

11/20/07

IN THE MATTER OF
THE APPLICATION OF
HENRY B. PECK, JR. - LEGAL OWNER /
PETITIONERS FOR VARIANCE ON
PROPERTY LOCATED ON THE S/S
OF TERRACE DALE, 130' W OF C/L OF
CEDAR AVENUE
(7 TERRACE DALE)

9TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 06-506-A

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OPINION

This matter is before the Board on an appeal from an original decision of the Zoning Commissioner dated June 28, 2006 in which Petition for Variance relief from § 1B02.3C.1 of the *Baltimore County Zoning Regulations* (BCZR) to permit a lot area of 4,800 sq. ft., a side yard setback of 8 feet, and a rear yard setback of 14 feet in lieu of the required 6,000 sq. ft., 10 feet and 30 feet respectively, and § 303.1 for a front yard setback of 21 feet for an open projection porch in lieu of the required 22.5 feet was denied. Petitioners filed a Motion for Reconsideration and an Order on the Motion was filed on July 26, 2006 affirming the denial of the variance. A timely appeal was filed and a hearing was held before the Board on July 11, 2007. Deborah C. Dopkin, Esquire, represented the Petitioner, Henry B. Peck, Jr., and J. Carroll Holzer, Esquire, represented the Protestants, the Aigburth Manor Association of Towson, Inc.; Wiltondale Improvement Association, et al; and Craig Demillie, President. Closing briefs were filed on August 21, 2007, and public deliberation was held on October 2, 2007.

Background

Terrace Dale, a small roadway approximately 0.2 miles in total length, changes in character and is a small one-way street narrowing to approximately 11 feet in width in front of the Petitioner's lot known as 7 Terrace Dale (Lot #8 on the 1918 plat of "Terrace Dale"). The road runs west from Cedar Avenue to its terminus at York Road. The property with its northern boundary fronting Terrace Dale is approximately 74 feet wide, tapering to 52 feet across the rear

boundary, and 80 feet deep, containing a gross area of 4,800 sq. ft. +/- . The property is zoned D.R. 5.5. Protestants presented a tax map showing that the square footage of the property is 3,500 sq. ft. +/- .

Bruce Doak, a registered land surveyor with Gerhold, Cross and Etzel, testified as to the history of the ground. Originally, the plot was a 2-acre plot conveyed to Mr. Charles E. Thomas, the great-grandfather of Petitioner, Henry Peck. This conveyance occurred in 1891. In 1910, Mr. Thomas conveyed 2 acres to Trustees as a 2-acre entirety. In 1918, eight lots were plotted, six for the children of Mr. Thomas, and Lots 7 and 8, which were held by Mr. Thomas. At the time of the conveyance in 1918, the houses were built for the children and the lots were conveyed to the children, with each deed containing a description of each separate lot. The deeds were dated April 18, 1918. In 1934, Lot 7 was conveyed to another party, leaving Lot 8 (the property in question) as a residue.

Mr. Doak testified that the large lot (Lot 7) was improved by a dwelling and that the subject property (Lot 8) had a stable or barn that was built on it and was utilized by the dwelling on Lot 7, as well as the other lot owners, for parking cars and storing various other pieces of equipment. All improvements pre-dated 1945 when zoning came into Baltimore County.

Eventually Lot 7 was conveyed to another party who built an office building on the lot. The subject lot (Lot 8) was the smallest of the eight lots in the subdivision and was known as the stable lot. It was deeded to the six children of Charles E. Thomas and as stated was used as a barn, garage, workshop and storage building until the 1950s when it was raised.

Mr. Peck testified that until the 1960s Lot #8 had a three-bay barn on it and was used by the six tenants on the other lots to park cars in the barn and utilize it for other storage. Mr. Peck testified that he purchased 7 Terrace Dale by eight separate deeds from the heirs, devisees, and

estates of the original tenants in common. He seeks approval to move a small cottage from Burk Avenue onto the lot; however, in order to put the cottage on the lot, he needs the requested variances. It is his contention that the style of the cottage is consistent with the style and age of the dwellings in the neighborhood.

Although Mr. Doak testified that a home could be built on the lot without utilizing the requested front, rear and side yard setbacks, he admitted that a variance would be needed to build on a lot of less than 6,000 sq. ft.

The Protestants submitted testimony by various neighbors and members of the Wiltondale Association. They contended that erecting a structure on the small lot was out of character with the neighborhood and that it would crowd the land, and it would not be consistent with the community as it now stands. In addition, they were concerned about traffic on Terrace Dale, which was only 11 feet wide at the place where Lot 8 is located and the home is to be constructed.

Letters of opposition were presented to the Board and a video of Terrace Dale was entered into evidence, showing the lot in question and the neighboring lots.

Although not participating before the Board, People's Counsel did enter his appearance at the inception of the case and submitted a letter stating his opposition to the granting of the variances. People's Counsel contended that a merger had taken place, as found by the Zoning Commissioner and that the subject lot was part of the 2-acre dwelling site known as the "old home place." He contends that the fact that the lot was carved out later and deeded to joint owners as accessory to residential buildings, including the Old Home Place on Lot 7, does not undue zoning merger. In objecting to the granting of the variance, People's Counsel contended that the property was not unique and that there was no evidence of uniqueness.

Issues

The Board considers that there are three issues involved in this matter:

1. Was § 1B02 of the *Baltimore County Zoning Regulations* (BCZR) the appropriate procedure for handling this matter or should the matter have been determined under § 304.1 of the BCZR?
2. Is the property affected by the doctrine of merger?
3. Were the standards for a variance met under § 307.1 of the BCZR?

Decision

Issue No. 1: Was the matter properly processed under § 1B02.3 of the BCZR or should it have been processed under § 304?

This matter was determined by the Board at the beginning of the hearing when the issue was raised. The Protestants contended that the appropriate documents had not been filed with respect to processing the matter under § 304 and that the matter should be processed under § 1B02.3. The Board agreed with that position at the beginning of the hearing, and the matter was processed under § 1B02.3 of the BCZR.

Issue No. 2: Is the property affected by the doctrine of merger?

The Zoning Commissioner found that the lot in question had been merged with Lot 3 of the eight lots conveyed by Charles Thomas in 1929. He stated that the 1929 conveyance was made with the intent that the stable lot be used as an accessory to all of the children's homes, including adjacent lot 3. This acted as an integration of the two lots in service of a single project, the residence built on lot 3. He held that the fact that the interest in the stable lot was split with several other homes does not diminish the intent by Charles Thomas that lot 3 and the stable lot be used as one.

People's Counsel supports the idea that the merger took place as a result of the fact that the lot was used by the original owner, Charles Thomas, as an accessory to the large lot 7 where

the main house was located. He contends that the fact that Thomas utilized the “stable lot” for parking cars and storage and the fact that he deeded a 1/6 interest in the lot to each of his children who utilized the lot for the same purposes did not destroy the merger.

This Board does not agree that Lot 8 (the lot in question) was merged with Lot 3 or any other lot. This Board feels that, in order to find merger, one lot owner must have used the second lot which he also owned, as an accessory to the first lot. The Board cites *Remes v. Montgomery County*, 386 Md. 52 (2005), in which the Court states: “We perceive no such declared public policy that should prevent us from finding a zoning merger where two lots held in common ownership were clearly used in the service of one another in order to satisfy zoning requirements and subsequent to *Ridge* remained in that category.”

This Board finds that it is not clear that any one lot used the stable lot (Lot 8) in common ownership. The Board feels that it is impossible to merge a piece of property that is utilized by six other adjacent landowners as an accessory to their properties. Therefore, the Board finds that the doctrine of merger does not apply in this matter.

Issue No. 3: Were the standards for a variance met under § 307.1 of the BCZR?

Under the standards created by *Cromwell v. Ward*, 102 Md.App. (1995), Petitioner must prove that the property is unique. Once the property is shown to be unique, the Petitioner must show that the property itself contains some special circumstance that relates to the hardship complained of and causes practical difficulty.

Mr. Doak, the expert registered surveyor presented by Protestants, testified that the property was irregular in shape, pinched in the middle and unlike other lots in the immediate area. Mr. Doak also testified that with the exception of a variance for constructing a home on a lot less than 6,000 sq. ft. in area, a home could be constructed on the lot that would meet all of the side yard, front and rear yard setbacks.

While the Board is not convinced that the lot in question is unique, it certainly is smaller size than the other lots in the area. It is a situation similar to the case cited in *Cromwell, Schafer v. Zoning Board of Appeals*, 24 Mass.App. CT. 966, 511 NE 2nd 635 (Mass.App. CT. 1987), in which the property owner had conveyed away several parcels from a larger tract, leaving a parcel the size of which was prohibited under the ordinance. While the Board granted the Petitioner a variance, the trial court reversed and the appellate court affirmed the trial court. The trial court stated:

There was no evidence...regarding 'soil conditions, shape or topography of the [property] especially affecting the [property] but not affecting generally the zoning district in which it is located.' The argument that the insufficient width...constitutes a special circumstance of 'shape' is unpersuasive, particularly as the deficiency is one which they themselves produced through subdivision of the land they originally owned at a time when the 125-foot requirement pertained."

Thus, it appears that the small, irregular shaped parcel was established by Charles E. Thomas back in 1914 and Petitioner inherits the problem. The Board finds that if one considers the property to be unique, the practical difficulty was one which the Petitioner was aware of when he finally was able to purchase the property. As stated in *Roeser v. Anne Arundel Co.*, 368 Md. 294, p 319:

In Maryland when title is transferred, it takes with it all the encumbrances and burdens that attach to title; but it also takes with it all the benefits and rights inherent in ownership. If a predecessor in title was subject to a claim that he had created his own hardship, that burden, for variance purposes, passes with the title. But, at the same time, if the prior owner has not self-created a hardship, a self-created hardship is not immaculately conceived merely because the new owner obtains title.

It is clear that the Petitioner was aware of the problem with the lot in question. Protestants submitted a letter dated May 6, 2004 from Petitioner to John Carroll Heise, Jr., Esquire, and George S. Ingalls, Esquire, in which the Petitioner refers to the lot in question as a "small, unbuildable parcel to the rear of 20 Cedar Avenue which still contains a cement floor and partial foundations of a small barn once constructed thereon.."

Thus the Board finds that the Petitioner has inherited the hardship which was created by his great-grandfather who established the small lot in question. In addition, the Board feels that the spirit and intent of the law as set forth in § 307.1 of the BCZR would not be adhered to by construction of a dwelling on the proposed lot. The street (Terrace Dale) is only 11 feet wide in front of the proposed lot. If the lot were built upon, the question of parking and traffic would be a serious problem for any individual owner who was attempting to park a car or for visitors who were parking cars. The Board does not feel that the health and safety of the public would be enhanced and in fact would be impaired by allowing a building to be built on this particular lot. Therefore, the Board will deny the variance.

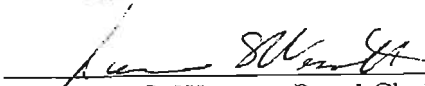
ORDER

THEREFORE, IT IS THIS 20th day of November, 2007 by the County Board of Appeals of Baltimore County

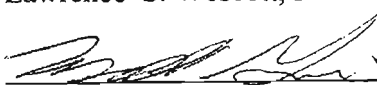
ORDERED that the Petition for Variance relief from § 1B02.3C.1 of the *Baltimore County Zoning Regulations* (BCZR) to permit a lot area of 4,800 sq. ft., a side yard setback of 8 feet, and a rear yard setback of 14 feet in lieu of the required 6,000 sq. ft., 10 feet and 30 feet, respectively and from § 303.1 for a front yard setback of 21 feet for an open projection in lieu of the required 22.5 feet 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*.

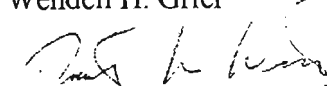
**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**



Lawrence S. Wescott, Panel Chairman



Wendell H. Grier



Robert W. Witt



County Board of Appeals of Baltimore County

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

November 20, 2007

Deborah C. Dopkin, Esquire
1000 Mercantile-Towson Building
409 Washington Avenue
Towson, MD 21204

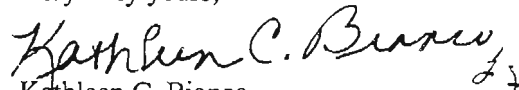
RE: *In the Matter of: Henry B. Peck, Jr. – Legal Owner /Petitioner*
Case No. 06-506-A

Dear Ms. Dopkin:

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 of Procedure*, **with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all subsequent Petitions for Judicial Review filed from this decision should be noted under the same civil action number as the first Petition.** 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
Administrator

Enclosure

c: Henry B. Peck, Jr.
Carrie Peck Tomko
J. Carroll Holzer, Esquire
The Aigburth Manor Assn of Towson, Inc.
Wiltondale Improvement Assn., et al
Craig Demallie, President
Paul and Susan Hartman Adele Free
Ashby and Milan Heath Andrew Evans
Joseph Booze Judith Giacomo
Virginia Caruthers Christopher Bready
Mary Miles John and Frances Holman Marueen Hunter
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM



8/21/07

Re: PETITION FOR VARIANCE * BEFORE THE
South Side of Terrace Dale, * BOARD OF APPEALS
130' West of Centerline * OF
of Cedar Road *
(7 Terrace Dale) *
9th Election District * BALTIMORE COUNTY
5th Council District *
Case No. 06-506-A * Case No. 06-506-A

Henry B. Peck, Jr. *
Petitioner/Appellant *

MEMORANDUM IN SUPPORT OF PETITION

Henry B. Peck, Jr., Appellant, by his attorney, Deborah C. Dopkin, and Deborah C. Dopkin, P.A., respectfully submits this Memorandum in support the Petition for Variances filed in this case.

HISTORY OF THE CASE

This matter came before the Zoning Commissioner for Baltimore County as a result of a Petition for Variances for the property, an unimproved lot located at 7 Terrace Dale in the Towson area of Baltimore County. The Zoning Commissioner denied the request for variances by Findings of Fact and Conclusion of Law dated June 28, 2006, (See Protestant's Exhibit 5) alleging a merger had occurred. Petitioner filed a Motion for Reconsideration, which was also denied by Order Dated July 26, 2006. Petitioner filed a timely appeal, and the County Board of Appeals heard the matter at a hearing on July 11, 2007.

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BOARD OF APPEALS

STATEMENT OF THE FACTS

The subject property is a lot located at 7 Terrace Dale in the Towson area of Baltimore County. The lot was created by a series of deeds between 1918 and 1934. There has been no change to the lot's boundaries since 1934. The creation of the lot predates the adoption of any zoning regulations in Baltimore County by at least 11 years.

Until 2005, the lot was owned as a tenancy-in-common by the heirs and devisees of the six original tenants in common to whom the property was conveyed in 1929 by the trustees for Charles E. Thomas, the original subdivider and the father of the six co-tenants. No sale of any interests in the lot occurred during the intervening 76 years.

The lot was created as the result of the division of a larger two (2) acre family tract by trustees for the family patriarch Charles E. Thomas, as shown on a survey plat prepared by J. Milton Green and dated April, 1918, dividing the property into eight (8) intended lots.

The lot is currently unimproved, though at one time it contained a stable that served the residence of Charles E. Thomas situate on the opposite side of Terrace Dale; that residence property was developed pursuant to Baltimore County regulations in the mid-1980's as part of the office complex known as York at Terrace Dale.

Over the intervening years, the lot was used and maintained by the six tenant in common owners, and later by their respective heirs and devisees, who shared the use and enjoyment of the lot (each in his/her own manner) as well as the expenses of maintenance and taxes.

Since 1934, the lot has been titled separately from all adjoining parcels, consistent with the 1918 survey plat.

In 2005, the Petitioner purchased 7 Terrace Dale by eight (8) separate deeds from the heirs, devisees and estates of the original tenants in common. In so doing, Petitioner opened or re-opened six estates in order to effect the conveyances and to perfect title, so he would acquire clear title, as a matter of law.

Petitioner sought approval to move a small vintage cottage onto the lot, albeit one that could not be built there without variances, primarily to achieve consistency with the style and age of dwellings in the area. (Petitioner's Exhibit 10 and Attachment 1.) Videotape evidence introduced at the hearing by Protestants (Protestant's Exhibit 10) demonstrates a wide variety of housing types, ages, lot sizes and styles in the immediate neighborhood, which range from large cottages on large lots, to modestly sized homes on small lots, to townhouse garden condominiums. The diversity is further documented by the records

of the State Department of Assessments and Taxation. (Attachment 2, a - 1).

Protestants' counsel raised procedural issues as to the appropriate analysis and relief under which Petitioner proceeded, and further suggests that the lot shared either use or ownership with adjoining property.

STANDARD OF REVIEW

Administrative law in Maryland provides that where an administrative agency applies the incorrect legal standard or its decision is based on an erroneous conclusion of law, the presumption of correctness of the administrative decision does not apply, and the reviewing court may substitute its judgment for that of the agency. Ocean City v. Purnell-Jarvis, Ltd., 86 Md. App 390, 586 A.2d 816 (1991); Caucus Distributors, Inc. v. Maryland Securities Commissioner, 320 Md. 313, 577 A.2d 783 (1990); People's Counsel for Baltimore County v. Maryland Marine Manufacturing Co., Inc., 316 Md. 491, 560 A.2d 32 (1989).

And in Umerly v. People's Counsel, 108 Md.App. 497 (1995).

"The order of a county zoning authority "must be upheld on review *if it is not premised upon an error of law* and if [its] conclusions 'reasonably may be based upon the facts proven.' " Ad + Soil, Inc. v. County Commissioners of Queen Anne's County, 307 Md. 307, 338, 513 A.2d 893 (1986) (emphasis added) (citing Annapolis v. Annapolis Waterfront Co., 284 Md. 383, 399, 396 A.2d 1080 (1979)). See also Montgomery County v. Merlands Club, Inc., 202 Md. 279, 287, 96 A.2d 261 (1953) (zoning authority must properly construe controlling law);

Appellate review of factual issues is very narrow. Maryland cases hold that the standard in reviewing a decision of an administrative agency is limited to whether the factual question before the Board was fairly debatable or whether there was an error of law.

A court's role in "reviewing the decision of an administrative agency is limited to determining if there is substantial evidence in the record as a whole to support the

agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law," e.g., Richmarr Holly Hills, Inc. v. American PCS, L.P., 117 Md. App. 607, 652 (1997) (citing Lee v. M-NCPPC, 107 Md. App. 486, 492 (1995). Friends of the Ridge v. Baltimore Gas and Elec. Co., 120 Md. App. 444, 465 (1998), *vacated in part*, 352 Md. 645.

ISSUES PRESENTED

- I. Was Section 1B02 of the Baltimore County Zoning Regulations the appropriate procedure under which to seek relief?
- II. Were the standards met for variance relief?
- III. Is the property affected by the doctrine of zoning merger?

DISCUSSION

I. Relief was sought under the appropriate section of the Baltimore County Zoning Regulations.

Petitioner sought relief under the correct process through the only analysis afforded him by the Baltimore County Zoning Regulations ("BCZR") and Zoning Commissioner's Policy Manual.

Two sections of the Baltimore County Zoning Regulations address undersized lots created before the effective date of the existing regulations. To determine the validity of a lot and whether it may be built upon requires a two-step analysis.

That analysis, which is applied by the Baltimore County Zoning Office, pursuant to the Zoning Regulations, looks first to the criteria of Section 304 and Zoning Commissioner's Policy Manual, to determine if a lot was created prior to 1945 is a valid buildable lot. (Attachment 3) The analysis could stop there: if the proposed residence complies, the use is permitted,

and there is a procedure for obtaining a building permit, requiring that the property be posted, after which either a hearing ensues, or a building permit is issued without a hearing, notwithstanding that the lot is undersized based on current regulations.

If the owner's proposed residence does not meet the bulk regulations of Section 304, variance relief must be sought under Section 1B02.3 (Attachment 4), as is the case here. This analysis and process is consistent with a common sense reading of the BCZR and with administrative practice and policy. Once a petition has been filed, the applicant must demonstrate that the relief is appropriate. This is the application of the regulations used by the zoning administrators and followed by Petitioner.

The consistent and long-standing construction given a statute by the agency charged with administering it is entitled to great deference. Baltimore Gas & Elec. V. Public Service Comm'n., 305 Md. 145, 501 A.2d 1307 (1986) cited in Bennett V. Zelinsky, 163 Md. App 292, 878 A.2d 670 (2005).

Thus, Section 1B02.3 is the correct section of the Zoning Regulations under which to seek relief.

In a case with fact highly similar to the subject case, *In the Matter of Niermann*, Case No. 03-160 SPH, where Appellant alleged that relief should have been sought under a different

section of the zoning regulations, this Board, the Circuit Court for Baltimore County and the Court of Special Appeals of Maryland¹ all approved the use of an undersized lot. The Appeals Court applied the two step analysis in its decision, first considering Section 304 of the Baltimore County Zoning Regulations, and then considering the requirements of Section 1B02.3 of the regulations.

II. The lot meets the standards for variance relief.

Expert testimony by Bruce Doak, a registered surveyor, attested to the irregular property lines and the irregular shape of the lot, pinched in the middle, unlike other lots in the immediate area. Mr. Doak's testimony was uncontradicted. Mr. Doak further testified that the proposed residence was in keeping with the character of the community and would not overburden public facilities.

Based on this unique configuration of the site, strict compliance with the regulations creates an undue hardship that would prevent the use of the lot for a permitted residential purpose, and as such, affects this lot differently than other lots in the area.

The hardship is not the result of the applicants's actions: the lot is exactly as he acquired it, and under Maryland law,

¹ Albright et al v. Kevin Michels, No. 01603, September Term, 2004, an unreported decision.

purchasing a property, knowing there is a deficiency, is not deemed a self-created hardship. Roeser v. Anne Arundel Co., 386 Md. 294 793 A.2d 545 (2002). 368

Based on the application of the zoning regulations and the history of the lot, the variances do not increase the density beyond that otherwise allowable by the BCZR, and well below the overall tract density if one considers the original tract, as developed. A single house on one lot is allowed in the D.R. zone.

The relief requested can be granted in such fashion that the spirit of the BCZR will be observed and public safety and welfare secured, as attested to by Mr. Doak and all the comments of the County agencies.

The Planning Department, which serves as the County's own professionals in evaluating zoning petitions, not only found no detrimental impacts on public facilities, including roads, but in fact, positively supports the proposed house, both as to size and style, as being in keeping with the character of the community! (Attachment 5)

III. There is no merger of the lot with any adjoining property or use.

Under case law in Maryland and other jurisdictions, variance relief may be affected if a property had been used to satisfy zoning requirements for an adjoining lot in common ownership.

This doctrine of zoning merger, like other zoning restrictions on the use of property is in derogation of the common law, and must be narrowly construed. "Zoning ordinances are in derogation of the common law and should be strictly construed." Gino's of Maryland, Inc. v. City of Baltimore, 250 Md. 621, 642, 244 A.2d 218, 230 (1968), cited with approval in White v. North, 356 Md. 31, 48, 736 A.2d 1072, 1082 (1999) and Bennet V. Zelinsky, 163 Md. App 292, 878 A2d 670 (2005). A majority of jurisdictions apply the merger principle narrowly, and at least one appellate court has articulated a "bright-line rule" to determine applicability of the doctrine. Jock v. Zoning Board, 878 A.2d 785 (N.J. 2005).

In Maryland, a merger for zoning purposes occurs when two or more lots are:

1. Held in **common ownership**; and
2. One lot is used in service to one or more of the other lots **solely** to meet zoning requirements; and
3. There is evidence of the common owner's **intent** to utilize the contiguous lots in the service of a single structure.

Remes v. Montgomery County, 387 Md. 52, 874 A.2d 470 (2005)

None of those elements exist in the instant case.

The subject property has never been held in common ownership with any adjoining residential property owner, but was owned by tenants in common until acquired by Petitioner.

As such, the lot could not be used to serve an adjoining property. Tenancy in common property ownership prohibits any use of the co-owned property by one of the co-tenants which would result in its merger with an adjacent property owned solely by one co-tenant. The fiduciary duty that exists between co-owners is breached and the property rights of the other co-tenants are violated if a use by a single co-tenant infringes the property rights of the other owners, as a zoning merger would.

Any use of tenancy-in-common property can only occur with the consent of **all** the tenants, and no claim of sole ownership by one of those tenants can be asserted unless there is an ouster (as defined by law) or an action for adverse possession. Neither has occurred here.²

Uncontradicted testimony and evidence presented by Petitioner based on first hand knowledge was that there was continuous use of the property by all the tenants-in-common, and contribution by all those tenants to the maintenance and upkeep of the property. As a matter of law there is no common ownership with any contiguous property nor did any affirmative act occur to establish such ownership.

2

Numerous cases have held that a property owned by either co-tenants or by spouses as tenants by the entireties is deemed not to be merged with another property owned solely by one co-tenant or one spouse. Loechner v. Campoli, 49 N.J. 504, 231 A.2d 553 (1967); Jock v. Zoning Board of Adjustment, supra; Carciofi v. Board of Appeals, 22 Mass. App. Ct. 926, 492 N.E. 2d 747 (1986). A very early Maryland case embraces the legal principle that one co-owner's interest cannot operate to divest or disturb the interests of the other co-owners. Minke's Lessee V. McNamee, 30 Md. 294 (1869).

The element of the intent is also lacking. The Jock case, citing Friends of the Ridge v. Baltimore Gas and Electric Co., 352 Md. 645, 724 A.2d 34 (1998), considers intent only one element of zoning merger, but not one that is determinative: whether or not a jurisdiction deems intent an element of merger, "commonality of legal title is the base line for a merger analysis" and, such commonality of legal title is the touchstone of zoning merger before which any analysis of intent can be considered.

There has never been an intent or use by the owner of the subject or adjoining property to utilize the lot in service of a single structure on an adjoining property *for zoning purposes* since all the improvements on all the adjoining parcels pre-dated zoning. The only showing of intent is the 1918 survey plat showing the property as a separate lot.

The lot is currently unimproved. At one time it contained a stable that served the residence lying on the opposite side of Terrace Dale. That residence property was developed in the mid-1980's pursuant to the development regulations then in effect as the office complex known as York at Terrace Dale. As stated in Remes, one way to avoid merger, is by subdivision or re-subdivision. Thus, even if one were to maintain that 7 Terrace Dale served the residence property across the street, that

connection was formally and legally severed when York at Terrace Dale was developed.³

There are also clearly defined exemptions to the doctrine of merger which apply.

Under the 2005 Jock case, supra, the court enumerated a number of recognized exceptions to the merger doctrine:

(i) It does not apply to adjoining lots, owned by the same person, all of which are found to conform to the requirements of the [local] regulations and are shown and designated as separate on the tax map;

(ii) It does not apply where a party who owns a non-conforming lot acquires a contiguous lot that *fronts on a different street* and merger would not create a conforming lot; (emphasis added)

(iii) It does not apply to *back to back or L-shaped lots* since it would require "a strained finding" that these two lots were intended to form one lot and would be in total disregard that each lot fronts on a different street. (emphasis added)

(iv) It does not apply to contiguous lots created pursuant to a subdivision approved under applicable law.

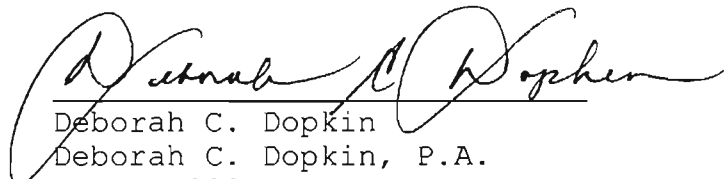
The burden of proving the elements of zoning merger fall on the party asserting merger - the Protestants. Friends of the Ridge, supra. Protestants have not presented evidence to support, much less meet their burden. To find zoning merger as a bar to using 7 Terrace Dale for a permitted residential use is unsupported by applicable law.

³ York at Terrace Dale was developed in the 1980's under Baltimore County regulations then in effect, long after the conveyance of 1934 which left the subject lot as a freestanding parcel. Both Appellee Associations were parties to agreements supporting that development.

CONCLUSION

Applying the requisite procedure in the Baltimore County Zoning Regulations and Zoning Commissioner's Policy Manual, Petitioner has appropriately applied for and pursued variance relief, presenting evidence and testimony of the unique characteristics of the property in support of the variances. As a matter of law, there has been no use or indicia of ownership that would raise zoning merger as a bar to the requested relief. As such, Petitioner should be allowed to locate a small and compatible house on 7 Terrace Dale.

Respectfully submitted,



Deborah C. Dopkin
Deborah C. Dopkin, P.A.
Suite 1000
409 Washington Avenue
Towson, Maryland 21204
(410) 821-0200

TABLE OF CASES

1. Ad + Soil, Inc. v. County Commissioners of Queen Anne's County, 307 Md. 307, 338, 513 A.2d 893 (1986)
2. Annapolis v. Annapolis Waterfront Co., 284 Md. 383, 399, 396 A.2d 1080 (1979)
3. Baltimore County Zoning Regulations, 1998, as amended
4. Baltimore Gas & Elec. V. Public Service Comm'n., 305 Md. 145, 501 A.2d 1307 (1986)
5. Bennet V. Zelinsky, 163 Md. App 292, 878 A2d 670 (2005)
6. Caucus Distributors, Inc. v. Maryland Securities Commissioner, 320 Md. 313, 577 A.2d 783 (1990)
7. Carciofi v. Board of Appeals, 22 Mass. App. Ct. 926, 492 N.E. 2d 747 (1986)
8. Friends of the Ridge v. Baltimore Gas and Electric Co., 352 Md. 645, 724 A.2d 34
9. Gino's of Maryland, Inc. v. City of Baltimore, 250 Md. 621, 642, 244 A.2d 218, 230 (1968)
10. Jock v. Zoning Board, 878 A.2d 785 (2005)
11. Lee v. M-NCPPC, 107 Md. App. 486, 492 (1995)
12. Loechner v. Campoli, 49 N.J. 504, 231 A.2d 553 (1967)
13. Minke's Lessee V. McNamee, 30 Md. 294 (1869)
14. Montgomery County v. Merlands Club, Inc., 202 Md. 279, 287, 96 A.2d 261 (1953)
15. Ocean City v. Purnell-Jarvis, Ltd., 86 Md. App 390, 586 A.2d 816 (1991)
16. People's Counsel for Baltimore County v. Maryland Marine Manufacturing Co., Inc., 316 Md. 491, 560 A.2d 32 (1989)
17. Remes v. Montgomery County, 387 Md. 52, 874 A.2d 470 (2005)

18. Richmarr Holly Hills, Inc. v. American PCS, L.P., 117 Md. App. 607, 652 (1997)
19. Roeser v. Anne Arundel Co., 386 Md. 294 793 A.2d 545 (2002)
20. Umerly v. People's Counsel, 108 Md.App. 497 (1995)
21. White v. North, 356 Md. 31, 48, 736 A.2d 1072, 1082 (1999)

CERTIFICATION OF MAILING

I HEREBY CERTIFY, that on this 21st day of August, 2007, a copy of the foregoing Notice of Appeal was mailed, postage prepaid to J. Carroll Holzer, Esquire, 508 Fairmont Avenue, Towson, Maryland 21286 and to People's Counsel for Baltimore County, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204.


Deborah C. Dopkin

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Account Identifier: District - 09 **Account Number -** 0919714170

Owner Information

Owner Name: TOWSON PROPERTIES LLC **Use:** RESIDENTIAL
Principal Residence: NO
Mailing Address: 2700 PHILADELPHIA RD **Deed Reference:** 1) /20450/ 372
 EDGEWOOD MD 21040-1120 2)

Location & Structure Information

Premises Address **Legal Description**
 22 E BURKE AVE .1742 AC
 22 E BURKE AVE
 530FT E OF YORK RD

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
70	14	325						2	Plat Ref:

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

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1922	1,400 SF	7,128.00 SF	04

Stories	Basement	Type	Exterior
2	YES	END UNIT	

Value Information

	Base Value	Value	Phase-in Assessments	
		As Of	As Of	As Of
		01/01/2005	07/01/2006	07/01/2007
Land	42,120	42,000		
Improvements:	68,570	126,220		
Total:	110,690	168,220	149,042	168,220
Preferential Land:	0	0	0	0

Transfer Information

Seller: GOULD MICHAEL A	Date: 07/27/2004	Price: \$225,000
Type: IMPROVED ARMS-LENGTH	Deed1: /20450/ 372	Deed2:
Seller: GOLDSBOROUGH CHARLES R	Date: 05/30/2002	Price: \$135,000
Type: IMPROVED ARMS-LENGTH	Deed1: /16458/ 494	Deed2:
Seller: SCOTTO MARIO SCOTTO JOAN	Date: 02/06/1996	Price: \$95,000
Type: IMPROVED ARMS-LENGTH	Deed1: /11420/ 302	Deed2:

Exemption Information

Partial Exempt Assessments	Class	07/01/2006	07/01/2007
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:
 * NONE *



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Account Identifier: District - 09 **Account Number -** 0908000860

Owner Information

Owner Name:	HIRSCH CHRISTOPHER J HIRSCH JILL M	Use:	RESIDENTIAL
Mailing Address:	4 CEDAR AVE TOWSON MD 21286-7843	Principal Residence:	YES
		Deed Reference:	1) /24331/ 547 2)

Location & Structure Information

Premises Address	Legal Description
4 CEDAR AVE	LT NWS CEDAR AVE 4 CEDAR AVE NW 200 E YORK RD

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
70	20	351						2	Plat Ref:

Special Tax Areas

Town
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1903	1,680 SF	13,350.00 SF	04
Stories	Basement	Type	Exterior
2	YES	STANDARD UNIT	

Value Information

	Base Value	Value	Phase-in Assessments	
		As Of	As Of	As Of
		01/01/2005	07/01/2006	07/01/2007
Land	42,330	93,330		
Improvements:	133,930	213,640		
Total:	176,260	306,970	263,400	306,970
Preferential Land:	0	0	0	0

Transfer Information

Seller: HELMACY LOUIS J	Date: 08/18/2006	Price: \$399,000
Type: IMPROVED ARMS-LENGTH	Deed1: /24331/ 547	Deed2:
Seller: BROOKS PATRICK	Date: 08/17/2001	Price: \$219,000
Type: IMPROVED ARMS-LENGTH	Deed1: /15478/ 759	Deed2:
Seller: LINCOLN LOUISE GIBSON HASSETT	Date: 09/23/1997	Price: \$156,250
Type: NOT ARMS-LENGTH	Deed1: /12397/ 643	Deed2:

Exemption Information

Partial Exempt Assessments	Class	07/01/2006	07/01/2007
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:
 * NONE *



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Account Identifier: District - 09 **Account Number -** 0908011590

Owner Information

Owner Name:	HEATH MILAN A HEATH ASHBY M	Use:	RESIDENTIAL
Mailing Address:	20 CEDAR AVE TOWSON MD 21286-7843	Principal Residence:	YES
		Deed Reference:	1) /21835/ 133 2)

Location & Structure Information

Premises Address	Legal Description
20 CEDAR AVE	20 CEDAR AVE WS SW COR THOMAS AV

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
70	20	689						2	Plat Ref:

Special Tax Areas

Town
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1913	1,847 SF	7,488.00 SF	04
Stories	Basement	Type	Exterior
2	YES	STANDARD UNIT	

Value Information

	Base Value	Value	Phase-in Assessments	
		As Of	As Of	As Of
		01/01/2005	07/01/2006	07/01/2007
Land	40,480	91,480		
Improvements:	101,520	134,620		
Total:	142,000	226,100	198,066	226,100
Preferential Land:	0	0	0	0

Transfer Information

Seller: WEISS JOHN CARROLL,JR	Date: 05/10/2005	Price: \$327,000
Type: NOT ARMS-LENGTH	Deed1: /21835/ 133	Deed2:
Seller: HUNT CHARLES E	Date: 04/15/2005	Price: \$0
Type: NOT ARMS-LENGTH	Deed1: /21724/ 52	Deed2:
Seller: HAMMARSTROM E H T	Date: 03/16/1972	Price: \$0
Type: NOT ARMS-LENGTH	Deed1: / 5255/ 590	Deed2:

Exemption Information

Partial Exempt Assessments	Class	07/01/2006	07/01/2007
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:
 * NONE *



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Account Identifier: District - 09 **Account Number - 0906450280**

Owner Information

Owner Name:	MISSLER LLOYD S HUBBARD FELICITY A	Use:	RESIDENTIAL
Mailing Address:	9 CEDAR AV BALTIMORE MD 21286-7844	Principal Residence:	YES
		Deed Reference:	1) / 7448/ 195 2)

Location & Structure Information

Premises Address	Legal Description
9 CEDAR AVE	PT LT 13-14 WILTONDALE

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
70	20	789			3		14	2	Plat Ref: 10/ 124

Special Tax Areas

Town
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1952	1,899 SF	7,800.00 SF	04
Stories	Basement	Type	Exterior
1 1/2	YES	STANDARD UNIT	

Value Information

	Base Value	Value	Phase-in Assessments	
		As Of	As Of	As Of
		01/01/2005	07/01/2006	07/01/2007
Land	61,800	100,800		
Improvements:	195,910	259,910		
Total:	257,710	360,710	326,376	360,710
Preferential Land:	0	0	0	0

Transfer Information

Seller: FORD ETHEL H	Date: 03/16/1987	Price: \$110,000
Type: IMPROVED ARMS-LENGTH	Deed1: / 7448/ 195	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:

Exemption Information

Partial Exempt Assessments	Class	07/01/2006	07/01/2007
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:
 * NONE *



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Account Identifier: District - 09 Account Number - 0911570130

Owner Information

Owner Name:	LYLES ROBERT L,3RD LYLES KELLY C	Use:	RESIDENTIAL
Mailing Address:	5 CEDAR AVE BALTIMORE MD 21286-7844	Principal Residence:	YES
		Deed Reference:	1) /23900/ 652 2)

Location & Structure Information

Premises Address	Legal Description
5 CEDAR AVE	PT LT 15 A 5 CEDAR AVE WILTONDALE

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
70	20	789			3		15A	2	Plat Ref: 10/ 124

Special Tax Areas

Town
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1948	1,552 SF	7,571.00 SF	04
Stories	Basement	Type	Exterior
2	YES	STANDARD UNIT	

Value Information

	Base Value	Value	Phase-in Assessments		
		As Of	As Of	As Of	
		01/01/2005	07/01/2006	07/01/2007	
Land	61,570	100,570			
Improvements:	151,100	232,830			
Total:	212,670	333,400	293,156	333,400	
Preferential Land:	0	0	0	0	

Transfer Information

Seller: LYLES ROBERT L,JR	Date: 05/25/2006	Price: \$285,400
Type: NOT ARMS-LENGTH	Deed1: /23900/ 652	Deed2:
Seller: KNELL WALTER L,JR	Date: 07/15/1985	Price: \$115,000
Type: IMPROVED ARMS-LENGTH	Deed1: / 6957/ 148	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:

Exemption Information

Partial Exempt Assessments	Class	07/01/2006	07/01/2007
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:
 * NONE *



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Account Identifier: District - 09 **Account Number -** 0919270110

Owner Information

Owner Name:	HENEBERRY PAULA A	Use:	RESIDENTIAL
Mailing Address:	64 CEDAR AV BALTIMORE MD 21286-7847	Principal Residence:	YES
		Deed Reference:	1) /14847/ 431 2)

Location & Structure Information

Premises Address	Legal Description
64 CEDAR AVE	LT NS CEDAR AV 64 CEDAR AVE NW COR HILLSIDE AV

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
70	14	418						2	Plat Ref:

Special Tax Areas

Town
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1953	1,606 SF	5,429.00 SF	04
Stories	Basement	Type	Exterior
2	YES	STANDARD UNIT	

Value Information

	Base Value	Value	Phase-in Assessments	
		As Of	As Of	As Of
		01/01/2005	07/01/2006	07/01/2007
Land	38,500	89,500		
Improvements:	136,980	182,680		
Total:	175,480	272,180	239,946	272,180
Preferential Land:	0	0	0	0

Transfer Information

Seller: GEORGE JAMES W	Date: 12/06/2000	Price: \$0
Type: NOT ARMS-LENGTH	Deed1: /14847/ 431	Deed2:
Seller: DAVISSON TIMOTHY JEROME	Date: 04/21/1999	Price: \$165,000
Type: IMPROVED ARMS-LENGTH	Deed1: /13688/ 113	Deed2:
Seller: SEHLHORST JOSEPH F	Date: 06/14/1989	Price: \$145,000
Type: IMPROVED ARMS-LENGTH	Deed1: / 8198/ 622	Deed2:

Exemption Information

Partial Exempt Assessments	Class	07/01/2006	07/01/2007
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:
 * NONE *



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Account Identifier: District - 09 **Account Number -** 0908001473

Owner Information

Owner Name:	WALKER HARRY C,JR WALKER KERRI H	Use:	RESIDENTIAL
Mailing Address:	22 CEDAR AVE BALTIMORE MD 21286-7845	Principal Residence:	YES
		Deed Reference:	1) /23607/ 344 2)

Location & Structure Information

Premises Address	Legal Description
22 CEDAR AVE	22 CEDAR AVE NWS NW COR TERRACE DALE

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
70	20	360						2	Plat Ref:

Special Tax Areas

Town
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1888	2,353 SF	6,840.00 SF	04
Stories	Basement	Type	Exterior
2 1/2	YES	STANDARD UNIT	

Value Information

	Base Value	Value	Phase-in Assessments	
		As Of	As Of	As Of
		01/01/2005	07/01/2005	07/01/2007
Land	39,840	90,840		
Improvements:	123,530	167,080		
Total:	163,370	257,920	226,402	257,920
Preferential Land:	0	0	0	0

Transfer Information

Seller: ZEMAREL JONATHAN	Date: 03/31/2006	Price: \$462,000
Type: IMPROVED ARMS-LENGTH	Deed1: /23607/ 344	Deed2:
Seller: WEISS JOHN CARROLL,JR	Date: 06/16/2005	Price: \$315,101
Type: NOT ARMS-LENGTH	Deed1: /22050/ 509	Deed2:
Seller: HAMMARSTROM N WALTER	Date: 04/15/2005	Price: \$0
Type: NOT ARMS-LENGTH	Deed1: /21724/ 52	Deed2:

Exemption Information

Partial Exempt Assessments	Class	07/01/2006	07/01/2007
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:
 * NONE *



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Account Identifier: District - 09 Account Number - 0907580660

Owner Information

Owner Name:	HUNTER DAVID F HUNTER KAY S	Use:	RESIDENTIAL
Mailing Address:	7 CEDAR AV BALTIMORE MD 21286-7844	Principal Residence:	YES
		Deed Reference:	1) / 6932/ 325 2)

Location & Structure Information

Premises Address	Legal Description
7 CEDAR AVE	PT LT 14,15 WILTONDALE

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
70	20	789			3	3	15	2	Plat Ref: 10/ 124

Special Tax Areas

Town
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1951	2,287 SF	7,800.00 SF	04
Stories	Basement	Type	Exterior
1 1/2	YES	STANDARD UNIT	

Value Information

	Base Value	Value	Phase-in Assessments	
		As Of	As Of	As Of
		01/01/2005	07/01/2006	07/01/2007
Land	61,800	100,800		
Improvements:	176,770	228,110		
Total:	238,570	328,910	298,796	328,910
Preferential Land:	0	0	0	0

Transfer Information

Seller: GREEN LAURIE M	Date: 06/11/1985	Price: \$84,000
Type: IMPROVED ARMS-LENGTH	Deed1: / 6932/ 325	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:

Exemption Information

Partial Exempt Assessments	Class	07/01/2006	07/01/2007
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:
 * NONE *



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Account Identifier: District - 09 Account Number - 0908000861

Owner Information

Owner Name: MILES MARY CARR HASSETT **Use:** RESIDENTIAL
Mailing Address: 2 CEDAR AVE **Principal Residence:** YES
 BALTIMORE MD 21286 **Deed Reference:** 1) /11055/ 210
 2)

Location & Structure Information

Premises Address **Legal Description**
 2 CEDAR AVE LT WS CEDAR AV
 2 CEDAR AVE WS
 COR YORK RD

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
70	20	297						2	Plat Ref:

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

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1854	2,051 SF	11,685.00 SF	04

Stories	Basement	Type	Exterior
2 1/2	YES	STANDARD UNIT	

Value Information

	Base Value	Value	Phase-in Assessments	
		As Of	As Of	As Of
		01/01/2005	07/01/2006	07/01/2007
Land	41,920	92,920		
Improvements:	109,980	183,830		
Total:	151,900	276,750	235,132	276,750
Preferential Land:	0	0	0	0

Transfer Information

Seller: LINCOLN LOUISE GIBSON HASSETT	Date: 05/23/1995	Price: \$75,435
Type: NOT ARMS-LENGTH	Deed1: /11055/ 210	Deed2:
Seller: HASSETT CHARLES C	Date: 12/28/1993	Price: \$1
Type: NOT ARMS-LENGTH	Deed1: /10241/ 704	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:

Exemption Information

Partial Exempt Assessments	Class	07/01/2006	07/01/2007
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:
 * NONE *



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Account Identifier: District - 09 Account Number - 0915100041

Owner Information

Owner Name:	ODELL AUDREY G	Use:	RESIDENTIAL
Mailing Address:	76 CEDAR AVE TOWSON MD 21286-7847	Principal Residence:	NO
		Deed Reference:	1) /18676/ 201 2)

Location & Structure Information

Premises Address	Legal Description
CEDAR AVE	LT ES CEDAR AV S AIGBURTH RD

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
70	14	413						2	Plat Ref:

Special Tax Areas

Town
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
0000		966.00 SF	04

Stories	Basement	Type	Exterior
----------------	-----------------	-------------	-----------------

Value Information

	Base Value	Value	Phase-in Assessments		
		As Of	As Of	As Of	
		01/01/2005	07/01/2006	07/01/2007	
Land	240	240			
Improvements:	0	0			
Total:	240	240	240	240	
Preferential Land:	0	0	0	0	

Transfer Information

Seller: ODELL LOIS D	Date: 08/27/2003	Price: \$0
Type: NOT ARMS-LENGTH	Deed1: /18676/ 201	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:

Exemption Information

Partial Exempt Assessments	Class	07/01/2006	07/01/2007
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:
 * NONE *

results



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Account Identifier: District - 09 Account Number - 1700000562

Owner Information

Owner Name: BOOZER F VERNON **Use:** APARTMENTS
 BOOZER DIANE H **Principal Residence:** NO
Mailing Address: 614 BOSLEY AV **Deed Reference:** 1) /15311/ 423
 BALTIMORE MD 21204-4029 2)

Location & Structure Information

Premises Address: 8 CEDAR AVE **Legal Description:** UNIT A
 CONDO UNIT: A CEDAR YORK COND

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
70	20	362						2	Plat Ref: 3/ 142

Special Tax Areas Town
 Ad Valorem
 Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
0000	1 SF		11
Stories	Basement	Type	Exterior

Value Information

	Base Value	Value As Of 01/01/2005	Phase-in Assessments As Of 07/01/2006	As Of 07/01/2007
Land	15,000	18,700		
Improvements:	34,600	43,800		
Total:	49,600	62,500	58,200	62,500
Preferential Land:	0	0	0	0

Transfer Information

Seller: BOOZER F VERNON	Date: 06/19/2001	Price: \$0
Type: NOT ARMS-LENGTH	Deed1: /15311/ 423	Deed2:
Seller: BOOZER RUTH C	Date: 04/20/1979	Price: \$0
Type: NOT ARMS-LENGTH	Deed1: / 6943/ 697	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:

Exemption Information

Partial Exempt Assessments	Class	07/01/2006	07/01/2007
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:
 * NONE *

Vernon Boozer's wife own
 10 apartments @ 8 Cedar Avenue
 which, per above, must have been
 converted to condos none sold by
 Boozer.

results

07/12/2007 11:45


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Account Identifier: District - 09 Account Number - 1700000563

Owner Information

Owner Name:	BOOZER F VERNON BOOZER DIANE H	Use:	APARTMENTS
Mailing Address:	614 BOSLEY AV BALTIMORE MD 21204-4029	Principal Residence:	NO
		Deed Reference:	1) /15311/ 423 2)

Location & Structure Information

Premises Address	Legal Description
8 CEDAR AVE	UNIT B
CONDO UNIT: B	CEDAR YORK COND

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
70	20	362						2	Plat Ref: 3/ 142

Special Tax Areas	Town
	Ad Valorem
	Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
0000	1 SF		11

Stories	Basement	Type	Exterior
----------------	-----------------	-------------	-----------------

Value Information

	Base Value	Value	Phase-In Assessments	
		As Of	As Of	As Of
		01/01/2005	07/01/2006	07/01/2007
Land	15,000	18,700		
Improvements:	34,600	43,800		
Total:	49,600	62,500	58,200	62,500
Preferential Land:	0	0	0	0

Transfer Information

Seller: BOOZER F VERNON	Date: 06/19/2001	Price: \$0
Type: NOT ARMS-LENGTH	Deed1: /15311/ 423	Deed2:
Seller: BOOZER RUTH C	Date: 04/20/1979	Price: \$0
Type: NOT ARMS-LENGTH	Deed1: / 6943/ 697	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:

Exemption Information

Partial Exempt Assessments	Class	07/01/2006	07/01/2007
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:
Special Tax Recapture:
 * NONE *

results

07/12/2007 11:45


Maryland Department of Assessments and Taxation
BALTIMORE COUNTY

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[GroundRent](#)

Account Identifier: District - 09 Account Number - 1700000569

Owner Information

Owner Name: BOOZER F VERNON Use: APARTMENTS
 BOOZER DIANE H Principal Residence: NO
 Mailing Address: 614 BOSLEY AV Deed Reference: 1) /15311/ 423
 BALTIMORE MD 21204-4029 2)

Location & Structure Information

Premises Address: 8 CEDAR AVE Legal Description: UNIT H
 CONDO UNIT: H CEDAR YORK COND

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
70	20	362						2	Plat Ref: 3/ 142

Special Tax Areas: Town
 Ad Valorem
 Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
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Stories	Basement	Type	Exterior

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Type:	Deed1:	Deed2:

Exemption Information

Partial Exempt Assessments	Class	07/01/2006	07/01/2007
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
 Exempt Class:

Special Tax Recapture:
 * NONE *

*Baltimore County Zoning Regulations
PC/Codebook for Windows*

Section 304, Use of Undersized Single-Family Lots [BCZR 1955; Bill No. 47-1992]

304.1 [Bill Nos. 64-1999; 28-2001] Except as provided in Section 4A03, a one-family detached or semidetached dwelling may be erected on a lot having an area or width at the building line less than that required by the area regulations contained in these regulations if:

- A. Such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to March 30, 1955;
- B. All other requirements of the height and area regulations are complied with; and
- C. The owner of the lot does not own sufficient adjoining land to conform to the width and area requirements contained in these regulations.

304.2 Building permit application.

- A. Any person desiring to erect a dwelling pursuant to the provisions of this section shall file with the Department of Permits and Development Management, at the time of application for a building permit, plans sufficient to allow the Office of Planning to prepare the guidelines provided in Subsection B below. Elevation drawings may be required in addition to plans and drawings otherwise required to be submitted as part of the application for a building permit. Photographs representative of the neighborhood where the lot or tract is situated may be required by the Office of Planning in order to determine appropriateness of the proposed new building in relation to existing structures in the neighborhood.
- B. At the time of application for the building permit, as provided above, the Director of the Department of Permits and Development Management shall request comments from the Director of the Office of Planning (the "Director"). Within 15 days of receipt of a request from the Director of the Department of Permits and Development Management, the Director shall provide to the Department of Permits and Development Management written recommendations concerning the application with regard to the following:
 - 1. Site design. New buildings shall be appropriate in the context of the neighborhood in which they are proposed to be located. Appropriateness shall be evaluated on the basis of new building size, lot coverage, building orientation and location on the lot or tract.
 - 2. Architectural design. Appropriateness shall be evaluated based upon one or more of these architectural design elements or aspects:

- a. Height.
 - b. Bulk or massing.
 - c. Major divisions, or architectural rhythm, of facades.
 - d. Proportions of openings such as windows and doors in relation to walls.
 - e. Roof design and treatment.
 - f. Materials and colors, and other aspects of facade texture or appearance.
3. Design amendments. The Director may recommend approval, disapproval or modification of the building permit to conform with the recommendations proposed by the Office of Planning.
- 304.3 Public notice. Upon application for a building permit pursuant to this section, the subject property shall be posted conspicuously under the direction of the Department of Permits and Development Management with notice of the application for a period of at least 15 days.
 - 304.4 Public hearing. Within the fifteen-day posting period: (1) Any owner or occupant within 1,000 feet of the lot may file a written request for a public hearing with the Department of Permits and Development Management, or (2) the Director of Permits and Development Management may require a public hearing. The Department of Permits and Development Management shall notify the applicant within 20 days of the receipt of a request for a public hearing. A hearing before the Zoning Commissioner shall be scheduled within 30 days from receipt of the request for public hearing. At the public hearing, the Zoning Commissioner shall make a determination whether the proposed dwelling is appropriate.
 - 304.5 Final approval.
 - A. The Director of the Department of Permits and Development Management may issue the building permit; or
 - B. Notwithstanding any provision to the contrary, the Director of the Department of Permits and Development Management may require a public hearing before the Zoning Commissioner pursuant to Section 304.4 above; or
 - C. If the Department of Permits and Development Management has not notified the applicant of a determination pursuant to the provisions of this section, or has not notified the applicant pursuant to Section 304.4 above of the intention to require a public hearing, the dwelling shall be considered appropriate for purposes of this section.

- 304.6 The decision of the Zoning Commissioner or the Director of the Department of Permits and Development Management may be appealed, in which case the hearing shall be scheduled by the Board of Appeals within 45 days from receipt of the request.
- 304.7 The Director of the Department of Permits and Development Management shall establish appropriate fee schedules.
-
-

SECTION 304 -- USE OF UNDERSIZED SINGLE-FAMILY LOTS - Prior to the application for a building permit, the applicant must provide satisfactory documentation. The applicant may be required to furnish:

- a. a copy of the pre-1955 deed or subdivision plat;
- b. (no additions)
- c. contiguous ownership

It is obvious that Section 304 of the Baltimore County Zoning Regulations recognizes the existence of parcels of property that did not meet the minimum lot sizes mandated at the time the minimum lot size regulations were passed. To do otherwise would have the effect of rendering such undersized lots useless, and such legislation would be unconstitutional.

1. Section 304 B.C.Z.R., however, is silent as to when contiguous ownership would serve as a bar to its implementation, i.e., contiguous ownership in existence only at the time this regulation was passed or contiguous ownership in existence at that time and at any time thereafter.
2. It is therefore important to consider the intent of the owner who attempts to invoke the applicability of Section 304 BCZR. Each situation must be judged individually by the particular facts and circumstances presented. If the intent to avoid the regulations is obvious, Section 304c. cannot be invoked and variances must be required. An obvious method used is called "checkerboarding". The owner of a tract of land consisting of undersized lots makes conveyances of certain lots in order to create a pattern of ownership which qualifies each parcel as an undersized lot in a single and separate ownership, thereby avoiding the necessity of public hearing and notice for a variance. Often this is done by transferring title to members of the owner's family or to his business associates, e.g., to officers of the corporation which purchased the tract. Another method is to sell adjoining undersized lots which were recently purchased to individual, bona fide buyers. This would permit the new owner of a single undersized lot to build without a variance, where such permission would not have been granted to the owner of the entire tract.
3. If a single owner of contiguous undersized lots has purchased the property in good faith and without any intent to avoid the area requirements, 304c. may be used to allow the owner to build pursuant thereto. Good faith also must be determined by the facts and circumstances of each situation, but such factors as dates of purchase of the parcels, the purpose of the purchase, the intent of the purchase, can be utilized to so determine. This office has traditionally applied the "six year rule" to determine good faith, and that rule shall be one criteria to be used. The rule holds that if the single owner of an undersized lot contiguous to another parcel owned by him has transferred ownership of one to another, 304c. would apply if such new ownership has been held for a period of at least six years. This rule shall not preclude exceptions where it is clear, and equitable, that single ownership of contiguous property was not intended to avoid area requirements.
4. Ownership Information Including:
 - (i) a property tax computer printout for all adjacent properties, in addition to the subject property;
 - (ii) copies of the deeds for all adjacent properties, in addition to the subject property; and
 - (iii) a notarized affidavit stating that the applicant has had no financial interests for the prior six years in any adjacent properties.

Interpretation: The Zoning Commissioner retains the right Section 500.6 B.C.Z.R. to interpret whether the spirit and intent of these Regulations are being adhered to on a case-by-case basis (see Section 101 - Ownership Z.C.P.M., Page 1-23)

*Baltimore County Zoning Regulations
PC/Codebook for Windows*

1B02.3 Special regulations for certain existing developments or subdivisions and for small lots or tracts in D.R. Zones.

- A. In D.R. Zones, contrary provisions of this article notwithstanding, the provisions of or pursuant to this subsection shall apply to the use, occupancy and development of; alteration or expansion of structures upon; and administrative procedures with respect to:
1. Any lot which is in a recorded residential subdivision approved by the Baltimore County Planning Board or Planning Commission and which has been used, occupied or improved in accordance with the approved subdivision plan;
 2. Any land in a subdivision tract which was laid out in accordance with the regulations of residence zoning classifications now rescinded, for which a subdivision plan tentatively approved by the Planning Board remains in effect and which has not been used, occupied or improved in accordance with such plan;
 3. Any lot or tract of lots in single ownership which is not in an existing development or subdivision, as described in Subsection A.1 or A.2, and which is too small in gross area to accommodate six dwelling or density units in accordance with the maximum permitted density in the D.R. Zone in which such tract is located;
 4. Any lot or tract of lots in single ownership which is not in an existing development or subdivision, as described in Subsection A.1 or A.2, and which is less than one-half acre in area, regardless of the number of dwelling or density units permitted at the maximum permitted density in the zone in which it is located; or
 5. Any lot or tract of lots in single ownership which is in a duly recorded subdivision plat not approved by the Baltimore County Planning Board or Planning Commission.
- B. Standards applicable to existing developments, etc. The minimum standards for net area, lot width, front yard depth, single-side-yard width, sum of widths of both side yards, rear yard depth and height with respect to each use in a development described in Subsection A.1 above, shall be as prescribed by the zoning regulations applicable to such use at the time the plan was approved by the Planning Board or Commission; however, the same or similar standards may be codified under Section 504, and these standards shall thereupon control in such existing developments. Development of any subdivision described in Subsection A.2 shall be in accordance with the tentatively approved subdivision plan therefor. Standards for development of lots or tracts described in Subsection A.3, A.4 or A.5 shall be as set forth in Subsection C below.
- C. Development standards for small lots or tracts.
1. Any dwelling hereafter constructed on a lot or tract described in Subsection A.3 or A.4

shall comply with the requirements of the following table:

Zoning Classifica- -tion	Minimum Net Lot Area per Dwelling Unit (sq. ft.)	Minimum Lot Width (feet)	Minimum Front Yard Depth (feet)	Minimum Width of Individual Side Yard (feet)	Minimum Sum of Side Yard Widths (feet)	Minimum Rear Yard Depth (feet)
D.R.1	40,000	150	50	20	50	50
D.R.2	20,000	100	40	15	40	40
D.R.3.5	10,000	70	30	10	25	30
D.R.5.5	6,000	55	25	10	--	30
D.R.10.5	3,000	20	10	10	--	50
D.R.16	2,500	20	10	25	--	30

1B02.3.B SETBACK REQUIREMENTS - PLANNING COMMISSION/BOARD APPROVED SUBDIVISIONS ONLY

ZONE (1971) (1955) (1945)(HOUSING TYPE)	TIME PERIOD	JAN. 2, 1945 to JULY 1, 1953				JULY 2, 1953 to MARCH 29, 1955				MARCH 30, 1955 to MARCH 30, 1971				MARCH 31, 1971 to PRESENT		
		FRONT	REAR	SIDE	CORNER (SIDE STREET)	FRONT	REAR	SIDE (COMBINED)	CORNER (SIDE STREET)	FRONT	REAR	SIDE (COMBINED)	CORNER (SIDE STREET)	FRONT	REAR	SIDE (COMBINED)
DR 1 R 40						25	20	7 (17)	40	50	50	20 (50)	50	50	50	20 (50)
DR 2 R 20						25	20	7 (17)	40	40	40	15	40	40	40	15 (40)
DR 3.5 R 10 A (1 or 2 FAMILY)		25	15	7	15	25	20	7 (17)	40	30	30	10 (25)	30	30	30	10 (25)
DR 5.5 R 6 B (SEMI-DETACHED)		25	15	7	15	25	20	7 (17)	40	25	30	8 (20)	25	25	30	10
DR 10.5 R.G. D (TOWN HOUSES)		25	25	10 END OF GROUP	25	25	50	15	-	25	50	15	-	10	50	10
DR 16 R.A. C (APARTMENTS)		55 TO 4*	20	7	-	25	25	7	15	25	50	15	-	10	30	25
		* FOR BLDGS. OVER 40 FT. HIGH ADD 4 INCHES FOR EACH FOOT OVER												* ONLY FOR SUBDIVISION WITH NO FDP		

1B02.3.B.1 - PARCELLING OR DIVIDING ALREADY DEVELOPED PROPERTY -
Parcelling or dividing developed property that is under one
ownership and meets the overall density, would be permitted for
mortgage purposes provided that:

- the ownership remains the same, and
- that the existing uses at the time of separation would not
change in a way that would increase the overall density.

SECTION

1B02.3.C.1 APPLICABILITY - Any lot, or tract of lots in single
ownership which is in a duly recorded subdivision plat not
approved by the Baltimore County Planning Board or Planning
Commission must also comply with this small lot table.

- SIDE STREET SETBACKS when the small lot table applies are the
same as the required front yard setback. Averaging is not
permitted on a side street setback.

SECTION

1102.3.C.2 - SMALL LOT TABLE APPLICATIONS

a. Between September 19, 1970 (Bill 100) and September 25, 1981 (Bill 124), if a tract of land qualified to be subdivided under the small lot table, the residential transition use and area charts would not have been used. Density and the 75 foot setback in D.R. 16 would also not have been applied. However, the transition use chart was used partially as a guide as follows:

- i. If the zoning was D.R. 1, 2, 3.5, 5.5 it was determined that the intent was to permit single family detached dwellings only. And this use limitation was carried over to a small lot table.
- ii. If the zoning was D.R. 10.5 or 16 it was determined that the intent was to permit townhouses or apartments, but the transition use chart was used partially as a guide so as not to conflict with existing developments or adjacent properties.

Bill 124-81 (effective September 25, 1981) deleted the limitation of only one principal dwelling on a lot, the Residential Transition Area chart, and also deleted the 75 foot setback in D.R. 16.

b. Subsequently, any tract of land that qualifies for the small lot table would continue to use the bulk regulations of the chart and the concept of the use regulations would be applied as before under a.. The difference being that more than one dwelling could occupy the same lot provided that planning would not require subdivision and the combined area, setbacks, lot width, and distances between principal buildings are complied with.

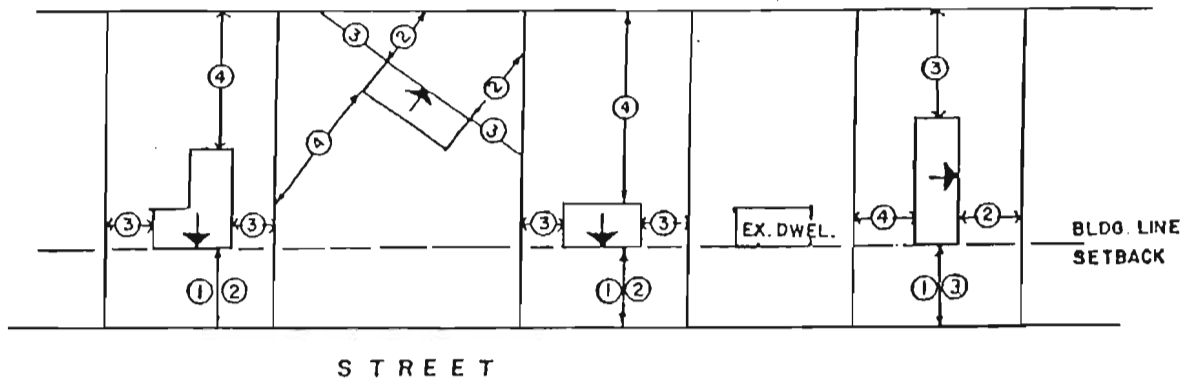
c. METHOD OF MEASURING SETBACKS

- Street Frontage & Building to Lot Line Orientation

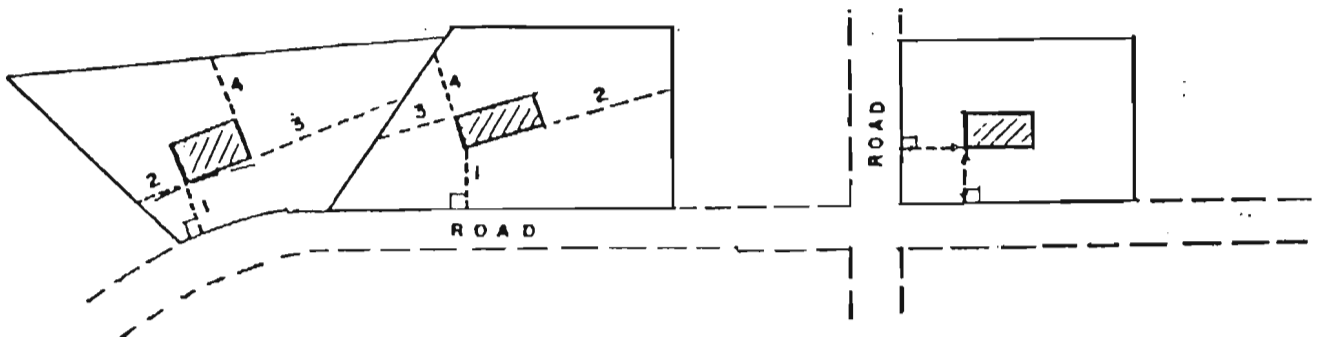
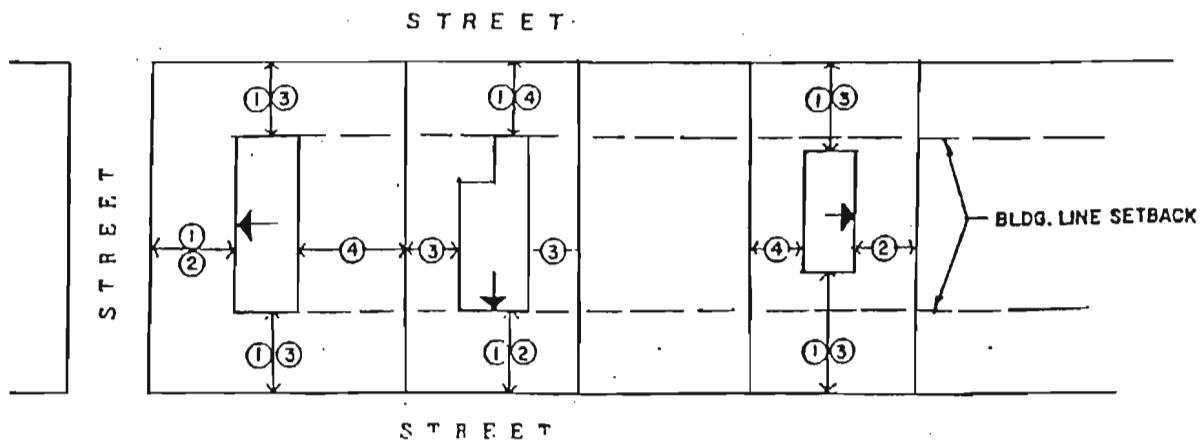
- i. The front setback distance is measured radial or perpendicular to the road or front right-of-way.
- ii. Side and rear setback distances are measured by extending the foundation wall lines to the nearest intersection of the property line.
- iii. The building line setback required by the lot's zoning classification must be maintained from all abutting street frontages.
- iv. Additionally, if a building is oriented so as to face or front a lot line other than a street, applicable front, side and rear setbacks relative to the building's front must also be maintained as required by the property's class.

SECTION 1B02.3.C.2.c

v. Diagrams



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



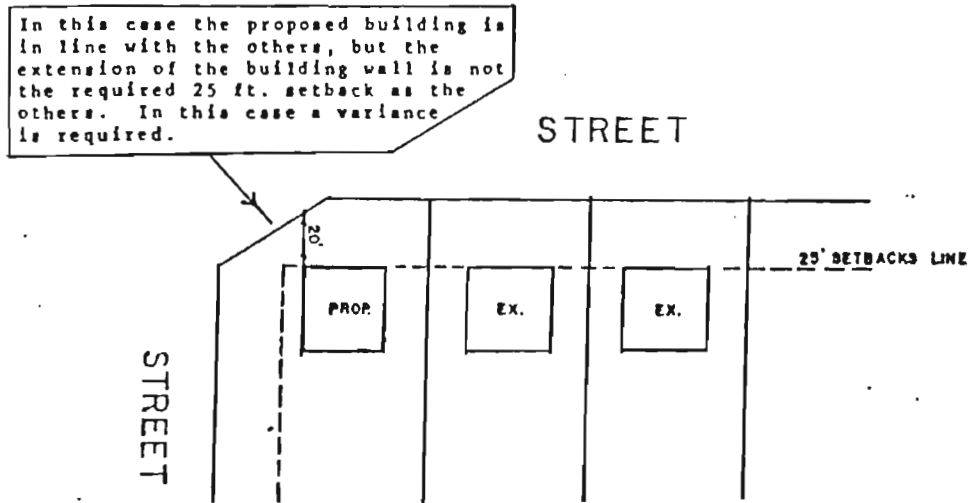
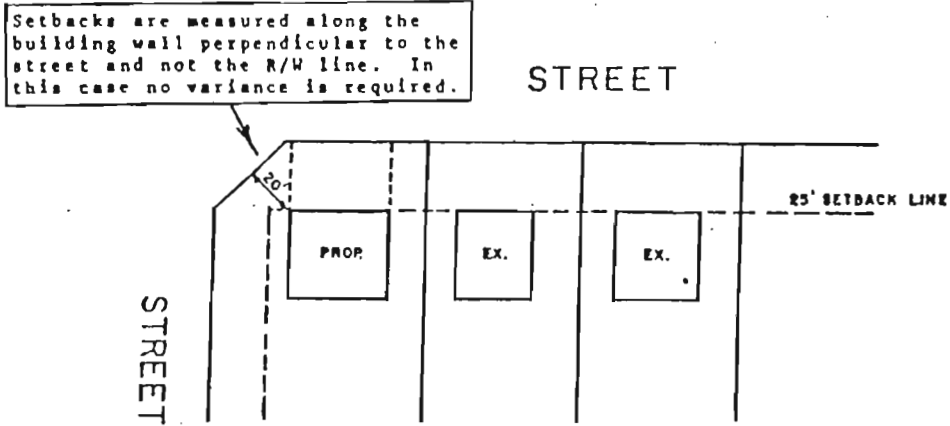
(See Section 103.3 ZCPM, Page 1-43.1 for diagrams showing method of measuring setback in R.C. zones).

ZONING COMMISSION'S POLICY MANUAL

SECTION 1B02.3.C.2.c

v. Diagrams

REFERENCE:
CASE NO. 74-248XA



BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: May 5, 2006

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

SUBJECT: 7 Terrace Dale

INFORMATION:

Item Number: 6-506

Petitioner: Henry B. Peck, Jr.

Zoning: DR 5.5

Requested Action: Variance

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MAY 15 2006

ZONING COMMISSIONER

SUMMARY OF RECOMMENDATIONS:

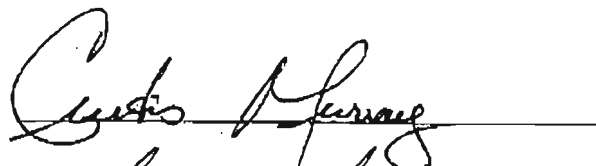
BCZR section 304 (Use of Undersized Lots) stipulates that the size and scale of the neighborhood be maintained with respect to new single-family dwellings. As agreed upon in recent discussions with the petitioner, the proposed dwelling would be relocated from #30 Burke Avenue to the vacant lot addressed as # 7 Terrace Dale. It is of the Opinion of this Office that the dwelling to be relocated would be far more compatible with the neighborhood than most dwellings being constructed under conventional design methods. As such the compatibility reviews normally given to undersized lots not apply in this unique instance.

Therefore, the Office of Planning recommends that the petitioner's request be approved subject to the following conditions:

1. Should the proposed dwelling to be relocated changes to a newly constructed dwelling; the petitioner shall submit the request under the undersized lot approval process.
2. If the proposed dwelling differs from the existing dwelling located at # 30 Burke Avenue, the petitioner shall resubmit the request as either an undersized lot approval, or as a request for Variance if required.
3. Limits of disturbance shall be shown on the site plan accompanying the request. Existing vegetation shall be preserved to the greatest extent possible.

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

Prepared by:

A handwritten signature in cursive script, appearing to read "Curtis Perry", written over a horizontal line.

Division Chief:

AFK/LL: CM

A handwritten signature in cursive script, appearing to read "Lynn Johnson", written over a horizontal line.

8/20/07

RE: PETITION FOR VARIANCE	*	BEFORE THE
SOUTH SIDE OF TERRACE DALE	*	COUNTY
130 Feet West of Center Line	*	BOARD OF APPEALS
of Cedar Road (7 Terrace Dale)	*	
9 th Election District	*	OF
5 th Councilmanic District	*	
HENRY B. PECK, Jr.	*	BALTIMORE COUNTY
Petitioner	*	Case No.: 06-506-A

* * * * *

PROTESTANTS' MEMORANDUM IN LIEU OF ORAL ARGUMENT
BEFORE THE COUNTY BOARD OF APPEALS

I. STATEMENT OF THE CASE

This matter comes before the County Board of Appeals as a result of a Petition for Variance filed by the owner of the subject property, Henry B. Peck, Jr. The Petitioner requested variance relief from §1B02.3.C.1 of the Baltimore County Zoning Regulations to permit a lot area of 4,800 sq. ft., a side yard setback of eight (8) feet, and a rear yard setback of fourteen (14) feet in lieu of the required 6,000 sq. ft., ten (10) feet and thirty (30) feet respectively; and further, from §303.1 for the front yard setback of twenty-one (21) feet for an open projection (porch) in lieu of the required 22.5 feet. The subject property and relief are described in the Site Plan marked as Petitioner's Exhibit.

The Baltimore County Zoning Commissioner, on June 28, 2006, reviewed the matter from the perspective of the requested variance relief and determined that from the facts presented the prior owners of the subject lot intended to merge the "stable lot" (the subject lot) with the other Terrace Dale platted lots. The Zoning Commissioner found that erecting a barn, stable or

LAW OFFICE
HOLZER AND LEE
THE 508 BUILDING
508 FAIRMOUNT AVENUE
TOWSON, MARYLAND
21286

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FAX: (410) 825-4923

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BALTIMORE COUNTY
BOARD OF APPEALS

garage on the subject lot without a principal dwelling, using that lot as accessory for storing construction equipment, and transferring title to his children in one-sixth interest or shares was tantamount to merging the undersized lot. He relied upon Friends of the Ridge v. Baltimore County, 352 Md. 645 (1999) and Remes v. Montgomery County, 387 Md. 52 (2005). He thus denied the variance request. A Motion for Reconsideration was filed by the Petitioner and in an Order on Motion for Reconsideration dated July 26, 2006, the Zoning Commissioner again found facts based on the testimony of the Petitioner himself that the lot in question had merged with the other lots. He further found that one-sixth (1/6th) interest by each of the children was enough to create merger under the above-cited cases, particularly relying upon the Remes case.

However, in his Reconsideration Order, the Zoning Commissioner went further and reviewed the merits of the variance issue and found that under Baltimore County Zoning Regulations §307, the subject site was not “*unique*” based upon its small size because the previous owner of the land carved it out of a much larger plot to house an accessory structure for his house as well as the six (6) single-family homes owned by his children. Thus, the size of the lot was created by the Petitioner’s predecessor in title. Secondly, he found that the Petitioner was well aware of potential problems with the subject property based upon the evidence of his letter submitted to Messrs. John Weiss and George Ingalls dated May 6, 2004, recognizing that this lot was unbuildable. Thirdly, he found that a variance, if granted, would affect the “aesthetic ambiance” of the residential area and was not in harmony with the spirit and intent of the regulations. Fourthly, he found that the request was too intensive and excessive given the pattern

of development in the area including the fact that the reduction of the lot size is particularly offensive to Zoning Regulations which would create, if granted, a density of nine (9) homes per acre versus the 5.5 permitted by the spirit and intent of the Regulations zoned D.R. 5.5.

From that Decision, the Petitioner filed an appeal to this Board which was heard on Wednesday, July 11, 2007 and testimony taken.

II. STATEMENT OF FACTS

A. Petitioner's Case. The Petitioner called Bruce Doak of Gerhold, Cross & Etzel, a recognized surveyor, who testified as to much history in regard to the Land Records. He acknowledged that he nor his firm surveyed the subject site for an accurate determination as to the square footage of the actual lot size. He acknowledged that in his testimony that Mr. Peck's ancestors and predecessors created a main house in 1918 on approximately a two-acre parcel from which he subdivided lots for each of his six (6) children. The main (now demolished) house was built in the 1800's, and several of the six (6) children's houses in the late 1800's. All six (6) of the children's houses were built before 1918. The 1918 date was the date of the survey by Green, the husband of one of the children who lived in one of the 3 Cedar Avenue houses. The subject lot was utilized first as a stable, then a garage for the original owner and his children. The stable/garage was utilized as storage for the original owners contracting business and then subsequently many of the six (6) children utilized it as storage for their vehicles or in fact, utilized it as a green grassy area added to their lot.

As Mr. Doak began to get into testimony purporting to satisfy the requirements of §304 of the Baltimore County Zoning Regulations, Protestants objected to the fact that the Petition filed was for a variance and that the evidence presented by Mr. Doak was improperly

intended to satisfy the requirements of §304 of the Baltimore County Zoning Regulations. The Baltimore County Zoning Regulations, when dealing with an undersized lot permit either compliance with §304, or a Petition and Request for Variance from that Section. In this case, the Petitioner elected to ask for variance and proceeded before the Zoning Commissioner and this Board in that fashion.

The Protestants objection was that the Petitioner was attempting to obtain satisfaction of §304.1 by the Board, without having properly filed the appropriate information under §304.2 and the Public Hearing required under §304.4. That public hearing process had not taken place in the manner prescribed by §304.4. The Board agreed and limited the testimony to whether or not the requested variance relief should be granted.

The Petitioner, Henry Peck, Jr., a real estate and trust attorney, acknowledged that he had sought from his relatives, the right to acquire their one-sixth (1/6th) interest in the lot in question on the basis that it was a "*small and unbuildable parcel.*" The letter subsequently submitted as a Protestants' Exhibit supports Mr. Peck's testimony. Mr. Peck further acknowledged his testimony before the Zoning Commissioner that the lot in question had been used first as a stable and then as a garage serving initially the main house before it was torn down for an office building. He acknowledged that other members of the family parked their cars in the barn with everybody's consent until the barn or stable fell down. He further acknowledged that the tax bill for the lot was paid for by all six (6) family members. Peck desires to improve the lot with a dwelling moved from another location in the neighborhood which requires the requested variances. Bruce Doak had previously testified that a home could meet the setback requirements without variances.

B. The Protestants. The Protestants, consisting of the Aigburth Manor Association, the Wiltondale Community Association by Andy Evans and number of individual adjacent property owners such as Paul Hartman and Ashby Heath testified as to their opposition to the request.

The People's Counsel for Baltimore County also participated by submitting a Memorandum dated July 6, 2007. The People's Counsel, in its Memorandum reviews the law involved in undersized lots related to Baltimore County Zoning Regulations, §304. The People's Counsel discussion of merger coincides with that of the Zoning Commissioner's analysis from the original hearing. Their analysis of the variance law concludes that the variance should not be granted. The Protestants adopt and incorporate the People's Counsel Memorandum in this matter, as if set forth herein. (Attached as Exhibit A).

Collectively, the Community presented a number of Protestants' Exhibits including an aerial overview showing Cedar Avenue and Terrace Dale adjacent to the subject site. From the overview, and the photographs, it can be seen that the subject lot is extremely small compared to the rest of the neighborhood. The Exhibits also establish that at least through the tax records, 4,800 sq. ft. is in excess of the 3,500 sq. ft. that the State designates as the size of the lot. Many color photos were introduced also by the Protestants showing the comparative lot size and types of homes that are in the neighborhood which will be impacted if the variance is granted. In addition the photographs show the Terrace Dale "alley" in front of the property as being extremely constricted and narrow. Finally, a video was shown which further defined the subject site for the Board.

Related photos from the Baltimore County Public Library Legacy Web clearly establish the subject lot in its early days when used as a stable and barn for the main house. One of the photos during the winter of 1910 likewise shows the subject lot containing a windmill which supplied water to the entire compound. The historic as well as the live testimony of the Petitioner himself clearly establishes that the subject lot had been merged by its collective use by the remaining lots in the subdivision. Mr. Peck's acknowledgement in Protestants' Exhibit #4 and #3, letters from Mr. Peck to Mr. Weiss and Mr. Ingalls, previously referred to of July 22, 2004 and May 6, 2004, clearly recognized that it would be fool-hearty for someone to attempt to build on this lot and that the lot was "*a small and unbuildable parcel.*" As stated, Protestants' Exhibit #2 establishes the lot size as 3,500 sq. ft.

Protestants do not see how it is still possible for the Board to grant the requested variances since Mr. Doak testified and prepared Petitioner's Exhibit #9 showing that the setbacks could be met as illustrated by his red-lined diagram. If that is so, as a matter of law, the variances cannot be granted.

III. LEGAL ARGUMENT

The Protestants submit that the Board cannot grant the requested variances based upon the acknowledged testimony of the Petitioner and the documented evidence before the Board.

1. It is clear that the setback variances are not required as established by Bruce Doak's testimony and his prepared Exhibit. Thus, the Board cannot grant variances when the setbacks can be met.

2. The Petitioner has acknowledged that any uniqueness of the site was created by his predecessor and family members.

3. It is clear that the entire family compound utilized this lot and was thus merged as per the legal arguments presented in the People's Counsel Memorandum and the two (2) Opinions of the Zoning Commissioner.

4. It is very clear that Petitioner through documented evidence was well aware of potential problems of the site prior to acquisition.

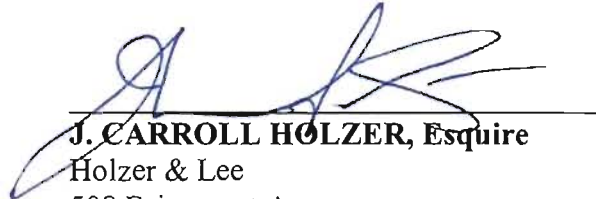
5. The "*aesthetic ambiance*" of the residential area will clearly be affected by the attempt to place a home on this undersized lot which would not be compatible with the neighborhood as reflected in the Protestants' photographic and videotaped presentations.

6. It is clear from the documented evidence from the Department of Assessments that the Petitioner's suggestion that this property contained 4,800 sq. ft. in lieu of 6,000 sq. ft. was in fact erroneous and in fact there is only 3,500 sq. ft. which is about half of what is required. The Zoning Commissioner's analysis of the intense and excessive request in this case is even further aggravated by this fact. The Zoning Commissioner further concluded that a twenty-five percent (25%) reduction in side yard setback, a fifty percent (50%) decrease in rear yard setback and a seven percent (7%) reduction in front yard setback were also detrimental to

the Community. If the Zoning Commissioner considered one house on 4,800 sq. ft. as creating a density of nine (9) homes per acre, that calculation is even further aggravated by the actual size of the lot determined by the State Department of Assessments and Taxation.

For all of the above reasons, this Board should deny the variance request.

Respectfully submitted,



J. CARROLL HOLZER, Esquire

Holzer & Lee
508 Fairmount Avenue
Towson, Maryland 21286
410-825-6961
Attorney for Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of August, 2007, a copy of the foregoing Protestants' Memorandum in Lieu of Oral Argument Before the County Board of Appeals was mailed first class, postage pre-paid to the following: Deborah C. Dopkin, Esquire, Mercantile-Towson Building, 409 Washington Avenue, Suite 1000, Towson, Maryland 21204-8509, People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204.



J. CARROLL HOLZER, Esquire



Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

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

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

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

July 6, 2007

Hand-delivered

Dr. Margaret Brassil, Chair
County Board of Appeals
400 Washington Avenue, Room 49
Towson, MD 21204

Re: Henry B. Peck, Jr., Petitioner
Case No: 06-506-A

Dear Ms. Brassil:

This matter is scheduled for hearing on July 11th on the Zoning Commissioner's denial of variances and setback requirements for an undersized lot in the D.R. 5.5 zone.

Our office entered its appearance at the inception of this case. We support the denial of the variance for the reasons set forth in the ZC's opinion and its Order on Motion for Reconsideration.

We believe counsel for the parties will more than adequately present the facts in the case and that our presence at the hearing will not be necessary in this regard. Nevertheless, we recognize legal issues here that our office has addressed in other zoning cases. The purpose of this letter is to enter our appearance in this appeal before the CBA, to present our office's position, and to assist the Board in this matter.

Undersized Lot - Overview

A dwelling cannot be constructed on an undersized lot unless permitted by statute or if the site satisfies the strict standards for a variance. Some Resource Conservation (R.C.) zones contain grandfather provisions in the regulation itself for certain undersized lots and are not applicable to this case.

BCZR 304 applies to undersized lots in the D.R. zones and has been strictly construed. Recent appellate cases on merger dovetail BCZR 304 (c). Some Petitioners who cannot meet the standards in 304 attempt to obtain variance relief. The variance standards for uniqueness and practical difficulty as defined in BCZR 307, Cromwell v. Ward, 102 Md. App. 691 (1995) and other appellate variance cases establish an extremely strict standard, rarely, if ever, satisfied in an undersized lot case. Generally, undersized lots in the D.R. zone must satisfy the standards in BCZR 304, because a variance cannot be granted simply because the lot is substandard. In discussing uniqueness in Cromwell, at page 717, Judge Cathell cites with approval Sebley v.

Exhibit A

Inhabitants of the Town of Wells, 462 A.2d 27, 30-31 (1983) to emphasize the particular features that qualify as unique cannot be widespread in the neighborhood:

“[T]he need for a variance [must be] due to the unique circumstances of the property and not to the general conditions in the neighborhood; . . . However, the mere fact that the lot is substandard is not a unique circumstance; all the undeveloped lots in that neighborhood are of substandard size . . .”

Merger

The merger doctrine stated in Remes v. Montgomery County, 387 Md. 52 (2005) has long been the law in Maryland and is applicable to the facts in the instant case:

“We perceive no such declared public policy that should prevent us from finding a zoning merger where two lots held in common ownership were clearly used in the service of one another in order to satisfy zoning requirements and subsequent to Ridge [Friends of the Ridge v. Baltimore Gas & Elec. Co., 352 Md. 645 (1999)] remained in that category. . . Ridge was a statement of the common law, not a change. The issue had not theretofore arisen, or been specified or articulated in our prior cases. Ridge was merely the first case to determine that zoning merger existed in Maryland.” Remes, supra at 77, 78.

The Court in Remes did not require extrinsic evidence of merger. The Court also dismissed the administrative agency’s position in Remes that even if intent could be inferred and applied, it was irrelevant since the lots had not been combined in the formal subdivision process required under County law. The Court was clear that zoning merger restricted the use, even if the owner maintained separate deeds:

“Simply because a formal combination of Lot 11 and Lot 12 did not occur as contemplated by the Montgomery County Code, however, does not lead us to the necessary conclusion that these lots for zoning limitations are not subject to the doctrine of zoning merger. The issue is not subdivision combination but zoning merger.” Id. at 80.

*

*

*

“For title purposes the platted lot lines may remain, but by operation of law a single parcel emerges for zoning purposes.” (citations omitted) Id. at 66-67.

*

*

*

[The owners] “use of Lot 11 and 12 in concert is consistent with zoning merger. That they did not undertake to submit a formal replatting to the County does not vitiate the manner in which they *used* their property.” Id. at 82.

It appears from the lengthy recital of facts in the instant case that the subject lot was part of the 2-acre dwelling site known as the “old home place”. Prior to that it was part of the entire tract before the children’s lots were created. The subject lot was used in conjunction with the original dwelling, a merger by all accounts. The fact that it was later carved off and deeded to joint owners as accessory to residential dwellings, including the “old home place” does not undo

the zoning merger. Its purpose was to be used in conjunction with and as subservient to a principal use, albeit with 6 other users.

Young, Anderson's American Law of Zoning, 4th Edition, Section 9.67 refutes Petitioner's position that because the subject property was at one time in joint ownership, neither BCZR 304 (c) or the merger doctrine applies:

"The single and separate ownership requirement is simple, but its application to a wide variety of circumstances has generated litigation. Problems have arisen with respect to what constitutes single ownership. . . . Ownership is considered single and separate ownership even though the owner of the substandard lot owns an adjacent lot with his wife as tenant by entirety." (citations omitted)

Variance:

Variances are not favored under the law and presumed to be in conflict with the regulations. For these reason, the spirit and intent of the law must be strictly construed. As Judge Cathell pointed out in Cromwell, supra:

"The general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances. *See, e.g., A. Rathkopf*, 3 *The law of Zoning and Planning* Section 38 (1978)." *Id.* 651 A.2d 424,430.

Judge Cathell continued:

"In the zoning context the 'unique' aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property.

'Uniqueness' of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls." Cromwell, supra at 710.

There is no evidence of uniqueness here as defined in variance law. It appears the subject site was once part of the original home site and used in conjunction with the dwelling on the adjoining parcel. The site continued to be used as accessory to the adjoining 20 Cedar Avenue, and the owner of 20 Cedar had an interest in the subject site. The fact that others also had an interest in the subject site is irrelevant as stated above in Anderson. This use became fixed at the

time the County Council rezoned the site; new use must comply with the standards in the current zone, including area regulations.

The evidence is undisputed that the subject site had a viable use in conjunction with the adjoining 20 Cedar, which could not be defeated without the consent of the adjoining owner. A "use in conjunction" is a viable use and permits any number of scenarios to preserve the subservient use without violation of zoning law.

The fact that a title owner later divested his interest in the subject site, whether or not he continued to own 20 Cedar, is not an exception to the prohibited relief under both merger and variance law. A variance is generally not permitted for a self-created hardship in an attempt to undo a prior merger, such as a sale to a 3rd party.

" . . . a purchaser of adjacent substandard lots will not be protected from a subsequent amendment which requires the lots to be merged." Young, supra.

Accordingly, this Board denied relief for an undersized lot that was owned and used in conjunction with the residence across the street but sold to a separate buyer. (Janice Oberst, Contract Purchaser(s): Dr Harlan and Amanda C. Zinn CBA # 4-522-A).

Otherwise, a mere transfer of title would undermine the prohibition against construction of a dwelling on an undersized lot that merged with contiguous property.

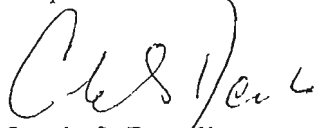
The spirit and intent of the zoning regulations is clear. An undersized lot currently or at one time used in conjunction with an adjoining principal use must meet current size and setback requirements, unless it meets the tests of uniqueness and practical difficulty under variance law. Concomitantly, current titleholders are bound by the actions of their predecessors.

We reiterate our position that the subject site merged with the contiguous parcel and that relief must be denied under variance and undersized lot standards. We reserve the right to submit further memorandum in this case should the Board request the same.

Respectfully submitted,



Peter Max Zimmerman
People's Counsel for Baltimore County



Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/rmw

cc: Deborah C. Dopkin, Esquire

Margaret Brassil, Chair

July 6, 2007

Page 5

bcc: J. Carroll Holzer, Esquire

7/9/07

Re: PETITION FOR VARIANCE * BEFORE THE
South Side of Terrace Dale, *
130' West of Centerline * BOARD OF APPEALS
of Cedar Road *
(7 Terrace Dale) * OF
9th Election District *
5th Council District * BALTIMORE COUNTY
Case No. 06-506-A *
* Case No. 06-506-A
Henry B. Peck, Jr. *
Petitioner/Appellant *

PRE-HEARING MEMORANDUM

Henry B. Peck, Jr., Appellee, by his attorney, Deborah C. Dopkin, and Deborah C. Dopkin, P.A., respectfully submits this Pre-Hearing Memorandum in anticipation of the hearing before this Board on July 11, 2007.

HISTORY OF THE CASE

This matter came before the Zoning Commissioner for Baltimore County as a result of a Petition for Variances for the property, an unimproved lot located at 7 Terrace Dale in the Towson area of Baltimore County. The Zoning Commissioner denied the request for variances, alleging a merger had occurred. Petitioner filed a Motion for Reconsideration, which was also denied.

Neither the facts nor the law support the conclusions of the Zoning Commissioner.

DISCUSSION

As stated in Remes v. Montgomery County, 387 Md. 52, 874 A.2d 470 (2005) a merger for zoning purposes occurs when two or

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BALTIMORE COUNTY
BOARD OF APPEALS

more lots are:

1. Held in **common ownership**; and
2. One lot is used in service to one or more of the other lots **solely** to meet zoning requirements; and
3. There is evidence of the common owner's **intent** to utilize the contiguous lots in the service of a single structure.

None of those elements exist in the instant case.

Under the facts in this case, the evidence to be presented at the hearing will clearly show that the subject property has never been held in common ownership with any adjoining residential property; that it has never been used to support any adjoining lot to meet zoning requirements, nor has there ever been an intent by the owner of the subject or adjoining property to utilize the lot in service of a single structure on an adjoining property.

A devolution of title will be presented at the hearing and will show that the ownership of the 7 Terrace Dale arose through a 1929 Deed of the lot to six siblings as tenants-in-common. This type of tenancy is unique and distinct from an individual's sole ownership of property. Any use of tenancy-in-common property can only occur with the consent of **all** the tenants, and no claim of ownership by one of those tenants can be asserted unless there is an ouster (as defined by law) or an action for adverse

possession. Neither has occurred here. To the contrary, testimony and evidence to be presented will show that there was continuous use of the property by all the tenants-in-common, and contribution by all those tenants to the maintenance and upkeep of the property. As a matter of law there is no common ownership with any contiguous property nor any act to establish such ownership.

Evidence will show that the property at 7 Terrace Dale was never used to support the zoning requirements of any adjoining structure or building, since **all** the adjoining residences pre-date Baltimore County Zoning regulations by thirty (30) years or longer.

Since all the adjoining uses pre-date zoning, and all the tenants-in-common shared the use and maintenance of the property, there was not and could not have been any intent to use the property in service of an adjoining property.

Even were any of the elements of merger present, there are clearly defined exemptions to the doctrine of merger which apply.

Other than Petitioner's desire to build a house on the lot that would be compatible with others in the immediate area, the lot will support a dwelling, albeit a small dwelling, under §304.1 of the Baltimore County Zoning Regulations as a matter of right.

Under a recent and significant New Jersey decision, Jock v.

Zoning Board, 878 A.2d 785 (2005), the court enumerated a number of recognized exceptions to the merger doctrine:

It does not apply to adjoining lots, owned by the same person, all of which are found to conform to the requirements of the [local] regulations and are shown and designated as separate on the tax map;

It does not apply where a party who owns a non-conforming lot acquires a contiguous lot that fronts on a different street and merger would not create a conforming lot;

It does not apply to back to back or L-shaped lots since it would require "a strained finding" that these two lots were intended to form one lot and would be in total disregard that each lot fronts on a different street.

It does not apply to contiguous lots created pursuant to a subdivision approved under applicable law.

Evidence will show that the only property which arguably could ever have been considered for merger was developed in the 1980's under Baltimore County regulations then in effect, long after the conveyance of 1934 which left the subject lot as a freestanding parcel.¹ The Zoning Commissioner's finding that the subject property's long destructed stable was **intended** to support any other lots or residences is contrary to both the facts and title history of both the subject property and that of Lot 7 which is now part of the office complex known as York at Terrace Dale.

The Jock case, citing Friends of the Ridge v. Baltimore Gas and Electric Co., 352 Md. 645, 724 A.2d 34, makes the explicit

¹

That development involved a restrictive covenant agreement to which Appellant is a party.

point at issue here: whether or not a jurisdiction deems intent an element of merger, "**commonality of legal title** is the base line for a merger analysis" (Emphasis added) and, to use the Zoning Commissioner's terminology, such commonality of legal title **is the touchstone** of zoning merger before which any analysis of intent can be considered. With all due respect, it is in this finding that the Zoning Commissioner's decision was clearly an error of law.

Respectfully submitted,

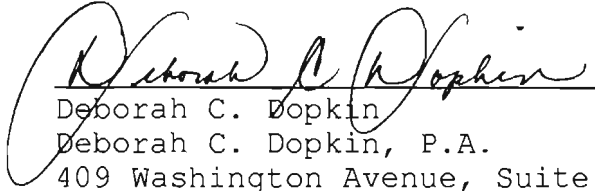

Deborah C. Dopkin
Deborah C. Dopkin, P.A.
409 Washington Avenue, Suite 1000
Towson, Maryland 21204
(410) 821-0200
Attorney for Petitioner/Appellant

TABLE OF CASES

1. Remes v. Montgomery County, 387 Md. 52, 874 A.2d 470 (2005)
2. Jock v. Zoning Board, 878 A.2d 785 (2005)
3. Friends of the Ridge v. Baltimore Gas and Electric Co., 352 Md. 645, 724 A.2d 34

CERTIFICATION OF MAILING

I HEREBY CERTIFY, that on this 9 day of July, 2007, a

copy of the foregoing Notice of Appeal was mailed, postage prepaid to Carroll Holzer, Esquire, 508 Fairmont Avenue, Towson, Maryland 21286 and to People's Counsel for Baltimore County, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204.


Deborah C. Dopkin

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BALTIMORE COUNTY, CORRESPONDENCE

INTER-OFFICE CORRESPONDENCE

TO: Lawrence S. Wescott
Wendell Grier
Robert Witt

FROM: Linda B. Fliegel

DATE: July 9, 2007

SUBJECT: Henry B. Peck, Jr.
Pre-Hearing Memorandum
Hearing – Wednesday, July 11, 2007

Attached for your review is a copy of the Pre-Hearing Memorandum for the above-captioned case.

8/12/06

Re: PETITION FOR VARIANCE	*	BEFORE THE
South Side of Terrace Dale,	*	
130' West of Centerline	*	BOARD OF APPEALS
of Cedar Road	*	
(7 Terrace Dale)	*	OF
9 th Election District	*	
5 th Council District	*	BALTIMORE COUNTY
Case No. <u>06-506-A</u>	*	
	*	Case No.
Henry B. Peck, Jr.	*	
Petitioner/Appellant	*	

NOTICE OF APPEAL

Please note an appeal from the Order on Motion for Reconsideration rendered by the Zoning Commissioner of Baltimore County, dated July 26, 2006 to the County Board of Appeals, and forward all papers in connection therewith to the Board for hearing. The Petitioner/Appellant is Henry B. Peck, Jr., whose address is 304 West Pennsylvania Avenue, Towson, Maryland 21204.

Enclosed is the appeal fee of \$325, plus a \$75 posting fee.

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Per. *any*

Deborah C. Dopkin
Deborah C. Dopkin
Deborah C. Dopkin, P.A.
409 Washington Avenue, Suite 1000
Towson, Maryland 21204
(410) 821-0200
Attorney for Petitioner/Appellant

CERTIFICATION OF MAILING

I HEREBY CERTIFY, that on this 17th day of August, 2006, a copy of the foregoing Notice of Appeal was mailed, postage prepaid to People's Counsel for Baltimore County, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204.

Deborah C. Dopkin
Deborah C. Dopkin

DEBORAH C. DOPKIN, P.A.
ATTORNEY AT LAW
409 WASHINGTON AVENUE, SUITE 1000
TOWSON, MARYLAND 21204
TELEPHONE 410-821-0200
FACSIMILE 410-823-8509
e-mail ddopkin@dopkinlaw.com

DEBORAH C. DOPKIN

August 17, 2006

Via Hand Delivery

Timothy M. Kotroco, Esquire
Director, Department of Permits and
Development Management
Baltimore County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

**RE: Notice of Appeal - 7 Terrace Dale
Henry B. Peck, Jr., Petitioner/Appellant
Zoning Case No. 06-506-A**

Dear Mr. Kotroco:

Enclosed for filing please find Notice of Appeal with
regard to the above captioned matter.

Also enclosed is my check in the amount of \$400 to cover
the costs of same.

Thank you for your assistance.

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AUG 17 2006

Per. *anf*

Very truly yours,

Deborah C. Dopkin
Deborah C. Dopkin

DCD/kmc

Enclosure

cc: People's Counsel for Baltimore County
William Wiseman, Esquire, Zoning Commissioner
Kathleen Bianco, Board of Appeals
Henry B. Peck, Jr., Esquire

7/26/06

RE: PETITION FOR VARIANCE	*	BEFORE THE
South Side of Terrace Dale, 130' West		
Of Centerline of Cedar Road	*	ZONING COMMISSIONER
(7 Terrace Dale)		
9 th Election District	*	OF
5 th Council District		
	*	BALTIMORE COUNTY
Henry B. Peck, Jr.		
Petitioner	*	Case No. 06-506-A

* * * * *

ORDER ON MOTION FOR RECONSIDERATION

This matter comes before the Zoning Commissioner on a Motion for Reconsideration timely filed in the above-captioned matter by Henry Peck, Esquire, Petitioner, on June 30, 2006. On July 5, 2006, Mr. Peck submitted a supplemental letter in support of his Motion.

By way of background, Petitioner in the instant case has purchased an undersized lot and seeks variances for front, back, and side yard setbacks, as well as for total lot size.

By my opinion and Order dated June 28, 2006, I denied the Petitioner's request for the reasons set forth therein. As noted above, Petitioner's Motion for Reconsideration was filed challenging the basis of my decision. Petitioner argues that in this case the doctrine of zoning merger is inapplicable, based on the premise that the lot in question (the "Stable Lot") was never a separate lot adjacent to a commonly-owned parcel. Petitioner also contends that the Stable Lot should not have been subject to the doctrine of zoning merger because the owner at best only held a one-sixth interest in the property, rather than a fee simple interest.

* I am grateful for and would like to acknowledge the research and assistance of Kedrick Whitmore, law student, University of Maryland, in the preparation of this Order.

ORDER RECEIVED FOR FILING
 Date 7-29-06
 By [Signature]

Later Creation of Stable Lot

Petitioner asserts that the Stable Lot in question cannot be subject to the doctrine of zoning merger because it did not exist as a separate entity until 1934, and thus no adjacent lot was ever under common ownership. He argues that the 1929 conveyance of this lot to the children of Charles Thomas did not create a separate lot, because their inheritance as tenants-in-common of the remaining parcel was referred to merely as the "residue" of the original lot, rather than mentioning the Stable Lot separately.

Such a reading, however, ignores precedent. In *Friends of the Ridge, et al v. Baltimore Gas & Electric Company*, 352 Md. 645 (1999), Judge Cathell recognizes the idea that merger may occur "without the need for official subdivision or conveyancing." *Id.* at 653. The opinion also states that "[z]oning is concerned with dimensions and uses of land or structures, not with any particular description 'lot,' 'parcel,' or 'tract' applicable to or necessary for conveyancing." *Id.* at 655.

Petitioner's emphasis on the language of the 1929 conveyance is misplaced. Determining what is or is not a separate lot for the purposes of zoning merger "is not concerned with the manner in which land is described for conveyancing purposes but rather with what use is made thereof." *Id.* at 655. Thus, whether or not the Stable Lot was a separate lot is not dependant upon whether it was referred to as separate in a conveyance, but rather whether its use was such that it should be considered a separate lot.

Based on this use, the lot was certainly separated from the larger "residue" of the original two acres when it was used as an accessory to the six lots of the Thomas' children subsequent to the 1929 conveyance.

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By [Signature]

Zoning merger exists as a tool of the local government to check the proliferation of undersized lots. Allowing the determination of what constitutes a separate lot to be based upon the language in a conveyance eviscerates the doctrine completely, allowing landowners to circumvent the practice at their will.

Therefore, I must respectfully find that the Stable Lot was created as a separate lot prior to the 1934 conveyance based upon the use of this lot as a separate accessory, regardless of the language in the 1929 transfer.

One Sixth Interest Enough to Create Merger

Petitioner also urges that the one-sixth interest in the Stable Lot granted to B.M. Thomas, the owner of Lot 6, is insufficient to create zoning merger. Again, Petitioner's emphasis is misplaced. The literal ownership of two contiguous parcels of land is not the touchstone of zoning merger: in many cases, two such parcels with a common owner will not merge into one. E.g. *The Ridge* 352 Md. at 656; *Appeal of Gregor*, 156 Pa. Commw. 418, 421-2 (1993); *Molic v. Zoning Board of Appeals*, 18 Conn.App. 159, 163-65 (1989). The court in *The Ridge* held that, although zoning merger may occur automatically between two contiguous, undeveloped parcels, "most [jurisdictions] require that the intent of the owner to merge the parcels be expressed, though little evidence of that intent is required." Id. at 653. Once again, the use of said parcels is one of the most important factors in determining whether zoning merger has occurred, not the extent of ownership interest.

Such intent may be expressed if the owners "integrate or utilize the contiguous lots in the service of a single structure or project." *The Ridge* at 40. Here, Charles Thomas made the 1929 conveyance with the intent that the Stable Lot be used accessory

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to all of his children's homes, including the adjacent Lot 3. This acts as an integration of the two lots in service of a single project, the residence built on Lot 3. The fact that this interest in the Stable Lot was split with several other homes does not diminish the intent by Charles Thomas that Lot 3 and the Stable Lot be used as one.

Petitioner points to *Loechner v. Campoli*, 49 N.J. 504 (1967) as evidence that zoning merger has not occurred. There, a husband and wife owned three contiguous lots on which they built a home. Later, they acquired two other lots contiguous to this home. After the death of her husband, his wife sold all five lots, and when the new owner attempted to utilize the lots individually, the court held that zoning merger had occurred. Petitioner points out that zoning merger did not occur in that case when the husband and wife owned the two adjacent lots in common rather than in fee, and that merger took place only after the husband's death when the wife owned both lots in fee. He (Petitioner) attempts to analogize this to the current situation, where B.M. Thomas owned Lot 3 in fee and Stable Lot in common with his siblings, arguing that a lack of fee simple ownership of all lots precludes zoning merger.

In *Loechner*, however, the original three lots on which the house was built were never used as one with the two lots owned in common. This is a case of automatic merger based on the acquisition of common title, rather than merger based on common usage. *Loechner*, then, is not dispositive in the current case, as here zoning merger is being examined on the basis of common usage.

Petitioner also cites *Carciotti v. Board of Appeals*, 22 Mass. App. Ct. 926 (1986), where zoning merger did not occur between an owner of a lot who owned a contiguous lot in common with his wife, as evidence that zoning merger cannot occur based on B.M.

Thomas' fractional interest in the Stable Lot. Again, this case is not analogous, as there is no evidence in the opinion that the two parcels were used as one.

Determining when zoning merger has occurred between two contiguous parcels with the same owner can be a daunting task. For example, does zoning merger occur if the owner of a contiguous parcel landscapes the adjacent parcel simultaneously with another? If he erects a fence around both parcels, etc.?

The most appropriate test to determine whether the landowner has intended for the lots to be treated as one, is whether this intention was made clear in a public forum. Such a rule is consistent with case law. For example, in *Ianucci v. Zoning Board of Appeals*, 25 Conn. App. 85 (1991), the court held that when a house was built on two contiguous parcels, zoning merger occurred. There, the builder was required to obtain permits from the local government and record the proposed building. Such activity shows an intention to use the two lots as one that is expressed in a public forum.

In *Remes v. Montgomery County*, 387 Md. 52 the court determined that two adjacent lots had merged when homeowners built a pool on an adjoining lot. The pool was clearly an accessory to the home on the adjacent plot, and the application for a permit to build the pool was recorded with the county. Again, there was evidence of an intent that the two lots be treated as one, and a public record of such intention.

In contrast, when such objective evidence of intention does not exist, zoning merger does not occur merely because a single owner maintains an interest in two adjacent properties. For example, in *Appeal of Gregor*, 156 Pa. Commw. at 424, no objective evidence existed that the owner of two adjacent properties intended that they be used as one. Based on this, the court rejected the theory that the lots had merged.

In a manner similar to *Ianucci* and *Remes*, Charles Thomas' grant of one-sixth interest in Stable Lot to the owner of Lot 3 is an expression that he intends for these two lots to be used as one, for the common benefit of the residence on Lot 3. The fact that this interest has been split amongst 6 individuals does not diminish the desire of Thomas to have the parcels examined together.

Therefore, I find that the one-sixth interest in the Stable Lot held by B.M. Thomas was sufficient to constitute zoning merger with the former Lot 3.

VARIANCE ISSUE

In the interest of efficiency, it is only prudent to address the issue of the variance request simultaneously with the zoning merger issue.

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.”

In general, variances are not favored under the law and presumed to be in conflict with the zoning regulations. As stated in *Cromwell v. Ward*, 102 Md. App. 691, 703

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By D. J. [Signature]

(1995), a variance may be granted when some unique characteristic of the property is found that makes compliance with the zoning regulations overly burdensome or difficult.

Petitioner argues in his motion that his situation falls under the rubric of *Cromwell v. Ward*, pointing to the very small size of this parcel and arguing that this is a unique characteristic of the property, making a variance appropriate. This theory fails, however, as this characteristic of the subject parcel is only present because the previous owner of the land carved it out of a much larger plot or tract to house an accessory structure for his house as well as six single-family homes owned by his children. Thus, the hardship facing Petitioner was created by his predecessor in title and in such situations the requisite hardship to obtain a variance cannot be demonstrated. *Wilson v. Mayor & Town Comm'rs of Town of Elkton*, 35 Md. App. 417 (1977).

It is the responsibility of the petitioner to use due diligence and determine if any such hardship may be avoided. Here, it seems that Petitioner was well aware of potential problems with the subject property prior to his purchase, and took no steps to alleviate this hardship: in a letter to Messrs. John Weiss and George Ingalls, Esqs. dated May 6, 2004 (marked in the record under Protestant's Exhibit 1), Petitioner refers to the Stable Lot as a "small unbuildable parcel." Petitioner has recognized the problems inherent in building on the parcel, yet continued in his attempts to acquire and develop it.

The variance must also be in harmony with the spirit and intent of the zoning regulations and does not cause damage to the surrounding area. *McLean v. Soley*, 270 Md. 208 (1973). The court has held that, where granting a variance would affect the "aesthetic ambience" of the residential area, granting relief is not in harmony with the spirit and intent of the regulations, as required in *McLean*. See also *Daihl v. County*

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Board of Appeals of Baltimore County, 258 Md. 157 (1970). Based on the evidence received from the large number of community protests and examinations of the construction proposed by Petitioner on this undersized lot, the ambience of the surrounding area would be negatively altered by granting this relief.

Beyond concerns of self-inflicted hardship and the aesthetic ambience of the area, Petitioner's requests are rather intense and excessive given the pattern of development in the area. Petitioner requests:

- A variance to build on a lot 20% smaller than required (4,800 square feet in lieu of 6,000 square feet)
- A 20% reduction in side yard setback (8 feet in lieu 10 feet)
- More than a 50% decrease in rear setback (14 feet in lieu of 30 feet)
- A 7% reduction in front yard setback (21 feet in lieu of 22.5 feet)

Requests for such variances are quite intense, particularly considering the character of the surrounding area.

The reduction in lot size requested is particularly offensive to zoning regulations. One house on 4,800 square feet would create a density of nine homes per acre. Such a result is certainly outside the spirit and intent of the regulations concerning areas zoned D.R.5.5.

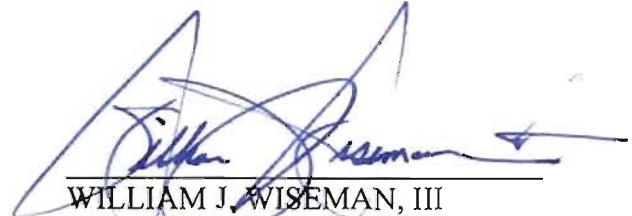
Therefore, for the reasons listed above, I have no choice but to deny Petitioner's request for a variance under *Cromwell* and Section 307 of the B.C.Z.R.

After due consideration of Petitioner's arguments and the evidence presented, I am convinced that no reason exists to reconsider the decision in this matter.

MAILED
Date 5-29-00
By [Signature]

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 26th day of July 2006 that the Motion for Reconsideration filed in the above-captioned matter be and the same is hereby DENIED.

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



WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

Henry B. Peck, Esquire, Haile & Peck, 304 W. Pennsylvania Avenue,
Towson, Maryland 21204
Carrie M. Peck Tomko, 831 Kellogg Road, Lutherville, Md. 21093
Paul and Susan Hartman, 18 1/2 Cedar Avenue, Towson, Md. 21286
Ashby and Milan A. Heath, 20 Cedar Avenue, Towson, Md. 21286
Joseph L. Booze, 21 Cedar Avenue, Towson, Md. 21286
Virgina Carruthers, 24 Cedar Avenue, Towson, Md. 21286
Mary H. Miles, 2 Cedar Avenue, Towson, Md. 21286
Maureen M. Hunter, 18 Cedar Avenue, Towson, Md. 21286
Adele Free, 21 Cedar Avenue, Towson, Md. 21286
Andrew Evans, 619 Coventry Place, Towson, Md. 21286
Judith Giacomo, 17 Aigburth Road, Towson, Md. 21286
Christopher H. Bready, 34 Cedar Road, Towson, Md. 21286
Craig Demallie, President, Wiltondale Improvement Association,
P.O. Box 10116, Towson, Md. 21285
John S. and Frances C. Holman, 12 Cedar Avenue, Towson, Md. 21286
Office of Planning; People's Counsel; Case File

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Date 7-26-06
By D. J. [Signature]



Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

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

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

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

July 24, 2006

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

RECEIVED

JUL 24 2006

Re: Henry B. Peck, Jr., Petitioner
Case No: 06-506-A

ZONING COMMISSIONER

Dear Mr. Wiseman:

For several reasons, our office respectfully requests an extension of time for filing a response to Petitioner's Motion for Reconsideration to August 7, 2006. First of all, the Petitioner did not send us a copy of the Motion. Rather, we become aware of it later. Secondly, the matter involves, among other things, the issue of "zoning merger," which the Maryland courts have just begun to address. Thirdly, the Motion goes into detail and therefore warrants a response which will take additional time. In light of the apparent interest of many parties, it appears that having additional time to prepare a thoughtful response is appropriate.

Thank you for your consideration.

Very truly yours,

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/rmw

cc: Henry B. Peck, Jr., Esquire
Paul Hartman

7/5/06
IN RE:

PETITION FOR VARIANCE
South Side of Terrace Dale, 130' West
Of Centerline of Cedar Road
(7 Terrace Dale)
9th Election District
5th Council District

Henry B. Peck, Jr.
Petitioner

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 06-506-A
*

* * * * *

PETITIONER'S MOTION FOR RECONSIDERATION

The undersigned Petitioner respectfully requests the Zoning Commissioner to reconsider his decision of June 28, 2006 in light of the information contained in the attached letter.

I declare and affirm under the penalties of perjury that the matter and facts set forth in the attached letter are true and correct to the best of my knowledge, information and belief.

Respectfully submitted,

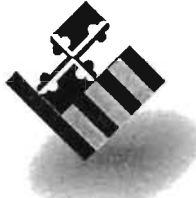


Henry B. Peck, Jr., Petitioner
304 West Pennsylvania Avenue
Towson, Maryland 21204
410-321-7037

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JUL 05 2006

ZONING COMMISSIONER



BALTIMORE COUNTY
M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

July 6, 2006

WILLIAM J. WISEMAN III
Zoning Commissioner

Henry B. Peck, Esquire
Haile & Peck
304 West Pennsylvania Avenue
Towson, Maryland 21204

RE: **PETITION FOR VARIANCE**
South Side of Terrace Dale, 130' West of Centerline of Cedar Road
(7 Terrace Dale)
9th Election District – 5th Council District
Henry B. Peck, Jr. - Petitioner
Case No. 06-506-A

Dear Mr. Peck:

This will acknowledge receipt of the Motion for Reconsideration filed in this matter and received by my office on July 5, 2006. I hasten to inform you that copies of this Motion should have been sent to those persons who appeared in opposition to your request as well as Mr. Peter Max Zimmerman, People's Counsel for Baltimore County, since his appearance had been entered in the case. By copy of this letter, I am forwarding to those individuals copies of your Motion and the grounds contained in your correspondence dated July 5, 2006.

As you may know, Appendix G of the Baltimore County Zoning Regulations contain the Rules of Practice and Procedure before the Zoning Commissioner and require pursuant to Rule 4K that the Zoning Commissioner shall rule on the Motion within thirty (30) days from the date which the Motion is accepted for filing. I wish to inform you that I am extending the courtesy to those individuals who attended the hearing and provide them with an opportunity to respond to me, in writing, prior to July 25, 2006, at which time the thirty (30) day period will begin to run and a decision will be rendered in your case.

Very truly yours,

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:dlw

c: Carrie M. Peck Tomko, 831 Kellogg Road,
Lutherville, Md. 21093
Paul and Susan Hartman, 18 ½ Cedar Avenue, Towson, Md. 21286
Ashby and Milan A. Heath, 20 Cedar Avenue, Towson, Md. 21286
Joseph L. Booze, 21 Cedar Avenue, Towson, Md. 21286
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Judith Giacomo, 17 Aigburth Road, Towson, Md. 21286
Christopher H. Bready, 34 Cedar Road, Towson, Md. 21286
Craig Demallie, President, Wiltondale Improvement Association,
P.O. Box 10116, Towson, Md. 21285
John S. and Frances C. Holman, 12 Cedar Avenue, Towson, Md. 21286
Office of Planning; Peter Max Zimmerman, People's Counsel; Case File

HAILE & PECK

ATTORNEYS AT LAW

Henry B. Peck, Jr.
David C. Haile

304 West Pennsylvania Avenue
Towson, Maryland 21204-4424
(410) 321-7037
FAX: (410) 938-2231

Walter R. Haile
1913-2005

Carrie M. Peck Tomko

July 5, 2006

William J. Wiseman, III, Esquire
Zoning Commissioner for Baltimore County
Room 405, County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

RE: 7 Terrace Dale
Case No.: 06-506-A

Dear Mr. Wiseman:

Your decision of June 28, 2006 denies the variances I had applied for on the basis of your finding that a merger for zoning purposes had occurred with respect to my lot and other property in its immediate vicinity. The doctrine of zoning merger has been applied in a number of jurisdictions, including Maryland, in order to limit or prevent development of nonconforming undersized parcels of land under a specific set of factual circumstances. As stated in Friends of the Ridge et al v. Baltimore Gas & Electric Company, 352 Md. 645 (1999),

"Efforts throughout the country, including Baltimore County, have been to restrict undersize parcels, not oversize parcels. These efforts have resulted in the creation and evolution in zoning of the doctrine of merger, which, in zoning cases, generally prohibits the use of individual substandard parcels if contiguous parcels have been, at any relevant time, in the same ownership and at the time of that ownership, the combined parcel was not substandard. In other words, if several contiguous parcels, **each** of which do not comply with present zoning, are in single ownership and, as **combined**, the single parcel is usable without violating zoning provisions, one of the separate, nonconforming parcels may not then or thereafter be considered nonconforming, nor may a variance be granted for that separate parcel."

For the doctrine to be applicable, two or more contiguous parcels of land, none of which standing alone would comply with zoning regulations, must be owned by the same person or persons, and the combined parcel must be usable without violating zoning regulations. Under those circumstances, the merger doctrine "has been applied... to prohibit the later creation of undersized parcels" by restricting the common owner's ability to utilize one of the component parcels by itself without first complying with present subdivision requirements.

A merger of two lots for zoning purposes cannot possibly occur prior to that point in time when the lots in question first come into independent existence. My lot did not come into independent existence until 1934. Prior to that date, the land which was to become the "stable lot" was but a portion of the residue of the original two acre lot purchased by Charles Thomas in 1891. I use the term "residue" because in 1918, at least seven years after the last of the children's houses was completed (Charles died in 1911), the family trust which then owned the entire two acre parcel executed and recorded simultaneously six separate deeds, one to each child, conveying his or her house and its respective lot. This left in the trust the original two acres saving and excepting the six newly deeded lots.

It is important to note that, despite the preparation in 1918 by J. Milton Green of the unrecorded plat of Terrace Dale, no lot or other portion of the original two acre tract of Thomas has ever, even to the present day, been described in a recorded conveyance by reference to such plat. Thus, the exhibit presented at the zoning hearing to give a pictorial depiction of the development of the Thomas land is not and never has been a part of the Land Records of Baltimore County. All deeds to all parcels in Terrace Dale have contained only metes and bounds descriptions, with no reference to a recorded subdivision plat.

Thus, while some might be tempted to propose that the stable lot came into independent existence as "Lot 8" on the unrecorded plat prepared in 1918, from a title and property assessment perspective my lot did not in fact become a separate parcel until 1934, when the original Thomas house and all of the remaining Thomas land on the north side of Terrace Dale was conveyed to a third party by way of a metes and bounds description. This Deed description created for the first time lines of division between the house land and the stable land.

As further evidence of the pre-1934 title status of my lot, please see the attached copy of the 1929 Deed executed by the family trust following the death that year of my great grandmother, which conveyed the "residue" of the two acres to the six children, as equal tenants in common. Described in that Deed as "the old home place", the land thereby conveyed comprised, as an undivided parcel, both the original house and the garage (stable) on the opposite side of the private road (Terrace Dale).

The 1934 Deed separated the house land from the original two acres, just as the six deeds in 1918 had separated the children's lots from the original two acres. This left the stable and its surrounding land on the south side of Terrace Dale, by then owned by the six children of Charles Thomas as tenants in common, as the ultimate residual parcel of the two acre lot purchased by Charles in 1891.

The issue remains as to whether a merger of lots for zoning purposes might be deemed to have occurred in 1934, being the earliest point in time my lot had independent legal existence. Such a merger demands as a prerequisite the element of common ownership of contiguous lots. The three lots contiguous to my lot in 1934 were 5 Terrace Dale to the immediate west; 20 Cedar Avenue to the immediate east; and the original Thomas house and its surrounding land to the immediate north, although physically separated by the road. In 1934, 5 Terrace Dale was owned by William K. Weaver and his wife, non-family members who had purchased the property in 1932

from Charles' son, B. Marvin Thomas, Sr. No. 20 Cedar Avenue was owned by Charles' son Edward, who owned a one-sixth undivided interest in the stable lot, in common with his five brothers and sisters.

I have found no reported case applying the doctrine of zoning merger which involved common ownership of only partial or fractional interests in contiguous properties. The Friends of the Ridge case, at page 654, discusses what it describes as one of the seminal cases dealing with zoning merger, Loechner v. Campoli, 49 N.J. 504, 231 A. 2d 553 (1967). There, five contiguous lots were found to have merged into one parcel for zoning purposes, but this was not deemed to have occurred until the widow of the original owner of two of the lots had inherited those two upon the death of her husband, under the terms of his Will, even though the same woman and her same husband had jointly owned the other three lots for some years before the husband alone bought the other two.

"The Supreme Court of New Jersey noted that '[t]he acquisition of title by [the widow] to Lots 189 and 190 which were contiguous to Lots 186-188 created one parcel or tract of land consisting of five separate lots."

Thus, the merger did not occur until after the husband died, whereupon his wife succeeded to full ownership of Lots 186-188 by right of survivorship and took title to Lots 189 and 190 as devisee under his Will. It seems to me that commonality of ownership of the five New Jersey lots prior to the husband's death would have been a lot easier to visualize than commonality of ownership by Edward Thomas of 20 Cedar Avenue and the stable lot, the former of which he owned in fee and the latter of which he owned in equal shares with his five brothers and sisters.

In Carciofi v. Board of Appeals, 22 Mass. App. Ct. 926, 492 N.E. 2d 747 (1986), a Massachusetts court ruled that merger could not apply to a lot owned individually by an owner and an adjoining lot held by that owner as a tenant in common with another person.

The owner of a fractional interest in property is not free to use it in any manner he sees fit, because his right is subject to identical rights held by each of the other fractional owners. Thus, while Edward Thomas did simultaneously own 20 Cedar Avenue and an undivided one-sixth interest in the contiguous stable lot, no merger of the two properties for zoning purposes can be deemed to have occurred. Edward made no use of 20 Cedar Avenue which depended for zoning compliance on his ownership of the fractional interest in the stable lot, and he likewise made no use of the stable lot which depended on his ownership of 20 Cedar Avenue. Contrast this with the facts in the Remes case, cited in your opinion, where the Court found several examples of the two contiguous lots being used "in the service of" one another while under common ownership.

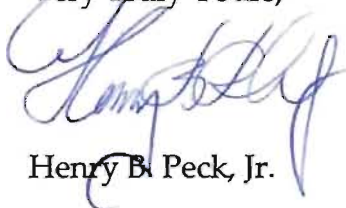
Each of the other two lots contiguous to the stable lot lacked the element of common ownership entirely. The 1934 Deed by the six children of Charles simultaneously transferred ownership to a third party of the large lot containing the original Thomas house, and created the stable lot for the first time as a separate and distinct parcel of land, with title thereto remaining in the six children. William K.

Weaver and his wife, owners since 1932 of 5 Terrace Dale, never had any ownership interest in the stable lot. Finally, the lots once belonging to the four remaining children of Charles Thomas, being 1 Terrace Dale, 3 Terrace Dale, 22 Cedar Avenue and 24 Cedar Avenue, are not contiguous to my lot, so cannot be deemed under any circumstances to have merged with it for zoning purposes.

In conclusion, there has never occurred that convergence of contiguity and common ownership of the stable lot at Terrace Dale with any other parcel of land which could trigger the application of the doctrine of merger for zoning purposes. Therefore, the requested variances with respect to this lot may not properly be denied on the basis of the merger doctrine. I purchased the stable lot from the estates, heirs and legatees of the six children of Charles Thomas, and firmly believe that I have the clear legal right to apply for setback variances with respect thereto. My request for variances should be decided solely on the basis of the criteria set forth in Cromwell v. Ward, which I addressed in my earlier letter, and which I believe are fully satisfied. As the Court of Appeals held in Roeser v. Anne Arundel, 368 Md. 294 (2002), cited in your opinion, the act of purchasing a nonconforming parcel with knowledge that area variances would be necessary to permit development may not be deemed to constitute a "self-inflicted" hardship which would preclude the granting of the variances.

Thank you for giving this letter your careful consideration and for reconsidering your recent decision in the captioned matter.

Very Truly Yours,

A handwritten signature in blue ink, appearing to read "Henry B. Peck, Jr.", written over a horizontal line.

Henry B. Peck, Jr.

TITLE DEED 833/412

THIS DEED made this ~~28th~~ day of October, nineteen hundred and twenty-nine, by B. Marvin Thomas and Seabrook S. Thomas, Trustees under a deed of trust made by Charles E. Thomas and Caroline Thomas, his wife, parties of the first part, Grantors, to Bessie J. Kenney, Seabrook S. Thomas, B. Marvin Thomas, Charles E. Thomas, Virginia M. Thomas and Edna A. Green, parties of the second part, Grantees, all of Baltimore County, State of Maryland.

WITNESSETH that in consideration of the sum of Five Dollars paid by each of the Grantees to the Grantors herein and in pursuance of an order of the Circuit Court for Baltimore County, passed October 18th, 1929, in a proceeding in said Court entitled "B. Marvin Thomas, et. al. Trustees, vs. Caroline Thomas, et. al., Equity Docket No. 23, folio 172", the said B. Marvin Thomas and Seabrook S. Thomas, Trustees as aforesaid, do grant and convey unto the said Bessie J. Kenney, Seabrook S. Thomas, B. Marvin Thomas, Charles E. Thomas, Virginia M. Thomas, and Edna A. Green, in equal shares, as tenants in common, in fee simple, the following described real estate, situate, lying and being in the Ninth Election District of Baltimore County, viz:

1st. All the unsold portion of the tract of land mentioned first in the deed of trust made by Charles E. Thomas and Caroline Thomas, his wife, to the said B. Marvin Thomas and Seabrook S. Thomas, dated November 3rd, 1910, and recorded among the Land Records of Baltimore County in Liber W. P. C. No. 368, folio 539, the said unsold portion being designated as Lot No. seven (7) on a plat filed in the Equity proceeding above referred to as Petitioners' Exhibit "B", the improvements consisting of a large frame dwelling house and garage building on the opposite side of the private road running through said property, said lot and improvements being known as the old home place. For a fuller and complete description of said lot No. 7 reference is made to said deed of trust and said plat.

2nd. A tract of unimproved land, comprising 1-1/2 acres on LaPaix Avenue, a private road running Westerly from the York Road, said tract adjoining on the West the residence of B. Marvin Thomas, one of the grantors herein, and being the property mentioned and described as the second and third lots in said deed of trust. For a fuller and complete description

of said property reference is made to said deed of trust. ~~XXXXXX~~

TOGETHER with the buildings and improvements thereupon erected, made or being and all and every, the rights, alleys, ways, waters, privileges, appurtenances and advantages, to the same belonging or anyway appertaining.

TO HAVE AND TO HOLD the said lot 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 Bessie J. Kenney, Seabrook S. Thomas, B. Marvin Thomas, Charles E. Thomas, Virginia M. Thomas and Edna A. Green, in equal shares, as tenants in common, in fee simple.

AND the said parties of the first part hereby covenant 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.

WITNESS the hands and seals of said Grantors.

WITNESS:

Joseph A. Rozlosky (SEAL)
Trustee.
Seabrook S. Thomas (SEAL)
Trustee.

STATE OF MARYLAND, BALTIMORE CITY, TO WIT:

I HEREBY CERTIFY that on this 15 day of October, 1929, before me, the subscriber, a Notary Public of the State of Maryland, in and for the City aforesaid, personally appeared B. Marvin Thomas and Seabrook S. Thomas, Trustees, the above named Grantors, and each acknowledged the foregoing deed to be their act.

AS WITNESS my hand and Notarial Seal.

[Signature]
Notary Public.

412 TAXES PAID 1328
Date Oct 22-29

279/154
344/24

For..... <u>and</u> D E E D CASE
169 from B. MARVIN THOMAS, ET. AL., <u>Leahood S. Trustees,</u> 65/1 to BESSIE J. KENNEY, ET. AL. <u>Leahood S. Thomas</u> <u>B Marvin Thomas</u> <u>Charles E Thomas</u> <u>Virginia M Thomas</u> <u>Edna A Kenney</u>
Received for Record <u>Oct 29</u> 1929 at <u>11 am</u> same day recorded in liber L. Rec. M. No. <u>833</u> folio <u>412</u> One of the <u>land</u> Records of Baltimore County and exam- ined, per <u>Louis McLaughlin</u> Clerk.
LAW OFFICES ERNEST C. HATCH 21 23 RECORD BUILDING TOWSON, MD.

THE REPRODUCING POINT, TOWSON, MD.

1100

6/28/06

IN RE: **PETITION FOR VARIANCE**

South Side of Terrace Dale, 130' West
Of Centerline of Cedar Road

(7 Terrace Dale)

9th Election District

5th Council District

Henry B. Peck, Jr.

Petitioner

* BEFORE THE

* ZONING COMMISSIONER

* OF BALTIMORE COUNTY

* Case No. 06-506-A

*

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the owner of the subject property, Henry B. Peck, Jr. The Petitioner requests variance relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a lot area of 4,800 square feet, a side yard setback of 8 feet, and a rear yard setback of 14 feet in lieu of the required 6,000 square feet, 10 feet, and 30 feet, respectively; and finally from Section 303.1 for a front yard setback of 21 feet for an open projection (porch) in lieu of the required 22.5 feet. The subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the request were Henry B. Peck, Jr., Esquire, property owner, and Carrie M. Peck Tomko, also an attorney and Mr. Peck's daughter.

The issues presented in this case generated significant public interest and a large number of individuals from the surrounding community appeared and/or testified in opposition to the request. Due to limitations of time and space, a listing of all of those individuals cannot be set out here but are noted on the citizens sign-in sheets which have been included in the case file. It is further noted that Paul S. Hartman, President of the Aigburth Manor Association of Towson, Inc. and Craig Demallie, President of the Wiltondale Improvement Association (the subject

ORDER RECEIVED FOR FILING

Date

6-28-06

By

property is located adjacent to homes in these communities) appeared and opposed Mr. Peck's request.

THE PROPERTY & PROPOSAL

Testimony was offered describing the subject property and its historical value to the Petitioner and his family. Briefly, Terrace Dale, approximately 0.2 miles in its total length, changes in character and is a small one-way street narrowing to approximately 11 feet in width in front of Mr. Peck's lot known as 7 Terrace Dale (Lot No. 8 on the 1918 Plat of "Terrace Dale" - Petitioner's Exhibit No. 3). The road, Terrace Dale runs west from Cedar Avenue to its terminus at York Road. The property with its northern boundary fronting Terrace Dale is approximately 74 foot wide tapering to 52 feet across the rear boundary and 80 feet deep, containing a gross area of 4,800 square feet more or less¹, zoned D.R.5.5. Mr. Peck meticulously presented the factual information spanning some 100 years in duration disclosing that his great grandfather, Charles E. Thomas, who is credited for building over 1/6 of the larger homes in Roland Park owned the 2-acre parcel depicted on Petitioner's Exhibit No. 3. Thomas, whose home was on Lot 7 had six (6) children, and subdivided the property in order to provide six (6) deeds for each of his children and built houses for each of them on lots denoted as 1, 2, 3, 4, 5 & 6, as depicted on the Plat of Terrace Dale as well as the photographic exhibits submitted and marked as Petitioner's 2A through 2F. The subject property, Lot 8 (a.k.a. 7 Terrace Dale) was the smallest of the eight (8) lots in the subdivision and known as the "Stable Lot". This lot was deeded to the six (6) children of Charles E. Thomas and used as a barn with a playroom on the second floor (See Page 2 of Exhibit 3), then a garage, workshop, and storage building until the 1950's when it was razed. Mr. Peck asserts that Lot 8 is unique as it was created by his great grandfather well prior to the effective date of the zoning regulations and as is often the case with older subdivisions, the lot does not meet current area/or setback requirements. He notes that no matter where on the lot a dwelling is situated it cannot conform to existing front, side and rear yard setbacks. Thus, the

¹ Residents from the surrounding community argue that the lot is much smaller in size as that claimed by the Petitioner and submit as evidence the Maryland Department of Assessments and Taxation Real Property Data Sheet submitted as Protestant's Exhibit No. 3 denoting a lot size of 3,500 square feet in area.

subject lot is undersized by today's standards. Variance relief is requested as set forth above to allow development of the subject property with a modest one-story single-family dwelling, 30 foot wide by 40 foot deep which will be centered on the lot so as to provide setback distances consistent with the other homes on adjacent properties. Apparently, Mr. Peck has acquired the property after great time, effort and expense and points out that the property is a "lot of record" and has been separately taxed as such since its creation (See Pages 5 & 6 of Exhibit 3). Without relief, Mr. Peck submits that the present zoning ordinance will restrict the use of his property so that it cannot, within the sphere of present zoning, be used for any reasonable purpose. When this occurs, Mr. Peck points out, zoning goes beyond permissible and legal regulation and must yield to the rights of the property owner. *Belvoir Farms v. North*, 355 Md. 259 (1999) and *White v. North*, 356 Md. 31 (1999)

APPLICABLE LAW

Government regulations of land use are largely a local function. The Baltimore County Council adopts zoning maps in Baltimore County every four (4) years, pursuant to the Comprehensive Zoning Process, and under those maps, every property in Baltimore County is assigned one of the nearly 40 zoning classifications listed in the Baltimore County Zoning Regulations (B.C.Z.R.). Those classifications contain specific regulations that govern particular land uses and D.R.5.5 zoned lots are required to have a minimum area of 6,000 square feet, a minimum front yard setback depth of 25 feet, side yard setbacks of 10 feet, and a minimum rear yard depth of 30 feet. Variance relief can be granted only if the requirements contained in Section 307 of the B.C.Z.R. are met. This section states that the Zoning Commissioner may grant variances:

... Only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance

ORDER RECEIVED FOR FILING

Date

6-28-06

By

D. Peck

with the zoning regulations of Baltimore County would result in practical difficulty or unreasonable hardship.

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

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

As noted above, the Protestants and neighbors from the community who were present raised a variety of concerns in this regard. In short, they believe that the Petitioner is trying to take advantage of the County's system and point out that the variance request must be denied on the grounds that "it is incumbent upon the Petitioner to obtain an accurate survey of the property's disputed size and area before requesting relief ... that any hardship or practical difficulty that he (Peck) now claims was self-inflicted" since he knew before obtaining the land that it was "a small unbuildable parcel" created by his ancestor and predecessor in title. *Roeser v. Anne Arundel*, 368 Md. 294 (2002)

This is not a simple case. From the evidence before me, I must conclude from a zoning standpoint that the prior owner(s) intended to merge the subject "Stable Lot" with the other "Terrace Dale Plated Lots". Erecting a barn or stable on the subject lot without a principle dwelling thereon and then transferring title to his children in 1/6 interest(s) or shares to use the property for purposes accessory to their dwelling lots is the kind of overt actions by Charles Thomas and subsequently his children, conducted in a public forum, that demonstrates an intent to merge the undersized lot. There is no physical evidence that the lot was treated separately. See *Friends of the Ridge v. Baltimore Gas & Electric Company*, 352 Md. 645 (1999), and *Remes v. Montgomery County*, 387 Md. 52 (2005) for Maryland cases on the doctrine of zoning merger. The question now presented is whether the subsequent transfer of this lot by the heirs and assigns

ORDER RECEIVED FOR FILING
Date 9-28-09
By [Signature]

of Charles Thomas to the Petitioner can undue the prior merger? This is a most difficult question in my view. Presented another way, did the discontinuance of the "Stable Lot" by Mr. Thomas and his children and their sale of the lots to separate owners negate the prior merger? The record in the *Remes* case indicated the court noted that the doctrine of zoning merger operated two (2) ways. While it permitted consolidation, it also prohibited the undoing of the process once merger had occurred. It was pointed out by the court that if it was only applied to permit consolidation, the inevitable result over a period of years would be the proliferation of unlawful non-conforming uses. The court went on as follows:

" ... We stated in Ridge: 'We shall hold that a landowner who clearly desires to combine or merge several parcels or lots of land into one larger parcel may do so. One way he or she may do so is to integrate or utilize contiguous lots in the service of a single structure or project...' That is precisely what the elder Duffies did when, in making additions to their home and in constructing a pool on a lot adjacent to their home, they employed Lot 11 in the service of Lot 12 for zoning purposes.

...

"Thus, based on the setback encroachments existing as a result of structures on Lot 12, the proposed construction on Lot 11, would make Lot 12, if in separate ownership, a new and illegal nonconforming lot, unless, under the doctrine of zoning merger, the uses of Lot 11 are appropriately limited.

...

"... To allow Lot 11 to be used as proposed, thus creates an illegal nonconformance as to lot 12 and, by implication, grants an improper variance as to the rear yard setback for Lot 12. Should this Court permit Lot 11 to be so used and a home constructed thereon, what becomes of Lot 12's ability to comply with existing rear yard and side yard setback requirements? Such action effectively waives the zoning requirements as to Lot 12.

...

"[If zoning merger only applied to permit consolidation, but did not operate to prohibit the undoing of merger] The owner would have the benefit of avoiding zoning violations by treating the parcels as merged for zoning purposes, but later seek benefit from the sale of two separate parcels of land. That is exactly what is occurring in the instant case."

UNDER RECEIVED FOR FILING
Date 6-28-09
By [Signature]

CONCLUSION

In summary, Judge Cathell noted in *Remes* that there is a national effort by counties to restrict undersized parcels, especially where the owner has or had contiguous undersized parcels. He indicated that the doctrine of zoning merger "generally prohibits the use of individual substandard parcels if contiguous parcels have been, at any relevant time, in the same ownership and at the same time of that ownership, the combined parcel was not substandard.

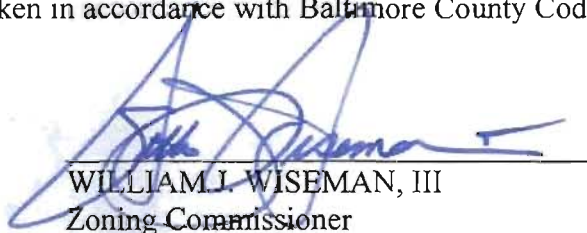
I find from the facts before me that the subject lot had merged with the other "Terrace Dale" lots owned by Mr. Peck's great grandfather, Charles E. Thomas, and his children prior to the Petitioner's acquiring the property. Once this occurred there can be no variance without the parcel proceeding through the minor subdivision process, which has not occurred. Therefore, I will deny the requested variances, as there are no internal divisions between lots recognized by zoning against which variances can be granted.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and for the reasons set forth above, I find that the Petitioner's variance requests should be denied.

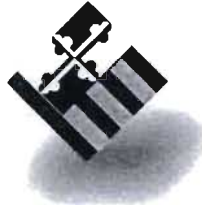
THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 28th day of June 2006, that the Petition for Variance relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a lot area of 4,800 square feet, a side yard setback of 8 feet, and a rear yard setback of 14 feet in lieu of the required 6,000 square feet, 10 feet, and 30 feet, respectively; and Section 303.1 for a front yard setback of 21 feet for an open projection (porch) in lieu of the required 22.5 feet, in accordance with Petitioner's Exhibit 1, be and is hereby DENIED.

Any appeal of this decision shall be taken in accordance with Baltimore County Code Section 32-3-401.

WJW:dlw


WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

FILED
Date 6-28-06
By [Signature]



BALTIMORE COUNTY
M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

June 28, 2006

WILLIAM J. WISEMAN III
Zoning Commissioner

Henry B. Peck, Esquire
Haile & Peck
304 West Pennsylvania Avenue
Towson, Maryland 21204

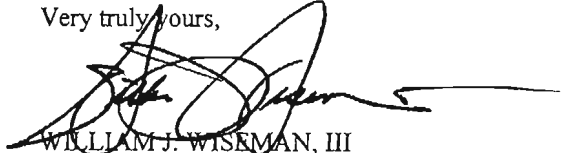
RE: **PETITION FOR VARIANCE**
South Side of Terrace Dale, 130' West of Centerline of Cedar Road
(7 Terrace Dale)
9th Election District – 5th Council District
Henry B. Peck, Jr. - Petitioner
Case No. 06-506-A

Dear Mr. Peck:

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

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

Very truly yours,



WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:dlw

c: Carrie M. Peck Tomko, 831 Kellogg Road,
Lutherville, Md. 21093
Paul and Susan Hartman, 18 ½ Cedar Avenue, Towson, Md. 21286
Ashby and Milan A. Heath, 20 Cedar Avenue, Towson, Md. 21286
Joseph L. Booze, 21 Cedar Avenue, Towson, Md. 21286
Virginia Carruthers, 24 Cedar Avenue, Towson, Md. 21286
Mary H. Miles, 2 Cedar Avenue, Towson, Md. 21286
Maureen M. Hunter, 18 Cedar Avenue, Towson, Md. 21286
Adele Free, 21 Cedar Avenue, Towson, Md. 21286
Andrew Evans, 619 Coventry Place, Towson, Md. 21286
Judith Giacomo, 17 Aigburth Road, Towson, Md. 21286
Christopher H. Bready, 34 Cedar Road, Towson, Md. 21286
Craig Demallie, President, Wiltondale Improvement Association,
P.O. Box 10116, Towson, Md. 21285
John S. and Frances C. Holman, 12 Cedar Avenue, Towson, Md. 21286
Office of Planning; People's Counsel; Case File



Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 7 TERRACE DALE

which is presently zoned DR 5.5

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

SEE ATTACHED

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

TO BE PRESENTED AT THE 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

Case No. 06-506-A

REV 9/15/98

Legal Owner(s):

HENRY B. PECK, JR.
Name - Type or Print

Signature

Name - Type or Print

Signature

304 W. PENNSYLVANIA AVE
Address

Telephone No.

TOWSON
City

MD
State

21204
Zip Code

(410) 321-7037
Zip Code

(410) 828-7651
Zip Code

Representative to be Contacted:

OWNER
Name

Address

Telephone No.

City

State

Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

UNAVAILABLE FOR HEARING

Reviewed By OPR

Date

1B02.3.C.1 to permit a lot area of 4,800 square feet, a side yard setback of 8 feet, and a rear yard setback of 14 feet in lieu of the required 6,000 square feet, 10 feet, and 30 feet, respectively; and Section 303.1 a front yard setback of 21 feet for an open projection (porch) in lieu of the required 22.5 feet.

ZONING DESCRIPTION

Zoning Description For 7 Terrace Dale

BEGINNING for the same in the center of a road twelve (12) feet wide and at the end of the South 47 degrees 16 minutes East 54 foot line of the land which by deed dated August 2, 1934, and recorded among the Land Records of Baltimore County in Liber C.W.B., Jr. No. 936, folio 361, was granted and conveyed by V. Merryman Thomas, et al, to The Terrace Dale Company, Incorporated, and running thence binding on the division line between the lot now being described and the land which by deed dated June 3, 1918, and recorded among the Land Records of Baltimore County in Liber W.P.C. No. 499, folio 216 was granted and conveyed by B. Marvin Thomas, et al, Trustees to Charles Edward Thomas the two following courses and distances, viz: South 48 degrees 54 minutes West 54 feet and southwesterly bounding on a fence there situate 22.20 feet to intersect the first line of the land which by deed dated July 15, 1891, and recorded among the Land Records of Baltimore County in Liber J.W.S. No. 188, folio 38, was granted and conveyed by Milton W. Offutt, et al, to Charles E. Thomas, thence bounding on said first line, as now surveyed, North 63 degrees 15 minutes West 52 feet to the end of the South 25 degrees 52 minutes West 82.10 foot line of the land which by deed dated June 3, 1918, and recorded among the Land Records of Baltimore County in Liber W.P.C. No. 499, folio 223, was granted and conveyed by B. Marvin Thomas, et al, Trustees to B. Marvin Thomas thence running and binding thereon reversely North 25 degrees 52 minutes East 82.10 feet to the center of the aforementioned twelve (12) foot road at the distance of 42.30 feet from the beginning of the South 63 degrees 38 minutes East 62.80 foot line of the deed first above mentioned from V. Merryman Thomas, et al, to The Terrace Dale Company, Incorporated, and running thence binding on the aforesaid deed along the center of the aforementioned twelve (12) foot road the two following courses and distances, viz: (1) South 63 degrees 38 minutes East 20.5 feet and (2) South 47 degrees 16 minutes East 54 feet to the place of beginning. The improvements thereon to be known as No. 7 Terrace Dale.

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: # 06-506-A

7 Terrace Dale

South side of Terrace Dale, 130 feet west of centerline of Cedar Avenue

9th Election District — 5th Councilmanic District

Legal Owner(s): Henry B. Peck, Jr.

Variance: to permit a lot area of 4,800 square feet, a side yard setback of 8 feet and a rear yard setback of 14 feet in lieu of the required 6,000 square feet, 10 feet and 30 feet respectively; and a front yard setback of 21 feet for an open projection (porch) in lieu of the required 22.5 feet.

Hearing: Friday, June 9, 2006 at 11:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue Towson 21204.

WILLIAM J. WISEMAN, III

Zoning Commissioner for Baltimore County

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

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

JT 5/21 May 23

96067

CERTIFICATE OF PUBLICATION

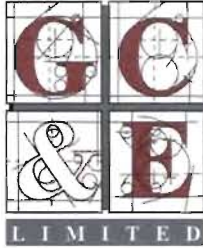
5/25/, 2006

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 5/23/, 2006.

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

J. Wilkins

LEGAL ADVERTISING



Gerhold, Cross & Etzel, Ltd.

Registered Professional Land Surveyors • Established 1906

Suite 100 • 320 East Towsontown Boulevard • Towson, Maryland 21286
Phone: (410) 823-4470 • Fax: (410) 823-4473 • www.gcelimited.com

CERTIFICATE OF POSTING

RE: CASE#06-506-A

PETITIONER/DEVELOPER:

Henry B. Peck, Jr.

DATE OF HEARING: June 09, 2006

BALTIMORE COUNTY DEPARTMENT OF
PERMITS AND DEVELOPMENT MANAGEMENT
COUNTY OFFICE BUILDING, ROOM 111
111 WEST CHESAPEAKE AVE.
TOWSON, MARYLAND 21204

ATTENTION: KRISTEN MATTHEWS

LADIES AND GENTLEMEN:

THIS LETTER IS TO CERTIFY UNDER THE PENALTIES OF PERJURY THAT THE NECESSARY
SIGN(S) REQUIRED BY LAW WERE POSTED CONSPICUOUSLY ON THE PROPERTY LOCATED AT

(see page 2 for full size photo)

LOCATION:

7 Terrace Drive

SIGNATURE OF SIGN POSTER

Bruce E. Doak

GERHOLD, CROSS & ETZEL, LTD
SUITE 100
320 EAST TOWSONTOWN BLVD
TOWSON, MARYLAND 21286
410-823-4470 PHONE
410-823-4473 FAX

POSTED ON: 5/22/06

ZONING NOTICE

CASE # :06-506-A

**A PUBLIC HEARING WILL BE HELD BY
THE ZONING COMMISSIONER
IN TOWSON, MD.**

PLACE: Room 407 County Courts Building
401 Bosley Avenue, Towson, MD

TIME & DATE : 11:00 am Friday, June 9, 2006

Variance: to permit a lot area of 4,800 square feet, a side yard setback of 8 feet and a rear yard setback of 14 feet in lieu of the required 6,000 square feet, 10 feet and 30 feet respectively; and a front yard setback of 21 feet for an open projection (porch) in lieu of the required 22.5 feet.

POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES
NECESSARY TO CONFIRM HEARING
CALL 410-867-3391 THE DAY BEFORE THE SCHEDULED HEARING DATE

DO NOT REMOVE THIS SIGN AND POST UNTIL DAY OF HEARING. UNDER PENALTY OF LAW
HEARINGS ARE HANDICAPPED ACCESSIBLE

05 22 2006 11:25

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

No. 5975

DATE 4/13/06 ACCOUNT 12001-006-6150

AMOUNT \$ 65.00

RECEIVED FROM: Henry Park

FOR: Wallace

DISTRIBUTION
WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

Item # 506

PAID RECEIPT

BUSINESS	ACTUAL	TIME	DRW
4/17/2006	4/13/2006	12:09:33	4
REG US04	WALKIN KNCH KCH		
RECEIPT # 446290		4/13/2006	OFLH
Dept 5 528 ZONING VERIFICATION			
CR NO. 005975			
Recpt Tot		465.00	
465.00 CR		4.00 CA	
Baltimore County, Maryland			

CASHIER'S VALIDATION

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 6089

DATE 8/17/06 ACCOUNT 001-006-6150
AMOUNT \$ 400.00

RECEIVED FROM: Deborah C. Dopkin, P.A.

FOR: CASE #06 506-A APPEAL

7 Terrace Dale "Peck"

DISTRIBUTION

WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

PAID RECEIPT

BUSINESS	ACTUAL	TIME	DATE
8/22/2006	8/22/2006	10:21:57	
OFF M304	W3111	THUR PMD	
RECEIVED BY	8/22/2006		DELR
APPL	5/500	SWIM-VERIFICATION	
ST. NO.	000000		
Receipt		\$400.00	
\$400.00		\$400.00	
Baltimore County, Maryland			

CASHIER'S VALIDATION

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The Baltimore County Zoning Regulations (BCZR) require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least fifteen (15) days before the hearing.

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements. The newspaper will bill the person listed below for the advertising. This advertising is due upon receipt and should be remitted directly to the newspaper.

OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.

For Newspaper Advertising:

Item Number or Case Number: 06-506-A
Petitioner: HENRY B. PECK, JR.
Address or Location: 7 TERRACE DALE TOWSON MD 21286

PLEASE FORWARD ADVERTISING BILL TO:

Name: HENRY B. PECK, JR.
Address: 304 W. PENNSYLVANIA AVENUE
TOWSON MD 21204

Telephone Number: 410 321-7037(W) 410 828-7651(H)

**Department of Permits and
Development Management**

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



Baltimore County

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

April 21, 2006

NOTICE OF ZONING HEARING

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

CASE NUMBER: 06-506-A

7 Terrace Dale
South side of Terrace Dale, 130 feet west of centerline of Cedar Avenue
9th Election District – 5th Councilmanic District
Legal Owners: Henry B. Peck, Jr.

Variance to permit a lot area of 4,800 square feet, a side yard setback of 8 feet and a rear yard setback of 14 feet in lieu of the required 6,000 square feet, 10 feet and 30 feet respectively; and a front yard setback of 21 feet for an open projection (porch) in lieu of the required 22.5 feet,

Hearing: Tuesday, June 6, 2006 at 11:00 a.m. in Room 407, County Courts Building,
401 Bosley Avenue, Towson 21204

A handwritten signature in black ink, reading "Timothy Kotroco".

Timothy Kotroco
Director

TK:klm

C: Henry Peck, Jr., 304 W. Pennsylvania Avenue, Towson 21204

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY MONDAY, MAY 22, 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
Tuesday, May 23, 2006 Issue - Jeffersonian

Please forward billing to:

Henry Peck, Jr.
304 W. Pennsylvania Avenue
Towson, MD 21204

410-321-7037

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: 06-506-A

7 Terrace Dale

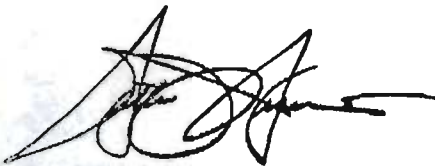
South side of Terrace Dale, 130 feet west of centerline of Cedar Avenue

9th Election District – 5th Councilmanic District

Legal Owners: Henry B. Peck, Jr.

Variance to permit a lot area of 4,800 square feet, a side yard setback of 8 feet and a rear yard setback of 14 feet in lieu of the required 6,000 square feet, 10 feet and 30 feet respectively; and a front yard setback of 21 feet for an open projection (porch) in lieu of the required 22.5 feet,

Hearing: Tuesday, June 6, 2006 at 11:00 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 ACCOMODATIONS, PLEASE CONTACT THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
- (2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

**Department of Permits and
Development Management**



Baltimore County

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

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

May 1, 2006

NEW 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: 06-506-A

7 Terrace Dale

South side of Terrace Dale, 130 feet west of centerline of Cedar Avenue

9th Election District – 5th Councilmanic District

Legal Owners: Henry B. Peck, Jr.

Variance to permit a lot area of 4,800 square feet, a side yard setback of 8 feet and a rear yard setback of 14 feet in lieu of the required 6,000 square feet, 10 feet and 30 feet respectively; and a front yard setback of 21 feet for an open projection (porch) in lieu of the required 22.5 feet,

Hearing: Friday, June 9, 2006 at 11:00 a.m. in Room 407, County Courts Building,
401 Bosley Avenue, Towson 21204

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

TK:klm

C: Henry Peck, Jr., 304 W. Pennsylvania Avenue, Towson 21204

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY MONDAY, MAY 22, 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
Tuesday, May 23, 2006 Issue - Jeffersonian

Please forward billing to:

Henry Peck, Jr.
304 W. Pennsylvania Avenue
Towson, MD 21204

410-321-7037

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: 06-506-A

7 Terrace Dale

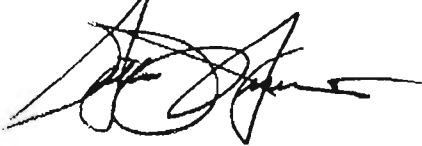
South side of Terrace Dale, 130 feet west of centerline of Cedar Avenue

9th Election District – 5th Councilmanic District

Legal Owners: Henry B. Peck, Jr.

Variance to permit a lot area of 4,800 square feet, a side yard setback of 8 feet and a rear yard setback of 14 feet in lieu of the required 6,000 square feet, 10 feet and 30 feet respectively; and a front yard setback of 21 feet for an open projection (porch) in lieu of the required 22.5 feet,

Hearing: Friday, June 9, 2006 at 11:00 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 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.

Requested: Jan. 5, 2007

APPEAL SIGN POSTING REQUEST

CASE NO. 06-506-A

7 TERRACE DALE

9TH ELECTION DISTRICT

APPEALED: 8/17/2006

ATTACHMENT – (Plan to accompany Petition – Petitioner's Exhibit No. 1)

*****COMPLETE AND RETURN BELOW INFORMATION*****

CERTIFICATE OF POSTING

TO: Baltimore County Board of Appeals
400 Washington Avenue, Room 49
Towson, MD 21204

Attention: Kathleen Bianco
Administrator

CASE NO.: 06-506-A

LEGAL OWNER: HENRY B. PECK, JR.

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

7 TERRACE DALE

The sign was posted on 2/22/, 2007.

By:

Jeff Radcliffe
(Signature of Sign Poster)

Jeff Radcliffe
(Print Name)

MAP
2708



County Board of Appeals of Baltimore County

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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

April 26, 2007

NOTICE OF ASSIGNMENT

CASE #: 06-506-A

IN THE MATTER OF: HENRY B. PECK, JR. – Legal Owner /Petitioner
7 Terrace Dale 9th Election District; 5th Councilmanic District

6/28/06 – Z.C.'s Order in which requested variance relief was DENIED.
7/26/06 – Z.C.'s Ruling on Petitioner's Motion for Reconsideration – DENIED.
**Appeal from Order on Motion for Reconsideration filed by Counsel for
Petitioner on 8/17/07.**

ASSIGNED FOR:

WEDNESDAY, JULY 11, 2007 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 Appellant /Petitioner
Appellant /Petitioner
Carrie Peck Tomko

: Deborah C. Dopkin, Esquire
: Henry B. Peck, Jr.

Counsel for Protestants
Protestants

: J. Carroll Holzer, Esquire
: The Aigburth Manor Assn of Towson, Inc.
Wiltondale Improvement Assn., et al

Paul and Susan Hartman
Ashby and Milan Heath
Joseph Booze
Virginia Caruthers
Mary Miles
Marueen Hunter

Adele Free
Andrew Evans
Judith Giacomo
Christopher Bready
Craig Demallie
John and Frances Holman

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

*pp'd @ req. of
W. Yuen - just trial -
cannot be here.
K.
9-18-07*

July 20, 2007

NOTICE OF DELIBERATION

IN THE MATTER OF:

HENRY B. PECK, JR. - Legal Owner /Petitioner
Case No. 06-506-A

Having heard this matter on 7/11/07, public deliberation has been scheduled for the following date /time:

DATE AND TIME : WEDNESDAY, SEPTEMBER 19, 2007 at 9 a.m.

LOCATION : Hearing Room 48, Basement, Old Courthouse

NOTE: Closing briefs are due on Tuesday, August 21, 2007
(Original and three [3] copies)

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

Kathleen C. Bianco
Administrator

c:	Counsel for Appellant /Petitioner	: Deborah C. Dopkin, Esquire
	Appellant /Petitioner	: Henry B. Peck, Jr.
	Carrie Peck Tomko	
	Counsel for Protestants	: J. Carroll Holzer, Esquire
	Protestants	: The Aigburth Manor Assn of Towson, Inc.
		Wiltondale Improvement Assn., et al
		Craig Demallie, President
	Paul and Susan Hartman	Adele Free
	Ashby and Milan Heath	Andrew Evans
	Joseph Booze	Judith Giacomo
	Virginia Caruthers	Christopher Bready
	Mary Miles	John and Frances Holman Marueen Hunter

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

Copy to: 3-4-6





County Board of Appeals of Baltimore County

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

September 18, 2007

NOTICE OF POSTPONEMENT AND REASSIGNMENT OF DELIBERATION

IN THE MATTER OF:

HENRY B. PECK, JR. – Legal Owner /Petitioner
Case No. 06-506-A

which was scheduled to be deliberated on 9/19/07 has been **POSTPONED** due to court /jury trial conflict on part of one of the Board members to this matter; and, counsel having been notified this date that the public deliberation of 9/19/07 was postponed, this public deliberation has been reassigned to the following date and time:

DATE AND TIME : **TUESDAY, OCTOBER 2, 2007 at 9:00 a.m.**

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

NOTE: Closing briefs were filed on 8/21/07.

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 Appellant /Petitioner	: Deborah C. Dopkin, Esquire
	Appellant /Petitioner	: Henry B. Peck, Jr.
	Carrie Peck Tomko	
	Counsel for Protestants	: J. Carroll Holzer, Esquire
	Protestants	: The Aigburth Manor Assn of Towson, Inc.
		Wiltondale Improvement Assn., et al
		Craig Demallie, President
	Paul and Susan Hartman	Adele Free
	Ashby and Milan Heath	Andrew Evans
	Joseph Booze	Judith Giacomo
	Virginia Caruthers	Christopher Bready
	Mary Miles	John and Frances Holman Marueen Hunter
	Office of People's Counsel	
	William J. Wiseman III /Zoning Commissioner	
	Pat Keller, Planning Director	
	Timothy M. Kotroco, Director /PDM	

Copy to: 3-4-6



Printed with Soybean Ink
on Recycled Paper

**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

June 1, 2006

Henry B. Peck, Jr.
304 W. Pennsylvania Avenue
Towson, MD 21204

Dear Mr. Peck:

RE: Case Number: 06-506-A, 7 Terrace Dale

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on April 13, 2006.

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 that reads "W. Carl Richards, Jr." in a cursive style.

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR:amf

Enclosures

c: People's Counsel

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





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

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

Maryland Department of Transportation

Date: 4.21.04

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

RE: Baltimore County
Item No. 504

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

Fire Department

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



Baltimore County

James T. Smith, Jr., County Executive
John J. Hohman, Chief

County Office Building, Room 111
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

April 21, 2006

ATTENTION: Zoning Review Planners

Distribution Meeting of: April 24, 2006

Item Numbers: 491-515

⁵⁰⁴
Pursuant to your request, the referenced plan(s) have been reviewed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

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

Lieutenant Roland P Bosley Jr.
Fire Marshal's Office
410-887-4881 (C) 443-829-2946
MS-1102F

cc: File

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



BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: April 25, 2006

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

SUBJECT: Zoning Advisory Committee Meeting
For May 1, 2006
Item No. 506

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

The minimum right-of-right for all public roads in Baltimore County is 40-feet. Show the right-of-way for Terrace Dale centered on existing 8-feet paving. Setbacks shall be adjusted accordingly.

DAK:CEN:clw

cc: File

ZAC-ITEM NO 506-04252006.doc

BW
6/9

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: May 5, 2006

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

SUBJECT: 7 Terrace Dale

INFORMATION:

Item Number: 6-506

Petitioner: Henry B. Peck, Jr.

Zoning: DR 5.5

Requested Action: Variance

RECEIVED

MAY 15 2006

ZONING COMMISSIONER

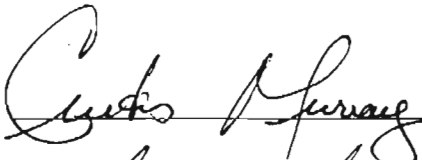
SUMMARY OF RECOMMENDATIONS:

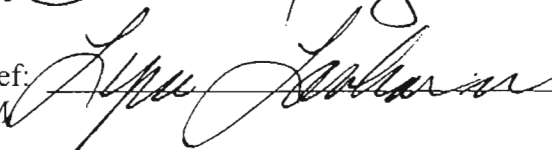
BCZR section 304 (Use of Undersized Lots) stipulates that the size and scale of the neighborhood be maintained with respect to new single-family dwellings. As agreed upon in recent discussions with the petitioner, the proposed dwelling would be relocated from #30 Burke Avenue to the vacant lot addressed as # 7 Terrace Dale. It is of the Opinion of this Office that the dwelling to be relocated would be far more compatible with the neighborhood than most dwellings being constructed under conventional design methods. As such the compatibility reviews normally given to undersized lots not apply in this unique instance.

Therefore, the Office of Planning recommends that the petitioner's request be approved subject to the following conditions:

1. Should the proposed dwelling to be relocated changes to a newly constructed dwelling; the petitioner shall submit the request under the undersized lot approval process.
2. If the proposed dwelling differs from the existing dwelling located at # 30 Burke Avenue, the petitioner shall resubmit the request as either an undersized lot approval, or as a request for Variance if required.
3. Limits of disturbance shall be shown on the site plan accompanying the request. Existing vegetation shall be preserved to the greatest extent possible.

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

Prepared by: 

Division Chief: 
AFK/LL: CM

DIVISION OF CODE INSPECTIONS AND ENFORCEMENT

VIOLATION CASE DOCUMENTS

VIOLATION CASE: 06-2552

7 Terrace Dale

**ZONING CASE: 06-506-A
7 TERRACE DALE**

BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

DATE: May 1, 2006

TO: W. Carl Richards, Jr.
Zoning Review Supervisor

FROM: Rick Wisnom, Chief
Division of Code Inspections & Enforcement

SUBJECT: Item No.: 506
Legal Owner/Petitioner: Henry B. Peck, Jr.
Contract Purchaser:
Property Address: 7 Terrace Dale
Location Description: South side Terrace Dale, 130 feet west centerline Cedar Avenue

VIOLATION INFORMATION: **Case No.: 06-2552**
Defendants: Henry B. Peck, Jr.

Please be advised that the aforementioned petition is the subject of an active violation case.
When the petition is scheduled for a public hearing, please notify the following person(s) regarding the hearing date:

**Ashby Heath
20 Cedar Avenue
Towson, Maryland 21286**

In addition, please find attached a duplicate copy of the following pertinent documents relative to the violation case, for review by the Zoning Commissioner's Office:

Complaint Intake Form
Correction Notice/Code Violation Notice
Other: data entry forms

After the public hearing is held, please send a copy of the Zoning Commissioner's order to Lisa Henson in Room 213 in order that the appropriate action may be taken relative to the violation case.

RSW/
c: Alphonso Griffin

1-506-A



Code

Enforcement

Baltimore County
Department of Permits & Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204
(410) 887-3351
pdmenforce@co.ba.md.us

Name: HENRY B. PECK JR

Date: 4/18/06

Address: 304 W. PENNSYLVANIA AVE

Case No.: 06-0552

City-Zip: 21204

Tax #: 16000001198

Location of Violation: 7 TERRACE DALE 21286

Dear Property Owner / Occupant:

Please make the following corrections:

() Cut, trim, and remove all overgrown grass and weeds to a height of three inches or less. BCC 13-7-112, 115, 401, 402, 403

(☒) Clean premises of all trash, junk, and debris. BCC 13-4-104, 13-7-112, 115, 123, 310, 312. BCZR 101, 102.1, 408

() Keep premises free of all animal manure. BCC 12-3-106.

Rental BCC 13-7, 112, 115, 123, 310.

Owner Occupied BCC 35-5-302

() Other: _____

The above-alleged violations must be corrected by 4/25/06.
Failure to resolve these issues will result in the issuance of a citation imposing monetary fines. Further, Baltimore County has the right to perform the necessary work and place the cost as a lien on your property tax bill for that current period. If additional questions remain, please contact me at 410-887-3351.

Sincerely,

A. GRIFIN

Code Inspections and
Enforcement Officer

PHONE DUTY INTAKE SHEET

Wednesday, April 05, 2006

INTAKE LH CASE # 06--2552 AREA 9 INSPECTOR: _____

PROBLEM VAC LOT FULL OF YARD DEBRIS

VIOL. LOCATION 7 PARISDALE

VIOL. ZIP 21286

COMPLAINANT NAME ASHBY HEATH

COMP. ADDRESS 20 CEDAR AVE

COMPL. ZIP 21286

COMPL. PHONE (410) 494-1105

COMPL. WORK #: _____

EXT _____

OWNERS INFO/ NOTES

PREVIOUS CASE NUMBERS:

NO PROPERTY TAX INFORMATION

☒ NCF

☐ REOPEN

Zoning Review Board
111 Chesapeake Avenue, Room 111
Towson, MD 21204

Re: case# 06-506-A
7 Terrace Dale Road

David and Barbara Orbock
15 Cedar Avenue
Towson, MD 21286

To the Zoning Board:

We are writing to protest any rezoning for 7 Terrace Dale Road for the following reasons:

1. The lot is too small for **any** sized residence. Any fire in a residence there would be a hazard for other homes in the immediate area.
2. The road (alley) is too narrow to accommodate any parking or access to, from said lot.
3. At present, Terrace Dale is the only close access to a York Road traffic light from Cedar Avenue for residents who live on the two-way segment of Cedar.
4. Since Towson High is on Cedar Avenue, many parents who pick up students use the two way segment to wait for their children and then return to York Road via Terrace Dale. This alleviates congestion in front of the school at dismissal time, but stretches Terrace Dale to the limit.
5. The visibility on Terrace Dale is limited because of the narrowness and curves. It is difficult enough now to always see pedestrians, especially young children who often play there. Any additional access from residential parking would compound the problem greatly.

I hope you will consider these points and deny the rezoning since it would be both a detriment to the neighborhood and create a serious traffic and safety hazard.

Sincerely,


Barbara Orbock


David Orbock

RE: PETITION FOR VARIANCE
7 Terrace Dale; S/S Terrace Dale, 130' W
c/line Cedar Avenue
9th Election & 5th Councilmanic Districts
Legal Owner(s): Henry B. Peck, Jr.
Petitioner(s)

* BEFORE THE
* ZONING COMMISSIONER
* FOR
* BALTIMORE COUNTY
* 06-506-A

* * * * *

ENTRY OF APPEARANCE

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

Peter Max Zimmerman

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO

Deputy People's Counsel

Old Courthouse, Room 47

400 Washington Avenue

Towson, MD 21204

(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of April, 2006, a copy of the foregoing Entry of Appearance was mailed to, Henry B. Peck, Jr., 304 W. Pennsylvania Avenue, Towson, MD 21204, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

RECEIVED

APR 21 2006

Pei

**Department of Permits and
Development Management**

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



Baltimore County

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

October 20, 2006

Henry B. Peck
Haile & Peck
304 W. Pennsylvania Avenue
Towson, MD 21204

Dear Mr. Peck:

RE: Case: 06-506-A, 7 Terrace Dale

Please be advised that an appeal of the above-referenced case was filed in this office on August 17, 2006 by Deborah Dopkin, P.A. 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 that reads "Timothy Kotroco".

Timothy Kotroco
Director

TK:klm

c: William J. Wiseman III, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Carrie Peck Tomko
Paul & Susan Hartman
Ashby & Milan Heath
Joseph Booze
Virginia Caruthers
Mary Miles
Maureen Hunter
Adele Free
Andrew Evans
Judith Giacomo
Christopher Bready
Craig Demallie
John & Frances Holman



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



**Department of Permits and
Development Management**

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



Baltimore County

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

October 20, 2006

Henry B. Peck
Haile & Peck
304 W. Pennsylvania Avenue
Towson, MD 21204

Dear Mr. Peck:

RE: Case: 06-506-A, 7 Terrace Dale

Please be advised that an appeal of the above-referenced case was filed in this office on August 17, 2006 by Deborah Dopkin, P.A. 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 that reads "Timothy Kotroco".

Timothy Kotroco
Director

TK:klm

c: William J. Wiseman III, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Carrie Peck Tomko
Paul & Susan Hartman
Ashby & Milan Heath
Joseph Booze
Virginia Caruthers
Mary Miles
Maureen Hunter
Adele Free
Andrew Evans
Judith Giacomo
Christopher Bready
Craig Demallie
John & Frances Holman

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



APPEAL

Petition for Variance
7 Terrace Dale
S/side of Terrace Dale, 130 ft. west of centerline of Cedar Avenue
9th Election District – 5th Councilmanic District
Legal Owners: Henry B. Peck, Jr.

Case No.: 06-506-A

Petition for Variance (April 2006)

Zoning Description of Property

Notice of Zoning Hearing (May 1, 2006)

Certification of Publication (The Jeffersonian – May 23, 2006)

Certificate of Posting (May 22, 2006) by Bruce Doak

Entry of Appearance by People's Counsel (April 21, 2006)

Petitioner(s) Sign-In Sheet – One Sheet

Protestant(s) Sign-In Sheet -None

Citizen(s) Sign-In Sheet – One Sheet

Zoning Advisory Committee Comments

Petitioners' Exhibit

1. Site Plan
2. Photos of Homes built by Mr. Peck's great grandfather
3. Plat, Photos, Estate Inventory, 1973 Tax Bill, site drawings

Protestants' Exhibits:

1. Letters of Protestants (collectively)
2. Photographs (collectively)
3. Md. Dept. of Assessments and Taxation

Miscellaneous (Not Marked as Exhibit)

1. Letter dated June 13, 2006 from Haile & Peck
2. Letter dated June 30, 2006 from Haile & Peck
3. Letters in opposition to request for Motion for Reconsideration

Zoning Commissioner's Order (DENIED – June 28, 2006)

Petition for Motion for Reconsideration – July 5, 2006

Acceptance Letter of Motion Request from Zoning Commissioner – July 6, 2006

Order on Motion for Reconsideration (DENIED – July 26, 2006)

Notice of Appeal received on August 17, 2006 from Deborah C. Dopkin, P.A.

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner
Timothy Kotroco, Director of PDM
Henry Peck, 304 W. Pennsylvania Avenue, Towson 21204
Carrie Peck Tomko
Paul & Susan Hartman
Ashby & Milan Heath
Joseph Booze
Virginia Caruthers
Mary Miles
Maureen Hunter
Adele Free
Andrew Evans
Judith Giacomo
Christopher Bready
Craig Demallie
John & Frances Holman

date sent October 20, 2006, klm

CASE #: 06-506-A

IN THE MATTER OF: HENRY B. PECK, JR. – Legal Owner /Petitioner
7 Terrace Dale 9th Election District; 5th Councilmanic District

VAR – To permit lot area of 4,800 sq ft, side yard setback of 8' and rear yard setback of 14' ilo req'd 6,000 sq. ft., 10' and 30', respectively; and for front yard setback of 21' for open projection (porch) ilo req'd 22.5'

6/28/06 – Z.C.'s Order in which requested variance relief was DENIED.

6/26/06 – Z.C.'s Ruling on Petitioner's Motion for Reconsideration – DENIED.

NOTE: Notice of Appeal states: "Please note an appeal from the Order on Motion for Reconsideration rendered by the Zoning Commissioner...dated July 26, 2006."

3/21/07 – Entry of Appearance filed by Mr. Holzer on behalf of The Aigburth Manor Association of Towson, Inc., and the Wiltondale Improvement Assn., et al, Protestants /Appellees. File noted; acknowledgement letter sent to Mr. Holzer this date, with copy to Ms. Dopkin.

4/26/07 --Notice of Assignment sent to following; assigned for hearing on Wednesday, July 11, 2007 at 10 a.m.:

Deborah C. Dopkin, Esquire
Henry B. Peck, Jr.
Carrie Peck Tomko
J. Carroll Holzer, Esquire
The Aigburth Manor Assn of Towson, Inc.
Wiltondale Improvement Assn, et al /Craig Demallie, President
Paul and Susan Hartman Adele Free
Ashby and Milan Heath Andrew Evans
Joseph Booze Judith Giacomo
Virginia Caruthers Christopher Bready
Mary Miles John and Frances Holman
Marueen Hunter
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

7/06/07 – Pre-hearing letter filed by Office of People's Counsel – supporting denial of variance request and presenting his office's position.

7/09/07 – Pre-Hearing Memorandum filed by Deborah Dopkin, Esquire, counsel for Petitioner.

NOTE: Copies of above provided to Board prior to hearing.

7/11/07 – Board convened for hearing (Wescott, Grier, Witt); concluded hearing this date; memos due 8/21/07; deliberation to be scheduled and notice sent.

7/20/07 – Notice of Deliberation sent to parties; public deliberation assigned for Wednesday, September 19, 2007 at 9:00 a.m. FYI copy to 3-4-6.

8/20/07 – Protestants' Memorandum in Lieu of Oral Argument before the County Board of Appeals filed by J. Carroll Holzer, Esquire.

8/21/07 – Memorandum in Support of Petition filed by Deborah Dopkin, Esquire, on behalf of Petitioners.

9/18/07 – T/C from W. Grier – Mr. Grier will be unable to attend public deliberation on 9/19/07 – is presently in the midst of multi-day jury trial; will reassign public deliberation in this matter and advise parties and all panel members. T/C to Mr. Holzer and Ms. Dopkin – deliberation to be postponed and reassigned.

-- Notice of PP and Reassignment of public deliberation; assigned for Tuesday, October 2, 2007 at 9:00 a.m. FYI copy to 3-4-6

CASE #: 06-506-A

IN THE MATTER OF: HENRY B. PECK, JR. – Legal Owner /Petitioner
7 Terrace Dale 9th Election District; 5th Councilmanic District

Page 2

10/02/07 –Board convened for public deliberation (Wescott, Grier, Witt); unanimous decision – variance relief for lot area and setbacks – DENIED; Board also found that the doctrine of merger does not apply in this case for reasons as stated. Written opinion /order to be issued; appellate period to run from date of written Order. (3)



Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

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

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

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

July 6, 2007

Hand-delivered

Dr. Margaret Brassil, Chair
County Board of Appeals
400 Washington Avenue, Room 49
Towson, MD 21204

Re: Henry B. Peck, Jr., Petitioner
Case No: 06-506-A

RECEIVED
JUL 06 2007

BALTIMORE COUNTY
BOARD OF APPEALS

Dear Ms. Brassil:

This matter is scheduled for hearing on July 11th on the Zoning Commissioner's denial of variances and setback requirements for an undersized lot in the D.R. 5.5 zone.

Our office entered its appearance at the inception of this case. We support the denial of the variance for the reasons set forth in the ZC's opinion and its Order on Motion for Reconsideration.

We believe counsel for the parties will more than adequately present the facts in the case and that our presence at the hearing will not be necessary in this regard. Nevertheless, we recognize legal issues here that our office has addressed in other zoning cases. The purpose of this letter is to enter our appearance in this appeal before the CBA, to present our office's position, and to assist the Board in this matter.

Undersized Lot - Overview

A dwelling cannot be constructed on an undersized lot unless permitted by statute or if the site satisfies the strict standards for a variance. Some Resource Conservation (R.C.) zones contain grandfather provisions in the regulation itself for certain undersized lots and are not applicable to this case.

BCZR 304 applies to undersized lots in the D.R. zones and has been strictly construed. Recent appellate cases on merger dovetail BCZR 304 (c). Some Petitioners who cannot meet the standards in 304 attempt to obtain variance relief. The variance standards for uniqueness and practical difficulty as defined in BCZR 307, Cromwell v. Ward, 102 Md. App. 691 (1995) and other appellate variance cases establish an extremely strict standard, rarely, if ever, satisfied in an undersized lot case. Generally, undersized lots in the D.R. zone must satisfy the standards in BCZR 304, because a variance cannot be granted simply because the lot is substandard. In discussing uniqueness in Cromwell, at page 717, Judge Cathell cites with approval Sebley v.

Inhabitants of the Town of Wells, 462 A.2d 27, 30-31 (1983) to emphasize the particular features that qualify as unique cannot be widespread in the neighborhood:

“[T]he need for a variance [must be] due to the unique circumstances of the property and not to the general conditions in the neighborhood; . . . However, the mere fact that the lot is substandard is not a unique circumstance; all the undeveloped lots in that neighborhood are of substandard size . . .”

Merger

The merger doctrine stated in Remes v. Montgomery County, 387 Md. 52 (2005) has long been the law in Maryland and is applicable to the facts in the instant case:

“We perceive no such declared public policy that should prevent us from finding a zoning merger where two lots held in common ownership were clearly used in the service of one another in order to satisfy zoning requirements and subsequent to Ridge [Friends of the Ridge v. Baltimore Gas & Elec. Co., 352 Md. 645 (1999)] remained in that category. . . Ridge was a statement of the common law, not a change. The issue had not theretofore arisen, or been specified or articulated in our prior cases. Ridge was merely the first case to determine that zoning merger existed in Maryland.” Remes, supra at 77, 78.

The Court in Remes did not require extrinsic evidence of merger. The Court also dismissed the administrative agency’s position in Remes that even if intent could be inferred and applied, it was irrelevant since the lots had not been combined in the formal subdivision process required under County law. The Court was clear that zoning merger restricted the use, even if the owner maintained separate deeds:

“Simply because a formal combination of Lot 11 and Lot 12 did not occur as contemplated by the Montgomery County Code, however, does not lead us to the necessary conclusion that these lots for zoning limitations are not subject to the doctrine of zoning merger. The issue is not subdivision combination but zoning merger.” Id. at 80.

*

*

*

“For title purposes the platted lot lines may remain, but by operation of law a single parcel emerges for zoning purposes.” (citations omitted) Id. at 66-67.

*

*

*

[The owners] “use of Lot 11 and 12 in concert is consistent with zoning merger. That they did not undertake to submit a formal replatting to the County does not vitiate the manner in which they *used* their property.” Id. at 82.

It appears from the lengthy recital of facts in the instant case that the subject lot was part of the 2-acre dwelling site known as the “old home place”. Prior to that it was part of the entire tract before the children’s lots were created. The subject lot was used in conjunction with the original dwelling, a merger by all accounts. The fact that it was later carved off and deeded to joint owners as accessory to residential dwellings, including the “old home place” does not undo

the zoning merger. Its purpose was to be used in conjunction with and as subservient to a principal use, albeit with 6 other users.

Young, Anderson's American Law of Zoning, 4th Edition, Section 9.67 refutes Petitioner's position that because the subject property was at one time in joint ownership, neither BCZR 304 (c) or the merger doctrine applies:

"The single and separate ownership requirement is simple, but its application to a wide variety of circumstances has generated litigation. Problems have arisen with respect to what constitutes single ownership. . . . Ownership is considered single and separate ownership even though the owner of the substandard lot owns an adjacent lot with his wife as tenant by entirety." (citations omitted)

Variance:

Variances are not favored under the law and presumed to be in conflict with the regulations. For these reason, the spirit and intent of the law must be strictly construed. As Judge Cathell pointed out in Cromwell, *supra*:

"The general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances. *See, e.g., A. Rathkopf*, 3 *The law of Zoning and Planning* Section 38 (1978)." Id. 651 A.2d 424,430.

Judge Cathell continued:

"In the zoning context the 'unique' aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property.

'Uniqueness' of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls." Cromwell, *supra* at 710.

There is no evidence of uniqueness here as defined in variance law. It appears the subject site was once part of the original home site and used in conjunction with the dwelling on the adjoining parcel. The site continued to be used as accessory to the adjoining 20 Cedar Avenue, and the owner of 20 Cedar had an interest in the subject site. The fact that others also had an interest in the subject site is irrelevant as stated above in Anderson. This use became fixed at the

time the County Council rezoned the site; new use must comply with the standards in the current zone, including area regulations.

The evidence is undisputed that the subject site had a viable use in conjunction with the adjoining 20 Cedar, which could not be defeated without the consent of the adjoining owner. A "use in conjunction" is a viable use and permits any number of scenarios to preserve the subservient use without violation of zoning law.

The fact that a title owner later divested his interest in the subject site, whether or not he continued to own 20 Cedar, is not an exception to the prohibited relief under both merger and variance law. A variance is generally not permitted for a self-created hardship in an attempt to undo a prior merger, such as a sale to a 3rd party.

" . . . a purchaser of adjacent substandard lots will not be protected from a subsequent amendment which requires the lots to be merged." Young, supra.

Accordingly, this Board denied relief for an undersized lot that was owned and used in conjunction with the residence across the street but sold to a separate buyer. (Janice Oberst, Contract Purchaser(s): Dr Harlan and Amanda C. Zinn CBA # 4-522-A).

Otherwise, a mere transfer of title would undermine the prohibition against construction of a dwelling on an undersized lot that merged with contiguous property.

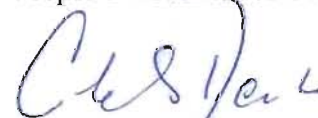
The spirit and intent of the zoning regulations is clear. An undersized lot currently or at one time used in conjunction with an adjoining principal use must meet current size and setback requirements, unless it meets the tests of uniqueness and practical difficulty under variance law. Concomitantly, current titleholders are bound by the actions of their predecessors.

We reiterate our position that the subject site merged with the contiguous parcel and that relief must be denied under variance and undersized lot standards. We reserve the right to submit further memorandum in this case should the Board request the same.

Respectfully submitted,



Peter Max Zimmerman
People's Counsel for Baltimore County



Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/rmw

cc: Deborah C. Dopkin, Esquire



County Board of Appeals of Baltimore County

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

March 21, 2007

J. Carroll Holzer, Esquire
HOLZER & LEE
508 Fairmount Avenue
Towson, MD 21286

RE: *In the Matter of: Henry B. Peck, Jr. - Petitioner*
Property: 7 Terrace Dale
Case No. 06-506-A

Dear Mr. Holzer:

This will acknowledge receipt of your entry of appearance filed this date in the subject matter on behalf of The Aigburth Manor Association of Towson, Inc., and the Wiltondale Improvement Association, et al.

The file has been noted, and you will receive copies of all future correspondence, including the notice of assignment when the matter has been scheduled for hearing before the Board.

Please call me if I can be of any further assistance.

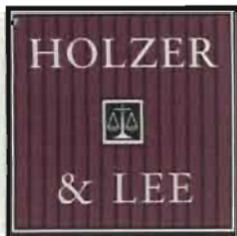
Very truly yours,

Kathleen C. Bianco
Administrator



c: Deborah C. Dopkin, Esquire





LAW OFFICES

J. CARROLL HOLZER, PA

J. HOWARD HOLZER

1907-1989

THOMAS J. LEE

OF COUNSEL

THE 508 BUILDING

508 FAIRMOUNT AVE.

TOWSON, MD 21286

(410) 825-6961

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E-MAIL: JCHOLZER@BCPL.NET

March 20, 2007

#7694

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



RE: *Henry B. Peck, Jr., Petitioner*
Variance – South Side of Terrace Dale
130 Feet West of Center Line of Cedar Road (7 Terrace Dale)
9th Election District
5th Councilmanic District
Case No.: 06-506-A

Dear Ms. Bianco:

Please enter my appearance on behalf of the Protestants/Appellee, The Aigburth Manor Association of Towson, Inc. and the Wiltondale Improvement Association, et al.

I would appreciate your advising me of any scheduled hearing date.

Very truly yours,

J. Carroll Holzer

JCH:mlg

COUNTY BOARD OF APPEALS

FACSIMILE TRANSMITTAL SHEET

TO:

FROM:

DEBORAH DOPKIN (1)
J. CARROL HOLZER (2)

KATHLEEN BIANCO

FAX NUMBER:

410-823-8509 (1)
410-825-4923 (2)

DATE:

SEPTEMBER 18, 2007

COMPANY:

TOTAL NO. OF PAGES INCLUDING
COVER:

TWO (2)

PHONE NUMBER:

SENDER'S REFERENCE NUMBER:

HENRY B PECK, JR. /06-506-A

RE: REASSIGNMENT OF PUBLIC
DELIBERATION

YOUR REFERENCE NUMBER:

URGENT

FOR REVIEW

☒ FOR YOUR RECORDS

PLEASE REPLY

PLEASE RECYCLE

NOTES/COMMENTS:

PERSONAL AND CONFIDENTIAL

Attached FYI is a copy of the Notice of Postponement and Reassignment of Deliberation that was sent out this afternoon, postponing tomorrow's (9/19/07) public deliberation and reassigning that deliberation to Tuesday, October 2, 2007 at 9:00 a.m.

I apologize for any inconvenience this change in schedule may cause you.

Please call me if you have any questions.



Attachment

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

**BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION**

IN THE MATTER OF: Henry B. Peck, Jr. –Legal Owner /Petitioner
Case No. 06-506-A

DATE : Tuesday, October 2, 2007

BOARD /PANEL : Lawrence S. Wescott (LSW)
Wendell H. Grier (WHG)
Robert W. Witt (RWW)

RECORDED BY : Kathleen C Bianco /Administrator

PURPOSE: To deliberate Case No. 06-506-A / Petition for Variance

- Request for variances /undersized lot at 7 Terrace Dale

Originally 3 issues, one of which was resolved at hearing –

Is 1B02 of BCZR the proper procedure for handling this matter or should it have been considered under 304 of the BCZR.

Board held that, because proper documents had not been filed under 304, the Board was hearing the case under 1B02

Whether or not property is affected by doctrine of merger

Were variance standards met under 307

Issue: Merger

Zoning Commissioner found that lot had merged with one of the lots (six that were held by heirs of estate as tenants in common).

Board members discussed this matter, including comments from W. Grier, who had difficulty with the ZC's finding. Where you have six people owing the land as tenants in common, how do you merge it with any one particular lot.

WHG – Believes that doctrine of merger does not apply.

RWW – Discussed comments regarding use of lot; if one owns two 50' lots and zoning law requires 100' for buildable lot and you utilize the two lots, they are merged. Discussed other uses, including using for picnic table, accessory uses, etc.

Original property divided into eight lots back in April 1918; six of those lots were developed with houses; they satisfied zoning requirements. Then one of the lots remained empty – was not utilized at all.

Did each own 1/6 of that lot?



LSW – If one lot owner utilizes the lot next door to put a shown on it, etc., it could be considered merged with lot with dwelling.

However, does not see where you can merge one lot with the six lots owned by individuals.

The lot in question was owned by tenants in common; previous owner subdivided the lots. Not clear where one particular person utilized the lot; does not believe that applies where you have tenants in common claiming utilization of a particular lot.

If all used it, then you cannot merge it with any one lot. As tenants in common, six people own the whole thing.

WHG – Does not believe there was a merge but believes that the test under zoning standpoint – this lot was stand alone lot; everyone used it; this lot was not required to justify the existence of other lots under zoning regs. Merger occurs when it is there to service another lot. Finds no merger.

Issue: Were standards of variance met under 307.1 of the BCZR.

Question #1 – Is the property unique. If yes, then on to practical difficulty or unreasonable hardship; if no, then it stops here and cannot be granted.

Reviewed drawings of eight lots; looked at subject lot; difference in size – discussed whether or not size makes a difference; does this make it different than surrounding properties.

LSW – Discussed measurements provided by Petitioner v. County (4800 v 3500) in lieu of required 6,000; reviewed setback requests; reviewed testimony from Bruce Doak. Petitioner wants to move house from Burch Avenue to this lot – in order to do that, he needs the variances requested. But if he could not do that, then he could build smaller house on the lot and meet all requirements except 6,000 sq. ft. requirement.

RWW – Following that argument – the fact that house could be built on that lot – dismisses the argument that it's unique?

LSW – Not necessarily.

WHG – It's a vacant lot – wants house on the lot; needs request from regulations to do that.

LSW – Without variance from square footage, cannot build on the lot.

WHG – Basically then, the lot is too small and he wants to use it for the house.

LSW – Discussed uniqueness; cited Rosier v. Anne Arundel County regarding transfer of title, including – when title is transferred, takes all burdens and encumbrances; if a predecessor was entitled to claim, that burden passes with the title; if not self-created hardship, it is not automatically conveyed because of title.

Board also discussed spirit and intent of the regulations; granted in only such a manner so as not to cause injury to public health, safety and general welfare.

Lane is only 15 feet wide; parking would be nightmare; anyone visiting house – not sure enough room exists for driveway or any off-street parking except in front yard.

Problem passes to Mr. Peck; the property is too small and variance for 4800 sq. ft. ilo 6000 sq. ft. should not be granted.

Also discussed rezoning of site by County Council; new use must then conform with new regulations; subject to size of lot; problems with parking, traffic, etc. Argument to deny it.

County's answer was – all lots in neighborhood were substandard in size under current regulations; therefore, this is not unique.

Variance request is denied. Written opinion and order to be issued; appellate period runs from date of written Order.

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

Respectfully submitted

Kathleen C. Bianco, Administrator
County Board of Appeals

GEORGE S. INGALLS, P.A.
ATTORNEY AT LAW
305 WEST CHESAPEAKE AVENUE
SUITE 100
TOWSON, MARYLAND 21204
410/828-7317 Fax/339-7320

March 18, 2005

Henry B. Peck, Jr., Esquire
Haile & Peck, Attorneys at Law
304 West Pennsylvania Avenue
Towson, Maryland 21204

Re: Estate of Charles Edward Hunt

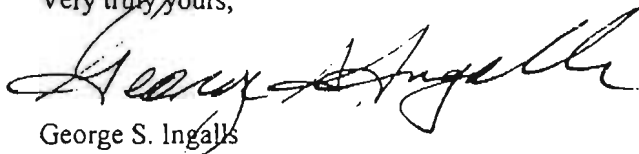
Dear Mr. Peck;

Thank you for your letter of March 8, 2005, offering to purchase Charles Hunt's interest in the property to the rear of 20 Cedar Avenue. After reviewing the status of title of the property, it appears that legal title remains in the estates of ancient owners. Neither the estate of Charles Hunt nor the estate of his mother, Elizabeth Hammarstrom, have any title to the property greater than an expectancy of inheriting the property after the probate of the ancient estates. Moreover, neither one could give you right of possession of the property.

After discussing this situation with the Register of Wills, the Register was of the opinion that it would not be appropriate to inventory an unperfected expectancy in the estate. Consequently, Mr. Weiss and I are unable and unwilling to execute a deed as you requested. I am returning herewith your letter, check and proposed contract.

If you wish to discuss this matter further, please telephone me at your convenience. Thank you for your consideration in this matter.

Very truly yours,



George S. Ingalls

encs.

ccw/out encs: John Carroll Weiss, Jr.

04012

6/9



May 31, 2006

P.O. Box 10116
Towson, Maryland 21285-10116Wiltendale
Improvement Association,
IncorporatedBaltimore County Zoning Commissioner
and Deputy Zoning Commissioner
Room 106, County Office Building,
111 W. Chesapeake Avenue,
Towson, MD 21204RE: Opposition to Requests for Variances at 7 Terrace Dale, 5th District
Case #06-506-/A

Gentlemen:

This letter is offered on behalf of the Wiltendale Improvement Association (WIA), of which I am the President. WIA is a neighborhood of 350+ homes bordered by Stevenson Lane, Sussex Road and Towson High School, York Road and Cedar Avenue.

Currently pending before you is a request for multiple variances to allow a home to be placed on Terrace Dale (Lot 7). Terrace Dale is a very short road extending from Cedar Avenue to the traffic light at York Road and Cross Campus Blvd. The lot in question is the Terrace Dale lot *closest* to Cedar, situate only a few feet from this Wiltendale neighborhood road.

Many Wiltendale residents have expressed concern to our Board of Directors about these requested variances, which, if granted, would allow a house disproportionate to the small size of Lot #7 at great variance to Baltimore County law and detriment to the neighborhood. As a result WIA's Board of Directors has voted to oppose the variances requested by the Petitioner and hereby urges you to deny them.

Cedar Avenue is a main walking path (with no sidewalks) for neighborhood high school students traveling to and from Towson High. In order to access Lot 7, vehicles must travel Cedar Avenue since Terrace Dale is a one way street. Houses on Terrace Dale have presented a persistent problem for the neighborhood in that they are frequently rented to college students, who drive too quickly, have disruptive parties, are careless with garbage and allow the rented properties to fall into disrepair. Petitioner has indicated that he does not wish to reside on the subject property, but to rent it.

Additional housing should not be allowed on this troublesome street where housing is not contemplated by the law, due to the small size of the subject lot. The effect of the requested variances would be to allow the Petitioner to situate a house which defies all applicable lot size and setback restrictions, on a lot 30-50% smaller than that contemplated by the law.¹ This lot is a sliver left from prior sales of what was once a consolidated parcel. Thus, to the extent the Petitioner claims hardship, any hardship faced by him was self-created by the owners of this lot. Petitioner purports to have come into title through estate bequests, with knowledge of this history and of the fact that the lot is too small for residential construction under County law. These facts do not support a variance under applicable legal standards.

Thank you for listening to the concerns of the residents of Wiltendale.

Sincerely,

Craig Demallie, President
Wiltendale Improvement Association

¹We understand there to be a dispute about the actual size of the lot. SDAT records show it to be 3500 sq. ft, rather than the 4800 sq. ft suggested by the Petitioner.

HAILE & PECK

Henry B. Peck, Jr.
David C. Haile

ATTORNEYS AT LAW
304 West Pennsylvania Avenue
Towson, Maryland 21204-4424
(410) 321-7037
FAX: (410) 938-2231

Walter R. Haile
Of Counsel

May 6, 2004

John Carroll Weiss, Jr., Esquire
100 East Melrose Avenue
Baltimore, Maryland 21212

George S. Ingalls, Esquire
305 West Chesapeake Avenue, Suite 100
Towson, Maryland 21204

RE: Estate of Charles E. Hunt

Gentlemen:

I understand that the two of you have been appointed Personal Representatives of the estate of Dr. Charles E. Hunt. Charles was a cousin of mine by marriage, his mother's second husband having been a brother of my maternal grandfather. Having done some minor legal work for Charles and his late mother, Elizabeth Hammarstrom, over the years, I wanted to write and share with you a few insights which may make your job as Personal Representatives a bit easier.

At the time of his death, Charles actually owned two houses on Cedar Avenue, Nos. 20 and 22. 20 Cedar Avenue, his residence, came to him via a life estate deed, in which his mother had a vested remainder interest. I suppose that property will now have to pass through her estate, which will have to be reopened in Baltimore County.

22 Cedar Avenue, which had essentially become Charles' personal mini-storage facility, was acquired by his mother after the death of her third husband, N. Walter Hammarstrom. As I recall, Elizabeth's Will left her entire estate to Charles, but Elizabeth's estate was administered without a Deed ever having been executed or recorded conveying 22 Cedar Avenue to Charles. I had mentioned this to Charles, but he was the Great Procrastinator. When Elizabeth's estate is reopened to deal with 20 Cedar Avenue, there probably should be a confirmatory Deed from the Successor Personal Representative over to the estate of Charles, or perhaps directly to a purchaser if the house is going to be sold.

Last and no doubt least, Charles is probably entitled to a one-third interest in a small unbuildable parcel to the rear of 20 Cedar Avenue which still contains the cement floor and partial foundation of a small barn once constructed thereon. This parcel, measuring approximately fifty feet by eighty feet, had once belonged to my great-grandfather, and was deeded to his six children, one of whom was the second husband

of Elizabeth Hammarstrom, and another of whom was the first wife of Walter Hammarstrom, who later became, as mentioned above, the third husband of Elizabeth Hammarstrom.

This "stable lot" has never been inventoried or accounted for in any of the many estates which have come and gone since the Deed to my grandfather and great-aunts and uncles, with the exception of the one-sixth interest of my grandfather, which I have tried to keep straight through four estate administrations beginning in 1970 with the death of my grandmother. Currently, in one of the few Deeds of recent vintage, an undivided one-eighteenth interest in this lot is titled in the name of my father, as Trustee under the Will of my mother. The enclosed copy of that Deed should give you a flavor of the complexities here.

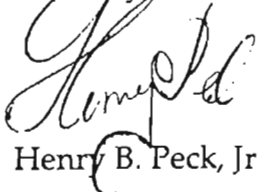
My fifteen-year-old son and I have had a number of discussions in recent years about trying to contact the roughly forty family members who would be involved in current presumptive ownership of this lot. As you can well imagine, the fees, costs and taxes which would be involved in clearing title to this lot would be prohibitive, so I am thinking of approaching family members to see which ones of them would be willing to sign quitclaim deeds for little or no consideration, simply to keep the property from slipping through the cracks.

The SDAT sheets for the three properties involved in Charles Hunt's estate are enclosed for your reference, and I hope you will find this information to be helpful. It is offered solely for the purpose of providing assistance to fellow members of the Bar. (I do, however, reserve the right to come back to you at some point to pursue my son's idea regarding the quitclaim deeds on the stable lot!!!).

Finally, in case Charles' stuff has overtaken 22 Cedar Avenue, please be aware that some of the furnishings in that house might well be of museum quality. They were originally acquired by my great-aunt, Walter Hammarstrom's first wife, who got interested in period antiques in the 1930's when they were still somewhat affordable. For the sake of Charles' legatees, please use care in the handling and disposition of those items. If and when you decide to offer them for sale, I would be grateful if you would alert me to the time and place of any auction which may occur.

I would be happy to meet with one or both of you to elaborate on any of the points raised in this letter. Thank you for your attention. With kind regards.

Sincerely,

A handwritten signature in cursive script, appearing to read "Henry B. Peck, Jr.", written in dark ink.

Henry B. Peck, Jr.

HAILE & PECK

Henry B. Peck, Jr.
David C. Haile

ATTORNEYS AT LAW
304 West Pennsylvania Avenue
Towson, Maryland 21204-4424
(410) 321-7037
FAX: (410) 938-2231
July 22, 2004

Walter R. Haile
Of Counsel

Mr. John Carroll Weiss, Jr.
100 E. Melrose Avenue
Baltimore, MD 21212

George S. Ingalls, Esquire
305 W. Chesapeake Avenue, Suite 100
Towson, MD 21204

Re: Terrace Dale Lot

Gentlemen:

Thanks for meeting with me on Tuesday. I would appreciate it if you would let me know at some point how my son might acquire Charles' interest in the property. While a No Consideration Deed would be most attractive, we would not be adverse to paying for the interest, assuming the cost was reasonable and that a valuation discount was considered for the fractional interest.

One advantage of dealing with us as opposed to another purchaser of the fractional interest would be that we would accept a Quit Claim Deed and would not insist that Charles' interest be run through the various estates to perfect his title. This is all I can hope for from all of the other relatives, so there would be no particular point in requiring any more of Charles' Estate.

Even if a structure could be built on the property, it would probably be foolhardy for someone to do that unless they planned to remain in ownership for twenty years and bring an action to quiet title after the adverse possession period had expired. No bank is going to lend money on the property, and no sensible purchaser would buy it with the status of title as it is going to be. I truly don't think that it would be worth anyone's effort to reopen the multiple estates and go through the process to try to actually perfect the title. Even if someone embarked on that, one holdout would queer the deal.

If you would consider a Quit Claim of Charles' right, title and interest for a modest consideration, please let me know and I will be glad to draw the instrument.

Page 2

Mr. John Carroll Weiss, Jr. and George S. Ingalls, Esquire
July 22, 2004

Also, as I mentioned at our meeting, since I know Charles' cousin Rita to some extent, I would be happy to talk to her about my plans. However, I agree with you that until the other cousin is located, the consent of one may not be too meaningful.

Thanking you and with kind regards.

Sincerely,

A handwritten signature in cursive script, appearing to read "Henry B. Peck, Jr.", written in dark ink.

Henry B. Peck, Jr.

HBP:lab

HAILE & PECK

ATTORNEYS AT LAW

304 West Pennsylvania Avenue
Towson, Maryland 21204-4424
(410) 321-7037
FAX: (410) 938-2231

Henry B. Peck, Jr.
David C. Haile

Carrie M. Peck Tomko

Walter R. Haile
1913-2005

RECEIVED

JUL 28 2006

July 27, 2006

ZONING COMMISSIONER

William J. Wiseman, III, Esquire
Zoning Commissioner
401 Bosley Avenue, Room 405
Towson, MD 21204

Re: 7 Terrace Dale, Case No. 06-506-A

Dear Mr. Wiseman:

I note that several neighbors have availed themselves of the opportunity to respond to my Motion for Reconsideration. I also note that Peter Max Zimmerman has requested additional time within which to respond. You had indicated in your letter that you would make a decision on my Motion within thirty days of July 25. While I have no strong objection to granting a brief extension to the Office of People's Counsel, I am hopeful that this will not delay the decision for any prolonged period. Therefore, I would ask that you respond to Mr. Zimmerman with a date certain by which he may respond to my Motion, so that this process does not become unduly delayed.

Certain of the protestants continue to supply you with erroneous information. In the Heaths' letter of July 22, they opine that the plat referred to in the 1929 Deed must be the J. Milton Green plat from 1918. They have no foundation for this, and they are obviously wrong, since the 1929 Deed refers to "Lot 7" on a plat, as embracing the residual land on both the north and south sides of Terrace Dale, while the J. Milton Green 1918 plat clearly depicts the property on the north side of Terrace Dale as being Lot 7 and the stable lot on the south side of Terrace Dale as being Lot 8. That plat, with those designations, was and continues to be unrecorded, and I stand by my earlier assertion that no recorded conveyance in the entire Terrace Dale chain has referred to the 1918 plat with its "Lot 8" designation for the stable property.

The Hartmans' letter of July 24 incorrectly stated that Charles Hunt, owner until 2004 of 20 Cedar Avenue, "owned a share of the Terrace Dale property, . . ." As a title examination of the stable lot would clearly show, Charles Hunt never had an

Page 2

William J. Wiseman, III, Esquire
July 27, 2006

ownership interest in the stable lot during his lifetime. His step-father, Edward Thomas (son of Charles Thomas), owned a 1/6 interest. Edward died in 1959, and his widow, Elizabeth Hammarstrom, inherited his interest under his Will. Elizabeth died in 1985, and while her Will did leave her estate to her son Charles, her interest in the stable lot did not pass from her estate until March 9, 2005, when Successor Personal Representatives conveyed that interest to the estate of Charles Hunt. Thus, Dr. Hunt never had a title interest in the stable lot during his lifetime, so the element of "common ownership" of adjacent property was lacking. Use of a piece of property is not the equivalent of ownership. This is not an adverse possession case, even though the Heaths and the Hartmans would have you think it so.

Thank you for your continuing concern.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Henry B. Peck, Jr.", written in a cursive style.

Henry B. Peck, Jr.

HBP:lab

cc: Peter Max Zimmerman, Esq.
Mr. and Mrs. Milan Heath
Mr. and Mrs. Paul Hartman

HAILE & PECK

ATTORNEYS AT LAW

304 West Pennsylvania Avenue
Towson, Maryland 21204-4424
(410) 321-7037
FAX: (410) 938-2231

Henry B. Peck, Jr.
David C. Haile

Carrie M. Peck Tomko

Walter R. Haile
1913-2005

June 13, 2006

William J. Wiseman, III, Esquire
Zoning Commissioner for Baltimore County
Room 405, County Courts Building
401 Bosley Avenue
Towson, MD 21204

RECEIVED

JUN 14 2006

ZONING COMMISSIONER

Re: 7 Terrace Dale
Case No.: 06-506-A

Dear Mr. Wiseman:

I am writing to offer my analysis of the referenced zoning case in the context of Cromwell v. Ward, 102 Md. App. 691. Much of the testimony I presented at the hearing on June 9th was historical background and factual information, hoping to correct some of the many misconceptions held by both those present at the hearing and those who had written letters opposing the relief sought. It is time to look at the facts of this case in the context of the applicable law.

Cromwell v. Ward requires that a two-step process be applied in deciding a variance case. First, the property must be found to be unique, unusual, or different from surrounding properties, and only then will the case proceed to the second step, which is "a determination of whether practical difficulty and/or unreasonable hardship, resulting from the disproportionate impact of the ordinance caused by the property's uniqueness, exists."

Charles E. Thomas built the houses at 1, 3 and 5 Terrace Dale and at 20, 22 and 24 Cedar Avenue on a two-acre property he owned, which also contained his own home and a large frame stable or barn. He planted a series of privet hedges to define the boundary lines he had selected for each homesite, and most of these hedges still exist. Charles died in 1911. The lots themselves were not legally created by survey and by metes and bounds descriptions until 1918, when six deeds were executed and recorded simultaneously, giving each child title to his or her respective lot. The six children had been living in the homes their father had built for fifteen or twenty years before the deeds were executed to give them title.

Not surprisingly, each deed description calls to the hedgerows previously planted by Charles, and they continue to define many of the lot boundaries to this day.

It is a virtual certainty that neither Charles nor the person he commissioned to plant the hedges ever consulted the Baltimore County Zoning Regulations or the Baltimore County Planning Board, since neither existed at the time. Charles made his own decisions about where his children's lots should begin and end.

Interestingly, the description of Lot 3, covering 5 Terrace Dale (copy attached), calls for its common line with the stable lot (7 Terrace Dale) to be 10 feet from the west side of the existing stable. Thus, when the family finally put pen to paper and laid out the lots, mainly by reference to Charles' hedgerows, they took care to leave 10 feet of open space on the west side of the stable building. If the stable lot had been an afterthought or merely a leftover sliver, presumably it would not have been assigned a lot number on the Plat (Lot 8), and presumably the surveyor would not have been careful to give the stable building a uniform 10 foot side setback.

At the hearing, I testified that according to contemporary accounts, Charles Thomas is said to have built one-sixth of the houses in Roland Park. Charles obviously liked and knew how to build large houses, since four of the six Terrace Dale/Cedar Avenue houses are quite large, with four or more bedrooms on the second floor, full third floors, large entrance halls with open stairways, and a lot of other amenities. The Plat on page 1 of my handout at the hearing shows that five of the six lots are approximately 65 feet wide at the street, and only Lot 3 has substantially greater frontage, being along the really twisty part of Terrace Dale. To fit the large Roland Park style houses on the small lots for his children, Charles didn't provide much distance between the houses and their respective lot lines. Applying current DR5.5 setbacks to the houses in question, all six would fail in one or more particulars. The front of the house at 5 Terrace Dale, for example, is only eight feet from the center line of Terrace Dale, at its closest point.

This brings up the first characteristic which makes Lot 8 (7 Terrace Dale) unique. If currently required setbacks were to be imposed with respect to any dwelling on Lot 8, it would be the only lot in compliance with setbacks in the entire Thomas family development. In the eight lot development, Lot 7 was the largest lot and Lot 8 the smallest. In any given area, one of the lots has to be the smallest of all. However, despite its small size, it possesses some unique characteristics which would make it very suitable to accommodate a small dwelling. Its primary deficiency is in depth, since it has an average depth of only 80 feet; as contrasted with the other six lots, which have average depths of approximately 120 feet. However, Lot 8 is wider than five of the six other lots, having 74.5 feet of frontage along Terrace Dale. Lot 4, (20 Cedar Avenue), has road frontage of only 53.14 feet, and six feet of that is in the bed of Terrace Dale, since the lot description calls to the center line of the twelve-foot road.

Lot 8 is unique in that a dwelling situate thereon, no matter where on the lot it was placed, would not and could not conform to any existing front or rear building line in the immediate area. The houses at 1, 3 and 5 Terrace Dale line up with each other, and the houses at 20, 22 and 24 Cedar likewise line up with each other. Lot 8 is set apart and no construction anywhere thereon could possibly be in line with any other existing house or group of houses in the immediate vicinity.

The elevation of Lot 8 is also unique, even in the context of the Thomas development. The Terrace Dale houses share a common elevation, and the Cedar Avenue houses share a common elevation, with Lot 8 being in a mid-range, higher than the Terrace Dale sites and lower than the Cedar Avenue sites. A structure located anywhere on Lot 8 would not materially interfere with anyone's view.

A house on Lot 8 would be unique in that it would be the sole dwelling to front on the narrow portion of Terrace Dale. Terrace Dale was once a uniform width, but the development of the office park at 7801 York Road, which includes all of Lot 7 from the old Thomas Plat, changed that when the lower portion of Terrace Dale was expanded to at least three times its original width so as to accommodate ingress and egress to and from the office buildings. Surely half a dozen daily trips by residents of 7 Terrace Dale along the narrow portion of the road would not endanger anyone's health, safety or welfare. Narrow Terrace Dale is one way westbound, and its only use is to provide Cedar Avenue residents with one of three possible means to access York Road. It is anything but heavily traveled. No reasonable person could seriously represent that the comings and goings associated with a small single-family residence on 7 Terrace Dale would create or compound a traffic problem.

In summary, the lot at 7 Terrace Dale is unique in a number of ways. It is the only parcel in the Thomas family subdivision, all of the existing homes in which violate one or more current zoning setback requirements, which is presently unimproved. Requiring strict compliance with setback requirements with respect to this, the smallest of all the lots, would pose great practical difficulty. The lot, though reasonably wide, lacks depth, and to require a dwelling to adhere to the standard front and rear setbacks would effectively preclude any practical residential use of the lot whatsoever. Because of its unique location in relation to surrounding lots, no structure on the lot, no matter what size or where located, could possibly conform to any front or rear line of existing buildings in the immediate area. Relaxation of the rear yard setback would result in a very small back yard, but there would be ample room on each side of a dwelling 30 feet wide to provide a pleasing combination of driveway, lawn and garden space, including the planting of appropriate natural screening.

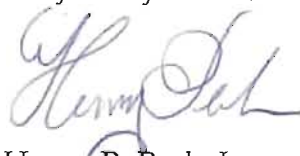
Cromwell v. Ward requires that the hardship or practical difficulty not be "self-inflicted" by the property owner. Examples are given in the decision, but no case has held that the mere act of purchasing a lot which could be built upon with appropriately granted setback waivers constitutes a self-imposed hardship. The only activity I have undertaken to date with respect to this property has been to purchase it from sixteen members of my family who owned separate interests therein.

Finally, at the hearing, you referred to the recent case of Remes v. Montgomery County, 387 Md. 52, and wondered aloud if its doctrine of "zoning merger" would apply to the present case, in that the stable had originally been an accessory structure to the home Charles Thomas had built on Lot 7 for himself. Remes involved the denial of a building permit for construction on an unimproved lot which had a number of close connections with an adjacent improved property. First, the two lots in that case were contiguous; Lots 7 and 8 on Terrace Dale were separated by the road. Second, the two lots in Remes had been combined for assessment and property tax purposes; Lots 7 and 8 have been separately assessed and taxed since 1929. Third, the lots in that case shared

a symbiotic relationship with each other because the improvements on each, standing alone, would have violated prescribed setbacks and they depended on each other for setback compliance. There is no such element present with respect to the Thomas lots. Fourth, the Court of Appeals intimated that it might allow the grant of a permit for the unimproved lot if the structure on the improved lot were modified to cure the setback violation. On Terrace Dale, Lot 7, the counterpart of the improved lot in Remes, has been swallowed up to become a part of the large commercial office park at 7801 York Road. Presently, nothing erected on former Lot 7 violates any setback requirements, with or without the presence of Lot 8. Thus, the two situations are readily distinguishable, and the doctrine of zoning merger should have no application in the present case.

Thank you for reviewing this letter as you prepare to rule on the variance petition.

Very Truly Yours,

A handwritten signature in blue ink, appearing to read "Henry B. Peck, Jr.", with a stylized, cursive script.

Henry B. Peck, Jr.

PROPERTY SURVEYED IN ALL PARTS OF THE STATE.
MEASUREMENT OF EXCAVATIONS AND EMBANKMENTS.
LAYING OUT A DEVELOPMENT OF SUBURBAN PROPERTIES.

PLANS AND ELEVATIONS FOR CONSTRUCTION OF ROADS.
MEASUREMENT OF BRICK WORK AND MASONRY.
LAYING OUT BASEBALL FIELDS, TENNIS COURTS, RACE TRACKS, ETC.

J. MILTON GREEN

BENJAMIN C. GREEN

(SUCCESSORS TO CHARLES B. MCCLEAN)

SURVEYORS AND CIVIL ENGINEERS

3 PIPER BUILDING

C. & P. TELEPHONE. RESIDENCE 125-R
OFFICE 266

5 Terrace Dale

April 15 1918

TOWSON, MD.

191

Lot No. 3 Beginning for the same in the centres

of a road 12 feet wide running the through the whole tract of land of which the herein described lot is a part and at the distance of 165.30 feet South 64 degrees 8 minutes East from the centre of the York Road, said place of beginning being in a line with the centre of the hedge marking the division line between the lot now being described and the lot adjoining on the West and running thence bounding on the centre of said road 12 feet wide, the three following courses and distances viz. South 55 degrees 36 minutes East 34.50 feet, South 18 degrees 41 minutes East 52.20 feet, and South 63 degrees 38 minutes East 42.30 feet to a point in a line with and 10 feet westerly from the west side of the stable on the aforesaid whole tract, thence South 25 degrees 52 minutes West ~~82.10~~ parallel with and 10 feet westerly from the west side of the aforesaid stable 82.10 feet to intersect the first line of the land which by a deed dated July 15 1891 and recorded in the land records of Baltimore County in liber C.W.S. No. 188 folio 38 ect, was conveyed by Milton W. Offutt et, al, to Charles B. Thomas the bounding on said first line North 63 degrees 15 minutes West 113 feet to the centre of the aforesaid hedge and thence bounding thereon North 28 degrees 28 minutes East 127.80 feet to the place of beginning.

PLAT TO ACCOMPANY PETITION FOR ZONING ☒ VARIANCE ☐ SPECIAL HEARING

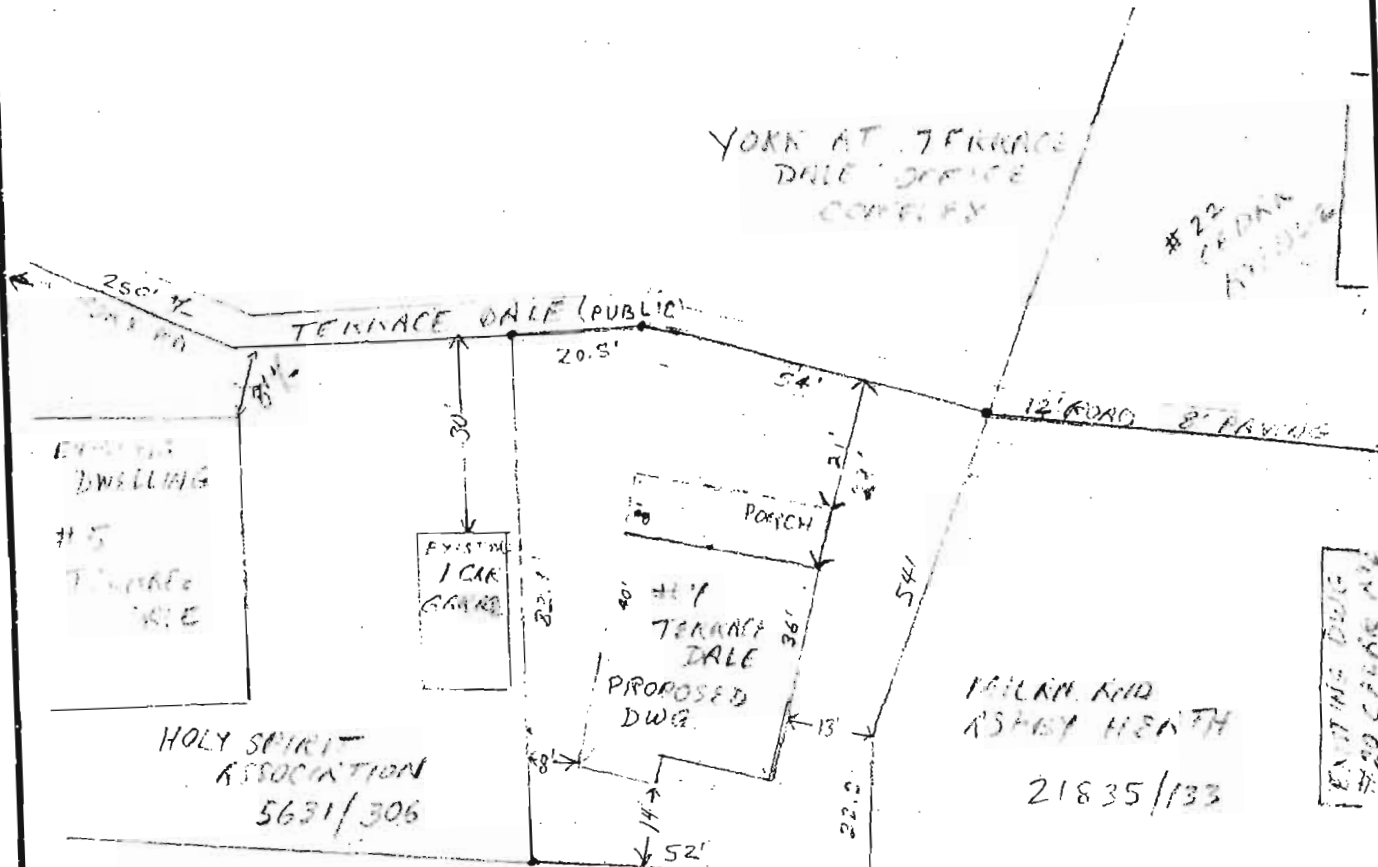
PROPERTY ADDRESS #7 TERRACE DALE

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

SUBDIVISION NAME N/A

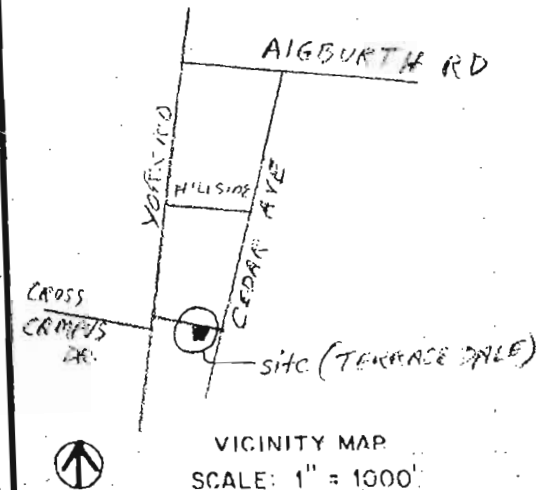
PLAT BOOK # _____ FOLIO # _____ LOT # _____ SECTION # _____

OWNER HENRY PECK



YORK AT TERRACE DALE OFFICE COMPLEX

#22 CEDAR AVENUE



LOCATION INFORMATION

ELECTION DISTRICT 9
 COUNCILMANIC DISTRICT 5
 1" = 200' SCALE MAP # 070A3
 ZONING DR 5.5
 LOT SIZE — 4,800
 ACRES SQUARED FEET
 PUBLIC PRIVATE
 SEWER ☒ ☐
 WATER ☒ ☐
 CHESAPEAKE BAY CRITICAL AREA YES ☐ NO ☒
 100 YEAR FLOOD PLAIN ☐ ☒
 HISTORIC PROPERTY/BUILDING ☐ ☐
 PRIOR ZONING HEARING n/a



PAUL AND SUSAN HARTMAN 7909/65

EXISTING DWG #18 1/2 Cedar

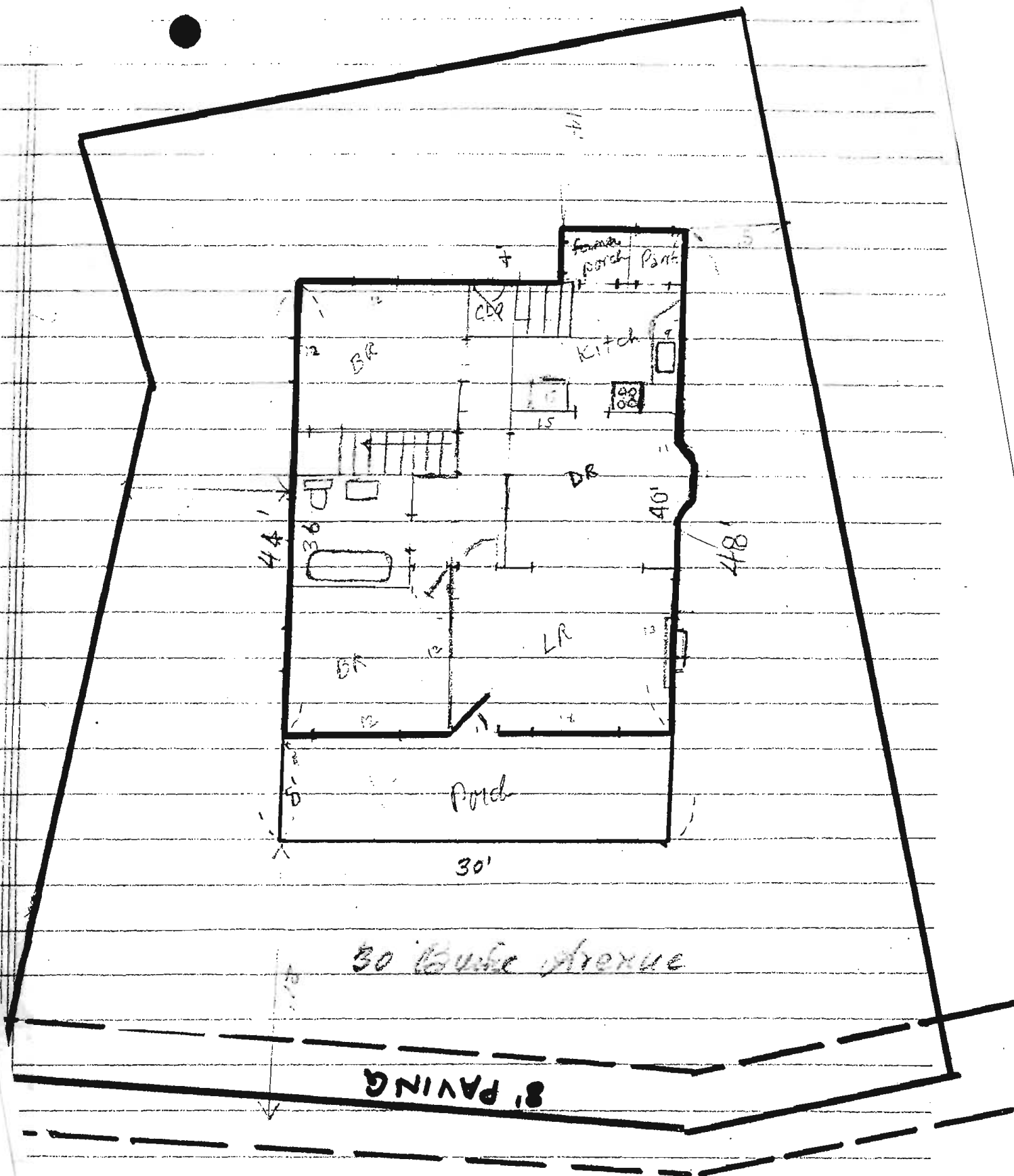
PREPARED BY H. PECK

SCALE OF DRAWING: 1" = 30'

ZONING OFFICE USE ONLY
 REVIEWED BY ITEM # CASE #

13K | 506 | 06-506-A

b



HAILE & PECK

ATTORNEYS AT LAW

304 West Pennsylvania Avenue
Towson, Maryland 21204-4424
(410) 321-7037
FAX: (410) 938-2231

Henry B. Peck, Jr.
David C. Haile

Carrie M. Peck Tomko

Walter R. Haile
1913-2005

June 30, 2006

William J. Wiseman, Esquire
Zoning Commissioner for Baltimore County
Room 405, County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

RECEIVED

JUN 30 2006

ZONING COMMISSIONER

RE: 7 Terrace Dale
Case No.: 06-506-A

Dear Mr. Wiseman:

The doctrine of zoning merger has been applied in a number of jurisdictions, including Maryland, in order to limit or prevent development of nonconforming undersized parcels of land under a specific set of factual circumstances. As stated in Friends of the Ridge et al v. Baltimore Gas & Electric Company, 352 Md. 645 (1999),

"Efforts throughout the country, including Baltimore County, have been to restrict undersize parcels, not oversize parcels. These efforts have resulted in the creation and evolution in zoning of the doctrine of merger, which, in zoning case, generally prohibits the use of individual substandard parcels if contiguous parcels have been, at any relevant time, in the same ownership and at the time of that ownership, the combined parcel was not substandard. In other words, if several contiguous parcels, each of which do not comply with present zoning, are in single ownership and, as combined, the single parcel is usable without violating zoning provisions, one of the separate, nonconforming parcels may not then or thereafter be considered nonconforming, nor may a variance be granted for that separate parcel."

For the doctrine to be applicable, two or more contiguous parcels of land, none of which standing alone would comply with zoning regulations, must be owned by the same person or persons, and the combined parcel must be usable without violating zoning regulations. Under those circumstances, the merger doctrine "has been applied... to prohibit the later creation of undersized parcels" by restricting the common owner's ability to utilize one of the component parcels by itself without first complying with present subdivision requirements.

There can be no merger of contiguous separate lots without the element of common ownership. The Terrace Dale situation does not fit the required fact pattern. Reviewing briefly the title history, Charles Thomas acquired two acres on the east side

of York Road in 1891, consisting of one parcel described by metes and bounds. Between that time and his death in 1911, he built a home for himself, a stable or garage, and houses for his six children. In 1918, the family trust which then owned the undivided two acres conveyed a house and its surrounding lot to each child by separate deeds containing metes and bounds descriptions. Thus, after the 1918 deeds, the remaining property of my great-grandparents, containing the original house and the stable, would have been described as being the original two acre parcel, saving and excepting the six off conveyances. In 1929, following the death of Charles' wife, this residue was conveyed by the trust to the six children as equal tenants in common. That deed is attached. As of that point in time, the house and stable were both on but one lot, being the residue of the original tract. This configuration was not disturbed until 1934, when the original house and the land around it on the east side of Terrace Dale was conveyed by the six children to other owners. This left the stable and its surrounding land on the west side of Terrace Dale as the ultimate residue of the original two acres.

Thus, when the house and stable were under common ownership, there was but one lot, not "separate, contiguous lots". The creation of separate lots did not occur until 1934, when the house lot and the stable lot ceased to be under common ownership. Since the zoning merger doctrine can only be applied in cases involving common ownership of separate parcels, it can have no application in the present situation.

The action which created the undersized nonconforming stable lot, namely, the sale to third parties of land on the east side of Terrace Dale containing the original family house, occurred in 1934. The stable lot, which I own, is the residual parcel of the entire original tract, and did not come into independent existence while in common ownership with any other parcel of land. There is not now, nor has there ever been, any "common owner" party in interest against whom the doctrine of zoning merger could be applied in the Terrace Dale case.

I purchased the stable lot from the estates, heirs and legatees of the six children of Charles Thomas, and firmly believe that I have the clear legal right to apply for setback variances with respect thereto, without the imposition of the theory of zoning merger to my situation. My request for variances should be decided solely on the basis of the criteria set forth in Cromwell v. Ward, which I addressed in my earlier letter, and which I believe are fully satisfied.

Thank you for giving this letter your careful consideration.

Very Truly Yours,

A handwritten signature in blue ink, appearing to read "Henry B. Peck, Jr.", written in a cursive style.

Henry B. Peck, Jr.

L M C L M 833/412

1929 Deed to 6 children of
residue of 2 acres saving and
excepting conveyances to children

THIS DEED made this ~~20~~ day of October, nineteen hundred and twenty-nine, by B. Marvin Thomas and Seabrook S. Thomas, Trustees under a deed of trust made by Charles E. Thomas and Caroline Thomas, his wife, parties of the first part, Grantors, to Bessie J. Kenney, Seabrook S. Thomas, B. Marvin Thomas, Charles E. Thomas, Virginia M. Thomas and Edna A. Green, parties of the second part, Grantees, all of Baltimore County, State of Maryland.

WITNESSETH that in consideration of the sum of Five Dollars paid by each of the Grantees to the Grantors herein and in pursuance of an order of the Circuit Court for Baltimore County, passed October 18th, 1929, in a proceeding in said Court entitled "B. Marvin Thomas, et. al. Trustees, vs. Caroline Thomas, et. al., Equity Docket No. 23, folio 172", the said B. Marvin Thomas and Seabrook S. Thomas, Trustees as aforesaid, do grant and convey unto the said Bessie J. Kenney, Seabrook S. Thomas, B. Marvin Thomas, Charles E. Thomas, Virginia M. Thomas, and Edna A. Green, in equal shares, as tenants in common, in fee simple, the following described real estate, situate, lying and being in the Ninth Election District of Baltimore County, viz:

1st. All the unsold portion of the tract of land mentioned first in the deed of trust made by Charles E. Thomas and Caroline Thomas, his wife, to the said B. Marvin Thomas and Seabrook S. Thomas, dated November 3rd, 1910, and recorded among the Land Records of Baltimore County in Liber W. P. C. No. 368, folio 539, the said unsold portion being designated as Lot No. seven (7) on a plat filed in the Equity proceeding above referred to as Petitioners' Exhibit "B", the improvements consisting of a large frame dwelling house and garage building on the opposite side of the private road running through said property, said lot and improvements being known as the old home place. For a fuller and complete description of said lot No. 7 reference is made to said deed of trust and said plat.

2nd. A tract of unimproved land, comprising 1-1/2 acres on LaPaix Avenue, a private road running Westerly from the York Road, said tract adjoining on the West the residence of B. Marvin Thomas, one of the grantors herein, and being the property mentioned and described as the second and third lots in said deed of trust. For a fuller and complete description

of said property reference is made to said deed of trust. ~~XXXXXX~~

TOGETHER with the buildings and improvements thereupon erected, made or being and all and every, the rights, alleys, ways, waters, privileges, appurtenances and advantages, to the same belonging or anywise appertaining.

TO HAVE AND TO HOLD the said lot 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 Bessie J. Kenney, Seabrook S. Thomas, B. Marvin Thomas, Charles E. Thomas, Virginia M. Thomas and Edna A. Green, in equal shares, as tenants in common, in fee simple.

AND the said parties of the first part hereby covenant 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.

WITNESS the hands and seals of said Grantors.

WITNESS:

Joseph C. Fozlock B. Marvin Thomas (SEAL)
Trustee. Seabrook S. Thomas (SEAL)
Trustee.

STATE OF MARYLAND, BALTIMORE CITY, TO WIT:

I HEREBY CERTIFY that on this 28 day of October, 1929, before me, the subscriber, a Notary Public of the State of Maryland, in and for the City aforesaid, personally appeared B. Marvin Thomas and Seabrook S. Thomas, Trustees, the above named Grantors, and each acknowledged the foregoing deed to be their act.

AS WITNESS my hand and Notarial Seal.

[Signature]
Notary Public.

412 TAXES PAID. 7348
Date Oct 29-29

For..... <u>and</u> D E E D GENE.
169 / from B. MARVIN THOMAS, ET. AL., <u>Leahood S. Trustees,</u> 65 / ✓ to BESSIE J. KENNEY, ET. AL. <u>Leahood S. Thomas</u> <u>B. Marvin Thomas</u> <u>Charles E. Thomas</u> <u>Virginia M. Thomas</u> <u>Edna A. Thomas</u>
65 / ✓
Received for Record <u>Oct 29 1929</u> at <u>11 am</u> same day recorded in liber L. McL. M. No. <u>833</u> folio <u>412</u> One of the <u>land</u> Records of Baltimore County and exam- ined, per <u>Louis McL. Harrison</u> Clerk.
LAW OFFICES ERNEST C. HATCH 2123 RECORD BUILDING TOWSON, MD.

279/154
344/207

1100

Joseph L. Booze
21 Cedar Ave.
Baltimore, MD 21286

Wm. J. Wiseman III
Zoning Commissioner for
Baltimore County

Re: Terrace Dale
Case # 06-506A

Dear Commissioner Wiseman

I fail to see anything in Mr. Peck's statements, in his letter to you of 5 July '06 that change my opinion about his request for variance appeal. I am strongly against his requests for the reason that he is still trying to put 10 pounds in a 5 pound bag.

Very respectfully
Joseph L. Booze

RECEIVED

JUL 14 2006

ZONING COMMISSIONER

4B2
6/9

David E. Lindenstruth
31 Cedar Avenue
Towson, Maryland 21286

June 7, 2006

Re: Case # 06-506A

Zoning Review Board
111 West Chesapeake Avenue
Room 111
Towson, Maryland 21204

Sirs/Mesdames:

I am writing as a member of the Wiltondale Improvement Association and resident of that community on Cedar Avenue.

I am strongly opposed to the requested variances of the above-referenced case. It is hard to conceive a more egregious example of abuse of the zoning process. Granting these exceptions would not only create substandard housing in the immediate vicinity of my home, but would set a terrible precedent to permit future variances of this or worse kinds.

This lot is ridiculously small, being 20% smaller than the required 6000 square feet. In addition, the plan requested would require waiving all of the setback requirements (side, front and back yards).

The location of the lot on Terrace Dale is at the most inaccessible part of a tiny 'road', which is barely one lane wide. Fire emergency vehicles would have difficulty both reaching the home and performing rescue activities. Terrace Dale is too small to be serviced by salt trucks or snow plows. There is insufficient room for parking by any future resident(s).

I urge you to reject this request.

Thank you for your consideration.

Sincerely,


David E. Lindenstruth

RECEIVED

JUN 09 2006

ZONING COMMISSIONER

Paul & Susan Hartman
18½ Cedar Avenue
Baltimore, MD 21286

(410) 296-6934

July 24, 2006

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

Re: Case 06-506-A

Dear Mr. Wiseman,

We are still **opposed** to the variances requested in case 06-506-A.

We feel that the property now known as 7 Terrace Dale is properly considered an extension of the adjacent 20 Cedar Avenue property.

Since July 1988, when our family moved to 18½ Cedar Avenue (which is adjacent to the petitioner's property at 7 Terrace Dale), we regularly observed our neighbor (the late Charles Hunt, owner of 20 Cedar Avenue), use the property in question as part of his back yard. He owned a share of the Terrace Dale property, and he maintained both properties as one entire yard (mowed lawn, maintained trees and shrubs, picked up trash). He had a clothesline running across the property line and there are several garden beds that straddle the property line, as well. He would occasionally park his car in his back yard (the part that is now known as 7 Terrace Dale) when he went on vacations. Upon his death, the car was parked there for many months while the estate was being settled. And also during that time of estate settlement, approximately a year, the lawyer for his estate hired a neighborhood teen to mow the entire yard – both parts (20 Cedar plus 7 Terrace Dale).

The petitioner testified at the June 9, 2006 hearing that he had instructed Baltimore County to send the property tax bill for 7 Terrace Dale to Mr. Hunt from sometime in the mid-1990s onward.

Therefore, it is reasonable to conclude that 7 Terrace Dale was in fact solely used by the former owner/resident of 20 Cedar Avenue and was not considered to be a separate lot.

As you stated in your decision, "The general rule is that authority to grant a variance should be exercised sparingly and only under exceptional circumstances." The circumstances in this case are certainly idiosyncratic, but they are *not* exceptional.

Sincerely,



Paul S. Hartman



Susan S. Hartman

RECEIVED

JUL 24 2006

ZONING COMMISSIONER

Paul & Susan Hartman
18½ Cedar Avenue
Baltimore, MD 21286

(410) 296-6934

Re: Case 06-506-A
7 Terrace Dale

To whom it may concern,

We are the owners of the property adjacent to the rear property line of 7 Terrace Dale. We **oppose** the granting of the variances that have been requested.

A rear yard setback of 14 feet in lieu of the 30 feet required in a DR5.5 zone would put the structure too close to our yard. This is less than half of the minimum setback of 30 feet required by zoning regulations.

There is a discrepancy of the square footage between the state tax records and the plan submitted by the petitioner. At best, the lot falls far short of the minimum lot size required in a DR5.5 zone. This, and the rear yard setback variance, are not insignificant amounts.

Putting such a large structure on such a small lot would require removing all of the trees and shrubs that provide screening between our yard and 7 Terrace Dale.

Sizeable, green yards are one of the features of properties in this neighborhood. The proposed structure would have minimal yard space, much of which would need to be devoted to parking.

A house located on this property would not be a desirable place to live. The front porch would overlook the dumpster of the Terrace Dale office building, which is frequently and noisily emptied late at night. Seven Terrace Dale is the prime location for trash blowing from the dumpster and office parking lot, which would collect across the front of the property. The narrow street, lack of parking, and inaccessibility create safety issues for the potential residents of 7 Terrace Dale, as well as the surrounding residents. County services are not currently provided on that road, and it is not clear that such services could be provided. The road is not plowed or salted in the winter.

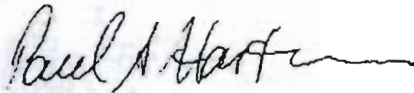
We moved to our Cedar Avenue home 18 years ago. We have had significant problems with absentee landlords renting to students that took many years and much effort on our part to resolve. Putting a rental property where the owner does not live on premises would impact the health, safety, and welfare of our fragile community.

The plan to move a house to this lot is infeasible. Is the petitioner putting the cart before the

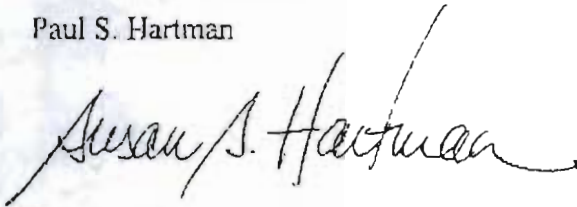
horse in requesting variances for an unlikely scenario? If so, what new plan would we be facing? We are concerned that a new structure could be built without any community input or oversight from any county office if these variances were granted.

We are asking you to enforce the statutes that have been put in place to protect property owners and communities from inappropriate development.

Sincerely,



Paul S. Hartman



Susan S. Hartman

20 Cedar Avenue
Towson, Maryland 21286

July 22, 2006

William J. Wiseman III, Esq.
Zoning Commissioner for Baltimore County
Room 405, County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

RECEIVED

JUL 25 2006

ZONING COMMISSIONER

Re: 7 Terrace Dale, Case No. 06-506-A

Dear Commissioner Wiseman:

Henry B. Peck, Jr., Esq. ("Peck") submitted a "Petitioner's Motion for Reconsideration" requesting that you reverse the decision you rendered in the above referenced matter. Peck supported his "Motion" with a letter. We, the adjoining neighbors to Peck's lot which is the subject of this zoning case, respectfully request that you deny Peck's "Motion" and confirm your original decision.

We believe there are a multitude of reasons the variances should be denied, which we addressed both in person at the hearing as well as in our previous letter opposing Peck's request for variances, but will focus in this letter primarily on responding to your written decision and Peck's Motion.

Peck's letter is remarkable in that it barely mentions, and does not discuss, the Remes v. Montgomery County case on which your decision was based. Rather than addressing the analysis and holding of Remes, Peck seeks support in Massachusetts and New Jersey cases which are not relevant to this Baltimore County, Maryland zoning matter.

Peck's letter relies heavily on the Carciofi v. Board of Appeals case, 22 Mass. App. Ct. 926 (1986) to support his argument that identical common ownership of parcels is required for a zoning merger to occur. However, in a November 8, 2001 paper on zoning issues presented to the Boston Bar Association, Arthur P. Krieger, Esq., described Carciofi as "[O]ne of the very few cases which had not required merger of adjacent lots." (emphasis added). p. 28, *Zoning Update and Dover Amendment* by Arthur P. Krieger, Esq. Indeed, the same Massachusetts Appeals Court which decided Carciofi subsequently described it as, "[A] two-page rescript which has never been cited and has been undermined by subsequent case law." Preston v. Board of Appeals of Hull, 51 Mass. App. Ct. 236, 239; 744 N.E. 2d 1126, 1129 (2001).

Peck's letter contains on its second page (the pages are not numbered) the following statement, "All deeds to all parcels in Terrace Dale have contained only metes and bounds descriptions, with no reference to a recorded subdivision plat." While perhaps literally accurate if extremely narrowly construed, the substance of this statement is belied by the Deed attached to Peck's letter. This 1929 Deed describes the 1st parcel being conveyed the Deed by reference to "Lot No. seven (7) on a plat filed in the Equity proceeding described above For a fuller and complete description of said lot No. 7

reference is made to ... said plat.” (emphasis added). Presumably, the Plat used in this Deed to describe the Terrace Dale land is the same 1918 plat which Peck describes as an “unrecorded plat,” thus, directly contradicting Peck’s assertion that “no lot ... even to the present day, has been described in a recorded conveyance by reference to such plat.”

Peck’s letter misses the primary point of the Maryland cases dealing with a merger for zoning purposes: the intent of the owners. As the Remes court stated, “We indicated in Ridge that merger may be derived from the common owner’s intent, as evidenced by ‘integrat[ing] or utiliz[ing] the contiguous lots in the service of a single structure or project. Remes v. Montgomery County, 387 Md. 52, 66; 874 A. 2d 470 (2005). The Remes opinion goes on to quote other cases stating that the intent of the owner may be inferred from his conduct with respect to the land and the use which he makes of it, and stating that “little evidence of that intent is required.” Remes 387 Md. 52, 66.

In the Terrace Dale case, it is clear that the previous owners of 20 Cedar Avenue and Peck’s lot intended that the lots be merged. For many decades, Peck’s lot has been used to service 20 Cedar Avenue. Even at this late date, the intricate flower beds which run across and completely disregard the property line, and the cemented clothes line poles which begin in one lot and end in the other, show the single use made of these two parcels of land.

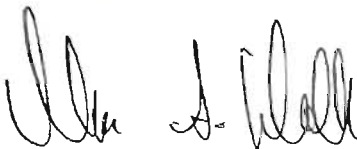
As to the issue of common ownership raised by Peck as an obstacle to the application of the Remes doctrine, Maryland law is clear that Charles Hunt and his mother, Elizabeth Hammarstrom, the longtime owners of 20 Cedar Avenue, had an unequivocal right as tenants in common ownership of Peck’s lot to occupy and use the parcel, thus satisfying the Remes criterion for “common ownership” of the affected lots. See Cook v. Boehl, 188 Md. 581, 592; 53 A. 2d 555 (1946). It is also clear that through their “hands off” ownership of the Peck lot, the other tenancy in common owners of the parcel intended that Hunt and Hammarstrom, could use it in service of 20 Cedar Avenue. Thus, the common ownership by Charles Hunt and Elizabeth Hammarstrom and the actual use of 20 Cedar Avenue and Peck’s lot as one integrated parcel show the intent that the lots be treated as merged lots.

In closing, we again request that Peck’s Motion for Reconsideration be denied and that your original decision be confirmed.

Sincerely,



Ashby M. Heath



Milan A. Heath II

Cc: Henry B. Peck, Jr., Esq.

**Neal and Linda Halsey
25 Cedar Ave
Towson MD 21286**

July 24, 2006

William J. Wiseman III
Zoning Commissioner
County courts Building
401 Bosley Ave, Suite 405
Towson, MD 21204

RECEIVED

JUL 24 2006

ZONING COMMISSIONER

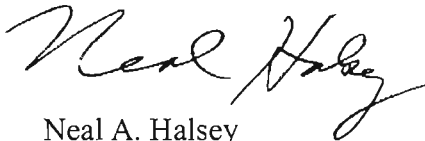
Dear Mr. Wiseman,

We applaud the decision that you made on June 28, 2006 denying the variance request for placing a house at 7 Terrace Dale. We strongly encourage you to reject the request for reconsideration of this decision.

As noted in numerous print and television media articles during the past couple of years, there is increasing pressure on open space in the greater Baltimore metropolitan area. Filling every possible bit of open space with housing will destroy the nature of this community, especially when placing homes in these tight spaces will require removal of some of the limited trees that are essential for the environment.

At times like these, we need careful planning for development. This will require adherence to the county zoning regulations, and strength and fortitude in our county officials to uphold these regulations. Thank you for demonstrating these qualities in rejecting the requested variance.

Sincerely,


Neal A. Halsey


Linda R. Halsey

CC: Paul and Sue Hartman, Ashby and Milan Heath, Virginia Carruthers, Maureen Hunter, Adele Free, Mary Miles, Craig DeMallie, John and Frances Holman,

Ashby and Milan Heath
20 Cedar Avenue
Towson, MD 21286

June 6, 2006

Zoning Review Bureau
111 West Chesapeake Avenue, Room 111
Towson, MD 21204

Re: Case #06-506-A

Dear Zoning Commissioner,

As owners of the property immediately adjacent to 7 Terrace Dale, we are writing to inform you of our **opposition** to the request for multiple variances for the property, recorded as Case #06-506-A.

When purchasing our home last year, located at 20 Cedar Avenue, we were informed by lawyers handling the estate of our house and the partial ownership of a vacant lot now known as 7 Terrace Dale, that the latter was not buildable due to its small size. The lot had been used as an extension of the backyard of our home by the previous owner for many years and was never conceived of as a home site.

In two letters the petitioner wrote to the estate's lawyers last year, which we have obtained and attached for your reference, he acknowledges that the lot is a "**small unbuildable parcel**." If we had known that the miniscule area behind our house could be the future site of a rental property, necessitating the removal of trees, which partially shield the view and sound of York Road, we surely would have reconsidered the monetary offer we made on our house, if not abandoned the purchase entirely.

According to another attached letter we obtained from lawyers handling the estate, the petitioner still does not own 100% of the property and does not have clear title to build. While he may be able to finance the project himself since he acknowledges that no bank would ever lend money on a property with an unperfected title, the petitioner, an experienced Towson real estate attorney, has obviously taken on the financial risks with full knowledge of the zoning issues that could and should prevent development of the land.

The petitioner is also well aware that we have on numerous occasions during the last year tried to purchase an interest in the property from him, as well as the estate, in order to ensure that the lot was maintained and kept as open space as it was intended. For these reasons, it is clear that the petitioner cannot prove any hardship to the Zoning Review Bureau beyond that which has been self-inflicted.

While the petitioner claims the size of 7 Terrace Dale to be 4800 square feet, Maryland Department of Assessments and Taxation (MDAT) records indicate that the property is in fact only 3500 square feet, a significant difference from his estimate. The property has

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JUN 07 2006

ZONING COMMISSIONER

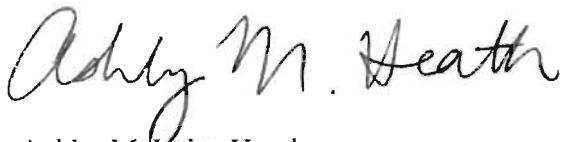
never been professionally surveyed and therefore there is considerable question as to the true size of the lot. Even with the petitioner's estimate of 4800 square feet, the property is still considerably smaller than the 6000 square feet required to build and that of surrounding homes in the area (see attached list of neighboring property sizes obtained from MDAT). We believe moving an existing dwelling or building a new house on the lot would be a gross overuse of the property and would negatively impact not only our growing family, but also those in adjacent homes, as well as the neighborhood as a whole.

Terrace Dale is the size of an alley, not a street (11.5 feet at its widest point in front of the lot) and with no county-supported snow cleanup in the winter and no room for parking, cars entering this tiny lot from this very narrow one-way road would create a considerable safety risk to pedestrians and drivers using Terrace Dale. In addition, safety personnel such as firefighters would have a difficult time accessing the lot with so little clearance on all sides.

Finally, this lot is not unique. There are a number of undersized lots in Baltimore County and making exceptions to rules and variances established to protect the health, safety and welfare of the community, as well as to prevent the overdevelopment of open land, for a lot as small as this one in a family neighborhood for the erection of another unneeded dwelling, is a decision we are hoping you will not make.

We trust that the system will work and follow its own rules to deny all variances requested. Thank you for your time.

Sincerely,



Ashby McIntire Heath



Milan Austin Heath II

24 Cedar Ave.
Towson, MD 21286
June 4, 2006

430
6/9
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JUN 07 2006

Zoning Review Bureau
111 West Chesapeake Ave., Room 111
Towson, MD 21204

ZONING COMMISSIONER

SUBJECT: Case Number 06-506-A

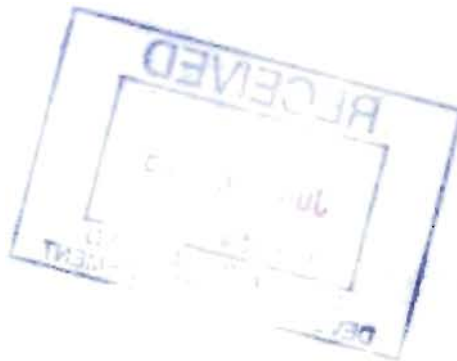
I am writing to register my strong objections to the granting of variances for the property at 7 Terrace Dale.

As a long-time resident of the neighborhood (since 1977), I am deeply concerned about the plan to place a house on such a small lot. All of the other houses in our area have substantial lots that can be attractively landscaped. Furthermore, all have adequate space for parking, either on the street or in private driveways. Terrace Dale is a very narrow street—hardly more than an alley. I don't understand where residents of a house that occupies almost the entire lot would park their car(s), or even how they would reach the house in the event of a snowstorm, given that the street is too narrow to be plowed and/or salted. by the county.

I will be at the zoning hearing on June 9 when I will be happy to express my objections orally.

Sincerely,

Virginia Carruthers
Virginia Carruthers



Jack & Judith Giacomo
17 Aigburth Road
Towson, MD 21286

June 5, 2006

Zoning Commissioner
Zoning Review Bureau
111 West Chesapeake Ave., room 111
Towson, MD 21204

Case # 06-506-A

Dear Zoning Commissioner,

We **oppose** the granting of the variances in this case, # -06-506-A.

This is a request to move a house onto this small bit of land situated in our neighborhood on Terrace Dale Road. Our neighborhood, The Aigburth Manor of Towson, Inc., predominately has older homes on good size lots. This lot is very small. Also, in order to situate a home on this small property, any trees and greenery would need to be removed which does not fit into our well established "green" neighborhood.

We ask you to not allow this "fill-in" request and deny all requested variances.

Thank you.

Sincerely,

Judith M. Giacomo
Jack F. Giacomo

RECEIVED

JUN 07 2006

ZONING COMMISSIONER

BW
6/9

Zoning Review Bureau
111 West Chesapeake Avenue, Room 111
Towson, MD 21204

June 5, 2006

Zoning Hearing- 7 Terrace Dale Road
Case number 06-506-A
5th Council District

4BW
6/9
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JUN 07 2006

ZONING COMMISSIONER

Dear Sir,

We recently received notice that the lot owner of 7 Terrace Dale has requested several variances in order to move a house to the lot. It is a remarkable request in that a house of a width greater than 10' could not possibly move up or down Terrace Dale. And this is readily apparent just standing at either end of Terrace Dale.

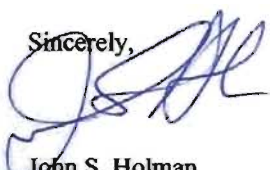
So, what to make of the requested variances? Does the lot owner in fact want to build a house? Is he trying to increase the lot value with an in hand variance? In the final analysis, it doesn't matter because the lot is a poor candidate for a house of any kind.

Specifically, he is asking for a 20% reduction in required land size. The 6000 is already smaller than most lots in the community and 4,800 would seem very small indeed. With a front setback of 21 and rear setback of 14 as requested, very little depth is left for the house. Also, with a mere 8 feet on either side of the house, any building will look cramped and out of character for the neighborhood. It is almost like building one rowhouse- the houses on either side are just mysteriously missing.

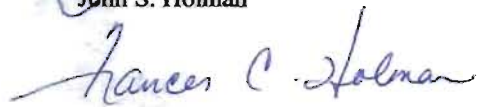
Further, some consideration must be given to a place for a car or two. There is certainly no on street parking on this little street and I can't imagine building a garage on this little house. Additionally, it would be unsafe to try to back out onto Terrace Dale should a garage be wedged in somewhere.

In short, common sense guides us very clearly on this request. It doesn't work and it doesn't make sense.

Sincerely,



John S. Holman



Frances C. Holman
12 Cedar Avenue

BW
6/9
11:00

June 4, 2006

Zoning Board Review
111 West Chesapeake Avenue
Room 111
Towson, MD 21204

Re: Case #06-506-A

To Whom It May Concern:

A recent motion picture declared that "If you build it, they will come," which actually reflects greatly on the matter before the Zoning Board as cited above. The property in question, 7 Terrace Dale Road, in the 5th Council District, measures approximately 4800 square feet (+/-), is located less than two hundred yards from our property, and it is our understanding that the current owner wishes several variances in order to move and place a house onto the property, which heretofore has never been the site of a dwelling, according to Baltimore County land records.

As the Zoning Board all too well knows, zoning decisions can be the cause of significant conflict and contention: almost always one person owns a property and wishes to do something with it in order to enhance the value or create additional revenue, while those who own property nearby either agree with the sought changes, or take issue with the desired alterations. In this instance, the Board is being asked to overlook standing county requirements regarding the size of a potential residential location to permit the owner to earn revenue from a property currently without any improvements.

In short, the argument seems to be: since someone owns the property, that person should be allowed to do what he/she wants, and the County should be agreeable to that person's wishes, regardless of the existing requirements. The current zoning maps, and zoning requirements, were not the result of indifferent behaviour by the County Council. They reflect an understanding of how development of real estate must conform within community-accepted guidelines. The maps were created (and amended and altered numerous times) with one overriding principle: what makes the most sense. The citizens of Baltimore County generations ago realized that development and growth are dependant upon what is best for the specific community, the general area, and the County as a whole, in that order. Zoning requirements have not resulted in unfair restrictions, just development under managed conditions.

Ours is a neighborhood that dates back to the beginning of the 19th Century, long before there were zoning requirements; some of the houses were built as early as the first quarter of the 19th Century. But residents knew even 200 years ago that the health of real personal property depended upon collectivism rather than pure individualism. Our property (and the property in question) both border upon a commercial/professional development (York at Terracedale); we bought our property knowing we bordered upon that property, and also that there had been a prior commercial operation on that land. We

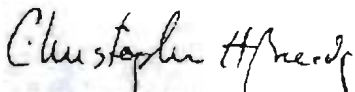
also knew that all the other properties surrounding our land and house were zoned residential under the existing county zoning maps except for Towson High School, which was built upon part of the land of the previous commercial operation (Towson Nurseries).

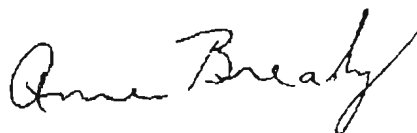
Now comes before the Zoning Board a citizen who is not a resident of our neighborhood and who has recently obtained most (but not even all) controlling interest in a small property which heretofore was considered to be simply part of the backyard of another resident of our street (recently deceased). It is my understanding that a portion of the complete title to the land was inherited, and most other inheritors were bought out of their portions. The mere fact of ownership should not be sufficient reason for the Zoning Board to accede to the new owner's wishes. The land is in close proximity to Towson University, and it is our understanding that the owner wishes to move an existing house from Burke Avenue to the Terrace Dale location as a rental property. We do not take issue with the new owner's intentions (anyone on our street has the right to rent, or petition to rent, part or all of their properties; one parcel on our street contains a multiple-unit rental operation), but we take significant issue with the desire by one person to have the County waive a number of standard zoning conditions which run so contrary to existing regulations.

Properties are bought and sold every day in Baltimore county with the understanding that they must conform with the current zoning regulations; but the owners also have the right to petition for changes in that zoning. To do otherwise would be draconian and contrary to the sense of public government under which we all live and function. But ours is a community, not simply a collection of individually-held properties, and the land on Terrace Dale is part of that collection. We hold it against no person to attempt to maximize the value of his or her assets, but any efforts must be within the accepted and legal guidelines. Because you own something does not mean you can do with it whatever you want, be it empty paint cans, derelict automobiles, cornfields along Interstate highways, university-held land bordering upon apartment complexes, or just a tiny plot of land along a narrow, winding unplowed lane that serves the entire community simply as a narrow thoroughfare.

There are other houses currently on Terrace Dale (and others which were torn down decades ago, on the northern side), but all are on that portion of the road which is two lanes in width, and all are in compliance with zoning regulations regarding the size of the lot and the required space between development and the edges of the properties. There is significant reason why none have even been built on the one-lane section of that road: it does not make any sense.

Sincerely,


Christopher H. Bready


Anne L. Bready

34 Cedar Avenue
Towson, Md 21286
410/821-8744

CASE NAME _____
CASE NUMBER _____
DATE _____

[illegible]

PLEASE PRINT CLEARLY

CASE NAME 7 Terrace Dale
CASE NUMBER 06-506-A
DATE 6/9/06

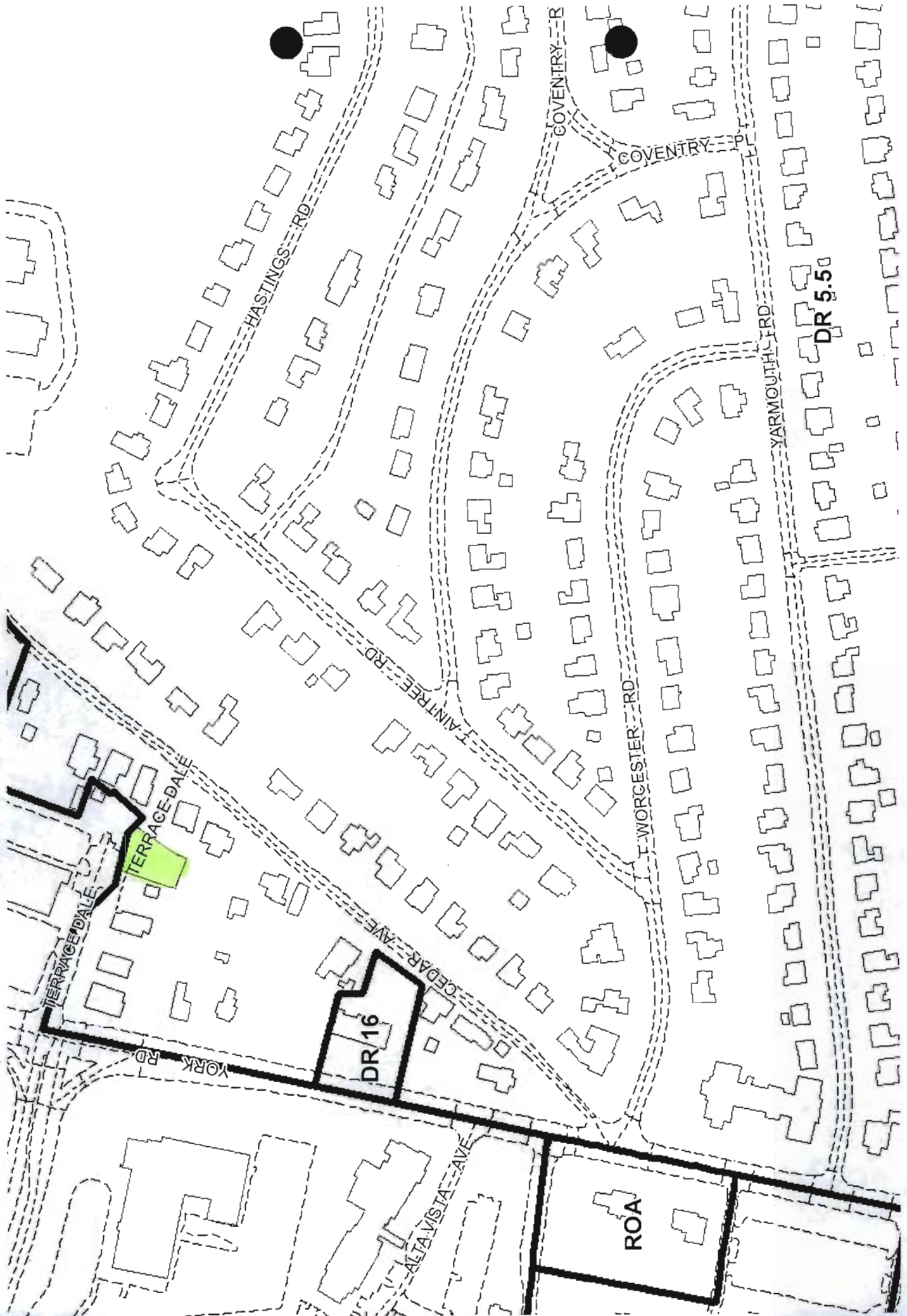
CITIZEN'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E-MAIL
Paul Hartman	18 1/2 Cedar Avenue	Baltimore MD 21286	paul@dirtylinen.com
Ashby Heath	20 Cedar Avenue	Towson, MD 21286	naheath@gmail.com
Joseph L Booz	21 Cedar Ave	" " "	BBAF@comcast.net
Susan S. Hartman	18 1/2 Cedar Ave	Towson MD 21286	susan@dirtylinen.com
Virginia Carothers	24 Cedar Ave	Towson, MD 21286	vcarothers@vball.com
Mary H. Miles	2 Cedar Ave	Towson MD 21286	milesman@redameprep.com
Maureen M. Hunter	18 Cedar Ave	Towson MD 21286	mm1hunt@comcast.net
Adele Free	21 Cedar Ave	Towson MD 21286	BBAF@comcast.net
Andrew Evans	619 COWAN PL	Towson, MD 21286	aevas@revelty.com
MILAN A. HEATH	20 Cedar Ave.	Towson, MD 21286	_____
Indira - Deacon	17 AIGBETH RD.	Towson, MD 21286	REDDSKYE@COMCAST.NET
Christopher H. Freedy	34 Cedar Avenue	Towson MD 21286	baltabook@comcast.net

160 sq rods

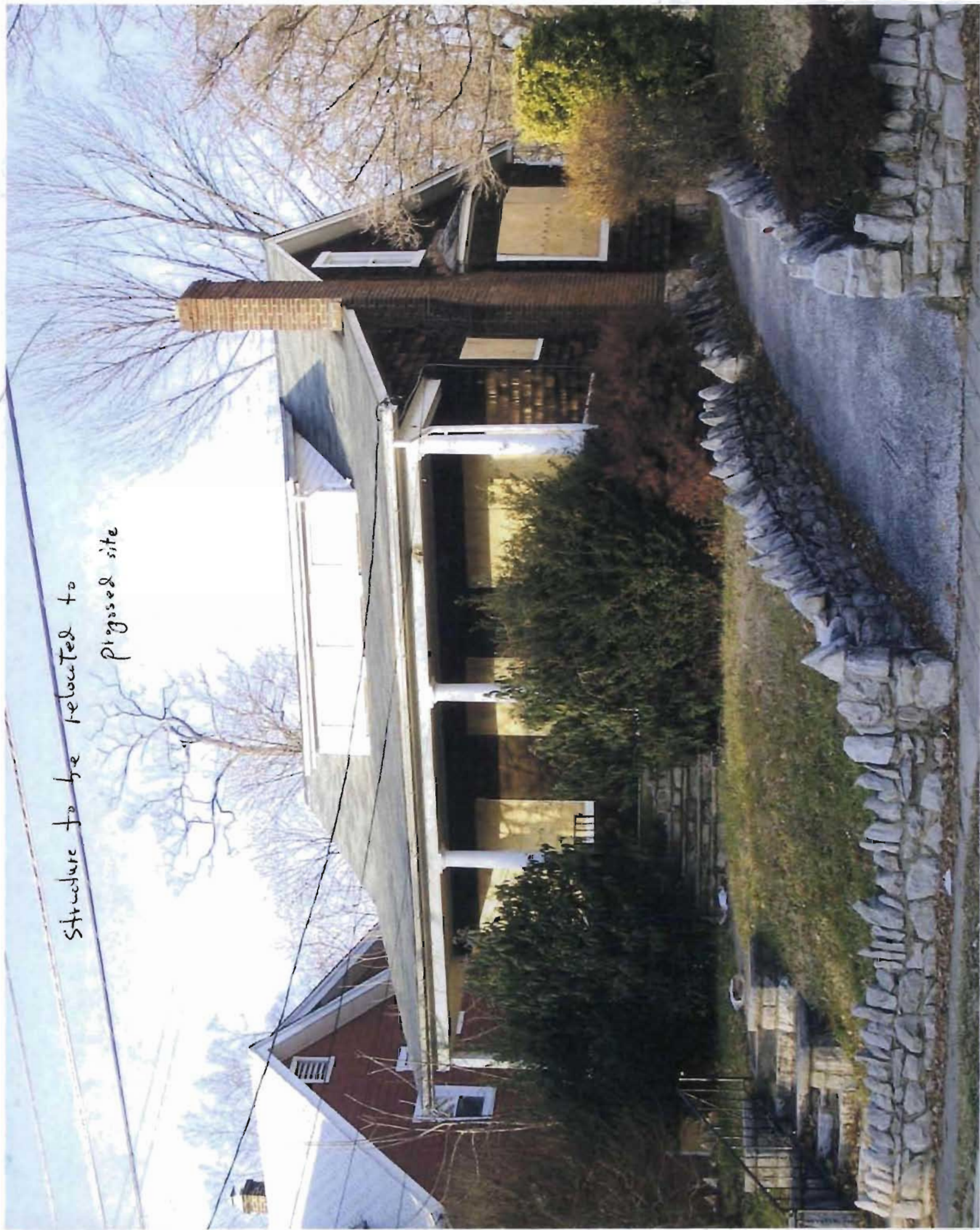
4840 sq yds

43560 sq ft



map # 070 A3

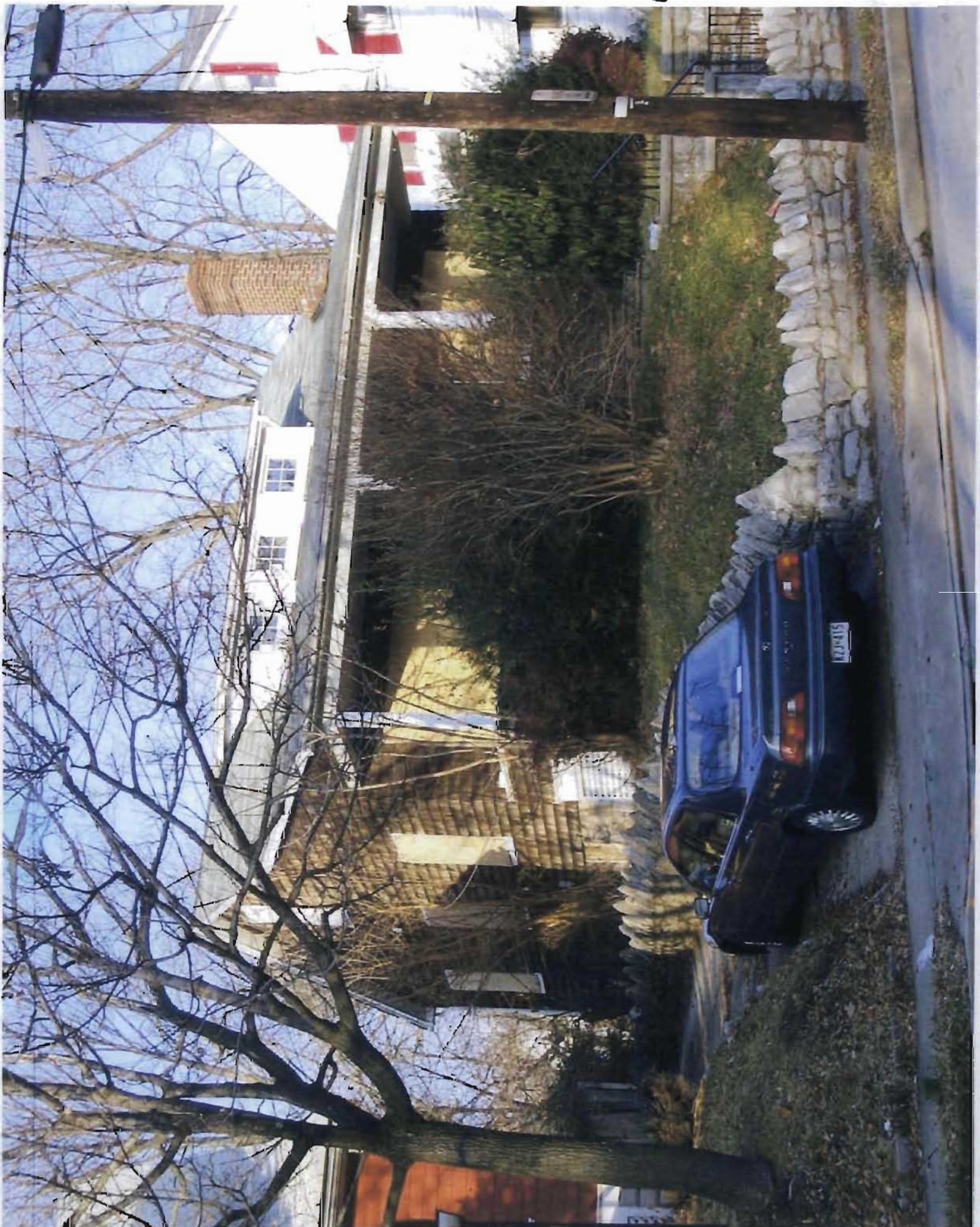
Structure to be relocated to
Piggsed site















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

[Go Back](#)
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[New Search](#)
[Ground Rent](#)

Account Identifier: District - 09 **Account Number -** 1600001198

Owner Information

Owner Name: PECK HENRY B,JR **Use:** RESIDENTIAL
Principal Residence: NO
Mailing Address: 304 W PENNSYLVANIA AVE
TOWSON MD 21204-4424 **Deed Reference:** 1) /22929/ 408
2) /22929/ 405
ADDITIONAL REFERENCE RECORDED

Location & Structure Information

Premises Address
TERRACE DALE AVE

Legal Description

.70AC
TERRACE DALE AVE SS
400 E YORK RD

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No: Plat Ref:
70	20	690						2	

Special Tax Areas
Town
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
0000		3,500.00 SF	04

Stories	Basement	Type	Exterior

Value Information

	Base Value	Value			Phase-in Assessments		
		As Of	As Of	As Of	As Of	As Of	As Of
		01/01/2005	07/01/2005	07/01/2005	07/01/2005	07/01/2006	07/01/2006
Land:	870	870					
Improvements:	0	0					
Total:	870	870	870	870	870	870	870
Preferential Land:	0	0	0	0	0	0	0

Transfer Information

seller: THOMAS RAMSAY B,JR	Date: 08/18/2005	Price: \$0
type: NOT ARMS-LENGTH	Deed1: /22929/ 408	Deed2: /22929/ 405
seller: PECK HENRY B TRUSTEE	Date: 11/21/1994	Price: \$1
type: NOT ARMS-LENGTH	Deed1: /15803/ 385	Deed2:
seller: KENNEY BESSIE J	Date: 11/15/1994	Price: \$0
type: NOT ARMS-LENGTH	Deed1: /10829/ 624	Deed2:

Exemption Information

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

Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

[Go Back](#)
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[New Search](#)

[illegible]

http://sdatcert3.resiusa.org/rp_rewrite/maps/showmap.asp?countyid=04&accountid=09+160... 06/08/06



PROPERTY SIZE OF AIGBURTH MANOR NEIGHBORHOOD HOMES SURROUNDING 7 TERRACE DALE

DETERMINED BY MDAT REPORTS AND COUNTY DEEDS

<u>NAME</u>	<u>ACCOUNT</u>	<u>STREET</u>	<u>MAP PARCEL</u>	<u>SQ. FEET</u>
VAGHARI KHOSROW D	09 0911150310	1 TERRACE DALE AVE	70 690	11,590
GOULD FRANKLIN DA	09 0920300270	3 TERRACE DALE AVE	70 691	7,308
HOLY SPIRIT ASSOC	09 0923154170	5 TERRACE DALE AVE	70 864	12,342
PECK HENRY BJR	09 1600001198	7 TERRACE DALE AVE	70 690	3,500 **
HEATH MILAN A II	09 0908011590	20 CEDAR AVE	70 689	7,488
HARTMAN PAUL S	09 0902650900	18.5 CEDAR AVE	70 236	17,031
HUNTER DAVID G	09 0914100210	18 CEDAR AVE	70 414	17,100
WALKER HARRY CJR	09 0908001473	22 CEDAR AVE	70 360	6,840
CARRUTHERS VIRGINIA	09 0919910610	24 CEDAR AVE	70 1067	6,786
YINGLING DAVID B	09 1600007162	26 CEDAR AVE	70 355	22,869

**** PLEASE NOTE DISCREPANCY BETWEEN THE SIZE OF 7 TERRACE DALE AND SURROUNDING PROPERTIES, AS WELL AS THE DIFFERENCE BETWEEN THE PETITIONER, MR. HENRY PECK'S CLAIMS THAT 7 TERRACE DALE IS 4,800 SQUARE FEET COMPARED TO MDAT'S REPORTS OF 3,500 SQUARE FEET.**

BALTIMORE COUNTY, MARYLANDBoard of Appeals of Baltimore County
Interoffice Correspondence

DATE: February 6, 2008

TO: Timothy Kotroco, Director
Permits & Development Management

FROM: Linda B. Fliegel
Board of Appeals

SUBJECT: **CLOSED APPEAL CASE FILES**

<i>NAME</i>	<i>CASE NO.</i>	<i>DECISION OF COURT</i>
CHARLESTOWN RETIREMENT COMM.	05-621-A and CBA-05-143	The Board, in its' Opinion and Order of April 6, 2007 <i>DENIED</i> Petitioner's request for lot line adjustments and further; that the Dir. of PDM, affirming, in case no.: CBA-05-143, regarding the determination of the DRC that the construction of the office building and garage herein meets the requirements of a refinement to a CRG Plan under § 32-4-106(b)(2) be <i>REVERSED</i> ; and it was further <i>ORDERED</i> that the Developer's request for a refinement to the original CRG Plan under § 32-4-106(b)(2) be <i>DENIED</i> .
HENRY B. PECK, JR.	06-506-A	The Board, in its' Opinion and Order of November 20, 2007, <i>DENIED</i> Petitioner's request for Variance relief from § 1B02.3C.1 of the <i>Baltimore County Zoning Regulations</i> to permit a lot area of 4,800 sq. ft., a side yard setback of 8', and a rear yard setback of 14' in lieu of the req'd 6,000' sq. ft. 10' and 30', respectively and from § 303.1 for a front yard setback of 21' for an open projection in lieu of the req'd 22.4'.
NANCY WEHR NIERMANN	03-160-SPH	The Board, in its' Opinion and Order of December 8, 2003, <i>GRANTED</i> Petitioner's request for Special Hearing with conditions. On Jan. 8, 2004 and appeal was filed by David Albright in the Circuit Court. On August 27, 2004 the Circuit Court <i>AFFIRMED</i> the Board of Appeals decision. Once again, the matter was appealed to a higher court, COSA, and on Nov. 2, 2006 the COSA <i>AFFIRMED</i> the Circuit Ct./BOA.

PETITIONER'S EXHIBITS

- ✓ 1. ENLARGEMENT OF A 1918 SURVEY OF SEVEN LOTS.
 - ✓ 2. SAME AS EXH. 1, DEPICTS IN RED SIX LOTS.
 - ✓ 3. SAME AS EXH. 1, DEPICTS LOT 7 IN GREEN.
 - ✓ 4. DESCRIPTION OF THE SIX LOTS
 - ✓ 5. AMENDMENT TO RESTRICTIVE COVENANTS
 - ✓ 6. DEED DATED 9/19/1972.
 - ✓ 7. PLAN TO ACCOMPANY PHOTOGRAPHS IN EXHIBIT 8.
 - ✓ 8. A-J PHOTOGRAPHS
 - ✓ 9. PLAN TO ACCOMPANY PETITION FOR ZONING VARIANCE.
 - ✓ 10. PICTURES OF 30 BURKE AVE. TO BE MOVED TO SUBJECT PROPERTY.
- } Large exhibits in closet

PETITIONER'S EXHIBITS 1, 2, 3

DESCRIPTION OF EXHIBITS

7 TERRACE DALE - ZONING CASE

(Large exhibits
in closet)

Exhibit 1: depicts in yellow the two acre parcel on the east side of York Road purchased by Charles E. Thomas in 1891. A builder by trade, he constructed seven residences on the property prior to his death in 1911. He defined the lot lines by planting a series of privet hedges, but there was no physical subdivision of the land by metes and bounds descriptions or recorded Deeds until 1918. In 1910, the two acre parcel was conveyed by C. E. Thomas and his wife to B. Marvin Thomas and Seabrook S. Thomas, Trustees for the benefit of Charles E. Thomas and his wife.

Exhibit 2: depicts in red the six lots which by a series of Deeds from the Trustees, all dated June 3, 1918, were conveyed to the six children of Charles E. Thomas. Lot 1 (now 1 Terrace Dale) was conveyed to Bessie J. Kenney; Lot 2 (now 3 Terrace Dale) was conveyed to Seabrook S. Thomas; Lot 3 (now 5 Terrace Dale) was conveyed to B. Marvin Thomas; Lot 4 (now 20 Cedar Avenue) was conveyed to C. Edward Thomas; Lot 5 (now 22 Cedar Avenue) was conveyed to Virginia M. Thomas; and Lot 6 (now 24 Cedar Avenue) was conveyed to Edna A. Green. The residue of the original two acre tract is shown in yellow on Exhibit 2. In 1929, this residue was conveyed by the Trustees to all 6 of the Thomas children, as equal tenants in common, following the death of their mother.

Exhibit 3: depicts in red the six lots conveyed in 1918 to the children of Charles E. Thomas, and depicts in green the large parcel designated as Lot 7 on the 1918 plat which was conveyed in 1934 by the 6 children of Charles E. Thomas to The Terrace Dale Company, Incorporated. Following a series of later conveyances, this parcel ultimately became part of the York at Terrace Dale office development at 7801 York Road. Shown in yellow on Exhibit 3 is the ultimate residual parcel of the original two acres, designated as Lot 8 on the 1918 Plat, which continued to be owned by the 6 children of Charles E. Thomas, as equal tenants in common, for the remainder of their respective lifetimes. As each child died, his or her interest in Lot 8 passed through estates. By way of eight separate Deeds dated and recorded in 2005, Henry B. Peck, Jr. acquired fee simple title to Lot 8 from the estates of various heirs and legatees of the six original owners.

YOSHIKAWA

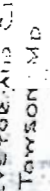


EXHIBIT 1

PROPERTY SURVEYED IN ALL PARTS OF THE
MEASUREMENT OF EXCAVATIONS AND EMBANKMENTS,
Laying out and development of suburban properties.

PLANS AND SPECIFICATIONS FOR CONSTRUCTION OF ROADS,
MEASUREMENT, BRICK WORK AND MASONRY,
LAYING OUT BASEBALL FIELDS, TENNIS COURTS, RACE TRACKS, ETC.

MILTON GREEN

BENJAMIN C. GREEN

(SUCCESSORS TO CHARLES B. McCLEAN)

SURVEYORS AND CIVIL ENGINEERS

3 PIPER BUILDING

TELEPHONE: RESIDENCE 125-R
OFFICE 209

TOWSON, MD. April 15 1918 191

Lot No. 1

Beginning for the same in the centre of York Road at the
end of the first line of the land which by a deed dated July 15 1891
and recorded among the land records of Baltimore County in liber J.W.S.
No. 188 folio 38 ect, was conveyed by Milton W. Offutt et, al to Charles
E. Thomas and running thence bounding on the centre of the York Road
North 20 Degrees 8 minutes East 122.50 feet to a point in line with the
centre of a road 12 feet wide laid out through the whole tract of land
of which the herein described lot is a part, thence bounding on the centre
of said 12 feet road South 64 degrees 2 minutes East 100 feet to a point
line with the hedge marking the division line between the lot now being
described and the lot adjoining on the east, thence South 24 degrees
48 minutes west to said centre of said hedge and continuing the same
thence bounding on the centre thereof in all 123 feet to intersect the
aforesaid first line and thence bounding thereof North 63 degrees 15
minutes West 90 feet to the place of beginning.

C.B.A.

P.G. EXH.

NO 4

PROPERTY SURVEYED IN ALL PARTS OF THE C
MEASUREMENT OF EXCAVATIONS AND EMBANKMENTS.
LAYING OUT AND DEVELOPMENT OF SUBURBAN PROPERTIES.

PLANS AND ELEVATIONS FOR CONSTRUCTION OF ROADS.
MEASUREMENT OF BRICK WORK AND MASONRY.
LAYING OUT BASEBALL FIELDS, TENNIS COURTS, RACE TRACKS, ETC.

J. MILTON GREEN

BENJAMIN C. GREEN

(SUCCESSORS TO CHARLES B. MCCLEAN)

SURVEYORS AND CIVIL ENGINEERS

3 PIPER BUILDING

C. B. P. TELEPHONE } RESIDENCE 125-R
OFFICE 208

TOWSON, MD. April 15 1918

Lot No 2

Beginning for the same in the centre of a road 12 feet wide running through the whole tract of land of which the herein described lot is a part, at the distance of 100 feet South 64 degrees 2 minutes East from the centre of the York Road, said place of beginning being on a line with the centre of the hedge marking the division line between the lot of ground now being described and the lot of ground adjoining on the west and running thence bounding on the centre of said road 12 feet wide South 64 degrees 2 minutes East 85.30 feet to a point in line with the centre of the hedge marking the division line between lot of ground now being described and the lot of ground adjoining on the East thence South 28 degrees 28 minutes West to and bounding on the centre of said hedge and continuing the same course in all 123.80 feet to intersect the first line of the land which by a deed dated July 15 1891 and recorded among the land records of Baltimore County in liber J.W.S. No. 188 folio 38 ect, was conveyed by Milton W. Offutt et, al, to Charles F. Thomas, thence bounding on the said first line North 63 degrees 15 minutes West 62 feet to the centre of the hedge first above mentioned and thence bounding thereon North 24 degrees 46 minutes East 123 feet to the place of beginning.

PROPERTY SURVEYED IN ALL PARTS OF THE
MEASUREMENT, EXCAVATIONS AND EMBANKMENTS.
LAYING OUT DEVELOPMENT OF SUBURBAN PROPERTIES.

PLANS AND ESTATES FOR CONSTRUCTION OF ROADS.
MEASUREMENT OF BRICK WORK AND MASONRY.
LAYING OUT BASEBALL FIELDS, TENNIS COURTS, RACE TRACKS, ETC.

J. MILTON GREEN

BENJAMIN C. GREEN

(SUCCESSORS TO CHARLES B. McCLEAN)

SURVEYORS AND CIVIL ENGINEERS

3 PIPER BUILDING

U. S. P. TELEPHONE RESIDENCE 120-N
OFFICE 200

April 15 1918

TOWSON, MD. 191
Lot No. 3 Beginning for the same in the centre

of a road 12 feet wide running the through the whole tract of land of which the herein described lot is a part and at the distance of 185.30 feet South 84 degrees 2 minutes East from the centre of the York Road, said place of beginning being in a line with the centre of the hedge marking the division line between the lot now being described and the lot adjoining on the West and running thence bounding on the centre of said road 12 feet wide, the three following courses and distances viz. South 55 degrees 38 minutes East 34.80 feet, South 18 degrees 41 minutes East 52.20 feet, and South 63 degrees 38 minutes East 42.30 feet to a point in a line with and 10 feet westerly from the west side of the stable on the aforesaid whole tract, thence South 25 degrees 52 minutes West ~~82.10~~ parallel with and 10 feet westerly from the west side of the aforesaid stable 82.10 feet to intersect the first line of the land which by a deed dated July 15 1891 and recorded in the land records of Baltimore County in liber J.W.S. No. 188 folio 38 not, was conveyed by Milton W. Offutt et al, to Charles E. Thomas as bounding on said first line North 63 degrees 15 minutes West 113 feet to the centre of the aforesaid hedge and thence bounding thereon North degrees 28 minutes East 123.80 feet to the place of beginning.

PROPERTY SURVEYED, MEASUREMENTS OF THE
MEASUREMENTS OF BRICK WORK AND MASONRY.
LAYING OUT SUBDIVISIONS OF SUBURBAN PROPERTIES.

PLANS AND ESTATES FOR CONSTRUCTION OF ROADS.
MEASUREMENT OF BRICK WORK AND MASONRY.
LAYING OUT BASEBALL FIELDS, TENNIS-COURTS, RACE TRACKS, ETC.

J. MILTON GREEN

BENJAMIN C. GREEN

(SUCCESSORS TO CHARLES B. McCLEAN)

SURVEYORS AND CIVIL ENGINEERS

3 PIPER BUILDING

U. S. P. TELEPHONE 125-A
RESIDENCE 125-A
OFFICE 224

TOWSON, MD., April 15 1918 191

LOT NO. 4

Beginning for the same on the North West side of Cedar Avenue (formerly
1st Street East) at the beginning of the land which by a deed dated July
15 1891 and recorded among the land records of Baltimore County in Liber
C. & S. No. 188 folio 38 oct, was conveyed by Milton W. Offutt et al, to
Charles B. Greene and running thence bounding on the North West side of
Cedar Avenue North 44 degrees 45 minutes East 53.14 feet to the centre
of a road 12 feet wide laid out through the aforesaid land, thence bounding
on the centre of said road North 55 degrees 23 minutes East 116.58 feet
to a point in line with the hedge marking the outline of the herein described
lot of ground, thence bounding on said hedge South 48 degrees 54 minutes
East 54 feet to a fence there situate, thence South westerly bounding on
said fence 22.30 feet to intersect the first line of the land conveyed
to aforesaid and thence bounding reversely on said first line South 63
degrees 15 minutes East 119.70 feet to the place of beginning.

Subject however to the leaving open the road as now opened and
use through the above lot of ground, as the same is used in connection
with the aforesaid estate, as long as any one part of the whole tract of
land remains unsold.

, at which time said road is to be closed and the title
will become vested in the owner of the above described lot.

PROPERTY SURVEYED IN ALL PARTS OF THE U.
MEASUREMENT EXCAVATIONS AND EMBANKMENTS.
LAYING OUT DEVELOPMENT OF SUBURBAN PROPERTIES.

PLANS AND ELEVATIONS FOR CONSTRUCTION OF ROADS.
MEASUREMENT OF BRICK WORK AND MASONRY.
LAYING OUT BASEBALL FIELDS, TENNIS COURTS, RACE TRACKS, ETC.

J. MILTON GREEN**BENJAMIN C. GREEN**

(SUCCESSORS TO CHARLES B. McCLEAN)

SURVEYORS AND CIVIL ENGINEERS

3 PIPER BUILDING

C. & P. TELEPHONE

RESIDENCE 1257 R
OFFICE 188

TOWSON, MD. April 15 1898 191

LOT NO. 5

Beginning for the same on the northwest side of Cedar Avenue
(formerly Old York Road) and at the intersect of the aforesaid North West
side of Cedar Avenue with the centre of a road 12 feet wide and running thence
bounding on the centre of said road North 58 degrees 28 minutes West
centre
115.58 feet to a point in line with the hedge marking the outline of the
herein described lot, thence and bounding on the centre of said hedge
North 48 degrees 54 minutes East 65 feet to the centre of the hedge marking
the division line between the lot now being described and the lot adjoining
on the north, thence bounding on the centre of the last mentioned hedge
South 56 degrees 8 minutes East 112 feet to the North West side of Cedar
Avenue and thence bounding thereon South 44 degrees 45 minutes West
60.50 feet to the place of beginning.

With the use in common with others having a similar right thence
to the path five feet wide running along the west side of the second line
of the herein described lot.

PROPERTY SURVEYED IN ALL PARTS OF THE
MEASUREMENTS EXCAVATIONS AND EMBANKMENTS.
LAYING OUT DEVELOPMENT OF SUBURBAN PROPERTIES.

PLANS AND ESTATES FOR CONSTRUCTION OF ROADS.
MEASUREMENT OF BRICK WORK AND MASONRY.
LAYING OUT BASEBALL FIELDS, TENNIS COURTS, RACE TRACKS, ETC.

J. MILTON GREEN

BENJAMIN C. GREEN

(SUCCESSORS TO CHARLES B. MCCREARY)

SURVEYORS AND CIVIL ENGINEERS

3 PIPER BUILDING

C. & P. TELEPHONE: RESIDENCE 125-R
OFFICE 160

TOWSON, MD.

April 15, 1909

LOT NO. 8

Beginning for the same on the North West side of Cedar Avenue
(formerly Old York Road) and at the end of the third line of the land
which by a deed dated July 15 1891 and recorded among the land records
of Baltimore County in Liber J.W.S. No. 188 folio 38 et was conveyed by
Milton W. Offutt et. al. to Charles F. Thomas and running thence bounding
on the north west side of Cedar Avenue South 44 degrees 45 minutes West 2
61.75 feet to the centre of the hedge marking the division line between
the lot of ground now being described and the lot adjoining on the South
thence bounding on the centre of said hedge North 68 degrees 2 minutes
West 117.30 feet to the centre of another hedge marking the outline of the
herein described lot, thence bounding thereon North 45 degrees 4
minutes East 55.25 feet to intersect the aforesaid third line and thence
bounding thereon South 80 degrees 40 minutes East 118 feet to the
place of beginning.

Together with others having a similar right thereto the
path five feet wide running south westerly from the end of the second
line of the herein described lot to the road 12 feet wide laid out
through the land conveyed as aforesaid.

AMENDMENT TO RESTRICTIVE COVENANTS

THIS AMENDMENT TO RESTRICTIVE COVENANTS is made and executed this day of October, 1980, by and among THE EQUITABLE TRUST COMPANY, a Maryland corporation and EQUITABLE BANCORPORATION, a Maryland corporation, (sometimes hereinafter collectively referred to as "Owner"), CLARK F. MACKENZIE, individually and as General Partner of YORK DALE LIMITED PARTNERSHIP, a Maryland Limited Partnership (sometimes hereinafter referred to as "Developer") and THE TOWSON MANOR ASSOCIATION, INC., a Maryland corporation and WILTON-DALE IMPROVEMENT ASSOCIATION, INC., a Maryland corporation, (hereinafter sometimes collectively referred to as "The Associations").

EXPLANATORY STATEMENT

By Deed dated September 19, 1972 and recorded among the Land Records of Baltimore County in Liber E.H.K. JR., 5302, Folio 339, The Maryland Title Guarantee Company purchased, for and on behalf of Owners, certain lots of ground situate on the southeast corner of York Road and Hillside Avenue in the 9th Election District of Baltimore County, which property is fully described in said Deed and hereinafter referred to as "subject parcel".

By virtue of a Bill of Complaint filed by the Associations and several individual members thereof against Owners and Maryland Title Guarantee Company, which resulted in the decision and opinion of the Maryland Court of Special Appeals entitled Equitable Trust Company, et al vs. The Towson Manor Association, Inc., et al, etc., Case No. 702, September Term 1974, decided July 3, 1975, which case is reported in 27 Md. App. 420, certain restrictive covenants, affecting the subject parcel have been created and given full force and effect, by virtue of the aforesaid appellate opinion, to run with the land and in accordance with the terms thereof. These covenants are set out in detail in the letter from F.E. Chippendale to The Towson Manor Association, Inc., dated March 17, 1971, which letter is recorded verbatim in the aforesaid appellate opinion, commencing at page 424, and in the Equity case files of the Circuit Court for Baltimore County, Case No. 77360, Docket 100, Folio 24.

By this Amendment to the restrictive covenants, the parties intend to reaffirm the aforesaid covenants except as amended herein.

TRANSFER TAX NOT REQUIRED
RANDOLPH S. ROSENKRANTZ
DIRECTOR OF FINANCE
BALTIMORE COUNTY, MARYLAND

Per _____
AUTHORIZED SIGNATURE

CBA
RET. EXH
NO. 5

Developer has entered into a contract with Owners for the purchase of the subject property and intends to take title thereto and develop it with office buildings. Owner, Developer and the Associations intend that the restrictive covenants hereinabove referred to, as amended and modified herein, shall run with the land and be binding upon Owner and Developer, his and their heirs, personal representatives, successors and assigns.

By vote of the membership of The Towson Manor Improvement Association, Inc., duly convened and held on September 26, 1980, the President of that Association has been authorized to execute this Amendment and bind the said Association hereto; by vote of the membership of The Wiltondale Improvement Association, Inc., duly convened and held on October 1, 1980, the President of that Association has been authorized to execute this Amendment and bind the said Association hereto.

NOW, THEREFORE, the parties hereto agree to the following Amendments to the Restrictive Covenants created by the Maryland Court of Special Appeals decision entitled Equitable Trust Company et al vs. The Towson Manor Association, Inc., et al, etc., 27 Md. App. 420:

1. Paragraph (1) is amended to read as follows:

The subject parcel is intended to be improved with office buildings, not to exceed four (4) in number, (including the existing stone building located at the northwest corner of the subject parcel), and any construction thereupon shall be developed in substantial accordance with the site plan prepared by Lapicki/Smith Assoc., revised September 22, 1980, a copy of which is attached hereto, marked Exhibit "A" and considered part hereof. Access to the subject parcel will be limited to one entrance along Terrace Dale Avenue and one entrance along Hillside Avenue, both of which shall be substantially at those locations and substantially with those orientations shown and designated on Exhibit "A".

2. Paragraph (2) is amended to read as follows:

The buildings constructed on the subject parcel shall be occupied as offices in accordance with the uses per-

mitted or provided for in the 0-1 office zone as that zone is further defined and delineated in the Baltimore County Zoning Regulations. All other uses permitted, from time to time, within the said 0-1 Zone shall be permitted within the office buildings to be constructed.

3. The following covenants are hereby added:

A. The existing stone building located at the northwest corner of the subject parcel may be renovated and occupied for office use, provided such renovation is possible without any expansion of the ground area occupied by, or square footage of, the existing building. In the event said stone building is not renovated within one (1) year of the commencement of construction, it shall be razed and no new structure shall be constructed in its place.

B. All parking areas located along and adjacent to the Cedar Avenue portion of the subject parcel as shown on attached Exhibit "A", will be landscaped and open space provided and maintained, as shown on said site plan.

C. These Amendments, but not the original Restrictive Covenants, shall become null and void if, prior to the construction of the improvements shown on the site plan, either of the following should occur:

1. The subject parcel is re-classified to a zone other than 0-1, provided said re-classification is not petitioned by Owner or Developer.
2. The Baltimore County Zoning Regulations pertaining to 0-1 zones are amended to create provisions in conflict with these amendments.

After construction of the improvements, this paragraph C shall become null and void.

4. As to all other terms, provisions and conditions, not in conflict with these amendments, the Restrictive Covenants, hereinabove referred to, are fully ratified and affirmed.

5. These Amendments or the original Restrictive Covenants shall not be further amended unless in writing, executed by the entity then in title to the subject parcel and the Associations.

IN WITNESS WHEREOF, the parties hereto have executed
this Amendment to Restrictive Covenants the day and year first
above written.

WITNESS:

William G. McChary

THE EQUITABLE TRUST COMPANY

BY: H. Grant Hathaway
H. Grant Hathaway, Chairman

William G. McChary

THE EQUITABLE BANCORPORATION

BY: H. Grant Hathaway
H. Grant Hathaway, President

Clark F. Mackenzie

Clark F. Mackenzie
CLARK F. MACKENZIE

Clark F. Mackenzie

YORK DALE LIMITED PARTNERSHIP

BY: Clark F. Mackenzie
CLARK F. MACKENZIE,

GENERAL PARTNER

Carl Bruff

TOWSON MANOR ASSOCIATION, INC.

BY: Carl Bruff
CARL BRUFF, PRESIDENT

Robert C. Pulver

WILTONDALE IMPROVEMENT ASSOCIATION,
INC.

BY: Robert C. Pulver
ROBERT C. PULVER, PRESIDENT

STATE OF MARYLAND, City OF BALTIMORE, to wit:

I HEREBY CERTIFY that on this 9th day of October, 1980, before me, the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore, personally appeared Charles Mackenzie of THE EQUITABLE TRUST COMPANY, who acknowledged himself to be the Chairman of THE EQUITABLE TRUST COMPANY, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the Corporation by himself as

AS WITNESS my hand and Notarial Seal.


Charles Mackenzie
 Notary Public

My Commission Expires:

7/1/82STATE OF MARYLAND, City OF BALTIMORE, to wit:

I HEREBY CERTIFY that on this 9th day of October, 1980, before me, the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore, personally appeared Charles Mackenzie of THE EQUITABLE BANCORPORATION, who acknowledged himself to be the President of THE EQUITABLE BANCORPORATION, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the Corporation by himself as

AS WITNESS my hand and Notarial Seal.


Charles Mackenzie
 Notary Public

My Commission Expires:

7/1/82STATE OF MARYLAND, City OF BALTIMORE, to wit:

I HEREBY CERTIFY, that on this 10th day of October, 1980, before me, the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore personally appeared CLARK F. MACKENZIE who acknowledged himself to be the person whose name is subscribed to the within instrument, and executed the same for the purposes therein contained.

AS WITNESS my hand and Notarial Seal.


Charles Mackenzie
 Notary Public

My Commission Expires:

July 1, 1982

STATE OF MARYLAND, City OF BALTIMORE, to wit:

I HEREBY CERTIFY that on this 10th day of October, 1980, before me, the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore, personally appeared CLARK F. MACKENZIE, General Partner of YORK DALE LIMITED PARTNERSHIP, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the Corporation by himself as General Partner.

Sarah D. Hurley
Notary Public

My Commission Expires:

July 1, 1982

STATE OF MARYLAND, County OF BALTIMORE, to wit:

I HEREBY CERTIFY that on this 1st day of October, 1980, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County of Baltimore, personally appeared CARL BRUFF, who acknowledged himself to be the President of TOWSON MANOR ASSOCIATION, INC., and that he, as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the Corporation by himself as President.

AS WITNESS my hand and Notarial Seal.

Carol A. Buckley
Notary Public

My Commission Expires:

July 1, 1982

STATE OF MARYLAND, OF BALTIMORE, to wit:

I HEREBY CERTIFY that on this _____ day of October, 1980, before me, the subscriber, a Notary Public of the State of Maryland, in and for the _____ of Baltimore, personally appeared ROBERT C. PULYER who acknowledged himself to be the President of WILTONDALE IMPROVEMENT ASSOCIATION, INC., and that he, as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the Corporation by himself as President.

AS WITNESS my hand and Notarial Seal.

Notary Public

My Commission Expires:

The undersigned, being the individual Plaintiffs in the hereinabove referenced appellate decision, or successors in title to any such Plaintiffs who have since conveyed, hereby execute and acknowledge this Amendment to Restrictive Covenants for the purpose of evidencing their individual agreements thereto:

WITNESS:

[Handwritten signature: Lillian Laird]
[Handwritten signature: Dorothy Greenwood]
[Handwritten signature: Claude W. Todd, Jr.]
[Handwritten signature: Margaret Todd]

Robert J. Laird

Lillian Laird, his wife
 520 Yarmouth Road
 Baltimore, Maryland 21204

[Handwritten signature: Burton E. Greenwood]
 Burton E. Greenwood

[Handwritten signature: Dorothy Greenwood]
 Dorothy Greenwood, his wife
 608 Wilton Road
 Baltimore, Maryland 21204

[Handwritten signature: Claude W. Todd, Jr.]
 Claude W. Todd, Jr.

[Handwritten signature: Margaret Todd]
 Margaret Todd, his wife
 628 Yarmouth Road
 Baltimore, Maryland 21204

[Handwritten signature: Carl E. Bruff]

Carl E. Bruff

[Handwritten signature: Mary Carol Bruff]

[Handwritten signature: Mary Carol Bruff]
 Mary Carol Bruff, his wife
 15 Hillside Avenue
 Baltimore, Maryland 21204

[Handwritten signature: Joe Carroll Bradley]

[Handwritten signature: Joe Carroll Bradley]
 Joe Carroll Bradley

[Handwritten signature: Nelle B. Bradley]

[Handwritten signature: Nelle B. Bradley]
 Nelle B. Bradley, his wife
 19 Hillside Avenue
 Towson, Maryland 21204

WITNESS:

Angela & Buckley
Angela & Buckley

Luther H. Immeler, III
 Luther H. Immeler, III
Margaret J. Immeler, III
 Margaret J. Immeler, III
 34 Cedar Avenue
 Towson, Maryland 21204, Successor
 in title to Thomas F. Mullen and
 Anita C. Mullen, his wife

STATE OF MARYLAND,

OF BALTIMORE, to wit:

I HEREBY CERTIFY that on this day of October, 1980,
 before me, the subscriber, a Notary Public of the State of Mary-
 land, of Baltimore, personally appeared ROBERT J. LAIRD
 and LILIAN LAIRD, his wife, being authorized to do so, executed
 the foregoing instrument for the purposes herein contained and
 acknowledged the same to be their act and deed.

NOTARY AS WITNESS my hand and Notarial Seal.

My Commission Expires:

Notary Public

STATE OF MARYLAND,

OF BALTIMORE, to wit:

I HEREBY CERTIFY that on this day of October, 1980,
 before me, the subscriber, a Notary Public of the State of Mary-
 land, of Baltimore, personally appeared BURTON E. GREENWOOD
 and DOROTHY GREENWOOD, his wife, being authorized to do so, executed
 the foregoing instrument for the purposes herein contained and
 acknowledged the same to be their act and deed.

NOTARY AS WITNESS my hand and Notarial Seal.

My Commission Expires:

Notary Public

STATE OF MARYLAND,

OF BALTIMORE, to wit:

I HEREBY CERTIFY that on this day of October, 1980,
 before me, the subscriber, a Notary Public of the State of Mary-
 land, of Baltimore, personally appeared CLAUDE W. TODD, JR.,
 and MARGARET TODD, his wife, being authorized to do so, executed
 the foregoing instrument for the purposes herein contained and
 acknowledged the same to be their act and deed.

NOTARY AS WITNESS my hand and Notarial Seal.

My Commission Expires:

Notary Public

STATE OF MARYLAND, *County* OF BALTIMORE, to wit:

I HEREBY CERTIFY that on this *14th* day of October, 1980, before me, the subscriber, a Notary Public of the State of Maryland, *County* of Baltimore, personally appeared CARL E. BRUFF and MARY CAROL BRUFF, his wife, being authorized to do so, executed the foregoing instrument for the purposes herein contained and acknowledged the same to be their act and deed.

AS WITNESS my hand and Notarial Seal.

Angela V. Buckley
Notary Public

My Commission Expires:

July 1, 1982

STATE OF MARYLAND, *County* OF BALTIMORE, to wit:

I HEREBY CERTIFY that on this *14th* day of October, 1980, before me, the subscriber, a Notary Public of the State of Maryland, *County* of Baltimore, personally appeared JOE CARROLL BRADLEY and NELLE B. BRADLEY, his wife, being authorized to do so, executed the foregoing instrument for the purposes herein contained and acknowledged the same to be their act and deed.

AS WITNESS my hand and Notarial Seal.

Angela V. Buckley
Notary Public

My Commission Expires:

July 1, 1982

STATE OF MARYLAND, *County* OF BALTIMORE, to wit:

I HEREBY CERTIFY that on this *14th* day of October, 1980, before me, the subscriber, a Notary Public of the State of Maryland, *County* of Baltimore, personally appeared LUTHER H. IMMLER, III and MARGARET J. IMMLER, III, Successor in title to Thomas F. Mullen and Anita C. Mullen, his wife, being authorized to do so, executed the foregoing instrument for the purposes herein contained and acknowledged the same to be their act and deed.

AS WITNESS my hand and Notarial Seal.

Angela V. Buckley
Notary Public

My Commission Expires:

July 1, 1982

Rec'd for record SEP 16 1981 at *934*
Per Elmer H. Kahline, Jr., Clerk
Mail to *Whitney Mendel, et al.*
Receipt No. *3300*

1-143

Application No. H-77649
Written By: CSC/djt

THIS DEED, Made this 19th day of September, in the year one thousand nine hundred and seventy-two, by and between ESSEXDALE CORPORATION, a body corporate of the State of Maryland, party of the first part, Grantor; and THE MARYLAND TITLE GUARANTEE COMPANY, a body corporate of the State of Maryland, party of the second part, Grantee.

WITNESSETH: that in consideration of the sum of Five Dollars (\$5.00), and other valuable considerations, the receipt whereof is hereby acknowledged, the said party of the first part does hereby grant and convey unto the said party of the second part, its successors and assigns, in fee simple, all those four (4) lots of ground situate in the Ninth Election District of Baltimore County, State of Maryland, and described as follows, that is to say:-

BEGINNING FOR THE FIRST thereof at a point on the southeast side of York Road, formerly Baltimore and York Turnpike Road, at the end of the south 18 degrees 09 minutes west 364.4 foot line of that lot of ground which by Deed dated March 18, 1911 and recorded among the Land Records of Baltimore County in Liber W.P.C. No. 377, folio 37, was conveyed by The Maryland Real Estate Company of Baltimore City to John J. Milligan, et al, said point being at the north corner of the land belonging to John L. Wagner, and running thence, binding on Wagner's Land, south 99 degrees 54 minutes east 554.5 feet to the northwest side of Cedar Avenue, as now located 30 feet wide, thence binding on the northwest side of said Avenue, north 56 degrees 52 minutes east 203 feet to the south side of Hillside Avenue, thence by a line curving to the northwest, binding on the south side of the aforesaid Avenue, for a distance of 308 feet to the end of said curve, thence north 73 degrees 34 minutes west 385 feet, more or less, to the southeast side of York Road, and thence binding on the southeast side of York Road, south 18 degrees 9 minutes west 129.9 feet to the place of beginning. **CONTAINING** 2.62 acres of land, more or less.

BEGINNING FOR THE SECOND thereof at a point on the west side of Cedar Avenue, formerly Old York Road, at a distance of 11 perches from the place of beginning of the whole tract of land described in a Deed dated April 18, 1870 and recorded among the Land Records of Baltimore County in Liber E.H.A. No. 66, folio 80, from John H. Butler and wife to Joseph B. Mitchell, being the end of the third or dividing line in a Lease from Margaret Smith to Ida V. Mitchell, dated December 19, 1882 and recorded among the aforesaid Land Records in Liber W.M.I. No. 132, folio 322, and running thence with said line, north 65-1/2 degrees west 30.8 perches to the center of York Road, formerly York Turnpike Road, thence binding on the center of said York Road, north 15 degrees east 12 perches, thence south 63 degrees east 36 perches to Cedar Avenue and to intersect the fourth line of the whole tract of land conveyed as aforesaid by John H. Butler and wife to Joseph B. Mitchell and running with and binding on the same, south 40 degrees west 12 perches to the place of beginning. **CONTAINING** about 2 acres of land.

SAVING AND EXCEPTING therefrom all that portion thereof which by Deed dated October 16, 1915 and recorded among the Land Records of Baltimore County in Liber W.P.C. No. 452, folio 340, was granted and conveyed by John L. Wagner and wife to Walter D. Hess and wife, which said portion is described as follows:-

WALTER D. HESS (as grantor)
Walter D. Hess

John L. Wagner
Authorizing Agent

Filed on: October 6/69

OBA
PET. EXH
No. 6

T-182

BEGINNING for the same at a point on the northwest side of Cedar Avenue formerly called Old York Road, which place of beginning is designed to be at the beginning of the land described in the Deed from Margaret Sanderson to John L. Wagner, dated February 9, 1899 and recorded among the Land Records of Baltimore County in Liber N.B.M. No. 239, folio 83; etc., and running thence binding on part of the first line of said land, as now surveyed, north 62-1/4 degrees west 172 feet; thence for division, north 27-1/4 degrees east 181 feet 9 inches to intersect the third line of the land conveyed to John L. Wagner, as aforesaid; thence binding on part of said line, as now surveyed, and along the fence there situate, south 60 degrees east 224 feet 6 inches to the northwest side of Cedar Avenue; and thence binding on the northwest side of Cedar Avenue, south 44-1/4 degrees west 180 feet to the place of beginning.

BEGINNING FOR THE THIRD thereof at the intersection of the center line of York Road with the center of an avenue, 12 feet wide, and running thence, binding on the center of York Road, north 20 degrees east 75.5 feet to the division line between the property now being described and that adjoining on the north, formerly owned by Towson Nurseries, Incorporated and now owned by The Baltimore Life Insurance Company, thence binding on said division line, south 60 degrees 40 minutes east 241 feet to the land which by Deed dated August 2, 1934 and recorded among the Land Records of Baltimore County in Liber C.W.B., JR. No. 936, folio 361, was conveyed by V. Merryman Thomas, et al, to The Terrace Dale Company, Incorporated, thence binding on said line, the two following courses and distances: south 27-1/2 degrees west 53.75 feet and south 82-1/2 degrees west 28.6 feet to the center of the aforesaid road 12 feet wide, thence binding on said center of said road, the three following courses and distances, north 18 degrees 41 minutes west 5.1 feet, north 55 degrees 36 minutes west 34.5 feet and north 64 degrees 02 minutes west 165.3 feet to the place of beginning.

BEGINNING FOR THE FOURTH thereof at a pipe heretofore planted at the northwest corner of the land which by Deed dated June 3, 1918 and recorded among the Land Records of Baltimore County in Liber W.P.C. No. 499, folio 221, was granted and conveyed by B. Marvin Thomas, et al, Trustees, to Edna A. Green, and running thence, binding on the northernmost outline of the firstly described lot of ground which by Deed dated October 28, 1929 and recorded among the aforesaid Land Records in Liber L.M.L. No. 833, folio 412, was conveyed by B. Marvin Thomas, et al, Trustees, to Bessie J. Konney, et al, north 60 degrees 40 minutes west 156 feet to an iron pipe now planted, thence running for lines of division now made, south 27-1/2 degrees west 53.75 feet to an iron pipe, thence south 82-1/2 degrees west, passing over an iron pipe near the northernmost side of a road 12 feet wide heretofore laid out and continuing the same course, in all, 28.60 feet to the center of said 12 foot road, thence binding on the center of said road, the three following courses and distances: south 18 degrees 41 minutes east 47.10 feet, south 63 degrees 38 minutes east 62.80 feet and south 47 degrees 16 minutes east 54 feet to the southwest corner of the land which by Deed dated June 3, 1918 and recorded among the aforesaid Land Records in Liber W.P.C. No. 499, folio 218, was conveyed by B. Marvin Thomas, et al, Trustees, to Virginia M. Thomas, thence binding on the southernmost side of said lot, north 48 degrees 54 minutes east 55 feet to an iron pipe heretofore planted, thence binding on land heretofore conveyed by B. Marvin Thomas, et al, Trustees, to Edna A. Green, the two following courses and distances, viz: north 58 degrees 02 minutes west 5.30 feet to an iron pipe heretofore planted and north 45 degrees 04 minutes east 55.30 feet to the place of beginning.

SUBJECT, HOWEVER, to leaving open a strip of land 5 feet wide along the westernmost outline of the land conveyed as aforesaid by B. Marvin Thomas, et al, Trustees, to Virginia M. Thomas, as a means of ingress and egress for the use of the owners and occupiers of the lots conveyed as aforesaid unto Virginia M. Thomas and Edna A. Green, and with the easement to the land hereinabove described, for the purpose of ingress and egress by pedestrians and vehicular traffic and for the purpose of storm water drainage and underground sewerage drainage and for gas and water and electric over, upon, in and under all the

T-102

roadways, as now used, laid out and constructed leading from the property hereinabove described to the York Road and with like easements over, in, to and under the road, as now laid out, constructed and used leading from the property hereinabove described to Cedar Avenue.

ALSO with the right to use all water pipes, gas pipes and electric lines, sewerage, pipes, and all other utilities as they now exist for the benefit of the property hereinabove described.

BEING the same lots of ground which by Deed dated November 7, 1960 and recorded among the Land Records of Baltimore County in Liber W.J.R. No. 3779, folio 90, was granted and conveyed by The Baltimore Life Insurance Company to the said Yorkdale Corporation, Grantor herein.

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

TO HAVE AND TO HOLD the above described lots of ground and premises, unto and to the use of the said party of the second part, its successors and assigns, in fee simple, forever.

AND the said party of the first part, Grantor covenants that it will warrant specially the property hereby granted and conveyed, and that it will execute such further assurances of said land as may be requisite.

IN TESTIMONY WHEREOF, the said Grantor has caused its corporate seal to be hereto affixed and its Vice-President to set his hand hereto.

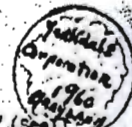
WITNESS:

B. L. Treadwell
B. L. TREADWELL

0561572** 21-12-83
0561572** 21-12-83

YORKDALE CORPORATION

BY: *Ellsworth H. Steinberg*
ELLSWORTH H. STEINBERG, President



STATE OF MARYLAND, Baltimore City TO WIT:

I HEREBY CERTIFY, that on this 19th day of September 1972, before me, the subscriber, a Notary Public of the State aforesaid, personally appeared ELLSWORTH H. STEINBERG, who acknowledged himself to be the Vice-President of the said YORKDALE CORPORATION, and that he, as such Vice-President, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing, in my presence, the name of the said corporation by himself as Vice-President.

WITNESS my hand and Notarial Seal.

056***** 20829982
056***** 20829982



B. L. TREADWELL

Notary Public

My commission expires July 1, 1974

See'd for record SEP 21 1972 at 1:10 PM
By Riner E. Kahline, Jr., Clerk
Mail to THE TITLE GUARANTEE COMPANY
Receipt No. 9-50

PLAT TO ACCOMPANY PETITION FOR ZONING ☒ VARIANCE ☐ SPECIAL HEAR.

PROPERTY ADDRESS #7 TERRACE DALE

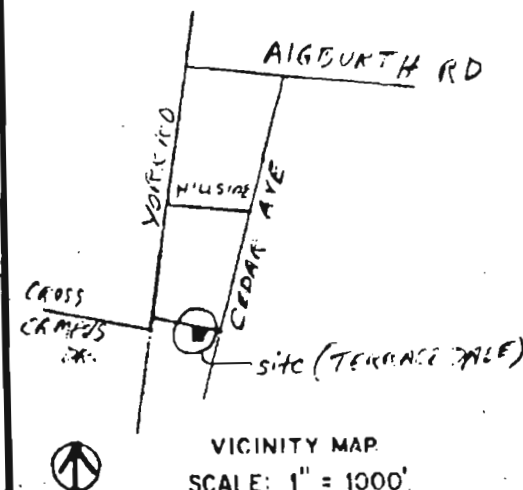
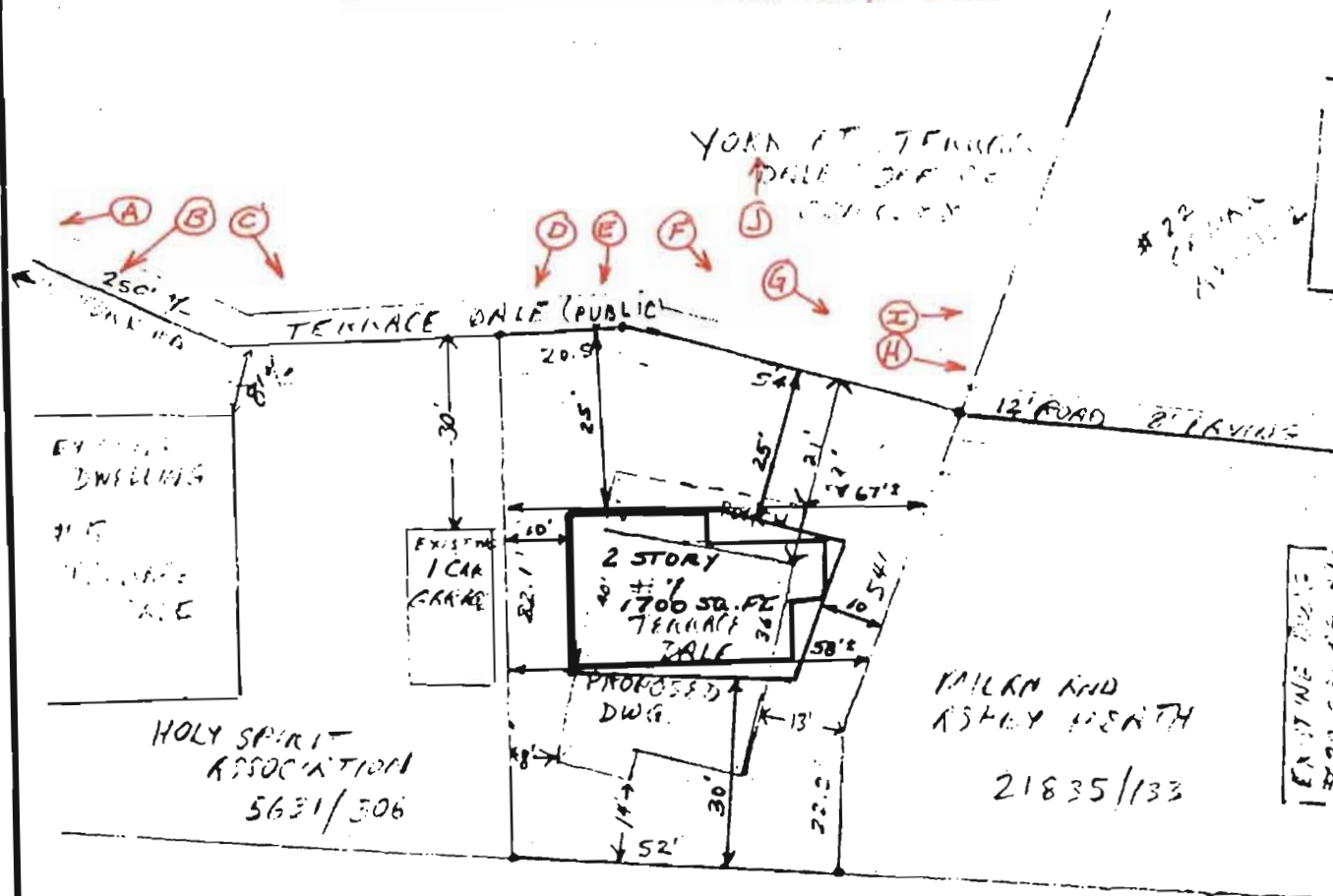
SEE PAGES 5 & 6 OF THE CHECKLIST FOR ADDITIONAL REQUIRED INFORMATION

SUBDIVISION NAME N/A

PLAT BOOK # FOLIO # LOT # SECTION #

OWNER HENRY PECK

PLAN TO ACCOMPANY PHOTOS



LOCATION INFORMATION

ELECTION DISTRICT 9

COUNCILMANIC DISTRICT 5

1" = 200' SCALE MAP # 070A3

ZONING D15.5

LOT SIZE 4,800

	ACREAGE	SQUARE FEET
SEWER	☒ PUBLIC	☐ PRIVATE
WATER	☒ PUBLIC	☐ PRIVATE

CHESAPEAKE BAY CRITICAL AREA ☐ YES ☒ NO

100 YEAR FLOOD PLAIN ☐ YES ☒ NO

HISTORIC PROPERTY/BUILDING ☐ YES ☒ NO

PRIOR ZONING HEARING n/a

ZONING OFFICE USE ONLY
REVIEWED BY ITEM # CASE #

PREPARED BY H. PECK

SCALE OF DRAWING: 1" = 30'

CPA. PET. EXH. NO. 7

NO
PARKING
ANY
TIME
↓

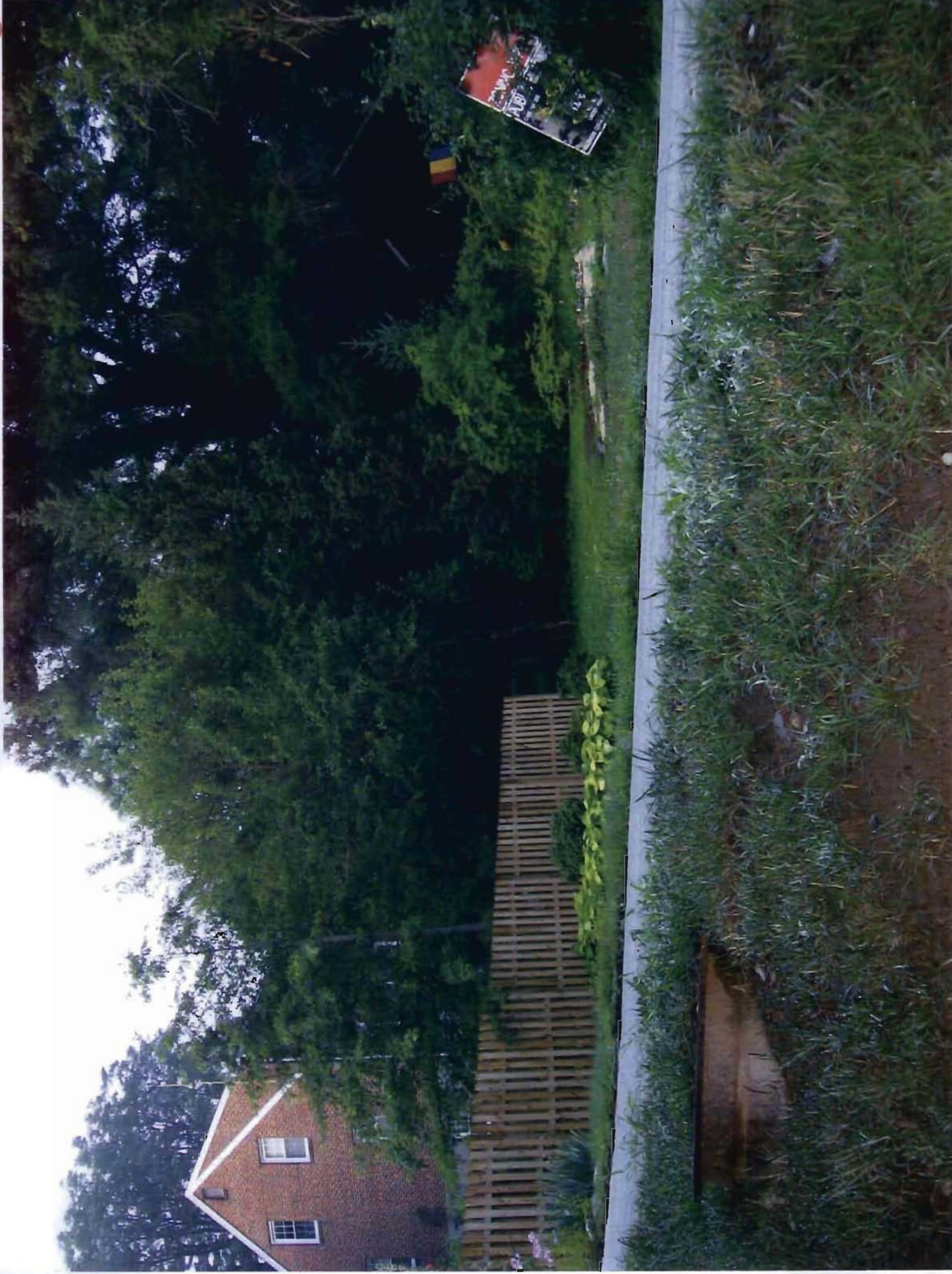




















PLAT TO ACCOMPANY PETITION FOR ZONING ☒ VARIANCE ☐ SPECIAL HEAR.

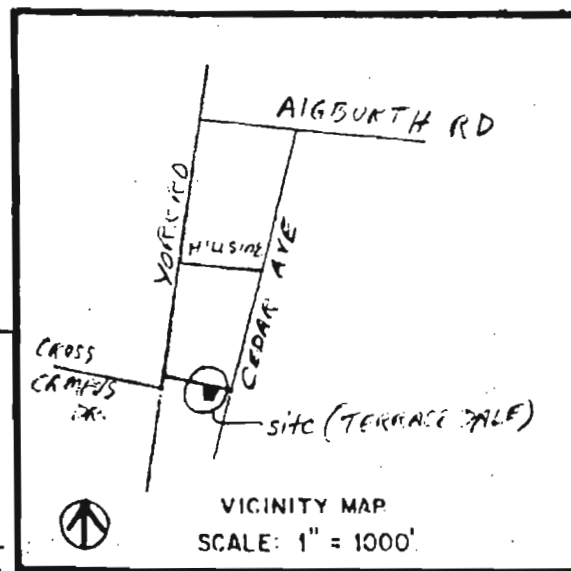
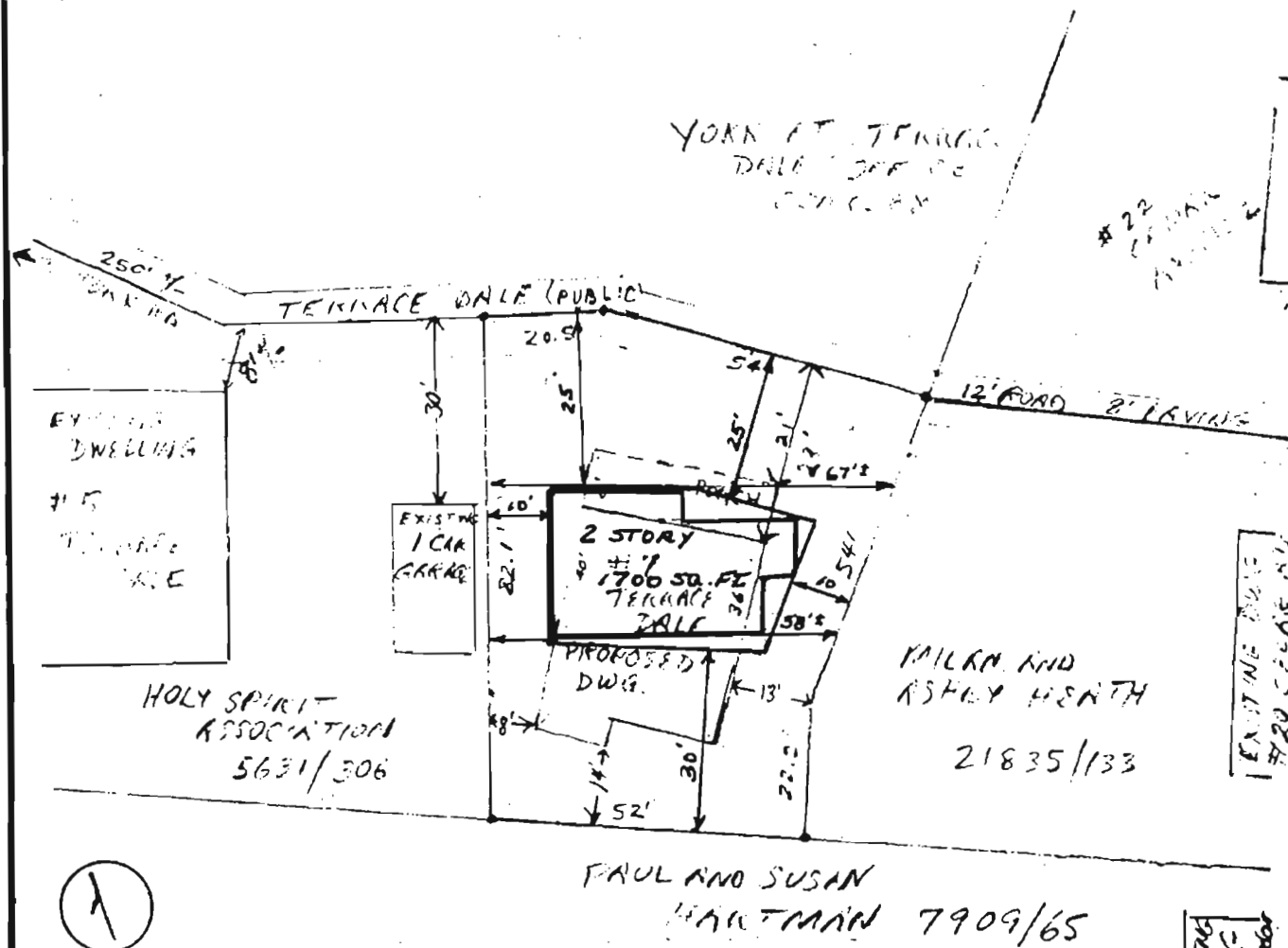
PROPERTY ADDRESS #7 TERRACE DALE

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

SUBDIVISION NAME N/A

PLAT BOOK # FOLIO # LOT # SECTION #

OWNER HENRY PECK



LOCATION INFORMATION

ELECTION DISTRICT 9
 COUNCILMANIC DISTRICT 5
 1" = 200' SCALE MAP # 070A3
 ZONING DR 5.5
 LOT SIZE — 4800
 ACRES ACREAGE SQUARE FEET
 SEWER PUBLIC ☒ PRIVATE ☐
 WATER ☒ ☐
 CHESAPEAKE BAY CRITICAL AREA YES ☐ NO ☒
 100 YEAR FLOOD PLAIN ☐ ☒
 HISTORIC PROPERTY/BUILDING ☐ ☐
 PRIOR ZONING HEARING n/a

ZONING OFFICE USE ONLY
 REVIEWED BY ITEM # CASE #

PREPARED BY H. PECK

SCALE OF DRAWING: 1" = 30'

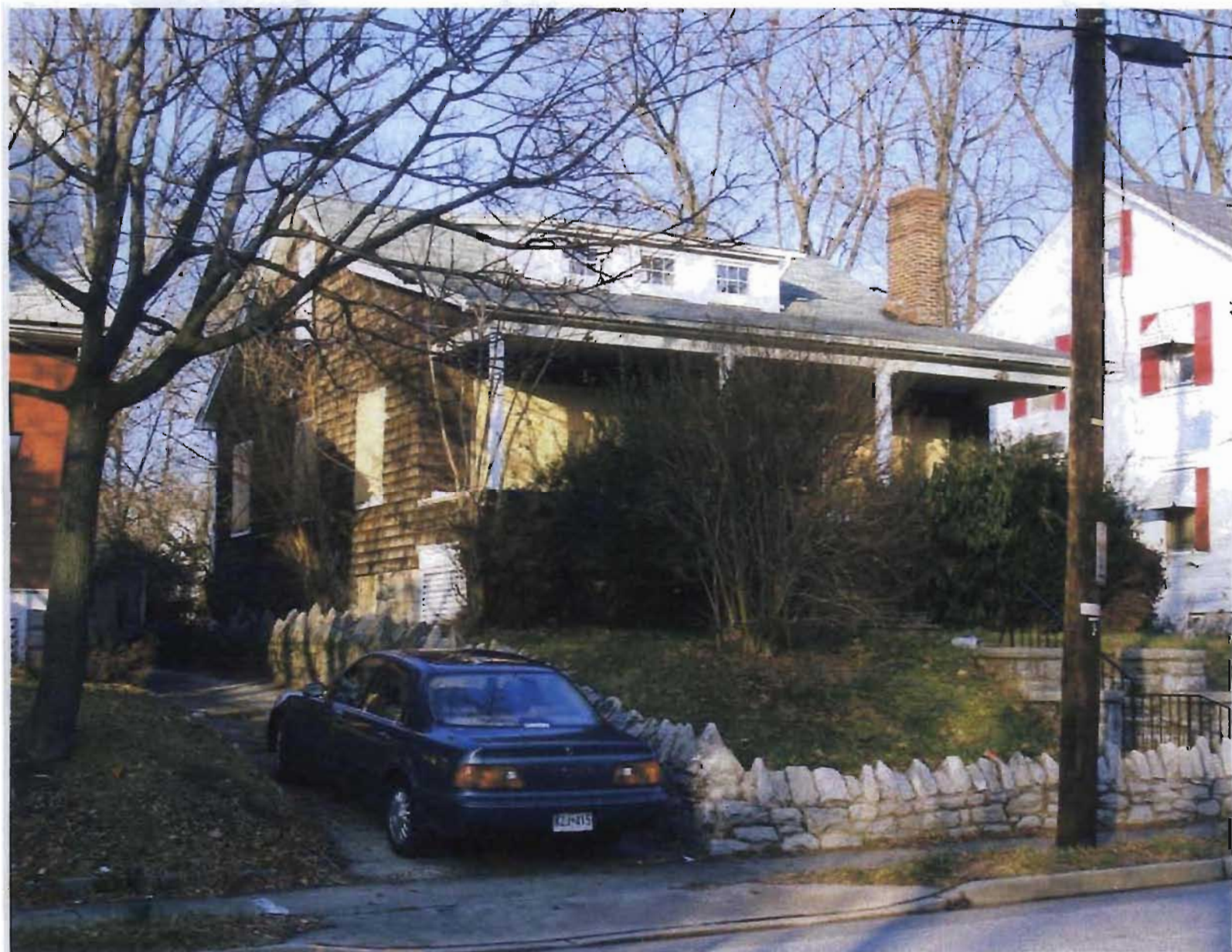
QBA. PET. EXH. NO. 9

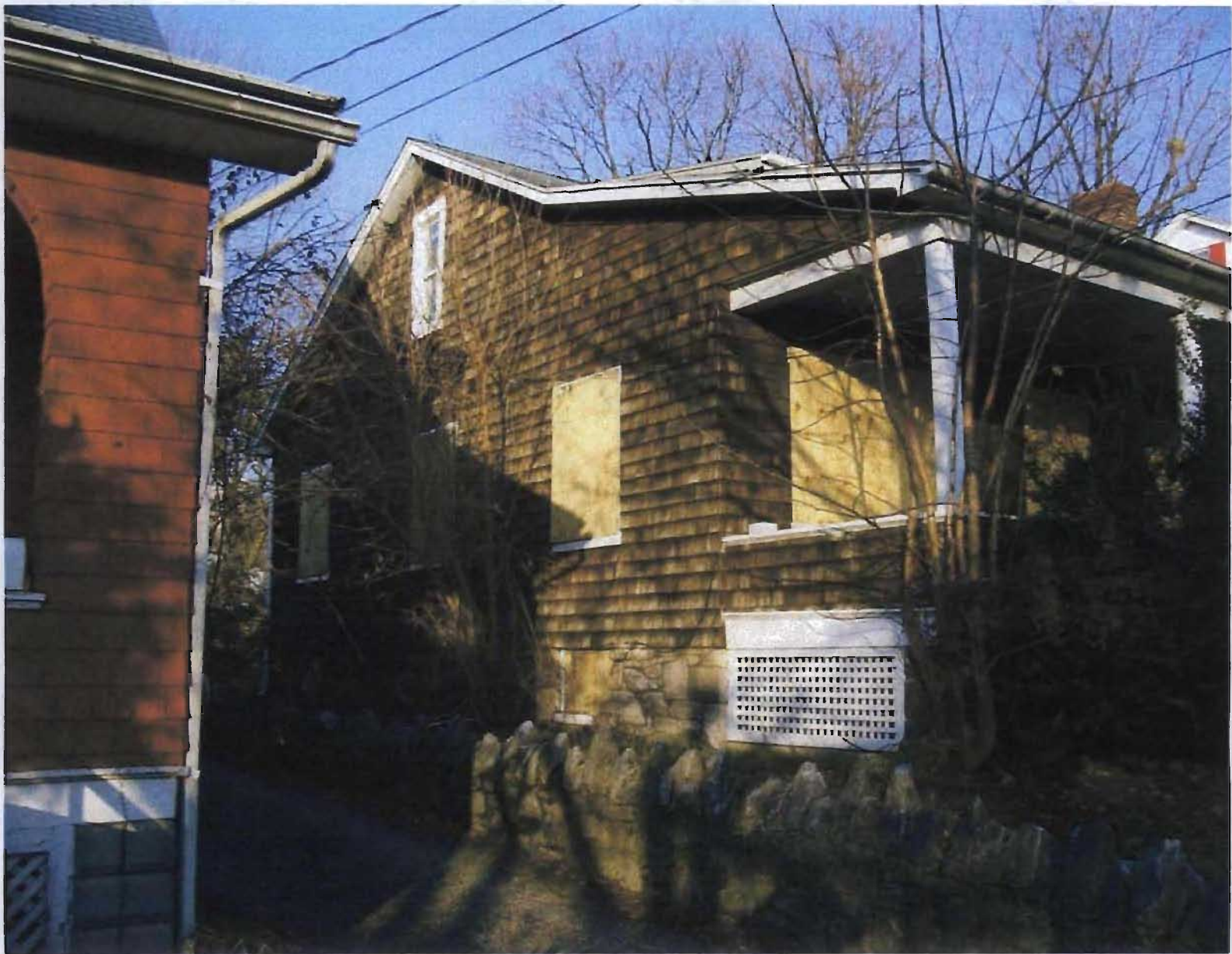
34 506 06-506-A



30 BURKE AVE

CBA
PET. EXH.
NO. 10









- ✓ 1. LIST OF NAMES AND ADDRESSES OF ~~B~~ PROTESTANTS
- ✓ 2. MD of A+T REAL PROPERTY SEARCH.
- ✓ 3. LETTER DATED 5/6/04 FROM MR. HENRY B. PARK, JR TO JOHN CARROLL WELLS, ESQ AND GEORGE S. INGALLS, ESQ.
- ✓ 4. LETTER DATED 7/22/04 TO SAME AS EXH. 3.
- ✓ 5. FILE ~~FILE~~ FROM ZONING HEARING.
- ✓ 6. TAPE FROM ZONING HEARING.
- ✓ 7. LETTER AND RESOLUTION FROM WILTONNAKE RE: ANDREW EVANS
- ✓ 8. FILE CONTAINING VARIOUS PHOTOS.
- ✓ 9. RULE 8 PAPERS FOR MR. HARTMAN.
- ✓ 10. VIDEO. TAPE
- ✓ 11. LETTER OF PROTEST - MARY MILES
- ✓ 12. LETTER OF PROTEST - MAUREEN HUNTER
- ✓ 13. LETTER OF PROTEST - ALICE HORAN
- ✓ 14. LETTER OF PROTEST - JOHN + FRANCES HOLMAN
- ✓ 15. LETTER OF PROTEST - VIRGINIA CARUTHERS
- ✓ 16. LETTER OF PROTEST - KAY S. HUNTER
- ✓ 17. LETTER OF PROTEST - ASHLEY HEATH.

Case # 06-586-A

- Protestants - 7/11/07

Paul Hartman	18 1/2 Cedar Ave	Towson 21286
Ashby Heath	20 Cedar Ave.	Towson 21286
Alice Horan	17 Cedar Ave	Towson 21286
ANDY EVANS	619 COUNTRY PLACE	" "
Mary H. Nicks	2 Cedar Ave	Towson 21286
Virginia Carruthers	24 Cedar Ave	Towson 21286
Ray Hunter	7 Cedar Ave	Towson 21286
Maurice Hunter	18 Cedar Ave.	Towson 21286
Robert McIntire	910 Wellington Rd.	Baltimore Co. 21212
Susan Hartman	18 1/2 Cedar Ave	Towson 21286
JOHN + FRAN HOLMAN	12 CEDAR AVE	TOWSON, 21286
JUDITH GIACOMO	17 AIGBORTH RD	TOWSON 21286

CBA

PROTESTANTS

EXIT NO. 1



Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search (2007b)

[Go Back](#)
[View Map](#)
[New Search](#)
[GroundRent](#)

Account Identifier: District - 09 **Account Number -** 1600001198

Owner Information

Owner Name: PECK HENRY B, JR **Use:** RESIDENTIAL
Principal Residence: NO
Mailing Address: 304 W PENNSYLVANIA AVE **Deed Reference:** 1) /23614/ 177
TOWSON MD 21204-4424 2)

Location & Structure Information

Premises Address **Legal Description**
7 TERRACE DALE AVE .70AC
7 TERRACE DALE AVE SS
400 E YORK RD

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
70	20	690						2	Plat Ref:

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

Primary Structure Built	Enclosed Area	Property Land Area	County Use
0000		3,500.00 SF	04

Stories **Basement** **Type** **Exterior**

Value Information

	Base Value	Value	Phase-in Assessments	
		As Of	As Of	As Of
		01/01/2005	07/01/2006	07/01/2007
Land	870	870		
Improvements:	0	0		
Total:	870	870	870	870
Preferential Land:	0	0	0	0

Transfer Information

Seller: PECK HENRY B, JR	Date: 03/31/2006	Price: \$0
Type: NOT ARMS-LENGTH	Deed1: /23614/ 177	Deed2:
Seller: THOMAS RAMSAY B, JR	Date: 08/18/2005	Price: \$0
Type: NOT ARMS-LENGTH	Deed1: /22929/ 408	Deed2: /22929/ 405
Seller: PECK HENRY B TRUSTEE	Date: 11/21/1994	Price: \$1
Type: NOT ARMS-LENGTH	Deed1: /15803/ 385	Deed2:

Exemption Information

Partial Exempt Assessments	Class	07/01/2006	07/01/2007
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:
* NONE *

CBA
PROT. EXA.
NO. 2

HAILE & PECK

Henry B. Peck, Jr.
David C. Haile

ATTORNEYS AT LAW
304 West Pennsylvania Avenue
Towson, Maryland 21204-4424
(410) 321-7037
FAX: (410) 938-2231

Walter R. Haile
Of Counsel

May 6, 2004

John Carroll Weiss, Jr., Esquire
100 East Melrose Avenue
Baltimore, Maryland 21212

George S. Ingalls, Esquire
305 West Chesapeake Avenue, Suite 100
Towson, Maryland 21204

RE: Estate of Charles E. Hunt

Gentlemen:

I understand that the two of you have been appointed Personal Representatives of the estate of Dr. Charles E. Hunt. Charles was a cousin of mine by marriage, his mother's second husband having been a brother of my maternal grandfather. Having done some minor legal work for Charles and his late mother, Elizabeth Hammarstrom, over the years, I wanted to write and share with you a few insights which may make your job as Personal Representatives a bit easier.

At the time of his death, Charles actually owned two houses on Cedar Avenue, Nos. 20 and 22. 20 Cedar Avenue, his residence, came to him via a life estate deed, in which his mother had a vested remainder interest. I suppose that property will now have to pass through her estate, which will have to be reopened in Baltimore County.

22 Cedar Avenue, which had essentially become Charles' personal mini-storage facility, was acquired by his mother after the death of her third husband, N. Walter Hammarstrom. As I recall, Elizabeth's Will left her entire estate to Charles, but Elizabeth's estate was administered without a Deed ever having been executed or recorded conveying 22 Cedar Avenue to Charles. I had mentioned this to Charles, but he was the Great Procrastinator. When Elizabeth's estate is reopened to deal with 20 Cedar Avenue, there probably should be a confirmatory Deed from the Successor Personal Representative over to the estate of Charles, or perhaps directly to a purchaser if the house is going to be sold.

★ Last and no doubt least, Charles is probably entitled to a one-third interest in a small unbuildable parcel to the rear of 20 Cedar Avenue which still contains the cement floor and partial foundation of a small barn once constructed thereon. This parcel, measuring approximately fifty feet by eighty feet, had once belonged to my great-grandfather, and was deeded to his six children, one of whom was the second husband

CTA
PRO EXH
NO. 3

of Elizabeth Hammarstrom, and another of whom was the first wife of Walter Hammarstrom, who later became, as mentioned above, the third husband of Elizabeth Hammarstrom.

This "stable lot" has never been inventoried or accounted for in any of the many estates which have come and gone since the Deed to my grandfather and great-aunts and uncles, with the exception of the one-sixth interest of my grandfather, which I have tried to keep straight through four estate administrations beginning in 1970 with the death of my grandmother. Currently, in one of the few Deeds of recent vintage, an undivided one-eighteenth interest in this lot is titled in the name of my father, as Trustee under the Will of my mother. The enclosed copy of that Deed should give you a flavor of the complexities here.

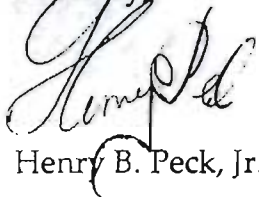
My fifteen-year-old son and I have had a number of discussions in recent years about trying to contact the roughly forty family members who would be involved in current presumptive ownership of this lot. As you can well imagine, the fees, costs and taxes which would be involved in clearing title to this lot would be prohibitive, so I am thinking of approaching family members to see which ones of them would be willing to sign quitclaim deeds for little or no consideration, simply to keep the property from slipping through the cracks.

The SDAT sheets for the three properties involved in Charles Hunt's estate are enclosed for your reference, and I hope you will find this information to be helpful. It is offered solely for the purpose of providing assistance to fellow members of the Bar. (I do, however, reserve the right to come back to you at some point to pursue my son's idea regarding the quitclaim deeds on the stable lot!!!).

Finally, in case Charles' stuff has overtaken 22 Cedar Avenue, please be aware that some of the furnishings in that house might well be of museum quality. They were originally acquired by my great-aunt, Walter Hammarstrom's first wife, who got interested in period antiques in the 1930's when they were still somewhat affordable. For the sake of Charles' legatees, please use care in the handling and disposition of those items. If and when you decide to offer them for sale, I would be grateful if you would alert me to the time and place of any auction which may occur.

I would be happy to meet with one or both of you to elaborate on any of the points raised in this letter. Thank you for your attention. With kind regards.

Sincerely,

A handwritten signature in dark ink, appearing to read "Henry B. Peck, Jr.", written in a cursive style.

Henry B. Peck, Jr.

HAILE & PECK

Henry B. Peck, Jr.
David C. Haile

ATTORNEYS AT LAW
304 West Pennsylvania Avenue
Towson, Maryland 21204-4424
(410) 321-7037
FAX: (410) 938-2231
July 22, 2004

Walter R. Haile
Of Counsel

Mr. John Carroll Weiss, Jr.
100 E. Melrose Avenue
Baltimore, MD 21212

George S. Ingalls, Esquire
305 W. Chesapeake Avenue, Suite 100
Towson, MD 21204

Re: Terrace Dale Lot

Gentlemen:

Thanks for meeting with me on Tuesday. I would appreciate it if you would let me know at some point how my son might acquire Charles' interest in the property. While a No Consideration Deed would be most attractive, we would not be adverse to paying for the interest, assuming the cost was reasonable and that a valuation discount was considered for the fractional interest.

One advantage of dealing with us as opposed to another purchaser of the fractional interest would be that we would accept a Quit Claim Deed and would not insist that Charles' interest be run through the various estates to perfect his title. This is all I can hope for from all of the other relatives, so there would be no particular point in requiring any more of Charles' Estate.

Even if a structure could be built on the property, it would probably be foolhardy for someone to do that unless they planned to remain in ownership for twenty years and bring an action to quiet title after the adverse possession period had expired. No bank is going to lend money on the property, and no sensible purchaser would buy it with the status of title as it is going to be. I truly don't think that it would be worth anyone's effort to reopen the multiple estates and go through the process to try to actually perfect the title. Even if someone embarked on that, one holdout would queer the deal.

If you would consider a Quit Claim of Charles' right, title and interest for a modest consideration, please let me know and I will be glad to draw the instrument.

OBA
PRO. EXH.
NO. 4

Page 2

Mr. John Carroll Weiss, Jr. and George S. Ingalls, Esquire
July 22, 2004

Also, as I mentioned at our meeting, since I know Charles' cousin Rita to some extent, I would be happy to talk to her about my plans. However, I agree with you that until the other cousin is located, the consent of one may not be too meaningful.

Thanking you and with kind regards.

Sincerely,

A handwritten signature in cursive script, appearing to read "Henry B. Peck, Jr.", written in dark ink.

Henry B. Peck, Jr.

HBP:lab



P.O. Box 10116
Towson, Maryland 21285-10116

Wiltondale
Improvement Association,
Incorporated

July 11, 2007

Baltimore County Zoning Commissioner
and Deputy Zoning Commissioner
Room 106, County Office Building,
111 W. Chesapeake Avenue,
Towson, MD 21204

RE: Opposition to Requests for Variances at 7 Terrace Dale, 5th District
Case #06-506-/A

Gentlemen:

As a participant in these proceedings, this letter is authorized and offered on behalf of the Wiltondale Improvement Association (WIA), of which I am a past Officer and present Board Member. WIA is a neighborhood of 380+ homes bordered by Stevenson Lane, Sussex Road and Towson High School, York Road and Cedar Avenue.

Currently pending before you is a request for multiple variances to allow a home to be built at 7 Terrace Dale (Lot 7). Terrace Dale is a very short and narrow road extending from Cedar Avenue to the traffic light at York Road and Cross Campus Blvd. The lot in question is the Terrace Dale lot *closest* to Cedar; situated only a few feet from this Wiltondale neighborhood road.

Since learning of this matter, many Wiltondale residents have expressed concern to our Board of Directors about these requested variances. As a result WIA's Board of Directors has voted to oppose the variances requested by the Petitioner and hereby urges you to deny these requests.

The issues our Community has with these requests are as follows.

- The lot in question will only accommodate a house disproportionate to the lot size and in great variance to existing Baltimore County law. This would therefore allow for a structure inconsistent with current structures in and around the surrounding area¹. This lot is simply too small to build a single family residence.
- From its conception, Lot #7 was not established to accommodate a residence, but that of a service building to support surrounding residential unit. In the last hearing the Court recognized that current Law specifically addresses these very issues and in no way provides grounds for owners to change the use of the lot.
- If allowed, in light of the rapid increase in land values, such permission could encourage additional land owners to partition the County so they may develop similar small lots, further crowding our already crowded communities. Such structures would

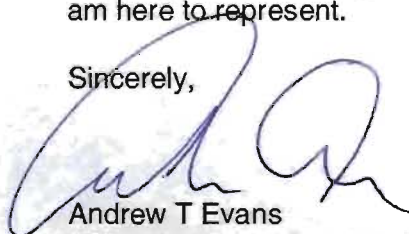
CRA
PRO. EXH
NO. 7

- require similar variances and deteriorate the look of our established older communities.
- Building patterns, such as that requested above, will require land owners, like that of the lot in question, to eliminate our already limited green space, including removing very valuable trees. Such loss of vegetation not only detracts from the look and feel of our neighborhoods, but also deteriorates the already scarce resources needed to support a healthy environment. In the case of Lot #7, the owner has already removed all trees in an effort to make the lot appear larger.
- The only style of structure that could likely be built on a small lot as small as Lot #7 would likely not attract home owners consistent with those of surrounding residences. This would likely mean such a structure would be occupied by renters, most likely college students, and subject surrounding neighbors with the type of disruptive parties and careless maintenance patterns common to those situations. Great examples of such can already be seen immediately to the right (West) of Lot #7.
- To the extent the Petitioner claims hardship, any hardship faced by him was self-created by the owners of this lot. Petitioner purports to have come into title through estate bequests, with knowledge of this history and of the fact that the lot is too small for residential construction under County law. These facts do not support a variance under applicable legal standards.

Our Association makes it a regular practice to support our fellow neighbors but in this case we feel this request is unwarranted and harmful to the surrounding communities. We urge the County to deny this request and help preserve the neighborhoods that have made Towson the quality community it is today.

Thank you for listening to the concerns I as a representative of the residents of Wiltondale am here to represent.

Sincerely,



Andrew T Evans
Wiltondale Improvement Association

SOUTHWORTH
FOUR STAR BRAND
75% COTTON 100%

RESOLUTION

Wiltondale Improvement ASSOCIATION

RESOLVED: That at the June 12, 2007 meeting
of the Wiltondale Improvement Association held on
June 12, 2007, it was decided by the Association that the responsibility for
review and action on all zoning matters for the period of June 12, 2007 to
October 12, 2007 be placed in the (Board of Directors) (Zoning
Committee) consisting of the following members:

Audrey Evans

AS WITNESS our hands and seal this 12 day of June, 2007.

ATTEST:

Chris A.
SECRETARY

Phyllis E. Gray
PRESIDENT



PLAT

OF 1

"TERRACE DALE"

TOWSON BALTIMORE

COUNTY MARYLAND

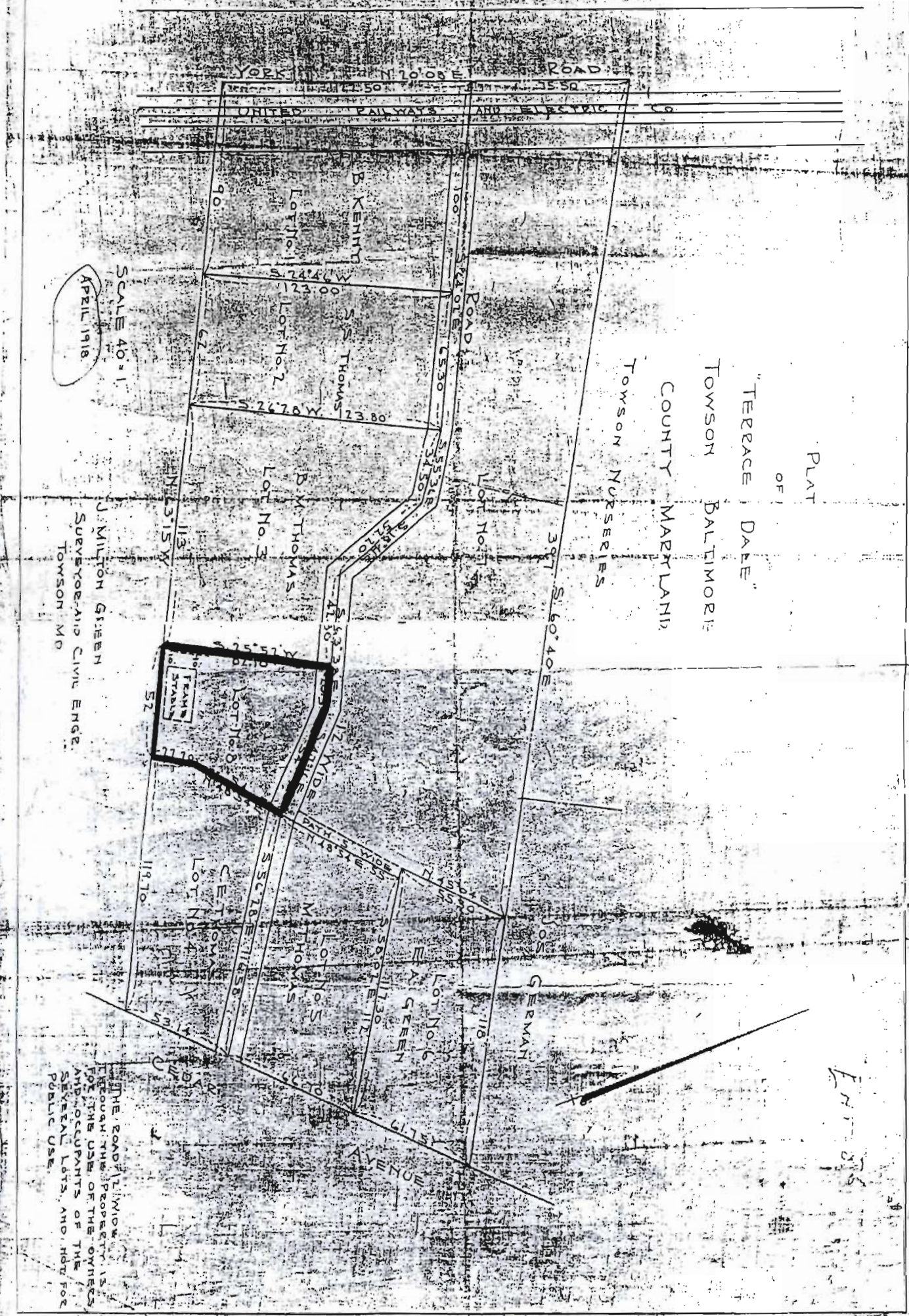
TOWSON NURSERIES

SCALE 40 = 1
APRIL 1918

J. MILTON GREEN
SURVEYOR AND CIVIL ENGR.
TOWSON MD

THE ROAD 11' WIDE
THROUGH THE PROPERTY IS
FOR THE USE OF THE OWNERS
AND OCCUPANTS OF THE
SEVERAL LOTS AND NOT FOR
PUBLIC USE.

Exhibit #3

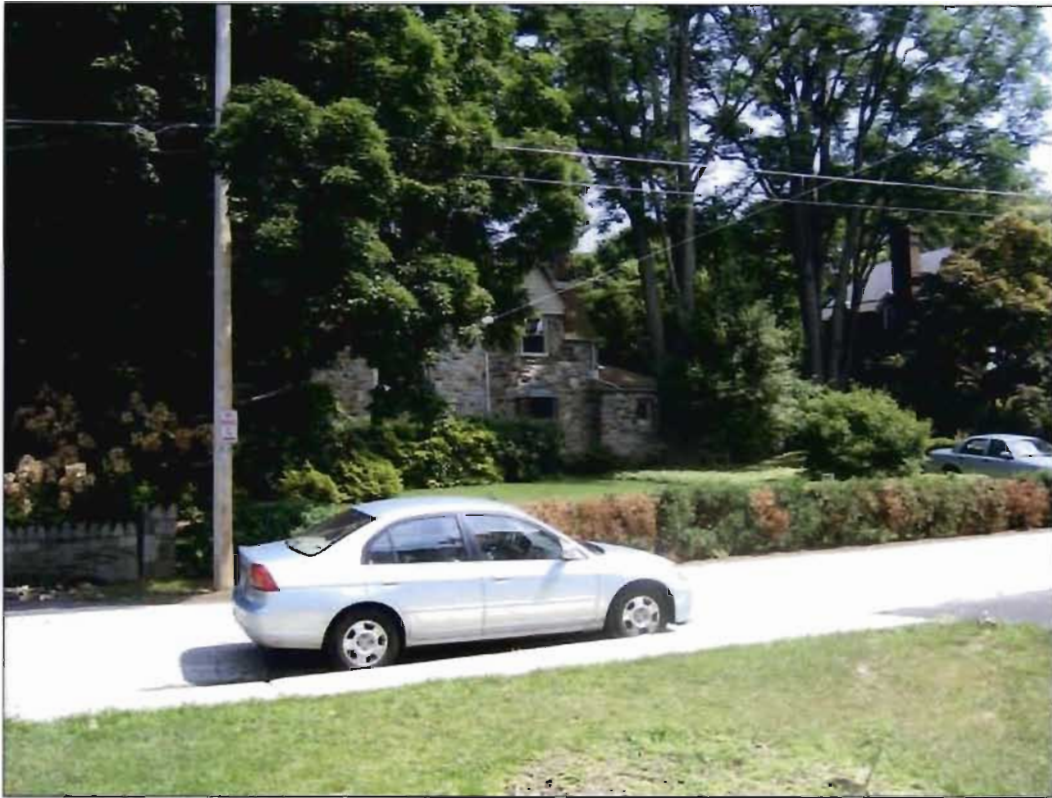




1) 12 Cedar Avenue



2) 15 Cedar Avenue



Paul Hartman June 30, 2007

3) 21 Cedar Avenue



Paul Hartman June 30, 2007

4) 25 Cedar Avenue



Paul Hartman June 30, 2007

5) 25 Cedar Avenue, facing east from Terrace Dale



Paul Hartman June 30, 2007

6) 26 Cedar Avenue



Paul Hartman June 30, 2007

7) 27 Cedar Avenue



Paul Hartman June 30, 2007

8) 19 Hillside



Susan Hartman June 30, 2007

9) 19 Hillside



Susan Hartman June 30, 2007

10) 17 Hillside



Paul Hartman June 30, 2007

11) 5 Terrace Dale



Paul Hartman June 30, 2007

12) Terrace Dale office parking lot and dumpster, facing 7 Terrace Dale (south)



Susan Hartman June 30, 2007

13) End of narrow part of Terrace Dale



Paul Hartman June 30, 2007

14) West end of Terrace Dale, at York Road intersection. Across York Road is Cross Campus Drive.



Paul Hartman June 30, 2007

15) Terrace Dale alley (east part) joins large part of Terrace Dale (west part)



Paul Hartman June 30, 2007

16) East end of Terrace Dale alley



17) Looking south. 7 Terrace Dale extends from the end of the fence on the left to just past the row of tall evergreens on the right.



18) 7 Terrace Dale, after all trees were cut down



Paul Hartman June 30, 2007

19) Terrace Dale at Cedar Avenue, facing west



Susan Hartman June 30, 2007

20) Back yard of 18 1/2 Cedar Avenue



Susan Hartman June 30, 2007

21) 7 Terrace Dale alley

Baltimore County Legacy Web



TOPIC: Houses - Towson

C.E.Thomas house, York Road, Towson shows side view with barn and houses on Terrace Dale, near York Road. Reading left to right, are houses 1, 3, and 5 Terrace Dale. The barn (stable) was used as a garage. Note the windmill.

Date: **WWI**

Photographer: **Wm. C. Kenney**

Source: **E.T. Kenney**

(The digitized image of this photograph has been edited to improve its appearance.)

Please reference this number for inquiries about ordering prints*: **1907014**

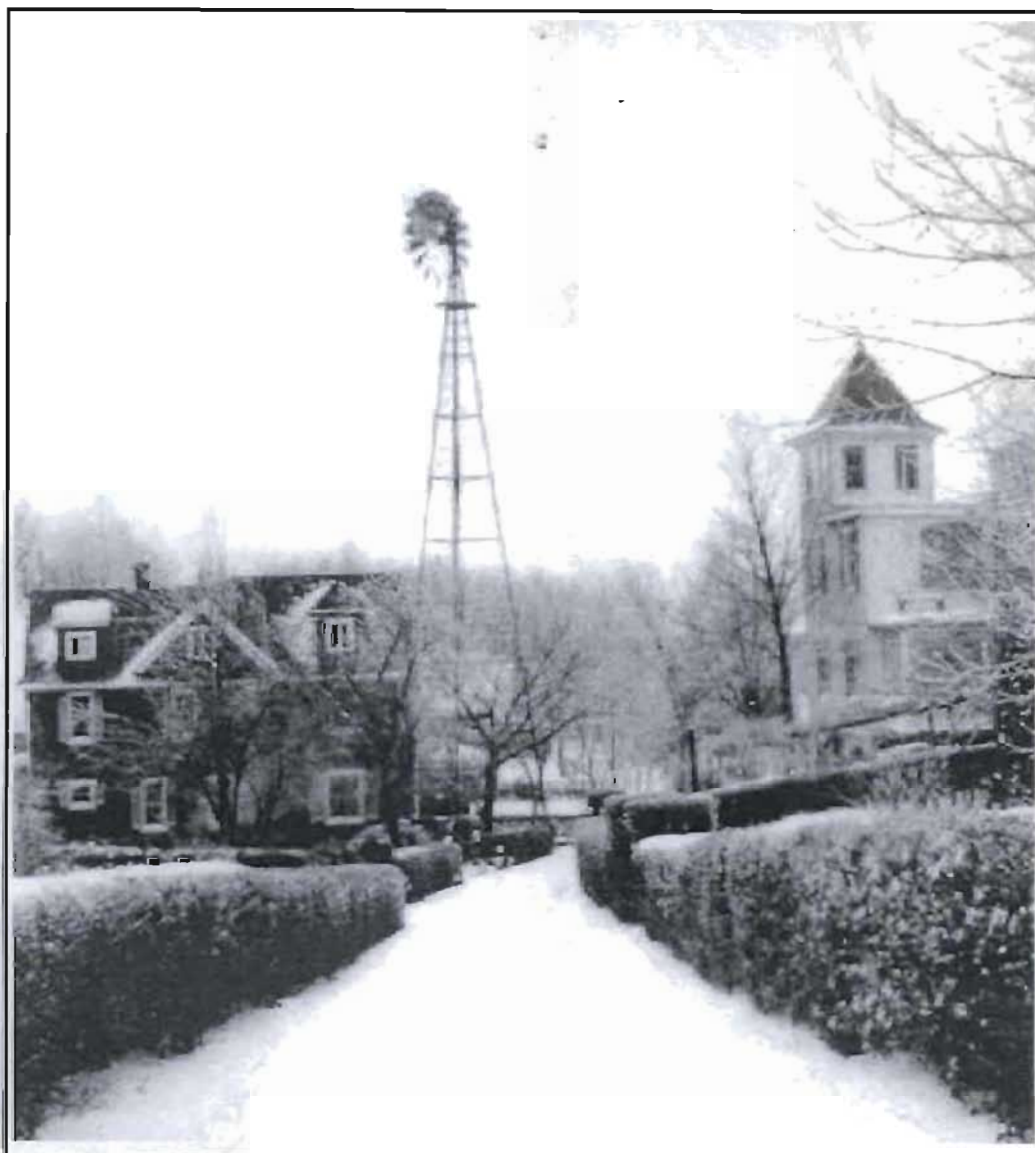
* For some photographs, prints may not be available.

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[Landmarks Preservation Commission](#)
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Take the [Baltimore County History Quiz](#).

Baltimore County Public Library, Towson Maryland USA
[Feedback](#) (Please provide reference number.)

Baltimore County Legacy Web



TOPIC: Houses - Towson

Towson. Shows the tower and side view at right of the C.E. Thomas house on York Road adjacent to Terrace Dale, and the Thomas windmill, off York Road. The view is from Cedar Avenue. To the left is #5 Terrace Dale. Originally built for B. Morgan Thomas and later lived in by Col. William K. Weaver. The windmill ran a pump to supply water to the entire Thomas compound.

Date: 1910

Photographer: **Wm. C. Kenney**

Source: **E.T. Kenney**

(The digitized image of this photograph has been edited to improve its appearance.)

Please reference this number for inquiries about ordering prints*: **1219032**

* For some photographs, prints may not be available.

Baltimore County Legacy Web



TOPIC: Houses - Towson

Looking down tree-lined Cedar Avenue in Towson, we see the elegant Charles E. Thomas house at #20 This home was built in 1913. Beyond it, located at #22 Cedar Avenue, is the Virginia Merryman/Thomas Hammarstrom house, which dates back to 1888.

Date: **June 1, 1960**

Photographer: **Guill Photo**

Source: **Henry Peck Esq.**

(The digitized image of this photograph has been edited to improve its appearance.)

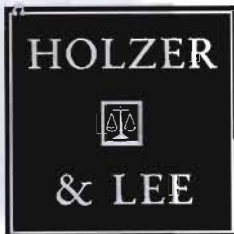
Please reference this number for inquiries about ordering prints*: **26948006**

* For some photographs, prints may not be available.

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Baltimore County Public Library, Towson Maryland USA
[Feedback](#) (Please provide reference number.)



LAW OFFICES

J. CARROLL HOLZER, PA

J. HOWARD HOLZER

1907-1989

THOMAS J. LEE

OF COUNSEL

THE 508 BUILDING

508 FAIRMOUNT AVE.

TOWSON, MD 21286

(410) 825-6961

FAX: (410) 825-4923

E-MAIL: JCHOLZER@BCPL.NET

April 5, 2006

TO: All Civic Associations

FR: J. Carroll Holzer

RE: Appearance Before the Board of Appeals as Representative of a Civic Association

Attached to this memorandum is a copy of Rule 8 of the Rules of Practice and Procedure of the County Board of Appeals which governs the appearance before the Board of Representatives of a civic or improvement associations.

This Rule requires the following:

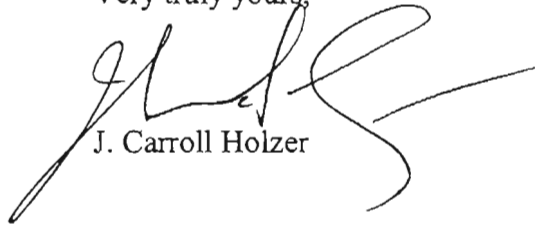
1. That the person who testifies can describe accurately the number of members in the association and the geographic limits of the association; and
2. That the person is authorized to speak for and present the views of the association. This second requirement can only be met by:
 - a. A Resolution (in duplicate) adopted by the association at its annual meeting or first meeting of the year signed by the President and attested to by the Secretary. This resolution must state that the responsibility for review and action of all zoning matters is placed in the Board of Directors or a duly elected zoning committee; and
 - b. A Written Affidavit (in duplicate) signed by the President of the association and attested by the Secretary that the President is current a duly elected member of the Board of Directors or a zoning committee of that association, or is an attorney appointed to represent the Board of Directors or zoning committee; and

CBA
PROT. EXH
NO. 9

- c. **A Resolution** (in duplicate) adopted by the Board of Directors or zoning committee signed by the President and attested by the Secretary stating the position of the association.

For your assistance, I have also attached blank resolutions and affidavits which may be used by your association.

Very truly yours,

A handwritten signature in black ink, appearing to be 'J. Carroll Holzer', written over the printed name.

J. Carroll Holzer

JCH:mlg

Enclosure

RESOLUTION

The Arghurth Manor ASSOCIATION of Towson Inc.

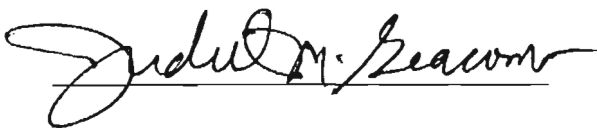
RESOLVED: That at the May 2007 (annual) meeting
of the Arghurth Manor Association of Towson Inc. Association held on
May 8, 2007, it was decided by the Association that the responsibility for
review and action on all zoning matters for the period May 2007 - April 2008
_____ be placed in the ~~(Board of Directors)~~ (Zoning
Committee) consisting of the following members:

Paul S. Hartman

Judith M. Giacomo

AS WITNESS our hands and seal this 31st day of May, 2007.

ATTEST:



JUDITH M. GIACOMO
SECRETARY



Paul S. Hartman
PRESIDENT

RESOLUTION

The Aighurth Manor ASSOCIATION of Towson Inc.
RESOLVED: That at the position of the Aighurth Manor
of Towson Inc. Association as adopted by the (Board of
Directors) (~~Zoning Committee~~) on the zoning matter known as:

66-506-A 7 Terrace Deck Variances

is that:

The Association opposes granting the requested
variances of the petitioner.

AS WITNESS our hands and seal this 31st day of
May, 20~~19~~07.

ATTEST:

The Aighurth Manor ASSOCIATION of Towson Inc.
Judith M. Gleason Paul P. Harty
SECRETARY PRESIDENT

AFFIDAVIT

STATE OF MARYLAND:
BALTIMORE COUNTY, SS:

TO WIT:

I hereby swear upon penalty of perjury that I am currently a duly elected member of the
(Board of Directors) ^{and} (Zoning Committee) of the Aphurth Manor
Association. of Teason Inc.

ATTEST:

Judith M. Giacomo

JUDITH M. GIACOMO
SECRETARY

Paul S. Hartman

Paul S. Hartman
PRESIDENT

The County Board of Appeals of Baltimore County
400 Washington Avenue Room 49
Towson, MD 21286
Re Case # 06 – 506 – A

July 8, 2007

To whom it may concern,

I am writing to oppose strongly the numerous variances proposed for the empty lot at 7 Terrace Dale, Towson, MD 21286. This property fronts on an alley-like street one block in length which runs between Cedar Avenue and the 7800 block of York Road. The petitioner, who is a part –owner of the property wishes to move a now vacant house from Burke Avenue in Towson on to this land and rent it out. We feel that this plan is completely unacceptable for several practical reasons and will be highly detrimental to the character of the neighborhood.

The variances being requested directly address the fact that the size of the lot makes it illegal for a dwelling in the DR5.5 zone under current zoning regulations. The lot is in fact substantially smaller than the law prescribes.

Access to this property by emergency vehicles and county services is almost impossible due to its peculiar location on the curved portion of Terrace Dale. In addition there is no place to park a car or cars legally anywhere in the vicinity of the house. Again, the lot is too small to allow even enough room for a car to pull off the pavement in front of or on the sides of the house. Certainly no vehicle can be parked on the road itself.

Other considerations include potential problems specifically associated with rental properties in the vicinity of large educational institutions such as Towson University. Aigburth Manor, of which Cedar Avenue is a part, consists almost entirely of single family owner-occupied houses. It is a strongly family-oriented community. The life – style of college-aged young men and women is incompatible with the character of the neighborhood.

I have lived on Cedar Avenue almost continuously for most of my life and am, as far as I know, one of the longest tenured residents of the neighborhood. I grew up at 4 Cedar Avenue and currently reside at 2 Cedar Avenue. My parents regularly attended zoning hearings when I was a child to protest the encroaching commercial rezoning of the York Road south of Towson during the 1950's.

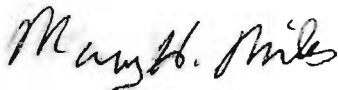
Several years ago in Chicago I chanced to meet Jack Levering, formerly of Baltimore and coincidentally a former resident of 20 Cedar Avenue, now owned by Milan and Ashby Heath. He sent me a hand-drawn map of the south end of Cedar Avenue which he said shows the area as he remembered it in 1932. On the property in question he has drawn a "Barn Garage" This was, according to his description, a utility building whose use was shared by the various members of the extended family who lived in the several houses which comprised the family "compound". No other use has been made of this lot that I am aware of.

CBA
Part 11

Aigburth Manor is an eclectic, and on Cedar Avenue, an historic area which has in recent years enthusiastically welcomed many new neighbors. Families with babies, children, dogs and bikes have invested time, money and themselves in their property and in our neighborhood. We hope they will remain among us for a long time. Renters cannot be expected to make the same commitments or contributions to our community.

In conclusion I sincerely hope that reasonable consideration of the negative aspects of the proposed plan to waive zoning regulations and to permit the introduction of an inappropriate building and situations that are potentially dangerous and detrimental to the character of the neighborhood will result in the rejection of the petition.

Respectfully submitted,

A handwritten signature in cursive script, reading "Mary H. Miles".

Mary H. Miles

2 Cedar Avenue

Baltimore, MD 21286

July 9, 2007

Reference case #06-506-A

To Whom it may concern:

The following letter is to continue our protest of the zoning variance requests of Mr. Henry Peck, owner of the parcel of property known as 7 Terrace Dale. Mr. Peck has applied to receive multiple variances for the property, in hopes of moving a rental house onto the undersized lot. Mr. Peck is asking for multiple variances because the lot is too small to adequately accommodate the proposed structure.

We oppose these applications for variances a number of reasons:

- A house placed on Mr. Peck's lot would crowd adjacent yards detracting from those properties.
- Such close placement of the structure to the property lines entails a significant loss of privacy for neighbors and increases the potential for the neighbors to be disturbed by noise.
- A house situated on this undersized lot would be quite out of step with the character of the neighborhood due to the absence of any side or back yard.
- The lack of exterior space can easily lead to difficulties with the storage of equipment and materials that are typically used out of doors, thereby further encroaching upon the adjacent properties.
- Where would any residents park their cars? Safety is an important issue as the lane (Terrace Dale) is a very narrow single lane - so much so that it is unusable for parking, not accessible by large vehicles and never plowed in the winter.
- It is our understanding that Mr. Peck does not intend to live in the house. We expect that the property would be rented. The close proximity to the neighboring homes will intensify any problems that might be experienced with the renters.
- There is a definite potential for loss of property value for the other homes in the neighborhood due to crowding caused by the insertion of this small house into a very visible and cramped location.
- Indeed, Mr. Peck's actions to date have increased rather than decreased our concerns about his plans. He recently had the property brutally clear cut destroying all of the mature trees on it.

Our overwhelming impression is that Mr. Peck is a non-resident who wishes to make money at the expense of the current residents of the neighborhood.

Sincerely,

Maureen Hunter

Maureen Hunter



David Hunter

CPA
Prot 12

July 11, 2007

To Whom it May Concern,

I am writing today in regards to case # 06-506-A to show my opposition to the granting of the variances needed in order for a home to be built on 7 Terrace Dale. I live at 17 Cedar Ave in what I consider to be a nice, quiet family neighborhood and feel that adding a house on Terrace Dale would be detrimental to our neighborhood. Our neighborhood primarily consists of family owned homes on nice sized lots. I consider the property on 7 Terrace Dale to be far too small to support a home and do not like the possibility of it being a rental property. I also have concerns for the safety of the neighborhood in regards to emergency vehicles being able to navigate down the narrow Terrace Dale lane. This narrow lane is also not plowed during snow storms which adds to the difficulty in accessing this area.

Thank you for your consideration in this zoning issue,

A handwritten signature in cursive script that reads "Alice Horan". The signature is fluid and elegant, with a long, sweeping underline that extends to the right.

Alice Horan
17 Cedar Ave.
Towson, MD 21286
410-832-2921

A handwritten note enclosed in a hand-drawn oval. The text inside the oval is written in blue ink and reads "CBA" on the top line and "Prot 13" on the bottom line.

12 Cedar Avenue
Towson, Maryland 21286
July 11, 2007

County Board of Appeals of Baltimore County
Room 49, Old Courthouse
Towson, Maryland 21204

RE: Case # 06-506-A

In the Matter of: Henry B. Peck, Jr., 7 Terrace Dale

Dear Ms/Sir:

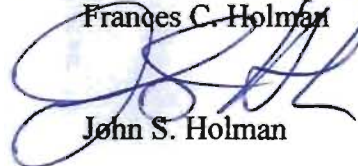
We have been residents of Cedar Avenue in Towson since 1980. Our property is situated so that 7 Terrace Dale is visible from our yard.

The Baltimore County Zoning Commission has twice denied requests for variances to place a house on this Terrace Dale property and we strongly support those decisions. Zoning regulations exist to protect our neighborhoods, and a plan for a property that would require four variances circumvents such protection. The proposed plan would place the newly-situated house closer to current homes than is common in our neighborhood. It seems obvious to us that there is no room for proper setbacks or parking.

Another issue is loss of value for surrounding homes. It is axiomatic that in single-home neighborhoods, close proximity of a neighboring home will affect a house's value negatively. Allowing Mr. Peck to place a house in the proposed location violates current zoning rules, thus devaluing the properties of immediate neighbors. Who compensates them? Allowing these zoning variances is not just giving Mr. Peck something, but also taking away value from others. Good zoning should bring value to all parties involved, thereby reinforcing the entire community structure.

We urge you to deny Mr. Peck's request.

Sincerely,


Frances C. Holman

John S. Holman

Cc: J. Carroll Holzer, Esq.
Deborah C. Dopkin, Esq.

CBA
Prot 14

24 Cedar Ave.
Towson, MD 21286
July 10, 2007

Zoning Review Bureau
111 West Chesapeake Ave., Room 111
Towson, MD 21204

SUBJECT: Case Number 06-506-A

I am writing to register my strong objections to the granting of variances for the property at 7 Terrace Dale.

As a long-time resident of the neighborhood (since 1977), I am deeply concerned about the plan to place a house on such a small lot. All of the other houses in our area have substantial lots that can be attractively landscaped. Furthermore, all have adequate space for parking, either on the street or in private driveways. Terrace Dale is a very narrow street—hardly more than an alley. I don't understand where residents of a house that occupies almost the entire lot would park their car(s), or even how they would reach the house in the event of a snowstorm, given that the street is too narrow to be plowed and/or salted. by the county.

I will be at the zoning hearing on July 11 to record my objections by submitting this letter.

Sincerely,

Virginia Carruthers
Virginia Carruthers

Q13A
Prot #15

July 10, 2007

Baltimore County Zoning Commissioner
Towson, Maryland 21204

Subject: Zoning variance case No. 06-506-A

Dear Sir:

I am writing this letter in opposition to the subject zoning variance request for 7 Terrace Dale. This request has been denied previously for good reasons. The lot in question is too small to be used for a residential structure and I strongly encourage you to deny this application again.

Sincerely Yours,

Kay S. Hunter

Kay S. Hunter
7 Cedar Avenue
Towson, Maryland 21286
410-823-6449

*CBA
Part 16*

Ashby and Milan Heath
20 Cedar Avenue
Towson, MD 21286

July 11, 2007

County Board of Appeals of Baltimore County
Old Courthouse, Room 49

Towson, MD 21204

Re: Case #06-506-A

Dear Zoning Appeals Board,

As owners of the property immediately adjacent to 7 Terrace Dale, we are writing to reiterate to you of our **opposition** to the request for multiple variances for the property, recorded as Case #06-506-A.

When purchasing our home two years ago, located at 20 Cedar Avenue, we were informed by lawyers handling the estate of our house and the partial ownership of a vacant lot now known as 7 Terrace Dale, that the latter was not buildable due to its small size. The lot had been used as an extension of the backyard of our home by the previous owner for many years and was never conceived of as a home site.

In a letter the petitioner wrote to the estate's lawyers last year, which we obtained from the attorneys and have attached for your reference, Mr. Peck acknowledges that the lot is a "small unbuildable parcel." If we had known that the miniscule area behind our house could be the future site of a rental property, necessitating the removal of trees, which partially shield the view and sound of York Road, we surely would have reconsidered the monetary offer we made on our house, if not abandoned the purchase entirely.

Mr. Peck has clearly created a self-imposed hardship because he, a Towson real estate attorney, has obviously taken on the financial risks with full knowledge of the zoning issues that could and **should prevent development** of the land.

The petitioner is also well aware that we have on several occasions tried to purchase an interest in the property from him, as well as the estate, in order to ensure that the lot was maintained and kept as open space as it was intended. For these reasons, it is clear that the petitioner cannot prove any hardship to the Board of Appeals beyond that which has been self-inflicted.

While the petitioner claims the size of 7 Terrace Dale to be 4800 square feet, Maryland Department of Assessments and Taxation (MDAT) records indicate that the property is in fact only 3500 square feet, a significant difference from his estimate. The property has never been professionally surveyed and therefore there is considerable question as to the true size of the lot. Even with the petitioner's estimate of 4800 square feet, the property is still considerably smaller than the 6000 square feet required to build and that of

CBA
Prot 17

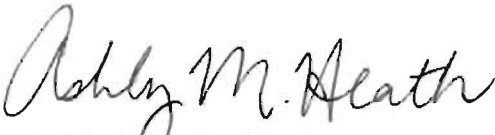
surrounding homes in the area. We believe moving an existing dwelling or building a new house on the lot would be a gross overuse of the property and would negatively impact not only our growing family, but also those in adjacent homes, as well as the neighborhood as a whole.

Terrace Dale is the size of an alley, not a street (11.5 feet at its widest point in front of the lot) and with little to no county-supported snow cleanup in the winter and no room for parking. Cars entering this tiny lot from this very narrow one-way road would create a considerable safety risk to pedestrians and drivers using Terrace Dale. In addition, safety personnel such as firefighters would have a difficult time accessing the lot with so little clearance on all sides.

Finally, this lot is not unique. There are a number of undersized lots in Baltimore County and making exceptions to rules and variances established to protect the health, safety and welfare of the community, as well as to prevent the overdevelopment of open land, for a lot as small as this one in a family neighborhood for the erection of another unneeded dwelling, is a decision we are hoping you will not make.

We trust that the system will work and uphold the previous decision and its own rules to again deny all variances requested. Thank you for your time.

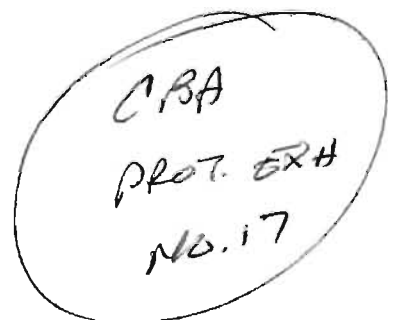
Sincerely,



Ashby McIntire Heath



Milan Austin Heath II



CBA
PROT. EXH
No. 17

Case No.:

06-506-A

7 TERRACE DALE

Exhibit Sheet

Petitioner/Developer

Protestant

No. 1	/ SITE PLAN	Collectively, Letters in Protest
No. 2	/ Photo's of Homes built by Mr. Peck's great-grandfather	Collectively Photographs of Road
No. 3	PLAT of Terrace Dale Photo's, Estate inventory 1973 TAX BILL - Site drawing	Md. Dept. of Assessments and Taxation
No. 4		
No. 5		
No. 6		
No. 7		
No. 8		
No. 9		
No. 10		
No. 11		
No. 12		

PLAT TO ACCOMPANY PETITION FOR ZONING ☒ VARIANCE ☐ SPECIAL HEARING

PROPERTY ADDRESS #7 TERRACE DALE

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

SUBDIVISION NAME N/A

PLAT BOOK # _____ FOLIO # _____ LOT # _____ SECTION # _____

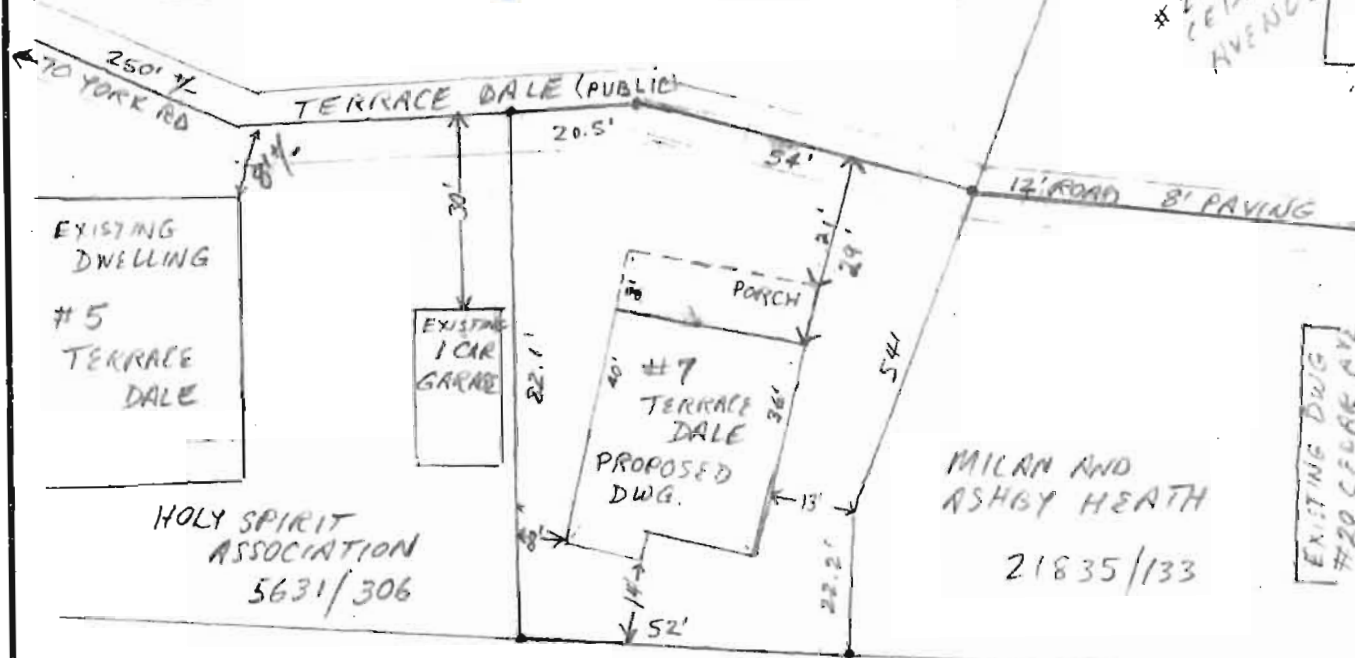
OWNER HENRY PECK

PETITIONER'S

EXHIBIT NO. 1

YORK AT TERRACE DALE OFFICE COMPLEX

#22 CEDAR AVENUE



LOCATION INFORMATION

ELECTION DISTRICT 9

COUNCILMANIC DISTRICT 5

1" = 200' SCALE MAP # 070A3

ZONING DR 5.5

LOT SIZE ACREAGE 4800 SQUARE FEET

SEWER ☒ PUBLIC ☐ PRIVATE

WATER ☒ ☐

CHESAPEAKE BAY CRITICAL AREA YES ☐ NO ☒

100 YEAR FLOOD PLAIN ☐ ☒

HISTORIC PROPERTY/BUILDING ☐ ☐

PRIOR ZONING HEARING n/a.

ZONING OFFICE USE ONLY

REVIEWED BY ITEM # CASE #

PREPARED BY H. PECK

SCALE OF DRAWING: 1" = 30'

13K | 506 | 06-506-A

1 TERRACE DALE
©1900



PHOTO'S OF HOMES BUILT
PETITIONER'S
By great grandfather "Thomas"
EXHIBIT NO. 2A



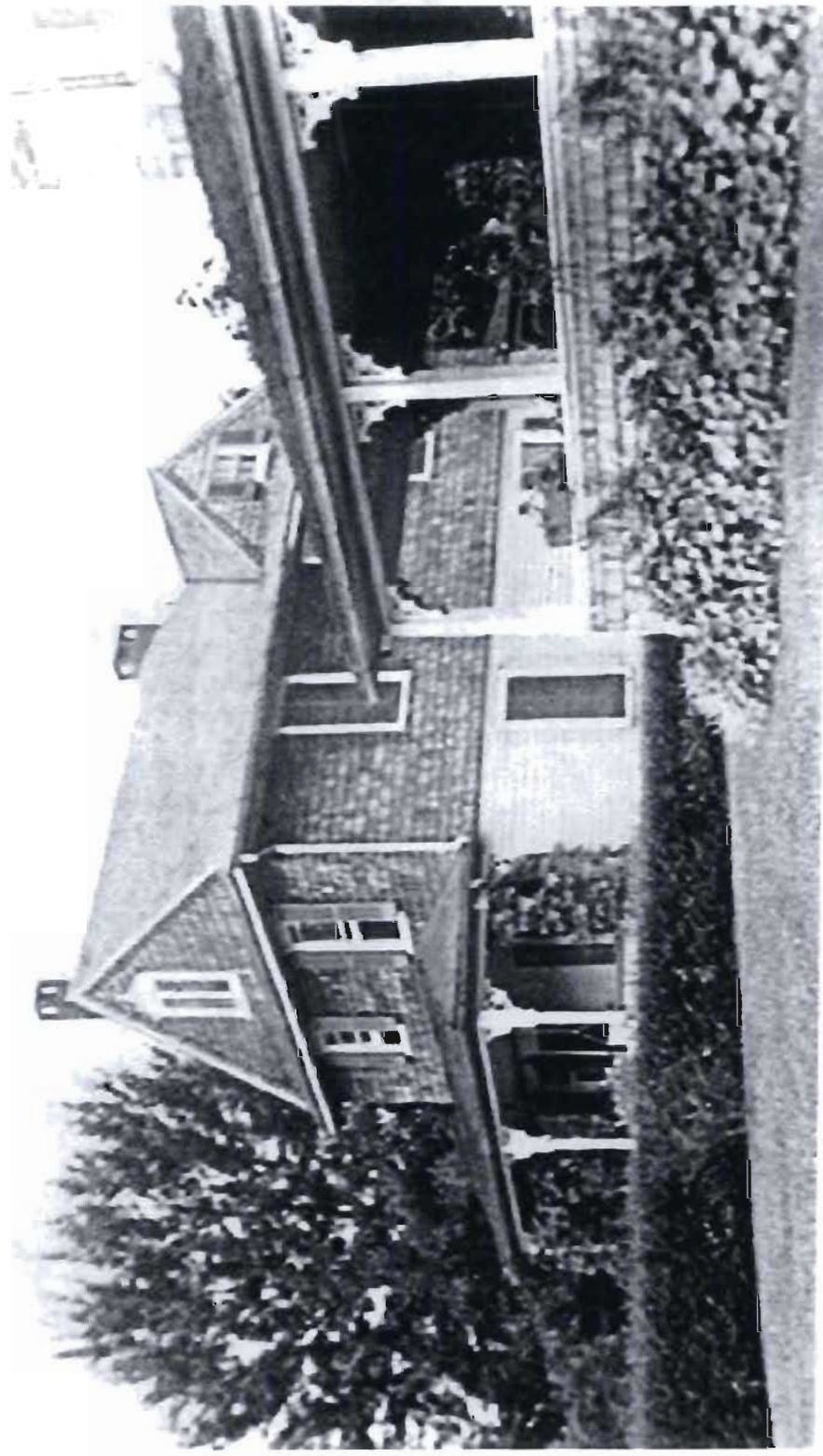
3 TERRACE DALE
© 1900

5 TERRACE DALE 1960

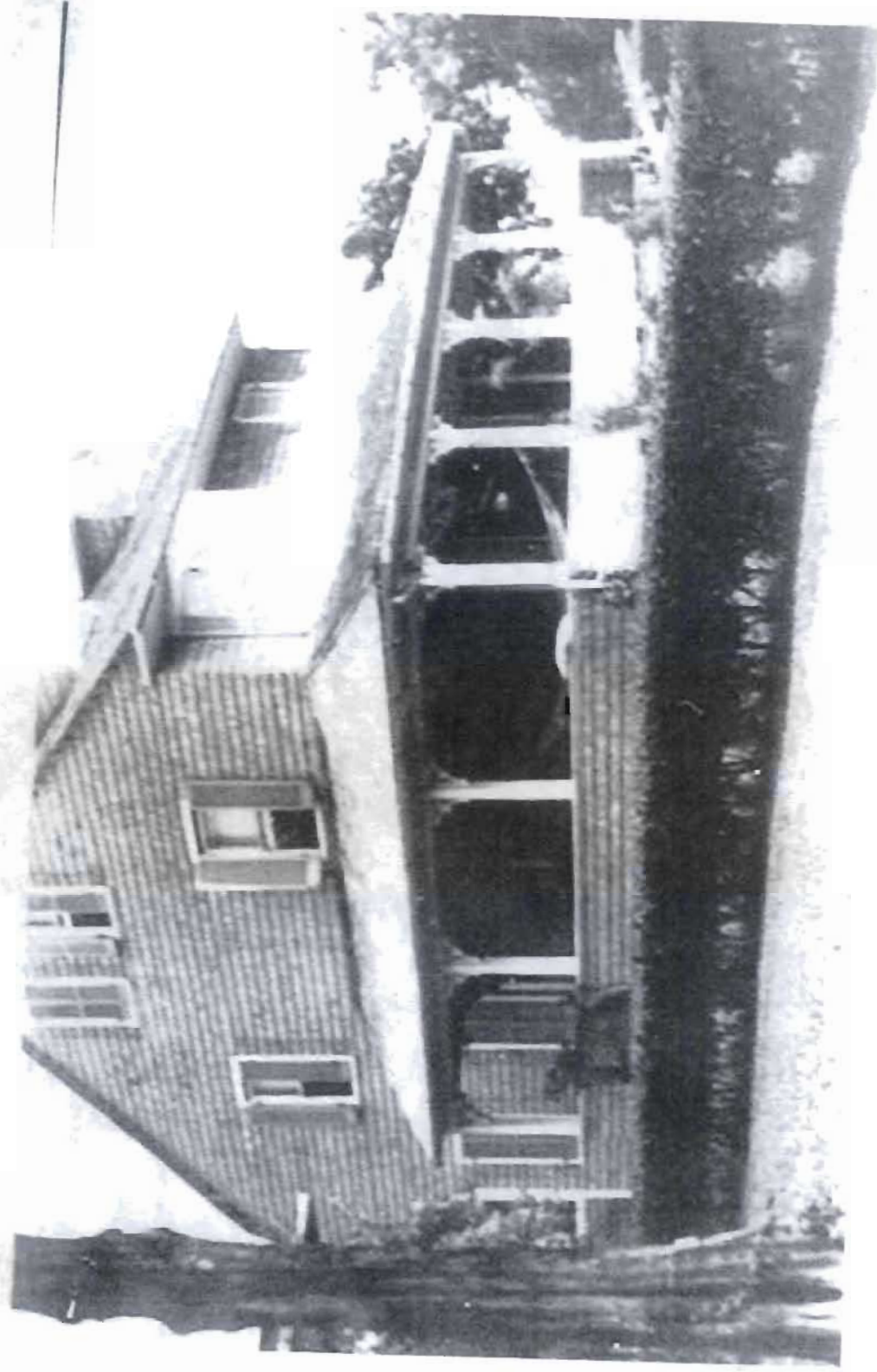


20 Cedar Ave 1960



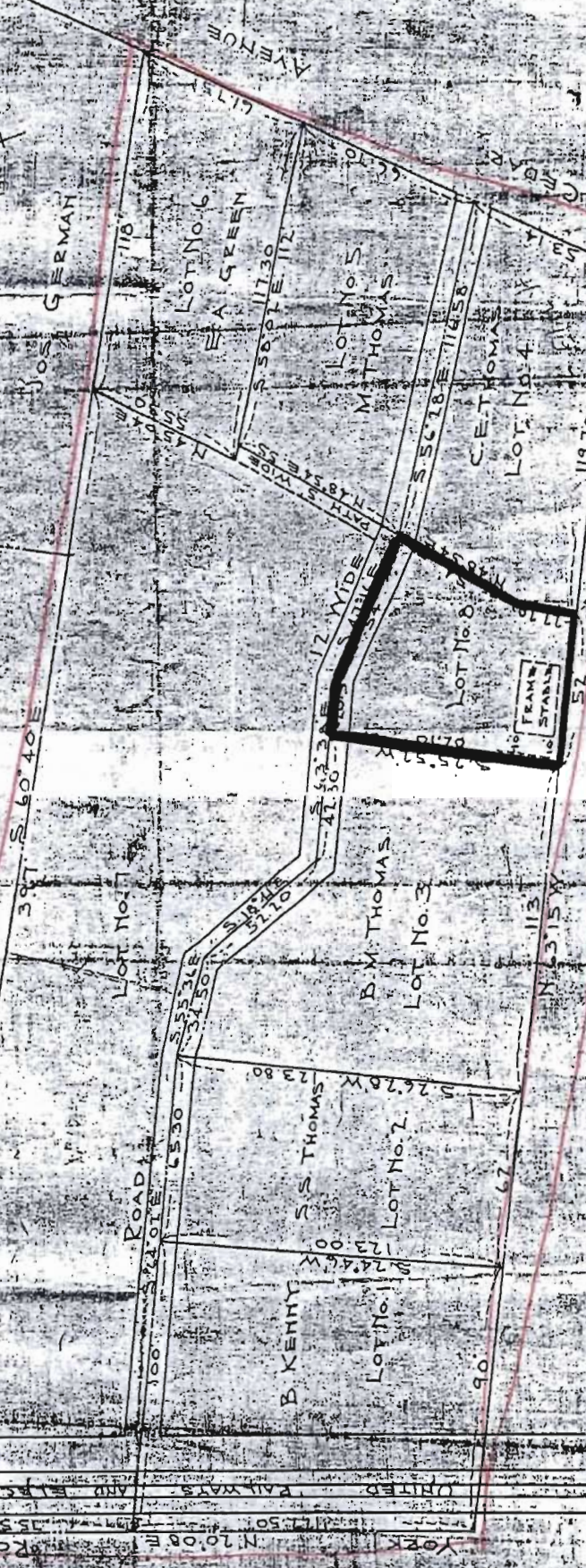


22 Cedar Avenue
© 1900



24 Cedar Avenue
© 1900

PLAT
OF
"TERRACE DALE"
TOWSON BALTIMORE
COUNTY MARYLAND
TOWSON NURSERIES



SCALE 40' = 1"
APRIL 1918
J. MILLION GREEN
SURVEYOR AND CIVIL ENGR.
TOWSON, MD.

PETITIONER'S

EXHIBIT NO.

Prepared in 1918

3

13 APR / 1906
Barn / 100 x 20
J. H. K. H. H.





State of Maryland--Baltimore County, to wit:

To L. Jean Sellman
and J. Milton Green } GREETING.

This is to authorize you, jointly TO APPRAISE THE REAL ESTATE of Seabrook Stieber Thomas late of Baltimore County, deceased, so far as they shall come to your sight or knowledge, each of you having first taken the oath hereto annexed, a certificate whereof you are to return, annexed to an inventory of the said REAL ESTATE, by you appraised, in Dollars and Cents; and in the said inventory you are to set down in a column or columns, opposite to each piece of property, the value thereof.

WITNESS, Chas. E. Lynch Esq.

Chief Judge of the Orphans' Court of Baltimore County, this 17

day of Mich in the year nineteen hundred and thirty eight

TEST:

Jos. P. Connor
Register of Wills for Baltimore County.

We, L. Jean Sellman & J. Milton Green
do swear that we will well and truly, without partiality or prejudice, value and appraise the REAL ESTATE of Seabrook Stieber Thomas deceased, so far as the same shall come to our sight and knowledge, and will, in all respects, perform our duty as appraisers, to the best of our skill and judgment; so help us God.

Signed:

L. Jean Sellman
J. Milton Green } Appraisers.

I HEREBY CERTIFY, that the foregoing oath was taken and subscribed to by the said L. Jean Sellman & J. Milton Green before the undersigned, a Reg. of Wills Justice of the Peace for Baltimore County, duly commissioned and qualified according to law, this 17 day of Mich 1938

Jos. P. Connor
A Justice of the Peace for Baltimore County.
Register of Wills

ESTATE OF

CHARBON SHERMAN THOMAS, Deceased

(IN FEB)

An undivided one-sixth (1/6) interest in a certain lot of ground, BEGINNING for the same at the intersection of the center line of the York Road with the center of an Avenue 12 feet wide and running thence bounding on the center of York Road North 50 degrees East 75.5 feet to the division line between the property now being described and that adjoining on the North now owned by the Townson Nurseries Company, thence bounding on said division line South 60 degrees 40 minutes East 241 feet to the land which by a deed dated August 2, 1934 and recorded among the land records of Baltimore County in Liber C. W. B. Jr. 926, folio 361 was conveyed by V. Merryman Thomas et al Trustee to the Terrace Dale Company, Inc., thence bounding on said land the two following courses and distances viz. South 27-1/2 degrees West 53.75 feet and South 82-1/2 degrees West 23.6 feet to the center of the aforesaid Road 12 feet wide, thence bounding on the center of said 12 foot Road the four following courses and distances viz. North 18 degrees 41 minutes West 5.1 feet, North 55 degrees 56 minutes West 34.5 and North 64 degrees 2 minutes West 155.3 feet to the place of beginning.

VALUED AND APPRAISED AT

\$ 600.00

(IN FEB)

An undivided one-sixth (1/6) interest in a certain lot of ground, BEGINNING for the same in the center of a road 12 feet wide and at the end of the South 47 degrees 16 minutes East 54 feet line of the land which by a deed dated October 18, 1929 and recorded among the land records of Baltimore County in Liber L. McL. M. No. 333, folio 412 etc. was conveyed by B. Marvin Thomas, et al Trustee to Bessie J. Penney et al, and running thence South 48 degrees 54 minutes West 51 feet, South-westerly 52 feet, North 63 degrees 15 minutes West 52 feet, North 2 degrees 52 minutes East 32-1/10 feet to the center of aforesaid road 12 feet wide thence bounding on center line of said center line the two following courses and distances viz., South 63 degrees 33 minutes East 20.5 feet and South 47 degrees 16 minutes East 53 feet to the place of beginning, and improvements thereon,

VALUED AND APPRAISED AT

\$ 300.00

Total amount of invoice

1100.00

" " " " " "

subject to tax

1/6th

\$ 183.34

5

OFFICE OF FINANCE
ROOM 169 COURT HOUSE
TOWSON MD 21204

BALTIMORE COUNTY, MARYLAND
STATE AND COUNTY REAL PROPERTY TAXES

TAXPAYER'S COPY
DETACH AND RETURN

LEVY PERIOD		ASSESSMENT INFORMATION		BILL DATE
JULY 1, 1973-JUNE 30, 1974		400 LAND	IMPROVEMENT	07/01/73
METROPOLITAN CHARGES		ASSESSMENT	RATE PER \$100	CHARGES
SEWER BENEFIT	COUNTY TAX	100	5.29	15.14
SEWER SERVICE	STATE TAX	100	.21	.4
WATER BENEFIT				
WATER DISTRIBUTION				
TOTAL METROPOLITAN				

PROPERTY NUMBER, OWNERS NAME, ADDRESS

16-00-001198 DIST. 09

GROSS BILL

14.00*

KENNEY, BESSIE J
KENNEY, EDMUND T, ET AL
CARROLL RD
PHOENIX MD 21131

BOOK FOLIO

COUNTY
DISCOUNT

INTEREST

TOTAL AFTER
DISCOUNT
OR INTEREST

LOT BLOCK SEC PLAT

0.70 AC
SS TERRACEDALE AV
20 TERRACEDALE AV

TAX BILLS MAY BE PAID AT ALL COUNTY BANKS

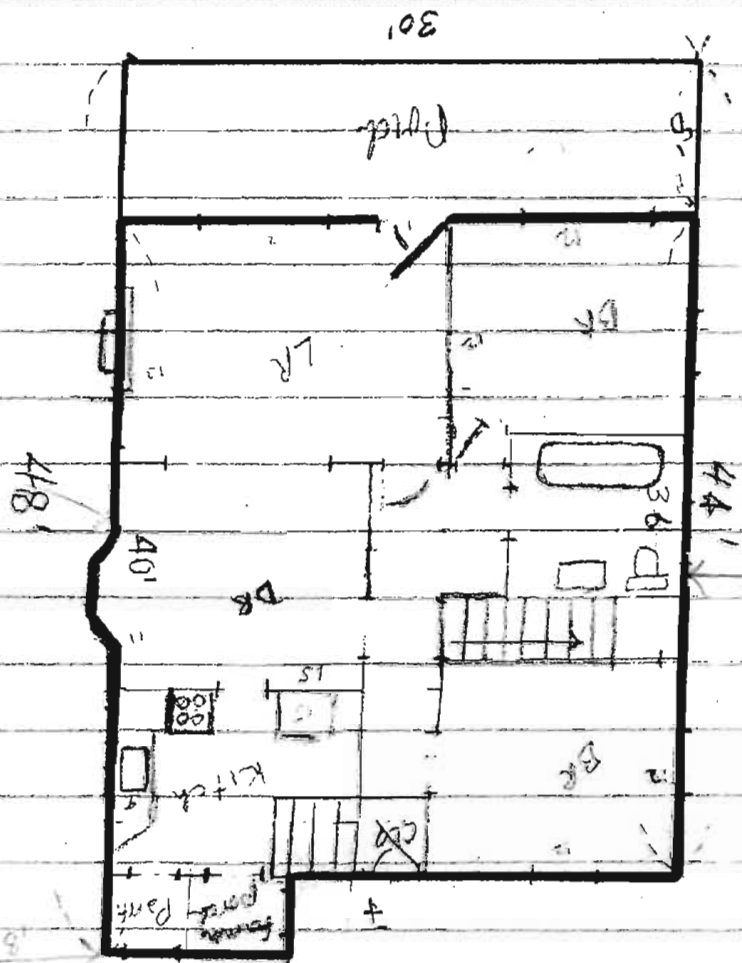
Check # 79 For 1972-73 } 4.58
1973-74 }

8/2/73

Henry,
Here is the Tax Bill. Net was \$13.74. You all
owe 1/6. Thank you for check.
B. M.

8' PAVING

50' Garage Avenue





The Aigburth Manor Association of Towson, Inc.

P.O. Box 20143 • Towson, Maryland 21284-0143

June 7, 2006

Zoning Review Bureau
111 West Chesapeake Avenue, Room 111
Towson, MD 21204

Re: Case 06-506-A

To whom it may concern,

The board of The Aigburth Manor Association of Towson, Inc. voted to **oppose** the variances requested in case 06-506-A.

The lot known as 7 Terrace Dale has an area of 4,800 square feet, which is severely undersized according to Baltimore County zoning regulations for a lot in a DR5.5 zone. It is 20% less than the minimum size. It is significantly smaller than all the lots in the vicinity. The number of variances requested indicates that a large house on that lot is not in keeping with the neighborhood and constitutes an overuse of the land.

Putting a large house on this lot would require the removal of all the existing mature trees and shrubs in an older community characterized by such greenery.

Terrace Dale is a small one-way street running west from Cedar Avenue to York Road. It changes character significantly within its short 0.2 mile length. More than half of it, including the frontage along 7 Terrace Dale, is approximately 11 feet wide. The remainder of the properties on Terrace Dale — #1, #3, and #5 — are on a wide two-way street and are easily accessible to County and other services such as snow removal, trash removal, fire and ambulance service, mail delivery, and delivery services such as FedEx and UPS. This is in direct contrast to the road fronting #7. The narrow eastern portion of Terrace Dale is not plowed or salted in the winter and routinely is a hazard for vehicles until the snow and ice melts. The small downhill right bend in the road is deceptive, and cars frequently slide off to the left onto 7 Terrace Dale when conditions are bad. The road has been blocked off by neighbors when it is impassible.

In the event of a fire, it would be very difficult for the fire department to access the site. The existing garage at 5 Terrace Dale is close to the property line of 7 Terrace Dale and does not allow clearance for fire equipment between structures. The rear yard setback request of 14 feet in lieu of the required 30 feet does not provide space for fire fighters to operate.

There is no on-street parking available. It is unlikely that more than one car would be able to park on the #7 Terrace Dale property. Therefore, additional residents and visitors would need to park on Cedar Avenue, which usually has few available spaces in proximity to Terrace Dale.

The petitioner has indicated his intention to develop this property for rental purposes. Due to our proximity to Towson University, our community has a history of problems with absentee-landlord properties. Our Association

Collectively - letters of
PROTESTANT' S

EXHIBIT NO. 1

invested a lot of time and effort in restoring a residential character to former problem rental properties at 1 Terrace Dale and 7727 York Road, which are now owner-occupied. This area is not currently part of the Towson Manor Village rental registration program.

There appears to be at least one other variance that is required that has not been petitioned for:

Baltimore County Zoning Regulations:

102.4 No dwelling, other than a multifamily building, shall be built on a lot containing less than 20,000 square feet which does not abut on a right-of-way at least 30 feet wide over which the public has an easement of travel, except as provided for panhandle lots in 32-4-409 of the Baltimore County Code. [Bill Nos. 172-1989; 2-1992; 137-2004]

The Maryland Department of Assessments and Taxation records show that the lot is only 3,500 square feet, which calls into question the actual size of the lot. If this record is accurate, the lot is just over 50% of the required lot size. The petitioner should be required to have the property professionally surveyed to verify the actual lot size.

The petitioner's stated plan is to move an existing structure from 30 Burke Avenue to 7 Terrace Dale. It is the opinion of the Association that this is physically impossible. There are numerous height obstructions in the path along York Road, and there are many trees on the 5 Terrace Dale and 7801 York Road properties that preclude passage of the size vehicle and wide load required. If the variances are granted, the petitioner would then be able to construct a new building that fits inside the footprint granted by the variances. This circumvents the process for approving construction on undersized lots specified in Section 304, Use of Undersized Single-Family Lots. Thus the neighborhood would be left vulnerable by the lack of involvement of the Planning Office in approval of appropriate architecture and design standards as outlined in the section stated..

Any hardship claimed by the petitioner is self-imposed. First, the original land owner subdivided the properties for #1, #3, #5, #7 Terrace Dale and #20, #22, and #24 Cedar Avenue. #7 was not intended to be used for a residential structure. Second, the petitioner obtained most of the remaining shares in the property with full realization that the property was undersized and is unbuildable without obtaining numerous variances.

Baltimore County has many undersized lots of a similar nature. There is nothing unique about owning a small lot that cannot be built on.

Therefore, the board of The Aigburth Manor Association of Towson, Inc. at the meeting of April 11, 2006 and reaffirmed at the meeting of May 9, 2006, voted to **oppose** the variances requested in case 06-506-A.

Sincerely,

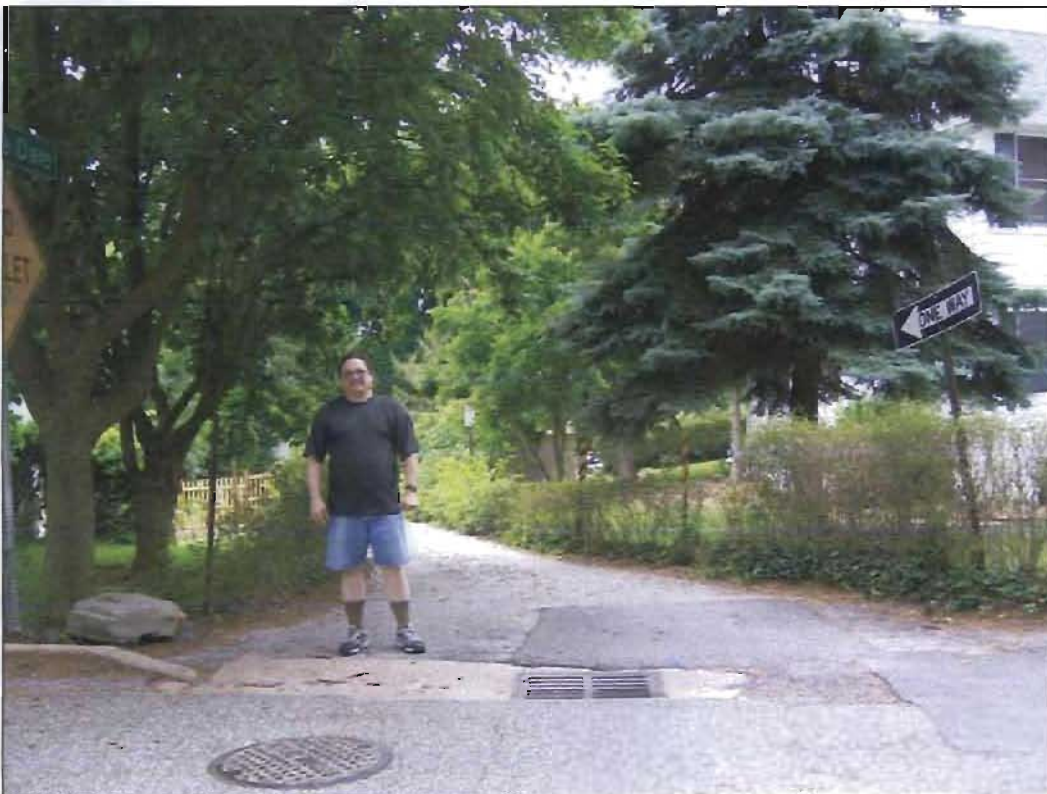


Paul S. Hartman
President, The Aigburth Manor Association of Towson, Inc.

Phone (410) 296-6934



1) Cedar Avenue looking north. Terrace Dale entrance is at left.

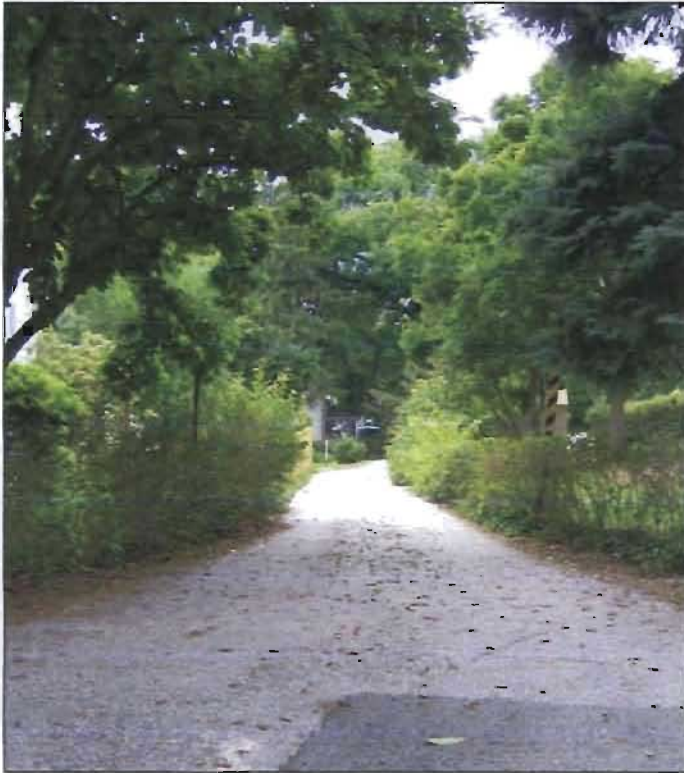


2) Entrance to Terrace Dale from Cedar Avenue.

PROTESTANT' S

EXHIBIT NO.

2



3) Terrace Dale looking west.



4) Terrace Dale looking west.



5) Terrace Dale looking west. 7 Terrace Dale extends from the end of the fence to just past the row of tall evergreens before the garage.



6) Terrace Dale looking west. Note row of trees on the right separating Terrace Dale from the office parking lot (far right).



7) Looking south. 7 Terrace Dale extends from the end of the fence on the left to just past the row of tall evergreens on the right.



8) Looking southeast from the junction of the narrow part of Terrace Dale with the office building parking lot.



9) Terrace Dale looking east from close to York Road. The narrow part of Terrace Dale joins the wide part at the right, at the DO NOT ENTER signs.

← 25th

Cedar Ave

22 Cedar

20 Cedar

7
Terraciale

8407

Terrace Dale

Existing garage

forwardable parking lot



[Click here for a plain text ADA compliant screen.](#)



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

[Go Back](#)
[View Map](#)
[New Search](#)
[Ground Rent](#)

Account Identifier: District - 09 Account Number - 1600001198

Owner Information

Owner Name: PECK HENRY B,JR Use: RESIDENTIAL
Principal Residence: NO
Mailing Address: 304 W PENNSYLVANIA AVE Deed Reference: 1) /23614/ 177
TOWSON MD 21204-4424 2)

Location & Structure Information

Premises Address
7 TERRACE DALE AVE

Legal Description
.70AC
7 TERRACE DALE AVE SS
400 E YORK RD

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No: Plat Ref:
70	20	690						2	

Special Tax Areas	Town Ad Valorem Tax Class	Primary Structure Built	Enclosed Area	Property Land Area	County Use
		0000		3,500.00 SF	04
Stories	Basement		Type	Exterior	

Value Information

	Base Value	Value As Of 01/01/2005	Phase-In Assessments As Of 07/01/2005	As Of 07/01/2006
Land:	870	870		
Improvements:	0	0		
Total:	870	870	870	870
Preferential Land:	0	0	0	0

Transfer Information

Seller: PECK HENRY B,JR	Date: 03/31/2006	Price: \$0
Type: NOT ARMS-LENGTH	Deed1: /23614/ 177	Deed2:
Seller: THOMAS RAMSAY B,JR	Date: 08/18/2005	Price: \$0
Type: NOT ARMS-LENGTH	Deed1: /22929/ 408	Deed2: /22929/ 405
Seller: PECK HENRY B TRUSTEE	Date: 11/21/1994	Price: \$1
Type: NOT ARMS-LENGTH	Deed1: /15803/ 385	Deed2:

Exemption Information

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

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

PROTESTANT' S

* NONE *

EXHIBIT NO. 3

PROPERTY SIZE OF AIGBURTH MANOR NEIGHBORHOOD HOMES SURROUNDING 7 TERRACE DALE

DETERMINED BY MDAT REPORTS AND COUNTY DEEDS

<u>NAME</u>	<u>ACCOUNT</u>	<u>STREET</u>	<u>MAP PARCEL</u>	<u>SQ. FEET</u>
VAGHARI KHOSROW D	09 0911150310	1 TERRACE DALE AVE	70 690	11,590
GOULD FRANKLIN DA	09 0920300270	3 TERRACE DALE AVE	70 691	7,308
HOLY SPIRIT ASSOC	09 0923154170	5 TERRACE DALE AVE	70 864	12,342
PECK HENRY BJR	09 1600001198	7 TERRACE DALE AVE	70 690	3,500 **
HEATH MILAN A II	09 0908011590	20 CEDAR AVE	70 689	7,488
HARTMAN PAUL S	09 0902650900	18.5 CEDAR AVE	70 236	17,031
HUNTER DAVID G	09 0914100210	18 CEDAR AVE	70 414	17,100
WALKER HARRY CJR	09 0908001473	22 CEDAR AVE	70 360	6,840
CARRUTHERS VIRGINIA	09 0919910610	24 CEDAR AVE	70 1067	6,786
YINGLING DAVID B	09 1600007162	26 CEDAR AVE	70 355	22,869

**** PLEASE NOTE DISCREPANCY BETWEEN THE SIZE OF 7 TERRACE DALE AND SURROUNDING PROPERTIES, AS WELL AS THE DIFFERENCE BETWEEN THE PETITIONER, MR. HENRY PECK'S CLAIMS THAT 7 TERRACE DALE IS 4,800 SQUARE FEET COMPARED TO MDAT'S REPORTS OF 3,500 SQUARE FEET.**