IN RE: PETITION FOR SPECIAL

HEARING

N/W Side of Bay Drive, 660' NE

Miami Beach Road

(4034 Bay Drive)

\*

OF

15<sup>th</sup> Election District

th Council District

\*

Case No. 07-466-SPH

William & Jane Bissell

Petitioners

\*

### 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 abutting properties, William and Jane Bissell, through their attorney, Deborah C. Dopkin, Esquire. As originally filed, the Petitioners seek approval of a lot size of 0.23 acres in lieu of the required 1.5 acres pursuant to Sections 1A04.3.B.1.b and 4A03.4.B.3 of the Baltimore County Zoning Regulations (B.C.Z.R.), and to approve a street setback of as little as 40 feet in lieu of the required 75 feet, and a lot line setback of 10 feet in lieu of the required 50 feet, pursuant to B.C.Z.R. Section 1A04.3.B.2.a. The two properties at issue and requested relief are more particularly described on the amended redlined site plan submitted and marked into evidence as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the request were William and Jane Bissell, property owners, William H. Bissell, III, Russell Musgrave, Tim Laubach, Donald E. Hicks, P.E., with Hicks Engineering Associates, Inc., the consultant who prepared the site plan for these properties, and Deborah C. Dopkin, Esquire, attorney for Petitioners. Appearing as Protestants/interested citizens was the adjacent property owner, Nyle C. Miller (3919 Briar Point

Date TANGED FOR FILING

At the onset of the hearing, Petitioners' attorney amended the petition to reflect a request for approval of one dwelling on combined lots totaling 0.38 acres. The petition, as drafted, failed to incorporate both property descriptions that were filed and entitled "Description for Zoning of Bissell Property" – See Petitioners' Exhibit 2.

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Road), and neighbors in the area, namely, Concetta P. Clemens (4030 Bay Drive), Roy M. Wetzbarger (4041 Bay Drive), Gerard Jasinski (4029 Bay Drive).

Testimony and evidence offered disclosed that the subject properties are abutting lots located at the end of Bay Drive at its intersection with Briar Point Road and Burke Avenue in Bowleys Quarters. Located on a peninsula, the lots enjoy a water view of the Chesapeake Bay to the east and Goose Harbor to the north. The property known as 4034 Bay Drive (parcel 125) contains a gross area of 0.23 acres, more or less, zoned R.C.5, and is approximately 60 feet wide along Bay Drive and 187 feet deep tapering to a width of 55 feet across the rear property line. The abutting property referred to as 3921 Briar Point Road (parcel 172) has approximately 50 feet of frontage along that road and is 130 feet deep widening slightly to a width of 55 feet across the rear property line. Given the unique configuration of Bay Drive, both lots are considered corner lots. The subject properties are served by public water and sewer.

It should be pointed out that the Office of People's Counsel, by its letter, dated July 6, 2007, raised issues of *collateral estoppel* and *res judicata* as a formidable bar to Petitioners' request. While true that the County Board of Appeals, in a *de novo* appeal of Case Nos. 05-405-SPH and 05-406-SPH, denied Petitioners' request to build two homes on the subject properties, the instant request is seeking permission to build a single house located on combined lots. In my opinion, this petition is dissimilar from the original request and does not preclude the Petitioners' from filing their new petition.

Nyle Miller and the other neighbors who live in close proximity to the subject properties state that they are not against building on the lots, however, they want to see only one home built. They felt the Petitioners' previous plan (Case Nos. 05-405-SPH & 05-406-SPH) was not in character with the past development practices in this internal area of Bowleys Quarters. Ms.

Date TING

Clemens points out that homes built on 50-foot lots are waterfront properties that parallel the shoreline. Currently, the homes built on the internal lots are staggered giving the appearance of larger lots with more privacy. The Office of Planning with its comments, dated July 10, 2007, supports the neighbors position, stating in pertinent part:

"The Office of Planning does not oppose the petitioners' request, provided that:

- Parcels 125 and 172 are combined;
- Driveway and parking are shown;
- The house is situated on the lot as shown in order to achieve the pattern of staggered house locations already established . . . the request is consistent with existing properties in the immediate vicinity."

In this regard, Messrs. Miller, Wetzbarger and Jasinski point to B.C.Z.R. Section 4A03.4(B)(1) "a building permit may be issued for the construction of a dwelling on an undersized lot subject to the following conditions: The owner of the lot does not own sufficient adjoining land that if combined with the adjoining land would allow the property owner to conform to the current zoning requirements." In this case, the Petitioners' own parcels 125 (0.23 acres) and 172 (0.15 acre) that, when combined, would result in a request for an undersized lot of 0.38 acres in lieu of the required 1.5-acre lot. Such a request would meet the requirements of Section 4A03.4(B)(1) and would be in character with other undersized lots in the neighborhood.

Upon Counsel for Petitioners' explanation of the amended petition, Mr. Hick's combining the two (2) lots for zoning purposes, by redlined delineation on the site plan evidencing a site area of 0.38 acres, the neighbors then each stated that they had no further objection to the plan.

I find that special circumstances or conditions exist that are peculiar to the land which is the subject of the request. As noted, the unique configuration of Bay Drive renders both lots as "corner lots". The lots were created in 1957, well prior to the effective date of the R.C. zoning

Date THECEIVED FOR FILING

regulations. The current regulations impact this property differently from lots laid out in conformance to the R.C. regulation. These lots, now combined, are unique in a zoning sense. I also find that strict enforcement of the regulations would impose a hardship on the Petitioners' as they would not be able to use the property for a permitted purpose. I further find that the proposed dwelling as located on the site plan is consistent with the pattern of development in the neighborhood and that there will be no adverse impacts to adjacent properties. In sum, it is clear that the subject lot, as combined, is undersized by today's standards and that relief, pursuant to Section 1A04.3.B of the B.C.Z.R. is appropriate given the unique configuration and small area of the lot and meets the statutory requirements of the B.C.Z.R. for consideration of alteration of the minimum acreage requirement by way of this petition for special hearing.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this day of July 2007, that the Petition for Special Hearing requesting approval of a site area of 0.38 acres in lieu of the required 1.5 acres pursuant to Sections 1A04.3.B.1.b and 4A03.4.B.3 of the Baltimore County Zoning Regulations (B.C.Z.R.), and to approve a street setback of as little as 40 feet in lieu of the required 75 feet, and a lot line setback of 10 feet in lieu of the required 50 feet, pursuant to B.C.Z.R. Section 1A04.3.B.2.a, in accordance with Petitioners' Exhibit 1, be and is hereby granted, subject, however, to the following restrictions:

1. The Petitioners' may apply for their building permit and be granted same upon receipt of this Order; however, the Petitioners' are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

- 2. Prior to the issuance of any permits, the Petitioners' shall submit building elevation drawings of the proposed dwelling to the Office of Planning as set forth in their comment, dated July 10, 2007, a copy of which is attached hereto and made a part hereof.
- Compliance with the Chesapeake Bay Critical Area regulations and federal flood insurance requirements pursuant to the ZAC comments submitted by DEPRM, dated May 31, 2007, and the Bureau of Development Plans Review, dated April 24, 2007, and all other appropriate environmental, floodplain and B.O.C.A. regulations relative to the protection of water quality, streams, wetlands and floodplains. Copies of those comments are attached hereto and made a part here.

When applying for any permits, the site plan must reference this case and set forth and address the restrictions of this Order.

Zoning Commissioner of

**Baltimore County** 

IN RE: PETITION FOR SPECIAL

HEARING

N/W Side of Bay Drive, 660' NE

Miami Beach Road (4034 Bay Drive)

15<sup>th</sup> Election District 6<sup>th</sup> Council District

William & Jane Bissell Petitioners

BEFORE THE

COUNTY BOARD OF APPEALS

OF

**BALTIMORE COUNTY** 

Case No. 07-466-SPH

### **OPINION AND ORDER**

Upon consideration of the evidence in a de novo appeal held on June 11, 2008, and upon public deliberations that same day, the Board enters the following Opinion and Order upon the Petition for Special hearing and other relief in this case.

William and Jane Bissell are the owners of the subject property. Petitioners seek approval by way of special hearing and variance relief to permit a combined lot size of 0.38 acres in lieu of the required 1.5 acres pursuant to Sections 1A04.3.B.1.b and 4A03.4.B.3 of the Baltimore County Zoning Regulations (B.C.Z.R.), and to approve a street setback of as little as 40 feet in lieu of the required 75 feet, and a lot line setback of 10 feet in lieu of the required 50 feet, pursuant to B.C.Z.R. Section 1A04.3.B.2.a., it being Petitioner's intent to build one house on the property, which consists of two undersized lots, The two properties at issue and requested relief are more particularly described on the amended redlined site plan submitted and marked into evidence as Petitioners' Exhibit 1. The Property is located in the Bowleys Quarters area of Baltimore County and is zoned R.C. 5.

People's Counsel appealed the Order of the Zoning Commissioner granting the requested relief. At the hearing before the Board on June 11, Carole S. Demilio, Deputy People's Counsel, Deborah C. Dopkin, Esquire, attorney for Petitioners, Mr. and Mrs. Bissell, Bernadette Moskunas from Site Rite Surveying were present. Also present in support were two nearby

### Case No. 07-466-SP William & Jane Bissell -Petitioners

property owners namely, Concetta P. Clemens (4030 Bay Drive), and Gerard Jasinski (4029 Bay Drive). There were no Protestants.

Ms. DeMilio stated the history of the case and that Petitioner had attempted to reconfigure the two lots into one and effect a zoning merger by locating the proposed house on top of the lot line, by application to the Development Review Committee (D.R.C.), which application could not be approved during the pendency of the subject appeal, and that the proposed resolution was one that People's Counsel does not oppose.

Ms. Dopkin introduced and amended site plan as Petitioner's Exhibit I, which plan showed the reconfigured lot line and house location. Ms. Dopkin proffered that Ms.Moskunas, an expert in zoning and site development, would testify testimony that the subject properties are abutting lots located at the end of Bay Drive at its intersection with Briar Point Road and Burke Avenue in Bowleys Quarters; that the property is long and narrow, consisting of two pre-existing lots which were created in the 1950's, prior to the current regulations; and that the subject properties are served by public water and sewer.

Ms. Dopkin indicated that the proposed house is situated in a manner consistent with the pattern of development of other lots in the block, and consistent with the recommendation of the Office of Planning, so as to achieve the pattern of staggered house locations, thereby maximizing water views for all the houses in the immediate vicinity."

Ms. Dopkin proffered that without the requested relief the Property could not be used for any permitted purpose, thus creating a practical difficulty for Petitioners.

Ms. Dopkin further proffered that the proposal is supported by the neighbors, is not detrimental to the health, safety or general welfare, does not overcrowd the land or increase the density beyond that which is otherwise permitted. She proffered that Ms. Moskunas would testify that there is a practical difficulty unique to the Property, that the Property satisfies the standards for

### Case No. 07-466-Sk William & Jane Bissell -Petitioners



granting variance relief, and that the requested relief is in keeping with the spirit and intent of the Baltimore County Zoning Regulations.

There was no evidence offered in opposition to the evidence proffered by Ms. Dopkin.

**ORDERED** that the Petition for Special Hearing and variance relief requested be approved as follows:

- 1. From Sections 1A04.3.B.1.b and 4A03.4.B.3 of the Baltimore County Zoning Regulations (B.C.Z.R.), a site area of 0.38 acres in lieu of the required 1.5 acres for a single residence, in accordance with Petitioners' Exhibit 1, the amended site plan;
- 2. From B.C.Z.R. Section 1A04.3.B.2.a, a street setback of as little as 40 feet in lieu of the required 75 feet, and a lot line setback of 10 feet in lieu of the required 50 feet for a single residence, all in accordance with Petitioners' Exhibit 1.

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

COUNTY BOARD OF APPEALS OF BALTIMORE/COUNTY

Edward W. Crizer, Jr., Chairman

Maureen E. Murphy

Lawrence M. Stahl

### FLand CBGA



### Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at _	4034	Bay	Drive	<u> </u>			
which is presently zoned <u>RC 5</u>							

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

to approve a lot size of 0.23 Acres in lieu of the required 1.5 acres pursuant to B.C.Z.R. 1A04.3.B.1.b and 4A03.4.B.3. and to approve a street setback of as little as 40' in lieu of the required 75', and a lot line setback of 10' in lieu of the required 50', pursuant to B.C.Z.R. 1A04.3.B.2.a.

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): Name - Type or Print Name - Type of Prin Signature Signature Jane Bissel Address Telephone No. Name - Type or Print City State Zip Code Signatu Attorney For Petitioner: 410-335-2311 4009 Bay Drive Telephone No. Address Baltimore, Maryland Zip Code City Representative to be Contacted: Signature <u>Deborah C. Dopkin, Esquire</u> Dr≥borah\_ Donkin Company 410-821-0200 409 Washington Avenue, #1000 410-821-0200 1000. Telephone No. Address Telephone No. Towson. Maryland Zip Code Zip Code **State** OFFICE USE ONLY ESTIMATED LENGTH OF HEARING \_\_\_\_\_ Case No. 07 - 466 - 54UNAVAILABLE FOR HEARING \_\_ REV 9/15/98

OPPOSA RECEIVED FOR FILING

OF
BISSELL PROPERTY,
1). NO. 4034 BAY DRIVE
TAX MAP 98; PARCEL 125
2). NO. 3921 BRIAR POINT DRIVE
TAX MAP 98; PARCEL 172:
6<sup>TH</sup> COUNCILMANIC DISTRICT
15<sup>TH</sup> ELECTION DISTRICT
BALTIMORE COUNTY, MARYLAND

### NO. 4034 BAY DRIVE TAX MAP 98; PARCEL 125:

BEGINNING FOR THE SAME 660 feet, more or less, from the intersection formed by the northwest side of Bay Drive, 30 feet wide, with the southwest side of Miami Beach Road, thence,

- North 35 degrees 36 minutes 00 seconds East 60.00 feet to the southwest side of a thirty foot road, thence binding on said road,
- North 53 degrees 49 minutes 00 seconds West 170.00, thence leaving said road,
- 3) South 54 degrees 23 minutes 00 seconds West 55 feet, more or less,

South 51 degrees 34 minutes 00 seconds East 187.40 feet to the place of

beginning.

CONTAINING 9,350 square feet or 0.23 acres of land, more or less.

HICKS ENGINEERING ASSOCIATES, INC. 200 EAST JOPPA ROAD, SUITE 402 TOWSON, MARYLAND 21286 TELEPHONE: (410) 494-0001

APRIL 11, 2007

PAGE NUMBER 1 OF 2

OF
BISSELL PROPERTY,
1). NO. 4034 BAY DRIVE
TAX MAP 98; PARCEL 125
2). NO. 3921 BRIAR POINT DRIVE
TAX MAP 98; PARCEL 172:
6<sup>TH</sup> COUNCILMANIC DISTRICT
15<sup>TH</sup> ELECTION DISTRICT
BALTIMORE COUNTY, MARYLAND

NO. 3921 BRIAR POINT DRIVE TAX MAP 98; PARCEL 172:

BEGINNING FOR THE SAME at a point formed by the intersection of the southern side of Bay Drive, 30 feet wide, with the eastern side of Briar Point Drive, 30 feet wide, thence running with the southern side of Bay Drive;

- South 53 degrees 49 minutes 00 seconds East 130.35 feet, thence leaving said road and running,
- South 54 degrees 23 minutes 00 seconds West 55 feet, more or less, thence running;
- North 51 degrees 34 minutes 00 seconds West 187.40 feet to a point on the eastern side of Briar Point Road;
- 4) North 54 degrees 23 minutes 00 seconds East 50.00 feet to the point of beginning.

CONTAINING 6,500 square feet or 0.15 acres of land, more or less.

HICKS ENGINEERING ASSOCIATES, INC. 200 EAST JOPPA ROAD, SUITE 402 TOWSON, MARYLAND 21286 TELEPHONE: (410) 494-0001

APRIL 11, 2007

PAGE NUMBER 2 OF 2

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### NOTICE OF ZONING HEARING

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

Case: #07-456-SPH

4034 Bay Drive

N/west side of Bay Drive, 660 feet +/- n/east side of the center of Miami Beach Road
15th Election District - 6th Councilmanic District
Legal Owner(s): William & Jane Bissell
Special Hearing: to approve a lot size of 0.23 acres in lieu of the required 1.5 acres, and to approve a street centerline setback of as little as 40 feet in lieu of the required 75 feet, and a lot line setback of 10 feet in lieu of the required 50.

Hearing: Friday, July 13, 2007 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue,

WILLIAM J. WISEMAN, III

Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Plesso 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.

6/334 June 28

6128/ JS61

THIS IS TO CERTIFY, that the annexed advertisement was published successive weeks, the first publication appearing in the following weekly newspaper published in Baltimore County, Md., once in each of

The Jeffersonian

- 🖵 Catonsville Times Arbutus Times
  - Towson Times
- Owings Mills Times
- 🗗 NE Booster/Reporter
  - D North County News

Mulus

LEGAL ADVERTISING

### CERTIFICATE OF POSTING

ATTENTION: KRISTEN MATHHEWS

DATE: 06/29/07

Case Number: 07-466-SPH

Petitioner / Developer: Deborah Dopkin, Esq.~Donald Hicks of

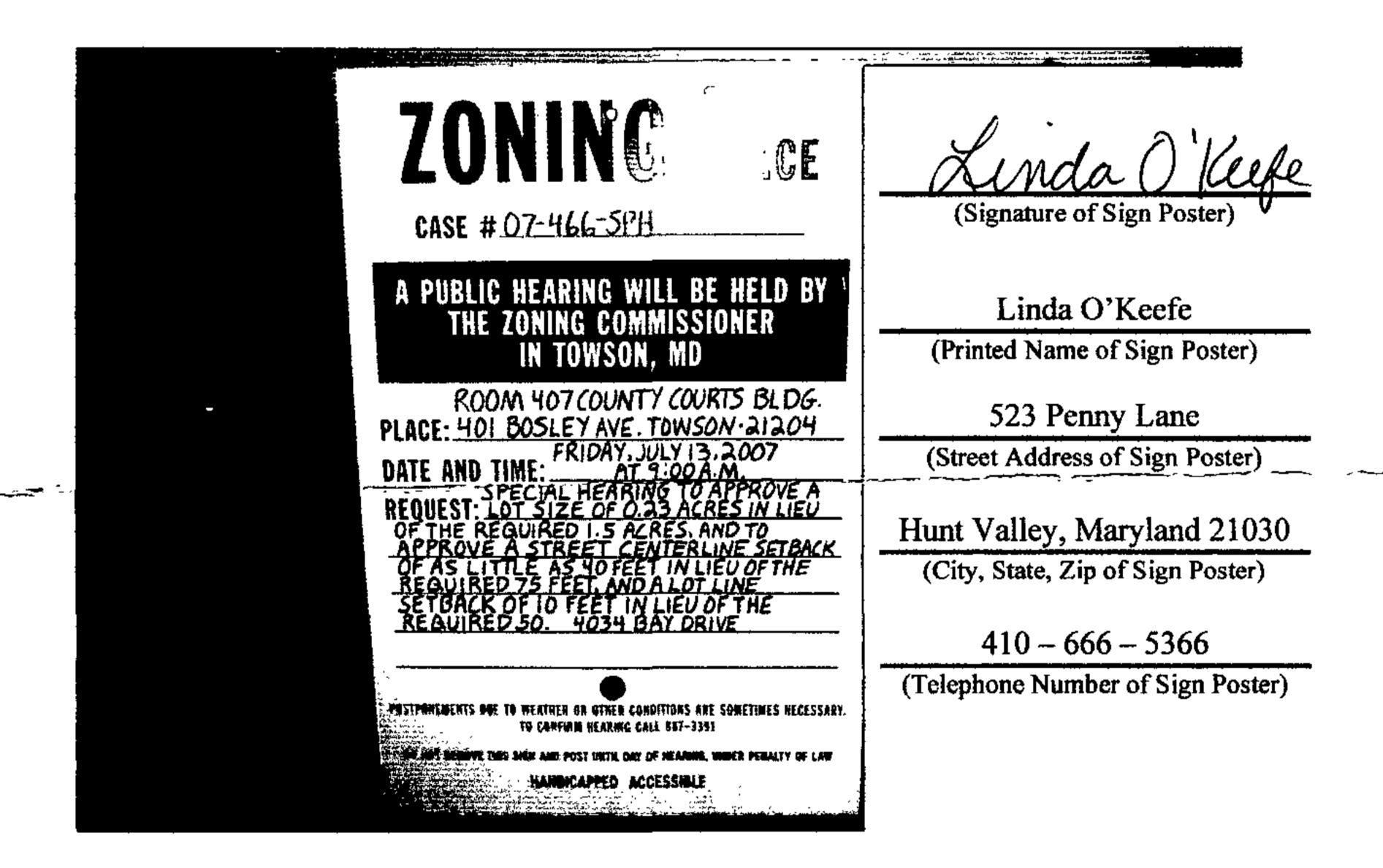
Hicks Enginering Co.~William and Jane Bissell

Date of Hearing (Closing): JULY 13, 2007

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

4034 BAY DRIVE

The sign(s) were posted on: 06/26/07



TO: PATUXENT PUBLISHING COMPANY

Thursday, June 28, 2007 Issue - Jeffersonian

Please forward billing to:

Deborah Dopkin

409 Washington Avenue, Ste. 1000

Towson, MD 21204

410-821-0200

### CORRECTED NOTICE OF ZONING HEARING

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

CASE NUMBER: 07-466-SPH

4034 Bay Drive

N/west side of Bay Drive, 660 feet +/- n/east side of the center of Miami Beach Road 15<sup>th</sup> Election District – 6<sup>th</sup> Councilmanic District

Legal Owners: William & Jane Bissell

Special Hearing to approve a lot size of 0.23 acres in lieu of the required 1.5 acres, and to approve a street centerline setback of as little as 40 feet in lieu of the required 75 feet, and a lot line setback of 10 feet in lieu of the required 50.

Hearing: Friday, July 13, 2007 at 9:00 a.m. in Room 407, County Courts Building,

401/Bosley Ayenue, 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.

TO: PATUXENT PUBLISHING COMPANY

Tuesday, June 26, 2007 Issue - Jeffersonian

Please forward billing to:

Deborah Dopkin

409 Washington Avenue, Ste. 1000

Towson, MD 21204

410-821-0200

### **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: 07-466-SPH

4034 Bay Drive

N/west side of Bay Drive, 660 feet +/- n/east side of the center of Miami Beach Road 15<sup>th</sup> Election District – 6<sup>th</sup> Councilmanic District

Legal Owners: William & Jane Bissell

Special Hearing to approve a lot size of 0.23 acres in lieu of the required 1.5 acres, and to approve a street centerline setback of as little as 40 feet in lieu of the required 75 feet, and a lot line setback of 10 feet in lieu of the required 50.

Hearing: Wednesday, July 11, 2007 at 9:00 a.m. in Room 407, County Courts Building,

40# Bosley Ayenue, 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.



JAMES T. SMITH, JR. County Executive

May 24, 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: 07-466-SPH

4034 Bay Drive

N/west side of Bay Drive, 660 feet +/- n/east side of the center of Miami Beach Road

15th Election District - 6th Councilmanic District

Legal Owners: William & Jane Bissell

Special Hearing to approve a lot size of 0.23 acres in lieu of the required 1.5 acres, and to approve a street centerline setback of as little as 40 feet in lieu of the required 75 feet, and a lot line setback of 10 feet in lieu of the required 50.

Hearing: Wednesday, July 11, 2007 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204

Timothy Kotroco

Director

TK:klm

C: Deborah Dopkin, 409 Washington Avenue, Ste. 1000, Towson 21204 William & Jane Bissell, 4009 Bay Drive, Baltimore 21220

NOTES: (1) THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, JUNE 26, 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.

### DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

### ZONING REVIEW

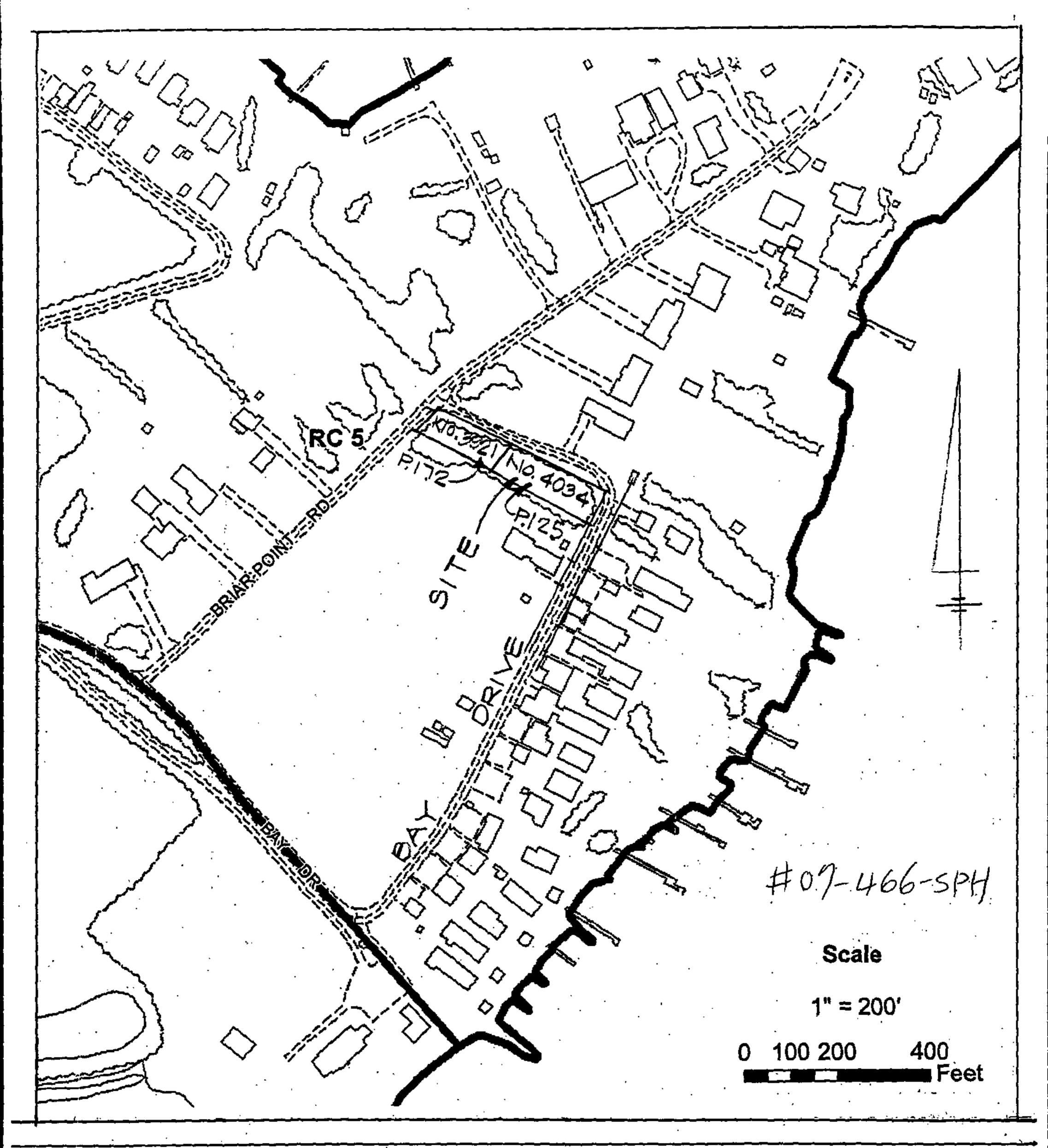
### ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

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 News	spaper Advertising:	-
Item Num	nber or Case Number 07-466-5PH	
Petitioner	William Bissell & Jane Bissell	
Address c	or Location. 4034 Bay Drive	
·		
PLEASE	FORWARD ADVERTISING BILL TO	
Name.	Deborah O Dopkin	<u> </u>
Address	409 Washington Ave	
	STE 1000	
	Towson MD 21204	
Telephone	e Number: 410 821-0200	



Baltimore County
Office of Planning and Zoning
Official Zoning Map

091A3	09183	091C3	092A3	092B3
098A1	098B1		099A1	099B1
098A2	098B2	098C2		



JAMES T. SMITH, JR. County Executive

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

July 3, 2007

Deborah C. Dopkin, Esquire 409 Washington Avenue, Suite 1000 Towson, Maryland 21204

Dear Ms. Dopkin:

RE: Case Number: 07-466-SPH, 4034 Bay Drive

The above referenced petition was accepted for processing ONLY by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on April 12, 2007. This letter is not an approval, but only a NOTIFICATION.

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

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

Very truly yours,

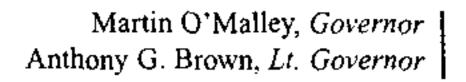
W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR:amf

Enclosures

c: People's Counsel William Bissell Jane Bissell 4009 Bay Drive Baltimore 21220







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

Maryland Department of Transportation

Date: 4/24/2007

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

RE: **Baltimore County** 

> Item No. 7-466-SPH 4034 BAY DRIVE

BISSELLPROPERTY 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. 7-466-5PH

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

SDF/MB

My telephone number/toll-free number is \_\_\_ Maryland Relay Service for Impaired Hearing or Speech: 1.800.735.2258 Statewide Toll Free

Street Address: 707 North Calvert Street · Baltimore, Maryland 21202 · Phone: 410.545.0300 · www.marylandroads.com

### BALTIMORE COUNTY, MARYLAND

### Inter-Office Correspondence



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Timothy M. Kotroco

FROM:

Dave Lykens, DEPRM - Development Coordination

DATE:

May 31, 2007

SUBJECT:

Zoning Item

Address

4034 Bay Drive

(Bissell Property)

Zoning Advisory Committee Meeting of April 23, 2007

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

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

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

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

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

### Additional Comments:

This property must comply with Limited Development Area regulations. Parcel 125 is limited to 31.25% impervious surface and mitigation must be provided. The property is not within the 100-foot buffer.

Reviewer:

Regina Esslinger

Date: May 14, 2007

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### BALTIMORE COUNTY, MARYLAND

### INTEROFFICE CORRESPONDENCE

TO:

Timothy M. Kotroco, Director

**DATE:** April 24, 2007

Department of Permits & Development

Management

FROM:

Dennis A. Kennedy, Supervisor

Bureau of Development Plans Review

**SUBJECT:** 

Zoning Advisory Committee Meeting

For April 30, 2007 Item No. 07-466

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

The base flood elevation for this site is 10.2 feet Baltimore County Datum.

The flood protection elevation for this site is 11.2 feet.

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

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

The building engineer shall require a permit for this project.

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

Flood-resistant construction shall be in accordance with the Baltimore County Building Code which adopts, with exceptions, the *International Building Code*.

DAK:CEN:clw

cc: File

ZAC-ITEM NO 07-466-04242007.doc

Date The Convention of the Con



JAMES T. SMITH, JR. County Executive

September 25 ment Management

Deborah Dopkin 409 Washington Avenue, Ste. 1000 Towson, MD 21204

Dear Mrs. Dopkin:

RE: Case: 07-466-SPH, 4034 Bay Drive

Please be advised that an appeal of the above-referenced case was filed in this office on August 1, 2007 by People's Counsel. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

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

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

Timothy Kotroco Director

Sincerely, Kotroco

### TK:klm

c: William J. Wiseman III, Zoning Commissioner Timothy Kotroco, Director of PDM People's Counsel William & Jane Bissell, 4009 Bay Drive, Baltimore 21220 Donald Hicks, 200 East Joppa Road, Ste. 402, Towson 21286 William Bissell, III, 924 Frog Mortar Road, Baltimore 21220 Russell Musgrave, 4011 Bay Drive, Baltimore 21220 Tim Laubach, 4018 Briar Point Road, Baltimore 21220 Concetta Clemens, 4030 Bay Drive, Baltimore 21220 Nyle Miller, 3919 Briar Point Road, Baltimore 21220 Roy Wetzbarger, 4041 Bay Drive, Baltimore 21220 Gerard Jasinski, 4029 Bay Drive, Baltimore 21220

### BALTIMORE COUNTY, MARYLAND

### INTER-OFFICE CORRESPONDENCE

TO:

4

Timothy M. Kotroco, Director

**DATE:** July 10, 2007

Department of Permits and Development Management

FROM:

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

SUBJECT:

4034 Bay Drive

INFORMATION:

Item Number:

7-466

Petitioner:

William Bissell, c/o Deborah Dopkin, Esquire

Zoning:

RC 5

Requested Action:

Special Hearing

### SUMMARY OF RECOMMENDATIONS:

The Office of Planning does not oppose the petitioner's request, provided that:

- Parcels 125 and 172 are combined;
- Driveway and parking are shown;
- The house is situated on the lot as shown in order to achieve the pattern of staggered house locations already established;

As the request is consistent with existing properties in the immediate vicinity. However, this office is required to provide a statement of finding to the Zoning Commissioner indicating how the proposed construction complies with the current RC 5 requirements. To prepare the statement of finding, the following information must be submitted to this office:

- 1. Photographs of existing adjacent dwellings.
- 2. Submit building elevations (all sides) of the proposed dwelling to this office for review and approval prior to the hearing. The proposed dwelling shall be compatible in size and architectural detail as that of the existing dwellings in the area. Ensure that the exterior of the

proposed building(s) uses the same finish materials and architectural details on the front, side, and rear elevations. Use of quality material such as brick, stone, or cedar is encouraged.

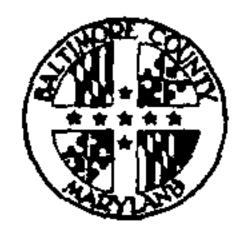
- 3. Design all decks, balconies, windows, dormers, chimneys, and porches as a component of the building following dominant building lines. Decks shall be screened to minimize visibility from a public street.
- 4. Design all accessory structures at a scale appropriate to the dwelling and design garages with the same architectural theme as the principal building on the site, providing consistency in materials, colors, roof pitch, and style.
- 5. Provide landscaping along the public road.

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

Prepared By:

**Division Chief:** 

CM/LL



### County Board of Appeals of Baltimore County

JEFFERSON BUILDING SECOND FLOOR, SUITE 203 105 WEST CHESAPEAKE AVENUE TOWSON, MARYLAND, 21204 410-887-3180 FAX: 410-887-3182

Hearing Room #2, Jefferson Building 105 W. Chesapeake Avenue, Second Floor (Next to Suite 203)

May 21, 2008

### NOTICE OF ASSIGNMENT

CASE #: 07-466-SPH

IN THE MATTER OF: WILLIAM & JANE BISSELL

-Legal Owners /Petitioners

4034 Bay Drive 15th Election District; 6th Councilmanic District

7/19/2007 – D.Z.C.'s Decision in which requested zoning relief was GRANTED with restrictions.

At the request of Counsel, the subject matter has been SPECIALLY ASSIGNED to the following date and time:

### **ASSIGNED FOR:**

### WEDNESDAY, JUNE 11, 2008 at 9:30 a.m.

NOTICE:

This appeal is an evidentiary hearing; therefore, parties should consider the

advisability of retaining an attorney.

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

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

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

Kathleen C. Bianco , Administrator

c: Appellant

: Office of People's Counsel

Counsel for Petitioners

: Deborah C. Dopkin, Esquire

Petitioners

: William and Jane Bissell

Donald E. Hicks, P.E. /Hicks Engineering Associates, Inc.

William Bissell III

Russell Musgrave

Tim Laubach

Concetta Clemens Nyle Miller Roy Witzbarger

Gerard Jasinski

William J. Wiseman III /Zoning Commissioner

Pat Keller, Planning Director

Timothy M. Kotroco, Director /PDM

CASE #: 07-466-SPH

### IN THE MATTER OF: WILLIAM & JANE BISSELL

-Legal Owners /Petitioners

4034 Bay Drive 15<sup>th</sup> Election District; 6<sup>th</sup> Councilmanic District

SPH – Approval of lot size of 0.23 acre in lieu of the required 1.5 ac and to approve street setback of as little as 40' ilo req'd 75' and a lot line setback of 10' ilo req'd 50'.

7/19/2007 – D.Z.C.'s Decision in which requested zoning relief was GRANTED with restrictions.

5/20/08 - T/C from Counsel for Petitioners - requesting that this matter be scheduled for hearing /joint request of Counsel; confirmed with D.P.C. as to date /time.

5/21/2008 - Notice of Assignment sent to following parties; hearing specially assigned as agreed with counsel for Wednesday, June 11, 2008 at 9:30 a.m.:

Office of People's Counsel Deborah C. Dopkin, Esquire

William and Jane Bissell

Donald E. Hicks, P.E. /Hicks Engineering Associates, Inc.

William Bissell III

Russell Musgrave

Tim Laubach

Concetta Clemens

Nyle Miller

Roy Witzbarger

Gerard Jasinski

William J. Wiseman III /Zoning Commissioner

Pat Keller, Planning Director

Timothy M. Kotroco, Director /PDM

6/11/08 – Board convened for specially assigned hearing (Crizer, Murphy, Stahl); Ms. Dopkin appeared for Petitioner; Ms. Demilio for Office of People's Counsel. Undisputed testimony proffered by Deputy People's Counsel; public deliberation followed this specially assigned hearing; granted requested zoning relief as proffered. Counsel to submit proposed order for review by Board panel.

6/25/08 - Proposed Opinion and Order submitted by Ms. Demilio and Ms. Dopkin.

### BOARD OF APPEALS OF BALTIMORE COUNTY MINUTES OF DELIBERATION

IN THE MATTER OF: William and Jane Bissell – Legal Owners /Petitioners

Case No. 07-466-SPH

DATE: Wednesday, June 11, 2008

BOARD / PANEL: Edward W. Crizer, Jr. (EWC)

Maureen Murphy (MM)

Lawrence M. Stahl (LMS)

**RECORDED BY**: Kathleen C Bianco / Administrator

**PURPOSE:** To deliberate Case No. 07-466-SPH /specially assigned by request of Counsel

Undisputed testimony proffered by People's Counsel (Ms. Demilio); Ms. Dopkin on behalf of Petitioner.

- Requested relief is in RC 5 zone; .38 acre in lieu of 1.5 acres
- ♦ Street setbacks 40' ilo required 75'
- side setback of 10' ilo required 50'
- Previously requested two homes; were denied with comment that one house would be fitting, if it went through the system
- Undisputed testimony proffered by Ms. Demilio
- ◆ Practical difficulty compliance with law would eat up entire lot; no appropriate use
- ♦ No argument among parties as to any issues health, safety, general welfare
- ♦ One house straddling two lots would be in spirit and intent of zoning regulations
- ♦ Submitted amended plan house will straddle both lots

### Decision of each member:

- ☑ EWC Meets requirements; will grant requested zoning relief as proposed and proffered
- ☑ LMS Made case for small lot and variance requested; would grant
- ☑ MM Agreed with above; established that meets law; neighbors appeared in support; not opposed to the requested relief

### Final decision:

Unanimous decision of the Board – zoning relief as requested by Petitioner in this matter will be GRANTED, based upon the proffer submitted on the record at hearing. Meets the requirements of the regulations and the spirit and intent; complies with standard as set forth in Cromwell v. Ward.

Proposed Order will be prepared and submitted by Counsel incorporating today's granting as deliberated; appellate period to run from date of written Order and not today's date.

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

Respectfully submitted

Kathleen C. Bianco, Administrator

County Board of Appeals

404 Ň CASE NAME OF CASE NUMBER DATE

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NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
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Russell Musgrave	4011 Bay Dr	Baltmore 1110 21220	1 1 1 as. c t
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RE: PETITION FOR SPECIAL HEARING
4034 Bay Drive; NW/side Bay Drive,
660' NE Miami Beach Road
15<sup>th</sup> Election & 6<sup>th</sup> Councilmanic Districts
Legal Owner(s): William & Jane Bissell
Petitioner(s)

BEFORE THE

ZONING COMMISSIONER

\* FOR

BALTIMORE COUNTY

\* 07-466-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 and 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 27<sup>th</sup> day of April, 2007, a copy of the foregoing Entry of Appearance was mailed to Deborah C. Dopkin, Esquire, 409 Washington Avenue, Ste. 1000, Towson, MD, 21204, Attorney for Petitioner(s).

RECEIVED

AR 2 7 2007

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

Per.....

DEBORAH C. DOPKIN, P.A.
ATTORNEY AT LAW

409 WASHINGTON AVENUE, SUITE 1000 TOWSON, MARYLAND 21204

> TELEPHONE 410-821-0200 FACSIMILE 410-823-8509 e-mail ddopkin@dopkinlaw.com

DEBORAH C. DOPKIN

July 10, 2007

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

JUL 1 1 2007 BY:

RE: William & Jane Bissell, Petitioner

4034 Bay Drive Case No. 07-466~SPH

Dear Mr. Wiseman:

It has come to my attention that People's Counsel for Baltimore County has sent you an ex-parte communication involving the above captioned case. I am asking that you <u>disregard</u> this correspondence as a prohibited ex parte communication under Section 7-1-308 of the County Code and contrary to the Maryland Rules. In addition, I have not received a copy of this communication to you from People's Counsel, though the hearing on this matter is imminent.

The assertions made by People's Counsel are inaccurate. Had People's Counsel carefully reviewed the file, it would have become evident that the subject petition comprehends all of the property that was included in the two prior zoning cases.

I trust that you will maintain an open and unprejudiced mind when hearing this case and not be unduly influenced by People's Counsel's actions.

Very truly yours,

Deborah C. Dopkir

DCD/kmc

cc: People's Counsel for Baltimore County
 Mr. and Mrs. William Bissell
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DEBORAH C. DOPKIN, P.A.

ATTORNEY AT LAW
409 WASHINGTON AVENUE, SUITE 1000
TOWSON, MARYLAND 21204

TELEPHONE 410-821-0200 FACSIMILE 410-823-8509 e-mail ddopkin@dopkinlaw.com

DEBORAH C. DOPKIN

May 31, 2007

### Via Facsimile Transmission and First Class Mail

Ms. Kristen Matthews
Baltimore County
Zoning Office
County Office Building
111 West Chesapeake Avenue, Room 105
Towson, Maryland 21204

RE: Case No. 07-466-SPH 4034 Bay Drive

Dear Ms. Matthews:

I received in today's mail the Notice of Zoning Hearing in the above captioned case setting the hearing for July 11<sup>th</sup> at 9am. This letter is to request a postponement, because of a scheduling conflict. On Wednesday, July 11<sup>th</sup>, I am before the County Board of Appeals on Case No. 06-506-A. A copy of that Notice of Assignment is enclosed. I would appreciate your calling me to arrange a suitable date on which to reschedule this hearing.

Thanking you in advance, I am

Very truly yours,

Deborah C. Dopkin

DCD/kmc

Enclosure

cc: Mr. and Mrs. William Bissell

Mr. Don Hicks

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## PLEASE PRINT CLEARLY

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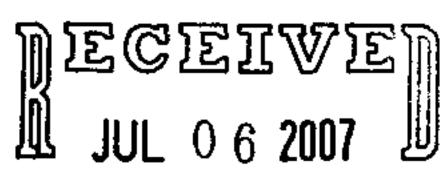
# CITIZEN'S SIGN-IN SHEET

E- MAIL				
BALTO MAZIA BACK, MO-21220 MIDDLE RIVER 21220				
40 ADDRESS 3919 Briar DT. Rd. 4041 6AY DR.				
Mule C. Miller.	1 1 1			

Office of the Zoning Commissioner 401 Bosely Avenue Towson MD 21204

RE: 07-466-SPH

Dear Sir:



BY:\_\_\_\_

Per Section 4A03.4(B)(1) "A building permit may be issued for the construction of a dwelling on an undersized lot subject to the following conditions: The owner of the lot does not own sufficient adjoining land that if combined with the adjoining land would allow the property—owner to conform to the current zoning requirements."

In this case the applicant owns Parcels 125 (0.23 acre) and Parcel 172 (0.15 acre) that, when combined, would result in a request for an undersized lot of 0.38 acres in lieu of the required 1.5 acre lot. Such a request would meet the requirements of Section 4A03.4(B)(1) and would be in character with the other undersized lots in the neighborhood. Should the application be modified to request approval for a 0.38 acre lot in lieu of 1.5 acre lot required, we would have no objections.

Additionally, in the previous case, the applicant agreed to move the house on Bay Drive back so that it would now have an 85-ft front street setback, which would require a property line setback of 14-ft and street centerline setback of 30-ft, in lieu of the 17-ft and 40-ft proposed. Should these changes which were agreed to at the first hearing be honored, we have no objections to the plans. Otherwise, we object for the reasons previously stated.

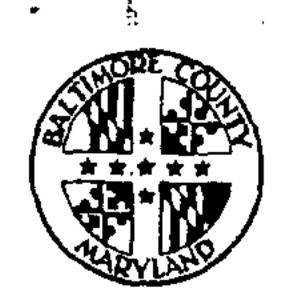
Should the application remain as a request for approval of a 0.23 acre lot in lieu of 1.5 acre required, we would object. To approve a 0.23 acre lot in lieu of the 1.5 acre requirement, would be in direct conflict with the previous zoning case 05-405-SPH in which the same request was denied by the Board of Appeals and would ignore the requirements set forth in 4A03.4(B)(1) which specifically addresses the requirement to combine adjacent undersized lots to conform (or try to conform) to the current zoning requirements.

Thank you for your time and consideration in this matter. It appears the applicant is essentially filing Case No. 05-405-SPH again without regard to the reasons it was contested in the first place.

Sincerely,

Nyle Miller





OFFICE OF PEOPLE'S COUNSEL

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

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

PETER MAX ZIMMERMAN People's Counsel

CAROLE S. DEMILIO Deputy People's Counsel

July 6, 2007

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

Re: William & Jane Bissell., Petitioner

Case No: 07-466-SPH

Dear Mr. Wiseman:

Our office duly entered its appearance in this matter. This matter was previously denied as a special exception on August 23, 2006 by the County board of appeals in a de novo appeal.(Case 05-405 and 05-406 attached). This special hearing requests the same relief by the same party in interest and must also be denied, regardless of the manner in which the petition was filed. Frankly, it is incredulous that the Petitioner seeks the same relief less than one year after the CBA case. At the very least, it is barred by res judicata and/or collateral estoppel.

The Petitioner owns contiguous undersized parcels, which was a factor discussed by the CBA in denying relief to construct a dwelling on each parcel consisting of .15 and .23 acres in an R.C. 5, zone which requires a minimum lot size of 1 ½ acres. The Petitioner cannot now impudently seek special hearing relief on the same .23 acre parcel. It is an affront to the CBA and to the administrative zoning process and must not be condoned.

"Justice requires that every cause be once fairly and impartially tried; but the public tranquility demands that having been once so tried, all litigation of that question and between the same parties should be closed forever." Maryland Digest, Judgment Section 540 quoting McKinzie v. Baltimore & O.R. Co. 28 Md. 161 (1868).

The doctrine of res judicata is actually based on fairness and finality of judicial decisions. It is easily understood in that context as explained by the Court of Appeals:

"The general rule, where the question has arisen, seems to be that after the lapse of such time as may be specified by the ordinance, a zoning appeals board may consider and act upon a new application for a special permit previously denied, but that it may properly grant such a permit only if there has been a substantial change in conditions.

This rule seems to rest not strictly on the doctrine of *res judicata*, but upon the proposition that it would be arbitrary for the board to arrive at the opposite conclusions on substantially the same state of facts and the same law." Whittle v. Bd. Of Zoning Appeals, 211 Md. 36, 45. quoted in Woodlawn Area Cit. Ass'n v. Board of County Com'rs, 241 Md 187 (1966) (emphasis added).

The principle applies to parties in privity and to the same cause of action, regardless of how titled by the Petitioner to disguise the previous decisions:

"Rule of res judicata is that judgment between same parties and their privies is a final bar to any other suit upon same cause of action, and is conclusive, not only as to all matters that have been decided in original suit, but as to all matters which with propriety could have been litigated in first suit." (emphasis added) Maryland Digest, Judgment Section 540 quoting Jack v. Foster Branch Homeowner's Ass'n No. 1, Inc. 53 Md. App. 325 (1982). See also Roberts v. Gates, 24 Md. App. 374 (1975).

The Court of Appeals has set forth the elements of *res* judicata in <u>Batson v. Shiflett</u> 325 Md. 684, 701 (1992). Judge Robert Karwacki there wrote:

"The Court of Special Appeals used the following test for determining whether the NLRB decision is entitled to preclusive effect:

"Whether an administrative agency's declaration should be given preclusive effect hinges on three factors: '(1) whether the [agency] was acting in a judicial capacity; (2) whether the issue presented to the district court was actually litigated before the [agency]; and (3) whether its resolution was necessary to the [agency's] decision."

Batson, 86 Md.App. at 356, 586 A.2d at 799 (quoting West Coast Truck Lines v. American Industries, 893 F.2d 229, 234-35 (9<sup>th</sup> Cir.1990)). This test was first enunciated in Exxon Corp. v. Fischer, 807 F.2d 842, 845046 (9<sup>th</sup> Cir. 1987), and its three prongs are supported by the Supreme Court caselaw on issue preclusion.

In United States v. Utah Constr. Co., 384 U.S. 394, 86 S.Ct. 1545, 16 L.Ed.2d 642 (1966), the Court spoke particularly to the preclusive effect of administrative law rulings, stating that:

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

William J. Wiseman, III, Zoning Commissioner July 6, 2007 Page 3

Id. at 422, 86 S.Ct. at 1560, 16 L.Ed.2d. at 661. Thus, agency findings made in the course of proceedings that are judicial in nature should be given the same preclusive effect as findings made by a court."

It is our firm position that the relief requested is highly improper and an unacceptable manipulation of the zoning process. We strenuously urge denial of the Petition for Special Hearing.

Respectfully submitted,

Peter Max Zimmerman

People's Counsel for Baltimore County

Carole S. Demilio

Deputy People's Counsel

PMZ/CSD/rmw

cc: Deborah C. Dopkin, Esquire (w/o enclosures)

IN THE MATTER OF
THE APPLICATION OF
WILLIAM & JANE BISSELL
PETITIONERS/LEGAL OWNERS
FOR A SPECIAL HEARING ON
PROPERTY LOCATED ON THE
NW/SIDE OF BAY DRIVE
(4034 BAY DRIVE)
AND
FOR A SPECIAL HEARING ON
PROPERTY LOCATED ON THE
E/S BRIAR POINT DRIVE
(3921 BRIAR POINT DRIVE

15<sup>TH</sup> ELECTION DISTRICT 6<sup>TH</sup> COUNCILMANIC DISTRICT BEFORE THE

COUNTY BOARD OF APPEALS

\* FOR

\* BALTIMORE COUNTY

CASE NO.: 05-405-SPH

AND

CASE NO.: 05-406-SPH

#### OPINION

These matters come before the Baltimore County Board of Appeals on appeal of the petitions for special hearings from the Zoning Commissioner. These appeals are for case numbers 05-405-SPH and 05-406-SPH, and were taken by People's Counsel for Baltimore County. The owners of the property, William and Jane Bissell, were represented by Deborah C. Dopkin, Esquire, their attorney. These cases were for special exceptions, whereby the Petitioners are seeking approval of lot areas of 0.15 and 0.23 acres, in lieu of the minimum required of 1.5 acres, a street centerline setback of 40 feet, in lieu of the required 75 feet, and property line setbacks of 10 feet and 17 feet, in lieu of the required 50 feet in a R.C.5 Zone.

#### Background

Through testimony and evidence, the Board was able to find out facts evident to the case. These properties are located in the southeastern end of the county, in the Bowley's Quarter area at: 4034 Bay Drive and 3921 Briar Point Drive, and are

William & Jane Bissell

Case Nos.: 05-405-SPH & 05-406-SPH

adjoining properties. William and Jane Bissell own both properties. These properties were purchased in 1994 for \$12,000, they are zoned R.C.5, and have been since 1976. Both properties are also located in the Chesapeake Bay Critical Area of Baltimore County. Petitioners live, and own a marina that they work, in the neighborhood. Petitioners would like to erect two homes, one on each lot. One home would be for their son, who lives with them, and the other for their daughter who lives in the Lutherville area. The homes they wanted to build would be approximately 1,000 square feet each.

#### Argument

Karen Watsic, who lives a couple of lots away from the subject properties, stated that she is not against building on the lots, however, she wants to see only one home built on the lots. Mrs. Watsic hopes, if a home is built, that it will be staggered on the property to match other homes in the area. According to Mrs. Watsic, the homes are staggered as they run along Bay Drive, which is parallel to the shoreline. Currently, the homes in the area are positioned either in the front of the lot or in the rear. With the nature of the lots, only being a minimum of 50 feet (some larger) but very long, it gives the appearance of larger lots and more privacy for homes that are about 5,000 square feet. The staggering also ensures more water view for each landowner. Mrs. Watsic feels that the Petitioners current plan will break character with the neighborhood. People's Counsel's Exhibit #5, which supports Ms. Watsic on her staggering theory, is a letter from the Director of Planning with comments on houses on Briar Point Drive. Donald Hicks, a registered professional engineer who

William & Jane Bissell Case Nos.: 05-405-SPH & 05-406-SPH

was hired by the Petitioners, visited the lots and stated that there are similar types of relief in the area. Mr. Hicks investigated the deeds, and found that they had been deeded since 1957, each having their own tax record and each serviced by sewer and water. Mr. Hicks felt that each lot is a proposed use of the area, even with only a 15 foot setback on Briar Point Drive. When Mr. Hicks was asked if he thought that § 502.1, of the Baltimore County Zoning Regulations (BCZR) for special exception, would be complied with, he thought that it would be. William Bissell, who currently lives at 406 Bay Drive with his wife Jane and their son, William Bissell, Jr., wants to build two homes for his children. Mr. Bissel stated that they would be approximately 1,000 square feet, and he had no plans to sell them. Mr. Bissell displayed pictures, Petitioners Exhibit #8, of homes being built in the area that he stated are getting relief. Mr. Bissell did testify that he owned commercial property in the area, and that he had built and sold homes in the area. Currently, he owns land and commercial property in the area.

Jack Dillion, who testified as an expert in land planning, zoning, and development, said that in the R.C.5 Zone it would take I.5 acres to build but there were grandfathered lots that were protected. This lot was one lot until it was deeded off in 1958 without a subdivision or, going through zoning. Mr. Dillion felt that the lots do not fit with the spirit and intent of the neighborhood, and they are out of character. Mr. Dillion felt that building one home would still be pushing the R.C.5 Zone because a variance would still be needed.

William & Jane Bissell

Case Nos.: 05-405-SPH & 05-406-SPH

This case was filed as a special exception, People's Counsel for Baltimore County feels that these cases should have been heard as variances. The Board agreed

William & Jane Bissell

Case Nos.: 05-405-SPH & 05-406-SPH

at their deliberation that this matter would be handled as a special exception. Under 502.1 of the (BCZR) it states:

"Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

- A. Be detrimental to the health, safety or general welfare of the locality involved;
- B. Tend to create congestion in roads, streets or alleys therein;
- C. Create a potential hazard from fire, panic or other danger;
- D. Tend to overcrowd land and cause undue concentration of population;
- E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
- F. Interfere with adequate light and air; [Bill No. 45-1982]
- G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; [Bill No. 45-182]
- H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor [Bill No. 45-1982]

William & Jane Bissell Case Nos.: 05-405-SPH & 05-406-SPH

I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in a R.C.2, R.C.4, R.C.5 or R.C.7 Zone. [Bill No. 74-2000]

Petitioners Exhibit #3, (a plat to accompany Petition for Zoning Variance) gives a very good view of the relief that is being asked for. This plat illustrates the staggering affect and the character of the neighborhood. This is for 4034 Bay Drive. With this, you can visualize the setbacks and the staggering having a solution in the R.C.5 Zone. With Petitioners Exhibit #4 (showing the house being built on 3921 Briar Point Drive), you can visualize the relief being asked for, and how the setbacks with two homes on these lots will impact the R.C.5 Zone. Petitioners Exhibits #7 and #8, showed a lot of homes with alleged relief but there were no cases sited, or it did not state so if they were in the critical bay area or what zone they went through. People's Counsel, Exhibit #2, gives you a good feel for what R.C.5 zoning gives to an area and the character of R.C.5. People's Counsel, Exhibit #5 (a letter from Arnold F. "Pat" Keller, III, Dir./Office of Planning, dated Mar. 7, 2005) shows the spirit and intent thar the Office of Planning is looking for in that area with R.C.5 Zoning.

### Conclusion

After careful consideration of all the evidence and testimony, this Board feels that the Petitioners are asking for an extraordinary amount of relief in their petition.

With combining both lots to build one house, there still would be a considerable

William & Jane Bissell
Case Nos.: 05-405-SPH & 05-406-SPH

amount of relief granted but would satisfy the letter from the Office of Planning. This Board also feels, that by combining both lots, it would be in character with the spirit and intent of the surrounding neighborhood. This Board decided that the Peitioners requests for special exceptions did not meet all of the criteria required under § 502.1 of the B.C.Z.R. Therefore, Petitioners request is denied. People's Counsel feels that the Petitioners should have had to seek relief under § 304 verses § 1A04.3 according to the Baltimore County Zoning Regulations. This Board finds the argument from Mrs. Dopkin, attorney for the Petitioners, to be more compelling than that of People's Counsel. In Mrs. Dopkins' Memorandum she states: "Appellant's approach ignores the legislative purpose and the plain language of § 1A04. The stated purpose of the zone, as it relates to lot size, is set forth in B.C.Z.R. 1A04.1.B.4, which states:

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

The subject lots are served by public utilities, thus obviating the need to maintain a large lot size for on-site utilities.

Section 1A04.3.1.b sets forth the procedure for utilizing undersized R.C.5 lots:

"The owner of a single lot of record that is not a subdivision and that is in existence prior to September 2, 2003, but does not meet the minimum acreage requirement, or does not meet the setback requirement of Paragraph 2, may apply for a special hearing under Article 5 to alter the minimum lot size requirement."

This provision is but one part of an overall and consistent statutory scheme, which recognizes the rights of individual lot owners whose lots were created before the effect of the R.C.5 zoning regulations, and, in particular, whose lots are served by

William & Jane Bissell

Case Nos.: 05-405-SPH & 05-406-SPH

public sewer and water."

This Board was not convinced that Petitioners could not build a single home, but the questions was if they could build two homes.

#### ORDER

THEREFORE, IT IS THIS 25 day of Appeals of Baltimore County

ORDERED that the Petitioner's requests for special hearing seeking the approval of lot areas of 0.15 and 0.23, acres in lieu of the minimum requirement of 1.5 acres, a street centerline setback of 40 feet, in lieu of the required 75 feet, and property line setbacks of 10 feet and 17 feet, in lieu of the required 50 feet in a R.C.5 Zone be and is hereby **DENIED**.

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

COUNTY BOARD OF APPEALS FOR BALTIMORE GOUNTY

Lawrence M. Stahl, Acting Chair

Mike/Mohler/

Edward W. Crizer, Jr.

Case No.: 07-466 SPH

4034 BAY DAVE

## **Exhibit Sheet**

# Petitioner/Developer

#### Protestant

No. 1	RED LINED SITE PLAN
No. 2	LOT DESCRIPTIONS  AS FILED SHOWED BOTH  LOTS COMBINED Bettlim in union
No. 3	Collectively - PHOTO'S  OF EXISTING CONDITIONS
No. 4	LEAR of SUPPORT MIX MA Bucking hom
No. 5	
No. 6	
No. 7	
No. 8	
No. 9	
No. 10	
No. 11	
No. 12	

DESCRIPTION FOR ZONING
OF
BISSELL PROPERTY,
1). NO. 4034 BAY DRIVE
TAX MAP 98; PARCEL 125
2). NO. 3921 BRIAR POINT DRIVE
TAX MAP 98; PARCEL 172:

6<sup>TH</sup> COUNCILMANIC DISTRICT 15<sup>TH</sup> ELECTION DISTRICT BALTIMORE COUNTY, MARYLAND

#### NO. 4034 BAY DRIVE TAX MAP 98; PARCEL 125:

BEGINNING FOR THE SAME 660 feet, more or less, from the intersection formed by the northwest side of Bay Drive, 30 feet wide, with the southwest side of Miami Beach Road, thence,

- North 35 degrees 36 minutes 00 seconds East 60.00 feet to the southwest side of a thirty foot road, thence binding on said road,
- 2) North 53 degrees 49 minutes 00 seconds West 170.00, thence leaving said road,
- 3) South 54 degrees 23 minutes 00 seconds West 55 feet, more or less,

4) South 51 degrees 34 minutes 00 seconds East 187.40 feet to the place of

beginning.

CONTAINING 9,350 square feet or 0.23 acres of land, more or less.

HICKS ENGINEERING ASSOCIATES, INC. 200 EAST JOPPA ROAD, SUITE 402 TOWSON, MARYLAND 21286 TELEPHONE: (410) 494-0001

APRIL 11, 2007

PAGE NUMBER 1 OF 2

PETITIONER'S

EXHIBIT NO.

2

OF
BISSELL PROPERTY,
1). NO. 4034 BAY DRIVE
TAX MAP 98; PARCEL 125
2). NO. 3921 BRIAR POINT DRIVE
TAX MAP 98; PARCEL 172:
6<sup>TH</sup> COUNCILMANIC DISTRICT
15<sup>TH</sup> ELECTION DISTRICT
BALTIMORE COUNTY, MARYLAND

# NO. 3921 BRIAR POINT DRIVE TAX MAP 98; PARCEL 172:

BEGINNING FOR THE SAME at a point formed by the intersection of the southern side of Bay Drive, 30 feet wide, with the eastern side of Briar Point Drive, 30 feet wide, thence running with the southern side of Bay Drive;

- South 53 degrees 49 minutes 00 seconds East 130.35 feet, thence leaving said road and running,
- 2) South 54 degrees 23 minutes 00 seconds West 55 feet, more or less, thence running;
- North 51 degrees 34 minutes 00 seconds West 187.40 feet to a point on the eastern side of Briar Point Road;
- 4) North 54 degrees 23 minutes 00 seconds East 50.00 feet to the point of beginning.

CONTAINING 6,500 square feet or 0.15 acres of land, more or less.

HICKS ENGINEERING ASSOCIATES, INC. 200 EAST JOPPA ROAD, SUITE 402 TOWSON, MARYLAND 21286 TELEPHONE: (410) 494-0001

APRIL 11, 2007

PAGE NUMBER 2 OF 2



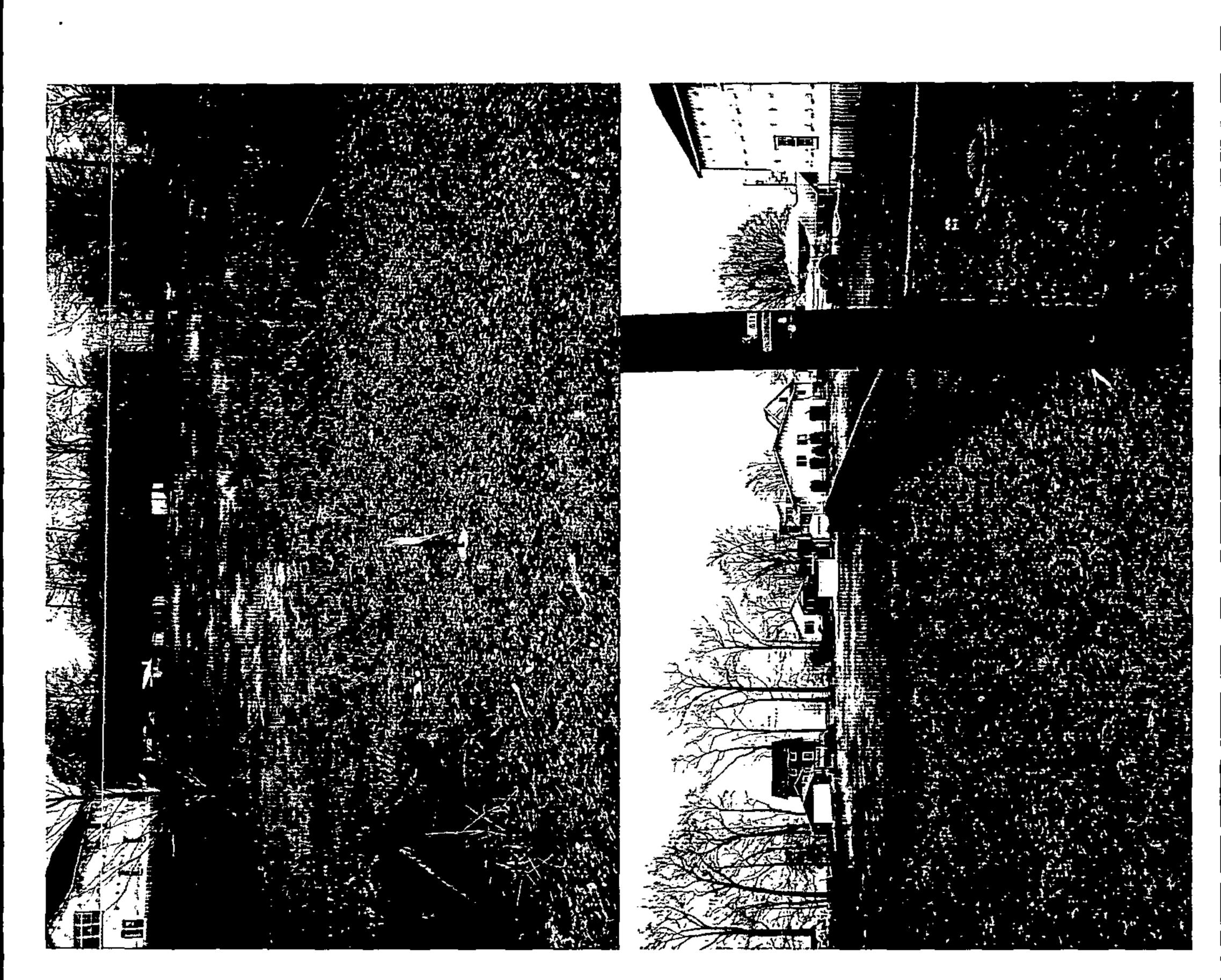
PETITIONER'S

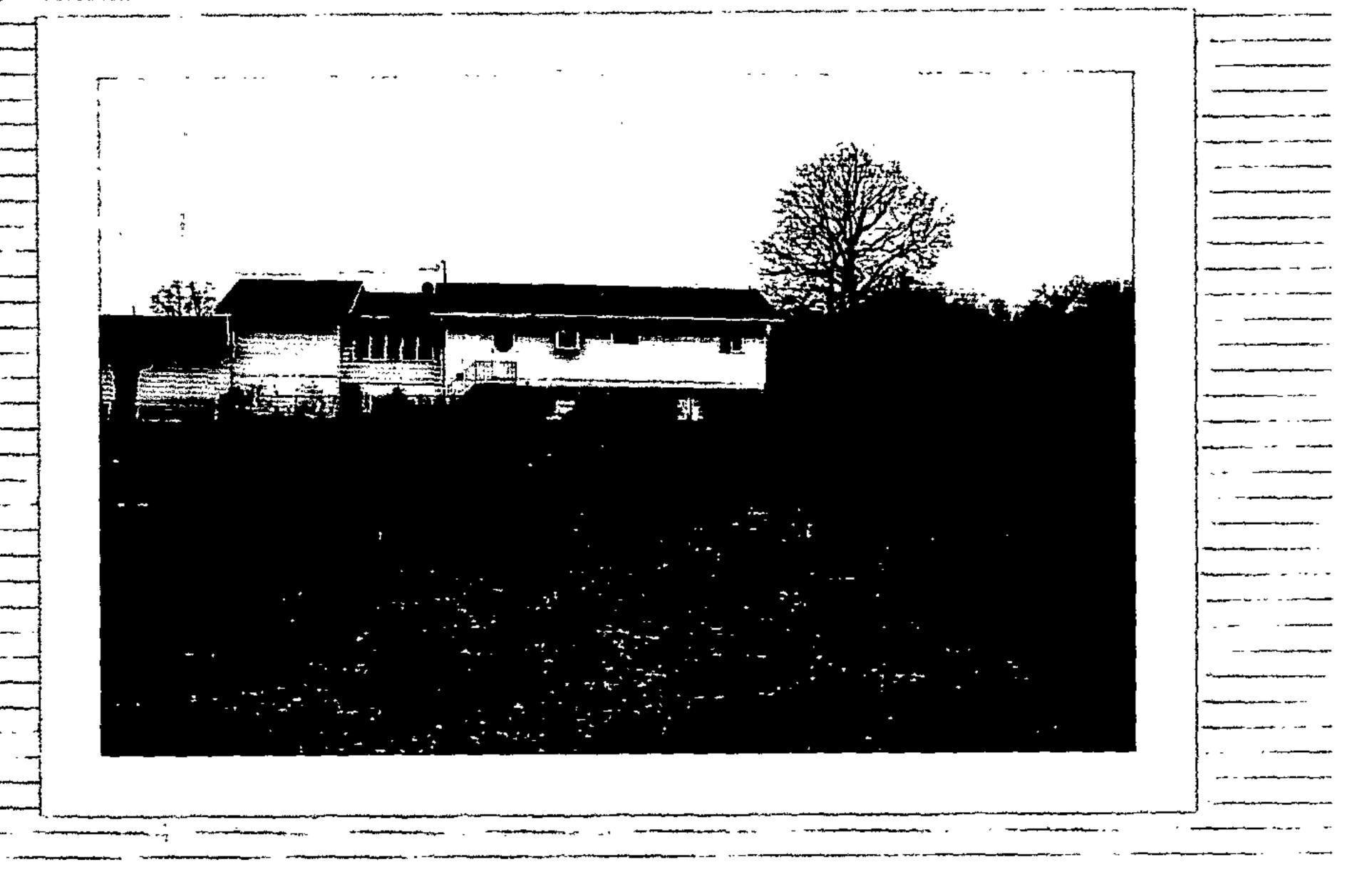
EXHIBIT NO.

3



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Baltimore County
Office of the Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

Zoning Commissioner,

We are unable to attend the public hearing for **Case 7-466-SPH**. However, we confirmed with Kristen Matthews if it would be acceptable if we could submit a letter stating support for Mr. Bissell's zoning request. She stated that we could fax our letter and it would be added to the file before the hearing.

#### Zoning Hearings - 4034 Bay Drive

Location: 6th Council District

Sub location: County Courts Building, 401 Bosley Avenue, Room 407, Towson 21204

Date/Time: 07/13/2007 9:00 AM - 07/13/2007 10:00 AM

#### Description:

Special Hearing to approve a lot size of 0.23 acres in lieu of the required 1.5 acres, and to approve a street centerline setback of as little as 40 feet in lieu of the required 75 feet, and a lot line setback of 10 feet in lieu of the required 50.

#### Statement of Support

We reside at 4027 Bay Drive. The property listed in this case is across the road diagonally to our property. We have known Bill Bissell for several years. He has been a good neighbor to us as well as to the neighborhood.

Currently the lot is vacant. Bill has continuously maintained the lot over the years. At times the lot is used by the neighbors as an overflow parking area when they have guests. Bill has always allowed this without reservation.

Some may object to having a house being built on this parcel. However, during the past 3 years 3 zoning requests were approved within this area. Two of the vacant lots had homes built on them and one had 2 large attached garages built. Two of the lots were owned by neighbors and are still occupied by them. The 3<sup>rd</sup> lot a house was built and sold (this lot shares the property line with Bill's). We had **no objections** to any of these requests.

Bill has owned the property for sometime and has the legal right (just as the others did) to build (according to zoning), to occupy and/or sell if he so chooses.

Just like the other Zoning requests that have been approved for other parcels in our neighborhood, we would like to go on record as having no objections.

Regards,

Mr. & Mrs. D Buckingham

4027 Bay Drive

Baltimore, MD 21220

PETITIONER'S

EXHIBIT NO.

4

Exhits Case 07-466-SPH
In Matter Villiam Jane
Bissell
Petitioners Exhibits

Di Amended Ste Plan.

· ———

Requested: Nov. 7, 2007

# APPEAL SIGN POSTING REQUEST

CASE NO. 07-466-SPH

4034 BAY DRIVE

### NW/S BAY DRIVE, 660' NE MIAMI BEACH ROAD

15<sup>TH</sup> ELECTION DISTRICT

APPEALED: 8/1/2007

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

# \*\*\*COMPLETE AND RETURN BELOW INFORMATION\*\*\*\*

## CERTIFICATE OF POSTING

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

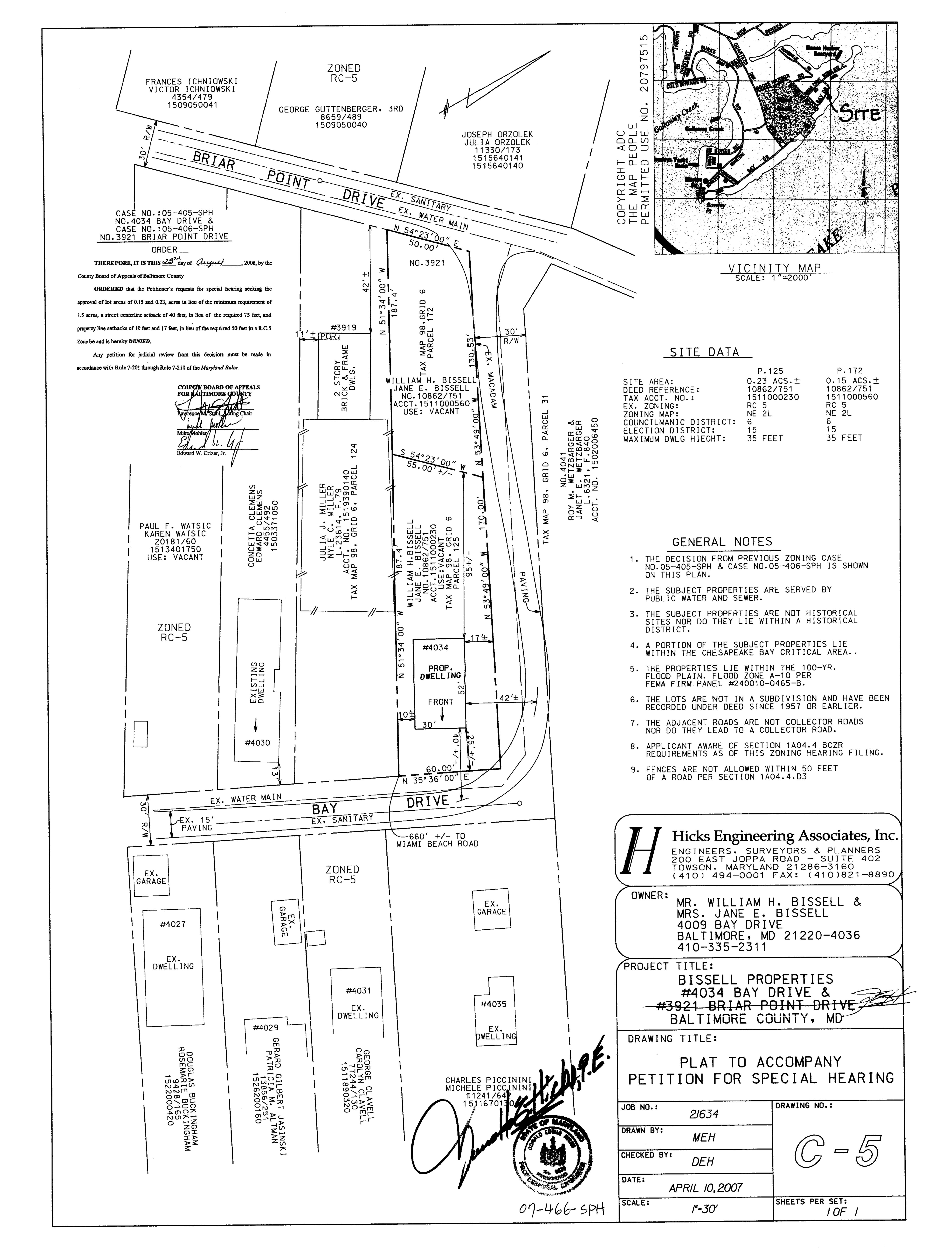
Attention: Kathleen Bianco Administrator

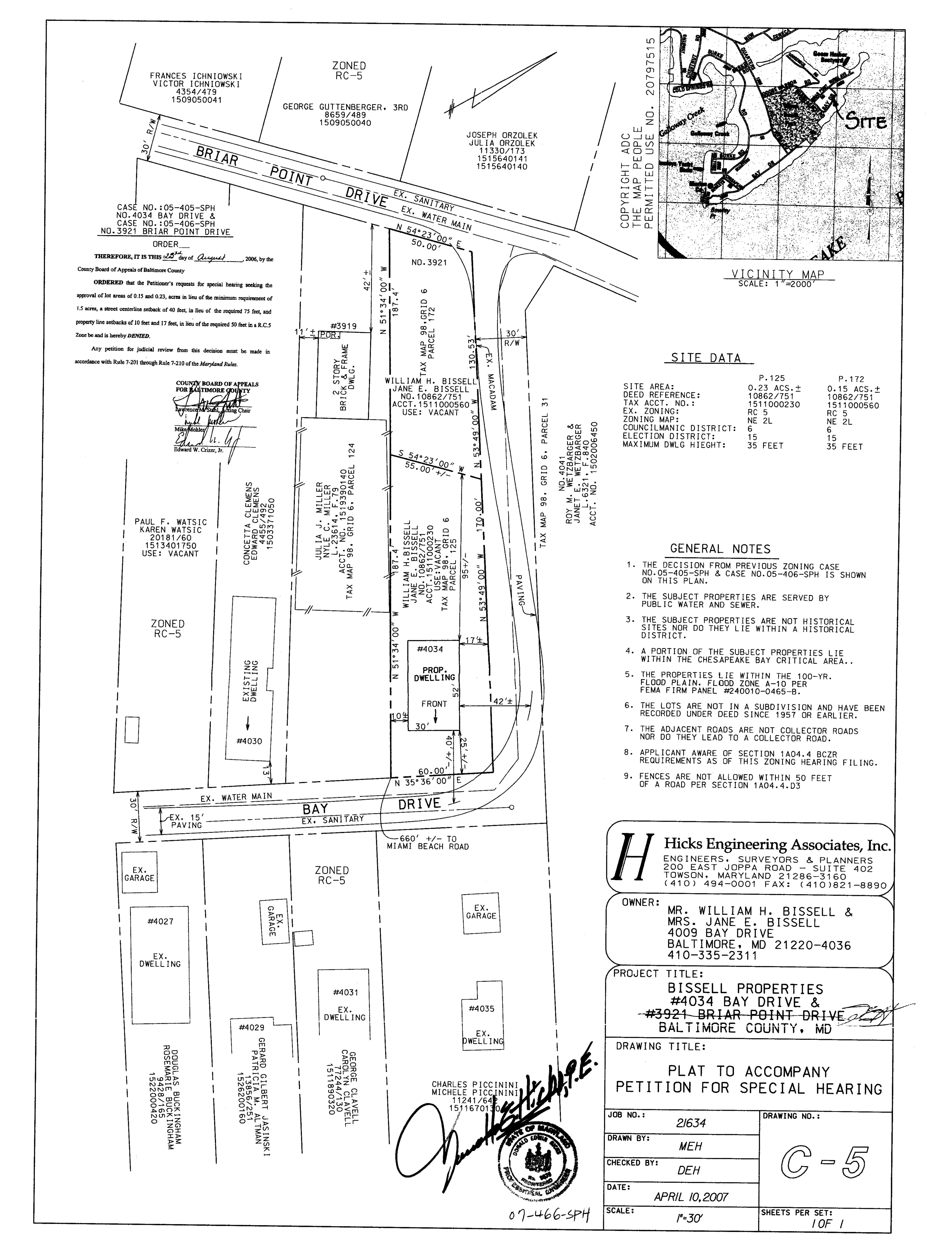
CASE NO.: 07-466-SPH

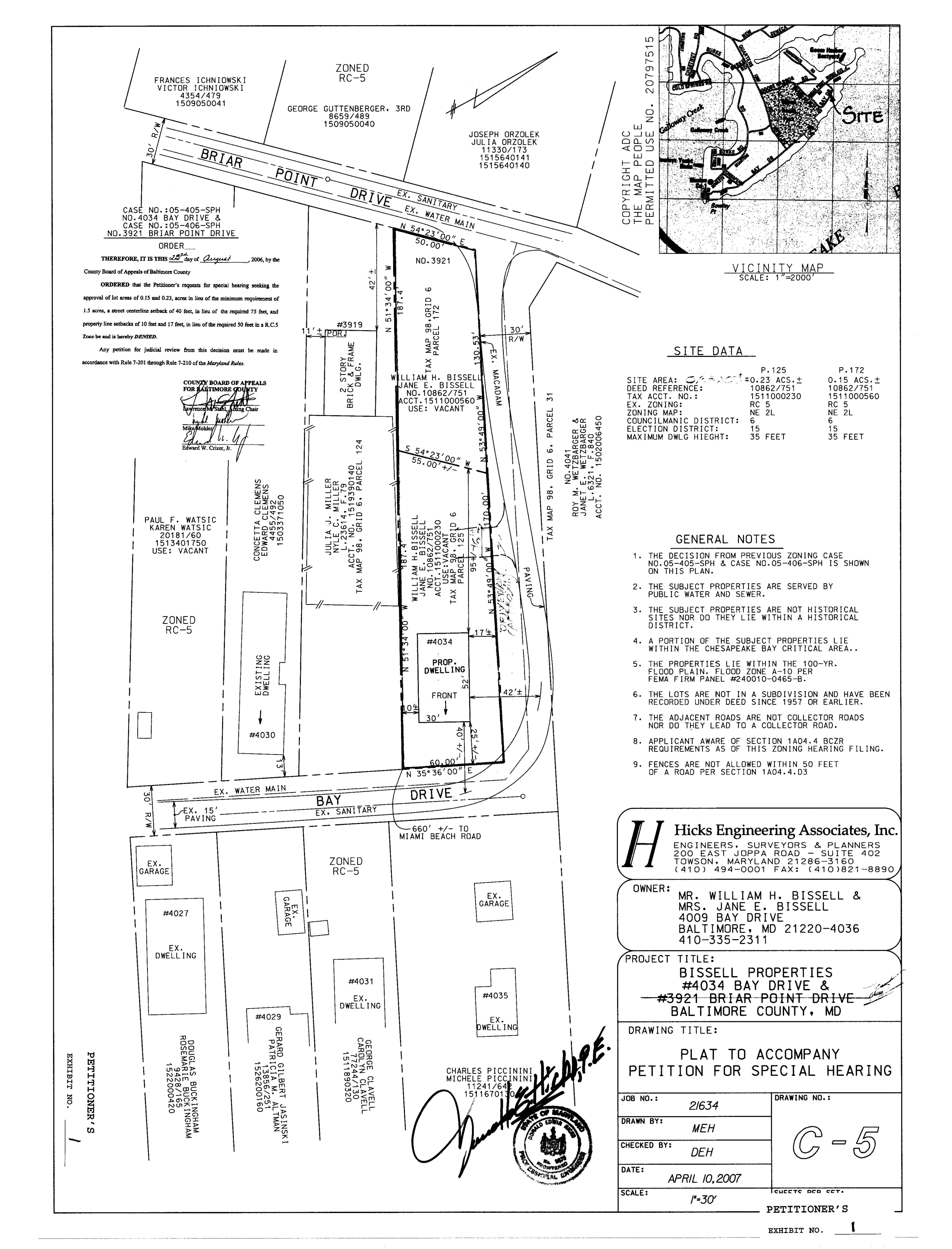
LEGAL OWNER: WILLIAM & JANE BISSELL

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

4034 BAY DRIVE  NW/S BAY DRIVE, 660' NE MIAMI BEACH ROAD				
The sign was posted on	, 2007.			
By: (Signature of Sign Poster)	)			
(Print Name)				







## 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

April 24, 2007

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

ATTENTION: Zoning Review planners

Distribution Meeting of: April 23,2007

Item No.: 454, 455, 456, 457, 458, 459, 460, 461, 462, 464, 465, 466, 467, 468, 469, 470, 471, and 472.

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

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

Acting Lieutenant Don W. Muddiman Fire Marshal's Office (0)410-887-4880 MS-1102F

cc: File



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