

WHITEFORD, TAYLOR & PRESTON L.L.P.

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BALTIMORE, MARYLAND 21202-1626
TELEPHONE 410 347-8700
FAX 410 752-7092

50 CORPORATE CENTER
10500 LITTLE PATUXENT PARKWAY
SUITE 750
COLUMBIA, MARYLAND 21044-3585
TELEPHONE 410 884-0700
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JENNIFER R. BUSSE
DIRECT NUMBER
410 832-2077
jbusse@wtplaw.com

210 WEST PENNSYLVANIA AVENUE
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WASHINGTON, D.C. 20036-5405
TELEPHONE 202 659-6800
FAX 202 331-0573

115 ORONOCO STREET
ALEXANDRIA, VIRGINIA 22314
TELEPHONE 703 836-5742
FAX 703 836-3558

August 1, 2014

Hand Delivery

Arnold Jablon, Esquire
Director,
Baltimore County Permits, Approvals & Inspections
111 W. Chesapeake Avenue
Towson, MD 21204

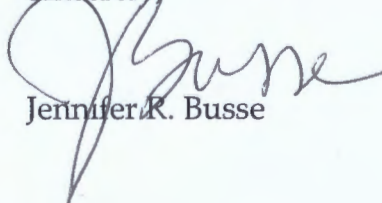
Re: 11116 Bird River Grove Road
15th Election District, 6th Councilmanic District
Withdrawing of Petition for Special Hearing
Case #2015-003-SPH

Dear Mr. Jablon:

This firm represents the property owner of the above referenced property, Mr. Wayne Sody. Mr. Sody desires to withdraw without prejudice the Petition for Special Hearing previously filed and currently set for a hearing on September 3, 2014.

Please, if it has not already been sent out, refrain from publishing the hearing notice. Thank you for your assistance in this regard. Please do not hesitate to contact me with any questions or concerns.

Sincerely,



Jennifer R. Busse

Attachment

cc: W. Carl Richards
Mr. Wayne Sody

436724



PETITION FOR ZONING HEARING(S)

FLOOD

To be filed with the Department of Permits, Approvals and Inspections

To the Office of Administrative Law of Baltimore County for the property located at:

Address 11116 Bird River Grove Road

which is presently zoned RC2

Deed References: 10B19 | 00685 10 Digit Tax Account # 1507001710

Property Owner(s) Printed Name(s) Wayne Allen Sody

(SELECT THE HEARING(S) BY MARKING X AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

The undersigned legal owner(s) of the property situate in Baltimore County and which is described in the description and plan attached hereto and made a part hereof, hereby petition for:

1. X **a Special Hearing** under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

please see attached

2. **a Special Exception** under the Zoning Regulations of Baltimore County to use the herein described property for

3. **a Variance** from Section(s)

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons:
(Indicate below your hardship or practical difficulty or indicate below "TO BE PRESENTED AT HEARING". If you need additional space, you may add an attachment to this petition)

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

I, or we, agree to pay expenses of above petition(s), 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.

Legal Owner(s) Affirmation: I / we do so 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 / these Petition(s).

Contract Purchaser/Lessee:

N/A
Name - Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

Attorney for Petitioner:

Jennifer R. Busse, Esquire

Name- Type or Print

Signature JBusse Whiteford, Taylor & Preston

1 W. Pennsylvania Ave., Ste. 300, Towson MD

Mailing Address City State
21204 /410-832-2077/ jbusse@wtpawl.com

Zip Code Telephone # Email Address

Legal Owners (Petitioners):

Wayne Allen Sody /

Name #1 - Type or Print

Name #2 - Type or Print

Signature #1

Signature #2

Wayne Allen Sody

11116 Bird River Grove Road, White Marsh, MD

Mailing Address City Waynesody10 State comcast.net

21162-1806 /410-344-9106 /hilly2@comcast.net

Zip Code Telephone # Email Address

Representative to be contacted:

Jennifer R. Busse, Esquire

Name - Type or Print

Signature JBusse Whiteford, Taylor & Preston

1 W. Pennsylvania Ave., Ste. 300, Towson MD

Mailing Address City State
21204 / 410-832-2077 / jbusse@wtpawl.com

Zip Code Telephone # Email Address

CASE NUMBER

2015-0003 -SPH

Filing Date

2/8/14

Do Not Schedule Dates:

Reviewer

AT

Attachment to Petition for Special Hearing

Owner/Petitioner: Wayne A. Sody
11116 Bird River Grove Road
Zoned R.C. 2

Petition for Special Hearing to interpret and/or modify restriction #3 from Order 2012-0139-A.

In the alternative, Petition for Special Hearing to allow a home occupation to be located within an accessory structure in an RC 2 Zone.

And for such other relief as may be deemed necessary by the Administrative Law Judge.

2015-0003-SPH

Zoning description for 11116 Bird River Grove Road,
White Marsh, MD 21162

Beginning at a point on the north side of Bird River Grove Road, which is 25 feet wide, 3969 feet east of the centerline of Ebenezer Road, which is 16 feet wide.

Being Lot 8, Section 8, in the Subdivision of Bird River Grove as recorded in Baltimore County Plat Book #13, Folio #1, containing 10,300 square feet. Located in the 15th Election District and 6th Council District.

2015-0003-SPH

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

No. 113833
 Date: 7/8/14

PAID RECEIPT

ADDRESS: ACTUAL TIME: 1
 7/8/2014 7/8/2014 10:17:26
 REC-5001 BARKIN LRS LIR
 RECEIPT & SOURCE 7/8/2014
 5 500 ZHIND VERIFICATION
 Recpt tot \$75.00
 \$75.00 CR \$0.00 CA
 Baltimore County, Maryland

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount
001	806	0000		6150				\$75-

Total: \$75-

Rec From: WHITEFORD, TAYLOR & PRESTON LLP
 For: 11116 BIRD RIVER GROVE RD
2015-0003-SPH

DISTRIBUTION

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

**CASHIER'S
 VALIDATION**



KEVIN KAMENETZ
County Executive

July 25, 2014

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections

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 NUMBER: 2015-0003-SPH

11116 Bird River Grove Road

N/s Bird River Grove Road, 3969 ft. E/of centerline of Ebenezer Road

15th Election District – 6th Councilmanic District

Legal Owners: Wayne Allen Soddy

Special Hearing to interpret and/or modify restriction #3 from order 2012-0139-A. In the alternative, Petition for Special Hearing to allow a home occupation to be located within an accessory structure in an RC-2 zone.

Hearing: Wednesday, September 3, 2014 at 2:30 p.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204

A handwritten signature in dark ink, appearing to read "Arnold Jablon".

Arnold Jablon
Director

AJ:kl

C: Jennifer Busse, 1 W. Pennsylvania Avenue, Ste. 300, Towson 21204
Wayne Soddy, 11116 Bird River Grove Road, White Marsh 21162

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY THURSDAY, AUGUST 14, 2014**
- (2) **HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.**
- (3) **FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.**

TO: PATUXENT PUBLISHING COMPANY
Thursday, August 14, 2014 Issue - Jeffersonian

Please forward billing to:

Jennifer Busse
Whiteford, Taylor & Preston
1 W. Pennsylvania Avenue, Ste. 300
Towson, MD 21204

410-832-2077

NOTICE OF ZONING HEARING

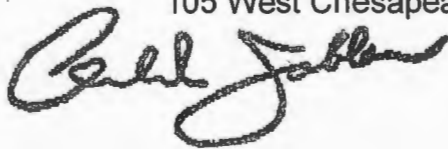
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CASE NUMBER: 2015-0003-SPH

11116 Bird River Grove Road
N/s Bird River Grove Road, 3969 ft. E/of centerline of Ebenezer Road
15th Election District – 6th Councilmanic District
Legal Owners: Wayne Allen Soddy

Special Hearing to interpret and/or modify restriction #3 from order 2012-0139-A. in the alternative, Petition for Special Hearing to allow a home occupation to be located within an accessory structure in an RC-2 zone.

Hearing: Wednesday, September 3, 2014 at 2:30 p.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204



Arnold Jablon
Director of Permits, Approvals and Inspections for Baltimore County

- NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.
- (2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

**DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS
ZONING REVIEW OFFICE**

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 legal owner/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 legal owner/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:

Case Number: 2015-0003 - SPH
Property Address: 11116 Bird River Grove Rd
Property Description: North side of Bird River Grove Rd, west of intersection with Ebenezer Road in White Marsh
Legal Owners (Petitioners): Wayne, Sady
Contract Purchaser/Lessee: N/A

PLEASE FORWARD ADVERTISING BILL TO:

Name: Jennifer Busse, Esq.
Company/Firm (if applicable): Whiteford Taylor Preston
Address: One W. Pennsylvania Ave.
Suite 300
Towson, MD 21204
Telephone Number: 410 832 2077

9/3

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

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

DATE: August 6, 2014

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: 11116 Bird River Grove Road

RECEIVED

INFORMATION:

AUG 07 2014

Item Number: 15-003

OFFICE OF ADMINISTRATIVE HEARINGS

Petitioner: Wayne Allen Sody

Zoning: RC 2

Requested Action: Special Hearing

SUMMARY OF RECOMMENDATIONS:

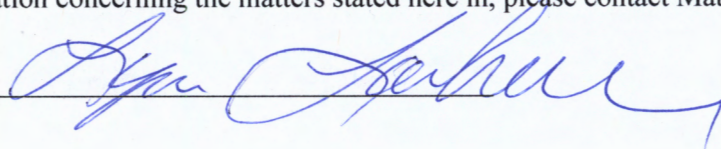
The Department of Planning has reviewed the petitioner's request and accompanying site plan. The petitioner is requesting a special hearing to modify/interpret restriction #3 from Order 2012-139-A, which reads "The accessory structure shall not be used for commercial purposes", or, in the alternative, to allow a home occupation to be located within an accessory structure in an RC 2 Zone.

The lot at 11116 Bird River Grove Road is 51' wide and 220' deep. It is improved with one single family dwelling and a detached garage subject of prior zoning case 2013-139-A. A complaint from a neighbor lead to an inspection and a Baltimore County code violation (Case no. 140047) was issued. A hearing on the citation for violation was held on June 11, 2014.

This department does not support the petitioner's requests. There is nothing that would alter the original finding of this Department that the accessory structure shall not be used for commercial purposes. Furthermore, the petitioner has not provided any documentation supporting his case for a home occupation in an accessory structure.

For further information concerning the matters stated here in, please contact Matt Diana at 410-837-3480.

Division Chief:
AVA/LL



BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits, Approvals
And Inspections

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

SUBJECT: Zoning Advisory Committee Meeting
For July 07, 2014
Item No. 2015-0003

DATE: July 28, 2014

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

Prior to building permit application the petitioner must contact the office of the Director of Public Works to determine the flood protection elevation so that the floor elevation can be set.

* * * * *

DAK:CEN
cc:file

ZAC-ITEM NO 14-0003-07212014.doc

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



James T. Smith, Jr., Secretary
Melinda B. Peters, Administrator

Date: 7/14/14

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

RE: Baltimore County
Item No 2015-0003-SPH
Special Hearing
Wayne Allen Sody
11116 Bird River Grove Road.

Dear Ms. Lewis:

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. 2015-0003-SPH.

Should you have any questions regarding this matter, please contact Richard Zeller at 410-545-5598 or 1-800-876-4742 extension 5598. Also, you may E-mail him at (rzeller@sha.state.md.us).

Sincerely,

A handwritten signature in dark ink, appearing to read 'Steven D. Foster', is written over a horizontal line.

Steven D. Foster, Chief/
Development Manager
Access Management Division

SDF/raz

My telephone number/toll-free number is _____
Maryland Relay Service for Impaired Hearing or Speech 1.800.735.2258 Statewide Toll Free

Street Address: 707 North Calvert Street • Baltimore, Maryland 21202 • Phone 410.545.0300 • www.roads.maryland.gov

RE: PETITION FOR VARIANCE * BEFORE THE OFFICE
11116 Bird River Grove Rd; N/S of Bird River *
Grove Rd, 3969' E c/line of Ebenezer Road * OF ADMINISTRATIVE
15th Election & 6th Councilmanic Districts *
Legal Owner(s): Wayne Allen Sody * HEARINGS FOR
Petitioner(s) * BALTIMORE COUNTY
* 2015-0003-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

Carole S. Demilio

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

RECEIVED

JUL 17 2014

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of July, 2014, a copy of the foregoing Entry of Appearance was mailed to Jennifer Busse, Esquire, One West Pennsylvania Avenue, Suite 300, Towson, Maryland 21204, Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

2/6/13
IN THE MATTER OF:

Wayne Allen Sody,

Appellee/Legal Owner/Petitioner

15th Election District

6th Councilmanic District

RE: 11116 Bird River Grove Road

* BEFORE THE

* COUNTY BOARD OF APPEALS

* OF

* BALTIMORE COUNTY

* Case No: 12-259-A

ORDER OF DISMISSAL

This matter comes before this Board as an appeal filed by Ms. Linda Splidt from the August 29, 2012 Motion for Reconsideration Opinion and Order filed by the Administrative Law Judge for Baltimore County in the above referenced matter.

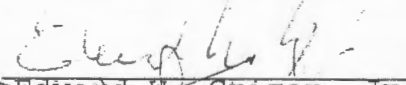
WHEREAS, the Board is in receipt of a Motion to Dismiss the appeal filed by Jennifer R. Busse, Adam D. Baker, and Whiteford, Taylor & Preston, L.L.P. on behalf of the Legal Owner/Petitioner, and therefore,

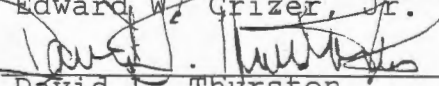
IT IS ORDERED this 6th day of February, 2013 by the County Board of Appeals of Baltimore County that the Motion to Dismiss is GRANTED, and

IT IS FURTHER ORDERED that the appeal taken in Case No. 12-259-A be and is hereby DISMISSED, with prejudice.

COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY


Wendell H. Grier, Panel Chairman


Edward W. Grizer, Jr.


David L. Thurston



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 6, 2013

Jennifer Busse, Esquire
Adam Baker, Esquire
Whiteford, Taylor & Preston, LLP
Towson Commons, Ste 300
1 West Pennsylvania Avenue
Towson, MD 21204

Linda Spliedt
11114 Bird River Grove Road
White Marsh, MD 211162

RE: *In the Matter of: Wayne A. Sody – Legal Owner/Petitioner*
Case No.: 12-259-A

Dear Counsel and Ms. Spliedt:

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

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Theresa Shelton/kc

Theresa R. Shelton
Administrator

TRS/klc
Enclosure
Duplicate Original Cover Letter

c: Wayne A. Sody and Dorothea "Hilly" Bell
Gerard Rybek
Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
John E. Beverungen, Administrative Law Judge
Arnold Jablon, Director/PAI
Andrea Van Arsdale, Director/Department of Planning
Nancy West, Assistant County Attorney
Michael Field, County Attorney, Office of Law

2015-0003-SPH

3/29/12
IN RE: PETITION FOR VARIANCE

N side of Bird River Grove Rd., 3,969'
E of c/line of Ebenezer Road
15th Election District
6th Council District
(11116 Bird River Grove Road)

Wayne Allen Sody
Petitioner

BEFORE THE

OFFICE OF

ADMINISTRATIVE HEARINGS

FOR BALTIMORE COUNTY

CASE NO. 2012-0259-A

* * * * *

MOTION FOR RECONSIDERATION
OPINION AND ORDER

By Order dated June 1, 2012, the undersigned denied Petitioner's Variance request from Section 1A01.3.B.3 of the Baltimore County Zoning Regulations (B.C.Z.R.). At that juncture, the Petitioner sought variance relief to permit a rear yard setback of 2' for a proposed addition and a front yard setback of 9' for an existing dwelling in lieu of the 35' setbacks required under the RC 2 designation. On June 20, 2012, the Petitioner, through counsel, filed a Motion for Reconsideration pursuant to Rule 4K of the Rules of Practice and Procedure before the Zoning Commissioner.

A hearing was held on the Motion for Reconsideration on August 28, 2012. At the hearing, counsel for the Petitioner indicated that the site plan submitted in the original case incorrectly labeled the front and rear of Mr. Sody's home, and an amended site plan was submitted (Exhibit 1) reflecting that the front of the Petitioner's home faces the water. As such, the variance relief sought is for side yard setbacks of 9' and 7', respectively, in lieu of the 35' setbacks specified under the RC 2 zoning.

In addition, counsel for Petitioner made at the outset of the case a legal argument, contending that variance relief was not required for the Petitioner to construct the addition to his dwelling. In support of this argument, counsel submitted a Plat of Section B – Bird River Grove, which is dated October, 1941. See Exhibit 6. In addition, a State Assessment record was

submitted showing that the Petitioner's home was constructed in 1948. See, Exhibit 5. In these circumstances, counsel argued that Section 103.3 of the B.C.Z.R. governed, and dictated that the applicable zoning regulations were those in effect at the time the plat was recorded. In this case, the plat submitted by the Petitioner does not contain a liber or folio number, or evidence of its filing among the Land Records in Baltimore County. As noted, however, the State assessment records show that the Petitioner's dwelling was constructed in 1948. On February 2, 1945, Baltimore County enacted its first set of zoning regulations and restrictions, which were in effect until July 2, 1953. Under those regulations, the Petitioner's single-family dwelling was permitted as of right in the "A" residence zone. See, Exhibit 7. Those same regulations provided that side yard setbacks must be "not less than seven feet in width along each side lot line." B.C.Z.R. (1945), § III C.3. See, Exhibit 7.

In this case, as reflected by the site plan, the Petitioner proposes setbacks of 9' (on the side where Mr. Sody's home adjoins lot 9 owned by Ms. Spliedt) and 7' (on the side of Mr. Sody's lot which adjoins lot 7, owned by Stanley and Florence Finch). Both of these setbacks are in compliance with the 1945 zoning regulations, and thus it does not appear as if the Petitioner needs variance relief to construct the proposed addition to his home.

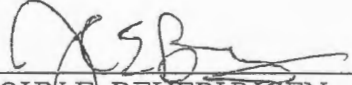
As I noted at the hearing, this case is in an unusual posture, in that the Petitioner originally filed for variance relief, and later argued that he did not need such relief to construct the proposed improvements. In these circumstances, I will permit the Petitioner to withdraw, without prejudice, his petition for variance relief. As such, the variance denial contained in the Order dated June 1, 2012, is null and void, and it is as if the Petitioner had never requested variance relief in the first instance.

Of course, the zoning regulations in Baltimore County are enforced by the Department of Permits, Approvals, and Inspections (PAI), not this office. As such, it is conceivable that the Department of PAI would not concur with my Opinion herein and prohibit the Petitioner from proceeding with construction under Article 3, Title 6, of the Baltimore County Code (B.C.C.). At the hearing, counsel for Petitioner indicated that the Director of the Department of PAI was aware of this proceeding, and was of the opinion that Mr. Sody did not need variance relief to construct the addition to his home. As such, it appears that a zoning violation/enforcement action would be unlikely in these circumstances, but I simply wanted to alert the parties to that potentiality, especially given the unusual posture of this case.

THEREFORE, IT IS ORDERED, this 29th day of August, 2012, by this Administrative Law Judge, that the Petition for Variance filed in the above matter, be and hereby is WITHDRAWN WITHOUT PREJUDICE.

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

JEB:dlw



JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County



KEVIN KAMENETZ
County Executive

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

August 29, 2012

Jennifer R. Busse, Esquire
Whiteford, Taylor & Preston, L.L.P.
Towson Commons, Suite 300
One West Pennsylvania Avenue
Towson, MD 21204

RE: Petition for Variance
Case No.: 2012-0259-A
Property: 11116 Bird River Grove Road

Dear Ms. Busse:

Enclosed please find a copy of the Motion for Reconsideration Opinion and Order 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 Office of Administrative Hearings at 410-887-3868.

Sincerely,

A handwritten signature in black ink, appearing to read "JEB", is written over the typed name.

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:dlw
Enclosure

c: Linda Spliedt, 11114 Bird River Grove Road, White Marsh MD 21162

2015-0003-SPH

1/4/12

IN RE: PETITION FOR ADMIN. VARIANCE

N side of Bird River Grove Road, 3,969
feet E of Ebenezer Road
15th Election District
6th Councilmanic District
(11116 Bird River Grove Road)

Wayne Allen Sody
Petitioner

* BEFORE THE
* OFFICE OF
* ADMINISTRATIVE HEARINGS
* FOR BALTIMORE COUNTY
* **Case No. 2012-0139-A**

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings as a Petition for Administrative Variance filed by the legal owner of the subject waterfront property, Wayne Allen Sody for property located at 11116 Bird River Grove Road. The variance request is from Sections 400.1 and 400.3 of the Baltimore County Zoning Regulations ("B.C.Z.R.") and Section 400.1.d(2) of the Zoning Commissioner's Policy Manual, to permit a replacement accessory building (garage) to be located in the side yard with a 2 feet setback and a 24 feet height in lieu of the permitted rear yard only, 2.5 feet setback and 15 feet height, and to permit a street centerline setback of 29 feet in lieu of the minimum required 75 feet. The subject property and requested relief are more particularly described on Petitioner's Exhibit No. 1. Petitioner desire to construct a garage measuring 24 feet wide by 30 feet long x 24 feet height. An existing garage will be replaced with a two car, two story garage to house two vehicles, recreational vehicles and storage for the family. No storage is available in the existing house because it does not have a basement and there is very limited closet and attic space.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Department of Environmental Protection and Sustainability (DEPS) dated December 27, 2011. DEPS has reviewed the subject zoning

2015-0003-SPH

petition for compliance with the goals of the State-mandated Critical Area Law listed in the Baltimore County Zoning Regulations, Section 500.14. Based upon this review, we offer the following comments:

1. The subject property is located within a Limited Development Area (LDA) and is subject to Critical Area requirements. The applicant is proposing to exceed the height limits and to reduce the side yard setbacks for a garage. To minimize impacts on water quality, lot coverage requirements must be met. A maximum of 31.25% percent, or 3,219 square feet, is permitted. Additional storage on a second level, rather than an expanded footprint, helps reduce lot coverage. The existing garage is 360 square feet; the replacement garage is 720 square feet. By meeting the lot coverage requirements and the 15% afforestation requirements, the relief requested by the applicant will result in minimal impacts to water quality.
2. This property is waterfront. It is unclear from the applicant's plan accompanying this zoning petition whether the requested relief will exceed the lot coverage limit on site. If the proposal does not exceed lot coverage limits, it will help conserve fish habitat in Bird River.
3. This office is unable to determine whether the applicant's proposal is consistent with this goal. The relief requested will be consistent with established land-use policies provided that the applicants meet the requirements stated above.

The Petitioner having filed a Petition for Administrative Variance and the subject property having been posted on December 11, 2011, and there being no request for a public hearing, a decision shall be rendered based upon the documentation presented.

The Petitioner has filed the supporting affidavits as required by Section 32-3-303 of the Baltimore County Code. Based upon the information available, there is no evidence in the file to indicate that the requested variance would adversely affect the health, safety or general welfare of the public and should therefore be granted. In the opinion of the Administrative Law Judge, the information, photographs, and affidavits submitted provide sufficient facts that comply with the requirements of Section 307.1 of the B.C.Z.R. Furthermore, strict compliance with the B.C.Z.R. would result in practical difficulty and/or unreasonable hardship upon the Petitioners.

Although the Office of Planning did not make any recommendations related to the garage height and usage, I will impose conditions that the accessory structure not be converted into a

dwelling unit or apartment, not contain any sleeping quarters, living area, kitchen or bathroom facilities, and not be used for commercial purposes.

Pursuant to the posting of the property and the provisions of both the Baltimore County Code and the Baltimore County Zoning Regulations, and for the reasons given above, the requested variance should be granted.

THEREFORE, IT IS ORDERED, by the Administrative Law Judge for Baltimore County, this 4th day of January, 2012 that a variance from Sections 400.1 and 400.3 of the Baltimore County Zoning Regulations ("B.C.Z.R.") and Section 400.1.d(2) of the Zoning Commissioner's Policy Manual, to permit a replacement accessory building (garage) to be located in the side yard with a 2 feet setback and a 24 feet height in lieu of the permitted rear yard only, 2.5 feet setback and 15 feet height, and to permit a street centerline setback of 29 feet in lieu of the minimum required 75 feet, be and is hereby GRANTED, subject to the following:

1. 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 such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. The Petitioner or subsequent owners shall not convert the subject accessory structure into a dwelling unit or apartment. The structure shall not contain any sleeping quarters, living area, kitchen or bathroom facilities.
3. The accessory structure shall not be used for commercial purposes.
4. Compliance with the ZAC comments made by the Department of Environmental Protection and Sustainability dated December 27, 2011, a copy of which is attached hereto and made a part hereof.
5. When applying for a building permit, the site plan filed must reference this case and set forth and address the restrictions of this Order.

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

Signed
TIMOTHY M. KOTROCO
Administrative Law Judge
for Baltimore County

TMK/pz

Office of Administrative Hearings for Baltimore County
105 West Chesapeake Avenue Suite 103
Towson, Maryland 21204

In the Matter of

Civil Citation No. 1400477

Wayne Allen Sody
11116 Bird River Grove Road
White Marsh, MD 21162

11116 Bird River Grove Road

Respondent

FINDINGS OF FACT AND CONCLUSIONS OF LAW
FINAL ORDER OF THE ADMINISTRATIVE LAW JUDGE

This matter came before the Administrative Law Judge on June 11, 2014 for a Hearing on a citation for violations under the Baltimore County Zoning Regulations (BCZR) sections 101; 102.1; 500.9, Baltimore County Code (BCC) section 32-3-102: Violation of commercial site/plan and/or zoning Order; Illegal home occupation on residential property.

On May 5, 2014, pursuant to BCC § 3-6-205, Inspector Christina Frink issued a Code Enforcement & Inspections Citation. The citation was sent to the Respondent by 1st class mail to the last known address listed in the Maryland State Tax Assessment files.

The citation proposed a civil penalty of \$6,600.00 (Six thousand six hundred dollars).

The following persons appeared for the Hearing and testified: Jennifer Busse, Esquire, representing Wayne Sody, owner and Respondent, Linda Spliedt and Bernard Gerst, Complainants and Christina Frink, Baltimore County Code Enforcement Officer.

Evidence was presented that upon a citizen complaint, an investigation of the subject property began with an inspection on 3/18/14, revealing what appeared to be an office above a garage accessory building. The Inspector went to the location and spoke to a person who identified herself as an employee and the Inspector identified filing cabinets and other office furniture and accoutrements. A Correction Notice was issued. On 3/19/14 the Respondent called the Inspector and referred her to his attorney, noting that the accessory garage building had been approved through an Administrative Variance. A review of the Administrative Variance Order by the Inspector revealed that although the accessory garage building and second floor was granted on January 12, 2012, it contained a specific

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condition that "The accessory structure shall not be used for commercial purposes" Accordingly, a Citation was issued, mailed and posted. On 5/5/14 a re-inspection noted no change.

Linda Spleidt, who lives next door to the subject property testified that the room above the accessory garage was to be used as a recreation room only. She offered as evidence photographs of employees carrying office equipment to the upstairs space and testified that she saw at least one employee and vehicles in front of the structure. She also advised that the employee (named Candace) had told her that there was a food business in the office.

Bernard Gerst also lives in the area and objected to the use (he believes) by the business of a lot for the parking of vehicles.

Counsel for the Respondent proffered that the Respondent has carried on a food brokerage business for years from his home. There is no inventory involved and no business storage on the property, just telephones and a computer. The property is zoned RC2, which allows home occupations. She noted that the one employee lives in the neighborhood. The Respondent would like to stay at the location and a petition signed by a number of neighbors in support of his position was submitted and entered into evidence.

This matter was held sub curia and Counsel for the Respondent was invited to file a brief memo in lieu of a closing argument. I have reviewed that submission. Counsel acknowledges that the Respondent has carried on the business from his home for fourteen years. She reiterated that there is no storage on the site, nor do any customers come to the location, and there is no signage. She notes that the RC2 zone allows this home occupation as a matter of right.

The question in this matter is not whether the Respondent can have an occupation carried out in his home—it is whether that permission includes the use of an accessory structure for that occupation, when permission for the construction of that accessory structure specifically precluded its being used for commercial uses. The Administrative Variance procedures are utilized to allow home owners to obtain minor adjustments, construction and/or additions for the personal use of the Petitioner. There is no public hearing, only the posting of a sign on the property setting forth the request being made, so that neighbors may be made aware and given an opportunity to object.

Counsel sets forth that the home office is not a "commercial use". I have consulted the American Heritage Dictionary, Second College Edition (the source of definitions set forth in the zoning code) and find that "commercial" is defined as "the buying and selling of goods"; and that "commercial" is defined as "pertaining or engaging in commerce". A food brokerage certainly meets that definition. Counsel points to the difference in permitted uses in DR and RC2 zones and gives examples of occupations permitted such as farming, saddlery, and wagon repair that have office related functions to support a conclusion that, since this an RC2 zone, it should be treated differently as to accessory uses.

I disagree. Respondent's business certainly falls within the dictionary definition of commerce. Moreover, and more importantly, the purpose of the Administrative Variance procedure is to assist the residential use of a property by its owner/inhabitant. It is purposely limited and should not be used for any other purpose. Having said that, the Administrative Variance order which permitted the construction of the accessory structure herein specifically denied permission to use it for any commercial purpose. Nothing presented by the Respondent, including evidently the positive opinions of some of the neighbors, has altered that fact.

The Respondent could seek permission to carry on his business in the accessory structure by Special Hearing, where his request would be subject to the burdens imposed for the granting of that relief. If granted, it would certainly supersede the prohibition of the original Administrative Variance.

Having heard the testimony and evidence presented at the Hearing:

IT IS ORDERED by the Administrative Law Judge that a civil penalty be imposed in the amount of \$1,000.00 (One thousand dollars).

IT IS FURTHER ORDERED that \$900.00 of the \$1,000.00 civil penalty be suspended, with an immediate \$100.00 fine imposed at this time.

IT IS FURTHER ORDERED that the remaining \$900.00 civil penalty will be imposed if the subject property is not brought into immediate compliance with the Administrative Variance order dated

January 4, 2012, pursuant to this Order, by ceasing to utilize the subject accessory structure for the Respondent's food brokerage business.

IT IS FURTHER ORDERED that if the subject property is brought into compliance pursuant to this Order, the remaining \$900.00 civil penalty will be imposed if there is a subsequent finding against the Respondent for the same violation.

IT IS FURTHER ORDERED that if not paid within thirty days of billing, the civil penalty AND any expenses incurred by Baltimore County, as authorized above, shall be imposed and placed as a lien upon the property.

ORDERED this ____18____ day of June 2014

Signed: _____


Lawrence M. Stahl
Managing Administrative Law Judge

NOTICE: Pursuant to §3-6-301(a) of the Baltimore County Code, the Respondent or Baltimore County may appeal this order to the Baltimore County Board of Appeals within fifteen (15) days from the date of this order; any such appeal requires the filing of a petition setting forth the grounds for appeal, payment of a filing fee of \$225.00 and the posting of security in the amount of the penalty assessed.



KEVIN KAMENETZ

County Executive

ARNOLD JABLON

*Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections*

6/18/2014

SODY WAYNE ALLEN
11116 BIRD RIVER GROVE RD
WHITE MARSH, MD 21162-1806

Tax ID #:	1507001710		
Premise:	11116 BIRD RIVER GROVE RD WHITE MARSH, MD 21162-1806		
Case #	CC1400477	Lien Amount Due:	\$1,000.00
Complaint Lien ID:	20366	Suspended Fee:	\$900.00
Lien Type:	Civil Penalty Lien	Administrative Fee:	
Lien Date:	06/18/2014	Total Amount Due:	\$100.00

Dear Property Owner:

The above charge constitutes a lien against the real property to be collected in the same manner as taxes. If the charges are not paid within 30 days of notice date, interest will accrue at the rate of 1% per month.

For questions regarding the above charge, please call The Department of Permits, Approvals & Inspections / Code Enforcement at 410 887-3351, weekdays between 8 a.m. and 4 p.m.

For payment questions please call 410 887-2404, weekdays between 8 a.m. and 4:30 p.m. Please use the enclosed bill for payment.

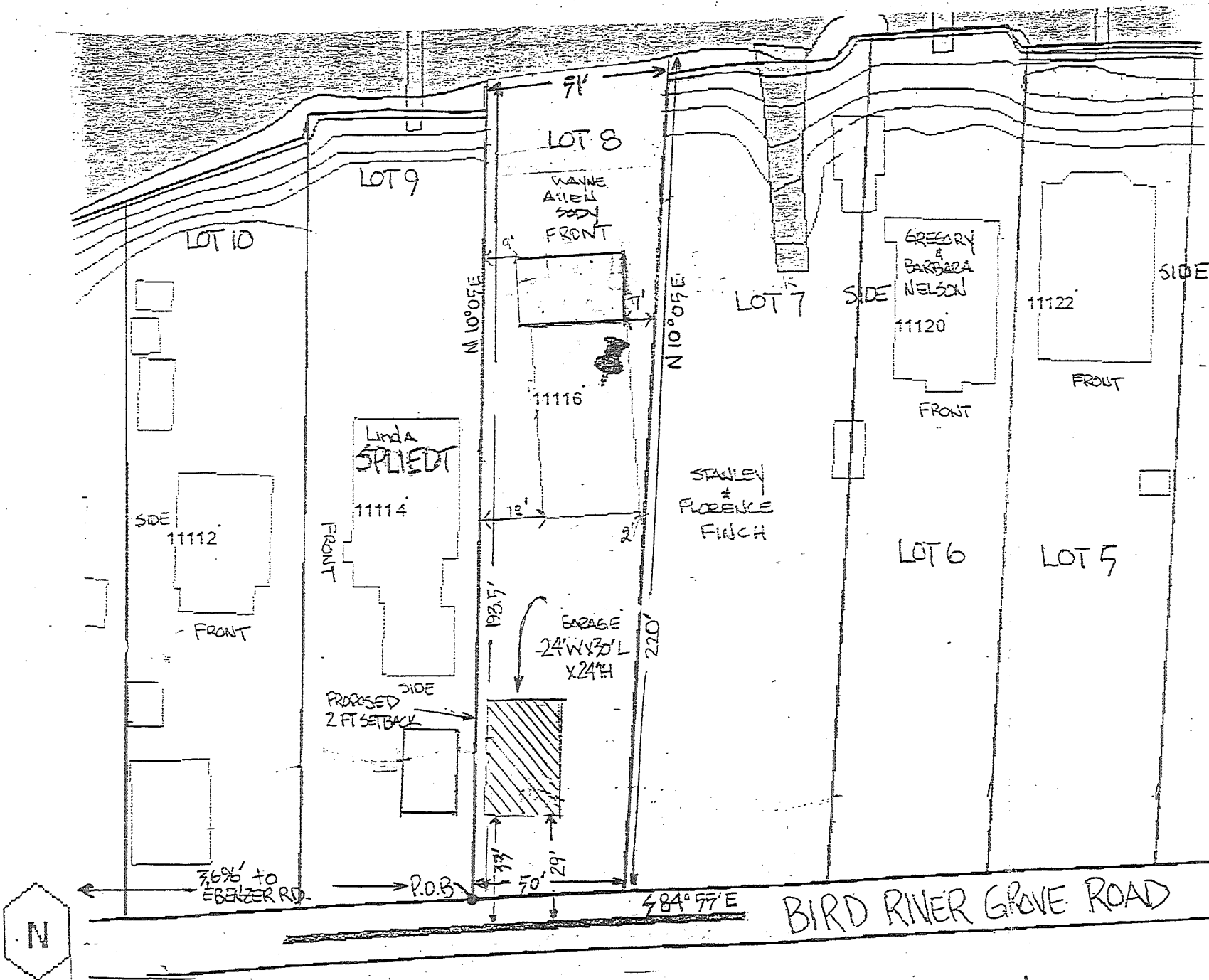
Send payments to:

Baltimore County Office of Budget and Finance
400 Washington Avenue, Rm 150
Towson, MD 21204

Sincerely,

Arnold Jablon
Director
Department of Permits, Approvals & Inspections

ZONING HEARING PLAN FOR VARIANCE FOR SPECIAL HEARING ✓ (MARK TYPE REQUESTED WITH X)
 ADDRESS 1116 BIRD RIVER GROVE ROAD OWNER(S) NAME(S) WAYNE ALLEN SODY
 SUBDIVISION NAME BIRD RIVER GROVE LOT # 8 BLOCK # B SECTION # B
 PLAT BOOK # 13 FOLIO # 1 10 DIGIT TAX # 1507001710 DEED REF. # 10819/00685



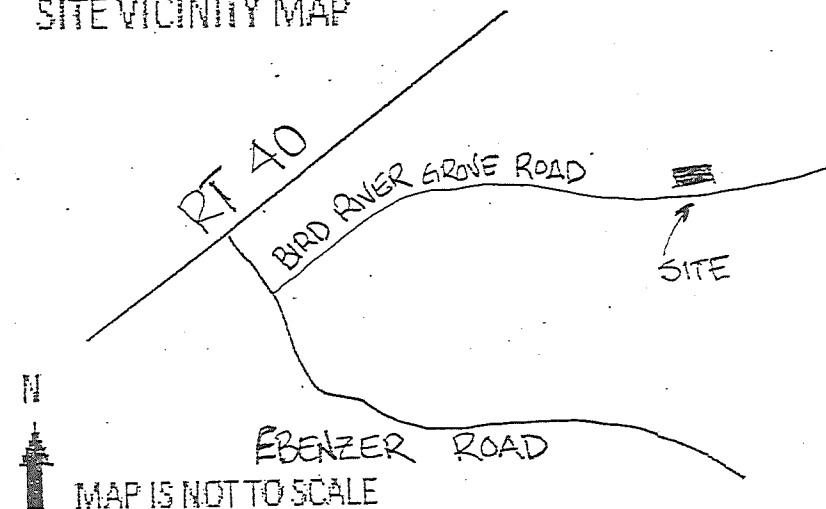
PLAN DRAWN BY WAYNE ALLEN SODY

DATE

SCALE: 1 INCH = 40 FEET

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SITE VICINITY MAP



ZONING MAP # 073A3

SITE ZONED RC2

ELECTION DISTRICT 15

COUNCIL DISTRICT 6

LOT AREA ACREAGE .236

OR SQUARE FEET 10,300

HISTORIC? NO

IN CBCA? NO

IN FLOOD PLAIN? YES

UTILITIES? MARK WITH X

WATER IS:

PUBLIC X PRIVATE

SEWER IS:

PUBLIC X PRIVATE

PRIOR HEARING? YES

IF SO GIVE CASE NUMBER

AND ORDER RESULT BELOW

2012-0139-A

Administrative Variance

granted; 2012-0259-A

dismissed with prejudice

VIOLATION CASE INFO:

#1400477 - \$100 fine imposed,

Final Order dated 6/18/14.