

IN RE: PETITION FOR VARIANCE

S side of Murdock Road, 110 feet W
of c/l of Heathfield Road
9th Election District
5th Councilmanic District
(323 Murdock Road)

Frank C. Meyer, Jr. and Kathleen C. Long
Petitioners

* BEFORE THE
* OFFICE OF ADMINISTRATIVE
* HEARINGS FOR
* BALTIMORE COUNTY
* CASE NO. 2012-0012-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings for Baltimore County for consideration of a Petition for Variance filed by the legal owners of the subject property, Frank C. Meyer, Jr. and Kathleen C. Long. Petitioners are requesting Variance relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit an enclosed addition (sunroom) with a setback of 37 feet in lieu of the required 50 feet. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the variance request were Petitioners Frank C. Meyer, Jr. and Kathleen C. Long. The record in this case reflects that the subject property was properly posted and advertised as required by the Baltimore County Zoning Regulations. J. Carroll Holzer, Esquire appeared on behalf of a number of citizen protestants, whose names appear on the sign in sheet which has been made a part of the file.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Office of Planning dated August 22, 2011, in which, failing to find any requisite practical difficulty in the Petitioners' request and noting a denial of a similar request in 1995, recommended denial of the instant variance Petition. The

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Date

By

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[Signature]

property currently has a screened porch. The Petitioners request enclosing said porch with glass walls which would convert the porch into a rear addition to the house. Permitting a rear addition could possibly allow for neighboring properties to do the same which would threaten the architectural uniformity of the Rodgers Forge community. The housing stock in Rodgers Forge is very dense and open space is limited. As stated by the Office of Planning, this property was the subject of a previously filed similar Petition for Variance to allow an enclosure in 1995 and was denied. Several nearby properties in Rodgers Forge have also come in for rear addition and were also denied, the latest in 2011.

The Petitioners long testified as to the description of the existing screened-in sunroom which existed when they purchased the property. Unfortunately, over the years it has deteriorated and is in need of replacement and/or repair. They wish to enclose the sunroom in order to use it in the spring and fall. Their request will not change the already existing footprint of the structure and they believe it will not only improve the use of the property, but will be visually less obstructive than the current sunroom and will enhance the value of their property.

Protestant Carol Zielke testified in opposition to the requested variance. She is an officer in the Rodgers Forge Community Association and shares a common wall with the site in question. She is concerned that the proposed permanent construction will adversely affect the air flow and light to the rear of the property. Moreover, she did not believe that the Petitioners' property was in any way unique in the community, such as to qualify it for a variance. She concluded that she had also testified in opposition when prior residents had unsuccessfully tried to obtain a variance in 1995.

There is no question as to the positive motivation of the Petitioners in wanting to address a decaying sunroom in their residence by upgrading the same space as a permanent enclosed

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addition. It is also true that, for whatever reason, many of the homes in Rodgers Forge have extensions such as that desired by the Petitioners.

Unfortunately, for the Petitioners, the reality of this case is otherwise; in order to construct their desired addition, Petitioners must obtain a variance. Either they qualify under present statutory case law, or they do not.

The obtaining of the variance governed by Section 307.1 of the B.C.Z.R. as well as well-settled case law. These requirements are purposely strict in nature, difficult to satisfy and reflect the public policy of severely restricting the granting of variance relief. The seminal case on the subject, *Cromwell v. Ward* 102 Md. App. 691 (1995), states the prevailing rule that "variances are to be granted sparingly, only in rare instances and under peculiar and exceptional circumstances....a variance should be strictly construed. Cromwell Id at 700. Section 307.1 of the zoning regulations permits variances to be granted "...only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the zoning regulations for Baltimore County would result in practical difficulty or unreasonable hardship. Cromwell requires that "uniqueness" first be established before the factor of "practical difficulty" is even addressed. Cromwell Id at 698. In requiring a prerequisite finding of "uniqueness" the Court defined the term and stated:

In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "Uniqueness" of a property for zoning purposes requires that the subject property has an inherent characteristic not shared by other properties in the area, i.e, its shape, topography, subsurface condition, environmental factors, historical

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significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects in bearing or parting walls...Id. At 710.

Only thereafter, do we address the issue of practical difficulty. To prove practical difficulty for an area variance, the Petitioners must produce evidence to allow the following questions to be answered affirmatively:

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

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

In considering the testimony and evidence presented, I am not persuaded that the Petitioners have not in any way established the "uniqueness" as regards the subject property, as called for in Section 307.1 and defined and discussed in *Cromwell v. Ward*, supra. The bar as to "uniqueness" is purposely raised high and the Petitioners have not succeeded in reaching it. The properties in Rogers Forge are relatively uniform; that uniformity provides much of the character and attraction of the community. Petitioners' property simply does not differ from that uniformity

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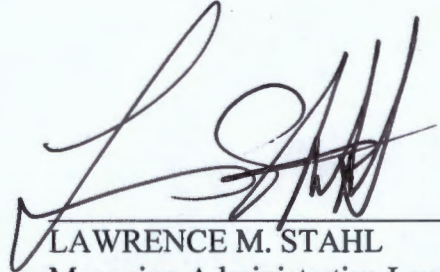
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in any significant way. Therefore, discussion of the "practical difficulty" is unnecessary in this opinion.

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

THEREFORE, IT IS ORDERED this 2nd day of September, 2011 by this Administrative Law Judge that Petitioners' Variance request from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit an enclosed addition (sunroom) with a setback of 37 feet in lieu of the required 50 feet be and is hereby DENIED.

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



LAWRENCE M. STAHL
Managing Administrative Law Judge
for Baltimore County

ORDER RECEIVED FOR FILING

Date

9-2-11

By

MS

LMS:pz



KEVIN KAMENETZ
County Executive

LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
TIMOTHY M. KOTROCO
Administrative Law Judges

September 2, 2011

FRANK C. MEYER, JR. AND KATHLEEN C. LONG
323 MURDOCK ROAD
BALTIMORE MD 21212

Re: Petition for Variance
Case No. 2012-0012-A
Property: 323 Murdock Road

Dear Mr. Meyer and Ms. Long:

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "L. Stahl", is written over the printed name of Lawrence M. Stahl.

LAWRENCE M. STAHL
Managing Administrative Law Judge
for Baltimore County

LMS/pz

Enclosure

- c: J. Carroll Holzer, Esquire, Holzer & Lee, 508 Fairmount Avenue, Towson, MD 21286
Bruce Hirshauer, 124 Dunkirk Road, Baltimore MD 21212
Bernice Hirshauer, 214 Murdock Road, Baltimore MD 21212
Carol and Ron Zielke, 325 Murdock Road, Baltimore MD 21212
Jennifer Herfrich, 150 Stanmore Road, Baltimore MD 21212

TAX ACCOUNT # 0908000370

Petition for Variance

to the Zoning Commissioner of Baltimore County
for the property located at 323 MURDOCK RD
which is presently zoned DR 10.5

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s) 1B02.3.C.1 to permit an enclosed addition (sunroom) with a setback of 37 ft. in lieu of the required 50 ft.

of the Zoning Regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons: (indicate hardship or practical difficulty) The area lends itself to the utilization of existing facilities without interruptions to the existing floor plan of the dwelling.

Will not increase footprint of existing construction,

Variance is only to enclose existing screen structure on rear of home, will improve appearance of home and increase property values, and maintain integrity of existing structure.

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

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

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

Contract Purchaser/Lessee:

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

Attorney For Petitioner:

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

Legal Owner(s):

Frank Meyer
Name - Type or Print _____
Signature _____
Kathleen Long
Name - Type or Print _____
Signature _____
323 Murdock Rd 410-760-1919
Address Telephone No.
Baltimore MD 21212
City State Zip Code

Representative to be Contacted:

Patio Enclosures
Name _____
224 8th ave 443-797-0353
Address Telephone No.
Glen Burnie MD 21061
City State Zip Code

OFFICE USE ONLY

Case No. 2012-0012-A

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By Bh Date 7/14/11

Zoning Description

ZONING DESCRIPTION FOR 323 MURDOCK ROAD

That parcel of ground situate in Baltimore County, Maryland and described as follows, that is to say:

Beginning on the south side of Murdock Road at the distance of two hundred eighty two feet easterly from the southeast corner of Murdock and Dorking Road and at a point where the south side of Murdock Road is intersected by a line drawn midway between the house on the lot and that on the lot adjoining thereto on the west;

Thence easterly binding on the south side of Murdock Road forty feet to a point in a line with the center of the partition wall there situate;

Thence southerly to and through the center of said partition wall and continuing the same course in all one hundred ten feet to the north side of an alley fifteen feet wide;

Thence running westerly binding on the north side of said alley thirty seven feet seven inches to intersect the aforementioned line drawn midway between the house on the lot and that on the lot adjoining thereto on the west;

Thence north binding on said line one hundred ten feet to the place of beginning.

**NOTICE OF ZONING
HEARING**

The Administrative Law Judges 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: # 2012-0012-A
323 Murdock Road
S/side of Murdock Road,
110 feet west of centerline
of Heathfield Road
9th Election District
5th Councilmanic District
Legal Owner(s): Frank Meyer
& Kathleen Long
Variance: to permit an en-
closed addition (sunroom)
with a setback of 37 ft. in
lieu of the required 50 ft.
Hearing: Tuesday, August
23, 2011 at 11:00 a.m. in
Room 205, Jefferson
Building, 105 West Ches-
apeake Avenue, Towson
21204.

ARNOLD JABLON, DIRECTOR
OF PERMITS, APPROVALS
AND INSPECTIONS FOR
BALTIMORE COUNTY

NOTES: (1) Hearings are
Handicapped Accessible;
for special accommoda-
tions Please Contact the
Administrative Hearings Of-
fice at (410) 887-3868.

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

JT/8/647 Aug. 9 283319

CERTIFICATE OF PUBLICATION

8/11/ 2011

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 8/9/ 2011.

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

S. Wilkinson

LEGAL ADVERTISING

Certificate of Posting
Photograph Attachment

Re: 2012-0012-A

Petitioner/Developer: _____

Frank Meyer & Kathleen Long

Date of Hearing/Closing: 8/23/11



323 Murdock Road

Posting Date: 8/8/11

Frank E. Meyer 8/8/11
(Signature and date of sign poster)

RE: PETITION FOR VARIANCE * BEFORE THE
323 Murdock Road; S/S Murdock Road, 110' *
W c/lineHeathfield Road * ADMINISTRATIVE LAW
9th Election & 5th Councilmanic Districts
Legal Owner(s): Frank Meyer & Kathleen Long* JUDGE FOR
Petitioner(s) * BALTIMORE COUNTY
* 2012-012-A

* * * * *

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

JUL 25 2011

.....

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 25th day of July, 2011, a copy of the foregoing Entry of Appearance was mailed to Patio Enclosures, 224 8th Avenue, Glen Burnie, Maryland 21061, Representative for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

The Rodgers Forge Community, Inc.

AN ORGANIZATION OF THE RESIDENTS OF RODGERS FORGE, MARYLAND 21212
Mailing Address: Post Office Box 571, Riderwood, Maryland 21139

August 18, 2011

Holzer and Lee
508 Fairmont Avenue
Towson, MD 21286

Re: Matter related to 323 Murdock Road

Dear Mr. Holzer:

The Vice President and/or his appointed representatives have the authority and responsibility to review and act on all matters, which in any way affect the interests of the Board or Community Association.

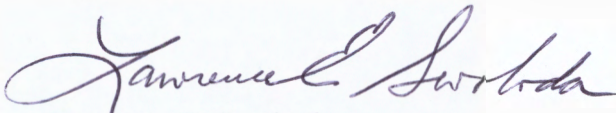
This will certify that the Vice President of the Rodgers Forge Community, Inc., Lawrence Swoboda, and/or his appointed representative(s) of the Board of Governors is/are the official representative(s) for the Rodgers Forge Community, Inc. on issues related the variance request made to Baltimore County by the homeowners of 323 Murdock Road and is empowered to speak for and represent the Association on this issue.

Appointed Person(s):

Jennifer Helfrich
Carol Zielke

Thank you for your efforts and diligence in this matter.

Regards,



Lawrence E. Swoboda
Vice President
Rodgers Forge Community, Inc.

PROTESTANT' S

EXHIBIT NO. 1

The Rodgers Forge Community, Inc.

AN ORGANIZATION OF THE RESIDENTS OF RODGERS FORGE, MARYLAND 21212

Mailing Address: Post Office Box 571, Riderwood, Maryland 21139

August 18, 2011

Holzer and Lee
508 Fairmont Avenue
Towson, MD 21286

Re: Matter related to 323 Murdock Road

Dear Mr. Holzer:

The Rodgers Forge Community, Inc. board voted on the following motion presented to the board via email on August 11, 2011:

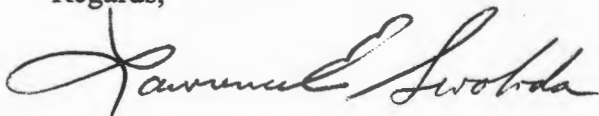
The board does not support the variance request made by the owners of 323 Murdock Road. The board authorizes the Architectural Committee to engage legal counsel (Holzer and Lee) to represent the RFC, Inc. in the matters related to the variance request for 323 Murdock Road, and instruct counsel to make every reasonable effort to secure a postponement of the hearing currently scheduled for August 23, 2011. If a postponement is not granted by the County, counsel will represent RFC, Inc. at the hearing on August 23, 2011. A maximum of \$2,000.00 will be allocated for attorney's fees.

The board members' votes were collected via email or in writing.

The motion has received greater than 60% support ("yes" votes) from the current board members, and, therefore, the motion has passed and has been approved by the board.

Thank you for your efforts and diligence in this matter.

Regards,



Lawrence E. Swoboda
Vice President
Rodgers Forge Community, Inc.

PROTESTANT' S

EXHIBIT NO.

2



Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

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

(410) 887-2188

95 JUL 25 AM 11:56

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

July 26, 1995

Mr. Robert O. Schuetz, Chairman
Board of Appeals of Baltimore County
Room 49 Courthouse
400 Washington Avenue
Towson, MD 21204

Hand-delivered

Re: Petition for Variance
CRAIG R. DeMALLIE, ET UX.
Case No. 95-104-A
Hearing Date: 7/27/95, 10 a.m.

Dear Chairman Schuetz:

This case presents a request for a variance in the well-settled and stable residential townhouse community of Rodgers Forge. The Petitioner seeks to modify the setback requirements in the D.R.-10.5 zone in order to construct a 150 square foot addition to his townhouse. His lot contains .098 acres. Presumably, the house has functioned in the past as a residence without the requested expansion.

The bulk regulations applicable to D.R.-10.5 are set forth in BCZR Section 1B01.2B.C. This regulation was presumably in effect when the Petitioner purchased his property.

BCZR Section 307 permits relief from area restrictions:

"... the county board of appeals... shall have and they are hereby given the power to grant variances... only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the zoning regulations for Baltimore County would result in practical difficulty or unreasonable hardship."

The recent decision of Cromwell v. Ward, 102 Md.App. 691 (1995) reiterated the standards in this regulation and its interpretation and applicability.

Our office is interested in defending the zoning requirement to this site. It is our position that the requirement set forth in Cromwell cannot be met in this case.

PROTESTANT'S
EXHIBIT NO. 3A

Mr. Robert O. Schuetz, Chairman
Board of Appeals of Baltimore County
July 26, 1995
Page Two

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The community of Rodgers Forge has existed as a residential subdivision for many years. The properties are similar, if not identical, in lot size and house styles. The homes have functioned as single-family dwellings for many generations.

There are thus no unusual physical characteristics or unique circumstances indigenous to this site which are not common to other townhouses in the subdivision.

The inability of the Petitioner to meet this standard precludes, as a practical matter, the introduction of any evidence of exceptional practical difficulties emanating from unique physical characteristics. Moreover, the personal preference of the property owner is not evidence of a practical difficulty.

In addition, the density and proximity of the houses in this neighborhood necessitate particular scrutiny of a variance request in light of the language of BCZR Section 307, which states:

"... Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking, or sign regulations, and only in such manner as to grant relief without injury to public health, safety, and general welfare."

In this context, 1990 the Master Plan (Map, page 39) places Rodgers Forge within the Community Conservation Area.

In view of these legal requirements and the representation of all interested persons by counsel, our office shall not attend the hearing to present further evidence and argument. This letter shall represent the position of our office in this case.

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

CSD/caf

cc: Michael P. Tanczyn, Esquire, Attorney for Petitioners

Newton A. Williams, Esquire, Attorney for Protestants

Mr. J. Donald Gerding, Rodgers Forge Community Association
Ms. Honey Holston, Rodgers Forge Community Association

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

JS 9-21-95

MINUTES OF DELIBERATION

IN THE MATTER OF: Craig R. DeMallie, et ux -Petitioners
Case No. 95-104-A

DATE : September 21, 1995 @ 9:00 a.m.

BOARD /PANEL : Kristine K. Howanski (KKH)
Harry E. Buchheister, Jr. (HEB)
Margaret Worrall (MW)

SECRETARY : Kathleen C. Weidenhammer
Administrative Assistant

Those present at this deliberation included Michael P. Tanczyn, Esquire, on behalf of Appellants /Petitioners; and Newton A. Williams, on behalf of Protestants.

KKH: We are here on deliberation in the matter of Craig R. DeMallie, et ux, case no. 95-104-A. The DeMallie's filed for an administrative variance which was denied by Deputy Zoning Commissioner Kotroco, and is now here on a de novo appeal. The subject lot is zoned D.R. 10.5 which, under the zoning regulations, requires a 50' rear setback. The DeMallie's apparently operated initially on the erroneous assumption that they could build the addition by right. They then discovered that they would need a variance, and they do intend, if the variance request is denied, to build an even larger open screened porch, as a matter of right.

HEB: I was just thinking of this this morning, and that Rodgers Forge, as much as any community in the metropolitan area, is a place where there is a great deal of pride in homes in the community, and certainly realtors and the community associations should certainly let it be known of the standards they expect when it comes to enforcing zoning law as it applies to any renovation, anything you might want to do to structure or property.

This matter of an area variance of 12' to enable the DeMallie's to construct a 10' x 15' room for a kitchen attached to the rear of residence seems reasonable. However, it is regulated by Section 307 of the Baltimore County Zoning Regulations. The covenants applied to properties in the subject location of Rodgers Forge over the years have expired, and do not have a bearing in this particular petition. The issues are whether special circumstances exist that are peculiar to the land or structure, and where strict compliance with the zoning regulations would result in practical difficulty. Also, if to grant the variance it would be without injury to public health, safety and general welfare.

Any granting of a variance shall contain a finding of fact setting forth the reasons or reason for granting the variance.

EXHIBIT NO.

PROTESTANT'S

MB

9-25-91

The extensive search the petitioner made before his purchasing his home, and the improvements that they made on the interior of the property are noteworthy, as testified to by Mr. DeMallie. It all seems to make good sense today to buy a house more than 40 years old and try to make it a more modern, up-to-date facility. But the renovation of the kitchen and the plan for the enclosed breakfast room were seemingly made without full understanding of the effects that that extension would have on the neighbors and the community.

Protestants have argued that special circumstances or peculiarities of the property do not exist. Residents of similar homes have not experienced the difficulties that the DeMallie's experience, and witnesses have testified to raising their families in the identical kitchen configuration, perhaps with some difficulty, but they did it. The fact that larger modern kitchen appliances were ordered for the kitchen in anticipation of the proposed addition of the breakfast room seems a little bit troublesome to me in the light that their contractor reminded them that a variance would be required. All the testimony of community, contacts by the DeMallie's, surveys of the community and rear yard additions comparable to Petitioner's, signed statements of support from numerous neighbors, these do not address the issues of the objections by the Zielke's. In my view, the arguments put forth by Protestants' counsel have not been countered, particularly in the matter of practical difficulty. I perceive this addition as a convenience, and the enclosed room would actually be an intrusion on the safety, health and welfare of their neighbors. The fact that the area from the point of the addition to the garage would be reduced to 11' appears to be an encumbrance on neighbors' access to light, air, sun and visual observance. I find no fact why this variance should be granted, and for all these reasons feel it should be denied.

MW: I think that Mr. Buchheister has more than adequately set out the circumstances of this case, and it is difficult because there is no doubt that the DeMallie's enjoy their house in Rodgers Forge, and have put a great deal of time and effort into refurbishing and decorating of their home. It is my opinion that it is necessary and appropriate that the Board make decisions based on law and not sentiment. The bases to grant a variance are set forth in section 307 of the Baltimore County Zoning Regulations. The regulations, 307, sets forth three tests: the first - the uniqueness of the property or structure; there must be practical difficulty or hardship; and that the variance must be consistent with the spirit and intent of the zoning regulations.

We are led most recently by the Court of Special Appeals' 1995 decision in Cromwell v. Ward; as I understand that order, the petition for variance must first show uniqueness peculiar to the property or structure in question. If no such uniqueness

RD 9-25-95

can be shown, variance must be denied, irrespective of other two items. I understand Mr. Buchheister; understand those issues as well. As far as uniqueness is concerned, the DeMallie's and others testified that 323 Murdock Road is no different than other houses built in Rodgers Forge at that time. Therefore, after carefully reviewing evidence and testimony, it is my opinion that the burden for granting has not been met and the variance must be denied.

KKH: I'm going to concur and I think both of you have accurately, thoroughly, and eloquently stated the grounds. I am certain, it's clear that the Petitioners have invested a lot of time and money, and that is a commendable thing. It is equally clear to me that the Zielke's in particular have legitimate concern in that the property has limited prospect for expansion. Just facts because of zoning regulations. Section 307.1 in the language itself does say to grant only in the presence of special circumstances or special conditions. Cromwell v. Ward has construed this regulation quite strictly. And I believe, therefore, that we must do likewise.

I agree with my colleagues that the threshold issue of uniqueness of property was not satisfied in this instance. Mr. DeMallie, on cross, admitted that the lot is not unique. Like hundreds of others in Rodgers Forge, homes similar in size, shape and function. It has and will continue to have use if variance is denied. If we were to assume that it is unique and went on to the next prong of practical difficulty - only ground indicated they would be proceeding on -- I can appreciate the perceived problem that the DeMallie's are faced with, but I don't believe their difficulties rise to level of practical difficulty as has been interpreted by Maryland's Court of Special Appeals.

I also found Ms. Zielke's testimony and exhibits persuasive as to how this addition will intrude upon their particular health and safety issues in particular, and perhaps the neighborhood, as well. And so while, like I say, the emotions of the case I found quite disheartening, and development between neighbors discouraging, I do not see that this Board has any ground or leeway to grant a variance under the facts set before us.

Closing by Ms. Howanski: We will issue a timely opinion, and you will have 30 days to file an appeal.

* * * * *

Respectfully submitted,

Kathleen C. Weidenhammer
Kathleen C. Weidenhammer
Administrative Assistant

IN RE: PETITION FOR ADMIN. VARIANCE
S/S Murdock Road, 282' E of
Dorking Road
(323 Murdock Road)
9th Election District
4th Councilmanic District

Craig R. DeMallie, et ux
Petitioners

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 95-104-A

* * * * *
FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter originally came before the Zoning Commissioner as a Petition for Administrative Variance. The Petition was filed by the owners of the property, Craig R. and Suzanne R. DeMallie, who seek relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a rear yard setback of 39 feet in lieu of the required 50 feet for a proposed addition to the existing dwelling. The subject property and relief sought are more particularly described on the site plan and photographs submitted and marked into evidence as Petitioner's Exhibits 1 and 2, respectively.

As a result of receiving numerous requests from neighboring property owners, this matter was scheduled for a public hearing to determine the appropriateness of the relief sought.

Appearing at the hearing on behalf of the Petition were Craig and Suzanne DeMallie, property owners, Michael and Kathleen Mahoney, adjoining property owners, Laura Boyce and Gordon and Sandra Rupp, nearby residents of the area, and Michael Tanczyn, Esquire, attorney for the Petitioners. Appearing as Protestants in the matter were numerous other residents from the surrounding community, including Carol L. Zielke, who resides immediately adjacent to the property, J. Donald Gerding, and Honey Holston, all

PROTESTANT'S

EXHIBIT NO. 3C

IN RE: PETITION FOR ADMIN. VARIANCE *

N Side of Hopkins Road @ Corner of
E Side of Dorking Road *
9th Election District *
5th Councilmanic District *
(300 Hopkins Road) *

Christiane M. Rothbaum
Legal Owner *

BEFORE THE

OFFICE OF ADMINISTRATIVE

HEARINGS FOR

BALTIMORE COUNTY

CASE NO: 2011-0302-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings for Baltimore County for consideration of a Petition for Variance filed by Christiane M. Rothbaum, the legal owner of the subject property. Petitioner is requesting Variance relief under Section 1B02.3.C.1 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit an existing dwelling and proposed addition with a side street setback of 6 feet in lieu of minimum required 10 feet, and a rear yard setback of 35 feet in lieu of minimum required 50 feet. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioner's Exhibit 1.

This matter was originally filed as an Administrative Variance, with a closing date of May 2, 2011. On April 27, 2011, a Formal Demand for Hearing was filed by Jennifer Helfrich, President, on behalf of Rodgers Forge Community, Inc. The hearing was subsequently scheduled for Friday, June 17, 2011 at 10:00 AM in Room 104 of the Jefferson Building, 105 West Chesapeake Avenue, Towson, Maryland. In addition, a sign was posted at the property on May 29, 2011 and an advertisement was timely published in *The Jeffersonian* newspaper, giving neighbors and interested citizens notice of the hearing.

PROTESTANT' S

EXHIBIT NO.

3D

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning



Suite 112 Courthouse
400 Washington Avenue
Towson, MD 21204

(410) 887-4386

April 6, 1995

Robert A. Hoffman, Esquire
Venable, Baetjer and Howard
210 Allegheny Avenue
Towson, Maryland 21204

RE: Case No. 95-222-A
Petition for Zoning Variance
Raymond J. Peroutka, Jr., et ux, Petitioners

Dear Mr. Hoffman:

Enclosed please find the decision rendered in the above captioned case. The Petition for Variance has been denied in accordance with the attached Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days of the date of the Order to the County Board of Appeals. If you require additional information concerning filing an appeal, please feel free to contact our Appeals Clerk at 887-3353.

Very truly yours,

Lawrence E. Schmidt
Zoning Commissioner

LES:mmn
att.

cc: Mr. and Mrs. Raymond J. Peroutka, Jr., 220 Dunkirk Road, Balto. 21212
Mr. Joseph A. Guzinski, Rodgers Forge Board of Governors, 210
Dunkirk Road, Balto. Md. 21212
Mr. and Mrs. R. Zielke, 325 Murdock Road, Balto. Md. 21212 ✓
Mrs. Mary B. Birckhead II, 324 Murdock Road 21212
Mr. and Mrs. E. J. Ament, 331 Murdock Road,
Mrs. Norma O'Hara, 329 Murdock Road, 21212
Mr. Carroll Miller, 322 Murdock Road, 21212

PROTESTANT'S

EXHIBIT NO. 38



IN RE: PETITION FOR ZONING VARIANCE * BEFORE THE
N/S Dunkirk Road, 260 ft. E *
of Pinehurst Road * ZONING COMMISSIONER
220 Dunkirk Road *
9th. Election District * OF BALTIMORE COUNTY
4th Councilmanic District *
Raymond J. Peroutka, Jr., et ux* Case No. 95-222-A
Petitioners *
* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for a Zoning Variance for the property located at 220 Dunkirk Road in the community of Rodgers Forge, located near Towson. The Petition is filed by Raymond J. Peroutka, Jr. and Debra J. Peroutka, his wife, property owners. Variance relief is requested from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (BCZR) to allow a rear setback of 36 ft. for an enclosed structure, in lieu of the required 50 ft., in a D.R.10.5 zone.

This matter was originally filed as an administrative variance, pursuant to Section 26-127 of the Baltimore County Code. That section allows the Zoning Commissioner to grant variance relief from strict adherence to the BCZR without the necessity of a public hearing for an owner occupied lot within a residential zone. Mr. and Mrs. Peroutka's lot, is indeed, owned and occupied by them and zoned D.R.10.5. However, Section 26-127 further provides that the Petition may be scheduled for public hearing either at the request of any concerned occupant or property owner within 1,000 ft. of the site in question, or at the Zoning Commissioner's discretion. A public hearing was scheduled for this case, based upon my initial review of the Petition, and pursuant to the discretionary authority provided to me within the Code. The public hearing convened for this case

REPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2591

September Term, 2008

SEMINARY GALLERIA, LLC

v.

DULANEY VALLEY IMPROVEMENT
ASS'N, INC., *et al.*

Meredith,
Wright,
Thieme, Raymond G., Jr.,
(Retired, specially assigned),

JJ.

Opinion by Meredith, J.

Filed: May 27, 2010

PROTESTANT' S

EXHIBIT NO. 4

Google maps

To see all the details that are visible on the screen, use the "Print" link next to the map.

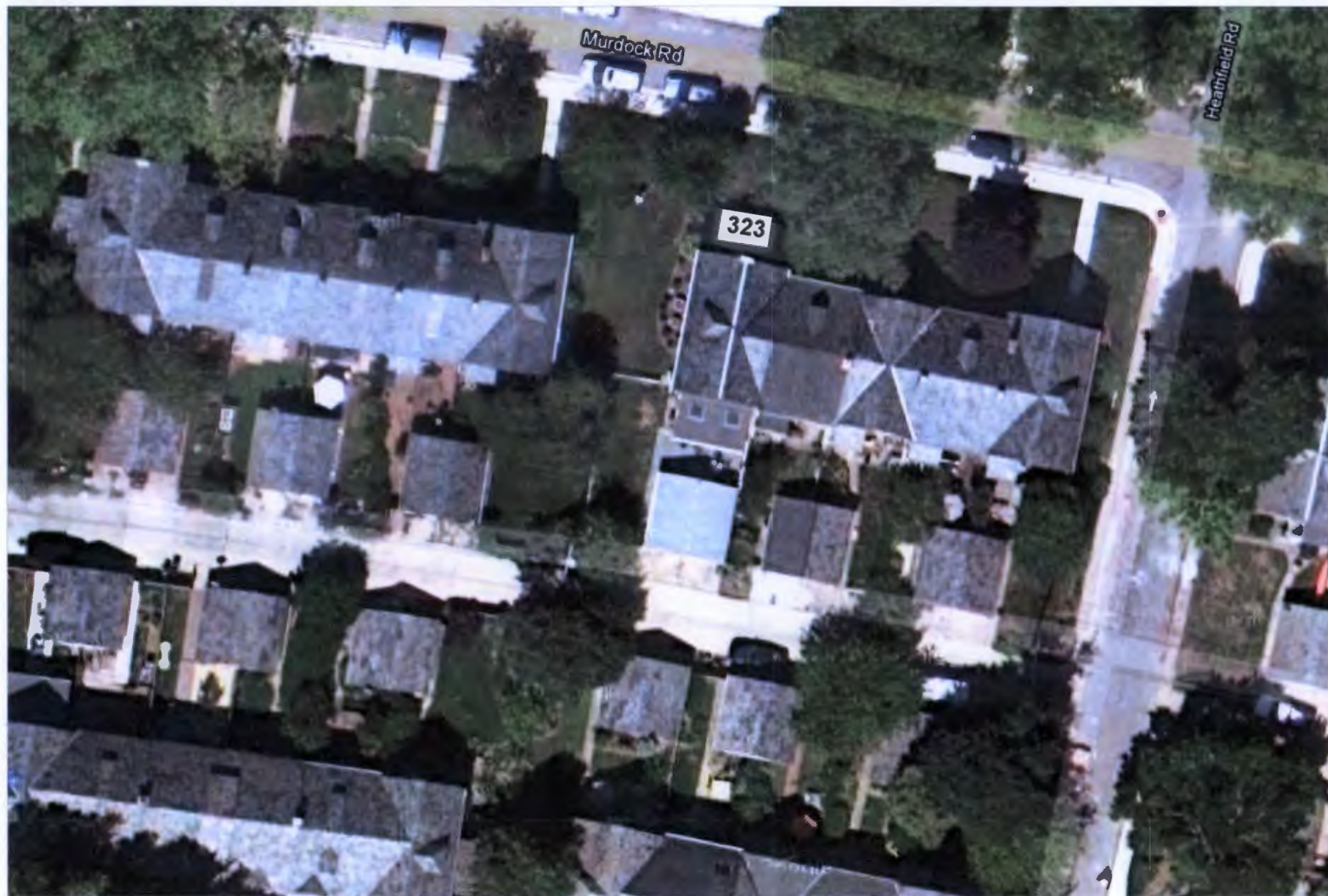


Google maps

PROTESTANT' S

EXHIBIT NO. SB

To see all the details that are visible on the screen, use the "Print" link next to the map.



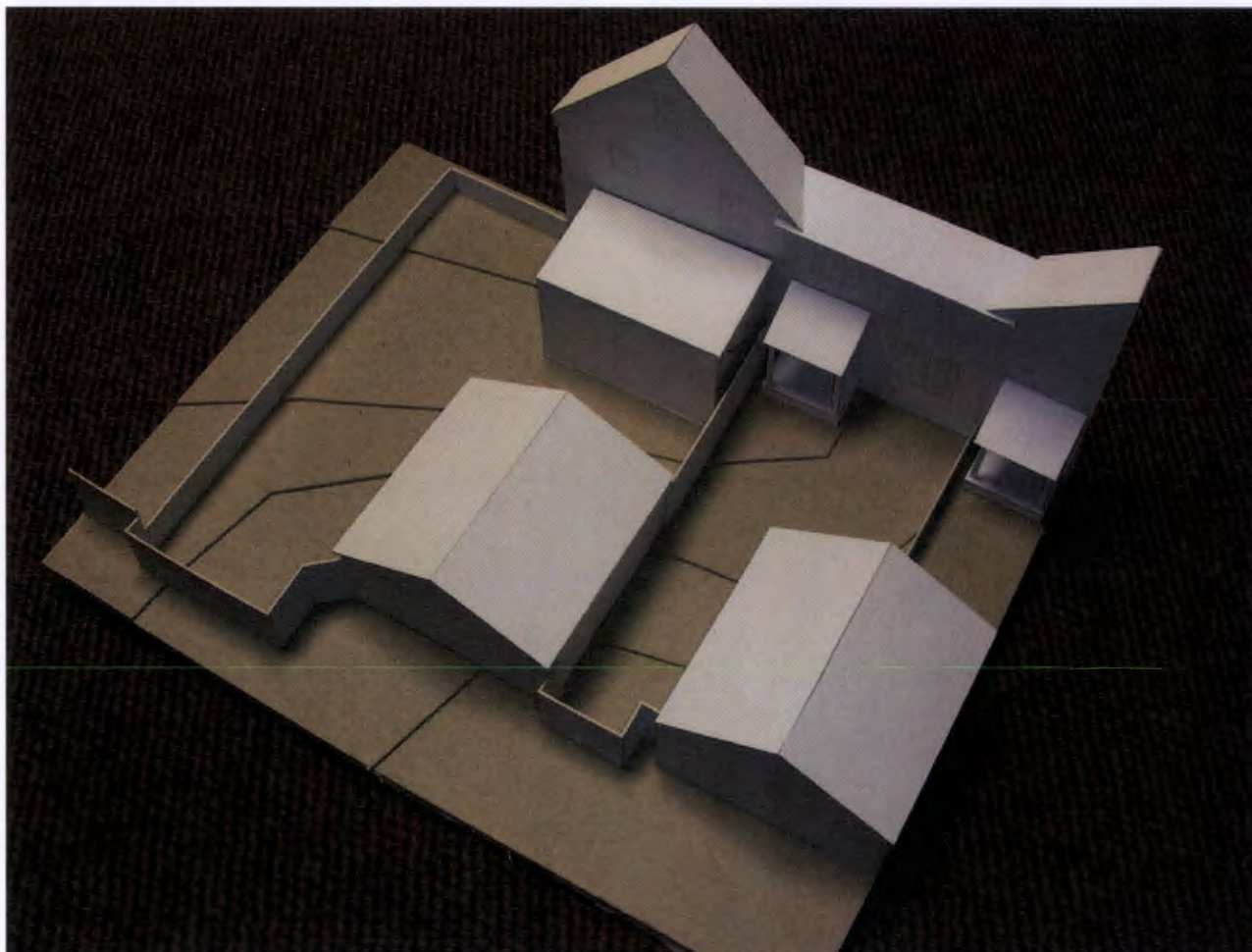
Percent of Inside Group Homes next to End of Group Homes in Oldest Part of Rodgers Forge				
House Group Type	Total of House Group Type	Total Houses in Group Type	End of Group Homes Per Category	Inside Group Homes next to EOG
Four House Group	18	72	36	36
Five House Group	36	180	72	72
Six House Group	27	162	54	54
	Total Houses	414	162	162
		Percent of Total Homes in Area	39.1%	39.1%

PROTESTANT' S
EXHIBIT NO. 6

PROTESTANT' S
EXHIBIT NO. 6

323 and 325 Murdock Road

Illustration Submitted by Carol Zielke



PROTESTANT' S

EXHIBIT NO. 7

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

DATE: August 22, 2011

FROM: Andrea Van Arsdale
Director, Office of Planning

RECEIVED

SUBJECT: 323 Murdock Road

AUG 22 2011

Item Number: 12-012

OFFICE OF ADMINISTRATIVE HEARINGS

Petitioner: Frank Meyer

Zoning: DR 10.5

Requested Action: Variance

SUMMARY OF RECOMMENDATIONS:

The Office of Planning has reviewed the petitioner's request and accompanying site plan. The subject property currently has a screened porch. The petitioner requests enclosing the said porch with glass walls, which would convert the porch into a rear addition to the house.

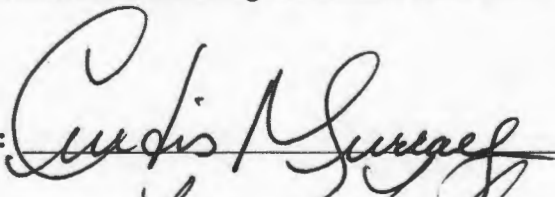
Permitting a rear addition could possibly allow for neighboring properties to do the same which would threaten the architectural uniformity of the Rodgers Forge community. The housing stock in Rodgers Forge is very dense and open space is limited.

The subject property has an existing garage and creating a permanent rear addition would almost completely fill the rear yard, thus being a detriment to the adjacent neighbor by compromising light, air and views from the neighboring property.

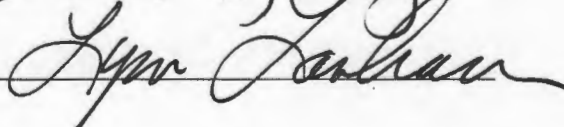
This property was the subject of a previously filed petition for a variance to allow an enclosure in 1995 and was denied. Several nearby properties in Rodgers Forge have also come in for rear additions and were also denied. The Hearing Officer for the subject property in 1995 case cited that he did not find any practical difficulty for allowing the petitioner's request. The Office of Planning also does not find any practical difficulty that would justify granting this variance and recommends denial of the petitioner's request.

For further information concerning the matters stated here in, please contact Donnell Zeigler at 410-887-3480.

Prepared by:

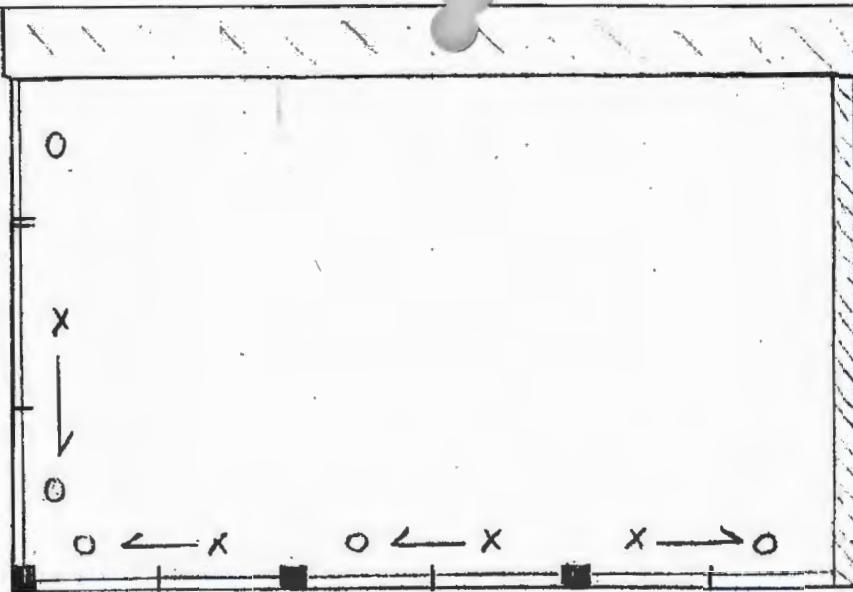


Division Chief:
JM/LL: CM



PROTESTANT'S

EXHIBIT NO. 8



18

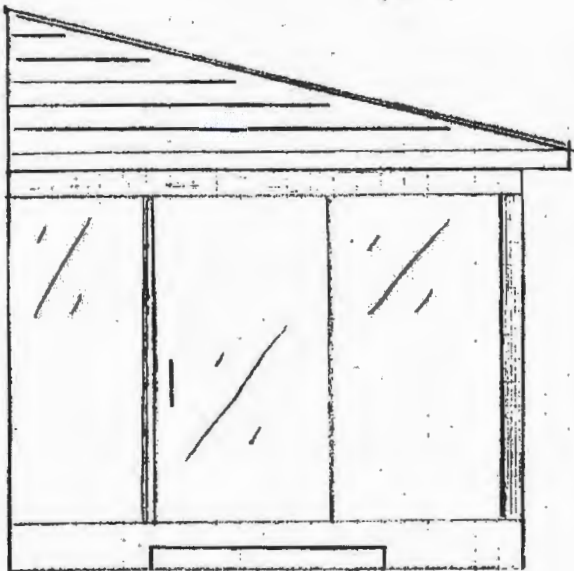
FIREWALL

Firewall on Zietke side of addition.

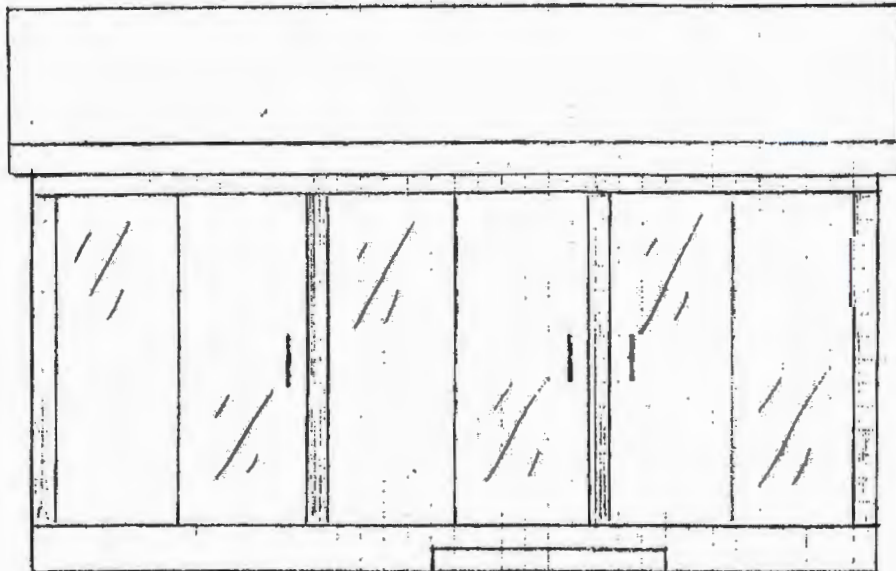
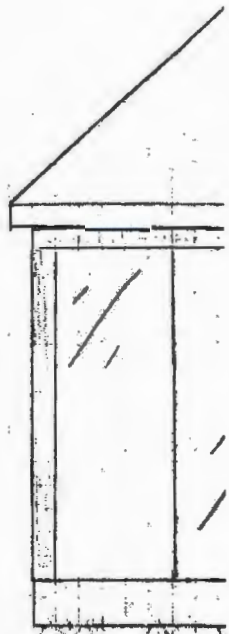
PROTESTANT'S

EXHIBIT NO.

9



A



B

PROTESTANT'S

EXHIBIT NO.

Zoning Commissioner
Jefferson Building
105 W Chesapeake Ave
Towson, Md. 21204
August 12, 2011

Re: Case # 2012-0012-A
Frank Meyer and Kathleen Long
323 Murdock Rd
Baltimore, Md. 21212
Hearing Date August 23 2011
11 AM, Rm. 205 in Jefferson Bldg.

To whom it may concern:

This is to certify that I support the position of the Rodgers Forge Board of Governors to request the county to deny the variance needed for an addition to the rear of property as referenced in the above case. I own my home and have lived in the community of Rodgers Forge for many years.

It is our understanding that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances. We see none in this case. Neither the property nor house contains any special circumstance, uniqueness or peculiarities that relate to the need for an addition.

When ^{Keely} ~~Kelly~~ built these homes over 65-70 years ago, some had front and rear porches as well as ~~some had front and rear porches as well as~~ some rear additions but due to age, decay and termite damage many have been replaced with new materials using the same footprints. Therefore, they may appear to be new but are not. The community has tried to maintain the original development plan as built. ing to records of John

PROTESTANT' S

EXHIBIT NO. _____

PROTESTANT' S

EXHIBIT NO. 10

McGrain

McGraine, former Historian for the County, Rodgers Forge was the first planned community in Baltimore County.

At that time, the entire area had only low or no fences, lots of open space surrounding the entire area of Rodgers Forge. Because of the changes in zoning regulations and expansion of TU, St Joseph's, GBMC, Sheppard Pratt and new developments, the open fields do not exist today. It is critical not to allow new additions in order to maintain the health safety and welfare of our community and not impede the flow of air and light. The community has consistently fought to maintain the structural integrity of the original ^{Keelty} development plan.

Yours,

Barbara C Merding

Name

335 Old Trail

Baltimore MD 21212

Address

Zoning Commissioner
Jefferson Building
105 W. Chesapeake Ave
Towson, MD 21204
August 15, 2011

Re: Case # 2012-0012-A
Frank Meyer and Kathleen Long
323 Murdock Rd.
Baltimore, MD 21212
Hearing Date August 23, 2011
11AM- Rm. 205 in Jefferson Bldg

To Whom It May Concern:

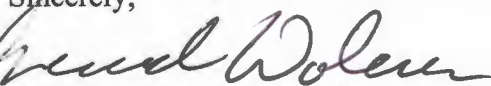
This is to certify that we support the position of the Rodgers Forge Board of Governors to request the county to deny the variance needed for an addition to the rear of property as referenced in the above case. We own our home, and we have lived in Rodgers Forge for many years.

When Keelty built these homes over 65 -70 years ago, some had front and rear porches, as well as some rear additions; however, due to age, decay and termite damage, many have been replaced with new materials using the same footprints. Although they may appear to be new, they are not. The community has tried to maintain the original development plan as built. According to records of John McGrain, former Historian for the County, Rodgers Forge was the first planned community in Baltimore County.

At that time Rodgers Forge had only low or no fences and was surrounded by large expanses of open space. Over the years, however, infill with new developments, changes in zoning regulations, and the expansion of Towson University, St. Joseph Medical Center, GBMC, and Sheppard Pratt have eliminated the open fields we all enjoyed. It is critical not to allow more additions to homes in Rodgers Forge, in order to maintain the health, safety and welfare of our community and not to impede the flow of air and light. The community has consistently fought to maintain the structural integrity of the original Keelty development plan.

We do not see any uniqueness in their floor plan or structure. It is our understanding that in Section 307.1 BCZR, it requires that variances should only be granted where special circumstances exist that are peculiar to the land or structure. There are none here. Therefore, we feel the request for the variance should be denied.

Sincerely,



Gerard and Anne F. Dolan
71 Murdock Road
Baltimore, MD 21212



Zoning Commissioner
Jefferson Building
105 W Chesapeake Ave
Towson, Md. 21204
August 13, 2011

Re: Case # 2012-0012-A
Frank Meyer and Kathleen Long
323 Murdock Rd.
Baltimore, Md. 21212
Hearing Date August 23, 2011
11AM- Rm. 205 in Jefferson Bldg

To whom it may concern:

This is to certify that I support the position of the Rodgers Forge Board of Governors to request the county to deny the variance needed for an addition to the rear of property as referenced in the above case. I own my home, and have lived Rodgers Forge for many years.

When Keelty built these homes over 65 -70 years ago some had front and rear porches as well as some rear additions but due to age, decay and termite damage many have been replaced with new materials using the same footprints. Although they may appear to be new, they are not. The community has tried to maintain the original development plan as built. According to records of John McGrain, former Historian for the County, Rodgers Forge was the first planned community in Baltimore County.

At that time Rodgers Forge had only low or no fences and was surrounded by large expanses of open space. Over the years, however, infill with new developments, changes in zoning regulations, and the expansion of TU, St Joseph, GBMC, and Sheppard Pratt have eliminated the open fields we all enjoyed. It is critical not to allow more additions to homes in Rodgers Forge in order to maintain the health safety and welfare of our community and not to impede the flow of air and light. The community has consistently fought to maintain the structural integrity of the original Keelty development plan.

I do not see any uniqueness in their floor plan or structure. It is my understanding that in Section 307.1 BCZR it requires that variances should only be granted where special circumstances exist that are peculiar to the land or structure. There are none here. Therefore, I feel the request for the variance should be denied.

Yours, *Bruce Hirshauer*

Name *Bruce Hirshauer*

124 Dunkirk Road
Address *Baltimore MD 21212*

Zoning Commissioner
Jefferson Building
105 W Chesapeake Ave
Towson, Md 21204

Case# 2012-0012-A

Frank Meyer & Kathleen Long

323 Murdock Rd,

Rodgers Forge, Md 21212

Hearing Date: August 23, 2011 /RM 205/11 AM/ Jefferson Bldg

To whom it may concern,

As a 38 year resident of Rodgers Forge, I have closely watched the procedural process that has been in place when residents of this community wish to alter their homes. In many instances, requests are made that are in direct opposition to the original development plan and covenants that were written by the Keelty Corporation.

Upon review of the property owners request for the variance (enclose an existing SCREENED PORCH) I would like to ask the zoning commission board to DENY this permit, based on the following:

- NO obvious hardship is claimed as required by Section 307-Variences(3.C.Z.R,1955;Bill #107,1993)
- The County DENIED (1995)a similar request at a hearing before the Zoning Commissioner and DENIED it a 2ND time at a hearing before the Baltimore County Board of Appeals
- This in one of the largest homes in the Forge in terms of living square footage already
- An enclosed addition of this kind would deny the homeowners at 325 Murdock Rd free open air space and take from them their rights to open views.(SEE Drawing)
- **An enclosed addition at 323 Murdock RD may substantially DECREASE the property value of 325 Murdock Rd if their open air space and view is taken away.**

If the Commissioning Board permits the enclosure of the existing screened porch, you will be setting a precedent for all future requests of the other 1700 homeowners to ask for similar variances and you will have no leg to stand on in the future to deny a variance of this kind.

Envision going through Rodgers Forge and seeing home, after home, after home, of fully enclose structures.

The "depreciation" of this community would rest fully on the shoulders of the zoning commission.

This community has consistently fought to maintain the structural integrity of the original James Keelty development plan and I am hopeful that the zoning commission will uphold his vision.

Respectfully yours,

Dale P. Philon
412 Murdock Rd
Baltimore, Md 21212

Zoning Commissioner
Jefferson Building
105 W Chesapeake Ave
Towson, Md. 21204
August 10, 2011

Re: Case # 2012-0012-A
Frank Meyer and
Kathleen Long
323 Murdock Rd.
Baltimore, Md. 21212
Hearing Date August 23rd 2011, 11AM Rm. 205 in Jefferson Bldg.

To whom it may concern:

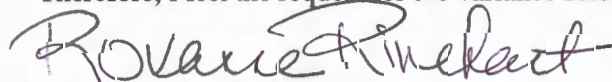
This is to certify that I support the position of the Rodgers Forge Board of Governors to request the county to deny the variance needed for an addition (Enclosed Sunroom) to the rear of the property, with less than the minimum 50 foot setback, as referenced in the above case.

I own my home, and have lived Rodgers Forge for many years.

When Keelty built these homes over 65 -70 years ago some had front and rear porches as well as some rear additions but due to age, decay and termite damage many have been replaced with new materials using the same footprints. Although they may appear to be new, they are not. The community has tried to maintain the original development plan as built. According to records of John McGrain, former Historian for the County, Rodgers Forge was the first planned community in Baltimore County.

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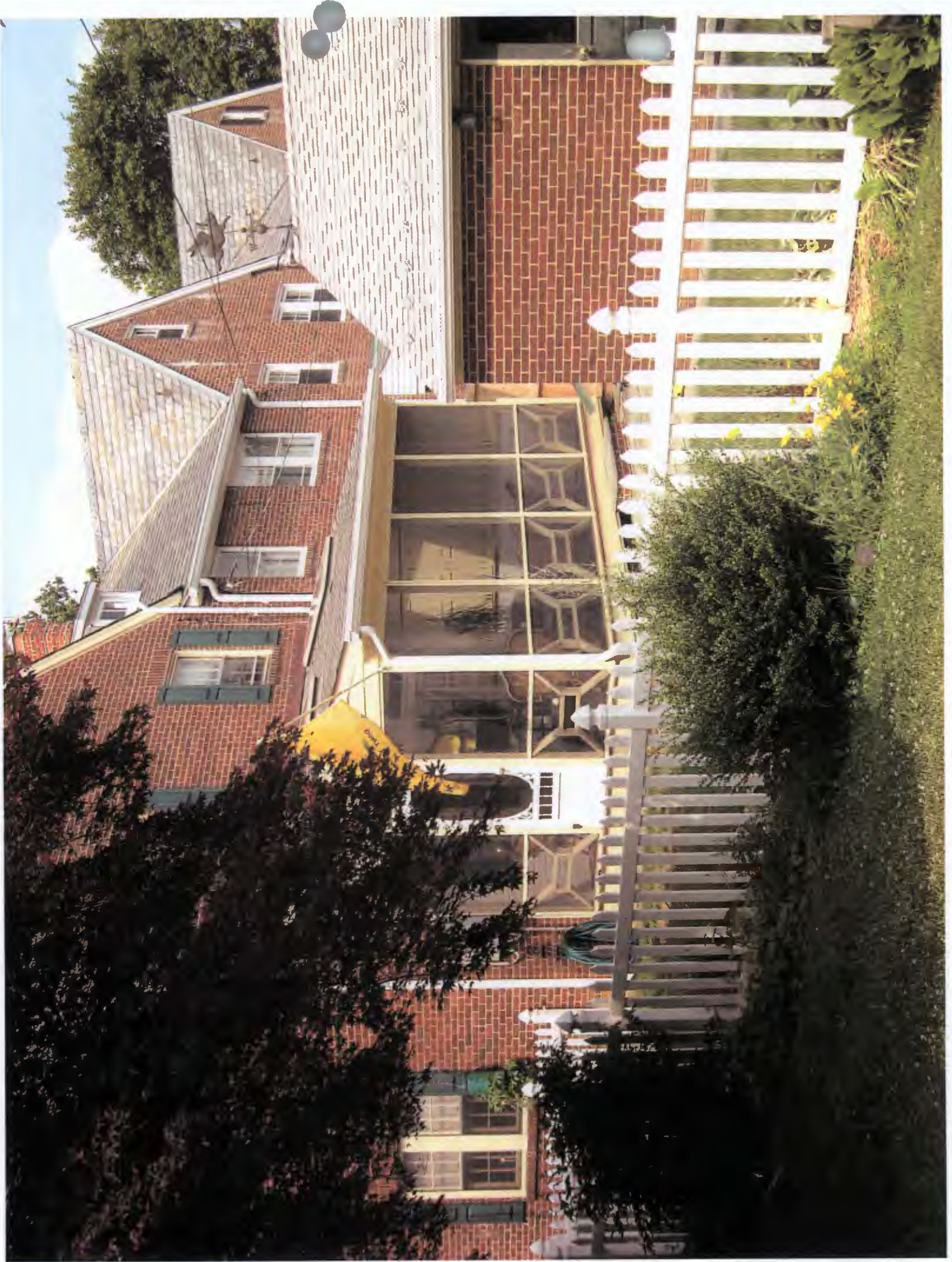
Therefore, I feel the request for the variance setback should be denied.


Roxanne M. Rinehart
10 Regester Ave
Baltimore Md. 21212



Restroomers
#1-#16





Variance photo for: 323 Murdock
Rd, Baltimore MD 21212
1) View of existing screenroom to be
enclosed with glass panels



#2012

PETITIONER'S

EXHIBIT NO.

19

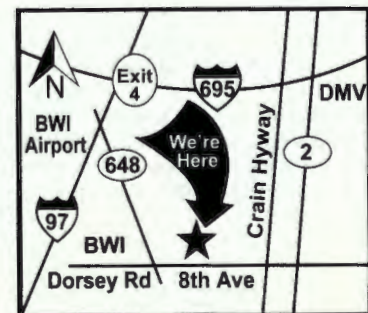


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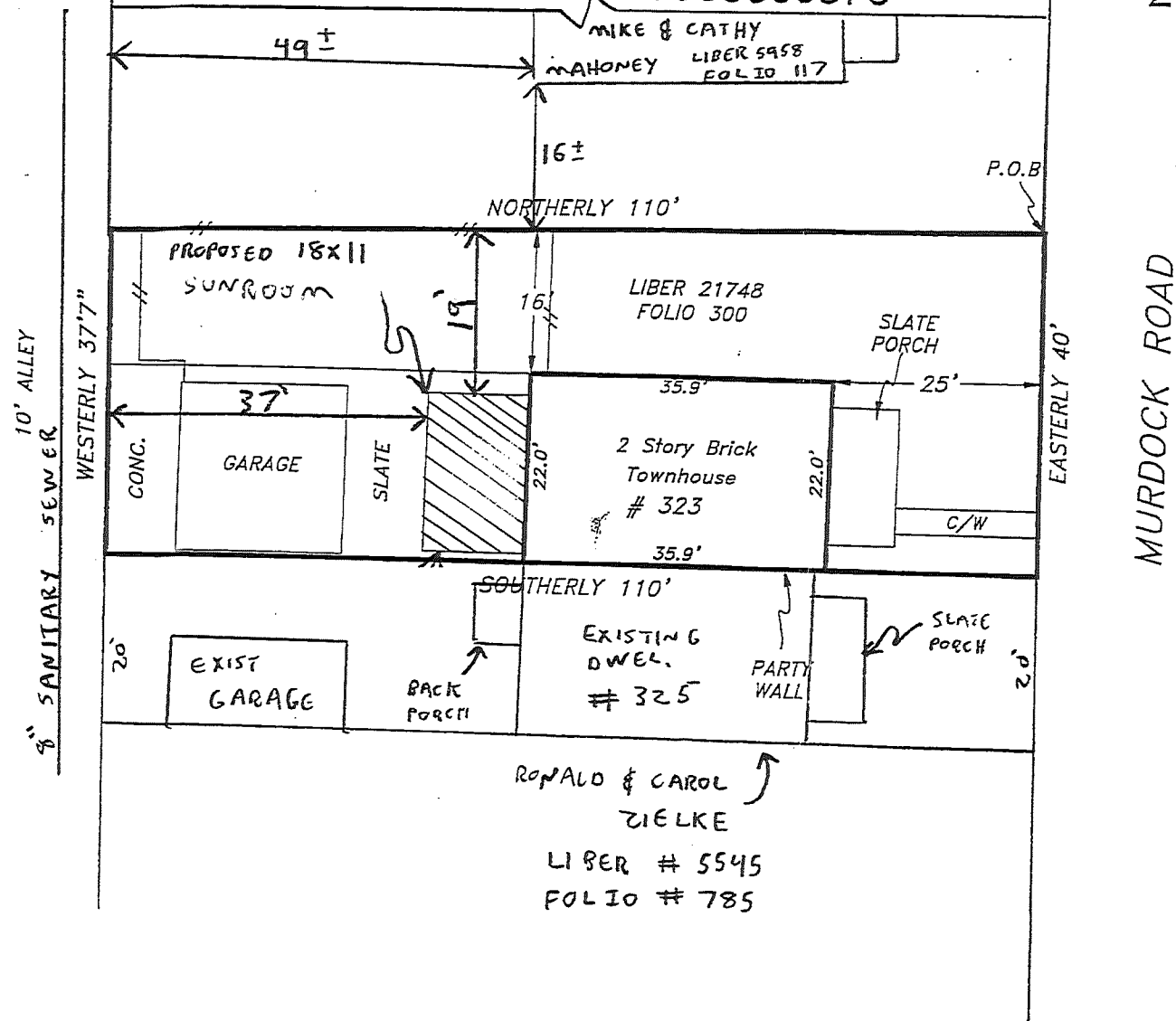
www.patioenclosuresmd.com

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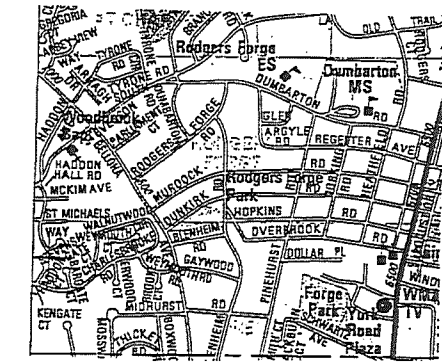
MHIC #12744

Corporate Headquarters: 700 East Highland Road • Macedonia, Ohio 44056 • 800-480-1966

ZONING HEARING PLAN FOR VARIANCE X FOR SPECIAL HEARING _____ (MARK TYPE REQUESTED WITH X)
 ADDRESS 323 Murdock Rd, Balt 21212 OWNER(S) NAME(S) Frank Meyer, Kathleen Long
 SUBDIVISION NAME Rogers Forge LOT # _____ BLOCK # _____ SECTION # _____
 PLAT BOOK # N/A FOLIO # _____ 10 DIGIT TAX # 0908000370 DEED REF. # 24457/00437



SITE VICINITY MAP



MAP IS NOT TO SCALE
 ZONING MAP# 080-A1
 SITE ZONED DR 10.5
 ELECTION DISTRICT 4
 COUNCIL DISTRICT 9
 LOT AREA ACREAGE _____
 OR SQUARE FEET 4400
 HISTORIC? NO
 IN CBCA? NO
 IN FLOOD PLAIN? NO
 UTILITIES? MARK WITH X
 WATER IS:
 PUBLIC X PRIVATE _____
 SEWER IS:
 PUBLIC X PRIVATE _____
 PRIOR HEARING? 1995-0104-A
 IF SO GIVE CASE NUMBER
 AND ORDER RESULT BELOW

PLAN DRAWN BY ERIC THOMAS DATE 6/1/11 SCALE: 1 INCH = 20 FEET

PETITION DENIED

 VIOLATION CASE INFO:
