

IN RE: PETITION FOR VARIANCE
SW corner of Hinton Avenue and
5th Street
15th Election District
7th Councilmanic District
(2808 5th Street)

Mark Fabiszak
Petitioner
William Robert Aburn
Contract Purchaser

* BEFORE THE
* DEPUTY ZONING
* COMMISSIONER
* FOR BALTIMORE COUNTY
*
*
* Case No. 08-200-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Variance filed by the legal owner of the subject property, Mark Fabiszak, and the contract purchaser, William Robert Aburn. Variance relief is requested from Sections 1B02.3.C.1 and 303.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) for the following:

- To permit a side street setback of 10 feet in lieu of the required 25 feet for a new dwelling; and
- To permit a lot width of 50 feet in lieu of the required 55 feet; and
- To permit an interior side yard setback of seven feet in lieu of the required 7.5 feet and a side street setback of seven feet in lieu of the required 18.75 feet for an open deck.

The subject property and the requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the variance request was Petitioner William Robert Aburn, the contract purchaser. Also appearing was David Billingsley with Central Drafting & Design, Inc., the consultant who prepared the site plan.

Testimony and evidence offered revealed that the subject property is a rectangular-shaped parcel containing approximately 7,500 square feet or 0.127 acre, more or less, and zoned D.R.5.5.

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1-29-08
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The property is located at the corner of Hinton Avenue and 5th Street, south of Back River, in the Millers Island area of Baltimore County. The property is currently unimproved. As shown on the SDAT Real Property Data Search which was marked and accepted into evidence as Petitioner's Exhibit 2, Mr. Fabiszak is the current owner of the property. The deed which was marked and accepted into evidence as Petitioner's Exhibit 3 shows that one-half interest in the property was gifted from Margaret Schilpp, his mother, to Mr. Fabiszak in October 2003, making Mr. Fabiszak the sole owner of the property. The property, referred to in previous deeds as Lot 78, has been known as an existing lot of record since at least 1965 when it was conveyed as a single lot on July 1, 1965, as shown on the deed which was marked and accepted into evidence as Petitioner's Exhibit 4.

The property was at one time improved with a dwelling, as shown on the sewer plan which was marked and accepted into evidence as Petitioner's Exhibit 5. That plan shows a dwelling located in the west side of the property, facing Hinton Avenue. Interestingly, as shown on Petitioner's Exhibit 5, at one time, a portion of the dwelling encroached on adjacent Lot 77. Mr. Billingsley indicated that an informal agreement existed between the owners of Lot 77 and Lot 78 to allow the previous dwelling to encroach on Lot 77, but that agreement would be extinguished upon the removal of the dwelling on Lot 78. Thereafter, the dwelling was virtually destroyed following Hurricane Isabel in September 2003. It has since been razed, leaving the property unimproved, though it has access to public water and sewer service. At this juncture, Petitioner desires to purchase the property and erect a home on the property as shown on the site plan. The lot is approximately 50 feet wide by 150 feet deep. Petitioner proposes to erect a two-story dwelling approximately 30 feet wide by 50 feet deep. The dwelling would front 5th Street and would also would have a wrap around deck 10 feet deep off the front and back and three feet deep off the sides of the dwelling.

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1-29-08

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Petitioner is in need of variance relief because although the property meets minimum area requirements, it does not meet the 55 foot minimum width requirement. In addition, in order to erect a 30 foot wide dwelling, Petitioner is in need of variance relief for a side street setback of 10 feet in lieu of the required 25 feet; moreover, in order to add a wrap around deck, Petitioner is in need of variance relief for an interior side yard setback of seven feet in lieu of 7.5 feet and a side street setback of seven feet in lieu of 18.75 feet for an open deck.

In support of the variance for the wrap around deck, Petitioner indicated that his wife is afflicted with lupus and has difficulty walking. Petitioner also added that his wife receives social security disability benefits and in anticipation of Petitioner's wife being potentially confined to a wheel chair, Petitioner is proposing a wrap around porch so his wife can move around from the front to the back of the home. Petitioner plans to install an elevator in the home as well. Also in support of the variances, Mr. Billingsley pointed out that most of the lots in Swan Point are 50 foot wide lots. The ones that are not 50 feet wide generally consist of double lots or those that have undergone lot line adjustments to meet the minimum width requirements. He indicated that none of the adjacent properties have ever been owned at the same time with the subject property so as to meet the 55 foot lot width requirement. He also indicated that the subject property is a unique parcel in that it is a corner lot and is constrained by the fact that the side yard facing Hinton Avenue must nonetheless conform to the front yard setback requirement. Finally, Mr. Billingsley indicated that Hinton Road is more akin to an alley or access road than a through street. The right-of-way is only 15 feet wide and the road itself is only about 12 to 13 feet wide, and mainly gives access to homes along the Back River.

The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. Comments received from the Office of Planning dated November 26, 2007 indicate that Petitioner does not own sufficient adjoining land to conform to the minimum width and area

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1-29-08

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requirements and therefore does meet the standards stated in Section 304.1.C of the B.C.Z.R. There also appear to be several existing undersized lots in the neighborhood. As such, that Office does not oppose Petitioner's request. The comments further indicate that building elevations shall be submitted for review and approval prior to the issuance of any building permit; the proposed dwelling shall be compatible in size, building materials, color and architectural detail as that of the existing dwellings in the area; and landscaping shall be provided along the public road. Comments received from the Bureau of Development Plans Review dated November 6, 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, and flood-resistant construction should be in accordance with the Baltimore County Building Code which adopts the International Building Code.

Comments received from the Department of Environmental Protection and Resource Management dated January 10, 2008 indicates that development of the property must comply with Chesapeake Bay Critical Area Regulations. Additional comments indicate that a maximum of 25% of the site may be covered by impervious surfaces; however, the allotted 1,875 square feet may be exceeded by 500 square feet of impervious with offsetting mitigation. Also, 15% tree cover must be provided during the permit evaluation process.

Considering the aforementioned testimony and evidence presented, I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. I also find that the imposition of zoning on this property disproportionately impacts the subject property as compared to others in the zoning district. I therefore find the property unique in a zoning sense.

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1-29-08

I further find that strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. In short, strict compliance would prevent Petitioner from erecting a dwelling that is compatible with others in the neighborhood and would essentially render an otherwise desirable property useless and unbuildable.

Finally, I find these variances can be granted in strict harmony with the spirit and intent of said regulations, and in such manner as to grant relief without injury to the public health, safety and general welfare.

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

THEREFORE, IT IS ORDERED this 29th day of January, 2008 by this Deputy Zoning Commissioner, that Petitioner's variance requests from Sections 1B02.3.C.1 and 303.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) for the following:

- To permit a side street setback of 10 feet in lieu of the required 25 feet for a new dwelling;
and
- To permit a lot width of 50 feet in lieu of the required 55 feet; and
- To permit an interior side yard setback of seven feet in lieu of their required 7.5 feet and a side street setback of seven feet in lieu of the required 18.75 feet for an open deck

be and are hereby GRANTED, subject to the following.

1. Petitioner is advised that he may apply for any required building permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. Petitioner shall submit building elevations to the Office of Planning for review and approval prior to the issuance of any building permit. The proposed dwelling shall be

~~ORDER RECEIVED FOR FILING~~

1-29-08

[Signature]

compatible in size, exterior building materials, color, and architectural detail as that of the existing dwellings in the area.

3. Petitioner shall provide landscaping along the public road (Hinton Avenue) as approved by the Office of Planning.
4. The base flood elevation for this site is 9.4 feet Baltimore County Datum. The flood protection elevation for this site is 10.4 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 the property must comply with Chesapeake Bay Critical Area Regulations. A maximum of 25% of the site may be covered by impervious surfaces; however, the allotted 1,875 square feet may be exceeded by 500 square feet of impervious with offsetting mitigation. Also, 15% tree cover must be provided during the permit evaluation process.

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


THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz

ORDER RECEIVED FOR FILING
1.29.08
BY 



BALTIMORE COUNTY
M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

THOMAS H. BOSTWICK
Deputy Zoning Commissioner

January 29, 2008

MARK FABISZAK
5012 EAST EAGER STREET
BALTIMORE MD 21205

Re: Petition for Variance
Case No. 08-200-A
Property: 2808 5th Street

Dear Mr. Fabiszak:

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 cursive script, reading "John H. Bostwick".

THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz

Enclosure

c: William Robert Aburn, 7709 Iroquois Avenue, Baltimore MD 21219
David Billingsley, Central Drafting & Design, Inc., 601 Charwood Court, Edgewood MD 21040



Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 2808 5TH STREET

which is presently zoned DR 5.5

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

SEE ATTACHED

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

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

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

Contract Purchaser/Lessee:

WILLIAM ROBERT ABURN
Name - Type or Print
Signature
7709 IROQUOIS AVE (443) 250-1982
Address
BALTO. MD. 21219
City State Zip Code

Attorney For Petitioner:

Name - Type or Print
Signature
Company
Address Telephone No.
City State Zip Code

Legal Owner(s):

MARK FABISZAK
Name - Type or Print
Signature
5012 E. EAGER ST.
Address
BALTO. MD. 21205
City State Zip Code

Representative to be Contacted:

DAVID BILLINGSLEY
CENTRAL DRAFTING & DESIGN, INC.
Name
601 CHARWOOD CT. (410) 679-8719
Address
EDGEWOOD MD. 21040
City State Zip Code

OFFICE USE ONLY

Case No. 08-200-A

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

REV 9/15/98

Reviewed By [Signature]

Date 10-29-07

1B02.3.C.1 AND 303.1 (BCZR) TO PERMIT:

1. A SIDE STREET SETBACK OF 10 FEET IN LIEU OF THE REQUIRED 25 FEET FOR A NEW DWELLING
2. A LOT WIDTH OF 50 FEET IN LIEU OF THE REQUIRED 55 FEET
3. AN INTERIOR SIDE YARD SETBACK OF 7 FEET IN LIEU OF THE REQUIRED 7.5 FEET AND A SIDE STREET SETBACK OF 7 FEET IN LIEU OF THE REQUIRED 18.75 FEET FOR AN OPEN DECK



CRITICAL * F100 ✓
Petition for Variance

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Contract Purchaser/Lessee:

WILLIAM ROBERT ABURN

Name - Type or Print

Signature

7709 IROQUOIS AVE (443) 250-1982

Address

BALTO.

City

MD.

State

Telephone No.

21219

Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address

City

State

Zip Code

Legal Owner(s):

MARK FABISZAK

Name - Type or Print

Signature

Name - Type or Print

Signature

5012 E. EAGER ST.

Address

BALTO.

City

MD.

State

Telephone No.

21205

Zip Code

Representative to be Contacted:

DAVID BILLINGSLEY

CENTRAL DRAFTING & DESIGN, INC.

Name

601 CHARWOOD CT (410) 679-8719

Address

EDGEWOOD

City

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Telephone No.

21040

Zip Code

OFFICE USE ONLY

Case No. 08-200-A

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

REV 9/15/98

Reviewed By Jim

Date 10-29-07

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CRICAL & Flood
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Contract Purchaser/Lessee:

WILLIAM ROBERT ABURN

Name - Type or Print

Signature

7709 IROQUOIS AVE (443) 250-1982

Address

BALTO.

City

MD.

State

Telephone No.

21219

Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address

City

State

Telephone No.

Zip Code

Legal Owner(s):

MARK FABISZAK

Name - Type or Print

Signature

Name - Type or Print

Signature

5012 E. EAGER ST.

Address

BALTO.

City

MD.

State

Telephone No.

21205

Zip Code

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Address

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OFFICE USE ONLY

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REV 9/15/98

Reviewed By

Date 10-29-07

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ZONING DESCRIPTION
2808 5TH STREET

Beginning at the point formed by the north side of Hinton Avenue (15 feet wide) with the west side of 5TH Street (30 feet wide), thence being all of lot 78 as shown on the plat entitled Swan Point recorded among the Baltimore County plat records in Plat Book 7 Folio 162.

Containing 7,500 square feet or 0.172 acre of land, more or less.

Being known as 2808 5TH Street. Located in the 15TH Election District, 7TH Councilmanic District of Baltimore County, Maryland.

NO. 630

PAID RECEIPT

Date: 10-29-07 10:29/2007 10/29/2007 09:46:57

DESIGNING ACTUAL THE

100

Fund	Agcy	Orgn	Sub	Rev	Source	Sub	Rept	BS	Amount	Rept
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Amount

5 THE ZEPHYRUS VERIFICATION

PT 4-23065 10/29/2017 JFLH

WILLIAM JEFFERSON

•

Recpt for \$45.00

45.00

[illegible]

\$5.00-

Billboard Forty, 1971 and

Total:

69-11111-10000

Rec:
From:

3. A-B U 2

For:

001N001

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

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

January 2, 2008

William Robert Aburn
7709 Iroquois Avenue
Baltimore, MD 21219

Dear Mr. Aburn:

RE: Case Number: 08-200-A, 2808 5th Street

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on October 29, 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:amf
Enclosures

c: People's Counsel
Mark Fabiszak 5012 E. Eager Street Baltimore 21205
David Billingsley Central Drafting & Design, Inc. 601 Charwood Ct. Edgewood 21040

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: November 26, 2007

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

SUBJECT: Zoning Advisory Petition(s): Case(s) 8-200- Variance

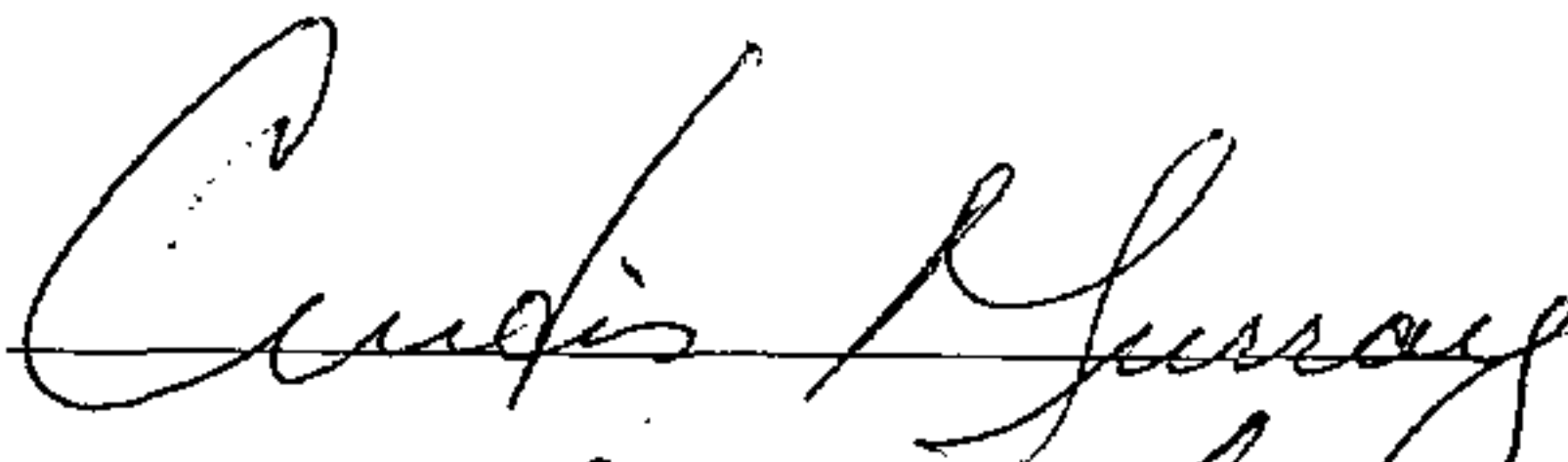
The Office of Planning has reviewed the subject request and has determined that the petitioner does not own sufficient adjoining land to conform to the minimum width and area requirements and therefore does not meet the standards stated in Section 304.1.C of the BCZR. However, there appears to be several existing undersized lots in the neighborhood. As such, this office does not oppose the petitioner's request.

If the petitioner's request is granted, the following conditions shall apply to the proposed dwelling:

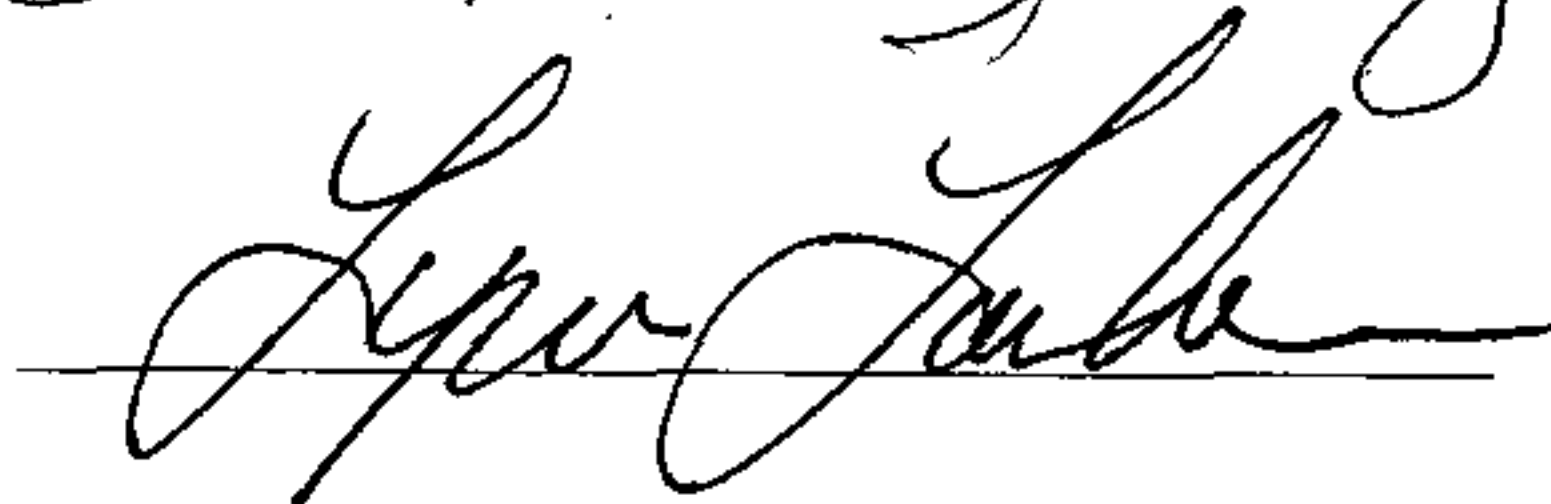
1. Submit building elevations to this office for review and approval prior to the issuance any building permit. The proposed dwelling shall be compatible in size, exterior building materials, color, and architectural detail as that of the existing dwellings in the area.
2. Provide landscaping along the public road.

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

Prepared By:



Division Chief:



CM/LL



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: 11/6/2007

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

RE: Baltimore County
Item No. B-200-A
2808 5th STREET
BUZZ PROPERTY
VARIANCE

Dear Ms. Matthews:

Thank you for the opportunity to review your referral request on the subject of the above captioned. We have determined that the subject property does not access a State roadway and is not affected by any State Highway Administration projects. Therefore, based upon available information this office has no objection to Baltimore County Zoning Advisory Committee approval of Item No. B-200-A.

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

Very truly yours,

Foster Steven D. Foster, Chief
Engineering Access Permits
Division

SDF/MB

PLEASE PRINT CLEARLY

CASE NAME Z808 5TH ST.
CASE NUMBER 08-200 A
DATE 1/7/08

PETITIONER'S SIGN-IN SHEET

[illegible]

Case No.:

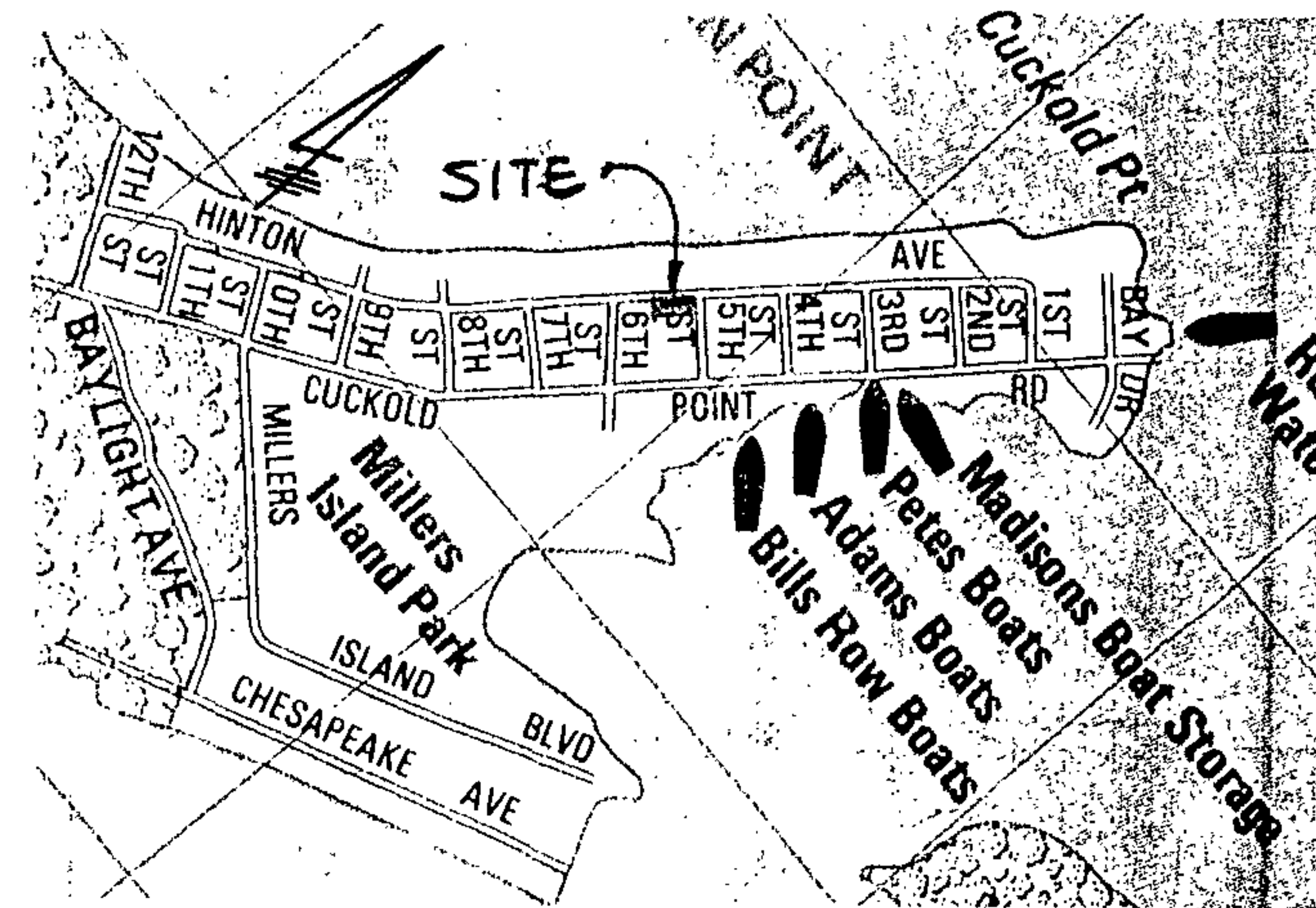
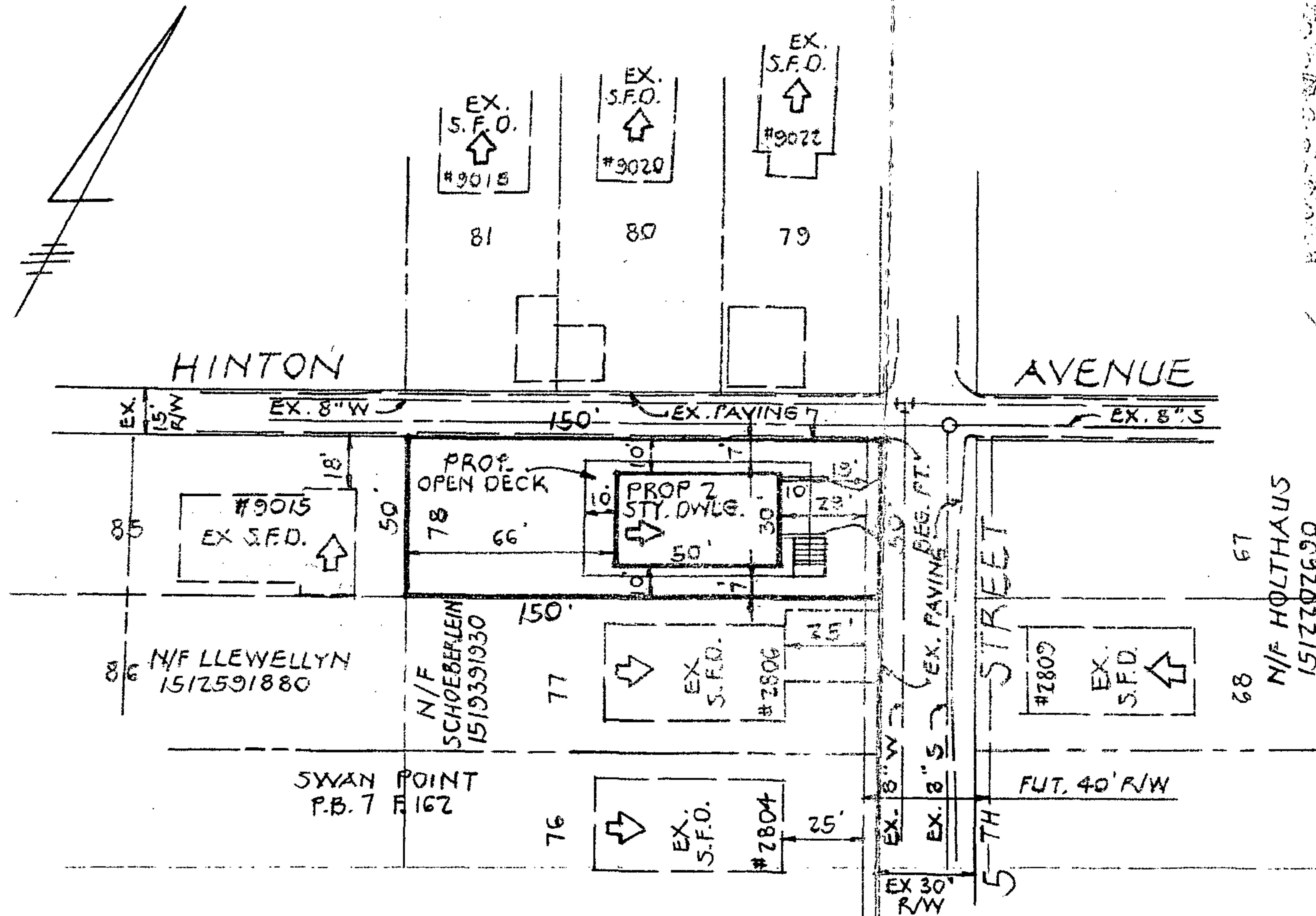
08-700-A

Exhibit Sheet

Petitioner/Developer

Protestant

No. 1	Site Plan	
No. 2	Tax Info	
No. 3	Deed	
No. 4	Deed from 7-1-65 showing lot of record	
No. 5	Sewer Plan	
No. 6		
No. 7		
No. 8		
No. 9		
No. 10		
No. 11		
No. 12		



VICINITY MAP
SCALE 1"=1000'

NOTES

1. ZONING.....DR 5.5 (MAP NO. 112B2)
2. AREA.....7,500 S.F. = 0.172 ACRE
3. NO PREVIOUS ZONING HISTORY OR VIOLATIONS KNOWN
4. SITE IS LOCATED IN CBCA AND FLOOD ZONE A9.
5. PUBLIC WATER AND SEWER IS EXISTING
6. NO HISTORIC STRUCTURES, ARCHEOLOGICAL SITES OR UNDERGROUND STORAGE TANKS EXIST

PETITIONER'S

EXHIBIT NO. 1

OWNER
MARK FABISZAK
5012 E. EAGER STREET
BALTO., MD. 21205
DEED REF.: L18919 L.715
PROP. NO. 1508801840

PLAT TO ACCOMPANY PETITION
FOR ZONING VARIANCE

2808 5TH STREET
LOT 78 SWAN POINT P.B. 7 F. 162
ELECTION DISTRICT 15C7
BALTIMORE COUNTY, MD
SCALE: 1 INCH = 40 FEET OCTOBER 9, 2007



Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search (2007 w3.3)

[Go Back](#)
[View Map](#)
[New Search](#)
[GroundRent](#)

Account Identifier: District - 15 Account Number - 1508801840

Owner Information

Owner Name: FABISZAK MARK **Use:** RESIDENTIAL
Principal Residence: NO
Mailing Address: 5012 E EAGER ST **Deed Reference:** 1) /18919/ 715
 BALTIMORE MD 21205-3201 2)

Location & Structure Information

Premises Address **Legal Description**
 2808 5TH ST 2808 5TH ST SWS
 SWAN POINT

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
112	15	4					78	3	Plat Ref: 7/ 162

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

Primary Structure Built	Enclosed Area	Property Land Area	County Use
0000		7,500.00 SF	04

Stories	Basement	Type	Exterior

Value Information

	Base Value	Value As Of 01/01/2006	Phase-in Assessments As Of 07/01/2007	As Of 07/01/2008
Land	53,000	140,500		
Improvements:	0	0		
Total:	53,000	140,500	111,332	140,500
Preferential Land:	0	0	0	0

Transfer Information

Seller: SCHILPP MARGARET M	Date: 10/07/2003	Price: \$0
Type: NOT ARMS-LENGTH	Deed1: /18919/ 715	Deed2:
Seller: HARRISON GEORGE F	Date: 11/16/1977	Price: \$13,500
Type: IMPROVED ARMS-LENGTH	Deed1: / 5825/ 730	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:

Exemption Information

Partial Exempt Assessments	Class	07/01/2007	07/01/2008
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:
 * NONE *

DEVELOPER' S

EXHIBIT NO.

2

NO CONSIDERATION;
NO TAXES; NO STAMPS

NO TITLE EXAMINATION

THIS DEED, made this 2nd day of September, 2003, by and between **Margaret M. Schilpp, widow**, of the City of Baltimore, State of Maryland, party of the first part, **Grantor**, and **Mark Fabiszak**, son of party of the first part, of the City of Baltimore, State of Maryland, party of the second part, **Grantee**.

WITNESSETH, that in consideration of No Dollars, but the love and affection between the parties hereto, and years of devoted service by Grantee to Grantor, the said Grantor does grant and convey her one-half interest unto the said Grantee, his personal representatives and assigns, in fee simple, in and to all of that lot of ground situate, lying and being in Baltimore County, in the State of Maryland and described as follows:

BEING known and designated as Lot No. 78, on the Plat of Swan Point, which Plat is recorded among the Plat Records of Baltimore County, in Plat Book No. 7, folio 162. Situate on the southwest side of 5th Street.

The improvements thereon being known as No. 2808 5th Street.

BEING the same lot of ground described in a Deed dated November 5, 1977 and recorded among the Land Records of Baltimore County in Liber EHK, Jr. No. 5825 folio 730 from George F. Harrison and Helen L. Harrison, his wife, to Alexander R. Schilpp, Margaret M. Schilpp, his wife, and Mark Fabiszak. The said Alexander R. Schilpp having departed this life on January 4, 1990, thereby vesting a full one-half interest in Margaret M. Schilpp by right of survivorship. Mark Fabiszak being the same Mark Fabiszak named herein as Grantee.

It is the intent of this deed to consolidate absolute total fee simple title and interest in Mark Fabiszak, Grantee.

Subject to the provisions of a Deed and Agreement dated January 31, 1977 and recorded among the Land Records of Baltimore County in Liber 5855 folio 593 from Alexander R. Schilpp, et al. to Baltimore County, Maryland, granting rights of way and easements for installation of sewers, drains, water pipes and other utilities.

Also subject to the provisions of a Deed and Agreement dated October 29, 1989 and recorded among the Land Records of Baltimore County in Liber No. 8326 folio 336 from Alexander R. Schilpp, et al. to Elizabeth Boyle and Diane Sperling wherein Grantees admitted building over the lot line onto the property of Grantors and wherein Grantees are permitted to that portion of Grantor's lot until Grantee's lot is razed, demolished or otherwise destroyed at which time the grant will terminate.

TOGETHER with the buildings and improvements thereupon erected, made or being and all and ever

DEVELOPER'S

EXHIBIT NO.

3

LAW OFFICE OF
EDWARD B. RYBCZYNSKI
ATTORNEY AT LAW
BALTIMORE, MARYLAND

privileges, appurtenances and advantages to the same belonging.

TO HAVE AND TO HOLD said lot of ground and premises above described and hereby intended to be conveyed, unto and to the proper use of the said Grantee, his personal representatives and assigns, in fee simple; subject to any and all covenants, conditions and restrictions of record.

AND THE said Grantor hereby covenants that no act, matter or thing whatsoever has been done to encumber the property hereby conveyed; and that further assurances of the same as may be requisite will be executed.

WITNESS the hand and seal of the said Grantor.

WITNESS

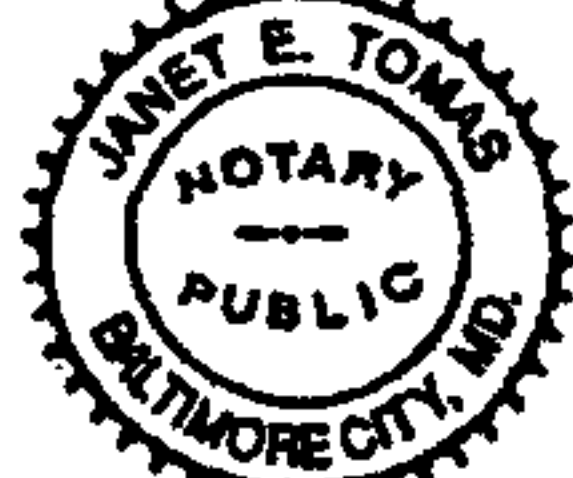
Janet E. Tomas

Margaret M. Schilpp (SEAL)
Margaret M. Schilpp

STATE OF MARYLAND, CITY OF BALTIMORE, to wit:

I HEREBY CERTIFY, that on this 2nd day of September, 2003, before me, the subscriber, a Notary Public of the State of Maryland, in and for the City aforesaid, personally appeared Margaret M. Schilpp, widow, known to me (or satisfactorily proven) to be the Grantor named in the foregoing Deed, and acknowledged the same to be Grantor's act, and in my presence signed and sealed the same.

AS WITNESS, my hand and Notarial Seal.



Janet E. Tomas
Janet E. Tomas, Notary Public

My Commission expires: April 1, 2006

THIS IS TO CERTIFY that the within instrument was prepared by or under the supervision of the undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland.

Edward B. Rybczynski
Edward B. Rybczynski

MAIL TO: Edward B. Rybczynski, Esquire
2437 Foster Avenue
Baltimore, MD 21224

LAW OFFICE OF
EDWARD B. RYBCZYNSKI
ATTORNEY AT LAW
BALTIMORE, MARYLAND

State of Maryland Land Instrument Intake Sheet

☐ Baltimore City ☒ County: Baltimore

Information provided is for the use of the Clerk's Office, State Department of Assessments and Taxation, and County Finance Office Only.

(Type or Print in Black Ink Only—All Copies Must Be Legible)

1	Type(s) of Instruments	☒ Deed ☐ Mortgage ☐ Other ☐ Other ☐ Deed of Trust ☐ Lease ☐ Multiple Accounts ☐ Not an Arms-																																																															
2	Conveyance Type Check Box	☐ Improved Sale ☐ Unimproved Sale ☐ Arms-Length [1] ☐ Arms-Length [2] ☐ Arms-Length [3] ☐ Length Sale [9]																																																															
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This Deed, Made this 1st-----day of July-----

in the year one thousand nine hundred and sixty-five---, by and between ✓
HIMELRIGHT and ✓ ROSE M. HIMELRIGHT, his wife-----

of Baltimore County-----in the State of Maryland, of the first part, and
✓ RICHARD M. HUTSON, JR. and ✓ THELMA M. HUTSON, his wife, of Baltimore County,
in the State of Maryland-----
of the second part.

Witnesseth, that in consideration of the sum of FIVE DOLLARS (\$5.00) and other good
and valuable considerations, the receipt whereof is hereby acknowledged---
the said GEORGE I. HIMELRIGHT and ROSE M. HIMELRIGHT, his wife-----
do---grant and convey unto the said RICHARD M. HUTSON, JR. and THELMA M. HUTSON,
his wife, as tenants by the entireties, their assigns and unto the survivor
of them, his or her-----

heirs and assigns, in fee simple, all that lot or parcel---of ground, situate, lying and being in
Baltimore County, State of Maryland--aforesaid, and described as follows, that is to say:--

~~Beginning for the~~

BEING known and designated as Lot No. 78, on the Plat of Swan Point, which
Plat is recorded among the Plat Records of Baltimore County, in Plat Book
No. 7 folio 162. Situate on the southwest side of 5th Street.

BEING the same lot of ground which by Deed dated July 17, 1961 and recorded
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162 was granted and conveyed by MARGARET R. LAMBERT and JOHN C. LAMBERT,
her husband, to GEORGE I. HIMELRIGHT and ROSE M. HIMELRIGHT, his wife,
the within Grantors.



DEVELOPER'S

EXHIBIT NO. 4

109 8 63 JUL 7

TB Y.7
9am

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



TO: Timothy M. Kotroco

FROM: Dave Lykens, DEPRM - Development Coordination JNL

DATE: January 10, 2008

SUBJECT: Zoning Item # 08-200-A
Address 2808 Fifth Street
(Fabizak Property)

RECEIVED
JAN 10 2008

BY:

Zoning Advisory Committee Meeting of November 5, 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:

A maximum of 25% of this site may be covered by impervious surfaces. The allotted 1,875 square feet may be exceeded by 500 square feet of impervious with offsetting mitigation. Additionally, 15% tree cover must be provided during the permit evaluation process.

Reviewer: Michael S. Kulis

Date: January 9, 2008

TB 1/7
9am

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: November 26, 2007

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

RECEIVED
NOV 29 2007

BY:

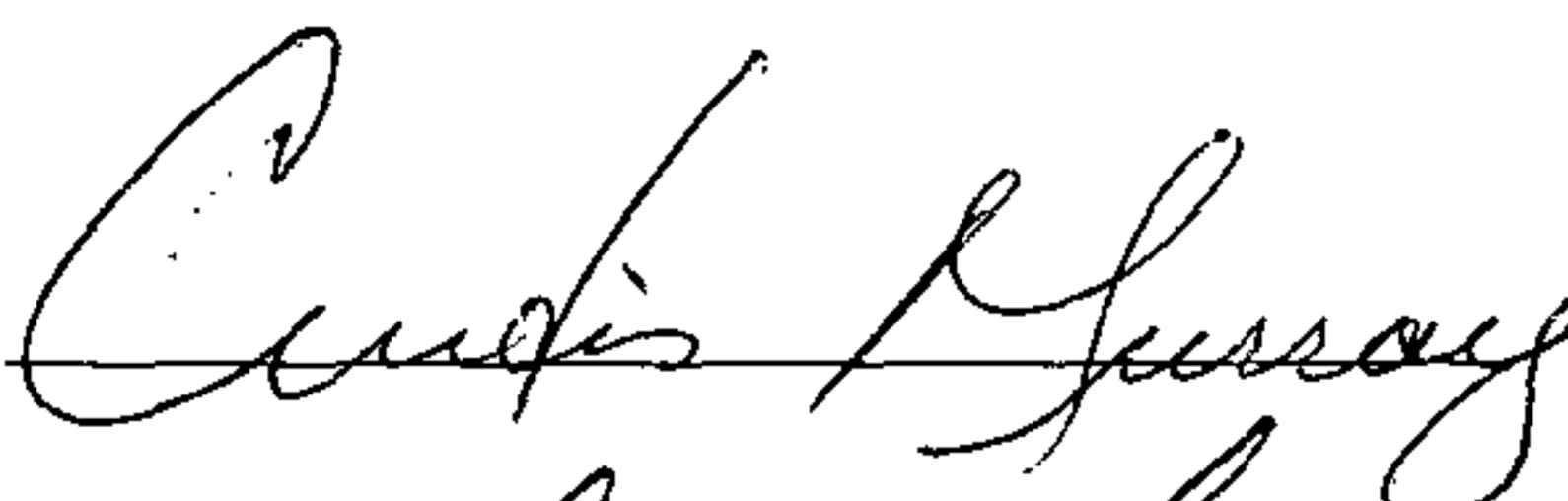
SUBJECT: Zoning Advisory Petition(s): Case(s) 8-200- Variance

The Office of Planning has reviewed the subject request and has determined that the petitioner does not own sufficient adjoining land to conform to the minimum width and area requirements and therefore does not meet the standards stated in Section 304.1.C of the BCZR. However, there appears to be several existing undersized lots in the neighborhood. As such, this office does not oppose the petitioner's request.

If the petitioner's request is granted, the following conditions shall apply to the proposed dwelling:

1. Submit building elevations to this office for review and approval prior to the issuance any building permit. The proposed dwelling shall be compatible in size, exterior building materials, color, and architectural detail as that of the existing dwellings in the area.
2. Provide landscaping along the public road.

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

Prepared By: 

Division Chief: 

CM/LL

BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

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

DATE: November 6, 2007

FROM: ^{DAK} Dennis A. Kennedy, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For November 12, 2007
Item No. 08-200

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

The ultimate right-of-way width for Hinton Avenue is 40-feet. It should be shown centered on the existing 15-foot-wide right-of-way. Then the side yard setback proposed should be measured off of the ultimate right-of-way line.

The base flood elevation for this site is 9.4 feet Baltimore County Datum.

The flood protection elevation for this site is 10.4 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 08-200-11062007.doc

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: #08-200-A

2808 5th Street
S/West corner of Hinton Avenue and 5th Street
15th Election District-7th Councilmanic District

Legal Owner(s): Mark Fabiszak

Contract Purchaser: William Robert Aburn

Variance: to permit a side street setback of 10 feet in lieu of the required 25 feet for a new dwelling. To permit a lot width of 50 feet in lieu of the required 55 feet. To permit an interior side yard setback of 7 feet in lieu of the required 7.5 feet and a side street setback of 7 feet in lieu of the required 18.75 feet for an open deck.

Hearing: Monday, January 7, 2008 at 9:00 a.m. in Room 106, County Courts Building, 111 West Chesapeake 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.

12/21/11 Dec. 20 158502

CERTIFICATE OF PUBLICATION

12/20/2007

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 12/20/2007.

- ☒ 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: 08-200-A

Petitioner/Developer: CENTRAL DRAFTING & DESIGN

Date Of Hearing/Closing: 1/7/08

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 2808 5th STREET

This sign(s) were posted on December 21, 2007
(Month, Day, Year)

Sincerely,

Martin Ogle 12/21/07
(Signature of sign Poster and Date)

Martin Ogle

Sign Poster

16 Salix Court

Address

Balto. Md 21220

(443-629 3411)

ZONING NOTICE

CASE # 08-200-A

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

ROOM 146, COUNTY COURTS BUILDING

PLACE: 111 WEST CHESAPEAKE AVENUE, TOWSON, MD

WEDNESDAY, JANUARY 7, 2009

DATE AND TIME: AT 9:00 A.M.

REQUEST: VARIANCE TO PERMIT A SIDE STREET SETBACK OF
8 FEET IN LIEU OF THE REQUIRED 15 FEET FOR A NEW
DWELLING TO PERMIT A LOT WIDTH OF 30 FEET IN LIEU OF THE
REQUIRED 55 FEET TO PERMIT AN INTERIOR SIDE YARD SETBACK OF 7
FEET IN LIEU OF THE REQUIRED 15 FEET AND A SIDE SETBACK
OF 7 FEET IN LIEU OF THE REQUIRED 10 FEET FOR AN ADJACENT LOT

POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY.
TO CONFIRM HEARING CALL 410-326-1301

DO NOT REMOVE THIS SIGN AND POST WITH DAY OF HEARING UNDER PENALTY OF LAW.
HANDICAPPED ACCESSIBLE

RE: PETITION FOR VARIANCE
2808 5th Street; SW corner Hinton
Avenue and 5th Street
15th Election & 7th Councilmanic Districts
Legal Owner(s): Mark Fabiszak
Contract Purchaser(s): William R. Burn
Petitioner(s)

* BEFORE THE
* ZONING COMMISSIONER
* FOR
* BALTIMORE COUNTY
* 08-200-A

* * * * *

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 20th day of November, 2007, a copy of the foregoing Entry of Appearance was mailed to, David Billingsley, Central Drafting & Design, Inc, 601 Charwood Court, Edgewood, MD 21040, Representative for Petitioner(s).

RECEIVED

NOV 20 2007

Per.....

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County



Director's Office
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204
Tel: 410-887-3353 • Fax: 410-887-5708

James T. Smith, Jr., County Executive
Timothy M. Kotroco, Director

November 19, 2007

NOTICE OF ZONING HEARING

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

CASE NUMBER: 08-200-A

2808 5th Street

S/west corner of Hinton Avenue and 5th Street

15th Election District – 7th Councilmanic District

Legal Owners: Mark Fabiszak

Contract Purchaser: William Robert Aburn

Variance to permit a side street setback of 10 feet in lieu of the required 25 feet for a new dwelling. To permit a lot width of 50 feet in lieu of the required 55 feet. To permit an interior side yard setback of 7 feet in lieu of the required 7.5 feet and a side street setback of 7 feet in lieu of the required 18.75 feet for an open deck.

Hearing: Monday, January 7, 2008 at 9:00 a.m. in Room 106, County Courts Building,
111 West Chesapeake Avenue, Towson 21204

Timothy Kotroco
Director

TK:klm

C: Mark Fabiszak, 5012 E. Eager Street, Baltimore 21205
William Robert Aburn, 7709 Iroquois Avenue, Baltimore 21219
David Billingsley, 601 Charwood Court, Edgewood 21040

- NOTES: (1) THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY SAT., DECEMBER 22, 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.

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



TO: PATUXENT PUBLISHING COMPANY
Thursday, December 20, 2007 Issue - Jeffersonian

Please forward billing to:
William Robert Aburn
7709 Iroquois Avenue
Baltimore, MD 21229

443-250-1982

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: 08-200-A

2808 5th Street

S/west corner of Hinton Avenue and 5th Street

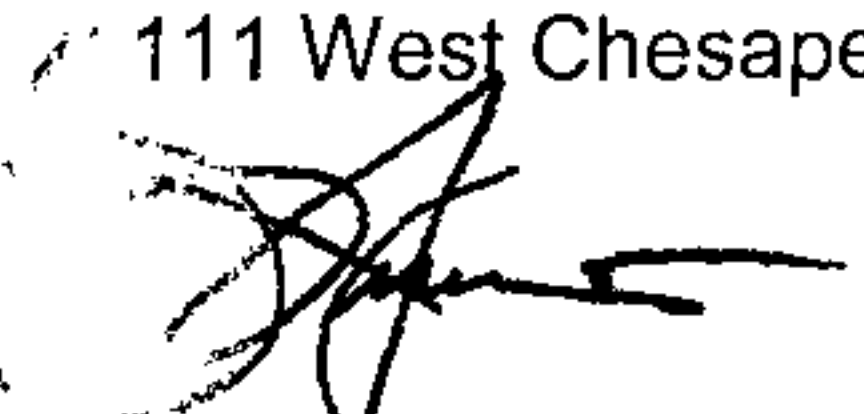
15th Election District – 7th Councilmanic District

Legal Owners: Mark Fabiszak

Contract Purchaser: William Robert Aburn

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Hearing: Monday, January 7, 2008 at 9:00 a.m. in Room 106, County Courts Building,
111 West Chesapeake Avenue, Towson 21204


WILLIAM J. WISEMAN III
ZONING COMMISSIONER FOR BALTIMORE COUNTY

- NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
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**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.

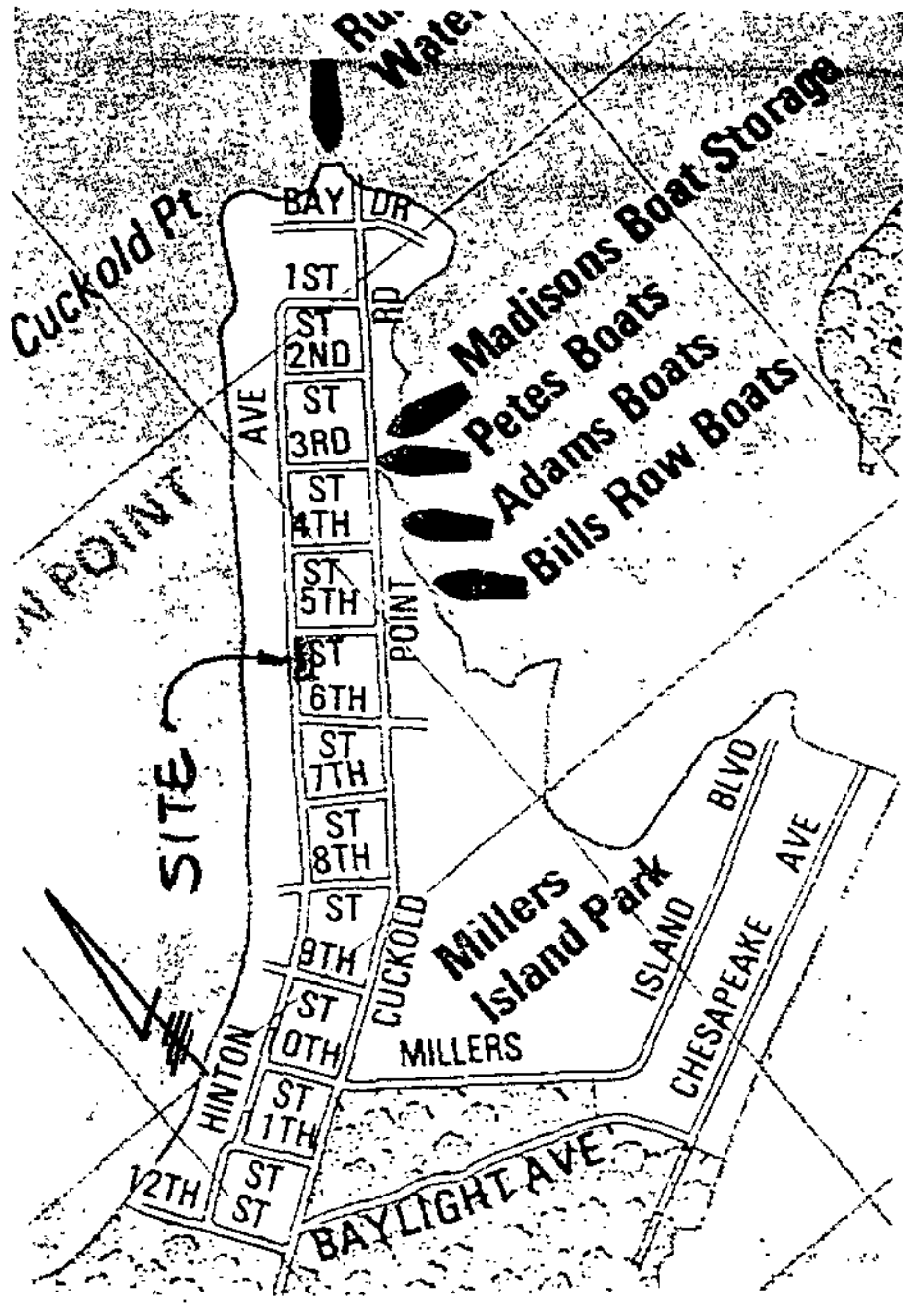
For Newspaper Advertising:

Item Number or Case Number: 08-200 A
Petitioner: WILLIAM ROBERT ABURN
Address or Location: 2808 5TH ST

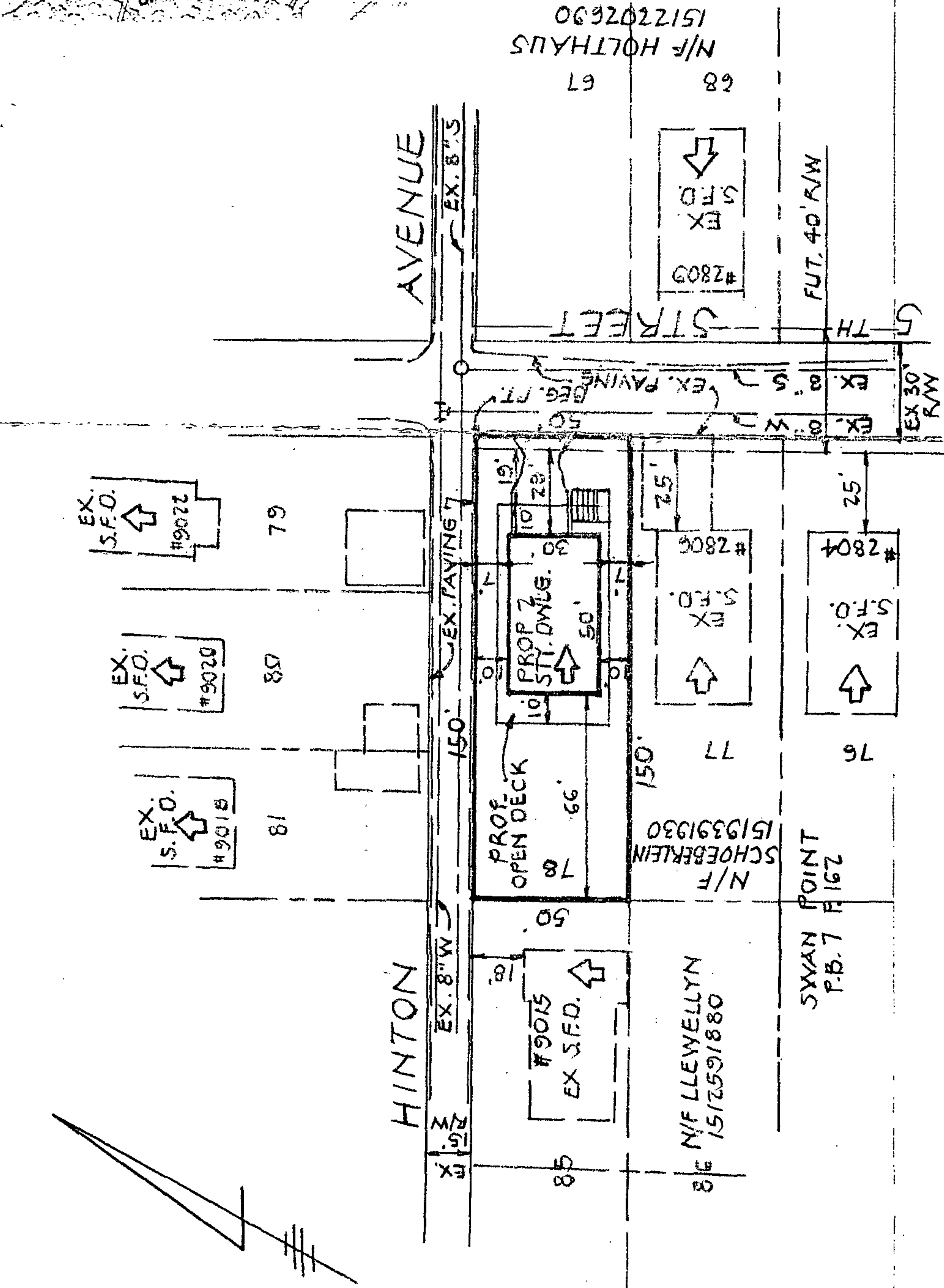
PLEASE FORWARD ADVERTISING BILL TO:

Name: WILLIAM ROBERT ABURN
Address: 2808 5TH ST. 7709 IROQUOIS AVE
BALTO. MD. 21229
Telephone Number: (443) 250-1982





VICINITY MAP.
SCALE 1"=1000'



NOTES

1. ZONING.....DR 5.5 (MAP NO. 112B2)
2. AREA.....7,500 S.F. = 0.172 ACRE
3. NO PREVIOUS ZONING HISTORY OR VIOLATIONS KNOWN
4. SITE IS LOCATED IN CBCA AND FLOOD ZONE A9.
- 5- PUBLIC WATER AND SEWER IS EXISTING
6. NO HISTORIC STRUCTURES, ARCHEOLOGICAL SITES OR UNDERGROUND STORAGE TANKS EXIST

PLAT TO ACCOMPANY PETITION
FOR ZONING VARIANCE

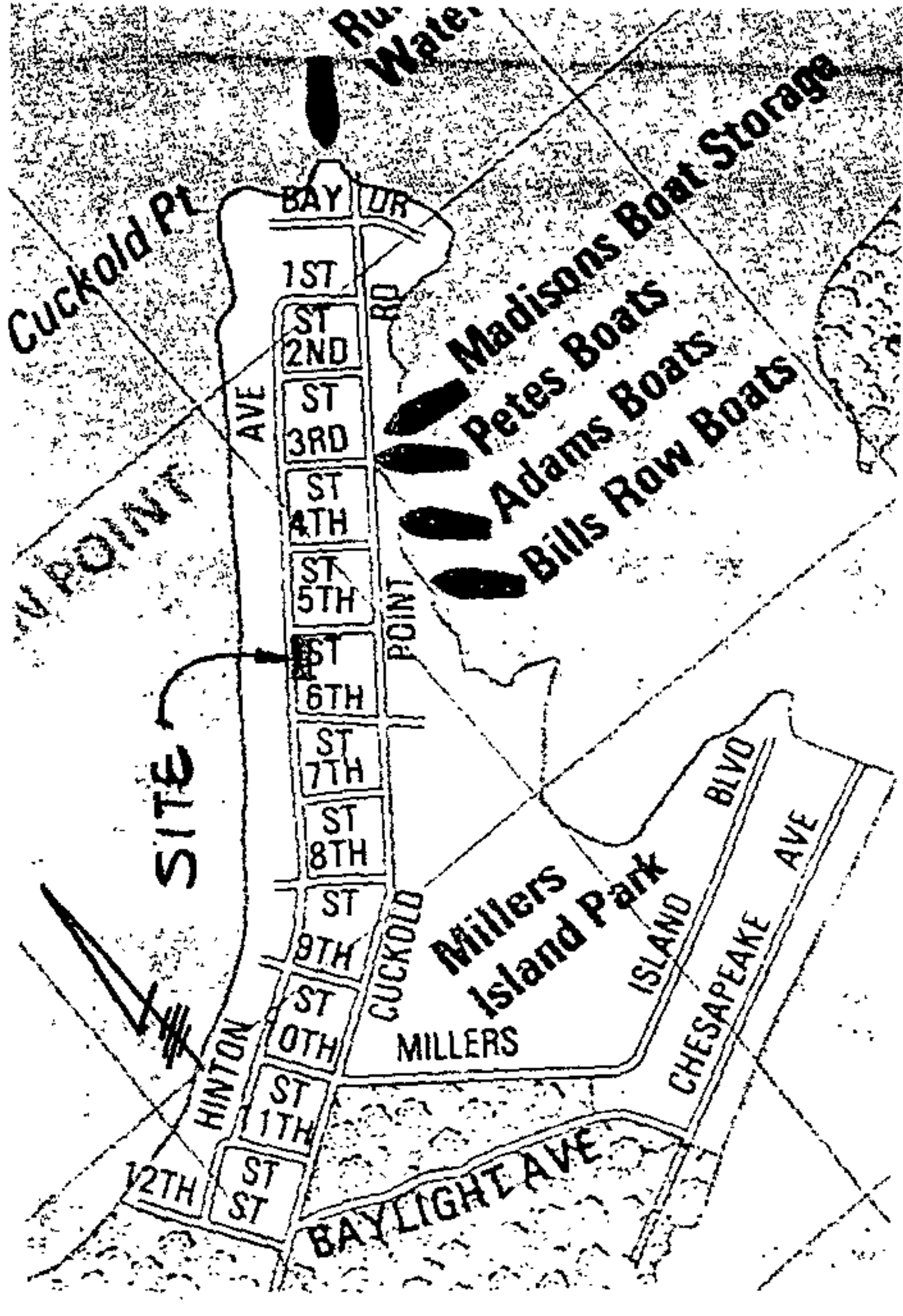
2808 5TH STREET

LOT 78 SWAN POINT P.B. 7 F. 162
ELECTION DISTRICT 15C7
BALTIMORE COUNTY, MD

SCALE: 1 INCH = 40 FEET OCTOBER 9, 2007

OWNER
MARK FABISZAK
5012 E. EAGER STREET
BALTO., MD. 21205
DEED REF.: L18919 L.715
PROP. NO. 1508801840

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



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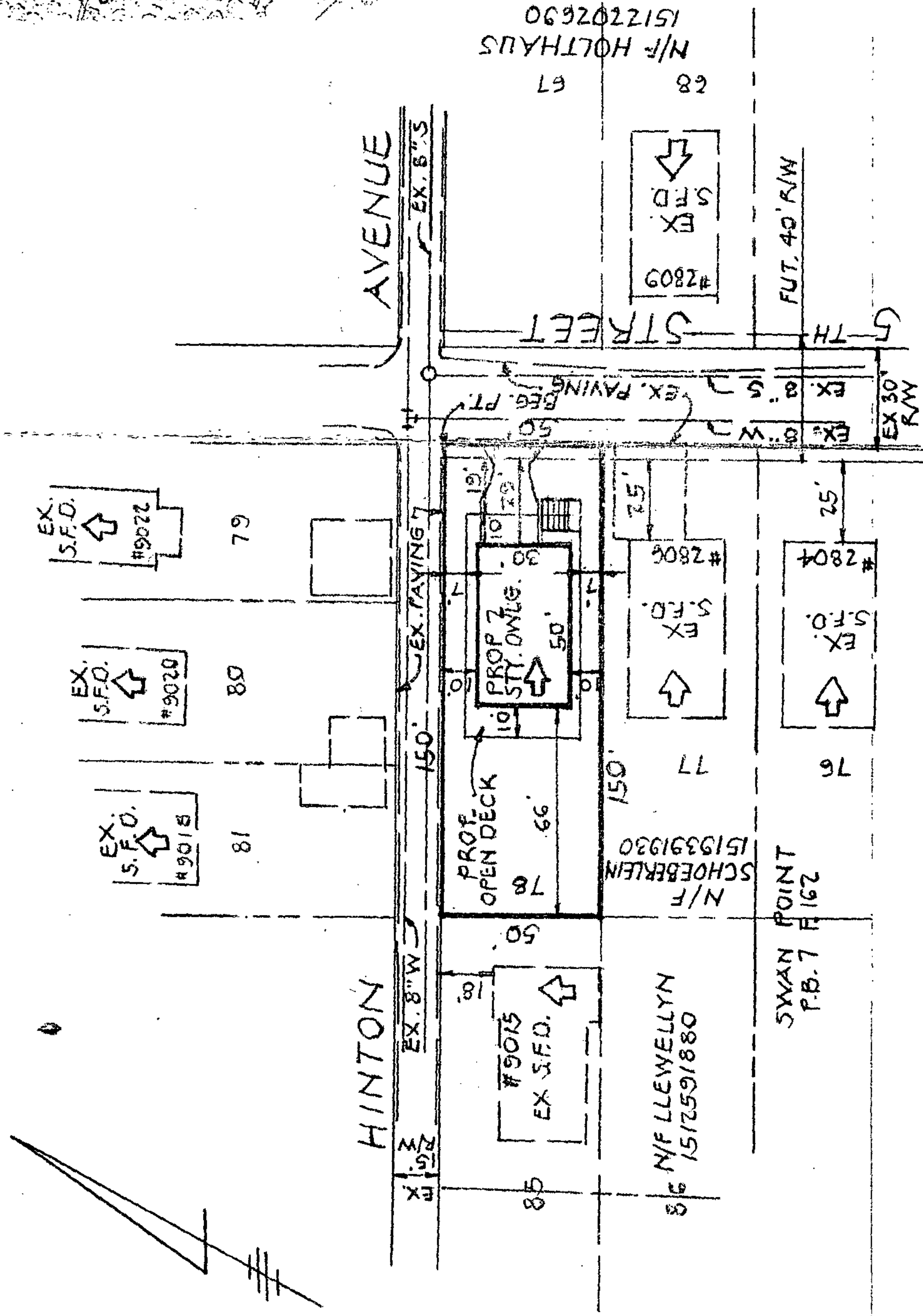
2808 5TH STREET

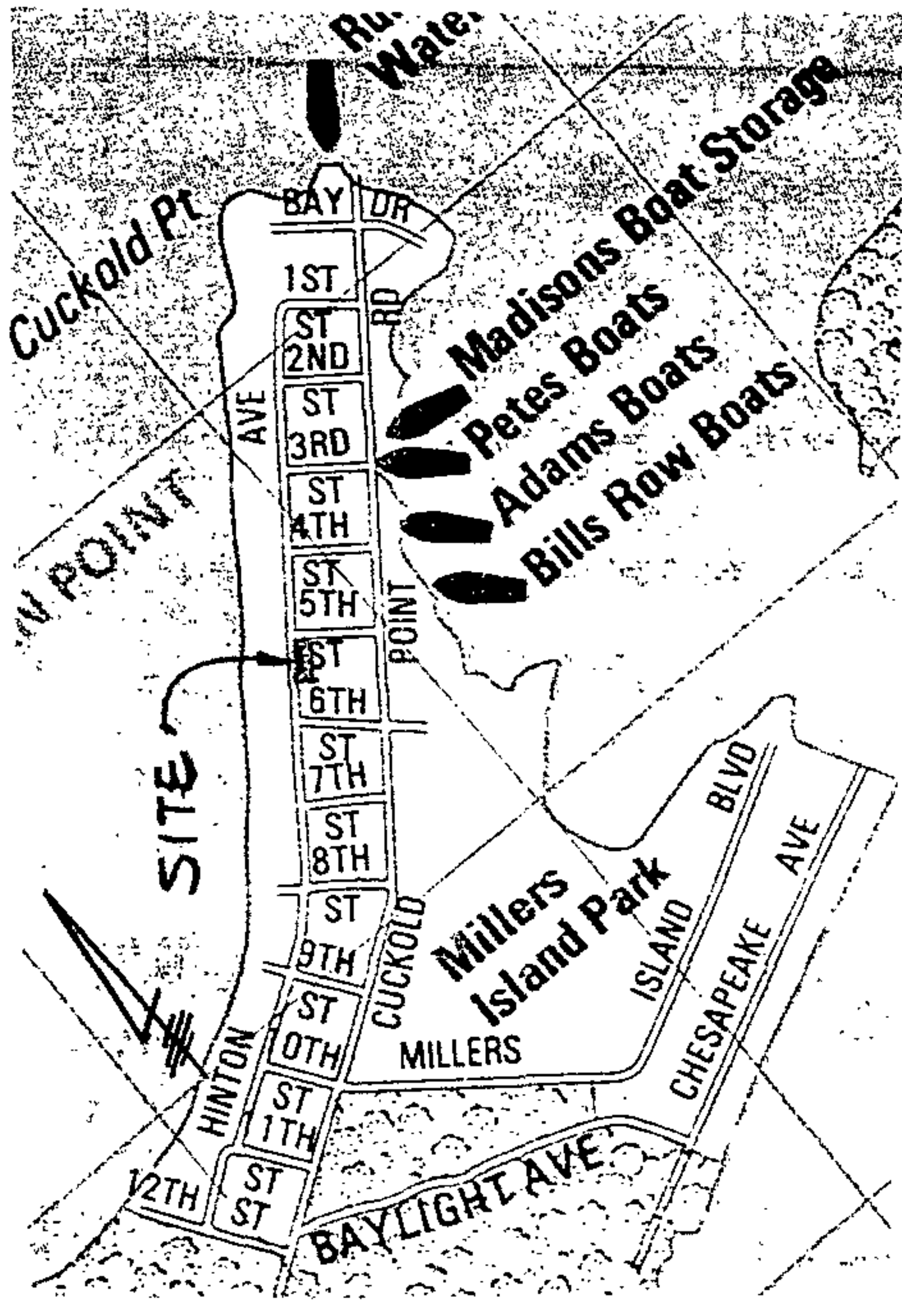
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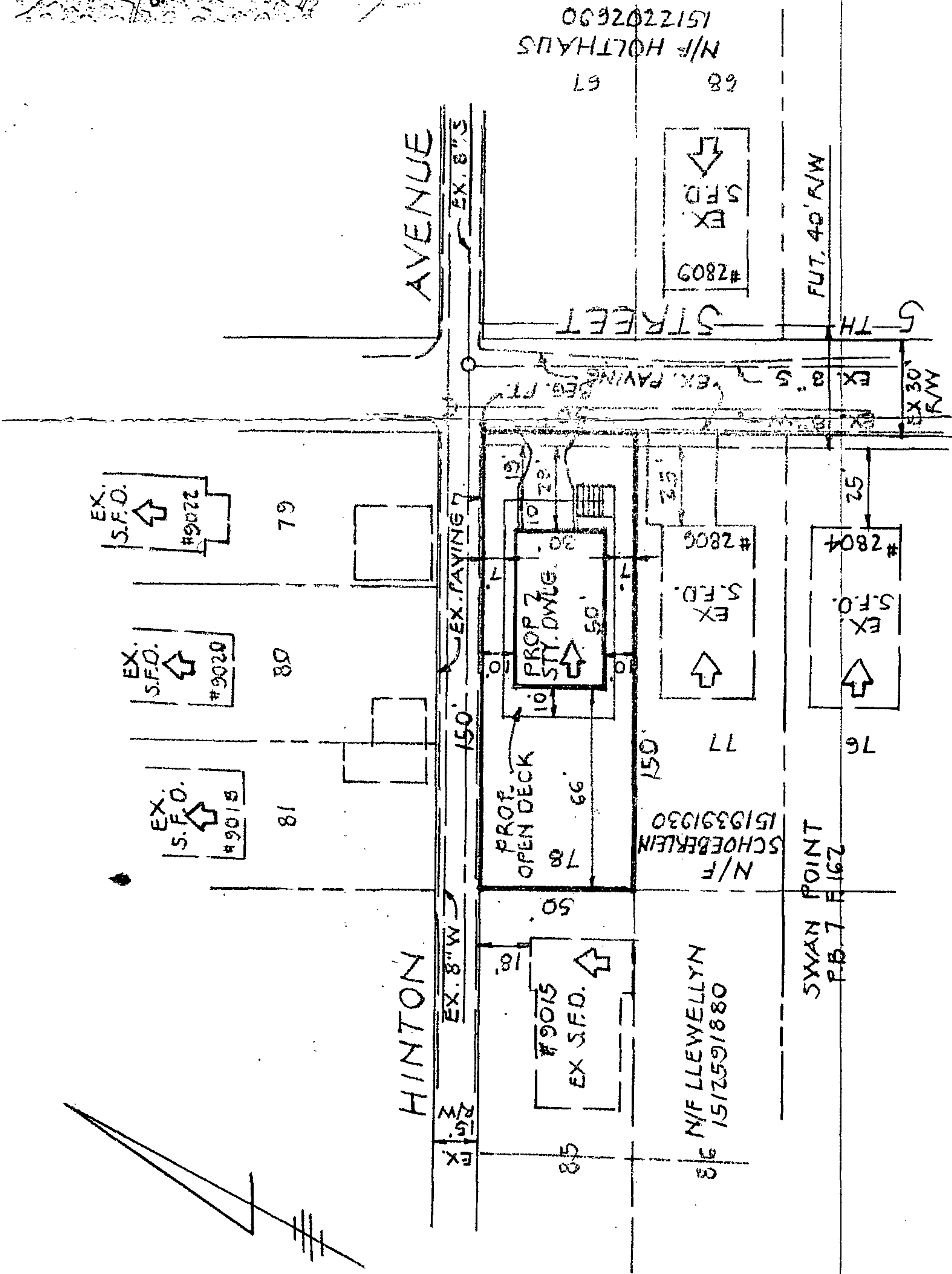
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