

11/16/10

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1589

September Term, 2009

CHRISTOPHER OKTAVEC, ET UX.

v.

RAY ROHDE, ET AL.

Eyler, James R.,
Kehoe,
Kenney, James A., III
(Retired, specially assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: November 16, 2010

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**BALTIMORE COUNTY
BOARD OF APPEALS**

In April of 1988, Christopher G. Oktavec and Charlotte A. Oktavec, appellants, requested a zoning variance to permit a garage structure to be built on their property, located at 1322 Goose Neck Road, in excess of the permitted height. In 1988, in Case No. 88-383-A, the Zoning Commissioner for Baltimore County (the "Commissioner") granted that variance, subject to certain restrictions – namely, that appellants "shall not allow or cause the accessory structure (garage) to be converted to a second dwelling unit and/or apartment," and the "garage shall contain no living or sleeping quarters, and no kitchen facilities."

Sometime in late 2007, appellants filed a Petition for Special Hearing to the Commissioner, requesting that the Commissioner approve an "in[-]law living quarters in an accessory building and to amend the order and plan in case #88-383-A and remove any restriction involving the in[-]law quarters use." On or about December 14, 2007, after a public hearing in Case No. 08-132-SPH, the Commissioner granted appellants' petition to "remove the restriction involving the in-law quarters" subject, again, to certain restrictions. Specifically, the Commissioner required appellants to obtain the appropriate permits; limited the use of the in-law quarters exclusively to appellants and their immediate family and restricted its use as a rental property; and, made it a condition that when the need for the in-law quarters ceased, or appellants sold or otherwise vacated the property, that the in-law quarters be removed and the restrictions on the property reverted back to those set forth in Case No. 88-383-A.

On or about January 5, 2008, Ray Rohde and Vicky Rohde, interested parties at the public hearing, and appellees on this appeal, filed a notice of appeal of the Commissioner's final decision to the County Board of Appeals of Baltimore County (the "Board"). On June 18 and September 25, 2008, public hearings were held in the appeal. Following those hearings, on or about January 20, 2009, the Board ordered that the Petition for Special Hearing relief "to approve in-law living quarters in an accessory building to amend the order and site plan in Case No. 88-383-A to remove the restriction involving the in-law quarters are hereby **DENIED.**" From that order, appellants filed a petition for judicial review in the Circuit Court for Baltimore County.

On August 19, 2009, the circuit court, in a written opinion, affirmed the decision of the Board. Subsequently, appellants appealed to this Court. On appeal, appellants present a sole contention: "Did the County Board of Appeals, in its Opinion and Order of January 20, 2009, make factual findings not based on the evidence before it in the Record and draw unfounded legal conclusions to support its decision." We shall affirm.

Background

Before turning to the testimony and evidence adduced at the June 18 and September 25 hearings before the Board, for purposes of background we observe the following undisputed facts as set forth in the Board's opinion.

This case comes to the Board on appeal of the final decision of the [Commissioner] in which the [Commissioner] granted a Petition for Special Hearing pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to approve

in law living quarters in an accessory building and to amend the Order and Site Plan in Case No.: 88-383-A to remove the restriction involving the in-law quarters use. Protestant, Ray [Rohde], of 1320 Goose Neck Road appealed the decision.

* * *

The Petitioners, Christopher and Charlotte Oktavec are the owners of 1322 Goose Neck Road which is located in the Bowleys Quarters section of Baltimore County (the "subject property"). Goose Neck Road is a dead end street. They have owned the property since 1986. The subject property is approximately 50 feet wide by 225 feet deep. It is waterfront property, which contains approximately 11,255 sq. ft. or .25 acres more or less. It is zoned R.C.5. The property is improved with a single family dwelling which was built in 1944 and two (2) garages – one of which is located directly behind the house and is 1-1 ½ stories. The other garage is the subject of this hearing and is 2 stories (the "subject garage") and it is located behind the 1 ½ story garage.

In 1988, the Petitioners filed a request for a variance to erect the subject garage. The Petitioners had a home-based business specializing in decorating churches and chapels and desired to use the subject garage as an office and for storage. The [Commissioner] granted the variance relief they requested but included a restriction on the use of the subject garage as in-law quarters.

* * *

The subject property is located in an R.C.5 zone (Rural-Residential) which zone was created by the County Council in 1975. Section 1A04 of the B.C.Z.R. governs R.C.5 zones and sets forth in the Declaration of Findings that inadequate lot sizes are fiscally expensive to serve for basic services like on-lot sewer and water systems. (B.C.Z.R. Section 1A04.1A1b). Moreover, one of the purposes of the R.C.5 zone is to "provide a minimum lot size which is sufficient to provide

adequate area for the proper functioning of on-lot sewer and water systems." (B.C.Z.R. Section 1A04.1B4).

Further, Section 1A04.2 entitled Use Regulations allows one (1) family detached dwelling unit as of right in an R.C.5 zone. Section 1A04.3B5 states that: "No more than one dwelling is permitted on any lot in an R.C.5 zone, but not excluding additional dwellings for bona fide tenant farmers." There is no provision under the "accessory uses and structures" listed in Section 1A04.2A11 for in-law apartments in this zone.

In-law apartments are also not listed as being permitted by special exception in this zone under Section 1A04.2B.

* * *

At the June 18 hearing, the following was adduced, in relevant part.

On direct examination, Mrs. Oktavec testified that she and her husband live in the main house, which they bought in 1986. They need to have use of an in-law apartment because Mrs. Oktavec needs help caring for her husband, particularly with the dialysis that he receives around the clock. She stated that her husband is legally blind, has diabetes, has a heart problem, is in end stage renal failure, and suffers from severe fatigue.

With respect to who would be living in the in-law apartment, Mrs. Oktavec testified that it "might be" Mr. Oktavec's 90-year-old mother or the parties' daughter, or it "might be another family member." She stated that depending on "who the person is," she thought that they "may be" living in the apartment for a "long time, or it may be, you know, a short time." If it was Mr. Oktavec's 90-year-old mother, who is "more physically

able to get around than" Mrs. Oktavec, she would live in the apartment permanently.

Mrs. Oktavec testified that Mr. Oktavec's daughter is a dental assistant and works during the day, but if she was the person living in the apartment, she would help at night. Mrs. Oktavec testified that they have also considered "other family members."

Mrs. Oktavec denied that they would rent the apartment to anyone outside the family. She stated that the garage had been in existence since 1988, and that the apartment would be above it and would have a kitchen, a bathroom, a living room, and a bedroom. When Mr. Rohde bought his adjoining property somewhere around 2000 to 2002, she and Mr. Oktavec were using the space above the garage as a "part-time office" for their business, R.A. Oktavec & Son, which business renovates and decorates churches.

Mrs. Oktavec testified that she believes that their request for a zoning variance is consistent with the property's zoning classification. She testified that before she and Mr. Oktavec petitioned to the Commissioner, she visited other properties in the neighborhood to see whether any had a second dwelling. Mrs. Oktavec took photographs of those other properties, and they were admitted into evidence for the proffered purpose of establishing that "there is nothing extraordinary about [appellants] particular request in terms of other houses with in-law apartments and prevail throughout the entire community"

Appellees' counsel responded that while he did not object to the admission of the photographs, he did not believe that there was any other evidence in the record to

establish who lives in the structures, whether the owners had received zoning approval, et cetera. The Board accepted the photographs as "it shows what it shows."

On cross-examination, Mrs. Oktavec was asked who would actually be living in the apartment, to which she responded: "Our first hope is that our daughter does it, if she's able. But if she's not able, his mother. And then if it's not the two of them, we'll just try someone else." She insisted, however, that it would "be a relative." Mrs. Oktavec testified that their daughter lives in Edgewood with her husband and two children, ages four and eight, and that she works during the day, but that she would be able to help at night. When asked if her daughter's family would be able to live in the apartment, Mrs. Oktavec responded that, "[m]ost likely, it's going to be his mother. And, you know, his mother will be the main one. If she can't do it, it will either be our daughter or another close relative." Mrs. Oktavec agreed that her husband's mother is 90-years-old, but testified that she does not have any physical infirmities.

With respect to the principal structure on the property, i.e., the parties' dwelling, Mrs. Oktavec testified that it has two bedrooms on the first floor and one large bedroom on the second floor. Mr. Oktavec occupies the upstairs bedroom. With respect to the other rooms, she stated that "one room is completely filled with trains. We've got model trains. It's, you know, for display and uses a big table." She is also using another bedroom "for [her] computer and things like that. And the other one is just, basically, it's loaded with junk." In other words, she agreed that there are two bedrooms that are not

used as bedrooms, but disagreed that they could be used as bedrooms because she "[doesn't] want to move [her] stuff."

On re-direct, Mrs. Oktavec testified that one of the reasons they want an in-law apartment over the garage is so that either Mr. Oktavec's mother or the parties' daughter could have some privacy. She stated that the upstairs bedroom is filled with medications and machinery necessary for Mr. Oktavec's dialysis.

The Board asked Mrs. Oktavec some follow-up questions. First, the Board asked if Mrs. Oktavec's husband's mother was the one living in the in-law apartment, whether she would be the person caring for him during the night. Mrs. Oktavec responded that she would be the person to come over at night, and that "even though ninety, she has more get-up and go than a twenty year old." Mrs. Oktavec also stated that her husband's mother would be able to go up and down the stairs leading up to the in-law apartment without any problem. Mrs. Oktavec clarified that the person living in the apartment would either be her husband's mother, or the parties' daughter, but not their daughter's husband and children. She stated that "as time goes on . . . [they would] see which one is more suited." If it was the parties' daughter, she would probably only stay in the apartment "when [they] needed her. It wouldn't be permanent."

The Board also asked about the bedroom situation in the house, clarifying that there are actually four bedrooms in the house. One upstairs where Mr. Oktavec and his

medical equipment and supplies are; one filled with trains, one filled with junk; and, the fourth containing Mrs. Oktavec's computer.

With regard to the in-law apartment, the Board asked whether a kitchen would need to be installed. Mrs. Oktavec responded that there is one "half done" in the apartment, and that there is also a bathroom and a tub. She stated that prior to the Commissioner's decision approving the variance, there was no kitchen or bathroom or anything else installed above the garage "because we had septic, and you couldn't have that with septic." She reiterated that from 1988 until the Commissioner's decision, the second floor was unfinished, and they did not make any improvements to the second floor until "[a]fter it was approved." Subsequently, however, during the summer of 2007, a county inspector visited the property pursuant to some complaints that improvements were being made to the property. She claimed that she did not know whether the inspector had found any improvements at that time because her husband "was handling everything with the garage," and she "never [goes] out there."

Mr. Oktavec testified to the following, in relevant part.

He wanted the second floor above the garage to be converted to a living space for an assistant for him because his wife also has "many problems . . . walking-wise, and especially going up and down steps," and every time he has a problem upstairs, she has to go up and down the spiral steps in the house. When asked why an assistant to him needed to stay in an in-law apartment rather than in one of the three bedrooms in the main house,

Mr. Oktavec testified that his mother needed her own space because "she's not one to be easily lived with" and "[y]ou have to give them individuality." He stated that in addition to his mother and his daughter, there are other family members who could possibly help out.

Mr. Oktavec addressed the question of when the changeover began to convert the second floor over the garage into an in-law apartment by stating that it was originally "partitioned off in three different ways upstairs." It consisted of a shop used for framework and an office, both for his business. He stated that in the summer of 2007, prior to his filing of the petition for a special hearing, a zoning inspector came to the property and asked him about the garage. Mr. Oktavec explained to the inspector that the garage structure was approved, and that he was "working on the upstairs, and we were going to make that an apartment." The building inspector looked at the "seals, and . . . said, It's already been approved, and electrically, too. He said, I don't know what the problem is," to which Mr. Oktavec responded, "Well, we are making an in-law apartment and we're not really ready for it yet. James was working on some of the stuff upstairs because we had to take the wall and partition it off so we could have the bathroom." The inspector then told Mr. Oktavec that he needed to petition for a special hearing, which he then did.

Mr. Oktavec testified that when the garage structure was built, the second floor was approved for "office only." There could not be any facilities in the structure at that

time because "we didn't have sewage"; thus, the Commissioner in 1988 limited the use of the structure. Since 1988, however, the county had put in sewer lines, which were connected to both the house and the garage. He explained, "We have them both approved from the garage out into the house out. It goes to a grinder pump. We have sewerage now." He stated that the apartment was currently "pretty much finished," and that there was a functioning toilet and running water.

On cross-examination, Mr. Oktavec admitted that in 1988, the Commissioner placed a restriction on the property such that the second floor could not be used as an apartment. When asked why he began making improvements to the property without first requesting "zoning relief to amend that restriction," Mr. Oktavec responded:

Well, for one thing, I wasn't -- at first when we started changing it over, I was trying to get it to where I could hook up the toilet out there. At first, it wasn't going . . . to be an apartment.

It was only later when I spoke to the neighbors and told them, you know, what I'm going to try to do, and I told them who I was going to try to have there.

And I asked them if I needed help with that type of a permit, that they would come down with me to help me, because when I went down for that time, in '88, my neighbor went down with me to help me get that.

Subsequently, counsel asked him whether he had gotten permits to convert the second floor of the garage to an apartment for the work that he had finished already, noting that Mr. Oktavec had stated previously that the work on the apartment was almost

done. Mr. Oktavec responded that he did not know what else he could do "outside of what the Commissioner said," agreeing, however, that he did not currently have any permits.

Mr. Oktavec told the Board upon questioning that the sewerage had been in place for "[t]wo or three years."

A family friend testified that he thought Mr. Oktavec's mother was capable of caring for Mr. Oktavec's medical problems.

Ray Rohde testified to the following, in relevant part.

Appellants had been his neighbors since 1999, when he bought the house next door to theirs. He was concerned with appellants use of the second-floor of their garage as an in-law apartment for privacy reasons and because he feared it would affect his property value. With respect to who would occupy the apartment, he testified that he had spoken to appellants, but that he "can never pin them down on who's actually going to be in the apartment". He also stated that appellants did not obtain the necessary permits before renovating their property, and that he had seen a person staying in the apartment before it was converted to an apartment.

Carl Harp, another next door neighbor of appellants, testified that he believed that around the time "when the sewerage came in and they put in the grinder pumps is when the plumbing went up [in the in-law apartment] and the constructions basically started." He stated that the bathroom and kitchen were completed prior to the summer of 2007. He

also testified that a "guy named Web used to live up there" in the apartment, and that another "one named Dave lived up there." He did not know how long they stayed, but they worked for Mr. Oktavec and would "spend the night" after work.

At the September 25 hearing, expert testimony in the areas of planning and zoning was proffered by appellees that the relief requested by appellants "to have living quarters in the accessory structure is simply just not permitted within this zone."

Mrs. Oktavec was recalled and testified in rebuttal that with respect to a person living in the apartment as was testified to, "years and years ago . . . we were trying to help this man out, and we let him stay up there, and he played music, and other times he would [f]all asleep, and he used our bathroom facilities and things like that. He wasn't actually living there. He was staying there, playing music, and falling asleep." She acknowledged that there was a restriction on people living above the garage, but reiterated that "[h]e wasn't really living there. You know, someone was playing music and falling asleep. It's what it is." She also reiterated that she did not believe that her 90-year-old mother-in-law would have a problem going up and down the steps to the in-law apartment in the middle of the night.

Turning back to the Board's opinion, after hearing the above testimony and receiving evidence, the Board made the following findings of fact and conclusions of law, ultimately denying appellants' request.

In support of their position that this restriction on allowing an in-law quarters should be removed, the Oktavecs testified that

the condition of Mr. Oktavec's health including blindness, heart disease, diabetes and end stage renal failure as well as his severe fatigue, necessitates having a caretaker live in the subject garage who could assist him with dialysis around the clock but particularly at night. When questioned, Mrs. Oktavec testified that she was unsure who would be living in the subject garage but that she hoped that either Mr. Oktavec's 90-year-old mother would live there, or the Oktavecs' daughter would stay there at night, or perhaps an unidentified cousin. There was no testimony from either the elderly mother or the daughter at the hearing. The daughter lives with her husband and 2 children in Edgemere [sic] and works full time during the day as a dental assistant.

The Oktavecs testified that they would not rent the subject garage, nor would they permit any non-relative to sleep there. On cross-examination, the Oktavecs admitted that, since 1988, they have permitted one or more of their workers to sleep in the subject garage. The Oktavecs further admitted that, despite the restrictions in the 1988 Zoning Order, they installed a kitchen, a bathroom (less a bathtub), a living room and a bedroom in the subject garage. Mr. Oktavec testified that the 1988 restrictions were imposed because there was no sewer connected to the subject garage. That fact notwithstanding, Mr. Oktavec proceeded to install a grinder pump and connected the subject garage to the County sewer system.

It was undisputed that all of these renovations were completed without the required permits and in violation of the 1988 Order. In the Summer of 2007, a Baltimore County zoning inspector notified the Oktavecs that they needed permits and the legal approval to change the 1988 Order. As a result of that inspection, the Oktavecs petitioned for the instant relief.

* * *

... [E]ven if [in-law apartments were] permitted by special exception, this request fails to meet the special exception principles and conditions contained [in] B.C.Z.R. 502.1,

which the Oktavecs argued, were met. Specifically, this use interferes with adequate provisions for sewers required in Section 502.1E. The request is inconsistent with the purposes of the R.C.5 zone and the spirit and intent of the R.C.5 regulations

Accordingly, the express language of Sections 1A04.2 and 1A04.3B5 make clear that the R.C.5 zone limits development to one (1) single family home per lot, unless it qualifies as a tenant farmer. Thus, while there is no dispute as to Mr. Oktavec's medical issues, the relief sought by the Oktavecs is not permitted under the R.C.5 zoning regulations.

The Board further finds that even if such relief was not in violation of the R.C.5 zoning regulations, the evidence before the Board was that the Oktavecs had sufficient and ample space within their house to have a caretaker reside there. The testimony was that their house was larger than both garages. The Oktavecs testified that there were 3 bedrooms in the house but that the 2 rooms on the first floor were filled with "junk" consisting of "model trains and a computer." This Board finds that a more reasonable solution to the Oktavec's request is to move the trains into the subject garage, thereby making room for the caretaker. The Board believes that Mr. Oktavec's boxes of medical supplies can be appropriately rearranged within the house to make room for a caretaker.

The Board notes that the Oktavecs had no definitive plans for either Mr. Oktavec's mother or their daughter to live in the subject garage. The Board is not convinced that Mr. Oktavec's elderly mother will be able to provide around the clock assistance, much less climb down 2 flights of stairs located outside of the subject garage -- at night -- and into the house when Mr. Oktavec needs assistance.

That evidence -- along with the undisputed fact that the Oktavecs performed all the renovations to the subject garage knowing that they were in violation of the 1988 Order and without permits, after having permitted third party(ies) to reside in the subject garage, along with the evidence that their

relief here stems from being "caught" by the zoning inspector affects the genuineness of the need for this additional dwelling unit on this lot. The installation of bathroom facilities in the subject garage through the use of an unauthorized grinder pump is an additional burden on the County sewer system which the R.C.5 zoning regulations specifically sought to control because it is not only expensive to serve, but impacts the long-term adequacy of the County sewer system. The fact that the building which comprises the subject garage has existed since 1988 does not change the negative impact that additional living quarters, in a 50 foot wide lot, has on the County.

The Oktavecs' main argument in support of their request is that it appears to them through photographs that they entered into evidence that other properties in Bowleys Quarters have in-law apartments. They contend that their request would be consistent with the neighborhood. This evidence does not persuade the Board. The photographs of second garages on these other lots are inconclusive proof that those garages are used as in-law residences. But even if these other garages were used as such, this request for Special Hearing concerns the subject garage and not the garages or second dwellings of other properties which may or may not be legal.

* * *

Discussion

Appellants submit on appeal that in the above-quoted decision, the Board made the following factual errors, as presented by appellant.

1. That the Oktavecs had improperly permitted persons to sleep in the subject garage over an extended period of time.
2. That the Oktavecs had violated the 1988 Zoning Order.
3. That the Oktavecs had installed a grinder pump and connected to the County sewer system improperly.

4. That all of the renovations were completed without the required permits in violation of the 1988 Order.

Appellants continue that due to the Board's "misunderstanding and use of the testimony, it arrived at the following erroneous conclusions in its [d]ecision":

1. That the Oktavecs' use of the garage interferes with adequate provisions for sewers in §502.1(e).
2. That their proposed use of the garage overloads the sewer system.
3. That their use of the grinder pump was somehow illegal.
4. That the Oktavecs had ample space within their house to have a caretaker reside therein.
5. The Board was not convinced that Mr. Oktavec's mother or daughter would occupy the subject garage.
6. That the Oktavecs performed all the renovations knowing they were in violation of the 1988 Order and without Permits after having third parties reside in the subject garage, along with the evidence that their relief stems from being "caught by the Zoning Inspector."
7. That the photographs of other garages and accessory structures are inconclusive proof that these structures are used as in-law residences.

After reviewing the record with respect to the same allegations of error presented on this appeal, the circuit court concluded that the Board did not err in denying the requested Special Hearing to remove the restriction involving the in-law quarters, as the conclusions drawn from the facts and inferences were supported by the record. We shall make the same determination, thereby affirming the Board.

At the outset, we observe that judicial review of an administrative decision “is limited to determining if there is substantial evidence in the record as a whole to support the agency’s findings and conclusions, and . . . determin[ing] if the administrative decision is premised upon an erroneous conclusion of law.” Lanzaron v. Anne Arundel County, 402 Md. 140, 147 (2007) (and cases cited therein). In doing so, we bypass the judgment of the circuit court and look directly at the administrative decision. White v. Workers’ Comp. Comm’n, 161 Md. App. 483, 487 (2005); *see, e.g., Gigeous v. E. Corr. Inst.*, 363 Md. 481, 495-96 (2001) (On appeal, “we reevaluate the decision of the agency, not the decision of the lower court.”). “Ordinarily, we are constrained to affirm the agency decision only for the reasons given by the agency” *Id.*

The scope of judicial review of administrative fact-finding is a narrow and highly deferential one. People’s Counsel for Balt. County v. Loyola College in Md., 406 Md. 54, 66 (2008). Accordingly, we will affirm a decision on the facts if it is supported by “substantial evidence.” *See id.* at 67. An agency’s fact-finding is based on substantial evidence if “supported by such evidence as a reasonable mind might accept as adequate to support a conclusion.” People’s Counsel for Balt. County v. Surina, 400 Md. 662, 681 (2007) (quoting Mayor of Annapolis v. Annapolis Waterfront Co., 284 Md. 383, 398 (1979)). If the issues before the agency were “fairly debatable” based on record evidence, we must refrain from substituting our own judgment for that of the agency. Annapolis Waterfront Co., 284 Md. at 396. When “a pure question of law is involved, we may

substitute our judgment for that of the administrative agency,” White, 161 Md. App. at 487; nevertheless, we afford some weight to an agency’s interpretation of the laws it is charged with administering, Surina, 400 Md. at 682-83, and we must review the agency’s decision in a light most favorable to it. *See, e.g., Maryland Aviation Administration v. Noland*, 386 Md. 556, 571 (2005).

Based on the above-quoted standard, and our review of the record, we have little difficulty concluding that the Board’s decision was supported by substantial evidence, and could have been reached by reasonable minds.

Appellants first allege that the Board made a “factual error” when it “claimed that the Oktavecs had improperly permitted workers to stay in the subject garage,” in violation of the 1988 zoning order. This is meritless. First, Mrs. Oktavec testified in rebuttal that someone did stay in the apartment. Second, although Mrs. Oktavec attempted to qualify that statement by stating that “he wasn’t really living there,” the Board also had before it the testimony of Mr. Rohde and Mr. Harp, who both stated that people had stayed in the apartment. We can not conclude that this was a “factual error.”

Appellants next allege that the Board made a factual error when it found that they had violated the 1988 zoning order by installing a kitchen and bathroom in the apartment. According to appellants’ brief, they did “not begin to prepare living quarters on the second floor of the garage until after they had received permission to do so” from the Commissioner. Again, and according to Mr. Oktavec’s own testimony, they did, in fact,

begin improving the second-floor space into an apartment prior to obtaining zoning approval. When confronted by the inspector in 2007, Mr. Oktavec explicitly admitted this fact. Furthermore, when asked why he began making improvements to the property without first obtaining the necessary approvals he had no explanation. Mrs. Oktavec claimed no knowledge of any improvements made to the apartment in her backyard. We perceive no error.

Next, appellants argue that the Board's finding that "the Oktavecs had improperly installed a grinder pump connected to the County sewer system" was "totally in error." According to appellants, the County installed the grinder pump when it installed the sewer system. We agree with appellants that the record is unclear with respect to whether the County or appellants installed the grinder pump. This is of no moment, however. Mr. Oktavec testified that the sewage was connected to the house and the garage two or three years prior to 2008, and that the apartment currently has a functioning toilet and running water. He also testified that in 2007, when confronted by the inspector, he told the inspector that he was "working on the upstairs; and we were going to make that an apartment," and that "James was working on some of the stuff upstairs because we had to take the wall and partition it off so we could have the bathroom." The inspector then told Mr. Oktavec that he needed to petition for a special hearing, which he then did. Clearly, Mr. Oktavec did not have the necessary permits to construct the bathroom prior to 2007 and subsequent to the installation of the sewer system. Moreover, Mr. Harp testified that

it was "when the sewerage came in and they put in the grinder pumps is when the plumbing went up [in the in-law apartment] and the constructions basically started." Thus, regardless of who installed the grinder pump, and even if we were to assume *arguendo* that the County installed the pump, as noted by the Board, the installation did not give appellants the right to ignore the restrictions on their property and construct a bathroom in the apartment connected to the County sewer system.

Appellants next contend that the Board's finding that all of the renovations to the apartment were completed without the required permits in violation of the 1988 order was in error. According to appellants, none of the renovations were started until after the Commissioner approved the installation and appellants obtained all necessary permits. Quite to the contrary, however, Mr. Oktavec testified that although the apartment was nearly completed, he had not obtained any permits from the County for the work that had been performed.

Appellants contend that the Board's factual errors led it to reach the wrong conclusions. We note that we perceive no factual errors in the first place. Nevertheless, we shall very briefly address those allegations.

Appellants' first three arguments relate to the grinder pump. We observe that, as noted by the Board, in-law apartments are not listed as being permitted by special exception. With respect to the sewer system, the Board concluded that

... even if [in-law apartments were] permitted by special exception, this request fails to meet the special exception

principles and conditions contained [in] B.C.Z.R. 502.1, which the Oktavecs argued, were met. Specifically, this use interferes with adequate provisions for sewers required in Section 502.1E. The request is inconsistent with the purposes of the R.C.5 zone and the spirit and intent of the R.C.5 regulations

Any argument with respect to grinder pumps or the use of the sewage system is misplaced. Simply put, in-law apartments are not an intended use in the R.C.5 zone, one reason being that use of the property as an apartment interferes with provisions for sewer systems, i.e., because "inadequate lot sizes are fiscally expensive to serve for basic services like on-lot sewer and water systems." In other words, no matter who installed the grinder pumps, appellants' use of the sewer system was contrary to the zoning code. This is precisely why appellants were required to gain approval before constructing an apartment, and precisely why their request to do so, even after the fact, was denied.

Appellants next complain that the Board's conclusion that they had space in their house to have a caretaker reside there was not supported by the evidence. The testimony of Mrs. Oktavec was that the home had four bedrooms; a room for Mr. Oktavec, a "train" room, one for her computer, and one for "junk." Simply because Mrs. Oktavec did not want to move her "stuff," does not make the Board's conclusion that there was space in the dwelling for a caretaker erroneous.

Appellants also argue that the Board should have been convinced that either Mr. Oktavec's mother or the parties' daughter would occupy the apartment. Never in her testimony did Mrs. Oktavec definitely state who would occupy the space. In fact, she

repeatedly stated that if it was not one of the former two individuals, it would be "someone else."

Next appellants argue that the Board's conclusion that they performed the renovations to the garage in violation of the 1988 order and without permits was "totally erroneous." We need not state any more than that this conclusion was supported by the record.

Finally, appellants argue that the Board's conclusion that the photographs taken by Mrs. Oktavec were inconclusive proof that the garages were used as in-law residences was error. There was no evidence before the Board to conclusively indicate that the structures were used for in-law apartments or that they did or did not receive zoning approval from the County. Even if it were somehow proven that the photographs did accurately depict in-law quarters, it would not change the result with respect to appellants' property.

**JUDGMENT AFFIRMED.
COSTS TO BE PAID BY
APPELLANT.**

8/13/09

In the Matter of

Christopher Oktavec

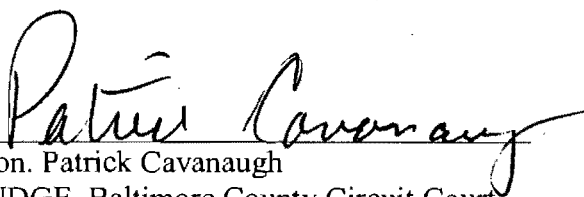
* IN THE CIRCUIT COURT
* FOR BALTIMORE COUNTY
* CASE No.: 03-C-09-0001221

* * * * *

ORDER

After a full and fair consideration of the Petitioner's Memorandum of Appeal and
Petitioner's Response, along with oral argument, it is thereupon this 13th day of
August 2009 by the Circuit Court for Baltimore County, Maryland,

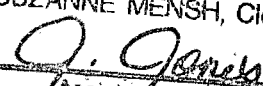
ORDERED that Petitioner's Appeal seeking to reverse the Baltimore County
Zoning Appeals Board decision is hereby **DENIED**.


Hon. Patrick Cavanaugh
JUDGE, Baltimore County Circuit Court

RECEIVED

AUG 20 2009

BALTIMORE COUNTY
BOARD OF APPEALS

True Copy Test
SUZANNE MENSCH, Clerk
Per 
Assistant Clerk

FILED AUG 19 2009

8/13/09

RECEIVED

AUG 20 2009

BALTIMORE COUNTY
BOARD OF APPEALS

IN THE MATTER OF:

CHRISTOPHER OKTAVEC, et al

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* Case No.: 03-C-09-001221
*

* * * * *

**CHRISTOPHER OKTAVEC'S APPEAL FROM THE
COUNTY BOARD OF APPEALS' DECISION**

Question Presented for Appeal

Did the Zoning Board of Appeals err by passing an Order denying the requested Special Hearing to remove the restriction involving the in-law quarters use for the Oktavec's?

Summary

This Court finds that the Zoning Board of Appeals did not err by denying the requested Special Hearing to remove the restriction involving the in-law quarters. The conclusions drawn from the facts and inferences in the record could be reached by a reasonable mind, and thus, the Zoning Board of Appeals' decision is AFFIRMED.

Statement of Facts

The pro se Petitioners filed a request with the Zoning Commissioner of Baltimore County to determine whether or not the Zoning Commissioner should approve an in-law living quarters in an accessory building and to amend the Order and Plan in Case No.: 88-282-A removing said prohibition. The parcel of land is zoned R. C. 5 and is approximately 50 feet wide and 225 feet deep. Petitioners have owned the waterfront

FILED AUG 19 2009

property on a dead-end street since 1986. The property, built in 1944, is improved with a single-family dwelling and two garages, one of which is located directly behind the house and is 1.5 stories. The other garage is two stories and is the subject garage located behind the other garage.

In 1988, Petitioners filed a request for a variance to erect the subject garage because they had a home-based business specializing in decorating churches and chapels and desired to use the subject garage as an office and for storage. Petitioners were granted the variance they requested by the Zoning Commissioner, but it included a restriction on the use of the subject garage as in-law quarters. The Commissioner further specified that the subject garage shall not: . . . be converted to a second dwelling unit and/or apartment. The garage shall contain no living or sleeping quarters and no kitchen facilities.

Petitioners testified that Mr. Oktavec's health necessitated having a caretaker live in the subject garage who could assist him with dialysis around the clock, particularly at night. Mr. Oktavec suffers from blindness, heart disease, diabetes and end stage renal failure, including severe fatigue. Mrs. Oktavec testified that she was unsure about who would be living in the subject garage, but hoped that it would be either Mr. Oktavec's 90-year-old mother, the couples' daughter, or an unidentified cousin. Petitioners testified that they would not rent the garage, nor would they permit any non-relative to sleep there. On cross-examination, Petitioners admitted that they have allowed one or more of their workers to sleep in the subject garage, beginning in 1988. Furthermore, Petitioners stated that they installed a kitchen, bathroom, living room, and bedroom in the subject garage. Mr. Oktavec testified that the restrictions were in place stemming from the 1988 Order because there was no sewer connected to the subject garage. There

is presently a grinder pump installed connecting the garage to the sewer system, but it is debated as to whether it was installed by the Petitioner or the County.

All of the renovations were completed without the required permits and in violation of the 1988 Order. In the summer of 2007, a Baltimore County zoning inspector notified the Petitioners that they needed permits and approval in order to modify the 1988 Order. Accordingly, Petitioners filed for appropriate relief.

Standard of Review

The standard of review of the action of an administrative agency is "limited to determining whether there is substantial evidence on the record as a whole to support the agency's finding of fact and whether the agency's conclusions of law were correct." Motor Vehicle Administration v. Atterbeary, 368 Md. 480, 796 A. 2d 75, 81 (2002). The agency decision is presumptively correct, and the correctness of an agency's findings of fact must be reviewed under the substantial evidence test. Dept. of Human Resources v. Thompson, 103 Md. App. 175, 652 A.2d 1183 (1995); State Election Board v. Billhimer, 314 Md. 46, 548 A.2d 819 (1988). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Supervisor of Assessments v. Group Health Ass'n, Inc., 308 Md. 151, 159, 517 A.2d 1076 (1986) quoting Bulluck v. Pelham Wood Apts., 283 Md. 505, 512, 390 A.2d 1119 (1978). Accordingly, this Court must affirm the Board's findings if substantial evidence exists to conclude that its determinations were reasonable.

A reviewing court may, and should, examine facts found by an agency to see if there is evidence to support each fact found. If evidence exists in the record to support an agency's fact-finding, the reviewing court cannot substitute its assessment of credibility of the evidence for that of the agency, no matter how questionable or

conflicting the source of evidence may be. Commissioner, Baltimore City Police Dept. v. Cason, 34 Md. App. 487, 368 A.2d 1067 (1977), *cert. denied*, 280 Md. 728 (1977). It is well settled that the reviewing court should not substitute its judgment for the expertise of the agency, as the agency has a superior ability to understand its own rules and regulations. Board of Education v. Paynter, 303 Md. 22, 35, 491 A.2d 1186 (1985); Bulluck, 283 Md. 505, 512, 390 A.2d 1119. When an agency infers the existence of a fact that is not supported by direct proof from the record, the reviewing court should examine such an inference to determine if it reasonably flows from other facts that are supported by direct proof. Even though an agency may have been reasonable in drawing a different inference, the court has no power to disagree with the facts so inferred. Id. at 508.

The court should review the agency's conclusion to determine whether "reasoning minds could reasonably reach that conclusion from facts in the record before the agency, by direct proof, or by permissible inference. If the conclusion could so be reached, then it is based upon substantial evidence, and the court has no power to reject that conclusion." Id.

Discussion

First, it is undisputed that the property is zoned as an R. C. 5 zone. Section 1A04.2 entitled "Use Regulations" allows one (1) family detached dwelling unit as of right in an R. C. 5 zone. Section 1A04.3B5 states that: "No more than one dwelling is permitted on any lot in an R. C. 5 zone, but not excluding additional dwellings for bona fide tenant farmers." There is no provision under the "accessory uses and structures" listed in Section 1A04.2A11 for in-law apartments in this zone. In order to prevail in their argument, Petitioners must overcome the above regulation.

Petitioners allege four (4) factual errors made by the County Board of Appeals:

1. That the Petitioners had improperly permitted persons to sleep in the subject garage over an extended period of time;
2. That the Petitioners had violated the 1988 Zoning Order;
3. That the Petitioners had installed a grinder pump and connected to the County sewer system improperly;
4. That all of the renovations were completed without the required permits in violation of the 1988 Order

However, each of these factual allegations fails. Carl Harp, a neighbor at 1324 Goose Neck Road testified that an individual by the name of Web used to live in the apartment. (T.160). Furthermore, Charlotte Oktavec admitted that someone did stay in the apartment but "that was like years and years ago." (T.47). She further attempted to qualify by stating that "he wasn't really living there. You know, someone was playing music and falling asleep. It's what it is." (T.48). Clearly, based on the transcript testimony of Carl Harp and Charlotte Oktavec, there was contrary evidence to Petitioners' first alleged factual error.

Petitioners also allege that they did not violate the 1988 Zoning Order. However, Mr. Oktavec admitted that at the time of the zoning inspection in the summer of 2007, he indicated to the inspector, "We are making an in-law apartment and we're not ready for it yet. James was working on some stuff upstairs because we had to take the wall and partition it off so we could have the bathroom." (T.76). Mr. Oktavec could not provide a valid reason why he started to make improvements towards making an apartment without first coming for zoning relief to amend the restriction placed on the property by

the previous zoning case. (T.84-85). Therefore, the County Board of Appeals did not err on this factual issue either.

Next Petitioners argue that there was an error in determining that they had installed a grinder pump and attached it to the Baltimore County sewer system improperly. Mr. Oktavec simply testified that the sewage was connected to the house as well as the garage at the time of the June 18, 2008 hearing. (T.80). Mr. Oktavec also indicated that the sewage was connected to the garage two or three years prior to his testimony on June 18, 2008. (T.87). From the transcript, it seems unclear as to whether the grinder pump was connected by the Petitioners or the County. However, even if the County did attach the grinder pump, it was harmless error for the Board of Appeals to determine otherwise, because Petitioners fail on all other arguments.

The final factual allegation of error was the finding that the renovations were done without the permits, in violation of the 1988 Order. Clearly, this allegation of error fails as well, because Mr. Oktavec indicated that at the time of his testimony before the Board he had gotten no permits from Baltimore County for the work performed in relation to the in-law apartment on the second floor of the garage. (T.85-87).

Petitioners also argue that because of the Board's misunderstanding of the testimony, it came to seven (7) conclusions of error:

1. That their use interferes with adequate provisions for sewers in §502.1(e);
2. That their proposed use overloads the sewer system;
3. That their use of the grinder pump was somehow illegal;
4. That the Petitioners had ample space within their house to have a caretaker reside there;

5. That the Board was not convinced that Mr. Oktavec's mother or daughter would occupy the subject garage;
6. That Petitioners performed all the renovations knowing they were in violation of the 1988 Order and without Permits after having third parties reside in the subject garage, along with the evidence that their relief stems from being "caught by the Zoning Inspector;"
7. That the photographs of other garages are inconclusive proof that these garages are used as in-law garages

The first three issues regarding the grinder pump deal with contradictory testimony. However, even if Petitioners' testimony is accurate, and the County installed the pumps, it was harmless error by the Board to find otherwise because of all the other accurate findings to support their decision.

The fourth alleged misunderstanding is regarding whether or not Petitioners have ample space in their primary residence to adequately house a caregiver. Again, the testimony of Mrs. Oktavec herself shows that Board could reasonably determine that there is ample space in the house. Mrs. Oktavec indicated the Petitioners' principal dwelling has three bedrooms, "but the one I'm using for my computer and things like that. The other one is just basically, it's loaded with junk. (T.54). When questioned whether the other bedrooms in Petitioners' home could be used as bedrooms, Ms. Oktavec stated, "I don't want to move my stuff." (T.55). Even further, when questioned by the Board, Ms. Oktavec indicated that their primary residence had four (4) bedrooms, and that "one is a train room." (T.60). Accordingly, there were plenty of

bedrooms in the dwelling in order to appropriately board a caretaker if only some of the items in the house were put into storage.

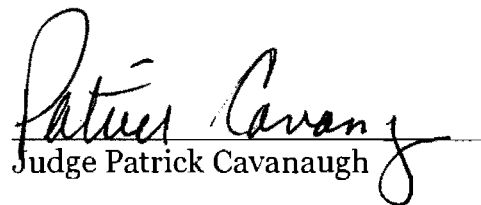
Petitioners also argue that the Board should have been convinced that Mr. Oktavec's mother or daughter would occupy the proposed quarters. Again, Petitioners themselves contradict this finding. Ms. Oktavec stated that if her daughter or 90-year old mother-in-law could not reside in the apartment, "We'll just try someone else." (T.51). This statement is hardly one that definitively proves who will live in the apartment. Furthermore, it is difficult to believe that a 90-year old would be able to adequately care for a person in such poor condition throughout the night from another dwelling.

Next, Petitioners raise the issue that the Board noted that Petitioners performed renovations to the subject garage, which were in violation of the 1988 Order, without a permit, and having third parties reside in the garage. This is a very general objection that is disproven by a review of the record as a whole. Petitioners did not file for zoning relief prior to alterations to the garage. Rather, Mrs. Oktavec admitted at the time of the inspection that, "I think we were doing a couple of things, but I'm not sure what we were doing." (T.67). Mr. Oktavec also admitted that, during the 2007 inspection, "we are making an in-law apartment and we're not ready for it yet. James was working on some stuff upstairs because we had to take the wall and partition it off so we could have the bathroom." (T.76). Mr. Oktavec admitted that this was before the filing of a Petition for a Special Hearing. (T.76). Clearly, renovations did begin on the garage before permits were issued and before a Special Hearing was petitioned for.

Finally, Petitioners argue that the pictures of other garages being used as dwellings are conclusive proof that other residences have been allowed the same usage

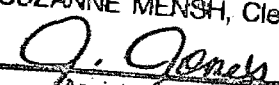
that they are currently being denied. There was absolutely no evidence before the Board to conclusively indicate that those structures were used for in-law apartments nor that they received zoning approval from Baltimore County. Even if it were somehow proven that Petitioners' photographs did accurately display in-law quarters, it is completely irrelevant, as the request for a Special Hearing was regarding Petitioners' property and no other.

If evidence exists in the record to support an agency's fact-finding, the reviewing court cannot substitute its assessment of credibility of the evidence for that of the agency, no matter how questionable or conflicting the source of evidence may be. See *supra*, Commissioner, Baltimore City Police Dept. v. Cason, 34 Md. App. 487, 368 A.2d 1067 (1977). This Court finds that the record reflects that all determinations made by the Zoning Board of Appeals were supported by the record. Therefore, Petitioners Appeal from the Zoning Board of Appeals is DENIED.


Judge Patrick Cavanaugh

8/13/09
Date

CLERK TO NOTIFY

True Copy Test
SUZANNE MENSCH, Clerk
Per 
Assistant Clerk

CIRCUIT COURT FOR BALTIMORE COUNTY

Suzanne Mensh

Clerk of the Circuit Court

County Courts Building

401 Bosley Avenue

P.O. Box 6754

Towson, MD 21285-6754

(410)-887-2601, TTY for Deaf: (800)-735-2258

Maryland Toll Free Number (800) 938-5802

Case Number: 03-C-09-001221

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
Jefferson Building Suite 203
105 West Chesapeake Avenue
Towson, MD 21204

RECEIVED
AUG 20 2009

BALTIMORE COUNTY
BOARD OF APPEALS

4/2/09

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
CHRISTOPHER AND CHARLOTTE OKTAVEC
LEGAL OWNERS/PETITIONERS

CIVIL ACTION
NO. : 03-C-09-001221

FOR JUDICIAL REVIEW OF THE OPINION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
JEFFERSON BUILDING - ROOM 203
105 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204

IN THE MATTER OF :
CHRISTOPHER AND CHARLOTTE OKTAVEC
- LEGAL OWNERS
FOR SPECIAL HEARING ON PROPERTY
LOCATED ON THE N/E SIDE OF GOOSE
NECK ROAD , 1450' N/E OF MIAMI BEACH
ROAD (1322 GOOSE NECK ROAD)

15TH ELECTION DISTRICT
6TH COUNCILMANIC DISTRICT

BOARD OF APPEALS CASE NO.: 08-132-SPH

* * * * *

**PROCEEDINGS BEFORE THE ZONING COMMISSIONER
AND THE BOARD OF APPEALS OF BALTIMORE COUNTY**

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now comes the County Board of Appeals of Baltimore County and, in answer to the Petition for Judicial Review directed against it in this case, herewith transmits the record of proceedings had in the above-entitled matter, consisting of the original papers on file in the Department of Permits and Development Management, Office of Zoning Review and the Board of Appeals of Baltimore County:

RECEIVED AND FILED

2009 APR -2 AM 9:41

CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND
THE ZONING COMMISSIONER
OF BALTIMORE COUNTY

No. 08-132-SPH

Sept. 13, 2007	Petition for Special Hearing filed by Christopher and Charlotte Oktavec, to permit in-law living quarters in an accessory building and to amend the Order and Plan in Case No. 88-383-A and remove any restriction involving the in-law quarters use.
October 4	Notice of Zoning Hearing issued
October 22	Certificate of Posting.
October 23	Publication in newspaper
November 1	ZAC Comments.
November 7	Hearing held before the Zoning Commissioner
December 14	Findings of Fact and Conclusions of Law issued by the Zoning Commissioner. Petition for Special Hearing was GRANTED with restrictions and conditions.
January 5, 2008	Notice of Appeal filed by Ray G. Rohde, Appellant.
April 9	Letter from Francis X. Borgerding, Esquire advising of his representation of Appellant/Protestant, Mr. Rohde.
June 18	Hearing before the Board, Day #1.
September 25	Hearing before the Board, Day #2

Exhibits submitted at hearing (two days) before the Board of Appeals:

Petitioner's Exhibit No.

- 1 – Plat to Accompany Petition for Special Hearing
- 2 – Order of Zoning Commissioner in Case No. 88-383-A
- 3 – Letter from Mark A. Lamos, M.D. dated 5/8/08
- 4 – Letter from Adam R. Berliner, M.D. dated 5/8/08
- 5 – Letter from Sachin Kalyani, M.D. dated 2/26/08
- 6 – Summary of Health costs
- 7 – Summary of Medications
- 8 – A. Oktavec & Son summary of Church customers/Screen
Painters newspaper articles
- 9 – Photo of front houses 1318-1326
- 10 – Photo of 1322 Garage
- 11 – Close up of 1322 Garage

- 12 – Zoning Map for 1322
- 13 – Photo of 1318 and 1320 (Rohde House)
- 14 – Photos of other houses in the area (10 pages)
- 15 – Baltimore County building permit for construction of a new roof.
- 16a – Photo showing peak of roof
- 16b – Photo showing finished roof
- 17 – Baltimore County Building permit to convert existing garage second floor subject to County Board of Appeals approval
- 18 – Photo of carport (9/20/08)
- 19 – Photo of boat and in-law apartment cleaned up.
- 20 – Photo of outside of carport.
- 21 – Photo of garage, boat and street
- 22 – Photo of deck cleaned up
- 23 – Photo of Harp party
- 24 – Photo of Harp party with pool
- 25 – Photos showing cars at party.

Protestants' Exhibit No.

- 1 – Photo from Rohde back door to apartment
- 2 – Photo of Oktavec work truck
- 3 – Photos of ladders and scaffolding
- 4a– Photo of metal pipes
- 4b– Photo of metal pipes
- 5a– Photo of Oktavec boating equipment
- 5b– Photo of stairs and bikes
- 5c– Photo of house/porch
- 5d – Photo of wood pike with tarp
- 5e– Photo of trailer and porch
- 6 – Jack Dillon resume
- 7 – Master plan (3 pages)
- 8 – BCZR 102 (1 page)
- 9 – BCZR 1A04 RC-5 Zone (9 pages)
- 10 – Opinion of County Board of Appeals in Case No 07-332-SPHA, Znamirowski case.
- 11 – Opinion of County Board of Appeals in Case No. 03-438-SPH, Ryan case.
- 12a-c -- Photos from 7/22/08

October 30, 2008

Petitioner's Memorandum in Lieu of Final Argument filed by J. Carroll Holzer, Esquire on behalf of Christopher and Charlotte Oktavec, Petitioners.

October 31 Protestant's Memorandum filed by Francis X. Borgerding, Esquire on behalf of Ray and Vicky Rohde, Appellants/Protestants.

November 13 Public deliberation held by Board of Appeals.

January 20, 2009 Final Opinion and Order issued by the Board in which the Petition for Special Hearing relief was DENIED.

February 3 Petition for Judicial Review filed in the Circuit Court for Baltimore County by J. Carroll Holzer, Esquire, on behalf of Christopher and Charlotte Oktavec, Petitioners

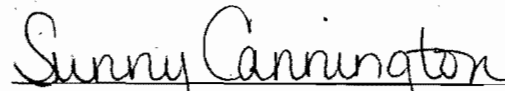
February 6 Copy of Petition for Judicial Review received from the Circuit Court for Baltimore County by the Board of Appeals.

February 9 Certificate of Notice sent to interested parties.

April 2, 2009 Transcript of testimony filed.

April 2, 2009 Record of Proceedings filed in the Circuit Court for Baltimore County.

Record of Proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court, together with exhibits entered into evidence before the Board.


Sunny Cannington, Legal Secretary
County Board of Appeals
The Jefferson Building, Suite 203
105 W. Chesapeake Ave.
Towson, Maryland 21204
410-887-3180

c: J. Carroll Holzer, Esquire
Christopher and Charlotte Oktavec
Francis X. Borgerding, Esquire
Ray and Vicky Rohde
Office of People's Counsel for Baltimore County
Timothy M. Kotroco, Director/PDM
William J. Wiseman, III/Zoning Commissioner
Arnold F. "Pat" Keller, Director/Planning
John E. Beverungen, County Attorney

2/9/09
IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
CHRISTOPHER AND CHARLOTTE OKTAVEC
APPLICANTS

CIVIL ACTION
NO. : 03-C-09-001221

FOR JUDICIAL REVIEW OF THE OPINION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
JEFFERSON BUILDING - ROOM 203
105 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204

IN THE MATTER OF :
CHRISTOPHER AND CHARLOTTE OKTAVEC
- LEGAL OWNERS/PETITIONERS
FOR SPECIAL HEARING
ON PROPERTY LOCATED ON THE N/E SIDE
OF GOOSE NECK ROAD, 1450' N/E OF
MIAMI BEACH ROAD
(1322 GOOSE NECK ROAD)

15TH ELECTION DISTRICT
6TH COUNCILMANIC DISTRICT

BOARD OF APPEALS CASE NO.: 08-132-SPH

* * * * *

RECEIVED AND FILED

2009 FEB -9 PM 2:29

CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the Provisions of Rule 7-202(d) of the *Maryland Rules*, the County Board of Appeals of Baltimore County has given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely:

Christopher and Charlotte Oktavec
1322 Goose Neck Road
Baltimore, MD 21220

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

Christopher and Charlotte Oktavec
Circuit Court Case No. 03-C-09-001221
Board of Appeals: 08-132-SPH

Ray Rohde
1320 Goose Neck Road
Baltimore, MD 21220

Francis X. Borgerding, Esquire
409 Washington Avenue, Suite 600
Towson, MD 21204

A copy of said Notice is attached hereto and prayed that it may be made a part hereof.

Sunny Cannington
Sunny Cannington, Legal Secretary
County Board of Appeals
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, Maryland 21204
410-887-3180

I **HEREBY CERTIFY** that on this 9th day of February, 2009, a copy of the foregoing Certificate of Notice has been mailed to: Christopher and Charlotte Oktavec, 1322 Goose Neck Road, Baltimore, MD 21220, Petitioners; J. Carroll Holzer, Esquire, Holzer & Lee, 508 Fairmount Avenue, Towson, MD 21286, Attorney for Petitioners; Ray Rohde, 1320 Goose Neck Road, Baltimore, MD 21220, Protestant; Francis X. Borgerding, Esquire, 409 Washington Avenue, Suite 600, Towson, MD 21204, Attorney for Protestant.

Sunny Cannington
Sunny Cannington, Legal Secretary
County Board of Appeals
Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, Maryland 21204
410-887-3180



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

February 9, 2009

Francis X. Borgerding, Esquire
409 Washington Ave., Ste 600
Towson, MD 21204

RE: Circuit Court Civil Action No. 03-C-09-001221
Petition for Judicial Review of Christopher and Charlotte Oktavec
Board of Appeals Case No.: 08-132-SPH

Dear Mr. Borgerding:

Notice is hereby given, in accordance with the Maryland Rules, that a Petition for Judicial Review was filed on February 3, 2009 in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to the Maryland Rules.

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, **must be filed under Civil Action No. 03-C-09-001221.**

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

A handwritten signature in cursive script that reads "Sunny Cannington".

Sunny Cannington
Legal Secretary

Enclosure

c: Ray Rohde
J. Carroll Holzer, Esquire
Christopher and Charlotte Oktavec
Office of People's Counsel
Timothy M. Kotroco, Director/PDM
William Wiseman, III/Zoning Commissioner
Arnold F. "Pat" Keller, Director/Planning
John E. Beverungen, County Attorney



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

February 9, 2009

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

RE: Circuit Court Civil Action No.: 03-C-09-001221
Petition for Judicial Review
In the Matter of: Christopher and Charlotte Oktavec
Board of Appeals Case No.: 08-132-SPH

Dear Mr. Holzer:

In accordance with the Maryland Rules, the County Board of Appeals is required to submit the record of proceedings of the Petition for Judicial Review, which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within sixty days. The cost of the transcript of the record must be paid by you and must be paid in time to transmit the same to the Circuit Court within the sixty day timeframe, as stated in the Maryland Rules.

The Court Reporter that you need to contact to obtain the transcript and make arrangement for payment is as follows:

CAROLYN PEATT
TELEPHONE: 410-828-4160
HEARING DATE: June 18, 2008 and September 25, 2008

This office has also notified Ms. Peatt that a transcript on the above captioned matter is due by April 7, 2008, for filing in the Circuit Court. A copy of your Petition, which includes your telephone number, has been provided to the Court Reporter, which enables her to contact you for payment provisions.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Sunny Cannington
Sunny Cannington
Legal Secretary

Enclosure

c: Carolyn Peatt
Christopher and Charlotte Oktavec
Francis X. Borgerding, Esquire
Ray Rohde

2/3/09

PETITION OF:
CHRISTOPHER & CHARLOTTE OKTAVEC
APPLICANTS

FOR JUDICIAL REVIEW OF THE DECISION OF THE
COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY
Jefferson Building, Suite 203
105 West Chesapeake Avenue
Towson, Maryland 21204

PETITION FOR SPECIAL HEARING
N/E SIDE OF GOOSE NECK ROAD
1450' N/E OF MIAMI BEACH ROAD
1322 Goose neck Road

15th Election District
6th Councilmanic District

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* Case No.:

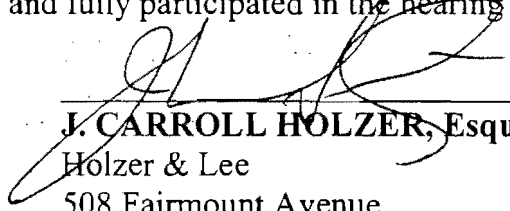
03C091221

* * * * *

PETITION FOR JUDICIAL REVIEW

CHRISTOPHER & CHARLOTTE OKTAVEC, INDIVIDUALLY, by and
through their attorney, J. Carroll Holzer, P.A. herein file their Petition for Judicial
Review pursuant to Rule 7-203 (b) from the Opinion of the County Board of Appeals for
Baltimore County in the above referenced matter rendered on January 20, 2009 and
attached hereto.

Petitioners were parties below and fully participated in the hearing below.


J. CARROLL HOLZER, Esquire
Holzer & Lee
508 Fairmount Avenue
Towson, Maryland 21286
410-825-6961
Attorney for Petitioners

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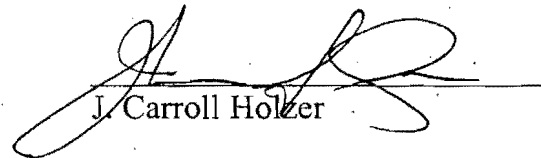
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

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BALTIMORE COUNTY
BOARD OF APPEALS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of February, 2009, a copy of the foregoing Petition for Judicial Review was mailed first class, postage pre-paid to the following: Francis X. Borgerding, Esquire, 409 Washington Ave., Suite 600, Towson, Maryland 21204; and Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County, 105 West Chesapeake Ave., Towson, MD 21204.


J. Carroll Holzer

1/20/09

IN THE MATTER OF
CHRISTOPHER AND CHARLOTTE OKTAVEC
APPLICANTS

PETITION FOR SPECIAL HEARING
N/E SIDE OF GOOSE NECK ROAD
1450'
N/E OF MIAMI BEACH ROAD
15th Election District, 6th Councilmanic
District
1322 Goose Neck Road

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. 08-132-SPH
*

* * * * *

OPINION

This case comes to the Board on appeal of the final decision of the Deputy Zoning Commissioner of Baltimore County in which the Deputy Zoning Commissioner granted a Petition for Special Hearing pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to approve in-law living quarters in an accessory building and to amend the Order and Site Plan in Case No.: 88-383-A to remove the restriction involving the in-law quarters use. Protestant, Ray Rohde, of 1320 Goose Neck Road appealed the decision.

A public hearing was held on June 18, 2008 and September 25, 2008. The Petitioners were represented by J. Carroll Holzer, Esquire. The Protestant, Ray Rohde, was represented by Francis X. Borgerding, Jr., Esquire. Public Deliberation was held on November 13, 2008.

Factual Background

The Petitioners, Christopher and Charlotte Oktavec are the owners of 1322 Goose Neck Road which is located in the Bowleys Quarters section of Baltimore County (the "subject property"). Goose Neck Road is a dead end street. They have owned the property since 1986. The subject property is approximately 50 feet wide by 225 feet deep. It is waterfront property, which contains approximately 11,225 sq. ft. or .25 acres more or less. It is zoned R.C. 5. The property is improved with a single family dwelling which was built in 1944 and two (2) garages -- one of which is located directly behind the house and is 1- 1/2 stories. The other garage is the subject of this hearing and is 2 stories (the "subject garage") and it is located behind the 1 1/2 story garage.

In 1988, the Petitioners filed a request for a variance to erect the subject garage. The Petitioners had a home-based business specializing in decorating churches and chapels and desired to use the subject garage as an office and for storage. The Zoning Commissioner granted the variance relief they requested but included a restriction on the use of the subject garage as in-law quarters. The Commissioner further specified that the subject garage shall not:

.... be converted to a second dwelling unit and/or apartment. The garage shall contain no living or sleeping quarters and no kitchen facilities.

In support of their position that this restriction on allowing an in-law quarters should be removed, the Oktavecs testified that the condition of Mr. Oktavec's health including blindness, heart disease, diabetes and end stage renal failure as well as his severe fatigue, necessitates having a caretaker live in the subject garage who could assist him with dialysis around the clock but particularly at night. When questioned, Mrs. Oktavec testified that she was unsure who would be living in the subject garage but that she hoped that either Mr. Oktavec's 90-year-old mother would live there, or the Oktavecs' daughter would stay there at night, or perhaps an unidentified cousin. There was no testimony from either the elderly mother or the daughter at the hearing. The daughter lives with her husband and 2 children in Edgemere and works full time during the day as a dental assistant.

The Oktavecs testified that they would not rent the subject garage, nor would they permit any non-relative to sleep there. On cross-examination, the Oktavecs admitted that, since 1988, they have permitted one or more of their workers to sleep in the subject garage. The Oktavecs further admitted that, despite the restrictions in the 1988 Zoning Order, they installed a kitchen, a bathroom (less a bathtub), a living room and a bedroom in the subject garage. Mr. Oktavec testified that the 1988 restrictions were imposed because there was no sewer connected to the subject garage. That fact notwithstanding, Mr. Oktavec proceeded to install a grinder pump and connected the subject garage to the County sewer system.

It was undisputed that all of these renovations were completed without the required permits and in violation of the 1988 Order. In the Summer of 2007, a Baltimore County zoning inspector notified the

Oktavecs that they needed permits and the legal approval to change the 1998 Order. As a result of that inspection, the Oktavecs petitioned for the instant relief.

Decision

The subject property is located in an R.C. 5 zone (Rural-Residential) which zone was created by the County Council in 1975. Section 1A04 of the B.C.Z.R. governs R.C.5 zones and sets forth in the Declaration of Findings that inadequate lot sizes are fiscally expensive to serve for basic services like on-lot sewer and water systems. (B.C.Z.R. Section 1A04.1A1b). Moreover, one of the purposes of the R.C.5 zone is to "provide a minimum lot size which is sufficient to provide adequate area for the proper functioning of on-lot sewer and water systems." (B.C.Z.R. Section 1A04.1B4).

Further, Section 1A04.2 entitled *Use Regulations* allows one (1) family detached dwelling unit as of right in an R.C.5 zone. Section 1A04.3B5 states that: "No more than one dwelling is permitted on any lot in an R.C.5 zone, but not excluding additional dwellings for bona fide tenant farmers." There is no provision under the "accessory uses and structures" listed in Section 1A04.2A11 for in-law apartments in this zone.

In-law apartments are also not listed as being permitted by special exception in this zone under Section 1A04.2B. Yet, even if that the use was permitted by special exception, this request fails to meet the special exception principles and conditions contained B.C.Z.R. 502.1, which the Oktavecs argued, were met. Specifically, this use interferes with adequate provisions for sewers required in Section 502.1E. The request is inconsistent with the purposes of the R.C.5 zone and the spirit and intent of the R.C.5 regulations as set forth above. (Section 502.1G).

Accordingly, the express language of Sections 1A04.2 and 1A04.3B5 make clear that the R.C.5 zone limits development to one (1) single family home *per lot*, unless it qualifies as a tenant farmer. Thus, while there is no dispute as to Mr. Oktavec's medical issues, the relief sought by the Oktavecs is not permitted under the R.C.5 zoning regulations.

The Board further finds that even if such relief was not in violation of the R.C.5 zoning regulations, the evidence before this Board was that the Oktavecs had sufficient and ample space within

their house to have a caretaker reside there. The testimony was that their house was larger than both garages. The Oktavecs testified that there were 3 bedrooms in the house but that the 2 rooms on the first floor were filled with "junk" consisting of "model trains and a computer." This Board finds that a more reasonable solution to the Oktavec's request is to move the trains into the subject garage, thereby making room for the caretaker. The Board believes that Mr. Oktavec's boxes of medical supplies can be appropriately rearranged within the house to make room for a caretaker.

The Board notes that the Oktavecs had no definitive plans for either Mr. Oktavec's mother or their daughter to live in the subject garage. The Board is not convinced that Mr. Oktavec's elderly mother will be able to provide around the clock assistance, much less climb down 2 flights of stairs located outside of the subject garage - at night - and into the house when Mr. Oktavec needs assistance.

That evidence - along with the undisputed fact that the Oktavecs performed all the renovations to the subject garage knowing that they were in violation of the 1988 Order and without permits, after having permitted third party(ies) to reside in the subject garage, along with the evidence that their relief here stems from being "caught" by the zoning inspector affects the genuineness of the need for this additional dwelling unit on this lot. The installation of bathroom facilities in the subject garage through the use of an unauthorized grinder pump is an additional burden on the County sewer system which the R.C.5 zoning regulations specifically sought to control because it is not only expensive to serve, but impacts the long-term adequacy of the County sewer system. The fact that the building which comprises the subject garage has existed since 1988 does not change the negative impact that additional living quarters, in a 50 foot wide lot, has on the County.

The Oktavecs' main argument in support of their request is that it appears to them through the photographs that they entered into evidence that other properties in Bowleys Quarters have in-law apartments. They contend that their request would be consistent with the neighborhood. This evidence does not persuade the Board. The photographs of second garages on these other lots are inconclusive proof that those garages are used as in-law residences. But even if these other garages were used as such, this request for Special Hearing concerns the subject garage and not the garages or second dwellings of other properties which may or may not be legal.

After reviewing all of the testimony and evidence presented, the Board has determined that the Petitioners request for Special Hearing relief pursuant to Section 500.7 of the B.C.Z.R. to approve in-law living quarters in an accessory building to amend the Order and Site Plan in Case No. 88-383-A to remove the restriction involving the in-law quarters use are hereby **DENIED**.

ORDER

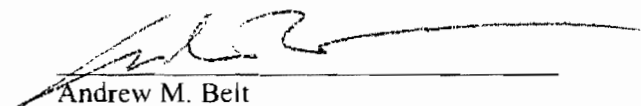
THEREFORE, IT IS THIS 20th day of January, 2009 by the County Board of Appeals of Baltimore County

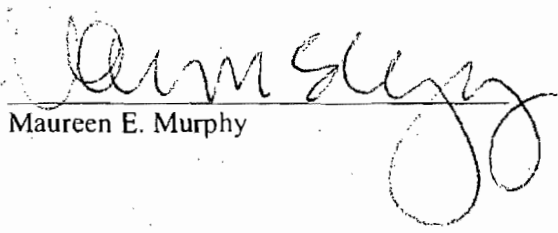
ORDERED that the Petition for Special Hearing relief pursuant to Section 500.7 of the B.C.Z.R. to approve in-law living quarters in an accessory building to amend the Order and Site Plan in Case No. 88-383-A to remove the restriction involving the in-law quarters use are hereby **DENIED**.

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

**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**


Wendell H. Grier, Panel Chairman


Andrew M. Belt


Maureen E. Murphy

1/20/09



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

January 20, 2009

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

Francis X. Borgerding, Esquire
409 Washington Ave, Suite 600
Towson, MD 21204

RE: *In the Matter of: Christopher and Charlotte Oktavec-Petitioners*
Case No.: 08-132-SPH

Dear Counsel:

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

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Theresa R. Shelton/sc

Theresa R. Shelton
Administrator

TRS/klc

Enclosure (Duplicate Original Cover Letter)

c: Christopher and Charlotte Oktavec
Ray Rohde
Office of People's Counsel for Baltimore County
William Wiseman, III, Zoning Commissioner
Timothy Kotroco, Director/PDM
Arnold Keller, Director/Planning

10/31/08
IN THE MATTER OF
CHRISTOPHER AND CHARLOTTE
OKTAVEC

PETITION FOR SPECIAL HEARING
N/E SIDE OF GOOSE NECK ROAD
1450'
N/E OF MIAMI BEACH ROAD
15th Election District, 6th Councilmanic
District
1322 Goose Neck Road

* BEFORE THE
* COUNTY BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
* Case No.: 08132SPH
*

* * * * *

PROTESTANT'S MEMORANDUM

Ray and Vicky Rohde, Protestants, by and through their attorney, Francis X. Borgerding, Jr., herein submit this Memorandum in opposition to Petition for Special Hearing filed by the Petitioners, Christopher and Charlotte Oktavec and say:

STATEMENT OF THE CASE

An appeal was filed to the Board of Appeals for Baltimore County (herein the "Board") from the December 14, 2007 Decision of the Deputy Zoning Commissioner for Baltimore County granting Petitioners, Christopher and Charlotte Oktavec, (herein the "Oktavecs") request for Special Hearing, pursuant to Section 500.7 of the Baltimore County Zoning Regulations (herein "BCZR") to approve an in-law living quarters in an accessory building and to amend the Order and Site Plan in case number 88-383-A to remove the restriction involving in-law quarters use in an accessory structure. It is from this Decision the appeal was taken to this Board.

TESTIMONY

Testifying on behalf of the Petitioners were Charlotte Oktavec, Christopher Oktavec and two other individuals. Testifying in opposition to the requested relief were Ray Rohde,

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**BALTIMORE COUNTY
BOARD OF APPEALS**

who resides at 1320 Goose Neck Road, which is adjacent to the Petitioners' property, Mr. Carl Harp, who resides at 1324 Goose Neck Road, also adjacent to the Petitioners' property, Mr. Earl Bigham, who resides at 1316 Goose Neck Road, Mr. Allen Robertson, member of the Bowley's Quarter Community Association and Jack Dillon, expert witness in the areas of Planning and Zoning.

Petitioners indicated in their testimony that they were requesting relief to allow the in-law living quarters and accessory building and to amend the Order and Site Plan in case number 88-383A which removed Restriction Number 2 from the Zoning Commissioner's Order in that case which states:

"(2) The Petitioner shall not allow or cause the accessory structure (garage) to be converted to a second dwelling unit and/or apartment. The garage shall contain no living or sleeping quarters and no kitchen facilities."

Petitioners testified that there is a need for living quarters in the accessory structure to allow someone to reside there who would help care for Petitioner, Christopher Oktavec, due to his medical condition. Petitioners' testimony established that they have run the business of Oktavec and Sons from the property for many years. Case number 88-383-A granted the Petitioners' requested Variance for an accessory structure (garage) with a height of 25 feet in lieu of the permitted 15 feet.

Petitioners testified that Christopher Oktavec's mother, who is 90 years old may occupy the living quarters to assist in his condition or the Oktavec's daughter, who has a husband and two children. Petitioners testified that they do not have a set plan as of the time of their testimony as to who would reside on the property.

On cross-examination, Petitioners admitted that at times in the past individuals had spent the night in the second floor of the accessory structure. In addition, testimony

indicated that certain steps have been taken towards improving the second floor of the garage to living quarters without permits prior to the time the Petitioners filed for their Special Hearing in this case.

Protestant, Ray Rohde, testified in opposition to the requested relief. Mr. Rohde has resided adjacent to the subject property since December of 1999. Mr. Rohde testified to concerns he had with regard to the Oktavecs conducting a business on their property and the upkeep of their property during the time he was a neighbor. Mr. Rohde objected to the Petitioners' requested relief, specifically the removal of the restriction regarding the accessory structure (garage) of the Petitioner's property to be used as a living quarters. Mr. Rohde indicated that he had made a large investment to purchase his property and was very concerned of the effect granting Petitioners' relief would have on his property value and the aesthetics of the neighborhood. Mr. Rohde testified that one of the attractions of living in the waterfront neighborhood that he lives in is the direct view of the water on one side and not having anyone's living quarters in direct view on the rear of his property. Further, Mr. Rohde testified that the requested apartment would have a direct sight line into his house.

Mr. Rohde testified that he is very sympathetic to the health care needs of Mr. Oktavec and has attempted to act as a good neighbor in the past, pertaining such as acts as raking leaves, shoveling snow, etc. Mr. Rohde testified he is against the requested apartment for primarily five reasons.

1. The apartment would impede the privacy of his home;
2. There are more effective ways for the Oktavecs to obtain help without affecting their neighbors;

3. It will lower the property value of the Oktavecs' adjacent neighbors' houses;
4. Past history shows that the Oktavecs will not abide by restrictions; and
5. Mr. Rohde does not want to serve as zoning police when and if restrictions are not followed.

Mr. Rohde indicated he lived in a row house in Baltimore City for approximately 35 years before moving to the subject property and that his attraction of the waterfront property was not having anyone living in front or behind his house. Further, Mr. Rohde indicated that due to the line of sight of the apartment, the apartment would interfere with his privacy as the garage lies in the rear of his house.

Mr. Rohde alleged that the best solution for the Oktavecs to meet Christopher Oktavec's health care needs would be to have a health care provider live within their home and be available at night rather than someone living in the apartment in the rear with steep steps they would have to traverse in the middle of the night, especially in inclement weather.

Mr. Rohde further testified that he believed that the granting of the Petitioners' requested relief would lower his, as well as, neighboring property values. He testified that a past history shows that the Oktavecs will not abide by restrictions imposed in that he testified the apartment was under construction long before the Oktavecs sought permission to operate same and further someone has already lived in the apartment in direct violation of the zoning restrictions. In addition, Mr. Rohde indicated that he wants to live in peace in his neighborhood rather than monitor the activities next door and be in a position to have to report any violations if Petitioners' requested relief is granted.

Mr. Harp, who lives at 1324 Goose Neck Road and Mr. Bigham who lives at 1316 Goose Neck Road also testified in opposition to Petitioners' requested relief.

Allen Robertson, a member of the Bowley's Quarters Community Association testified in opposition to the requested relief and indicated his opposition to increased density in the R.C. 5 zoned areas of the community.

Jack Dillon, whose was accepted by the Board as an expert in Planning and Zoning testified that the relief requested by the Petitioners was not allowed under the BCZR. Mr. Dillon testified he reviewed the Master Plan 2010, verified zoning of the property was R.C. 5, visited the site, reviewed the Order of the Deputy Zoning Commissioner, consulted with the Zoning Supervisor about PDAM policies, reviewed previous case number 88-383A and reviewed the current BCZR regulations in preparation of his testimony.

Mr. Dillon rendered an opinion as an expert that based upon the current BCZR, the Petitioners' request for in-law living quarters as an accessory building is not permitted in the R.C. 5 zone. Mr. Dillon cited Section 1A04.2 of the BCZR and indicated that Section 1A04.2A.2 allowed as a use permitted as of right dwellings, one family detached. Mr. Dillon also noted that Section 1A04.3B5 indicated that no more than one dwelling is permitted on any lot in any R.C. 5 zone. Mr. Dillon further indicated that he was aware of prior Board decisions in case numbers C07-332-SPHA, in the Matter of Brian P. and Robin L. Znamkowski and case number C03-438-SPH in the Matter of Joseph and Lauren Ryan. In both of those cases the Board denied Special Hearing requests for in-law living quarters in R.C. zones indicating that the BCZR did not allow same in the R.C. 5 and R.C. 4 zones, respectively in the Znamkowski and Ryan cases.

Mr. Dillon rendered an opinion there was not a legitimate basis granting the Special Hearing in light of the fact that in his opinion the BCZR does not allow living quarters in R.C. 5 zones on the same lot as the principal residence and further he believed that the granting of the requested relief would impede Mr. Rohde's privacy. Mr. Dillon also noted that the Petitioners, from their own testimony, had alternatives to place someone on the first floor or second floor of their property in the bedroom which presently has trains in it or the second bedroom which is being otherwise used on the first floor.

RELEVANT LAW

BCZR:

Section 102.1

"No land shall be used or occupied and no building or structure shall be erected, altered, located or used except in conformity with these regulations and this shall include any extension of a lawful nonconforming use."

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

1A04.2A

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

1. Churches or other buildings for religious worship including church schools.
2. Dwellings, one-family detached."

1A04.3B5

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

Section 500.7

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

ARGUMENT

The Petitioners' Special Hearing request, pursuant to Section 500.7 of the BCZR to approve an in-law living quarters in an accessory building to amend the order and plan in case number 88383A and remove any restriction involving the in-law quarters use should be denied. The BCZR specifically Section 1A04 of the R.C. 5 Regulations prohibit the relief which the Petitioners request. Specifically, Section 1A04.2A2 allows as a permitted use dwellings, one family detached and Section 1A04.3B5 specifically allows no more than one dwelling per lot in an R.C. 5 zone. Accordingly, by the plain wording of the BCZR, the Petitioners are prohibited from the use for which they are requested. In fact, the Board has ruled as such in the cases of in case number 07-332-SPHA and case number 03-438-SPH both of which were submitted as exhibits before the Board. Petitioners' attorney attempted to cross-examine Protestant's expert, Jack Dillon, to indicate that the above cases are distinguishable from the present as the Petitioner is only requiring relief during his lifetime rather than permanent relief. Mr. Dillon indicated that he believed the BCZR would not allow such a use permanent or temporary. A review of the BCZR indicates that the prohibition against no more than one dwelling per lot in any R.C. 5 zone has no exemption

for temporary in-law living quarters.

Protestant, Ray Rohde, indicated very clearly his sympathy for the Petitioner's medical condition, however, the testimony and evidence before the Board, clearly establishes that the Petitioners have two rooms in their house in which they could accommodate an overnight health care provider. Further, Protestants submit it is impractical to believe that the Petitioner's 90 year old mother will be able to go up and down the steep steps of the apartment in the middle of the night, especially during inclement weather to aid in the care of the Petitioner. In addition, there is evidence before the Board that notwithstanding the restriction in case number 883683A prohibiting the use of the garage as a living quarters, that there have been improvements to the garage to start converting the accessory building into a living quarters and there was testimony that someone has, in fact, previously lived in the garage. Evidence before the Board indicates that the granting of Petitioners' requested Special Hearing is not permissible under the BCZR. Further, the testimony and evidence before the Board indicate that even if the requested relief were legally permissible that the Petitioners have not met their burden of proof to justify the granting of the requested relief.

CONCLUSION

In conclusion, in light of the above, the Petitioners' requested Special Hearing should be **DENIED**.

Respectfully submitted,



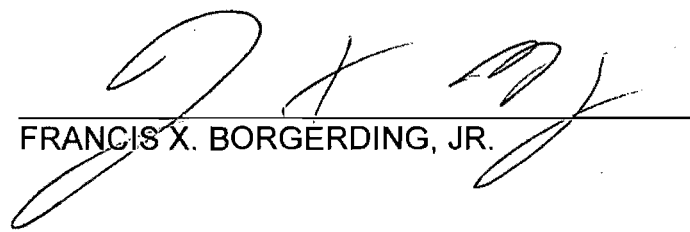
FRANCIS X. BORGERDING, JR.
409 Washington Avenue, Suite 600
Towson, Maryland 21204
410-296-6820
ATTORNEY FOR PROTESTANTS,
Ray and Vicky Rohde

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 31 day of October, 2008, a copy of the foregoing was mailed, first-class postage prepaid, to:

J. Carroll Holzer, Esquire
508 Fairmount Avenue
Towson, Maryland 21286

Peter Max Zimmerman, Esquire
People's Counsel for Baltimore County
Jefferson Building
105 West Chesapeake Avenue, Room 204
Towson, Maryland 21204



FRANCIS X. BORGERDING, JR.

10/31/08

IN THE MATTER OF:
Christopher G. and Charlotte A. Oktavec

Legal Owner/Petitioners
(1322 Goose Neck Road)

15th Election District
6th Councilmanic District

* BEFORE THE
* BALTIMORE COUNTY
* BOARD OF APPEALS
*
* Case No.: 08-132-SPH

* * * * *

PETITIONERS MEMORANDUM IN LIEU OF FINAL ARGUMENT

The Petitioners, *Christopher G. and Charlotte A. Oktavec*, by *J. Carroll Holzer, Esquire*, Holzer & Lee, hereby submits this Memorandum in Lieu of Final Oral Argument and says:

I.

STATEMENT OF THE CASE

This matter came before the County Board of Appeals (hereinafter "Board"), by an appeal filed by Ray Rohdes, Protestant to a decision rendered by the Deputy Zoning Commissioner Thomas H. Boswick, dated December 14, 2007, in which the Deputy Zoning Commissioner granted the Petitioners Request for Special Hearing to amend the Order and Site Plan in Case No.: 88-383-A to remove the restriction involving the in-law quarters use subject to various conditions as follows:

1. Petitioners may apply for 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 thirty (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.

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

(410) 825-6961
FAX: (410) 825-4923

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BALTIMORE COUNTY
BOARD OF APPEALS

2. The in-law quarters granted herein shall be used exclusively as such or by Petitioner' immediate family. In no instance shall the in-law quarters be utilized as a residence by non-family members or rented as an apartment.

3. Upon such time as the need for the in-law quarters ceases or Petitioners sell or otherwise vacate the property, the in-law quarters shall be removed and the relief granted herein shall revert back to the conditions set forth in Case No.: 88-383-A. In the event a subsequent purchaser desires an in-law quarters, they will be required to file for such special hearing relief.

4. The base flood elevation for this site is 10.2 feet Baltimore County Daturm. The base flood elevation for this site is 10.2 feet Baltimore Country Daturm. The flood protection elevation for this site is 11.4 feet. In conformance with *Federal Flood Insurance* Requirements, the first floor or basement floor must be at least one foot above the flood plain elevation in all construction.

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

6. The building engineer shall require a permit for this project.

7. The building shall be designed and adequately anchored to prevent flotation, collapse, or lateral movement of structure with materials resistant to flood damage. Flood-resistant construction shall be in accordance with the Baltimore County Building Code which adopts, with exceptions, the International Building Code.

8. Development of this property must comply with the Chesapeake Bay Critical Area Regulations (§33-2-101 through §33-6-122 of the Baltimore County Code. This property is also located within a Limited Development Area (LDA) and Buffer Management Area (BMA) and must meet all LDA and BMA requirements, including impervious surface limits and fifteen percent (15%) afforestation.

These conditions imposed by the Deputy Zoning Commissioner have all been complied with or will be complied with by the Petitioners Oktavec and are acceptable and satisfactory to the Oktavecs.

In fact, the Petitioners have applied for and received all permits necessary from Baltimore County for the use as requested in the Petition for Special Hearing. The in-law quarters will be used exclusively by Petitioners immediate family, nor shall it be rented as an apartment. The Petitioners further accept the condition that the property shall revert back to the conditions set forth in Case No.: 88-383-A. Furthermore, the in-law quarters complies with and is in conformance all Baltimore County *Federal Flood Insurance* requirements and has received permits and complies with all Baltimore County Building Codes.

Thus, at the present time, all the conditions required in the Deputy Zoning Commissioner's Decision have been met by the Petitioners.

The case was heard before the County Board of Appeals on June 18, 2008, and September 25, 2008, with this Brief to be filed on or before October 31, 2008. The Deliberation date is scheduled for November 13, 2008.

II.

STATEMENT OF FACTS

This matter originated before the Deputy Zoning Commissioner for consideration of a Petition for Special Hearing filed by Christopher G. and Charlotte A. Oktavec, legal property owners. The Special Hearing relief is requested pursuant to §500.7 of the Baltimore County Zoning Regulations to approve an in-law living quarters in an accessory building and to amend the Order and Site Plan in Case No.: 88-383-A. The subject property is described on the Site Plan to accompany the Special Hearing.

The subject property is a rectangular shape waterfront parcel containing 11,225 sq. ft. or .25 acres more or less and zoned R.C. 5. It is approximately fifty feet (50') wide by 225 feet deep. The property is located in the Bowleys Quarters section of Baltimore County. The property is improved with Petitioners existing single-family dwelling and two (2) existing garage structures, one of which is the subject of the instant in-law apartment request. The Petitioners have owned the property since approximately 1986, and the existing dwelling is two (2) stories and was built in 1944. The subject of the instant Petition is a two-story garage accessory structure located behind the one and one-half (1 ½) story garage. It was built in 1988, and the subject of a previous zoning case. The Petitioners in 1988, requested a variance in order to erect the subject garage. In 1988, the Zoning Commissioner granted the relief but included restriction on the use of the structure not to allow it to be converted to a dwelling or in-law quarters.

1. Petitioners Case.

In the hearing before the Board on June 18, 2008, Christopher and Charlotte Oktavec testified before the Board.

The Petitioners presented the Plat to accompany the Special Hearing as Petitioners Exhibit #1, which establishes the proximity of the Petitioners garage site with the home of the Protestant who resides next door. Petitioners established the basis of the amendment by the Special Hearing of the Order of the Zoning Commissioner in Case No.: 88-383-A. Subsequent to that testimony, the Oktavecs testified as to the physical condition of Christopher Oktavec, who suffers from blindness, heart disease, diabetes, and in-stage renal failure on dialysis and severe fatigue. Dr. Mark Lamos, M.D. testified that these conditions are all permanent and assistance and support of family would be of help. (Petitioners Exhibit #3). Dr. Adam Berliner, M.D. submitted documentation as to Christopher Oktavec's prognosis of ambulatory peritoneal dialysis (CAPD). Dr. Berliner's opinion was that Christopher's end-stage renal disease requires assistance in his home. (Petitioners Exhibit #4). Dr. Sachin Kaly, M.D. submitted Petitioners Exhibit #5, which reflected the decrease in vision of Mr. Oktavec's right and left eyes, being secondary to diabetic retinopathy and Fuch's Dystrophy in which he is considered legally blind. (Petitioners Exhibit #5). Petitioners Exhibits #6 and #7 reflects summaries of medications for Mr. Oktavec's disease and the substantial cost for health care being expended by the Petitioners.

Petitioners Exhibit #8 are a series of Exhibits showing the scope of work that the Oktavecs performed for various religious institutions including painting, decorating, plastering and renovating existing churches in the Baltimore Metropolitan area. Both Charlotte and Christopher Oktavec testified that they desire to have their daughter and Mr. Oktavec's mother to assist Mr. Oktavec's medical condition and utilize the garage apartment in order to provide the daily medical processes necessary for Mr. Oktavec, which include around the clock assistance. They testified that they did not intend to rent out the apartment. They testified that they would only permit his mother and/or their daughter to utilize the garage apartment. They further indicated upon cross-examination that there are no other rooms in the house that they could utilize for this purpose due to a large volume of medical supplies stored in the house along with the need to allow their daughter or mother some privacy from the twenty-four (24) hour constant assistance required by Mr. Oktavec.

They agreed to the conditions imposed by the Deputy Zoning Commissioner that they would comply with all building code requirements as well as Chesapeake Bay Critical Area Regulations. Further, they agree that upon such time as the need for the in-law quarters ceases or the property is sold, that the in-laws quarters would be removed and the situation would revert back to the conditions set forth in Case No.: 88-383-A.

Finally, in Petitioners Exhibits #9 through #14, pictures illustrate that the following homes in the immediate neighborhood have in-law quarters in a separate building within the same zone as the Oktavecs:

1304 Goose Neck

4016 Chestnut Road

3735 Bay Drive

4044 Chestnut Road

1342 Goose Neck

3827 Bay Drive

3713 Bay Drive	1420 Burk Road
3822 New Section Road	1440 Burk Road
1215 Seneca Road	3637 Bay Drive
1161 Seneca Road	3017 Bay Drive
1200 Seneca Road	1444 Burk Road
1308 Brenda Road	1347 South Seneca Road
4014 Chestnut Road	3601 Bay Drive
3719 Bay Drive	1338 Brenda Road
3725 Bay Drive	3618 Claire Road
1336 Burk Road	3601 Claire Road
1340 Burk Road	3928 New Section
1340 Burk Road	3904 New Section
3709 Bay Drive	3926 New Section

The Protestants made an effort through Mr. Dillon to suggest that these properties may have been either non-conforming and/or received no permission. This testimony belies the fact that Mr. Dillon opined that there could be no permission granted for such a dwelling. However, the photographs establishes clearly that others have been permitted this relief in the same zone and in the same area. These photos reflect modern and recent construction of additional living quarters on these properties. There is no evidence in the record that all of these homes are in violation of the Baltimore County Zoning Regulations. Furthermore, there appears

to be no limitation on the length of such use by examining the photographs in Petitioners Exhibit #14, the limitations imposed on the Oktavecs Deputy Zoning Commissioner are clearly more restrictive than those properties depicted in the photographs. Mr. Fred Schmidt of 7908 Dowell Ford Road and Allen Smith, 1313 Back River testified in support of the Petitioners request.

2. Protestant Ray Rohdes.

Ray Rohdes testified that he just recently acquired his property adjacent to the Oktavecs. He testified, as he did before the Deputy Zoning Commissioner, that he objected to the Oktavecs being able to “look into his house” from the garage apartment. He raised issues in regard to alleged “junk” on the Oktavecs property. He recited concerns about a man who was permitted to sleep there overnight. He objected to his loss of property value if they are permitted to use the garage on a temporary basis. He further raised issues in regard to permits.

He also presented other witnesses who testified that they were opposed to the in-law garage as a precedent.

3. Petitioner Rebuttal.

In response to Protestants concerns about establishing a precedent, the Petitioners pointed out the multiple situations in the Community where two (2) structures on the same lot provide living quarters. Again, reference to Petitioners Exhibit #14 shows dozens of lots on which a main living quarters is constructed as well as a separate living accommodation is provided. Examination of Petitioners Exhibit #14, establishes that most of the accessory structures are new

or of recent construction, which belies the fact that they may have existed as non-conforming uses. In addition, clearly all of the structures of recent vintage cannot be illegal and must have received approval from the County similar to the Deputy Zoning Commissioner's Decision in this case.

The Protestants' concerns about his privacy being invaded from someone in the garage looking into his window was disputed, not only by the Petitioners insofar as the proximity of houses to Mr. Rohdes windows, but other houses in closer proximity to Mr. Rohdes windows. Finally, the Deputy Zoning Commissioner, who simply said "put up curtains if you want additional privacy."

Insofar as the Protestants concern about the loss of property values, that claim was not supported by any evidence. Also, to the contrary, this is nothing more than a temporary situation involving Mr. Oktavec's health and medical condition. In addition, the garage structure was on the property already and has been for years and nothing on the outside of the garage is being done to change the physical appearance in any way, shape or form so there can be no loss of economic value to Mr. Rohdes. The remaining concerns such as the alleged "junk" and the failure to obtain Permits was addressed in the second day of hearing by Mrs. Oktavec. At that time, the Petitioners presented Petitioners Exhibit #15, #16A and #16B, the Baltimore County Permits for repair of the roof being performed by the Oktavecs as a result of leakage to the roof of the property.

Petitioners further established that Baltimore County has issued a Permit to convert the existing garage second floor to an in-law quarters. (Petitioners Exhibit #17).

Insofar as the alleged “junk,” Petitioners Exhibits #18, #19, #20, #21 and #22, establish for the Board the current clean status of the property after the construction modifications have taken place.

As it exists today, all necessary County approvals have been received by the Oktavecs to permit the use of the existing garage as in-law quarters.

4. County Approvals.

The Deputy Zoning Commissioner, in addition to finding that the Petitioners Plans to convert the second story of the garage “would not be disruptive or interfere with the privacy of the neighbors nor would it be detrimental to the self, health, safety or general welfare of the surrounding locale,” further found that the neighborhood consisted of many properties in the immediate area contain two (2) structures on the property, each of which is currently used as a dwelling (referring to properties on Bay Drive and Goose Neck Road).

Likewise, the Zoning Advisory Comments in the Record reflect that the requirements of the Bureau of Development Plans Review dated October 1, 2007, indicating that the first floor must be at least one foot above flood plain elevation, not only was a condition, but was complied with by the Petitioner. Also, their comments in regard to the Baltimore County Building Code have been met as determined by Permits issued from Baltimore County. Finally, the Baltimore County Planning Office made no objection to the requested relief by the Petitioner. That comment is very significant in light of the argument advanced by Mr. Dillon. Clearly, Baltimore

County has recognized in this Community that in-law living quarters separate from the house are permitted in this zone. The Planning Office's position is certainly tacit approval of the Petitioners request; otherwise, the Planning Office and/or Zoning Office would have commented against the granting of this request.

III.

LEGAL ARGUMENT

It is clear that the Protestants objection in this case is based upon a "spite" issue with the Petitioner. His reasons for objecting are transparent. First, there can be no diminution of property values to his property if this request is granted based on the fact that there will be no exterior physical change in the Oktavecs garage with the living quarters on the second floor.

Secondly, the privacy issue of looking in the windows is not legitimate based on other properties and other houses being closer to Rohdes windows than the Oktavecs. The position of the Deputy Zoning Commissioner who suggested curtains on the window if that was a concern was a reasonable response.

Thirdly, there can be no over-crowding of the subject site based on the fact that the in-law quarters will be limited to the mother of Mr. Oktavec or their daughter.

Fourth, Section 502.1.

While the Petition for Special Hearing seeks to amend a condition of the previous 1988 case, when one examines the criteria of §502.1 and applies it to the requested relief, it is clear through the testimony of the Oktavecs that the requested relief will not be detrimental to the general health, safety or welfare of the Community. The representative Community as depicted

in Petitioners Exhibits #14 showing adjacent and adjoining and properties in the Community with additional living units make it clear that this will not impact the general welfare of the locality but is consistent with the neighborhood. It certainly will not create congestions in the roads, streets or alleys in the testimony of the Oktavecs that there was adequate parking on their site for either the daughter or the mother. In addition, there is an area across the street that is available for vehicle parking that has not been overcrowded. It clearly complies with the Building Code requirements which minimize any potential hazard from fire, panic or other danger. It certainly, would not overcrowd the land in respect that the neighborhood consists of many lots with additional living quarters as depicted in the photographs. In addition, the use for the mother and/or the daughter will clearly not impact schools, parks, etc., nor will it interfere with adequate light and air. As a result, Petitioners testimony reflects that it is within the Board's authority to grant the amendment to the 1988 case as conditioned by the Deputy Commissioner.

Fifth, Dillon Testimony.

Dillon's reliance on Board of Appeals Case No.: 03-438-SPH is distinguishable from the instant case. While that case consisted of R.C. 4 Zone, the Applicant was requesting the construction of a larger permanent home in addition to the existing structure. In the instant case, the Oktavec garage has been approved and been in existence for many years.

The Ryan case wanted permanent use of the two (2) structures, whereas in the instant case, the Petitioner has already acknowledged that the use will cease and is simply a temporary use subject to health conditions of Mr. Oktavec. In Case No.: 07-332, again a new structure was

going to be constructed whereas in the instant case, the garage is already in existence. Again, there was the indication that the in-law apartments would be permanent as opposed to this case in which the situation is temporary.

This case sets no precedent relative to the adherence to the Baltimore County Zoning Regulations and the integrity of those regulations. It is a resolution of a temporary situation. It is clear that the Petitioner is willing and intends to comply with the conditions of the Deputy Zoning Commissioner and such acknowledgement and acceptance by the Petitioner, clearly by case law makes all of the conditions imposed enforceable.

It is clear from the conditions proposed that the integrity and the spirit and intent of the Baltimore County Zoning Regulations will not be impacted or diminished by the Board's approval in this limited fashion.

If the Board grants the Petitioners request with the conditions agreed to, the subject property will still comply with Baltimore County Zoning Regulations §1A04.2 and §1A04.3(b)(5). By granting Petitioners request with conditions as imposed by the Deputy Zoning Commissioner, the subject property will not be in violation of that Section.

IV.

CONCLUSION

The Petitioners submit that it is uncontested that Mr. Oktavec's health is both legitimate and serious and the need for temporary assistance by a family member on a temporary basis utilizing the existing garage will not be a permanent modification of the zoning applied to the subject property under any circumstance.

The reasons for opposition given by the Protestants appear to be spiteful in nature. Those concerns of the Protestants regarding diminution of property value and setting a precedent are clearly not impacted by the Board's approval of this Petition in that the outward appearance of the existing garage will be improved and will not be a precedent.

One final thought relative to Petitioners Exhibit #14, the significant number of second dwellings in this Community should not be overlooked by the Board. In this case, pictures are worth a thousand words and it is undeniable that the predominant nature of the neighborhood consists of two (2) dwelling units on a permanent basis in the Community. It was beyond the scope of this hearing as to whether those additional structures received zoning approval or not. If they did, then it is clear that the zoning authorities have permitted multiple lots with second dwellings. If they did not receive zoning approval, then it is clear that there are multiple violations of the Zoning Regulations in this area.

Furthermore, from looking at the photographs, it is clear that these additional dwellings are not temporary in nature, but permanent in construction and use. When the Petitioners limited request is considered in light of all of the existing, either approved two (2) dwelling lots or two (2) dwelling lots in violation of the Zoning Regulations, this Board should apply a standard of reasonableness and common sense to grant the limited request of this Petitioner.

Respectfully submitted,



J. CARROLL HOLZER, Esquire
Holzer & Lee
508 Fairmount Avenue
Towson, Maryland 21286
410-825-6961
Attorney for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of October, 2008, a copy of the foregoing Petitioners Memorandum in Lieu of Final Argument was mailed first class, postage pre-paid to the following: Francis X. Borgerding, Jr., Esquire, Mercantile Building – Suite 600, 409 Washington Avenue, Towson, Maryland 21204.



J. CARROLL HOLZER, Esquire

IN THE MATTER OF
THE APPLICATION OF
JOSEPH AND LAUREN RYAN- LEGAL
APPEALS
OWNERS /PETITIONERS FOR A SPECIAL
HEARING ON PROPERTY LOCATED ON THE
N/S OF DEER PARK ROAD, 600' W OF C/L
THOMPSON AVE (6139 DEER PARK ROAD)

4TH ELECTION DISTRICT
4TH COUNCILMANIC DISTRICT

* * * * *

* BEFORE THE
* COUNTY BOARD OF
* OF
* BALTIMORE COUNTY

* Case No. 03-438-SPH
* * * * *

OPINION

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

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

IN THE MATTER OF
THE APPLICATION OF
BRIAN P. AND ROBIN L. ZNAMIROWSKI
- LEGAL OWNERS / PETITIONERS FOR
SPECIAL HEARING AND VARIANCE ON
PROPERTY LOCATED ON THE NW/S BART
ALLEN LANE, 755' NW OF E DEVONFIELD
DRIVE (4803 BART ALLEN LANE)

11th ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. 07-332-SPHA
*

* * * * *

OPINION

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

Testimony and Evidence

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

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

Section 102
General Requirements
[BCZR 1955]

- 102.1 No land shall be used or occupied and no building or structure shall be erected, altered, located or used except in conformity with these regulations and this shall include any extension of a lawful nonconforming use.
- 102.2 No yard space or minimum area required for a building or use shall be considered as any part of the yard space or minimum area for another building or use.
- 102.3 No portion of an alley shall be considered as any part of a side or rear yard.
- 102.4 No dwelling, other than a multifamily building, shall be built on a lot containing less than 20,000 square feet which does not abut on a right-of-way at least 30 feet wide over which the public has an easement of travel, except as provided for panhandle lots in § 32-4-409 of the Baltimore County Code. [Bill Nos. 172-1989; 2-1992; 137-2004]
- 102.5 On a corner lot in any residential zone, no planting, fence, wall, building or other obstruction to vision more than three feet in height shall be placed or maintained within the triangular area bounded on two sides by the front and side street property lines, or by projections of said lines to their point of intersection, and on the third side by a straight line connecting points on said lot lines (or their projections), each of which points is 25 feet distant from the point of intersection. At the intersection of a street and an alley, the dimension corresponding to the 25 feet noted above shall be 15 feet and 10 feet at the intersection of two alleys. Poles, posts and guys for streetlights and for other utility services shall not be considered obstructions to vision within the meaning of this section. [Resolution, November 21, 1956]
- 102.6 No building permit shall be issued for any commercial, industrial or apartment development until the proposed plan for vehicular access thereto shall have been first approved by the Baltimore County Department of Permits and Development Management. [Resolution, November 21, 1956]
- 102.7 Where development of a property includes both a special exception and a residential subdivision, the area allocated for use as a special exception shall not be included in the calculation of residential density. [Bill No. 74-2000]

Section 103
Application of Zoning Regulations¹
[BCZR 1955]

- 103.1 These regulations shall apply as of the date of their adoption but the provisions pertaining to use, height, area and density of population shall not apply to any development, subdivision or parcel of land, the preliminary plan for which was

¹ Editor's Note: Section 4 of Bill No. 24-2006, a bill which amended Article 32, Planning, Zoning and Subdivision Control, of the Baltimore County Code 2003, stated as follows: "This Act is adopted independently of Section 103 of the Baltimore County Zoning Regulations so that it supersedes and abrogates the rights to the vesting of a development that would otherwise accrue from the zoning or development regulations or other County laws."

12/14/07

IN RE: PETITION FOR SPECIAL HEARING

NE side Goose Neck Road, 1450 feet
NE of Miami Beach Road
15th Election District
6th Councilmanic District
(1322 Goose Neck Road)

Christopher G. and Charlotte A. Oktavec
Petitioners

BEFORE THE

DEPUTY ZONING

COMMISSIONER

FOR BALTIMORE COUNTY

Case No. 08-132-SPH

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Special Hearing filed by Christopher G. and Charlotte A. Oktavec, legal property owners. Special Hearing relief is requested pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to approve in-law living quarters in an accessory building and to amend the Order and site plan in Case No. 88-383-A to remove the restriction involving the in-law quarters use. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the requested special hearing were Petitioners Christopher G. and Charlotte A. Oktavec. Appearing as an interested citizen opposed to the requested relief was an adjacent neighbor, Ray Rohde of 1320 Goose Neck Road. There were no other Protestants or interested persons in attendance at the hearing.

Testimony and evidence offered revealed that the subject property is a rectangular-shaped waterfront parcel containing 11,225 square feet or .25 acre, more or less, and zoned R.C.5. The parcel is approximately 50 feet wide by 225 feet deep. The property is located east of Bowleys Quarters Road and north of Goose Harbor Road in the Bowleys Quarters area of Baltimore County. A copy of the zoning map and an aerial photograph of the area showing the location of

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the property were marked and accepted into evidence as Petitioners' Exhibits 2 and 3, respectively. The property is improved with Petitioners' existing single-family dwelling and two existing garage structures, one of which is the subject of the instant in-law apartment request. A photograph showing Petitioners' property with a large tree screening the property from Goose Neck Road was marked and accepted into evidence as Petitioners' Exhibit 4.

Petitioners indicate they have owned the property since approximately 1986. The existing dwelling is two stories and was built in 1944. It was remodeled with brick and siding in the 1960's. The property also has a 1½-story garage located closest to Goose Neck Road at the northwest property line and used for storage. The subject of the instant petition is the two-story garage accessory structure located behind the 1½-story garage and also located at the northwest property line. This structure was built in 1988 and was the subject of a previous zoning case. At that time, Petitioners requested a variance in order to erect the subject garage. Petitioners had a home-based business specializing in party decorating for churches and chapels. In Case No. 88-383-A, the Zoning Commissioner granted the variance relief, but also included restrictions on the use of the structure not to allow the structure to be converted to a dwelling or in-law quarters. Photographs of the structure were marked and accepted into evidence as Petitioner's Exhibits 5A and 5B.

At this juncture, due to ongoing and progressive physical limitations facing Petitioners, they desire to have the restriction from the prior variance case involving in-law use removed so the second floor of the two-story garage can be converted into an in-law quarters. Specifically, Petitioners explained that Mr. Octavec has heart problems and related vision and kidney problems. His vision is extremely limited and is deteriorating. In addition, he has a catheter for his kidneys. Presently, only he and his wife live in their primary dwelling; however, with Ms. Octavec's

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advancing age and health issues of her own, she is unable to adequately care for her husband, including multiple times up and down stairs each night. In order to help with Mr. Octavec's care, Petitioners wish to use the second floor of the garage as an apartment for immediate family, and specifically their daughter. Petitioners note that there will still be plenty of room on the property for parking and that their requested relief will not present any problems or difficulties for neighbors or other nearby residents. They stressed that this apartment would not be used as a rental unit. Petitioners also pointed out that there are a number of properties in the immediate area with two structures on the property, and where each is currently used as a dwelling. Marked and accepted into evidence as Petitioner's Exhibits 6A through 6J were nine photographs from properties on nearby Bay Drive at Miami Beach and one from Goose Neck Road approximately ten houses from Petitioners' property, showing the various lots with primary dwellings and additional garages and/or accessory structures which appear to be used or converted to living quarters.

Testifying in opposition to the requested relief was Mr. Rohde. Mr. Rohde lives next door and found himself in something of a quandary. He indicates that he has a good relationship with Petitioners and can appreciate the health problems they are facing and their rationale for the instant request. However, he is also quite understandably concerned over allowing the subject garage accessory structure to be utilized as an apartment. Mr. Rohde moved into his home in 1999. He believes allowing the requested relief will disrupt his privacy, will possibly reduce his and adjacent property values, and could also result in more of a likelihood of fire with the addition of another living area on Petitioners' property.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The comments received from the Bureau of Development Plans Review dated

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October 1, 2007 indicate that the first floor or basement must be at least one foot above the flood plain elevation in all construction, the building should be designed and adequately anchored to prevent flotation or collapse and constructed of materials resistant to flood damage. Flood-resistant construction should be in accordance with the Baltimore County Building Code which adopts the International Building Code. The comments received from the Department of Environmental Protection and Resource Management (DEPRM) dated November 2, 2007 indicate that the property must comply with the Chesapeake Bay Critical Area Regulations. The Inter-Office Correspondence from the Office of Planning dated November 5, 2007 indicates no comments to the requested relief.

Based on the testimony and evidence presented, I am persuaded to grant the special hearing relief to approve the in-law quarters in the existing garage accessory structure, and to amend the Order and site plan in Case 88-383-A to remove the restriction involving the in-law quarters use.

In my judgment, Petitioner's plans are necessary and appropriate under the circumstances. Though I understand Mr. Rohde's concerns and appreciate his input in this case, I do not believe Petitioners' plan to convert the second floor of the garage into an in-law quarters will be disruptive or interfere with the privacy of neighbors, nor will it be detrimental to the health, safety, or general welfare of the surrounding locale.

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' request for special hearing should be granted with conditions.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 14th day of December, 2007, that Petitioners' request for Special Hearing

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relief filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to approve in-law living quarters in an accessory building and to amend the Order and site plan in Case No. 88-383-A to remove the restriction involving the in-law quarters use are hereby GRANTED, subject to the following restrictions which are conditions precedent to the relief granted herein:

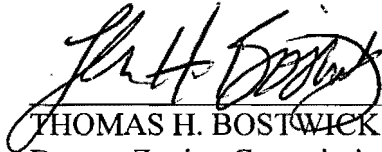
1. Petitioners may apply for permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. The in-law quarters granted herein shall be used exclusively as such or by Petitioners' immediate family. In no instance shall the in-law quarters be utilized as a residence by non-family members or rented as an apartment.
3. Upon such time as the need for the in-law quarters ceases or Petitioners sell or otherwise vacate the property, the in-law quarters shall be removed and the relief granted herein shall revert back to the conditions set forth in Case No. 88-383-A. In the event a subsequent purchaser desires an in-law quarters, they will be required to file for such special hearing relief.
4. The base flood elevation for this site is 10.2 feet Baltimore County Datum. The flood protection elevation for this site is 11.4 feet. In conformance with *Federal Flood Insurance* Requirements, the first floor or basement floor must be at least 1 foot above the flood plain elevation in all construction.
5. The property to be developed is located adjacent to tidewater. The developer is advised that the proper sections of the Baltimore County Building Code must be followed whereby elevation limitations are placed on the lowest floor (including basements) of residential (commercial) development.
6. The building engineer shall require a permit for this project.
7. The building shall be designed and adequately anchored to prevent flotation, collapse, or lateral movement of structure with materials resistant to flood damage. Flood-resistant construction shall be in accordance with the Baltimore County Building Code which adopts, with exceptions, the International Building Code.
8. Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 33-2-101 through 33-6-122 of the Baltimore County Code. This property is also located within a Limited Development Area (LDA) and Buffer

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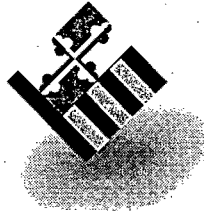
Management Area (BMA) and must meet all LDA and BMA requirements, including impervious surface limits and 15% afforestation.

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

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12-14-07
P3



BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

THOMAS H. BOSTWICK
Deputy Zoning Commissioner

December 14, 2007

CHRISTOPHER G. AND CHARLOTTE A. OKTAVEC
1322 GOOSE NECK ROAD
BALTIMORE MD 21220

Re: Petition for Special Hearing
Case No. 08-132-SPH
Property: 1322 Goose Neck Road

Dear Mr. and Mrs. Oktavec:

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

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

Very truly yours,

A handwritten signature in black ink, appearing to read "Th H Bostwick", written over the printed name.

THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz

Enclosure

c: Ray Rohde, 1320 Goose Neck Road, Baltimore MD 21220



CBCA Flood

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

TAX ACCT #
1512002400

for the property located at 1322 Goose Neck Road, 21220
which is presently zoned RC5

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 **IN LAW LIVING QUARTERS IN**

AN ACCESSORY BUILDING AND TO AMEND THE ORDER AND PLAN IN CASE #88-383-A
AND REMOVE ANY RESTRICTION INVOLVING THE IN LAW QUARTERS USE

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:

Name - Type or Print

Signature

Address

Telephone No.

City

State

Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address

Telephone No.

City

State

Zip Code

Legal Owner(s):

Christopher G. Oktavec

Name - Type or Print

Signature *Christopher G. Oktavec*

Charlotte A. Oktavec

Name - Type or Print

Signature *Charlotte A. Oktavec*

1322 Goose Neck Road 410-335-3737

Address

Telephone No.

Baltimore, MD 21220

City

State

Zip Code

Representative to be Contacted:

Chris or Charlotte Oktavec

Name

1322 Goose Neck Road 410-335-3737

Address

Telephone No.

Baltimore, MD 21220

City

State

Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING 1/4R

UNAVAILABLE FOR HEARING NA

Reviewed By VL Date 9/13/07

REV 9/15/98

ORDER RECEIVED FOR FILING

12-14-07

pm

08-132-SPH

Zoning Description
1322 GOOSE NECK RD.

BEGINNING AT A POINT ON THE NORTH EAST SIDE
OF GOOSE NECK RD. ~~AND~~ AT A DISTANCE OF 1,450' ±
N.E. OF THE INTERSECTION OF GOOSE NECK AND MIAMI BEACH
ROADS BEING LOT 245 AS RECORDED IN PLAT ~~BOOK~~ 2 "FIRST
ADDITION" OF BOULEY'S QUARTERS IN BOOK 9, FOLIO 12. LOT SIZE @ 25 AC
IN THE 15TH E.D.

Charlotta A. Okstaver

**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: # 08-132-SPH

1322 Goose Neck Road
N/east side of Goose Neck
Road, 1450 ft. n/east of Mil-

ami Beach Road
15th Election District

6th Councilmanic District
Legal Owner(s): Christo-

pher & Charlotte Oktavec
Special Hearing: to ap-

prove in-law living quarters
in an accessory building

and to amend the order and
plan in case 88-383-A and

remove any restriction in-
volving the in-law quarters

use.
Hearing: November 7,

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 accommoda-

tions Please Contact the

Zoning Commissioner's Of-

fice at (410) 887-3868.

(2) For information con-

cerning the File and/or

Hearing, Contact the Zon-

ing Review Office at (410)

887-3391.

JT 10/762 Oct. 23 153006

CERTIFICATE OF PUBLICATION

10/25/, 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 10/23/, 2007.

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

S. Wilkinson

LEGAL ADVERTISING

CERTIFICATE OF POSTING

RE: Case No: 08-132-SPH

Petitioner/Developer: CHRISTOPHER
CHARLOTTE OETAVER

Date Of Hearing/Closing: 11/7/07

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

Attention:

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary
sign(s) required by law were posted conspicuously on the property
at 1322 GOOSE NECK ROAD

This sign(s) were posted on October 22, 2007

(Month, Day, Year)

Sincerely,

Martin Ogle 10/22/07
(Signature of sign Poster and Date)

Martin Ogle

Sign Poster

16 Salix Court

Address

Balto. Md 21220

(443-629 3411)

ZONING NOTICE

CASE # 08-132-SPH

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

ROOM 407, COUNTY COURTS BUILDING,
PLACE: 401 BOWLEY AVENUE, TOWSON 21204

DATE AND TIME: WEDNESDAY, NOVEMBER 7, 2007
AT 11:00 AM

REQUEST: SPECIAL HEARING TO APPROVE IN-LAW LIVING
QUARTERS IN AN ACCESSORY
BUILDING AND TO AMEND THE ORDER AND PLAN IN CASE
13-223-A AND REMOVE ANY RESTRICTION INVOLVING THE
IN-LAW QUARTERS USE

POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY
TO CONFORM HEARING CALL 667-2202

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

Paula J.
10/22/07

990110036 PA220004_0018

Walgreens <18> 10/24/07

January 5, 2008

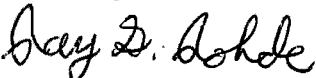
Department of Permits and Development Management
Attn. Ms. Kristen Matthews, Room 111
111 West Chesapeake Avenue
Towson, Maryland 21204

Dear Ms. Matthews:

Please accept this letter as my intention and desire to appeal the decision of the Deputy Zoning Commissioner in **Case No. 08-132-SPH**.

Enclosed is a check in the amount of \$400.00 to begin the appellant process.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ray G. Rohde".

Ray G. Rohde
1320 Goose Neck Road
Baltimore, Maryland 21220

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS RECEIPT

No. 06231

PAID RECEIPT

Date:

1/7/08

BUSINESS 1/7/2008 ACTUAL 1/07/2008 TIME 14:32:03 DRW 2

REG W: 02 MAIL JEVA JEE
 >>RECI IPT # 556930 1/07/2008 OFLN

Fund	Agcy	Orgn	Sub Orgn	Rev Source	Sub Rev	Rept Catg	BS Acct	Amount	Dept
0000	0000			6150				400.00	0000

5 528 ZONING VERIFICATION
 006231

Recpt Tot \$400.00
 \$400.00 CK \$0.00 CA
 Baltimore County, Maryland

Total: 400.00

Rec
 From:

Ravi Rohde

For:

Appeal
 08-133-184

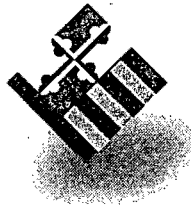
DISTRIBUTION

WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

**CASHIER'S
 VALIDATION**



BALTIMORE COUNTY

M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

October 4, 2007
TIMOTHY 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: 08-132-SPH

1322 Goose Neck Road

N/east side of Goose Neck Road, 1450 ft. n/east of Miami Beach Road

15th Election District – 6th Councilmanic District

Legal Owners: Christopher & Charlotte Oktavec

Special Hearing to approve in-law living quarters in an accessory building and to amend the order and plan in case 88-383-A and remove any restriction involving the in-law quarters use.

Hearing: Wednesday, November 7, 2007 at 11:00 a.m. in Room 407, County Courts Building,
401 Bosley Avenue, Towson 21204

A handwritten signature in black ink that reads "Timothy Kotroco".

Timothy Kotroco
Director

TK:klm

C: Chris & Charlotte Oktavec, 1322 Goose Neck Road, Baltimore 21220

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, OCTOBER 23, 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.



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 2, 2008

NOTICE OF ASSIGNMENT

CASE #: 08-132-SPH

IN THE MATTER OF: CHRISTOPHER & CHARLOTTE OKTAVEC -
Legal Owners /Petitioners
1322 Goose Neck Road 15th Election District; 6th Councilmanic District

12/14/07 - D.Z.C.'s decision in which requested special hearing relief was
GRANTED with restrictions.

ASSIGNED FOR:

TUESDAY, JUNE 3, 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 /Protestant

: Ray Rohde

Legal Owners /Petitioners

: Christopher G. and Charlotte A. Oktavec

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

*pp'd @ reg of
counsel for
appellant
to 6/18/08*

FRANCIS X. BORGERDING, JR.

Attorney at Law

MERCANTILE BUILDING - SUITE 600
409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 296-6820
FAX (410) 296-6884

RECEIVED

APR 09 2008

**BALTIMORE COUNTY
BOARD OF APPEALS**

April 9, 2008

Clerk
County Board of Appeals of Baltimore County
Jefferson Building
Second Floor, Suite 203
105 West Chesapeake Avenue
Towson, Maryland 21204

RE: In the matter of Christopher & Charlotte Oktavec
Case No.: 08-132-SPH

Dear Clerk:

This is to advise that I represent Ray Rhodes, protestant and next door neighbor, of the above-referenced property. I am herein respectfully requesting a postponement of the hearing scheduled for Tuesday, June 3, 2008, at 10:00 a.m. due to the fact that Mr. Rhodes is scheduled to be out of the country on a prepaid non-refundable cruise. We apologize to the Board for any inconvenience this request may make.

Thank you very much for your consideration.

Very truly yours,



FRANCIS X. BORGERDING, JR.

FXBJr:bjk

cc: Christopher G. & Charlotte A. Oktavec



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 14, 2008

NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 08-132-SPH

**IN THE MATTER OF: CHRISTOPHER & CHARLOTTE OKTAVEC -
Legal Owners /Petitioners**

1322 Goose Neck Road 15th Election District; 6th Councilmanic District

12/14/07 – D.Z.C.'s decision in which requested special hearing relief was
GRANTED with restrictions.

which was scheduled to be heard on 6/03/08 has been POSTPONED at the request of Counsel for Appellant /Protestant who will be out of country on date of hearing; and has been

REASSIGNED FOR:

WEDNESDAY, JUNE 18, 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: Counsel for Appellant /Protestant
Appellant /Protestant

: Francis X. Borgerding, Jr., Esquire
: Ray Rohde

Legal Owners /Petitioners

: Christopher G. and Charlotte A. Oktavec

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



County Board of Appeals of Baltimore County

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 19, 2008

NOTICE OF ASSIGNMENT /Day #2

CASE #: 08-132-SPH

**IN THE MATTER OF: CHRISTOPHER & CHARLOTTE OKTAVEC -
Legal Owners /Petitioners**

1322 Goose Neck Road 15th Election District; 6th Councilmanic District

Day #2 from 6/18/08

12/14/07 - D.Z.C.'s decision in which requested special hearing relief was
GRANTED with restrictions.

Having heard day #1 on 6/18/08, day #2 has been assigned to the following date and time upon confirmation with counsel and panel members as to availability; and has been

ASSIGNED FOR:

THURSDAY, SEPTEMBER 25, 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:	Counsel for Appellant /Protestant Appellant /Protestant	: Francis X. Borgerding, Jr., Esquire : Ray Rohde
	Counsel for Legal Owners /Petitioners Legal Owners /Petitioners	: J. Carroll Holzer, Esquire : Christopher G. and Charlotte A. Oktavec
	Office of People's Counsel William J. Wiseman III /Zoning Commissioner Pat Keller, Planning Director Timothy M. Kotroco, Director /PDM	



County Board of Appeals of Baltimore County

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

September 26, 2008

NOTICE OF DELIBERATION

IN THE MATTER OF:

CHRISTOPHER & CHARLOTTE OKTAVEC – Legal Owner /Petitioner
Case No. 08-132-SPH

Having heard this matter on 6/18/08 and 9/25/08, public deliberation has been scheduled for the following date /time:

DATE AND TIME : THURSDAY, NOVEMBER 13, 2008, at 9:30 a.m.

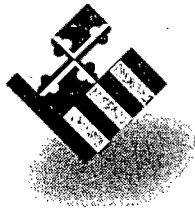
LOCATION : Hearing Room #2, Second Floor (next to Suite 203)
Jefferson Building, 105 W. Chesapeake Avenue

NOTE: Closing briefs are due on
Friday, October 31, 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: Counsel for Appellant /Protestant	: Francis X. Borgerding, Jr., Esquire
Appellant /Protestant	: Ray Rohde
Counsel for Legal Owners /Petitioners	: J. Carroll Holzer, Esquire
Legal Owners /Petitioners	: Christopher G. and Charlotte A. Oktavec
Office of People's Counsel	
William J. Wiseman III /Zoning Commissioner	
Pat Keller, Planning Director	
Timothy M. Kotroco, Director /PDM	



BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

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

November 1, 2006
2007

Christopher G. Oktavec
Charlotte A. Oktavec
1322 Goose Neck Road
Baltimore, Maryland 21220

Dear Mr. Christopher and Charlotte Oktavec

RE: Case Number: 08-132-SPH 1322 Goose Neck Road

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

A handwritten signature in black ink that reads "W. Carl Richards, Jr." with a stylized flourish at the end.

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR:rjc
Enclosures

c: Peoples Council



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

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

Maryland Department of Transportation

Date: SEPT. 26, 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. 8-132-SPH
1322 GOOSE NECK ROAD
OKTAVEC PROPERTY
SPECIAL HEARING

Dear Ms. Matthews:

Thank you for the opportunity to review your referral request on the subject of the above captioned. We have determined that the subject property does not access a State roadway and is not affected by any State Highway Administration projects. Therefore, based upon available information this office has no objection to Baltimore County Zoning Advisory Committee approval of Item No. 8-132-SPH.

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,

A handwritten signature in black ink that reads "Michael P. Bailey".

For ¹ Steven D. Foster, Chief
Engineering Access Permits
Division

SDF/MB

My telephone number/toll-free number is _____

Maryland Relay Service for Impaired Hearing or Speech: 1.800.735.2258 Statewide Toll Free

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

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: October 1, 2007

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

SUBJECT: Zoning Advisory Committee Meeting
For October 1, 2007
Item No. 08-132

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

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

The flood protection elevation for this site is 11.4 feet.

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

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

The building engineer shall require a permit for this project.

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

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

DAK:CEN:clw

cc: File

ZAC-ITEM NO 08-132-10012007.doc

TB
11-7-07

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



RECEIVED
NOV 02 2007

TO: Timothy M. Kotroco

BY:.....

FROM: Dave Lykens, DEPRM - Development Coordination JWL

DATE: November 2, 2007

SUBJECT: Zoning Item # 08-132-SPH
Address 1322 Goose Neck Road
(Oktavec Property)

Zoning Advisory Committee Meeting of September 24, 2007

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

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

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

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

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

Additional Comments:

This property is within a Limited Development Area (LDA) and Buffer Management Area (BMA), and must meet all LDA & BMA requirements, including impervious surface limits and 15% afforestation.

Reviewer: Regina Esslinger

Date: 10/30/07

TB
11/7

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: November 5, 2007

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

RECEIVED
NOV 06 2007

BY:.....

SUBJECT: Zoning Advisory Petition(s): **Case(s) 08-132**

The Office of Planning has reviewed the above referenced case(s) and has no comments to offer.

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

Prepared By: *R. Bruce Arly*

Division Chief: *Lynn Lanham / PMS*

rbs

RE: PETITION FOR SPECIAL HEARING * BEFORE THE
1322 Goose Neck Road; NE/S Goose Neck
Road, 1,450' NE Miami Beach Road * ZONING COMMISSIONER
15th Election & 6th Councilmanic Districts
Legal Owners: Christopher & Charlotte Oktavec* FOR
Petitioner(s) * BALTIMORE COUNTY
* 08-132-SPH

* * * * *

ENTRY OF APPEARANCE

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

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of October, 2007, a copy of the foregoing Entry of Appearance was mailed to, Chris & Charlotte Oktavec, 1322 Goose Neck Road, Baltimore, MD 21220, Petitioner(s).

RECEIVED

OCT 02 2007

Per.....

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County



BALTIMORE COUNTY
M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

February 19, 2008
TIMOTHY M. KOTROCO, Director
Department of Permits and
Development Management

Christopher Oktavec
Charlotte Oktavec
1322 Goose Neck Road
Baltimore, MD 21220

Dear Mr. & Mrs. Oktavec:

RE: Case: 08-132-SPH, 1322 Goose Neck Road

Please be advised that an appeal of the above-referenced case was filed in this office on January 5, 2008 by Ray Rohde. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

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

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

Sincerely,

A handwritten signature in black ink that reads "Timothy Kotroco".

Timothy Kotroco
Director

TK:klm

c: William J. Wiseman III, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Ray Rohde, 1320 Goose Neck Road, Baltimore 21220

APPEAL

Petition for Special Hearing
1322 Goose Neck Road
NE S Goose Neck Rd., 1450' NE Miami Beach Rd.
15th Election District – 6th Councilmanic District
Legal Owners: Christopher & Charlotte Oktavec

Case No.: 08-132-SPH

- ✓ Petition for Special Hearing (September 13, 2007)
- ✓ Zoning Description of Property
- ✓ Notice of Zoning Hearing (October 4, 2007)
- ✓ Certification of Publication (The Jeffersonian – October 23, 2007)
- ✓ Certificate of Posting (October 22, 2007) by Martin Ogle
- ✓ Entry of Appearance by People's Counsel (October 2, 2007)
- ✓ Petitioner(s) Sign-In Sheet – One Sheet
- Protestant(s) Sign-In Sheet - None
- ✓ Citizen(s) Sign-In Sheet – One Sheet
- ✓ Zoning Advisory Committee Comments
- Petitioners' Exhibit
 - ✓ 1. Plan to accompany petition
 - ✓ 2. Site Plan
 - ✓ 3. Zoning Map
 - ✓ 4. Photos
 - ✓ 5. Photos

Protestants' Exhibits:

- ✓ Letter dated October 30, 2007 from Ray Rohde

Miscellaneous (Not Marked as Exhibit) None

Deputy Zoning Commissioner's Order (GRANTED – December 14, 2007)

Notice of Appeal received on January 5, 2008 from Ray Rohde

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner/Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Mr. & Mrs. Oktavec
Mr. Ray Rohde

RECEIVED
FEB 20 2008
BALTIMORE COUNTY
BOARD OF APPEALS

date sent February 19, 2008, klm

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: CHRISTOPHER AND CHARLOTTE OKTAVEC 08-132-SPH

DATE: November 13, 2008

BOARD/PANEL: Wendell Grier
Andrew Belt
Maureen Murphy

RECORDED BY: Sunny Cannington/Legal Secretary

PURPOSE: To deliberate an appeal of the following:

1. To approve in-law living quarters in an accessory building and to amend the order and plan in case No. 88-383-A and remove any restriction involving the in-law quarters use.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

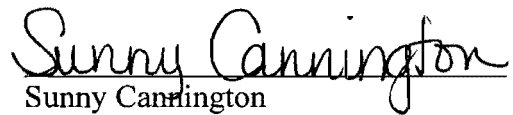
- The subject property has a house and two garages. The house has three bedrooms. The second garage was built with an accessory use for an office space. The Petitioners have made improvements, without the appropriate permits, to the accessory area of the second garage to include a bathroom and kitchen. The Petitioners added water and sewer to the garage. They installed a grinder pump to provide the sewer service.
- The Board felt that testimony provided by the Petitioners was inconsistent. The petitioners were unable to specify who would be living in the apartment area they created. They first indicated that the 90 year old Grandmother would be living there. The Petitioners then indicated that their Daughter would be living there with her children so that she could help her take care of her parents. It was later indicated that the daughter would not be bringing her children to stay that she would be coming and going.
- Testimony provided also indicated that the other bedrooms in the main house were used as storage and one room was set up as a train room.
- The Board considered the Special Exception factors. They determined that the intended use is not consistent with the Zoning in the area. Additionally, in the previous case, the Zoning Commissioner set the restriction that the space in the second garage would not be allowed to be used as an apartment. The zoning sets forth a minimum lot size requirement in consideration of the water and sewage in the area to ensure that water and sewage are not overwhelmed in that area.
- While the Board understands that the health concerns of family members make the situation compelling, they feel that it would be more appropriate for the daughter to stay in the house as opposed to in the garage, should she be needed.

DECISION BY BOARD MEMBERS: The Board felt that the Petition fails to meet the standards to grant the relief. There is available space in the home for additional family members to live. The space above the second garage would not be best suited for living quarters.

FINAL DECISION: After thorough review of the facts, testimony, and law in the matter, the Board unanimously agreed to DENY the relief requested in the Petition for Special Hearing.

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

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

Case Number: 03-C-09-001221

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
Jefferson Building Suite 203
105 West Chesapeake Avenue
Towson, MD 21204

CIRCUIT COURT FOR BALTIMORE COUNTY

Suzanne Mensh

Clerk of the Circuit Court

County Courts Building

401 Bosley Avenue

P.O. Box 6754

Towson, MD 21285-6754

(410)-887-2601, TTY for Deaf: (800)-735-2258

Maryland Toll Free Number (800) 938-5802

NOTICE OF HEARING / TRIAL

Case Number: 03-C-09-001221 AA

C I V I L

In the Matter of Christopher Oktavec, et al

STATE OF MARYLAND, BALTIMORE COUNTY COUNTY, TO WIT:

TO: County Board Of Appeals Of Baltimore County
Jefferson Building Suite 203
105 West Chesapeake Avenue
Towson, MD 21204

RECEIVED
APR 24 2009

**BALTIMORE COUNTY
BOARD OF APPEALS**

You are hereby NOTIFIED TO APPEAR before a Judge of the:

CIRCUIT COURT FOR BALTIMORE COUNTY
County Courts Building
401 Bosley Avenue
Towson, MD 21285-6754

Court date:
July 28, 2009
At: 09:30 AM
Civil Non-Jury Trial
1/2 HOUR ADMINISTRATIVE APPEAL CORRECTED NOTICE AGREED
DATE

PLEASE NOTE: All counsel are expected to confer with each other with regard to the assigned trial date and to advise the court and other parties of any pre-existing conflict promptly.

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Civil Assignment Office at (410)-887-2660 or use the Court's TDD line, (410) 887-3081, or or the Voice/TDD M.D. Relay Service, (800) 735-2258.

Application for postponement must be made in writing with copies to all attorneys.

Please refer to Information Desk for Court Room Designation.

Camera Phones Prohibited: Pursuant to Md. Rule 16-109 b.3., cameras and recording equipment are strictly prohibited in courtrooms and adjacent hallways. This means that camera cell phones should not be brought with you on the day of your hearing to the Courthouse.

Assignment Clerk: Maria Kaikis
Assignment Office Phone: (410)-887-2660

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

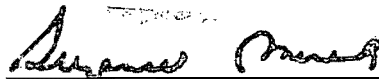
N O T I C E O F R E C O R D

Case Number: 03-C-09-001221 AA
C I V I L

In the Matter of Christopher Oktavec, et al

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 2nd day of April, 2009.



Suzanne Mensh

Clerk of the Circuit Court, per 

Date issued: 04/02/09

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
Jefferson Building Suite 203
105 West Chesapeake Avenue
Towson, MD 21204

RECEIVED

APR 06 2009

BALTIMORE COUNTY
BOARD OF APPEALS

CASE NAME OKtavec
CASE NUMBER 08132 SPH
DATE 11-6-07

[illegible]

PLEASE PRINT CLEARLY

CASE NAME _____
CASE NUMBER 08-132-5PH
DATE _____

CITIZEN'S SIGN-IN SHEET

NAME

ADDRESS

CITY, STATE, ZIP

E-MAIL

Ray Rohde

1320 Goose Neck Rd

Balto Md 21220

RRohde@Proxbank.com

October 30, 2007

Mr. Timothy M. Kotroco, Director
Permits and Development Management
County Office Building
111 West Chesapeake Avenue, Suite 105
Towson, Maryland, 21204

Dear Mr. Kotroco:

This letter is in reference to zoning request 8-132-SPH at 1322 Goose Neck Road.

The above referenced property is located in Bowleys Quarters and is waterfront property. A zoning change request is being made by the property owners referenced above to use an accessory building as a living quarters. The accessory building is approximately 80 feet from the residents of the adjacent properties. The second floor windows of the proposed living quarters have a direct line of sight into the rear bedroom windows of the property at 1320 Goose Neck Road. Granting the requested zoning change will have a negative impact on my privacy and my ability to enjoy the property. In addition, the living quarters will reduce the property values in the neighborhood, especially the adjacent properties, create a greater risk of fire and the risk of fire spreading to other properties and increase traffic. Goose Neck Road is a substandard dead end road (approximately 17 feet wide). In order for two cars to safely pass one another, someone has to pull over to let the other car pass. .

Attached is a petition **against the zoning change** signed by 10 individual, representing six households that are within 300 feet of the property requesting the zoning change. Both of the adjacent property owners that will be impacted the most are **against** the zoning change.

We respectfully request that zoning request 8-132-SPH be denied in its entirety.

Sincerely,



Ray G. Rohde

attachment

PROTESTANT' S

EXHIBIT NO. /

Petition

We the undersigned are **against** zoning request 8-132-SPH at 1322 Goose Neck Road to allow living quarters in an accessory building because it is not in the best interests of the community. Allowing living quarters in an accessory building will:

1. Decrease property values, especially the adjacent properties.
2. Be inconsistent with the Bowleys Quarters Community Action Plan.
3. Increase the risk of fire and the associated risk of fire spreading to other dwellings and/or accessory buildings.
4. Increase traffic on Goose Neck Road which is a substandard and dead end road. In order to safely pass each other, one car has to pull off of the road.
5. Infringe on the privacy of the adjacent property owners, thereby taking away the right of the property owners to enjoy their property.

Date

Name

Address

* 10/27/07 Gay B Rohde 1320 Goose Neck Road
* 10/27/07 Quincy Rohde 1320 Goose Neck Road

10/27/07 Earl Bughan 1314 GOOSE NECK RD.

10/27/07 George M. Howard 1310 Goose Neck Rd

* 10/27/07 Theresa Hays 1324 Goose Neck Rd

* 10/27/07 [Signature] 1324 Goose Neck Rd

10/27/07 Stephanie L. [Signature] 1328 Goose Neck Rd

10/27/07 Wayne Kalin 1334 GOOSENECK RD

10/27/07 Denise J. Helli 1334 Gooseneck Road

10/27/07 Jan J. [Signature] 1328 GOOSENECK RD.

* Adjacent Property Owners











Verified
6-18-08
Verified
9-25-08

Case 08-132-SPH Oktavec

Petitioners Exhibits

- ✓ ① Plat for Special Hearing
- ✓ ② Order Commissioner 88-383-A
- ✓ ③ BMC Mark Lamos, MD. 5/8/08
- ✓ ④ Rheumatology Center of MD 5/8/08
Adam Bortner, MD
- ✓ ⑤ Wilmer Institute letter 2/26/08
John D. Gottsch, MD
- ✓ ⑥ Summary of Health Costs.
- ✓ ⑦ Summary of Medications
- ✓ ⑧ A Oktavec + Sons Summary of Church
Customers
Screen Painter
Newspaper articles of Churches
- ✓ ⑨ Photo of front house 1318 → 1326
- ✓ ⑩ Photo of 1322 Garage
- ✓ ⑪ Close up of 1322 Garage.
- ✓ ⑫ Zoning Map. for 1322
- ✓ ⑬ Photo of 1318 + 1320 (Rhode House)

✓ 10 pages.
✓ 14 Photos of other for parties.

✓ 15 Balto County Permit Roof

✓ 16 A Photo showing oak roof

✓ 16 B- Photo showing finished roof.

✓ 17 Permit from B County to convert existing garage second floor, subject to CBA approval

✓ 18 Photo 9/20/08 - airport

✓ 19 Photo Boat + inlaw apartment cleaned up.

✓ 20 Photo outside airport.

✓ 21 Photo garage, boat + st

✓ 22 Photo of Deck cleaned up.

✓ 23 Photo Harp party

✓ 24 Photo Harp party with pool

✓ 25 Photos showing cars @ party

CBA EX (2) Petitioners

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
494-3353

J. Robert Haines
Zoning Commissioner

April 11, 1988



Dennis F. Rasmussen
County Executive

Mr. & Mrs. Christopher G. Oktavec
1322 Goose Neck Road
Baltimore, Maryland 21220

RE: Petition for Zoning Variance
NE/S Goose Neck Road, 800' NW of Goose Harbor Road
15th Election District; 5th Councilmanic District
Case No. 88-383-A

Dear Mr. & Mrs. Oktavec:

Enclosed please find the decision rendered on the above-referenced case. The Petition for Zoning Variance has been Granted, subject to the restrictions noted in the attached Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal to the County Board of Appeals. For further information on filing an appeal, please contact this office.

Very truly yours,

J. Robert Haines
J. ROBERT HAINES
Zoning Commissioner
of Baltimore County

JRH:bjs
Enclosures

cc: People's Counsel

File



MARK LAMOS, M.D. & ASSOCIATES

MARK LAMOS, M.D.
ROBIN MOTTER, D.O.

DEBBIE JONES, C.R.N.P.
PAM MUCHA, C.R.N.P.

May 8, 2008

To Whom It May Concern:

My patient, Christopher Oktavec (d.o.b.10/28/47) suffers from blindness, heart disease, diabetes, end-stage renal failure on dialysis, and severe fatigue. These conditions are all permanent, assistance and support of family would be of great help to him and his wife.

Most sincerely,

A handwritten signature in black ink, appearing to read "Mark A. Lamos".

Mark A. Lamos, M.D.

NEPHROLOGY CENTER OF MARYLAND

5601 Loch Raven Blvd, 3 North
Baltimore, Maryland 21239
Phone: 443-444-3775 Fax: 443-444-4678

520 Upper Chesapeake Drive, Suite 312
Bel Air, MD 21014
Phone: 443-643-4680 Fax 443-643-4692

Luis F. Gimenez, M.D.
Hyung M. Lim, M.D.
Kaleem U. Haque, M.D.
Elias C. Ghandour, M.D.

Bernard G. Jaar, M.D. M.P.H.
Adam R. Berliner, M.D.
Anitha Byreddy, M.D.

May 8, 2008

To Whom It May Concern:

Christopher Oktavec is a patient in our clinic of ambulatory peritoneal dialysis (CAPD). As such, he has end-stage renal disease and requires assistance in his home. His family has agreed to provide this assistance.

Please extend every courtesy to him and his family.

Sincerely,



Adam R. Berliner, M.D.



John D. Gottsch, M.D.

321 Maumenee Building, The Wilmer Ophthalmological Institute @ Johns Hopkins, 600 N. Wolfe Street, Baltimore, MD 21287-9235

CBA Petitioner's (5)

410-955-7928 / Fax 410-614-2816

February 26, 2008

To Whom It May Concern

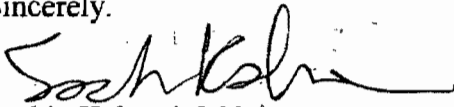
RE: Christopher Oktavec

To Whom It May Concern:

Mr. Christopher Oktavec was last seen in our clinic on October 31, 2007 at which time his best corrected visual acuity is count fingers in the right eye and 20/230 in the left eye. The decrease in vision is likely secondary to diabetic retinopathy and Fuchs' dystrophy.

As a result of Mr. Oktavec's best corrected visual acuity, he is considered legally blind.

Sincerely,


Sachin Kalyani, M.D.

CBA Petitioners (6)

Mail All Payments To:

Aon Consulting, Inc.
PO Box 2436

Carol Stream, IL 60132-2436

Due Date: 07/01/2008 Amount: \$ 745.40

Charlotte A Oktavec
1322 Goose Neck Rd

Baltimore, MD 21220

Code: CEG08 Please report any change of address on the reverse of this form.

Mail All Payments To:

Aon Consulting, Inc.
PO Box 2436

Carol Stream, IL 60132-2436

Due Date: 08/01/2008 Amount: \$ 745.40

Charlotte A Oktavec
1322 Goose Neck Rd

Baltimore, MD 21220

Code: CEG08 Please report any change of address on the reverse of this form.

Mail All Payments To:

Aon Consulting, Inc.
PO Box 2436

Carol Stream, IL 60132-2436

Due Date: 09/01/2008 Amount: \$ 745.40

Charlotte A Oktavec
1322 Goose Neck Rd

Baltimore, MD 21220

Code: CEG08 Please report any change of address on the reverse of this form.

Mail All Payments To:

Aon Consulting, Inc.
PO Box 2436

Carol Stream, IL 60132-2436

Due Date: 10/01/2008 Amount: \$ 745.40

Charlotte A Oktavec
1322 Goose Neck Rd

Baltimore, MD 21220

Code: CEG08 Please report any change of address on the reverse of this form.

Mail All Payments To:

Aon Consulting, Inc.
PO Box 2436

Carol Stream, IL 60132-2436

Due Date: 11/01/2008 Amount: \$ 745.40

Charlotte A Oktavec
1322 Goose Neck Rd

Baltimore, MD 21220

Code: CEG08 Please report any change of address on the reverse of this form.

Mail All Payments To:

Aon Consulting, Inc.
PO Box 2436

Carol Stream, IL 60132-2436

Due Date: 12/01/2008 Amount: \$ 745.40

Charlotte A Oktavec
1322 Goose Neck Rd

Baltimore, MD 21220

Code: CEG08 Please report any change of address on the reverse of this form.

*Our health insurance.
\$ 745.40 per month
out of pocket*

Either pay this or die.

No other insurance company will take him.

Peterson's OBA #7

Dr. Berliner (Merrily)

Oktavec, Christopher
1322 Gooseneck Road
Middle River, Md 21220
410-335-3737
© 410-952-9646
Charlotte © 410-952-0269
Pt # 235033099
DOB 10-28-46

Newton cyler, low calcium
2500 CCPD X 3, 2500last, 2500 pause
8 hours 10 min (4-9-7-07)
FIWt 180 (79.3Kg)
1st CAPD 5-16-07
1st hemo 1-06
ESRD 2nd diabetes
Allergy - Cardiazem -itching
Fistula - left arm

Aranesp 60mcg monthly (10-4-07)

Apr 10

#129.62 Coreg 25mg twice daily #28 per month

#27.75 Lisinopril 20mg twice daily (9-6-07) #5 per month

Pravachol 40mg at bedtime

Glipizide 2.5mg every other day (11-8-07)

Rocaltrol 0.25mcg daily (8-2-07)

~~————~~ #549.84 Phos-Lo 8-9 with all meals (1-10-08) #75 every 16 Days

Fosrenol 500mg - 1-2 with meals (1-10-08)

Nephrovite Rx daily

decrease → Ferrous sulfate 325mg - ~~3 tablets~~ daily (6-27-07) one daily

#166.72 Nexium 40mg daily as needed #37.30 per month

#7.46 Temazepam 15mg at bedtime as needed #5.00 per month

Tylenol as needed for back pain (8-2-07)

Benadryl 25mg every 8 hours as needed (12-6-07)

Dr. Mark Lamos, prim
410-771-9220
Dr Ahmed Shilpi, card
410-583-1170

Dr. Eugene Schweitzer, surgeon
Wal-Mart pharm 410-335-1135

March 6, 2008

THE SCREEN PAINTERS



A Documentary Film on Baltimore's Unique Folk Art

THE PAINTED SCREEN SOCIETY AND BALTIMORE TRADITIONS PRESENTS
"THE SCREEN PAINTERS" ALBERT OKTAVEC, JOHNNY ECK, BEN RICHARDSON,
TED RICHARDSON, TOM LIPKA, DEE HERGET AND FRANK CIPOLLONI
DIRECTOR EXECUTIVE PRODUCER ELAINE EFF DIRECTOR OF PHOTOGRAPHY RICHARD CHISOLM
FIELD PRODUCER ALIX LITWACK EDITOR PENNY TRAMS

Started by William Oktavec (Grandfather)

Carried on by Albert Oktavec (Father)

Richard Oktavec (Uncle)

John Oktavec (Cousin)

Chris Oktavec (when he
could see
and wasn't blind)

Pete Oktavec (Chris' son)

Barbara Oktavec (Cousin)



Set #9





Pet #10



Pet #11



Pet # 13



Petitioners 14
CBA.



1304 Goose Neck - 9 Houses From our house
This has been an in law apartment for as long as we can remember



Chris has:
Legally blind (20/400)
Diabetic Retinopathy
Diabetes

Heart by pass
(Heart attack
with minutes to
live)

Shortness of
breath

End stage renal
disease and is
on Kidney dialysis

He is dying, and
he needs help.



Chris Oktavec and his
90 year old mother, Theresa Oktavec



Chris Oktavec's daughter, Mary,
and grand children, Chris and Holly



3926 New Section Rd



3904 New Section Rd.



These are the "monkey balls" falling from Ray Rohde's tree. Our dog can only walk on the sidewalk without being "stuck" in the foot.

Ray Rohde agreed with us to cut down the tree.

We gave him an antique boat that was made by Ray Rohde's grandfather.

That was our payment for "half."

He never took the tree down and

Kept our boat. We want our boat back
the tree "d



Steps / House

Apartment

Pool



3618 Claires Lane

3601 Claires Lane



1444 Burke Rd



1347 South Seneca Rd

Apartment

House



3601 Bay Drive

Apartment

House



1338 Burke Rd



House

Apartment with a
rocking chair in
the window

142 - Burke Rd



Apartment with
extensions on
both sides

House

1440 Burke Rd.

1340 Burke Rd



3637 Bay Drive



3617 Bay Drive
 3 long windows on side +
 blinds on bottom half of
 small windows
 Neighbor has a building with
 sliding glass doors + large roof



1336 Burke Rd



1340 Burke Rd



3709 Bay Drive
Apartment has A.C. in window



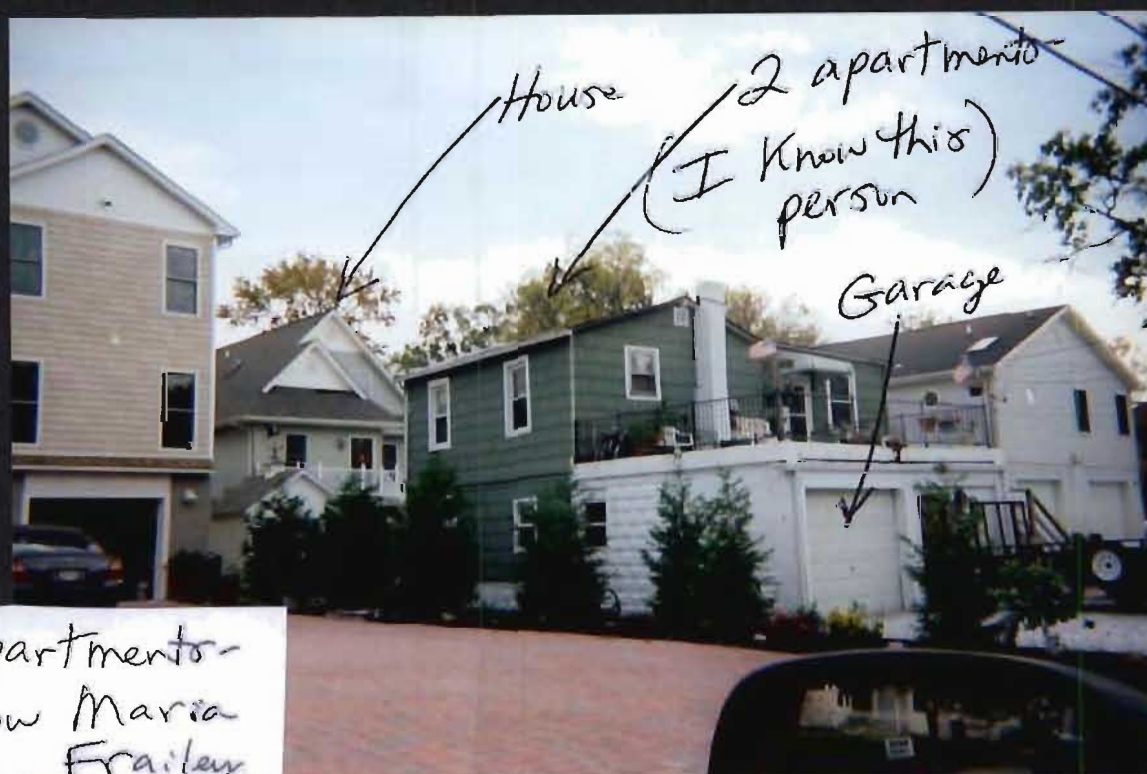
4014 Chestnut Rd



1308 Burke Rd



3719 Bay Drive

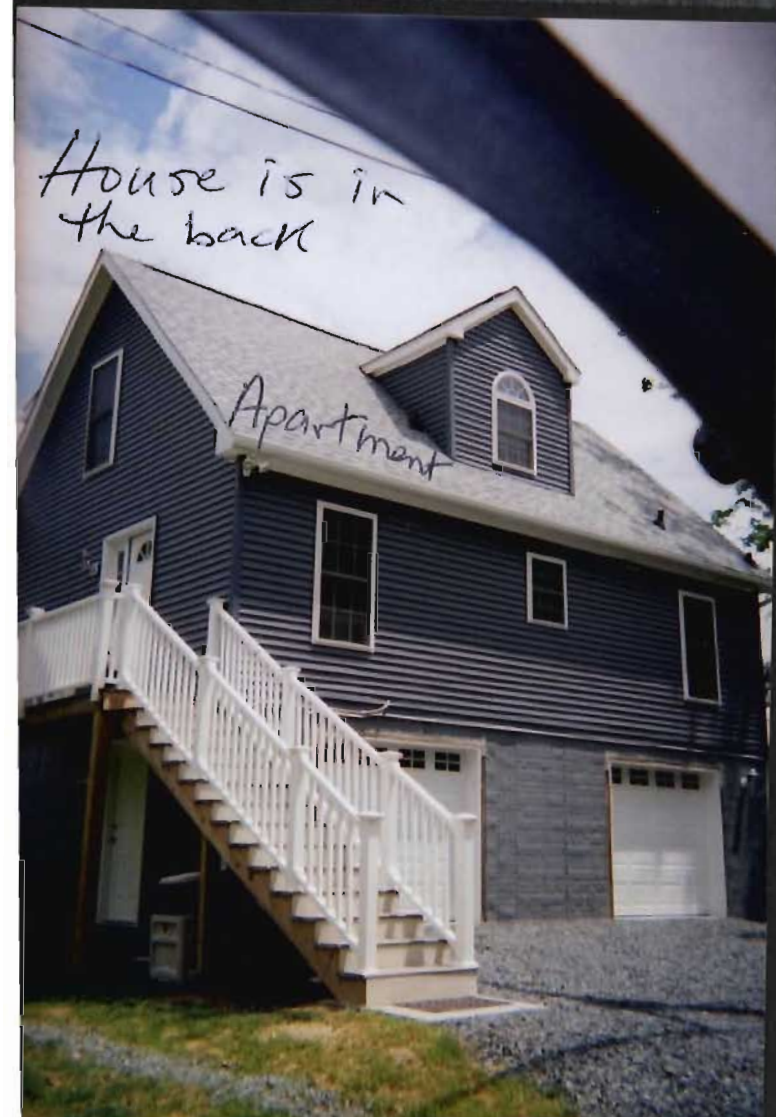


2 Apartments -
I know Maria
Frailley

3725 Bay Drive
Maria Frailley



3822 New Section Rd



1215 Seneca Rd.



1161 Seneca Rd.



1200 Seneca Rd



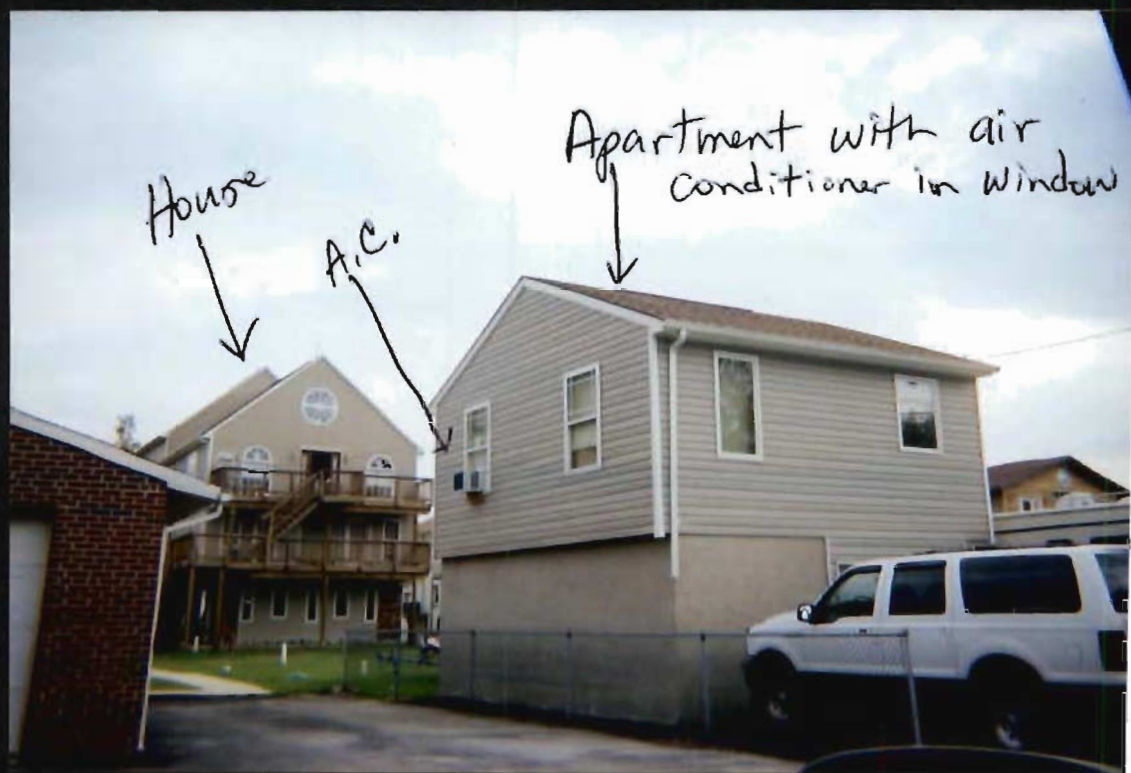
4016 Chestnut Rd



4044 Chestnut Rd



3827 Bay Drive



3713 Bay Drive



12334 Eastern Blvd.



3547 Edwards Lane



1342 Goose Neck Road - 10 Houses away from



3619 Bay Drive - Mike Vivirito
(President) of the Bowleys
Quarters Improvement Association,
House and Full Garage,
Apartment with side entrance
and extension in back toward
house

The Bowleys Quarters Improvement
Association wants to be neutral
and let the Court decide per
Mike Vivirito.



1143 or 1153 Seneca Rd

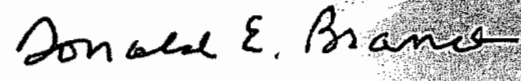
Petitioner's 15

BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT


TIMOTHY M. KOTROCO, Director




DONALD E. BRAND, Buildings Engineer

BUILDING PERMIT

PERMIT #: B697137 CONTROL #: MR DIST: 15 PREC: 01
DATE ISSUED: 06/18/2008 TAX ACCOUNT #: 1512002400 CLASS: 34

PLANS: CONST 0 PLOT 0 R PLAT 0 DATA 0 ELEC NO PLUM NO
LOCATION: 1322 GOOSENECK RD
SUBDIVISION: BOWLEYS QUARTERS

OWNERS INFORMATION
NAME: OKTAVEC CHRISTOPHER
ADDR: 1322 GOOSENECK RD. 21220

TENANT:
CONTR: CHRISTOPHER OKTAVEC
ENGR:
SELLR:
WORK:

CONST. NEW ROOF WITH STEEPER PITCH OVER EX. ROOF
ON PART OF EX. SFD, 10'6X25X4=263SF, NO CHANGE
TO HOUSE FOOTPRINT. MAX. HEIGHT 35' PER APPLICANT

PERMIT EXPIRES
ONE YEAR FROM
DATE OF ISSUE

BLDG. CODE:
RESIDENTIAL CATEGORY: DETACHED OWNERSHIP: PRIVATELY OWNED

PROPOSED USE: SFD AND ALT
EXISTING USE: SFD

TYPE OF IMPRV: ALTERATION
USE: ONE FAMILY
FOUNDATION:
SEWAGE: PUBLIC EXIST

BASEMENT:
WATER: PUBLIC EXIST

LOT SIZE AND SETBACKS

SIZE: 0050.00 X 0200.50
FRONT STREET:
SIDE STREET:
FRONT SETB: NC
SIDE SETB: NC/NC
SIDE STR SETB:
REAR SETB: NC

 **BALTIMORE COUNTY**
BUILDING INSPECTION
410-887-4638

Part of Building Inspected: B-697137 FRAME

Approved ☒ Disapproved ☐

REMARKS: ADD COLLECTOR
ADD MORE NAT
USE CASE 117-100
FINISHED

6/25/08 B. K. 100
DATE BUILDING INSPECTOR

PLEASE REFER TO PERMIT NUMBER WHEN

DEPARTMENT OF PERMITS AND DEVELOPMENT



Det # 13



BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

Timothy M. Kotroco

TIMOTHY M. KOTROCO, Director



Donald E. Brand

DONALD E. BRAND, Buildings Engineer

BUILDING PERMIT

PERMIT #: B701324 CONTROL #: MR DIST: 15 PREC: 01
DATE ISSUED: 08/14/2008 TAX ACCOUNT #: 1512002400 CLASS: 34

PLANS: CONST 0 PLOT 0 R PLAT 0 DATA 0 ELEC YES PLUM YES
LOCATION: 1322 GOOSENECK RD
SUBDIVISION: BOWLEYS QUARTERS

OWNERS INFORMATION

NAME: OKTAVEC CHRIS & CHARLOTTE
ADDR: 1322 GOOSENECK RD. 21220

TENANT:

CONTR: OWNER

ENGR:

SELLR:

WORK: CH.OF OCC.TO CONVERT EX.DET.GARAGE 2ND FLR FROM
OFFICE TO IN-LAW APT,ALT.TO CREATE KITCHEN AREA
BEDRM,BATHRM,LIVING RM,672';VARIANCE CASE#
08-132-SPH;N.S.I.-E.ECKER,NO STRUCTURAL WORK-
WAIVE PLANS,ZONING APPROVAL SUBJECT TO
RESTRICTION #1 IN CASE#08-132-WCR.

BLDG. CODE:

RESIDENTIAL CATEGORY: DETACHED

OWNERSHIP: PRIVATELY OWNED

PROPOSED USE: SFD,DETACHED GARAGE W/2ND FLR IN-LAW APT
EXISTING USE: SFD,DETACHED GARAGE

TYPE OF IMPRV: ALTERATION

USE: ONE FAMILY

FOUNDATION:

SEWAGE: PUBLIC EXIST

BASEMENT:

WATER: PUBLIC EXIST

LOT SIZE AND SETBACKS

SIZE: 0050.00 X 0200.50

FRONT STREET:

SIDE STREET:

FRONT SETB: NC

SIDE SETB: NC/NC

SIDE STR SETB:

REAR SETB: NC

PERMIT EXPIRES
ONE YEAR FROM
DATE OF ISSUE

PLEASE REFER TO PERMIT NUMBER WHEN MAKING INQUIRIES.



Pet #18



Pet # 19





Pet #20

Pet # 21





Pet #22





Pt # 24



Pt # 23



Pt #25

Denfield
6-18-08

Case 08-132 SPH OK tower

Protestant's Exhibits

- ✓ ① Photos ~~(B)~~ from Rhode backdoor to apartment
- ✓ ② Photo Oktavec work truck
- ✓ ③ Photos of ladders and scaffolding
- ✓ 4A Photo metal pipes:
- ✓ 4B Photo " "
- ✓ 5A Photo Oktavec boating equipment
- ✓ 5B Photo stairs / bike
- ✓ 5C Photo of house / porch
- ✓ 5D Photo wood pile w/ tarp
- ✓ 5E Photo of trailer + porch
- ~~5F~~
- ✓ 6 Jack Dillon Resume
- ✓ 7 Master Plan
- ✓ 8 BCZR 102
- ✓ 9 BCZR 1A04 RC 5 zone
- 10 Union CBA 07-332-SPHA
Znamkowski
- ✓ 11 Ryan Case No: 03-438-SPH
- ✓ 12 A, B, C. Photos 7/22/08











Protestants
#6

Jack Dillon & Associates, LLC

410-337-5455 Fax 410-337-5476 410-221-0060
jackdillon1@verizon.net

**118 W. Pennsylvania Ave.
Towson, Maryland 21204**

**922 Parsons Drive
Madison, Maryland 21648**

OBJECTIVE:

Provide professional planning assistance in the areas of land use, land use analysis, site and design evaluation, and land preservation consultation.

EMPLOYMENT HISTORY:

JACK DILLON & ASSOCIATES, LLC
Private Land Use Consultant
March 1996 – Present

THE VALLEYS PLANNING COUNCIL, Inc.
Executive Director
May 1997 – September 2004

BALTIMORE COUNTY, MARYLAND
OFFICE OF PLANNING, COMMUNITY PLANNING DIVISION
Senior Planner and Deputy Division Chief
Rural planner serving as 2nd, 3rd, and 5th District Planner
August 1987 – February 1996 (retired)

OFFICE OF PLANNING, COMMUNITY PLANNING DIVISION
Planner II – 2nd and 3rd District Area Planner
June 1981 – August 1987
Administrator of Baltimore County Agricultural Land Preservation Program
1979 – 1981

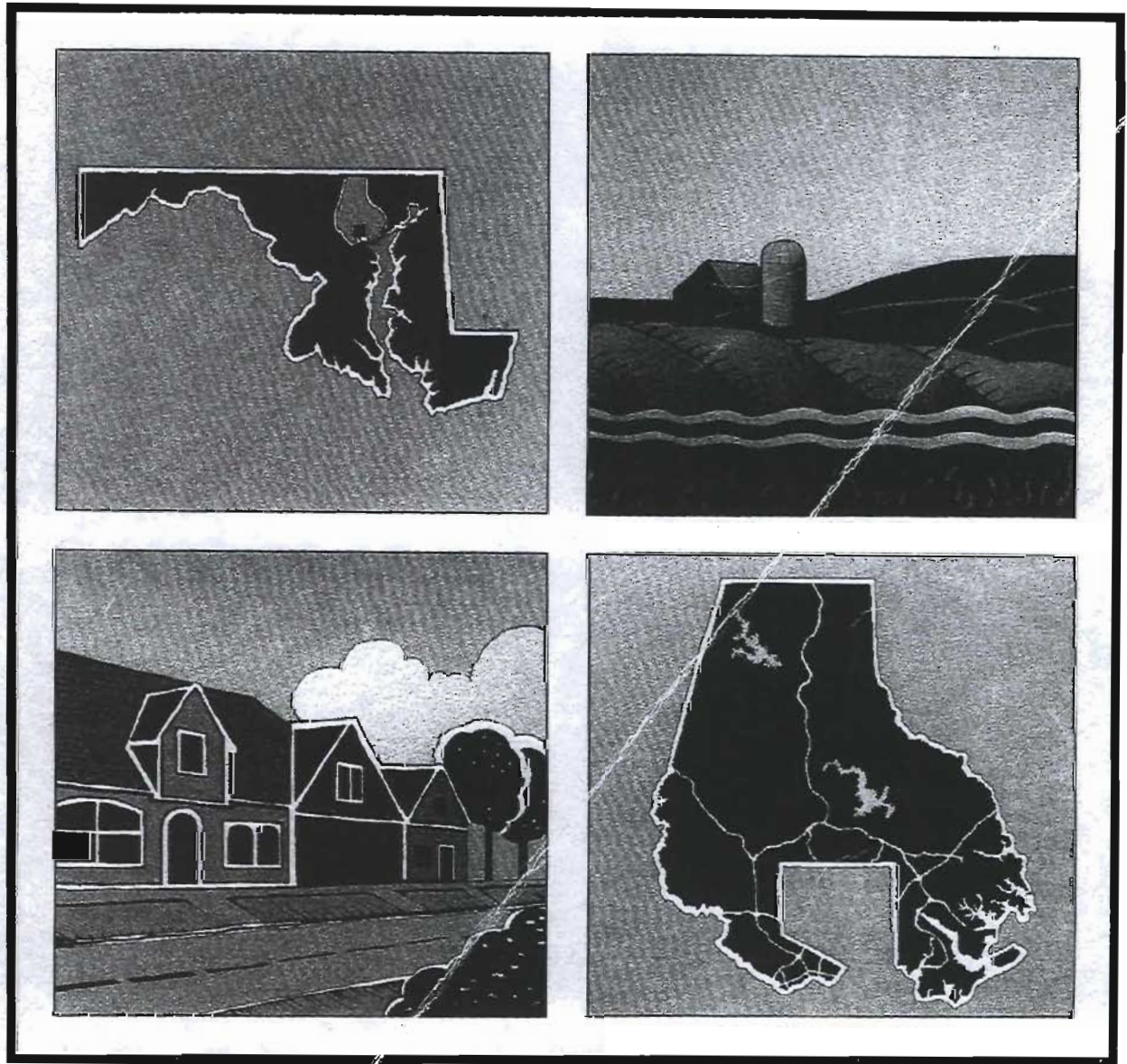
OFFICE OF PLANNING, COMPREHENSIVE PLANNING DIVISION, ENVIRONMENTAL STUDIES SECTION
Planner II – Environmental Planner
October 1974 – June 1981

BALTIMORE COUNTY ZONING OFFICE
Planning & Zoning Technician II, Planning & Zoning Technician III
1967 – 1970
Chair of Zoning Advisory Committee
1969 – 1973
Chief of Zoning Enforcement
1973 – 1974

DEPARTMENT OF PUBLIC WORKS
Special Projects assignments at Johns Hopkins University and The Baltimore City/County Analyzer Office
February 1962 – September 1974

MASTER PLAN 2010

BALTIMORE COUNTY, MARYLAND



AS ADOPTED BY BALTIMORE COUNTY COUNCIL

FEBRUARY 22, 2000

Section 102
General Requirements
[BCZR 1955]

- 102.1 No land shall be used or occupied and no building or structure shall be erected, altered, located or used except in conformity with these regulations and this shall include any extension of a lawful nonconforming use.
- 102.2 No yard space or minimum area required for a building or use shall be considered as any part of the yard space or minimum area for another building or use.
- 102.3 No portion of an alley shall be considered as any part of a side or rear yard.
- 102.4 No dwelling, other than a multifamily building, shall be built on a lot containing less than 20,000 square feet which does not abut on a right-of-way at least 30 feet wide over which the public has an easement of travel, except as provided for panhandle lots in § 32-4-409 of the Baltimore County Code. **[Bill Nos. 172-1989; 2-1992; 137-2004]**
- 102.5 On a corner lot in any residential zone, no planting, fence, wall, building or other obstruction to vision more than three feet in height shall be placed or maintained within the triangular area bounded on two sides by the front and side street property lines, or by projections of said lines to their point of intersection, and on the third side by a straight line connecting points on said lot lines (or their projections), each of which points is 25 feet distant from the point of intersection. At the intersection of a street and an alley, the dimension corresponding to the 25 feet noted above shall be 15 feet and 10 feet at the intersection of two alleys. Poles, posts and guys for streetlights and for other utility services shall not be considered obstructions to vision within the meaning of this section. **[Resolution, November 21, 1956]**
- 102.6 No building permit shall be issued for any commercial, industrial or apartment development until the proposed plan for vehicular access thereto shall have been first approved by the Baltimore County Department of Permits and Development Management. **[Resolution, November 21, 1956]**
- 102.7 Where development of a property includes both a special exception and a residential subdivision, the area allocated for use as a special exception shall not be included in the calculation of residential density. **[Bill No. 74-2000]**

Section 103
Application of Zoning Regulations¹
[BCZR 1955]

- 103.1 These regulations shall apply as of the date of their adoption but the provisions pertaining to use, height, area and density of population shall not apply to any development, subdivision or parcel of land, the preliminary plan for which was

¹ Editor's Note: Section 4 of Bill No. 24-2006, a bill which amended Article 32, Planning, Zoning and Subdivision Control, of the Baltimore County Code 2003, stated as follows: "This Act is adopted independently of Section 103 of the Baltimore County Zoning Regulations so that it supersedes and abrogates the rights to the vesting of a development that would otherwise accrue from the zoning or development regulations or other County laws."

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

1A04.1 General provisions.

A. Legislative statement of findings.

1. Declaration of findings. It is found that:

- a. The rural-residential development that has occurred in Baltimore County heretofore has been of a scattered and generally disorderly nature;
- b. This form of development constitutes a wasteful use of land and is fiscally expensive to serve with respect to the provision of basic services;
- c. In some cases lot sizes are inadequate to assure long-term adequacy of on-lot sewer and water systems;
- d. That unless measures are implemented to assure more rational growth patterns, including adequate lot size, undue financial hardships will be placed on Baltimore County and the life, safety and general welfare of the citizens of the county will be adversely affected;
- e. That specific areas which are highly suitable for rural-residential development do exist; and
- f. That these areas are adequate to accommodate anticipated future growth in the rural area and that future growth should be directed to these areas.

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

1. Provide for rural-residential development in suitable areas in which basic services are not anticipated.
2. Eliminate scattered and generally disorderly patterns of future rural-residential development.
3. Assure that encroachments onto productive or critical natural resource areas will be minimized.
4. Provide a minimum lot size which is sufficient to provide adequate area for the proper functioning of on-lot sewer and water systems.

1A04.2 Use regulations.

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

1. Churches or other buildings for religious worship including church schools.
2. Dwellings, one-family detached.

IN THE MATTER OF
THE APPLICATION OF
BRIAN P. AND ROBIN L. ZNAMIROWSKI
- LEGAL OWNERS / PETITIONERS FOR
SPECIAL HEARING AND VARIANCE ON
PROPERTY LOCATED ON THE NW/S BART
ALLEN LANE, 755' NW OF E DEVONFIELD
DRIVE (4803 BART ALLEN LANE)

11th ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. 07-332-SPHA
*

* * * * *

OPINION

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

Testimony and Evidence

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

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

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

* * * * *

OPINION

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

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

IN THE MATTER OF: * BEFORE THE
 CHRISTOPHER & CHARLOTTE OKTAVEC * COUNTY BOARD OF APPEALS
 Legal Owners/Petitioners * OF
 1322 Goose Neck Road * BALTIMORE COUNTY
 15th Election District * Case No. 08-132-SPH
 * June 18, 2008

* * * * *

The above-entitled matter came on for hearing
 before the County Board of Appeals of Baltimore County, at
 Hearing Room #3, Second Floor, Jefferson Building, 105 W.
 Chesapeake Avenue, Towson, Maryland 21204, at 10 a.m.,
 June 18, 2008.

* * * * *

ORIGINAL

Reported by: Carolyn E. Peatt

1 IN THE MATTER OF: * BEFORE THE
2 CHRISTOPHER & CHARLOTTE OKTAVEC * COUNTY BOARD OF APPEALS
3 Legal Owners/Petitioners * OF
4 1322 Goose Neck Road * BALTIMORE COUNTY
5 15th Election District * Case No. 08-132-SPH
6 * September 25, 2008

7 * * * * *

8 The above-entitled matter came on for hearing
9 before the County Board of Appeals of Baltimore County, at
10 Hearing Room #3, Second Floor, Jefferson Building, 105 W.
11 Chesapeake Avenue, Towson, Maryland 21204, at 10 a.m.,
12 September 25, 2008.

13 * * * * *

14
15
16
17
18 ORIGINAL
19
20

21 Reported by: Carolyn E. Peatt



BALTIMORE COUNTY

MARYLAND

JAMES T. SMITH, JR.
County Executive

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: # 08-132-SPH
1322 Goose Neck Road
N/east side of Goose Neck Road, 1450 ft. n/east of Miami Beach Road
15th Election District
6th Councilmanic District
Legal Owner(s): Christopher & Charlotte Oktavec
Special Hearing: to approve in-law living quarters in an accessory building and to amend the order and plan in case 88-383-A and remove any restriction involving the in-law quarters use.

Hearing: November 7, 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 10/762 Oct. 23 153006

CERTIFICATE OF PUBLICATION

10/25/2007

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 10/23/2007.

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

J. Wilkinson

LEGAL ADVERTISING

Zoning Review | County Office Building

111 West Chesapeake Avenue, Room 111 | Towson, Maryland 21204 | Phone 410-887-3391 | Fax 410-887-3048
www.baltimorecountymd.gov

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

No. 00959

Date: 9/13/07

PAID RECEIPT

BUSINESS RECEIPT TIME 9/17/2007 9/15/2007 14:38:05

Fund	Agcy	Orgn	Sub Orgn	Rev Source	Sub Rev	Rept Catg	BS Acct	Amount
001	006			450				65.00

Total: 65.00

Rec From: OCT+MISC

For: RES SPH 1322 GOOSE NECK RD

DISTRIBUTION

WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

**CASHIER'S
VALIDATION**

302 MAIL JPM JE
RECEIPT # 535107 9/13/2007
5 BUS BUDGET VERIFICATION
000959
Receipt for \$65.00
\$65.00 CA
Baltimore County, Maryland

CERTIFICATE OF POSTING

RE: Case No: 08-132-SPH

Petitioner/Developer: CHRISTOPHER
CHARLOTTE OKTAVEC

Date Of Hearing/Closing: 11/2/07

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

Attention:

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property at 1322 GOOSE NECK ROAD

ZONING NOTICE

CASE # 08-132-SPH

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

PLACE: 400 N. 1ST AVENUE, TOMBALL 28004
DATE AND TIME: APRIL 27, 1968 7, 2009
AT 11:30 A.M.
REQUEST: SPECIAL HEARING TO ADDRESS 10-LAW LIVING
QUARTERS IN AN APARTMENT
BUILDING AND TO JUDGE THE OTHER TWO DWELLING CASES
IS-333-A AND FEMINA ABUSE PROTECTION INVOLVING THE
IN-LAW QUARTERS USE.

FOR INFORMATION OF THE OFFICE OF THE ATTORNEY GENERAL, THE FOLLOWING INFORMATION
IS SUBMITTED FOR YOUR INFORMATION: (1) THE
INVESTIGATION OF THE FBI HAS REVEALED THAT THE
FOLLOWING INFORMATION IS AVAILABLE:

October 22, 2007
(Month, Day, Year)

Sincerely,

Signature of sign Poster and Date)

Martin Ogle

Sign Poster

16 Salix Court

Address

Balto. Md 21220

(443-629 3411)

TO: PATUXENT PUBLISHING COMPANY
Tuesday, October 23, 2007 Issue - Jeffersonian

Please forward billing to:

Chris Oktavec
1322 Goose Neck Road
Baltimore, MD 21220

410-335-3737

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: 08-132-SPH

1322 Goose Neck Road

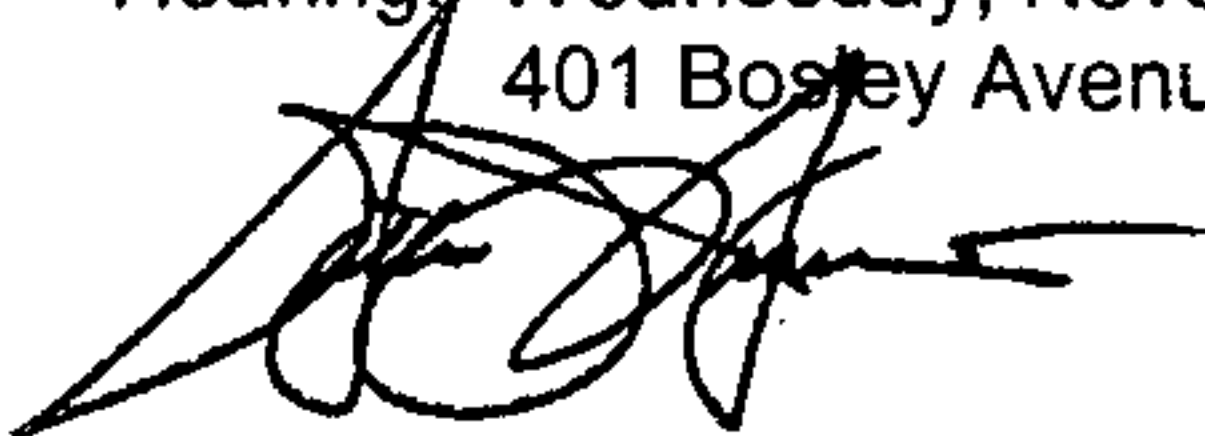
N/east side of Goose Neck Road, 1450 ft. n/east of Miami Beach Road

15th Election District – 6th Councilmanic District

Legal Owners: Christopher & Charlotte Oktavec

Special Hearing to approve in-law living quarters in an accessory building and to amend the order and plan in case 88-383-A and remove any restriction involving the in-law quarters use.

Hearing: Wednesday, November 7, 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.

**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: 08 132 SPH
Petitioner: x OKTAVEC
Address or Location: x 1322 GOOSE NECK RD

PLEASE FORWARD ADVERTISING BILL TO:

Name: Chris Oktavec
Address: 1322 Goose Neck Rd.
Baltimore, MD 21220
Telephone Number: 410-335-3737



BALTIMORE COUNTY

M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

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

November 1, 2006

Christopher G. Oktavec
Charlotte A. Oktavec
1322 Goose Neck Road
Baltimore, Maryland 21220

Dear Mr. Christopher and Charlotte Oktavec

RE: Case Number: 08-132-SPH 1322 Goose Neck Road

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

A handwritten signature in black ink, reading "W. Carl Richards, Jr." in a cursive style.

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR:rjc
Enclosures

c: Peoples Council



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

State Highway
Administration

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

Maryland Department of Transportation

Date: SEPT. 26, 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. 8-132-SPH
1322 GOOSE NECK ROAD
OKTAVEC PROPERTY
SPECIAL HEARING

Dear Ms. Matthews:

Thank you for the opportunity to review your referral request on the subject of the above captioned. We have determined that the subject property does not access a State roadway and is not affected by any State Highway Administration projects. Therefore, based upon available information this office has no objection to Baltimore County Zoning Advisory Committee approval of Item No. 8-132-SPH.

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,

^{F012} Steven D. Foster, Chief
Engineering Access Permits
Division

SDF/MB

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

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

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: October 1, 2007

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

SUBJECT: Zoning Advisory Committee Meeting
For October 1, 2007
Item No. 08-132

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

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

The flood protection elevation for this site is 11.4 feet.

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

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

The building engineer shall require a permit for this project.

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

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

DAK:CEN:clw

cc: File

ZAC-ITEM NO 08-132-10012007.doc

TB
11-7-07

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



RECEIVED
NOV 02 2007

BY:

TO: Timothy M. Kotroco

FROM: Dave Lykens, DEPRM - Development Coordination *JWL*

DATE: November 2, 2007

SUBJECT: Zoning Item # 08-132-SPH
Address 1322 Goose Neck Road
(Oktavec Property)

Zoning Advisory Committee Meeting of September 24, 2007

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

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

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

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

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

Additional Comments:

This property is within a Limited Development Area (LDA) and Buffer Management Area (BMA), and must meet all LDA & BMA requirements, including impervious surface limits and 15% afforestation.

Reviewer: Regina Esslinger

Date: 10/30/07

TB 11/7

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: November 5, 2007

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

RECEIVED
NOV 06 2007

BY:

SUBJECT: Zoning Advisory Petition(s): Case(s) 08-132

The Office of Planning has reviewed the above referenced case(s) and has no comments to offer.

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

Prepared By:

R. Bruce Arly

Division Chief:

Lynn Lauham / PMS

rbs

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: November 5, 2007

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

SUBJECT: Zoning Advisory Petition(s): Case(s) 08-132

The Office of Planning has reviewed the above referenced case(s) and has no comments to offer.

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

Prepared By:

R. Bruce Arly

Division Chief:

Lynn Lanham / rbs

rbs



BALTIMORE COUNTY
M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, Director
February 19, 2008
Department of Permits and
Development Management

Christopher Oktavec
Charlotte Oktavec
1322 Goose Neck Road
Baltimore, MD 21220

Dear Mr. & Mrs. Oktavec:

RE: Case: 08-132-SPH, 1322 Goose Neck Road

Please be advised that an appeal of the above-referenced case was filed in this office on January 5, 2008 by Ray Rohde. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

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

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

Sincerely,

Handwritten signature of Timothy Kotroco.
Timothy Kotroco
Director

TK:klm

c: William J. Wiseman III, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Ray Rohde, 1320 Goose Neck Road, Baltimore 21220

RE: PETITION FOR SPECIAL HEARING * BEFORE THE
1322 Goose Neck Road; NE/S Goose Neck
Road, 1,450' NE Miami Beach Road * ZONING COMMISSIONER
15th Election & 6th Councilmanic Districts
Legal Owners: Christopher & Charlotte Oktavec* FOR
Petitioner(s) * BALTIMORE COUNTY
* 08-132-SPH

* * * * *

ENTRY OF APPEARANCE

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

Peter Max Zimmerman
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County
Carole S. Demilio
CAROLE S. DEMILIO
Deputy People's Counsel
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of October, 2007, a copy of the foregoing Entry of Appearance was mailed to, Chris & Charlotte Oktavec, 1322 Goose Neck Road, Baltimore, MD 21220, Petitioner(s).

RECEIVED

OCT 02 2007

Per

Peter Max Zimmerman
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

CASE NAME OK + ave.
CASE NUMBER 08132 SFH
DATE 11-6-07

PETITIONER'S SIGN-IN SHEET

[illegible]

DATE _____

21220 RC Rohde@Perbank.com

January 5, 2008

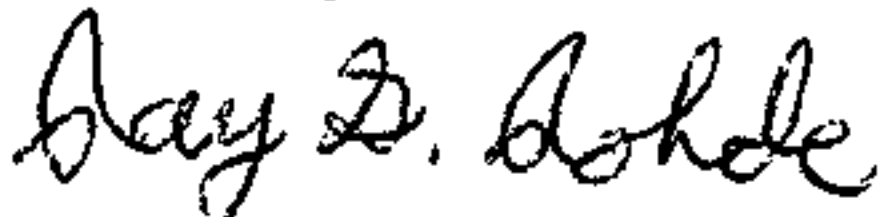
Department of Permits and Development Management
Attn. Ms. Kristen Matthews, Room 111
111 West Chesapeake Avenue
Towson, Maryland 21204

Dear Ms. Matthews:

Please accept this letter as my intention and desire to appeal the decision of the Deputy Zoning Commissioner in **Case No. 08-132-SPH**.

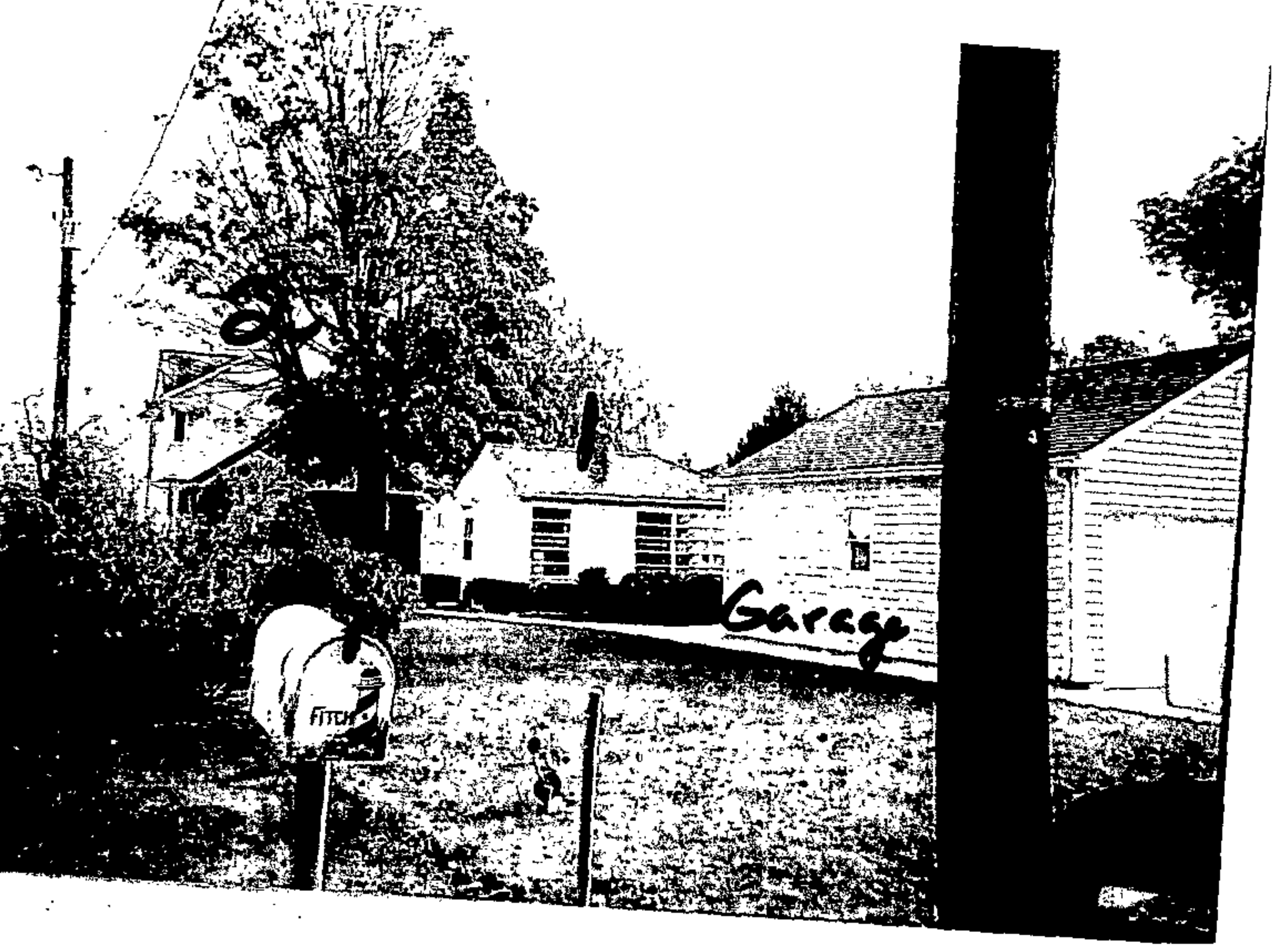
Enclosed is a check in the amount of \$400.00 to begin the appellant process.

Sincerely,



Ray G. Rohde
1320 Goose Neck Road
Baltimore, Maryland 21220





October 30, 2007

Mr. Timothy M. Kotroco, Director
Permits and Development Management
County Office Building
111 West Chesapeake Avenue, Suite 105
Towson, Maryland, 21204

Dear Mr. Kotroco:

This letter is in reference to zoning request 8-132-SPH at 1322 Goose Neck Road.

The above referenced property is located in Bowleys Quarters and is waterfront property. A zoning change request is being made by the property owners referenced above to use an accessory building as a living quarters. The accessory building is approximately 80 feet from the residents of the adjacent properties. The second floor windows of the proposed living quarters have a direct line of sight into the rear bedroom windows of the property at 1320 Goose Neck Road. Granting the requested zoning change will have a negative impact on my privacy and my ability to enjoy the property. In addition, the living quarters will reduce the property values in the neighborhood, especially the adjacent properties, create a greater risk of fire and the risk of fire spreading to other properties and increase traffic. Goose Neck Road is a substandard dead end road (approximately 17 feet wide). In order for two cars to safely pass one another, someone has to pull over to let the other car pass.

Attached is a petition **against the zoning change** signed by 10 individual, representing six households that are within 300 feet of the property requesting the zoning change. Both of the adjacent property owners that will be impacted the most are **against** the zoning change.

We respectfully request that zoning request 8-132-SPH be denied in its entirety.

Sincerely,



Ray G. Rohde

attachment

PROTESTANT' S

EXHIBIT NO. 1

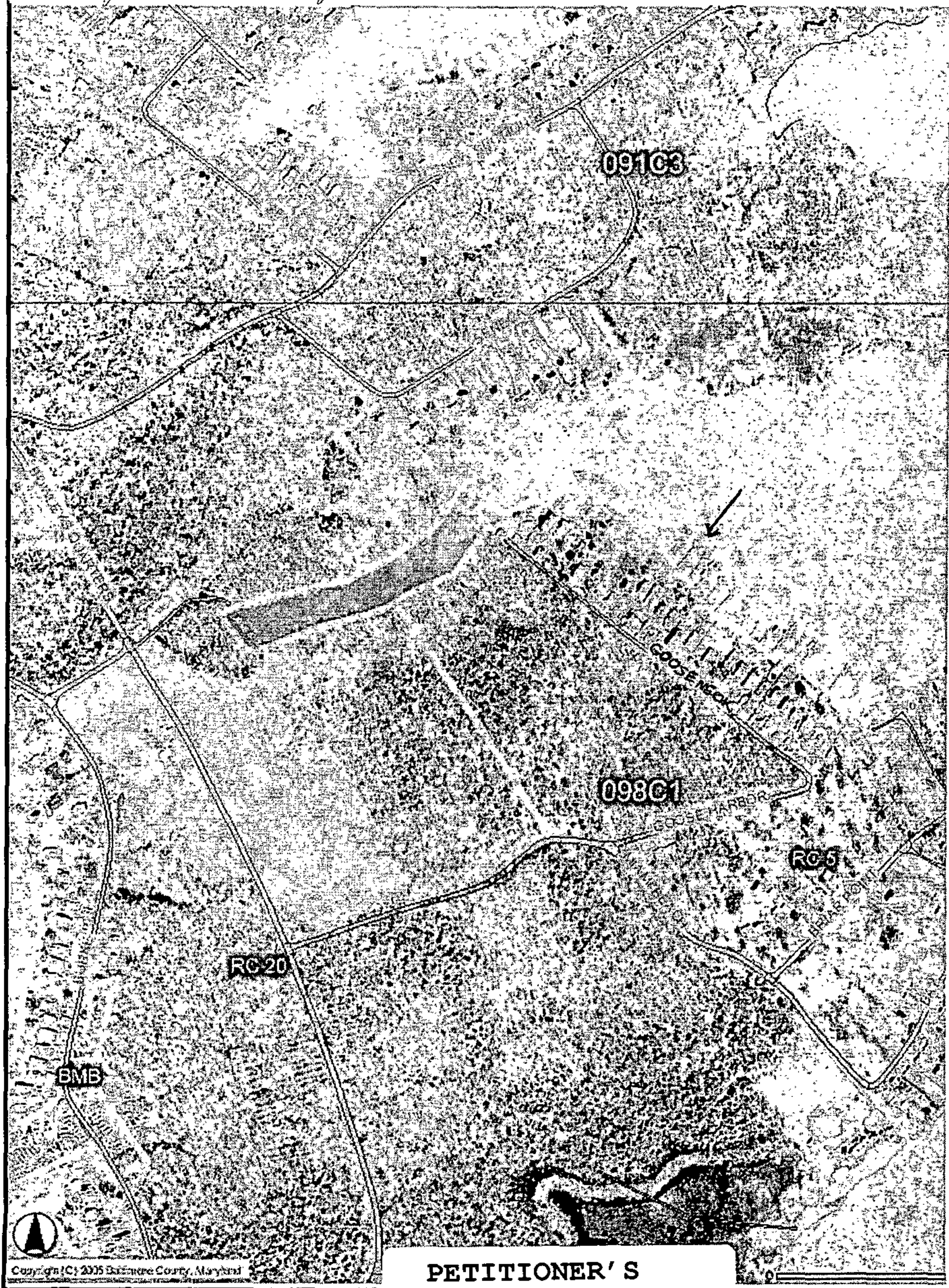
Petition

We the undersigned are against zoning request 8-132-SPH at 1322 Goose Neck Road to allow living quarters in an accessory building because it is not in the best interests of the community. Allowing living quarters in an accessory building will:

1. Decrease property values, especially the adjacent properties.
2. Be inconsistent with the Bowleys Quarters Community Action Plan.
3. Increase the risk of fire and the associated risk of fire spreading to other dwellings and/or accessory buildings.
4. Increase traffic on Goose Neck Road which is a substandard and dead end road. In order to safely pass each other, one car has to pull off of the road.
5. Infringe on the privacy of the adjacent property owners, thereby taking away the right of the property owners to enjoy their property.

<u>Date</u>	<u>Name</u>	<u>Address</u>
* 10/27/07	<u>Gay B Rohde</u>	<u>1320 Goose Neck Road</u>
* 10/27/07	<u>Quincy Rohde</u>	<u>1320 Goose Neck Road</u>
10/27/07	<u>Earl Bighan</u>	<u>1316 GOOSE NECK RD.</u>
10/27/07	<u>George M. Howell</u>	<u>1310 Goose Neck Rd</u>
* 10/27/07	<u>Theresa Harper</u>	<u>1324 Goose Neck Rd</u>
* 10/27/07	<u>[Signature]</u>	<u>1324 Goose Neck Rd</u>
10/27/07	<u>Stephanie J. [Signature]</u>	<u>1328 Goose Neck Rd</u>
10/27/07	<u>Wayne Holm</u>	<u>1334 GOOSE NECK RD.</u>
10/27/07	<u>Denise J. Holm</u>	<u>1334 Gooseneck Road</u>
10/27/07	<u>[Signature]</u>	<u>1328 GOOSE NECK RD.</u>
* Adjacent Property Owners		

Copy of zoning map 200' scale



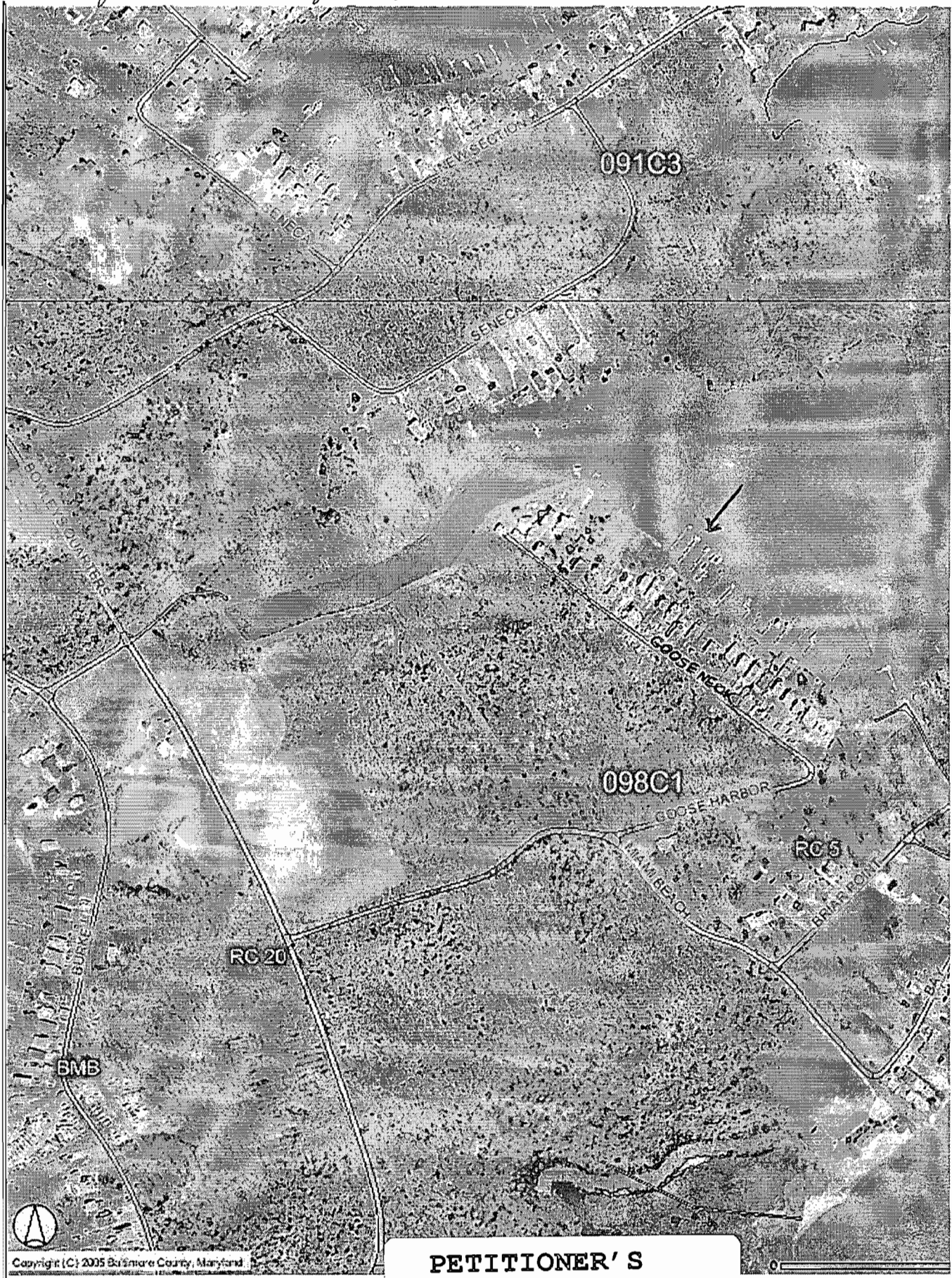
PETITIONER'S

EXHIBIT NO.

3

132

Copy of zoning map 200' scale



PETITIONER'S

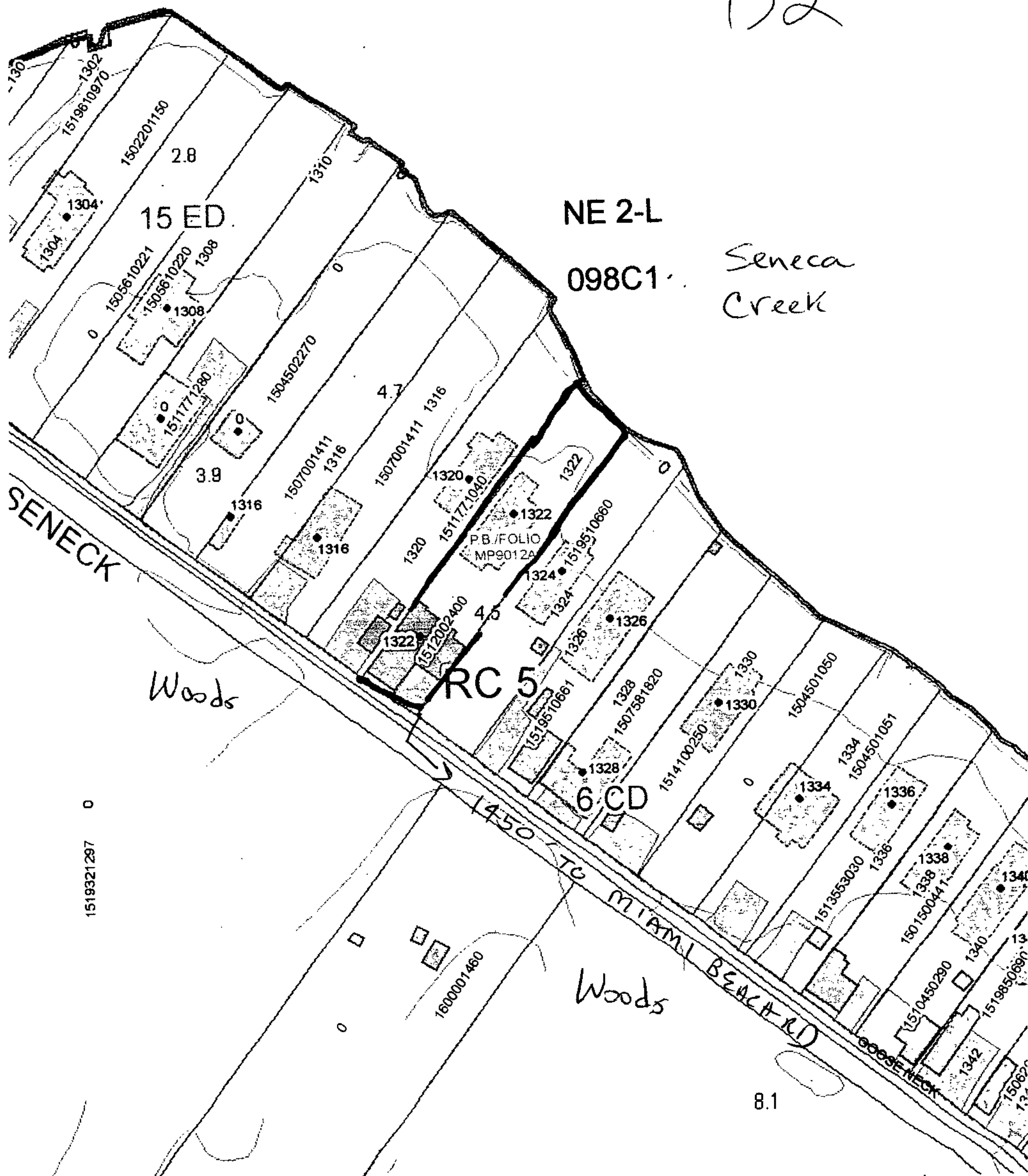
EXHIBIT NO.

3

132



~~#~~ 132



132

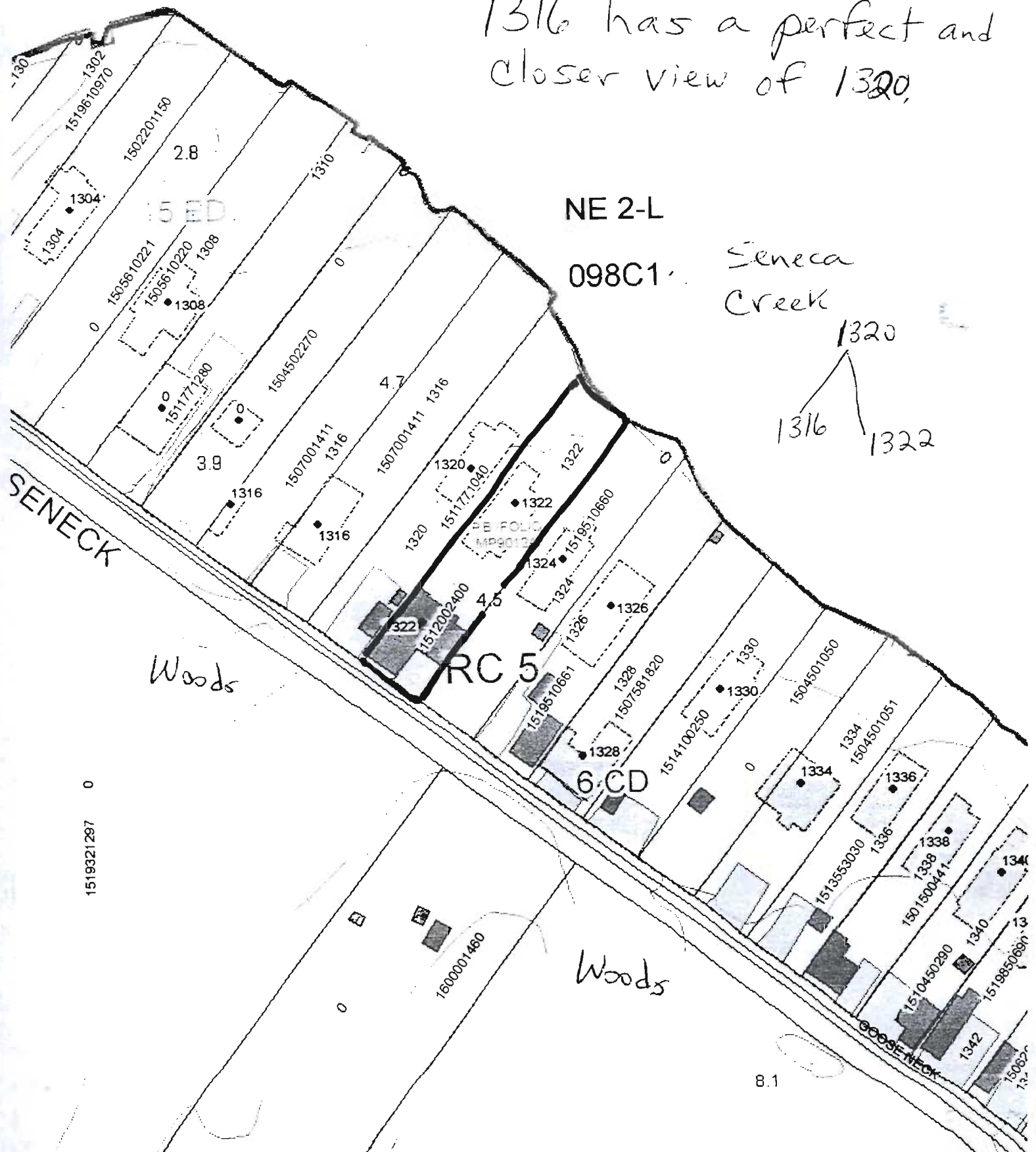


2

03A Petitioners 12

1"=100'

1316 has a perfect and
closer view of 1320,



PLAT TO ACCOMPANY PETITION FOR ZONING ☐ VARIANCE ☒ SPECIAL HEARING

CBA #1 Petitioners

PROPERTY ADDRESS 1322 Goose Neck Rd

SEE PAGES 5 & 6 OF THE CHECKLIST FOR ADDITIONAL REQUIRED INFORMATION

SUBDIVISION NAME Bowleys Quarters

PLAT BOOK # 9 FOLIO # 12 LOT # 245 SECTION N/A

OWNER Christopher + Charlotte
OKtavec OKtavec

1320 Goose Neck Rd

Vicky + Ray Rohde

15-11-771040

14870/491

Carl + Theresa Harp

1324 Goose Neck Rd

15-19-510660

13294/617

1322 Goose Neck Rd

Chris + Charlotte OKtavec

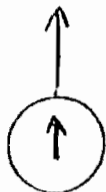
15-12-002400

7204/385

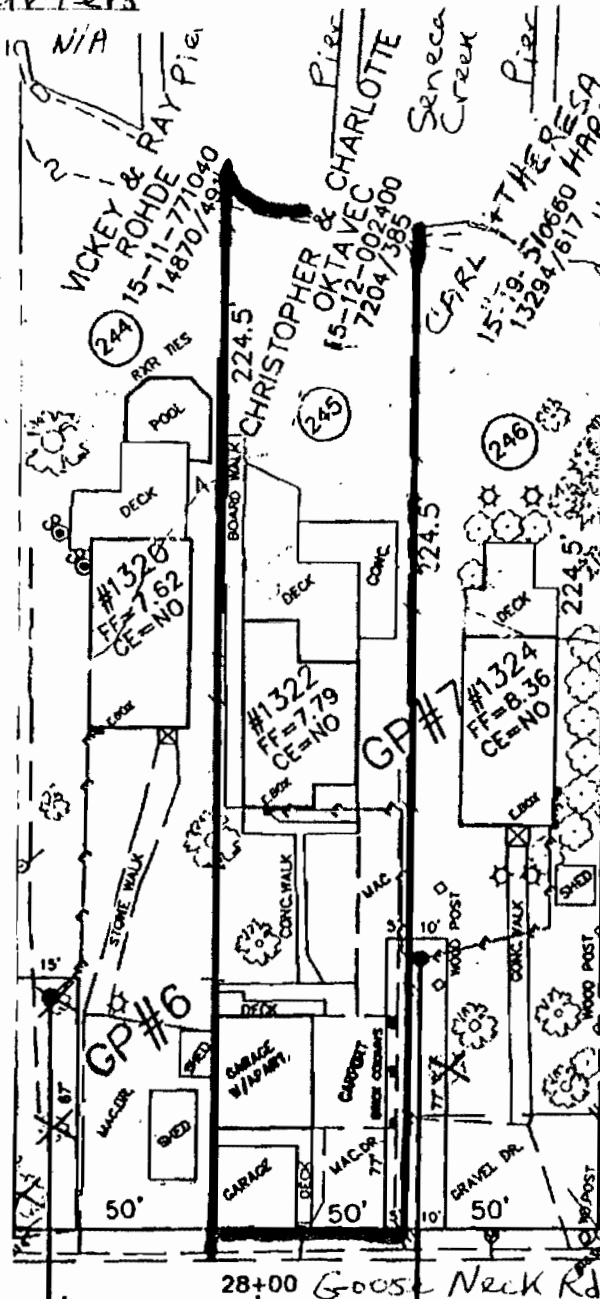
15-12-002400
15-19-510660

Glen A. Keller
Professional Engineer

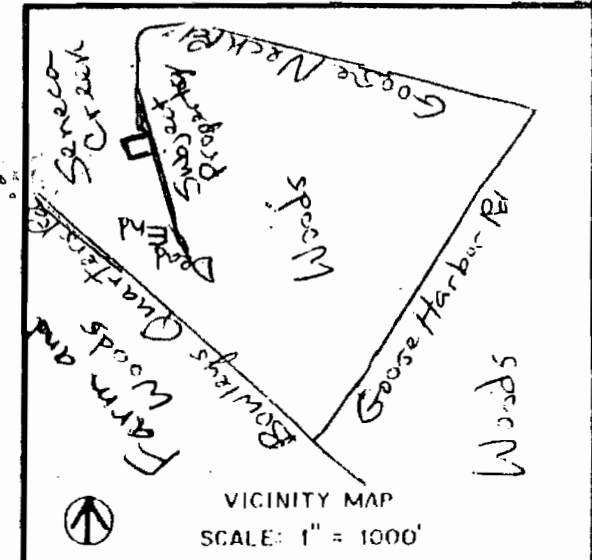
Prepared By: Engineer
Baltimore County Dept. of
Public Works
Bureau of Engineering
and Construction
for Miami Beach low
pressure sanitary
sewer system



NORTH



SCALE OF DRAWING: 1" = 50'



LOCATION INFORMATION

ELECTION DISTRICT 15
COUNCILMANIC DISTRICT 6
1" = 200' SCALE MAP # 2000-0368
ZONING RC5
LOT SIZE .25 11,225
ACREAGE SQUARE FEET
SEWER ☒ PUBLIC ☐ PRIVATE
WATER ☒ PUBLIC ☐ PRIVATE
CHESAPEAKE BAY CRITICAL AREA ☒ YES ☐ NO
100 YEAR FLOOD PLAIN ☒ YES ☐ NO
HISTORIC PROPERTY/BUILDING ☐ YES ☒ NO
PRIOR ZONING HEARING 88-383A

ZONING OFFICE USE ONLY
REVIEWED BY ITEM # CASE #

PETITIONER'S

EXHIBIT NO. _____

☒ SPECIAL HEARING

ADDITIONAL REQUIRED INFORMATION

PLAT TO ACCOMPANY PETITION FOR

PROPERTY ADDRESS 1322 Goose Neck Rd

SUBDIVISION NAME Bowleys Quarters

PLAT BOOK # 9 FOLIO # 12 LOT # 245 SECTION N/A

OWNER Christopher + Charlotte
OKtavec OKtavec

NEIGHBORS:

1320 Goose Neck Rd

Vicky + Ray Rohde

15-11-771040

14870/491

Carl + Theresa Harp

1324 Goose Neck Rd

15-19-510660

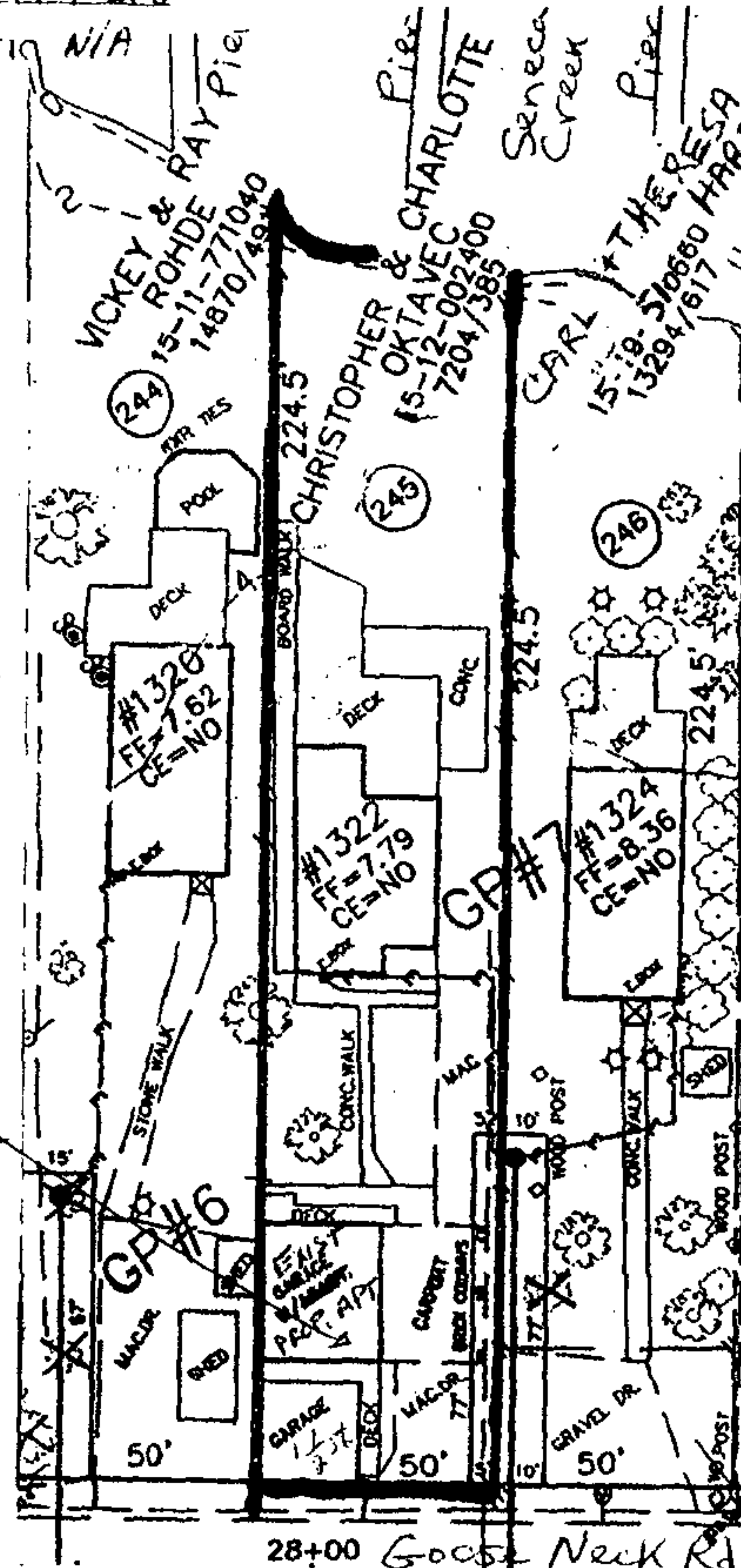
13294/617

1322 Goose Neck Rd

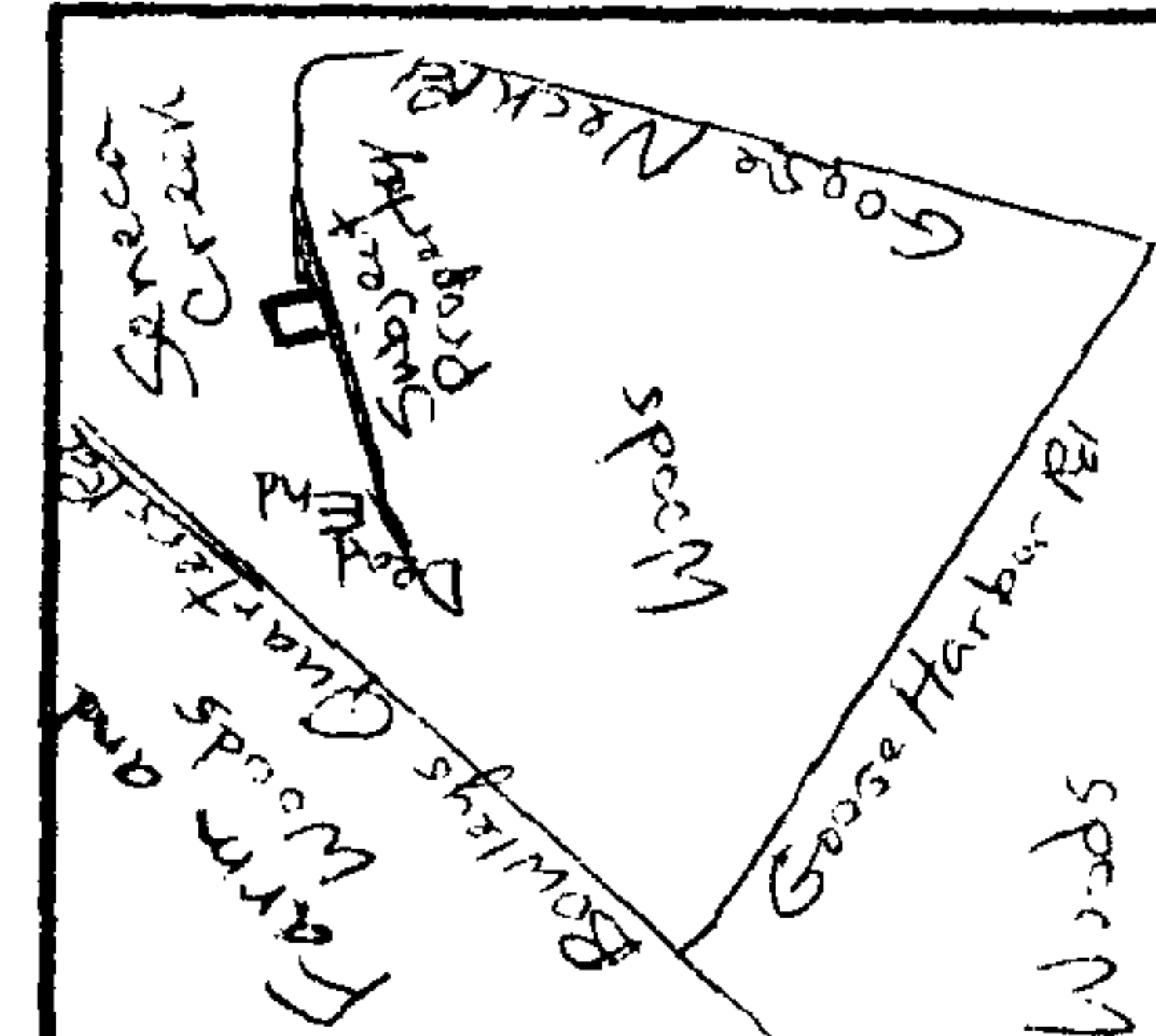
Chris + Charlotte OKtavec

15-12-002400

7204/385



SCALE OF DRAWING: 1" = 50'



VICINITY MAP
SCALE: 1" = 1000'

LOCATION INFORMATION

ELECTION DISTRICT 15

COUNCILMANIC DISTRICT 6

1" = 200' SCALE MAP # 2000-0368098C1

ZONING RC5

LOT SIZE .25 11,225
ACREAGE SQUARE FEET

	PUBLIC	PRIVATE
SEWER	☒	☐
WATER	☒	☐

	YES	NO
CHESAPEAKE BAY CRITICAL AREA	☒	☐
100 YEAR FLOOD PLAIN	☒	☐
HISTORIC PROPERTY/BUILDING	☐	☒
PRIOR ZONING HEARING	<u>88-383A</u>	

ZONING OFFICE USE ONLY
REVIEWED BY _____ ITEM # _____ CASE # _____

JL 08-132-SPH

1.450' TO MIAMI BEACH RD.

SPT FOR
IN LAW
APARTMENT
IN AN EXISTING
GARAGE.

Glen A. Keller
Professional

Prepared By: Engineer
Baltimore County Dept. of
Public Works
Bureau of Engineering
and Construction
for Miami Beach low
pressure sanitary
sewer system

NORTH

PREPARED BY sewer system

PLAT TO ACCOMPANY PETITION FOR ZONING ☐ VARIANCE ☒ SPECIAL HEARING

PROPERTY ADDRESS 1322 Goose Neck Rd

SEE PAGES 5 & 6 OF THE CHECKLIST FOR ADDITIONAL REQUIRED INFORMATION

SUBDIVISION NAME Bowleys Quarters

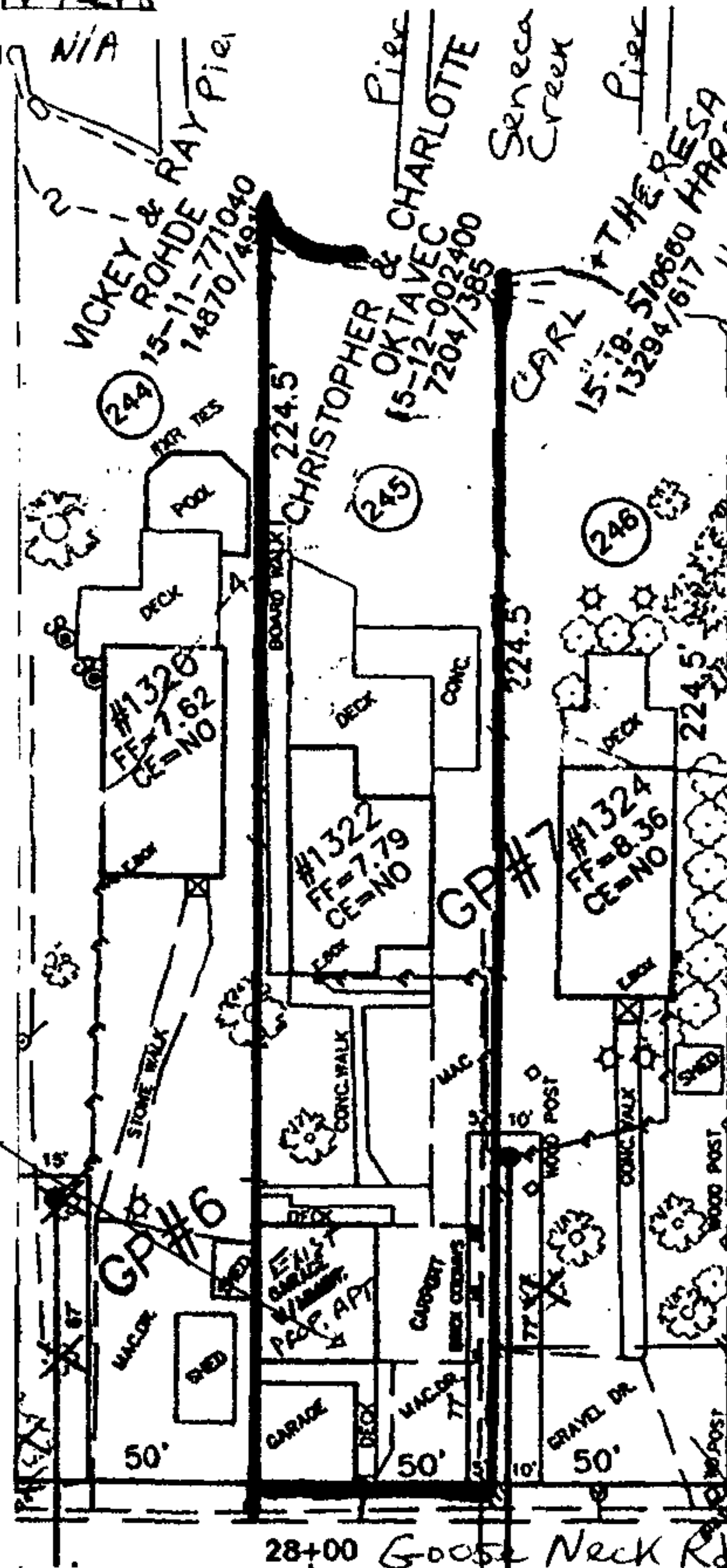
PLAT BOOK # 9 FOLIO # 12 LOT # 245 SECTION N/A

OWNER Christopher + Charlotte
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13294/617

1322 Goose Neck Rd
Chris + Charlotte OKtavec
15-12-002400
7204/385



SPH FOR
IN LAW
APARTMENT
IN AN EXISTING
GARAGE.

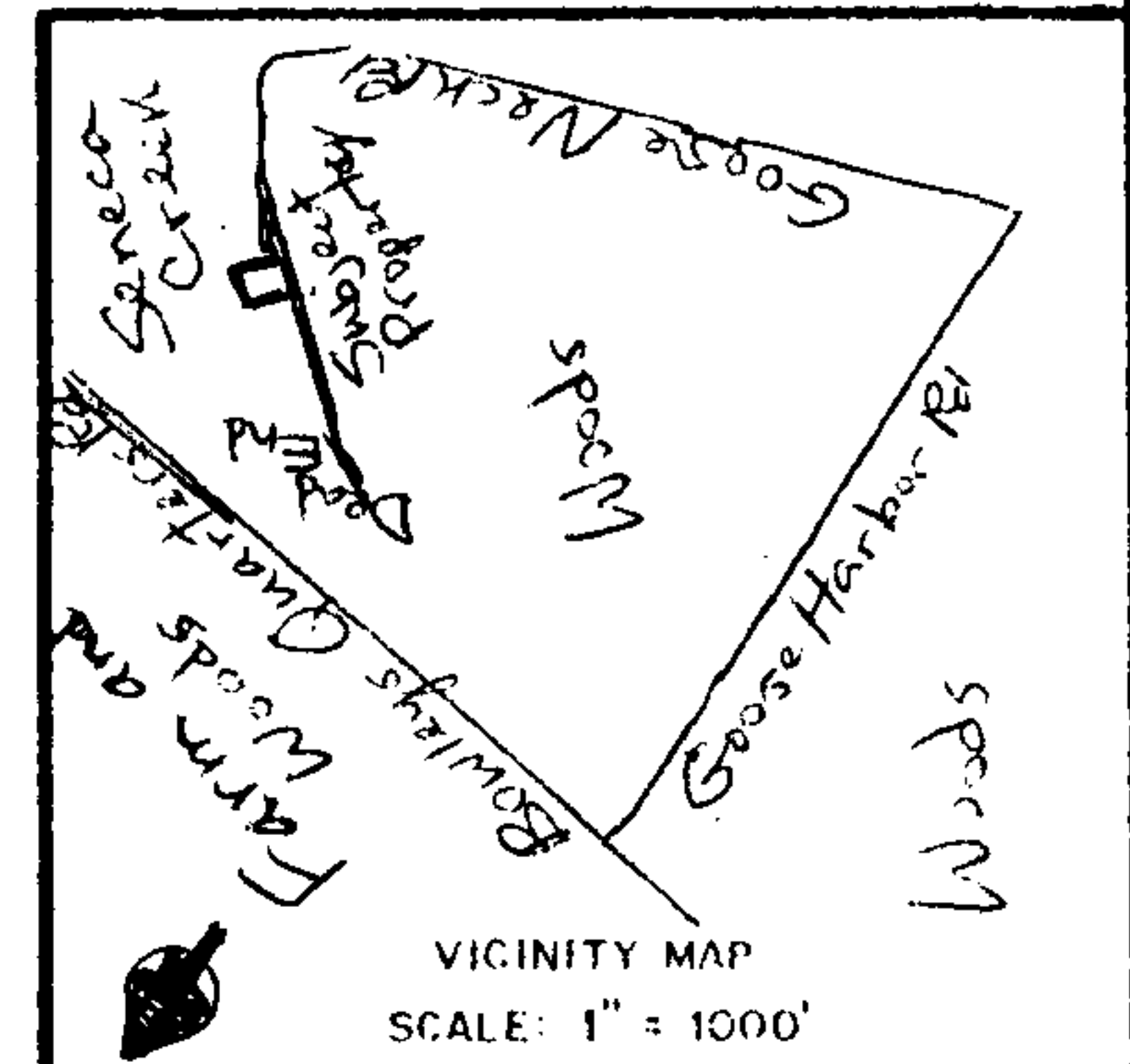
Glen A. Keller
Professional

Prepared By: Engineer
Baltimore County Dept. of
Public Works
Bureau of Engineering
and Construction
for Miami Beach low
pressure sanitary
sewer system



NORTH

SCALE OF DRAWING: 1" = 50'



LOCATION INFORMATION

ELECTION DISTRICT 15
COUNCILMANIC DISTRICT 6
1"=200' SCALE MAP # 2000-0368098C1
ZONING RC5

LOT SIZE .25 11,225
ACREAGE SQUARE FEET

	PUBLIC	PRIVATE
SEWER	☒	☐
WATER	☒	☐

	YES	NO
CHESAPEAKE BAY CRITICAL AREA	☒	☐
100 YEAR FLOOD PLAIN	☒	☐
HISTORIC PROPERTY/BUILDING	☐	☒
PRIOR ZONING HEARING	<u>88-383 A</u>	

ZONING OFFICE USE ONLY
REVIEWED BY JL ITEM # 08-132-SPH CASE #

1,450' TO MIAMI BEACH RD.