IN RE: **PETITIONS FOR SPECIAL HEARING AND VARIANCE** (5402 Patterson Road) 11th Election District 3rd Council District Richard George D'Antonio & Kathleen Kohlerman D'Antonio *Owners/Petitioners*	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY
	*	**Case No. 2017-0028-SPHA**

* * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed on behalf of Richard and Kathleen D'Antonio, legal owners ("Petitioners"). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R) to approve an accessory apartment with a square footage in excess of the permitted 1,200 sq. ft. In addition, a Petition for Variance seeks approval of the 1,255 sq. ft. apartment as constructed in lieu of the maximum allowed 1,200 sq. ft. A site plan was marked and accepted into evidence as Petitioners' Exhibit 1.

Appearing at the public hearing in support of the requests were Richard and Kathleen D'Antonio. There were no Protestants or interested citizens in attendance. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP) and the Department of Environmental Protection and Sustainability (DEPS). Neither agency opposed the requests.

The subject property is approximately 1.75 acres in size and is zoned RC-2. The property is improved with a single-family dwelling and detached garage. Petitioners constructed last year an addition to the garage to be used as a hobby room. Since that time their daughter and her

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family have suffered a financial setback and have moved back home. Petitioners propose to convert the hobby room into an accessory apartment pursuant to B.C.Z.R. § 400.4. Since the apartment would be located in a detached structure, the B.C.Z.R. requires a public hearing.

The owners submitted an aerial photo of the subject property and the immediate vicinity. Ex. 2. The property is situated in a rural area which is sparsely populated. There are significant buffers between this property and neighboring homes, and I do not believe the accessory apartment use would have a detrimental impact upon the community. As such the petition for special hearing will be granted.

VARIANCE

A variance request involves a two-step process, summarized as follows:

(1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
(2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

Petitioners have met this test. The large property has an irregular shape and is therefore unique. Petitioners would experience practical difficulty if the regulations were strictly interpreted because they would be required to raze and/or reconstruct the existing accessory building. Finally, as demonstrated by the lack of any opposition, I do not believe granting the requests would have a detrimental impact upon the community.

THEREFORE, IT IS ORDERED this **28th** day of September, **2016**, by this Administrative Law Judge, that the Petition for Special Hearing filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R) to approve an accessory apartment within a detached accessory building on the subject property, be and is hereby GRANTED.

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IT IS FURTHER ORDERED the petition for variance to approve the 1,255 sq. ft. accessory apartment in lieu of the maximum allowed 1,200 sq. ft., be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.

2. Petitioners must obtain approval from the Ground Water Management section of DEPS prior to issuance of permit(s) for the project.

3. Petitioners must obtain from the Department of Permits, Approvals and Inspections a use permit for the accessory apartment.

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

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln

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By SLN

DECLARATION OF UNDERSTANDING

THIS DECLARATION OF UNDERSTANDING (hereinafter referred to as "Declaration") is made on this 26th day of July 20 16, by and between Dr. Richard George D'Antonio and Kathleen Kohlerman D'Antonio (hereinafter referred to as the "Declarants") and the Department of Permits, Approvals and Inspections (hereinafter referred to as "PAI").

Recitals

A. The Declarants who are the owners of this property have filed an application for use permit and special hearing for the approval of construction added to their existing garage structure that measures 26'1" by 52'1". The property being located at 5402 Patterson Road, Lot: Parcel 426, Liber: 19441, Folio 579, Baltimore County, Maryland, and Is more particularly described by metes and bounds in Exhibit A (The Property) and Exhibit B (The use permit or hearing plans) attached hereto and made a part hereof. The property is zoned RC-2, which is the particular zone in which the property is located.

B. PAI or The Administrative Law Judge has approved the Declaration request to create an Accessory Apartment complete with dedicated bathing and cooking facilities, located on this owner-occupied property. The accessory apartment will be housing for: Kaitlin D'Antonio Johnson (daughter), Blake Johnson (grandson), Lacy Johnson (granddaughter), Thomas D'Antonio (son), Richard D'Antonio (son). The other residents of the property are Dr. Richard George D'Antonio and Kathleen Kohlerman D'Antonio, being the parents and grandparents of the occupants. The use permit must be renewed by PAI every two years by filing a renewal on a PAI approved form, to be dated from the month of the initial approval.

C. As a condition of approval of the Declarants request, Bill No. 49-11 requires the filing of this Declaration among the Land Records of Baltimore County, to provide notice to any future owners, subsequent bona fide purchasers of users of the Property that no part of any improvements or addition on this Property may be used for separate living quarters and that all such improvements shall only be used as a single-family residence, unless otherwise approved by and at the discretion of PIA.

(signatures continue on following page)

IN WITNESS WHEREOF, the parties have hereto duly executed this Declaration under seal on the date first above written.

WITNESS: _____

_____

_____

_____

State of Maryland, County of Baltimore to wit:

I HEREBY CERTIFY that on this 26th day of July 2016, before the Subscriber, a Notary Public of State of Maryland, personally appeared Richard D'Antonio & Kathleen D'Antonio.

The declarants herein, who are the owners of this property, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and who acknowledged that they executed for the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, have hereunto set my hand and Notarial Seal.

My Commission Expires:
12/20/16

Tracey Marie Collins
Notary Public

TRACEY MARIE COLLINS
NOTARY
PUBLIC
BALTIMORE COUNTY, MD

EXHIBIT A

LEGAL DESRIPTION

ALL that piece or parcel of land situate, lying and being the Eleventh Election District of Baltimore County, State of Maryland and described as follows, to wit:

BEGINNING, for the same in or near the center of Patterson Road at the end of the seventh or North 27 degrees 57 minutes 50 seconds West 151.12 foot line of the first parcel of land which by a deed dated October 1, 1985 and recorded among the Land Records of Baltimore County in Liber E.H.K. Jr., No. 7017 folio 262 was conveyed by PELICAN INDUSTRIES, Trustees for Walter C. Masland, to Thomas R. Reier and Maryland G. Reier, his wife;

THENCE leaving said Patterson Road and running with and binding on a part of the last line of the said first parcel of land and referring the courses of this description to the Baltimore County Grid Meridian, 1) North 61 degrees 54 minutes 54 seconds East 192.62 feet to the beginning of the parcel of land which by a deed dated November 22, 1993 and recorded among the Land Records of Baltimore County in Liber S.M. No. 10379 folio 410 was conveyed by Glenn Mark Scarff, Personal Representative of the Estate of William Glenn Scarff, Jr., to Thomas R. Reier and Maryland G. Reier, his wife;

RUNNING THENCE with and binding on the first and second lines of said last mentioned parcel of land and on a part of the third or north 70 degrees 09 minutes 20 seconds East 785.11 foot line of the second parcel of land which by a deed dated October 1, 1985 and recorded among the land records of Baltimore County in Liber E.H.K. Jr. No. 7017 folio 262 was conveyed by PELICAN INDUSTRIES, Trustees for Walter C. Masland, to Thomas R. Reier and Maryland G. Reier, his wife, the two following courses and distances, viz:

2) North 34 degrees 13 minutes 01 seconds West 375.05 feet to an iron bar heretofore set; and

3) North 61 degrees 54 minutes 54 seconds East 267.10 feet to an iron bar and cap now set; and

THENCE RUNNING for a line of division now made in 1998 the two following courses and distances, viz:

4) South 10 degrees 15 minutes 20 seconds East 412.73 feet; and

5) South 61 degrees 54 minutes 54 seconds West, parallel to and 20 feet measured southeasterly at a right angle from the last line of the aforesaid first parcel of land which was conveyed by PELICAN INDUSTRIES to Reier, 290.45 feet to a point in or near the center of Patterson Road and to intersect the aforesaid seventh line of the first parcel of land which was conveyed by PELICAN INDUSTRIES to Reier, at the distance of 20.20 feet measured reversely along said seventh line from the end thereof;

THENCE RUNNING with and binding on a part of said seventh line and in or near the center of Patterson Road, 6) North 36 degrees 11 minutes 05 seconds West 20.20 feet to the place of beginning.

Containing 1.737 Acres of land, more or less.

TOGETHER WITH the right to use in common with others entitled thereto of a 30 foot wide easement for ingress, egress and utilities and described as follows, to wit:

BEGINNING for the same or near the center of Patterson Road and in the seventh or North 27 degrees 57 minutes 50 seconds West 151.12 foot line of the first parcel of land which by a deed dated October 1, 1985 and recorded among the Land Records of Baltimore County in Liber E.H.K. Jr. No. 7017 folio 262 was conveyed by PELICAN INDUSTRIES, TRUSTEE for WALTER C. MASLAND, to Thomas R. Reier, and Maryland G. Reier, his wife, at the distance of 20.20 feet measured reversely from the end of said seventh line, said point of beginning also being at the end of the fifth or South 61 degrees 54 minutes 54 seconds West 290.45 foot line of the herein described 1.737 acres, more or less parcel of land; and

RUNNING THENCE and binding reversely on the said fifth line, 1) North 61 degrees 54 minutes 14 seconds East 290.45 feet;

THENCE RUNNING on the lines of the 30 foot wide easement now made, 2) South 10 degrees 15 minutes 20 seconds East 31.51 feet; and

THENCE RUNNING parallel to and 30 feet measured at a right angle southeasterly from the first line of the easement 3) South 61 degrees 54 minutes 54 seconds WEST 276.53 feet to interest the aforesaid seventh line of the aforesaid first parcel of land and in or near the center of Patterson Road;

THENCE RUNNING with and binding on a part of said seventh line in or near the center of Patterson Road, 4) North 36 degrees 11 minutes 05 seconds West 30.30 feet to the place of BEGINNING.

Containing 0.195 of an acre of land, more or less.

SUBJECT TO a 20 foot wide easement for ingress, egress and utilities and described as follows, to wit:

BEGINNING for the same at the end of the first or North 61 degrees 54 minutes 54 seconds East 290.45 foot line of the herein described 30 foot wide easement and the end of the fourth or South 10 degrees 15 minutes 20 seconds East 412.73 foot line of the herein described 1.737 acres, more or less, parcel of land;

RUNNING THENCE with and binding reversely on the part of the fourth line 1) North 10 degrees 15 minutes 20 seconds West 71.01 feet;

THENCE RUNNING on the lines of the aforesaid 20 foot easement now made, 2) South 79 degrees 44 minutes 40 seconds West 20.00 feet;

THENCE RUNNING parallel to and 20 feet measured at a right angle southwesterly from the first line of the 20 foot wide easement now being described, 3) South 10 degrees 15 minutes 20 seconds East 77.44 feet to intersect the first line of the herein mentioned 30 foot wide easement;

RUNNING THENCE with and binding on a part of said first line, 4) North 16 degrees 54 minutes 54 seconds East 21.01 feet to the place of BEGINNING.

Containing 0.034 of an acre of land, more or less.

See approval by the Baltimore County Development Review Committee for a lot line adjustment, DRC Number 01058B, Dist. 11C6, January 13, 1998.

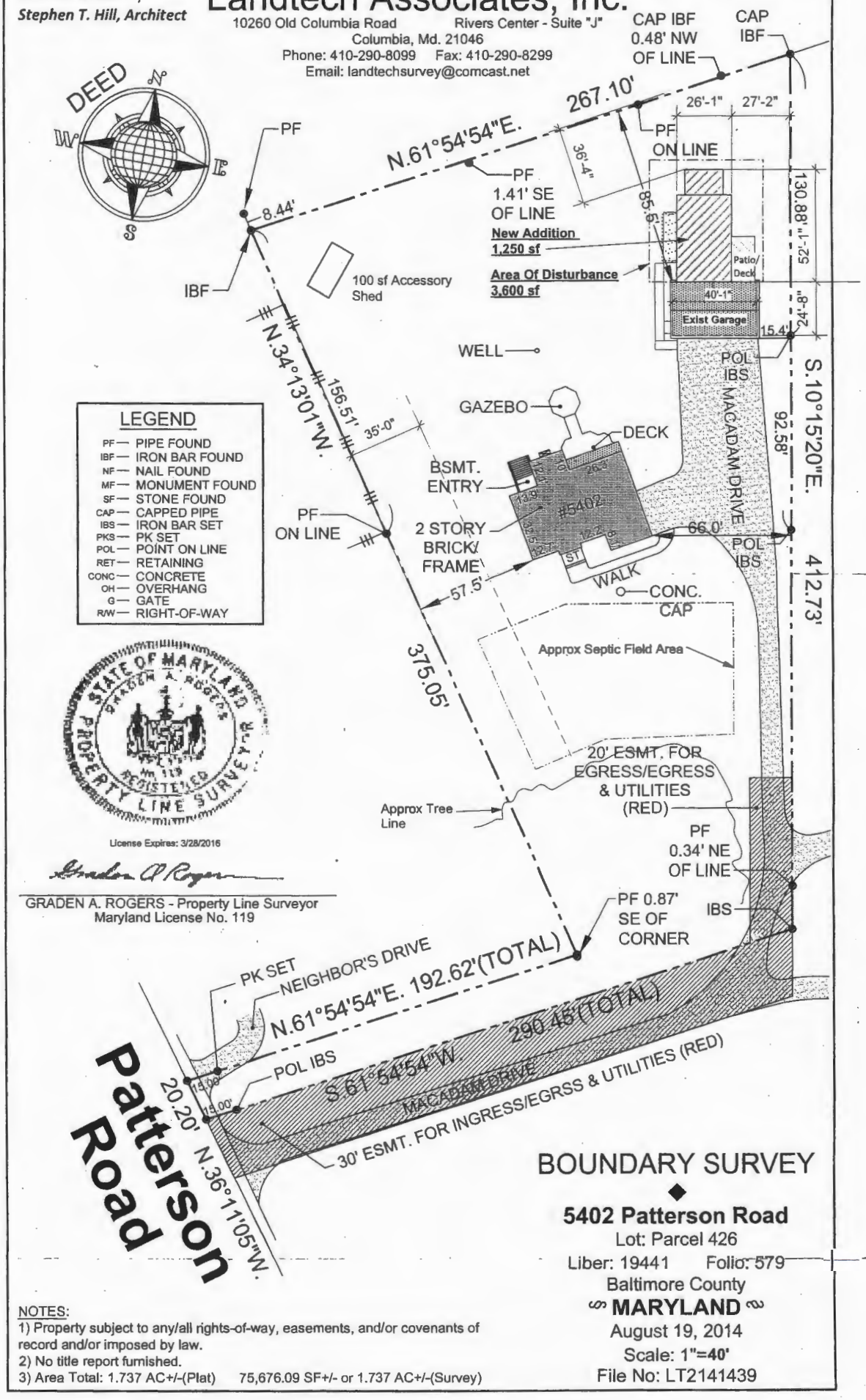
The improvements being known as 5402 Patterson Road.

BEING THE SAME lot of ground which by Deed dated September 3, 2014 and recorded among the Land Records of Baltimore County at Liber 35353, Folio 309, was granted and conveyed by Carole Stolte Upman formerly known as Carole M. Stolte, Trustee or her Successors in Trust, Under the Carole M. Stolte Trust dated January 15, 2003, unto Richard George D'Antonio and Kathleen Kohlerman D'Antonio, his wife, the Grantors herein.

Addition Drawn by
Stephen T. Hill, Architect

Landtech Associates, Inc.

10260 Old Columbia Road Rivers Center - Suite "J"
Columbia, Md. 21046
Phone: 410-290-8099 Fax: 410-290-8299
Email: landtechsurvey@comcast.net



LEGEND

PF	PIPE FOUND
IBF	IRON BAR FOUND
NF	NAIL FOUND
MF	MONUMENT FOUND
SF	STONE FOUND
CAP	CAPPED PIPE
IBS	IRON BAR SET
PKS	PK SET
POL	POINT ON LINE
RET	RETAINING
CONC	CONCRETE
OH	OVERHANG
G	GATE
R/W	RIGHT-OF-WAY

STATE OF MARYLAND
GRADEN A. ROGERS
No. 119
REGISTERED
PROPERTY LINE SURVEYOR

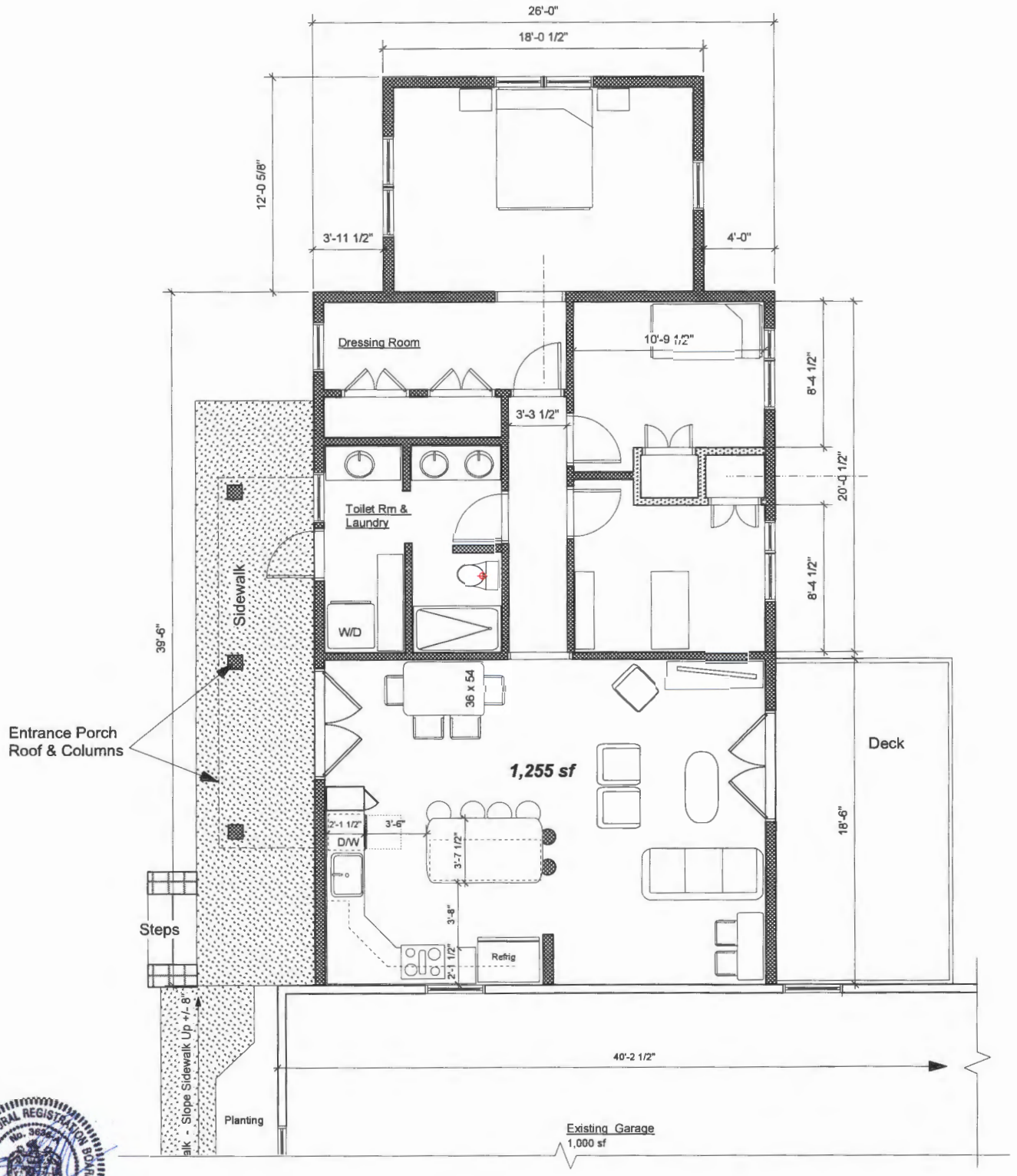
License Expires: 3/28/2016

GRADEN A. ROGERS - Property Line Surveyor
Maryland License No. 119

BOUNDARY SURVEY

5402 Patterson Road
Lot: Parcel 426
Liber: 19441 Folio: 579
Baltimore County
MARYLAND
August 19, 2014
Scale: 1"=40'
File No: LT2141439

NOTES:
1) Property subject to any/all rights-of-way, easements, and/or covenants of record and/or imposed by law.
2) No title report furnished.
3) Area Total: 1.737 AC+/-(Plat) 75,676.09 SF+/- or 1.737 AC+/-(Survey)



Floor Plan

No Scale

Stephen T. Hill, Architect
1515 Bellona Avenue, Lutherville MD 21093
410-409-7730

"I certify that these documents were prepared or approved by me, and that I am a duly licensed Architect in the State of Maryland, License Number 3636, Expiration Date 3/11/18."

Proposed Garage Extension for an In-Law Apartment

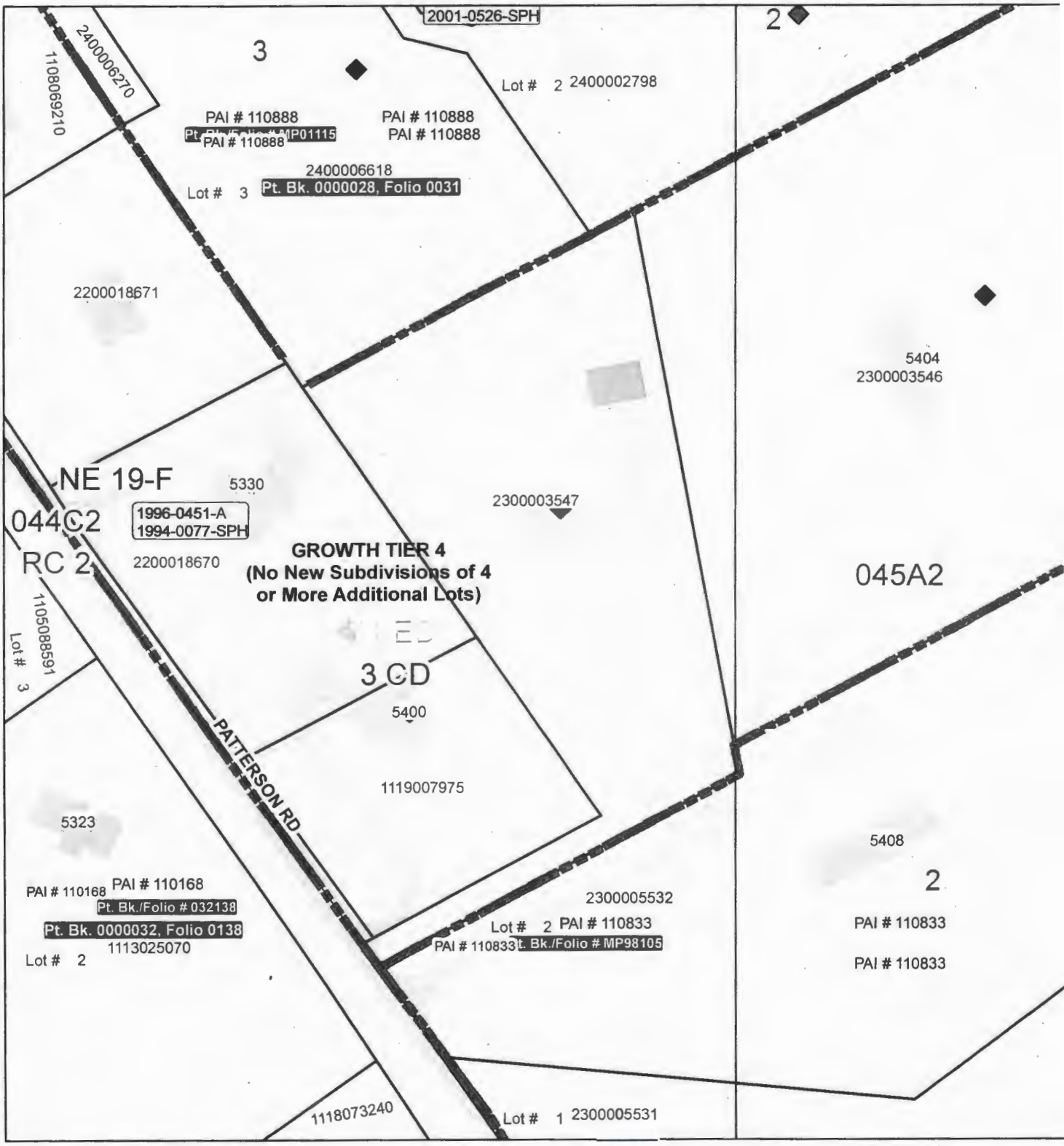
July 22, 2016

D'Antonio Residence

5402 Patterson Road, Baldwin, MD 21013
Baltimore County Maryland

SK-1

5402 Patterson Road



Publication Date: 7/27/2016

Publication Agency: Permits, Approvals & Inspections
Projection/Datum: Maryland State Plane,
FIPS 1900, NAD 1983/91 HARN, US Foot

N W E S

0 25 50 100 150 200 Feet

1 inch = 100 feet

Item # 0028