IN THE MATTER OF RICHARD AND SUSAN LEHMANN LEGAL OWNERS AND PETITIONERS FOR SPECIAL HEARING ON THE PROPERTY LOCATED AT 7700 CROSSLAND ROAD	*	BEFORE THE BOARD OF APPEALS OF
3RD ELECTION DISTRICT 2ND COUNCILMANIC DISTRICT	*	BALTIMORE COUNTY
	*	CASE NO.: 16-060-SPH

* * * * * * * * * * *

AMENDED ORDER OF DISMISSAL

This matter comes to the Board of Appeals by way of an appeal filed by Richard C. Burch, Esquire on behalf of Henry Kahn and Marlene Trestman, Protestants and Appellants, from a decision of the Administrative Law Judge dated May 18, 2016, in which the requested Petition for Special Hearing was denied.

The Board previously heard argument, and held a public deliberation on Motions to Dismiss filed by both parties. Both Motions to Dismiss were denied and the Board determined that a hearing on the merits of this case would be heard. A hearing was scheduled for April 25, 2017 and subsequently postponed by request of the Petitioners. No further hearing dates have been scheduled.

WHEREAS, pursuant to Board of Appeals Rules of Practice and Procedure, Rule 3(b)(2), the Board is in receipt of a Notice of Voluntary Withdrawal and Dismissal of the Petition for Special Hearing, dated July 18, 2017 from Dino C. La Fiandra, Esquire, Counsel for Richard and Susan Lehmann, Petitioners, (a copy of which is attached hereto and made a part hereof); and

WHEREAS, said Notice requests that the Petition for Special Hearing taken in this matter be withdrawn as of July 18, 2017;

WHEREAS, the Board previously issued an Order of Dismissal in this matter on August 16, 2017, which inadvertently included language from a form Order. Pursuant to Board of Appeals Rules

of Practice and Procedure, Rule 11, the Board retains revisory power over the opinions and orders for 30 days after issuance.

IT IS THEREFORE ORDERED this 13th day of September, 2017 by the Board of Appeals of Baltimore County that, in accordance with Board of Appeals Rules of Practice and Procedure Rule 3(b)(2) and Rule 11, the Petition for Special Hearing in Case No. 16-060-SPH be and the same is hereby **WITHDRAWN AND DISMISSED, with prejudice.**

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

BOARD OF APPEALS
OF BALTIMORE COUNTY

Maureen E. Murphy, Panel Chair

TO WCR

Board of Appeals of Baltimore County

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

September 13, 2017

Dino C. La Fiandra, Esquire
PK Law
901 Dulaney Valley Road, Suite 500
Towson, Maryland 21204

Richard C. Burch, Esquire
Mudd, Harrison & Burch, L.L.P.
401 Washington Avenue, Suite 900
Towson, Maryland 21204-4835

RE: In the Matter of: *Richard and Susan Lehmann*
Case No.: 16-060-SPH

3 (a)

Dear Counsel:

Enclosed please find a copy of the Amended 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,

Sunny Cannington

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Duplicate Original Cover Letter
Enclosure

c: Richard and Susan Lehmann
Henry Kahn / Marlene Trestman
Richard E. Matz, P.E.
Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Deputy Administrative Officer and Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law

Krysundra Cannington

From: Dino La Fiandra <dlafiandra@pklaw.com>
Sent: Friday, August 25, 2017 12:26 PM
To: Krysundra Cannington
Cc: Richard Burch; Peter Max Zimmerman; Special Hearing E_Mail
Subject: 7700 Crossland Road - 2016-0060-SPH [IWOV-FirmLive.FID515188]
Attachments: 20170825121047988.pdf

Please see the attached letter. Hard copy to follow by mail.
Thank you and have a nice weekend.
Dino

Dino C. La Fiandra
Member
901 Dulaney Valley Road Suite 500 Towson, MD 21204
Direct Dial: 410.938.8705 Direct Fax: 410.832.5651 Mobile: 443-204-3473
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August 25, 2017

Maureen E. Murphy, Chairperson
Baltimore County Board of Appeals
105 W. Chesapeake Avenue, Suite 203
Towson, Maryland 21204

Re: Case No. 2016-0060-SPH
7700 Crossland Road

Dear Ms. Murphy:

I am responding to yet another letter of Mr. Burch, this one dated August 21, 2017. This time he has asked for reconsideration and/or revision of the Board's Order of Dismissal dated August 16. The Lehmanns oppose both of these motions.

As a preliminary matter, the Lehmanns withdraw their consent to Mr. Burch's proposed Order that he transmitted to the Board with his letter of August 9. They withdraw their consent for two reasons. First, the Board has entered a perfectly fine Order of Dismissal of its own in the ordinary course of business following extensive correspondence to the Board by counsel for both the Lehmanns and the Kahns. There is nothing unusual or improper about the Order of Dismissal that was entered and in fact it conforms to similar orders of dismissal entered by the Board under similar circumstances. Second, there must be an end to the seemingly endless saga of simply withdrawing and voluntarily dismissing this Petition for Special Hearing. Once again, the Lehmanns find themselves in the position of incurring additional legal fees on the simple matter of withdrawing this Petition, which they are entitled to do under the Board's Rules of Procedure. The back and forth on the precise wording of the Board's Order of Dismissal has cost the Lehmanns thousands of dollars in legal fees, and in the end, the Board entered its own order after all anyway. This should end the matter.

The process surrounding the Lehmanns' voluntary withdrawal and dismissal of their Petition for Special Hearing must end. For that reason the Lehmanns respectfully request the Board deny the Motion for Reconsideration.

Mr. Burch requests, in the alternative, that the Board amend or revise its August 16 Order of Dismissal. Pursuant to Board Rule 11, the Board may exercise its revisory power over its orders only in the event of fraud, mistake or irregularity. Mr. Burch's letter does not allege fraud, mistake or irregularity and therefore the Motion to Revise/Amend should likewise be denied.

The Lehmanns respectfully request you deny both motions without further delay and without a hearing.

Thank you for your continued attention to this matter.

Sincerely,

Dino C. La Fiandra

cc: Richard C. Burch, Esquire
Peter M. Zimmerman, Esquire

MUDD, HARRISON & BURCH, L.L.P.
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RICHARD C. BURCH *
DOUGLAS W. BISER *
ANDREW JANQUITTO * +
MATTHEW P. LALUMIA *

* MEMBER OF MARYLAND BAR
+ MEMBER OF DISTRICT OF COLUMBIA BAR

JOHN E. MUDD
(1928-2003)

T. ROGERS HARRISON
(1949-1995)

August 21, 2017

HAND DELIVERY
Maureen E. Murphy, Esquire, Chairwoman
Baltimore County Board of Appeals
105 West Chesapeake Avenue, Suite 203
Towson, Maryland 21204

Re: Case No. 2016-0060-SPH
Property: 7700 Crossland Road

Dear Ms. Murphy:

This correspondence acknowledges receipt of the Order of Dismissal, which was entered on August 16, 2017. On behalf of my clients, Henry Kahn and Marlene Trestman, I respectfully request that you enter the Order of Dismissal which accompanied my letter of August 9, 2017, another copy of which is enclosed (although I have changed the caption to read "Amended Order of Dismissal").

Please note by letter dated August 17, 2017, Mr. La Fiandra advised you that he and his clients accepted the language proposed by me. (A copy of that letter is also enclosed.)

My concern is that the Order which was entered on August 16 could be construed as rendering the entire Opinion and Order of the Administrative Law Judge as null and void, including that part of the Opinion and Order which denied the relief initially sought by Plaintiffs (i.e. a flood plain waiver), from which Protestants took no appeal. Respectfully, the Order of Dismissal requires clarification so that the Petitioners do not have the opportunity to escape/avoid the consequences of that portion of the May 18, 2016 Opinion and Order which was adverse to them. That portion of the Opinion and Order should not be deemed or declared a nullity.

Please regard this correspondence as a motion to revise/amend and/or reconsider Order of Dismissal. I trust you understand and appreciate my need to bring this issue and request for clarification before you, particularly in light of Petitioners approval of the language proposed by me.

Many thanks for your kind attention to this matter.

Very truly yours,

Richard C. Burch

RCB/tyj

cc: Dino La Fiandra, Esquire (via e-mail and 1st class mail)
Peter Max Zimmerman, Esquire (via e-mail and 1st class mail)
Henry Kahn, Esquire
Marlene Trestman, Esquire

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August 17, 2017

Maureen E. Murphy, Chairperson
Baltimore County Board of Appeals
105 W. Chesapeake Avenue, Suite 203
Towson, Maryland 21204

Re: Case No. 2016-0060-SPH
7700 Crossland Road

Dear Ms. Murphy:

I am responding to Mr. Burch's letter to you of August 9. The Lehmanns' accept the proposed order offered by Mr. Burch.

Sincerely,

Dino C. La Fiandra

cc: Richard C. Burch, Esquire
Peter M. Zimmerman, Esquire

IN THE MATTER OF RICHARD AND SUSAN LEHMANN LEGAL OWNERS AND PETITIONERS FOR SPECIAL HEARING ON THE PROPERTY LOCATED AT 7700 CROSSLAND ROAD	*	BEFORE THE BOARD OF APPEALS OF
3RD ELECTION DISTRICT 2ND COUNCILMANIC DISTRICT	*	BALTIMORE COUNTY
	*	CASE NO.: 16-060-SPH

* * * * * * * * * * *

ORDER OF DISMISSAL

This matter comes to the Board of Appeals by way of an appeal filed by Richard C. Burch, Esquire on behalf of Henry Kahn and Marlene Trestman, Protestants and Appellants, from a decision of the Administrative Law Judge dated May 18, 2016, in which the requested Petition for Special Hearing was denied.

The Board previously heard argument, and held a public deliberation on Motions to Dismiss filed by both parties. Both Motions to Dismiss were denied and the Board determined that a hearing on the merits of this case would be heard. A hearing was scheduled for April 25, 2017 and subsequently postponed by request of the Petitioners. No further hearing dates have been scheduled.

WHEREAS, pursuant to Board of Appeals Rule 3(b)(II), the Board is in receipt of a Notice of Voluntary Withdrawal and Dismissal of the Petition for Special Hearing, dated July 18, 2017 from Dino C. La Fiandra, Esquire, Counsel for Richard and Susan Lehmann, Petitioners, (a copy of which is attached hereto and made a part hereof); and

WHEREAS, said Notice requests that the Petition for Special Hearing taken in this matter be withdrawn as of July 18, 2017;

IT IS THEREFORE ORDERED this 16th day of August, 2017 by the Board

of Appeals of Baltimore County that the Petition for Special Hearing in Case No. 16-060-SPH be and the same is hereby **WITHDRAWN AND DISMISSED, with prejudice**, in accordance with Board of Appeals Rule 3.b.II, thereby rendering the May 18, 2016, Opinion and Order of the Administrative Law Judge as **null and void**.

BOARD OF APPEALS
OF BALTIMORE COUNTY

Maureen E. Murphy, Panel Chair

Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
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August 16, 2017

Dino C. La Fiandra, Esquire
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Towson, Maryland 21204

Richard C. Burch, Esquire
Mudd, Harrison & Burch, L.L.P.
401 Washington Avenue, Suite 900
Towson, Maryland 21204-4835

RE: In the Matter of: *Richard and Susan Lehmann*
Case No.: 16-060-SPH

Dear Counsel:

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,

Sunny Cannington /taz

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Duplicate Original Cover Letter
Enclosure

c: Richard and Susan Lehmann
Henry Kahn / Marlene Trestman
Richard E. Matz, P.E.
Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Deputy Administrative Officer and Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law

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RICHARD C. BURCH *
DOUGLAS W. BISER *
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* MEMBER OF MARYLAND BAR
+ MEMBER OF DISTRICT OF COLUMBIA BAR

JOHN E. MUDD
(1928-2003)

T. ROGERS HARRISON
(1949-1995)

August 9, 2017

HAND DELIVERY
Maureen E. Murphy, Esquire, Chairwoman
Baltimore County Board of Appeals
105 West Chesapeake Avenue, Suite 203
Towson, Maryland 21204

Re: Case No. 2016-0060-SPH
Property: 7700 Crossland Road

Dear Ms. Murphy:

Enclosed please find a proposed Order which I have revised slightly from the proposed Order which was forwarded to you on August 8 by Mr. La Fiandra. As you will see, I have simply added language which makes it clear that the relief granted to Petitioners by ALJ Beverungen is null and void and of no force and/or effect. That language should not be objectionable since Mr. La Fiandra's letter acknowledges that the Petitioners cannot cite the ALJ's Order as authority for a permit. The inclusion of the language proposed by me clarifies and memorializes that point.

Many thanks for your kind attention to this matter. For everyone's sake, I hope that the Board and the Protestants accept and adopt the Order as revised slightly by me.

Very truly yours,

Richard C. Burch

RCB/tyj

cc: Dino La Fiandra, Esquire (via e-mail and 1st class mail)
Peter Max Zimmerman, Esquire (via e-mail and 1st class mail)
Henry Kahn, Esquire
Marlene Trestman, Esquire

In the Matter of: 7700 Crossland Road Richard S. and Susan W. Lehmann, Legal Owners 3rd Election District 2nd Council District	BEFORE THE BOARD OF APPEALS FOR BALTIMORE COUNTY Case No. 2016-0060-SPH

AMENDED ORDER DISMISSING PETITION WITH PREJUDICE

Upon the Notice of Voluntary Withdrawal and Dismissal of Petition for Special Hearing filed by Richard and Susan Lehmann, Petitioners for Special Hearing, and in consideration of the correspondence of Richard C. Burch, counsel for Henry Kahn and Marlene Trestman, adjoining property owners, and of Dino C. La Fiandra, counsel for Mr. and Mrs. Lehmann, it is this ___ day of _____, 2017, **ORDERED** by the Board of Appeals for Baltimore County that the Petition for Special Hearing is **DISMISSED WITH PREJUDICE** in accordance with Board Rule 3(b)(2); and it is further

ORDERED that the relief granted to Petitioners in Opinion and Order dated May 18, 2016 (Administrative Law Judge Beverungen) is null and void and of no force and/or effect.

Maureen E. Murphy, Chairperson
Board of Appeals

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August 8, 2017

Maureen E. Murphy, Chairperson
Baltimore County Board of Appeals
105 W. Chesapeake Avenue, Suite 203
Towson, Maryland 21204

Re: Case No. 2016-0060-SPH
7700 Crossland Road

Dear Ms. Murphy:

As you know, I represent Richard and Susan Lehmann in the above-referenced matter. I am responding to Mr. Burch's letter to you of August 7.

Board Rule 3(b)(2) states:

> A request for withdrawal of a petition shall be filed in writing with the board. A petitioner who wishes to have a petition withdrawn and dismissed without prejudice shall withdraw the petition not less than 10 days before the scheduled hearing date. A petition that is withdrawn less than 10 days before the scheduled hearing date shall be dismissed with prejudice. A petition that is dismissed with prejudice under this paragraph may not be resubmitted for a period of 18 months after the dismissal.

The rule clearly allows a petitioner for zoning relief to unilaterally withdraw its petition at the Board level. While Mr. Burch is correct that the rule speaks in terms of a "request for withdrawal", the rule also speaks in the active voice about the Petitioner withdrawing the petition. "A petitioner who wishes to have a petition withdrawn and dismissed without prejudice shall withdraw the petition not less than 10 days before the scheduled hearing date." In this case, the Lehmanns withdrew their petition after 10 days before the hearing date. According to the rule, their petition shall be dismissed with prejudice.

Although a fair reading of the Rule suggests no further order of the Board is necessary, under the circumstances of this particular case, the Board should issue an order dismissing the case with prejudice in accordance with Rule 3(b)(2). Because the rule provides that a petition that is dismissed with prejudice may not be resubmitted for a period of 18 months after the dismissal, the Lehmanns respectfully request that the Board enter the order without further delay so the record is clear that the 18 month period has begun. However, in accordance with the rule, the order should be limited to a dismissal, with or without prejudice, as the case may be. In this case, an order dismissing the case with prejudice is appropriate. A proposed order is enclosed.

Mr. Burch continues to request an order denying all relief. Such an order would go well beyond the scope of Rule 3(b)(2), which at most allows the Board to enter an order dismissing the case, with or without prejudice as

the case may be. He is essentially asking the Board to do an end run around the entire hearing process and enter a summary judgment. The Lehmanns have withdrawn their petition and all requests for relief. They have acknowledged that they cannot cite the ALJ's order as authority for a permit. Any order granting or denying any relief would be inappropriate as the petition has been withdrawn and, even if it had not been withdrawn, there is no evidence of record from which the Board may conclude any entitlement to relief or otherwise. I understand Mr. Burch's zealous advocacy for his client's position, but procedurally there is just so much that the Board can do. Entering an order dismissing the case with prejudice is as far as Rule 3(b)(2) allows the Board to go.

Mr. Burch cites Maryland Rule 2-506(c), which governs voluntary dismissals in Circuit Court. This rule has no applicability to the case before the Board. There is no provision of law that adopts this Rule as a rule of the Board, or even a guide for the Board in circumstances where it might be helpful. Maryland Rule 2-506 speaks in terms of dismissing complaints, counterclaims, cross-claims, and third party claims before or after the opposing party has filed an answer. It allows conditions to be imposed upon the dismissal of these Circuit Court actions as justice may require when the dismissal of one claim may have an adverse impact on the ability of another party to pursue another claim in the same action. None of these pleadings or procedural mechanisms are present in the Board Rules, and Mr. Burch's clients have no outstanding claims or petitions in this case. Therefore Maryland Rule 2-506(c) has no value in this matter even as comparable or analogous to Board Rule 3(b)(2). Voluntary withdrawals of petitions before the Board of Appeals are governed exclusively by Board Rule 3(b)(2), which adequately addresses the issues in this case and calls for only an order dismissing the petition with prejudice.

Lastly, while both Mr. Burch and I, and our respective clients, have expressed a desire to not expend additional resources on the simple matter of this withdrawal of my clients' petition, by continuing to write letters to the Board which require responses, both Mr. Burch and his client are causing my client to incur unnecessary legal expenses. The Lehmanns respectfully ask the Board to dispose of this matter promptly without a hearing by entering the attached proposed order without delay.

Thank you for your work on this matter.

Sincerely,

Dino C. La Fiandra

cc: Richard C. Burch, Esquire
Peter M. Zimmerman, Esquire

MUDD, HARRISON & BURCH, L.L.P.
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JOHN E. MUDD
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(1949-1995)

August 7, 2017

HAND DELIVERY
Maureen E. Murphy, Esquire, Chairwoman
Baltimore County Board of Appeals
105 West Chesapeake Avenue, Suite 203
Towson, Maryland 21204

Re: Case No. 2016-0060-SPH
Property: 7700 Crossland Road

Dear Ms. Murphy:

I respond to Mr. La Fiandra's correspondence of July 24 to you. I apologize for my delay in responding, but Mr. La Fiandra's letter arrived after I had departed for a family vacation and I just returned to the office on Friday.

While I do not want to belabor the point, Mr. La Fiandra's position ignores the plain language and meaning of Board Rule 3(b)(2). That Rule provides that a Petitioner may file a **request** for the withdrawal of a petition with the Board. The Rule further provides, as Mr. La Fiandra correctly notes, that if a Petitioner wishes to have the petition withdrawn, without prejudice, that request must be made not less than 10 days before the scheduled hearing date. In this case, the request was made long after the scheduled hearing date and, therefore, as Mr. La Fiandra notes, the matter is to be dismissed with prejudice.

Notwithstanding Mr. La Fiandra's position, the Board needs to act upon the Petitioner's "request" and enter an appropriate order so as to memorialize the Board's final action on Petitioner's request. The Board retains jurisdiction for the purpose of entering an appropriate order.

I renew my request of the Board to enter an order consistent with my letter of July 20, 2017.

Thank you for your kind attention to this matter. While my clients certainly do not wish to expend any additional resources on this matter, they do want the matter to conclude appropriately, particularly in light of the resources they have been required to expend to date. They are deserving of the entry of an appropriate order which denies the Petitioners any relief, including that which was offered improvidently by Administrative Law

Judge Beverungen. Petitioners have elected to abandon its petition and the opportunity to "prove" its entitlement to the relief gratuitously offered by Administrative Law Judge Beverungen. The Board can certainly entered an order upon such terms and conditions as the Board deems proper similar to that which a Court is empowered to do under Maryland Rule 2-506(c). Petitioners do not have the unilateral authority to end the matter, without an appropriate order of the Board.

Thank you for your kind attention.

Very truly yours,

Richard C. Burch

RCB/tyj

cc: Dino La Fiandra, Esquire (via e-mail and 1st class mail)
Peter Max Zimmerman, Esquire (via e-mail and 1st class mail)
Henry Kahn, Esquire
Marlene Trestman, Esquire

In the Matter of: 7700 Crossland Road Richard S. and Susan W. Lehmann, Legal Owners 3rd Election District 2nd Council District	BEFORE THE BOARD OF APPEALS FOR BALTIMORE COUNTY Case No. 2016-0060-SPH

ORDER DISMISSING PETITION WITH PREJUDICE

Upon the Notice of Voluntary Withdrawal and Dismissal of Petition for Special Hearing filed by Richard and Susan Lehmann, Petitioners for Special Hearing, and in consideration of the correspondence of Richard C. Burch, counsel for Henry Kahn and Marlene Trestman, adjoining property owners, and of Dino C. La Fiandra, counsel for Mr. and Mrs. Lehmann, it is this ___ day of _____, 2017, **ORDERED** by the Board of Appeals for Baltimore County that the Petition for Special Hearing is **DISMISSED WITH PREJUDICE** in accordance with Board Rule 3(b)(2); and it is further

ORDERED that the relief granted to Petitioners in Opinion and Order dated May 18, 2016 (Administrative Law Judge Beverungen) is null and void and of no force and/or effect.

Maureen E. Murphy, Chairperson
Board of Appeals

In the Matter of: 7700 Crossland Road Richard S. and Susan W. Lehmann, Legal Owners 3rd Election District 2nd Council District	BEFORE THE BOARD OF APPEALS FOR BALTIMORE COUNTY Case No. 2016-0060-SPH

ORDER DISMISSING PETITION WITH PREJUDICE

Upon the Notice of Voluntary Withdrawal and Dismissal of Petition for Special Hearing filed by Richard and Susan Lehmann, Petitioners for Special Hearing, and in consideration of the correspondence of Richard C. Burch, counsel for Henry Kahn and Marlene Trestman, adjoining property owners, and of Dino C. La Fiandra, counsel for Mr. and Mrs. Lehmann, it is this _____ day of _____, 2017 ORDERED by the Board of Appeals for Baltimore County that the Petition for Special Hearing is DISMISSED WITH PREJUDICE in accordance with Board Rule 3(b)(2).

_____

Maureen E. Murphy, Chairperson
Board of Appeals

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July 24, 2017

Maureen E. Murphy, Chairperson
Baltimore County Board of Appeals
105 W. Chesapeake Avenue, Suite 203
Towson, Maryland 21204

Re: Case No. 2016-0060-SPH
7700 Crossland Road

Dear Ms. Murphy:

As you know, I represent Richard and Susan Lehmann in the above-referenced matter. Mr. and Mrs. Lehmann were the Petitioners before the Administrative Law Judge and the Appellees before the Board of Appeals. I am responding to Mr. Burch's letter to you of July 20.

This matter was initiated by the Lehmanns filing a Petition for Special Hearing before the Administrative Law Judge. The matter is now pending before the Board of Appeals on appeal by Mr. Burch's clients, the Kahns. By a Notice of Voluntary Withdrawal and Dismissal of Petition for Special Hearing dated July 18, 2017, the Lehmanns withdrew and dismissed the underlying Petition for Special Hearing, as it is their right to do under Board Rule 3(B)(2). Rule 3(B) states:

B.

1. An appeal may be withdrawn or dismissed at any time prior to the conclusion of the hearing on said appeal.

2. A request for withdrawal of a petition shall be filed in writing with the board. A petitioner who wishes to have a petition withdrawn and dismissed without prejudice shall withdraw the petition not less than 10 days before the scheduled hearing date. A petition that is withdrawn less than 10 days before the scheduled hearing date shall be dismissed with prejudice. A petition that is dismissed with prejudice under this paragraph may not be resubmitted for a period of 18 months after the dismissal.

In his letter, Mr. Burch asks "that the Board of Appeals enter an Order dismissing the case with prejudice, reversing the decision below that a floodplain waiver is not required, and denying the Petitioners any relief." [Emphasis in original.] As a preliminary matter, Rule 3(B) is self-executing. Pursuant to this Rule, a petitioner may withdraw a petition by filing a written request or notice with the Board. Thereafter, the matter is dismissed, with or without prejudice as the case may be, leaving the Board with no jurisdiction over the matter. Accordingly, the Board lacks authority to "reverse" the decision below or "deny" relief of any sort, as Mr. Burch requests, and the

Board should not enter an order purporting to do so. But more importantly, withdrawing and dismissing the underlying Petition for Special Hearing obviously withdraws all of the Lehmanns' requests for relief and essentially vacates the ALJ's Order. Accordingly, the Lehmanns cannot cite the ALJ's decision as authority for a permit. And, of course, because the case is dismissed and no longer before the Board, the Board is without authority to enter the order Mr. Burch requests.

Likewise, Mr. Burch asks that the Board enter an order dismissing the matter with prejudice. Such an order is not necessary because there already has been a hearing in this matter (February 9, 2017 before the Board of Appeals), and *according to the rule*, if the Petition is withdrawn later than 10 days prior to the hearing date, as is the case in here, the dismissal shall be with prejudice. That being said, the rule permits a petition dismissed with prejudice to be resubmitted after a period of 18 months, and the Lehmanns reserve their right to do so.

Lastly, Mr. Burch requests a hearing. The Lehmanns object to a hearing on this matter because it is unnecessary and costly, and the Lehmanns have dismissed the Petition on their own and they should not now be required to incur costs and spend time attending a hearing on a case which they have abandoned. The Lehmanns dismissed the Petition. According to the Rule, the dismissal is with prejudice. A hearing will serve no purpose.

Thank you for your work on this matter.

Sincerely,

Dino C. La Fiandra

cc: Richard Burch, Esquire
Peter Zimmerman, Esquire
Richard Lehmann, Esquire

Krysundra Cannington

From: Tammy McDiarmid
Sent: Friday, July 21, 2017 2:07 PM
To: Krysundra Cannington
Subject: Lehmann

Sunny,

Dino La Fiandra called. He received Mr. Burch's letter and will be filing a response no later than Tuesday.

Tammy A. Zahner. Legal Secretary
Board of Appeals of Baltimore County
Second Floor, Suite 203
105 West Chesapeake Avenue
Towson, Maryland 21204
(410) 887-3180
(410) 887-3182 (Fax)

MUDD, HARRISON & BURCH, L.L.P.
ATTORNEYS AT LAW
401 WASHINGTON AVENUE
SUITE 900
TOWSON, MARYLAND 21204-4835
410 828 1335
FAX 410 828 1042

RICHARD C. BURCH *
DOUGLAS W. BISER *
ANDREW JANQUITTO * +
MATTHEW P. LALUMIA *

* MEMBER OF MARYLAND BAR
+ MEMBER OF DISTRICT OF COLUMBIA BAR

JOHN E. MUDD
(1928-2003)

T. ROGERS HARRISON
(1949-1995)

July 20, 2017

HAND DELIVERY
Maureen E. Murphy, Esquire, Chairwoman
Baltimore County Board of Appeals
105 West Chesapeake Avenue, Suite 203
Towson, Maryland 21204

Re: Case No. 2016-0060-SPH
Property: 7700 Crossland Road

Dear Ms. Murphy:

As you know, I represent Henry Kahn and Marlene Trestman, Protestants, in the above-captioned matter.

Yesterday I received a paper entitled Lehmanns' Notice of Voluntary Withdrawal and Dismissal of Petition for Special Hearing. While pleased that the Lehmanns are not proceeding further, my clients respectfully request that the Board of Appeals enter an Order dismissing this matter with prejudice, reversing the decision below that a flood plain waiver is not required, and denying the Petitioners any relief.

As you will recall, this matter was scheduled for hearing on April 25, 2017, but it was postponed at the request of Petitioners. Mr. La Fiandra, counsel for the Petitioners, justified the postponement request as follows:

> "The extraordinary circumstances justifying the postponement are that the Board's Rulings in this case, which everyone seems to agree is very unusual, severely limit the Petitioners' case to a theory that they did not advance to the Administrative Law Judge in the hearing below and they need to determine whether it makes sense at this time to move forward on that theory."

Administrative Law Judge Beverungen improperly granted relief on a theory that Petitioners did not advance in the hearing before him (and, in our view, a theory not supported in law). Unless the Board of Appeals issues an Order disposing of the matter with prejudice and denying all relief, Petitioners could potentially try to obtain a permit by citing

Judge Beverungen's decision as authority for the permit. Please recall that Petitioners did not appeal Judge Beverungen's Opinion and Order adverse to them. Petitioners should not be able to terminate an appeal not initiated by them, elect not to proceed further before the Board of Appeals, salvage the ruling below, and thereby place themselves in a better legal positon to the disadvantage of Protestants, who did note a timely appeal.

Simply put, Petitioners may not be allowed potentially to benefit from an election not to proceed. That election must be documented and memorialized in a way which bars Petitioners from proceeding in the future on the theory that no flood plain waiver is required and using Judge Beverungen's Opinion and Order to support that proposition.

I respectfully request that the Board of Appeals enter a formal order which dismisses the matter with prejudice, reverses the Opinion and Order on the sole remaining issue before the Board of appeals and denies Petitioners any relief. I submit that Petitioners should have no objection to my request, unless they seek an advantage by electing not to proceed further on appeal.

Thank you for your kind attention to this matter. I send this correspondence in the interests of time and efficiency. Please accept it as a formal motion. I also request a brief conference/hearing before the Board of Appeals to address these issues should Petitioners object to my request. Many thanks again.

Very truly yours,

Richard C. Burch

RCB/tyj

cc: Dino La Fiandra, Esquire
Peter Max Zimmerman, Esquire
Henry Kahn, Esquire
Marlene Trestman, Esquire

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of July, 2017, a copy of the foregoing correspondence was sent via e-mail to dlafiandria@pklaw.com and mailed to Dino LaFiandra, Esquire, Pessin Katz Law, P.A., 901 Dulaney Valley Road, Suite 500, Towson, Maryland 21204, attorney for Petitioners and Peter M. Zimmerman, Esquire, Peoples' Counsel, 105 W. Chesapeake Avenue, Suite 204, Towson, Maryland 21204.

Richard C. Burch

In the Matter of: 7700 Crossland Road Richard S. and Susan W. Lehmann, Legal Owners 3rd Election District 2nd Council District	BEFORE THE BOARD OF APPEALS FOR BALTIMORE COUNTY Case No. 2016-0060-SPH

LEHMANNS' NOTICE OF VOLUNTARY WITHDRAWAL AND DISMISSAL

OF PETITION FOR SPECIAL HEARING

PURSUANT TO Board of Appeals' Rule 3.b.2, the Richard S. and Susan W. Lehmann, Petitioners for Special Hearing (Appellees before the Board) provide notice of their withdrawal and dismissal of the Petition for Special Hearing.

Respectfully submitted,

7/18/17
Date

Dino C. La Fiandra
Pessin Katz Law, P.A.
901 Dulaney Valley Road, Suite 500
Towson, Maryland 21204
(410) 938-8705
dlafiandra@pklaw.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18 day of July, 2017, a copy of the foregoing Notice of Dismissal without Prejudice was sent via first-class mail, postage pre-paid, to Richard C. Burch, Mudd, Harrison & Burch, L.L.P., 401 Washington Avenue, Suite 900, Towson, Maryland 21204, attorneys for Protestants and Peter M. Zimmerman, People's Counsel, 105 W. Chesapeake Avenue, Suite 204, Towson, Maryland 21204.

Dino La Fiandra

Board of Appeals of Baltimore County

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

April 24, 2017

NOTICE OF POSTPONEMENT

IN THE MATTER OF: Richard and Susan W. Lehmann
1100 Crossland Road
16-060-SPH 3rd Election District; 2nd Councilmanic District

Re: Petition for Special Hearing pursuant to Baltimore County Zoning Regulation Section 500.7 for a waiver to rebuild an existing enclosed porch in a riverine floodplain.

5/18/16 Opinion and Order issued by the Administrative Law Judge wherein the requested relief was DENIED

This matter was assigned for Tuesday, April 25, 2017 and has been postponed. It will be rescheduled to a later date.

NOTICE:

- This appeal is an evidentiary hearing. Parties should consider the advisability of retaining an attorney.
- Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.
- No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).
- If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

NEW! Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits (including video and PowerPoint) with the Board unless otherwise requested.

NEW! Projection equipment for digital exhibits is available by request. A minimum of forty-eight (48) hours-notice is required. Supply is limited and not guaranteed.

For further information, including our inclement weather policy, please visit our website www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington, Administrator

---

c: Counsel for Petitioner/Legal Owner : Dino C. LaFiandra, Esquire
Petitioner/Legal Owner : Richard and Susan Lehmann

Counsel for Protestants : Richard C. Burch, Esquire
Protestants : Henry Kahn and Marlene Trestman

Richard E. Matz, P.E./Colbert, Matz, Rosenfelt, Inc.

Office of People's Counsel
Arnold Jablon, Director/PAI
Nancy West, Assistant County Attorney

Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Michael Field, County Attorney, Office of Law

Board of Appeals of Baltimore County

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

April 24, 2017

SENT VIA EMAIL AND REGULAR MAIL

Dino C. La Fiandra, Esquire
Pessin Katz Law, P.A.
901 Dulaney Valley Road, Ste 500
Baltimore, Maryland 21204

Re: In the matter of: Richard and Susan Lehmann
Case No: 16-060-SPH

Dear Mr. La Fiandra:

We are in receipt of your request for postponement. Please be advised that your request has been granted. The hearing scheduled for Tuesday, April 25, 2017 is hereby postponed and a Notice of Postponement has been enclosed.

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

Very truly yours,

Sunny Cannington

Krysundra "Sunny" Cannington
Administrator

Enclosure

cc: Richard C. Burch, Esquire (Sent via email and regular mail.)

Krysundra Cannington

From: Krysundra Cannington
Sent: Monday, April 24, 2017 8:32 AM
To: 'Dino La Fiandra'; Teri Jarrard
Cc: Peter Max Zimmerman
Subject: RE: Case No. 16-060-SPH - Richard and Susan Lehmann
Attachments: Notice of Postponement of 4-25-17 hearing.pdf; Ltr to Counsel granting Postponement.pdf

Good morning,

Attached please find a Notice of Postponement and cover letter. Please be advised that these documents are also being issued by regular mail.

If I have not heard from you, I will follow up in 60 days.

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

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
410-887-3180

From: Dino La Fiandra [mailto:dlafiandra@pklaw.com]
Sent: Friday, April 21, 2017 4:11 PM
To: Teri Jarrard <TJ@mhblaw.com>; Krysundra Cannington <kcannington@baltimorecountymd.gov>
Cc: Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov>
Subject: RE: Case No. 16-060-SPH - Richard and Susan Lehmann

Sunny,

In response to Mr. Burch's email below, of course the Lehmanns will not proceed with construction while the case is pending.

Thank you and have a nice weekend.
Dino

Dino C. La Fiandra
Member
901 Dulaney Valley Road | Suite 500 | Towson, MD | 21204
Direct Dial: 410.938.8705 | Direct Fax: 410.832.5651 | Mobile: 443-204-3473
dlafiandra@pklaw.com | About Us | Attorney Bio | Download V-Card

PK LAW

Krysundra Cannington

From: Dino La Fiandra <dlafiandra@pklaw.com>
Sent: Friday, April 21, 2017 4:11 PM
To: Teri Jarrard; Krysundra Cannington
Cc: Peter Max Zimmerman
Subject: RE: Case No. 16-060-SPH - Richard and Susan Lehmann

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Dino

Dino C. La Fiandra
Member
901 Dulaney Valley Road | Suite 500 | Towson, MD | 21204
Direct Dial: 410.938.8705 | Direct Fax: 410.832.5651 | Mobile: 443-204-3473
dlafiandra@pklaw.com | About Us | Attorney Bio | Download V-Card

PK LAW

From: Teri Jarrard [mailto:TJ@mhblaw.com]
Sent: Friday, April 21, 2017 3:31 PM
To: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Cc: Dino La Fiandra <dlafiandra@pklaw.com>; Kahn, Henry D. <henry.kahn@hoganlovells.com>; marlenetrestman@gmail.com; Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov>
Subject: Case No. 16-060-SPH - Richard and Susan Lehmann

Sunny:

My clients and I have no objection to the Lehmann's request for postponement of the April 25 hearing; provided that we have assurances that the Lehmanns will not attempt to proceed with any construction while this matter remains pending. I have tried to speak with Mr. La Fiandra, but I have not been able to catch up with him. I will keep trying.

Thank you and the Board for your kind consideration of this matter.

Richard C. Burch
Mudd, Harrison & Burch, LLP
401 Washington Avenue, Suite 900
Towson, Maryland 21204
(410) 828-1335 – Phone
(410) 828-1042 – Fax
rcb@mhblaw.com

Krysundra Cannington

From: Teri Jarrard <TJ@mhblaw.com>
Sent: Friday, April 21, 2017 3:31 PM
To: Krysundra Cannington
Cc: Dino La Fiandra (dlafiandra@pklaw.com); Kahn, Henry D.; marlenetrestman@gmail.com; Peter Max Zimmerman
Subject: Case No. 16-060-SPH - Richard and Susan Lehmann

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Richard C. Burch
Mudd, Harrison & Burch, LLP
401 Washington Avenue, Suite 900
Towson, Maryland 21204
(410) 828-1335 – Phone
(410) 828-1042 – Fax
rcb@mhblaw.com

PK LAW

901 DULANEY VALLEY ROAD
SUITE 500
BALTIMORE, MD 21204

BALTIMORE COLUMBIA BEL AIR

TELEPHONE 410-938-8800
FAX 410-832-5600
PKLAW.COM

Dino C. La Fiandra
Telephone: 410.938.8705
Facsimile: 410.832.5651
DLaFiandra@PKLaw.com

April 20, 2017

Maureen Murphy, Chairman
Baltimore County Board of Appeals
105 West Chesapeake Avenue, #203
Towson, MD 21204

Re: Case No. 2016-0060-SPH
Property: 7700 Crossland Road

Dear Ms. Murphy:

As you know, I represent Richard and Susan Lehmann in the above referenced matter. Mr. and Mrs. Lehmann were the Petitioners in the Petition for Special Hearing before the Administrative Law Judge and are the Respondents/Appellees in the matter before the Board of Appeals. The matter is scheduled for hearing on April 25th.

On behalf of my clients, I respectfully request a postponement of the April 25th hearing. My clients are evaluating whether to proceed with the Petition before the Board in light of the Board's rulings on the various motions to dismiss. The extraordinary circumstances justifying the postponement are that the Board's rulings in this case which everyone seems to agree is very unusual severely limit the Petitioners' case to a theory that they did not advance to the Administrative Law Judge in the hearing below, and they need to determine whether it makes sense at this time to move forward on that theory. I further note that there would be no prejudice to any party if a postponement were granted.

Thank you for your consideration.

Sincerely,

Dino La Fiandra

cc: Richard Burch, Esquire
Richard and Susan Lehmann
Peter M. Zimmerman, Esquire

PK LAW

901 DULANEY VALLEY ROAD
SUITE 500
BALTIMORE, MD 21204

BALTIMORE COLUMBIA BEL AIR

TELEPHONE 410-938-8800
FAX 410-832-5600
PKLAW.COM

Dino C. La Fiandra
Telephone: 410.938.8705
Facsimile: 410.832.5651
DLaFiandra@PKLaw.com

April 20, 2017

Maureen Murphy, Chairman
Baltimore County Board of Appeals
105 West Chesapeake Avenue, #203
Towson, MD 21204

PC No objection

8:40

Re: Case No. 2016-0060-SPH
Property: 7700 Crossland Road

Dear Ms. Murphy:

As you know, I represent Richard and Susan Lehmann in the above refe
Mrs. Lehmann were the Petitioners in the Petition for Special Hearing before th
Judge and are the Respondents/Appellees in the matter before the Board of Ap
scheduled for hearing on April 25th.

On behalf of my clients, I respectfully request a postponement of the April 25th hearing. My clients are evaluating whether to proceed with the Petition before the Board in light of the Board's rulings on the various motions to dismiss. The extraordinary circumstances justifying the postponement are that the Board's rulings in this case which everyone seems to agree is very unusual severely limit the Petitioners' case to a theory that they did not advance to the Administrative Law Judge in the hearing below, and they need to determine whether it makes sense at this time to move forward on that theory. I further note that there would be no prejudice to any party if a postponement were granted.

Thank you for your consideration.

Sincerely,

Dino La Fiandra

cc: Richard Burch, Esquire
Richard and Susan Lehmann
Peter M. Zimmerman, Esquire

1898623_1

Krysundra Cannington

From: Dino La Fiandra <dlafiandra@pklaw.com>
Sent: Thursday, April 20, 2017 2:43 PM
To: Krysundra Cannington
Cc: Richard Burch; Peoples Counsel
Subject: Lehmann 2016-0060-SPH
Attachments: Board of Appeals re_ postponement.PDF

Ms. Cannington,

Attached please find a letter seeking a postponement of the hearing in the Lehmann matter presently scheduled for April 25. I have copied counsel and everyone will be receiving hard copies in the mail as well.

Thank you.
Dino La Fiandra

Dino C. La Fiandra
Member
901 Dulaney Valley Road | Suite 500 | Towson, MD | 21204
Direct Dial: 410.938.8705 | Direct Fax: 410.832.5651 | Mobile: 443-204-3473
dlafiandra@pklaw.com | About Us | Attorney Bio | Download V-Card

PK LAW

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Richard and Susan Lehmann 16-060-SPH

DATE: March 23, 2017

BOARD/PANEL: Maureen E. Murphy, Panel Chairman
James H. West
Joseph L. Evans

RECORDED BY: Tammy A. McDiarmid, Legal Secretary

PURPOSE: To deliberate the following:

1) Protestants' Motion to Dismiss Petition for Special Hearing; or, alternatively, Motion for Summary Judgment/Decision filed by Richard C. Burch, Esquire; and
2) Motion to Dismiss Appeal filed by Dino C. La Fiandra, Esquire on behalf of Petitioners.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- The Board reviewed the Motions to Dismiss and discussed the reasoning for each request. The ALJ denied the Petitioner's Petition for Special Hearing for waiver to rebuild an existing enclosed porch in a riverine floodplain, but determined that pursuant to BCC a waiver is not required for reconstruction and repair of existing buildings as long as it does not exceed 50% of fair market value of the structure.
- The Board discussed the question of what issue is before the Board? The Petitioners did not appeal the denial of their Petition for Special Hearing. However, the Protestants filed an appeal, but did not specify what they were appealing. The appeal was filed under Section 500.10, as being aggrieved by the ALJ's Decision. The Board agreed to that the only issue before it was whether a waiver was necessary.
- The Board determined that when the ALJ hears a case, he has the authority to interpret regulations and therefore can expand the issue filed in the Petitioner under the *Halle* case. The Board has the same authority granted to the ALJ and therefore we can hear that issue.
- The Board noted that this case is to be heard *de novo*, and the Board will make written findings of fact.

FINAL DECISION: After thorough review of the facts and law in the matter, the Board unanimously agreed to DENY the Motion to Dismiss, and hold a hearing to take evidence and testimony on the waiver issue only.

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

Respectfully Submitted,

Tammy A. McDiarmid

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 14, 2017

NOTICE OF PUBLIC DELIBERATION AND ASSIGNMENT OF DAY 2 (if necessary)

IN THE MATTER OF: Richard and Susan W. Lehmann
1100 Crossland Road
16-060-SPH 3rd Election District; 2nd Councilmanic District

Re: Petition for Special Hearing pursuant to Baltimore County Zoning Regulation Section 500.7 for a waiver to rebuild an existing enclosed porch in a riverine floodplain.

5/18/16 Opinion and Order issued by the Administrative Law Judge wherein the requested relief was DENIED

The Board heard argument on Motions to Dismiss and responses thereto, on Thursday, February 9, 2017. The public deliberation on the Motions in this matter has been

SCHEDULED FOR: THURSDAY, MARCH 23, 2017 AT 9:00 A.M.

By request of Counsel, in the event this matter is not dismissed through either of the above referenced Motions and it is necessary, the hearing on this matter has been

ASSIGNED FOR: TUESDAY, APRIL 25, 2017 AT 10:00 A.M. – Day 2 (if necessary)

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

NOTICE:

- This appeal is an evidentiary hearing. Parties should consider the advisability of retaining an attorney.
- Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.
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Krysundra "Sunny" Cannington, Administrator

c: Counsel for Petitioner/Legal Owner : Dino C. LaFiandra, Esquire
Petitioner/Legal Owner : Richard and Susan Lehmann

Counsel for Protestants : Richard C. Burch, Esquire
Protestants : Henry Kahn and Marlene Trestman

Richard E. Matz, P.E./Colbert, Matz, Rosenfelt, Inc.

Office of People's Counsel
Arnold Jablon, Director/PAI
Nancy West, Assistant County Attorney

Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Michael Field, County Attorney, Office of Law

Krysundra Cannington

From: Dino La Fiandra <dlafiandra@pklaw.com>
Sent: Monday, February 13, 2017 12:52 PM
To: Rebecca Wheatley; Richard Burch; Krysundra Cannington
Cc: Kahn, Henry D.; marlenetrestman@gmail.com
Subject: RE: Lehmann Day 2

Sunny,

My client and I are available on 4/25 as well. Thanks for your help.

Dino

Dino C. La Fiandra
Member
901 Dulaney Valley Road | Suite 500 | Towson, MD | 21204
Direct Dial: 410.938.8705 | Direct Fax: 410.832.5651 | Mobile: 443-204-3473
dlafiandra@pklaw.com | About Us | Attorney Bio | Download V-Card

PK LAW®

From: Rebecca Wheatley [mailto:rwheatley@baltimorecountymd.gov]
Sent: Monday, February 13, 2017 11:11 AM
To: Richard Burch; Krysundra Cannington; Dino La Fiandra
Cc: Kahn, Henry D.; marlenetrestman@gmail.com
Subject: RE: Lehmann Day 2

Sunny,

Pete is available April 12, 13 and 25th .

Rebecca

From: Richard Burch [mailto:RCB@mhblaw.com]
Sent: Monday, February 13, 2017 11:01 AM
To: Krysundra Cannington <kcannington@baltimorecountymd.gov>; Dino La Fiandra, Esquire <dlafiandra@pklaw.com>; Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov>
Cc: Rebecca Wheatley <rwheatley@baltimorecountymd.gov>; Kahn, Henry D. <henry.kahn@hoganlovells.com>; marlenetrestman@gmail.com
Subject: RE: Lehmann Day 2

Sunny:

Mr. Burch and our clients are available on April 25.

HAVE A GREAT DAY!
Teri Jarrard

Krysundra Cannington

From: Richard Burch <RCB@mhblaw.com>
Sent: Monday, February 13, 2017 11:01 AM
To: Krysundra Cannington; Dino La Fiandra, Esquire; Peter Max Zimmerman
Cc: Rebecca Wheatley; Kahn, Henry D.; marlenetrestman@gmail.com
Subject: RE: Lehmann Day 2

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Teri Jarrard
Assistant to Richard C. Burch
Mudd, Harrison & Burch, LLP
401 Washington Avenue, Suite 900
Towson, Maryland 21204
(410) 828-1335 – Phone
(410) 828-1042 – Fax
TJ@mhblaw.com

From: Krysundra Cannington [mailto:kcannington@baltimorecountymd.gov]
Sent: Monday, February 13, 2017 10:17 AM
To: Dino La Fiandra, Esquire; Richard Burch; Peter Max Zimmerman
Cc: Rebecca Wheatley
Subject: Lehmann Day 2

Good morning Counsel,

Please be advised the following dates are currently available for Day 2 in the Lehmann matter. April 11, 12, 13, 18, and 25, 2017. Any hearing scheduled would begin at 10:00 a.m.

Please advise as soon as possible regarding your availability on these dates.

Thank you,

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
Phone: 410-887-3180
Fax: 410-887-3182

Krysundra Cannington

From: Rebecca Wheatley
Sent: Monday, February 13, 2017 11:11 AM
To: Richard Burch; Krysundra Cannington; Dino La Fiandra, Esquire
Cc: Kahn, Henry D.; marlenetrestman@gmail.com
Subject: RE: Lehmann Day 2

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Rebecca

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To: Krysundra Cannington <kcannington@baltimorecountymd.gov>; Dino La Fiandra, Esquire <dlafiandra@pklaw.com>; Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov>
Cc: Rebecca Wheatley <rwheatley@baltimorecountymd.gov>; Kahn, Henry D. <henry.kahn@hoganlovells.com>; marlenetrestman@gmail.com
Subject: RE: Lehmann Day 2

Sunny:

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HAVE A GREAT DAY!
Teri Jarrard
Assistant to Richard C. Burch
Mudd, Harrison & Burch, LLP
401 Washington Avenue, Suite 900
Towson, Maryland 21204
(410) 828-1335 – Phone
(410) 828-1042 – Fax
TJ@mhblaw.com

From: Krysundra Cannington [mailto:kcannington@baltimorecountymd.gov]
Sent: Monday, February 13, 2017 10:17 AM
To: Dino La Fiandra, Esquire; Richard Burch; Peter Max Zimmerman
Cc: Rebecca Wheatley
Subject: Lehmann Day 2

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Krysundra Cannington

From: Krysundra Cannington
Sent: Monday, February 13, 2017 10:17 AM
To: Dino La Fiandra, Esquire; Richard C. Burch Esquire (rcb@mhblaw.com); Peter Max Zimmerman
Cc: Wheatley, Rebecca
Subject: Lehmann Day 2

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Please advise as soon as possible regarding your availability on these dates.

Thank you,

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
Phone: 410-887-3180
Fax: 410-887-3182

Board of Appeals

Case No: 2016-0060-SPH Case Name: In the matter of: 7700 Crossland Road

Exhibit List

Party: People's Counsel Date: 2/9/17

Exhibit No:	Description:
1	Baltimore County Master Plan 2020
	VERIFIED BY _____ DATE: _____

2/13/17 KC ✓

People's Counsel
CBA Exhibit

1

Baltimore County, Maryland

MASTER PLAN2020

INTRODUCTION

The present and future needs of our citizens with respect to the economy, community and the environment will be protected and enhanced by actions proposed in this plan, with the intention of achieving a sustainable community.

The general purpose of *Master Plan 2020* is to guide the coordinated, adjusted, and harmonious development of Baltimore County. Policies and actions proposed herein will promote public health, safety, morals, order, convenience, prosperity and the general welfare. Although a few proposed actions are required by state law, generally the policies and actions stated in *Master Plan 2020* are not mandatory and do not control or limit the County governing body. They serve, as do all of the statements of the Master Plan, as a guide for the County's governing body. This plan will build on the successful concepts and strategies of previous plans, and will strengthen these long-term goals using a framework of sustainability. The present and future needs of our citizens with respect to the economy, community and the environment will be protected and enhanced by actions proposed in this plan, with the intention of achieving a sustainable community.

The County Executive and the County Council acknowledge the importance of the master plan as an advisory tool for ensuring rational and orderly development. The policy decisions of the Council, expressed through its law-making powers, are the means to fulfilling the evolving needs of the County and the citizens. *Master Plan 2020* is intended to guide the County Executive, the Council, and the government agencies in accomplishing the visions and goals of the plan. However, in certain limited circumstances, the plan may be more than just a guide. In response to a recent court decision, the Maryland General Assembly revised Article 66B of the Annotated Code of Maryland. The code essentially describes how applicable regulations and ordinances promulgated by local jurisdictions shall be consistent with specific items in the plan. (§ 1.02 Consistency with comprehensive plans, Article 66B. Annotated Code of Maryland)

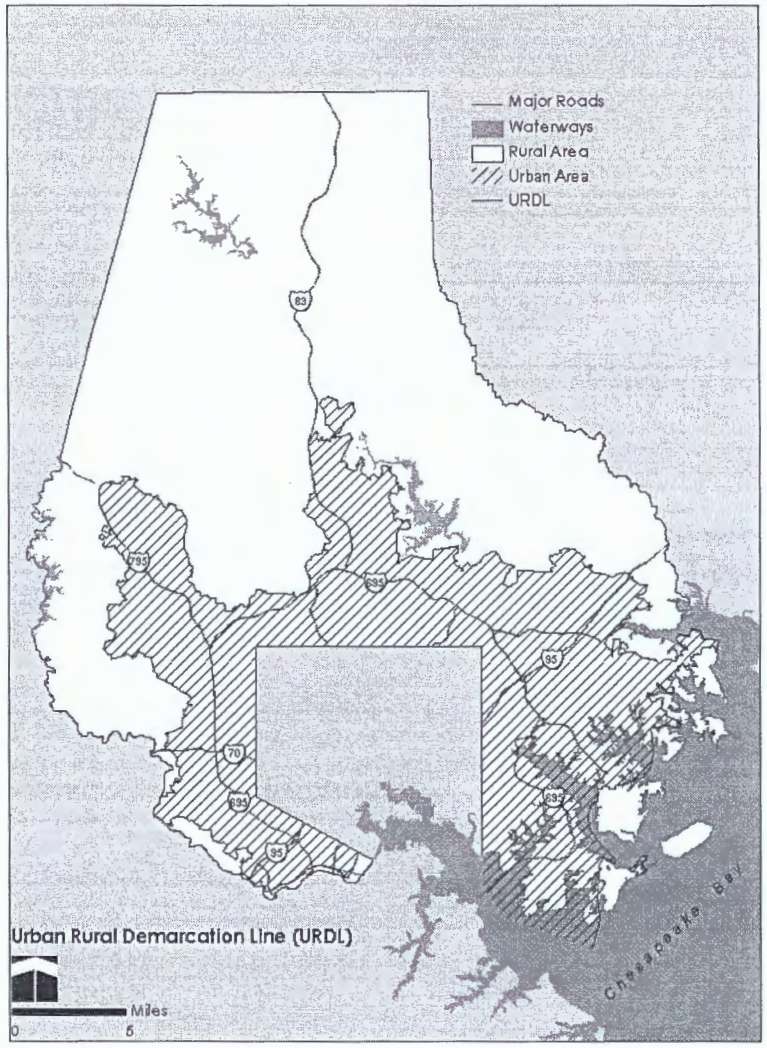
Several other mandates, including Federal, State, and local regulations affect *Master Plan 2020*. First, the Baltimore County Charter requires that a master plan be prepared and adopted every 10 years (§ 522.1 et. seq.). Additionally, details on required and optional contents of the plan are described in the Baltimore County Code (§ 32-2-202 et. seq.). Article 66B of the Annotated Code of Maryland, which is quite specific about elements required in local master plans, lists twelve new visions to be implemented to ensure a sustainable future for all jurisdictions in Maryland. This State Code was further revised to require a Water Resources Element (WRE) be included in the plan. The WRE is an examination of existing and future impacts of land development on all water resources in the County. Based on the results of this study, the proposed policies and actions in this plan are selected that will best help ensure the County will meet pollutant loading reductions in stormwater runoff and wastewater, and drinking water supplies will be safe and adequate. The WRE is included in *Master Plan 2020*. Finally, in compliance with Article 66B, a priority preservation element was recently added to *Master Plan 2010*, to ensure protection of the agricultural industry and the rural areas. The latter element is continued in this plan.

Success of Current and Past Master Plans

The first formal master plan, the *1980 Guideplan for Baltimore County, Maryland*, was adopted in 1972. Its philosophy was to accommodate growth and development in an orderly, environmentally sensitive manner, with adequate open space. Subsequent plans, the *Baltimore County Comprehensive Plan, 1975* and the *Baltimore County Master Plan 1979-1990* reorganized land use and development planning into a comprehensive growth management program. The 1975 plan resulted in the creation and adoption of urban and rural zoning. Two growth areas, Owings Mills and Perry Hall-White Marsh, were designated in the 1979 plan. The *Baltimore County Master Plan 1989-2000* created specific land management areas and policies that included growth areas, urban centers, community conservation areas, employment areas, and various rural land management areas.

Baltimore County is a national showcase in resource management and balanced growth, by successfully implementing *Master Plan 2010*, and the precedent master plans. The residential construction and redevelopment within the Urban-Rural Demarcation Line (URDL)(Map 1), first described in 1967, illustrate that the County excels in conserving its urban and rural communities by revitalizing existing communities and directing new development into the County's two designated growth areas. Water and sewer planning to allow those public utilities only in urban areas ensures development is concentrated inside the URDL, thus reducing sprawl. The noteworthy concentration of population and employment within the community conservation areas, and development in Owings Mills and Perry Hall-White Marsh, reflects the extraordinary effort on rational, aesthetic, and environmentally sustainable growth. *The Plan for the Valleys*, prepared and published in 1964 by the Green Spring and Worthington Valley Planning Council Incorporated, won the 2010 American Planning Association's National Planning Landmark Award. The Plan is the first long-range development plan based on the application of principles of ecological determinism to direct growth away from sensitive ecological features.

Map 1: Urban Rural Demarcation Line



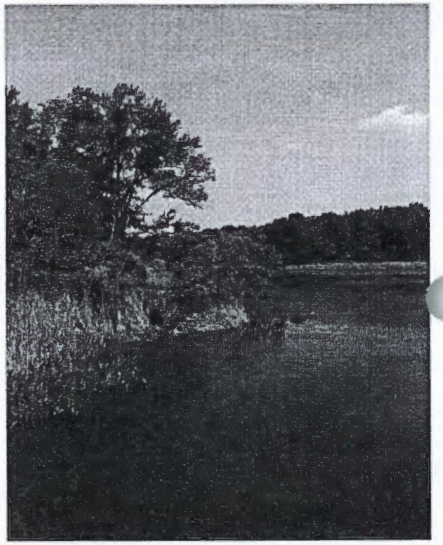
Since 2000, the County adopted and implemented amendments to the Comprehensive Manual of Development Policies (CMDP), new Resource Conservation (RC) zone designations, Renaissance Initiatives, the Adequate Public Facility Ordinance (APFO), and Planned Unit Development (PUD) regulations. These efforts continue to enhance quality design, high density, and efficient development in accordance with the Maryland Smart Growth Legislation. The County also strongly promotes large-scale redevelopment and new urbanist, or mixed-use development projects within its urban communities.

Furthermore, success is demonstrated in the economic development strategies to retain zoning districts for commercial and industrial expansion, by directing business development to the designated growth areas, commercial revitalization districts, enterprise zones, and employment centers. These policies are balanced with community conservation through programs that accentuate community empowerment, public/private partnerships, and coordination of public/private actions. Maintaining and strengthening the vibrancy of residential and business communities throughout the urban county is being achieved, and will be continued by *Master Plan 2020*.

Many advances in restoring, preserving and protecting our natural resources are continuing with policies and actions carried forward from precedent master plans. More than 55,000 acres of significant agricultural properties are preserved in perpetual easements available through various programs being administered by the Department of Environmental Protection and Resource Management (DEPRM). Stream restorations, retrofitting stormwater management facilities, tree plantings, establishment of stream buffers and forest conservation easements are successful and will continue to protect and enhance our natural resources.

Future Development

Over the next decade and beyond, the county must focus on where and how development occurs. This need is directed by State court decisions asserting that each jurisdiction must accommodate its fair share of population and employment increases. Although the rate of population increase is predicted to be slow, it



is estimated there will be 30,000 additional people living in Baltimore County in the next decade, with approximately 32,000 to 33,000 new jobs by 2020. Using policies and actions proposed by *Master Plan 2020*, this amount of growth can be accommodated with sustainable design at appropriate sites.

There are locations where growth and development should not occur. These sites may be of special concern or significance, such as agricultural properties, tracts within Chesapeake Bay Critical Areas, places near drinking water supply reservoirs, and other parcels with environmental resources. Some very localized parts of the County may have seriously inadequate infrastructure, such as insufficient public sewer capacity or over-crowded schools that make these sites unsuitable for additional density, unless these deficiencies are corrected. Many existing stable residential neighborhoods should not be disturbed for additional development. Most of these communities will be protected, with some in need being enhanced with physical improvements such as, schools, parks, open spaces, and, in some cases, enriched by amenities provided by nearby redevelopments.

The majority of future growth will be in the form of redevelopment because most of the land within the urbanized portion of the County is already developed. Larger, one-story buildings with huge unused parking lots present great opportunities for redevelopment as compact, mixed-use walkable communities. The areas most suitable for growth are typically located along major roads in commercial corridors, in or adjacent to existing town centers, or on older industrial and warehouse properties. The most ideal sites to accommodate future growth will have adequate public infrastructure already in place. Other criteria include the possibility for a good mix of residential, office, retail and other uses, potential for walkable and sustainable design, proximity to existing or proposed public transit, and with civic services, amenities, and employment opportunities on the sites or very close. The term Community Enhancement Areas (CEAs) is used to identify these new, sustainable communities. A detailed description of the proposed CEAs, their function, and the overall effect on the economy, community and environment is presented in the *Sustainable Communities* chapter in this plan.

Master Plan 2020 introduces the concept of transect-based planning to guide development. The concept was used to formulate the proposed land use maps for Baltimore County. Identifying a range of habitats from the most natural to the most urban, transects may be used as a framework for creation of zoning categories. The habitats are divided into six transect zones that are defined by the level and intensity of their physical and social character. One very important principle of this planning concept is that certain forms and elements are appropriate in specific environments. For example, a large apartment building belongs in an urban area, while a ranch house is more suitable in a rural setting. Additionally, the transect concept recognizes more flexibility of uses and building types that support mixed-use development. A land use map and zoning categories based on transects will allow citizens to be better aware of the form that future development will take. Transect-based planning is more fully described in the *Sustainable Communities* chapter in this plan.

"To be truly successful in any community, planning must have the understanding and support of the people it serves. Staff members of the Office of Planning speak frequently before community groups, and the Office itself, with its collection of maps and other data in the County Building, is a clearing house for information that is open to everyone."

Excerpt from: 1958 Report of Programs and Progress, Baltimore County Office of Planning, December 1958

Citizen Participation

A significant key to the success of any proposal is the involvement of all stakeholders. Baltimore County is strongly committed to providing every opportunity for participation by any interested citizen, businessperson, property owner and government entity in the development/redevelopment process. It is very important to instill a sense of stewardship: with encouragement and support, the citizens will have an integral role in the creation of sustainable developments through collaborative efforts. At the very genesis of any proposals, the County will facilitate meetings with all stakeholders, soliciting comments and suggestions from all who will contribute.

Process

In November 2007, the Office of Planning convened an interagency committee to begin developing *Master Plan 2020*. Representatives from the following agencies served on this committee:

(1) Department of Environmental Protection and Resource Management (DEPRM)

SUSTAINABLE ENVIRONMENT

Environmental sustainability means using natural resources wisely to meet current needs without degrading the supply and quality of those resources for the future.

The goal of a sustainable environment supports Baltimore County's vision for community vibrancy and economic vitality. Environmental sustainability means using natural resources wisely to meet current needs without degrading the supply and quality of those resources for the future. Natural resources and air quality are essential to economic growth, environmental protection, energy conservation, and quality of life. Natural resources, especially forests and wetlands that comprise the green infrastructure, provide valuable ecosystem services including cleaning air and water. Sustainability also assures habitat protection for terrestrial and aquatic wildlife and genetic diversity.

Baltimore County's environmental mission is to protect and perpetuate the natural resources of the County and to protect environmental health. Over the past 20 years, the County's Department of Environmental Protection and Resource Management (DEPRM) has established and implemented programs to protect critical natural resources, restore ecosystem functions, and educate citizens about good stewardship. While the County's environmental programs are nationally recognized, the pollution from sprawl development and unmanaged agricultural activities, as well as the continued loss of forests, requires significant changes to land use practices under new federal and State programs to restore the health of the Chesapeake Bay. *Master Plan 2020* builds upon past successes and recommends new policies to address emerging environmental challenges such as climate change.

Overall, both the biggest challenge and the most important reason for the County to serve as a catalyst for good resource management is the fact that 85% of the land area and resources in Baltimore County, depended upon and enjoyed by all, are privately owned. DEPRM uses an integrated watershed management framework to accomplish its mission, including land preservation, resource protection/ regulation, restoration, facility maintenance, monitoring, planning and research, and citizen education and participation.

Nature-Friendly Community

"Baltimore County, Maryland, has one of the most ambitious and successful land management and environmental protection programs in the country. An impressive combination of tools and strategies – land use regulations, land acquisition, and urban growth boundary; education; partnerships with private land trusts; and infill development initiatives – has been employed to preserve thousands of acres throughout the county and protect critical wildlife habitat... Baltimore County is in many ways a model for local governments everywhere when it comes to protecting nature and biodiversity." (Source: Duerksen and Snyder, 2005. Nature-Friendly Communities: Habitat Protection and Land Use Planning, p.152).

Climate Change

Citizens in Baltimore County and elsewhere are debating the implications of a changing climate as it relates to human activities. Of particular interest is whether human-produced greenhouse gases are causing long-term global warming. Baltimore County, as part of the global community, should reduce and mitigate negative impacts of human activities on the environment.

County government operations, private businesses, and the daily routines of citizens have great potential to increase atmospheric pollution through release of harmful gases and thermal pollution. One concern about a changing climate is the relative increase in sea level. While the rate and extent of sea level rise are under continuing study, it is estimated that the mean high tide in the coastal areas of the County may increase from three to five feet in the next century. Overall, the retention and planting of forests and trees is considered the single most effective measure for mitigating the negative impact of climate change.

Citizens can make adaptations to actions that might contribute to climate change, and mitigate impacts that are unavoidable or more difficult to prevent. This represents also good stewardship of limited energy and financial resources. Human activities that potentially affect the degree of climate change are mostly attributed to the production, use, and conservation of energy. Most of current energy in Maryland derives from coal and other fossil fuels that increase harmful atmospheric gases. Walking or riding a bike instead of driving, turning off lights and other electrical appliances when not in use, changing light bulbs from fluorescents to LED's, and similar actions are beneficial to the environmental health and natural resources. Energy conservation and other climate change adaptation and mitigation actions will lead to significant changes in current economic structure and community function. Over the long term, they will enhance sustainability.

Policy: Continue to adapt to, and mitigate impacts of climate change on the environment.

Actions:

(1) Implement the recommendations of the County's Sustainability Network for County operations, energy conservation, protection of natural resources, and communities in order to reduce emissions of greenhouse gases and energy consumption.

(2) Develop appropriate indicators for sustainability actions and commitments in order to summarize sustainability conditions and trends and to provide a basis for evaluation of progress.

Environmental Justice

The development of environmental justice in the United States dates to almost three decades ago when communities began to form organized protests against traditional planning efforts to site polluting factories and toxic waste dumps in less affluent and often minority neighborhoods. Local victories empowered local protesters to coalesce into a national movement. In 1994, President Clinton signed an Executive Order focusing the federal government effort on protecting or improving the quality of the environment and human health conditions for all communities.

The federal government definition of environmental justice is applicable to all levels of state and local government planning. Environmental justice calls for the fair treatment of all minority, indigenous, and low-income populations to ensure that no individual racial, ethnic, or socioeconomic group will bear an unequal burden due to the negative effects of pollution or other environmental hazards. Environmental justice also promotes equal access to public information and equal rights to participate in the development, implementation, and enforcement of environmental laws.

The Phase I Action Plan of the Baltimore Watershed Agreement between Baltimore County and Baltimore City specifically calls for consideration of environmental justice issues in the course of watershed management planning.

Policy: Incorporate environmental justice considerations when developing Small Watershed Action Plans to address water quality protection and restoration.

Actions:

(1) Review environmental justice indicators developed nationwide and develop a set of indicators for the watershed management planning process.

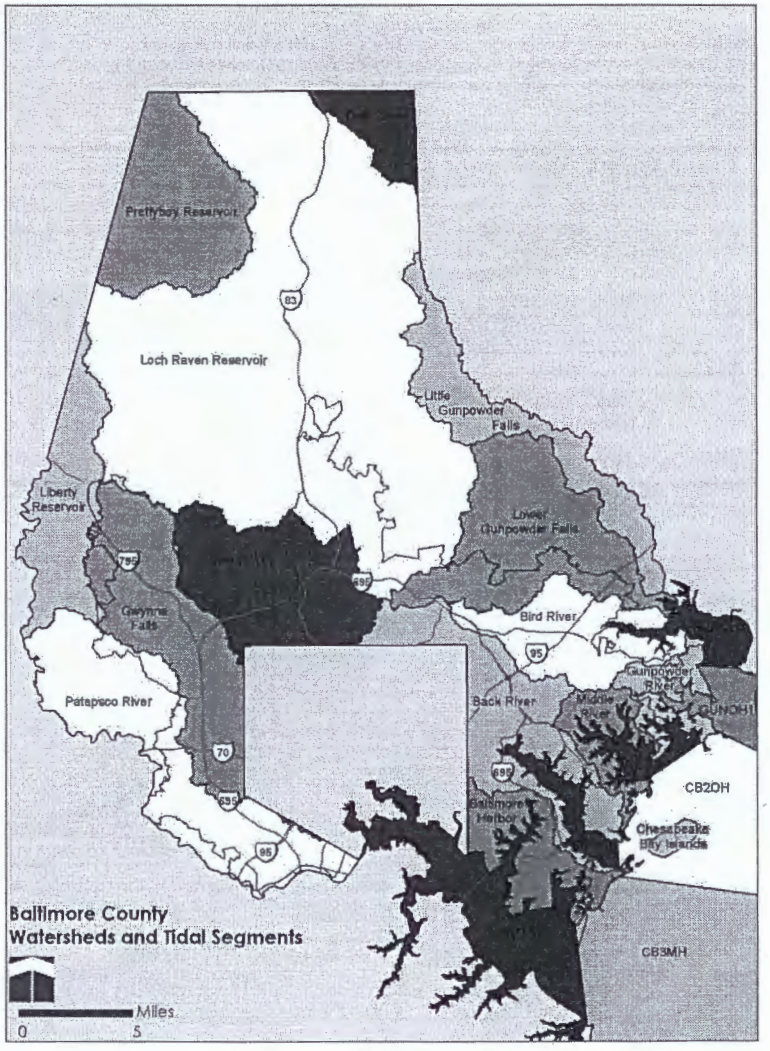
(2) Include the environmental justice indicators in the Small Watershed Action Plans for prioritizing water quality improvement projects.

WATER RESOURCES

The water resources of Baltimore County include over 2,100 miles of streams, groundwater resources, three drinking water reservoirs, non-tidal and tidal wetlands, and tidal waters. All of these water resources are interconnected through the hydrologic cycle driven by precipitation in the form of rain and snow. These water resources are also interconnected with surrounding jurisdictions and through tidal exchange with the Chesapeake Bay.

Precipitation falling on the land drains to streams, either as surface flow or through groundwater flow. The land surface that drains to a particular stream is called a watershed or a basin. The Chesapeake Bay is a large basin with a total drainage area in excess of 64,000 square miles.

Map 36: Watersheds and Tidal Segments



Water Use Classification of County Waterways

In order to protect multiple water uses, the State of Maryland has designated four Use Classes and associated water quality standards. If the water is a source for a public drinking water supply, a "P" follows the Use Class.

The four Use Classes (and subcategories for Use II) are:
Use I
Water contact recreation and protection of non-tidal warm water aquatic life.
Use II
Support of estuarine and marine aquatic life and shellfish harvesting (not all subcategories apply to each tidal water segment); Shellfish harvesting; Seasonal migratory fish spawning and nursery (Chesapeake Bay only); Seasonal shallow-water submerged aquatic vegetation (Chesapeake Bay only); Open-water fish and shellfish (Chesapeake Bay only); Seasonal deep-water fish and shellfish (Chesapeake Bay only); Seasonal deep-channel refuge use (Chesapeake Bay only)
Use III
Non-tidal cold water – usually considered natural trout waters
Use IV
Recreational trout waters – waters that are stocked with trout

These waters support aquatic communities and provide for human uses such as agricultural irrigation and livestock watering, drinking water, industrial uses, fishing and boating, and receiving areas for treated wastewater. Having adequate clean water to support all of these uses is crucial to continued ecological and human health now and for the future, and for providing for the continued quality of life for citizens and the economic vitality of Baltimore County.

Waters in Baltimore County are of high quality in general. Some water resources are degraded by improper human activities. The waters that do not meet or exceed water quality standards are placed on an impaired waters list (Sec. 303(d) of the federal Clean Water Act) by the State of Maryland. These listings are based on 8-digit watersheds and tidal water segments, with each impairing substance listed separately. Regulations and policies require protection of high quality water resources and improvement of degraded water resources. High quality waters are protected through the permitting requirements associated with Tier II, defined as waters with a better than the average aquatic biological community. Tier II waters meet the anti-degradation requirements of the federal Clean Water Act. For each impairing substance in any watershed or tidal segment, the State must determine how much of the substance must be reduced through modeling. This is referred to as a Total Maximum Daily Load (TMDL), or the maximum amount of a particular pollutant in a waterway that can be naturally assimilated while maintaining water quality standards

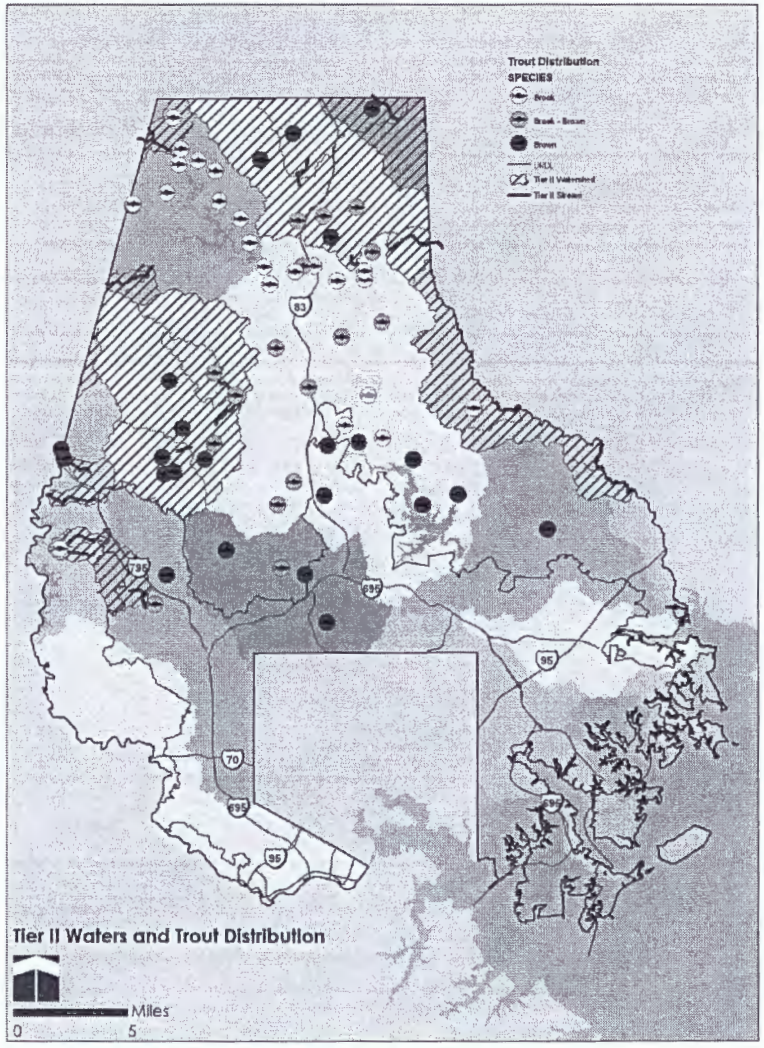
The principal regulatory requirement to address pollution impacts in urban areas is to implement the National Pollutant Discharge Elimination System - Municipal Separate Storm Sewer System (NPDES-MS4) permit. This permit requires the County to control the water quality that is discharged from its storm drain system, by implementing stormwater management, sediment control, education, monitoring, watershed management planning, and restoration programs. These programs are intended to control pollution from new development and restore

Tier II Waters and Trout

Tier II waters are identified and rated on the basis of aquatic community sampling by Maryland Department of Natural Resources. When both the fish and the bottom-dwelling invertebrate community have a rating of "good" the reach of stream represented by the sampling is identified as Tier II waters. Baltimore County has 33 miles of Tier II stream segments at 20 different sites, mainly in rural areas. The drainage area to these sites represents 23% of the County. These stream segments must be protected from degradation.

Trout are also indicative of higher quality water. Baltimore County's streams support a fairly good population of both brook and brown trout. Over 61 sites located on various streams have trout present. The trout are more wide spread than the Tier II waters, indicating that additional Baltimore County streams are still supporting aquatic natural resources.

Map 37: Tier II Waters and Trout Distribution



Total Maximum Daily Load (TMDL)

Baltimore County watersheds and tidal segments are impaired by a variety of substances, including nutrients, sediment, bacteria, trash, and various toxic substances, as well as biological impairments. The amount of each pollutant that needs to be reduced from each source in order to meet water quality standards is then determined. The model also indicates a cap for each pollutant based on the assimilative capacity of the water body. Any increase in a load from a new source must be offset to maintain the water quality standards. For each TMDL, the County is required to prepare an Implementation Plan with measurable implementation milestones and a projected timeline for meeting water quality standards.

The Chesapeake Bay is impaired by nitrogen, phosphorus, and sediment. The U.S. Environmental Protection Agency is developing TMDLs for nitrogen, phosphorus, and sediment to improve Bay water quality.

degradation caused by development that occurred prior to the current environmental protection requirements. Approximately 80% of the urban land was developed prior to environmental controls. Future permits will require preparing Implementation Plans for approved TMDLs and meeting water quality improvement and restoration milestones.

The Water Resources Element is an analysis of the adequacy of drinking water and wastewater treatment to support future population growth, and the ability to maintain and improve water quality within the County's receiving waters. The WRE analysis indicates that redevelopment will result in the greatest protection of high quality aquatic resources and reduction of pollution. The WRE is adopted as part of *Master Plan 2020.*

Watersheds

Baltimore County contains 14 major watersheds, which are identified on the basis of local stream systems and drinking water reservoirs. Seven of them are part of the Gunpowder River basin, six are in the Patapsco River basin, and one flows to the Susquehanna River basin. Watersheds are a useful framework for resource management. Individual resource elements including streams and forests are linked through ecosystem processes that operate to maintain the stability of the system.

Land use activities within watersheds affect the water quality of streams and downstream water bodies. Clearing forests increases stormwater runoff to streams, causing an increase in the amount of sediments, nutrients, and toxins and the erosion of stream channels. Changes in sediment and nutrient levels may degrade stream habitat quality. Land preservation programs that place environmentally sensitive land in permanent easements help protect watersheds and their interrelated systems.

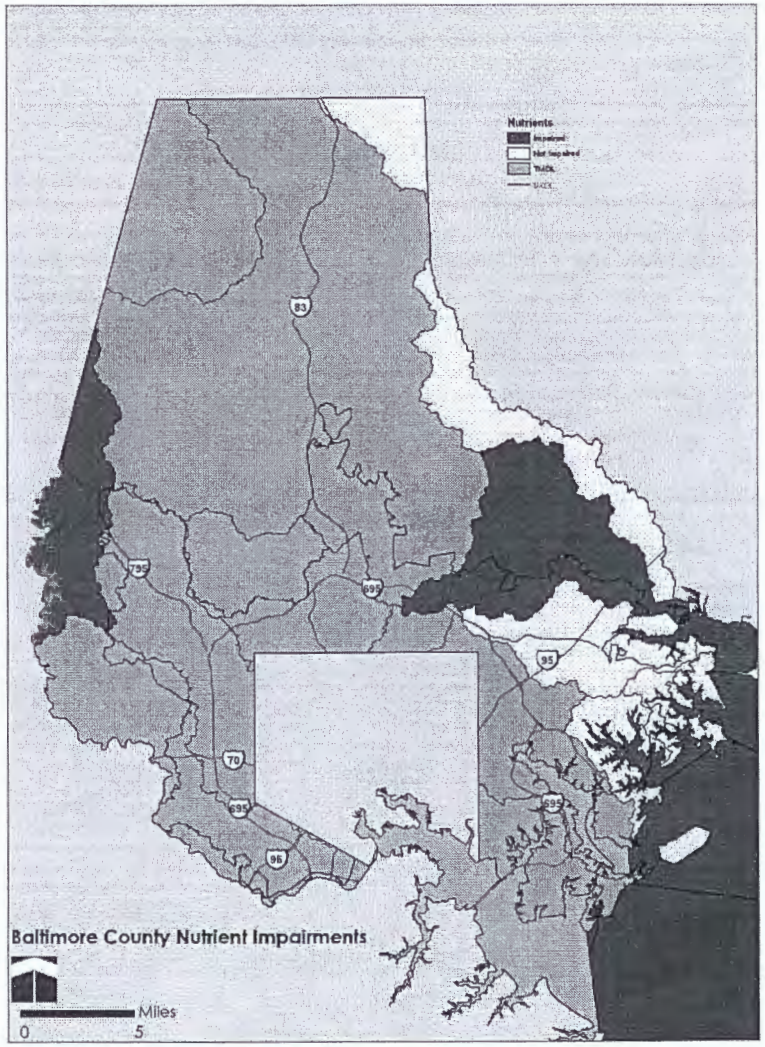
The County's watershed program consists of characterizing and prioritizing watersheds, preparing management plans, including Small Watershed Action Plans (SWAPs), and evaluating resource systems and functions at varying scales. Assessments of pollutant loads, stream stability, and forest community structure provide the framework for the implementation of capital projects, facility maintenance, education programs, and cooperative citizen actions.

Policy: Promote redevelopment and revitalization inside the URDL to reduce pollutant loads and protect natural resources.

Actions:

(1) Assure that the countywide redevelopment strategy accommodates population growth, provides maximum pollutant reduction, protects high quality waters, promotes economic vitality, and maintains a high quality of life for Baltimore County residents.

Map 38: Nutrient Impairments



(2) Include environmental policies and goals in community plans for the preservation and enhancement of functional open spaces such as greenways and wildlife habitat; the reduction of water, air, and toxic pollution and solid wastes; and the promotion of neighborhood environmental stewardship.
(3) Facilitate the redevelopment of underutilized industrial properties.

(4) Direct redevelopment efforts along the waterfront into historically disturbed, uncontrolled buffer areas in order to maximize water quality protection.

Policy: Assure protection of Tier II waters and those with known trout resources.

Actions:

(1) Investigate the development of overlay zones for Tier II waters and those with known trout resources and evaluate the need for additional protection through development regulations.

(2) Examine the feasibility of an offset program to achieve a no net increase in pollutant loads from new development.

(3) Continue to protect water quality, streams, wetlands, floodplains, and forests from impacts of new development and redevelopment.

(4) Implement projects to restore wetlands, reestablish forests, plant stream and shoreline buffers, and stabilize stream channels in impacted watersheds.

(5) Continue to implement the 2006 Baltimore Watershed Agreement with the City of Baltimore for improved and coordinated efforts for public health, trash, stormwater management, community greening, and redevelopment.

Streams and Non-Tidal Wetlands

Baltimore County contains more than 2,100 miles of non-tidal streams and rivers, including some of the highest quality recreational fishery resources in the eastern United States and more than 1,000 miles of streams that drain to the three drinking water reservoirs. A stream system consists of a stream and its associated floodplain, wetlands, and springs. Wetland and riparian vegetation play an essential role in the natural functioning of a stream system, including maintaining base flow, regulating water temperature, controlling pollution, and providing habitat. Pollutants discharged from point and non-point sources degrade stream water quality. These sources include urban runoff (non-point sources, particularly from impervious surfaces), pollutants discharged directly to streams (point sources), and agricultural operations (non-point source). Urban non-point source types of pollution vary and include nutrients, sediments, metals, pesticides, oil and grease, salts, and other particulate and dissolved matter.

Point-source pollution, generated from wastewater treatment plants, industries, and other sources with a direct, piped discharge, is regulated by the State. Over the past several decades, channelization, encroachment of development on floodplains, draining and filling of wetlands, removal of riparian vegetation, and development or clearing of steep slopes and erodible soils has been detrimental to streams.

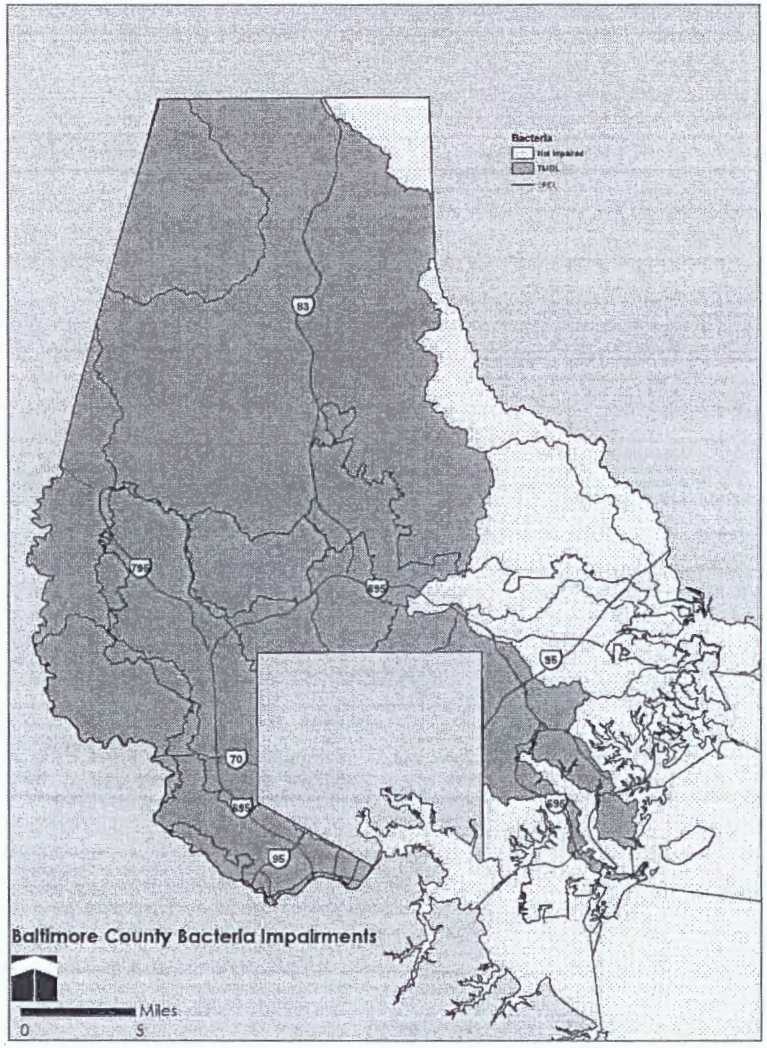
In 1987, DEPRM initiated a capital environmental restoration program to assess and identify water quality problems and implement design and construction of watershed restoration projects. The program is based on the County's 14 major watersheds, providing a comprehensive framework for protection and restoration of water resources. DEPRM has been recognized nationally for its stream restoration program and, with the completion of numerous projects, has made significant progress toward its objectives for watershed restoration. In the early 1990's Baltimore County developed regulations to protect water quality, streams, wetlands, floodplains, forests, and steep or highly erodible slopes from land development impacts. The County faces a challenge common to most areas experiencing urban growth: how to restore, protect, and enhance its waterways.

Stream Restoration

The U.S. EPA Mid-Atlantic Integrated Assessment program (MAIA) produced a document to share knowledge among state and local governments, regional offices, and non-governmental organizations. The document highlights DEPRM's stream restoration accomplishments. DEPRM's program incorporates project planning and design, communication and coordination with property owners, construction, and post-restoration follow-up. The program integrates state-of-the art techniques with an environmentally sensitive approach to stabilizing streams and reducing sediment loads, in turn enhancing stream morphology, ecological function, water quality, and aquatic habitat. Baltimore County responds to degraded urban streams with an adaptive natural channel design (NCD) approach that relies on the principles of fluvial geomorphology to evaluate stream flow, channel dimension, and bed and bank materials to optimize water and sediment movement and minimize erosive forces.

Physical changes to stream systems can be worse than pollutant runoff, point source discharges, or storm water management impacts. Since 1990, DEPRM has developed expertise in the restoration of destabilized stream channels. Reconstruction of channels applies the concepts of natural channel design (NCD) using natural materials (boulders and vegetation) in conjunction with the reshaping of the stream channels. When properly constructed, these restored streams are a cost-effective and attractive means to sustain physical stability, function, and habitat. Since the early 1990's, DEPRM has also maintained a physical, chemical, and biological stream monitoring program to determine ambient water quality and trends over time, assist in targeting restoration efforts, assess the effectiveness of restoration, and track progress in meeting TMDL pollutant load reduction requirements. The monitoring measures the abundance and diversity of aquatic life as indicators of stream quality and chemical constituents. Summary data from the biological monitoring indicate that there is fairly widespread impairment of aquatic organisms, even if only moderate, for most of the County's streams.

Map 39: Bacteria Impairments



Improvements to stream quality, in both water quality and habitat, will require a range of controls that best address specific types of pollution sources.

Policy: Continue to protect, enhance, and restore degraded waterways to meet water quality standards and permit requirements.

Actions:

(1) Continue to enforce development regulations for the protection of water quality, streams, wetlands, and floodplains.

(2) Continue to prepare and implement Small Watershed Action Plans (SWAPs) and participate in studies to identify needs and opportunities for stream restoration, wetland creation and restoration, and stormwater management.

(3) Continue to design and construct stream restoration projects using an adaptive natural channel design (NCD) approach.

(4) Incorporate stream protection policies in community plans.

(5) Continue to implement biological, chemical, and geomorphological stream monitoring programs in order to measure the long-term trends in stream quality.

(6) Identify opportunities for the creation of wetlands as mitigation for County capital projects and other land development impacts.

(7) Continue environmental education programs for schools, businesses, and homeowners for the reduction of water pollution and toxic and solid wastes.

(8) Continue to implement environmental inspection and maintenance programs such as storm drain inlet cleaning and maintenance of stormwater management facilities.

(9) Continue to identify and convert appropriate publicly owned stormwater management facilities to provide for increased water quality function.

(10) Continue to retrofit older communities to provide for stormwater treatment for improved water quality to the receiving waters.

(11) Continue to support watershed associations and citizens in stream clean-ups, stream and watershed surveys, and other restoration projects.

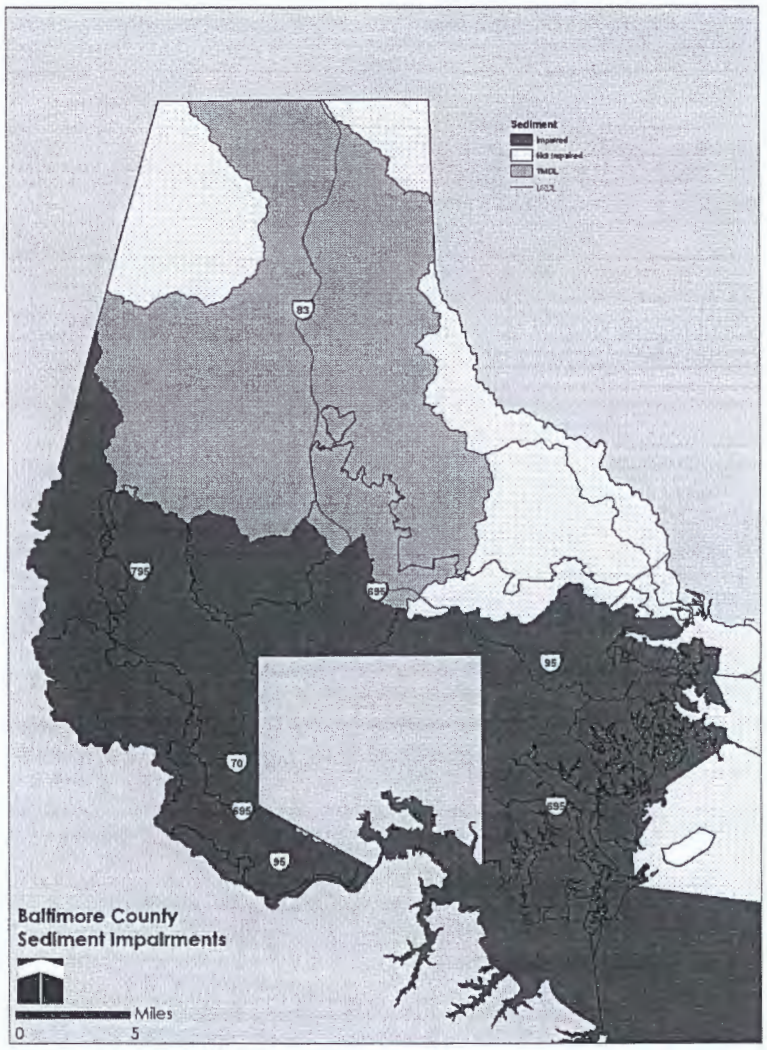
(12) Identify impediments to, and opportunities for tree plantings along streams on private properties, and work to plant more trees on private lands.

Stormwater Management and Sediment Control

The hydrologic cycle is a descriptive model for the movement of precipitation from the atmosphere to the earth's surface and then to receiving waters and back to the atmosphere. In natural areas, precipitation that reaches the ground infiltrates into the soil, replenishing groundwater aquifers and discharging to streams. In urban areas, precipitation that falls onto impervious surfaces runs off the surface much more rapidly. Unless properly controlled, stormwater runoff can result in stream channel erosion and the degradation of in-stream habitat and the aquatic biological community. Stormwater runoff also results in an increase of pollutants washed downstream. During the land development process, the soil at construction sites is the most vulnerable to erosion in streams and other surface waters. Soil erosion from construction activity may exceed 100 to 400 times that obtained from an adjacent undeveloped land or woodland in an equivalent period of time.

About 80% of Baltimore County was developed prior to the advent of stormwater management regulations, which damaged many waterways. In 1968, Baltimore County enacted Maryland's first local sediment control ordinance. Since the mid 1970's, Baltimore County has been a statewide leader in recognizing the impact of stormwater runoff generated as a result of land development. Stormwater management requirements have evolved over time. Initial

Map 40: Sediment Impairments



stormwater management focused on volume and peak discharge control to reduce physical impacts on streams. Beginning in the late 1980's through the early 1990's, water quality treatment was added as a means to address the increased pollutant loads associated with urban development. As stream science and understanding of stream dynamics evolved, it was recognized that further peak discharge control was necessary to protect stream channels from erosion during storm flow.

In the early 2000's, control of small storms was required, along with methods to disperse the flow from a development site instead of concentrating the flow. The Maryland Stormwater Act of 2007 further refined stormwater management by requiring Environmental Site Design (ESD) where practicable. ESD attempts to reduce stormwater runoff from a site by reducing impervious cover, retaining natural vegetation, and dispersing the runoff throughout the site to allow greater infiltration of precipitation. As Baltimore County's older urban and suburban areas are redeveloped, state-of-the-art stormwater practices will be constructed and water quality will improve.

Policy: Protect and improve water quality through the application of stormwater control measures for new development and redevelopment projects.

Actions:

(1) Continue to implement state-of-the-art stormwater management techniques, including ESD as feasible, for new and redevelopment projects.

(2) Provide flexibility for redevelopment to implement innovative solutions to stormwater management.

(3) Ensure the sustainability of stormwater practices including long-term function and maintenance.

Policy: Inspect and enforce compliance with the Baltimore County Code, permits, plans and State specifications as related to erosion and sediment control and grading.

Actions:

(1) Continue to inspect and enforce erosion and sediment control implementation on all active projects for compliance with approved plans.

(2) Continue to investigate complaints pertaining to erosion, sediment control, grading, and surface drainage problems associated with new construction.

(3) Continue to provide responsible personnel training and certification of individuals that oversee installation and maintenance of project controls.

(4) Continue to work in cooperation with the Baltimore County Soil Conservation District to require minimum standards for Soil Conservation and Water Quality Management Plans for conservation easements.

Best Management Practices (BMPs) for Agriculture

Best Management Practices (BMPs) that prevent soil erosion and protect water quality provide long-term benefits for maintaining the productive quality of farmland. Farmers are assisted in their efforts to apply BMPs by the Baltimore County Soil Conservation District, University of Maryland Extension (UME), the Maryland Department of Agriculture, the U.S. Department of Agriculture's Natural Resources Conservation Service, and the U.S. Farm Services Agency. Farmers and landowners participate in

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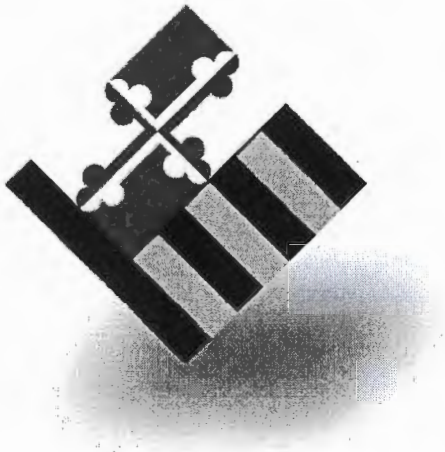
WATER RESOURCES ELEMENT



BALTIMORE COUNTY

MARYLAND

Draft presented to
Maryland Department of Planning
June 14, 2010

Executive Summary

Introduction

Developed in response to House Bill 1141, entitled *Land Use – Local Government Planning*, this Water Resources Element (WRE) will assist in protection and restoration of all water resources, including the Chesapeake Bay. The WRE is a thorough examination of all water resources in Baltimore County, Maryland. It includes public and private drinking water supplies, public and private wastewater disposal systems, and stormwater runoff from existing and proposed land uses. The intent of the analysis is to ensure safe and adequate supplies of drinking water, adequate facilities for wastewater disposal, protection of high quality natural resources, and a reduction *and cap* of pollutant loadings from point and non-point sources. Incorporated into the County's land use plan - *Master Plan 2020*, the WRE will inform policies and actions to be implemented over the next decade and beyond.

Growth

The population growth rate in Baltimore County is projected to slow, however, there still is an anticipated increase in the number of residents. Planning is crucial for any growth: it must be managed to protect natural resources, and assist in the restoration of degraded water bodies. Furthermore, responsible growth must be *sustainable*: the County must meet present and future needs, while preserving the environment and resources for future generations.

Drinking Water and Wastewater Disposal

Drinking water and wastewater disposal are either public or private systems. The public Baltimore Metropolitan Water Supply serves properties located "inside" the "Urban Rural Demarcation Line" (URDL), closest to Baltimore City. In a few growth-restricted areas, water and sewer is supplied due to public health issues related directly to preserving the quality of the Chesapeake Bay. The water system is supplied by 3 reservoirs located in Baltimore County, supplemented by the Susquehanna River. The public system providing wastewater treatment includes two large facilities and one smaller facility. Outside the URDL, there are private single homes, business well and septic systems, and multiple privately owned institutional, community and multi-use wastewater treatment facilities. For the most part in the rural areas, private water wells and on-site disposal systems are utilized. These public and private water supplies were examined to ensure they continue to be properly protected, and have an adequate supply to serve future populations. Pollutants discharged from all wastewater treatment facilities: public, private, community and individual systems, were analyzed to affirm they do not exceed permitted levels, accounting for the anticipated increase in the number of users.

Stormwater Runoff

The major contributor to pollution of our water bodies is how land is developed and used. Increased impervious surfaces from parking lots, driveways, houses and buildings, result in greater volumes of water runoff, eroding stream banks, and carrying nutrient-laden sediments and other contaminants. Agricultural uses, without benefit of *best management practices*, can cause similar effects, with additional contamination by inappropriate use of chemicals on crops. There is also considerable pollution from urban and suburban lawns. This Water Resources Element examines existing conditions of land uses, and determines current pollutant loadings. Based on projected population figures, and various proposed land use scenarios, future loadings are also calculated.

A Sustainable Plan

To meet the Total Maximum Daily Loads (TMDLs) required by state and federal regulations, the best future land use plan was selected from six (6) scenarios analyzed. As discussed in Chapter 5, it is demonstrated the future growth pattern allowing for the lowest pollutant loadings is a mix of high density mixed-use, revitalization of older neighborhoods with single-family homes and townhouses, including conversion of existing development to parks. Policies and actions to enable implementation of this land use pattern, preserving and protecting our high quality waters and resources in our rural areas, are proposed in this Water Resources Element. These policies and actions are further strengthened and enhanced throughout *Master Plan 2020*. The plan is based on a *sustainability framework* that will allow for appropriate development *and* redevelopment, while ensuring a brighter future for our citizens, and a cleaner, healthier natural environment. Baltimore County is strongly committed to improving the health of our local water bodies and the Chesapeake Bay.

FINAL DRAFT

Chapter 1 – Introduction

The 2006 Maryland General Assembly passed legislation (HB 1141) requiring the development of a Water Resources Element (WRE) as part of local government comprehensive plans (Master Plan). The purpose of the WRE is to compare planned growth and its impact on water resources. Specifically, three aspects of water resources are to be examined:

1. The adequacy of drinking water to support anticipated population growth,
2. The capability of waste water treatment to handle additional waste generated by the future population growth, particularly in light of discharge caps in Waste Water Treatment Plant (WWTP) permits established to meet nutrient reductions required to restore the health of the Chesapeake Bay, and
3. The impact of current and future development on stormwater runoff, especially related to the protection of high quality aquatic natural resources, and nutrient pollutant loads to local water bodies and the Chesapeake Bay.

This report provides the information needed to guide the formulation of policies and actions in a revised Master Plan that provides for adequate water and wastewater treatment for population growth, while ensuring watershed protection and restoration.

Chapter 2 contains information on anticipated population growth in Baltimore County. This chapter is supported by Technical Memo B, which gives additional detail on the calculation of population increases and its distribution in rural and urban portions and within individual watersheds in the County.

Chapter 3 assesses the adequacy of the public drinking water resources and public wastewater treatment to support the anticipated population increases over the next 25 years. Public water for Baltimore County is supplied by the Baltimore City distribution system, with the associated reservoirs located in the County. This drinking water system also delivers water to four other surrounding jurisdictions. Wastewater treatment is likewise shared with Baltimore City, which owns and manages the Back River and Patapsco WWTP's. Two other jurisdictions also depend on the Patapsco WWTP. Baltimore County owns and operates a small WWTP (Richlyn Manor). Appendices A-K support this chapter.

Chapter 4 assesses the adequacy of the individual private drinking water resources (wells) and private on-site disposal systems (OSDS) to handle future population growth. Consideration is given to the quantity and quality of the ground water as a drinking water supply, and the adequacy of OSDS.

Chapter 5 provides a comparison of the impacts of future development on urban stormwater nutrient loads and impervious surfaces utilizing three different growth scenarios. Technical Memos A-C, containing detailed information on existing water quality conditions, nutrient pollutant loads, and impervious surfaces, support this chapter.

resources are outside the URDL. Both Scenario 2 – All Future Development Inside the URDL, and all of the Scenario 3 – Redevelopment subcategories would limit impervious surface growth in the rural area.

Development Regulations to Protect Water Resources

Baltimore County is a leader in protecting the environment through rigorously enforced environmental regulation related to new development and redevelopment. A brief summary of the applicable regulations is provided below.

Stormwater Management

Since the mid 1970's, Baltimore County has been a statewide leader in recognizing the impact of stormwater as a result of land use changes caused by land development. Baltimore County Stormwater Engineering in DEPRM enforces federal, state and county storm water laws and regulations ensuring that the citizens of Baltimore County experience economic growth and still protect its valuable water resources.

However, Baltimore County waterways have been damaged by years of land development and agricultural activities, mainly because 80% of the County was developed prior to the advent of storm water management regulations. As the County's Renaissance progresses and older urban and suburban areas are redeveloped, state-of-the-art storm water practices will be constructed and land areas will become greener.

Recently, increased attention has been directed to the impact of storm water management on stream systems. Developed initially to protect downstream areas from flooding as a result of upstream runoff, storm water management can also erode stream channels when the stored runoff volume is discharged at a sustained level. Responses to this problem include: (1) state-of-the-art stormwater management regulations requiring Environmental Site Design techniques for new and redevelopment projects which mimic natural runoff characteristics and minimize impact to water resources; and (2) re-incorporation of the natural flood function into stream restoration projects where access to floodplains for the river are possible, and where no downstream areas are susceptible to flooding damage.

Forest Conservation

Baltimore County's Forest Conservation Act of 1992 (FCA) was passed pursuant to requirements of the Maryland Forest Conservation Act of 1991, the nation's first statewide forest protection measure. Forest protection measures prior to this time were limited to the Chesapeake Critical Area, as required by Chesapeake Bay Critical Area Law of 1984, and Baltimore County's Critical Area Law of 1988. Through these laws, developers are required to preserve or reestablish forests on development sites, or provide mitigation through either off-site plantings or by payment of fees to the county. Establishment of areas for mitigation of forest losses may be another alternative for meeting forest retention requirements.

McGill Run and Piney Run (both tributaries to Loch Raven Reservoir) have been connected through the Rural Legacy Program.

Continued implementation of the land preservation program will provide additional protection of the natural resources, including Tier II waters and trout resources, in the rural areas of the county.

Restoration

Restoration activities have evolved over time as tools are added. Baltimore County addresses restoration through two programs, the Capital Improvement Program and the Community Reforestation Program. In addition, the county is working cooperatively with the surrounding jurisdictions and the local watershed associations to promote restoration activities.

Capital Improvement Program

Baltimore County contains more than 2,100 miles of non-tidal streams and rivers, including more than 1,000 miles of streams that drain to the three drinking water reservoirs. The County faces a challenge common to most areas experiencing urban growth: how to keep its waterways stable and healthy for the sake of its ecosystem and residents. In 1987, the Baltimore County Department of Environmental Protection and Resource Management (DEPRM) initiated a capital environmental restoration program to assess and identify water quality problems and implement design and construction of watershed restoration projects. In addition to stream restoration, DEPRM's efforts to improve and protect waterways include storm water retrofit projects, waterway dredging, and shoreline erosion control measures. The program is based on the County's fourteen (14) major watersheds in order to provide a comprehensive framework of protection and restoration of the County's water resources.

The County's stream restoration program integrates state-of-the-art techniques with an environmentally sensitive approach to stabilize streams and reduce sediment loads, in turn enhancing stream morphology, ecological function, water quality, and aquatic habitat. DEPRM addresses these issues in the context of how one impaired stream (or reach) affects the safety and function of all waterways, residents, and habitats downstream. DEPRM has been nationally recognized for it's stream restoration projects and with the completion of numerous projects has been successful in meeting its objectives to restore watershed health. This program requires a watershed approach—an understanding of how waterways are directly linked to one another, the land, and the Chesapeake Bay.

In addition to stream restoration projects, DEPRM implements stormwater management facility conversions and retrofits to improve water quality. Many of the older stormwater management facilities did not provide water quality. These older facilities provide an opportunity to improve water quality through conversion to water quality facilities, while still maintaining the water quantity control functions of the original facility. In some situations it is possible to construct new stormwater management facilities to address areas that were developed prior to the existing environmental regulations.

Policy: Protect natural resources from impacts due to development

Actions:

1. Continue to protect streams, wetlands, floodplains, and woodlands from impacts of new development and redevelopment as required by development regulations.
2. Identify and protect high value natural resources in watersheds in order to preserve their beneficial functions for clean water, clean air, and habitat.
3. Continue commitments to restrict development in the reservoir watersheds, and expand this restriction of development to all rural areas outside the URDL.
4. Review permits for construction of shoreline structures, and only allow structural measures where a nonstructural alternative does not exist.
5. Improve implementation procedures of the Chesapeake Bay Critical Area Program while maintaining a high level of water quality and habitat standards.
6. Limit growth and control density along the waterfront.
7. Maintain land use and development standards essential for the protection of the Chesapeake Bay's biological integrity.
8. Enhance the image of the waterfront, while at the same time protecting water quality and significant plant and wildlife habitats.
9. Preserve the unique rural character of the waterfront residential communities, and improve the quality of new development and redevelopment; provide effective buffers between development projects and adjoining rural areas, and implement cluster principles and environmental site design techniques to maintain forests and open space.
10. Steer growth allocations involving conversions to Intensely Developed Areas into priority funding areas.
11. Implement environmental site design (ESD) practices in accordance with Baltimore County and state stormwater regulations, including design process and planning techniques that will protect natural areas, minimize impervious surfaces, and use available landscaping areas for ESD practices.
12. Ensure that stormwater practices are sustainable in that they utilize natural processes to treat stormwater runoff and minimize environmental impacts.

3. Policies and actions associated with restoring aquatic natural resources and meeting TMDL reduction requirements.

Policy: Restore degraded waterways to meet water quality standards and enhance enjoyment and quality of life for Baltimore County residents and visitors

Actions:

1. **Continue to prepare small watershed action plans and participate in studies to identify needs and opportunities for stream restoration, wetland creation or restoration, and stormwater management.**

2. **Investigate the feasibility of an offset program that results in a no net increase in pollutant loads from new development.**
3. Continue the design and construction of stream restoration projects, based on natural channel stability concepts.
4. Reduce pollution through a reduction in impervious surface, improved management of urban runoff, and implementation of source-based controls.
5. Coordinate management of inter-jurisdictional watersheds with surrounding jurisdictions.
6. Encourage and actively participate in partnerships among agencies, organizations, and communities to address environmental issues.
7. Continue to implement the 2006 Baltimore Watershed Agreement with the City of Baltimore for improved and coordinated efforts for public health, trash, stormwater management, community greening, and redevelopment.
8. Continue efforts to protect shorelines from erosion and improve the water quality and habitat value of tidal wetlands; use nonstructural measures for shoreline stabilization, where physically feasible, and enhance tidal wetlands by increasing the number of native species.
9. Continue to monitor and control upland sources of sediment and other water pollutants carried to waterways as storm water runoff.
10. Explore beneficial uses of dredge spoil disposal including shoreline stabilization projects and tidal marsh creation.
11. Educate property owners about the benefits of living shorelines.
12. Develop an aggressive public education campaign to inform and promote behaviors that will improve water quality.
13. Evaluate existing private septic systems in the CBCA; make loans or grants to encourage and/or require septic system upgrades or public sewerage connection, as needed.
14. Encourage the implementation of clean marina best management practices.
15. Identify opportunities for the creation of wetlands as mitigation for County capital projects and other land development impacts.
16. Continue environmental education programs for schools, businesses, and homeowners for the reduction of water pollution and toxic and solid wastes.
17. Continue to implement environmental inspection and maintenance programs such as storm drain inlet cleaning, **street sweeping,** and maintenance of stormwater management facilities.
18. Continue to implement and expand the stream biological monitoring program in order to measure the long-term trends in stream quality.

Policy: Baltimore County will continue cooperative efforts to protect the quantity and quality of source water in its three reservoir watersheds

Actions:

1. Continue to participate with other area jurisdictions in the cooperative regional Reservoir Watershed Management Program, including participation in the Reservoir Technical

Group for coordination of program implementation under the adopted Action Strategies and preparation of progress reports.

2. Continue commitments to restrict development in the reservoir watersheds.
3. Continue to implement non-point pollution control, stream restoration projects, and sewerage improvements.
4. Continue to prioritize implementation of projects to establish riparian forest buffers along stream systems in the reservoir watersheds in cooperation with private organizations and other public agencies.
5. In cooperation with citizen organizations, continue to implement the ambient biological stream monitoring program in order to provide information about the impacts of land use activities on reservoir stream quality, and to assist in the evaluation and implementation of management programs.

APPEAL

Petition for Special Hearing
(7700 Crossland Road)
3rd Election District – 2nd Councilmanic District
***Legal Owners*: Richard and Susan Lehmann**
Case No. 2016-0060-SPH

Petition for Variance Hearing (September 4, 2015)

Zoning Description of Property

Notice of Zoning Hearing (September 25, 2015)

Certificate of Publication (October 13, 2015)

Certificate of Posting (October 13, 2015) – Linda O'Keefe

Entry of Appearance by People's Counsel –September 18, 2015

Petitioner(s) Sign-in Sheet – Two sheets (1 for March 7, 2016 and 1 for November 2, 2015)
Citizen(s) Sign-in Sheet – Two Sheets (1 for March 7, 2016 and 1 for November 2, 2015)

Zoning Advisory Committee (ZAC) Comments

Petitioner(s) Exhibits:

1. Site Plan (redline)
2. Color photos
3. 3A & 3B photos of wood deck
4. Existing elevations
5. proposed elevations

Miscellaneous (Not Marked as Exhibits)

Administrative Law Judge Order and Letter (DENIED /GRANTED May 18, 2016)

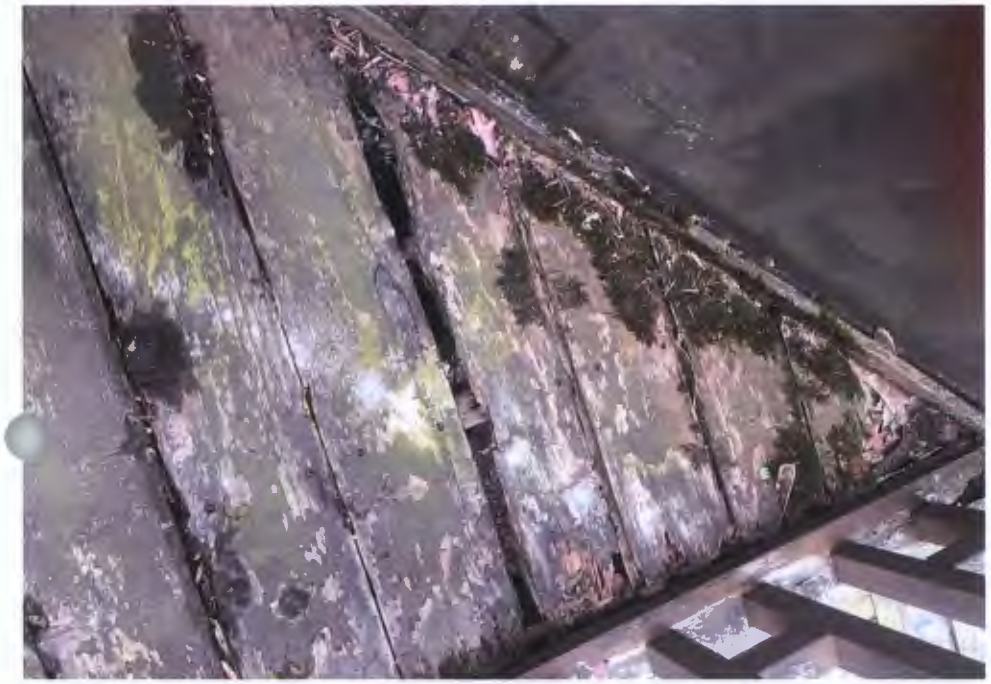
Notice of Appeal –Richard Burch, Esq. June 15, 2016

Case No.: 2016-0060-SPH

Exhibit Sheet

5-18-16
SEN

	Petitioner/Developer	Protestants
No. 1	site plan (redline)	
No. 2	color photos	
No. 3	3A + 3B photos of wood deck	
No. 4	Existing elevations	
No. 5	proposed elevations	
No. 6		
No. 7		
No. 8		
No. 9		
No. 10		
No. 11		
No. 12		



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

November 29, 2016

NOTICE OF REASSIGNMENT

IN THE MATTER OF: Richard and Susan W. Lehmann
1100 Crossland Road
16-060-SPH 3rd Election District; 2nd Councilmanic District

Re: Petition for Special Hearing pursuant to Baltimore County Zoning Regulation Section 500.7 for a waiver to rebuild an existing enclosed porch in a riverine floodplain.

5/18/16 Opinion and Order issued by the Administrative Law Judge wherein the requested relief was DENIED

ASSIGNED FOR: THURSDAY, FEBRUARY 9, 2017 AT 10:00 A.M.

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

NOTICE:

- This appeal is an evidentiary hearing. Parties should consider the advisability of retaining an attorney.
- Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.
- No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).
- If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

NEW! Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits (including video and PowerPoint) with the Board unless otherwise requested.

NEW! Projection equipment for digital exhibits is available by request. A minimum of forty-eight (48) hours-notice is required. Supply is limited and not guaranteed.

For further information, including our inclement weather policy, please visit our website www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington, Administrator

---

c: Counsel for Petitioner/Legal Owner : Dino C. LaFiandra, Esquire
Petitioner/Legal Owner : Richard and Susan Lehmann

Counsel for Protestants : Richard C. Burch, Esquire
Protestants : Henry Kahn and Marlene Trestman

Richard E. Matz, P.E./Colbert, Matz, Rosenfelt, Inc.

Office of People's Counsel
Arnold Jablon, Director/PAI
Nancy West, Assistant County Attorney

Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Michael Field, County Attorney, Office of Law

In the Matter of: 7700 Crossland Road Richard S. and Susan W. Lehmann, Legal Owners 3rd Election District 2nd Council District	BEFORE THE BOARD OF APPEALS FOR BALTIMORE COUNTY Case No. 2016-0060-SPH

MOTION TO DISMISS APPEAL

APPELLEES, Richard S. Lehmann and Susan W. Lehmann, Petitioners below ("Appellees" or the "Lehmanns"), by and through Dino C. La Fiandra and Pessin Katz Law, P.A., move to dismiss Protestants' Henry Kahn and Marlene Trestman's ("Protestants") appeal, and state:

1. In Case No. 2016-0060-SPH, the Lehmanns sought a Special Hearing for a waiver to rebuild an existing structure within a riverine floodplain.
2. On May 18, 2016 the Administrative Law Judge issued an Opinion and Order in which he DENIED the Lehmann's Petition for Special Hearing. See, ALJ's decision dated May 18, 2016, page 2 ("THEREFORE, IT IS ORDERED this 18th day of May, 2016, by this Administrative Law Judge, that the Petition for Special Hearing pursuant to B.C.Z.R. § 500.7 for a waiver to rebuild an existing enclosed porch in a riverine floodplain, be and is hereby DENIED.")
3. In his Opinion and Order, the ALJ offered through *dicta* a reason why he believed a waiver was not necessary. *Id.*
4. On June 15, 2016, the Protestants filed a "NOTICE OF APPEAL". Their notice stated, in relevant part, "Henry Kahn and Marlene Trestman, Protestants and adjoining property owners, hereby appeal the Opinion and Order dated May 18, 2016, in the above-referenced matter. Protestants, as adjoining property owners, are persons aggrieved by the Opinion and Order."
5. An examination of the decision from which the appeal was noted reveals that it has two distinct

parts. First, the ALJ denied the Lehmanns' Petition for Special Hearing. Second, in *dicta*, it offered an analysis by which the waiver sought by the Petition for Special Hearing may not be necessary. See, ALJ's decision, page 2, second full paragraph, which states:

> Even so, I do not believe a waiver is required in the first instance. The Building Code of Baltimore County, adopted May 4, 2015 in Bill 4-15, contains several sections on construction in flood zones. Part 125 concerns construction in a riverine floodplain, and Part 125.1 states the general rule that no new buildings or additions shall be constructed in a riverine floodplan. No new building or addition is proposed by Petitioners. Part 125.2 concerns "Reconstruction and Repair of Existing Buildings." That section indicates a "waiver" is required for construction of "substantial improvements" to existing buildings. Under both the Building Code (Part 123.1.1) and BCC (§32-8-101(dd)), a "substantial improvement" is one that exceeds 50% of the fair market value of the structure. The current tax assessment (which may not precisely equate to fair market value) for the structure is $493,800.00, and it would appear the construction proposed her would not cost in excess of $246,900.00 Assuming that is the case, I do not believe a waiver is required.

6. Among other requirements for maintaining an appeal to the Board of Appeals, a party must have standing to bring the appeal and the Board must have jurisdiction over the matter appealed. Standing for a party to appeal to the Board of Appeals is governed by BCC, § 32-3-401 "APPEALS TO THE BOARD OF APPEALS", which states in pertinent part,

   (a) *In general.* A person aggrieved or feeling aggrieved by a decision of the Zoning Commissioner or the Director of Permits, Approvals and Inspections may appeal the decision or order to the Board of Appeals.

7. The jurisdiction of the Board of Appeals is governed by the Baltimore County Charter and the Express Powers Act. The Baltimore County Charter provides in Section 602,

> Sec. 602. - Powers and functions of county board of appeals.
>
> The county board of appeals shall have and may exercise the following functions and powers:
>
> (a) *Appeals from orders relating to zoning.* The county board of appeals shall have and exercise all the functions and duties relating to zoning described in Article 25A of the Annotated Code of Maryland as such functions and powers may be prescribed by legislative act of the County Council. All references in law to the board of zoning appeals shall be construed to refer to the county board of appeals. In all cases, except those excluded by this Charter or by legislative act of the county council,

the order of the county board of appeals shall be final unless an appeal is taken therefrom in the manner provided in section 604 of this article.

* * *

(c) *Appeals from orders relating to building.* The county board of appeals shall hear and decide all appeals from orders relating to building.

(d) *Appeals from executive, administrative and adjudicatory orders.* The county board of appeals shall hear and decide appeals from all other administrative and adjudicatory orders as may from time to time be provided by Article 25A of the Annotated Code of Maryland (1957 Edition), as amended, or by legislative act of the county council not inconsistent therewith.

(e) The county board of appeals shall have original and exclusive jurisdiction over all petitions for reclassification.

8. The Express Powers Act, formerly codified at Maryland Code, Article 25A, has been recodified in Maryland Code, Local Government Article, Title 10. As it relates to the jurisdiction of the Board of Appeals under the Express Powers Act, Md. Code, Local Government Article, § 10-305 (b) provides,

(b) The county board of appeals may have original jurisdiction or jurisdiction to review the action of an administrative officer or unit of county government over matters arising under any law, ordinance, or regulation of the county council that concerns:

(1) an application for a zoning variation or exception or amendment of a zoning map;
(2) the issuance, renewal, denial, revocation, suspension, annulment, or modification of any license, permit, approval, exemption, waiver, certificate, registration, or other form of permission or of any adjudicatory order; or
(3) the assessment of any special benefit tax.

9. Standing. As it relates to the portion of the ALJ's decision denying the Lehmanns' Petition for Special Hearing, which the Protestants opposed before the ALJ and which was unquestionably denied, the Protestants cannot possibly be aggrieved. They appeared in opposition to the Petition for Special Hearing, argued against it, and were successful in persuading the ALJ that the Petition should be denied. In their Notice of Appeal, Protestants note that, "as adjacent property owners, [they] are persons aggrieved by the Opinion and Order." While it is true that adjoining property owners are *prima facie* aggrieved, the decision in question still must inure to their detriment, or be adverse to their interests. *Ray v. Baltimore*, 430 Md. 70 (2013) discusses

aggrievement as follows:

> First, an adjoining, confronting or nearby property owner is deemed, *prima facie,* to be specially damaged and, therefore, a person aggrieved. Second, a person whose property is far removed from the subject property ordinarily will not be considered a person aggrieved ... [unless] he meets the burden of alleging and proving ... that his personal or property rights are specially and adversely affected.
> Beyond these general principles provided in *Bryniarski,* we have not articulated what it means to be "specially affected" or how one proves that his harm is different from the public harm. Rather, the standard is flexible in the sense that it is based on a fact-intensive, case-by-case analysis. * * *
> [W]e keep in mind that the concept of special aggrievement used in current zoning laws has its roots in the laws pertaining to the tort action of public nuisance. *See* 4 Edward H. Ziegler, Jr., *Rathkopf's The Law of Zoning and Planning* § 63:14 (2012) ("This strict standard of [special] aggrievement for standing to enforce a zoning ordinance is based in early nuisance law which antedated zoning."). As the *Rathkopf's* treatise explains,
>
> > [T]he "special damage" rule was an outgrowth of the law of public nuisance. **Inasmuch as a public nuisance was an offense against the state and, accordingly, was subject to abatement on motion of the proper governmental agency, an individual could not maintain an action for a public nuisance unless he suffered some special damage from the public nuisance.** (Emphasis added).

Ray v. Mayor & City Council of Baltimore, 430 Md. 74, 81–82, 59 A.3d 545, 549–50 (2013) (underscoring added, other emphasis in the original) (internal quotations and citations omitted).

The fact that the cases discuss adjoining property owner standing as *prima facie* special aggrievement necessarily means that such standing may be defeated if it is shown that the adjoining property owner is not, in fact, aggrieved at all. The decision which the adjoining property owner appeals must adversely affect his property. Said another way, even an adjoining property owner may not appeal a decision in which he prevailed, because there is no adverse impact on his adjoining property.

10. Here, the only action which the ALJ took was to deny the Petition for Special Hearing at the urging of the Protestants. It was a denial of the relief sought by the Lehmanns. The Protestants cannot be aggrieved, specially or otherwise, by a decision in which they prevailed.

11. Jurisdiction. In his order, the ALJ offered, in *dicta*, a reasoning as to why a waiver is not required. The rationale is set forth above in the quoted language from his decision, but it is

clear that the legal provisions to which he refers are self-executing, and do not require any approval or grant of authority. This is a non-decision, and merely an observation of the law. The ALJ does not actually decide anything, nor does he grant permission or approval. The jurisdiction of the Board of Appeals in similar circumstances was discussed in *UPS v. People's Counsel*:

> The clause from Art. 25A, § 5(U) [which defines the jurisdiction of the Board of Appeals] grants to a board of appeals appellate jurisdiction from "the issuance, renewal, denial, revocation, suspension, annulment, or modification of any license, permit, approval ... or other form of permission...." The words "issuance, renewal, denial, revocation, suspension, annulment, or modification" obviously refer to an *operative event* which determines whether the applicant will have a license or permit [or other form of permission], and the conditions or scope of that license or permit. The plain import of the words would not include a statement simply confirming that a license or permit was issued or denied in the past or defending a past issuance or denial of a license or permit. In the context, the phrase "approval ... or other form of permission," on which the protestants place so much reliance, seems to have been designed simply to encompass all forms of licensing regardless of what the particular license or permit may be called.[] *Nevertheless, the appealable event is the issuance, renewal, revocation, etc. of the license or permit. In the present case, this appealable event occurred in 1986 when the application for a building permit was approved and the permit was issued.*
>
> * * *
>
> The Zoning Commissioner, in responding to Mr. Hupfer on January 19, 1987, did not grant, deny, decide, or order anything. The Commissioner's letter simply explained and defended the 1986 decision approving the application for a building permit. Consequently, the January 19, 1987, letter was not an "approval" or "decision" appealable to the Board of Appeals.
>
> United Parcel Serv., Inc. v. People's Counsel for Baltimore County, 336 Md. 569, 583–84, 650 A.2d 226, 233–34 (1994) (emphasis added).

The situation is almost identical in the present case, where the ALJ (formerly known as the Zoning Commissioner) merely discussed the lack of need for a waiver, and in fact did not decide anything. In the context of *UPS*, the ALJ's general observation that the Lehmanns do not need a waiver is not an *operative event* from which an appeal may be had, or over which the Board of Appeals has jurisdiction.

12. Because the Protestants do not have standing to challenge the portion of the order denying the

Lehmann's Petition for Special Hearing, because they prevailed in that aspect of the case and they are not aggrieved by it, and because the Board of Appeals does not have jurisdiction over the ALJ's gratuitous comments regarding whether a waiver is necessary, as those comments are not an operative event under the Express Powers Act or UPS, the proper course of action is for the Board of Appeals to dismiss the Protestants' appeal. There is no aspect of the ALJ's decision that is reviewable under the Express Powers Act, the Baltimore County Charter, the Baltimore County Code, or the UPS case.

WHEREFORE, for the reasons discussed above, the Lehmanns respectfully request that the Board dismiss the Protestants appeal.

Respectfully submitted,

Dino C. La Fiandra
Pessin Katz Law, P.A.
901 Dulaney Valley Road, Suite 500
Towson, Maryland 21204
(410) 938-8705
dlafiandra@pklaw.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of February, 2017, a copy of the foregoing Motion to Dismiss Appeal was sent by email to rcb@mhblaw.com and via first-class mail, postage pre-paid, to Richard C. Burch, Mudd, Harrison & Burch, L.L.P., 401 Washington Avenue, Suite 900, Towson, Maryland 21204, attorneys for Protestants.

Dino La Fiandra

In the Matter of: 7700 Crossland Road Richard S. and Susan W. Lehmann, Legal Owners 3rd Election District 2nd Council District	BEFORE THE BOARD OF APPEALS FOR BALTIMORE COUNTY Case No. 2016-0060-SPH

APPELLEES' RESPONSE TO MOTION TO DISMISS OR MOTION FOR SUMMARY JUDGMENT

APPELLEES, Richard S. Lehmann and Susan W. Lehmann, Petitioners below ("Appellees" or the "Lehmanns"), by and through Dino C. La Fiandra and Pessin Katz Law, P.A., respond to Protestants' Henry Kahn and Marlene Trestman's ("Protestants") Motion to Dismiss or, Alternatively, Motion for Summary Judgment, and state:

1. In Case No. 2016-0060-SPH, the Lehmanns sought a Special Hearing for a waiver to rebuild an existing structure within a riverine floodplain. *See,* Petition for Special Hearing, attached as Exhibit A.
2. After a hearing on the Lehmann's Petition for Special Hearing, at which the Protestants were represented by counsel and objected to the waiver, on May 18, 2016, the Administrative Law Judge issued an Opinion and Order in which he DENIED the Lehmann's Petition for Special Hearing. *See*, ALJ's decision dated May 18, 2016, page 2 ("THEREFORE, IT IS ORDERED this 18th day of May, 2016, by this Administrative Law Judge, that the Petition for Special Hearing pursuant to B.C.Z.R. § 500.7 for a waiver to rebuild an existing enclosed porch in a riverine floodplain, be and is hereby DENIED.") *See,* Opinion and Order dated May 18, 2016, attached as Exhibit B.
3. In his Opinion and Order, the ALJ offered through *dicta* a reason why he believed a waiver was not necessary. *Id*.

4. On June 15, 2016, the Protestants filed a "NOTICE OF APPEAL". Their notice stated, in relevant part, "Henry Kahn and Marlene Trestman, Protestants and adjoining property owners, hereby appeal the Opinion and Order dated May 18, 2016, in the above-referenced matter. Protestants, as adjoining property owners, are persons aggrieved by the Opinion and Order." *See,* Notice of Appeal, attached as Exhibit C.

5. Appeals of Petitions for Special Hearings before the Board of Appeals are heard *de novo*. Baltimore County Charter, § 603 states in part, "All hearings held by the board shall be heard *de novo*, unless otherwise provided by legislative act of the County Council, and shall be open to the public."[1] There is no legislative act of the County Council that prescribes a different standard of review for appeals of Petitions for Special Hearings, other than for a *de novo* review of the Petition.

6. According to the Merriam Webster Dictionary, *de novo* means "over again. Anew." An appellate hearing that is held *de novo* is one which is done over again, as if for the first time, allowing for a complete retrial upon new evidence and an independent determination of facts and law. In the context of the Board of Appeals hearing appeals of Petitions for Special Hearing, it means the ALJ's decision is not entitled to any deference. A *de novo* hearing is one in which there is a blank slate for whatever evidence the Petitioner may wish to present, and from which the Board may make its own findings of fact and conclusions of law.

7. The Protestants did not limit their Notice of Appeal to any issue resolved or set forth in the ALJ's decision. It merely noted an appeal of the decision, which then triggers a *de novo* hearing on the Petition for Special Hearing before the Board of Appeals.

---

[1] BCZR § 501.6 provides, "Appeals from the Zoning Commissioner shall be heard by the Board of Zoning Appeals de novo." Baltimore County Code, § 3-12-104(b) provides, "Any reference to the Zoning Commissioner, the Deputy Zoning Commissioner or the Hearing Officer in the Charter, the Code or the Baltimore County Zoning Regulations shall be deemed to be a reference to the Office [of Administrative Hearings]".

8. The Protestants now seek to artificially limit the scope of the appeal by saying, "Protestants do not appeal (and have not appealed) that portion of the Opinion and Order which resolved in their favor." Motion, page 5. Not only did the Protestants' Notice of Appeal fail to identify any portion or portions of the Opinion and Order that they were specifically appealing, but also because it is a *de novo* hearing before the Board of Appeals, it is impossible for the Protestant's or anyone else to bifurcate the issues on appeal. The hearing is a re-do of the Petition for Special Hearing that was heard by the ALJ upon a blank slate.

9. The Protestants cite in their Motion, *Halle Companies v. Crofton Civil Association*, 339 Md. 131, at 141 (1995), which in turn cited *Dailh v. County Board of Appeals*, 258 Md. 157, for the argument that the scope of this appeal is somehow limited. Their argument fails for at least two reasons. First, as even the *Halle* court agreed, the citation in *Halle* of the language from *Dailh* involved the scope of the Board's appellate jurisdiction, not the scope of review. *Halle*, 339 Md. 131, at 141. The *Halle* Court quoted from *Dailh* to illustrate that a *de novo* appeal is a wholly original and independent proceeding, differing from other types of jurisdiction, such as *certiorari*, wherein a prior decision of a lower tribunal is reviewed. Contrary to the Protestants' argument, *Halle* does not stand for the proposition that in a *de novo* appeal to a Board of Appeals, the Board may only entertain issues that have been specifically appealed. Indeed, *Halle* was resolved with a very expansive view of the scope of *de novo* review, allowing issues which were not even raised below. This was specifically because of the nature of the review as *de novo*, which the Court described as, "an entirely new hearing at which time *all aspects of the case should be heard anew, as if no decision has been previously rendered*. Acting *de novo,* the Board exercises jurisdiction akin to original jurisdiction." *Halle Companies v. Crofton Civic Ass'n*, 339 Md. 131, 144 (emphasis added)(internal quotations and citations omitted).

10. The Protestants' argument also fails because not only does the County Code not permit or require an identification of issues on a *de novo* appeal to the Board of Appeals of a Petition for Special Hearing (unlike in the case of an appeal of a development plan, which requires an itemization of the issues challenged by the appellant), but also the Protestants did not identify any such issues even if it was permitted or required of them to do so. They cannot now come back on essentially the eve of the *de novo* proceedings at the Board of Appeals and say they only meant to appeal a certain aspect of the case.

11. In the current procedural posture of the case, being the Protestants' appeal of the Lehmann's Petition for Special Hearing, the Protestants must choose from two choices that are available to them: 1) they can maintain their appeal, in which case the Lehmann's may present their case to the Board anew, as if no prior hearing had been held by the ALJ and no prior decision had been rendered by the ALJ, or, 2) they may dismiss their appeal. There is no mechanism in the County Code by which the Protestants may limit their *de novo* appeal. Even if there was such a mechanism by which they could have done that, they did not do so because they filed a general notice of appeal without specifying any particular issues for review.

12. The Protestants then go on to discuss why the Lehmann's original Petition for Special Hearing should be dismissed. The reasons can be paraphrased as follows: The ALJ found against the Lehmanns on the waiver and since the Lehmanns did not appeal that denial, they are now foreclosed from pursuing it before the Board of Appeals. The ALJ exceeded his authority in discussing in *dicta* that a waiver may not be needed, and because that is the only way, under the Opinion and Order that the Lehmanns may be able to rebuild their structure in the riverine floodplain, this Board should summarily dismiss the underlying Petition for Special Hearing or otherwise dismiss it. Unfortunately for the Protestants, their argument ignores the fundamental principle of Board of Appeals' *de novo* hearings that such cases should be heard anew, as if no

decision had been previously rendered. The Board not only has the right, but the duty to hear the case anew and render whatever decision the facts, as established in the course of the hearing before the Board, lead to. The Protestants are arguing that the ALJ was wrong, but under the Baltimore County Charter and the BCZR, on appeal the ALJ's decision is essentially a nullity anyway. Procedurally, unless the Protestants wish to dismiss their appeal, it is incumbent upon the Lehmanns to present their case anew, this time to the Board. Despite the Protestants argument to the contrary, once they noted their appeal, they essentially vacated the entire record of the case, and the Lehmanns are entitled to present their case to the Board anew, as if the matter was never heard by the ALJ. Dismissal or "Summary Judgment" is not permitted nor is it warranted.

WHEREFORE, the Appellees Richard S. and Susan W. Lehmann respectfully request that the Board deny the Protestants' Motion to Dismiss or in the alternative Motion for Summary Judgment.

Respectfully submitted,

Dino C. La Fiandra
Pessin Katz Law, P.A.
901 Dulaney Valley Road, Suite 500
Towson, Maryland 21204
(410) 938-8705
dlafiandra@pklaw.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of February, 2017, a copy of the foregoing Appellees' Response to Motion to Dismiss or Motion for Summary Judgment was sent by email to rcb@mhblaw.com and via first-class mail, postage pre-paid, to Richard C. Burch, Mudd, Harrison & Burch, L.L.P., 401 Washington Avenue, Suite 900, Towson, Maryland 21204, attorneys for Protestants.

Dino La Fiandra

Exhibit A

FLOOD

PETITION FOR ZONING HEARING(S)

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 7700 Crossland Road **which is presently zoned** D.R. 2

Deed References: Liber 8905 Folio 821 10 Digit Tax Account # 0314011742, 0314011743

Property Owner(s) Printed Name(s) Richard S. Lehmann & Susan W. Lehmann

(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

(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)**

TO BE PRESENTED AT HEARING

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

Legal Owners (Petitioners):

Richard S. Lehmann / Susan W. Lehmann
Name #1 – Type or Print Name #2 – Type or Print

Signature #1 / Susan W. Lehmann Signature # 2

7700 Crossland Road Baltimore Maryland
Mailing Address City State

21208 / 410-539-8300 / rlehmann@abrneu.com
Zip Code Telephone # Email Address

Attorney for Petitioner:

N/A
Name- Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

Representative to be contacted:

Richard E. Matz, P.E.
Name – Type or Print

Signature

2835 Smith Ave., Ste. G Baltimore Maryland
Mailing Address City State

21209 / 410-653-3838 / dmatz@cmrengineers.com
Zip Code Telephone # Email Address

CASE NUMBER 2016-0060-SPH Filing Date 9/4/15 Do Not Schedule Dates: _____ Reviewer JRF

REV. 10/4/11

Petition for Special Hearing Attachment
7700 Crossland Road
Baltimore County, Maryland

Special Hearing Requested

1. A Special Hearing for a **waiver** pursuant to Section 500.6, BCZR; Section 3112.0, Building Code; and Sections 32-4-414, 32-4-107(a)(2), 32-8-301, BCC to rebuild an existing enclosed porch in a riverine floodplain.

Exhibit B

IN RE: **PETITION FOR SPECIAL HEARING** **(7700 Crossland Road)** 3rd Election District 2nd Council District Richard S. & Susan W. Lehmann *Legal Owners* Petitioners	*	BEFORE THE
	*	OFFICE OF
	*	ADMINISTRATIVE HEARINGS
	*	FOR BALTIMORE COUNTY
	*	**Case No. 2016-0060-SPH**

* * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Hearing filed on behalf of Richard S. & Susan W. Lehmann, legal owners. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") for a waiver to rebuild an existing enclosed porch in a riverine floodplain.

Richard Lehmann and Richard E. Matz, professional engineer, appeared in support of the petition. Dino LaFiandra, Esq. represented Petitioners. Richard Burch, Esq. represented a neighbor who opposed the request. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. A substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Public Works (DPW). That agency did not oppose the waiver request.

The subject property is 0.76 acres and zoned DR 2. The property is improved with a single family dwelling. The petition states the existing porch is "in a riverine floodplain" (emphasis added) but the DPW's ZAC comment states the porch is "within 20 feet of the 100-year riverine floodplain." That comment also states the waiver is sought to "approve a setback from the 100-year floodplain limit of less than 20 feet." I note these discrepancies to highlight, as discussed at

the hearing, that waiver requests are not zoning matters and it is often unclear precisely what relief is sought or needed under the myriad and byzantine floodplain regulations and codes.

The County Code provides that a floodplain waiver can be granted only upon a showing of "exceptional hardship." BCC §32-8-303. Protestant's counsel argued that being denied the right to rebuild (and/or enlarge) the deck would not constitute an unreasonable or exceptional hardship, and I concur. Protestant's counsel also notes a waiver action is initiated by a "request of a department director" (BCC §32-4-107) which is arguably lacking in this case as well. As such, I do not believe a waiver can be granted properly in this case.

Even so, I do not believe a waiver is required in the first instance. The Building Code of Baltimore County, adopted May 4, 2015 in Bill 40-15, contains several sections on construction in flood zones. Part 125 concerns construction in a riverine floodplain, and Part 125.1 states the general rule that no new buildings or additions shall be constructed in any riverine floodplain. No new building or addition is proposed by Petitioners. Part 125.2 concerns "Reconstruction and Repair of Existing Buildings." That section indicates a "waiver" is required for construction of "substantial improvements" to existing buildings. Under both the Building Code (Part 123.1.1) and BCC (§32-8-101(dd)), a "substantial improvement" is one that exceeds 50% of the fair market value of the structure. The current tax assessment (which may not precisely equate to fair market value) for the structure is $493,800.00, and it would appear the construction proposed here would not cost in excess of $246,900.00. Assuming that is the case, I do not believe a waiver is required.

THEREFORE, IT IS ORDERED this **18th** day of **May, 2016** by this Administrative Law Judge, that the Petition for Special Hearing pursuant to B.C.Z.R. § 500.7 for a waiver to rebuild an existing enclosed porch in a riverine floodplain, be and is hereby DENIED.

IT IS FURTHER ORDERED Petitioners shall be entitled to rebuild the existing enclosed porch, provided the cost to do so does not exceed $246,900.00.

The relief granted herein shall be subject to 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.

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

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln

Exhibit C

MUDD, HARRISON & BURCH, L.L.P.
ATTORNEYS AT LAW
401 WASHINGTON AVENUE
SUITE 900
TOWSON, MARYLAND 21204-4835
410 828 1335
FAX 410 828 1042

RICHARD C. BURCH *
DOUGLAS W. BISER *
ANDREW JANQUITTO * +
MATTHEW P. LALUMIA *

* MEMBER OF MARYLAND BAR
+ MEMBER OF DISTRICT OF COLUMBIA BAR

JOHN E. MUDD
(1928-2003)

T. ROGERS HARRISON
(1949-1995)

June 15, 2016

HAND DELIVERY
John E. Beverungen, Administrative Law Judge
Office of Administrative Hearings
105 W. Chesapeake Avenue, Room 103
Towson, Maryland 21204

Re: Case No. 2016-0060-SPH
Property: 7700 Crossland Road

NOTICE OF APPEAL

Dear Judge Beverungen:

Henry Kahn and Marlene Trestman, Protestants and adjoining property owners, hereby appeal the Opinion and Order dated May 18, 2016, in the above-referenced matter. Protestants, as adjacent property owners, are persons aggrieved by the Opinion and Order.

Enclosed please find my firm's check in the amount of $265 to cover the appeal filing fee.

Thank you for your kind attention to this matter.

Very truly yours,

Richard C. Burch

RCB/tyj

cc: Dino LaFiandra, Esquire, Attorney for Petitioners (w/o enc.)
Henry Kahn and Marlene Trestman (w/o enc.)

Enclosure

IN THE MATTER OF: 7700 Crossland Road Richard S. & Susan W. Lehmann Legal Owners 3rd Election District 2nd Council District	*	BEFORE THE
	*	BOARD OF APPEALS
	*	FOR
	*	BALTIMORE COUNTY
	*	Case No. 2016-0060-SPH

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

PROTESTANTS' MOTION TO DISMISS PETITION FOR SPECIAL HEARING;
OR, ALTERNATIVELY, MOTION FOR SUMMARY JUDGMENT/DECISION

Protestants and adjacent property owners, Henry Kahn and Marlene Trestman, file this Motion to Dismiss Petition for Special Hearing; or, Alternatively, Motion for Summary Judgment/Decision and for the following reasons state:

1. Petitioners failed to properly/adequately post notice for a two-story addition under 500.7;

2. ALJ Beverungen had no jurisdiction exists to rule on Part 125 of the Baltimore County Building Code because no request for any such relief was requested by Petitioners and no public notice was made;

3. Petitioners having failed to appeal from the relief ALJ Beverungen correctly denied below, Petitioners cannot use this appeal/Board of Appeals to review that decision now; and

4. Even if ALJ Beverungen had no jurisdiction exists to rule on Part 125 of the Baltimore County Building Code

A. The Building Code expressly prohibits the new addition sought by Petitioners; and

B. ALJ Beverungen improperly assumed facts regarding construction costs not in evidence to determine that the addition was not a substantial improvement as to obviate the need for a flood plain waiver.

THE ORIGINAL PETITION FOR SPECIAL HEARING

On or about September 4, 2015, Petitioners, Richard S. and Susan W. Lehmann (the "Lehmanns"), property owners, filed a Petition for Special Hearing pursuant to Baltimore County Zoning Regulation Section 500.7, whereby the Lehmanns sought a waiver to "rebuild" an existing enclosed porch in a riverine flood plain. A copy of the Petition is attached as Exhibit A. As stated succinctly on the second page of the Petition, the only relief sought was:

> "A Special Hearing for a waiver pursuant to Section 500.6, B.C.Z.R.; Section 3112.0, Building Code and Sections 32-4-414, 32-4-107(a)(2), 32-8-301, BCC to rebuild an existing enclosed porch in a riverine flood plain." (Emphasis added.)

Furthermore, there was no public notice/posting to remotely suggest that Petitioners were seeking a declaration/decision that certain provisions of the Building Code (Bill No. 40-15) effectively trump and override the BCC code provisions which specifically address flood pain and wetland protection and the issuance of waivers under Sections 32-8-301, et seq. of the Baltimore County Code.

The Petitioners did not seek a declaration or decision by the Administrative Law Judge that the Building Code of Baltimore County (Bill 40-15) trumps or overrides the provisions of Sections 32-4-414, 32-4-107(a)(2) or 32-8-301 of the Baltimore County Code and allows Petitioners to proceed with their plans without a waiver.

While the specific relief requested was a waiver to rebuild an existing enclosed porch in a riverine flood plain, the diagram/plat which was attached and/or filed with the petition indicates that the existing enclosed porch was to be rebuilt as a two-story addition.[1]

Prior to the Special Hearing, the property was posted and, consistent with the specific relief requested on page 2 of the Petition for Special Hearing, the only relief requested (per the required public posting) was:

> "Special Hearing for a waiver pursuant to Section 500.6 B.C.Z.R.; Section 3112.0, Building Code[2] and Sections 32-4-414, 32-4-107(a)(2), 32-8-301 BCC to rebuild an existing enclosed porch in a riverine flood plain.
> 7700 Crossland Road"

A copy of the posted notice is attached as Exhibit C. Notably, the notice/posting did not remotely suggest to the public that the Petition actually sought permission to replace an existing screened-in porch with a two-story addition to expand the living space to the existing dwelling.

PUBLIC HEARINGS

Over Protestants' objections, the Petition for Special Hearing was heard on the merits on March 7, 2016 and May 11, 2016, by ALJ John Beverungen.[3] Not once, either before or during the hearings (including argument at the close of the hearings) did

---

[1] As reflected by the attached photograph (Exhibit B), the existing "enclosed porch" is in reality an outside screened-in porch.

[2] That provision of the Code is clearly inapplicable as it addresses "Circuses and Carnivals."

[3] Protestants objected to proceeding with a hearing on the merits in light of the grossly inadequate pubic notice as required by Section 500.7 BCZR, Section 32-4-107(b) and Code Sections 32-3-301, 32-3-302 and 32-3-302(b). The posted notice made no mention of replacing a detached screened porch with a new two-story addition which would increase the interior living space of the existing dwelling.

Petitioners suggest, discuss or argue that a waiver under Section 32-4-107 or BCC Section 32-8-303 was not required because of any provision of the Building Code of Baltimore County (Bill 40-15). The Building Code offers them no relief and consequently they sought no such relief in their Petition or during the hearings.

JUDGE BEVERUNGEN'S OPINION AND ORDER

On May 18, 2016, Administrative Law Judge Beverungen issued his Opinion and Order (a copy of which is attached as Exhibit D). The second sentence of Judge Beverungen's Opinion and Order frames clearly the limited scope of the matter before him. He wrote, "The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") for a waiver to rebuild an existing enclosed porch in a riverine flood plain." That was the only issue framed by the Petition; that was the only issue identified in the public notice/posting; that was the only issue addressed and argued at the hearing on the merits; that was the only issue presented to Judge Beverungen; and that was the only issue which Judge Beverungen was authorized to address and resolve. In his Opinion and Order, Judge Beverungen correctly determined, resolved and ordered that Petitioners are not entitled to the only relief sought by them - a waiver under BCC Sections 32-4-107, 32-8-301 and 32-8-303. His legal authority and jurisdiction stopped there.

Inexplicably, after deciding the sole issue before him, Judge Beverungen exceeded his jurisdictional boundary and authority in order to opine (incorrectly) on a matter and issue that was not before him – an issue that was never advertised in any public notice/posting as required by applicable law and regulations. To make matters worse, Judge Beverungen misinterpreted and misapplied the Building Code of Baltimore County

to override the provisions of BCC Sections 32-4-107 and 32-8-303, causing him to come to the incorrect decision that no waiver was required in the first instance. Judge Beverungen incorrectly looked to Part 125, and although it expressly prohibits "new buildings and additions" he assumed as facts not in evidence to conclude no waiver was needed. Judge Beverungen granted relief that was never requested or sought by Petitioners and he did so by ignoring and/or misinterpreting the plain language of the Building Code.

ISSUE ON APPEAL

Protestants were compelled to note an appeal to this Board as their only vehicle to challenge that portion of Judge Beverungen's Opinion and Order which granted relief under the Building Code of Baltimore County. Protestants do not appeal (and have not appealed) that portion of the Opinion and Order, which resolved in their favor (i.e. the denial of a waiver to rebuild an existing enclosed porch in a riverine flood plain).

Petitioners did not file an appeal of ALJ Beverungen's adverse ruling, Opinion and Order which denied a waiver to rebuild an existing enclosed porch in a riverine flood plain – the only relief requested by Petitioners. Accordingly, that issue is not before this Board of Appeals and that issue is not subject to appellate review by this Board of Appeals. See Halle Companies v. Crofton Civic Association, 339 Md. 131 at 141 (1995) citing Daihl v. County Board of Appeals, 258 Md. 157, where the Court of Appeals held that a board of appeals cannot review actions which were not appealed specifically.

ARGUMENT

ALJ Beverungen did not have the authority to issue the relief "granted" by him in his May 18, 2016, Opinion and Order.[4]

A petition for special hearing under B.C.Z.R. Section 500.7 is akin to a declaratory judgment action. Antwerpen v. Baltimore County, 163 Md. App. 194, 209 (2005). In this case, Petitioners sought a declaration that they were entitled to a waiver under the County Code to build in a riverine flood plain. B.C.Z.R. Section 500.7 requires specific public notice as to the scope and nature of the "declaratory" request and the public hearing, as does BCC Section 32-4-107.1.

B.C.Z.R. Section 500.7 states in relevant part:

> "If the petition relates to a specific property, notice of the time and place of the hearing shall be conspicuously posted on the property for a period of at least fifteen days before the time of the hearing. Whether or not a specific property is involved, notice shall be given for the same period of time in at least two newspapers of general circulation in the County. The notice shall describe the property, if any, and the action requested in the petition..." (Emphasis added.)

BCC Section 32-4-107.1 similarly requires in relevant part as follows:

> (a) *Required.* The Director of Permits, Approvals and Inspections shall give notice of a request for...a waiver under Section 32-4-107 of this subtitle.
>
> (b) *Contents.* Notice shall be given to the County Council and posted on the County's internet website. The notice shall contain:
>
> (1) The date of the application for...waiver;
> (2) The nature of the request;

[4] See Early v. Early, 338 Md. 639, 658 (1995). The Court has no authority, discretionary or otherwise, to rule upon a question not raised in the pleadings, and of which the parties therefore had neither notice nor an opportunity to be heard. See also Scott v. Jenkins, 345 Md. 21, 27-28 (1997).

(3) If a public meeting is scheduled, the date, time and place of the hearing...(Emphasis added.)

The public notice of the action requested by the Petition as required by B.C.Z.R. Section 500.7 was limited to the request for a waiver under BCC Sections 32-4-107 and 32-8-301. The public notice did not invoke the application or implication of the Building Code of Baltimore County (Bill 40-115) Section 125. The public notice/posting as required by B.C.Z.R. Section 500.7 and BCC Section 32-4-107(a)(2) simply advised the public that the Petitioners wished to "rebuild an existing enclosed porch in a riverine flood plain." There was no mention in the public notice (as required) that Petitioners were really seeking to replace a screened-in porch with a new two-story addition, which would expand the interior living space of their property. The absence of proper notice by Petitioners is a fatal flaw.

As noted by the Maryland Court of Appeals in Cassidy v. Board of Zoning Appeals, 218 Md. 418, 421-22 (1956):

> "It has been stated so frequently and so generally that the failure of the administrative official or board to give a proper notice of a hearing, required by law, is fatal to the jurisdiction of the official or the board to conduct the hearing that it requires no citation of authority to support the proposition; ..."[5]

---

[5] In Cassidy, the Court of Appeals relied heavily upon Professor Merrill's treatise on notice. Professor Merrill wrote, "...the notification must indicate the authority under which the administration is acting and the facts which bring the matter within its jurisdiction. A monition of a proceeding of one character may not be used as the foundation for action of a different sort...Finally, and here is the heart of the requirement of the notification in administrative proceedings, "the noticee should be apprised of the character of the action proposed and enough of the basis upon which it rests to enable him intelligently to prepare for the hearing...2 Merrill, Notice, see 796" 218 Md. at 424. While in Cassidy, the Court held that the notice of a petition for zoning reclassification substantially complied to allow for the approval of a special exception (not mentioned in the notice), the Court justified its decision by finding that the requisite evidence to satisfy special exception standards was the same as that which was necessary to satisfy the requirements for a zoning reclassification.

In the instant case, Petitioners' notice was insufficient and improper because it failed to apprise anyone that the action rested upon Part 125 of the Building Code of Baltimore County. In fact, Part 125 was never mentioned or raised throughout the course of the proceedings until Judge Beverungen brought it into his Opinion and Order. Furthermore, the "evidence" of construction costs involving Part 125 of the Building Code (even if it were applicable) is substantially different from the evidence to satisfy the waiver requirements under BCC Sections 32-8-301 and 32-8-303.

This Board should also follow the well-reasoned majority Opinion and Order issued by the Board of Appeals of Baltimore County in the matter of Carolyn Morris and CG Homes (Case No. 2015-302-SPHA). In that case, like the instant case, Administrative Law Judge Beverungen denied the only relief requested by Ms. Morris' Petition for a variance under B.C.Z.R. Section 307. As here, Petitioner did not appeal the Opinion and Order as to the B.C.Z.R. Section 307 Petition denied by ALJ Beverungen.

In his original Opinion and Order denying Ms. Morris the relief before him, ALJ Beverungen noted in dicta that B.C.Z.R. Section 304 could provide Ms. Morris the avenue for the relief she sought. Apparently, at the hearing on the merits, there had been some discussion regarding the import or impact of B.C.Z.R. Section 304. In any event, following the path for relief as gratuitously offered by ALJ Beverungen, Ms. Morris filed a Petition for Reconsideration requesting relief under Section 304 (which relief was granted by ALJ Beverungen, without public notice or a hearing and over the objection of the Protestants).

On appeal, this Board correctly determined that Ms. Morris' original notice and hearing were not in substantial compliance with the notice requirements to allow relief under B.C.Z.R. Section 304. Accordingly, the Board of Appeals granted Peoples Counsel's Motion to Dismiss, concluding that the lack of a public notice and a public hearing regarding what was at issue in the B.C.Z.R. Section 304 Reconsideration was fatal. Furthermore, the Board of Appeals rightly determined that its exercise of appellate jurisdiction did not permit it to entertain the B.C.Z.R. Section 304 Reconsideration (and/or an Amended Petition filed by Ms. Morris) due to the issues were not properly before the Board because of the lack of proper public notice, as well as a public hearing, to address the issues specifically raised by the Section 304 Reconsideration and Amended Petition. A copy of the Board of Appeals Majority Opinion and Order in Morris is attached hereto for the convenience of the Board and Petitioner (as Exhibit E).

Finally, the Building Code of Baltimore County (Bill 40-15) provides no aid to Petitioners' cause in any event. The relief granted by ALJ Beverungen by invoking and relying upon Part 125 of the Building Code of Baltimore County (Bill 40-15) is wrong, misplaced and misguided. Assuming arguendo that ALJ Beverungen had the authority to step beyond the boundaries of his reservation (which he did not), his reliance upon the terms and provisions of Part 125 of the Building Code of Baltimore County is flatly wrong as a matter of law and unsupported by the evidence presented at the hearings before him. ALJ Beverungen ignores the provisions of Part 109 Application of Building Code. That provision states in no uncertain terms as follows:

> "This Code shall apply to the construction, alteration, addition, repair, removal, demolition, enlargement, replacement, relocation, equipment, use or occupancy,

> location, and maintenance of all buildings and structures or any appurtenants connected or attached to such buildings and structures and their service equipment as herein defined, except as such matters are otherwise provided for in other ordinances or statutes, wherein the rules and regulations authorized for promulgation under the provisions of this Code." (Emphasis added.)

Baltimore County Building Code Sections 32-4-414, 32-4-107, 32-8-301 and 32-8-303 control and provide otherwise.

ALJ Beverungen also ignored Part 123 of the Building Code which states:

> "All permitted activity in a flood hazard area shall be subject to the legal requirements set forth in Section 32-4-414 of Article 32, Title 4 of the Baltimore County Code, 2003, as amended, titled Flood Plain and Wetland Protection and Article 32, Title 8 of the Baltimore County Code, 2003, as amended, titled Flood Plain Management, as well as the requirements of this Code."

ALJ Beverungen found that Petitioners did not meet the legal requirements of "exceptional hardship" set forth under BCC Section 32-8-303 or the requirements of BCC Section 32-4-107. Furthermore, ALJ Beverungen ignored the plain language and meaning of Part 125.1, which states clearly and concisely, "No new buildings or additions shall be constructed in a riverine flood plain." (Emphasis added.) The plan/plat attached to the Petition for Special Hearing and the evidence Petitioners presented to ALJ Beverungen at the hearing clearly established that Petitioners were going to replace an existing screened-in porch with a two-story addition which would be attached to the existing dwelling and expand the interior living space of the property.

Lastly, without any evidence or argument that the provisions of Part 125.2 apply, ALJ Beverungen simply "assumed" that the construction proposed by Petitioners would not meet the definition of substantial improvements to existing building. There

was no discussion or evidence as to the value of the structure or the value of the current tax assessment. There was nothing before the Administrative Law Judge, which would allow him to conclude, "it would appear the construction proposed here would not cost in excess of $246,900" (one-half of the current tax assessment). That point is underscored as ALJ Beverungen concluded his Opinion by stating, "Assuming that is the case, I do not believe a waiver is required." (Emphasis added.) Fundamentally, ALJ Beverungen had no authority to render a decision based on "assumptions," particularly assumptions which were not grounded on any evidence or argument presented.

CONCLUSION

In conclusion, this Board has no authority to grant relief under the Building Code for lack of proper request, proper notice and/or public hearing initially. ALJ Beverungen lacked jurisdiction to grant any relief under The Building Code (even if such relief were available) for lack of proper request, lack of public notice and lack of public hearing. Furthermore, Petitioners cannot employ the Board of Appeal's scope of appellate review to grant the relief which was denied below (but from which no appeal was taken by Petitioners).

Respectfully submitted,

Richard C. Burch,
Mudd, Harrison & Burch, L.L.P.
401 Washington Avenue, Suite 900
Towson, Maryland 21204
[T] 410-828-1335
[F] 410-828-1042
rcb@mhblaw.com
Attorney for Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of February, 2017, a copy of the foregoing Protestants' Motion to Dismiss Petition for Special Hearing; or, Alternatively, Motion for Summary Judgment/Decision was sent via e-mail to dlafiandria@pklaw.com and mailed to Dino LaFiandra, Esquire, Pessin Katz Law, P.A., 901 Dulaney Valley Road, Suite 500, Towson, Maryland 21204, attorney for Petitioners.

Richard C. Burch

FLOOD

PETITION FOR ZONING HEARING(S)

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 7700 Crossland Road **which is presently zoned** D.R. 2

Deed References: Liber 8905 Folio 821 10 Digit Tax Account # 0314011742, 0314011743

Property Owner(s) Printed Name(s) Richard S. Lehmann & Susan W. Lehmann

(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

(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)**

TO BE PRESENTED AT HEARING

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

Legal Owners (Petitioners):

Richard S. Lehmann / Susan W. Lehmann
Name #1 – Type or Print Name #2 – Type or Print

Signature #1 / Susan W. Lehmann
Signature # 2

7700 Crossland Road Baltimore Maryland
Mailing Address City State

21208 / 410-539-8300 / rlehmann@abrneu.com
Zip Code Telephone # Email Address

Attorney for Petitioner:

N/A
Name- Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

Representative to be contacted:

Richard E. Matz, P.E.
Name – Type or Print

Signature

2835 Smith Ave., Ste. G Baltimore Maryland
Mailing Address City State

21209 / 410-653-3838 / dmatz@cmrengineers.com
Zip Code Telephone # Email Address

CASE NUMBER 2016-0060-SPH Filing Date 9/4/15 Do Not Schedule Dates: _____ Reviewer JRF

REV

EXHIBIT A

Petition for Special Hearing Attachment
7700 Crossland Road
Baltimore County, Maryland

Special Hearing Requested

1. A Special Hearing for a **waiver** pursuant to Section 500.6, BCZR; Section 3112.0, Building Code; and Sections 32-4-414, 32-4-107(a)(2), 32-8-301, BCC to rebuild an existing enclosed porch in a riverine floodplain.


EXHIBIT
B


ZONING NOTICE
CASE #
A PUBLIC HEARING WILL BE HELD BY
THE ZONING COMMISSIONER
IN TOWSON, MD
PLACE:
DATE AND TIME:

EXHIBIT
C

KEVIN KAMENETZ
County Executive

LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
Administrative Law Judge

May 18, 2016

Dino LaFiandra, Esquire
Pessin Katz Law, P.A.
901 Dulaney Valley Road, #500
Towson, MD 21204

RE: Petition for Special Hearing
Case No. 2016-0060-SPH
Property: 7700 Crossland Road

Dear Mr. LaFiandra:

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

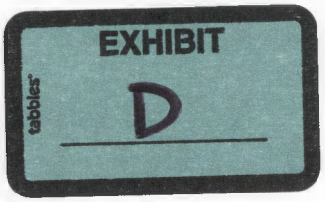
In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Office of Administrative Hearings at 410-887-3868.

Sincerely,

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln
Enclosure

c: Richard Burch, Esquire, Mudd, Harrison & Burch, L.L.P.,
401 Washington Avenue, Suite 900, Towson, MD 21204



IN RE: **PETITION FOR SPECIAL HEARING** **(7700 Crossland Road)** 3rd Election District 2nd Council District	*	BEFORE THE
	*	OFFICE OF
	*	ADMINISTRATIVE HEARINGS
Richard S. & Susan W. Lehmann *Legal Owners* Petitioners	*	FOR BALTIMORE COUNTY
	*	**Case No. 2016-0060-SPH**

* * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Hearing filed on behalf of Richard S. & Susan W. Lehmann, legal owners. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") for a waiver to rebuild an existing enclosed porch in a riverine floodplain.

Richard Lehmann and Richard E. Matz, professional engineer, appeared in support of the petition. Dino LaFiandra, Esq. represented Petitioners. Richard Burch, Esq. represented a neighbor who opposed the request. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. A substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Public Works (DPW). That agency did not oppose the waiver request.

The subject property is 0.76 acres and zoned DR 2. The property is improved with a single family dwelling. The petition states the existing porch is "in a riverine floodplain" (emphasis added) but the DPW's ZAC comment states the porch is "within 20 feet of the 100-year riverine floodplain." That comment also states the waiver is sought to "approve a setback from the 100-year floodplain limit of less than 20 feet." I note these discrepancies to highlight, as discussed at

IT IS FURTHER ORDERED Petitioners shall be entitled to rebuild the existing enclosed porch, provided the cost to do so does not exceed $246,900.00.

The relief granted herein shall be subject to 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.

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

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln

IN THE MATTER OF: CAROL LYNN MORRIS AND C.G. HOMES 206 MORRIS AVENUE	*	BEFORE THE
	*	BOARD OF APPEALS
	*	OF
8th Election District 3rd Councilmanic District	*	BALTIMORE COUNTY
	*	Case No. 2015-302-SPHA

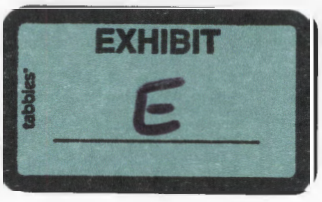
* * * * * * * * * * * * *

OPINION AND ORDER

This matter comes to the Baltimore County Board of Appeals (the "Board") originally as an appeal filed by Michael R. McCann, Esquire, on behalf of Lutherville Community Association and affected residents ("Protestants") of the Administrative Law Judge's Order granting the Motion for Reconsideration, dated October 9, 2015. However, prior to any hearing on the merits, People's Counsel for Baltimore County filed a Motion to Dismiss Amended Petition. At deliberation on the Motion, the Board granted the Motion to Dismiss. After the Opinion and Order regarding the disposition of that Motion was drafted but just prior to its issuance, the Board received a request from Lawrence E. Schmidt, Esquire on behalf of Petitioner that the Opinion and Order be stayed so that the above-captioned case could be consolidated with a new, related appeal. A public deliberation on the request to stay the Opinion and Order and consolidate the cases was held on August 9, 2016. This Opinion and Order addresses both, the original Motion to Dismiss as deliberated and the subsequent request to stay and consolidate.

Procedural History

On June 25, 2015, Petitioner, Carol Lynn Morris filed a Petition for Zoning Hearing concerning the above-captioned property, located in historic Lutherville. The Petition requested: (1) a Special Hearing pursuant to Baltimore County Zoning Regulations Section 500.7 seeking



confirmation that the request will not affect the density of the surrounding neighborhood; and (2) a Variance of required setback and lot size minimums. Following the filing of the Petition, a Notice of Zoning Hearing identifying the requests for Special Hearing and the Variances was published in The Jeffersonian. In addition, the property at issue was posted with a Zoning Notice identifying the same requests. The subject matter of the hearing as identified by the public notice was as follows:

> Special Hearing to approve a confirmation that density of the surrounding neighborhood is not being affected. Variance to permit a proposed dwelling with a side setback of 10 feet in lieu of the minimum setback of 15 feet with a sum of 25 feet in lieu of required 40 feet; to permit a lot width of 63 feet in lieu of the required 100 feet, a lot area of 14.189 sq. ft. in lieu of the required 20,000 sq. ft.

A hearing was held in front of the Administrative Law Judge on September 4, 2015. Petitioner was represented by counsel, as were Protestants. People's Counsel also entered its appearance. On September 9, 2015, the Administrative Law Judge issued his Opinion and Order ("ALJ Original Opinion"), denying the Petition for Special Hearing and denying the Petition for Variance. As set forth in the ALJ Original Opinion, a discussion arose during the hearing concerning Baltimore County Zoning Regulation § 304 ("Use of Undersized Single-Family Lots"). The ALJ Original Opinion commented that B.C.Z.R. §304 may have been better designed to accommodate the wishes of Petitioner rather than B.C.Z.R. §307, which was the subject matter of the Petition and the hearing. In the end, however, the Administrative Law Judge denied variance relief, finding that the property was not unique as required by B.C.Z.R. § 307.

With that in mind, on September 18, 2015, Petitioner filed a Motion for Reconsideration seeking approval for an undersized lot pursuant to B.C.Z.R. §304, and variance(s) to accommodate the same, as well as reconsideration of the earlier Petition for Special Hearing and Petition for Variance that sought relief pursuant to B.C.Z.R. §307.1. As part of the Motion for

Reconsideration, Petitioner submitted a new, alternative plan for the proposed dwelling. The Motion was opposed by Protestants. There was no hearing on the Motion for Reconsideration.

On October 9, 2015, the Administrative Law Judge granted the Motion for Reconsideration finding that the new, alternate plan met the requirements of B.C.Z.R. § 304. In doing so, the Administrative Law Judge concluded that notice previously given on the original Petition was sufficient for the consideration of the application of §304 to the newly-submitted plan and that it did not matter, in terms of notice and due process, whether B.C.Z.R. §304 or §307 is the operative provision under which Petitioner sought relief. Moreover, the Administrative Law Judge concluded that notice and due process were particularly not at issue in the Amended Petition as the applicability, *vel non*, of Section 304 was identified by Protestants at the original hearing.

On November 9, 2015, counsel for Protestants appealed the October 9, 2015 Order ("ALJ Reconsideration Opinion"), as well as the ALJ Original Order. Petitioner did not appeal the Order as to the §307 Petition denied by the Administrative Law Judge.

On December 1, 2015, counsel for Petitioners filed a formal Amended Petition for Variance and Special Hearing. People's Counsel filed its Motion to Dismiss on January 20, 2016. A hearing was scheduled in front of the Board of Appeals on February 4, 2016, at which time, it was decided that additional time was needed to review the Motion and materials at issue. As such, a Public Deliberation on the Motion was scheduled for March 9, 2016. At the Public Deliberation, this Board voted 2-1 to grant the Motion to Dismiss as the neither the original Petition, nor the Reconsideration, afforded Protestants adequate public notice or a public hearing on the attempted request for relief pursuant to Section 304.

Just prior to the intended issuance of this Board's Opinion and Order regarding the decision reached at the March 9, 2016 Public Deliberation, Petitioner's counsel filed a letter on May 25,

2016 requesting that the Board of Appeals, in essence, stay its issuance of its Opinion and Order, as a new, related Petition (Case No. 2016-0201-SPH) had been filed and had just been denied on May 18, 2016 by the Administrative Law Judge, and Petitioner wished to consolidate the above-captioned case with the appeal taken on Case No. 2016-0201-SPH.[1]

Discussion

In disposing of the Motion to Dismiss, the Board examined whether there had been sufficient public notice and public hearing for the relief sought as part of the §307 Petition, §304 Reconsideration and/or Amended Petition, with respect to the new, alternative dwelling plan, first argued by Petitioner in writing post-hearing as part of its Motion for Reconsideration. For the reasons set forth below, the Board of Appeals concludes that, in this instance, the prior notice for the §307 Petition did not substantially comply with the public notice requirements to permit the §304 Reconsideration going forward. Similarly, the Board of Appeals concludes that the hearing on the §307 Petition did not satisfy the public hearing requirements required to proceed under §304 to grant the Motion for Reconsideration. These failures warrant dismissal of the Amended Petition.

A. The Hearing on the Original Petition Concerned Relief Under Section 307 Only

The §307 Petition filed by Petitioner identified, as is relevant, a variance from Section 1B02.3.C.1, the development standards for small lots, which identifies minimum widths, depths and area. Petitioner did not specifically identify whether relief was sought pursuant to B.C.Z.R. §304 or B.C.Z.R. §307. Both, §304 and §307, are methods by which an owner may seek relief to construct a dwelling on an undersized lot. *Mueller v. People's Counsel*, 177 Md. App. 43; 934

[1] As there are multiple Petitions being discussed, to make sure that the Petitions being discussed are properly differentiated in this Opinion, the original Petition shall be referred to as the "§307 Petition," or "Original Petition;" the Reconsideration shall be referred to as "§304 Reconsideration", the Amended Petition shall be "Amended Petition," and new § 304 Petition shall be "2016 Petition."

A.2d 974 (2007). However, §304 and §307 have differences, particularly: the elements that need to be proved; the evidence for the same; the procedure to obtain relief; and public notice and public hearing requirements.

At the hearing below on the Original Petition, Petitioner spent much time and effort on proving whether the property at issue was unique, an element under §307, but not §304. During that hearing, Petitioner asserted that the size of the lot made the property unique. The Administrative Law Judge, however, questioned whether the size of the lot should be considered as a factor of uniqueness; but, even assuming that it could be a factor, the evidence presented revealed that other lots in the community were similar in size and shape. (ALJ Original Opinion, p. 3-4.)

Ultimately, the Administrative Law Judge, in disposing of the §307 Petition, determined that Petitioner could not "satisfy the stringent requirements for variance relief," noting that Petitioner's property did not have any historic structure or inherent historic attributes, a factor of uniqueness identified in *Cromwell v. Ward*, 102 Md.App. 691, 710; 651 A.2d 424, 433-34 (1995). (ALJ Original Opinion, p. 3.) The Administrative Law Judge denied the variance request on the §307 Petition, as the requirements of B.C.Z.R. §307 were not satisfied.

In the ALJ Original Opinion, the Administrative Law Judge noted that B.C.Z.R. §304 is specific to undersized lots and theorized that if Petitioner could construct a dwelling that satisfies the setback requirements in a D.R. 2 zone, "they could take advantage of §304." (ALJ Original Opinion, at p. 4.) It is clear from the Administrative Law Judge's comments that Petitioner had not sought variance relief as an undersized lot. Based on the above, it is without question that the public hearing on the original Petition concerned only relief sought under B.C.Z.R. §307.

In Petitioner's Motion for Reconsideration, counsel for Petitioner stated that §304 "was raised as an issue at the hearing," and stressed judicial economy as a reason to avoid having "to file yet another petition and repeat the process." (Reconsideration, at pp. 1, 2.) However, as part of that Motion, Petitioner requested that the Court apply §304 to a new, alternative dwelling plan. The new, alternative plan one differed from the Original Petition and therefore, differed from relief identified in the public notice. Petitioner sought to bypass the requirements of filing a new petition and consequently, bypass the generation of a new public notice regarding the new relief sought. Counsel's statements and actions further illustrate that B.C.Z.R. §304 was not the subject of the Original Petition or hearing.

B. The Original Notice and Hearing Were Not In Substantial Compliance with the Requirements to Proceed Under Section 304

Counsel for both parties cite *Cassidy v. County Board of Appeals of Baltimore County,* 218 Md. 418, 421; 146 A.2d 896, (1958) in their Memoranda on the Motion to Dismiss, and, indeed, *Cassidy* is analogous to this case in certain respects and provides framework helpful in resolving this issue.

In *Cassidy*, one principal contention presented was whether proper notice of a hearing was provided and if not, was such failure fatal to the jurisdiction of the official or board to conduct the hearing. (*Id* at 897-98.) The deficiency claimed was the failure to name a request for a special exception when the notice identified only a reclassification. (*Id* at 898-99.) The Court upheld the decisions below, holding that the notice given was in substantial compliance with the requirements. (*Id.* at 900.) In doing so, the Court concluded that by being on notice of the request to reclassify, the public was on notice of special exception and therefore, preparing for one was akin to preparing for both. (*Id.* at 899-900.) In essence, the failure to specifically identify a request for special exception in addition to a reclassification did not change the course of the hearing or the evidence

needed to defeat the petition. Moreover, the method of notice required by each was identical. (*Id.* at 900.)

The case at hand, however, starkly contrasts with the facts relied upon in *Cassidy* in arriving at its conclusion. Here, §304 and §307 may have similar goals, but notably, the elements, and therefore, the proof needed for each, have significant differences. *Mueller*, 177 Md. App. at 87; 934 A.2d at 999. (e.g., "BCZR §304 does not contain elements of practical difficulty or uniqueness, which are embodied in § 307.").

In particular, in order to obtain relief pursuant to B.C.Z.R. §307, the more general statute,[2] Petitioner must prove: (1) the property is unique; and (2) if variance relief is denied, Petitioner will experience a practical difficulty or hardship. *Trinity Assembly of God v. People's Counsel*, 407 Md. 53, 80; 962 A.2d 404, 420 (2008), citing *Cromwell v. Ward*, 102 Md.App. 691, 698-99; 651 A.2d 424, 427-28 (1995). The uniqueness of a property requires a particular property to have an inherent characteristic not shared by other properties in the area --- its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties, or other such restrictions. *Cromwell*, 102 Md.App. at 710; 651 A.2d at 433-34, citing *North v. St. Mary's County*, 99 Md.App. 502, 512; 638 A.2d 1175 (1994).

On the other hand, B.C.Z.R. §304.1 requires a party to prove its eligibility for relief by demonstrating: (A) the lot was duly recorded by deed or validly approved subdivision prior to March 30, 1955; (B) all other requirements of the height and area regulations are complied with; and (C) the owner of the lot does not own sufficient adjoining land to conform to the width and area requirements in the regulations.

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[2] *Mueller*, 177 Md.App. at 86-87; 934 A.2d at 999.

The Administrative Law Judge noted and counsel for Petitioner argued that Protestants raised the applicability, *vel non*, of §304 in the hearing on the Original Petition, and therefore, consideration of the same in the Motion for Reconsideration was not a surprise. This argument may be more persuasive if the original hearing concerned §304 or the plan at issue in the original hearing was the same plan at issue in the Reconsideration.

Instead, the dwelling plan under consideration pursuant to §304 was a new, alternative plan raised by the first time in the Motion for Reconsideration. It is axiomatic that the plan raised for the first time in the Motion for Reconsideration was not one at issue in the hearing, nor was it the one identified in the public notice. In *Cassidy*, the notice for reclassification and request for special exception concerned the same plan. There were no changes to the plan when under consideration for reclassification or when under consideration for the special exception.

As Petitioner's new, alternative plan was not an issue at the time of the hearing, the quantity and quality of evidence particular to §304 was not relevant. Rather, arguments over facts and issues germane to §304 were newly raised in letter form as part of the Motion for Reconsideration. Again, raising of new facts and issues as part of the Motion for Reconsideration is indicative as to whether the original public notice was sufficient, as well as whether the public hearing was sufficient. The failure to have a public notice and a public hearing regarding that which was at issue in the reconsideration is fatal to the §304 Reconsideration and related Amended Petition.

In addition, §304 has its own specific process (as alluded to above), as well as its own particular public notice and public hearing provisions. If Petitioner intended to proceed under §304 prior to the hearing, Petitioner was required to adhere to those requirements. The failure to do so dictates the same conclusion --- public notice was inadequate, and here, the matter fails under

Section 304.4 as well as there never has been a full public hearing pursuant to Section 304.4 on the new alternative dwelling plan.

It should be noted that there is a question as to whether relief under B.C.Z.R. §304 can be sought via Petition for Zoning Hearing in the absence of a building permit, as §304.3 states "*Upon application for a building permit pursuant to this section*, the subject property shall be posted conspicuously..." (emphasis added).

Petitioner argued that no particular notice under §304.3 was required here because there was no building permit issued as of yet. Petitioner also argued that no notice or hearing under §304 is required if and once a building permit is issued in this case because the Protestants had their day in court. Petitioner wants the relief pursuant to that section, but not the obligations that come with obtaining such relief. Section 304's specific notice provision, as well as its specific hearing provision, cannot and should not be so lightly disregarded.

Moreover, in the ALJ Reconsideration Opinion, the Administrative Law Judge noted that this property is within the Lutherville historic district and the Landmarks Preservation Commission must review the proposal. (Baltimore County Code ("BCC") §32-7-404.) The effect, importantly, is that a permit for construction cannot be issued unless the Landmarks Preservation Commission issues a notice to proceed. (BCC §32-7-405.)

Therefore, if it is accepted that a building permit triggers the public notice and public hearing sections on a petition for variance relief pursuant to §304, a party cannot raise the issue by amending an existing petition at a hearing or post hearing, without a building permit *and* without compliance with the public notice and public hearing provisions distinct to §304. By virtue of this analysis, in light of the fact that there has never been a building permit and there has not been public notice following the issuance of a building permit issued under §304.3, this issue is not

properly in front of the Board of Appeals, and the §304 Reconsideration and Amended Petition require dismissal.

This is not a matter where a full public hearing can be dispensed with either. To be excused from a hearing, the property must be an owner-occupied lot zoned residential, and in order to receive a variance without a hearing, the petitioner is required to file a supporting affidavit with the petition under oath made on the personal knowledge of the petitioner that sets forth facts that would otherwise satisfy the petitioner's burden of proof if a hearing were to be required. (BCC §§32-3-303(a)(1), (a)(2)(i).) The affidavit is in addition to the information required by the Administrative Law Judge[3] on the petition. (BCC §32-3-303 (a)(2)(ii).) The Administrative Law Judge may not grant a variance under this section unless notice of the petition is conspicuously posted on the property for a period of at least 15 days following the filing of the application in accordance with the requirement of the Department of Permits, Approvals and Inspections. (BCC §32-3-303(a)(3).)

The property is not owner-occupied, as there is no dwelling on that lot. Moreover, none of the requirements to excuse a hearing on a variance request have occurred in order to substantiate the granting of the Motion for Reconsideration, and therefore, relief under Section 304, without a full public hearing. Therefore, the reconsideration and attempted amendment both run afoul of the specific public notice and public hearing sections under §304 that parties are compelled to comply with when proceeding pursuant to that section.

[3] § 3-12-104(b) — Any reference to the Zoning Commissioner, the Deputy Zoning Commissioner or the Hearing Officer in the Charter, the Code or the Baltimore County Zoning Regulations shall be deemed to be a reference to the Office [of Administrative Hearings].

C. The Amended Petition Cannot Be Heard For the First Time by the Board of Appeals

It was also argued that a full hearing on the §304 Reconsideration and/or Amended Petition can occur at the Board of Appeals as our review of variance requests is *de novo*. A *de novo* appeal, however, is an exercise of appellate jurisdiction rather than original jurisdiction. *Halle Companies v. Crofton Civic Ass'n,* 339 Md. 131, 143; 661 A.2d 682, 687-88 (1995); see *Hardy v. State*, 279 Md. 489, 492, 369 A.2d 1043, 1046 (1977). Whether a tribunal's exercise of jurisdiction is appellate or original does not depend on whether the tribunal is authorized to receive additional evidence. *Halle Companies*, 339 Md. at 143; 661 A.2d at 688. Instead, as Chief Justice Marshall explained, '[i]t is the essential criterion of appellate jurisdiction that it revises and corrects the proceedings in a cause already instituted, and does not create that cause...." *Id.*, quoting, *Marbury v. Madison,* 5 U.S. (1 Cranch) 137, 175; 2 L.Ed. 60, 73 (1803).

In the Board's opinion, the plan at issue in the §304 Reconsideration and Amended Petition, submitted for the first time after the original hearing, is not simply new evidence to be received and considered in connection with the reconsideration or by the Board of Appeals. As outlined in detail above, there is a process for relief under §304, a process in which the public is required to have specific notice of as well as a public hearing to participate and present evidence in --- a process the Lutherville Community Association and affected residents were not provided as part of the original hearing or as part of the reconsideration.

In determining the scope of *de novo* hearings in front of the Anne Arundel County Board of Appeals in *Halle Companies*, the Court of Appeals concluded that access to the site and its impact upon public health was an issue "inextricably intertwined with the administrative hearing officer's decision," so that "it was an issue properly before the Board which could be addressed." 339 Md. at 145-46; 661 A.2d at 689. Here, the Board finds that the plan on which Petitioner

intended to proceed in the Amended Petition was not so intertwined for the reasons stated above and therefore, such issues are not properly in front of the Board at this time. For these reasons, the §304 Reconsideration fails as does the Amended Petition.

D. There is No Petition Presently In Front of the Board to Consolidate

Because the Board already deliberated and determined that the Motion to Dismiss should be granted, the pendency of a related Petition does not cause the Board to revisit or vacate its earlier determination. The Board's only course of action here is to issue the Opinion it intended just prior to the request to stay and consolidate.

As set forth above, the Board dismissed the §304 Reconsideration and the Amended Petition. Petitioner did not appeal the Administrative Law Judge's ruling on the §307 Petition. At this time, there is no petition pending in front of the Board to consolidate with the appeal of the Administrative Law Judge's Order denying the Petition in 15-302-SPHA. Therefore, with the issuance of the Opinion and Order on the Motion to Dismiss, the Board has no option but to deny Petitioner's request to consolidate as being moot.

Conclusion

While the recitation of procedural history and analysis above make this matter seem complicated, it really is not. In the end, Protestants did not have sufficient public notice or a public hearing regarding the new, alternative plan and relief under B.C.Z.R. §304. The failure to provide such adequate public notice and a full public hearing requires dismissal of the §304 Reconsideration Petition and the related, subsequent Amended Petition. People's Counsel's Motion to Dismiss is granted. The request to stay the issuance of the Board's Opinion and Order is denied. As the Board granted People's Counsel Motion to Dismiss, there is nothing for the Board to consolidate. Therefore, Petitioner's request to consolidate is denied as moot.

ORDER

THEREFORE, IT IS THIS 24th day of October, 2016, by the Board of Appeals of Baltimore County,

ORDERED that People's Counsel's Motion to Dismiss is hereby **GRANTED**. The Petitioners' §304 Reconsideration Petition and related Amended Petition are **DISMISSED**; and

ORDERED that Petitioner's request to stay the issuance of the Board's Opinion and Order disposing of the Motion to Dismiss is **DENIED**; and

ORDERED that Petitioner's request to consolidate the appeal on Case No. 2016-0201-SPH with the above-captioned case is **DENIED, as moot.**

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

BOARD OF APPEALS
OF BALTIMORE COUNTY

Jason S. Garber

James West

Krysundra Cannington

From: Dino La Fiandra <dlafiandra@pklaw.com>
Sent: Wednesday, November 23, 2016 11:42 AM
To: Krysundra Cannington
Cc: Richard C. Burch Esquire (rcb@mhblaw.com)
Subject: RE: Richard and Susan Lehmann 16-060-SPH

Sunny,

I have spoken with Richard Burch and the date we have settled on for this hearing is Thursday, February 9, 2017.

Thank you for your kind assistance with this matter. Have a nice Thanksgiving!

Regards,
Dino

Dino C. La Fiandra
Member
901 Dulaney Valley Road | Suite 500 Towson, MD | 21204
Direct Dial: 410.938.8705 | Direct Fax: 410.832.5651 | Mobile: 443-204-3473
dlafiandra@pklaw.com | About Us | Attorney Bio | Download V-Card

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From: Krysundra Cannington [mailto:kcannington@baltimorecountymd.gov]
Sent: Wednesday, November 16, 2016 2:37 PM
To: Dino La Fiandra
Cc: Richard C. Burch Esquire (rcb@mhblaw.com)
Subject: RE: Richard and Susan Lehmann 16-060-SPH

Counsel,

Please be advised I spoke with the Chairman this afternoon and the request for postponement is granted. An official Notice of Postponement will be issued in tomorrow's mail.

In the meantime, the following dates are currently available on the Board's calendar:

February 7, 8, 9, 14, 15, 16, 22, and 28, 2017. Any hearing would begin at 10:00 a.m.

Please advise which dates work best for you.

Thank you.

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County

410-887-3180

From: Dino La Fiandra [mailto:dlafiandra@pklaw.com]
Sent: Wednesday, November 16, 2016 1:14 PM
To: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Cc: Richard C. Burch Esquire (rcb@mhblaw.com) <rcb@mhblaw.com>
Subject: RE: Richard and Susan Lehmann 16-060-SPH

Sunny,

Thanks for your email. A copy of the letter is attached.

Regards,
Dino

Dino C. La Fiandra
Member
901 Dulaney Valley Road | Suite 500 | Towson, MD | 21204
Direct Dial: 410.938.8705 | Direct Fax: 410.832.5651 |Mobile: 443-204-3473
dlafiandra@pklaw.com | About Us | Attorney Bio | Download V-Card

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From: Krysundra Cannington [mailto:kcannington@baltimorecountymd.gov]
Sent: Wednesday, November 16, 2016 12:01 PM
To: Dino La Fiandra
Cc: Richard C. Burch Esquire (rcb@mhblaw.com)
Subject: Richard and Susan Lehmann 16-060-SPH

Good morning Dino,

On Monday, we received a letter from Mr. Burch consenting to your request for postponement in the matter of Richard and Susan Lehmann 16-060-SPH. Today's mail has been processed and we have not yet received your request for postponement. We are unable to act on a request we haven't received. Would you be able to email an additional copy of your request?

Thank you,

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue

Towson, MD 21204
Phone: 410-887-3180
Fax: 410-887-3182

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Dino C. La Fiandra
Telephone: 410.938.8705
Facsimile: 410.832.5651
DLaFiandra@PKLaw.com

November 8, 2016

Maureen Murphy, Chairman
Baltimore County Board of Appeals
105 West Chesapeake Avenue, #203
Towson, MD 21204

Re: Case No. 2016-0060-SPH
Property: 7700 Crossland Road

Dear Ms. Murphy:

I represent Richard and Susan Lehmann. Mr. and Mrs. Lehmann are the owners of the subject property; they were the Petitioners in the Petition for Special Hearing before the Administrative Law Judge and are the Respondents/Appellees in the matter before the Board of Appeals.

The hearing before the Board of Appeals was scheduled by agreement of the parties for November 30, 2016 at 10 am. However, Mrs. Lehmann has recently had a medical procedure scheduled for that morning, and Mr. Lehmann needs to be with his wife to assist with transportation and whatever she may need during the day. Accordingly, on behalf of my clients, I respectfully request that the hearing be rescheduled to a different date. If the Board grants their request to reschedule the hearing, I would be happy to work with Mr. Burch to find a mutually agreeable date.

Thank you for your consideration.

Sincerely,

Dino La Fiandra

cc: Richard Burch, Esquire

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

November 17, 2016

NOTICE OF POSTPONEMENT

IN THE MATTER OF: Richard and Susan W. Lehmann
1100 Crossland Road
16-060-SPH 3rd Election District; 2nd Councilmanic District

Re: Petition for Special Hearing pursuant to Baltimore County Zoning Regulation Section 500.7 for a waiver to rebuild an existing enclosed porch in a riverine floodplain.

5/18/16 Opinion and Order issued by the Administrative Law Judge wherein the requested relief was DENIED

This matter was assigned for Wednesday, November 30, 2016 and has been postponed. It will be rescheduled to a later date.

NOTICE:

- This appeal is an evidentiary hearing. Parties should consider the advisability of retaining an attorney.
- Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.
- No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).
- If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

NEW! Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits (including video and PowerPoint) with the Board unless otherwise requested.

NEW! Projection equipment for digital exhibits is available by request. A minimum of forty-eight (48) hours-notice is required. Supply is limited and not guaranteed.

For further information, including our inclement weather policy, please visit our website www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington, Administrator

---

c: Counsel for Petitioner/Legal Owner : Dino C. LaFiandra, Esquire
Petitioner/Legal Owner : Richard and Susan Lehmann

Counsel for Protestants : Richard C. Burch, Esquire
Protestants : Henry Kahn and Marlene Trestman

Richard E. Matz, P.E./Colbert, Matz, Rosenfelt, Inc.

Office of People's Counsel
Arnold Jablon, Director/PAI
Nancy West, Assistant County Attorney

Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Michael Field, County Attorney, Office of Law

Krysundra Cannington

From: Krysundra Cannington
Sent: Wednesday, November 16, 2016 2:37 PM
To: 'Dino La Fiandra'
Cc: Richard C. Burch Esquire (rcb@mhblaw.com)
Subject: RE: Richard and Susan Lehmann 16-060-SPH

Counsel,

Please be advised I spoke with the Chairman this afternoon and the request for postponement is granted. An official Notice of Postponement will be issued in tomorrow's mail.

In the meantime, the following dates are currently available on the Board's calendar:

February 7, 8, 9, 14, 15, 16, 22, and 28, 2017. Any hearing would begin at 10:00 a.m.

Please advise which dates work best for you.

Thank you.

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
410-887-3180

From: Dino La Fiandra [mailto:dlafiandra@pklaw.com]
Sent: Wednesday, November 16, 2016 1:14 PM
To: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Cc: Richard C. Burch Esquire (rcb@mhblaw.com) <rcb@mhblaw.com>
Subject: RE: Richard and Susan Lehmann 16-060-SPH

Sunny,

Thanks for your email. A copy of the letter is attached.

Regards,
Dino

Dino C. La Fiandra
Member

Krysundra Cannington

From: Dino La Fiandra <dlafiandra@pklaw.com>
Sent: Wednesday, November 16, 2016 1:14 PM
To: Krysundra Cannington
Cc: Richard C. Burch Esquire (rcb@mhblaw.com)
Subject: RE: Richard and Susan Lehmann 16-060-SPH
Attachments: Board of Appeals Letter.pdf

Sunny,

Thanks for your email. A copy of the letter is attached.

Regards,
Dino

Dino C. La Fiandra
Member
901 Dulaney Valley Road Suite 500 Towson, MD 21204
Direct Dial: 410.938.8705 Direct Fax: 410.832.5651 Mobile: 443-204-3473
dlafiandra@pklaw.com | About Us | Attorney Bio | Download V-Card

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From: Krysundra Cannington [mailto:kcannington@baltimorecountymd.gov]
Sent: Wednesday, November 16, 2016 12:01 PM
To: Dino La Fiandra
Cc: Richard C. Burch Esquire (rcb@mhblaw.com)
Subject: Richard and Susan Lehmann 16-060-SPH

Good morning Dino,

On Monday, we received a letter from Mr. Burch consenting to your request for postponement in the matter of Richard and Susan Lehmann 16-060-SPH. Today's mail has been processed and we have not yet received your request for postponement. We are unable to act on a request we haven't received. Would you be able to email an additional copy of your request?

Thank you,

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
Phone: 410-887-3180

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DLaFiandra@PKLaw.com

November 8, 2016

Maureen Murphy, Chairman
Baltimore County Board of Appeals
105 West Chesapeake Avenue, #203
Towson, MD 21204

Re: Case No. 2016-0060-SPH
Property: 7700 Crossland Road

Dear Ms. Murphy:

I represent Richard and Susan Lehmann. Mr. and Mrs. Lehmann are the owners of the subject property; they were the Petitioners in the Petition for Special Hearing before the Administrative Law Judge and are the Respondents/Appellees in the matter before the Board of Appeals.

The hearing before the Board of Appeals was scheduled by agreement of the parties for November 30, 2016 at 10 am. However, Mrs. Lehmann has recently had a medical procedure scheduled for that morning, and Mr. Lehmann needs to be with his wife to assist with transportation and whatever she may need during the day. Accordingly, on behalf of my clients, I respectfully request that the hearing be rescheduled to a different date. If the Board grants their request to reschedule the hearing, I would be happy to work with Mr. Burch to find a mutually agreeable date.

Thank you for your consideration.

Sincerely,

Dino La Fiandra

cc: Richard Burch, Esquire

Krysundra Cannington

From: Krysundra Cannington
Sent: Wednesday, November 16, 2016 12:01 PM
To: (dlafiandra@pklaw.com)
Cc: Richard C. Burch Esquire (rcb@mhblaw.com)
Subject: Richard and Susan Lehmann 16-060-SPH

Good morning Dino,

On Monday, we received a letter from Mr. Burch consenting to your request for postponement in the matter of Richard and Susan Lehmann 16-060-SPH. Today's mail has been processed and we have not yet received your request for postponement. We are unable to act on a request we haven't received. Would you be able to email an additional copy of your request?

Thank you,

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
Phone: 410-887-3180
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MUDD, HARRISON & BURCH, L.L.P.
ATTORNEYS AT LAW
401 WASHINGTON AVENUE
SUITE 900
TOWSON, MARYLAND 21204-4835
410 828 1335
FAX 410 828 1042

RICHARD C. BURCH *
DOUGLAS W. BISER *
ANDREW JANQUITTO * *
MATTHEW P. LALUMIA *

* MEMBER OF MARYLAND BAR
* MEMBER OF DISTRICT OF COLUMBIA BAR

JOHN E. MUDD
(1928-2003)

T. ROGERS HARRISON
(1949-1995)

November 14, 2016

HAND DELIVERY
Maureen E. Murphy, Esquire, Chairwoman
Baltimore County Board of Appeals
105 West Chesapeake Avenue, Suite 203
Towson, Maryland 21204

Re: Case No. 2016-0060-SPH
Property: 7700 Crossland Road

Dear Ms. Murphy:

This correspondence replies to Mr. La Fiandra's correspondence of November 8, 2016, whereby he requests a continuance of the hearing in the captioned matter which is currently scheduled for November 30, 2016. Needless to say, my clients and I consent to Mr. La Fiandra's request on behalf of his clients.

I will be happy to work with Mr. La Fiandra to coordinate a new date convenient for the parties and the Board of Appeals.

Many thanks for your kind consideration of this matter. Best wishes to all for a happy and healthy holiday season.

Very truly yours,

Richard C. Burch

RCB/tyj
cc: Dino La Fiandra, Esquire
Henry Kahn, Esquire

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

August 3, 2016

NOTICE OF ASSIGNMENT

IN THE MATTER OF: Richard and Susan W. Lehmann
1100 Crossland Road
16-060-SPH 3rd Election District; 2nd Councilmanic District

Re: Petition for Special Hearing pursuant to Baltimore County Zoning Regulation Section 500.7 for a waiver to rebuild an existing enclosed porch in a riverine floodplain.

5/18/16 Opinion and Order issued by the Administrative Law Judge wherein the requested relief was DENIED

ASSIGNED FOR: WEDNESDAY, NOVEMBER 30, 2016 AT 10:00 A.M.

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

NOTICE:

- This appeal is an evidentiary hearing. Parties should consider the advisability of retaining an attorney.
- Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.
- No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).
- If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

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NEW! Projection equipment for digital exhibits is available by request. A minimum of forty-eight (48) hours-notice is required. Supply is limited and not guaranteed.

For further information, including our inclement weather policy, please visit our website www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington, Administrator

---

c: Counsel for Petitioner/Legal Owner : Dino C. LaFiandra, Esquire
Petitioner/Legal Owner : Richard and Susan Lehmann

Counsel for Protestants : Richard C. Burch, Esquire
Protestants : Henry Kahn and Marlene Trestman

Richard E. Matz, P.E./Colbert, Matz, Rosenfelt, Inc.

Office of People's Counsel
Arnold Jablon, Director/PAI
Nancy West, Assistant County Attorney

Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Michael Field, County Attorney, Office of Law

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Dino C. La Fiandra
Telephone: 410.938.8705
Facsimile: 410.832.5651
DLaFiandra@PKLaw.com

July 7, 2016

Ms. Sunny Carrington
Baltimore County Board of Appeals
105 West Chesapeake Avenue, #203
Towson, MD 21204

Re: Case No. 2016-0060-SPH
Property: 770 Crossland Road

Dear Ms. Carrington:

Please be advised that Richard Burch and I have agreed on November 30, 2016 for the hearing on the above-referenced matter/appeal.

Thank you for your assistance with scheduling this matter.

Very truly yours,

Dino C. La Fiandra

DCL/tek

Cc: Richard C. Burch, Esquire
Richard Lehmann

RECEIVED
JUL 08 2016
BALTIMORE COUNTY
BOARD OF APPEALS

1640657_1

PK LAW

901 DULANEY VALLEY ROAD
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BALTIMORE, MD 21204

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FAX 410-832-5600
PKLAW.COM

Dino C. La Fiandra
Telephone: 410.938.8705
Facsimile: 410.832.5651
DLaFiandra@PKLaw.com

June 24, 2016

Ms. Sunny Carrington
Baltimore County Board of Appeals
105 West Chesapeake Avenue, #203
Towson, MD 21204

Re: Case No. 2016-0060-SPH
Property: 770 Crossland Road

Dear Ms. Carrington:

Please be advised that Richard Burch and I have agreed on November 8, 2016 for the hearing on the above-referenced matter/appeal.

Thank you for your assistance with scheduling this matter.

Very truly yours,

Tracy - LM 11:36am
11/8 is Election Day 6/27/16
The County is closed.

1:50 - Tracy - will work w/ cl & Burch to find another date - will send a new note -

RECEIVED
JUN 27 2016
BALTIMORE COUNTY
BOARD OF APPEALS

KEVIN KAMENETZ
County Executive

LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
Administrative Law Judge

RECEIVED

6

Dir
Pes
901
Tov

6/22/16 Dino - may need to look in November -

Dino on vacation from tomorrow to July 5 so Tracy - his assistant will work to get this scheduled.

Dear

June
Boar

intere
your

Boarc

LMS:s

c: Ba
Pe

1

6/20/16
Dino Lafiandra
- scheduling was difficult below -
- will work w/ Burch for October date(s) & get back to me.

6/22 - Tracy

Board of Appeals of Baltimore County

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

September 13, 2017

Dino C. La Fiandra, Esquire
PK Law
901 Dulaney Valley Road, Suite 500
Towson, Maryland 21204

Richard C. Burch, Esquire
Mudd, Harrison & Burch, L.L.P.
401 Washington Avenue, Suite 900
Towson, Maryland 21204-4835

RE: In the Matter of: *Richard and Susan Lehmann*
Case No.: 16-060-SPH

Dear Counsel:

Enclosed please find a copy of the Amended 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,

Sunny Cannington

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Duplicate Original Cover Letter
Enclosure

c: Richard and Susan Lehmann
Henry Kahn / Marlene Trestman
Richard E. Matz, P.E.
Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Deputy Administrative Officer and Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law

IN THE MATTER OF RICHARD AND SUSAN LEHMANN LEGAL OWNERS AND PETITIONERS FOR SPECIAL HEARING ON THE PROPERTY LOCATED AT 7700 CROSSLAND ROAD	*	BEFORE THE BOARD OF APPEALS OF
3RD ELECTION DISTRICT 2ND COUNCILMANIC DISTRICT	*	BALTIMORE COUNTY
	*	CASE NO.: 16-060-SPH

* * * * * * * * * * *

AMENDED ORDER OF DISMISSAL

This matter comes to the Board of Appeals by way of an appeal filed by Richard C. Burch, Esquire on behalf of Henry Kahn and Marlene Trestman, Protestants and Appellants, from a decision of the Administrative Law Judge dated May 18, 2016, in which the requested Petition for Special Hearing was denied.

The Board previously heard argument, and held a public deliberation on Motions to Dismiss filed by both parties. Both Motions to Dismiss were denied and the Board determined that a hearing on the merits of this case would be heard. A hearing was scheduled for April 25, 2017 and subsequently postponed by request of the Petitioners. No further hearing dates have been scheduled.

WHEREAS, pursuant to Board of Appeals Rules of Practice and Procedure, Rule 3(b)(2), the Board is in receipt of a Notice of Voluntary Withdrawal and Dismissal of the Petition for Special Hearing, dated July 18, 2017 from Dino C. La Fiandra, Esquire, Counsel for Richard and Susan Lehmann, Petitioners, (a copy of which is attached hereto and made a part hereof); and

WHEREAS, said Notice requests that the Petition for Special Hearing taken in this matter be withdrawn as of July 18, 2017;

WHEREAS, the Board previously issued an Order of Dismissal in this matter on August 16, 2017, which inadvertently included language from a form Order. Pursuant to Board of Appeals Rules

of Practice and Procedure, Rule 11, the Board retains revisory power over the opinions and orders for 30 days after issuance.

IT IS THEREFORE ORDERED this 13th day of September, 2017 by the Board of Appeals of Baltimore County that, in accordance with Board of Appeals Rules of Practice and Procedure Rule 3(b)(2) and Rule 11, the Petition for Special Hearing in Case No. 16-060-SPH be and the same is hereby **WITHDRAWN AND DISMISSED, with prejudice.**

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

BOARD OF APPEALS
OF BALTIMORE COUNTY

Maureen E. Murphy, Panel Chair

PK LAW

901 DULANEY VALLEY ROAD
SUITE 500
BALTIMORE, MD 21204

BALTIMORE COLUMBIA BEL AIR

TELEPHONE 410-938-8800
FAX 410-832-5600
PKLAW.COM

Dino C. La Fiandra
Telephone: 410.938.8705
dlafiandra@pklaw.com

September 12, 2017

Maureen E. Murphy, Chairperson
Baltimore County Board of Appeals
105 W. Chesapeake Avenue, Suite 203
Towson, Maryland 21204

Re: Case No. 2016-0060-SPH
7700 Crossland Road

Dear Ms. Murphy:

In response to Mr. Burch's letter dated September 6, I would like to remind the Board that the Lehmanns no longer support Mr. Burch's proposed order and that they have retracted any prior consent to any Order other than the Order that was actually issued by the Board. The expense and delay created by the Kahns' insistence on particular language in the Order of Dismissal have been an unfair and costly burden to the Lehmanns. The Lehmanns' Notice of Voluntary Withdrawal and Dismissal was dated July 18, 2017 – almost 2 months ago – and still this matter lingers. This matter must come to a conclusion. The Lehmanns respectfully request that you deny the pending motions for reconsideration and/or to amend or revise.

Thank you for your continued work on this matter.

Sincerely,

Dino C. La Fiandra

cc: Richard C. Burch, Esquire
Peter M. Zimmerman, Esquire
Mr. & Mrs. Richard Lehmann

MUDD, HARRISON & BURCH, L.L.P.
ATTORNEYS AT LAW
401 WASHINGTON AVENUE
SUITE 900
TOWSON, MARYLAND 21204-4835
410 828 1335
FAX 410 828 1042

RICHARD C. BURCH *
DOUGLAS W. BISER *
ANDREW JANQUITTO * +
MATTHEW P. LALUMIA *

* MEMBER OF MARYLAND BAR
+ MEMBER OF DISTRICT OF COLUMBIA BAR

JOHN E. MUDD
(1928-2003)

T. ROGERS HARRISON
(1949-1995)

September 6, 2017

HAND DELIVERY
Maureen E. Murphy, Esquire, Chairwoman
Baltimore County Board of Appeals
105 West Chesapeake Avenue, Suite 203
Towson, Maryland 21204

Re: Case No. 2016-0060-SPH
Property: 7700 Crossland Road

Dear Ms. Murphy:

Consistent with my letter dated August 21, 2017, I ask that the Board enter the Amended Order. The language in the Amended Order is identical to that which was approved previously by Mr. La Fiandra and his clients. I have simply asked that this matter end with an Order that includes language approved by both parties and their counsel. Mr. La Fiandra's letter of August 25, 2017, ignores and/or fails to dispute the fact that he and his clients approved the language previously. Furthermore, Mr. La Fiandra still takes no issue with the language set forth in the Amended Order.

Thank you for your continued attention to this matter.

Very truly yours,

Richard C. Burch

RCB/tyj

cc: Dino La Fiandra, Esquire (via e-mail and 1st class mail)
Peter Max Zimmerman, Esquire (via e-mail and 1st class mail)
Henry Kahn, Esquire
Marlene Trestman, Esquire

PK LAW

901 DULANEY VALLEY ROAD
SUITE 500
BALTIMORE, MD 21204

BALTIMORE COLUMBIA BEL AIR

TELEPHONE 410-938-8800
FAX 410-832-5600
PKLAW.COM

Dino C. La Fiandra
Telephone: 410.938.8705
dlafiandra@pklaw.com

August 25, 2017

Maureen E. Murphy, Chairperson
Baltimore County Board of Appeals
105 W. Chesapeake Avenue, Suite 203
Towson, Maryland 21204

Re: Case No. 2016-0060-SPH
7700 Crossland Road

Dear Ms. Murphy:

I am responding to yet another letter of Mr. Burch, this one dated August 21, 2017. This time he has asked for reconsideration and/or revision of the Board's Order of Dismissal dated August 16. The Lehmanns oppose both of these motions.

As a preliminary matter, the Lehmanns withdraw their consent to Mr. Burch's proposed Order that he transmitted to the Board with his letter of August 9. They withdraw their consent for two reasons. First, the Board has entered a perfectly fine Order of Dismissal of its own in the ordinary course of business following extensive correspondence to the Board by counsel for both the Lehmanns and the Kahns. There is nothing unusual or improper about the Order of Dismissal that was entered and in fact it conforms to similar orders of dismissal entered by the Board under similar circumstances. Second, there must be an end to the seemingly endless saga of simply withdrawing and voluntarily dismissing this Petition for Special Hearing. Once again, the Lehmanns find themselves in the position of incurring additional legal fees on the simple matter of withdrawing this Petition, which they are entitled to do under the Board's Rules of Procedure. The back and forth on the precise wording of the Board's Order of Dismissal has cost the Lehmanns thousands of dollars in legal fees, and in the end, the Board entered its own order after all anyway. This should end the matter.

The process surrounding the Lehmanns' voluntary withdrawal and dismissal of their Petition for Special Hearing must end. For that reason the Lehmanns respectfully request the Board deny the Motion for Reconsideration.

Mr. Burch requests, in the alternative, that the Board amend or revise its August 16 Order of Dismissal. Pursuant to Board Rule 11, the Board may exercise its revisory power over its orders only in the event of fraud, mistake or irregularity. Mr. Burch's letter does not allege fraud, mistake or irregularity and therefore the Motion to Revise/Amend should likewise be denied.

The Lehmanns respectfully request you deny both motions without further delay and without a hearing.

Thank you for your continued attention to this matter.

Sincerely,

Dino C. La Fiandra

cc: Richard C. Burch, Esquire
Peter M. Zimmerman, Esquire

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

No. 133691

Date: 6/15/16

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount
001	806	000		6150				265.00

Total: 265.00

Rec From: Richard Burch, Esq

For: 2016-0060-SPH (OAH)
1700 Crossland Rd
CL# 67594

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

PAID RECEIPT
BUSINESS ACTUAL TIME DRW
6/16/2016 6/15/2016 09:52:46 5
REG WS05 WALKIN LRB
>>RECEIPT # 852041 6/15/2016 OFLN
Dept 5 520 ZONING VERIFICATION
No. 133691
Recpt Tot $265.00
$265.00 CK $.00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

MUDD, HARRISON & BURCH, L.L.P.
ATTORNEYS AT LAW
401 WASHINGTON AVENUE
SUITE 900
TOWSON, MARYLAND 21204-4835
410 828 1335
FAX 410 828 1042

RICHARD C. BURCH *
DOUGLAS W. BISER *
ANDREW JANQUITTO * +
MATTHEW P. LALUMIA *

* MEMBER OF MARYLAND BAR
+ MEMBER OF DISTRICT OF COLUMBIA BAR

JOHN E. MUDD
(1928-2003)

T. ROGERS HARRISON
(1949-1995)

June 15, 2016

RECEIVED
JUN 15 2016
OFFICE OF ADMINISTRATIVE HEARINGS

HAND DELIVERY
John E. Beverungen, Administrative Law Judge
Office of Administrative Hearings
105 W. Chesapeake Avenue, Room 103
Towson, Maryland 21204

Re: Case No. 2016-0060-SPH
Property: 7700 Crossland Road

NOTICE OF APPEAL

Dear Judge Beverungen:

Henry Kahn and Marlene Trestman, Protestants and adjoining property owners, hereby appeal the Opinion and Order dated May 18, 2016, in the above-referenced matter. Protestants, as adjacent property owners, are persons aggrieved by the Opinion and Order.

Enclosed please find my firm's check in the amount of $265 to cover the appeal filing fee.

Thank you for your kind attention to this matter.

Very truly yours,

Richard C. Burch

RCB/tyj

cc: Dino LaFiandra, Esquire, Attorney for Petitioners (w/o enc.)
Henry Kahn and Marlene Trestman (w/o enc.)

Enclosure

KEVIN KAMENETZ
County Executive

LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
Administrative Law Judge

May 18, 2016

Dino LaFiandra, Esquire
Pessin Katz Law, P.A.
901 Dulaney Valley Road, #500
Towson, MD 21204

RE: Petition for Special Hearing
Case No. 2016-0060-SPH
Property: 7700 Crossland Road

Dear Mr. LaFiandra:

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

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Office of Administrative Hearings at 410-887-3868.

Sincerely,

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln
Enclosure

c: Richard Burch, Esquire, Mudd, Harrison & Burch, L.L.P.,
401 Washington Avenue, Suite 900, Towson, MD 21204

IN RE: **PETITION FOR SPECIAL HEARING** **(7700 Crossland Road)** 3rd Election District 2nd Council District	*	BEFORE THE
	*	OFFICE OF
	*	ADMINISTRATIVE HEARINGS
Richard S. & Susan W. Lehmann *Legal Owners* Petitioners	*	FOR BALTIMORE COUNTY
	*	**Case No. 2016-0060-SPH**

* * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Hearing filed on behalf of Richard S. & Susan W. Lehmann, legal owners. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") for a waiver to rebuild an existing enclosed porch in a riverine floodplain.

Richard Lehmann and Richard E. Matz, professional engineer, appeared in support of the petition. Dino LaFiandra, Esq. represented Petitioners. Richard Burch, Esq. represented a neighbor who opposed the request. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. A substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Public Works (DPW). That agency did not oppose the waiver request.

The subject property is 0.76 acres and zoned DR 2. The property is improved with a single family dwelling. The petition states the existing porch is "in a riverine floodplain" (emphasis added) but the DPW's ZAC comment states the porch is "within 20 feet of the 100-year riverine floodplain." That comment also states the waiver is sought to "approve a setback from the 100-year floodplain limit of less than 20 feet." I note these discrepancies to highlight, as discussed at

the hearing, that waiver requests are not zoning matters and it is often unclear precisely what relief is sought or needed under the myriad and byzantine floodplain regulations and codes.

The County Code provides that a floodplain waiver can be granted only upon a showing of "exceptional hardship." BCC §32-8-303. Protestant's counsel argued that being denied the right to rebuild (and/or enlarge) the deck would not constitute an unreasonable or exceptional hardship, and I concur. Protestant's counsel also notes a waiver action is initiated by a "request of a department director" (BCC §32-4-107) which is arguably lacking in this case as well. As such, I do not believe a waiver can be granted properly in this case.

Even so, I do not believe a waiver is required in the first instance. The Building Code of Baltimore County, adopted May 4, 2015 in Bill 40-15, contains several sections on construction in flood zones. Part 125 concerns construction in a riverine floodplain, and Part 125.1 states the general rule that no new buildings or additions shall be constructed in any riverine floodplain. No new building or addition is proposed by Petitioners. Part 125.2 concerns "Reconstruction and Repair of Existing Buildings." That section indicates a "waiver" is required for construction of "substantial improvements" to existing buildings. Under both the Building Code (Part 123.1.1) and BCC (§32-8-101(dd)), a "substantial improvement" is one that exceeds 50% of the fair market value of the structure. The current tax assessment (which may not precisely equate to fair market value) for the structure is $493,800.00, and it would appear the construction proposed here would not cost in excess of $246,900.00. Assuming that is the case, I do not believe a waiver is required.

THEREFORE, IT IS ORDERED this **18th** day of **May, 2016** by this Administrative Law Judge, that the Petition for Special Hearing pursuant to B.C.Z.R. § 500.7 for a waiver to rebuild an existing enclosed porch in a riverine floodplain, be and is hereby DENIED.

ORDER RECEIVED FOR FILING
Date 5/18/16
By DLN

IT IS FURTHER ORDERED Petitioners shall be entitled to rebuild the existing enclosed porch, provided the cost to do so does not exceed $246,900.00.

The relief granted herein shall be subject to 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.

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

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln

ORDER RECEIVED FOR FILING
Date 5/18/16
By sln

PK LAW®

901 DULANEY VALLEY ROAD
SUITE 500
BALTIMORE, MD 21204

BALTIMORE | COLUMBIA | BEL AIR

TELEPHONE 410-938-8800
FAX 410-832-5600
PKLAW.COM

Dino C. La Fiandra
Telephone: 410.938.8705
Facsimile: 410.832.5651
DLaFiandra@PKLaw.com

March 28, 2016

Ms. Kristen Matthews
Bureau of Zoning Review
Department of Permits, Approvals and Inspections
111 W. Chesapeake Avenue, Suite 111
Towson, MD 21204

Re: Case No. 2016-0060-SPH

Dear Ms. Matthews:

This will confirm that the hearing in the above-referenced case is scheduled for May 11, 2016, at 1:30 p.m. at 105 Chesapeake Avenue, Room 205. Many thanks for your assistance with scheduling this matter.

Very truly yours,

Dino C. La Fiandra/HK

Dino C. La Fiandra

DCL/tek

Cc: ✓Hon. John Beverungen, Administrative Law Judge
Richard C. Burch, Esquire
Richard Lehmann
Richard Matz, P.E.

1498490_1

MUDD, HARRISON & BURCH, L.L.P.
ATTORNEYS AT LAW
401 WASHINGTON AVENUE
SUITE 900
TOWSON, MARYLAND 21204-4835
410 828 1335
FAX 410 828 1042

RICHARD C. BURCH *
DOUGLAS W. BISER *
ANDREW JANQUITTO * +
MATTHEW P. LALUMIA *

* MEMBER OF MARYLAND BAR
+ MEMBER OF DISTRICT OF COLUMBIA BAR

JOHN E. MUDD
(1928-2003)

T. ROGERS HARRISON
(1949-1995)

January 6, 2016

HAND DELIVERY
Kristen Matthews
Bureau of Zoning Review
Department of Permits, Approvals and Inspections
111 W. Chesapeake Avenue, Room 111
Towson, Maryland 21204

Re: Case No. 2015-0060-SPH
7700 Crossland Road

Dear Ms. Matthews:

This will confirm that the hearing in the above-captioned matter has been rescheduled for Monday, March 7, 2016, at 1:30 p.m. at 105 West Chesapeake Avenue, Room 205.

Many thanks for your kind assistance. Best wishes for a happy and healthy New Year.

Very truly yours,

Richard C. Burch

RCB/tyj
cc: Hon. John Beverungen, Administrative Law Judge
Henry Kahn, Esquire
Dino LaFiandra, Esquire

MUDD, HARRISON & BURCH, L.L.P.
ATTORNEYS AT LAW
401 WASHINGTON AVENUE
SUITE 900
TOWSON, MARYLAND 21204-4835
410 828 1335
FAX 410 828 1042

RICHARD C. BURCH *
DOUGLAS W. BISER *
ANDREW JANQUITTO * +
MATTHEW P. LALUMIA *

* MEMBER OF MARYLAND BAR
+ MEMBER OF DISTRICT OF COLUMBIA BAR

JOHN E. MUDD
(1928-2003)

T. ROGERS HARRISON
(1949-1995)

December 31, 2015

HAND DELIVERY

The Honorable John E. Beverungen
Administrative Law Judge
Office of Administrative Hearings
105 W. Chesapeake Avenue, Room 103
Towson, Maryland 21204

RECEIVED
DEC 31 2015
OFFICE OF ADMINISTRATIVE HEARINGS

Re: Case No. 2015-0060-SPH
7700 Crossland Road
Hearing Date: January 8, 2016 at 1:30 p.m.

Dear Mr. Beverungen:

I represent Henry Kahn, Esquire, who resides at 7702 Crossland Road, which is the property next door to the subject property. Mr. Kahn was scheduled to attend next week's hearing to address any questions, concerns and/or objections he and his wife may have with respect to the relief requested by the Lehmanns, who own and reside at 7700 Crossland Road.

Unfortunately, Mr. Kahn learned yesterday afternoon that he needs to be in New York City next Friday for a meeting with the enforcement division of the SEC. While Mr. Kahn was hopeful that his presence at that meeting in New York would not be necessary, he is now compelled to attend.

Accordingly, I respectfully request a brief continuance of this matter. I have spoken with Dino LaFiandra, counsel for the Lehmanns, and Mr. LaFiandra and his clients have kindly authorized me to advise you of their consent to this request. Needless to say, if you are inclined to grant my request, I will gladly coordinate the rescheduling of the matter with Mr. LaFiandra and your office.

Many thanks for your kind consideration of this request. Best wishes for a happy and healthy New Year.

Very truly yours,

Richard C. Burch tyj

Richard C. Burch

RCB/tyj
cc: Henry Kahn, Esquire
Dino LaFiandra, Esquire

1/8 1:30 Reset to 1-19 @ 1:30 pm per K. on 11-23 (JB 11-2-15 orig. set)

MEMORANDUM

TO: Kristen Lewis
Office of Zoning Review

FROM: Debra Wiley, Legal Administrative Secretary DW
Office of Administrative Hearings

DATE: November 2, 2015

SUBJECT: Case No. 2016-0060-SPH – 7700 Crossland Road

As you may be aware, the above-referenced case was scheduled for today, November 2, 2015 @ 10 AM, in Room 205. Both Dino LaFiandra, Esq. and Richard C. Burch, Esq. appeared and a continuance was granted.

Judge Beverungen has advised that there is no need for re-posting and when re-scheduling, please allow 2 hours – perhaps a 1:30 PM slot.

In any event, we are returning the file to you for further processing, i.e., obtaining new closing date, etc. Thanks.

c: File

M E M O R A N D U M

TO: Kristen Lewis
Office of Zoning Review

FROM: Debra Wiley, Legal Administrative Secretary
Office of Administrative Hearings

DATE: November 2, 2015

SUBJECT: Case No. 2016-0060-SPH – 7700 Crossland Road

As you may be aware, the above-referenced case was scheduled for today, November 2, 2015 @ 10 AM, in Room 205. Both Dino LaFiandra, Esq. and Richard C. Burch, Esq. appeared and a continuance was granted.

Judge Beverungen has advised that there is no need for re-posting and when re-scheduling, please allow 2 hours – perhaps a 1:30 PM slot.

In any event, we are returning the file to you for further processing, i.e., obtaining new closing date, etc. Thanks.

c: File

Debra Wiley

From: Debra Wiley
Sent: Monday, November 02, 2015 10:29 AM
To: Kristen L Lewis
Subject: 2016-0060-SPH - Nov. 2nd @ 10 AM
Attachments: 20151102103110371.pdf

Kristen,

Please see attached. File has been placed in the pick-up box to be returned to you.

Thanks.

-----Original Message-----
From: adminhearingscpr@baltimorecountymd.gov [mailto:adminhearingscpr@baltimorecountymd.gov]
Sent: Monday, November 02, 2015 10:31 AM
To: Debra Wiley <dwiley@baltimorecountymd.gov>
Subject: Admin Hearings Copier

This E-mail was sent from "RNP002673903BB1" (MP 3054).

Scan Date: 11.02.2015 10:31:10 (-0500)
Queries to: adminhearingscpr@baltimorecountymd.gov

M E M O R A N D U M

TO: Kristen Lewis
Office of Zoning Review

FROM: Debra Wiley, Legal Administrative Secretary
Office of Administrative Hearings

DATE: November 2, 2015

SUBJECT: Case No. 2016-0060-SPH – 7700 Crossland Road

As you may be aware, the above-referenced case was scheduled for today, November 2, 2015 @ 10 AM, in Room 205. Both Dino LaFiandra, Esq. and Richard C. Burch, Esq. appeared and a continuance was granted.

Judge Beverungen has advised that there is no need for re-posting and when re-scheduling, please allow 2 hours – perhaps a 1:30 PM slot.

In any event, we are returning the file to you for further processing, i.e., obtaining new closing date, etc. Thanks.

c: File

FLOOD

PETITION FOR ZONING HEARING(S)

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 7700 Crossland Road **which is presently zoned** D.R. 2

Deed References: Liber 8905 Folio 821 10 Digit Tax Account # 0314011742, 0314011743

Property Owner(s) Printed Name(s) Richard S. Lehmann & Susan W. Lehmann

(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

(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)**

TO BE PRESENTED AT HEARING

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:

N/A
Name- Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

ORDER RECEIVED FOR FILING
Date 5/18/16
By ASN

Legal Owners (Petitioners):

Richard S. Lehmann / Susan W. Lehmann
Name #1 – Type or Print Name #2 – Type or Print

Signature #1 / Susan Co. Lehmann Signature # 2

7700 Crossland Road Baltimore Maryland
Mailing Address City State

21208 / 410-539-8300 / rlehmann@abrneu.com
Zip Code Telephone # Email Address

Representative to be contacted:

Richard E. Matz, P.E.
Name – Type or Print

Signature

2835 Smith Ave., Ste. G Baltimore Maryland
Mailing Address City State

21209 / 410-653-3838 / dmatz@cmrengineers.com
Zip Code Telephone # Email Address

CASE NUMBER 2016-0060-SPH **Filing Date** 9/4/15 **Do Not Schedule Dates:** _____ **Reviewer** JRF

REV. 10/4/11

Petition for Special Hearing Attachment
7700 Crossland Road
Baltimore County, Maryland

Special Hearing Requested

1. A Special Hearing for a **waiver** pursuant to Section 500.6, BCZR; Section 3112.0, Building Code; and Sections 32-4-414, 32-4-107(a)(2), 32-8-301, BCC to rebuild an existing enclosed porch in a riverine floodplain.

Colbert Matz Rosenfelt, Inc.

Civil Engineers • Surveyors • Planners

ZONING DESCRIPTION
7700 Crossland Road
Baltimore County, Maryland

Beginning at a point on the western side of Crossland Road, which is 50 feet wide, located 25 feet, more or less, northwest of the centerline of the nearest improved intersecting street Overbrook Road, which is 50 feet wide at the intersection of Crossland Road and Overbrook Road.

Being Lot Number 5, Section 3 of the Plat of Dumbarton as recorded in Baltimore County Plat Book W.P.C. Number 7, Folio 151, containing 32,661 square feet or 0.76 acres, more or less. Located in the 3rd Election District and 2nd Councilmanic District. Also known as 7700 Crossland Road.

Professional Certification
I hereby certify that these documents were prepared or approved by me, and that I am a duly licensed professional engineer under the laws of the State of Maryland.

License No. 13203 Expiration Date: 11/02/2016

SEPT 4, 2015

2835 Smith Avenue, Suite G Baltimore, Maryland 21209
Telephone: (410) 653-3838 / Facsimile: (410) 653-7953

KEVIN KAMENETZ
County Executive

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

September 25, 2015

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: 2016-0060-SPH
7700 Crossland Road
NW corner of Overbrook Road and Crossland Road
3rd Election District – 2nd Councilmanic District
Legal Owners: Richard & Susan Lehmann

Special Hearing for a waiver pursuant to Section 500.6, BCZR; Section 3112.0, Building Code; and Sections 32-4-414, 32-4-107(a)(2), 32-8-301, BCC to rebuild an existing enclosed porch in a riverine floodplain.

Hearing: Monday, November 2, 2015 at 10:00 a.m. in Room 205, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204

Arnold Jablon
Director

AJ:kl

C: Richard & Susan Lehmann, 7700 Crossland Road, Baltimore 21208
Richard Matz, 2835 Smith Avenue, Ste. G, Baltimore 21209

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, OCTOBER 13, 2015**
(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.

THE BALTIMORE SUN MEDIA GROUP

501 N. Calvert St., P.O. Box 1377
Baltimore, Maryland 21278-0001
tel: 410/332-6000
800/829-8000

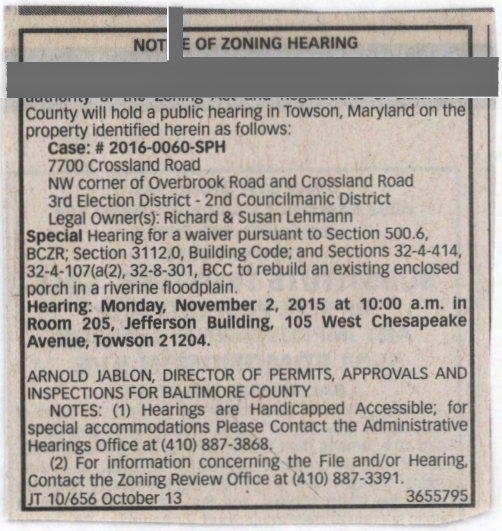
WE HEREBY CERTIFY, that the annexed advertisement of Order No 3655795

Sold To:
Richard & Susan Lehmann - CU00495671
7700 Crossland Rd
Pikesville,MD 21208-4309

Bill To:
Richard & Susan Lehmann - CU00495671
7700 Crossland Rd
Pikesville,MD 21208-4309

Was published in "Jeffersonian", "Bi-Weekly", a newspaper printed and published in Baltimore County on the following dates:

Oct 13, 2015



NOT[redacted]E OF ZONING HEARING

[redacted]

County will hold a public hearing in Towson, Maryland on the property identified herein as follows:

Case: # 2016-0060-SPH
7700 Crossland Road
NW corner of Overbrook Road and Crossland Road
3rd Election District - 2nd Councilmanic District
Legal Owner(s): Richard & Susan Lehmann

Special Hearing for a waiver pursuant to Section 500.6, BCZR; Section 3112.0, Building Code; and Sections 32-4-414, 32-4-107(a(2), 32-8-301, BCC to rebuild an existing enclosed porch in a riverine floodplain.

Hearing: Monday, November 2, 2015 at 10:00 a.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 accommodations 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.

JT 10/656 October 13 3655795

The Baltimore Sun Media Group

By S. Wilkinson

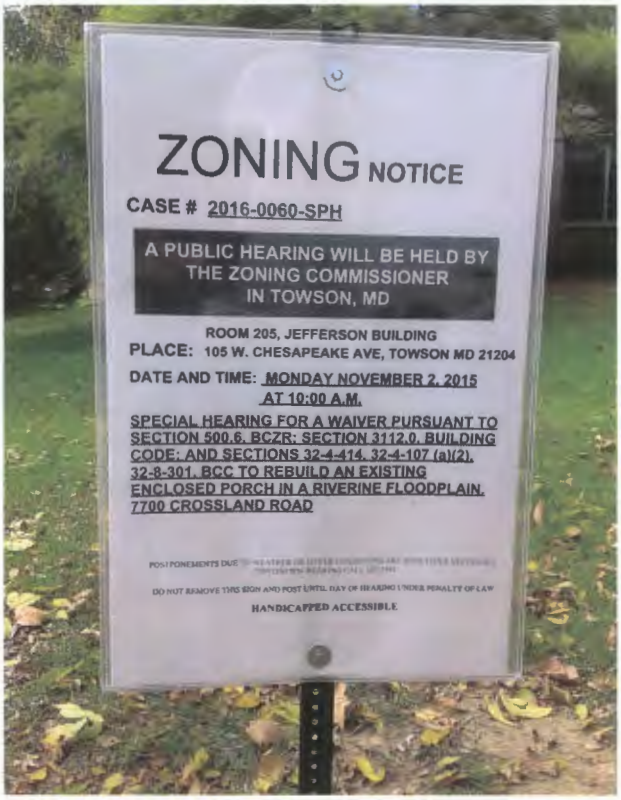
Legal Advertising

CERTIFICATE OF POSTING

ATTENTION: KRISTEN LEWIS
DATE: 10/13/2015
Case Number: 2016-0060-SPH
Petitioner / Developer: COLBERT, MATZ & ROSENFELT, INC. ~ RICHARD & SUSAN LEHMANN
Date of Hearing (Closing): NOVEMBER 2, 2015

This is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at:
7700 CROSSLAND ROAD

The sign(s) were posted on: OCTOBER 13, 2015



Linda O'Keefe
(Signature of Sign Poster)

Linda O'Keefe
(Printed Name of Sign Poster)

523 Penny Lane
(Street Address of Sign Poster)

Hunt Valley, Maryland 21030
(City, State, Zip of Sign Poster)

410 – 666 – 5366
(Telephone Number of Sign Poster)

RE: PETITION FOR SPECIAL HEARING 7700 Crossland Road; NW corner of Overbrook Road & Crossland Road 3rd Election & 2nd Councilmanic Districts Legal Owner(s): Richard & Susan Lehmann Petitioner(s)	*	BEFORE THE OFFICE
	*	OF ADMINSTRATIVE
	*	HEARINGS FOR
	*	BALTIMORE COUNTY
	*	2016-060-SPH

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

ENTRY OF APPEARANCE

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

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

RECEIVED
SEP 18 2015

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 18th day of September, 2015, a copy of the foregoing Entry of Appearance was mailed to Richard Matz, P.E., 2835 Smith Avenue, Suite G, Baltimore, Maryland 21209, Representative for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

PLEASE PRINT CLEARLY

CASE NAME lehmann
CASE NUMBER 2016-0060-SPH
DATE 3/7/16

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
DINO LaFiandra	901 Dulaney Valley Rd #500	Towson 21204	dlafiandra@pklaw.com
Richard Lehmann	7700 Crossland Road	Baltimore 21208	rlehmann@abrnet.com
RICHARD E. MATZ	2035 SMITH AVE, SUITE G	BALTO, MD 21209	DMATZ@CMLENGINEERS.COM
TINA McCOACH	313 THORNHILL RD	BALTIMORE, MD 21212	tmccoach@verizon.net

PLEASE PRINT CLEARLY

CASE NAME Lehmann
CASE NUMBER 2016-0060-SPH
DATE 3-7-2016

CITIZEN'S SIGN - IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E - MAIL
Richard BURCH	Suite 900 401 Washington Ave.	Towson, MD	RCB@MHBLAW.com
Henry Kahn	7702 Crossland Rd	Balto 21208 21204	KAHNHX@Yahoo.Com

KEVIN KAMENETZ
County Executive

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

October 28, 2015

Richard S & Susan W Lehmann
7700 Crossland Road
Baltimore MD 21208

RE: Case Number: 2016-0060 SPH, Address: 7700 Crossland Road

Dear Mr. & Ms. Lehmann:

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits, Approvals, and Inspection (PAI) on September 4, 2015. This letter is not an approval, but only a **NOTIFICATION.**

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

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

Very truly yours,

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR: jaw

Enclosures

c: People's Counsel
Richard E Matz, PE, 2835 Smith Avenue, Suite G, Baltimore MD 21209

Larry Hogan, *Governor*
Boyd K. Rutherford, *Lt. Governor*

SHA
State Highway Administration
Maryland Department of Transportation

Pete K. Rahn, *Secretary*
Douglas H. Simmons, *Acting Administrator*

Date: 9/16/15

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

RE: Baltimore County
Item No. 2016-0060-SPH
Special Hearing
Richard S. & Susan W. Lehmann
7700 Crossland Rd.

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. 2016-0060-SPH

Should you have any questions regarding this matter, please contact Mr. Richard Zeller at 410-229-2332 or 1-866-998-0367 (in Maryland only) extension 2332, or by email at (rzeller@sha.state.md.us).

Sincerely,

Richard A Zeller

David W. Peake
Metropolitan District Engineer – District 4
Baltimore & Harford Counties

DWP/RAZ

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: September 23, 2015

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

SUBJECT: Zoning Advisory Committee Meeting
For September 21, 2015
Item No. 2016-0060

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

The Director of Public Works will comment on this item.

* * * * * *

DAK:CEN
cc:file

ZAC-ITEM NO 15-0060-09212015.doc

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: September 30, 2015

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: 7700 Crossland Road

INFORMATION:

Item Number: 16-060

Petitioner: Richard S. Lehmann, Susan W. Lehmann

Zoning: DR 2

Requested Action: Special Hearing

SUMMARY OF RECOMMENDATIONS:

The Department of Planning has reviewed the Petition for Special Hearing to determine if the Zoning Commissioner should approve a waiver to allow the reconstruction of an existing enclosed porch in a riverine flood plain.

Department of Planning has no objection to the granting of the petitioned zoning relief.

For further information concerning the matters stated herein, please contact Bill Skibinski at 410-887-3480.

Division Chief: Kathy Schlabach
AVA/KS

C: Bill Skibinski

s:\planning\dev rev\zac\zacs 2016\16-060.docx

PLEASE PRINT CLEARLY

CASE NAME 2016-0060-SPH
CASE NUMBER 7700 CROSSLAND ROAD
DATE NOV 2, 2015

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
RICHARD E. MATZ	2835 SMITH AVE, SUITE G	BALTO. MD 21209	DMATZ@CMRENGINEERS.COM
RICHARD S. LEHMANN	7700 CROSSLAND ROAD	BALTO MD 21208	rlehmann@adrnet.com
DIEGO LAFIANDRA	901 DULANEY VALLEY RD #500	TOWSON, MD 21204	dlafiandra@gfrlaw.com

PLEASE PRINT CLEARLY

CASE NAME _____
CASE NUMBER _____
DATE _____

CITIZEN'S SIGN - IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E - MAIL
Richard C. Burch	401 Washington Ave Suite 900	Towson, Md. 21204	RCB@MHBLAW.com
Henry D Kahn	7702 crossland Rd	Baltimore MD 21208	Kahnhd@yahoo.com

BALTIMORE COUNTY, MARYLAND
INTER OFFICE CORRESPONDENCE

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

ATTN: Kristen Lewis
MS 1105

FROM: Edward C. Adams, Director
Department of Public Works

DATE: September 22, 2015

SUBJECT: Case No: 2016-0060-SPH
7700 Crossland Road, Baltimore, Maryland 21208

Special Hearing to determine whether or not the Administrative Law Judge should approve a waiver to the Baltimore County Code Section 32.4.1.4 building in a riverine flood plain is prohibited and Department of Public Works Design Manual Plate DF-1 to approve a setback from the 100-year flood plain limit of less than 20 feet for a commercial building and retaining wall.

The Special Hearing involves an existing residence with deck and the deck is proposed to be enclosed to a year round living space within 20 feet of the 100-year riverine floodplain. An elevation certificate was prepared by Colbert, Matz, Rosenfelt Inc. The certificate was signed, sealed and certified by a Maryland Licensed Surveyor showing the proposed deck is barely inside the flood plain boundary.

The plans and documents submitted were reviewed and the Department of Public Works takes no exception to the approval of the waiver.

ECA/TWC/s

CC: Dennis Kennedy, Chief, Development Plans Review and Building Plan Review
Peter M. Zimmerman, People's Council

KEVIN KAMENETZ
County Executive

LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
Administrative Law Judge

RECEIVED
JUN 17 2016
BALTIMORE COUNTY
BOARD OF APPEALS

June 17, 2016

Dino LaFiandra, Esquire
Pessin Katz Law, P.A.
901 Dulaney Valley Road, #500
Towson, MD 21204

Richard C. Burch, Esquire
Mudd, Harrison & Burch, L.L.P.
401 Washington Avenue, Suite 900
Towson, Maryland 21204

RE: **APPEAL TO BOARD OF APPEALS** - Petition for Special Hearing
Property: 7700 Crossland Road
Case No.: 2016-0060-SPH

Dear Counsel:

Please be advised that an appeal of the above-referenced case was filed in this Office on June 15, 2016. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals ("Board").

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

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

Sincerely,

LAWRENCE M. STAHL
Managing Administrative Law Judge
for Baltimore County

LMS:sln

c: Baltimore County Board of Appeals
Peter Max Zimmerman, People's Counsel for Baltimore County

APPEAL

Petition for Special Hearing
(7700 Crossland Road)
3rd Election District – 2nd Councilmanic District
***Legal Owners*: Richard and Susan Lehmann**
Case No. 2016-0060-SPH

Petition for Variance Hearing (September 4, 2015)

Zoning Description of Property

Notice of Zoning Hearing (September 25, 2015)

Certificate of Publication (October 13, 2015)

Certificate of Posting (October 13, 2015) – Linda O'Keefe

Entry of Appearance by People's Counsel –September 18, 2015

Petitioner(s) Sign-in Sheet – Two sheets (1 for March 7, 2016 and 1 for November 2, 2015)
Citizen(s) Sign-in Sheet – Two Sheets (1 for March 7, 2016 and 1 for November 2, 2015)

Zoning Advisory Committee (ZAC) Comments

Petitioner(s) Exhibits:

1. Site Plan (redline)
2. Color photos
3. 3A & 3B photos of wood deck
4. Existing elevations
5. proposed elevations

Miscellaneous (Not Marked as Exhibits)

Administrative Law Judge Order and Letter (DENIED /GRANTED May 18, 2016)

Notice of Appeal –Richard Burch, Esq. June 15, 2016

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF PUBLIC WORKS

FLOODPLAIN STUDY REPORT

FOR

WESTERN RUN

BALTIMORE CITY / BALTIMORE COUNTY LINE

TO

UPSTREAM of the DRUID RIDGE CEMETERY POND

WALLACE,
MONTGOMERY
& ASSOCIATES, LLP

CONSULTING ENGINEERS
January 2006
Rev. Feb. 2006

F100D

PETITION FOR ZONING HEARING(S)

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 7700 Crossland Road **which is presently zoned** D.R. 2

Deed References: Liber 8905 Folio 821 10 Digit Tax Account # 0314011742, 0314011743

Property Owner(s) Printed Name(s) Richard S. Lehmann & Susan W. Lehmann

(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

(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)**

TO BE PRESENTED AT HEARING

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:

N/A
Name- Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

ORDER RECEIVED FOR FILING
Date 5/18/16
By DEA

Legal Owners (Petitioners):

Richard S. Lehmann / Susan W. Lehmann
Name #1 – Type or Print Name #2 – Type or Print

Signature #1 / Susan W. Lehmann
Signature # 2

7700 Crossland Road Baltimore Maryland
Mailing Address City State

21208 / 410-539-8300 / rlehmann@abrneu.com
Zip Code Telephone # Email Address

Representative to be contacted:

Richard E. Matz, P.E.
Name- Type or Print

Signature

2835 Smith Ave., Ste. G Baltimore Maryland
Mailing Address City State

21209 / 410-653-3838 / dmatz@cmrengineers.com
Zip Code Telephone # Email Address

CASE NUMBER 2016-0060-XA **Filing Date** 9/4/15 **Do Not Schedule Dates:** _____ **Reviewer** JRE

REV. 10/4/11

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

No. 128729

Date: 9/4/15

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount
001	806	00001		6150				75.00

Total: 75.00

Rec From: Calbert Metz Rosenfeld, Inc.

For: 7709 Crossland Rd.
SPH 2016-02000-SPH

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

PAID RECEIPT
BUSINESS ACTUAL TIME
9/04/2015 9/04/2015 10:07:57 1
REC FROM: WALKER LAND LTD
RECEIPT # 128729 9/04/2015
Acct: S 528 ZONING VERIFICATION
CK NO. 120727
Recpt Tot $75.00
475.00 CK 0.00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

1-8-16

PK LAW®

901 DULANEY VALLEY ROAD
SUITE 500
BALTIMORE, MD 21204

BALTIMORE | COLUMBIA | BEL AIR

TELEPHONE 410-938-8800
FAX 410-832-5600
PKLAW.COM

Dino C. La Fiandra
Telephone: 410.938.8705
Facsimile: 410.832.5651
DLaFiandra@PKLaw.com

November 24, 2015

VIA U.S. MAIL

Ms. Kristen Matthews
Bureau of Zoning Review
Department of Permits, Approvals and Inspections
111 W. Chesapeake Avenue, Suite 111
Towson, Maryland 21204

Re: Case No. 2015-0060-SPH
7700 Crossland Road

Dear Ms. Matthews:

This will confirm that the hearing in the above-referenced case is scheduled for Friday, January 8 at 1:30 pm in 105 W. Chesapeake Avenue, Room 205. Many thanks for your assistance with scheduling this matter.

Sincerely,

Dino La Fiandra

Enclosures

cc: Hon. John Beverungen, Administrative Law Judge
Richard C. Burch, Esquire

Sherry Nuffer

From: Debra Wiley
Sent: Thursday, December 31, 2015 11:43 AM
To: John E. Beverungen; Lawrence Stahl; Sherry Nuffer
Subject: Change to January Calendar

2016-0060-SPH scheduled for 1/8 @ 1:30 PM has been granted a postponement.

Please mark your calendars accordingly. Thanks.

Debra Wiley
Baltimore County Office of Administrative Hearings
105 West Chesapeake Avenue, Suite 103
Towson, Maryland 21204
410-887-3868

Sherry Nuffer

From: Dino La Fiandra <dlafiandra@pklaw.com>
Sent: Thursday, December 31, 2015 11:40 AM
To: John E. Beverungen
Cc: Debra Wiley; Sherry Nuffer
Subject: RE: No. 2016-0060

Will do. Happy New Year to you, Debra and Sherry as well!
Regards,
Dino

Dino C. La Fiandra
Member
901 Dulaney Valley Road | Suite 500 | Towson, MD | 21204
Direct Dial: 410.938.8705 | Direct Fax: 410.832.5651 |Mobile: 443-204-3473
dlafiandra@pklaw.com | About Us | Attorney Bio | Download V-Card

---

From: John E. Beverungen [mailto:jbeverungen@baltimorecountymd.gov]
Sent: Thursday, December 31, 2015 11:38 AM
To: Dino La Fiandra
Cc: Debra Wiley; Sherry Nuffer
Subject: No. 2016-0060

Mr. La Fiandra,

I received this morning a postponement request from Richard Burch, concerning the January 8, 2016 hearing scheduled in the above matter. He indicated you consented to the postponement. As such, the postponement will be granted and the case will be removed from the OAH calendar. You and Mr. Burch will need to contact Kristen in PAI to arrange for a new hearing date.

Could I ask of you one small favor? I do not have an email address for Mr. Burch, and hoped that you might be able to forward this message to him. Thanks and happy new year.

John Beverungen
ALJ

CONNECT WITH BALTIMORE COUNTY

www.baltimorecountymd.gov

contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties that may be imposed under the Internal Revenue Code or by any other applicable tax authority; or (2) promoting, marketing or recommending to another party any tax-related matter addressed herein. PKLAW provides this disclosure on all outbound e-mails to assure compliance with new standards of professional practice, pursuant to which certain tax advice must satisfy requirements as to form and substance.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: September 30, 2015

FROM: Andrea Van Arsdale
Director, Department of Planning

RECEIVED
OCT 0 1 2015
OFFICE OF ADMINISTRATIVE HEARINGS

SUBJECT: 7700 Crossland Road

INFORMATION:

Item Number: 16-060

Petitioner: Richard S. Lehmann, Susan W. Lehmann

Zoning: DR 2

Requested Action: Special Hearing

SUMMARY OF RECOMMENDATIONS:

The Department of Planning has reviewed the Petition for Special Hearing to determine if the Zoning Commissioner should approve a waiver to allow the reconstruction of an existing enclosed porch in a riverine flood plain.

Department of Planning has no objection to the granting of the petitioned zoning relief.

For further information concerning the matters stated herein, please contact Bill Skibinski at 410-887-3480.

Division Chief: Kathy Schlabach
AVA/KS

C: Bill Skibinski

s:\planning\dev rev\zac\zacs 2016\16-060.docx

MUDD, HARRISON & BURCH, L.L.P.
ATTORNEYS AT LAW
401 WASHINGTON AVENUE
SUITE 900
TOWSON, MARYLAND 21204-4835
410 828 1335
FAX 410 828 1042

RICHARD C. BURCH *
DOUGLAS W. BISER *
ANDREW JANQUITTO * +
MATTHEW P. LALUMIA *

* MEMBER OF MARYLAND BAR
+ MEMBER OF DISTRICT OF COLUMBIA BAR

JOHN E. MUDD
(1928-2003)

T. ROGERS HARRISON
(1949-1995)

January 6, 2016

HAND DELIVERY
Kristen Matthews
Bureau of Zoning Review
Department of Permits, Approvals and Inspections
111 W. Chesapeake Avenue, Room 111
Towson, Maryland 21204

RECEIVED
JAN 06 2016
OFFICE OF ADMINISTRATIVE HEARINGS

Re: Case No. 2015-0060-SPH
7700 Crossland Road

Dear Ms. Matthews:

This will confirm that the hearing in the above-captioned matter has been rescheduled for Monday, March 7, 2016, at 1:30 p.m. at 105 West Chesapeake Avenue, Room 205.

Many thanks for your kind assistance. Best wishes for a happy and healthy New Year.

Very truly yours,

Richard C. Burch

RCB/tyj
cc: Hon. John Beverungen, Administrative Law Judge
Henry Kahn, Esquire
Dino LaFiandra, Esquire

CASE NO. 2016-0060-SPH

CHECKLIST

Comment Received	Department	Support/Oppose/ Conditions/ Comments/ No Comment
9/23/15	DEVELOPMENT PLANS REVIEW (if not received, date e-mail sent _____)	C
_____	DEPS (if not received, date e-mail sent _____)	_____
_____	FIRE DEPARTMENT	_____
9/30/15	PLANNING (if not received, date e-mail sent _____)	no obj
9/16/15	STATE HIGHWAY ADMINISTRATION	no obj
_____	TRAFFIC ENGINEERING	_____
9/22/15	Dept. of Public Works	Comment
_____	COMMUNITY ASSOCIATION	_____
_____	ADJACENT PROPERTY OWNERS	_____

ZONING VIOLATION (Case No. _____)

PRIOR ZONING (Case No. _____)

NEWSPAPER ADVERTISEMENT Date: 10/13/15

SIGN POSTING Date: 10/13/15 by O'Keefe

PEOPLE'S COUNSEL APPEARANCE Yes ☑ No ☐

PEOPLE'S COUNSEL COMMENT LETTER Yes ☐ No ☐

Comments, if any: _____

Real Property Data Search (w2) Guide to searching the database

Search Result for BALTIMORE COUNTY

View Map View GroundRent Redemption View GroundRent Registration

Account Identifier: District - 03 Account Number - 0314011743

Owner Information

Owner Name:	LEHMANN RICHARD S LEHMANN SUSAN W	**Use:** **Principal Residence:**	RESIDENTIAL YES
Mailing Address:	7700 CROSSLAND RD BALTIMORE MD 21208	**Deed Reference:**	/08905/ 00821

Location & Structure Information

Premises Address:	7700 CROSSLAND RD 0-0000	**Legal Description:**	PT LT 5 DUMBARTON

Map:	Grid:	Parcel:	Sub District:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:	
0078	0004	0510		0000	3		5	2014	Plat Ref:	0007/ 0151

Special Tax Areas: **Town:** NONE
Ad Valorem:
Tax Class:

Primary Structure Built	Above Grade Enclosed Area	Finished Basement Area	Property Land Area	County Use
1993	4,228 SF		27,090 SF	04

Stories	Basement	Type	Exterior	Full/Half Bath	Garage	Last Major Renovation
2	YES	STANDARD UNIT	BRICK	3 full/ 1 half	1 Attached	

Value Information

	Base Value	Value As of 01/01/2014	Phase-in Assessments As of 07/01/2015	As of 07/01/2016
Land:	244,200	220,200		
Improvements	493,800	561,600		
Total:	738,000	781,800	767,200	781,800
Preferential Land:	0			0

Transfer Information

Seller: NEUBERGER FERDINAND	Date: 09/06/1991	Price: $1
Type: ARMS LENGTH IMPROVED	Deed1: /08905/ 00821	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:

Exemption Information

Partial Exempt Assessments:	Class	07/01/2015	07/01/2016
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Tax Exempt: **Special Tax Recapture:**
Exempt Class: NONE

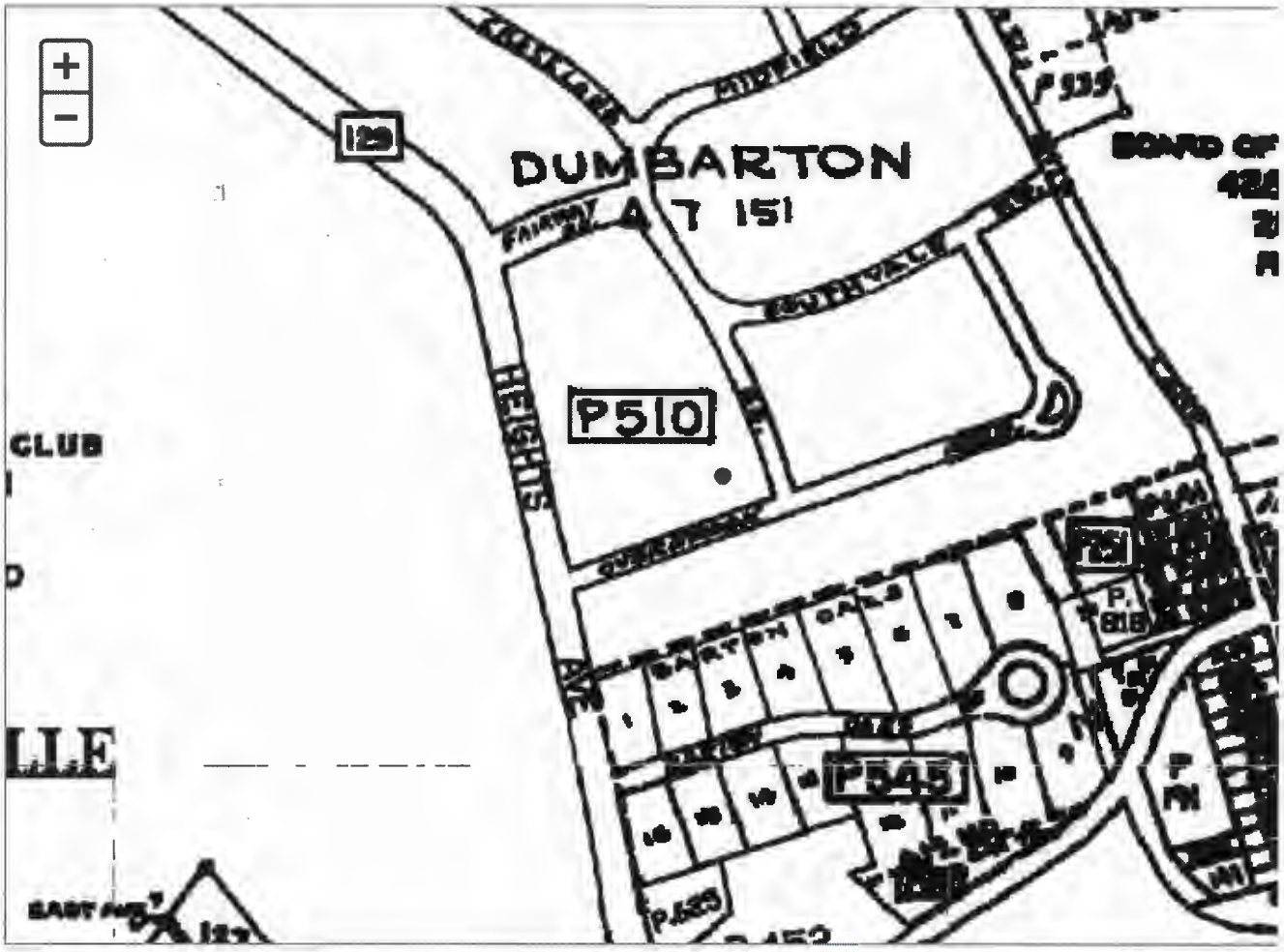
Homestead Application Information

Homestead Application Status: Approved 07/15/2009

Baltimore County

New Search (http://sdat.dat.maryland.gov/RealProperty)

District: 03 Account Number: 0314011743



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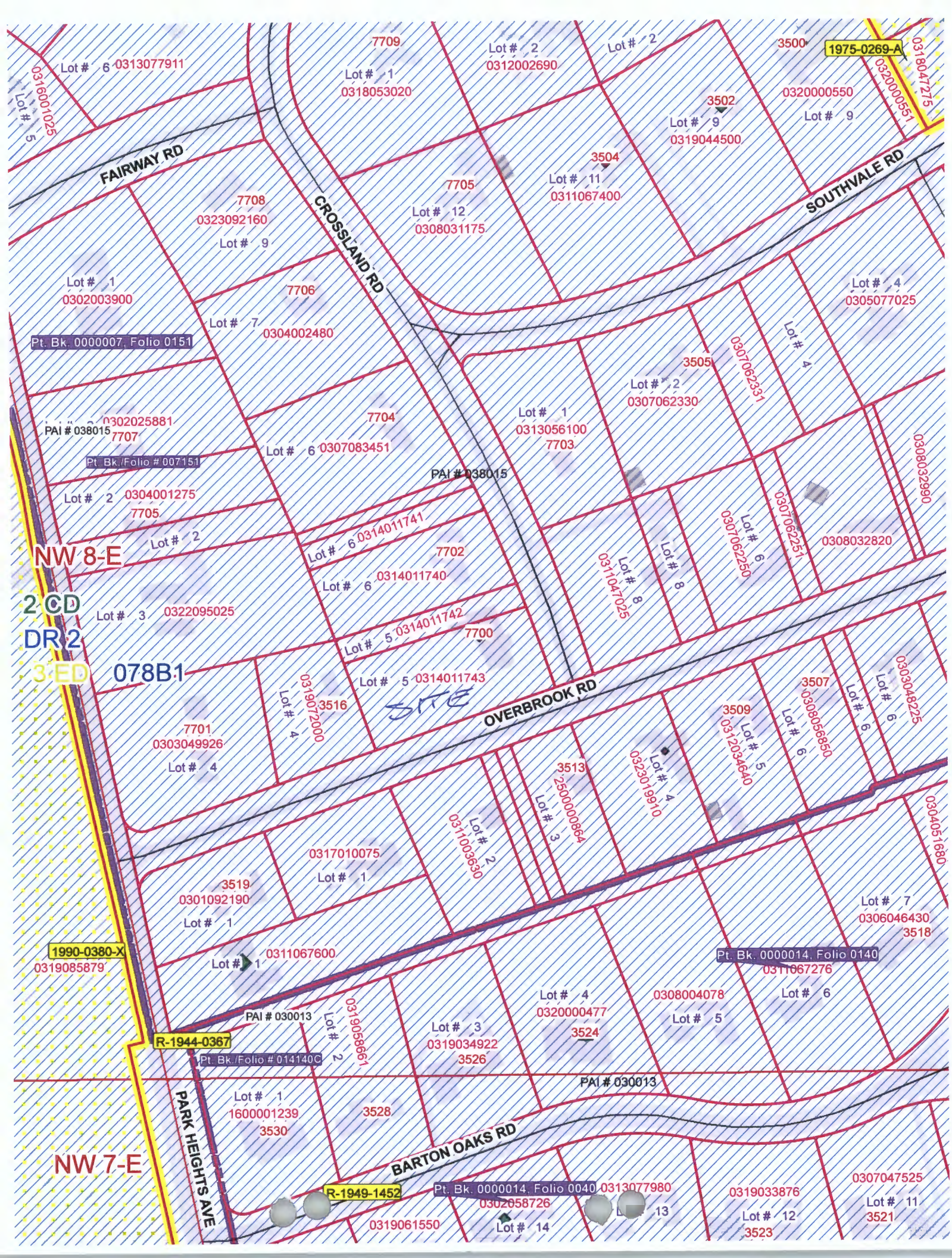
FAIRWAY RD
CROSSLAND RD
SOUTHVALE RD
OVERBROOK RD
BARTON OAKS RD
PARK HEIGHTS AVE
NW 8-E
2 CD
DR 2
3 ED
078B1
NW 7-E
Lot # 6 0313077911
0316001025
Lot # 5
7709
Lot # 1
0318053020
Lot # 2
0312002690
Lot # 2
3500
1975-0269-A
0318047275
0320000551
0320000550
Lot # 9
3502
Lot # 9
0319044500
3504
Lot # 11
0311067400
7705
Lot # 12
0308031175
7708
0323092160
Lot # 9
Lot # 1
0302003900
7706
Lot # 7
0304002480
Pt. Bk. 0000007, Folio 0151
Lot # 4
0305077025
3505
0307062331
Lot # 4
Lot # 2
0307062330
PAI # 038015
0302025881
7707
7704
Lot # 1
0313056100
7703
Pt. Bk./Folio # 007151
Lot # 6 0307083451
PAI # 038015
0308032990
Lot # 2
0304001275
7705
Lot # 2
Lot # 6 0314011741
7702
Lot # 6 0314011740
0307062251
0307062250
Lot # 6
Lot # 8
0311047025
Lot # 8
0308032820
Lot # 3 0322095025
Lot # 5 0314011742
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Lot # 5 0314011743
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0303048225
3509
0312034640
Lot # 5
3513
2500000864
Lot # 3
0323019910
Lot # 4
0311003630
Lot # 2
0304051680
0317010075
Lot # 1
3519
0301092190
Lot # 1
Lot # 7
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3518
1990-0380-X
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0311067600
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Lot # 5
Lot # 6
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PAI # 030013
Lot # 1
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3530
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Pt. Bk. 0000014, Folio 0040
0313077980
0302058726
0319033876
Lot # 12
3523
0319061550
Lot # 14
13

CASE NO. 2016-0060-SPH

CHECKLIST

Comment Received	Department	Support/Oppose/ Conditions/ Comments/ No Comment
9/23/15	DEVELOPMENT PLANS REVIEW (if not received, date e-mail sent _____)	C
_____	DEPS (if not received, date e-mail sent _____)	_____
_____	FIRE DEPARTMENT	_____
9/30/15	PLANNING (if not received, date e-mail sent _____)	no obj
9/16/15	STATE HIGHWAY ADMINISTRATION	no obj
_____	TRAFFIC ENGINEERING	_____
9/22/15	Dept. of Public Works	C
_____	COMMUNITY ASSOCIATION	_____
_____	ADJACENT PROPERTY OWNERS	_____

ZONING VIOLATION (Case No. _____)

PRIOR ZONING (Case No. _____)

NEWSPAPER ADVERTISEMENT Date: 10/13/15

SIGN POSTING Date: 10/13/15 by O'Keefe

PEOPLE'S COUNSEL APPEARANCE Yes ☑ No ☐

PEOPLE'S COUNSEL COMMENT LETTER Yes ☐ No ☐

Comments, if any: _____

Real Property Data Search (w4) Guide to searching the database

Search Result for BALTIMORE COUNTY

View Map View GroundRent Redemption View GroundRent Registration

Account Identifier: District - 03 Account Number - 0314011743

Owner Information

Owner Name:	LEHMANN RICHARD S LEHMANN SUSAN W	**Use:** **Principal Residence:**	RESIDENTIAL YES
Mailing Address:	7700 CROSSLAND RD BALTIMORE MD 21208	**Deed Reference:**	/08905/ 00821

Location & Structure Information

Premises Address:	7700 CROSSLAND RD 0-0000	**Legal Description:**	PT LT 5 DUMBARTON

Map:	Grid:	Parcel:	Sub District:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:	
0078	0004	0510		0000	3		5	2014	Plat Ref:	0007/ 0151

Special Tax Areas:		**Town:** **Ad Valorem:** **Tax Class:**	NONE

Primary Structure Built	Above Grade Enclosed Area	Finished Basement Area	Property Land Area	County Use
1993	4,228 SF		27,090 SF	04

Stories	Basement	Type	Exterior	Full/Half Bath	Garage	Last Major Renovation
2	YES	STANDARD UNIT	BRICK	3 full/ 1 half	1 Attached	

Value Information

	Base Value	Value As of 01/01/2014	Phase-in Assessments As of 07/01/2015	As of 07/01/2016
Land:	244,200	220,200		
Improvements	493,800	561,600		
Total:	738,000	781,800	767,200	781,800
Preferential Land:	0			0

Transfer Information

Seller: NEUBERGER FERDINAND	**Date:** 09/06/1991	**Price:** $1
Type: ARMS LENGTH IMPROVED	**Deed1:** /08905/ 00821	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2015	07/01/2016
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Tax Exempt:	**Special Tax Recapture:**
Exempt Class:	NONE

Homestead Application Information

Homestead Application Status: Approved 07/15/2009

Baltimore County

New Search (http://sdat.dat.maryland.gov/RealProperty)

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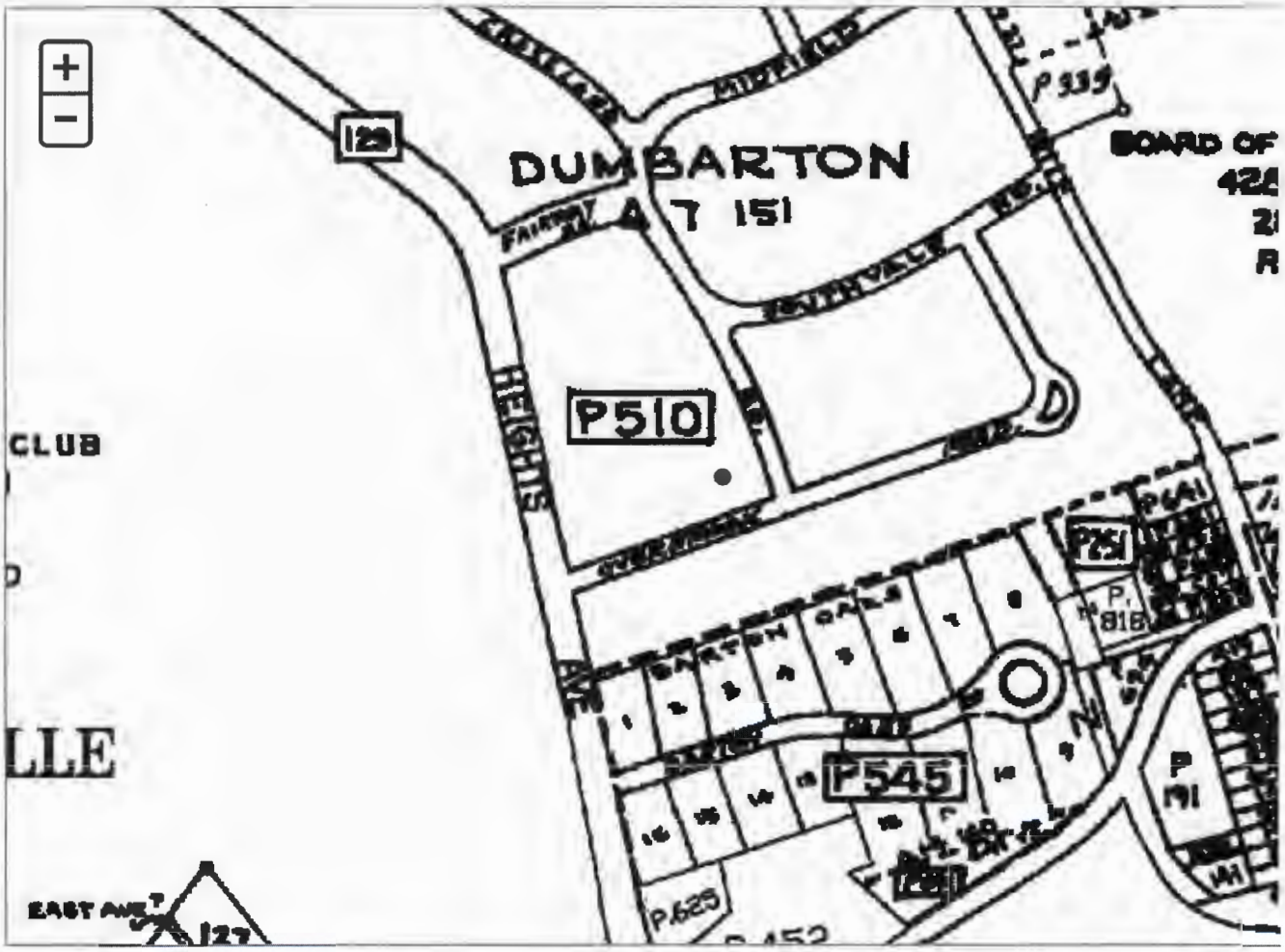

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TO: PATUXENT PUBLISHING COMPANY
Tuesday, October 13, 2015 Issue - Jeffersonian

Please forward billing to:
Richard & Susan Lehmann 410-539-8300
7700 Crossland Road
Baltimore, MD 21208

NOTICE OF ZONING HEARING

The Administrative Law Judge 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: 2016-0060-SPH
7700 Crossland Road
NW corner of Overbrook Road and Crossland Road
3rd Election District – 2nd Councilmanic District
Legal Owners: Richard & Susan Lehmann

Special Hearing for a waiver pursuant to Section 500.6, BCZR; Section 3112.0, Building Code; and Sections 32-4-414, 32-4-107(a)(2), 32-8-301, BCC to rebuild an existing enclosed porch in a riverine floodplain.

Hearing: Monday, November 2, 2015 at 10:00 a.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 AND DEVELOPMENT MANAGEMENT
ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The Baltimore County Zoning Regulations (BCZR) require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least fifteen (15) days before the hearing.

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements. The newspaper will bill the person listed below for the advertising. This advertising is due upon receipt and should be remitted directly to the newspaper.

OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.

For Newspaper Advertising:

Item Number or Case Number: #2016-0060-SPH

Petitioner: Richard S. Lehmann & Susan W. Lehmann

Address or Location: 7700 Crossland Road, Baltimore, Maryland 21208

PLEASE FORWARD ADVERTISING BILL TO:

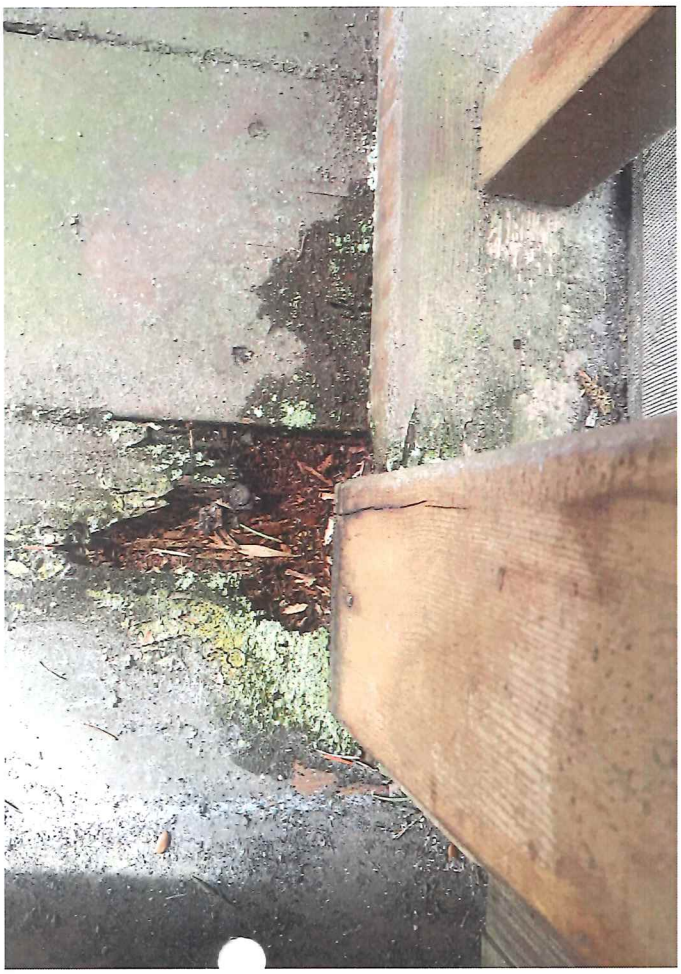
Name: Richard S. Lehmann & Susan W. Lehmann

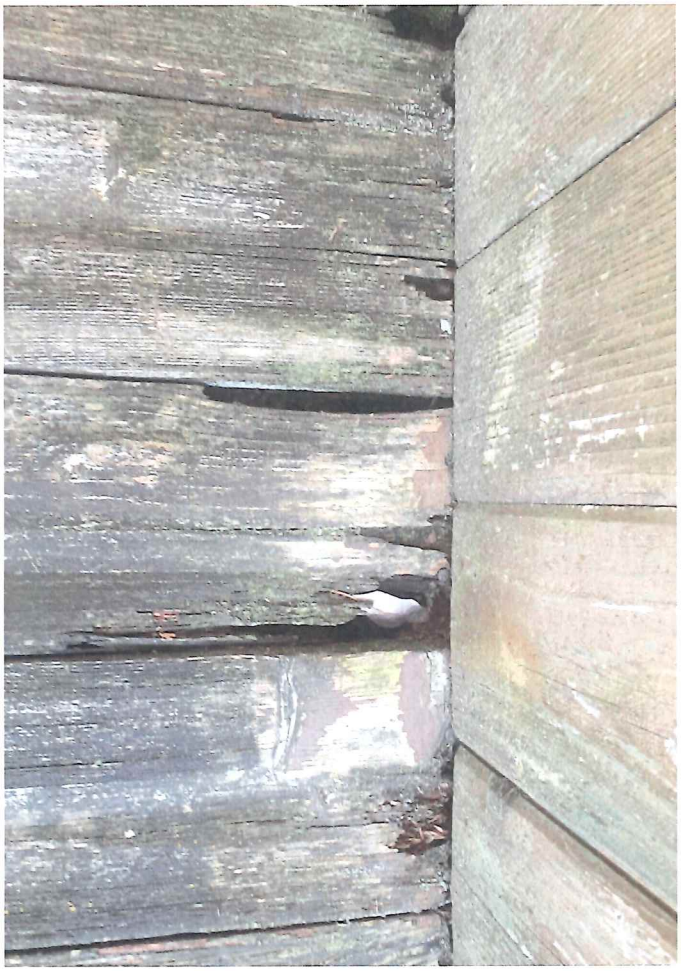
Address: 7700 Crossland Road

Baltimore, Maryland 21208

Telephone Number: 410-539-8300

Revised 2/20/98 - SCJ





tabbies
EXHIBIT
B


ZONING NOTICE
CASE #
A PUBLIC HEARING WILL BE HELD BY THE ZONING COMMISSIONER IN TOWSON, MD
PLACE:
DATE AND TIME:

EXHIBIT

C

WEST ELEVATION-PROPOSED

PROPOSED SOLID AREA

Storage Enclosure 6.67' x 12' = 80.00 sq.ft.	80.00 sq.ft.
Posts W6 x 16 area = 4.74" ea. X 15 = 71.1 sq.in. / 144 sq.in. = .49 sq.ft.	.49 sq.ft
Steps to yard 6.75' x 6.25' = 42.18 sq.ft..	42.18 sq.ft.
Steps to driveway 6.5' x 5.5' = 35.75 sq.ft.	35.75 sq.ft.
TOTAL	158.42 sq.ft.

NORTH ELEVATION-PROPOSED

PETITIONER'S

EXHIBIT NO. 5

THORNHILL DESIGN STUDIO ARCHITECTURE
312 THORNHILL ROAD
BALTIMORE, MD 21212
T: 410.435.4943
F: 410.435.4943

RENOVATIONS AND ADDITIONS TO THE

LEHMANN RESIDENCE

1700 CROSSLAND ROAD, BALTIMORE, MD 21208

Date 3.3.16
Scale 1/4"=1'0"
Drawn TSM
Job
Sheet A-3
Of Sheets

24 X 36 CLEARPRINT®

Storage Enclosure 6.67' x 12' = 80.00 sq.ft.	80.00 sq.ft.
Posts 5.5" X 5.5" = 30.25" X 15 = 453.75 sq.in. / 144 sq.in. = 3.15 sq.ft.	3.15 sq.ft.
Triangular Planter (6.5' x 6.5')/2 = 21.12 sq.ft x2 = 42.25 sq.ft.	42.25 sq.ft.
Small Rectangular Planter 2.33' x 4.83' = 11.25 sq.ft.	11.25 sq.ft.
Steps to yard (3.5' x 7') + ((7' x 6.66')/2)) = 47.81 sq.ft.	47.81 sq.ft.
Steps to driveway 6.5' x 5.5' = 35.75 sq.ft.	35.75 sq.ft.
TOTAL	220.21q sq.ft.

WEST ELEVATION - EXISTING

NORTH ELEVATION - EXISTING

PETITIONER'S

EXHIBIT NO. 4

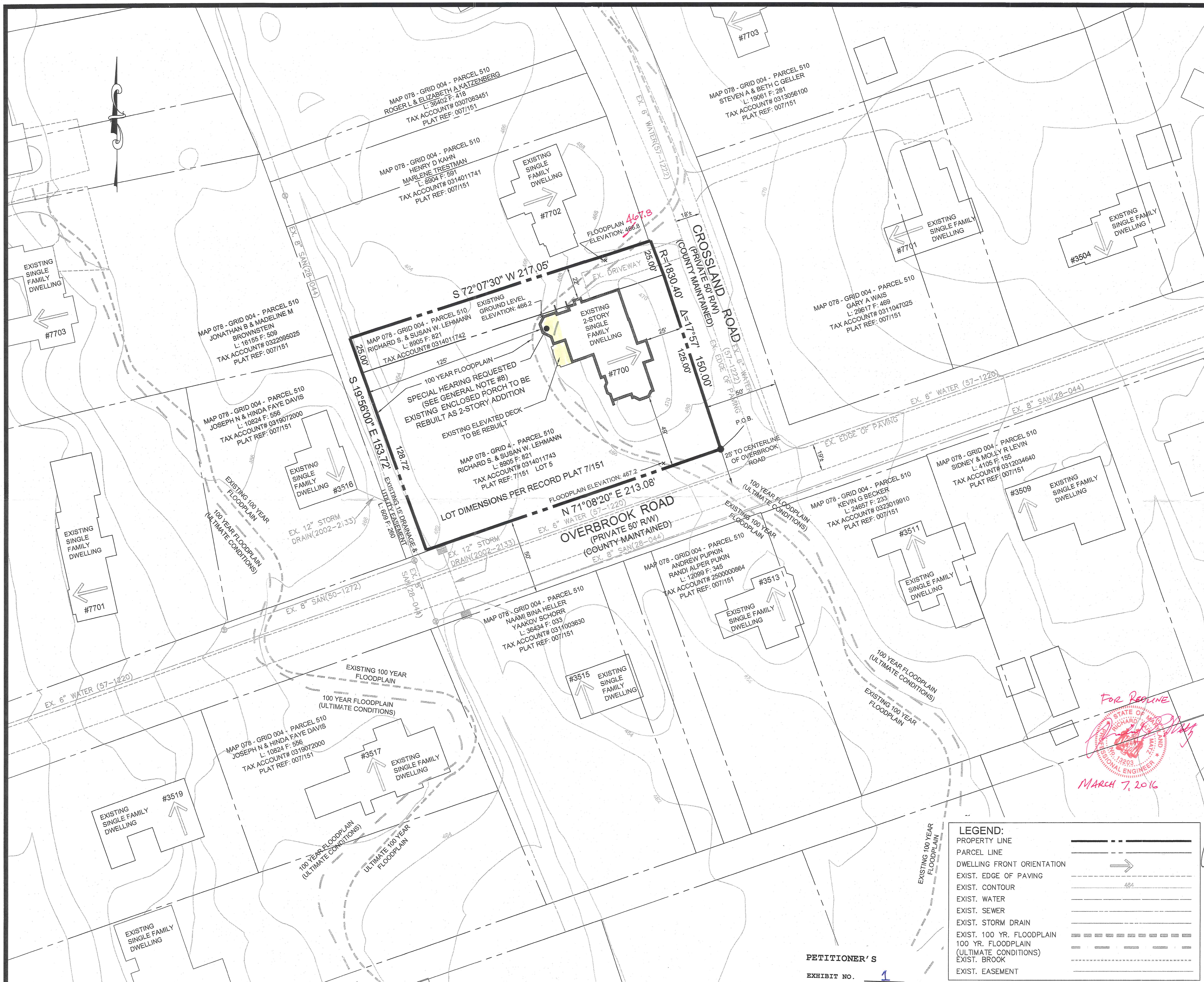
ARCHITECTURE
313 THORNHILL ROAD
BALTIMORE, MD 21212
T: 410.435.4943
F: 410.435.4943

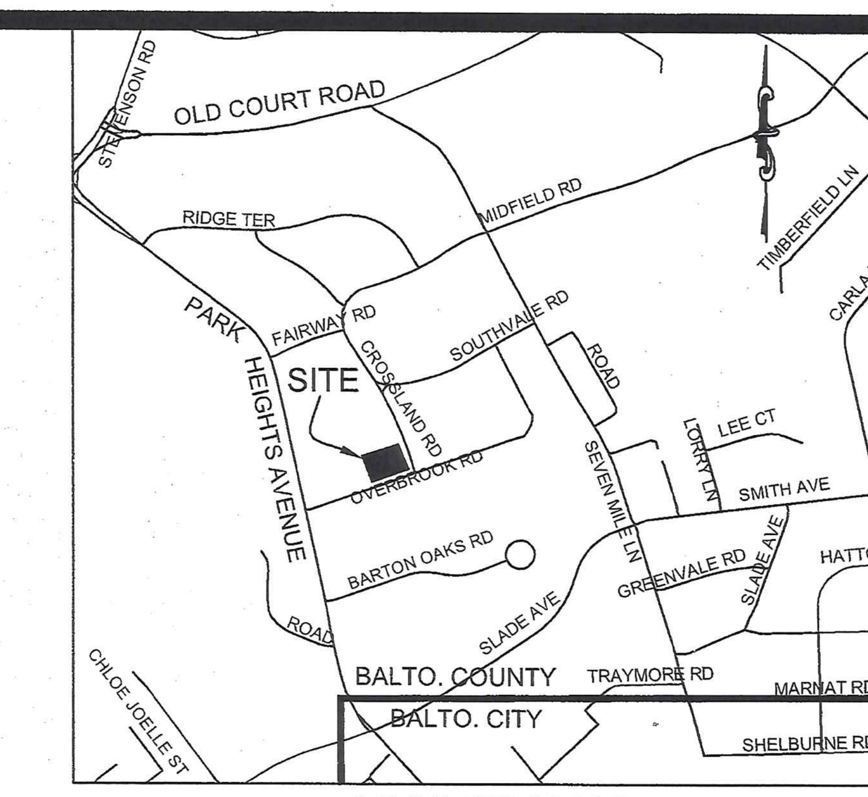
RENOVATIONS AND ADDITIONS TO THE

LEHMANN RESIDENCE

1700 CROWNLAND ROAD, BALTIMORE, MD 21208

Date 1.27.16
Scale 1/4"=1'-0"
Drawn TSM
Job
Sheet A-2





VICINITY MAP
SCALE: 1" = 1000'

GENERAL NOTES:

1. OWNER/APPLICANT
   RICHARD S. LEHMANN
   SUSAN W. LEHMANN
   7700 CROSSLAND ROAD
   BALTIMORE, MARYLAND 21208

2. SITE DATA:
   MAP 078 - GRID 4 - PARCEL 510
   DEED REF: 8905/821
   TAX ACCOUNT #0314011742, #0314011743
   PLAT REFERENCE: 7/151

3. SITE AREA: 5,425 SQ. FT.± OR 0.13 AC.± (PER RECORD PLAT)
   27,236 SQ. FT.± OR 0.63 AC.± (PER PER RECORD PLAT)
   TOTAL: 32,661 SQ. FT.± OR 0.76 AC.±

4. SITE ZONING: D.R. 2

5. EXISTING USE: SINGLE FAMILY DWELLING
   PROPOSED USE: SINGLE FAMILY DWELLING

6. SINGLE FAMILY DETACHED BUILDING SETBACKS PER BCZR SECTION 1B02.3:

	REQUIRED	EXISTING
FRONT:	40'	25'
INDIVIDUAL SIDE:	15'	25'
MINIMUM SUM OF SIDE YARDS:	40'	69'
REAR:	40'	122'

7. THE SUBJECT SITE IS LOCATED WITHIN THE 100-YEAR FLOODPLAIN.

8. SPECIAL HEARING REQUESTED:
   SPECIAL HEARING FOR A WAIVER PURSUANT TO SECTION 500.6, BCZR: SECTION 3112.0, BUILDING CODE: AND SECTIONS 32-4-414, 32-4-107(a)(2), 32-8-301, BCC TO REBUILD AN EXISTING STRUCTURE LOCATED WITHIN THE SETBACK OF THE RIVERINE FLOODPLAIN.

9. FLOODPLAIN BOUNDARY SHOWN HEREON IS TAKEN FROM A FLOODPLAIN STUDY PREPARED BY WALLACE, MONTGOMERY & ASSOCIATES, LLP DATED FEBRUARY 2006 FOR BALTIMORE COUNTY DEPARTMENT OF PUBLIC WORKS.

10. FLOODPLAIN ELEVATIONS SHOWN HEREON ARE BASED UPON AN ELEVATION CERTIFICATE PREPARED BY COLBERT MATZ ROSENFELT, INC. DATED JUNE 6, 2015.

11. THE SUBJECT SITE DOES NOT LIE WITHIN THE CHESAPEAKE BAY CRITICAL AREA (CBCA).

12. THERE ARE NO HISTORIC STRUCTURES LOCATED ON SITE.

13. THERE IS NO PREVIOUS ZONING HISTORY FOR THIS SITE.

14. BOUNDARY AND TOPOGRAPHIC INFORMATION SHOWN HEREON IS BASED ON BALTIMORE COUNTY GIS AND AVAILABLE RECORDS AND DOES NOT REPRESENT A FIELD RUN SURVEY.

ZONING CASE #2016-0060-SPH

PLAN TO ACCOMPANY ZONING PETITION FOR SPECIAL HEARING

7700 CROSSLAND ROAD

BALTIMORE COUNTY, MARYLAND
2ND COUNCILMANIC DISTRICT
3RD ELECTION DISTRICT

GRAPHIC SCALE
30 0 15 30 60 120
(IN FEET)
1 inch = 30 ft.

STATE OF MARYLAND RICHARD EARL MATZ No. 13203 PROFESSIONAL ENGINEER
SEPT 9, 2015
THIS PLAN ... AND HAS BEEN PREPARED IN ACCORDANCE WITH BALTIMORE COUNTY REGULATIONS.

Colbert Matz Rosenfelt, Inc.
Engineers * Surveyors * Planners
2835 Smith Avenue, Suite G
Baltimore, Maryland 21209
Telephone: (410) 653-3838
Facsimile: (410) 653-7953

Professional Certification
I hereby certify that these documents were prepared or approved by me, and that I am a duly licensed professional engineer under the laws of the State of Maryland.
License No. 13203 Expiration Date: 11/02/2016

SCALE:	1"=30'
DATE:	9/9/2015
JOB NO.:	2015148
DESIGNED:	MS
DRAWN:	MS
CHECKED:	CMR
FILE:	2015148 GIS_BASE.dwg
DRAWING NUMBER:	SPH-1
SHEET	1 OF 1

NO.	DATE	REVISIONS:	BY

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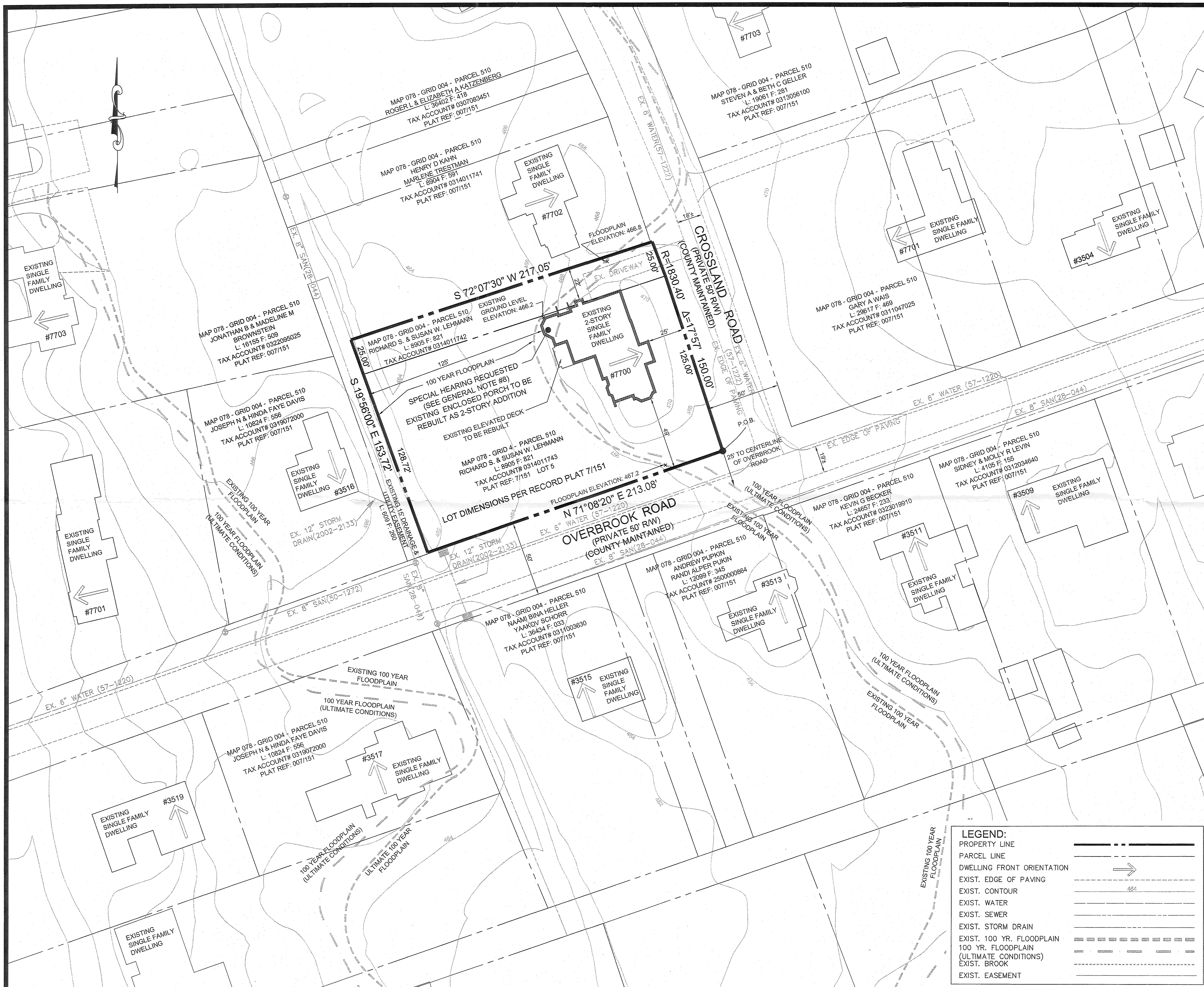

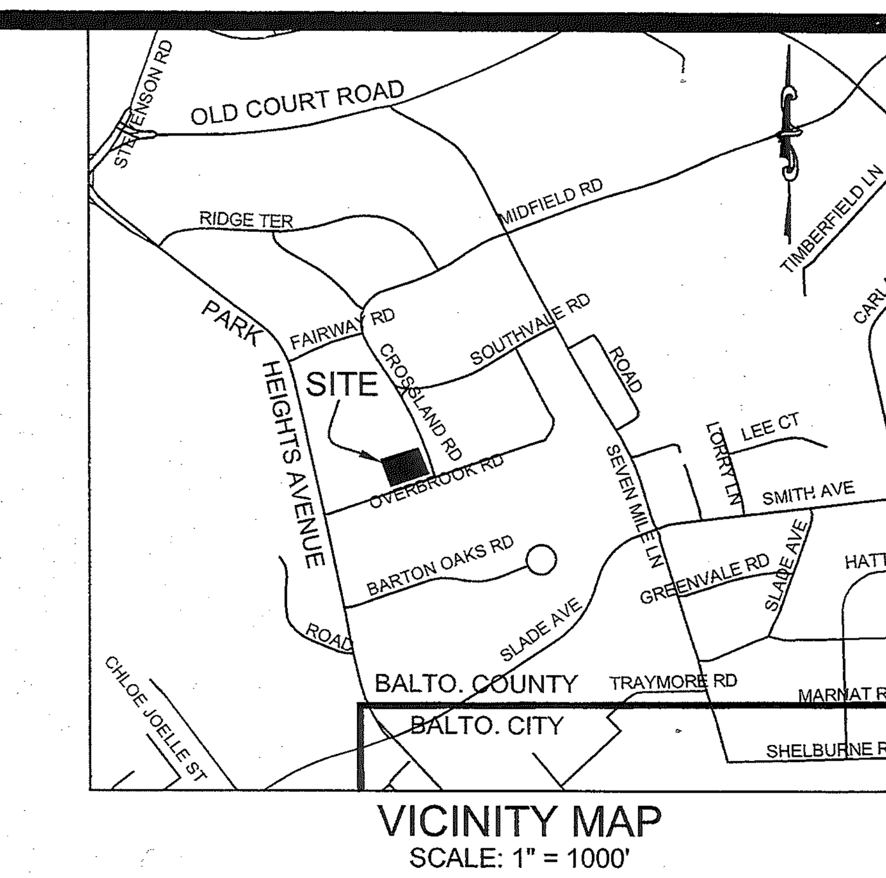

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SCALE: 1" = 1000'

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ZONING CASE #2016-0060-SPH

PLAN TO ACCOMPANY ZONING PETITION
FOR SPECIAL HEARING

7700 CROSSLAND ROAD

BALTIMORE COUNTY, MARYLAND
2ND COUNCILMANIC DISTRICT
3RD ELECTION DISTRICT

GRAPHIC SCALE
30 0 15 30 60 120
(IN FEET)
1 inch = 30 ft.

STATE OF MARYLAND
RICHARD EARL MATZ
No. 13203
PROFESSIONAL ENGINEER
THIS PLAN IS ACCURATE AND HAS BEEN PREPARED IN ACCORDANCE WITH BALTIMORE COUNTY REGULATIONS.
SEPT 9, 2015

Colbert Matz Rosenfelt, Inc.
*Engineers * Surveyors * Planners*
2835 Smith Avenue, Suite G
Baltimore, Maryland 21209
Telephone: (410) 653-3838
Facsimile: (410) 653-7953

Professional Certification
I hereby certify that these documents were prepared or approved by me, and that I am a duly licensed professional engineer under the laws of the State of Maryland.

License No. 13203 Expiration Date: 11/02/2016

NO.	DATE	REVISIONS:	BY

SCALE:	1"=30'
DATE:	9/9/2015
JOB NO.:	2015148
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CHECKED:	CMR
FILE:	2015148 GIS_BASE.dwg
DRAWING NUMBER:	SPH-1
SHEET	1 OF 1

\\CMRFILE\cadd\dwg\d2\project\2015\2015148\Project Directories\CMR\Concept-Prelim\2015148 Base (current).dwg, 24 x 36, 9/9/2015 9:13:22 AM, mvidaver