Date

By

NECEIVED FOR FILING

Date

IN RE: PETITION FOR SPECIAL HEARING

E/S North Stuart Street, 275' NW c/line of Franklin Avenue

(503A North Stuart Street)

15th Election District 7th Council District

Kevin Cook, et ux Petitioners BEFORE THE

* ZONING COMMISSIONER

* FOR

* BALTIMORE COUNTY

* Case No. 07-365-SPH

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Hearing filed by the owners of the subject property, Kevin Cook, and his wife, Lindsay Cook, through their attorney, Jennifer R. Busse, Esquire, of Whiteford, Taylor and Preston, LLP. The Petitioners request a special hearing to approve a waiver, pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) and Section 32-4-409(c) of the Baltimore County Code (B.C.C.), development regulations, to permit access to an existing lot (Lot 47, Lands of William Bolton) through an existing right-of-way in lieu of the required in-fee strip. The subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the request were Kevin and Lindsay Cook, property owners, Mike Liberatore, of Crystal Construction, in his capacity as their builder, and Adam D. Baker, Esquire and Jennifer R. Busse, Esquire, attorneys for Petitioners. There were no Protestants or other interested persons present.

Testimony and evidence offered revealed that the subject property is a triangular shaped unimproved lot (Lot 47) consisting of 1.00 acre, more or less, zoned D.R.5.5. The property is located on the east side of North Stuart Street, north of Franklin Avenue, in the Essex area of the

County. The Petitioners are longtime residents of the area and are the current owners of Lot 47 acquiring same in 2005, which appears on a Plat of the Subdivision of the property of William P. Bolton, recorded among the Land Records of Baltimore County in Plat Book 13, Folio 35, and introduced as Petitioners' Exhibit 2 at the hearing. Since 2005, Petitioners have been attempting to acquire a building permit to construct a two-story, single-family dwelling on the lot. Due to the fact that access to the property, approximately 160 feet from Stuart Street, is by way of a ten (10) foot alley owned by Baltimore County, the Department of Public Works informed the Petitioners that a special hearing would be necessary in order for them to acquire a building permit. The Petitioners would like to build a private driveway having 10 feet of paving from North Stuart Street to the proposed dwelling using the County-owned strip of land.

The Petitioners have requested a waiver from the requirements of B.C.C. Section 32-4-409 to permit access to Stuart Street through the existing right-of-way. Section 32-4-409(c) of the B.C.C. vests the Hearing Officer with the authority to grant such a waiver. Section 32-4-409(c) provides that where a right-of-way has been established prior to the submission of a development plan, the Hearing Officer may approve access to the local street through the existing right-of-way instead of through an in-fee strip. Section 32-4-107(a) provides that at the request of a department director, the Hearing Officer may grant a waiver from Subtitles 3, 4, and 5 of the County development regulations if the Hearing Officer finds that:

- (i) 1. The size, scope, and nature of a proposed development does not justify strict compliance with this title;
 - 2. A waiver would be within the scope, purpose, and intent of this title; and
 - 3. All other county laws and regulations have been complied with; or
- (ii) Compliance with this title would cause unnecessary hardship.

Mr. Baker argued that the ten foot wide alley is shown on both the Plat of the Subdivision of the property of William P. Bolton and the Revised Plat of the property of the Taylor Land Company, recorded among the Land Records of Baltimore County in Plat Book 9, Folios 74 and 75, and introduced as Petitioners' Exhibit 3 at the hearing. By Deed, dated November 18, 1987, all of these avenues, streets, roads, lanes, sidewalks, alleys, or paths shown on the Taylor Land Company Plat, which were reserved and not already conveyed, were transferred to Baltimore County. Included in this conveyance was the *ten-foot wide alley* that the Petitioners are seeking to use for access to the property. Said Deed was introduced as Petitioners' Exhibit 4 at the hearing. The Petitioners also produced a title certification, prepared by a title attorney admitted to the Maryland Bar. The title certification verifies the County's ownership interest in the alley and was admitted as Petitioners' Exhibit 5.

Mr. Baker noted that prior to filing the Petition for the Special Hearing, the Petitioners explored alternative methods of accessing their property. They approached Jim Collins, whose property fronts on Franklin Avenue, and inquired whether he would be amenable to the Petitioners accessing their property through his property. They offered him \$10,000, but ultimately this was refused. In any event, this alternative would have produced a much longer driveway than that provided by the alley and would have required the Petitioners to cross the 100-year flood plain to the rear of Mr. Collins's property.

Dennis Kennedy and Dave Thomas, from the Department of Public Works, appeared at the hearing in opposition to the waiver and voiced several concerns. Specifically, the Department of Public Works contended that should the Petitioners be permitted to use the alley as a means of access to the property, the County should not bear the burden of maintaining the alley solely for the benefit of the Petitioners. Additionally, should the Petitioners be granted

permission to use the alley, the County may, from time to time, need to access the alley to perform maintenance on a storm drain line which the County owns that runs parallel to the alley. Both of these are indeed valid concerns and they will be addressed accordingly.

The instant case is quite similar to a recent case heard and decided by the Deputy Zoning Commissioner in Case No. 06-289-SPH in which a property owner sought to construct a driveway and install water and sewer lines over a county owned strip of land after he had subdivided his property into two parcels. In that case, John V. Murphy ultimately denied the requested use of the County's land pointing out that it would be another thing "if there were some lonely land locked lot" involved. The instant scenario is distinguishable, as the Petitioners do not have an alternative means of accessing their property, their lot is a lonely land locked lot, and they did not create the need to use the alley. Their property appears as a buildable lot on a plat of record. Additionally, the Petitioners are not requesting to install water and sewer connections in the alley. They have already acquired water and sewer connections via a private easement over an adjacent property.

Common sense dictates that the alley may be used and should be used by the Petitioners to access their property. The Property is a lot of record that appears on the Plat of the Property of William P. Bolton along with the adjacent ten-foot alley. The alley is a public right-of-way owned by Baltimore County, pursuant to the November 18, 1987 deed transferring all of the remaining right-of-ways shown on the Plat of the Property of the Taylor Land Company to the County. As a public right-of-way owned by Baltimore County, the Petitioners, like any other citizen, have the right to use the alley to access their property. The use of the alley as a means of accessing the property is consistent with Baltimore County's policy of not landlocking buildable lots.

As indicated previously, the Department of Public Works voiced several concerns over the Petitioners' use of the alley. These concerns were addressed at the hearing. The Petitioners agreed that their rights concerning the alley are subordinate to those of the County. The Petitioners indicated that they were willing to construct and maintain the driveway over the tenfoot alley by themselves, with the full knowledge that the responsibility of maintaining the alley is theirs alone. The County certainly may use the ten-foot alley, if necessary, to access the storm water sewer line for maintenance and repair, as needed. The Petitioners have no objection to this understanding. The Petitioners have also agreed to memorialize this understanding in a Right-of-Way Improvement Declaration that is to be recorded among the Land Records of Baltimore County. It should also be noted that the granting of this waiver to use the alley to access the property in no way sets a precedent regarding the use of public alleys for similar purposes. The circumstances in this instance are quite unique and are not universally transferable to other cases.

After due consideration of the testimony and evidence presented, I am persuaded to grant the requested relief. Other than the Department of Public Works' position of not supporting the use of alleys as the only means of ingress/egress, there were no adverse comments submitted by any County reviewing agency and no one appeared in opposition to the request. The Office of Planning, who makes recommendations on waivers (B.C.C. Section 32-4-409[k]), did not oppose this request. In my judgment, this waiver will not be detrimental to the health, safety, or general welfare of the locale.

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

THEREFORE, IT IS ORDERED by this Zoning Commissioner for Baltimore County, day of April, 2007, that the Special Hearing, pursuant to Section 500.7 of the

 Baltimore County Zoning Regulations (B.C.Z.R.) and Section 32-4-409(c) of the Baltimore County Code (B.C.C.), development regulations, to permit access to an existing lot (Lot 47, Lands of William Bolton) through an existing right-of-way in lieu of the required in-fee strip, be and is hereby GRANTED, subject to the following conditions:

- 1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, the Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded; and
- 2) The Petitioners' rights concerning the alley are subordinate to those of Baltimore County; and
- 3) The Petitioners shall have the responsibility of maintaining the driveway constructed over the alley; and
- 4) The Petitioners agree that should the County need to use the alley when performing maintenance on the storm drain facility that runs parallel to the alley, such use will be permitted; and
- 5) The Petitioners shall, within 90 days of the issuance of this Order, submit an executed Right-of-Way Improvement Declaration (See copy attached) to the Land Records Office of Baltimore County for recordation, and
- 6) The decision in this case is not a legal precedent that may be cited as such in any other zoning/development case involving the use of access to the local street or collector street through an existing right-of-way (alley) instead of an in-fee strip.

Any appeal of this Order shall be taken in accordance with Baltimore County Code

Sections 32-3-401.

WJW:dlw

WHELMANI. WISEMAN III
Zoning Commissioner for

Baltimore County



JAMES T. SMITH, JR. County Executive

April 26, 2007

WILLIAM J. WISEMAN III

Zoning Commissioner

Jennifer R. Busse, Esquire
Adam Baker, Esquire
Whiteford, Taylor & Preston, L.L.P.
210 W. Pennsylvania Avenue
Towson, MD 21204

RE: PETITION FOR SPECIAL HEARING

E/S Stuart Avenue, 275' NW c/line of Franklin Avenue (503A Stuart Avenue)

15th Election District - 7th Council District

Kevin Cook, et ux – Petitioners

Case No. 07-365-SPH

Dear Ms. Busse and Mr. Baker:

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

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

ILLIAM J. WISEMAN, III

Zoning Commissioner for Baltimore County

Very truly your

WJW:dlw

c: Kevin and Lindsay Cook, 412 Dorsey Avenue, Baltimore, Md. 21221 Mike Liberatore, 801 St. Anne Drive, Street, Md. 21154 People's Counsel; Case File



Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at	503A Stuart Ave	nue
	presently zoned	

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 Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

Please see attached

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

I, or we, agree to pay expenses of above Special Hearing, 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:

Legal Owner(s):

Contract Purchaser/Lessee:	† L		Legal Owner(s):		
N/A	;		Kevin Cook		
Name - Type or Print	* · · · · · · · · · · · · · · · · · · ·	Name - T	ype or Print		
Signature	! :	•	Signature Lindsay Cook		
Address	Telephone No.	-	Name - Type or Print Coul-		
City	Zìp Code	-	Signature		
Attorney For Petitioner:	† •		412 Dorsey Avenue		
	ŧ		Address		Telephone No.
Jennifer R. Busse, Esq.	· · · · · · · · · · · · · · · · · · ·	_	Baltimore, Maryland 21221		
Name - Type or Print	l	City	State	2	Cip Code
) 1		Representative to be Cont	tacted:	
Signature		-			
Whiteford, Taylor & Preston L.L.P.	· •	· 	Jennifer R. Busse, Esq.		
Company		_	Name	Alle Flace	440 022 2077
210 W. Pennsylvania Avenue, 4th Floor		_	210 W. Pennsylvania Avenue,	4th Floor	<u> </u>
Address	Telephone No.		Address		Telephone No.
Towson, Maryland 21204		_	Towson, Maryland 21204	Chala	Zin Codo
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	: •		ESTIMATED LENGTH OF HEARING _		-
Case No. 07-365-SPH	,		UNAVAELABLE FOR HEARING		
		Reviewed	By Date	2/12	107
REV 9/15/98	Lewis San Carlo Barrier				
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Attachment to Petition for Special Hearing Lot 47 Stuart Avenue To Be Known as 503A Stuart Avenue

Petition for a Special Hearing for a waiver from Section 32-4-409(c) of the Baltimore County code development regulations to permit access to an existing lot (Lot 47, Lands of Wm. Bolton) through an existing right-of-way in lieu of the required in-fee strip.

ZONING DESCRITPION FOR 503A STUART AVENUE, BALTIMORE MARYLAND 21221

Beginning at a point on the east side of Stuart Avenue which is fifty (50) feet wide at the distance of two-hundred and seventy-five (275) feet northeast of the centerline of the nearest improved intersecting street Franklin Avenue which is fifty (50) feet wide. Being Lot No. 47, Block N, Section C, Bolton Plat of Essex, which Plat is recorded among the Land Records of Baltimore County in Plat Book 13, Folio 35, containing 1.00 acres. Also known as 503A Stuart Avenue, Baltimore, Maryland 21221 and located in the 15th Election District, 7th Councilmanic District.

Item # 365

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 heating in Towson, Maryland on the property identified herein as follows:

Case: #07-365-SPH
503A Stuart Avenue, 275 feet n/west of centerline E/side of Stuart Avenue

E/side of Stuart Avenue

15th Election District - 7th Councilmanic District

Legal Owner(s): Keven & Lindsay Cook

Special Hearing: for a waiver from Section 32-4-409 (c) of the Baltimore County Code Development Regulations to permit access to an existing lot (Lot 47, Lands of Wm. Bolton) through an existing right-of-way in lieu of the required in-fee strip.

Hearing: Wednesday, April 4, 2007 at 9:00 a.m. In Room 106, County Office Building, 111 West Chesa-peake 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/3/697 March 20.

-, 2007

FY, that the annexed advertisement was published THIS IS TO CERT!

newspaper published in Baltimore County, Md., in the following weekly

successive weeks, the first publication appearing each of once in ö

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North County News

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LEGAL ADVERTISING

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CASHIER'S WALIDATION	
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BUDGET & FINANCE INFOUS RECEIPT AMOUNTY, MARYL AGENCY YELL	
BALTIMOR OFFICE OF B MISCELLA PROM: FOR. PATE TOR. WHITE - CASHIER	-

CERTIFICATE OF POSTING

RE: Case No.: 07-365-SPA

Petitioner/Developer: XEVIN +

LINDSAY COOK

Date of Hearing/Closing: 4-4-07

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

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

Ladies and Gentlemen:

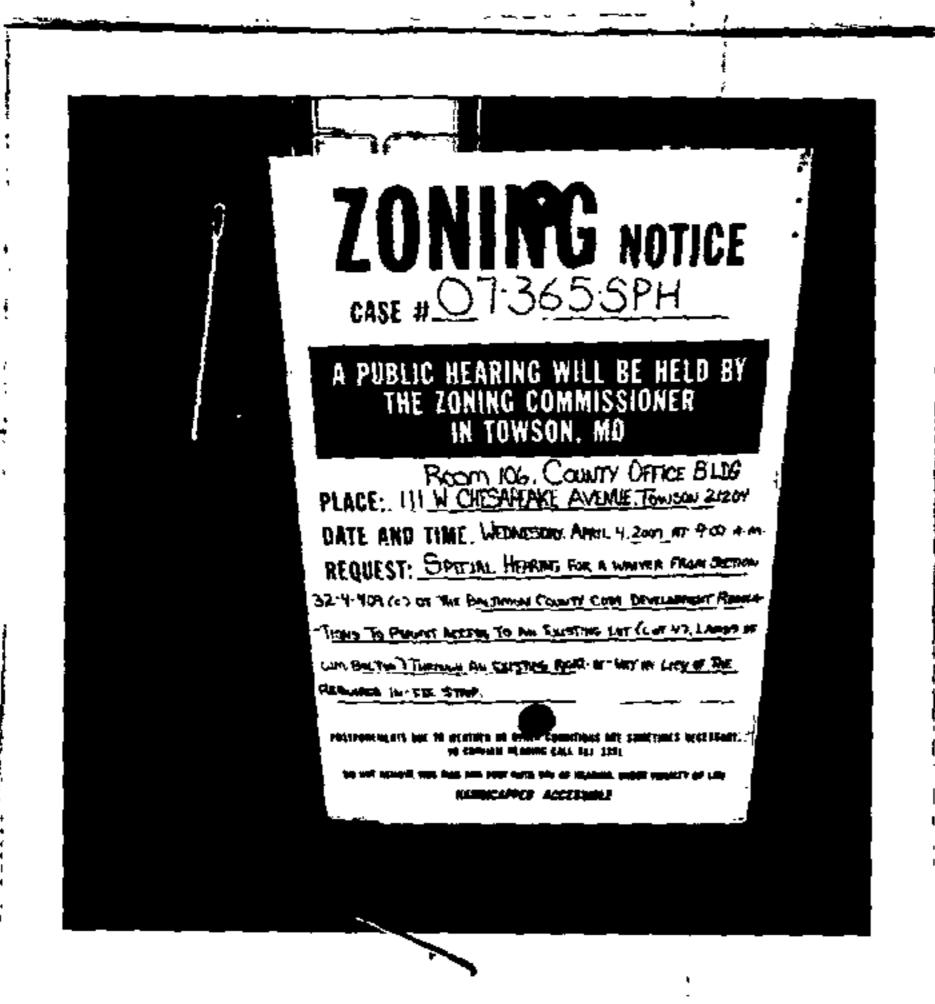
This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at:

503 A STUART AVENUE

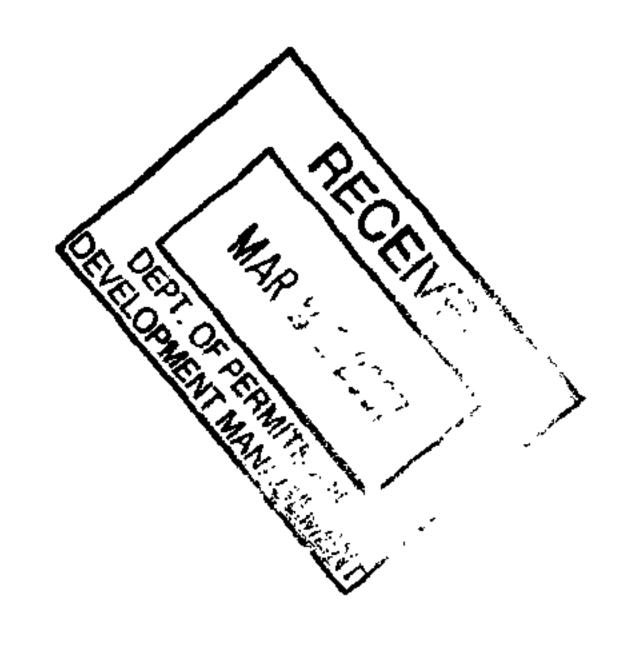
The sign(s) were posted on

3-18-07 (Month, Day, Year)

Sincerely,



Divert Black	3-19-0
(Signature of Sign Poster)	(Date)
SSG Robert Black	· ·
(Print Name)	` .
1508 Leslie Road	· ;
(Address)	- 1
Dundalk, Maryland 212	22
(City, State, Zip Code	e)
(410) 282-7940	
(Telephone Number)	



RECEIVED

MAR 2 1 2007

DEPT. OF PERMITS AND DEVELOPMENT MANAGEMENT



JAMES T. SMITH, JR. County Executive

March 2, 2007
TIMOTHY M. KOTROCO, Director
Department of Permits and
Development Management

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: 07-365-SPH

503A Stuart Avenue

E/side of Stuart Avenue, 275 feet n/west of centerline of Franklin Avenue

15th Election District – 7th Councilmanic District

Legal Owners: Kevin & Lindsay Cook

Special Hearing for a waiver from Section 32-4-409 (c) of the Baltimore County Code Development Regulations to permit access to an existing lot (Lot 47, Lands of Wm. Bolton) through an existing right-of-way in lieu of the required in-fee strip.

Hearing: Wednesday, April 4, 2007 at 9:00 a.m. in Room 106, County Office Building, 111 West Chesapeake Avenue, Towson 21204

Timothy Kotroco
Director

TK:klm

C: Jennifer Busse, 210 W. Pennsylvania Avenue, 4th Fl., Towson 21204 Kevin & Lindsay Cook, 412 Dorsey Avenue, Baltimore 21221

NOTES: (1) THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, MARCH 20, 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 20, 2007 Issue - Jeffersonian

Please forward billing to:

Adam Baker

Whiteford, Taylor & Preston

210 W. Pennsylvania Avenue, Ste. 400

Towson, MD 21204

410-832-2052

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: 07-365-SPH

503A Stuart Avenue

E/side of Stuart Avenue, 275 feet n/west of centerline of Franklin Avenue

15th Election District – 7th Councilmanic District

Legal Owners: Kevin & Lindsay Cook

Special Hearing for a waiver from Section 32-4-409 (c) of the Baltimore County Code Development Regulations to permit access to an existing lot (Lot 47, Lands of Wm. Bolton) through an existing right-of-way in lieu of the required in-fee strip.

Hearing: Wednesday, April 4, 2007 at 9:00 a.m. in Room 106, County Office Building,

1/11 West Chesapeake Avenue, Towson 21204

WILLIAM J. WISEMAN III

ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ZONING COMMISSIONER'S

OFFICE AT 410-887-4386.

(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

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

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

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

For Newspaper Advertising:
Item Number or Case Number: 07-365-SPH
Petitioner: Kern & Lindon, Cook
Address or Location: 5034 STUART AVE, BANTMONE, MD 21221
PLEASE FORWARD ADVERTISING BILL TO:
Name: Arm Baron
Address: Lithrefus Taylor + Preston UP
210 W. PENNSYLVANIA AVE JUITE 400
10250, MD 2204
Telephone Number: 40.832.2052



JAMES T. SMITH, JR. County Executive

TIMOTHY M. KOTROCO, Director

Department of Permits and

Development Management

March 27, 2007

Jennifer R. Busse, Esquire Whiteford, Taylor & Preston, LLP 210 W. Pennsylvania Avenue, 4th Floor Towson, Maryland 21204

Dear Ms. Busse:

RE: Case Number: 07-365-SPH, 503A Stuart Avenue

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on February 12, 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.

Supervisor, Zoning Review

U. Callibal)

WCR:amf

Enclosures

c: People's Counsel Kevin Cook Lindsay Cook 412 Dorsey Avenue Baltimore 21221

ate A-22-01

RIGHT-OF-WAY IMPROVEMENT DECLARATION

	THIS RIGHT-	OF-WAY	/ IMP	ROVEM	1ENT	DECL	ARA	TION	("De	claration	n") is	made
this _	day of	و	2007,	by KEV	'IN J.	COOK	and	LIND	SAY	COOK	(collec	ctively
referre	d to as the "Dec	larant").		1								

RECITALS

- A. The Declarant is the fee simple owner of Lot No. 47 (the "Lot") as shown on the Plat entitled "Subdivision of the Property of William P. Bolton", recorded among the Land Records of Baltimore County, Maryland in Plat Book C.H.K. 13, folio 35, and attached hereto as Exhibit "A"; for title see the Deed dated May 17, 2005 and recorded among the Land Records of Baltimore County, Maryland in Liber 22022, folio 97.
- B. The Declarant desires and intends to construct and install, at no cost to Baltimore County (the "County"), a driveway (the "Driveway") over the 10' wide alley (the "Right-of-Way") adjacent to the Lot, as shown on the Plat entitled "Subdivision of the Property of William P. Bolton", recorded among the Land Records of Baltimore County, Maryland in Plat Book C.H.K. 13, folio 35.
- C. The Right-of-Way is owned by Baltimore County and is the Declarant's sole means of accessing the Lot.
 - D. The Declarant's interest in the Right-of-Way is subservient to that of the County.
 - E. The Declarant's rights concerning the Right-of-Way are the result of a zoning case, 07-365-SPH, in which the Zoning Commissioner granted the Declarant access to the Lot over the Right-of-Way. In consideration for the right to utilize the Right-of-Way as a means of access to the Lot, the Declarant hereby agrees to the terms and conditions set forth in this Declaration.

NOW, THEREFORE, it is covenanted and agreed for the benefit of the Lot, as herein stated, the Declarant confirms their understandings and obligations as follows:

1. Improvements.

a. <u>Construction of Driveway.</u> The Declarant shall install at their own expense the Driveway over the existing Right-of-Way.

2. Maintenance of Driveway Area.

a. <u>Types of Maintenance</u>. For purposes of this Declaration, the following terms have the meaning indicated. With regard to the upkeep of the Driveway Area for the purposes indicated herein, "Routine Maintenance" means moving of grass shoulders, clearing of

 leaves and debris and similar activities and "Extraordinary Maintenance" means all maintenance activities (except for Routine Maintenance) which reasonably require the expenditure of funds to accomplish, including removal of snow and ice from the easement area when the circumstances reasonably warrant the expenditure of funds to do so. An example (without limitation) of an item of Extraordinary Maintenance is the repair or replacement of the driving surface within the Driveway Area.

- b. Responsibility for Routine Maintenance. The Declarant shall be responsible for Routine Maintenance of the entire Driveway Area.
- c. <u>Authorization of Extraordinary Maintenance.</u> Extraordinary Maintenance may be performed by any party so elected by the Declarant.
- d. <u>Cost of Extraordinary Maintenance</u>. All costs and expenses for Extraordinary Maintenance shall be the sole responsibility of the Declarant.

3. Access for Baltimore County Department of Public Works and U.S. Postal Service.

- a. <u>Access</u>. As an inducement to Baltimore County to extend their service over the Driveway Area, Baltimore County and its agents are hereby granted access over the Driveway Area to perform the above-described services in Baltimore County's sole discretion and at its option. This access shall not imply any obligation on the part of Baltimore County to exercise its option if it does not so choose.
- b. <u>Indemnification</u>. The Declarant hereby agrees to indemnify and defend Baltimore County, Maryland, and its respective agents and holds all such parties harmless from any and all claims, actions, damages, connection with the loss of life, personal injury or damage to property, including but not limited to physical damage to the surface of the Driveway Area, arising from or out of the use of the Driveway Area by agents of Baltimore County in the reasonable exercise of its duties.

4. Miscellaneous.

- a. <u>Binding Affect</u>. This Declaration and the Right-of-Way shall be binding upon and shall inure to the benefit of the Declarant, their respective personal representatives, successors and assigns.
- b. <u>Gender and Number</u>. As used in this Declaration, the singular shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.
- c. <u>Right to Petition County.</u> Declarant shall retain a right to petition the County to close the alley under the road closing procedures and purchase the right-of-way under the usual County policies and procedures.

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d. <u>Captions</u>. The captions of this Declaration are inserted for convenience only and do not constitute a substantive portion of this Declaration.

IN WITNESS WHEREOF, this Declaration has been duly executed as of the day and year first above written.

WITNESS/ATTEST:	•			
			DECLARANT: KEVIN J. COOK	
	· ·	Ву:		(SEAL
	; i		DECLARANT: LINDSAY COOK	
	! !	Ву:		(SEAL

STATE OF MARYLAND, COUNTY OF BALTIMORE, TO WIT:

the subscriber, a Notary Public of the S Cook, known to me, or satisfactorily pa	State of Maryland, personally appeared Kevin and Lindsay roven, to be the persons whose names are subscribed to the that they are the Declarant hereof, and that the same is
AS WITNESS my hand	and Notarial Seal the day and year first above written.
	Notary Public
MY COMMISSION EXPIRES:	
•	instrument has been prepared by or under the supervision admitted to the practice before the Court of Appeals of
	Adam D. Baker
381539	:

Date ACCUIVED FOR FILING By ISS 26-07

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

March 1, 2007

ATTENTION: Zoning Review Planners

Distribution Meeting Of: February 26,2007

365

Item Number: 363 through 373

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



BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO:

Timothy M. Kotroco, Director

DATE: March 2, 2007

Department of Permits & Development

Management

0

FROM:

Dennis A. Kennedy, Supervisor

Bureau of Development Plans Review

SUBJECT:

Zoning Advisory Committee Meeting

For March 5, 2007 Item No. 07-365

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

Because of the complex nature of this request, and other circumstances we have asked the County Law Office for an opinion and guidance. We ask for a continuance until we hear from them. If you deny the continuance, we recommend against the use of the alley for access for the following reasons:

- > Ownership of the alley has not been determined.
- The minimum driveway width for a panhandle lot is 12-feet. While this could be reduced to 8-feet, it has not been shown that an 8-feet-wide driveway can be built in the 10-foot-wide alley without affecting the adjacent properties.
- The property owners adjacent to the alley may claim ownership by adverse possession.

DAK:CEN:clw

cc: File

ZAC-ITEM NO 07-365-03022007.doc

BALTIMORE COUNTY, MARYLAND

INTER OFFICE CORRESPONDENCE

10 Went

TO:

Timothy Kotroco, Director,

Permits & Development Management

ATTN:

Kristen Matthews

MS 1105

FROM:

Edward C. Adams, Jr., Director,

Department of Public Works

DATE:

April 5, 2007

SUBJECT: Case No. 07-365-SPH

Waiver to allow use of existing right-of-way 503A Stuart Avenue (Permit No. B634242)

Section 32-4-409(c) of the Baltimore County Code allows the Hearing Officer to approve access to the local street or collector street through an existing right-of-way instead of an in-fee strip. In this case, however, the existing right-of-way is an alley (defined in Section 32-4-101(d)). This department does not support use of alleys as the only means of ingress/egress to new development, and therefore recommends that the subject waiver not be approved.

The following alternative would be acceptable: Petition the County to close the alley under the road closing process, so that the right-of-way could be offered for sale as surplus property. The property could then be purchased as private right-of-way, although it may need to be offered for sale to the adjacent property owners first under the usual County policies and procedures for road closings. This department is willing to recommend reduction of a paved driveway width to ten feet to fit within the future private right-of-way in this case. A suitable drainage & utility easement for the existing storm drain pipe would need to be reserved for the County storm drain.

ECA/DLT/s

CC: William J. Wiseman, III, Zoning Commissioner; Dennis Kennedy, Chief, Development Plan Review Bureau; Shirley Murphy, Chief, Bureau of Land Acquisition (attn.: Steve Verch); Adam Baker, Whiteford Taylor & Preston.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO:

Timothy M. Kotroco, Director

DATE: April 3, 2007

Department of Permits and Development Management

FROM:

Arnold F. 'Pat' Keller, III

Director, Office of Planning

SUBJECT: Zoning Advisory Petition(s): Case(s) 07-365- Special Hearing

The Office of Planning has reviewed the above referenced case(s) and does not oppose the petitioner's request to utilize a pre-existing right-of-way for access to 503A N. Stuart Avenue in lieu of in-fee access.

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

Prepared By:

Division Chief:

APR - 4 2007

CM/LL

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



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

Maryland Department of Transportation

Date: MARCH 5, 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. 7-365-5PH

503A STUART AVENUE

SPECIAL HEARING

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. 7-365-5P.H.

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,

Steven D. Foster, Chief

Engineering Access Permits

Division

SDF/MB

RE: PETITION FOR SPECIAL HEARING
503A Stuart Avenue; E/S Stuart Avenue,
275' NW c/line Franklin Avenue
15th Election & 7th Councilmanic Districts
Legal Owner(s): Kevin & Lindsay Cook
Petitioner(s)

BEFORE THE

* ZONING COMMISSIONER

FOR

BALTIMORE COUNTY

97-365-SPH

ENTRY OF APPEARANCE

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

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

CAROLE S. DEMILIO

Deputy People's Counsel

Old Courthouse, Room 47

400 Washington Avenue

Towson, MD 21204

(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of February, 2007, a copy of the foregoing Entry of Appearance was mailed to, Jennifer R. Busse, Esquire, Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Towson, MD 21204, Attorney for Petitioner(s).

RECEIVED

FEB 2 7 2007

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

Per.....

PLEASE PRINT CLEARLY

CASE NAME COOK Kewin & Windsay CASE NUMBER 07-265-5PH DATE 440707

PETITIONER'S SIGN-IN SHEET

Case No.: 503 A STUART AUE 07-365-SPH

Exhibit Sheet

Petitioner/Developer

Protestant

 _		
No. 1	Sitz RAN	
No. 2	PLAT OF Williams BOLTON	
NTo 2		
No. 3	PLAT of TAYLOR CAND Co.	
No. 4	Tit/2 DEED 11/18/87	
No. 5	Title CERTIFICATION	
No. 6	Youngs-Permission/ Support	
No. 7	Oldewurtel-Permisson/ Support	
No. 8		
No. 9		
No. 10		
No. 11		
No. 12		

***679** 301 Md. 679

484 A.2d 630

Court of Appeals of Maryland.

Kirk A. BOUCHER et ux. Eugene Blessing BOYER et al.

No. 61, Sept. Term, 1983. Dec. 10, 1984.

Owners of two lots binding on a street instituted a declaratory judgment action against owners of another lot abutting the street, urging trial court to declare them fee simple owners of the street and requesting that owners of the third lot be permanently enjoined from using the street. The Circuit Court, Frederick County, Samuel W. Barrick, J., declared that owners of the first two lots were each fee simple owners of one-half of the street and that owners of third lot had no easement over such street, and owners of the third lot filed an appeal to the Court of Special Appeals. Subsequently, the Court of Appeals, Cole, J., granted certiorari and held that: (1) original grantor's conveyance of two lots to respective purchasers vested fee simple title in each lot owner to center of street to which each lot bound, and (2) owners of third lot had an implied easement over street abutting their property by reference in their deed to plat depicting such street as a right-of-way to their property.

Judgment of the Circuit Court reversed and case remanded.

West Headnotes

Boundaries \$\infty\$ 20(3) [1]

59 ----

59I Description

59k19 Roads, Ways, and Public Grounds

59k20 Public Ways

59k20(3) Conveyance by State, Municipality, or Owner of Fee of Bed of Highway.

Statute providing that any deed or other instrument which conveys land binding on any street or highway shall be construed to pass to the devisee all right and title of devisor to center line of the street or highway, except in certain circumstances, extends common-law presumption that title to center of a binding street passes to the grantee. Code 1957, Art. 21, § 5-114.

Boundaries \Leftrightarrow 20(3) [2]

59 ----

59I Description

59k19 Roads, Ways, and Public Grounds

59k20 Public Ways

59k20(3) Conveyance by State, Municipality, or Owner of Fee of Bed of Highway.

Conveyance of two lots by original grantors to respective purchasers of such lots vested fee simple title in each lot owner to the center of street which bounded the lots at time of conveyance, in accordance with statute, where original grantors had held the property in fee simple, and where nothing in the deed indicated that original grantors expressly reserved title to the street. Code 1957, Art. 21, § 5-114.

Easements ©== 1 [3]

141 ----

1411 Creation, Existence, and Termination 141k1 Nature and Elements of Right.

An "easement" is a nonpossessory interest in real property of another and arises through grant or implication.

Easements ©== 15.1 [4]

141 ----

1411 Creation, Existence, and Termination 141k15 Implication 141k15.1 In General.

(Formerly 141k15)

Easements by implication may be created in a variety of ways, such as by prescription, necessity, filing of plats, estoppel, and implied grant or reservation where a quasi-easement has existed while the two tracts are one.

Easements © 15.1 [5]

141 ----

141I Creation, Existence, and Termination 141k15 Implication 141k15.1 In General.

(Formerly 141k15)

An implied easement is based on the presumed intention of the parties at the time of the grant or reservation disclosed from surrounding as

circumstances rather than on the language of the deed.

[6] Easements \$\infty\$ 36(1)

141 ----

141I Creation, Existence, and Termination 141k36 Evidence 141k36(1) Presumptions and Burden of Proof.

Deed through which landowners obtained land, which referred to entire original tract, including two lots which had been conveyed previously by original grantor, and which contained an exceptions clause expressly excluding such lots from the grant by reference to a plat which contained a right-of-way, created a rebuttable presumption that the parties intended to incorporate the right-of-way in the transaction.

[7] Easements \$\infty\$=36(1)

141 ----

141I Creation, Existence, and Termination
141k36 Evidence
141k36(1) Presumptions and Burden of Proof.

A deed that is silent as to a right-of-way but refers to a plat that establishes such a right-of-way creates a rebuttable presumption that the parties intended to incorporate the right-of-way in the transaction, and a party may therefore point to the existence of a plat to establish that the parties intended that the right-of-way depicted in the plat be used by the grantee.

[8] Easements \$\infty\$ 17(4)

141 ----

141I Creation, Existence, and Termination
141k15 Implication
141k17 Ways in General
141k17(4) Sale of Platted Land in General.

Application of plat-reference theory of implied easements results in conclusion that grantees whose deed referred to a plat as a means of describing boundaries of their property, which plat established a right-of-way, gave grantees an easement over street which was shown on plat as a right-of-way.

[9] Easements \$\infty\$ 36(1)

141 ----

141I Creation, Existence, and Termination 141k36 Evidence 141k36(1) Presumptions and Burden of Proof. Existence of a right-of-way on a plat creates a rebuttable presumption that the parties intended to create an easement at time of a division of the property.

[10] Easements \$\infty\$ 17(4)

141 ----

141I Creation, Existence, and Termination 141k15 Implication 141k17 Ways in General 141k17(4) Sale of Platted Land in General.

Where all grantees from common grantor purchased their property with reference to same plat, which contained a right-of-way, and where all lots granted were either binding or abutting on street established as a right-of-way, this indicated that the grantors intended that each grantee have at least an easement over the street, and fact that owners of two lots received fee simple title to the center of the street did not detract from such intent.

[11] Easements \$\infty\$ 17(4)

141 ----

141I Creation, Existence, and Termination 141k15 Implication 141k17 Ways in General 141k17(4) Sale of Platted Land in General.

Where all grantees from common grantor purchased their property with reference to same plat, which plat established a right-of-way over a street, original grantors intended that subsequent grantees have an easement over that street.

[12] Boundaries \$\infty\$=20(1)

59 ----

59I Description 59k19 Roads, Ways, and Public Grounds 59k20 Public Ways 59k20(1) In General.

Conveyance of land from grantors to grantees could not convey title to center line of street abutting the land conveyed, because the tract did *679 not coextensively bind such street.

[13] Boundaries \$\iins20(3)\$

59 ----

59I Description
59k19 Roads, Ways, and Public Grounds

59k20 Public Ways 59k20(3) Conveyance by State, Municipality, or Owner of Fee of Bed of Highway.

Purpose of statute providing that any deed or other instrument which conveys land binding on any street or highway shall be construed to pass to devisee or donee or grantee all rights, title, and interest of devisor, donor or grantor to center line of the street or highway is to assure landowners that they will have access to streets bounding on their land by granting to them title to the center lines of street while recognizing an easement in the other half of the street. Code 1957, Art. 21, § 5-114.

[14] Easements ©== 17(4)

141 ----

141I Creation, Existence, and Termination 141k15 Implication 141k17 Ways in General 141k17(4) Sale of Platted Land in General

Implied easement by plat reference has purpose of assuring landowners that they will have access to streets abutting their land by creating an easement to the whole of the street.

[15] Easements © 77(4)

141 ----

141I Creation, Existence, and Termination 141k15 Implication 141k17 Ways in General 141k17(4) Sale of Platted Land in General.

Statute providing that any deed or other instrument which conveys land binding on a street or highway should be construed to pass to devisee or grantee title to center line of street binding the land is not inconsistent with implied easement by plat reference, which accomplishes its objective by creating an easement to the whole of the street abutting land rather than by granting fee simple title to part of the street. Code 1957, Art. 21, § 5-114.

[16] Easements ©= 17(4)

141 ----

1411 Creation, Existence, and Termination 141k15 Implication 141k17 Ways in General 141k17(4) Sale of Platted Land in General.

Absent an express provision to the contrary in a

deed, those who purchase a lot with reference to a plat depicting an abutting street acquire a private easement in that street regardless of whether it has been dedicated to the public and accepted by the local government.

[17] Easements \$\infty\$=44(1)

141 ----

141II Extent of Right, Use, and Obstruction 141k39 Extent of Right 141k44 Ways 141k44(1) In General.

By virtue of easement granted those who purchase a lot with reference to a plat depicting an abutting street, purchaser has right to keep the street open and to make reasonable use thereof.

[18] Easements \$\infty\$ 17(4)

141 ----

141I Creation, Existence, and Termination 141k15 Implication 141k17 Ways in General 141k17(4) Sale of Platted Land in General.

Rule that those who purchase a lot with reference to a plat depicting an abutting street acquire a private easement in that street regardless of whether it has been dedicated to the public and accepted by the local government does not include nonabutting properties, except in cases where ownership of the property made right-of-way an essential factor in the purchase of the property in the first instance.

[484 A.2d 632] *683 Paula A. Grogg (Osborn & Winters, on brief), Frederick, for appellants.

W. Jerome Offutt, Frederick (George T. Horman and Offutt & Horman, P.A., Frederick, on brief), for appellees.

Argued before MURPHY, C.J., and SMITH, DAVIDSON ELDRIDGE, COLE, (FN*), RODOWSKY and COUCH, JJ.

[484 A.2d 633] COLE, Judge.

We shall decide in this case whether the appellants, whose property abuts a street that was dedicated to public use but was never accepted by the county government, have any property interest in that street under a theory of implied easement by virtue of a plat reference.

The facts are not in dispute. In 1972, George H. and Beverly L. Piper, owners of an approximately fifteen acre tract in Frederick County, Maryland, prepared and duly *684 recorded a plat adopting a plan of subdivision for their property. This plat, entitled "Section One, Piper Estates" (Piper Estates), established two approximately one acre lots (Lot Nos. 1 and 2) from a trapezoidally shaped parcel. The two lots were bisected by a roadway with the plat designation of "George Street." Lot No. 1 bounded George Street to the southwest, and Lot No. 2 bounded George Street to the northeast. The plat depicted George Street as a fifty foot wide right of way that extended the entire length of the two lots, back to the remaining portion of the Pipers' property. The Owner's Certificate further indicated that the Pipers were offering to dedicate George Street to public use:

By a duly recorded deed dated May 5, 1972, the Pipers conveyed Lot No. 1 on the Piper Estates plat to appellees, Eugene B. and Joan F. Boyer. By a duly recorded deed dated May 3, 1974, the Pipers conveyed Lot No. 2 on the same plat to George W. and Ethel E. Brady. The Bradys subsequently conveyed Lot No. 2 to the appellees, Willard A. and Beverly D. Gordon, Jr., by a duly recorded deed dated May 12, 1978. All of these deeds referred to the Piper Estates plat.

By a duly recorded deed dated January 28, 1976, the Pipers conveyed the remainder of their interest in the original fifteen acre tract to the appellants, Kirk and Deborah A. Boucher. The deed conveyed the property to the Bouchers by reference to the description by which the Pipers had acquired the property, and excluded Lot Nos. 1 and 2 by reference to the Piper Estates plat. In 1982, the Bouchers further subdivided their property by creating Lot No. 3, which is depicted on the Piper Estates plat. The plat designates a right of way for Lot No. 3 and reflects the prior dedication of George Street, which abuts Lot No. 3. This right of way was created at the behest of the Frederick County Planning Commission as a condition to the creation of Lot No. 3.

*685 Although the Owner's Certificate on the Piper Estates plat indicated that George Street had been dedicated to public use, that dedication was never completed. After the recordation of the Boucher plat, the Zoning Administrator for Frederick County wrote a letter to the Bouchers informing them that the County had not accepted George Street.

At trial, Mrs. Boucher testified that George Street was the only means of access to the Boucher farm land. She further testified that she and her husband have

solely maintained George Street up to the point where the driveways to Lot Nos. 1 and 2 branch off to their respective lots. Mrs. Boucher testified that she and her husband laid gravel on George Street from the point at which the appellees' driveways intersect the street up to their property line. She further indicated that she and her husband have used George Street to bring farm equipment to their farm land. Although Mrs. Boucher testified that George Street was the only safe access for this equipment, she conceded that the farm land was not without access to another road. Evidence also disclosed that the Bouchers have placed a mobile home on Lot No. 3 so as to provide a residence for Mrs. Boucher's parents.

In 1982, the appellees instituted a declaratory judgment action against the Bouchers in the Circuit Court for Frederick County. Appellees urged the trial court to declare them fee simple owners of George Street and requested that the Bouchers be permanently enjoined from using George Street. In an order dated February 15, 1983, the trial court declared that the appellees [484 A.2d 634] were each fee simple owners of one half of George Street by virtue of the statute in effect at the time of the conveyances, Md.Code (1957, 1973 Repl.Vol.), Art. 21, § 5-114, and that the Bouchers had no easement over George Street. The Bouchers filed an appeal to the Court of Special Appeals, but we granted certiorari prior to decision by that court to decide the issue presented.

*686 I

The threshold issue we must decide is which party holds fee simple title to George Street. The Bouchers argue that the intention of the original grantors (the Pipers) should govern the determination of this issue. The Bouchers reason that the original grantors intended to dedicate George Street to public use, but the County's nonacceptance of this dedication continued the ownership in the original grantors. Based on this reasoning, the Bouchers contend that as successors in title to the original grantors they hold fee simple title to George Street. We disagree.

Former § 5-114 of Art. 21, (FN1) as the trial court correctly recognized, controls this issue. Section 5-114 provides:

Any deed, will, or other instrument which conveys land in this State, binding on any street or highway, or when any street or highway shall be one or more of the lines thereof, shall be construed to pass to the devisee, donee or grantee therein, all the right, title, and interest of the devisor, donor, or

45

grantor in the street or highway; provided, however, to the extent the devisor, donor or grantor owns other land on the opposite side of the street or highway, then the deed, will, or other instrument shall be construed to pass the right, title, and interest of the devisor, donor, or grantor only to the center of that portion of the street or highway upon which the two (or *687 more) tracts co-extensively bind. The foregoing provisions shall be inapplicable in either of the above instances if the devisor, donor or grantor shall in express terms in the writing by which the devise, gift or conveyance is made, reserve to himself all the right, title and interest to the said street or highway.

[1] This statute, which applies to both private and public streets, Grunwell v. Henderson, 220 Md. 240, 247, 151 A.2d 920 (1959); Campeggi v. Wakefield, 157 Md. 229, 237, 145 A. 546 (1929), extends the common law presumption that title to the center of a binding street passes to the grantee. Callahan v. Clemens, 184 Md. 520, 526, 41 A.2d 473 (1945).

[2] Lot Nos. 1 and 2 bounded George Street at the time of the conveyance of these lots, thereby making former § 5-114 applicable. Thus, the 1972 conveyance of Lot No. 1 to the Boyers conveyed fee simple title to them to the southwestern half of George Street because their predecessors in title (the Pipers) held the property in fee simple. Similarly, the 1974 conveyance of Lot No. 2 to the Bradys and later the Gordons vested fee simple title in those lot owners to the opposite half of George Street. At the time the Pipers conveyed the remainder of their property to the Bouchers in 1976, the Pipers simply did not hold fee simple title to any portion of George Street. Moreover, this property did not bind George Street, but instead [484 A.2d 635] abutted it. Because nothing in the deed indicates that the Pipers express reserved title to George Street, we hold that the conveyance of Lot Nos. 1 and 2 by the original grantors to the respective purchasers of these lots vested fee simple title in each lot owner to the center of George Street in accordance with former § 5-114.

 Π

The Bouchers make an alternative argument that they have an implied easement over George Street by virtue of a plat reference in the Piper Estates plat. To place this issue in proper perspective, we consider it necessary to review *688 briefly the nature of easements and the methods by which they may be created.

[3][4][5] An easement is broadly defined as a nonpossessory interest in the real property of another, see Condry v. Laurie, 184 Md. 317, 320, 41 A.2d 66 (1945), and arises through express grant or implication. See, e.g., Shpak v. Oletsky, 280 Md. 355, 360-61, 373 A.2d 1234 (1977); Hancock v. Henderson, 236 Md. 98, 102, 202 A.2d 599 (1964); Knight v. Mitchell, 154 Md. 102, 105-06, 140 A. 74 (1928). Easements by implication may be created in a variety of ways, such as by prescription, see Department of Natural Resources v. Ocean City, 274 Md. 1, 7-9, 332 A.2d 630 (1975), necessity, Hancock v. Henderson, supra, the filing of plats, Atlantic Constr. Corp. v. Shadburn, 216 Md. 44, 52-53, 139 A.2d 339 (1958); Klein v. Dove, 205 Md. 285, 294, 107 A.2d 82 (1954); Mullan v. Hochman, 157 Md. 213, 221, 145 A. 554 (1929), estoppel, see Atlantic Constr. Corp. v. Shadburn, supra; Knight v. Mitchell, supra, and implied grant or reservation where a quasi-easement has existed while the two tracts are one. See Slear v. Jankiewicz, 189 Md. 18, 23-24, 54 A.2d 137 (1947), cert. denied, 333 U.S. 827, 68 S.Ct. 453, 92 L.Ed. 1112 (1948); 2 G. Thompson, Commentaries on the Modern Law of Real Property § 330, at 94 (J. Grimes ed. 1984). An implied easement is based on the presumed intention of the parties at the time of the grant or reservation as disclosed from the surrounding circumstances rather than on the language of the deed. Id. § 351, at 287. As a result, courts often refer to extraneous factors to ascertain the intention of the parties.

The Bouchers do not claim that they have an express easement or an implied easement by prescription or necessity. Rather, the Bouchers proceed on the theory that they have an implied easement by virtue of the plat reference to George Street as a means of access to what is now Lot No. 3. An obvious but important factor in determining whether the Bouchers can prevail on this theory is whether their deed contains a reference to a plat that contains a right of *689 way. See R. Powell, The Law of Real Property ¶ 409, at 35-53 to -55 (P. Rohan ed. 1984); 2 G. Thompson, supra, § 351, at 302. We hold that it does.

[6][7] The Bouchers' deed describes the conveyed property by a metes and bounds description. The deed, however, does so in reference to the entire original Piper tract, including Lot Nos. 1 and 2, which had been conveyed previously to the appellees. The deed contains an "exceptions clause," which expressly excludes these lots from the grant by reference to the Piper Estates plat. Appellees challenge this clause by arguing that it cannot be relied upon for this purpose. We disagree. It seems clear to us that the exceptions clause describes the conveyed property as much as the

metes and bounds description. Without both, the description of the Bouchers' property would be incomplete. As we see it, a deed that is silent as to the right of way but refers to a plat that establishes such a right of way creates a rebuttable presumption that the parties intended to incorporate the right of way in the transaction. See generally Mullan v. Hochman, supra (when a grantor subdivides property shown on a plat as bordering streets he impliedly convenants that the grantee will have an easement over the street shown on the plat). A party may therefore point to the existence of the plat to establish that the [484 A.2d 636] parties intended that the right of way depicted in the plat be used by the grantee. In sum, we view this as a reasonable application of the common law rule that a deed reference to a plat incorporates that plat as part of the deed. See Klein v. Dove, supra; William's Realty Co. v. Robey, 175 Md. 532, 2 A.2d 683 (1938); see also Schickli v. Keeling, 307 Ky. 210, 210 S.W.2d 780 (1948); Goldstein v. Beal, 317 Mass. 750, 59 N.E.2d 712 (1945); Vogel v. Haas, 456 Pa. 585, 322 A.2d 107 (1974).

The rule in Maryland concerning implied easements by virtue of plat references represents a clear majority view. See, e.g., Day v. Robison, 131 Cal.App.2d 622, 281 P.2d 13 (1955); Stanley Heights Property Owners Ass'n v. Whiteside, *690 151 Colo. 429, 378 P.2d 399 (1963) To view preceding link please click here; Stankiewicz v. Miami Beach Ass'n, 191 Conn. 165, 464 A.2d 26 (1983); Bonifay v. Garner, 445 So.2d 597 (Fla.Dist.Ct.App.1984); Smith v. Clay, 239 Ga. 220, 236 S.E.2d 346 (1977); Monaco v. Bennion, 99 Idaho 529, 585 P.2d 608 (1978); Reiman v. Kale, 83 Ill.App.3d 773, 38 Ill.Dec. 671, 403 N.E.2d 1275 (1980); McBrayer v. Davis, 307 S.W.2d 14 (Ky.1957) ; Callahan v. Ganneston Park Dev. Corp., 245 A.2d 274 (Me.1968); Gagnon v. Moreau, 107 N.H. 507, 225 A.2d 924 (1967); Stupnicki v. Southern N.Y. Fish & Game Ass'n, 41 Misc.2d 266, 244 N.Y.S.2d 558 (1962) (discussing rule), aff'd, 19 A.D.2d 921, 245 N.Y.S.2d 333 (1963); Strickland v. Shew, 261 N.C. 82, 134 S.E.2d 137 (1964); Overstreet v. Brookland, Inc., 52 N.C.App. 444, 279 S.E.2d 1 (1981); Vogel v. Haas, supra; Immanuel Baptist Church v. Barnes, 274 S.C. 125, 264 S.E.2d 142 (1980); Knierim v. Leatherwood, 542 S.W.2d 806 (Tenn.1976); Barron v. Phillips, 544 S.W.2d 752 (Tex.Civ.App.1976); Capitol Hill Methodist Church v. Seattle, 52-Wash.2d 359, 324 P.2d 1113 (1958); Reger v. Wiest, 310 S.E.2d 499 (W.Va.1983). See generally 2 G. Thompson, supra, § 359, at 357-70 (discussing plat reference theory of implied easements); H. Tiffany, The Law of Real Property § 800 (3d ed. 1939 & Supp.1984) (same); Annot., 7 A.L.R.2d 607 (1949)

(same); 28 C.J.S. Easements § 39 (1941 & Supp.1984) (same). For instance, in Vogel v. Haas, supra, the plaintiffs owned land in a residential development. When they attempted to use an alleyway that was depicted on the development plat as "Reserved For Future Street," their neighbors objected. The plaintiffs then secured an injunction forbidding their neighbors from interfering with the plaintiffs' use of the street. The Supreme Court of Pennsylvania affirmed, reasoning that the plat reference created an implied easement in the alleyway. Id. 456 Pa. at 588, 332 A.2d at 109. See generally Fessenden v. Parrigin, 228 Ga. 61, 62-63, 183 S.E.2d 771, 772 (1971) ("The general rule is that when a subdivision is laid out and the lots sold with reference thereto, the purchasers thereof acquire a right of way over *691 the streets"); M.H. Siegfried Real Estate, Inc. v. Renfrow, 592 S.W.2d 488, 491 (Mo.Ct.App.1979) ("A conveyance which conveys property by reference to a map or plat, which map or plat shows the property so conveyed is bounded by a road or way, the right-of-way thereover passes by the conveyance as an easement appurtenant thereto."). We note that some jurisdictions have extended this rule so as to provide that a plat reference creates an easement in all the streets or roads depicted on the plat. See, e.g., McPhillips v. Brodbeck, 289 Ala. 148, 266 So.2d 592 (1972); Lindsay v. James, 188 Va. 646, 51 S.E.2d 326 (1949).

[8][9][10][11] The application of the plat reference theory of implied easements in the case sub judice leads us to conclude that the Bouchers have an easement over George Street. As we indicated above, an important factor is that the Bouchers' deed refers to the Piper Estates plat as a means of describing the boundaries of their property. Indeed, as we previously stated, we view the existence of a right of way on a plat as a factor so probative that it in effect creates a rebuttable presumption that the parties intended to create an easement at the time of the division of the property. At a minimum this indicates that the original grantors intended that George [484 A.2d 637] Street be used as a means of access to property abutting on that street. In addition, all grantees from the common grantor (the Pipers) purchased their property with reference to the same plat, and all of the lots either bind or abut George Street. In our view, this indicates that the grantors intended that each grantee have at least an easement over the street. That the owners of Lot Nos. 1 and 2 received fee simple title to the center of the street does not detract from this intent. Here the appellees failed to produce any evidence at trial to rebut the presumption created by the plat reference. We therefore conclude that the original grantors intended that subsequent grantees have an easement

over George Street. We find support for our conclusion in a number of our past decisions concerning the plat reference theory of implied easements.

*692 In a 1958 decision, our predecessors considered a claim of an implied easement arising out of a development plat. Atlantic Constr. Corp. v. Shadburn, supra. Factually, the Shadburns owned a lot on a Baltimore City block, and the appellants owned several lots on the same block. An alley separated the lots on the west side of the block from the lots on the opposite side (east side) of the block. After the appellants obstructed this alley, the Shadburns and others brought suit to enjoin the obstruction. This Court upheld the requested relief, holding that the Shadburns and the other neighbors had a right to use the alley. Because some of the lot owners had express rights of use in their respective deeds, the Shadburn Court held that they had express easements. Although the Shadburns lacked this clause in their deed, we determined that they nonetheless had an easement because the development plat depicted the alley. Id. [216 Md.] at 51-52, 139 A.2d 339; see Hackerman v. City of Baltimore, 212 Md. 618, 130 A.2d 732 (1957) (easement by implication may be created when plat depicts a right of way) (dictum). In both Shadburn and Hackerman, we found that a plat that sets out a street or alleyway creates a presumption that a dedication was intended. Under this line of reasoning, purchasers who relied upon the plat were entitled to a private right of way over the street or alley regardless of whether the dedication was ever accepted. See generally Klein v. Dove, supra (in lots located in a waterfront development, non-abutting property owners have an implied easement in a right of way depicted in a recorded plat; court found that plaintiffs bought their lots in reliance upon the plat); Williams Realty Co. v. Robey, supra (another waterfront development case involving non-abutting properties; court intimated that appellees had an implied easement to a community beach because they relied upon a recorded plat). These cases, together with our discussion of this theory in the context of the instant case, convince us that the Bouchers have an implied easement over George Street.

*693 Appellees challenge this conclusion on the basis that former § 5-114 of Art. 21 compels a different result. Appellees reason that this statute operates to grant "all the right, title and interest" of the grantor of the conveyed property in any street bounding upon the property. Because a conveyance of property bounding on a street conveys all right, title, and interest to the center of the street, and because an easement is an

"interest" in the street, appellees contend that the grantor is statutorily precluded from creating an easement in the street to the grantee. This reasoning would of course effectively abrogate the common law principle that a conveyance of property with reference to a recorded plat creates a rebuttable presumption that rights of way depicted on the plat are intended as easements. We are therefore presented with an apparent conflict.

[12] In most circumstances, this type of problem would not arise because grantees obtain fee simple title to the center of the street on which their property binds in accordance with former § 5-114 of Art. 21. In this case, however, George Street abuts rather than binds the Boucher tract. [484 A.2d 638] Therefore, the conveyance from the Pipers to the Bouchers could not convey title to the center line of George Street because the tract did not coextensively bind George Street, i.e., run parallel with another tract.

[13][14][15][16][17][18] To resolve the apparent conflict between these two rules, we must examine the purpose of each and reconcile them if possible. The purpose of former § 5-114 is to assure landowners that they will have access to streets bounding on their land by granting to them title to the center line of the street while recognizing an easement in the other half of the street. The implied easement by plat reference rule has an identical purpose, although it accomplishes its objective by creating an easement to the whole of the street rather than by granting fee simple title to part. The purpose of each rule is to assure access to a right of way contiguous with the land so as to afford each owner *694 full use and enjoyment of his property. In our view, the two rules are not inconsistent. As one well respected commentator noted:

The results called for by the[se] rules ... are sometimes modified slightly by the existence in the state of another rule of conveyancing, namely, that a deed conveying Blackacre by reference to a map or by a description naming a street as boundary, conveys the fee to the center line of the bounding street, together with an easement in the balance of the bounding street. This conveyancing rule can be made inapplicable by language of the deed showing an inconsistent intent. When the owner of Blackacre thus acquires a fee to the center line of the bounding street, his street strip is subject to an easement in favor of other lot owners using the same street.

3 R. Powell, supra, ¶ 409, 34-54 to -55 (emphasis supplied) (footnotes omitted). Therefore, absent an express provision to the contrary in the deed, those

who purchase a lot with reference to a plat depicting an abutting street acquire a private easement in that street regardless of whether it has been dedicated to the public and accepted by the local government. By virtue of this easement, the purchaser has the right to keep the street open and to make reasonable use thereof. Our conclusion should not be construed to include non-abutting properties, except in those cases where the ownership of the property made the right of way an essential factor in the purchase of the property in the first instance. See Klein v. Dove, supra; Williams Realty Co. v. Robey, supra.

Accordingly, we hold that the Bouchers have an implied easement over George Street by virtue of the reference in their deed to the Piper Estates plat, which depicts George Street as a right of way to their property.

JUDGMENT OF THE CIRCUIT COURT FOR FREDERICK COUNTY REVERSED AND CASE REMANDED TO *695. THAT COURT FOR ENTRY OF A JUDGMENT NOT INCONSISTENT WITH THIS OPINION.

APPELLEES TO PAY THE COSTS.

(FN*) Davidson, J., participated in the hearing and in the conference of the case in regard to its decision, but died prior to the adoption of the opinion by the Court.

(FN1.) This statute was later recodified at Md.Code (1981 Repl.Vol.), § 2-114 of the Real Property Article. Section 2-114, effective July 1, 1974 provides:

Unless a contrary intention appears in the deed, will, or other instrument, if any deed, will, or other instrument grants or bequeaths land binding on any street or highway, or if any street or highway is one or more of the lines of the land, the deed, will, or other instrument passes to the legatee, donee, or grantee, all the right, title, and interest of the testator, donor or grantor in the street or highway. Except that to the extent the testator, donor, or grantor owns other land on the opposite side of the street or highway, the deed, will, or other instrument passes the right, title, and interest of the testator, donor, or grantor only to the center of that portion of the street or highway on which the two or more tracts coextensively bind.

§ 32-4-107. WAIVERS.

- (a) In general.
- (1) At the request of a department director, the Hearing Officer may grant a waiver of any or all requirements of Subtitles 3, 4, and 5 of this title if the Hearing Officer finds that:
- (i) 1. The size, scope, and nature of a proposed development does not justify strict compliance with this title;
 - 2. A waiver would be within the scope, purpose, and intent of this title; and
 - 3. All other county laws and regulations have been complied with; or
 - (ii) Compliance with this title would cause unnecessary hardship.
 - (2) A waiver shall be granted only in accordance with Title 8 of this article.
 - (b) Waivers Development Plan requirements.
- (1) The Director of Permits and Development Management may waive the Development Plan requirements under §§ 32-4-221(b) and (c) and 32-4-222 through 32-4-224 of this title and the Hearing Officer's hearing if, after consultation with appropriate county agencies, the Director finds:
- (i) That the size, scope, and hature of a proposed development does not justify strict compliance with this title; and
 - (ii) That a waiver would be within the scope, purpose, and intent of this title; and
 - (iii) That the proposed development complies with all other county laws and regulations.
- (2) Before proposing to grant a waiver for development within the critical area, the Director of Permits and Development Management shall obtain recommended findings from the Director of Environmental Protection and Resource Management based on the standards specified under § 32-4-226 (d)(1)(iv) of this title.

(1988 Code, § 26-172) (Bill No. 18, 1990, § 2; Bill No. 1, 1992, § 2; Bill No. 173-93, § 3, 11-17-1993; Bill No. 8-96, § 3, 3-23-1996; Bill No. 79-01, § 2, 7-1-2004; Bill No. 75-03, § 8, 7-1-2004)

Item # 365

§ 32-4-409. PANHANDLE DRIVEWAYS.

- (a) In general.
 - (1) The county may only allow a panhandle lot:
 - (i) To achieve better use of irregularly shaped parcels;
 - (ii) To avoid development in environmentally sensitive areas;
 - (iii) Where the lot will not be detrimental to adjacent properties; and
- (iv) Were the lot will not conflict with efforts to provide for public safety and general welfare.
- (2) The county may only allow a panhandle driveway where necessary to provide access to interior lots where a public road is neither feasible nor desirable.
 - (b) In-fee strip; required.
- (1) Except as provided in subsection (c) of this section, the county may permit a panhandle lot if the lot includes an in-fee strip of land for access to the local street.
 - (2) Panhandle fee strips shall be a minimum of:
 - (i) 20 feet in width to serve one lot;
 - (ii) 12 feet in width per lot where two lots are involved;
 - (iii) 10 feet in width per lot where three or more lots are involved; or
- (iv) 12 feet in width per lot where there are two or more lots in a development that is within the metropolitan area where public water and sewer services are available, planned, or considered.
- (c) Same; exception. In cases where a right-of-way has been established before the submission of the Development Plan, the Hearing Officer may approve access to the local street or collector street through the existing right-of-way instead of an in-fee strip.
 - (d) Panhandle driveways.
- (1) A single panhandle driveway may serve up to five dwellings, three of which may be on internal lots not adjacent to the local street or collector street.
- (2) Panhandle driveways serving lots greater than 20,000 square feet may serve five internal lots plus two dwellings on the front lots adjacent to the panhandle driveway and the local street or collector street.
 - (3) Front lots are not required to be part of the panhandle driveway development.
 - (4) Notwithstanding the provisions of § 32-4-107 of this title, the requirements of this

Them H 365 subsection may not be waived.

- Length of panhandle in DR and RC zones.
 - In a DR zone, the panhandle length may not exceed 500 feet.
 - In an RC zone, the panhandle length may not exceed 1,000 feet. (2)
- The maximum permitted length of a panhandle is subject to variance under § 307 of the Baltimore County Zoning Regulations.
 - (f) Panhandle driveways serving multiple lots.
- For panhandle driveways serving more than one lot, the developer shall note on the record plat any covenants that provide for common use and maintenance of the panhandle driveway and culvert.
- A use in common agreement is established if the panhandle driveway serves two or more abutting panhandle lots.
 - Dwelling orientation on panhandle lot. (g)
- The orientation of the dwelling on each panhandle lot shall be indicated on the Development Plan.
 - The dwelling shall be oriented to establish a desirable relationship between: (2)
 - Each of the proposed dwellings and existing adjacent homes; and **(i)**
 - The proposed dwellings themselves. (ii)
- Panhandle driveway and street intersection; requirements. At the intersection of the panhandle driveway and the street, the following shall be provided by the developer:
 - A paved trash collection area that: (1)
- Is located at the right-side intersection of the panhandle driveway and public road, as the driveway is exited; and
 - Is at least 16 square feet per dwelling unit served by the panhandle driveway; (ii)
- A mail delivery area that is located at the left intersection of the panhandle driveway and public road, as the driveway is exited; and
- Numerical identification of each dwelling served by the panhandle driveway in accordance with § 35-2-206 of the Code.
 - Construction of panhandle driveway. (1)

nstruction of panhandle driveway.

The panhandle driveway shall be built in accordance with standards established by the #365 (1)

Director of Public Works.

- (2) The panhandle shall be paved within 1 year of the issuance of the first occupancy permit or before the issuance of the occupancy permit of the last lot to be served, whichever comes first.
- (3) In DR zones required utilities shall be provided to all lots to be served by the panhandle before the paving of the panhandle driveway.
 - (j) Parking along panhandle driveway. Parking is not permitted along a panhandle driveway.
- (k) Waiver. Except as provided in subsections (d) and (e) of this section, the Director of Planning may grant a waiver from any provision in this section or title if the Director finds:
- (1) That the size, scope, and nature of the subdivision of land into three or fewer lots for residential single-family dwellings does not justify strict compliance with this section;
 - (2) That a waiver would be within the scope, purpose, and intent of this section; and
 - (3) Compliance with all other county ordinances and regulations.

(1988 Code, §§ 26-168, 26-266) (Bill No. 172, 1989, § 2; Bill No. 106, 1990, § 1; Bill No. 1, 1992, § 2; Bill No. 173-93, § 3, 11-17-1993; Bill No. 61-95, § 1, 6-30-1995; Bill No. 8-96, § 3, 3-23-1996; Bill No. 49-96, § 15, 7-1-1996; Bill No. 38-98, § 4, 6-20-1998; Bill No. 51-99, § 1, 8-26-1999; Bill No. 79-01, § 2, 7-1-2004)

Itam #365

Hetery Public, of the State aforesail in and for the bety aforesaid, personally appeared bharles I stall withower, and acknowledged the foregoing Deed to be luis act and deel. as Wetness muchand and notarial seal -Cyrus W. Atull notarial Recorded Steene 25, 1985 at 15 74 & Ext. per INT Place Cluk The Taylor Land Company second day of June Michael Reynolds and in the efter similain Mary Polynolde his wife hundred and twenty fue by The Tay oringamy a corporation mearhorated lunder the Cubelle Beneral laws of the State of Many land party of the first part, and Michael Reynolds & Mary Reynolds his wrfe of Baltimore Bety Maryland politice of the second part: Wetweeseth that in consideration of the payment of the sum of Five (5) dollars and other Valuable menderations by the granters becein to The Laylan and Company receipt of which is hereby alknow ledged and it further consideration of the persaid The Taylor Land Company a bolly corporate as a foresall does hereby grant bud convery unto Michael Keynolds and Mary Keynold lie wife parties of the second part of teleants by the en tireties their heers and assigns, subject to the said covenante and agreements, all that ground and premises setuate in Baltimore County State aforesaid and described as follows: 6 Degenning at a bout on the South East side of Moodwell Drive as laid out 50 feet unde said point being securted North 25 degrees 27 minutes East 600 Leet and South 64 deques 33 muntes East 50 Keet from the South west corner of

SALTIMORE COUNTY CIRCLIT COURT lunca Recordul (MSA SE 62 615) WPC 613 p. 0151. Pressa 0. 30 2007. Image available as of a followings.

County in Plat Book Liber W. P. C. Bo. o falio 15; thereo. and hunning thence from said beginning boint South 64 degrees 33 shinutes East 51x of feet more fort or less to butersect the North-west side of a ten (10) foot alley at the distance of 885 feet from the or qui Harth west bide of Castern House thence binding on the North-west side of said ten (10) foot adular affley with the use thereof in common and paralbel with Eastern avenue as laid out on What outof Coses North 68 degrees 49,5 minutes East main 397. 3 feet: thence Harth 20 degrees 27 minutes East 11.3 feet: thence Horthof 64 degrees 33 minutes West 841.03 - feet to the South-east side of Woodnever ward drive thence builing on the South-east leine side of Woodward Dewe (South 25 degrees 27 minutes West 300 feet to the place off beginning arin. containing 4.90 acres of land, more or leste Denig part of the lades mentioned and described in Weller Afrom Jacob N. Taylor Cocenter to times he Taylor Land Mountany dated October 19, 1908. and Recorded in Lible W. P. C. No. 394 folia 348; and also in a Deed from Jacob SV. Paylor et al ted or to The Laylor Land & Coulpany dated February 23 Time. shal the. or appertaining To Store and It Stold the above granted property unto the said parties of the second fact as tenant by the betwee entireties their heurs and assigne forever in Ifee simple; subject however to the following covebe-1 naster and Vagreements which are hereby bentered hereb enter as part of the considertion of this deed by the occu said parties of the second part for themselves their heirs and assigns with The Taylor Land bornpany for the behafit of itself its successore and as begand and all persons who have hereto fee or who secons same a shown on the Splat aforesaid

153 thereof, or any building erected thereon at any time hereafter ble used of occupied as a townil saloon for the sale of intoricatuly drinks, fertilizer factory tonnery slaughter house glue soak carlate stares dangerous purpoles for shall any signs for adifitising pulposes be creeted or placed thereon b. That how blern stable well respect or other out-buildings shall be exected sleaver to the main road avenue or street on which said lot fronte than seventy-five feet; That said lot of buildings thereon shall never nor shall any part thereof, be kented lessed, sold transferled or conveyed to non shall the same be occupied efelusively by loved person or persons off. blood for mongolean d. That all styles and enspools shall at all times be kept completely covered and prop erly disinfected: e What the front of any lines or building erected on said clot shall be not less than twenty. Five feet from the front line of said late hat is to say every dwelling house or building shall be at React Otwenty- Hive feet back of house shell be creeted on said lot to expt less than Livelve hundred dollars (\$ 1700.00) It is further distinctly coveranted and agreed between the parties Thereto that all the Coo enants and agreements above expressed shall be held tolleun with and biked the land hereby conveyed and all subsequent owners and occuppants (thereof forever and the acceptance of this deed shall have the same effect and builing force upon the parties of the second part their leves and aleigns as if the same were signed sealed and lacknowledged by the parties of the second part and Shurther that all reference to or mention of avenues streets roads leves sedewalke alleys

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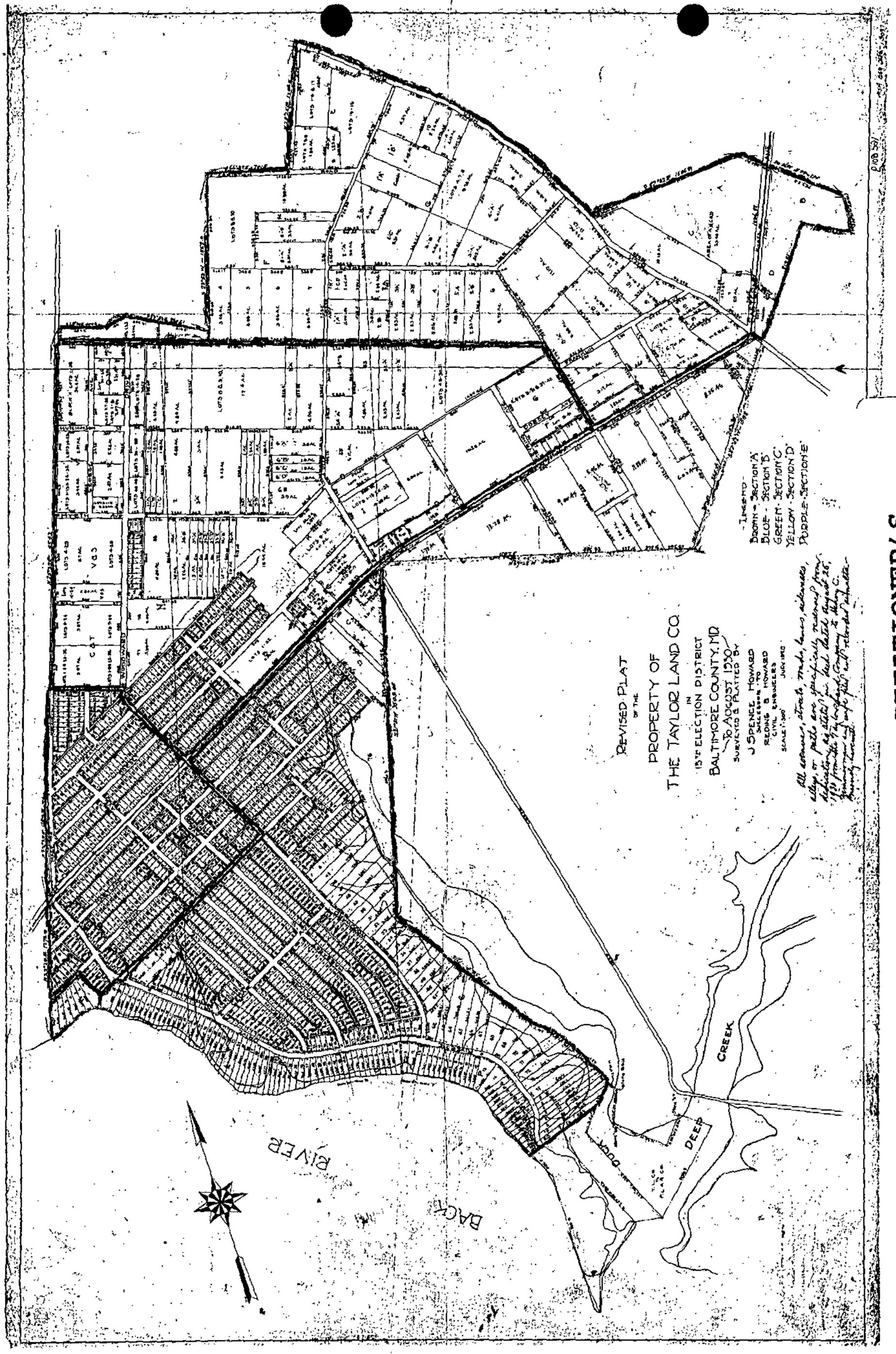
and not for the kurkose of dedication and all right title and buterest in and to the same are thereby efferessly reserved in the granter and select said The Taylor Land bout bour tureby expressly reserves to Street by way off all each-Noteres buent the right to lay created builed or establish a drain or sewer on wilder or across the land hereby conveyed, on, over, or through which to drain surface States sewage and Slouse- hold draining and to-enter upon solid land at any time to lay create, establish build and repair said drake or sewer his grant is made subject however to the pale let of way hereto first granted by The Taylor lelephone bourpany, dated July 10, 1916, and recorded kuly 12, 1916 among the Daud Records of Syou 1. No 465 Folia 764 sidera and The Taylor Land - Company subject to the Maine above coveredute and agreements on the part of sail parties of the beeoud part covenants that there it will warrant specially the property hereby granted and conveyed and that it will execute such other and Ofwither assurances of sail land as may be requirete of the In witness whereof The Taylor Land Company has caused these presents to be seaned by Palte Frank & Laylan Ita Cherident and its corpolate seal to be thattacked attested by John O. Walf ite grants Secretary on the day and year Officet above Vife 6 written Kleorde the Taylor Land Company Folio! By Frank & Laylo Logeth the se tendu State of Maryland, Baltimere City, to wit. I stereby lostify that on this second day of orus time lin the Gear nimeteen hundred and twenty above five before med the subscriber a Notary Gualie uiteus of the State of Maryland

BALLINGRE COURTY CHOURT COURT IN THE CONTROL OF

11,05,2003

315.13 **53** 4 C4 33 W. Ross STREET HIGHWAYS DEPARTMENT OF BALTIMORE COUNTY. STREET ALIGNMENT AND LOCATION, STREET GRADES. WILLIAM POLTON Approved Herman & There I'm SURVEYORS + KIVIL ENGINEERS DUNCAN BLOG TOWSON MO. JUNE 9. 1942. PETITIONER'S

EXHIBIT NO. 2



PETITIONER'S

EXHIBIT NO.

State of the 135

J.O. 1-17-27
District No. 15
Item 1 (M)

1478

THIS DEED, Made this /8 day of November, in the year 1987, by and between ANNE P. TAYLOR, of Naples, Collier County, State of Florida; KATHERINE T. MARSHALL, by KATHARINE RODGERS ELLICOTT, Attorney in Fact, under Power of Attorney hereinafter referred to; MARGARET T. HOGE; FRANK D. MEAD and DORIS E. LINDER, Personal Representatives of the Estate of Carol Taylor Mead, Deceased, late of Baltimore City, State of Maryland, all of Baltimore City, State of Maryland, parties of the first part; and BALTIMORE COUNTY, MARYLAND, a body corporate and politic, party of the second part.

THOUSAND (\$12,000.00) DOLLARS, the said parties of the first part do grant and convey unto Baltimore County, Maryland, a body corporate and politic, its successors and assigns, in fee simple, all their right, title and interest, in and to all those parcels of land situate, lying and being in Essex in the Fifteenth Election District of Baltimore County and being more particularly described as follows, that is to say:

FIRST: BEING-all those avenues, streets, roads, lanes, sidewalks, alleys or paths reserved and not heretofore conveyed, by The Taylor Land Co., and as laid out, shown and indicated on the "REVISED PLAT OF THE PROPERTY OF THE TAYLOR LAND CO.", which Plat is recorded among the Plat Records of Baltimore County in Plat Book L.McL.M. No. 9, folios 74 and 75.

SECOND: BEING all those avenues, streets, roads, lanes, sidewalks, alleys, or paths reserved and not heratofore conveyed by The Taylor Land Co., and as laid out, shown and indicated on the "PLAT SHOWING RELATIVE LOCATION OF SENAGE DISPOSAL PLANT TO PROPERTY OF THE TAYLOR LAND CO. COO! 202 109:Jf which Plat is recorded among the Plat Records of Baltimore County in Plat O1/28/88 Book W.P.C. No. 5, folios 72 and 73.

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PETITIONER'S

EXHIBIT NO.

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SAVING AND EXCEPTING THEREFROM, however, the following:

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- (1) All and every the rights, alleys, ways, waters, privileges, appurtenances and advantages appurtenant to those lots of ground conveyed by Deed dated June 22, 1977 and recorded among the Land Records of Baltimore County in Liber E.H.K., Jr. No. 5778, folio 307 from Margaret T. Hoge, Widow, et al to John A. Slowik.
- (2) All that lot of ground being an alley or strip of land 10 feat by 300 feet, more or less, lying between Blocks K & M leading into Virginia Avenue as laid out and shown on the aforesaid plat of the Revised Plat of the Property of The Taylor Land Co., which Plat is recorded as aforesaid among the Plat Records of Baltimore County,

BEING portions of the property which by a Deed dated September 5, 1959 and recorded among the Land Records of Baltimore in Liber W.J.R. No. 3591, folio 376 was granted and conveyed by The Taylor Land Company, et al, to Frank J. Taylor, Jr. and Anne P. Taylor, his Wife, as tenants by the entireties, Katherine T. Marshall, Margaret T. Hoge and Carol T. Mead. The said Frank J. Taylor, Jr. departed this life on or about September 23, 1976, thereby vesting title in the said Anne P. Taylor of the undivided interest conveyed to them as aforesaid. The said Carol T. Mead, also known as Carol Taylor Mead, departed this life on or about October 15, 1984, a resident of Baltimore City, Maryland. See Estate No. A-23547, Estate Docket 127, folio 374 in the Office of the Register of Wills for Baltimore City, wherein the said Frank D. Mead and Doris E. Linder were appointed Personal Representatives of the Estate of the said Carol Taylor Mead. See also Power of Attorney dated August 21, 1982 and recorded among the aforesaid Land Records in Liber E.H.K., Jr. No. 7277, folio 268 in which the said Katherine T. Mershall appointed the said Katherine Rodgers Ellicott as her attorney-in-fact.

It being the intention of the parties to this Deed of Conveyance to grant unto Baltimore County, Maryland, all the right, title, interest and estate of the parties of the first part, not heretofore conveyed, in and to all streets, roads, alleys, and ways as shown on the plats hereinbefore referred to and described.

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

described and mentioned, and hereby intended to be conveyed; together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining, unto and to the proper use and benefit of the said Baltimore County, Maryland, a body corporate and politic, its successors and assigns, in fee simple.

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

AS WITNESS the due execution hereof by the aforenamed parties of the first part.

TEST:

Julie Howel

WILLIAM H.C. WILSON

WILMAN H. C. WILEON

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16 1/2016

Anna P. Taylor

Katharine Rodgers Ellicott,
Attorney-in-Fact for
Katherine T. Marshall

Margaret T. Hoge

TEST:

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July House

Frank D. Mead

Frank D. Mead

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Frank D. Mead Personal Representative of the Estate of Carol Taylor Mead, Deceased

Ruhard S. mono

Boris E. Linder,
Personal Representative of the
Estate of Carol Taylor Mead,
Decessed

PUBLIC

STATE OF FLORIDA

, to wit:

I HEREBY CERTIFY that on this State of Occasion, in the year 1987, before me, the subscriber, a Notary Public of the State of The ANNE PATAYLOR, and she acknowledged the foregoing Deed to be her act.

AS WITHERS my Hand and Notarial Seal.

MOTARY PUBLIC STATE OF FLOATOR MY COMMISSION EXP. FCB 27,1989 MONDED THRU CONERAL INS. UND.

Nortry Public

STATE OF MARYLAND, BUTTIMORE City, to with

I HEREBY CERTIFY that on this 670 day of New ware, in the year 1987, before me, the subscriber, a Notary Public of the State of Maryana.

AS WITNESS my Hand and Notarial Seal.

Notary Public .

COMMISSION EXPIECT 7/1/90

-4-

JUER 7 7 8 0 PAGE 0 6 8

STATE OF MARYLAND, Baltimore C.S. to wit: day of Noverises I HEREBY CERTIFY that on this year 1987, before me, the subscriber, a Notary Public of the State of Magazan, Brance, in and for the City aforesaid, personally appeared MARGARET T. HOGE, and she acknowledged the foregoing Deed to be her act. AS WITNESS my Hand and Notarial Seal. NOTARY PUBLIC GOTINISSION EXPIRES JUL STATE OF FORIDA I HEREBY CERTIFY that on this PRANK D. MEAD, and he acknowledged the foregoing Deed to be his act. Mand and Notarial Seal. ... HOTARY AUTROC STATE OF PLURICA BONDED THRU GENERAL INC. CAD. STATE OF MARYLAND CITY OF BALFIMURE , to wit: day of NOVEMBER T HEREBY CERTIFY that on this (3TH year 1987, before me, the subscriber, a Notary Public of the State of MANUAND, in and for the CITY aforesaid, personally appeared poris E. LINDER, and she acknowledged the foregoing Deed to be her act. AS WITNESS my Hand and Notarial Seal. Notary Public DEPIRES THE THE APPROVED as to legal sufficiency: APPROVED as to form:

Roads Engineer

LIDER 7 7 8 0 PAGE 0 6 9

APPROVED and ACCEPTED this Control of Granding 1987.

ATTEST:

BALTIMORE COUNTY, MARYLAND

BY Dennis F. Rasmusden

County Executive

APPROVED: BALTIMORE COUNTY COUNCIL

Norman W. Lauenatsin

Chairman

OPPICE OF PINANCE

OALTCE OF LINGUED

Funda Available and Encumbered

Timothy T. Harrison, Director

for 13/7/27 3/2,000.000

9/24/87

WJB:dmk Index: 8/30/87 R(1)

... ISER7 780 PASE 78 RW 87-195 BALTIMORE COUNTY, MARYLAND Item #1 (M) Office of Finance - Revenue Division

REAL PROPERTY TRANSFER - CONSIDERATION AFFIDAVIT

Complete affidavit - original and I copy - for each instrument other than mortgage or deed of trust, (with or without consideration). Sign and return both copies. In compliance with Baltimore County Code Title 11, Article IX, Sections 11-69 through 11-85, as amended, it is certified that an instrument described below, representing a transfer of real property including, but not limited to, fee simple estate, leasehold estate, limited estate and legal or equitable interests in real property, is offered for record in Baltimore County. The subject property is identified as follows: Prior Deed Reference: Property Liber________ Folio376 Account #_None-Amount of Mortgage 1 Date of Instrument_ Other (Cash, etc.) \$ DOCUMENTS PRESENTED Total Consideration \$ 13,000 Deed | Agreement Assessed Factor Deed of Trust Mortgage Exempt Status Claimed per Baltimore Lease over Contract County Code 11-85(A) 7 years Other *Total Consideration is Right-of-way or transfer tax base. Easement Agreement *Is Subject Property Financed by Bonds Issued Under Article 41. Section 266, Annotated Code of Maryland TRANSFERRED PROPERTY KNOWN AS: PERSON OFFERING INSTRUMENT FOR RECORDING: Avenues, etreets, roade, lanes, side-Name Walter J. Ballesteros walks, alleys or paths reserved on Title Co. -Plate -- both Taylor Land Go: or Firm Bureau of Land Acquisition WHOLE TRANSFER Address C.O.B. PARTIAL TRANSFER - List Improve-Towson, Md 21204 ments on Partial Transfer Phone: 494-3294 GRANTOR: Is Plat Availabe for Transfer Anne P. Taylor, at al Office? GRANTEE Baltimore County, HD Court House I HEREBY CERTIFY under the penalties of perjury that the information given above is true to the GRANTEE MAILING ADDRESS_____ best of my personal knowledge and belief. Signed Walter St. Ballesteros OFFICE OF FINANCE USE DNLY:..... Agent ____ Amount \$ ____ Invoice # ____ Date____ Tex 8111 _____ C.B. Credit _____ Other Credit _____

BALLINGS COUNTS CARD LE 24 COMPANIE CONTRACTOR OF A POPULATION OF THE COUNTS OF THE 101-280

Comments

TITLE CERTIFICATION

CERTIFIED TRUE COPY

UNDERSIGNED THE HEREBY CERTIFIES, REPRESENTS OPINES AND BALTIMORE COUNTY, MARYLAND, that:

- The undersigned maintains, or has maintained for the benefit of the undersigned, professional liability insurance coverage under policy no. 268015702, issued by Continental Casualty Co., insurer, with limits of liability of \$1 mil/1mil. Such policy is in force and effect as the date of this certification, benefiting the county in case of loss, injury or damage arising from any error or omissions related to the issuance of this Certificate by the undersigned and the County's reliance thereof.
- The undersigned has caused a diligent examination of the Land Records of Baltimore County, Maryland to be made to ascertain the status of record title to the real property known as Lot No. 47, more particularly shown on a Plat entitled, "Bolton Plat of Essex", which Plat is recorded among the Land Records of Baltimore County, MD in Plat Book 13, folio 35, and described in a Deed dated May 17, 2005, and recorded among the Land Records of Baltimore County, MD in Liber No. 22022, folio 097, and has determined that subject lot has right or access to Stuart Street through the 10' alley, as conveyed to Baltimore County, MD by Deed dated November 18, 1987 and recorded among the Land Records of Baltimore County, MD in Liber No. 7780, folio 064.
- This certification is made and delivered subject to the express understandings and 3. agreement that:
- a. The execution and delivery of this Certification by the undersigned was an express condition of Baltimore County, Maryland.
- b. This Title Certification is rendered to Baltimore County, MD, for its benefit, with the understanding that Baltimore County, MD, will rely upon the truth, accuracy and completeness of the certifications and representations herein set forth.
- c. This Title Certification may be relied upon by Baltimore County, MD authorities. It may not be relied upon by any other person or entity without the prior written consent of the undersigned.
- d. The undersigned assumes no liability for any lien, encumbrance, defect in title to or ownership of the Property, of whatever nature or character, arising subsequent to the Examination Date. The undersigned assumes no responsibility for any lien, encumbrance, title defect or any other matter affecting title to the Property but not appearing of record among the Land Records of Baltimore County, Maryland, as of the Examination Date.

Date:

June 15, 2006.

PETITIONER'S

Name: Caty A. Berger Firm: Gary A. Berger, P.A.

s: 401 Washington Avenue, Suite 905

Towson, MD 21204 one No.: 410-828-5000

EXHIBIT NO.

I, Glen Young give permission to Kevin & Lindsay Cook to use the alley way on North Stuart Street to access their property Lot 47. Kevin & Lindsay Cook will in turn maintain the alleyway.

Den Young Glen Young	1	$\frac{9/2 \circ / \circ }{\text{Date}}$
Rem Hermit Shah	9/20/06	
Notary's Signature	Date	Seal
		9-20-6
Kevin Cook		Date
	9/20/06 Date	Seal
Rudbon Coll		9-20.06
Lindsay Cook		Date
Lindsay Cooky		Date
hem Hemant Shah	9/20/06	
	Date	Seal
PREM HEMANT SHAH NOTARY PUBLIC STATE OF MARYLAND My Commission Expires October 9, 2006 1012010		PETITIONER'S
· · · · · · · · · · · · · · · · · · ·		EXHIBIT NO.

Ms. Deborah C. Oldewurtel 501 North Stuart Street Baltimore, Maryland 21221

March 28, 2007

Mr. William Wiseman, III, Esq.
Baltimore County Zoning Commissioner
County Courts Building
401 Bosley Avenue, Room 405
Towson, Maryland 21204

Re: 07-365-SPH, 503A N. Stuart Street

Dear Mr. Wiseman:

I currently reside at 501 North Stuart Avenue in Essex. I am writing to indicate that I am aware of Kevin and Lindsay Cook's petition for special hearing to permit the use of the 10 foot alley adjacent to their Lot 47. I am aware that a hearing has been scheduled for April 4, 2007 at 9:00a.m. in Room 106 of the County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204.

My property is adjacent to the 10 foot alley over which the Cook's are requesting a right-of-way to access their lot. My property is on the north side of the alley. I have spoken with the Cooks and am familiar with their plans in this regard. I do not object to their use of the alley, nor do I have any objection to their construction of a driveway on the alley.

I hope you find this letter helpful. If you have any questions of me, please feel free to contact me.

Sincerely,

Peporah Condewurt

PETITIONER'S

EXHIBIT NO.

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