IN THE MATTER OF THE APPLICATION OF BRIAN P. AND ROBIN L. ZNAMIROWSKI - LEGAL OWNERS / PETITIONERS FOR SPECIAL HEARING AND VARIANCE ON PROPERTY LOCATED ON THE NW/S BART ALLEN LANE, 755' NW OF E DEVONFIELD DRIVE (4803 BART ALLEN LANE) 11th ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	* BEFORE THE * COUNTY BOARD OF APPEALS * OF * BALTIMORE COUNTY * Case No. 07-332-SPHA *

* * * * * * * * *

OPINION

This case comes as an appeal of a Deputy Zoning Commissioner's order in which requested relief for Special Hearing and Variance were granted with restrictions. A public de *novo* hearing was held on June 27, 2007. Petitioners, Brian P. and Robin L. Znamirowski, were represented by John Packard, Esquire. Peter Max Zimmerman, People's Counsel for Baltimore County, appeared on behalf of the Office of People's Counsel. Appellant /Protestant, Edward Healy, was represented by Francis X. Borgerding, Jr., Esquire. A public deliberation was held on July 25, 2007.

Testimony and Evidence

The special hearing request was filed pursuant to Section 500.7 of the *Baltimore County Zoning Regulations* (BCZR) to permit an in-law residence to be located within an accessory structure. The Variance request, filed pursuant to Section 307, is to permit an accessory structure located in the side and front yards with a height of 28 feet in lieu of the required rear yard and 15 feet respectively.

The subject property contains about 2.016 acres, improved with the Petitioners' existing two-story single-family dwelling. The property is zoned R.C. 5. Petitioners testified that they would like to build a two-story accessory structure. The first story would be a garage for antique

vehicles. The second story would contain two apartments in which both sets of in-law parents could reside when they visited. The apartments would contain two bedrooms, two bathrooms, a living room, and kitchen.

David Billingsly, whose firm is Central Drafting, presented the site plan, which he had prepared (Petitioner's Exhibit #1). The proposed structure is on the northeast side of the property, in the side and front yards. According to Mr. Billingsly, the property has special circumstances, with a forest conservation easement in the rear taking up approximately 30 percent of the lot. There is also a 10,000 square-foot septic reserve, which also prevents placing the structure in the rear of the house.

Petitioners' Exhibit #3 is a copy of the subdivision and shows the Protestant's lot, which is across from Petitioners' on Lot 5.

Petitioners' Exhibit #5 shows the elevations of the new structure, and the first and second story floor plans. The ground floor will contain three garage bays, an elevator and stairway to the second floor, which would provide access to the in-law residence.

According to Mr. Billingsly, the practical difficulty, if the variance relief were not granted, would constrict the size of the garage. He stated there was no other location on the lot.

On cross-examination, he testified that in an R.C. 5 zone only one dwelling was permitted by right. The square footage of the existing house is 2,990 (per Petitioners' Exhibit 2), while the new structure would be about 3,636 square feet. He also agreed that it would be possible to place a smaller accessory structure in the rear of the house.

Petitioner Brian Znamirowski testified regarding the uses of the proposed structure. He stated that both sets of in-laws reside in Florida most of the year, but visit during holidays. Should any of the in-laws become ill, he and his wife wanted somewhere nearby where they

could live. He testified that he would comply with the Zoning Commissioner's order to terminate the use of the apartments when they were no longer needed by taking the kitchen out. On cross-examination, he testified that the family owned three cars, which he and his wife drive; he also used two company cars, and owned four antique cars, all of which created the need for the extra garage space.

Protestant Edward Healy testified regarding his objection to the proposed structure. He stated that he was not opposed to the idea of in-law residences, but that this proposal would negatively impact his own property. The structure was immense and only 5 feet from his property line. He stated that he thought accessory buildings were usually smaller than the main building, while the proposed one was much bigger.

Jack Dillon, a planning consultant, also testified for Protestants as an expert in land planning and the *Baltimore County Zoning Regulations*. He testified that BCZR Section 1A04, the regulations for and R.C. 5 zone, did not allow for apartments or accessory structures with apartments (Protestant's Exhibit 1). Section 400, which concerns Accessory Buildings in Residence Zones, provides requirements regarding where accessory buildings should be located (no less than 2-1/2 feet of the property line) and maximum height (15 feet). Mr. Dillon opined that the Petitioners' proposal did not meet the requirements of an accessory structure. He stated that, in his opinion, the proposal is a two-family dwelling with a garage. He also believed there were no grounds to grant a variance, because the property was not unique. Other properties have forest easements and septic systems. In addition, he pointed out that Petitioners had been granted a variance in January 2007 for the attached garage, which is only one-story. At that time they could have expanded the attached garage to accommodate the in-laws. Therefore, the hardship was self-inflicted.

On cross-examination, Mr. Dillon testified that the zoning regulations do not contain specific regulations for in-law apartments, either within existing dwellings or as separate dwellings. In his opinion, however, he stated that this proposed structure is a separate dwelling that is not allowed in the R.C. 5 zone.

Applicable Law

Section 101 – Definitions

Accessory use or Structure – A use or structure which: (a) is customarily incident and subordinate to and serves a principal use or structure; (b) is subordinate in area, extent or purpose to the principal use or structure; (c) is located on the same lot as the principal use or structure served; and (d) contributes to the comfort, convenience or necessity of occupants, business or industry in the principal use or structure served. . . .

400.1 Accessory Buildings in residence zones . . . shall be located only in the rear yard and shall occupy not more than 40 % thereof. . . . In no case shall they be located less than 2-1/2 feet from any side or rear lot lines. . .

400.3 The height of accessory buildings, except as noted in Section 300 shall not exceed 15 feet.

1A04 R.C. 5 (Rural-Residential) Zone

*****

1A04.2A. Uses permitted as right.

*****

2. Dwellings, one-family detached.

*****

11. Accessory uses or structures, including, but not limited to the following:

*****

f. Swimming pools, tennis courts, garages, utility sheds, satellite receiving dishes . . . or other accessory structures or uses (Subject to the height and area provisions for buildings as set forth in Section 400).

Opinion and Order

The first question this Board addressed was whether or not the proposed structure was allowed under current zoning regulations. We find that, based on the regulations for permitted

uses in an R.C. 5 zone and for accessory structures that this proposal is not allowed. Although it is possibly time that the County regulations made some provision for in-law apartments, at this time they do not. The regulations regarding uses in an R.C. 5 zone are clear that apartments of any type are not allowed. The proposal would have two bedrooms, two bathrooms, a kitchen, and living room. There is no guarantee that, once a structure of this size is built, it would ever be the abandoned. While this Board, and even Protestant, understands the impulse to provide an adjoining residence for their in-laws, it is not permitted under the law.

This proposal also does not fit the definition or purposes of accessory uses in the BCZR. The proposed structure is almost twice the size of the existing house on the subject property. It will dwarf not only the house but also anything built near it on the adjoining lot. We credit Mr. Dillon's testimony regarding the applicable zoning regulations and the allowed uses for accessory structures. Mr. Dillon pointed out that, by capping the height of the structures at 15 feet, the County Council intended accessory structures to be subordinate to the main building. In fact, that is the clear intent of the definition of an accessory structure.

Finally, this Board finds no uniqueness to the property that would allow the granting of a variance allowing an accessory structure to be built in the side and front yards and at a height of 28 feet. Again we credit Mr. Dillon's expert testimony that locations exist in the rear of the house, even if not ideal, for an accessory use, and the property was not unique. In addition, Petitioners created a situation of self-inflicted hardship by not considering their need for extra garage space and in-law apartments when they were granted a variance for, and built, the attached garage.

This Board therefore unanimously denies the petition to permit an in-law residence to be located within an accessory structure. We also deny the variance requests.

ORDER

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

ORDERED that, for the reasons stated in the foregoing Opinion, the special hearing request filed pursuant to Section 500.7 of the *Baltimore County Zoning Regulations* (BCZR) to permit an in-law residence to be located within an accessory structure be and the same is hereby DENIED; and it is further

ORDERED that the variance request filed pursuant to Section 307 to permit an accessory structure to be located in the side and front yards with a height of 28 feet in lieu of the required rear yard and 15 feet respectively 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[1]

Lawrence M. Stahl

Robert W. Witt

[1] This case was originally heard and publicly deliberated by a panel comprised of three members of the Board of Appeals of Baltimore County; viz., Margaret Brassil, Ph.D., Chairperson; Lawrence M. Stahl; and Robert W. Witt, all of whom reached the unanimous decision in this matter. However, at the time of issuance of the Board's final Order, Dr. Brassil was no longer a member of the Board of Appeals.

County Board of Appeals of Baltimore County

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

November 20, 2007

Francis X. Borgerding, Jr., Esquire
Suite 600
Mercantile-Towson Building
409 Washington Avenue
Towson, MD 21204

RE: *In the Matter of: Brian P. and Robin L. Znamirowski*
Legal Owners /Petitioners Case No. 07-332-SPHA

Dear Mr. Borgerding:

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

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all 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

Kathleen C. Bianco
Administrator

Enclosure

c: Edward Healy
John Packard, Esquire
Brian P. and Robin L. Snamirowski
Robert Infussi
David Billingsley /Central Drafting
Cheryl Williams
Office of People's Counsel
Pat Keller, Planning Director
William J. Wiseman III, Zoning Commissioner
Timothy M. Kotroco, Director /PDM

Printed with Soybean Ink
on Recycled Paper

5-2-6

(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 9, 2007

RECEIVED
09 20
BALTIMORE COUNTY
BOARD OF APPEALS

Hand-delivered
Margaret Brassil, Chair
Lawrence M. Stahl, Panel Member
Robert Whitt, Panel Member
County Board of Appeals
400 Washington Avenue, Room 49
Towson, MD 21204

Re: Brian & Robert Znamiroski
4803 Bart Allen Lane
07-332-SPHA

Dear Panel Members:

The Board conducted a trial hearing and entertained oral argument on this case on June 27, 2007. The public deliberation is set for July 25, 2007.

This is to confirm that, consistent with the Board's instruction at the close of argument, we transmitted copies of the following cases: Dampman v. City of Baltimore, 231 Md. 280 (1963); Arundel Supply Corp., v. Cason, 265 Md. 371, 377-78 (1972); Riffin v. People's Counsel, 137 Md. App. 90 (2001): McLean v. Soley, 270 Md. 208, 213-15 (1973).

We have also just recalled the Board's decision in Joseph and Lauren Ryan, Case No.03-438-SPH dated March 10, 2004. We believe it will be helpful to the Board's review here. In order to be fair, we will refrain from making any argument but rather just transmit a copy, with enclosures for each attorney. It is settled that the Board may take notice of its own past decisions.

Thank you for your consideration in this matter.

Sincerely,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

PMZ/rmw
Enclosure
cc: Francis X. Borgerding, Jr, Esquire
John Packard, 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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

May 31, 2007

NOTICE OF ASSIGNMENT

CASE #: 07-332-SPHA

IN THE MATTER OF: BRIAN P. AND ROBIN L. ZNAMIROWSKI
- Legal Owners /Petitioners 4803 Bart Allen Lane 11th E; 3rd C

3/23/07 – Petition for Special Hearing and Variance GRANTED with restrictions by Deputy Zoning Commissioner.

ASSIGNED FOR: **WEDNESDAY, JUNE 27, 2007 at ~~10:00 a.m.~~** 11:00 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 C, 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: Appellant /Protestant : Edward Healy

Counsel for Petitioners /Legal Owners : John Packard, Esquire
Petitioners /Legal Owners : Brian P. and Robin L. Znamirowski

Robert Infussi
David Billingsley /Central Drafting

Cheryl Williams

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

Printed with Soybean Ink on Recycled Paper

CASE #: 07-332-SPHA **IN THE MATTER OF: BRIAN P. AND ROBIN L. ZNAMIROWSKI**
- Legal Owners /Petitioners 4803 Bart Allen Lane 11th E; 3rd C

SPH – To permit an in-law residence to be located within an accessory structure
VAR – To permit accessory structure to be located in side and front yards ilo required rear yards and height of 28' ilo maximum permitted 15'

3/23/07 – Petition for Special Hearing and Variance GRANTED with restrictions by Deputy Zoning Commissioner.

5/31/07 – Notice of Assignment sent to following parties; assigned for hearing on Wednesday, June 27, 2007 at 10 a.m:

Edward Healy
John Packard, Esquire
Brian P. and Robin L. Snamirowski
Robert Infussi
David Billingsley /Central Drafting
Cheryl Williams
Office of People's Counsel
Pat Keller, Planning Director
William J. Wiseman III, Zoning Commissioner
Timothy M. Kotroco, Director /PDM

6/11/07 – Letter from John G. Packard, Esquire, via FAX – advising of conflict for David Billingsly, Central Drafting and Design, with scheduled time of hearing. Not requesting that matter be continued, but rather than start time of hearing could be delayed until 11 a.m.

6/12/07 – Letter to Mr. Packard in response to his 6/11/07 letter with copies to all parties listed. Start time of hearing on June 27, 2007 will be held until 11:00 a.m.; the Board will convene at 11 a.m. in this matter on the scheduled date rather than the earlier start time originally assigned. File noted.

6/19/07 – Letter from P. Zimmerman – should a date be open in the not too distant future from the assigned 6/27 date, would ask that consideration be given to a postponement of this matter. Ms. Demilio has a trial in Orphan's Court for Baltimore County that date; Counsel for Petitioner cannot agree to postponement; Mr. Zimmerman indicated that they did not see the original notice and only found out about the hearing when the time was changed o 11 a.m.
-- Spoke with Mr. Zimmerman – indicated that no other dates are available at this time. Will advise should something come up and then contact both him and Mr. Packard.

6/27/07 – Board convened for hearing (Brassil, Stahl, Witt); Francis X. Borgerding, Jr., Esquire, appeared on behalf of Appellant /Protestant; to formally enter appearance; completed hearing; no memos to be filed; public deliberation assigned for Wednesday, July 25, 2007 at 9:00 a.m.; notice to be sent.

6/28/07 – Entry of Appearance filed by Francis X. Borgerding, Jr., Esquire, on behalf of Edward and Mary Lou Healy, Appellant.
-- Notice of Deliberation sent this date; fyi copy to 5-2-6; deliberation assigned for Wednesday, July 25, 2007 at 9:00 a.m. (copies of various cases as requested by CBA provided with deliberation notice).

7/09/07 – Letter from P. Zimmerman - follow up to transmitted copies of four cases to include the March 10, 2004 decision of the Board in Joseph and Lauren Ryan, 03-438-SPH. Copies provided to 5-2-6 this date (5 and 2 via USPS; 6 in office).

7/25/07 – Board convened for public deliberation (Brassil, Stahl, Witt). Unanimous decision of the Board that requested zoning relief was DENIED. Written Opinion and Order to be issued; appellate period to run from date of written Order. (5)

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
NW side Bart Allen Lane, 755 feet NW of East Devonfield Drive	*	DEPUTY ZONING COMMISSIONER
11th Election District	*	FOR
3rd Councilmanic District		
(4803 Bart Allen Lane)	*	BALTIMORE COUNTY
Brian P. and Robin L. Znamirowski *Legal Owner & Petitioner*	*	CASE NO. 07-332-SPHA

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Special Hearing and Variance filed by the legal owners of the subject property, Brian P. and Robin L. Znamirowski for property at 4803 Bart Allen Lane. The Special Hearing request was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an in-law residence to be located within an accessory structure. The Variance request is to permit an accessory structure located in the side and front yards with a height of 28 feet in lieu of the required rear yard and 15 feet respectively.

The property was posted with Notice of Hearing on March 4, 2007, for 15 days prior to the hearing, in order to notify all interested citizens of the requested zoning relief. In addition, a Notice of Zoning hearing was published in "The Jeffersonian" newspaper on March 6, 2007, to notify any interested persons of the scheduled hearing date.

Applicable Law

Section 500.7 of the B.C.Z.R. *Special Hearings*

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

ORDER RECEIVED FOR FILING
Date 3-23-07
By B

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."

Zoning Advisory Committee Comments

The Zoning Advisory Committee Comments are made part of the record of this case and contain the following highlights: ZAC comments were received from the Office of Planning dated February 1, 2007 which contains restrictions. ZAC comments were also received from the Department of Environmental Protection and Resource Management dated January 29, 2007 which contains restrictions. Copies of the comments are incorporated herein and made a part hereof the file.

Interested Persons

Appearing at the hearing on behalf of the requested special hearing and variance relief were Brian P. and Robin L. Znamirowski, Petitioners, as well as Robert Infussi and David Billingsley from Central Drafting who prepared the Plat to Accompany. Edward Healy appeared at the hearing as an adjacent property owner. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case.

PLAN. REVIEWED FOR FILING
3-23-07

Testimony and Evidence

The subject property contains 2.016 acres +/- zoned RC 5 and is improved by the Petitioner's existing two story single family dwelling. An addition to the existing garage was approved recently in Case No. 07-281-A as shown in exhibit 1. The Petitioners indicate that they would like to build a structure to house both sets of in-laws and the Petitioner's collection of antique vehicles. They initially considered simply adding to the existing home but that this turned out to be impractical. Mr. Billingsley pointed out the rear yard is restricted by the existing septic reserve area and the forest conservation easement. Consequently he opined the only location for an accessory structure large enough to meet these needs is shown on exhibit 1.

The floor plan for the in-law apartments is shown on exhibit 5C and shows two bedrooms, two baths and a common kitchen, dining and living room area. There will be a small elevator to eliminate the need for these elderly people to climb the stairs to the second floor. The Petitioners indicated that they realize that such an arrangement is somewhat experimental with hope that both sets of in-laws will be able to live together compatibly. However they also note that at present one set of in-laws lives in Florida for much the winter and so there may not be that much overlapping living. Nevertheless they recognize the need for their parents who are elderly to be physically near them for their care.

The need for the 28 foot height arises from the need for a second story for the apartments with roof line and shape compatible with the main house. The elevation for the structure is shown in exhibit 5A which features dormers and roof line similar to the house.

In regard to the Planning Office comments the Petitioners agreed to file an Declaration of Understanding which requires the living facilities be removed once the structure is no longer used by in-laws and also they agreed to record an Order approving this special hearing and the Declaration in the Land Records so as to notify future owners that the structure could not be used

PLANNING APPROVED FOR FILING
3-23-07

for a dwelling. In regard to the three car garage on the first floor, the Petitioners indicated that their in-laws have vehicles which should be stored out of the weather for the in-laws' comfort and safety. When there is room in this garage, the Petitioners will store some of their antique car collection in the new garage and when all the in-laws are in town the Petitioner will move his vehicles elsewhere. They noted that many other owners in the area have similar additional garages and presented letters of support from neighbors.

Mr. Healy, who owns the vacant lot across the common driveway, attended the hearing to better understand what was being proposed. He asked why the new structure could not be located in the rear yard and was told that the forest buffer easements and septic reserve area prohibit this location. The Petitioner also indicated that the topography of the area around the new garage is such that the new garage will be built somewhat into a small hill. Mr. Healy's property slopes away from the common driveway and so only the top 2/3 of the structure will be visible from the Healy lot. In addition the Petitioner agreed to the Planning Office comment to provide landscaping around the new building as approved by the Baltimore County Landscape Architect.

Mr. Healy indicated that the proposed structure will be subject to subdivision covenants and review by the architectural committee. The Petitioners indicated their willingness to this review if applicable and opined that the structure will add value to the neighborhood as it will be compatible with the house.

Findings of Fact and Conclusions of Law

In regard to the requested special hearing to permit a in-law residences to be located within an accessory structure, I am simply in awe of anyone who would attempt to mix in-law families in such an intimate manner as described in exhibit 5. The Petitioners have only three grandchildren to spread among four parents. I hope it works.

3-2307

I understand Mr. Healy's concern about the location and use of the new garage. The Petitioners will have to execute a Declaration of Understanding that requires them to dismantle the dwelling aspects of the garage when the in-laws no longer use it. It may never be rented or sold separately. To protect future buyers of the property, I will require the Petitioners to record this Order among the Land Records of the County indicating that the structure is not to be used as a dwelling or used for commercial purposes. In addition I will require the Petitioners to submit a landscape plan for the review and approval of the Baltimore County Landscape Architect who will require proper buffering of the new garage from the neighbors including Mr. Healy. In addition I will require the Petitioners to provide the Office of Planning with architectural plans and renderings to assure that the design of the new garage will be compatible with the Petitioners' home and neighborhood.

Considering all the testimony and evidence I will grant the request to allow in-law apartments in the second floor of the structure subject to conditions as below. With these condition I find that the request is within the spirit and intent of the RC 5 regulations and will not adversely affect the community.

In regard to the requests for variances, considering all the testimony and evidence presented, I find that special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. The new structure should be architecturally compatible with the new house and neighborhood and so must have a peaked roof and dormers. This raises the height of the structure to 28 feet. In addition the rear yard of the property is constrained by the extensive forest buffer easements and septic reserve area. These are the kind of special conditions which make the impact of the zoning regulations different on the subject property when compared to others in the district.

3-2307
B

I also find that strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. The Petitioners would be unable to provide for their elderly parents.

Finally, I find that this variance can be granted in strict harmony with the spirit and intent of said regulations and in a manner so as to grant relief without injury to the public health, safety and general welfare. Provided the landscape buffers are in place and the design reviewed by the Planning Office the structure should be compatible with the house and neighborhood. Finally when the Declaration is executed and filed in the land records, the community will be protected against use of the new garage as a dwelling or for commercial purposes.

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

THEREFORE, IT IS ORDERED, by the Deputy Zoning Commissioner for Baltimore County, this 23rd day of March, 2007, that the Petitioners' request for Variance request is to permit an accessory structure located in the side and front yards with a height of 28 feet in lieu of the required rear yard and 15 feet respectively is hereby GRANTED; and

IT IS FURTHER ORDERED, the Petitioner's request for Special Hearing request is filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit an in-law residence to be located within an accessory structure is hereby GRANTED, subject to the following:

1. The Petitioners may apply for their permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition; and
2. The Petitioners shall submit a landscape plan for the review and approval of the Baltimore County Landscape Architect to assure proper buffering of the new garage from the neighbors, and

ORDER RECEIVED FOR FILING
Date 3-23-07
By

3. The Petitioners to provide the Office of Planning with architectural plans and renderings to assure that the design of the new garage will be compatible with the Petitioners' home and neighborhood; and
4. The Petitioners shall enter into a Declaration of Understanding for In-law Apartments which shall require all aspects of a dwelling be removed after the last relative no longer uses the building as a residence; and
5. The Petitioner shall cause a copy of this Order and the Declaration of Understanding to be recorded by a qualified attorney in the Land Records for Baltimore County to notify future purchasers that this structure is not to be used for a dwelling; and
6. The Petitioner shall not use the structure for commercial purposes; and
7. The Petitioner may store antique vehicles in addition to family vehicles in the structure but shall not recondition or repair said vehicles except for routine maintenance; and
8. Additional information shall be submitted to the Department of Environmental Protection and Resource Management's Ground Water Management Section to determine if perc tests and/or additional components to the septic system will be required.

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

John V. Murphy

JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

JVM:pz

3-23-07

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

March 22, 2007

WILLIAM J. WISEMAN III
Zoning Commissioner

BRIAN P. AND ROBIN L. ZNAMIROWSKI
4803 BART ALLEN LANE
BALTIMORE MD 21013

Re: Petition for Special Hearing and Variance
Case No. 07-332-SPHA
Property: 4803 Bart Allen Lane

Dear Mr. and Mrs. Znamirowski

Enclosed please find the decision rendered in the above-captioned case.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days from the date of the Order to the Department of Permits and Development Management. If you require additional information concerning filing an appeal, please feel free to contact our appeals clerk at 410-887-3391.

Very truly yours,

John V. Murphy

John V. Murphy
Deputy Zoning Commissioner
for Baltimore County

JVM:pz
Enclosure

c: Robert Infussi, PO Box 1043-7043, Belair MD 21014
David Billingsley, Central Drafting & Design, Inc., 601 Charwood Court, Edgewood MD 21040
Cheryl Williams, 524 Rivera Drive, Joppa MD 21085
Edward Healy, 1505 Greendale Road, Baltimore MD 21218

Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 4803 BART ALLEN LANE

which is presently zoned R.C.5

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

SEE ATTACHED

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

TO BE PRESENTED AT HEARING

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

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

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Attorney For Petitioner:

Name - Type or Print City

Signature

Company

Address Telephone No.

City State Zip Code

Legal Owner(s):

BRIAN P. ZNAMIROWSKI
Name - Type or Print

Signature

ROBIN L. ZNAMIROWSKI
Name - Type or Print

Signature

4803 BART ALLEN LA. (410)592-5692
Address Telephone No.

BALDWIN MD. 21013
State Zip Code

Representative to be Contacted:

ROBERT INFUSSI
Name

P.O. BOX 1043-7043 (410)812-2236
Address Telephone No.

BEL AIR MD. 21014
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By RJ Date 1/24/07

Case No. 07-332-SPHA

REV 9/15/98

[illegible] RECEIVED FOR FILING

Date 3-23-07

By BJ

400.1 and 400.3 (BCZR) TO PERMIT AN ACCESSORY STRUCTURE LOCATED IN THE SIDE AND FRONT YARDS WITH A HEIGHT OF 28 FEET IN LIEU OF THE REQUIRED REAR YARD AND 15 FEET RESPECTIVELY.

Item #332

ZONING DESCRIPTION

4803 BART ALLEN LANE

Beginning at a point on the northwest side of Bart Allen Lane (50 feet wide) distant 755 feet northwesterly from it's intersection with the center of East Devonfield Drive (50 feet wide), thence being all of Lot 4 as shown on the plat entitled Beckwith Estates recorded among the plat records of Baltimore County in Plat Book 68 Folio 66. Containing 2.016 acres of land, more or less.

Being known as 4803 Bart Allen Lane. Being located in the 11TH Election District, 3RD Councilmanic District of Baltimore County, Maryland.

STATE OF MARYLAND
GEOFFREY A. TIZARD II
NO. 15453
REGISTERED
PROFESSIONAL ENGINEER

Item # 332

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: #07-332-SPHA
4803 Bart Allen Lane
N/west side of Bart Allen Lane, 755 feet +/- n/west of E. Devonfield Drive
11th Election District - 3rd Councilmanic District
Legal Owner(s): Brian P. & Robin L. Znamirowski

Special Hearing: to permit an in-law residence to be located within an accessory structure. ***Variance:*** to permit an accessory structure located in the side and front yards with a height of 28 feet in lieu of the required rear yard and 15 feet respectively.

***Hearing:* Wednesday, March 21, 2007 at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204.**

WILLIAM J. WISEMAN, III
Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-3868.
(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

JT/3/608 Mar. 6 126906

CERTIFICATE OF PUBLICATION

3/8, 2007

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 3/6, 2007.

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

S. Wilkinson

LEGAL ADVERTISING

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 23021

DATE 1/24/07 ACCOUNT 1-021-306-6150

AMOUNT $ 130.00

RECEIVED FROM:

FOR: zoning verification Case #07-332-SPH

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT

BUSINESS DATE	ACTUAL TIME	TRN
1/25/2007	1/24/2007 09:19:11	4

STG 0036 WALKIN WALKIN
>>RECEIPT # 542251 1/24/2007 0010
Dept 1 520 ZONING VERIFICATION
CR NO. 023021
Recpt Tot $130.00
$130.00 CK $.00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

CERTIFICATE OF POSTING

RE: Case No: 07-332-SPHA

Petitioner/Developer: BRIAN P. ROBIN L. ZNAMIROWSKI

Date Of Hearing/Closing: 3/21/07

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

Attention:

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 at 4803 BART ALLEN LANE

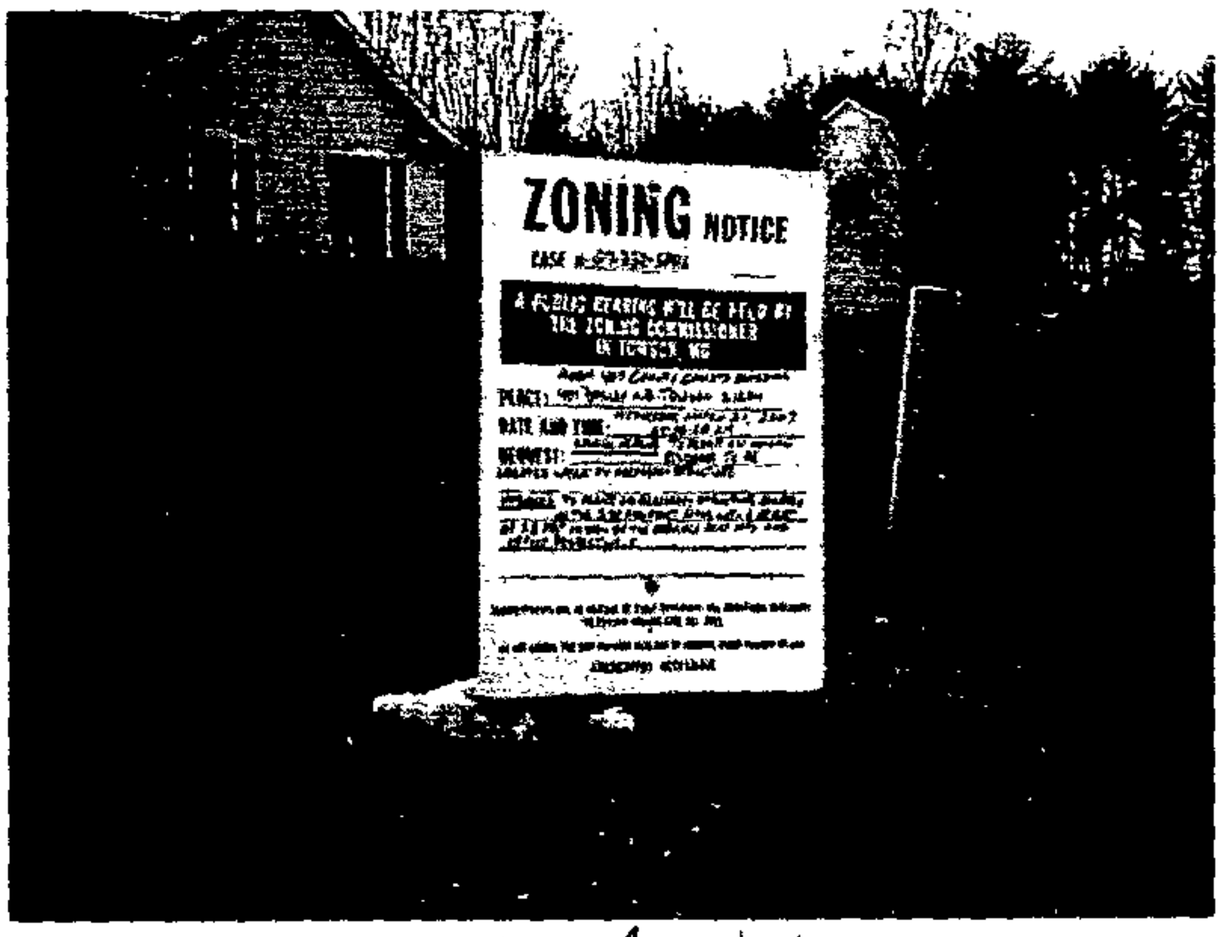
This sign(s) were posted on March 4, 2007.
(Month, Day, Year)

Sincerely,

Martin Ogle 3/4/07
(Signature of sign Poster and Date)

Martin Ogle
Sign Poster
16 Salix Court
Address
Balto. Md 21220
(443-629 3411)

im001014 (576x432x24b jpeg)



MartinOgle 3/4/07

BALTIMORE COUNTY

MARYLAND

JAMES T. SMITH, JR.
County Executive

TIMOTHY KOTROCO, *Director*
Department of Permits and Development Management

February 21, 2007

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: 07-332-SPHA
4803 Bart Allen Lane
N/west side of Bart Allen Lane, 755 feet+/- n/west of E. Devonfield Drive
11th Election District – 3rd Councilmanic District
Legal Owners: Brian P. & Robin L. Znamirowski

Special Hearing to permit an in-law residence to be located within an accessory structure. Variance to permit an accessory structure located in the side and front yards with a height of 28 feet in lieu of the required rear yard and 15 feet respectively.

Hearing: Wednesday, March 21, 2007 at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204

Timothy Kotroco
Director

TK:klm

C: Mr. & Mrs. Znamirowski, 4803 Bart Allen Lane, Baldwin 21013
Robert Infussi, P.O. Box 1043-7043, Bel Air 21014

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, MARCH 6, 2007.**
(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, March 6, 2007 Issue - Jeffersonian

Please forward billing to:
Brian Znamirowski
4803 Bart Allen Lane
Baldwin, MD 21013

410-592-5692

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: 07-332-SPHA
4803 Bart Allen Lane
N/west side of Bart Allen Lane, 755 feet+/- n/west of E. Devonfield Drive
11th Election District – 3rd Councilmanic District
Legal Owners: Brian P. & Robin L. Znamirowski

Special Hearing to permit an in-law residence to be located within an accessory structure. Variance to permit an accessory structure located in the side and front yards with a height of 28 feet in lieu of the required rear yard and 15 feet respectively.

Hearing: Wednesday, March 21, 2007 at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204

WILLIAM J. WISEMAN III
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL 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.

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, *Director*
Department of Permits and Development Management

March 15, 2007

Brian P. Znamirowski
Robin L. Znamirowski
4803 Bart Allen Lane
Baldwin, MD 21013

Dear Mr. and Mrs. Znamirowski:

RE: Case Number: 07-332-SPHA, 4803 Bart Allen Lane

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on January 24, 2007.

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

W. Carl Richards, Jr.

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR:amf

Enclosures

c: People's Counsel
Robert Infussi P.O. Box 1043-7043 Belair 21014

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

Febuary 5, 2007

ATTENTION: Zoning Review Planners

Distribution Meeting Of: January 29, 2007

332

Item Number: 314 and 322 through 333

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

Printed on Recycled Paper

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: February 5, 2007

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

SUBJECT: Zoning Advisory Committee Meeting
For February 5, 2007
Item Nos. 07-316, 323, 325, 328, 330, 331, 332, and 333

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

DAK:CEN:clw
cc: File
ZAC-NO COMMENTS-02052006.doc

Martin O'Malley, *Governor*
Anthony Brown, *Lt. Governor*

SHA
State Highway Administration
Driven to Excel
Maryland Department of Transportation

John D. Porcari, *Secretary Designate*
Neil J. Pedersen, *Administrator*

Date: FEBRUARY 1, 2007

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

RE: Baltimore County
Item No. 7-332-A
4803 BART ALLEN LANE
ZNAMIROWSKI PROPERTY
VARIANCE

Dear Ms. Matthews:

Thank you for the opportunity to review your referral request on the subject of the above captioned. We have determined that the subject property does not access a State roadway and is not affected by any State Highway Administration projects. Therefore, based upon available information this office has no objection to Baltimore County Zoning Advisory Committee approval of Item No. 7-332-A.

Should you have any questions regarding this matter, please contact Michael Bailey at 410-545-2803 or 1-800-876-4742 extension 5593. Also, you may E-mail him at (mbailey@sha.state.md.us).

Very truly yours,

Michael P. Bailey
For Steven D. Foster, Chief
Engineering Access Permits
Division

SDF/MB

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

TO: Timothy M. Kotroco

FROM: Dave Lykens, DEPRM - Development Coordination

DATE: Waiting for comment from EIR

SUBJECT: Zoning Item # 07-322-SPHA
Address 4803 Bart Allen Lane
(Znamirowski Property)

Zoning Advisory Committee Meeting of January 29, 2007

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

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

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

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

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

Additional Comments:
Additional information must be submitted to DEPRM's Ground Water Management (GWM) section to determine if perc tests and/or additional components to the septic system will be required. – *S. Farinetti; Ground Water Management.*

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Lynn Lanham **Date:** 2/1/07

SUBJECT: 4803 Bart Allen Lane

INFORMATION:

Item Number: ZAC 07-332-SPHA

Petitioner: Brian and Robin Znamirowski

SUMMARY OF RECOMMENDATIONS:

Based on a review of the petition and a site visit the Community Planning Division offers the following comments:

The petitioner is asking for variance relief from Section 400.1 and 400.3 to permit an accessory structure located in the side and front yards with a height of 28 feet in lieu of the required rear yard and 15 feet respectively. The petitioner is also asking for permission for an in-law residence to be located in an accessory structure.

The Community Planning Division does not oppose the request for an in-law residence as long as it is conditioned with appropriate future lapsing provisions. Additionally, a landscape plan designed to buffer the adjacent property (4802 Bart Allen Lane) should be submitted to the Office of Planning for review and approval.

FAX COVER SHEET

For You, For Baltimore County

Census 2000

Count Yourself in Maryland's Future!

Date: Dec. 11, 2007

Number of Pages including cover sheet: 8

To: Don Rivkin, Esq

Phone: (410) 823-2258

Fax # (410) 823-2268

c:

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

Phone: (410) 887-3180

Fax # (410) 887-3182

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

NSMISSION VERIFICATION REPORT

TIME : 12/11/2007 14:42

DATE,TIME	12/11 14:39
FAX NO./NAME	4108232266
DURATION	00:02:55
PAGE(S)	08
RESULT	OK
MODE	STANDARD ECM

Out of Play

Orange Jurii

Pet. Decision Notified Letter.

IN THE MATTER OF THE APPLICATION OF JOSEPH AND LAUREN RYAN- LEGAL APPEALS OWNERS /PETITIONERS FOR A SPECIAL HEARING ON PROPERTY LOCATED ON THE N/S OF DEER PARK ROAD, 600' W OF C/L THOMPSON AVE (6139 DEER PARK ROAD)	* * * * *	BEFORE THE COUNTY BOARD OF OF BALTIMORE COUNTY
4TH ELECTION DISTRICT 4TH COUNCILMANIC DISTRICT	*	Case No. 03-438-SPH

* * * * * * * * *

OPINION

This case comes to the Baltimore County Board of Appeals based on a decision rendered by the Zoning Commissioner for Baltimore County relative to a Petition for Special Hearing under date of July 22, 2003, who, after a public hearing, approved the Petition for Special Hearing which essentially approved two (2) single-family dwellings (an existing dwelling which would serve as an in-law residence) on one property in accordance with Petitioner's Exhibit #1 subject to four restrictions contained within the Order.

Following an appeal filed by People's Counsel for Baltimore County on August 6, 2003, a public hearing was scheduled before this Board on February 26, 2004. At that time, Joseph Ryan appeared *pro se*, and Peter Max Zimmerman, People's Counsel for Baltimore County, appeared as the Appellant. Since Mr. Ryan was not represented by counsel, the Chairman suggested that Mr. Zimmerman lead off with his case and documentation at which time Mr. Ryan would be given the opportunity to examine any exhibits and proceed with any comments he might wish the Board to hear.

People's Counsel introduced ten separate exhibits in explaining the rationale for his appeal from the decision rendered by the Zoning Commissioner, and Mr. Ryan requested that the entire file previously forwarded to the Board by the Zoning Commissioner's office be accepted as evidence on his part. People's Counsel indicated that he had had many conversations with Mr. Ryan relative to his submission of the appeal of the Petition for Special Hearing and that there were a number of reasons for his appealing the case, the primary one of which involved § 1A03, R.C. 4 (watershed protection) zone.

People's Counsel Exhibit #3, § 1A03.4 "Height and Area Regulations":

1.(b) The maximum gross density of a tract to be developed with a gross area of more than 10 acres is 0.2 lot per acre…

(1) A minimum of 70% of the gross area of the tract to be developed shall be designated as the conservancy area….

§ 1A03.4 – dwelling units per lot:

5. Dwelling units per lot. No more than one dwelling unit shall be located on any lot in an R.C. 4 Zone, except that tenant dwellings may be approved if the Land Preservation Advisory Board certifies that:

   a. Any such proposed dwelling is required for the operation of the farm for the use of bona fide tenant farmers; and

   b. That any such dwelling, in the location proposed, will not interfere with the operation of the farm.

Mr. Zimmerman explained to the Board that his primary concern was the fact that the Zoning Commissioner had granted the special hearing in contradiction of the fact that no more than one dwelling unit could be located on any lot in the R.C. 4 zone and that his

ruling violated the intent of the special hearing procedure and also the spirit and intent of the zoning laws. The ten exhibits that were submitted by People's Counsel were offered to Mr. Ryan, who had the opportunity to examine same, and People's Counsel explained his rationale for presenting them to the Board as evidence. Reference was made to a letter dated February 25, 2004 (People's Counsel Exhibit #5) in which the Valleys Planning Council went on notice as being opposed to the relief requested by the Petitioners in this case on the basis that the R.C. 4 (watershed protection) zone limited the development to a single home per lot unless it qualifies as a bona fide farmer. The latter stated that the property was approximately 18 acres in size and could be subdivided as a minor subdivision. While there might be personal reasons for this request, the granting of this request was contrary to the spirit and intent of the zoning regulations and therefore should be denied.

In addition, the Office of Planning of Baltimore County did not support the Petitioner's request to permit two single-family dwellings on one R.C. 4 lot and that was confirmed by the testimony of Mr. Mark A. Cunningham, Office of Planning who also testified at the hearing.

The Board afforded Mr. Ryan the opportunity to present his case. He stated that he and his wife were seeking County approval by way of special hearing to be permitted to build a second home on his property, utilizing his existing home as an in-law residence. He explained that his present home on the property was a very small rancher and that he has a growing family. He indicated he was a full-time career firefighter and emergency medical technician for Baltimore County Fire Department and that his wife

was a registered nurse working in the oncology departments of Johns Hopkins and GMBC hospitals.

Mr. Ryan also related the current medical condition of Mrs. Ryan's mother and the elderly condition of both parents that required close attention on his and his wife's part. He opined as to the considerable time and expense that had gone into the project so far, and that, because of the size and shape of his property and the current location of the rancher, it was desirable to erect a larger home on the property and that he and his wife could not subdivide the property at the present time due to financial restrictions. He indicated that when he bought the property, about two years ago, the then-present owner did not indicate to him that she had signed a "forestry declaration of intent" on March 17, 2000 in which the owner made declaration for an exemption for commercial forestry activities under the Baltimore County Forest Conservation Program.

Present also in the Board's hearing room were Mr. John Johnson, 6112 Deer Park Road, and Ms. Deirdre Moore, neighbors of the Petitioner who live in proximity to Mr. Ryan, not far from the Deer Park Methodist Church. Mr. Johnson was sworn in and testified that his objection to Mr. Ryan's petition was the fact that the property is not zoned appropriately for two dwelling units and that not being so zoned, the Board should enforce the current zoning and deny the special hearing petition.

Mr. Zimmerman and Mr. Ryan were given the opportunity for closing statements, at which time the Board recessed and reconvened a short time later to publicly deliberate the case. At that time, the Board, while sympathetic to the needs of Mr. Ryan, nevertheless was required to deny the special hearing petition primarily on the basis that

the present zoning does not permit the number of homes which he has proposed. The Board also found that this type of matter was not the proper subject for a special hearing. The Board then offered to Mr. Ryan some suggestions as to possible alternatives as to his existing home. In accordance with the above, the Board will deny the Petition for Special Hearing and will so order.

ORDER

THEREFORE, IT IS THIS 10th day of March, 2004 by the County Board of Appeals of Baltimore County

ORDERED that, for the reasons as stated in the foregoing Opinion, Petitioner's request for special hearing be and the same is hereby **DENIED.**

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Charles L. Marks, Panel Chairman

Edward W. Crizer, Jr.

Lawrence M. Stahl

PLEASE PRINT CLEARLY

CASE NAME 4803 BART ALLEN LA
CASE NUMBER 07-332 SPHA
DATE 3/21/07

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
DAVE BILLINGSLEY	601 CHARWOOD CT	EDGEWOOD MD 21040	
Robin + Brian Znamirowski	4803 Bart Allen Lane	Baltimore, MD 21013	
Rob Infussi	P.O. Box 1043	Bel Air, MD 21014	
Cheryl Williams	534 Rumen Dr.	Joppa 21085	

PLEASE PRINT CLEARLY

CASE NAME_____
CASE NUMBER_____
DATE_____

CITIZEN'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
Edward Healy	1505 Greendale Rd.	Balto MD 21218	Ed-Healy3@aol.com

RE: PETITION FOR SPECIAL HEARING AND VARIANCE	*	BEFORE THE
4803 Bart Allen Lane, NW/S Bart Allen Lane, 755' NW E. Devonfield Drive	*	ZONING COMMISSIONER
11th Election & 3rd Councilmanic Districts	*	FOR
Legal Owner(s): Brian & Robin Znamirowski Petitioner(s)	*	BALTIMORE COUNTY
	*	07-332-SPHA

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

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/ 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 2nd day of February, 2007, a copy of the foregoing Entry of Appearance was mailed Robert Infussi, P.O. Box 1043-7043, Bel Air, MD 21014, Representative for Petitioner(s).

RECEIVED
FEB 0 2 2007
Per.....

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

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

June 19, 2007

RECEIVED
JUN 19 2007
BALTIMORE COUNTY
BOARD OF APPEALS

HAND DELIVERED
Kathleen Bianco, Administrator
County Board of Appeals
of Baltimore County
400 Washington Avenue, Room 49
Towson, MD 21204

Re: Brian & Robin Znamirowski
Case No.: 07-332-SPHA

Dear Ms. Bianco:

The purpose of this letter is to ask for a postponement. Here is our explanation.

Last week we received your letter dated June 12, 2007, which refers to the scheduling of this case for June 27, 2007. Apparently by inadvertence, our office did not have the original hearing notice, although we were listed on the notice and customarily receive these notices when they are sent. Had we seen the notice when it came out, we would have made an earlier request.

Please note that although our office did not file an appeal, we did enter our appearance at the zoning commissioner level and we are interested in the issues in this case. Our reason for postponement is that Carole Demilio, who was to handle this case, has a previously set trial in the Orphan's Court for Baltimore County.

I spoke with John Packard, Esquire, Attorney for the Petitioner. He explained that he could not agree to a postponement of any great length because his client is interested in an expedited hearing. Under these circumstances, I would like to inquire whether the Board may have open another date not too distant from June 27th My educated estimate is that this case should take no longer than a couple of hours to try.

If you believe that there may potentially be another date, it perhaps may be agreeable to the Petitioner and Mr. Healy, the Appellant. If not, I will participate on June 27th.

Thank you for your consideration.

Sincerely,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

PMZ\rmw

cc: John Packard, Esquire via fax
Edward Healy

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, *Director*
Department of Permits and Development Management

May 15, 2007

Brian P. Znamirowski
Robin L. Znamirowski
4803 Bart Allen Lane
Baldwin, MD 21013

Dear Mr. and Mrs. Znamirowski:

RE: Case 07-332-SPHA, 4803 Bart Allen Lane

Please be advised that an appeal of the above-referenced case was filed in this office on April 20, 2007 by Edward Healy. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

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

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

Sincerely,

Timothy Kotroco

Timothy Kotroco
Director

TK:amf

c: William J. Wiseman III, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Robert Infussi P.O. Box 1043-7043 Belair 21014
Edward Healy 1505 Greendale Road Baltimore 21218
Dave Billingsley 601 Charwood Court Edgewood 21040
Cheryl Williams 534 Rivera Drive Joppa 21085

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 9, 2007

Hand-delivered
Margaret Brassil, Chair
Lawrence M. Stahl, Panel Member
Robert Whitt, Panel Member
County Board of Appeals
400 Washington Avenue, Room 49
Towson, MD 21204

RECEIVED
JUL 09 2007
BALTIMORE COUNTY
BOARD OF APPEALS

Re: Brian & Robert Znamiroski
4803 Bart Allen Lane
07-332-SPHA

Dear Panel Members:

The Board conducted a trial hearing and entertained oral argument on this case on June 27, 2007. The public deliberation is set for July 25, 2007.

This is to confirm that, consistent with the Board's instruction at the close of argument, we transmitted copies of the following cases: Dampman v. City of Baltimore, 231 Md. 280 (1963); Arundel Supply Corp., v. Cason, 265 Md. 371, 377-78 (1972); Riffin v. People's Counsel, 137 Md. App. 90 (2001): McLean v. Soley, 270 Md. 208, 213-15 (1973).

We have also just recalled the Board's decision in Joseph and Lauren Ryan, Case No.03-438-SPH dated March 10, 2004. We believe it will be helpful to the Board's review here. In order to be fair, we will refrain from making any argument but rather just transmit a copy, with enclosures for each attorney. It is settled that the Board may take notice of its own past decisions.

Thank you for your consideration in this matter.

Sincerely,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

PMZ/rmw
Enclosure
cc: Francis X. Borgerding, Jr, Esquire
John Packard, 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

June 28, 2007

NOTICE OF DELIBERATION

IN THE MATTER OF:
BRIAN P. AND ROBIN L. ZNAMIROWSKI – Legal Owners /Petitioners
Case No-07-332-SPHA

Having heard this matter on 6/27/07, public deliberation has been scheduled for the following date /time:

DATE AND TIME : WEDNESDAY, JULY 25, 2007 at 9:00 a.m.

LOCATION : Hearing Room 48, Basement, Old Courthouse

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

Kathleen C. Bianco
Administrator

c: Counsel for Appellant /Protestant : Francis X. Borgerding, Jr., Esquire
Appellant /Protestant : Edward Healy

Counsel for Petitioners /Legal Owners : John Packard, Esquire
Petitioners /Legal Owners : Brian P. and Robin L. Znamirowski

Robert Infussi
David Billingsley /Central Drafting

Cheryl Williams

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

Copy to: 5-2-6

Printed with Soybean Ink
on Recycled Paper

The Valleys Planning Council, Inc.

207 Courtland Avenue, Towson, Maryland 21204
Mailing Address: P.O. Box 5402, Towson, Maryland 21285-5402
Phone: 410 337-6877, *Fax:* 410 296-5409

June 25, 2007

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

Re: Appeal of Zoning Case # 07-332-SPHA

Dear Ms. Bianco:

I am writing to express the Valleys Planning Council's (VPC) opposition to the approval of variances requested in the above-mentioned case. The matter involves variances associated with an accessory structure, and the granting of those variances would permit substantial additions to a garage, accommodating two apartments. I understand the Board of Appeals will consider an appeal of this decision on June 26.

The VPC is concerned about a project such as this one that creates a separate dwelling unit of substantial size. Although the initial purpose is for extended family, in the future, there is a very real possibility that it will morph into a completely separate dwelling unit. Although the applicant agreed to a Declaration of Understanding calling for the demolition of the living quarters if no longer needed by the in-laws, it is unlikely that this would be monitored and enforced. With an investment of this magnitude, a Declaration of Understanding calling for the living facilities to be removed does not seem practical.

The granting of the location and height variances does not appear to be in keeping with the RC5 regulations which state: "No more than one dwelling is permitted on any lot in an R.C.5 Zone, but not excluding additional dwellings for bona fide tenant farmers." For this reason, the VPC feels the initial approval of the variances should be overturned.

Thank you for considering our input in this matter.

Sincerely,

Teresa Moore

Teresa Moore
Executive Director

RECEIVED
POST – APPEAL

The Valleys Planning Council, Inc.
P.O. Box 5402
Towson, Maryland 21285
410-337-6877 (phone)
410-296-5409 (fax)
moorevpc@comcast.net

FAX

To: Kathleen Bianco

From: Teresa Moore

Date: June 25, 2007

Subject: comment for appeal of case #07-332-SPHA (to be heard tomorrow, June 26)

The VPC would like to submit the attached comment regarding the above mentioned case. I hope you will have time to get it in the file before the hearing.

Thanks very much.

20 April 2007

Dear Sir,

I wish to appeal the decision of the Baltimore County Zoning Board of 3/23/07, case # 07-332 SPHA. The address for this property is 4803 Bart Allen Lane - 21013. My wife and I own the adjoining lot (4802 Bart Allen Lane.).

Thank you for your assistance in this matter.

Edward L Healy

Edward L Healy
1505 Greendale Rd.
Balt MD 21218
410-235-6545

RECEIVED
APR 20 2007
Per

May 24, 2007

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

RECEIVED
MAY 30 2007
BALTIMORE COUNTY
BOARD OF APPEALS

Dear Ms. Bianco,

RE: Case 07-332-SPHA, 4803 Bart Allen Lane

We received a letter indicating that Mr. Edward Healy, the owner of the undeveloped property adjoining ours, has appealed the decision of the Deputy Zoning Commissioner allowing us to build a separate 2 story garage with an upstairs in-law suite.

We respectfully request that the Board fast track scheduling this appeal. It is important that we proceed with the construction of the garage and in-law suite as quickly as possible. The in-law suite is to be occupied by my 83 year old father, who currently lives in a home that has a split entrance requiring him to climb 2 sets of steps to enter the main living floor.

In September of 2005 my father underwent a spinal laminectomy involving discs L2 to T12 requiring the insertion of 10 pins in his back. The surgery has left him with severe balance problems and weakness in his legs and arms. Climbing stairs is very difficult and painful. This information can be verified by Dr. Charles Hartjen, the orthopedic surgeon, 410-683-7260 and Dr. Bernard Zunkeler, the neurosurgeon 410-337-8201.

We would like to have this appeal hearing scheduled as soon as possible so that we can move forward with accommodating my father's disabilities.

Any consideration that you can give to our request will be greatly appreciated.

Sincerely,

Brian Znamirowski
Robin Znamirowski

Brian and Robin Znamirowski

January 17, 2007

Re: 4803 Bart Allen Lane

To whom it may concern,

My name is Dolores Kahler and I live at 4803 Carroll Manor Road. My home is directly behind Brian and Robin Znamirowski. Their address is 4803 Bart Allen Lane.
Mr. and Mrs. Znamirowski have shared with me their desire to build a detached garage with living quarters above it for their aging parents. They have shown me their plans and the plat outlining where the structure will sit on their property.

I am writing to let you know that I have no objection to their plans, nor do I object to the positioning of the new garage.

Sincerely,

Dolores Kahler

Mr. William Wiseman, Zoning Commissioner
Baltimore County Courts Building
Towson, Md. 21204

RE: 4803 BART ALLEN LANE
CASE NO. 07-332 SPHA

Dear Mr. Wiseman:

We, the undersigned, have reviewed the request of the petitioner to construct a garage with an in-law residence above and have no objection to the approval of same.

Mark Arenas Mark Arenas 3/11/07
4801
CARROL MANOR

Robert Feehley Robert Feehley 3/11/07
4807 BART ALLEN

Richard O'Donnell [illegible] 3/11/07
4805 "

Edward J McLoughlin Edward J McLoughlin 3/18/07.
4804 "

Katherine Franzoni Katherine Franzoni 3/19/07
4809 "

County Board of Appeals of Baltimore County

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

June 12, 2007

John Packard, Esquire
LAW OFFICE OF STUART SAGAL
600 Washington Avenue
Suite 300
Towson, MD 21204

RE: *In the Matter of: Brian P. and Robin L. Znamirowski*
Case No. 07-332-SPHA

Dear Mr. Packard:

This will acknowledge receipt of your letter dated June 11, 2007, in the subject matter, requesting that the start time for the hearing assigned for June 27, 2007 be held until 11:00 a.m. to accommodate Mr. Billingsley's conflict earlier that morning.

Please note that the Board will convene for hearing in Case No. 07-332-SPHA **at 11:00 a.m.** on Wednesday, June 27, 2007, in lieu of the assigned earlier start time.

Please call me if you have any questions.

Very truly yours,

Kathleen C. Bianco
Administrator

c: Edward Healy
Brian P. and Robin L. Znamirowski
Robert Infussi
David Billingsley /Central Drafting
Cheryl Williams
Office of People's Counsel
Pat Keller, Planning Director
William J. Wiseman III, Zoning Commissioner
Timothy M. Kotroco, Director /PDM

Printed with Soybean Ink
on Recycled Paper

LAW OFFICES

SAGAL, CASSIN, FILBERT & QUASNEY, P.A.

600 WASHINGTON AVENUE - SUITE 300
TOWSON, MARYLAND 21204

Telephone: 410-823-1881
Fax: 410-823-8032

STUART L. SAGAL
ALVIN J. FILBERT, JR
DANIEL W. QUASNEY
JOHN G. PACKARD
JEFFREY B. SCHULTZ
SANDRA M. WU
JAMES E. GILBERT
JENNIFER L. ALVAREZ

OF COUNSEL
STANLEY I. MORSTEIN

HOWARD CASSIN
(1951 – 2005)

June 11, 2007

Kathleen C. Bianco, Administrator
Baltimore County Board of Appeals
400 Washington Avenue, Room 409
Towson, Maryland 21204

VIA MAIL AND FAX (410) 887-3182

RE: **Case No. 07-332-SPHA**
In the Matter of Brian P. and Robin L. Znamirowski
4803 Bart Allen Lane
Hearing Date: **6/27/07 at 10:00 a.m.**

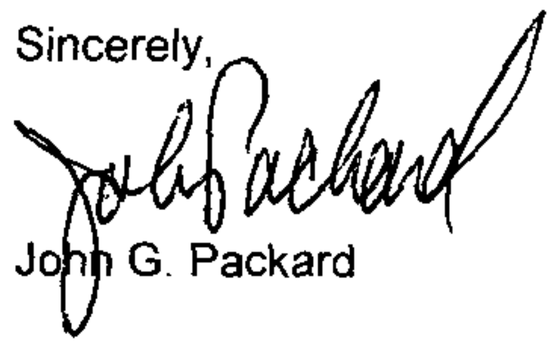
Dear Ms. Bianco:

I received a communication from David Billingsly, Central Drafting and Design, the Engineer in this case, that on June 27, 2007 10:00 a.m. he is scheduled to be in Room 407 in the New Courthouse on Case No.: 07-453-SPH, 2421 Beyerson Point Road.

I am not asking that this Znamirowski matter be continued. Rather, since Mr. Billingsly will be across the Plaza and available that morning, I would request that the start time for our case be held until 11:00 a.m.

If you anticipate any difficulty with this request, please let me know. Thank you for your assistance throughout this matter.

Sincerely,



John G. Packard

JGP:tlp
cc: Mr. Brian Znamirowski

F:\BALT\JGP\Znamirowski\bianco ltr-6-11-07.doc

LAW OFFICES

SAGAL, CASSIN, FILBERT & QUASNEY, P.A.

600 WASHINGTON AVENUE - SUITE 300
TOWSON, MARYLAND 21204

Telephone: 410-823-1881
Fax: 410-823-8032

STUART L. SAGAL
ALVIN I. FILBERT, JR.
DANIEL W. QUASNEY
JOHN G. PACKARD
JEFFREY B. SCHULTZ
SANDRA M. WU
JAMES E. GILBERT
JENNIFER L. ALVAREZ

OF COUNSEL
STANLEY I. MORSTEIN

HOWARD CASSIN
(1951 - 2006)

June 11, 2007

Kathleen C. Bianco, Administrator
Baltimore County Board of Appeals
400 Washington Avenue, Room 409
Towson, Maryland 21204

VIA MAIL AND FAX (410) 887-3182

RE: **Case No. 07-332-SPHA**
In the Matter of Brian P. and Robin L. Znamirowski
4803 Bart Allen Lane
Hearing Date: **6/27/07 at 10:00 a.m.**

Dear Ms. Bianco:

I received a communication from David Billingsly, Central Drafting and Design, the Engineer in this case, that on June 27, 2007 10:00 a.m. he is scheduled to be in Room 407 in the New Courthouse on Case No.: 07-453-SPH, 2421 Beyerson Point Road.

I am not asking that this Znamirowski matter be continued. Rather, since Mr. Billingsly will be across the Plaza and available that morning, I would request that the start time for our case be held until 11:00 a.m.

If you anticipate any difficulty with this request, please let me know. Thank you for your assistance throughout this matter.

Sincerely,

John G. Packard

JGP:tlp
cc: Mr. Brian Znamirowski

F:\BAILY\GP\znamirowski\bianco 1ltr-6-11-07.doc

APPEAL

Petition for Special Hearing and Variance
4803 Bart Allen Lane
Northwest side Bart Allen Lane, 755 feet northwest of East Devonfield Drive
11th Election District – 3rd Councilmanic District
Legal Owner(s): Brian P. and Robin L. Znamirowski

Case No.: 07-332-SPHA

✓ Petition for Special Hearing and Variance (January 24, 2007)

✓ Zoning Description of Property

✓ Notice of Zoning Hearing (February 21, 2007)

✓ Certification of Publication (March 6, 2007)

✓ Certificate of Posting (March 21, 2007) by Martin Ogle

✓ Entry of Appearance by People's Counsel (February 2, 2

✓ 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. Vicinity map
- ✓ 2. Real Property Search
- ✓ 3. Site plan
- ✓ 4. Photographs
- ✓ 5. A. Elevation drawing
  - ✓ B. First floor plan drawing
  - C. Cross-section drawing
- ✓ 6. Letter in support of petitioners

✓ Protestants' Exhibits: None

✓ Miscellaneous (Not Marked as Exhibit)
1. Petition in support of petitioners

✓ Deputy Zoning Commissioner's Order (GRANTED in accordance w/order – March 23, 2007)

Notice of Appeal received on April 20, 2007 from Edward Healy

Rec'd 3:56 pm
John Packard, Esq
(410) 823-1881 | 23 | 07
07-332-SPHA
He has a few procedural questions & wanted to know what he could do to set a June Hearing
Packard
Pet. Call
07-332-
410-823-1881

RECEIVED
MAY 15 2007
BALTIMORE COUNTY
BOARD OF APPEALS

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner/Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Robert Infussi P.O. Box 1043-7043 Belair 21014
Edward Healy 1505 Greendale Road Baltimore 21218
Dave Billingsley 601 Charwood Court Edgewood 21040
Cheryl Williams 534 Rivera Drive Joppa 21085
Brian P. Znamirowski Robin L. Znamirowski 4803 Bart Allen Lane Baldwin, MD 21013

date sent May 15, 2007, amf

Counsel for Petitioners:

John Packard, Esquire
LAW OFFICE OF STUART SAGAL
600 Washington Avenue
Suite 300
Towson, MD 21204

410-823-1881

IN RE: PETITION FOR ADMIN. VARIANCE NW end of Bart Allen Drive, 755 feet NW of c/l of East Devonfield Drive 11th Election District 3rd Councilmanic District **(4803 Bart Allen Lane)**	* * *	BEFORE THE DEPUTY ZONING COMMISSIONER BALTIMORE COUNTY
Brian P. and Robin L. Znamirowski *Petitioners*	*	CASE NO. 07-281-A

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Administrative Variance filed by the legal owners of the subject property, Brian P. and Robin L. Znamirowski. The variance request is for property located at 4803 Bart Allen Lane. The variance request is from Section 1A04.3.B.2.b of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a rear yard setback of 40 feet in lieu of the required 50 feet for a garage addition. The subject property and requested relief are more particularly described on Petitioners' Exhibit No. 1. The Petitioners wish to construct a one (1) car addition to the existing garage. The location as shown on the site plan is the only practical location due to the layout and architectural features of the existing structure.

Zoning Advisory Committee Comments

The Zoning Advisory Committee (ZAC) comments are made part of the record of this case and contain the following highlights: None.

Applicable Law

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

"The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations, and from sign regulations only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for

CBA
Plot. No. 3

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."

The Petitioners having filed a Petition for Administrative Variance and the subject property having been posted on December 29, 2006 and there being no request for a public hearing, a decision shall be rendered based upon the documentation presented.

The Petitioners have filed the supporting affidavits and photographs as required by Section 32-3-303 of the Baltimore County Code. Based upon the information available, there is no evidence in the file to indicate that the requested variance would adversely affect the health, safety or general welfare of the public and should therefore be granted. In the opinion of the Deputy Zoning Commissioner, the information, photographs, and affidavits submitted provide sufficient facts that comply with the requirements of Section 307.1 of the B.C.Z.R. Furthermore, strict compliance with the B.C.Z.R. would result in practical difficulty and/or unreasonable hardship upon the Petitioner.

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

THEREFORE, IT IS ORDERED, by the Deputy Zoning Commissioner for Baltimore County, this 17th day of January, 2007 that a variance from Section 1A04.3.B.2.b of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a rear yard setback of 40 feet in lieu

of the required 50 feet for a garage addition be and is hereby GRANTED, subject to the following:

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

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

JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

JVM:pz

Section 1A04
R.C.5 (Rural-Residential) Zone

1A04.1 General provisions.

A. Legislative statement of findings.

1. Declaration of findings. It is found that:

a. The rural-residential development that has occurred in Baltimore County heretofore has been of a scattered and generally disorderly nature;

b. This form of development constitutes a wasteful use of land and is fiscally expensive to serve with respect to the provision of basic services;

c. In some cases lot sizes are inadequate to assure long-term adequacy of on-lot sewer and water systems;

d. That unless measures are implemented to assure more rational growth patterns, including adequate lot size, undue financial hardships will be placed on Baltimore County and the life, safety and general welfare of the citizens of the county will be adversely affected;

e. That specific areas which are highly suitable for rural-residential development do exist; and

f. That these areas are adequate to accommodate anticipated future growth in the rural area and that future growth should be directed to these areas.

B. Purpose. The R.C.5 zoning classification is established, pursuant to the legislative findings above, in order to:

1. Provide for rural-residential development in suitable areas in which basic services are not anticipated.

2. Eliminate scattered and generally disorderly patterns of future rural-residential development.

3. Assure that encroachments onto productive or critical natural resource areas will be minimized.

4. Provide a minimum lot size which is sufficient to provide adequate area for the proper functioning of on-lot sewer and water systems.

1A04.2 Use regulations.

A. Uses permitted as of right. The following uses, only, are permitted as of right in R.C.5 Zones:

1. Churches or other buildings for religious worship including church schools.

2. Dwellings, one-family detached.

CBA Pro. Exh No. 1

3. Farms and limited-acreage wholesale flower farms. **[Bill No. 51-1993]**[1]

4. (Reserved)[2]

5. Open space, common.

6. Schools, including but not limited to private preparatory schools, colleges, conservatories or other fine arts schools. **[Bill Nos. 63-1980; 47-1982; 47-1985]**

7. Streets or ways.

8. Telephone, telegraph, electrical-power or other similar lines or cables, all underground; underground gas, water or sewer mains or storm drains; other underground conduits, except underground interstate and intercontinental pipelines.

9. Trailers, provided that any trailer allowed under this provision must be used or stored in accordance with the provisions of Subsection B, C, E or F of Section 415.1 and Section 415.2.A.1, as applicable.

10. Antennas used by CATV systems operated by companies franchised under Article 25 of the Baltimore County Code, if situated on property owned by the county, state or federal government or by a governmental agency. **[Bill Nos. 220-1981; 137-2004]**

11. Accessory uses or structures, including, but not limited to, the following:

    a. Excavations, uncontrolled.

    b. Farmer's roadside stand and produce stand, subject to the provisions of Section 404.4. **[Bill No. 41-1992]**

    c. Home occupations.[3]

    d. Parking spaces, including recreational vehicles, subject to the provisions of Section 415A.

    e. Piers, wharves, docks and bulkheads, subject to the provisions of Section 417.

    f. Swimming pools, tennis courts, garages, utility sheds, satellite receiving dishes (subject to Section 429) or other accessory structures or uses (subject to the height and area provisions for buildings as set forth in Section 400). **[Bill No. 71-1987]**

    g. Signs, subject to Section 450. **[Bill No. 89-1997]**

---

1 **Editor's Note: Former Item 4, "Farmettes," which followed this item, was repealed by Bill No. 110-1993, and former Item 5, "Hospitals" was repealed by Bill No. 37-1988.**

2 **Editor's Note: Former Item 4, "Assisted-living facilities, Class A," added by Bill No. 188-1993, was repealed by Bill No. 32-2006, retroactive to 5-29-2004.**

3 **Editor's Note: Former Paragraph d, "Offices or studios," which followed this paragraph, was repealed by Bill No. 124-1982.**

12. (Reserved)[13]

13. Commercial film production, subject to Section 435. **[Bill No. 57-1990]**

14. Transit facilities. **[Bill No. 91-1990]**

B. Uses permitted by special exception. The following uses, only, are permitted by special exception in R.C.5 Zones:

1. Antique shops, subject to the provisions of Section 402B.[14]

2. Camps, including day camps.

3. Cemeteries.

4. Community buildings, swimming pools or other uses of a civic, social, recreational or educational nature, including tennis facilities, provided that no tennis facility shall comprise more than four courts (Section 406A). **[Bill No. 62-1978]**

5. Community care centers, provided that no residential community care center (i.e., a center which serves as the residence of the persons for whom care is provided) shall provide care for more than 15 persons per site, and no day community care center shall provide care for more than 15 persons per acre nor more than 75 persons per site. **[Bill Nos. 142-1979; 157-1986]**

6. Excavations, controlled.

7. Fishing and shellfishing facilities, shoreline, Class I or II. **[Bill No. 30-1978]**

8. Golf courses, country clubs or other similar outdoor recreation clubs.

9. Home occupations of disabled persons, where the use is established in a structure originally constructed as a dwelling or as accessory to a dwelling or where the use is established in a structure that is situated on the same lot as a dwelling and which the Zoning Commissioner finds to be compatible with its surrounding neighborhood, provided that:

(1) Five years after the issuance of the permit;

(2) Death of the disabled person;

(3) Termination of the disability; or

(4) The failure of the disabled person to permanently reside at the premises.

A new special exception for the use may be granted when the previous special exception expires but only upon the completion of the entire application and hearing process in the same manner as if it were the initial

---

13 **Editor's Note: Former Section 1A04.A.12, regarding life-care facilities, was repealed by Bill No. 55-2004.**

14 **Editor's Note: Former Item 2, "Boat yards (Sections 417 and 101)," which followed this item, was repealed by Bill No. 179-1995.**

application for this special exception. It is the purpose of this provision to prevent the use of residential property for business purposes by an occupant other than a disabled person and to ensure that any occupation permitted pursuant to this item will be conducted in a manner appropriate to its surroundings **[Bill No. 27-1981]**

10. Horticultural nurseries, subject to the provisions of Sections 404.1 and 404.2. **[Bill No. 41-1992]**[15]

11. Offices or studios of physicians, dentists, lawyers, architects, engineers, artists, musicians or other professional persons as an accessory use, provided that any such office or studio is established within the same building as that serving as the professional person's primary residence at the time of application; does not occupy more than 25% of the total floor area of that residence; and does not involve the employment of more than one nonresident professional associate nor two other nonresident employees. **[Bill Nos. 105-1982; 65-1999]**

12. Public utility uses not permitted as of right, including underground interstate and intercontinental pipelines.

13. Rail passenger station, subject to Section 434. **[Bill No. 91-1990]**[16]

14. Railroads or other transportation lines or ways.

15. Residential art salons, subject to the provisions of Section 402C.

16. Standard restaurants or tearooms, converted from dwellings or other buildings as provided in Section 402.3. **[Bill No. 110-1993]**

17. Riding stables (commercial or noncommercial).[17]

18. Schools, not permitted as of right.

19. Trailers, subject to the provisions of Section 415.1.D.

20. Volunteer fire company or ambulance-rescue facilities.

21. Wireless telecommunications towers, subject to Section 426. **[Bill No. 30-1998]**

22. Practice, training, or physical-conditioning facilities and field for amateur or professional sports organizations, including offices that are necessary for the administration of the organization, subject to the following conditions: **[Bill No. 76-2002]**

---

15 Editor's Note: Former Item 9, "Marinas (Sections 417 and 101)," which followed this item, was repealed by Bill No. 179-1995, and former Item 10, "Office of doctor or dentist," was repealed by Bill No. 37-1988.

16 Editor's Note: Former Item 12, "Research institutes, subject to the provisions of Section 418," was repealed by Bill No. 122-1984.

17 Editor's Note: Former Item 17, "Sanitary or rubble landfills (see Section 412)," added by Bill No. 97-1987, and following this item, was repealed by Bill No. 28-1997.

a. Accommodations for public spectators may not be provided at the facility and field;

b. Only one sports organization may use the facility and field at one time;

c. The facility and field may not include lighting that would produce substantial off-site illumination;

d. The sports organization may not sell admission to the sports events at the facility and field; and

e. The facility and field shall be located:

(1) Within proximity to adequate road access; and

(2) On publicly owned land.

1A04.3 Height and area regulations.

A. Height regulation. No structure hereafter erected in an R.C.5 Zone shall exceed a height of 35 feet, except as provided under Section 300.

B. Area regulations.

1. Lot area; density control. **[Bill Nos. 178-1979;[2] 55-2004[3]]**

a. A lot having an area of less than 1 1/2 acres may not be created in an R.C.5 Zone. The maximum gross residential density is 0.5 dwelling per acre. **[Bill No. 128-2005[4]]**

b. Exceptions to minimum lot size. **[Bill No. 152-2004]**

(1) The owner of a single lot of record that is not a subdivision and that is in existence prior to September 2, 2003, but does not meet the minimum acreage requirement, or does not meet the setback requirement of Paragraph 2, may apply for a special hearing under Article 5 to alter the minimum lot size requirement. However, the provisions of Section 1A04.4 may not be varied.

(2) The Office of Planning may authorize a smaller lot size per residential unit, but in no event less than one acre per unit, for a tract of property for which growth allocation acreage has been

---

2 Editor's Note: This bill also repealed former Paragraph 2, "Minimum diametral dimension," which followed this paragraph.

3 Editor's Note: This bill also stated that it would not apply to any concept plan or application for limited exemption or waiver accepted for filing prior to June 7, 2004, that it would not apply to the Back River Neck District as defined in Section 4A03.13 of the Baltimore County Zoning Regulations, and any structure, building or use in existence prior to the effective date of this bill that is damaged or destroyed by fire or other casualty after the effective date of this bill would be subject to the provisions of Section 104 of the Baltimore County Zoning Regulations regarding nonconforming uses. The effective date of this bill is 6-11-2004.

4 Editor's Note: This bill also stated that it would not apply to any concept plan or application for limited exemption or waiver accepted for filing on or before 12-5-2005, nor would it override the grandfathering provisions of Bill No. 55-2004. Bill No. 128-2005 further stated that it would not apply to the Back River Neck District, as defined in Section 4A03.13.

awarded prior to June 11, 2004, pursuant to Article 32, Title 9 of the Baltimore County Code, if at least 50% of the tract is donated to and accepted by the County for public benefit.

2. Building setbacks. **[Bill No. 55-2004]**

   a. As used in this section, "collector road" means a street or road that is intended for travel, including commuter travel, between residential neighborhoods, but not for travel within neighborhoods, and is not designated as a principal arterial. **[Bill No. 77-2005[5]]**

   b. Any principal building hereafter constructed in an R.C.5 Zone shall be situated at least 150 feet from the center line of any collector road, or any scenic route identified in the Baltimore County Master Plan, and 100 feet from the center line of any road that leads to or connects with a collector road, and at least 75 feet from the center line of any other street or road, and at least 50 feet from any lot line other than a street line, except as otherwise provided in Paragraph 5 below. **[Bill No. 77-2005[6]]**

   c. Any principal building constructed in an R.C.5 Zone that is contiguous to an R.C.2 or R.C.7 Zone shall be situated at least 150 feet from the zone line.

3. Coverage. No more than 15% of any lot in an R.C.5 Zone may be covered by buildings, except as otherwise provided in Paragraph 5 below.

4. Exceptions for certain record lots. Any existing lot or parcel of land with boundaries duly recorded among the land records of Baltimore County with the approval of the Baltimore County Office of Planning on or before the effective date of these zoning regulations and not part of an approved subdivision that cannot meet the minimum standards as provided within the zone may be approved for residential development in accordance with the standards prescribed in force at the time of the lot recordation.

5. Dwellings per lot. No more than one dwelling is permitted on any lot in an R.C.5 Zone, but not excluding additional dwellings for bona fide tenant farmers.

---

[5] Editor's Note: Section 2 of this bill stated that it would not apply to any concept plan or application for limited exemption or waiver accepted for filing prior to July 5, 2005, nor would it override any of the grandfathering provisions contained in Bill No. 55-04. Bill No. 77-2005 also stated that it would apply retroactively to May 1, 2005.

[6] Editor's Note: Section 2 of this bill stated that it would not apply to any concept plan or application for limited exemption or waiver accepted for filing prior to July 5, 2005, nor would it override any of the grandfathering provisions contained in Bill No. 55-04. Bill No. 77-2005 also stated that it would apply retroactively to May 1, 2005.

1A04.4 Performance standards. **[Bill No. 55-2004[7,8]]**

A. The standards in this section apply to all residential development in the R.C. 5 Zone, including single lots of record and minor subdivisions.

B. Intent; evaluation of compliance.

1. These standards are intended to ensure that rural residential development conforms with a quality of design that maintains and reflects the rural character of the County.

2. The evaluation of compliance shall occur as part of the review of development proposals. In addition to all other times required by law, the Office of Planning shall review a plan and submit findings to ensure compliance, including site layout of principal buildings and proposed roads, at the time of perc test application and at the time of construction document submission.

3. The Office of Planning may require the submittal of sufficient information, such as a written narrative of the salient features of the site, the design concept of the site plan, a photo montage and building elevations and grading plans, from which a finding can be made on compliance of the project with the standards.

4. Deviation from the standards may be allowed only if clearly necessary to:

a. Comply with another standard; or

b. Comply with environmental regulations or otherwise protect resources.

5. Deviation from the standards is not permitted for the purpose of allowing additional lots.

C. Consideration of findings; deviation from standards.

1. The findings of the Office of Planning shall be submitted to the hearing officer or to the Director of Permits and Development Management, as applicable.

2. The hearing officer or the Director of Permits and Development Management, as applicable, shall adopt the findings presented by the Office of Planning before a development plan is approved, unless the hearing officer or Director determines that the findings constitute an abuse of discretion or are unsupported by the documentation and evidence presented to the office. The Office of Planning may recommend relaxation of public

---

7 **Editor's Note: This bill also repealed former Section 1A04.4, regarding life-care facilities.**

8 **Editor's Note: This bill also stated that it would not apply to any concept plan or application for limited exemption or waiver accepted for filing prior to June 7, 2004, that it would not apply to the Back River Neck District as defined in Section 4A03.13 of the Baltimore County Zoning Regulations, and any structure, building or use in existence prior to the effective date of this bill that is damaged or destroyed by fire or other casualty after the effective date of this bill would be subject to the provisions of Section 104 of the Baltimore County Zoning Regulations regarding nonconforming uses. The effective date of this bill is 6-11-2004.**

works standards if necessary to enhance or maintain the rural character of the proposed development provided that public safety is not jeopardized.

D. Site planning.

1. A development proposal shall:

a. Reflect the traditional rural character of the area in architectural form, scale, materials, detailing and landscaping context.

b. Retain the existing quality vegetation of the site to the fullest extent possible and protect the root systems of the remaining vegetation during construction.

c. Integrate, where possible, significant features of the site, such as distinctive buildings, vistas, topographic features, specimen trees, tree stands, hedgerows, monuments, landmarks and gardens, into the site design, and retain the existing character of the features and their settings.

d. Coordinate building design, site layout, and grading so that grade transitions are gradual and respect the existing topography.

e. Provide for smooth transitions between the proposed development and the surrounding rural area by arranging and orienting the proposed buildings and site improvements to complement those in the surrounding vicinity.

f. Provide varietal transitions between proposed buildings and site improvements with respect to setbacks, street patterns, and building-to-street grade relationships.

2. Reverse-frontage lots are permitted only if the applicant can demonstrate that adequate setbacks, topography, berming, landscaping or building design will effectively screen private yard space and decks from the public view.

3. Fences may not be located closer than 50 feet to a public right-of-way.

4. Panhandle lots must conform to section 32-4-409 of the Baltimore County Code and to the standards in the Comprehensive Manual of Development Policies.

5. Streets shall incorporate curvilinear or circular features.

E. Open space. A development proposal shall:

1. Integrate open space areas into the proposed development by:

a. Creating focal points along streets;

b. Locating landscaped open green spaces that may be viewable from the development entrance or adjoining public street; and

c. Orienting dwelling units around open areas or squares.

2. Incorporate significant features, such as stands of trees, into open areas.

3. In addition to plant material, use fences, walls or earth forms to provide effective and attractive screens and buffers where necessary. Buffer quantities are not limited by the Baltimore County Landscape Manual.

F. Landscape design.

1. A development proposal shall be landscaped to maintain and enhance a rural character, especially as visible from an arterial or connector road. This may include a provision for contiguous tree growth of the same species or trees with design characteristics and growth habits that are similar to those of the surrounding rural area.

2. Community signage shall be designed with natural materials that reflect a rural character. The design for community signage, including the size of lettering, shall be shown on the schematic landscape plan or included in the final development plan and shall be part of the approval process before issuance of any building permits.

G. Buildings.

1. A development proposal shall:

a. Allow variety in housing type or design, while maintaining continuity in scale, rhythm, proportion and detail.

b. Orient the front of the dwelling toward the street and incorporate prominent entries and porches or stoops in front building facades.

c. Provide for the coordinated architectural design of decks, balconies, windows, dormers, chimneys and porches as components of the building following dominant building lines, proportions, style and scale. Decks shall be screened to minimize visibility from a public street.

d. Design accessory structures at a scale appropriate to the dwelling and design garages with the same architectural theme as the principal building on the site, providing consistency in materials, colors, roof pitch, and style.

e. Ensure that exteriors of all buildings use the same finish materials and architectural details on all front, side and rear elevations. Use of quality material such as brick, stone or cedar is encouraged.

2. Garages may not become the dominant street feature. Garage doors shall use items such as windows, decorative patterns, and color to relieve the visual impact of the house from the street.

Type	Limitation	Minimum Acreage
Fowl or Poultry:		
Chickens, ducks, turkeys, geese	No numerical limit, provided that a nuisance is not created or allowed to exist on the property	1

*Sucklings and weanlings under 12 months of age will not be counted.[5]

Section 101
Definitions
[BCZR 1955]

Words used in the present tense include the future; words in the singular number include the plural number; the word "shall" is mandatory. For the purposes of these regulations, certain terms and words are defined below. **[Bill No. 149-1987]**

Any word or term not defined in this section shall have the ordinarily accepted definition as set forth in the most recent edition of Webster's Third New International Dictionary of the English Language, Unabridged. **[Bill No. 149-1987]**

ACCESSORY BUILDING — One which is subordinate and customarily incidental to and on the same lot with a main building. A trailer shall not be considered an accessory building. A structure connected to a principal building by a covered passageway or with one wall in common shall not be considered an accessory building.

ACCESSORY USE OR STRUCTURE — A use or structure which: (a) is customarily incident and subordinate to and serves a principal use or structure; (b) is subordinate in area, extent or purpose to the principal use or structure; (c) is located on the same lot as the principal use or structure served; and (d) contributes to the comfort, convenience or necessity of occupants, business or industry in the principal use or structure served; except that, where specifically provided in the applicable regulations, accessory off-street parking need not be located on the same lot. An accessory building, as defined above, shall be considered an accessory structure. A trailer may be an accessory use or structure if hereinafter so specified. An ancillary use shall be considered as an accessory use; however, a use of such a nature or extent as to be permitted as a "use in combination" (with a service station) shall be considered a principal use. **[Bill Nos. 100-1970; 26-1988]**[6]

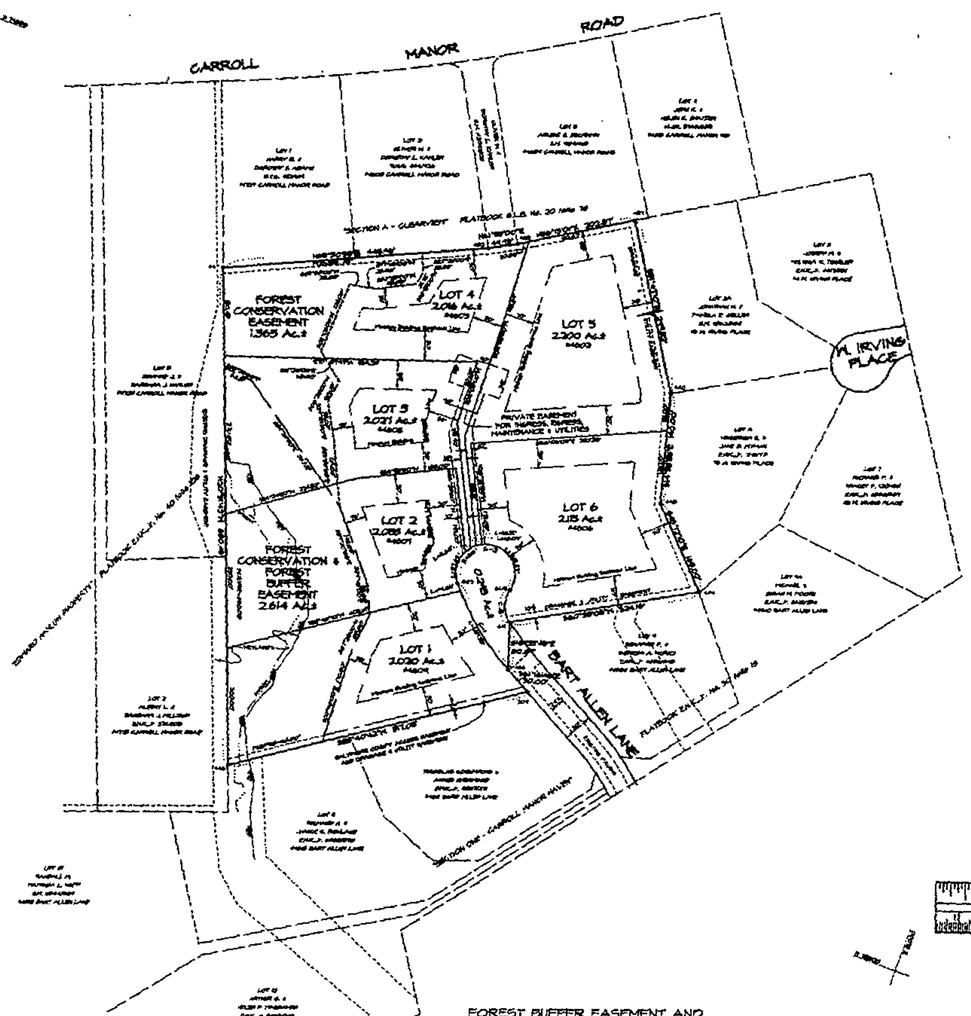
AGRICULTURE, COMMERCIAL — The use of land, including ancillary structures and buildings, to cultivate plants or raise or keep animals for income, provided that the land also qualifies for farm or agricultural use assessment pursuant to § 8-209 of the Tax-Property Article of the Annotated Code of Maryland, as amended. Commercial agriculture includes the production of field crops, dairying, pasturage agriculture, horticulture,

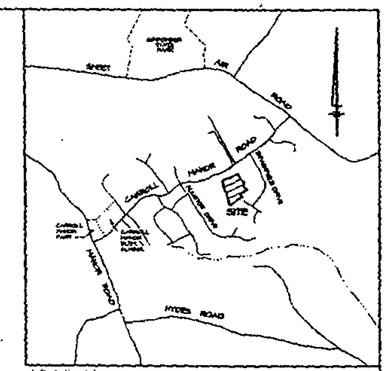
---

5 **Editor's Note: See also Section 404.**

6 **Editor's Note: The definition of "acreage, gross residential" which originally followed this definition was repealed by Bill No. 100-1970. The definition of "after-hours club," which followed thereafter, was repealed by Bill No. 36-2000.**

CBA
Pla. Exh
No. 2





Vicinity Map 1" = 2000'

GENERAL NOTES

1. Highway and Flood rights-of-way, sewer easements, drainage and utility easements, access easements, forest buffer or forest conservation areas in lots or easement, storm water access in fee or easement, and storm water management areas, as either now existing, shown hereon, or established under separate and subject for these instruments as private, are hereby offered for dedication to Baltimore County, Maryland. The owner, his personal representatives and assigns, shall convey said areas by deed, to Baltimore County, Maryland, at no cost, upon final or site approval or when requested by Baltimore County, the owner determines Baltimore County, its agents and assigns, the right to enter upon the property for the purpose of installing, constructing, maintaining and repairing roads, utility lines and facilities, and storm water management ponds and facilities.
2. Structure and/or inside drains for roof and rooftop flooded in drains are for ventilation of basements only, and the same are not intended to be connected to public sewer, the line inside floor to be drain therefor to originally constructed connected to the property at the time to clean the pipe is difficult, their halls and sewage.
3. This plat may contain in accordance with the provisions of the Baltimore County Code, Section 26-206.
4. The recording of this plat does not guarantee the installation of streets or an addition by Baltimore County.
5. The information shown hereon may be supplemented by a subsequent or amended plat.
6. Additional information concerning this plat may be obtained from the Baltimore County Office of Planning and Zoning and the Department of Public Works.
7. The recording of this plat does not constitute or imply acceptance by the County of any street, easement, park, open space or other public area shown on the plat.
8. The owner/developer will comply with the forest management provisions adopted by the Baltimore County Department of Environmental Protection and Resource Management.
9. The plan for the property shown on this plat was approved on January 26, 1996.
10. And permission hereon will be void for a period of three(3) years from the date the record plat is signed by the Director of the Department of Environmental Protection and Resource Management. At the expiration of this period, new tests may be required.
11. All requirements of the Maryland State Department of the Environment and Baltimore County Department of Environmental Protection and Resource Management pertaining to private water and/or sewage systems must be complied with prior to approval of building permit applications.
12. Tree protection, area removal and none maintenance are to be provided in the portion of the property and street right of way.
13. Except as otherwise indicated, no building restriction lines shown hereon have been placed on the result of an interpretation only of currently applicable regulations and policies of the Baltimore County Office of Planning and Zoning. Exceptions to these regulations may apply.
14. Lots 1 & 2 may need to utilize easements or private drives.

Filed for record
S.M. 68 FOLIO 86
Date MAR 26 1996
Time
Clerk

"BECKWITH ESTATES"

BART ALLEN LANE
Deed Ref: S.M. No. 11064 folio 197
Tax Account No. 11-02-022281
Zoned R.C.-5
Tax Map 44 Grid 11 Parcel 123
11th ELECTION DISTRICT
6th COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

COORDINATES

POINT	NORTH	EAST
204	78702.71	80288.87
402	74409.77	79984.98
489	74441.80	79978.24
487	74801.18	80181.09
486	75134.80	80214.72
444	75888.31	80136.46
442	74876.50	80908.86
445	74113.56	80871.82
444	73942.64	80710.76
447	74238.44	79938.64
448	73441.34	79881.59
502	73888.78	80089.30
503	73888.38	80170.33

FOREST BUFFER EASEMENT AND FOREST CONSERVATION EASEMENT NOTES

1. THERE SHALL BE NO CLEARING, GRADING, CONSTRUCTION OR DISTURBANCE OF VEGETATION IN THE FOREST BUFFER EASEMENT OR THE FOREST CONSERVATION EASEMENT EXCEPT AS PERMITTED BY THE BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT.
2. ANY FOREST BUFFER EASEMENT OR FOREST CONSERVATION EASEMENT SHOWN HEREON IS SUBJECT TO PROTECTIVE COVENANTS WHICH MAY BE FOUND AMONG THE LAND RECORDS OF BALTIMORE COUNTY AND WHICH RESTRICT DISTURBANCE AND USE OF THESE AREAS.
3. THE FOLLOWING USES ARE PERMITTED BY RIGHT WITHIN THE FOREST CONSERVATION EASEMENT: HIKING, MAKING SNACKS AND THE PLUCKING OF NONVOCAL TREES LESS THAN 30" IN DIAMETER FOR PERSONAL USE. OTHER ACTIVITIES INCLUDING CLEARING, GRADING, CONSTRUCTION OR DISTURBANCE OF VEGETATION IN THE FOREST CONSERVATION EASEMENT REQUIRE APPROVAL BY THE BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT.

DENSITY CALCULATIONS

ZONED RC-5
GROSS AREA 12.724 Ac.±
NUMBER OF LOTS PERMITTED: 0.667 x 12.724 = 8.5
NUMBER OF LOTS PROPOSED: 6

CURVE INFORMATION

Curve	Radius	Length	Chord Bear.	Chord
C-1	450.00'	75.40'	N60°30'07"W	110.88'
C-2	50.00'	203.80'	N17°29'46"E	94.21'
C-3	50.00'	36.35'	S41°13'38"E	35.50'

SCALE: 1"=100' DATE: JANUARY 12, 1996

FMA Completed
Final Plat: PDM:
Public Services
Dev. Design
Dev. Engineer
Street, Numbering
Zoning
Real Estate
Recreation and Parks

APPROVED FOR THE DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT
DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

APPROVED BY THE DIRECTOR OF PERMITS AND DEVELOPMENT MANAGEMENT PURSUANT TO SECTION 26-278(A), BALTIMORE COUNTY CODE
DIRECTOR OF PERMITS AND DEVELOPMENT MANAGEMENT

NOTE: COORDINATES and BEARINGS shown on this plat are referred to the system of coordinates established in the Baltimore County Metropolitan District and are based on the following Traverse stations:

B.C. 1024A N 74,777.9 E 79,789.22
B.C. 1024A1 N 75,276.67 E 80,812.60

OWNER - DEVELOPER
M.R.I.C., LLC
R. Andrew Larkin, Jr. Pres.
325 N. 23rd Street
Baltimore, Maryland 21211
Phone (410) 864 - 1911

OWNER'S CERTIFICATE

The undersigned, Owner of the land shown on this Plat, hereby certifies that, to the best of his knowledge, the requirements of Subsection (c) of Section 3-108 of the Real Property Article of the Annotated Code of Maryland have been complied with, insofar as same concerns the making of the Plat and setting of the markers.

By R. Andrew Larkin Jr. 2-14-96
R. Andrew Larkin, Jr. PRESIDENT

SURVEYOR'S CERTIFICATION

The undersigned, a Registered Land Surveyor of the State of Maryland, does hereby certify that to the best of his knowledge, the requirements this Plat and that the land shown on this Plat has been laid out, and the Plat thereon has been prepared, in compliance with Subsection (c) of Section 3-108 of the Real Property Article of the Annotated Code of Maryland, and hereby certify as some concerns the making of the Plat and setting the markers.

Bruce E. Dick 2/16/96
Bruce E. Dick - Maryland Property Line Surveyor No. 881

GERHOLD, CROSS & ETZEL, LTD
REGISTERED PROFESSIONAL LAND SURVEYORS
Suite 100
320 East Towsontown Boulevard
Towson, Maryland 21286
(410) 823-4470

COMPUTED S.A.L. DRAWN S.A.L./S.A.D. CHECKED B.E.D

MSA3SU 1936 -9415

68-66

CBA Pet #3

CASE NO. 07-332. SPHA

PROTESTANT'S EXHIBITS

✓ 1. SECTION 1A04 RC5 (RURAL-RESIDENTIAL) ZONE

✓ 2. SECTION 101 BCZR 1955

✓ 3. ZONING COMMISSIONER'S ORDER 1/17/07.

✓ 4. A. PICTURE - 4803 BALT ALLEN LANE - REAR

B. " VIEW FROM HEALY LOT

C. " - 4803 BALT ALLEN LANE REAR YARD.

D. " 4815 CARROLL MANOR ROAD.

E. " 4809 CARROLL MANOR RD.

F. " 4806 BALT ALLEN LANE

G. " 4805 " " "

✓ 5. JACK DILLON RESUME

✓ 6. SECTION 102 BCZR 1955

✓ (7) SPECIAL REGULATION - SECTION A400

8 AERIAL PHOTOGRAPH - 2005

✓ 9. A. PHOTOGRAPH

B. PHOTOGRAPH

C. PHOTOGRAPH - PANORAMIC VIEW

D. " HEALY PROPERTY

E. " " "

F. " SUBJECT PROPERTY

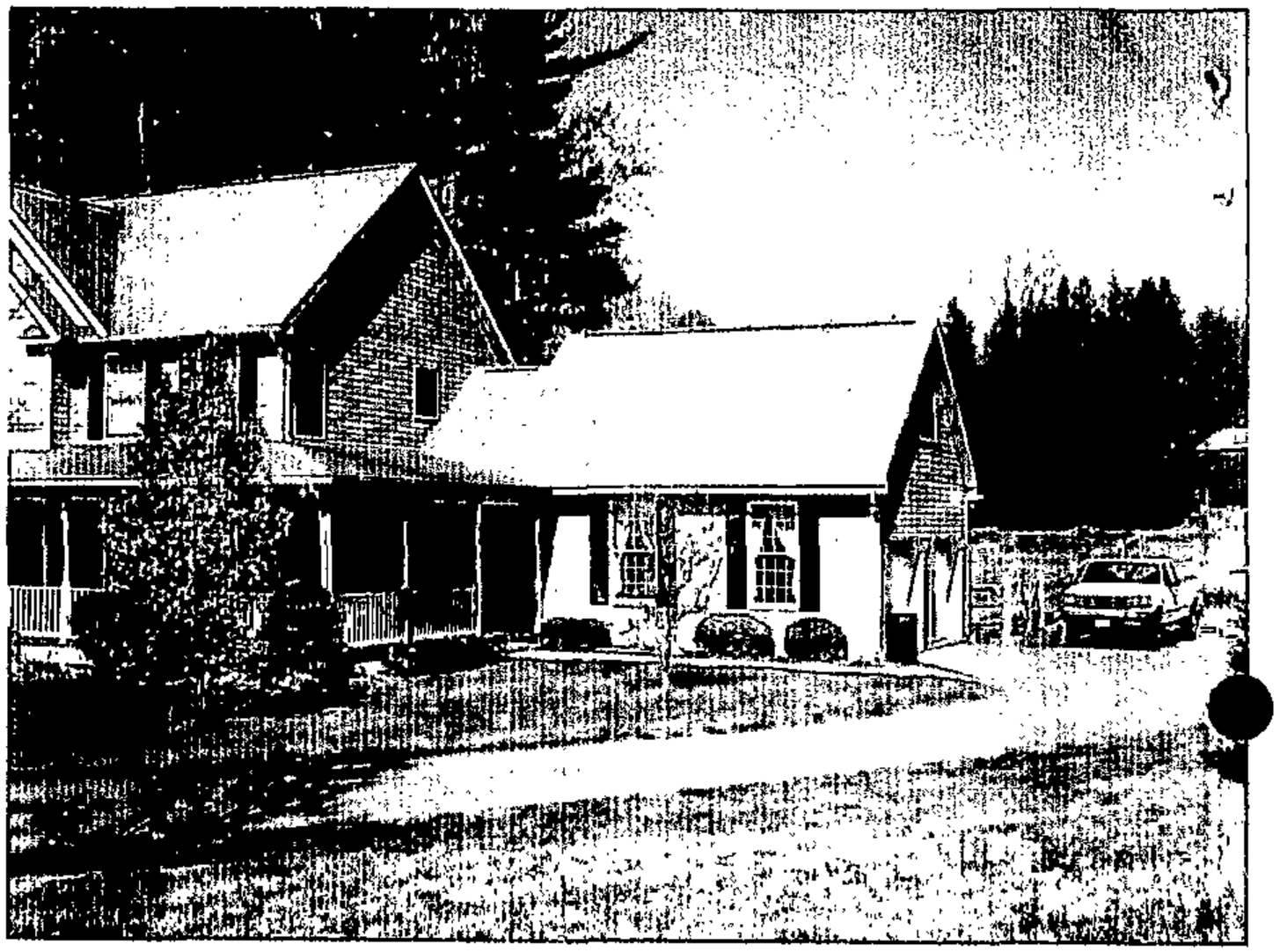
G. " " " BACK YARD

H. " LOT 6

I. " LOT 3

J. "

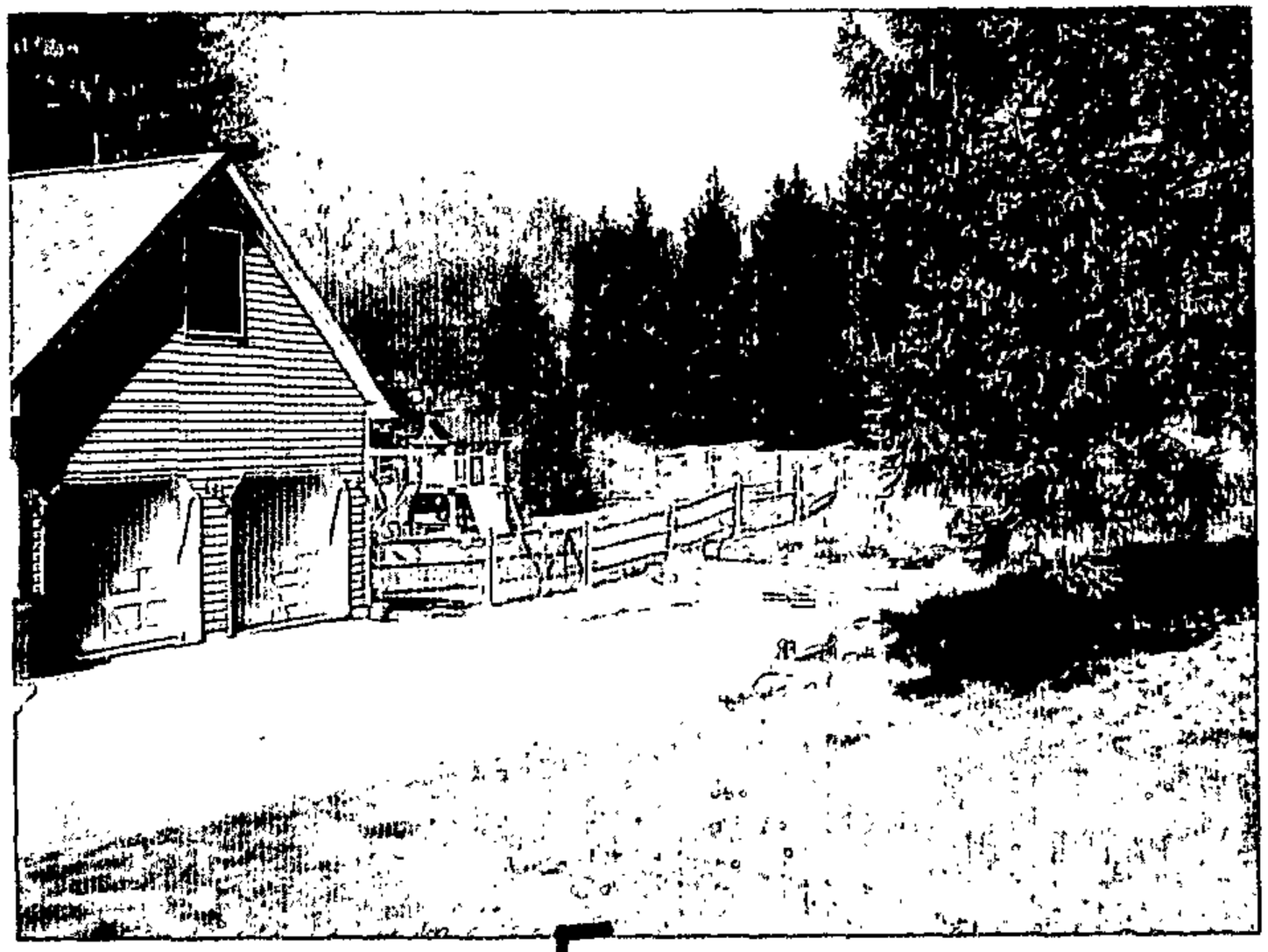
1



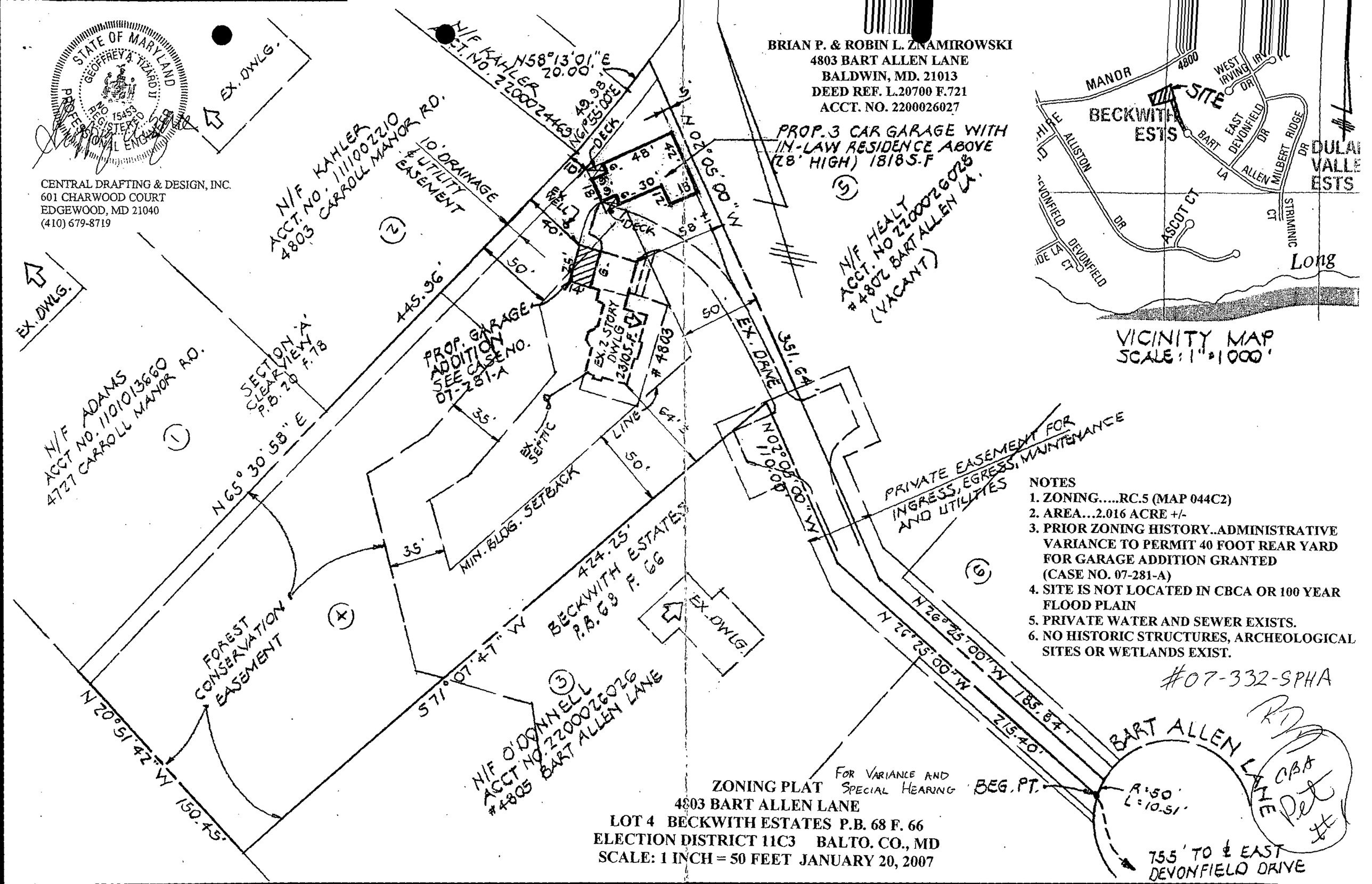
2

3

4



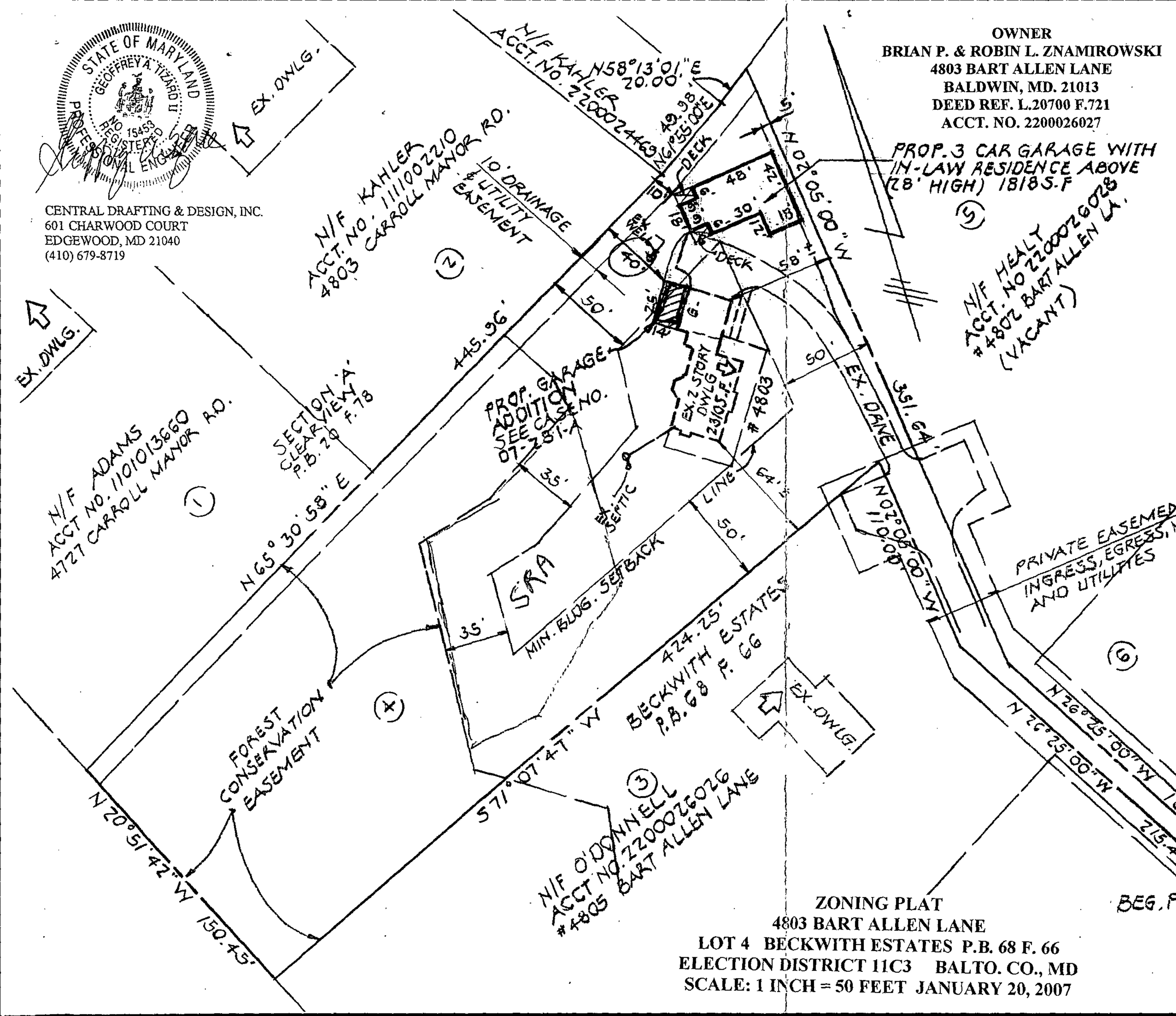
5

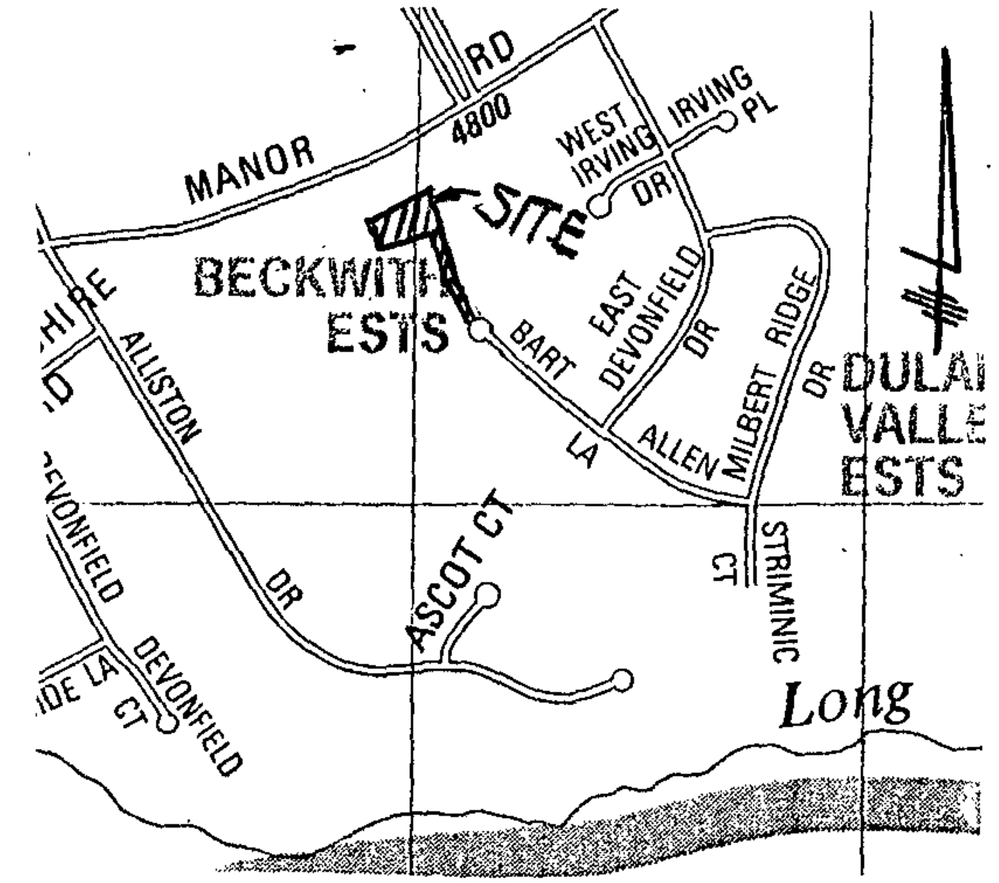

STATE OF MARYLAND
GEOFFREY A. TIZARD II
15453
REGISTERED
PROFESSIONAL ENGINEER
CENTRAL DRAFTING & DESIGN, INC.
601 CHARWOOD COURT
EDGEWOOD, MD 21040
(410) 679-8719
BRIAN P. & ROBIN L. ZNAMIROWSKI
4803 BART ALLEN LANE
BALDWIN, MD. 21013
DEED REF. L.20700 F.721
ACCT. NO. 2200026027
PROP. 3 CAR GARAGE WITH IN-LAW RESIDENCE ABOVE (28' HIGH) 1818 S.F.
N/F KAHLER ACCT. NO. 2200024463
N58°13'01"E 20.00'
49.98' N61°55'00"E
N/F KAHLER ACCT. NO. 1110022210 4803 CARROLL MANOR RD.
10' DRAINAGE & UTILITY EASEMENT
DECK
WELL
445.96'
PROP. GARAGE ADDITION SEE CASE NO. 07-281-A
EX. 2 STORY DWLG 2305 S.F.
4803
EX. SEPTIC
MIN. BLDG. SETBACK
LINE
N 02°05'00" W
351.64'
EX. DRIVE
N/F HEALY ACCT. NO 2200026028 #4802 BART ALLEN LA. (VACANT)
N/F ADAMS ACCT NO. 1101013660 4727 CARROLL MANOR RD.
SECTION 'A' CLEARVIEW P.B. 70 F. 78
N 65°30'58" E
FOREST CONSERVATION EASEMENT
N 20°51'42" W 150.45'
S 71°07'47" W
424.25'
BECKWITH ESTATES P.B. 68 F. 66
N/F O'DONNELL ACCT NO. 2200026026 #4805 BART ALLEN LANE
EX. DWLG.
PRIVATE EASEMENT FOR INGRESS, EGRESS, MAINTENANCE AND UTILITIES
N 26°25'00" W 185.84'
N 26°25'00" W 215.40'
BART ALLEN LANE
BEG. PT.
R=50' L=10.51'
755' TO ℄ EAST DEVONFIELD DRIVE
MANOR
4800
WEST IRVING DR.
SITE
BECKWITH ESTS
EAST DEVONFIELD DR
BART LA
ALLEN
MILBERT RIDGE DR
ALLISTON
DEVONFIELD DR
ASCOT CT
STRIMINIC CT
DEVONFIELD CT
DULAI VALLE ESTS
Long
VICINITY MAP
SCALE: 1" = 1000'
NOTES
1. ZONING.....RC.5 (MAP 044C2)
2. AREA...2.016 ACRE +/-
3. PRIOR ZONING HISTORY..ADMINISTRATIVE VARIANCE TO PERMIT 40 FOOT REAR YARD FOR GARAGE ADDITION GRANTED (CASE NO. 07-281-A)
4. SITE IS NOT LOCATED IN CBCA OR 100 YEAR FLOOD PLAIN
5. PRIVATE WATER AND SEWER EXISTS.
6. NO HISTORIC STRUCTURES, ARCHEOLOGICAL SITES OR WETLANDS EXIST.
#07-332-SPHA
CBA Pet #1
ZONING PLAT FOR VARIANCE AND SPECIAL HEARING
4803 BART ALLEN LANE
LOT 4 BECKWITH ESTATES P.B. 68 F. 66
ELECTION DISTRICT 11C3 BALTO. CO., MD
SCALE: 1 INCH = 50 FEET JANUARY 20, 2007

STATE OF MARYLAND
GEOFFREY A. TIZARD II
No. 15453
REGISTERED
PROFESSIONAL ENGINEER

CENTRAL DRAFTING & DESIGN, INC.
601 CHARWOOD COURT
EDGEWOOD, MD 21040
(410) 679-8719

OWNER
BRIAN P. & ROBIN L. ZNAMIROWSKI
4803 BART ALLEN LANE
BALDWIN, MD. 21013
DEED REF. L.20700 F.721
ACCT. NO. 2200026027



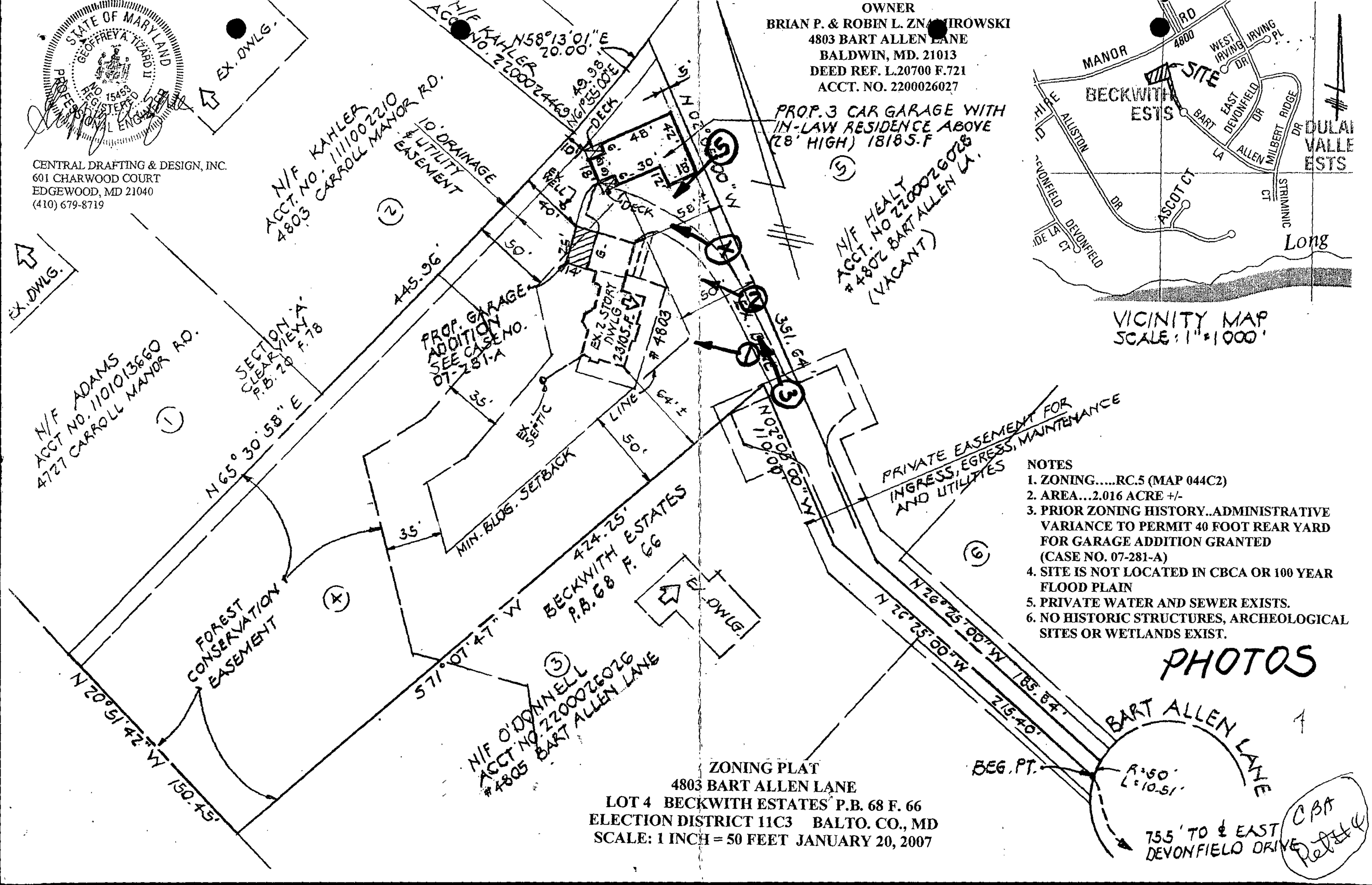


VICINITY MAP
SCALE: 1" = 1000'

NOTES

1. ZONING.....RC.5 (MAP 044C2)
2. AREA...2.016 ACRE +/-
3. PRIOR ZONING HISTORY..ADMINISTRATIVE VARIANCE TO PERMIT 40 FOOT REAR YARD FOR GARAGE ADDITION GRANTED (CASE NO. 07-281-A)
4. SITE IS NOT LOCATED IN CBCA OR 100 YEAR FLOOD PLAIN
5. PRIVATE WATER AND SEWER EXISTS.
6. NO HISTORIC STRUCTURES, ARCHEOLOGICAL SITES OR WETLANDS EXIST.

ZONING PLAT
4803 BART ALLEN LANE
LOT 4 BECKWITH ESTATES P.B. 68 F. 66
ELECTION DISTRICT 11C3 BALTO. CO., MD
SCALE: 1 INCH = 50 FEET JANUARY 20, 2007

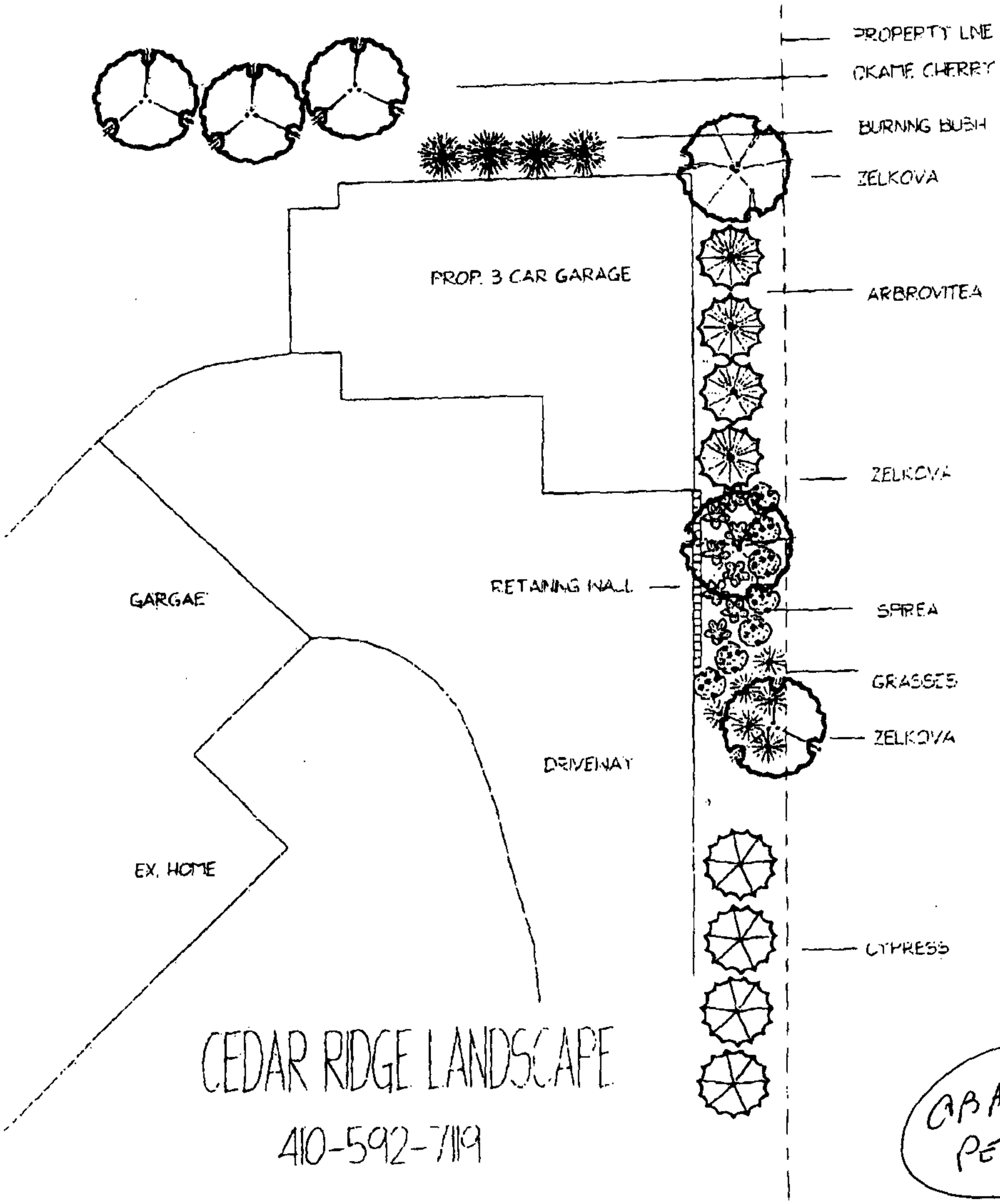


NOTES

1. ZONING.....RC.5 (MAP 044C2)
2. AREA...2.016 ACRE +/-
3. PRIOR ZONING HISTORY..ADMINISTRATIVE VARIANCE TO PERMIT 40 FOOT REAR YARD FOR GARAGE ADDITION GRANTED (CASE NO. 07-281-A)
4. SITE IS NOT LOCATED IN CBCA OR 100 YEAR FLOOD PLAIN
5. PRIVATE WATER AND SEWER EXISTS.
6. NO HISTORIC STRUCTURES, ARCHEOLOGICAL SITES OR WETLANDS EXIST.

ZONING PLAT
4803 BART ALLEN LANE
LOT 4 BECKWITH ESTATES P.B. 68 F. 66
ELECTION DISTRICT 11C3 BALTO. CO., MD
SCALE: 1 INCH = 50 FEET JANUARY 20, 2007

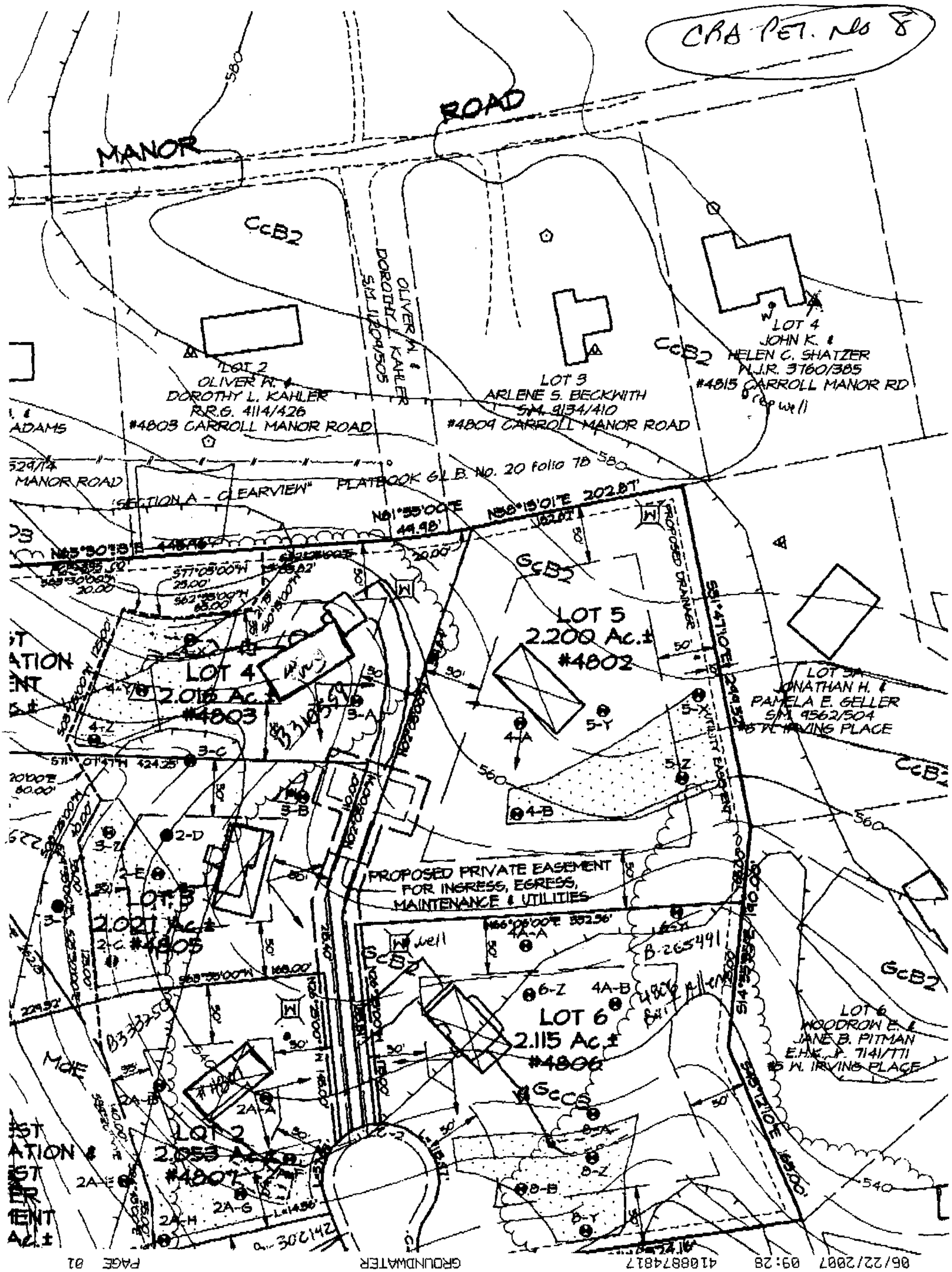
ZNAMIROWSKI RESIDENCE



CEDAR RIDGE LANDSCAPE

410-592-7119

CBA
Pet. No 9


CRA PET. No 8
MANOR ROAD
LOT 2
OLIVER R. &
DOROTHY L. KAHLER
R.R.6. 4114/426
#4803 CARROLL MANOR ROAD
LOT 3
ARLENE S. BECKWITH
S.M. 9134/410
#4809 CARROLL MANOR ROAD
LOT 4
JOHN K. &
HELEN C. SHATZER
N.J.R. 3760/385
#4815 CARROLL MANOR RD
OLIVER R. & DOROTHY L. KAHLER
S.M. 11204/505
MANOR ROAD
"SECTION A - CLEARVIEW" PLATBOOK G.L.B. No. 20 Folio 78
LOT 4
2.016 Ac.±
#4803
LOT 5
2.200 Ac.±
#4802
LOT 5A
JONATHAN H. &
PAMELA E. GELLER
S.M. 9562/504
#5 W. IRVING PLACE
PROPOSED DRAINAGE
PROPOSED PRIVATE EASEMENT
FOR INGRESS, EGRESS,
MAINTENANCE & UTILITIES
LOT 3
2.021 Ac.±
#4805
LOT 6
2.115 Ac.±
#4806
LOT 6
WOODROW E. &
JANE B. PITMAN
E.H.E. P. 7141/771
#5 W. IRVING PLACE
LOT 2
2.053 Ac.±
#4807
06/22/2007 09:28 4108874817 GROUNDWATER PAGE 01

January 17, 2007

Re: 4803 Bart Allen Lane

To whom it may concern,

My name is Dolores Kahler and I live at 4803 Carroll Manor Road. My home is directly behind Brian and Robin Znamirowski. Their address is 4803 Bart Allen Lane.
Mr. and Mrs. Znamirowski have shared with me their desire to build a detached garage with living quarters above it for their aging parents. They have shown me their plans and the plat outlining where the structure will sit on their property.

I am writing to let you know that I have no objection to their plans, nor do I object to the positioning of the new garage.

Sincerely,

Dolores Kahler

CBA
PET
#6

Mr. William Wiseman, Zoning Commissioner
Baltimore County Courts Building
Towson, Md. 21204

RE: 4803 BART ALLEN LANE
CASE NO. 07-332 SPHA

Dear Mr. Wiseman:

We, the undersigned, have reviewed the request of the petitioner to construct a garage with an in-law residence above and have no objection to the approval of same.

ar Karenes _____

FRANCE MANOR

Fechley _____

BART ALLEN

ond O Donnell _____ 3/11/07

4805 "

ward J McLoughlin _____ 3/18/07

4804 "

atherine Franzoni _____ 3/19/07

4809 "

January 17, 2007

Re: 4803 Bart Allen Lane

To whom it may concern,

My name is Dolores Kahler and I live at 4803 Carroll Manor Road. My home is directly behind Brian and Robin Znamirowski. Their address is 4803 Bart Allen Lane.
Mr. and Mrs. Znamirowski have shared with me their desire to build a detached garage with living quarters above it for their aging parents. They have shown me their plans and the plat outlining where the structure will sit on their property.

I am writing to let you know that I have no objection to their plans, nor do I object to the positioning of the new garage.

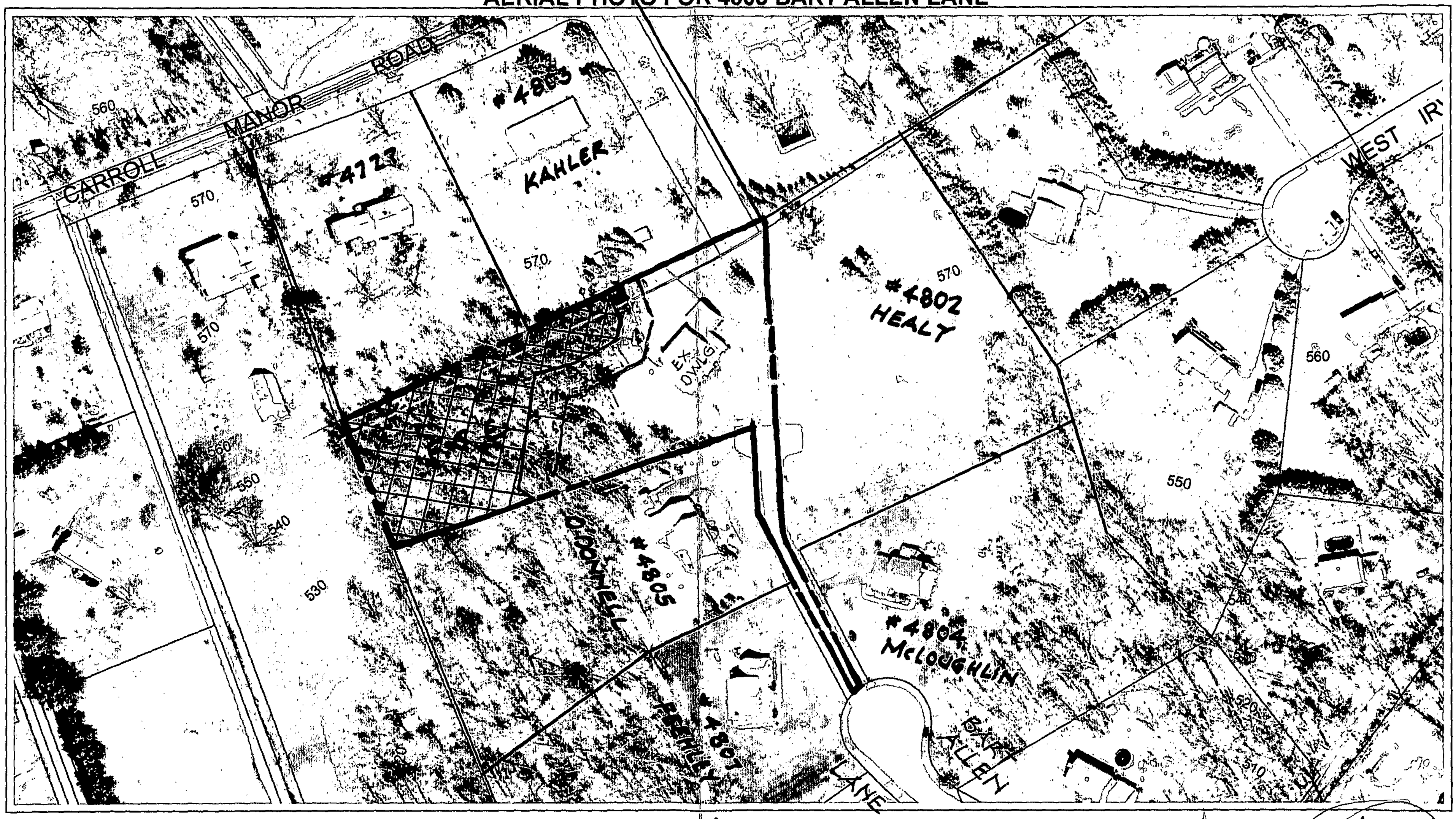
Sincerely,

Dolores L Kahler

Dolores Kahler

Item #3-52
CBA
Ref
#6

AERIAL PHOTO FOR 4803 BART ALLEN LANE



Coordinate System:
Maryland State Plane: NAD83/91 Horizontal Datum
Elevations in Feet: NAVD88 Vertical Datum

Date of Data Capture: March 1995
Scale of Data Capture: 1" = 100'

Date of Aerial Photography: March 2005

For internal use only.
The cadastral information on this plot was compiled from existing deed information.
This information is not to be considered authoritative.
This survey information was not field checked and certified by a licensed land surveyor.

BALTIMORE COUNTY

Baltimore County, MD
Department of Public Works
GIS Services

The utility (Sanitary Sewer and/or Storm Drain) location information shown is not guaranteed correct and should only be used as a reference. Locations of appurtenances should be verified using construction drawings, which are available in room 206 of the Baltimore County Office Building, or, through actual field investigations.

100 50 0 100 Feet

CRA
PET. NO. 7

Prepared By:
Robin Hurley, EA111
DPW Directors Office
June 20, 2007

5-2-6

#5

County Board of Appeals of Baltimore County

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

June 28, 2007

NOTICE OF DELIBERATION

IN THE MATTER OF:
BRIAN P. AND ROBIN L. ZNAMIROWSKI – Legal Owners /Petitioners
Case No-07-332-SPHA

Having heard this matter on 6/27/07, public deliberation has been scheduled for the following date /time:

DATE AND TIME : WEDNESDAY, JULY 25, 2007 at 9:00 a.m.

LOCATION : Hearing Room 48, Basement, Old Courthouse

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

Kathleen C. Bianco
Administrator

c: Counsel for Appellant /Protestant : Francis X. Borgerding, Jr., Esquire
Appellant /Protestant : Edward Healy

Counsel for Petitioners /Legal Owners : John Packard, Esquire
Petitioners /Legal Owners : Brian P. and Robin L. Znamirowski

Robert Infussi
David Billingsley /Central Drafting

Cheryl Williams

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

Copy to: 5-2-6

Printed with Soybean Ink
on Recycled Paper

Znamirowski

2 issues—

SPH ① Is it legal?

② If legal do we grant variance?

Relevant Laws

Per PC: 1A04.2A2BC2R — Prot 1 — Use by right — 1 Dwelling

BC2R Def - 101 A-D

Dillon 10 2.1 - "No land used or occupied except to conform" (my notes

Sect 400.1 Accessory Structures

400.3 Height requirement

500.7 In-Law Res

Zone RC 5

Cases:

Accessory defined in Dangman v City of Balt 1963

Practical Difficulty - Mclean

Argument - PD is self inflicted

Main Argument Against -
De Facto Subdivision
2nd house being built
As Accessory, Garage cannot
be larger than house itself
Main reason for height
restriction

CASE NO. 07-332-SPHA

PETITIONER'S EXHIBITS

✓ 1. VICINITY MAP - ZONING MAP FOR VARIANCE + SPEC. HEARING.

✓ 1A " " WITH RED MARKER.

✓ 2. REAL PROPERTY SEARCH

✓ 3. SITE PLAN

✓ 4. PHOTOGRAPHS 1-5 AND ZONING PLAT

✓ 5. A - ELEVATION OF NEW RESIDENCE C. DETACHED GARAGE

B - FIRST FLOOR PLAN. SECOND FLOOR

✓ 6. LETTER IN SUPPORT OF PETITIONERS

✓ 7. AERIAL PHOTO OF THE PROPERTY

✓ 8. COPY OF THE COUNTY'S MASTER PLAN.

✓ 9. PROPOSAL OF LANDSCAPING PLAN.

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** - 11 **Account Number** - 2200026027

Owner Information

Owner Name:	ZNAMIROWSKI BRIAN P ZNAMIROWSKI ROBIN L	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	4803 BART ALLEN LN BALDWIN MD 21013-9769	**Deed Reference:**	1) /20700/ 721 2)

Location & Structure Information

Premises Address
4803 BART ALLEN LN

Legal Description
2.016 AC
4803 BART ALLEN LN NS
BECKWITH ESTATES

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
44	11	123					4	3	Plat Ref: 68/ 66

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

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1998	2,990 SF	2.02 AC	04

Stories	Basement	Type	Exterior
2	YES	STANDARD UNIT	SIDING

Value Information

	Base Value	Value As Of 01/01/2006	Phase-in Assessments As Of 07/01/2006	As Of 07/01/2007
Land:	77,140	143,260		
Improvements:	257,570	443,270		
Total:	334,710	586,530	418,650	502,590
Preferential Land:	0	0	0	0

Transfer Information

Seller:	KROPFELDER BERNARD R,JR	**Date:**	09/17/2004	**Price:**	$545,000
Type:	NOT ARMS-LENGTH	**Deed1:**	/20700/ 721	**Deed2:**	
Seller:	GETTMAN GEORGE J,3RD	**Date:**	06/30/2003	**Price:**	$485,000
Type:	NOT ARMS-LENGTH	**Deed1:**	/18310/ 460	**Deed2:**	
Seller:	MRIC L L C	**Date:**	09/22/1997	**Price:**	$116,000
Type:	IMPROVED ARMS-LENGTH	**Deed1:**	/12394/ 518	**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

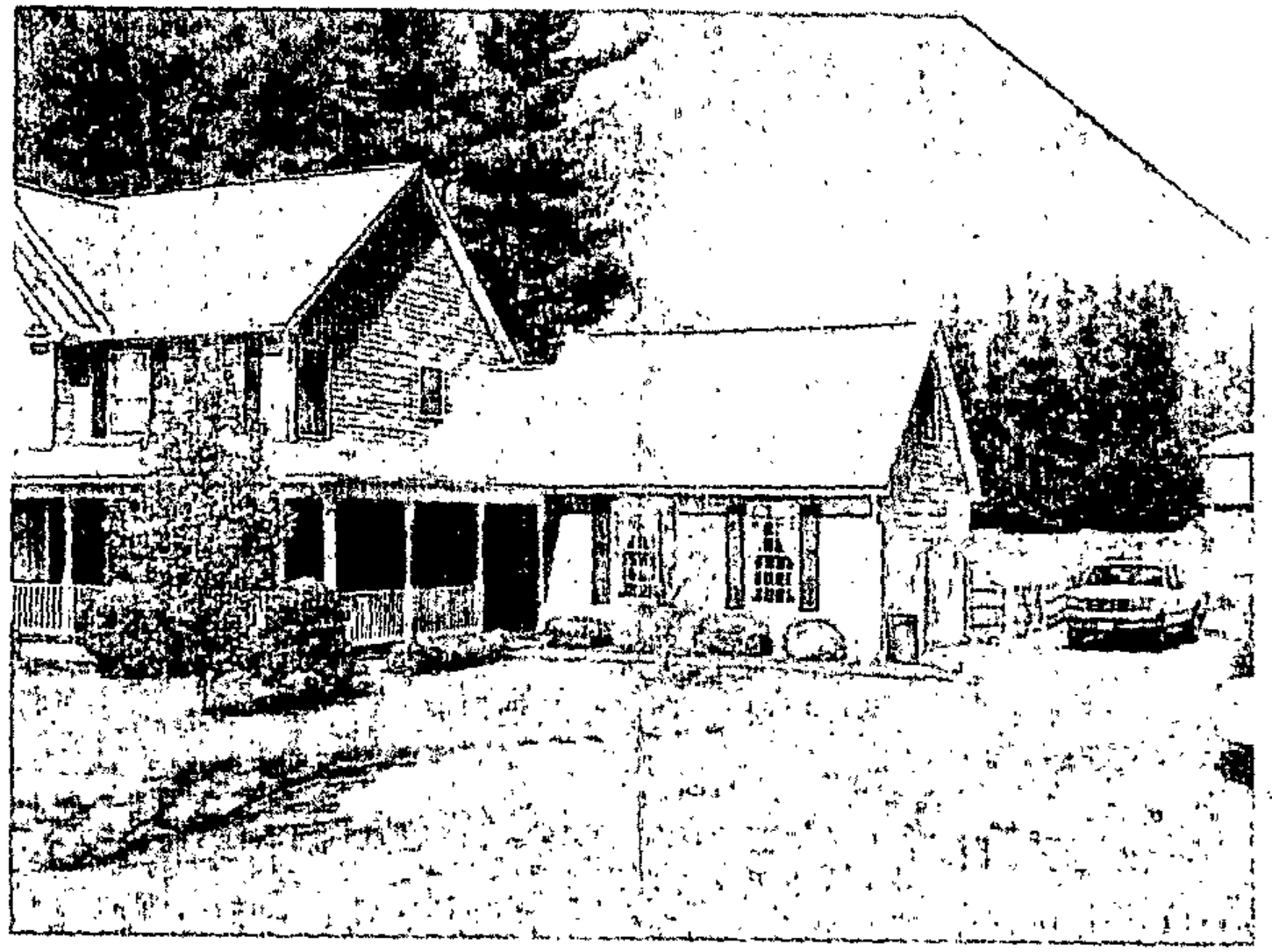
Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

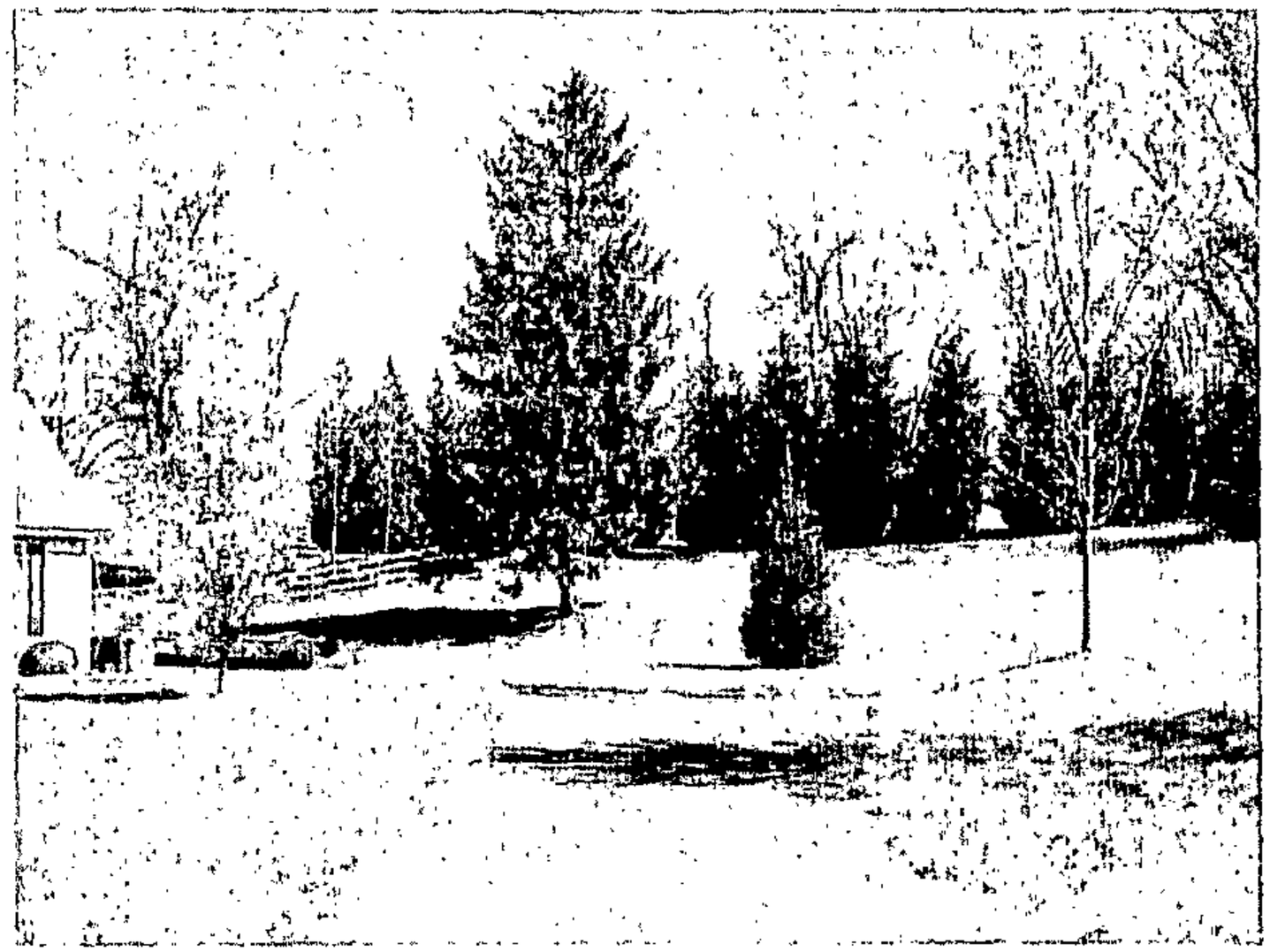
* NONE *

CBA Pet #2

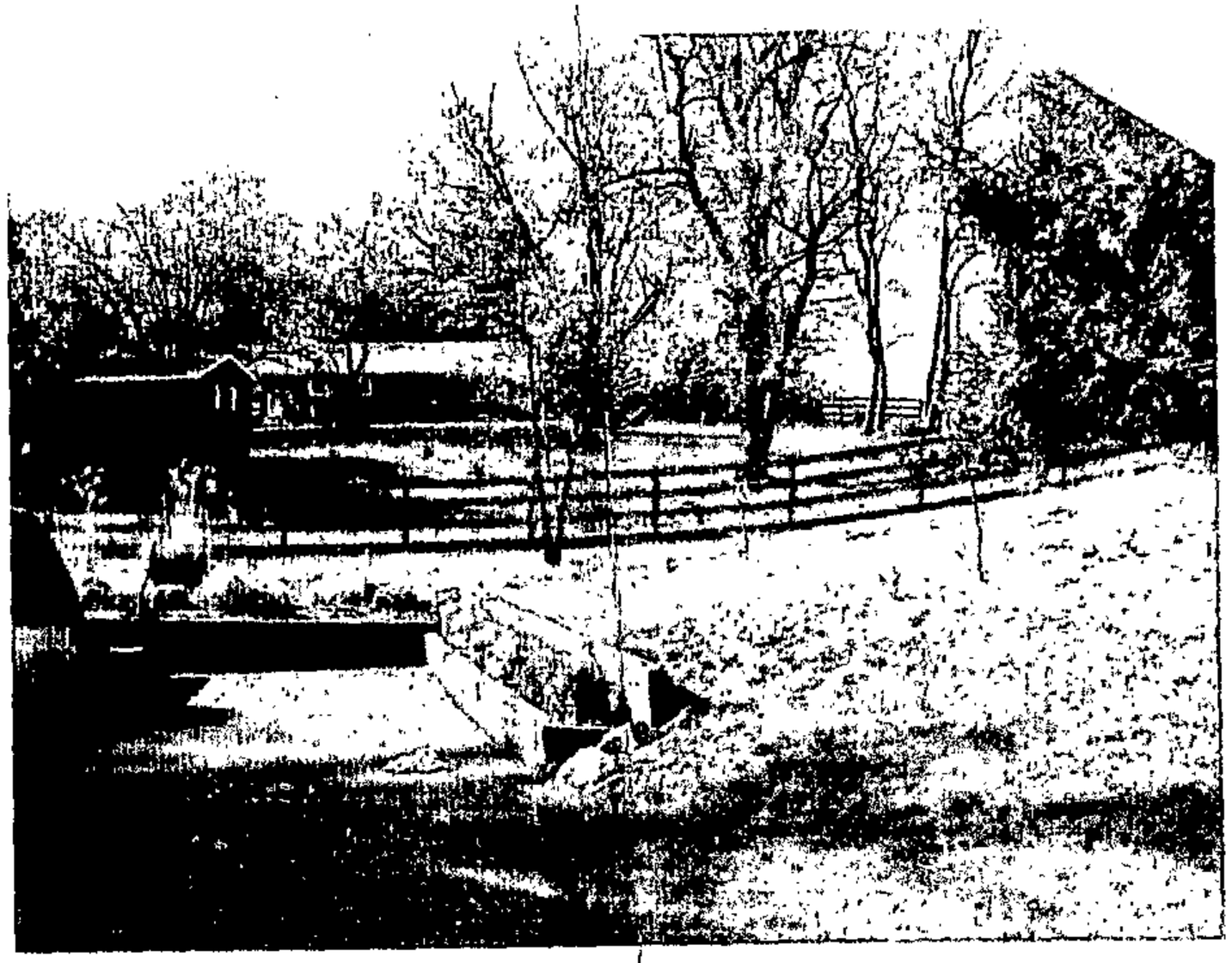
1



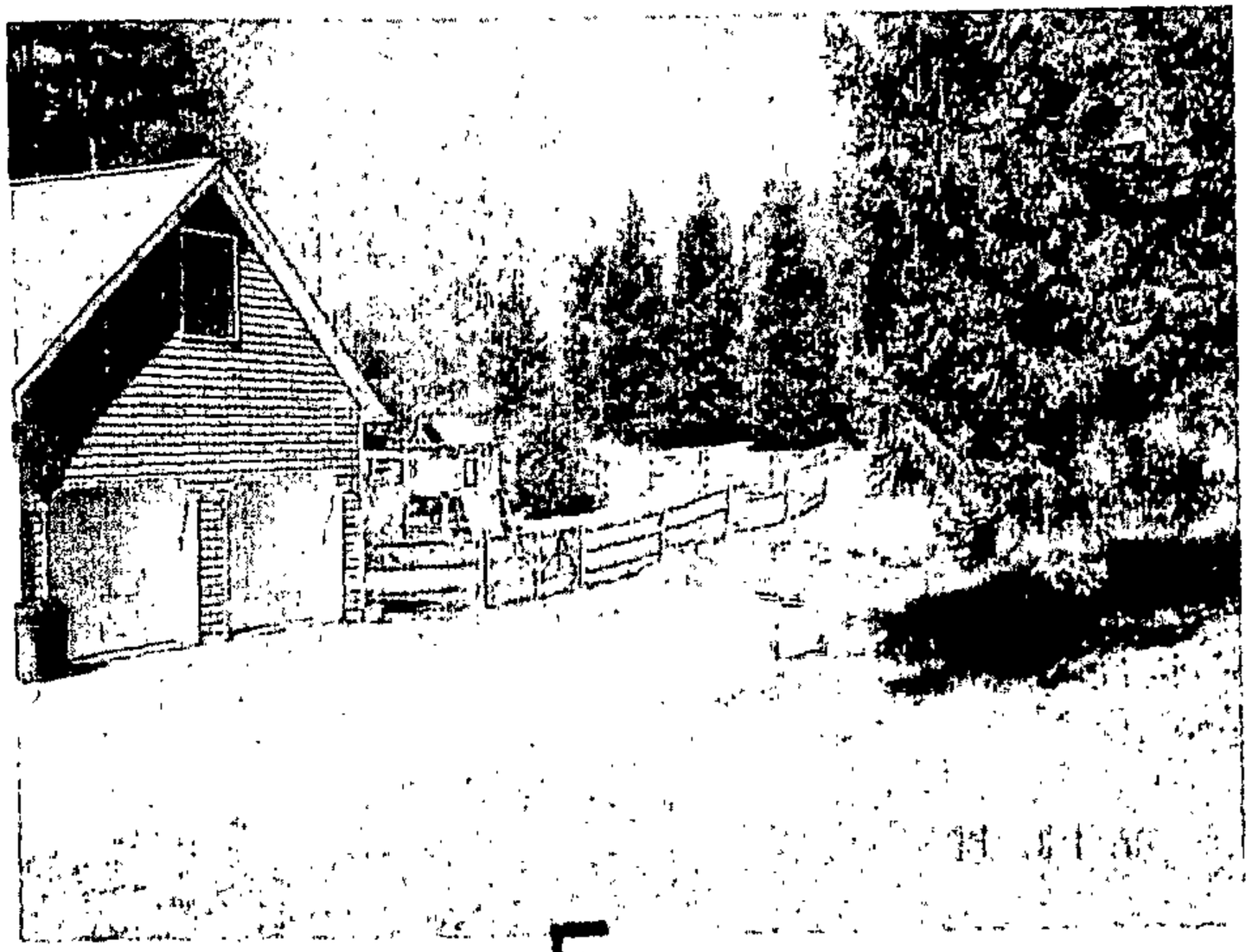
2



3



4



5

4803 BART ALLEN LANE

ARGUMENTS

Pet –

Met burden – PD / UH for var.
No evidence that it affects GHSW.
Special / unique conditions
Forest but
Septic
Well } combined prohibit structure behind here

Test of Dillon – says yes but not back there.
Site conditions such can't put there.
Garage for antique vehicles can't put behind here

Not sep res / subdiv / [illegible]
Arch committee would be res on street = already approve
Healy ans not res.
Healy test saying garage OK
No diff in site line / structures.
1 story structure from his vantage.

Access structure can be placed w/in 2½ ft.
No sight line diff. No aesthetic burden.

Healy personal op

Pete's Silly Questions

No room for addition on rear

Rear wall behind garage
Don't Know
L shape structure
Yes

[If addition put there kitchen and rest of house cut off from light etc.]
Can't use yard would be ugly.

Real problem is he wants garage

Protestants

Not Don't build rept to me.

Have not met burden.

→ Sect 500.7 - In law res

RC5 - zone

→ 1A04 - RC5
.2 A2 - 1 fam SF only
No provision to permit Acces. structure for in law res
Dillon has never seen case like this

→ 1021 - Regs - must conform with Regs.

Sympathetic to intent of Pet.
But not lawful

1021 - must be under law

No prov. in RC 5 to grant SA for sep. dwelling / in law res.

Not aldt of case law. on SH.

Not allowed - law clear.

If allowed - then issue of var.

4001 - Acces St. Rear Yard
.3 Height 15 feet

Need to meet Cromwell
3 part
(1) unique - special circumstances
(2) Disprop affect
(3) U. Hardship / PD

Self Infliction? -
~~Pd~~
Does not meet burdens.
(1) Uniqueness issues -
On cross - Bingsley - admitted
other F/E on other props in area
~~Other circu~~
Well / septic - drain on 1A in rel
in relation to house
leaves entire backyard for
structure.
Well in area not in back in side
Leaves back yard for access structure
Billings admitted yes.
Pet expert

No uniqueness met.

(2) ~~Hardship~~ Disprop affect -
3 issues don't bear on height
issue / vst placement
Pet expert said yes could build.

Dillon did not walk backyard

(3) PD / VH
Would it affect prop use? No
Not used all time - doesn't affect
use of prop.
[Convenience not hardship]

would lose backyard - doesn't want that

Choices - If you want structure - maybe it does impact other uses like deck.

Cromwell not met.

Self created hardship - New garage Has 2nd floor - could have been used.

As principle structure - not an issue only as accessory ~~as~~ structure.

Mr Zimmerman

Matter of law - must deny

If granted Court would reverse

Issues of law -

1. No new proposal is accessory/
   Billingsley not zoning expert
   Combination garage / dwelling as big if not bigger than main structure

Def. of AS - not obscure
customary & incidental
Tremendous implications for Res Zones
would be precedent.

Incidental Use Case – Dempv. Balt City

2nd story addition – bus. space.
Court said – incidental to be subordinate not as large as main use.

Any dictionary def gives def
Nothing customary or subordinate

Wherever proposed would not matter. Can't do.

Only 1 dwell allowed.

= to
1 Amendment to final Dev. plan
Sig change to Dev.
Separate process to amend

Renshell case

Variance – Frank pointed out
Uniqueness relates to prop.
similar prop in area.
Beautiful home based on photos
Want extra living quarters
Can't do in Zoning Code.

Reasonable use of property –
Nothing prevents
Request is convenience & choice

No legal justification even if all prop owners liked it

McCleer v. Soley - Prac Diff Case.
Will give us cases

Does not need to reach Variance b/c not legal

Rifter vs PC - Variances
Arundel Supply v. Causen - on access.

Rebuttal Argument

Access use / structures

BC routinely approves in law apts

In law apt / garage customarily incident & subordinate

foot print less than principle
1/2 structure is garage area
purpose -

Allowed by DC2 with restrictions
Pet agrees.
Deed on record that use terminates
On same lot - not subdividing

D Contest convenience of occupants

Need of occupants

Impose

County Board of Appeals of Baltimore County

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

5-2-6

(5)

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

May 31, 2007

NOTICE OF ASSIGNMENT

CASE #: 07-332-SPHA

IN THE MATTER OF: BRIAN P. AND ROBIN L. ZNAMIROWSKI
- Legal Owners /Petitioners 4803 Bart Allen Lane 11th E; 3rd C

3/23/07 – Petition for Special Hearing and Variance GRANTED with restrictions by Deputy Zoning Commissioner.

ASSIGNED FOR: **WEDNESDAY, JUNE 27, 2007 at ~~10:00 a.m.~~** 11:00 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 C, 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: Appellant /Protestant : Edward Healy

Counsel for Petitioners /Legal Owners : John Packard, Esquire
Petitioners /Legal Owners : Brian P. and Robin L. Znamirowski

Robert Infussi
David Billingsley /Central Drafting

Cheryl Williams

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

Printed with Soybean Ink
on Recycled Paper

Znamirowsk

07-332-SPHA

John Packard - Pet

Francis Bergeds - Prot - Healy

Peter PC

OS - Packard

A 28 ft ile
Rear yard

Inlaw les in Accessory structure

1-6 Exhibits - moved.

Bergeds -

Unimproved lot adjacent

Sympathize - taking care of inlaws
not issue

Current laws - structure or placement
not appropriate

Zimmerman -

* Legal issue - Is it accessory?
Subordinate and incidental
Size & Scope beyond accessory
of project

Dwelling unit not accessory.
Re-subdivision even if not new plot

Rural Zones - requests for new
houses / structures
Can't look at case in isolation
could contribute to sprawl.
DZC set the limit etc. but
once built tendency for amendment/
modification etc.
Symp to inlaw requests.

Often gray areas.
But this is constricting new large
dwelling
Precedent.

Testimony - David B. Illingsley
Central Drafting
Employed
Our firm /

Expert in ZC hearings @ 45-50 cases

Prepared site plan

Pet 1 Site Plan / Plat to accompe
Jan 7 2007
Prepared by firm

Existing 2-story dwelling
Use in common driveway (?)

Proposed structure - In N/E side
Side / Front yard

Accessory

Znamirowski

Special circumstances –
Forest conserv. easement –
Mean 30% of lot
Reasement & house
10,sq ft septic reserve
Both prevent placement

why not remove Garage? — Existing garage accessed from side could not maintain garage & build addition

Pet 2 — SDAT printout

Pet 3 — Reduced copy of subdiv.
Lot 4 – Pet Lot –
Prot lot access from – Lot 5

Pet 4 — Ex 1 + Photos. (5)

1 Driveway – front of house
Small structure on left is Garage

2 Shows Garage & driveway
View from Prot lot.
3 Photo from Driveway V 2 sides
4 Looks at rear of Dwelling
5 Side of dwelling.

Proposed dwelling near tall Pine

Pet 7 Aerial View of Subdiv.

Shows Healys prop
and others that use
Accessory structure where pool
tree is
Shows Forest easement.

Locating as far to rear as
possible if not behind house

Pet 8 Candy Masden Plan from
DEPEM Septic & well at Estate
Shows Healy septic in SE portion
of lot
Proposed dwelling envelope
orients 45° to access Rd.
Faces use in corner
New structure would be on side of
Dwelling not front.

Pet 5 Proposed Structure
A-C Elevations
A Upper L - away from Prot

R Side would face Protestant
Lot
Bottom - what you see coming up
driveway
Designed to match house

B First Floor Plan
3 Garage Bays
Elevator & Stair
1 Access to Inlaw Res

Pet 5C 2nd Floor Plan
shows lack of In law Apt

~~Dimensions~~ -

Practical Diff -
to construct Garage of this
size - no other location on
lot

Expert - Construction / BCZR
Site planning

Not PE / Not licensed as
experienced as site planner

90% work in BC
Plan sealed by Company PE
Not sealed by Billingsley.

CROSS

Q: Zoning
RC 5
Q: How many dwellings
A: 1 per RC 5
Q: Review
Yes
Pet Q: Copy of 1A04 BCZR
04.2A2 - use of right 1 dwell
Yes
Pet Q: Def "accessory structure" (-101.
2 Sq foot of principal dwelling
A: Not sure / Does not know

Pet 2 - SDAT
Sq. footage 2,990 sq. ft. - House
Acces structure 1818 sqft.
2 1 floor
Testimony (3720) Doubled - 3636 sq. ft.
Larger than principal structure

A Per regs foot print ~~can~~ must be smaller.
Foot print of Acces structure is smaller than house.
Don't know exact sq ft of house but is larger.

1818 - foot print of accessory

Can an accessory structure be more or less in total sq. ft.
A Usually less

If one floor would not need elevation. (would also be smaller)

Used BC plans re. well & septic
Pet 8 Shows septic

Septic field in relation to house on
Pet 1 Marked in Red - SPA

Q Areas in back yard to place an AS
A. Some room in rear & basement
Q Could an 1800 sqft be located?
A Possible
Q. Site planner for garage extension
yes LVAR for

Fa that VAR request - marked blue
on Pet 1
Reg 07-281A - var for garage

Prot
3 ZC Decision Order
Relief - req allow set back 40 ft. to 50
along prop line Rear yard
50 ft req. set back. set back
Granted Jan 17 2007

Wanted to eliminate 1 Garage Bay
for laundry room & Add 2nd
Bay with variance

~~Could provision for in law res.~~
Requests to make in law apt
Could have been made along with

CROSS - Peter

Pet 3 - recorded Plat for Subdiv
Ex 8 is copy of masden plan for
development.
Partial of approved plan.

File 1996 - Estate Plat
No HOH - as far as Billings knows
6 lot subdivision

Lots @ same size - slightly over
2 acres
Lots 1 2 3 4 have easement.
4 acres total 1 substantial
FC Easement / B. Sten

A 1 2 & 3 — both includes stream
3 & 4 Forest conser. easement.
Q Nothing unique about?
A No
Panhandle driveway?
Use in common access
Which lots have panhandle
3 - 4 - 5 in fee strips
each 10 ft

A County law discourages panhandles.
Q Additional burden on driveway?
A Yes - for in law res

Please ~~Record plat~~ show 1 dwelling
Final dev. plan

Proposing amendment to final plan?

Existing dwelling
Pet 1 -
2310 - sq ft footprint
Not sure of sq ft on 2nd floor
Pet 2 shows 2990.
A Doesn't rec. agree SDAT often
incorrect
Does not know exact sq ft of
house
Pet 1
2310 includes garage
350 sq ft - garage

House built 1998 -

2004 - Zamarauskas bought house.
they put on garage addition

Other lots all but Healy developed.
No record of 2 var.
No proposals another lots like this

Other case where proposal like this in Rural area
No
Existing dwelling # Bedrooms
Doest Know - Not familiar with house into - height etc
Didn't think nec.

2 Bed 2 bath in ranch dwelling
LR | K. Common dining area
storage.
Front ~~are~~ garage doors

DW - Dan stair
Elev. below stair on plan.
2 family in law res.
+ 3 car garage below,
A Pineapple houses = BC smaller than this - yes.
~~BC~~ Foyer, walkin closets 6x6

~~6 X 8~~ bathrooms
7 X 10 + 3 X ___ fantailet
(10 X 15-ish)
Not temp living space
~~Capable of~~
Existing
Septic System subject to DEPRM
will serve new Apt.

Re Direct

Pet 5C with cross section
Dimensions - floor plan
Ceiling height & usable area
Gable design, reduce sq. ft usable area?
Yes
Large sq ft. reduced by 2nd floor gable

Pet 1 - & 4 Location of well
A. Well 30 ft from structure
but can be closer with conditions

Testimony Brian Zamorowski
Owner/Petitioner

Background - what is project

Hus parents res - FLA - 2/3 year
split level & in BC - gives
Her parents res FLA - 99%
for their visits
Both here for holidays
Usage upper floor - not perm
full time
If too ill to remain in FLA they
can. But not full time all year

Elev. - Dad 82 back & knee
Mom hip replaced.
Stairs too much.

Pet 6 Neighbor petition =
Went to immediate neighbors in sub div & behind us.
~~Pop~~ Explained / showed plans etc
No one had problem.
Went forward with Zoning H.

Restrictions placed on Z Order -
~~Pop needed~~
Termination of structure -
A No problem. When not nec. we take kitchen out - No larger res.

Pet 9 Landscape plan - shielding and aesthetics -
2/3 buried in hillside - trees along property line to shield.

CROSS
Q Friendly w/ neighbors
Yes
Visually ~~not~~ other neighbor as impacted
No as Healys
Who else?
A Lot 6 has more impact
How are they more impacted -
Based on way homes facing
On Healy lot - more impact - closer
Not nec. Back of lot 6 faces our house. Back of their house looks directly at our house.

Front or back yard Healy's want see structure.

28 ft high
5 ft off prop line.

A Only dormers of roof will be seen
b/c cut into hill
Pet 5A - e

A Early drawing - Right side - could
not have windows & siding
5A - C does not rep plan to
build?

A Other purposes when drawing made.
Remove windows - will be
accurate.

5 ft Garage to prop line
Yes
Trees on landscape plan extend
over Healy prop.

5 ft to prop line not enough for
landscaping & screening
Landscaper knew that chose

Pete Cross

Q Employment?
A Sales - Indust cutting tools

Bought 2004
close to 3 years

Consider larger prop?
Tried
Anticipate in law apt
No

4 Bedrooms 3 Kids
3 cars - Kids don't drive

Inlaws now = FLA - have time.
SF houses - ranches - Drive

3 - Car garage? Who to use
2 co-cars / trucks
3 personal cars - drive reg.

Old cars restored.

Tahoe
Suburban
Lincoln
} 3 cars driven by him & wife

2 cc. vehicles - Pick up / Ranger Pick up
Business - Commercial
2 car garage now -

New Bldg - 3 bays -
What is parked depends on what car is driven and whether Inlaws bring cars.

Garage Space more for us than inlaws but when visiting

Antique cars -
Now at office in warehouse
4 cars
Wants to park them at home to use
Drivable

Understanding of 2C order when use no longer
Remove Kitchen. Rest stays as is would not tear down.
Q 2 Bedroom structure minus kitchen
A Yes

When kids grow up? Can use
A Yeah they could.
My understanding is it is not another res - happens when prop is sold
Can't be used as 2nd res.

If approved this will be permanent
yes - part of prop / house

A Sales price $540r - house
Q Est cost of new structure
A ~~215~~ 250r

Neighbors saw detailed plans

Lunch

Protestant Case

Edward Healy - Testimony
1505 Greendale 21218
Balt. City

W. Se + 5 Kids
Purchased 4802 1997
Plans - eventually move there
accomodate in laws.
Drawings done
Not yet financially feasible
Do not own any other lots

Oppose -
Not approp.
Larger than orig home not
subordinate to

Access bldgs in area are much
smaller than proposed bldgs.
Non 2 stories. None res.
Non size proposed.

Could be located elsewhere or expand
orig home.

Good thing to care for in laws
We hope to too.
This structure too close to our lot
huge 5ft from prop line

At settlement we were told Arch Review
Committee approval needed.
Lee
Baldwin.

Scenic view not alumin

Prop value would diminish
Rolling hill ruined.

Project too ambitious for that size lot
Could become rental over time
after current owners
Who would know?

Dual Road - Garage & Inlaws
not on 1 lot.

Concerned well & septic
well yield could be affected
with addit people on lot

Letter/Petition - If any other
neighbors had 42 foot long wall
might not sign

Erosion - Structure req hill to
be dug out.
Rainwater off bldg could eat
into side of hill on our prop.

Prot 4 A. Photos of accessory bldgs in area
took by self
View from our lot and new
garage on Pet lot and
neighbor's shed 4803 Canal
About spot where new bldg
would be

4B Views 4803 access. structure
and hill to be dug.
on cinder blocks → @ 10ft high

Pet 1 & 3 for reference

4C Rear of Pet yard
Shows play area / Swings
New garage added.

D 4815 Carroll Manor Rd
Acc structure
N/E of Pet lot

E Directly beyond lot
Acc structure

F No Acc structure on this lot
Lot 6 on Pet 3

G 4805 Bart Allen Lane
Small Acc. structure
Smaller than house.

Acces should be subordinate

Inlaws could be accomodated w/out
Separate Bldg.
2 Res structures — not permitted
under law

Zimmerman —

~~When purchased~~
No home on Pet lot when we
bought.
We were told needed permission

to even east shed.

Does you prop border other lots
Only 1 in Bard Allen sub.
4806/ Lot 6.
Adjacent lots in other subdiv
Does not border lot 3

Pet 3 –
No access at Lot 6

Lot 3 – 4805 –
Width of road 20ft from lot
and lot 3.

CROSS

Q. Proposed
Footprint faces 2's ?
'Side of house'

Yes
Not front or Rear
Yes
7 photos – only 4 on Beck estates
others Carol Marcy

Object to trees on prop line
A. structure 5 ft off

Do you object to trees
No
If trees obstruct structure
less objectionable
Only 5ft for trees – will
grow into here on our prop

cnd 28 ft high

Height of proposed structure

Elevation shows 28 ft
How does it compare to existing house.?

Proposed structure not as high as
2 house
Don't know.

Testimony at DC2 hearing -
proposal set back hill you
prop would only view existing
gables
Not my understanding.
28 x 42

Testimony - Mary Lou Healy

Do you agree with husband
Yes
Understand not opposed to 2 providing
for parents
Size & placement object
42 x 28 5' from our prop.

We plan to build home on lot
we care our parents
Hope to bring with us. But
under one roof.
Want 2 to consider another location
w/out neg impact on our lot

Testimony - Jack Dillon

Employed - Planning Consultant
Self employed

Prot 5 CV

Land planning & Zoning
Accepted.

~~[illegible]~~ Visited site on Monday
Verified Zoning RC5
Reviewed MP
No disc. in MP RE inlaw housing
Needed but not addressed
SDAT check
Consulted Z supervisor of area
Reviewed DZC order

Opinion - RE relief

Current Z Regs - 102.1 -
No land used or occupied
except to conform

Prot 6 Sect 102.1 BCZR

RC 5 Regs - 1A04 (Prot 1)
How does relief relate?
Allows rural res SF housing
No prov. for apts or access w/ Apts

1A04.2A.2 -

Sect 400 Acces structures

Requirements — of Acces Struct.
Req. Rear yard unless corner lot
2 1/2 ft to prop line
15 ft hight

Not Corner lot — Pet prop

Pet Sect 101 A — D

Pet proposal not accessory
2 fmly dwelling w/ garage
not subordinate to main dwelling
Legit reason but not permitted
Size — Cannot recall on Acces
this size being built.
~~Shed setbacks~~
Rear yard — Could it be located
Reviewed site plan.
No reason not to construct
addition or other AS in rear yard
Listing today to testimony —
Septic & Forest don't preclude
See no practical diff.

Not unique. Forest biffer common
septic common
Slight grade to prop but nothing
to provide unique situation
Above URDL

Vari Granted — Jan — garage —
Returning to ask this var =
Self inflicted hardship
Area could have been used for
addition — 2nd floor for use

Prot 8

Aerial - GIS Map
Topo. 2005
1997

GIS placed Site plan scale & prop lines
Taken before addition to garage

2ft Contours - topo lines
Shows 8ft diff [properties
Pet & Prot

Aerial shows
15 or 18 ft sq - Largest Acc. Structure
behind Healy

Photos

9 A Photo end of T turned front
of Healy of Pet prop.
B Looking up driveway to Healy prop
line
C-E Panoramic L-R Subject to Healy
D. Move to Right Healy prop
E. Right again - rest of Healy

F Next from Healy prop looking down
from Pet prop.
G. Directly to Pet - Garage
Play area in back
H. Rear lot 6
I Yellow House

Photos - show Gentle grade
change not severe

* Concern - Size of structure
1818 sqft footprint - even
level huge.
2nd level even more

Apts not allowed in zone at all

Garage addition - 950 sq ft - 3 bays

Accomodation could have been done on 2nd floor above garage on addition.

Bldg will mass 20 ft above hill even with landscaping
42 ft long - still massive
Encroachment on vista.

No hardship or practicl. here.

5 ft enough room -
Not issue. That disguises issue - is this approp location for use not allowed

- Pete -

RC Zones -
Case of first impression -
Can't think of anything like it.

Farm bldgs have accomodated tenants but not res use

400.1 - Access Use - Res zones
RC5 is res zone
Typical Access uses -
Garage pools sheds tennis cts
Rural zones -

Barns are principal bldg does not need house

Set backs access - 2.5' to line
Not a large structure that close
15' max - also indicates modest size

Inlaw Apt / dwellings -
Even come up before.
Yes
Types of situations?

Unwritten policies of Zoning office -
more freq. issue
Regs not amended to accomodate.
If within dwelling - admin process allows
If accessory - referred for SH
don't know how often appealed -
this first I know
Not in Regs.
Relates back to enforcement
Restrictions on deed but 250p investment. Might be attractive as rental in 10-20 years.

Op - This is dwelling.

Garage now is 950 sq ft - could accomodate living -

Concern as planner - precedent for similar structures?
A Seen increase in need so decision would open door for similar

PC 1 Zoning Map of area
Does not show houses
recent

PC2 SDAT with tax map

— Rebuttal —

Testimony Mr Z
Prot-
9 G — Photo —
Shows Garage addition with gable
roof. Explain hard trees in
with Access strada

Height & pitch match with A.S.

New Garage same height.
Top level same height
42 size chosen b/c of
Gable — only small % of
high enough ceiling b/c of angle.
Wanted it to match.
Not after thought

Not any higher than house —
Same height as garage
once mob hill

Mr. Dillon perspective not seeing
Rear — What is there
A Ground goes down — walkout
basement

Entire side is above Grade.
Sliding glass doors
Kitchen not flat - bump out
- Like a bay
3-4 ft / for nook
Could not see how to add on
w/out losing deck lighting
windows etc across back

Corner of house - well
If we could have made
garage bigger Could not, well

Set back prevented moving
garage.
This was only option
No intention to rent property.

CROSS

Photo from Healy to your lot
Fence on right

Access to back yard a problem -

No larger a back yard. if put there.
Could not get cars back there.
Doe
Garages usually near each other

How far above Grand level?
Same as garage
[What is that?]

Increase sprawl?
RC zones designed to acc growth
purpose was to direct res dev.
and maintain ~~rural~~ rural
RC - area to limit sprawl.

Proposed use not customary
or incidental
Incidental - Secondary to main use.

Final dev. plan did not anticipate
2 dwellings. This bldg
has appearance of dwelling.
Could be referred back.

Ranshell case. 5-6 lot subdiv
all but 1 built. Pet wanted to
resub the 1. Res. opposed relied
on Dev. Plan to # of lots.

Does this resemble

CROSS

Site visit important in analysis
June 25
In site visit didn't go in 2 backyard
No.
Obs. limited
Yes
So don't know what's back there
A Only visible from aerial
Shows grade changes - not severe

Testified possible to put Access structure in back yard - but w/out seeing it

A: ~~No~~

Don't know layout of existing house in back

No

Often Then topo did not measure grade change

No

Q: Agree to fully eval. lack of hardship you would need to see?

A: More info is better

Q: Correct that DRC hearing - van was allowed - CBA has similar power

Yes

SPH - mlan apt allowed.

Re Direct

Distinction - CBA has power to grant van but in this case not appropriate for CBA to grant

SPH should not have granted

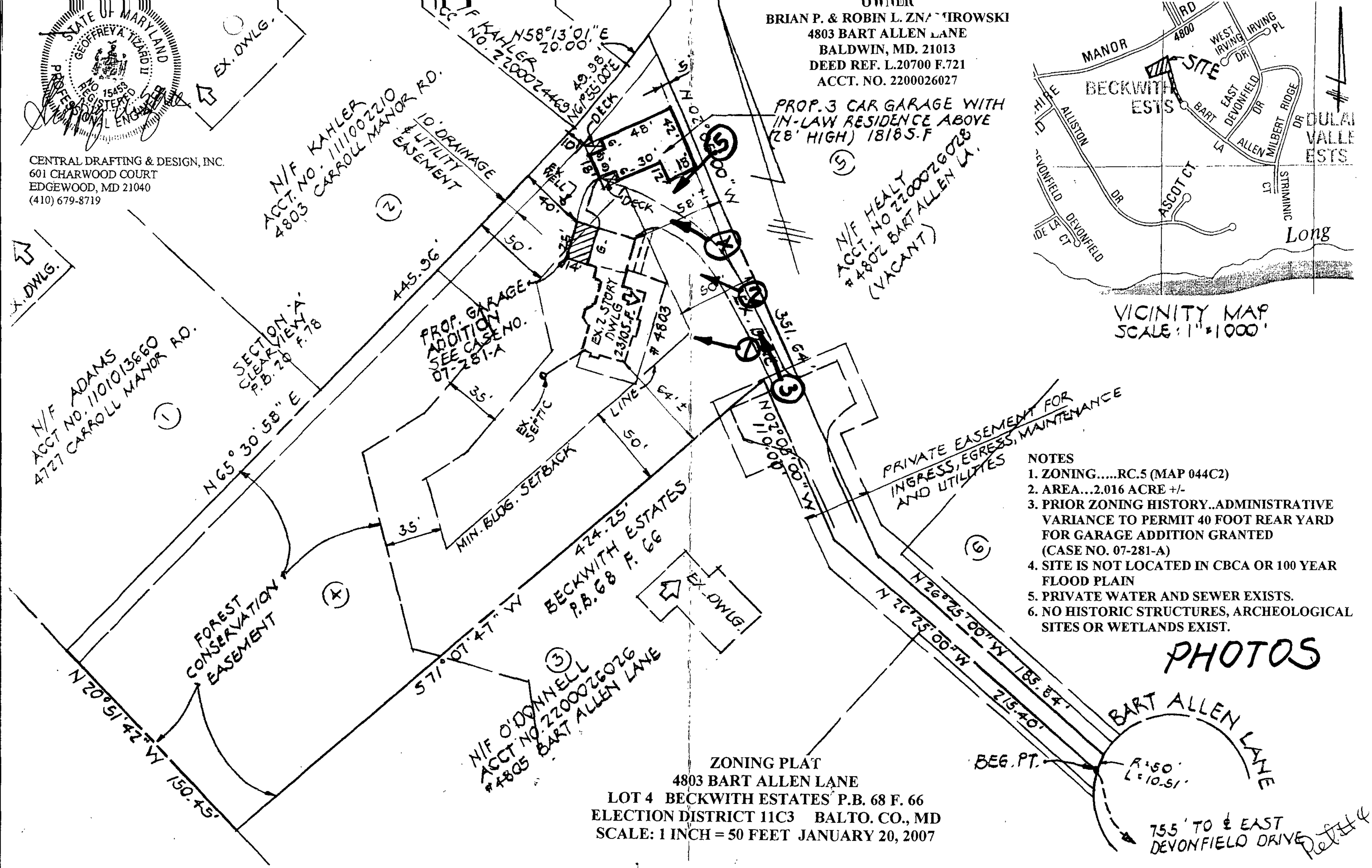
No prov. in regs allow use

Back yard photo

Yes

Thought info from visit and test today doesn't change op.

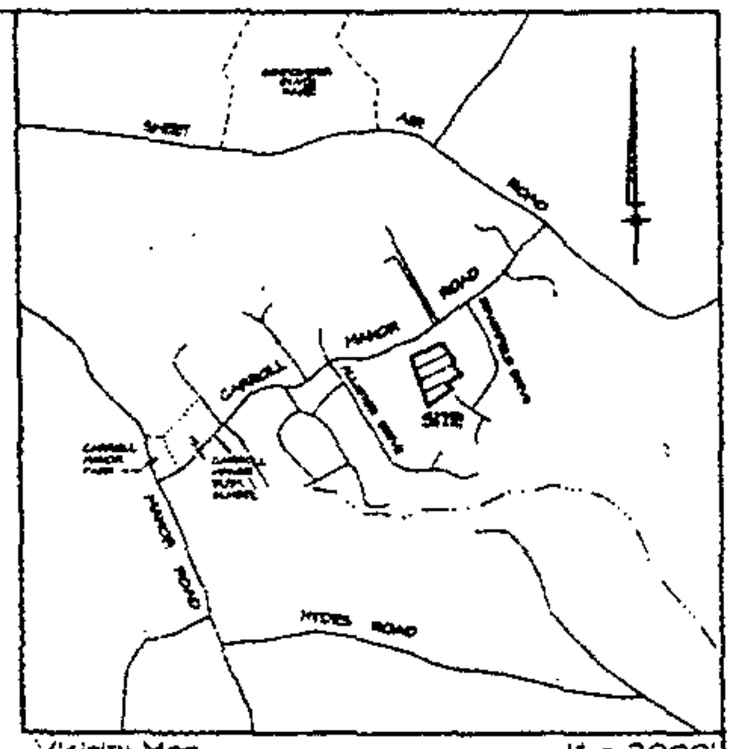
Pete - silly questions



NOTES
1. ZONING.....RC.5 (MAP 044C2)
2. AREA...2.016 ACRE +/-
3. PRIOR ZONING HISTORY..ADMINISTRATIVE VARIANCE TO PERMIT 40 FOOT REAR YARD FOR GARAGE ADDITION GRANTED (CASE NO. 07-281-A)
4. SITE IS NOT LOCATED IN CBCA OR 100 YEAR FLOOD PLAIN
5. PRIVATE WATER AND SEWER EXISTS.
6. NO HISTORIC STRUCTURES, ARCHEOLOGICAL SITES OR WETLANDS EXIST.

ZONING PLAT
4803 BART ALLEN LANE
LOT 4 BECKWITH ESTATES P.B. 68 F. 66
ELECTION DISTRICT 11C3 BALTO. CO., MD
SCALE: 1 INCH = 50 FEET JANUARY 20, 2007

Pet #4



Vicinity Map 1" = 2000'

GENERAL NOTES

1. Highway and highway widenings, slope easements, drainage and utility easements, access easements, forest buffer or forest conservation areas in lieu or easement, grassway areas in lieu or easement, and storm water management areas, as either fee simple, shown hereon, are reserved into the owner and, except for those indicated as private, are hereby offered for dedication to Baltimore County, Maryland. The owner, his personal representatives and assigns, shall convey said areas, by deed, to Baltimore County, Maryland, at no cost. Until such time as said conveyance is accepted by Baltimore County, the owner authorizes Baltimore County, its agents and assigns, the right to enter upon the property for the purpose of installing, constructing, maintaining and repairing roads, utility lines and facilities, and storm water management ponds and facilities.
2. Private shelter roads shown hereon and number thereof to denote are for purposes of description only and the same are not intended to be dedicated to public use; the fee simple title to the roads thereof is expressly reserved in the grantors of the deed to which this plat is attached, their heirs and assigns.
3. This plat was approved in accordance with the provisions of the Baltimore County Code, Section 26-206.
4. The recording of this plat does not guarantee the installation of streets or or utilities by Baltimore County.
5. The information shown hereon may be superseded by a subsequent or amended plat.
6. Additional information concerning this plat may be obtained from the Baltimore County Office of Planning and Zoning and The Department of Public Works.
7. The recording of this plat does not constitute or imply acceptance by the County of any street, easement, park, open space or other public area shown on the plat.
8. The owner/developer will comply with the best management practices adopted by the Baltimore County Department of Environmental Protection and Resource Management.
9. The plan for the property shown on this plat was approved on January 26, 1996.
10. Soil percolation tests will be valid for a period of three(3) years from the date the reserve plat is signed by the Director of the Department of Environmental Protection and Resource Management. At the expiration of this period, new tests may be required.
11. All requirements of the Maryland State Department of the Environment and Baltimore County Department of Environmental Protection and Resource Management pertaining to private water and/or sewage systems must be complied with prior to approval of building permit applications.
12. Trash collection, snow removal and road maintenance are to be provided to the junction of the panhandle and street right of way.
13. Except as otherwise indicated, all building restriction lines shown hereon have been placed on the map as a result of an interpretation only of currently applicable regulations and policies of the Baltimore County Office of Planning and Zoning. Exceptions to these restrictions may apply.
14. Lots 4 & 5 may need to utilize sewage ejector pumps.

Filed for record
S.M. 88 FOLIO 66
Date MAR 28 1996

Test
Clerk

"BECKWITH ESTATES"

BART ALLEN LANE
Deed Ref: S.M. No. 11064 folio 197
Tax Account No. 11-02-022281
Zoned R.C.-5
Tax Map 44 Grid 11 Parcel 125
11th ELECTION DISTRICT
6th COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

DENSITY CALCULATIONS

RC-5
AREA 12.724 Ac.±
OF LOTS PERMITTED: 0.667 x 12.724 = 8.5
OF LOTS PROPOSED: 6

CURVE INFORMATION

Curve	Length	Chord Bear.	Chord
450.00'	171.40'	N80°30'07"W	170.35'
50.00'	209.88'	N77°29'46"E	84.21'
50.00'	36.39'	S49°56'37"E	35.60'

SCALE: 1"=100' DATE: JANUARY 12, 1996

SURVEYOR'S CERTIFICATION

I, [illegible], a Registered Land Surveyor of the State of Maryland, do hereby certify that he is the Surveyor who made this Plat and that the lines shown on this Plat have been set, and the Plat thereof has been prepared, in accordance with Subsection 10 of Section 3-108 of the Real Property Article of the Annotated Code of Maryland, and that there are no lines concerning the making of the said setting the markers.

4/16/96
E. Etzel - Maryland Property Line Surveyor No. [illegible]

GERHOLD, CROSS & ETZEL, LTD
REGISTERED PROFESSIONAL LAND SURVEYORS
Suite 100
320 East Towsontown Boulevard
Towson, Maryland 21286
(410) 823-4470

COMPUTED S.A.L. DRAWN B.A.L./R.A.D. CHECKED E.E.P.

MSA 3341 Q36 -9415

68-66

Pet #3

Click here for a plain text ADA compliant screen.

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

Go Back
View Map
New Search
Ground Rent

Account Identifier: **District - 11 Account Number -** *2200026027*

Owner Information

Owner Name:	ZNAMIROWSKI BRIAN P ZNAMIROWSKI ROBIN L	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	4803 BART ALLEN LN BALDWIN MD 21013-9769	**Deed Reference:**	1) /20700/ 721 2)

Location & Structure Information

Premises Address
4803 BART ALLEN LN

Legal Description
2.016 AC
4803 BART ALLEN LN NS
BECKWITH ESTATES

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
44	11	123					4	3	Plat Ref: 68/ 66

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

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1998	2,990 SF	2.02 AC	04

Stories	Basement	Type	Exterior
2	YES	STANDARD UNIT	SIDING

Value Information

	Base Value	Value As Of 01/01/2006	Phase-in Assessments As Of 07/01/2006	As Of 07/01/2007
Land:	77,140	143,260		
Improvements:	257,570	443,270		
Total:	334,710	586,530	418,650	502,590
Preferential Land:	0	0	0	0

Transfer Information

Seller:	KROPFELDER BERNARD R,JR	**Date:**	09/17/2004	**Price:**	$545,000
Type:	NOT ARMS-LENGTH	**Deed1:**	/20700/ 721	**Deed2:**	
Seller:	GETTMAN GEORGE J,3RD	**Date:**	06/30/2003	**Price:**	$485,000
Type:	NOT ARMS-LENGTH	**Deed1:**	/18310/ 460	**Deed2:**	
Seller:	MRIC L L C	**Date:**	09/22/1997	**Price:**	$116,000
Type:	IMPROVED ARMS-LENGTH	**Deed1:**	/12394/ 518	**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:

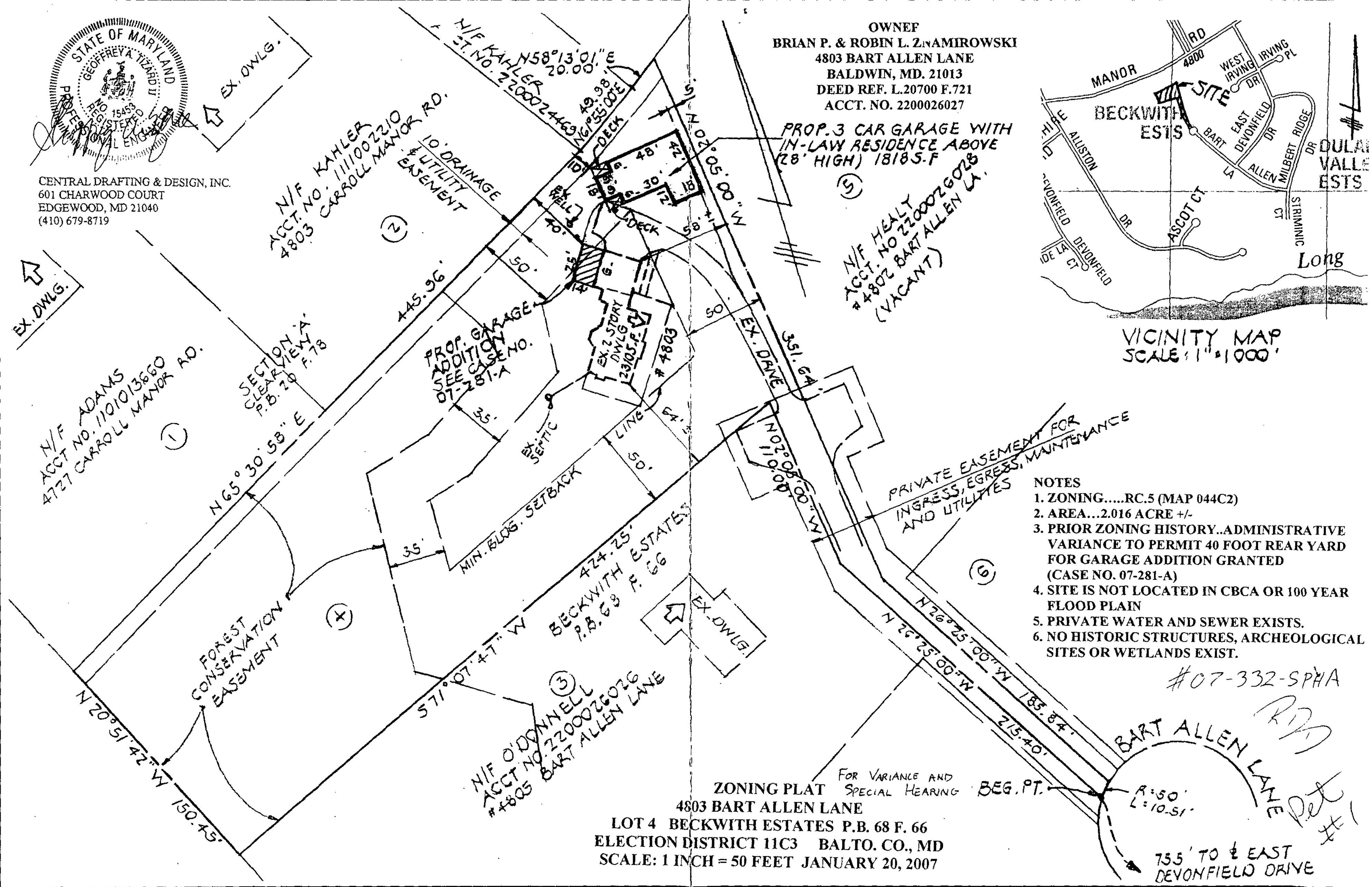
* NONE *

Pet #2

STATE OF MARYLAND
GEOFFREY A. TIZARD II
No. 15453
REGISTERED
PROFESSIONAL ENGINEER

CENTRAL DRAFTING & DESIGN, INC.
601 CHARWOOD COURT
EDGEWOOD, MD 21040
(410) 679-8719

OWNEF
BRIAN P. & ROBIN L. ZNAMIROWSKI
4803 BART ALLEN LANE
BALDWIN, MD. 21013
DEED REF. L.20700 F.721
ACCT. NO. 2200026027



VICINITY MAP
SCALE: 1" = 1000'

NOTES
1. ZONING.....RC.5 (MAP 044C2)
2. AREA...2.016 ACRE +/-
3. PRIOR ZONING HISTORY..ADMINISTRATIVE VARIANCE TO PERMIT 40 FOOT REAR YARD FOR GARAGE ADDITION GRANTED (CASE NO. 07-281-A)
4. SITE IS NOT LOCATED IN CBCA OR 100 YEAR FLOOD PLAIN
5. PRIVATE WATER AND SEWER EXISTS.
6. NO HISTORIC STRUCTURES, ARCHEOLOGICAL SITES OR WETLANDS EXIST.

#07-332-SPHA

RB

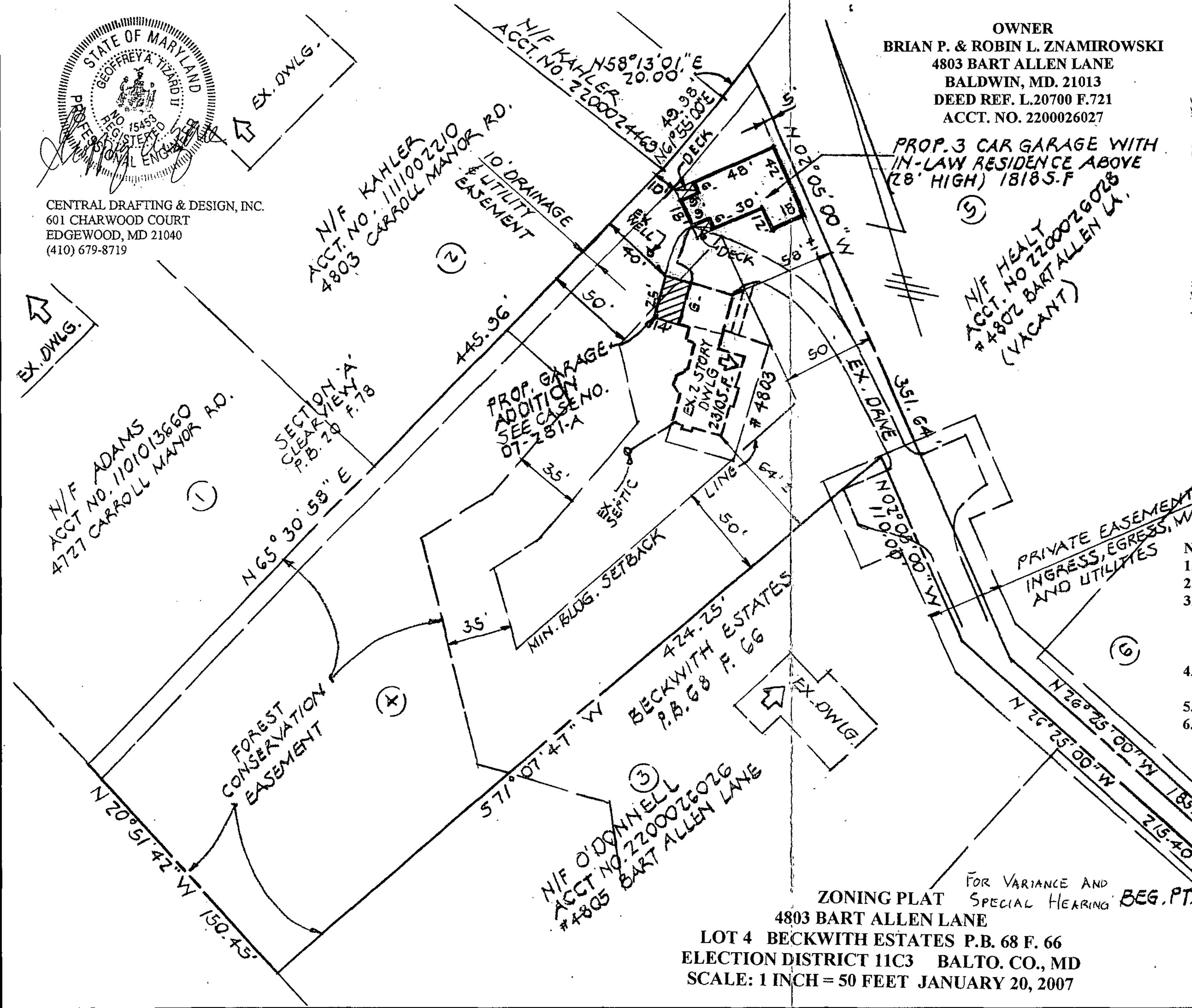
Pet #1

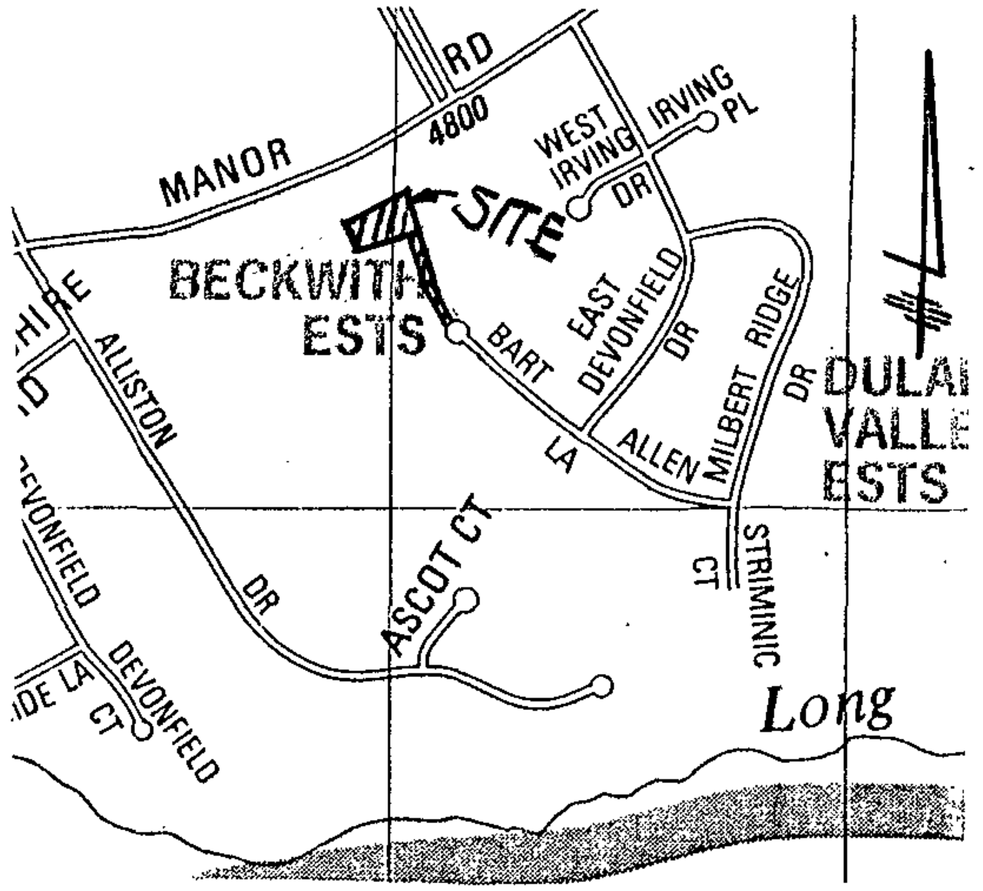
ZONING PLAT FOR VARIANCE AND SPECIAL HEARING
4803 BART ALLEN LANE
LOT 4 BECKWITH ESTATES P.B. 68 F. 66
ELECTION DISTRICT 11C3 BALTO. CO., MD
SCALE: 1 INCH = 50 FEET JANUARY 20, 2007

STATE OF MARYLAND
GEOFFREY A. TIZARD II
No. 15453
PROFESSIONAL ENGINEER

CENTRAL DRAFTING & DESIGN, INC.
601 CHARWOOD COURT
EDGEWOOD, MD 21040
(410) 679-8719

OWNER
BRIAN P. & ROBIN L. ZNAMIROWSKI
4803 BART ALLEN LANE
BALDWIN, MD. 21013
DEED REF. L.20700 F.721
ACCT. NO. 2200026027





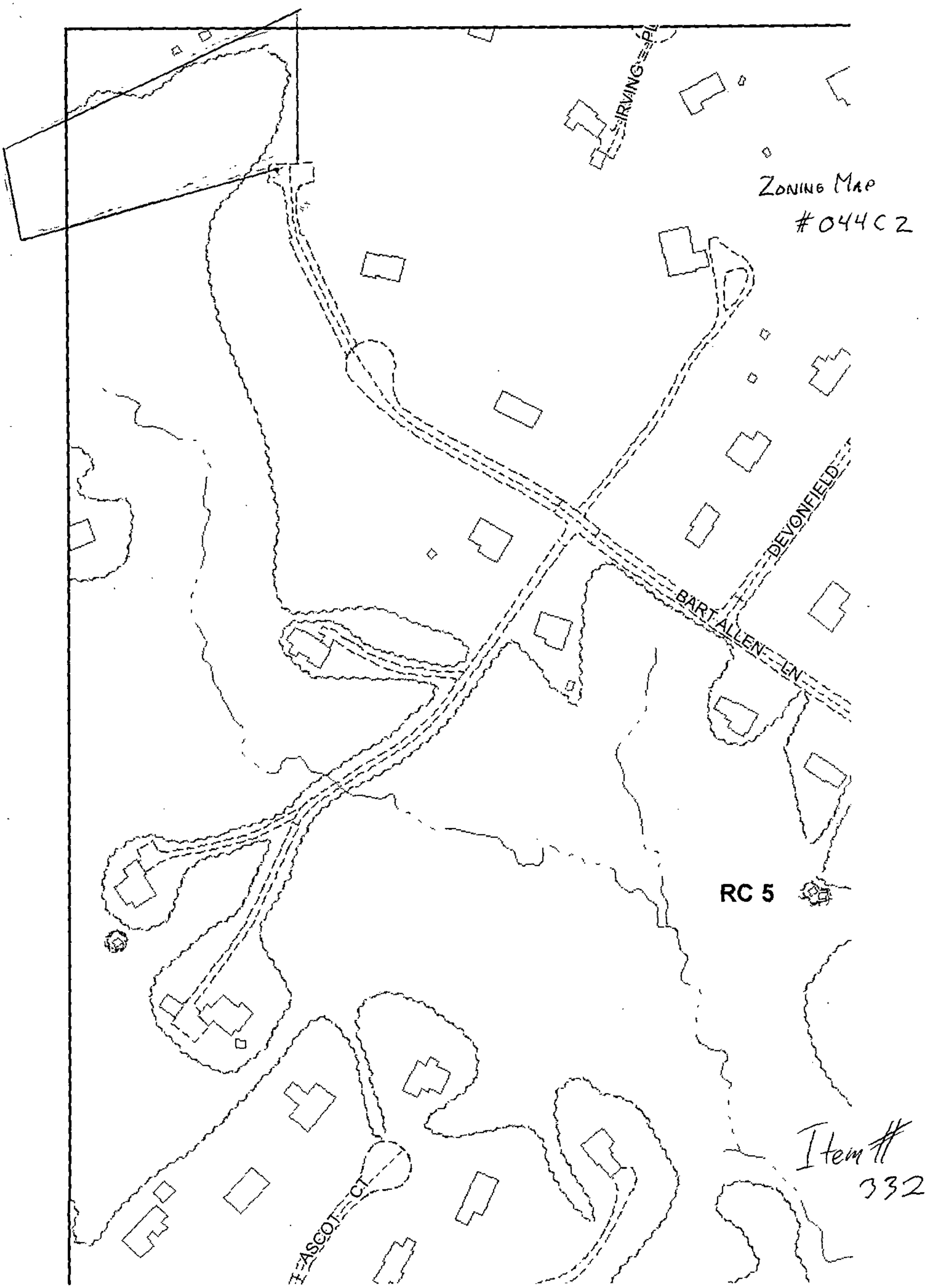
VICINITY MAP
SCALE: 1" = 1000'

NOTES

1. ZONING.....RC.5 (MAP 044C2)
2. AREA...2.016 ACRE +/-
3. PRIOR ZONING HISTORY..ADMINISTRATIVE VARIANCE TO PERMIT 40 FOOT REAR YARD FOR GARAGE ADDITION GRANTED (CASE NO. 07-281-A)
4. SITE IS NOT LOCATED IN CBCA OR 100 YEAR FLOOD PLAIN
5. PRIVATE WATER AND SEWER EXISTS.
6. NO HISTORIC STRUCTURES, ARCHEOLOGICAL SITES OR WETLANDS EXIST.

#07-332-SPHA

ZONING PLAT
4803 BART ALLEN LANE
LOT 4 BECKWITH ESTATES P.B. 68 F. 66
ELECTION DISTRICT 11C3 BALTO. CO., MD
SCALE: 1 INCH = 50 FEET JANUARY 20, 2007



Zoning Map
#044C2

Item #
332

(044 C2)

Item # 332

see no error in these findings.[3] Accordingly, the court correctly directed Ms. Droney to transfer the home in its 1992 Order; the court's finding of contempt in the 1994 Order, based on Ms. Droney's failure to comply, was not an abuse of discretion.

III.

[13] Ms. Droney contends that even if the court did not err in finding that the term "real estate" encompassed the home, the court lacked the statutory authority to order her to transfer her interest in property, either as part of a divorce decree or in the enforcement thereof. Under Md.Fam.Law Code Ann., § 8–202(a) (1991), the court may determine ownership of disputed property when the court grants an absolute divorce, but the statute expressly denies the court the power to transfer property, other than money, as part of an award. *See also, Kline v. Kline*, 93 Md.App. 696, 703, 614 A.2d 984 (1992). At the same time, the court can merge the terms of a deed, agreement, or settlement made between the parties during the divorce as a part of the divorce decree. Md.Fam. Law Code Ann., § 8–105(a); *Goldberg v. Goldberg*, 290 Md. 204, 210 n. 6, 428 A.2d 469 (1981). Once the terms are so merged, the court has the power to enforce those terms using the contempt power. Md.Fam.Law Code Ann., § 8–105(a);

3. In addition, our decision finds logical support in the area of lawful warrantless searches of vehicles under the Fourth Amendment of the United States Constitution. In *California v. Carney*, 471 U.S. 386, 105 S.Ct. 2066, 85 L.Ed.2d 406 (1985), the Supreme Court held that the mobile home in question was sufficiently mobile that it fell within the "automobile exception" to the prohibition on warrantless searches, even if it was being used primarily as a residence and not as a means of transportation. *Id.* at 393, 105 S.Ct. at 2070. The Court suggested, however, that the same home, on blocks and connected to utility lines in a mobile home park, would not have been subject to a warrantless search, because the critical element of mobility would be lacking. *Id.* at 394 n. 3, 105 S.Ct. at 2071 n. 3. *See also, Doering v. State*, 313 Md. 384, 398–99, 545 A.2d 1281 (1988) (interpreting *Carney*, defendant's bus, which had been converted into lodging, was subject to warrantless search as it had all of its tires fully inflated, had all its windows intact, had all its lights in apparently functional condition, and was near a road).

Md.Rule 2–648; *Mendelson v. Mendelson*, 75 Md.App. 486, 497–98, 541 A.2d 1331 (1988).

Ms. Droney relies on the case of *McAlear v. McAlear*, 298 Md. 320, 469 A.2d 1256 (1984) for the proposition that contempt may not be used to enforce a "property disposition award." In *McAlear*, the divorced wife sought to have her ex-husband held in contempt for his failure to pay the monetary award specified in the judgment of absolute divorce. The Court held that, unlike alimony, a monetary award in a divorce case constitutes a "debt," and as the Maryland Constitution, Art. III, § 38 forbids incarceration for the failure to pay a debt, contempt was not an available method of enforcement. *Id.* at 349–52, 469 A.2d 1256.

Ms. Droney's reliance on *McAlear* is inapposite. The Court did not consider Fam.Law, § 8–105(a), and we find nothing in *McAlear* that approaches the question of whether a court may use contempt to enforce the lawful terms of its own orders. Given the clear statutory authority to merge the terms of an agreement into a judgment of divorce and to enforce such terms with contempt, the court did not err in seeking to enforce the terms of the Judgment by ordering Ms. Droney to transfer her ownership of the Property to Mr. Droney.

AFFIRMED. COSTS TO BE PAID BY APPELLANT.

---

651 A.2d 424

David CROMWELL, et al.

v.

Arthur Thomas WARD, III.

No. 617, Sept. Term, 1994.

Court of Special Appeals of Maryland.

Decided Jan. 4, 1995.

The Circuit Court, Baltimore County, Lawrence Daniels, J., affirmed order of board of appeals granting height variance

for accessory building already built by owner. Appeal was taken. The Court of Special Appeals, Cathell, J., held that: (1) no variance was appropriate where property was not shown to be unusual or unique from surrounding properties before variance based on practical difficulty or unreasonable hardship was sought; (2) landowner's self-created hardship arising from construction of accessory building before variance was sought was not grounds for grant; and (3) approval of building permit for accessory building did not support grant of variance sought.

Reversed.

1. Zoning and Planning ⚷461

City was not estopped from refusing to grant variance from height restriction on auxiliary building merely because owner submitted and obtained construction permit, at least where owner's plan's elevation schematics contained neither elevation dimensions nor scale and elevation was not stated; while zoning inspectors might have been able to extrapolate dimensions from other schematics, they were not required to do so in light of owner's affirmative statement in application of compliance with zoning requirements. Code 1957, Art. 66B, § 7.03; Baltimore, Md., Zoning Ordinance § 307.

2. Zoning and Planning ⚷496

Under law on variances in Maryland and under Baltimore County's charter and ordinance, property's peculiar characteristics or unusual circumstances relating only and uniquely to that property must exist in conjunction with ordinance's more severe impact on specific property because of property's uniqueness before any consideration will be given to whether requisite practical difficulty or unnecessary hardship exists. Code 1957, Art. 66B, § 7.03; Baltimore, Md., Zoning Ordinance § 307.

3. Zoning and Planning ⚷497

Practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted. Code 1957, Art. 66B, § 7.03; Baltimore, Md., Zoning Ordinance § 307.

4. Zoning and Planning ⚷496

Mistake of county official cannot be the "practical difficulty" unique to subject property required to authorize grant of variance. Code 1957, Art. 66B, § 7.03; Baltimore, Md., Zoning Ordinance § 307.

5. Zoning and Planning ⚷503

Granting of variance from height restrictions on auxiliary building was arbitrary and illegal where subject site was not in any way peculiar, unusual or unique when compared to other properties in neighborhood and thus was not disproportionately affected by height restriction; self-created hardship arising from owner's failure to disclose height dimensions in applying for permit and construction of building in nonconformity were self-imposed or created hardships that could not support variance. Code 1957, Art. 66B, § 7.03; Baltimore, Md., Zoning Ordinance § 307.

Michael Paul Smith (Thomas G. Bodie and Bodie, Nagle, Dolina, Smith & Hobbs, P.A., on the brief), Towson, for appellants.

Newton A. Williams (Nolan, Plumhoff & Williams, Chtd., on the brief), Towson, for appellee.

Argued before WENNER, CATHELL and MURPHY, JJ.

CATHELL, Judge.

Appellant, David Cromwell, appeals from the judgment of the Circuit Court for Baltimore County (Daniels, J., presiding) affirming the order of the Board of Appeals granting a height variance for an accessory building already built by appellee, Arthur Thomas Ward, III. Appellant poses the following questions:

I. Whether the self-imposed or self-created hardship discussed in the Maryland case law on variances

requires an intentional act, such as ignoring or flaunting [sic] the zoning regulations.

II. Does the record before the Honorable Lawrence Daniels support a finding that had the accessory building been built in accordance with the height regulations of Baltimore County, the accessory building would necessarily require a different pitch from all other buildings on the property?

III. Can a difference in roof pitches between an accessory building and a home constitute a "practical difficulty or unreasonable hardship" within the meaning of § 307 of the Baltimore County Zoning Regulations?

While those questions are limited, appellant expands in his arguments supporting the questions and argues that

> [t]he restrictions of the applicable ordinance, *taken in conjunction with the unique circumstances affecting the property,* must be the proximate cause of the hardship [Emphasis added.]

and

> Section 307.1 requires that variances only be granted in cases where special circumstances or conditions exist *that are peculiar to the land or structure* which is the subject of the variance request.... [Emphasis added.]

and

> Mr. Ward's property *is not unique* from the others in the Ruxton area. [Emphasis added.]

Although somewhat indirectly, appellant has pointed out an important aspect of the nature of the *variance* process, *i.e.*, it is at least a two-step process. The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is—in and of itself—unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property. Unless there is a finding that the property is unique, unusual, or different, the process stops here and

the variance is denied without any consideration of practical difficulty or unreasonable hardship. If that first step results in a supportable finding of uniqueness or unusualness, then a second step is taken in the process, *i.e.*, a determination of whether practical difficulty and/or [1] unreasonable hardship, resulting from the disproportionate impact of the ordinance *caused by the property's uniqueness, exists.* Further consideration must then be given to the general purposes of the zoning ordinance.

What we have recently observed in Baltimore County, and in other jurisdictions as well, and what occurred in the case at bar, is a reversal of the required process. Instead of first determining whether the subject property is unusual or unique, the zoning authorities are first determining whether a practical difficulty or unreasonable hardship exists. That determination is then used to create a unique and unusual situation as to the subject property because surrounding properties do not experience the hardship or difficulty.

In the case *sub judice,* appellee's act of constructing a building of such a height as to produce a roof pitched at the angle he desired caused the roof to extend above the fifteen-foot height limit. This fact alone was found by the Board (and affirmed by the trial court) to make the property's problems unique. Simply stated, the variance that is desired (and the difficulties that would exist if it is not granted) cannot be the source of the first prong of the variance process—an inherent uniqueness of the subject property not shared by surrounding properties.

---

1. Some ordinances use the conjunctive, "and," creating a requirement that both practical difficulty "and" unreasonable hardship exist. Because hardship is the most severe standard, this means that it is the standard used regardless of whether an area or use variance is sought. Some ordinances use the disjunctive, "or," to separate the two standards. These jurisdictions construe the ordinance to require the unreasonable hardship standard to be used when "use" variances are sought, because use variances are believed to be more disruptive of zoning goals and purposes, but require the lesser "practical difficulty" standard when "area" variances are sought.

The Facts

Appellee's contractor, Donald S. Huber and Company, Inc. (Huber), prepared plans for a garage, wine cellar, and storage area on appellee's property. Using these plans, Huber, on appellee's behalf, applied for a building permit, noting on the application that it was to construct a two story "garage and wine cellar;" "[second] story to be used as storage, [first] floor for garage and wine testing room. Cellar will be for wine." The application indicates that some prior height indication was marked over on the application for a permit and a new mark was made indicating the anticipated height of the structure to be fourteen feet. Huber admitted that he had little experience with the zoning requirements for accessory buildings and was unaware of the height limitations. The County's automated tracking system, in creating its general permit application data on the subject property, noted: "Height: 14'" and "Stories: 2+ CELL."

The plans presented to the County included a "Left Side Elevation" but no height is shown on the elevation plan. Neither, as far as we have been able to find, does the plan contain a scale from which the "Left Side elevation" can be determined. The plans also include a "Front Elevation" from which actual proposed heights are also conspicuously, almost suspiciously, absent given that all other dimensions appear to be included on the plans.

We have, however, extrapolated from a horizontal distance indicated on the lower right-hand corner of the "Second Floor Plan" that fourteen feet five and one-half inches equals slightly over three and one-half inches on our ruler. It would appear that the front elevation plan indicates five and one-fourth inches on our ruler or approximately twenty-one and one-half feet in height. When measured in similar fashion, the left side elevation indicates a similar height. Thus, if the other measurements are correct, a method existed in which, even absent a scale, rough height elevations might have been discernable, though we are at a loss to understand why the

elevations were not given in feet and why the plans contained no scale.[2]

After receiving a building permit, appellee proceeded to construct the building that violated the fifteen foot height requirement. During the building process, inspections were made of footings, foundations, framing, and electrical service. Final occupancy was then given. Later, the building was discovered to be twenty-one feet in height.[3] Appellee then successfully applied for an after the fact variance. Appellant appealed to the Board of Appeals and it, in a two to one decision, granted the variance that the circuit court ultimately affirmed.

The Law

The State Zoning Enabling Act was first passed in 1927 by Chapter 705 of the Acts of 1927. It has since been codified as Article 66B of the Annotated Code of Maryland (1957, 1988 Repl.Vol., 1994 Cum.Supp.). While it was generally believed that local subdivisions did not have to enact zoning regulations (and some did not), if enacted, they normally had to conform to the provisions of Article 66B.

Baltimore County, however, is a charter county and is exempt from many of the provisions in Md.Code Art. 66B. See Md.Code Art. 66B § 7.03 which provides "Except as provided in [sections not pertinent here] ... this article does not apply to the chartered counties of Maryland." Nevertheless, the language of Art. 66B relating to variances is virtually identical to the provisions of the Baltimore County ordinance.

---

2. Appellee, several times in his brief, states that the plans "clearly" show the height of the building. We are tempted to respond with a short rejoinder. We resist. The heights shown on the plans are not clearly shown—they are not shown at all—but must be computed, as we have done, without the benefit of a scale by a difficult reference to dimensions that are given for horizontal distances.

3. As we have said, the application, building permit and the county data indicated that its height was to be fourteen feet.

The Article 66B provision that provides for variance authority in local zoning ordinances is section 1.00(j). As relevant to an area variance, this section defines a variance under Art. 66B as follows:

> [M]odification only of density, bulk, or area requirements in the zoning ordinance ... where *owing to conditions peculiar to the property, and not the result of any action taken by the applicant,* a literal enforcement ... would result in either, as specified by the local governing body in a zoning ordinance, unnecessary hardship or practical difficulty. [Emphasis added.]

The Baltimore County Zoning Ordinance in section 307, "Variances," provides, in relevant part, that variances from the ordinances provision, *i.e.*, height, may be granted

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

Accordingly, we shall, in our discussion of cases, refer extensively to cases under the provisions relating to Art. 66B as well as cases under the Baltimore County provisions.

The Baltimore County ordinance requires "conditions ... peculiar to the land ... and ... practical difficulty...." Both must exist. But the terms "practical difficulty" and "unreasonable hardship" are stated in the ordinance disjunctively. Thus, at least as to variances other than use variances,[4] if the property is found to be unique, the practical difficulty standard would then apply. We address practical difficulty at some length hereafter. However, as is clear from the language of the Baltimore County ordinance, the initial factor that must be established before the practical difficulties, if any, are addressed, is the abnormal impact the ordinance has on a specific piece of property because of the peculiarity and

4. It is not clear that section 307, "Variances," would even permit any use variances except perhaps as to signs or parking, as the section is framed primarily in terms of "area" variance requests.

uniqueness of *that* piece of property, not the uniqueness or peculiarity of the practical difficulties alleged to exist. It is only when that uniqueness is first established that we then concern ourselves with the practical difficulties (or unnecessary hardships in use variance cases).

Because we have discerned that some of the confusion in this and other jurisdictions may have arisen because of a tendency to intermingle the concepts of special exceptions/conditional uses[5] (where normally an applicant has an easier burden) and variances, we shall first discuss the cases (local as well as foreign) and treatises in which the terms are distinguished. We shall then discuss our cases and certain of those elsewhere in which the proper (and, on occasion, improper) applications of variance law have been applied. The Baltimore County statute will then be restated and applied to the facts and circumstances of the case *sub judice.*

Special Exceptions (and Conditional Uses) and Variance—Distinguished

The treatise writers define the concept as:

> A variance is an authorization for [that] ... which is prohibited by a zoning ordinance....
>
> ... [T]he difference between the two [variances and special exceptions] ... is of practical significance....
>
> "... [T]he variance and exception are designed to meet two entirely different needs. The variance contemplates a departure from the terms of the ordinance in order to preclude confiscation of property, while the exception

5. *Matters relating to area issues are intended to be, and usually are,* addressed as special exceptions. Matters relating to "use" issues are intended to be, and usually are, addressed as conditional uses. The terms, however, are, with some frequency, intermixed. Because both concepts envision that they are permitted so long as certain conditions are met, the indiscriminate use of the two terms has created little difficulty. In a pure sense, however, "conditional uses" refer to uses while exceptions normally apply to area, *i.e.*, yard, height, and density matters. In either event, conditional uses and special exceptions are permitted uses, so long as the conditions set out in the ordinance are met.

contemplates a permitted use ... [once] the prescribed conditions therefor are met."

... [A] variance is "authority ... to use his property in a manner forbidden ...," while an exception "allows him to put his property to a use which the enactment expressly permits."

... [T]he standards for ... exceptions are usually less stringent than in the case of variances. A Maryland court summarized this difference and the reason for it.

"A special exception ... is one which is controlled and ... permissible in a given zone. It is granted ... upon a finding conditions of the zoning ordinance are satisfied. A variance is authorized ... where the literal enforcement of its terms would result in unnecessary hardships."

3 Robert M. Anderson, *American Law of Zoning* § 18.02–03 (2d ed. 1977) (footnotes omitted) (quoting in part *Stacy v. Montgomery County*, 239 Md. 189, 193, 210 A.2d 540 (1965)). *See also Schultz v. Pritts*, 291 Md. 1, 11, 432 A.2d 1319 (1981); *People's Counsel v. Mangione*, 85 Md.App. 738, 748, 584 A.2d 1318 (1991).

A distinction commonly is made between [special] exceptions ... and variances.... An "exception" ... is a dispensation permissible where a board ... finds existing those facts ... specified in the ordinance as sufficient.... "... But zoning ordinances usually provide for another kind of dispensation, ... by which a variance ... may be authorized ... where a literal enforcement ... would result in unnecessary hardship."

8 Eugene McQuillin, *Municipal Corporations* § 25.160 (3d ed. rev. 1991) (footnotes omitted).

The general rule is that variances and exceptions are to be granted sparingly, only in rare instances and under peculiar and exceptional circumstances.... A variance should be strictly construed....

Id. § 25.162 (footnotes omitted). *See also* 5 Norman Williams, Jr. et al., *American Land Planning Law* § 133.01 (1985 rev.); 3 Arden H. Rathkopf, *The Law of Zoning and Planning* § 38.01 (4th ed. 1981); 3 E.C. Yokley, *Zoning Law and Practice* § 21–6 (4th ed. 1979); 3 Robert M. Anderson, *American Law of Zoning* § 14.55 (1968); Anderson, *supra* § 18.30 (2d ed.).

Maryland courts, and courts elsewhere, have generally made the same distinction.

There is a marked distinction between "variance" and "special exception" in Montgomery County. A special exception ... is expressly permissible.... [A zoning board has authority to grant] variances from the strict application of this chapter when by reason of exceptional narrowness, shallowness, or shape of specific parcels of property ... or by reason of exceptional topographical conditions or other extraordinary situations ... of specific parcels of property, the strict application ... would result in ... unusual practical difficulties to, or exceptional or undue hardship....

Stacy, 239 Md. at 193, 210 A.2d 540.

Judge Hammond for the Court of Appeals noted in *Montgomery County v. Merlands Club, Inc.*, 202 Md. 279, 288–91, 96 A.2d 261 (1953):

It is the common practice to join an application for an exception with an application for a variance, leaving it to the Board to decide on which ground it will grant the application. As a result, many cases discuss exceptions and variances without differentiation, yet the two do differ, and one important distinction is that where a specific use is permitted by the legislative body in a given area ... the application can be granted without a showing of hardship or other conditions which are necessary for the allowance of a variance....

....

... There is a distinction between ... the ordinance provisions ... in those cases [Baltimore City cases] and the facts and the ordinance provision in this case....

See also our case of *Martin Marietta Aggregates v. Citizens*, 41 Md.App. 26, 34–35, 395 A.2d 179 (1978).

> A conditional use is not a variance. The primary difference between the two is that a conditional use is not an exceptional[6] use. A conditional use is a desirable use which is attended with detrimental effects which require that certain conditions be met.... While a variance is a departure from the terms of an ordinance, a conditional use is a permitted use ... so long as ... conditions are met. Therefore, conditional use grants cannot be encompassed within the ... statutory authority to grant variances.

Eberhart v. Indiana Waste Systems, Inc., 452 N.E.2d 455, 459 (Ind.App. 3 Dist.1983) (citations omitted).

In a case affirming the granting of a special exception, the court in *Ash v. Rush County Bd. of Zoning Appeals*, 464 N.E.2d 347, 350 (Ind.App. 1 Dist.1984), opined:

> A great deal of confusion has been generated ... because of the parties' failure to distinguish among rezoning amendments, variances, and special exceptions.... A variance involves a deviation ... from the legislated zoning classification.... A special exception involves a use which is permitted ... once certain statutory criteria have been satisfied. [Citations omitted.]

See also Lindquist v. Board of Adjustment, 490 So.2d 16, 18 (Ala.Civ.App.1986) ("Thus a special exception is not truly an exception to the zoning regulations at all") and ("a special exception may not be used as a substitute for a variance in order to avoid the ... burden of proving ... hardship"); *Wolfner v. Board of Adjustment*, 672 S.W.2d 147, 150 (Mo. App.1984) ("an exception is legislatively permitted whereas a variance is legislatively prohibited, but may be allowed for special reasons"); *Urban Farms, Inc. v. Franklin Lakes*, 179 N.J.Super. 203, 431 A.2d 163, 167 (A.D.), *cert. denied*, 87 N.J. 428, 434 A.2d 1099 (1981) (special exception and variance defined—case decided on zoning estoppel basis); *A.J. Grosek & Associates v. Zoning Hearing Bd.*, 69 Pa.Cmwlth. 38, 450 A.2d 263, 265 (1982); *Bell v. City Council*, 224 Va. 490, 297 S.E.2d 810, 813–14 (1982).

6. Exceptional is used here in its generic sense.

VARIANCE—

The First Step—Uniqueness or Peculiarity of the Subject Property

> The general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances. *See, e.g.*, A. Rathkopf, 3 The Law of Zoning and Planning § 38 (1979).

Doorack v. Board of Adjustment, 709 S.W.2d 140, 143 (Mo. App.1986). *See also McMorrow v. Board of Adjustment*, 765 S.W.2d 700, 701–02 (Mo.App.1989); *Taylor v. Board of Zoning Adjustment*, 738 S.W.2d 141, 144 (Mo.App.1987).

The requirement of uniqueness of the subject property, as we have indicated, is specifically set out for noncharter counties in the State enabling legislation, Md.Code Article 66B, and it is also set out in the Baltimore County ordinance applicable here. Additionally, it has been a necessary prerequisite almost since the inclusion of variance practice in zoning laws—and, before that, it was a part of Maryland case law. That case law is in accord generally with the case law elsewhere as we shall later discuss.

Early on, prior to the State specifically empowering local governments to delegate the granting of variances to zoning boards, the Maryland Court of Appeals found that the delegation of power to an administrative board to grant variances from the terms of a zoning "type" ordinance was improper because

> the board of zoning appeals is in effect given the power to set aside or annul the ordinance ... with no more definite standard or guide than that such action may only be taken when there are "practical difficulties or unnecessary hardships".... [U]nder our system of written constitutions it is essential that they accomplish those ... objects in conformity with the restrictions, rules, and limitations which the law itself provides and not in disregard of them.... For such

phrases as "practical difficulties," "unnecessary hardships," "substantial justice," are too general and indefinite to furnish such a guide, or to mark the limits or control the exercise of the power conferred....

Jack Lewis, Inc. v. Mayor and City Council of Baltimore, 164 Md. 146, 151, 164 A. 220, *appeal dismissed*, 290 U.S. 585, 54 S.Ct. 56, 78 L.Ed. 517 (1933) (though it questioned the variance provisions under which the appellant sought a variance to operate a funeral home, it upheld the restriction prohibiting the funeral home in the first instance). In *Sugar v. North Baltimore Methodist Protestant Church*, 164 Md. 487, 165 A. 703 (1933), the Court likewise found the board's powers to grant special exceptions to permit a confectionery store where otherwise prohibited to be invalid for the same reasons.

In moving towards an acceptance of variance procedures, the Court noted that the "increasing need for garages in the cities was one of the main reasons for the rapid spread of zoning in this country." *Heath v. Mayor and City Council of Baltimore*, 187 Md. 296, 300, 49 A.2d 799 (1946). By the time of its decision in *Heath*, the Court had accepted the inevitable need for formal variance and special exception provisions, noting that "[c]haos would result if [a building engineer] were allowed to make exceptions or variances in his own discretion." 187 Md. at 301, 49 A.2d 799. The Court further pointed to the special exception powers of the Board of Zoning Appeals as a legally acceptable alternative. The Court also observed that in response to its decisions in *Jack Lewis* and *Sugar*, the City had amended the Baltimore City ordinance to incorporate additional standards to guide the Board. The Court correctly defined an exception as "a dispensation granted where the Board ... finds ... those facts ... specified in the ordinance...." *Id.* 187 Md. at 303, 49 A.2d 799.

It was then that the court, for the first time that we discern, combined exceptions and variances when it found conformity to the rules in regard to the grant of either. This is the first instance where the two concepts were blended with respect to the Baltimore City ordinance. To some extent, this intermingling has, from time to time, [illegible]

confusion in the cases arising out of Baltimore City. Because of the proportionately larger number of cases arising out of that jurisdiction, that confusion can be seen in subsequent cases arising from other jurisdictions. This intermingling increased over the years and, during this time, Baltimore City amended its ordinance and eventually became subject to an ordinance that does not distinguish between variances and exceptions except as to the title of their respective sections. In other words, Baltimore City, by the terms of its ordinance, applies the same standards to both variances and special exceptions; this standard is the one used elsewhere for variances. Thus, the Baltimore City special exceptions procedure is one only by title. For all practical purposes, it is also a variance procedure.

Caution should always be used therefore when a court is concerned with special exceptions, as reliance on the cases from Baltimore City may well lead one to rely on inapposite zoning concepts and cases. Judge Marbury, for the Court of Appeals, noticed this unusual circumstance in *Dampman v. Mayor and City Council of Baltimore*, 231 Md. 280, 285, 189 A.2d 631 (1963) ("In Baltimore City there appears to be no distinction between the two terms....").[7] We also attempted to indicate the problem in *North v. St. Mary's County*, 99 Md.App. 502, 510, 638 A.2d 1175 (1994), in footnote 3:

> Baltimore City's zoning code makes no distinction between special exceptions and variances. Its code treats special exceptions as if they were variances.... [I]t is generally inexact to rely on Baltimore City cases when a special exception is at issue in another jurisdiction, but would be appropriate when a variance is at issue.

In any event, as to variances, the Court of Appeals, applying the uniqueness standard, stated:

[7] Another typical Baltimore City case in that regard is *Easter v. Mayor and City Council of Baltimore*, 195 Md. 395, 400, 73 A.2d 491 (1950), where the Court noted "facts to justify an exception ... [show] that the hardship affects the particular premises and is not common to other property in the neighborhood." This is a variance standard.

> [I]t was incumbent upon the Marinos to have shown ... (ii) that the difficulties or hardships *were peculiar to the property in question in contrast with those of other property owners in the same district, and* (iii) that the hardship was not the result of the applicants' own actions.

Marino v. Mayor and City Council of Baltimore, 215 Md. 206, 218, 137 A.2d 198 (1957) (emphasis added). *Salisbury Bd. of Zoning Appeals v. Bounds*, 240 Md. 547, 214 A.2d 810 (1965), also involved the completion of structural improvements in violation of an ordinance and a subsequent request for an after the fact variance. The Court opined:

> The only evidence before the Board as to hardship or injustice involving the property was the fact that repairs and alteration work had been substantially completed before an application for either a variance or a building permit had been made and that what had been done could not be undone without financial hardship to appellees.....

240 Md. at 554, 214 A.2d 810. The Court first quoted from 2 Rathkopf, *The Law of Zoning and Planning*, § 48–1, and then noted:

> "Where property, due to unique circumstances applicable to it, cannot reasonably be adopted to use in conformity with the restrictions ... hardship arises.... The restrictions of the ordinance, taken in conjunction with the unique circumstances *affecting the property* must be the proximate cause of the hardship.... [T]he hardship *arising as a result of the act of the owner* ...' will be regarded as having been self-created, barring relief....
>
> The instant case fits squarely within the above general rule.... [I]f the appellees had used proper diligence ... and then made accurate measurements ... [the resultant hardship could have been avoided]. The hardship ... was entirely self-created....

Id. at 554–55, 214 A.2d 810 (emphasis added). Had Ward's contractor, Huber, in the case at bar, checked the ordinance's height limitation, the situation that now exists could easily have been avoided. *See also Burns v. Mayor and City Council of Baltimore*, 251 Md. 554, 559, 248 A.2d 103 (1968); *Pem Constr. Co. v. Mayor and City Council of Baltimore*, 233 Md. 372, 378, 196 A.2d 879 (1964) ("[There was] no evidence of any limitation ... by ... size of yards, irregularity of shape of land or buildings, topography, grade or accessibility"....); *Mayor and City Council v. Sapero*, 230 Md. 291, 186 A.2d 884 (1962); *Frankel v. Mayor and City Council of Baltimore*, 223 Md. 97, 104, 162 A.2d 447 (1960) ("It was incumbent ... to show that the hardship ... affected his particular premises and was not ... common to other property in the neighborhood.... [H]e met the burden...."); *Park Shopping Center, Inc. v. Lexington Park Theatre Co., Inc.*, 216 Md. 271, 277–78, 139 A.2d 843 (1958).

> Secs. 14(b), 14(d) and 16 ... have been held not to authorize a granting for the mere convenience to the owner but to require a showing of urgent necessity, hardship peculiar to the particular property....

Mayor and City Council v. Polakoff, 233 Md. 1, 9, 194 A.2d 819 (1963).

The Court in *Kennerly v. Mayor and City Council of Baltimore*, 247 Md. 601, 606–07, 233 A.2d 800 (1967), dismissed an appeal of the grant of a height variance for lack of standing, but, in doing so, nevertheless opined:

> Our dismissal of the appeal is not to be taken as showing that if the appeal properly was here we would affirm the Board. To grant a variance the Board must find from the evidence more than that the building allowed would be suitable or desirable or could do no harm or would be convenient for or profitable to its owner. The Board must find there was proof of "*urgent necessity, hardship peculiar to the particular property*...." ... Specific reasons, specific bases to support the finding must be revealed by the evidence before the Board. [Emphasis added, citation omitted.]

In *McLean v. Soley*, 270 Md. 208, 210, 310 A.2d 783 (1973), one of the few reported Maryland appellate cases approving of a variance, the applicant for an area variance in connection

with an application to build forty units asserted that it was his desire to retain the "present trees and natural growth, terrain, and topography which provides excellent drainage and natural screening and beauty." There was evidence that, if the applicant destroyed the existing trees, he could have built 330 units without needing a variance. It was established that a number of attractive trees along the western boundary would have to be destroyed absent a variance. The Court noted that "there was considerable evidence to show the natural beauty of these trees and their importance to the ecology." 270 Md. at 211, 310 A.2d 783. The Court, seeming to acknowledge that it was making a detour from Maryland variance law, opined:

> Given the unique facts of this case, we think those criteria are met by this evidence: That the construction of the buildings in strict compliance with the sideyard requirements would result in the destruction of the trees; that the preservation of trees in the construction of the first section had contributed to full occupancy ... that the benefits of retaining the trees would accrue to the general public; that greater density would result from strict compliance....
>
> ....
>
> Concededly, this is a close case, but it is nevertheless sufficient....

Id. at 215, 310 A.2d 783. We would have to agree that it is a close case. The opinion does not make mention that the practical difficulty resulted from the fact that the uniqueness of the property caused the ordinance to have a different impact on it than on adjoining property. Also, there was no evidence that the neighboring properties were in any way different than the subject property. If the presence of trees on a particular lot was unique, that might have been a basis, but the court did not make that connection. Thus, this case, coupled with *Loyola Federal Savings & Loan Assoc. v. Buschman*, 227 Md. 243, 176 A.2d 355 (1961), and *Frankel v. Mayor & City Council of Baltimore*, 223 Md. 97, 162 A.2d 447 (1960), is among the affirmances of variances that we perceive to be, at best, extremely close calls and, as we shall indicate, exceedingly rare.

The Court in the sludge storage case of *AD + Soil, Inc. v. County Comm'rs*, 307 Md. 307, 513 A.2d 893 (1986), reiterated the standards applicable to variances when it affirmed a trial court's affirmance of a zoning agency's denial of an area and other variances. The variances were necessary to satisfy the requirements for a conditional use permit to operate the sludge storage and distribution operation. The Court of Appeals noted that the trial court, in affirming the agency's denial of a variance, agreed that "the only hardships facing Ad + Soil were of its own making." 307 Md. at 317, 513 A.2d 893. After addressing the important preemption issues therein raised, the Court directed its attention to the area variances sought and, referring to the Board's findings, stated that, in Queen Anne's County, the Board's authority to grant variances was limited to a situation where "there are exceptional or extraordinary circumstances or special conditions applying to the property in question ... that do not apply generally to other properties ... in the ... district." *Id.* at 340, 513 A.2d 893. The Court concluded:

> The board declined to grant the variances, concluding that Ad + Soil's "hardship" was self-inflicted, and, in any event, that it was not the result of exceptional or extraordinary *characteristics* of the *land itself* and therefore not the kind of hardship cognizable under the Zoning Ordinance....
>
> We think the Board's decisions ... reflect no error of law.

Id. at 340–41, 513 A.2d 893 (emphasis added).

In *Red Roof Inns, Inc. v. People's Counsel*, 96 Md.App. 219, 224, 624 A.2d 1281 (1993), after noting the standard of review, we said:

> In reviewing the zoning authority's decision, the court must consider all of the evidence in the administrative record. The reviewing court's role, however, is confined to determining the legality of the procedure employed and whether the decision was fairly debatable in light of the evidence adduced before the zoning authority.

The role of this Court "is essentially to repeat the task for the circuit court; that is, to be certain the circuit court did not err in its review." [Citations omitted.]

We then discussed the legal standards to utilize in respect to variances construing the same statute that applies in the case at bar, saying that variances may be granted "where special circumstances or conditions exist *that are peculiar to the land* . . . and where strict compliance . . . would result in practical difficulty. . . ." *Id.* (emphasis added). We noted that, in regards to area variances, we were only concerned that the conditions peculiar to the land in question presented practical difficulties. In concluding that the Board had not acted wrongly in denying the variance at issue (a sign variance), we noted: "Zoning matters, including sign variance requests, depend upon the unique facts and circumstances *of a particular location* and must be analyzed individually." *Id.* at 227–28, 624 A.2d 1281 (emphasis added).

In *North v. St. Mary's County*, 99 Md.App. at 512, 638 A.2d 1175, we held that the ordinance there required a finding that "special conditions or circumstances exist that are peculiar to the land. . . ." We there stated that, in the zoning context, the term "unique" has a customized meaning:

> In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring 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.
>
> . . . .
>
> In some zoning ordinances, the specialness or uniqueness requirement is more explicitly set out. The Court of Appeals, in *Ad + Soil, Inc. v. County Comm'rs*, 307 Md. 307, 339, 513 A.2d 893 (1986), quoted from the Queen Anne's County ordinance:
>
> > Where by reason of the exceptional narrowness, shallowness, or unusual shape of a specific . . . property . . ., or by reason of exceptional topographic conditions or other extraordinary situation or special condition of . . . property . . . the literal enforcement . . . would make it exceptionally difficult . . . to comply . . . and would cause unwarranted hardship and injustice. . . .
>
> The general thrust of the meaning of special features or uniqueness of property for variance purposes relates to the type of uniqueness discussed by the Court in *Ad + Soil, Inc.*

Id. at 514–15, 638 A.2d 1175.

One indication of the general rule that variances are rarely appropriate is that, in our review of the reported Maryland cases since the creation of the state zoning enabling act in 1927, we have found only five reported Maryland cases in which the grant of a variance has been affirmed or the denial of a variance has been reversed. The cases are *McLean, supra; Stacy, supra; Sapero, supra; Loyola Federal Savings & Loan Assoc., supra* (a Baltimore County case); and *Frankel, supra.* All of these cases were decided over a twelve-year period and the last of them was decided more than twenty-one years ago. Three of them, *Frankel, Loyola,* and *McLean* appear to be somewhat at odds with accepted Maryland law. *McLean* was described by the Court as a "[c]oncededly . . . close case. . . ." *Frankel* has caused some confusion in that it has later been viewed by some as lowering the standards for the granting of variances. *Mayor and City Council of Baltimore v. Borinsky*, 239 Md. 611, 212 A.2d 508 (1965), involved one of the same issues that was presented in *Frankel, i.e.*, whether a zoning restriction so compromised the use of property as to constitute an unconstitutional taking absent the granting of a variance—a variance Frankel was granted. The Court noted that the trial court had found *Frankel* controlling. The Court of Appeals disagreed. The Court acknowledged

that Borinsky had the "same expert witness," "he was asked the same general questions ... and gave the same answers," and that the "economic suicide" present in *Frankel* was "doubly true in this instance." *Id.* 239 Md. at 624, 212 A.2d 508. The Court, nevertheless, made a factual distinction and declined to apply *Frankel.* Judge Barnes opined in dissent that, based on what the Court had done in *Frankel,* the facts for variances were stronger in *Borinsky. Sapero* and *Stacy* met traditional standards for the granting of variances. *Frankel, Loyola,* and *McLean* were anomalous cases.

In any event, nowhere in those five cases, or any others, has the Court of Appeals ever changed the Maryland rule relating to uniqueness and peculiarity of the subject property.

Cases from other jurisdictions are generally in accord.

The Supreme Court of Nebraska in *Bowman v. City of York,* 240 Neb. 201, 482 N.W.2d 537 (1992), reversed the grant of a variance for a structure after, pursuant to the variance, the structure was constructed. Citing an earlier Nebraska case, *Frank v. Russell,* 160 Neb. 354, 70 N.W.2d 306 (1955), and noting that the Nebraska statute had been made more specific in light of *Frank,* the court said 482 N.W.2d at 545: "[A] variance [may be granted] ... only if strict application of the regulation, because of the unusual physical characteristics of the property existing at the time of the enactment, [of the zoning ordinance] 'would result in peculiar and exceptional practical difficulties ... or exceptional ... hardships....'"

In *Shafer v. Zoning Bd. of Appeals,* 24 Mass.App. 966, 511 N.E.2d 635 (1987), the property owner had conveyed away several parcels from a larger tract leaving a parcel, the size of which was prohibited under the ordinance. The Board granted him a variance, the trial court reversed it, and the appellate court affirmed the trial court. The appellate court reiterated the trial court's finding:

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

511 N.E.2d at 636–37 (citation omitted). *See also VanLandschoot v. City of Mendota Heights,* 336 N.W.2d 503, 509 (Minn.1983) ("the plight of respondent was not due to circumstances 'unique to his property.' ... [S]ome of the problems were the result of illegal acts of respondent's predecessor in title, of which respondent was aware....")

In *St. Clair v. Skagit County,* 43 Wash.App. 122, 715 P.2d 165 (1986), a landowner applied for a variance of a lot width requirement on the grounds that the county had given him a permit to install a trailer on her fifty-foot wide lot even though the ordinance mandated a width of at least seventy feet. The zoning board, approving the variance, determined that she had applied for the permit in good faith. The Skagit County ordinance, as does the instant statute, provided that a variance had to be "because of special circumstances applicable to subject property, including size, shape, topography, location or surroundings...." 715 P.2d at 167. The code also required that an application for a variance include a narration that "special conditions and circumstances exist ... peculiar to the land...." *Id.* The court then noted that the applicant had done there what Ward attempts to do in the case *sub judice:*

> [The appellant] relied primarily upon the fact that the County issued a building permit ... and that she acted in good faith....

Id. at 168. The court responded: "Reasons for a variance must be reasons pertaining to the property itself.... Evidence of hardship or difficulty that will support a variance must relate to the land itself and not to the owner-applicant." *Id.* (citation omitted). The court added that "the 75-foot width and aggregation requirements do not put a burden on [appellant's] property which does not apply to other properties in the vicinity...." *Id.* at 169. In the case *sub judice,* the

Baltimore County fifteen foot height limitation for accessory buildings does not affect Ward's property alone; it applies to all of the properties in the neighborhood.

In *Walkingstick v. Board of Adjustment*, 706 P.2d 899 (Okla.1985), the zoning board, having failed to comply with notice requirements, granted a permit for an oil drilling well. Amoco had expended considerable sums before the board's omission was discovered. The relevant part of the ordinance involved was similar to the one in the instant case. After the court noted that the hardships alleged were not peculiar to the subject site, it stated the general rule that "a hardship created by the owner ... constitutes no valid basis for a variance.... [D]eprivation of an advantage does not constitute an unnecessary hardship." 706 P.2d at 904. It concluded:

> The need to expose tools to the ravages of the environment may be peculiar to Amoco. But, the language of section 44–107(2) [as does the language in the Baltimore County ordinance] clearly refers to conditions peculiar to the property, *not to activities peculiar to the owner of such property.*

Id. at 904–05 (emphasis added).

In a decision somewhat difficult to understand, which carried the variance limitations to the extreme and predated the 1992 case of *Lucas v. South Carolina Coastal Council*, — U.S. —, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992), but had facts similar to *Lucas*, the Supreme Court of Delaware in *Baker v. Connell*, 488 A.2d 1303 (Del.Supr.1985), upheld a trial court's reversal of the grant of a variance even though the ordinance limited the use of applicant's entire lot to open space only. The zoning board had found that the property was unique because the entire property was zoned open space and *nothing* could be constructed there. The board permitted a variance to allow two semi-detached dwellings. The trial court reversed on the grounds that the 0–1 zoning did not make the property unique. The trial court noted that a need for a variance arises only when the plight of the property is unique in that it cannot reasonably be put to a conforming use. The trial court found that there was no evidence that the

property could not conform to open space land. The appellate court affirmed, stating:

> [F]inancial return ... alone, never justifies a variance. As to the unique character of the land, the mere fact that it sits entirely within the 0–1 zone does not make it unique. There is no evidence that this lot is the only one of its type in Rehoboth. Nor does it become unique because it adjoins the R–2 zone containing multi-family units.

488 A.2d at 1309. Whether this Delaware opinion remains viable in light of *Lucas* and *Dolan v. City of Tigard*, — U.S. —, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994), is doubtful.

The case of *Xanthos v. Board of Adjustment*, 685 P.2d 1032 (Utah 1984), involved a factual scenario similar to the case *sub judice*. The Xanthoses received notice that they were in violation of the city zoning code. The building of a duplex by the Xanthoses caused a pre-existing dwelling to lose frontage on a public street and to violate set-back and parking requirements. The Xanthoses requested variances in reference to the violations. The court initially noted that, "in order to justify a variance ... the applicant [must] show ... that there are special conditions with regard to the property...." 685 P.2d at 1035–36. The court continued:

> What must be shown ... is that the property itself contains some special circumstance that relates to the hardship complained of....
>
> ... The property is neither unusual topographically or by shape, nor is there anything extraordinary about the piece of property itself. Simply having an old building on land upon which a new building has been constructed does not constitute special circumstances.
>
> ....
>
> Hardship is not demonstrated by economic loss alone. It must be tied to the special circumstances, none of which have been proven here. Every person requesting a variance can indicate some economic loss. To allow a variance anytime any economic loss is alleged would make a mockery of the zoning program. Further, the Xanthos[es] brought

their losses upon themselves. The application affirmatively alleged ... that no dwelling existed....[8]

Id. at 1036–37 (footnotes omitted).

[1] The Xanthoses also argued, in a fashion similar to the argument in the case *sub judice*, that the city should be estopped because the plot plan submitted to the city showed the dwelling and the fact that the city failed to realize it misled them to their detriment. The court noted, in rejecting the Xanthoses' argument: "[T]o hold that the city should have been put on notice ... in the face of an affirmative statement that no such dwelling existed, would put a premium on prevarication ... and ... shift the burden of proof in variance cases to the city. None of these results is acceptable." *Id.* at 1038. In the case at bar, appellants' application for the permit contained a clear statement that he would comply with the zoning requirements. His plan's elevation schematics contained neither elevation dimensions nor scale. While the zoning inspectors might have been able to extrapolate dimensions from other schematics, they certainly were not required to do so in light of appellants' affirmative statement of compliance.

See also Chambers v. Smithfield City, 714 P.2d 1133, 1135 (Utah 1986), where the court stated: "[T]here is no evidence of special conditions attached to the property itself which do not also attach to other property in the vicinity. The property is neither unusual topographically or by shape, nor is there anything extraordinary about the piece of property itself." (Footnote omitted.) In a case involving the conversion of a garage into a dwelling, the Supreme Court of Virginia in *Prince William County Bd. of Zoning Appeals v. Bond*, 225 Va. 177, 300 S.E.2d 781 (1983), reversed a trial court decision reversing a zoning board's denial of a variance. The court noted that the conversion was underway when the Bonds discovered a need and applied for a variance. It opined that,

8. The application and plans in the case *sub judice* were, at best, vague and unclear as to the height of the structure.

in order to grant a variance, the hardship allegedly created by the ordinance must "not [be] shared generally by other properties in the same zoning district and the same vicinity." 300 S.E.2d at 783. It then held: "The limitation imposed by the zoning ordinance is one shared by all property owners in the A–1 district." *Id.*

The court in *Richardson v. Town of Salisbury*, 123 N.H. 93, 455 A.2d 1059, 1061 (1983), noted:

We have defined unnecessary hardship as follows:

> "A hardship exists only if due to special conditions *unique* to a *particular parcel of land*, the ordinance unduly restricts the use.... The hardship must relate to the special character of the land rather than to the personal circumstances of the landowner." [Emphasis added.]

See also Margate Motel, Inc. v. Gilford, 130 N.H. 91, 534 A.2d 717 (1987); *Ryan v. City of Manchester Zoning Bd. of Adjustment*, 123 N.H. 170, 459 A.2d 244 (1983).

In *Sibley v. Inhabitants of the Town of Wells*, 462 A.2d 27, 30–31 (1983), the Supreme Judicial Court of Maine upheld the denial of a variance, holding:

> [T]he need for a variance [must be] due to the unique circumstances of the property and not to the general conditions in the neighborhood;
>
> ....
>
> ... [T]he hardship [must] not [be] the result of action taken by the appellant or a prior owner.
>
> ....
>
> ... However, the mere fact that the lot is substandard is not a unique circumstance; all the undeveloped lots in that neighborhood are of substandard size....
>
> ... However, when a landowner purchases land with actual or constructive knowledge of the zoning restrictions, he may not be granted a variance on the grounds of undue hardship.

See also Williams v. Salem Township, 92 Pa.Cmwlth. 634, 500 A.2d 933 (1985) *alloc. denied*, 516 Pa. 615, 531 A.2d 781 (1987);

Hersh v. Zoning Hearing Bd. of Marlborough Township, 90 Pa.Cmwlth. 15, 493 A.2d 807 (1985); *Serban v. Zoning Hearing Bd. of the City of Bethlehem*, 84 Pa.Cmwlth. 558, 480 A.2d 362 (1984) (burden sustained); *Davis v. Zoning Bd. of Adjustment*, 78 Pa.Cmwlth. 645, 468 A.2d 1183 (1983) (burden sustained); *Malakoff v. Zoning Bd. of Adjustment*, 72 Pa. Cmwlth. 109, 456 A.2d 1110 (1983); *Immordino v. Zoning Hearing Bd.*, 65 Pa.Cmwlth. 79, 441 A.2d 818, 821 (1982) ("[P]roperty owner must sustain the heavy burden of proving that the zoning ordinance imposes an unnecessary hardship *which is unique to his particular property*....") (Emphasis added.)

> A prerequisite to the granting of a hardship zoning variance is the presence of an exceptional and unique hardship to the individual landowner, *unique to that parcel* and not shared by other property owners in the area.... Indialantic's zoning restrictions are common difficulties shared by all other oceanfront lot owners in the area, and are therefore not the unique hardship required to support a variance.

Town of Indialantic v. Nance, 400 So.2d 37, 40 (Fla.App. 5th Dist.1981), *aff'd*, 419 So.2d 1041 (1982) (citation omitted). *See also Fort Lauderdale Bd. of Adjustment v. Nash*, 425 So.2d 578, 579 (Fla.App. 4th Dist.1983); *City of Naples v. Clam Court Marina Trust*, 413 So.2d 475, 477 (Fla.App. 2d Dist. 1982); *Lakeshore Property Owners Ass'n v. City of New Orleans Zoning Bd. of Appeals and Adjustments*, 481 So.2d 162, 168 (La.App. 4th Cir.1985), *cert. denied*, 494 So.2d 674 (1986).

We mentioned earlier that there are very few Maryland cases upholding the grant of a variance (or the reversal of a denial). We likewise note that this is also the case in foreign jurisdictions. We mentioned two cases from Pennsylvania above where this occurred. We now discuss several others.

A minimum lot area variance was affirmed in *Russell v. District of Columbia Bd. of Zoning Adjustment*, 402 A.2d 1231 (D.C.App.1979), where, due to the size of the lot, no viable economical use of the property could be had without the

variance. It was determined that the lot was the only lot in the area that had been subdivided into smaller lots prior to the adoption of the zoning ordinance. The Supreme Court of New Hampshire reversed the denial of a variance in *U-Haul Co. of New Hampshire & Vermont, Inc. v. City of Concord*, 122 N.H. 910, 451 A.2d 1315, 1317 (1982), saying: "The location and characteristics of the property involved create greater security requirements ... than ... other property in the area because the parcel ... is less central ... less populated and ... less serviced by law enforcement patrols. This hardship arises from the uniqueness of the building and the land itself." In *Atwood v. City of Portland*, 55 Or.App. 215, 637 P.2d 1302 (1981), *cert. denied*, 292 Or. 722, 644 P.2d 1131 (1982), application for a variance was granted and affirmed on appeal in part because the site was a steep and rocky slope, the former site of a landfill. *See also Higgins v. Township of Radnor*, 13 Pa.Cmwlth. 195, 318 A.2d 761, 763 (1974).

The treatise writers also are in accord with the rule that variances should only be granted when the uniqueness or peculiarity of a subject property is not shared by neighboring property and where the uniqueness of that property results in an extraordinary impact upon it by the operation of the statute, thus creating undue difficulty (or unnecessary hardship in respect to use variances).

> It is *fundamental* that the difficulties or hardships must be unique to justify a variance; they must be peculiar to the application of zoning restrictions *to particular property* and not general in character.... [I]t is not uniqueness of the plight of the owner, but uniqueness of the land causing the plight, which is the criterion. If the hardship is common to the whole neighborhood, it may be ground for an exception or special use permit [if the statute so provides].... [T]he hardship [in order to justify a variance, however,] ... must relate to the particular property of the applicant....

McQuillin, *supra* § 25.167 (emphasis added, footnotes omitted).

> [I]t is held that a variance may be granted only for hardship which relates specifically to the applicant's land. Thus, a landowner was not entitled to a variance to relieve his land from a restriction which applied equally to all lots of similar size.

Anderson, *supra* § 14.55 (1968).

> It follows that the unnecessary hardship ... must relate to the land, not to the applicant-owner. Hardship which is merely personal to the current owner of real property will not justify the granting of a variance....
>
> In each case [where the variance was denied], the hardship results from an error on the part of the landowner, not from an unduly severe impact of the regulations upon the land in question....
>
> ....
>
> Reviewing a wide variety of variance applications based upon reasons personal to the applicant, the courts have consistently held that such personal difficulties do not constitute unnecessary hardship.

Anderson, *supra* § 18.30 (2d ed.) (footnotes omitted).

> The most important part of [the] law of variances depends upon a distinction between two kinds of hardship. In one type of case, hardship in developing a given lot ... arises from circumstances peculiar to that lot ...; and in that case the appropriate remedy is ... a variance.... In the other types of cases, the hardship ... may arise because of conditions which are general in the neighborhood; ....it is often held that the appropriate remedy is a change in the zoning.... [T]he courts have usually (but not always) held that variances are inappropriate in that situation.

Williams, *supra* § 142.

> The great strengthening of the criteria for granting variances, ... has thus been particularly evident in the number of cases emphasizing the requirement that hardship must arise from circumstances unique to the particular lot in question.... Moreover, the courts have again emphasized that a variance granted to take care of some hardship personal to the applicant is not a unique hardship resulting from circumstances peculiar to the piece of land.

Id. § 142.06. *See also* Rathkopf, *supra* § 38.04; Yokley, *supra* § 21–6. ("The burden of proof is on the applicant to establish that his land is uniquely affected resulting in unnecessary hardship.").

Yokley quotes from *Taxpayers Association v. Board of Zoning Appeals*, 301 N.Y. 215, 93 N.E.2d 645, 647 (1950):

> [T]he record does not show that the property suffers a unique or singular disadvantage, not common to other property in the district, through the operation of the zoning ordinance. Here, the hardship, if any, is general and characteristic of the entire area, and the remedy lies in a revision of the zoning ordinance through legislative action, not by the granting of a variance to a single property owner.

Yokley, *supra* § 21–6.

[2] We conclude that the law in Maryland and in Baltimore County under its charter and ordinance remains as it has always been—a property's peculiar characteristic or unusual circumstances relating only and uniquely to that property must exist in conjunction with the ordinance's more severe impact on the specific property because of the property's uniqueness before any consideration will be given to whether practical difficulty or unnecessary hardship exists. Before applying the facts of the instant case to the law and, thus, resolving the case *sub judice*, we must touch upon two other aspects of the process, *i.e.*, the self-inflicted injury and the zoning authorities' acquiescence in issuing a building permit based on plans that left unclear the elevation of the structure and the subsequent inspection.

Self-Inflicted Hardship

[3] We have before referred to *Marino v. Mayor and City Council of Baltimore*, 215 Md. 206, 137 A.2d 198. There, the Court said, "it was incumbent [on the applicant] to [show] ... that the hardship was not the result of the applicants' own actions." *Id.* at 218, 137 A.2d 198. The Court of Appeals

noted in *AD + Soil, Inc. v. County Comm'rs*, 307 Md. at 340, 513 A.2d 893:

> The essence of AD + Soil's argument ... is that the setback requirements ... would cause ... unwarranted hardship because it had obtained its first state permit and constructed its transfer station before it learned of these local requirements.... The Board declined to grant the variances, concluding that Ad + Soil's "hardship" was self-inflicted ... and therefore not the kind of hardship cognizable under the Zoning Ordinance.

The Court affirmed the Board. Foreign jurisdictions are generally in accord. *See Pollard v. Zoning Bd. of Appeals*, 186 Conn. 32, 438 A.2d 1186, 1190 (1982) (" '[S]elf-inflicted or self-created hardship ... is never considered proper grounds for a variance.' ... '[W]here the applicant ... creates a nonconformity, the board lacks power to grant a variance.' ") (citations omitted); *Volkman v. City of Kirkwood*, 624 S.W.2d 58 (Mo.App.1981); *Matter of Schrader*, 660 P.2d 135 (Okl. 1983); *Ex Parte La Quinta Motor Inns, Inc. v. Greenville County Bd. of Zoning Appeals*, 279 S.C. 598, 310 S.E.2d 438 (App.1983); *McClurkan v. Board of Zoning Appeals*, 565 S.W.2d 495 (Tenn.1977); *Steele v. Fluvanna County Bd. of Zoning Appeals*, 246 Va. 502, 436 S.E.2d 453, 456 (1993) ("[T]he hardship, if any, was self-inflicted. The placement of the improvements ... was within the control of the Garretts and their contractor, Raintree."). *See also Shafer, supra; VanLandschoot, supra; Walkingstick, supra; Xanthos, supra; St. Clair, supra.* Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted.

The Granting of the Permit

In *Francis v. MacGill*, 196 Md. 77, 75 A.2d 91 (1950), a property owner sought equitable injunctive relief. The facts were that while the enactment of a zoning ordinance was pending, the property owner obtained a building permit to construct that which would not be permitted after the enactment of the ordinance. After the ordinance was enacted, the owner constructed, pursuant to the permit, a building that had become prohibited by reason of the passage of the ordinance. The Court noted:

> "Adoption of zoning ordinance *ipso facto* revokes permit for construction ... where no construction has begun."
>
> ... They completely ignored the Zoning Regulations, and they were engaged in an unlawful act.

196 Md. at 85, 75 A.2d 91 (citation omitted). The Court affirmed the revocation of the building permit.

The Court noted, pursuant to a timely appeal, in *Mayor and City Council of Baltimore v. Shapiro*, 187 Md. 623, 634, 51 A.2d 273 (1947), *overruled on other grounds in Nutter v. Non-Profit Housing Co.*, 230 Md. 6, 185 A.2d 360 (1962), where the ordinance was changed prior to commencement of construction under a permit, and where the change made that use, which was previously permitted, prohibited, that the "mere issuance of a permit ... does not create a vested right, or estop [9] the municipal authorities from revoking it." In a case for the issuance of a mandatory injunction that involved an attempt to obtain a permit for what was alleged would be a nonconforming use the court opined in *Board of County Comm'rs v. Snyder*, 186 Md. 342, 347, 46 A.2d 689 (1946): "No permit was issued, and if it had been, it would have conferred no vested right, nor would it have created an estoppel."

In the mandamus case of *County Comm'rs v. Ward*, 186 Md. 330, 340, 46 A.2d 684 (1946), the Court held:

> The Board ..., as an administrative body, was bound to follow the regulations it adopted, in the exercise of ...

9. The applicability of the "doctrine of zoning estoppel" has still not been accepted (or rejected) by the Court of Appeals in spite of the opportunity presenting itself to that Court as recently as our case of *Offen v. County Council*, 96 Md.App. 526, 625 A.2d 424 (1993), *rev'd in part*, 334 Md. 499, 639 A.2d 1070 (1994).

delegated legislative power. The fact that it might have rezoned ... does not alter its obligation to adhere to existing regulations....

In the case of *Lipsitz v. Parr*, 164 Md. 222, 164 A. 743 (1933), a case seeking injunctive relief by way of a restraining order, a city officer mistakenly issued a building permit for an ice factory when the statute prohibited ice factories. The Court there held:

> A municipality may be estopped by the act of its officers if done within the scope and in the course of their authority or employment, but estoppel does not arise should the act be in violation of law.... [T]he ordinance forbade the officials ... to grant the permit which the plaintiff asked and obtained....
>
> ... [I]t was therefore unlawful for the officers ... to grant the permit, and it would be unlawful for the licensee to do what the purporting permit apparently sanctioned. A permit thus issued ... does not ... prevent the permit from being unlawful nor from being denounced by the municipality because of its illegality.... *Every one dealing with the officers and agents of a municipality is charged with knowledge of the nature of their duties and the extent of their powers, and therefore such a person cannot be considered to have been deceived or misled* by their acts when done without legal authority.
>
> So, even where a municipality has the power, but has done nothing, to ratify or sanction the unauthorized act ... it is not estopped by the unauthorized or wrongful act of its officer ... in issuing a permit that is forbidden by the explicit terms of an ordinance.... *Valentine v. Rds. Directors*, 146 Md. 199, 206 [126 A. 147] [(1924)].... [Citations omitted, emphasis added.]

164 Md. at 227–28, 164 A. 743.

The Court cited *Lipsitz* in *Inlet Associates v. Assateague House Condominium Assoc.*, 313 Md. 413, 545 A.2d 1296 (1988), a case seeking specific performance and injunctive relief, and also cited *City of Hagerstown v. Long Meadow Shopping Center*, 264 Md. 481, 287 A.2d 242 (1972), a case of a timely appeal of the denial of a building permit. In *Inlet Associates*, the Court opined that "[c]onsequently, '[e]veryone dealing with officers and agents of a municipality is charged with knowledge of the nature of their duties and the extent of their powers, and therefore such a person cannot be considered to have been deceived or misled by their acts when done without legal authority.'" 313 Md. at 437, 545 A.2d 1296. The Court added: "[T]he doctrine of equitable estoppel 'cannot be ... invoked to defeat the ... enforcement of ... ordinances, because of an error or mistake committed by one of its officers ... which has been relied on by the third party to his detriment.'" *Id.*

[4] Accordingly, it appears clear that the mistake of a county official cannot be the "practical difficulty" unique to the subject property required in order to authorize the grant of the variance sought and obtained by Ward.

> The authorities elsewhere are in accord.
>
> The master also erred in finding that unnecessary hardship resulted from the plaintiffs' reliance upon representations by the selectmen. This finding disregards the principal that hardship relates to the special character of the *land*, not to the circumstances of the *owner*.

Richardson, 455 A.2d at 1062.

> [R]elator argues the Board should be estopped from denying the height variance because a city building inspector visited the premises several times and observed the construction taking place but made no complaint....
>
> In any case there is no authority on the part of a building inspector to grant a variance....

Katz v. Board of Zoning Adjustments, 232 So.2d 546, 548 (La.App. 4th Cir.1970). *See also Klanke v. Zoning Bd. of Adjustment*, 83 Pa.Cmwlth. 441, 477 A.2d 907, 909 (1984), and *Walkingstick, supra; Xanthos, supra; and St. Clair, supra.*

Resolution

We resolve here only the issue of the granting of the variance sought and applied for by Ward.

[5] There was no evidence submitted to the Board that the subject site was in any way peculiar, unusual, or unique when compared to other properties in the neighborhood such that the ordinance's height restriction's impact upon the subject property would be different than the restriction's impact upon neighboring properties. In essence, the impact would be the same. The first step of the variance process was thus not met. Had there been evidence before the Board indicating that the subject property was peculiar or unusual and, thus, disproportionately affected by the height restriction, then we might have been able to conclude that the Board was correct. There was, however, no such evidence presented. Therefore, the Board's granting of the variance was arbitrary and illegal.

It is not the purpose of variance procedures to effect a legalization of a property owner's intentional or unintentional violations of zoning requirements. When administrative entities such as zoning authorities take it upon themselves to ignore the provisions of the statutes enacted by the legislative branch of government, they substitute their policies for those of the policymakers. That is improper. We shall reverse.

JUDGMENT REVERSED; COSTS TO BE PAID BY APPELLEE.

---

651 A.2d 442

RICHARD F. KLINE, INC.

v.

SIGNET BANK/MARYLAND.

No. 618, Sept. Term, 1994.

Court of Special Appeals of Maryland.

Jan. 4, 1995.

After general contractor filed for bankruptcy, subcontractor sued construction lender to recover total sums unpaid under subcontractor's contract with contractor. The Circuit Court, Frederick County, G. Edward Dwyer, J., entered summary judgment in favor of lender, and subcontractor appealed. The Court of Special Appeals, Wenner, J., held that lender had not been unjustly enriched.

Affirmed.

1. Appeal and Error ⟹863

When reviewing grant of motion for summary judgment, appellate court must determine whether trial court was legally correct in granting motion.

2. Implied and Constructive Contracts ⟹3

Claim of unjust enrichment requires trial court to determine whether contract between parties should be implied as matter of law, i.e., whether quasi-contract exists.

3. Judgment ⟹181(19)

When facts are undisputed, whether quasi-contract exists is question of law that may be decided on motion for summary judgment.

4. Implied and Constructive Contracts ⟹3

Construction lender was not unjustly enriched even though subcontractor could not obtain mechanics' lien or sue for breach of contract because general contractor

McLEAN v. SOLEY

[No. 23, September Term, 1973.]

Decided November 7, 1973.

ZONING — *Variances — Need Sufficient To Justify An Exception Must Be Substantial And Urgent, And Not Merely For The Convenience Of The Applicant.* pp. 212-213

ZONING — *Variances — Requirements Of "Practical Difficulty Or Unreasonable Hardship" Are In The Disjunctive — No Reason To Construe "Practical Difficulty" As The Equivalent Of A Taking In The Constitutional Sense.* pp. 213-214

ZONING — *Variances — Criteria For Determining Whether Practical Difficulty Has Been Established.* pp. 214-215

ZONING — *Variances — Facts Which Meet Criteria For Granting Exception To Sideyard Requirements Where Strict Compliance Would Result In Destruction Of Trees.* p. 215

ZONING — *Estoppel — Variances — Rule That One Is Charged With Knowledge Of Zoning Regulations When Property Is Purchased And Therefore Precluded From Asserting Hardship Is Significant For Use Variances But Not Area Variances.* p. 215

ZONING — APPEAL — *Fairly Debatable — A Zoning Body's Decision Will Be Sustained Where Reasonable Persons Could Have Reached Differing Conclusions On The Evidence So That The Issues Were Fairly Debatable Even If A Court Might Have Reached A Contrary Result On The Evidence.* pp. 215-216

R. L. H.

Appeal from the Circuit Court for Baltimore County (MACDANIEL, J.).

Appeal by William H. McLean, Jr., from granting of a sideyard variance to Joseph L. Soley by the Board of Appeals of Baltimore County. From a judgment affirming the action of the Board, the protestant appeals.

Judgment affirmed; appellant to pay costs.

The cause was argued before MURPHY, C. J., and BARNES, MCWILLIAMS, SINGLEY, SMITH, DIGGES and LEVINE, JJ.

Richard F. Cadigan for appellant.

W. Lee Harrison, with whom was *Cooper C. Graham* on the brief, for appellee.

LEVINE, J., delivered the opinion of the Court.

This appeal is from an order of the Circuit Court for Baltimore County which affirmed a decision of the County Board of Appeals of Baltimore County (the Board) granting a variance from the side yard window setback requirement contained in the county zoning regulations. Appellee, Joseph L. Soley (Soley), had applied for the variance in connection with his proposed apartment house-office building project, and appellant, William H. McLean, Jr. (McLean), who lives in a house adjacent to the Soley property, was the only protestant.

The property in question is located on the north side of Aigburth Road approximately 324 feet east of York Road. Immediately to its west is a development previously built by Soley known as Cardiff Hall East Apartments, which also combines apartment units and office space. The McLean property, including his residence, is situated immediately to the east and fronts on Aigburth Road. The subject property, consisting of 2.43 acres, is rectangularly-shaped with the south end also fronting on Aigburth Road. The rear end of the parcel backs up on an alley which separates it from a development of detached homes called "Burkleigh Square."

Solely proposes to erect two rectangularly-shaped buildings, each to contain 20 dwelling units, positioned upon the parcel in a north-south direction. In other words, the south end of one building would front on Aigburth Road and the north end of the second would back up on the alley.

The adjacent parcel to the west, previously developed by Soley, consists of 4.44 acres and is improved by 60 units. Since the property is in the D.R. 16 classification, as is the

As we have indicated, the Board decision was upheld by the circuit court which based its decision upon the test enunciated in *Loyola Loan Ass'n v. Buschman*, 227 Md. 243, 176 A. 2d 355 (1961); and held that the evidence of whether strict compliance with the regulations would result in practical difficulty or unreasonable hardship was fairly debatable. Hence, the Board had not been arbitrary, unreasonable or capricious in reaching its decision. We agree and shall affirm that judgment.

Succinctly stated, McLean's argument in this Court is that whatever the degree of practical difficulty or hardship required for a variance, neither is shown here; and that the request is "merely for the convenience of the applicant," *Carney v. City of Baltimore*, 201 Md. 130, 137, 93 A. 2d 74 (1952). In our view, McLean reads the requirements for a variance too severely.

We think the facts in *Carney, supra*, upon which McLean places his principal reliance, are distinguishable from those at bar. There, a homeowner sought a variance from a sideyard requirement for the purpose of building a bedroom and bath on the ground floor of his house due to his wife's physical condition. The adjacent property owner objected because the variance would have deprived him of light in his dining room. This Court upheld the Board of Appeals decision denying the requested variance. There, we said:

> "... The need sufficient to justify an exception must be substantial and urgent and not merely for the convenience of the applicant, inasmuch as the aim of the ordinance is to prevent exceptions as far as possible, and a liberal construction allowing exceptions for reasons that are not substantial and urgent would have the tendency to cause discrimination and eventually destroy the usefulness of the ordinance. (citation omitted).
>
> "The expression 'practical difficulties or unnecessary hardships' means difficulties or hardships which are peculiar to the situation of the applicant for the permit and are not necessary to carry out the spirit of the ordinance and which are of such a degree of severity that their existence amounts to a substantial and unnecessary injustice to the applicant. Exceptions on the ground of 'practical difficulties or unnecessary hardships' should not be made except where the burden of the general rule upon the individual property would not, because of its unique situation and the singular circumstances, serve the essential legislative policy, and so would constitute an entirely unnecessary and unwarranted invasion of the basic right of private property. (citations omitted)." 201 Md. at 137.

We think the cases are distinguishable in that there the Board of Appeals determined that the variance was based on convenience rather than practical difficulty; and, furthermore, no benefit to any other persons was established.

In our view, this case is controlled by *Loyola Loan Ass'n v. Buschman, supra*. There, the applicant sought a variance from the height limitations for a proposed office building. Two additional floors were required because the side setback and parking space requirements made it necessary to build the structure in that manner. The standard for granting a variance then, as it is now, was whether strict compliance with the regulations would result in "practical difficulty or unreasonable hardship"; and that it should be granted only if in strict harmony with the spirit and intent of the zoning regulations; and only in such manner as to grant relief without substantial injury to the public health, safety and general welfare.

There we noted that the requirements "practical difficulty or unreasonable hardship" are in the disjunctive. Thus we said:

> "The terms of § 307 are applicable only to variances as to height and area. We see no occasion to construe that section otherwise than as it reads — in the disjunctive — 'practical difficulty or

unreasonable hardship,' and we see no reason to construe 'practical difficulty' here as the equivalent of a taking in the constitutional sense. In our estimation, the Board had at least sufficient evidence before it to make the question of practical difficulty a debatable one; and under the authorities above referred to, its order should, therefore, have been affirmed. . . . This, we think, presents at least a case of 'practical difficulty' within the meaning of § 307 of the Regulations. To ignore it and to restrict Loyola to a building of uneconomic size where, as here, the Board's findings that there is no injury to the public health, safety and general welfare and that the proposed variance is in strict harmony with the spirit and intent of the Regulations should be upheld, would, we think, place too narrow a construction upon § 307, and would itself impose an unreasonable hardship on the applicant. . . ." 227 Md. at 250-51.

We think it clear that the evidence in this case was fairly debatable on the issue of "practical difficulty." In 2 Rathkopf, *The Law of Zoning and Planning*, (3d ed. 1972) 45-28, 29, the following criteria for determining whether "practical difficulty" has been established are set forth:

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

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

"3) Whether relief can be granted in such fashion

that the spirit of the ordinance will be observed and public safety and welfare secured."

Given the unique facts of this case, we think those criteria are met by this evidence: That the construction of the buildings in strict compliance with the sideyard requirements would result in the destruction of the trees; that the preservation of trees in the construction of the first section had contributed to full occupancy for its entire six years; that the benefits of retaining the trees would accrue to the general public; that greater density would result from strict compliance; and that there was only meager evidence to support the contention that a detriment would befall the neighboring property owner.

It is also contended by McLean that Soley is precluded from asserting "practical difficulty" because he was charged with knowledge of the sideyard requirements when he purchased this property. We see no merit in this argument. We noted in *Zengerle v. Bd. of Co. Comm'rs*, 262 Md. 1, 21, 276 A. 2d 646 (1971), citing *Loyola, supra*, that this "rule" is more strictly applied in "use variance" cases than in cases of "area variances," such as the one at bar. In other words, it has less significance where we are concerned with "practical difficulty" than it does in the event of "hardship" which usually characterizes the "use variance" cases.

Concededly, this is a close case, but it is nevertheless sufficient to support the findings of the Board. Under similar circumstances, we said in *Sembly v. County Bd. of Appeals*, 269 Md. 177, 304 A. 2d 814 (1973), quoting with approval from *Eger v. Stone*, 253 Md. 533, 542, 253 A. 2d 372 (1969):

" 'This rule [if the issue is "fairly debatable," we will not substitute our judgment for that of the administrative body] will be adhered to even if we were of the opinion that the administrative body came to a conclusion we probably would not have reached on the evidence. In the instant case, but for the rule, we might well have reached the conclusion [that the Board of Appeals erred], but in enforcing

JUDGMENT AFFIRMED.

COSTS TO BE PAID BY APPELLANT.

---

767 A.2d 922

James RIFFIN,

v.

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Maryland, et al.

No. 3002, Sept. Term, 1999.

Court of Special Appeals of Maryland.

March 2, 2001.

Landowner appealed decision of the county board of appeals denying request for a special exception to construct a commercial recreation facility to accommodate bungee jumping. The Circuit Court, Baltimore County, Thomas J. Bollinger, Sr., J., affirmed. Landowner appealed. The Court of Special Appeals, Moylan, J., held that the proposed use was a "bungee jumping operation" prohibited by state law and county ordinance.

Affirmed.

1. Administrative Law and Procedure ⟹791

The standard of review of an administrative agency's findings of fact requires the Court of Special Appeals to determine whether substantial evidence on the record as a whole supports its conclusions.

2. Administrative Law and Procedure ⟹784.1

The Court of Special Appeals cannot substitute its judgment for that of an administrative agency on findings of fact,

but must exercise a restrained and disciplined judicial judgment so as not to interfere with the agency's factual conclusions.

3. Zoning and Planning ⟹505

Landowner's proposed commercial recreation facility to accommodate bungee jumping was a "bungee jumping operation" prohibited by state law and county ordinance, rather than a "commercial recreational facility," and, thus, the landowner was not entitled to a special exception; the crane operator acknowledged payment by the landowner, and the county ordinance defined "commercial recreational facility" to exclude an amusement park or similar use. Code, Business Regulation, § 3–503.

4. Zoning and Planning ⟹489

The county board of appeals cannot grant a special exception for a use that is neither permitted by law nor by county zoning regulations.

5. Zoning and Planning ⟹539

Evidence supported conclusions by the county board of appeals that a one-story office building was not unique and that the landowner was not entitled to special exception and variances to construct a commercial recreation facility.

6. Zoning and Planning ⟹481

A "variance," if granted, permits a use that is normally prohibited and presumed to be in conflict with the ordinance.

7. Zoning and Planning ⟹536

An applicant for a variance bears the burden of overcoming the presumption that the proposed use is unsuitable.

James Riffin, Timonium, for appellant.

Peter Max Zimmerman and Carole S. Demilio, Towson, for appellees.

Submitted before MOYLAN,* SONNER and PAUL E. ALPERT (retired, specially assigned), JJ.

MOYLAN, Judge.

The appellant, James Riffin, challenges an Order issued by Judge Thomas J. Bollinger in the Circuit Court for Baltimore County affirming the decision of the Baltimore County Board of Appeals, which denied his petitions for a special hearing, special exception, and five separate zoning variances. On appeal, he contends:

1. that the Board erred in finding that the appellant's proposed use of the property constituted a "bungee jumping operation"; and
2. that the Board acted arbitrarily and capriciously in denying his petitions.[1]

At some point in the spring of 1998, the appellant petitioned the Baltimore County Zoning Commissioner for a Special Hearing, for a Special Exception, and for nine area parking and sign variances in an effort to operate a "Commercial Recreational Facility" at 1941 Greenspring Avenue Drive in Timonium. At that time, there existed on the property an old one-story building which was rented for office space. The property was zoned for M.L. (Manufacturing–Light). It was the appellant's intention in seeking the exception and the variances to create a commercial/recreation facility that would accommodate bungee jumping.

On June 1, 1998, the Zoning Commissioner granted four of the requested nine variances for existing non-conforming front and side-yard setbacks but denied all of the other requests. The appellant appealed that decision to the Baltimore County Board of Appeals ("the Board") and a three day public hearing

* Moylan, J., participated in the hearing and conference of this case while an active member of this Court; he participated in the adoption of this opinion as a retired, specially assigned member of this Court.

1. We note that in his brief to this Court, the appellant raised five issues with approximately twenty subcontentions. We have condensed those subcontentions into two.

began on November 25, 1998.[2] In the course of that hearing, the Board heard extensive testimony from the appellant regarding his plans for the property. The Board also heard testimony from adjacent property owners, from the Office of the People's Counsel, and from a representative from the Greater Timonium Community Council, all of whom testified in opposition to the appellant's petitions.

On December 31, 1998, the Board issued an extensive written Opinion denying the appellant's request for both the Special Hearing and Special Exception for bungee jumping and for the requested variances that had been denied by the Zoning Commissioner. The appellant appealed to the Circuit Court for Baltimore County. On October 4, 1999 a hearing was held before Judge Bollinger. On October 7, Judge Bollinger affirmed the Board's decision, finding that it was supported by substantial evidence and was not premised on any error of law. The appellant noted this timely appeal.

[1, 2] With regard to the standard of review to be applied in a case such as this, we explained in *Stover v. Prince George's County*, 132 Md.App. 373, 380–81, 752 A.2d 686 (2000), that:

> [w]hen reviewing a decision of the administrative agency, this Court's role is "precisely the same as that of the circuit court." "Judicial review of administrative agency action is narrow. The court's task on review is *not* to 'substitute its judgment for the expertise of those persons who constitute the administrative agency."
>
> Rather, "*[t]o the extent the issues on appeal turn on the correctness of an agency's findings of fact, such findings must be reviewed on the substantial evidence test.*" The reviewing court's task is to determine "whether there was substantial evidence before the administrative agency on the record as a whole to support its conclusions." *The court cannot substitute its judgment for that of the agency, but*

2. The public hearing was held on November 25, December 15, and December 17, 1998.

instead must exercise a "restrained and disciplined judicial judgment so as not to interfere with the agency's factual conclusions."

(Citations omitted; emphasis supplied).

[3] The appellant first contends that the trial court erred in denying his petition for a Special Hearing and a Special Exception in order to accommodate bungee jumping. The appellant specifically contends that the trial court erred in finding that his proposed use of the property would amount to a "bungee jumping operation," which both parties agree is prohibited in Maryland,[3] rather than a "recreational use," which is permissible. We are not persuaded.

In its Opinion denying the appellant's request for a Special Hearing and Special Exception, the Board set out, in great detail, its findings with respect to the appellant's proposed use:

> The Board has carefully considered the testimony produced and the numerous exhibits of the evidence admitted and items marked for identification and weight assessment. This Board's initial review involved bungee jumping and how it is addressed in the Maryland Code. A review of the law and supporting documents afforded the Board members some insight into the thinking of the legislature on this subject.... *The Board concluded that the bungee jumping operations as proposed by the appellant/petitioner was in actuality a bungee jumping operation.* Regardless of

3. Md.Code, Business Regulation, § 3-503 specifically provides:

§ 3-503. **Prohibition on bungee jumping operation.**

(a) *Definitions.*—(1) in this section the following words have the meaning indicated.

(2) "Bungee jump" means jumping or falling by an individual from a height while attached to a rope or cord that is elastic, rubber, or latex.

(3) "Bungee jumping operation" means an operation that allows an individual to bungee jump for a fee or dues.

(b) *Prohibition.*—A person may not conduct a bungee jumping operation.

(c) *Penalties.*—A person who violates subsection (b) of this section is guilty of a misdemeanor and, on conviction, is subject to a fine not exceeding $2,500 or imprisonment not exceeding 6 months or both.

> whether using the word "operation" or the word "activity," it is semantical and one resembles the other. The inference regarding fees came out in the testimony by a crane operator who acknowledged that he was paid by Mr. Riffin for operating the crane, and that he expected to continue on as a crane operator if Mr. Riffin were allowed to have a bungee jumping operation. As well, Mr. Riffin indicated that individuals would be able to rent the crane and /or any needed equipment in order to perform bungee jumping activities. *These representations produce the appearance of being a bungee jumping operation, which is not allowed by Maryland law, this would not be a permitted use under the Baltimore County Zoning Regulations ["BCZR"].*

The Board then explored whether the appellant's proposed use could in any way be viewed as a Commercial Recreational Facility, a permissible use for the property under the zoning regulations. In rejecting the appellant's contention, the Board stated:

> The Board then looked at the definitions of Commercial Recreational Facilities under BCZR 101.... *The definition notes that a commercial recreational facility shall not include an amusement park or similar use.* Throughout the numerous discussions as to what bungee jumping would be considered, it came up that it was frequently done in conjunction with amusement-like operations and was described by expert witnesses as a "thrill seeking activity." It was noted that State legislation regarding bungee jumping was put in that Section of the Annotated Code as amusement activities.

In rejecting the appellant's final two arguments with respect to his request for a Special Exception, the Board found 1) that bungee jumping did not qualify as a permitted use under Section 253 of the BCZR, which permits practice or physical training conditioning facilities and fields for amateur or professional sports organizations; and 2) that bungee jumping did not qualify as a use permitted without special exception under Section 270 of the BCZR 2-115 Schedule of Special Exceptions. That Schedule provides that a community build-

ing, swimming pool, or other structural or land use devoted to civic, social or recreational and educational activities is a use permitted without special exception.

[4] The appellant is correct in that a requested special exception should be granted unless there is substantial evidence that it would have an adverse effect above and beyond those inherently associated with such a special exception use irrespective of its location within the zone. What the appellant fails to acknowledge, however, is that the Board made a factual finding that the appellant's proposed use of the property amounted to a "bungee jumping operation," not a "recreational facility." That finding alone required the Board to deny the petition for the special exception. The Board simply cannot grant a special exception for a use that is neither permitted by law nor by Baltimore County Zoning Regulations. There is substantial evidence in the record to support that finding by the Board. We see no error.

[5] Additionally, we note that even assuming *arguendo* that the Board erred in finding that the appellant's proposed use was an illegal "bungee jumping operation," we would still hold that the Board did not err in denying the appellant's petition for a Special Exception. In its Opinion the Board carefully examined the criteria for granting a request for a special exception under Section 502.1 of the BCZR.[4] After

4. Section 502.1 specifically provides:

Before any Special Exception may be granted, it must appear that the uses for which the Special exception is requested will not:

a. Be detrimental to the health, safety or general welfare of the locality involved;
b. Tend to create congestion in roads, streets or alley therein;
c. Create a potential hazard from fire, panic, or other dangers;
d. Tend to overcrowd land and cause undue concentration of population;
e. Interfere with adequate provisions for schools, parks, water, sewerage, transformations or other public requirements, convenience, or improvements;
f. Interfere with adequate light and air;
g. Be consistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; nor

doing so, the Board found that the appellant failed to satisfy those criteria. We hold that there was substantial evidence on the record supporting that decision.

[6, 7] With regard to the appellant's variance requests, we note that a variance, if granted, permits a use that is normally prohibited and presumed to be in conflict with the ordinance. *North v. St. Mary's County*, 99 Md.App. 502, 510, 638 A.2d 1175 (1994). "An applicant for a variance bears the burden of overcoming the presumption that the proposed use is unsuitable. That is done, if at all, by satisfying fully the dictates of the statute authorizing the variance." *North*, 99 Md.App. at 510, 638 A.2d 1175.

In denying the appellant's requests for variances, the Board explained:

Section 307.1 of the *Baltimore County Zoning Regulations* states, in pertinent part, as follows:

"... [T]he County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations ... *only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship* ... Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area .. regulations, and only in such manner as to grant relief without injury to public health, safety, and general welfare."

As well, this Board enjoys the guidance provided by the Court of Special Appeals in *Cromwell v. Ward*, 102 Md.App. 691 [651 A.2d 424] (1995). In requiring a pre-requisite finding of "uniqueness," the Court defined the term and stated:

h. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations.

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 has an inherent characteristic not shared by other properties in the area, i.e.,* it 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....

It is this Board's finding that the proposed site is in no way unique, unusual or different from the other properties that are existent in this M.L.-I.M. zone. The Maryland Department of Assessments and Taxation, real Property System map, shows just how similar in size and shape all of the properties are along Greenspring Drive. Testimony by Mr. Patton indicated that this property was consistent with others in the community, and he noted that the gentle slope off of Greenspring Drive was consistent with other properties, further noting that some chose to fill in their properties before building and have entrances at the rear of their locations.... At no time in the hearing did the appellant entertain any historical significance to the site nor were environmental or subsurface conditions documented. Mr. Riffin did testify as to the damage to the interior of his building but did not document the same with photographic exhibits, receipts for repairs or documentation by some authority regarding the nature or extent of this damage. There was no testimony or evidence regarding abutting properties restricting his activities or imposing any unique characteristics upon his site. *In the absence of an initial finding of uniqueness, the inquiry under Section 307.1 stops and, in this case, the three variances must be denied.*

(Emphasis supplied). We see no error.

JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANT.

767 A.2d 926

HOWARD COUNTY, Maryland,

v.

Joseph Albert CONNOLLEY, et al.

No. 74, Sept. Term, 2000.

Court of Special Appeals of Maryland.

March 2, 2001.

County filed complaint to acquire motor vehicle, alleging that vehicle was subject to forfeiture because it was used to facilitate transportation, sale, possession, or concealment of controlled dangerous substances. Claimant moved to dismiss. The Circuit Court, Howard County, Raymond J. Kane, Jr., J., granted motion. County appealed. The Court of Special Appeals, Kenney, J., held that: (1) forfeiture hearing need not be held within 60 days after answer is filed; (2) Fourth Amendment did not require police to obtain warrant before seizing vehicle from defendant's garage; (3) inquiry into probable cause was improper when ruling on motion to dismiss; and (4) complaint alleged probable cause to support vehicle's forfeiture.

Vacated.

1. Drugs and Narcotics ⚷190

The purpose of the statutory forfeiture scheme is to impede the drug trade by depriving drug dealers of the instrumentalities that facilitate the sale and use of illegal drugs. Code 1957, Art. 27, § 276.

2. Forfeitures ⚷1, 2

Forfeiture statutes are not favored in the law and, thus, should be interpreted under a "strict constructionist theory." Code 1957, Art. 27, § 276.

public's tastes, trends and consumption of certain foods and its interest in leisure activities; to determine and evaluate population growth or decline in various areas as indicative of the probabilities in regard to future sales; the ability to determine the location of advantageous sites for outlets and the solution of traffic, zoning and construction problems, as well as making provision for construction financing; and, to deal more effectively with problems of labor-management relations, to name a few which come to mind.

Our predecessors stated the purpose of § 57 in *Read Drug and Chemical Co., supra,* as follows:

> "* * * to exact an additional license fee for the privilege of engaging in the 'chain store' business, by reason of the advantages such a method of conducting business has over the individual operator, thereby rendering more equal competition and also deriving additional revenue for the State. It is evident that the Legislature concluded that, as the number of stores or mercantile establishments in the chain increased there was a corresponding increase in the advantages secured."
> (165 Md. at 258, 166 A. at 746.)

The advantages obtained by Fair Lanes by the greater quality, expertise and experience of its management, as well as its ownership and supervision of Arundel and English, bring Fair Lanes within the language and purpose of § 57 and support the order of the Maryland Tax Court sustaining the ruling of the Comptroller in denying the refunds and holding that there was no denial of the equal protection of the laws under the Fourteenth Amendment.

Order of August 20, 1971, affirmed, the appellant to pay the costs.

ARUNDEL SUPPLY CORPORATION ET AL. v. CASON ET AL.

[No. 309, September Term, 1971.]

Decided April 12, 1972.

LACHES—*A Suit To Enforce Zoning Ordinances Requiring The Cessation Of An Illegal And Quite Profitable Business Enterprise Will Not Be Barred By Laches Where The Firm Is Unable To Show Any Disadvantage, Injury Or Prejudice Suffered Because Of The Delay In Bringing Suit.* pp. 375-377

ZONING—*"Gravel Pit" Defined—Where A Gravel Pit Is Permitted, It Is Anticipated That The Use Will Be For An Excavation From Which Gravel Will Be Removed And Not Particularly For Washing And Screening Of The Gravel.* p. 377

ZONING—*"Gravel Pit" — Accessory Use—Washing, Screening And Batching Of Materials Trucked In From Other Places Is Not A Use Accessory To The Excavation Of Gravel On The Property.* pp. 377-378

STATUTES—*Although Customs And Usage Are Admissible To Ascertain The Intention Of A Legislative Body When A Statute Is Vague Or Ambiguous, No Custom Can Nullify The Clear And Manifest Meaning Of The Statute.* pp. 378-379

ZONING—*A Use And Occupancy Permit Cannot Be Validated Under Provisions For Correcting Erroneous Permits Where The Use Itself Has Been Declared Illegal.* p. 379

INJUNCTIONS—DECREES — APPEAL — *A Matter May Be Remanded For Revision Of A Decree To Comply With The Requirements Of Maryland Rule BB78 a Without Upsetting The Effect Of The Decree.* pp. 379-380

R. L. H.

Motion for rehearing filed May 8, 1972; denied May 16, 1972.

Three appeals in one record from the Circuit Court for Prince George's County (POWERS, Ralph W., J.).

Suit by James P. Cason and other residents of Prince George's County, Maryland, against Arundel Supply Corporation, Arundel Concrete Co., Arundel Asphalt Products, Inc., Ben Woodward and Lorenzo F. Thompson seek-

ing to enjoin the continuation of gravel screening and washing operations. From a decree overruling defendants' demurrer and enjoining the operations complained of, defendants appeal.

Case remanded for a revision of the decree conformable with the views stated in the opinion. As revised the decree is affirmed. Costs to be paid by the appellants.

The cause was argued before HAMMOND, C. J., and BARNES, MCWILLIAMS, FINAN and SMITH, JJ.

James M. Greenan, with whom were *Charles M. Cockerill* and *L. David Ritter* on the brief, for appellants.

J. Willard Nalls, Jr., with whom were *Walter H. Maloney, Jr., Prince George's County Attorney* and *Jess J. Smith, Jr., Associate County Attorney,* on the brief, for appellees.

MCWILLIAMS, J., delivered the opinion of the Court.

The locale is that part of Prince George's County between Andrews Air Force Base and the southeastern boundary of the District of Columbia. Some of the appellees live in District Heights; some live in Capital Heights. Lying generally between those two communities is the 16 acre tract upon which Arundel began washing and screening gravel in 1947. Over the years, and at least as early as 1959, residents of the area complained about the noise, the dust, the mosquitoes, and the tract's unfenced and unguarded ponds, but their complaints fell upon deaf ears. In August 1970 the appellees, claiming to represent over 2,000 householders, filed their bill of complaint seeking an order enjoining the continuance of Arundel's operation. After many preliminary sorties the case came on for trial, on 18 March 1971, before the chancellor, Powers, J. (now C. J.). The decree enjoining Arundel

> "from the establishment or continuance of a sand and gravel washing and screening process,

> the establishment or continuance of the construction of hoppers, or the continuance of the use of hoppers except for the prompt removal of materials presently on the site; the hauling in of materials or the production of various grades of sand and gravel, and any step in the production, for sale, of concrete on the property leased or owned by the defendants described in the Bill of Complaint heretofore filed in this cause * * *"

was filed on 11 November. Arundel's appeal was filed promptly.

The 16 acre tract had been placed in the residential classification when the first zoning ordinance was enacted in 1928. It was continued in that classification by the 1930 and 1942 ordinances. The use of land as a "Gravel Pit" was permitted in residential zones by the 1928, 1930 and 1942 ordinances, each of which also permitted "[a]ccessory buildings and uses incident to any of the * * * [permitted] uses when located on the same lot and not involving the conduct of a retail business, except * * * [the sale of farm products]." [1] The 1942 ordinance contained a provision which permitted, in the "E" Industrial Zone, the use of premises "for any purpose whatsoever" except that a special ordinance was required for any use which, in the opinion of the Maryland-National Capital Park and Planning Commission, might become "noxious or offensive by reason of the emission of odor, dust, smoke, gas or noise." [2]

Arundel began the mining of sand and gravel on the tract in November 1946 and, as has been said, it installed and operated a screening and washing plant soon thereafter. At first only the materials mined on the 16 acre tract were processed but after a year or two, when that supply was exhausted, Arundel began to fetch to the property materials mined at other locations. Batching

1. Section III A 29.
2. Section VII A 55.

trial on the merits. It does so here. It says that, during the 24 years of its uninterrupted washing, screening and batching operations, no one sought an injunction. While this seems to be true there is, of course, evidence of much dissatisfaction and many complaints during the past decade. Arundel cites many cases in support of its contention that the appellees' suit is barred by laches but analysis suggests to us that all of them are distinguishable from the case at bar. Basic to the defense of laches is the need to show some disadvantage or prejudice to the party asserting it. *Bradford v. Futrell*, 225 Md. 512, 525 (1961), and *Niner v. Hanson*, 217 Md. 298, 309 (1958). There must be either prejudice or circumstances making it inequitable to grant the relief sought.

We are not persuaded that Arundel has been injured or prejudiced or that it has suffered any disadvantage because this action was instituted in 1970 rather than in 1948. Had the neighbors moved against Arundel in 1948 laches as a defense would not, of course, have been available to Arundel and, as we shall see, it is quite likely the neighbors would have prevailed. During the succeeding years Arundel has enjoyed an illegal operation that has been profitable; stockpiles on the property, at the time of trial, had and perhaps still have a value in excess of $1,000,000. That it should now be required to cease and desist its illegal operation can hardly be said to be inequitable. Indeed moving its machinery and equipment to another location will probably be less a hardship now than it would have been in 1948.

The appellees argue here, as they argued below, that the zoning ordinance in effect when the bill of complaint was filed provides that "each and every day during which" a violation continues "shall be deemed a separate misdemeanor," [7] that the 1942 ordinance provided that "each day's violation is hereby declared to be a separate offense hereunder," [8] that the same or a similar provision will be found in all of the intervening ordinances, and

7. Prince George's County Zoning Ordinance § 31.614 (1970).
8. Section XII.

that the defense of laches is not available in these circumstances. Whether it is or is not Judge Powers did not say and since the expression of an opinion in this regard is not required of us we shall go no further than to hold that there has been no showing of prejudice. *Hall v. Barlow Corp.*, 255 Md. 28, 44 (1969).

II.

Arundel next challenges the validity of the 1942 ordinance, contending it is unreasonably vague. "Gravel Pit" is not defined, it says, and it points to the absence of any mention of a washing or screening plant. We see nothing vague or ambiguous in the term "Gravel Pit." Failure to define a word calls for the application of its ordinary meaning. *Williams v. Associated Professors of Loyola College*, 257 Md. 316, 328 (1970). In Black's Law Dictionary (Rev. 4th ed.) "gravel pit" is defined as "[a]n excavation from which gravel is removed." The Oxford English Dictionary defines "gravel-pit" as "an excavation from which gravel (or sand) is or has been obtained." If the absence of any mention of washing or screening in the 1942 ordinance signifies anything, we think it signifies a legislative intention to allow the extraction of sand and gravel simply because it happens to be there, but not to allow washing and screening. Such an intention seems to be supported by the prohibition, in the same ordinance, of

> "[a]ny kind of manufacture [in the "D" Commercial Zone] other than manufacture clearly incident to a retail business conducted on the premises, or any manufacture or treatment which would constitute a nuisance."
> § VI A (5) (m).

The plausibility of what we have said is enhanced by the fact that under the 1949 ordinance washing, screening and batching required a highly restrictive special exception.

But, says Arundel, the 1942 ordinance made washing

and screening an accessory use. We are not persuaded that this is so any more than we could be persuaded that a commercial bakery in an agricultural zone could be said to be a use accessory to the raising of wheat. Moreover the section authorizing accessory uses excludes anything involving the conduct of a "retail business" and, unless we are greatly mistaken, Arundel, between 1942 and 1949, sold at retail, from the property, large quantities of sand and gravel to the ultimate consumer. Whether the washing and screening of the sand and gravel extracted from the 16 acre tract in 1946 was an accessory use we shall not undertake to say. We do not think, however, that the washing, screening and batching of materials "trucked in" from other places was an accessory use and we so hold.

III.

Arundel produced Sam Bevard as a witness and offered to have him testify that Arundel, from 1946 to 1949, was doing only what everyone in the sand and gravel business was doing. Customs and usage are admissible, it argues, to ascertain the intention of the legislative body when the language of the ordinance is vague or ambiguous, citing *Frazier v. Warfield*, 13 Md. 279, 303 (1859). It is fundamental, however, that no custom, however long and widely followed, can nullify the clear and manifest meaning of the statute. *Comptroller v. American Cyanamid Co.*, 240 Md. 491, 506 (1965); *Bouse v. Hutzler*, 180 Md. 682, 687 (1942). Judge Powers, correctly we think, sustained the objection to Bevard's testimony. His comment, at the time, is interesting. He said:

> "I don't see how you could do that any more than you could show that there had been sixty gang killings in a certain area and therefore it showed that the area tolerated murder, and on a murder trial there was no reason why you should hold the man guilty of murder. That is

> an extreme example, but I am only using that to illustrate the point that a custom in the business may have been a violation and it may have been a tolerated violation, but that doesn't make it legal."

The 1942 ordinance, as we have said, is neither vague nor ambiguous.

IV.

In 1956 Arundel obtained from the Department of Building Inspection of the County Commissioners a "Use and Occupancy Permit" for the purpose of using on the 16 acre tract a "Gravel Washing & screening plant." Judge Powers's signing and filing of the decree connotes a finding that the issuance of the permit was erroneous. But Arundel insists it was error to grant the injunction without giving it an opportunity to "seek validation of its permit pursuant to Section 12.5 of the [1970] Zoning Ordinance." This seems to us to be utterly without merit. We do not see how the Commission (District Council) could validate a use the chancellor has declared to be illegal. Indeed to ask the question is to answer it. *Cf. Hagerstown v. Long Meadow Shopping Center*, 264 Md. 481 (1972).

V.

Arundel's final contention is that Judge Powers's decree does not comply with the requirements of Maryland Rule BB78 a which is as follows:

> "An order granting an injunction shall set forth the reasons for its issuance; shall be specific in terms; and shall describe in reasonable detail, and not by reference to the complaint or other document, the act sought to be required or commanded or restrained or forbidden."

This does indeed seem to have some merit but on remand Judge Powers can revise the decree so as to satisfy the

#5

of waiver by the assurer, after an improper notice, had been properly submitted to the jury. During the course of its opinion, the Court uses some broad and sweeping language. In so far as there is anything in this opinion contrary to what is there said, we, respectfully, decline to follow that case. We note that although the case was decided nearly a half century ago, it has been followed in no case since.

[5] The question of estoppel gives us little difficulty. In the case at bar, there is not a shred of evidence that the insured was in any way prejudiced, in any way misled, or in any way changed his position as a result of the time span between his receipt of the reservation of rights letter and the institution of the present suit. We hold that the assurer was not estopped from denying liability.

Judgment affirmed, with costs.

231 Md. 280

Francis T. DAMPMAN

v.

CITY OF BALTIMORE et al., and William Steinmetz, et ux., etc.

No. 268.

Court of Appeals of Maryland.

April 5, 1963.

Board of Municipal Zoning Appeals rendered an order permitting the extension of a non-conforming commercial use in a residential area, and an appeal was taken. The Baltimore City Court, Dulany Foster, J., affirmed the order, and an appeal was taken. The Court of Appeals, Marbury, J., held that action of Board in permitting owners, whose business constituted non-conforming use in residential area, to erect second story addition 12 feet wide and 22 feet long for purpose of expanding business space under zoning ordinance was arbitrary and capricious, where there was no showing that need for addition was real and substantial and no showing that zoning restriction when applied to owners' property was so unreasonable as to constitute arbitrary and capricious interference with basic right of private ownership.

Judgment reversed.

1. Zoning ⚷329

"Incidental use" within zoning ordinance providing that zoning board may permit, where otherwise excluded or limited, use of same classification, necessary or incidental to non-conforming use presently existing in certain districts within 50 feet from existing non-conforming use, provided that 50 foot measurement should not extend across street or alley does not contemplate major addition to or major expansion of non-conforming use, but rather one appertaining, subordinate, or casual thereto.

See publication Words and Phrases for other judicial constructions and definitions.

2. Zoning ⚷329

Action of board of municipal zoning appeals in permitting owners, whose business constituted non-conforming use in residential area, to erect second story addition 12 feet wide and 22 feet long for purpose of expanding business space under zoning ordinance was arbitrary and capricious, where there was no showing that need for addition was real and substantial and no showing that zoning restriction when applied to owners' property was so unreasonable as to constitute arbitrary and capricious interference with basic right of private ownership.

Douglas H. Gordon, Baltimore (C. Rider Brandau, Jr., Baltimore, on the brief), for appellant.

190

John A. Dewicki, Asst. City Sol., and Charles Mindel, Baltimore (Francis B. Burch, City Sol. and Buckmaster, White, Mindel & Clarke, Baltimore, on the brief), *for appellees.*

Before BRUNE, *C. J., and* HAMMOND, PRESCOTT, MARBURY and SYBERT, JJ.

MARBURY, Judge.

From a judgment of the Baltimore City Court affirming an order of the Board of Municipal Zoning Appeals, which permitted the extension of a non-conforming commercial use in a residential area, appellant appeals.

The nine hundred block of Tyson Street is an attractive area of residences located in the business district of Baltimore, and heavily surrounded by commercial establishments. Originally, this area was zoned commercial and was generally in a dilapidated condition. In 1953, an organization known as the Tyson Street Association was successful in getting the nine hundred block zoned residential, and its members have proceeded to remodel the residences located on this street into attractive city homes, retaining the characteristics of the original architectural style.

Mr. and Mrs. William Steinmetz, two of the appellees, own 903 Tyson Street. When it was originally purchased by Mrs. Steinmetz in 1946, prior to her marriage, it was located in a first commercial use district. She proceeded to rehabilitate the premises and has used it since that time as a studio for the design and sale of jewelry, and the designing of showrooms and offices. When the property on this street was rezoned in 1953 to residential, her business constituted a non-conforming use of the premises. However, her property conforms to the general scheme and character of the neighborhood.

These appellees also own 220 West Read Street, purchased by them in 1955. This property is zoned first commercial. They use it as a residence and in conjunction with the Tyson Street property as a studio for the design and manufacture of jewelry. The rear, or eastern, line of 903 Tyson Street runs along a part of the western side line of 220 West Read Street, about the middle of the back yard of the Read Street property. Between the rear of the 903 Tyson Street building and the rear line of the lot on which it is built, there is an open space eight feet four inches long. Mr. and Mrs. Steinmetz applied for a permit to erect a second story addition to the Tyson Street property, twelve feet wide and twenty-two feet, one inch long, to be supported on steel or masonry piers, for the purpose of expanding their business space. This would result in its covering the eight feet four inches in back of 903 Tyson, and extending into the back of the Read Street property. The building inspection engineer refused their application because it involved a commercial use of the residentially zoned eight feet four inches of the yard of 903 Tyson Street. The owners then applied for and received a hearing on March 27, 1962, before the Board of Municipal and Zoning Appeals.

At this hearing, opposition to this request for this permit in the nature of a special exception was presented by the appellant, the non-residing owner of 901 Tyson Street, and by letter, objections were made by the director of the Baltimore Urban Renewal and Housing Agency. The vice-president of the Mt. Vernon Improvement Association also testified in opposition to the special exception. The gist of the opposition was that the proposed improvement would block off light and air, that there would be excessive lot coverage, and that such encroachments on a residential area would contribute severely to blight. On the other hand, the appellees produced three neighboring property owners, one being the president of the Tyson Street Association. In addition, they produced letters from the owners of fifteen Tyson Street property owners. All stated they had no objection to the proposed alterations. The

Board appr
dition. On
affirmed the
that the pro
to the prese
granting of
the discretio
14(b) of Or
ordinance of

The questi
from that co
exceed its pc
exception whi
a commercial
area.

The autho
purported to a
ception is Sec
dinance. Tha
public notice
provisions of
permit, where
ited—

"* * *
sification, ne
non-conform
first commer
district or in
district withi
isting non-c
such fifty fc
extend acre
* * *."

Section 35(j)
must not be det
or welfare of
court found th
not necessary,
conforming use

It thus appe
substantially n
merely a questi
struction of the
erence to speci

Appellant rel
Cleland v. May
198 Md. 440, 8
oral argument.

n conjunction with
ty as a studio for
cture of jewelry.
ne of 903 Tyson
of the western side
Street, about the
of the Read Street
ear of the 903 Ty-
he rear line of the
there is an open
ies long. Mr. and
r a permit to erect
the Tyson Street
le and twenty-two
be supported on
or the purpose of
space. This would
e eight feet four
son, and extending
d Street property.
engineer refused
it involved a com-
atially zoned eight
ard of 903 Tyson
n applied for and
arch 27, 1962, be-
cipal and Zoning

sition to this re-
e nature of a spe-
ited by the appel-
ner of 901 Tyson
ctions were made
timore Urban Re-
ency. The vice-
non Improvement
in opposition to
e gist of the op-
roposed improve-
ght and air, that
lot coverage, and
on a residential
everely to blight.
ppellees produced
y owners, one be-
yson Street Asso-
produced letters
een Tyson Street
ated they had no
alterations. The

Board approved the application for the addition. On appeal the Baltimore City Court affirmed the Board's decision on the ground that the proposed addition was "incidental" to the present use of the property, and the granting of such an extension was within the discretion of the Board under Section 14(b) of Ordinance No. 711, the zoning ordinance of Baltimore City.

The question presented on this appeal from that court is did the Zoning Board exceed its powers in granting the special exception which permitted the extension of a commercial use in a residentially zoned area.

The authority under which the Board purported to act in granting the special exception is Section 14(b) of the zoning ordinance. That section provides that after public notice and hearing, subject to the provisions of Section 35(j), the Board may permit, where otherwise excluded or limited—

> "* * * (b) a use of the same classification, necessary or incidental to a non-conforming use now existing in a first commercial or in a residential use district or in a residential and office use district within fifty feet from such existing non-conforming use, provided such fifty foot measurement shall not extend across a street or alley; * * *."

Section 35(j) provides that the addition must not be detrimental to the health, safety or welfare of the community. The lower court found that although the addition was not necessary, it was incidental to the non-conforming use.

It thus appears that this case presents substantially no conflict as to fact but merely a question of law involving the construction of the zoning ordinance with reference to special exceptions.

Appellant relied heavily on the case of Cleland v. Mayor and City of Baltimore, 198 Md. 440, 84 A.2d 49, in his brief and oral argument. We agree that that case involved an analogous situation to the one presented here. There, three doctors made application for permission to maintain a parking lot for their own and their employees' automobiles next to the building in which they had their offices. The area was zoned residential but their building was an established non-conforming use. Such a parking lot would have been an extension of that non-conforming use. The Board of Municipal and Zoning Appeals, acting under the provisions of Section 12(b) (Section 12(b) being the predecessor of the present Section 14(b) of the zoning ordinance), granted the application, and this action was affirmed by the Baltimore City Court. On appeal this Court reversed, finding that the proposed use was neither necessary nor incidental and was only for the convenience of the applicants. At page 444 of 198 Md., at page 51 of 84 A.2d we said:

> "This court has consistently held that special exceptions will never be granted to gratify mere convenience, that there must be a necessity, and that necessity must be so urgent, and the facts so extraordinary as to require the withdrawal of that particular case from the application of the accepted rule. That accepted rule is the division made in the zoning ordinance for various classes of use districts. It is part of a general plan which is not intended to be changed except in cases of urgent necessity."

The judge below, in this case, properly recognized that there was no urgent necessity for the special exception, yet he did find that the proposed exception was "incidental" to the present non-conforming use, and that this met the disjunctive standard of "necessary or incidental" as set out in Section 14(b) of the zoning ordinance. With this finding we disagree.

Ordinarily there is a distinction between a variance and an exception. This is true in many of the counties of this state. An exception is usually granted where a specific use is permitted by the legislative body in a

given area if the zoning plan is conformed to and there is no adverse effect on the neighborhood. There is usually no necessity for showing undue hardship. See Oursler v. Board of Zoning Appeals, 204 Md. 397, 104 A.2d 568. On the other hand, variances are usually given only on the showing of undue hardship. Montgomery Co. v. Merlands Club, 202 Md. 279, 96 A.2d 261. In Baltimore City there appears to be no distinction between the two terms (see Baltimore v. Sapero, 230 Md. 291, 186 A.2d 884), and the City zoning ordinance does not specify what uses may be permitted within certain zoned areas as exceptions, as do many of the county ordinances. In the City, the existence of unnecessary hardship (to the property owner) usually justifies the granting of an exception. The determination of unnecessary hardship is whether the applicable zoning restriction, when applied to the property in the setting of its environment, is so unreasonable as to constitute an arbitrary and capricious interference with the basic right of private ownership. Marino v. City of Baltimore, 215 Md. 206, 216-217, 137 A.2d 198.

In Heath v. Mayor & C. C. of Baltimore, 190 Md. 478, 58 A.2d 896, this Court said, at page 483 of 190 Md., at page 898 of 58 A.2d:

> "The need to justify the exception must be real and substantial. If an exception to the general rule is permitted for reasons that are not urgent and substantial, but for mere convenience, then a provision of the ordinance for an exception might cease to be such and, in practice, become the rule."

[1] The statute in requiring that the use be "incidental" does not, we think, contemplate a major addition to or a major expansion of the nonconforming use, but rather one appertaining, subordinate or casual thereto.

[2] Nor is the alternate requirement of the statute, that the need be real and substantial, established. No evidence was introduced to show that the appellees need the exception in order to remain in business, nor why they could not extend their Read Street property within the commercial area in order to provide more working room. From the record it appears that the proposed exception would be only a convenience to Mr. and Mrs. Steinmetz, and did not involve an unnecessary hardship to them. There was clearly no evidence which tended to show that the applicable zoning restriction when applied to this property was so unreasonable as to constitute an arbitrary and capricious interference with the basic right of private ownership. Marino v. City of Baltimore, supra. The late Judge Eli Frank, in the case of Cullen et al. v. M. & C. C. of Baltimore, reported in the Daily Record, May 15, 1943, set out the proper standard when he said:

> "The result of the authorities would seem to be that in exercising the power to vary the application of zoning restrictions in order to permit the invasion of a residential district by a business use, the guiding standard of the zoning authorities must be the public need or the public welfare in most cases to the subordination of the selfish interests of the owner or occupant of the property for which the variance is sought."

The fact that most of the property owners in the area did not protest the exception does not of itself show that the exception would be for the public welfare. In the light of the authorities referred to, and particularly that of the Cleland case, which was a far stronger case for the granting of the special exception, we hold that the judgment of the court below affirming the order of the Board must be reversed because the action of the Board was in a legal sense arbitrary and capricious.

Judgment reversed, costs to be paid by the appellees, William Steinmetz and wife.

Jame

STA

Court of

Prosecution
Court for Balti
ment of convic
pealed. The C
J., held that ac
cerning silence
rape, when con
accusation that
course with vi
stances, includin
and co-defendan
officers, and tha
motive to seek
versible error.

Reversed an

1. Criminal Law

If statement
in presence of pa
criminal, contai
which, if untrue,
cumstances natu
his failure to sp
dence that he beli
and his conduct
him as an admissi

2. Criminal Law

Admission c
silence of defenc
when confronted
sation that defen
with victim was,
cluding fact that
defendant were in
and co-defendant
revenge on defend

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** - 11 **Account Number** - 2200026027

Owner Information

Owner Name:	ZNAMIROWSKI BRIAN P ZNAMIROWSKI ROBIN L	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	4803 BART ALLEN LN BALDWIN MD 21013-9769	**Deed Reference:**	1) /20700/ 721 2)

Location & Structure Information

Premises Address
4803 BART ALLEN LN

Legal Description
2.016 AC
4803 BART ALLEN LN NS
BECKWITH ESTATES
4803 BART ALLEN LN NS
BECKWITH ESTATES

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
44	11	123					4	3	Plat Ref: 68/ 66

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

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1998	2,990 SF	2.02 AC	04

Stories	Basement	Type	Exterior
2	YES	STANDARD UNIT	SIDING

Value Information

	Base Value	Value As Of 01/01/2006	Phase-in Assessments As Of 07/01/2006	As Of 07/01/2007
Land:	77,140	143,260		
Improvements:	257,570	443,270		
Total:	334,710	586,530	418,650	502,590
Preferential Land:	0	0	0	0

Transfer Information

Seller:	KROPFELDER BERNARD R,JR	**Date:**	09/17/2004	**Price:**	$545,000
Type:	NOT ARMS-LENGTH	**Deed1:**	/20700/ 721	**Deed2:**	
Seller:	GETTMAN GEORGE J,3RD	**Date:**	06/30/2003	**Price:**	$485,000
Type:	NOT ARMS-LENGTH	**Deed1:**	/18310/ 460	**Deed2:**	
Seller:	MRIC L L C	**Date:**	09/22/1997	**Price:**	$116,000
Type:	IMPROVED ARMS-LENGTH	**Deed1:**	/12394/ 518	**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:

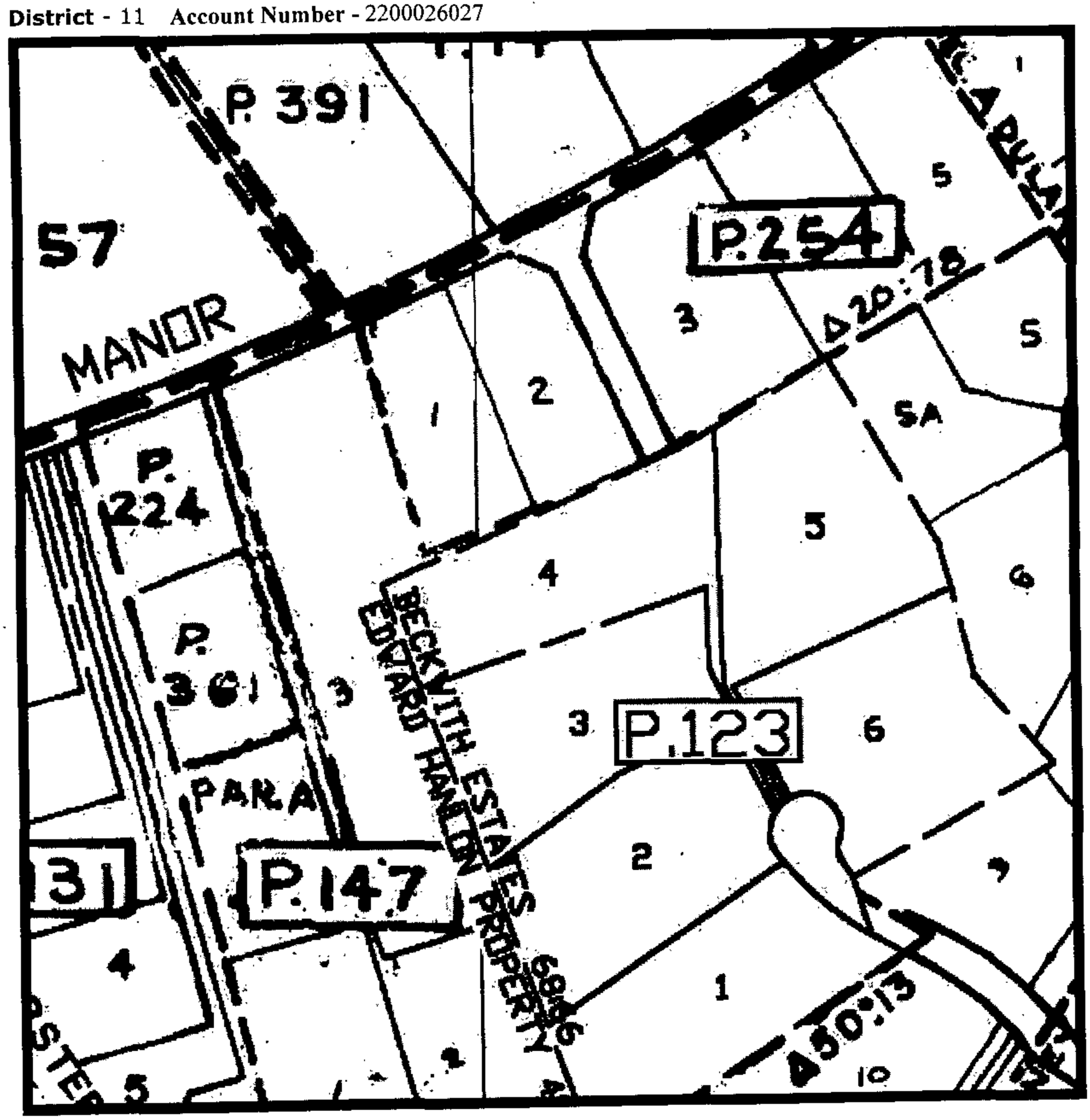
* NONE *

CBA
Peoples' Counsel
No. 2

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

Go Back
View Map
New Search

District - 11 Account Number - 2200026027



Property maps provided courtesy of the Maryland Department of Planning ©2006.
For more information on electronic mapping applications, visit the Maryland Department of Planning web site at
www.mdp.state.md.us/webcom/index.html

Order the TAX MAP click here...

CASE NO. 07-332-SPHA

PEOPLES' COUNSEL

EXHIBITS

✓ 1. CURRENT ZONING

✓ 2. SAME AS PET. EXH. NO. 2 REAL PROPERTY SEARCH

CBA Pro. No. 9A 6-25-07

CBA ARO No. 9B 2-25-07 JDH

CBA PRO. NO. 96 L-2507 Dg6

CBA Pro. 200. 9 D

6-25-08

CBA PRS No. 98 6-25-07

CBA PRO. NO 9F 2-25-02

CBA Pro. No. 96 6-25-02

CBA. PRO. No 9H 6-25-07

CBA Pro. No. 9 I 6-25-01

Jack Dillon & Associates, LLC

410-337-5455 *Fax 410-337-5476* *410-221-0060*
jackdillon1@verizon.net

118 W. Pennsylvania Ave.
Towson, Maryland 21204

922 Parsons Drive
Madison, Maryland 21648

OBJECTIVE:

Provide professional planning assistance in the areas of land use, land use analysis, site and design evaluation, and land preservation consultation.

EMPLOYMENT HISTORY:

JACK DILLON & ASSOCIATES, LLC
Private Land Use Consultant
March 1996 – Present

THE VALLEYS PLANNING COUNCIL, Inc.
Executive Director
May 1997 – September 2004

BALTIMORE COUNTY, MARYLAND
OFFICE OF PLANNING, COMMUNITY PLANNING DIVISION
Senior Planner and Deputy Division Chief
Rural planner serving as 2nd, 3rd, and 5th District Planner
August 1987 – February 1996 (retired)

OFFICE OF PLANNING, COMMUNITY PLANNING DIVISION
Planner II – 2nd and 3rd District Area Planner
June 1981 – August 1987
Administrator of Baltimore County Agricultural Land Preservation Program
1979 – 1981

OFFICE OF PLANNING, COMPREHENSIVE PLANNING DIVISION, ENVIRONMENTAL STUDIES SECTION
Planner II – Environmental Planner
October 1974 – June 1981

BALTIMORE COUNTY ZONING OFFICE
Planning & Zoning Technician II, Planning & Zoning Technician III
1967 – 1970
Chair of Zoning Advisory Committee
1969 – 1973
Chief of Zoning Enforcement
1973 – 1974

DEPARTMENT OF PUBLIC WORKS
Special Projects assignments at Johns Hopkins University and The Baltimore City/County Analyzer Office
February 1962 – September 1974

CBA
PROT. EXH.
NO. 3

EDUCATION:

MORGAN STATE UNIVERSITY
Graduate Program in Landscape Architecture
1992 – 1994

UNIVERSITY OF MARYLAND
Graduated Para Legal
1978

UNIVERSITY OF BALTIMORE
Graduated B.S. Degree in Business Management
Planning Courses at Johns Hopkins University
1969

ADDITIONAL EDUCATION:

DUNDALK COMMUNITY COLLEGE
Media/TV Production
1984 – 1986

ATTENDED UNIVERSITY OF BALTIMORE SCHOOL OF LAW
1969 – 1970

GEORGIA INSTITUTE OF TECHNOLOGY
Institute in Urban Planning
1969

JOHNS HOPKINS UNIVERSITY
Appraisal of Real Estate
1975

OTHER PROFESSIONAL EXPERIENCE:

CATONSVILLE COMMUNITY COLLEGE
Visiting Lecturer - Zoning and Subdivision Design
Spring 1991

UNIVERSITY OF MARYLAND, SCHOOL OF SOCIAL WORK AND URBAN PLANNING
Visiting Lecturer - Use of Video in the Art of Planning
February 1987

TOWSON STATE UNIVERSITY
Department of Geography and Environmental Planning
Instructor of Two, Three Credit Courses - Principals of Zoning and Planning Implementation
February 1972 – December 1981

PROFESSIONAL AND VOLINTEER ORGANIZATIONS:

Member of the American Planning Association (1995 – Present)
President, Susquehanna Point Home Owners Association (2001 – 2003)
President, Baltimore County Extension Advisory Committee (2001 – Present)
Board Member, Baltimore County Agricultural Resource Center, Inc. (2004- Present)

Member, Baltimore Metropolitan Council Transportation Advisory Committee (2001 – 2004)

SIGNIFICANT PROFESSIONAL AWARDS AND ACCOMPLISHMENTS:

PLANNER AND AUTHOR/CO-AUTHOR REPORTS AND PLANNING STUDIES, INCLUDING:

RECIPIENT OF THE 2004 *"MCHARG AWARD"* BY THE VALLEYS PLANNING COUNCIL, MAY 2004
RECIPIENT OF *"APA LIFETIME ACHIVEMENT AWARD"* BY THE MARYLAND CHAPTER OF THE AMERICAN PLANNING ASSOCIATION, OCTOBER 2004

Prepare land use evaluation for potential redevelopment and new development in the City of Cambridge for the Chesapeake Bay Foundation. Aug. (2006)
Rural Roads Study – Recommended Design Standards and Policies For Rural Baltimore County Roads - The Valleys Planning Council, (2005)
Prepare a concept development plan for OM Investments Limited in Ghana, Africa (2005)
The Enduring Rural Landscape – VPC (2001)
The Essex/Middle River Community Assessment (1995)
The Owings Mills Open Space Concept Plan (1995)
Concept design for the Fisherman's Pavilion at dark Head Cove (1995)
Hanover Pike Corridor Plan (1993)
Producer of Video "The Grove" - won a National Association of Counties Award (1993)
Hereford: A Preliminary Analysis (1987)
The Reisterstown Road Corridor Study (1987)
Plan for Owings Mills, Maryland (1984)
The Old Court Road Corridor Study (1984)
Site Selection for the Northwest Area Multipurpose Center (1982)
Proposed Amendment to Baltimore County Zoning Regulations – Sludge Disposal in Baltimore County (1982)
Areas of Critical of State Concern in Baltimore County (1979)
Planner responsible for the organization and administering the Agricultural Land Preservation Program for Baltimore County (1979 – 1981)
Primary draftsman of the Four Resource Conservation Zones for Baltimore County - has become the basis for controlling growth in rural Baltimore County (1975)
Development and Administration of the Video Production unit within the office of Planning

PROVIDED EXPERT WITNESS TESTIMONY BEFORE COURT AND AGENCY PROCEEDINGS INCLUDING:
The Baltimore County Planning Board
Various Legislative Sub-Committees in Annapolis
The Baltimore County Council
The Baltimore County Zoning Commissioner
The Baltimore County Board of Appeals
The Calvert County Board of Appeals
The District Court of Maryland
The Circuit Court of Maryland
The Planning Commission for the Town of Ocean City
The Dorchester County Board of Appeals
The Harford County, MD Zoning Hearing Officer
The City of Cambridge, MD Planning Commission
The Summerset County MD Board of Appeals

Rev. 06-25-07

Section 102
General Requirements
[BCZR 1955]

102.1 No land shall be used or occupied and no building or structure shall be erected, altered, located or used except in conformity with these regulations and this shall include any extension of a lawful nonconforming use.

102.2 No yard space or minimum area required for a building or use shall be considered as any part of the yard space or minimum area for another building or use.

102.3 No portion of an alley shall be considered as any part of a side or rear yard.

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]**

102.5 On a corner lot in any residential zone, no planting, fence, wall, building or other obstruction to vision more than three feet in height shall be placed or maintained within the triangular area bounded on two sides by the front and side street property lines, or by projections of said lines to their point of intersection, and on the third side by a straight line connecting points on said lot lines (or their projections), each of which points is 25 feet distant from the point of intersection. At the intersection of a street and an alley, the dimension corresponding to the 25 feet noted above shall be 15 feet and 10 feet at the intersection of two alleys. Poles, posts and guys for streetlights and for other utility services shall not be considered obstructions to vision within the meaning of this section. **[Resolution, November 21, 1956]**

102.6 No building permit shall be issued for any commercial, industrial or apartment development until the proposed plan for vehicular access thereto shall have been first approved by the Baltimore County Department of Permits and Development Management. **[Resolution, November 21, 1956]**

102.7 Where development of a property includes both a special exception and a residential subdivision, the area allocated for use as a special exception shall not be included in the calculation of residential density. **[Bill No. 74-2000]**

Section 103
Application of Zoning Regulations[1]
[BCZR 1955]

103.1 These regulations shall apply as of the date of their adoption but the provisions pertaining to use, height, area and density of population shall not apply to any development, subdivision or parcel of land, the preliminary plan for which was

---

[1] **Editor's Note: Section 4 of Bill No. 24-2006, a bill which amended Article 32, Planning, Zoning and Subdivision Control, of the Baltimore County Code 2003, stated as follows: "This Act is adopted independently of Section 103 of the Baltimore County Zoning Regulations so that it supersedes and abrogates the rights to the vesting of a development that would otherwise accrue from the zoning or development regulations or other County laws."**

CBA PLOT NO. 6

ARTICLE 4

SPECIAL REGULATIONS

Section A400
Purpose
[Bill Nos. 40-1967; 18-1976]

Certain uses, whether permitted as of right or by special exception, have singular, individual characteristics which make it necessary, in the public interest, to specify regulations in greater detail than would be feasible in the individual use regulations for each or any of the zones or districts. This article, therefore, provides such regulations.

Section B400
Application of This Article's Provisions
[Bill No. 18-1976]

The provisions of this article apply only to principal uses except as otherwise specified (as in Item 405.4.D.7) or unless the provision implicitly relates to accessory usage (as in Section 405A).

Section 400
Accessory Buildings in Residence Zones
[BCZR 1955; Bill No. 27-1963]

400.1 Accessory buildings in residence zones, other than farm buildings (Section 404) shall be located only in the rear yard and shall occupy not more than 40% thereof. On corner lots they shall be located only in the third of the lot farthest removed from any street and shall occupy not more than 50% of such third. In no case shall they be located less than 2½ feet from any side or rear lot lines, except that two private garages may be built with a common party wall straddling a side interior property line if all other requirements are met. The limitations imposed by this section shall not apply to a structure which is attached to the principal building by a covered passageway or which has one wall or part of one wall in common with it. Such structure shall be considered part of the principal building and shall be subject to the yard requirements for such a building.

400.2 Accessory buildings, including parking pads, shall be set back not less than 15 feet from the center line of any alley on which the lot abuts. **[Bill No. 2-1992]**

400.3 The height of accessory buildings, except as noted in Section 300 shall not exceed 15 feet.

CBA
PRO NO. 7

4803 BART ALLEN LANE
REAR YARD OF
PETITIONERS
EXH. NO. 4A

PROT. NO. 4B

Red Accessory Structure is in Rear of 4/8 03 Carroll Manor Rd.

View from Healy Lot to be disturbed by 42' x 28' Wall

4803 Bart Allen Ln.
Rear yard of
Petitioners
NO. 4C

HEAL 02292 DECM2749
83/02/24 13BUS +00100100+00 114C

4815 Carroll
Manor Rd.

Rear Accessory
Structure

Pet. D

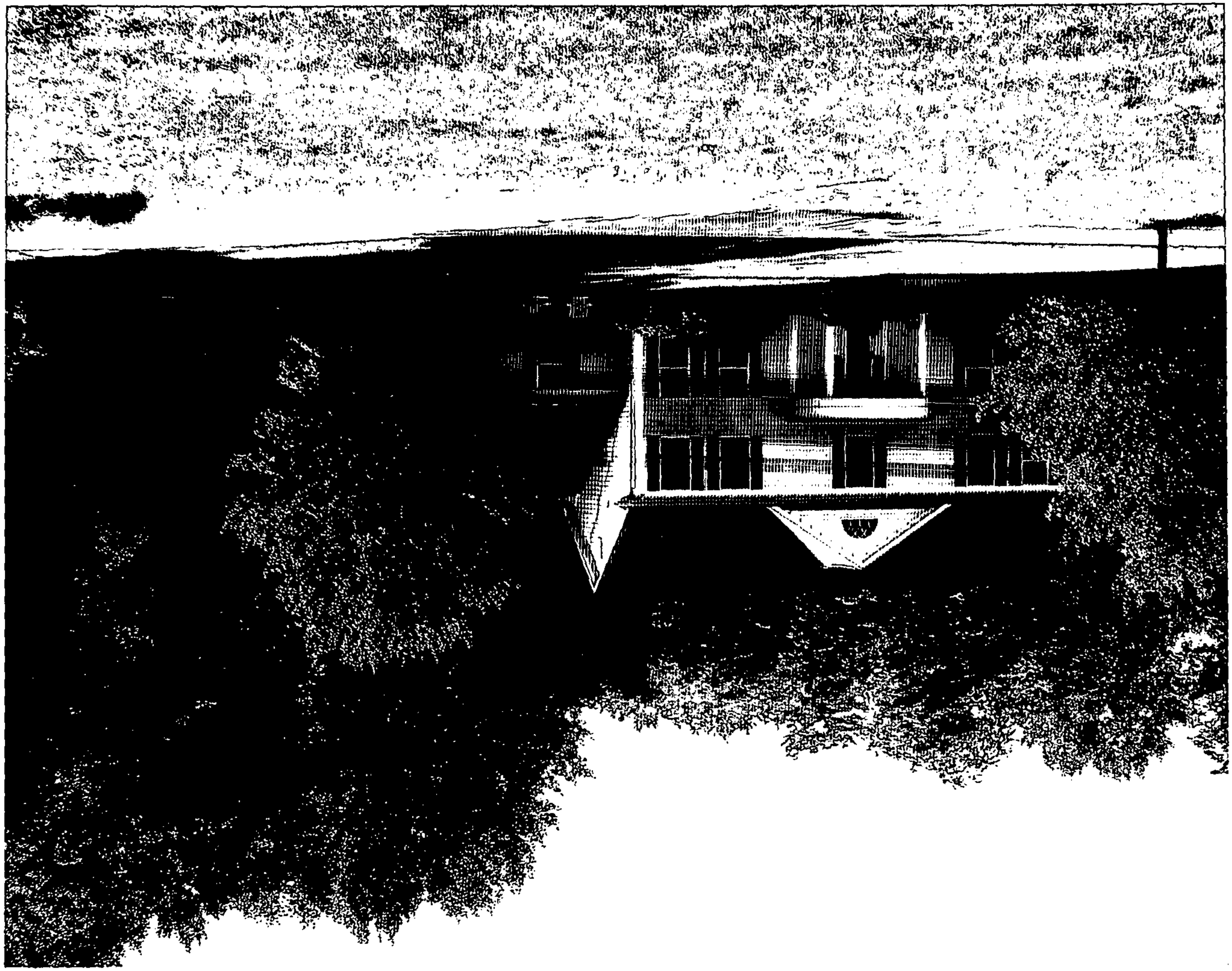
831235< 2>031 +00100100+00 1142
HEALY679, decn2745

1809 Carroll
Manorcrest
Rear Accessory
Structure
4E

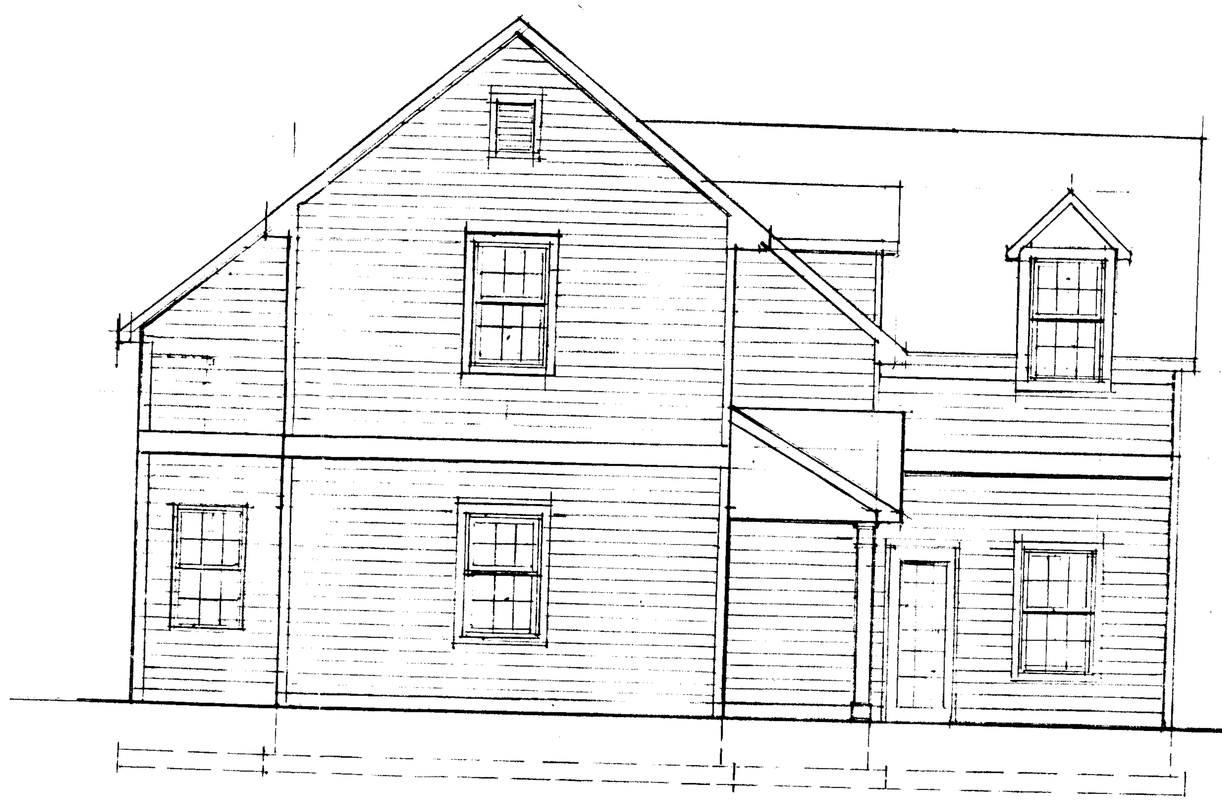
4806 Bart Allen La.

with no accessory
building
Plot. 4F

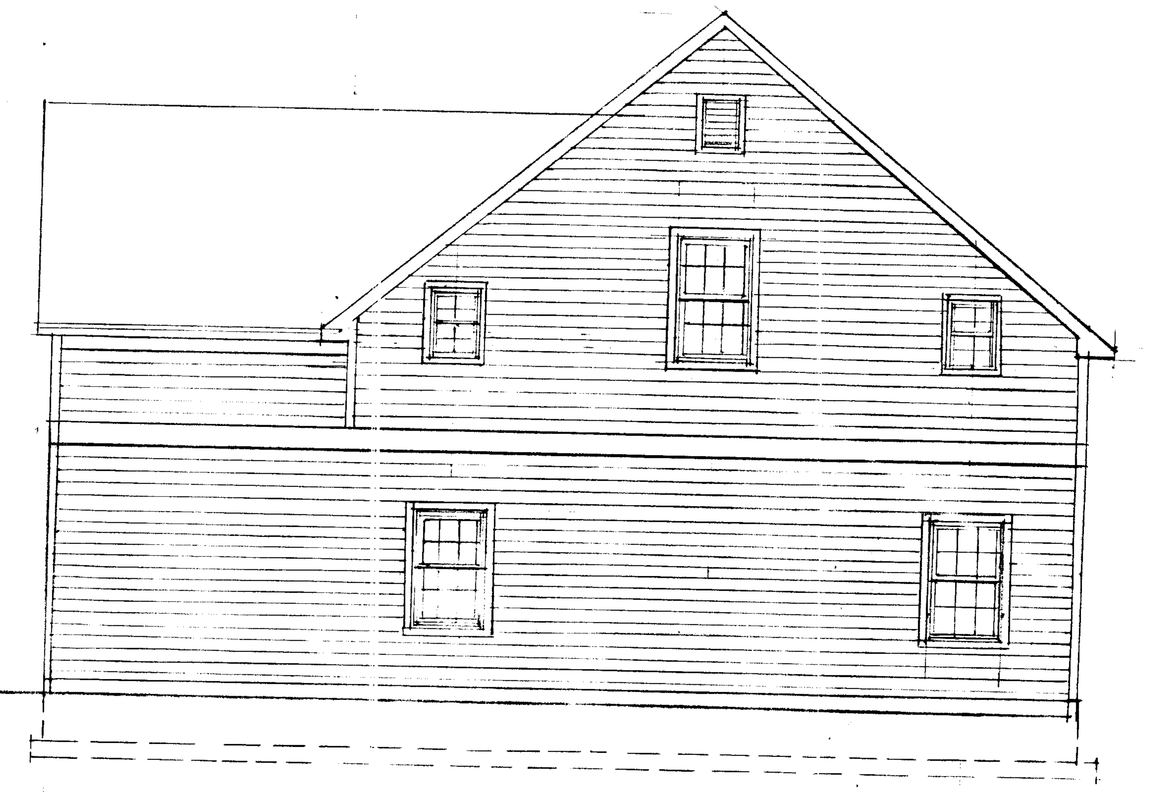
831235< 17062 +03.00+00+00 1142
HEAL967972 d=L72/34



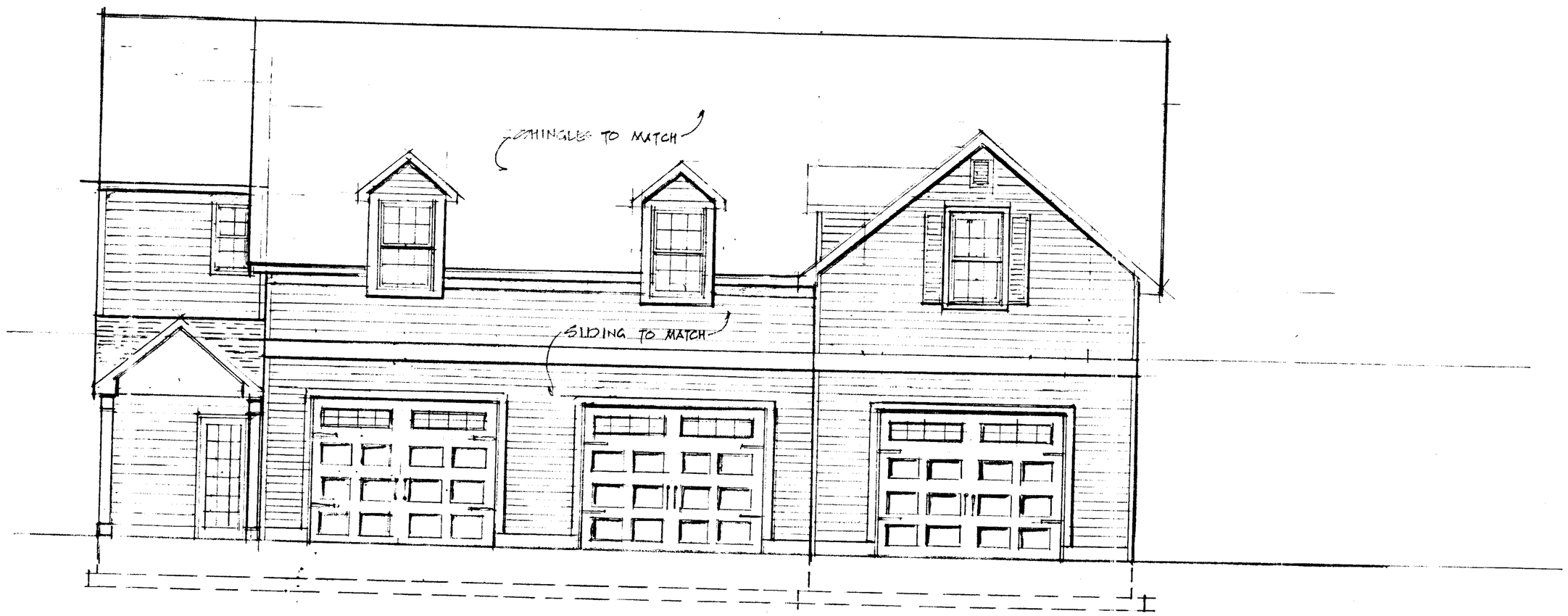
4805 Bart Allen
Lane
Home with
Small accessory
Structure
Plot. 46



LEFT SIDE ELEVATION SCALE: 1/4"=1'-0



RIGHT SIDE ELEVATION SCALE: 1/4"=1'-0"



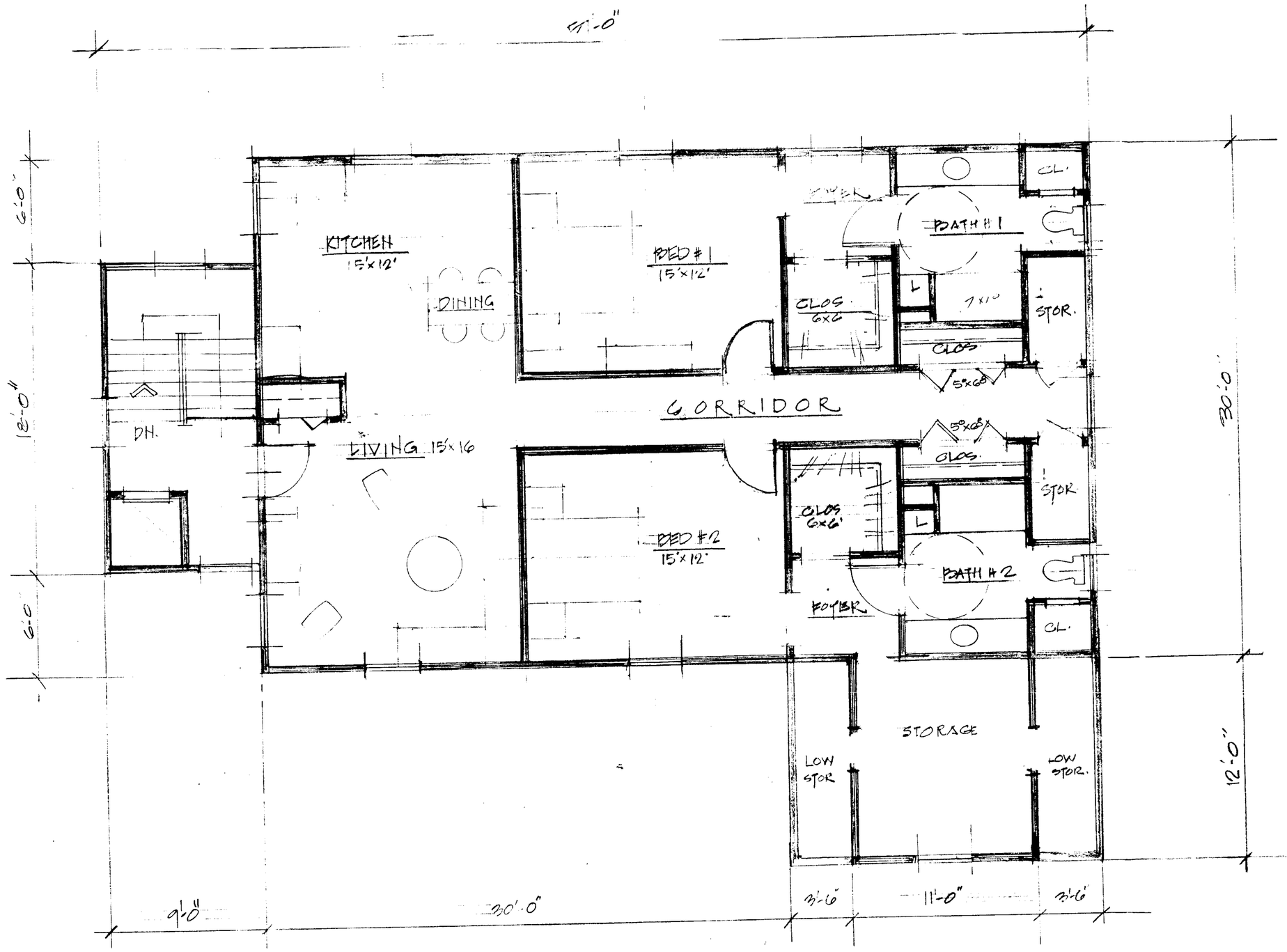
FRONT ELEVATION SCALE: 1/4"=1'-0

DETACHED GARAGE

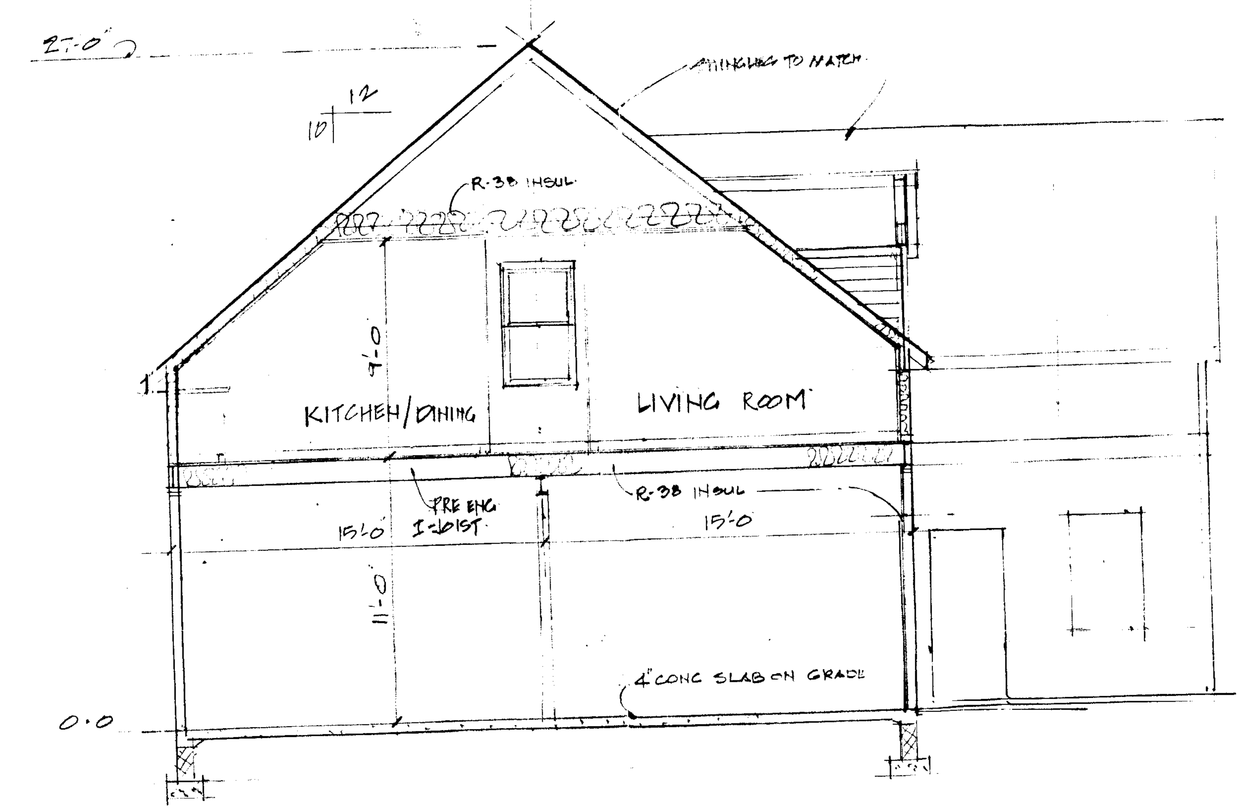
NEW GARAGE ADDITION W/LIVING AREA ABOVE

CBA
PET
SA

4803 BART ALLEN LANE



SECOND FLOOR PLAN SCALE: 1/4"=1'-0"

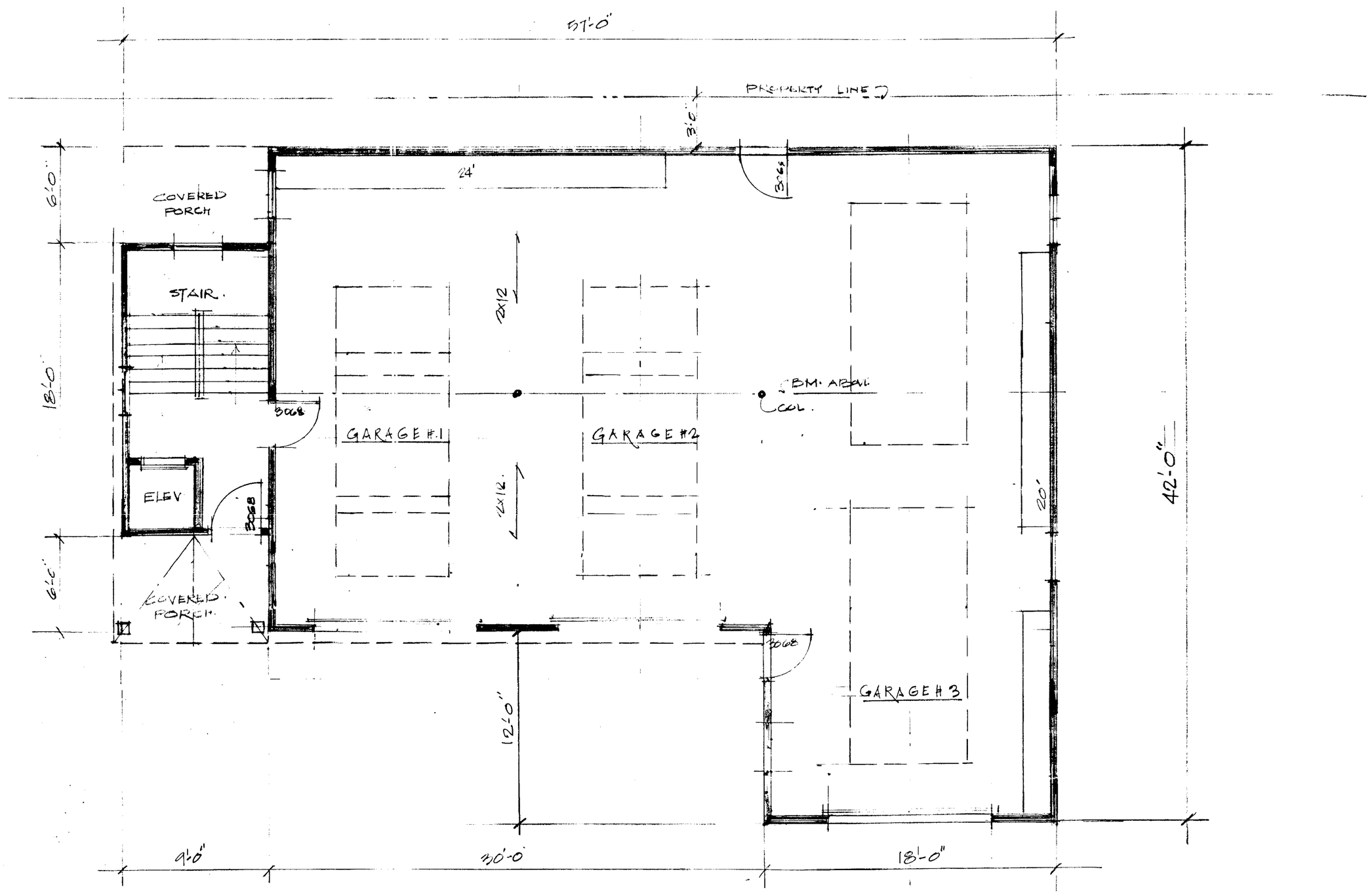


SECTION: A-A SCALE: 1/4"=1'-0"

CROSS-SECTION

DETACHED GARAGE

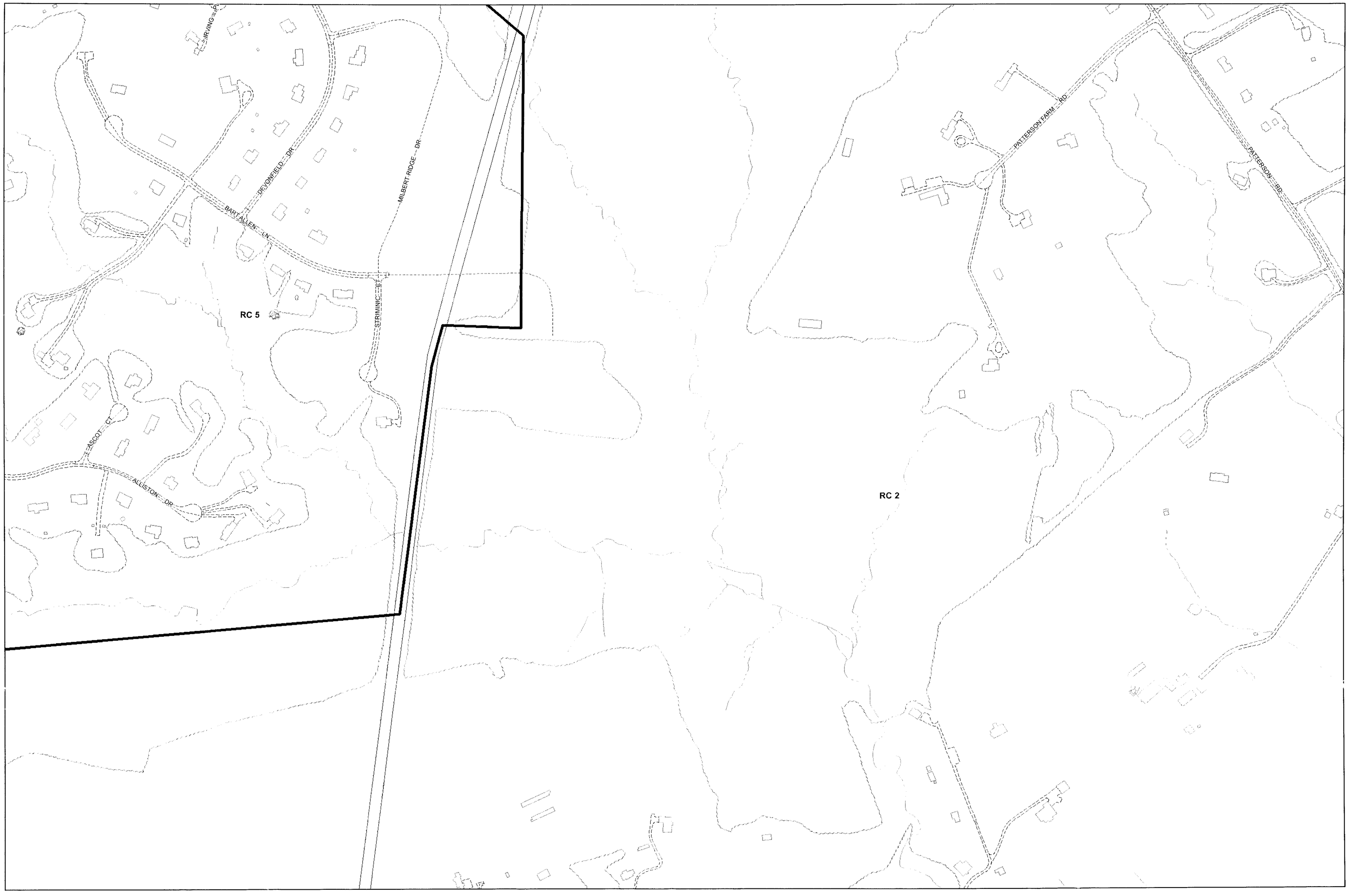
CBA
RET SC



FIRST FLOOR PLAN SCALE: 1/4" = 1'-0"

DETACHED GARAGE

CBA
RET
SB



Plan Sheet: *044C2*

Note:
The zoning depicted in this application incorporates the actions associated with County Council Bills 82-04, 83-04, 84-04, 85-04, 86-04, 87-04, 88-04, and 89-04 adopted by the County Council on August 31, 2004. The action associated with County Council Bill 130-04 adopted on December 6, 2004 is also depicted. In addition, County Board of Appeals actions from MC 05-01, MC 05-02, MC 05-03, and MC 05-04 on February 9, 2005 are represented in this application.

Legend

Zoning — Streams — Vegetation
Buildings — Roads — Rail Lines

Baltimore County
Office of Planning and Zoning
Official Zoning Map

044A1	044B1	044C1	045A1	045B1
044A2	044B2	044C2	045A2	045B2
044A3	044B3	044C3	045A3	045B3

Scale

1" = 200'

0 100 200 400 Feet

1

Data Sources:
Planametric Data - Baltimore County
OIT/GIS Services Unit
1:2400, from 1995/96 photography
Zoning - Baltimore County Office of Planning
1:2400, 2004

CBA Petitioner's Exhibit No. 1

GAA PLAT No. 8

4803 Bart Allen Lane

Produced by Baltimore County GIS Services Unit
Date: June 25, 2007
Date of Imagery: April 2005
Date of Topo: 1997

1 inch equals 50 feet

The Cadastral Information on this Plot was compiled from existing deed information. This Information is not to be considered authoritative. The Survey Information was not field checked and Certified by a licensed land surveyor.

N W E S