

Wednesday October 29, 2008 @ 9:00 am PM 1

(20090070)

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Note: PLEASE READ MEMO
DATED 10/16/08 TO DIRECTOR KATCO

2009-0070-SPHA

CERTIFICATE OF POSTING	
ENC	☐
ADVERTISEMENT	
ENC	☐
CBCA	☐
FLOOD ZONE	☐
COMMENTS	
Planning	☐
DEPRM	☐
SHA	☐
Fire	☐
Plans Rev.	☐
ZONING VIOLATION 08-5192	
PRIOR ZONING	

APP CAUSED 12/08/08
ADVISED NO APPEAL FILE M/R/C
APP ADVISED HE HAS + WILL COMPLY WITH RES'T'S

1 OF 2

2009-0070-SPHA

DEC 10 2010

IN THE * CIRCUIT COURT
IN THE MATTER OF * FOR
JOSEPH A. BURLOCK, ET AL. * BALTIMORE COUNTY
* Case No.: 03-C-09-012324

* * * * *

FILED DEC 09 2010

there was a slab of concrete where a shed was previously located; this is referred to as the "historic location." It appears that the home's previous owners removed the shed when they moved. The Petitioners constructed a new shed on the historic location. Around three years ago, the Petitioners moved the shed to a new location so that they could more safely and easily move their recreational vehicles. After the Petitioners moved their shed, they were cited for a violation of the zoning ordinance. The Petitioners seek a variance from BCZR, § 400.1 to allow an accessory structure—a shed—in the front/side yard of an existing single-family dwelling in lieu of the required rear yard. On November 6, 2008, the Zoning Commissioner granted the Petitioners' petition for variance, with restrictions.

Respondent, James Montgomery ("Respondent"), the Petitioners' neighbor, opposed the new location of the shed. Respondent appealed the Zoning Commissioner's decision. On May 13, 2009, a hearing was held before the Board. On September 11, 2009, the Board denied the Petitioners' petition for variance. The Petitioners filed a timely petition for judicial review and presented the following issues for this Court's review:

1. Whether the Board erred in denying the Petitioners' request for a variance despite uncontroverted evidence establishing that the Petitioners' property is unique and that denial of their variance request would cause them practical difficulty?
2. Whether the Board improperly applied the well-settled standard for determining whether a property is "unique" for zoning purposes?
3. Whether the location of a house constructed prior to the passage of Baltimore County's comprehensive zoning scheme creates a self-inflicted hardship for zoning purposes?
4. Whether the Board acted in an arbitrary and capricious manner in denying the petition for variance in light of the granting of other similar variances and the common presence of accessory structures in the front yards of properties in the subject neighborhood?

II. Standard of Review

The court reviewing a final decision of an administrative agency determines only the legality of the decision and whether there was substantial evidence from the record as a whole to support the decision.³ In determining whether the record supports an administrative agency's decision, "substantial evidence" is defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.⁴

This Court must determine whether the administrative agency made an error of law.⁵ The administrative agency's interpretations of law enjoy no presumption of correctness on review; this Court is not constrained in reversing an administrative decision that is based entirely upon an erroneous conclusion of law.⁶

Upon determination that the administrative agency applied the correct standards prescribed by the statute at issue, the administrative agency's conclusions are tested by the substantial evidence test.⁷ In applying the substantial evidence test, this Court must not substitute its judgment for the expertise of the administrative agency.⁸ With substantial evidence and an absence of fraud, agency decisions are presumed valid.⁹ The administrative agency's decision is considered *prima facie* correct, and this Court must view the decision in the light most favorable to the agency.¹⁰

³ *Dep't of Labor v. Woodie*, 128 Md. App. 398, 406 (1999); *Bd. of Educ. v. Paynter*, 303 Md. 22, 35 (1985).

⁴ *Caucus Distribs., Inc. v. Md. Sec. Comm'r*, 320 Md. 313, 323-24 (1990).

⁵ *Balt. Lutheran High Sch. v. Employment Sec. Admin.*, 302 Md. 649, 662 (1985).

⁶ *Montgomery County v. Buckman*, 333 Md. 516, 519 n. 1 (1994).

⁷ *Id.*

⁸ *Md. State Police v. Lindsay*, 309 Md. 557, 563 (1987).

⁹ *Woodie*, 128 Md. App. at 406.

¹⁰ *Lindsay*, 309 Md. at 563; *Carriage Hill Cabin John, Inc. v. Md. Health Res. Planning Comm'n*, 125 Md. App. 183, 212 (1999).

The standard of review is whether a reasonable mind could have reached the same conclusion as the administrative agency.¹¹ If there was evidence of the fact in the record before the agency, no matter how conflicting or how questionable the credibility of the source of the information, this Court has no power to reject that conclusion—even if this Court could have reached a different conclusion.¹² Moreover, this Court must uphold the administrative agency's decision if it is sustainable on the administrative agency's findings and for the reasons stated by the administrative agency.¹³

III. Discussion

Under § 307.1 of the BCZR the Board has the power, in certain circumstances, to grant variances from height and area regulations. In *Cromwell v. Ward*, the Maryland Court of Special Appeals explained that in order to grant a variance two conditions must be met.¹⁴ First, there must be:

a finding that the property whereon structures are to be placed (or uses conducted) is -- in and of itself -- unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property.¹⁵

Specifically, the Court of Special Appeals explained that one looks at “the abnormal impact the ordinance has on a specific piece of property because of the peculiarity and uniqueness of that piece of property, not the uniqueness or peculiarity of the practical difficulties alleged to exist.”¹⁶

It further explained the definition of “unique” as applied in zoning cases. It stated that:

the “unique” aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. “Uniqueness” of

¹¹ *Comm'r Balt. City Police Dep't v. Cason*, 34 Md. App. 487, 508 (1977), *cert. denied*, 280 Md. 728 (1977).

¹² *Id.*

¹³ *United Parcel Serv., Inc. v. People's Counsel*, 336 Md. 569, 577 (1994); *Harford County v. Preston*, 322 Md. 493, 505 (1991).

¹⁴ 102 Md. App. 691, 694 (1995).

¹⁵ *Id.*

¹⁶ *Id.* at 698-99.

a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls.¹⁷

If the property is not found to be “unique, unusual, or different, the process stops here and the variance is denied without any consideration of practical difficulty or unreasonable hardship.”¹⁸

If, however, the first test is met, then the second step is to determine if “practical difficulty and/or unreasonable hardship, resulting from the disproportionate impact of the ordinance caused by the property's uniqueness, exists.”¹⁹ To establish that practical difficulty exists, the party seeking an area variance must show:

1. Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
2. Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
3. Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.²⁰

If the hardship is self-inflicted, it cannot form the basis for a claim of practical difficulty.²¹

Generally, “the authority to grant a variance should be exercised sparingly and only under exceptional circumstances.”²²

¹⁷ *Cromwell*, 102 Md. App. at 710 (quoting *North v. Saint Mary's County*, 99 Md. App. 502, 514 (1993)).

¹⁸ *Id.* at 694-695T.

¹⁹ *Id.* at 695T.

²⁰ *McLean*, 270 Md. at 214-15.

²¹ *Cromwell*, 102 Md. App. at 721-22.

²² *Id.* at 703 (internal citations omitted).

1. The Board Did Not Err in Determining that No Practical Difficulty Would Result From Denial of the Petitioners' Variance Request.

The Petitioners argue that the Property's unique configuration prevents them from placing any accessory structure in the rear yard as required by the BCZR and from safely entering and exiting the Property with their trailers, thus imposing a practical difficulty.

There was substantial evidence for the Board to conclude that the Petitioners' professed practical difficulty is based solely on the self-imposed hardship of facilitating the parking of recreational vehicles onto the Property. The Petitioners are correct; as a result of the location of their home they are unable to place an accessory structure in their rear yard, as is required by the BCZR. However, the Petitioners had a shed on the historic location.²³ Also, as the Board noted, the Petitioners already have one shed on their Property, located down by the water.²⁴ The only reason the Petitioners seek to move the location of their shed is to facilitate the unlawful parking of their recreational vehicles.

As to the Petitioners' assertion that they are unable to safely enter and exit with their trailers from the historic location, there was substantial evidence for the Board to find that this practical difficulty was self-imposed. This practical difficulty is self-imposed because the Petitioners were storing an excessive number of recreational vehicles on their Property and their storage of the vehicles failed to comply with setback requirements.²⁵ Under §415A.1A of the BCZR, the Petitioners are only allowed to store one recreational vehicle on a residential lot. The Petitioners have a camper and a boat that sits on a boat trailer.²⁶ Under BCZR §415A.3 the Petitioners are allowed to store a camper and a boat mounted on a trailer on their Property from

²³ The Petitioners were never cited for a violation of the zoning ordinance during the approximately thirteen years that the shed was located at the historic location. There is nothing to suggest that the prior owners were in violation of the zoning ordinance when they constructed a shed on the historic location.

²⁴ Board's Opinion, p. 1; Transcript, p. 93.

²⁵ Board's Opinion, p. 6.

²⁶ Board's Opinion, p. 2; Transcript, p. 63.

November first through March thirty-first. The correspondence from James Thompson, Supervisor for the Bureau of Code Enforcement, indicates that when he visited the Petitioners' Property and saw that they were storing a boat, boat trailer and camper, it was October—the Petitioners were not permitted to have more than one recreational vehicle on their property at that time. Additionally, Mr. Thompson's correspondence states that not only are there too many vehicles on the property, but that "the placement of the camper and the boat are not only closer than 2 ½ ft. from the side property line but the camper fails to meet the 8ft. setback requirement from the lateral projection of the front foundation line of the dwelling. (415A.1A BCZR)[.]"²⁷

The Board did not err in determining that the Petitioners' professed practical difficulty is based solely on the self-imposed hardship of facilitating the unlawful parking of recreational vehicles onto their Property. As a result of this finding, it is not necessary to determine whether the Board was correct in determining that the Petitioners' Property is not unique. Even if the Board was incorrect in its determination of uniqueness, the Petitioners' variance request fails because they failed to establish practical difficulty.

2. Whether the location of a house constructed prior to the passage of Baltimore County's comprehensive zoning scheme creates a self-inflicted hardship for zoning purposes?

Answering this question is not necessary to decide the issue. Furthermore, the Board did not find that the location of a house constructed prior to the passage of Baltimore County's comprehensive zoning scheme creates a self-inflicted hardship for zoning purposes. The Board stated that if it addressed the issue of practical difficulty, it would have found "that the Petitioners' professed practical difficulty is based solely on the self-imposed hardship to facilitate the parking of his 3 recreational vehicles on the property."

²⁷ Additionally, the Petitioners only attempt to move their travel trailer three times per year for family trips. Board's Opinion, p. 5; Transcript, p. 112-13.

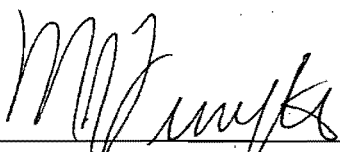
3. The Board's Decision Was Not Arbitrary and Capricious.

The Petitioners argue that the Board acted in an arbitrary and capricious manner in denying the petition for variance despite the existence of other front yard accessory structures in the subject neighborhood. The Board did not act in an arbitrary and capricious manner in denying the petition for variance. The Board had substantial evidence to determine that the Petitioners' professed practical difficulty is based solely on the self-imposed hardship of facilitating the parking of recreational vehicles onto the Property. The Petitioners failed to meet the standard for the granting of a variance. As noted in *Baltimore v. Polakoff*, the Court of Appeals "adopted the following language from a New Jersey Court: '[p]rior exceptions granted by the adjustment board are not in themselves controlling. Ill-advised or illegal variances do not furnish grounds for repetition of the wrong.'"²⁸

IV. Final Ruling

WHEREFORE, it is this 30 day of November 2010, by the Circuit Court for Baltimore County,

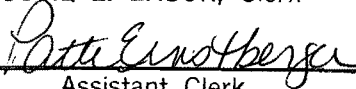
ORDERED that the decision of the Board, in which it denied the Petitioners' petition for variance, **AFFIRMED**.



Judge Michael J. Fipfiter

True Copy Test

JULIE L. ENSOR, Clerk

Per 

Assistant Clerk

²⁸ 233 Md. 1, 9-10 (1963) (quoting *Easter v. City of Baltimore*, 195 Md. 395, 400 (1950)).

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

Case Number: 03-C-09-012324

RECEIVED

DEC 10 2010

**BALTIMORE COUNTY
BOARD OF APPEALS**

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

11/20/09

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
JOSEPH AND JUDITH BURLOCK

CIVIL ACTION
NO: 03-C-09-012324

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

IN THE MATTER OF :
JOSEPH AND JUDITH BURLOCK – LEGAL
OWNERS/PETITIONERS
FOR SPECIAL HEARING AND VARIANCE
ON PROPERTY LOCATED ON THE NE/SIDE
OF BEACHWOOD ROAD, 375' NW OF
LYNHURST ROAD (4130 BEACHWOOD RD)

15TH ELECTION DISTRICT
7TH COUNCILMANIC DISTRICT

BOARD OF APPEALS CASE NO.: 09-070-SPHA *

* * * * *

**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**

RECEIVED AND FILED

2009 NOV 20 AM 11:28

CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

No. 09-070-SPHA

September 9, 2008	Petition for Special Hearing to determine the location of the front yard of existing single family dwelling adjacent to the Back River; and Petition for Variance to allow an accessory structure (shed) in the front/side yard of the existing single family dwelling in lieu of the rear yard, filed by Herbert Brugunder, III, Esquire on behalf of Legal Owners/Petitioners Joseph and Judith Burlock.
September 29	Entry of Appearance filed by People's Counsel for Baltimore County.
October 16	Certificate of Publication in newspaper
October 17	Certificate of Posting.
October 23	ZAC Comments.
October 29	Hearing held before the Zoning Commissioner
November 6	Findings of Fact and Conclusions of Law issued by the Zoning Commissioner. Petition for Special Hearing was RESOLVED that the waterfront property is the front yard and the rear yard abuts upon Beachwood Road; and Petition for Variance was GRANTED with restrictions.
December 5, 2008	Notice of Appeal filed by James Montgomery, Protestant/Appellant.
April 14, 2009	Certificate of Appeal sign posting.
May 13	Board convened for hearing.

Exhibits submitted at hearing before the Board of Appeals:

Petitioner's Exhibit No.

- 1 – SDAT Data Sheet dated 5/11/09
- 2 – APR Survey of site boundary dated 10/28/05
- 3 – Zoning Commissioner's file generally
- 4 – Photograph of site (old 2A)
- 5 – Photograph of site (old 2B)
- 6 – Plat of area of site (old 3)
- 7 – Photograph of street of site
- 8 – Photograph of street of site
- 9 – Photograph of street of site
- 10 – Photograph of street of site
- 11 – Plat to accompany Petition for Variance

- 12 – Photograph from house
- 13 – Photograph from house toward Beachwood Road and water behind
- 14 – Photograph from house toward Beachwood Road and water behind
- 15 – Amended statement of distance of shed to property line per Wiseman approval
- 16 – Shed location drawing
- 17 – Petition in support of Variance submitted at Zoning Commissioner's hearing.
- 18 – Neeshler Hnatiuk-Photograph of shed and pool in his front yard
- 19 – Photograph of Hnatiuk house and Nershler – water on right side of photograph 4116 Beechwood Road – 92-187-A (collective exhibit 4 opinions)

Protestants' Exhibit No.

- 1 – Photograph from Mr. Burlock's yard showing original placement of shed (grey building, water to left)
- 2 – 4116 Beachwood Road Variance 92-187-A (collective exhibit – 4 opinions)
- 3 – 02-573-A – Findings of Fact and Conclusions of law and plat (collectively 2 documents)
- 4 – Diagram of area – aerial photograph
- 5a – Photograph of Southeast entrance to breezeway
- 5b – Photograph through breezeway toward water
- 5c – Photograph through breezeway toward water
- 6a – Photograph through breezeway toward water
- 6b – Photograph of shed moved to front yard
- 6c – Photograph shed with landscaping
- 6d – Photograph Petitioner's camper and boat
- 6e – Photograph Petitioner's camper and boat
- 6f – Photograph from Hnatiuk property to Petitioner's driveway
- 6g – Photograph from street side towards water
- 6h – Photograph from shed showing slab and breezeway
- 6i – Photograph Petitioner's additional shed
- 6j – Photograph crabbing?
- 7 – Diagram of site
- 8 – Agency comment – Planning dated 10/23/08
- 9 – Letter from Planner to Petitioner dated 7/21/08
- 10 – Memorandum from Code Enforcement to Kotroco dated 10/16/08
- 11 – Plat of neighborhood lots.

June 26, 2009 Brief and Memorandum of Petitioners in Support of Petition for Variance filed by Bruce Edward Covahey, Esquire on behalf of Petitioners, Joseph and Judith Burlock.

June 25 Protestant's Closing Brief filed by Francis X. Borgerding, Jr., Esquire on behalf of Protestant, James Montgomery.

July 30 Board convened for Public deliberation.

September 11 Final Opinion and Order issued by the Board in which the Petition for Variance was DENIED; and the Petition for Special Hearing was voluntarily DISMISSED.

October 9 Petition for Judicial Review filed in the Circuit Court for Baltimore County by F. Vernon Boozer, Esquire and Bruce Edward Covahey, Esquire, on behalf of Joseph and Judith Burlock, Petitioners

October 19 Copy of Petition for Judicial Review received from the Circuit Court for Baltimore County by the Board of Appeals.

October 20 Certificate of Compliance sent to all parties and interested persons.

November 9 Transcript of testimony filed.

November 20, 2009 Record of Proceedings filed in the Circuit Court for Baltimore County.

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



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

c: Joseph and Judith Burlock
F. Vernon Boozer, Esquire/Bruce Edward Covahey, Esquire
James Montgomery
Francis X. Borgerding, Esquire
Walter R. Hnatiuk
Michael P. Elder
State of Maryland/Chesapeake Bay Critical Area Commission
Office of People's Counsel
William J. Wiseman, III, Zoning Commissioner
Arnold F. "Pat" Keller, Director/Office of Planning
Timothy Kotroco, Director/Office of Permits and Development Mgmt
John E. Beverungen, County Attorney

10/20/09

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
JOSEPH AND JUDITH BURLOCK

CIVIL ACTION
NO: 03-C-09-012324

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

IN THE MATTER OF :
JOSEPH AND JUDITH BURLOCK – LEGAL
OWNERS/PETITIONERS
FOR SPECIAL HEARING AND VARIANCE
ON PROPERTY LOCATED ON THE NE/SIDE
OF BEACHWOOD ROAD, 375' NW OF
LYNHURST ROAD (4130 BEACHWOOD RD)

15TH ELECTION DISTRICT
7TH COUNCILMANIC DISTRICT

BOARD OF APPEALS CASE NO.: 09-070-SPHA *

* * * * *

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:

Joseph and Judith Burlock
4130 Beachwood Road
Baltimore, MD 21222

F. Vernon Boozer, Esquire
Bruce Edward Covahey, Esquire
Covahey, Boozer, Devan & Dore P.A.
614 Bosley Avenue
Towson, MD 21204

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CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

James Montgomery
4132 Beachwood Road
Baltimore, MD 21222

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

Walter R. Hnatiuk
4128 Beachwood Road
Baltimore, MD 21222

Michael P. Elder
4112 Beachwood Road
Baltimore, MD 21222

State of Maryland
Chesapeake Bay Critical Area Commission
1804 West Street, Suite 100
Annapolis, MD 21401

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

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

I HEREBY CERTIFY that on this 20th day of October, 2009, a copy of the foregoing Certificate of Compliance has been mailed to the individuals listed above.


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

October 20, 2009

F. Vernon Boozer, Esquire
Bruce Edward Covahey, Esquire
Covahey, Boozer, Devan & Dore P.A.
614 Bosley Avenue
Towson, MD 21204

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

RE: Petition for Judicial Review
Circuit Court Case No.: 03-C-09-012324
In the Matter of: Joseph and Judith Burlock
Board of Appeals Case No.: 09-070-SPHA

Dear Counsel:

Notice is hereby given, in accordance with the Maryland Rules that a Petition for Judicial Review was filed on October 9, 2009 by F. Vernon Boozer, Esquire, on behalf of Joseph and Judith Burlock, 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.

In accordance with the Maryland Rules, the County Board of Appeals is required to submit the record of proceedings of the Petition for Judicial Review filed by People's Counsel within 60 days. F. Vernon Boozer, Esquire, on behalf of Joseph and Judith Burlock, having taken the appeal, are responsible for the cost of the transcript of the record and the transcript must be paid for in time to transmit the same to the Circuit Court within the 60 day timeframe as stated in the Maryland Rules.

The Court Reporter that must be contacted to obtain the transcript and make arrangement for payment is as follows:

CAROLYN PEATT
TELEPHONE: 410-837-3027
HEARING DATE: May 13, 2009

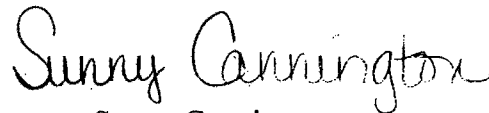
Joseph and Judith Burlock - Legal Owners
Circuit Court Case No.: 03-C-09-012324
Board of Appeals Case No.: 09-070-SPHA

Page 2

This office has also notified Ms. Peatt that a transcript on the above matter is due for filing in the Circuit Court. A copy of the Petition for Judicial Review has been provided to the Court Reporter, which will enable her to contact the responsible parties.

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

Very truly yours,



Sunny Cannington
Legal Secretary

Enclosure

cc: Joseph and Judith Burlock
James Montgomery
Walter R. Hnatiuk
Michael P. Elder
State of Maryland Chesapeake Bay Critical Area Commission
Office of People's Counsel
William J. Wiseman, III, Zoning Commissioner
Arnold F. "Pat" Keller, Director/Office of Planning
Timothy Kotroco, Director/Office of Permits and Development Mgmt
John E. Beverungen, County Attorney

10/9/09

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
PETITION OF: *

Joseph A. Burlock and Judith Ann Burlock *
4130 Beachwood Road *
Baltimore, Maryland 21222 *

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

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

CIVIL ACTION No. _

C-09-12324

IN THE CASE OF: *

Joseph A. Burlock, Sr. and Judith Ann *
Burlock, NE/S Beachwood Road, *
375' NW of Lynhurst Road *
(4130 Beachwood Road) *
15th District, 7th Council *
Case No. 09-070-SPHA *
July 30, 2009 *

* * * * *

PETITION FOR JUDICIAL REVIEW

Joseph A. Burlock, Sr., and Judith Ann Burlock by their attorneys, F. Vernon Boozer, Bruce Edward Covahey, and Covahey, Boozer, Devan & Dore, P.A., pursuant to Rule 7-201, hereby request judicial review by this Honorable Court of the September 11, 2009 Opinion of the County Board of Appeals for Baltimore County denying their Petition for Variance. The Petitioners were parties to the said proceedings.

RECEIVED

OCT 19 2009

BALTIMORE COUNTY
BOARD OF APPEALS

rfm090918

F. Vernon Boozer
F. Vernon Boozer

Bruce Edward Covahey
Bruce Edward Covahey
Covahey, Boozer, Devan & Dore, P.A.
614 Bosley Ave.
Towson, Maryland 21204
410-828-9441
Attorneys for Petitioners

cc: Boozer, Esq.
Covahey, Esq.
Co Bd of Appeals

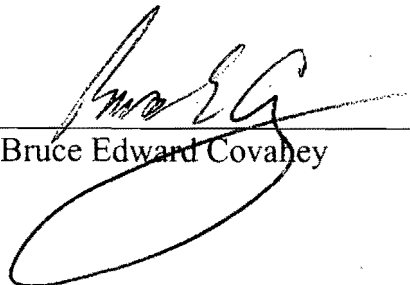
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2009 OCT -9 PM 2:19
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

ch

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of October 2009, I mailed first class, postage prepaid, a copy of the foregoing Petition for Judicial Review to:

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



Bruce Edward Covahey

9/11/09



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

September 11, 2009

Edward C. Covahey, Jr., Esquire
COVAHEY & BOOZER, P.A.
614 Bosley Avenue
Towson, MD 21204

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

RE: *In the Matter of: Joseph and Judith Burlock-Legal Owners/Petitioners*
Case No.: 09-070-SPHA

Dear Counsel:

Enclosed please find a copy of the 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,

Theresa Shelton/kc

Theresa R. Shelton
Administrator

TRS/klc
Enclosure

Duplicate Original Cover letter

c: Joseph and Judith Burlock
Walter R. Hnatiuk
Chesapeake Bay Critical Area Commission
William J. Wiseman, III/Zoning Commissioner
Arnold F. "Pat" Keller, Director/Planning

James Montgomery
Michael P. Elder
Office of People's Counsel
Timothy Kotroco, Director/PDM
John Beverungen, County Attorney

IN THE MATTER OF
JOSEPH A. BURLOCK, SR. AND
JUDITH ANN BURLOCK,
Legal Owners/Petitioners

4130 Beachwood Road
Baltimore, MD 21222-3605
NE/S Beachwood Road,
375' NW of Lynhurst Road
15th Election District
7th Council District

RE: Petitioner for Variance

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
*
* Case No. :09-070-SPHA
*

* * * * *

OPINION

This case comes to the Board on appeal of the final decision of the Zoning Commissioner of Baltimore County in which the Zoning Commissioner granted a Petition for Variance seeking relief from Section 400.1 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to allow an accessory structure (shed) in front/side yard of existing single family dwelling in lieu of the required rear yard. Petitioner also filed a Petition for Special Hearing to determine the location of the front yard of the existing single family dwelling (its orientation) adjacent to the Back River. On appeal before this Board, the Petitioner withdrew the Petition for Special Hearing and conceded that the front yard was the area between the house and Back River.

A public hearing was held on May 13, 2009. The Petitioners, Joseph A. Burlock, Sr. and his wife, Judith Ann Burlock (the "Petitioners") were represented by Bruce Edward Covahey and Covahey, Boozer, Devan & Dore, P.A. The Protestant, James Montgomery, (the "Protestant") was represented by Francis X. Borgerding, Jr. Public Deliberation was held on July 30, 2009.

Factual Background

The Petitioners are the owners of the property located at 4130 Beachwood Road, Baltimore, MD 21222 in Eastern Baltimore County (the "Property") which is a waterfront lot fronting on Back River. The Property is improved with a single family dwelling, a pier extending out into the water, a shed located on the pier and an accessory shed which is the subject of this appeal. The Property is approximately 50 feet

wide and 190 feet deep. The property contains a gross area of 0.22 acres (9,450 square feet) more or less (Petitioner's Exh. 1) and is zoned D.R. 5.5 (Petitioner's Ex. 3).

At issue is the location of the Petitioner's accessory shed. The shed is presently located 72 feet from the Property's rear border in the front/side yard. Apparently the Petitioners received a zoning violation notice when they moved the shed to its current location.¹ When the Petitioner's purchased the property in 1995, the historic location of the shed was a concrete slab in the side yard which was visible from the photographs in evidence. (Protestant's Ex. 6g and 6h). Also located on the Property are the Petitioner's camper, boat, boat trailer and truck.

Testifying in opposition to the present location of the accessory shed was the Protestant, James Montgomery. The Protestant testified that he did not oppose the historic location of the shed because it did not block his view of the water. However, he objected to the present location because he is unable to sit in his breezeway and view the water across the Petitioner's yard. The Protestant does have a back porch with a direct view across his own property to the water but indicated that his wife is unable to sit on the back porch due to her skin cancer. There was no medical evidence presented as to the wife's skin cancer or of any medical restriction prohibiting the Protestants from viewing the water from their back porch.

The Protestants offered into evidence Case No. 92-187A regarding a Petition for Variance which was filed to permit an existing accessory structure (screen house) in the front yard of 4116 Beachwood Road. The Zoning Commissioner, the Board of Appeals and the Circuit Court all agreed that the variance should be granted. However, the Court of Special Appeals, in an unreported decision, *Rakowski v. Weimer*, No. 1543, Sept. Term, 1993 reversed and remanded the case back to the Board of Appeals to deny the variance.

The Protestants also offered Case No. 02-573-A where Zoning Commissioner Schmidt denied a Petition for Variance for a swimming pool and gazebo to be located in the front yard (waterside) of the same property at 4116 Beachwood Road. It should be noted that the Petitioner in this case was the son of

¹ The zoning violation case is not before this Board.

Mr. Weimer who had previously been denied a variance by the Court of Special Appeals in Case No. 92-187A.

On the other hand, a variance was granted to neighbor Walter Hnatiuk who resides at 4128 Beachwood Road in Case No.: 76-75A, to build an in ground swimming pool in the front yard (waterside).

Decision

In order for the Petitioner to obtain approval to leave the accessory shed in the front yard, the Petitioners need a variance. Section 307.1 of the BCZR states, in pertinent part, as follows:

"...(T)he County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations...only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship.... Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area...regulations, and only in such manner as to grant relief without injury to public health, safety, and general welfare...."

This Board is guided by the holding provided by the Court of Special Appeals in *Cromwell v. Ward*, 102 Md. App. 691, 698 (1995), wherein the Court writes:

...The Baltimore County ordinance requires "conditions ...peculiar to the land...and...practical difficulty...." Both must exist. ...However, as is clear from the language of the Baltimore County ordinance, the initial factor that must be established before the practical difficulties, if any, are addressed, is the abnormal impact the ordinance has on a specific piece of property because of the peculiarity and uniqueness of that piece of property, not the uniqueness or peculiarity of the practical difficulties alleged to exist. It is only when the uniqueness is first established that we then concern ourselves with the practical difficulties...."

In requiring a finding of "uniqueness", the Court of Special Appeals in *Cromwell* referred to the definition of "uniqueness" provided in *North v. St. Mary's County*, 99 Md. App. 502, 514 (1993):

In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "Uniqueness" of a property for zoning purposes requires that the

subject property has an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects in bearing or parting walls....

Id. at 710.

If the Property is determined to be "unique," then the issue is whether practical difficulties also exist. Toward this end, the Board acknowledges that an area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property.

McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must produce evidence to allow the following questions to be answered affirmatively:

1. Whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
2. Whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
3. Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

However, the law is clear that self-inflicted hardship cannot form the basis for a claim of practical difficulty. Speaking for the Court in *Cromwell*, *supra*, Judge Cathell noted:

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

Id., at 722.

The Petitioners argue that the Property is unique because the house is located 3 feet from Beachwood Road which makes it impossible for a shed to be located in the rear yard. The Petitioner testified that none of the other homes along Beachwood Road are located that close to the road. His house was constructed in 1944 before the enactment of the zoning regulations. The Petitioner concedes

that he could place the shed in its historic location in the side yard but he is unable to move his boat and trailer and/or camper in and out of his driveway safely. He claims that this is a result of the Protestant's extension of his mailbox and fence along the southeastern border, into Beachwood Road. According to the Petitioner, the presence of these obstructions makes the turning radius difficult and entering and exiting the Property unsafe. The Petitioner moves these vehicles in and out of the Property 3 times per year.

As to practical difficulty, the Petitioner asserts that strict compliance with §400.1 of the BCZR would prevent the Petitioner from constructing an accessory structure which is allowed as a matter of right under the BCZR, subject to location, lot coverage, setback and height restrictions set forth in §§400.1- 400.3. The Petitioner also pointed out that the Protestant's objection is not based in the law as the Protestant does not enjoy a permanently protected view across the Petitioner's Property. This view could be blocked by the Petitioner planting a row of trees.

After reviewing all of the testimony and evidence presented, the Board has determined that the Petitioners have failed to prove that the Property is unique or that they suffered any practical difficulty which is not a self imposed hardship. As a result, the variance is denied for the following reasons.

The Board finds that the Petitioners' reasoning for uniqueness being the location of the house near Beachwood Road was rejected by the Court of Special Appeals in *North v. St. Mary's County, supra*. To prove uniqueness the Petitioner must show uniqueness as to the Property's shape, topography, subsurface condition, environmental factors, historical significance, or access or non-access to navigable waters or, practical restrictions imposed by abutting properties (such as obstructions). No evidence was presented as to these factors affecting the land because this is a rectangular, flat lot similar to all the other lots along Beachwood Road which front Back River. The Board finds that there is no uniqueness to the land. This Board further finds that there is no uniqueness caused by the Protestant's fence and mailbox because the only reason those alleged obstructions come into play is due to parking recreational vehicles *onto the land*. This activity does not involve a peculiarity inherent in the land itself.

While the Board has determined that there is no uniqueness to the land such that there is no need to address the issue of practical difficulty, if the Board did address practical difficulty, it would have found that the Petitioner's professed practical difficulty is based solely on the self imposed hardship to facilitate the parking of his 3 recreational vehicles on the Property. The Board notes that §415.1 of the BCZR provides that the Petitioner is only entitled to store one (1) recreational vehicle on a residential lot. A recreational vehicle includes a boat whether mounted on a trailer or stored on the land. Because the Petitioner is not permitted to store all 3 of these vehicles on the Property, he is not suffering from the type of "practical difficulty" delineated in *McLean v. Soley, supra*.

ORDER

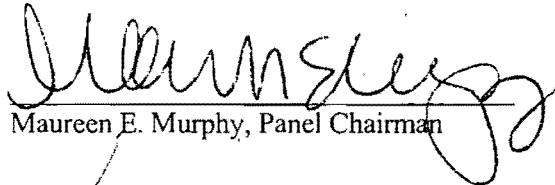
THEREFORE, IT IS THIS 11th day of September, 2009, by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Variance seeking relief from §400.1 of the Baltimore County Zoning Regulations to locate an accessory shed in the front yard (waterside) of the Property be, and the same is hereby **DENIED**; and it is further,

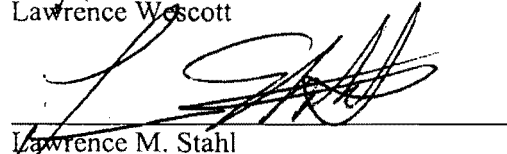
ORDERED that the Petition for Special Hearing Relief to determine the location of the front yard was voluntarily dismissed by Petitioner and the same is hereby **DISMISSED**.

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

**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**


Maureen E. Murphy, Panel Chairman


Lawrence Wescott


Lawrence M. Stahl

6/26/09

RECEIVED
JUN 26 2009

IN THE MATTER OF	*	BEFORE THE COUNTY	BALTIMORE COUNTY
JOSEPH A. BURLOCK, SR. AND	*	BOARD OF APPEALS	BOARD OF APPEALS
JUDITH ANN BURLOCK	*	FOR	
Legal Owners/Petitioners	*	BALTIMORE COUNTY	
	*	CASE NO. 09-070-SPHA	

* * * * *

**BRIEF AND MEMORANDUM OF PETITIONERS
IN SUPPORT OF PETITION FOR VARIANCE**

Joseph A. Burlock, Sr. and Judith Ann Burlock, Petitioners, by Bruce Edward Covahey and Covahey, Boozer, Devan & Dore, P.A., their attorneys, respectfully submit this Brief and Memorandum in Support of Petition for Variance in lieu of closing argument as requested by the Board of Appeals for Baltimore County ("Board") at the conclusion of the hearing held on May 13, 2009.

STATEMENT OF THE CASE

The Petitioners are the record owners of property located at 4130 Beachwood Road, Baltimore, Maryland 21222 ("Property"), which is waterfront property fronting on the Back River. The Property is improved by a single-family dwelling and a shed, which is presently located in the side yard of the Property along its southeastern border.

The instant case commenced on or about November 6, 2008 when the Petitioners filed a Petition for Special Hearing and a Petition for Variance with regard to the Property. The Petition for Special Hearing, which was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("BCZR"), sought a

determination as to whether the front yard of the Property abuts Beachwood Road or the Back River for purposes related to the application of the BCZR. The Petition for Variance requested a variance from BCZR § 400.1 to "allow an accessory structure in Front/Side Yard of [an existing single family dwelling] in lieu of the required rear yard." The Petition for Variance included no other requests for relief.

A hearing on both petitions was held before William J. Wiseman, III, Zoning Commissioner for Baltimore County, after which Commissioner Wiseman issued Findings of Fact and Conclusions of Law ("Findings") in which he determined the front yard of the Property abutted Back River and granted the requested variance, subject to certain restrictions. Of most pertinence among those restrictions is one requiring the Petitioners to submit a revised site plan to "reflect the measurements of the existing shed to be relocated in the east side yard at a distance of 65 feet northeast of Beachwood Road and 3 feet northwest of the [southeastern] property line."

This matter comes before the Board as a result of an appeal filed by Protestant, James Montgomery, from the Findings issued by Commissioner Wiseman. A *de novo* hearing was held before the Board on May 13, 2009, at which time the Petitioners conceded that their front yard for the purposes of this matter is the portion of the Property abutting the Back River and voluntarily withdrew their Petition for Special Hearing. Accordingly, the Petition for Variance is the only matter to be considered by the Board at this time.

QUESTIONS PRESENTED

- I. WHETHER THE EVIDENCE ESTABLISHING THAT THE PETITIONERS' PROPERTY IS UNIQUE AND THAT DENIAL OF THEIR VARIANCE REQUEST WOULD CAUSE THEM PRACTICAL DIFFICULTY REQUIRES THE BOARD TO GRANT THEIR PETITION FOR VARIANCE.
- II. WHETHER DENIAL OF THE PETITIONERS' REQUEST FOR VARIANCE WOULD BE ARBITRARY AND CAPRICIOUS IN LIGHT OF THE GRANTING OF OTHER VARIANCES AND THE COMMON PRESENCE OF ACCESSORY STRUCTURES IN THE FRONT YARDS OF PROPERTIES IN THE SUBJECT NEIGHBORHOOD.

STATEMENT OF THE FACTS

As noted above, the Petitioners are the record owners of the Property. The Property is improved by a single-family dwelling that was constructed in 1944 and which lies three (3) feet from the Property's border with Beachwood Road, a public road. (T. 8, 26). The Property is also improved by, *inter alia*, a storage shed presently located in the Property's side yard, 72 feet from the Property's border with the right-of-way for the public road. (T. 31).

The subject shed replaced a shed that was on the Property prior to the Petitioners' purchase of the Property in 1995. (T. 17). The previous owners removed the original shed prior to the sale of the Property, thus the Petitioners erected a new shed atop the concrete slab upon which the original shed was located. Id. The original shed and the replacement constructed by the Petitioners were located in what was referred to in testimony and discussions on the record before the Board as the "historic location", approximately even with the northeastern edge of the Petitioners' residence. (T. 18; Petrs.' Ex. 11). Thereafter, in an effort to

obtain adequate room to move their travel trailer on and off of the Property, the Petitioners moved the shed to its second position, which was approximately 75 feet from the edge of the Property abutting Beachwood Road. (T. 18-19; Petrs.' Ex. 11). That position fell between the edge of the Petitioners' residence and Back River, meaning the shed was now located in the Property's front yard.¹

The relocation of the shed to that second location touched off the dispute that brought the parties before the Board. After being cited for violating the area regulations of the BCZR, the Petitioners filed the Petition for Variance, seeking a variance to allow the subject shed to be located in the front yard of the Property. The shed was relocated to its present position pursuant to Commissioner Wiseman's Findings, in which he granted the Petitioners' variance request, subject to the relocation of the shed to its current position. (T. 25; Petrs.' Ex. 3).

ARGUMENT

I. THE PROPERTY IS UNIQUE AS A RESULT OF THE LOCATION OF THE PETITIONERS' DWELLING AND CONSTRAINTS IMPOSED BY CONDITIONS ON THE PROTESTANT'S PROPERTY.

In Cromwell v. Ward, 102 Md.App. 691 (1995), the Court of Special Appeals articulated the benchmark against which all Baltimore County variance cases are to be measured. Judge Cathell, writing for the Court of Special Appeals, crystallized the variance process as a two step process:

The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is – in and of itself – unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness

¹ Since the property fronts on the Back River, the waterfront side of the Property is considered the "front yard" for zoning purposes, with the Beachwood Road side of the Property representing the "rear yard." Baltimore County Zoning Commissioners' Policy Manual ("ZCPM") §§ 400.1.a, 400.2.a.

and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property. Unless there is a finding that the property is unique, unusual or different, the process stops here and the variance is denied without any consideration of practical difficulty or unreasonable hardship.

Cromwell, 102 Md.App. at 694.

Judge Cathell, writing for the Court of Special Appeals in North v. St. Mary's County, 99 Md.App. 502 (1994), previously expounded on what is required in order to show that a property is unique.

"Uniqueness" of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historic significance, access or non-access to navigable waters, *practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions.*

North, 99 Md.App. at 514 (emphasis added).

The inclusion of the phrase "other similar restrictions" demonstrates that the Court of Special Appeals did not intend the list of conditions set forth in North to represent an exhaustive, complete list of the types of characteristics that could render a property "unique" for zoning purposes. Instead, the summary laid out by Judge Cathell provides only a sample of the types of restrictions that could render a property "unique."

In the present case, the house on the Property is located three (3) feet from the Baltimore County right-of-way for Beachwood Road. (T. 8, 26). The uncontroverted testimony of Joseph Burlock, Sr. and a series of exhibits make it clear that it is the *only* house in the neighborhood located in such close proximity to the Beachwood Road right-of-way. (T. 11-15; Petrs.' Ex. 6-10). All other properties

in the neighborhood sit well back from the road, with sheds and garages between the house and road on many properties. Id.

The Petitioners' house was constructed in 1944, which predates the passage of both Baltimore County's first zoning ordinance and the initial enactment of the current version of the BCZR. BCZR, App. K; (T. 7; Petr.'s Ex. 1). Otherwise, the house on the Property would violate the thirty-foot rear setback required for properties with the zoning classification DR 5.5, such as those in the neighborhood in which the property is located. BCZR §1B01.2(C). No newly constructed home in the neighborhood can be similarly constructed in light of the applicable rear yard setback. Id. Therefore, the existing, legal configuration of the dwelling on the property renders the Property "unique" for zoning purposes.

As noted above, the Court of Special Appeals has opined that obstructions or other "practical restrictions imposed by abutting properties" can also make a property "unique" for zoning purposes. North, 99 Md.App. at 514. In this instance, the Property is constrained by a fence along its southeastern border, which was constructed by the Protestant and which lies on the Protestant's property until it extends into the Beachwood Road right-of-way. (T. 18-25; Petrs.' Ex. 2, 11-12, 14). Joseph Burlock, Sr. testified that the fence and the Protestant's mailbox, which sits at the end of the fence, hamper his ability to enter and exit the Property safely with his travel trailer. (T. 18-25). That "obstruction" or "practical restriction" imposed by the present condition of the Protestant's property also renders the Property "unique" for zoning purposes. North, 99 Md.App. at 514.

II. THE PROPERTY'S UNIQUE CONFIGURATION PREVENTS THE PETITIONERS FROM PLACING ANY ACCESSORY STRUCTURE IN THE REAR YARD AS REQUIRED BY THE BCZR AND FROM SAFELY ENTERING AND EXITING THE PROPERTY WITH THEIR TRAILERS, THUS IMPOSING A PRACTICAL DIFFICULTY.

Since the Petitioners have established that the Property is "unique", the Board must next determine whether practical difficulty or unreasonable hardship exists, "resulting from the disproportionate impact of the ordinance caused by the property's uniqueness." Cromwell, 102 Md.App. at 695.

Whether the Board must apply the "undue hardship" or "practical difficulty" standard in reviewing a variance depends upon the nature of the variance in question. When the request is for a use variance, the "undue hardship" standard applies, while the "practical difficulty" standard applies to area variances. In this instance, the Petitioners have requested an area variance, as they have sought relief from setback requirements and/or restrictions governing the location of an accessory structure. Accordingly, the less onerous "practical difficulty" standard applies.

In McLean v. Soley, 270 Md. 208 (1973), the Court of Appeals set forth the burden that must be met to establish a "practical difficulty." The McLean Court stated that the party seeking a variance must show:

1. Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
2. Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial

relief to the owner of the property involved and be more consistent with justice to other property owners.

3. Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

McLean, 270 Md. at 214-15.

A. Strict compliance with the BCZR would prevent the Petitioners from placing any shed on the Property.

Applying the standard set forth in McLean, the Board must first consider whether strict compliance with BCZR § 400.1 "would unreasonably prevent the [Petitioners] from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome." McLean, 270 Md. 214. The construction or installation of accessory structures is allowed as a matter of right under the BCZR, subject only to the location, lot coverage, setback and height restrictions set forth in §§ 400.1 – 400.3. Therefore, constructing a storage shed on a residential property would constitute "using the property for a permitted purpose" in accordance with McLean.

In the case at bar, strict application of the location restrictions of BCZR § 400.1 would require the Petitioners to place their shed in the rear yard of the Property, which is the portion of the Property fronting on Beachwood Road. ZCPM §§ 400.1.a, 400.2.a. In addition, strict application of BCZR § 400.1 would further require that the shed be at least 2½ feet from the Petitioners' rear property line (i.e., their border with the Beachwood Road right-of-way). BCZR § 400.1. However, given the unique location of the Petitioners' residence on the Property, their rear yard is only three feet deep and offers *no* location upon which to construct *any*

accessory structure such as the subject shed. (T. 8, 26). Accordingly, it is patently obvious that strict compliance with BCZR § 400.1 "would unreasonably prevent the [Petitioners] from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome." McLean, 270 Md. 214.

Beyond the foregoing, it must be noted that merely maintaining the shed in either its "historic" location or its current location only addresses part of the Petitioners' concerns. Placing the shed in either of those positions would not address the Petitioners' inability to safely enter and exit the Property with their travel trailer, which problem necessitated their initial move of the shed from its historic location. (T. 18).

Joseph Burlock, Sr. explained that the original location of the shed made it difficult for him to maneuver his travel trailer in and out of his driveway, which he generally attempts to do three times per year for family trips. (T. 18-22, 112-113). He further explained that even with the shed in its current location, between the "historic location" and the proposed location, he has to ask the owner of the property across the street to move his car before he can attempt to move the trailer. (T. 20; Petr.'s Ex. 12). Otherwise, he risks striking the Protestant's fence or mailbox or other vehicles. Id. Accordingly, while placement of the shed in either position would at least allow the Petitioners to have a shed, it would not alleviate their inability to enter and exit the Property safely with their trailers. Instead, elimination of that additional impediment would require placement of the shed in the position proposed in the Petition for Variance.

While the Protestant's counsel spent considerable time during cross examination asking Mr. Burlock about the nature of the trailers on his property, that issue is ultimately much ado about nothing. Mr. Burlock testified that he owns a travel trailer and a boat trailer, the latter of which is used for boat storage during the winter. (T. 63-64). Storage of the travel trailer and boat trailer is permitted on the property from November 1 through March 31 pursuant to BCZR § 415A.3. Therefore, the Board can, and in fact must, consider the impact of the BCZR restrictions upon the Petitioners' ability to enter and exit the Property when *both* trailers are present.

B. Granting of the Petition for Variance would do substantial justice to the Petitioners and other neighborhood residents.

The Board must next consider "whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners." McLean, 270 Md. at 214-15. The only individual expressing any opposition to the Petitioners' variance request at the hearing before the Board was the Protestant, who is the owner of the property located immediately southeast of the Property at 4132 Beachwood Road. The Protestant testified that his *sole* objection to the proposed variance is that placing the shed in the location proposed by the Petitioners would interfere with the ability of him and his wife to view the Back River from the breezeway between their home and garage, which they reportedly use instead of their deck facing the Back River because of his wife's

history of skin cancer. (T. 80). He had no objection to the placement of the shed in its "historic location." (T. 84, 103).

While the Protestant's desire to maintain his water view from his breezeway is natural, it is not entitled to such weight as to override the Petitioners' ability to make a reasonable use of the Property. Maryland courts have expressly and repeatedly held that property owners are not entitled to any prescriptive easement of light and air over the property of another and/or to enjoy a permanently protected view across such property. Cherry v. Stein, 11 Md. 1 (1857); Homewood Realty Corp. v. Safe Deposit & Trust Co. of Baltimore, 160 Md. 457 (1931); Kulbitsky v. Zimnoch, 196 Md. 504 (1950). Those decisions make it clear that the Protestant has no legally cognizable right, interest and/or expectation in or to an unfettered view across the property of the Petitioners. Accordingly, denial of the Petitioners' variance request based solely on the impact upon the Protestant's water view would be contrary to the well settled principle set forth in Cherry, Homewood Realty and Kulbitsky.

The reality is that the Petitioners could block the Protestant's view of the water across the Property merely by planting a row of shrubs or evergreen trees along the boundary between their respective properties, in which case the Protestant would have no cause to object. Accordingly, the fact that the placement of the Petitioners' shed might impact the Protestant's view across the *Petitioners'* property should not be considered in the course of the Board's review of the Petition for Variance.

To the extent the Board nevertheless elects to consider the impact on the Protestant's view, it should also be noted that the Protestant's breezeway sits to the rear of his home and is located on what is effectively the back third of his property. The proposed shed location is near the rear of the Protestant's residence. If the Petition for Variance is granted, the waterfront side of the property would remain fully available for the Protestant's use and would not be impacted in any way by the placement of the shed, nor would the Protestant's water view be impacted from the vast majority of his home.

C. The granting of the Petition for Variance is consistent with the spirit and intent of the BCZR.

The final portion of the Board's analysis requires determining "[w]hether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured." This prong parallels the language of BCZR § 307 allowing the Board to grant a variance when the variance is in "harmony with the spirit and intent" of the applicable regulations. BCZR § 307.

The "spirit and intent" of BCZR § 400.1 includes promoting consistency of land use among neighboring properties. As noted previously, multiple other properties in the Petitioners' neighborhood, including that of their next door neighbor, Walter Hnatiuk, have accessory structures, such as sheds and swimming pools, on their waterfront sides. (T. 11-15, 107, 109-110; Petrs. Ex. 6-10). Therefore, the "spirit and intent" of BCZR § 400.1 would be honored by allowing the Petitioners to place their shed in the proposed location on the front side of the Property.

Overall, the application of the McLean standard demonstrates that strict application of the provisions of BCZR § 400.1 would result in a "practical difficulty" for the Petitioners. Accordingly, their Petition for Variance must be granted.

III. DENIAL OF THE PETITIONERS' VARIANCE REQUEST WOULD BE ARBITRARY AND CAPRICIOUS IN LIGHT OF THE GRANTING OF PRIOR VARIANCES AND/OR THE EXISTENCE OF OTHER FRONT YARD ACCESSORY STRUCTURES IN THE SUBJECT NEIGHBORHOOD.

An administrative agency charged with considering a zoning request such as that filed by the Petitioners cannot act in an arbitrary and capricious manner in rendering its decision. Aspen Hill Venture v. Montgomery County Council, 265 Md. 303 (1972). That principle prohibits an administrative agency from denying relief to a party when other similarly situated parties have been granted equivalent relief. Id.

In the case at bar, multiple residents of the subject neighborhood have been allowed to erect or maintain accessory structures in their front yards, including sheds and in-ground and above-ground swimming pools, most of which still remain in place. (T. 11-15, 107, 109-110; Petrs.' Ex. 6-10). Neighbor Walter Hnatiuk expressly testified that he obtained a variance before building an in-ground swimming pool in his front yard. (T. 109). In addition, Commissioner Wiseman took note that in Case No. 76-75-A, a variance was granted to allow a swimming pool in the front yard of 4126 Beachwood Road. Findings, p. 3 (Petrs.' Ex. 3). In light of the granting of those variances and the existence of multiple *other* front yard accessory structures in the neighborhood, the denial of the Petitioners' variance request would be arbitrary and capricious. Aspen Hill Venture, *supra*. Therefore, the Petition for Variance must be granted.

**IV. DENIAL OF VARIANCES REQUESTED BY OWNERS OF 4116
BEACHWOOD ROAD ARE INAPPOSITE TO THE CASE AT BAR
BECAUSE SUCH DENIALS WERE BASED UPON ISSUES
INAPPLICABLE TO THIS MATTER.**

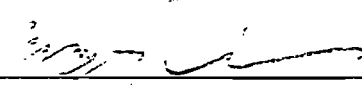
Not surprisingly, given the presence of numerous other properties with front yard accessory structures, the Protestant can point to only one property in the neighborhood for which variance requests for front yard accessory structures have been denied. (Prot.'s Ex. 2, 3). The denial of variance requests regarding that single property cannot overcome the weight of evidence showing that multiple other properties have been allowed to maintain accessory structures in their front yards. Beyond that fact, the variance requests referenced by the Protestant are so factually dissimilar from the case at bar as to be easily distinguished.

As noted during the Protestant's presentation of evidence, 4116 Beachwood Road was the subject of two variance requests, filed on separate occasions by a father and son. On the first occasion, the Zoning Commissioner, Board and Circuit Court for Baltimore County each granted the father's variance request, only to have the request reversed by the Court of Special Appeals on procedural grounds in an unreported opinion. Rakowski v. Weimer, Sept. Term 1993, No. 1543 (Board of Appeals Case No. 92-187A)(Prot.'s Ex. 2). Specifically, the Court of Special Appeals reversed the decision of the Circuit Court for Baltimore County granting the variance (1) because the Board failed to make adequate and appropriate findings of fact and (2) because the Court determined that the BCZR did not authorize the granting of the requested variance under *any* circumstances. Rakowski v. Weimer, Sept. Term 1993, No. 1543 at 5, 10-11. Neither such circumstance is present in this case, thus the denial of the first variance request is inapposite to this matter.

In the latter instance, the Board noted its surprise that the son would request relief identical to that requested by the father, then denied the request because there was no evidence presented to establish that the property was unique. Board of Appeals Case No. 02-573-A (Prot.'s Ex. 3). Having made such a determination, the Board never went on to determine whether the property owner suffered a practical difficulty or unreasonable hardship as required by Cromwell. The Petitioners in this case have proven both that the Property is unique and that strict application of the provisions of the BCZR will cause a practical difficulty. Accordingly, the denial of the second variance request for 4116 Beachwood Road should carry no weight in the Board's analysis in the case at bar.

V. CONCLUSION

For the reasons set forth above, it is clear that the Petitioners have met their burden of proof pursuant to BCZR § 307, Cromwell v. Ward, and other applicable statutes. Therefore, the Petitioners' Petition for Variance must be granted.

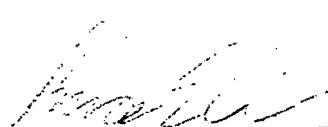


BRUCE EDWARD COVAHEY
Covahey, Boozer, Devan & Dore, P.A.
614 Bosley Avenue
Towson, Maryland 21204
410-828-9441
Attorneys for Petitioners,
Joseph A. Burlock, Sr. and
Judith Ann Burlock

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of July, 2009, a
copy of the foregoing Brief and Memorandum in Support of Petition for Variance
was mailed, first class, postage prepaid, to:

Francis X. Borgerding, Jr.
409 Washington Avenue
Suite 600
Towson, Maryland 21204



BRUCE EDWARD COVAHEY

bec090604

6/25/09

JOSEPH A. BURLOCK SR., et ux.
IN RE: PETITIONS FOR SPECIAL HEARING
AND VARIANCE
NE/S Beachwood Road, 375' NW of
Lynhurst Road
(4130 Beachwood Road)
15th Election District
7th Council District

* BEFORE THE
* COUNTY BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
* Case No.: 2009-0070-SPHA

* * * * *

PROTESTANT'S CLOSING BRIEF

James Montgomery, Protestant, by and through his attorney, Francis X. Borgerding, Jr., prepares this Closing Brief and in support of says:

I.

PRELIMINARY MATTER

As a preliminary matter, the Petitioners withdrew their request for a Special Hearing with regard to the issue of whether or not the waterfront side of their property is the front yard or the rear yard conceding the purposes of the matters before the Board that the waterfront side of their property is the front yard for purposes of determining their entitlement to the relief as to a variance. (T. 4).

TESTIMONY

Testifying at the hearing in the above-captioned case were Joseph A. Burlock, Sr., Petitioner, in support of his requested relief.

In opposition to Petitioners' requested relief was James Montgomery who lives adjacent to the property which is the subject of this hearing testified against Petitioners' requested relief. Walter Hnatiuk, a neighbor, also testified before the Board.

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**BALTIMORE COUNTY
BOARD OF APPEALS**

Mr. Burlock testified that he lives at 4130 Beachwood Road in the North Point area of Baltimore County along the shores of the Back River. The house on his property was constructed in 1944. (T. 7). Mr. Burlock testified that after he purchased his property in 1995, he constructed a shed on the side yard of his property on top of a slab which had supported a shed for the previous owner of the property. (T. 17). Mr. Burlock identified Petitioners' Exhibit Number 11 which was entered into evidence indicating that the notation on the document which says old shed represents the location where the slab was located when he purchased the property. (T. 18). Further, Mr. Burlock testified in relation to moving the shed "I moved it up so I can get my trailer and also moved it up so I have more swinging room to go around Mr. Montgomery's fence that is on Baltimore County property." (T. 18). In relation to recreational vehicles, Mr. Burlock testified that he has a boat, trailer and an RV trailer. (T. 21). Mr. Burlock testified that Petitioners' Exhibit Number 11 also illustrates the location where he moved the shed in to his front yard. (T. 25). Mr. Burlock contended that due to the placement of his house, there would be no room to construct any useful type of shed. (T. 27). Mr. Burlock, therefore, indicated he is requesting a variance to construct a shed in his front yard. (T. 27). Mr. Burlock indicated that the Zoning Commissioner made him move his shed 10 feet towards the road from the location it was sitting at the time of the Zoning Commissioner's Decision. (T. 28-29). The current location of the shed is located by a notation of a dotted box on Petitioners' Exhibit Number 16. (T. 36).

On cross-examination, Mr. Burlock acknowledged that James Montgomery's objection to the placement of his shed on his lot in the front yard is that it interferes with the waterfront view from his property when he and his wife sit on his breeze way. (T. 50-51).

Further, Mr. Burlock indicated Mr. Montgomery did not object to the placement of the shed on the slab in the side yard of his property. (T. 51).

Although Mr. Burlock failed to give any testimony in his direct examination as to the uniqueness, if any, of his property or whether he suffered practical difficulty, on cross-examination Mr. Burlock acknowledged that topographically from a size and shape standpoint, his lot is not unique. (T. 52). Mr. Burlock also acknowledged that it is the original owner's placement of the structure on the property which is unique not the land itself. (T. 52-53). Further, Mr. Burlock acknowledged that he constructed the shed originally sometime after 1995. (T. 53-54). Mr. Burlock was asked on cross-examination to circle the original placement of the shed on the slab which was present in the side yard of his property when he purchased the property in blue pen. (T. 54-55). Mr. Burlock acknowledged that the original placement of the shed was in the side yard not the front yard. (T. 55). Mr. Burlock acknowledged that when the shed was originally placed on the pre-existing slab on the side yard of his property that James Montgomery could sit on his breeze way and have a full view of the water. (T. 61-62).

Mr. Burlock acknowledged the terms of a recreational vehicle is that "I have a boat and a trailer, and I have a trailer." Being an RV. (T. 63). Mr. Burlock indicated that he was not aware that Section 415 of the Baltimore County Zoning Regulations (herein "BCZR") only allows one recreational vehicle on a lot. (T. 64). Although Mr. Burlock claims that James Montgomery's mailbox is encroaching on a Baltimore County right-of-way, Mr. Burlock produced no copy of any easement or right-of-way agreement nor the terms of any such easement or right-of-way agreement. (T. 65-66). Entered into evidence as Protestant's Exhibit Nos. 2 and 3 were copies of cases relating to variance relief requested

for 4116 Beachwood Road in case numbers 92-187A and 02-573A which requests were denied either originally or on appeal. (T. 67-68). Mr. Burlock further made clear when questioned about whether he would suffer practical difficulty if his requested relief was denied that his claim for practical difficulty is based solely on the necessity to move his shed in the front yard to facilitate the parking of a recreational vehicle. (T. 69-71). On re-cross, Mr. Burlock acknowledged that Petitioners' Exhibit No. 2 indicates on the side of Beachwood Road right-of-way that does not indicate anything further about the owner of the right-of-way or the terms of any valid right-of-way. (T. 77-78).

James Montgomery testified in opposition to the requested relief. Mr. Montgomery indicated that he and his wife sit on the breeze way on his property in order to look at the water and further that his wife cannot be on the front porch because she has had skin cancer. (T. 80-81). Entered was Protestant's Exhibit No. 4 an aerial view of the subject property as well as James Montgomery's adjacent property. For the record, Mr. Montgomery circled in a blue pen the placement of his breeze way on Protestant's Exhibit No. 4. Further, Mr. Montgomery circled in red the original placement of the shed on the pre-existing slab on Mr. Burlock's property. (T. 84). Mr. Montgomery indicated that he had no problem with the original placement of the shed by Mr. Burlock on the pre-existing slab on his property because it did not interfere with his waterfront view. (T. 84). Mr. Montgomery indicated that his feelings changed when the shed was moved from Mr. Burlock's side to front yard because "It just destroyed the value of our property because we can't see the water, sitting on our breeze way anymore." (T. 85). Mr. Montgomery entered a series of photographs showing his view from his breeze way, with Exhibit No. 5B indicating the placement of the shed in Petitioners' front yard. Mr. Montgomery testified

that even after Commissioner Wiseman's ruling moving the shed 10 feet back from its original location in the Petitioners' front yard, it still interferes with his view of the water. (T. 88). Mr. Montgomery identified Exhibit No. 6B a photograph showing a pile of dirt material existing in the Petitioners' front yard. Mr. Montgomery indicated that Exhibit No. 6E was a photograph showing Mr. Burlock's truck, his boat trailer and his camper. Introduced were photographs 6G and 6H both showing the slab where Mr. Burlock's shed was originally located. Protestants' Exhibits 6I and J illustrates an existing shed down by the waterfront edge of Mr. Burlock's property. Mr. Montgomery contended that part of the roadbed which Mr. Burlock contends is a county right-of-way are telephone poles, mailboxes and "everybody parks there." (T. 96). Baltimore County's Office of Planning's Zoning Advisory Comment was entered as Protestant's Exhibit No 8. Said Comment indicates "The existing shed that is on the site should be raised. Additionally, the Petitioner has several recreational vehicles parked on the site. Only one recreational vehicle is permitted. ... Lastly the proposed shed should be located further from the property line as it is in close proximity to the adjacent home." Protestant also offered Protestant's Exhibits Nos. 9 and 10 Inspection Reports made by Leonard Wasilewski of the Office of Permits and Development Management and James Thompson of the Office of Permits and Development Management. Concerns were raised about the placement of the Petitioners' shed in the front yard as well as the number of recreational vehicles on Petitioners' property. In response to a question from the Board's Chairman, Mr. Montgomery indicated that he had no objection whatsoever to the Petitioner having a shed as long as it is in the side yard "where we don't have to look at it". (T. 103). Mr. Montgomery indicated he had no objection to the placement of the shed on the slab which pre-existed Mr. Burlock's

ownership of the property. (T. 103-104).

QUESTION PRESENTED

1. HAVE THE PETITIONERS MET THEIR BURDEN OF PROOF FOR THE BOARD'S GRANTING OF A PETITION FOR VARIANCE SEEKING RELIEF FROM SECTION 400.1 OF THE BCZR TO ALLOW AN ACCESSORY STRUCTURE [SHED] IN THE FRONT/SIDE YARD OF THE EXISTING SINGLE FAMILY DWELLING IN LIEU OF THE REQUIRED REAR YARD.

“We conclude that the law in Maryland and in Baltimore County under its charter and ordinance remains as it has always been - a property’s peculiar characteristic or unusual circumstances relating only and uniquely to that property must exist in conjunction with the ordinance’s more severe impact on the specific property because of the property’s uniqueness before any consideration will be given to whether practical difficulty or unnecessary hardship exists.”

Cromwell v. Ward, 102 Md. App. 691 at 721, 651 A.2d 424 (1995).

The Petitioner did not directly testify to his lot being unique nor that he would suffer practical difficulty during his direct examination. On cross-examination, Mr. Burlock acknowledged that the land upon which his house sits is not unique. Rather, he contended that the placement of the structure on his lot is unique as opposed to the land itself.

Per the Petitioners’ own testimony, it fails to meet the uniqueness test of *Cromwell v. Ward* of unique characteristics of the property or land itself.

As the case of *Cromwell v. Ward* indicates, if the Petitioner fails to meet the uniqueness test, the adjudicating body of a petition for variance there is no further required analysis of whether or not the relief can be granted. Assuming for the sake of argument, this Board should consider whether or not the Petitioner met the test of sustaining practical

difficulty, per Mr. Burlock's own testimony on cross-examination, the sole basis for moving the shed from the side to the front yard is to help facilitate the parking of recreational vehicles in his yard.

Section 415 of the BCZR allows the parking of one recreational vehicle on a residential property. Per Petitioners' own testimony, however, in his case he parks a boat, a boat trailer and an RV on his property in violation of the BCZR. See Protestants' Exhibit No. 8 a Zoning Advisory Comment from the Baltimore County Office of Planning and Protestants' Exhibit Nos. 9 and 10 the Inspection Reports from inspectors from the Baltimore County Office of Permits and Development Management.

The evidence on the record before the Board is that the Petitioners' evidence to support a finding of practical difficulty is self inflicted due to his illegal use of the property in violation of Section 415A.1. of the BCZR.

"We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot be generally self-inflicted."

Cromwell v. Ward, 102 Md. App. 691 at 722, 651 A.2d 424 (1995).

Accordingly, the Petitioners have not met their burden of proof to support a finding by the Board that Petitioners' property is unique or that they suffered practical difficulty in support of their Petition for Variance. Petitioners' request for variance, therefore, must be **DENIED** for failing to meet its burden of proof established in *Cromwell v. Ward*. It should further be noted per Protestant's photographs entered as Exhibit Nos. 6I and 6J that the Petitioners already have a shed by the waterfront of their property on which they can store any items needed to be housed in a shed.

As Protestant, James Montgomery, candidly indicated before the Board, he has no objection to the placement of a shed in Petitioners' side yard on a slab which existed prior to Mr. Burlock's ownership of the property which is in fact the location that Mr. Burlock originally constructed his shed. Placing a shed in this location as opposed to the front yard the Petitioners' property either originally as placed by the Petitioner or subsequently after Commissioner Wiseman's ruling would resolve the main basis of James Montgomery's opposition to the Petitioners' requested relief, namely placement of a shed in the Petitioners' front yard which interferes with the view of the water from the breeze way which he and his wife are required to use in light of his wife's health condition.

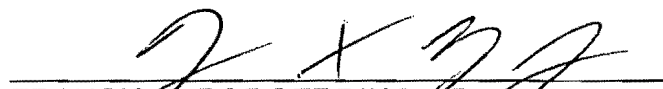
The record before the Board indicates that the Petitioner has no justifiable reason to place a shed in the front yard as opposed to the side yard and, therefore, diminish the value and the use and enjoyment of Mr. Montgomery's waterfront property.

Therefore, assuming for the sake of argument that the Board finds any evidence from which to support the granting of relief by the Petitioners in the above-captioned case, Protestant asserts this Honorable Board should only grant a variance to allow the Petitioners to construct their shed in his side yard on the placement of the slab which pre-existed his ownership of the property which is illustrated on Petitioners' Exhibit No. 11 as well as the location circled in red on Protestant's Exhibit No. 4 an aerial photograph of the subject property. Also shown in Protestant's pictures 6G and 6H. Further, Protestant would request that if the Board would grant such relief, that the granting of the variance or placement of his shed in the side yard be conditioned upon the Petitioners placing the shed to have its doors open toward the Burlock property and away from the Montgomery property so that the Montgomerys do not have to view the internal contents of the shed

when the doors are open.

CONCLUSION

In summary, the record before the Board clearly fails to establish a legally sufficient basis to grant Petitioners' requested relief under *Cromwell v. Ward*. However, if the Board for any reason would feel otherwise, the Protestant requests that relief only be granted to allow placement of a shed in Petitioners' side yard as indicated above and its position facing away from the Montgomerys' property.


FRANCIS X. BORGERDING, JR.
409 Washington Avenue, Suite 600
Towson, Maryland 21204
410-296-6820
ATTORNEY FOR PROTESTANT,
James Montgomery

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of June, 2009, a copy of the foregoing was mailed, first-class postage prepaid, to:

Bruce Edward Covahey, Esquire
614 Bosley Avenue
Towson, Maryland 21204


FRANCIS X. BORGERDING, JR.

11/6/08

IN RE: **PETITIONS FOR SPECIAL HEARING ***
AND VARIANCE

NE/S Beachwood Road, 375' NW of *
Lynhurst Road

(4130 Beachwood Road) *
15th Election District *
7th Council District *

Joseph A. Burlock, Sr., et ux *
Petitioners *

BEFORE THE

ZONING COMMISSIONER

OF

BALTIMORE COUNTY

Case No. 2009-0070-SPHA

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by the owners of the subject property, Joseph A. Burlock, Sr., and his wife, Judith Ann Burlock. The Petitioners seek special hearing relief to determine the location of the front yard of the existing single family dwelling (its orientation) adjacent to the Back River, and, if necessary, for variance relief from Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow an accessory structure (shed) in the front/side yard of the existing single family dwelling in lieu of the required rear yard. The subject property and requested relief are more particularly 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 requests were the Petitioners, Joseph A. and Judith Ann Burlock, and their attorney, Herbert Burgunder, III. The Petitioners additionally submitted a two (2) page Petition signed by 17 residents living on Beachwood Road that support the shed's current location. *See* Petitioners' Exhibit 18. Appearing as Protestants and concerned adjacent property owners were James M. Montgomery of 4132 Beachwood Road, Walter R. Hnatiuk of 4128 Beachwood Road, and Michael P. Elder of 4112 Beachwood Road. It is also noted that this matter comes before me as the result of an anonymous complaint registered

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Date 11-2-08

By [Signature]

with the Code Enforcement Division of the Department of Permits and Development Management (DPDM) relative to the shed being moved from the rear to the front yard and also the shed being enlarged.¹

Testimony and evidence presented revealed that the subject property is a waterfront lot approximately 50 feet wide and 190 feet deep, located with frontage on Back River and adjacent to the northeast side of Beachwood Road in eastern Baltimore County. The property contains a gross area of 0.22 acres (9,450 square feet), more or less, zoned D.R.5.5, and is improved with a single-family dwelling and a pier extending out into the water. In addition to the dwelling and pier, there is an accessory shed on the site and Petitioners store their recreational vehicles (a camper and boat mounted on a trailer²) on the east side of the dwelling. Mr. Burlock testified that he and his wife purchased the property and the two-story home in 1995 and have made substantial improvements to the structure that was originally built in 1944. Petitioners' photographic Exhibit 2A illustrates the homes appearance in 1995; photograph 2B – its appearance post-improvements. He further testified that there is very limited space between the right-of-way of Beachwood Road and what he characterizes as the front of the dwelling. He described the orientation of the home on the lot, the physical characteristics of the property, including exterior appearance, interior layout and the consistent historical use of the porch and door located on the southeast side of the home adjacent to Beachwood Road as being used as the main entrance. Based on this history, the location of other accessory buildings in the community

¹ The property was inspected by Leonard Wasilewski, Planner II, at the request of Carl Richards, Supervisor of Zoning Review (July 18, 2008) and James H. Thompson, Supervisor, Bureau of Code Enforcement (October 16, 2008). Both determined that the home fronts upon the water known as Back River.

² B.C.Z.R. Section 415A pertains to recreational vehicles and boats and allows in pertinent part the storage of one recreational vehicle no closer than 2 ½ feet from any side lot line that is situated at least 8 feet to the rear of a lateral projection front foundation line of the dwelling. Section 415A.3 provides a further exception for waterfront lots allowing (from November 1st through March 31st) the out-of-water boat storage of a boat less than 16 feet mounted on a trailer.

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and the home's physical characteristics, Mr. Burgunder presented legal argument and placed reliance on the factors set forth by the Court of Special Appeals in *Swoboda v. Wilder* 173 Md. App. 615 (2007). Messrs. Montgomery and Hnatiuk testified in opposition. They say it is simply inconceivable given the unique characteristics of waterfront property that using the door located on the street side of the home (as everyone owning waterfront property does) would somehow define the area positioned between the dwelling and the water as the rear yard. It is within that yard space as illustrated on the site plan that the Petitioners have placed their accessory shed not far from the side property line adjoining the Montgomery's property.

I find that Petitioners reliance on *Swoboda* is misplaced. First, the Zoning Commissioner's Policy Manual (Z.C.P.M.) at Sections 400.1.a and 400.2.a provides a determination of what constitutes the front yard on waterfront lots based on the orientation of the houses and accessory buildings. In most cases, as is the situation here, waterfront lots refer to the front of the structure facing the water. Secondly, and most relevant to the issues presented in the petition for special hearing, is an appreciation of the past history involving nearby properties, which is briefly outlined. Petitioners point to the location of existing accessory structures (in-ground pool and shed) at 4128 Beachwood that are located in the yard area between the home and the water. These structures would be in violation of B.C.Z.R. Section 400.1. Mr. Hnatiuk, however, stated under oath that the requisite variances had been granted for both allowing them to be placed in the front yard. He said that Sylvan Pools demanded the variance before they would start construction. Similarly, a variance was granted in Case No. 76-75-A to allow an accessory structure (swimming pool) in the front yard in lieu of the required rear yard for 4126 Beachwood Road. In Case No. 02-573-A, then Zoning Commissioner Lawrence Schmidt denied the owners at 4116 Beachwood Road a variance to permit accessory structures (screened

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building and above-ground swimming pool) to be located in the front yard in lieu of the required rear yard as they impeded the water views of other property owners. It is also noted that in Case No. 92-187-A, Mr. James Weimer, at 4116 Beachwood Road, petition for variance relief from the same regulations as set forth above (Section 400.1 of the B.C.Z.R.) to permit a screened house to be located in the front yard near the water. After the requisite public hearing, Deputy Zoning Commissioner Timothy Kotroco granted the variance. A Protestant, Mrs. Lotz took an appeal of that decision to the County Board of Appeals, which affirmed the grant of the variance. On further appeal by Mrs. Lotz to the Circuit Court, the Board's decision was affirmed by Order of Judge Thomas J. Bollinger on August 11, 1993. Mrs. Lotz later appealed the case to the Court of Special Appeals. In an unreported 13-page decision, the Court of Special Appeals reversed the relief and denied the variance. In its decision, the Court held that Mr. Weimer did not meet the requirements for variance relief to be granted under Section 307 of the B.C.Z.R. In all of these cases, it was determined what constitutes front yards and rear yards for waterfront homes in Beachwood. That is to say, the front yard is the waterfront and this presumption can only be overcome by "clear and convincing evidence" to the contrary. The prior decisions of this Commission, Board of Appeals, and Appellate Court create as they must a presumption of correctness.

The not-so-simple answer has to do with the shed variance now that it has been determined to be in the front side (east) yard 75 feet back from the road and 2 feet off the common property line according to the site plan submitted (Petitioners' Exhibit 1). Mr. Montgomery and his wife are the most affected and testified that they have owned and resided on their property for over 23 years. The Montgomery's are vehemently opposed to the location of

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structure which they maintain is clearly visible and blocks their water view when they sit in their breezeway (See Protestants' photographs submitted as Exhibits 2 and 4).

Following the hearing, I visited the subject site and drove the community. Observations made during that visit are particularly relevant in reaching the conclusion that variance relief is warranted; however, I will grant a modification of the relief requested. I will grant a variance to allow a reduced setback and require alterations to the plan. Specifically, the Petitioners shall amend their plan so as to depict the shed's location a distance 65 feet from Beachwood Road (10 feet closer to the road than currently positioned) and no closer than 3 feet from the common property line. This restriction will require the Petitioners to somewhat reconfigure their parking layout used to store recreational vehicles. It is anticipated that the Petitioners will be able to provide sufficient parking under B.C.Z.R. Section 415A.1A. The configuration of the existing home on the property and constraints associated the lack of a rear yard meets the requirements of Section 307 of the B.C.Z.R. for modified relief to be granted. Strict compliance with the regulations would result in a practical difficulty and unreasonable hardship.

Pursuant to the advertisement, posting of the property and public hearing on these Petitions held, and for the reasons set forth above, it is my opinion that the Petitioners house fronts on the water along with the majority of the even numbered homes in the 4100 block of Beachwood Road, however, the structure's location on the lot well prior to the implementation of the zoning regulations in Baltimore County creates a uniqueness when compared with other developed lots in this area. Accordingly, the relief requested shall be denied in part and yet granted in part with conditions.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this
6th day of November 2008, that the Petition for Special Hearing to determine

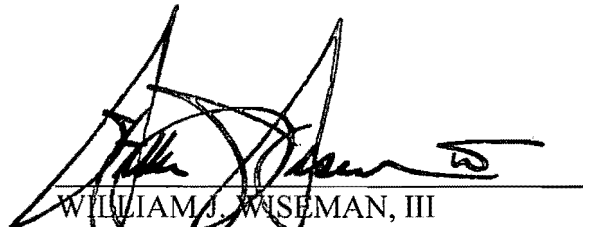
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Date 11-5-08
By [signature]

the location of the front yard of the existing single family dwelling adjacent to the Back River, be and is hereby RESOLVED that the waterfront property is the front yard and the rear yard abuts upon Beachwood Road; and

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow an accessory structure (shed) in front/side yard of existing single family dwelling in lieu of the required rear yard, be and is hereby GRANTED, subject to the following restrictions which are conditions precedent to the partial relief being granted:

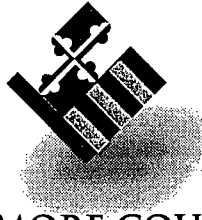
1. Within thirty (30) days of the issuance of this Order, the Petitioners shall submit a Revised site plan to this Commission incorporating the modified relief granted herein for inclusion in the Department of Permits and Development Management (DPDM) case file. Specifically, the Revised site plan shall reflect the measurements of the existing shed to be relocated in the east side yard at a distance of 65 feet northeast of Beachwood Road and 3 feet northwest of the property line.
2. The Petitioners shall then, within ninety (90) days of any final Order in this case, relocate the storage shed from the front of the property to the new location as indicated on the Revised site plan.
3. The Petitioners shall permit a representative of the Code Enforcement Division of the Department of Permits and Development Management (DPDM) reasonable access to the property to insure compliance with this Order.

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


WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:dlw

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BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

November 6, 2008

WILLIAM J. WISEMAN III
Zoning Commissioner

Herbert Burgunder, III
Law Offices of Herbert Burgunder, III
1501 Sulgrave Avenue, Suite 207
Baltimore, MD 21209

RE: PETITIONS FOR SPECIAL HEARING AND VARIANCE

NE/S Beachwood Road, 375' NW of Lynhurst Road
(4130 Beachwood Road)
15th Election District - 7th Council District
Joseph A. Burlock, Sr., et ux – *Petitioners*
Case No. 2009-0070-SPHA

Dear Mr. Burgunder:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petitions for Special Hearing and Variance have been denied in part and granted in part with conditions, in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Department of Permits and Development Management office at 887-3391.

Very truly yours,

A handwritten signature in black ink, appearing to read "William J. Wiseman, III", written over a large, stylized star or asterisk symbol.

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:dlw
Enclosure

- c: Joseph A. and Judith Ann Burlock, 4130 Beachwood Road, Baltimore, MD 21222
James M. Montgomery, 4132 Beachwood Road, Baltimore, MD 21222
Walter R. Hnatiuk, 4128 Beachwood Road, Baltimore, MD 21222
Michael P. Elder, 4112 Beachwood Road, Baltimore, MD 21222
Chesapeake Bay Critical Area Commission, 1804 West Street, Suite 100,
Annapolis, MD 21401

People's Counsel; Code Enforcement Division, DPDM; Office of Planning; DEPRM; File



Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at

4130 BEACHWOOD RD

which is presently zoned

DR 5.5

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

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

(This box to be completed by planner)

TO DETERMINE THE LOCATION OF THE FRONT YARD
OF EX SFD ADJACENT TO BACK YARD

Property is to be posted and advertised as prescribed by the zoning regulations.

I, or we, agree to pay expenses of above Special Hearing, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

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

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address

Telephone No.

City

State

Zip Code

Attorney For Petitioner:

Herbert Burgunder III

Name - Type or Print

Signature

Law Offices of Herbert Burgunder III

Company

1501 Sulgrave Avenue, Suite 207 410-664-6500

Address

Telephone No.

Baltimore

MD

21209

City

State

Zip Code

Legal Owner(s):

Judith Ann Burlock

Name - Type or Print

Signature

Joseph A. Burlock Sr.

Name - Type or Print

Signature

4130 Beachwood Road

Address

Telephone No.

Baltimore

MD

21222

City

State

Zip Code

Representative to be Contacted:

Herbert Burgunder III

Name

1501 Sulgrave Avenue, Suite 207 410-664-6500

Address

Telephone No.

Baltimore

MD

21209

City

State

Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

Case No.

2009-0070-BHHA

REV 9/15/98

ORDER RECEIVED FOR FILING

AVAILABLE FOR HEARING

Reviewed By

com

Date

9/9/08

Date

By



TAX. ACCOUNT # 1502002540

Petition for Variance

to the Zoning Commissioner of Baltimore County
for the property located at 4130 Beachwood Road
which is presently zoned DR S.5

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s) 400.1 TO ALLOW AN ACCESSORY STRUCTURE

IN FRONT/~~REAR~~ SIDE YARD OF EX SFD IN LIEU OF THE
REQUIRED REAR YARD

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

~~NO EXISTING REAR~~
TO BE DETERMINED AT HEARING.

Property is to be posted and advertised as prescribed by the zoning regulations.

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

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

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address

Telephone No.

City

State

Zip Code

Attorney For Petitioner:

Herbert Burgunder III

Name - Type or Print

Signature

Law Offices of Herbert Burgunder III

Company

1501 Sulgrave Avenue Suite 201 410-664-6500

Address

Telephone No.

City

State

Zip Code

Legal Owner(s):

Judith Ann Burlock

Name - Type or Print

Signature

Joseph A. BURLOCK SR

Name - Type or Print

Signature

4130 Beachwood Road

Address

Telephone No.

Baltimore

City

MD

State

21222

Zip Code

Representative to be Contacted:

Herbert Burgunder III

Name

Address

Telephone No.

City

State

Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Case No. 2009-0070-SPHA

REV 9/15/98

Date

11-6-08

Reviewed By

CM

Date

9/9/08

By

DW

Zoning Description

Zoning description for 4130 Beachwood Road.

Beginning at a point on the northeast side of Beachwood Road, which has a right-of-way width of 50 feet, at a distance of 375 feet northwesterly from the turn in Beachwood Road as shown on the Plat dated July 2, 1937, and recorded among the Plat Records of Baltimore County at Plat Book 10, folio 123. Being Lot 10 on the Plat of Beachwood containing 9,450 square feet, more or less. Also known as 4130 Beachwood Road and located in the 15th Election District and the 7th Councilmanic District.

**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: #2009-0070-SPHA
4130 Beachwood Road
N/east side of Beachwood
Road, 375' n/west of Lynhurst
Road

15th Election District
7th Councilmanic District
Legal Owner(s): Judith & Joseph Burlock

Special Hearing: to determine the location of the front yard of existing single family dwelling adjacent to back river. **Variance:** to allow an accessory structure in front side yard of existing single family dwelling in lieu of the required rear yard.

Hearing: Wednesday, October 29, 2008 at 9:00 a.m. in Hearing Room 1, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204.

WILLIAM J. WISEMAN, III
Zoning Commissioner for
Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-4386.

(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

JT/10/656 Oct. 14 186086

CERTIFICATE OF PUBLICATION

10/16/, 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 10/14/, 2008.

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



LEGAL ADVERTISING

CERTIFICATE OF POSTING

ATTENTION: KRISTEN MATHHEWS

DATE: 10/17/08

Case Number: 2009-0070-SPHA

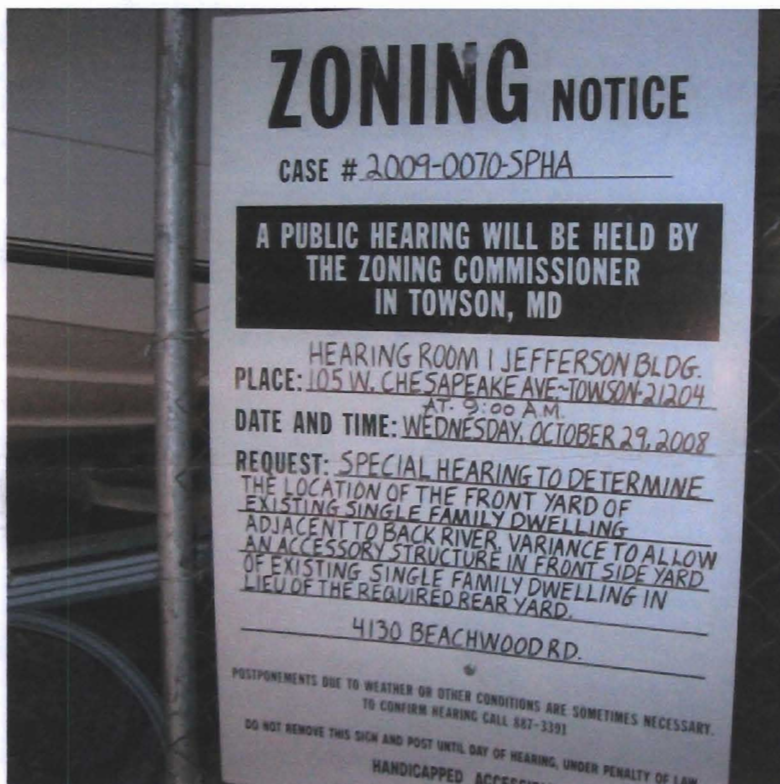
Petitioner / Developer: HERBERT BURGUNDER, ESQ.~

MR. & MRS. BURLOCK

Date of Hearing (Closing): OCTOBER 29, 2009

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:
4130 BEACHWOOD ROAD

The sign(s) were posted on: OCTOBER 12, 2008



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)

RECEIVED

APR 14 2009

BALTIMORE COUNTY
BOARD OF APPEALS

Requested: March 31, 2009

APPEAL SIGN POSTING REQUEST

CASE NO.: 09-070-SPHA

4130 Beachwood Road

15th ELECTION DISTRICT

APPEALED: 12/5/08

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: Theresa Shelton
Administrator

45 F3

CASE NO.: 09-070-SPHA

LEGAL OWNER: Joseph and Judith Burlock

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

4130 BEACHWOOD ROAD
N/E SIDE OF BEACHWOOD ROAD, 375' N/W OF LYNHURST ROAD

The sign was posted on 4.14.08, 2008.

By: M. Stuart Kelly
(Signature of Sign Poster)

M. STUART KELLY
(Print Name)

PHOTOGRAPHIC RECORD

Citation/Case No.: 09-070-SPHA 4130 BEACHWOOD RD
Date of Photographs: 4-14-09



I HEREBY CERTIFY that I took the 2 photographs set out above, and that these photographs
(number of photos)
fairly and accurately depict the condition of the property that is the subject of the above-referenced
citation/case number on the date set out above.

M. H. Aitken
Enforcement Officer

ALSO DOWNROAD 221A

4142-070-PO

PO 41-12



Waterbury

**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: 2009-0070-SPHA
Petitioner: JUDITH ANN BURLOCK
Address or Location: 4130 ~~BURLOCK~~ BEACHWOOD RD

PLEASE FORWARD ADVERTISING BILL TO:

Name: HERBERT BURGUNDER III
Address: 1501 SULGRAVE AVE STE 207
BALTO MD 21209

Telephone Number: 410-664-6500

Revised 7/11/05 - SCJ

TO: PATUXENT PUBLISHING COMPANY
Tuesday, October 14, 2008 Issue - Jeffersonian

Please forward billing to:

Herbert Burgunder
1501 Sulgrave Avenue, Ste. 207
Baltimore, MD 21209

410-664-6500

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: 2009-0070-SPHA

4130 Beachwood Road

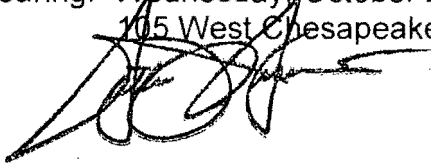
N/east side of Beachwood Road, 375' n/west of Lynhurst Road

15th Election District – 7th Councilmanic District

Legal Owners: Judith & Joseph Burlock

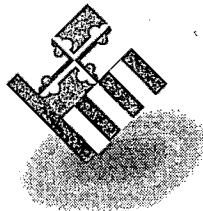
Special Hearing to determine the location of the front yard of existing single family dwelling adjacent to back river. Variance to allow an accessory structure in front side yard of existing single family dwelling in lieu of the required rear yard.

Hearing: Wednesday, October 29, 2008 at 9:00 a.m. in Hearing Room 1, Jefferson Building,
105 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 KOTROCO, Director
September 29, 2008
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: 2009-0070-SPHA

4130 Beachwood Road

N/east side of Beachwood Road, 375' n/west of Lynhurst Road

15th Election District – 7th Councilmanic District

Legal Owners: Judith & Joseph Burlock

Special Hearing to determine the location of the front yard of existing single family dwelling adjacent to back river. Variance to allow an accessory structure in front side yard of existing single family dwelling in lieu of the required rear yard.

Hearing: Wednesday, October 29, 2008 at 9:00 a.m. in Hearing Room 1, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204

A handwritten signature in cursive script, reading "Timothy Kotroco".

Timothy Kotroco
Director

TK:klm

C: Herbert Burgunder, 1501 Sulgrave Avenue, Ste. 207, Baltimore 21209
Mr. & Mrs. Burlock, 4130 Beachwood Road, Baltimore 21222

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, OCTOBER 14, 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

February 26, 2009

NOTICE OF ASSIGNMENT

CASE #: 09-070-SPHA IN THE MATTER OF: Joseph A. Burlock, Sr and
Judith Ann Burlock / Legal Owners /Petitioners
4130 Beachwood Road
15th Election District; 7th Councilmanic District

RE: SPH – to determine location of front yard of SFD adjacent to Back River;
VAR – to allow accessory structure in front side yard

11/6/08 –ZC decision that location of the front yard is RESOLVED that the waterfront property is the front yard and the Petition for Variance is GRANTED with restrictions.

ASSIGNED FOR: WEDNESDAY, MAY 13, 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).

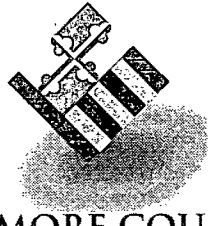
If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Theresa R. Shelton, Administrator

c: Appellant	: James Montgomery
Counsel for Petitioner/Legal Owner	: Herbert Burgunder, III, Esquire
Petitioner/Legal Owner	: Joseph A. Burlock, Sr and
	Judith Ann Burlock

Walter Hnatiuk
Michael Elder
Chesapeake Bay Critical Commission

People's Counsel for Baltimore County
William Wiseman, III, Zoning Commissioner,
Timothy Kotroco, Director/PDM



BALTIMORE COUNTY
M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, *Director*
Department of Permits and
Development Management
October 23, 2008

Herbert Burgunder III
Law Office of Herbert Burgunder III
1501 Sulgrave Ave. Ste. 207
Baltimore, MD 21209

Dear: Herbert Burgunder III

RE: Case Number 2009-0070-SPHA, 4130 Beachwood Rd.

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on September 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 cursive script that reads "W. Carl Richards, Jr.".

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR:lnw

Enclosures

c: People's Counsel
Judith A. & Joseph A. Burlock, 4130 Beachwood Rd., Baltimore, MD 21222



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

State Highway
Administration

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

Maryland Department of Transportation

Date: SEPT. 23, 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 2009-0070-SHA
4130 BEACHWOOD RD
BURLOCK PROPERTY
SPECIAL HEARING
VARIANCE

Dear Ms. Matthews:

Thank you for the opportunity to review your referral request on the subject of the above captioned. We have determined that the subject property does not access a State roadway and is not affected by any State Highway Administration projects. Therefore, based upon available information this office has no objection to Baltimore County Zoning Advisory Committee approval of Item No. 2009-0070-SHA

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,

Fo¹ 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



BW
10/29
9AM

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: October 23, 2008

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

RECEIVED
OCT 27 2008

BY:

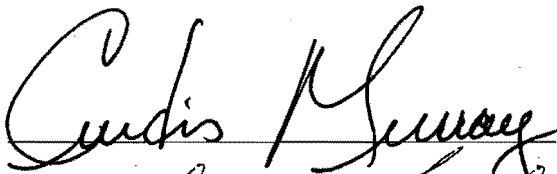
SUBJECT: Zoning Advisory Petition(s): **Case(s) 09-070- Variance and Special Hearing**

The Office of Planning has reviewed the above referenced case(s) and offers the following:

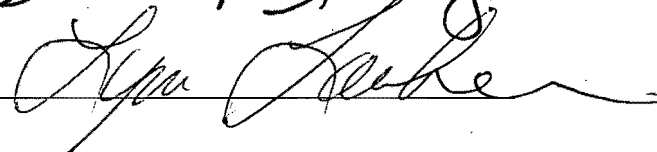
The existing shed that is on the site should be razed. Additionally, the petitioner has several recreational vehicles parked on the site. Only one recreational vehicle is permitted. Impervious calculations should be included on the site plan, it appears that the proposal cover more than 15% of the site. Lastly the proposed shed should be located further from the property line as it is in close proximity to the adjacent home.

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

Prepared By:



Division Chief:
CM/LL



BW

10-29-08
10AM

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

RECEIVED
SEP 30 2008

BY:

TO: Timothy M. Kotroco
FROM: Dave Lykens, DEPRM - Development Coordination
DATE: September 30, 2008
SUBJECT: Zoning Item # 09-070-SPHA
Address 4130 Beachwood Road
(Burlock Property)

Zoning Advisory Committee Meeting of September 22, 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:

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

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

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

Additional Comments:

This property is located within the CBCA and is within a Limited Development Area (LDA). LDA regulations permit lot coverage up to 31.25%. Mitigation is required between 25% and 31.25%. This area is also located within a Buffer Management Area (BMA 79-1). There is also a 15% afforestation (tree coverage) requirement on all lots located within the LDA.

Reviewer: Shawn L. Krout

Date: 9/29/2008

S:\Devcoord\I ZAC-Zoning Petitions\ZAC 2009\ZAC 09-070-SPHA.doc

BALTIMORE COUNTY, MARYLAND
Interoffice Correspondence

DATE: October 16, 2008

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

FROM: James H. Thompson, Supervisor
Bureau of Code Enforcement

SUBJECT: 4130 Beachwood Road
Burlock-Property Owners

*J.T.
Please place this
memo in the Z.C.'s
variance file*

Per your request, I have made an inspection of 4130 Beachwood Road. It is my opinion that the front of the residential dwelling does face the water (Back River). However, the Zoning Commissioner will make an official determination on this matter on October 29, 2008 in Case No. 2009-0070-SPHA. The property owners Judith and Joseph Burlock have filed both a Special Hearing and Variance petition.

In the Special Hearing petition, a determination is to be made as to what is the front yard of this property. The Variance petition was filed to allow an accessory structure in the front/side yard of the existing single family dwelling in lieu of the required rear yard. Assuming the Zoning Commissioner agrees with me, the accessory structure is not only in the front yard but it is closer than 2½ft. from the property line.

Regarding recreational vehicles, both a camper and a boat mounted on a trailer are on this property. This is a violation of section 415A.1 of the Baltimore County Zoning Regulations (BCZR). This regulation only permits one recreational vehicle stored on a residential lot. Furthermore, the placement of the camper and boat are not only closer than 2½ft. from the side property line but the camper fails to meet the 8ft. setback requirement from the lateral projection of the front foundation line of the dwelling. (415A.1A BCZR) Again, this is assuming the Zoning Commissioner rules the waterside of this land is the front yard.

Director Kotroco, we have an upcoming public hearing that fails to address two additional issues. One: the number of recreational vehicles and their placement on the property. Two: once a determination is made as to front yard orientation, a setback violation as to accessory structure placement is evident. The plat submitted at the petition filing indicates not only a shed 12ft.x 10ft. but also one that is 2ft. from the side property line. Lastly, the placement of the petition sign of 4130 Beachwood Road could be called in question? What's to prevent someone from parking in front of this sign thus preventing anyone from seeing it from Beachwood Road?

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: September 23, 2008

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

SUBJECT: Zoning Advisory Committee Meeting
For September 29, 2008
Item Nos. 2009-0065, 0066, 0067, 0068,
0070, 0072, 0073, 0074, and 0076

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

DAK:CEN:lrk
cc: File
ZAC-09232008 -NO COMMENTS

RE: PETITION FOR SPECIAL HEARING * BEFORE THE
AND VARIANCE *
4130 Beachwood Road; NE/S Beachwood Rd, * ZONING COMMISSIONER
375' NW of Lynhurst Road *
15th Election & 7th Councilmanic Districts * FOR
Legal Owner(s): Judith & Joseph Burlock *
Petitioner(s) * BALTIMORE COUNTY
* 09-070-SPHA

* * * * *

ENTRY OF APPEARANCE

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

RECEIVED

SEP 29 2008

.....

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 29th day of September, 2008, a copy of the foregoing Entry of Appearance was mailed to Herbert Burgunder, III, Esquire, 1501 Sulgrave Avenue, Suite 207, Baltimore, MD 21209, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Case No: 08-5192Address: 04130 BEACHWOOD RD 21222Insp Area: 015 Dist: 000 Date Rcv: 5/28/2008 Grp: ENF Intk: JRA/KHInspec: THOMPSON, Buck Inspec2: _____ Date Inspec: 8/26/2008Close: 0/00/0000 Activity: _____ Delete: Problem: SHED MOVED FROM REAR TO FRONT YARD, SHED ENLARGEDCL Name: ANONYMOUSCL Address: 00000CL Home Phone: _____ CL Work Phone: _____ Tax Acct. 1502002540Owner: JUDITH A & JOSEPH A SR BURLOCK

Enter=Continue F12=Cancel

Case No: 08-5192

Notes: ***6/2/08, ISSUE NOTICE TO PUT SHED BACK IN REAR OR SIDE YARD, ANON
COMPL, P/U 6/10/08.BT/CJ***

6/11/08, P/U 6/12/08 FOR B.T., CR/CP

6/16/08, ASSIGNED TO BT, CR/VR

6/16/08, POP UP FOR REINSPECTION, P/U 7/2/08, BT/CJ

***6/26/08, SPOKE WITH OWNERS ATTORNEY. EXTENSION REQUESTED. ATTORNEY IS
MEETING WITH CARL RICHARDS NEXT WEEK AND REQUESTED EXTENSION PENDING HIS
DISCISON. COMPLIANCE DATE PUSHED BACK TO 7/7/08. BT***

****7/18/08 PROPERTY INSPECTED BY LEN WASILEWSKI PER CR REQUEST. LTR SENT TO
ATTORNEY STATING THAT THE HOUSE FRONTS THE WATER ALONG WITH THE MAJORITY OF
THE BLOCK AND THAT THE SHED AND RV PARKING REQUIRE A VARIANCES. NOTE BECAUSE
THIS IS A VIOLATION CASE, THE OWNER CANNOT FILE FOR AN ADMINISTRATIVE
VARIANCE.LW/LW*****

***7/21/08, ATTORNEY HAS SENT ME A LETTER REQUESTING FURTHER EXTENSION TO
ALLOW FOR FILING OF VARIANCE. EXTENSION GRANTED UNTIL 8/15/08, BT***

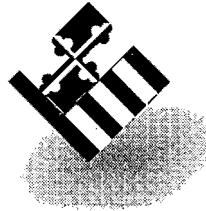
Enter=Continue F12=Cancel

↓ CARL
Richards

Permits Development - Livability System
View Cases

Notes: 8/22/08 PER TELECON W/ JIM MONTGONERY A SECOND RV HAS BEEN PARKED O
N THIS PROPERTY. NO RECORD OF A APPOINTMENT TO FILE FOR A VARIANCE CONFIRMED B
Y LJW. NOTE: LETTER IN ENFORCEMENT FILE REGARDING HOUSE ORIENTATION. P
/U 8/26/08 LW/LW*****

Enter=Continue F12=Cancel



BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

July 21, 2008

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

Herbert Burgunder III
Law Offices of Herbert Burgunder III
Mt. Washington Center
1501 Sulgrave Avenue, Suite 207
Baltimore, Maryland 21209

Re: 4130 Beachwood Road Determination of Front Yard

Dear Mr. Burgunder:

Your letter Dated July 15, 2008 to Carl Richards has been forwarded to me for response. A review of the documentation you provided and a physical inspection of the neighboring properties, has given this office enough evidence to conclude that the above listed house **fronts on the water** along with the majority of the houses on the North East Side of Beachwood Road.

Please note: The shed located on the water side of the house in question is in the front yard and as such requires a variance to Section 400 of the Baltimore County Zoning Regulations (BCZR). Additionally, recreational vehicles may be stored in the side or rear yard of a single family dwelling, **8 feet behind the front foundation and 2 ½ feet from the side and/or rear property lines** pursuant to Section 415.a (BCZR). I have enclosed a copy of the variance application for your disposition.

I trust that the information set forth in this letter is sufficiently detailed and responsive to your inquiry.

Sincerely,

Leonard Wasilewski
Planner II, Plans Review

CC: Code Enforcement
08-350/LW

Debra Wiley - Re: 2009-0070-SPHA - Search Request

From: Carl Richards
To: Wiley, Debra; Wiseman, Bill
Date: 10/29/08 3:21 PM
Subject: Re: 2009-0070-SPHA - Search Request
CC: Perlow, Jeffrey

Debra, Also see policy #400.1.a, Pg. 4-1 Zoning Policy Manual for accessory structures would also be used just to determine orientation for setback purposes. This policy was backed up by the CC over the Bd. of A. in case # 85-106SPH

>>> Debra Wiley 10/29/2008 1:30 PM >>>
Carl,

Since Bill heard the evidence in this case, he's not comfortable with obtaining your advice since it appears within the file on Zoning Enforcement Case 08-5192 that you or Len Wasilewski have determined that this waterfront house fronts the water. He asks that you or one of your staff look into any zoning variances granted to 4128 Beachwood Road. Arguments were made that since this property has a pool and shed on the water side of the house, that those accessory structures would indicate the front of that property facing on Beachwood Road. The owner of that property was present and stated that he had to get a variance for the pool and shed's location. This and any other variance relief would tend to support your finding that the rear of the home faces on the public street.

Please let Bill or myself know if you can help out in searching for this or other variance relief for "front yard accessory structures".

Thanking you in advance.

Debbie Wiley
Legal Administrative Secretary
Office of the Zoning Commissioner
105 West Chesapeake Avenue, Suite 103
Towson, Md. 21204
410-887-3868
410-887-3468 (fax)
dwiley@baltimorecountymd.gov

From: Thomas Peddicord
To: Bostwick, Thomas
Date: 10/30/08 11:10:09 AM
Subject: Re: Recent Legislation?

Tom,

Several months ago, the Planning Board recommended comprehensive amendments to the CMDP that addressed this issue. The Board gave notice to the Council under Section 504.2 of the Zoning Regulations. The Council did not object.

I believe the amendments have now gone into effect. You may want to check with Pat Keller.

>>> Thomas Bostwick 10/30/2008 10:54 AM >>>

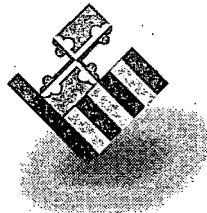
Tom,

Bill Wiseman asked me to send this email to you because he is in an HOH Development Plan hearing this morning.

Yesterday, we were discussing what constitutes the "front" of a dwelling and the impact of a recent case decided by the Court of Special Appeals entitled Swoboda v. Wilder, 173 Md.App. 615 (2007). In that case, the Court of Special Appeals indicated that determining the front, side, and rear orientation of a dwelling could not be done as a matter of law based merely on the applicable zoning regulations, the dwelling's street address, and the placement of accessory structures, but rather required consideration of all physical characteristics of the property, including exterior appearance, interior layout, length of each face, and consistent use of main entrance.

Bill then indicated that he had spoken recently with attorney Carroll Holzer who told him that since that case was decided, the Council passed legislation that more clearly defined what constitutes the "front" of a house. We're not familiar with anything to that effect; can you shed some light on whether there has been anything passed in the last year or so related to the definition of "front" or determining the orientation of a dwelling? Thanks for giving this a look.

Thomas H. Bostwick
Deputy Zoning Commissioner
for Baltimore County
105 West Chesapeake Avenue, Suite 103
Towson, Maryland 21204
Phone: (410) 887-3868
Fax: (410) 887-3468



BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, Director
February 5, 2009
Department of Permits and
Development Management

Herbert Burgunder, III
Law Offices of Herbert Burgunder, III
1501 Sulgrave Avenue, Ste. 207
Baltimore, MD 21209

Dear Mr. Burgunder:

RE: Case 2009-0070-SPHA, 4130 Beachwood Road

Please be advised that an appeal of the above-referenced case was filed in this office on December 5, 2008 from James Montgomery. 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
Joseph & Judith Burlock, 4130 Beachwood Road, Baltimore 21222
James Montgomery, 4132 Beachwood Road, Baltimore 21222
Walter Hnatiuk, 4128 Beachwood Road, Baltimore 21222
Michael Elder, 4112 Beachwood Road, Baltimore 21222
Chesapeake Bay Critical Commission, 1804 West Street, Ste. 100, Annapolis 21401

APPEAL

Petition for Special Hearing & Variance
4130 Beachwood Road
N/east side of Beachwood Road, 375' n/west of Lynhurst Road
15th Election District – 7th Councilmanic District
Legal Owners: Joseph & Judith Burlock

Case No.: 2009-0070-SPHA

Petition for Special Hearing & Variance (September 9, 2008)

Zoning Description of Property

Notice of Zoning Hearing (September 29, 2008)

Certification of Publication (The Jeffersonian – October 14, 2008)

Certificate of Posting (October 12, 2008) by Linda O'Keefe

Entry of Appearance by People's Counsel (September 29, 2008)

Petitioner(s) Sign-In Sheet – One Sheet

Protestant(s) Sign-In Sheet - None

Citizen(s) Sign-In Sheet – Two Sheets

Zoning Advisory Committee Comments

Code Enforcement Case Notes - 5/28/08

Petitioners' Exhibit

1. Site Plan
2. (A & B) Photos
3. Aerial of Area
- 4-7. Photos
8. Addition added to existing home
- 9-17. Photos
18. Petition of Support
19. Letter from Mr. Joseph Burlock
20. Site Plan

Protestants' Exhibits:

1. Aerial Photo
2. Photos
3. Note from Petitioner to Protestant
4. Photos

Miscellaneous (Not Marked as Exhibit)

1. Letter dated July 21, 2008 from Leonard Wasilewski
2. Email dated October 29, 2008 from Carl Richards
3. Letter dated October 31, 2008 from Thomas Peddicord

Zoning Commissioner's Order (GRANTED – November 6, 2008)

Notice of Appeal received on December 5, 2008 from James Montgomery

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner
Timothy Kotroco, Director of PDM
See Attached

date sent February 5, 2009, klm

APPEAL

Petition for Special Hearing & Variance
4130 Beachwood Road
N/east side of Beachwood Road, 375' n/west of Lynhurst Road
15th Election District – 7th Councilmanic District
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- ✓ Entry of Appearance by People's Counsel (September 29, 2008)
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- Protestant(s) Sign-In Sheet - None
- ✓ Citizen(s) Sign-In Sheet – Two Sheets
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- ✓ Code Enforcement Case Notes - 5/28/08

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- ✓ 4. Photos

RECEIVED

FEB - 6 2009

**BALTIMORE COUNTY
BOARD OF APPEALS**

Miscellaneous (Not Marked as Exhibit)

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- ✓ 2. Email dated October 29, 2008 from Carl Richards
- ✓ 3. Letter dated October 31, 2008 from Thomas Peddicord

- ✓ Zoning Commissioner's Order (GRANTED – November 6, 2008)
- ✓ Notice of Appeal received on December 5, 2008 from James Montgomery

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner
Timothy Kotroco, Director of PDM
See Attached

date sent February 5, 2009, klm

Burlock 09-070-SPHA Addresses

Joseph and Judith Burlock
4130 Beachwood Road
Baltimore, MD 21222
(410-574-4588)

Herbert Burgunder, III
1501 Sulgrave Avenue, Ste 207
Baltimore, MD 21209

Mr. Boozer will be taking over for Mr. Burgunder

Appellant/Protestant:

James Montgomery
4132 Beachwood Road
Baltimore, MD 21222

> Need to know if Petition for Variance
filed & Case #.

Walter R. Hnatiuk
4128 Beachwood Road
Baltimore, MD 21222

Michael P. Elder
4112 Beachwood Road
Baltimore, MD 21222

State of Maryland
Chesapeake Bay Critical Area Commission
1804 West Street, Suite 100
Annapolis, MD 21401

Interoffice:

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

Variance

James
Montgomery

Case #:

Req to file for
Variance

§3-6-2005
\$8,500 penalty

Hearing 11/14/08
Cvilt #42-711
Cite #

2/24 Burlock
changing
atty ~
atty wants
case info
on neighbor

NOTICE OF CIVIL TRACK ASSIGNMENT AND SCHEDULING ORDER

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

RECEIVED
JAN - 8 2010

BALTIMORE COUNTY
BOARD OF APPEALS

County Board Of Appeals For Baltimore County
Suite 203, Jefferson Buil
105 W Chesapeake Avenue
Towson MD 21204

Assignment Date: 01/07/10

Case Title: In The Matter Of Joseph A Burlock, Et Al
Case No: 03-C-09-012324 AA

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..... 01/22/10
2. All Motions (excluding Motions in Limine) are due by..... 02/26/10
3. TRIAL DATE is..... 04/07/10

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: Francis X Borgerding Jr
cc: Bruce Edward Covahey Esq
cc: Frank Vernon Boozer Esq
Issue Date 01/07/10

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

MAY - 7 2010

BALTIMORE COUNTY
BOARD OF APPEALS

NOTICE OF HEARING / TRIAL

Case Number: 03-C-09-012324 AA

Administrative Agency : 09-070-SPHA

C I V I L

In The Matter Of Joseph A Burlock, Et Al

STATE OF MARYLAND, BALTIMORE COUNTY COUNTY, TO WIT:

TO: County Board Of Appeals For Baltimore County
Suite 203, Jefferson Building
105 W Chesapeake Avenue
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:
July 16, 2010
At: 09:30 AM
Civil Non-Jury Trial
1/2-1 HOUR ADMINISTRATIVE APPEAL (AGREED DATE)

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

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

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

Please refer to Information Desk for Court Room Designation.

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

Assignment Clerk: Johnson Jennifer L
Assignment Office Phone: (410)-887-2660

Date Issued: 05/05/10

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

Case Number: 03-C-09-012324 AA

County Board Of Appeals For Baltimore County
Suite 203, Jefferson Building
105 W Chesapeake Avenue
Towson, MD 21204

FOLD HERE

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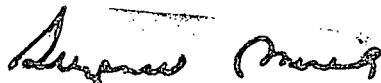
N O T I C E O F R E C O R D

Case Number: 03-C-09-012324 AA
Administrative Agency : 09-070-SPHA
C I V I L

In The Matter Of Joseph A Burlock, Et Al

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 20th day of November, 2009.



Suzanne Mensh
Clerk of the Circuit Court, per 

Date issued: 11/23/09

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

RECEIVED
NOV 25 2009
BALTIMORE COUNTY
BOARD OF APPEALS

LEAS

CASE NAME Burlock et al
CASE NUMBER 2009 - 6070 - SPIRA
DATE 10-29-08

PETITIONER'S SIGN-IN SHEET

[illegible]

CASE NAME _____
CASE NUMBER _____
DATE _____

[illegible]



Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search (2007 vw5.1)

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

Account Identifier: District - 15 Account Number - 1502002540

Owner Information

Owner Name: BURLOCK JUDITH A **Use:** RESIDENTIAL
 BURLOCK JOSEPH A,SR **Principal Residence:** YES
Mailing Address: 4130 BEACHWOOD RD **Deed Reference:** 1) /11082/ 593
 BALTIMORE MD 21222-3605 2)

Location & Structure Information

Premises Address **Legal Description**
 4130 BEACHWOOD RD 4130 BEACHWOOD RD
 WATERFRONT BEECHWOOD

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
104	4	29					10	3	Plat Ref: 10/ 123

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

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1944	2,240 SF	9,450.00 SF	34
Stories	Basement	Type	Exterior
2	NO	STANDARD UNIT	SIDING

Value Information

	Base Value	Value	Phase-in Assessments	
		As Of	As Of	As Of
		01/01/2006	07/01/2008	07/01/2009
Land	145,450	145,450		
Improvements:	153,310	153,310		
Total:	298,760	298,760	298,760	NOT AVAIL
Preferential Land:	0	0	0	NOT AVAIL

Transfer Information

Seller: BARRY JOHN FRANCIS,SR	Date: 06/13/1995	Price: \$93,500
Type: IMPROVED ARMS-LENGTH	Deed1: /11082/ 593	Deed2:
Seller: BARRY JOHN F,SR	Date: 05/18/1990	Price: \$0
Type: NOT ARMS-LENGTH	Deed1: / 8484/ 464	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 *

(3) Solely because the resident is a member or organizer of any tenant's organization.

The circuit court held that the statute required that the owners' motive must be "solely" retaliatory and the evidence was undisputed that appellees intended to change the use of the property. Thus, the motives could not be "solely" retaliatory. On appeal, appellants do not challenge that holding.

Instead, appellants argue that the court failed to consider the County ordinance, which contained different language. Section 16.516(c) provides that no mobile home park owner shall evict a tenant

(1) Because the resident or other occupant has filed a written complaint, or complaints, against the mobile home park owner or operator with any public agency or agencies;

(2) Because the resident or other occupant has filed a lawsuit, or lawsuits, against the mobile home park owner or operator; or

(3) Because the resident or other occupant is a member of any tenants'; or residents' organization.

Appellants argue that the County law does not require that the motive be solely retaliatory and whether it was in part retaliatory is a question of fact, thus defeating summary judgment.

We expressly do not decide whether and, if so, under what circumstances, the retaliatory eviction provisions may apply to a tenant holding over proceeding. We only address the situation before us in the context of appellants' limited contention.

[5, 6] With respect to any differences between the Act and local law, a local law cannot "diminish or limit any right or remedy granted" under the Act. § 8A-1801. This applies to owners as well as tenants. Section 8A-202(c)(3) recognizes that a mobile home park owner has the right to cease operating as a mobile home park, upon giving the requisite notice. At the end of the notice term, the owner had the right to initiate tenant holding over proceedings, as discussed above. The

retaliatory eviction provisions do not apply under these circumstances.

JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANTS.

920 A.2d 518

Lawrence SWOBODA, et al.

v.

Charles WILDER, et ux.

No. 0070, Sept. Term, 2006.

Court of Special Appeals of Maryland.

April 4, 2007.

Background: Neighbors and community association petitioned for judicial review of decision of county board of appeals approving a building permit for proposed addition to end unit of a townhouse group. The Circuit Court, Baltimore County, Jakubowski, J., affirmed. Neighbors and community association appealed.

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

- (1) determination of end unit's yard orientation required consideration of all physical characteristics of the property;
- (2) substantial evidence supported board's determination that end unit fronted on the intersecting street, rather than the end unit's address street which the townhouse group's interior homes fronted on;
- (3) board was not required to give dispositive weight to the opinions expressed by the opponents' zoning and real estate experts; and
- (4) opinion of unit owners' architectural expert was supported by ample factual evidence.

Affirmed.

ORIENTATION OF HOUSE
RNOF v RRAH

4126 Beachwood Road

76-75-A

Pursuant to the advertisement, posting of property, and public hearing on the above Petition and it appearing that by reason of the following finding of facts that strict compliance with the Baltimore County Zoning Regulations would result in practical difficulty and unreasonable hardship upon the Petitioners,

the ~~above~~ Variance should be had; and it further appearing that by reason of the granting of the Variance requested not adversely affecting the health, safety, and general welfare of the community, the Variance to permit an accessory structure (swimming pool) in the front yard in lieu of the required rear yard should be granted.

IT IS ORDERED by the Zoning Commissioner of Baltimore County, this

20th

day of October, 1975, that the herein Petition for the aforementioned Variance should be and the same is GRANTED, from and after the date of this Order, subject to the approval of a site plan by the Department of Public Works and the Office of Planning and Zoning.

[Signature]
Zoning Commissioner of Baltimore County

Pursuant to the advertisement, posting of property and public hearing on the above petition and it appearing that by reason of

the above Variance should NOT BE GRANTED.

IT IS ORDERED by the Zoning Commissioner of Baltimore County, this day of 1975 that the above Variance be and the same is hereby DENIED.

[Signature]
Zoning Commissioner of Baltimore County



85-106-SPH

CAROL DOHME - 85-106-SPH

a variance in this matter. The special hearing before this Board was specifically to determine what is the front yard and what is the rear yard of this property. We believe that the testimony presented before the Board at hearing may have been sufficient to warrant a variance to allow the shed to be located in the side yard, but as this matter was not an issue before this Board, no such decision can be reached at this time.

Under the circumstances the Board determines that the petition for special hearing should be denied.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 1st day of August, 1985, by the County Board of Appeals, ORDERED that the shed is determined to be located in the front yard of the Petitioner's property and as such the petition for special hearing is DENIED.

Any appeal from this decision must be in accordance with Rules B-1 through B-13 of the Maryland Rules of Procedure.

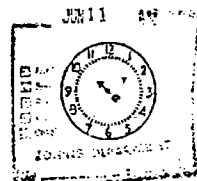
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman

Keith S. Franz
Keith S. Franz

Diana K. Vincent
Diana K. Vincent

Rettye



CASE NO. 85-106-SPH

FILED
COUNTY BOARD OF APPEALS
NO JUN 10 A 9 49

CAROL DOHME, et al

Plaintiffs/
Appellants

Vs.

BALTIMORE COUNTY
BOARD OF APPEALS

Defendant/
Appellee

IN THE

CIRCUIT COURT

FOR BALTIMORE COUNTY

CASE NO. 85 CG 2764

Docket 14

Page 224

OPINION OF THE COURT

In this appeal from a decision of the Baltimore County Board of Appeals, Appellants contend that the Board erred in its interpretation of Section 400.1 of the Baltimore County Zoning Regulations. This Court agrees and will reverse the Board's decision.

The regulation in question provides in pertinent part that accessory buildings in residential zones shall be located only in the rear yard. Appellants are the owners of waterfront property and erected a shed on that portion of their property between the dwelling and the waterfront. People's Counsel contends that it considers that portion of Appellants' property a "front yard" and argue that the portion of the property which faces the street is the "rear yard" of waterfront property.

On a petition filed by the owners of the property, the Zoning Commissioner, after conducting a hearing, found that in the absence of specific regulation, the question of which is the rear of the property should be determined by such factors as the direction which the house faces, the configuration of the houses

FILED JUN 6 1986

(12)

IN RE: PETITION FOR VARIANCE

NE/S Beachwood Road, 700' NW of the c/l
Beachwood Road
(4116 Beachwood road)
15th Election District
7th Council District

James A. Weimer
Petitioner

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 02-573-A
*

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the owner of the subject property, James A. Weimer. The Petitioner seeks relief from Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit accessory structures (screened gazebo and swimming pool) to be located in the front yard in lieu of the required rear yard. The subject property and requested relief 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 was James Weimer, property owner. Rondalyn Lotz and William Titus, adjacent property owners on either side of the property, appeared as Protestants in the matter.

Testimony and evidence presented revealed that the subject property is a waterfront lot, approximately 50 feet wide and 184 feet deep, located with frontage on Back River and adjacent to the north side of Beachwood Road in eastern Baltimore County. The property contains a gross area of 0.219 acres, more or less, zoned D.R.5.5 and is improved with a single family dwelling. In addition to the dwelling, there are several accessory structures on the site. Although Mr. Weimer has resided on the property since 1998, the property has been in his family for a number of years. In fact, Mr. Weimer indicated that when he acquired the property in 1998, he razed the existing dwelling and constructed a new single family dwelling thereon.

At issue in the instant case are two accessory structures that are located between the house and the water. Due to the unique characteristics of waterfront property, the front yard is defined as that area between the dwelling and the water. Within that yard area, the Petitioner

IN RE: PETITION FOR SPECIAL HEARING
S/S Beachwood Road, 920' NW of the c/l
Lynhurst Road
(4117A & 4118A Beachwood Road)
15th Election District
7th Council District

William J. Titus
Petitioner

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 03-185-SPH
*

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Hearing filed by the owner of the subject property, William J. Titus. The Petitioner requests a special hearing, pursuant to Sections 431.A, 431.B.1, 2 and 3(c) of the Baltimore County Zoning Regulations (B.C.Z.R.), to approve the parking of a commercial vehicle exceeding 10,000 lbs. G.V.W. in the front yard of a residential lot owned by the Petitioner, though not his residence. The subject property and requested relief 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 William Titus, property owner, Charles Stempor, who resides on the subject property at 4117A Beachwood Road, and Rondalyn Lotz, who resides nearby at 4118 Beachwood Road. Appearing as Protestants in the matter were Michael P. Elder and James A. Weimer, adjacent property owners.

Testimony and evidence offered revealed that the subject property is located on the north and south sides of Beachwood Road, not far from its intersection with Lynhurst Road in eastern Baltimore County. The property is comprised of two lots, identified as Lots 17A and 18A of the subdivision known as Beachwood, an older community which was recorded in the Land Records of Baltimore County prior to the adoption of the zoning regulations. Each lot is 50 feet wide and 125 feet deep and together contain a combined gross area of 12,500 sq.ft. zoned D.R.5.5. The property is served by public water and sewer and is improved with a single-family dwelling.

#4112
PAUL ELDER

May 13, 2009 at 10:00 ✓
completed

Memorandum 6/26/09

Opinion & Order
Issued 9/11/09

09-070-SPHA

July 30, 2009 @ 9 A.M. - Deliberation

(200900070)

EXHIBITS

202

12-5-08

Petition for Special Hearing and Variance

Petitioner: Ref: Joseph Burlock

Protestant: Ref: James Montgomery

CASE No. 2009-0070 SPHA

Rec'd
12/5/08

Appeal

Petition for relief from Zoning code violations at 4130 Birchwood Rd.

(1) Old unused swing set in front yard next to water and 4132 Birchwood Rd

(SEE Picture)

(2) Weed covered pile of dirt in front yard

(SEE Picture)

(3) Camper Trailer backed into front yard

(SEE Picture)

(4) Storage Shed moved Thirty Five ft (35')

from historic location into front yard

(SEE Exhibit A and Picture)

To move the Trailer and Shed will not cause any hardship for the property owner. As they have been at the location for thirteen (13) years with the shed in its previous location.

PAGE (2)CASE No 2009-0070-SPHA.

If the Trailer is moved towards Beachwood Road, where it has traditionally been parked and the shed moved back to its historic location. Then turned 90° Northwest with the door facing 4130 Beachwood, it would provide an additional five (5) ft. of parking space, plus more privacy for 4130 and 4132 Beachwood Rd.

In conclusion if this relief is granted, it will restore the comfort of our home. Since we cannot sit on our front deck because of my wife's medical condition, we use our laneway. As it is now, we are looking at the side of a camper trailer and storage shed instead of the water.

James N. Montgomery
Protestant

An aerial photograph of a residential neighborhood, rotated 90 degrees clockwise. The image shows a grid of streets and individual houses. Numerous property addresses are labeled in white text, including 1507001630, 1507001631, 1507001632, 1507001633, 1507001634, 1507001635, 1507001636, 1507001637, 1507001638, 1507001639, 1507001640, 1507001641, 1507001642, 1507001643, 1507001644, 1507001645, 1507001646, 1507001647, 1507001648, 1507001649, 1507001650, 1507001651, 1507001652, 1507001653, 1507001654, 1507001655, 1507001656, 1507001657, 1507001658, 1507001659, 1507001660, 1507001661, 1507001662, 1507001663, 1507001664, 1507001665, 1507001666, 1507001667, 1507001668, 1507001669, 1507001670, 1507001671, 1507001672, 1507001673, 1507001674, 1507001675, 1507001676, 1507001677, 1507001678, 1507001679, 1507001680, 1507001681, 1507001682, 1507001683, 1507001684, 1507001685, 1507001686, 1507001687, 1507001688, 1507001689, 1507001690, 1507001691, 1507001692, 1507001693, 1507001694, 1507001695, 1507001696, 1507001697, 1507001698, 1507001699, 1507001700, 1507001701, 1507001702, 1507001703, 1507001704, 1507001705, 1507001706, 1507001707, 1507001708, 1507001709, 1507001710, 1507001711, 1507001712, 1507001713, 1507001714, 1507001715, 1507001716, 1507001717, 1507001718, 1507001719, 1507001720, 1507001721, 1507001722, 1507001723, 1507001724, 1507001725, 1507001726, 1507001727, 1507001728, 1507001729, 1507001730, 1507001731, 1507001732, 1507001733, 1507001734, 1507001735, 1507001736, 1507001737, 1507001738, 1507001739, 1507001740, 1507001741, 1507001742, 1507001743, 1507001744, 1507001745, 1507001746, 1507001747, 1507001748, 1507001749, 1507001750, 1507001751, 1507001752, 1507001753, 1507001754, 1507001755, 1507001756, 1507001757, 1507001758, 1507001759, 1507001760, 1507001761, 1507001762, 1507001763, 1507001764, 1507001765, 1507001766, 1507001767, 1507001768, 1507001769, 1507001770, 1507001771, 1507001772, 1507001773, 1507001774, 1507001775, 1507001776, 1507001777, 1507001778, 1507001779, 1507001780, 1507001781, 1507001782, 1507001783, 1507001784, 1507001785, 1507001786, 1507001787, 1507001788, 1507001789, 1507001790, 1507001791, 1507001792, 1507001793, 1507001794, 1507001795, 1507001796, 1507001797, 1507001798, 1507001799, 1507001800, 1507001801, 1507001802, 1507001803, 1507001804, 1507001805, 1507001806, 1507001807, 1507001808, 1507001809, 1507001810, 1507001811, 1507001812, 1507001813, 1507001814, 1507001815, 1507001816, 1507001817, 1507001818, 1507001819, 1507001820, 1507001821, 1507001822, 1507001823, 1507001824, 1507001825, 1507001826, 1507001827, 1507001828, 1507001829, 1507001830, 1507001831, 1507001832, 1507001833, 1507001834, 1507001835, 1507001836, 1507001837, 1507001838, 1507001839, 1507001840, 1507001841, 1507001842, 1507001843, 1507001844, 1507001845, 1507001846, 1507001847, 1507001848, 1507001849, 1507001850, 1507001851, 1507001852, 1507001853, 1507001854, 1507001855, 1507001856, 1507001857, 1507001858, 1507001859, 1507001860, 1507001861, 1507001862, 1507001863, 1507001864, 1507001865, 1507001866, 1507001867, 1507001868, 1507001869, 1507001870, 1507001871, 1507001872, 1507001873, 1507001874, 1507001875, 1507001876, 1507001877, 1507001878, 1507001879, 1507001880, 1507001881, 1507001882, 1507001883, 1507001884, 1507001885, 1507001886, 1507001887, 1507001888, 1507001889, 1507001890, 1507001891, 1507001892, 1507001893, 1507001894, 1507001895, 1507001896, 1507001897, 1507001898, 1507001899, 1507001900, 1507001901, 1507001902, 1507001903, 1507001904, 1507001905, 1507001906, 1507001907, 1507001908, 1507001909, 1507001910, 1507001911, 1507001912, 1507001913, 1507001914, 1507001915, 1507001916, 1507001917, 1507001918, 1507001919, 1507001920, 1507001921, 1507001922, 1507001923, 1507001924, 1507001925, 1507001926, 1507001927, 1507001928, 1507001929, 1507001930, 1507001931, 1507001932, 1507001933, 1507001934, 1507001935, 1507001936, 1507001937, 1507001938, 1507001939, 1507001940, 1507001941, 1507001942, 1507001943, 1507001944, 1507001945, 1507001946, 1507001947, 1507001948, 1507001949, 1507001950, 1507001951, 1507001952, 1507001953, 1507001954, 1507001955, 1507001956, 1507001957, 1507001958, 1507001959, 1507001960, 1507001961, 1507001962, 1507001963, 1507001964, 1507001965, 150700196

IN THE MATTER OF: * BEFORE THE

JOSEPH A. BURLOCK, SR and * COUNTY BOARD OF APPEALS

JUDITH ANN BURLOCK/Legal * OF

Owners/Petitioners * BALTIMORE COUNTY

4130 Beachwood Road * Case No. 09-070-SPHA

15th Election District * May 13, 2009

7th Councilmanic District *

* * * * *

The above-entitled matter came on for hearing

before the County Board of Appeals of Baltimore County at

Hearing Room #2, Second Floor, Jefferson Building, 105 W.

Chesapeake Avenue, Towson, Maryland 21204, at 10 a.m., May

13, 2009.

ORIGINAL

Reported by: C.E. Peatt

SE 2-H

BACK RIVER HYDROLOGY AREA

2008 CZMP Permits Hold Layer (See Dev. Mgt. for Filing Date)

SE 3-H



CBOA 5-13-09 Appt Gr #4

9AM

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: October 23, 2008

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

RECEIVED
BY.....

SUBJECT: Zoning Advisory Petition(s): **Case(s) 09-070- Variance and Special Hearing**

The Office of Planning has reviewed the above referenced case(s) and offers the following:

The existing shed that is on the site should be razed. Additionally, the petitioner has several recreational vehicles parked on the site. Only one recreational vehicle is permitted. Impervious calculations should be included on the site plan, it appears that the proposal cover more than 15% of the site. Lastly the proposed shed should be located further from the property line as it is in close proximity to the adjacent home.

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

Prepared By:

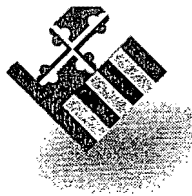
Curtis Murray

Division Chief:

CM/LL

John Alexander

CBA Appellant Ex #8
5-13-09



BALTIMORE COUNTY

M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

July 21, 2008

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

Herbert Burgunder III
Law Offices of Herbert Burgunder III
Mt. Washington Center
1501 Sulgrave Avenue, Suite 207
Baltimore, Maryland 21209

Re: 4130 Beachwood Road Determination of Front Yard

Dear Mr. Burgunder:

Your letter Dated July 15, 2008 to Carl Richards has been forwarded to me for response. A review of the documentation you provided and a physical inspection of the neighboring properties, has given this office enough evidence to conclude that the above listed house **fronts on the water** along with the majority of the houses on the North East Side of Beachwood Road.

Please note: The shed located on the water side of the house in question is in the front yard and as such requires a variance to Section 400 of the Baltimore County Zoning Regulations (BCZR). Additionally, recreational vehicles may be stored in the side or rear yard of a single family dwelling, **8 feet behind the front foundation** and **2 ½ feet from the side and/or rear property lines** pursuant to Section 415.a (BCZR). I have enclosed a copy of the variance application for your disposition.

I trust that the information set forth in this letter is sufficiently detailed and responsive to your inquiry.

Sincerely,

Leonard Wasilewski
Planner II, Plans Review

CC: Code Enforcement
08-350/LW

CPA Approval Ex #9
5/13-09

For: Jim Montgomery

410-218-7095

BALTIMORE COUNTY, MARYLAND
Interoffice Correspondence

J.T.
Please place this
memo in the Z.C.'s
variance file

DATE: October 16, 2008

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

FROM: James H. Thompson, Supervisor
Bureau of Code Enforcement

SUBJECT: 4130 Beachwood Road
Burlock-Property Owners

Per your request, I have made an inspection of 4130 Beachwood Road. It is my opinion that the front of the residential dwelling does face the water (Back River). However, the Zoning Commissioner will make an official determination on this matter on October 29, 2008 in Case No. 2009-0070-SPHA. The property owners Judith and Joseph Burlock have filed both a Special Hearing and Variance petition.

In the Special Hearing petition, a determination is to be made as to what is the front yard of this property. The Variance petition was filed to allow an accessory structure in the front/side yard of the existing single family dwelling in lieu of the required rear yard. Assuming the Zoning Commissioner agrees with me, the accessory structure is not only in the front yard but it is closer than 2½ft. from the property line.

Regarding recreational vehicles, both a camper and a boat mounted on a trailer are on this property. This is a violation of section 415A.1 of the Baltimore County Zoning Regulations (BCZR). This regulation only permits one recreational vehicle stored on a residential lot. Furthermore, the placement of the camper and boat are not only closer than 2½ft. from the side property line but the camper fails to meet the 8ft. setback requirement from the lateral projection of the front foundation line of the dwelling. (415A.1A BCZR) Again, this is assuming the Zoning Commissioner rules the waterside of this land is the front yard.

CBA Mella
ax #10
5-13-09

IN RE: PETITION FOR VARIANCE

NE/S Beachwood Road, 700' NW of the c/l
Beachwood Road
(4116 Beachwood road)
15th Election District
7th Council District

James A. Weimer
Petitioner

* BEFORE THE

* ZONING COMMISSIONER

* OF BALTIMORE COUNTY

* Case No. 02-573-A

*

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the owner of the subject property, James A. Weimer. The Petitioner seeks relief from Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit accessory structures (screened gazebo and swimming pool) to be located in the front yard in lieu of the required rear yard. The subject property and requested relief 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 was James Weimer, property owner. Rondalyn Lotz and William Titus, adjacent property owners on either side of the property, appeared as Protestants in the matter.

Testimony and evidence presented revealed that the subject property is a waterfront lot, approximately 50 feet wide and 184 feet deep, located with frontage on Back River and adjacent to the north side of Beachwood Road in eastern Baltimore County. The property contains a gross area of 0.219 acres, more or less, zoned D.R.5.5 and is improved with a single family dwelling. In addition to the dwelling, there are several accessory structures on the site. Although Mr. Weimer has resided on the property since 1998, the property has been in his family for a number of years. In fact, Mr. Weimer indicated that when he acquired the property in 1998, he razed the existing dwelling and constructed a new single family dwelling thereon.

At issue in the instant case are two accessory structures that are located between the house and the water. Due to the unique characteristics of waterfront property, the front yard is defined as that area between the dwelling and the water. Within that yard area, the Petitioner

DATE RECEIVED FOR FILING
8/20/12
BY [signature]

Appellant BO/A 5-13-09 #3 collected 2 DOCS

Case No.: 2009-0070-SPHA

4130 BEACHWOOD ROAD

Exhibit Sheet

Petitioner/Developer

Protestant

No. 1	SITE PLAN	Aerial Photo ^{PRIOR to} ~~Post~~ Shed Relocation to Front Sideyard
No. 2	2A - HOME APPEARANCE 1995 2B HOME APPEARANCE Post/improv.	3 photo's NOTING SHEDS Current location "front yard" BOAT and CAMPER
No. 3	AERIAL OF AREA - SHOWS PATTERN OF DEVELOPMENT	Note from Petitioner to Protestant re. sideyard Setback Problem
No. 4	PHOTO - PORCH : ENTRANCE 1995	Photographs - Existing Conditions after shed moved forward
No. 5	PHOTO - AREA PREVIOUS SHED LOCATED	
No. 6	PHOTO - ENTRANCE and electric Service	
No. 7	PHOTO - PAD WHERE PRIOR SHED LOCATED	
No. 8	ADDITION ADDED TO EXISTING HOME	
No. 9	PHOTO - IMPROVED HOME WITH ENTRANCE & MAILBOX	
No. 10	ENTRANCE to SUBJECT HOME - SHED SHOWN IN YARD	
No. 11	PHOTO OF PARKING at Rt-of-Way	
No. 12	SHED LOCATION IN YARD	

Case No.: 2009-0070-SPHA

4130 BEACHWOOD ROAD

Exhibit Sheet

Petitioner/Developer

Protestant

No. 1	SITE PLAN	Aerial Photo ^{PRIOR to} ~~Post~~ Shed's Relocation to Front Sideyard
No. 2	2A - HOME APPEARANCE 1995 2B HOME APPEARANCE Post/Improv.	3 Photo's Noting SHEDS Current Location "front yard" BOAT and CAMPER
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No. 8	ADDITION ADDED TO EXISTING HOME	
No. 9	Photo - IMPROVED HOME WITH ENTRANCE & MAILBOX	
No. 10	ENTRANCE TO SUBJECT HOME - SHED SHOWN IN YARD	
No. 11	Photo OF PARKING at RT-of-Way	
No. 12	SHED LOCATION IN YARD	

09-070-Spha

5-13-09

#

Exhibits

Protestants

Applicant

Bullock

1 ✓ Photo from Mr. Bullock's yard showing
ing placement of Shed (gray building)
(water to left.)

2 ✓ 4116 Beachwood Rd C50/A 92-187A Vanner
(collector's exhibit - 4 opinions)

3 ✓ CBA 02-573A - Findings & conclusions of Law
& plot (2 documents collectively)

✓ 4. Diagram of area - aerial photo

✓ 5 Photos: A Southeast entrance to breezeway
B. Through breezeway towards water
C. Same

✓ 6 Photos A- Through breezeway towards water
B- Photo of shed moved to front yard
C- Shed w/ landscaping
D- Petitioner's camper & boat
E- Same as above
F From Nadick property to Petitioner
driveway
G From Street side towards water
H. From Shed showing slab & breezeway
I Bullock additional shed
J CRABBING?

✓ 7 Diagram of site

✓ 8 Agency Comment. Planning 10-23-08

✓ 9 Planner to Petitioner letter dated 7-21-08

✓ 10 memo from Code Enforcement to Cochoco 10-16-08

✓ 11 Plot of neighborhood lots

Verified
5/13/09
HSS

BURLOCK

BURLOCK

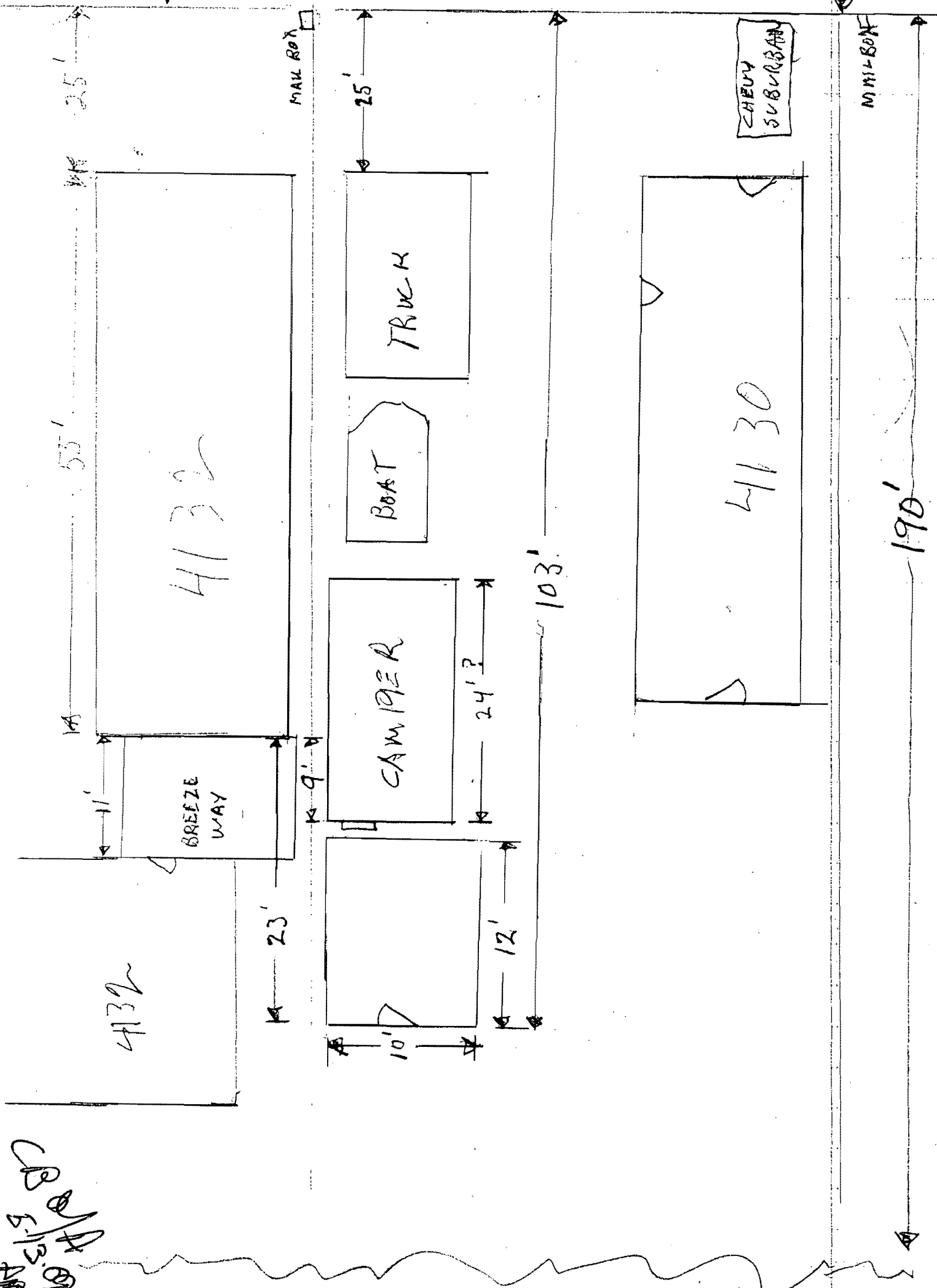
Verf
5/13/09
JRS

SE

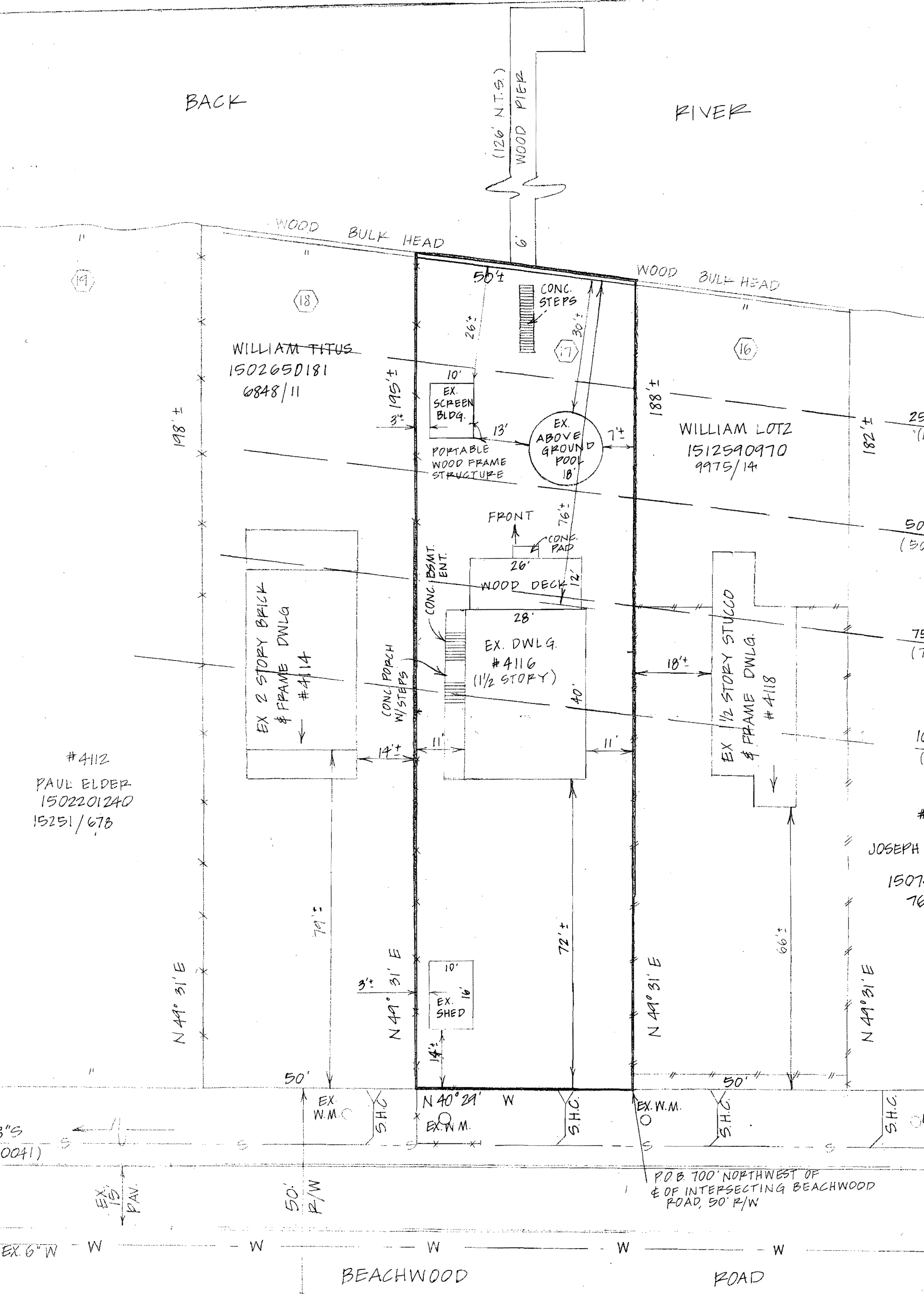
BEACHWOOD ROAD

NW

USABLE PORTION OF RD



Handwritten notes in the bottom left corner, including a signature and the date 5/13/08.



LEGEND

- SEWER HOUSE CONNECTION: S.H.C.
- WATER METER: W.M.
- SANITARY SEWER LINE: --- S ---
- WATER LINE: --- W ---
- CHAINLINK FENCE: --- X ---
- WOOD FENCE: --- # ---

John Fitzhugh Dorney Jr.

PLAT TO ACCOMPANY PETITION FOR ZONING ☒ VARIANCE ☒ SPECIAL HEARING

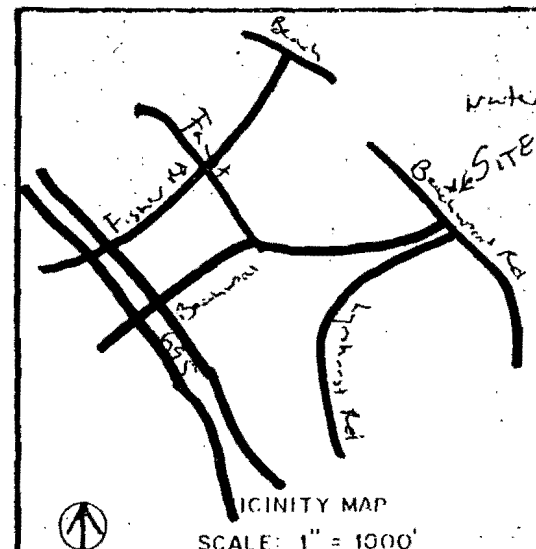
PROPERTY ADDRESS 4130 Beachwood Road

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

SUBDIVISION NAME _____

PLAT BOOK # 10 FOLIO # 123 LOT # 10 SECTION # _____

OWNER Joeth A. Birlack and Joseph A. Birlack Sr.



LOCATION INFORMATION

ELECTION DISTRICT 15

COUNCILMANIC DISTRICT 7

1" = 200' SCALE MAP # 104B1

ZONING DR5-5

LOT SIZE .22 9450
ACREAGE SQUARE FEET

	PUBLIC	PRIVATE
SEWER	☒	☐
WATER	☒	☐

	YES	NO
CHESAPEAKE BAY CRITICAL AREA	☒	☐

100 YEAR FLOOD PLAIN	☐	☒
----------------------	--------------------------	-------------------------------------

HISTORIC PROPERTY/ BUILDING	☐	☒
-----------------------------	--------------------------	-------------------------------------

PRIOR ZONING HEARING NONE

ZONING OFFICE USE ONLY

REVIEWED BY _____ ITEM # _____ CASE # _____

CM

0070

2009 -
0070-SPH

EXHIBIT B

Walter A. and Eva L.

Hunting

9,150 sq. ft.

Lot 11

15-1510950300

SHED

POOL

HISTORIC LOCATION

NEW LOCATION

James M. and Helen G. Montgomery

9,500 sq. ft.

Lot 9

15-1502200030

SHED

SHED

SHED

SHED

SHED

SHED

SHED

SHED

SHED

SHED

SHED

SHED

SHED

SHED

SHED

SHED



NORTH

PREPARED BY _____

SCALE OF DRAWING: 1" = 30'