

08-471-SPH

2/16/2009 @ 10⁰⁰ a.m. ✓

4/14/09 9:00

am

Del.

✓ memo ✓

~~3/13/09~~

~~3/10/09~~

changed to

ORDERS
OPINIONS
MEMORANDA

Opinion issued
5/18/09

08-471-SPH

20080471

supplemental

A.

①

14

BALTIMORE COUNTY, MARYLAND

Board of Appeals of Baltimore County
Interoffice Correspondence

DATE: April 30, 2012

TO: Dave Duvall
Permits, Approvals & Inspections

FROM: Sunny Cannington, Legal Secretary
Board of Appeals

SUBJECT: CLOSED APPEAL CASE FILES/CASES DISMISSED

The following cases have been closed as of the above date and are being returned to your office for storage.

Case No:	Case Name:	Note:
08-471-SPH	J. Gary & Barbara Mueller	Board of Appeals denied requested relief to allow living quarters for a son in an existing accessory structure; Circuit Court Reversed the Board's decision; Court of Special Appeals Reversed the Circuit Court and Affirmed the Board of Appeals.

c: Arnold Jablon, Director
Michael Field, County Attorney
Nancy West, Assistant County Attorney

12/19/11
FALLS ROAD COMMUNITY ASS'N,
et al.

v.

J. GARY MUELLER, et ux., et al.

CSL
* IN THE

* COURT OF APPEALS

* OF MARYLAND

* Petition Docket No. 358
September Term, 2011

* (No. 304, Sept. Term, 2010
Court of Special Appeals)

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals and the answers filed thereto, in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert M. Bell

Chief Judge

DATE: December 19, 2011

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BALTIMORE COUNTY
BOARD OF APPEALS

8/19/11

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BALTIMORE COUNTY
BOARD OF APPEALS

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 304

September Term, 2010

PEOPLE'S COUNSEL FOR BALTIMORE
COUNTY, ET AL.

v.

J. GARY MUELLER, ET UX.

Matricciani,
Kehoe,
Davis, Arrie W.
(Retired, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: August 19, 2011

RECEIVED

MAR 3 - 2011

BY COURT OF SPECIAL APPEALS

PEOPLES' COUNSEL FOR BALTIMORE COUNTY, *et al.*,

Appellants,

v.

J. GARY MUELLER, *et ux.*

Appellees.

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MAR 3 - 2011

BY COURT OF SPECIAL APPEALS

IN THE COURT OF

SPECIAL APPEALS

OF MARYLAND

September Term 2010

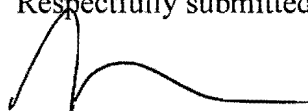
Case No. 00304

* * * * *

NOTICE OF PARTIAL DISMISSAL

Appellant, Maria Cristina Sabolcik, hereby dismisses her appeal in the above-captioned matter.

Respectfully submitted,



Michael R. McCann

Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204
(410) 825-2150

Dated: February 28, 2011

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of February 2011 a copy of the foregoing Notice of Partial Dismissal was sent via first-class mail, postage prepaid, to:

Lawrence Schmidt, Esq.
Gildea & Schmidt, LLC
600 Washington Avenue, Ste. 200
Towson, Maryland 21204

Carole S. Demilio, Esq.
Deputy People's Counsel
Jefferson Building, Room 204
105 W. Chesapeake Avenue
Towson, Maryland 21204



Michael R. McCann



LESLIE D. GRADET
CLERK

Court of Special Appeals
Robert C. Murphy Courts of Appeals Building
Annapolis, Md. 21401-1699

(410) 260-1450
WASHINGTON AREA 1-888-200-7444

RECORD

March 10, 2011

Michael McCann, Esquire
118 West Pennsylvania Avenue
Towson, Maryland 21204

Re: People's Counsel for Baltimore County et al. vs.
J. Gary Mueller et ux.
No. 304, September Term, 2010

Dear Mr. McCann:

This will acknowledge receipt of the Notice of Partial Dismissal of the appeal of Appellant Maria Cristina Sabolcik filed in the captioned case. The mandate, when issued at the conclusion of the appeal, will evidence this dismissal. In all other respects, the appeal will continue.

Very truly yours,

Leslie D. Gradet
Clerk

LDG:ls

cc: All counsel of record

10/17/10

RECORD

People's Counsel for
Baltimore County et al.,

Appellants,

v.

J. Gary Mueller et ux.,

Appellees.

* In the
* COURT OF SPECIAL APPEALS
* No. 304
* September Term, 2010
*

ORDER

Upon consideration of the parties' Stipulation, and the Stipulation having been filed after the date Appellants' briefs were due, it is this 13th day of October, 2010, by the Court of Special Appeals, on its own motion,

ORDERED that the Stipulation be treated as a motion to extend time, and as so treated, it is granted. The date for filing Appellants' brief is extended to October 18, 2010; Appellees' brief is due November 24, 2010; Appellants' reply brief is due December 17, 2010.


Peter B. Krauser
Chief Judge

9/21/10
**PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY, ET AL.**

APPELLANTS

V.

**J. GARY MUELLER, ET UX.
APPELLEES**

* **IN THE**
* **COURT OF SPECIAL APPEALS**
* **OF MARYLAND**
* **SEPTEMBER TERM 2010**
* **CASE NO. 00304**

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LESLIE D. GRADE, CLERK
COURT OF SPECIAL APPEALS

* * * * *

STIPULATION

Pursuant to Maryland Rule 8-502(b), Appellants, People's Counsel for Baltimore County and Falls Road Community Association, Carol Kakel, Marvin Tenburg, Maria Christina Sabolzick and James Brook Smith, III by and through their attorney, Michael McCann, Esquire, and Appellee, J. Gary Mueller, et ux, by and through their attorney, Lawrence E. Schmidt, Esquire, hereby stipulate to the following extension of time for the filing of the Appellants' Briefs and Record Extract, the Appellee's Brief and the Appellants' Reply Brief in the above-captioned matter.

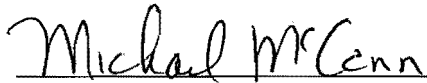
Appellants' Briefs: To be filed on or before October 18, 2010;

Record Extract: To be filed on or before October 18, 2010;

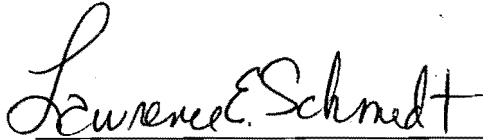
Appellee's Brief: To be filed on or before November 24, 2010;

Appellants' Reply Brief: To be filed on or before December 17, 2010.

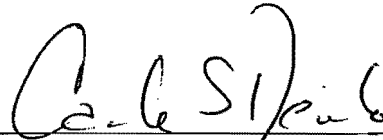
This appeal will be set for oral argument before this Honorable Court between April 1, 2011 and April 12, 2011.



Michael McCann, Esquire
118 W. Pennsylvania Avenue
Towson, Maryland 21204
(410) 825-2150
Attorney for Falls Road Community
Association, et al.



Lawrence E. Schmidt, Esquire
Gildea & Schmidt LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
(410) 821-0070
Attorney for J. Gary Mueller, et ux.



Carole S. Demilio
Deputy People's Counsel
for Baltimore County
The Jefferson Building
105 W. Chesapeake Ave., Suite 204
Towson, Maryland 21204
Telephone: (410) 887-2188



Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Jefferson Building
105 West Chesapeake Avenue, Room 204
Towson, Maryland 21204

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

PETER MAX ZIMMERMAN
People's Counsel

September 21, 2010

CAROLE S. DEMILIO
Deputy People's Counsel

Leslie D. Gradet, Esq., Clerk
Court of Special Appeals of Maryland
Robert C. Murphy Courts of Appeal Building
361 Rowe Boulevard
Annapolis, MD 21401

RECEIVED
CLERK'S OFFICE
2010 SEP 28 PM 3:17
LESLIE D. GRADET, CLERK
COURT OF SPECIAL APPEALS

Re: In the Matter of People's Counsel for Baltimore County et al.
v. J. Gary Muller, et ux.
Circuit Court Case No: 03-C-09-007062 AA

Dear Clerk:

Enclosed please find a Stipulation with regard to the briefing schedule for filing in the above-referenced matter.

Should you have any questions or concerns, please call our office. Thank you for your consideration.

Sincerely,

Carole S. Demilio
Deputy People's Counsel
for Baltimore County

CSD/rmw
Enclosure

cc: Michael McCann, Esquire
Lawrence E. Schmidt, Esquire

4/13/10

PETITION OF J. GARY AND BARBARA MUELLER	*	IN THE
FOR JUDICIAL REVIEW OF THE DECISION		
OF THE COUNTY BOARD OF APPEALS	*	
OF BALTIMORE COUNTY		
	*	CIRCUIT COURT
IN THE CASE OF J. GARY AND BARBARA MUELLER*		
LEGAL OWNERS FOR A PETITION FOR SPECIAL		
HEARING ON PROPERTY LOCATED AT 1109 JUSTA	*	FOR
LANE , S/S JUSTA LANE, 370' WEST OF BOX		
HILL ROAD	*	
8 th Election District, 2 nd Councilmanic District	*	BALTIMORE COUNTY
Prior Case No. 08-471-SPH	*	Case No. 03-C-09-07062
Before the County Board of Appeals		
* * * * *		* * * * *

NOTICE OF APPEAL

Dear Madam Clerk:

Please enter an appeal to the Court of Special Appeals of Maryland on behalf of the PEOPLE'S COUNSEL FOR BALTIMORE COUNTY from the Opinion and Ruling of this Court dated March 15, 2010 (docketed March 24, 2010) in the above-captioned case. A copy of the Opinion and Ruling is attached as Exhibit A.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
The Jefferson Building
105 W. Chesapeake Avenue, Room 204
Towson, MD 21204
(410) 887-2188

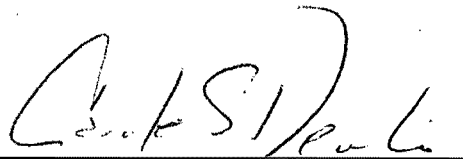
RECEIVED

APR 13 2010

BALTIMORE COUNTY
BOARD OF APPEALS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of April, 2010, a copy of the foregoing Notice of Appeal was mailed to Michael McCann, Esquire, 118 W. Pennsylvania Avenue, Towson, Maryland 21204, and Lawrence E. Schmidt, Esquire, Gildea & Schmidt LLC, 600 Washington Avenue, Suite 200, Towson, MD 21204, Attorney for Gary and Barbara Mueller

A handwritten signature in dark ink, appearing to read "Carole S. Demilio", is written over a horizontal line.

CAROLE S. DEMILIO
Deputy People's Counsel

PETITION OF: J. GARY AND
BARBARA MUELLER

IN THE

FOR JUDICIAL REVIEW OF THE
DECISION OF THE COUNTY BOARD
OF APPEALS OF BALTIMORE CO.

CIRCUIT COURT
FOR BALTIMORE COUNTY

IN THE CASE OF:

J. GARY AND BARBARA MUELLER

Case No.: 03-C-09-07062

* * * * *

OPINION AND RULING

This matter comes before this Court on a Petition for Judicial Review of the May 18, 2009 decision by the County Board of Appeals of Baltimore County (hereinafter "the Board").

BACKGROUND

The Petitioners in this case live in a 4600-square-foot single family home that sits on a 1.78acre lot in the Cockeysville area of Baltimore County. Behind the Petitioners' home to the rear of the property there is a detached garage which the Petitioners have upgraded and turned into a separate living space for their son Cole who is a college student. It is the converted garage structure which is the subject of the zoning dispute in this case.

The Petitioners originally sought to have this use ratified by the Office of the Zoning Commissioner of

Exhibit A

3/15/10

RECEIVED
MAR 26 2010

PETITION OF: J. GARY AND
BARBARA MUELLER

IN THE

FOR JUDICIAL REVIEW OF THE
DECISION OF THE COUNTY BOARD
OF APPEALS OF BALTIMORE CO.

CIRCUIT COURT

FOR BALTIMORE COUNTY

IN THE CASE OF:

J. GARY AND BARBARA MUELLER

Case No.: 03-C-09-07062

* * * * *

OPINION AND RULING

This matter comes before this Court on a Petition for Judicial Review of the May 18, 2009 decision by the County Board of Appeals of Baltimore County (hereinafter "the Board").

BACKGROUND

The Petitioners in this case live in a 4600-square-foot single family home that sits on a 1.78acre lot in the Cockeysville area of Baltimore County. Behind the Petitioners' home to the rear of the property there is a detached garage which the Petitioners have upgraded and turned into a separate living space for their son Cole who is a college student. It is the converted garage structure which is the subject of the zoning dispute in this case.

The Petitioners originally sought to have this use ratified by the Office of the Zoning Commissioner of

Baltimore County and then after being denied subsequently took a de novo appeal to the Board. In its opinion denying the use requested by the Petitioners the Board found that the converted garage was an "accessory structure" and that the in-law apartment use as an accessory structure was not permitted by the Baltimore County Zoning Regulations (hereinafter, "BCZR"). The Petitioners now take this appeal of the Boards' decision.

STANDARD OF REVIEW

"Judicial review of administrative agency action is narrow". United Parcel Service, Inc. v. People's Counsel for Baltimore County, 336 Md. 569, 576 (2000). This Court may not substitute its own judgment for that of the administrative agency. Id. at 576-77. "[The] Court's role is limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law." Id. at 577.

OPINION

The Petitioners argue, and this Court agrees, that if the Board makes a finding that an "accessory structure" exists the Board must then consider whether the specific use of that structure is proper in light of BCZR § 502.1.

The record clearly establishes that the converted garage at issue here was found to be an "accessory structure" by the Board. The Board's next step therefore should have been to determine by way of a hearing if the specific use Petitioners had requested, a living area for their son Cole, is permissible under BCZR § 502.1.

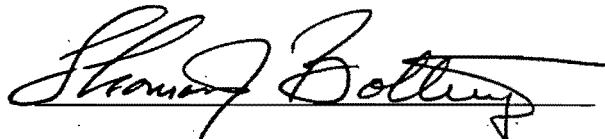
This Court finds that the Board erroneously concluded that an "accessory structure" may never be occupied by any person, including family members. The Board suggests in its May 18, 2009 opinion that it "cannot find anything in the BCZR that permits such an apartment as an accessory structure." The Board is correct that nothing in BCZR specifically allows a person use an accessory structure as a living space. This Court notes, however, that there is also nothing in the BCZR that specifically prohibits a person from living in an accessory structure.

This Court views that lack of prohibition in the BCZR together with a documented history of in-law apartments having being allowed in the past in determining that use of accessory structures as in-law type apartments are not prohibited. The one qualification of this general rule has always been that the occupants of the in-law apartment must be members of the same immediate family.

It is undisputed that the Petitioners' son is the person who occupies the accessory structure at issue here and the he is a member of their immediate family. Therefore, the sole issue left for the Board to decide is if the use by the Petitioners' son is somehow detrimental to the health, safety and general welfare of the area.

RULING

Accordingly, on this 15th day of March, 2010, the Circuit Court of Baltimore County hereby **REVERSES** the Opinion and Order of the County Board of Appeals of Baltimore County and **REMANDS** for a hearing on whether the specific use is permissible under BCRZ 502.1.



THOMAS J. BOLLINGER, JUDGE

True Copy Test

SUZANNE MENSCH, Clerk

Per Kenna Reddish
Assistant Clerk

CC: Lawrence E. Schmidt, esq.
Carole DeMillo, esq.
Michael R. McCann esq.

7/14/09

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
J. GARY AND BARBARA MUELLER

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

CIVIL ACTION
NO.: 03-C-09-007062

IN THE MATTER OF :
J. GARY AND BARBARA MUELLER-LEGAL
OWNERS
FOR SPECIAL HEARING AND VARIANCE
ON PROPERTY LOCATED ON THE S/SIDE OF
JUSTA LANE, 370' W/OF BOX HILL ROAD
(1109 JUSTA LANE)

8TH ELECTION DISTRICT

2ND COUNCILMANIC DISTRICT

BOARD OF APPEALS CASE NO.: 08-471-SPH

RECEIVED AND FILED

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CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

* * * * *

**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 and the Board of Appeals of Baltimore County:

**ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND
DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT**

OF BALTIMORE COUNTY

No. 08-471-SPH

April 9, 2008	Petition for Special Hearing and Petition for Variance filed by J. Gary and Barbara Mueller, through their attorney, Vernon Boozer, Esquire, for living quarters for a son in an existing accessory structure (garage).
April 20	Entry of Appearance filed by People's Counsel for Baltimore County.
May 29	Certificate of Publication in newspaper
June 2	Certificate of Sign Posting.
June 11	ZAC Comments.
June 16	Hearing held before the Deputy Zoning Commissioner
July 10	Findings of Fact and Conclusions of Law issued by the Deputy Zoning Commissioner. Petition for Special Hearing was DENIED.
August 6	Notice of Appeal filed by Lawrence E. Schmidt, Esquire, on behalf of J. Gary and Barbara Mueller, Petitioners/Appellants.
August 22	Letter from Lawrence E. Schmidt, Esquire, on behalf of J. Gary and Barbara Mueller, Petitioners/Appellants, including an original copy of the Notice of Appeal and requesting it to be docketed on the original filing date of August 6 or August 7, 2008.
October 6	Letter from Timothy Kotroco, Director of Permits and Development Management acknowledging appeal and forwarding file to Board of Appeals.
November 25, 2008	Certificate of Sign Posting.
February 10, 2009	Board convened for hearing.

Exhibits submitted at hearing before the Board of Appeals:

Petitioner's Exhibit No.

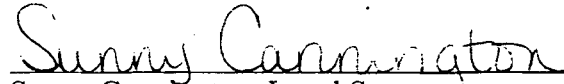
- 1 – Site Plan of the property, 1109 Justa Lane
- 2 – Copy of Building Elevation Drawings of the accessory building and floor plan
- 3 – Aerial Photo of the area when building was not there.
- 4 – Permit to build the accessory structure
- 5a – Drawing of the top floor of the accessory structure
- 5b – Drawing of the bottom floor of the accessory structure.
- 6 – Letter stipulating the use for the building signed by Mr. Mueller and several neighbors
- 7 – Deed dated 9/9/1987 for the property.
- 8 – Application for soil percolation test for accessory building.
- 9 – Letter from DEPRM dated 11/12/08 reference percolation test
- 10a – Photograph – front of structure.
- 10b – Photograph – front of structure.
- 10c – Photograph – of structure – rear.
- 10d – Photograph – back of house looking down from house
- 10e – Photograph – of structure.
- 10f – Photograph – neighbor's property.
- 10g – Photograph – from structure toward Van Vliet's property.
- 10h – Photograph – looking toward Van Vliet's property.
- 10i – Photograph – looking out the front of the building toward Van Vliet's property.
- 10j – Photograph – looking out toward Smith's house.
- 10k – Photograph – looking at Smith's property from rear of building.
- 11 – Mr. Kellman's Resume
- 12 – Letter from Neighbor
- 13a – Photograph – Mr. Smith's property from neighbor's property
- 13b – Photograph – Looking across R. Reighnor's property
- 13c – Photograph – Mr. Smith's property
- 13d – Photograph – Mr. Smith's property

Protestants' Exhibit No.

- 1 – MD Department of Tax and Assess. Record of the property
- 2a – Photographs – Accessory building
- 2b – Photographs – side of building and pool
- 2c – Photographs – view from Smith's property of building
- 2d – Photographs – private drive
- 3 – Application for permit to construction accessory building
- 4 – Well permit application to construction well for accessory building.
- 5 – Article 8 papers for Mr. Tenberg
- 6 – Photograph – view standing on Mr. Smith's property.

March 13, 2009	Memorandum of People's Counsel for Baltimore County filed by Peter M. Zimmerman and Carole S. Demilio.
March 20, 2009	Post-Hearing Memorandum in Opposition to Appeal filed by Michael R. McCann, Esquire on behalf of Falls Road Community Association, Carol Kakel, Marvin Tenberg, Maria Christina Sabolzik, and James Brook Smith, III, Protestants.
March 20	Post-Hearing Memorandum filed by Lawrence E. Schmidt, Esquire on behalf of J. Gary and Barbara Mueller, Petitioners/Appellants.
April 14	Board convened for Public deliberation.
May 18	Final Opinion and Order issued by the Board in which the Petition for Special Hearing relief was DENIED.
June 17	Petition for Judicial Review filed in the Circuit Court for Baltimore County by Lawrence E. Schmidt, Esquire, on behalf of J. Gary and Barbara Mueller, Petitioners/Appellants.
June 23	Copy of Petition for Judicial Review received from the Circuit Court for Baltimore County by the Board of Appeals.
June 25	Transcript of testimony filed with Board.
June 29	Certificate of Compliance sent to all parties and interested persons.
June 29	Response to Petition for Judicial Review filed in the Circuit Court for Baltimore County by the Office of People's Counsel.
July 6	Response to Petition for Judicial Review filed in the Circuit Court for Baltimore County by Michael R. McCann, Esquire on behalf of Falls Road Community Association, Carol Kakel, Marvin Tenberg, Maria Christina Sabolzik, and James Brook Smith, III, Protestants, and received by Board on July 8, 2009.
July 14	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. Gary and Barbara Mueller
Lawrence E. Schmidt, Esquire
Joseph Larson
Michael R. McCann, Esquire
Falls Road Community Association
Harry and Carol Kakel
Marvin Tenberg
Kevin Sabolcik
Anthony Van Vliet
Elizabeth Parkinson
James Brookes Smith, III
Office of People's Counsel for Baltimore County
Tim Kidd, Building Inspections
William J. Wiseman, III, Zoning Commissioner
Arnold F. "Pat" Keller, III, Director, Office of Planning
Timothy Kotroco, Director, Permits and Development Management
John Beverungen, County Attorney

7/6/09

PETITION OF: J. GARY AND BARBARA MUELLER
FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS OF BALTIMORE
COUNTY

* IN THE CIRCUIT COURT
* FOR BALTIMORE
* COUNTY

IN THE CASE OF:

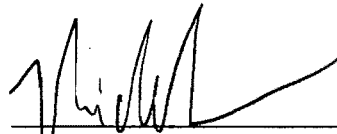
J. GARY AND BARBARA MUELLER
Case No. CBA-08-471-SPH

* Case No.: 03-C-09-07062
*

* * * * *

RESPONSE TO PETITION FOR JUDICIAL REVIEW

The Falls Road Community Association, Carol Kakel, Marvin Tenberg, Maria Christina Sabolzik, and James Brook Smith, III, by their attorneys, Michael R. McCann and Michael R. McCann, P.A., pursuant to Maryland Rule 7-204, hereby respond to the petition for judicial review filed by J. Gary and Barbara Mueller and state their intention to participate in this action for judicial review.



Michael R. McCann

Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204
(410) 825-2150

Dated: July 6, 2009

RECEIVED
JUL - 8 2009

**BALTIMORE COUNTY
BOARD OF APPEALS**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of July 2009 a copy of the foregoing Response to

Petition for Judicial Review was sent via U. S. Mail, postage prepaid to:

Lawrence E. Schmidt
Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204

Attorney for Petitioner

County Board of Appeals
105 W. Chesapeake Avenue, Suite 203
Towson, Maryland 21204

Peter Max Zimmerman
Carole S. DeMilio
People's Counsel for Baltimore County
The Jefferson Building
105 W. Chesapeake Avenue, Room 204
Towson, Maryland 21204



Michael R. McCann

6/29/09

PETITION OF **J. GARY AND BARBARA MUELLER** *
FOR JUDICIAL REVIEW OF THE DECISION *
OF THE COUNTY BOARD OF APPEALS *
OF BALTIMORE COUNTY *

IN THE

RECEIVED
JUN 29 2009

**BALTIMORE COUNTY
BOARD OF APPEALS**

CIRCUIT COURT

IN THE CASE OF **J. GARY AND BARBARA MUELLER***
LEGAL OWNERS FOR A PETITION FOR SPECIAL
HEARING ON PROPERTY LOCATED AT 1109 JUSTA *
LANE , S/S JUSTA LANE, 370' WEST OF BOX *
HILL ROAD *

FOR

8th Election District, 2nd Councilmanic District *

BALTIMORE COUNTY

Prior Case No. 08-471-SPH *
Before the County Board of Appeals *

Case No. 03-C-09-07062

* * * * *

RESPONSE TO PETITION FOR JUDICIAL REVIEW

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, in accordance with Maryland Rule
7-204, submits this response to the Petition for Judicial Review filed by J. GARY AND
BARBARA MUELLER, and states that it intends to participate in this action for Judicial
Review. The undersigned participated in the proceeding before the County Board of Appeals.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
The Jefferson Building
105 W. Chesapeake Avenue, Room 204
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of June, 2009, a copy of the foregoing Response to Petition for Judicial Review was mailed to Michael McCann, Esquire, 118 W. Pennsylvania Avenue, Towson, Maryland 21204, Lawrence E. Schmidt, Esquire, Gildea & Schmidt LLC, 600 Washington Avenue, Suite 200, Towson, MD 21204, Attorney for Appellant and County Board of Appeals, 105 W. Chesapeake Avenue, Suite 203, Towson, Maryland 21204..

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

6/29/09

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
J. GARY AND BARBARA MUELLER

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

CIVIL ACTION
NO.: 03-C-09-007062

IN THE MATTER OF :
J. GARY AND BARBARA MUELLER-LEGAL
OWNERS
FOR SPECIAL HEARING AND VARIANCE
ON PROPERTY LOCATED ON THE S/SIDE OF
JUSTA LANE, 370' W/OF BOX HILL ROAD
(1109 JUSTA LANE)

8TH ELECTION DISTRICT
2ND COUNCILMANIC DISTRICT

BOARD OF APPEALS CASE NO.: 08-471-SPH

* * * * *

CERTIFICATE OF COMPLIANCE

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:

Mr. and Mrs. J. Gary Mueller
1109 Justa Lane
Cockeysville, MD 21030

Lawrence Schmidt, Esquire
Gildea & Schmidt
600 Washington Avenue, Ste 200
Towson, MD 21204

RECEIVED AND FILED

2009 JUN 29 AM 8:46

CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

J. Gary and Barbara Miller
Circuit Court Case No. 03-C-09-007062
Board of Appeals: 08-471-SPH

Joseph Larson
222 Bosley Avenue
Suite B-3
Towson, MD 21204

Mr. Anthony Van Vliet
and Ms. Elizabeth Parkinson
1113 Justa Lane
Cockeysville, MD 21030

Mr. and Mrs. J. Brookes Smith, III
11889 Falls Road
Cockeysville, MD 21030

Mr. Marvin Tenberg
Falls Road Community Association
12206 Boxer Hill Road
Cockeysville, MD 21030

Mr. and Mrs. Harry Kakel, Jr.
12006 Boxer Hill Road
Cockeysville, MD 21030

Michael McCann, Esquire
118 W. Pennsylvania Avenue
Towson, MD 21204

Kevin J. Sabolcik
12000 Boxer Hill Road
Cockeysville, MD 21030

Office of People's Counsel
The Jefferson Building, Suite 204
105 W. Chesapeake Avenue
Towson, MD 21204

William J. Wiseman, III, Zoning Commissioner
The Jefferson Building, Suite 103
105 W. Chesapeake Avenue
Towson, MD 21204

Arnold F. "Pat" Keller, Director
Office of Planning
The Jefferson Building, Suite 101
105 W. Chesapeake Avenue
Towson, MD 21204

Timothy Kotroco, Director
Office of Permits and Development Mgmt
County Office Building
111 W. Chesapeake Avenue, Suite 105
Towson, MD 21204

John E. Beverungen, County Attorney
Office of Law
400 Washington Avenue
Towson, MD 21204

Tim Kidd, Building Inspections
Office of Permits and Development Mgmt
County Office Building
111 W. Chesapeake Avenue, Suite 105
Towson, MD 21204

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

I HEREBY CERTIFY that on this 29th day of June, 2009, a copy of the foregoing Certificate of Compliance has been mailed to the individuals listed above.

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



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

June 29, 2009

Michael R. McCann, Esquire
118 W. Pennsylvania Avenue
Towson, MD 21204

Lawrence E. Schmidt, Esquire
Gildea & Schmidt, LLC
600 Washington Ave., Suite 200
Towson, MD 21204

RE: Petition for Judicial Review
Circuit Court Case No.: 03-C-09-007062
In the Matter of: J. Gary and Barbara Mueller
Board of Appeals Case No.: 08-471-SPH

Dear Counsel:

Notice is hereby given, in accordance with the Maryland Rules that a Petition for Judicial Review was filed on June 17, 2009, by Lawrence E. Schmidt, Esquire on behalf of J. Gary and Barbara Mueller 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 with the Circuit Court for Baltimore County within 30 days after the date of this letter, pursuant to the Maryland Rules.

A copy of the Certificate of Compliance has been enclosed for your convenience.

Very truly yours,

Sunny Cannington
Legal Secretary

Enclosure

cc:	Mr. and Mrs. J. Gary Mueller	Joseph Larson	Mr. Anthony Van Vliet
	Ms. Elizabeth Parkinson	Kevin J. Sabolcik	Mr. and Mrs. J. Brookes Smith, III.
	Mr. and Mrs. Harry Kakel, Jr.	Mr. Marvin Tenberg/Falls	Road Community Association
	Tim Kidd, Building Inspections		Office of People's Counsel
	William J. Wiseman, III, Zoning Commissioner		Arnold F. "Pat" Keller, Director/Planning
	Timothy Kotroco, Director/PDM		John Beverungen, County Attorney

6/17/09
PETITION OF: J. GARY AND BARBARA MUELLER

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY

Jefferson Building
105 W. Chesapeake Avenue, Room 203
Towson, MD 21204

IN THE CASE OF: J. Gary and Barbara Mueller,
Petitioners/Legal Owners
1109 Justa Lane
Timonium, MD 21030

Case No. CBA-08-471-SPH

* * * * *

PETITION FOR JUDICIAL REVIEW

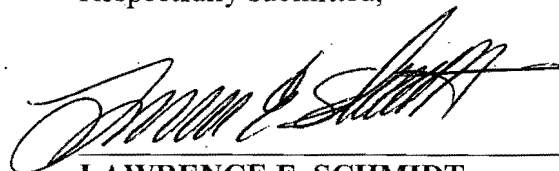
The Appellants, J. Gary and Barbara Mueller, by and through their attorney, Lawrence E. Schmidt and Gildea & Schmidt, LLC, herein file their Petition for Judicial Review pursuant to Rule 7-203(b) from the Opinion and Order of the County Board of Appeals of Baltimore County in the above referenced matter dated May 18, 2009 and attached hereto. The Petitioners were a party to the agency proceeding and have standing to pursue Judicial Review.

Respectfully submitted,

RECEIVED

JUN 23 2009

**BALTIMORE COUNTY
BOARD OF APPEALS**



LAWRENCE E. SCHMIDT

Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
410-821-0070

Attorney for Appellants

RECEIVED AND FILED

2009 JUN 17 PM 3:05

CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

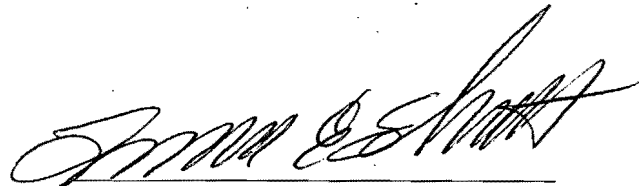
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of **June, 2009**, a copy of the foregoing Response to Petition for Judicial Review was mailed, first-class mail, postage pre-paid to:

Michael R. McCann, Esquire
Michael McCann, P.A.
118 West Pennsylvania Avenue
Towson, MD 21204

Carole S. DeMilio, Esquire
Deputy People's Counsel
People's Counsel for Baltimore County
The Jefferson Building
105 West Chesapeake Avenue, Room 204
Towson MD 21204

Theresa R. Shelton
County Board of Appeals of Baltimore County
The Jefferson Building
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204



LAWRENCE E. SCHMIDT

5/18/09.

IN THE MATTER OF
THE APPLICATION OF
J. GARY AND BARBARA MUELLER -
LEGAL OWNERS; PETITIONERS
FOR SPECIAL HEARING ON THE
PROPERTY LOCATED ON THE
S/S OF JUSTA LANE,
370' W/ OF BOX HILL ROAD
(1109 JUSTA LANE)

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. 08-471-SPH

8TH ELECTION DISTRICT
2ND COUNCILMANIC DISTRICT

*
*

* * * * *

OPINION

This matter comes before the Board of Appeals of Baltimore County as an appeal from a decision of the Deputy Zoning Commissioner (DZC) of Baltimore County, dated July 10, 2008 in which he denied Petitioner's, J. Gary and Barbara Mueller's requested Petition for Special Hearing relief, pursuant to Section 500.7 of the Baltimore County Zoning Regulations (BCZR), to allow living quarters for a son in an existing accessory structure. A public *de novo* hearing was held before the Board on February 10, 2009 at 10:00 a.m. Petitioners, J. Gary and Barbara Mueller were represented by Lawrence E. Schmidt, Esquire. Protestants, Falls Road Community Association, Carol Kakel, Marvin Tenberg, Maria Christina Sabolzick, and James Brook Smith, III, were represented by Michael R. McCann, Esquire. Office of People's Counsel was represented by Carole S. Demilio, Deputy People's Counsel for Baltimore County. Counsel for the Petitioners, Protestants and People's Counsel for Baltimore County agreed to submit Post-Hearing Memorandums in lieu of closing arguments, which were filed by the parties on March 13, 2009 (Office of People's Counsel for Baltimore County) and March 20, 2009 (Petitioners / Protestants). A public deliberation was held on April 14, 2009 at 9:00 a.m.

Background

The subject property is located at 1109 Justa Lane in the Cockeysville community of northern Baltimore County, in the 8th Election District, 2nd Councilmanic District. The property measures 1.78 acres and is split zoned RC 4 and RC 5. It is improved with an existing single-family, detached brick and frame two-story dwelling, which includes three (3) one-story attached additions, an attached deck, a greenhouse and a shed. The dwelling is serviced by a septic tank and well. There is a wood shed in the middle of the property. At the rear of the property there is a two-story metal accessory structure. It also is serviced by a separate septic tank and well. Access to the main dwelling is via a circular driveway from Justa Lane at the front of the property. Access to the accessory structure is a gravel driveway that enters and exits via a 16 ½ foot use-in-common private road at the rear of the property, which the Muellers and other neighbors share. The elevation of the property drops significantly from the front of the property at Justa Lane to the rear of the property. The accessory building was built into the slope of the property so only the second floor is visible from Justa Lane. It was built in 2007 pursuant to a building permit issued by Baltimore County on March 8, 2007 (Petitioner's Exhibit No. 4). The permit called for construction of a two-story detached three (3) car garage with storage and hank sink on the first floor and an office/loft on the second floor. Subsequently, the building has been improved with a bathroom and utilities on the first floor and two bathrooms, a kitchen, and three (3) rooms on the second floor (Petitioner's Exhibit Nos. 5A and 5B).

The Mueller's son, Nicholas (Cole), presently lives in the accessory building while attending Stevenson University. The Mueller's petition seeks relief pursuant to Section 500.7 of the BCZR to permit Cole to continue to live in the accessory structure while attending Stevenson University and law school, and then to convert the accessory building into an in-law apartment to be used by Mr. Mueller's mother.

Testimony and Evidence

Mr. Schmidt, in his opening remarks, described the property and submitted as Petitioner's Exhibit No. 1, a zoning plat which shows the residence and the accessory building. He stated that an "in-law apartment" is requested for the accessory building. Mr. Schmidt also introduced as Petitioner's Exhibit No. 4, a copy of the original Baltimore County Permit dated March 8, 2007 to construct the two-story detached accessory building with a three (3) car garage, storage and hand sink on the first level and an office and loft on the second floor. Proposed use was to be a detached garage/office. Subsequently the building has been improved with a bathroom and utilities on the first floor and two (2) bathrooms, three (3) rooms and a kitchen on the second floor. (see Petitioner's Exhibit No. 5A and 5B). No testimony or exhibits were presented authorizing these improvements to the accessory structure.

Mr. Schmidt called his first witness, Mr. J. Gary Mueller. Mr. Mueller testified that he and his wife have owned the property since September, 1987 and it is their primary residence. They have two children, a son and a daughter. Mr. Mueller is a salesman and travels approximately forty (40) weeks a year. The youngest child is their son Nicholas, nick-named Cole, who attends Stevenson University and is Captain of the lacrosse team. He attended St. Paul School until 2004 and lived in the main dwelling during that time. He presently lives in the accessory building on the property. The Mueller's daughter is 28 years old, is single and lives in the main dwelling. She works at Greenspring Station. Mrs. Mueller works at Northern Baltimore Surgical Center off Kenilworth Drive. Mr. Mueller testified that there are four (4) bedrooms and three (3) bathrooms in the main dwelling. There is a small kitchen and two (2) offices on the upper level of the accessory building and storage and bathroom on the lower level. There is also a garden shed in the middle of the property. Mr. Mueller testified that Cole has friends over and they sometimes spend the night in the accessory building. Cole drives a Dodge

Dakota and a pick-up truck. Mr. Mueller testified that his brother and mother may occupy the accessory structure in the future. Cole would continue to live there while attending law school. Mr. Mueller stated that his mother presently lives with his brother on Stevenson Lane. He has another brother and two (2) sisters. One sister lives in Ohio and the other in Chicago. The second brother resides in Baltimore.

Mr. Schmidt introduced as Petitioner's Exhibit No. 6 a Stipulation Letter dated February 10, 2009, signed by J. Gary Mueller, Barbara I. Muller, Nicholas F. Mueller and six (6) neighbors, in which the Muellers agree to adhere to six (6) conditions concerning their use of the accessory building. The conditions stipulate that occupancy of the accessory building is restricted to Nicolas Mueller or another immediate member of the Mueller family; that the accessory building shall not be leased or used by others; that Nicholas Mueller shall not reside in the accessory building longer than September 1, 2015; that no outdoor gatherings would be held after 9:00 p.m., Sunday through Thursday, and 11:00 p.m., Friday and Saturday; that no gathering shall exceed ten (10) guests; and that the Muellers shall not block the private access road to the accessory building.

Mr. Schmidt called Mitchell Kellman of Daft-McCune-Walker, Inc., to testify on behalf of the Petitioners. Mr. Kellman is a former long time employee of the Zoning Office within the Department of Permits and Development Management (PDM) of Baltimore County and was accepted as a expert planner and an expert in the interpretation of the BCZR. Mr. Kellman testified that he visited the property and the subject building is an accessory structure and meets points A-D of BCZR, Section 101.1, which describes an accessory use or structure as:

- (a) is customarily incident and subordinate to and serves a principal use or structure;
- (b) is subordinate in area, extent or purpose to the principal use or structure;
- (c) is located on the same lot as the principal use or structure served; and

(d) contributes to the comfort, convenience or necessity of occupants, business or industry in the principal use or structure served;

Mr. Kellman further offered testimony that the structure complies with the area of limitations for accessory structure in BCZR 400.1.

Accessory buildings in residence zones, other than farm buildings (Section 404) shall be located only in the rear yard and shall occupy not more than 40% thereof. On corner lots they shall be located only in the third of the lot farthest removed from any street and shall occupy not more than 50% of such third. In no case shall they be located less than 2 1/2 feet from any side or rear lot lines, except that two private garages may be built with a common party wall straddling a side interior property line if all other requirements are met. The limitations imposed by this section shall not apply to a structure which is attached to the principal building by a covered passageway or which has one wall or part of one wall in common with it. Such structure shall be considered part of the principal building and shall be subject to the yard requirements for such a building.

Under cross-examination by Mr. McCann, Mr. Kellman testified that there is nothing in the Baltimore County Zoning Regulations (BCZR) to allow family members to occupy an accessory structure. Mr. Kellman testified that the accessory structure satisfies all the conditions of BCZR, paragraph 502.1, conditions that determine the granting of Special Exceptions. Mr. Kellman testified that no zoning variances were required. Mr. Kellman conceded that the zoning regulations do not state anywhere that in-laws or other family members may reside in an accessory building in the RC zone. He acknowledged that the words "in-law" apartment(s) are not mentioned in the BCZR.

Mr. McCann called four (4) witnesses who testified in opposition to Petitioner's request for Special Hearing relief. Mr. Marvin Tenberg testified on behalf of the Falls Road Community Association. He is the Vice President of the Association, which represents two thousand seven hundred (2,700) families. He has lived at the end of Boxer Hill Road for twenty (20) years. Rule 8 papers for Mr. Tenberg were submitted as Protestant's Exhibit No. 5. Mr. Tenberg expressed concern regarding the precedent the Petitioner's proposal would set. Mr. McCann

then called Carole Kakel. Ms. Kakel has lived at 12006 Boxer Hill Road for forty (40) years and is Treasurer of the Falls Road Community Association. Ms. Kakel echoed Mr. Tenberg's concern about a precedent being set. She also expressed concern about the impact Petitioner's proposal would have on the neighborhood. Mr. McCann then called Mr. James B. Smith, III, who also testified for the Protestants. Mr. Smith lives at 11889 Falls Road. He has lived there for twenty (20) years. The front yard of his property fronts the rear yard of the Mueller's property where the accessory building is located. He testified they have experienced numerous parties, loud noises late at night and numerous cars coming and going daily. He also discussed drainage issues in the area between his property and the Petitioner's property. Mr. McCann's final witness was Maria Christina Sabolzik. Ms. Sabolzik resides two (2) properties over and east of the Petitioner's property. She testified that she has observed a lot of cars using the private driveway to access the second building. She said it is not the amount of traffic an accessory structure would have. In her opinion it "indicates to her, that this is not just one person living there". She also echoed Mr. Smith's concern regarding the water run-off along the right-of-way.

Mr. Schmidt, in his Post-Hearing Memorandum, cited six (6) cases that permitted "in-law" apartments. Four (4) of the cases involved additions to existing dwellings. Two (2) cases, numbers 07-476-SPH and 01-496-SPHA granted "in-law apartments" to be located in accessory structures with occupancy restricted to in-laws related to the Petitioners. Two (2) of the cases utilized a document called *Declaration of Understanding*, which restricts the use of "in-law apartments". A sample of the document was included as Exhibit D in Mr. Schmidt's Post-Hearing Memorandum. It is noted that Section I, titled Declaration, in the *Declaration of Understanding* statements specifies:

1. Any and all improvements now existing or to be constructed on the Property shall be used only as a single-family residence. No such improvements or additions shall ever be used as a separate living quarter or second residential unit.

Decision

The matter at hand concerns a request by the Muellers for Special Hearing Relief pursuant to BCZR Section 500.7 to permit their son Cole to live in an accessory building, which is located on the same property as their existing single family dwelling. BCZR Section 500.7 permits the Zoning Commissioner, and Board of Appeals on appeal, to conduct a Special Hearing to "determine any rights whatsoever of such person in any property within Baltimore County in so far as they may be affected by these regulations". Testimony and Exhibits presented indicate that an accessory structure exists on the Mueller's property and was constructed to service the Mueller's principal dwelling.

Section 101 of the BCZR defines an accessory structure:

- a. is customarily incident and subordinate to and serves a principal use or structure;
- b. is subordinate in area, extent or purpose to the principal use or structure;
- c. is located on the same lot as the principal use or structure served; and
- d. contributes to the comfort, convenience or necessity of occupants, business or industry in the principal use or structure served.

The Building Permit issued March 8, 2007 to construct the accessory building described the proposed work:

"CONSTRUCT 2 STY DETACHED GARAGE T/D 3 CAR GARAGE W STORAGE, HANK SINK ONLY 2ND FLR TO BE OFFICE/LOFT ACCESSORY STRUCTURE LTR ATTACHED IN REAR OF PROPERTY OF EX. SFD OVERALL DIM 50'X30'X24'10"=2,500SF, SMALLER THAN DWELLING"

There is no mention of an apartment or dwelling use. Subsequently, the Muller's made improvements to the building to include two (2) bedrooms; two (2) baths and a full kitchen on the second floor and a bathroom on the first floor. The building is serviced by a well and septic system separate from the main dwelling. The Mueller's son, Cole, lives full time in the accessory building. In order to permit Cole to reside in the accessory structure, the Muller's, through their attorney, Mr. Schmidt, have requested that the accessory structure be labeled "in-law apartment". Although Mr. Schmidt presented several rulings in his Post-Hearing Memorandum, which permitted "in-law apartments", the Board cannot find anything in the BCZR that permits such an apartment in an accessory structure. Mr. Kellman, who was accepted as an expert in the interpretation of the BCZR, testified that there is nothing in the BCZR that allows family members to occupy an accessory structure. The rulings that were cited by Mr. Schmidt included restrictions such as covenants that must be added to the Deed and Declaration of Understanding. Again, this Board cannot find in the BCZR, any code that would permit a residence in an accessory structure, with these restrictions. There was no testimony presented why Cole cannot reside in the main dwelling, other than he frequently entertains fellow students and friends and some stay overnight. To reclassify the accessory structure as an "in-law apartment" is a misnomer. The letter signed by the Muellers and several neighbors specified that Cole can continue to reside in the accessory building until September 1, 2015. Mr. Mueller testified that there are four (4) bedrooms and three (3) bathrooms in the main dwelling. The current precedent is to allow "in-law" living quarters as an addition to an existing dwelling, where there is the medical necessity of an elderly relative. Under this precedent, this matter does not meet the requirements to allow "in-law" living quarters in the existing accessory structure. The Board is concerned that by allowing the current living arrangement in the existing accessory

building, the density of the property is increased beyond what is allowable in RC 4 and RC 5 zones.

After a thorough review of the facts, testimony and law, the Board unanimously agreed to deny the Petitioner's Special Hearing request to allow living quarters for the Mueller's son, Cole, in the existing accessory structure.

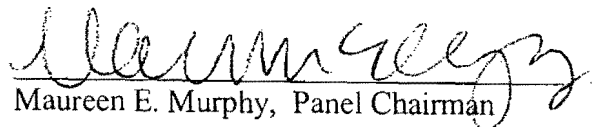
ORDER

THEREFORE, IT IS THIS 18th day of May, 2009 by the Board of Appeals of Baltimore County;

ORDERED that for the reasons stated in the foregoing Opinion, the Special Hearing relief requested pursuant to Section 500.7 of the Baltimore County Zoning Regulations (BCZR) to allow living quarters for a son in an existing accessory structure be and is hereby **DENIED**.

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

**BOARD OF APPEALS
OF BALTIMORE COUNTY**


Maureen E. Murphy, Panel Chairman


Wendell H. Grier


Robert W. Witt

5/18/09



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

May 18, 2009

Lawrence Schmidt, Esquire
Gildea & Schmidt
600 Washington Avenue, Ste 200
Towson, MD 21204

Michael McCann, Esquire
118 W. Pennsylvania Avenue
Towson, MD 21204

RE: *In the Matter of: J. Gary and Barbara Mueller*
Case No.: 08-471-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 above 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,

A handwritten signature in black ink that reads "Theresa Shelton/kc".

Theresa R. Shelton
Administrator

Duplicate Cover Letter

TRS/klc
Enclosure

c: Mr. and Mrs. J. Gary Mueller
Mr. Anthony Van Vliet
Mr. Marvin Tenberg/Falls Road Community Association
Tim Kidd, Building Inspections
William J. Wiseman III /Zoning Commissioner
Timothy M. Kotroco, Director /PDM

Joseph Larson
Mr. and Mrs. J. Brookes Smith, III
Mr. and Mrs. Harry Kakel, Jr.
Office of People's Counsel
Arnold F "Pat" Keller, Planning Director
John E. Beverungen, County Attorney

3/20/09

IN RE: PETITION FOR SPECIAL HEARING

S side of Justa Lane, 370 feet W of
Box Hill Road
8th Election District
2nd Councilmanic District
(1109 Justa Lane)

J. Gary and Barbara Mueller
Petitioners

* BEFORE THE

* BOARD

* OF APPEALS FOR

* BALTIMORE COUNTY

* Case No. 2008-0471-SPH

* * * * *

POST-HEARING MEMORANDUM

J. Gary Mueller and Barbara Mueller (hereinafter “Mueller” or “Petitioners”), by and through their attorneys, Lawrence E. Schmidt and Gildea & Schmidt, LLC, submit this Post-Hearing Memorandum, pursuant to the instruction of the County Board of Appeals of Baltimore County (hereinafter “Board”) and respectfully state:

Statement of the Case

This matter comes to the Board on a Petition for Special Hearing for the property owned by Mueller located at 1109 Justa Lane in the Cockeysville community of northern Baltimore County. The Petition for Special Hearing was filed pursuant to the authority contained in Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to allow living quarters for a son (a/k/a an “in-law apartment”) in an existing accessory structure.¹ At the conclusion of the *de novo* hearing on February 10, 2009, the Board requested that the parties submit post-hearing memorandums in lieu of closing argument on or before March 13, 2009. Shortly before that date, an extension of the deadline to submit memoranda was requested by counsel for certain Protestants (Michael McCann, Esquire) to the petition and a new deadline was established for March 20, 2009. This memorandum follows.

¹ BCZR § 500.7 permits the Zoning Commissioner (and Board on appeal) to conduct “special” hearings to, among other things, “determine any rights whatsoever of such person in any property within Baltimore County insofar as they may be affected by these regulations.” Petitions for Special Hearing are routinely filed to address a myriad of zoning issues; whereas Petitions for Variance or Petitions for Special Exception address those specific requests.

Facts

The relevant facts related to the case were established through the testimony and evidence offered at the Board's hearing. On behalf of the Petitioner, testimony was received from the co-owner/co-petitioner, J. Gary Mueller and Mitchell Kellman, of Daft-McCune-Walker. Mr. Kellman, a former long-time employee of the Zoning office within the Department of Permits and Development Management of Baltimore County, was accepted as an expert planner and also an expert in the interpretation of the BCZR. Also, the Petitioners submitted the following documentary exhibits:

1. Site Plan of Property
2. Building elevation drawing of accessory buildings
3. Aerial photos of area
4. Permit for construction of accessory building (B657840)
5. Drawings (floor plan) of accessory building interior
6. Stipulation between Mueller and neighbors
7. Deed of acquisition by Mueller (9/9/1987)
8. Application for percolation tests with DEPRM
9. DEPRM letter dated November 12, 2008 regarding percolation tests
10. Photos
11. Mitchell Kellman's resume
12. Letter of support from neighbor
13. Photos

Testimony was also received by several opponents in the community, most of whom do not

reside close enough to the subject property to be impacted by the request. In fact, neither adjacent neighbor to either side of the property appeared in opposition. Many of the immediate neighbors who are most impacted by the request submitted a signed stipulation supporting the request. (Petitioner's Exhibit No. 6).

The subject property under consideration is a roughly rectangularly shaped property, 1.78 acres in area, split-zoned R.C.4 and R.C. 5. The R.C. 5 zoned portion of the property occupies the front third of the lot. The R.C.4 zoning covers approximately two-thirds of the site to the rear. The property is improved with an existing single-family detached brick-and-frame two-story building. In addition to the ground floor and second story, there is also a fully improved basement. The total area of the dwelling, including the basement, is approximately 4,600 square feet. There is not a garage located on the front portion of the site to serve the dwelling. Instead, visitors to the Mueller home park in a circular macadam driveway, which provides access to the property from Justa Lane (a private road). The detached single-family dwelling features an attached deck and greenhouse building.

There are significant topographical features of the property. Most notably is the property's slope. The elevation of the property drops significantly from the front at Justa Lane to the rear. The property is also somewhat irregularly shaped. Specifically, the width ranges from 138.54 feet at the front to 144.64 feet along the rear property line. Similarly, the depth of the property ranges from 539.7 feet on the east side to 560.91 feet along the western property line.

The subject of the instant Petition is a two-story accessory building which is located in the rear of the lot. It is significantly downgrade from the dwelling. Additionally, although the single-family detached dwelling is in the portion of the lot zoned R.C. 5, the accessory building is in that

part of the lot zoned R.C. 4. Unlike the single-family detached dwelling, vehicular access to the accessory building is not via Justa Lane. Rather, there is a shared 16.5 foot wide use-in-common right-of-way which the Muellers and other neighbors have legal access. Testimony and evidence was that the Muellers have improved that right-of-way with a crushed stone base to provide a navigable roadway the accessory structure. In view of the topography of the property, the accessory structure is built into a grade. From the north (front) side, the accessory structure appears to be one-story, however, when viewed from the downgrade (south) side, it appears to be two stories. The lower floor largely contains a garage area/storage area, as is evidenced by the two garage doors which provide access to the lower floor. The upper floor contains living quarters, including bathroom and kitchen facilities.

The structure was originally contemplated to be used for storage and an office for Mr. Mueller. In this regard, he testified that he is a salesman for a compressor company (Kaeser Compressors, Inc.), which is headquartered out-of-state. Thus, he does not go to a local office daily, but travels a "territory." He further indicated that he does not keep stock or inventory on the property. Significantly, he testified that he is "on the road" for approximately 40 weeks out of the year. It was indicated that some business trips may last but a day or two, while others may last the entire week.

The accessory structure was built pursuant to a valid building permit issued by Baltimore County (Permit No. B657840). As the site does not have access to public water or sewer, there are two wells and septic areas on the property. An older well and septic area serves the detached single-family dwelling. Due to the significant grade change, neither of these existing facilities could be used for the accessory structure. Thus, a new well was recent drilled, pursuant to a County permit

(BA-95-1890) to provide water to the accessory structure. Additionally, a septic system has been installed for the accessory structure. Mr. Mueller testified that the septic is presently operational, however he has been instructed by the Department of Environmental Protection and Resource Management ("DEPRM") to conduct additional percolation tests (when the ground dries in the spring of 2009) in order to provide an additional septic reserve area.

Mr. and Mrs. Mueller are the parents of two children. The youngest is Nicholas Mueller, nicknamed "Cole." Cole Mueller is currently a student at Stevenson University, which is located in the Greenspring Valley of Baltimore County. Following his high school graduation, he initially attended college out-of-state in his freshman year, however later transferred to Stevenson. He plays lacrosse for the university and was captain of the team last year. Like many 20-something college students, Cole would like his own "living space," particularly since Stevenson University is primarily a commuter campus. Moreover, in order to provide a male presence on the property in view of Mr. Mueller's work schedule, it was decided that the instant Petition for Special Hearing would be filed to permit Cole to reside within the accessory structure. The testimony from Mr. Mueller is that Cole is the only resident of the structure, and does not pay rent. There is no evidence before the Board to the contrary. Additionally, as one would anticipate in view of his position on the lacrosse team, Cole frequently entertains teammates and friends from college in the building. When it was brought to the attention of the Muellers that these visits might adversely impact neighbors, a stipulation (Exhibit 6) was signed between the Muellers and their neighbors to ensure that there would be no adverse impact on the neighborhood. The Muellers are agreeable to terms and conditions of that stipulations being attached as conditions of approval of the instant matter.

Argument

1. An in-law apartment is a permitted land use in the R.C. 4 and R.C.5 zone.

Notwithstanding the extension of the filing date of Post-Hearing Memoranda, People's Counsel chose to file its Memorandum before the deadline, the Petitioners have had an opportunity to review it. People's Counsel's Memorandum, in essence, argues that the proposed relief cannot be granted, because in-law apartments are not allowed by the Baltimore County Zoning Regulations. Citing two cases previously decided by the Board (In Re: Joseph and Lauren Ryan, Case 03-438-SPH and In Re: Brian P. and Robin L Zemaniroski, 07-332-SPHA), People's Counsel asserts that the Board has determined that in-law apartments are not permitted under the BCZR. These cases are distinguished from the subject petition on their facts, in that the Board specifically found that the structures at issue were not accessory in nature. Thus, they are not controlling in this case. Moreover, if the People's Counsel correctly states that it was the Board's intention to hold that in-law apartments are never allowed in accessory structures in Baltimore County, then the Petitioners respectfully assert that the Board has misinterpreted the law and struck down a legal interpretation and administrative practice that has existed for years.

Mueller does not disagree with People's Counsel that the Baltimore County Zoning Regulations are written in the inclusive (see *Kowalski vs. Lamar*, 25 Md.App. 493, 334 A.2d 536 (1975)). That is, only those uses identified in the regulations are allowed. Moreover, it is not disputed that the regulations do not permit two single-family detached dwellings on a single lot in the R.C. 4 and R.C.5 zones. Moreover, this case is not (as People's Counsel asserts) about an attempted subdivision of the Mueller lot. There is but one lot and there is no intent to change its present configuration and form.

What is sought is approval for **one** single-family dwelling and **one** accessory structure with living quarters for a family member. A single-family detached dwelling is permitted by right in the R.C. 4 zone by BCZR §1A03.3.A.1. In the R.C. 5 zone, a single-family detached dwelling is permitted by right in BCZR § 1A04.2.A.2. Accessory structures are also permitted by right in both zones. In the R.C. 4 zone, they are allowed under BCZR §1A03.3.A.9, and in the R.C. zone under BCZR §1A04.7.A.11.

Most respectfully, People's Counsel misses the point, in that Petitioners are not seeking approval of two single-family dwellings. As noted above, and to be emphasized, they seeking approval of one single-family dwelling and one accessory structure. Most importantly, the accessory structure must be occupied by a member of Mueller family. If occupied by a person not a member of the Mueller family, indeed the second building would be a separate **single family detached** dwelling. However, if it is occupied by a member of the Mueller family, the use can be allowed, assuming the building meets the definition and requirements for an accessory structure in the BCZR and the Board determines that the use can be carried out without detriment to the locale. This has been the interpretation of the BCZR for years.

In 1986, then-Zoning Commissioner Arnold Jablon considered an application for an in-law apartment in Case 87-88-SPHA. In a well-reasoned opinion, he noted that the Petitioner sought relief via Special Hearing pursuant to BCZR §500.7. He noted the rational basis to permit in-law apartment in accessory structures, stating:

“A remarkable demographic change occurred from 1970 to 1980 – the average household size decreased from 3.11 to 2.75 persons per household. Moreover, the Population Reference Bureau predicts a further decrease to 2.47 persons per household. Even though there has been an increase of over

11% in population with a resulting increase in the total number of households, the decrease in an average household size shall continue. [citations omitted] In addition, the age group that is growing faster than any other is persons over 65, presently numbering 24 million. Approximately 6.4 million live in 1 person households, which is the largest numerical increase of any type of household. [citations omitted]

As a result of this demographic revolution and the expanding needs of the elderly, there has been an increased demand for "accessory apartments," i.e. units created within existing single-family homes or on the same lot. They are independent units but may share an entrance, yard and parking area with the primary units. They are often called "mother-in-law apartments," "mother-daughter homes," "secondary residences," "shared housing," "grammy flats," or "elderly cottage housing opportunities" (ECHO housing). Some have common kitchens, some are detached or semi-detached units placed in the rear yard of the existing dwelling. All raise similar regulatory problems and legal issues. All attempt to resolve a growing problem, i.e. the need for housing for the elderly that will provide familiar supervision while permitting an element or perceived independence."

In approving the in-law apartment application in that case, Commissioner Jablon observed that the proposal "will not deviate from the legally acceptable single-family dwelling permitted in an R.C. 5 zone." Moreover, he stated that an in-law apartment will not increase the maximum permitted density. He further reasoned that the use could be permitted if determined to be accessory to the principal use of the property for a single-family detached dwelling. Noting the definition of accessory structure in the BCZR, he concluded that an accessory in-law apartment was allowed.²

Commissioner Jablon's rationale has been supported over the years in numerous other cases. In Case 01-004-SPH, the Zoning Commissioner considered a request for a Special Hearing Request for an in-law apartment in the R.C.5 zone. A summary of the County law as interpreted was

² A copy of Commissioner Jablon's decision is attached as Exhibit A.

provided in that decision. It stated:

“In-law apartments in the R.C. 5 zone are not specifically provided for in the BCZR. However, Section 1A04.2 thereof lists those uses that are permitted as-of-right in that zone. Among the uses so identified are, ‘dwellings, one family attached.’ Additionally, ‘family’ is defined in the BCZR as, ‘any number of individuals lawfully living together as a single housekeeping units and doing their cooking on the premises, as distinguished from a group occupying a boarding or rooming house or hotel. [emphasis in original] The use of the word ‘lawfully’ has been held to imply that the individuals are related by blood or marriage. Finally, Section 500.7 of the BCZR empowers the Zoning Commissioner to conduct hearings as might be necessary to property enforce or interpret the BCZR. From these sections, it has been held that an ‘in-law apartment’ is permitted in the R.C. zone.”³

Numerous other cases have reached the same result. These include Case 94-83-SPHA, wherein an in-law apartment was approved in the R.C. 5 zone; Case 7-476-SPH, wherein an in-law apartment was permitted in the R.C. 5 zone; Case 01-496-SPHA, wherein an in-law apartment in the R.C. 4 zone; Case 07-214-A, where an in-law apartment was permitted in an R.C. zone.⁴ There are numerous other decisions that have been issued throughout the years where an in-law apartment has been permitted. Does People’s Counsel seriously contend that all of the hundreds of in-law apartments previously approved are now illegal? Is the Board prepared to adopt this rationale?

Moreover, the Zoning office of the Department of Permits and Development Management provides to the public (either through the Zoning office directly or via the County’s website) a sample Declaration of Understanding for use in in-law apartment cases (attached hereto as Exhibit D). Moreover, a covenant restriction has been recorded among the Land Records of Baltimore

³ This decision is also attached as Exhibit B.

⁴ These decisions have been attached collectively as Exhibit C.

County to ensure compliance with the accepted interpretation. A copy of this covenant as used in a previous case is attached hereto and may be imposed in the instant case by the Board as a condition to the grant of the relief requested (Exhibit E).

The permissibility of an in-law apartment within an accessory structure has never been challenged until the Board's rulings in Ryan and Zemaniroski. Even People's Counsel, until they piggybacked onto the Board's recent decisions, acknowledged the legal permissibility of in-law apartments. In Case No. 06-006-A, then Deputy Zoning Commissioner John V. Murphy granted a Petition to permit an in-law apartment administratively, without holding a public hearing. People's Counsel filed a Motion for Reconsideration. Therein, it contended that a hearing need be held; but did **not** contest the validity of the in-law apartment concept. People's Counsel said,

"In addition, it should be noted that any approval of an "in-law" apartment should be conditioned specifically on the use of the apartment by the parents of the occupants, and the filing of the decision in the Land Records of Baltimore County."⁵

Although there is a scarcity of reported Maryland cases in this subject, other states have addressed this issue. In *Farr v. Board of Adjustments* 318 N.C. 493, 349 SE.2d 576 (1986), the Supreme Court of North Carolina addresses the identical issues (i.e. family members living in an accessory structure) and a similar statute. The Court concluded that the use of an accessory building for residential purposes by members of the property owner's family was permissible.

Finally, in *Keseling v. City of Baltimore* 220 Md. 263, 191 A.2d 726 (1999), the Court of Appeals of Maryland recognized the difference in calculating density when considering a "family," as opposed to roomers or boarders. The Court stated, in considering the density issue, "[i]t is

⁵ A copy of People's Counsel's Motion is attached as Exhibit F.

apparent that the restrictions of the law are expressed in the measurement of family units.” In this case, there is but **one family** living at 1109 Justa Lane; the Muellers, Gary, Barbara, Cole and their daughter. Thus, the use of the accessory structure is not prohibited by law for so long as it is occupied by a family member.

2. The building is an accessory structure.

The actual issue in this case is whether the structure occupied by Cole Mueller is an accessory structure. An accessory structure is defined in BCZR § 101.1. If the structure meets that definition, and the living quarters therein will be occupied by a member of the Mueller family, then it is a permitted land use for the reasons set forth hereinabove.

BCZR Section 101.1 provides definitions of terms throughout the Regulations. Accessory Use or Structure is defined therein as,

“A use or structure which: (a) is customarily incident and subordinate to and serves a principal use or structure; (b) is subordinate in area, extent or purpose to the principal use or structure; (c) is located on the same lot as the principal use or structure served; and (d) contributes to the comfort, convenience or necessity of occupants, business or industry in the principal use or structure served; except that, where specifically provided in the applicable regulations, accessory off-street parking need not be located on the same lot. An accessory building, as defined above, shall be considered an accessory structure. A trailer may be an accessory use or structure if thereafter so specified. An ancillary use shall be considered as an accessory use; however, a use of such a nature or extent as to be permitted as a “use in combination” (with service station) shall be considered a principal use.”

Mr. Kellman offered testimony in this case that the building is an accessory structure as defined and squarely meets the points (a-d) identified. His testimony was not rebutted, nor

challenged, by any testimony or evidence offered by the opponents or People's Counsel. The factual underpinnings of his conclusion were provided through the testimony of Mr. Mueller and exhibits presented. There is a four part test for a building to be considered an accessory structure. First it must be customarily incident and subordinate to and serve a principal use or structure. Clearly, the building at issue meets the criteria. It is subordinate (both in area and in purpose) then the detached single family dwelling which is on the property. Moreover, it serves the occupants (i.e. the Mueller Family) of the detached single family area. Secondly, it is subordinate in area, extent or purpose to the principal use or structure. The Mueller single family detached structure is 4,600 square feet in area (three levels), the accessory buildings is 3,000 square feet in area (including the garage). Third, it is located on the same lot as the principal use or structure. Fourth, it contributes to the comfort, convenience and necessity of the occupants. In this regard, the fact that Cole helps maintain the property, is a male presence during his father's frequent absences from the site, etc., is evidence that this criterion is satisfied. Further, Mr. Kellman offered undisputed testimony that the structure complies with the area limitations for accessory structures in BCZR § 400.1 (Accessory Structures in Residence Zones). Mr. Kellman stated, without dispute, that the accessory structure at issue met all of the applicable height, setbacks, lot location and other requirements. It does not require any zoning variance.

For these reasons, the Board should find that the subject building is an accessory structure. Having made such a determination, the in-law apartment use should be granted, as it is permitted by law.

3. The use of the accessory structure as an in law apartment will not detrimentally impact the locale.

Petitioners' aver that having determined that the building is an accessory structure, the Board should grant the Petition for Special Hearing. However, as noted above, in adjudging similar petitions, the County has applied the special exception criteria set out in BCZR 502.1 to the requests. This is because the interpretation of the law required an inquiry into the impacts of the in law apartment; insofar as it affects upon adjacent properties.

In this case, the testimony and evidence offered was overwhelming that the use of the accessory structure by Cole Mueller for living quarters would not detrimentally impact adjacent properties. Admittedly, he is a young man and inclined to socialize with his friends and teammates from Stevenson College. Recognizing this, the Muellers and their son have entered into an agreement with their neighbors to restrict the impacts of Cole's occupancy of the structure. As noted during the hearing, they are willing to abide by these terms and restrictions and the Board certainly has the authority to impose such conditions and limitations of any use.

The Protestants who appeared at the hearing testified little in the way of direct impact to their respective properties. Marvin Tenberg testified that he appeared in opposition only because this case "sets a very dangerous precedent"; ignoring the fact that each and every Petition for Special Hearing will be adjudged separately based upon the facts and property at issue and that each such application must undergo the scrutiny of a public hearing. Carol Kakel admitted on cross examination that the accessory structure is not visible from her property and when asked, "[s]o there's really very little impact on your property from a cause and effect standpoint, is that correct?," responded "true".

James Smith expressed concerns about water runoff in the area but acknowledged that the runoff did not impact his property and was not caused by the Mueller lot and improvements thereon. He also expressed concerns about loud music and squealing of wheels but admitted that these events had not occurred in the past year, after the Muellers had been approached by other neighbors and agreed to the terms in the stipulation. For his part, he never approached the Muellers about his concerns and had never met Cole or seen him close up until the hearing. Finally, Maria Sabolzik testified she's "never seen a party" on he Mueller property but is concerned over the fact that there are five cars (over a 24 hour period, or one car every four and one half hours) using the common right of way.

In contrast to this testimony, Mr. Kellman offered specific and precise answers addressing each of the standards of section 502.1 of the BCZR. He noted that the houses in the area are located on large lots, that the closest house is at least 175 feet away, that the use would not adversely impact traffic, public utilities, etc.

In summary, if the Board chooses to apply the special exception criteria set out in BCZR Section 502.1, the evidence is overwhelming that the proposed use will not detrimentally impact the health, safety or general welfare of the locale.

Conclusion

Based upon the foregoing, as well as the testimony and evidence offered at the public hearing on this matter, the Petitioners request that the Petition for Special Hearing be granted and that the Board impose such reasonable limitations and conditions thereon (i.e. adoption of the Stipulation and/or required recordation of the County covenant) as may be required.

Respectfully submitted,

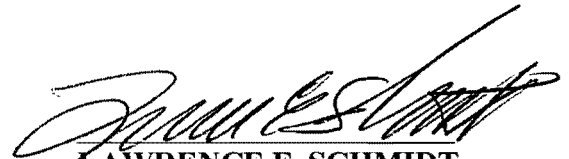
A handwritten signature in black ink, appearing to read "Lawrence E. Schmidt", is written over a horizontal line.

LAWRENCE E. SCHMIDT

Gildea & Schmidt, LLC
600 Washington Avenue
Suite 200
Towson, MD 21204
Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of March, 2009, a copy of the foregoing Post-Hearing Memorandum was mailed first class, postage pre-paid to: Carole DeMillio, Esquire, People's Counsel for Baltimore County, 105 West Chesapeake Avenue, Room 204, Towson, MD 21204 and Michael R. McCann, Esquire, Michael McCann, P.A., 118 West Pennsylvania Avenue, Towson MD 21204.


LAWRENCE E. SCHMIDT

GILDEA & SCHMIDT, LLC

600 WASHINGTON AVENUE

SUITE 200

TOWSON, MARYLAND 21204

TELEPHONE 410-821-0070

FACSIMILE 410-821-0071

www.gildeallc.com

DAVID K. GILDEA

LAWRENCE E. SCHMIDT

D. DUSKY HOLMAN

SEBASTIAN A. CROSS

CHARLES B. MAREK, III

JASON T. VETTORI

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BOARD OF APPEALS

March 20, 2009

Via Hand Delivery

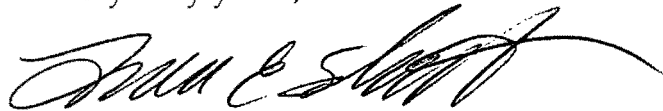
Ms. Theresa R. Shelton
County Board of Appeals of Baltimore County
The Jefferson Building
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204

**Re: Petitions for Special Hearing
Mueller/1109 Justa Lane
Case No. 2008-0471-SPH**

Dear Ms. Shelton:

Enclosed please find an original and three (3) copies the Petitioner's Post-Hearing Memorandum with the accompanying exhibits for the above captioned matter. Thank you for your cooperation in this matter. With kind regards, I am

Very truly yours,



Lawrence E. Schmidt

LES: jkl

Enclosures

CC: Carole S. DeMilio, Esquire, Esquire, People's Counsel for Baltimore County
Michael R. McCann, Esquire
Mitch Kellman, Daft, McCune, Walker
J. Gary & Barbara Mueller

Exhibit A

IN RE: PETITIONS SPECIAL HEARING
AND VARIANCE

NW/S of Farmfield Court, of
1,101' NE of the E/S of
Dairydale Court -
10th Election District

Richard P. Kidwell, et ux,

Petitioners

BEFORE THE

ZONING COMMISSIONER

OF BALTIMORE COUNTY

Case No. 87-88-SPHA

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request approval by the Zoning Commissioner to permit a second living unit to be added to their home and, additionally, a variance to permit a side yard setback of 42 feet in lieu of the required 50 feet, as more particularly described on Petitioners' Exhibit 1.

The Petitioners appeared and testified. John Rommel, the contractor, also testified. William Beschorner, an adjacent property owner, appeared in opposition.

Testimony indicated that the subject property, zoned R.C.5 and measuring 260' x 560' x 266' x 504', is improved with a single-family dwelling. The Petitioners propose to construct a 26' x 38' addition to the north side to be used by Mrs. Kidwell's mother, Lucille Kelley. The addition would contain a separate kitchen and living unit.

Mrs. Kelley would like to live with her daughter and son-in-law but only if she could have some semblance of independence, as is common with the elderly. The Petitioners have no intent of creating a permanent second living unit; in fact, the purpose of it is solely for use by Mrs. Kelley. Upon her death, if she should reside elsewhere, or if the property is sold, the Petitioners will remove the kitchen and open up the addition to the rest of the house by providing access through.

Exhibit B

IN RE: PETITION FOR SPECIAL HEARING
NE/S Kaufman Road, 900' SE of
Bentley Road
(200 Kaufman Road)
3rd Election District
7th Council District

Patrick Meadowcroft, et ux
Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 01-004-SPH

*

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Zoning Commissioner for consideration of a Petition for Special Hearing filed by the owners of the subject property, Patrick and Susan Meadowcroft, through their attorney, Howard L. Alderman, Jr., Esquire. The Petitioners request a special hearing to approve the use of the building on the subject property as a legal, nonconforming two-apartment dwelling. The subject property and relief sought are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the request were Patrick Meadowcroft, property owner, his daughter, Lyda Swartz, Eugene F. Raphael, Professional Land Surveyor who prepared the site plan for this property, and Howard L. Alderman, Jr., Esquire, attorney for the Petitioners. In addition, Janice Staples appeared on behalf of the Maryland Line Area Association, Inc. in support of the request. Appearing as Protestants in the matter were Alphonse J. Wissman, Bonnie Herwig, George W. Lacey, and Robert E. Schatz, nearby residents of the area.

Testimony and evidence offered revealed that the subject property consists of a gross area of 4.458 acres, more or less, zoned R.C.5, and is improved with two structures, one a barn containing two apartments, and the other, a combined barn/shed building which is used for storage purposes. Testimony indicated that Mr. Meadowcroft has owned the subject property for the past 25 years. He indicated that he formerly resided on the property in one of the apartments and that

Exhibit C

Res
10/6

IN RE: PETITIONS FOR SPECIAL HEARING * BEFORE THE
AND VARIANCE - SW/S Quaker Bottom *
Road, 100' E of the c/l of the * ZONING COMMISSIONER
Baltimore/Harrisburg Expwy. (I-83) *
(401 Quaker Bottom Road) * OF BALTIMORE COUNTY
8th Election District *
3rd Councilmanic District * Case No. 94-83-SPHA

Michael A. Greaver, et ux *
Petitioners *

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as Petitions for Special Hearing and Variance for the property known as 401 Quaker Bottom Road in the Quaker Hills subdivision of northern Baltimore County. The Petitions were filed by the owners of the subject property, Michael A. and Regina M. Greaver. Within the Petition for Special Hearing, approval is sought for an in-law apartment on the subject property, zoned R.C. 5, and to amend the final development plan of Quaker Hills, Section 1, accordingly. Within the Petition for Variance, the Petitioners request relief from Section 1A04.3.B.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit lot line setbacks of 43' and 48'6" in lieu of the required 50 feet for a proposed addition. The relief requested is more particularly described on Petitioner's Exhibit 1, the plat which accompanied the Petitions filed.

Appearing at the public hearing held for this case was Michael A. Greaver, property owner. He was not represented by Counsel. Appearing in opposition to the request was Kenneth T. Bosley, who resides in the vicinity of the subject property, and his son, K. Webster Bosley.

Testimony indicated that the subject property, known as 401 Quaker Bottom Road, consists of 4.476 acres, more or less, zoned R.C. 5 and is improved with a single family dwelling. Said property is also known as

Exhibit C

IN RE: PETITIONS FOR SPECIAL HEARING * BEFORE THE
AND VARIANCE *
260' W centerline of Corbett Village Lane * DEPUTY ZONING COMMISSIONER
8th Election District *
3rd Councilmanic District * OF BALTIMORE COUNTY
(1615 Corbett Road) *
* CASE NO. 01-496-SPHA
Mary Jane Neighbours *
Petitioner *

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Special Hearing and Variance filed by Mary Jane Neighbours, the legal owner of the subject property. The Petitioner is requesting a special hearing for property she owns at 1615 Corbett Road, located in the Monkton area of Baltimore County. The subject property is zoned RC 4. The special hearing request is from Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to approve the bottom level of the new dwelling to be utilized as an in-law apartment for Mrs. Mary Jane Neighbours. The variance request is from Section 400.1 of the B.C.Z.R., to approve an accessory building to be located in the front yard rather than the rear yard.

Appearing at the hearing on behalf of the requests were Mary Jane Neighbours, owner of the property and her son, J. Owen Neighbours. Joe McGraw, property line surveyor also attended on behalf of the Petitioner. The Petitioner was represented by David K. Gildea, attorney at law. There were no others in attendance.

Testimony and evidence indicated that the property, which is the subject of this special hearing and variance request, is shown as a Residential Use Area No. 1, which is part and parcel of a larger 49.52 acre tract of land. The property is owned by Mrs. Neighbours and has been placed in the Gunpowder Conservancy Trust. The Petitioner is desirous of constructing a new single-family residence on the property. The subject house is under construction at this time. Several photographs were submitted into evidence showing the house and surrounding location

Exhibit C

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
S side Carriage Road, 96 feet E of		
c/l Maybrook Court	*	DEPUTY ZONING
11 th Election District		
3 rd Councilmanic District	*	COMMISSIONER
(11203 Old Carriage Road)		
	*	OF BALTIMORE COUNTY
Martin C. and Kathy A. Bindel		
<i>Petitioners</i>	*	CASE NO. 07-476-SPH

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner on a Petition for Special Hearing filed by Martin C. and Kathy A. Bindel, 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 quarters within a proposed accessory structure. The subject property is more particularly described on the site plan, which was marked and accepted into evidence as Petitioner's Exhibit 1.

Appearing at the hearing on behalf of the requested special hearing was Petitioner, Martin C. Bindel, and John E. Barrett, Jr., Petitioner's father-in-law. John B. Gontrum, Esquire, represented Petitioners at the hearing. There were no protestants or other interested citizens at the hearing.

The subject property is located off Manor Road in a subdivision known as Honeysuckle Hill in Glen Arm and contains one (1) acre zoned R.C.5. The property is improved with Petitioners' two-story dwelling and a macadam driveway with a parking pad sitting adjacent to the attached side entrance garage. Behind the parking pad is an accessory shed. The property also contains a large septic reserve area covering much of the back of the property.

Testimony and evidence offered revealed that Petitioners desire to build a rear yard accessory structure that would provide a two-car garage and ground-level in-law quarters, and which would be handicap accessible for two aging parents with various medical difficulties. The

Exhibit C

IN RE: PETITION FOR ADMIN. VARIANCE * BEFORE THE
S side Stansbury Mill Road, 805 feet
+/- W c/l Manor Road
10th Election District * DEPUTY ZONING COMMISSIONER
3rd Councilmanic District *
(3709 Stansbury Mill Road) * BALTIMORE COUNTY

David A. and Barbara E. Jungers
Petitioners * CASE NO. 07-214-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Administrative Variance filed by the legal owners of the subject property, David A. and Barbara E. Jungers. The variance request is for property located at 3709 Stansbury Mill Road. The variance request is from Section 1A04.3.B.2.b of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a proposed addition (in-law quarters with second kitchen) to have a side yard setback of 30 feet in lieu of the required 50; and to amend the Final Development Plan of Stansbury, Lot 12, only.

The subject property and requested relief are more particularly described on Petitioners' Exhibit No. 1. The Petitioners state that they are in need of additional space in the home to provide private living quarters for an elderly parent who can no longer live on her own. The most efficient way to accomplish this goal is by adding space to the south side of the property which would require a setback change from 50 feet to 30 feet. The proposed 2-story addition would require such a change whether it was placed to the other side or the rear of the property.

Zoning Advisory Committee Comments

The Zoning Advisory Committee (ZAC) comments are made part of the record of this case and contain the following highlights: None.

The attached Declaration of Understanding is only a sample for you to use as a guide in drafting your own Declaration of Understanding document. Once you have drafted your Declaration, have it notarized prior to its submittal to the County. A cover letter with your name, address, etc. should be included with your Declaration so that we will know where to return it upon approval by the Director of PDM. Address your cover letter and mail your Declaration to:

Timothy Kotroco
Director-PDM
Room 111
111 W. Chesapeake Ave.
Towson, MD 21204

Include a check in the amount of \$50.00 payable to Baltimore County. After the County returns the Declaration to you, have it recorded in the Land Records Dept., 2nd floor, New Courts Building, 401 Bosley Avenue, Towson. Your permit will not be released until you are issued a book/folio number for the recorded Declaration, which may take 3-5 weeks. Call our office (410-887-3391) with the book/folio number so we can approve your building permit.

If you have any questions, call us at 410-887-3391.

DECLARATION OF UNDERSTANDING

THIS DECLARATION OF UNDERSTANDING (hereinafter referred to as "Declaration") is made on this 15th day of January, 2007, by and Between Martin C Bindel and Kathy A Bindel (hereinafter referred to as the Declarant") and the Department of Permits and Development Management (hereinafter referred to as "PDM").

Recitals

A. The Declarant has filed an application for a permit with PDM requesting approval to construct an addition to the improvements on the property located at 11203 Old Carriage Road Glen Arm, Maryland 21057 and more particularly described by the metes and bounds in Exhibit A, (the "Property") and attached hereto and made a part hereof. The property is zoned RC 5, which is the particular zone in which the property is located.

B. PDM has approved the Declarants request to build an in-law addition, complete with kitchen, provided the improvement and addition are used as a single-family residence. **The addition will be the housing for Declarants' elder parents with the benefit of being attached to their family.** The second kitchen will be removed and the addition's living space will be taken over by the Declarants upon the death of the in-laws. if they leave or move from the residence, or if the Declarant moves or sells the property, whichever occurs first.

C. As a condition to its approval of the Declarant's request, PDM has required the filing of this Declaration amongst the Land Records of Baltimore County to provide notice to any future owners, subsequent bona fide purchasers or users of this Property that no part of any improvement or addition on the Property may be used for separate living quarters and that all such improvement shall only be used as a single-family residence, unless otherwise approved by and at the discretion of PDM.

DECLARATIONS

Now, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Declarant and PDM hereby declare as follows:

1. Any and all improvements now existing or to be constructed on the property shall be used only as a single-family residence. No such improvements or additions shall ever be used as a separate living quarter or second residential unit.
2. The kitchen for the in-law will be constructed as part of the addition to the property shall be accessory uses to the principal use of the property as a single-family residence. Living quarters for the in-laws shall be used only by the in-laws and not as an independent residential unit, and shall not be used by any other person or for any other reason.

Roll File

Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

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

RECEIVED

SEP 1 2005

410-887-2188
Fax: 410-823-4238

September 1, 2005

ZONING COMMISSIONER

CAROLE S. DEMILIO
Deputy People's Counsel

PETER MAX ZIMMERMAN
People's Counsel

John V. Murphy, Deputy Zoning Commissioner
County Courts Building
401 Bosley Avenue, Suite 405
Towson, Maryland 21204

Re: PETITIONER FOR ADMINISTRATIVE VARIANCE
Madeline M. & Carrick L. Hopson- Petitioners
5208 Bangert Street
Case Nos: 06-006-A

Dear Mr. Murphy:

Please accept this letter as a Motion for Reconsideration under Rule 4K of the Findings of Fact and Conclusions of Law and Order dated August 4, 2005 in the above-referenced case.

It appears to this office that this request involves an "in-law apartment" in a D.R. 2 zone, which involves density issues. It should have been treated, therefore, as a petition for special hearing under BCZR 500.7, with notice and a public hearing, as is typically done in such situations. The attached public notice for the variance, moreover, does not provide notice that an in-law apartment is requested. In sum, this case should be dismissed without prejudice, with leave to refile as a petition for special hearing in combination with variances.

In addition, it should be noted that any approval of an "in-law" apartment should be conditioned specifically on the use of the apartment by parents of the occupants, and the filing of the decision in the Land Records of Baltimore County.

Thank you for your consideration.

Very truly yours,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio

Carole S. Demilio
Deputy People's Counsel for Baltimore County

PMZ/CSD/rmw

cc: Madeline & Carrick Hopson
W. Carl Richards, Zoning Supervisor

3/20/09

RECEIVED

MAR 20 2009

BALTIMORE COUNTY
BOARD OF APPEALS

IN RE: PETITION FOR SPECIAL HEARING
1109 Justa Lane;
8th Election District
2nd Councilmanic District
Legal Owners: J. Gary and Barbara Mueller
11300 Falls Road

* BEFORE THE
* BALTIMORE COUNTY
* BOARD OF APPEALS
* Case No: 08-471- SPH

* * * * *

POST-HEARING MEMORANDUM IN OPPOSITION TO APPEAL

Protestants, Falls Road Community Association, Carol Kakel, Marvin Tenberg, Maria Christina Sabolzick, and James Brook Smith, III, submit this post-hearing memorandum in support of their opposition to Petitioners' appeal.

I. PRELIMINARY STATEMENT

Without first obtaining approval from the County, Petitioners have constructed a 3,000 square foot house on their property and allowed their son to live there. Petitioners' primary argument is that this second house (with its three bedrooms, three full bathrooms, a large kitchen, and a garage) is an "accessory" structure permitted in the RC zone.

Petitioners have woefully failed to meet their burden of proving that the second house meets the definition of "accessory use or structure" in the Zoning Regulations. The second house is not "accessory", but rather constitutes a "dwelling" and, thus, violates the one dwelling per lot requirement in the regulations. Moreover, the second house violates the maximum density and minimum lot size requirements of the regulations. For these reasons, and for those set forth below, the Board of Appeals should deny the relief requested in the petition for special hearing.

II. ARGUMENT

A. **The Second House Is Not An “Accessory Use Or Structure”**

An “accessory” use or structure is defined in section 101 of the Zoning Regulations as follows:

ACCESSORY USE OR STRUCTURE

A use or structure which: (a) is customarily incident and subordinate to and serves a principal use or structure; (b) is subordinate in area, extent or purpose to the principal use or structure; (c) is located on the same lot as the principal use or structure served; *and* (d) contributes to the comfort, convenience or necessity of occupants, business or industry in the principal use or structure served....

(Emphasis added). Petitioners have woefully failed to meet their burden of proving that each and every element of this definition is met.¹

1. *The second house is not “customarily” incident and subordinate to a principle dwelling*

Simply put, Petitioners introduced no evidence whatsoever regarding whether a second dwelling is “customarily” associated with a principle dwelling, either in the area surrounding the Petitioners’ property or, for that matter, anywhere else in the County. Indeed, the only evidence on this critical point was introduced by Protestants. Marvin Tenburg, who has lived in the area 20 years, explained that there were no other properties in the area of the Property, which includes hundreds of families, where there is a second building being used as a dwelling. (See transcript attached hereto as **Exhibit A**, pp. 178-179). For this reason alone, the Board should conclude that Petitioners have not met their burden of proof to demonstrate that the second house is “accessory” and should deny the requested relief.

¹ Because the definition is stated in the conjunctive rather than the disjunctive, all elements of this definition must be met.

2. The second house will not “serve the purpose” of the main house

Mr. Mueller provided two reasons why Petitioners wanted their son to live in the second house, (1) because “it would just kind of make sense with the economic situation”, and (2) so “he would ... be able to be around for his mother...when I am out of town.” (Ex. A, p. 25). Upon further prompting from counsel, Mr. Mueller later added that there is the “possibility” that the second house would be used by his mother who is “pretty old” and his brothers who are “not in the greatest of health.” (Ex. A, p. 26).

Notably, Petitioners’ expert witness, Mr. Kellman, offered entirely different reasons for the second house. According to Mr. Kellman, the Mueller family needs storage space and room to keep materials to maintain the property.

[The second building is] helping the function of the single family dwelling, whether it’s storage, you know, space, function of taking care of or maintaining the property, and it does all that.

[T]hat accessory structure is used for storage. The family needs that storage. Okay? They will not fit in that house. They need that accessory structure. The accessory structure is assisting or helping that single family dwelling.

So a lot of the materials can be used in that accessory structure or garage. It’s very helpful to have the materials there or the equipment there so you don’t have to drag them out of the house, which may not be able to be stored in the house anyway, so it functions as what it says, accessory to the house. It helps the house.

Q. Any other factors that you deem noteworthy in your determination that the building is customarily incident and subordinate and serves the principle use of the structure?

A. Well, the accessory structure wouldn’t be there if it wasn’t a house.

(Ex. A, pp. 127-29).

No evidence supported Mr. Kellman's blanket statements that "[t]he family needs that storage", "[t]hey will not fit in that house," or that "it's very helpful to have the materials there." There was no evidence, for example, that the main house did not have sufficient storage space or that any particular materials are needed to be kept in the second house. Indeed, one wonders why and how this urgent need for space has suddenly come about when Petitioners have lived in the main house since 1987. Mr. Kellman would not know and did not testify regarding any lack of storage space in the main house; in fact, he conceded that he did not go in the main house other than in the foyer and kitchen area. (Ex. A, p. 152).

As for the dual "purposes" expressed by Mr. Mueller – (1) the economic situation and (2) having Cole around when he's out of town – neither of them supports this element of the definition of "accessory." Mr. Mueller offered no explanation how these purposes would be served by his son living in the second house. In particular, Mr. Mueller did not explain why those purposes could not be achieved if Cole simply lived in the main house. If economics were a factor, the most economical scenario would be for Cole to live at home as he did for many years. This would save money and allow Cole to be around his mother when Mr. Mueller was out of town. The main house – which has four bedrooms, three bathrooms and a finished basement – served Petitioners' purposes for many years while they raised Cole and his sister; there is no evidence that the main house can no longer do so. Tellingly, when the Chairwoman asked Mr. Mueller why Cole could not live in the main house, he responded: "[Cole] kind of wants to be on his own, which we would like" and "it just makes sense." (Ex. A, p. 107).

3. *The second house is not "subordinate" in area, extent or purpose to the main house*

The second house is 3,000 square feet. The records of the State Department of Assessments and Taxation state that the square footage of the main house is 3,111 square feet. (See SDAT

record, Protestants' Ex. A). The second house is clearly not "subordinate" in "area" to the main house.

According to Mr. Mueller, the SDAT figure of 3,111 square feet does not include the basement. No evidence was introduced supporting this statement by Mr. Mueller, nor did Petitioners submit any evidence whatsoever regarding what they contended is the total square footage of the main house. The plat accompanying their petition for special hearing contains the dimensions of the second house, but not the main house. However, even if we assume that Mr. Mueller was correct, and even if we increased the square footage by one-third ($1/3$) to 4,000 square feet to account for the basement, then the second house would still not be "subordinate" in area.²

Moreover, it is clear from Mr. Mueller's testimony that the "area" or "extent" of the second house extends to the yard surrounding it, including the substantial area between the main house and the second house. That area has been used by Cole to host a party and to accommodate a swimming pool for some period of time. The plat accompanying the petition for special hearing demonstrates that this area between the two houses – combined with the area south of the second house (which consists of the brick walk, the drive way, septic area, and yard) – consumes a substantial part of the entire 1.78 acres of the Property.

The independent, rather than subordinate, nature of the second house is perhaps best demonstrated by the fact that the second house has its own septic system,³ its own well, its own driveway, and its own private road leading to that driveway. The second house even has its own

² According to Mr. Kellman, "subordinate in area means... it is *less in square footage* than the single family dwelling, which it is." (Ex. A, p. 129) (emphasis added). While that may be a true statement, it cannot be true that a structure is subordinate if it is merely one square foot less than the principle structure, as Mr. Kellman implied. A more thorough comparison of the two structures is required.

³ The septic system has not been approved by the County. One of two perc tests failed. (Ex. A, pp. 37-39, 85). In its comments, DEPRM stated that it had no record of any permit to install the septic tank depicted on the site plan. It is recommended that approval for the proposed use be contingent on DEPRM approval for the septic system." (See Inter-Office Correspondence from D. Lykens to T. Kotroco dated June 17, 2008).

birdhouse and, for a period of time, had its own swimming pool. (Ex. A, pp. 43, 55; Petitioners' Ex. 10B). Petitioners have taken considerable steps to separate the second house from the main house. Mr. Mueller planted, at great expense, a substantial number of trees to provide a visual barrier between the main house and second house. (Ex. A, p. 52; Petitioners' Exs. 10E, 10I). As Mr. Mueller stated, the second house is "barely" visible from the main house. (Ex. A, p. 42; Petitioners' Exs. 10D, E).⁴

Finally, use of the second house as a dwelling would clearly not be subordinate in "purpose" to the main house. If used as a dwelling, the second house would serve the very same purpose as the main house.

4. *The second house will not contribute to the comfort, convenience or necessity of the main house*

On this fourth criterion, Mr. Kellman's testimony, in total, was as follows:

That goes hand in hand with (a). It does support the comfort of the family. Consistent with the house, maintaining it, keeping a lot of equipment in the accessory structure makes it easier for the family to, you know, maintain the property, take care of everything.

(Ex. A, pp. 129-30).

Again, it is noteworthy that Mr. Kellman's justification for the second house is entirely different than Mr. Mueller's. Mr. Kellman's justification, as noted above, is not supported by any evidence.

Mr. Mueller would contend that having Cole live in the second house will contribute to the "comfort" and "convenience" of Mrs. Mueller. No evidence was introduced regarding why or how Mrs. Mueller is in need of such comfort or convenience. No evidence was introduced that Mrs. Mueller has any medical condition, physical infirmity or other need to have her son living in a

⁴ The second house has a garage which the main house does not, but Petitioners do not use that garage for their cars. (Ex. A, pp. 69-70). The garage is used solely for Cole's personal vehicles, those of his friends, and the vehicles he uses in connection with his work.

house a few hundred feet away. (Ex. A, p. 75). By all accounts, and by her appearance and conduct at the hearing, Mrs. Mueller appears fully capable of taking care of herself. Simply wanting to have Cole “around” is insufficient to meet this fourth element of the definition of “accessory.”⁵

In sum, Petitioners have fallen far short of meeting their burden to prove that the second house meets all four elements of the definition of “accessory use or structure.” What the evidence instead demonstrates, as will be discussed below, is that the second house is itself a principal “dwelling.”

B. The Second House Is A “Dwelling” And, Thus, Violates The One Dwelling Per Lot Requirement In The Zoning Regulations

The Zoning Regulations state, unequivocally, that no more than one dwelling is permitted on any lot in either an RC4 or RC5 zone. *See* BCZR, §§ 1A03.4B.5, 1A04.4B.5. A “dwelling” is defined as “a building or portion thereof which provides living facilities for one or more families.” A “single-family detached dwelling” is defined as “a dwelling which is designed for and occupied by not more than one family and surrounded by open space or yards and not attached to any other dwelling by any means.” *Id.* § 101.

The second house unquestionably looks like and is laid out as a separate “dwelling.” The top floor has three bedrooms, two full bathrooms, and a large kitchen. The bottom floor has a full bathroom, a garage, and utility room. (Ex. A, pp. 65-67). The house has its own septic system, its own well, its own driveway, and its own private road leading to that driveway.⁶ The second house even has its own birdhouse and, for a period of time, had its own swimming pool. (Ex. A, pp. 43, 55; Petitioners’ Ex. 10B).

⁵ The Zoning Commissioner held that the second house did not meet the definition of accessory use or structure. The Zoning Commissioner concluded that “[i]n my judgment, Petitioners’ special hearing request appears to be an attempt to use the property for two separate dwellings without pursuing the formal subdivision process.” (Findings of Fact and Conclusions of Law, p. 6).

⁶ The private road was installed for the specific purpose of serving the second house. (Ex. A, pp. 105-06).

Further, since Petitioners chose to construct and use the house before obtaining special hearing approval from the County,⁷ we have the benefit of knowing that the second house has already been *used* as a “dwelling.” Petitioners admit that their son, Cole, has been living in the second house since the hearing before the Zoning Commissioner in June 2008. (Ex. A, pp. 69-70). He also lived there for a period of time prior to that hearing, up until approximately November 2007. (*Id.*, p. 70). He eats and sleeps there, along with friends who regularly visit and sometimes spend the night. (*Id.*, p. 72). He even has hosted parties at the second house. (*Id.*, pp. 184, 187-189, 208-209). The second house is clearly a “dwelling” and thus violates the one dwelling per lot limitation in the Zoning Regulations.⁸

C. The Second House Violates The Maximum Density And Minimum Lot Size Requirements In The Zoning Regulations

Section 1A03.4.B.1.a of the Zoning Regulations provides that, in the RC4 zone, a tract of less than 6 acres can only support one lot; in other words, there cannot be a lot less than 6 acres. Similarly, section 1A04.04.B.1.a provides that the minimum lot area in an RC5 zone is 1.5 acres. The maximum density allowed in an RC5 zone is .5 dwelling per acre (*i.e.*, 1 dwelling per 2 acres).

Because the second house is a dwelling (*see infra* part B), consideration must given to whether it complies with the maximum density and minimum lot size requirements. The second house violates these requirements because the total acreage of Petitioners’ property is only 1.78

⁷ When he submitted his application for a building permit, Mr. Mueller disclosed only that he was going to use the second house for a garage and storage; he did not disclose at that time, nor at any subsequent time, that he intended to use the building as a residence. (Ex. A, pp. 76-78; *see also* Protestants’ Ex. 3). In submitting an application for a well permit, the “use for water” disclosed was “barn supply”; it was not disclosed that water would be used for “domestic potable supply & residential irrigation.” (Protestants’ Ex. 4; Ex. A, pp. 81-92).

⁸ As Mr. Tenburg correctly pointed out, Mr. Mueller often referred to the second house as a “house.” (Ex. A, pp. 179-180).

acres.⁹ Indeed, even if the main house did not exist, a house could not be constructed today on the property because of these requirements.¹⁰ For this additional reason, the relief requested by Petitioners should be denied.

D. Petitioners' Contention That So-Called "In-Law" Apartments Are Permitted As A Second Dwelling In The RC Zone Is Unsupported By Any Credible, Reliable Or Admissible Evidence

In their brief, Petitioners will no doubt attempt to argue that the second house constitutes an "in-law apartment" and that such a use is an accessory use permitted in Baltimore County. Petitioners may even attempt to introduce evidence (not introduced at the hearing) purporting to support this contention. For several reasons, the Board should reject any such effort by Petitioners.

First, the Board did not allow Mr. Kellman to testify regarding any alleged unwritten policy or practice in the County of approving so-called in law apartments. There was discussion at the hearing, amongst counsel and the Board, regarding in-law apartments, but no evidence was actually presented to the Board in this regard.

Q. Did you, during your time at the county, were you ever called upon to process or to consider for the Department of Permits and Development Management, applications for in-law apartments in the R.C. zone?

⁹ The Planning Office, in its comments, likewise noted that the property "does not appear to have sufficient acreage to meet the density requirements for two dwellings, one in the RC4 zone and one in the RC5 zone." (See Inter-Office Corresp. from P. Keller to T. Kotroco dated May 2, 2008).

¹⁰ The RC5 and RC4 portions of the Property are considered separate for purposes of determining the number of dwelling units allowed.

§ 1A00.5. Application to tract divided by zone boundary.

Whenever a single tract is divided by a zone boundary so that portions of such a tract lie within R.C. Zones of different classifications, the total number of dwellings or density units permitted shall apply to each tract individually and, for the purpose of these regulations, shall be considered as separate parcels.

In other words, each portion must independently meet the requirements of the Zoning Regulations, including the minimum lot size and density requirements.

A. Yes.

Q. So my question is to you, sir, based on the fact you actually performed that function for the county, can you tell us how the zoning office and how Baltimore County processes or considers applications for in-law apartments in the R.C. zones?

MR. McCANN: Objection.

(Ex. A, p. 115). Following this objection, there was a lengthy discussion between the Board and counsel regarding the relevance, prejudicial nature, and admissibility of this line of questioning. (*Id.*, pp. 115-124). The Board, ultimately, sustained counsel's objection and instructed Petitioners' counsel: "Let's limit it to *what we are doing here* within that, you know, frame, because that's an issue the Board is certainly going to want to look at." (*Id.*, p. 124; *see also id.*, p. 153) (emphasis added).

Counsel for Petitioners did not pursue this line of questioning but rather moved on and questioned Mr. Kellman regarding whether the second house met the elements of an accessory use and structure. (*Id.*, pp. 124-131). Then, counsel for Petitioners asked Mr. Kellman the following:

Q. ...[H]ow about the use of the building, particularly for the in-law use, does that bear, sir, on the definition, and whether the building as its proposed to be used should be considered an accessory structure?

A. It should. I mean, it's all relative. If that living quarters is part of the family, they're family members that are living in that accessory structure, they're allowed to be there.

The family can be on the same premises and the family can live in that accessory structure. It helps that dwelling.

Q. How about could the building be used under the definition, in your opinion, as a residence for someone other than a family member?

A. No. It would have to be a family member. It cannot be a boarding house or a rooming house or hotel.

Family, you know, is defined as someone who is related by blood or marriage. So this particular use is going to be for family only.

(*Id.*, pp. 131-132).

Q. So Mr. Kellman, as a bottom line, just so the record is absolutely clear, do you believe that this use is permitted under the Baltimore County zoning regulations as a permitted land use?

A. Yes, I do.

Q. Do you believe it's appropriate and should be permitted in this case, given the specifics of this site?

A. Yes, I do.

Q. And you've obviously discussed this with your clients Mr. and Mrs. Mueller and their son, correct?

A. I have.

Q. Have you explained to them your opinion that the use is restricted only to a family member?

A. It is. I mean, in all my experience....

Mr. McCann: Objection....

* * *

(The question was read by the court reporter)

* * *

THE WITNESS: In the RC zones, it's limited to family members.

In short, there was no testimony from Mr. Kellman, nor any other evidence, regarding whether Baltimore County has in the past allowed other applicants to have in-law apartments in the RC zones.

At the very most, Mr. Kellman testified that, in his opinion, in-law apartments are accessory uses in the RC zone.¹¹ That testimony, however, is unsupported by any credible, reliable or admissible evidence. As Mr. Kellman conceded, the Zoning Regulations do not state anywhere that in-laws or other family members may reside in an accessory building in the RC zone. (Ex. A, pp. 153, 155). Mr. Kellman acknowledged, in fact, that the words “in law” apartments – or words to that effect – are not even mentioned in the Zoning Regulations. (*Id.*, p. 152).

In the absence of any basis in the Zoning Regulations themselves, and because the Board correctly refused to allow Mr. Kellman to opine about an alleged County practice of allowing in-law apartments, the Board should give no weight to Mr. Kellman’s opinions on this issue.

E. The Testimony of Protestants Further Supports The Denial Of The Relief Requested

1. Marvin Tenburg

Mr. Tenburg is vice president of the Falls Road Community Association (FRCA), which represents 2700 families in the area of Petitioners’ property. Mr. Tenburg lives at the end of Boxer Hill Road and has lived there for 20 years.

Mr. Tenburg expressed concern regarding the “precedent” that Petitioners’ proposal would set. He testified:

We are very concerned that this sets a very dangerous precedent. [W]e have, for example, a number of cases over the years that people have to go through a rather vigorous subdivision of their property to let their family members [live] on it. If something like this can go through, this is a real easy way of winding up with another structure on the property.

* * *

So that’s the main consideration. It isn’t a matter of family against family. It’s a matter of setting a precedent in our area, and that’s a very important part of our task.

¹¹ It should be noted that Mr. Kellman worked for Baltimore County many years ago.

(Ex. A, pp. 177-178).

Mr. Tenburg explained that there were no other properties in the area of the Property, which includes hundreds of families, where there is a second building being used as a dwelling. (*Id.*, pp. 178-179).

2. Carol Kakel

Mrs. Kakel is the Treasurer of the FRCA. She and her husband have lived near Petitioners' property, at the end of Justa Lane, for 40 years. Ms. Kakel expressed concern that Petitioners' proposal violates the one dwelling per lot provision in the regulations. Like Mr. Tenburg, she is concerned with the precedent that the proposal would set, if approved. She explained that the FRCA, in the past, had taken action to remove an accessory building on the property next door to Petitioners, which was being used to run a business. (Ex. A, pp. 182-184). Mrs. Kakel also is concerned with the impact of Petitioners' proposal on the neighborhood. She cited an incident in which there was a "huge party" at the second house. During the party, neighbors could not travel on Justa Lane; as she put it, people were everywhere and "[i]t was just distressing." (*Id.*, p. 184).

3. James B. Smith, III

Mr. Smith resides on 1.7 acres at 11889 Falls Road with his wife and four children. The front yard of his property faces the rear yard of the Property where the second house is located. Mr. Smith has lived there for 20 years. When his family first built their house, the property was a "very quiet peaceful" place to live. Since Petitioners constructed the second house, however, they have experienced "numerous parties," loud noises late at night, squealing of wheels, and numerous cars coming and going daily. (Ex. A, pp. 187-189, 208). The parties occur every few weeks; during

the last party, the police were called. (*Id.*, pp. 208-209). Mr. Smith has observed three vehicles come and go to the second house regularly. (*Id.*, p. 211).

Mr. Smith also discussed water drainage issues in the area between his property and Petitioners' property. After a long rain, a 15-20 foot wide swale runs through that area. (*Id.*, p. 193). Mr. Smith explained that the area has wash-outs and that Petitioners installed a silt fence after the second house was constructed; the silt fence remains there today. (*Id.*, pp. 194-195).

4. Maria Christina Sabolzik

Ms. Sabolzik resides east of the Petitioners' property, two properties over. She is a civil engineer. She has observed a lot of cars using the private right of way to access the second house. In her opinion, the traffic is not indicative of an accessory structure:

[I]t's the amount of traffic a house would have. It's not the amount of traffic an accessory structure would have.

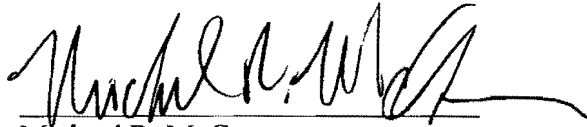
If somebody was using that house as a workshop or actual office or a hobby room, I don't think you would have five cars going in and out. I think maybe you'd be going there occasionally for storage, you might be going there once every couple of days, but there's in and out traffic every day, multiple cars, different cars, and I think that is more indicative of a residence, a dwelling, and multiple people, rather than [an] accessory structure.

(Ex. A, pp. 216-217). Ms. Sabolzik has observed as many as five or six different cars traveling to the second house, which "indicates to [her] that this is not just one person living there." (*Id.*, p. 222).

Ms. Sabolzik echoed the concerns of Mr. Smith regarding the water runoff along the right of way. She noticed that there was filter fabric underneath the right of way and believes it is now impervious, meaning that water is running down the right of way rather than being absorbed into the ground. (*Id.*, pp. 218-219).

III. CONCLUSION

For the reasons stated, Protestants respectfully request that the Board of Appeals affirm the decision of the Zoning Commissioner and deny the relief requested by Petitioners in their petition for special hearing.

A handwritten signature in black ink, appearing to read "Michael R. McCann", written over a horizontal line.

Michael R. McCann

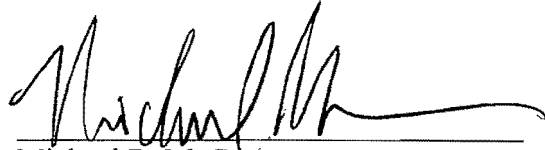
Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204
(410) 825-2150

Dated: March 20, 2009

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of March 2009 a copy of the foregoing Post-Hearing Memorandum was sent via U. S. Mail, postage prepaid to:

Lawrence Schmidt, Esq.
Gildea & Schmidt, LLC
600 Washington Avenue, Ste. 200
Towson, Maryland 21204



Michael R. McCann

1 IN THE MATTER OF: * BEFORE THE
2 J. GARY & BARBARA L. MUELLER - * COUNTY BOARD OF APPEALS
3 LEGAL OWNERS/PETITIONERS * OF
4 1109 Justa Lane * BALTIMORE COUNTY
5 8th Election District * Case No. 08-471-SPH
6 2nd Councilmani District *

7 * * * * *

8 The above-entitled matter came on for
9 hearing before the County Board of Appeals in the
10 Jefferson Building, Second Floor, Hearing Room #2, 105 W.
11 Chesapeake Avenue, Towson, Maryland 21204, at 10 a.m.,
12 February 10, 2009.

13 * * * * *

14
15 EXHIBIT A
16
17
18
19
20

21 Reported by: Carolyn E. Peatt

Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204
Phone: (410) 825-2150
Facsimile: (410) 825-2149
michael@mmccannlaw.net

March 20, 2009

Theresa R. Shelton, Administrator
Baltimore County Board of Appeals
Suite 203, Jefferson Building
105 W. Chesapeake Avenue
Towson, MD 21204

Re: *In re* Mueller Property
Case No. 08-471-SPH

Dear Ms. Shelton:

Enclosed please find an original and three copies of Protestant's Post-Hearing Memorandum in this matter.

Thank you for your consideration.

Best regards,



Michael R. McCann

RECEIVED
MAR 20 2009
BALTIMORE COUNTY
BOARD OF APPEALS

3/13/09

RE: PETITION FOR SPECIAL HEARING * BEFORE THE
1109 Justa Lane; S/side Justa Lane, * ZONING COMMISSIONER
370' West of Box Hill Road *
8th Election & 2nd Councilmanic Districts *
Legal Owners: J Gary & Barbara Mueller* FOR
Petitioner(s) * BALTIMORE COUNTY
* 08-471-SPH
*
BALTIMORE COUNTY *
BOARD OF APPEALS * * * * *

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MAR 13 2009

MEMORANDUM OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

Introduction

"A request for special hearing is, in legal effect, a request for a declaratory judgment." Antwerpen v. Baltimore County, 163 Md. App. 194, 209 (2005)

The fundamental issue to be decided by the County Board of Appeals (CBA), in the instant case is whether the applicable zone permits two dwellings on a single lot. This is a *legal* issue that requires the CBA to interpret BCZR, particularly the regulations pertaining to density. The fact that the site is split-zoned R.C. 5 (Resource Conservation), and R.C. 4 is irrelevant for the density calculation here. In both zones, only one detached single family dwelling is permitted on a single lot. Both zones also require a minimum lot size, and the lot here fails to meet the minimum area for either zone. All of the applicable zoning regulations are discussed in detail in this Memorandum.

The fundamental legal issue cannot be ignored or subordinated by calling the structure an "accessory" building or an "accessory use." Those terms are also defined in BCZR and both the structure and the use here do not comport with the definitions. In fact, Petitioners and their expert witness admit that the building contains a two-bedroom, two bath apartment, which serves as the principal residence of Petitioner's adult son. BCZR does not permit an additional dwelling for relatives on a single lot beyond the density permitted in the zone. In other words, if a second dwelling is proposed, the owner must

have sufficient land to subdivide the property under the applicable zone, and comply with other requirements for development.

Prior CBA Decisions Denied Similar Requests

In the instant case, Petitioners constructed a building containing a self-contained apartment in the R.C. 5 zoned portion of their lot, for which they now seek authority to use as a dwelling. The Deputy Zoning Commissioner denied the relief. The CBA has ruled on similar Petitions to construct or convert a structure in the R.C. 5 zone to a separate dwelling for relatives in two recent cases, In the Matter of Brian and Robin I. Znamirovski, Case No. 07-332-SPHA and In the Matter of Christopher and Charlotte Oktavec, Case No. 08-132-SPH. In both cases the CBA denied a second dwelling for a so-called "in-law" apartment. In Znamirovski, the CBA, in an Opinion dated November 20, 2007, stated at pages 4-5:

"The first question this Board addressed was whether or not the proposed structure was allowed under current zoning regulations. We find that, based on the regulations for permitted uses in an R.C. 5 zone and for accessory structures that this proposal is not allowed. . . The regulations regarding uses in an R.C. 5 zone are clear that apartments of any type are not allowed. The proposal would have two bedrooms, two bathrooms, a kitchen, and living room. There is no guarantee that, once a structure of this size is built, it would ever be abandoned. While this Board, and even Protestant, understands the impulse to provide an adjoining residence for their in-laws, it is not permitted under the law."

Board member Mr. Witt was a member of the Znamirovski panel that denied the Petition for Special Hearing.

In Oktavec, the CBA, in its January 9, 2009 Opinion, stated at page 3:

"Further, Section 1A04.2 entitled *Use Regulations* allows one (1) family detached dwelling unit as of right 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 . . . This 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.”

Board members Ms. Murphy and Mr. Grier were members of the Oktavec panel that denied the Petition for Special Hearing.

The Baltimore County Zoning Regulations Prohibit A Second Dwelling

As noted, the prior two cases decided by the CBA involved lots zoned R.C.5. In the R.C. 5 zone, BCZR 1A04.3 B.5 states:

“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.”

The fact that the front portion of the site here is zoned R.C.4 does not allow additional density. Even so, the R.C. 4 zone contains identical language. BCZR 1A03.4B.5. states:

“Dwelling Units per lot. No more than one dwelling unit shall be located on any lot in an R.C. 4 Zone, except that tenant dwellings may be approved if the Land Preservation Advisory Board certifies. . .”

A dwelling is defined in BCZR 101 as:

“ . . . A building or portion thereof which provides living facilities for one or more families.”

Both R.C. 4 and R.C. 5 zones list a dwelling (one-family detached) as a principal permitted use in the zone. BCZR 1A03.3.A.1 and BCZR 1A04.2.A.2. respectively.

A Petition For Special Hearing Cannot Be Used To Approve A Use Otherwise Prohibited

The Petitioners claim the use can be approved under BCZR 500.7 with a special hearing petition. There is no authority for the CBA to permit a use that is not specifically stated in BCZR for the applicable zone. On the contrary, both BCZR and long-standing case law prohibit such relief. BCZR 500.7 provides that the “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 . . .” (emphasis added).

In addition, BCZR 102.1 states:

“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. . . .”

Finally, in Kowalski v. Lamar, 25 Md.App. 493 (1975), Judge Rita Davidson discussed the BCZR structure and wrote of this section:

“Any use other than those permitted and being carried on as of right or by special exception is prohibited.” 25 Md.App. at 498.

Density On The Site is Limited To The Existing Single Family Dwelling

There is no authority in the development or zoning regulations that would permit a second dwelling on the site. BCZR 1A03.4 B. 1.a. provides that an area of 6 acres or less in the R.C. 4 zone can support only one lot. This dovetails with BCZR 1A03.4 B. 5., above, which permits only one dwelling per lot. Similar provisions exist in the R.C. 5 zone, which require an area of 1 ½ acres per lot. In addition, the maximum gross residential density in the R.C. 5 zone is 0.5 dwelling per acre. BCZR 1A04.4 B.1.a.

All of these regulations support PC’s position that the structure at the rear R.C. 5 part of the site is in violation of BCZR. It is a separate use. It is not an accessory building for an accessory use, despite what Petitioners chose to call it.

The fact that the site is split zoned R.C. 4 and R.C. 5 does not create a density bonus. On the contrary, each separately zoned area must in and of itself be able to meet the requirements to develop with a single-family dwelling, including minimum lot size and calculation of density. This is addressed in BCZR at 1A00.5:

“Whenever a single tract is divided by a zone boundary, so that portions of such a tract lie within R.C. Zones of different classifications, the total number of dwellings or density units permitted shall apply to each tract individually and, for the purpose of these regulations, shall be considered as separate parcels.”

The Zoning Commissioner's Policy Manual also addresses this issue in Section 1A005.a. and b. :

"If R.C. zoned land under the same ownership is separated by a different R.C. zone, then the density should be calculated and utilized by each zone parcel. . . "any lot must meet the minimum lot areas, width and setback requirements of the zone in which the house is to be located."

It should be emphasized that these sections are concerned with *density calculations* under various scenarios. They are not a substitute for the subdivision process, which is required to construct a second dwelling on a single lot. If Petitioners here had sufficient land to construct a dwelling in each zone on the site, they must still go through the subdivision process to create two separate lots. The requested relief is particularly egregious and offensive because the Petitioners ignore the proscribed density in the respective zones and the mandatory subdivision process for constructing a second dwelling.

Even permitted *mixed uses on a single zone site* must meet the minimum requirements for each use – there is no double counting of lot area. Section 102.2A.2.a.i of the Zoning Commissioner's Policy Manual states:

"Both existing and proposed uses, as divided, must be able to meet the BCZR requirements with respect to area, density . . ."

These sections establish the density that can then be utilized in the subdivision process. The relevance here is that Petitioners lack the density to even subdivide their lot to construct a dwelling on the rear R.C. 5 portion. They cannot circumvent this inadequacy by constructing a second dwelling, while calling it an accessory structure, in defiance of the permitted density set forth in BCZR and further explained in its application in the Policy Manual.

Pertinent Facts, Density and Subdivision

The entire site is 1.78 acres; about 1.1 acres fronting on Justa Lane is zoned R.C.4; it contains the home of Gary and Barbara Mueller, who have lived there with their daughter and son, Cole since 1987; the R.C.5 portion of the lot is about .6 acres. It

contains the structure at issue here. That building was constructed in 2007. The building permit issued March 8, 2007 describes the proposed work to:

“Construct a 2 sty detached garage T/B 3 car garage w storage, hank sink only 2nd flr to be office/loft accessory structure LTR attached In rear of property of ex. SFD overall. Dim 50' x 30' x 24'10" = 2500 SF, smaller than dwelling”

There is no mention of an apartment or dwelling use.

Despite the detailed proposed uses on the building permit, which controls the construction, Petitioners impertinently, if not defiantly, constructed a two-bedroom, two-bath apartment plus a full kitchen and a living room on the second floor. The building also has a 3rd bathroom on the first floor along with garage space for three motor vehicles. It meets the BCZR definition of a dwelling stated above. Petitioners' twenty-two year old son, Cole resides in the apartment. He keeps his motor vehicles, which include at least one truck, in the garage. Presumably, he also maintains the equipment for his hauling business in the garage. He has no living arrangements in his parents' home.

It is significant that the current use was never reflected on the building permit application (Protestant's Exhibit 3) nor on the building permit ((Petitioner's Exhibit 4). A second dwelling is prohibited and the building permit would not have been issued if the true use of the building were disclosed. Furthermore, it is irrelevant that the dwelling is occupied by a member of the family because the zoning regulations do not permit a second dwelling in either the R.C. 4 or R.C. 5 zones except for tenant farmers. There is no exception for family members.

The Petitioners' land use witness, Mr. Mitch Kellman, discussed the definition of accessory use in BCZR 101 in terms of the garage and storage uses, but did not discuss the apartment use. While garage and storage uses are generally considered accessory, they must actually be used in that manner in conjunction with the principal use. As we know, the parents do not use the garage for their own cars, nor was there any significant testimony about storage use. It is undisputed the garage portion of the building is used by Cole Mueller for his personal motor vehicles and those used in conjunction with his hauling business. Nor was there any evidence or testimony of an existing workshop in the

building. Even if there were a workshop, it would not make the building “accessory” since, clearly, the primary use is a dwelling.

The Structure and Use Do Not Meet the Accessory Use Definition in BCZR

BCZR 101 defines both an accessory building and accessory use or structure. The first condition of an accessory use is that it *is customarily incident and subordinate to and serves a principal use or structure*. There is no history of a widespread custom in Baltimore County that parent’s routinely create or use a separate building at their home site as a residence for their adult children. Even if such arrangements were commonplace, and thus “customary”, they would not be “subordinate or incident to”, that is dependent on, the main dwelling. The structure is 3000 sq. ft., much larger than a traditional garage use or even garage and workshop uses subordinate to the main dwelling.

Likewise, the apartment for the Petitioners’ son is self-contained with bathroom and kitchen facilities, its own well, septic system, and utilities, and sleeping and living space. It has front and back doors, a driveway and the aforementioned 2- car garage. It is not in any way used in conjunction with the Petitioners’ home. Cole Mueller owns his own business and has his own set of friends who visit at the apartment, not in his parents’ home. The apartment is apparently large enough to have several friends visit at a time and even stay overnight. It is not, as the BCZR definition states, “subordinate in . . . purpose to the principal use . . .” but rather is equal to it as a separate residential dwelling.

It is also clear the apartment does not serve the principal use. The parents’ home is over 3000 sq. ft. plus a basement, and contains all the necessities for a single-family dwelling. Mr. Mueller acknowledged that they raised their family in the home since 1987. The son’s apartment and the building do not, “contribute to the comfort, convenience, or necessity of occupants . . . in the principal use or structure . . .” as BCZR 101 requires for an accessory use or structure. In other words, the parents can live comfortably in their home without the need for the apartment building. Mr. & Mrs. Mueller do not need the accessory structure in order to utilize their dwelling as a home.

The Petitioners may insist on calling the apartment an "accessory" building, but, clearly, it is the primary dwelling for a young adult. A 22 year old living independently in a separate dwelling is customary – a second dwelling on a single R.C. lot is not customary under the definition of accessory use.

Testimony of Gary Mueller

Mr. Mueller admitted that his dwelling, in which he and his family resided since 1987, has four bedrooms and three bathrooms and that he and his wife raised their son and daughter there. He offered no reason why his son could not continue to live there while he attended a near-by college. He just prefers that he have his own apartment, while not expending monthly rent or room and board.

Mr. Mueller claims his mother, who is in her 90's may at some point need care and would live in the apartment instead of Cole, although Mr. Mueller works out of town all or part of forty weeks a year and his wife is employed full-time. While hoping to garner more sympathy, this use is also not permitted under BCZR. In analyzing this proposal, it seems incredulous that the elderly mother would rely on two full-time workers, who reside in a separate home some distance from her. It is not an easy walk between the dwellings - there is no sidewalk, walkway, private road or covered passageway. Moreover, the apartment is on the second floor if one enters from the direction of the elder Muellers' home, requiring the elderly mother to use the interior stairway. Currently, Gary Mueller's mother resides in her own home with another son. It is unlikely she would move on her own into the apartment when her son is employed and out of town most of the year and her daughter in law also works full-time.

Separately, Mr. Mueller's testimony that he did not know when he made application for the permit at the end of December, 2006 that he would need an apartment for his son is dubious. Cole, who is now a senior, would have been enrolled in college in 2006-2007. Instead, it appears he applied for a building permit for accessory uses thought to be permitted by BCZR, a garage and home office, rather than for another dwelling, an illegal use.

Testimony of Mitch Kellman

Mr. Kellman, a land planner, testified the structure and use met the definition of accessory under BCZR 101. But he only discussed the garage and office or workshop, and conveniently ignored the dominant residential use. Even the testimony concerning the garage and storage space is abstract inadequate. The garage is admittedly not used in conjunction with the Muellers' dwelling. Likewise, there was no evidence that the Muellers' dwelling does not have adequate storage. The storage space was apparently sufficient for over 20 years when two adults and two children lived in the home, but it is insufficient now that only three people reside in the house?

Furthermore, Mr. Kellman did not explain how the apartment, which occupies the entire 2nd floor, or the garages that Cole Mueller uses exclusively for his 2 vehicles, meet the definition of accessory. Moreover, the fact that the building may satisfy the setback regulations for an accessory structure, does not legitimize an otherwise illegal use. (See Marzullo v. Kahl 366 Md. 158 (2001), where the Court of Appeals held a building constructed and called a barn on the building permit could not be used to breed snakes, a use not permitted in the R.C. 4 Zone, even if the building complied with all setback requirements.)

It is also erroneous to apply the special exception standards under BCZR 502.1 in a special hearing case to approve a use not listed in BCZR. There is no authority in BCZR to apply special exception standards. It also conflicts with Antwerpen, *supra*, which clearly defines a special hearing as a type of declaratory relief. Here, the issue is legal and pertains solely to whether the use and structure, as used, are permitted in the zone. This issue is not dependent on or even related to special exception standards. The application of the special exception standards by Petitioners is a red herring to disguise the use and make the request palatable. Mr. Kellman's testimony on special exception standards should be ignored as irrelevant to the legal issue that is the underlying special hearing relief.

Generally, if the County Council intends to apply special exception standards to a use other than a stated special exception use in BCZR, it is stated accordingly in the

regulation itself. (See for example, special exception standards applied in BCZR 259.3 B. 3. pertaining to building sizes in the C.R. District, and BCZR 409.8 B. 1. e. (4) pertaining to business parking in residential zones). Mr. Kellerman's testimony, even if accurate and correct, that the structure satisfies special exception standards under BCZR 502.1 cannot be misapplied to the fundamental legal issue under the special hearing – whether use is permitted in the zone. Likewise, a prohibited use cannot be approved merely because the structure can be built without variances.

Finally, those parts of Mr. Kellman's testimony applicable to the legal issue are not persuasive. In People's Counsel v. Beachwood 107 Md. App. 627, 650-651 (1995), the Court discussed the importance of the quality of the expert's testimony and disregarded "... naked declarations, unsubstantiated by facts ...". These standards also apply in deciding a legal issue, which is at the heart of the CBA's authority here. Board of Physicians v. Banks, 354 Md. 59 (1999). Moreover, Mr. Kellman's opinions, even if the proposal were permitted under BCZR, are unsubstantiated and thus suspect. For instance, on cross-examination, he stated (i) the proposal was not in conflict with the Basic services Map, but he did not look at the Map; (ii) he did not measure the building lot *vis a vis* the minimum lot size required in the zone; (iii) he claimed the proposal would not generate traffic but did no traffic study; (iv) he claimed the well for the apartment building was approved by DEPRM but never verified this; (v) he failed to calculate the impervious surface of the improvements although the R.C. 4 zone limits impervious surface to 10%; (vi) he claimed the proposal does not present a fire hazard although he admits he failed to determine the minimum County road standards to enable access by fire fighting vehicles; (vii) he claimed density does not apply but could not cite a single regulation in BCZR to support his opinion.

Moreover, it is not incumbent on the CBA to adopt Mr. Kellman's interpretation, even if he was the only expert in the case. On the contrary, no expert is needed for the CBA to decide the unadulterated special hearing relief in the instant case. In deciding a legal issue, the CBA is not bound by the testimony of the only expert who testified, nor is the protestant's position diminished if no expert is called. It is up to the CBA, in whom

the appellate courts have deferred even on interpretation of the statutes, to make an independent judgment. Board of Physicians, supra.

Testimony of Neighbors Opposing Special Hearing Supports Denial

Several neighbors very familiar with the use of the structure confirm that it is a separate dwelling prohibited by BCZR. All agree approval would signal a dangerous precedent as a way to avoid the subdivision process and the limit on density in their neighborhood. They are concerned a second building could be used for prohibited commercial or office uses as well as a dwelling, all of which conflicts with the character of the neighborhood as single family houses on larger lots. The noise and traffic generated by a "dwelling" which only has to adhere to "accessory building" setbacks is disturbing. In particular, development of the subject site, including the impervious right-of-way as well as the building and driveways, exacerbates problems with existing run-off and the storm water management pond. They are also concerned the right-of-way is inadequate to accommodate the amount of traffic they witness coming from the apartment and poses a safety threat for residents and emergency vehicles. All the neighbors agree the second dwelling is not an "accessory" use but rather represents a type of *de facto* subdivision that is out of character with the neighborhood, that was never anticipated when they purchased their homes, and illegal under BCZR.

Summary

The special hearing should be denied, at a minimum, because (i) the building on the R.C. 5 portion of the lot is a separate dwelling and BCZR prohibits a second dwelling on a single lot in both the R.C. 4 and R.C. 5 zones; and (ii) the structure and the use do not meet the threshold definition of "accessory."

Peter Max Zimmerman

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO

Deputy People's Counsel

Jefferson Building, Room 204

105 West Chesapeake Avenue

Towson, MD 21204

(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of March, 2009, a copy of the foregoing Memorandum of People's Counsel for Baltimore County was mailed to Michael McCann, Esquire, 118 W. Pennsylvania Avenue, Towson, Maryland 21204 and Lawrence E. Schmidt, Esquire, Gildea & Schmidt LLC, 600 Washington Avenue, Suite 200, Towson, MD 21204, Attorney for the Petitioners.

Carole S. Demilio

CAROLE S. DEMILIO

Deputy People's Counsel

8/6/08

IN RE: PETITION FOR SPECIAL HEARING

S side of Justa Lane, 370 feet W of
Box Hill Road
8th Election District
2nd Councilmanic District
(1109 Justa Lane)

J. Gary and Barbara Mueller
Petitioners

* BEFORE THE
* DEPUTY ZONING
* COMMISSIONER FOR
* BALTIMORE COUNTY
* Case No. 2008-0471-SPH

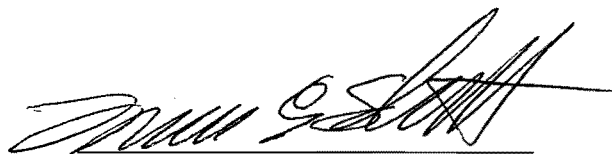
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NOTICE OF APPEAL

J. Gary Mueller and Barbara Mueller, Petitioners in the above-captioned case, by and through their attorneys, Lawrence E. Schmidt and Gildea & Schmidt, LLC, feeling aggrieved by the decision of the then Deputy Zoning Commissioner in the Findings of Fact and Conclusions of Law of the Deputy Zoning Commissioner of Baltimore County dated July 10, 2008 attached hereto and incorporated herein as **Exhibit #1**, hereby appeals the aforementioned Findings of Fact and Conclusions of Law and Order to the County Board of Appeals of Baltimore County.

Filed concurrently with this Notice of Appeal is Petitioners' check made payable to Baltimore County in full payment of the costs of the appeal. Petitioners were a party below and fully participated in the proceedings.

Respectfully submitted,



LAWRENCE E. SCHMIDT
Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of August, 2008, a copy of the foregoing Notice of Appeal was mailed first class, postage pre-paid to: Anthony Van Vliet, 1113 Justa Lane, Cockeysville, MD 21030; J Brooks Smith III and Sandra J. Smith, 11889 Falls Road, Cockeysville, MD 21030; Marvin Tenberg, 12206 Boxer Hill Road, Cockeysville, MD 21030; and Elizabeth Parkinson, Falls Road Community Association, P.O. Box 555, Brooklandville, MD 21022.


LAWRENCE E. SCHMIDT

TB ✓
6-16-08

IN RE: PETITION FOR SPECIAL HEARING * BEFORE THE
S side of Justa Lane, 370 feet W of *
Box Hill Road * DEPUTY ZONING
8th Election District *
2nd Councilmanic District * COMMISSIONER
(1109 Justa Lane) *
J. Gary and Barbara L. Mueller * FOR BALTIMORE COUNTY
Petitioner * **Case No. 2008-0471-SPH**

EXHIBIT #1

* * * * *

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 the legal owners of the subject property, Gary and Barbara Mueller. Special Hearing relief is requested pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow living quarters for a son in an existing accessory structure. 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 relief were Petitioners Gary and Barbara Mueller, and their attorney, Vernon Boozer, Esquire. Also appearing in support of the requested relief was Joseph L. Larson with Spellman Larson & Associates, Inc., the professional engineer who prepared the site plan. This case garnered considerable interest from the neighboring community and there were a number of Protestants present at the hearing, including Anthony Van Vliet of 1113 Justa Lane, J. Brookes Smith, III and Sandra J. Smith of 11889 Falls Road, Marvin Tenberg of 12206 Boxer Hill Road, and Elizabeth Parkinson on behalf of the Falls Road Community Association.

At the outset of the hearing, Protestants raised a preliminary issue with regard to the posting of the sign providing notice of the upcoming public hearing. Mr. Van Vliet argued that

7/10/08

IN RE: PETITION FOR SPECIAL HEARING * BEFORE THE
S side of Justa Lane, 370 feet W of *
Box Hill Road * DEPUTY ZONING
8th Election District *
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(1109 Justa Lane) *
J. Gary and Barbara L. Mueller * FOR BALTIMORE COUNTY
Petitioner * **Case No. 2008-0471-SPH**

* * * * *

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the notice requirement had not been met since the notice had been moved from the intersection of Justa Lane and Boxer Hill Road to a location on a private driveway closer to the property. After reviewing the evidence, I found that Petitioners had met the notice requirement by conspicuously posting notice of the upcoming hearing on the subject property. In fact, I find that Petitioners met or exceeded the requirement to post notice on the property since the sign was originally posted closer to a public road where more people would have a chance to view the sign. Consistent with the Court of Appeals standard, the sign provided notice that alerted interested parties to defend their interest and described the nature of the request at issue before the zoning commissioner. *See Cassidy v. Board of Appeals of Baltimore County*, 218 Md. 418, 421-2 (1958). Furthermore, actual notice of the public hearing was evidenced by the attendance and participation of various Protestants at the public hearing. *See Largo Civi Ass'n v. Prince George's County*, 21 Md. App. 76 at 86. Thus, the public hearing was permitted to proceed.

Testimony and evidence offered by Petitioners revealed that the subject property is a rectangular-shaped property containing approximately 1.7 acres of land zoned R.C.4 for the front two-thirds of the property and R.C.5 for the rear section of the property. The property is located on Justa Lane, east of Falls Road and approximately 370 feet west of Boxer Hill Road in the Cockeysville area of Baltimore County and is improved with two existing structures. The principal structure, which accesses the property through a driveway on Justa Road, is a two-story single-family dwelling originally built in the 1950's and is located towards the northern end of the subject property in the R.C.5 area. The second structure, which accesses the property through a shared private driveway to the south of the property, is a two-story structure, approximately 3,000 square feet in size, that was built in 2007 toward the southern end of the property in the R.C.4 area. Interestingly, each structure is served by its own separate septic tank and well. Protestants

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submitted several photographs of the accessory structure, which were marked and accepted into evidence as Protestants' Exhibits 1 through 4. The photographs and additional testimony from Petitioners revealed that the subject structure contains a two-car garage, an office and workshop on the first floor, and a bedroom, office, and bathroom on the second floor. The structure presently contains a refrigerator and sink and Mr. Mueller testified that he wishes to eventually install a full kitchen.

Further evidence revealed that Petitioners are pursuing the requested relief to permit their twenty-two year old son to live in the upstairs apartment area of the accessory structure. Petitioners' son is a student at Stevenson University at Villa Julie College and wishes to remain close to his parents for various reasons. Mr. Mueller testified that he is a District Manager with Kaeser Compressors, Inc., a supplier of compressed air and blower products, and travels over 40 weeks a year. As a result of his travel, he indicated that his wife greatly benefits from having her son live near to her. He also indicated it is difficult to live with four people in the principal dwelling, so Petitioners wish to permit their son to live in the accessory structure for at least the next few years. Mr. Mueller further testified that his original intention was to build a storage and workshop area in the accessory structure to serve as a home office, but that his intentions changed once he realized that the structure could further benefit his family by providing a place for his son to live while attending college and pursuing a post graduate education. In support of their request, Petitioners submitted three letters from nearby residents that fully supported the requested relief. Specifically, the letters were from William Hearn of 12004 Boxer Hill Road, Earl and Elva Kammerer of 1106 Just Lane, and Ronald S. Landsman, Esquire who resides in the St. David's Lane community on the west side of Falls Road approximately one quarter mile from the subject

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property. The letters were marked and accepted into evidence as Petitioners' Exhibits 2 through 4, respectively.

Testimony from several Protestants, including Mr. Van Vliet, Mr. and Mrs. Smith, and Mr. Tenberg, shed further light on Protestants' concerns and opposition to the requested relief. According to Protestants, Petitioners' son moved into the accessory structure last fall and created what they characterized as a constant disruption from approximately October through February until he moved back into the principal dwelling. Protestants testified that the area was once a quiet, family oriented community in a rural setting, but that Petitioners' property became a nuisance with their son throwing numerous college parties, hosting bonfires, and having friends drive and screech their tires late into the night. At one point, the police responded to the late-night noise at the accessory structure, although no formal citations were issued. In addition to the previously admitted photographs, Protestants submitted several Exhibits in support of their opposition to the requested relief. This included a document dated June 12, 2008 authorizing Mr. Tenberg to speak on behalf of the Falls Road Community Association, a letter dated June 11, 2008 from the Falls Road Community Association formally opposing the requested relief, and a letter from Harry and Carol Kakel, nearby residents opposing the requested relief. The three Exhibits were respectively marked and accepted into evidence as Protestants' Exhibits 5, 6 and 7.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments received from the Office of Planning dated May 2, 2008 indicate that the property does not appear to have sufficient acreage to meet the density requirements for two dwellings -- one in the R.C.4 zone and one in the R.C.5 zone. The acreage of each zone and density calculations have not been shown on the site plan. A field visit on April 23, 2008 showed that the accessory structure has a separate driveway in place. If the special hearing is granted, a

NOT RECEIVED FOR FILING
7.10.08
[Signature]

deed restriction should be recorded stating that if the property is sold the accessory structure will be converted to its original use, and any kitchen should be removed. It should also not be used as a separate dwelling or as a rental dwelling. Comments received from the Department of Environmental Protection and Resource Management (DEPRM) dated June 17, 2008 indicate that soil percolation tests must be conducted to determine the suitability for an onsite sewage disposal system for the proposed use. DEPRM further indicates that it has no record of any permits to install the septic tank depicted on the site plan. It is recommended that approval for the proposed use be contingent on DEPRM approval for the septic system. The property owner should contact the Ground Water Management Section in DEPRM to arrange for percolation tests.

After reviewing all of the testimony and evidence presented, I am persuaded to deny the requested special hearing relief. With all due respect to Petitioners, I am not impressed with their justification for converting this structure into a separate apartment for their son. This office has often granted these types of requests for in-law quarters where an elderly parent is in need of care from the adult children, or where an adult child or other relative has a condition that necessitates frequent and onsite care; however, other than for the convenience of Petitioners and their son, there is no such justification present in this case. In my view, Petitioners can comfortably fit their family members into the principal structure and, hence, not impact the surrounding locale. Moreover, in my judgment, Petitioners' plans for the structure are simply not appropriate given the history of having a documented negative effect on the health, safety, and general welfare of the surrounding locale.

In addition, while it appears Petitioners already received the necessary building permits to construct the supposed "accessory structure," and that decision will not be revisited by the Deputy Zoning Commissioner, I believe it is also worthy of comment that the structure as it is presently,

FROM RECEIVED FOR REVIEW
7.10.08
m

in my view, does not meet the definition of an "accessory use or structure" as contained in the B.C.Z.R. An accessory structure is defined in Section 101 of the B.C.Z.R. as a use or structure which:

- (a) is customarily incident and subordinate to and serves a principal use or structure; (b) is subordinate in area, extent or purpose to the principal use or structure; (c) is located on the same lot as the principal use or structure served; and (d) contributes to the comfort, convenience or necessity of occupants, business or industry in the principal use or structure served.

Here, Petitioners have constructed a two-story, 3,000 square foot building with a two-car garage, office and apartment area, walkout basement, and separate front and rear entrances. As depicted on the site plan, this structure is as large or larger than the "principal" structure. The past use of the structure as an office and then as an apartment demonstrates that the use is not "subordinate to and serves the principal use" or that it is "subordinate in area, extent, or purpose to the principal use." In fact, it could be argued very persuasively that the structure is not an accessory structure at all, but as the Office of Planning found -- is a separate dwelling located on property that does not have sufficient acreage to meet the density requirements for two dwellings. The size and appearance of the structure is that of a dwelling, combined with the fact that the two structures have their own dedicated well and septic systems. In my judgment, Petitioners' special hearing request appears to be an attempt to use the property for two separate dwellings without pursuing the formal subdivision process.

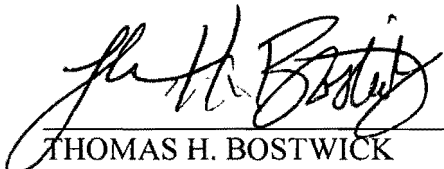
Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by the parties, I find that Petitioners' request for special hearing should be denied.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 10th day of July, 2008 that Petitioners' request for Special Hearing relief filed

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7.10.08
m

pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow living quarters for a son in an existing accessory structure be and is hereby DENIED.

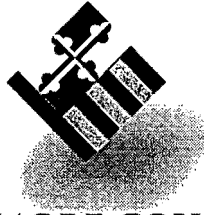
Any appeal of this decision must be made within thirty (30) days of the date of this Order.



THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz

RECEIVED FOR FILING
7.10.08
BY 



BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

THOMAS H. BOSTWICK
Deputy Zoning Commissioner

July 10, 2008

VERNON BOOZER, ESQUIRE
COVAHEY & BOOZER
614 BOSLEY AVENUE
TOWSON MD 21204

Re: Petition for Special Hearing
Case No. 2008-0471-SPH
Property: 1109 Justa Lane

Dear Mr. Boozer:

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 a horizontal line.

THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz
Enclosure

c: J. Gary and Barbara L. Mueller, 1109 Justa Lane, Cockeysville MD 21030
Joseph L. Larson, Spellman, Larson & Associates Inc., 222 Bosley Avenue Suite B-3,
Towson MD 21204
Anthony Van Vliet, 1113 Justa Lane, Cockeysville MD 21030
J. Brookes Smith III and Sandra J. Smith, 11889 Falls Road, Cockeysville MD 21030
Marvin Tenberg, 12206 Boxer Hill Road, Cockeysville MD 21030
Elizabeth Parkinson, Falls Road Community Association, PO Box 555, Brooklandville MD 21022

20080471 "A"
supplemental

2



00000000

01



Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 1109 Justa Lane

which is presently zoned RC-5 & RC-4

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

See attached sheet

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 NA
Signature NA
Address NA Telephone No. NA
City NA State NA Zip Code NA

Attorney For Petitioner:

Vernon Boozer, Esq.
Name - Type or Print Vernon Boozer, Esq.
Signature [Signature]
Company Covahey & Boozer
614 Bosley Avenue 410-828-9441
Address 614 Bosley Avenue Telephone No. 410-828-9441
Towson MD 21204
City Towson State MD Zip Code 21204

Legal Owner(s):

J. Gary Mueller
Name - Type or Print J. Gary Mueller
Signature [Signature]
Barbara L. Mueller
Name - Type or Print Barbara L. Mueller
Signature [Signature]
1109 Justa Lane 443-271-3263
Address 1109 Justa Lane Telephone No. 443-271-3263
Cockeysville MD 21030-1730
City Cockeysville State MD Zip Code 21030-1730

Representative to be Contacted:

Joseph L. Larson
Name Joseph L. Larson
222 Bosley Ave. Ste. B-3 410-823-3535
Address 222 Bosley Ave. Ste. B-3 Telephone No. 410-823-3535
Towson MD 21204
City Towson State MD Zip Code 21204

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING 1 HR

UNAVAILABLE FOR HEARING —

Case No. 2008-0471-SPH

Reviewed By VL Date 4/09/08

REV 9/15/98

RECEIVED FOR FILING

7-16-08

[Signature]



0471

**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: 2008-0471 - SPH
Petitioner: GARY & BARBARA MUELLEZ
Address or Location: 1109 JUSTA LANE

PLEASE FORWARD ADVERTISING BILL TO:

Name: GARY MUELLEZ
Address: 1109 JUSTA LANE
COCKEYSVILLE, MD. 21030-1730
Telephone Number: 443-271-3263

Revised 2/20/98 - SCJ

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

No.

23927

Date:

8/7/08

PAID RECEIPT

DEBIT ACTUAL TIME DAY
 11/2008 8/07/2008 15:08:21 2
 REC 002 MAIL NEW REC
 RECEIPT # 587176 8/07/2008 0913
 5 538 JIMMIE VERIFICATION
 023927
 Recpt Tot 400.00
 400.00 CR 1.00 CA
 Baltimore County, Maryland

Rev Sub
 Source/ Rev/

Fund	Dept	Unit	Sub Unit	Obj	Sub Obj	Dept Obj	BS Acct	Amount
001	006		0000	0150				400.00

Total:

400.00

Rec

From:

Gildea + Schmidt

For:

Apprent - 1109 JIMMIE LN
 Dr - 471 - 541

DISTRIBUTION

WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

GOLD - ACCOUNTING

PLEASE PRESS HARD!!!!

**CASHIER'S
 VALIDATION**

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS RECEIPT

JL
0471

No. **12069**

Date: **4/09/09**

PAID RECEIPT

BUSINESS ACTUAL TIME

4/09/2009 4/09/2009 09:09:23

RECEIPT # 440033 4/09/2009

5 528 ZONING VERIFICATION

112069

Receipt for \$65.00

\$65.00 BY \$ 0

Baltimore County, Maryland

Fund	Agcy	Orgn	Sub Orgn	Rev Source	Sub Rev	Rept Catg	BS Acct	Amount
001	106			1150				15.00

Total: **15.00**

Rec
From:

For:

DISTRIBUTION

WHITE - CASHIER

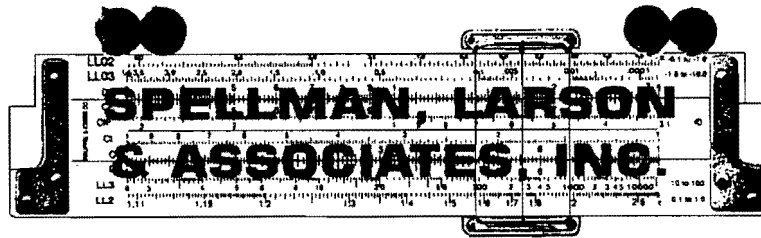
PINK - AGENCY

YELLOW - CUSTOMER

**CASHIER'S
 VALIDATION**

**PETITION FOR SPECIAL HEARING
1109 JUSTA LANE**

.....living quarters for a son in an existing accessory structure.



ROBERT E. SPELLMAN, P.L.S.
JOSEPH L. LARSON

CIVIL ENGINEERS AND LAND SURVEYORS
222 BOSLEY AVENUE, SUITE B-3
TOWSON, MARYLAND 21204
TEL (410) 823-3535 / FAX (410) 825-5215

0471

**LEGAL DESCRIPTION FOR SPECIAL HEARING
1109 JUSTA LANE**

BEGINNING for the same at a point in the center line of Justa Lane a 16' roadway being 370' west of Box Hill Road and running for a line of division south 5 degrees 46 minutes 34 seconds west 539.70 feet to the north side of the 16.5' roadway thence running along the north side of the 16.5' roadway south 84 degrees 01 minutes 43 seconds west 144.64 feet to a point on the north side of the 16.5' roadway thence for a line of division north 6 degrees 5 minutes 48 seconds east 564.91 feet to a point in the center line of Justa Lane thence running along the center line of Justa Lane south 86 degrees 16 minutes 26 seconds east 138.54 feet to the place of beginning.

SAID property containing 1.78 acres of land more or less.

File#D03190802



**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: #2008-0471-SPH
1109 Justa Lane
S/side of Justa Lane, 370
feet west of Box Hill Road,
8th Election District
2nd Councilmanic District
Legal Owner(s): J. Gary &
Barbara L. Meuller
Special Hearing: for living
quarters for a son in an ex-
isting accessory structure.
Hearing: Monday, June
16, 2008 at 9:00 a.m. In
Room 106, County Office
Building, 111 West Ches-
apeake 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) 887-4386.
(2) For information con-
cerning the File and/or
Hearing, Contact the Zon-
ing Review Office at (410)
887-3391.
5/360 May 29 174524

CERTIFICATE OF PUBLICATION

5/29/, 2008

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 5/29/, 2008.

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

S. Wilkinson

LEGAL ADVERTISING

CERTIFICATE OF POSTING

ATTENTION: KRISTEN MATTHEWS

DATE: 06/02/08

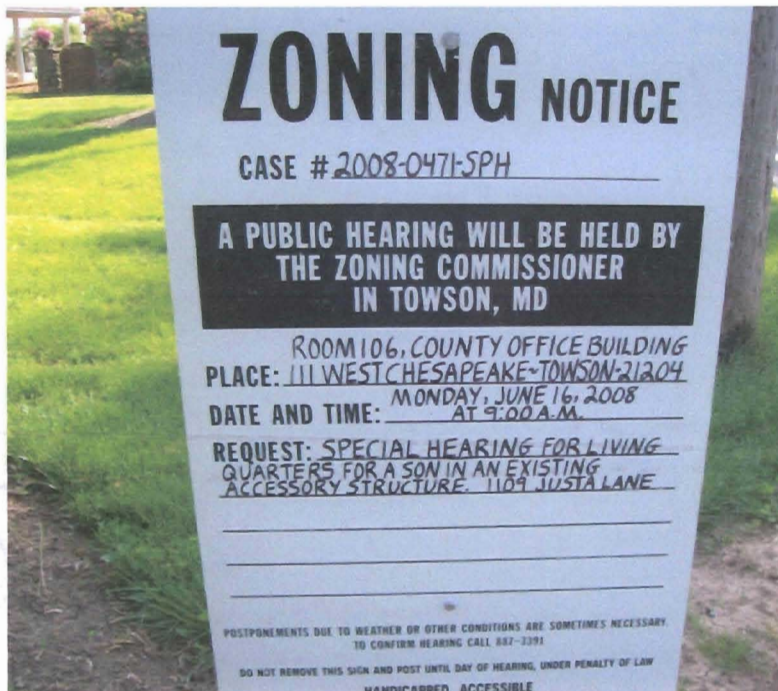
Case Number: 2008-0471-SPH

Petitioner / Developer: EDWARD COVAHEY, ESQ. ~
J GARY & BARBARA MUELLER

Date of Hearing (Closing): JUNE 16, 2008

This is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at:
1109 JUSTA LANE

The sign(s) were posted on: 05/30/08



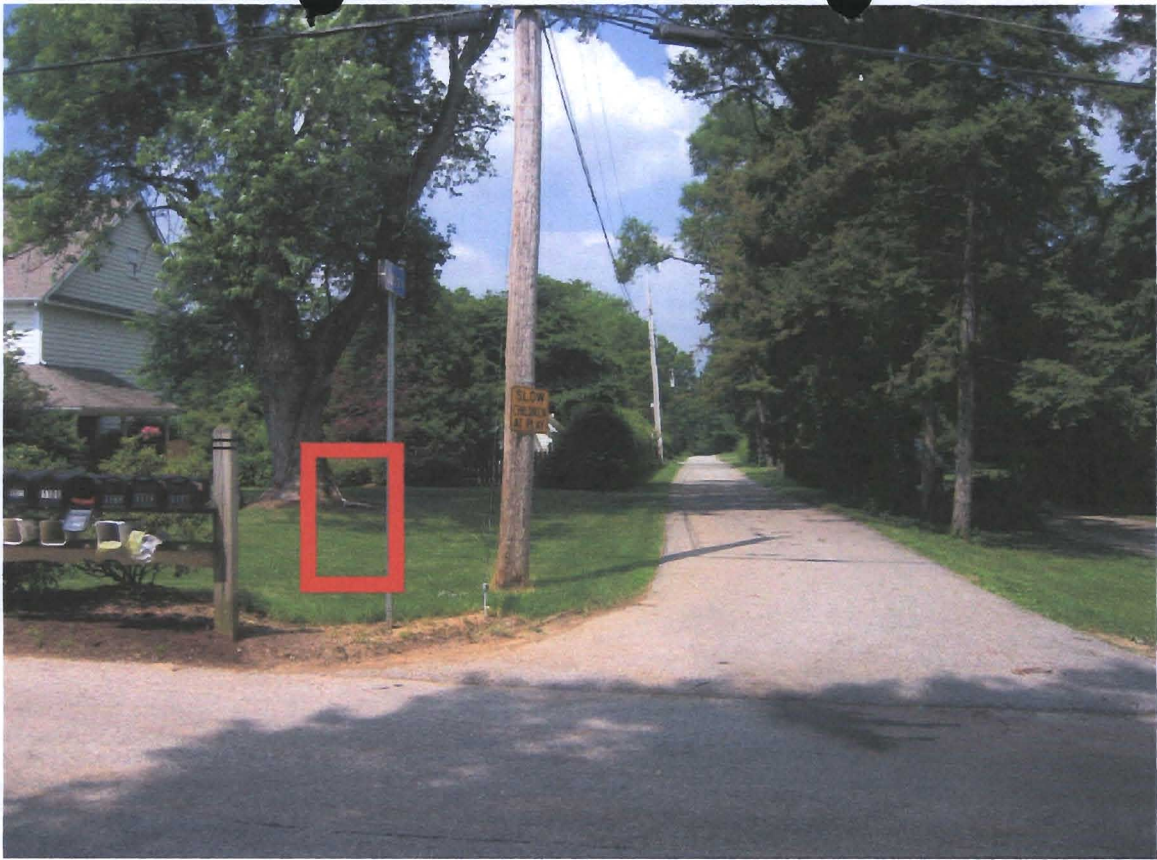
Linda O'Keefe
(Signature of Sign Poster)

Linda O'Keefe
(Printed Name of Sign Poster)

523 Penny Lane
(Street Address of Sign Poster)

Hunt Valley, Maryland 21030
(City, State, Zip of Sign Poster)

410 - 666 - 5366
(Telephone Number of Sign Poster)



COUNTY PLACED HEARING NOTICE – JUSTA LN. PUBLIC INTERSECTION



PRIVATE JUSTA LN. – TOWARD BOXER HILL RD.



PETITIONER RELOCATED NOTICE SIGN



DRIVEWAY/ RIGHT OF WAY AT BOXER HILL ROAD

8th
Requested: October 8, 2008

APPEAL SIGN POSTING REQUEST

CASE NO.: 08-471-SPH

1109 Justa Lane 18 B-10

8th ELECTION DISTRICT

APPEALED: 8/7/2008

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

COMPLETE AND RETURN BELOW INFORMATION

CERTIFICATE OF POSTING

TO: Baltimore County Board of Appeals
The Jefferson Building, Suite 203
102 W. Chesapeake Avenue
Towson, MD 21204

Attention: Kathleen Bianco
Administrator

CASE NO.: 08-471-SPH

LEGAL OWNER: J. Gary & Barbara Mueller

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

1109 JUSTA LANE
S/SIDE OF JUSTA LANE, 370' W/OF BOX HILL ROAD

The sign was posted on 11-25, 2008.

By: Dan J. O'Neill

(Signature of Sign Poster)

DAN ONEILL

(Print Name)



11.25.2008 13:29

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

No. **32304**

Date: **1/29/09**

PAID RECEIPT

BUSINESS ACTUAL TIME BOD
 /29/2009 1/29/2009 15:01:21 1

Rev Sub
 Source/ Rev/

REF USD1 BALKIN JRIC WIR
 RECEIPT # 406701 1/29/2009 OFU

Fund	Dept	Unit	Sub Unit	Obj	Sub Obj	Dept Obj	BS Acct	Amount
001	806	6000		7120				\$10.50

5.5% MISCELLANEOUS
 0. 032304

Recpt Tot \$10.50
 \$12.50 CR \$0.00 CA
 Baltimore County, Maryland

Total: **\$10.50**

Rec From: **Michael McCann, Esq.**

For: **Copies (21 pgs at 50¢ per page)**

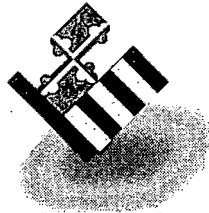
08-471-SPH

DISTRIBUTION

WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER GOLD - ACCOUNTING

PLEASE PRESS HARD!!!!

**CASHIER'S
 VALIDATION**



BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

April 24, 2008
TIMOTHY M. KOTROCO, *Director*
*Department of Permits and
Development Management*

NOTICE OF ZONING HEARING

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

CASE NUMBER: 2008-0471-SPH

1109 Justa Lane

S/side of Justa Lane, 370 feet west of Box Hill Road

8th Election District – 2nd Councilmanic District

Legal Owners: J. Gary & Barbara L. Mueller

Special Hearing for living quarters for a son in an existing accessory structure.

Hearing: Monday, June 16, 2008 at 9:00 a.m. in Room 106, County Office Building,
111 West Chesapeake Avenue, Towson 21204

A handwritten signature in black ink, appearing to read "Timothy Kotroco".

Timothy Kotroco
Director

TK:klm

C: Edward Covahey, 614 Bosley Avenue, Towson 21204
J. Gary & Barbara Mueller, 1109 Justa Lane, Cockeysville 21030

- NOTES: (1) THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY SATURDAY, MAY 31, 2008.**
- (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**

October 28, 2008

NOTICE OF ASSIGNMENT

CASE #: 08-471-SPH

IN THE MATTER OF: J. GARY & BARBARA I. MUELLER –
LEGAL OWNERS / PETITIONERS
1109 Justa Lane 8th E; 2nd C

7/10/2008 - D.Z.C.'s decision in which requested special hearing relief was
DENIED.

ASSIGNED FOR:

TUESDAY, FEBRUARY 10, 2009, 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 Appellants /Petitioners : Lawrence E. Schmidt, Esquire
Appellants /Petitioners : J. Gary Mueller and Barbara Mueller
Joseph L. Larson /Spellman, Larson & Assoc., Inc.

Anthony Van Vliet
J Brooks Smith III and Sandra J. Smith
Marvin Tenberg
Elizabeth Parkinson /Falls Road Community Assn., Inc.
Harry Kakel, Jr., and Carol Kakel

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

February 12, 2009

NOTICE OF DELIBERATION

IN THE MATTER OF:
CASE #: 08-471-SPH

J. GARY & BARBARA I. MUELLER –
LEGAL OWNERS /PETITIONERS
1109 Justa Lane
8th Election District; 2ND Councilmanic District

Having concluded this matter on 2/10/09; public deliberation has been scheduled for the following date /time:

DATE AND TIME : TUESDAY, APRIL 14, 2009 at 9:00 a.m.

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

**NOTE: Closing briefs are due on Friday, March 13, 2009
(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.

Theresa R. Shelton, Administrator

c: Counsel for Appellants /Petitioners : Lawrence E. Schmidt, Esquire
Appellants /Petitioners : J. Gary Mueller and Barbara Mueller

Joseph L. Larson /Spellman, Larson & Assoc., Inc.

Anthony Van Vliet
J Brooks Smith III and Sandra J. Smith
Marvin Tenberg
Elizabeth Parkinson /Falls Road Community Assn., Inc.
Harry Kakel, Jr., and Carol Kakel

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

Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204
Phone: (410) 825-2150
Facsimile: (410) 825-2149
michael@mmccannlaw.net

March 5, 2009

Via Facsimile

Theresa R. Shelton, Administrator
Baltimore County Board of Appeals
Suite 203, Jefferson Building
105 W. Chesapeake Avenue
Towson, MD 21204

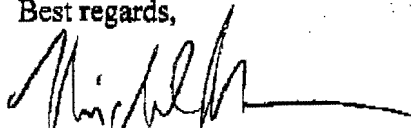
Re: Mueller/Case No.: 0471-SPH

Dear Ms. Shelton:

I write to request an extension of the deadline for the parties to file post-hearing memoranda until March 20, 2009. I have contacted Mr. Schmidt, counsel for petitioners, and he consents to this extension.

Thank you.

Best regards,



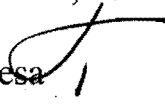
Michael R. McCann

cc: Lawrence Schmidt, Esquire

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
Interoffice Correspondence

TO: Maureen
Wendell
Bob

DATE: March 24, 2009

FROM: Theresa 

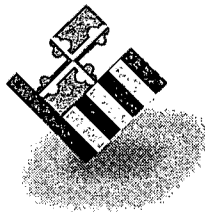
RE: Mueller

Attached are the Memorandums in the above referenced matter.

Deliberation is scheduled for Tuesday, April 14, 2009 at 9:00.

Thank you.

T ☺



BALTIMORE COUNTY

M A R Y L A N D

JAMES T. SMITH, JR.

County Executive

Vernon Boozer, ESQ
Covahey & Boozer
614 Bosley Ave.
Towson, MD 21204

TIMOTHY M. KOTROCO, *Director*

Department of Permits and Development Management
June 11, 2008

Dear: Vernon Boozer

RE: Case Number 2008-0471-SPH, Address: 1109 Justa Ln.

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on April 09, 2008. 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:lnw

Enclosures

c: People's Counsel
J. Gary & Barber L. Mueller, 1109 Justa Ln., Cockeysville, MD 21030-1730
Joseph L. Larson, 222 Bosley Ave. Suite B-3, Towson, MD 21204

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: May 2, 2008

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

SUBJECT: 1109 Justa Lane

INFORMATION:

Item Number: 08-471

Petitioner: J.Gary & Barbara Mueller Trustees

Zoning: RC4 and RC5

Requested Action: Special Hearing

Hearing Date:

The property in question does not appear to have sufficient acreage to meet the density requirements for two dwellings, one in the RC4 zone, one in the RC5 zone. The acreage of each zone and density calculations have not been shown on the site plan.

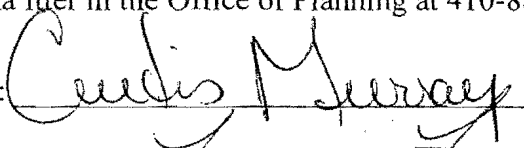
A field visit on April 23, 2008 showed that the accessory structure has a separate driveway in place.

SUMMARY OF RECOMMENDATIONS:

If the Zoning Commissioner grants the special hearing for use of the accessory structure as a dwelling for the owners' son, a deed restriction must be recorded stating that if the property is sold, the accessory structure will be converted to its original use, any kitchen removed. It should not be used as a separate dwelling or as a rental dwelling.

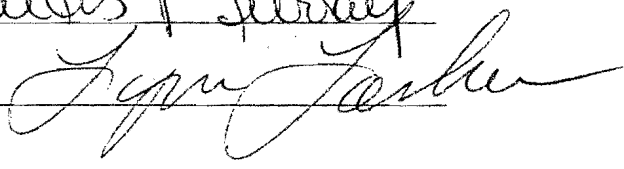
For further questions or additional information concerning the matters stated herein, please contact Diana Itrter in the Office of Planning at 410-887-3480.

Prepared By:



Section Chief:

AFK: CM



BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



TO: Timothy M. Kotroco
FROM: Dave Lykens, DEPRM - Development Coordination
DATE: June 17, 2008
SUBJECT: Zoning Item # 08-471-SPH
Address 1109 Justa Lane
(Mueller Property)

Zoning Advisory Committee Meeting of April 21, 2008

- _____ 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:

Soil percolation tests must be conducted to determine suitability for an on-site sewage disposal system for the proposed use. The Department has no record of any permits to install the septic tank depicted on the site plan. It is recommended that approval for the proposed use be contingent on DEPRM approval for the septic system. The property owner should contact Ground Water Management Section in DEPRM to arrange for perc tests.

Reviewer: kwk

Date: 6/6/08

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: April 28, 2008

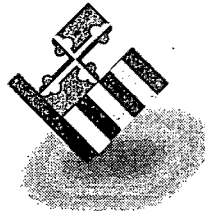
FROM: Dennis A. Kennedy, ^{DAK}Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For April 28, 2008
Item No.: 08-470, 471, 472, 474, 475, 476,
477, 478, 479, 480, 481, 482, 483, 484,
485, 486, 487, and 488.

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

DAK:CEN:lrk
cc: File

ZAC-04282008-NO COMMENTS



BALTIMORE COUNTY

M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

JOHN J. HOHMAN, *Chief*
Fire Department

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

April 24, 2008

ATTENTION: Zoning Review Planners

Distribution Meeting Of: April 21, 2008

Item Number: 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481,
482, 483, 484, 485, 486 and 488

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

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

Lieutenant Roland P Bosley, Jr.
Fire Marshal's Office
410-887-4880 (C) 443-829-2946
MS-1102F

cc: File



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: APRIL 20, 2008

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

RE: Baltimore County
Item No. 8-471-SPH
1109 JUSTA LANE
MUELLER 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. 8-471-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,

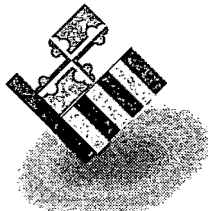
For: Steven D. Foster, Chief
Engineering Access Permits
Division

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

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, Director
October 6, 2008
Department of Permits and
Development Management

Vernon Boozer, Esq.
Covahey & Boozer
614 Bosley Avenue
Towson, MD 21204

Dear Mr. Boozer:

RE: Case: 2008-0471-SPH, 1109 Justa Lane

Please be advised that an appeal of the above-referenced case was filed in this office on August 7, 2008 by Lawrence Schmidt on behalf of Mr. & Mrs. Mueller. 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
Lawrence Schmidt, 600 Washington Avenue, Ste. 200, Towson 21204
Mr. & Mrs. Mueller, 1109 Justa Lane, Cockeysville 21030
Joseph Larson, 222 Bosley Avenue, Ste. B-3, Towson 21204
Anthony Van Vliet, 1113 Justa Lane, Cockeysville 21030
Mr. & Mrs. Brooks, 11889 Falls Road, Cockeysville 21030
Marvin Tenberg, 12206 Boxer Hill Road, Cockeysville 21030
Elizabeth Parkinson, P.O. Box 555, Brooklandville 21022

RE: PETITION FOR SPECIAL HEARING * BEFORE THE
1109 Justa Ln; S/S Justa Ln, 370' W Box Hill Rd
8th Election & 2nd Councilmanic Districts * ZONING COMMISSIONER
Legal Owner(s): Andrew & Linda Brown
Petitioner(s) * FOR
* BALTIMORE COUNTY
* 08-471-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.

RECEIVED

APR 20 2008

Per.....

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
Jefferson Building, Room 204
105 West Chesapeake Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of April, 2008, a copy of the foregoing Entry of Appearance was mailed to Joseph Larson, 222 Bosley Avenue, Suite B-3, Towson, Maryland 21204 and Vernon Boozer, Esquire, Covahey, Boozer, Devan & Dore, P.A., 614 Bosley Avenue, Towson, MD 21204, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

APPEAL

Petition for Special Hearing
1109 Justa Lane
S/side of Justa Lane, 370' w/of Box Hill Road
8th Election District – 2nd Councilmanic District
Legal Owners: J. Gary & Barbara L. Mueller

Case No.: 2008-0471-SPH

- ✓ Petition for Special Hearing (April 9, 2008)
- ✓ Zoning Description of Property
- ✓ Notice of Zoning Hearing (April 24, 2008)
- ✓ Certification of Publication (The Jeffersonian – May 29, 2008)
- ✓ Certificate of Posting (May 30, 2008) by Linda O'Keefe
- ✓ Entry of Appearance by People's Counsel (April 20, 2008)
- ✓ 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. Site Plan
- ✓ 2. Letter from William Hern
- ✓ 3. Letter from Mr. & Mrs. Kammerer
- ✓ 4. Letter from Mr. Landsman

Protestants' Exhibits:

- ✓ 1. Photo
- ✓ 2. Photo
- ✓ 3. Photo
- ✓ 4. Photo
- ✓ 5. Letter from Falls Road Community Association
- ✓ 6. Letter from Falls Road Community Association

Miscellaneous: (Not Marked as Exhibit)
None

- ✓ Deputy Zoning Commissioner's Order (DENIED – 7/10/08)
- ✓ Notice of Appeal received on August 7, 2008 from Lawrence Schmidt

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner/Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Vernon Boozer
Lawrence Schmidt
Mr. & Mrs. Mueller
Joseph Larson
Mr. Van Vliet & Ms. Parkinson
Mr. & Mrs. Brooks Smith
Mr. Tenberg
~~Ms. Parkinson~~

RECEIVED
OCT 07 2008
BALTIMORE COUNTY
BOARD OF APPEALS

Harry Kakel, Jr
Carol Kakel
12006 Boxer Hill Rd
Cockeysville 21030
410-252-8662

date sent October 7, 2008, klm

RECEIVED

APR 27 2012

BALTIMORE COUNTY
BOARD OF APPEALS

CIRCUIT COURT FOR BALTIMORE COUNTY

Julie L. Ensor

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

04/26/12

Case Number: 03-C-09-007062 AA OTH

Date Filed: 06/17/2009

Status: Closed/Active

Judge Assigned: To Be Assigned,

Location :

CTS Start : 06/17/09 Target : 12/14/10

In the Matter of J Gary, et al

C A S E H I S T O R Y**OTHER REFERENCE NUMBERS**

Description	Number
-----	-----
Case Folder ID	C09007062V01
Administrative Agency	CBA-08-471-SPH

INVOLVED PARTIES

Type Num	Name(Last,First,Mid,Title)	Addr Str/End	Pty. Disp. Addr Update	Entered
PET	001 Gary, J		BT DO 03/24/10	06/19/09
		Party ID: 1395311		
	Mail: 1109 Justa Lane	06/19/09		06/19/09 KAS
	Timonium, MD 21030			
	Attorney: 0007161 Schmidt, Lawrence	Appear: 06/19/2009		06/19/09
	Gildea & Schmidt, LLC			
	600 Washington Avenue			
	Suite 200			
	Towson, MD 21204			
	(410)821-0070			
PET	002 Mueller, Barbara		BT DO 03/24/10	06/19/09
		Party ID: 1395312		

Mail: 1109 Justa Lane
Timonium, MD 21030

06/19/09

06/19/09 KAS

Attorney: 0007161 Schmidt, Lawrence
Gildea & Schmidt, LLC
600 Washington Avenue
Suite 200
Towson, MD 21204
(410)821-0070

Appear: 06/19/2009

06/19/09

Type Num	Name(Last,First,Mid,Title)	Addr Str/End	Pty. Disp. Addr Update	Entered
ADA 001	County Board Of Appeals Of Baltimore County The		BT DO 03/24/10	06/19/09
	Party ID: 1395313			
	Mail: Jefferson Building	06/19/09		06/19/09 KAS
	105 W Chesapeake Avenue Room 203			
	Towson, MD 21204			
ITP 001	People's Counsel For Baltimore County		BT DO 03/24/10	07/14/09
	Party ID: 1405486			
	Attorney: 0005744 Demilio, Carole S	Appear: 07/14/2009		07/14/09
	People's Counsel For Baltimore County			
	105 W Chesapeake Avenue			
	Room 204			
	Towson, MD 21204			
	(410)887-2188			
	0029075 Zimmerman, Peter M	Appear: 07/14/2009		07/14/09
	People's Counsel For Baltimore County			
	105 West Chesapeake Ave.			
	Room 204			
	Towson, MD 21204			
	(410)887-2188			
ITP 002	Falls Road Community Assn The		BT DO 03/24/10	07/21/09
	Party ID: 1408156			
	Attorney: 0001101 McCann, Michael R	Appear: 07/06/2009		07/21/09
	Michael R McCann P A			
	118 W Pennsylvania Ave			
	Towson, MD 21204			
	(410)825-2150			
ITP 003	Kakel, Carol		BT DO 03/24/10	07/21/09
	Party ID: 1408157			
	Attorney: 0001101 McCann, Michael R	Appear: 07/06/2009		07/21/09
	Michael R McCann P A			
	118 W Pennsylvania Ave			

Towson, MD 21204
(410)825-2150

Type Num	Name(Last,First,Mid,Title)	Addr Str/End	Pty. Disp. Addr Update	Entered
ITP 004	Tenberg, Marvin		BT DO 03/24/10	07/21/09
		Party ID: 1408158		
	Attorney: 0001101 McCann, Michael R Michael R McCann P A 118 W Pennsylvania Ave Towson, MD 21204 (410)825-2150	Appear: 07/06/2009		07/21/09
ITP 005	Sabolzik, Maria Christina		BT DO 03/24/10	07/21/09
		Party ID: 1408159		
	Attorney: 0001101 McCann, Michael R Michael R McCann P A 118 W Pennsylvania Ave Towson, MD 21204 (410)825-2150	Appear: 07/06/2009		07/21/09
ITP 006	Smith, James Brook, III		BT DO 03/24/10	07/21/09
		Party ID: 1408160		
	Attorney: 0001101 McCann, Michael R Michael R McCann P A 118 W Pennsylvania Ave Towson, MD 21204 (410)825-2150	Appear: 07/06/2009		07/21/09

CALENDAR EVENTS

Date	Time	Fac	Event Description	Text SA	Jdg Day	Of Notice	User ID
Result			ResultDt By Result Judge	Rec			
11/25/09	09:30A	NDOC	Civil Non-Jury Trial	Y	TBA	01 /01	JMO AJS
	Postponed/Reset		09/22/09 Y				
01/12/10	09:30A	CR13	Civil Non-Jury Trial	Y	TJB	01 /01	09/22/09 MK
	Held/Concluded		01/22/10 E T.Bollinger, Sr.	N			

DISPOSITION HISTORY

Disp Date	Disp Code	Description	Stage Code	Description	Activity User	Date
03/24/10	D0	Decree or Order	BT	BEFORE TRIAL/HEARING	DR	03/24/10

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal	RSN
TBA To Be Assigned.	J	06/19/09		

DOCUMENT TRACKING

Num/Seq	Description	Filed	Entered	Party	Jdg Ruling	Closed	User ID
00001000	Petition for Judicial Review, with exhibits	06/17/09	06/19/09	PET001	TBA	03/24/10	KAS DR
00001001	Response to Petition for Judicial Review	06/29/09	07/14/09	ITP001	TBA	03/24/10	NF DR
00001002	Response to Petition for Judicial Review Filed by ITP002-Falls Road Community Assn The, ITP003-Kakel, ITP004-Tenberg, ITP005-Sabolzik, ITP006-Smith	07/06/09	07/21/09	ITP002	TBA	03/24/10	RLM DR
00002000	Certificate of Compliance	06/29/09	07/14/09	000	TBA	03/24/10	NF DR
00003000	Transcript of Record from Adm Agency *	07/14/09	07/16/09	000	TBA	03/24/10	SAP DR
00004000	Notice of Transcript of Record Sent	07/16/09	07/16/09	ADA001	TBA	07/16/09	SAP
00005000	Notice of Transcript of Record Sent	07/16/09	07/16/09	ITP001	TBA	07/16/09	SAP
00006000	Notice of Transcript of Record Sent	07/16/09	07/16/09	PET001	TBA	07/16/09	SAP
00007000	Notice of Transcript of Record Sent	07/16/09	07/16/09	PET002	TBA	07/16/09	SAP
00008000	Stipulation * Filed by PET001-Gary, ITP001-People's Counsel For Baltimore County, ITP002-Falls Road Community Assn The, ITP004-Tenberg, ITP005-Sabolzik, ITP006-Smith	08/04/09	08/08/09	PET001	TBA	08/08/09	KTW
00009000	Scheduling Order	08/17/09	08/17/09	000	TBA	08/17/09	JMD
00010000	Memorandum of Law in Support of Petition for Judicial Review with exhibits Filed by PET001-Gary, PET002-Mueller	09/04/09	09/17/09	PET001	TBA	09/17/09	LAC LAC
00010001	Response to Memorandum of Law in Support of Petition for Judicial Review * (with exhibit)	10/05/09	10/24/09	ITP005	TBA	03/24/10	RLM DR

Filed by ITP005-Sabolzik, ITP006-Smith, ITP004-Tenberg,
ITP003-Kakel, ITP002-Falls Road Community Assn The

Num/Seq	Description	Filed	Entered	Party	Jdg Ruling	Closed	User ID
00011000	Hearing Notice	09/22/09	09/22/09	000	TBA	09/22/09	MK
00012000	Memorandum of people's counsel for Baltimore County *	10/05/09	10/23/09	ITP001	TBA	10/23/09	EMH
00013000	Reply Memorandum of Law in Support of Petition for Judicial Review Filed by Attorney: Lawrence Schmidt Esq Filed by PET001-Gary, PET002-Mueller	10/20/09	11/04/09	PET001	TBA	11/04/09	RLM
00014000	Open Court Proceeding January 12, 2010. Hon. Thomas J. Bollinger Sr. Hearing had in re: administrative appeal. Opinion to be filed.	01/12/10	01/22/10	000	TJB	03/24/10	PF DR
00015000	Opinion and Ruling of the Court reversing the Opinion and Order of the County Board of Appeals of Baltimore County and REMANDING for a hearing on whether the specific use is permissible under BCRZ 502.1	03/24/10	03/24/10	000	TJB Granted	03/24/10	DR
00016000	Docket entries sent to Baltimore County Board of Appeals	04/01/10	04/01/10	000	TBA		CVM
00017000	Notice of Appeal to COSA or COA ** 13/P5-11	04/13/10	04/13/10	ITP001	TBA		JBJ DR
00018000	Pre Trial Hearing Letter Issued	04/13/10	04/13/10	000	TBA	04/13/10	JD
00019000	*Notice of Appeal to COSA or COA (13/P 5-11) Filed by PET001-Gary, ITP002-Falls Road Community Assn The	04/14/10	04/14/10	ITP002	TBA		DR
00020000	Pre Trial Hearing Letter Issued	04/14/10	04/14/10	000	TBA	04/14/10	JD
00021000	Order to proceed w/out prehearing conf.	06/11/10	06/11/10	000	TBA		JD
00022000	Original Record sent to COSA Sent Certified Mail. 1 Volume, 1 Transcript. 1 Accordion Exhibit File #7006 3450 0003 3459 6915	08/05/10	08/05/10	000	TBA		JD
00023000	Receipt is hereby acknowledged of a petition for writ of certiorari filed in this case.	10/07/11	10/14/11	000	TBA		OFF
00024000	Ordered, by the Court of Appeals of Maryland, that the Petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest	12/22/11	12/27/11	000	TBA		KAS

Num/Seq	Description	Filed	Entered	Party	Jdg Ruling	Closed	User ID
00025000	1 volume, 1 envelope exhibits, 1 transcripts	03/27/12	03/27/12	000	TBA		JGM
00026000	Mandate Received from Court of Special Appeals March 3, 2011: Notice of Partial Dismissal filed by counsel. Appeal of Maria Cristina Sabolcik dismissed. August 19, 2012: the judgment of the Circuit Court for Baltimore County is reversed. Appellee to pay costs. September 19, 2011: Mandate issued.	03/27/12	03/28/12	000	TBA		AAA

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
1ANS	1st Answer Tickle	CLOSED	06/29/09	0	no	no	DANS	D	1	001
1ANS	1st Answer Tickle	CLOSED	10/05/09	0	no	no	DANS	D	10	001
1YRT	One Year Tickle (Jud	CLOSED	06/17/10	365	no	no	DAAA	D	1	000
EXPU	Exhibit Pickup Notic	CLOSED	05/23/10	30	no	no			0	000
SLTR	Set List For Trial	CANCEL	06/29/09	0	yes	no	1ANS	T	1	001
SLTR	Set List For Trial	Done	07/14/09	0	yes	yes	DTRA	D	3	000
SLTR	Set List For Trial	CANCEL	10/05/09	0	yes	no	1ANS	T	10	001

EXHIBITS

Line #	Marked	Code	Description	SpH	Sloc	NoticeDt	Disp Dt	Dis By
Offered By:	ADA	001	County Board Of Appeals Of Ba					
000		B	returned to CBA 4/			04/26/12	0	cb

DIFFERENTIATED CASE MANAGEMENT**TRACKS AND MILESTONES**

Track : R1 Description: EXPEDITED APPEAL TRACK Custom: Yes
Assign Date: 08/17/09 Order Date : 08/17/09
Start Date : 08/17/09 Remove Date:

03-C-09-007062 Date: 04/26/12 Time: 14:38

Page: 7

Milestone	Scheduled	Target	Actual	Status
Motions to Dismiss under MD. Rule 2-322(	09/01/09	03/24/10	CLOSED	
All Motions (excluding Motions in Limine	10/16/09	03/24/10	CLOSED	
TRIAL DATE is	01/12/10	11/15/09	01/22/10	REACHED

ACCOUNTING SUMMARYNON-INVOICED OBLIGATIONS AND PAYMENTS

Date	Rcpt/Initials	Acct Desc	Oblig	Payment	Total MOP	Balance
06/17/09	200900014715/CPW	1102 CF-Civil Fil	.00	80.00	-80.00 CA	-80.00
06/17/09	200900014715/CPW	1500 Appearance F	.00	10.00	-10.00 CA	-90.00
06/17/09	200900014715/CPW	1265 MLSC	.00	25.00	-25.00 CA	-115.00
06/19/09		1102 CF-Civil Fil	80.00	.00	80.00	-35.00
06/19/09		1265 MLSC	25.00	.00	25.00	-10.00
06/19/09		1500 Appearance F	10.00	.00	10.00	.00
04/14/10	201000009291/MAB	1161 CF-Appeal Fe	.00	60.00	-60.00 CK	-60.00
04/14/10	201000009291/MAB	1151 Ct Sp App Fe	.00	50.00	-50.00 CK	-110.00
04/14/10	201000009296/MAB	1151 Ct Sp App Fe	.00	50.00	-50.00 CK	-160.00

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

RECEIVED

SEP 23 2009

BALTIMORE COUNTY
BOARD OF APPEALS

N O T I C E O F H E A R I N G / T R I A L

Case Number: 03-C-09-007062 AA
Administrative Agency : CBA-08-471-SPH
C I V I L

In the Matter of J Gary, et al

STATE OF MARYLAND, BALTIMORE COUNTY COUNTY, TO WIT:

TO: County Board Of Appeals Of Baltimore County The
Jefferson Building
105 W Chesapeake Avenue Room 203
Towson, MD 21204

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:
January 12, 2010
At: 09:30 AM
Civil Non-Jury Trial
1/2 HOUR ADMINISTRATIVE APPEAL CORRECTED NOTICE

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

Date Issued: 09/22/09

NOTICE OF CIVIL TRACK ASSIGNMENT AND SCHEDULING ORDER

RECEIVED
AUG 18 2009

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 BOSLEY AVENUE
P.O. BOX 6754
TOWSON, MARYLAND 21285-6754

BALTIMORE COUNTY
BOARD OF APPEALS

County Board Of Appeals Of Baltimore County The Assignment Date: 08/17/09
Jefferson Building
105 W Chesapeake Avenue R
Towson MD 21204

Case Title: In the Matter of J Gary, et al
Case No: 03-C-09-007062 AA

County Bd of Appeals of Balto Co

The above case has been assigned to the EXPEDITED APPEAL TRACK. Should you have any questions concerning your track assignment, please contact: Joy M Keller at (410) 887-3233.

You must notify this Coordinator within 15 days of the receipt of this Order as to any conflicts with the following dates:

SCHEDULING ORDER

1. Motions to Dismiss under MD. Rule 2-322(b) are due by..... 09/01/09
2. All Motions (excluding Motions in Limine) are due by..... 10/16/09
3. TRIAL DATE is..... 11/25/09

Civil Non-Jury Trial; Start Time: 09:30AM; To Be Assigned: 1/2 HOUR ADMINISTRATIVE APPEAL

Honorable John Grason Turnbull II
Judge

Postponement Policy: No postponements of dates under this order will be approved except for undue hardship or emergency situations. All requests for postponement must be submitted in writing with a copy to all counsel/parties involved. All requests for postponement must be approved by the Judge.

Settlement Conference (Room 507): All counsel and their clients **MUST** attend the settlement conference in person. All insurance representatives **MUST** attend this conference in person as well. Failure to attend may result in sanctions by the Court. Settlement hearing dates may be continued by Settlement Judges as long as trial dates are not affected. (Call [410] 887-2920 for more information.)

Special Assistance Needs: 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) 887-3018, or the Voice/TDD M.D. Relay Service, (800) 735-2258.

Voluntary Dismissal: Per Md. Rule 2-506, after an answer or motion for summary judgment is filed, a plaintiff may dismiss an action without leave of court by filing a stipulation of dismissal signed by all parties who have appeared in the action. The stipulation shall be filed with the Clerk's Office. Also, unless otherwise provided by stipulation or order of court, the dismissing party is responsible for all costs of the action.

Court Costs: All court costs **MUST** be paid on the date of the settlement conference or trial.

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.

cc: Michael R McCann Esq
cc: Carole S Demilio Esq
cc: Lawrence Schmidt Esq
cc: Peter M Zimmerman Esq
Issue Date 08/17/09

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

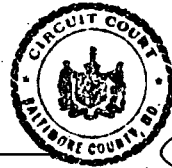
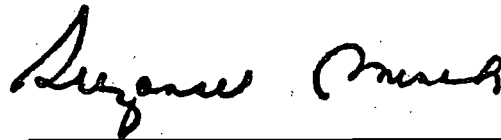
N O T I C E O F R E C O R D

Case Number: 03-C-09-007062 AA
Administrative Agency : CBA-08-471-SPH
C I V I L

In the Matter of J Gary, et al

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 14th day of July, 2009.



Suzanne Mensh
Clerk of the Circuit Court, per 

Date issued: 07/16/09

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY THE
Jefferson Building
105 W Chesapeake Avenue Room 203
Towson, MD 21204

RECEIVED
JUL 20 2009
BALTIMORE COUNTY
BOARD OF APPEALS

2/28/11

MEMORANDUM

TO: KEHOE, J., PRESIDING; MATRICCIANI AND DAVIS
(Retired, specially assigned), JJ.

FROM: LESLIE D. GRADET, CLERK

DATE: March 10, 2011

RE: People's Counsel for Baltimore County et al. vs.
J. Gary Mueller et ux.
No. 304, September Term, 2010
Scheduled for argument before this panel on Wednesday,
April 6, 2011 in Courtroom 2

The attached Notice of Partial Dismissal of the appeal of Appellant
Maria Cristina Sabolcik is directed to this panel for informational purposes.

LDG:ls

Attachment

RECEIVED

MAR 3 - 2011

BY COURT OF SPECIAL APPEALS

PEOPLES' COUNSEL FOR BALTIMORE COUNTY, *et al.*,

Appellants,

v.

J. GARY MUELLER, *et ux.*

Appellees.

RECEIVED

MAR 3 - 2011

BY COURT OF SPECIAL APPEALS

IN THE COURT OF

SPECIAL APPEALS

OF MARYLAND

September Term 2010

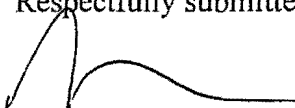
Case No. 00304

* * * * *

NOTICE OF PARTIAL DISMISSAL

Appellant, Maria Cristina Sabolcik, hereby dismisses her appeal in the above-captioned matter.

Respectfully submitted,



Michael R. McCann

Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204
(410) 825-2150

Dated: February 28, 2011

From: Theresa Shelton
To: Sabolcik, Kevin
Date: 4/27/2009 3:08 PM
Subject: Re: Board of Appeals Decision-1109 Justa Lane Zoning Variance Appeal
Attachments: Deliberation-Mtn for Recon.doc

Good Afternoon:

The final Ruling on the Motion for Reconsideration has not been completed by the Panel; however, I have attached the Deliberation Minutes for you. It normally takes between 4 - 6 weeks for the Ruling to be written, transcribed, reviewed and signed.

I have added your name to the notification list and you will receive a copy of the final Ruling and Order when it is issued.

Please do not hesitate to call me if you have any questions. Thank you.

Theresa

Theresa R. Shelton, Administrator
Board of Appeals for Baltimore County
Suite 203, The Jefferson Building
105 W. Chesapeake Avenue
Towson, MD 21204

410-887-3180
410-887-3182 (FAX)
tshelton@baltimorecountymd.gov

>>> Kevin Sabolcik 4/27/2009 11:50 AM >>>
Ms. Shelton,

On Tuesday, April 14th, 2009 the Board of Appeals meet at 9:00 am to discuss and decide a zone variance appeal submitted by the owners of 1109 Justa Lane, Cockeysville, Maryland (owner Gary Mueller). Is there a public document available from this decision and if so how could I obtain a copy of it?

Thank you with this request.

Kevin J. Sabolcik
12000 Boxer Hill Road
Cockeysville, MD 21030
Phone: 410-370-8153

From: Theresa Shelton
To: Sabolcik, Kevin
Date: 4/28/2009 6:14 PM
Subject: Re: Board of Appeals Decision-1109 Justa Lane Zoning Variance Appeal
Attachments: Deliberation.doc

Good Evening:

I do apologize for forwarding the Deliberation Minutes for another matter before the Board. The Mueller Deliberation Minutes are attached. As stated earlier, the process can take from 4 -6 weeks after the deliberation before the final Order is issued. I have corrected the error and have added your name and address to the Mueller file so that you will receive a copy of the final Order.

Please do not hesitate to call me if I can be of any further assistance.

Thank you for your understanding in this matter.

Theresa

Theresa R. Shelton, Administrator
Board of Appeals for Baltimore County
Suite 203, The Jefferson Building
105 W. Chesapeake Avenue
Towson, MD 21204

410-887-3180
410-887-3182 (FAX)
tshelton@baltimorecountymd.gov

>>> Kevin Sabolcik 4/28/2009 8:10 AM >>>
Ms. Shelton,

Thank you for your quick reply. However, I'm not sure if the document you forwarded is for the hearing I attended. The hearing was for the Mueller property at 1109 Justa Lane, Cockeysville which I think was held on April 14th.

Thank you for your time.

>>> On 4/27/2009 at 3:08 PM, in message <49F5CA66.EAD1.00A6.0@baltimorecountymd.gov>, Theresa Shelton wrote:
Good Afternoon:

The final Ruling on the Motion for Reconsideration has not been completed by the Panel; however, I have attached the Deliberation Minutes for you. It normally takes between 4 - 6 weeks for the Ruling to be written, transcribed, reviewed and signed.

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Theresa

Theresa R. Shelton, Administrator
Board of Appeals for Baltimore County
Suite 203, The Jefferson Building
105 W. Chesapeake Avenue
Towson, MD 21204

410-887-3180
410-887-3182 (FAX)
tshelton@baltimorecountymd.gov

>>> Kevin Sabolcik 4/27/2009 11:50 AM >>>

Ms. Shelton,

On Tuesday, April 14th, 2009 the Board of Appeals meet at 9:00 am to discuss and decide a zone variance appeal submitted by the owners of 1109 Justa Lane, Cockeysville, Maryland (owner Gary Mueller). Is there a public document available from this decision and if so how could I obtain a copy of it?

Thank you with this request.

Kevin J. Sabolcik
12000 Boxer Hill Road
Cockeysville, MD 21030
Phone: 410-370-8153

BALTIMORE COUNTY, MARYLAND

Board of Appeals of Baltimore County

Interoffice Correspondence

Phone: 410-887-3180

Fax: 410-887-3182

To: Tim Kidd, Building Inspections

From: Sunny Cannington, Legal Secretary 

Date: April 15, 2010

Re: In the Matter of: J. Gary and Barbara Mueller
Case No.: 08-471-SPH

Mr. Kidd,

Attached please find a copy of the Circuit Court for Baltimore County's decision dated March 15, 2010 (filed March 24, 2010). Please be advised that this matter is on Appeal to the Court of Special Appeals of Maryland. Upon the issuance and receipt of that Court's decision, I will forward a copy to you.

Should you have any questions, please do not hesitate to contact me.

Thank you.

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF:

J. Gary and Barbara Mueller

08-471-SPH

DATE:

April 14, 2009

BOARD/PANEL:

Maureen Murphy
Wendell Grier
Robert Witt

RECORDED BY:

Sunny Cannington/Legal Secretary

PURPOSE:

To deliberate the following:

1. Special Hearing request to allow living quarters in an existing accessory structure.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- The Board members discussed the history of this matter. The Petitioners requested and were given a permit to build an accessory structure. The original request was for a two-floor garage with the second floor use as an office. Additions have been made to the second floor to include separate kitchen, bath, bedroom, sewer, and water facilities. The property is located in a split, RC4 and RC5 zone with the main house located in the RC4 zone and the accessory structure located in the RC5 zone. The property descends and the accessory structure was built into the hill so that from the front of the property, only the second floor is visible and from the rear of the property, both floors are visible. The Petitioners' son is currently living in the accessory structure and uses the first floor garage. The question before the Board is whether this property, accessory, and use, qualify as in-law living quarters.
- The Board reviewed the Baltimore County Zoning Regulations (BCZR) and finds that there is nothing in them to allow for in-law living quarters at all. Several Zoning Commissioner Rulings were presented to the Board in Post-Hearing Memorandum. The current precedent under which the Board acts in these types of cases was established in 1986 when Arnold Jablon was the Zoning Commissioner. He ruled in case number 87-88-SPHA that he would grant the in-law living quarters due to the medical necessity of an elderly relative with the conditions that a covenant must be added to the Deed filed with Land Records and that upon the death of the elderly relative or if the property were to be sold, the kitchen would be removed and home would be returned to its original condition.
- The Board feels that this issue needs to be addressed by the County Council.
- Pursuant to Mr. Jablon's 1986 decision, the Department of Permits and Development Management (PDM) has a Declaration of Understanding that is entered into by the Property Owners in situations where in-law living quarters are being added to an existing

08-471-SPH

MINUTES OF DELIBERATION

main structure that is then filed with Land Records. The Declaration includes the condition that when the elderly occupants pass, the home is to be returned to its original condition.

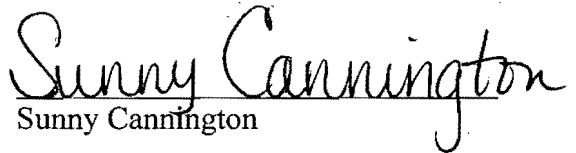
- The Board is concerned that by allowing the in-law living quarters in an existing accessory structure, the density of the property would be increased beyond what is allowable by BCZR in an RC4 or RC5 Zone.

DECISION BY BOARD MEMBERS: The current precedent is to allow in-law living quarters as an addition to an existing dwelling when there is the medical necessity of an elderly relative. Under the precedent, this matter does not meet the requirements to allow in-law living quarters in the existing accessory structure.

FINAL DECISION: After thorough review of the facts, testimony, and law in the matter, the Board unanimously agreed to DENY the request to allow in-law living quarters in an existing accessory structure.

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

GILDEA & SCHMIDT, LLC

600 WASHINGTON AVENUE

SUITE 200

TOWSON, MARYLAND 21204

TELEPHONE 410-821-0070

FACSIMILE 410-821-0071

www.gildeallc.com

DAVID K. GILDEA

LAWRENCE E. SCHMIDT

D. DUSKY HOLMAN

SEBASTIAN A. CROSS

CHARLES B. MAREK, III

JASON T. VETTORI

August 6, 2008

Via Hand Delivery

Timothy M. Kotroco

Department of Permits and Development Management

111 W. Chesapeake Avenue, Room 105

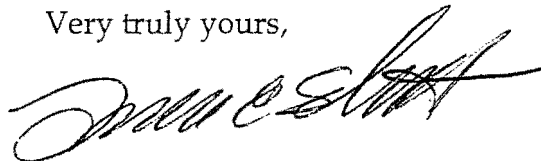
Towson, MD 21204

Re: Mueller/1109 Justa Lane
Case No.: 2008-0471-SPH

Dear Mr. Kotroco:

Enclosed please find the original and a copy of our Notice of Appeal in the above referenced matter. Please accept the original for filing and return a date stamped copy to my attention in the self-addressed, stamped envelope enclosed herein. Additionally, I am enclosing our check for Four Hundred Dollars (\$400.00) for the filing of the Notice of Appeal. Thank you for your prompt attention to this most important matter.

Very truly yours,



Lawrence E. Schmidt

LES: jk

Enclosure

CC: J. Gary & Barbara Mueller

Thomas H. Bostwick, Deputy Zoning Commissioner for Baltimore County

Kathy Bianco, Baltimore County Board of Appeals

RECEIVED
AUG - 7 2008

BALTIMORE COUNTY
BOARD OF APPEALS

IN RE: PETITION FOR SPECIAL HEARING

S side of Justa Lane, 370 feet W of
Box Hill Road
8th Election District
2nd Councilmanic District
(1109 Justa Lane)

J. Gary and Barbara Mueller
Petitioners

*

BEFORE THE

*

DEPUTY ZONING

*

COMMISSIONER FOR

*

BALTIMORE COUNTY

*

Case No. 2008-0471-SPH

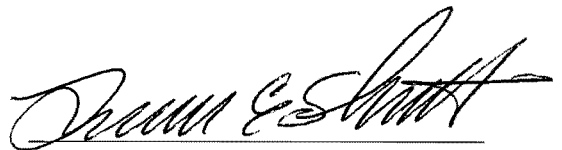
* * * * *

NOTICE OF APPEAL

J. Gary Mueller and Barbara Mueller, Petitioners in the above-captioned case, by and through their attorneys, Lawrence E. Schmidt and Gildea & Schmidt, LLC, feeling aggrieved by the decision of the then Deputy Zoning Commissioner in the Findings of Fact and Conclusions of Law of the Deputy Zoning Commissioner of Baltimore County dated July 10, 2008 attached hereto and incorporated herein as **Exhibit #1**, hereby appeals the aforementioned Findings of Fact and Conclusions of Law and Order to the County Board of Appeals of Baltimore County.

Filed concurrently with this Notice of Appeal is Petitioners' check made payable to Baltimore County in full payment of the costs of the appeal. Petitioners were a party below and fully participated in the proceedings.

Respectfully submitted,



LAWRENCE E. SCHMIDT
Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
Attorney for Appellant

GILDEA & SCHMIDT, LLC

600 WASHINGTON AVENUE

SUITE 200

TOWSON, MARYLAND 21204

TELEPHONE 410-821-0070

FACSIMILE 410-821-0071

www.gildeallc.com

DAVID K. GILDEA

LAWRENCE E. SCHMIDT

D. DUSKY HOLMAN

SEBASTIAN A. CROSS

CHARLES B. MAREK, III

JASON T. VETTORI

August 22, 2008

Via Hand Delivery

Kristin Matthews

Scheduler

Baltimore County Zoning

111 W. Chesapeake Avenue, Room 111

Towson, MD 21204

**Re: Mueller/1109 Justa Lane
Case No.: 2008-0471-SPH**

RECEIVED

AUG 07 2008

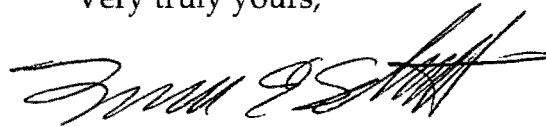
Klm

Dear Ms. Matthews:

Pursuant to our telephone conversation, enclosed please find an original copy of the Notice of Appeal for the above referenced case. Also find enclosed a copy of the cancelled check which was cleared on August 13, 2008. I have confirmed with Sunny, from the County Board of Appeals of Baltimore County that their office received a copy of the appeal which was logged into their system on August 7, 2008. The original was hand delivered to your office on August 6, 2008 or August 7, 2008.

Please docket this appeal on either of these dates and provide me with a date-stamped copy. Should you have any questions, comments or concerns regarding this matter, please do not hesitate to contact me.

Very truly yours,



Lawrence E. Schmidt

LES: kmb

Enclosure

6592

GILDEA & SCHMIDT, LLC

600 WASHINGTON AVENUE
SUITE 200
TOWSON, MD 21204

BAY NATIONAL BANK
LUTHERVILLE, MD 21093

65-335-550

Aug 06, 2008

PAY TO THE
ORDER OF:

Baltimore County

\$ **400.00**

*** **Four Hundred** *****

00/100 DOLLARS

Baltimore County
100 County Courts Building
401 Bosley Avenue
Towson, MD 21204

MEMO


AUTHORIZED SIGNATURE

⑈006592⑈ ⑆055003353⑆

⑈1000001784⑈

⑈000004000⑈

See back for details on back



AUG-22-2008 13:18 From: BAY NATIONAL BANK 4104273752

To: 4108210071

P.2/3

GILDEA & SCHMIDT, LLC

600 WASHINGTON AVENUE

SUITE 200

TOWSON, MARYLAND 21204

TELEPHONE 410-821-0070

FACSIMILE 410-821-0071

www.gildeallc.com

DAVID K. GILDEA

LAWRENCE E. SCHMIDT

D. DUSKY HOLMAN

SEBASTIAN A. CROSS

CHARLES B. MAREK, III

JASON T. VETTORI

RECEIVED

JUN 17 2009

BALTIMORE COUNTY
BOARD OF APPEALS

June 17, 2009

Via Hand Delivery

Ms. Suzanne Mensh
Clerk of the Circuit Court
Circuit Court for Baltimore County
401 Bosley Avenue, 2nd Floor
Towson MD, 21204

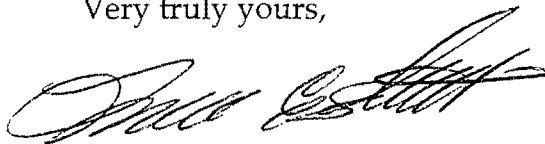
Re: In the Matter of: J. Gary and Barbara Mueller
Petition for Judicial Review
Case No.: CBA-08-471-SPH

Dear Madame Clerk:

I have enclosed with this letter for filing in the above referenced matter a Petition for Judicial Review, Civil Case Information Report and \$115.00, for the filing fee. Pursuant to Maryland Rule 7-202(d), I have also enclosed an extra copy of the Petition for service upon the agency.

Should you have any questions, please feel free to call. Thank you for your assistance.

Very truly yours,



Lawrence E. Schmidt

LES: jkl

Enclosures

CC: Michael R. McCann, Esquire, Michael McCann, P.A.
Carole S. DeMilio, Esquire, People's Counsel for Baltimore County
Theresa R. Shelton, County Board of Appeals of Baltimore County

PETITION OF: J. GARY AND BARBARA MUELLER	* IN THE
FOR JUDICIAL REVIEW OF THE DECISION OF	* CIRCUIT COURT
THE COUNTY BOARD OF APPEALS OF	
BALTIMORE COUNTY	* FOR
Jefferson Building	
105 W. Chesapeake Avenue, Room 203	* BALTIMORE COUNTY
Towson, MD 21204	
	*
IN THE CASE OF: J. Gary and Barbara Mueller,	
Petitioners/Legal Owners	* Case No. _____
1109 Justa Lane	
Timonium, MD 21030	*

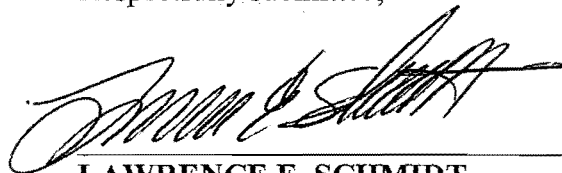
Case No. CBA-08-471-SPH

* * * * *

PETITION FOR JUDICIAL REVIEW

The Appellants, J. Gary and Barbara Mueller, by and through their attorney, Lawrence E. Schmidt and Gildea & Schmidt, LLC, herein file their Petition for Judicial Review pursuant to Rule 7-203(b) from the Opinion and Order of the County Board of Appeals of Baltimore County in the above referenced matter dated May 18, 2009 and attached hereto. The Petitioners were a party to the agency proceeding and have standing to pursue Judicial Review.

Respectfully submitted,



LAWRENCE E. SCHMIDT
 Gildea & Schmidt, LLC
 600 Washington Avenue, Suite 200
 Towson, MD 21204
 410-821-0070
Attorney for Appellants

GILDEA & SCHMIDT, LLC

600 WASHINGTON AVENUE
SUITE 200

TOWSON, MARYLAND 21204

TELEPHONE 410-821-0070

FACSIMILE 410-821-0071

www.gildeallc.com

DAVID K. GILDEA

LAWRENCE E. SCHMIDT

D. DUSKY HOLMAN

SEBASTIAN A. CROSS

CHARLES B. MAREK, III

JASON T. VETTORI

RECEIVED

JUN 25 2009

BALTIMORE COUNTY
BOARD OF APPEALS

June 25, 2009

Via Hand Delivery

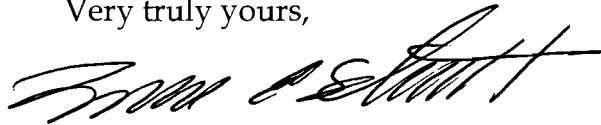
Ms. Theresa R. Shelton
County Board of Appeals of Baltimore County
The Jefferson Building
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204

Re: Mueller/1109 Justa Lane
Case No. 08-0471-SPH

Dear Ms. Shelton:

As we discussed, enclosed please find the County Board of Appeals transcript for the February 10, 2009 hearing held for the above matter to be included in the record transmitted to the Circuit Court for Baltimore County. As this transcript was already prepared, it is not required for the Court Reporter to prepare another copy for the purpose of the appeal. Thank you for your cooperation in this matter.

Very truly yours,



Lawrence E. Schmidt

LES: jkl
Enclosure

GILDEA & SCHMIDT, LLC

600 WASHINGTON AVENUE

SUITE 200

TOWSON, MARYLAND 21204

TELEPHONE 410-821-0070

FACSIMILE 410-821-0071

www.gildeallc.com

DAVID K. GILDEA

LAWRENCE E. SCHMIDT

D. DUSKY HOLMAN

SEBASTIAN A. CROSS

CHARLES B. MAREK, III

JASON T. VETTORI

April 12, 2010

Via Hand Delivery

Ms. Theresa R. Shelton
County Board of Appeals of Baltimore County
The Jefferson Building
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204

RECEIVED
APR 12 2010
BALTIMORE COUNTY
BOARD OF APPEALS

**Re: Mueller/1109 Justa Lane
Remand from Circuit Court
Case No. 03-C-09-07062**

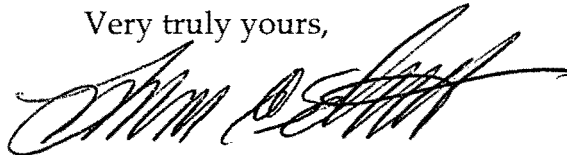
Dear Ms. Shelton:

Please find enclosed a copy of the Circuit Court for Baltimore County's Opinion and Ruling for the above referenced matter dated March 15, 2010. This decision reversed the Opinion and Order of the Board of Appeals and remands the matter for a hearing on whether the specific use is "somehow detrimental to the health, safety and general welfare of the area." The Court further directed that the Board schedule a hearing on this (BCZR 502.1) issue.

Please contact me to discuss scheduling. I would be pleased to coordinate with you and opposing counsel (Mr. McCann and Ms. DeMilio).

Thank you for your cooperation in this matter. With kind regards, I am

Very truly yours,



Lawrence E. Schmidt

LES: jkl

Enclosure

CC: Carole S. DeMilio, Esquire, People's Counsel for Baltimore County
Michael R. McCann, Esquire, Michael McCann, P.A.
Mitch Kellman, Daft, McCune, Walker
J. Gary & Barbara Mueller

PETITION OF: J. GARY AND
BARBARA MUELLER

FOR JUDICIAL REVIEW OF THE
DECISION OF THE COUNTY BOARD
OF APPEALS OF BALTIMORE CO.

IN THE CASE OF:

J. GARY AND BARBARA MUELLER

*

*

*

*

*

*

IN THE

CIRCUIT COURT

FOR BALTIMORE COUNTY

Case No.: 03-C-09-07062

*

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*

OPINION AND RULING

This matter comes before this Court on a Petition for Judicial Review of the May 18, 2009 decision by the County Board of Appeals of Baltimore County (hereinafter "the Board").

BACKGROUND

The Petitioners in this case live in a 4600-square-foot single family home that sits on a 1.78acre lot in the Cockeysville area of Baltimore County. Behind the Petitioners' home to the rear of the property there is a detached garage which the Petitioners have upgraded and turned into a separate living space for their son Cole who is a college student. It is the converted garage structure which is the subject of the zoning dispute in this case.

The Petitioners originally sought to have this use ratified by the Office of the Zoning Commissioner of



Falls Road Community Association

P.O. Box 555 Brooklandville, Maryland 21022

ESTABLISHED

1947

January 22, 2009

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

With reference to Case #: 08-471-SPH, please note the following correction:

Marvin Tenberg – Vice President, Falls Road Community Association

Sincerely,

Marvin Tenberg
Marvin Tenberg

RECEIVED
JAN 26 2009

**BALTIMORE COUNTY
BOARD OF APPEALS**

CASE NAME 1109 JUSTA LA.
CASE NUMBER _____
DATE _____

[illegible]

IN THE MATTER OF: * BEFORE THE
 J. GARY & BARBARA L. MUELLER - * COUNTY BOARD OF APPEALS
 LEGAL OWNERS/PETITIONERS * OF
 1109 Justa Lane * BALTIMORE COUNTY
 8th Election District * Case No. 08-471-SPH
 2nd Councilman District *

* * * * *

The above-entitled matter came on for
 hearing before the County Board of Appeals in the
 Jefferson Building, Second Floor, Hearing Room #2, 105 W.
 Chesapeake Avenue, Towson, Maryland 21204, at 10 a.m.,
 February 10, 2009.

* * * * *

ORIGINAL

Reported by: Carolyn E. Peatt

TO: PATUXENT PUBLISHING COMPANY
Thursday, May 29, 2008 Issue - Jeffersonian

Please forward billing to:
Gary Mueller
1109 Justa Lane
Cockeysville, MD 21030

443-271-3263

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: 2008-0471-SPH

1109 Justa Lane
S/side of Justa Lane, 370 feet west of Box Hill Road
8th Election District – 2nd Councilmanic District
Legal Owners: J. Gary & Barbara L. Mueller

Special Hearing for living quarters for a son in an existing accessory structure.

Hearing: Monday, June 16, 2008 at 9:00 a.m. in Room 106, County Office 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.
- (2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.



BALTIMORE COUNTY
M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, *Director*
October 6, 2008
*Department of Permits and
Development Management*

Vernon Boozer, Esq.
Covahey & Boozer
614 Bosley Avenue
Towson, MD 21204

Dear Mr. Boozer:

RE: Case: 2008-0471-SPH, 1109 Justa Lane

Please be advised that an appeal of the above-referenced case was filed in this office on August 7, 2008 by Lawrence Schmidt on behalf of Mr. & Mrs. Mueller. 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,

Timothy Kotroco
Director

TK:klm

c: William J. Wiseman III, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Lawrence Schmidt, 600 Washington Avenue, Ste. 200, Towson 21204
Mr. & Mrs. Mueller, 1109 Justa Lane, Cockeysville 21030
Joseph Larson, 222 Bosley Avenue, Ste. B-3, Towson 21204
Anthony Van Vliet, 1113 Justa Lane, Cockeysville 21030
Mr. & Mrs. Brooks, 11889 Falls Road, Cockeysville 21030
Marvin Tenberg, 12206 Boxer Hill Road, Cockeysville 21030
Elizabeth Parkinson, P.O. Box 555, Brooklandville 21022

APPEAL

Petition for Special Hearing
1109 Justa Lane
S/side of Justa Lane, 370' w/of Box Hill Road
8th Election District – 2nd Councilmanic District
Legal Owners: J. Gary & Barbara L. Mueller

Case No.: 2008-0471-SPH

Petition for Special Hearing (April 9, 2008)

Zoning Description of Property

Notice of Zoning Hearing (April 24, 2008)

Certification of Publication (The Jeffersonian – May 29, 2008)

Certificate of Posting (May 30, 2008) by Linda O'Keefe

Entry of Appearance by People's Counsel (April 20, 2008)

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. Site Plan
2. Letter from William Hern
3. Letter from Mr. & Mrs. Kammerer
4. Letter from Mr. Landsman

Protestants' Exhibits:

1. Photo
2. Photo
3. Photo
4. Photo
5. Letter from Falls Road Community Association
6. Letter from Falls Road Community Association

Miscellaneous (Not Marked as Exhibit)
None

Deputy Zoning Commissioner's Order (DENIED – 7/10/08)

Notice of Appeal received on August 7, 2008 from Lawrence Schmidt

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner/Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Vernon Boozer
Lawrence Schmidt
Mr. & Mrs. Mueller
Joseph Larson
Mr. Van Vliet
Mr. & Mrs. Brooks
Mr. Tenberg
Ms. Parkinson

date sent October 7, 2008, klm

Monday, June 16, 2008 @ 9:00 a.m. Em 106

APPEAL

DAVE

STILL PENDING
AS OF 10/29/10
THERE IS NO BOA ORDER,
WITHDRAWAL OR DISMISSAL ETC
IN THIS FILE.

2008-0471
SPH

CERTIFICATE OF POSTING

- 1) Posted _____ Hearing Date _____
2) Posted _____ Hearing Date _____

ADS

- 1) Paper/Date _____ Date _____
Paper/Date _____ Date _____

- 2) Paper/Date _____ Date _____
Paper/Date _____ Date _____

P&A FEES

- 1) _____
2) _____

COMMENTS

Planning _____ Fire _____
Critical Area _____ SHP _____
Health: _____

Associate _____

March 6, 2009

Mr. Thomas H. Bostwick
Deputy Zoning Commissioner
For Baltimore County
111 W. Chesapeake Ave., MS 1105
Towson, MD 21204

RECEIVED

MAR 09 2009

ZONING COMMISSIONER

RE: Petition for Special Hearing
S side of Justa Lane, 370' West of Boxer Hill Road
1109 Justa Lane
Case No. 2008-0471-SPH

Dear Commissioner Bostwick,

I am a resident living near in the area of the above Petition action. Reviewing the public documents and witnessing recent events, I wish to bring the following to your attention as the final decision on the appeal by the owners of 1109 Justa Lane (Muellers) is expected within the next month or so. The items of interest are:

- In the **FINDINGS OF FACT AND CONCLUSIONS OF LAW** from the Mueller's initial special hearing there is a statement in the second paragraph, 1st page that reads *"Also appearing in support of the requested relief was Joseph L. Larson with Spellman Larson & Associates, Inc., the professional engineer who prepared the site plan."* However a check of the Maryland Department of Labor, Licensing & Regulation website (www.dllr.state.md.us/license/occprof/profeng.html) indicates no listing of a Joseph L. Larson or anyone with the last name of Spellman as a Maryland Register Professional Engineer. Furthermore, it appears the company referenced is in poor standing with the State of Maryland due to a history of tax problems.
- In the original petition hearing and noted in the above document, J. Gary Mueller has stated his adult son, Nicholas Mueller, was attending college (Stevenson University). However, from articles available on the college website it appears Nicholas was listed as a senior on the 2007-2008 school lacrosse team. He is not listed as a member on the current 2009 team roster. Additionally, on Nicholas's Facebook.com profile he notes as graduating in 2008.

- Lastly, there is a road right of way that runs along the south boundary of the properties adjacent to 1109 Justa Lane on which J. Gary Mueller constructed a stone and gravel roadway from his property to Boxer Hill Road in the Summer of 2007. Given the road dimensions (10 to 12 feet wide and slightly over 500 feet long) it appears a County grading permit would have been required to construct this roadway. However, no such issued permit is on file with Baltimore County. Furthermore, J. Gary Mueller has recently install NO TRESSPASSING signs on this roadway and has told other residence that he "owns" the property and no one else is allowed to access it. A review of the deeds and historic property data search indicate this road right of way dates back to the 1940's and was intended as access to Padonia Road for land locked property owners, before Boxer Hill Road and Justa Lane were built and before parcel subdivisions took place in the 1950' and 60's.

The above is for your use in the decision making process involved in the on-going petition appeal hearing for the above referenced subject. As the Muellers have be hostile and intimidating to other property owners who have spoke up against their actions the author of this letter wishes to remain anonymous at this time. I believe the Falls Road Community Association should be aware of the above and would be able to answer any questions you may have.

PETITIONER' / PROTESTANT'S
EXHIBITS

3

Case No.:

08-471-SPA

Exhibit Sheet

Petitioner/Developer

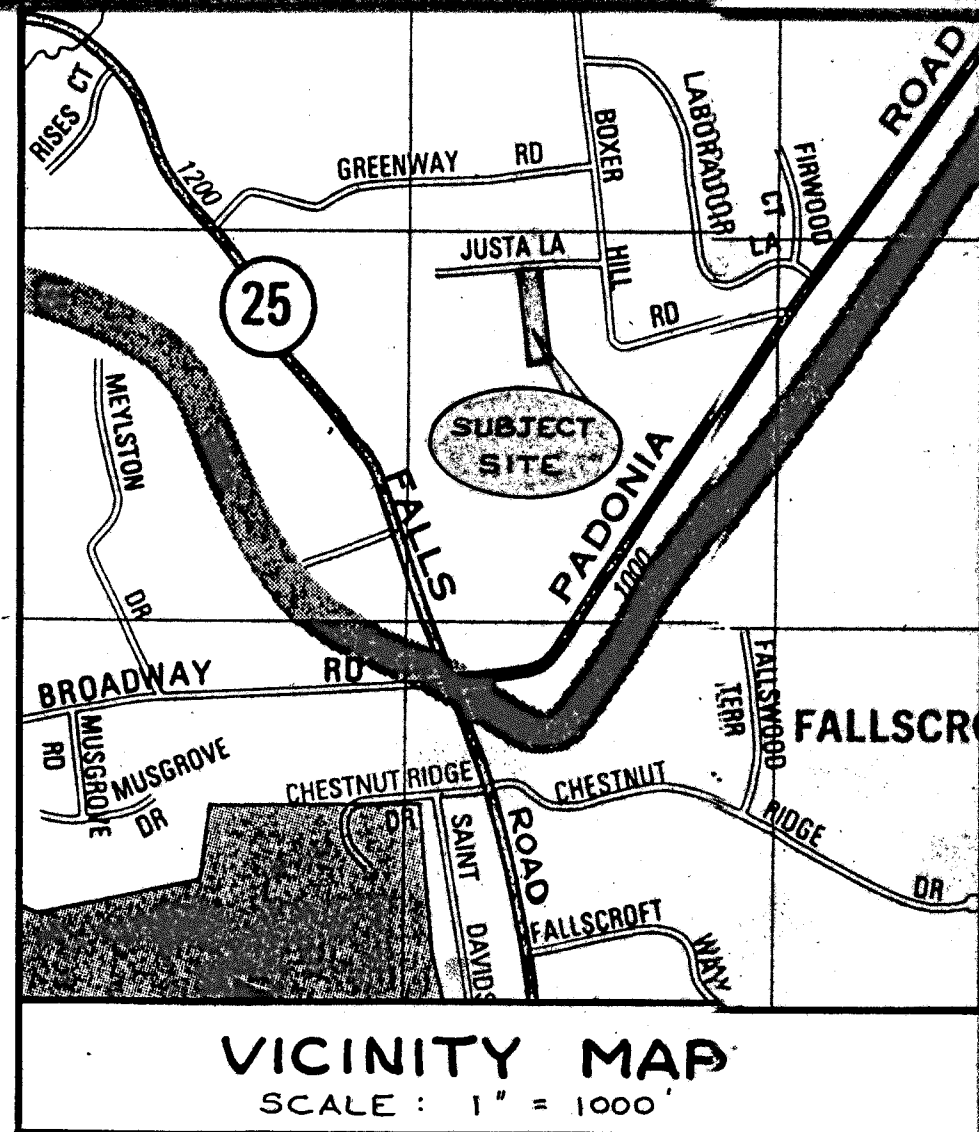
Protestant

No. 1	SITE PLAN	PHOTO
No. 2	LETTER WILLIAM HEARN	PHOTO
No. 3	LETTER EARL & MRS CAMMER	PHOTO
No. 4	LETTER RONALD LANDSMAN	PHOTO
No. 5		LETTER FACS RD Authority to Twp
No. 6		Letter from Association
No. 7		Letter from Cabold's not located in piece
No. 8		
No. 9		
No. 10		
No. 11		
No. 12		

GENERAL NOTES

1. THERE ARE NO ARCHEOLOGICAL SITES, HAZARDOUS MATERIALS, ENDANGERED SPECIES HABITATS, OR HISTORIC BUILDINGS OR LANDMARK ON THE SUBJECT SITE.
2. THERE ARE NO STREAMS, BODIES OF WATER, OR SPRINGS ON OR ADJACENT TO THE SUBJECT SITE.
3. THERE ARE NO UNDERGROUND STORAGE TANKS ON THE SUBJECT PROPERTY.
4. THE SUBJECT PROPERTY DOES NOT LIE WITHIN THE CHESAPEAKE BAY CRITICAL AREA.
5. THE SUBJECT PROPERTY HAS NO PREVIOUS ZONING CASE HISTORY.
6. THE SUBJECT PROPERTY DOES NOT LIE WITHIN A 100 YEAR FLOOD PLAIN.

RC-5
JUSTA LANE



SITE DATA

SITE AREA	77,537 SQ. FT./1.78 AC +/-
EXIST. ZONING	RC-5/RC-4
COUNCILMANIC DISTRICT	2ND
ZONING MAP	050C3
DEED REFERENCE	24502/387
TAX MAP/GRID/PARCEL	50/24/187
TAX ACCOUNT NO.	2100000556
WATER	PRIVATE
SEWER	PRIVATE

ANTHONY VAN VILET
ELIZABETH E. PARKINSON
26368/85
TAX NO. 0807001520

SCOTT J. TARANTINO
BONNIE G. TARANTINO
16627/50
TAX NO. 0812040300

RC-4

DEFER TO PERMIT
#P 657840
EXIST. 1 STY METAL
ACCESSORY
BLDG.
50.2'
BRICK WALK
SEPTIC TANK
WELL
GRAVEL DRIVE
144.64'

PETITIONER'S

EXHIBIT NO. 1

OWNER INFORMATION

GARY J. MUELLER
BARBARA L. MUELLER, TRUSTEES
1109 JUSTA LANE
COCKEYSVILLE, MD. 21030-1730
PHONE: 443-271-3263

ZONING OFFICE USE ONLY

REVIEWED BY ITEM # CASE #

SPELLMAN, LARSON
&
ASSOCIATES, INC.

CIVIL ENGINEERS AND LAND SURVEYORS
222 BOSLEY AVENUE SUITE B-3 TOWSON, MD 21204
PHONE: 410-823-3535

ZONING PLAT TO ACCOMPANY SPECIAL HEARING

1109 JUSTA LANE

MUELLER PROPERTY

8TH ELECTION DISTRICT BALTIMORE COUNTY

SCALE: 1" = 40' DES. BY: DAN. BY: TC SHT. OF

SPELLMAN, LARSON
& ASSOCIATES, INC.
CIVIL ENGINEERS AND LAND SURVEYORS
222 BOSLEY AVENUE, SUITE B-3
TOWSON, MARYLAND 21204
PHONE: 410-823-3535
FAX: 410-825-5215

GENERAL NOTES

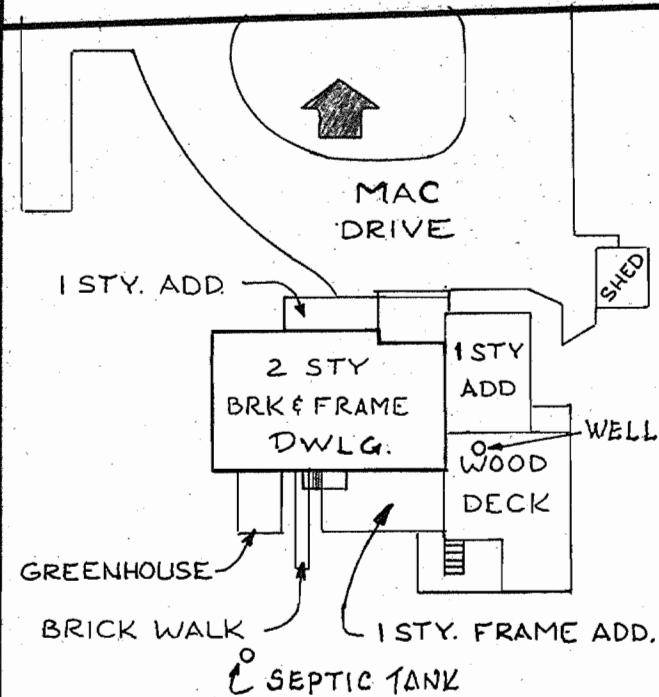
1. THERE ARE NO ARCHEOLOGICAL SITES, HAZARDOUS MATERIALS, ENDANGERED SPECIES HABITATS, OR HISTORIC BUILDINGS OR LANDMARK ON THE SUBJECT SITE.
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6. THE SUBJECT PROPERTY DOES NOT LIE WITHIN A 100 YEAR FLOOD PLAIN.

RC-5

JUSTA LANE

POINT OF BEGINNING
370' TO BOX HILL RD

S 86° 16' 26" E 138.54'



RC-5
RC-4

564.91'

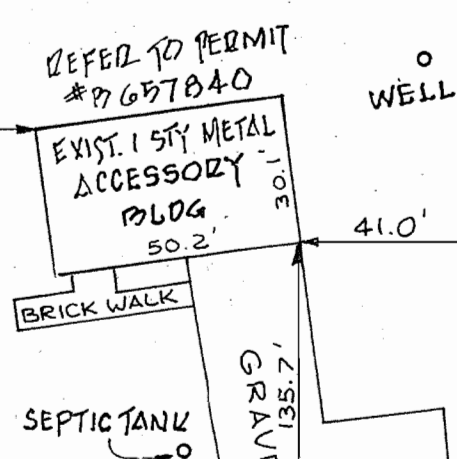
539.70'

RC-5
RC-4

ANTHONY VAN VILET
ELIZABETH E. PARKINSON
26368/85
TAX NO. 0807001520

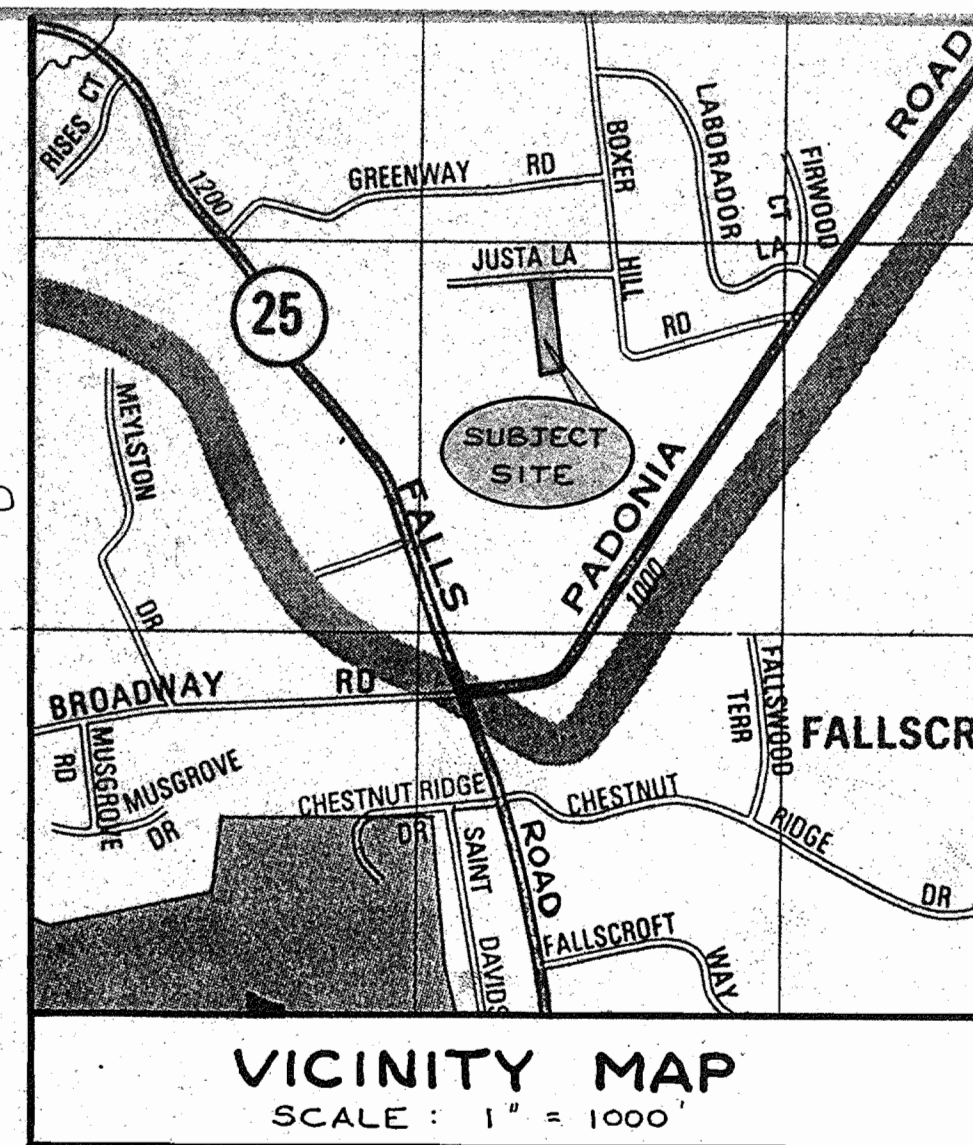
SCOTT J. TARANTINO
BONNIE G. TARANTINO
16627/50
TAX NO. 0812040300

RC-4



S 84° 01' 43" W 144.64'

16.5' ROAD (USE IN COMMON)



SITE DATA

SITE AREA	77,537 SQ. FT./1.78 AC +/-
EXIST. ZONING	RC-5/RC-4
COUNCILMANIC DISTRICT	2ND
ZONING MAP	050C3
DEED REFERENCE	24502/387
TAX MAP/GRID/PARCEL	50/24/187
TAX ACCOUNT NO.	2100000556
WATER	PRIVATE
SEWER	PRIVATE

0471

REVISIONS		
NO.	DATE	DESCRIPTION
1	7.25.08	REV. PER FILING CONF.

SPELLMAN, LARSON & ASSOCIATES, INC.

CIVIL ENGINEERS AND LAND SURVEYORS
222 BOSLEY AVENUE SUITE B-3 TOWSON, MD 21204
PHONE: 410-823-3535

**ZONING PLAT TO ACCOMPANY
SPECIAL HEARING**

1109 JUSTA LANE

MUELLER PROPERTY

8TH ELECTION DISTRICT BALTIMORE COUNTY

SCALE: 1" = 40' DES. BY: DATE: MAR. 21, 2008 DRN. BY: TC SHT. OF

SPELLMAN, LARSON & ASSOCIATES, INC.
CIVIL ENGINEERS AND LAND SURVEYORS
222 BOSLEY AVENUE, SUITE B-3
TOWSON, MARYLAND 21204
PHONE: 410-823-3535
FAX: 410-825-5215

ZONING OFFICE USE ONLY

REVIEWED BY ITEM # CASE #

OWNER INFORMATION

GARY J. MUELLER
BARBARA L. MUELLER, TRUSTEES
1109 JUSTA LANE
COCKEYSVILLE, MD. 21030-1730
PHONE: 443-271-3263

TB 6/16
9Am

June 3, 2008

Zoning Commissioner
410 Bosley Avenue
Towson, Maryland 21204

RECEIVED
JUN 06 2008

BY:.....

Dear Sir or Madam,

I am writing in reference to case # 2008-0471 Gary and Barb Mueller. I have been a neighbor with the Muellers since 1994. Barb and Gary have been great neighbors. I have watched their kids grow up. I am aware of the zoning hearing scheduled for later this month. I understand that the hearing is to permit their son Cole to live in the new barn.. I as a neighbor have no objection to that whatsoever. Cole is a nice young man. Please feel free to call me if necessary 443 829 4104.

Sincerely,


William Hearn

William Hearn
12004 Boxer Hill Rd
Cockeysville, Md

PETITIONER'S
EXHIBIT NO. 2

TB 6/16 9am

RECEIVED
JUN 12 2008

BY: _____

June 6 2008

Zoning Commissioner
401 Bosley Ave.
Towson, MD 21204

We are writing on behalf of Gary and Barbra Mueller pertaining to a zoning hearing for June 16th 2008. Can a garage/shop building be classified as a second residence on a single property when it is not a house structure?

The son needs to be near his aging parents for thier sake plus this solution makes the cost of a college education more affordable for them.

It seems to be a growing trend for the homeowner to provide comfortable living space for the older generation and the younger generation as they once did back when people and families weren't dependent on Government services and outside help. In theses uncertain times it may be an option for many of us to consider.

We are neighbors of the Muellers and for over 30 years they have been fine upstanding people and an asset to our community. We have seen this son grow up into a respectful young man with a bright future and we see no violation of codes or laws if this arrangement takes place.

Sincerely,
Earl and Elva Kammerer
1106 Justa Lane
Cockeysville, MD 21030

PETITIONER'S

EXHIBIT NO.

3

LAW OFFICES OF
LANDSMAN & RONALD

RONALD S. LANDSMAN (MD, DC)
CRAIG K. RONALD (MD, DC)

JACQUELINE KELLY (Paralegal)

THE SOPHOMAR BUILDING
SIX EAST MULBERRY STREET
BALTIMORE, MARYLAND 21202

ron@landsmanlaw.com
craig@landsmanlaw.com

(410)-752-4220
FAX: (410)-752-4046

June 11, 2008

Mr. William J. Wiseman III, Esquire
Zoning Commission of Baltimore County
401 Bosley Avenue
Suite 405
Towson, Maryland 21204

RE: 1109 Justa Lane
2008-0471-SPH

Dear Mr. Wiseman:

I am the president of the St. David's Lane Association which is located approximately 1/4 of a mile from the above address. I have reviewed the proposed request for the use of an accessory structure on the above property and support the petitioners' request.

I have known the petitioners, Gary and Barbara Mueller, for close to ten years. I have found them to be active and responsible members of the community. Their property is always maintained in a manner which is consistent with the quality of their immediate neighborhood and surrounding community.

I would hope that you give these good people the request as outlined in their petition.

Sincerely,



Ronald S. Landsman

RSL/mc

PETITIONER'S

EXHIBIT NO.

4

Case No.:

08-471-SPH

Exhibit Sheet

Petitioner/Developer

Protestant

No. 1	SITE PLAN	PHOTO
No. 2	LETTER WILLIAM HEARN	PHOTO
No. 3	LETTER EARL & MRS CAMMERER	PHOTO
No. 4	LETTER RONALD LANDSMAN	PHOTO
No. 5		LEGAL FACS RE Authority to Twp
No. 6		Letter from Association
No. 7		Letter from Celoid's not located in file
No. 8		
No. 9		
No. 10		
No. 11		
No. 12		

THE FALLS ROAD COMMUNITY ASSOCIATION, INC.

The undersigned hereby acknowledge and attest that the Board of Directors of the Falls Road Community Association, Inc., a Maryland Corporation (the "Corporation"), in accordance with Section 2-408 of the Maryland Corporations & Associations Code, do hereby take the actions below set forth, do hereby consent as follows:

RESOLVED: Marvin Tenberg, on behalf of the Falls Road Community Association, Inc. shall attend the variance hearing on the 1109 Justa Lane property on June 16, 2008 and testify on our behalf in opposition to granting the requested variance.

AS WITNESS OUR HANDS ON THIS 12th day of June, 2008.

ATTEST: The Falls Road Community Association, Inc.

By: Marcia W. Goldberg

Marcia W. Goldberg, Secretary

By: Marvin Tenberg

Marvin Tenberg, Vice-President

Prot
5



ESTABLISHED

1947

Falls Road Community Association

P.O. Box 555 Brooklandville, Maryland 21022

June 16, 2008

To Whom it May Concern:

The Falls Road Community Association opposes the request granting a variance to the Mueller property on Justa Lane. This proposal exceeds the present County Zoning Density Regulations and would set a bad precedent for future requests.

The numerous other building code violations further make this request totally unacceptable in our eyes.

Sincerely,

FRCA

Put

⑥

CBA PETITIONER'S EXHIBITS

(4)

PETITIONER'S EXHIBITS

- ✓ 1. SITE PLAN OF THE PROPERTY - 1109 JUSTA LANE
- ✓ 2. COPY OF THE BUILDING ELEVATION DRAWINGS OF THE ACCESSORY BUILDING AND FLOOR PLAN.
- ✓ 3. AERIAL PHOTO OF THE AREA WHEN BLDG WAS NOT THERE.
- ✓ 4. PERMIT TO BUILD THE ACCESSORY BUILDING.
- ✓ 5. A. DRAWING OF THE TOP FLOOR OF THE ACCESS. STRUCTURE
- ✓ B. DRAWING OF THE BOTTOM FLOOR OF THE ACCESS. STRUCTURE
- ✓ 6. LETTER STIPULATING THE USE FOR THE BUILDING, SIGNED BY MR. MUELLER AND SEVERAL NEIGHBORS.
- ✓ 7. DEED DATED 9/9/1987 FOR THE PROPERTY.
- ✓ 8. APPLICATION FOR SOIL PERCOLATION TEST FOR ACCESS. BLDG.
- ✓ 9. LETTER FROM DEPRM DATED 11/12/08 REFERENCE PERC. TEST.
- ✓ 10. A. PHOTOGRAPH - FRONT OF STRUCTURE
- ✓ B. " - REAR OF STRUCTURE
- ✓ C. " - OF STRUCTURE - REAR
- ✓ D. " - BACK OF HOUSE LOOKING DOWN FROM HOUSE
- ✓ E. " - OF STRUCTURE
- ✓ F. " - NEIGHBOR'S PROPERTY
- ✓ G. " - FROM STRUCTURE TOWARD VAN ^{VLIET} ~~LOEK'S~~ PROP.
- ✓ H. " - LOOKING TOWARD VAN ^{VLIET} ~~LOEK'S~~ PROP.
- ✓ I. " - LOOKING OUT THE FRONT OF THE BLDG TOWARD VAN ~~LOEK'S~~ VLIET.
- ✓ J. " - LOOKING OUT TOWARD SMITH'S HOUSE.
- ✓ K. " - LOOKING AT SMITH'S PROP FROM REAR OF BLDG.

CASE NO. 08-471-SPH

PETITIONER'S EXHIBITS

✓ 11. MR. KOLMAN'S RESUME

✓ 12. LETTER FROM NEIGHBOR

✓ 13. A PHOTOGRAPH - MR. SMITH'S PROPERTY FROM NEIGHBOR'S PROP.

✓ B " - LOOKING ACROSS NEIGHBOR'S PROP.

✓ C " - MR. SMITH'S PROPERTY.

✓ D " - " " "



BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

TOWSON, MARYLAND 21204

Timothy Kotroco

TIMOTHY M. KOTROCO
DIRECTOR

BUILDING PERMIT

BUILDINGS ENGINEER

PERMIT #: B657840 CONTROL #: NR DIST: 08 PREC: 01
DATE ISSUED: 03/08/2007 TAX ACCOUNT #: 2100000553 CLASS: 04

PLANS: CONST 0 PLOT: R PLAT 0 DATA 0 ELEC YES PLUM YES
LOCATION: 1109 JUSTA LN
SUBDIVISION: 370 W BOX HILL RD

OWNERS INFORMATION

NAME: MUELLER, J. GARY
ADDR: 1109 JUSTA LN, 21030

TENANT:

CONTR: J. GARY MUELLER

ENGR:

SELLR:

WORK: CONSTRUCT 2 STY DETACHED GARAGE T/B 3 CAR
GARAGE W STORAGE, HANK SINK ONLY 2ND FLR TO BE
OFFICE/LOFT ACCESSORY STRUCTURE 1TR ATTACHED
IN REAR OF PROPERTY OF EX. SFD OVERALL DIM
50'X30'X24'10"=2,500SF, SMALLER THAN DWELLING

BLOG. CODE:

RESIDENTIAL CATEGORY: DETACHED

OWNERSHIP: PRIVATELY OWNED

PROPOSED USE: SFD & DET GARAGE

EXISTING USE: SFD

TYPE OF IMPRV: NEW BUILDING CONSTRUCTION

USE: GARAGE

FOUNDATION:

BASEMENT:

SEWAGE: PRIV. EXISTS

WATER: PRIV. EXISTS

LOT SIZE AND SETBACKS

SIZE: 0000.00 X 0000.00

FRONT STREET:

SIDE STREET:

FRONT SETB: NC

SIDE SETB: 40'X34'

SIDE STR SETB:

REAR SETB: 125'

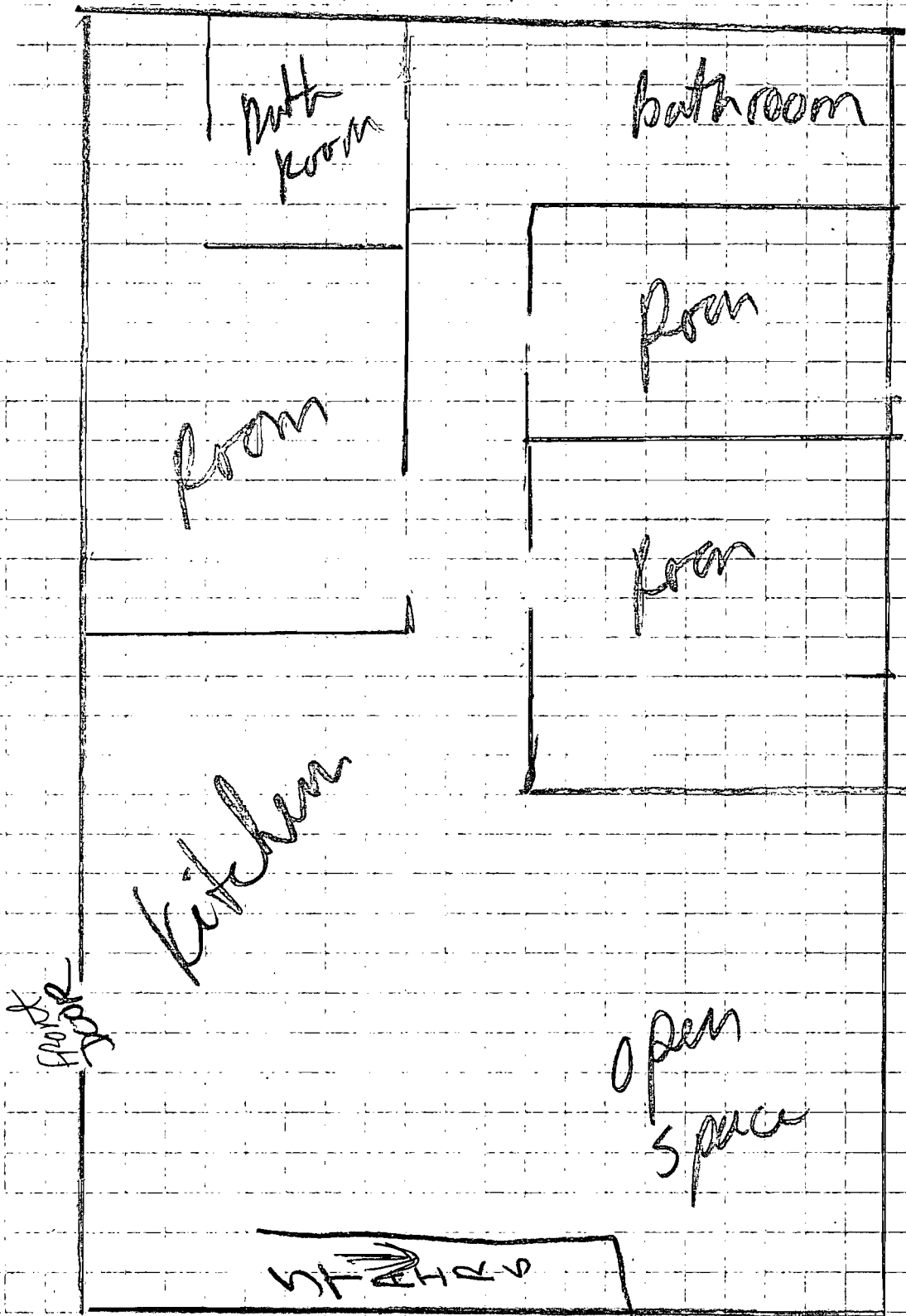
DATE OF ISSUE
ONE YEAR EXPIRATION
DATE OF EXPIRATION

CBA PET. No. 4

PLEASE REFER TO PERMIT NUMBER WHEN MAKING INQUIRIES.

Plot
5A

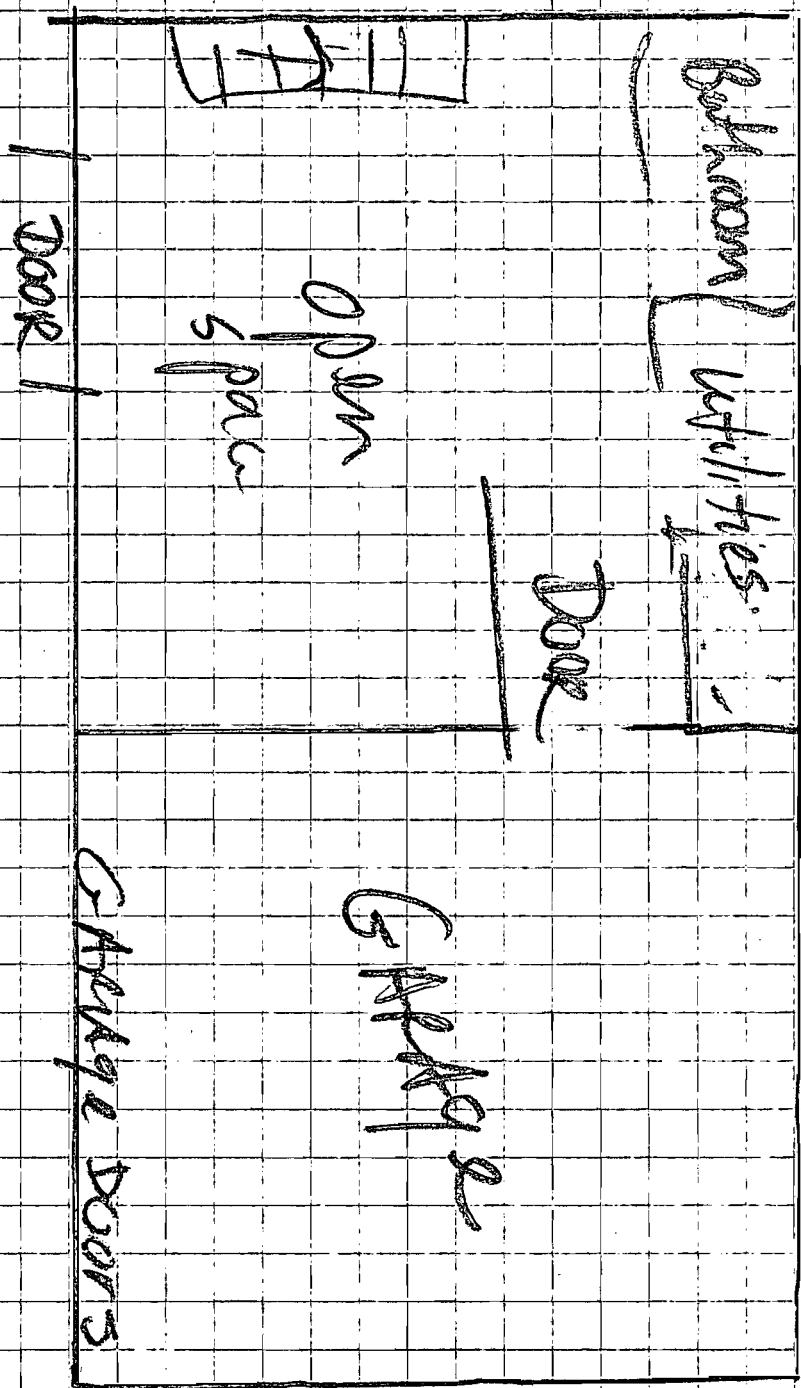
Top Floor



CRA PET. EXH NO. 5A

SB
513

Bottom Floor



Pet No 6

S side of Justa Lane, 370 feet W of
Boxer Hill Road
8th Election District
2nd Councilmanic District
(1109 Justa Lane)

BEFORE THE COUNTY
BOARD OF APPEALS FOR
BALTIOMRE COUNTY
Case No. 2008-0471-SPH

J. Gary and Barbara L. Mueller
Petitioners

STIPULATION

WHEREAS, J. Gary and Barbara L. Mueller, (hereinafter "Mueller") are owners of the property located in Baltimore County, Maryland known as 1109 Justa lane; and

WHEREAS, Mueller has filed a Petition for Special Hearing before the Zoning Commissioner For Baltimore County requesting approval of the use of an existing structure on the property as living quarters for their immediate family(I.e. Nicholas Mueller, son J. Gary Mueller and Barbara L. Mueller); and

WHEREAS, FOLLOWING A PUBLIC HEARING, Deputy Zoning Commissioner Thomas H. Bostwick denied Mueller's Petition for Special Hearing and Mueller has caused there to be filed a timely appeal to the County Board of Appeals of Baltimore County (:Board ") which will schedule a de novo hearing for this Petition for Special Hearing; and

WHEREAS, the parties desire to settle the disputes between them, so that each can use their respective properties in an appropriate manner, without adverse impact to others in the neighborhood.

Now therefore, it is on this Feb 10 day of 2008⁹ agreed by and between the parties.

1. That occupancy of the existing accessory structure on the Mueller property shall be restricted to Nicholas Mueller, or another immediate member of the Mueller family (i.e. the children and/or parents of J. Gary Mueller and Barbara L. Mueller).
2. That no more than two individuals shall reside in the existing accessory structure.
3. That the existing accessory structure shall not be leased or used by others, nor as a separate dwelling unit for others (not family) as aforesaid.
4. That Nicholas Mueller shall not reside in the aforesaid accessory structure longer than September 1, 2015 subject to the modification of this provision by the parties hereto.
5. That Mueller and the occupant of the existing accessory structure shall not allow any out door gathering after the hours of 9:00p.m. Sunday through Thursday and 11 p.m. on Friday and Saturday. No outside gathering shall exceed more than 10 guests
6. That Mueller shall not block lawful access to the deeded right of way by others so entitled with a hold harmless and maintenance agreement.

CBA PET. EXH NO. 6

Ref No 7

DEED — FEE SIMPLE — INDIVIDUAL GRANTOR — LONG FORM

JB 7 672 00584

This Deed, MADE THIS 9th day of September

in the year one thousand nine hundred and eighty-seven by and between

✓ LIBORIO SERRAVALLE AND JUSTINA F. SERRAVALLE, HIS WIFE, parties

XEROX

of the first part, and

✓ J. GARY MUELLER AND BARBARA L. MUELLER, HIS WIFE, parties

of the second part.

WITNESSETH, That in consideration of the sum of One Hundred Thirty-four Thousand Nine Hundred and 00/100ths-----Dollars (\$134,900.00), the receipt of which is hereby acknowledged

the said parties of the first part

do grant and convey to the said party of the second part, as tenants by the entireties, their heirs and assigns, the survivor of them and the survivors heirs

personal representatives/successors and assigns

in fee simple, all
A RC F 16
A T TX 674.50
A DOCS 675.00
0 H
SM CLERK 1365.50
H92021 0003 R01 T09+13
09/17/87

that lot of ground situate in Baltimore County, Maryland

and described as follows, that is to say:

LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF.

BEING the same property described in a Deed dated November 13, 1961 and recorded among the land records of Baltimore County, in liber 3923 folio 243, which was granted and conveyed by JOSEPH O. LITZINGER AND RUTH A. LITZINGER, HIS WIFE, unto the said parties of the first part.

ALSO BEING the same property described in a Deed of Reversion dated January 31, 1984 and recorded among the land records of Baltimore County, in liber 6666 folio 325, which was granted and conveyed by THOMAS P. JOHNSON AND ELIZABETH G. JOHNSON, HIS WIFE, unto the said parties of the first part.

AGRICULTURAL TRANSFER TAX
NOT APPLICABLE

SIGNATURE JR

DATE 9-16-87

STATE DEPARTMENT OF
ASSESSMENTS & TAXATION

CLERK

DATE

15
14
14

8 8354****215840** 81R2A

CBA PET EXH. NO. 7

Ref No 8

APPLICATION FOR SOIL PERCOLATION TESTS
BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

Please Print

District 2nd

Location of Property: 1109 JUSTA LANE

PADONIA TO BOXER HILL TO JUSTA LANE IN REAR
(Road name, direction, and distance to nearest intersection)

Subdivision Name: Not in Subdivision Section: Block: Lot(s):
Owner's Name: J. GARY MUELLER Telephone: H 410 561-7833
BARBARA L. Mueller Telephone: C 443 271-2263

Zoning Designation: RC-5
RC-4

Proposed Use: New ☒ Existing ☒ Residential ☐ Commercial ☐ Industrial ☐

Water Supply: Individual Well ☒ Existing ☒ Proposed ☐ (or) Metropolitan ☐

Direct Correspondence to: Name: J. GARY MUELLER Address: 1109 JUSTA LANE
(Print) (Print)
City: Cockeysville State: MD Zip: 21030 Telephone: 443-271-3263

Special Notes:

This application is hereby made for a standard percolation test to determine suitability of the above-referenced site for installation of an individual sewage disposal system in accordance with the Annotated Code of Maryland Regulation Title 26.04.02. **This is not a permit to install a system.**

J. Gary Mueller
Applicant Signature

1. **Four plot plans** must accompany this application. The plot plans must be drawn to a minimum scale of 1" = 100'. The existing and/or proposed property boundaries shall be shown, as well as locations of proposed water supplies, buildings, and sewage disposal areas. Any existing wells, septic systems, and/or streams within 100 ft. of property must be shown.
2. A non-refundable fee is required for each lot. Make check payable to **"BALTIMORE COUNTY, MARYLAND"**. Please note: **Application expires one year from date of issue.**

DO NOT WRITE BELOW THIS LINE

307 DEPT. OF PUBLIC WORKS: Master W and S Plan W- 7 S- 7 F.P. C By Bryant 9-12-08

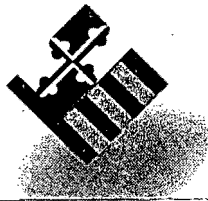
DEPT. PERMITS & DEVELOPMENT MGMT: Tax Account #: 2100000556 Date: 9/12/08

Case Slip No. A 595204 Amount: \$ 60.00 By: E. J. [Signature]

416 DEPT. ENVIRONMENTAL PROTECTION: Reviewer: [Signature] O.K. to file 9/12/08
Requires Perc Preliminary Assessment: Environmental Impact Review ☒ Agricultural Preservation ☐

COMMENTS: Percs for office (ex. b/dy)

CBA PET. EXH NO 8



Ad 9

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

JONAS A. JACOBSON, Director
Department of Environmental Protection
and Resource Management

November 12, 2008

Mr. J. Gary Mueller
1109 JUSTA LA
COCKEYSVILLE MD 21030

RE: 1109 Justa Lane, D-8

Dear Mr. Mueller,

A representative of this office, J. Robert Powell, R.S., conducted soil evaluations on 10/29/2008 regarding the above-referenced lot(s). Prior to granting approval of the soil percolation tests, a revised plan, drawn to a scale no greater than 1" equals to 100', must be submitted to this office and contain the following:

- Accurate location(s) of:
 - All completed test pits and proposed sewage disposal reserve area(s)
- **Two soil tests were conducted onsite, one of which failed (lower test), consequently, additional soil tests are required. Prior to conducting additional soil tests, a revised plan depicting the tests must be submitted to this office for review and approval.**

In order to subdivide this property, the owner/developer will be required to comply with the subdivision regulations of the State of Maryland and Baltimore County. For additional subdivision information, contact the Development Coordination office at 410-887-5859.

IN ORDER TO FACILITATE PROCESSING OF THE PROJECT, WE REQUEST THAT THE REVISED PLANS BE SUBMITTED DIRECTLY TO THE SANITARIAN WHO CONDUCTED THE SOIL TESTS.

Please also contact that sanitarian for any further information or questions.

Sincerely,

A handwritten signature in dark ink, appearing to read "J. Robert Powell".

J. Robert Powell, R.S.
Soil Evaluation Program

CBA PET EXH. NO. 9

J:\PERC LETTERS\2008 PERC LETTERS\Revised Letters\Justa La, 1109, 11-12-08.doc Revised 7-04



Department of Permits, Approvals and Inspections

Zoning

111 West Chesapeake Avenue, Room 111

Towson, Maryland, 21204

CBA Pet Ex

#10

PHOTOS

Return Service Requested



16> C0 M0 Y0 D0 12/08/08

Ret
10A



B2570B 20/21 <4R20>

<23A> C0 M0 Y0 D0 08/03/08

Ref
10 B



Feb 10

19> 00 10 40 00 12/08/08

<



Feb 10 1911



Red m E



<23> 00 10 40 00 12/08/08

Pol 10F



Feb 10 1906



Feb 10 14



Feb

10 I

Let $\mathcal{M}_1$ and $\mathcal{M}_2$ be two $\mathcal{M}$ -matrices. Then

2000

$$^{\circ}\text{C} = (F - 32) \times \frac{5}{9}$$

1. *Journal of the American Medical Association*, 1997; 277: 1033-1036.

$\text{rank}(A) = \text{rank}(A^T) = \text{rank}(A^T A) = \text{rank}(A A^T)$
 $\text{rank}(A) = \text{rank}(A^T A) = \text{rank}(A A^T)$
 $\text{rank}(A) = \text{rank}(A^T A) = \text{rank}(A A^T)$

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.



Pit

10 J



Feb 10 K

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1. *Journal of the American Statistical Association*, 1997, 92, 1003-1010.

[illegible]



DAFT MCCUNE WALKER INC

MITCHELL J. KELLMAN
DIRECTOR OF ZONING SERVICES

Education

Towson University, BA, Geography and Environmental Planning, Urban Planning
Towson University, Masters, Geography and Environmental Planning, Urban Planning

Professional Summary

Mr. Kellman has over 11 years of experience working in zoning administration and subdivision regulation for the public sector; 9 of those years were with the Baltimore County Office of Planning and Zoning. His responsibilities included review, approval and signatory powers on behalf of the Director of Final Development Plans and Record Plats. He represented the Zoning Office on the County Development Review Committee, a body reviewing the procedural compliance of all development submissions. Review of petitions and site plans filed for zoning hearing approvals were within his authority. Additionally, he supervised county review staff, met with professionals and public on development project matters, and made determinations regarding developments and their compliance with county regulations. In working for DMW, he has extensive experience in testifying before the Baltimore County Zoning Commissioner, Hearing Officer, and Board of Appeals. He also regularly represents the company at the Baltimore County Development Review Committee meetings.

Partial List of Projects

Charlestown Retirement Community, Baltimore County, MD
GBMC, Baltimore County, MD
Goucher College, Baltimore County, MD
Hopewell Point, Baltimore County, MD
Notre Dame Preparatory School, Baltimore County, MD
Oakcrest Village Retirement Community, Baltimore County, MD
Sheppard and Enoch Pratt Hospital, Baltimore County, MD
Waterview, Baltimore County, MD

Professional Experience

Daft-McCune-Walker, Inc., Towson, MD: 2000-Present
Baltimore County Office of Permits and Development Management - Development Control,
1988-2000

CBA PET. NO. 11

To those concerned,

We are writing on behalf of the Mueller family. As we understand it there is some question about their son Cole temporarily living in an office/storage building on their property while he attends college.

For over twenty five years we have been neighbors and we can honestly says they are nice, hard working people that have raised two children who have become two mature, responsible young adults that any parents would be proud of.

We are the "Senior Citizens" of the lane and there are times when we need a hand, he's there. Sometimes, he is the Phanthom who cuts our grass without being asked to and without accepting pay, this means a lot to us. He's always willing to lend a hand and it's little things like this that we appreciate. It also says a lot about the quality of his character.

With the cost of living soaring, including a college education it would be a very sensible move that would benefit Cole and his parents who are approaching an age where it's a comfort to know that he is nearby when they need him.

He would be maintaining his independence and his responsibilities and still be under the watchful eyes of his parents (and the neighbors). This sounds like a win win situation for all involved and not a problem to be concerned about.

Earl and Elva Kammerer
1106 Justa Lane
Cockeysville, Md 21030

CBA PET EX NO. 12



Department of Permits, Approvals and Inspections

Zoning

111 West Chesapeake Avenue, Room 111

Towson, Maryland, 21204

CBA Per Ex #13

PHOTOS

Return Service Requested



pet 13A

<24> 00 10 40 00 12/08/08



Phil 13 13

<11> CC MD Y3 D0 12/08/08



pet 13 C

(26) 00 MO 10 00 12/08/08



Pet

18> C0 M0 Y0 D0 12/08/08

13 D

GENERAL NOTES - RESIDENTIAL CONSTRUCTION:

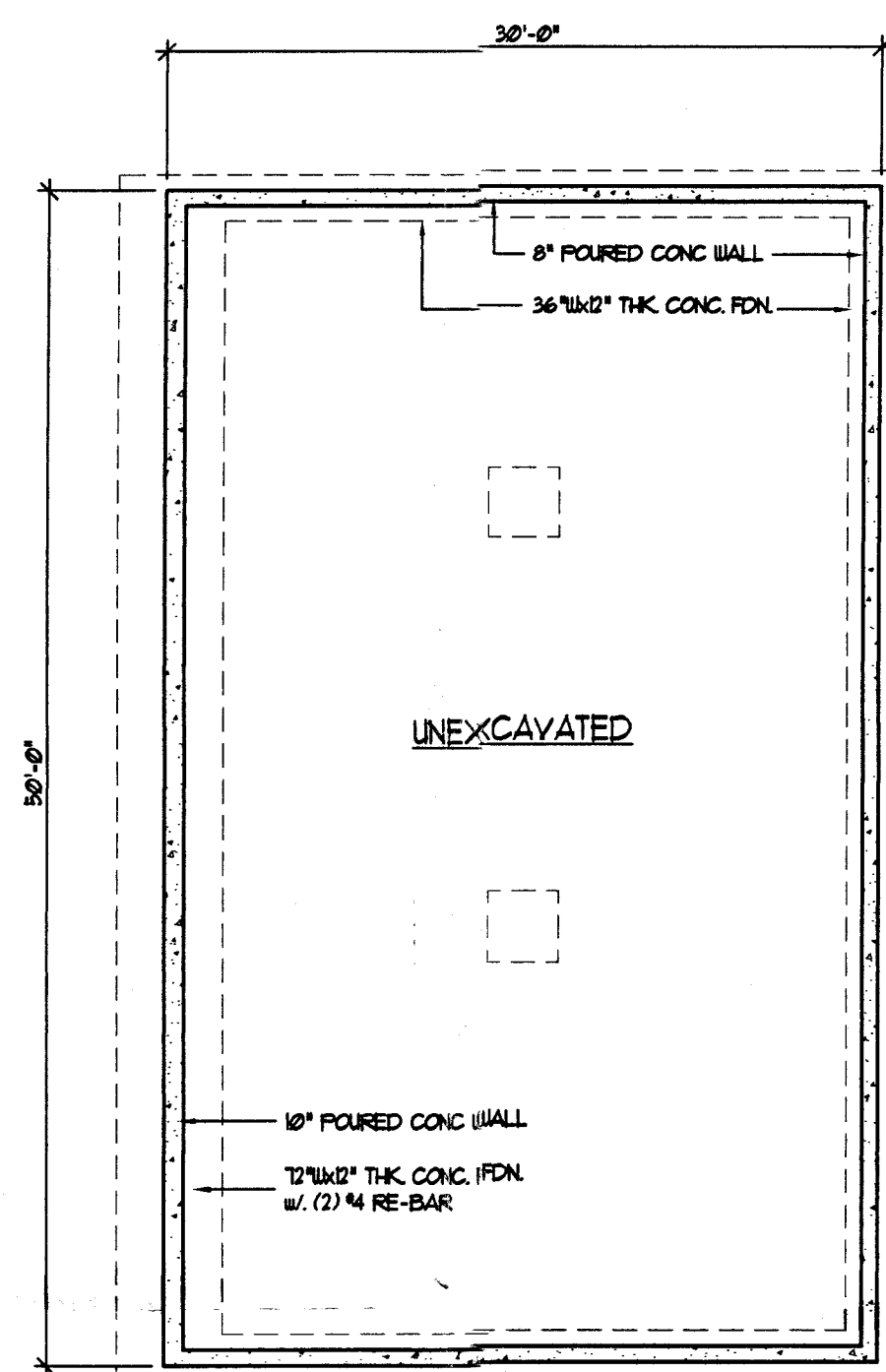
- THESE NOTES APPLY TO ALL DRAWINGS.
- ALL WORK TO CONFORM TO ALL SECTIONS OF IRC 2003 CODE, NCL, LOCAL AMENDS. OF COCKEYSVILLE MD, BALTIMORE CO. CONTRACTOR IS RESPONSIBLE TO CONTACT CODE OFFICIAL INSPECTIONS AS REQUESTED BY THE LOCAL TOWNSHIP ALL INSPECTIONS, INCLUDE BUT NOT LIMITED TO FOUNDATIONS.
 - PENETRATIONS OF FIRE-RATED WALL, FLOOR ASSEMBLIES, OR MEMBRANES TO COMPLY W/ IRC SECTION R317.3. DIEMING UNIT FIRE SEPARATIONS TO COMPLY W/ IRC SECTION R317.1 OR R317.2.
 - STRUCTURAL DESIGN IS IN ACCORDANCE WITH THE IRC 2003 CODE. DESIGN LOAD FOR FRAMING IS AS FOLLOWS:
20 PSF TOTAL ROOF TRUSS DEAD LOAD (ROOF 3, FLYTUD, 3, FRYS, 3, MISC. 5, 4 GYP. CELL 4)
MINIMUM DESIGN LIVE LOAD FOR ALL NEW FRAMING IS AS FOLLOWS:
FLOOR - 40 PSF UP
WIND - 30 MPH BASIC WIND VELOCITY, EXPOSURE C
SNOW - 30 PSF PLUS DRIFT
CALCULATIONS MAY BE PROVIDED UPON REQUEST.
 - ALL FOUNDATIONS DESIGNED FOR 36" Frost Depth & ASSUMED ALLOWABLE NET SOIL BEARING PRESSURE OF 3000 PSF. CONTRACTOR TO VERIFY.
 - THE STABILITY OF THE STRUCTURE DEPENDS ON THE DIAPHRAGM ACTION OF THE ROOF AND FLOORS. CONTRACTOR IS COMPLETELY RESPONSIBLE FOR METHODS OF CONSTRUCTION AND SHALL PROVIDE ALL GUTS, BRACING AND SHORING REQD. FOR ALL INTERIM LOADING CONDITIONS THROUGHOUT THE CONSTRUCTION PHASE.
 - CONTRACTOR TO DETERMINE FLOOR ELEVATIONS IN RELATION TO SITE PLAN. GRADE TO SLOPE AWAY FROM HOUSE, MIN 6 INCH PER 10 FEET.
 - PROVIDE STREET ADDRESS NUMBERS VISIBLE FROM STREET PER IRC R301.
 - FOUNDATION DRAINS TO CONNECT TO STORMWATER PIPING PER SITE PLAN.
 - PROVIDE EROSION PROTECTION AS REQD. BY ALL GOVERNING AUTHORITIES.
 - ALL CONCRETE WORK SHALL CONFORM TO ALL PROVISIONS OF THE LATEST EDITIONS OF ACI 301 & ACI 318. CONC. TO BE 3000 PSI UNLESS OTHERWISE NOTED. REINFORCING SHALL CONFORM TO ACI 305.
 - PER IRC SECTION R602.3 - FIREBLOCKING: FIREBLOCKING SHALL BE INSTALLED IN CONCEALED SPACES OF STUD WALLS AND PARTITIONS, INCLUDING FURRED OR BUTTED-OF SPACES OF MASONRY OR CONC. WALLS, AND AT CEILING OF FLOOR & ROOF LEVELS.
 - STRUCTURAL WOOD TO BE GRADED - MIN 5.0% OR 9% HET-FIR UNLESS NOTED. ENGRD. WD. PRODUCTS TO HAVE FOLLOWING STRENGTHS:
LVL: Fb = 2300 PSI HET-16E: Fb = 2200 PSI
LVL: Fb = 2325 PSI HET-16E: Fb = 2250 PSI
I-JOISTS: TJI SIZE & SERIES AS INDICATED OR EQ BY.
GUILAINS: Fb = 2300 PSI, Fc = 2500 PSI
 - COMPLY WITH NFPA MANUAL FOR HOUSE FRAMING & NAILING SCHEDULE & NATIONAL DESIGN SPECS. (LUMBER & 5/8" FLYTUD. TO COMPLY W/ GRADING REQD. ALSO, REFER TO IRC FIG. R602.3 FOR CUTTING & NOTCHING TABLES R602.3.1 AND FOR FASTENERS, AND FIG. 602.3.2 FOR STUD WALL FRAMING DETAILS. AT NON-BEARING NT, 4" EXT. WALLS FOR OPENING UP TO 1'-0" WIDE, PROVIDE (2) 2x8 HEADERS. PROVIDE EQ SPACED BRIDGING (MAX 8'-0" O.C.) AT FLOOR JOISTS.
 - HURRICANE STRAP MODEL TO BE VERIFIED FOR UPLIFT SHOWN ON TRUSS SHOPS. TRUSS UPLIFT CONNECTIONS TO BE CONTINUED TO FPN.
 - PROVIDE P.T. WD. WHERE IN CONTACT W/ ETERN ROOFING, FLASHING, WATERPROF. MASONRY, CONCRETE OR EARTH. PROVIDE F.R. WD. WHERE REQD. BY CODE.
 - ALL WOOD FASTENERS, HANGERS, ETC. IN CONTACT W/ P.T. WD. TO RECEIVE MIN. G90 GALV. OR GREATER AS REQD. BY FASTENER MFR. FOR TYPE OF P.T. CHEMICAL USED AND/OR ENVIRONMENTAL CONDITIONS.
 - ANCHOR P.T. SILL PLATES AT MAX 48" O.C. & MAX 24" FROM CORNER. PROVIDE MIN. (2) BOLTS PER PIECE.
 - PROVIDE CODE OFFICIAL W/ SHOP DRGS. SEALED BY AN ENGR. REG. IN THE STATE IN ITEM 1, FOR THE FOLLOWING: WOOD ROOF TRUSSES.
 - FLASHING TO CONFORM W/ SHIMONA SHEET METAL MANUAL FOR LOCATIONS AND INSTALL. ALL ROOF DETAILS, NCL. BUT NOT LIMITED TO EDGES, CURBS, AND PENETRATIONS TO BE INSTALLED PER MANUFACTURER REQUIREMENTS AND NRCA RECOMMENDATIONS. ALL FLASHING, GUTTERS & D.S. TO COMPLY W/ SHIMONA RECOMM. NCL. WIND & SNOW LOADING.
 - ALL WALLS AT USABLE SPACES BELOW GRADE TO RECEIVE WATERPROOFING, EXCEPT SUPERIOR WALL SYSTEMS.
 - REFER TO IRC SECTION R603 FOR REQD. FLASHING LOGS.
 - PER LOCAL ORDINANCE, WEATHERABILITY IS CLASSIFIED AS SEVERE.
 - PROVIDE SEALANTS AT ALL JOINTS BETW. DISSIMILAR MATERIALS AT CL's AND E.L.s AND AS NOTED. PROVIDE RECON. BACKER MATERIALS, NCL. BACKER RODS & PREFORMED C.J. GASKETS.
 - PROVIDE GLASS TYPES AT ALL LOCATIONS AS REQD. IN IRC SECTION R308.4. INCLUDE TEMPERED GLASS WHERE REQUIRED BY CODE.
 - ALL FIRE-RATED (FR) GYP. TO BE TYPE X - 5/8" THICK, UNCL.
 - PROVIDE TERMITE PROTECTION FOR MOD-HEAVY INFESTATION PER IRC R310.

WOOD ROOF TRUSS NOTES:

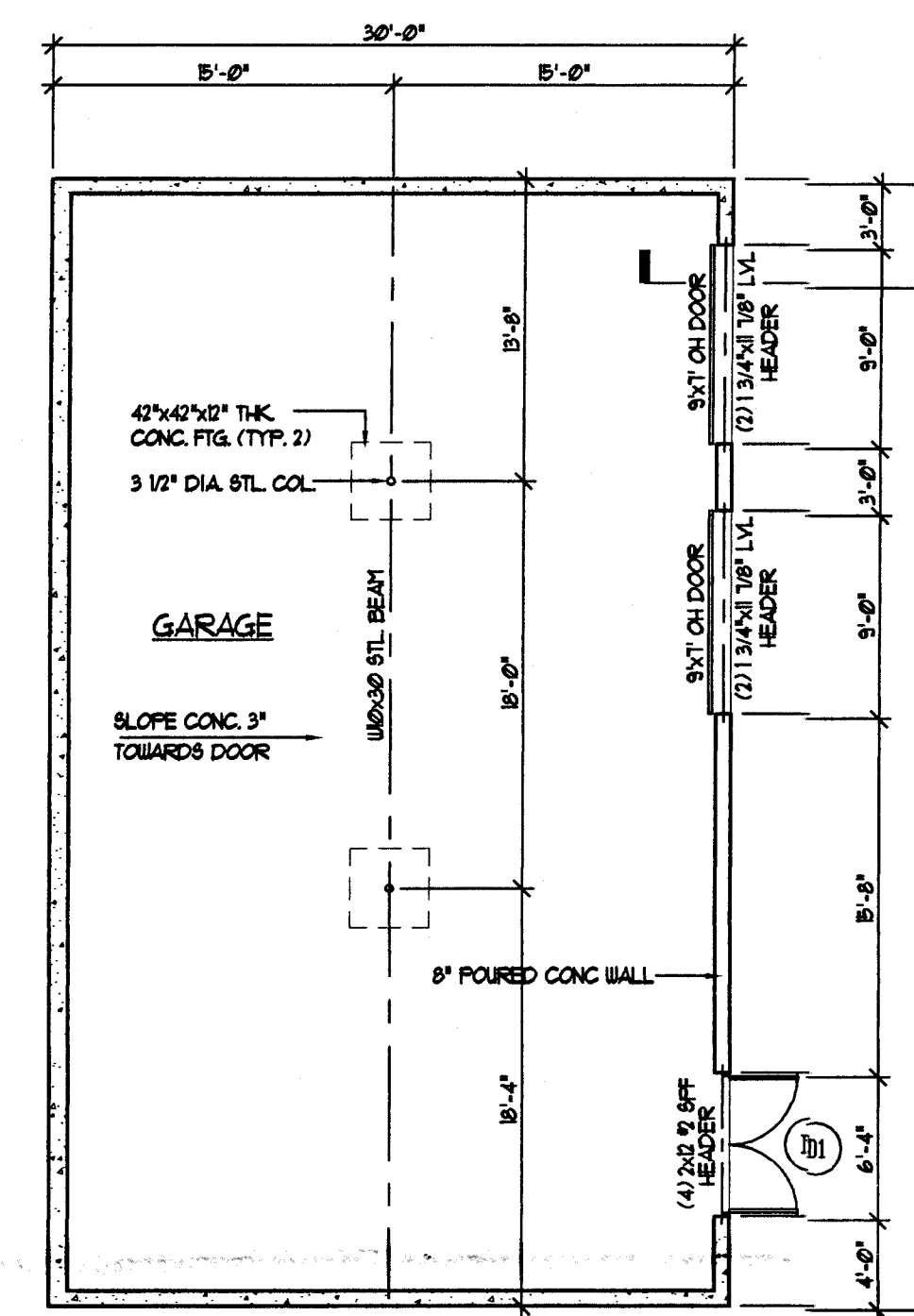
- TRUSSES SHALL BE DESIGNED, FABRICATED AND ERECTED TO MEET PITCH AND D.P.S. SHOWN ON THE DRGS. AND TO MEET DESIGN LOADING REQD. FOR THIS LOCATION. TRUSSES SHALL CONFORM TO THE NATIONAL DESIGN SPECIFICATIONS FOR WOOD TRUSS CONSTRUCTION AND TO THE NATIONAL DESIGN STANDARD FOR METAL PLATE CONNECTED WOOD TRUSS CONSTRUCTION, AND SHALL INCORPORATE ALL APPLICABLE LOADING COMBINATIONS, INCLUDING MINIMUM REQUIRED BOTTOM CHORD LOADING AS SET FORTH IN THE 2003 IRC CODE. MAXIMUM TRUSS DEFLECTION UNDER ROOF LIVE LOAD TO BE LESS THAN 1/360. THE CONTRACTOR SHALL SUBMIT FOR REVIEW TO THE ARCHITECT THE TRUSS DESIGN CALCULATIONS AND DRAWINGS SIGNED AND SEALED BY A LICENSED ENGINEER REGISTERED IN THE STATE IN WHICH THE PROJECT IS LOCATED.
- TRUSSES SHALL BE DESIGNED TO ACCOMMODATE MECH. UNIT WEIGHTS IN ADDITION TO UNIFORM ROOF DEAD AND LIVE LOADS.
- LUMBER USED FOR CHORDS AND WEBS SHALL BE A MINIMUM 2" IN NOMINAL WIDTH SURFACED FOUR SIDES WITH MOISTURE CONTENT NOT EXCEEDING 19%. LUMBER SHALL BE GRADE STAMPED WITH THE APPROPRIATE WUPA OR SPFS STAMP INDICATING COMPLIANCE WITH PS-20 LUMBER DEFECTS OCCURRING IN THE CONNECTOR PLATE AREA SHALL SECURELY FASTEN EACH JOINT ON BOTH FACES OF THE TRUSS IN ACCORDANCE WITH ACCEPTED TPI STANDARDS AND PROCEDURES AND BE CAPABLE OF TRANSFERRING THE FULL TENSILE CAPACITIES.
- GALVANIZED STEEL CONNECTOR PLATES SHALL BE FABRICATED FROM MINIMUM 6026 INCH THICK STEEL SHEET CONFORMING TO ASTM A446, GRADE A AND ASTM A572, C60. PLATES SHALL SECURELY FASTEN EACH JOINT ON BOTH FACES OF THE TRUSS IN ACCORDANCE WITH ACCEPTED TPI STANDARDS AND PROCEDURES AND BE CAPABLE OF TRANSFERRING THE FULL TENSILE CAPACITIES.
- SECURELY BRACE TRUSSES DURING ERECTION IN ACCORDANCE WITH THE REQUIREMENTS OF THE TRUSS PLATE INSTITUTE. ERECTION BRACING SHALL HOLD TRUSSES STRAIGHT AND PLUMB UNTIL DECKING AND PERMANENT BRACING ARE INSTALLED. INSTALL PERMANENT BRACING AS REQUIRED BY DESIGN PRIOR TO APPLICATION OF LOAD. PERMANENT BRACING SHOWN ON ARCH. DRGS. IS MIN. REQD. - PROVIDE ADDITIONAL PER TRUSS MFR. DESIGN.
- SECURE TRUSSES TO THE SUPPORTING STRUCTURE WITH GALVANIZED FRAMING ANCHORS. ANCHORS IN CONTACT WITH P.T. LUMBER SHALL HAVE G90 GALVANIZATION. CONNECTIONS MUST RESIST ALL DESIGN LOADS.

SYMBOL LEGEND

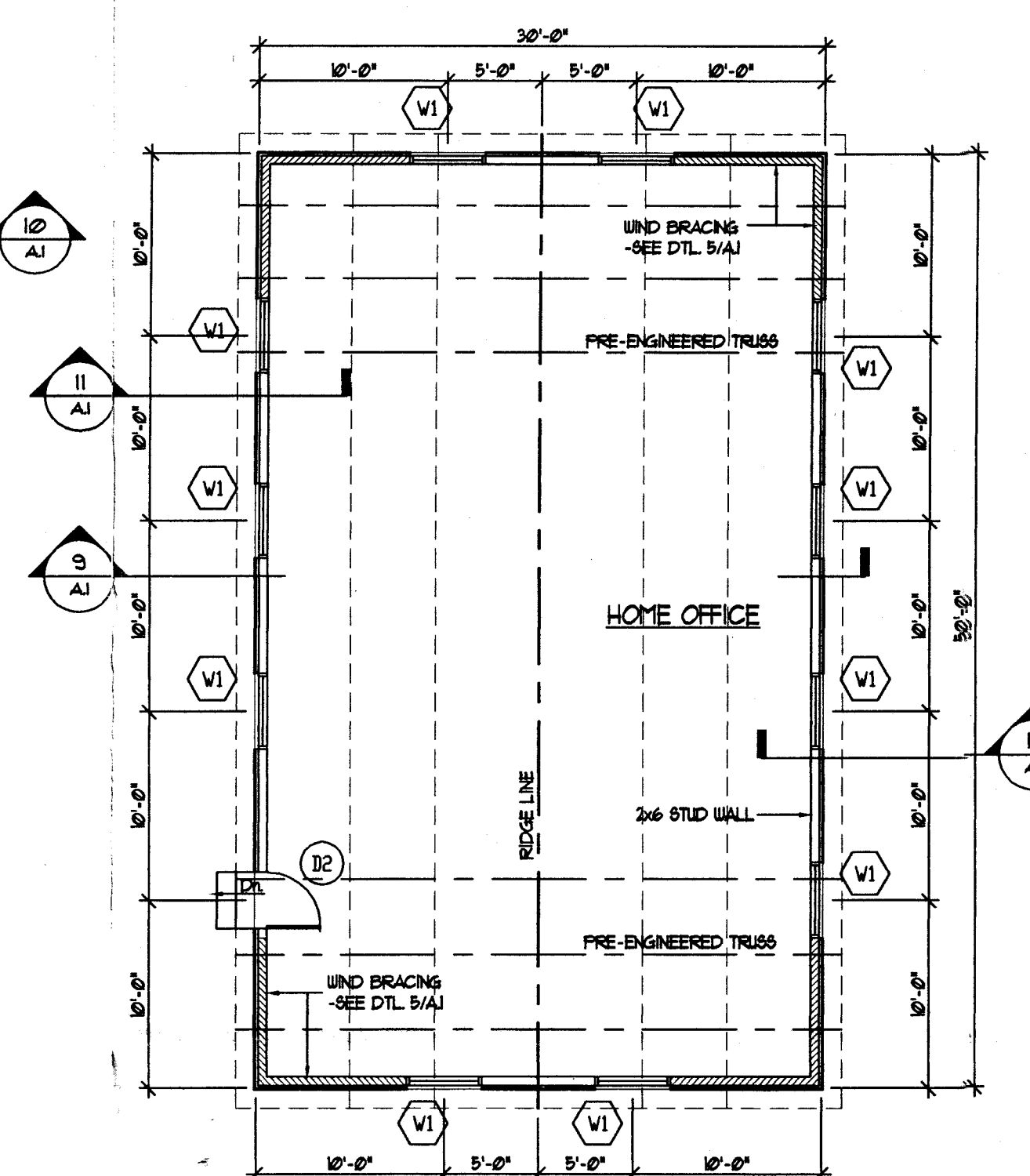
- (D1) (2) 3'-0"x6'-8" SERVICE DOOR w/ 8-LITE WDW.
- (D2) 3'-0"x6'-8" SERVICE DOOR w/ 8-LITE WDW.
- (V1) 48"x36" SLIDING WDW.
- (A1) SECTION NUMBER SHEET SECTION IS LOCATED.
- (1) DETAIL NUMBER SHEET DETAIL IS LOCATED.
- (E) ELEVATION BULLET



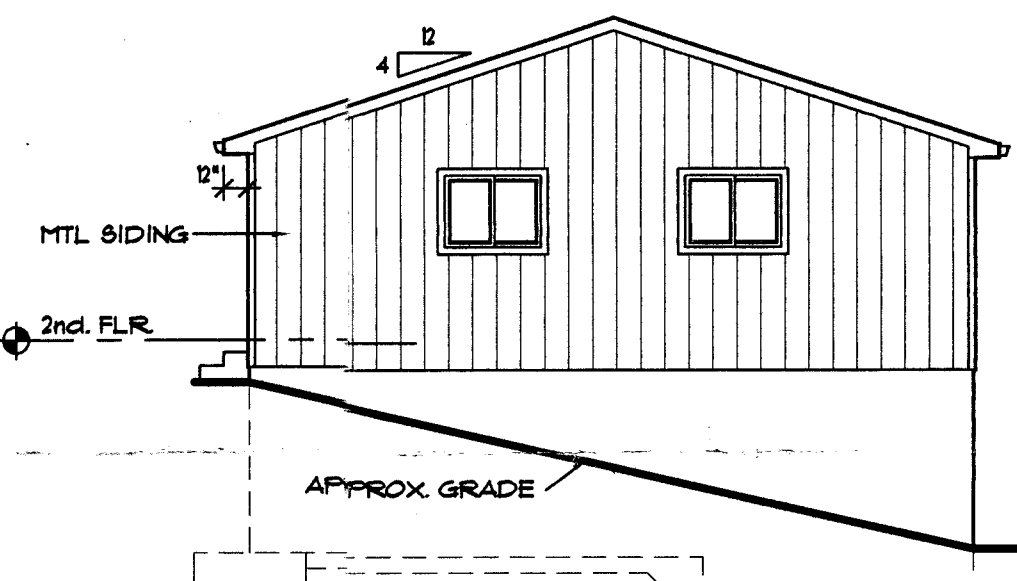
1 FOUNDATION PLAN
SCALE: 1/8" = 1'-0"



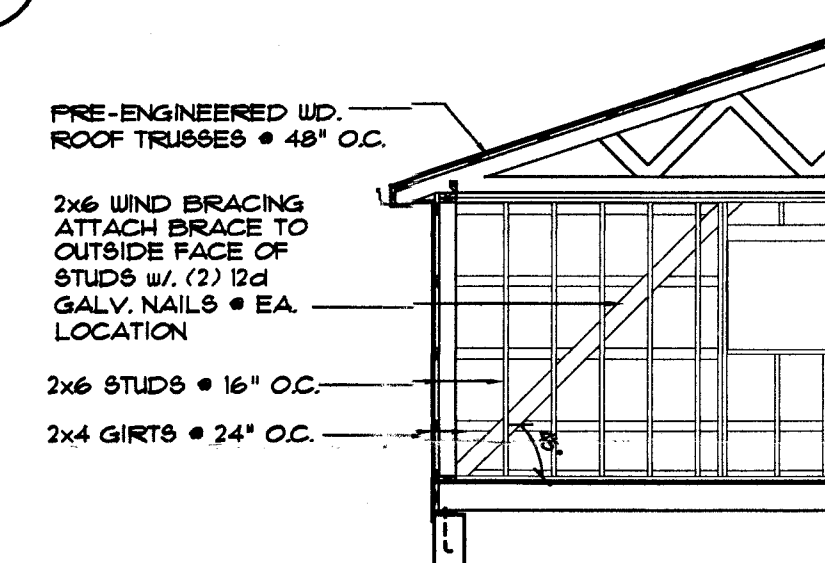
2 FLOOR PLAN
SCALE: 1/8" = 1'-0"



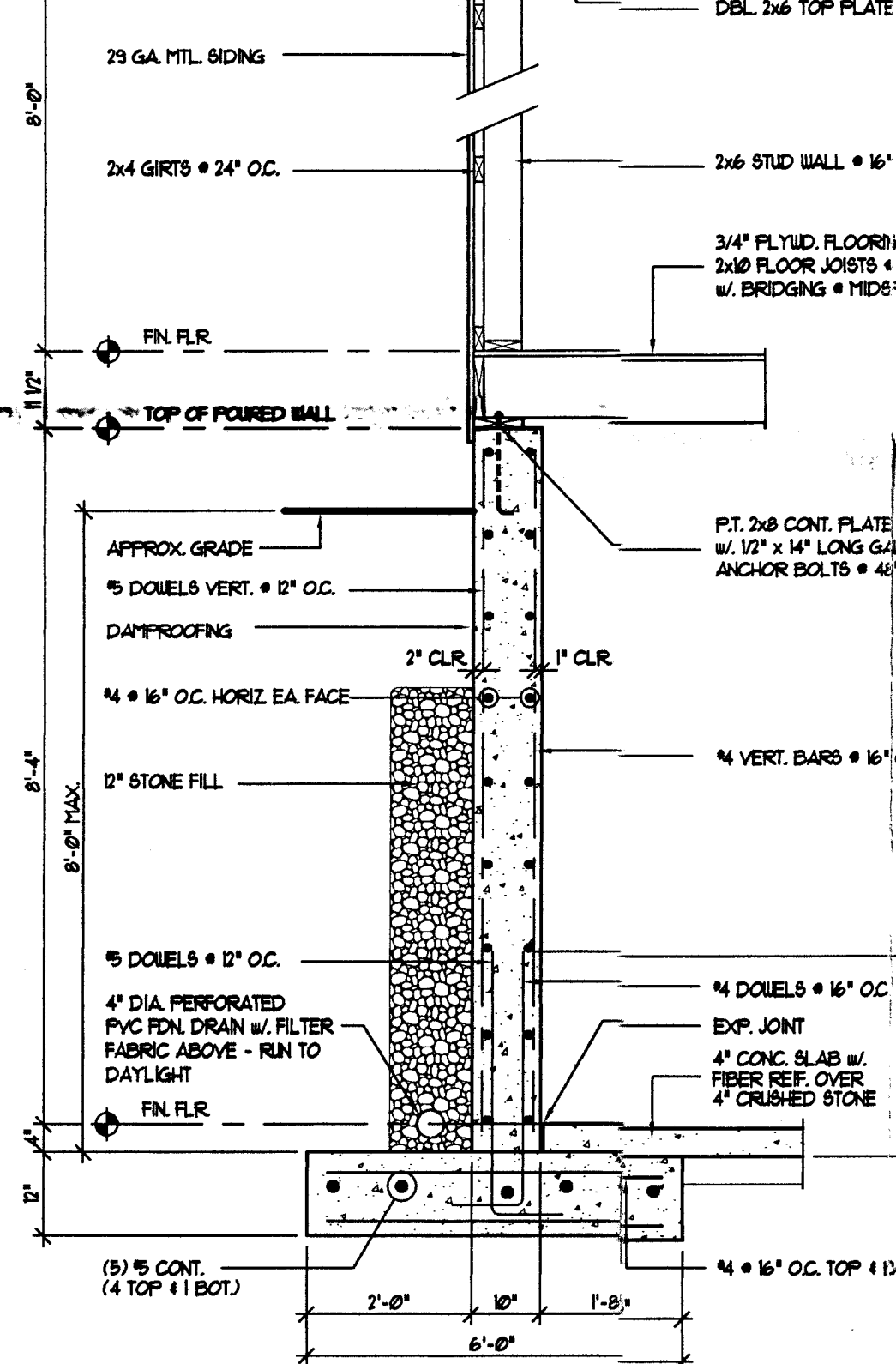
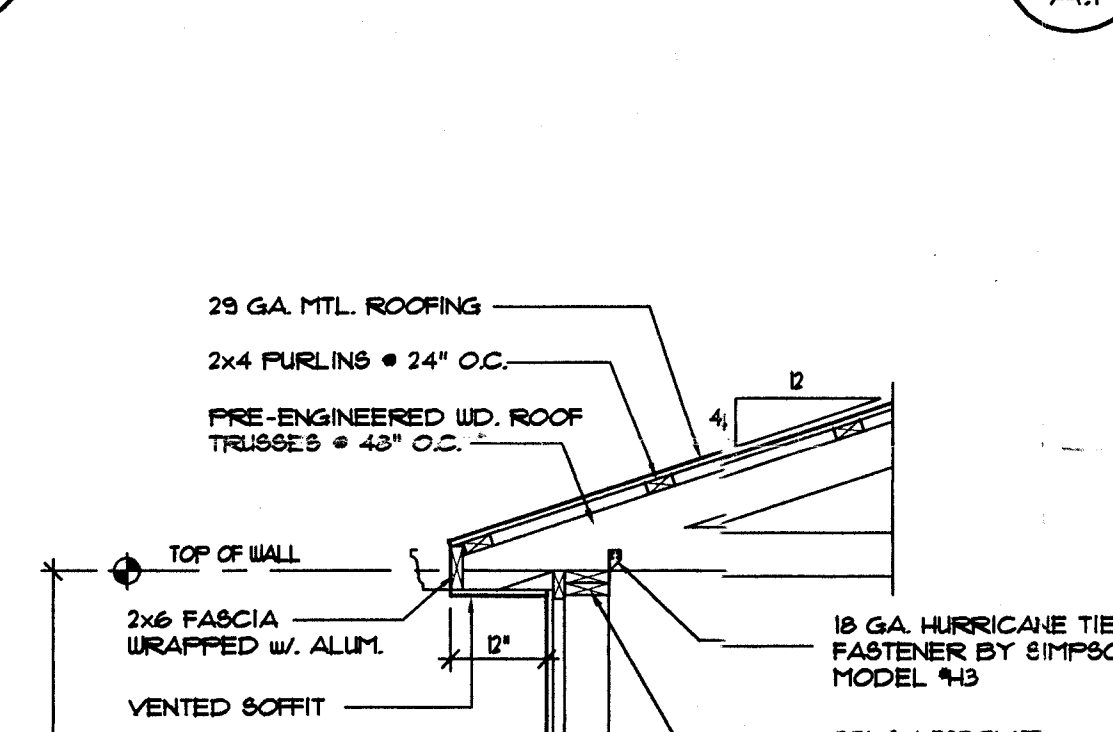
3 SECOND FLOOR PLAN
SCALE: 1/8" = 1'-0"



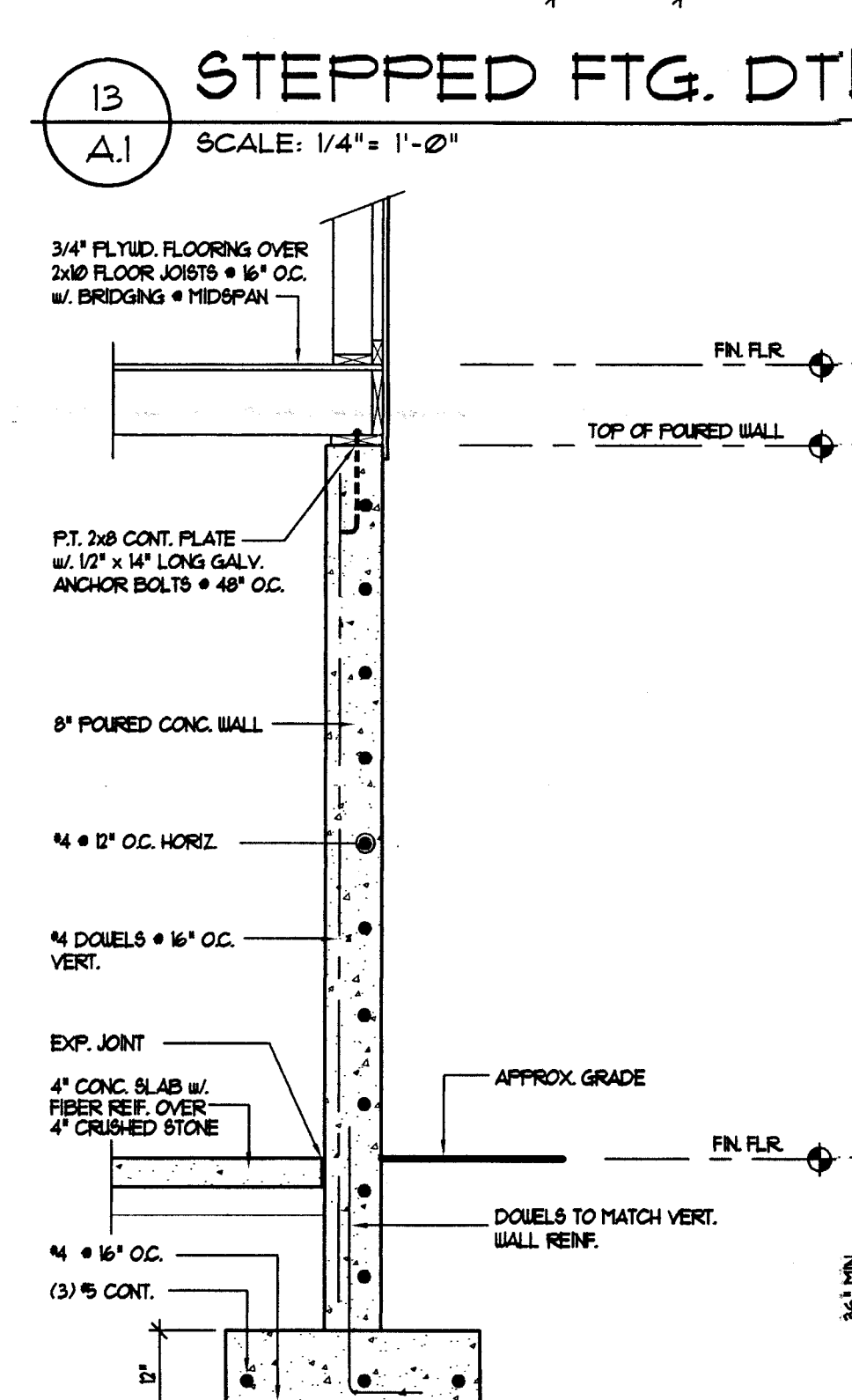
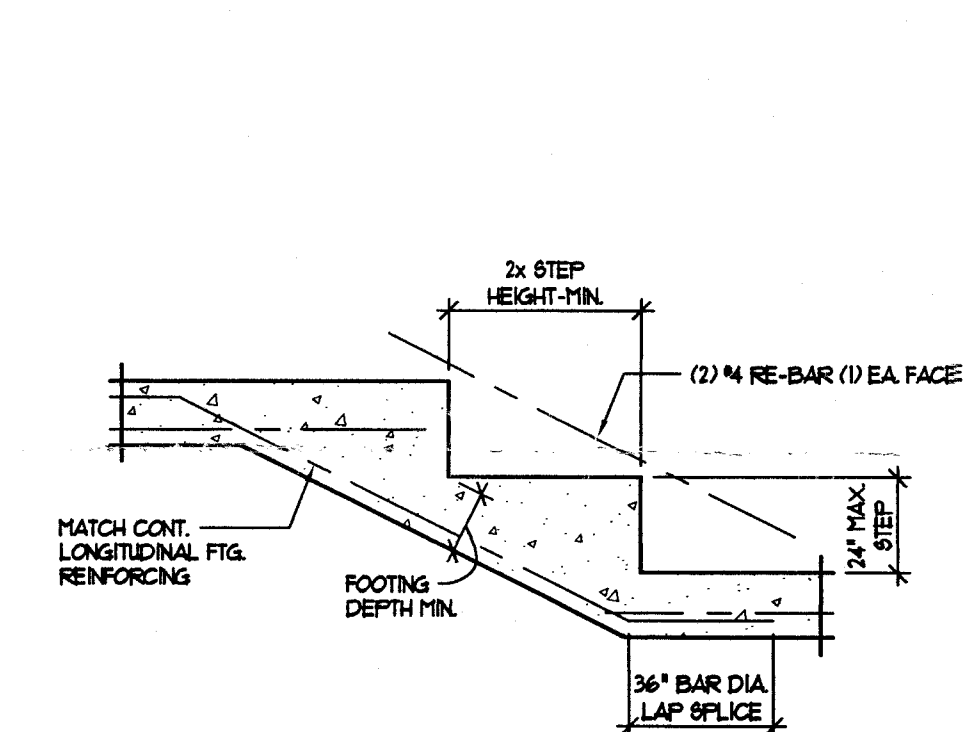
4 LEFT SIDE ELEV.
SCALE: 1/8" = 1'-0"



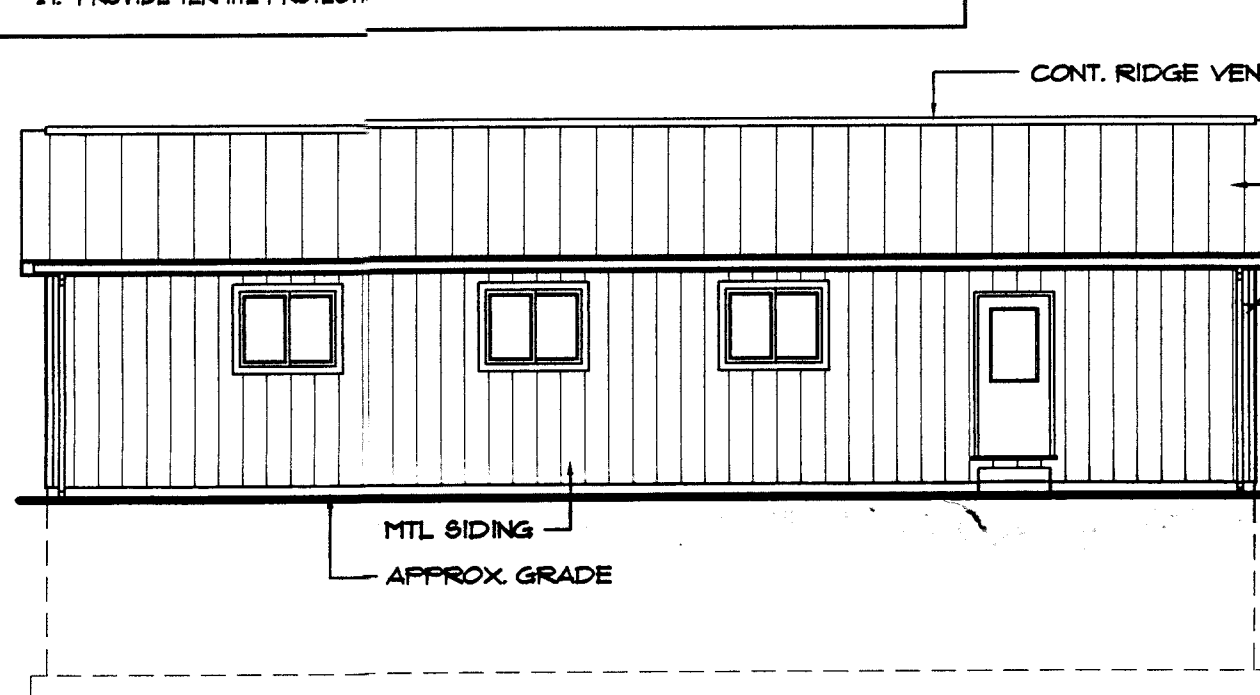
5 WIND BRACING DTL.
SCALE: 3/16" = 1'-0"



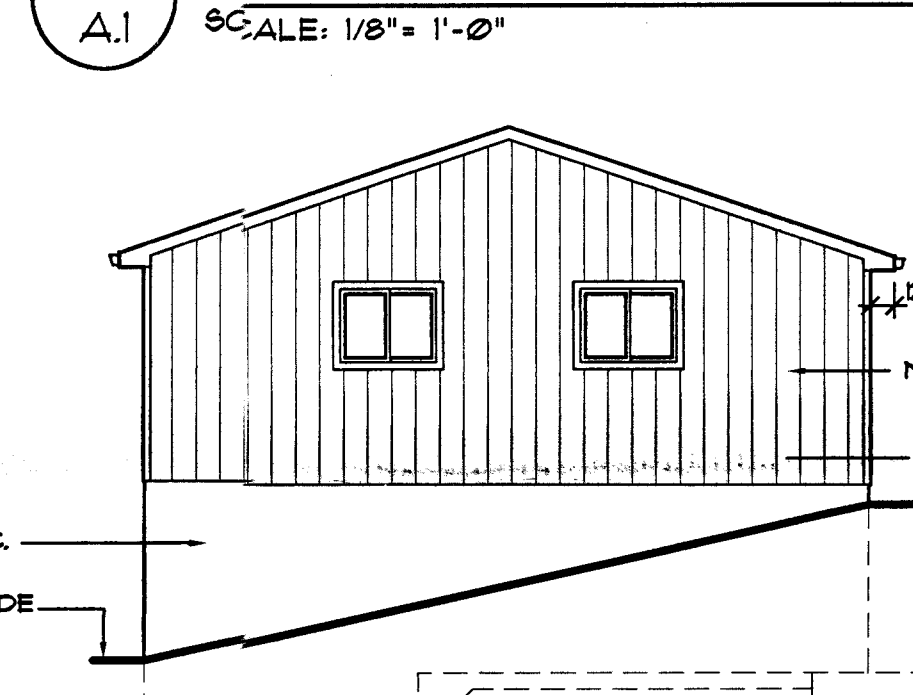
11 WALL SECTION
SCALE: 1/2" = 1'-0"



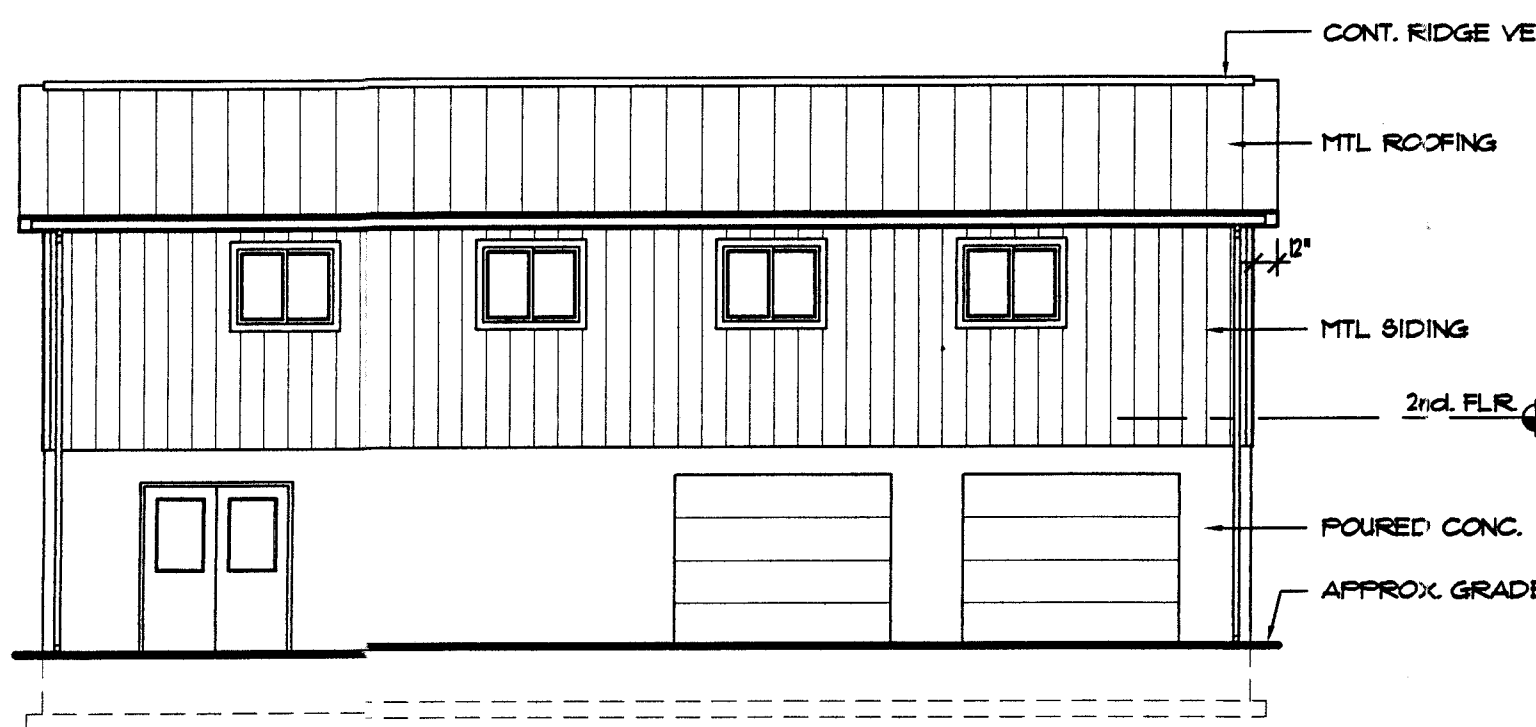
12 WALL SECTION
SCALE: 1/2" = 1'-0"



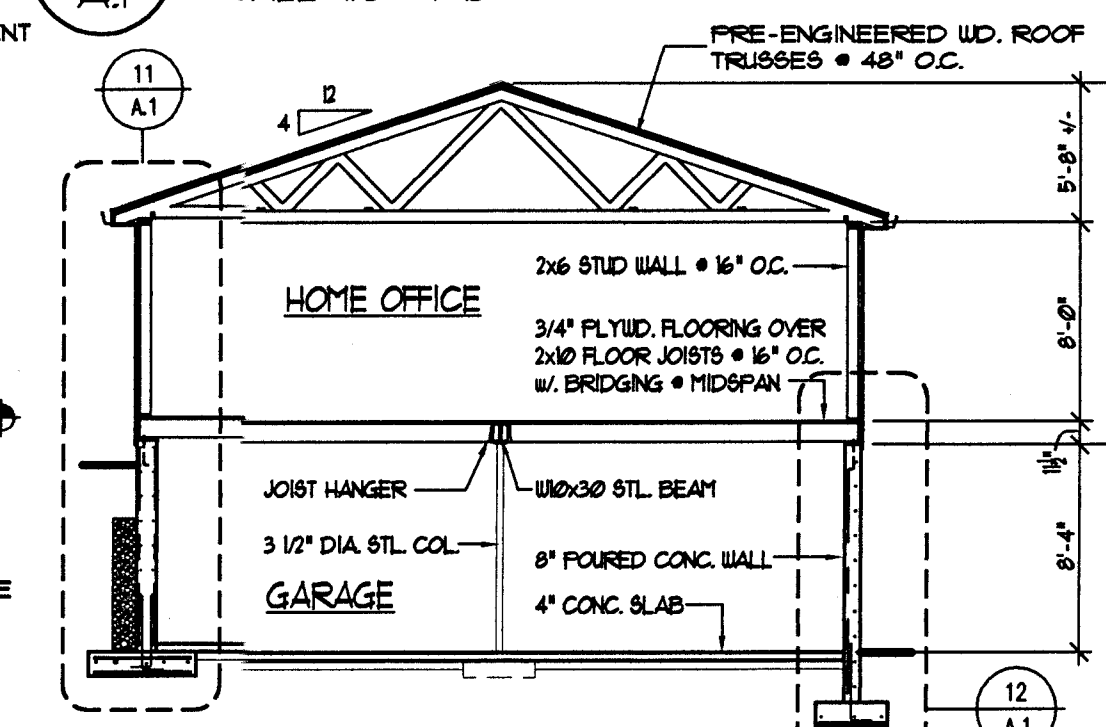
6 REAR ELEVATION
SCALE: 1/8" = 1'-0"



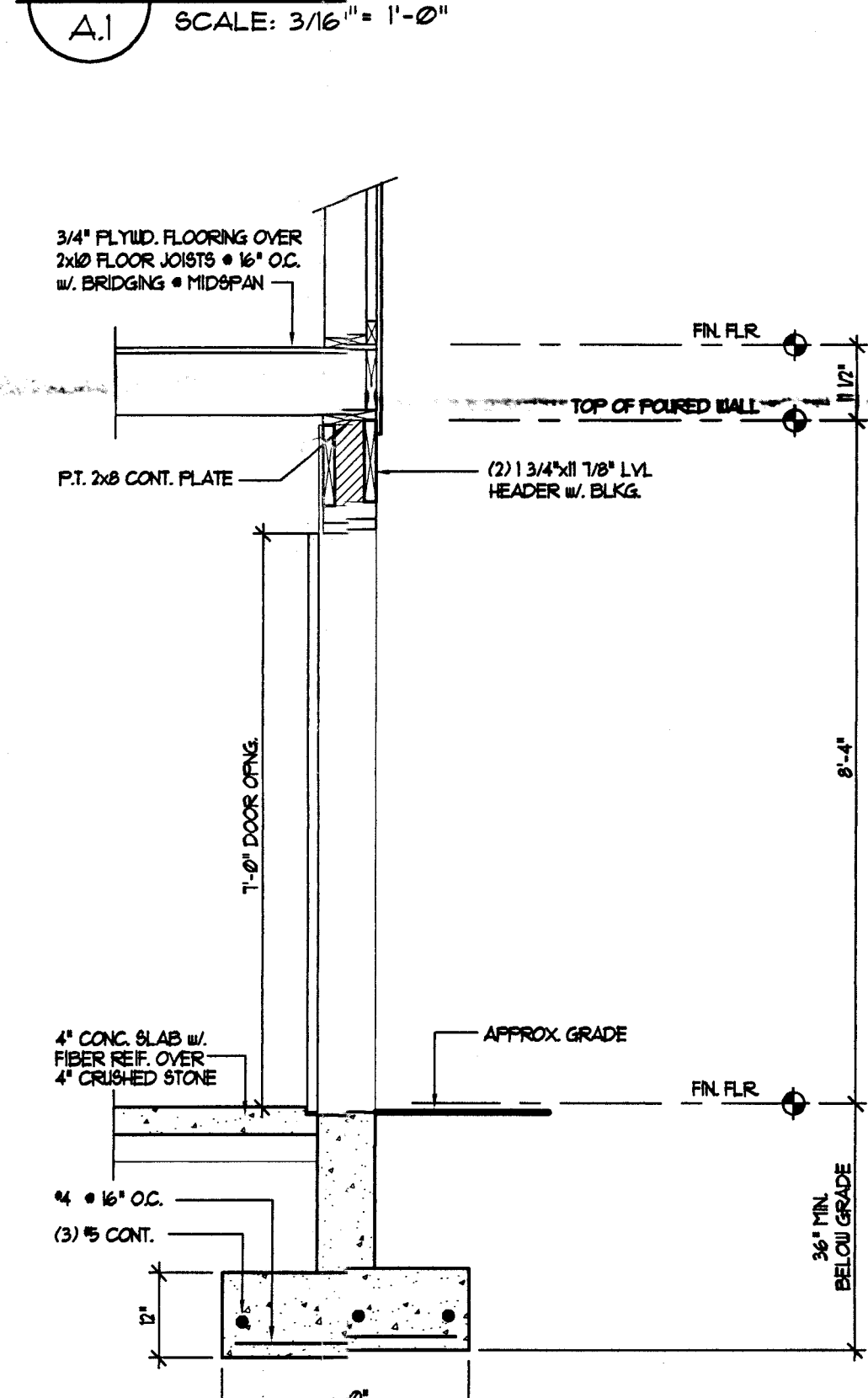
7 RIGHT SIDE ELEV.
SCALE: 1/8" = 1'-0"



8 FRONT ELEVATION
SCALE: 1/8" = 1'-0"



9 BUILDING SECTION
SCALE: 1/8" = 1'-0"



10 WALL SECTION
SCALE: 1/2" = 1'-0"

FILE INFO.

CONTRACTOR
B&D BUILDERS
14 N. Ronks Road
Ronks, Pa. 17572
DAN: (610) 637-0971 / BEN: (717) 278-4127

Angel Architects
1854 Lincoln Highway East
Lancaster, PA 17602
(717) 592-8021, fax 392-7140

RESIDENTIAL GARAGE
FOR
GARY MUELLER
1109 Justa Lane
Cockeysville, Md. 21030

SEAL OF ARCHITECTS
REG. NO. 9741
Elvin Roy Engel
STATE OF MARYLAND
MAR 07 2007

THIS DRAWING IS THE PROPERTY OF ENGEL ARCHITECTS. IT MAY NOT BE REPRODUCED IN ANY FORM WITHOUT THEIR PERMISSION. DO NOT SCALE DRAWING. CONTRACTOR SHALL VERIFY ALL CONDITIONS & DIMENSIONS ON SITE PRIOR TO PROCEEDING WITH THE WORK.

PROJECT NO.
071041
MANAGED BY
E. ENGEL
DRAWN BY
R. ENEDY
REVISIONS

DATE
MARCH 7, 2007
DRAWING TITLE
FLOOR PLAN
EXTER. ELEVATIONS

SHEET NO.
A.1

88A PGT-EX No. 2

GENERAL NOTES

1. THERE ARE NO ARCHEOLOGICAL SITES, HAZARDOUS MATERIALS, ENDANGERED SPECIES HABITATS, OR HISTORIC BUILDINGS OR LANDMARK ON THE SUBJECT SITE.
2. THERE ARE NO STREAMS, BODIES OF WATER, OR SPRINGS ON OR ADJACENT TO THE SUBJECT SITE.
3. THERE ARE NO UNDERGROUND STORAGE TANKS ON THE SUBJECT PROPERTY.
4. THE SUBJECT PROPERTY DOES NOT LIE WITHIN THE CHESAPEAKE BAY CRITICAL AREA.
5. THE SUBJECT PROPERTY HAS NO PREVIOUS ZONING CASE HISTORY.
6. THE SUBJECT PROPERTY DOES NOT LIE WITHIN A 100 YEAR FLOOD PLAIN.

RC-5

JUSTA LANE

POINT OF BEGINNING

160' →

RC-5
RC-4

RC-5
RC-4

ANTHONY VAN VILET
ELIZABETH E. PARKINSON
26368/85
TAX NO. 0807001520

RC-4

397.2

DEFER TO PERMIT
#765784-0

EXIST. 1 STY METAL
ACCESSORY
BLDG

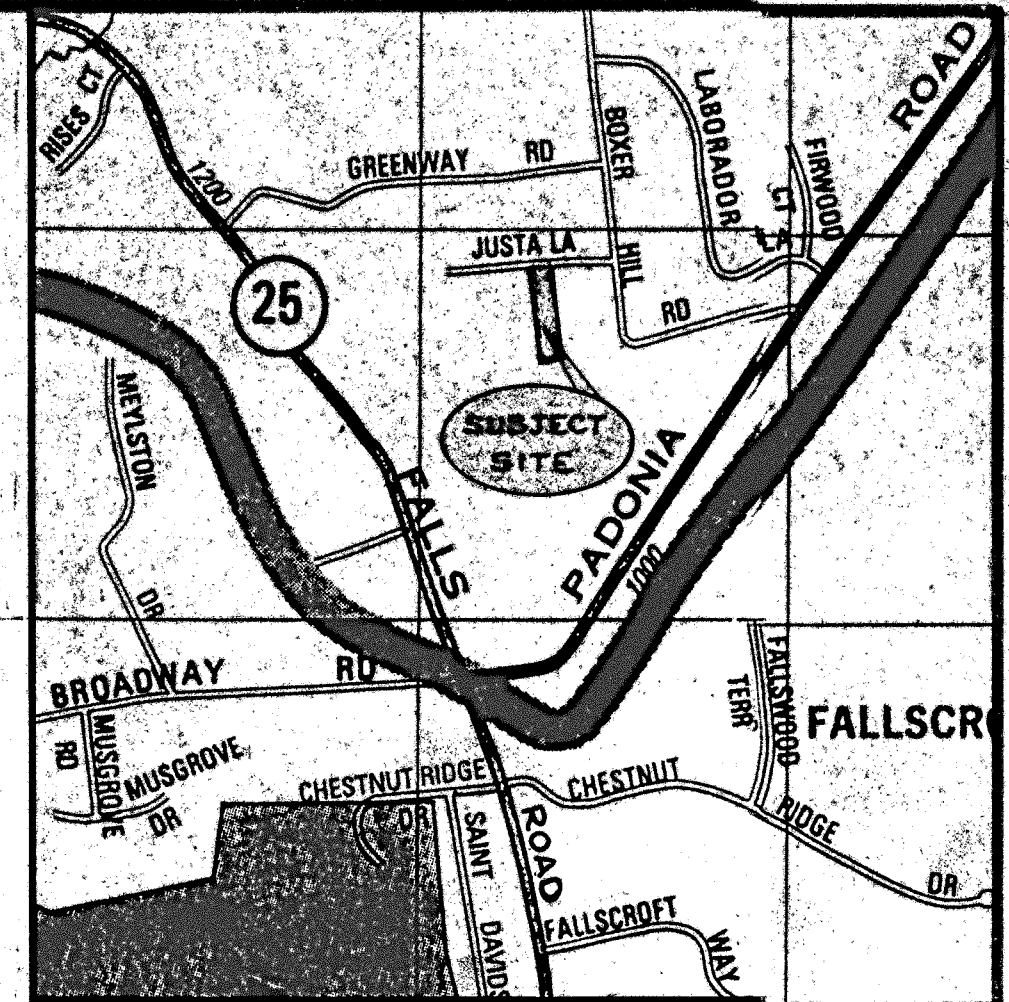
BRICK WALK

SEPTIC TANK

GRAVEL DRIVE

WELL

16.5' ROAD (USE IN COMMON)



VICINITY MAP
SCALE: 1" = 1000'

SITE DATA

SITE AREA	77,537 SQ. FT./1.78 AC +/-
EXIST. ZONING	RC-5/RC-4
COUNCILMANIC DISTRICT	2ND
ZONING MAP	050C3
DEED REFERENCE	24502/387
TAX MAP/GRID/PARCEL	50/24/187
TAX ACCOUNT NO.	2100000556
WATER	PRIVATE
SEWER	PRIVATE

SCOTT J. TARANTINO
BONNIE G. TARANTINO
16627/50
TAX NO. 0812040300

Ref No 1

SP, ELLMAN, LARSON
& ASSOCIATES, INC.
CIVIL ENGINEERS AND LAND SURVEYORS
222 BOSLEY AVENUE, SUITE B-3
TOWSON, MARYLAND 21204
PHONE: 410-823-3535
FAX: 410-825-5215

ZONING OFFICE USE ONLY

REVIEWED BY ITEM # CASE #

OWNER INFORMATION

GARY J. MUELLER
BARBARA L. MUELLER, TRUSTEES
1109 JUSTA LANE
COCKEYSVILLE, MD. 21030-1730
PHONE: 443-271-3263

SP, ELLMAN, LARSON
& ASSOCIATES, INC.

CIVIL ENGINEERS AND LAND SURVEYORS
222 BOSLEY AVENUE SUITE B-3 TOWSON, MD 21204
PHONE: 410-823-3535

ZONING PLAT TO ACCOMPANY SPECIAL HEARING

1109 JUSTA LANE

MUELLER PROPERTY

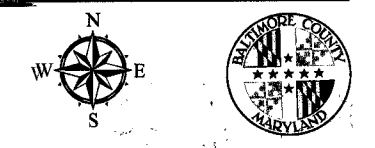
8TH ELECTION DISTRICT BALTIMORE COUNTY

SCALE: 1" = 40' DES. BY: DATE: MAR 21, 2008 DWN. BY: TC SHT. OF

CRA REF EX No. 1

$$\text{Re} + \text{NO} \rightleftharpoons$$

CBA P-7. No. 3



CBA PROTESTANT'S EXHIBITS

5

Wrfid
bpd
2/11/09

CASE NO. 08-471-SP-1

PROTESTANTS
PETITIONERS EXHIBITS

- ✓ 1. MIN. DEPT. OF TAX AND ASSESS. RECORD OF THE PROPERTY.
- ✓ 2. A. PHOTOGRAPHS- ACCESSORY BLDG.
 - ✓ B. " - SIDE OF BLDG. AND POOL.
 - ✓ C. " - VIEW FROM SMITH'S PROPERTY OF BLDG.
 - ✓ D. " - PRIVATE DRIVE
- ✓ 3. APPLICATION FOR PERMIT TO CONSTRUCT ACCESS. BLDG.
- ✓ 4. WELL PERMIT APPLICATION TO CONSTRUCT WELL FOR ACCESS. BLDG.
- ✓ 5. ARTICLE 8 PAPERS FOR MR. TENBERG.
- ✓ 6. PHOTOGRAPH- VIEW STANDING ON MR. SMITH'S PROPERTY.



Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search (2007 vw3.1)

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

Account Identifier: District - 08 Account Number - 2100000556

Owner Information

Owner Name:	MUELLER J GARY MUELLER BARBARA L, TRUSTEES	Use:	RESIDENTIAL
Mailing Address:	1109 JUSTA LN COCKEYSVILLE MD 21030-1730	Principal Residence:	YES
		Deed Reference:	1) /24502/ 387 2)

Location & Structure Information

Premises Address	Legal Description
1109 JUSTA LN	1.78 AC 1109 JUSTA LN SS 370 W BOX HILL RD

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
50	24	187						2	Plat Ref:

Special Tax Areas

Town
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1957	3,111 SF	1.78 AC	04

Stories	Basement	Type	Exterior
2	YES	STANDARD UNIT	1/2 BRICK SIDING

Value Information

	Base Value	Value	Phase-in Assessments	
		As Of	As Of	As Of
		01/01/2008	07/01/2008	07/01/2009
Land	161,700	215,600		
Improvements:	412,040	492,090		
Total:	573,740	707,690	618,390	663,040
Preferential Land:	0	0	0	0

Transfer Information

Seller: MUELLER J GARY	Date: 09/21/2006	Price: \$0
Type: NOT ARMS-LENGTH	Deed1: /24502/ 387	Deed2:
Seller: SERRAVALLE LIBOR IO	Date: 09/17/1987	Price: \$134,900
Type: IMPROVED ARMS-LENGTH	Deed1: / 7672/ 584	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:

Exemption Information

Partial Exempt Assessments	Class	07/01/2008	07/01/2009
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:
 * NONE *

CBA Pfo. EXH. No. 1



TWO STORY 3,000 S.F. ACCESSORY STRUCTURE

ABA PRO. NO 2A

Photo



EXTERIOR GRADE ARTIFICIALLY BUILT UP – 15' HT. EXCEEDED



FILLED POOL WITHOUT REQUIRED BARRIER

LBA pfo. No. 1B

Prot

2



CPBA PLO 684
No 26

Plot.
3

APPLICATION FOR PERMIT

BALTIMORE COUNTY MARYLAND

DEPARTMENT OF PERMITS & DEVELOPMENT MANAGEMENT
BALTIMORE, MARYLAND 21204DATE: 12/22/06
OEA: SAR/OK
HISTORIC DISTRICT/BLDG.PERMIT #: B657940
RECEIPT #: A564024
CONTROL #: MR
XREF #:PROPERTY ADDRESS: 1109 JUSTA LANE
SUITE/SPACE/FLOOR:
SUBDIV: 320 W BOX HILL RD.
TAX ACCOUNT #: 2100-000556
OWNER'S INFORMATION (LAST, FIRST)
NAME: J. GARY MUELLER
ADDR: 1109 JUSTA LANE COCKEYSVILLE - 21030-1730FEE: 60+5 = 65.00
PAID:
PAID BY:
INSPECTOR:
I HAVE CAREFULLY READ THIS APPLICATION AND KNOW THE SAME IS CORRECT AND TRUE, AND THAT IN DOING THIS WORK ALL PROVISIONS OF THE BALTIMORE COUNTY CODE AND APPROPRIATE STATE REGULATIONS WILL BE COMPLIED WITH WHETHER HEREIN SPECIFIED OR NOT AND WILL REQUEST ALL REQUIRED INSPECTIONS.

APPLICANT INFORMATION

NAME: J. GARY MUELLER
COMPANY:
STREET: 1109 JUSTA LANE
CITY, ST, ZIP: COCKEYSVILLE MD 21030
PHONE #: 443-271-8267 MHIC #
APPLICANT SIGNATURE: J. Gary Mueller DRO#
PLANS: CONST PLOT PLAT DATA EL 1 PL 1
TENANT:
CONTR:
ENGR:
SELLR:
DOES THIS BLDG. HAVE SPRINKLERS YES NO

TYPE OF IMPROVEMENT

1. ☒ NEW BLDG CONST
2. ☐ ADDITION
3. ☐ ALTERATION
4. ☐ REPAIR
5. ☐ WRECKING
6. ☐ MOVING
7. ☐ OTHER

TYPE OF USE

RESIDENTIAL

01. ☐ ONE FAMILY
02. ☐ TWO FAMILY
03. ☐ THREE AND FOUR FAMILY
04. ☐ FIVE OR MORE FAMILY (ENTER NO UNITS)
05. ☐ SWIMMING POOL
06. ☒ GARAGE
07. ☐ OTHER

TYPE FOUNDATION

1. ☐ SLAB
2. ☐ BLOCK
3. ☒ CONCRETE

BASEMENT

1. ☐ FULL
2. ☐ PARTIAL
3. ☒ NONE

DESCRIBE PROPOSED WORK:

Constr. (2) sty detached garage -
to be (3) car garage w/ storage and
(plg. - hand sink) and flr - 10ft/office

NON-RESIDENTIAL

08. ☐ AMUSEMENT, RECREATION, PLACE OF ASSEMBLY
09. ☐ CHURCH, OTHER RELIGIOUS BUILDING
10. ☐ FENCE (LENGTH HEIGHT)
11. ☐ INDUSTRIAL, STORAGE BUILDING
12. ☐ PARKING GARAGE
13. ☐ SERVICE STATION, REPAIR GARAGE
14. ☐ HOSPITAL, INSTITUTIONAL, NURSING HOME
15. ☐ OFFICE, BANK, PROFESSIONAL
16. ☐ PUBLIC UTILITY
17. ☐ SCHOOL, COLLEGE, OTHER EDUCATIONAL
18. ☐ SIGN
19. ☐ STORE MERCANTILE RESTAURANT
20. ☐ SWIMMING POOL
21. ☐ TANK, TOWER
22. ☐ TRANSIENT HOTEL, MOTEL (NO. UNITS)
23. ☐ OTHER

TYPE OF CONSTRUCTION

1. ☐ MASONRY
2. ☒ WOOD FRAME
3. ☐ STRUCTURE STEEL
4. ☐ REINF. CONCRETE

TYPE OF HEATING FUEL

1. ☐ GAS 3. ☐ ELECTRICITY
2. ☐ OIL 4. ☐ COAL

TYPE OF SEWAGE DISPOSAL

1. ☐ PUBLIC SEWER EXISTS PROPOSED
2. ☒ PRIVATE SYSTEM
SEPTIC EXISTS PROPOSED
PRIVY EXISTS PROPOSED

CENTRAL AIR: 1. ☐ 2. ☐ 1. ☐ PUBLIC SYSTEM EXISTS PROPOSED
ESTIMATED COST: \$100,000.00 2. ☒ PRIVATE SYSTEM EXISTS PROPOSED

OF MATERIALS AND LABOR

PROPOSED USE:
EXISTING USE:
APPR. 15' x 30' x 24' 10" = 2,500 sq ft
smaller than dwelling

OWNERSHIP

1. ☒ PRIVATELY OWNED 2. ☐ PUBLICLY OWNED 3. ☐ SALE 4. ☐ RENTAL

RESIDENTIAL CATEGORY: 1. ☒ DETACHED 2. ☐ SEMI-DET. 3. ☐ GROUP 4. ☐ TOWNHSE 5. ☐ MIDRISE#EFF:
#1BED:
#2BED:
#3BED:
TOT BED:
TOT APTS/CONDOS:
6. ☐ HIRISE

1 FAMILY BEDROOMS

GARBAGE DISPOSAL 1. ☐ Y 2. ☒ N BATHROOMS CLASS 04

POWDER ROOMS KITCHENS LIBER 000 FOLIO 000 MAP 050

Over 11 GR. 024 PARCEL 187

APPROVAL SIGNATURES DATE

BUILDING SIZE LOT SIZE AND SETBACKS

FLOOR 2 500A SIZE 1,280AC

WIDTH 50' FRONT STREET

DEPTH 30' SIDE STREET

HEIGHT 24'10" FRONT SETBK

STORIES 2 SIDE SETBK

LOT # S SIDE STR SETBK

CORNER LOT REAR SETBK

1. ☐ YES 2. ☒ NO ZONINGBLD INSP:
BLD PLAN: Bm120 Final 3/8/07FIRE:
SEDI CTL:
ZONING: Rm 114 Final 12/22/06PUB SERV:
ENVRMT: AK 4/16 Final 12/22/06PLANNING:
PERMITS:
MAKE CHECKS PAYABLE TO BALTIMORE COUNTY MARYLAND -- NO PERMIT FEES REFUNDED.

garage to be 15' from highest point of grade

CBA Pro, No. 3



DRIVEWAY & GATE INSTALLED ON SHARED 16.5' RIGHT OF WAY

CBA PRO No 2 D.

Prod.

④

EMERGENCY/TEMP. NO. IF ANY		STATE OF MARYLAND APPLICATION FOR PERMIT TO DRILL WELL		STATE PERMIT NUMBER PA-95-1890	
B 1 8395		SEQUENCE NO. (MDE USE ONLY)		fill in this form completely	
Date Received (APA) 3/5/01 OWNER INFORMATION 15. Last Name Mueller First Name Gary 36. 1109 Justa Lane Street or RFD 57. Cockeysville MD 21030 Town State Zip			B 3 Baltimore LOCATION OF WELL 8 COUNTY 23. SUBDIVISION SECTION 44 46 LOT 48 50 Cockeysville 52 NEAREST TOWN MILES FROM TOWN (enter 0 if in town) 2 M I 73 76 77 78		
DRILLER INFORMATION Driller's Name Michael D. Isom License No. MSD162 Firm Name G. Edgar Harr Sons' Corp. Address 12047 Falls Road, Cockeysville 21030 Signature [Signature] Date 5/2/07			B 4 1109 Justa Lane DIRECTION OF WELL FROM TOWN (CIRCLE BOX) ON WHICH SIDE OF ROAD (CIRCLE APPROPRIATE BOX) 34 200 37 DISTANCE FROM ROAD ENTER FT OR MI FT 38 39 TAX MAP: BLK: PARCEL:		
B 2 WELL INFORMATION APPROX. PUMPING RATE (GAL. PER MIN.) 5 AVERAGE DAILY QUANTITY NEEDED (GAL. PER DAY) 750 14 20			NOT TO BE FILLED IN BY DRILLER HEALTH DEPARTMENT APPROVAL COUNTY NAME Balto COUNTY NO. CD3 STATE SIGNATURE [Signature] INSERT S 41 DATE ISSUED 5/2/07 43 MM DO YR 48 CO SIGNATURE [Signature] EXP. DATE NORTH GRID 597 000 EAST GRID 0893 000 50 55 57 63		
USE FOR WATER (CIRCLE APPROPRIATE BOX) ☒ DOMESTIC POTABLE SUPPLY & RESIDENTIAL IRRIGATION ☒ FARMING (LIVESTOCK WATERING & AGRICULTURAL IRRIGATION) Don Supri ☐ INDUSTRIAL, COMMERCIAL, DEWATERING ☐ PUBLIC WATER SUPPLY WELL ☐ TEST, OBSERVATION, MONITORING ☐ GEO-THERMAL			APPROXIMATE DEPTH OF WELL 300 FEET 24 28 APPROXIMATE DIAMETER OF WELL 6 INCH METHOD OF DRILLING (circle one) BORED (or Augered) JETTED Jetted & DRIVEN 30 AIR-ROTARY AIR-PERCUSION ROTARY (Hydraulic Rotary) 37 CABLE Reverse-ROTARY Drive-POINT other		
REPLACEMENT OR DEEPEMED WELLS (CIRCLE APPROPRIATE BOX) ☒ THIS WELL WILL NOT REPLACE AN EXISTING WELL ☐ THIS WELL WILL REPLACE A WELL THAT WILL BE ABANDONED AND SEALED 39 ☐ THIS WELL WILL REPLACE A WELL THAT WILL BE USED AS A STANDBY-CONTACT LOCAL APPROVING AUTHORITY FOR POLICY ON STANDBY WELLS ☐ THIS WELL WILL DEEPEM AN EXISTING WELL PERMIT NUMBER OF WELL TO BE REPLACED OR DEEPEMED: (IF AVAILABLE) 41 52			SHOW MAJOR FEATURES OF BOX & LOCATE WELL WITH AN X SOURCES OF DRILLING WATER 1. Well 2. 3. WRITE THE BOX NUMBER FROM THE MAP HERE E 890 N 590 000 000 DRAW A SKETCH BELOW SHOWING LOCATION OF WELL IN RELATION TO NEARBY TOWNS AND ROADS AND GIVE DISTANCE FROM WELL TO NEAREST ROAD JUNCTION N		
Not to be filled in by driller (MDE OR COUNTY, USE ONLY) APPROP. PERMIT NUMBER G PERMIT No. PA 95-1890 70 71 72 73 74 75 76 77 78 79					
SPECIAL CONDITIONS NOTE: APPROVING AUTHORITY SHOULD USE SEPARATE SHEET IF REQUIRED					

CBA PRO. NO. 4

THE FALLS ROAD COMMUNITY ASSOCIATION, INC.

The undersigned hereby acknowledge and attest that the Board of Directors of The Falls Road Community Association, Inc., a Maryland corporation (the "Corporation"), in accordance with Section 2-408 of the Maryland Corporations and Associations Code, do hereby take the actions below set forth, and to evidence their waiver of any right to dissent from such actions, do hereby consent as follows:

WHEREAS: J. Gary and Barbara L. Mueller (the "Muellers") are owners of the property located in Baltimore County, Maryland known as 1109 Justa Lane; and have filed a Petition for Special Hearing before the Zoning Commissioner For Baltimore County, Case #08-471-SPH, requesting approval of the use of an existing structure on the property which structure has been illegally improved to serve as a second residence;

WHEREAS: after a Public Hearing, the Deputy Zoning Commissioner denied the Muellers' Petition for Special Hearing, and the Muellers have appealed to the Board of Appeals of Baltimore County;

NOW BE IT RESOLVED: The Falls Road Community Association, Inc. opposes the relief requested by the Muellers in their Petition for a Special Hearing, Case #08-471-SPH.

RESOLVED FURTHER: Carol Kakel and Marvin Tenberg who are both duly elected officers of the Falls Road Community Association, Inc., are authorized to attend the hearing on February 10, 2005 before the Board of Appeals of Baltimore County in #08-471-SPH. and testify in opposition to said Petition.

AS WITNESS OUR HANDS THIS 9th day of February, 2009.

ATTEST:

The Falls Road Community Association,
Inc.

By: Marcia W. Goldberg
Marcia Goldberg, Secretary

By: Harold H. Burns, Jr.
Harold H. Burns, Jr., President

AFFIDAVIT

I hereby swear upon penalty of perjury that Carol Kakel and Marvin Tenberg are both duly elected officers of the Falls Road Community Association, Inc.,

ATTEST:

The Falls Road Community Association,
Inc.

By: Marcia W. Goldberg
Marcia Goldberg, Secretary

By: Harold H. Burns, Jr.
Harold H. Burns, Jr., President

CBA PRO. EX. NO. 5



CBA Pro. Ex No. 6