4/1/11

RE:	PETITION FOR SPECIAL HEARING 8301 Wilson Avenue; E/S Wilson Avenue; NE cor b/w Wilson & Woodside Avenues 4th Election & 6th Councilmanic Districts Legal Owner(s): Christopher Malstrom Petitioner(s)	*	BEFORE THE BOARD OF APPEALS FOR BALTIMORE COUNTY 10-094-SPH

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

FINAL DECISION AFTER REMAND BY THE BOARD OF APPEALS

The original hearing on this matter before the Board of Appeals occurred on July 27, 2010 as an appeal by the Office of People's Counsel from an Opinion and Order from the Zoning Commissioner for Baltimore County, dated December 12, 2009. In that Opinion the Zoning Commissioner granted a waiver of the requirement to have a permit for renovation on the second floor of a home that had been constructed in a 100-year riverine floodplain.

The Petitioner, Christopher Malstrom, was represented by Victor W. Fuentealba, Esquire and People's Counsel for Baltimore County, Peter Max Zimmerman, participated.

Mr. Malstrom sought to make renovations to his home located at 8301 Wilson Avenue. He did not apply to Baltimore County for a permit to undertake the renovations. The renovations consisted of the enlargement of the second floor living space from 500 square feet to 900 square feet, to be accomplished by removing and replacing the walls and roof on the second floor of the house.

On June 6, 2008, after notice to cease construction was issued by Baltimore County, Mr. Malstrom applied for a permit to allow for the renovations he had done to his house. The permit application was filed before the Baltimore County Department of Permits and Development management. Mr. Malstrom's application was to disseminated to various County Agencies for their review and comment as a normal part of the permit approval process. The Department of

Public Works (DPW) notes that the property was located within a 100-year riverine floodplain. Based upon the Floodplain location of the property, the Department of Permits and Development Management (DPM) advised Mr. Malstrom that a building permit could not be issued to him as a matter of right. Additionally, by letter dated October 5, 2009, the Director of Public Works suggested he would not oppose the waiver if their was no community opposition and the property was brought into strict compliance. "Strict compliance" meant "move all HVAC and electrical equipment out of the basement, provide flood vents in the basement area and remove all materials subject to flood damage, verify elevation to the first floor with respect to the flood protection elevation".

Mr. Malstrom was further advised that he could apply to the Office of the Zoning Commissioner for a "waiver" from the County Code provisions applicable to development in a 100-year riverine floodplain. Mr. Malstrom did so and received a waiver from the Zoning Commissioner. People's Counsel appealed that decision.

Before the Zoning Commissioner and this Board, Counsel for Petitioner Malstrom moved to have the matter dismissed arguing that his client was exempted from the necessity of obtaining a waiver from the development requirements in a floodplain; citing Section 3112.0 of the Baltimore County Building Code "CONSTRUCTION IN AREAS SUBJECT TO FLOODING", which states:

> "1. General – Selected Definitions
>
> Substantial Improvement – any repair, reconstruction, alteration, or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure (less land value) either: (A) before the improvement or repair is started; or (B) if the structure incurred substantial damage and has been restored, before the damage occurred."...

People's Counsel opposed the position of the Petitioner stating basically that prior to a waiver being issued in a 100-year riverine floodplain, all applicable conditions of Section 32-8-207 of the Code Title pertaining to building permits and the building code must be met.

During the hearing before the Board, Mr. David Thomas, an Engineer and Assistant to the Director of Public Works for Baltimore County testified before the Board on behalf of People's Counsel. He stated that in his experience in working with the Department of Public Works, there was a policy or practice, which the Department used to determine whether or not a particular construction is a "substantial improvement".

In its decision dated December 2, 2010, the Board held that the test for exception to the general rule concerning construction in areas subject to flooding, as contained in Section 3112.0 of the Baltimore County Building Code should be applied to the Building Permit Application filed by Mr. Malstrom before the test for granting a waiver is applied.

Based on the testimony of Mr. Thomas, the Board determined that the matter should be remanded to the Building Engineer at the Department of Permits and Development Management to determine, in accordance with their policy and practice, whether or not Mr. Malstrom has constructed a "substantial improvement" within the meaning of Section 3112.0 of the Baltimore County Building Code and Section 32-8-101(dd) of the Floodplain Management Section of the Baltimore County Code in order to require a building permit.

The Board then issued an Order of Remand and held the matter *sub curia* until such time it received clarification from the Building Engineer.

Subsequent to the Board's decision on December 2, 2010, People's Counsel filed a Motion for Reconsideration, which was received on December 13, 2010. After the Public Deliberation on the Motion to Reconsider, the Board issued a denial of that Motion on January 20, 2011 and Ordered that a hearing date be set before the Board of Appeals for the sole purpose

of taking testimony from the Building Engineer, with respect to the question of constructing a substantial improvement and the method for determining substantial improvement as set forth in the Building Code.

On March 8, 2011 a hearing was held before the Board for the purpose of taking testimony from the Building Engineer. The County Attorney's Office by Nancy C. West, Assistant County Attorney entered its appearance at the hearing. Peter Max Zimmerman, People's Counsel for Baltimore County and Victor W. Fuentealba, Esquire, Counsel for the Petitioner, Christopher Malstrom, were present at the hearing.

At the hearing, Mr. Donald E. Brand, the Baltimore County Building Engineer testified with respect to the question of substantial improvement. Mr. Brand stated that he had reviewed plans that had been submitted to him by Petitioner Malstrom and he had determined that based upon a value of $52.00 per square foot for the renovation work, that the value of the improvements being constructed by Mr. Malstrom were under fifty percent (50%) of the cost of the building. Therefore, they were not considered a substantial improvement under the Code.

The Board then held a Public Deliberation on March 24, 2011 in the above matter. At that time the Board determined that based upon the testimony of the Building Engineer that the renovations did not constitute a substantial improvement within the meaning of the Building Code. Therefore, Petitioner Malstrom should be granted a waiver from the requirement for construction in a flood plain in accordance with Section 32-8-101(aa), (dd) and 32-8-207 of the *Baltimore County Code* (BCC).

In granting this waiver, the Board finds that there is good and sufficient cause since the addition would not be a substantial improvement. Failure to grant the waiver would result in exceptional hardship of having to tear down the second floor of the house. In addition, the waiver will not increase flood heights, impact public safety, incur public expense, create

nuisances, cause fraud , or victimization of the public or conflict with existing local and state laws and ordinances. This finding is based on the fact that the addition is on top of the existing footprint of Petitioner's home and does not seek to expand the footprint outside of the four walls of the existing footprint.

In addition, in making this waiver, the Board is not excusing the Petitioner from meeting the requirements of any other Sections of the Building Code, such as the requirement for electrical and plumbing installations.

ORDER

THEREFORE, IT IS THIS 1st day of April, 2011 by the Board of Appeals for Baltimore County

ORDERED that the Petition for Special Hearing in Case No.: 10-094-SPH, seeking approval of a waiver pursuant to Section 500.6 of the Baltimore County Zoning Regulations (BCZR); Sections 32-4-107(a)(2), 32-4-414, 32-8-301 and 32-8-303 of the Baltimore County Code (BCC) and Section 3112.0 of the Baltimore County Building Code to provide a second story addition built above an existing single family dwelling located in a 100-year floodplain in accordance with Petitioner's plans be and is hereby granted subject to compliance with other Sections of the BCC with regard to plumbing, electrical codes, etc.

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

BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence Wescott, Chairman

Andrew M. Belt

Wendell H. Grier

4/1/11

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

April 1, 2011

Victor Fuentealba, Esquire
Court Square Building, Ste 805
200 E. Lexington Street
Baltimore, MD 21202

Peter M. Zimmerman, Esquire
Carole S. Demilio, Esquire
Office of People's Counsel
The Jefferson Building, Ste 204
105 W. Chesapeake Avenue
Towson, MD 21204

RE: *In the Matter of: Christopher Malstrom – Legal Owner/Petitioner*
Case No.: 10-094-SPH

Dear Counsel:

Enclosed please find a copy of the Final Decision after Remand by the Board of Appeals 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/klc

Theresa R. Shelton
Administrator

TRS/klc
Enclosure
Duplicate Original Cover Letter

c: Christopher Malstrom
Matthew Braid
Lawrence M. Stahl, Managing Administrative Judge
Jeff Mayhew, Deputy Director/Office of Planning
Michael Field, County Attorney, Office of Law
Dave Thomas, DPW
Douglas DuVal
William and M. Gerardine Malstrom
Arnold Jablon, Director/PAI
Nancy West, Assistant County Attorney
Lew Mayer, Building Inspector
Donald Brand, Building Engineer

1/20/11

RE:	PETITION FOR SPECIAL HEARING 8301 Wilson Avenue; E/S Wilson Avenue; NE cor b/w Wilson & Woodside Avenues 4th Election & 6th Councilmanic Districts Legal Owner(s): Christopher Malstrom Petitioner(s)	*	BEFORE THE
		*	BOARD OF APPEALS
		*	FOR
		*	BALTIMORE COUNTY
		*	10-094-SPH

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

RULING AND ORDER ON PEOPLE'S COUNSEL'S MOTION FOR RECONSIDERATION AND CLARIFICATION

On December 2, 2010 the Board issued an Order of Remand in the above case. The Order stated:

"that this matter be REMANDED to the Department of Permits and Development Management (PDM) for the Building Engineer to determine whether or not the Petitioner, Christopher James Malstrom, is constructing a substantial improvement on his property, located at 8301 Wilson Avenue, that requires a building permit in Case No.: 10-094-SPH; and it is further

ORDERED that, such a determination shall set forth the basis upon which the Building Engineer has made his determination; and it is further

ORDERED that, a final ruling will not be issued by the Board of Appeals at this time, but rather the matter shall be held ***sub curia,*** with no further action to be taken by this Board until such time as the Building Engineer issues his determination on whether or not the Petitioner, Christopher James Malstrom, is constructing a substantial improvement on his property, located at 8301 Wilson Avenue, that requires a building permit in Case No.: 10-094-SPH."

On December 13, 2010, People's Counsel filed a Motion for Reconsideration and Clarification. In the Motion, People's Counsel stated:

> " 6. Meanwhile, at a minimum, the CBA should take into account the relevance of other building code provisions. Unless that is done, Petitioner may assume the CBA Order means the construction activities he performed are not subject to any regulation if the addition is not determined to be a substantial improvements. We do not believe the CBA intended such broad latitude, but the matter needs to be clarified so that it is clear that Petitioner's construction is not exempt from the Building Code, a and that there are other provisions of the Building Code relevant to public safety, health and welfare.
>
> * * * * *
>
> 8. Therefore, the scope of review by the Building Engineer should include such other building code provisions as may be relevant, whether or not they find that the construction amounts to a substantial improvement."

The Board feels that there was sufficient opportunity to present the other sections of the Building Code during the original hearing before the Board. The Board dismisses the Motion for Reconsideration and Clarification and requires that the Building Engineer testify in a subsequent hearing before this Board, to determine whether or not Petitioner, Christopher James Malstrom is constructing a substantial improvement on his property, located at 8301 Wilson Avenue, and the basis for such a determination. This will give Petitioner's Counsel an opportunity to cross-examine the Building Engineer with respect to the procedures as set for in the Building Code of Baltimore County.

RULING AND ORDER

THEREFORE, IT IS THIS 20th day of January, 2011 by the Board of Appeals for Baltimore County

ORDERED that the Motion for Reconsideration and Clarification be and is hereby DENIED in Case No.: 10-094-SPH; and it is further

ORDERED that a hearing date be set in Case No.: 10-094-SPH before the Board of Appeals for the sole p[purpose of taking testimony from the Building Engineer, with respect to the question of constructing a substantial improvement and the method for determining substantial improvement as set forth in the Building Code.

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

BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence Wescott, Panel Chair

Andrew M. Belt

Wendell H. Grier

1/20/11

County Board of Appeals of Baltimore County

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

January 20, 2011

Victor Fuentealba, Esquire
Court Square Building, Ste 805
200 E. Lexington Street
Baltimore, MD 21202

Peter M. Zimmerman, Esquire
Carole S. Demilio, Esquire
Office of People's Counsel
The Jefferson Building, Ste 204
105 W. Chesapeake Avenue
Towson, MD 21204

RE: *In the Matter of: Christopher Malstrom – Legal Owner/Petitioner*
Case No.: 10-094-SPH

Dear Counsel:

Enclosed please find a copy of the Ruling and Order on People's Counsel's Motion for Reconsideration and Clarification 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/klc

Theresa R. Shelton
Administrator

TRS/klc
Enclosure
Duplicate Original Cover Letter

c: Christopher Malstrom
Matthew Braid
Lawrence M. Stahl, Chief Administrative Judge
Director/Office of Planning
Michael Field, County Attorney, Office of Law
Dave Thomas, DPW
Douglas DuVal/DuVal & Associates, P.A.
William and M. Gerardine Malstrom
Arnold Jablon, Director/PAI
Nancy West, Assistant County Attorney
Lew Mayer, Building Inspector

Baltimore County, Maryland
OFFICE OF PEOPLE'S COUNSEL
Jefferson Building
105 West Chesapeake Avenue, Room 204
Towson, Maryland 21204

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

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

December 30, 2010

Lawrence S. Wescott, Chairman
County Board of Appeals
105 West Chesapeake Avenue, Suite 203
Towson, MD 21204

Re: Christopher Malstrom
8301 Wilson Avenue
Case No.: 2010-094-SPH

Dear Chairman Wescott:

This supplements our motion for reconsideration. As just reminded us by Donald Brand, the Buildings Engineer, County Code Section 32-8-207(a) (attached) requires a building permit for "all development in the floodplain area notwithstanding any provision in the building code that is to the contrary or less restrictive." It is subject also by subsection (b) to prior approval of necessary permits by the state and federal agencies. It is noteworthy that subsection (d)(3) states that, "Basements are not permitted in the floodplain area." This is a further basis for the Public Works Department position.

The legislative definitions of development, both generally in Code Section 32-4-101(p) and specifically with reference to floodplain management in Code Section 32-8-101(g) are very broad and extend to "…. man-made change to improved or unimproved real estate …."

Our point is that Petitioner Christopher Malstrom's building addition is subject generally to building permit review under this law and to any other relevant building code and development regulations, whether or not the Buildings Engineer finds this is a "substantial improvement." The remand order should be modified to reflect this context.

Thank you for your consideration.

Sincerely,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

PMZ\rmw
Enclosure
cc: Victor W. Fuentealba, Esquire
Donald Brand, Buildings Engineer
David Thomas, Assistant to the Director of Public Works

§ 32-8-207. DEVELOPMENT IN THE FLOODPLAIN AREA.

(a) *In general.* This section applies to all development in the floodplain area notwithstanding any provision in the building code that is to the contrary or less restrictive.

(b) *Permit required.*

(1) The Building Engineer shall require a permit for all development, storage of equipment and materials, or placement of manufactured homes in the floodplain area.

(2) The permit shall be granted only after necessary permits from the state and federal agencies have been obtained.

(c) *Register of permits.*

(1) The county shall maintain a register of permits issued for any residential or nonresidential building construction or improvement in the floodplain area, including the elevation of the lowest floor or the elevation to which the structure was floodproofed, and the elevation of the related base flood level.

(2) The following items are to be maintained in this register, as applicable:

(i) Agreement to supply elevation certificate;

(ii) Non-conversion agreement;

(iii) Declaration of land restrictions;

(iv) Work sheet for substantial improvement;

(v) Checklist for items below flood elevation;

(vi) Floodproofing certificate; and

(vii) Elevation certificate.

(d) *Flood resistant construction.*

(1) Flood resistant construction shall be in accordance with the requirements of the International Code Council's International Building Code currently adopted by the county and as modified in this subsection.

(2) The lowest floor elevations of all new or substantially improved structures shall be those elevations required by the Building Code of Baltimore County.

(3) Basements are not permitted in the floodplain area.

(1988 Code, § 26-668) (Bill No. 174, 1991, §§ 1, 2; Bill No. 173-93, § 2, 11-17-1993; Bill No. 112-02, § 2, 7-1-2004; Bill No. 47-10, § 5, 7-19-2010)

12/21/10

PETITION FOR SPECIAL HEARING 8301 Wilson Avenue; E/S Wilson Avenue; NE cor b/w Wilson & Woodside Avenue 4th Election & 6th Councilmanic Districts Legal Owner(s): Christopher Malstrom	:	BEFORE THE COUNTY BOARD OF APPEALS FOR
Petitioner(s)	:	BALTIMORE COUNTY
	:	Case No: 10-094-SPH

: : : : : : : : : : : : : :

ANSWER TO MOTION FOR RECONSIDERATION
AND CLARIFICATION

Now comes the Petitioner, Christopher Malstrom, by his attorney, Victor W. Fuentealba, Esq., and in answer to the Motion filed by the People's Counsel for Baltimore County, says:

1. The duty of the petitioner Christopher Malstrom to obtain a building permit for the alterations in question to the second floor of his residence has never been an issue.

2. That the Order of Remand signed by the members of the Board of Appeals of Baltimore County dated December 2, 2010 clearly states that the matter was remanded to the Department of Permits and Development Management for the building engineer to determine whether or not the petitioner's alterations to the second floor of his property constituted a "substantial improvement" to his property as defined in various sections of the Baltimore County Building Code.

3. That the petitioner presumes that the aforementioned alterations to the second floor of his home must be in compliance with the applicable provisions of the Baltimore County Building Code.

VICTOR W. FUENTEALBA
200 E. Lexington Street - #805
Baltimore, Maryland 21202
Attorney for Christopher Malstrom

I HEREBY CERTIFY that on this 21st day of December, 2010, a copy of the Petitioner's Answer to the People's Counsel for Baltimore County Motion for Reconsideration and Clarification was mailed by first class mail to Peter Max Zimmerman, Esq., 105 West Chesapeake Avenue, Room 204, Towson, Maryland 21204.

VICTOR W. FUENTEALBA

Law Offices

VICTOR W. FUENTEALBA

SUITE 805, COURT SQUARE BLDG.
200 E. LEXINGTON STREET
BALTIMORE, MD 21202

FAX:
(410) 234-0624

TELEPHONE:
(410) 539-5115

December 21, 2010

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

Re: Case #: 10-094-SPH
Christopher J. Malstrom
8301 Wilson Avenue

Dear Ms. Shelton:

Enclosed please find the original and three (3) copies of the Petitioner's Answer to the Motion for Reconsideration and Clarification filed by People's Counsel in the above matter.

Very truly yours,

VICTOR W. FUENTEALBA

VWF: flw
Enclosures

cc: Peter Max Zimmerman, Esq.

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

December 17, 2010

Peter Max Zimmerman
People's Counsel for
Baltimore County
Suite 204, Jefferson Building
105 W. Chesapeake Avenue
Towson, MD 21204

Victor Fuentealba, Esquire
Court Square Building, Ste 805
200 E. Lexington Street
Baltimore, MD 21202

Re: In the Matter of: Christopher J. Malstrom / Legal Owner
Case No.: 10-094-SPH

Dear Counsel:

Please be advised that the Panel Chairman, Lawrence Stahl, has accepted another position within Baltimore County Government.

Mr. Stahl will be replaced in this matter by Andrew M. Belt, a current member of the Board. Mr. Belt has been provided the complete transcript of the hearing, as well as the opportunity to listen to the proceedings via Courtsmart and review all evidence presented before this Board, including, but not limited to the Closing Briefs; Minutes of Deliberation; Remand Order issued December 2, 2010, and the Motion for Reconsideration and Clarification filed by People's Counsel on December 13, 2010.

The Deliberation of the Motion for Reconsideration has been scheduled for Tuesday, January 18, 2011 @ 9:30 a.m. Mr. Belt will participate in that Deliberation as the panel member replacing Mr. Stahl; and in all future hearings and/or decisions in Case No. : 10-094-SPH. A copy of the Deliberation Notice is enclosed.

Mr. Belt will be signing the Opinion in case number 10-094-SPH in lieu of Mr. Stahl, when the final order of this panel is issued.

Please do not hesitate to contact me if you wish to discuss this matter further. I remain,

Very truly yours,

Theresa R. Shelton
Administrator

Duplicate Original

Encl.: Notice of Deliberation
c(w.Encl.): Andrew M. Belt, Esquire

County Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
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December 14, 2010

Peter M. Zimmerman, Esquire
Carole S. Demilio, Esquire
Office of People's Counsel
The Jefferson Building, Ste 204
105 W. Chesapeake Avenue
Towson, MD 21204

RE: *In the Matter of: Christopher Malstrom – Legal Owner/Petitioner*
Case No.: 10-094-SPH / Motion for Reconsideration and Clarification

Dear Mr. Zimmerman:

This will acknowledge receipt of your Motion for Reconsideration and Clarification filed December 13, 2010 in the subject matter. A copy of your Motion for Reconsideration, along with any response that may be filed thereto, will be forwarded to the appropriate Board members for their review and ultimate consideration.

With regard to this request for reconsideration, Rule 10 of the Board's Rules of Practice and Procedure states in part as follows:

> ...**The filing of a motion for reconsideration shall stay all further proceedings in the matter, including the time limits and deadlines for the filing of a petition for judicial review. After public deliberation and in its discretion, the board may convene a hearing to receive testimony or argument or both on the motion.** Each party participating in the hearing on the motion shall be limited to testimony or argument only with respect to the motion; the board may not receive additional testimony with respect to the substantive matter of the case. Within 30 days after the date of the board's ruling on the motion for reconsideration, any party aggrieved by the decision shall file a petition for judicial review. The petition for judicial review shall request judicial review of the board's original order, the board's ruling on the motion for reconsideration or both. [Emphasis added.]

Therefore, in response to your Motion for Reconsideration, a public deliberation will be scheduled and appropriate notice promptly sent to all parties to this matter.

Should you have any questions, please contact me at 410-887-3180.

Very truly yours,

Theresa R. Shelton
Administrator

c: Victor Fuentealba, Esquire
Christopher J. Malstrom

12/13/10

RE:	PETITION FOR SPECIAL HEARING 8301 Wilson Avenue; E/S Wilson Avenue; NE cor b/w Wilson & Woodside Avenues 4th Election & 6th Councilmanic Districts Legal Owner(s): Christopher Malstrom Petitioner(s)	*	BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY 10-094-SPH

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

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY'S MOTION FOR RECONSIDERATION AND CLARIFICATION

Pursuant to Rule 10 of the County Board of Appeals (CBA) Rules of Practice and Procedure, People's Counsel for Baltimore County files this Motion for Reconsideration and Clarification of the Order of Remand dated December 2, 2010. Our request for clarification is to add that the remand to the Department of Permits and Development Management (PDM) for a determination by the Buildings Engineer clarify that the scope of review include such other provisions of the Building Code which may be relevant to Petitoner's additional construction pertaining to enlargement of the second floor living space at 8301 Wilson Avenue. The reasons are as follows:

1. The Petition for Special Hearing began as a request for a waiver from County Code restrictions on development in the 100-year floodplain.

2. Petitioner argued, however, that the Building Code provisions pertaining to "substantial improvements" must be considered and that, if the new construction is not a substantial improvement based on Building Code criteria, calculations, and practice, then a waiver would not be necessary. Our office contended, to the contrary, that a waiver would still be necessary.

3. The case did not focus on the potential relevance and application of other Building Code provisions.

4. The County Board of Appeals (CBA) agreed with Petitioner's position with respect to the application of the "substantial improvement" standard and, while holding

the case *sub curia*, remanded the case to PDM and the Buildings Engineer for a determination as to whether the aforesaid construction is a substantial improvement.

5. We are disappointed that the CBA did not agree with our office's position. At the very least, we may suggest to the concerned departments that they evaluate whether new legislation may be appropriate to address the relationship between the development law and building code provisions.

6. Meanwhile, at a minimum, the CBA should take into account the relevance of other building code provisions. Unless that is done, Petitioner may assume the CBA Order means the construction activities he performed are not subject to any regulation if the addition is not determined to be a substantial improvement. We do not believe the CBA intended such broad latitude, but the matter needs to be clarified so that it is clear that Petitioner's construction is not exempt from the Building Code, and there are other provisions of the Building Code relevant to public safety, health, and welfare.

7. **We have reviewed CBA opinion with Buildings Engineer Donald Brand in anticipation of the remand.** He has provided us with the attached excerpts from the applicable Baltimore County Building Code in force and applicable to the construction here. Bill 49-07, Section 105, and 2006 International Residential Code, R105. These show that the Petitioner's construction was and is subject to permit review and standards.

8. Therefore, the scope of review by the Buildings Engineer should include such other building code provisions as may be relevant, whether or not they find that the construction amounts to a substantial improvement.

9. In conclusion, upon reconsideration, the scope of review should be clarified to avoid future controversy.

10. Therefore, we ask that the Order of Remand on Page 9 be supplemented with an additional paragraph, which reads:

"THEREFORE, it is this ____ day of _____, **ORDERED,** by the County Board of Appeals for Baltimore County, that the scope of review by the Buildings Engineers shall also include Baltimore County Building Code Section 105 and such other

provisions of the Building Code as may be relevant to Petitioner's second-floor building addition at 8301 Wilson Avenue."

11. To assist the CBA, we attach a proposed Order.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of December, 2010, a copy of the People's Counsel for Baltimore County Motion for Reconsideration and Clarification was mailed to Victor Fuentealba, Esquire, 200 East Lexington Street, Suite 805, Baltimore, Maryland 21202, Attorney for Petitioner.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

RE:	PETITION FOR SPECIAL HEARING 8301 Wilson Avenue; E/S Wilson Avenue; NE cor b/w Wilson & Woodside Avenues 4th Election & 6th Councilmanic Districts Legal Owner(s): Christopher Malstrom Petitioner(s)	*	BEFORE THE COUNTY
		*	BOARD OF APPEALS
		*	FOR
		*	BALTIMORE COUNTY
		*	10-094-SPH

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

AMENDED ORDER OF REMAND

Upon review of People's Counsel for Baltimore County's Motion for Reconsideration and Clarification, it is this ____ day of _____, **ORDERED,** by the County Board of Appeals for Baltimore County, that said Motion be, and hereby is, **GRANTED**, and that the **ORDER OF REMAND** entered December 2, 2010 in this case be, and hereby is, **AMENDED AND CLARIFIED** so that the scope of review by the Buildings Engineer shall also include Baltimore County Building Code Section 105 and such other provisions of the Building Code as he determines may be relevant to Petitioner's second-floor building addition at 8301 Wilson Avenue."

BOARD OF APPEALS
OF BALTIMORE COUNTY

_____
LAWRENCE M. STAHL, CHAIRMAN

_____
LAWRENCE WESCOTT, PANEL MEMBER

_____
WENDELL H. GRIER, PANEL MEMBER

LEHR

BALTIMORE COUNTY BUILDING CODE

Baltimore County Council Bill 49-07

Effective July 15, 2007

www.baltimorecountymd.gov

A Member of the International Code Family®

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FOR ONE- AND TWO-FAMILY DWELLINGS

2006

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INTERNATIONAL CODE COUNCIL®

12/2/10

RE:	PETITION FOR SPECIAL HEARING 8301 Wilson Avenue; E/S Wilson Avenue; NE cor b/w Wilson & Woodside Avenues 4th Election & 6th Councilmanic Districts Legal Owner(s): Christopher Malstrom Petitioner(s)	*	BEFORE THE BOARD OF APPEALS FOR BALTIMORE COUNTY 10-094-SPH

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

ORDER OF REMAND

HISTORY

This matter comes before the Board of Appeals as an appeal by the Office of People's Counsel from an Opinion and Order of the Zoning Commissioner for Baltimore County dated December 12, 2009.

Christopher Malstrom is the resident and owner of the Baltimore County parcel known as 8301 Wilson Avenue. The improvements on the said property consist of a one and one half story detached house. The house was erected circa 1948. The property is located in a 100 year floodplain.

In 2008, Mr. Malstrom sought to make renovations to the subject property. He did not apply to Baltimore County for a permit to undertake the renovations. The renovations undertaken by Mr. Malstrom consisted of the enlargement of the second flood living space from 500 square feet to 900 square feet to be accomplished by removing and replacing the walls and roof on the second floor of the house.

On June 6, 2008, after a Notice to cease construction was issued by Baltimore County, Mr. Malstrom applied for a permit to allow for the renovations he had done to his house. The permit application was filed with the Baltimore County Department of Permits and Development Management. Mr. Malstrom's application was disseminated to various County Agencies for

their review and comment as a normal part of the permit approval process. The Department of Public Works (DPW) noted that the property was located within a 100 year flood plain. Based upon the floodplain location of the property, the Department of Permits and Development Management (PDM) advised Mr. Malstrom that a building permit could not be issued to him as a matter of right. Additionally, by letter dated October 5, 2009 the Director of Public Works suggested he would not oppose the waiver if there was no community opposition and the property was brought into strict compliance. "Strict compliance" meant "move all HVAC and electrical equipment out of the basement, provide flood vents in the basement area and remove all materials subject to flood damage, verify elevation to the first floor with respect to the Flood Protection Elevation."

Mr. Malstrom was further advised that he could apply to the Office of the Zoning Commissioner for a "waiver" from the *County Code* provisions applicable to development in a 100 year floodplain.

Thereafter, Mr. Malstrom made application for a "waiver", whereupon the Zoning Commissioner conducted a public hearing and received testimony and evidence concerning the propriety of issuing a waiver under the facts of the case. At the hearing, Counsel for Mr. Malstrom moved to have the matter dismissed, arguing that his client was exempted from the necessity of obtaining a waiver from the development requirements in a floodplain; citing Section 3112-0 of the Baltimore County Building Code "Construction in Areas Subject to Flooding" which states:

> 1. General Selected Definitions.
>
> Substantial Improvement - Any repair, reconstruction, alteration or improvement of a structure, the cost of which exceeds 50% of the market value of the structure (less land value) either (A) before the improvement or

repair is started; or (B) if the structure incurred substantial damage and has been restored before the damage occurred.

The Zoning Commissioner, in his opinion, cited Title 8 "Floodplain Management" of the *Baltimore County Code* (BCC), Subtitle 1, Definitions 32-8-101 (dd) which defines "Substantial Improvements" as "any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure, less land value either (i) before the improvement or repair is started; or (ii) if the structure has incurred substantial damage and has been restored before the damage occurred".

The Zoning Commissioner accepted the proffer of Counsel for Mr. Malstrom that the assessed value of the subject property, as of January 1, 2009 was $111,300.00, 50% of which amounts to $55,650.00. Counsel for Mr. Malstrom further proffered that the cost of the materials for the improvements to the subject property did not exceed $15,000.00 with Mr. Malstrom performing the labor himself.

The Zoning Commissioner concluded that the foregoing arguments concerning substantial improvement were not necessary to reach a conclusion in the case.

The Zoning Commissioner, after a review of all of the evidence and testimony presented at the hearing, concluded that special circumstances or conditions existed that would cause unnecessary hardship to Mr. Malstrom. The Zoning Commissioner then granted the waiver as petitioned for by Mr. Malstrom.

The Office of People's Counsel filed an appeal of the Findings of Fact and Conclusion of Law issued by the Zoning Commissioner.

THE CASE BEFORE THE BOARD

The Board of Appeals held a de novo hearing in this matter and accepted testimony, evidence and briefs from the parties.

The Respondent, Mr. Malstrom through his Counsel, raised the same argument concerning the lack of necessity for a waiver as raised in the hearing before the Zoning Commissioner. His testimony before the Board as to the value of his property and cost of materials, as well as, his own labor was consistent with his testimony before the Zoning Commissioner.

People's Counsel asserted to the Board that the provisions of the Baltimore County Building Code, relied upon by Respondent to establish the lack of necessity for a waiver, come into play only after an applicant for a building permit first satisfies the *Baltimore County Code* requirement to obtain a waiver of the general prohibition of development in the 100 year floodplain. People's Counsel in his brief submitted to the Board urged the following interpretation of the relevant law on the subject presented in this matter:

"*Baltimore County Code* Section 32-4-414 is included as People's Counsel Exhibit 7. Subsection (c) generally prohibits development in a riverine floodplain, with exceptions not applicable here. The definition of "development" is broad, extending to "any man-made change to improved or unimproved real estate, including erection of buildings and other structures." Section 32-8-101(g)(1). P.C. Exh. 8. The definition of "riverine floodplain" to the 100-year floodplain based on the current standards approved by the Department of Public Works, but in no case less restrictive than the Federal Flood Insurance Study base flood." Section 32-8-101(z), There is further definition of the floodplain area and the role of the Director of Public Works in Section 32-8-202. Clearly, the proposed addition is a type of development in the riverine floodplain of Stemmers Run.

The law does provide the opportunity to request a waiver from the Section 32-4-414 prohibition upon satisfaction of enumerated standards. Section 32-8-301, 32-8-303. P.C.

Exh. 8. As to the relationship of the waiver and building permits requirements, the law also provides that that "For a waiver issued in a riverine floodplain ., all applicable conditions of Section 32-8-207 of this title [relating to building permits] and the Building Code Shall be met."

Peoples Counsel had no objection to a waiver being granted if Mr. Malstrom complied with the relocation of the utilities at the house as suggested in the DPW letter of October 5, 2009.

ISSUE

Is a "waiver" required for the building permit sought by the applicant in the instant case?

The Board accepted testimony from the Applicant, Mr. Malstrom, at the hearing conducted in this matter. His testimony was that he undertook the renovation of the second floor of his house, without a permit, to increase the size and configuration of same from a one and one half story house to a two story house by the addition of five hundred feet for a total of nine hundred feet of living space. The testimony of Mr. Malstrom was that he performed the work by himself and the cost of the materials used by him in this effort was less than Sixteen Thousand ($16,000.00) Dollars. Mr. Malstrom did not dispute that his house is located within a 100 year floodplain. The value of Mr. Malstrom's house, less land value was offered as being One Hundred Eleven Thousand Three Hundred ($111,300.00) Dollars. based upon the recent assessment of value by the State Department of Assessments and Taxation.

DECISION

After review of the evidence presented at the July 27, 2010 hearing in this matter, the Board determined that the test for exception to the general rule concerning construction in area subject to flooding as contained in Section 3112-0 of the Baltimore County Building Code, should be applied to the building permit application filed by Mr. Malstrom before the test for granting a "waiver" is applied..

The concept and definition of "Substantial Improvement" indicate that there are improvements that are not "substantial". The test for such improvements is contained in the definitional sections of 3112-0 of the Baltimore County Building Code and Section 32-8-101 (dd) of the *Baltimore County Code,* clearly establish the dividing line between that which is "substantial" for purposes of the rules and by implication that which is not "substantial".

Title 8. Section 32-8-207 of the *Baltimore County Code* covers the issuance of a permit in a flood plain area. It states:

> "(b) *Permit required.*
>
> (1) The Building Engineer shall require a permit for all development, storage of equipment and materials, or placement of manufactured homes in the floodplain area.
>
> (2) The permit shall be granted only after necessary permits from the state and federal agencies have been obtained."

Title 8. Section 32-8-101 *Definitions*, Section g states:

> "(g) *Development.*
>
> (1) "Development" means any man-made change to improved or unimproved real estate, including erection of buildings and other structures, dredging, fill, grading, paving, clearing, excavation, dumping, extraction, or storage of equipment or materials."

Title 8. Section 32-8-101(aa) entitled *Start of Construction* states:

> "(1) "Start of construction" means the date of issue of the building permit for any development, including new construction and substantial improvements, provided that the actual start of the new

> construction or substantial improvement (emphasis added) is within 180 days after permit issuance."

Section 3112.0 of the Baltimore County Building Code states:

> 1. General Selected Definitions.
> Substantial Improvement - Any repair, reconstruction, alteration or improvement of a structure, the cost of which exceeds 50% of the market value of the structure (less land value) either (A) before the improvement or repair is started; or (B) if the structure incurred substantial damage and has been restored before the damage occurred.

Section 32-8-101(dd) of the Floodplain Management Section of the *Baltimore County Code* is entitled Substantial Improvement and mirrors Section 3112.0 of the Baltimore County Building Code.

Therefore , it is the finding of this Board that if there is no substantial improvement to a building structure within the meaning of Section 3112.0 and Section 32-8-101(dd) of the BCC, there is no need for the issuance of a building permit and no need to seek a waiver of such permit.

Mr. David Thomas, an Engineer and Assistant to the Director of Public Works of Baltimore County, testified before the Board on behalf of People's Counsel. He stated that in his experience in working with the Department of Public Works, there was a policy or practice which the Department used to determine whether or not a particular construction is a "substantial improvement".

He stated that in response to a question as to a specific policy:

> "A. Yes, there is. And I can state this because of my working relationship with the building engineer and the plans review office.

What they will do to determine whether or not there is a substantial improvement – which is usually based on a determination of the cost of the value of improvements, and whether or not – how they relate to the fifty percent criteria of the appraised value of the property being improved.

The plans review office has its own set of criteria for that. They have dollar values per square foot of certain types of construction.

And I have seen these charts, and I have seen them applied.

And they also do not allow the cost of labor to be removed from that consideration, because their presumptive square foot values include labor.

So that if someone were to say – and this is a relatively common argument made – I'm doing the labor myself, therefore, it's less than substantial improvement, the plans review office does not allow that.

They say the value has to be based on materials and labor, and they have criteria of their own, which the applicant can say something is more valuable than that, but it can't be less valuable than their presumptive values." *(Transcript pages 10 and 11)*

Based on the testimony of Mr. Thomas the Board has determined that this matter should be remanded to the Building Engineer at the Department of Permits and Development Management (PDM) to determine, in accordance with their policy and practice, whether or not Mr. Malstrom has constructed a "substantial improvement" within the meaning of Section 3112

of the Baltimore County Building Code and Section 32-8-101(dd) of the Floodplain Management Section of the BCC, in order to require a building permit.

ORDER OF REMAND

THEREFORE, IT IS THIS 2nd day of December, 2010 by the Board of Appeals for Baltimore County

ORDERED that, for the reasons as stated in the foregoing Opinion, that this matter be REMANDED to the Department of Permits and Development Management (PDM) for the Building Engineer to determine whether or not the Petitioner, Christopher James Malstrom, is constructing a substantial improvement on his property, located at 8301 Wilson Avenue, that requires a building permit in Case No.: 10-094-SPH; and it is further

ORDERED that, such a determination shall set forth the basis upon which the Building Engineer has made his determination; and it is further

ORDERED that, a final ruling will not be issued by the Board of Appeals at this time, but rather the matter shall be held ***sub curia,*** with no further action to be taken by this Board until such time as the Building Engineer issues his determination on whether or not the Petitioner, Christopher James Malstrom, is constructing a substantial improvement on his property, located at 8301 Wilson Avenue, that requires a building permit in Case No.: 10-094-SPH.

BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence M. Stahl, Panel Chair

Lawrence Wescott

Wendell H. Grier

12/2/10

County Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
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TOWSON, MARYLAND, 21204
410-887-3180
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December 2, 2010

Victor Fuentealba, Esquire
Court Square Building, Ste 805
200 E. Lexington Street
Baltimore, MD 21202

Peter M. Zimmerman, Esquire
Carole S. Demilio, Esquire
Office of People's Counsel
The Jefferson Building, Ste 204
105 W. Chesapeake Avenue
Towson, MD 21204

RE: *In the Matter of: Christopher Malstrom – Legal Owner/Petitioner*
Case No.: 10-094-SPH

Dear Counsel:

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

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

Very truly yours,

Theresa Shelton/kc

Theresa R. Shelton
Administrator

TRS/klc
Enclosure
Duplicate Original Cover Letter

c: Christopher Malstrom
Douglas DuVal
Matthew Braid
William and M. Gerardine Malstrom
William J. Wiseman, III, Zoning Commissioner
Timothy Kotroco, Director/PDM
Arnold F. "Pat" Keller, III, Director/Planning
Lew Mayer, Building Inspector
Nancy West, Assistant County Attorney
John Beverungen, County Attorney
Dave Thomas, DPW

9/28/10

RE:	PETITION FOR SPECIAL HEARING 8301 Wilson Avenue; E/S Wilson Avenue; NE cor b/w Wilson & Woodside Avenues 4th Election & 6th Councilmanic Districts Legal Owner(s): Christopher Malstrom Petitioner(s)	*	BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY 10-094-SPH

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

MEMORANDUM OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

On September 15, 2009, Petitioner, Christopher Malstrom, filed a petition for special hearing for "a second story addition above existing dwelling within a flood plain area pursuant to Baltimore County Code Article 32, Title 4 and 6 (Public Improvements), and Title 4 and 8, Council Bill 49-07 (Building Code Section 3112). The Public Works Department (DPW) on October 5, 2009 addressed the petition as a request for a waiver from the County Code provisions which prohibit development in the 100-year floodplain. P.C. Exh. 4. David Thomas, Assistant to Director Edward Adams, prepared the correspondence for Director Edward Adams.

Malstrom had begun construction of the addition without a permit. Subsequently, upon being informed of the permit requirement, he did file a building permit application on June 6, 2008. P.C. Exh. 2. There then came to light the floodplain issue, the filing of the petition for special hearing, and the required DPW review.

DPW stated that it "would not actively oppose a waiver" if Malstrom would "move all HVAC and electrical equipment out of the basement, provide flood vents in the basement area and remove all material subject to flood damage, verify elevation of first floor with respect to the Flood Protection Elevation."

Zoning Commissioner (ZC) William Wiseman conducted a public hearing. Malstrom's attorney argued that the proposed addition is exempt from the floodplain provisions of the Building Code because it was not a "substantial improvement," defined as "any repair, reconstruction or improvement of a structure, the cost of which exceeds 50% of the market value of the structure...." In his December 15, 2009 opinion, ZC

Wiseman declined to rule on this argument, but granted the waiver. People's Counsel filed a motion for reconsideration, which ZC Wiseman denied on January 13, 2010.

People's Counsel filed a timely appeal. The CBA conducted its *de novo* hearing on July 27, 2010. To assist the Board and complement our argument, we attach the testimony of David Thomas.

I. Upon a *de novo* appeal, the burden of proof remains on the petitioner.

County Charter § 603 assigns to the County Board of Appeals the responsibility to review the DZC decision *de novo*, anew, as if for the first time. The law treats the CBA hearing as the first hearing, and the DZC decision as if nonexistent. Boehm v. Anne Arundel County 54 Md. App. 497, 506-11 (1983); Hill v. Baltimore County 86 Md. App. 642 (1991); Pollard's Towing v. Berman's Body Frame & Mechanical 137 Md. App. 277, 288 (2001). Therefore, the burden of proof remains on the petitioner.

II. The proposed addition is not exempt from the prohibition of development in the floodplain; the applicant must prove satisfaction of the waiver standards

Malstrom focuses on several provisions of the Building Code to support the argument for exemption. But, as the law makes clear, and David Thomas explained, the Building Code provisions come into play only after an applicant first satisfies the County Code requirements to obtain a waiver of the general prohibition of development in the 100-year floodplain.

Baltimore County Code § 32-4-414 is included as People's Counsel Exhibit 7. Subsection (c) generally prohibits development in a riverine floodplain, with exceptions not applicable here. The definition of "development" is broad, extending to "... any man-made change to improved or unimproved real estate, including erection of buildings and other structures ..." § 32-8-101(g)(1). P.C. Exh. 8. The definition of "riverine floodplain" to the 100-year floodplain "... based on the current standards approved by the Department of Public Works, but in no case less restrictive than the Federal Flood Insurance Study base flood." § 32-8-101(z). There is further definition of the floodplain area and the role of the Director of Public Works in § 32-8-202. Clearly, the proposed addition is a type of development in the riverine floodplain of Stemmers Run.

The law does provide the opportunity to request a waiver from the § 32-4-414 prohibition upon satisfaction of enumerated standards. § 32-8-301, et seq.; 32-8-301, 32-8-303. P.C. Exh. 8. As to the relationship of the waiver and building permit requirements, the law also provides that "For any waiver issued in a riverine floodplain ..., all applicable conditions of § 32-8-207 of this title [relating to building permits] and the Building Code shall be met."

Consistent with the above provisions, David Thomas explained his office's interpretation and practice lucidly. Transcript Pages 1-16. The bottom line is that the approval of a waiver for development in the riverine floodplain is prerequisite to consideration of additional building code requirements. Moreover, as noted, the DPW may establish a floodplain base map which is more restrictive than the federal map. It has done so in this area. §§ 32-8-101(z), 32-8-202.

III. The County Board of Appeals Should at Least Impose the Conditions Stated by the Department of Public Works

To obtain a waiver, an applicant must prove and show, in brief, (1) "good and sufficient cause; (2) "exceptional hardship, other than economic hardship;" and (3) "... that the granting of a waiver will not increase flood heights, impact public safety, incur extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing local and state laws and ordinances." § 32-8-303 (a). P.C. Exh. 8. In turn, § 32-8-303(b) provides, "The waiver action shall be the minimum necessary, considering the flood hazard, to afford relief." Furthermore, "...comments from the state coordinating office and the County Department of Public Works shall be taken into account." § 32-8-303(c).

A waiver may be granted with conditions. § 32-8-305(a). If so, "... a letter shall be sent to the applicant indicating the terms and conditions of the waiver, the increased risk to life and property in granting the waiver, and the increased premium rates for national flood insurance coverage." § 32-8-305(b) These terms and conditions must also be recorded in the deed or memorandum of land restriction before obtaining a permit. § 32-8-305(c)

Here, David Thomas summarized DPW's review of the application and its position. Transcript Pages 17-46. While the proposed addition may not increase flood heights, it increases the risk to life and property by adding to the living area and property in a location vulnerable to flooding. As Mr. Thomas put it, at Page 26,

> "It would impact public safety because it could allow for additional occupancy of a house in an area of peril, and because of the possible impacts of the flood occurring in the house could impact, if someone is in the basement if the house is rebuilt, it could impact equipment failures, it could affect anyone in the house.
>
> "An electrical short could injure someone. So I wouldn't say that --- public safety , it's a stretch, but it could be an issue."

He added a concern that a future owner might sell the house without full disclosure.

Mr. Thomas also said, at Pages 27-28,

> "One of the reasons that our floodplain ordinance is subject to the review and approval of FEMA is that Baltimore County participates in the national floodplain insurance program.
>
> And if we don't have provisions in the law that restrict development in hazardous areas, and the property owner were to buy flood insurance – which he can, no matter what his agents tell him – then allowing this type of construction without the appropriate restrictions would expose the federal flood insurance program to additional risk, and that program is funded through tax money, so we do have an interest to observe the federal government concern--"

DPW would not oppose the additional risk so long as it is offset by the likely greater reduction of risk by removing HVAC and electrical equipment from the basement, providing flood vents, and removing all material subject to flood damage. Mr. Thomas did add that his department would also accept "an acceptable or equivalent measures acceptable to the Buildings Engineer. Transcript Pages 36-43.

Mr. Thomas also discussed Malstrom's point that there had not been recent flooding. "Stemmers Run watershed in this area is relatively small --- large enough to be a floodplain, but it's relatively small compared to like Gwynns Falls or Jones Falls ....

Therefore, it's possible, and likely …" to go many years before a major flood hits. Page 29. As an example, Mr. Thomas pointed to Hurricane Isabel. He added, at pages 30-31,

> "And just because that particular storm hasn't hit in a particular neighborhood, that doesn't mean floodplain doesn't exist. And it doesn't mean that it can't be a greater storm than a one-hundred year flood. You can have a five-hundred year flood, of course. And that's not what we're saying. What we're saying, and what the law says, is that this is an area of hazard that's been defined as the one-hundred year floodplain, and that's the area that we regulate."

In addition, Mr. Thomas addressed an issue Malstrom raised with respect to the impact of a bridge or culvert placed in the area around 1961, and found that that the floodplain existed with or without it. It would not change his recommendation. Pages 33-36. In any event, there is no dispute that the area currently is well within the Stemmers Run riverine floodplain.

Conclusion

Our office concurs with Mr. Thomas. To start with, it is doubtful that any "exceptional hardship" justifies the building of an addition to a house used as a residence since about 1948. The main point, however, is that there is a public interest under the law to protect public safety in floodplain areas. The Department of Public Works has raised serious issues concerning impact to public safety, involving life and property. The least that should be done is to require as conditions the stated DPW requirements.

Peter Max Zimmerman
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of September, 2010, a copy of the Memorandum of People's Counsel for Baltimore County was mailed to Victor Fuentealba, 200 East Lexington Street, Suite 805, Baltimore, Maryland 21202, Attorney for Petitioner..

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

IN THE MATTER OF

CHRISTOPHER JAMES MALSTROM
8301 Wilson Avenue
Baltimore County, Maryland 21234

COUNTY BOARD OF APPEALS

OF BALTIMORE COUNTY

Case No: 10-094-SPH

BRIEF OF CHRISTOPHER MALSTROM, APPELLEE
BY VICTOR W. FUENTEALBA, HIS ATTORNEY

This is an Appeal filed by the office of People's Counsel of Findings of Fact and Conclusion of law issued December 14, 2009 by the Zoning Commissioner to allow and approve a second story addition built above an existing single family dwelling.

The property in question was constructed in 1948 and was purchased by Mr. Malstrom in 2001. The property is a one and a half story residence and until 2008 five hundred square feet of the second story was used as a completely furnished bedroom. In the Spring of 2008 Mr. Malstrom decided to enlarge the usable space on the second level by extending the usable space from 500 square feet to 900 square feet and started the improvements as many homeowners do, without obtaining a building permit. He was later informed that a permit was necessary and on June 6, 2008 filed an application for the permit. His application was rejected on the basis that his home was located in a l00 year flood plain and that a permit could not be issued unless a waiver was granted by the Zoning Commissioner. On November 24, 2009 a hearing was held before William J. Weisman, III, Zoning Commissioner of Baltimore County. Appearing at the public hearing and in support of the request were the property owner Christopher Malstrom, his parents who reside approximately one block from the subject property, his next door neighbor, Matthew "Ted" Braid, III and Douglas W. DuVal, a registered land surveyor retained by Mr. Malstrom. There were no protestants or other interested parties present. There were also no adverse zoning advisory committee comments received from any of the County reviewing agencies other than an interoffice memo from Edward Adams, Director of Public Works to Timothy Kotroco, Director of Permits and Development Management stating that although the Department of Public Works did not recommend approval of the waiver, the Department of Public Works would not actively oppose a waiver approval through the appeal process if "the dwelling is modified to bring it into strict compliance with all applicable requirements of the building code" which would include moving all HVAC and electric equipment out of the basement, providing flood vents in the basement area, removing all materials subject to flood damage and verifying elevation of the first floor with respect to the flood protection elevation. Although no one was present at the hearing on behalf of the Department of Public Works, the aforementioned contents of the memo were thoroughly discussed during the hearing and in particular, the fact that the modifications

recommended in that memo had no bearing whatsoever on the improvements that were being made to the second story level. On December 14, 2009, the Zoning Commissioner for Baltimore County granted approval of the waiver sought by Mr. Malstrom. On December 28, 2009 Peter Max Zimmerman, People's Counsel for Baltimore County filed a rule 4K Motion for Reconsideration of the aforementioned Findings of Fact and Conclusions of Law and Order. On January 13, 2010, the the Zoning Commissioner denied the Motion for Reconsideration and on February 9, 2010, an appeal was filed by the People's Counsel.

Bearing in mind that the burden of proof to reverse the decision of the Zoning Commissioner rests wholly upon the appellant, the People's Counsel of Baltimore County, there are two fundamental issues to be decided: (1) did the alterations performed and planned by Mr. Malstorm necessitate the granting of a waiver or did they come under the exclusionary provisions of the Baltimore County Code and (2) will those improvements to his home increase its vulnerability to damage in the unlikely event of a flood in the area. Title 8 "Floodplain Management" of the Baltimore County Code in subtitle 1, Definitions 32-8-101(dd) defines "Substantial Improvements" as "substantial improvement means any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure, less land value either (i) before the improvement or repair is started; or (ii) if the structure has incurred substantial damage and been restored before the damage occurred".

Section 3112-0 of the Baltimore County Building Code "Construction in Areas Subject to Flooding" states as follows:

1. General Selected Definitions.
   Substantial Improvement – Any repair, reconstruction, alteration or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure (less land value) either (A) before the improvement or repair is started; or (B) if the structure incurred substantial damage and has been restored before the damage occurred.

Subsequent paragraphs of Section 3112 consistently refer to "Substantial Improvements" in determining what requirements must be met, such as paragraph 1(b) which states "whenever substantial improvements to existing buildings, including additions, are constructed, or building experiencing repetitive loss are located in areas subject to tide or flooding as established by the FIS and FIRM of Baltimore County or more restrictive criteria as established by the county, the buildings lowest floor shall be not lower then the flood protection elevation." See also paragraph 7 which states "For all new or substantially improved structures in the flood plain area, the owner must have a professional land surveyor, property line surveyor or professional engineer submit a fully executed elevation certificate at the time of inspection" and paragraph 8 "New or substantially improved non-residential structures may be flood proofed to the flood protection elevation. Under this option, the owner must have a

professional engineer or architect submit a fully executed flood proof certificate to the county prior to the approval of the construction by any building official of Baltimore County."

See also section 3112.2 paragraph2: Areas subject to inundention by riverine surface waters within the 100 year floodplain. "Reconstruction or repair of existing buildings shall be governed by section 115.0 "Unsafe Structures and Equipment". All substantial improvements to existing buildings shall be permitted only on the basis of an approved waiver in accordance with section article 32, title 8, subtitle 3 of the Baltimore County Code, 2003 (Waivers) and shall be subject to all applicable conditions of section 32-207 of the Baltimore County Code 2003 Development in the Flood Plain Area" and Section 3112.1 of this building code "Area subject to tidal flooding".

The above sections of the regulations clearly exempt alterations and improvements which do not equal or exceed 50% of the market value of the structure, less land value. The assessed value of Mr. Malstrom's home, excluding the land, as of January 1, 2009 was $111,300.00, 50% of which amounts to $55,650.00. According to his testimony at the hearing before the Zoning Commissioner, the cost of materials that he used did not exceed $15,000.00 and he performed all of the work himself. Even if you attach a value to his labor, the cost would not amount to 50% of the value of his home.

Regarding (2) above, section 32-4-414 of the Baltimore County Code states that the reasons for the adoption of flood plain regulations were (1) to reduce loss of life and property from flooding (2) to avoid the need for public expenditure for flood protection and (3) to protect or enhance the environmental quality of watersheds.

The improvements that Mr. Malstrom made do not in any way impact on any of those purposes. All of the improvements are above the first floor and no changes were made or are being contemplated to be made on anything at the ground level. It is also interesting to note that although this particular area is considered by the County as a l00 year flood plain area, it is not so designated by FEMA, the Federal agency with flood responsibility. If there would ever be a flood which is highly unlikely since the chances of a flood in a l00 year flood plain area are 1% a year, the improvements made by Mr. Malstrom could not possibly contribute to any damage that might occur. It is also interesting to note that the comments from the Director of the Department of Public Works fail to give any reason whatsoever for recommending that a waiver not be granted which indicates that those comments are not based on fact and should not be taken into consideration. The demand by Mr. Adams that if a waiver is granted Mr. Malstrom must remove all electrical equipment including the furnace from his basement, install vents and take other measures to protect the property from flood damage in order to get the waiver is totally unrealistic and impractical, particularly in view of the fact that if he chooses to remove

the improvements that he made to the second floor, he would not be required to do anything to the property whatsoever to ensure against flooding, including the basement.

It is my opinion that the People's Counsel has not furnished any evidence other then speculative opinions regarding the possibility of flooding in the area to comply with the requirement of the rules that he has the burden of proof to overcome and reverse the decision of the Zoning Commissioner of Baltimore County and that therefore his appeal should be denied.

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(410) 539-5115
Attorney for Christopher Malstrom

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

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

March 26, 2010

Victor Fuentealba, Esquire
Court Square Building, Ste. 805
200 East Lexington Street
Baltimore, MD 21202

Dear Mr. Fuentealba:

RE: Case: 2010-0094-SPH, 8301 Wilson Avenue

Please be advised that an appeal of the above-referenced case was filed in this office on .February 9, 2010 by the Office of People's Counsel. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

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

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

Sincerely,

Timothy Kotroco
Director

TK:klm

c: William J. Wiseman III, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Chris Malstrom, 8301 Wilson Avenue, Parkville 21234
William & Geraldine Malstrom, 3300 Garnet Road, Baltimore 21234
Matthew Braid, II, 8303 Wilson Avenue, Baltimore 21234
Douglas DuVal, 1729 York Road, Ste. 205, Lutherville 21093

Baltimore County, Maryland
OFFICE OF PEOPLE'S COUNSEL
Jefferson Building
105 West Chesapeake Avenue, Room 204
Towson, Maryland 21204

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

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

February 9, 2010

Hand-delivered
Timothy Kotroco, Director
Department of Permits and
Development Management
111 W. Chesapeake Avenue
Towson, MD 21204

RECEIVED
FEB 09 2010

Re: PETITION FOR SPECIAL HEARING
E/S Wilson Avenue @ SE corner of Wilson Avenue & Woodside Avenue
(8301 Wilson Avenue)
4th Election District; 6th Council District
Charles James Malstrom - Petitioner
Case No.: 10-094-SPH

Dear Mr. Kotroco:

Please enter an appeal by the People's Counsel for Baltimore County to the County Board of Appeals from the Order on Motion for Reconsideration dated January 13, 2010 and the incorporated Findings of Fact and Conclusions of Law dated December 14, 2009, filed by the Baltimore County Zoning Commissioner in the above-entitled case.

Please forward copies of any papers pertinent to the appeal as necessary and appropriate.

Very truly yours,

Peter Max Zimmerman
Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S Demilio
Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/rmw

cc: Victor W. Fuentealba, Attorney for Petitioner
Edward Adams, Director of Public Works
David Thomas, Assistant to Director of Public Works
Donald Brand, Building Engineer, PDM

1/13/10

IN RE: **PETITION FOR SPECIAL HEARING** E/S Wilson Avenue @ SE Corner of Wilson Avenue & Woodside Avenue **(8301 Wilson Avenue)** 4th Election District 6th Council District Christopher James Malstrom Petitioner	*	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY **Case No. 2010-0094 SPH**

* * * * * * * * * * *

ORDER ON MOTION FOR RECONSIDERATION

This matter returns to this Zoning Commissioner on a Motion for Reconsideration requested by Peter Max Zimmerman, People's Counsel for Baltimore County. The Motion was filed pursuant to Rule 4K of Appendix G of the Baltimore County Zoning Regulations (B.C.Z.R.). The grounds for the Motion involve a desired clarification of the waiver granted under Baltimore County Code Section 32-8-303 for second floor improvements made by the Petitioner to his home located in a 100-year floodplain. By his letter of January 7, 2010, Victor Fuentealba, counsel for the Petitioner, responded to Mr. Zimmerman pointing out that the Department of Public Works' comments pertaining to public safety had been "discussed in detail at the hearing".

This Commission believes that a Motion for Reconsideration should only be necessary when there has been substantive new facts, case law, or statute not available previously, which would clearly merit a modification of the previous decision. Such does not exist here. Essentially, People's Counsel takes issue with the Zoning Commissioner's determination of the facts and his legal analysis. Mr. Zimmerman alleges deficiencies in the Order and refers to what he considers insufficient and incorrect conclusions concerning the issues raised by the Director of Public Works. That, however, is not sufficient grounds to require a modification of this

ORDER RECEIVED FOR FILING
Date 1-13-10
By

Commission's Order. The facts and my conclusions of law were predicated upon a teaspoon of reality in as much as there were no changes made to the subject structure's footprint at ground level and the second floor improvements in no way contribute to any danger or changes to the 100-year floodplain. As these ordinances are in derogation of the common law right to use private property they should not be extended by implication to cases not clearly within the scope of the purpose and intent manifest in their language. *Aspen Hill Venture v. Montgomery Council*, 265 Md. 303 (1972).

IT IS THEREFORE ORDERED this 13th day of January, 2010, that the Motion for Reconsideration filed in this matter is DENIED.

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

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

ORDER RECEIVED FOR FILING
Date 1-13-10
By

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

WILLIAM J. WISEMAN III
Zoning Commissioner

January 12, 2010

Peter Max Zimmerman, People's Counsel
Office of People's Counsel
Jefferson Building
105 West Chesapeake Avenue, Room 204
Towson MD 21204

RE: **PETITION FOR SPECIAL HEARING**
Order on Motion for Reconsideration
(8301 Wilson Avenue)
Christopher James Malstrom - Petitioner
Case No. 2010-0094 SPH

Dear Mr. Zimmerman:

Enclosed please find a copy of the decision rendered in the above-captioned matter.

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,

WILLIAM J. WISEMAN
Zoning Commissioner
for Baltimore County

WJW:dlw
Enclosure

c: Victor W. Fuentealba, Esquire, Suite 805, Court Square Building, 200 East Lexington Street, Baltimore, MD 21202
Chris Malstrom, 8301 Wilson Avenue, Parkville, MD 21234
William J. and M. Gerardine Malstrom, 3300 Garne Road, Baltimore, MD 21234
Matthew "Ted" Braid, II, 8303 Wilson Avenue, Baltimore, MD 21234
Douglas W. DuVal, L.S., 1729 York Road, Suite 205, Lutherville, MD 21093
File

BW
11-24-09

Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

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

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

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

December 28, 2009

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

RECEIVED

DEC 28 2009

ZONING COMMISSIONER

Re: PETITION FOR SPECIAL HEARING
Christopher J. Malstrom
8301 Wilson Avenue
Case No: 10-094-SPH

Dear Mr. Wiseman,

This is a Rule 4K Motion for Reconsideration of the Findings of Fact and Conclusions of Law and Order dated December 14, 2009 in the above case. Master Plan 2010 states an explicit intent to protect floodplains. This is included in the sections on managing the watersheds and protecting and restoring streams and non-tidal wetlands. Pages 124-29. Our office defends the master plan as well as the comprehensive zoning maps. We also typically support County Department of Public Works ("DPW") public safety comments on waiver petitions.

Here, the proposed addition to the dwelling is "development" in a 100-year riverine floodplain, based on the broad definition of "development" in Baltimore County Code §32-8-101(g)(1). Plainly, § 32-4-414 prohibits such development, unless the Hearing Officer properly grants a waiver under Code §32-8-303. The relevant floodplain is the 100-year floodplain.

The main purpose of the law is to discourage development in the 100-year floodplain. This extends to additions to nonconforming dwellings which predate the law. It is doubtful that the proposed addition, begun without such a waiver, involves an exceptional hardship, other than economic hardship. Code §32-8-303(a)(2).

Critically, any consideration of a waiver requires that comments from the State Coordinating Officer ("SCO") and County DPW "....shall be taken into account." Code § 32-8-303(c). The opinion does not satisfy the enclosed comment dated October 5, 2009 form DPW Director Edward Adams. Nor is there any mention of any comment from the SCO.

The Director '... does not recommend approval of the waiver." However, under certain circumstances, DPW "would not actively oppose a waiver." Among other things, the dwelling would have to be "modified to bring it into strict compliance with all applicable requirements of the "Building Code." This would "include, but not be limited, to the following: ... move all HVAC and electrical equipment out of the basement, provide flood vents in the basement area and remove all material subject to flood damage, verify elevation of first floor with respect to the Flood Protection Elevation."

Please note that DPW is currently taking a consistent and similar position concerning relocation of basement utilities in a case now pending before the County Board of Appeals, Jakub Scigala No. 7-428, 9 Boxwood Lane. We are supporting DPW in that case as well.

Under these circumstances, any grant of a waiver must, at the very least, satisfy all of the conditions prescribed by Director Adams. I am sending a copy of the opinion and this letter to Assistant to the DPW Director David Thomas to keep him apprised of progress on this matter.

It also should be underlined that the stated absence of a recent flooding experience in the area does not excuse a lack of requisite protection from a 100-year storm and flood event. Hurricane Katrina did not have a comparable recent predecessor before it hit New Orleans. The relatively small chance of a catastrophic event in any given year is not an answer. A timing of a catastrophic occurrence is unpredictable.

Thank you for your consideration.

Sincerely,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

PMZ/rmw
cc: Victor W. Fuentealba, Attorney for Petitioner
David Thomas, Assistant to DPW Director Edward Adams

12/14/09

IN RE: **PETITION FOR SPECIAL HEARING** E/S Wilson Avenue @ SE Corner of Wilson Avenue & Woodside Avenue **(8301 Wilson Avenue)** 4th Election District 6th Council District Christopher James Malstrom Petitioner	*	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY **Case No. 2010-0094 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 property, Christopher J. Malstrom. The Petitioner requests a special hearing for a waiver pursuant to Section 500.6 of the Baltimore County Zoning Regulations (B.C.Z.R.), Sections 32-4-107(a)(2), 32-4-414, 32-8-301 and 32-8-303 of the Baltimore County Code (B.C.C.), and from Section 3112.0 of the Baltimore County Building Code, to allow and approve a second story addition built above an existing single-family dwelling that is located in a 100-year floodplain. The subject property and requested relief are more particularly described on the site plan and floodplain study submitted and accepted into evidence as Petitioner's Exhibits 2 and 3, respectively.[1]

Appearing at the requisite public hearing in support of the request were Chris Malstrom, property owner, his parents and long-time residents in the area, William J. and M. Gerardine Malstrom, an adjacent neighbor, Matthew "Ted" Braid, III (8303 Wilson Avenue), Douglas W. DuVal, land surveyor, who is familiar with the site and prepared the site plan, and Victor W. Fuentealba, Esquire, the Petitioner's attorney. Mr. DuVal has been recognized and accepted as an expert witness by this Commission on land use and zoning cases, including waivers as

[1] The subject property is a *corner lot* defined in Section 101 of the B.C.Z.R. as: "a lot abutting on and at the intersection of two or more streets". As will be discussed, it is the 1950's County designed box culvert that runs under Woodside Avenue that drives the instant request for a waiver.

permitted by Sections 32-4-107 and 32-8-303 of the B.C.C., and was accepted as an expert in the instant matter, specifically as to *waivers* involving Sections 32-4-107 and 32-8-303 of the B.C.C. and of 3112.0 of the Baltimore County Building Code.

There were no Protestants or other interested persons present. There were no adverse Zoning Advisory Committee (ZAC) comments received from any of the County reviewing agencies, however, it is noted that the Department of Public Works (DPW) in its response, dated October 5, 2009, withheld its approval. The Director suggested "relocating the HVAC and electrical equipment out of the basement . . . and all material subject to flood damage . . . ".

In response to DPW's comment and at the onset of the hearing, Mr. Fuentealba moved to have the undersigned dismiss this matter. He argues that the Petitioner's alterations do not subject him to the provisions of the B.C.C. concerning floodplains. The basis of this motion is as follows:

Title 8 "Floodplain Management" of the B.C.C. in subtitle 1, Definitions 32-8-101(dd) defines "Substantial Improvements" . . . "any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure, less land value either (i) before the improvement or repair is started; or (ii) if the structure has incurred substantial damage and been restored before the damage occurred".

Section 3112-0 of the Baltimore County Building Code "Construction in Areas Subject to Flooding" states as follows:

1. General Selected – Definitions

   Substantial Improvement – Any repair, reconstruction, alteration or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure (less land value) either: (A) before the improvement or repair is started; or (B) if the structure incurred substantial damage and has been restored, before the damage occurred.

Subsequent paragraphs of Section 3112 consistently refer to "Substantial Improvements" in determining what requirements must be met, such as paragraph 1(B) which states: "Whenever substantial improvements to existing buildings, *including additions*, are constructed, or building experiencing repetitive loss are located in areas subject to tidal flooding as established by the Flood Insurance Study (FIS) and FIRM (Flood Insurance Rate Map) of Baltimore County or more restrictive criteria as established by the County, the building's lowest floor shall not be lower than the flood protection elevation". (Emphasis Added) *See* also paragraph 7 which states: "For all new or substantially improved structures in the floodplain area, the owner must have a professional land surveyor, property line surveyor, or professional engineer submit a fully executed elevation certificate to the County at the time of framing inspection" and paragraph 8 "New or substantially improved non-residential structures may be floodproofed to the flood protection elevation. Under this option, the owner must have a professional engineer or architect submit a fully executed floodproof certificate to the County prior to the approval of the construction by any building official of Baltimore County."

See also Section 3112.2, paragraph 2: Areas Subject to Inundation by Riverine Surface Waters Within the 100-Year Floodplain. "Reconstruction or repair of existing buildings shall be governed by Section 115.0 'Unsafe Structures and Equipment' ". All substantial improvements to existing buildings shall be permitted only on the basis of an approved waiver in accordance with Section Article 32, Title 8, Subtitle 3 of the Baltimore County Code, 2003 "Waivers", and shall be subject to all applicable conditions of Section 32-8-207 of the Baltimore County Code, 2003, "Development in the Floodplain Area" and Section 3112.1 of this Building Code "Areas subject to tidal flooding".

Mr. Fuentealba asserts that the above sections of both the Baltimore County Code and Building Code clearly exempt alterations and improvements which do not equal or exceed 50% of the market value of the structure, less land value. The assessed value of his client's home, excluding the land, as of January 1, 2009 was $111,300.00, 50% of which amounts to $55,650.00. According to Mr. Malstrom's sworn testimony, the cost of the materials that he used did not exceed $15,000.00 and he performed all of the work himself. Even if one would attach a value to the Petitioner's labor, the cost would not amount to 50% of the value of his home.

While I accept the merits of counsel's argument and the basis upon which it is premised, I do not believe it necessary to reach a conclusion on this issue. In my opinion, it would not provide the Petitioner with the requisite authority needed to obtain his building permit – which is being withheld pending the results of this hearing.

On behalf of the Petitioner, Mr. DuVal offered testimony and evidence regarding the subject property which is 60' wide x 90' deep on the southeast corner of Wilson Avenue and Woodside Avenue in Parkville. The property known as Lot No. 8301 in the Parktowne subdivision contains an area of 5,400 square feet, zoned D.R.5.5 and improved with a modest 1-½ story cape code style home (25' wide x 30' deep) built in 1948 that fronts on Wilson Avenue. Other improvements on the site include a shed positioned in the rear yard. *See* Petitioner's Exhibit 5 – photographs of existing conditions. As shown on the site plan, the property is located adjacent to the Stemmers Run – a stream, which flows along the rear southeastern property line and into a 14' x 4' box culvert that runs under Woodside Avenue at ground elevation 276'. Mr. Malstrom purchased the home in 2001 and stated he was never made aware that it was within the 100-year floodplain. In this regard, the Federal Emergency Management

the waiver be granted. Certainly no public expense at all is proposed should the waiver be granted.

Considering all the testimony and the evidence presented, I find special circumstances or conditions exist that would cause unnecessary hardship to the Petitioner. There is no adverse impact on the community and the addition does not create any nuisance or detriment to the health, safety or general welfare of the locale. Mr. DuVal testified that it was his opinion that the strictures of Sections 32-4-107 and 32-8-303 of the B.C.C. were satisfied and that the Petitioner has shown good and sufficient cause that to comply with Section 32-4-414 of the B.C.C. and 3112.0 of the Building Code would cause unnecessary hardship. The Petitioner has shown good and sufficient cause for the waiver. Based on the evidence and testimony, I determine that failure to grant the waiver would result in unnecessary hardship to Petitioner and, further, determine that the granting of the waiver will not increase flood heights, impact public safety, incur extraordinary public expense or conflict with existing local and State laws and ordinances. I find that the waiver requested is the minimum necessary to afford relief.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 14th day of December 2009, that the Petition for Special Hearing seeking approval of a waiver pursuant to Section 500.6 of the Baltimore County Zoning Regulations (B.C.Z.R.), Sections 32-4-107(a)(2), 32-4-414, 32-8-301 and 32-8-303 of the Baltimore County Code (B.C.C.), and from Section 3112.0 of the Baltimore County Building Code, to provide for a

ORDER RECEIVED FOR FILING
Date 12-14-09
By

second story addition above an existing single-family dwelling in the 100-year floodplain, in accordance with Petitioner's Exhibits 2 and 3, respectively, be and is hereby GRANTED.

- The Petitioner may apply for his building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until the thirty (30) day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

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

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

ORDER RECEIVED FOR FILING
Date 12-14-05
By DJ

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

WILLIAM J. WISEMAN III
Zoning Commissioner

December 14, 2009

Victor W. Fuentealba, Esquire
Suite 805, Court Square Building
200 East Lexington Street
Baltimore, Maryland 21202

RE: **PETITION FOR SPECIAL HEARING**
E/S Wilson Avenue @ SE Corner of Wilson Avenue & Woodside Avenue
(8301 Wilson Avenue)
4th Election District - 6th Council District
Christopher James Malstrom - Petitioner
Case No. 2010-0094 SPH

Dear Mr. Fuentealba:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Hearing has been granted, 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,

WILLIAM J. WISEMAN
Zoning Commissioner
for Baltimore County

WJW:dlw
Enclosure

c: Chris Malstrom, 8301 Wilson Avenue, Parkville, MD 21234
William J. and M. Gerardine Malstrom, 3300 Garnet Road, Baltimore, MD 21234
Matthew "Ted" Braid, II, 8303 Wilson Avenue, Baltimore, MD 21234
Douglas W. DuVal, L.S., 1729 York Road, Suite 205, Lutherville, MD 21093
People's Counsel; File

BALTIMORE COUNTY, MARYLAND

INTER OFFICE CORRESPONDENCE

PMZ
C.L

TO: Timothy Kotroco, Director,
Permits & Development Management

ATTN: Kristen Matthews
MS 1105

FROM: Edward Adams, Director,
Public Works

RECEIVED BY
OCT 09 2009
People's Counsel for Baltimore County

DATE: October 5, 2009

SUBJECT: Case No. 2010-0094-SPH
Petition for Special Hearing for waiver to permit addition to single family dwelling in 100-year riverine floodplain.
8301 Wilson Avenue

Section 32-8-303 (c) of the Baltimore County Code concerning waivers to the floodplain regulations says, "In considering a waiver action, comments from the state coordinating office and the County Department of Public Works shall be taken into account and maintained with the permit file." This memo is the comment from the Department of Public Works for the subject waiver.

The waiver involves a new second story addition to an existing house that was the subject of Code Violation Case # CO-0059943 (5/1/2009). The house is located in a 100-year floodplain.

This department does not recommend approval of the waiver. The fact that the petitioners began work without a valid permit does not obligate approval of a waiver to grant relief from a hardship of their own making. However, if there is no community opposition and if the dwelling is modified to bring it into strict compliance with all applicable requirements of the Building Code, this department would not actively oppose a waiver approval through the appeal process. "Strict compliance" would include but not be limited to the following (see section 3112 of the Building Code): move all HVAC and electrical equipment out of the basement, provide flood vents in the basement area and remove all material subject to flood damage, verify elevation of first floor with respect to the Flood Protection Elevation.

The petitioners would need to decide if it would be in their best interest to return the dwelling to its original condition rather than going to the expense of complying with the conditions of a waiver.

ECA/DLT/s
CC: Doug DuVal, DuVal & Associates; Dennis Kennedy, Chief, Development Plan Review Bureau; Don Rascoe, Deputy Director, Department of Permits & Development Management; Peter M. Zimmerman, Peoples' Counsel

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 8301 Wilson Ave.

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)

A 2ND STORY ADDITION ABOVE EXISTING DWELLING WITHIN A FLOOD PLAIN AREA PURSUANT TO BALTIMORE COUNTY CODE ARTICLE 32, TITLE 4 AND 6 (PUBLIC IMPROVEMENTS), AND, TITLE 4 AND 8, COUNCIL BILL 49-07 (BUILDING CODE SECTION 3112)

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

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

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address Telephone No.

City State Zip Code

Legal Owner(s):

CHRISTOPHER JAMES MALSTROM

Name - Type or Print

Signature

Name - Type or Print

Signature

8301 Wilson Ave. 410-967-6757

Address Telephone No.

Baltimore MD 21234

City State Zip Code

Representative to be Contacted:

Douglas W. DuVal, L.S., Pres.
DuVal & Associates, P.A.

Name

1729 York Rd., Ste. 205 410-666-5467

Address Telephone No.

Lutherville MD 21093

City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

Case No. 2010-0094-SPH

UNAVAILABLE FOR HEARING _____

REV 9/15/98

Reviewed By A. TSUI Date 9/15/09

ORDER RECEIVED FOR FILING

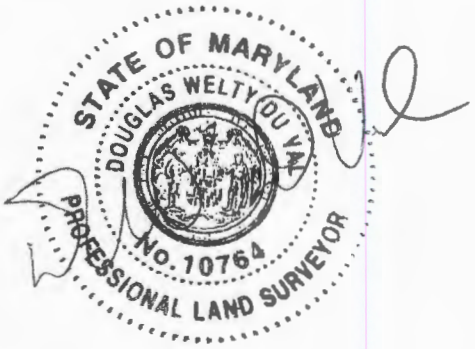
Date 12-14-09

By DW

DuVal & Associates, P.A.
SURVEYING • ENGINEERING
Douglas W. DuVal, L.S.
Raymond B. Sutton, Jr.

Zoning Description for 8301 Wilson Avenue

Beginning at a point at the intersection of the east side of Wilson Avenue (50' wide) and the north side of Woodside Avenue (50' wide). Being Lot #8301, Block B in the subdivision of Parktowne as recorded in Baltimore County Plat Book #12, Folio #077, containing 5,400 square feet or 0.1239 acres of land, more or less. Also known as 8301 Wilson Avenue and located in the 14th Election District, 6th Councilmanic District.



2010-0094-SPH

1729 York Road, Suite 205 • Lutherville, MD 21093
Phone: 410-666-5467 • Fax: 410-583-4688 • E mail: duvalapa@verizon.net

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

9/15/09

No.

Date:

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount

Total:

Rec From:

For:

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER GOLD - ACCOUNTING
PLEASE PRESS HARD!!!!

CASHIER'S VALIDATION

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: # 2010-0094-SPH
8301 Wilson Avenue
E/side of Wilson Avenue, n/east corner of intersection between Wilsorl Ave. & Woodside Ave.
4th Election District — 6th Councilmanic District
Legal Owner(s): Christopher Malstrom

Special Hearing: to approve a waiver for a 2nd story addition above existing dwelling within a flood plain area pursuant to Baltimore County Code article 32, title 4 and 6 (Public improvements) and title 4 and 8, council bill 49-07 (building code section 3112).

Hearing: Tuesday, November 24, 2009 at 10:00 a.m. in Room 104, 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 11/730 November 10 220817

CERTIFICATE OF PUBLICATION

11/12/, 2009

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 11/10/, 2009.

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

S. Wilkinson

LEGAL ADVERTISING

CERTIFICATE OF POSTING

RE: Case No 2010-0094-SPH

Petitioner/Developer Doug Duvall, Duvall & Assoc.

Date Of Hearing/Closing: 11/24/09

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

Attention:

Ladies and Gentlemen

This letter is to certify under penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property at 8301 Wilson Avenue

This sign(s) were posted on November 8, 2009
Month, Day, Year

Sincerely,

Martin Ogle 11/8/09
Signature of Sign Poster and Date

Martin Ogle
60 Chelmsford Court
Baltimore, Md, 21220
443-629-3411

Martin Ogle 11/8/09

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: 2010-0094-SPH

Petitioner: CHRISTOPHER J. MALSTROM

Address or Location: 8301 WILSON AVE.

PLEASE FORWARD ADVERTISING BILL TO:

Name: Douglas W. DuVal, L.S. c/o DuVal & Associates, P.A.

Address: 1729 York Rd., Ste. 205
Lutherville, MD 21093

Telephone Number: 410-666-5467

Revised 7/11/05 - SCJ

TO: PATUXENT PUBLISHING COMPANY
Tuesday, November 10, 2009 Issue - Jeffersonian

Please forward billing to:
Douglas DuVal 410-666-5467
DuVal & Associates
1729 York Road, Ste. 205
Lutherville, MD 21093

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: 2010-0094-SPH
8301 Wilson Avenue
E/side of Wilson Avenue, n/east corner of intersection between Wilson Ave. & Woodside Ave.
4th Election District – 6th Councilmanic District
Legal Owners: Christopher Malstrom

Special Hearing to approve a waiver for a 2nd story addition above existing dwelling within a flood plain area pursuant to Baltimore County Code article 32, title 4 and 6 (Public Improvements) and title 4 and 8, council bill 49-07 (building code section 3112).

Hearing: Tuesday, November 24, 2009 at 10:00 a.m. in Room 104, 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
MARYLAND

JAMES T. SMITH, JR.
County Executive

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

October 15, 2009

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: 2010-0094-SPH
8301 Wilson Avenue
E/side of Wilson Avenue, n/east corner of intersection between Wilson Ave. & Woodside Ave.
4th Election District – 6th Councilmanic District
Legal Owners: Christopher Malstrom

Special Hearing to approve a waiver for a 2nd story addition above existing dwelling within a flood plain area pursuant to Baltimore County Code article 32, title 4 and 6 (Public Improvements) and title 4 and 8, council bill 49-07 (building code section 3112).

Hearing: Tuesday, November 24, 2009 at 10:00 a.m. in Room 104, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204

Timothy Kotroco
Director

TK:klm

C: Christopher Malstrom, 8301 Wilson Avenue, Baltimore 21234
Douglas DuVal, DuVal & Assoc., 1729 York Rd., Ste. 205, Lutherville 21093

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY MONDAY, NOVEMBER 9, 2009.**
(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

pp reassigned to 7/27/10

Jefferson Building - Second Floor
Hearing Room #2 - Suite 206
105 W. Chesapeake Avenue

April 2, 2010

NOTICE OF ASSIGNMENT

CASE #: 10-094-SPH ***IN THE MATTER OF: Christopher James Malstrom***
Legal Owner/Petitioner
8301 Wilson Avenue

RE: Findings of Fact and Conclusion of Law issued December 14, 2009 by the Zoning Commissioner that the Petitioner for Special Hearing to allow and approve a second story addition built above an existing single family dwelling located in a 100-year floodplain. filed pursuant to Section 500.6 was granted.

ASSIGNED FOR: THURSDAY, JUNE 24, 2010 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: Counsel for Petitioner/Property Owner : Victor Fuentealba, Esquire
Petitioner /Property Owner : Christopher Malstrom

Appellant : Peter Max Zimmerman
People's Counsel for Baltimore County

Douglas DuVal /DuVal & Associates, P.A.

Matthew Braid
William and M. Gerardine Malstrom

William J. Wiseman, III, Zoning Commissioner
Timothy Kotroco, Director/PDM
Arnold F. "Pat" Keller, III, Director/Planning
Lew Mayer, Building Inspector
Nancy West, Assistant County Attorney
John Beverungen, County Attorney

Davine Thomas
DTW

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

Jefferson Building - Second Floor
Hearing Room #2 - Suite 206
105 W. Chesapeake Avenue

June 7, 2010

NOTICE OF POSTPONEMENT AND RE-ASSIGNMENT

CASE #: 10-094-SPH *IN THE MATTER OF: Christopher James Malstrom*
Legal Owner/Petitioner
8301 Wilson Avenue

RE: Findings of Fact and Conclusion of Law issued December 14, 2009 by the Zoning Commissioner that the Petitioner for Special Hearing to allow and approve a second story addition built above an existing single family dwelling located in a 100-year floodplain. filed pursuant to Section 500.6 was granted.

which had been assigned to 6/24/10 has been postponed and has been re-assigned as follows:

RE-ASSIGNED FOR: TUESDAY, JULY 27, 2010 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: Counsel for Petitioner/Property Owner : Victor Fuentealba, Esquire
Petitioner /Property Owner : Christopher Malstrom

Appellant : Peter Max Zimmerman
People's Counsel for Baltimore County

Douglas DuVal /DuVal & Associates, P.A.

Matthew Braid
William and M. Gerardine Malstrom

William J. Wiseman, III, Zoning Commissioner
Arnold F. "Pat" Keller, III, Director/Planning
Nancy West, Assistant County Attorney
John Beverungen, County Attorney

Timothy Kotroco, Director/PDM
Lew Mayer, Building Inspector
Dave Thomas, DPW

County Board of Appeals of Baltimore County

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

June 7, 2010

Victor Fuentealba, Esquire
Court Square Building, Ste 805
200 E. Lexington Street
Baltimore, MD 21202

Re: In the Matter of: Christopher J. Malstrom / Legal Owner
Case No.: 10-094-SPH

Dear Mr. Fuentealba:

This letter is to advise you that your request for a postponement of the hearing scheduled for June 24, 2010 has been granted without opposition from the Office of People's Counsel, Appellant.

The matter has been re-assigned to Tuesday, July 27, 2010. A copy of the Notice of Postponement and Reassignment is enclosed.

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact this office.

Very truly yours,

Theresa R. Shelton

Theresa R. Shelton
Administrator

Enclosure: Notice of Postponement and Reassignment

cc (w/Encl.): Peter Max Zimmerman
People's Counsel for Baltimore County
Christopher J. Malstrom

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

July 29, 2010

NOTICE OF DELIBERATION / MOTION FOR RECONSIDERATION

CASE #: 10-094-SPH *IN THE MATTER OF: Christopher James Malstrom*
Legal Owner/Petitioner
8301 Wilson Avenue

Having concluded this matter on 7/27/10, a public deliberation was held on 10/13/10. The Remand Order was issued by the Board on 12/2/10. A Motion for Reconsideration and Clarification was filed on 12/13/10. The matter has been scheduled for a Deliberation on the following date /time:

DATE AND TIME : TUESDAY, JANUARY 18, 2011 at 9:30 a.m.

LOCATION : Jefferson Building - Second Floor
Hearing Room #2 - Suite 206
105 W. Chesapeake Avenue

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

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: Counsel for Petitioner/Property Owner : Victor Fuentealba, Esquire
Petitioner /Property Owner : Christopher Malstrom

Appellant : Peter Max Zimmerman
People's Counsel for Baltimore County

Douglas DuVal /DuVal & Associates, P.A.

Matthew Braid
William and M. Gerardine Malstrom

Zoning Commissioner
Director/PDM
Director/Planning
Lew Mayer, Building Inspector
Nancy West, Assistant County Attorney
County Attorney

County Board of Appeals of Baltimore County

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

July 29, 2010

NOTICE OF DELIBERATION

CASE #: 10-094-SPH *IN THE MATTER OF: Christopher James Malstrom*
Legal Owner/Petitioner
8301 Wilson Avenue

RE: Findings of Fact and Conclusion of Law issued December 14, 2009 by the Zoning Commissioner that the Petitioner for Special Hearing to allow and approve a second story addition built above an existing single family dwelling located in a 100-year floodplain filed pursuant to Section 500.6 was granted.

Having concluded this matter on 7/27/2010 a public deliberation has been scheduled for the following:

DATE AND TIME: WEDNESDAY, OCTOBER 13, 2010 at 9:00 a.m.

LOCATION: Jefferson Building - Second Floor
Hearing Room #2 - Suite 206
105 W. Chesapeake Avenue

NOTE: Closing briefs are due on ~~Wednesday, September 15, 2010 by 4:30 p.m.~~ extended to October 1, 2010 by 4:00

(Original and three [3] copies)

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

Theresa R. Shelton
Administrator

---

c: Counsel for Petitioner/Property Owner : Victor Fuentealba, Esquire
Petitioner /Property Owner : Christopher Malstrom

Appellant : Peter Max Zimmerman
People's Counsel for Baltimore County

Douglas DuVal /DuVal & Associates, P.A.

Matthew Braid
William and M. Gerardine Malstrom

William J. Wiseman, III, Zoning Commissioner
Timothy Kotroco, Director/PDM
Arnold F. "Pat" Keller, III, Director/Planning
Lew Mayer, Building Inspector
Nancy West, Assistant County Attorney
John Beverungen, County Attorney

Baltimore County, Maryland
OFFICE OF PEOPLE'S COUNSEL
Jefferson Building
105 West Chesapeake Avenue, Room 204
Towson, Maryland 21204

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

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

September 2, 2010

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

Re: Christopher Malstrom
8301 Wilson Avenue
Case No.: 2010-094-SPH

Dear Ms. Shelton:

This letter is to request an extension of the due date for the filing of memoranda in this case from September 15, 2010 until October 1, 2010. We have spoken with Mr. Victor Fuentealba, attorney for the Petitioner, and he has no objection to the extension. The deliberation is currently scheduled for October 13, 2010.

Thank you for your consideration.

Sincerely,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

PMZ\rmw

cc: Victor W. Fuentealba, Esquire

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

TO: Larry S.
Larry W.
Wendell

DATE: September 29, 2010

FROM: Theresa T

RE: **Closing Briefs / Malstrom**

Due to the lack of hearings before the Board, these briefs are being mailed.

The Public Deliberation on this matter is scheduled for

WEDNESDAY, OCTOBER 13 @ 9:00 A.M.

Encl.: Memos

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

Jefferson Building - Second Floor
Hearing Room #2 - Suite 206
105 W. Chesapeake Avenue

January 24, 2011

NOTICE OF ASSIGNMENT
PURSUANT TO THE BOARD'S RULING AND ORDER
ON MOTION FOR RECONSIDERATION

CASE #: 10-094-SPH ***IN THE MATTER OF: Christopher James Malstrom***
Legal Owner/Petitioner
8301 Wilson Avenue

RE: Findings of Fact and Conclusion of Law issued December 14, 2009 by the Zoning Commissioner that the Petitioner for Special Hearing to allow and approve a second story addition built above an existing single family dwelling located in a 100-year floodplain. filed pursuant to Section 500.6 was granted.

Pursuant to the Order issued by this Board on January 20, 2011, the matter has been assigned as follows:

ASSIGNED FOR: TUESDAY, MARCH 8, 2011 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: Counsel for Petitioner/Property Owner : Victor Fuentealba, Esquire
Petitioner /Property Owner : Christopher Malstrom

Appellant : Peter Max Zimmerman
People's Counsel for Baltimore County

Douglas DuVal /DuVal & Associates, P.A. Dave Thomas, DPW Donald Brand, Building Engineer
Matthew Braid William and M. Gerardine Malstrom
Lawrence M. Stahl, Chief Administrative Judge Arnold Jablon, Director/PAI
Jeff Mayhew, Deputy Director/Office of Planning Nancy West, Assistant County Attorney
Michael Field, County Attorney, Office of Law Lew Mayer, Building Inspector

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

March 8, 2011

NOTICE OF DELIBERATION

CASE #: 10-094-SPH *IN THE MATTER OF: Christopher James Malstrom*
Legal Owner/Petitioner
8301 Wilson Avenue

Having concluded this matter on 7/27/10, a public deliberation was held on 10/13/10. The Remand Order was issued by the Board on 12/2/10. This matter being held 'sub curia' before the Board. A Motion for Reconsideration and Clarification was filed on 12/13/10. The Motion was deliberated on 1/18/10 and the Ruling was issued 1/20/11. A hearing was held before the Board for the purpose of testimony from the Building Engineer and concludes the hearing before this Board. A Public Deliberation has been scheduled as follows:

DATE AND TIME: THURSDAY, MARCH 24, 2011 at 9:30 a.m.

LOCATION : **Jefferson Building - Second Floor**
Hearing Room #2 - Suite 206
105 W. Chesapeake Avenue

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

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: Counsel for Petitioner/Property Owner : Victor Fuentealba, Esquire
Petitioner /Property Owner : Christopher Malstrom

Appellant : Peter Max Zimmerman
People's Counsel for Baltimore County

Douglas DuVal /DuVal & Associates, P.A. Dave Thomas, DPW Donald Brand, Building Engineer
Matthew Braid William and M. Gerardine Malstrom
Lawrence M. Stahl, Chief Administrative Judge Arnold Jablon, Director/PAI
Jeff Mayhew, Deputy Director/Office of Planning Nancy West, Assistant County Attorney
Michael Field, County Attorney, Office of Law Lew Mayer, Building Inspector

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

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

November 18, 2009

Christopher James Malstrom
8301 Wilson Ave.
Baltimore, MD 21234

Dear: Christopher James Malstrom

RE: Case Number 2010-0094-SPH, 8301 Wilson Ave.

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on September 15, 2009. This letter is not an approval, but only a **NOTIFICATION.**

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

W. Carl Richards Jr.

W.Carl Richards, Jr.
Supervisor, Zoning Review

WCR:lnw

Enclosures

c: People's Counsel
Douglas W. DuVal: DuVal & Associates, P.A.; 1724 York Rd. Ste. 205; Lutherville, MD 21093

Kristen:
To File
TMK

BALTIMORE COUNTY, MARYLAND

INTER OFFICE CORRESPONDENCE

TO: Timothy Kotroco, Director,
Permits & Development Management

ATTN: Kristen Matthews
MS 1105

FROM: Edward Adams, Director,
Public Works

DATE: October 5, 2009

SUBJECT: Case No. 2010-0094-SPH
Petition for Special Hearing for waiver to permit addition to single family dwelling in 100-year riverine floodplain.
8301 Wilson Avenue

Section 32-8-303 (c) of the Baltimore County Code concerning waivers to the floodplain regulations says, "In considering a waiver action, comments from the state coordinating office and the County Department of Public Works shall be taken into account and maintained with the permit file." This memo is the comment from the Department of Public Works for the subject waiver.

The waiver involves a new second story addition to an existing house that was the subject of Code Violation Case # CO-0059943 (5/1/2009). The house is located in a 100-year floodplain.

This department does not recommend approval of the waiver. The fact that the petitioners began work without a valid permit does not obligate approval of a waiver to grant relief from a hardship of their own making. However, if there is no community opposition and if the dwelling is modified to bring it into strict compliance with all applicable requirements of the Building Code, this department would not actively oppose a waiver approval through the appeal process. "Strict compliance" would include but not be limited to the following (see section 3112 of the Building Code): move all HVAC and electrical equipment out of the basement, provide flood vents in the basement area and remove all material subject to flood damage, verify elevation of first floor with respect to the Flood Protection Elevation.

The petitioners would need to decide if it would be in their best interest to return the dwelling to its original condition rather than going to the expense of complying with the conditions of a waiver.

ECA/DLT/s
CC: Doug DuVal, DuVal & Associates; Dennis Kennedy, Chief, Development Plan Review Bureau; Don Rascoe, Deputy Director, Department of Permits & Development Management; Peter M. Zimmerman, Peoples' Counsel

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: September 25, 2009

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

SUBJECT: Zoning Advisory Committee Meeting
For October 5, 2009
Item No.: 10-094

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

The Director of Public Works will make a response to this item.

DAK:CEN:kmt
cc: file
G:\DevPlanRev\ZAC - Comments\ZAC-ITEM NO 10-080-10052009.doc

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: October 9, 2009

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

SUBJECT: Zoning Advisory Petition(s): **Case(s) 10-094- Special Hearing**

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

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

Prepared By: _____

Division Chief: _____

CM/LL

W:\DEVREV\ZAC\10-094.doc

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

JOHN J. HOHMAN, *Chief*
Fire Department

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

October 2,2009

ATTENTION: Zoning Review Planners

Distribution Meeting Of: September 21. 2009

Item Numbers 0087,0088,0090,0091,0092,0093,0094,0095 and 0096

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

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

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

cc: File

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

SHA State Highway Administration

Beverley K. Swaim-Staley, Secretary
Neil J. Pedersen, Administrator

MARYLAND DEPARTMENT OF TRANSPORTATION

Date: SEPT. 29, 2009

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

RE: Baltimore County
Item No. 2010-0094-SPH
8301 WILSON AVE
MALSTROM PROPERTY
SPECIAL HEARING -

Dear Ms. Matthews:

Thank you for the opportunity to review your referral request on the subject of the above captioned. We have determined that the subject property does not access a State roadway and is not affected by any State Highway Administration projects. Therefore, based upon available information this office has no objection to Baltimore County Zoning Advisory Committee approval of Item No. 2010-0094-SPH.

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

Very truly yours,

Michael P. Bailey

FOR Steven D. Foster, Chief
Engineering Access Permits
Division

SDF/mb

BW
11-24-09

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

RECEIVED

NOV 03 2009

ZONING COMMISSIONER

TO: Timothy M. Kotroco

FROM: Dave Lykens, DEPRM - Development Coordination

DATE: November 3, 2009

SUBJECT: Zoning Item # 10-094-SPH
Address 8301 Wilson Avenue
(Malstrom Property)

Zoning Advisory Committee Meeting of September 21, 2009

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

__X__ 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).

Additional Comments:

Reviewer: Paul Dennis Date: October 6, 2009

RE:	PETITION FOR SPECIAL HEARING 8301 Wilson Avenue; E/S Wilson Avenue; NE cor b/w Wilson & Woodside Avenues 4th Election & 6th Councilmanic Districts Legal Owner(s): Christopher Malstrom Petitioner(s)	*	BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY 10-094-SPH

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

ENTRY OF APPEARANCE

Pursuant to Baltimore County Charter § 524.1, please enter the appearance of People's Counsel for Baltimore County as an interested party in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence sent and all documentation filed in the case.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

RECEIVED
SEP 30 2009

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 30th day of September, 2009, a copy of the foregoing Entry of Appearance was mailed to Douglas Duval, Duval & Associates, 1729 York Road, Suite 205, Lutherville, MD 21093, Representative for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

IN THE MATTER OF Christopher James Malstrom 8301 Wilson Avenue Parkville, MD 21234 Legal Owner/Appellant	*	**BEFORE THE**
	*	**COUNTY BOARD**
	*	**OF APPEALS**
	*	**FOR BALTIMORE COUNTY**
	*	**Case No. 10-094-SPH**

* * * * * * * * *

ENTRY OF APPEARANCE

Please enter the appearance of the undersigned in the above-referenced case as counsel for Baltimore County, Maryland, and forward all notices of future hearings to my attention.

MICHAEL E. FIELD
County Attorney

NANCY C. WEST
Assistant County Attorney
Courthouse, Second Floor
400 Washington Avenue
Towson, MD 21204
410-887-4420

Attorneys for Baltimore County, Maryland

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of March, 2011, a copy of this Entry of Appearance was personally delivered to: Victor Fuentealba, Esq., Court Square Building, Ste. 805, 200 E. Lexington Street, Baltimore, MD 21202, and Peter Max Zimmerman, People's Counsel for Baltimore County, Suite 204, Jefferson Building, 105 W. Chesapeake Avenue, Towson, MD 21204.

NANCY C. WEST

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

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

March 26, 2010

Victor Fuentealba, Esquire
Court Square Building, Ste. 805
200 East Lexington Street
Baltimore, MD 21202

Dear Mr. Fuentealba:

RE: Case: 2010-0094-SPH, 8301 Wilson Avenue

Please be advised that an appeal of the above-referenced case was filed in this office on .February 9, 2010 by the Office of People's Counsel. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

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

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

Sincerely,

Timothy Kotroco
Director

TK:klm

c: William J. Wiseman III, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Chris Malstrom, 8301 Wilson Avenue, Parkville 21234
William & Geraldine Malstrom, 3300 Garnet Road, Baltimore 21234
Matthew Braid, II, 8303 Wilson Avenue, Baltimore 21234
Douglas DuVal, 1729 York Road, Ste. 205, Lutherville 21093

APPEAL

Petition for Special Hearing
8301 Wilson Avenue
E/s Wilson Ave. @ SE Corner of Wilson Ave. & Woodside Ave.
4th Election District – 6th Councilmanic District
Legal Owner: Christopher Malstrom

Case No.: 2010-0094-SPH

Petition for Special Hearing (September 15, 2009)

Zoning Description of Property

Notice of Zoning Hearing (October 15, 2009)

Certification of Publication (The Jeffersonian – November 10, 2009)

Certificate of Posting (November 8, 2009) by Martin Ogle

Entry of Appearance by People's Counsel (September 30, 2009)

Petitioner(s) Sign-In Sheet – One Sheet

Protestant(s) Sign-In Sheet - None

Citizen(s) Sign-In Sheet - None

Zoning Advisory Committee Comments

Petitioners' Exhibit
1. Assessed Property Values
2. Site Plan
3a. Fema Flood Map
b. Flood Plain Study – Property Plan
c. Drainage Area Map
4. Building Permit B696144
5. Photos of Property

Protestants' Exhibits - None

Miscellaneous (Not Marked as Exhibit)
1. Letter from Victor Fuentealba dated November 30, 2009 as per requested by Zoning Commissioner at hearing
2. Letter from Douglas DuVal dated December 3, 2009
3. Email from Chris Malstrom dated December 7, 2009
4. PDM Complaint Report

Zoning Commissioner's Order (GRANTED – December 14, 2009)

Request for Motion of Reconsideration from People's Counsel dated December 28, 2009

Letter in response to Motion of Reconsideration from Mr. Fuentealba dated January 7, 2010

Order on Motion for Reconsideration (DENIED – January 13, 2010)

Notice of Appeal received on February 9, 2010 from People's Counsel

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner/Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Victor Fuentealba
Chris Malstrom
Mr. & Mrs. Malstrom
Matthew Braid, II
Douglas DuVal

date sent March 26, 2010, klm

APPEAL

Petition for Special Hearing
8301 Wilson Avenue
E/s Wilson Ave. @ SE Corner of Wilson Ave. & Woodside Ave.
4th Election District – 6th Councilmanic District
Legal Owner: Christopher Malstrom

Case No.: 2010-0094-SPH

✓ Petition for Special Hearing (September 15, 2009)

✓ Zoning Description of Property

✓ Notice of Zoning Hearing (October 15, 2009)

✓ Certification of Publication (The Jeffersonian – November 10, 2009)

✓ Certificate of Posting (November 8, 2009) by Martin Ogle

✓ Entry of Appearance by People's Counsel (September 30, 2009)

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

Protestant(s) Sign-In Sheet – (None)

Citizen(s) Sign-In Sheet – (None)

RECEIVED
MAR 2 6 2010
BALTIMORE COUNTY
BOARD OF APPEALS

✓ Zoning Advisory Committee Comments

Petitioners' Exhibit
- ✓ 1. Assessed Property Values
- ✓ 2. Site Plan
- ✓ 3a. Fema Flood Map
- ✓ b. Flood Plain Study – Property Plan
- ✓ c. Drainage Area Map
- ✓ 4. Building Permit B696144
- ✓ 5. Photos of Property

Protestants' Exhibits (None)

Miscellaneous (Not Marked as Exhibit)
- ✓ 1. Letter from Victor Fuentealba dated November 30, 2009 as per requested by Zoning Commissioner at hearing
- ✓ 2. Letter from Douglas DuVal dated December 3, 2009
- ✓ 3. Email from Chris Malstrom dated December 7, 2009
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✓ Order on Motion for Reconsideration (DENIED – January 13, 2010)

✓ Notice of Appeal received on February 9, 2010 from People's Counsel

Address List

Petitioner:

Victor Fuentealba, Esquire
Court Square Building, Ste 805
200 E. Lexington Street
Baltimore, MD 21202

Christopher Malstrom
8301 Wilson Avenue
Baltimore, MD 21234

Douglas DuVal
DuVal & Associates, P.A.
1729 York Road, Ste 205
Lutherville, MD 21093

Appellant:

Office of People's Counsel

Interested:

Matthew Braid
8303 Wilson Avenue
Baltimore, MD 21234

William and M. Gerardine Malstrom
3300 Garnet Road
Baltimore, MD 21234

Interoffice:

Building Engineer ✓ updated

William J. Wiseman, III, Zoning Commissioner
Timothy Kotroco, Director/PDM
Arnold F. "Pat" Keller, III, Director/Planning
Nancy West, Assistant County Attorney
John Beverungen, County Attorney

added Dave Thomas DPW

Bill Wiseman - Case# 2010-0094 SPH (Malstrom)

From: <T8keMeAslAm@aol.com>
To: <wwiseman@baltimorecountymd.gov>
Date: 12/7/2009 6:03 AM
Subject: Case# 2010-0094 SPH (Malstrom)

Mr Wiseman,

Less than ten years ago I replaced my oil fired boiler system with a gas fired FHA system, and also replaced the water heater at the same time. These utilities were relocated to a location on an elevated pad in a "utility closet" which is integrated with the french drain system and sump pump installed with the house.

I will also install an emergency standby by generator, permanently tied to the power system, with a continuous gas feed tapped from the gas system to the house. This will provide uninterrupted power to the sump pump, on the chance of a possible "100 year flood" inundating and causing power outage along with continuous rain.

As previously mentioned, I have never had an issue with rain/storm water entering the house from outside.

Thank you

Chris Malstrom
8301 Wilson Avenue
Parkville, Md 21234
410-967-6757

County Board of Appeals of Baltimore County

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

January 18, 2011

Peter Max Zimmerman
People's Counsel for
Baltimore County
Suite 204, Jefferson Building
105 W. Chesapeake Avenue
Towson, MD 21204

Victor Fuentealba, Esquire
Court Square Building, Ste 805
200 E. Lexington Street
Baltimore, MD 21202

Re: In the Matter of: Christopher J. Malstrom / Legal Owner
Case No.: 10-094-SPH

Dear Counsel:

Prior to the Board making a determination with respect to the Motion for Reconsideration and Clarification filed by People's Counsel on December 13, 2010, I requested a copy of the International Building Code to review the language of the Code, as pertains to the question of substantial improvement. The Building Engineer brought copies of the old International Code and the new International Code plus a Bill presented to the County Counsel to the Board's office. After he presented the Code, the Building Engineer and I discussed the Code. I did not make any notes with respect to our conversation, but I do recall that he may have presented his position as set forth by People's Counsel in his Motion for Reconsideration and the subsequent letter to the Board.

If either party has any question with respect to my continued participation in this matter because you may feel that I am biased or prejudiced, I will certainly recuse myself from any further hearings.

Please notify this office of your position with respect to this matter by February 4, 2011. This will give the Board an opportunity to appoint another Board member to the case who will be able to review the decisions and testimony and participate in the new hearing.

Thank you for your cooperation in this matter.

Very truly yours,

Lawrence S. Wescott
Chairman

LSW/trs

From: Theresa Shelton
To: Zimmerman, Peter
Date: 6/2/2010 8:46 AM
Subject: Malstrom / 10-094-SPH / PP and Re-assignment

Pete:

Good Morning. Just wanted to follow-up if the date of July 27, 2010 is good for you? Please let me know either way and I will send out the appropriate notice today. Thank you.

T
Semper Fi

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

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

"I took the Green @ Work Energy Challenge Pledge."

County Board of Appeals of Baltimore County

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

February 4, 2011

Peter Max Zimmerman
People's Counsel for
Baltimore County
Suite 204, Jefferson Building
105 W. Chesapeake Avenue
Towson, MD 21204

Victor Fuentealba, Esquire
Court Square Building, Ste 805
200 E. Lexington Street
Baltimore, MD 21202

Re: In the Matter of: Christopher J. Malstrom / Legal Owner
Case No.: 10-094-SPH

Dear Counsel:

This office has received the enclosed documents from the County Building Engineer in the above captioned case.

I am requesting comments from Counsel stating your position with respect to the issue raised for the first time.

Comments should be received by Friday, February 18, 2011. At this time the hearing remains scheduled for March 8, 2011.

Please do not hesitate to contact me if you wish to discuss this matter further. I remain,

Very truly yours,

Lawrence S. Wescott
Chairman

Duplicate Original

Encl.: Email and Attachment dated 2/4/2011

c(w/o.Encl.): Donald Brand, Building Engineer

From: Donald Brand
To: Shelton, Theresa
CC: Bryan, John; Hohne, Paul; Patel, Yogin kumar
Date: 2/4/2011 11:02 AM
Subject: Malstrom case #10-094-SPH
Attachments: S50BW-211020412000.PDF

Theresa:

The Board ordered that a hearing date be set for the purpose of taking testimony from the Building Engineer regarding the question of constructing a substantial improvement and the method for determining substantial improvement as set forth in the Building Code.

I am unable to comply with the Board's order as this Department does not have sealed plans showing the changes at issue. Until I receive sealed plans, I am unable to comply with the Board's request.

Our files indicate that an application was filed on June 6, 2008 but was not issued. The application was reviewed by Yogin Patel, Plans Reviewer, and he noted on the application "Required sealed Const. plan" See attached PDF.

Please advise the Board of this issue and that I would appreciate receiving from them direction as to how I should proceed as matters currently exist, further advising them that if Mr. Malstrom can supply me with sealed drawings satisfactory to all parties, I can then provide an opinion as requested.

Thank you.

Don

Donald E. Brand, P.E.
Building Engineer
Department of Permits & Development Management
111 W. Chesaapeake Avenue, Room 105
Towson, Maryland 21204
dbrand@baltimorecountymd.gov
410-887-4585
FAX 410-887-5708

APPLICATION FOR PERMIT
BALTIMO[illegible]NTY MARYLAND
DEPARTMENT OF PE[illegible] DEVELOPMENT MANAGEMENT
TOWSO[illegible]LAND 21204

DATE: 6-6-08
OEA: ED4/TC4
HISTORIC DISTRICT/BLDG.
[ ] YES [ ] NO
[ ] DO NOT KNOW

PERMIT #: B696144
RECEIPT #: A578532
CONTROL #: MR
XREF #:

FEE: 60+5
PAID: 65.00
PAID BY: [illegible]
INSPECTOR:

I HAVE CAREFULLY READ THIS APPLICATION AND KNOW THE SAME IS CORRECT AND TRUE, AND THAT IN DOING THIS WORK ALL PROVISIONS OF THE BALTIMORE COUNTY CODE AND APPROPRIATE STATE REGULATIONS WILL BE COMPLIED WITH WHETHER HEREIN SPECIFIED OR NOT AND WILL REQUEST ALL REQUIRED INSPECTIONS.

PROPERTY ADDRESS: 8301 WILSON AVE
SUITE/SPACE/FLOOR
SUBDIV:
TAX ACCOUNT #: 1402066300 DISTRICT/PRECINCT 14 / 04
OWNER'S INFORMATION (LAST, FIRST)
NAME: CHRISTOPHER J MALSTRUM
ADDR: 8301 WILSON AVE PARKVILLE MD 21234

DOES THIS BLDG. HAVE SPRINKLERS YES — NO —

APPLICANT INFORMATION
NAME: SAME Christopher J Malstrom
COMPANY: N/A
STREET 8301 WILSON AVE
CITY, ST, ZIP PARKVILLE MD 21234
PHONE #: 410-663-4503 MHIC # N/A MHBR# N/A
APPLICANT SIGNATURE: [signature] BRC#
PLANS: CONST 2 PLOT 1/2 PLAT 0 DATA 0 EL 1 PL 2
TENANT
CONTR: SAME OWNER
ENGNR:
SELLR:

TYPE OF IMPROVEMENT
1. ✓ NEW BLDG CONST
2. ✓ ADDITION
3. ___ ALTERATION
4. ___ REPAIR
5. ___ WRECKING
6. ___ MOVING
7. ___ OTHER

DESCRIBE PROPOSED WORK: Construct 2nd story addition over existing 1st floor to extend existing second floor, to be used as: great-room per plans 26'x30'x26'=780sf.

TYPE OF USE

RESIDENTIAL
01. ✓ ONE FAMILY
02. ___ TWO FAMILY
03. ___ THREE AND FOUR FAMILY
04. ___ FIVE OR MORE FAMILY (ENTER NO UNITS)
05. ___ SWIMMING POOL
06. ___ GARAGE
07. ___ OTHER

NON-RESIDENTIAL
08. ___ AMUSEMENT, RECREATION, PLACE OF ASSEMBLY
09. ___ CHURCH, OTHER RELIGIOUS BUILDING
10. ___ FENCE (LENGTH HEIGHT)
11. ___ INDUSTRIAL, STORAGE BUILDING
12. ___ PARKING GARAGE
13. ___ SERVICE STATION, REPAIR GARAGE
14. ___ HOSPITAL, INSTITUTIONAL, NURSING HOME
15. ___ OFFICE, BANK, PROFESSIONAL
16. ___ PUBLIC UTILITY
17. ___ SCHOOL, COLLEGE, OTHER EDUCATIONAL
18. ___ SIGN
19. ___ STORE MERCANTILE ___ RESTAURANT SPECIFY TYPE
20. ___ SWIMMING POOL SPECIFY TYPE
21. ___ TANK, TOWER
22. ___ TRANSIENT HOTEL, MOTEL (NO. UNITS)
23. ___ OTHER

Required Sealed Const. plan. —YAP.

TYPE FOUNDATION
1. _ SLAB
2. _ BLOCK
3. _ CONCRETE

BASEMENT
1. _ FULL
2. _ PARTIAL
3. _ NONE

TYPE OF CONSTRUCTION
1. ___ MASONRY
2. ___ WOOD FRAME
3. ___ STRUCTURE STEEL
4. ___ REINF. CONCRETE

TYPE OF HEATING FUEL
1. ___ GAS 3. ___ ELECTRICITY
2. ___ OIL 4. ___ COAL

TYPE OF SEWAGE DISPOSAL
1. ✓ PUBLIC SEWER ✓ EXISTS ___ PROPOSED
2. ___ PRIVATE SYSTEM
SEPTIC ___ EXISTS ___ PROPOSED
PRIVY ___ EXISTS ___ PROPOSED

TYPE OF WATER SUPPLY
1. ✓ PUBLIC SYSTEM ✓ EXISTS ___ PROPOSED
2. ___ PRIVATE SYSTEM ___ EXISTS ___ PROPOSED

CENTRAL AIR: 1. 2.
ESTIMATED COST: $20,000
OF MATERIALS AND LABOR
PROPOSED USE: SFD & ADDITION. - & SHED
EXISTING USE: SFD, SHED

OWNERSHIP
1. ✓ PRIVATELY OWNED 2. ___ PUBLICLY OWNED 3. ___ SALE 4. ___ RENTAL

RESIDENTIAL CATEGORY: 1. ✓ DETACHED 2. ___ SEMI-DET. 3. ___ GROUP 4. ___ TOWNHSE 5. ___ MIDRISE 6. ___ HIRISE
#EFF: #1BED: #2BED: #3BED: TOT BED: TOT APTS/CONDOS
1 FAMILY BEDROOMS
GARBAGE DISPOSAL 1. Y 2. N BATHROOMS CLASS 4
POWDER ROOMS KITCHENS LIBER 0 FOLIO 0 SECTION B

BUILDING SIZE		LOT SIZE AND SETBACKS	
FLOOR	780	SIZE	5400 SF
WIDTH	26	FRONT STREET	
DEPTH	30'	SIDE STREET	
HEIGHT	26'	FRONT SETBK	NC
STORIES		SIDE SETBK	
LOT #'S		SIDE STR SETBK	
CORNER LOT		REAR SETBK	
1. ✓ YES 2. __ NO		ZONING	DR 5.5

APPROVAL SIGNATURES		DATE
BLD INSP		
BLD PLAN	120 OK TO FILE [illegible]	6/8/?
FIRE		
SEDI CTL		
ZONING	[signature] FINAL	6/6/08
PUB SERV	[signature]	6/6/08
ENVRMNT	416 cFinal [signature]	6/6/08
PLANNING	NO NEED TO REVIEW [signature]	6/6/08
PERMITS		

MAKE CHECKS PAYABLE TO BALTIMORE COUNTY MARYLAND -- NO PERMIT FEES REFUNDED

Rm 307

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 7, 2010

Peter Max Zimmerman
People's Counsel for
Baltimore County
Suite 204, Jefferson Building
105 W. Chesapeake Avenue
Towson, MD 21204

RE: In the Matter of: *Christopher J. Malstrom / Legal Owner*
Case No.: 10-094-SPH

Dear Mr. Zimmerman:

This letter acknowledges receipt of your letter dated September 2, 2010 requesting an extension for filing closing briefs in the above referenced matter until October 1, 2010. You indicate in your letter that there are no objections to this request by the parties; therefore, your request has been granted.

The briefs are due in this office no later than 4:00 p.m. on Friday, October 1, 2010. The Deliberation will not be re-scheduled and will commence on Wednesday, October 13, 2010 at 9:00 a.m.

Should you have any questions, please contact me at 410-887-3180.

Very truly yours,

Theresa R. Shelton
Administrator

/trs

c: Victor Fuentealba, Esquire
Christopher J. Malstrom

Baltimore County, Maryland
OFFICE OF PEOPLE'S COUNSEL
Jefferson Building
105 West Chesapeake Avenue, Room 204
Towson, Maryland 21204

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

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

February 1, 2011

HAND DELIVERED

Lawrence S. Wescott, Chairman
County Board of Appeals
105 West Chesapeake Avenue, Suite 203
Towson, MD 21204

Re: Christopher Malstrom
8301 Wilson Avenue
Case No.: 2010-094-SPH

Dear Chairman Wescott:

This is in response to your letter dated January 18, 2011. Please be advised that this office does not object to your continuing participation in this case.

Sincerely,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

cc: Victor W. Fuentealba

Baltimore County, Maryland
OFFICE OF PEOPLE'S COUNSEL
Jefferson Building
105 West Chesapeake Avenue, Room 204
Towson, Maryland 21204

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

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

February 23, 2011

HAND DELIVERED

Lawrence S. Wescott, Chairman
County Board of Appeals
105 West Chesapeake Avenue, Suite 203
Towson, MD 21204

Re: Christopher Malstrom
8301 Wilson Avenue
Case No.: 2010-094-SPH

Dear Chairman Wescott:

This is in response to your most recent letter, dated February 4, 2011, enclosing the Building Engineer's information that the Petitioner in 2008 submitted a building permit application which could not be processed for lack of a sealed construction plan.

This reflects again that Petitioner's initiation of construction without a proper permit precipitated the difficulties and litigation which enfold this protracted matter. This information also reinforces the point I have been harping on in my motion for reconsideration that all aspects of the building permit process and law have to be considered, and that the "substantial improvement" issue and review cannot properly be looked at in isolation. Plainly, the remand to the Building Engineer should be modified to require the Petitioner to comply with all aspects of the law and the review process, of which the "substantial improvement" review is just one element.

In the hearing on March 8, 2011, the CBA should consider where the case goes from here, including a requirement for a proper permit application. Under these circumstances, the Building Engineer should have latitude to report on all relevant issues, not just the issue of "substantial improvement." It appears that it will be impossible to conclude the case on March 8.

Sincerely,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

cc: Victor W. Fuentealba
Donald Brand, Buildings Engineer
David Thomas, Assistant to the Director, DPW

Note - 2/18/11

Nancy came in and reviewed Malstrom & Scigala - It appears she's getting involved but she's hoping both will settle.

BW 11/24
10 AM

Law Offices

VICTOR W. FUENTEALBA

SUITE 805, COURT SQUARE BLDG.
200 E. LEXINGTON STREET
BALTIMORE, MD 21202

FAX:
(410) 234-0624

TELEPHONE:
(410) 539-5115

November 30, 2009

RECEIVED

DEC 01 2009

ZONING COMMISSIONER

William J. Wiseman, III
Zoning Commissioner of Balto County
Jefferson Building – Room 103
105 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Case #: 2010-0094-SPH
8301 Wilson Avenue

Dear Commissioner Wiseman:

As you requested during the hearing concerning the above mentioned property held on November 24, 2009, I am submitting the following information concerning my contention that the alterations made by my client to his home do not subject him to the provisions of the Baltimore County Code concerning floodplains.

Title 8 "Floodplain Management" of the Baltimore County Code in subtitle 1, Definitions 32-8-101(dd) defines "Substantial Improvements" as "substantial improvement means any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure, less land value either (i) before the improvement or repair is started; or (ii) if the structure has incurred substantial damage and been restored before the damage occurred".

Section 3112-0 of the Baltimore County Building Code "Construction in Areas Subject to Flooding" states as follows:

1. General Selected Definitions.
   Substantial Improvement – Any repair, reconstruction, alteration or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure (less land value) either (A) before the improvement or repair is started; or (B) if the structure incurred substantial damage and has been restored before the damage occurred.

Subsequent paragraphs of Section 3112 consistently refer to "Substantial Improvements" in determining what requirements must be met, such as paragraph 1(b) which states "whenever substantial improvements to existing buildings, including additions, are constructed, or building experiencing repetitive loss are located in areas subject to tide or flooding as established by the FIS and firm of Baltimore County or more restrictive criteria as established by the county, the buildings lowest floor shall be not lower then the flood

protection elevation." See also paragraph 7 which states "For all new or substantially improved structures in the flood plain area, the owner must have a professional land surveyor, property line surveyor or professional engineer submit a fully executed elevation certificate at the time of inspection" and paragraph 8 " New or substantially improved non-residential structures may be flood proofed to the flood protection elevation. Under this option, the owner must have a professional engineer or architect submit a fully executed flood proof certificate to the county prior to the approval of the construction by any building official of Baltimore County."

See also section 3112.2 paragraph 2: Areas subject to inundention by riverine surface waters within the 100 year floodplain. "Reconstruction or repair of existing buildings shall be governed by section 115.0 "Unsafe Structures and Equipment". All substantial improvements to existing buildings shall be permitted only on the basis of the an approved waiver in accordance with section article 32, title 8, subtitle 3 of the Baltimore County Code, 2003 (Waivers) and shall be subject to all applicable conditions of section 32-8-207 of the Baltimore County Code 2003 Development in the Flood Plain Area" and Section 3112.1 of this building code "Area subject to tidal flooding".

The above sections of both the Baltimore County Code and Building Code clearly exempt alterations and improvements which do not equal or exceed 50% of the market value of the structure, less land value. The assessed value of my client's home, excluding the land, as of January 1, 2009 was $111,300.00, 50% of which amounts to $55,650.00. According to his testimony at the hearing, the cost of the materials that he used did not exceed $15,000.00 and he performed all of the work himself. Even if you attach a value to his labor, the cost would not amount of 50% of the value of his home.

I might also add that if you refer to the reasons for the adoption of floodplain regulations, section 32-4-414 of the Code states (1) to reduce loss of life and property from flooding (2) avoid the need for public expenditure for flood protection and (3) to protect or enhance the environmental quality of watersheds.

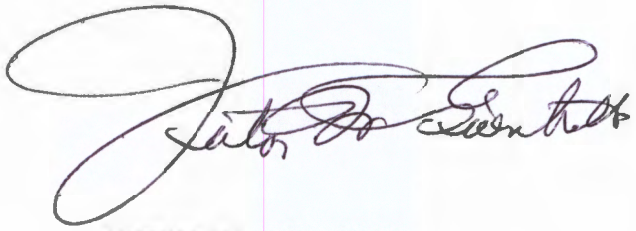
The improvements that Mr. Malstrom made do not in any way impact on any of those purposes. The improvements are all above the first floor and no changes were made or are being contemplated to be made on anything at the ground level. If there would ever be a flood, which is highly unlikely since the chances of a flood in the 100 year flood plan are 1% a year, these improvements could not possibly contribute to any damage that might occur.

Also as I mentioned during the hearing, the comments from the Department of Public Works failed to give any reason whatsoever for recommending that a waiver not be granted which indicates to me that those comments are not based on fact and should be ignored. I also

cannot understand the logic of Mr. Adams insisting that if a waiver is granted, my client must remove all electrical equipment, including the furnace, from his basement, install vents and take other measures to protect the property from flood damage in order to get the waiver. However, if he chooses to remove the improvements that he made to the second floor, he is not required to do anything to the property whatsoever to ensure against flooding, including the basement. This makes no sense to me at all and appears to be purely punitive in nature to coerce my client into withdrawing his request for a waiver.

I trust this information will be of some assistance to you in rendering a decision and hopefully the decision will be favorable to my client.

Very truly yours,



VICTOR W. FUENEALBA

VWF: flw

Law Offices

VICTOR W. FUENTEALBA

SUITE 805, COURT SQUARE BLDG.
200 E. LEXINGTON STREET
BALTIMORE, MD 21202

FAX:
(410) 234-0624

TELEPHONE:
(410) 539-5115

September 9, 2010

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

Re: Case #: 10-094-SPH
Christopher J. Malstrom
8301 Wilson Avenue

Dear Ms. Shelton:

Enclosed please find the original and three (3) copies of the Appellee's Brief in the above matter.

Very truly yours,

VICTOR W. FUENTEALBA

VWF: flw
Enclosures

Law Offices

VICTOR W. FUENTEALBA

SUITE 805, COURT SQUARE BLDG.
200 E. LEXINGTON STREET
BALTIMORE, MD 21202

FAX:
(410) 234-0624

TELEPHONE:
(410) 539-5115

May 20, 2010

Theresa R. Shelton
Administrator
County Board of Appeals of Baltimore County
Jefferson Building – Suite 203
105W. Chesapeake Avenue
Towson, Maryland 2l204

Re: Case #: 10-094-SPH
Christopher J. Malstrom
8301 Wilson Avenue

Dear Ms. Shelton:

Per our conversation of today, I would very much appreciate a postponement of the hearing set in the above matter for **June 24, 2020 at 10:00 A.M.** as Mr. Fuentealba, the attorney for the Petitioner Christopher Malstrom, is recovering from major surgery and is not expected to return to the office for several weeks.

Thank you very much for your cooperation in this matter.

Very truly yours,

Florence L. Wagner

FLORENCE L. WAGNER

FLW: flw

cc: Peter Max Zimmerman
People's Counsel for Baltimore County

Law Offices

VICTOR W. FUENTEALBA

SUITE 805, COURT SQUARE BLDG.
200 E. LEXINGTON STREET
BALTIMORE, MD 21202

FAX:
(410) 234-0624

TELEPHONE:
(410) 539-5115

September 29, 2010

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

Re: Case No. 10-094-SPH
In the Matter of Christopher J. Malstrom

Dear Ms. Shelton:

Please file the enclosed Certificate of Service in the above-mentioned case.

Very truly yours,

Victor W. Fuentealba

Vfw/dw
Encl.

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of September, 2010, a copy of the Brief of Christopher Malstrom, Appellee, was mailed by first class mail, to Peter Max Zimmerman, Esq., 105 W. Chesapeake Ave., Towson, MD 21204.

Victor W. Fuentealba
Attorney for Christopher Malstrom

Law Offices

VICTOR W. FUENTEALBA

SUITE 805, COURT SQUARE BLDG.
200 E. LEXINGTON STREET
BALTIMORE, MD 21202

FAX:
(410) 234-0624

TELEPHONE:
(410) 539-5115

January 4, 2011

Lawrence S. Wescott
Chairman
Baltimore County Board of Appeals
105 W. Chesapeake Avenue - #203
Towson, Maryland 21204

Re: Case No: 2010-094-SPH
8301 Wilson Avenue

Dear Chairman Wescott:

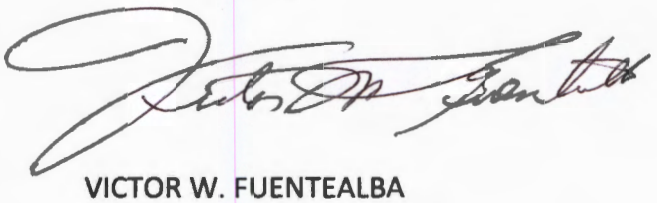
This letter is a response on behalf of petitioner Christopher Malstrom, owner of the above mentioned property, to the letter to you dated December 30, 2010 from Peter Max Zimmerman, Esq., People's Counsel for Baltimore County. First of all, let me say that this issue appears to be "blown out of proportion" by Mr. Zimmerman.

The undisputed fact is that my client, owner of the above mentioned property since 2001, decided in 2008 to expand an existing bedroom on the second story of the house from 500 square feet to 900 square feet and failed to apply for a permit. He was notified by the County after almost completing the work that a permit was necessary and he proceeded to apply. However, he was denied a permit because his home is located in a l00 year flood plain area and that a permit could not be issued unless a waiver was granted by the Zoning Commissioner. On December 14, 2009 the Zoning Commissioner for Baltimore County granted approval of the waiver. The People's Counsel filed a Motion for Reconsideration which was denied and then filed an appeal. On December 2, 2010 the Board of Appeals for Baltimore County remanded the matter to the Department of Permits and Development Management to determine whether or not the improvements being made to the property constituted a "substantial improvement" or not.

People's Counsel filed a Motion for Reconsideration followed by a letter to you dated December 30, 2010 raising further additional issues which should have no bearing or influence on the Order of Remand issued by the Board of Appeals. It is my opinion that the only issue to be determined is whether or not the improvements made or contemplated by my client to his home constituted a "substantial improvement" as defined by the Code and that the issues

raised by People's Counsel such as a prohibition on construction of basements in a flood plain area are totally irrelevant.

Very truly yours,



VICTOR W. FUENTEALBA

VWF: flw

cc: Peter Max Zimmerman

BW
11-24-09

Law Offices
VICTOR W. FUENTEALBA
SUITE 805, COURT SQUARE BLDG.
200 E. LEXINGTON STREET
BALTIMORE, MD 21202

FAX:
(410) 234-0624

TELEPHONE:
(410) 539-5115

January 7, 2010

RECEIVED

JAN 08 2010

ZONING COMMISSIONER

William J. Wiseman, III
Zoning Commissioner of Baltimore County
Jefferson Building – Room 103
105 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Case #: 2010-0094-SPH
8301 Wilson Avenue

Dear Commissioner Wiseman:

The December 28, 2009 request by People's Counsel Peter Max Zimmerman for reconsideration of your Findings of Fact and Conclusions of Law dated December 14, 2009 came as a surprise to me and to my client, particularly in view of the fact that no one from the Department of Public Works or any other county agency appeared at the hearing on 12/14/09. Had anyone appeared, they would have been aware of the fact that Mr. Adams' comments dated October 5, 2009 were discussed in detail by me, several of the witnesses and yourself during the hearing. They also would have noted that no individuals or organizations appeared to contest the granting of a waiver.

Mr. Zimmerman's letter to you implies not only that Mr. Adams' comments should be considered but that you also were obligated to follow his recommendations. Nothing could be farther from the truth. The Office of Zoning Commissioner is a separate and distinct entity of the County Government and is not subservient or under any obligation whatsoever to adopt comments from the Department of Public Works. As was discussed at the hearing, the modifications suggested by Mr. Adams are not related in any way to the alterations that my client was making to his dwelling. Ironically, if my client chose to remove the improvements that he made to the second floor, he would not be required to do anything to the property whatsoever to ensure against flooding, including the basement.

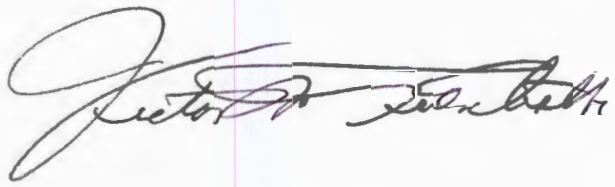
I also note that in his letter to you, Mr. Zimmerman failed to comment on the sections of the Baltimore County Building Code covering construction in areas subject to flooding and in particular, the definition of "substantial improvements' as mentioned in my letter to you dated November 30, 2009.

I was also appalled and shocked by the last paragraph in Mr. Zimmerman's letter where he compares Hurricane Katrina and New Orleans to potential flooding in the Parkville/Carney area. By no stretch of the imagination could anyone with knowledge of both areas try to equate the geographics of the New Orleans area with the Parkville/Carney area of Baltimore County.

Nowhere in his December 28, 2009 request does Mr. Zimmerman challenge the validity and legality of the hearing that took place on December 14, 2009 and it appears that the only basis for his Motion for Reconsideration was the fact that your Findings of Fact and Conclusions of Law do not mention the October 5, 2009 comments from DPW Director Adams. As I previously mentioned, Mr. Adams' comments were discussed in detail at the hearing which satisfies the requirement that those comments "shall be taken into account".

For the above reasons, I urge you to deny the Motion for Reconsideration and allow your Findings of Fact and Conclusions of Law and Order dated December 14, 2009 to remain as stated.

Very truly yours,



VICTOR W. FUENTEALBA

VWF: flw

cc: Peter Max Zimmerman, Esq.

Law Offices

VICTOR W. FUENTEALBA

SUITE 805, COURT SQUARE BLDG.
200 E. LEXINGTON STREET
BALTIMORE, MD 21202

FAX:
(410) 234-0624

TELEPHONE:
(410) 539-5115

January 25, 2011

Lawrence S. Wescott
Chairman
Baltimore County Board of Appeals
105 W. Chesapeake Avenue - #203
Towson, Maryland 21204

Re: Case No: 2010-094-SPH
Christopher J. Malstrom/Legal Owner

Dear Chairman Wescott:

Please be advised that as counsel for Christopher J. Malstrom, I have no objection to your continued participation in the above mentioned matter. The ruling and Order signed by the Board on January 20, 2011 clearly states that the only issue that will be considered at the next hearing will be the taking of testimony from the building engineer with respect to the question of constructing a substantial improvement and the method for determining substantial improvement as set forth in the Building Code.

I do not feel that any discussions that you might have had with the building engineer could possibly have any impact on this particular issue.

I will be looking forward to meeting you at the next hearing on the above mentioned matter.

Very truly yours,

VICTOR W. FUENTEALBA

VWF: flw

cc: Peter Max Zimmerman

Law Offices

VICTOR W. FUENTEALBA

SUITE 805, COURT SQUARE BLDG.
200 E. LEXINGTON STREET
BALTIMORE, MD 21202

FAX:
(410) 234-0624

TELEPHONE:
(410) 539-5115

February 28, 2011

Lawrence S. Wescott, Chairman
County Board of Appeals
105 W. Chesapeake Ave., Suite 203
Towson, Md 21204

Re: Christopher Malstrom
8301 Wilson Ave.
Case No. 2010-094-SPH

Dear Chairman Wescott:

This letter is a rebuttal to the letter dated February 23, 2011 from Peter Max Zimmerman, Esq. that was hand delivered to your office five days after the deadline established by your letter to counsel, dated February 4th, 2011.

Unfortunately, Mr. Zimmerman's comments offer nothing new and merely repeat the arguments that he made in his Motion for Reconsideration and Clarification, which was denied by the Board on January 20th, 2011.

My client has the sealed plans requested by the Building Engineer and I understand that they have been delivered to his office in ample time for his review prior to the date of the hearing, March 8, 2011.

I have also requested my client to bring all receipts and records of materials purchased for the renovations that were made prior to denial of his application for a permit.

I will be looking forward to meeting you on March 8th.

Very truly yours,

Victor W. Fuentealba

VWF/DW
cc: P. Zimmerman, Esq.

DuVal & Associates, P.A.
SURVEYING • ENGINEERING

Douglas W. DuVal, L.S.
Raymond B. Sutton, Jr.

December 3, 2009

Baltimore County Zoning Commissioner's Office
County Office Building
111 W. Chesapeake Avenue
Towson, MD 21204

RECEIVED
DEC 09 2009
ZONING COMMISSIONER

Attn: Mr. William Wiseman, Zoning Commissioner

RE: Case No. 2010-SPH, 8301 Wilson Avenue
DVA No. 09063

Dear Mr. Wiseman:

We are submitting herewith, as requested, the July 2009 flood plain study "Property Plan" and "Drainage Area Map", prepared by Richard Truelove P.E., Inc. that show the extent of the area of flooding from a now required 100-year design storm as it is forced through the 1950's County designed (50-year storm) box culvert in Woodside Avenue. We have highlighted the flood limits for clarity. Also, as mentioned during the Special Hearing on November 24, 2009, the recently updated (September 26, 2008) Federal Emergency Management Agency Flood Insurance Rate Map No. 2400100270F shows that the subject property is more than 4,000 feet from any Flood Hazard Area.

Please call should you need additional information.

Very truly yours,

Douglas W. DuVal, L.S., President
DuVal & Associates, P.A.

Enclosure

1729 York Road, Suite 205 • Lutherville, MD 21093
Phone: 410-666-5467 • Fax: 410-583-4688 • E mail: duvalapa@verizon.net

RICHARD TRUELOVE P.E. INC.
414 LYMAN AVENUE
BALTIMORE, MARYLAND 21212

(410) 433-6600 Fax (410) 435-9029
richard@rtpe.com

LETTER OF TRANSMITTAL

DATE	JOB NO.
July 28, 2009	2008015

ATTENTION: DOUG DUVAL

RE: MALSTROM PROPERTY

TO: DUVAL ASSOCIATES P.A.
COUNTY DROP-OFF BIN

WE ARE SENDING YOU ☒ Attached ☐ Under separate cover via _____ the following items:

☐ Shop drawings ☐ Prints ☐ Plans ☐ Samples ☐ Specifications
☐ Copy of letter ☐ Change order ☐ _____

COPIES	DATE	NO.	DESCRIPTION
1	7/24/09	1	DRAINAGE AREA MAP
2	7/24/09	1	100 YEAR FLOODPLAIN · PLOT PLAN
1	-		TR-55, TR-20, HY-8 (RUN-OFF, CULVERT HYDRAULICS).

THESE ARE TRANSMITTED as checked below:

☐ For approval ☐ Approved as submitted ☐ Resubmit _____ copies for approval
☒ For your use ☐ Approved as noted ☐ Submit _____ copies for distribution
☐ As requested ☐ Returned for corrections ☐ Return _____ corrected prints
☐ For review and comment ☐ _____
☐ FOR BIDS DUE _____ ☐ PRINTS RETURNED AFTER LOAN TO US

REMARKS THE 100 YEAR DRAINAGE COMPUTATIONS, DRAINAGE AREA MAP, & 1 COPY OF LOT PLAN (PLOT PLAN) ARE TO SUBMIT AT WEDNESDAY'S HEARING. (1 COPY OF THE PLOT PLAN IS FOR YOUR FILES)

COPY TO _____

SIGNED: RICHARD TRUELOVE

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Christopher Malstrom 10-094-SPH

DATE: October 13, 2010

BOARD/PANEL: Lawrence M. Stahl, Chairman
Lawrence S. Wescott
Wendell H. Grier

RECORDED BY: Sunny Cannington/Legal Secretary

PURPOSE: To deliberate the following:

1. Petition for Special Hearing to allow a second story addition built above an existing single family dwelling located in a 100-year flood plain.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- The Board discussed the history of this matter. This case originated after the Petitioner began work to add a second story above the existing single family dwelling without obtaining the proper permits. The County issued a stop work order, and the Petitioner filed the subsequent Petition for Special Hearing which is at issue in this matter.
- The first issue the Board discussed was whether this matter warranted a *de novo* hearing. The Board determined that because this is a land issue case and it went before the Zoning Commissioner, it requires a *de novo* hearing pursuant to the Baltimore County Code and Baltimore County Zoning Regulations.
- The Board then discussed the Building Code and its differentiation regarding substantial changes and insubstantial changes. The Board reviewed that depending on where you look, the Building Code has two separate statutes that are in conflict. Part of the Building Code indicates that in cases such as this, the citizen would apply for a waiver then the matter would go before the Building Engineer who would apply a formula, which determines whether the proposed changes to the property are substantial or insubstantial based on the monetary value of the changes. If the changes are found to be insubstantial, the Building Engineer would then be able to issue the appropriate permits, with or without conditions. If the changes were found to be substantial, the Development Regulations would then take effect and a new process would take place. In this case, the requested changes were never presented to the Building Engineer for the formula to be applied to determine if the changes requested were deemed substantial.
- The Board discussed that another portion of the Building Code indicates that the Development Regulations would take effect upon any change to a property. The Board determined that this is unreasonable and used an example of the purchase and installation of a new front door. The installation of a $99 door would not be considered a substantial change to the property therefore it is not a Development matter.

- The Board determined that these Building Codes are there to protect the neighborhood but not require that every minute change to a house (i.e. a door) be considered a substantial change.
- Additionally, the Board discussed that under the Code and Regulations after the Building Engineer applies the formula, the Code allows the County to add any conditions they wish even if the work required to meet the County's conditions pushes the formula from the insubstantial range into the substantial range. The Board determined that that does not seem appropriate. In this case, the County told the Petitioner to move the HVAC, among other things which were deemed dangerous. The Board stated that it is interesting that these things were not required when the family was crowded into the house and used part of the basement where the dangers lay, but once the crowded family tried to expand the house to allow two additional bedrooms on the new upper level, the dangers seemed to be required to be fixed.
- The Board discussed that they had not been provided sufficient facts to determine whether the changes requested were considered insubstantial or substantial. The Board discussed that the conditions the County attempted to impose, moving the HVAC work among other things, did not seem to be required prior to building the addition.
- The Board discussed that in this matter, the Petitioner's requested changes to his home were never provided to the Building Engineer for the formula to be applied. The Board determined that they will Grant the Petition for Special Hearing with the condition that the Petitioner must go before the Building Engineer for the formula to be applied to the requested changes, and for any permit to be issued.

DECISION BY BOARD MEMBERS: The Board will Grant the Petition for Special Hearing with the condition that the Petitioner present the requested change to the Building Engineer for the formula to be applied to determine if the requested change is substantial or insubstantial.

FINAL DECISION: After thorough review of the facts, testimony, and law in this matter, the Board unanimously agreed to GRANT the Petition for Special Hearing with the condition that the Petitioner present the requested change to the Building Engineer for the formula to be applied to determine if the requested change is substantial or insubstantial.

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place on the above date regarding this matter. The Board's final decision and the facts and findings thereto will be set out in the written Opinion and Order to be issued by the Board.

Respectfully Submitted,

Sunny Cannington

Sunny Cannington

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Christopher Malstrom 10-094-SPH

DATE: January 18, 2011

BOARD/PANEL: Lawrence S. Wescott
Wendell H. Grier
Andrew M. Belt (substituting for Lawrence M. Stahl)

RECORDED BY: Sunny Cannington/Legal Secretary

PURPOSE: To deliberate the following:

1. Motion for Reconsideration and Clarification filed by Office of People's Counsel.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- The Board first discussed that Panel member Lawrence Stahl has left the Board to assume another position within the County. Andrew M. Belt, has been appointed to replace Mr. Stahl on this panel. Mr. Belt reviewed the hearing transcript, evidence and testimony and is qualified to make a decision in this matter.
- The Board briefly discussed the history of this matter. Office of People's Counsel filed a Motion for Reconsideration and Clarification attaching information from the Baltimore County Code and International Building Code, as well as an opinion he claims was made by the Building Engineer. The Board had previously held their opinion sub curia pending a determination by the Building Engineer with regard to whether the changes to be made by Petitioners would be considered "substantial" or not.
- Generally speaking, the Board's approach to Motions for Reconsideration has been consistent in the past and unless there has been a substantial change in the law, the Board does not revisit the matter because the facts of the case do not change.
- The Board discussed the Motion presented by People's Counsel. People's Counsel seems to argue in their Motion that elements of the County Code and International Building Code, which were not presented to the Board at the previous hearing, are relevant and should be considered by the Board. The Board interprets People's Counsel's request to be, the Board should find in favor of People's Counsel and the Board does not need further information from the Building Engineer. The Board determined that the Petitioner has a right to cross-examine the testimony of the Building Engineer.

DECISION BY BOARD MEMBERS: The Petitioner has the right to cross-examine the testimony of the Building Engineer. The Board will therefore hold a hearing reopening this matter for the testimony and cross-examination of the Building Engineer with respect to the Board's previous order.

FINAL DECISION: After thorough review of the facts, testimony, and law in the matter, the Board unanimously agreed to DENY the Motion for Reconsideration and Clarification. A hearing to provide an opportunity for the testimony and cross-examination of the Building Engineer with respect to the Board's previous order will be scheduled and notice will be forthcoming.

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place on the above date regarding this matter. The Board's final decision and the facts and findings thereto will be set out in the written Opinion and Order to be issued by the Board.

Respectfully Submitted,

Sunny Cannington

Sunny Cannington

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Christopher Malstrom 10-094-SPH

DATE: March 24, 2011

BOARD/PANEL: Lawrence S. Wescott, Chairman
Wendell H. Grier
Andrew M. Belt

RECORDED BY: Sunny Cannington/Legal Secretary

PURPOSE: To deliberate the following:

1. Petition for Special Hearing to allow a second story addition built above an existing single family dwelling located in a 100-year flood plain.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- The Board determined that the question currently before them in this matter is whether the proposed improvements to the second floor of the dwelling constitute a "substantial improvement" and if the proposed improvements are not considered "substantial" is the Petitioner required to have an additional permit for the improvements due to the subject property's location within the flood plain?
- The Board discussed the history of this matter. This matter was previously remanded to the Building Engineer to have the proposed improvements reviewed to determine if they were considered "substantial improvements." The Board received testimony on the record from the Building Engineer, who indicated that he determined that the proposed improvements are not considered "substantial." The Board agreed with the Building Engineer.
- The Board reviewed the Baltimore County Code and the International Building Code. The Board determined that both Codes are confusing. Neither the Baltimore County Code, nor the International Building Code clearly state what should happen if it is determined that the improvements are not substantial.
- The Board determined that the Petitioner is subject to any permits that any person not living in a flood plain would be subject to, to comply with the Codes, but the Petitioner is not required to have any additional permits for the proposed improvements solely because the property is located within the flood plain.

DECISION BY BOARD MEMBERS: The Board determined that the improvements as proposed are not "substantial" improvements to the property. The Board will grant the Waiver for any additional permits.

FINAL DECISION: After thorough review of the facts, testimony, and law in this matter, the Board unanimously agreed to GRANT the Waiver of any additional permits for the proposed improvements due to the subject property's location within the flood plain. The Petitioner will be required to obtain any permits that someone living outside the flood plain would be required to obtain, and comply with any and all applicable utility codes.

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place on the above date regarding this matter. The Board's final decision and the facts and findings thereto will be set out in the written Opinion and Order to be issued by the Board.

Respectfully Submitted,

Sunny Cannington

Sunny Cannington

6-15-09

BALTIMORE COUNTY, MD
DEPARTMENT OF PUBLIC WORKS
PERMIT REVIEW FORM

Date: 6/10/2008 *Review By:* ***Ann Briggeman*** *Phone:* 410-887-3117

Applicant Name: Christopher J. Malstrim *T/A:* Christopher J. Malstrim

Property Address: 8301 Wilson Avenue *Tax Acct #:* 14-02-066300

Permit #: B696144 *Tax Map:* 81 *Grid:* 3 *Parcel:*724 *Lot:*

WATER AND SEWER PLAN DESIGNATION

Water: W-1 *Sewer:* S-1 *KeySheet:*

Water Drawing: Existing *Sewer Drawing:* Existing

FLOOD INSURANCE RATE MAP

Panel # 2400100270B *Zone:* C

Tidal: Riverine: *Base Flood Elevation:*

REVIEWERS' NOTES

Reviewed for Public Water, Public Sewer, Roads and Storm Drainage/Floodplains Only.

Need to determine limit of 100 year floodplain on site plan.
We have enclosed drawing No's. 1960-099 & 1963-1222 which may assist you and your engineer/surveyor in determining the 100 year floodplain limit.

RECOMMENDATION

Approve: Approve as Noted: **HOLD: X**

Must Comply with Baltimore County Code Article 32, Title 4 and 6 (*Public Improvements*):

Must Comply with Baltimore County Code Article 32, Title 4 and 8, Council Bill 49-07 (*Bldg Code Section 3112*):

Other:

2010-0094-SPH

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

DATE: May 12, 2011

TO: Arnold Jablon, Director
Permits, Approvals & Inspections

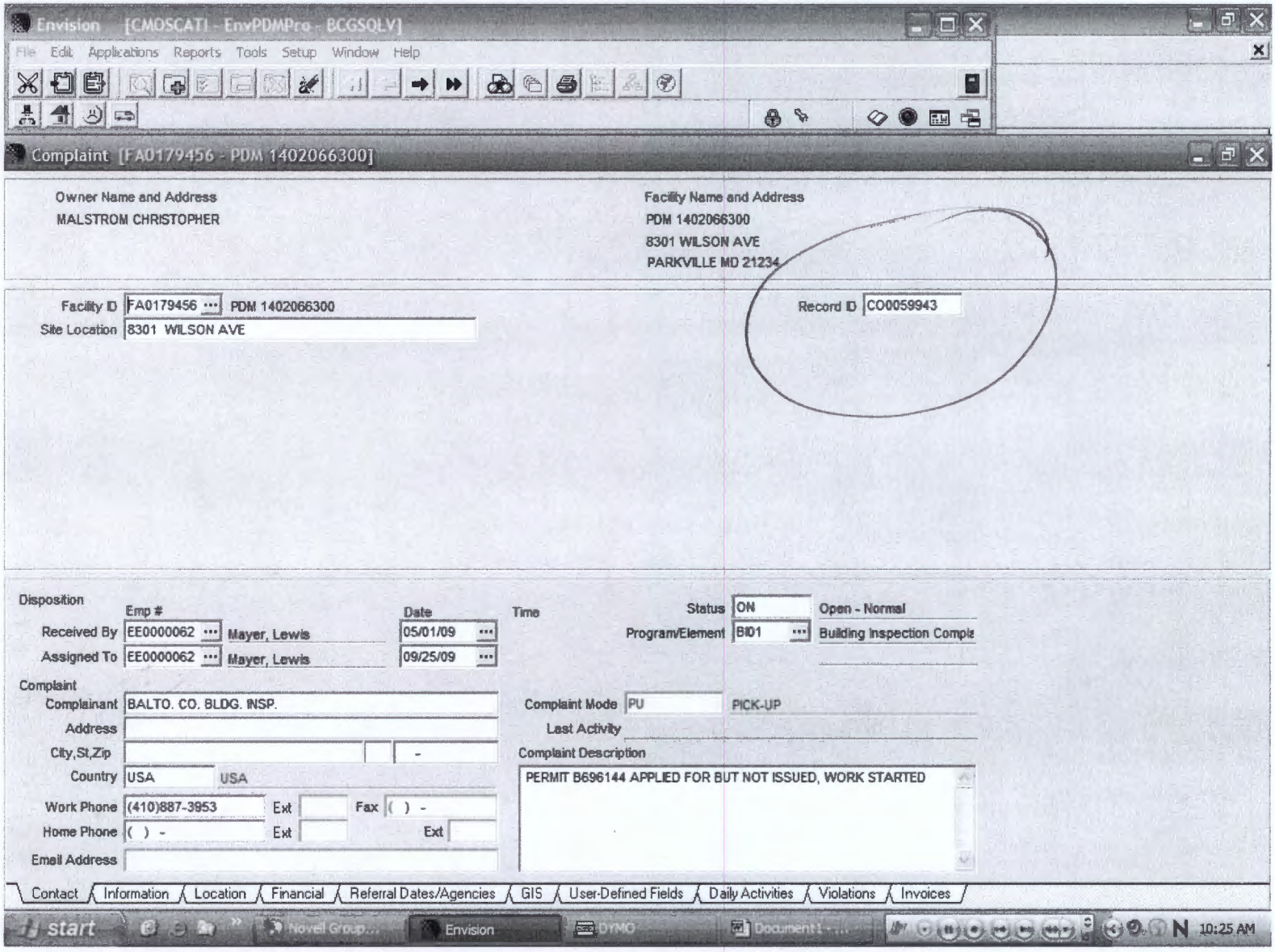
FROM: Sunny Cannington, Legal Secretary
Board of Appeals

SUBJECT: CLOSED APPEAL CASE FILES/CASES DISMISSED

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

Case No:	Case Name:	Note:
10-094-SPH	Christopher Malstrom	4/1/11-Board issued final Order Granting the Petition for Special Hearing.
11-144-A	Dulaney Center Business Trust	3/8/11-Order of Dismissal - Petitioner withdrew the Petition for Variance.

c: Michael Field, County Attorney



2010-0094-SPH

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

Go Back
View Map
New Search

Account Identifier: **District - 14 Account Number -** 1402066300

Owner Information

Owner Name:	MALSTROM CHRISTOPHER	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	8301 WILSON AVE BALTIMORE MD 21234-4703	**Deed Reference:**	1) /15469/ 633 2)

Location & Structure Information

Premises Address
8301 WILSON AVE

Legal Description
ES WILSON AVE
8301 WILSON AVE ES
PARKTOWNE

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
81	3	724			B			3	Plat Ref:

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

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1948	1,293 SF	5,400.00 SF	04

Stories	Basement	Type	Exterior
1 1/2	YES	STANDARD UNIT	FRAME

Value Information

	Base Value	Value As Of 01/01/2009	Phase-in Assessments As Of 07/01/2009	As Of 07/01/2010
Land	59,500	71,500		
Improvements:	102,410	111,300		
Total:	161,910	182,800	168,873	175,836
Preferential Land:	0	0	0	0

Transfer Information

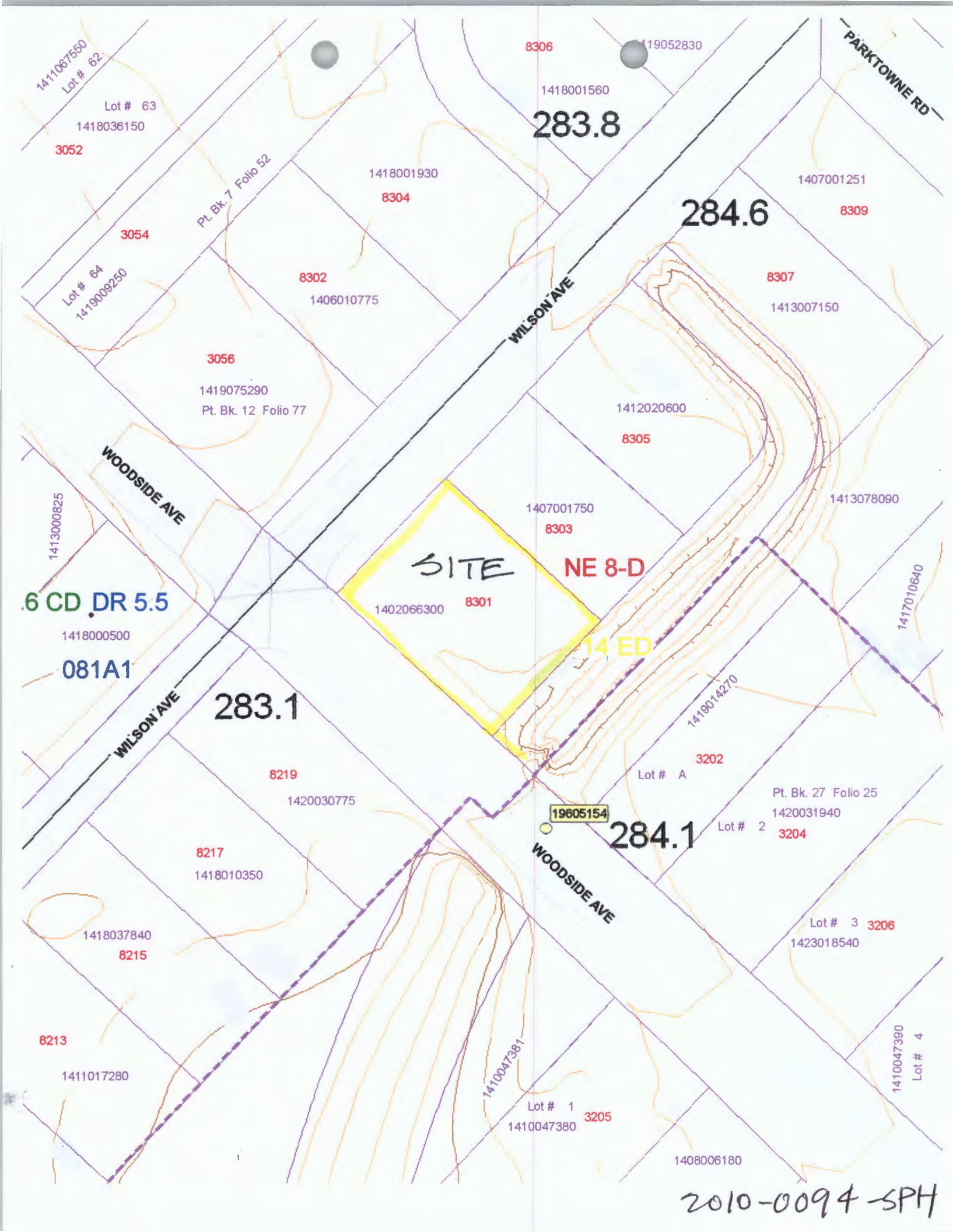
Seller:	MASON ALAN C TRUSTEE	**Date:**	08/15/2001	**Price:**	$71,000
Type:	NOT ARMS-LENGTH	**Deed1:**	/15469/ 633	**Deed2:**	
Seller:	BROOKS WILHELMENA	**Date:**	05/25/1994	**Price:**	$1
Type:	NOT ARMS-LENGTH	**Deed1:**	/10549/ 356	**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	

Exemption Information

Partial Exempt Assessments	Class	07/01/2009	07/01/2010
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:
* NONE *



2010-0094-SPH

PLEASE PRINT CLEARLY

CASE NAME Malstrom
CASE NUMBER 2010-0094-SPA
DATE 11-24-09

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
Matthew (Tad) Braid	8303 Wilson Av	Baltimore Md 21234	administrator@gastro-doc.com
William J Malstrom	3300 Garnet Rd	Baltimore MD 21234	—
M. Gerardine Malstrom	3300 Garnet Rd.	Baltimore MD. 21234	
Douglas W. DuVal, L.S.	1729 York Rd. Ste. 205	Lutherville, MD 21093	DUVALAPA@VERIZON.NET
Chris Malstrom	8301 Wilson Ave	Parkville MD 21234	
Victor Fuentealba	200 E. Lexington Street	Baltimore MD 21202	Victorlaw@aol.com

Law Offices
VICTOR W. FUENTEALBA
SUITE 805, COURT SQUARE BLDG.
200 E. LEXINGTON STREET
BALTIMORE, MD 21202

FAX
(410) 234-0624

TELEPHONE:
(410) 539-5115

IN THE MATTER OF:	* BEFORE THE
CHRISTOPHER JAMES MALSTROM	* COUNTY BOARD OF APPEALS
Legal Owner - Petitioner	* OF
8301 Wilson Avenue	* BALTIMORE COUNTY
	* Case No. 10-094-SPH
	* July 27, 2010

* * * * *

Excerpt testimony of David Thomas in The above-entitled matter which came on for hearing before the County Board of Appeals of Baltimore County, Hearing Room #2, Jefferson Building, 105 W. Chesapeake Avenue, Towson, Maryland 21204, July 27, 2010.

* * * * *

Reported by: Carolyn E. Peatt

verified 7/28/10 tls

15
1

Case No: 10-094-SPH Case Name: CHRISTOPHER J MALSTROM

Exhibit List

Party: PEOPLES COUNSEL Date: 7/27/10

	Exhibit No:	Description:
✓	#1	Permits & Dev. Mngt Complaint Rqst
✓	#2	APPLICATION FOR Permit
✓	#3	AERIAL PHOTO - 2008. SHOWING PROPERTY - SHOWING WILSON & WOODSIDE AVES.
✓	#4.	Inter office Correspondence Adams to KOTROKO. 10/5/09
✓	#5A.	Photos of Malstrom Property front
✓	B	" " " " front left corner
✓	C.	" " " " SOUTHERN SIDE
✓	D	" " " " SHOWING DECK
✓	E	" " " " EAST SHOWING FENCE
✓	F	" " NEIGHBORS HOUSE WITH fence.
✓	6.	Excerpt of BC Master Plan pg 128-130
✓	7.	BC Code 32-4-414.
✓	8.	Art 32 - Title 8.

Case No: 10-094-SPH Case Name: Christyne Molstein

Exhibit List

Party: Peoples Counsel Date: 7/27/10

Exhibit No:	Description:
9	BC Build Code 3112 7/15/2007
10	BC Dept of P Ws. Policy on Flood Plain Reg 8/1/91
	verified 7/28/10 trs

Permits & Development Management
Complaint Report

Report Criteria:
Complaint Record ID: CO0059943

PC#1

:cord ID	AS/400 Case	Assigned To	Assigned Date	Scheduled Time	Received By	Received Date	Status	Hearing Date	ADC Grid
)0059943		Lewis Mayer	11/24/2009		Lewis Mayer	05/01/2009	Open - Normal	07/29/2009	28D11

mplaint Description: PERMIT B696144 APPLIED FOR BUT NOT ISSUED, WORK STARTED

cility:	Owner :	Complainant:
0179456	MALSTROM CHRISTOPHER	BALTO. CO. BLDG. INSP
)M 1402066300	8301 WILSON AVE	
01 WILSON AVE	BALTIMORE MD 21234	WORK: 4108873953
.RKVILLE, MD 21234		

)aily Activity Details - No Data

V tion Details - No Data

PC#1

APPLICATION FOR PERMIT
BALTIMORE COUNTY MARYLAND
DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
TOWSON MARYLAND 21204

DATE: 6 · 6 · 08
OEA: EDU/NY
HISTORIC DISTRICT/BLDG.
[ ] YES [ ] NO
[ ] DO NOT KNOW
DISTRICT/PRECINCT 14 6

PERMIT #: B[illegible]
RECEIPT #: A5[illegible]
CONTROL #: MR
XREF #:

FEE: 60+5
PAID: 65.00
PAID BY: [illegible]
INSPECTOR: [illegible]

I HAVE CAREFULLY READ THIS APPLICATION AND KNOW THE SAME IS CORRECT AND TRUE, AND THAT IN DOING THIS WORK ALL PROVISIONS OF THE BALTIMORE COUNTY CODE AND APPROPRIATE STATE REGULATIONS WILL BE COMPLIED WITH WHETHER HEREIN SPECIFIED OR NOT AND WILL REQUEST ALL REQUIRED INSPECTIONS.

PROPERTY ADDRESS: 8301 WILSON AVE
SUITE/SPACE/FLOOR:
SUBDIV:
TAX ACCOUNT #: 1402066300
OWNER'S INFORMATION (LAST, FIRST)
NAME: CHRISTOPHER J MALSTROM
ADDR: 8301 WILSON AVE PARKVILLE MD 21234

DOES THIS BLDG. HAVE SPRINKLERS YES __ NO __

APPLICANT INFORMATION
NAME: SAME Christopher J Malstrom
COMPANY: N/A
STREET: 8301 WILSON AVE
CITY,ST,ZIP: PARKVILLE MD 21234
PHONE #: 410-663-4503 MHIC #: N/A MHBR #: N/A
APPLICANT SIGNATURE: [signature] DRC#
PLANS: CONST ✓ PLOT 0 PLAT 0 DATA 0 EL 1 PL 2
TENANT
CONTR: SAME OWNER
ENGNR:
SELLR:

TYPE OF IMPROVEMENT
1. ___ NEW BLDG CONST
2. ✓ ADDITION
3. ___ ALTERATION
4. ___ REPAIR
5. ___ WRECKING
6. ___ MOVING
7. ___ OTHER

DESCRIBE PROPOSED WORK: Construct 2nd story addition over existing 1st floor to extend existing second floor, to be used as: great-room per plans 26'x30'x26'–780sf.

TYPE OF USE

RESIDENTIAL
01. ✓ ONE FAMILY
02. ___ TWO FAMILY
03. ___ THREE AND FOUR FAMILY
04. ___ FIVE OR MORE FAMILY (ENTER NO UNITS) ___
05. ___ SWIMMING POOL
06. ___ GARAGE
07. ___ OTHER

NON-RESIDENTIAL
08. ___ AMUSEMENT, RECREATION, PLACE OF ASSEMBLY
09. ___ CHURCH, OTHER RELIGIOUS BUILDING
10. ___ FENCE (LENGTH ___ HEIGHT ___)
11. ___ INDUSTRIAL, STORAGE BUILDING
12. ___ PARKING GARAGE
13. ___ SERVICE STATION, REPAIR GARAGE
14. ___ HOSPITAL, INSTITUTIONAL, NURSING HOME
15. ___ OFFICE, BANK, PROFESSIONAL
16. ___ PUBLIC UTILITY
17. ___ SCHOOL, COLLEGE, OTHER EDUCATIONAL
18. ___ SIGN
19. ___ STORE ___ MERCANTILE ___ RESTAURANT
SPECIFY TYPE ___
20. ___ SWIMMING POOL ___
SPECIFY TYPE
21. ___ TANK, TOWER
22. ___ TRANSIENT HOTEL, MOTEL (NO. UNITS ___)
23. ___ OTHER ___

Required Sealed Const. plan. –YAP

TYPE FOUNDATION
1. _ SLAB
2. _ BLOCK
3. _ CONCRETE

BASEMENT
1. _ FULL
2. _ PARTIAL
3. _ NONE

TYPE OF CONSTRUCTION
1. ___ MASONRY
2. ___ WOOD FRAME
3. ___ STRUCTURE STEEL
4. ___ REINF. CONCRETE

TYPE OF HEATING FUEL
1. ___ GAS 3. ___ ELECTRICITY
2. ___ OIL 4. ___ COAL

TYPE OF WATER SUPPLY
1. ___ PUBLIC SYSTEM ✓ EXISTS ___ PROPOSED
2. ___ PRIVATE SYSTEM ___ EXISTS ___ PROPOSED

TYPE OF SEWAGE DISPOSAL
1. ___ PUBLIC SEWER ✓ EXISTS ___ PROPOSED
2. ___ PRIVATE SYSTEM
___ SEPTIC ___ EXISTS ___ PROPOSED
___ PRIVY ___ EXISTS ___ PROPOSED

CENTRAL AIR: 1. ___ 2. ___
ESTIMATED COST: $30,000 OF MATERIALS AND LABOR
PROPOSED USE: SFD & ADDITION & SHED
EXISTING USE: SFD, SHED

OWNERSHIP
1. ✓ PRIVATELY OWNED 2. ___ PUBLICLY OWNED 3. ___ SALE 4. ___ RENTAL

RESIDENTIAL CATEGORY: 1. ✓ DETACHED 2. ___ SEMI-DET. 3. ___ GROUP 4. ___ TOWNHSE 5. ___ MIDRISE 6. ___ HIRISE
#EFF: ___ #1BED: ___ #2BED: ___ #3BED: ___ TOT BED: ___ TOT APTS/CONDOS ___
1 FAMILY BEDROOMS ___
GARBAGE DISPOSAL 1. _Y 2. _N BATHROOMS ___ CLASS 4
POWDER ROOMS ___ KITCHENS ___ LIBER 0 FOLIO 0
SECTION 3

BUILDING SIZE
FLOOR 780
WIDTH 26
DEPTH 30
HEIGHT 26'
STORIES ___
LOT #'S ___
CORNER LOT
1. ✓ YES 2. ___ NO

LOT SIZE AND SETBACKS
SIZE 3400 SF
FRONT STREET ___
SIDE STREET ___
FRONT SETBK ___
SIDE SETBK ___
SIDE STR SETBK ___
REAR SETBK ___
[illegible] 1325.5

APPROVAL SIGNATURES		DATE
BLD INSP		
BLD PLAN	120 OK TO FILE [illegible]	6/8/7
FIRE		
SEDI CTL		
ZONING	[signature]	6/6/08
PUB SERV	[signature]	6/6/08
ENVRMNT	4/6 – Final [signature]	6/6/08
PLANNING	[illegible]	6/6/08
PERMITS		

MAKE CHECKS PAYABLE TO BALTIMORE COUNTY MARYLAND -- NO PERMIT FEES REFUNDED

2010-0094-SPH

PC#2

BALTIMORE COUNTY, MARYLAND

INTER OFFICE CORRESPONDENCE

TO: Timothy Kotroco, Director,
Permits & Development Management

ATTN: Kristen Matthews
MS 1105

FROM: Edward Adams, Director,
Public Works

DATE: October 5, 2009

SUBJECT: Case No. 2010-0094-SPH
Petition for Special Hearing for waiver to permit addition to single family dwelling in 100-year riverine floodplain.
8301 Wilson Avenue

Section 32-8-303 (c) of the Baltimore County Code concerning waivers to the floodplain regulations says, "In considering a waiver action, comments from the state coordinating office and the County Department of Public Works shall be taken into account and maintained with the permit file." This memo is the comment from the Department of Public Works for the subject waiver.

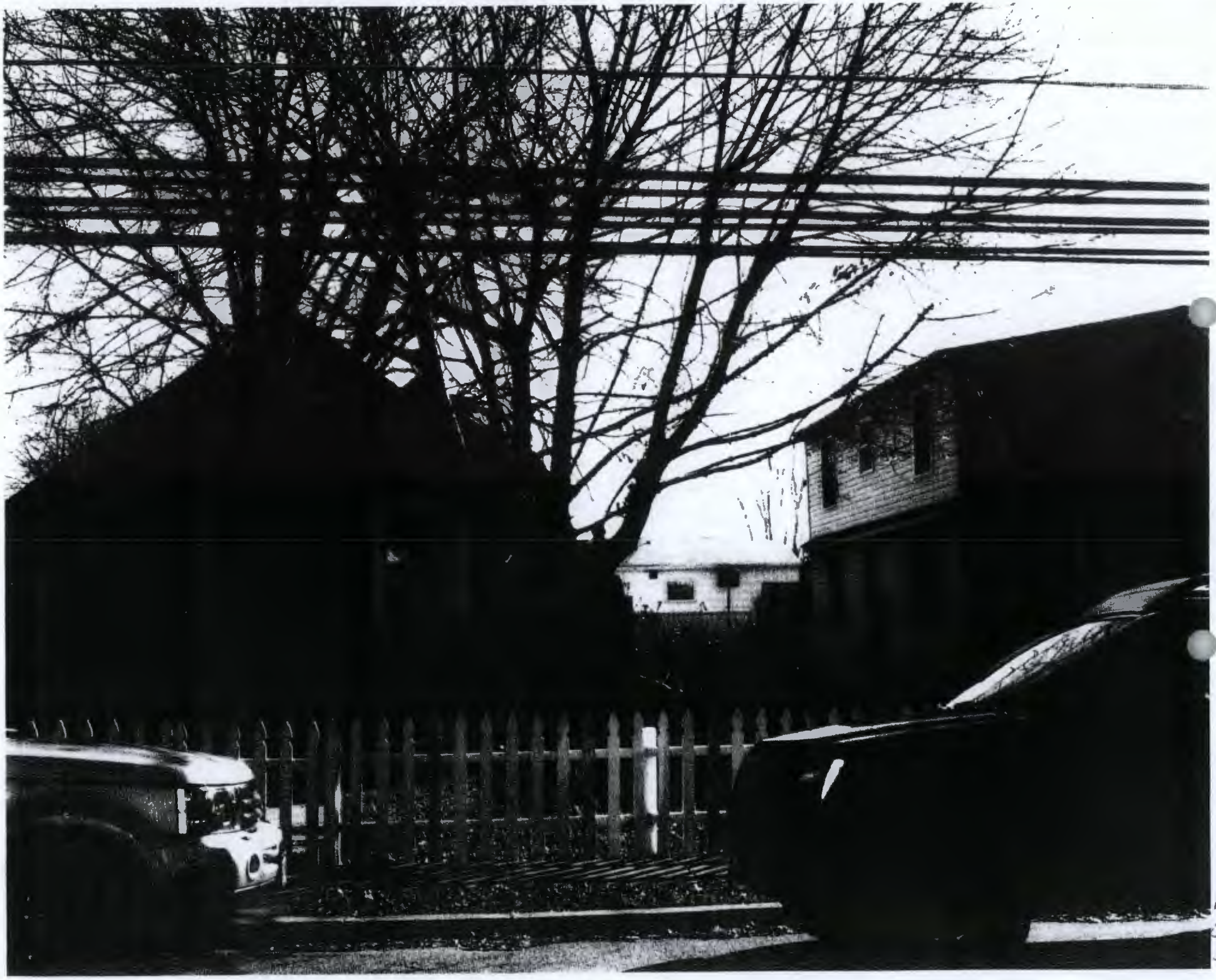
The waiver involves a new second story addition to an existing house that was the subject of Code Violation Case # CO-0059943 (5/1/2009). The house is located in a 100-year floodplain.

This department does not recommend approval of the waiver. The fact that the petitioners began work without a valid permit does not obligate approval of a waiver to grant relief from a hardship of their own making. However, if there is no community opposition and if the dwelling is modified to bring it into strict compliance with all applicable requirements of the Building Code, this department would not actively oppose a waiver approval through the appeal process. "Strict compliance" would include but not be limited to the following (see section 3112 of the Building Code): move all HVAC and electrical equipment out of the basement, provide flood vents in the basement area and remove all material subject to flood damage, verify elevation of first floor with respect to the Flood Protection Elevation.

The petitioners would need to decide if it would be in their best interest to return the dwelling to its original condition rather than going to the expense of complying with the conditions of a waiver.

ECA/DLT/s
CC: Doug DuVal, DuVal & Associates; Dennis Kennedy, Chief, Development Plan Review Bureau; Don Rascoe, Deputy Director, Department of Permits & Development Management; Peter M. Zimmerman, Peoples' Counsel

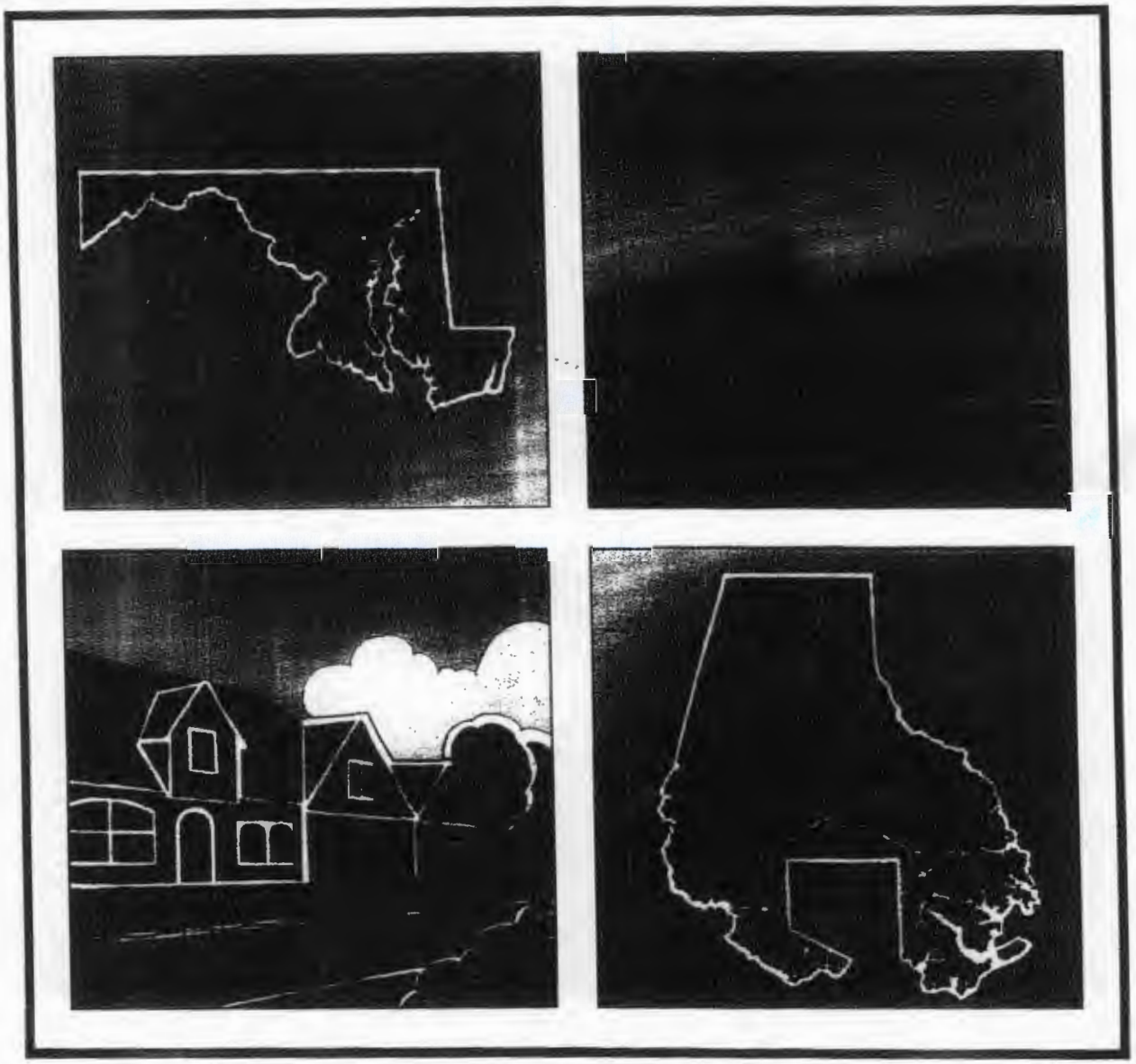
PC# 4



PC
5
E.

MASTER PLAN 2010

BALTIMORE COUNTY, MARYLAND



AS ADOPTED BY BALTIMORE COUNTY COUNCIL

FEBRUARY 22, 2000

PC#6

BALTIMORE COUNTY CODE

§ 32-4-414. FLOODPLAIN AND WETLAND PROTECTION.

(a) *Definitions.* In this section, "base flood", "development", "flood insurance rate map", "flooding", "floodway" and "riverine floodplain" have the meanings stated in Title 8 of this article.

(b) *Purpose.* The purpose of this section to:

(1) Reduce loss of life and property from flooding;

(2) Avoid the need for public expenditures for flood protection; and

(3) Protect or enhance the environmental quality of watersheds.

(c) *Development in floodplain prohibited; exceptions.* The county may not permit development in a riverine floodplain except for:

(1) The establishment of property subdivision lines; and

(2) The installation of a pond, culvert, bridge, street, utility, or drainage facility that the county finds is not detrimental to floodplain management programs.

(d) *Base flood elevation.*

(1) Except as provided in paragraph (2) of this subsection, if the floodplain is shown on the flood insurance rate map, the county shall limit any increase in the existing base flood elevation to a maximum of 1 foot.

(2) The county may not allow encroachment in the floodway causing an increase in the existing base flood elevation.

(3) In areas where the base flood elevation has not been established, the county shall determine the riverine floodplain and flood elevation by means of a flood study prepared in accordance with the requirements of the Department of Public Works Design Manual and sealed by a registered professional engineer before the issuance of a permit or the recording of a subdivision plat.

(e) *Wetlands.*

(1) The county may not permit dredging, filling, or construction in any nontidal wetland or tidal wetland.

(2) The county shall require adequate protection of nontidal wetlands or tidal wetlands from contamination.

(1988 Code, § 26-276) (Bill No. 173-93, § 3, 11-17-1993; Bill No. 79-01, § 2, 7-1-2004; Bill No. 75-03, § 27, 7-1-2004)

PC #7

Baltimore County Code
ARTICLE 32. PLANNING, ZONING, AND SUBDIVISION CONTROL
TITLE 8. FLOODPLAIN MANAGEMENT

TITLE 8. FLOODPLAIN MANAGEMENT

Section

SUBTITLE 1. DEFINITIONS

§ 32-8-101. DEFINITIONS.

(a) *In general.* In this title and in any code or regulations adopted under the authority of this title, the following words have the meanings indicated.

(b) *Accessory structure.*

(1) "Accessory structure" means a detached structure on the same parcel of property as the principal structure, the use of which is incidental to the principal structure.

(2) "Accessory structure" includes a shed or detached garage.

(c) *Base flood.* "Base flood" means the 100-year frequency flood event as indicated in the Flood Insurance Study, as amended, the elevation of which is used for regulatory purposes in the code.

(d) *Baltimore County Datum.* "Baltimore County Datum (BCD)" means the datum elevation to which Baltimore County floodplain elevations are referenced.

(e) *Basement.* "Basement" means an enclosed area that is below grade on all four sides.

(f) *Certificate of occupancy or use.* "Certificate of occupancy or use" means a permit to legally occupy or use a building for the intended purpose.

(g) *Development.*

(1) "Development" means any man-made change to improved or unimproved real estate, including erection of buildings and other structures, dredging, fill, grading, paving, clearing, excavation, dumping, extraction, or storage of equipment or materials.

(2) "Development" includes subdivision of land.

(h) *Elevation certificate.* "Elevation certificate" means a form supplied by the Federal Emergency Management Agency (FEMA) to certify as-built elevations of structures referenced to the Baltimore County Datum (BCD).

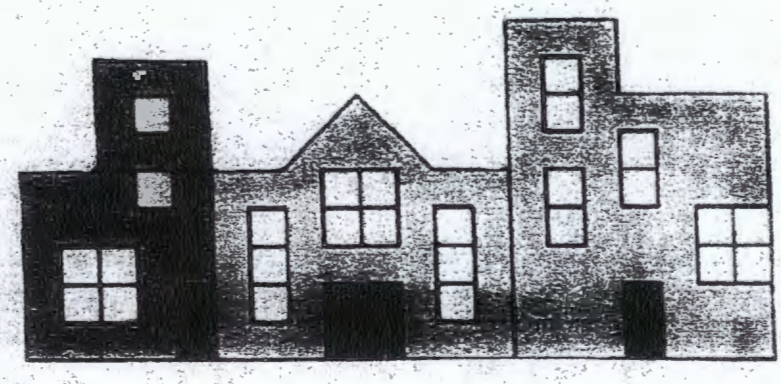
(i) *Flood.* "Flood" means general and temporary condition of partial or complete inundation of normally dry land areas from overflow of inland or tidal waters, or rapid unusual accumulation of runoff from any sources.

(j) *Flood insurance rate map.* "Flood Insurance Rate Map (FIRM)" means a map that depicts the minimum special flood hazard area to be regulated by this code unless a floodway map is available.

(k) *Flood protection elevation* "Flood Protection Elevation (FPE)" means the elevation of the base flood plus 1 foot freeboard.

13

BALTIMORE COUNTY BUILDING CODE



Baltimore County Council Bill 49-07

Effective July 15, 2007

www.baltimorecountymd.gov

Pub
9

BALTIMORE COUNTY
DEPARTMENT OF PUBLIC WORKS
BUREAU OF ENGINEERING

Adopted August 1, 1991

Recommendations and Procedures for Watershed Studies - Floodplain Studies and Waterway Crossing Studies

These standards are not meant to supersede those standards established by other agencies for hydrologic and/or hydraulic studies. Other agencies should be contacted to determine their specific requirements.

Floodplain Regulations:

The Baltimore County Code defines the 100 Year Frequency Floodplain and Section 22-98 of the Code defines activities which are acceptable within the 100 year floodplain.

The Department of Public Works through this document defines the 100 year frequency floodplain as that area inundated by the runoff from a 30 acre or greater drainage area generated by rainfall which has a 1 percent chance of occurance (100 year frequency storm). If the drainage area is less than 30 acres the area inundated is defined as the 100 year waterway.

1) 100 Year Floodplain

Where the drainage area contributing to a point in a waterway equals or exceeds 30 acres only activities as defined in Section 22-98 shall be permitted. For activities which are proposed but not permitted by Code the approval of the Planning Board shall be obtained. This document is concerned with those streams and drainage systems which have drainage areas which equal or exceed 30 acres.

PC#
10

Remand Brad Testimony

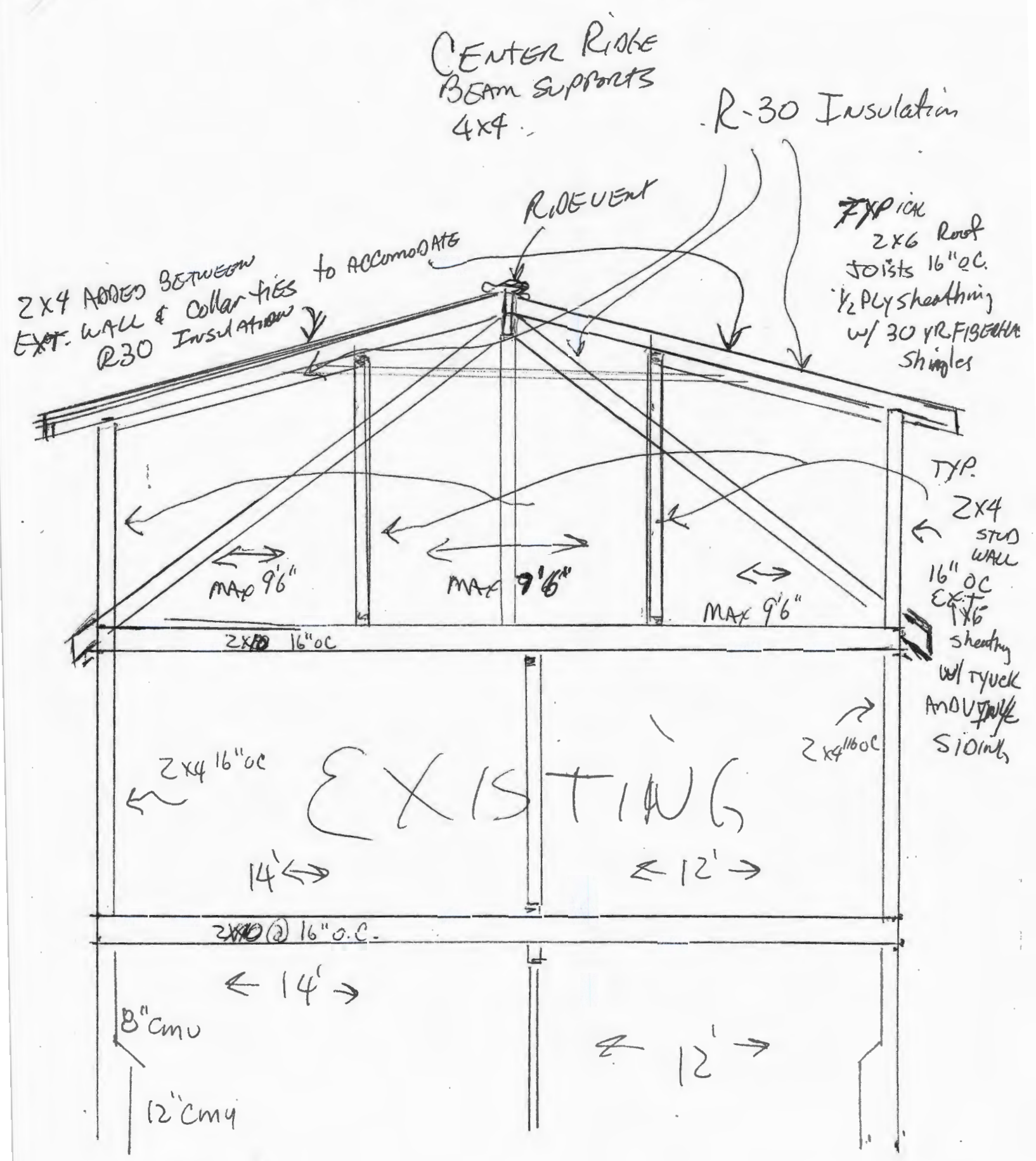
Case No: 10-094 SPH Case Name: Christopher Malstrom Remand

Exhibit List

Party: County Date: 3/8/11

Exhibit No:	Description:
BC1	Sketch of proposed addition to House
BC2	32-4-414 - Ba H. Co. Code - 2 pages
	VERIFIED BY tvs DATE: 3/8/11

10-094-SPH Remand County Ex 1 3/8/11



10-094-SPH Renard County Exh 2 3/8/11

ARTICLE 32. PLANNING, ZONING, AND SUBDIVISION CONTROL / TITLE 4. DEVELOPMENT / SUBTITLE 4. GENERAL DESIGN STANDARDS AND REQUIREMENTS / § 32-4-414. FLOODPLAIN AND WETLAND PROTECTION.

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Case No: 10-094-SPH Case Name: CHRISTOPHER J MALSTROM

Exhibit List

Party: PETITIONER Date: 7/27/10

Exhibit No:	Description:
#1	PHOTO OF BRIDGE OVER STEMMERS RUN BEHIND HIS HOME
#2	BAL CO. TAX ASSESSMENT SHEET
#3A	FLOOD INSURANCE RATE MAP
3B	FLOOD PLAIN STUDY - PREPARED BY R TRUSSO
3C	" " " " " " "
	verified 7/28/10 trs

✓ ✓ ✓ ✓ ✓

Pet Ex #1

Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search (2007 vw2.3d)

Go Back
View Map
New Search

Account Identifier: **District - 14 Account Number -** 1402066300

Owner Information

Owner Name:	MALSTROM CHRISTOPHER	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	8301 WILSON AVE BALTIMORE MD 21234-4703	**Deed Reference:**	1) /15469/ 633 2)

Location & Structure Information

Premises Address
8301 WILSON AVE

Legal Description
ES WILSON AVE
8301 WILSON AVE ES
PARKTOWNE

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
81	3	724			B			3	Plat Ref:

Special Tax Areas
Town
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1948	1,293 SF	5,400.00 SF	04

Stories	Basement	Type	Exterior
1 1/2	YES	STANDARD UNIT	FRAME

Value Information

	Base Value	Value As Of 01/01/2009	Phase-in Assessments As Of 07/01/2009	Phase-in Assessments As Of 07/01/2010
Land	59,500	71,500		
Improvements:	102,410	111,300		
Total:	161,910	182,800	168,873	175,836
Preferential Land:	0	0	0	0

Transfer Information

Seller:	MASON ALAN C TRUSTEE	**Date:**	08/15/2001	**Price:**	$71,000
Type:	NOT ARMS-LENGTH	**Deed1:**	/15469/ 633	**Deed2:**	
Seller:	BROOKS WILHELMENA	**Date:**	05/25/1994	**Price:**	$1
Type:	NOT ARMS-LENGTH	**Deed1:**	/10549/ 356	**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	

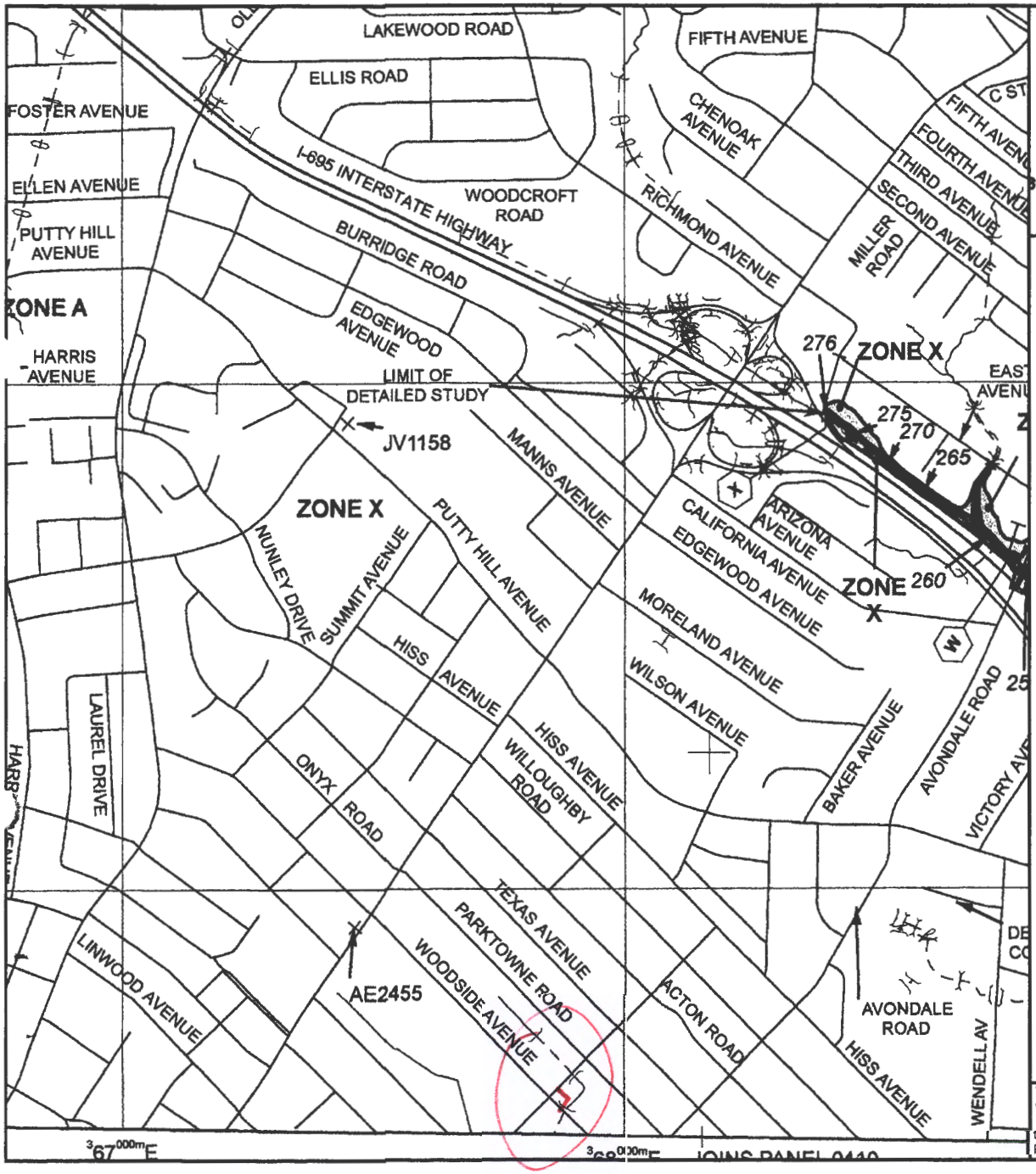
Exemption Information

Partial Exempt Assessments	Class	07/01/2009	07/01/2010
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:
* NONE *

Pet Ex 2



MAP SCALE 1" = 1000'

500 0 1000 2000 FEET

300 0 300 600 M

NFIP NATIONAL FLOOD INSURANCE PROGRAM

PANEL 0270F

FIRM

FLOOD INSURANCE RATE MAP

BALTIMORE COUNTY
MARYLAND
UNINCORPORATED AREAS

PANEL 270 OF 580

(SEE MAP INDEX FOR FIRM PANEL LAYOUT)

CONTAINS:

COMMUNITY	NUMBER	PANEL	SUFFIX
BALTIMORE COUNTY	240010	0270	F

Notice to User: The Map Number shown below should be used when placing map orders; the Community Number shown above should be used on insurance applications for the subject community.

MAP NUMBER
2400100270F

MAP REVISED
SEPTEMBER 26, 2008

Federal Emergency Management Agency

This is an official copy of a portion of the above referenced flood map. It was extracted using F-MIT On-Line. This map does not reflect changes or amendments which may have been made subsequent to the date on the title block. For the latest product information about National Flood Insurance Program flood maps check the FEMA Flood Map Store at www.msc.fema.gov

Ref Bld App 34

PETITIONER'S EXHIBIT NO. 3A

Case No.: 2010-0094-SPlt 8301 Wilson Ave

Exhibit Sheet

	Petitioner/Developer	Protestant
No. 1	Assessed Property Values	
No. 2	Site Plan	
No. 3	A - Fema Flood Map B - Flood Plain Study — Property Plan C - Drainage Area Map	
No. 4	Bldg Permit B696144	
No. 5	Photo's of Property	
No. 6		
No. 7		
No. 8		
No. 9		
No. 10		
No. 11		
No. 12		

Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search (2007 vw2.3d)

Go Back
View Map
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Account Identifier: **District - 14 Account Number -** 1402066300

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Owner Name:	MALSTROM CHRISTOPHER	**Use:**	RESIDENTIAL
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Type:		**Deed1:**		**Deed2:**	

Exemption Information

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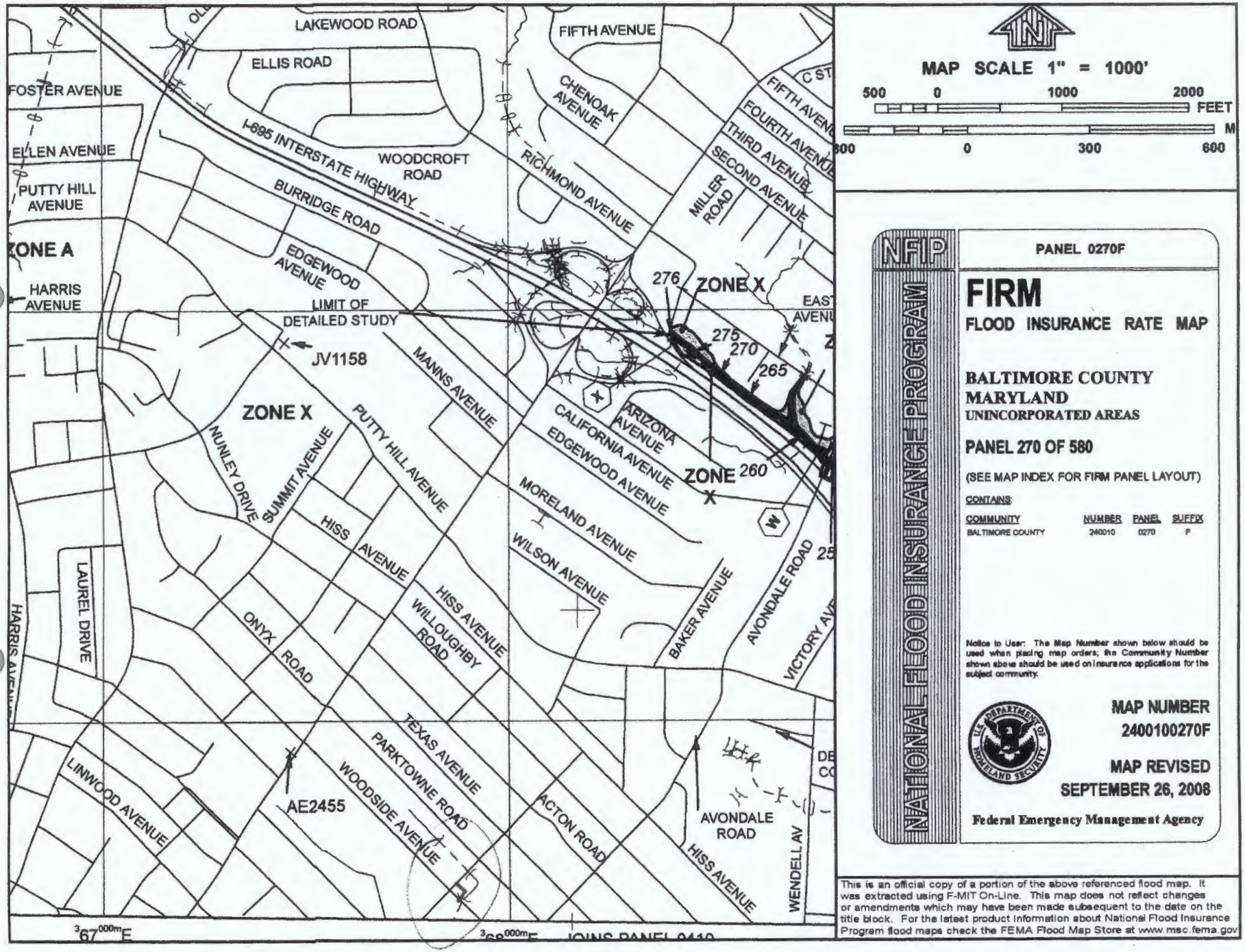
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:
* NONE *

PETITIONER'S
EXHIBIT NO. 1



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NFIP

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PANEL 0270F

FIRM

FLOOD INSURANCE RATE MAP

BALTIMORE COUNTY
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PANEL 270 OF 580

(SEE MAP INDEX FOR FIRM PANEL LAYOUT)

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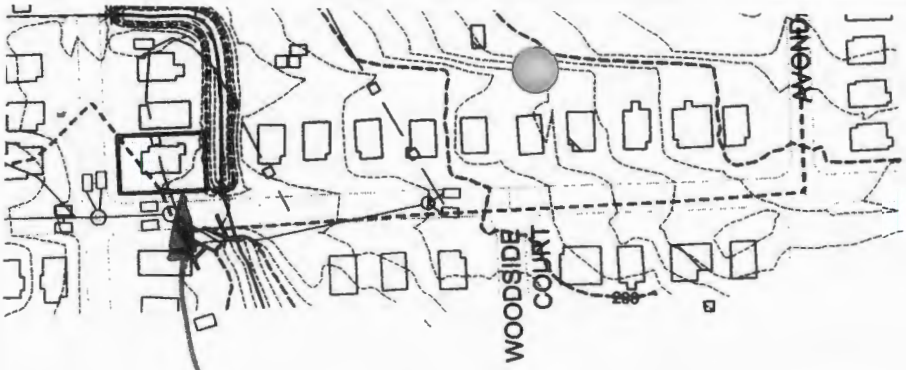
PETITIONER'S EXHIBIT NO. 3A



Site (See other drawing for Flood Plain Limits)

100 YEAR FLOODPLAIN CERTFICATION

I CERTIFY THAT THE 100 YEAR FLOODPLAIN OUTLINE SHOWN ON THIS PLAN IS CORRECT AND DONE IN ACCORDANCE WITH THE BALTIMORE COUNTY DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT, BUREAU OF DEVELOPMENT PLANS REVIEW'S POLICY MANUAL, APPENDIX B, RECOMMENDATIONS AND PROCEDURES FOR WATERSHED STUDIES, FLOODPLAIN STUDIES, AND WATERWAY CROSSING STUDIES.

Richard Truelove 7-28-09

RICHARD TRUELOVE P.E., MD. REGISTRATION 10800

STATE OF MARYLAND
RICHARD TRUELOVE
No. 10800
PROFESSIONAL ENGINEER

DRAINAGE AREA MAP

FLOODPLAIN STUDY
MALSTROM PROPERTY

8301 WILSON AVENUE
BALTIMORE COUNTY, MARYLAND
ELECTION DISTRICT 14
COUNCILMANIC DISTRICT 6

SCALE: 1"=200' JULY 24, 2009

DESIGN AND DRAWING BASED ON
MARYLAND COORDINATE SYSTEM
HORIZONTAL - NAD 83/91
VERTICAL - NAVD 88

PETITIONER'S

EXHIBIT NO. 3B

IONAL CERTIFICATION

THESE DOCUMENTS WERE PREPARED OR APPROVED BY
ILY LICENSED PROFESSIONAL ENGINEER UNDER THE
MARYLAND,

IRATION DATE: FEBRUARY 10, 2010.

#2009015

PLAN PREPARED BY:
RICHARD TRUELOVE P.E.,Inc.
registered civil engineer
414 Lyman Avenue
Baltimore, Maryland 21212-3511
(410)433-6600 FAX (410)435-9029

APPLICATION FOR PERMIT
BALTIMORE COUNTY MARYLAND
DEPARTMENT OF PERMITS & DEVELOPMENT MANAGEMENT
TOWSON, MARYLAND 21204

DATE: 6.6.08
OEA: EDM/TCG
HISTORIC DISTRICT/BLDG.

PERMIT #: B/96444
RECEIPT #: A15785
CONTROL #: MR
XREF #:

FEE: 60+3
PAID: 6-6-08
PAID BY: cash
INSPECTOR:

I HAVE CAREFULLY READ THIS APPLICATION AND KNOW THE SAME IS CORRECT AND TRUE, AND THAT IN DOING THIS WORK ALL PROVISIONS OF THE BALTIMORE COUNTY CODE AND APPROPRIATE STATE REGULATIONS WILL BE COMPLIED WITH WHETHER HEREIN SPECIFIED OR NOT AND WILL REQUEST ALL REQUIRED INSPECTIONS.

PROPERTY ADDRESS 8301 WILSON AVE ☐ YES ☐ NO
SUITE/SPACE/FLOOR
SUBDIV: ☐ DO NOT KNOW
TAX ACCOUNT #: 1402066300 DISTRICT/PRECINCT 14 6
OWNER'S INFORMATION (LAST,FIRST)
NAME: CHRISTOPHER J MALSTROM
ADDR: 8301 WILSON AVE PARKVILLE MD 21234

DOES THIS BLDG. HAVE SPRINKLERS YES — NO —

APPLICANT INFORMATION
NAME: SAME Christopher Malstrom
COMPANY: N/A
STREET 8301 WILSON AVE
CITY,ST,ZIP PARKVILLE MD 21234
PHONE #: 410-663-4503 MHIC # N/A MHBR # N/A
APPLICANT SIGNATURE: Christopher Malstrom BRC# 1
PLANS: CONST 2 PLOT 1 & PLAT 0 DATA 3 EL 1 PL 2
TENANT
CONTR: SAME OWNER
ENGNR:
SELLR:

TYPE OF IMPROVEMENT
1. ___ NEW BLDG CONST
2. ✓ ADDITION
3. ___ ALTERATION
4. ___ REPAIR
5. ___ WRECKING
6. ___ MOVING
7. ___ OTHER

DESCRIBE PROPOSED WORK: Construct 2nd story addition over existing 1st floor to extend existing second floor, to be used as: great-room per plans 26'x30'x26'=780sf.

TYPE OF USE

RESIDENTIAL
01. ✓ ONE FAMILY
02. ___ TWO FAMILY
03. ___ THREE AND FOUR FAMILY
04. ___ FIVE OR MORE FAMILY (ENTER NO UNITS)_____
05. ___ SWIMMING POOL
06. ___ GARAGE
07. ___ OTHER

TYPE FOUNDATION
1. _ SLAB
2. _ BLOCK
3. _ CONCRETE

BASEMENT
1. _ FULL
2. _ PARTIAL
3. _ NONE

NON-RESIDENTIAL
08. ___ AMUSEMENT, RECREATION, PLACE OF ASSEMBLY
09. ___ CHURCH, OTHER RELIGIOUS BUILDING
10. ___ FENCE (LENGTH_____ HEIGHT_____)
11. ___ INDUSTRIAL, STORAGE BUILDING
12. ___ PARKING GARAGE
13. ___ SERVICE STATION, REPAIR GARAGE
14. ___ HOSPITAL, INSTITUTIONAL, NURSING HOME
15. ___ OFFICE, BANK, PROFESSIONAL
16. ___ PUBLIC UTILITY
17. ___ SCHOOL, COLLEGE, OTHER EDUCATIONAL
18. ___ SIGN
19. ___ STORE ___ MERCANTILE ___ RESTAURANT SPECIFY TYPE
20. ___ SWIMMING POOL SPECIFY TYPE

Required Sealed Const. plan. —AP

PETITIONER'S EXHIBIT NO. 4

PETITIONER'S

EXHIBIT NO. 5

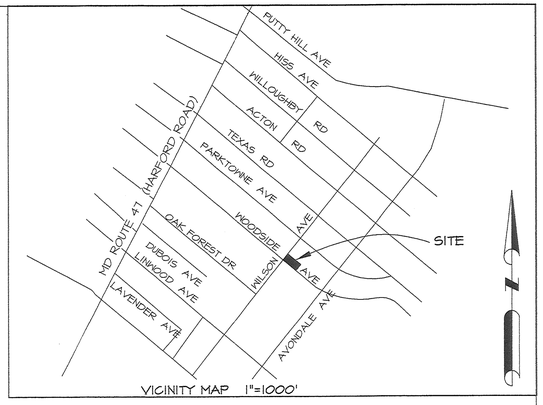
8301 Wilson Avenue

People's Counsel Exhibit 3 CBA

Produced by Baltimore County GIS Services Unit
Date: July 21, 2010
Date of Imagery: 2008

1 inch = 50 feet

The Cadastral information on this Plot was compiled from existing deed information. This information is not to be considered authoritative. The Survey Information was not field checked and Certified by a licensed land surveyor.



BENCHMARK

THE HORIZONTAL DATUM SHOWN HEREON IS BASED ON THE FOLLOWING BALTIMORE COUNTY PRIMARY CONTROL NETWORK MONUMENTS.

HORIZONTAL NAD '83/91

BCID	NORTH	EAST	ELEV.
615-48	623826.07	1442645.830	321.34

BRASS CAP EAST SIDE HARFORD RD. SOUTH OF EMERALD RD.

BCID	NORTH	EAST	ELEV.
615-12	621138.68	1445941.85	282.56

BRASS DISC SOUTH SIDE GLEN RD. EAST OF DOUBLE ROCK PARK ENTRANCE

GENERAL NOTES:

OWNER: CHRISTOPHER J. MALSTROM
DEED REF: 15469/633
ZONING: DR5.5 GIS TILE: 081 A1
FLOOD INSURANCE RATE MAP: 24001002708
FLOOD ZONE C
100 YR FLOOD PLAIN ELEV=284.21
BUILDING PERMIT No. B696144

IMPROVEMENTS MADE TO THE EX. DWELLING WERE TO THE SECOND FLOOR ONLY; NO IMPROVEMENTS WERE MADE AT GROUND LEVEL.

	PUBLIC	PRIVATE
PUBLIC WATER	☒	☐
PUBLIC SEWER	☒	☐
	YES	NO
CHESAPEAKE BAY CRITICAL AREA	☐	☒
100 YEAR FLOOD PLAIN	☒	☐
HISTORIC PROPERTY/ BUILDING	☐	☒

Code Violation Case # CO-0059943 of 5-01-2009 for 2nd story Addition without an approved/ issued building permit.

STATE OF MARYLAND
DOUGLAS WELTY DUVAL
No. 10764
PROFESSIONAL LAND SURVEYOR

PLAT TO ACCOMPANY SPECIAL HEARING

MALSTROM RESIDENCE
8301 WILSON AVENUE

TAX ID: 14-02066300
MAP: 81, GRID: 3, PARCEL: 724, PLAT:12-77 (PARKTOWNE) SECTION B

14TH ELECTION DISTRICT
COUNCILMATIC DISTRICT 6
SCALE: 1'=20'

Baltimore County, Maryland
Date: SEPTEMBER 11, 2009

0' 20' 40' 60'

PETITIONER'S EXHIBIT NO. 2

DUVAL & ASSOCIATES, P.A.
SURVEYING • ENGINEERING
1729 YORK ROAD
SUITE 205
LUTHERVILLE, MD 21093
PHONE: 410-666-5467 FAX: 410-583-4688
E-MAIL: duvalapa@verizon.net

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2010-0094-SPH

LEGEND

EXISTING CONTOURS	560
EXISTING WOODS LINE	
SOIL TYPE BOUNDARIES	SnB / BuB
ZONE CLASSIFICATION	BL
ZONE LINE	
TIME OF CONCENTRATION PATH (Tc)	
DRAINAGE AREA LIMITS	
PROPERTY LINE/LOT LINE	
EXISTING STORM DRAINS	INLET, HEADWALL, OUTFALL, DRAIN PIPE, MANHOLE

RUNOFF SUMMARY (SEE TR-20 RESULTS)
2 YEAR STORM 359.2 C.F.S.
10 YEAR STORM 675.0 C.F.S.
100 YEAR STORM 1011.6 C.F.S.

100 YEAR FLOODPLAIN CERTFICATION

I CERTIFY THAT THE 100 YEAR FLOODPLAIN OUTLINE SHOWN ON THIS PLAN IS CORRECT AND DONE IN ACCORDANCE WITH THE BALTIMORE COUNTY DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT, BUREAU OF DEVELOPMENT PLANS REVIEW'S POLICY MANUAL, APPENDIX B, RECOMMENDATIONS AND PROCEDURES FOR WATERSHED STUDIES, FLOODPLAIN STUDIES, AND WATERWAY CROSSING STUDIES.

[signature] 7-28-09

RICHARD TRUELOVE P.E., MD. REGISTRATION 10800

STATE OF MARYLAND RICHARD TRUELOVE No. 10800 PROFESSIONAL ENGINEER

DRAINAGE AREA MAP
FLOODPLAIN STUDY MALSTROM PROPERTY
8301 WILSON AVENUE
BALTIMORE COUNTY, MARYLAND
ELECTION DISTRICT 14
COUNCILMANIC DISTRICT 6

SCALE: 1"=200' JULY 24, 2009

DESIGN AND DRAWING BASED ON MARYLAND COORDINATE SYSTEM
HORIZONTAL - NAD 83/91
VERTICAL - NAVD 88

PETITIONER'S

EXHIBIT NO. 3B

PROFESSIONAL CERTIFICATION

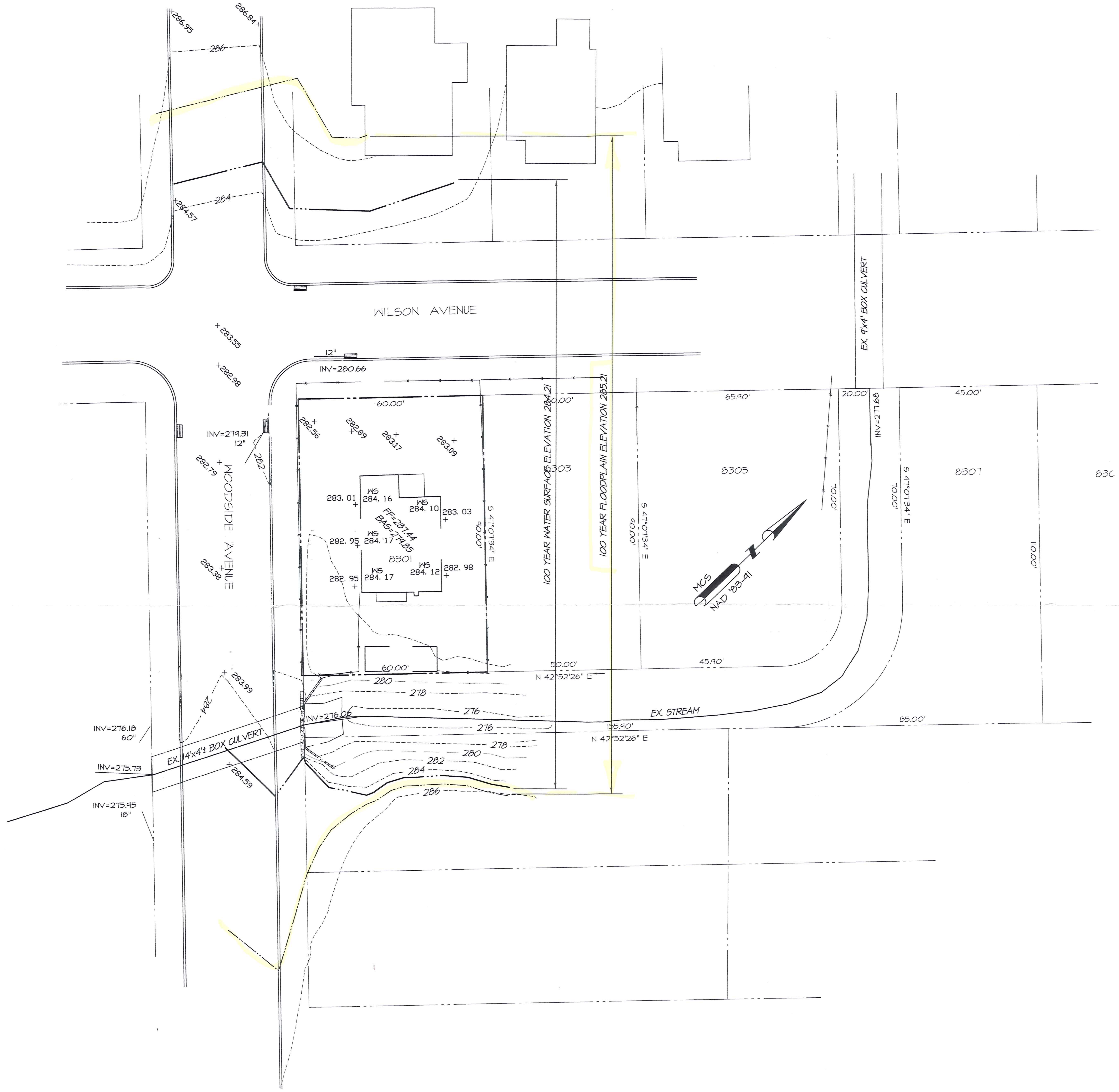
I HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MARYLAND,

LICENSE NO. 10800, EXPIRATION DATE: FEBRUARY 10, 2010.

#2009015

PLAN PREPARED BY:
RICHARD TRUELOVE P.E.,Inc.
registered civil engineer
414 Lyman Avenue
Baltimore, Maryland 21212-3511
(410)433-6600 FAX (410)435-9029

Bd. App. 3B



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[signature] July 28, 2009

RICHARD TRUELOVE P.E., MD. REGISTRATION 10800

STATE OF MARYLAND — RICHARD TRUELOVE — No. 10800 — PROFESSIONAL ENGINEER

PROPERTY PLAN

FLOODPLAIN STUDY
MALSTROM PROPERTY

8301 WILSON AVENUE
BALTIMORE COUNTY, MARYLAND
ELECTION DISTRICT 14
COUNCILMANIC DISTRICT 6

SCALE: 1"=20' JULY 24, 2009

DESIGN AND DRAWING BASED ON
MARYLAND COORDINATE SYSTEM
HORIZONTAL - NAD 83/91
VERTICAL - NAVD 88

PETITIONER'S

EXHIBIT NO. 3C

PROFESSIONAL CERTIFICATION

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Pet. BE
Bd 5/ App. 3C

C:\Land Projects R2\MALSTROM PROPERTY\dwg\FLOODPLAIN PLAN.dwg, 07/28/2009 11:40:19 AM, RTPE, Inc.