10/22/07

IN RE: PETITIONS FOR SPECIAL HEARING AND VARIANCE	*	BEFORE THE
S side Hilltop Drive, 450 feet W of Magledt Road	*	DEPUTY ZONING
11th Election District	*	COMMISSIONER
5th Councilmanic District		
(9941 Hilltop Drive)	*	FOR BALTIMORE COUNTY
Weston C. and Lulu J. Tucker *Legal Owner*	*	
James Barnes *Contract Purchaser*	*	**CASE NO. 08-073-SPHA**

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by the legal owner of the subject property, The Estate of Weston C. and Lulu J. Tucker, and the contract purchaser, James Barnes. The Special Hearing request was filed pursuant to Section 500.7 and Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a principal dwelling to be erected on an existing lot having an area of 7,338 square feet in lieu of the 10,000 square feet required. The Variance request is from Section 303.1 of the B.C.Z.R. to permit a principal building front yard setback of 30 feet in lieu of the average front yard depths of adjoining lots of 50.5 feet. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the requested special hearing and variance relief were Bryce Tucker on behalf of the Estate of Weston C. and Lulu J. Tucker, Paul Garner on behalf of the contract purchaser, Howard L. Alderman, Jr., Esquire, attorney for Petitioners, and Charles Merritt with Merritt Development Consultants, Inc., the consultant who prepared the site plan. There were no Protestants or other interested persons in attendance at the hearing.

ORDER RECEIVED FOR FILING
Date 10-22-07
By BB

Testimony and evidence offered revealed that the subject property is a rectangular-shaped parcel containing approximately 7,338 square feet or 0.168 acre, more or less, and zoned DR 3.5. The property is unimproved and situated to the east of Harford Road and north of Joppa Road in the Parkville area of Baltimore County. The property has access to public water and sewer service. Petitioners seek, by way of special hearing, approval of the parcel as a buildable lot, and also seek variance relief from the average front yard depth setback requirement. The property to the west of Petitioners' property has a front yard setback of 63 feet, the property to the east has a front yard setback of 38 feet, requiring an average front yard depth for the subject property of 50.5 feet.

In support of the special hearing and variance requests, Mr. Merritt, a site plan and development consultant with extensive experience in County zoning and development matters, indicated that the current zoning allows for the construction of a single-family home on the property. Without the special hearing in order to approve the lot size of 7,338 square feet in lieu of the required 10,000 square feet, the lot is essentially useless for a permitted use. In addition, Mr. Merritt indicated that the lot has a number of constraints and characteristics that render it unique compared with others in the area. The most easily recognized constraint is the small size of the rear yard, as depicted on the aerial photograph which was marked and accepted into evidence as Petitioners' Exhibit 2. It shows that the rear yard on the subject property is the smallest in the area, especially compared with others on Hilltop Drive. The rear property also slopes upward, especially at the property line, to the rear of adjacent properties, as indicated by the topographical lines shown on Petitioners' Exhibit 1.

In addition, the Monaghan property to the west of the subject property, with the 63 foot front yard setback, has a rear yard setback of less than 30 feet. Consequently, if built today, the dwelling thereon would likely need to be placed further forward in order to comply with rear

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10-22-07
PM

yard setback requirements. Mr. Merritt added that Petitioners' proposed dwelling on the subject property makes the most efficient use of the space on the lot. If Petitioners are compelled to meet the average front yard setback requirement, as well as the side and rear yard setback requirements, the proposed dwelling would need to be placed much further back on the lot -- necessitating variance relief from rear yard setback requirements and severely limiting the use of the back yard. The alternative would be to design the proposed dwelling much smaller than the homes that currently characterize the neighborhood. Instead, the proposed dwelling is to be placed almost centered on the lot, with a building envelope of 30 feet to the front, 30 feet to the rear, and 12 to 15 feet on each side, without overcrowding the lot. Mr. Merritt also added that granting the special hearing and variance relief would not increase the allowable density for the parcel.

The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. The comments were received from the Office of Planning dated August 24, 2007 indicate that due to the fact there is a mix of lot sizes surrounding the subject property, the proposed variances should not have a negative impact on the neighborhood despite lots on Hilltop Drive being much larger than the proposed lot. As such, the Office does not oppose Petitioners' variance requests provided that building elevation drawings are submitted for review and approval, and limits of disturbance on the proposed lot are shown.

In regard to the requested special hearing, I am persuaded to grant the requested relief. Currently, the lot is vacant, though based on the site plan and the proposed dwelling indicated thereon, there appears to be sufficient space for the lot to be developed. Especially when viewed against the size of the lots in the subdivision abutting Petitioners' property to the south as shown on Petitioners' Exhibit 2, it is evident that the granting of the relief will not be detrimental to the

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Date 10-22-07
By PM

health, safety and general welfare of the locale, and is within the spirit and intent of the zoning regulations.

In regard to the request for variance, considering all the testimony and evidence presented, I find that special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request; namely, the small size of the rear yard and the upward slope, and the placement of existing adjacent homes much further back from the front property lines than would be required today. Therefore I find the property unique in a zoning sense.

I also find that strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. In order to develop this parcel as permitted by the zoning regulations, Petitioners would be compelled to design a much smaller house than those in the neighborhood, or would need additional variance relief from rear yard setback requirements.

Finally, I find that relief can be granted in this matter in strict harmony with the spirit and intent of said regulations, and in a manner so as to grant relief without injury to the public health, safety and general welfare.

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

THEREFORE, IT IS ORDERED, by the Deputy Zoning Commissioner for Baltimore County, this 22nd day of October, 2007, that Petitioners' request for Special Hearing relief filed pursuant to Section 500.7 and Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a principal dwelling to be erected on an existing lot having an

JUDGE RECEIVED FOR FILING
Date 10-22-07
By PB

area of 7,338 square feet in lieu of the 10,000 square feet required be and is hereby GRANTED; and

IT IS FURTHER ORDERED that Petitioners' request for Variance from Section 303.1 of the B.C.Z.R. to permit a principal building front yard setback of 30 feet in lieu of the average front yard depths of adjoining lots of 50.5 feet be and is hereby GRANTED.

The relief granted herein is subject to the following:

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

2. Petitioners shall submit building elevation drawings to the Office of Planning for review and approval.

3. Petitioners shall provide the limits of disturbance for the proposed lot.

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

THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz

ORDER RECEIVED FOR FILING
Date 10-22-07
By PB

Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 9941 HILLTOP DRIVE

which is presently zoned DR 3.5

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

SEE ATTACHED (A) WAIV

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

SEE ATTACHED

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

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

Contract Purchaser/Lessee:

JAMES BARNES
Name - Type or Print

X [signature]
Signature

2095 RIDGEMONT DRIVE 410-833-9575
Address Telephone No.

FINKSBURG MD 21048
City State Zip Code

Legal Owner(s):

WESTON C. TUCKER
Name - Type or Print

Nancy S. Tucker Power of attorney for Weston C. Tucker
Signature

LULU J. TUCKER
Name - Type or Print

Nancy S. Tucker Power of attorney for Lulu J. Tucker
Signature

9945 HILLTOP DRIVE 410-665-8587
Address Telephone No.

Baltimore MD 21234
State Zip Code

Attorney For Petitioner:

Name - Type or Print City

Signature

Company

Address Telephone No.

City State Zip Code

Representative to be Contacted:

MERRITT DEVELOPMENT CONSULTANTS, INC.
Name

2416 E. JOPPA ROAD 410-663-5525
Address Telephone No.

Baltimore MD 21234
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING 1HR

UNAVAILABLE FOR HEARING —

Case No. 08 073 SPHA

Reviewed By JL / JNP Date 8/8/07

REV 9/15/98

[illegible] RECEIVED FOR FILING

Date 10-22-07

By PB

ATTACHMENT

PETITION FOR VARIANCE
AND SPECIAL HEARING

CASE NO: 08-073-SPHA

Address: 9941 Hilltop Drive

Legal Owners: Weston C. Tucker & Lulu J. Tucker

Contract Purchaser: James Barnes

Present Zoning: DR 3.5

REQUESTED RELIEF:

A. Grant a variance from *Baltimore County Zoning Regulations* Section 303.1 to permit a principal building front yard setback of 30 feet in lieu of the average front yard depths of adjoining lots of 50.5 feet; and

B. from Section 1B02.3C.1 to permit a principal dwelling to be erected on an existing lot having an area of 7,338 square feet (0.168 acre ±) in lieu of the 10,000 square feet required; and

C. For such further relief as the nature of this case may require.

JUSTIFICATION:

A. Size, shape and configuration of existing property;
B. Average front setback would prohibit construction of home consistent with homes in this area; and
C. For such further reasons that will be presented at the hearing on this Petition.

For Additional Information Contact:

Howard L. Alderman, Jr., Esquire
Levin & Gann, P.A.
Nottingham Centre
502 Washington Avenue
8th Floor
Towson, Maryland 21204

(410) 321-0600
Fax: (410) 296-2801
halderman@LevinGann.com

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 9941 HILLTOP DRIVE

which is presently zoned DR 3.5

*(This petition **must** be filed in person, in the zoning office, in triplicate, with original signatures.)*

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

(This box to be completed by planner)

SEE ATTACHED (ITEM B & C) WAB

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:

JAMES BARNES
Name - Type or Print

James Barnes
Signature

2095 RIDGEMONT DRIVE 410-833-9575
Address Telephone No.

FINKSBURG MD. 21048
City State Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address Telephone No.

City State Zip Code

Legal Owner(s):

WESTON C. TUCKER
Name - Type or Print

Nancy S Tucker, P.O.A.
Signature

LULU J. TUCKER
Name - Type or Print

Nancy S Tucker, P.O.A.
Signature

9945 HILLTOP DRIVE 410-665-8587
Address Telephone No.

BALTIMORE MD. 21234
City State Zip Code

Representative to be Contacted:

MERRITT DEVELOPMENT CONSULTANTS,INC.
Name

2416 E. JOPPA ROAD 410-663-5525
Address Telephone No.

BALTIMORE MD. 21234
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING 1HR

UNAVAILABLE FOR HEARING

Reviewed By JL/JM Date 8/08/07

Case No. 08-073-SPHA

10-22-07

PM

ATTACHMENT
PETITION FOR VARIANCE
AND SPECIAL HEARING

CASE NO: 08-073-SPHA

Address: 9941 Hilltop Drive

Legal Owners: Weston C. Tucker & Lulu J. Tucker

Contract Purchaser: James Barnes

Present Zoning: DR 3.5

REQUESTED RELIEF:

A. Grant a variance from *Baltimore County Zoning Regulations* Section 303.1 to permit a principal building front yard setback of 30 feet in lieu of the average front yard depths of adjoining lots of 50.5 feet; and

B. from Section 1B02.3C.1 to permit a principal dwelling to be erected on an existing lot having an area of 7,338 square feet (0.168 acre ±) in lieu of the 10,000 square feet required; and

C. For such further relief as the nature of this case may require.

JUSTIFICATION:

A. Size, shape and configuration of existing property;
B. Average front setback would prohibit construction of home consistent with homes in this area; and
C. For such further reasons that will be presented at the hearing on this Petition.

For Additional Information Contact:

Howard L. Alderman, Jr., Esquire
Levin & Gann, P.A.
Nottingham Centre
502 Washington Avenue
8th Floor
Towson, Maryland 21204

(410) 321-0600
Fax: (410) 296-2801
halderman@LevinGann.com

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: # 08-073-SPHA
9941 Hilltop Drive
S/side of Hilltop Drive, 450 feet west of Magledt Road
11th Election District - 5th Councilmanic District
Legal Owner(s): Weston C. & Lulu J. Tucker
Contract Purchaser: James Barnes

Special Hearing: to permit a principal dwelling to be erected on an existing lot having an area of 7,338 sq. ft. (0.168 acres +/-) in lieu of the 10,000 square feet required. **Variance:** to permit a principal building front yard setback of 30 feet in lieu of the average front yard depths of adjoining lots of 50.5 feet.

Hearing: Tuesday, September 25, 2007 at 11:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204.

WILLIAM J. WISEMAN, III
Zoning Commissioner for Baltimore County

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

JT 9/661 Sept. 11. 148267

CERTIFICATE OF PUBLICATION

9/13, 2007

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 ~~successive~~ weeks, the first publication appearing on 9/11, 2007.

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

S. Wilkinson

LEGAL ADVERTISING

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS RECEIPT

#073 JL

No. 04195

Date: 8/09/07

Fund	Agcy	Orgn	Sub Orgn	Rev Source	Sub Rev	Rept Catg	BS Acct	Amount
001	006			6150				130.00
							Total:	130.00

Rec From:

For: Red Van + SPH 9941 Hilltop Dr

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

CASHIER'S VALIDATION

PAID RECEIPT
[illegible] 8/09/2007 8/09/2007 11:25:53 4
[illegible] ZONING VERIFICATION
Rcpt Tot $130.00
Baltimore County, Maryland

CERTIFICATE OF POSTING

Date: 9/11/07

RE: Case Number: 08-073-SPHA

Petitioner/Developer: JAMES BARNES

Date of Hearing/Closing: TUESDAY, SEPT. 25, 2007

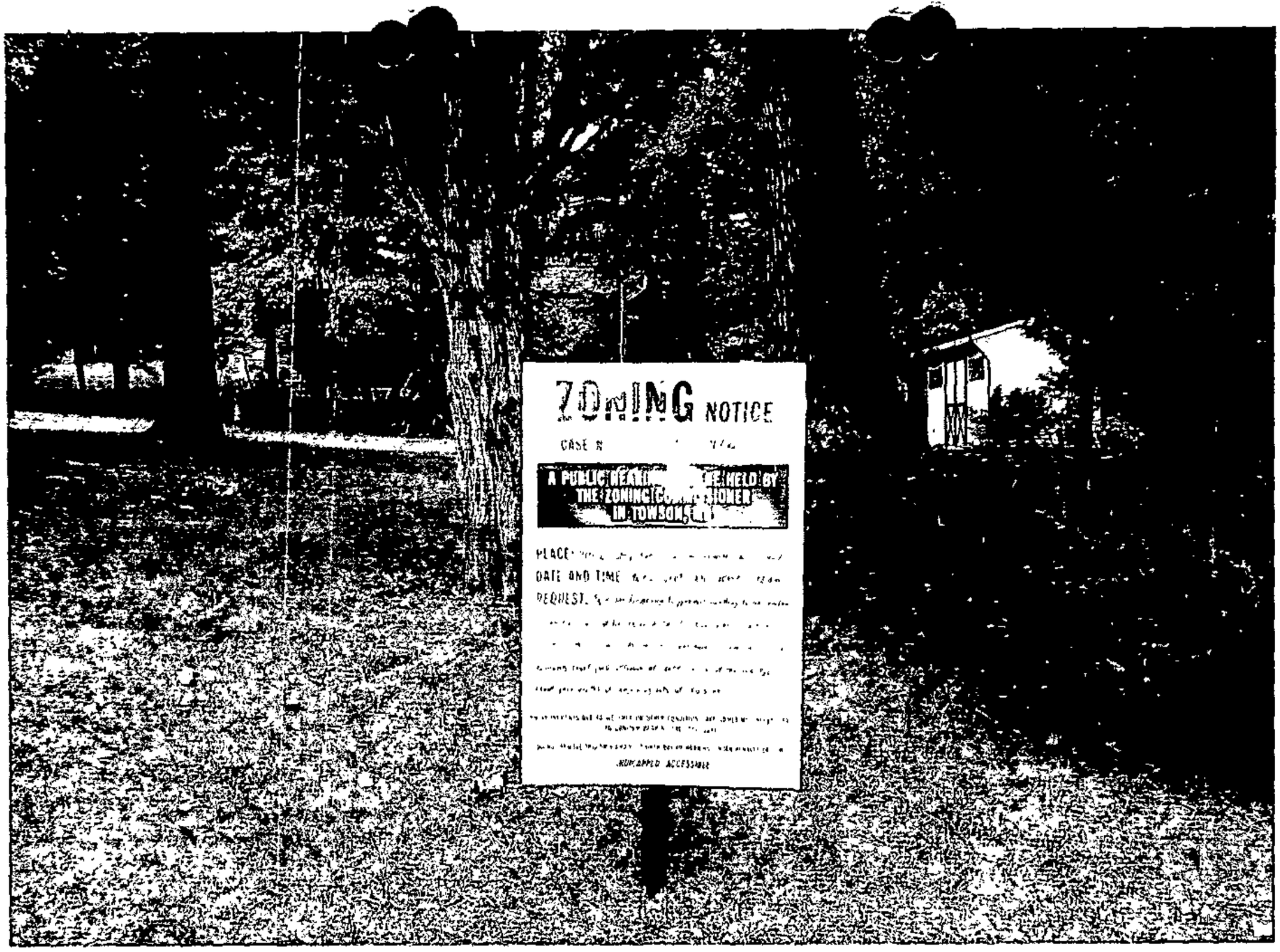
This is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at 9941 HILLTOP DRIVE

The sign(s) were posted on MONDAY, SEPTEMBER 10, 2007
(Month, Day, Year)

(Signature of Sign Poster)

Charles E. Merritt
9831 Magledt Road
Baltimore, MD 21234
410-665-5562

RECEIVED
SEP 14 2007
DEPT OF PERMITS AND DEVELOPMENT



ZONING NOTICE

CASE #08-073-SPHA

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

PLACE: 401 Bosley Ave., Towson 21204 RM # 407

DATE AND TIME: Tues. Sept. 25, 2007 11 Am

REQUEST: Special hearing to permit dwelling to be erected on an existing lot having an area of 7,558 sq. ft. (0.168 Acres +/-) in lieu of the 10,000 sq. ft. Required. Variance to permit a principal building front yard setback of 30 ft. in lieu of the average front yard depths of adjoining lots of 50.5 ft.

POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY.
TO CONFIRM HEARING CALL 887-3391

DO NOT REMOVE THIS SIGN AND POST UNTIL DAY OF HEARING, UNDER PENALTY OF LAW

HANDICAPPED ACCESSIBLE

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

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

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

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

For Newspaper Advertising:

Item Number or Case Number: 08-073-SPHA

Petitioner: WESTON C. & LULU J. TUCKER

Address or Location: 9945 HILLTOP DRIVE

PLEASE FORWARD ADVERTISING BILL TO:

Name: JAMES BARNES

Address: 2095 RIDGEMONT DRIVE
FINKSBURG, MD. 21048

Telephone Number: 410-833-9575

Revised 2/20/98 - SCJ

28 G7

Requested: Feb. 29, 2008

APPEAL SIGN POSTING REQUEST

CASE NO.: 08-073-SPHA

9941 HILLTOP DRIVE

11TH ELECTION DISTRICT APPEALED: 11/15/07

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.: 08-073-SPH

LEGAL OWNER: **WESTON & LULU TUCKER**

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

9941 HILLTOP DRIVE

S/s Hilltop Drive., 450' W of Magledt Road

The sign was posted on 4-7-08, 2008.

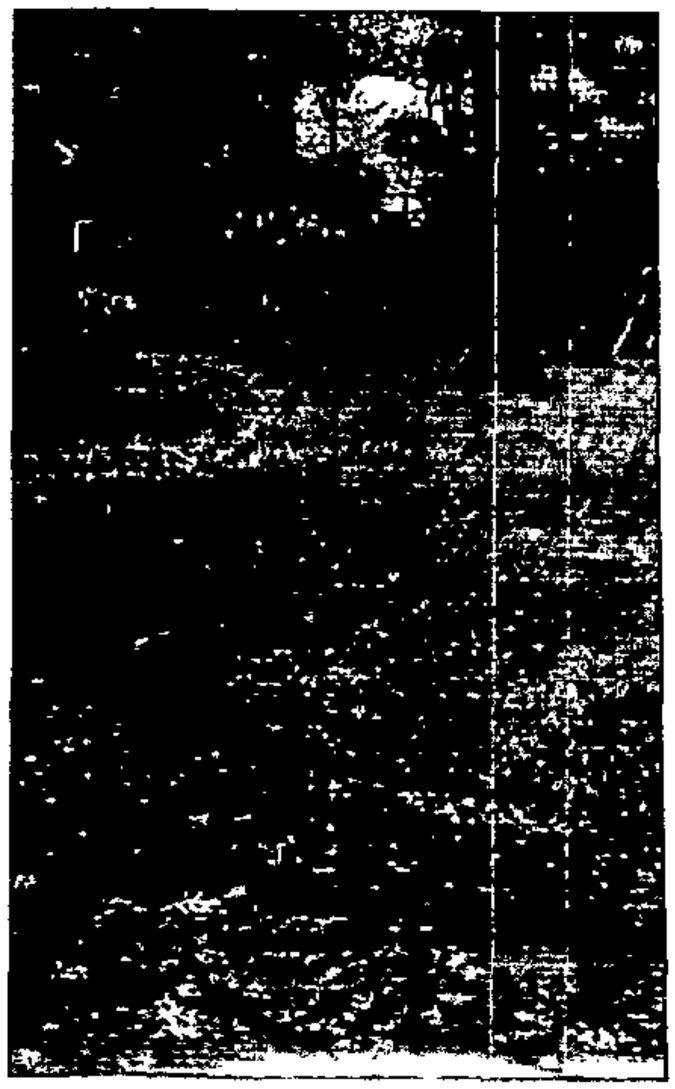
By: M Stuart Kelly
(Signature of Sign Poster)

M Stuart Kelly
(Print Name)

PHOTOGRAPHIC RECORD

Citation/Case No.: _____

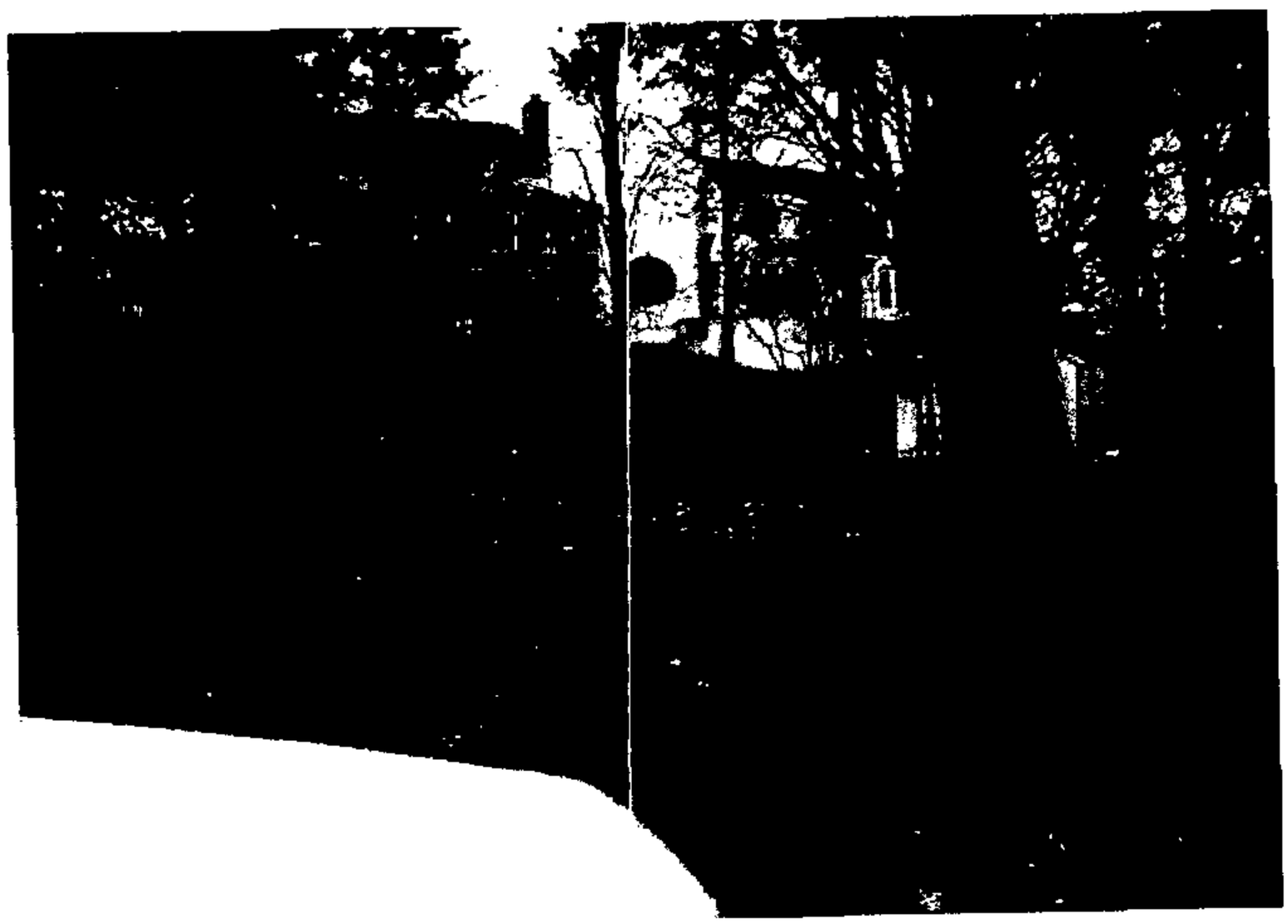
Date of Photographs: _____



I HEREBY CERTIFY that I took the _____ photographs set out above, and that these photographs
(number of photos)
fairly and accurately depict the condition of the property that is the subject of the above-referenced citation/case number on the date set out above.

_____
Enforcement Officer

11/14/00



BALTIMORE COUNTY

MARYLAND

JAMES T. SMITH, JR.
County Executive

August 21, 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: 08-073-SPHA
9941 Hilltop Drive
S/side of Hilltop Drive, 450 feet west of Magledt Road
11th Election District – 5th Councilmanic District
Legal Owners: Weston C. & Lulu J. Tucker
Contract Purchaser: James Barnes

Special Hearing to permit a principal dwelling to be erected on an existing lot having an area of 7,338 sq. ft. (0.168 acres +/-) in lieu of the 10,000 square feet required. Variance to permit a principal building front yard setback of 30 feet in lieu of the average front yard depths of adjoining lots of 50.5 feet.

Hearing: Tuesday, September 25, 2007 at 11:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204

Timothy Kotroco

Timothy Kotroco
Director

TK:klm

C: Chuck Merritt, 2416 E. Joppa Road, Baltimore 21234
Weston & Lulu Tucker, 9945 Hilltop Drive, Baltimore 21234
James Barnes,2095 Ridgemont Drive, Finksburg 21048

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY MONDAY, SEPTEMBER 10, 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, September 11, 2007 Issue - Jeffersonian

Please forward billing to:
James Barnes
2095 Ridgemont Drive
Finksburg, MD 21048

410-833-9575

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: 08-073-SPHA
9941 Hilltop Drive
S/side of Hilltop Drive, 450 feet west of Magledt Road
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Special Hearing to permit a principal dwelling to be erected on an existing lot having an area of 7,338 sq. ft. (0.168 acres +/-) in lieu of the 10,000 square feet required. Variance to permit a principal building front yard setback of 30 feet in lieu of the average front yard depths of adjoining lots of 50.5 feet.

Hearing: Tuesday, September 25, 2007 at 11:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204

WILLIAM J. WISEMAN III
ZONING COMMISSIONER FOR BALTIMORE COUNTY

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

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, Second Floor
Jefferson Building, 105 W. Chesapeake Avenue

April 22, 2008

NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 08-073-SPHA **IN THE MATTER OF: WESTON & LULU TUCKER – LO; JAMES BARNES – C.P. –PETITIONER**
9941 Hilltop Drive 11th Election District; 5th Councilmanic District

10/22/07 – D.Z.C.'s'Order in which requested zoning relief was **GRANTED**.

which had been scheduled for hearing on 6/04/08 has been **RESCHEDULED** to the following date and time by joint request of Counsel due to scheduling conflict for People's Counsel; and has been

REASSIGNED FOR: **WEDNESDAY, JUNE 11, 2008 at 10:00 a.m.**

NOTICE: **This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.**

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

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

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

Kathleen C. Bianco
Administrator

---

c: Appellant : Office of People's Counsel

Counsel for Petitioner : Howard L. Alderman, Jr., Esquire
Paul Garner on behalf of C.P.
James Barnes, C.P.
Bryce Tucker on behalf of Est. of Weston C. and Lulu J. Tucker
Nancy S. Tucker POA

Charles Merritt / Merritt Development Consultants, Inc.

Jennifer Cabeza

William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

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, Second Floor
Jefferson Building, 105 W. Chesapeake Avenue

June 11, 2008

NOTICE OF ASSIGNMENT /Day #2

CASE #: 08-073-SPHA

IN THE MATTER OF: WESTON & LULU TUCKER – LO;
JAMES BARNES – C.P. –PETITIONER
9941 Hilltop Drive 11th Election District; 5th Councilmanic District

Day #2 (from 6/11/08)

10/22/07 – D.Z.C.'s Order in which requested zoning relief was **GRANTED**.

REASSIGNED FOR: **WEDNESDAY, AUGUST 6, 2008 at 10:00 a.m. /Day #2**

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 Petitioner : Howard L. Alderman, Jr., Esquire
Paul Garner on behalf of C.P.
James Barnes, C.P.
Bryce Tucker on behalf of Est. of Weston C. and Lulu J. Tucker
Nancy S. Tucker POA

Charles Merritt / Merritt Development Consultants, Inc.

Jennifer Cabeza

William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

7-1-2

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

August 7, 2008

NOTICE OF DELIBERATION

IN THE MATTER OF:
WESTON & LULU TUCKER – LEGAL OWNERS; JAMES BARNES - CP
Case No. 08-073-spha

Having heard this matter on 6/11/08 and 8/06/08, public deliberation has been scheduled for the following date /time:

DATE AND TIME : TUESDAY, OCTOBER 21, 2008, AT 9:00 A.M.

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

NOTE: Closing briefs are due on
Monday, September 22, 2008
(Original and three [3] copies)

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

Kathleen C. Bianco
Administrator

c: Appellant : Office of People's Counsel

Counsel for Petitioner : Howard L. Alderman, Jr., Esquire
Paul Garner on behalf of C.P.
James Barnes, C.P.
Bryce Tucker on behalf of Est. of Weston C. and Lulu J. Tucker
Nancy S. Tucker POA

Charles Merritt / Merritt Development Consultants, Inc.

Jennifer Cabeza

William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

7-1-2

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

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

September 18, 2007

Weston C. Tucker
Lulu J. Tucker
9945 Hilltop Drive
Baltimore, MD 21234

Dear Mr. and Mrs. Tucker:

RE: Case Number: 08-073-SPHA, 9941 Hilltop Drive

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on August 8, 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
James Barnes 2095 Ridgemont Drive Finksburg 21048
Merritt Development Consultants, Inc. 2416 E. Joppa Road Baltimore 21234

Baltimore County
Fire Department

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

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

August 14, 2007

ATTENTION: Zoning Review Planners

Distribution Meeting Of: August 14, 2007

Item Number: Item Number ~~49~~ 73 and 052 through 075

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

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

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

cc: File

Printed with Soybean Ink
on Recycled Paper

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

SHA
State Highway Administration
Maryland Department of Transportation

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

Date: August 13, 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. 8-73-SPHA
9941 Hilltop Drive
Tucker Property
Special Hearing
Variance

Dear Ms. Matthews:

Thank you for the opportunity to review your referral request on the subject of the above captioned. We have determined that the subject property does not access a State roadway and is not affected by any State Highway Administration projects. Therefore, based upon available information this office has no objection to Baltimore County Zoning Advisory Committee approval of Item No. 8-73-SPHA.

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

Very truly yours,

Michael P. Bailey

For Steven D. Foster, Chief
Engineering Access Permits
Division

SDF/MB

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: August 15, 2007

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

SUBJECT: Zoning Advisory Committee Meeting
For August 20, 2007
Item Nos. 052, 054, 056, 057, 058, 061, 062, 063, 065, 066, 067, 068, 071, 072, 073, 074, and 075

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

DAK:CEN:clw
cc: File
ZAC-NO COMMENTS-08152007.doc

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: August 24, 2007

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

SUBJECT: 9941 Hilltop Drive

INFORMATION:

Item Number: 8-073

Petitioner: Weston C. Tucker

Zoning: DR 3.5

Requested Action: **Variance**

SUMMARY OF RECOMMENDATIONS:

Due to the fact that there is a mix of lot sizes surrounding the subject property, the proposed variances should not have a negative impact on the neighborhood despite lots sizes on Hilltop Drive being much larger then the proposed lot. The Office of Planning does not oppose the petitioner's variance requests provided the following conditions are met:

1. Submit building elevation drawings to the Office of Planning for review and approval.
2. Provide the limits of disturbance for the proposed lot.

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

Reviewed by: Curtis M Murray

Division Chief: Lynn Lanham
AFK/LL: CM

W:\DEVREV\ZAC\8-073.doc

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: WESTON & LULU TUCKER 08-073-SPHA

DATE: October 21, 2008

BOARD/PANEL: Edward Crizer, Jr.
Maureen Murphy
Lawrence Stahl

RECORDED BY: Sunny Cannington/Legal Secretary

PURPOSE: To deliberate an appeal of the following:

1. Special Hearing request to permit a principal dwelling to be erected on an existing undersized lot having an area of 7,338 square feet in lieu of the 10,000 square feet required.

2. Petitioners have withdrawn their request for Variance relief originally requested in the Petition.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- Based on the decisions of *Mueller v. People's Counsel* and *Remes vs. Montgomery County* the Board feels that the People's Counsel did not present enough evidence that the subject undersized property is being used in such a way as to suggest that the properties have been merged.

- The subject property has a basketball hoop and a portable shed. The Property owners have not been using the property as though the two lots were one. Inferring from the activities of the property owners, there is not enough evidence that the lots should be merged.

DECISION BY BOARD MEMBERS: There is no evidence to suggest that the properties have been used as merged properties.

FINAL DECISION: After thorough review of the facts, testimony, and law in the matter, the Board unanimously agreed that the undersized lot is such that the relief requested is *APPROVED.*

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place on the above date regarding this matter. 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 the Board.

Respectfully Submitted,

Sunny Cannington

Sunny Cannington

RE: PETITION FOR SPECIAL HEARING AND VARIANCE 9941 Hilltop Drive; S/S Hilltop Drive, 450' W Magledt Road 11th Election & 5th Councilmanic Districts Legal Owner(s): Weston & Lulu Tucker Contract Purchaser(s): James Barnes Petitioner(s)	* * * * * *	BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY 08-073-SPHA

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

ENTRY OF APPEARANCE

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

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of August, 2007, a copy of the foregoing Entry of Appearance was mailed Chuch Merritt, Merritt Development Consultants, Inc, 2416 East Joppa Road, Baltimore, Md 21234, Representative for Petitioner(s).

RECEIVED
AUG 1 6 2007
Per.....

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

APPEAL

Petitions for Special Hearing & Variance
9941 Hilltop Drive
S/s Hilltop Dr., 450' W of Magledt Road
11th Election District – 5th Councilmanic District
Legal Owners: Weston & Lulu Tucker
Contract Purchaser: James Barnes

Case No.: 08-073-SPHA

✓ Petition for Special Hearing & Variance (August 8, 2007)

✓ Zoning Description of Property

✓ Notice of Zoning Hearing (August 21, 2007)

✓ Certification of Publication (The Jeffersonian – September 11, 2007)

✓ Certificate of Posting (September 10, 2007) by Charles Merritt

✓ Entry of Appearance by People's Counsel (August 16, 2007)

✓ Petitioner(s) Sign-In Sheet – One Sheet

Protestant(s) Sign-In Sheet - None

Citizen(s) Sign-In Sheet - None

✓ Zoning Advisory Committee Comments

Petitioners' Exhibit
✓ 1. Plan to accompany petitions
✓ 2. Map

Protestants' Exhibits - None

✓ Miscellaneous (Not Marked as Exhibit)
1. Durable Power of Attorney

✓ Deputy Zoning Commissioner's Order (GRANTED – October 22, 2007)

✓ Notice of Appeal received on November 15, 2007 from People's Counsel

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner/Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Howard Alderman, Jr.
Mr. & Mrs. Tucker
Charles Merritt
Paul Garner
Bryce Tucker
Jennifer Cabeza

RECEIVED
JAN 08 2008
BALTIMORE COUNTY
BOARD OF APPEALS

date sent January 8, 2008, klm

HOWARD L. ALDERMAN, JR.
halderman@LevinGann.com

DIRECT DIAL
410-321-4640

LAW OFFICES
LEVIN & GANN
A PROFESSIONAL ASSOCIATION
NOTTINGHAM CENTRE
502 WASHINGTON AVENUE
8th Floor
TOWSON, MARYLAND 21204
410-321-0600
TELEFAX 410-296-2801

ELLIS LEVIN (1893-1960)
CALMAN A. LEVIN (1930-2003)

September 22, 2008

HAND DELIVERED
Kathleen Bianco, Administrator
County Board of Appeals for Baltimore County
The Jefferson Building
105 West Chesapeake Avenue, Suite 203
Towson, Maryland 21204

RE: *JFB Renovation & Construction, Inc., Petitioner*
9941 Hilltop Drive
Case No. 2008-0073-SPHA
Petitioner's Post-Hearing Memorandum

RECEIVED
SEP 22 2008
BALTIMORE COUNTY
BOARD OF APPEALS

Dear Ms. Bianco:

In accordance with the direction received from the Board at the conclusion of the hearing on the above-referenced matter, I am pleased to provide to the Board an original and three (3) copies of the *Petitioner's Post-Hearing Memorandum*. Should you or any member of the Board desire additional information or additional copies, please do not hesitate to contact me.

Very truly yours,

Howard L. Alderman, Jr.

HLA/gk
Enclosures (4)
c (w/one encl.): JFB Renovation & Construction, Inc.
Peter Max Zimmerman, Esquire/Carole S. Demilio, Esquire
Mr. and Mrs. Paul Garner
Merritt Development Consultants

11/20/08

IN THE MATTER OF THE PETITION OF WESTON C. AND LULA J. TUCKER – L/O and JAMES BARNES – CONTRACT PURCHASER FOR SPECIAL HEARING RELIEF FOR AN UNDERSIZED LOT AND FOR A VARIANCE FOR PROPERTY LOCATED AT 9941 HILLTOP ROAD, 11th Election District 5th Councilmanic District	* * * * * *	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case No. 08-073-SPHA

* * * * * * * * * * *

OPINION

This case comes to the Board on appeal of the final decision of the Deputy Zoning Commissioner for Baltimore County in which the Deputy Zoning Commissioner granted a Petition for Special Hearing Relief pursuant to Section 500.7 and Section 1B02.3.C.1 of the *Baltimore County Zoning Regulations* (B.C.Z.R.) to permit a principal dwelling to be erected on an existing lot having an area of 7,338 square feet in lieu of the required 10,000 square feet. The Deputy Zoning Commissioner also granted Petitioners' request for Variance from Section 303.1 of the B.C.Z.R. to permit a principal building front yard setback of 30 feet in lieu of the average front yard depths of adjoining lots of 50.5 feet.

Public hearings were held on June 11, 2008 and August 6, 2008. The Petitioners were represented by Howard L. Alderman, Jr., Esquire. The Office of People's Counsel was represented by Peter Max Zimmerman. Public Deliberation was held on October 21, 2008.

Background

At the outset of the Board Hearing, the Petitioners dismissed their request for Variance. After the hearing before the Deputy Zoning Commissioner, and prior to the hearing before this Board, they redesigned the proposed dwelling and the setback relief was no longer needed.

Testifying for the Petitioners was Charles Merritt of Merritt Development Consultants, Inc., the consultant who prepared the site plan for the proposed dwelling. He was accepted by the Board as an expert in the area of B.C.Z.R. Also testifying for the Petitioners was Paul Gartner, one of the legal owners of 9945 Hilltop Road, which property is next to the subject property. Testifying for the Office of People's Counsel was Jack Dillon who was accepted as an expert in planning and zoning in Baltimore County.

Facts

Testimony and evidence presented to the Board revealed that the subject property, 9941 Hilltop Drive, is an unimproved lot containing approximately 7,338 square feet or 0.168 acre, more or less (hereinafter "9941" and the "subject property"). It is zoned DR 3.5 and has access to public water and sewer. It is located on the South side of Hilltop Drive, east of Harford Road and north of Joppa Road in the Parkville area of Baltimore County. The location known as 9945 Hilltop Drive is an improved lot and contains 10,331 sq. ft. (hereinafter "9945").

Mr. Merritt testified that he prepared the site plan (CBA – Pet. Ex. 1) and the amended site plan (CBA – Pet. Ex. 2). The Amended Site Plan showed the reorientation of the proposed dwelling, which eliminated the need for the setback variances. He explained the ownership history of 9941 and 9945 by referring to a Deed dated November 12, 1952 (Liber 2203, page 474) from Otto Paul Burchardt and Dorothy May Burchardt, his wife, (the "Burchardts") to Weston C. Tucker and Lula J. Tucker, his wife (the "Tuckers") (hereinafter the "Tucker Deed"). (CBA – Pet. Ex. 3).

The Tucker Deed described 2 lots. Lot 1, which has the address of 9945 Hilltop Drive, is described in the Deed as originally having an area of .284 acre or approximately 12,000 square feet. The "Being Clause" for Lot 1 describes Lot 1 has being the same lot of ground that was described in a Deed dated November 18, 1949. Lot 2, which is the subject property, is described in a Being Clause as being the same lot of ground described in the prior Deed dated February 15, 1950 between John W. Bowling and Elizabeth R. Bowling, his wife and the Burchardts, the predecessors to the Tuckers.

Mr. Merritt further testified that, on behalf of the Estate of Lula Tucker, on May 23, 2007, he was granted a lot line adjustment between 9941 and 9945 in an attempt to bring 9941 into compliance with the minimum lot size requirements. (CBA – Pet. Ex. 4). A Deed explaining the lot line adjustment was filed on January 8, 2008. (Liber 26572, page 489). (CBA – Pet. Ex. 5).

After the lot line adjustment, the Estate of Lula Tucker sold 9945 to Paul and Tiffany Garner on January 23, 2008 as referenced in a recorded deed (Liber 26641, page 602). (CBA Pet. Ex. 6). On January 23, 2008, the Estate of Lula Tucker sold 9941 to JFB Renovation & Construction, Inc., by recorded deed (Liber 26633, page 35). (CBA Pet. Ex. 7).

Mr. Merritt further testified and presented numerous plats (CBA – Pet. Exhs. 8 through 11) showing neighboring areas where the lots were less than the required 10,000 sq. ft. He opined that the subject property met all the requirements under BCZR §304.

Paul Garner testified that he reviewed the elevation plans for the proposed dwelling at 9941 and believed that it would be compatible with other homes in the area, despite the fact that there were no other properties in the 9900 block of Hilltop Drive which were less than 10,000 sq. ft. .(CBA –Pet. 13). He presented numerous photographs of properties on Hilltop Drive. (CBA – Pet 16 -20). He testified that, in his job as a realtor, he obtained information from the Metropolitan Regional Information System ("MRIS") that 143 properties that were less than 10,000 sq. ft had sold in the area. (CBA - Pet. Ex. 22).

People's Counsel presented evidence through Paul Garner, that the MRIS listing for 9945 (CBS – PC Exh. 8A) dated March 30, 2007 (prior to the lot line adjustment) states that 9945 was "being conveyed with the lot next door w[h]ich is 0.12 acres of land." People's Counsel further points out that there was one purchase price paid for both 9941 and 9945 in the amount of $250,000.00. (CBA – PC Exh. 8B).

The SDAT assessment record for each lot was also entered into evidence (CBA – PC Exhs. 3 and 4) showing that 9941 and 9945 had two separate tax account numbers (i.e. 1120080175 and 1120080176) although there was one parcel number (Parcel 406) for both lots.

Jack Dillon testified that he visited the site, took photographs, viewed the neighborhood and was familiar with the zoning history of the area. Mr. Dillon explained that the area was originally zoned R.10 and was later changed to D.R. 3.5. He described Hilltop Drive as a dead-end, short street, which has individually built homes and is different from the surrounding subdivisions which contain newer homes. He further testified that most lots on Hilltop Drive are larger than required 10,000 sq. ft. in a DR 3.5 development.

Mr. Dillon identified photographs showing the subject property with a shed and a basketball pole and hoop, which he commented, appeared to have been there for a number of years. He testified that the shed is an accessory structures under BCZR. He further explained that there was no visible boundary line or fence separating 9941 from 9945. He also highlighted that 9941 only recently received an address after the lot line adjustment.

Decision

The issues for this Board to decide are:

(1) Was there a zoning merger of lots 9941 and 9945?

(2) If there was no zoning merger, did the Petitioner satisfy B.C.Z.R. § 304.1?

1. Zoning Merger.

The merger of lots for zoning purposes occurs when one lot is used in service to another lot and both lots are held under common ownership. *Remes v. Montgomery County*, 387 Md. 52, 64 (2005). Merger is derived from the common owner's intent as evidenced by "integra[ting] or utilize[ing] the contiguous lots in the service of a single structure or project...." *Id.* at 65. Intent is to be derived from the facts. *Id.*

In *Remes*, the Court of Appeals emphasized that each case must be examined on its own facts. The facts which swayed the Court of Appeals in finding merger was that the owners received a building permit to construct a swimming pool on the vacant lot as "an accessory use to their home on Lot 12;" the swimming pool violated the prescribed setbacks from the street and from the adjoining lot (unless the swimming pool was dedicated to the improved lot); the owners received a building permit to construct an addition on the house which encroached upon the vacant lot's setback requirements; there was a circular driveway that traversed both lots; and, for over 30 years, the lots had been assessed for tax purposes as one lot.

The *Remes* Court explained that the setback encroachments were significant in finding merger:

> Thus, even if the elder Duffies might have imagined that Lot 11 would "absorb" the setback deficiencies by their Lot 11 pool and Lot 12 home additions, the setback requirements delineated in Montgomery County's zoning ordinance prohibit such adjacent lot encumbrance and Lot 11 never actually fulfilled this role in service of Lot 12. What respondents fail to acknowledge is that the zoning merger that occurred in this case forestalled the creation of a nonconformity on Lot 12. Without the use of Lot 11 as accessory to Lot 12, the uses of both lots would have violated the zoning ordinance.

Id. at 73.

Office of People's Counsel relies on *Remes* and contends that 9941 and 9945 have merged through the common use of the principal dwelling at 9945 and the recreational space of 9941. The

evidence presented by People's Counsel in support of their merger theory was the testimony of Mr. Dillon. Mr. Dillon testified that, during his field observations of the two lots, merger was shown by: the lack of discernible boundary or division lines on the ground between the two lots; by a storage shed and basketball pole and hoop on the vacant lot; and by the reference to both lots as Parcel #406 in the tax assessment records. No one from the Estate of the Tuckers and no neighbors on Hilltop Road testified as to the intent of the Tuckers to merge the two lots.

The argument of People's Counsel is that the shed is an "accessory structure" to 9945. The definition of "accessory structure" under BCZR §101(c) requires that the shed be located on the same lot as the principal use or structure served (i.e. on 9945). This definition, he believes, supports his position that the Tuckers intended the two lots to be used as one, single lot.

He also contends that because the language in the Tucker Deed refers to "all those lots of ground and the buildings and improvements" this language shows intent by the Tuckers to treat the two lots as a single lot. The Board does not find this argument persuasive. The language cited by People's Counsel is standard, boilerplate language found in most deeds. Unlike the *Remes* Deed, the Tucker Deed does not describe a single lot. It refers to "all those **lots** of ground…" (Emphasis Added). The Board fails to see how this reference to the plural "lots" and the separate metes and bounds descriptions for those lots creates a single, merged lot.

People's Counsel insists that *Remes* is factually similar to this case. Specifically, People's Counsel finds it significant that the Estate of Tucker sold the lots to Paul Garner and JFB Renovation. These transfers, they contend, are the same type of transfers made by Jonathan Duffie in *Remes*. In that case, Mr. Duffie had transferred both lots to himself in a Personal Representative Deed and identified both lots as a single lot with the same address. Later, he transferred the vacant lot to a third party. The Board finds that Mr. Duffie's attempt to separate the lots by deed as well as his request to have the tax authorities reassess the property into two separate tax accounts is factually different from the instant case.

To the contrary, this Board finds that the facts of this case are more similar to the facts in *Mueller v. People's Counsel*, 177 Md. App. 43 (2007), cert. denied, 403 Md. 307 (2008) and that the holding in *Mueller* applies here. The *Mueller* Court, in distinguishing *Remes*, emphasized that the improvements to

the vacant lot in *Mueller* (Lot 67) were not "of a kind that are remotely comparable to those made to Lot 11 in *Remes*." *Id.* at 101. In Mueller, on vacant Lot 67, there was a temporary shed; the lot was used by the Mueller family for recreational sports and for family parties; and it was used as a boat launch.

In this case, there is a temporary storage shed and a basketball hoop. There are no permanent, accessory structures constructed on 9941. There were no setback or zoning violations by way of a swimming pool, addition to the house or even a driveway. The only evidence of a zoning setback violation was of the garage which was built on the side of 9945 which was furthest away from 9941. If the Tuckers had intended to merge 9941 with 9945, they would have constructed the garage so that it extended into the setback lines of 9941. Finally, unlike *Remes*, this Board notes that the two lots have been assessed and billed as two separate tax account numbers.

As the *Mueller* Court indicated, the Muellers, like the Tuckers, were not "required to abstain entirely from the use of Lot 67 in order to preclude merger." *Id.* The *Mueller* Court noted: "If the Board were compelled to find merger on these facts, it would mean that almost any time a landowner owns adjoining and contiguous parcels, they would merge as a matter of law for zoning purposes." *Id.* The Mueller Court agreed that the occasional recreational use of the vacant lot did not cause a merger to occur. "Moreover, the mere existence of a shed - not constructed on a foundation and not a structure for which a building permit was sought - cannot be viewed as similar to a permanent improvement benefiting the other parcel or a driveway being built across one lot to access another." *Id.* at 102.

The evidence did not show that the Tuckers used the lots in service of a single structure or project. *Remes* at 65. Indeed, this Board has even less facts upon which to find merger than existed in *Mueller*.

2. B.C.Z.R. § 304.1.

Having found that merger of the lots did not occur, the second issue is whether the petitioners satisfied B.C.Z.R. § 304.1. That section reads:

> 304.1 Except as provided in Section 4A03, a one-family detached or semidetached dwelling may be erected on a lot having an area or width at the building line less than that required by the area regulations contained in these regulations if:

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

As to § 304.1, People's Counsel argues that the Petitioners' lot line adjustment in 2008 "created" the lot known as 9941 because it is not the *original* lot that was 'duly recorded by deed or in a validly approved subdivision prior to March 30, 1955.' This Board rejects that argument and notes that prior to the lot line adjustment in this case, there existed two lots of record as referenced in the Tucker Deed. (CBA- Pet. Ex. 3). After the lot line adjustment - despite increasing the size of 9941 and decreasing the size of 9945 - there were still two lots of record. In addition, the language in §304.1A does not expressly required that the lot have its original boundary lines to qualify under that Subsection.

Moreover, this Board does not find that lot line adjustments "create" new lots. In this case, the Petitioners received a limited exemption and approval for the lot line adjustment under Baltimore County Code §32-4-106(a)(1)(viii) ("BCC"). (CBA – Pet. Ex. 4). That section defines "Lot Line Adjustment" for the purposes of §32-4-106 as:

> one or more alterations of a divisional property line or lines between two or more lots in common ownership or by agreement of the owners, ***provided that the alteration does not result in an increase or decrease in the number of lots*** and there is no increase in total residential density available to the lots considered as a whole; * * * * **(Emphasis Added).**

Thus, the lot line adjustment could not have "created" 9941 because, by definition, one must start with "two or more lots." Further, the Petitioners' request would have been denied if it increased or decreased the number of lots.

In contrast, the "Subdivision" process does create lots as defined in BCC § 32-4-101 (yy) as:

> (1) The division of property into two or more lots; or

> (2) The combination of lots, parcels, tracts, or other units of property previously divided for the purpose, whether immediate or future, of sale, rental, or building development.

There was no subdivision of the lots in this case.

The Tucker Deed shows 9945 as having been a recorded lot since as early as 1949. It shows that 9941 was a recorded lot since as early as 1950. Therefore, both lots were duly recorded prior to 1955. Accordingly, the Board finds that the Petitioners have satisfied §304.1.A.

Item "B"of §304.1 states. "....all other requirements of the height and area requirements are complied with...." The evidence presented by Charles Merritt was uncontroverted in that the proposed dwelling located at 9941 meets all height and area requirements, particularly given the reorientation of the proposed dwelling on the lot and withdraw of the variance request. Petitioners have satisfied §304.1B.

The third condition found in § 304.1C states that the owner of the lot does not own sufficient land adjoining to conform to the width and area requirements contained in the regulations. The evidence in this case was that, after the lot line adjustment, 9945 consisted of 10,331 sq. ft There is no more land belonging to 9945 that 9941 could borrow even if both lots were now owned by the same owner. The property known as 9941 cannot borrow any more land from 9945 without making 9945 an undersized lot. *Mueller* at 91.

The *Mueller* Court found that the grandfather clause in §304 was "meant to limit the construction of residences on undersized lots when a landowner possesses a contiguous, *vacant* or undeveloped parcel of property." *Id.* at 93. The property known as 9945 is improved with a single family residence and therefore, according to the Court of Special Appeals interpretation of §304.1C, 9945 must be vacant land in order to be available to transfer it to the undersized lot. While this Board recognizes that §304.1C does not contain the word "vacant," at present, the Court of Special Appeals decision stands as Writ of Certiorari by the Court of Appeals was denied.

Accordingly, the Petitioners, having satisfied the requirements of B.C.Z.R. §304.1, are entitled to construct a principal dwelling on the undersized lot known as 9941 Hilltop Road.

ORDER

THEREFORE, IT IS THIS 20th day of November, 2008, by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Hearing for relief pursuant to Section 500.7 and Section 1B02.3.C.1 of the *Baltimore County Zoning Regulations* (B.C.Z.R.) to permit a principal dwelling to be erected on an existing lot having an area of 7,338 square feet in lieu of the required 10,000 square feet. be and the same is hereby **AFFIRMED;** and it is furthered,

ORDERED that the Petitioners' request for Variance from Section 303.1 of the B.C.Z.R. to permit a principal building front yard setback of 30 feet in lieu of the average front yard depths of adjoining lots of 50.5 feet be, and it is hereby, **VOLUNTARILY DISMISSED BY THE PETITIONERS**.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Edward W. Crizer, Jr., Chairman

Maureen E. Murphy

Lawrence M. Stahl

9/22/08

RE: PETITION FOR SPECIAL HEARING AND VARIANCE	*	BEFORE THE COUNTY
9941 Hilltop Drive; S/S Hilltop Drive, 450' W Magledt Road	*	BOARD OF APPEALS
11th Election & 5th Councilmanic Districts	*	FOR
Legal Owner(s): Weston & Lulu Tucker		
Contract Purchaser(s): James Barnes	*	BALTIMORE COUNTY
Petitioner(s)		
	*	08-073-SPHA

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BOARD OF APPEALS

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

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Petitioner(s)		
	*	08-073-SPHA

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

MEMORANDUM OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

Statement of the Case

On August 8, 2007, Nancy Tucker, holding a power of attorney for Weston and Lulu Tucker, the property owners, and James Barnes, as contract purchaser, filed a petition for variance and special hearing to construct a new dwelling at a lot described as 9941 Hilltop Drive. The property is zoned D.R. 3.5. The petition requested this relief:

> A. "Grant a variance from *Baltimore County Zoning Regulations* Section 303.1 to permit a principal building front yard setback of 30 feet in lieu of the average front yard depth of adjoining lots of 50.5 feet.
>
> B. "from Section 1B02.3C.1 to permit a principal dwelling to be erected on an existing lot having an area of 7,338 square feet (0.168 acre ±) in lieu of the 10,000 square feet required; and
>
> C. "For such further relief as the nature of this case may require."

Following a hearing, Deputy Zoning Commissioner Thomas Bostwick granted both the special hearing and the variance in an opinion and order dated October 22, 2007.

Our office, People's Counsel for Baltimore County, filed a timely appeal to the County Board of Appeals (CBA). A *de novo* hearing began June 11, 2008 and concluded August 6, 2008. Meanwhile, ownership of the property had passed to the Lulu Tucker estate and, on January 23, 2008, to JFB Renovation & Construction, Inc., a corporation owned by Mr. Barnes. At the CBA, the Petitioner amended the petition and site plan to move the dwelling back and eliminate the need to obtain the front yard setback variance. This left for review the petition for special hearing for an undersized lot.

Questions Presented

I. Zoning merger: the Remes standard; the relevant parcel or lot

1. Whether, under all of the circumstances, as a matter of zoning law, there was a zoning merger of the adjoining lots owned by the Tuckers into a single residential property during their long years of integrated residential use, so that there is no longer any separate "undersized lot" eligible for approval under BCZR § 304?

II. The special hearing; the undersized lot law; BCZR § 304

2. In any event, merger or not, does the proposed undersized lot meet the requirements for approval of a dwelling under BCZR §304, or is it subject to variance review? More specifically,

a. Does the proposal meet the BCZR § 304.1.A requirement that "the lots shall have been duly recorded by deed or in a validly approved subdivision prior to March 30, 1955?

b. Does the proposal meet the BCZR §304.1.C requirement that, "The owner of the lot does not own sufficient adjoining land to conform to the width and area requirements contained in these regulations?

c. Does the proposal meet the BCZR § 304.2.B.1 site design requirement that, "New buildings shall be appropriate in the context of the neighborhood in which they are proposed to be located?"

Relevant Baltimore County Zoning Regulations and Code Provisions

BCZR § 1B02.3, including the small lot table, and BCZR § 304, governing undersized lots are in People's Counsel's Exhibits 13 and 14. We shall also discuss the BCZR § 101 definition of "Accessory Use or Structure" and BCZR § 600, on "Interpretation." Baltimore County Code § 32-4-106(a)(1)(viii), concerning limited exemptions for lot line adjustments, will be reviewed, along with Code §§ 32-4-104 and 32-4-114 on compliance of development plans with zoning law.

Statement of Facts

History of the property: 1952-2008

On November 12, 1952, Weston and Lulu Tucker acquired by deed a parcel of land with dwelling on Hilltop Drive. Pet. Exh. 3. On page 1, in the second paragraph, the deed states that the owners

> "... do grant and convey, ... in fee simple, all those lots of ground, situate, lying and being in Baltimore County, and described as follows, that is to say:"

It goes on to described the two "lots of ground" and then, on pages 3, last paragraph, includes "... the buildings and improvements thereupon erected ... " In sum, while the deed describes the two lots, they are conveyed entirely, as "all those lots of ground," along with "the buildings and improvements."

The tax maps show this property with two tax accounts, but on the same map and grid, and with the same parcel number. P.C. Exh. 3. There is the account for 9945 Hilltop Drive, "SS HILLTOP DR, 375FT W MAGLEDT AVE," with 12,250 square feet, and a 1.5 story dwelling built in 1953 having an enclosed area of 1386 square feet. There is also the account for "MAGLEDT AVE," for "LOT SS 30 FT R OF W LEADING TO MAGLEDT AVE," with 5,150 square feet and no dwelling. Together, the lots comprise 17,400 square feet. Both accounts cite Map 71, Grid 11, Parcel 406.

The Tuckers apparently built their home in 1953 and lived there for many years. The entire property has had one address, 9945 Hilltop Drive. The dwelling is substantial and attractive. It is located on the east side of the property, as shown in various photographs. See P.C. Exh. 6B. At some point, the Tuckers constructed a typical storage shed on the adjoining westernmost vacant area, along with a fixed basketball backboard structure. P.C. Exh. 6A, 6D. It is apparent that the shed served the usual accessory storage purposes and that the backboard served normal recreational purposes. There is no discernible physical boundary or difference between the two areas or lots. There is no physical evidence of any disparate, distinct, or segregated use of the two areas or lots. The topography is unremarkable. It is evident that they served a common, integral residential use.

The MRIS listing shows that on March 30, 2007, the Tuckers listed their residential property for sale with Re/Max Elite Realty Company. P.C. Exh. 8A. The listing for the dwelling at 9945 Hilltop Drive included this remark:

> "This property is being conveyed with the lot next door which .12 acres of land."

Shortly thereafter, Paul Garner, a licensed real estate agent, became interested in the property. He came up with the idea to build another dwelling. He arranged for Charles Merritt of Merritt Development Consultants to request a limited exemption for a "lot line adjustment" to increase the size of the vacant lot to accommodate a dwelling. He filed a request on April 17, 2007 to increase the size of this lot from 5,150 square feet to 6,105 square feet. P.C. Exh. 2. The site plan shows he subsequently amended the proposal to enlarge it to 7,350 square feet, reducing the larger lot with the existing house from 12,250 square feet to 10,000+ square feet. Ibid. On May 23, 2007, PDM Director Timothy Kotroco adopted the following DRC recommendation and determination,

> "The DRC has determined that your project meets the requirements of a limited exemption under Section 32-4-106(a)(1)(viii)."

The effect of the limited exemption is to provide an "*Exemption from development plan and approval process*." Code § 32-4-106(a) More specifically, it exempts certain types of development "from Subtitle 2 of this Title." Title 2 sets out the usual complete process, including concept plan, community input meeting, and hearing officer's hearing. The limited exemption does not provide any exemption from the zoning law.

On August 8, 2007, as noted, Nancy Tucker, as power of attorney for her parents, filed this zoning petition relating to the newly adjusted vacant lot. James Barnes signed on as contract purchaser. By December 10, 2007, the MRIS records show that 9945 Hilltop Drive was off the market. P.C. Exh. 8A. On January 8, 2008, the Estate of Lulu Tucker deeded "the same property" conveyed in the "Deed dated November 12, 1952" to Nancy Tucker, Personal Representative, describing also "the two newly configured lots (9945 Hilltop Drive and the newly named 9945 Hilltop Drive). Pet. Exh. 5. On January 23, 2008, Paul and Tiffany Garner acquired the newly configured 9945 Hilltop Drive property, with the dwelling. Pet. Exh. 6, P.C. Exh. 8B. The SDAT records describe this

property as 10,331 square feet. P.C. Exh. 4. Also on January 23, JFB Renovation & Construction acquired the vacant newly created 9941 Hilltop Drive.. Pet. Exh. 7. The SDAT records describe it with the new address of 9941 Hilltop Drive, and a land area of 7,338 square feet. P.C. Exh. 5. On April 11, 2008, Paul Garner listed 9945 Hilltop Drive for sale. P.C. Exh. 8-C. The "for sale" signs on the property are shown in various photographs. Meanwhile, Mr. Barnes has pursued this zoning petition for the vacant lot, although the actual owner is JFB Renovation & Construction, Inc.

The absence of eyewitnesses as to use of the property

Weston and Lulu Tucker died in 2007, some time after the filing of the petitions. Neither the Tucker children nor any neighbors appeared as witnesses to describe the historic use of the property. There are thus no direct observations of the historic use of the property. There is no statement of intent by the Tuckers.

Petitioner's presentation

Charles Merritt, the consultant, and Paul Garner, the real estate agent at the center of these arrangements, were the only witnesses presented by Petitioner. Mr. Barnes attended the hearing, but did not testify.

Messrs. Merritt and Garner, mixing fact with opinion, suggested that the new lot acquired by JFB was created before March 30, 1995 in that it was an improved version of the previously existing lot. It was larger, thereby coming closer to meeting the minimum lot size requirement of 10,000 square feet for the D.R. 3.5 zone. Moreover, in light of the existence of the dwelling on the adjoining lot, they were of the view that there was no sufficient adjoining land available to meet the requirements. Mr. Merritt provided perfunctory testimony that he saw no adverse impact from the proposal and that the new dwelling would be similar in size to other dwellings in the area.. Mr. Garner produced three subdivision plats as well as real estate data showing development and sales of other dwellings on lots of similar size, less than 10,000 square feet in other areas in the greater neighborhood , but not on this part of Hilltop Drive. Pet. Exh. 8-10, 22.

Mr. Garner also produced a document purporting to have the signatures of three of the neighboring residents to an agreement "not to oppose the construction of a two-story dwelling on the property located at 9941 Hilltop Avenue, Baltimore, Maryland 21234."

These signatories did not appear as witnesses on either hearing date. There was thus no testimony from them regarding the background of the document, and no opportunity to cross-examine. The document itself does not state any relevant facts. Nor does it state the reasons for their lack of opposition. Indeed, it does not even state that these neighbors favor the project. In view of Mr. Garner's assiduity in attempting to get support for this project, moreover, it is reasonable to infer that there were other neighbors who refused to sign on to this statement of non-opposition. Some citizens may be opposed to a project, but shy about participation at a hearing. In any event, zoning cases are not decided by a show of hands in favor or in opposition.

People's Counsel's presentation

The CBA accepted as an expert in planning and zoning John J. Dillon, Jr., a planner with over thirty years of service in the Baltimore County zoning and planning offices, and subsequent experience as a consultant. He has testified on numerous occasions both during and after his county service and been cited with approval by the appellate courts. His resume is in the record as P.C. Exh. 9.

Mr. Dillon reviewed the petition, deed history, DRC documents (PC Exh. 2), SDAT data (PC Exh. 3-5), and MRIS reports (PC Exh. 8A-8C). He visited the property, took photographs (PC Exh. 6A-6F), and obtained a GIS aerial photograph (PC Exh. 1). He also examined SDAT data for all of the properties in the 9900 block of Hilltop Drive, from its intersection with Magledt Road to its dead-end at its western terminus. He produced a summary of this data, which shows the lot area for each of these properties, the entire Tucker property, along with 10 other residential properties. PC. Exh. 10.

In conjunction with review of the property and the neighborhood, Mr. Dillon reviewed the pertinent zoning regulations, including the history of BCZR § 304 from the time of its enactment in 1955 through its amendment in 1992. In this connection, there were introduced as Exhibits the November 7, 1991 Planning Board Report on "Proposed Amendments to the Baltimore County Zoning Regulation Regarding Residential Development of Undersized Lots in Existing Subdivisions," the ensuing Bill 47-92, and the current BCZR § 304., and the BCZR § 1B02.3 regulations and table of development standards for small lots or tracts. P.C. Exh. 11-14

Upon this foundation, Mr. Dillon addressed the issue of zoning merger. He recognized that the 1952 deed referred to two lots. But his field visit revealed that the entire Tucker property (both lots together) appeared clearly to have been used in common as an integrated single residential use with a principal dwelling and storage/recreational/ open space area. There was no discernible boundary or division on the ground between the two lots. Moreover, as shown in the photographs, there was a storage shed and basketball backboard on the smaller vacant lot. These appeared to have been there for a long time. This indicated not only common use of the two lots, but also a merger as a matter of law because the BCZR § 101(c) definition of "Accessory Use or Structure" requires, among other things, that it be "located on the same lot as the principal use or structure served." In order to preserve any semblance of separateness, the Tuckers would have had to request a variance for accessory structures on a separate lot from the dwelling lot. As to the tax records, while there were separate tax accounts for the two lots, each of the accounts refereed to "Parcel 406." Upon consideration of the totality of circumstances, Mr. Dillon concluded that there had been a zoning merger. The "lot line adjustment" approved by the DRC and the PDM Director provided a "limited exemption" from the full development process, but did not affect or provide a basis to circumvent the independent and paramount issue of zoning merger.

If the lots merged as a matter of zoning law, then the Tuckers had, for zoning purposes, a single lot which complied with the BCZR § 1B02.3 small lot table standards for the D.R. 3.5 Zone. Neither they nor their successors would be eligible, therefore, for piecemeal approval under BCZR § 304 of a fractional undersized lot. The separate sales by the Tucker estate of the two "adjusted" lots to Mr. And Mrs. Garner and JFB Renovation, respectively, would not affect the zoning merger. Remarkably, the transfers occurred in January, 2008, while this *de novo* appeal was pending.

Mr. Dillon observed that even if there were no zoning merger, the newly "adjusted" undersized lot would not qualify under BCZR § 304.1. The 2007 "adjustment" changed the lot configuration described in the 1952. The modified lots created in this "adjustment" were not the original lots "duly recorded by deed or in a validly approved subdivision prior to March 30, 1955;" as required by BCZR § 304.1.A. Despite

Petitioner's suggestion that the "adjustment" was a beneficial attempt to enlarge the smaller lot, there is no getting around that it eliminated eligibility under this subsection. The consequence, as we shall see, is that Petitioner would have to seek a variance.

Moreover, the Tuckers did "... own sufficient adjoining land to conform to the width and area requirements ...." Together, the lots occupy over 17,000 square feet, well over the minimum 10,000 square feet. Therefore, the property arguably did not qualify under BCZR § 304.1.C. (The Court of Special Appeals has held, to the contrary, that the adjoining land must be "vacant" for there to be a disqualification on this last ground. Mueller v. People's Counsel 177 Md. App. 43 (2007). But the Court of Appeals denied a petition for writ of certiorari, thereby leaving the issue open at that level. People's Counsel v. Mueller 403 Md. 307 (2008). We discuss this in Argument II..B, below.).

Mr. Dillon also addressed the public interest and adverse impact on the neighborhood. His site visit, the aerial photo, and the summary of the SDAT data for the 9900 block of Hilltop Road showed this block is occupied, with one exception, by other lots over 20,000 square feet in size. Even taken together, the Tucker property is the second smallest residential property on the block. The smallest, at 9949 Hilltop Drive, is listed as 12,232 square feet. There are at present no undersized lots in this block.

To approve a new dwelling on this undersized lot would be out of character with the other dwelling lots on this block. It could also set a precedent for piecemeal subdivision and construction of dwellings on other properties. This undermines the intent of the D.R. 3.5 Zone to set minimum standards. It also conflicts with the stated intent in BCZR § 304.2.B.1 Site Design standard,

> "New buildings shall be appropriate in the context of the neighborhood in which they are proposed to be located. Appropriateness shall be evaluated on the basis of new building size, lot coverage, building orientation and location on the lot or tract."

Mr. Dillon also observed that the subdivision and sales data produced by Mr. Garner for other small dwelling lots in the area related to other streets and blocks, which had different characteristics from the 9900 block of Hilltop Drive. It should also be noted that two of the three subdivisions cited had D.R. 5.5 Zoning, in whole or in the main, and there was no zoning data provided for the list of sales.

Argument

Introduction: The separation of zoning and subdivision law; the lot line adjustment does not exempt the property from zoning law, the zoning merger doctrine, and the Baltimore County Zoning Regulations

The Court of Appeals delivered a landmark opinion on the functional or objective doctrine of "zoning merger" in Remes v. Montgomery County 387 Md. 52 (2005). This case is so important that we attach it to this memorandum. We will discuss the substance of the merger doctrine below, in Argument I. For the purpose of this introduction, Judge Cathell also recited the fundamental distinction between zoning law and subdivision (or development) law. The distinction is crucial to an understanding of the present case. It is crucial, in particular, to understanding that the DRC/PDM Director approval of a lot line adjustment does not exempt the property from compliance with the zoning merger doctrine, and zoning law in general, including BCZR § 304.

Judge Cathell wrote this in Remes, footnote 8, 387 Md. at 64,

> "As we have generally stated, zoning and subdivision are normally separate and distinct regulatory entities."

He subsequently elaborated, 387 Md. at 72-73,

> "As we explained in *Ridge,* zoning differs from planning; the latter of which embodies the requirements of subdivision. We stated:
>
> > "Zoning does not create parcels of real property. What zoning ordinances normally do, with respect to residential districts, is establish dimensional minimums, such as minimal lot, parcel or tract size, yard sizes (the distance between buildings and property lines), and the height of structures. In addition, such ordinances specify the number of residential units that may be placed upon the area of a tract or *74 parcel (density), ancillary requirements such as parking minimums, bathroom minimums, and square footage minimums of buildings. Additionally, zoning ordinances can, to some extent, regulate uses of property, as distinct from dimensional requirements."
>
> *Id.* at 650-651, 724 A.2d at 37. Effectively, zoning dictates what one can build on, or how one may use his property while subdivision or planning determines how the land is divided. It is entirely possible that subdivision regulations are utilized to create separate lots while, at the same time, zoning principles establish limitations on the uses of lots, limitations that can extend across lot lines."

The Court of Appeals long ago stated in Board of County Comm'rs v. Gaster 285 Md. 233, 246 (1979),

> "There are three integral parts of adequate land planning, the master plan, zoning, and subdivision regulations."

Within this legal structure, BCZR § 600, "Interpretation," recognizes the independence and preeminence of zoning law,

> "In their interpretation and application, these regulations shall be held to be the minimum requirements for the promotion of the public health, safety, convenience and general welfare. Where these regulations impose a greater restriction on the use of buildings or land or on the height of buildings, or require larger yards, courts or other open spaces, or impose other higher standards than are imposed by the provisions of any law, ordinance, regulation or private agreement, these regulations shall control. When greater restrictions are imposed by any law, ordinance, regulation or private agreement than are required by these regulations, such greater restrictions shall not be affected by these regulations."

It should be kept in mind that Baltimore County Code § 32-4-104 states,

> "Proposed development shall be in compliance with the zoning classification of the property to be developed."

County Code § 32-4-114(a) further states,

> "*Compliance with other county laws required.* Except as otherwise provided in this title, all development shall comply with this title and all other applicable laws or regulations of the county."

It is logical then that the limited exemption for lot line adjustments in County Code § 32-4-106(a)(1)(viii) is under the rubric of "*Exemption from development review and approval process.*" It is not a complete exemption from all law. More to the point, it is not an exemption from zoning law.

The net result is that the 2007 DRC/PDM Director approval of the lot line adjustment does not furnish an exemption from the zoning merger doctrine. Nor does it furnish an exemption from BCZR § 304, the subject of Argument II, below.

I. The Tucker lots merged as a matter of zoning law

Remes is a landmark decision in the evolution of the zoning merger doctrine. The key point is that zoning law employs an objective standard to determine intent to merge lots, This involves evaluation of the owner's conduct and the totality of circumstances.

In finding that a merger had definitely occurred, Judge Cathell describes a factual scenario with remarkable similarities to the situation here.

In Remes, Ralph Duffie and Violette Duffie had acquired Lot 12 in 1951, upon which they built their house, and Lot 11 in 1954. the Duffies subsequently built a semi-circular driveway spanning both lots, a swimming pool on Lot 11, and an house addition on Lot 12. In 2001, their son Jonathan, as personal representative of his father's estate, deeded the property to himself, describing lots 11 and 12, and adding that they are known as 8920 Fairview Road. In early 2003, he deeded lot 11 alone to Design-Tech Builders, who had just secured a permit to build a dwelling. The adjoining property owner, David Remes, appealed the issuance of the permit, and the case eventually made it to the Court of Appeals. The separate sale of Lot 11 did not immunize it from the application of the zoning merger doctrine.

Judge Cathell reviewed the background and gave this analysis, 387 Md. at 66-68,

> "We indicated in *Ridge* that merger may be derived from the common owner's intent, as evidenced by "integrat[ing] or utiliz[ing]**478 the contiguous lots in the service of a single structure or project...." *Id.* at 658, 724 A.2d at 40 (alterations added). Intent is to be derived from the facts. *Id.* at 659, 724 A.2d at 41; *see also Rouse-Fairwood Devel. Ltd. Partnership v. Supervisor of Assessments for Prince George's County*, 138 Md.App. 589, 630, 773 A.2d 535, 559 (2001); *Iannucci v. Zoning Bd. of Appeals*, 25 Conn.App. 85, 87, 592 A.2d 970, 971 (1991) (stating that intent of the owner "may be inferred from his conduct with respect to the land and the use which he makes of it"). In reviewing scenarios from varying jurisdictions, we noted that "[s]ome cases discuss automatic merger, but most require that the intent of the owner to merge the parcels be expressed, though little evidence of that intent is required." *Ridge*, 352 Md. at 653, 724 A.2d at 38.
>
> Petitioner contends that, in applying *Ridge* to the instant case, Lot 11 and Lot 12 remain separate for subdivision purposes, but are combined for zoning purposes. This is, indeed, a correct articulation of the thrust of zoning merger: zoning merger does not cause a nullification of any subdivision that has previously occurred. It merely consolidates lots insofar as the determination of what can be constructed upon that land, or what uses can be made of it, bearing in mind the requirement that one must comply with zoning requirements including area, setback, etc. "For title purposes, the platted lot lines may remain, but by operation of law a single parcel emerges or zoning purposes." *Ridge*, 352 Md. at 658, 724 A.2d at 34.
>
> Respondents urge that merger in Montgomery County may arise only from a formal replatting. Thus, according to the respondents, other indicia of merger such as common ownership, contiguous parcels, use of one or more lots in service of another, offer no evidentiary import and are of little moment in Montgomery County. They are

incorrect. The respondents read this Court's decision in *Ridge* as narrowly focused on the realm of zoning, and to this effect, Montgomery County insists that "the Court limited its ruling to the zoning requirements and did not address the subdivision perspective of creating lots." The respondents' assertion illustrates a point, that we emphasized in *Ridge*, and that bears repeating: zoning merger is not a resubdivision. When zoning merger occurs, the lots remain divided. Thus, zoning merger, in effect, is an adjustment of zoning requirements. It has no effect on subdivision. Title examiners regularly consider aspects of zoning when examining titles in order to be able to indicate to purchasers the uses that can be made of a property. Those uses have no effect on subdivision regulation. One must comply with *both* zoning and subdivision requirements. In the present case, the applicant cannot meet zoning requirements because of the doctrine of zoning merger and thus, while Lot 11 may be sold, it cannot be used, absent zoning variances or other zoning relief, if any.

Simply because an applicant submits documents articulating plan specifications, engineering details, and a plot diagram showing details of the building to be erected [FN12] does not *68 remove the fact that the **479 instant lot may be part of some larger zoning configuration-a configuration that arose through a common owner's use of the property, if not through schematics. Each case must be examined on its own. In the case at bar, there is ample evidence to conclude the elder Duffies intended to use their Lot 11 and Lot 12 as one property for zoning purposes: the pool on Lot 11 violates (or violated) the prescribed setbacks from the street and from Lot 12, unless it was dedicated for zoning purposes to Lot 12, and from the time of its creation was thus an accessory use to the structure or use of Lot 12; the additions to the house on Lot 12 encroach upon that lot's setbacks; the circular driveway traverses both Lot 11 and Lot 12; until very recently the lots were assessed for tax purposes as a single parcel; and the subsequent personal representative's deed conveying Lot 11 and Lot 12 to Mr. Duffie described a single lot comprised of two lots, in that it reads "Lot numbered eleven (11) and twelve (12)."

Let us now return to the facts here. To begin with, the 1952 deed actually refers to "all those lots of ground" and the "buildings and improvements." So, while two lots are incorporated, the deed actually describes the lots together as a single property. Likewise, while there are two separate tax accounts, they both refer to a single parcel. The entire property has had the single address of 9945 Hilltop Drive.

No one form the Tucker family appeared to describe the use of the property or the specific intent of the Tuckers. There were no eyewitnesses from the area. They physical evidence demonstrates, however, the objective intent to use the property as a single property for zoning purposes. There is the residence on the east side of the property and the shed and basketball backboard on the east side of the property. There is no discernible boundary or line of division between the two lots. Significantly, as Mr. Dillon observed,

an accessory structure must, as a matter of zoning law (BCZR § 101) be on the same lot as the principal structure.

Under these circumstances, while the physical improvements may not be as imposing as the swimming pool and common driveway described in Remes, the property description and tax accounts, the use of the property, and the presence of the accessory structures by law on the same lot all effectuated a zoning merger. There is no doubt of the objective intent to combine these lots. Moreover, there is no statement of intent to the contrary by any member of the Tucker family or any eyewitness.

As in Remes, the attempt here by the Tucker estate, Mr. Garner, and JFB Renovation to change lot lines and sell the properties separately does not insulate them from the zoning merger doctrine. Jonathan Duffie and Design-Tech attempted to orchestrate a similar separation and new building project in Remes.

As a result of the merger, the undersized vacant lot disappears. There is left a single merged dwelling lot, which meets the relevant standards. The merged Tucker property satisfies both the area and lot width standards of BCZR § 1B02.3. There is thus no longer any undersized lot eligible for construction of a dwelling under BCZR § 304.

Our research shows that the only significant Maryland case after Remes is Mueller v. People's Counsel, *supra*. While the CBA there found that merger had not occurred, the opinion relied heavily on the direct testimony of Mr. Herman Mueller. Jr. "... that it was never his intent to merge the two properties." 177 Md. App. at 101. The CSA sustained the CBA's finding as "not clearly erroneous." It is noteworthy that the elder Muellers had acquired their first lot in 1947, and built their dwelling on it in 1948. They did not acquire the adjoining second lot until lot twelve years after that, in 1960. Moreover, there were no fixed structures at all on the second lot, just a movable storage shed. The opinion did not discuss the BCZR § 101 accessory structure requirements. Under all these circumstances, the Mueller situation is distinguishable. In any event, being fairly debatable, the CBA could have found merger. The present case fits squarely within the path and pattern of Remes, which found a merger had occurred as a matter of law.

Our research also reflects that in Remes, Judge Cathell expanded on his discussion of zoning merger in Friends of the Ridge v. BG&E 352 Md. 645 (1999). He there cited

the New Jersey decision of Loechner v. Campoli 231 A.2d 553 (N.J. 1967) as a seminal case. He also observed that some jurisdictions have adopted an "automatic merger" doctrine. While Remes did not adopt automatic merger, its objective approach to intent reflects that merger ordinarily occurs where common use is made of lots which, on their own, do not satisfy modern zoning standards. The Rhode Island case of Sciacco v., Caruso 760 A.2d 578 (R.I. 2001) illustrates this approach.

II. In any event, the proposed undersized dwelling lot does not satisfy BCZR § 304

We begin with the reminder that the approval of a limited exemption for a lot line adjustment is not an escape or excuse from compliance with zoning law. In addition to the merger problem, there is the additional objection that the proposed undersized lot fails in any event to satisfy the BCZR §304 prerequisites for construction of a dwelling.

It should be underlined that where a lot does not meet these prerequisites, the owner may apply for a variance. Frequently, property owners apply for approval of an undersized lot under BCZR § 304 and, in the alternative, a variance under BCZR § 307. Here, the property owner has chosen to file only under BCZR § 304 and has deliberately eschewed or bypassed the opportunity to apply for a variance.

The 1991 Planning Board Report provided this background,

> "DISCUSSION
>
> > "The Zoning Regulations (B.C.Z.R.) require that most undersized lots or tracts in Density Residential (D.R.) zones be developed according to a special set of standards (Attachment 2). These standards are also applicable to any lot in a residential subdivision which was created without approval of the Planning Board or its predecessor, the Planning Commission, unless the lot is "grandfathered" under Section 304 of the Zoning Regulations.
> >
> > "Any residential development of an undersized lot zoned D.R. which does not meet the development standards shown on Attachment 2, nor qualify as a developable lot pursuant to Section 304, is subject to approval by the Zoning Commissioner as a variance. This approval process, with a public hearing on a request for a variance, can sometimes serve to allow community residents' concerns about appropriateness of a proposed building within their existing neighborhoods to be stated. However, because the Zoning Commissioner must rule on the bases of "practical difficulty" or "unreasonable hardship", and may only grant a variance not injurious to public health, safety, and welfare, a variance hearing is not intended to address or resolve the compatibility issue for in-fill housing. "

A. The proposed undersized lot fails to satisfy the BCZR § 304.1.A requirement that "the lots shall have been duly recorded by deed or in a validly approved subdivision prior to March 30, 1955.

It is crystal clear that the "newly configured" and newly named and addressed lot of 9941 Hilltop Drive was not approved before March 30, 1955. Rather, it is the product of a 2007 lot line adjustment and a 2008 deed from the Tucker Estate to Nancy Tucker. No amount of rationalization or spin about the beneficial reasons for the "adjustment" can translate into compliance with the plain language of the statutory requirement.

BCZR § 304.1 establishes clearly defined and specific criteria for approval of an undersized lot outside the variance process. There is no basis to avoid this law on the ground that the proper owner has a "better" lot configuration. Either the owner must proceed with the lot recorded or approved before March 30, 1955, or the owner is subject to the equally well-established variance process.

In electing to change the lot configurations described in the 1952 deed, the Tucker Estate property became disqualified for consideration under BCZR § 304. There was still available the opportunity to file for a variance. The present petitioner elected to dispense with that opportunity.

B. The proposed undersized lot fails to satisfy the BCZR §304.1.C requirement that, "The owner of the lot does not own sufficient adjoining land to conform to the width and area requirements contained in these regulations."

We observed, on page 8, that the Court of Special Appeals construed BCZR §304.1.C to mean that a property owner of an undersized lot qualifies to build a dwelling if the owner does not own sufficient adjoining *vacant* land to meet the standards. Mueller, *supra*, 177 Md. App.43, at 85-93 (2007), cert. denied People's Counsel v. Mueller 403 Md. 307 (2008). Remarkably, the County Board of Appeals had decided the case on the basis that the Muellers were entitled to a variance and that there was no merger. 177 Md. App. at 61-64. The CBA opinion actually did not address this issue of interpretation, which became so prominent at the appellate court. Because the CBA did not address the issue, it appears reasonable that the CBA take a look at it. Moreover, the denial of certiorari effectively leaves the issue open for further argument.

Once again, the key clause at issue is BCZR § 304.1.C, which allows the property owner to erect a dwelling where,

> "The owner of the lot does not own sufficient adjoining land to conform to the width and area requirements of these regulations."

The short answer to the Mueller court's conclusion that "adjoining land" means "adjoining *vacant* land" is that it rewrites the clause to give it a different meaning than is plainly intended. If the County Council had wished the clause to encompass only *vacant* land, it could have and would have said so. The clause is not ambiguous.

The longer answer is that BCZR § 304.1 in its entirety dovetails with the merger doctrine. Its intended purpose is to prevent the proliferation of dwellings on undersized lots. The BCZR § 304.1.C authorization takes care of the situation where an owner acquired a single isolated lot rendered undersized by the change in the law. In this situation, it would appear particularly harsh and arguably confiscatory to prevent that owner from building one dwelling.

This problem does not arise where an owner has bought two or more lots and placed a dwelling on them. In this context, the undersized lot law is a species of nonconforming use law. It prevents the expansion of a nonconforming situation while allowing the existing nonconformity to continue.

Here, there is no allegation of difficulty or hardship. It is evident that the Tuckers never experienced any difficulty or hardship. Rather, the recent efforts of the estate, Mr. Garner, and JFB Renovation to rearrange lot lines, market, and develop the property with a second dwelling have been purely for economic advantage. The effect, however, is to generate a new undersized lot, the very thing BCZR § 304.1 was designed to prevent. The fact that the proposed new lot is so out of character with the other lots in the 9900 block of Hilltop Drive further reflects untoward impact of a loose and distorted statutory interpretation.

C. The proposed undersized lot fails to satisfy the § BCZR § 304.2.B.1 site design requirement that, "New buildings shall be appropriate in the context of the neighborhood in which they are proposed to be located."

Once again, the BCZR § 304.2.B.1 Site Design standard states,

> "New buildings shall be appropriate in the context of the neighborhood in which they are proposed to be located. Appropriateness shall be evaluated on the basis of new building size, lot coverage, building orientation and location on the lot or tract."

The aerial photograph, the summary of site data on the properties in the 9900 block of Hilltop Drive, and Mr. Dillon's discussion all show clearly that the proposed undersized lot is inappropriate in the context of this neighborhood. This is a block where all the other dwelling lots but one are in excess of 20,000 square feet. In this land use context, it is anomalous and detrimental to the area to take a 17,000 square foot property and break it in two. It should also be apparent that the relevant neighborhood is this block, not the subdivisions on other streets, which developed later with different land use patterns and some in the more intense D.R. 5.5 Zone.

We have considered Petitioner's introduction of a short note with the apparent signatures of three of the neighboring property owners to their lack of opposition. Even if we put aside the lack of background or opportunity to question these neighbors about their understanding of the matter, we must emphasize that land use law serves a public interest. The implementation of the law does not depend on a plebiscite of neighboring property owners. Furthermore, for all we know, the other neighbors might oppose this petition if asked. Many citizens do not have the time or inclination to participate actively in zoning cases. The law is there to serve the public interest and does not depend on the active attendance and participation of individual citizens in defense of the law.

We have also considered Petitioner's counsel observation that BCZR § 304.2 refers to review at the building permit stage, with a recommendation from the planning director to be made to the Director of PDM. He suggested that it is premature for the CBA to consider the issue. Nevertheless, where it is clear that the proposed lot does not comply with the law, the CBA should identify and review a serious issue of noncompliance where it arises in a zoning hearing. See Riffin v. People's Counsel 137 Md. App. 90, cert. denied 363 Md. 660 (2001).

Conclusion

For all of these reasons, the County Board of Appeals should deny this petition for special hearing for an undersized lot.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22 day of September, 2008, a copy of the foregoing Memorandum of People's Counsel for Baltimore County was mailed Howard L. Alderman, Jr. Esquire, Levin & Gann, P.A., 502 Washington Avenue, 8th Floor, Towson, MD 21204 , Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

9/22/08

ORIGINAL

BEFORE THE

COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY

Case No. 2008-0073-SPHA

In the Matter of: Weston & LuLu Tucker, Prior Owners

JFB Renovation & Construction, Inc., Legal Owner,

Petitioner

9941 Hilltop Drive
11th Election District
5th Councilmanic District

PETITIONER'S POST-HEARING MEMORANDUM

RECEIVED
SEP 22 2008
BALTIMORE COUNTY
BOARD OF APPEALS

Howard L. Alderman, Jr.
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Towson, Maryland 21204

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Under Purple Sheet:

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PETITIONER'S POST-HEARING MEMORANDUM

JFB Renovation & Construction, Inc., a Maryland corporation ("**Owner**", "**JFB**" or "**Petitioner**"), by and through its undersigned legal counsel, hereby submits this Post-Hearing Memorandum in accordance with the direction of the County Board of Appeals for Baltimore County ("**Board**") at the conclusion of the hearings held on the above-referenced appeal, in lieu of closing argument.

STATEMENT OF THE CASE

This case is not about basketball backboards, moveable accessory, garden sheds, or subdivision. This case is not about whose real estate sign is posted on the adjoining, improved property or what might be existing improvements on the adjoining property

(referred to herein as the "**9945 property**") which may not meet applicable setbacks as pressed by the Baltimore County Office of People's Counsel ("**People's Counsel**"). This case is about the present Owner's[1] request, pursuant to the Special Hearing and Variance authority vested in the Zoning Commissioner and this Board by the *Baltimore County Zoning Regulations* ("**BCZR**") to seek approval of the use of the subject property, an undersized lot of record, for the erection of a single-family, detached dwelling. Given the redesign of the proposed dwelling, which occurred after the hearing before the Zoning Commissioner, the Petitioner's Variance relief to permit a less than required, average front-foot setback was dismissed by the Petitioner at the outset of the Board's hearing.

The Petitioner owns a single lot of record, Parcel No. 1670 as show on Baltimore County Tax Map No. 71, having a street address of 9941 Hilltop Drive[2] (the "**subject property**"). The subject property was created in 1950 and then contained approximately 5,298 square feet of land. In 1952, Weston and LuLu Tucker purchased the subject property, as well as 9945 Hilltop Drive [the adjoining property, created in 1949], comprised of approximately 12,371 square feet, by virtue of a single deed, but both parcels

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[1] While the Petitions for Special Hearing/Variance were filed in the names of the Estate of Weston and LuLu Tucker ("**Estate of Tucker**"), both of whom are now deceased, JFB Renovation & Construction, Inc., as the assignee of Contract Purchaser listed on those Petitions (James Barnes) and now the legal owner of the subject property, was represented before the Board and proceeded with the relief requested at the *de novo* hearing.

[2] *See*, People's Counsel Exhibit No. 5, the SDAT Real Property Data Sheet for the subject property.

remained separately described.

Thereafter, the Tuckers built their home on the , raised a family and lived there until their respective deaths. Their Estate originally marketed both lots for sale in the same listing agreement. Thereafter, the Estate of Tucker sought to sell each lot as the separately recorded lot that it was. In order to bring the subject property into compliance with the minimum lot size requirement of the BCZR [10,000 square feet], the Estate of Tucker adjusted the common property line between the subject property and the . After the lot line adjustment was approved and separate deeds recorded, the subject property is 7,338 square feet in size and the is 10,331 square feet in size. Each of the lots were then offered for sale by the Estate.

JFB signed a contract for the purchase of the subject property and the Estate of Tucker promptly began the process of having it approved for building purposes. The Estate of Tucker sought approval of an undersized lot of record [7,338 sq. ft. in lieu of the 10,000 sq. ft. required] and a variance from the average front yard setback requirement. Those approvals were granted by the Deputy Zoning Commissioner for Baltimore County on October 22, 2007, subject to three (3) enumerated conditions. Notwithstanding the fact that only community support for the requested relief was presented to the Deputy Zoning Commissioner, the Office of People's Counsel noted a timely appeal of the decision to this Board.

THE EVIDENCE

To obtain the remaining relief requested, the Owner had the burden of adducing testimony and evidence that the subject property met the enumerated, statutory requirements of Section 304.1 of the BCZR to have the subject property approved as a buildable, undersized lot of record. The Petitioner presented two witnesses, the expert development consultant that assisted the Estate of Tucker and, subsequently, the Owner, as well as the owner of the . A total of twenty-three (23) exhibits were presented by the Petitioner in support of the requested relief, including title deeds, plats of other subdivisions in the immediate neighborhood, support from neighbors on Hilltop Drive, photographs and other documentary evidence.

Charles Merritt of Merritt Development Consultants, Inc. was offered and accepted as an expert in matters of Baltimore County Zoning, testified that he was familiar with the subject property, that the revised plan to accompany the Petition for Special Hearing[3] presented fairly and accurately the subject property and the proposed improvements and that, having been the development consultant for many of the subdivisions in the immediate neighborhood, he was familiar with the neighborhood and the area of the County in which the subject property is located. Mr. Merritt described the subject property as follows:

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[3] Revised to redefine the footprint and location of the proposed dwelling such that no setback variance relief was needed.

- very long, trapezoidal shaped lot, having a depth of 107.4 feet on the west side and 102.25 feet on the east side
- there is 70 feet of road frontage directly on Hilltop Drive
- the subject property is served by public water and sewer and is presently zoned DR 3.5
- the subject property is approximately 7,338 square feet in size

Through Mr. Merritt, the following deeds concerning the subject property were accepted into evidence:

Petitioner's Exhibit No. 3: Deed dated November 12, 1952, recorded in Liber 2203, folio 474, conveying the subject property [secondly described lot] and the [firstly described lot] to the Tuckers ("**Tucker Deed**")

Petitioner's Exhibit No. 4: "Deed to Adjust Lot Lines", dated January 8, 2008, recorded in Liber 26572, folio 489, from the Estate of Tucker to the Estate of Tucker, adjusting the common property line between the two, recorded lots such that the subject property is comprised of 7,338 sq.ft. and the is comprised of 10,331 sq.ft.; Exhibit B to this deed is the approval letter of the Baltimore County Development Review Committee and approved drawing showing the modified common property line between the two lots

Petitioner's Exhibit No. 6: Deed dated January 23, 2008, recorded in Liber 26641, folio 602, conveying the 9945 Property to Paul and Tiffany Garner

Petitioner's Exhibit No. 7: Deed dated January 23, 2008, recorded in Liber 26633, folio 035, conveying the subject property to the Petitioner.

Mr. Merritt made specific reference to the "BEINGS" clauses[4] in the Tucker Deed. With respect to the subject property, which is the secondly described lot in the Tucker Deed, the "BEINGS" clause identifies it as the same lot of ground described in a deed dated February 15, 1950, recorded in Liber 1819, folio 254 from John and Elizabeth Bowling to the Tuckers' predecessors, thereby evidencing its creation at least as of that date.[5]

Mr. Merritt testified that his firm was retained by the Estate of Tucker to process, through the Development Review Committee ("**DRC**") a request to adjust the common lot line between the subject property and the 9945 Property. Mr. Merritt identified a letter, dated May 23, 2007, from Timothy M. Kotroco, Director of the County Department of Permits and Development Management regarding DRC [Item] No. 051407E, approving the lot line adjustment.[6] Mr. Merritt noted that there was no appeal taken from that action of the DRC and it is now final.

Next, Mr. Merritt described how the subject property was not dissimilar to many other lots in the neighborhood, improved and unimproved, under 10,000 square feet in

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[4] "BEINGS" clauses in deeds of conveyance refer to prior deeds involving the creation and/or prior conveyance of the particular property described.

[5] The evidence established that the 9945 Property was created in at least 1949. Mr. Merritt made reference to the firstly described lot in the Tucker Deed, and its "BEINGS" clause identifying it as the same lot of ground described in a deed, dated November 18, 1949, recorded in Liber 1795, folio 595, that was granted and conveyed to the Tuckers' predecessors.

[6] Mr. Kotroco's letter is in evidence as Petitioner's Exhibit No. 4.

size.[7] Mr. Merritt's opinion was bolstered further by the evaluation of the Baltimore County Office of Planning that the requested relief (including the variance relief originally requested) "should not have a negative impact on the neighborhood, despite lot sizes on Hilltop Drive being much larger than the proposed lot. The Office of Planning does not oppose the petitioner's" relief if certain conditions are met. Those conditions were to:

1. submit building elevation drawings to the Office of Planning for review and approval; and

2. Provide the limits of disturbance for the proposed house on the subject property.

No other County or State reviewing agency had any comment on the Petitioner's requested relief.[8] That position of the Office of Planning and other review agencies is consistent with the complete agency review of the building permit that Mr. Merritt described was issued for the subject property after the decision of the Deputy Zoning Commissioner but before the appeal was noted by People's Counsel.[9]

Finally, Mr. Merritt testified with respect to each element of BCZR Section 304.1:

- the subject property, 9941 Hilltop Drive, was created by duly recorded deed

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[7] Petitioner's Exhibit Nos. 8, 9, 10 & 11 are copies of recorded subdivision plats, in the surrounding neighborhood, all containing many lots of record less than 10,000 square feet in size.

[8] The comments of all reviewing agencies as transmitted by the County to the Petitioner are in evidence as Petitioner's Exhibit No. 12.

[9] The Petitioner did not proceed with construction once the appeal of the Deputy Zoning Commissioner's Order was known.

prior to March 30, 1955[10]

- All other requirements of the height and area regulations will be complied with [the front setback variance relief was dismissed by the Petitioner]

- When the Estate of Tucker owned both lots, it obtained approval of a lot line adjustment to conform the subject property to the width and area requirements of the BCZR to the extent permitted by the DRC and the Estate of Tucker did not nor does the present Owner own sufficient adjoining land to conform to the minimum area requirements contained in the BCZR

In Mr. Merritt's expert opinion, the DRC approval of lot line adjustment had no effect on the fact that the lot which is the subject property was created before 1955. The lot line adjustment was merely the prior owner's attempt to comply, to the extent possible and permitted, with the 3rd requirement of BCZR Section 304.1. The 9945 Property could not have been reduced in size to make it non-conforming, but the subject property was made as large as possible.

Although not required for approval of the relief requested, Mr. Merritt then applied each of the elements of BCZR Section 502.1 [applicable to approval of Special Exception uses] to the requested relief and provided his reasoning and analysis in opining that each element would be met if the requested relief was granted.

Next to testify was Mr. Paul Garner who, together with his wife, purchased the 9945 Property from the Estate of Tucker. Mr. Garner, a licensed real estate agent, reviewed the

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[10] *See*, Petitioner's Exhibit No. 3, the Tucker Deed, and the "BEINGS" clause for the secondly described lot.

elevation and floor plans of the home proposed for the subject property[11] and, prior to the hearings before this Board, at the request of the Owner delivered a copy of each to People's Counsel. Mr. Garner testified that both he and his wife had reviewed and approved the proposed home for construction next to the property that they own. The Garners, at the request of the Owner, shared the elevations and floor plans with other residents and obtained their signatures in support.[12]

Mr. Garner introduced a number of photographs of the subject property, the Garner's property at 9945 Hilltop Drive and other homes on Hilltop Drive.[13] As the final exhibit, Mr. Garner introduced a collection of Maryland Regional Information System records (used extensively by those in the real estate profession), listing 143 properties that are under 10,000 square feet in size, that have sold or are for sale in the neighborhood and overall area of the subject property.[14]

People's Counsel presented only the testimony of Jack Dillon, a former County planner, who was accepted by the Board as an expert in Baltimore County zoning matters. Mr. Dillon suggested that Hilltop Drive was a neighborhood unto itself. He also testified

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[11] The elevation and floor plans of the home to be constructed on the subject property and for which a building permit has been issued are in evidence as Petitioner's Exhibit No. 13.

[12] Petitioner's Exhibit No. 14.

[13] Petitioner's Exhibit Nos. 16-21.

[14] Petitioner's Exhibit No. 22.

that, in his opinion, the presence of an accessory shed and basketball backboard on the subject property was evidence of the manifest intent of the Tuckers to merge the otherwise vacant subject property with the improved, 9945 Property. In viewing the subject property from Hilltop Drive, Mr. Dillon did not see any improvement (principal or accessory) that crossed the property line between the lots, he did not see a common driveway that traversed both lots. Mr. Dillon testified, with no supporting authority, that the lot line adjustment effected by the Estate of Tucker in 2008 created new lots making them ineligible for consideration under BCZR Section 304.1. On cross-examination, Mr. Dillon had to acknowledge that – other than his theory on merger – two lots existed before the lot line adjustment and two lots existed after the adjustment.

Mr. Dillon testified extensively about the Tuckers [whose house was constructed on the 9945 property] having built their garage on east side of their house, too close to their eastern property line, in violation of the zoning setback regulations. On cross-examination, Mr. Dillon was unable to even speculate as to why, if the Tuckers purchased the subject property and intended to merge it with their property at 9945 Hilltop Drive, they built the garage on the opposite side of the house. Mr. Dillon acknowledged, reluctantly, that the garage could have been built on the west side of the Tucker's house [toward the subject property], with a driveway extending onto the subject property without any violation of setback requirements – however, they chose to build it on the opposite side.

Given the support for the Petition by members of the community, there were no

other witnesses to testify on behalf of People's Counsel's case.

ARGUMENT

The Subject Property Meets the Requirements of BCZR Section 304.1 for Approval as an Undersized Lot

The County Council has adopted special regulations to be applied to older, lots of record regarding area and setback requirements. Those special regulations are adopted in BCZR Section 1B02.3, with the specific development standards adopted at Section 1B02.3C.1. With respect to lots in the DR 3.5 zone, like the subject property, the applicable development standards are:

Minimum Net Lot Area:	10,000 square feet
Minimum Lot Width:	70 feet [front lot line]
Minimum Depth of Front Yard:	30 feet
Minimum Depth of Rear Yard:	30 feet
Minimum Side Yard Width:	10 feet
Minimum Sum of Side Yard Widths:	25 feet

In addition to adopting these special regulations, the County Council recognized that there are lots created before 1955 that cannot meet the minimum requirements of those special regulations. To ensure that those lots are buildable, the County Council adopted BCZR Section 304.1 which provides:

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

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

A. Such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to March 30, 1955;

B. All other requirements of the height and area regulations are complied with; and

C. The owner of the lot does not own sufficient adjoining land to conform to the width and area requirements contained in these regulations. [Emphasis added.]

The subject property is less than the 10,000 square feet in size required by BCZR Section 1B02.3C.1. Therefore, improvement of the subject property with a single-family, detached home can be approved if the provisions of Section 304.1A, B & C are met.

Section 304.1A:

It cannot be denied that the subject property was a lot, duly recorded by deed prior to March 30, 1955. The Tuckers acquired title to it in 1952 and it was a recorded lot then, with their deed referring to it as a duly recorded lot of record in 1950. Over 55 years later, in 2007-08, the Estate of Tucker consulted with the County regarding approval of the subject property as a buildable lot. As Charles Merritt testified, the County advised that because the Estate of Tucker owned the 9945 Property [now owned by the Garners] a lot line adjustment between the two properties was necessary to bring the subject property into compliance with the 10,000 square foot requirement insofar as possible. The lot line adjustment required by the County was applied for and approved by the Development Review Committee in accordance with *Baltimore County Code* Section 32-4-

106(a)(1)(viii)[15], the express statute adopted by the County Council for such adjustments.

People's Counsel would have this Board believe that the County authorized and County approved lot line adjustment creates a new lot thereby making it ineligible for relief under BCZR Section 304.1A. Such a proposition belies a plain reading of the Council's intent in enacting the lot line adjustment statute. A new lot can only be created by a validly approved subdivision. Certainly, prior to zoning and subdivision statutes being adopted in the County, lots could be validly created by the recording of a deed, as in the case of the subject property. The County Council specifically defined a lot line adjustment as " one or more alterations of a divisional property line or lines **between two or more lots** in common ownership or by agreement of the owners . . . ." The alteration of lot lines does not create a new lot – the lots must already be in existence. Where a statute is clear, without ambiguity, there is no authority to read additional words or concepts into it. As noted by this State's highest Court [considering the infamous "Snake Case" on appeal from this Board]:

> We have said that '[t]he cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature.' Legislative intent

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[15] *Baltimore County Code* § 32-4-106(a)(1)(viii): Lot line adjustments in residential zones for lots that are not part of an approved Development Plan under this title or an approved Development Plan under Article 1B of the Baltimore County Zoning Regulations. For purposes of this subsection, "lot line adjustment" means one or more alterations of a divisional property line or lines between two or more lots in common ownership or by agreement of the owners, provided that the alteration does not result in an increase or decrease in the number of lots and there is no increase in total residential density available to the lots considered as a whole.

> must be sought first in the actual language of the statute. Where the statutory language is plain and free from ambiguity, and expresses a definite and simple meaning, courts normally do not look beyond the words of the statute to determine legislative intent.

Marzullo v. Kahl, 366 Md. 158, 175 (2001) (all citations omitted)

The Board has already approved, in a prior case filed by Herman Mueller, Jr. and his wife, an undersized lot that was enlarged after 1955. The Muellers owned two, adjoining lots of record, both created before 1955, one of which was improved and the other was vacant and both lots were undersized by today's BCZR requirements. Prior to seeking approval for use of the vacant lot as an undersized, single-family lot, **in 1960** the Mr. Muller's parents acquired from Baltimore County, a 20 foot wide water access strip that ran between the lots and combined one-half of the width of the strip to each lot, thereby increasing each lot's area and its width by 10 feet. The Muellers sought to have the vacant lot [**enlarged after 1955 with an area equal to ½ of the width of the access strip**] approved for development pursuant to BCZR Section 304.1. This Board approved the **enlarged**, vacant lot as an undersized lot which met the statutory requirements and granted approval – People's Counsel appealed. Ultimately, the Court of Special Appeals upheld the Board's decision and reasoning for approving the vacant lot as a valid, undersized lot.[16] *Mueller, et al v. People's Counsel,* 177 Md. App. 43, 101-02 (2007),

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[16] As noted below in the 2nd Argument on Merger, the Court of Special Appeals remanded the case for the Board to consider facts that occurred during the pendency of the appeal relative to variance relief that was sought by the Muellers.

cert. denied, 403 Md. 307 (2008).[17] The recorded deeds in evidence cannot and were not disputed by People's Counsel. The subject property is a lot duly recorded by deed prior to March 30, 1955. It has been enlarged in size, to comply insofar as possible with the 10,000 square foot minimum area by means of the statutorily authorized lot line adjustment, just like the Mueller vacant lot.

Section 304.1B:

As testified to by Mr. Merritt and acknowledged by People's Counsel's expert witness, with the redesign of the proposed home for the subject property, the variance relief from the required front setback is no longer necessary and the proposed improvement complies with "all other requirements of the height and area regulations" of the BCZR. There is no dispute that the Owner has met this requirement.

Section 304.1C:

There is, likewise, no dispute that the present Owner does not own sufficient adjoining land to conform the subject property to the area requirements of the BCZR. contained in these regulations. Mr. Merritt testified affirmatively on this required element and there was no contradictory evidence offered.

The Owner has met its burden through substantial and uncontraverted evidence that the requirements of BCZR Section 304.1 have been met and the subject property should

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[17] A copy of the *Mueller* case is included under the purple sheet in the back of this Memorandum.

be approved for use as an undersized single-family lot as provided for by the County Council.

The Subject Property, An Unimproved Lot, Did Not Merge With the Adjoining Developed Lot

The 9945 Property never was an undersized lot from the first day the deed creating it was recorded, nor is it undersized today. The subject property became an undersized lot upon enactment of the applicable provisions of the BCZR. The 9945 Property has a single-family dwelling on it and it cannot be further subdivided. The subject property, even after increasing its size through a lot line adjustment, remains undeveloped and undersized.

The appellate courts of Maryland have considered the doctrine of zoning merger in three, recorded opinions, two of which originated in Baltimore County. The Court of Appeals first addressed zoning merger in relation to the plans of BGE to use contiguous lots for enlargement of a power station, with the applicable setbacks measured from the outside perimeter of all of the lots. *Friends of the Ridge v. Baltimore Gas & Elec. Co.*, 352 Md. 645 (1999) There, the Court found that merger may occur, depending on the intent and/or actions of the owner. Approximately six years later, the Court of Appeals determined that the actions of an Owner of two, contiguous lots, integrating or utilizing those lots in the service of a single structure or project constituted merger of those lots for zoning purposes. *Remes v. Montgomey County,* 387 Md. 52, 66 (2005) The merger actions of the Owner in that case included:

i) construction of an addition that encroached on the required setbacks

on the adjoining vacant lot;

ii) construction of a circular driveway that connects the public roadway, through the adjoining vacant lot to the dwelling on the improved lot; and

iii) construction of an in-ground, swimming pool on the vacant lot, in violation of the setbacks required from the improved lot and from the street

Most recently (again involving People's Counsel's appeal of this Board's decision) in the *Mueller* case, the Court of Special Appeals reviewed the Board's finding that the Muellers had not merged their vacant lot with the adjoining, improved lot merely by playing ball and having an accessory shed on the vacant lot. After the Circuit Court had reversed this Board, finding that such activities evidenced merger of the two lots, the appellate Court reversed, reinstating the Board's approval of undersized lot status.[18] The Court of Special Appeals reasoned that:

> Not all uses of an adjacent undeveloped property result in a merger. It is improper and without legal foundation to suggest that Appellants' occasional recreational use of [**vacant**] Property II caused Properties I and II to merge. If the Appellants had bought an undeveloped lot somewhere else in the community, and "play[ed] ball" on it or placed a shed on it, such actions would never be considered merger. **Moreover, the mere existence of a shed, not constructed on a foundation and not a structure for which a building permit was sought, cannot be viewed as similar to a permanent improvement benefitting the other parcel or a driveway being built across one lot to access another. The Appellants never needed the undeveloped Property II for them to enjoy the use of their developed**

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[18] The Court of Special Appeals reversed the Circuit Court and remanded the balance of the case to the Board to consider facts that had changed during the pendency of the appeal that may have an impact on a companion variance sought by the Muellers

Property I.

Mueller at 101-02 (Emphases supplied.)

The Tuckers, like the Muellers, placed an accessory shed and apparatus for ball playing on the subject property. Mr. Dillon, testifying for People's Counsel, acknowledged on cross-examination that the Tuckers, unlike the owners in *Remes*, did not construct a pool on the subject property, the Tuckers did not have a driveway for their home running through the subject property and the addition to the Tucker home that may have violated the setback requirements was on the opposite side of the home from the subject property.

The evidence before the Board in support of no merger of the subject property with the 9945 Property is substantial. Improvements to the Tucker home that could have been constructed on the side of the house toward or even on the subject property were not – instead they were constructed on the opposite side of the house. The only, purported *indicia* of the Tucker's 'intent' to merge the 9945 Property and the subject property is the placement of an accessory shed and a backboard for ball playing on the subject property – facts which the appellate courts of this State have expressly rejected in establishment of such intent.

According to People's Counsel's only witness, Mr. Dillon, the Tuckers are guilty of keeping the grass mowed on the subject property, giving the appearance that both properties were one big yard, and using the subject property for ball playing and a storage shed. Those same arguments in support of the merger of two lots were made by a

Protestant in the *Mueller* case and rejected. *Muller* at 58-9.

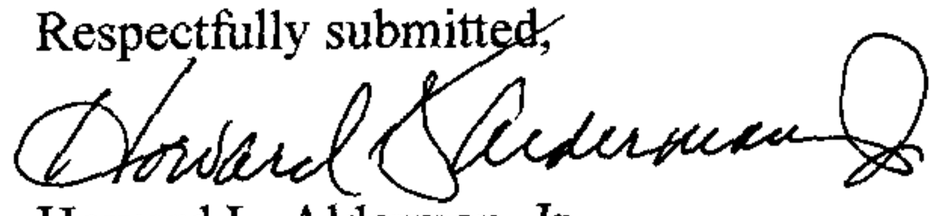
There has been no merger of the two lots, created in different years and owned by the Tuckers before being sold, one to the Petitioner and the other to the Garners. Mr. Dillon's testimony, like that of the Protestant in the *Mueller* case, offered no credible evidence of actual merger or of the prior owner's intent to merge these two lots.

SUMMARY and CONCLUSION

In a nutshell, the Owner has met its burden. The Owner was required to show compliance with BCZR Section 304.1A, B & C. That was done without contradiction. The testimony and plats in evidence reveal that the subject property, being under 10,000 square feet in size, is not unlike over 100 lots in the neighborhood. People's Counsel would have the Board define the neighborhood as the 10 or so houses on Hilltop Drive; a definition that is incongruous with the residential neighborhood exhibited by the residential community of which Hilltop Drive is a part.

No permanent use of the subject property has ever been made. Occasional recreational use and location of a storage shed do not constitute an intent by the Tuckers to merge the two properties. This Board should be guided by the binding opinions of the appellate courts of this State, especially the *Mueller* court which is nearly identical to the factual evidence in this case, and the Board should grant the relief as requested by the Petitioner.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of September, 2008, one copy of the foregoing Petitioner's Post-Hearing Memorandum, was mailed, postage prepaid, First Class United States Mail to the following:

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Carole S. Demilio, Esquire
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and

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and

Mr. and Mrs. Paul Garner
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and

Mr. Charles Merritt
Merritt Development Consultants, Inc.
2416 East Joppa Road
Baltimore, MD 21234

Howard L. Alderman, Jr.

***Mueller, et al v. People's Counsel*, 177 Md. App. 43 (2007), *cert. denied*, 403 Md. 307 (2008)**

Mitchell v. State, 363 Md. 130, 145, 767 A.2d 844 (2001) (citation omitted). Conspiracy may be proven through circumstantial evidence, from which an inference of a common design may be shown. *See Gardner v. State*, 286 Md. 520, 524, 408 A.2d 1317 (1979).

In addition to the above testimony, Easton also stated that Alston asked him for his gun, and that the three men then drove to the place where Easton was robbed at gunpoint earlier in the day. Moreover, the evidence showed that after the men retrieved the gun, they returned to the scene of the initial robbery, and left Easton in the car to drive quickly from the scene. The testimony detailing this sequence of events could have allowed a rational jury to infer a common design to commit murder. After hearing Easton's testimony, the jury could have rationally determined beyond a reasonable doubt that Alston and Easton developed an unspoken agreement to commit murder.

The evidence here was sufficient to sustain the jury's verdict.

Conclusion

We conclude that the belated swearing of the jury, under the circumstances of the case, was not structural or jurisdictional error, for which prejudice is assumed. Thus, the harmless error standard was properly applied. Moreover, the trial court did not err in admitting testimony identifying Alston as a participant in the crime. Neither did the court err in sentencing Alston to life in prison for conspiracy to murder.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

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934 A.2d 974

Herman MUELLER, Jr., et al.

v.

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY.

No. 319, Sept. Term, 2006.

Court of Special Appeals of Maryland.

Nov. 2, 2007.

Background: People's counsel for county brought action for judicial review of decision of county board of appeals to grant lot owners' petition for variance as to an undersized, unimproved waterfront lot. The Circuit Court, Baltimore County, Kathleen Gallogly Cox, J., reversed, and lot owners appealed.

Holdings: The Court of Special Appeals, Hollander, J., held that:

(1) grandfather provisions of zoning ordinance controlled over more general variance provisions;

(2) construction of a residence on one of two adjoining lots was not a self-inflicted hardship that precluded grandfather protection for the other unimproved lot; and

(3) unimproved lot did not merge with adjoining developed lot.

Reversed and remanded.

1. Zoning and Planning ⚷1, 33

The very essence of zoning is territorial division of land within a jurisdiction according to the character of the land and the buildings, their peculiar suitability for particular uses, and uniformity of use within the zone.

2. Zoning and Planning ⚷4

The power to zone is a legislative function.

3. Zoning and Planning ⚷6

Zoning authority stems from the State's police power to regulate in the interest of the general welfare.

4. Zoning and Planning ⚷2

One function of zoning is to preserve various types of neighborhoods, be they residential, industrial, commercial or historical.

5. Zoning and Planning ⚷1.5

Zoning and planning are separate functions.

6. Zoning and Planning ⚷1.5

Planning is a broader concept than zoning, encompassing the development of a community and the creation of goals for orderly growth and development including the establishment of viable neighborhoods for which it delineates appropriate boundaries, and suggesting methods for implementation and achievement of those goals, including proposals for future land use and zoning classifications.

7. Zoning and Planning ⚷481

A "zoning variance" is an authorization for that which is prohibited by a zoning ordinance.

8. Zoning and Planning ⚷536

The burden is on the applicant to show facts to warrant a zoning variance.

9. Zoning and Planning ⚷489, 498

In general, the specific need for a zoning variance must be substantial and urgent and not merely for the convenience of the applicant.

10. Zoning and Planning ⚷489, 493

Ordinarily, a zoning variance is warranted if the applicable zoning restriction is so unreasonable as to constitute an arbitrary and capricious interference with the basic right of private ownership, or otherwise results in unwarranted hardship.

11. Administrative Law and Procedure ⚷791, 796

The Supreme Court reviews an administrative agency's adjudicatory decision to determine if there is substantial evidence in the record as a whole to support the agency's

findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law.

12. Administrative Law and Procedure ⚷760, 791

A reviewing court may not substitute its judgment for the administrative agency's in matters where purely discretionary decisions are involved, particularly when the matter in dispute involves areas within that agency's particular realm of expertise, so long as the agency's determination is based on substantial evidence; "substantial evidence" is defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

13. Zoning and Planning ⚷605

A reviewing court is less deferential in review of the legal conclusions of an administrative body and may reverse those decisions where the legal conclusions reached by that body are based on an erroneous interpretation or application of the zoning statutes, regulations, and ordinances relevant and applicable to the property that is the subject of the dispute.

14. Zoning and Planning ⚷701

The zoning agency is considered to be the expert in the assessment of the evidence, not the court.

15. Administrative Law and Procedure ⚷753

An appellate court will review an agency decision solely on the grounds relied upon by the agency.

16. Zoning and Planning ⚷503

Provisions of grandfather zoning ordinance which protected a landowner from a change in the zoning laws if the lot was recorded by deed prior to certain date or the lot was recorded as part of a validly approved subdivision prior to that date controlled over more general zoning ordinance which applied generally to all variance requests in connection with lot owners' request for variance to construct residence on waterfront lot which became undersized as a result of changes to county zoning laws.

17. Municipal Corporations ⚷120

The court interprets ordinances under the same canons of construction that it applies to the interpretation of statutes.

18. Statutes ⚷181(1)

The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the Legislature.

19. Statutes ⚷188

The court gives the words of a statute their ordinary and usual meaning.

20. Statutes ⚷190

If a statute is not ambiguous, the court generally will not look beyond its language to determine legislative intent.

21. Statutes ⚷181(2)

In an effort to effectuate the Legislature's intent in a statute, the court may consider the consequences resulting from one meaning rather than another, and adopt that statutory construction which avoids an illogical or unreasonable result, or one which is inconsistent with common sense.

22. Statutes ⚷206

If reasonably possible, the court reads a statute so that no word, phrase, clause or sentence is rendered surplusage or meaningless, or superfluous or redundant.

23. Statutes ⚷205, 207

The court is obligated to construe the statute as a whole, so that all provisions are considered together and, to the extent possible, reconciled and harmonized.

24. Statutes ⚷208

Where appropriate, the court interprets a statutory provision in the context of the entire statutory scheme of which it is a part.

25. Statutes ⚷223.4

If there is any conflict between two statutory provisions, the more specific statute controls.

26. Statutes ⚷223.1, 223.4

When two statutes appear to apply to the same situation, the court will attempt to give effect to both statutes to the extent that they are reconcilable, but if there is an irreconcilable conflict, the specific statute is controlling.

27. Zoning and Planning ⚷322

Lot owners' construction of a residence on one of two adjoining undersized lots was not a self-inflicted hardship that precluded grandfather protection for the other unimproved lot under zoning ordinance which provided such protection if lot owners did "not own sufficient adjoining land to conform to the width and area requirements," where residence was constructed on first lot prior to enactment of the area and width requirements, owners acquired other lot several years after they constructed their residence, other lot was a buildable lot when it was acquired, lot owners did not own any other adjacent, unimproved parcels, and lot owners could not "borrow" land from improved lot without rendering it even more substandard.

28. Zoning and Planning ⚷741

Lot owners' subsequent sale of undersized lot had no effect on appellate court's review of the issues involved on appeal of request for variance to construct residence on lot, as lot was not sold until after zoning board of appeals made its final decision and the appeal before the circuit court was pending.

29. Administrative Law and Procedure ⚷669.1

Appellate review of administrative decisions is limited to those issues and concerns raised before the administrative agency.

30. Administrative Law and Procedure ⚷676

It is the function of the reviewing court to review only the materials that were in the record before the agency at the time it made its final decision.

31. Zoning and Planning ⚷497

The typical type of self-created hardship, which cannot justify a zoning variance, arises from an act of commission by

the owner or his predecessor; put another way, a self-created hardship results from affirmative actions of the landowner, rather than from the impact of the zoning ordinance on the property.

32. Zoning and Planning ⚷254, 503

Lot owners' undeveloped lot did not merge with their adjoining developed lot, and thus lot owners were not precluded from seeking zoning variance to construct residence on the undersized undeveloped lot, although there was no physical or structural line of demarcation separating the lots, where lot owners' only improvements to the undeveloped lot were a boat launch and a moveable storage shed, lot was used for recreational activities, no permanent structures were erected on lot, lot was not used in service of developed lot, and lot owner never stated any intent to merge the two lots.

33. Zoning and Planning ⚷254

"Merger," in the context of land use, is the joining of contiguous parcels under common ownership, so that they are viewed as a single parcel for purposes of zoning regulations.

34. Zoning and Planning ⚷254

Zoning merger in Maryland can occur as a result of a property owner's use of contiguous lots under the same ownership.

Edward J. Gilliss (Leanne M. Schrecengost, Royston, Mueller, McLean & Reid, LLP, on the brief), Towson, for appellant.

Carole S. Demilio (Peter Max Zimmerman, on the brief), Towson, for appellee.

Panel: HOLLANDER, DEBORAH S. EYLER, and WOODWARD, JJ.

HOLLANDER, J.

In this appeal, we are asked to determine whether the Circuit Court for Baltimore County erred in reversing the

Baltimore County Board of Appeals (the "Board"), which had granted a "Petition for Variance" (the "Petition") as to an undersized waterfront lot owned by Herman Mueller, Jr. and Grace Mueller, appellants. The lot became undersized as a result of changes to Baltimore County's zoning laws.

When the Petition was filed, appellants also owned an adjoining waterfront lot that Mr. Mueller's parents had purchased in 1947, and on which they had constructed a residence in 1948 (referred to as "Lot 66" or "Property I"). The lot at issue here (referred to as "Lot 67" or "Property II"), was purchased by Mr. Mueller's parents in 1960, and has remained undeveloped. Appellants acquired the properties in 1979. In 2004, they sought a variance as to the undeveloped lot in order to construct a dwelling on it. People's Counsel for Baltimore County, appellee, opposed the Petition. After appellants prevailed before the Board, appellee sought judicial review in the circuit court. That court reversed the Board.

This appeal followed. Appellants pose the following questions:

1. Did the Board properly grant the Appellants' Petition for Variance in Accordance with the standards for undersized lots established in BCZR Section 304.1?
2. Did the Board properly grant Appellants' Petition for Variance in accordance with the BCZR Section 307 variance process?
3. Was the Board correct in finding that the doctrine of merger is inapplicable to Properties I and II?

For the reasons set forth below, we shall reverse the circuit court and remand to the Board for further proceedings.

FACTUAL AND PROCEDURAL SUMMARY

In 1947, Herman Mueller, Sr. and his wife, Thelma Mueller (the "elder Muellers"), the parents of appellant Herman Mueller, Jr., acquired Lot 66, located at 2606 Bauernschmidt Drive in Baltimore County (the "County"). In 1948, they construct-

ed a dwelling on Lot 66, which is used as a summer home and weekend retreat. The elder Muellers purchased the adjacent waterfront lot, Lot 67, in 1960, located at 2608 Bauernschmidt Drive. Lot 66 is approximately 8,400 square feet in area, and 50 feet wide, while Lot 67 is approximately 6,812 square feet in area and about 61 feet wide.[1]

The lots are located in Bauernschmidt Manor, a 1940 waterfront subdivision on the Turkey Point Peninsula, in eastern Baltimore County. Bauernschmidt Manor consists predominantly of single family residences built in the 1940's and 1950's, many on lots which are about 50 feet wide, and thus undersized under current zoning regulations. However, many homes in the waterfront section of Bauernschmidt Manor were constructed on multiple, contiguous lots. Lots 66 and 67 both front on Greyhound Creek, which flows into Middle River. Moreover, most of the area comprising the two lots is located within the 100-foot Chesapeake Bay Critical Area Buffer.[2]

In 1978, the two parcels were re-deeded to Thelma Mueller and her son, Herman Mueller, Jr. Then, in 1979, the deeds were transferred to appellants Herman, Jr. and his wife, Grace Mueller. Both lots were collectively known as 2606 Bauernschmidt Drive,[3] but are deeded separately. As of

1. Originally, Lot 67 was 50 feet wide, but it was enlarged by the purchase of a portion of an adjacent emergency water access lane that was no longer needed for public safety purposes.

2. Baltimore County Zoning Regulation 500.14 prohibits the Board from granting a variance within the 100 foot setback unless certain criteria are satisfied. On May 20, 2004, the Baltimore County Department of Environmental Protection & Resource Management ("DEPRM") advised the Zoning Advisory Committee ("ZAC") that development of Lot 67 "must comply with Chesapeake Bay Critical Area Regulations. . . ." As we said in *Becker v. Anne Arundel County*, 174 Md.App. 114, 139, 920 A.2d 1118 (2007), "there are different criteria that must be met for 'ordinary' or 'general' zoning variances and critical area variances." This opinion does not address whether appellants' proposed development of Lot 67 satisfies the Chesapeake Bay Critical Area Regulations.

3. Records of the Maryland Department of Assessments and Taxation ("SDAT") were admitted in evidence at the Board hearing and show that, as of January 1, 2003, only the improved lot had a street number.

January 1, 2003, the land portion of Lot 66 was valued at $98,550, while the improvements were valued at $21,550. As of that date, Lot 67 had a "Base Value" of $5,720. During the pendency of the variance proceedings, appellant sold Lot 66.

Lots 66 and 67 conformed to Baltimore County Zoning Regulations ("BCZR") until 1970, when the Bauernschmidt Manor subdivision was re-zoned Density Residential 3.5 or "D.R. 3.5," (i.e., 3.5 units per acre). In order to construct a dwelling on a lot that is zoned D.R. 3.5, a minimum lot area of 10,000 square feet per dwelling unit is required, along with a minimum lot width of 70 feet. *See* BCZR § 1B02.3.C.1.[4]

On April 27, 2004, appellants filed their variance Petition, in which they sought permission to make Lot 67 a buildable lot. In particular, the Petition requested that the Zoning Commissioner "approve an undersized lot per Section 304 [of BCZR] with any other variances deemed necessary. . . ."[5]

A zoning hearing was held on June 21, 2004. Thereafter, on June 23, 2004, the Deputy Zoning Commissioner granted appellants' Petition, stating, in relevant part:

Interested Persons

Appearing at the hearing on behalf of the variance request were James Grammer, engineer from McKee & Associates, Inc., Steven Glock and Herman Mueller, the Petitioner. Silvana Wisniewski, Robert Koch and Steve Hummel appeared in opposition to the petition. Linda Clark attended the hearing as a[sic] interested citizen. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case.

Testimony and Evidence

4. As discussed, *infra*, the County established a comprehensive zoning scheme in 1945 and, in 1955, it passed an ordinance to "grandfather" lots that had become substandard as a result of the 1945 ordinance, allowing them to be developed under certain conditions.

5. In its opinion, the circuit court stated that appellants sought relief under both BCZR § 304 and § 307. The Petition refers only to § 304.

Testimony and evidence indicated that the property, which is the subject of this variance request, consists of 6,812.10 sq. ft., more or less, and is zoned DR 3.5. Mr. Grammer proffered that the subject property is a vacant lot (lot 67) of the Bauernschmidt Manor subdivision which was recorded in the Land Records of Baltimore County in 1940. Its frontage along Bauernschmidt Drive is approximately 50 ft. as are most other lots in the subdivision. See Petitioner's Exhibit 1. The Petitioner acquired one half of a 20 ft. wide emergency water access strip in 1960 that separates lots 68 and 67 and so the combined road frontage is approximately 61 ft. As such, the combination does not meet the minimum 70 ft. width required by the regulations for DR 3.5 property. The subject lot faces Greyhound Creek and widens out to approximately 70 ft. along the water. The lot contains approximately 6,800 sq. ft of area, whereas the regulations require 10,000 sq. ft. The property is served by public sewer and water.

Lot 66 is also owned by the Petitioner and is improved by a single-family dwelling. Again, its frontage along Bauernschmidt Drive is approximately 50 ft. . . .

The Deputy Zoning Commissioner proceeded to list the nearby properties as an indication of the development pattern. He noted that several were built on 50 foot lots, while others were situated on double lots. Moreover, he observed that several protestants were concerned about jeopardizing their own views of the water. Further, he stated:

Mr. Grammer indicated that the proposed home would meet all County requirements for setbacks but could not meet the area and lot width regulations. As such, he believed that the subject property qualifies under Section 304 since the lot was recorded prior to March 30, 1955, that all other requirements except area and width will be complied with, and the owner does not own sufficient adjoining land to conform to the area and width requirements. Again, in regard to the latter requirement, he noted that *lot 66 was already undersized and there would be no sense to take land from this undersized lot as this would also require a variance.* In addition, he noted that the property could not meet the zoning regulations imposed upon it many years after it was laid out and recorded. This would amount to both a hardship and practical difficulty. (Emphasis added.)

The opinion continued:

Findings of fact and conclusions of law

In regard to what was requested in terms of variance, I find that there are special circumstances or conditions existing, that are peculiar to the land or structure, which is the subject of the variance request. The subdivision was recorded in the 1940's much before the DR 3.5 regulations were imposed. I recognize that the case of *Cromwell v. Ward*, 102 Md.App. 691, 651 A.2d 424, (1995) seems to indicate that there must be some physical uniqueness in the size[,] shape or environment of the property to qualify for a variance. However, I do not believe the Court addressed the issue of old subdivisions having new zoning regulations imposed upon them. In such a case, *the imposition of the new regulations impacts the lot in the old subdivision disproportionately as compared to lots in the area laid out in accord with the regulations. I find that under these circumstances the property passes the first test and is unique. There is no way for the 50 ft. lots, which were designed before the new regulations, to meet the new 70 ft. width or area requirements. Requiring such would be a hardship and a practical difficulty.*

However, as I indicated at the hearing, I must also find that the variance can be granted in strict harmony with the spirit and intent of said regulations, and in a manner as to grant relief without injury to the public health, safety and general welfare. To me, this means that I look to the pattern of development in the immediate area to see if the old undersized lots are generally developed with single-family homes on 50 ft. lots or has the "neighborhood" been developed with double lots. In my way of thinking, *the proposed new home should be compatible with the existing neighborhood.* Said another way, allowing new homes on 50 ft. lots in neighborhoods which have been developed in

double lots would be out of place with and change the character of the neighborhood.

I think it also important to arrive at the same result using Section 304 or the formal variance procedure. Both have been requested here. This lot meets all the criteria of Section 304.1 as it is a pre–1955 lot, the new home will meet all regulations other than lot width and area, and there is no adjoining land from which the owner could take to make the lot conform. I distinguish the Clark's Point Road case referred to me by the protestants because the Clark's Point Road owner had three lots that could be combined to produce two lots which would meet the regulations. However, *here, lot 66 is not large enough to contribute land without creating just another variance case.*

Also, by Section 304.4, I am additionally charged with finding whether or not the proposed dwelling is "appropriate". *I find that it is "appropriate" in this case because the neighborhood has been developed with single-family homes on 50 ft. wide lots in the past. As evidenced above, I find that the pattern of development shows that most of the lots are developed as single family homes on 50 ft. lots.* I acknowledge that there are a few double lots on the edge of this neighborhood. I define the neighborhood to be the water front and water view properties shown on Petitioner's Exhibit No. 1. Just as the water front lots are generally developed as single-family homes on the 50 ft. lots, the protestants [sic] homes across Bauernschmidt Drive are not developed as double lots, but rather single-family homes on 50 ft. lots. I do not believe that allowing another single-family home on the subject lot will adversely affect the character of the neighborhood as these are already so developed....

Under the totality of the evidence, *I also find that such a variance can be granted in strict harmony with the spirit and intent of said regulations, and in such manner as to grant relief without injury to the public health, safety and general welfare.*

Finally, I understand that the protestants have enjoyed the view from across the road for many years. I understand that they would like to continue to enjoy that view. However, they have the opportunity to purchase the development rights on the Petitioner's lot as it seems that the Petitioner is ready to sell the lot. In this case the Petitioner would maintain his view to the west without an additional neighbor. It may even be possible for an agreement with Mr. Hummel and Koch to similarly restrict the development rights on their waterfront properties. However, I cannot impose such restrictions by law. This must be a matter of agreement among the Parties.

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

Appellee filed a *de novo* appeal to the Board, which held an evidentiary hearing on February 3, 2005.[6] We turn to review the evidence adduced at the hearing.

James Grammer, a project manager for McKee & Associates, testified on appellants' behalf.[7] As a project manager, he reviewed site plans and supervised property surveys. Moreover, for a period of twenty years, he worked with the County zoning office regarding the variance and zoning process. Grammer explained that Lot 67 was created before March 30, 1955, pursuant to a validly approved subdivision; that it has access to public water and sewer service; and that it cannot be further subdivided. He claimed that, with the exception of the D.R. 3.5 area and width requirements, Lot 67 meets all BCZR height and area regulations.

Grammer described a small boat ramp on Lot 67, "near the line of division" between lots 66 and 67, which he "assume[d]"

6. As of the time of the Board's hearing, appellants still owned Lot 66.

7. Appellants were unsuccessful in having Grammer certified as an expert in the County variance and zoning processes.

was used by the Muellers in conjunction with their home on Lot 66. Grammer also testified that appellants placed an "aluminum shed" on Lot 67, and he acknowledged that it "straddles the property line between Lot 67 and 68[sic]. . . ." He also recognized that "some" of the properties along the waterfront, and some behind the houses on the waterfront, were constructed on double lots.

The following testimony on cross-examination is relevant:

> [COUNSEL FOR APPELLEE]: Now, let's look at the adjoining property where the Muellers have their home. Just to keep the record straight, that's 2606 [Bauernschmidt Drive].
>
> [MR. GRAMMER]: Correct.
>
> [COUNSEL FOR APPELLEE]: Now, is 2606 and 2608 are [sic] combined, if you combine the acreage, will that meet the 10,000 square foot minimum acreage required in the D.R. 3.5?
>
> [MR. GRAMMER]: Yes, if they were both combined.
>
> [COUNSEL FOR APPELLEE]: Would it also meet the front yard requirement of the seventy foot, front footage requirement of seventy feet, if they are combined?
>
> [MR. GRAMMER]: Yes.

However, Grammer maintained that, in actuality, it is not possible for Lot 67 to conform to current zoning laws by using land that is part of Lot 66, because Lot 67 "does not have sufficient adjacent land to conform to current width and area requirements." Grammer indicated that the owner of Lot 66 would then be required to seek a variance for reducing the size of that lot. He explained that Lot 66

> is currently improved with a dwelling. That itself and on its own is an undersized lot. There's no ground we can acquire from it that would increase our lot to meet the minimum area or the minimum lot width of the building line, in any case, and if we did take any ground from [Lot 66], it would just make the existing deficiencies on Lot 66, 2606 Bauernschmidt, worse.

Mr. Mueller testified that, throughout the years, Lot 66 was used primarily as "a weekend retreat," while Lot 67 was used "to play ball on, the kids went over, and ran on it." He maintained that he "never" intended to merge the two lots, which are separately deeded and taxed. Although Lot 67 is situated "to the side" of the house on Lot 66, he insisted that "it was a lot," and did not serve as a "side yard" for Lot 66.

Appellants' son-in-law, Steven Glock, has been familiar with both lots for about 30 years, as he knew the Mueller family since he was six years old. He testified that the residence on Lot 66 is used as a "weekend home." Moreover, he stated that Lot 67 was "always characterized . . . as a separate lot" and referred to as "the lot." He added: "I call it that because that's what we referred to it in the thirty years I have been familiar with the property." According to Glock, the family entertained on Lot 66, not Lot 67. He explained that "the side lot was simply, you know, a lot," where the children played ball. With regard to the shed on Lot 67, he claimed it is "very easily moved" because it is approximately "ten-by-ten," made of aluminum, and is not a permanent structure. Glock also testified that appellants used it to store a riding lawnmower, a push lawnmower, and other handtools. As to Lot 67, he claimed: "There is no boathouse. There's a section of a seawall that's open . . . It can be used to take a boat in and out."

Since the DR 3.5 zoning regulations were imposed in 1970, residences have been built on other undersized lots within the Bauernschmidt Manor community. For example, in 1972 a residence was built at 2412 Bauernschmidt (waterfront property); in 1979, a residence was built at 2311 Bauernschmidt (non-waterfront); in 1980, a residence was built at 2705 Bauernschmidt (non-waterfront); in 1986 a residence was constructed at 2308 Bauernschmidt (non-waterfront); and in 2004 a residence was built at 2508 Bauernschmidt (waterfront property). The smallest of these properties was 2705

Bauernschmidt, with an area of 7450 sq. feet.[8]

Appellee presented two witnesses. In addition, appellee presented a petition from neighbors who opposed the variance request.

Aaron Kluttz has lived at 2618 Bauernschmidt Drive since 1991. That property consists of lots 70 and 71. He acknowledged that he intended to merge his two lots.

According to Kluttz, the Muellers have always treated their two lots as one property, with no visible line of separation. When asked about appellants' use of the properties, Kluttz stated: "I know each holiday, they have a pretty large party ... I don't know exactly where they put their tents, but it seems like they use both areas consistently." Further, he testified: "It's just all one big yard." He added that Mr. Mueller keeps the grass on both properties "nice, keeps it all mowed." He also stated that the Muellers use Lot 67 for recreational activities, and it has a shed on it as well as a sandy "beach ramp," from which "you can launch a boat." The remainder of both lots is "straight bulkhead all the way across."

Kluttz maintained that treating appellants' two lots as one parcel would be consistent with the neighborhood, which is composed of many residences built on double lots. He also testified that on appellant's waterfront block, two other single, vacant waterfront lots are used by their respective owners as front yards, with their residences located across the street. He added that his neighbor, Perry Leventis, constructed a house in the area in the past 15 years, which he believed was built on a lot exceeding the 10,000 square feet minimum.[9]

Appellants' counsel questioned Kluttz about a residence built on an undersized lot that had been used as a side lot for

8. In 1983, a residence was built at 2515 Bauernschmidt, a non-waterfront property, consisting of 14,136 square feet.

9. While the record contains many SDAT records pertaining to properties located in Bauernschmidt Manor, we have not been able to locate a record pertaining to Leventis.

an existing dwelling owned by Steven Wilson. Although each of Wilson's properties exceeds 13,000 square feet in area, the property in issue lacked the 70 foot width requirement to meet current zoning regulations. Yet, a variance was granted to build a residence on the vacant lot adjoining Wilson's residence. Mr. Kluttz expressed concern that development of Lot 67 would obstruct his view of the water. Because the area is designated as a Critical Area, Kluttz was also of the view that development should be restricted in compliance with the regulations.

Ronald Wisniewski has lived at 2605 Bauernschmidt Drive, a double lot, since 1982. He conceded that he uses his own lots as "one parcel"; that his house "straddles" the lot line; and his home is "built in the center" of the two lots. Nevertheless, he explained that it is "very common" in the neighborhood for houses to be built "on double lots." For that reason, he did not believe construction on Lot 67 would be in keeping with the character of the area. Indeed, he claimed that if appellants' variance request were granted, it would be "the first house built on Greyhound Creek within the hundred foot buffer since, I guess, the Muellers built their home." He expressed concern that he would "lose [his] waterfront view" if the Petition were granted.

Wisniewski also stated:

> Like I said before, we, the community association, was successful in preventing any building in the hundred foot buffer along Greyhound Creek.
>
> You extend that map all the way up, you will see it's all woodland, all the way around. And from that section of the road there, from Bauernschmidt, that's the only view, unobstructed view, you have of that creek, and it's all undeveloped.
>
> And the people enjoy that every day, walking through there, and seeing that view.
>
> Once they build there, no one will even know they're on waterfront, basically, because you're going to be looking through houses.

So it not only affects my property value, my loss of view, but it affects everybody's property value.

According to Wisniewski, appellants "mostly" used their home "on weekends." He also stated that they used Lot 67 to launch and store their boat and for "outdoor activities." He also claimed that, when hosting social gatherings, appellants used Lot 67 for a variety of purposes, including parking, playing horseshoes, and playing ball, and sometimes tables were put on the line between the two lots. Mr. Wisniewski indicated that he has seen others playing on Lot 67 (i.e., people who are not members of appellants' family). Wisniewski noted that there is no line of demarcation between lots 66 and 67, and stated that "[t]he major part of sixty-seven was open. . . ."

Wisniewski explained that he contacted SDAT about the property taxes for lots 66 and 67, because he was interested in the comparison to his own. He claimed that the property taxes for Lot 67 are lower than that for Lot 66, because SDAT considered Lot 67 a "mowing property," in that it "was a lot extension or an unbuildable lot."

In a 29-page post-hearing memorandum filed with the Board on March 17, 2005, appellee raised a number of issues. People's Counsel argued that appellants failed to satisfy the requirements for a variance, including the uniqueness requirement. Moreover, appellee claimed that appellants did not show "practical difficulty," and that granting a variance would be "in direct conflict with variance law and the spirit and intent of the regulations," stating: ". . . Petitioner wants a radical deviation from the regulations in the D.R. 3.5 zone because he believes he can make more money with two separate lots."

Appellee also argued that "the merger doctrine supports denial of the Petition under BCZR 304," and that the use of the two properties over the years created a zoning merger that precluded appellants from obtaining the requested variance. People's Counsel added that the Petition "fail[ed] to

satisfy Chesapeake Bay Critical Area Standards." Further, People's Counsel asserted:

> The site was used effectively by Petitioner with his adjoining property for many years. There is nothing prohibiting Petitioner from selling both lots together, particularly since the SDAT records show both lots were acquired by Petitioner at the same time (5–11–79). . . . [10] It is apparent that the Petitioner intends to separate the site from lot 66 after all these years in the hope of increasing his profit. He rejects the viable alternative of selling the combined lots and improvements together, in compliance with current zoning regulations and long-standing use. But a property owner is not entitled to every use in the zone, only a reasonable use. Nor can a variance be granted to increase Petitioner's economic gain. . . . Meanwhile, the evidence demonstrates it is reasonable and common in this area to utilize and transfer two or more of the old lots as a single home site, particularly along the waterfront on Bauernschmidt Drive.

On July 8, 2005, the Board issued its "Opinion," granting appellants' Petition, with the caveat that any building must comply with the Chesapeake Bay Critical Area requirements, which would be addressed during the building permit process. The Board considered the variance under BCZR § 304, stating:

> Petitioners, Grace M. and Herman Mueller, Jr., requested variance relief for property located at 2608 Bauernschmidt Drive in the "Bauernschmidt Manor" subdivision, to permit a 6,812 sq. ft. lot in lieu of the minimum required 10,000 sq. ft.; to permit a lot width of 61 feet in lieu of the minimum 70 feet per § 304 of the *Baltimore County Zoning Regulations* (BCZR); and to permit an undersized lot per § 304.

After the Board reviewed the evidence, it set forth its "Discussion," as follows:

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10. As noted, appellants acquired the lots from Mr. Muellers' parents. The elder Muellers did *not* acquire the two lots at the same time. Indeed, they built a home on Lot 66 twelve years before they acquired Lot 67.

The Board of Appeals members deliberated this request for a variance on May 4, 2005. After much discussion the members agreed on the following.

The property was developed in the early 1940's and the Muellers purchased two lots in 1947.[11] A home was built on lot 66 in 1948 that conformed to zoning requirements which were changed in 1970. *The outcome of this zoning change, to already existing properties, resulted in a legitimate nonconforming use, causing the property to become unique.* Based upon the evidence and testimony received at [the] hearing, we find that *there are special circumstances or conditions which exist that are peculiar to the land or structure that is the subject of the variance request.*

* * *

While it appears from *Cromwell [v. Ward,* 102 Md.App. 691, 651 A.2d 424 (1995)] that there must be some physical uniqueness in the size and shape or environment of the property to qualify for a variance, we believe that the court did not address *the imposition of new zoning regulations on old subdivisions. In such cases, the imposition of new regulations impacts the lots in the old subdivision disproportionately as compared to lots in the area developed after and in accordance with new regulations. We therefore find that, under these circumstances, the property passes the first test and is unique.* This subdivision was recorded in the 1940s prior to D.R. 3.5 zoning, and *denying the requested variance would result in a hardship and practical difficulty.*

As to the issues brought up in People's Counsel's memorandum:

1. Profitability, inconvenience, or preferable alternative- The Board finds that as a result of the new zoning imposed after 1950 makes these issues moot.

11. This finding is clearly erroneous but not material; the elder Muellers acquired Lot 66 in 1947, and they acquired Lot 67 in 1960.

2. The variance request does not conflict with the spirit or intent of the regulations.

3. As to the issue of "merger," *there is no mention of intent by the owner to combine the lots as one unit.* It appears through testimony by the owner that he has never considered merging the two lots as one property as further indicated by the separate tax bills.

4. As to the Chesapeake Bay Critical Area requirements, this issue will be addressed with the building permit per DEPRM [Department of Environmental Protection and Resource Management] and ZAC [Zoning Advisory Committee] comments when the owner applies for a building permit.

The Board Members also feel that the development of this lot will not harm or change the nature of the area. Denying the requested variance relief would relinquish the use of lot 67 to only expansion of the current yard of lot 66. Therefore, this Board will grant the requested variance relief and it will so order.

(Emphasis added.)

The Board issued the following Order:

ORDERED that the Petitioners' request to permit a 6,812 sq. ft. lot in lieu of the minimum required 10,000 sq. ft. and permit a lot width of 61 feet in lieu of the minimum 70 feet per § 304 of the Baltimore County Zoning Regulations (BCZR) be and the same is hereby **GRANTED,** with the following restrictions:

1. Compliance with the ZAC comments submitted by DEPRM [Department of Environmental Protection and Resource Management] dated may 20, 20024[sic], a copy of which is attached hereto and made par hereof;
2. Compliance with the ZAC comments submitted by the Bureau of Development Plans Review dated May 18, 2004, a copy of which is attached hereto and made a part hereof; and

3. When applying for a building permit, the site plan filed must reference this case and set forth and address the restrictions of this Order.

Thereafter, on July 15, 2005, appellee filed a "Petition for Judicial Review." Appellants sold Lot 66 sometime during the Fall of 2005, and the new owner recorded title on December 15, 2005. Following a hearing on January 9, 2006, the circuit court reversed the Board's decision. In a well written "Memorandum Opinion" and "Judgment Order" dated January 25, 2006, the court said, in part:

> In this case, the properties at issue were re-zoned in 1970 in a manner that increased the minimum lot size and width. Further construction was thereby limited, unless parties owned adjacent parcels or a variance was obtained. Testimony established that many, if not most, of the homes originally constructed in the subdivision are now on lots construed to be undersized, based upon the re-zoning. New construction has occurred within the subdivision on double lots, in compliance with the new zoning restrictions.
>
> * * *
>
> The decision of whether to grant a variance under either provision [of the BCZR] is a two-step process. The first requires a determination of whether the property, in and of itself, is "unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provisions to impact disproportionately upon that property." *Cromwell v. Ward*, 102 Md.App. 691, 694 [651 A.2d 424] (1995). If that "uniqueness" does not exist, no variance may be granted. If it does, then the second hurdle is to determine whether practical difficulty and/or unreasonable hardship result from the disproportionate impact of the zoning ordinance caused by the property's unique quality. *Cromwell, supra* at 694–695 [651 A.2d 424].

> * * *
>
> The Board found, and the [appellants] currently argue, that application of the new zoning in 1970 disproportionately impacts undeveloped lots in the old subdivision, such as the Muellers, and that alone suffices for a finding that the property is "unique." Additionally, the [Muellers] cite to the testimony of their expert, James Grammer, who notes that Lot 67 would be rendered unusable for residential purposes if the variance were not granted.
>
> This analysis ignores the requirements under *Cromwell* that the impact on the property at issue be somehow different from that of surrounding properties. In fact, the impact here is the same as to every undeveloped lot in the subdivision. Construction of that fact, alone, as rendering a property "unique" would effectively gut the impact of the rezoning. Every undersized lot throughout the community would then be able to claim it was unique on the basis of the re-zoning alone, and the increased lot size restrictions would be virtually meaningless.
>
> *B. C.Z.R. affords some limited relief to property owners like the Muellers who own undersized lots in older subdivisions. By its express terms, however, relief under B. C.Z.R. 304.1 is not permitted if the owner has sufficient adjoining land to conform with the area and width restrictions set forth in the applicable zoning. At the time these matters were before the Board, the combined lots permitted construction of one residence that met with the regulations. It would be contrary to the intent of this regulation, and to the zoning modification overall, to allow construction of a second structure on this same site.*
>
> The requested variance must fail for other reasons as well. At the time this case was before the Board, the Muellers owned Lots 66 and 67, which are contiguous. This fact is also crucial to the variance analysis.
>
> *The doctrine of merger has developed in zoning analysis to allow consideration of the lot sizes of contiguous parcels with common ownership, where development on a single*

parcel would violate the zoning restriction. This doctrine of merger was first formally recognized in Maryland in *Friends of the Ridge, supra,* at which time the Court of Appeals held that a landowner who clearly desires to combine or merge several parcels of lots of land into one larger parcel may do so to allow consideration of the contiguous lots in service of a single structure or project. In reaching this conclusion, the Court noted a split in the approach to merger employed in other jurisdictions. The majority required some evidence, often minimal, of the owner's expression of intent to merge the parcels. However, some jurisdictions presume merger automatically. In *Friends of the Ridge, supra,* the court was not required to determine which of these approaches Maryland should follow.

In *Remes v. Montgomery County,* 387 Md. 52 [874 A.2d 470] (2005), the Court of Appeals further explored the doctrine of zoning merger. In *Remes,* the Court held that two contiguous lots held in common ownership that were used by prior owners in service to one another had merged for zoning purposes. Thus permits could not be issued to permit construction on the vacant lot, where such construction would create a non-conforming use on the adjacent lot. As the Court noted, when zoning merger occurs, the lots remain divided, and the doctrine simply operates as an adjustment of zoning requirements. *Remes* at 478. However, once that occurs, one can't later sell off a parcel without correcting nonconformance issues and simply seek a variance. To hold otherwise would allow the original owner to "flip-flop between his or her adjacent parcels, thwarting the intent of the land development regulations and, perhaps more egregiously skirting [the] County's exacting requirements for subdivision." *Remes* at 489.

At the time the Board considered the Mueller's [sic] variance request, they had adjacent parcels. The undeveloped parcel had been used in combination with the developed parcel for over 40 years. The dock used by the family was on the undeveloped lot, and a shed straddled the property line. While never formally "merged" into a single

deed, the properties had shared a common address for many years. *The double lot had sufficient area to comply with the revised zoning restrictions.* To allow the owners to now claim they are entitled to a variance to permit construction of a home on the undeveloped parcel would be contrary to the analysis employed by the Court in *Remes.*

Finally, the [Muellers] argue that the December sale of [Property I], leaving them owners of only the undeveloped lot, eliminates the merger analysis. This argument must fail for several reasons. First, in the posture of this case, this Court is bound to analysis of the facts and issue [sic] before the Board. *To the extent that new facts develop that may impact on the Board's analysis, the proper remedy is to remand for further review, not to analyze those facts in the first instance on appeal.* Second, in the analysis under B.C.Z.R. 304. 1, at the time of application the Muellers owned adjoining land. Thus this development is not one that this Court may consider in the first instance as according a basis for relief by grant of a variance.

* * *

For the reasons stated, the Court finds that the July 8, 2005 decision of the Board of Appeals was premised on an erroneous interpretation of the law, and thus was in error. For that reason, the decision of the Board of Appeals is REVERSED, and this case is remanded for an entry of a ruling consistent with the ruling set forth in this opinion.

(Emphasis added.)

On February 7, 2006, appellants filed a "Motion to Alter or Amend Judgment," which was denied on March 9, 2006. The court said: "For the reasons previously stated, this Court does not believe BCZR 304.1 authorized the relief granted below."

DISCUSSION

I.

[1–3] "The very essence of zoning is territorial division [of land within a jurisdiction] according to the character of the

land and the buildings, their peculiar suitability for particular uses, and uniformity of use within the zone." *Heath v. Mayor and City Council of Baltimore,* 187 Md. 296, 305, 49 A.2d 799 (1946). *See Schultz v. Pritts,* 291 Md. 1, 432 A.2d 1319 (1981); *Northwest Merchants Terminal v. O'Rourke,* 191 Md. 171, 60 A.2d 743 (1948); *Applestein v. Baltimore City,* 156 Md. 40, 143 A. 666 (1928); *Baltimore County v. Wesley Chapel,* 110 Md. App. 585, 602, 678 A.2d 100, *rev'd on other grounds,* 344 Md. 52, 684 A.2d 1327 (1996). The power to zone is a legislative function. *Anne Arundel County v. McDonough,* 277 Md. 271, 283, 354 A.2d 788 (1976); *Nottingham Village, Inc. v. Baltimore County,* 266 Md. 339, 350, 292 A.2d 680 (1972); *Board of County Comm'rs for Prince George's County v. Edmonds,* 240 Md. 680, 215 A.2d 209 (1965). The authority stems from the State's police power to regulate in the interest of the general welfare. *See Maryland–National Capital Park & Planning Comm'n v. Mayor of Rockville,* 272 Md. 550, 560, 325 A.2d 748 (1974); *Norbeck Village Joint Venture v. Montgomery County Council,* 254 Md. 59, 65–66, 254 A.2d 700 (1969); *American Oil Co. v. Miller,* 204 Md. 32, 39, 102 A.2d 727 (1954). *See also Euclid v. Ambler Realty Co.,* 272 U.S. 365, 387, 47 S.Ct. 114, 71 L.Ed. 303 (1926).

[4–6] At least one function of zoning is "to preserve various types of neighborhoods, be they residential, industrial, commercial or historical." *Montgomery County v. Horman,* 46 Md.App. 491, 497–98, 418 A.2d 1249 (1980). Zoning and planning are separate functions, however. *Howard Co. v. Dorsey,* 292 Md. 351, 361, 438 A.2d 1339 (1982); *Board of County Comm'rs of Carroll County v. Stephans,* 286 Md. 384, 389, 408 A.2d 1017 (1979). Planning is a broader concept, encompassing the development of a community and the creation of "goals for orderly growth and development including the establishment of viable neighborhoods for which it delineates appropriate boundaries," and "suggest[ing] methods for implementation and achievement of those goals, including proposals for future land use and zoning classifications." *Dorsey,* 292 Md. at 362, 438 A.2d 1339. *See Washington County Taxpayers Assoc., Inc. v. Board of County Comm'rs,* 269 Md.

454, 455–56, 306 A.2d 539 (1973) ("planning embraces zoning, in a general way, but the converse is not true"); *see also* 1 E. Yokley, *Zoning Law and Practice* §§ 1–2 (4th ed.1978) (noting that "zoning is almost exclusively concerned with use regulation, whereas planning is a broader term and indicates the development of a community. . . ."); 101A C.J.S. *Zoning and Planning* § 5 (1979) (" 'Planning' contemplates the evolvement of an overall program or design of the present and future physical development of the total area and services of an existing or contemplated municipality, while 'zoning' is part of an end result or product of planning").

The first zoning regulations in Baltimore County took effect on January 2, 1945, "when, pursuant to previous authorization by the General Assembly, the County Commissioners adopted a comprehensive set of zoning regulations." *McKemy v. Baltimore County,* 39 Md.App. 257, 259, 385 A.2d 96 (1978). Then, on March 30, 1955, the County adopted "a new set of comprehensive zoning regulations." *Id.* at 260, 385 A.2d 96. However, it also enacted BCZR § 304 to "grandfather" lots that had become substandard as a result of the zoning law, allowing them to be developed under certain conditions. BCZR § 304 was intended to mitigate the harsh effect of the zoning scheme, and to avoid constitutional takings violations. The County sought to balance the expectancy interests of landowners who, in the 1940's and 1950's, may have intended to build on land that was later affected by the zoning scheme, and the long-term interests of the County in protecting against over-development and overcrowding.

In 1970, the zoning ordinance was amended again to add area and density provisions to its zoning scheme for the purpose of improving the health, safety, and general welfare of its citizens. At that time, the present minimum width and minimum area requirements were established. The ordinance was amended again in 1991 to add a "compatibility review" to the process, requiring a landowner who seeks a building permit to show that the proposed dwelling is appropriate to the neighborhood.

[7–10] "'A variance is an authorization for [that] ... which is prohibited by a zoning ordinance....'" *Cromwell v. Ward*, 102 Md.App. 691, 699, 651 A.2d 424 (1995) (citation omitted). The burden is on the applicant to show facts to warrant a variance. *Easter v. Mayor and City Council of Baltimore*, 195 Md. 395, 400, 73 A.2d 491 (1950). In general, "the specific need for the variance 'must be substantial and urgent and not merely for the convenience of the applicant[.]'" *Chesley v. City of Annapolis*, 176 Md.App. 413, 432, 933 A.2d 475 (2007) (quoting *Belvoir Farms Homeowners Ass'n, Inc. v. North*, 355 Md. 259, 276, 734 A.2d 227 (1999)). Ordinarily, a variance is warranted if the "'applicable zoning restriction ... is so unreasonable as to constitute an arbitrary and capricious interference with the basic right of private ownership,'" or otherwise results in "unwarranted hardship." *Belvoir Farms*, 355 Md. at 276, 282, 734 A.2d 227 (citation omitted).

Writing for this Court in *Cromwell*, 102 Md.App. at 694, 651 A.2d 424, Judge Cathell explained that the variance process "is at least a two-step process." He stated, *id.* at 694–95, 651 A.2d 424:

> The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is—in and of itself—unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property. Unless there is a finding that the property is unique, unusual, or different, the process stops here and the variance is denied without any consideration of practical difficulty or unreasonable hardship. If that first step results in a supportable finding of uniqueness or unusualness, then a second step is taken in the process, i.e., a determination of whether practical difficulty and/or[1] unreasonable hardship, resulting from the disproportionate impact of the ordinance *caused by* the property's uniqueness, exists. Further consideration must then be given to the general purposes of the zoning ordinance.

Noting that a variance is often confused with a special exception, the Court observed, *id.* at 699–700, 651 A.2d 424: "[T]he variance and exception are designed to meet two entirely different needs. The variance contemplates a departure from the terms of the ordinance in order to preclude confiscation of property, while the exception contemplates a permitted use ... [once] the prescribed conditions therefore are met." (Citation omitted.) Moreover, the Court stated: "The general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances." *Id.* at 703, 651 A.2d 424 (citation omitted).

II.

We turn to review the zoning regulations pertinent here. BCZR § 304 is titled "Use of Undersized Single–Family Lots." The first part, § 304. 1, sets out threshold criteria for eligibility, stating:

> Except as provided in Section 4A03, a one-family detached or semidetached dwelling may be erected on a lot having an area or width at the building line less than that required by the area regulations contained in these regulations if:
>
> A. Such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to March 30, 1955;
>
> B. All other requirements of the height and area regulations are complied with; and
>
> C. The owner of the lot does not own sufficient adjoining land to conform to the width and area requirements contained in these regulations.

If the threshold requirements of BCZR § 304.1 have been met, the inquiry proceeds to the "compatibility review" outlined in BCZR § 304.2, captioned "Building Permit Application." It provides, in part:

> A. Any person desiring to erect a dwelling pursuant to the provisions of this section shall file with the Department of Permits and Development Management, at the time of application for a building permit, plans sufficient to

allow the Office of Planning to prepare the guidelines provided in Subsection B below. Elevation drawings may be required in addition to plans and drawings otherwise required to be submitted as part of the application for a building permit. Photographs representative of the neighborhood where the lot or tract is situated may be required by the Office of Planning in order to determine appropriateness of the proposed new building in relation to existing structures in the neighborhood.

B. At the time of application for the building permit, as provided above, the Director of the Department of Permits and Development Management shall request comments from the Director of the Office of Planning (the "Director"). Within 15 days of receipt of a request from the Director of the Department of Permits and Development Management, the Director shall provide to the Department of Permits and Development Management written recommendations concerning the application with regard to the following:

1. Site design. New buildings shall be appropriate in the context of the neighborhood in which they are proposed to be located. Appropriateness shall be evaluated on the basis of new building size, lot coverage, building orientation and location on the lot or tract.

2. Architectural design. Appropriateness shall be evaluated based upon one or more of these architectural design elements or aspects:

a. Height.

b. Bulk or massing.

c. Major divisions, or architectural rhythm, of facades.

d. Proportions of openings such as windows and doors in relation to walls.

e. Roof design and treatment.

f. Materials and colors, and other aspects of facade texture or appearance.

BCZR § 307 is titled "Variances." BCZR § 307.1 provides:

The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations, and from sign regulations only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. No increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations, and only in such manner as to grant relief without injury to public health, safety and general welfare. They shall have no power to grant any other variances. Before granting any variance, the Zoning Commissioner shall require public notice to be given and shall hold a public hearing upon any application for a variance in the same manner as in the case of a petition for reclassification.[ ] Any order by the Zoning Commissioner of the County Board of Appeals granting a variance shall contain a finding of fact setting forth and specifying the reason or reasons for making such variance.

As to BCZR § 307, the *Cromwell* Court said, 102 Md.App. at 698–99, 651 A.2d 424:

The Baltimore County ordinance requires "conditions ... peculiar to the land ... and ... practical difficulty...." Both must exist. But the terms "practical difficulty" and "unreasonable hardship" are stated in the ordinance disjunctively. Thus, at least as to variances other than use variances,[1] if the property is found to be unique, the

practical difficulty standard would then apply.... However, as is clear from the language of the Baltimore County ordinance, the initial factor that must be established before the practical difficulties, if any, are addressed, is the abnormal impact the ordinance has on a specific piece of property because of the peculiarity and uniqueness of *that* piece of property, not the uniqueness or peculiarity of the practical difficulties alleged to exist. It is only when that uniqueness is first established that we then concern ourselves with the practical difficulties (or unnecessary hardships in use variance cases).

Section 4A03, entitled "Growth Management Plan for Bowleys Quarters and Back River Neck Areas," is similar to BCZR § 304, except that it applies to residential property "located in the Bowleys Quarters and Back River Neck areas...." *See* § 4A03.2. But, § 4A03 imposes two additional requirements: (1) the property must meet the criteria for a variance under BCZR § 307; and (2) the property must have access to public sewer service.[12]

Under § 4A03.1, an undersized lot is defined as follows: "An unimproved platted lot or a lot of record on or before August 6, 1999, that does not meet the area, height or setback requirements in these Zoning Regulations to allow the construction of a dwelling." Section 4A03.4 is titled "Building permits." Section 4A03.4.B provides:

12. Appellants state that BCZR § 4A03 "applies to Lot 67 because the property is in the Back River Neck Area." The Board made no such finding, however. Indeed, in its opinion, the Board only mentioned § 4A03 in its "Testimony" section, as follows:

> Mr. Grammer testified [that i]n 1948 lot 67 did meet the zoning requirements for building a home. He also opined that the subject lot did meet the other requirement regarding the height and area as required under § 304.1B and § 4A03B.

Moreover, appellee does not appear to argue that § 4A03 applies here; the section is not included in its appendix of zoning regulations, nor does it cite to the section in its brief. The circuit court addressed that section, but stated that the Muellers sought relief under BCZR §§ 304 and 307.

A building permit may be issued for the construction of a dwelling on an undersized lot subject to the following conditions:

1. 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;
2. No further subdivision of the lot is allowed;
3. The property owner obtains a variance as provided in Section 307 of these Zoning Regulations; and
4. The property owner connects to a public sewer where available and with adequate capacity.

BCZR § 4A03.5.B contains the same site design and architectural design requirements as set forth in BCZR § 304.2.B.

As noted, the majority of the land comprising lots 66 and 67 is located within the 100-foot Chesapeake Bay Critical Area Buffer. Baltimore County Code § 33-2-401 bars construction within that buffer unless a variance is granted in accordance with the Chesapeake Bay Critical Area criteria. BCZR § 500.14 prohibits the Board from rendering any decision on a petition for special exception or a variance within the Chesapeake Bay Critical Area setback unless:

> [T]he Zoning Commissioner has received from the Director of the Department of Environmental Protection and Resource Management, or his designated representative, written recommendations describing how the proposed request would:
>
> A. Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands;
>
> B. Conserve fish, wildlife and plant habitat; and
>
> C. Be consistent with established land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that, even if pollution is controlled, the number,

movement and activities of persons in that area can create adverse environmental impacts.

BCZR § 104.1 concerns nonconforming uses. It states:

A nonconforming use (as defined by Section 101) may continue except as otherwise specifically provided in these regulations, provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, the right to continue or resume such nonconforming use shall terminate.

III.

Appellants claim that the Board properly applied the requirements of BCZR § 304.1 in granting their Petition for undersized lot relief. In their view, the Board's decision "was based on substantial evidence within the record that the Appellants met all of the requirements . . ." of that section. Therefore, they urge us to reverse the circuit court.

According to appellants, BCZR §§ 304.1 and 307 are "independent methodologies available to obtain authority to build a residence on an undersized lot." They explain: "Section 304.1 is simply an undersized lot provision, which is an alternative methodology to the much more general Section 307 variance process." Moreover, appellants contend that they satisfied the criteria of § 304. 1, which does not require a determination that a property is unique and unusual in a manner different from the nature of the surrounding properties. Rather, appellants argue that § 304.1

allows for the construction of a residence on an undersized lot if three elements are met: (A) the subdivision was created prior to March 30, 1955; (B) other height and area regulations are satisfied; and (C) insufficient adjoining land is available. *Importantly, nowhere does Section 304.1 require application of Section 307's standards.*

(Emphasis added.)

Appellants maintain that the circuit court "correctly accepted that elements A and B [of § 304.1] were established," but

"refused to recognize the substantial evidence presented by the Appellants that Property II does not have sufficient adjoining land in order to conform to the current zoning regulations." They posit: "The Appellants could not simply 'borrow' land from the already developed, undersized Property I in order to make Property II of lawful size so as to permit construction of a residence. As stated by Mr. Grammer, the effect would only have been to require a variance for the existing, developed Property I."

In any event, appellants argue that the Board properly found Lot 67 unique, a factor under BCZR § 307, based on the imposition of new zoning regulations on an old subdivision.[13] Urging this Court to affirm the Board, appellants state: "Finding lawfully created lots that pre-dated zoning to be 'unique' is appropriate." In appellants' view, Lot 67 "is disproportionately impacted as compared to properties in other subdivisions or communities that were subdivided consistent with the requirements of D.R. 3. 5. . . ." Moreover, they argue that the *Cromwell* decision "never suggests that in determining whether a property is unique, it must be compared only to those properties within its immediate vicinity." Appellants assert that, "[b]y focusing solely on the Bauernschmidt Manor subdivision," the court "did not take into account . . . that the D.R. 3.5 zoning regulations affect a much broader area than just Bauernschmidt Manor."

In addition, appellants maintain that the Board was legally correct in determining that, without a variance, practical difficulty will result. According to appellants, "Property I, an undersized and developed lot, did not afford Appellants adequate adjoining land to make the non-conforming Property II 'conforming.'" They suggest that, if they are not granted a variance, Lot 67 "will have to remain vacant," rendering it "essentially worthless as compared to Property I or any other developed property in the same subdivision." Based upon the

13. As noted, the circuit court disagreed. It concluded that Lot 67 is not unique because the impact of the zoning regulations has the same effect on "every undeveloped lot in the subdivision."

alleged "economic harm" that would accrue to appellants if they are not granted a variance, appellants ask this Court to find that strict compliance with the zoning regulations will result in practical difficulty.

Further, appellants maintain that the Board correctly found that a variance would not violate the spirit and intent of the sixty-year old community, which is substantially developed. They point out that twenty-three of the properties on Bauernschmidt Drive were developed prior to the enactment of D.R. 3.5 regulations, and were constructed on what are now undersized lots. Appellants also allege that, since the enactment of D.R. 3.5 zoning in 1970, structures have been built on undersized lots on five occasions. Therefore, they insist that granting their request would not injure the public health, safety, or welfare of the community.

Appellants also contend that, in addition to meeting all three requirements of § 304. 1, they satisfied the additional requirements set forth in § 4A03.4B. In this regard, they note that the properties cannot be further subdivided, and Property II has access to public water and sewer.

In addition, appellants insist that they "should not be barred from obtaining County permission to construct a home on Property II simply based on the fact that they sold Property I." They insist that they did not "create" a hardship as to Lot 66. Appellants also contend that "the record lacks any evidence demonstrating that the doctrine of merger applies."

People's Counsel suggests that Lot 67 does not qualify for relief under BCZR § 304 or BCZR § 307. Claiming that the Board erred "on every legal issue," appellee asserts: "[C]ontrary to the [Board's] Opinion, a variance must stand on its own merits under the *Cromwell* standards for uniqueness and practical difficulty and under BCZR 307. Alternatively, the property must qualify for undersized lot relief under BCZR 304. There is no evidence to support relief under either scenario." In appellee's view, the Board's "decision is inadequate in form and substance. It lacks even a minimal analysis of the facts and application of the law required under the

fairly debatable standard for judicial review." Among other things, argues appellee, the Board ignored the evidence that, over the years, Lot 67 was utilized as a side yard for Lot 66, as well as the fact that other dwellings were constructed on double lots in the subdivision.

According to appellee, the Board's "most serious" mistake concerned its finding as to uniqueness, and "the justification of a variance based on the imposition of D.R. 3.5 zoning in 1970." Appellee explains:

> The implications of this premise turn upside down long standing [sic] zoning principals [sic] on reclassification, variance, and nonconforming use. There is no authority to expand the definition of uniqueness to include a condition unrelated to the geographic features of the site or improvements. Further, the [Board] interjects a standard—size—that is not contemplated by the definition of uniqueness cited in *Cromwell v. Ward* 102 Md.App. 691 [651 A.2d 424] (1995). It also grants a prohibitive increase in density under the variance statute, B.C.Z.R. 307. This misinterpretation in turn conflicts with the limited and conditional statutory relief afforded undersized lots under B.C.Z.R. 304.1. It also seriously usurps and undermines the legislation [sic] authority of the Baltimore County Council under Md. Ann.Code, Art. 25A(X) to rezone residential property, including the concomitant increase in minimum lot size. Finally, the legal errors expand nonconforming uses, a violation of longstanding zoning principles to reduce or restrict such uses.
>
> * * *
>
> If the variances are granted here, it creates instability for residential reclassifications that seek to reduce density by increasing minimum lot size. There are 6 D.R. classifications and 8 Resource Conservation (R.C.) zones, each with varying densities per acre. If a variance is granted to reduce lot area, it effectively supercedes a site's zoning classification, which in turn collapses the comprehensive

zoning authority of the County Council under Md. Ann. Code, Art. 25A(X).

Insisting that there was "no evidence of uniqueness causing practical difficulty to prevent a reasonable use," appellee contends that the Board "foisted its own standard for uniqueness," and "disguised its errors by giving lip service to legitimate variance standards...." Appellee elaborates, asserting that a finding of uniqueness "must relate to conditions on the land itself." Thus, appellee contends that the Board "illegally expand[ed] a reasonable use standard for practical difficulty to include the petitioner's preferred uses."

Moreover, People's Counsel claims that the Board's decision "has the disturbing side effect of extending and expanding a nonconforming use, contrary to conventional zoning principles to eliminate such uses." Appellee comments:

> In adopting a conflicting and unauthorized standard for definition of uniqueness, the [Board] acted illegally and exceeded its authority. The impact on statutory construction and administrative and zoning law is seismic. In addition to subverting the Charter authority of the County Council, the decision violates the traditional definition of uniqueness, which must relate to the conditions on the land itself. *Cromwell, supra.*

Similarly, appellee maintains that the Board's "assessment of practical difficulty is woefully inadequate and insufficient under the legal standard of review...." Appellee argues:

> Even if practical difficulty is an issue here, the variances must be denied because the characteristics of the site do not prohibit a reasonable use in conjunction with lot 68 [14] and consistent with other uses in the neighborhood. Appellants may desire a second dwelling as a different use now, but that is not the standard for practical difficulty.

Further, appellee argues that "a variance cannot be granted for a perceived economic advantage. Zoning principles have

14. We assume appellee meant Lot 66.

long rejected variance relief based on convenience and profitability for the property owner." Appellee continues:

> The decision gives protective non-conforming status to a use that did not exist when the new law became effective. In other words, when D.R. 3.5 was applied to the site, lot 67 was used as a side yard for the dwelling on lot 68[sic], not for a second dwelling. The [Board's] decision gives a type of "retroactive" nonconforming use for a dwelling on lot 67 as a justification for variance relief.

In addition, appellee maintains that BCZR § 304 does not apply. Appellee explains:

> Variance relief cannot conflict with this statute. Zoning regulations are not like a smorgasbord. BCZR 307 must be applied harmoniously with BCZR 304. It is contradictory and arbitrary to grant a variance for lot size, if BCZR 304[.1](c) prohibits the same relief. Unfortunately, the [Board] ignored the proper application [of] BCZR 304(c), which is not intended to permit every use, or maximize the owner's profits, but rather assure some use.

(Emphasis in original.)

People's Counsel also maintains that the Board's decision is "legally flawed in the interpretation and application of the merger doctrine[.]" According to appellee, the owner of two adjoining parcels need not state an intention to merge the properties in order for merger to occur. In appellee's view, "construction of a second dwelling is a *de facto* illegal expansion or change of a nonconforming use under BCZR 104.1.... If the relief is granted, both lots 67 and 68 [15] are nonconforming uses, contrary to the policy to eliminate, not increase, such uses."

Finally, People's Counsel complains that the requested variance violates Chesapeake Bay Critical Area standards, stating:

> The Critical Area Regulations, enacted in 1988, prohibit new construction within the 100 ft[.] buffer of tributaries that flow into the Chesapeake Bay. It is significant that no

15. We assume appellee meant to say lots 66 and 67.

new construction has been permitted along the waterfront here, including Grey Hound Creek in this area, since the enactment of the Critical Area Law. E.39. Petitioner's request would be the first new house built along the water on Bauernschmidt Drive, except for 2515 Bauernschmidt, a 14,134 sq ft double lot, built in 1983 prior to the critical area law. E.39. B.C.Z.R. 500.14 imposes standards and findings to be made by the [Zoning Commission or Board] applicable to all zoning petitions in the Chesapeake Bay Critical Area. The [Board] completely ignored this provision and made no such findings:

> "As to the Chesapeake Bay Critical Area requirements, this issue will be addressed with the building permit per DEPRM and ZAC comments when the owner applies for a building permit." Opinion p. 6.

IV.

[11] We review the final decision of the Board, rather than the circuit court, in accordance with the well established principles of administrative law. *See, e.g., People's Counsel for Baltimore County v. Surina*, 400 Md. 662, 681, 929 A.2d 899 (2007); *Board of Physician Quality Assurance v. Mullan*, 381 Md. 157, 165, 848 A.2d 642 (2004); *Mastandrea v. North*, 361 Md. 107, 133, 760 A.2d 677 (2000). Our role is the same as that of the circuit court. *Capital Commercial Props., Inc. v. Montgomery County Planning Bd.*, 158 Md.App. 88, 95, 854 A.2d 283 (2004). We review the administrative agency's adjudicatory decision to determine "if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law.' " *Noland*, 386 Md. at 571, 873 A.2d 1145 (citing *United Parcel Serv., Inc. v. People's Counsel*, 336 Md. 569, 577, 650 A.2d 226 (1994)). *See Total Audio-Visual Systems, Inc. v. Dep't of Labor*, 360 Md. 387, 394, 758 A.2d 124 (2000).

[12, 13] A reviewing court "may not substitute its judgment for the administrative agency's in matters where purely discretionary decisions are involved, particularly when the matter in dispute involves areas within that agency's particular realm of expertise ... so long as the agency's determination is based on 'substantial evidence.' " *Surina*, 400 Md. at 681, 929 A.2d 899 (citations omitted). *See Mullan*, 381 Md. at 164, 848 A.2d 642; *United Parcel Serv.*, 336 Md. at 577, 650 A.2d 226. Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Bulluck v. Pelham Wood Apartments*, 283 Md. 505, 512, 390 A.2d 1119 (1978); *see Gigeous v. ECI*, 363 Md. 481, 497, 769 A.2d 912 (2001); *see Surina*, at 681, 929 A.2d 899 (same). But, "[w]e are less deferential in our review ... of the legal conclusions of the administrative body and may reverse those decisions where the legal conclusions reached by that body are based on an erroneous interpretation or application of the zoning statutes, regulations, and ordinances relevant and applicable to the property that is the subject of the dispute." *Id.*, at 682, 929 A.2d 899 (*citing Belvoir Farms*, 355 Md. at 267–68, 734 A.2d 227).

[14] Of import here, the Court of Appeals has said: " 'It is a clearly established rule in the law of zoning that a court may not substitute its judgment for that of the Zoning Board.' " *Stansbury v. Jones*, 372 Md. 172, 182, 812 A.2d 312 (2002) (citation omitted). Indeed, "the zoning agency is considered to be the expert in the assessment of the evidence, not the court." *Bowman Group v. Moser*, 112 Md.App. 694, 699, 686 A.2d 643 (1996), *cert. denied*, 344 Md. 568, 688 A.2d 446 (1997); *see also Cremins v. County Commr's of Washington County*, 164 Md.App. 426, 437, 883 A.2d 966 (2005); *White v. Spring*, 109 Md.App. 692, 699, 675 A.2d 1023, *cert. denied*, 343 Md. 680, 684 A.2d 455 (1996).

In *White v. North*, 356 Md. 31, 736 A.2d 1072 (1999), the Court of Appeals specifically elucidated the process of judicial review applicable to zoning matters:

> In judicial review of zoning matters, including special exceptions and variances, "the correct test to be applied is whether the issue before the administrative body is 'fairly

debatable,' that is, whether its determination is based upon evidence from which reasonable persons could come to different conclusions." For its conclusion to be fairly debatable, the administrative agency overseeing the variance decision must have "substantial evidence" on the record supporting its decision.

Id. at 44, 736 A.2d 1072 (internal citations omitted); *see also Alviani v. Dixon*, 365 Md. 95, 107–108, 775 A.2d 1234 (2001); *Mastandrea*, 361 Md. at 133–34, 760 A.2d 677.

[15] In this case, the Board did not specify in its opinion the BCZR section or sections on which it relied to grant appellants' request for variance relief. However, the Board discussed several variance criteria, such as the uniqueness of the property, which is an element under BCZR § 307 and § 4A03. Nevertheless, in its Order, the Board expressly relied solely on BCZR § 304. In its analysis, the circuit court considered BCZR § 304, as well as BCZR § 307 and § 4A03. But, as we have seen, we must review the Board's decision. And, an appellate court will review an agency decision " 'solely on the grounds relied upon by the agency.' " *Schwartz v. Md. Dep't of Natural Resources*, 385 Md. 534, 555–56, 870 A.2d 168 (2005) (quoting *Brodie v. MVA*, 367 Md. 1, 4, 785 A.2d 747 (2001)). In effect, this means that the agency must be right for the right reason. Therefore, we shall focus on BCZR § 304.

V.

[16] BCZR § 304 is a "grandfather" provision that protects a landowner from a change in the zoning laws if, *inter alia*, the lot was recorded by deed prior to 1955, or the lot was recorded as part of a validly approved subdivision prior to 1955. Although the Board (and the circuit court) discussed elements that are part of BCZR § 307, we are satisfied that BCZR § 304 controls here, rather than BCZR § 307.[16]

16. As the Board did not apply BCZR § 4A03, and appellee never argued that the Board erred by not applying BCZR § 4A03, we decline to consider that provision. We note, however, that it incorporates BCZR § 307.

[17–20] In reaching our conclusion, we apply the principles of statutory construction.[17] " 'The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the Legislature.' " *Chow v. State*, 393 Md. 431, 443, 903 A.2d 388 (2006) (quoting *Kushell v. Department of Natural Resources*, 385 Md. 563, 576, 870 A.2d 186 (2005)); *see Dep't of Health & Mental Hygiene v. Kelly*, 397 Md. 399, 419, 918 A.2d 470 (2007). We are guided in this endeavor by the statutory text. *Reier v. State Dep't of Assessments and Taxation*, 397 Md. 2, 26, 915 A.2d 970 (2007); *Deville v. State*, 383 Md. 217, 223, 858 A.2d 484 (2004); *Huffman v. State*, 356 Md. 622, 628, 741 A.2d 1088 (1999); *State v. Pagano*, 341 Md. 129, 133, 669 A.2d 1339 (1996). We give the words of a statute their ordinary and usual meaning. *City of Balt. Development Corp. v. Carmel Realty Assocs.*, 395 Md. 299, 319, 910 A.2d 406 (2006); *Ridge Heating, Air Conditioning and Plumbing, Inc. v. Brennen*, 366 Md. 336, 350, 783 A.2d 691 (2001). If the statute is not ambiguous, we generally will not look beyond its language to determine legislative intent. *See Stanley v. State*, 390 Md. 175, 182, 887 A.2d 1078 (2005)(" 'Where the statutory language is free from . . . ambiguity, courts will neither look beyond the words of the statute itself to determine legislative intent nor add to or delete words from the statute.' ") (Citations omitted); *Kaczorowski v. Mayor & City Council of Baltimore*, 309 Md. 505, 513–14, 525 A.2d 628 (1987).

[21–24] In our effort to effectuate the Legislature's intent, we may consider " 'the consequences resulting from one meaning rather than another, and adopt that construction which avoids an illogical or unreasonable result, or one which is inconsistent with common sense.' " *Chesapeake Charter, Inc.*

17. We interpret ordinances under the same canons of construction that we apply to the interpretation of statutes. *Howard Research and Dev. Corp. v. Concerned Citizens for the Columbia Concept*, 297 Md. 357, 362, 466 A.2d 31 (1983); *Ahalt v. Montgomery Co.*, 113 Md.App. 14, 25, 686 A.2d 683 (1996).

v. Anne Arundel County Bd. of Educ., 358 Md. 129, 135, 747 A.2d 625 (2000) (citation omitted); *see Frost v. State*, 336 Md. 125, 137, 647 A.2d 106 (1994). Moreover, if "'"reasonably possible,"'" we read a statute "so '"that no word, phrase, clause or sentence is rendered surplusage or meaningless,"'" *Del Marr v. Montgomery County*, 169 Md.App. 187, 207, 900 A.2d 243 (2006) (citations omitted), *aff'd*, 397 Md. 308, 916 A.2d 1002 (2007), or "superfluous or redundant." *Blondell v. Baltimore City Police Dep't.*, 341 Md. 680, 691, 672 A.2d 639 (1996); *see Collins*, 383 Md. at 691, 861 A.2d 727; *Eng'g Mgmt. Servs., Inc. v. Md. State Highway Admin.*, 375 Md. 211, 224, 825 A.2d 966 (2003); *Mayor & Council of Rockville v. Rylyns Enters., Inc.*, 372 Md. 514, 551, 814 A.2d 469 (2002). Further, we are obligated to construe the statute as a whole, so that all provisions are considered together and, to the extent possible, reconciled and harmonized. *Deville*, 383 Md. at 223, 858 A.2d 484; *Navarro–Monzo v. Washington Adventist*, 380 Md. 195, 204, 844 A.2d 406 (2004). Where "appropriate," we interpret a provision "in the context of the entire statutory scheme of which it is a part." *Gordon Family Partnership v. Gar on Jer*, 348 Md. 129, 138, 702 A.2d 753 (1997).

[25, 26] Of import here, if there is any conflict between two statutory provisions, the more specific statute controls. *Property & Casualty Ins. Guar. Corp. v. Yanni*, 397 Md. 474, 492 & n. 15, 919 A.2d 1 (2007) ("Ordinarily, a specific enactment prevails over an incompatible general enactment in the same or another statute."). As the Court explained in *State v. Ghajari*, 346 Md. 101, 115, 695 A.2d 143 (1997), "when two statutes appear to apply to the same situation, [the] Court will attempt to give effect to both statutes to the extent that they are reconcilable." But, if there is an irreconcilable conflict, "the specific statute is controlling...." *Id.* at 116, 695 A.2d 143. *See also Maryland–National Capital Park and Planning Comm'n v. Anderson*, 395 Md. 172, 183, 194, 909 A.2d 694 (2006); *Mayor of Oakland v. Mayor of Mountain Lake Park*, 392 Md. 301, 316–17, 896 A.2d 1036 (2006).

In this case, as between BCZR § 304 and BCZR § 307, § 304 is clearly the more specific statute, because it is a

grandfather provision that applies to lots that became undersized due to changes in the zoning laws. In contrast, § 307 applies generally to all variance requests. Therefore, § 304 controls. BCZR § 304 does not contain elements of practical difficulty or uniqueness, which are embodied in § 307.

The grandfather clause of § 304 has limits, however. BCZR § 304.1.(C) provides relief only to owners who "do not own sufficient adjoining land to conform to the width and area requirements contained in these guidelines." [18] We pause to review 4 Kenneth H. Young, *Anderson's American Law of Zoning* §§ 9.66–9.67 (4th ed.1997), with regard to grandfather clauses in zoning matters:

> Before the subdivision of land was subjected to municipal control, a great deal of municipal land had been divided into small lots, many with less than 30 feet of frontage and less than 3,000 square feet of space. When greater frontage and area requirements were superimposed upon this pattern, many owners were left with substandard lots. Strict and literal enforcement of the more stringent regulations would have made such lots useless to their owners and to the community. In addition, the regulations which destroyed the use value of such substandard lots would have been held confiscatory.
>
> To avoid this result, most ordinances provide some relief for the owner of a substandard lot.... Under such an ordinance, the owner of a substandard lot which was of record prior to the adoption of the restrictive ordinance need not seek administrative relief. He is entitled as of right to develop his lot within the limits of the exception. *His right to such relief may be lost where he treats a number of lots as a single unit* for the purpose of constructing a condominium. If the determination of his qualification

18. Similarly, BCZR § 4A03.4.B. 1 limits the granting of a building permit to owners of undersized lots only if "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."

for an exception is committed to an administrative board, as is true under some ordinances,[ ] the task of the board is simply to determine whether the lot was one of record on the effective date of the ordinance. *The board is without discretion to deny a permit if the specific requirements of the ordinance are met. . . .*

* * *

The common exception of lots which were recorded prior to the effective date of a restrictive ordinance is limited to lots which were in single and separate ownership on that date. Under such a provision, an owner is entitled to an exception only if his lot is isolated. If the owner of such a lot owns another lot adjacent to it, he is not entitled to an exception. Rather, he must combine the two lots to form one which will meet, or more closely approximate, the frontage and area requirements of the ordinance. Where, for example, a landowner held four contiguous lots which each had a frontage of 20 feet, he was regarded as owning 80 feet of frontage and was required to redivide the land consistent with the zoning regulations. This requirement was held reasonable as it permitted him some reasonable use of his land. The same result was reached where the owner of a lot containing 5,000 square feet acquired a contiguous lot of the same size. Under the ordinance he was considered to own a lot of 10,000 square feet. However, the requirement that adjacent substandard lots be merged may be unreasonable if the lots are the same size as most other lots in the area.

(Emphasis added; footnotes omitted.)

[27] In this case, there is no dispute that appellants satisfied BCZR § 304.1(A) and (B). The question is whether appellants satisfied BCZR § 304.1(C), which states: "The owner of the lot does not own sufficient adjoining land to conform to the width and area requirements. . . ." As noted, the Board was of the view that there was no adjoining parcel available to appellants under the circumstances of this case. In contrast, the circuit court ruled, *inter alia*, that appellants

had a "double lot" and thus they "had sufficient area to comply with the zoning requirements." We disagree with the circuit court.

[28–30] Appellants' house was constructed on Lot 66 prior to enactment of the current area and width requirements. Lot 67 remained undeveloped and vacant. Had appellants requested a variance as to Lot 66, it is clear that appellants would have had adjoining land—Lot 67—a vacant and undeveloped lot, which could have been combined with Lot 66 so as to render Lot 66 a conforming parcel. In this case, however, we must analyze whether Lot 67 had sufficient adjoining land available to it from Lot 66 so as to create a conforming parcel on Lot 67. To the extent that the circuit court determined that appellants had an adjacent parcel to enable them to satisfy current zoning requirements, it erred.[19]

In *Cromwell*, 102 Md.App. 691, 651 A.2d 424, this Court made clear that self-inflicted hardships cannot justify a variance. There, we said, *id.* at 722, 651 A.2d 424:

> Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted.

The Court added, *id.* at 726, 651 A.2d 424:

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19. We agree with the circuit court's determination that appellants' subsequent sale of Lot 66 has no effect on our review of the issues. "[A]ppellate review of administrative decisions is limited to those issues and concerns raised before the administrative agency." *Capital Commercial Props., Inc.*, 158 Md.App. at 96, 854 A.2d 283. Moreover, "[i]t is the function of the reviewing court to review only the materials that were in the record before the agency at the time it made its final decision." *Department of Labor v. Boardley*, 164 Md.App. 404, 415, 883 A.2d 953 (2005) (citing *Chertkof v. Dep't. of Nat. Resources*, 43 Md.App. 10, 17, 402 A.2d 1315 (1979)). At the time the Board made its decision, the appellants owned both Lot 66 and Lot 67. Lot 66 was not sold until after the Board made its final decision and the appeal before the circuit court was pending.

It is not the purpose of variance procedures to effect a legalization of a property owner's intentional or unintentional violations of zoning requirements. When administrative entities such as zoning authorities take it upon themselves to ignore the provisions of the statutes enacted by the legislative branch of government, they substitute their policies for those of the policymakers. That is improper.

[31] As we see it, however, appellants' use of Lot 66 does not give rise to a claim of self-inflicted hardship with regard to Lot 67.[20] The "typical type of self-created hardship" arises from "an act of commission by the owner" or his predecessor. *Richard Roeser Prof'l Builder, Inc. v. Anne Arundel Co.*, 368 Md. 294, 317, 793 A.2d 545 (2002). *See Stansbury*, 372 Md. at 198, 812 A.2d 312 (recognizing that subdividing property in accordance with all applicable statutes does not, generally, constitute a self-created hardship, even though the act of subdivision was an act of commission). Put another way, a self-created hardship results from affirmative "actions of the landowner," rather than from the "impact ... of the zoning ordinance on the property." *Roeser*, 368 Md. at 314, 793 A.2d 545. *See, e.g., Ad+Soil, Inc. v. County Comm'rs of Queen Anne's County*, 307 Md. 307, 316, 513 A.2d 893 (1986).

This case is unlike those in which the landowner took an affirmative action that resulted in the hardship. Here, the elder Muellers acquired Lot 67 several years after their residence was constructed on Lot 66. And, when they acquired Lot 67, it was a buildable lot. Neither Lot 66 nor Lot 67 was rendered nonconforming by virtue of actions taken by the elder Muellers, or appellants, *after* the zoning law in issue was enacted.

To be sure, zoning ordinances often limit grandfather clauses to lots of record that are in single or separate ownership.

20. Appellee does not suggest that appellants do not stand in the shoes of the elder Muellers with respect to the use of the lots. Nor has appellee argued that BCZR § 304 does not apply because Mr. Mueller acquired the lots from his parents after the enactment in 1970 of the D.R. 3.5 zoning provision.

Put another way, an ordinance may limit the grandfather clause by a provision that, in effect, merges contiguous, vacant, substandard lots under common ownership, so that they are treated as a single parcel for purposes of zoning area and frontage requirements. But, appellants correctly argue that they did not own sufficient adjoining land to enable Lot 67 to comply with the zoning ordinances. This is because, with regard to Lot 67, appellants did not own an adjoining, *unimproved* parcel. Rather, the adjoining parcel, Lot 66, was improved before the change in the zoning law. Thus, appellants could not "borrow" land from Lot 66 to enlarge Lot 67 without making Lot 66 more substandard than it already is.

Appellee cites *Board of Zoning Appeals of the City of Hammond, Lake County v. Waskelo*, 240 Ind. 594, 168 N.E.2d 72 (1960), to support its position. In our view, *Waskelo* is distinguishable from the case *sub judice*.

In *Waskelo*, the court denied a variance for property owners who voluntarily subdivided their property. At the time of the purchase of the subject property in that case, the property was one lot and conformed to the applicable zoning regulations. After the subdivision, the owners sold the improved lot and retained the remaining lot, which did not meet frontage requirements. The owners then sought a variance to construct a dwelling on the substandard lot. In that circumstance, the court refused to find a hardship to justify a variance, stating: "The property as it existed at the time of purchase conformed fully with the provisions of the zoning ordinance." *Id.* at 73. The court went on to state that the owners' decision to sell the improved portion of their property, with full knowledge of the restriction on the use of the remaining portion, is "not the result of any invalid application of terms of the zoning ordinance to their particular property, even though landowners might have been under a hardship in utilizing the portion of the lots which they retained." *Id.* at 74.

Unlike the landowners in *Waskelo*, appellants did not subdivide a conforming lot, thereby creating a substandard or

nonconforming lot. Instead, appellants' relatives purchased two lots at separate times, both of which were conforming when acquired. And, they developed the first lot years before they even purchased the second lot. As a result of rezoning, both lots became nonconforming. The creation of the nonconforming lots was not of appellants' doing, however. Thus, appellants did not create a hardship for themselves.

We find the reasoning in *Burke v. Board of Adjustment of the Borough of Spring Lake,* 52 N.J.Super. 498, 145 A.2d 790 (App.Div.1958), persuasive. There, the town of Spring Lake increased its frontage requirements for a building permit from 50 feet to 100 feet, and adopted a provision to "grandfather" current owners, which stated, in part, *id.* at 792:

> 'Notwithstanding the Lot Area and Lot width requirements of (the area here involved) * * *, a single family dwelling may be erected on any lot separately owned and not adjacent to any lot in the same ownership [on] the effective date of this ordinance.'

In 1946, before the new zoning ordinance was passed, the plaintiff purchased two contiguous lots, each having 50 feet of frontage. The plaintiff erected a dwelling house on one of the properties when the old zoning ordinance was in force. A year after the new ordinance was adopted, the plaintiff sought permission to erect a dwelling on the undeveloped lot, which had become undersized. The local zoning board denied her application for a variance, on the ground that the lot failed to comply with the new frontage requirements. The plaintiff appealed, arguing that, unless permitted to construct a dwelling on the property, the lot was "useless." *Id.* at 791. The trial judge concluded that the variance should be granted on the grounds of undue hardship. *Id.*

On appeal, the defendants, the Board of Adjustment of the Borough of Spring Lake and its building inspector, argued that the ordinance expressly sanctioned dwellings on 50 foot frontage lots only when " 'not adjacent to any lot in the same ownership.' " *Id.* at 792. The defendants also challenged the trial court's finding of undue hardship, arguing that the plaintiff caused the undue hardship. The Superior Court disagreed, stating:

> We fail to perceive . . . any justification for holding that a property owner who constructs her home on a 50–foot frontage lot and who leaves *untouched* another adjoining lot with the same dimensions—all done many years before the enactment of an amendatory ordinance increasing the frontage requirements—has in any culpable sense contributed to her own hardship.

Id. (Emphasis added.)

Rejecting the defendants' claim that plaintiff was not entitled to relief because she owned an adjoining lot, the court upheld the award of variance. It said:

> The evident purpose of [the] provision is to allow dwellings on 50–foot frontage lots unless the owner himself has the wherewithal to make his lot comply with the new requirements, *i.e.*, adjacent property, in which event he would not need a variance, at the expense of the community-at-large. **But the exclusion of those lots 'adjacent to any lot in the same ownership' does not faithfully reflect the purpose of the provision unless it is limited to *vacant* adjacent lots. That plaintiff finds herself with the adjacent lot 17, which because of the dwelling thereon, she cannot use to make lot 16 comply is clearly no reason for denying her the benefit of the cited ameliorative provision. Realistically, the plaintiff has a house on one 50–foot lot and another vacant 50–foot lot. If she cannot build on the latter, it will be forever useless. That the two lots are adjacent does not mitigate her hardship.**

Id. at 793 (Italics in the original; boldface added.)

As in *Burke,* we believe the grandfather clause in § 304 was meant to limit the construction of residences on undersized lots when a landowner possesses a contiguous, *vacant* or undeveloped parcel of property. That is not the situation here, through no fault or action of appellants.

[32] Appellee suggests that, even if Lot 66 has been developed, appellants are not entitled to the variance because

the two lots merged into one under merger principles. Notably, the Board rejected appellee's merger claim. The circuit court, however, agreed with appellee that, based on merger, appellants are not entitled to treat Lots 66 and 67 as distinct properties. As we discussed earlier, we may not set aside a factual finding that is "fairly debatable," i.e., "based upon evidence from which reasonable persons could come to different conclusions." *White,* 356 Md. at 44, 736 A.2d 1072. In our view, the matter is "fairly debatable," and thus the Board's finding as to lack of merger was not clearly erroneous. Accordingly, we shall not disregard it. We explain.

[33, 34] Merger, in the context of land use, is the joining of contiguous parcels under common ownership, so that they are viewed as a single parcel for purposes of zoning regulations. 3 Ziegler, *Rathkopf's Law of Zoning and Planning,* § 32.04, n. 1 (1994). Zoning merger in Maryland can occur as a result of a property owner's use of contiguous lots under the same ownership. *See Friends of the Ridge v. Baltimore Gas & Elec. Co.,* 352 Md. 645, 724 A.2d 34 (1999)(recognizing existence of zoning merger).

4 Arden H. Rathkopf, et al., Rathkopf's, *The Law of Zoning and Planning,* § 49.13 (4th ed.2001), provides guidance. It states:

> Zoning ordinance provisions often limit exemptions or grandfather clauses to lots of record that are in single or separate ownership. *Either implicitly by such provisions or expressly by "merger" requirements in the ordinance itself, contiguous substandard lots under common ownership may lose their separate identity and be treated as a single parcel for purposes of zoning area and frontage requirements and subdivision restrictions. Merger provisions generally have been upheld against due process, equal protection, and taking claims. The application of merger provisions when a variance is sought is often the subject of litigation and denial of a variance is frequently sustained by courts based on such provisions. Merger requirements may operate upon contiguous undeveloped lots or upon contiguous lots where one or more of the lots are already developed.*
>
> In dealing with substandard lots, as with nonconforming uses which are analogous, the point of reference is the effective date of the bylaw. The basic purpose of the ordinance provision establishing generally applicable minimum lot requirements has as its corollary the purpose to freeze and minimize substandard lots. If there is a merger provision in the ordinance, it is designed to result in a maximum number of standard lots from each separate tract of land in single ownership at the effective date of the ordinance. The number of separately described parcels which an owner or his predecessors in title may have acquired over the course of time to make up the entire tract is thus immaterial.[1]

(Emphasis added; footnotes omitted.)

Appellee claims that, by the way in which appellants used both lots, a merger occurred. Appellee directs our attention, *inter alia,* to *Sciacca v. Caruso,* 769 A.2d 578 (R.I.2001), for the proposition that appellants "cannot 'unmerge' " their properties. In that case, Caruso held two adjacent lots, each of which met the minimum buildable lot size at the time they were acquired by her in the 1960's. The owner constructed a dwelling on Lot 91 and landscaped and placed a shed on lot 92. *Id.* at 579. Nearly twenty years later, the town amended its zoning ordinance, which increased the minimum lot size and frontage requirements. As a result, the lots did not meet the frontage or area requirements under the new ordinance. However, if combined, the lots satisfied the new regulations. In the same amendment to the zoning ordinance, the town included "a so-called merger provision,[ ] pursuant to which contiguous lot Nos. 91 and 92 merged into one lot to meet this particular residential zoning district's minimum lot area and frontage requirements." *Id.* at 579–80.[21]

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21. The merger provision provided:

"Contiguous lots under the same ownership. **Where no adjacent lot is in the same ownership at the time this amendment becomes**

In 1997, Caruso sought to build a dwelling on Lot 92. To "unmerge" the lots, she was granted approval to subdivide the property along its original lines. She then sought a variance from the minimum area and frontage requirement. Although several neighboring property owners objected to the variance request, it was ultimately granted by the zoning board. *Id.* at 581. The opponents then challenged that ruling in court.

Under Rhode Island statutory law, in order for a property owner to be entitled to a variance from frontage or area requirements, the owner must satisfy the zoning board "that the hardship suffered by the owner of the subject property if the dimensional variance is not granted amounts to more than a mere inconvenience, which means that there is no other reasonable alternative to enjoy a legally permitted beneficial use of one's property." *Id.* at 583 (emphasis omitted). Moreover, before a zoning board grants a variance, it must be satisfied that any hardship suffered was "not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain." *Id.* "Given this statutory language and the circumstances concerning how Caruso created the substandard lot that was the subject of her variance request," the Supreme Court of Rhode Island ruled that "the zoning board's grant of a dimensional variance ... improperly ignored the 'prior action of the applicant' in creating the alleged hardship." *Id.* at 584. It continued, *id.*: "Here, the undeniable fact is that Caruso's prior action caused the planning board to subdivide her single-conforming lot into two substandard-sized parcels, thereby creating the undersized lot in question. This 'prior action' resulted in the self-created hardship that she later used as the basis for her variance request." [ ]

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effective, so as to enable the formation of a larger lot, an existing lot shown on a plat duly recorded in the office of the town clerk prior to January 6, 1953 which fails to meet either the minimum frontage requirements or minimum area requirements, or both, of this chapter, may be used for a one-family dwelling in an R-40, R-20, R-15, R-10 and R-7 district. Where land adjacent to such a lot is in the same ownership, the exemption of the previous sentence shall not apply. If adjacent land in the same ownership is not sufficient to meet the minimum frontage requirements or minimum area requirements, or both, then the largest area and frontage which the adjoining common ownership make possible shall be provided.

"No parcel, tract or lots of land contiguous to each other and under single ownership shall be subdivided in a manner where the lot width or area shall be below the requirements fixed by this chapter. No yard, or open space provided around any building for the purpose of complying with the provisions of this chapter, shall again be used as a yard or open space for any other building.

"Nothing contained in paragraphs (a) or (b) shall be construed to exempt such lots from the side yard, front yard, and rear yard requirements of the zone in which such lots are located." Johnston Town Code § 26-16(b) (1995).

Id. at 580 n. 1 (italics in original; boldface added).

In overruling the zoning board, the court concluded: "To rule otherwise would allow Caruso and other similarly situated property owners to circumvent applicable zoning laws pertaining to the validity of merger provisions like those in the town's zoning ordinance, as well as to evade the threshold showing of hardship that is required to obtain relief from their application through the granting of a dimensional variance." *Id.* at 585.

We are not persuaded by *Sciacca.* The question remains whether the doctrine of merger applies here.

In *Friends of the Ridge,* 352 Md. 645, 724 A.2d 34, the property owner, BG & E, sought a declaration that three adjacent properties it owned merged for zoning purposes, so that the site was of sufficient size to allow it to enlarge an electricity substation. BG & E applied for a variance from certain setback requirements in order to operate the larger substation. The Board determined, however, that no variance was necessary. *Id.* at 648 n. 3, 724 A.2d 34. The petitioners, Friends of the Ridge, appealed, asserting that because the parcels were never legally combined, BG & E was required to obtain a variance to use the three parcels as one. *Id.* at 649, 724 A.2d 34. The Court of Appeals sustained the Board's decision that the variance criteria of BCZR did not apply, reasoning that the assemblage of contiguous parcels was sufficiently large to overcome the conditions triggering the need for a variance. *Id.* at 662, 724 A.2d 34.

With regard to the principles of merger, the Court said, *id.* at 653–54, 724 A.2d 34:

> Efforts throughout the country, including Baltimore County, have been to restrict undersize[d] parcels, not oversized parcels. These efforts have resulted in the creation and evolution in zoning of the doctrine of merger, which, in zoning cases, generally prohibits the use of individual substandard parcels if contiguous parcels have been, at any relevant time, in the same ownership and at the time of that ownership, the combined parcel was not substandard.[1] In other words, if several contiguous parcels, each of which do not comply with present zoning, are in single ownership and, as combined, the single parcel is usable without violating zoning provisions, one of the separate, nonconforming parcels may not then *or thereafter* be considered nonconforming, nor may a variance be granted for that separate parcel. Some cases discuss automatic merger, but most require that the intent of the owner to merge the parcels be expressed, though little evidence of that intent is required. As far as we can discern, the zoning doctrine of lot merger has never been applied in any jurisdiction to limit the creation of parcels that exceed minimum dimensional requirements; merger has been applied only to prohibit the later creation of undersized parcels. This, perhaps, is due to the general lack of objection to large parcels.[1] A discussion, however, of how the doctrine of merger applies conversely to the present case may help emphasize that, in the context described above, merger occurs without the need for official subdivision or conveyancing. It is accepted automatically in some jurisdictions or, most often, with minimum proof of the owner's intent in other jurisdictions and always without the necessity of official action. We see no reason why a doctrine that seeks to prevent the proliferation or use of nonconforming, undersized lots by holding that they have been combined or merged into a larger parcel should not, as far as zoning is concerned, be applied properly to permit the creation, through the combining by use of a larger parcel from already conforming smaller parcels, without the necessity of official action or conveyancing.

Ultimately, the Court held that "a landowner who clearly desires to combine or merge several parcels or lots of land into one larger parcel may do so." *Id.* at 658, 724 A.2d 34. Of import here, the Court said: "An owner of contiguous parcels of land *may merge those parcels to form one tract if he desires to do so.* An intent on the part of the owner to do so may be inferred from his conduct with respect to the land and the use which he makes of it. . . . **Intent is a question of fact.**" *Id.* at 659, 724 A.2d 34 (italics in original; boldface added). The Court recognized that one way for a landowner to manifest intent to merge contiguous properties is by "integrat[ing] or utiliz[ing] the contiguous lots in the service of a single structure or project. . . ." *Id.* at 658, 724 A.2d 34.

Remes v. Montgomery County, 387 Md. 52, 874 A.2d 470 (2005), is also pertinent. There, the Court applied the concept of zoning merger to treat two residential lots as one, even though the owner wanted to treat them separately. Ralph and Violette Duffie purchased a parcel of property in 1951 (Lot 12), located in a subdivision created in 1945. They constructed a residence on that lot. *Id.* at 57, 874 A.2d 470. Several years later the Duffies purchased an adjoining parcel, Lot 11. *Id.* Over the years, both properties had been assessed as one lot for tax assessment purposes, and the properties shared the same address. *Id.* at 58, 874 A.2d 470. In addition, the Duffies installed a driveway that traversed both lots and, in 1959, they received a building permit to construct a swimming pool on Lot 11, "as an accessory use to their home on Lot 12. . . ." *Id.* at 57, 874 A.2d 470. In 1963, the Duffies again sought a building permit to construct an addition to the residence, which resulted in an encroachment to the setback requirements on the Lot 11 side of the residence. *Id.* at 58, 874 A.2d 470.

In 1999, after the Duffies' deaths, both properties were transferred to their son by a single deed describing both properties. *Id.* On January 15, 2003, the Duffies' son executed

a deed conveying one of the two lots to Design–Tech Builders, Inc. In 2002, before it purchased the property, Design–Tech obtained a building permit to construct a single-family dwelling on the property it eventually purchased. *Id.* at 59, 874 A.2d 470. Shortly after the sale of January 15, 2003, David Remes, an owner of property adjacent to the lot purchased by Design–Tech, filed an action in circuit court seeking a declaration that the Duffies' two lots had merged for zoning purposes, and to rescind the sale to Design–Tech. *Id.* at 60, 874 A.2d 470.

The Court of Appeals held that although the properties were separately deeded, it "does not lead us to the necessary conclusion that these lots for zoning limitations are not subject to the doctrine of zoning merger." *Id.* at 80, 874 A.2d 470. The Court reiterated what it had said in *Ridge*, "that merger may be derived from the common owner's intent, as evidenced by 'integrat[ing] or utiliz[ing] the contiguous lots in the service of a single structure or project. . . .'" *Id.* at 66, 874 A.2d 470 (citing *Ridge*, 352 Md. at 658, 724 A.2d 34).

Underscoring that "[e]ach case must be examined on its own," *id.* at 68, 874 A.2d 470, the Court said, *id.*:

> In the case at bar, there is ample evidence to conclude the elder Duffies intended to use their Lot 11 and Lot 12 as one property for zoning purposes: the pool on Lot 11 violates (or violated) the prescribed setbacks from the street and from Lot 12, unless it was dedicated for zoning purposes to Lot 12, and from the time of its creation was thus an accessory use to the structure or use of Lot 12; the additions to the house on Lot 12 encroach upon that lot's setbacks; the circular driveway traverses both Lot 11 and Lot 12; until very recently the lots were assessed for tax purposes as a single parcel; and the subsequent personal representative's deed conveying Lot 11 and Lot 12 to Mr. Duffie described a single lot comprised of two lots, in that it reads "Lot numbered eleven (11) and twelve (12)." [ ]

The Court concluded that the properties had merged for zoning purposes because they "were under common ownership, and at the time of that common ownership, they were used in service to one another." *Id.* at 87, 874 A.2d 470. It reasoned that, in order for the adjacent property to be "utilized separate and apart from [the other], there would have to be a resubdivision of the combined lot, creating two lots both of which meet the requirements of both the zoning ordinance and the subdivision regulations." *Id.*

This case is distinguishable from *Remes* on its facts. Appellants made no improvements to Lot 67 of a kind that are remotely comparable to those made to Lot 11 in *Remes*. The elder Muellers acquired Lot 66 in 1947, and Lot 67 in 1960. The evidence before the Board indicated that the family's boat launch and a moveable storage shed were located on Lot 67. Mr. Mueller and appellants' son-in-law both testified that Lot 67 was generally utilized for recreational activities, such as ball playing. However, no permanent structures were erected on Lot 67, such as a swimming pool or a common driveway. Nor was Lot 67 used in service of Lot 66 in a way comparable in degree to the way that Lot 11 served Lot 12 in *Remes*. Moreover, Mr. Mueller testified that it was never his intent to merge the two properties.

To be sure, there was no physical or structural line of demarcation separating the lots. But, that is not required to preclude merger. Nor were appellants or the elder Muellers required to abstain entirely from the use of Lot 67 in order to preclude merger. If the Board were compelled to find merger on these facts, it would mean that almost any time a landowner owns adjoining and contiguous parcels, they would merge as a matter of law for zoning purposes.

On these facts, the Board was not clearly erroneous in concluding that appellants' use of Lot 67 did not create a merger. We agree with appellants, who argue:

> [N]ot all uses of an adjacent undeveloped property result in a merger. It is improper and without legal foundation to suggest that Appellants' occasional recreational use of Property II caused Properties I and II to merge. If the Appellants had bought an undeveloped lot somewhere else

in the community, and "play[ed] ball" on it or placed a shed on it, such actions would never be considered merger. Moreover, the mere existence of a shed-not constructed on a foundation and not a structure for which a building permit was sought—cannot be viewed as similar to a permanent improvement benefitting the other parcel or a driveway being built across one lot to access another. The Appellants never needed the undeveloped Property II for them to enjoy the use of their developed Property I.[22]

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY REVERSED; CASE REMANDED TO THAT COURT WITH INSTRUCTIONS TO REMAND TO THE BOARD FOR FURTHER PROCEEDINGS. COSTS TO BE PAID BY APPELLEE.

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934 A.2d 1009

Mary L. REESE, Guardian

v.

DEPARTMENT OF HEALTH AND MENTAL HYGIENE.

No. 514 Sept. Term, 2006.

Court of Special Appeals of Maryland.

Nov. 2, 2007.

Background: Guardian of mentally retarded individual sought review of decision by Department of Health and Mental Hygiene denying request for admission of individual into a State residen-

22. We note that the Board determined that Lot 67 is "unique." Although BCZR § 307 contains a uniqueness requirement, BCZR § 304 does not contain such a requirement, and the Board's Order indicates that it granted the variance pursuant to § 304. Therefore, we need not address the element of uniqueness or hardship. As noted, we may only uphold the agency on the grounds on which it relied. *See Department of Health and Mental Hygiene v. Campbell*, 364 Md. 108, 111 n. 1, 771 A.2d 1051 (2001).

tial center. The Circuit Court, Montgomery County, John W. Debelius, III, J., dismissed. Guardian appealed.

Holding: The Court of Special Appeals, Hollander, J., held that mentally retarded individual's procedural due process rights were violated by statutes that denied her a contested case hearing in regards to denial of her application to State residential center.

Vacated and remanded.

1. Administrative Law and Procedure ⚷651

An administrative agency's action is generally subject to judicial review only when there is a legislative grant of the right to seek judicial review.

2. Appeal and Error ⚷1

An appellate right is entirely statutory in origin and no person or agency may prosecute such an appeal unless the right is conferred by statute.

3. Administrative Law and Procedure ⚷659
Mandamus ⚷4(5)

When there is no statutory provision for judicial review of final adjudicatory decisions by administrative agencies, either a certiorari or a mandamus action in the appropriate circuit court is normally available for ordinary substantial evidence judicial review of the adjudicatory administrative decisions.

4. Mandamus ⚷4(5)

An "administrative mandamus" action serves as a substitute for an action for judicial review under rule regarding review of agency action, when neither statute nor local law creates a right of judicial review of a quasi-judicial order or action of an administrative agency. Md.Rule 7-201.

5. Administrative Law and Procedure ⚷442

One of the key elements of a contested case hearing is whether the entity conducting the hearing acts in an adjudicatory capacity by determining the facts of a case and applying those facts to some legal standard in order to reach a conclusion; whether a given act or decision of an administrative body

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Remes v. Montgomery County
Md.,2005.

Court of Appeals of Maryland.
David H. REMES
v.
MONTGOMERY COUNTY, Maryland, et al.
No. 122, Sept. Term, 2004.

May 12, 2005.
Reconsideration Denied June 15, 2005.

Background: Resident sought judicial review of county Board of Appeals decision that upheld issuance of a building permit on another lot on grounds the lot had merged for zoning purposes with a contiguous lot. The Circuit Court, Montgomery County, Durke G. Thompson, J., affirmed the Board of Appeals decision. Resident petitioned for writ of certiorari, which was granted.

Holdings: The Court of Appeals, Cathell, J., held that:
(1) vacant lot merged with adjacent lot for zoning purposes by operation of law;
(2) zoning merger doctrine not required to be applied only prospectively; and
(3) lots that remained combined, or encumbered by doctrine of zoning merger at the time court recognized doctrine were subject to its effects.

Reversed and remanded with instructions.

West Headnotes

[1] Zoning and Planning 414 ⚷254

414 Zoning and Planning
414V Construction, Operation and Effect
414V(B) Architectural and Structural Designs
414k254 k. Area and Frontage Requirements. Most Cited Cases
Vacant residential lot merged for zoning purposes by operation of law with adjacent developed lot, which precluded issuance of a building permit for the vacant lot, even though there had never been a formal replatting by the common owner of the lots; when under common ownership, vacant lot was used to satisfy setback requirements for structure on developed lot, owner installed a swimming pool on vacant lot as an accessory use to the developed lot, owner built a curved driveway that traversed both lots, and merger for zoning purposes did not affect subdivision of lots.

[2] Zoning and Planning 414 ⚷1.5

414 Zoning and Planning
414I In General
414k1.5 k. Zoning and Planning Distinguished. Most Cited Cases
Zoning and subdivision are normally separate and distinct regulatory entities.

[3] Zoning and Planning 414 ⚷254

414 Zoning and Planning
414V Construction, Operation and Effect
414V(B) Architectural and Structural Designs
414k254 k. Area and Frontage Requirements. Most Cited Cases
The doctrine of zoning merger deals with zoning limitations and uses, not with title.

[4] Zoning and Planning 414 ⚷254

414 Zoning and Planning
414V Construction, Operation and Effect
414V(B) Architectural and Structural Designs
414k254 k. Area and Frontage Requirements. Most Cited Cases
Zoning merger does not cause a nullification of any subdivision that has previously occurred; it merely consolidates lots insofar as the determination of what can be constructed upon that land, or what uses can be made of it, bearing in mind the require-

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ment that one must comply with zoning requirements including area and setback.

[5] Zoning and Planning 414 ⚷254

414 Zoning and Planning
414V Construction, Operation and Effect
414V(B) Architectural and Structural Designs
414k254 k. Area and Frontage Requirements. Most Cited Cases
Regarding the effect of zoning merger on contiguous lots, for title purposes, the platted lot lines may remain, but by operation of law a single parcel emerges for zoning purposes.

[6] Zoning and Planning 414 ⚷381.5

414 Zoning and Planning
414VIII Permits, Certificates and Approvals
414VIII(A) In General
414k378 Grounds for Grant or Denial
414k381.5 k. Maps, Plats, or Plans, Conformity to Regulations. Most Cited Cases
In applying for a building permit, the applicant must comply with both zoning and subdivision requirements.

[7] Zoning and Planning 414 ⚷1.5

414 Zoning and Planning
414I In General
414k1.5 k. Zoning and Planning Distinguished. Most Cited Cases
Zoning differs from planning; the latter of which embodies the requirements of subdivision.

[8] Zoning and Planning 414 ⚷1.5

414 Zoning and Planning
414I In General
414k1.5 k. Zoning and Planning Distinguished. Most Cited Cases
Zoning dictates what one can build on, or how one may use his property while subdivision or planning determines how the land is divided.

[9] Zoning and Planning 414 ⚷254

414 Zoning and Planning
414V Construction, Operation and Effect
414V(B) Architectural and Structural Designs
414k254 k. Area and Frontage Requirements. Most Cited Cases
Doctrine of zoning merger was not a change in common law that was contrary to public policy of the state that required prospective application only from action challenging issuance of a building permit for a lot that merged with a contiguous lot for zoning purposes; doctrine of zoning merger was not a change in the common law, and there was no recognized public policy with which the doctrine interfered.

[10] Common Law 85 ⚷11

85 Common Law
85k10 Adoption and Repeal
85k11 k. In General. Most Cited Cases

Courts 106 ⚷100(1)

106 Courts
106II Establishment, Organization, and Procedure
106II(H) Effect of Reversal or Overruling
106k100 In General
106k100(1) k. In General; Retroactive or Prospective Operation. Most Cited Cases
Changes in the common law are generally applied prospectively, as well as to the case triggering that change in the common law.

[11] Zoning and Planning 414 ⚷254

414 Zoning and Planning
414V Construction, Operation and Effect
414V(B) Architectural and Structural Designs
414k254 k. Area and Frontage Requirements. Most Cited Cases
Lots that remained combined, or encumbered by the doctrine of zoning merger at the time of recognition

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of the doctrine in *Friends of the Ridge v. Baltimore Gas & Elec. Co.*, and since, are clearly subject to its effects.

[12] Common Law 85 ⚷11

85 Common Law
85k10 Adoption and Repeal
85k11 k. In General. Most Cited Cases
The Court of Appeals will hesitate to apply a change to the common law in the case before it where such a change would be contrary to a public policy set forth by the General Assembly.

[13] Zoning and Planning 414 ⚷321

414 Zoning and Planning
414VI Nonconforming Uses
414k321 k. In General. Most Cited Cases
One of the primary goals of zoning and subdivision controls is to avoid the creation of nonconforming lot, and uses, and to restrict undersized parcels, not oversized parcels.

[14] Zoning and Planning 414 ⚷254

414 Zoning and Planning
414V Construction, Operation and Effect
414V(B) Architectural and Structural Designs
414k254 k. Area and Frontage Requirements. Most Cited Cases
Under the doctrine of zoning merger, a common owner of property who constructs a building on one lot which incorporates space from an adjacent lot in order to fulfill setback requirements still maintains two separate lots for title purposes.

****471 *55** David H. Remes (Douglas M. Bregman and Heather Libman Blauer of Bregman, Berbert, Schwartz & Gilday, L.L.C., Bethesda, MD), on brief, for appellant.
Marc P. Hansen, Chief Counsel (Charles W. Thompson, Jr., County Atty., Karen L. Federman Henry, Principal Counsel for Appeals, and Malcolm F. Spicer, Jr., Asst. County Atty., Rockville, MD), all on brief; Debra Yerg Daniel, Associate General Counsel (Adrian R. Gardner, General Counsel, and Michele Rosenfeld, Associate General Counsel, the Maryland-National Capital Park and Planning Com'n, Silver Spring, MD), all on brief; William Kominers (Philip T. Evans and Erica A. Leatham of Holland & Knight, L.L.P., Bethesda, MD), all on brief, for appellees.

Argued before BELL, C.J., RAKER, CATHELL, BATTAGLIA, GREENE, and JOHN C. ELDRIDGE (Retired, Specially Assigned) and LAWRENCE F. RODOWSKY (Retired, Specially Assigned), JJ.

CATHELL, Judge.
In this case, David H. Remes, petitioner, owner of a home located in Silver Spring, seeks to establish whether directly-adjacent property, which formerly was owned by Jonathan C. Duffie, and was later transferred by Mr. Duffie to Design-Tech Builders, Inc. ("Design-Tech"), respondent, is deemed to have merged for zoning purposes under the common-law ***56** principles described in *Friends of the Ridge v. Baltimore Gas & Elec. Co.*, 352 Md. 645, 724 A.2d 34 (1999).

Under the circumstances of this case, the Court is called upon to determine if Design-Tech was properly granted a ****472** building permit by the Montgomery County Division of Permitting Services ("DPS") and whether the Montgomery County Board of Appeals ("the Board" or "the County"), respondent, properly interpreted the relevant provisions of the Montgomery County Code, Subdivision Regulations, and Zoning Ordinance in respect to the issuance of a building permit. Our review shall address the following questions:

1. Did the Montgomery County Board of Appeals correctly rule that two contiguous lots had not undergone a zoning merger and a building permit for one of the lots was, therefore, properly issued?

2. Did the Montgomery County Board of Appeals correctly find that a single-family dwelling pro-

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posed to be built on one lot did not exceed the height requirements of the Montgomery County Zoning Ordinance? [FN1]

FN1. In Montgomery County height is apparently determined by first establishing the "natural grade."

We hold that the Board of Appeals incorrectly failed to find that Lot 11 and Lot 12 had merged for zoning purposes. Because we hold that there occurred a zoning merger of Lot 11 and Lot 12 notwithstanding the provisions of Montgomery County Code § 50-8, it is unnecessary to reach a determination whether the Board properly approved a cellar as a non-counting story in calculating the permissible height of the applicant's proposed single-family dwelling.[FN2]

FN2. We note however that "natural grade" would include the grade of the land prior to any work in respect to the use that is the subject of an application. In virtually every subdivision of land, the land is prepared and graded long before the lots are conveyed and prior to applications for individual permits. Over time, farming changes the grades that theretofore existed. Grades may have been changed centuries before. In many instances it would be impossible to determine a purely "natural grade." Natural grade as used in most land use regulations, subject to constitutional requirements, normally might mean the grade, however created, that legally exists or was or could be legally created, prior to or at the time of any land preparation for a specific project that is the subject of the application at issue; otherwise no building permits could ever be issued.

***57 I. Facts and Procedural History**

This case involves property in the Woodside Park neighborhood of Silver Spring, Maryland, consisting of several parcels created by a 1945 subdivision and located in an R-60 zone which allows single-family detached residential homes. The primary parcels at issue, as originally laid out in the subdivision, are Lot 12, a corner lot with access both to Noyes Drive toward the north and to Fairview Road toward the east, acquired by husband and wife, Ralph J. Duffie and Violette P. Duffie ("elder Duffies") in 1951 on which they constructed their home, and its westerly adjacent neighboring lot, Lot 11, acquired by the elder Duffies in 1954. A semi-circular driveway serving the home on Lot 12 was constructed by the Duffies over and through both Lot 11 and Lot 12. A Montgomery County Department of Permitting Services permit card, found among DPS' records, indicates that a building permit was also issued in June 1959 to the elder Duffies, for construction of a swimming pool [FN3] on Lot 11 as an accessory use to their home on Lot 12, and a building permit was issued to the Duffies in October 1963, presumably for the construction of an addition to the Lot 12 home. At the time of its original construction around 1951, the Lot 12 home had the required ****473** seven-foot [FN4] side yard setback and twenty-foot rear yard setback. The 1963 addition extended thirteen feet into the twenty-foot rear setback. This construction changed the ***58** side and rear yards of Lot 12, resulting in encroachments into the setback requirements on the Lot 11 side of the house.

FN3. There is some evidence in the record that, as of January 2003, the pool may have been demolished.

FN4. The elder Duffies' home apparently was constructed according to the provisions of Montgomery County's 1950 Zoning Ordinance. The 1954 zoning ordinance established a minimum side yard setback of *eight* feet and maintained the twenty foot rear yard setback requirement. The current zoning ordinance, likewise, requires lots in this zone to have an eight-foot side yard set back and a twenty foot rear yard setback. *See* Montgomery County Zoning Ordinance § 59-C-1.323(b), regarding setback from the adjoining lot.

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Following the deaths of Violette Duffie in 1988 and Ralph Duffie in 1999, their son, Jonathan C. Duffie, ("Mr. Duffie"), as Personal Representative of the latter's estate, deeded the property to himself. This "Personal Representative's Deed," dated August 31, 2001, describes the subject property, in relevant part, as follows:

"Lot numbered eleven (11) and twelve (12) of a resubdivision of original Lot numbered two (2) in Block lettered 'A-2' of the subdivision known as 'Woodside Park', as per plat of said resubdivision recorded in Plat Book 26, folio 1614, in the Land Records of Montgomery County, Maryland.

...

"The improvements thereon being known as *8920 Fairview Road.*"

Apparently, up until the 2003 request to separate Lot 11 and Lot 12 for tax assessment purposes, both lots had been assessed as one lot under the single address of 8920 Fairview Road. More important even is that the use of the swimming pool on subdivision Lot 11 was initially described as an accessory structure to the house on Lot 12, and remained in that status at least through the 2001 reassessment. Accordingly, at least in 1959, the relevant governmental officials considered the swimming pool on Lot 11 as an accessory use to the structure on Lot 12. At that time the Montgomery County Zoning Ordinance defined accessory use as "a use of a building, lot, or portion thereof, which is customarily incidental and subordinate to the principal use of the main building or lot." *See* Montgomery County Zoning Ordinance (1958) § 107-2, *Definitions*. In 1960, and since, the definition was changed to read "building lot, or portion thereof." Even after the 1960 amendment, which deleted the comma between building and lot, the relevant governmental officials continued to treat the swimming pool as an accessory use to the home on Lot 12.

***59** On December 10, 2002, DPS, the agency, one of whose functions is to determine whether a proposed development complies with the zoning ordinance, [FN5] issued to Design-Tech Builders, Inc., respondent, a building permit for construction of a single-family dwelling on Lot 11, Block A-2, Woodside Park, 1102 Noyes Drive, Silver Spring. At that time Design-Tech was not the owner of the lot. On January 8, 2003, petitioner noted an "Appeal Charging Error in Administrative Action or Determination" to respondent Montgomery County Board of Appeals asserting that DPS had issued erroneously a building permit for 1102 Noyes Drive/8920 Fairview Road for the following reasons:

FN5. Montgomery County Code § 8-26, "conditions of permit," requires the permit issuing agency to establish that the building complies with zoning regulations.

"1. The permit authorizes construction of a second building on a single lot, in violation of Code § 59-A-5.2.

****474** 2. The permit authorizes construction of a building that violates the building height limitation of Code § 59-C-1.327(a), in that (a) the height is greater than 35' when measured along the average elevation of the front of the building; and (b) the height exceeds 2 1/2 stories, in that the lowest level is a basement (and therefore a story), not a cellar, as those terms are defined in the Code, § 59-A-2.1."

Mr. Duffie executed a deed dated January 15, 2003, to convey Lot 11 to Design-Tech and this transfer was recorded in the Land Records of Montgomery County on January 30, 2003. Design-Tech intended to build on the property a single-family dwelling, similar to that which it had constructed on at least thirteen other lots in the locality. Following this transfer, the respondents requested that the Maryland Department of Assessments and Taxation reas-

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sess the parcel as two separate lots. The lots had been assessed and billed as a single account since at least 1974. The Department then requested that Mr. Duffie and Design-Tech provide appropriate*60 information in order that Lot 11 could be assessed separately.

Petitioner (and his wife) filed a Complaint for Declaratory and Injunctive Relief in the Circuit Court for Montgomery County on January 29, 2003, seeking to declare Lot 11 and Lot 12 merged and seeking also to rescind the sale of Lot 11 from Mr. Duffie to Design-Tech, and enjoin any further sale of Lot 11. This declaratory judgment action was stayed during the pendency of the administrative appeal before the Board of Appeals.

The Board of Appeals held hearings on Mr. Remes' appeal of DPS' issuance of a building permit, in which Design-Tech intervened, on February 26 and March 5, 2003. After hearing the testimony of several witnesses, the Board issued a written opinion on May 29, 2003, denying the administrative appeal and concluding that Lot 11 and Lot 12 had not merged. *In its conclusions of law, the Board of Appeals stated, inter alia:*

"Lot 11 is a properly recorded lot, which is independent of Lot 12. [Petitioner] argues that Lots 11 and 12 merged into one lot, while DPS and Design-Tech argue that Lots 11 and 12 were complementary but independent lots. The Board agrees with DPS and Design-Tech. Although [petitioner] did establish that the Duffies may have intended to treat Lots 11 and 12 as one single lot, the Board does not agree that their intentions are determinative of the issue." [Alterations added.]

The Board then quoted extensively from Design-Tech's Memorandum of Law:
" 'Montgomery County has codified the procedures for the formal combination, assembly or other "merger" of already recorded lots (or unrecorded parcels) in Chapter 50 of the Montgomery County Code. The procedure culminates with the recordation of a new plat describing the newly created, "merged" lots to effectuate any assembly. Lot 11, as shown on the permit plans, is a recorded lot pursuant to a plat recorded in 1945 in Plat Book 26 at Plat Number 1614. Since that time, no additional subdivision or resubdivision *61 procedures were initiated and no new plat was recorded; therefore, Lot 11 remains a valid subdivided, individual lot with the ability to support a building permit and related residential structure.'

"The Board also believes that [petitioner's] reliance on *Friends of the Ridge v. Balt. Gas & Elec. Company*, 352 Md. 645, 724 A.2d 34 (1999) is misplaced. In *Ridge*, the Court of Appeals held that **for zoning purposes**, adjacent lots held **475 by the same owner could merge by operation of law as a result of the intentions and actions of the owner. But Judge Catchel [sic] stated unequivocally in *Ridge* that subdivision is not zoning, that zoning ordinances do not create lots, and that the construction of structures over more than one parcel would not affect lot lines. He stated first: 'We have often held that subdivision is not zoning.' *Ridge*, at 648, n. 4, 724 A.2d 34. He later states: 'Zoning ordinances ...**do not create lots** (emphasis in original).' *Ridge*, at 651, 724 A.2d 34. He finally states: '... the construction of structures extending over more than one parcel or lot would not, in our view, affect the boundary lines (or lot lines) of the two parcels. They remain in place until a deed of conveyance or a new subdivision ... is created.' *Ridge*, at 661, 724 A.2d 34.

"Unlike *Ridge*, this is not a zoning variance case, it is a building permit case. The only issue for permit purposes is whether the lot was a properly recorded lot which met the development standards of the zone.![[[FN6] Lot 11 is a properly *62 recorded lot, and no plat has ever identified the 'merger' of Lots 11 and 12 into a third larger lot. Therefore, based upon the subdivision plat recorded in the land records of this County, we believe that Lot 11 is a properly recorded independent lot." [Alteration added.] [Bolding original.] [Footnote added.]

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FN6. This is not so. Compliance with the requirements of zoning and zoning codes, where they exist, are generally necessary before permits may be issued. The Montgomery County Zoning Ordinance provides as follows:

" **§ 59-A-3.1. Building permit.**

(a) **Building permits generally.** A *building permit must be issued* by the director before any building or other structure can be erected, moved, structurally altered, added to, or enlarged and before any excavation can be started. A building permit is not required for any building or structure to be used exclusively for purposes of agriculture upon land used exclusively for agriculture. However, a building permit is required for any building or structure to be used for a purpose that is not exclusively agricultural in nature, including special exception uses, even though located on otherwise agricultural land, and (ii) any equestrian facility building or structure intended for use by participants or spectators at an equestrian event.

(b) A building permit may be issued only for proposed work that conforms to the uses and amount of development authorized under this chapter *or other applicable law* and for which the adequacy of public facilities is determined after:

(1) Review of a preliminary plan of subdivision or site plan if required under this chapter or chapter 50 [subdivision regulations]; or

(2) Building permit review if required under chapter 8 [Buildings]."

[Alterations added.] [Emphasis added.]

Moreover, as we explained *supra*, compliance with zoning requirements is a function of the permitting process under the Montgomery County Code. The permit *application procedure, is further* explained in Chapter 8, Buildings, of the Montgomery County Code. *See infra.*

The Board of Appeals declined Mr. Remes' request for reconsideration of its decision.

On June 27, 2003, petitioner filed a petition for judicial review in the Circuit Court for Montgomery County of the Board of Appeals' decision. The Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission ("MNCPPC"), in its capacity as the general oversight body for the physical development of the Capital region, sought to intervene as an additional respondent in this judicial review and the Circuit Court granted this request on December 17, 2003. Following a March 22, 2004, hearing, the Circuit Court issued an order on April 5, 2004, affirming the Board of Appeals' decision. On May 6, 2004, petitioner noted an appeal to the Court of Special **476 Appeals. Before the intermediate appellate *court could hear the case, this* Court, on its own initiative, issued a writ of certiorari. *Remes v. Montgomery County*, 384 Md. 581, 865 A.2d 589 (2005).

***63 II. Discussion**

[1] Much of the debate in the instant case arises from an issue this Court raised, but did not have need to address, in our *Friends of the Ridge* opinion. Specifically, we there surmised:

"An owner of contiguous parcels who erects a structure in what would ordinarily be a setback of one of the individual parcels might, under this doctrine, *although we do not now decide it,* also cause a combination of lots thus restricting the future alienability of the unbuilt upon parcel because the conveyance of that parcel would cause the property upon which the structure is built to be in violation of the ordinance. Such an owner would also risk be-

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ing forced to bring that parcel into conformity by removing the structure from the setback."

352 Md. at 658 n. 11, 724 A.2d at 41 n. 11 (emphasis added).

While petitioner operates under the belief that Lot 11 and Lot 12 have merged for zoning purposes, the respondents, and specifically Montgomery County, in oral argument, succinctly summarized their position as follows:

"Montgomery County asks the Court not to extend the *Ridge* doctrine in situations where a developer has borrowed open space from an adjacent lot to satisfy setback requirements on the lot being developed. *Ridge*, in footnote eleven, leaves that issue for another day, and I guess this is the day." [FN7]

FN7. We are unaware of a legal rationale for "borrowing open space" from adjacent lots. How do you borrow open space? More importantly, under circumstances such as exist here, how is it "repaid" or returned? If Lot 11 is considered a separate unrestricted lot, from where does the "pay back" come? What would happen is that the open space "borrowed" would never be returned, thus creating an illegal nonconforming use on Lot 12 from the point in time when Lot 11 separated.

A. Zoning Merger

Petitioner grounds his argument that Lot 11 and Lot 12 have "functionally" merged for zoning purposes pursuant to our decision in ***64***Friends of the Ridge v. Baltimore Gas & Elec. Co.*, 352 Md. 645, 724 A.2d 34 (1999), wherein we recognized the existence of the doctrine of zoning merger in Maryland. We described zoning merger to be the merger for zoning purposes of two or more lots held in common ownership where one lot is used in service to one or more of the other common lots solely to meet zoning requirements. Petitioner argues that *Ridge* is an equitable doctrine that seeks to prevent lots from being broken up in such a way that would create zoning violations. In *Ridge*, respondent Baltimore Gas and Electric Company ("BG&E") sought to increase the capacity of its electric substation. In order to effectuate this expansion, BG&E acquired additional parcels of land contiguous with the parcel on which the existing substation was located and BG&E attempted *to create* a new resubdivision. It was argued that its attempt to create a formal resubdivision was inadequate. We did not address that particular controversy, resolving the case on the assumption that no proper formal resubdivision had occurred.

[2] BG&E sought and was granted a public utility special exception to operate a larger capacity substation. BG&E also applied for a variance from the side yard setback requirements. In considering ****477** BG&E's request, the Baltimore County Board of Appeals determined that the variance criteria of the Baltimore County Zoning Ordinance did not apply. In response to the *Ridge* petitioners' concerns with the propriety of BG&E's lot consolidation, we stated that, as to *Ridge*,"[w]e are concerned here only with the applicability of the zoning ordinance's variance provisions and not Baltimore County subdivision regulations." *Id.* at 649-50. 724 A.2d at 36.[FN8] We sustained the Board of Appeals' conclusion, reasoning that there was no need for BG&E to obtain a variance from the zoning regulations [FN9] because BG&E's intended use of its three ***65** contiguous parcels as one parcel effectively overcame the conditions triggering the need for a variance. Thus, BG&E was permitted to use the entire parcel for its substation expansion, provided that its proposal met the setback requirements as measured from the exterior property lines of the combined parcel. Specifically, this Court held, "unless the ordinance's language specifically and clearly prohibits it, an owner of contiguous parcels of real property ... is free to combine them into larger and fewer parcels without violating the *zoning* code." *Id.* at 648, 724 A.2d at 35-36.[FN10] In reaching our resolution, we examined the mechanisms triggering the doctrine of

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zoning merger in other jurisdictions and observed that merger had been applied to "prohibit[ ] the use of individual substandard parcels if contiguous parcels have been, at any relevant time, in the same ownership and at the time of that ownership, the combined parcel was not substandard." *Id.* at 653, 724 A.2d at 38. We also stated:

FN8. As we have generally stated, zoning and subdivision are normally separate and distinct regulatory entities. *See Ridge*, 352 Md. at 650 n. 4, 724 A.2d at 36 n. 4 ("We often have held that subdivision is not zoning.").

FN9. But for the land area requirement of the increased substation sought by Baltimore Gas & Electric, there is no indication that the lots acquired by BG&E were undersized or otherwise substandard, in and of themselves.

FN10. When we referred to the "ordinance" in this statement we were referring to the zoning ordinance, not subdivision regulations.

"We see no reason why a doctrine that seeks to prevent the proliferation or use of nonconforming, undersized lots by holding that they have been combined or merged into a larger parcel should not, as far as zoning is concerned, be applied properly to permit the creation, *through the combining by use of a larger parcel from already conforming smaller parcels*, without the necessity of official action or conveyancing."
Id. at 654, 724 A.2d at 38 (emphasis added).

[3] The facts of the instant case, as one may suppose, present issues somewhat differently than the facts in *Ridge*. In *Ridge*, BG&E, as the "developer," sought a conclusion that its three lots *had merged* for zoning purposes so that it might possess a land assemblage of sufficient size, with sufficient setbacks to allow it to enlarge its electricity substation. In ***66** the case at bar, respondents seek the conclusion that Lot 11 and Lot 12 *have not merged*, for varying reasons including that informal lot consolidation, according to respondents, is not available other then by formal plat submission in Montgomery County and so that Mr. Duffie might sell Lot 11 to Design-Tech, the "developer," who seeks to build a single-family dwelling on this piece of land.[FN11]

FN11. The doctrine of zoning merger deals with zoning limitations and uses, not with title.

We indicated in *Ridge* that merger may be derived from the common owner's intent, as evidenced by "integrat[ing] or utiliz[ing]****478** the contiguous lots in the service of a single structure or project...."*Id.* at 658, 724 A.2d at 40 (alterations added). Intent is to be derived from the facts. *Id.* at 659, 724 A.2d at 41; *see also Rouse-Fairwood Devel. Ltd. Partnership v. Supervisor of Assessments for Prince George's County*, 138 Md.App. 589, 630, 773 A.2d 535, 559 (2001); *Iannucci v. Zoning Bd. of Appeals*, 25 Conn.App. 85, 87, 592 A.2d 970, 971 (1991) (stating that intent of the owner "may be inferred from his conduct with respect to the land and the use which he makes of it"). In reviewing scenarios from varying jurisdictions, we noted that "[s]ome cases discuss automatic merger, but most require that the intent of the owner to merge the parcels be expressed, though little evidence of that intent is required." *Ridge*, 352 Md. at 653, 724 A.2d at 38.

[4][5] Petitioner contends that, in applying *Ridge* to the instant case, Lot 11 and Lot 12 remain separate for subdivision purposes, but are combined for zoning purposes. This is, indeed, a correct articulation of the thrust of zoning merger: zoning merger does not cause a nullification of any subdivision that has previously occurred. It merely consolidates lots insofar as the determination of what can be constructed upon that land, or what uses can be made of it, bearing in mind the requirement that one must comply with zoning requirements including area, setback, etc. "For title purposes, the platted lot lines

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may remain, but by operation of law a single parcel *67 emerges for zoning purposes." *Ridge*, 352 Md. at 658, 724 A.2d at 34.

[6] Respondents urge that merger in Montgomery County may arise only from a formal replatting. Thus, according to the respondents, other indicia of merger such as common ownership, contiguous parcels, use of one or more lots in service of another, offer no evidentiary import and are of little moment in Montgomery County. They are incorrect. The respondents read this Court's decision in *Ridge* as narrowly focused on the realm of zoning, and to this effect, Montgomery County insists that "the Court limited its ruling to the zoning requirements and did not address the subdivision perspective of creating lots." The respondents' assertion illustrates a point, that we emphasized in *Ridge*, and that bears repeating: zoning merger is not a resubdivision. When zoning merger occurs, the lots remain divided. Thus, zoning merger, in effect, is an adjustment of zoning requirements. It has no effect on subdivision. Title examiners regularly consider aspects of zoning when examining titles in order to be able to indicate to purchasers the uses that can be made of a property. Those uses have no effect on subdivision regulation. One must comply with *both* zoning and subdivision requirements. In the present case, the applicant cannot meet zoning requirements because of the doctrine of zoning merger and thus, while Lot 11 may be sold, it cannot be used, absent zoning variances or other zoning relief, if any.

Simply because an applicant submits documents articulating plan specifications, engineering details, and a plot diagram showing details of the building to be erected [FN12] does not *68 remove the fact that the **479 instant lot may be part of some larger zoning configuration-a configuration that arose through a common owner's use of the property, if not through schematics. Each case must be examined on its own. In the case at bar, there is ample evidence to conclude the elder Duffies intended to use their Lot 11 and Lot 12 as one property for zoning purposes: the pool on Lot 11 violates (or violated) the prescribed setbacks from the street and from Lot 12, unless it was dedicated for zoning purposes to Lot 12, and from the time of its creation was thus an accessory use to the structure or use of Lot 12; the additions to the house on Lot 12 encroach upon that lot's setbacks; the circular driveway traverses both Lot 11 and Lot 12; until very recently the lots were assessed for tax purposes as a single parcel; and the subsequent personal representative's deed conveying Lot 11 and Lot 12 to Mr. Duffie described a single lot comprised of two lots, in that it reads "Lot numbered eleven (11) and twelve (12)." [FN13] Thus, petitioner maintains that the building permit for the construction of a single-family dwelling on Lot 11 was issued in error and its issuance violates the current relevant provisions of the Montgomery County Zoning Ordinance, which prohibit a second single-family dwelling on a single lot, as follows:

FN12. Montgomery County Code, Chapter 8, Buildings, mandates, in relevant part, the required components for permit application as follows:

" § 8-24. Application for permit.

...

(f) *Plot diagram.* There shall also be filed in duplicate with each application for a building or occupancy permit, a plot plan drawn to scale showing:

(1) The lot upon which the proposed building is to be erected, lot dimensions, lot and block numbers and subdivision name, if any...."

Section 8-26 further provides, among the several conditions associated with issuance of a building permit, that the building must meet the zoning requirements. This section states, in relevant part:

"§ 8-26. Conditions of permit.

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...

(g) *Compliance with zoning regulations.* The building or structure must comply with all applicable zoning regulations, including all conditions and development standards attached to a site plan approved under Chapter 59 [subdivision regulations]. The issuance of a permit by the Department for the building or structure does not affect an otherwise applicable zoning regulation." [Alteration added.]

FN13. Design-Tech urges that the Personal Representative's Deed contains a typographical error in denominating the lots and that the single taxation was simply a matter of convenience. The actuality of either of these possibilities is not dispositive.

"§ 59-A-5.2. Buildings to be located on lots.

*69 Every building hereafter erected shall be located on a lot, as herein defined; and, except as provided in this chapter, there shall be not more than one single-family dwelling on one lot.

§ 59-A-5.3. Yards and open spaces generally.

No building shall be erected, nor shall any existing building be altered, enlarged, moved or rebuilt, nor shall any open space surrounding any building be encroached upon or reduced in any manner not in conformity with the yard, lot, area and building location regulations hereinafter designated for the zone in which such building or open space is located, except as otherwise specifically provided.

No yard or other open space provided about any building for the purpose of complying with the provisions of this chapter shall be considered as a yard or open space for any other building; and no yard or other open space of a building on one lot shall be considered as a yard or open space for a building on any other lot." [FN14]

FN14. The elder Duffies acquired Lot 12 in 1951 and Lot 11 in 1954. The 1955 version of this section of the zoning ordinance, adopted originally in December 1953 and effective January 1, 1954, provided as follows:

"§ 107-4. General regulations.

...

(c) *Area.*

(1) No building shall be erected, nor shall any existing building be altered, enlarged, moved or rebuilt, nor shall any open space surrounding any building be encroached upon or reduced in any manner, except in conformity with the yard, lot, area and building location regulations hereinafter designated for the zone in which such building or open space is located, except as otherwise specifically provided.

(2) No yard or other open space provided about any building, for the purpose of complying with the provisions of this chapter, shall be considered as a yard or open space for any other building; and no yard or other open space on one lot shall be considered as a yard or open space for a building on any other lot."

Thus, the only way that the permit for the addition to the structure on Lot 12 (as well as the pool) could have been legally issued was for the two lots to have been considered one parcel for zoning purposes.

The 1958 version of the zoning ordinance, adopted May 1958 and effective June 1958, is slightly altered from its predecessor:

"§ 107-4. GENERAL REGULA-

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TIONS.

...

c. Area.

(1) Yards and open spaces.

(a) No building shall be erected, nor shall any existing building be altered, enlarged, moved or rebuilt, nor shall any open space surrounding any building be encroached upon or reduced in any manner not in conformity with the yard, lot, area, and building location regulations hereinafter designated for the zone in which such building or open space is located, except as otherwise specifically provided.

(b) No yard or other open space provided about any building for the purpose of complying with the provisions of this Ordinance shall be considered as a yard or open space for any other building; and no yard or other open space *of a building* on one lot shall be considered as a yard or open space for a building on any other lot." [Alteration emphasized.]

As indicated, the essential language of this section of the current zoning ordinance is unchanged from that found in the 1958 version. *Compare,* § 107-4(b) (1958), *supra,* with the current Montgomery County Zoning Ordinance § 59-A-5.3 (b), *supra.*

****480 *70 B. Montgomery County's Zoning Ordinance and Subdivision Regulations**

Montgomery County is somewhat unique in the source and exercise of its municipal authority to regulate the use of land. As this Court explained in *Pan American Health Organ. v. Montgomery County,* 338 Md. 214, 657 A.2d 1163 (1995):

"Montgomery County is a charter county under the Home Rule Amendment. *See*MD. CONST. art. XI-A. Section 5 of Maryland Code (1957, [2001] Repl. Vol., [ ]) Article 25A, known as the Express Powers Act, enumerates the powers that are granted to and conferred upon any county that forms a charter under the provisions of the Home Rule Amendment.

Montgomery County's zoning power, however, derives exclusively from the Regional District Act [enacted by Chapter 448, Acts of 1927].... [Amended] in 1939 and currently codified in Article 28 of the Maryland Code, creates the Regional District, which now encompasses all of Montgomery County and most of Prince George's County. Maryland Code (1957, [1997] Repl. Vol., [2001] Cum. Supp.) Art. 28, § 7-103.

***71** The Regional District Act establishes two mechanisms for land use planning. The first mechanism is through zoning. Under the Regional District Act, the county councils of Montgomery and Prince George's Counties each serve as 'the district council for that portion of the regional district lying within [the] county.' Art. 28, § 8-101(a). Each district council 'may by ordinance adopt and amend the text of the zoning ordinance and may by resolution or ordinance adopt and amend the map or maps accompanying the zoning ordinance text.' *Id.*§ 8-101(b)(2). Thus, the Montgomery County Council has been designated as the District Council and has broad authority to adopt and amend the text of the zoning ordinance ****481** to regulate 'the location and uses of buildings and structures.' Art. 28, § 8-101(b)(2)(v).

The second mechanism is known as the mandatory referral process. Under the Regional District Act, the Maryland-National Capital Park and Planning Commission ('M-NCPPC') is empowered to adopt 'a general plan for the physical development of the [Regional] District.' 1939 Maryland Laws ch. 714, § 4, at 1489 (codified as amended at Art. 28, § 7-108). Section 7-112 of Article 28 (the 'mandatory referral provision') provides that proposals for certain public projects shall be referred to the M-NCPPC for non-binding review."

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Pan American Health, 338 Md. at 217-18, 657 A.2d at 1164-65 (footnote omitted) (some alterations added) (some citations omitted). Thus, Montgomery County's zoning authority arises from the Regional District Act, and is regulated by the provisions of the Montgomery County Code.

The respondents offer two primary objections to Mr. Remes' contention that Lot 11 and Lot 12 have merged. First, the respondents urge that lot merger, by any method other than formal plat submission, is unavailable according to the Montgomery County Code.[FN15]Second, the respondents ***72** maintain that merger is intended to combine substandard, undersized, or nonconforming lots, [FN16] not to rectify setback encroachments and, because at no time have Lot 11 and Lot 12 been deemed substandard according to any of the iterations of Montgomery County's Zoning Ordinance development standards,FN17 the issue before this Court, according to the respondents, thus, is not one of merger, but rather a question of whether the Montgomery County Department of Permitting Services properly issued a building permit ****482** for Lot 11. As a corollary to the latter argument, the County notes that County law, dating back at least to the mid 1950's "has prohibited the use of an adjoining lot to satisfy zoning setback require***73** ments...." Thus, even if the elder Duffies might have imagined that Lot 11 would "absorb" the setback deficiencies by their Lot 11 pool and Lot 12 home additions, the setback requirements delineated in Montgomery County's zoning ordinance prohibit such adjacent lot encumbrance and Lot 11 never *actually* fulfilled this role in service of Lot 12. What respondents fail to acknowledge is that the zoning merger that occurred in this case forestalled the creation of a nonconformity on Lot 12. Without the use of Lot 11 as accessory to Lot 12, the uses of both lots would have violated the zoning ordinance.

FN15. Respondents contend that Montgomery County's building code, subdivision regulations, and zoning ordinance each contain language specifically prohibiting the merger conclusion advanced by Mr. Remes. The County adds that these articulated prohibitions serve two important purposes: First, the language prevents the County's Department of Permitting Services from bearing the burden of having to consider the circumstances of surrounding lots, as well as the propriety of granting the permit in light of any surrounding lots, when presented with a permit application. Second, persons looking to buy vacant property are not left to perform exhaustive title searches solely to determine if the lot of interest has ever been in common ownership with surrounding lots and there may have been created zoning encumbrances arising from the uses of surrounding lots.

However, we have not been directed to any language in the zoning code that prohibits the applicability of the doctrine of zoning merger. As far as we have been made aware, there is nothing in the Montgomery County Zoning Ordinance that would prohibit the County (or whatever appropriate entity) from amending its *zoning* code to prohibit zoning merger. Such a prohibition must be done carefully in order that the problem of the creation of non-conforming uses be properly addressed and resolved. Modifications of subdivision regulations, without the modification of zoning ordinances, normally would not suffice. Zoning and subdivision are typically separate concepts.

FN16. This idea is apparently based on our statement in *Ridge:*

"As far as we can discern, the zoning doctrine of lot merger has never been applied in any jurisdiction to limit the creation of parcels that exceed minimum di-

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mensional requirements; merger has been applied only to prohibit the later creation of undersized parcels."

Id. at 653, 724 A.2d at 38. The attempt to limit merger might, under some circumstances, raise constitutional issues.

FN17. The current development standards are found in Montgomery County's Zoning Ordinance, at Chapter 59 of the Montgomery County Code. Lot 11 and Lot 12 are located in the *R-60 Zone allowing* single-family detached residential dwellings and requiring a minimum lot area of at least six thousand square feet.

Mr. Remes urges that *Ridge* mandates that the owner of Lot 11 and Lot 12 make a choice: either formally combine the parcels so as to enable Lot 11 to satisfy the appropriate setbacks for the structure on Lot 12, or cure the setback deficiencies on Lot 12 and then subdivide the merged Lot 11 and Lot 12. Thus, petitioner argues that the fact that neither Lot 11 nor Lot 12 have ever been deemed undersized is relevant only to the issue of remedy; it has no bearing on whether these are merger-eligible lots. He is correct. Petitioner further maintains that the *Ridge* doctrine applies without regard to the *positive* law of a municipality, *i.e.*, what affirmative steps the local *subdivision* regulations might require in order to recognize a formal zoning merger of lots, because the underlying policy of *Ridge* seeks to protect zoning requirements, requirements which are separate and apart from subdivision regulations. Again he is correct.

[7][8] As we explained in *Ridge*, zoning differs from planning; the latter of which embodies the requirements of subdivision. We stated:

"Zoning does not create parcels of real property. What zoning ordinances normally do, with respect to residential districts, is establish dimensional minimums, such as minimal lot, parcel or tract size, yard sizes (the distance between buildings and property lines), and the height of structures. In addition, such ordinances specify the number of residential units that may be placed upon the area of a tract or ***74** parcel (density), ancillary requirements such as parking minimums, bathroom minimums, and square footage minimums of buildings. Additionally, zoning ordinances can, to some extent, regulate uses of property, as distinct from dimensional requirements."

Id. at 650-651, 724 A.2d at 37. Effectively, zoning dictates what one can build on, or how one may use *his property while subdivision* or planning determines how the land is divided. It is entirely possible that subdivision regulations are utilized to create separate lots while, at the same time, zoning principles establish limitations on the uses of lots, limitations that can extend across lot lines.

The respondents vigorously exhort that zoning merger "by operation of law," *see Ridge*, 352 Md. at 658, 724 A.2d at 40, is unavailable in Montgomery County. In arguing that *Ridge* is inapposite, the County states that "[u]nlike Baltimore County, Montgomery County law clearly prohibits subdivision by intent, requiring instead that a property owner submit a plat for recording in the land records to combine or divide land." The County points to the language of current Montgomery County Code § 50-8, found in the chapter governing subdivision of land, which provides as follows:

****483 "§ 50-8. [ ]-Filing and approval of plats.**

Whenever any subdivision or resubdivision of land is proposed to be made *within the district, and* before any contract for the sale of or any offer to sell such subdivision is made, or before any development or construction of any building takes place within a subdivision or any part thereof, the subdivider thereof or his agent shall file, in accordance with procedure prescribed in this chapter, a plat of the proposed subdivision with the board for its approval and the approved record plat shall be recorded in the land records of the county, except as provided in section 50-9 [exceptions to platting requirements]." [Alterations added.]

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Montgomery County further contends that given its "long history of imposing exacting requirements for subdivision, which includes requirements for combining or dividing parcels, ***75** the doctrine of merger stands diametrically opposed to the clear dictates of County law." According to the County, then, the owner's intent-and presumably the owner's actual use-plays no part in a finding of merger (or resubdivision) unless there has been a formal adjudication by the County's land use regulatory authority.

In a related argument Design-Tech suggests that the elder Mr. Duffie could not have intended to merge the lots when the common law of this State did not formally recognize zoning merger until such time as the filing of *Ridge* on February 11, 1999. Specifically, Design-Tech states in a footnote:

"Even if this Court were to extend *Ridge* in favor of [petitioner's] position in this case, it would be inappropriate to give such a ruling a retroactive application to cover the *actions taken by the owner of Lot* 11 and Lot 12 in the 1950's and 1960's. *See, e.g. Julian v. Christopher*, 320 Md. 1, 10-11, 575 A.2d 735, 739-40 (1990); *Kelley v. R.G. Indus., Inc.*, 304 Md. 124, 140, 497 A.2d 1143, 1150-51 (1985) (changes to common law are generally restricted to prospective application)." [Alteration added.]

In essence, Design-Tech seems to be arguing that zoning merger, since it is based, in part, on the owner's intent, must run with the person, and not with the land; alternatively, Design-Tech may be arguing for zoning merger to come into Montgomery County, but only *after* Design-Tech buys Lot 11 and builds its house, *i.e., prospectively.*

The facts indicate that the elder Mr. Duffie died on August 16, 1999, and Mr. Duffie (the son) did not convey Lot 11 and Lot 12 to himself until August 31, 2001. There is no indication that, in those intervening two years, there were any changes on Lot 11 or Lot 12 that altered or ameliorated the encroachments or that removed one lot from the service of the other. Thus, technically, there was a period, after *Ridge*, and before the elder Mr. Duffie's death, during which the elder Mr. Duffie held both lots. Also, for two years following his death the lots were not yet deeded (by personal representative's deed) to Mr. Duffie (the son). During those two years, the ***76** encroachments (*i.e.*, the use of Lot 11 in service of the needed Lot 12 setbacks) remained.

In addition, the cases cited by Design-Tech do not support the position of prospective application of the common law. *Julian v. Christopher*, 320 Md. 1, 10-11, 575 A.2d 735, 739-40 (1990), was a case dealing with contractual restrictions on the alienability of leasehold interests in which this Court stated:

"In appropriate cases, courts may 'in the interest of justice' give their decisions only prospective effect. Contracts are ****484** drafted based on what the law is; to upset such transactions even for the purpose of improving the law could be grossly unfair. Overruling prospectively is particularly appropriate *when we are* dealing with decisions involving contract law. The courts must protect an individual's right to rely on existing law when contracting. Ordinarily decisions which change the common law apply prospectively, as well as to the litigants before the court."

Design-Tech also cited this Court's opinion in *Kelley v. R.G. Indus., Inc.*, 304 Md. 124, 161, 497 A.2d 1143, 1161-62 (1985) (a products liability case prompting changes to Maryland common law tort principles in respect to gun manufacturers' offering of "Saturday Night Specials"). We stated:

"One final matter warrants discussion, namely the effective date of the modification in Maryland common law tort principles which is set forth in Part **III** of this opinion. Ordinarily in a case such as this, which changes common law principles applicable to civil actions sounding in tort, we would apply the change to the case before us and prospectively to all such causes of action accruing after the date of

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the case before us."

Kelley. 304 Md. at 161, 497 A.2d at 1161-62 (citation omitted). In *Kelley*, this Court determined that, based upon the particular circumstances in that case in respect to the Court's recognition that the wrongful conduct was related to the gun manufacturers' *marketing* of their product, the changes to the common law of tort effected by *Kelley* would not apply to all causes of action arising from a gunshot wound inflicted by a *77 "Saturday Night Special," but would apply to the *Kelley* plaintiff as well as to other causes of action accruing after the date of the *Kelley* mandate. *Julian* and *Kelley* were a contract case and a products liability case, respectively; they do not apply to the facts of the instant case and do not support Design-Tech's position.

[9][10][11][12] Generally, changes in the common law are applied prospectively, as well as to the case triggering that change in the common law. In *Boblitz v. Boblitz*, 296 Md. 242, 462 A.2d 506 (1983), this Court abrogated the common law of interspousal immunity and applied the abrogation to *Boblitz* as well as to all such cases accruing after the filing of the *Boblitz* opinion. *Id.* at 275, 462 A.2d at 522. *But see Williams v. State*, 292 Md. 201, 217, 438 A.2d 1301, 1309 (1981) (noting that "particularly in criminal cases, changes in the common law ordinarily should have only prospective effect when considerations of fairness are present"). The Court will hesitate to apply a change to the common law in the case before it where such a change would be contrary to a public policy set forth by the General Assembly. *See Harrison v. Montgomery County Bd. of Educ.*, 295 Md. 442, 460, 456 A.2d 894, 903 (1983) (stating that the Court "has been particularly reluctant to alter a common law rule in the face of indications that to do so would be contrary to the public policy of the State"). *See also Murphy v. Baltimore Gas & Elec. Co.*, 290 Md. 186, 428 A.2d 459 (1981), overruled on other grounds by *Baltimore Gas & Elec. Co. v. Flippo*, 348 Md. 680, 705 A.2d 1144 (1998); *Condore v. Prince George's County*, 289 Md. 516, 532, 425 A.2d 1011, 1019 (1981). We perceive no such declared public policy that should prevent us from finding a zoning merger where two lots held in common ownership were clearly used in the service of one another in order to satisfy zoning requirements and subsequent to *Ridge* remained in that category.[FN18] *78 Moreover, as **485 we perceive it, *Ridge* was a statement of the common law, not a change. The issue had not theretofore arisen, or been specified or articulated in our prior cases. *Ridge* was merely the first case to determine that zoning merger existed in Maryland.

FN18. We do not need to, nor do we now address, the situation where lots may have been combined in the past, but legally separated before our decision in *Ridge*. If that were the present case, which it is not, respondents' argument *might be* more persuasive. However, lots that remained combined, or encumbered by the doctrine of zoning merger at the time of *Ridge*, and since, are clearly subject to its effects.

Montgomery County goes on to state that "[b]y definition, subdivision includes both the division of land into one or more lots and the assembly of one or more lots or parcels into a larger one. [Montgomery County] Code § 50-1. [According to the County, t]o combine lots in Montgomery County, a property owner must prepare and submit a plat showing the resubdivision. When the Planning Board approves it, the plat is then recorded in the County land records. [Montgomery County] Code § 50-8" (alterations added). The terms "subdivision" and "resubdivision" are defined in the current Montgomery County Subdivision Regulations as follows:

"§ 50-1. Definitions.

...

Resubdivision: A change in any lot line of a recorded lot or parcel of land. Resubdivision includes the assembly of recorded lots or parts of lots. A re-

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subdivision is a subdivision.

...

Subdivision: The division or assemblage of a lot, tract or parcel of land into one (1) or more lots, plots, sites, tracts, parcels or other divisions for the purpose, whether immediate or future, of sale or building development and, when appropriate to the context, relating to the process of subdividing or to the land or area subdivided; provided, that the definition of subdivision shall not include a bona fide division or partition of exclusively agricultural land not for development purposes. A resubdivision is a subdivision."

*79 The respondents endeavor to distinguish the facts of the case *sub judice* from the circumstances in *Friends of the Ridge*, observing that Baltimore County, the locus of *Ridge*, had no statute or ordinance specifically prohibiting that merger.[FN19] The text **486 of the relevant provisions of the Baltimore County Code are set out in the margin. We fail to perceive the degree of distinction between the Baltimore County and the Montgomery County provisions urged on the Court by respondents. Both, regardless of labels, address division of parcels and combining of parcels. Thus, the crux of the respondents' position is that no merger "by operation of law" occurred because the common owner of Lot 11 and Lot 12 did not undertake a formal "anti-subdivision" process to consolidate the lots as contemplated by Montgomery County's subdivision *80 regulations.[FN20] Simply because a formal combination of Lot 11 and Lot 12 did not occur as contemplated by the Montgomery County Code, however, does not lead us to the necessary conclusion that these lots for zoning limitations are not subject to the doctrine of zoning merger. The issue is not subdivision combination but zoning merger.

FN19. The Baltimore County Code, Planning, Zoning and Subdivision Control Article, Development Title, includes the following relevant subdivision provisions:

"§ 32-4-101. Definitions.

...

(p) *Development.* 'Development' means:

...

(3) The combination of any two or more lots, tracts, or parcels of property for any purpose;

...

(yy) *Subdivision.* 'Subdivision' means:

(1) The division of property into two or more lots; or

(2) The combination of lots, parcels, tracts, or other units of property previously divided for the purpose, whether immediate or future, of sale, rental, or building development.

"§ 32-4-108. Prohibition on Transfer of Land.

(a) *In general.* A person may not convey a lot, parcel, or tract of a subdivision unless a plat, if required, has been recorded in accordance with this title and the plat is effective at the time of the convey- ance.

...

"§ 32-4-201. In General.

Except as provided in §§ 32-4-105 [Agricultural exemptions], 32-4-106 [Limited exemptions], and 32-4-107 [Waivers] of this title, an approved Development Plan is required for a development and a plat is required for a subdivision. [Alterations added.]

...

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"§ 32-4-271. Required.

(a) *In general.* The applicant shall prepare a plat in accordance with the approved Development Plan for any subdivision."

FN20. Montgomery County also questions its ability to prosecute and/or remedy any "unapproved" merger of Lot 11 and Lot 12 and subsequent construction undertaken by the property's owner decades ago, noting that Md.Code (1973, 1998 Repl. Vol.), § 5-114 of the Courts and Judicial Procedure Article sets a statute of limitations as follows:

"§ 5-114. Setback line restrictions.

...

(b) *In general....*

(2) A governmental entity may not initiate an action or proceeding arising out of a failure of a building or structure to comply with a setback line restriction more than 3 years after the date on which the violation first occurred if the building or structure was constructed or reconstructed:

(i) In compliance with an otherwise valid building permit, except that the building permit wrongfully permitted the building or structure to violate a setback line restriction; or

(ii) Under a valid building permit, and the building or structure failed to comply with a setback line restriction accurately reflected in the permit."

The respondents assert that the mandatory language of Montgomery County Code § 50-8 ("the subdivider thereof or his agent shall file ....") precludes any use of the land that is inconsistent with the filed subdivision plat. As we have indicated, however, zoning concerns one's use of land, not how it is formally divided. The MNCPPC points to the intermediate appellate court's decision in *Lee v. Maryland National Capital Park and Planning Comm'n,* 107 Md.App. 486, 668 A.2d 980 (1995), an opinion which pre-dates this Court's *Ridge* opinion, as dispositive of the availability of merger by operation of law in Montgomery County. In *Lee* the MNCPPC approved "the resubdivision [*i.e.,* a *subsequent* subdivision] of two lots in the Glen Hills area into six lots." *Id.* at 488-89, 668 A.2d at 982 (alteration added).[FN21] Following a petition for ***81** judicial review in the Circuit Court for Montgomery County brought by neighboring landowners who argued that the resubdivision was not consistent with the rural character of the neighborhood, the circuit court affirmed. The neighbors appealed and the intermediate appellate court reversed, holding that although the MNCPPC *considered* the seven statutory subdivision criteria found in Montgomery County Code § 50-29(b)(2),[FN22] there was not substantial ****487** evidence that the Board found that the proposed subdivision *complied* with all seven criteria. *Lee,* 107 Md.App. at 495, 668 A.2d at 985. The Court of Special Appeals explained:

FN21. This was the opposite of combining two parcels into a larger parcel through zoning merger.

FN22. These seven subdivision criteria are as follows:

"§ 50-29. Lot design.

...

(b) Additional requirements for residential lots.

...

(2) *Resubdivision.*Lots on a plat for the resubdivision of any lot, tract or other parcel of land that is a part of an existing subdivision previously recorded in a plat

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book shall be of the same character as to [1] street frontage, [2] alignment, [3] size, [4] shape, [5] width, [6] area and [7] suitability for residential use as other lots within the existing block, neighborhood or subdivision."[Alterations ad- ded.]

"Compliance with the criteria ensures that the lots will be of the same character as existing lots in the neighborhood, block, or subdivision. To prove that the seven criteria have been met, lots need not be cookie cutter matches to existing lots in the neighborhood. The correlation, however, between area, size, shape, street frontage, alignment, width, and suitability for residential use of the proposed resubdivided lots and existing lots must be high in order to meet the requirements of section 50-29."
Id. Lee is inapposite. As we have emphasized repeatedly, merger of the type here present is a function of, and limited to, zoning. To find zoning merger in the case *sub judice* affects no change to the decades-long status quo of the formal dimensions of Lot 11 and Lot 12; it merely affects the uses to which Lot 11 and Lot 12 may be put.

The County's position specifically, and the other respondents' position generally, suggests their belief that those ***82** actions which are not legislated do not happen. Montgomery County's having legislated a formal process for land subdivision does not necessarily mean that such results, *i.e.,* a limitation on uses, might not otherwise come about. We stated in *Ridge:* "We shall hold that a landowner who clearly desires to combine or merge several parcels or lots of land into one larger parcel may do so. One way he or she may do so is to integrate or utilize the contiguous lots in the service of a single structure or project...." [FN23]*Id.* at 658, 724 A.2d at 40. That is precisely what the elder Duffies did when, in making additions to their home and in constructing a pool on a lot adjacent to their home, they employed Lot 11 in the service of Lot 12 for zoning purposes. Their *use* of Lot 11 and Lot 12 in concert is consistent with zoning merger. That they did not undertake to submit a formal replatting to the County [FN24] does ****488** not vitiate the manner in which they *used* their property.

FN23. For instance, there is no indication that the elder Duffies constructed a swimming pool on Lot 11, the contiguous parcel to Lot 12 on which their family home was located, to serve other than the elder Duffies' home located on Lot 12. Moreover, the circular driveway transversed both lots.

FN24. The 1955 Montgomery County Subdivision Regulations contain the following provision:

"§ 106-2. Procedure for preparation and filing of plats.

(a) Whenever any subdivision of land is proposed to be made, and before any contract for the sale of, or any offer to sell such subdivision or any part thereof is made, the subdivider thereof or his agent shall file a plat of the proposed subdivision with the commission for its approval. Such plat and all procedure relating thereto shall, in all respects, be in full compliance with the provisions of the regulations set out in this chapter.

(b) The subdivider shall prepare a preliminary subdivision plat...." [Footnote omitted.]

The 1965 Montgomery County Subdivision Regulations reflect changes made to the regulations in 1961. Specifically, the words "or resubdivision" were added as follows:

"§ 104-7. Filing and recording of plats required.

Whenever any subdivision *or resubdivision* of land is proposed to be made within the district, and before any con-

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tract for the sale of or any offer to sell such subdivision is made, or before any development or construction of any building take place within a subdivision or any part thereof, the subdivider thereof or his agent shall file, in accordance with procedure described in this chapter, a plat of the proposed subdivision with the board for its approval and the approved record plat shall be recorded in the land records of the county...." [Alteration emphasized.] [Footnote omitted.]

"Resubdivision" is not found among the definitions in either the 1955 or the 1965 subdivision regulations.

**83 1. What becomes of Lot 12 in the absence of Lot 11?*

[13] Another question that would be left wanting, should this Court approve the agencies' approval of a building permit issued for Lot 11, is what becomes of Lot 12? We begin by noting that one of the primary goals of zoning and subdivision controls is to avoid the creation of nonconforming lots (and uses) and "to restrict undersize parcels, not oversized parcels." *Ridge*, 352 Md. at 653, 724 A.2d at 34; *see Fred McDowell, Inc. v. Wall Twp. Bd. of Adjustment*, 334 N.J.Super. 201, 224, 757 A.2d 822, 835 (App.Div.2000) (invoking *Loechner v. Campoli*, 49 N.J. 504, 231 A.2d 553 (1967), New Jersey's seminal zoning merger case which we discussed in *Ridge*, and stating "merger is employed to further the goal of bringing (or keeping) nonconforming lots into conformity with the zoning ordinance and thereby serving the overall goals of the master plan") Thus, based on the setback encroachments existing as a result of the structures on Lot 12, the proposed construction on Lot 11 would make Lot 12, if in separate ownership, a new and illegal nonconforming lot, unless, under the doctrine of zoning merger, the uses of Lot 11 are appropriately limited.

Montgomery County notes that a single building may not extend across lot lines, even internal lot lines.[FN25] It is not ***84** disputed that Lot 11, with an area of eight thousand square feet, if considered in a vacuum, exceeds the minimum six thousand square feet lot size required in the R-60 zone, and satisfies the setback requirements. On the other hand, Lot 12, while of sufficient area for the zone,[FN26] does not, *by itself*, without the use of Lot 11, possess the required side yard and rear yard setbacks on account of the configuration of the structures constructed upon it. To allow Lot 11 to be used, as proposed, thus creates an illegal nonconformance as to Lot 12 and, by implication, grants an improper variance as to the rear yard setback for Lot 12.[FN27] Should this Court permit Lot 11 to be so used and a home constructed thereon, what becomes of Lot 12's ability to comply with the existing rear yard and side yard setback requirements? Such action****489** effectively waives the zoning requirements as to Lot 12.

FN25. The subdivision regulations provide, in relevant part:

"§ 50-20. Limitations on issuance of building permits.

...

(b) A building permit may not be approved for the construction of a dwelling or other structure, except those strictly for agricultural use, which is located on more than one (1) lot, *which crosses a lot line*, which is located on the unplatted remainder of a resubdivided lot, or which is located on an outlot...." [Emphasis added.]

The constitutionality of this provision in the Montgomery County Code is not before us.

In the instant case, the structure on Lot 12 does not traverse the lot line delineating Lot 11 and Lot 12, but rather the structure on Lot 12 extends so as to fail to have sufficient setbacks from Lot 11. We note that a building that goes right to the lot line is the same thing as crossing the lot line for zoning purposes. That is, the setback requirements are still viol- ated.

FN26. Lot 12 measures 11,182 square feet-well in excess of the R-60 zone's required 6,000 square foot lot size.

FN27. We do not comment as to whether variance procedures can be used to obtain a variance for Lot 12.

The County, apparently recognizing that if its position were to be accepted by this Court it will have permitted the creation of an illegal nonconforming use, seeks to relieve the Court of concern, assuring that "this Court need [ ][not] apply *Ridge* to prevent a nonconforming use that might result from an owner treating merged lots as separate.... Based on the setback requirements and the longstanding rejection of attempts to treat adjoining lots as one without formal resubdivision, the encroachment of the [elder Duffies'] addition into the setbacks remains a matter for DPS to handle through enforcement or when the owner of that lot seeks an additional building permit in the future" [FN28] (alterations added).

FN28. The County has already expressed, however, its doubt about its ability to prosecute a code violation that occurred more than three years ago. *SeeMd. Code* (1973, 1998 Repl. Vol.), § 5-114 of the Courts and Judicial Procedure Article, addressing setback line restrictions.

***85** The Court must consider, however, the possibility that a Montgomery County landowner of multiple lots might utilize a "parcel A" to assuage zoning violations on an adjacent companion (and thus, nonconforming) "parcel B," and later benefit from the sale of "parcel A" without correcting conditions *causing the nonconformance of* "parcel B." Moreover, in relying on merger arising only from a formal resubdivision platting, a common owner might "fly under the radar" by simply refraining from submitting a new resubdivision plat. That is, the owner would assert zoning merger for purposes of complying with zoning requirements, but two lots for purposes of subdivision and sale (free of zoning limitations). In this way, the common owner could flip-flop between his or her adjacent parcels, thwarting the intent of the land development regulations and, perhaps more egregiously, skirting Montgomery County's "exacting requirements for subdivision." The owner would have the benefit of avoiding zoning violations by treating the parcels as merged for zoning purposes, but later seek benefit from the sale of two separate valuable parcels of land. That is exactly what is occurring in the instant case.

2. Title to Lot 11 and Lot 12

Mr. Duffie acquired title to a lot composed of Lots 11 and 12 from his father's estate. At that time zoning merger had already occurred. The respondents contend that, should we find zoning merger of Lot 11 and Lot 12, our decision will wreak havoc on the title search procedures that a landowner who seeks to buy property must undertake. That is, the respondents urge that there must be an exhaustive title search in order to determine if two or more lots were ever held in common ownership and may have been used in a manner suggesting zoning merger. Such a practice, according to respondents, can lead to clouds on title and undermine zoning and subdivision laws. As stated by the MNCPPC, "every situation involving the application of the merger doctrine for ***86** subdivision matters could potentially involve a factual dispute over whether a prior or current owner ever 'desired' [*i.e.*, intended] to merge the lots" (alteration added).

[14] As we have indicated previously, a common owner of property who constructs a building on one

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lot which incorporates space from an adjacent lot in order to fulfill setback requirements still maintains two separate lots for title purposes. *See Ridge*, 352 Md. at 658, 724 A.2d at 34. *See also* **490*Rouse-Fairwood Devel. Ltd. Partnership v. Supervisor of Assessments for Prince George's County*, 138 Md.App. at 630, 773 A.2d at 559 (stating that this Court, in *Ridge*"observed that lots do not remain separate merely because they appear separately on a subdivision plan").

Surveys are available to answer many of the title questions that might arise. Surveys routinely disclose encroachments. Surveys can as easily determine setback violations on abutting properties. The records of the administrative entities are public records and thus, available; land records of adjacent lots are also available (they were clearly available in the present case-they are, for the most part, in the record); title insurance is likewise available in most instances; actions in ejectment, quia timet [FN29] and the like are available. If disputes arising from encroachments or setback violations lead to claims of adverse possession or an action for ejectment, the parties generally seek judicial review in an effort to remove any such clouds on title. The same can be done via declaratory judgment actions in respect to the factual applicability of zoning merger emanating from adjacent properties. The task, for competent title attorneys, is not insurmountable.

FN29. "A legal doctrine that allows a person to seek equitable relief from future probable harm to a specific right or interest." BLACK'S LAW DICTIONARY 1281 (8th ed. 2004).

"[A]nd again, that equity will not allow a title, otherwise clear, to be clouded by a claim which cannot be enforced in law or equity." *Holland v. City of Baltimore*, 11 Md. 186, 197 (1857) (alteration added).

It would not be necessary as respondents speculate to trace title to an indefinite time for, as we have indicated, there are *87 avenues which may be used to resolve the infrequent title questions that may arise. As petitioner suggests, DPS might revise its permit application to determine whether the subject lot is presently, or was formerly, held in common ownership with a contiguous lot. In the instant case, Lot 11 and Lot 12 apparently were still held by Mr. Duffie when Design-Tech obtained its building permit.[FN30]

FN30. Design-Tech obtained a building permit in December 2002. The deed from Mr. Duffie to Design-Tech was executed in January 2003. At all times relevant hereto Design-Tech needed to have looked no farther than Mr. Duffie, its immediate predecessor in title, in order to assess the potential that zoning merger might have occurred.

III. Conclusion

We find that Lot 11 and Lot 12 are merged for zoning purposes. Accordingly, we reverse the Board of Appeals' rejection of petitioner's contention that the building permit for Lot 11 was erroneously granted. Lot 11 and Lot 12 were under common ownership, and at the time of that common ownership, they were used in service to one another. The permit should not have issued, absent further zoning action. *In order for Lot 11 to be utilized separate* and apart from Lot 12, there would have to be a resubdivision of the combined lot, creating two lots both of which meet the requirements of both the zoning ordinance and the subdivision regulations. In that process it may well be necessary to seek zoning variances as to setbacks, or to remove the setback encroachments of the structure on Lot 12.

As we have found that Lot 11 and Lot 12 have merged for zoning purposes, we do not resolve the issue of whether the base level of the single-family home proposed by Design-Tech was a cellar or a basement. *See supra* note 1.

JUDGMENT OF THE CIRCUIT COURT FOR

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MONTGOMERY COUNTY REVERSED. CASE REMANDED TO THAT COURT WITH DIRECTIONS TO REVERSE THE DECISION OF **491 THE BOARD OF APPEALS AND DIRECT THE BOARD TO ISSUE AN ORDER CONSISTENT*88 WITH OUR OPINION. COSTS TO PAID BY THE RESPONDENTS.

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

END OF DOCUMENT

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DURABLE POWER OF ATTORNEY

I, **LULA JANE TUCKER,** of Baltimore County, Maryland, hereby make, authorize, nominate, constitute and appoint my daughter-in-law, **NANCY SELLARS TUCKER**, as my True and Lawful Attorney for me and in my name, place and stead to act in, manage, and conduct all my affairs, and for that purpose in my name and on my behalf to do and execute all or any of the following acts, deeds and things, that is to say:

A. To continue, carry on, or open, any bank, savings and/or checking accounts for me and in my name in such banks or savings institutions as my said Attorney may deem best and to make deposits of money belonging to me in such accounts and to draw from and/or disburse said moneys on the signature of my said Attorney in any such amounts and for such purposes and at such times as my said Attorney in its sole, unrestricted discretion and judgment may deem best.

To borrow any sum or sums of money on such terms and with such security, whether real or personal property, as my Attorney may think fit, and for that purpose to execute all promissory notes, bonds, mortgages, and other instruments which may be necessary or proper; also to borrow any sum or sums of money from the cash value of any policy of insurance on my life, as my Attorney may think fit, and for that purpose to execute any instruments which may be necessary or proper to effectuate such loan or loans.

B. To sell, transfer, assign or otherwise dispose of any part or all the shares of the capital stock of any corporation registered in my name and, for that purpose, to make, execute and deliver all necessary assignments or other instruments of transfer or conveyance and to receive the purchase price or other consideration for such stock and to give a receipt or receipts for the same and generally to do all lawful acts necessary to consummate such disposition.

C. To sell, either at public or private sale, mortgage, assign, transfer, donate, or exchange any part or parts of my real estate or personal property for such consideration and upon such terms as my Attorney shall deem fit, and to execute and deliver good and sufficient deeds, mortgages, notes or other instruments for the conveyance or transfer of the same, with such covenants of warranty or otherwise as my Attorney shall see fit, and to give effectual receipts for all or any part of the purchase price or other consideration.

D. To ask, demand, sue for, recover, and receive all sums of money, debts, dues, goods, wares, merchandise, chattels, effects, and things of whatsoever nature or description which now or hereafter shall be or become due, owing, payable, or belonging to me in or by any right, title, ways or means howsoever, and upon receipt thereof or of any part thereof to make, sign, execute and deliver such receipts, releases, or other discharges for the same respectively as she shall think fit or be advised.

To pay for, satisfy or settle any account or reckoning whatsoever wherein I now am or at any time hereafter shall be in any wise interested or concerned with any person whomsoever, and to pay or receive the balance thereof as the case may require.

08-073-SPHA

Miscellaneous
(NOT MARKED AS EXHIBIT)

To commence, prosecute, discontinue, settle, release or defend all acts or other legal proceedings touching my estate or any part thereof, or touching any matter in which I or my estate may be in any wise concerned.

E. For all or any of the purposes of these presents to enter into and sign, seal, execute, acknowledge, and deliver any contracts, stock certificates, conveyances, affidavits or other instruments whatsoever, and to draw, accept, make, endorse discount or otherwise deal with any bills of exchange, checks, promissory notes or other commercial or mercantile instruments.

F. In general to do all other acts, deeds, matters and things whatsoever in or about my estate, property and affairs, or to concur with persons jointly interested with myself therein in doing all acts, deeds, matters and things herein, either particularly or generally described as fully and effectually to all intents and purposes as I could do in my own proper person if personally present; hereby ratifying and confirming whatsoever my said Attorney shall in its name lawfully do, or cause to be done in and about the premises by virtue of these presents.

This Durable Power of Attorney shall be effective so long as I am alive, regardless of my legal competency, except as otherwise provided for herein.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 22nd day of February, in the year Two Thousand and Five.

Lula Jane Tucker (SEAL)
LULA JANE TUCKER

STATE OF MARYLAND)
) to wit:
COUNTY OF BALTIMORE)

I HEREBY CERTIFY that on this 22nd day of February 2004 before me, a Notary Public of the State of Maryland, personally appeared **LULA JANE TUCKER**, who acknowledged the foregoing two (2) page document to be his Durable Power of Attorney and as his voluntary act and deed.

AS WITNESS my hand and Notarial Seal:

Rosina Keys-Judy
Notary Public

My commission expires:
4/1/07

ROSINA KEYS-JUDY NOTARY PUBLIC BALTIMORE COUNTY, MD

Paid

VALID ONLY WITH IMPRESSED SEAL

I HEREBY CERTIFY THAT THE ATTACHED IS A TRUE COPY OF A RECORD ON FILE IN THE DIVISION OF VITAL RECORDS

DATE ISSUED: FEB 06 2007

STATE REGISTRAR OF VITAL RECORDS

Please Type or Print in Black Indelible Ink. Ensure All Copies Are Legible.

State of Maryland / Department of Health and Mental Hygiene

1- For State Registrar

Certificate of Death

Reg. No.

To Be Completed by Funeral Director

1. Decedent's Name (First, Middle, Last): Weston Charles Tucker Sr.
2. Date of Death (Month Day Year): 02 03 2007
3. Time of Death: 6:50A M
4a. Facility Name (If not institution, give street and number): Franklin Square Hospital
4b. City, Town, or Location of Death: Rosedale
4c. County of Death: Baltimore
5. Social Security Number: 217-20-7757
6. Sex: 1 X M 2 ☐ F
7. Age (In yrs. last birthday): 80 Yrs.
If Under 1 Year: Months / Days
If Under 24 Hrs.: Hours / Min.
8. Date of Birth (Month, Day, Year): 4/17/1926
9. Birthplace (State or Foreign Country): West Virginia

Usual Residence of Decedent

10a. State: MD
10b. County: Baltimore
10c. City, Town or Location: Baltimore
10d. Inside City Limits: 1 ☐ Yes 2 X No
10e. Street and Number: 9945 Hilltop Dr.
10f. Zip Code: 21234
10g. Citizen of What Country? usa

11. Marital Status: 1 ☐ Never Married 2 X Married 3 ☐ Widowed 4 ☐ Divorced
12. Was Decedent Ever In U.S. Armed Forces? 1 X Yes 2 ☐ No If Yes, Give Year or Dates:
13. Was Decedent of Hispanic Origin? (Specify Yes or No- If Yes, specify Cuban, Mexican, Puerto Rican, etc.) 1 ☐ Yes 2 X No Specify:
14. Race - American Indian, Black, White, etc. Specify: White
15. Decedent's Education (Specify only highest grade completed): Elementary/Secondary (0-12): 12 College (1-4 or 5+):
16a. Decedent's Usual Occupation (Give kind of work done during most of working life. DO NOT use retired): Policeman
16b. Kind of Business/Industry: Conrail
17. Father's Name (First, Middle, Last): Willie C. Tucker
18. Mother's Name (First, Middle, Maiden Surname): Bessie Dunivant
19a. Informant's Name/Relationship (Type, Print): Bryce L. Tucker/ son
19b. Mailing Address (Street and Number or Rural Route Number, City or Town, State, Zip Code): 3835 Bay Dr. Middle River, MD 21220
20a. Method of Disposition: 1 ☐ Burial 2 X Cremation 3 ☐ Removal from State 4 ☐ Donation 5 ☐ Other (Specify)
20b. Place of Disposition (Name of cemetery, crematory or other place): Evans Funeral Chapel - Bel Air
Date: FEBRUARY 7, 2007
20c. Location - City or Town, State: Forest Hill, MD
21. Signature of Funeral Service Licensee: [signature]
22. Name and Address of Facility: Evans Funeral Chapel And Cremation Services, 8800 Harford Rd., Parkville, MD 21234

To Be Completed by Physician/Medical Examiner

Medical Certification

23a. Part I. Enter the disease, or complications that caused the death. Do not enter the mode of dying, such as cardiac or respiratory arrest, shock, or heart failure. List only one cause on each line.

Immediate Cause (Final disease or condition resulting in death)
a. Cardio Pulmonary Failure
Due to (or as a consequence of):
b. Liver Cancer
Due to (or as a consequence of):
c.
Due to (or as a consequence of):
d.

Sequentially list conditions, if any, leading to immediate cause. Enter Underlying Cause (Disease or injury that initiated events resulting in death) Last

Approximate Interval Between Onset and Death

IF FEMALE:
23b. Was decedent pregnant in the past 12 months? 1 ☐ Yes 2 ☐ No 9 ☐ Unknown
23c. If yes, outcome of pregnancy: 1 ☐ Live birth 2 ☐ Fetal death 3 ☐ Ectopic pregnancy 4 ☐ Pregnant at time of death 5 ☐ Other (specify) 9 ☐ Unknown
23d. Date of delivery: Month Day Year

Part II. Other significant conditions contributing to death but not resulting in the underlying cause given in Part I.

23e. Did tobacco use contribute to the cause of death? 1 ☐ Yes 2 ☐ No 3 ☐ Probably 4 X Unknown

24a. Was an autopsy performed? 1 ☐ Yes 2 X No
24b. Were autopsy findings available prior to completion of cause of death? 1 ☐ Yes 2 ☐ No

25. Was case referred to medical examiner? 1 ☐ Yes 2 X No
26. Place of Death (Check only one): Hospital: 1 X Inpatient 2 ☐ ER/Outpatient 3 ☐ DOA Other: 4 ☐ Nursing Home 5 ☐ Residence 6 ☐ Other (Specify)
27. Manner of Death: 1 X Natural 2 ☐ Accident 3 ☐ Suicide 4 ☐ Homicide 5 ☐ Pending Investigation 6 ☐ Could not be determined
28a. Date of Injury (Month, Day Year)
28b. Time of Injury M
28c. Injury at Work? 1 ☐ Yes 2 ☐ No
28d. Describe how injury occurred
28e. Place of injury - At home, farm, street, factory, office building, etc. (Specify)
28f. Location (Street and Number or Rural Route Number, City or Town, State)

29a. Certifier (Check only one): 1 X Certifying Physician: To the best of my knowledge, death occurred at the time, date and place, and due to the cause(s) and manner as stated. 2 ☐ Medical Examiner: On the basis of examination and/or investigation, in my opinion, death occurred at the time, date and place, and due to the cause(s) and manner stated.
29b. Signature and title of certifier: [signature]
29c. License number: RES 00000
29d. Date signed (Month, Day, Year): 2-3-7
30. Name and address of person who completed cause of death (Item 23a) (Type, Print): Dr Anna Patkowska 9000 Franklin Sq. Dr. Baltimore, Md 21237

State Registrar

31. Date filed (Month, Day, Year): FEB 06 2007
32. Registrar's Signature: [signature]

/2001

LAST WILL AND TESTAMENT

OF

WESTON CHARLES TUCKER, SR.

I, Weston Charles Tucker, Sr., of Baltimore County, State of Maryland, declare that I am of sound and disposing mind and memory, and do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all previous Wills and Codicils, if any, made by me.

ITEM 1. I acknowledge that I am married to Lula Jane Tucker, nee Parks, and that there are three living issues of my body, to wit: Weston Charles Tucker, Jr.; Brice Lee Tucker and Deborah Carol Tucker-Zylka, all of whom are over the age of eighteen (18) years, and are not dependent upon me for their support.

ITEM 2. I direct that my Personal Representative, hereinafter named, pay all of my just debts. Upon my death I direct that my Personal Representative take all necessary steps to dispose of my remains and any and all expense associated therewith shall be at the discretion of said Personal Representative and not subject to any limitation of law.

ITEM 3. I give, devise and bequeath the rest, residue and remainder of my entire estate, real, personal and mixed, of whatsoever kind and wheresoever situated, to which I may be entitled, and over which I have power of disposition at the time of my death, unto my beloved Wife, Lula Jane Tucker, provided that she shall survive me. In the event that my beloved Wife, Lula Jane Tucker, shall predecease me, then I give, devise and bequeath any and all property left herein to my beloved children, Weston Charles Tucker, Jr., Brice Lee Tucker and Deborah Carol Tucker-Zylka, to share and share alike, per stirpes.

WCT

ITEM 4. I hereby appoint my beloved daughter-in-law, Nancy Sellars Tucker, to act as Personal Representative of my Estate and request that no bond be required of her. In the event that Nancy Sellars Tucker is unwilling or unable to act as Personal Representative of my estate, I appoint Weston Charles Tucker, III, to act as Personal Representative in her stead within the terms expressed herein. In any case, I direct that no action be taken by said Personal Representative other than probating this Will and returning an accurate appraisement of my estate.

ITEM 5. Be it understood that should my son, Weston Charles Tucker, Jr., wish to purchase the real estate owned by me, known as 9945 Hilltop Drive, Baltimore, Maryland 21234, that he shall be allowed to do so, provided that he shall pay two/thirds (2/3) of its value to the estate which, in turn, shall distribute the money recognized from that sale to the remaining heirs as identified elsewhere in this my Last Will and Testament. Any election by Weston Charles Tucker, Jr., to exercise this option must be done, in writing, within sixty days subsequent to the creation of any estate created by virtue of my death. Otherwise, the Personal Representative identified herein shall act in accordance with instructions given elsewhere in this my Last Will and Testament.

ITEM 6. In addition to the powers and duties afforded the Personal Representative under the applicable laws of the State of Maryland, I also direct and empower said Personal Representative to sell, lease, mortgage and otherwise alienate any and all real estate, including my private residence, if any, and to divide the proceeds of said sale in accordance with the terms and conditions of this Will.

IN TESTIMONY OF WHICH, I now sign this Will, in the presence of the witnesses whose names appear below, and request that they witness my signature and attest to the execution of this,

W. C. T.

my Last Will and Testament, on this, the 22 day of February, in the year Two Thousand and Five.

Weston Charles Tucker Sr

Weston Charles Tucker, Sr.

Weston Charles Tucker, Sr., in our presence, signed this instrument. Before he signed, he declared to us that this is his Last Will and Testament and he requested that we act as witnesses to its execution. We now, in his presence and in the presence of each other, sign as witnesses below, all on this, the 22nd day of February, in the year Two Thousand and Five.

Name

1740 E. Joppa Rd

Address 21234

Name

11967 Harford Rd.

Address

Glen Arm, MD 21057

PLEASE PRINT CLEARLY

CASE NAME 9944 Hilltop Dr.
CASE NUMBER 08 -
DATE

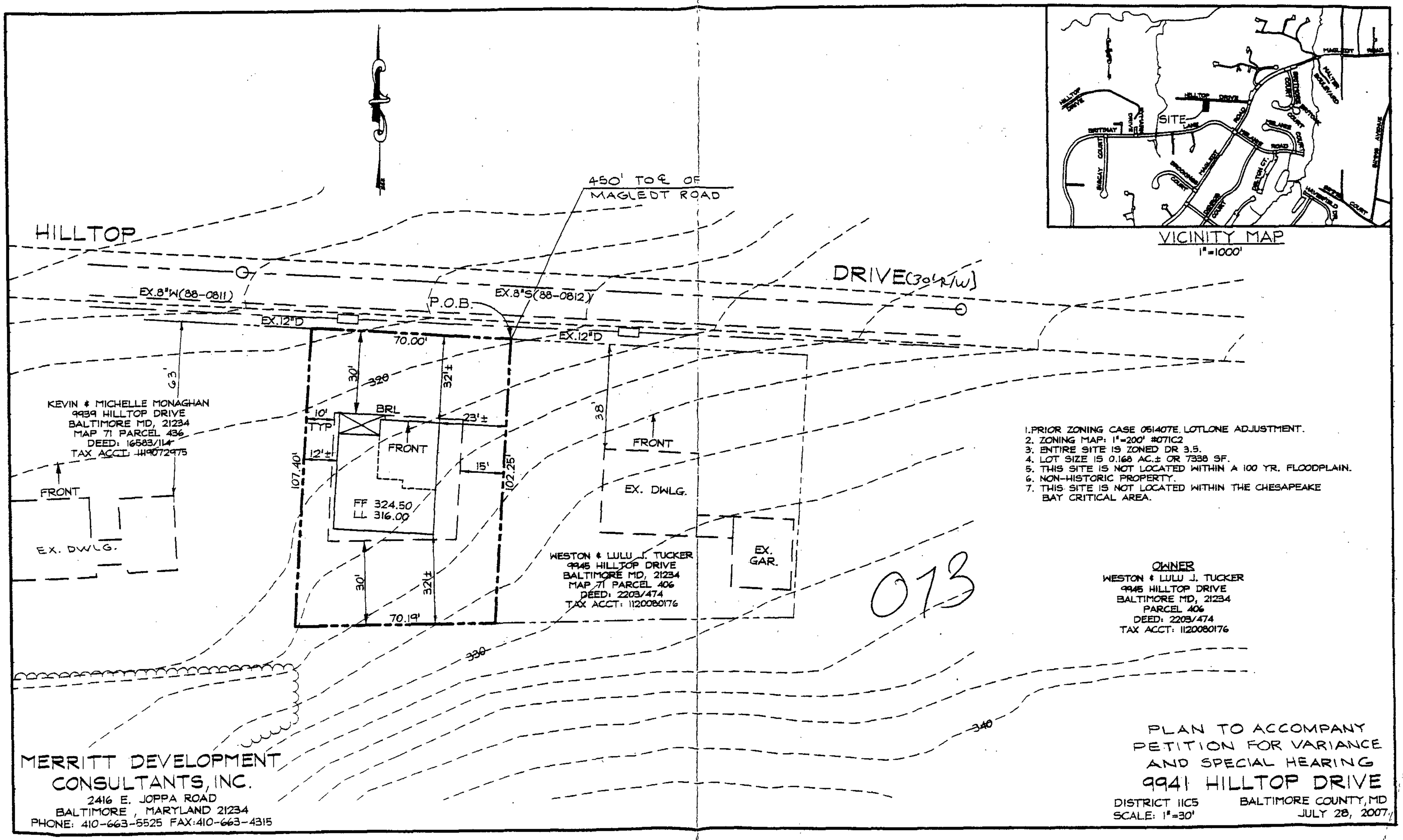
PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
Bryce Lueka	3835 Bay Dr.	Middle River Md 21202	—
Howard L Alderman Jr	502 Washington Ave Suite 550	Towson MD 21204	
PAUL GARNER	952 ELLENDALE DR	TOWSON MD 21286	
Charles MERRITT	MERRITT DEV. CONS. INC		
	2416 E. JOPPA RD	BALTO MD 21234	
Jennifer Cabeza	14 Flintlock Ct Perry Hall MD 21128	→	jcabeza@comcast.net

013

PETITIONER'S

EXHIBIT NO. 2


450' TO ℄ OF MAGLEDT ROAD
HILLTOP
DRIVE(30'R/W)
EX.8"W(88-0811)
EX.8"S(88-0812)
P.O.B.
EX.12"D
EX.12"D
70.00'
63'
30'
320
32'±
38'
10' TYP
BRL
23'±
12'±
15'
107.40'
102.25'
FRONT
FF 324.50
LL 316.00
30'
32'±
70.19'
FRONT
EX. DWLG.
EX. GAR.
KEVIN & MICHELLE MONAGHAN
9939 HILLTOP DRIVE
BALTIMORE MD, 21234
MAP 71 PARCEL 436
DEED: 16583/114
TAX ACCT: 1119072975
FRONT
EX. DWLG.
WESTON & LULU J. TUCKER
9945 HILLTOP DRIVE
BALTIMORE MD, 21234
MAP 71 PARCEL 406
DEED: 2203/474
TAX ACCT: 1120080176
330
340
073
VICINITY MAP
1"=1000'
SITE
HILLTOP DRIVE
BRITTMAY COURT
BRITTMAY ROAD
HILLANDE ROAD
HILLANDE COURT
MAGLEDT ROAD
MAGLEDT COURT
PRESTON CT.
HAVERFIELD CT.
HALTON BOULEVARD
BETTER AVENUE
BETTER COURT
1. PRIOR ZONING CASE 051407E. LOTLONE ADJUSTMENT.
2. ZONING MAP: 1"=200' #071C2
3. ENTIRE SITE IS ZONED DR 3.5.
4. LOT SIZE IS 0.168 AC.± OR 7338 SF.
5. THIS SITE IS NOT LOCATED WITHIN A 100 YR. FLOODPLAIN.
6. NON-HISTORIC PROPERTY.
7. THIS SITE IS NOT LOCATED WITHIN THE CHESAPEAKE BAY CRITICAL AREA.
OWNER
WESTON & LULU J. TUCKER
9945 HILLTOP DRIVE
BALTIMORE MD, 21234
PARCEL 406
DEED: 2203/474
TAX ACCT: 1120080176
MERRITT DEVELOPMENT CONSULTANTS, INC.
2416 E. JOPPA ROAD
BALTIMORE, MARYLAND 21234
PHONE: 410-663-5525 FAX: 410-663-4315
PLAN TO ACCOMPANY
PETITION FOR VARIANCE
AND SPECIAL HEARING
9941 HILLTOP DRIVE
DISTRICT 11C5
BALTIMORE COUNTY, MD
SCALE: 1"=30'
JULY 28, 2007

Case No: 08-073-SPHA Deputy 6-11-08

People Counsel's Exhibits

(1) Aerial Photo 11/14/07

(2) 5/23/07 DRC Approval along w/ Application and Site Plan

(3) Tax Acct. Tucker Property SDAT info.

(4) SDAT dated 4/21/08 9945 Hilltop.

(5) SDAT 4/2/08 9941 Hilltop Drive

(6A) Photo 4/28/08 - Shed & Basketball net on 9941

6B Photo 4/28/08 House @ 9941

6C Photo "for Sale" Sign

6D Photo 4/28/08 zoning Sign. with Shed

6E Photo Hilltop Drive.

6F Photo House @ 9939 Hilltop Rd.

(7) Official zoning Map.

(8A) MRIS 9945 Hilltop Rd Parkville dated 6/12/08 list price $324,900

(8B) MRIS dated 6/12/08 9945 Hilltop Rd. list price 300,000

PC Exhibits

(8) MRS Gardner ~~and~~ listing of Property 6/2008

(9) Jack Dillon Reserve.

(10) SDAT Summary by Jack Dillon

(11) Planning Board Report 11/7/1991

(12) Bill 47-92

(13) 304.1 BCZR

(14) BCZR §1B02.3

CBA People's Counsel
Ex: 2

Baltimore County Government
Department of Permits and
Development Management

111 West Chesapeake Avenue
Towson, MD 21204

410-887-3335

May 23, 2007

Merritt Development Cons., Inc.
2416 East Joppa Road
Baltimore, MD 21235

RE: Hilltop Drive
9945 Hilltop Drive
DRC Number 051407E; Dist. 11C5

Dear Sir or Madam:

Pursuant to Article 25A, Section 5 (U) of the Annotated Code of Maryland, and as provided in Section 602 (d) of the Baltimore County Charter, and Sections 32-1-101, 32-3-401, and 32-3-517 of the Baltimore County Code, this letter constitutes an administrative order and decision on the request for issuance, renewal, or modification of a license, permit, approval, exemption, waiver, or other form of permission you filed with this department.

Your request has been submitted for careful review and consideration to the Development Review Committee (DRC), which is composed of representatives from each of those departments involved in land-use decisions. These representatives are designees of the directors of these departments. The purpose of the DRC is to ensure compliance with Section 32-4-106 and Section 32-4-262 of the Baltimore County Code and to make recommendations to the Director, Department of Permits and Development Management (PDM).

The DRC has, in fact, met in an open meeting on May 14, 2007, and made the following recommendations:

The DRC has determined that your project meets the requirements of a limited exemption under Section 32-4-106(a)(1)(viii).

I have reviewed the recommendations carefully, and I have determined to adopt the recommendations set forth above. It is this 23rd day of May, ordered and decided that the recommendations of the DRC are hereby adopted.

Should you submit an application for any permits that may be required for this project, your application will be processed subject to the conditions set forth above and any plans, securities, or non-county permits that may be required in accordance with County, State, or Federal regulations.

Sincerely,

Timothy Kotroco
Director

TK:DTR:dak

c: File

BALTIMORE COUNTY
DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

DEVELOPMENT REVIEW COMMITTEE (DRC) APPLICATION

DRC# 051407E
County Use Only

Filing Date: _____
Stamp in w/PDM date stamp here

This application must be accompanied by the following:

1. **One copy of the completed DRC application form checklist.**
2. **Three copies of this DRC application, completed in full.**
3. **Three copies of a letter of request (attach one to each DRC application).**
4. **Nine copies of the plan folded to 8 ½ x 11 inches.**
5. **$50 fee (check made payable to Baltimore County and non-refundable; do not staple check to request form)**

Project Name: ~~9945~~ HILLTOP DRIVE PDM File #: _____

Project Address: 9945 HILLTOP DR, BALTO., MD. Zip Code: 21234 ADC Map #: 28

Councilmanic District: 5 Election District: 11 Project Acreage: 0.405

Tax Account No(s): 1120080175 & 1120080176 Zoning: DR 3.5

Engineer: MERRITT DEVELOPMENT CONS., INC. Engineer's Phone No.: 410-663-5525

Applicant: MERRITT DEVELOPMENT CONS., INC. Applicant's Phone No.: 410-663-5525

Address: 2416 E. JOPPA ROAD
BALTO., MD. Zip 21235 Email: merrittdc@comcast.net

Is this an antenna? ___Yes X No If "Yes" check one of the following: Cellular ___ (CAC) Water Tower ___ (WTC) MonoPole ___ (CFC)

REQUESTED ACTION (TO BE COMPLETED BY THE APPLICANT)

( ) Limited Exemption under Section 32-4-106 (____) (____)
( ) Material Amendment to the plan
( ) Plan Refinement
( ) Waiver of public works standards
( ) Requires a Zoning ( ) Special Hearing; ( ) Special Exception; ( ) Variance
( ) Other _____

A1-8 BLUE LINE PLAN NEED ~~RED~~ 70' FRONT 15' SB. Taken Care of

This application must be accompanied by a written request. That request must be in the form of a letter, legibly printed or typed, and signed by the applicant. The letter must contain the name, address and telephone number of the applicant and must provide details of the request.

Please note that a DRC application form checklist is available in room 123 of the Baltimore County Office Building and on the Baltimore County web site at www.co.ba.md.us. A copy of that checklist must be completed and included along with this DRC application.

Please see the DRC application form checklist for complete submittal requirements.

c: Council, Planning, DEPRM

rev. 10/2004

MERRITT DEVELOPMENT CONSULTANTS,INC

~~~~~~~~Engineering~~~~~~~~~~~~Land Planning~~~~~~~~~~~~Surveying~~~~~~~~~~

2416 E Joppa Road
Baltimore, MD 21234
Phone: 410-663-5525
Fax: 410-663-4315
merrittdc@comcast.net

April 17, 2007

Mr. Walt Smith
Baltimore County –PDM
County Office Building - #123
111 West Chesapeake Avenue
Towson, Maryland 21204

RE: 9945 Hilltop Drive

Dear Mr. Smith,

We hereby request your approval for a lot line adjustment between two properties. The property in question has a Tax ID No. of 1120080176 and is only 50' wide with an area of 5,150 sf. This lot is currently undersized. We wish to aquire 8' from the adjacent parcel to ultimately create a 58' wide lot with an area of 6,105 sf. The adjacent lot has enough area to accommodate this request.

Please find enclosed (9) copies of the plan with requested lot line adjustment.

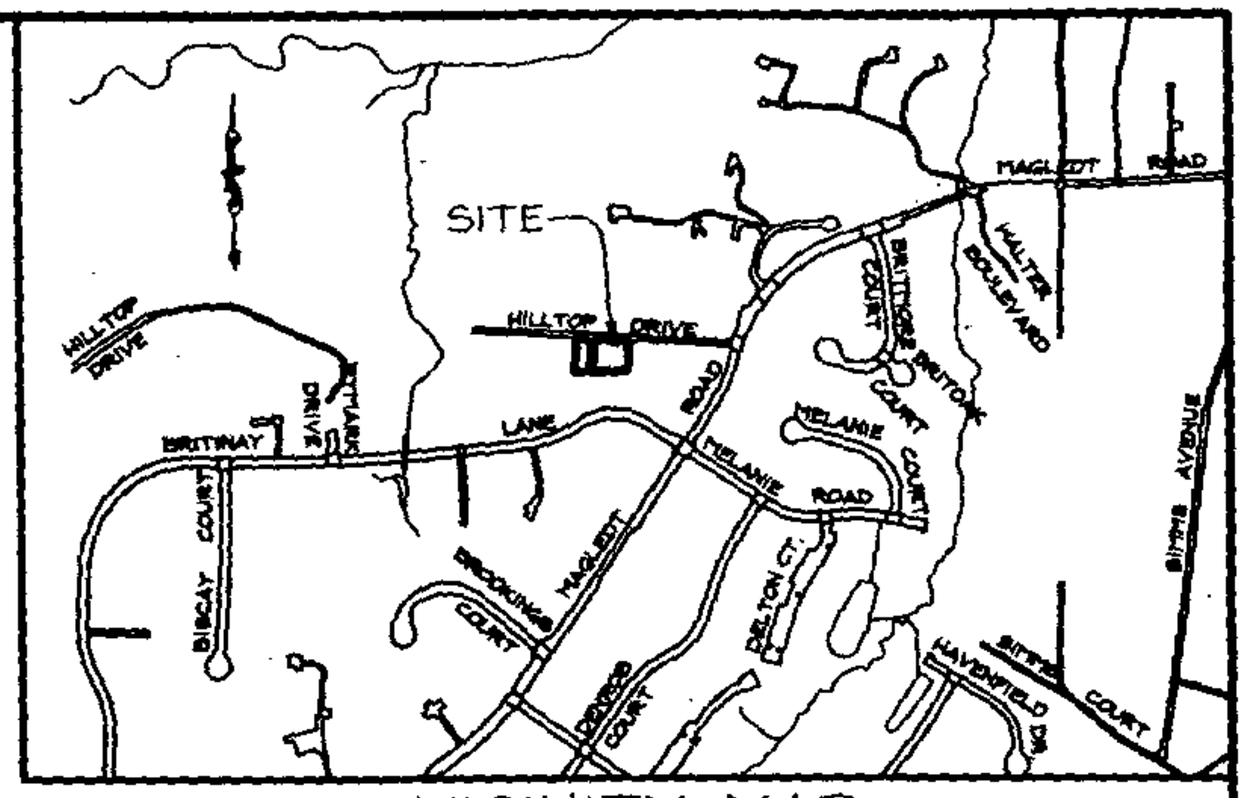
Thank you for considering our request. If you should have any question please do not hesitate to contact us.

Yours truly,

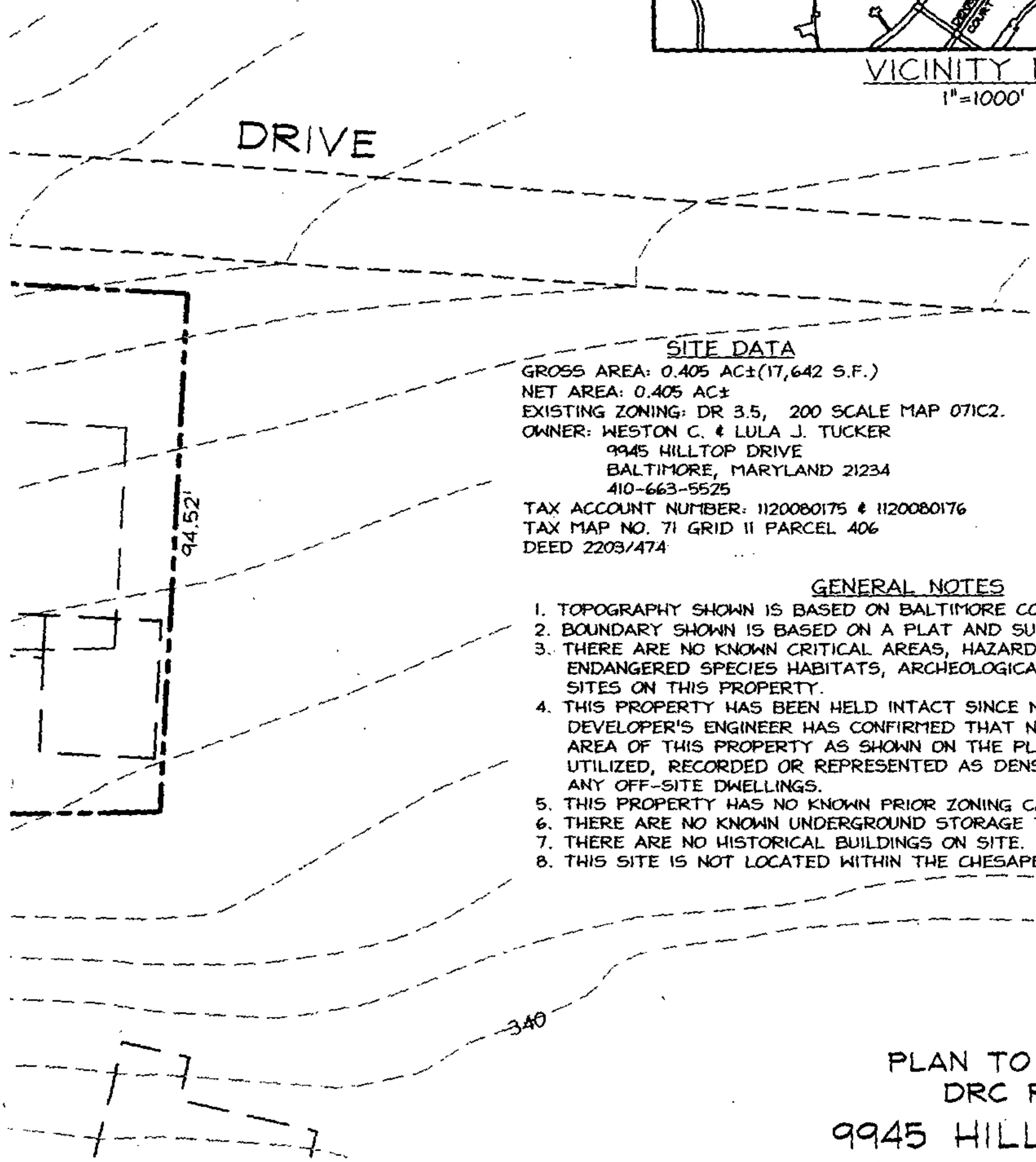
Chuck

Charles E. Merritt
President

Enclosures
~~~~~~~~



VICINITY MAP
1"=1000'



SITE DATA

GROSS AREA: 0.405 AC±(17,642 S.F.)
NET AREA: 0.405 AC±
EXISTING ZONING: DR 3.5, 200 SCALE MAP 071C2.
OWNER: WESTON C. & LULA J. TUCKER
9945 HILLTOP DRIVE
BALTIMORE, MARYLAND 21234
410-663-5525
TAX ACCOUNT NUMBER: 1120080175 & 1120080176
TAX MAP NO. 71 GRID 11 PARCEL 406
DEED 2203/474

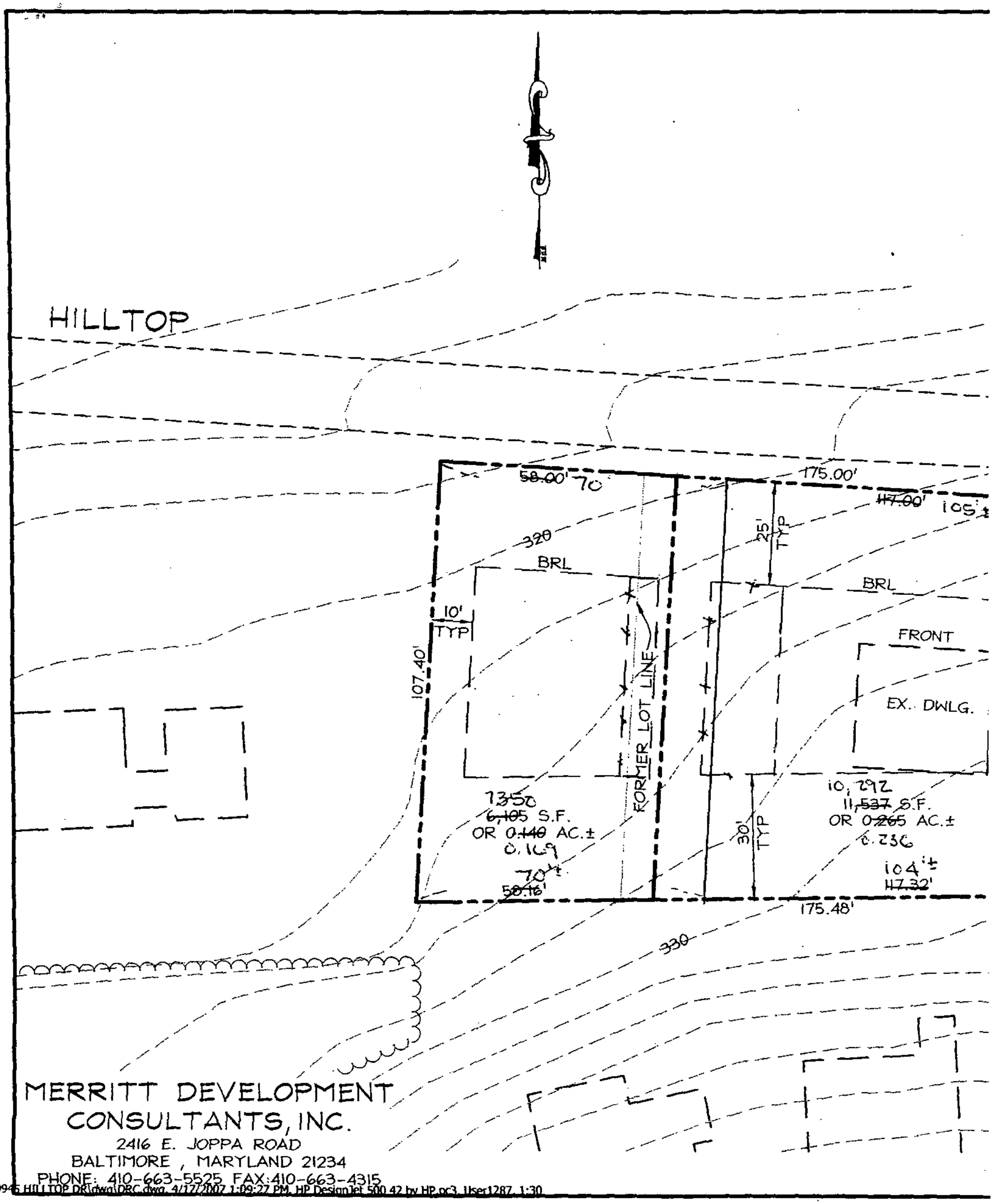
GENERAL NOTES

1. TOPOGRAPHY SHOWN IS BASED ON BALTIMORE COUNTY GIS TILE 71C2.
2. BOUNDARY SHOWN IS BASED ON A PLAT AND SURROUNDING DEEDS.
3. THERE ARE NO KNOWN CRITICAL AREAS, HAZARDOUS WASTE SITES, ENDANGERED SPECIES HABITATS, ARCHEOLOGICAL OR HISTORICAL SITES ON THIS PROPERTY.
4. THIS PROPERTY HAS BEEN HELD INTACT SINCE NOVEMBER, 1952. THE DEVELOPER'S ENGINEER HAS CONFIRMED THAT NO PART OF THE GROSS AREA OF THIS PROPERTY AS SHOWN ON THE PLAN HAS EVER BEEN UTILIZED, RECORDED OR REPRESENTED AS DENSITY OR AREA TO SUPPORT ANY OFF-SITE DWELLINGS.
5. THIS PROPERTY HAS NO KNOWN PRIOR ZONING CASES.
6. THERE ARE NO KNOWN UNDERGROUND STORAGE TANKS ON SITE.
7. THERE ARE NO HISTORICAL BUILDINGS ON SITE.
8. THIS SITE IS NOT LOCATED WITHIN THE CHESAPEAKE BAY CRITICAL AREA.

PLAN TO ACCOMPANY DRC REQUEST

9945 HILLTOP DRIVE

DISTRICT 11C5 BALTIMORE COUNTY, MD
SCALE: 1"=30' APRIL 17, 2007



:\9945 HILLTOP DR\dwg\DRC.dwg, 4/17/2007 1:09:27 PM, HP DesignJet 500 42 by HP.pc3, User1287, 1:30

old Lot.

CBA People's Counsel Ex: 3

Maryland Department of Assessments a..d Taxation
BALTIMORE COUNTY
Real Property Data Search (2007 vw3.1)

Go Back
View Map
New Search

*** * DELETED 01/31/2008**
*** ***

Account Identifier: **District** - 11 **Account Number** - 1120080176

Owner Information

Owner Name:	TUCKER WESTON C TUCKER LULA J	**Use:**	RESIDENTIAL
		Principal Residence:	NO
Mailing Address:	3835 BAY DR BALTIMORE MD 21220-4407	**Deed Reference:**	1) 2)

Location & Structure Information

Premises Address
MAGLEDT AVE

Legal Description
LOT SS 30 FT R OF W
LEADING TO MAGLEDT AVE

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
71	11	406						3	Plat Ref:

Special Tax Areas
Town
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
0000		5,150.00 SF	04

Stories	Basement	Type	Exterior

Value Information

	Base Value	Value As Of 01/01/2006	Phase-in Assessments As Of 07/01/2007	As Of 07/01/2008
Land	1,280	1,280		
Improvements:	0	0		
Total:	1,280	1,280	1,280	1,280
Preferential Land:	0	0	0	0

Transfer Information

Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**

Exemption Information

Partial Exempt Assessments	Class	07/01/2007	07/01/2008
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:
* NONE *

Old Cd

Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search (2007 vw5.1)

Go Back
View Map
New Search

Account Identifier: **District** - 11 **Account Number** - 1120080175

Owner Information

Owner Name:	TUCKER WESTON C TUCKER LULA J	**Use:**	RESIDENTIAL
		Principal Residence:	NO
Mailing Address:	3835 BAY DR BALTIMORE MD 21220-4407	**Deed Reference:**	1) / 2203/ 474 2)

Location & Structure Information

Premises Address
9945 HILLTOP DR
BALTIMORE 21234-1812

Legal Description
*
SS HILLTOP DR
375FT W MAGLEDT AVE

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
71	11	406						3	Plat Ref:

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

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1953	1,386 SF	12,250.00 SF	04

Stories	Basement	Type	Exterior
1 1/2	YES	STANDARD UNIT	FRAME

Value Information

	Base Value	Value As Of 01/01/2006	Phase-in Assessments As Of 07/01/2007	As Of 07/01/2008
Land	43,310	103,310		
Improvements:	76,260	100,680		
Total:	119,570	203,990	175,850	203,990
Preferential Land:	0	0	0	0

Transfer Information

Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**

Exemption Information

Partial Exempt Assessments	Class	07/01/2007	07/01/2008
County	000	0	0
State	000	0	0
Municipal	000	0	0

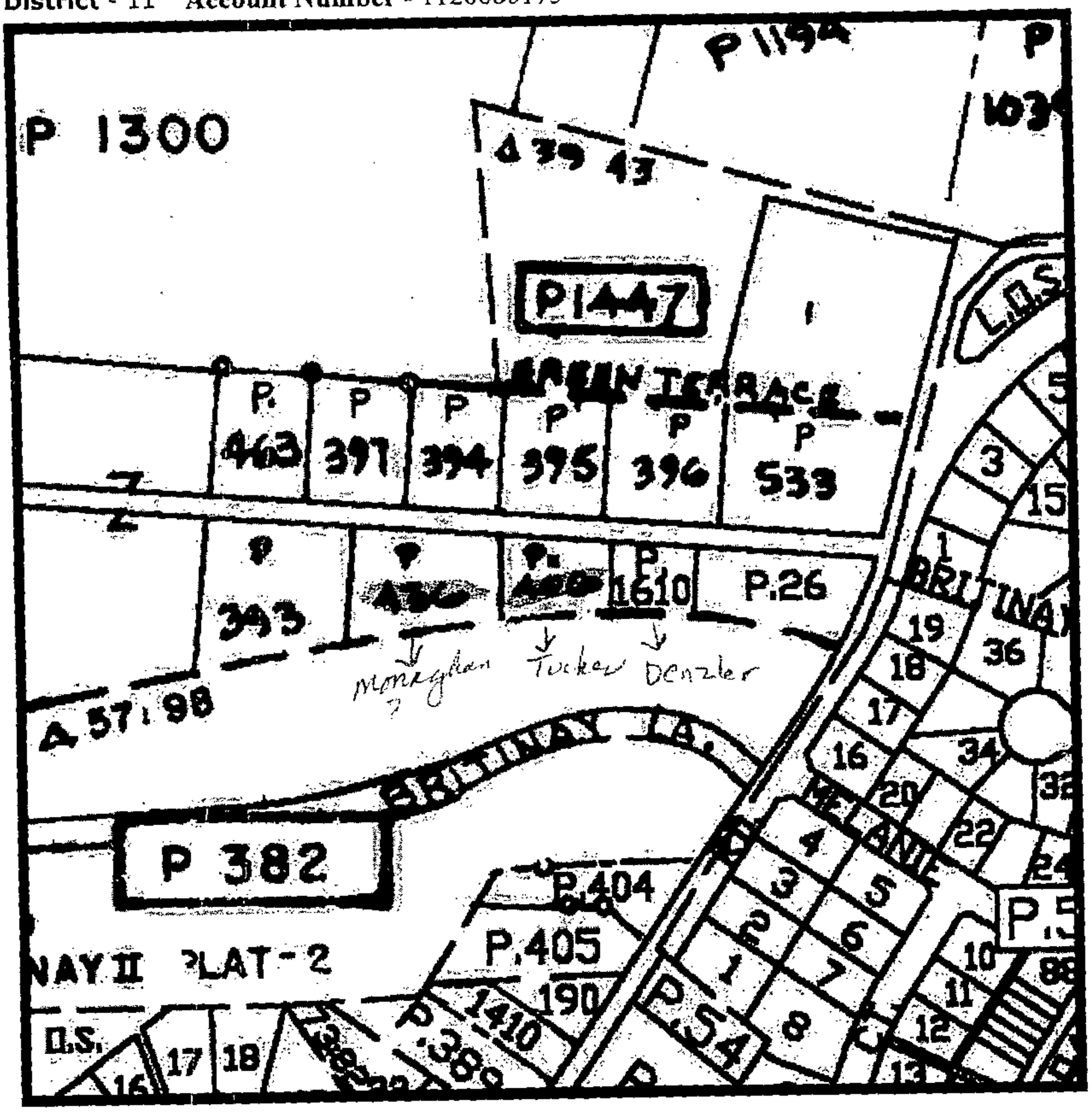
Tax Exempt: NO
Exempt Class:

Special Tax Recapture:
* NONE *

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

Go Back
View Map
New Search

District - 11 **Account Number** - 1120080175



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For more information on electronic mapping applications, visit the Maryland Department of Planning web site at www.mdp.state.md.us/webcom/index.html

PC Ex: 4

Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search (2007 vw3.1)

Go Back
View Map
New Search

Account Identifier: **District -** 11 **Account Number -** 2500003527

Owner Information

Owner Name:	GARNER PAUL J GARNER TIFFANY A	**Use:**	RESIDENTIAL
		Principal Residence:	NO
Mailing Address:	952 ELLENDALE DR TOWSON MD 21286-1510	**Deed Reference:**	1) /26641/ 602 2)

Location & Structure Information

Premises Address
9945 HILLTOP DR

Legal Description
.237AC
9945 HILLTOP DR SS
400FT W OF MAGLEDT RD

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
71	11	406						3	Plat Ref:

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

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1953	1,386 SF	10,331.00 SF	04

Stories	Basement	Type	Exterior
1 1/2	YES	STANDARD UNIT	FRAME

Value Information

	Base Value	Value As Of 01/01/2006	Phase-in Assessments As Of 07/01/2007	As Of 07/01/2008
Land	42,840	102,830		
Improvements:	76,260	100,680		
Total:	119,100	203,510	0	203,510
Preferential Land:	0	0	0	0

Transfer Information

Seller:	TUCKER NANCY S P/R	**Date:**	02/06/2008	**Price:**	$180,000
Type:	IMPROVED ARMS-LENGTH	**Deed1:**	/26641/ 602	**Deed2:**	
Seller:	TUCKER WESTON/LULU J	**Date:**	01/14/2008	**Price:**	$0
Type:	NOT ARMS-LENGTH	**Deed1:**	/26572/ 489	**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	

Exemption Information

Partial Exempt Assessments	Class	07/01/2007	07/01/2008
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:
* NONE *

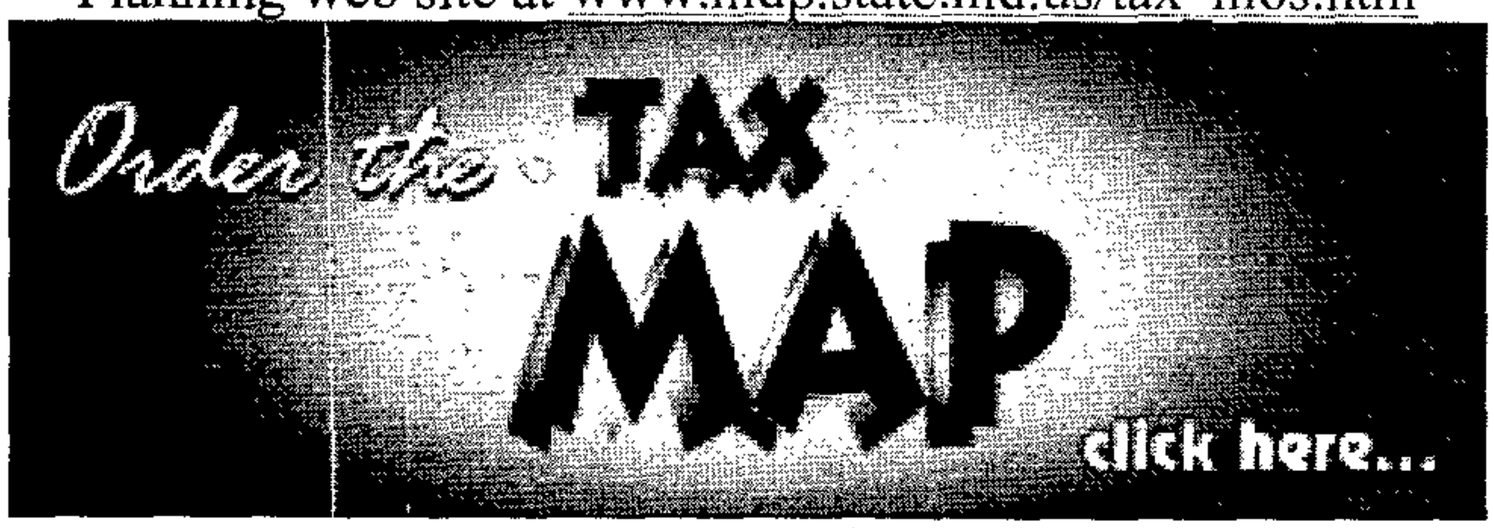
PC Ex: 4

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

Go Back
View Map
New Search

A map was not found for this property

Property maps provided courtesy of the Maryland Department of Planning ©2004.
For more information on electronic mapping applications, visit the Maryland Department of Planning web site at www.mdp.state.md.us/tax_mos.htm



Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search (2007 vw3.1)

Go Back
View Map
New Search

Account Identifier: **District** - 11 **Account Number** - 2500003528

Owner Information

Owner Name:	JFB RENOVATION & CONSTRUCTION INC	**Use:**	RESIDENTIAL
		Principal Residence:	NO
Mailing Address:	2095 RIDGEMOUNT DR FINKSBURG MD 21048	**Deed Reference:**	1) /26633/ 35 2)

Location & Structure Information

Premises Address
9941 HILLTOP DR

Legal Description
.168AC
SS HILLTOP DRIVE
500FT W OF MAGLEDT RD

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
71	11	1670						3	Plat Ref:

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

Primary Structure Built	Enclosed Area	Property Land Area	County Use
0000		7,338.00 SF	04

Stories	Basement	Type	Exterior

Value Information

	Base Value	Value As Of 01/01/2006	Phase-in Assessments As Of 07/01/2007	As Of 07/01/2008
Land	42,100	102,080		
Improvements:	0	0		
Total:	42,100	102,080	0	102,080
Preferential Land:	0	0	0	0

Transfer Information

Seller:	TUCKER NANCY S P/R	**Date:**	02/01/2008	**Price:**	$70,000
Type:	UNIMPROVED ARMS-LENGTH	**Deed1:**	/26633/ 35	**Deed2:**	
Seller:	TUCKER WESTON/LULU J	**Date:**	01/14/2008	**Price:**	$0
Type:	NOT ARMS-LENGTH	**Deed1:**	/26572/ 489	**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	

Exemption Information

Partial Exempt Assessments	Class	07/01/2007	07/01/2008
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

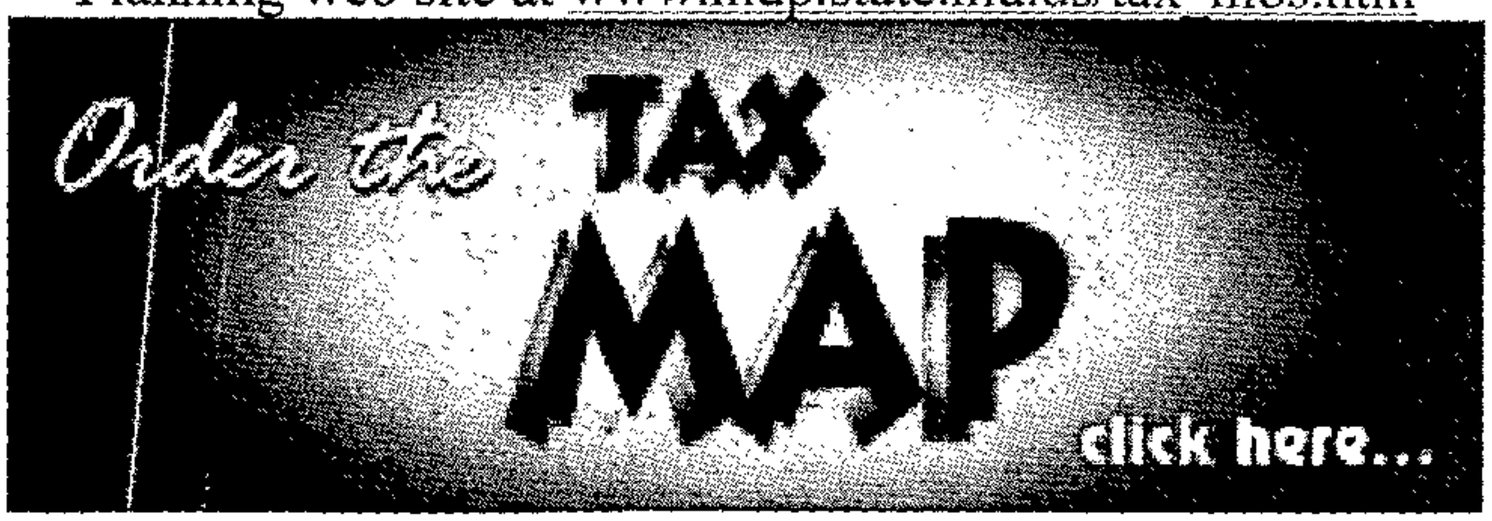
Special Tax Recapture:
* NONE *

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

Go Back
View Map
New Search

A map was not found for this property

Property maps provided courtesy of the Maryland Department of Planning ©2004.
For more information on electronic mapping applications, visit the Maryland Department of Planning web site at www.mdp.state.md.us/tax_mos.htm



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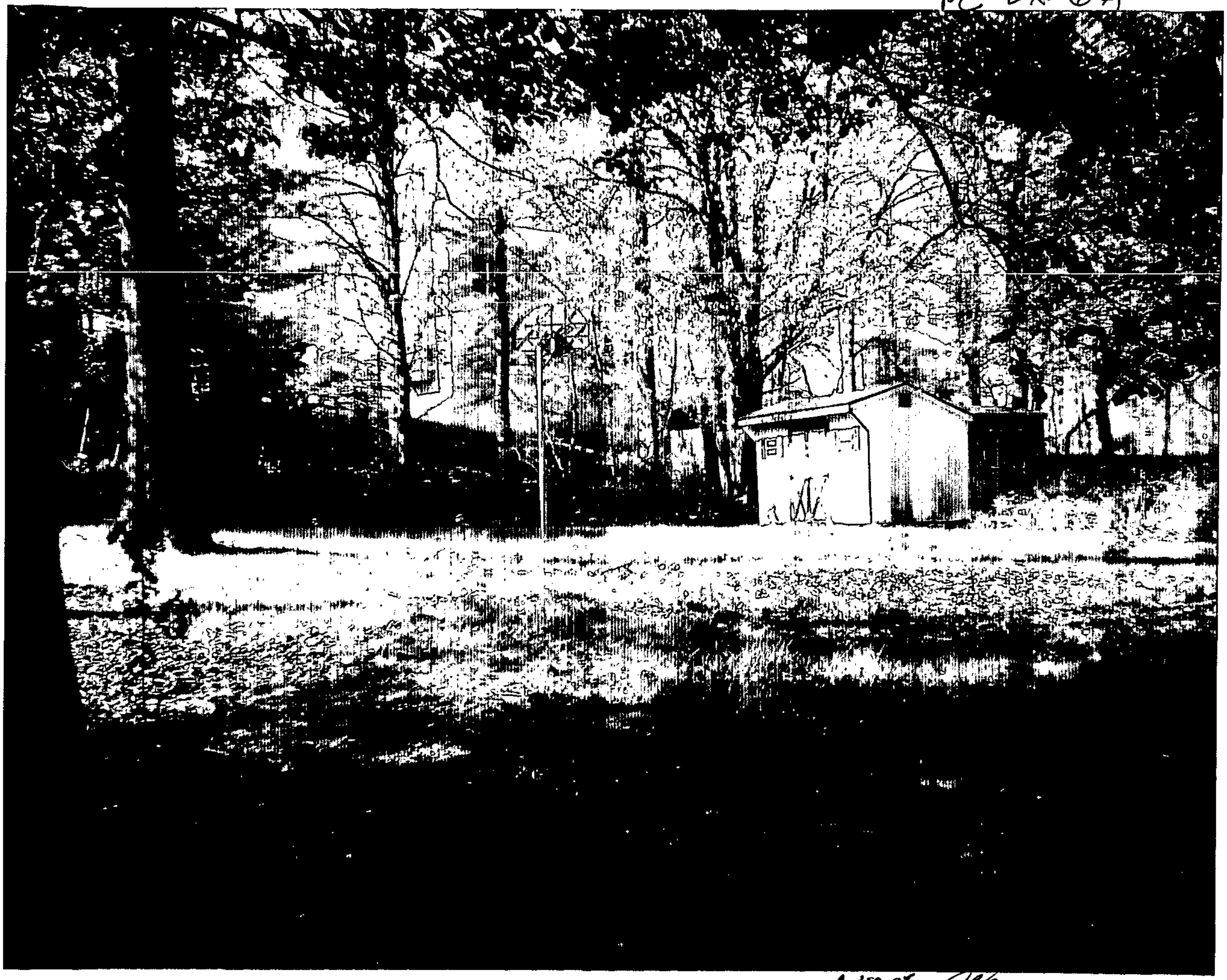
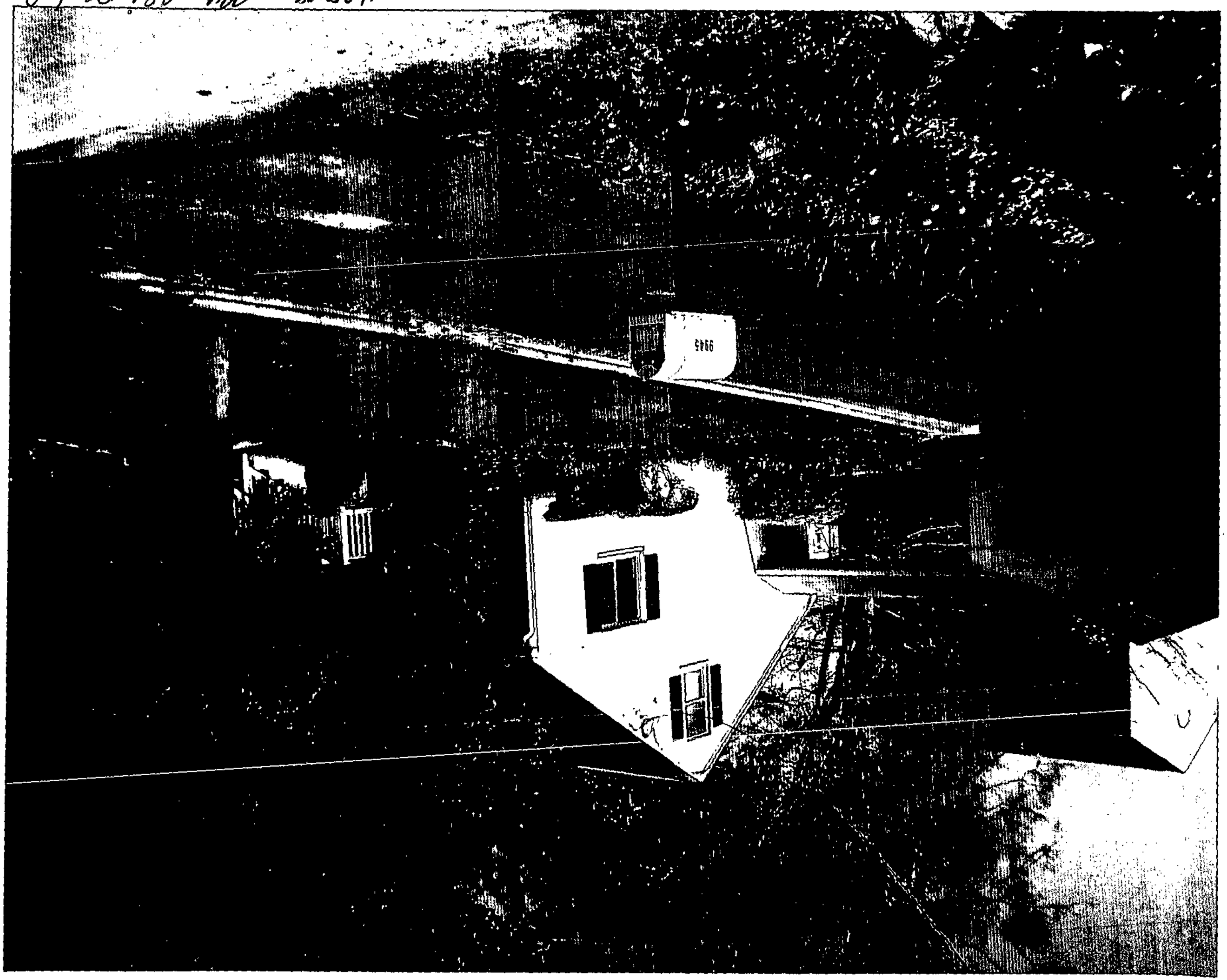


4-28-08 SR6

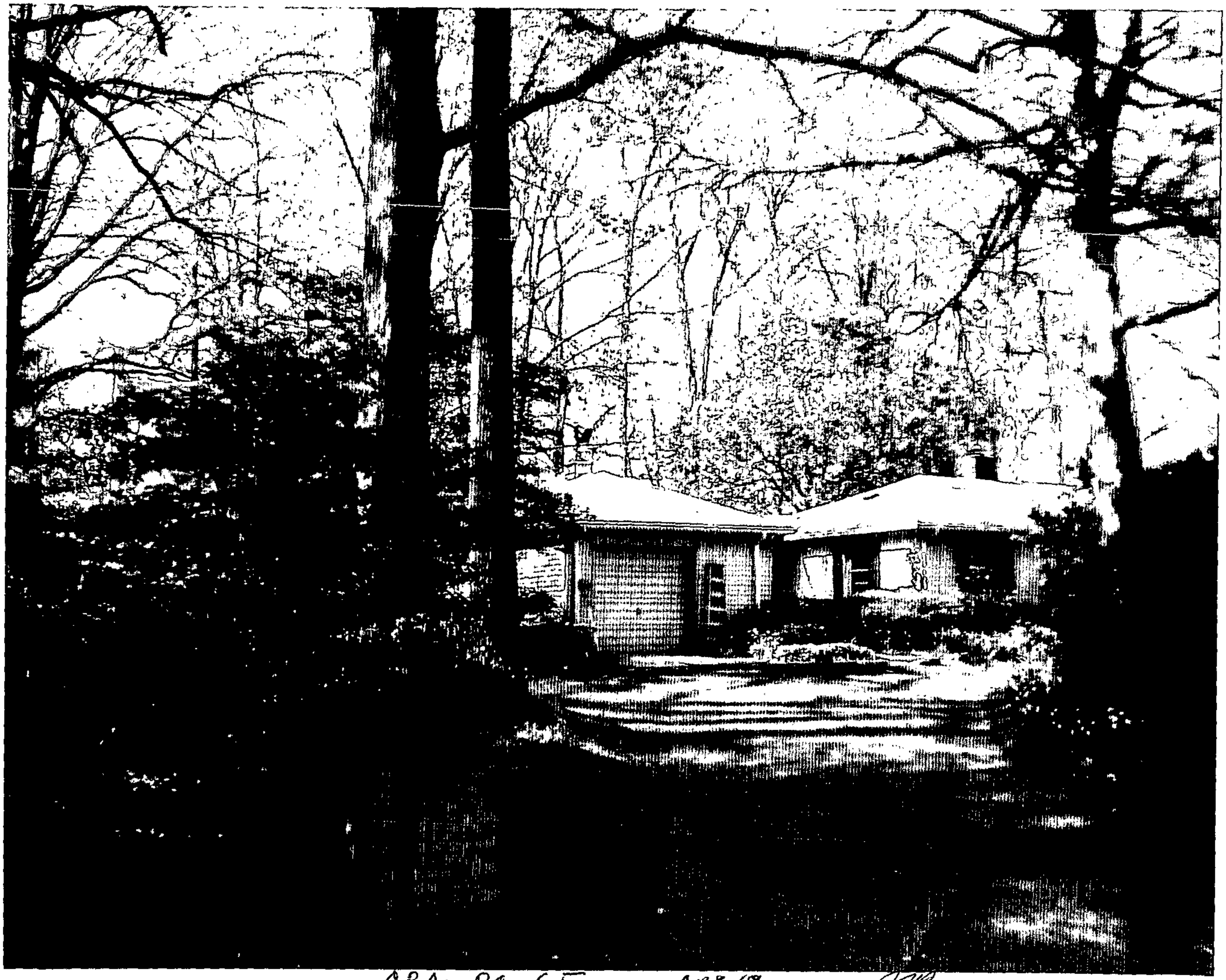
4-25-05 9910 CBA PE 66



CBA PC 6C

4-28-08 gjd CBA 6 D PC

CBA PC 6E



CBA PC 6F 9-28-09

CBA PC 8A

Result 1 of 1.

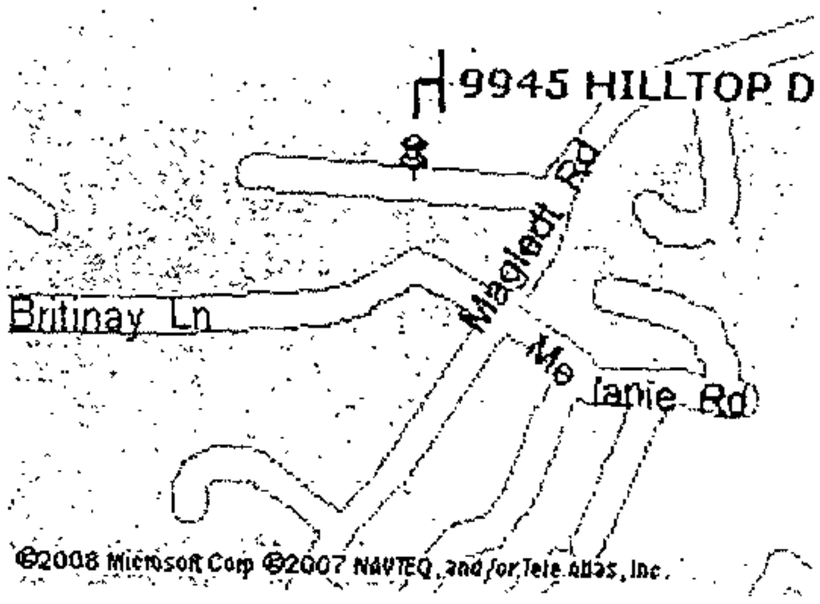
Previous | Next | [1] | Bottom

Metropolitan Regional Information Systems, Inc.

BC6357625 - BALTIMORE
9945 HILLTOP DR, PARKVILLE, MD 21234

Full Listing
Residential

No Photo Available



Status: Withdrn
Ownership: Fee Simple
Sale or Rental: Sale
Listing Type: Excl. Agency
Adv Sub: Carney
Legal Sub:
Condo/Coop Proj Name:

Style: Cape Cod
Type: Detached
TH Type:
#Levels: 3
#Fireplaces: 0
Model:

List Price: $324,900
Inc City/Town:
Zip: 21234 - 1812
Election District: 11
Map Coord: XXXX

Area:

Tax ID: 04111120080175
HOA Fee: /
C/C Fee: /

Total Taxes: $2,762
Tax Year: 2006
Lot AC/SF: .28/12,250

Level Location:
Age: 55
Year Built: 1953

Elementary:

Middle:

High:

INTERIOR

	Total	Main	Upper 1	Upper 2	Lower 1	Lower 2
Bedrooms:	4	2	2	0	0	0
Full Baths:	1	1	0	0	0	0
Half Baths:	0	0	0	0	0	0

Room	Dimensions	Level	Flooring	Fireplace
Living Room	x	Main	Wood Under Carpet	
Dining Room	x			
Bedroom-Master	x			
Bedroom-First	x	Main	Wood Under Carpet	
Bedroom-Second	x	Main	Wood Under Carpet	
Bedroom-Third	x	Upper 1	Wood	
Bedroom-Fourth	x	Upper 1	Wood	
Bedroom-Fifth	x			
Bedroom-Master #2	x			

Sitting Room	x		
Kitchen	x	Main	Vinyl
Recreation Room	x		
Family Room	x		
Den	x		
Unfinished Basement	x	Lower 1	Other
Other Room #1	x		
Other Room #2	x		
Other Room #3	x		
Library	x		
Breakfast Room	x		
Foyer	x		
Garage	x		
Carport	x		

FEATURES
Rooms: Living Room,Bedroom-Second,Bedroom-Third,Bedroom-Fourth,Kitchen,Garage,Unfinished Bsmt,Bedroom-Fir
Main Entrance:
Interior Style: Floor Plan-Open
Dining/Kitchen: Kit-Table Space,Kitchenette
Appliances: Refrigerator,Stove
Amenities: Drapery Rods,Drapes/Curtains,Entry Lvl BR,Shades/Blinds,W/W Carpeting,Washer/Dryer Hookup
Security:
Windows/Doors:
Walls/Ceilings:

Basement: Yes
Foundation:
Basement Type: Full,Unfinished
Basement Entrance: Connect Stair
Handicap: Other
Unit Description:
R-Factor Basement:
R-Factor Ceilings:
R-Factor Walls:
House Dimensions: x
SQFT-Tot Fin: 0
Above Grade Unfinished:
Above Grade Finished:
Below Grade Finished:
Below Grade Unfinished:
Directions:
Joppa to Magledt Road to Left on Hilltop

REMARKS
Internet/Public:
This property is being conveyed with the lot next door wich is .12 acres of land.

EXTERIOR
Building Sites/Lots:
Lot Dimension: x x
Lot Acres/Sqft: .28/12,250
Exterior:
Exterior Construction: Vinyl Siding
Lot Description:
Other Buildings:
Original Builder:
New Construction: No
Property Condition:
Roads:
Roofing:
Soil Type:
Topography:
Transportation:
View/Exposure:
Year Converted:
Year Renovated:

PARKING
Parking: Garage
Garage Type: Detached
Gar/Carpt/Assgn Sp: 2//
Carport Type:
Parking Space #: 6
Parking Incl in List Price: Yes
Parking Incl in Sale Price: No
Parking Block/Square:

UTILITIES
Heat System: Forced Air
Heat Fuel: Natural Gas
Cool System: Ceiling Fan(s),Central A/C
Cool Fuel: Natural Gas

Water: Public
Sewer Septic: Public Sewer
TV/Cable/Comm:

Hot Water: Natural Gas

FINANCIAL INFORMATION

Earnest Money:
Total Taxes: $2,762
Tax Year: 2006

Other Fees: /
City/Town Tax:
Refuse Fee:
Water/Sewer Hook-up:
Special Tax Assess: $971
Improvements: $100,680
Investor Ratio:

County Tax: $1,790
Tap:
Front Foot Fee:
Yr Assessed: 2005
Total Tax Assessment: $203,990
Total Units:

Assessments:
Land: $103,310

Project Approved:
Possession: Immediate
Tenant Rights:

HOA/CONDO
HOA Fee: /
Condo/Coop Fee: /
HOA/Condo/Coop Amenities:
HOA/Condo/Coop Rules:
HOA/Condo/Coop Fee Includes:
HOA/Condo/Coop Management:

HOA: No

LEGAL INFORMATION
Tax Map:
Section:
Liber:
Zoning Code:
Historic Designation ID:
Contract Info: None
Disclosures: Prop Disclaimer
Documents:
Special Permits:

Lot #:
Phase:
Folio:

Master Plan Zoning:

Block/Square:
Parcel Number: 406

PROPERTY MANAGEMENT
Property Mgmt Company:
Prop Mgr's Name:

Office:
Phone:

Broker Name: RE/MAX Elite Realty

List Date: 30-Mar-2007
VRP: No
Low Price: $324,900

Orig List Price: $324,900
Prior List Price:
Status Change Date: 10-Dec-2007

Off Mkt Date: 10-Dec-2007
DOM-MLS: 15
DOM-Prop: 27

SOLD INFORMATION
Close Date: 31-Dec-2007

Close Price:

Seller Subsidy: $0

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Information is believed to be accurate, but should not be relied upon without verification.

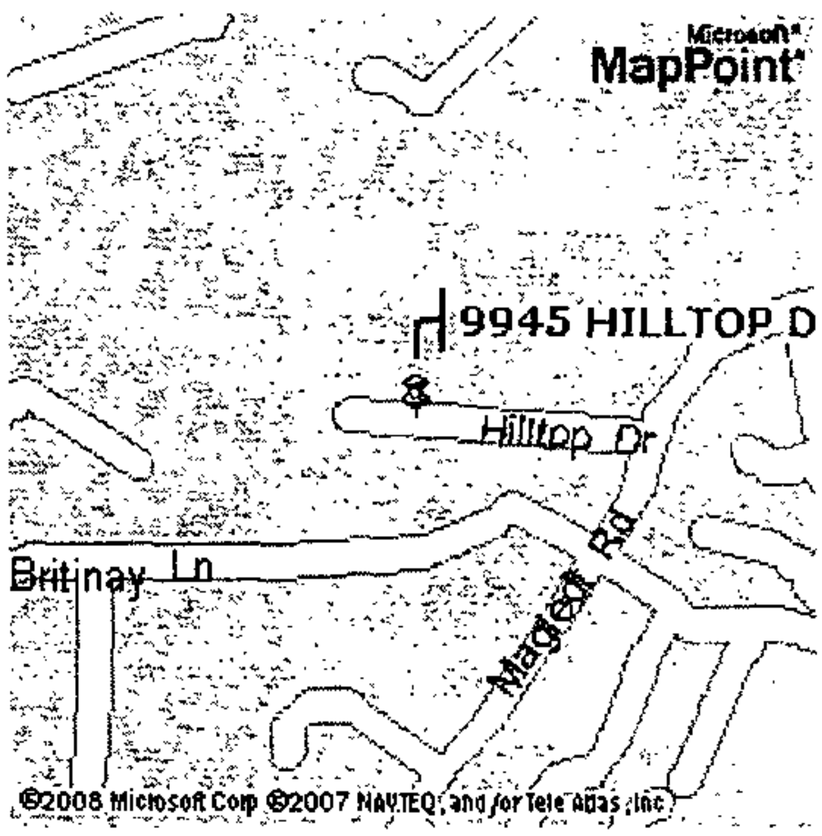
Accuracy of square footage, lot size and other information is not guaranteed.

CBA PC-8B

Metropolitan Regional Information Systems, Inc.

BC6610787 - BALTIMORE
9945 HILLTOP DR, PARKVILLE, MD 21234

Full Listing
Residential



Status: Sold
Close Date: 23-Jan-2008
Ownership: Fee Simple
Sale or Rental: Sale
Listing Type: Excl. Agency
Adv Sub: Carney
Legal Sub:
Condo/Coop Proj Name:

Style: Cape Cod
Seller Subsidy: $0
Type: Detached
TH Type:
#Levels: 3
#Fireplaces: 0
Model:

List Price: $300,000
Close Price: $250,000
Inc City/Town:
Zip: 21234 - 1812
Election District: 11
Map Coord: XXXX

Area:

Tax ID: 04111120080175
HOA Fee: /
C/C Fee: /

Total Taxes: $3,101
Tax Year: 2007
Lot AC/SF: .28/12,250

Level Location:
Age: 55
Year Built: 1953

Elementary:

Middle:

High:

INTERIOR

	Total	Main	Upper 1	Upper 2	Lower 1	Lower 2
Bedrooms:	4	2	2	0	0	0
Full Baths:	1	1	0	0	0	0
Half Baths:	0	0	0	0	0	0

Room	Dimensions	Level	Flooring	Fireplace
Living Room	x	Main	Wood Under Carpet	
Dining Room	x			
Bedroom-Master	x			
Bedroom-First	x	Main	Wood Under Carpet	
Bedroom-Second	x	Main	Wood Under Carpet	
Bedroom-Third	x	Upper 1	Wood	
Bedroom-Fourth	x	Upper 1	Wood	
Bedroom-Fifth	x			

Bedroom-Master #2	x		
Sitting Room	x		
Kitchen	x	Main	Vinyl
Recreation Room	x		
Family Room	x		
Den	x		
Unfinished Basement	x	Lower 1	Other
Other Room #1	x		
Other Room #2	x		
Other Room #3	x		
Library	x		
Breakfast Room	x		
Foyer	x		
Garage	x	Main	Other
Carport	x		

FEATURES
Rooms: Living Room,Bedroom-Second,Bedroom-Third,Bedroom-Fourth,Kitchen,Garage,Unfinished Bsmt,Bedroom-Fir
Main Entrance:
Interior Style: Floor Plan-Traditional
Dining/Kitchen: Kit-Table Space
Appliances: Refrigerator,Stove
Amenities: Drapery Rods,Drapes/Curtains,Entry Lvl BR,Shades/Blinds,W/W Carpeting,Washer/Dryer Hookup
Security:
Windows/Doors:
Walls/Ceilings:

Basement: Yes
Foundation:
Basement Type: Full,Unfinished
Basement Entrance: Connect Stair
Handicap: None
Unit Description:
R-Factor Basement:
R-Factor Ceilings:
R-Factor Walls:
House Dimensions: x
SQFT-Tot Fin: 0
Above Grade Unfinished:
Above Grade Finished:
Below Grade Finished:
Below Grade Unfinished:
Directions:
Joppa to Magledt to Left on Hilltop

REMARKS
Internet/Public:
Beautiful home on quiet dead end street*This Cape Cod Offers 4 BR and 1 BA*New Windows and features a Very Larg Deatched Two Car Garage and lots of land*

EXTERIOR
Building Sites/Lots:
Lot Dimension: x x
Lot Acres/Sqft: .28/12,250
Exterior:
Exterior Construction: Vinyl Siding
Lot Description:
Other Buildings:
Original Builder:
New Construction: No
Property Condition: As-is condition,Rehab potential,Shows Well
Roads:
Roofing:
Soil Type:
Topography:
Transportation:
View/Exposure:
Year Converted:
Year Renovated:

PARKING
Parking: Drvwy/Off Str,Garage
Garage Type: Detached
Gar/Carpt/Assgn Sp: 2//
Carport Type:
Parking Space #:
Parking Incl in List Price: Yes
Parking Incl in Sale Price: Yes
Parking Block/Square:

UTILITIES

Heat System: Forced Air
Cool System: Ceiling Fan(s),Central A/C
Water: Public
Sewer Septic: Public Sewer
TV/Cable/Comm:

Heat Fuel: Natural Gas
Cool Fuel: Natural Gas
Hot Water: Natural Gas

FINANCIAL INFORMATION

Earnest Money:
Total Taxes: $3,101
Tax Year: 2007

Assessments:
Land: $103,310

Project Approved:
Possession: Immediate,Negotiable
Tenant Rights:

Other Fees: /
City/Town Tax:
Refuse Fee:
Water/Sewer Hook-up:
Special Tax Assess: $969
Improvements: $100,680
Investor Ratio:

County Tax: $2,131
Tap:
Front Foot Fee:
Yr Assessed: 2007
Total Tax Assessment: $203,990
Total Units:

HOA/CONDO
HOA Fee: /
Condo/Coop Fee: /
HOA/Condo/Coop Amenities:
HOA/Condo/Coop Rules:
HOA/Condo/Coop Fee Includes:
HOA/Condo/Coop Management:

HOA: No

LEGAL INFORMATION
Tax Map:
Section:
Liber:
Zoning Code:
Historic Designation ID:
Contract Info: None
Disclosures: None
Documents:
Special Permits:

Lot #:
Phase:
Folio:

Master Plan Zoning:

Block/Square:
Parcel Number: 406

PROPERTY MANAGEMENT
Property Mgmt Company:
Prop Mgr's Name:

Office:
Phone:

Broker Name: RE/MAX American Dream

List Date: 10-Dec-2007
VRP: No
Low Price: $300,000

Orig List Price: $324,900
Prior List Price: $324,900
Status Change Date: 23-Jan-2008

Off Mkt Date:
DOM-MLS: 12
DOM-Prop: 27

SOLD INFORMATION
Contract Date: 22-Dec-2007
Close Date: 23-Jan-2008
New 1st Trust Loan Amt:$210,000
Selling/Rental Office: RMEL1

Sell/Rent Agency:Buyer Agency
Close Price: $250,000
New 1st Trust Loan Type:Conventional

Seller Subsidy: $0

Long and Foster
Timonium Office
410-804-4601

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Information is believed to be accurate, but should not be relied upon without verification.

Accuracy of square footage, lot size and other information is not guaranteed.

CBA PC-8C

Result **2** of **2**.

Previous | Next | 1 **[2]** | Bottom

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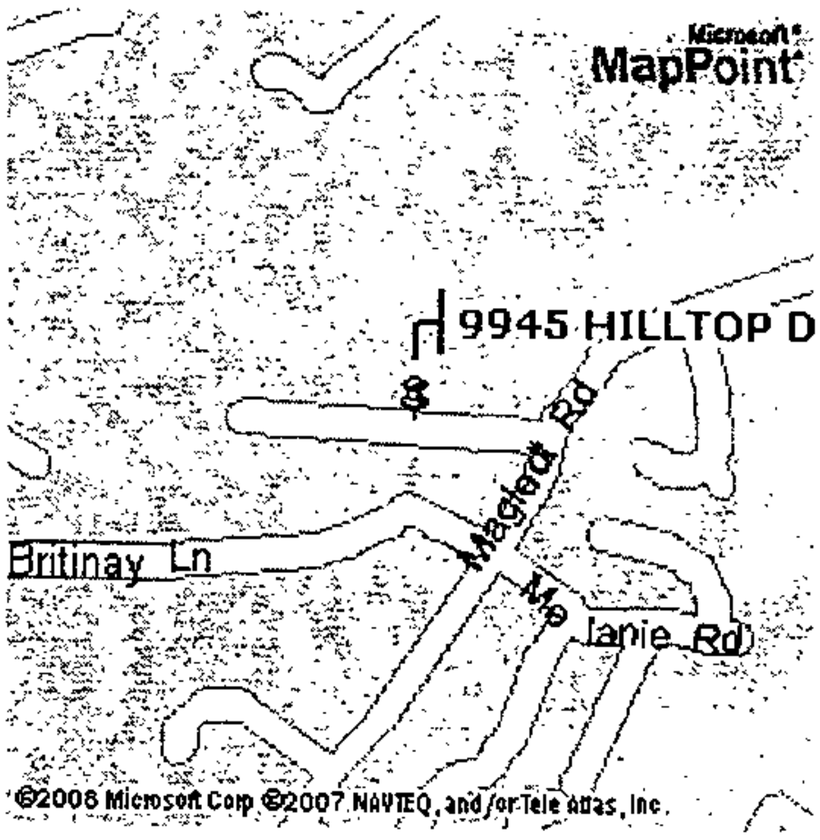
Metropolitan Regional Information Systems, Inc.

BC6727095 - BALTIMORE
9945 HILLTOP DR, PARKVILLE, MD 21234

Full Listing
Residential



Status: Active
Ownership: Fee Simple
Sale or Rental: Sale
Listing Type: Excl. Right
Adv Sub: Carney
Legal Sub:
Condo/Coop Proj Name:

Style: Cape Cod
Type: Detached
TH Type:
#Levels: 3
#Fireplaces: 0
Model:

List Price: $299,900
Inc City/Town:
Zip: 21234 - 1812
Election District: 11
Map Coord: 28 H 6

Area:

Tax ID: 04111120080175
HOA Fee: /
C/C Fee: /

Total Taxes: $3,101
Tax Year: 2007
Lot AC/SF: .28/12,250

Level Location:
Age: 55
Year Built: 1953

Elementary:

Middle:

High:

INTERIOR

	Total	Main	Upper 1	Upper 2	Lower 1	Lower 2
Bedrooms:	4	2	2	0	0	0
Full Baths:	2	1	0	0	1	0
Half Baths:	0	0	0	0	0	0

Room	Dimensions	Level	Flooring	Fireplace
Living Room	x			
Dining Room	x			
Bedroom-Master	15 x 11	Main	Hardwood	
Bedroom-First	x			
Bedroom-Second	11 x 11	Main	Hardwood	
Bedroom-Third	13 x 13	Upper 1	Carpet	
Bedroom-Fourth	13 x 12	Upper 1	Carpet	
Bedroom-Fifth	x			
Bedroom-Master #2	x			

Sitting Room	x		
Kitchen	12 x 11	Main	Ceramic Tile
Recreation Room	31 x 12	Lower 1	Carpet
Family Room	17 x 15	Main	Wood Under Carpet
Den	x		
Unfinished Basement	x		
Other Room #1	x		
Other Room #2	x		
Other Room #3	x		
Library	x		
Breakfast Room	x		
Foyer	x		
Garage	x		
Carport	x		

FEATURES
Rooms: Bedroom-Master,Bedroom-Second,Bedroom-Third,Bedroom-Fourth,Kitchen,Recreation Rm,Family Rm
Main Entrance:
Interior Style:
Dining/Kitchen: Fam Rm Off Kit,Kit-Breakfast Bar
Appliances: Dishwasher,Dryer,Exhaust Fan,Icemaker,Microwave,Oven/Range-Electric,Refrigerator,Washer
Amenities: Auto Gar Dr Opn,Sump Pump,W/W Carpeting,Wood Floors
Security:
Windows/Doors:
Walls/Ceilings:

Basement: Yes
Foundation:
Basement Type: Full,Fully Finished
Basement Entrance: None
Handicap: None
Unit Description:
R-Factor Basement:
R-Factor Ceilings:
R-Factor Walls:
House Dimensions: x
SQFT-Tot Fin: 0
Above Grade Unfinished:
Above Grade Finished:
Below Grade Finished:
Below Grade Unfinished:
Directions:
FROM 695 NORTH ON HARFORD RD, RIGHT ON JOPPA, LEFT ON MAGLEDT, LEFT ON HILLTOP DR.

REMARKS
Internet/Public:
COMPLETELY RENOVATED LARGE 3 BEDROOM W/DEN THAT CAN BE USED AS 4TH, OVERSIZED 2 CAR GARAGE W/ ELECTRIC, 16" CERAMIC TILE, MAPLE CAB`S W.CROWN, STAINLESS STEEL APPL'S, BREAKFAST BAR, HARDWOOD, HUGE FINISHED REC RM. W/ ROOM FOR A WOODSTOVE, FENCED IN BACK YARD, ALL ON A NO THRU STREET! *ACTUAL LOT SIZE IS .23AC*

EXTERIOR
Building Sites/Lots:
Lot Dimension: x x
Lot Acres/Sqft: .28/12,250
Exterior:
Exterior Construction: Concrete/Block
Lot Description:
Other Buildings:
Original Builder:
New Construction: No
Property Condition: Renov/Remod
Roads:
Roofing:
Soil Type:
Topography:
Transportation:
View/Exposure:
Year Converted:
Year Renovated:

PARKING
Parking: Drvwy/Off Str,Garage
Garage Type: Attached
Gar/Carpt/Assgn Sp: 2//
Carport Type:
Parking Space #: 6
Parking Incl in List Price: Yes
Parking Incl in Sale Price: No
Parking Block/Square:

UTILITIES
Heat System: Heat Pump(s)
Cool System: Ceiling Fan(s),Central A/C
Water: Public
Sewer Septic: Public Sewer
TV/Cable/Comm:

Heat Fuel: Electric
Cool Fuel: Electric
Hot Water: Electric

FINANCIAL INFORMATION

Earnest Money:
Total Taxes: $3,101
Tax Year: 2007

Assessments:
Land: $103,310

Other Fees: /
City/Town Tax:
Refuse Fee:
Water/Sewer Hook-up:
Special Tax Assess: $969
Improvements: $100,680
Investor Ratio:

County Tax: $2,131
Tap:
Front Foot Fee:
Yr Assessed: 2007
Total Tax Assessment: $203,990
Total Units:

Project Approved:
Possession: Negotiable
Tenant Rights:

HOA/CONDO
HOA Fee: /
Condo/Coop Fee: /
HOA/Condo/Coop Amenities:
HOA/Condo/Coop Rules:
HOA/Condo/Coop Fee Includes:
HOA/Condo/Coop Management:

HOA: No

LEGAL INFORMATION
Tax Map:
Section:
Liber:
Zoning Code:
Historic Designation ID:
Contract Info: None
Disclosures: Prop Disclaimer
Documents:
Special Permits:

Lot #:
Phase:
Folio:

Master Plan Zoning:

Block/Square:
Parcel Number: 406

PROPERTY MANAGEMENT
Property Mgmt Company:
Prop Mgr's Name:

Office:
Phone:

Broker Name: RE/MAX Elite Realty

List Date: 11-Apr-2008
VRP: No
Low Price: $299,900

Orig List Price: $299,900
Prior List Price:
Status Change Date: 11-Apr-2008

Off Mkt Date:
DOM-MLS: 62
DOM-Prop: 62

SOLD INFORMATION

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Information is believed to be accurate, but should not be relied upon without verification.

Accuracy of square footage, lot size and other information is not guaranteed.

CBA PC #9

Jack Dillon & 0Associates, LLC

410-337-5455 Fax 410-337-5476 410-221-0060

jackdillon@dmv.com

Baltimore County
207 Courtland Avenue
Towson, Maryland 21204

Dorchester County
922 Parson Drive
Madison, Maryland 21648

Resume of Jack Dillon
Principal of Jack Dillon & Associates, LLC

EDUCATION

B.S. in Business Management
University of Baltimore, Baltimore, MD (1969)
Graduate Summer Program in Urban Planning
Georgia Institute of Technology, Atlanta, GA (1969)
Para Legal Program University of Maryland
University of Maryland University College (1978)
Video & Television Production
Dundalk Community College (1984-1986)
Graduate Program in Landscape Architecture
Morgan State University, Baltimore, MD (1992-1994)
(Did not complete program)

PROFESSIONAL AFFILIATION

American Planning Association

EMPLOYMENT

Mr. Dillon was employed by Baltimore County from 1962 to 1996. He was assigned to a special research project at Johns Hopkins University from 1962 thru 1965 and then two years at the jointly staffed Baltimore City and Baltimore County Analyzer Office at the Ashburton Filtration Plant. He then worked in the Office of Planning and Zoning, eight years in the Zoning Office and the remaining twenty one years in the Planning Office until his retirement in 1996.

In 1997 he accepted the position of Executive Director of The Valleys Planning Council, a private non-profit planning and land preservation organization. He retired from that position in September 2004 when he formed his planning consulting firm.

GENERAL EXPERIENCE

Mr. Dillon, a reputable and dedicated planning professional, has been involved in many aspects of planning and zoning including; community planning, environmental planning, roadway corridor planning, master plans, open space planning, waterfront planning and rural planning. For many years he has specialized in agricultural and rural zoning and land preservation. In addition he has taught planning and zoning related courses at Towson University, University of Maryland @ Baltimore and Catonsville Community College. Mr. Dillon also has extensive experience in working with citizen groups on various planning and zoning issues as well as being qualified as an expert witness in numerous zoning cases. His relative experience is listed below.

SPECIFIC EXPERIENCE

Roadway Corridor Studies

Hanover Pike Corridor Plan, Baltimore County, MD
Reisterstown Road Corridor Study, Baltimore County, MD
Old Court Road Corridor Study, Baltimore County, MD

Streetscape Design Projects (design administration and citizen participation)

Liberty Road Streetscape Design Project - Baltimore County, MD
Pikesville Streetscape Design Project - Baltimore County, MD

Comprehensive Plans

Baltimore County Comprehensive Plan Update, 1989-2000
The Essex Middle River Community Assessment - Baltimore County, MD
Herford Community Plan Assessment - Baltimore County, MD
Plan for Owings Mills - Baltimore County, MD
Concept plan for the Fisherman's Exchange at Dark Head Cove, Middle River, MD
The Baltimore County Comprehensive Zoning Map Process, 1975, 1980, 1984, 1988, 1992, 1996, 2000, 2004.

Landscape and Open Space Planning

The Owings Mills Open Space Plan, Baltimore County, MD
The Enduring Rural Landscape – A Landowners Guide to Landscaping in the Baltimore Countryside - The Valleys Planning Council, 2001
Piney Run Rural Legacy Area, The Valleys Planning Council 1998-2004

Other Significant Accomplishments
Site Selection for the Northwest Area Multipurpose Center (1982)
Proposed Amendment to Baltimore County Zoning Regulations – Sludge Disposal in Baltimore County (1982)
Areas of Critical State Concern in Baltimore County (1979)
Planner responsible for the organization and administering the Agricultural Land Preservation Program for Baltimore County (1979 – 1981)
Primary draftsman of the first four Resource Conservation Zones for Baltimore County - has become the basis for controlling growth in rural Baltimore County (1975)
Development and administration of the video production unit within the Office of Planning
Assisted in the formation and development of the Towson Farmers Market

Volunteer Organizations
President, Susquehanna Point Home Owners Association (2001 – 2003)
Member & Past President, Baltimore County Extension Advisory Committee (2001 – Present)
President, Baltimore County Agricultural Resource Center, Inc. (2004- Present)
Member, Baltimore Metropolitan Council Transportation Advisory Committee (2001 – 2004)
Board Member Scenic Maryland (2005)

SIGNIFICANT PROFESSIONAL AWARDS AND ACCOMPLISHMENTS:
Recipient of the 2004 "McHarg Award" by the Valleys Planning Council May 2004
Recipient of "American Planning Association Lifetime Achievement Award" by the Maryland Chapter of the American Planning Association, October 2004

PROVIDED EXPERT WITNESS TESTIMONY BEFORE COURT AND AGENCY PROCEEDINGS INCLUDING:

The Baltimore County Planning Board
Various Legislative Sub-Committees in Annapolis
The Baltimore County Council
The Baltimore County, MD, Zoning Commissioner
The Baltimore County, MD, Board of Appeals
The Calvert County, MD, Board of Appeals
The District Court of Maryland
The Circuit Court of Maryland
The Planning Commission for the Town of Ocean City, Worchester County, MD
The Dorchester County, MD, Board of Appeals
The Harford County, MD, Zoning Hearing Examiner Board of Appeals
The City of Cambridge, MD, Planning Commission

CBA PC 10

Summary of Lots on Hilltop Drive West of Magledt Drive

Tax Account #	Map/parcel	Address	Lot Area
1105077070	71/ 26	9951 Hilltop Drive	24,829 sq. ft.
2300003919	71/1610	9949 Hilltop Drive	12,632 sq. ft.
1120080175	71/406	9945 Hilltop Drive	12,250 sq. ft.* (prior to 1-31-2008)
1120080176	71/406		5,150 sq. ft.* (prior to 1-31-2008)
1119072975	71/436	9939 Hilltop Drive	25,650 sq. ft.
1108081580	71/393	9933 Hilltop Drive	36,280 sq. ft.
1110046650	71/463	9936 Hilltop Drive	22,990 sq. ft.
1111089560	71/397	9936 A Hilltop Dr.	21,320 sq. ft.
1103052110	71/394	9938 Hilltop Drive	21,460 sq. ft.
1107060380	71/395	9940 Hilltop Drive	22,912 sq. ft.
1112059550	71/396	9946 Hilltop Drive	24,040 sq. ft.
1106021330	71/533	9800 Magledt Rd.	32,670 sq. ft.
2500003527	71/406	9945 Hilltop Drive	10,331 sq. ft.** (after 1-31-2008)
2500003528	71/1670	9941 Hilltop Drive	7,338 sq. ft.** (after 1-31-2008)

Parcel 406 had a total of 17, 669 sq. ft.

All information was obtained from the MD Dept of Assessments and Taxation, Real property Data Search

Prepared by Jack Dillon, Jack Dillon & Assoc. LLC June 9, 2008

Baltimore County Government
Planning Board

CBA PC 11

401 Bosley Avenue
Towson, MD 21204

887-3211

November 13, 1991

The Honorable Douglas B. Riley
Chairman, Baltimore County Council
Court House
Towson, MD 21204

Dear Councilman Riley:

Enclosed is a final report of the Baltimore County Planning Board, adopted November 7, 1991, which I am submitting to you in accordance with Section 26-123(c) of the Baltimore County Code, 1988.

The report is in response to County Council Resolution 1-91, and recommends that amendments be made to the Zoning Regulations for purposes of establishing a special review process for residential development of undersized lots.

Sincerely,

P. David Fields

P. David Fields, Secretary
Baltimore County Planning Board

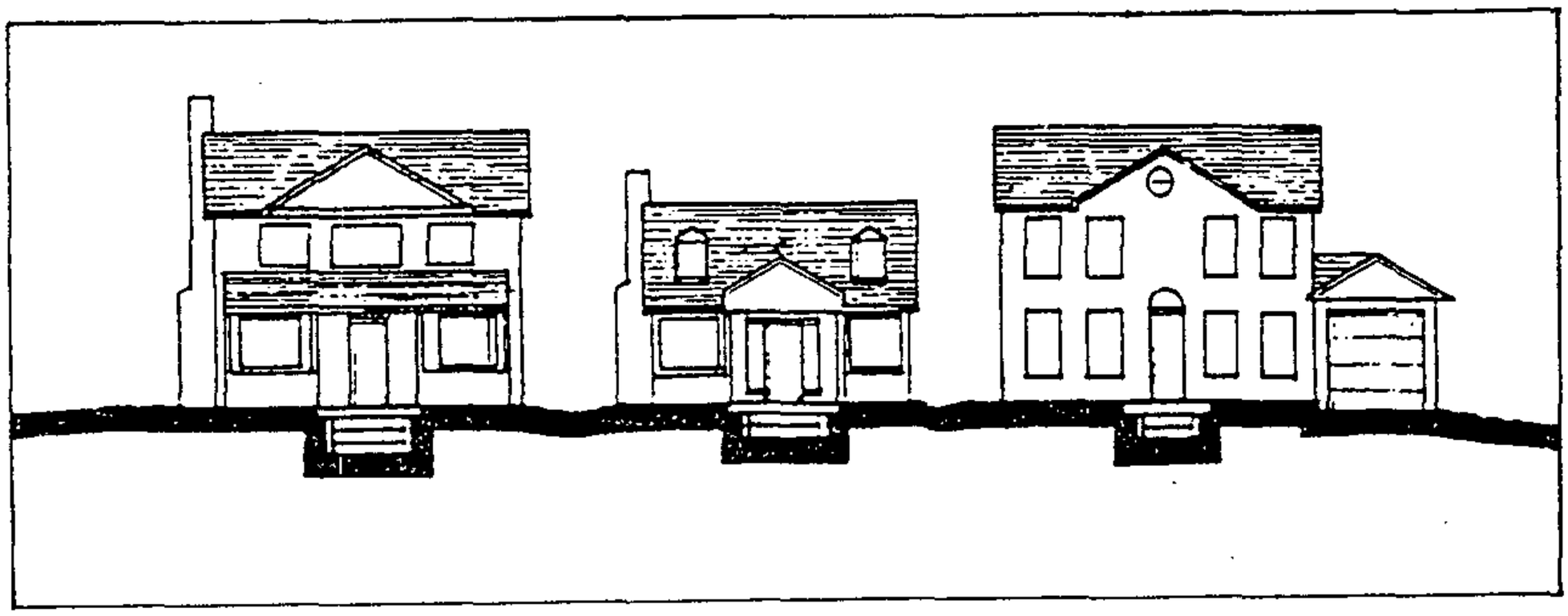
PDF/MCF/mjm
FINAL.RPT/TXTMJM

Enclosures

cc: The Honorable Roger B. Hayden, County Executive
Members, Baltimore County Council
Merreen E. Kelly, Administrative Officer
Thomas Peddicord, Legislative Counsel/Secretary
Lawrence Schmidt, Zoning Commissioner
H. Emslie Parks, County Attorney
Harold G. Reid, Chairman of the Planning Board
Louis Waidner, Executive Assistant
Patrick Roddy, Director, Legislative Relations
Arnold Jablon, Director, ZADM
Phyllis Cole Friedman, People's Counsel

Proposed Amendments To
The Baltimore County
Zoning Regulations
Regarding

RESIDENTIAL DEVELOPMENT OF



UNDERSIZED LOTS IN EXISTING SUBDIVISIONS

A Final Report Of
The Baltimore County
Planning Board

November 7, 1991

Legislative Project No. 91-2

PROPOSED AMENDMENTS TO THE BALTIMORE COUNTY ZONING REGULATIONS REGARDING RESIDENTIAL DEVELOPMENT OF UNDERSIZED LOTS IN EXISTING SUBDIVISIONS

A Final Report of the Baltimore County
Planning Board
November 7, 1991

PROJECT DESCRIPTION

Council Resolution No. 1-91 (Attachment 1) requests the Planning Board to consider proposing amendments to the Baltimore County Zoning Regulations in order to provide a special hearing process for cases of residential development proposed on vacant lots within subdivisions approved before enactment of the 1955 Zoning Regulations.

The Resolution specifically requests that the Planning Board consider amendments which would allow a special review process to assure that new housing otherwise buildable by right would be harmonious with the character, scale or size of existing development in older established subdivisions, consistent with the Master Plan policy that new development be compatible with existing communities.

DISCUSSION

The Zoning Regulations (B.C.Z.R.) require that most undersized lots or tracts in Density Residential (D.R.) zones be developed according to a special set of standards (Attachment 2). These standards are also applicable to any lot in a residential subdivision which was created without approval of the Planning Board or its predecessor, the Planning Commission, unless the lot is "grandfathered" under Section 304 of the Zoning Regulations.

Any residential development of an undersized lot zoned D.R. which does not meet the development standards shown on Attachment 2, nor qualify as a developable lot pursuant to Section 304, is subject to approval by the Zoning Commissioner as a variance. This approval process, with a public hearing on a request for a variance, can sometimes serve to allow community residents' concerns about appropriateness of a proposed building within their existing neighborhoods to be stated. However, because the Zoning Commissioner must rule on the bases of "practical difficulty" or "unreasonable hardship", and may only grant a variance not injurious to public health, safety, and welfare, a variance hearing is not intended to address or resolve the compatibility issue for in-fill housing.

There is no process for assuring consideration of compatibility of a new residential structure and an existing residential community where a lot or small tract meets these B.C.Z.R. standards, or if it is a "grandfathered" undersized lot. As a result, it is currently possible for an in-fill construction project of one or more houses to be entirely inappropriate for the existing residential community surrounding it, yet completely beyond review for its impact upon neighboring homes. (This excludes technical review for matters such as traffic or sewer capacity.) This leaves the community vulnerable to a form of physical disruption which can reduce its aesthetic quality, and thereby its "curb appeal" as a desirable place to live, ultimately affecting real estate values adversely in the immediate area. The Council Resolution reflects a need to address the issue.

The Baltimore County Master Plan 1989-2000 specifically suggests that the issue of incompatible in-fill residential development in older communities be addressed. In its section entitled "Community Development: Community Planning, Conservation and Enhancement", the Master Plan 1989-2000 recommends:

> To ensure that new development is compatible with the existing residential community, establish and adopt criteria for compatibility and procedures for review and approval which are acceptable to both development and community interests. A compatibility review should be required for infill development in community conservation areas.

One of the reasons lots without adequate set-backs (other than those "grandfathered" by Section 304) are subject to public hearings before the Zoning Commissioner is that the proximity of buildings on undersized lots can generate a great impact upon other lots and buildings already in place. A petitioner proposing to build on an undersized lot may offer to mitigate the impact of the proposed building(s) by careful attention to placement upon the lot, to landscaping and buffering, and occasionally to building design in terms of facade or exterior features. However, the nature of what is offered and of what is approved as condition(s) for a variance does remain subject to case-by-case negotiation and agreement.

Most existing residential neighborhoods in Baltimore County are distinguishable by way of one or more predominant architectural styles or building (house) types. A logical or reasonable approach to the compatibility issue would thus be a requirement for a generalized review, using the residential development standards of the as-built neighborhood in which the in-fill lots are located, by the Director of the Office of Planning and Zoning. In this way, proposed construction could be encouraged to conform to enhanced design standards, while maintaining an appropriate appearance complementary to and compatible with existing housing styles in the community. Results of the review would then be considered by the Zoning Commissioner in an administrative determination or special hearing on the

appropriateness of the proposed construction. The review would be similar to the one conducted for new Class B office buildings in Residential Office zones, where most other uses are established dwellings.

A fundamental concern with regard to imposition of a compatibility review requirement is whether the correct balance of individual property owners' right to build their own housing, versus established communities' right to protection from incompatible new development, would justify a compatibility requirement for an otherwise fully permitted type of construction, i.e. residential, on lots or tracts of lots which meet all zoning requirements, particularly for lot area, width, set-backs, or compliance with Residential Transition Area (RTA) requirements. Although the Council Resolution calls for a review process for all applications to construct housing on lots recorded before 1955, it is the opinion of the Planning Board that only undersized lots, i.e. those subject to the provisions of Section 304, located in Density Residential (D.R.) zones could convincingly justify a compatibility review requirement. This is because of the greater proximity of proposed new housing on undersized lots to other housing in the established residential community, and the current absence of any forum for review of construction proposed on these "grandfathered" lots.

The Planning Board is also concerned with potential delay in issuance of building permits inherent in any additional requirement for approval of building plans. For this reason, specific time limits for review are recommended. The proposed review procedure is summarized on Attachment 3.

The legislative proposals which follow would amend current Section 304 of the Zoning Regulations, to require that small-scale individual lot construction meet minimum design and compatibility standards in established residential communities. A person proposing to build a house on an undersized "grandfathered" lot would petition the Zoning Commissioner for a determination of appropriateness. The Director of the Office of Planning and Zoning would, upon request of the Zoning Commissioner, comment on whether proposed residential construction would be inappropriate, in terms of site design and architectural design, in the context of the existing established residential community.

The Director's comments would be forwarded to the Zoning Commissioner for consideration during an administrative determination or special hearing. The hearing process would be provided in revised Section 304, i.e. a public hearing if a request for a public hearing would be made by an owner or occupant of property within 1,000' of the subject undersized lot, or a public hearing held at the initiative of the Zoning Commissioner. (It should be noted that Section 22-26(b) of the Baltimore County Code empowers the Zoning Commissioner to initiate a public hearing even if no formal request for one has been received from a concerned citizen, when a variance petition

"involves an owner occupied lot zoned residential", or to grant such a variance without public hearing if no one requests a hearing. This procedure would be similar.)

RECOMMENDATION

Baltimore County Zoning Regulations should be amended at Section 304 to provide for determination by the Zoning Commissioner of appropriateness or inappropriateness of residential development of certain undersized lots and tracts, as follows. New material is shown in **bold face**, and deleted material is enclosed in brackets: { }.

Re-enact the following section of the Zoning Regulations, with amendments as shown:

Section 304 -- USE OF UNDERSIZED SINGLE-FAMILY LOTS [B.C.Z.R., 1955.]

304.1 **A one-family detached** dwelling may be erected on a lot having an area or width at the building line less than that required by the {height and} area regulations **contained in these regulations, provided that:** [B.C.Z.R., 1955.]

A. {a. That} such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to {adoption of these Regulations} **March 30, 1955**; and [B.C.Z.R., 1955.]

B. {b. That} all other requirements of the height and area regulations are complied with; and [B.C.Z.R., 1955.]

C. {c. That} the owner of the lot does not own sufficient adjoining land to conform {substantially} to the width and area requirements {.} [B.C.Z.R., 1955.] **contained in these regulations; and**

D. **The Zoning Commissioner shall have determined that, in any zone other than a Resource Conservation (R.C.) zone, the proposed dwelling will not be inappropriate in relation to the immediate residential neighborhood in which such lot is located.**

304.2 **Any person desiring to erect a dwelling pursuant to the provisions of this Section shall petition the Zoning Commissioner for a determination that any improvements proposed would not be inappropriate to the immediate residential neighborhood in which the lot is located.**

A. **The petitioner shall provide, as an attachment to the petition, plans sufficiently prepared to allow a determination in accordance with the guidelines provided in Subsection 304.2.B below. Elevation drawings shall be submitted in addition to plans and drawings otherwise required to be submitted as part**

of the application for a building permit. Photographs representative of the neighborhood where the lot or tract is situated may be required by the Zoning Commissioner in order to determine appropriateness of the proposed new building in relation to existing structures in the neighborhood.

B. Upon acceptance of a formal petition for a determination of appropriateness as provided above, the Zoning Commissioner shall request comments from the Director of the Office of Planning and Zoning (the Director). Within fifteen (15) days of receipt of a request from the Zoning Commissioner, the Director shall provide to the Zoning Commissioner written comments concerning the petition with regard to the following:

1. Site design: New buildings shall be appropriate in the context of the neighborhood in which they are proposed to be located. Appropriateness shall be evaluated on the basis of new building size, lot coverage, building orientation and location on the lot or tract.

2. Architectural design: Appropriateness shall be evaluated based upon one or more of these architectural design elements or aspects:

   a. height;

   b. bulk or massing;

   c. major divisions, or architectural rhythm, of facades;

   d. proportions of openings such as windows and doors in relation to walls;

   e. roof design and treatment; and,

   f. materials and colors, and other aspects of facade texture or appearance.

3. Design amendments: The Director may recommend amendments to the plans or any part thereof which would have the effect of removing inappropriate design elements, and may recommend that a determination be made conditional upon amendments which would incorporate the Director's recommendations in the plans.

304.3 Public notice. Upon accepting a petition pursuant to this Section, the Zoning Commissioner shall post conspicuously upon the lot public notice of the petition for a period of at least fifteen (15) days. Within the fifteen (15) day posting period, any owner or occupant within 1,000 feet of the lot may file a written request for a public hearing with the

Zoning Commissioner, and such hearing shall be scheduled within thirty (30) days from receipt of the request for public hearing.

304.4 Procedures for determination.

A. The Zoning Commissioner shall determine whether the proposed dwelling is inappropriate, and notify the petitioner of said determination within twenty (20) days of acceptance of the petition, unless a request for a public hearing shall have been filed pursuant to Subsection 304.3 above. If the Director has recommended design amendments, the Zoning Commissioner may determine that the proposed dwelling is not inappropriate subject to the petitioner's incorporating in the building plans the amendments recommended by the Director. In the notification from the Zoning Commissioner, the petitioner shall be informed that a public hearing may be requested by the petitioner to appeal the Commissioner's determination, in which case the hearing shall be scheduled within forty-five (45) days from receipt of the request.

B. If a written request for a public hearing is not filed, and notwithstanding any provision herein to the contrary, the Zoning Commissioner may hold a public hearing where a determination shall be made whether the proposed dwelling is inappropriate, provided that the Zoning Commissioner shall have notified the petitioner within twenty (20) days of acceptance of the petition of the Commissioner's intention to hold said public hearing. The public hearing shall be scheduled within thirty (30) days of the Zoning Commissioner's notification to the petitioner.

C. If a written request for a public hearing is not filed, and if the Zoning Commissioner shall not have notified the petitioner of a determination pursuant to the provisions of this Section, or shall not have notified the petitioner pursuant to Subsection 304.4.B above of his intention to hold a public hearing, the dwelling shall be considered appropriate for purposes of this Section.

ATTACHMENT 1

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND

LEGISLATIVE SESSION 1991, LEGISLATIVE DAY NO. 1

RESOLUTION NO. 1-91

MR. MELVIN G. MINTZ, COUNCILMAN

BY THE COUNTY COUNCIL, JANUARY 7, 1991

A Resolution of the Baltimore County Council to request the Planning Board to consider proposing amendments to the Baltimore County Zoning Regulations in order to provide for a special hearing in cases where residential development will take place on vacant lots within subdivisions approved and substantially built before the 1945 adoption or after 1945 but before the 1955 revision of the Baltimore County Zoning Regulations.

WHEREAS, the Baltimore County Zoning Regulations currently permit development by right on vacant lots within subdivisions approved and substantially built before 1945, the year that the County's first Zoning Regulations became effective; and

WHEREAS, the Zoning Regulations were revised in 1955 to require minimum lot sizes for residential uses; and

WHEREAS, the lack of a requirement for a special hearing in the case of subdivisions approved before 1945 or between 1945 and 1955 permits new homes to be built by right, provided all County regulations are met; and

WHEREAS, permitting new homes by right may allow development to occur which is not harmonious with the character, scale or size of existing development in these older subdivisions; and

WHEREAS, it is in the interests of the citizens of Baltimore County to allow for a special review process in these cases to assure that new residential units will respect existing development, in order to preserve the character and maintain property values in older neighborhoods; and

WHEREAS, the 1989-2000 Master Plan calls for review procedures to assure that new development is compatible with existing communities.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, that the Baltimore County Planning Board be and it is hereby requested to consider proposing amendments to the Baltimore County Zoning Regulations in order to permit development of

vacant lots within subdivisions approved and substantially built before 1945 or after 1945 but before 1955 only upon a special hearing of the Zoning Commissioner and a finding that such development will harmonize or will not detract from the scale and appearance of existing homes.

ATTACHMENT 2

From the Zoning Regulations:

1B02.3 -- Special Regulations for Certain Existing Developments or Subdivisions and for Small Lots or Tracts in D.R. Zones. [Bill No. 100, 1970.]

A. In D.R. zones, contrary provisions of this article notwithstanding, the provisions of or pursuant to this subsection shall apply to the use, occupancy, and development of, the alteration or expansion of structures upon, and administrative procedures with respect to: [Bill No. 100, 1970.]

1. Any lot which is in a recorded residential subdivision approved by the Baltimore County Planning Board or Baltimore County Planning Commission and which has been used, occupied, or improved in accordance with the approved subdivision plan; [Bill No. 100, 1970.]

2. Any land in a subdivision tract which was laid out in accordance with the regulations of residence zoning classifications now rescinded, for which a subdivision plan tentatively approved by the Planning Board remains in effect, and which has not been used, occupied, or improved in accordance with such plan; [Bill No. 100, 1970.]

3. Any lot, or tract of lots in single ownership, which is not in an existing development or subdivision as described in Subparagraph 1 or 2 and which is too small in gross area to accommodate six dwelling or density units in accordance with the maximum permitted density in the D.R. zone in which such tract is located; or (13) [Bill No. 100, 1970.]

4. Any lot, or tract of lots in single ownership, which is not in an existing development or sub- division as described in Subparagraph 1 or 2 and which is less than one-half acre in area, regardless of the number of dwelling or density units that would be permitted at the maximum permitted density in the zone in which it is located. (14) [Bill No. 100, 1970.]

5. Any lot, or tract of lots in single ownership which is in a duly recorded subdivision plat not approved by the Baltimore County Planning Board or Planning Commission. [Bill No. 100, 1970.]

B. Standards Applicable to Existing Developments Etc. The minimum standards for net area, lot width, front-yard depth, single-side-yard width, sum of widths of both side yards, rear-yard depth, and height with respect to each use in a development described in Subparagraph A.1, above, shall be as prescribed by the zoning regulations applicable to such use at the time the plan was approved by the Planning Board or Commission; however, the same or similar standards may be codified and comparable bulk (height or area) standards for different permitted uses may be established and codified under Section 504, and these standards shall thereupon control in such existing developments. Development of any subdivision described in Subparagraph A.2 shall be in accordance with the tentatively approved subdivision plan therefor. Standards for development of lots or tracts described in Subparagraphs A.3, A.4 or A.5 shall be as set forth in Paragraph C, below. [Bill No. 100, 1970.]

C. Development Standards for Small Lots or Tracts. [Bill No. 100, 1970.]

1. Any dwelling hereafter constructed on a lot or tract described in Subparagraph A.3 or A.4 shall comply with the requirements of the following table:

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

[Bill No. 100, 1970.]

2. Other standards for development of small lots on tracts as so described shall be set forth in provisions adopted pursuant to the authority of Section 504. [Bill No. 100, 1970.]

D. An amendment to any part of a development plan involving only property subject to the provisions of this subsection shall not be subject to the provisions of Paragraph D (16) of Subsection 1B01.3. [Bill No. 100, 1970.]

From ENDNOTES - ARTICLE 1B:

13. Thus (with conjunction) in Bill No. 100, 1970.

14. Thus (period; without conjunction) in Bill No. 100, 1970.

15. Thus (plural) in Bill No. 100, 1970.

16. Although the provision referred to was Paragraph D as set forth in the Planning Board's final report recommending the legislation on which Bill No. 100, 1970 was based, when drafted into law the subject matter of the provision was transferred to Subparagraph 7 of Paragraph A.

From the Zoning Regulations:

Section 304 -- USE OF UNDERSIZED SINGLE-FAMILY LOTS [B.C.Z.R., 1955.]

A one-family dwelling may be erected on a lot having an area or width at the building line less than that required by the height and area regulations, provided: [B.C.Z.R., 1955.]

a. That such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to adoption of these Regulations; and [B.C.Z.R., 1955.]

b. That all other requirements of the height and area regulations are complied with; and [B.C.Z.R., 1955.]

c. That the owner of the lot does not own sufficient adjoining land to conform substantially to the width and area requirements. [B.C.Z.R., 1955.]

ATTACHMENT 3

RECOMMENDED PROCESS FOR REVIEW OF APPROPRIATENESS OF RESIDENTIAL DEVELOPMENT OF UNDERSIZED LOTS PURSUANT TO B.C.Z.R. SECTION 304

STEP

1. Owner/Builder petitions for determination of appropriateness by the Zoning Commissioner pursuant to amended Section 304.

2. Zoning Commissioner, upon accepting petition, refers it, with site plan and elevation drawings, to the Director of the Office of Planning & Zoning for review and comments.

3. Director of OPZ forwards comments to Zoning Commissioner within 15 days of date petition was accepted.

4. Zoning Commissioner posts public notice upon the property, giving 15 days from posting for any owner or occupant within 1,000' of the undersized lot to request a public hearing.

5. Pursuant to amended Section 304, either:

   A. No request is received for a public hearing, and the Zoning Commissioner determines by administrative action whether or not the dwelling would be appropriate; or,

   B. No request is received for a public hearing, but the Zoning Commissioner chooses to hold a public hearing to determine whether or not the dwelling would be appropriate, with hearing held within 50 days of acceptance of the petition; or,

   C. A public hearing is requested and held within 45 days of acceptance of the petition, at which the Zoning Commissioner determines whether or not the dwelling would be appropriate.

6. Appeal may be taken from the Zoning Commissioner's determination of incompatibility, per County Code Section 22-32.

SMALLOT9/LEGISLAT November 8, 1991

ATTACHMENT 4

ADVISORY GROUP

The following contributed to preparation of this report as members of the Advisory Group on Residential Development of Undersized Lots:

Name	Representing
Gail LeCompte	Hon. Berchie Manley, First District
Adele Kass	Hon. Melvin Mintz, Second District
Jennifer Macek	Hon. Dutch Ruppersberger, Third District
Tracy Gingher	Hon. William Howard, Sixth District
Valerie Brown	Bare Hills
Julia Chestnut	Cherry Heights
Ton Kelly	Greater Timonium
Bud McManus	Overlea
Mike Beccio	Home Builders Association (HBAM)
Tom Carski	HBAM
John Ciresi	HBAM
John Cozelski	HBAM
John Stewart	Overlea

Membership in the Advisory Group does not necessarily indicate that the recommendations contained in this report fully represent the views and opinions of each member.

Baltimore County
Office of Planning and Zoning
401 Bosley Avenue
Towson, Maryland 21204

CBA PC - 12

PASSED: 5/04/92
EFFECTIVE: 6/25/92

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND

LEGISLATIVE SESSION 1992, LEGISLATIVE DAY NO. 7

BILL NO. 47-92

MR. MELVIN G. MINTZ, COUNCILMAN

BY THE COUNTY COUNCIL, APRIL 6, 1992

A BILL ENTITLED

AN ACT concerning

Undersized Single-Family Lots

FOR the purpose of amending the Zoning Regulations in order to require that small scale individual lot construction must meet certain minimum design and compatibility standards in established residential communities, and requiring that a petition be filed, notice be given, and a hearing be provided in order to make certain determinations as to the appropriateness of the construction.

BY repealing and re-enacting, with amendments,

Section 304

Baltimore County Zoning Regulations, as amended

WHEREAS, the Baltimore County Council has received a final report from the Planning Board, dated November 7, 1991, concerning the subject legislation and has held a public hearing thereon, on March 10, 1992, now, therefore

SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, that Section 304 of the Baltimore County Zoning Regulations, as amended, be and it is hereby repealed and re-enacted, with amendments, to read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike-out~~ indicates matter stricken from bill.
Underlining indicates amendments to bill.

1. SECTION 304 -- Use of Undersized Single-Family Lots

2. 304.1 A one-family DETACHED OR SEMI-DETACHED dwelling may be erected on a
3. lot having an area or width at the building line less than that required by the
4. {height and} area regulations {, provided:} CONTAINED IN THESE REGULATIONS IF:

5. a. {That} such lot shall have been duly recorded either by deed or
6. in a validly approved subdivision prior to {adoption of these Regulations; and}
7. MARCH 30, 1955; AND

8. b. {That} all other requirements of the height and area regulations
9. are complied with; and

10. c. {That} the owner of the lot does not own sufficient adjoining
11. land to conform {substantially} to the width and area requirements CONTAINED IN
12. THESE REGULATIONS.

13. 304.2.(A) ANY PERSON DESIRING TO ERECT A DWELLING PURSUANT TO THE
14. PROVISIONS OF THIS SECTION SHALL FILE WITH THE OFFICE OF ZONING ADMINISTRATION,
15. AT THE TIME OF APPLICATION FOR A BUILDING PERMIT, PLANS SUFFICIENT TO ALLOW THE
16. OFFICE OF PLANNING AND ZONING TO PREPARE RECOMMENDATIONS IN ACCORDANCE WITH THE
17. GUIDELINES PROVIDED IN SUBSECTION (B) BELOW. ELEVATION DRAWINGS MAY BE REQUIRED
18. IN ADDITION TO PLANS AND DRAWINGS OTHERWISE REQUIRED TO BE SUBMITTED AS PART OF
19. THE APPLICATION FOR A BUILDING PERMIT. PHOTOGRAPHS REPRESENTATIVE OF THE
20. NEIGHBORHOOD WHERE THE LOT OR TRACT IS SITUATED MAY BE REQUIRED BY THE OFFICE OF
21. PLANNING AND ZONING IN ORDER TO DETERMINE APPROPRIATENESS OF THE PROPOSED NEW
22. BUILDING IN RELATION TO EXISTING STRUCTURES IN THE NEIGHBORHOOD.

23. (B) AT THE TIME OF APPLICATION FOR THE BUILDING PERMIT, AS PROVIDED
24. ABOVE, THE DIRECTOR OF ZONING ADMINISTRATION SHALL REQUEST COMMENTS FROM THE
25. DIRECTOR OF THE OFFICE OF PLANNING AND ZONING (THE DIRECTOR). WITHIN FIFTEEN
26. (15) DAYS OF RECEIPT OF A REQUEST FROM THE DIRECTOR OF ZONING ADMINISTRATION, THE
27. DIRECTOR SHALL PROVIDE TO THE OFFICE OF ZONING ADMINISTRATION WRITTEN
28. RECOMMENDATIONS CONCERNING THE APPLICATION WITH REGARD TO THE FOLLOWING:

1. SITE DESIGN: NEW BUILDINGS SHALL BE APPROPRIATE IN THE CONTEXT OF THE NEIGHBORHOOD IN WHICH THEY ARE PROPOSED TO BE LOCATED. APPROPRIATENESS SHALL BE EVALUATED ON THE BASIS OF NEW BUILDING SIZE, LOT COVERAGE, BUILDING ORIENTATION AND LOCATION ON THE LOT OR TRACT.

2. ARCHITECTURAL DESIGN: APPROPRIATENESS SHALL BE EVALUATED BASED UPON ONE OR MORE OF THESE ARCHITECTURAL DESIGN ELEMENTS OR ASPECTS:

I. HEIGHT;

II. BULK OR MASSING;

III. MAJOR DIVISIONS, OR ARCHITECTURAL RHYTHM, OF FACADES;

IV. PROPORTIONS OF OPENINGS SUCH AS WINDOWS AND DOORS IN RELATION TO WALLS;

V. ROOF DESIGN AND TREATMENT; AND,

VI. MATERIALS AND COLORS, AND OTHER ASPECTS OF FACADE TEXTURE OR APPEARANCE.

3. DESIGN AMENDMENTS: THE DIRECTOR MAY RECOMMEND APPROVAL, DISAPPROVAL, OR MODIFICATION OF THE BUILDING PERMIT TO CONFORM WITH THE RECOMMENDATIONS PROPOSED BY THE OFFICE OF PLANNING AND ZONING.

304.3 PUBLIC NOTICE. UPON APPLICATION FOR A BUILDING PERMIT PURSUANT TO THIS SECTION, THE SUBJECT PROPERTY SHALL BE POSTED CONSPICUOUSLY UNDER THE DIRECTION OF THE OFFICE OF ZONING ADMINISTRATION WITH NOTICE OF THE APPLICATION FOR A PERIOD OF AT LEAST FIFTEEN (15) DAYS. ~~WITHIN THE FIFTEEN (15) DAY POSTING PERIOD, ANY OWNER OR OCCUPANT WITHIN 1,000 FEET OF THE LOT MAY FILE A WRITTEN REQUEST FOR A PUBLIC HEARING WITH THE OFFICE OF ZONING ADMINISTRATION, AND A HEARING SHALL BE SCHEDULED WITHIN THIRTY (30) DAYS FROM RECEIPT OF THE REQUEST FOR PUBLIC HEARING. THE OFFICE OF ZONING ADMINISTRATION SHALL ESTABLISH APPROPRIATE FEE SCHEDULES.~~

304.4 FINAL APPROVAL.

(A) IF NO WRITTEN REQUEST FOR A PUBLIC HEARING IS FILED, THE DIRECTOR OF ZONING ADMINISTRATION MAY ISSUE THE BUILDING PERMIT, IN ACCORDANCE WITH SECTION 304.2.B. THE DECISION OF THE DIRECTOR OF ZONING ADMINISTRATION MAY BE APPEALED, IN WHICH CASE THE HEARING SHALL BE SCHEDULED BY THE BOARD OF APPEALS WITHIN FORTY-FIVE (45) DAYS FROM RECEIPT OF THE REQUEST.

(B) IF A WRITTEN REQUEST FOR A PUBLIC HEARING IS NOT FILED, AND NOT WITHSTANDING ANY PROVISION HEREIN TO THE CONTRARY, THE DIRECTOR OF ZONING ADMINISTRATION MAY REQUIRE A PUBLIC HEARING BEFORE THE ZONING COMMISSIONER WHERE A DETERMINATION SHALL BE MADE WHETHER THE PROPOSED DWELLING IS APPROPRIATE. THE OFFICE OF ZONING ADMINISTRATION MUST NOTIFY THE APPLICANT WITHIN TWENTY (20) DAYS OF ACCEPTANCE OF THE APPLICATION OF THE DIRECTOR'S INTENTION TO REQUIRE A PUBLIC HEARING. THE PUBLIC HEARING SHALL BE SCHEDULED BEFORE THE ZONING COMMISSIONER WITHIN THIRTY (30) DAYS OF THE DIRECTOR OF ZONING ADMINISTRATION'S NOTIFICATION TO THE APPLICANT.

(C) IF A WRITTEN REQUEST FOR A PUBLIC HEARING IS NOT FILED, AND IF THE OFFICE OF ZONING ADMINISTRATION HAS NOT NOTIFIED THE APPLICANT OF A DETERMINATION PURSUANT TO THE PROVISIONS OF THIS SECTION, OR HAS NOT NOTIFIED THE APPLICANT PURSUANT TO SUBSECTION (B) ABOVE OF THE INTENTION TO REQUIRE A PUBLIC HEARING, THE DWELLING SHALL BE CONSIDERED APPROPRIATE FOR PURPOSES OF THIS SECTION.

<u>304.4 PUBLIC HEARING.</u>

<u>WITHIN THE FIFTEEN (15) DAY POSTING PERIOD: 1) ANY OWNER OR OCCUPANT WITHIN 1,000 FEET OF THE LOT MAY FILE A WRITTEN REQUEST FOR A PUBLIC HEARING WITH THE OFFICE OF ZONING ADMINISTRATION, OR 2) THE DIRECTOR OF ZONING ADMINISTRATION MAY REQUIRE A PUBLIC HEARING. THE OFFICE OF ZONING ADMINISTRATION SHALL NOTIFY THE APPLICANT WITHIN TWENTY (20) DAYS OF THE RECEIPT OF A REQUEST FOR A PUBLIC HEARING. A HEARING BEFORE THE ZONING COMMISSIONER SHALL BE</u>

BASED UPON ONE OR MORE OF THESE ARCHITECTURAL DESIGN ELEMENTS OR ASPECTS:

I. HEIGHT;

II. BULK OR MASSING;

III. MAJOR DIVISIONS, OR ARCHITECTURAL RHYTHM, OF FACADES;

IV. PROPORTIONS OF OPENINGS SUCH AS WINDOWS AND DOORS IN RELATION TO WALLS;

V. ROOF DESIGN AND TREATMENT; AND,

VI. MATERIALS AND COLORS, AND OTHER ASPECTS OF FACADE TEXTURE OR APPEARANCE.

3. DESIGN AMENDMENTS: THE DIRECTOR MAY RECOMMEND APPROVAL, DISAPPROVAL, OR MODIFICATION OF THE BUILDING PERMIT TO CONFORM WITH THE RECOMMENDATIONS PROPOSED BY THE OFFICE OF PLANNING AND ZONING.

304.3 PUBLIC NOTICE. UPON APPLICATION FOR A BUILDING PERMIT PURSUANT TO THIS SECTION, THE SUBJECT PROPERTY SHALL BE POSTED CONSPICUOUSLY UNDER THE DIRECTION OF THE OFFICE OF ZONING ADMINISTRATION WITH NOTICE OF THE APPLICATION FOR A PERIOD OF AT LEAST FIFTEEN (15) DAYS. ~~WITHIN THE FIFTEEN (15) DAY POSTING PERIOD, ANY OWNER OR OCCUPANT WITHIN 1,000 FEET OF THE LOT MAY FILE A WRITTEN REQUEST FOR A PUBLIC HEARING WITH THE OFFICE OF ZONING ADMINISTRATION, AND A HEARING SHALL BE SCHEDULED WITHIN THIRTY (30) DAYS FROM RECEIPT OF THE REQUEST FOR PUBLIC HEARING. THE OFFICE OF ZONING ADMINISTRATION SHALL ESTABLISH APPROPRIATE FEE SCHEDULES.~~

CBA PG 13

all improved lots within 200 feet on each side thereof, provided that no dwelling shall be required to be set back more than 60 feet in D.R.2 Zones, 50 feet in D.R.3.5 Zones and 40 feet in D.R.5.5 Zones. In no case, however, shall nonresidential principal buildings have front yards of less depth than those specified therefor in the area regulations for D.R.2, D.R.3.5 and D.R.5.5 Zones respectively. **[Resolution, November 21, 1956]**

303.2 In B.L., B.M. and B.R. Zones, the front yard depth of any building hereafter erected shall be the average of the front yard depths of the lots immediately adjoining on each side, provided such adjoining lots are improved with permanent commercial buildings constructed of fire-resisting materials situate within 100 feet of the joint side property line, but where said immediately adjoining lots are not both so improved, then the depth of the front yard of any building hereafter erected shall be not less than the average depth of the front yards of all lots within 100 feet on each side thereof which are improved as described above.

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

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

A. Such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to March 30, 1955;

B. All other requirements of the height and area regulations are complied with; and

C. The owner of the lot does not own sufficient adjoining land to conform to the width and area requirements contained in these regulations.

304.2 Building permit application.

A. Any person desiring to erect a dwelling pursuant to the provisions of this section shall file with the Department of Permits and Development Management, at the time of application for a building permit, plans sufficient to allow the Office of Planning to prepare the guidelines provided in Subsection B below. Elevation drawings may be required in addition to plans and drawings otherwise required to be submitted as part of the application for a building permit. Photographs representative of the neighborhood where the lot or tract is situated may be required by the Office of Planning in order to determine appropriateness of the proposed new building in relation to existing structures in the neighborhood.

B. At the time of application for the building permit, as provided above, the Director of the Department of Permits and Development Management shall request comments from the Director of the Office of Planning (the "Director"). Within 15 days of receipt of a request from the Director of the Department of Permits and Development Management, the Director shall provide to the

Department of Permits and Development Management written recommendations concerning the application with regard to the following:

1. Site design. New buildings shall be appropriate in the context of the neighborhood in which they are proposed to be located. Appropriateness shall be evaluated on the basis of new building size, lot coverage, building orientation and location on the lot or tract.

2. Architectural design. Appropriateness shall be evaluated based upon one or more of these architectural design elements or aspects:

   a. Height.

   b. Bulk or massing.

   c. Major divisions, or architectural rhythm, of facades.

   d. Proportions of openings such as windows and doors in relation to walls.

   e. Roof design and treatment.

   f. Materials and colors, and other aspects of facade texture or appearance.

3. Design amendments. The Director may recommend approval, disapproval or modification of the building permit to conform with the recommendations proposed by the Office of Planning.

304.3 Public notice. Upon application for a building permit pursuant to this section, the subject property shall be posted conspicuously under the direction of the Department of Permits and Development Management with notice of the application for a period of at least 15 days.

304.4 Public hearing. Within the fifteen-day posting period: (1) Any owner or occupant within 1,000 feet of the lot may file a written request for a public hearing with the Department of Permits and Development Management, or (2) the Director of Permits and Development Management may require a public hearing. The Department of Permits and Development Management shall notify the applicant within 20 days of the receipt of a request for a public hearing. A hearing before the Zoning Commissioner shall be scheduled within 30 days from receipt of the request for public hearing. At the public hearing, the Zoning Commissioner shall make a determination whether the proposed dwelling is appropriate.

304.5 Final approval.

A. The Director of the Department of Permits and Development Management may issue the building permit; or

B. Notwithstanding any provision to the contrary, the Director of the Department of Permits and Development Management may require a public hearing before the Zoning Commissioner pursuant to Section 304.4 above; or

C. If the Department of Permits and Development Management has not notified the applicant of a determination pursuant to the provisions of this section, or has not notified the applicant pursuant to Section 304.4 above of the intention to require a public hearing, the dwelling shall be considered appropriate for purposes of this section.

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

304.7 The Director of the Department of Permits and Development Management shall establish appropriate fee schedules.

Section 305
Replacement of Destroyed or Damaged Dwellings
[BCZR 1955; repealed by Bill No. 124-1991; re-enacted by Bill No. 214-1991]

In case of complete or partial casualty loss by fire, windstorm, flood or otherwise of an existing dwelling that does not comply with height or area requirements of the zone in which it is located, such dwelling may be restored, provided area or height deficiencies of the dwelling before the casualty are not increased in any respect, and such restoration is subject to the limitations imposed by Section 104.2 of the Baltimore County Zoning Regulations.

Section 306
Minor Public Utility Structures
[BCZR 1955; Resolution, November 21, 1956; Bill No. 32-2004]

Minimum lot area regulations in any zone shall not apply to:

A. Repeater, booster or transformer stations;

B. Bus shelters, Class A or B; or

C. Small community dial offices.

Section 307
Variances
[BCZR 1955; Bill Nos. 107-1963; 32-1988; 2-1992; 9-1996]

307.1 The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations, and from sign regulations only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. No increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore,

CBA PC 14

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

A. In D.R. Zones, contrary provisions of this article notwithstanding, the provisions of or pursuant to this subsection shall apply to the use, occupancy and development of; alteration or expansion of structures upon; and administrative procedures with respect to:

1. Any lot which is in a recorded residential subdivision approved by the Baltimore County Planning Board or Planning Commission and which has been used, occupied or improved in accordance with the approved subdivision plan;

2. Any land in a subdivision tract which was laid out in accordance with the regulations of residence zoning classifications now rescinded, for which a subdivision plan tentatively approved by the Planning Board remains in effect and which has not been used, occupied or improved in accordance with such plan;

3. Any lot or tract of lots in single ownership which is not in an existing development or subdivision, as described in Subsection A.1 or A.2, and which is too small in gross area to accommodate six dwelling or density units in accordance with the maximum permitted density in the D.R. Zone in which such tract is located;

4. Any lot or tract of lots in single ownership which is not in an existing development or subdivision, as described in Subsection A.1 or A.2, and which is less than one-half acre in area, regardless of the number of dwelling or density units permitted at the maximum permitted density in the zone in which it is located; or

5. Any lot or tract of lots in single ownership which is in a duly recorded subdivision plat not approved by the Baltimore County Planning Board or Planning Commission.

B. Standards applicable to existing developments, etc. The minimum standards for net area, lot width, front yard depth, single-side-yard width, sum of widths of both side yards, rear yard depth and height with respect to each use in a development described in Subsection A.1 above, shall be as prescribed by the zoning regulations applicable to such use at the time the plan was approved by the Planning Board or Commission; however, the same or similar standards may be codified under Section 504, and these standards shall thereupon control in such existing developments. Development of any subdivision described in Subsection A.2 shall be in accordance with the tentatively approved subdivision plan therefor. Standards for development of lots or tracts described in Subsection A.3, A.4 or A.5 shall be as set forth in Subsection C below.

C. Development standards for small lots or tracts.

1. Any dwelling hereafter constructed on a lot or tract described in Subsection A.3 or A.4 shall comply with the requirements of the following table:

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

2. Other standards for development of small lots on tracts as so described shall be as set forth in provisions adopted pursuant to the authority of Section 504.

D. An amendment to any part of a development plan involving only property subject to the provisions of this subsection shall not be subject to the provisions of Section 1B01.3.A.7.

Draft
6-11-08

Exhibits
Case No 08-073-SPHA
In matter of Weston + Lulu Tucker
James Barnes - Petitioner.

Petitioner (1) Site Plan before DZC

(2) Lot Grading Plan Jan 7, 2008
Reduced plan

(3) Deed 11/12/52 Liber 2203, p 474.

(4) Dept Permits & Management (DPC)
5/23/07 letter approve lot
line adjustment for 9945

(5) Deed 1/8/08 - Estate Lulu Tucker to
Nancy Tucker
- deed to adjust lot lines
Liber 26572, 487

(6) Deed for 9945 Hilltop 9/23/08 Nancy Tucker as PR
Estate Lulu Tucker to Paul +
Tiffany Gainer Liber 00 26641

(7) Deed for 9941 Hilltop Dr. 1/23/08 Nancy Tucker as
PR Estate Lulu Tucker to JFB
Renovation + Construction
Liber 26633, Folio 35

(8) Plat Village of Nearbrook

(9) Plat Necker Property

Exhibits

CBA - 08-073

(10) Plat - Britiny II Subdivision

(11) 2nd Amended Plat Village Vanderway

(12) ZAC Comments 9/18/07

(13) House Drawing Elevation & Floor Piano

(14) Neighbors Signatures

(15) Notice of Zoning Hearing Advertise & certificate.

(16) Photos - 9945 Hilltop Rd.

(17) Photo of property to left of 9945 Hilltop Rd

(18) Photo of House at 9939 Hilltop ~~Rd~~ Drive

(19) Photo of 9940 Hilltop Drive

(20) 2 Photos (Stagled) next door to Pet 19

(21) Photos of 9941 Hilltop Drive

(22) 143 Properties Sold 10,000 sq ft or less

(23) MD Code Ann, CJ Copy

Pet. 23 CBA

MICHIE'S™ ANNOTATED CODE OF THE PUBLIC GENERAL LAWS OF MARYLAND

Courts and Judicial Proceedings

ENACTED BY CHAPTER 2, ACTS 1973
FIRST EXTRAORDINARY SESSION

Prepared by the Editorial Staff of the Publishers

Consultants

State Department of Legislative Services

2006 Replacement Volume

(Including Acts of the 2006 Regular and Special Sessions and annotations taken from decisions posted as of September 22, 2006)

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tional disease was the proximate cause of death, but in any event not later than 10 years from the date of death.

(c) *"Proximate cause" defined.* — As used in subsection (b) of this section, "proximate cause" means that the occupational disease was a substantial contributing cause of the death of the plaintiff's decedent. (1987, ch. 624; 1988, ch. 6, § 1; ch. 772.)

Editor's note. — Section 2, ch. 624, Acts 1987, provides that "this Act shall be construed both retrospectively and prospectively, taking effect July 1, 1987."

Section 2, ch. 772, Acts 1988, provides that this act shall be construed both retroactively and prospectively.

Distinction between wrongful death and survival actions. — Trial court erred by dismissing a wrongful death suit as barred by the statute of limitations, because the beneficiaries' knowledge that the decedent had mesothelioma, standing alone, was not sufficient for inquiry notice and they were entitled to a trial on the issue of when they each had acquired knowledge of the decedent's asbestos exposure as well. Dismissal of the survival action was upheld, however, because the decedent was on inquiry notice, and thus, the cause of action accrued when he knew he had mesothelioma and that he had been exposed to asbestos. Benjamin v. Union Carbide Corp., 162 Md. App. 173, 873 A.2d 463 (2005).

Because of the nature of a survival action, knowledge obtained by the decedent during his lifetime can act to cut short the decedent's cause of action after death. Conversely, in a wrongful death action, death is essential to the cause of action, thus, the beneficiaries are the claimants, and it is their knowledge that must trigger inquiry notice. Benjamin v. Union Carbide Corp., 162 Md. App. 173, 873 A.2d 463 (2005).

Accrual of action. — In situations involving the latent development of disease, any cause of action of the injured person accrues either (1) when he ascertains, or through the exercise of reasonable care and diligence should have ascertained, the nature and cause of his injury, or (2) at death, whichever first occurs. Benjamin v. Union Carbide Corp., 162 Md. App. 173, 873 A.2d 463 (2005).

Application of discovery rule. — In cases involving workplace exposure to toxic substances, like asbestos, a claimant, including a wrongful death claimant, is on inquiry notice of the causation element of a cause of action to recover injuries resulting from an occupational disease when the claimant has knowledge that the person whose injury forms the basis for the claim has been diagnosed with the disease, and the injured person was exposed to asbestos in the workplace. In a survival action, if the decedent's knowledge is sufficient to satisfy the discovery rule, the decedent's knowledge is enough to trigger the running of the limitations period for the survival action. Georgia-Pacific Corp. v. Benjamin, — Md. —, — A.2d — (Aug. 2, 2006).

Under the survival statute, included in this section, if an occupational disease was the proximate cause of a claimant's death, damages can be claimed within three years from the date the action accrues but not later than 10 years from the date of death. Georgia-Pacific Corp. v. Benjamin, — Md. —, — A.2d — (Aug. 2, 2006).

Quoted in Geisz v. Greater Baltimore Medical Ctr., 313 Md. 301, 545 A.2d 658 (1988).

Cited in State v. Sharafeldin, 382 Md. 129, 854 A.2d 1208 (2004).

§ 5-114. Setback line restrictions.

(a) *Definitions.* — (1) In this section the following words have the meanings indicated.

(2) "Building permit" or "permit" includes a site plan and other documentation submitted in support of an application for a building permit and providing the basis for the issuance of the building permit.

(3) "Governmental entity" includes:

(i) The State;

(ii) A local government; and

(iii) An officer, office, department, agency, board, commission, or other unit of State or local government.

(4) "Highway" means any way or thoroughfare, whether or not the way or thoroughfare has been dedicated to the public or a dedication has been accepted.

(5) "Local government" means:

(i) A chartered county established under Article 25A of the Code;

(ii) A code county established under Article 25B of the Code;

(iii) A board of county commissioners established or operating under Article 25 of the Code;

(iv) Baltimore City;

(v) A municipal corporation established or operating under Article 23A of the Code;

(vi) A special taxing district; or

(vii) Any other political subdivision.

(6) (i) "Person" means an individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind and any partnership, firm, association, corporation, or other entity.

(ii) "Person" does not include a governmental entity.

(7) "Property line" means the line marking the boundary between 2 separate lots or parcels of property.

(8) "Setback line" means the distance from a curb or shoulder of a highway, edge of a sidewalk, or property line beyond which any portion of a building or structure may not extend.

(9) "Setback line restriction" means a setback line established by:

(i) A law, ordinance, or regulation, including a building or zoning law, ordinance, or regulation; or

(ii) An instrument, however denominated.

(b) *In general.* — (1) A person may not initiate an action or proceeding arising out of a failure of a building or structure to comply with a setback line restriction more than 3 years after the date on which the violation first occurred.

(2) A governmental entity may not initiate an action or proceeding arising out of a failure of a building or structure to comply with a setback line restriction more than 3 years after the date on which the violation first occurred if the building or structure was constructed or reconstructed:

(i) In compliance with an otherwise valid building permit, except that the building permit wrongfully permitted the building or structure to violate a setback line restriction; or

(ii) Under a valid building permit, and the building or structure failed to comply with a setback line restriction accurately reflected in the permit.

(3) For purposes of paragraph (2)(i) of this subsection and notwithstanding any other provision of State or local law to the contrary, a building permit that was otherwise validly issued, except that the permit wrongfully permitted the building or structure to violate a setback line restriction, shall be considered a valid building permit.

(4) For purposes of paragraph (2) of this subsection, the date on which the violation first occurred shall be deemed to be the date on which the final building inspection was approved.

(c) *Failure to comply.* — Notwithstanding any provision to the contrary in a deed or other written instrument, a failure to comply with a setback line restriction may not cause a forfeiture or reversion of title.

(d) *Defenses.* — This section may not be construed to abrogate or affect the defense of laches or any other defense that a person may have to an action or proceeding for a violation of a setback line restriction. (1989, ch. 729; 1991, ch. 576; 1992, ch. 383; 2002, ch. 19, § 10.)

Editor's note. — Section 2, ch. 729, Acts 1989, provides that "this act shall be construed only prospectively and may not be applied or interpreted to have any effect upon or application to any action or proceeding initiated prior to July 1, 1989."

Section 2, ch. 576, Acts 1991, provides that "this Act shall apply to and be interpreted to affect all actions or proceedings initiated on or after July 1, 1989."

Section 2, ch. 383, Acts 1992, provides that "this Act shall be construed both prospectively and retroactively and shall be applied to and interpreted to affect a building or structure constructed or reconstructed under a valid building permit or in which a variance was granted before October 1, 1992."

Section 3 of ch. 383 provides that "this Act shall apply to all actions or proceedings filed on or after October 1, 1992."

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

§ 5-115. Product liability arising in a foreign jurisdiction.

(a) *Definitions.* — (1) In this section the following words have the meanings indicated.

(2) "Foreign jurisdiction" means a state, other than this State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a foreign country.

(3) (i) "Manufacturer" means a designer, assembler, fabricator, constructor, compounder, producer, or processor of a product or its component parts.

(ii) "Manufacturer" includes an individual or entity not otherwise a manufacturer that imports a product or otherwise holds itself out as a manufacturer.

(4) "Product" means a tangible article, including attachments, accessories, and component parts, and accompanying labels, warnings, instructions, and packaging.

(5) "Seller" means a wholesaler, distributor, retailer, or other individual or entity other than a manufacturer that is regularly engaged in the selling of a product whether the sale is for resale by the purchaser or is for sale to or consumption by the ultimate consumer.

(b) *In general.* — If a cause of action against a manufacturer or seller of a product for personal injury allegedly caused by a defective product arose in a foreign jurisdiction and by the laws of that jurisdiction the cause of action may not be maintained by reason of a lapse of time, an action may not be maintained in this State, except in favor of one who is a resident of this State.

(c) *Exceptions.* — This section may not be applied to a cause of action:

(1) That was precluded, for any period of time, from being filed before July 1, 1991 by operation of law or a court order; or

(2) For wrongful death described under Title 3, Subtitle 9 of this article. (1991, ch. 201.)

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2007 Supplement

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§§ 5-101 to End

2006 REPLACEMENT

Place in Pocket of Corresponding Volume of Main Set.

Effective Date of Statutes

See Md. Const., Article XVI, § 2

Annotated through decisions posted as of July 3, 2007.
For complete scope of annotations and legislation,
see preface in Volume 1.

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Office, tolled the running of the statute of limitations as the visitor brought a medically-related claim, the proper forum was ambiguous, and the filing was otherwise timely. The subsequent filing in the circuit court, therefore, related back to the initial filing and satisfied the statute of limitations; in addition, the medical center suffered no unfairness in allowing the claim to proceed on the merits because it already had notice of the claim. Swam v. Upper Chesapeake Med. Ctr., Inc., 397 Md. 528, 919 A.2d 33 (2007).

Applied in Georgia-Pacific Corp. v. Benjamin, 394 Md. 59, 904 A.2d 511 (2006).

§ 5-113. Limitation on actions for damages from occupational disease.

Application of discovery rule. — In cases involving workplace exposure to toxic substances, like asbestos, a claimant, including a wrongful death claimant, is on inquiry notice of the causation element of a cause of action to recover injuries resulting from an occupational disease when the claimant has knowledge that the person whose injury forms the basis for the claim has been diagnosed with the disease, and the injured person was exposed to asbestos in the workplace. In a survival action, if the decedent's knowledge is sufficient to satisfy the discovery rule, the decedent's knowledge is enough to trigger the running of the limitations period for the survival action. Georgia-Pacific Corp. v. Benjamin, 394 Md. 59, 904 A.2d 511 (2006).

Under the survival statute, included in this section, if an occupational disease was the proximate cause of a claimant's death, damages can be claimed within three years from the date the action accrues but not later than 10 years from the date of death. Georgia-Pacific Corp. v. Benjamin, 394 Md. 59, 904 A.2d 511 (2006).

§ 5-118. Filing complaint with Maryland Insurance Commission.

For the purposes of this subtitle, the filing of a complaint with the Maryland Insurance Administration in accordance with § 27-1001 of the Insurance Article shall be deemed the filing of an action under § 3-1701 of this article. (2007, ch. 150.)

Editor's note. — Section 3, ch. 150, Acts 2007, provides that the act shall take effect October 1, 2007.

Chapters 150 and 324, Acts 2007, both enacted § 5-118 of this subtitle. Neither chapter referred to the other. The section enacted by ch. 324 has been redesignated as § 5-119 as a result of the multiple enactments.

Section 2, ch. 324, Acts 2007, provides that "this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any action or claim dismissed before the effective date of this Act for which a final judgment has been rendered and for which appeals, if any, have been exhausted before the effective date of this Act."

§ 5-119. Limitation on refiling claim dismissed without prejudice.

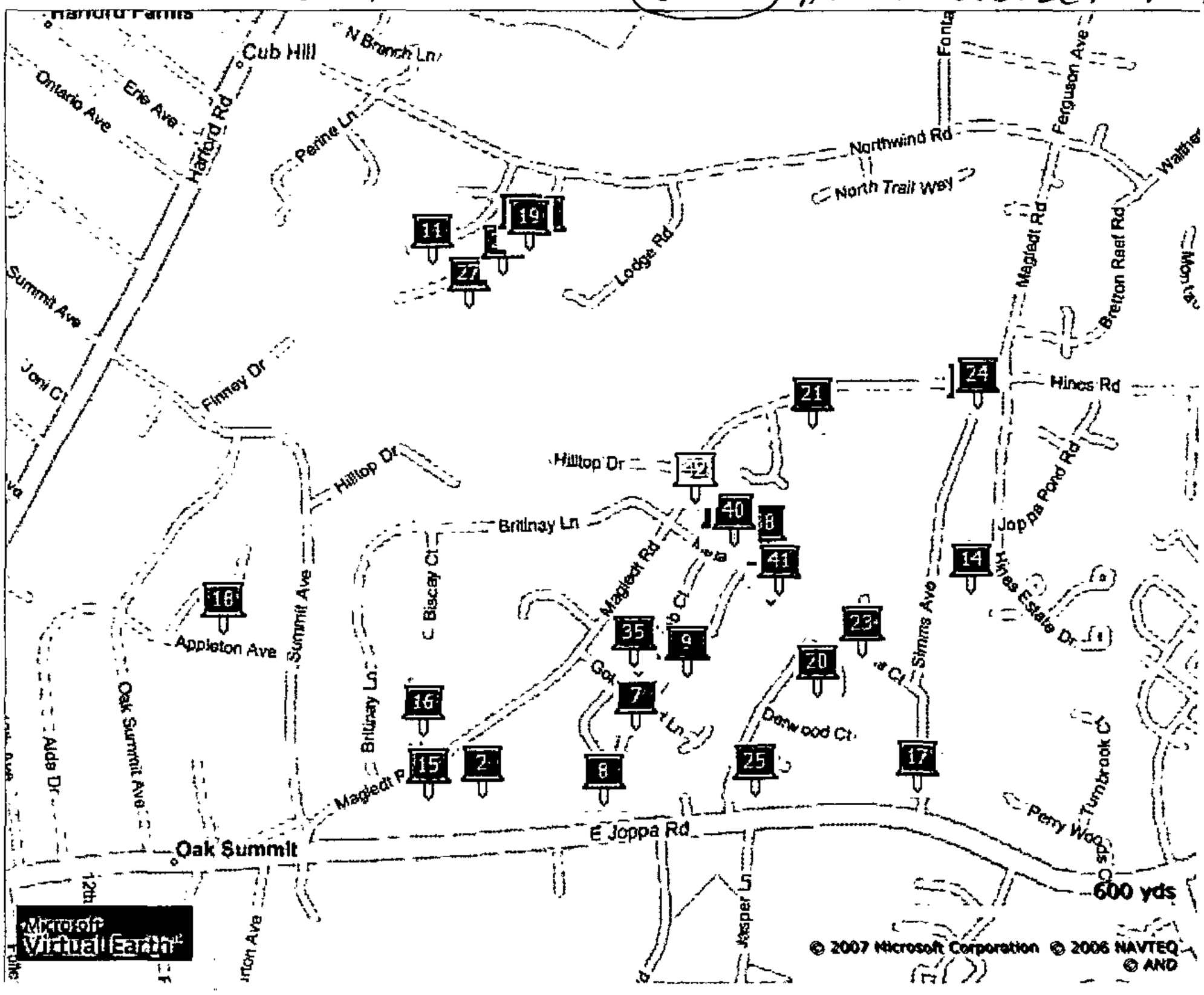
(a) *Scope.* — (1) This section does not apply to a voluntary dismissal of a civil action or claim by the party who commenced the action or claim.

(2) This section applies only to a civil action or claim that is dismissed once for failure to file a report in accordance with § 3-2A-04(b)(3) of this article.

(b) *Refiling of claim after dismissal.* — If a civil action or claim is commenced by a party within the applicable period of limitations and is dismissed without prejudice, the party may commence a new civil action or claim for the same cause against the same party or parties on or before the later of:

(1) The expiration of the applicable period of limitations;

143 PROPERTIES THAT HAVE SOLD AROUND SUBJECT PROPERTY with under 10,000 sq ft.



	Stat	ML#	Address	List Price	BR	FB	HB Type	Adv Subdiv
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2	Sold	BC6554991	3410 Maple View Way	$470,000	4	2	1 Detached	CHATMAN
3	Sold	BC240294C	9727 Denrob Ct	$215,000	4	2	1 Detached	CLOVERFIELD
4	Sold	BC2573636	9731 Denrob Ct	$188,500	3	2	2 Detached	CLOVERFIELD
5	Sold	BC2685584	9719 Denrob Ct	$185,000	4	2	1 Detached	CLOVERFIELD
6	Sold	BC3512458	9726 Denrob Ct	$184,987	3	2	1 Detached	CLOVERFIELD
7	Sold	BC3139944	9706 Red Clover Ct	$175,000	4	2	1 Detached	CLOVERFIELD MANO
8	Sold	BC5353820	9700 Red Clover Ct	$349,000	4	2	1 Detached	CLOVERFIELD MANOR
9	Sold	BC2609514	9772. Red Clover Ct.	$194,900	5	2	1 Detached	CUB HILL
10	Sold	BC3241310	10011 Nearbrook Ln	$169,900	3	2	0 Detached	CUB HILL
11	Sold	BC218106C	9904 Maidbrook Road	$142,000	3	2	1 Detached	CUB HILL
12	Sold	BC4588610	16 Melanie Ct	$212,000	3	2	0 Detached	CUB HILL
13	Sold	BC2148309	9302 Hines Estates Dr	$187,000	4	2	1 Detached	HINES ESTATE
14	Sold	BC4176029	9302 Hines Estates Dr	$259,900	4	2	1 Detached	HINES ESTATES
15	Sold	BC4601877	9607 Magledt	$239,905	3	2	1 Detached	N/A
16	Sold	BC4627536	7 Brightoak Ct	$344,900	4	2	1 Detached	NECKER

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17	Sold	BC210572C	9011 Simms Avenue	$85,350			0 Detached	PARKVILLE
18	Sold	BC215406C	9703 Uxbridge	$93,500	4	1	1 Detached	PARKVILLE
19	Sold	BC240803C	10017 Nearbrook Rd	$142,000	4	2	1 Detached	PERRY HALL
20	Sold	BC2515344	12 Havenfield Dr	$119,900	3	2	0 Detached	PERRY HALL
21	Sold	BC241749C	9809 Magledt Road	$171,900	4	2	1 Detached	PERRY HALL
22	Sold	BC209483C	9918 Magledt Road	$125,900	4	2	1 Detached	PERRY HALL
23	Sold	BC227171C	9034 Simms Ct 4%	$69,925	4	1	1 Detached	PERRY HALL
24	Sold	BC4745461	9918 Magledt Rd	$233,900	4	2	1 Detached	PERRY HALL
25	Sold	BC4131373	10 Bushwood Rd	$159,900	3	2	0 Detached	PERRY HALL/CARNEY
26	Sold	BC2687222	9739 Denrob Ct	$119,500	2	2	0 Detached	VIL.OF VANDERWAY
27	Sold	BC2654089	9945 Nearbrook Ln	$144,990	4	2	0 Detached	VILLAGE OF NEARB
28	Sold	BC4773813	10000 Nearbrook Ln	$259,977	4	2	1 Detached	VILLAGE OF NEARBROOK
29	Sold	BC4944826	10008 Nearbrook Ln	$269,900	3	2	1 Detached	VILLAGE OF NEARBROOK
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31	Sold	BC2430062	15 Melanie Ct	$129,900	3	1	1 Detached	VILLAGE OF VANDE
32	Sold	BC4024377	3617 Melanie Rd	$138,000	3	2	0 Detached	VILLAGE OF VANDERWAY
33	Sold	BC4567990	8 Melanie Ct	$199,900	4	2	1 Detached	VILLAGE OF VANDERWAY
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35	Sold	BC4800217	9745 Denrob Ct	$209,000	3	2	0 Detached	VILLAGE OF VANDERWAY
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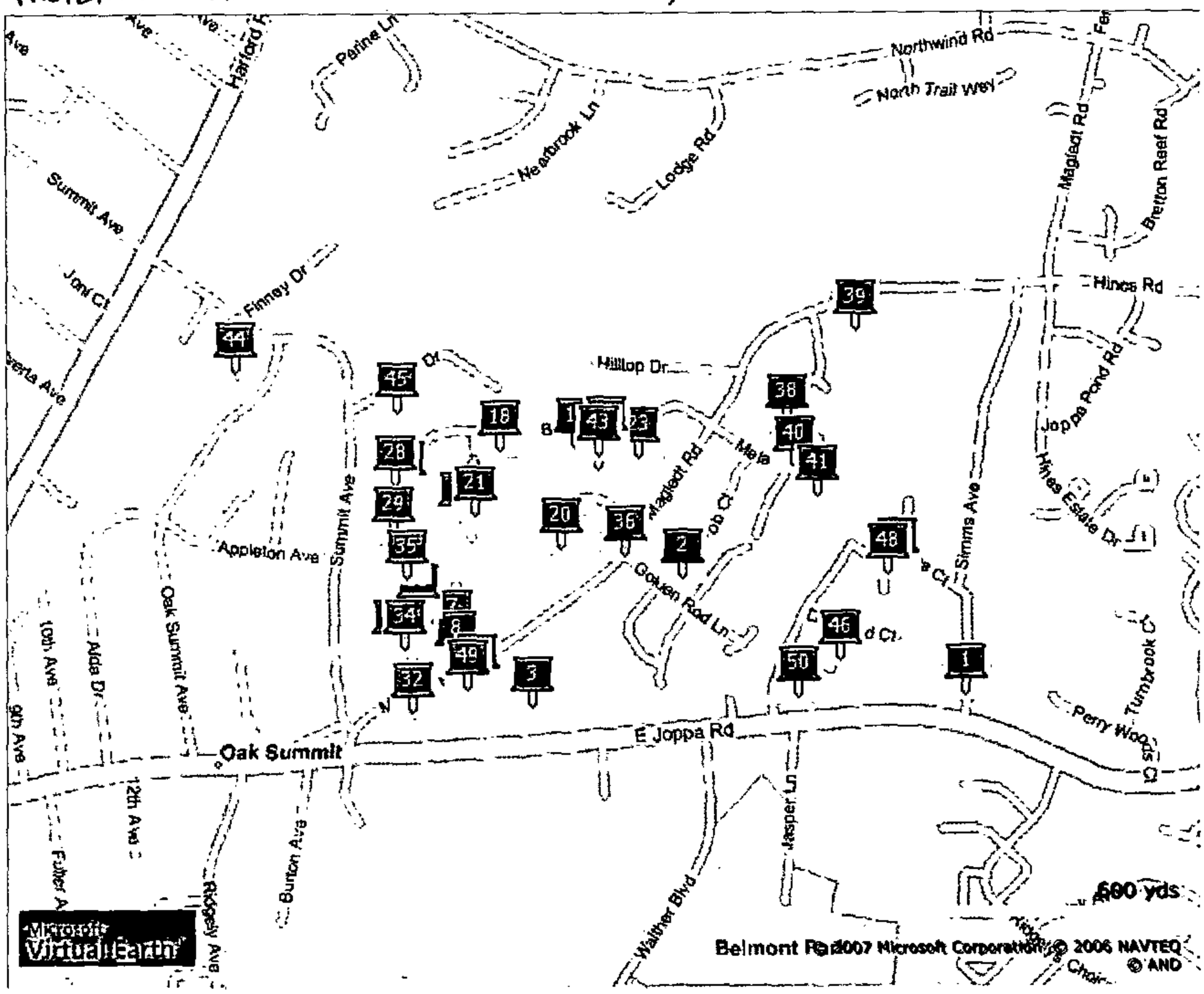
41	Act	BC6572929	3617 Melanie Rd	$309,900	3	2	0 Detached	VILLAGE OF VANDERWAY
42	Cont	BC6647520	9753 Magledt Rd	$399,900	3	3	0 Detached	VILLAGE OF VANDERWAY
43	Sold	BC3308570	10002 Nearbrook Ln	$184,500	4	2	2 Detached	VLG OF NEARBROOK

50 PROPERTIES AROUND SUBJECT PROPERTY WITH LESS THAN 10,000 Sq Ft.

(143) total



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6	Sold	BC2660276	4 Bright Oak Ct	$209,900	4	2	1	Detached	BRIGHT OAK
7	Sold	BC2690192	10 Bright Oak Ct	$187,900	4	2	1	Detached	BRIGHT OAK
8	Sold	BC2693923	6 Bright Oak Ct	$212,900	4	2	1	Detached	BRIGHT OAK
9	Sold	BC227166C	9622 Magledt Road	$129,850	3	1	1	Detached	BRITIANAY HILLS
10	Sold	BC213575C	9909 Britinay Lane	$189,900	4	2	1	Detached	BRITINAY
11	Sold	BC217903C	9817 Britinay Lane	$146,455	3	1	1	Detached	BRITINAY
12	Sold	BC204054C	9703 Britinay Lane	$148,900	4	2	2	Detached	BRITINAY
13	Sold	BC4430557	4 Biscay Ct.	$268,000	4	2	1	Detached	BRITINAY
14	Sold	BC4513800	9829 Britinay Ln	$254,900	4	2	1	Detached	BRITINAY
15	Sold	BC4551827	9938 Britinay Ln	$285,000	4	2	1	Detached	BRITINAY
16	Sold	BC4607691	9914 Britinay Ln	$264,900	4	2	2	Detached	BRITINAY

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18	Sold	BC4853378	9913 Britinay Ln	$324,900	3	2	2 Detached	BRITINAY
19	Sold	BC5084603	9943 Britinay Ln	$269,000	3	2	0 Detached	BRITINAY
20	Sold	BC5208791	2 Brookings Ct	$359,900	4	3	1 Detached	BRITINAY
21	Sold	BC6182648	4 Biscay Ct	$399,900	4	2	2 Detached	BRITINAY
22	Sold	BC6310362	9937 Britinay Ln	$414,900	4	2	2 Detached	BRITINAY
23	Sold	BC6582492	9923 Britinay Ln	$350,000	4	2	1 Detached	BRITINAY
24	Act	BC6679551	9922 Britinay Ln	$425,000	4	2	2 Detached	BRITINAY
25	Sold	BC4382438	9710 Britinay Ln	$211,000	3	2	0 Detached	BRITINAY HILL
26	Sold	BC4413896	9724 Britinay Ln	$179,900	3	1	1 Detached	BRITINAY HILL
27	Sold	BC4641027	9730 Britinay Ln	$179,000	3	2	1 Detached	BRITINAY HILL
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35	Sold	BC219221C	9734 Britinay La *5%*	$125,000	3	2	2 Detached	BRITINAY HILLS
36	Sold	BC5196253	4 Brookings Court Ct	$335,000	4	2	1 Detached	BRITINAY III
37	Sold	BC4548656	19 Britmore Ct	$226,500	4	2	0 Detached	BRITINAY IV
38	Sold	BC3088934	17 Britmore Ct	$189,970	5	3	0 Detached	BRITNAY
39	Sold	BC214277C	9805 Magledt Rd	$155,000	4	2	1 Detached	BRITTNAY HILLS
40	Sold	BC2419895	13 Melanie Ct	$95,000	2	1	1 Detached	CARNEY
41	Sold	BC2364754	3602 Melanie Rd	$129,900	3	1	1 Detached	CARNEY
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45	Sold	BC221868C	9805 Hilltop Drive	$139,900	4	1	1 Detached	CARNEY
46	Sold	BC2285155	10 Derwood Ct	$129,900	4	3	0 Detached	CARNEY
47	Sold	BC4965523	9034 Simms Ct	$189,900	3	2	0 Detached	CARNEY
48	Sold	BC4404464	9034 Simms Ct	$79,800	2	2	0 Detached	CARNEY/LION HEIGHTS
49	Sold	BC5452128	7 Brightoak Ct	$429,000	4	2	1 Detached	CARNEY/NECKER
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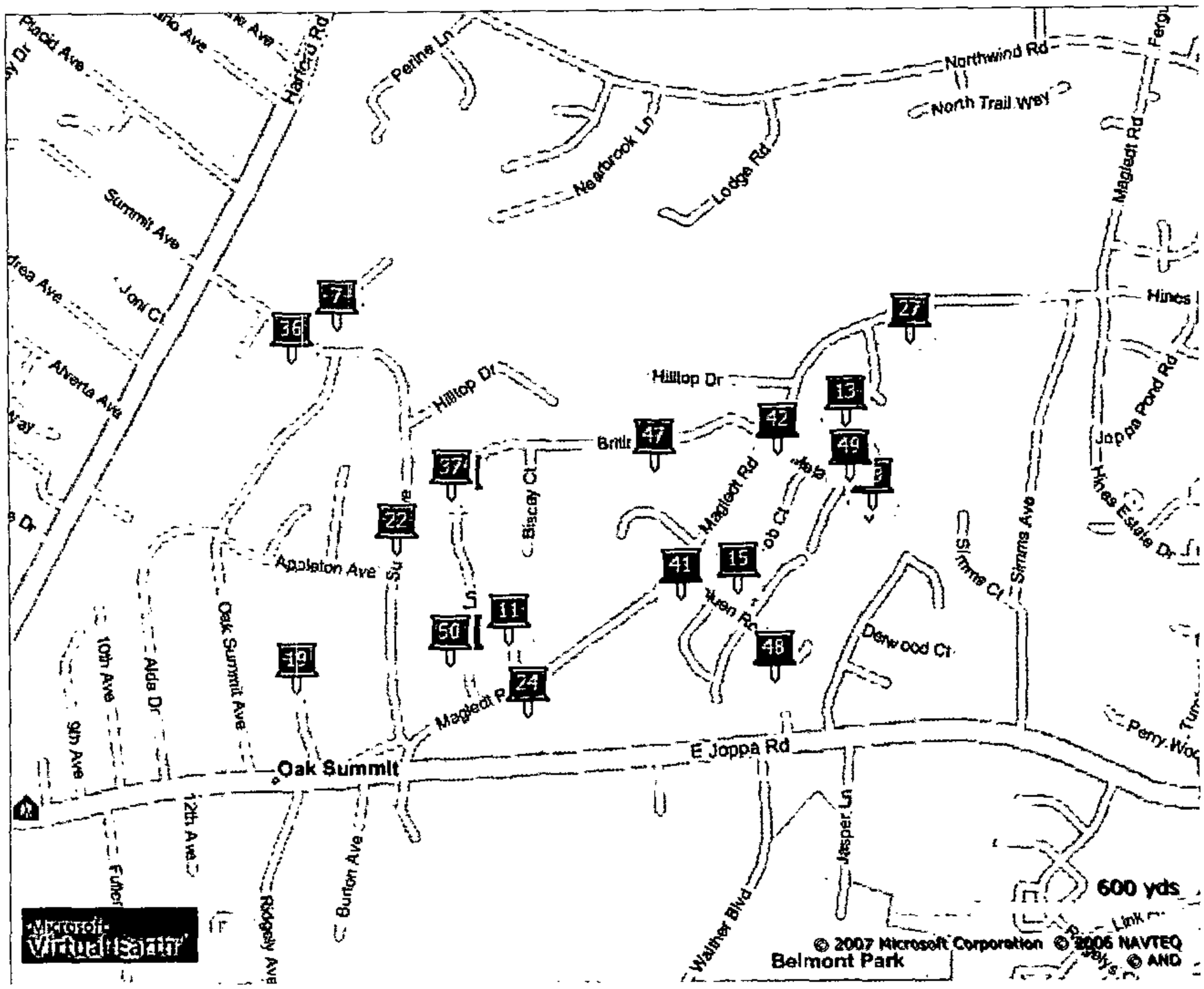

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3	Sold	BC4235568	9739 Denrob Ct	$159,900	3	2	0	Detached	VILLAGE OF VANDERWAY
41	Sold	BC2104528	16 Melanie Ct	$124,000	3	2	0	Detached	CARNEY
15	Sold	BC2133042	3610 Melanie Rd	$129,500	3	1	1	Detached	CARNEY
6	Sold	BC2191961	9928 Britinay Ln	$179,925	4	2	1	Detached	BRITINAY MANOR
37	Sold	BC2275543	9901 Finney Dr	$124,900	4	1	0	Detached	CUB HILL
8	Sold	BC2284472	17 Britmore Ct	$189,900	5	3	0	Detached	PERRY HALL
9	Sold	BC2390446	9922 Britinay Ln	$162,000	4	2	1	Detached	BRITINAY MANOR
10	Sold	BC2406613	9926 Britinay Ln	$150,000	3	2	0	Detached	CARNEY
11	Sold	BC2582358	12 Bright Oak Ct	$174,900	3	2	1	Detached	BRIGHT OAK
12	Sold	BC2740950	3621 Melanie Rd	$125,000	3	2	0	Detached	CARNEY
13	Sold	BC3016738	8 Britmore Ct	$195,000	4	2	1	Detached	PERRY HALL
14	Sold	BC3026585	9745 Denrob Ct	$129,000	3	2	0	Detached	CARNEY
15	Sold	BC3062488	9747 Denrob Ct	$137,000	4	2	0	Detached	PERRY HALL
16	Sold	BC3315930	3604 Melanie Rd	$135,000	4	2	0	Detached	CARNEY/PERRYHALL

17	Sold	BC3440189	9818 Britinay Ln	$174,900	3	2	1 Detached	BRITINAY
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19	Sold	BC4044210	9638 Oakdale Ave	$274,900	4	2	1 Detached	OAKDALE WOODS
20	Sold	BC4098987	9702 Britinay Ln	$169,500	3	2	0 Detached	BRITINAY HILL
21	Sold	BC3284952	9719 Britinay Ln	$153,900	3	2	0 Detached	BRITINAY HILL
22	Sold	BC4246039	3200 Summit Ave	$180,000	4	2	0 Detached	HOMEACRES
23	Sold	BC2165686	9827 Britinay Ln	$124,900	3	1	1 Detached	BRITINAY MANOR
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32	Sold	BC243921C	9736 Britinay Ln	$129,000	3	2	1 Detached	BRITINAY
33	Sold	BC246106C	3608 Melanie Road	$129,500	3	1	1 Detached	CARNEY
34	Sold	BC2498424	9804 Britinay Ln	$164,900	3	2	1 Detached	BRITINAY HILL
35	Sold	BC2552355	9946 Britinay Ln	$189,500	4	2	1 Detached	BRITINAY MANOR
36	Sold	BC2601856	9901A Finney Dr	$139,900	3	2	0 Detached	CARNEY/CUB HILL
37	Sold	BC2622884	9824 Britinay Ln	$150,000	3	2	0 Detached	PERRY HALL
38	Sold	BC2756987	9726 Britinay Ln	$154,900	4	3	0 Detached	BRITINAY HILL
39	Sold	BC2768014	9914 Britinay Ln	$184,900	4	2	2 Detached	BRITINAY MANOR
40	Sold	BC3240957	18 Melanie Ct	$140,900	4	3	0 Detached	CARNEY
41	Sold	BC3458212	9747 Magledt Rd	$166,000	4	3	0 Detached	VILLAGE OF VANDERWAY
42	Sold	BC3491061	9751 Magledt Rd	$199,900	4	3	0 Detached	VILLAGE OF VANDERWAY
43	Sold	BC4067908	9722 Britinay Ln	$172,000	3	1	1 Detached	BRITINAY HILL
44	Sold	BC4154503	9700 Britinay Ln	$219,900	4	2	1 Detached	BRITINAY HILL
45	Sold	BC2157064	9910 Britinay Ln	$157,900	3	2	1 Detached	BRITINAY
46	Sold	BC2642045	9902 Britinay Ln	$149,900	4	2	0 Detached	BRITINAY
47	Sold	BC3075418	9928 Britinay Ln	$197,900	4	2	1 Detached	BRITINAY MANOR
48	Sold	BC3498872	3502 Goldenrod Ln	$229,900	4	2	1 Detached	CLOVERFIELD MANOR
49	Sold	BC4229920	14 Melanie Ct	$178,000	3	1	1 Detached	VILLAGE OF VANDERWAY
50	Sold	BC4200287	9708 Britinay Ln	$202,000	3	3	0 Detached	BRITINAY HILL

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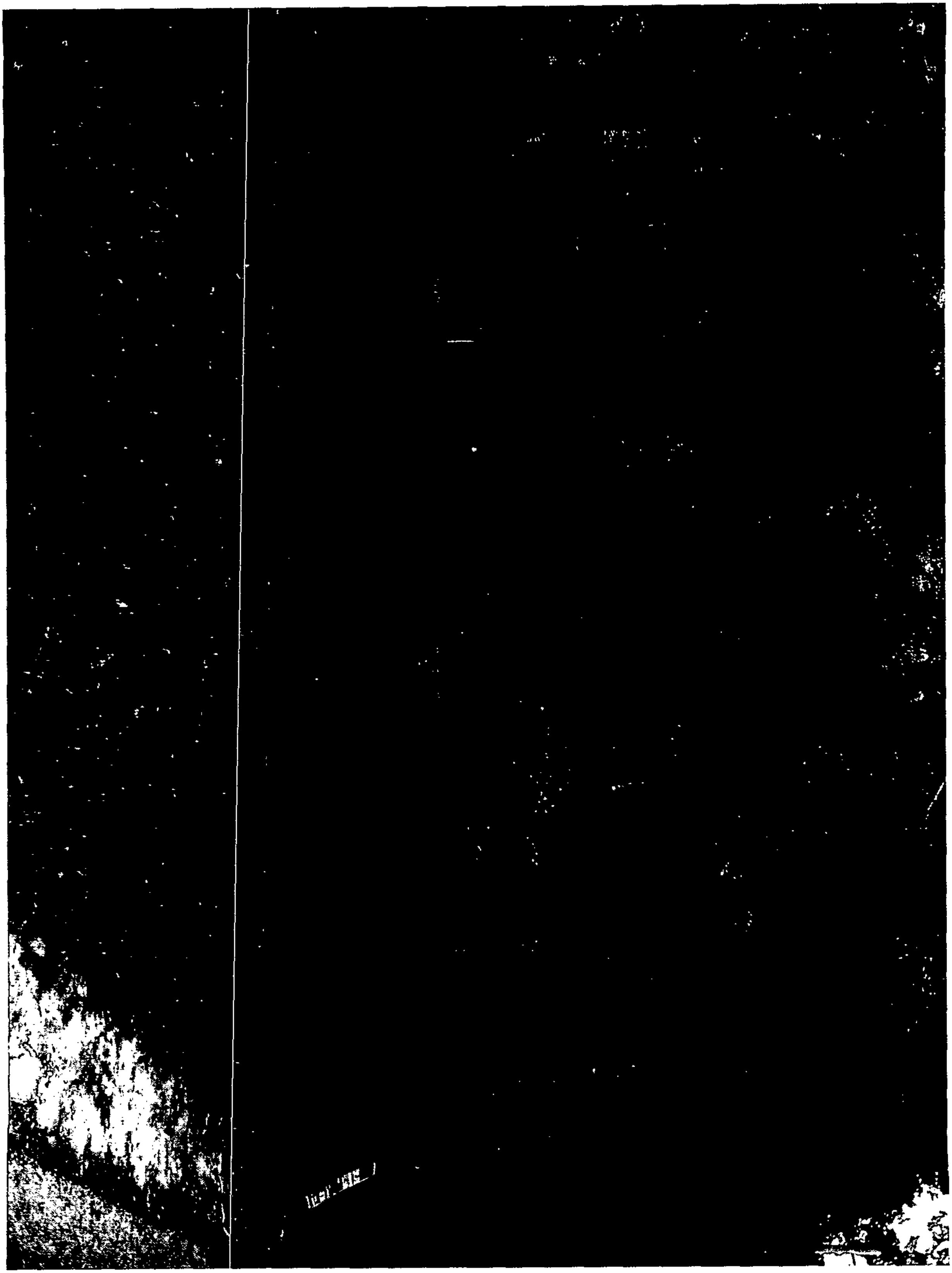
PETITIONER'S EXHIBIT
CBA 21

ZONING APPEAL
PUBLIC HEARING
CASE NUMBER
08-073-SPHA
FOR INFORMATION CALL
887-3180



PROPERTY ACCESS FROM SUBJECT

PETITIONER'S EXHIBIT
CBA-19

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PETITIONER'S EXHIBIT
CBA 20

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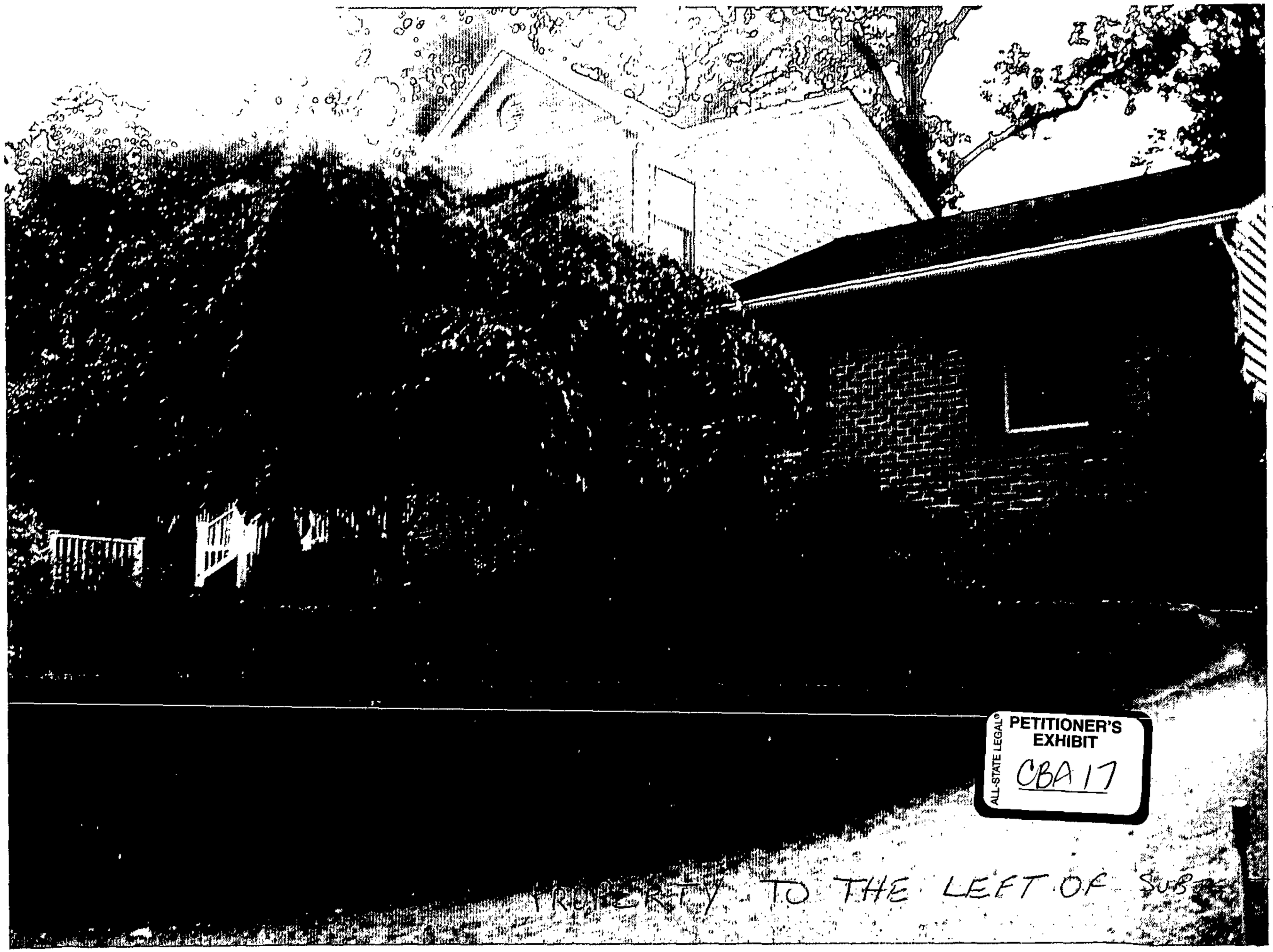
PETITIONER'S EXHIBIT
CBA 18



PETITIONER'S EXHIBIT
CBA 17

PETITIONER'S
EXHIBIT
28A 16
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BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

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

September 18, 2007

Weston C. Tucker
Lulu J. Tucker
9945 Hilltop Drive
Baltimore, MD 21234

Dear Mr. and Mrs. Tucker:

RE: Case Number: 08-073-SPHA, 9941 Hilltop Drive

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on August 8, 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

ALL-STATE LEGAL®
PETITIONER'S EXHIBIT
CBA 12

WCR:amf
Enclosures
c: People's Counsel
James Barnes 2095 Ridgemont Drive Finksburg 21048
Merritt Development Consultants, Inc. 2416 E. Joppa Road Baltimore 21234

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: August 24, 2007

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

SUBJECT: 9941 Hilltop Drive

INFORMATION:

Item Number: 8-073

Petitioner: Weston C. Tucker

Zoning: DR 3.5

Requested Action: **Variance**

SUMMARY OF RECOMMENDATIONS:

Due to the fact that there is a mix of lot sizes surrounding the subject property, the proposed variances should not have a negative impact on the neighborhood despite lots sizes on Hilltop Drive being much larger then the proposed lot. The Office of Planning does not oppose the petitioner's variance requests provided the following conditions are met:

1. Submit building elevation drawings to the Office of Planning for review and approval.
2. Provide the limits of disturbance for the proposed lot.

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

Reviewed by: Curtis Murray

Division Chief: Lynn Lochner
AFK/LL: CM

W:\DEVREV\ZAC\8-073.doc

Baltimore County
Fire Department

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

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

August 14, 2007

ATTENTION: Zoning Review Planners

Distribution Meeting Of: August 14, 2007

Item Number: Item Number ~~49~~ 73 and 052 through 075

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

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on Recycled Paper

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

State Highway Administration
Maryland Department of Transportation

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

Date: August 13, 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. 8-73-SPHA
9941 Hilltop Drive
Tucker Property
Special Hearing
Variance

Dear Ms. Matthews:

Thank you for the opportunity to review your referral request on the subject of the above captioned. We have determined that the subject property does not access a State roadway and is not affected by any State Highway Administration projects. Therefore, based upon available information this office has no objection to Baltimore County Zoning Advisory Committee approval of Item No. 8-73-SPHA.

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

Very truly yours,

Michael P. Bailey

For Steven D. Foster, Chief
Engineering Access Permits
Division

SDF/MB

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

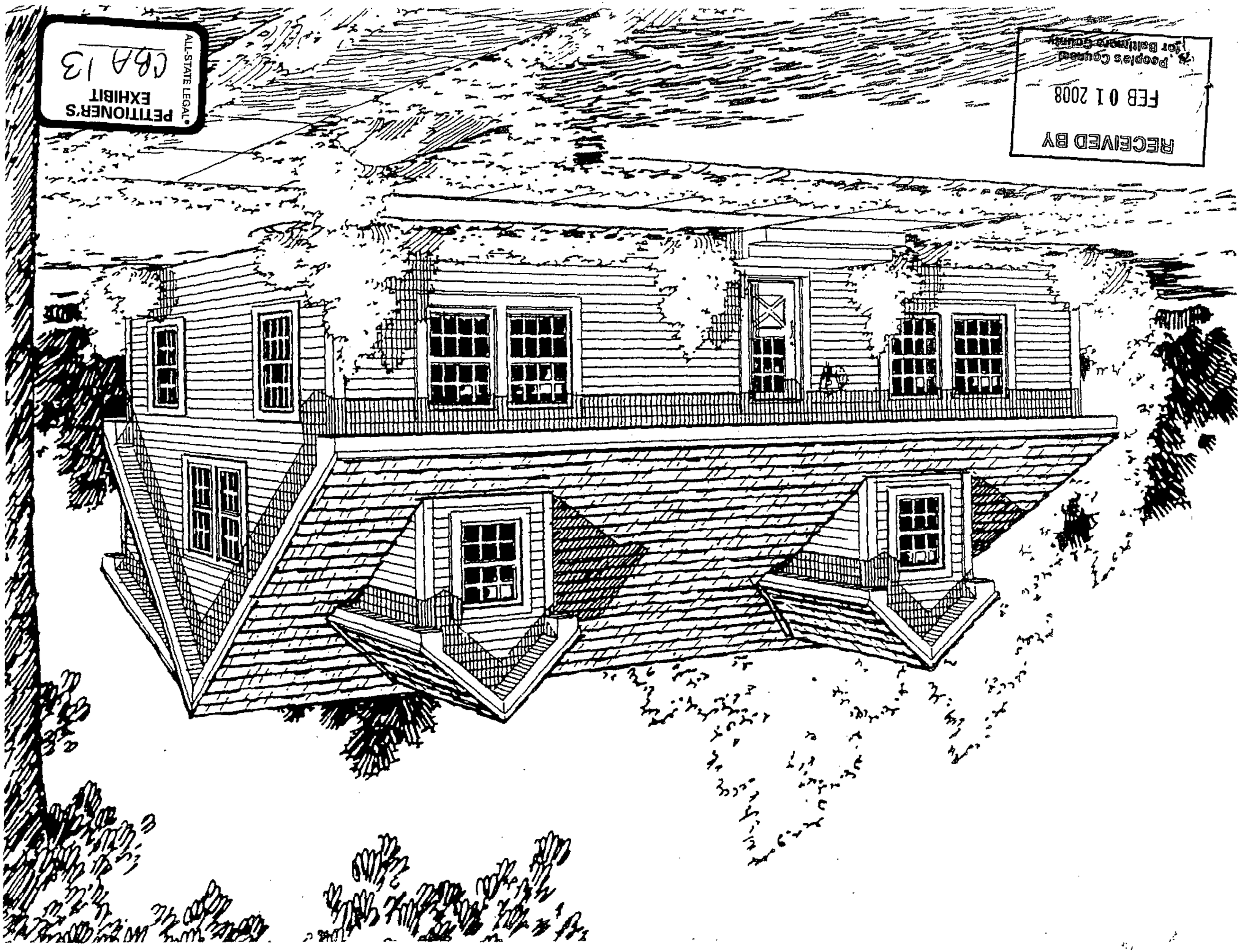
DATE: August 15, 2007

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

SUBJECT: Zoning Advisory Committee Meeting
For August 20, 2007
Item Nos. 052, 054, 056, 057, 058, 061, 062, 063, 065, 066, 067, 068, 071, 072, 073, 074, and 075

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

DAK:CEN:clw
cc: File
ZAC-NO COMMENTS-08152007.doc



PETITIONER'S
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CBA 13
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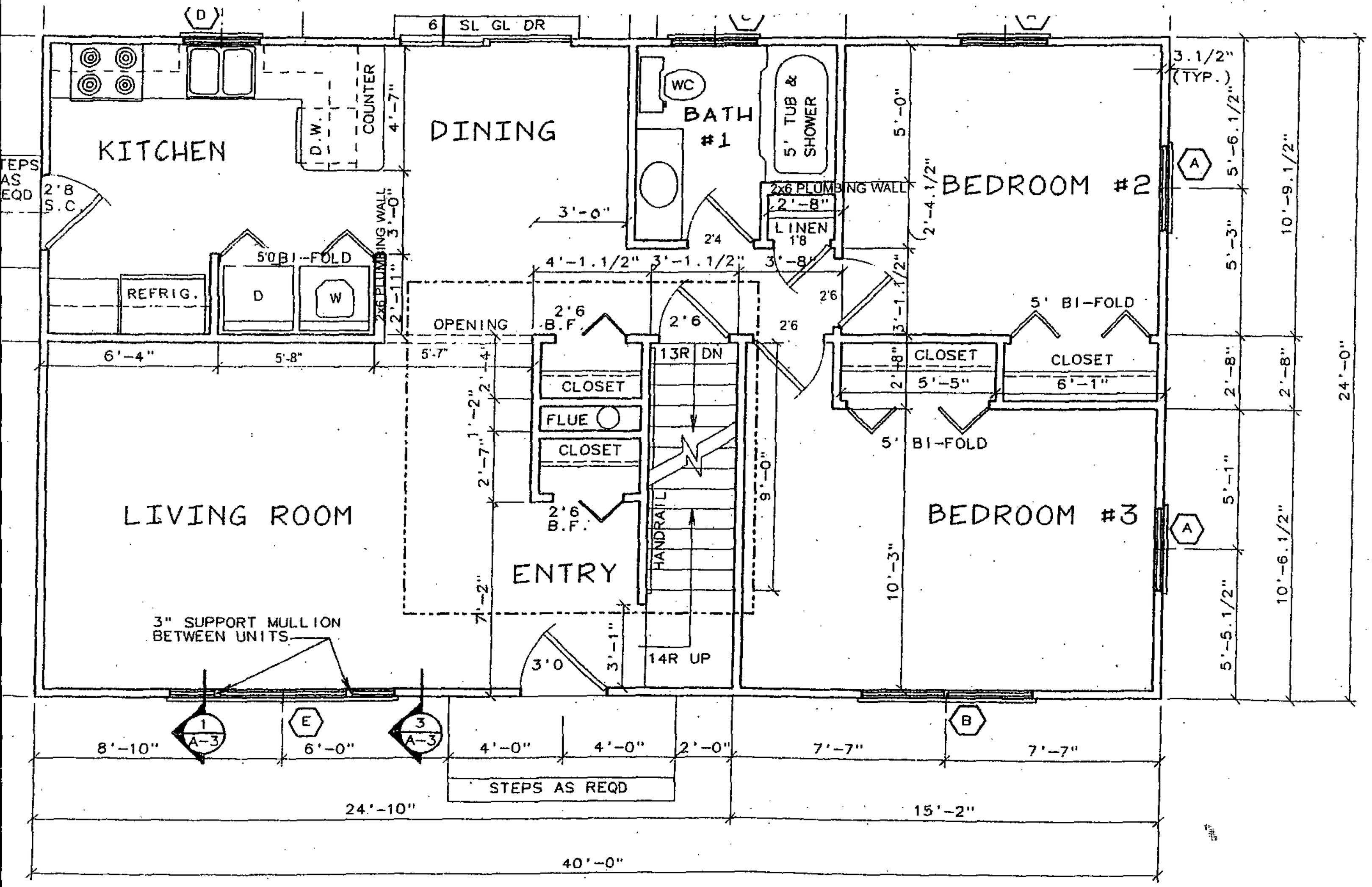
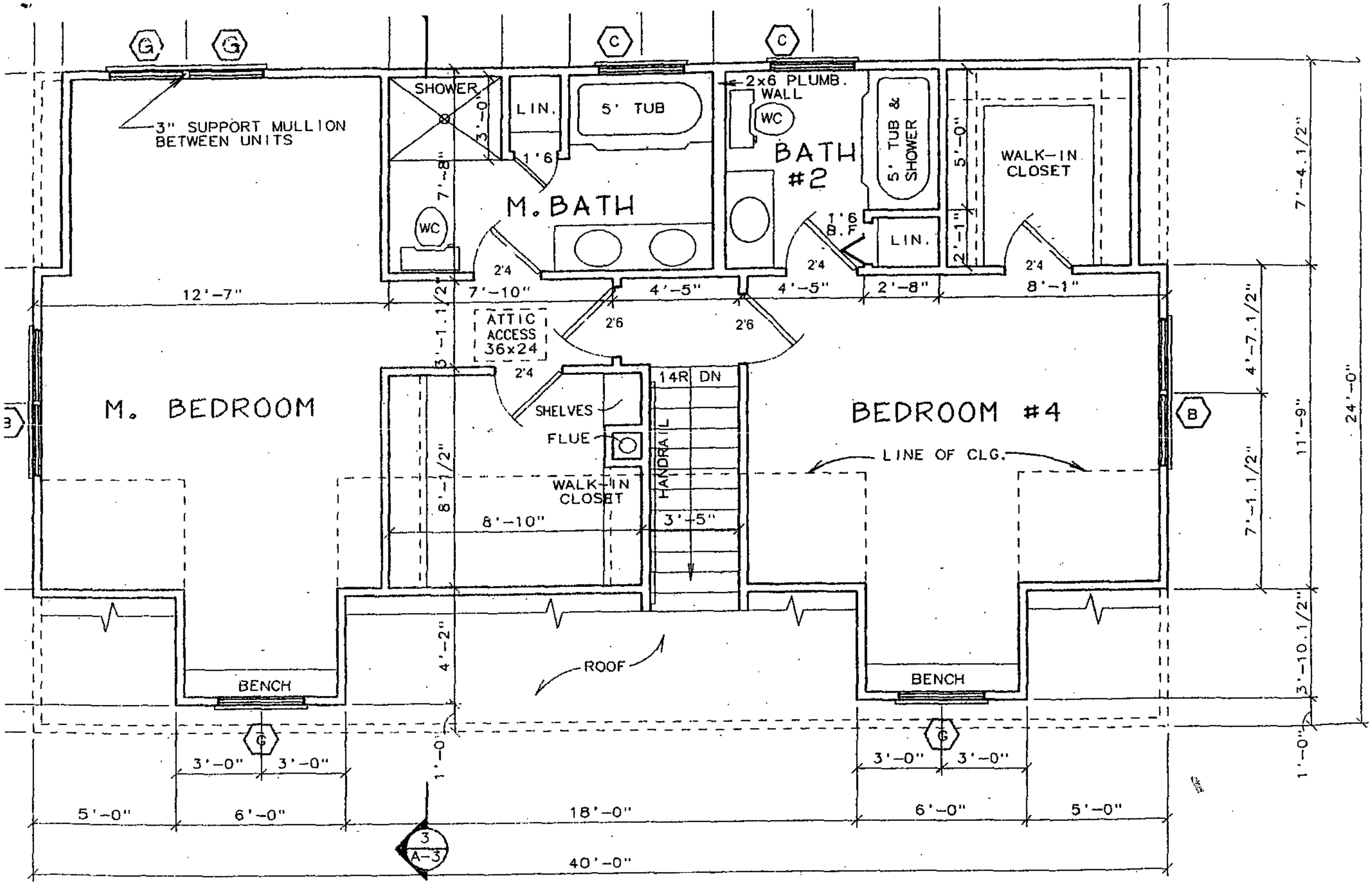
FEB 01 2008
People's Counsel
for Baltimore County



FIRST FLOOR PLAN



SECOND FLOOR PLAN

SCALE: 1/4" = 1'-0"

January 29, 2008

We, the undersigned, agree not to oppose the construction of a two-story dwelling on the property located at 9941 Hilltop Avenue Baltimore, Maryland 21234.

Kevin Monaghan		9939 Hilltop Dr.
Resident	Signature	Address
Julie Puhl		9940 Hilltop Dr.
Resident	Signature	Address
D. L. Dunzler		9949 Hilltop Dr.
Resident	Signature	Address

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PETITIONER'S EXHIBIT
CBA 14

ACCOUNT NO. 51798

PHONE NUMBER 410-833-9575

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- Northeast Reporter
- Baltimore Messenger
- Jeffersonian
- North County News

ZONING: 08-073-SPHA 9941 HILLTOP DR

INVOICE DATE 9/12/07

PAYMENT DUE UPON RECEIPT OF INVOICE

DATE START	DATE STOP	DESCRIPTION	LINES	TIMES	AGATE LINES	RATE	AMOUNT
9/11/2007	9/13/2007	NOTICE OF ZONING HEARING The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regul ations of Baltimore County will hold a	88	1	88		88.00
SKIP INSERTIONS							
PUBLICATIONS ▶					ADJUSTMENTS		
P.O. NO. JT 57661					PROOF CHANGES		
					PREPAID AMOUNT		
					TOTAL AMOUNT DUE		88.00

not delivered 9-14-07

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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: #08-073-SPHA
9941 Hilltop Drive
S/side of Hilltop Drive, 450 feet west of Magledt Road
11th Election District - 5th Councilmanic District
Legal Owner(s): Weston C. & Lulu J. Tucker
Contract Purchaser: James Barnes

Special Hearing: to permit a principal dwelling to be erected on an existing lot having an area of 7,338 sq. ft. (0.168 acres +/-) in lieu of the 10,000 square feet required. **Variance:** to permit a principal building front yard setback of 30 feet in lieu of the average front yard depths of adjoining lots of 50.5 feet.

Hearing: Tuesday, September 25, 2007 at 11:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204.

WILLIAM J. WISEMAN, III
Zoning Commissioner for Baltimore County

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

JT 9/661 Sept. 11 148267

CERTIFICATE OF PUBLICATION

9/13, 2007

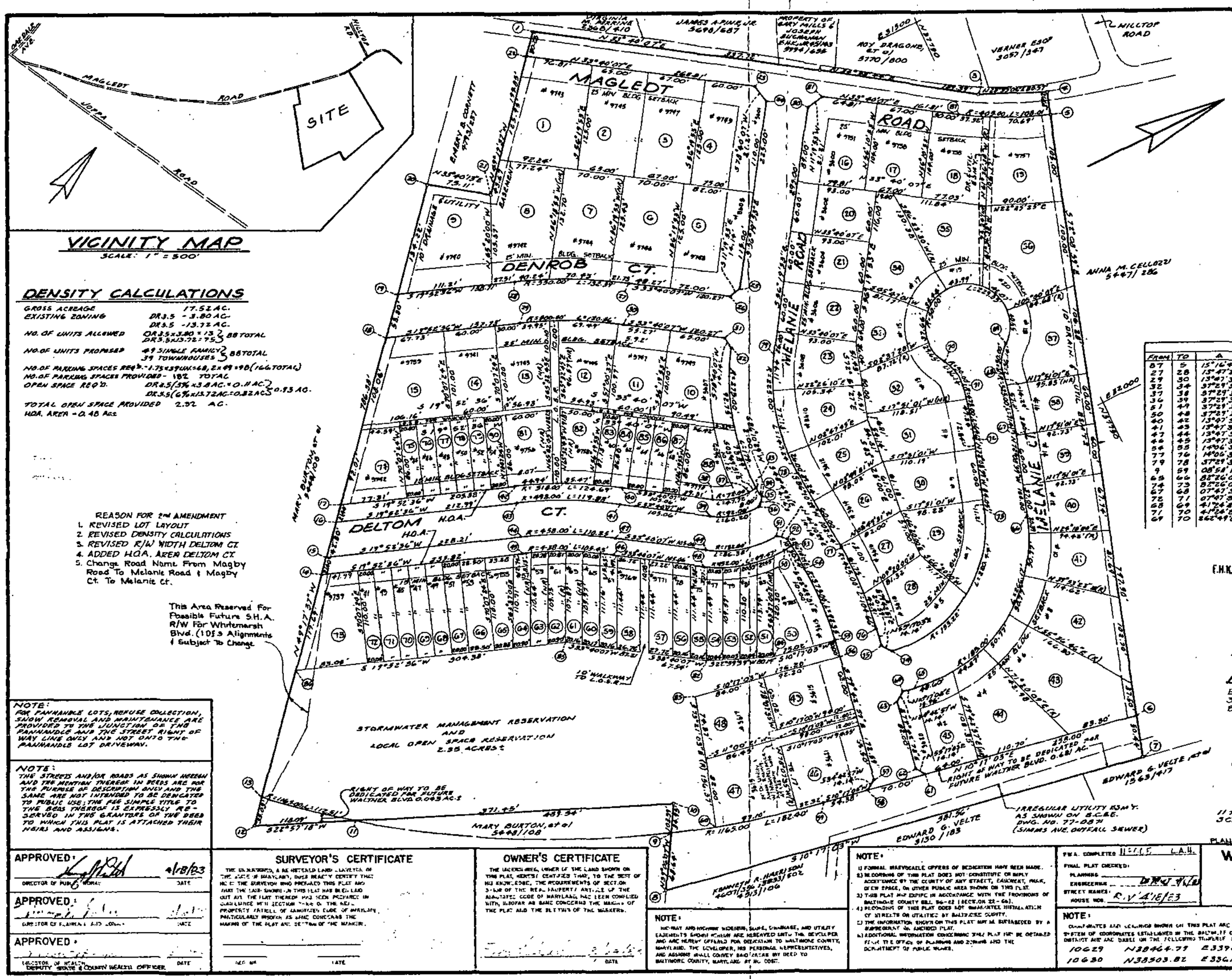
THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 ~~successive~~ weeks, the first publication appearing on 9/11, 2007.

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

Bd #61
9-24-07

S. Wilkinson 9/11

LEGAL ADVERTISING



VICINITY MAP

SCALE: 1" = 500'

DENSITY CALCULATIONS

GROSS ACREAGE 17.52 AC.
EXISTING ZONING DR3.5 - 3.80 AC.
DR5.5 - 13.72 AC.
NO. OF UNITS ALLOWED DR3.5 x 3.80 = 13 } 88 TOTAL
DR5.5 x 13.72 = 75 }
NO. OF UNITS PROPOSED 49 SINGLE FAMILY } 88 TOTAL
39 TOWNHOUSES }
NO. OF PARKING SPACES REQ'D. - 1.75 x 39 UNITS = 68, 2 x 49 = 98 (166 TOTAL)
NO. OF PARKING SPACES PROVIDED - 182 TOTAL
OPEN SPACE REQ'D. DR3.5 (3% x 3.8 AC.) = 0.11 AC.
DR5.5 (6% x 13.72 AC. = 0.82 ACS } = 0.93 AC.
TOTAL OPEN SPACE PROVIDED 2.35 AC.
H.O.A. AREA - 0.48 ACS.

REASON FOR 2nd AMENDMENT
1. REVISED LOT LAYOUT
2. REVISED DENSITY CALCULATIONS
3. REVISED R/W WIDTH DELTOM CT.
4. ADDED H.O.A. AREA DELTOM CT.
5. Change Road Name From Magby Road To Melanie Road & Magby Ct. To Melanie Ct.

NOTE:
FOR PANHANDLE LOTS, REFUSE COLLECTION, SNOW REMOVAL AND MAINTENANCE ARE PROVIDED BY THE JURISDICTION BETWEEN THE PANHANDLE AND THE STREET RIGHT OF WAY LINE ONLY AND NOT INTO THE PANHANDLE LOT DRIVEWAY.

NOTE:
THE STREETS AND/OR ROADS AS SHOWN HEREON AND THE MENTION THEREOF IN DEEDS ARE FOR THE PURPOSE OF DESCRIPTION ONLY AND THE SAME ARE NOT INTENDED TO BE DEDICATED TO PUBLIC USE; THE FEE SIMPLE TITLE TO THE BEDS THEREOF IS EXPRESSLY RESERVED IN THE GRANTORS OF THE DEED TO WHICH THIS PLAT IS ATTACHED THEIR HEIRS AND ASSIGNS.

APPROVED: 4/18/83
DIRECTOR OF PUBLIC WORKS — DATE
APPROVED:
DIRECTOR OF PLANNING AND ZONING — DATE
APPROVED:
DIRECTOR OF HEALTH
DEPUTY STATE & COUNTY HEALTH OFFICER — DATE

SURVEYOR'S CERTIFICATE

THE UNDERSIGNED, A REGISTERED LAND SURVEYOR OF THE STATE OF MARYLAND, HEREBY CERTIFY THAT I, THE SURVEYOR WHO PREPARED THIS PLAT AND THAT THE LAND SHOWN IN THIS PLAT HAS BEEN LAID OUT AS THE PLAT THEREOF HAS BEEN PREPARED IN COMPLIANCE WITH SECTION [illegible] OF THE REAL PROPERTY ARTICLE OF ANNOTATED CODE OF MARYLAND, PARTICULARLY PRIOR TO ANY CONCERNS THE MAKING OF THE PLAT AND SETTING OF THE MARKERS.

REG. NO. — DATE

OWNER'S CERTIFICATE

THE UNDERSIGNED, OWNER OF THE LAND SHOWN ON THIS PLAT, HEREBY CERTIFIES THAT, TO THE BEST OF HIS KNOWLEDGE, THE REQUIREMENTS OF SECTION 3-108 OF THE REAL PROPERTY ARTICLE OF THE ANNOTATED CODE OF MARYLAND, HAS BEEN COMPLIED WITH, PRIOR TO ANY CONCERNS THE MAKING OF THE PLAT AND THE SETTING OF THE MARKERS.

DATE

NOTE:
1) FORMAL INDIVIDUALLY OFFERS OF DEDICATION HAVE BEEN MADE.
2) THE CONTENTS OF THIS PLAT DOES NOT CONSTITUTE OR IMPLY ACCEPTANCE BY THE COUNTY OF ANY STREETS, ROADWAY, PARK, OPEN SPACE, OR OTHER PUBLIC AREA SHOWN ON THIS PLAT.
3) THIS PLAT WAS DRAWN IN ACCORDANCE WITH THE PROVISIONS OF BALTIMORE COUNTY BILL 96-62 (SECTION 22-26).
4) RECORDING OF THIS PLAT DOES NOT GUARANTEE INSTALLATION OF STREETS OR UTILITIES BY BALTIMORE COUNTY.
5) THE INFORMATION SHOWN ON THIS PLAT MAY BE SUPERSEDED BY A SUBSEQUENT OR AMENDED PLAT.
6) ADDITIONAL INFORMATION CONCERNING THIS PLAT MAY BE OBTAINED FROM THE OFFICE OF PLANNING AND ZONING AND THE DEPARTMENT OF PUBLIC WORKS.

NOTE:
NO WALL AND FENCE HEDGES, SLOPES, DRAINAGE, AND UTILITY EASEMENTS SHOWN HEREON ARE RESERVED UNTIL THE DEVELOPER AND ARE HEREBY OFFERED FOR DEDICATION TO BALTIMORE COUNTY, MARYLAND. THE DEVELOPER, HIS PERSONAL REPRESENTATIVES, AND ASSIGNS SHALL CONVEY SAID PARCELS BY DEED TO BALTIMORE COUNTY, MARYLAND, AT NO COST.

F.W.A. COMPLETED 11-17-82 L.A.H.
FINAL PLAT CHECKED:
PLANNER
ENGINEERING 4/18/83
STREET NAMES:
HOUSE NOS. R.V. 4/18/83

NOTE:
COORDINATES AND BEARINGS SHOWN ON THIS PLAT ARE REFERRED TO THE SYSTEM OF COORDINATES ESTABLISHED BY THE BALTIMORE COUNTY METROPOLITAN DISTRICT AND ARE BASED ON THE FOLLOWING TRIANGULATION STATIONS:

10629	N38464.77	E33963.14
10630	N38503.82	E33616.06

COMPUTED BY: PA
DRAWN BY: RB
CHECKED BY: WD
PR. ACCT. NUMBER:

COORDINATES

N°	NORTH	EAST	N°	NORTH	EAST
1	37342.46	31314.24	67	37443.13	31989.64
2	37612.83	31301.44	68	37440.33	31920.40
3	37738.60	31604.93	69	37678.45	31890.01
4	37852.48	31842.17	70	37694.77	31876.78
5	37844.28	31907.07	71	37611.10	31871.46
6	37612.830	32583.75	72	37595.53	31914.32
7	37612.48	32587.33	73	37540.07	32054.31
8	37033.62	32597.91	74	37396.58	31968.10
9	37075.87	32239.00	75	37385.93	31946.88
10	37088.82	32204.01	76	37392.20	32126.22
11	36796.78	32068.14	77	37398.08	32021.99
12	36638.04	32018.09	78	37391.26	31919.99
13	36600.88	31991.34	79	37428.30	31780.24
14	36838.68	31784.87	80	37393.05	31934.77
15	36852.69	31768.65	81	37612.85	31530.95
16	36880.55	31736.21	82	37745.42	31037.60
17	36898.90	31719.84	83	37766.07	32105.52
18	37028.48	31562.48	84	37269.19	32103.90
19	37048.37	31528.71	85	37048.23	31961.82
20	37150.90	31451.64	86		
21	37211.95	31465.76	87	37782.51	31620.26
22	37372.33	31537.18			
23	37546.27	31486.20			
24	37580.93	31507.00			
25	37623.70	31594.26			
26	37631.81	31577.09			
27	37711.73	31630.34			
28	37793.82	31570.87			
29	37762.82	31617.89			
30	37780.01	31671.37			
31	37584.11	31754.65			
32	37358.80	31792.53			
33	37345.20	32117.30			
34	37339.43	32136.37			
35	37312.19	32287.71			
36	37300.37	32378.16			
37	37247.06	32589.46			
38	37127.27	32598.33			
39	37369.94	32307.68			
40	37364.39	32296.04			
41	37376.23	32217.35			
42	37387.66	32207.30			
43	37403.35	32110.15			
44	37612.48	32084.53			

CURVE DATA

FROM	TO	Δ	R	L	T	CHORD
27	5	15°16'49"	405.00	108.01	54.33'	N26°01'49.12" 107.69'
27	28	13°47'32"	550.00'	132.39'	66.52'	S26°46'21" W 132.09'
29	30	13°42'32"	500.00'	120.36'	60.47'	S26°46'21" W 120.07'
32	34	37°29'38"	275.00'	179.96'	93.33'	N75°06'41.8" W 176.76'
37	38	37°29'38"	72.00'	47.72		
39	49	37°29'38"	91.00'	60.20'	31.22'	S14°55'18.5" W 59.16'
51	49	37°29'38"	132.00'	86.38'	44.80'	S14°55'18.5" W 84.86'
50	48	37°29'38"	152.00'	99.47'		
40	42	13°47'32"	818.00'	196.69'	60.23'	S26°46'21" W 170.50'
41	43	13°47'32"	499.00'	119.88'	60.35'	S26°46'21" W 119.58'
47	44	13°47'32"	458.00'	110.35'		
44	45	13°47'32"	438.00'	105.43'		
54	55	14°06'34"	375.00'	92.35'	46.41'	N86°46'18.1" W 92.11'
77	76	14°05'34"	425.00'	104.64'	52.60'	N86°46'18.1" W 104.39'
79	78	37°29'38"	225.00'	147.24'	76.36'	N75°06'41.8" W 144.63'
9	59	08°58'14"	1165.00	182.40	91.37'	S14°46'07" W 182.21'
65	66	85°26'02"	185.00'	276.07'	167.06'	N30°55'58.1" W 249.80'
74	73	85°26'02"	153.33'	228.64'	154.21'	N30°55'58.1" W 208.01'
67	68	07°47'35"	525.00'	71.41'	35.76'	N76°02'44.3" W 71.35'
72	71	07°47'35"	475.00'	64.61'	32.35'	N76°02'44.3" W 64.56'
68	69	41°24'35"	50.00'	36.14'	18.90'	S33°19'16.4" E 35.36'
71	70	41°24'35"	50.00'	36.14'	18.90'	S33°19'16.4" E 35.36'
69	70	262°49'09"	50.00'	229.35'	—	N 8°03'26.3" E 75.00'

F.H.K. JR. 50 FOLIO 10
Filed for record
Date APR 21 1983
Clerk

EHKJR 5831 / 891

DEVELOPER:
E.L.S. ENTERPRIZES, INC.
3031 EAST AVE.
BALTO. MD. 21214

SECOND AMENDED PLAT OF
"VILLAGE OF VANDERWAY"

11TH ELECT. DIST. — BALTO. CO. MD.
SCALE: 1" = 50' — DATE: JAN. 31, 1982

PLAN APPROVAL DATE 1/27/83

W. DUVALL & ASSOCIATES
416 E. JOPPA RD.
TOWSON, MD. 21204
583-3571

F10796

MSA S5U 1236-10322 50-10

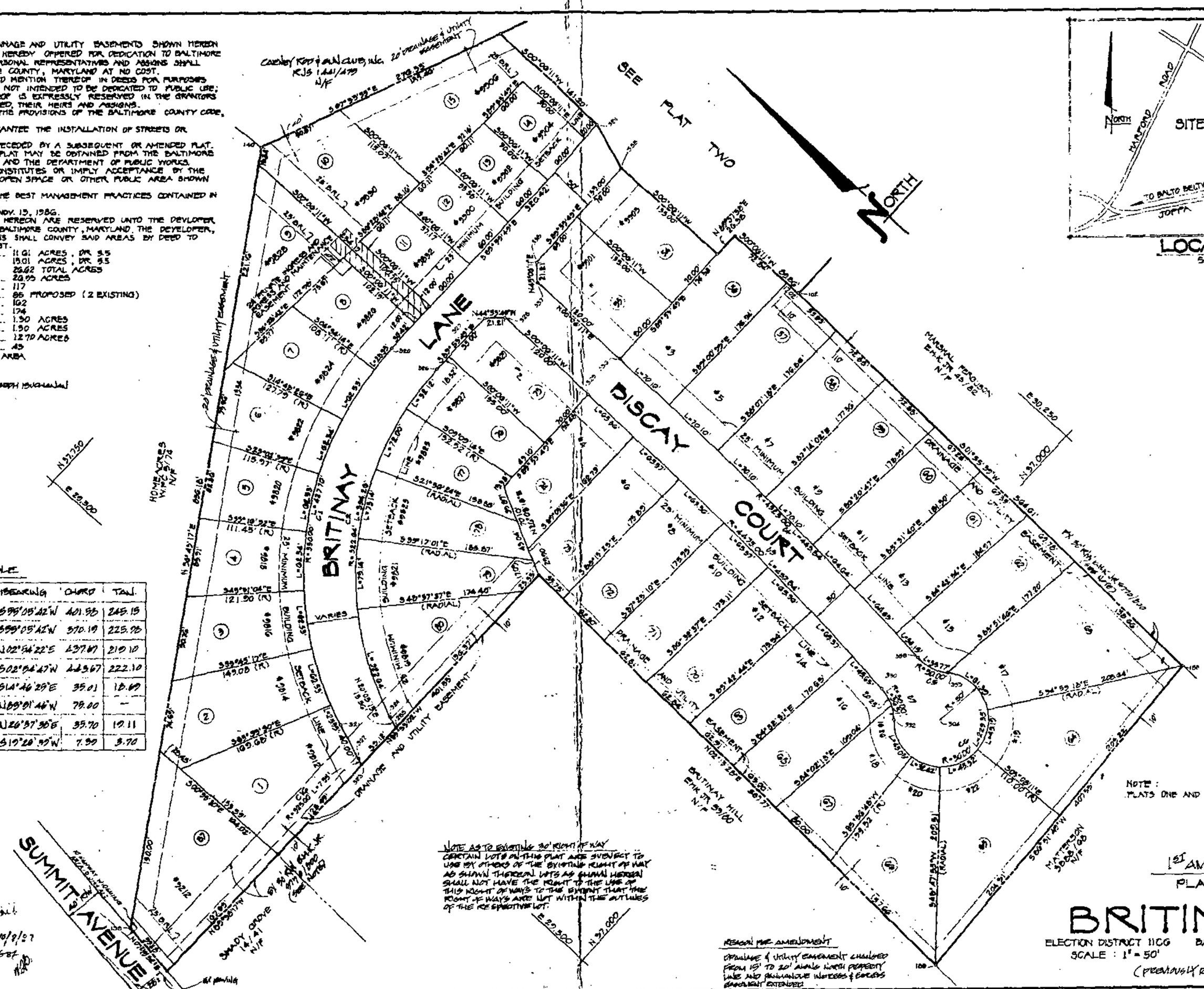
PETITIONER'S EXHIBIT
CBA 11
ALL-STATE LEGAL

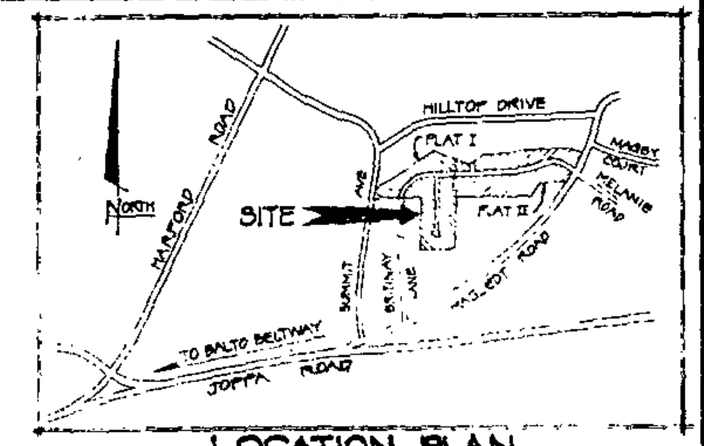
GENERAL NOTES:

1) HIGHWAY AND HIGHWAY WIDENING, SLOPE, DRAINAGE AND UTILITY EASEMENTS SHOWN HEREON ARE RESERVED UNTO THE DEVELOPER AND ARE HEREBY OFFERED FOR DEDICATION TO BALTIMORE COUNTY, MARYLAND. THE DEVELOPER, HIS PERSONAL REPRESENTATIVES AND ASSIGNS SHALL CONVEY SAID AREAS BY DEED TO BALTIMORE COUNTY, MARYLAND AT NO COST.
2) STREETS AND/OR ROADS SHOWN HEREON AND MENTION THEREOF IN DEEDS FOR PURPOSES OF DESCRIPTION ONLY, AND THE SAME ARE NOT INTENDED TO BE DEDICATED TO PUBLIC USE; THE FEE SIMPLE TITLE TO THE BEDS THEREOF IS EXPRESSLY RESERVED IN THE GRANTORS OF THE DEED TO WHICH THIS PLAT IS ATTACHED, THEIR HEIRS AND ASSIGNS.
3) THIS PLAT MAY EXPIRE IN ACCORDANCE WITH THE PROVISIONS OF THE BALTIMORE COUNTY CODE, SECTION 22-65.
4) THE RECORDING OF THIS PLAT DOES NOT GAURANTEE THE INSTALLATION OF STREETS OR UTILITIES BY BALTIMORE COUNTY.
5) THE INFORMATION SHOWN HEREON MAY BE SUPERCEDED BY A SUBSEQUENT OR AMENDED PLAT.
6) ADDITIONAL INFORMATION CONCERNING THIS PLAT MAY BE OBTAINED FROM THE BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING AND THE DEPARTMENT OF PUBLIC WORKS.
7) THE RECORDING OF THIS PLAT DOES NOT CONSTITUTES OR IMPLY ACCEPTANCE BY THE COUNTY OF ANY STREET, EASEMENT, PARK, OPEN SPACE OR OTHER PUBLIC AREA SHOWN ON THE PLAT.
8) THE OWNER/DEVELOPER WILL COMPLY WITH THE BEST MANAGEMENT PRACTICES CONTAINED IN THE WATER QUALITY MANAGEMENT POLICY.
9) PLAN OF BRITINAY II WAS APPROVED ON NOV. 15, 1986.
10) THE DRAINAGE RESERVATION AREAS SHOWN HEREON ARE RESERVED UNTO THE DEVLOPER AND ARE HEREBY OFFERED FOR DEDICATED TO BALTIMORE COUNTY, MARYLAND. THE DEVELOPER, HIS PERSONAL REPRESENTATIVE AND ASSIGNS SHALL CONVEY SAID AREAS BY DEED TO BALTIMORE COUNTY, MARYLAND AT NO COST.
11) GROSS AREA OF TRACT ..... 11.61 ACRES ; DR. 9.5
15.01 ACRES ; DR. 9.5
26.62 TOTAL ACRES
12) NET AREA OF TRACT ..... 20.95 ACRES
13) DWELLING UNITS ALLOWED 117
14) DWELLING UNITS PROPOSED ..... 86 PROPOSED (2 EXISTING)
15) PARKING SPACES REQUIRED 162
16) PARKING SPACES PROPOSED 174
17) OPEN SPACE REQUIRED ..... 1.30 ACRES
18) OPEN SPACE PROPOSED ..... 1.90 ACRES
19) AREA OF THIS PLAT ..... 12.70 ACRES
20) NUMBER OF PROPOSED LOTS THIS PLAT 49
21) DRAINAGE AREA – GUN POWDER DRAINAGE AREA
22) SUB SEWERAGE-18
23) TAX ACCT. NO 11-03-031189 - Roy Dixon
24) TAX ACCT NO 16-00-013025 Grey Mills & Joseph Buchanan
25) TAX ACCT NO 18-00-013026
26) TAX ACCT NO 17-00-008734
27) TAX ACCT NO 18-00-013025
28) TAX ACCT NO 11-03-051990
29) TAX ACCT NO 11-03-051991
30) SH. 7490-399
31) SH. 7490-399
32) SH. 7490-401
33) SH. 7490-404

CURVE TABLE

NAME	ANGLE	RADIUS	LENGTH	BEARING	CHORD	TAN.
C1	Δ=70°00'38"	350.00	427.70	S39°05'42"W	401.55	245.19
C2	Δ=70°00'38"	322.64	394.26	S39°05'42"W	370.19	225.96
C3	Δ=09°36'21"	2475.00	437.84	N02°54'22"E	437.07	219.10
C4	Δ=09°37'12"	2525.00	423.84	S02°54'27"W	423.67	212.10
C5	Δ=40°59'37"	50.00	38.77	S14°46'29"E	35.01	20.40
C6	Δ=262°46'37"	50.00	229.39	N89°01'46"W	78.00	—
C7	Δ=41°30'10"	50.00	36.51	N26°37'30"E	35.70	19.11
C16	Δ=01°18'19"	825.00	7.99	S19°28'39"W	7.99	3.70





LOCATION PLAN
SCALE : 1" = 1000'

COORDINATES:

POINT	NORTH	EAST
102	37909.6890	30171.4721
199	37370.7561	29206.7492
140	37829.5781	29905.5039
188	37745.4002	30192.4828
189	38725.1058	29745.5947
289	37310.7400	29548.8000
304	36884.0425	29940.8171
320	37555.1425	29841.2197
321	37595.3492	29511.8792
322	37517.7823	29498.1414
323	37510.8100	29495.6800
324	37323.2872	29859.7726
326	37555.1140	29659.9836
327	37534.9810	29920.9010
328	37519.9547	29945.4799
329	37599.9545	29949.2579
330	37582.8494	29995.0882
332	37930.9328	29907.0886
393	38022.5143	29861.0365
339	38054.7725	29872.7097
336	37999.8048	29898.2576
332	37894.8370	30010.8008
381	37584.5056	30161.0249
333	37534.9225	30148.9008

NOTE:
PLATS ONE AND TWO MUST BE RECORDED TOGETHER

Filed for record
S.M. 57 FOLIO 97
Date OCT 29 1987

1ST AMENDED
PLAT ONE
of
BRITINAY II

ELECTION DISTRICT 11CG BALTIMORE COUNTY, MARYLAND
SCALE : 1" = 50' SEPTEMBER 14, 1987
(PREVIOUSLY RECORDED S.M. 64/98)

REASON FOR AMENDMENT
DRAINAGE & UTILITY EASEMENT CHANGED FROM 15' TO 20' ALONG NORTH PROPERTY LINE AND PARKWAYS WIDENED & CURVES SMOOTHED EXTENDED

APPROVED:
Charles Shealey 10-13-87
DIR. DEPT. OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT DATE

APPROVED:
DIRECTOR OF PLANNING AND ZONING DATE:

APPROVED:
DIRECTOR OF PUBLIC WORKS DATE:

OWNER / DEVELOPER:
TIMBERBROOK INC.
5700 OLD HARFORD ROAD
BALTIMORE, MARYLAND 21214
TELEPHONE (301) 661-1902

NOTE:
COORDINATES AND BEARINGS SHOWN ON THIS PLAT ARE REFERENCE TO THE SYSTEM OF COORDINATES ESTABLISHED IN THE BALTIMORE COUNTY METROPOLITAN DISTRICT AND ARE BASED ON THE FOLLOWING TRAVERSE STATIONS:

X-4536 N 35,752.37 E 32,017.10
X-4557 N 35,774.78 E 32,515.15

OWNERS CERTIFICATE:
THE UNDERSIGNED, OWNER OF THE LAND SHOWN ON THIS PLAT, HEREBY CERTIFIES THAT, TO THE BEST OF HIS KNOWLEDGE, THE REQUIREMENTS OF SUBSECTION (C) OF SECTION 3-108 OF THE REAL PROPERTY ARTICLE OF THE ANNOTATED CODE OF MARYLAND HAVE BEEN COMPLIED WITH, SOOTHE AS SAME CONCERNS THE MAKING OF THE PLAT AND SETTING OF THE MARKERS.
TIMBERBROOK INC.
E. SCOTT WAGNER V.P. DATE:

SURVEYOR'S CERTIFICATE:
THE UNDERSIGNED, A REGISTERED LAND SURVEYOR OF THE STATE OF MARYLAND, DOES HEREBY CERTIFY THAT HE IS THE SURVEYOR WHO PREPARED THIS PLAT AND THAT THE LAND SHOWN ON THIS PLAT HAS BEEN LAID OUT, AND THE PLAT THEREOF HAS BEEN PREPARED IN COMPLIANCE WITH SUBSECTION (C) OF SECTION 3-108 OF THE REAL PROPERTY ARTICLE OF THE ANNOTATED CODE OF MARYLAND, SPECIFICALLY SOOTHE AS SAME CONCERNS THE MAKING OF THE PLAT AND SETTING THE MARKERS.
REGISTERED LAND SURVEYOR, NO. 11521 DATE:

DEC
DEVELOPMENT ENGINEERING CONSULTANTS INC.
SITE ENGINEERS & SURVEYORS
6600 YORK ROAD BALTIMORE, MARYLAND 21212
TELEPHONE (301) 377-2600
COMPUTED: G.A.E DRAWN: K.P.H CHECKED: W.E.S. J.O. 86129

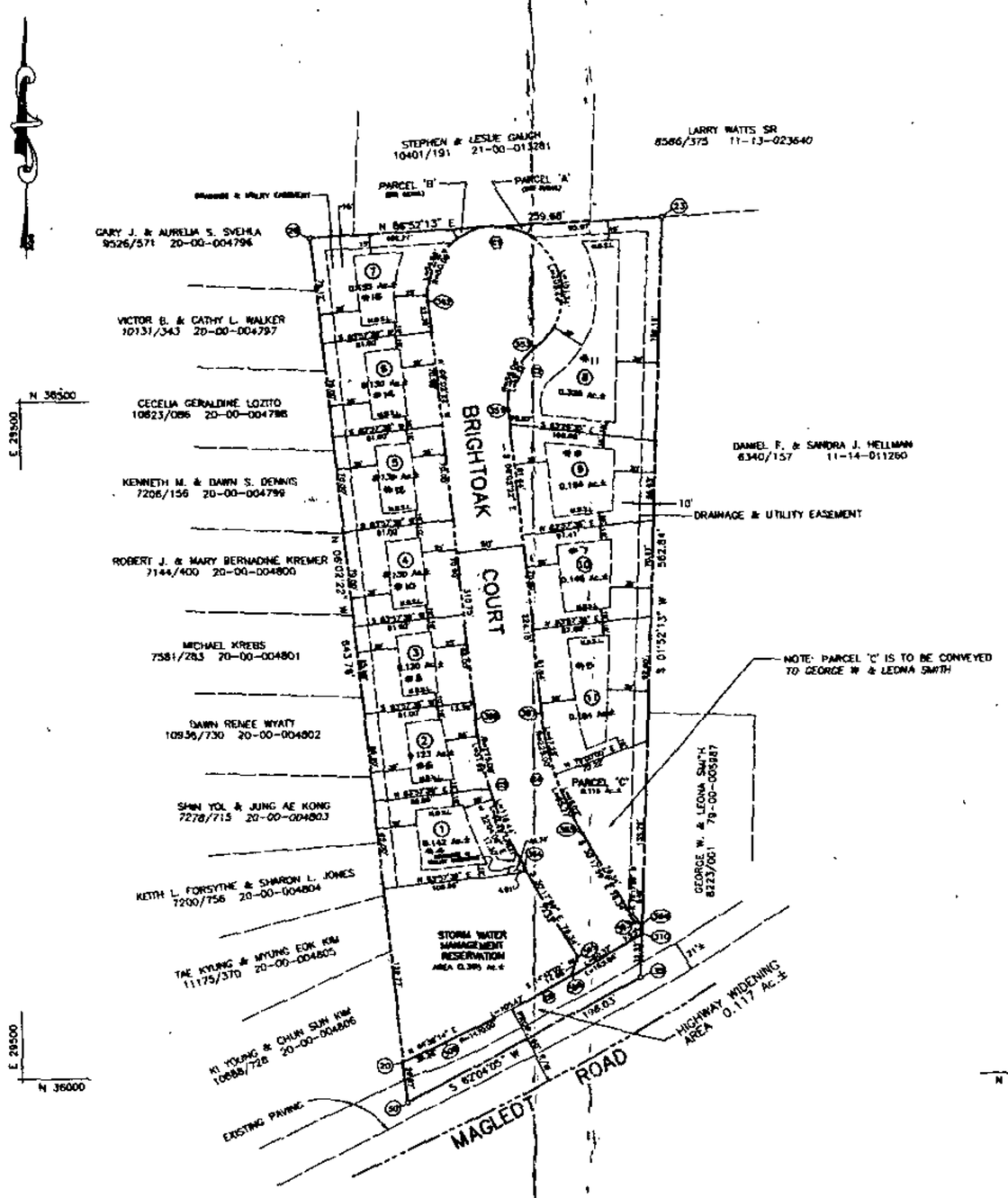
M5R33XL 1336 - 2613

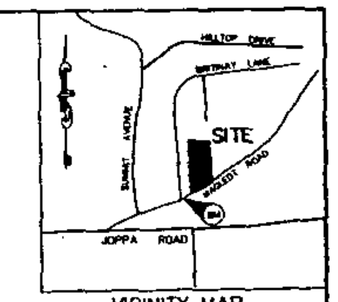
S.M. 57 FOLIO 97

ALL-STATE LEGAL®
PETITIONER'S EXHIBIT
CBA 10

GENERAL NOTES

1. THE RECORDING OF THIS PLAT DOES NOT CONSTITUTE OR IMPLY ACCEPTANCE BY THE COUNTY OF ANY STREET, EASEMENT, PARK, OPEN SPACE, OR OTHER PUBLIC AREA SHOWN ON THIS PLAT.
2. THIS PLAT WAS EXEMPT IN ACCORDANCE WITH THE PROVISIONS OF THE BALTIMORE COUNTY CODE, SECTION 26-278.
3. THE RECORDING OF THIS PLAT DOES NOT GUARANTEE THE INSTALLATION OF STREETS OR UTILITIES BY BALTIMORE COUNTY.
4. THE ARCHITECTURAL DESIGN HISTORY MAY BE SUPERSEDED BY A SUBDIVISION IMPROVEMENTS PLAN.
5. ADDITIONAL INFORMATION CONCERNING THIS PLAN CAN BE OBTAINED FROM THE BALTIMORE COUNTY DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT AND THE DEPARTMENT OF PUBLIC WORKS.
6. DRAINAGE AND HIGHWAY EASEMENTS, SLOPE EASEMENTS, WALKWAYS AND UTILITY EASEMENTS, ACCESS EASEMENTS, FOREST BUFFER AREAS IN FEE OR EASEMENT, FOREST CONSERVATION AREAS IN FEE OR EASEMENT, SPECIMEN TREES IN FEE OR EASEMENT, THE STORM WATER MANAGEMENT FACILITY, AS WELL AS THE ENTRANCE AND ROADWAYS WITHIN THE CROWN AND SHOULDERS OF THE ROAD, ARE TO BE CONSTRUCTED AS SHOWN ON THE PLAN ACCORDING TO BALTIMORE COUNTY STANDARDS. THE OWNER AND PERSONS REPRESENTATIVES AND ASSIGNS SHALL CONVEY AND GRANT AT WRITTEN REQUEST OF BALTIMORE COUNTY, AT NO COST TO THE COUNTY, THE STORM WATER MANAGEMENT FACILITY, AND THE DRAINAGE AND UTILITY EASEMENTS, AND THOSE LANDS, IN FEE OR EASEMENT, THAT ARE REQUIRED TO BE PROPERLY FOR THE PURPOSE OF INSTALLING, CONSTRUCTING, MAINTAINING AND REPAIRING ROADS, UTILITIES AND FACILITIES, AND OTHER WORK ASSOCIATED THERETO AND FACILITIES.
7. THE STORM WATER MANAGEMENT WILL COMPLY WITH THE WATER MANAGEMENT PRACTICES ADOPTED BY THE BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT.
8. EXCEPT AS OTHERWISE PROVIDED, ALL BUILDING RESTRICTION LINES SHOWN HEREON ARE BEYOND PLACED ON A DEPTH OF AN EASEMENT OR PROPERTY LINE, WHICHEVER IS GREATER, UNLESS OTHERWISE APPROVED BY THE COUNTY DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT. EXCEPTIONS TO THESE RESTRICTIONS MAY APPLY.
9. LOTS WILL GRAVITATE ON PUBLIC WATER AND PUBLIC SEWER SYSTEMS.
10. THE APPROVAL OF THIS PLAN IS BASED UPON A REASONABLE EXPECTATION THAT THE PLAN AND DRAINAGE SERVICE WHICH IS PLANNED FOR THE DEVELOPMENT OF THE PROPERTY WILL BE CONSTRUCTED AS SHOWN ON THE PLAN. THE PLAN SHALL NOT BE ISSUED UNTIL THE PLANNED WATER AND SEWER FACILITIES ARE COMPLETED AND DETERMINED TO BE ADEQUATE TO SERVE THE PROPOSED DEVELOPMENT.
11. NO FINAL ARCHITECT OFFER IS DESCRIBED UNDER DEED LAND.
12. THE PLAN FOR THE PROPERTY SHOWN ON THIS PLAT WAS APPROVED ON MAY 30, 1996.
13. COORDINATES AND BEARINGS SHOWN ON THIS PLAT ARE REFERRED TO THE SYSTEM OF COORDINATES ESTABLISHED IN THE BALTIMORE COUNTY METROPOLITAN DISTRICT, AND ARE BASED UPON THE FOLLOWING:
   MAGLEDT ROAD N 38500 E 29500 N 36000 E 29500
   MAGLEDT ROAD N 38500 E 29500 N 36000 E 29500
14. THE STREETS AND/OR ROADS SHOWN HEREON AND THE PUBLIC STREETS IN THE VICINITY THEREOF, WERE ADOPTED BY THE BALTIMORE COUNTY COUNCIL, THE SAME ARE NOT INTENDED TO BE DEDICATED TO PUBLIC USE, AND THE PUBLIC SHALL HAVE NO RIGHTS THEREIN, AND ARE EXPRESSLY REFERRED TO BE CONVEYED OF THE BASIS TO WHICH THIS PLAT IS DEDICATED, PER HOMA AND ABOVE.
15. FOREST CONSERVATION REQUIREMENTS ARE TO BE MET OFF-SITE.

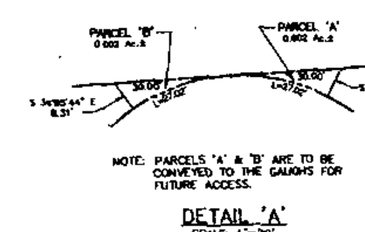




VICINITY MAP
SCALE: 1" = 1000'

BENCH MARK INFORMATION:

HUB No. BC #8680
DESCRIPTION: RR SPIKE IN MACADAM ON SOUTH SIDE OF MAGLEDT ROAD, 45'± EAST OF BRITNAY LANE.
N 35834.60 E 29710.78 ELEV = 348.773



NOTE: PARCELS "A" & "B" ARE TO BE CONVEYED TO THE GAUGHS FOR FUTURE ACCESS.

DETAIL "A"
SCALE: 1"=20'

SITE DATA:

1.	EXISTING ZONING	D.R. 5.5
2.	GROSS AREA	3.015 Ac.±
3.	NET AREA	2.898 Ac.±
4.	HIGHWAY WIDENING AREA	0.117 Ac.±
5.	ROAD R/W AREA (BRIGHTOAK COURT)	0.719 Ac.±
5.	No. OF LOTS ALLOWED	16
6.	No. OF LOTS PROPOSED	11
7.	PARKING SPACES REQUIRED	2 SPACES/LOT=22
8.	PARKING SPACES PROPOSED	22+

S.M. 69-101
Filed for Filing
Date 69 FOLIO 101
Date JUL 2 1997
Chief

REASON FOR FIRST AMENDMENT:
ADDED ROAD NAME, REVISED SITE DATA, REVISED OWNER

COORDINATE TABLE		
No.	NORTH	EAST
20	36010.7825	29776.5431
23	36835.4196	29971.0521
28	36821.2432	29711.7954
35	36672.6630	29052.6819
50	35981.0572	29778.4858
308	36025.8643	29808.2008
310	36105.1971	29853.7371
351	36482.4946	29657.1078
353	36538.1080	29872.4132
362	36573.3081	29798.2737
364	36154.5156	29867.0076
366	36179.7417	29810.1775
386	36264.3280	29830.6686
387	36269.5065	29890.8811
393	36173.6317	29942.8919
394	36112.4454	29953.8738
395	36068.8051	29905.5220
396	36074.4202	29901.8005

CURVE TABLE						
CURVE	RADIUS	LENGTH	TANGENT	CHORD	BEARING	DELTA
C1	50.00'	209.44'	86.80'	86.80'	N 66°07'22" W	240°00'00"
C2	50.00'	53.20'	28.87'	50.80'	S 23°51'40" W	60°59'00"
C3	275.00'	118.44'	59.11'	119.57'	S 16°10'10" E	24°13'37"
C4	225.00'	95.27'	48.34'	94.56'	N 16°10'10" W	24°15'37"
C5	1470.00'	183.85'	92.01'	183.72'	N 81°23'18" E	06°37'40"

It is certified that this plan of plat is in compliance with all plans previously approved by the County and Baltimore County Metropolitan Districts.

McKEE & ASSOCIATES, INC.
Engineering - Surveying - Real Estate Development
Towson Plaza, 8 Jessop Ave. Towson, Maryland 21204
Telephone: (410) 821-4500 Fax: (410) 821-7422
Staff Officers: Ronald L. Bagnal, Robert E. Mitchell

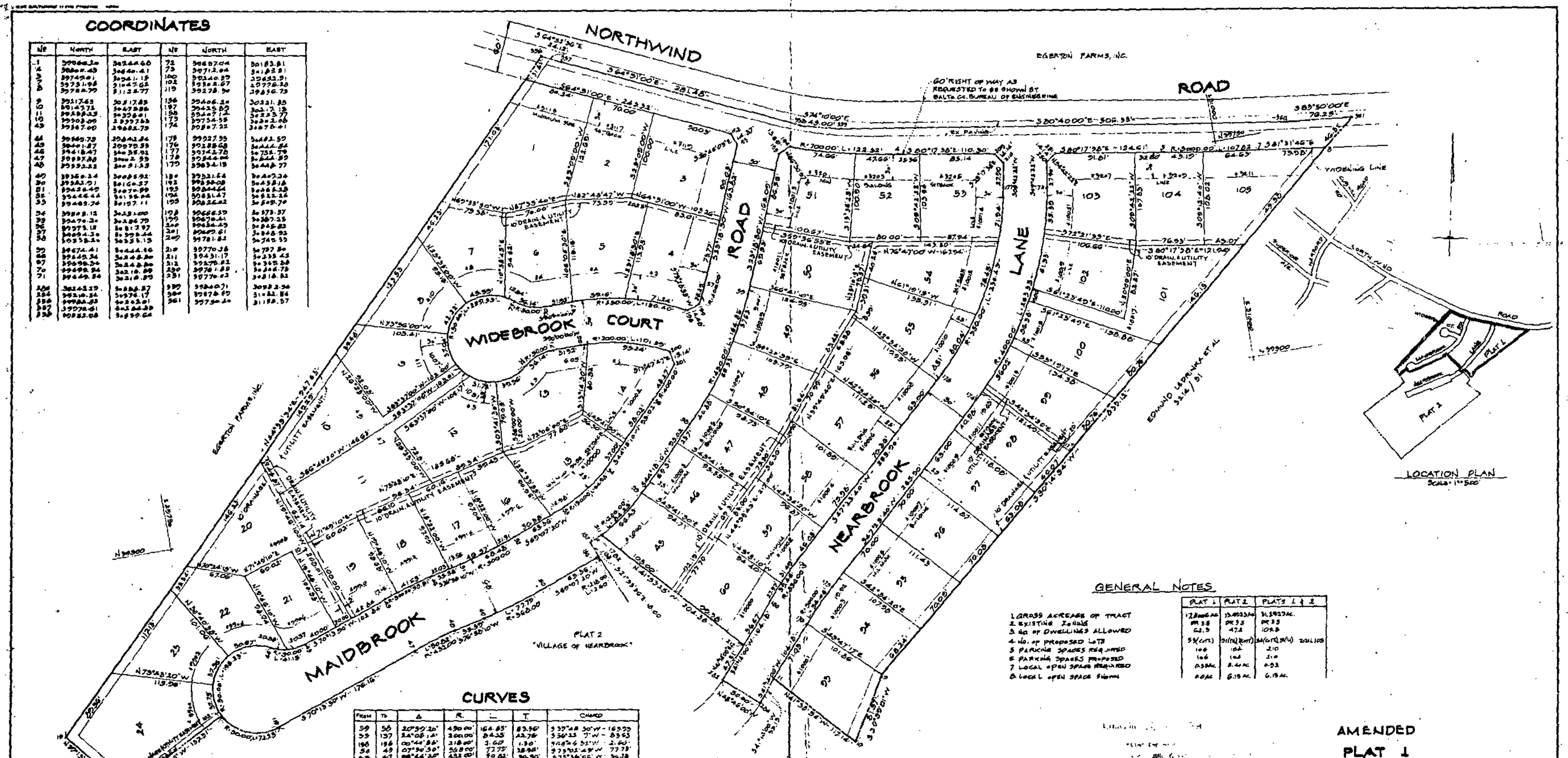
COMPUTED BY: GLS
DRAWN BY: BAUGAC
CHECKED BY: DCS
JOB NO.: 95-37

JAMES W. HINKLE 3/31/97
(MARYLAND REGISTRATION No. 6012) DATE

SURVEYOR'S CERTIFICATION
This subdivision, a registered Land Surveyor of the State of Maryland does hereby certify that to the surveyor who prepared this plat and that the land shown hereon has been the subject of a field survey and that the plat is in compliance with the provisions of Section 3-108 (c) of the Maryland Annotated Code of Maryland, particularly Section 3-108 (c) (iii) and (iv) thereof, particularly Section 3-108 (c) (iii) and (iv) thereof, particularly Section 3-108 (c) (iii) and (iv) thereof

COORDINATES

Nº	NORTH	EAST	Nº	NORTH	EAST
1	39966.20	36244.60	73	36697.04	36183.81
4	39800.45	36460.41	79	39713.84	36183.81
5	39769.01	36461.15	100	39246.83	35963.91
8	39731.96	36463.05	102	39362.67	35778.30
8	39728.79	36122.77	119	39278.34	35836.73
9	39317.83	36117.89	156	39446.24	36331.85
10	39143.71	36127.86	197	39435.82	36217.18
11	39139.23	36356.61	199	39447.14	36233.77
19	39398.09	36397.63	173	39734.53	36362.26
43	39367.00	36683.79	174	39867.22	36378.41
44	39469.79	36683.84	178	39927.35	36483.57
45	39441.27	36979.39	176	39788.60	36444.84
46	39418.47	36835.01	177	39714.78	36752.79
47	39397.80	36812.39	178	39744.06	36834.89
48	39393.22	36839.13	179	39834.19	36848.77
49	39382.14	36883.82	180	39832.84	36848.34
50	39382.91	36960.27	182	39828.08	36838.18
51	39426.49	36976.99	183	39844.64	36863.38
52	39446.44	36986.44	184	39831.47	36822.86
53	39469.76	36957.11	185	39826.82	36848.79
54	39589.13	36931.00	198	39668.39	36373.37
55	39479.31	36866.79	199	39679.84	36387.35
56	39373.13	36817.97	200	39634.49	36845.83
57	39364.36	36798.46	201	39609.61	36848.93
58	39353.24	36783.13	249	39781.84	36749.53
59	39474.41	36444.16	210	39770.38	36777.84
60	39425.34	36486.80	211	39431.17	36335.43
97	39399.34	36486.80	212	39378.82	36319.38
70	39498.84	36218.88	220	39781.88	36246.78
71	39449.84	36218.88	221	39778.63	36816.81
208	38143.19	36886.87	222	39840.71	36923.36
284	39310.34	36976.17	360	39878.97	31481.84
286	39984.83	36863.01	361	39738.20	31178.57
287	39778.61	36846.39			
336	39883.08	36859.04			



CURVES

FROM	TO	Δ	R.	L	T	CHORD
59	58	20°39'26"	450.00'	164.85'	83.36'	S 35°48 30'W - 163.99
53	137	84°08'14"	200.00'	294.35	183.78'	S 36°33 7'W - 268.63
186	186	00°44'56"	218.00'	2.67	1.34'	N 76°54 55'W 2.67'
36	49	07°36'30"	560.00'	77.75'	38.94'	S 73°03'45"W 77.78'
48	47	88°44'30"	432.00'	90.02	90.50'	S 73°36'55" W 34.78
119	44	22°09'23"	34.00'	19.83'	14.84'	N 09°54'51" E 9.69'
44	33	47°47'23"	34.00'	27.13'	21.83'	S 86°11'23"E - 44.94'
45	46	06°46'36"	500.00'	59.81'	29.93'	N 73°38'00"E - 59.77
51	52	07°33'50"	500.00'	66.48	33.28'	N 73°03'45"E - 66.45'
55	54	34°49'01"	134.00'	84.98'	44.01'	N 56°43'45"E 84.47'
96	201	06°34'40"	400.00'	46.37'	23.19'	N 44°30 40"E - 46.34
197	37	47°49 37"	400.00'	28.25'	15.18'	N 21°10'40"E - 28.20'
200	96	29°01'05"	200.00'	101.39'	51.74'	N 39°39'38"W - 100.31'
71	72	47°54'33"	90.00'	36.04'	18.90'	S 49°17'45"W 35.36'
72	73	383°49'29"	34.00'	334.35'	56.05'	N 06°00'00"E - 73.00'
73	70	41°24'55"	30.00'	36.14'	18.94'	S 69°17'43"E - 35.34'
67	100	37°33 44"	250.00'	163.80'	84.72'	S 73°05'38"E - 160.93'
175	174	37°43 18"	400.00'	263.33'	136.63'	S 20°36'01"W - 258.63'
173	170	06°11'40"	300.00'	32.40'	16.21'	S 46°19'30"W - 32.03'
6	194	10°00'41"	700.00'	122.38'	61.31'	N 75°17'17"W - 122.16
7	3	61°14'08"	300.00	107.03'	53.91'	N 80°34'42"W - 107.03
186	179	06°11'40"	350.00	36.46'	18.26'	N 46°19'30"E - 36.43
178	177	37°45'18"	350.00	230.43'	119.36'	N 20°34 01"E - 226.29

GENERAL NOTES

	PLAT 1	PLAT 2	PLATS 1 & 2
1. GROSS ACREAGE OF TRACT	17.8006 AC	13.4933 AC	31.2939 AC.
2. EXISTING ZONING	RR 3.5	RR 3.5	RR 3.5
3. NO. OF DWELLINGS ALLOWED	62.3	47.2	109.5
4. NO. OF PROPOSED LOTS	59 (LOTS)	51 (NO. OF LOTS)	110 (LOTS) 2 (OUTLOTS)
5. PARKING SPACES REQUIRED	108	102	210
6. PARKING SPACES PROVIDED	108	102	210
7. LOCAL OPEN SPACE REQUIRED	0.53 AC	0.40 AC	0.93
8. LOCAL OPEN SPACE SHOWN	0.0 AC	6.15 AC	6.15 AC.

— Notes —

1. Highway and highway widening, slope drainage and utility easements shown hereon are reserved into the developer and are hereby offered for dedication to Baltimore County, Maryland. The developer his personal representatives and assigns shall convey said areas by deed to Baltimore County, Md. at no cost.
2. Street and/or roads shown hereon and mention thereof in deeds are for purposes of description only and the same are not intended to be dedicated to public use. The fee simple title to the roads thereof is expressly reserved in the grantors of the deed to which this plat is attached their heirs and assigns.

SITE IS LOCATED IN GUNPOWDER FALLS WATERSHED.

DEVELOPER:
E.L.S. ENTERPRISES, INC.
3031 EAST AVE.
BALTIMORE, MD. 21234

AMENDED PLAT 1
VILLAGE OF NEARBROOK

ELECTION DISTRICT Nº 11
SCALE: 1" = 50'

BALTIMORE COUNTY, MARYLAND

ADDED ADDITIONAL DRAIN & UTILITY EASEMENTS

APPROVED
DATE: DEPUTY STATE & COUNTY HEALTH OFFICER

APPROVED, BALTIMORE COUNTY PLANNING BOARD
DATE: DIRECTOR

DATE: COUNTY ROADS ENGINEER

NOTE

NOTE

X-566. N 40042.87 E 50-23 53
X-8662 N 35878 H E 30607.70

OWNERS CERTIFICATE

SURVEYORS CERTIFICATE
I DAVID E. WILDER

PAUL LEE ENGINEERING, INC.
504 W. PENNSYLVANIA AVENUE
TOWSON, MARYLAND, 21204

P.T. | D.B. | P.T. | 78-031

MSA S5 U. 1836 - (49)

44-88

P 73142

ALL-STATE LEGAL
PETITIONER'S EXHIBIT
8 CBA

THIS DEED, Made this 23rd day of **January**, in the year two thousand eight, by and between **Nancy S. Tucker, Personal Representative of The Estate of Lula Jane Tucker,** a Maryland Estate, party of the first part, Grantor, and **JFB RENOVATION & CONSTRUCTION, INC, a Maryland Corporation**, party of the second part, Grantee.

WITNESSETH, That in consideration of the sum of **$70,000.00** and other valuable considerations, the receipt whereof is hereby acknowledged, the said Grantor does hereby grant, convey, and assign unto the said Grantee, its successors and assigns, in fee simple, all that lot of ground situate in Baltimore County, in the State of Maryland, and described as follows, that is to say:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

BEING part of the property which by Deed dated January 8, 2008, and recorded among the Land Records of Baltimore County in Liber S.M. No. 26572, folio 489, was conveyed by Nancy S. Tucker, Personal Representative of the Estate of Lula Jane Tucker; to herself as said Personal Representative.

Weston Charles Tucker, Jr. joins in the execution hereof to convey any right, title, and interest he may have in said property pursuant to Item 5 of the Last Will and Testament of Lula Jane Tucker.

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

TO HAVE AND TO HOLD the said lot of ground and premises unto and to the use of the said Grantee, its successor and assigns, in fee simple.

AND the said Grantor hereby covenants that the Grantor has not done or suffered to be done any act, matter or thing whatever to encumber the property hereby conveyed; and to warrant specially the property hereby granted and to execute such further assurances of the same as may be requisite.

Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

ALL-STATE LEGAL®
PETITIONER'S EXHIBIT
CBA 7

REVIEWED SDAT
BY 1/30/08 DATE

BALTIMORE COUNTY CIRCUIT COURT (Land Records) [MSA CE 62-26488] Book SM 26633, p. 0035. Printed 05/29/2008. Online 02/07/2008.

WITNESS the hands and seals of said Grantors:

WITNESS:

The Estate of Lula Jane Tucker

By: Nancy S. Tucker P.R. **(SEAL)**
Nancy S. Tucker, Personal Representative

Weston Charles Tucker Jr. **(SEAL)**
Weston Charles Tucker, Jr.

STATE OF MARYLAND, BALTIMORE COUNTY TO WIT:

I HEREBY CERTIFY, that on this 23rd day of January in the year two thousand eight, before me, the subscriber, a Notary Public of the State aforesaid, personally appeared Nancy S. Tucker, Personal Representative of The Estate of Lula Jane Tucker and known (or satisfactorily proven) to me to be the person whose name is subscribed to the within Deed and acknowledged the foregoing Deed to be her act as Personal Representative and in my presence signed and sealed the same, and further acknowledged that the consideration as stated above is true and correct.

AS WITNESS my hand and Notarial Seal.

Lisa M.L. Eisemann Notary Public

LISA M. L. EISEMANN NOTARY PUBLIC BALTIMORE COUNTY, MD.

My Commission Expires: 08/01/09

STATE OF MARYLAND, BALTIMORE COUNTY TO WIT:

I HEREBY CERTIFY, that on this 23rd day of January in the year two thousand eight, before me, the subscriber, a Notary Public of the State aforesaid, personally appeared Weston Charles Tucker, Jr. and known (or satisfactorily proven) to me to be the person whose name is subscribed to the within Deed and acknowledged the foregoing Deed to be his act and in my presence signed and sealed the same, and further acknowledged that the consideration as stated above is true and correct.

AS WITNESS my hand and Notarial Seal.

Lisa M.L. Eisemann Notary Public

LISA M. L. EISEMANN NOTARY PUBLIC BALTIMORE COUNTY, MD.

My Commission Expires:

This is to certify that the within instrument has been prepared by or under the supervision of the undersigned Maryland attorney.

Lisa M.L. Eisemann, Attorney

RECORD AND RETURN TO:
HILLTOP BUILDERS, LLC
2095 Ridgemount Drive
Finksburg, Maryland 21048
File # 07-0599

BALTIMORE COUNTY CIRCUIT COURT (Land Records) [MSA CE 62-26488] Book SM 26633, p. 0036. Printed 05/29/2008. Online 02/07/2008.

EXHIBIT "A"

MERRITT DEVELOPMENT CONSULTANTS, INC
Engineering Land Planning Surveying

2416 B Joppa Road
Baltimore, MD 21234
Phone: 410-663-5525
Fax: 410-663-4315
merrittdc@comcast.net

Description
9941 Hilltop Drive

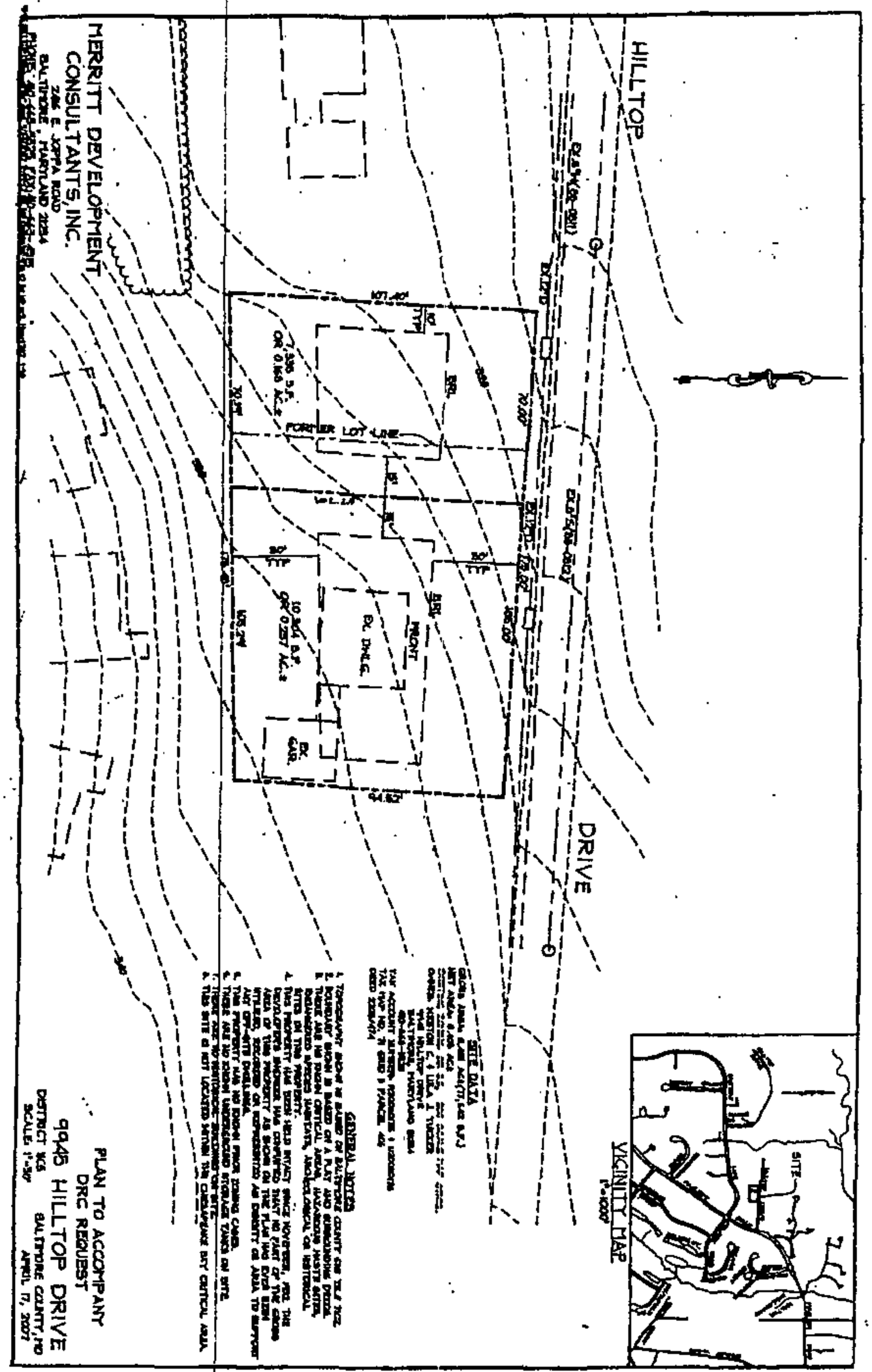
All that piece, parcel, or tract of land situate on the south side of Hilltop Drive, approximately 410' ±, westerly of the intersection of Hilltop Drive and Magledt Road in the 11th election district of Baltimore County Maryland and being more particularly described as follows:

Beginning for the same at a point distant North 79°-09'-51" West 175.00 feet from the beginning of the second line of a referred tract of land described in a deed from Thelma S. Emge and Robert S. Emge to John W. Bowling and Elizabeth R. Bowling dated May 29, 1948 and recorded among the land records of Baltimore County in Liber T.B.S. 1687, folio 356. Thence running with and binding reversely on said second line which is also the south side of a 30' right-a-way, 1) South 79°-09'-51" East 70.00 feet; thence leaving the 2nd line for a new line of division, 2) South 10°-50'-21" West 102.25 feet to intersect a point in the 5th line of aforementioned deed and running with and binding reversely on said line, 3) North 83°-22'-20" West 70.19 thence leaving said 5th line, 4) North 10°-50'-09" East 107.40 feet to the place of beginning.

Containing 7,338 square feet or 0.168 acres of land more or less. The improvements thereon to be known as No. 9941 Hilltop Drive
Also being a portion of the first parcel and all of the second parcel as described in a deed from Otto Paul Burchardt and Dorothy May Burchardt to Weston C. Tucker and Lula J. Tucker dated November 12, 1952 and recorded among the land records of Baltimore County, Maryland in Liber G.L.B. 2203, folio 474.

BALTIMORE COUNTY CIRCUIT COURT (Land Records) [MSA CE 62-26488] Book SM 26633, p. 0037. Printed 05/29/2008. Online 02/07/2008.

EXHIBIT "A#2"



BALTIMORE COUNTY CIRCUIT COURT (Land Records) [MSA CE 62-26488] Book SM 26633, p. 0038. Printed 05/29/2008. Online 02/07/2008.

FILE # 07-0599

State of Maryland Instrument Intake Sheet

☐ Baltimore City ☒ County: Baltimore County

Information provided is for the use of the Clerk's Office, State Department of Assessments and Taxation, and County Finance Office only.

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

IMP FD SURE $	20.00
RECORDING FEE	20.00
TR TAX STATE	350.00
TOTAL	390.00
Rest R495	Rcpt # 22665
SM LL	Blk # 44
Feb 01, 2008	09:30 am

1 Type(s) of Instruments (☐ Check Box if Addendum Intake Form is Attached.)

1 Deed 1.00T ☐ Mortgage ☐ 3 Collateral Assign. ☐ Other _____
2 ~~Deed of Trust~~ ☐ Lease ☐

2 Conveyance Type Check Box

☐ Improved Sale Arms-Length *[1]* ☐ Unimproved Sale Arms-Length *[2]* ☐ MultipleAccounts Arms-Length *[3]* ☐ Not an Arms-Length Sale *[9]*

3 Tax Exemptions (if Applicable) Cite or Explain Authority

Recordation	
State Transfer	
County Transfer	

4 Consideration and Tax Calculations

Consideration Amount	
Purchase Price/Consideration	$70,000.00
Any New Mortgage	$
Balance of Existing Mortgage	$
Other:	$
Other:	$
Full Cash Value	$

Finance Office Use Only — Transfer and Recordation Tax Consideration	
Transfer Tax Consideration	$
X ( ) % =	$
Less Exemption Amount =	$
Total Transfer Tax =	$
Recordation Tax Consideration	$
X ( ) per $500 =	$
TOTAL DUE	$

5 Fees

REVIEWED SDAT

Amount of Fees	Doc. 1	Doc. 2
Recording Charge	$20.00	$75.00
Surcharge	$20.00	$20.00 20
State Recordation Tax	$350.00	$ 20
State Transfer Tax	$350.00	$ 20 50
County Transfer Tax	$1,050.00	$
Other	$	$ 15
Other	$	$

Agent:
Tax Bill:
C.B. Credit:
Ag. Tax/Other

6 Description of Property SDAT requires submission of all applicable information. A maximum of 40 characters will be indexed in accordance with the priority cited in Real Property Article Section 3-104(g)(3)(i).

District	Property Tax ID No. (1)	Grantor Liber/Folio	Map	Parcel No.	Var. LOG (5)
	P/O 11-20-080175 & 11-20-080176	2203/474			

Subdivision Name	Lot (3a)	Block (3b)	Sect/AR(3c)	Plat Ref.	SqFt/Acreage (4)

Location/Address of Property Being Conveyed (2): 9941 Hilltop Drive, 0.168 +/- Acre, Baltimore, Maryland 21234

Other Property Identifiers (if applicable): | Water Meter Account No.:

Residential ☒ or Non-Residential ☐ | Fee Simple ☒ or Ground Rent ☐ | Amount:

Partial Conveyance? ☒ Yes ☐ No | Description/Amt. of SqFt/Acreage Transferred:

If Partial Conveyance, List Improvements Conveyed:

7 Transferred From

Doc. 1 - Grantor(s) Name(s)	Doc. 2 - Grantor(s) Name(s)
The Estate of Lula J. Tucker	JFB RENOVATION & CONSTRUCTION, INC.
Doc. 1 - Owner(s) of Record, if Different from Grantor(s)	Doc. 2 - Owner(s) of Record, if Different from Grantor(s)

8 Transferred To

Doc. 1 - Grantee(s) Name	Doc. 2 - Grantee(s) Name(s)
JFB RENOVATION & CONSTRUCTION, INC.	Scott C. Nicholson and John A. Scaldara, Jr., trustees

New Owner's (Grantee) Mailing Address: 2095 Ridgemount Drive, Finksburg, Maryland 21048

9 Other Names to Be Indexed

Doc. 1 - Additional Names to be Indexed (Optional)	Doc. 2 - Additional Names to be Indexed (Optional)
	The Columbia Bank

10 Contact/Mail Information

Instrument Submitted By or Contact Person

Name: Ruth Mitchell
Firm: Moore, Carney, Ryan & Lattanzi, L.L.C.
Address: 4111 E. Joppa Road, Suite 201
Baltimore, MD 21236-2288 Phone: 410-529-4600

☐ Return to Contact Person
☐ Hold for Pickup
☒ Return Address Provided

11 IMPORTANT: *BOTH* THE ORIGINAL DEED *AND* A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER

Assessment Information

☐ Yes ☒ No Will the property being conveyed be the grantee's principal residence?
☐ Yes ☒ No Does transfer include personal property? If yes, identify: _____
☐ Yes ☒ No Was property surveyed? If yes, attach copy of survey (if recorded, no copy required).

Assessment Use Only - Do Not Write Below This Line

☐ Terminal Verification ☐ Agricultural Verification ☐ Whole ☐ Part ☐ Tran. Process Verification

Transaction Number: Date Received: Deed Reference: Assigned Property No.:

Yes	20	20	Geo.	Map	Sub	Block
Land			Zoning	Grid	Plat	Lot
Buildings			Use	Parcel	Section	Occ. Cd.
Total			Town Cd.	Ex. St.	Ex. Cd.	

DUPLICATE PAID RECEIPT
REVALIDATION
BUSINESS ACTUAL TIME DRW
2/01/2008 2/01/2008 09:18:51 2
REG MSR MAIL REVA JEE
>>RECEIPT # 560757 2/01/2008 QELM
Dept 7 :SDAT RECORDATION TAXES
ACCOUNT NO 1120080176
Recept for $1,400.00
Land $1,400.00
Buildings $0.00 CA
Total
Transaction Number: Baltimore County, Maryland

FILE # 07-0599

Addendum
State of Maryland Land Instrument Intake Sheet
☐ Baltimore City ☒ County: Baltimore

This addendum form should be used when one transaction involves more than two instruments. Each instrument should be itemizedin accordance with Section No. 1 of the Intake Sheet.

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

5 (Continued) Fees	Amount of Fees	Doc. 3	Doc. 4	Doc. 5	Doc. 6
	Recording Charge	$ 20.00	$	$	$
	Surcharge	$ 20.00	$	$	$
	State Recordation Tax	$	$	$	$
	State Transfer Tax	$	$	$	$
	County Transfer Tax	$	$	$	$
	Other	$	$	$	$
	Other	$	$	$	$

7 (Continued) Transferred From	Doc. 3 - Grantor(s) Name(s)	Doc. 4 - Grantor(s) Name(s)
	Hill Top Builders, LLC	
	JFB Renovation & Construction, Inc.	
	Doc. 5 - Grantor(s) Name(s)	**Doc. 6 - Grantor(s) Name(s)**
	Doc. 3 - Owner(s) of Record, if Different from Grantor(s)	**Doc. 4 - Owner(s) of Record, if Different from Grantor(s)**
	Doc. 5 - Owner(s) of Record, if Different from Grantor(s)	**Doc. 6 - Owner(s) of Record, if Different from Grantor(s)**

8 (Continued) Transferred To	*Doc. 3 - Grantee(s) Name(s)*	Doc. 4 - Grantee(s) Name(s)
	The Columbia Bank	
	Doc. 5 - Grantee(s) Name(s)	**Doc. 5 - Grantee(s) Name(s)**

9 (Continued) Other Names to be Indexed	Doc. 3 - Additional Names to be Indexed (Optional)	Doc. 4 - Additional Names to be Indexed (Optional)
	Doc. 5 - Additional Names to be Indexed (Optional)	Doc. 6 - Additional Names to be Indexed (Optional)

Special Instructions	Special Recording Instruction (if any)

11-20-080175
11-20-080176

RECORDATION TAX NOT REQUIRED
Director of Budget and Finance
BALTIMORE COUNTY, MARYLAND
T.P. ART 12-108
DOC # 2 3 4 5 6
Initial:
Date 02-01-08

0026572 480

E\Title Company, LLC
File No. 07-E-0621

Tax ID # 11-1120080175
11-1120080176

DEED TO ADJUST LOT LINES

This Deed, made this 8th day of January, 2008, by and between NANCY S. TUCKER, Personal Representative of the ESTATE OF LULA JANE TUCKER, party of the first part, Grantor, and NANCY S. TUCKER, Personal Representative of the ESTATE OF LULA JANE TUCKER, party of the second part, Grantee.

WHEREAS, LULA JANE TUCKER departed this life on or about August 29, 2007, seized and possessed the herein described property (the "Property"); and

WHEREAS, the Property consists of the two parcels of ground more fully described in the Deed dated November 12, 1952 and recorded among the Land Records of Baltimore County in Liber G.L.B. No. 2203, folio 474, from Otto Paul Burchardt and Dorothy May Burchardt to Weston C. Tucker and Lula J. Tucker, in fee simple.

WHEREAS, on October 15, 2007, the Register of Wills for Baltimore County, State of Maryland, granted administration of the ESTATE OF LULA JANE TUCKER to NANCY S. TUCKER in Estate No. 146002 (the "Estate"); and

WHEREAS, NANCY S. TUCKER, Personal Representative of the Estate, has applied for and obtained approval by Administrative Order in Baltimore County Development Review Committee No. 051407E for an adjustment of the lot lines of the Property, and

WHEREAS, a copy of the Administrative Order approving the adjustment of the lot lines of the Property is attached hereto and incorporated herein as Exhibit B; and

WHEREAS, a reduced copy of the approved plat entitled "Plan to Accompany DRC Request, 9945 Hilltop Drive" (hereinafter referred to as the "Plat") is attached hereto and incorporated herein as Exhibit C.

WHEREAS, Merritt Development Consultants, Inc., has prepared legal descriptions of the two newly configured lots reflecting the approved lot line adjustment of the Property as shown on the Plat, which said descriptions are attached hereto as Exhibits A-1 and A-2.

Now Therefore Witnesseth, that for and in consideration of the sum of No And 00/100 Dollars ($0.00), and other good and valuable consideration, the receipt whereof is hereby acknowledged, *to adjust the lot lines pursuant to the aforesaid* Administrative Order, the said Grantor does grant and convey to the said Grantee, in fee simple, all those lots of ground situate in Baltimore County, Maryland and described as follows, that is to say:

REVIEWED SDAT
BY JG DATE 1/14/08

See the metes and bounds descriptions of the two newly configured lots attached hereto as Exhibits A-1 and A-2, reflecting the approved lot line adjustment of the Property as shown on the Plat attached hereto as Exhibit C.

BEING the same property which by Deed dated November 12, 1952 and recorded among the Land Records of Baltimore County in Liber G.L.B. No. 2203, folio 474, was granted and conveyed by Otto Paul Burchardt and Dorothy May Burchardt to Weston C. Tucker and Lula J. Tucker, in fee simple. The said Weston C. Tucker departed this life on or about February 3, 2007, thereby vesting absolute title in Lula Jane Tucker, by right of survivorship.

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PETITIONER'S EXHIBIT
5 CBA

Together with the buildings and improvements thereon erected, made or being; and all and every the rights, alleys, ways, waters, privileges, appurtenances and *advantages thereto belonging, or in anywise appertaining.*

BALTIMORE COUNTY CIRCUIT COURT (Land Records) [MSA CE62-26427] Book SM 26572, p. 480. Printed 05/20/2020. Online 01/16/2008.

To Have and To Hold the said tract of ground and premises above described and mentioned, and hereby intended to be conveyed, together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit of the said NANCY S. TUCKER, Personal Representative of the ESTATE OF LULA JANE TUCKER, in fee simple.

And the said Grantor hereby covenants that she has not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that she will warrant specially the property hereby granted; and that she will execute such further assurances of the same as may be requisite.

The Grantor affirms under the penalties of perjury that the ESTATE OF LULA JANE TUCKER is a Maryland entity and therefore exempt from the income tax withholding requirements of Section 10-912 of the Tax-General Article, Annotated Code of Maryland.

As Witness the hand and seal of said Grantor, the day and year first above written.

WITNESS/ATTEST:

Personal Representative of the Estate of Lula Jane Tucker

Nancy S. Tucker {Seal}

Nancy S. Tucker,
Personal Representative of the
ESTATE OF LULA JANE TUCKER

STATE OF MARYLAND, COUNTY OF Baltimore, to wit:

I hereby certify that on this 8th day of January, 2008, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared Nancy S. Tucker, the Personal Representative of the Estate of Lula Jane Tucker, Deceased, and she acknowledged the foregoing Deed to be her act, and in my presence signed and sealed the same.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

MINDY A. LONGO NOTARY PUBLIC BALTIMORE COUNTY, MD.

Notary Public
My commission expires: 12/1/08

THIS IS TO CERTIFY that the within Deed was prepared by, or under the supervision of the undersigned, an Attorney duly admitted to practice before the Court of Appeals of Maryland.

James D. O'Connor, Attorney

AFTER RECORDING, PLEASE RETURN TO:
E\Title Company, LLC
7939 Honeygo Boulevard, Suite 123
White Marsh, MD 21236
410-931-5300

F:\Settlements\07-E-0621\Deed-Lot Line Adj

BALTIMORE COUNTY CIRCUIT COURT (Land Records) [MSA CE 62-26427] Book SM 26572, p. 0490. Printed 05/29/2008. Online 01/18/2008.

EXHIBIT "A-1"

MERRITT DEVELOPMENT CONSULTANTS, INC

Engineering ~~~~~ Land Planning ~~~~~ Surveying

2416 E Joppa Road
Baltimore, MD 21234
Phone: 410-663-5525
Fax: 410-663-4315
merrittdc@comcast.net

Description
9941 Hilltop Drive

All that piece, parcel, or tract of land situate on the south side of Hilltop Drive, approximately 410' ±, westerly of the intersection of Hilltop Drive and Magledt Road in the 11th election district of Baltimore County Maryland and being more particularly described as follows:

Beginning for the same at a point distant North 79°-09'-51" West 175.00 feet from the beginning of the second line of a referred tract of land described in a deed from Thelma S. Emge and Robert S. Emge to John W. Bowling and Elizabeth R. Bowling dated May 29, 1948 and recorded among the land records of Baltimore County in Liber T.B.S. 1687, folio 356. Thence running with and binding reversely on said second line which is also the south side of a 30' right-a-way, 1) South 79°-09'-51" East 70.00 feet; thence leaving the 2nd line for a new line of division, 2) South 10°-50'-21" West 102.25 feet to intersect a point in the 5th line of aforementioned deed and running with and binding reversely on said line, 3) North 83°-22'-20" West 70.19 thence leaving said 5th line, 4) North 10°-50'-09" East 107.40 feet to the place of beginning.

Containing 7,338 square feet or 0.168 acres of land more or less.

Also being a portion of the first parcel and all of the second parcel as described in a deed from Otto Paul Burchardt and Dorothy May Burchardt to Weston C. Tucker and Lula J. Tucker dated November 12, 1952 and recorded among the land records of Baltimore County, Maryland in Liber G.L.B. 2203, folio 474. The said Weston C. Tucker, also known as Weston C. Tucker, Sr., departed this life on or about February 3, 2007, thereby vesting absolute fee simple title to the within described property in Lula J. Tucker by right of survivorship.

BALTIMORE COUNTY CIRCUIT COURT (Land Records) [MSA CE 62-26427] Book SM 26572, p. 0491. Printed 05/29/2008. Online 01/18/2008.

11-20-08176

"EXHIBIT A-2"

MERRITT DEVELOPMENT CONSULTANTS, INC
~~~~~~~Engineering~~~~~~~~~~Land Planning~~~~~~~~~~Surveying~~~~~~~~~~

2416 E Joppa Road
Baltimore, MD 21234
Phone: 410-663-5525
Fax: 410-663-4315
merrittdc@comcast.net

Description
9945 Hilltop Drive

All that piece, parcel, or tract of land situate on the south side of Hilltop Drive, approximately 410' ±, westerly of the intersection of Hilltop Drive and Magledt Road in the 11th election district of Baltimore County Maryland and being more particularly described as follows:

Beginning for the same at a point distant South 83°-22'-20" East 183.98 feet from the beginning of the fifth line of a referred tract of land described in a deed from Thelma S. Emge and Robert S. Emge to John W. Bowling and Elizabeth R. Bowling dated May 29, 1948 and recorded among the land records of Baltimore County in Liber T.B.S. 1687, folio 356. Thence running with and binding the first line of aforesaid deed, 1) North 10°-50'-09" East 94.52 feet to the south side of a right-a-way 30' feet wide thence running with and binding on said right-of-way and a portion of said 2nd line of aforementioned deed, 2) North 79°-09'-51" West 105.00 feet; thence leaving said right-of-way for a new line of division, 3) South 10°-50'-21" West 102.25 feet to a point in the aforementioned 5th line; thence running with and binding with on said line, 4) South 83°-22'-20" East 105.29 feet to the place of beginning.

Containing 10,331 square feet or 0.237 acres of land more or less.

Also being a portion of the first parcel as described in a deed from Otto Paul Burchardt and Dorothy May Burchardt to Weston C. Tucker and Lula J. Tucker dated November 12, 1952 and recorded among the land records of Baltimore County, Maryland in Liber G.L.B. 2203, folio 474. The said Weston C. Tucker, also known as Weston C. Tucker, Sr., departed this life on or about February 3, 2007, thereby vesting absolute fee simple title to the within described property in Lula J. Tucker by right of survivorship.

11-20-080175
~~~~~~~

Baltimore County Government
Department of Permits and
Development Management

111 West Chesapeake Avenue
Towson, MD 21204

410-887-3335

Exhibit "B"

May 23, 2007

Merritt Development Cons., Inc.
2416 East Joppa Road
Baltimore, MD 21235

RE: Hilltop Drive
9945 Hilltop Drive
DRC Number 051407E; Dist. 11C5

Dear Sir or Madam:

Pursuant to Article 25A, Section 5 (U) of the Annotated Code of Maryland, and as provided in Section 602 (d) of the Baltimore County Charter, and Sections 32-1-101, 32-3-401, and 32-3-517 of the Baltimore County Code, this letter constitutes an administrative order and decision on the request for issuance, renewal, or modification of a license, permit, approval, exemption, waiver, or other form of permission you filed with this department.

Your request has been submitted for careful review and consideration to the Development Review Committee (DRC), which is composed of representatives from each of those departments involved in land-use decisions. These representatives are designees of the directors of these departments. The purpose of the DRC is to ensure compliance with Section 32-4-106 and Section 32-4-262 of the Baltimore County Code and to make recommendations to the Director, Department of Permits and Development Management (PDM).

The DRC has, in fact, met in an open meeting on May 14, 2007, and made the following recommendations:

The DRC has determined that your project meets the requirements of a limited exemption under Section 32-4-106(a)(1)(viii).

I have reviewed the recommendations carefully, and I have determined to adopt the recommendations set forth above. It is this 23rd day of May, ordered and decided that the recommendations of the DRC are hereby adopted.

Should you submit an application for any permits that may be required for this project, your application will be processed subject to the conditions set forth above and any plans, securities, or non-county permits that may be required in accordance with County, State, or Federal regulations.

Sincerely,

Timothy Kotroco
Director

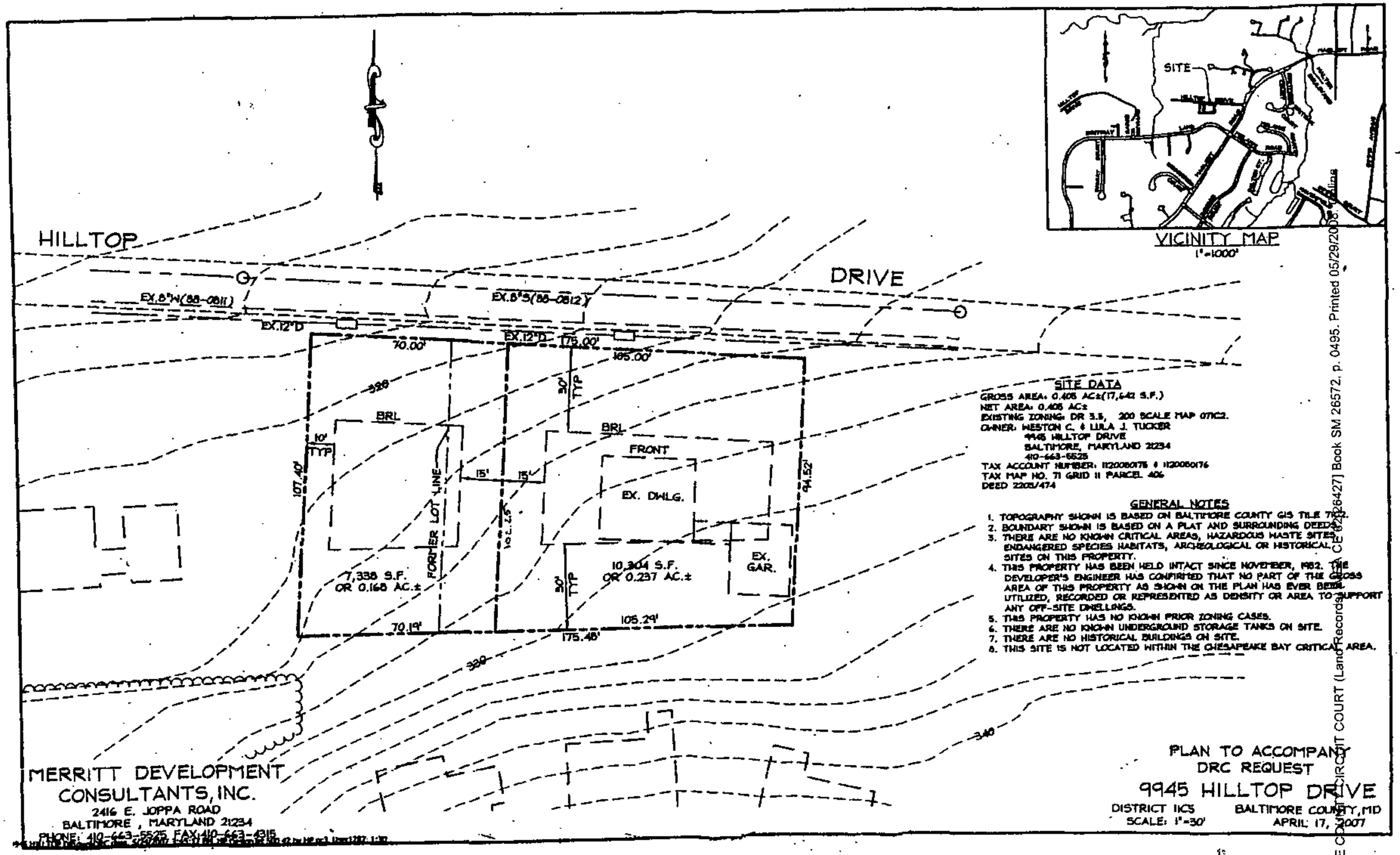
TK:DTR:dak

c: File

BALTIMORE COUNTY CIRCUIT COURT Visit the County's Website at www.baltimorecountymd.gov 2008. Online 01/18/2008.

00265721 4995

EXHIBIT "C"



BALTIMORE COUNTY CIRCUIT COURT (Land Records) CE [illegible]26427] Book SM 26572, p. 0495. Printed 05/29/2008 [illegible]
01/18/2008.

0026512 4815

State of Maryland Land Instrument Intake Sheet

[ ] Baltimore City [X] County: Baltimore

Information provided is for the use of the Clerk's Office and State Department of Assessments and Taxation, and the County Finance Office only.

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

IMP FD SURC $ 20.00
RECORDING FEE 20.00
TOTAL 40.00
Rcpt: DA81 Rcpt # 4882
SH TD Blk # 1231
Jan 14, 2008 12:02 PM

1 Type(s) of Instruments

1 Deed	Mortgage	Other	Other
Deed of Trust	Lease		

2 Conveyance Check Box

X Improved Sale Arms-Length [1]	Unimproved Sale Arms-Length [2]	Multiple Arms Length [3]	Not an Arms-Length Sale [9]

3 Tax Exemptions (If Applicable) Cite or Explain Authority

Deed to Adjust Lot Lines
Deed to Adjust Lot Lines
Deed to Adjust Lot Lines

4 Consideration and Tax Calculations

Purchase Price	$
Any New Mortgage	$
Balance of Existing Mortgage	$
Other:	$
Other:	$
Full Cash Value	$

5 Fees

Recording Charge	$ 20.00	$
Surcharge	$ 20.00	$ 0.00
State Recordation Tax	$	$ 0.00
State Transfer Tax	$	$ 0.00
County Transfer Tax	$	$ 0.00
Other	$	$
Other	$	$

6 Description of Property

SDAT requires submission of all applicable information. A maximum of 40 characters will be indexed in accordance with the priority cited in Real Property Article Section 3-104(g)(3)(i).

11/11-20-080175 & 2203/474

9945 & 9941 Hilltop Drive, Parkville, MD 21234

11-20-080176

Amount: $N/A

Description/Amt. of SqFt/Acreage Transferred: N/A

If Partial Conveyance, List Improvements Conveyed: N/A

7 Transferred From

Estate of Lula J. Tucker

8 Transferred To

Estate of Lula J. Tucker

The Columbia Bank

654 Torbert Road, Fawn Grove, PA 17321

9 Other Names to Be Indexed

10 Contact/Mail Information

Name: MLongo
Firm: EATitle Company, LLC
Address: 7939 Honeygo Boulevard, Suite 123, White Marsh, Maryland 21236
Phone: Telephone: 410-931-5300 FAX 410-931-5304

[X] Return to Contact Person
[ ] Hold for Pickup
[ ] Return Address Provided

IMPORTANT: BOTH THE ORIGINAL DEED AND A FOLDED COPY MUST ACCOMPANY EACH TRANSFER

Assessment Information

[ ] Yes [X] No Will the property being conveyed be the grantee's principal residence?
[ ] Yes [X] No Does transfer include personal property? If yes, identify:
[ ] Yes [X] No Was property surveyed? If yes, attach copy of survey (if recorded, no copy required)

SDAT USE ONLY - DO NOT WRITE BELOW THIS LINE

Per _____ Date 1-24-08

BALTIMORE COUNTY CIR
01/18/2008.

07-E-0621

1/2

E\Title Company, LLC
File No. 07-E-0621
Tax ID# 11/11-20-080175

This Deed, made this 23rd day of January, 2008, by and between Nancy S. Tucker, Personal Representative of the Estate of Lula Jane Tucker, party of the first part, Grantor; and Paul J. Garner and Tiffany A. Garner, husband and wife, parties of the second part, Grantees.

Whereas, Lula Jane Tucker departed this life on or about August 29, 2007 seized and possessed the herein described property (the "Property"); and

Whereas, on October 15, 2007, the Register of Wills of Baltimore County, State of Maryland granted administration of the Estate of Lula Jane Tucker to Nancy S. Tucker in Estate No. 146002 (the "Estate");

Whereas, under the Last Will and Testament of Lula Jane Tucker, Weston Charles Tucker, Jr. was granted the option to purchase the Property; however, he has waived his option to do so per his Consent attached hereto as Exhibit "B".

Whereas, Nancy Tucker, in her capacity as Personal Representative in said Estate, has complete and full power and authority by law, to grant and convey the entire fee simple interest in the Property; and

Whereas, as part of the administration of the Estate, Grantor desires to convey the entire fee simple estate in the Property to the Grantee.

- Witnesseth -

That in consideration of the sum of One Hundred Eighty Thousand And 00/100 Dollars ($180,000.00), which includes the amount of any outstanding Mortgage or Deed of Trust, if any, the receipt whereof is hereby acknowledged, the said GRANTOR as Personal Representative as the Estate, does hereby grant and convey to Paul J. Garner and Tiffany A. Garner, as tenants by the entirety, the survivor of them, and the Personal Representatives, heirs and assigns of the survivor, in fee simple, all that lot of ground situate in the County of Baltimore, State of Maryland and described as follows, that is to say:

FOR THE LEGAL DESCRIPTION, SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Together with the buildings and improvements thereon erected, made or being; and all and every, the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging, or in anywise appertaining.

To Have and To Hold the said tract of ground and premises above described and mentioned, and hereby intended to be conveyed, together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit of the said Paul J. Garner and Tiffany A. Garner, as tenants by the entirety, the survivor of them, and the Personal Representatives, heirs and assigns of the survivor, in fee simple.

ALL-STATE LEGAL® PETITIONER'S EXHIBIT CBA 6

Grantor(s) hereby declare(s) and affirm(s) under the penalty of perjury that Grantor(s) is/are a Maryland resident(s)/entity and therefore exempt from the income tax withholding requirements of § 10-912 of the *Tax-General Article, Annotated Code of Maryland.*

Witness the hand and seal of Grantor the day and year first above written.

Nancy S. Tucker
Personal Representative of the
Estate of Lula Jane Tucker (SEAL)
Nancy S. Tucker,
Personal Representative of the
Estate of Lula Jane Tucker

STATE OF MARYLAND
COUNTY OF Baltimore, to wit:

I hereby certify that on this 23rd day of January, 2008, before me, the undersigned officer, a Notary Public in and for the State aforesaid, personally appeared Nancy S. Tucker, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged herself to be the Personal Representative of the Estate of Lula J. Tucker and who, in my presence, signed and sealed the foregoing Deed and acknowledged it to be her act and deed as Personal Representative of the foregoing Estate, giving oath under penalties of perjury that the consideration recited herein is correct.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

MINDY A. LONGO NOTARY PUBLIC BALTIMORE COUNTY, MD.

Notary Public
My commission expires: 12/1/08

THIS IS TO CERTIFY that the within Deed was prepared by, or under the supervision of the undersigned, an Attorney duly admitted to practice before the Court of Appeals of Maryland.

James D. O'Connor, Attorney

AFTER RECORDING, PLEASE RETURN TO:
E\Title Company, LLC
7939 Honeygo Boulevard
Suite 123
White Marsh, Maryland 21236

EXHIBIT "A-1"

MERRITT DEVELOPMENT CONSULTANTS, INC
Engineering Land Planning Surveying

2416 E Joppa Road
Baltimore, MD 21234
Phone: 410-663-5525
Fax: 410-663-4315
merrittdc@comcast.net

Description
9945 Hilltop Drive

All that piece, parcel, or tract of land situate on the south side of Hilltop Drive, approximately 410' ±, westerly of the intersection of Hilltop Drive and Magledt Road in the 11th election district of Baltimore County Maryland and being more particularly described as follows:

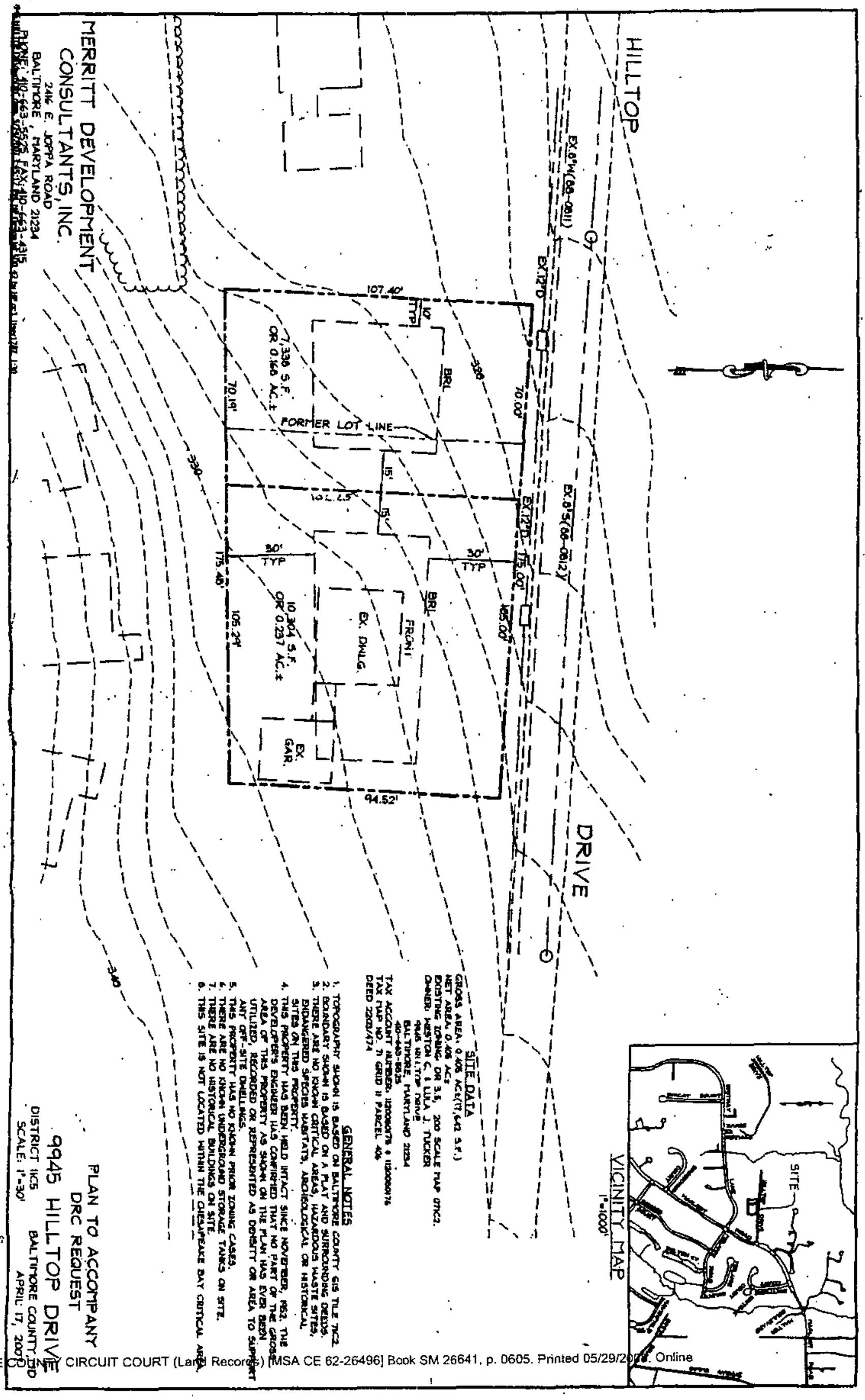
Beginning for the same at a point distant South 83°-22'-20" East 183.98 feet from the beginning of the fifth line of a referred tract of land described in a deed from Thelma S. Emge and Robert S. Emge to John W. Bowling and Elizabeth R. Bowling dated May 29, 1948 and recorded among the land records of Baltimore County in Liber T.B.S. 1687, folio 356. Thence running with and binding the first line of aforesaid deed, 1) North 10°-50'-09" East 94.52 feet to the south side of a right-a-way 30' feet wide thence running with and binding on said right-of-way and a portion of said 2nd line of aforementioned deed, 2) North 79°-09'-51" West 105.00 feet; thence leaving said right-of-way for a new line of division, 3) South 10°-50'-21" West 102.25 feet to a point in the aforementioned 5th line; thence running with and binding with on said line, 4) South 83°-22'-20" East 105.29 feet to the place of beginning.

Containing 10,331 square feet or 0.237 acres of land more or less.

BEING one of the parcels as described in Deed dated January 8, 2008, and recorded among the Land Records of Baltimore County, Maryland in Liber 26572 folio 489, was granted and conveyed by Nancy S. Tucker, Personal Representative of the Estate of Lula Jane Tucker, unto Nancy S. Tucker, Personal Representative of the Estate of Lula Jane Tucker, the herein Grantor, in fee simple.

0026641 0605

EXHIBIT "A-2"



BALTIMORE COUNTY CIRCUIT COURT (Land Records) [MSA CE 62-26496] Book SM 26641, p. 0605. Printed 05/29/2024. Online 02/11/2008.

EXHIBIT "B"

CONSENT OF
WESTON CHARLES TUCKER, JR.
TO THE SALE OF
9945 HILLTOP DRIVE

Under ITEM 5 of the Last Will and Testament of Lula Jane Tucker, nee Parks, Weston Charles Tucker, Jr. is granted the right to purchase 9945 Hilltop Drive, Baltimore, Maryland 21234 (the "Property") on the terms set forth therein. Weston Charles Tucker, Jr. joins herein for the purposes of:

1) waiving his option to purchase the property; and
2) declaring that he does not desire to exercise his option to purchase the property or to purchase the property; and
3) directing Nancy S. Tucker, Personal Representative of the Estate of Lula Jane Tucker, to convey the Property to Paul Garner and Tiffany Garner (the "Buyers") in accordance with the Residential Contract of Sale executed December 21, 2007; and
4) ratifying and consenting to the foregoing conveyance of the Property to the Buyers, in fee simple; and
5) acknowledging that said conveyance is free and clear of any right, title and interest in the property he may have acquired by the aforesaid ITEM 5.

WITNESS:

WESTON CHARLES TUCKER, JR.

STATE OF MARYLAND, CITY/COUNTY OF Baltimore, to wit:

I HEREBY CERTIFY, That on this 23rd day of January, 2008, before me, the subscriber, a Notary Public of the State aforesaid, personally appeared WESTON CHARLES TUCKER, JR., known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged the aforegoing to be his act, and in my presence signed and sealed the same.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: 2/1/08

NANCY A. LONGO NOTARY PUBLIC BALTIMORE COUNTY, MD.

f:\Settlements\07-E-0621\Consent

BALTIMORE COUNTY CIRCUIT COURT (Land Records) [MSA CE 62-26496] Book SM 26641, p. 0606. Printed 05/29/2008. Online 02/11/2008.

0026640

State of Maryland Land Instrument Intake Sheet

[ ] Baltimore City [X] County: Baltimore

Information provided is for the use of the Clerk's Office and State Department of Assessments and Taxation, and the County Finance Office only.

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

IMP FD SURE $ 20.00
RECORDING FEE 20.00
TR TAX STATE 900.00
TOTAL 940.00
Rest BA06 Rcpt # 41961
SM BC Blk # 698
Feb 06, 2008 02:02 PM

1 Type(s) of Instruments ([ ] Check Box if Addendum Intake Form is Attached.)

1	Deed		Mortgage		Other		Other
2	Deed of Trust		Lease				

2 Conveyance Check Box

X	Improved Sale Arms-Length *[1]*		Unimproved Sale Arms-Length *[2]*		Multiple Arms Length *[3]*		Not an Arms-Length Sale *[9]*

3 Tax Exemptions (If Applicable) Cite or Explain Authority

Recordation	
State Transfer	
County Transfer	

4 Consideration and Tax Calculations

Consideration	Amount
Purchase Price/Consideration	$ 180,000.00
Any New Mortgage	$ 162,000.00
Balance of Existing Mortgage	$
Other:	$
Other:	$
Full Cash Value	$ 180,000.00

Finance Office Use Only	
Transfer and Recordation Tax Consideration	
Transfer Tax Consideration	$
x ( ) % =	$
Less Exemption Amount -	$
Total Transfer Tax =	$
Recordation Tax Consideration	$
x ( ) per $500 =	$
TOTAL DUE	$

5 Fees

20
20
900

Amount of Fees	Doc. 1	Doc. 2
Recording Charge	$ 40.00	$ 95.00
Surcharge	$ 0.00	$ 0.00
State Recordation Tax	$ 900.00	$ 0.00
State Transfer Tax	$ 900.00	$ 0.00
County Transfer Tax	$ 2,700.00	$ 0.00
Other	$	$
Other	$	$

Agent:
Tax Bill:
C.B. Credit:
Ag. Tax/Other:

6 Description of Property

SDAT requires submission of all applicable information. A maximum of 40 characters will be indexed in accordance with the priority cited in Real Property Article Section 3-104(g)(3)(i).

District	Property Tax ID No.(1)	Grantor Liber/Folio	Map	Parcel No.	Var. LOG
11	11-20-080175	2203/474			[ ] (5)

Subdivision Name	Lot (3a)	Block(3b)	Sect/AB(3c)	Plat Ref.	SqFt/Acreage(4)

Location/Address of Property Being Conveyed (2)
9945 Hilltop Drive, Parkville, MD 21234

Other Property Identifiers (If applicable): Nextt 25-00-003527
Water Meter Account No.:

Residential [X] or Non-Residential [ ] | Fee Simple [X] or Ground Rent [ ] | Amount: $N/A
Partial Conveyance? [ ] Yes [X] No | Description/Amt. of SqFt/Acreage Transferred: | N/A
If Partial Conveyance, List Improvements Conveyed: N/A

7 Transferred From

Doc. 1 – Grantor(s) Name(s)	Doc. 2 – Grantor(s) Name(s)
Estate of Lula J. Tucker	Paul J. Garner
	Tiffany A. Garner
Doc. 1 - Owner(s) of Record, if Different from Grantor(s)	Doc. 2 – Owner(s) of Record, if Different from Grantor(s)

8 Transferred To

Doc. 1 – Grantee(s) Name(s)	Doc. 2 – Grantee(s) Name(s)
Paul J. Garner	Michael T. Galeone
Tiffany A. Garner	

New Owner's (Grantee) Mailing Address
952 Ellendale Drive, Towson, Maryland 21286

9 Other Names to Be Indexed

Doc. 1 – Additional Names to be Indexed (Optional)	Doc. 2 - Additional Names to be Indexed (Optional)
	The Columbia Bank

10 Contact/Mail Information

Instrument Submitted By or Contact Person
Name: M. Longo
Firm: E\Title Company, LLC
Address: 7939 Honeygo Boulevard, Suite 123, White Marsh, Maryland 21236
Phone: Telephone: 410-931-5300 FAX 410-931-5304

[X] Return to Contact Person
[ ] Hold for Pickup
[ ] Return Address Provided

11 IMPORTANT: *BOTH* THE ORIGINAL DEED *AND* A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER

Assessment Information
[X] Yes [ ] No Will the property being conveyed be the grantee's principal residence?
[ ] Yes [X] No Does transfer include personal property? If yes, identify:
[ ] Yes [X] No Was property surveyed? If yes, attach copy of survey (if recorded, no copy required)

Assessment Use Only - Do Not Write Below This Line

[ ] Tenants Verification [ ] Agricultural Verification [ ] Whole [ ] Part [ ] Tran. Process Verification
Transfer Tax Exempt: Date Received: Deed Reference: Assigned Property No.:

Year	Regular	Geo.	Map	Sub	Block	
Land		Zoning	Grid	Plat	Lot	
Building		Use	Parcel	Section	Occ. Cd.	
Total				Ex. Cd.		

RECORDATION TAX NOT REQUIRED
Director of Budget and Finance
BALTIMORE COUNTY, MARYLAND
T.P. ART 12-108

DOC # 2 3 4 5 6

Initial: SA
Date: 2/5/08

BALTIMORE COUNTY, MARYLAND (Land Records) (MSA_CE 62-2961) Book SM 26641, p. 0607. Printed 05/29/2008. Online 02/11/2008

07-E-0621

I have reviewed the recommendations carefully, and I have determined to adopt the recommendations set forth above. It is this 23rd day of May, ordered and decided that the recommendations of the DRC are hereby adopted.

Should you submit an application for any permits that may be required for this project, your application will be processed subject to the conditions set forth above and any plans, securities, or non-county permits that may be required in accordance with County, State, or Federal regulations.

Sincerely,

Timothy Kotroco
Director

TK:DTR:dak

c: File

Baltimore County Government
Department of Permits and
Development Management

111 West Chesapeake Avenue
Towson, MD 21204

410-887-3335

May 23, 2007

Merritt Development Cons., Inc.
2416 East Joppa Road
Baltimore, MD 21235

RE: Hilltop Drive
9945 Hilltop Drive
DRC Number 051407E; Dist. 11C5

Dear Sir or Madam:

Pursuant to Article 25A, Section 5 (U) of the Annotated Code of Maryland, and as provided in Section 602 (d) of the Baltimore County Charter, and Sections 32-1-101, 32-3-401, and 32-3-517 of the Baltimore County Code, this letter constitutes an administrative order and decision on the request for issuance, renewal, or modification of a license, permit, approval, exemption, waiver, or other form of permission you filed with this department.

Your request has been submitted for careful review and consideration to the Development Review Committee (DRC), which is composed of representatives from each of those departments involved in land-use decisions. These representatives are designees of the directors of these departments. The purpose of the DRC is to ensure compliance with Section 32-4-106 and Section 32-4-262 of the Baltimore County Code and to make recommendations to the Director, Department of Permits and Development Management (PDM).

The DRC has, in fact, met in an open meeting on May 14, 2007, and made the following recommendations:

The DRC has determined that your project meets the requirements of a limited exemption under Section 32-4-106(a)(1)(viii).

ALL-STATE LEGAL®
PETITIONER'S EXHIBIT
4 CBA

TO HAVE AND TO HOLD the said lots of ground and premises, above described and mentioned, and hereby intended to be conveyed; together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit of the said Weston C. Tucker and Lula J. Tucker, his wife, as tenants by the entireties, their heirs and assigns, the survivor of them, and the heirs and assigns of such survivor, in fee simple.

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

WITNESS the hands and seals of the said Grantors.

TEST:

Otto Paul Burchardt (SEAL)
Otto Paul Burchardt

Robert B. Kelm
Robert B. Kelm

Dorothy May Burchardt (SEAL)
Dorothy May Burchardt

LAW OFFICES
HENRY D. BLAIR
HENRY D. BLAIR, JR.

June 1, 1946, and recorded among the Land Records aforesaid in Liber R.J.S. No. 1441, folio 479 etc., was conveyed by Robert S. Enge and wife to the Carney Rod and Gun Club, Inc.; thence running with and binding reversely on the aforesaid second line and on the south side of said 30 foot right of way south 79 degrees 09 minutes 51 seconds east 50 feet to the end of the second line of that tract of land which by Deed dated November 18, 1949, and recorded among the Land Records aforesaid in Liber T.B.S. No. 1795, folio 559 etc., was conveyed by John W. Bowling and wife to Otto Paul Burchardt and wife, and running thence with and binding on the third line of the last referred to tract of land south 10 degrees 50 minutes 09 seconds west 103.72 feet to the end of said third line and to a point in the fifth or south 83 degrees 22 minutes 20 seconds east 183.98 foot line of that tract of land first herein referred to and running thence with and binding reversely on part of said fifth line north 83 degrees 22 minutes 20 seconds west 50.14 feet more or less to a point where said line would be drawn from the place of beginning to the second line intersected by a line of the tract of land now being described and running thence and binding reversely on said line so drawn north 10 degrees 50 minutes 09 seconds east 107.4 feet more or less to the place of beginning.

BEING the same lot of ground and premises which by Deed dated February 15, 1950 and recorded among the Land Records of Baltimore County in Liber T.B.S. No. 1819, folio 254 was granted and conveyed by John W. Bowling and Elizabeth R. Bowling, his wife, to Otto Paul Burchardt and Dorothy May Burchardt, his wife.

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

LAW OFFICES
HENRY D. BLUM
HENRY D. BLUM, JR.

Deed dated June 1, 1946 and recorded among the Land Records of Baltimore County in Liber R.J.S. No. 1441, folio 479 etc., was conveyed by Robert S. Enge and wife to Carney Rod and Gun Club Inc; thence running with and binding on the south side of said 30 foot right of way and on part of the second or north 79 degrees 9 minutes 51 seconds west 379.37 foot line of the firstly described conveyance north 79 degrees 9 minutes 51 seconds west 125 feet, thence leaving the said south side of said 30 foot right of way and said second line and running for a line of division south 10 degrees 50 minutes 9 seconds west 103.72 feet to intersect the fifth or south 83 degrees 22 minutes 20 seconds east 183.98 foot line of the firstly described conveyance, thence running with and binding on part of said fifth line to the end thereof south 83 degrees 22 minutes 20 seconds east 125.3 feet to the place of beginning. Containing .284 of an acre of land more or less.

BEING the same lot of ground and premises which by Deed dated November 18, 1949 and recorded among the Land Records of Baltimore County in Liber T.B.S. No. 1795, folio 559 was granted and conveyed by John W. Bowling and Elizabeth R. Bowling, his wife, to Otto Paul Burchardt and Dorothy May Burchardt, his wife.

BEGINNING FOR THE SECOND on the second or north 79 degrees 09 minutes 51 seconds west 379.37 foot line of that tract of land which by Deed dated May29, 1948, and recorded among the Land Records of Baltimore County in Liber T.B.S. No. 1687, folio 356 etc., was conveyed by Thelma S. Enge and husband to John W. Bowling and wife at a point distant north 79 degrees 09 minutes 51 seconds west 175 feet from the beginning of said second line, which point of beginning is on the south side of a right of way 30 feet wide to be kept open and used in common with others entitled thereto as described by the seventh or south 78 degrees 33 minutes east 940.9 foot line of that tract of land which by Deed dated

THIS DEED, made this 12th day of November in the year one thousand nine hundred and fifty-two, by and between Otto Paul Burchardt and Dorothy May Burchardt, his wife, of Baltimore County, in the State of Maryland, of the first part, Grantors, and Weston C. Tucker and Lulu S. Tucker, his wife, of Baltimore County, in the State of Maryland, of the second part, Grantees.

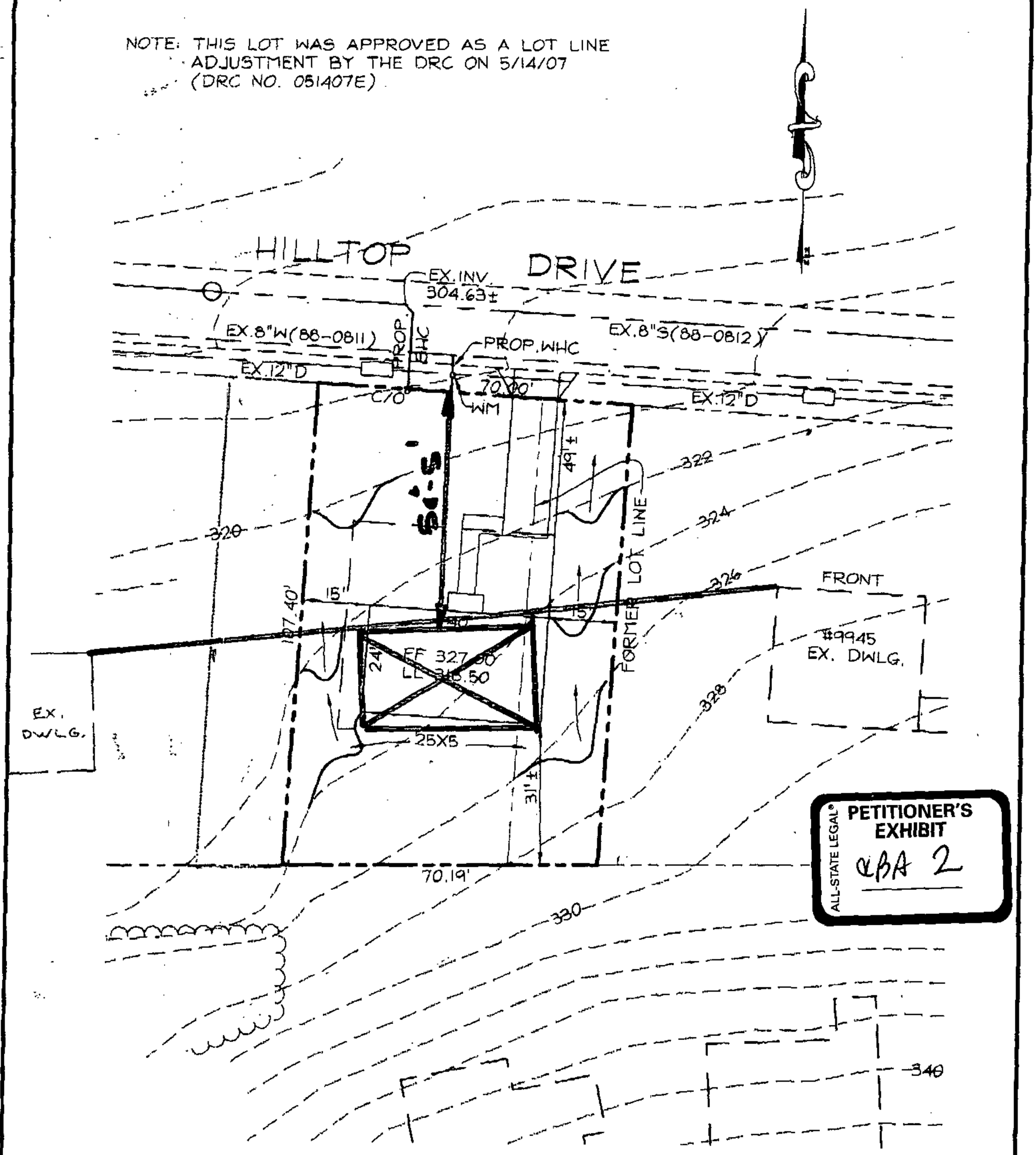
WITNESSETH, that for and in consideration of the sum of Five Dollars and other good and valuable considerations, the receipt whereof is hereby acknowledged, the said Otto Paul Burchardt and Dorothy May Burchardt, his wife, do grant and convey unto the said Weston C. Tucker and Lulu S. Tucker, his wife, as tenants by the entireties, their heirs and assigns or survivor of them, and the heirs and assigns of such survivor, in fee simple, all those lots of ground, situate, lying and being in Baltimore County, and described as follows, that is to say:

BEGINNING FOR THE first at an iron pipe heretofore planted at the beginning of that tract of land which by deed dated May 24, 1948 and recorded among the Land Records of Baltimore County in Liber T.B.S. No. 2087, Folio 356, etc., was conveyed by Thelma S. Enge and husband to [illegible] Bowling and wife, thence running with and binding on the first line of said tract of land north 10 degrees 50 minutes 9 seconds east 94.52 feet to the end thereof north 10 degrees 50 minutes 9 seconds east 94.52 feet to an iron pipe heretofore planted on the south side of a right-of-way 30 feet wide to be kept open and used in common with others entitled thereto as described by the seventh or south 78 degrees 33 minutes east 944.9 feet line of that tract of land which by

LAW OFFICES
HENRY D. BLAIR,
HENRY D. BLAIR, JR.

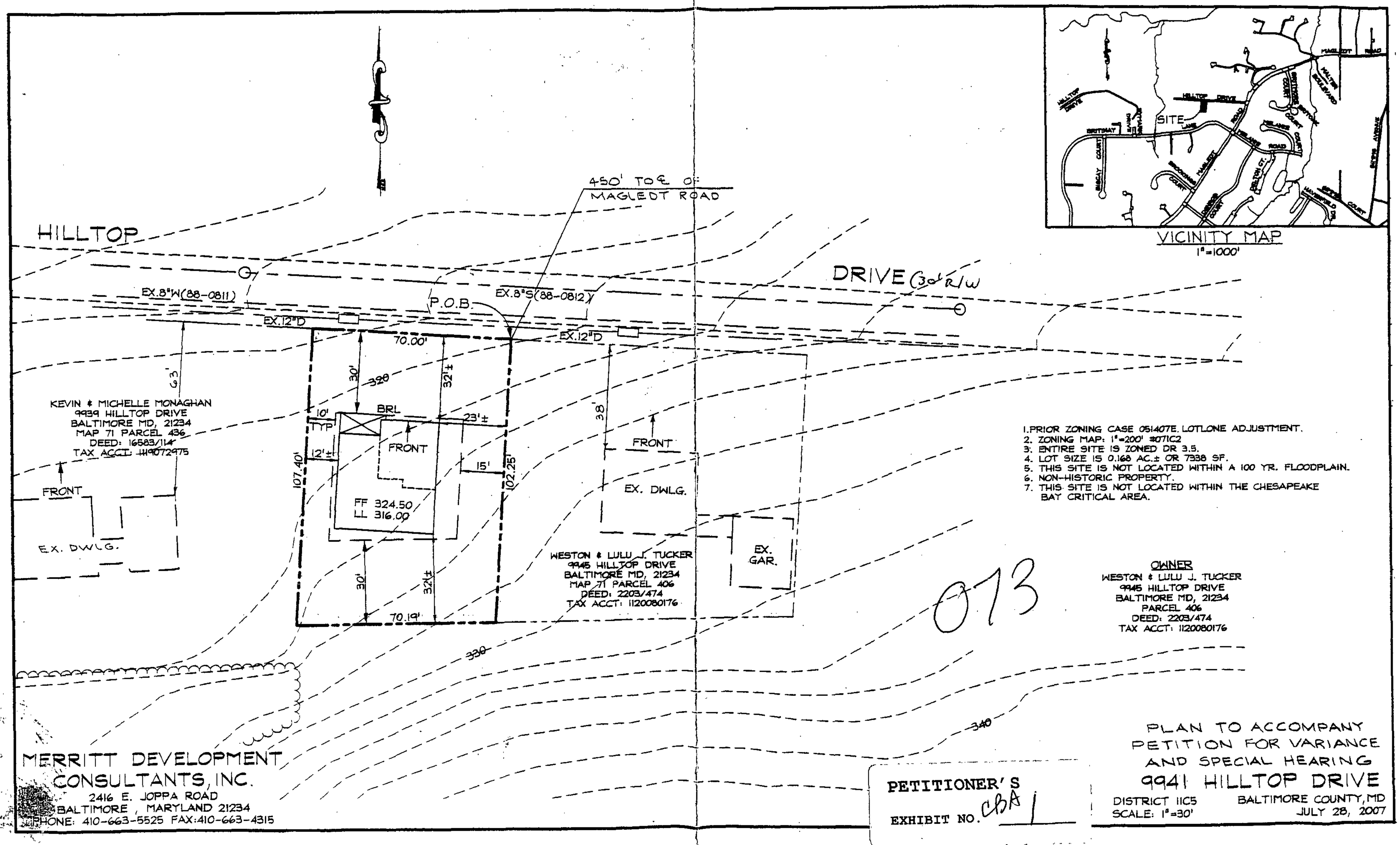
ALL-STATE LEGAL®
PETITIONER'S EXHIBIT
3 CBA

NOTE: THIS LOT WAS APPROVED AS A LOT LINE ADJUSTMENT BY THE DRC ON 5/14/07 (DRC NO. 051407E)



MERRITT DEVELOPMENT CONSULTANTS, INC.
2416 E. JOPPA ROAD
BALTIMORE, MARYLAND 21234
PHONE: 410-663-5525 FAX: 410-663-4315

LOT GRADING PLAN
9941 HILLTOP DRIVE
DISTRICT 11C5
SCALE: 1"=30'
BALTIMORE COUNTY, MD
JANUARY 7, 2008



1. PRIOR ZONING CASE 051407E. LOTLONE ADJUSTMENT.
2. ZONING MAP: 1"=200' #071C2
3. ENTIRE SITE IS ZONED DR 3.5.
4. LOT SIZE IS 0.168 AC.± OR 7338 SF.
5. THIS SITE IS NOT LOCATED WITHIN A 100 YR. FLOODPLAIN.
6. NON-HISTORIC PROPERTY.
7. THIS SITE IS NOT LOCATED WITHIN THE CHESAPEAKE BAY CRITICAL AREA.

OWNER
WESTON & LULU J. TUCKER
9945 HILLTOP DRIVE
BALTIMORE MD, 21234
PARCEL 406
DEED: 2203/474
TAX ACCT: 1120080176

073

MERRITT DEVELOPMENT CONSULTANTS, INC.
2416 E. JOPPA ROAD
BALTIMORE, MARYLAND 21234
PHONE: 410-663-5525 FAX: 410-663-4315

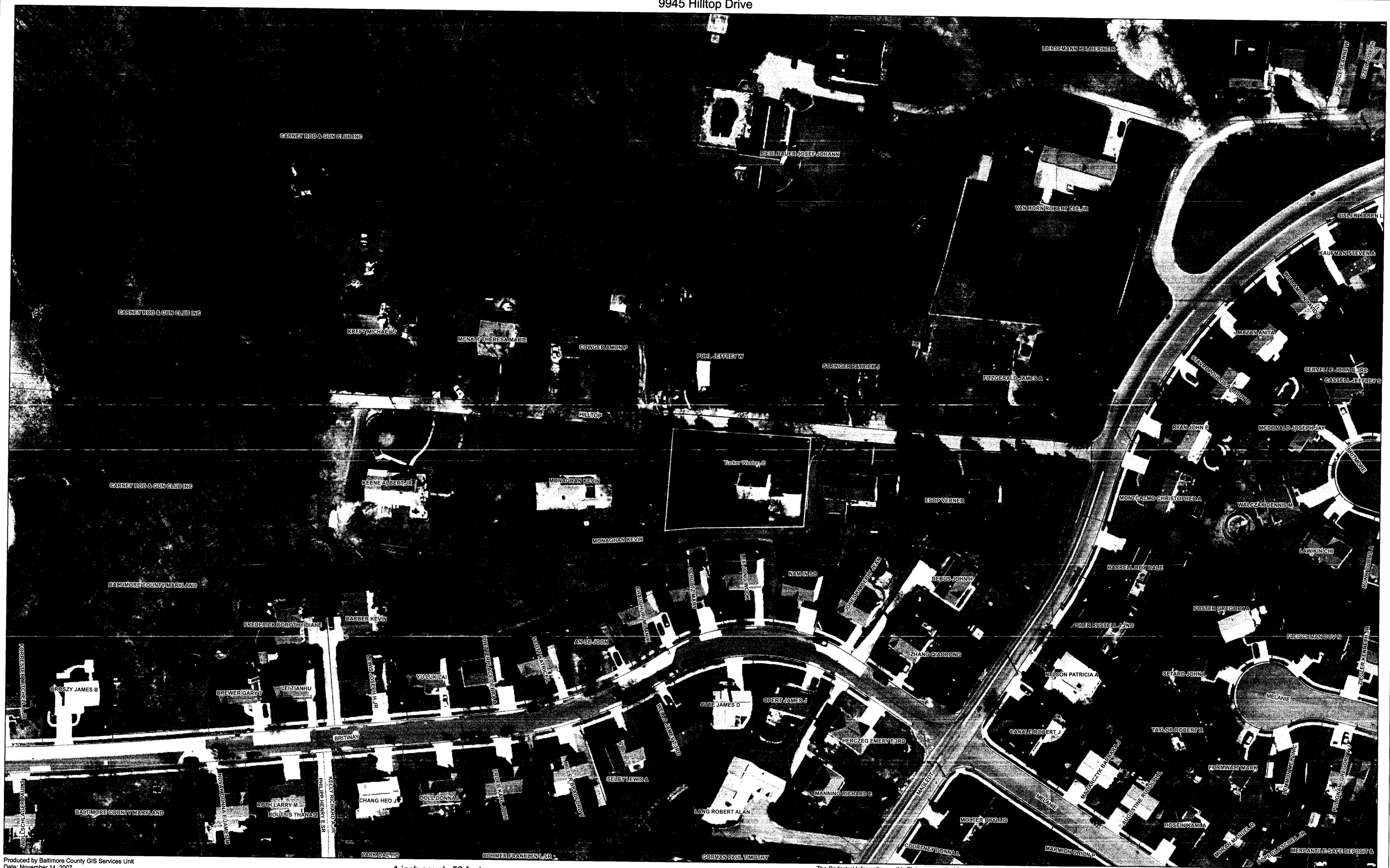
PETITIONER'S EXHIBIT NO. CBA 1

PLAN TO ACCOMPANY
PETITION FOR VARIANCE
AND SPECIAL HEARING
9941 HILLTOP DRIVE

DISTRICT 11C5 BALTIMORE COUNTY, MD
SCALE: 1"=30' JULY 28, 2007

People's Counsel #1

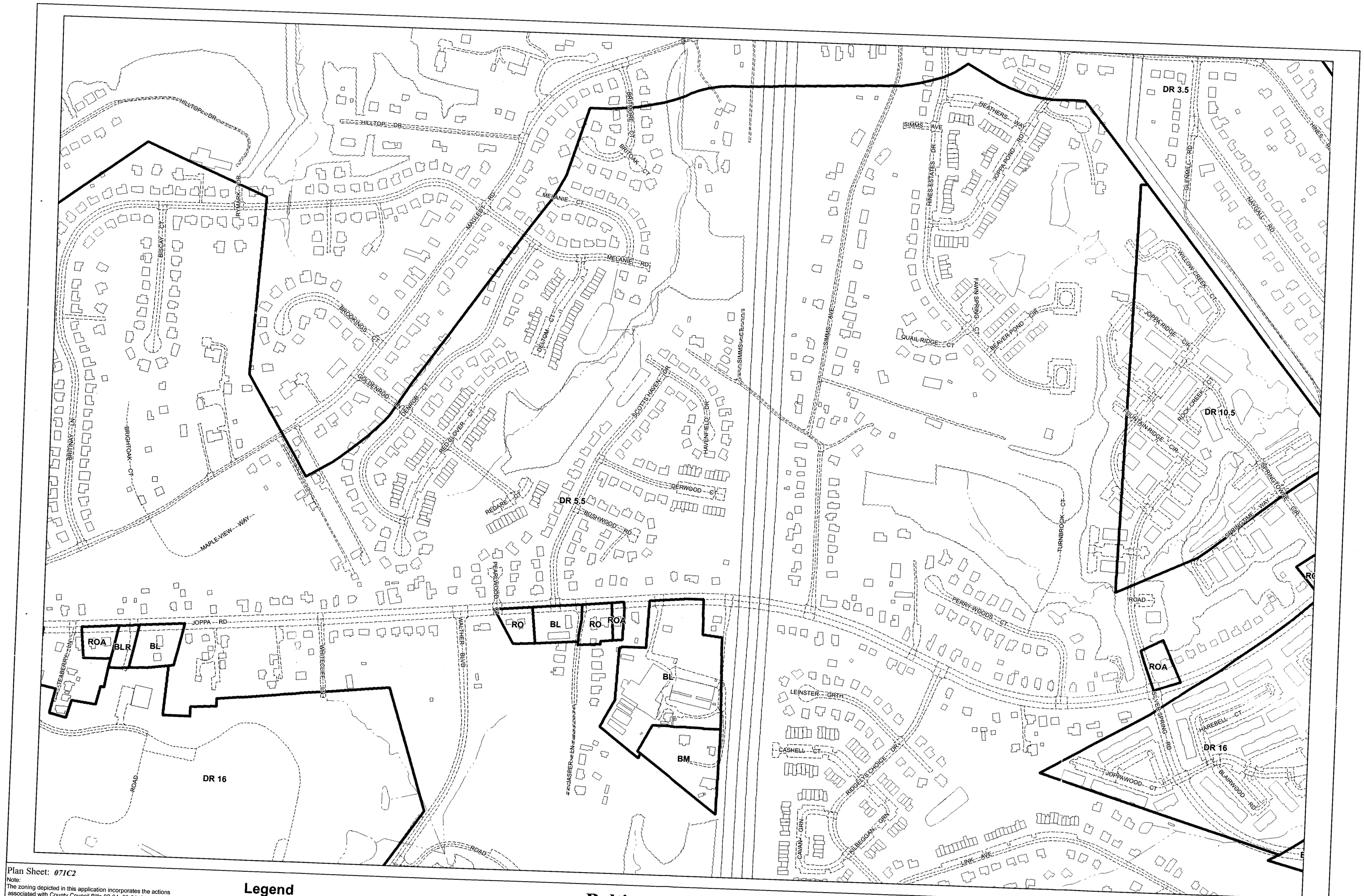
9945 Hilltop Drive



Produced by Baltimore County GIS Services Unit
Date: November 14, 2007
Date of Imagery: April 2005

1 inch equals 50 feet

The Cadastral Information on this Plot was compiled from existing deed information. This Information is not to be considered authoritative. The Survey Information was not field checked and Certified by a licensed land surveyor.



Plan Sheet: *071C2*

Note:
The zoning depicted in this application incorporates the actions associated with County Council Bills 82-04, 83-04, 84-04, 85-04, 86-04, 87-04, 88-04, and 89-04 adopted by the County Council on August 31, 2004. The action associated with County Council Bill 130-04 adopted on December 6, 2004 is also depicted. In addition, County Board of Appeals actions from MC 05-01, MC 05-02, MC 05-03, and MC 05-04 on February 9, 2005 are represented in this application.

Legend

Zoning — Streams — Vegetation
Buildings — Roads — Rail Lines

Baltimore County
Office of Planning and Zoning
Official Zoning Map

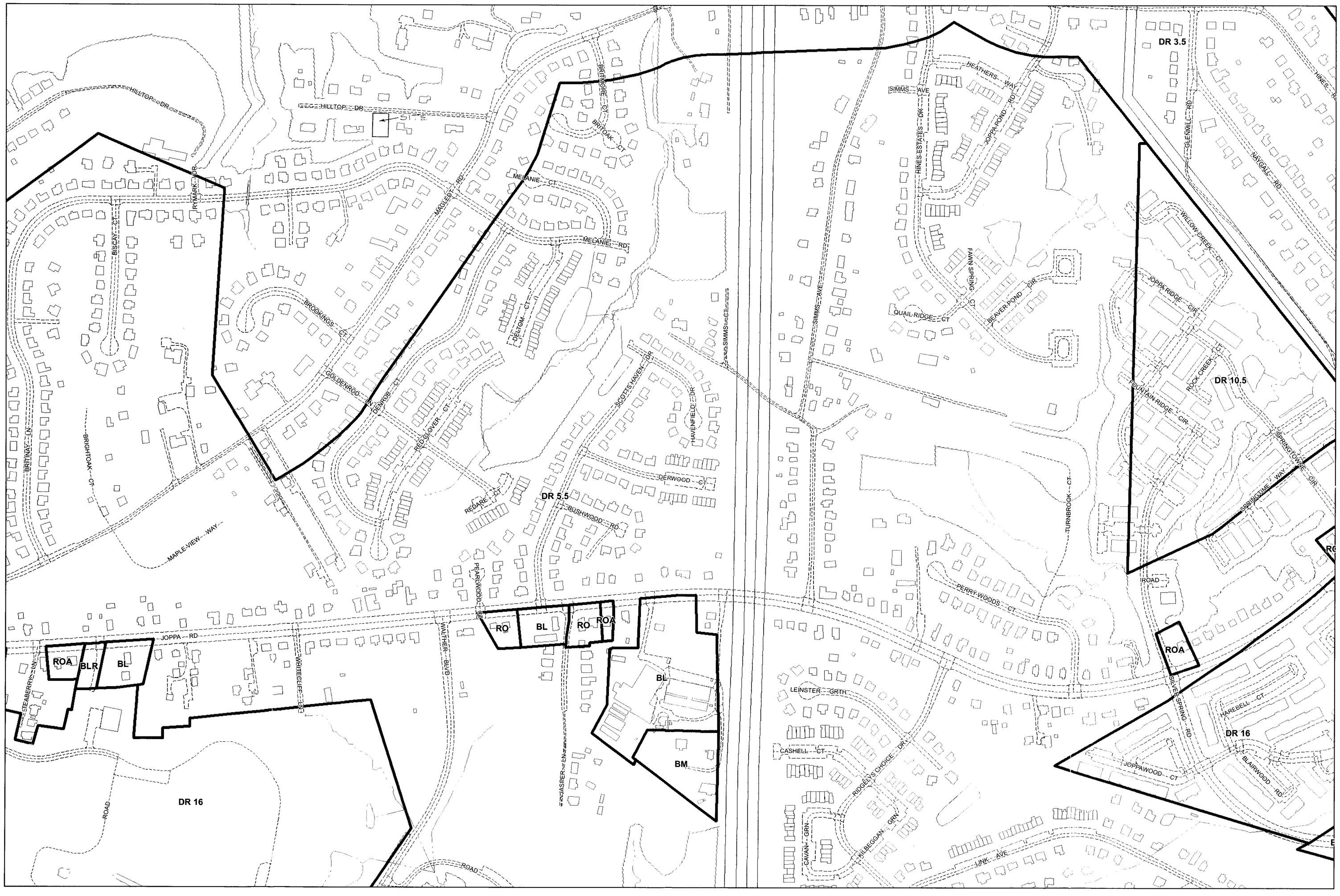
071A1	071B1	071C1	072A1	072B1
071A2	071B2	071C2	072A2	072B2
071A3	071B3	071C3	072A3	072B3

Scale
1" = 200'
0 100 200 400 Feet

1

Data Sources:
Planametric Data - Baltimore County
OIT/GIS Services Unit
1:2400, from 1995/96 photography
Zoning - Baltimore County Office of Planning
1:2400, 2004

CBA
PC 7



073

Plan Sheet: *071C2*

Note:
The zoning depicted in this application incorporates the actions associated with County Council Bills 82-04, 83-04, 84-04, 85-04, 86-04, 87-04, 88-04, and 89-04 adopted by the County Council on August 31, 2004. The action associated with County Council Bill 130-04 adopted on December 6, 2004 is also depicted. In addition, County Board of Appeals actions from MC 05-01, MC 05-02, MC 05-03, and MC 05-04 on February 9, 2005 are represented in this application.

Legend

Zoning — Streams — Vegetation
Buildings — Roads — Rail Lines

Baltimore County
Office of Planning and Zoning
Official Zoning Map

071A1	071B1	071C1	072A1	072B1
071A2	071B2	071C2	072A2	072B2
071A3	071B3	071C3	072A3	072B3

Scale

1" = 200'

0 100 200 400 Feet

1

Data Sources:
Planametric Data - Baltimore County
OIT/GIS Services Unit
1:2400, from 1995/96 photography
Zoning - Baltimore County Office of Planning
1:2400, 2004