

## MEMORANDUM

DATE: February 10, 2016  
TO: Zoning Review Office  
FROM: Office of Administrative Hearings  
RE: Case No. 2016-0123-SPH- Appeal Period Expired

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The appeal period for the above-referenced case expired on February 8, 2016. There being no appeal filed, the subject file is ready for return to the Zoning Review Office and is placed in the 'pick up box.'

c: ✓ Case File  
Office of Administrative Hearings

IN RE: PETITION FOR SPECIAL HEARING \*

(523 Morris Avenue)

8<sup>th</sup> Election District \*

3<sup>rd</sup> Council District \*

Julia B. Silber \*

*Legal Owner* \*

Petitioner \*

BEFORE THE

OFFICE OF

ADMINISTRATIVE HEARINGS

FOR BALTIMORE COUNTY

Case No. 2016-0123-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 Julia B. Silber, legal owner. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to allow a waiver of the public work standards (DPW Plat DF-1) to allow for a 10.5 ft. setback in lieu of the required 20 ft. setback from the 1 ft. freeboard line of the 100 year floodplain to a dwelling.

Julia Silber and professional engineer John Motsco appeared in support of the petition. Timothy M. Kotroco, Esq., represented the Petitioner. Eric Rockel and Al Fischer, both neighbors in the area, attended and opposed the request. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP), the Bureau of Development Plans Review (DPR) and the Department of Public Works (DPW).

The subject property is 7,720 square feet and zoned DR 5.5. Petitioner purchased the house recently, and secured building permits from Baltimore County to renovate the subject property. Petitioner explained the house was in deplorable (almost unlivable) condition. When

she purchased it, she wanted to construct an addition at the rear of the home and remediate the

ORDER RECEIVED FOR FILING

Date 1-8-16

By BW

mold and termite damage at the property. After investing substantial sums of money and time, Baltimore County issued a stop work order and directed Petitioner to obtain a waiver of the floodplain setback standards.

Mr. Motsco's firm undertook field surveys and prepared a plan depicting the floodplain and setback therefrom. Petitioner's Exhibit 1. Petitioner's house and proposed improvements are not in the floodplain; rather, they would encroach 10.5 ft. into the 20 ft. floodplain setback. Mr. Motsco opined that granting the waiver would be consistent with sound floodplain management practices. Dave Thomas, who reviews these matters on behalf of Baltimore County, indicated his agency did not oppose the petition.

While I understand and appreciate the concerns raised by Messrs. Rockel and Fischer, I do not believe Petitioner should be made to pay for Baltimore County's mistake. The neighbors correctly note that Baltimore County has in the recent past issued building permits in analogous situations; i.e., where the property was in the floodplain or setback. As such, I understand their frustration. But here the evidence indicates Petitioner sought and obtained all permits from the County, and under applicable case law, the County should in fact be estopped from denying the permit. Permanent Financial v. Montgomery Co., 308 Md. 239 (1986).

THEREFORE, IT IS ORDERED this 8<sup>th</sup> day of **January, 2016** by this Administrative Law Judge, that the Petition for Special Hearing pursuant to B.C.Z.R. § 500.7 to allow a waiver of the public work standards (DPW Plat DF-1) to allow for a 10.5 ft. setback in lieu of the required 20 ft. setback from the 1 ft. freeboard line of the 100 year floodplain to a dwelling, be and is hereby GRANTED.

ORDER RECEIVED FOR FILING

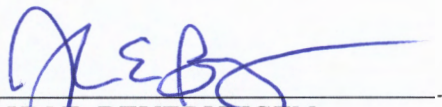
Date 1-8-16

By EW

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at her 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, Petitioner would be required to return the subject property to its original condition.
2. The 100-year floodplain area must remain undisturbed and shall not be maintained, mowed or cleared as lawn area.
3. Neither Petitioner or her agents and employees shall deposit fill dirt or other material onto the 100-year floodplain area.
4. Petitioner shall convey to Baltimore County at no cost an easement or record among the Land Records a covenant imposing use restrictions upon the 100-year floodplain area.

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:dlw

ORDER RECEIVED FOR FILING

Date 1-8-16

By DW



KEVIN KAMENETZ  
*County Executive*

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

January 8, 2016

Timothy M. Kotroco, Esq.  
305 Washington Avenue, Suite 502  
Towson, Maryland 21204

RE: Petition for Special Hearing  
Case No. 2016-0123-SPH  
Property: 523 Morris Avenue

Dear Mr. Kotroco:

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,

A handwritten signature in black ink, appearing to read "JEB", is written over the printed name of John E. Beverungen.

JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB:dlw  
Enclosure

c: Eric Rockel, 1610 Riderwood Drive, Lutherville, MD 21093  
Al Fischer, 1605 Trebor Court, Lutherville, MD 21093



**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 523 Morris Avenue which is presently zoned DR 5.5  
Deed References: 36241/65 10 Digit Tax Account # 0808033570  
Property Owner(s) Printed Name(s) Julia B. Silber

(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)

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:

Name- Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

## Attorney for Petitioner:

Timothy M. Kotroco

Name- Type or Print

Signature

305 Washington Avenue, Suite 502 Towson, Maryland

Mailing Address City State

21204 / 410-299-2943 / TKotroco@gmail.com  
Zip Code Telephone # Email Address

## Legal Owners (Petitioners):

Julia B. Silber

Name #1 - Type or Print

Name #2 - Type or Print

Signature #1

Signature #2

523 Morris Avenue Lutherville, Md

Mailing Address City State

21093 / 410-404-2585 / juliasilber1@gmail.com  
Zip Code Telephone # Email Address

## Representative to be contacted:

Same As Attorney for Petitioner

Name - Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

CASE NUMBER 2016-0123 SPH Filing Date 11/9/15

Do Not Schedule Dates: \_\_\_\_\_ Reviewer: WCR

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

No. **128786**

Date: \_\_\_\_\_

**PAID RECEIPT**

BUSINESS ACTUAL TIME DEN  
 11/09/2015 11/09/2015 13:56:50 2

RES W002 WALKIN JEVA JEE

> RECEIPT # 996786 11/09/2015 OFLN

DEPT 5 520 ZONING VERIFICATION

NO. 128786

Receipt Tot \$75.00  
 \$75.00 OK \$1.00 CA  
 Baltimore County, Maryland

| Fund | Dept | Unit | Sub Unit | Rev Source/ Obj | Sub Rev/ Sub Obj | Dept Obj | BS Acct | Amount |
|------|------|------|----------|-----------------|------------------|----------|---------|--------|
| 001  | 806  | 0000 |          | 6100            |                  |          |         | 75.00  |
|      |      |      |          |                 |                  |          |         |        |
|      |      |      |          |                 |                  |          |         |        |
|      |      |      |          |                 |                  |          |         |        |
|      |      |      |          |                 |                  |          |         |        |
|      |      |      |          |                 |                  |          |         |        |

Total: 75.00

Rec From: Tim Kotaro

For: Special Hearing - 2016-0123-SPH  
503 Morris Ave (51500)

DISTRIBUTION

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

**CASHIER'S  
 VALIDATION**

# DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS

## 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.

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#### For Newspaper Advertising:

Item Number or Case Number: 2016-0123-SPH

Petitioner: Julia B. Silber

Address or Location: 523 Morris Avenue

PLEASE FORWARD ADVERTISING BILL TO:

Name: Tim Kotroco

Address: 305 Washington Ave Suite 502

Towson, MD 21204

Telephone Number: 410 299 2943



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 3818375

**Sold To:**

Tim Kotroco - CU00509203  
305 Washington Ave  
Ste 502  
Towson, MD 21204-4747

**Bill To:**

Tim Kotroco - CU00509203  
305 Washington Ave  
Ste 502  
Towson, MD 21204-4747

Was published in "Jeffersonian", "Bi-Weekly", a newspaper printed and published in Baltimore County on the following dates:

Dec 17, 2015

The Baltimore Sun Media Group

By S. Wilkinson  
Legal Advertising

**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: # 2016-0123-SPH**  
523 Morris Avenue  
SW/s Morris Avenue, 270 ft. SE Greenspring Drive  
8th Election District - 3rd Councilmanic District  
Legal Owner(s) Julia Silber

**Special Hearing** to allow a waiver of the public standards (DPW Plate DF-1) to allow for a 10.5 ft. setback in lieu of the required 20 ft. setback from the 1 ft. freeboard line of the 100 year floodplain in a dwelling. The house and its addition are NOT located within the 100 yr. floodplain.

**Hearing: Thursday, January 7, 2016 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.

12/15/15 Dec. 17 3818375

## CERTIFICATE OF POSTING

Date: 12/18/15

RE: Case Number: 2016-0123 SP4

Petitioner/Developer: Julia Silber

Date of Hearing/Closing: 1/7/16 10AM

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 523 Morris Ave

The signs(s) were posted on 12/18/15  
(Month, Day, Year)

J. Lawrence Pilson  
(Signature of Sign Poster)

J. LAWRENCE PILSON  
(Printed Name of Sign Poster)

ATTACH PHOTOGRAPH

1015 Old Barn Road  
(Street Address of Sign Poster)

Parkton, MD 21120  
(City, State, Zip Code of Sign Poster)

410-343-1443  
(Telephone Number of Sign Poster)



KEVIN KAMENETZ  
County Executive

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

November 30, 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: 2016-0123-SPH**

523 Morris Avenue  
SW/s Morris Avenue, 270 ft. SE Greenspring Drive  
8<sup>th</sup> Election District – 3<sup>rd</sup> Councilmanic District  
Legal Owners: Julia Silber

Special Hearing to allow a waiver of the public works standards (DPW Plate DF-1) to allow for a 10.5 ft. setback in lieu of the required 20 ft. setback from the 1 ft. freeboard line of the 100 year floodplain to a dwelling. The house and its addition are NOT located within the 100 yr. floodplain.

Hearing: Thursday, January 7, 2016 at 10:00 a.m. in Room 205, Jefferson Building,  
105 West Chesapeake Avenue, Towson 21204

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

Arnold Jablon  
Director

AJ:kl

C: Timothy Kotroco, 305 Washington Avenue, Ste. 502, Towson 21204  
Julia Silber, 523 Morris Avenue, Lutherville 21093

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY FRIDAY, DECEMBER 18, 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.

TO: PATUXENT PUBLISHING COMPANY  
Thursday, December 17, 2015 Issue - Jeffersonian

Please forward billing to:

Tim Kotroco  
305 Washington Avenue, Ste. 502  
Towson, MD 21204

410-299-2943

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## NOTICE OF ZONING HEARING

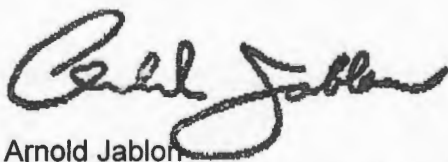
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SW/s Morris Avenue, 270 ft. SE Greenspring Drive  
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Legal Owners: Julia Silber

Special Hearing to allow a waiver of the public works standards (DPW Plate DF-1) to allow for a 10.5 ft. setback in lieu of the required 20 ft. setback from the 1 ft. freeboard line of the 100 year floodplain to a dwelling. The house and its addition are NOT located within the 100 yr. floodplain.

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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.

RE: PETITION FOR SPECIAL HEARING  
523 Morris Avenue; SW/S Morris Avenue,  
270' SE Greenspring Drive  
8<sup>th</sup> Election & 3<sup>rd</sup> Councilmanic Districts  
Legal Owner(s): Julia Silber  
Petitioner(s)

\* BEFORE THE OFFICE  
\* OF ADMINSTRATIVE  
\* HEARINGS FOR  
\* BALTIMORE COUNTY  
\* 2016-123-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.

RECEIVED

DEC 04 2015

*Peter Max Zimmerman*

PETER MAX ZIMMERMAN  
People's Counsel for Baltimore County

*Carole S. Demilio*

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

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 4<sup>th</sup> day of December, 2015, a copy of the foregoing Entry of Appearance was mailed to Timothy Kotroco, Esquire, 305 Washington Avenue, Suite 502, Towson, Maryland 21204, Attorney for Petitioner(s).

*Peter Max Zimmerman*

PETER MAX ZIMMERMAN  
People's Counsel for Baltimore County

Case No.: 2016-0123-SPH

Exhibit Sheet

Petitioner/Developer

Protestant

DW 2-10-16

DW 1-8-16

|        |                                           |  |
|--------|-------------------------------------------|--|
| No. 1  | site plan                                 |  |
| No. 2  | colored site plan                         |  |
| No. 3  | Floodplain mapping-<br>Wallace Montgomery |  |
| No. 4  | MotSCO <del>CV</del> CV                   |  |
| No. 5  | Letters of support                        |  |
| No. 6  | photos                                    |  |
| No. 7  | floodplain aerial<br>photo                |  |
| No. 8  | photos                                    |  |
| No. 9  |                                           |  |
| No. 10 |                                           |  |
| No. 11 |                                           |  |
| No. 12 |                                           |  |



KEVIN KAMENETZ  
*County Executive*

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

December 30, 2015

Julia B. Silber  
523 Morris Avenue  
Lutherville MD 21093

RE: Case Number: 2016-0123 SPH, Address: 523 Morris Avenue

Dear Ms. Silber:

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits, Approvals, and Inspection (PAI) on November 9, 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,

A handwritten signature in black ink that reads "W. Carl Richards, Jr." The signature is written in a cursive style with a large, stylized "W" and "C".

W. Carl Richards, Jr.  
Supervisor, Zoning Review

WCR: jaw

Enclosures

c: People's Counsel  
Timothy M Kotroco, Esquire, 305 Washington Avenue, Suite 502, Towson MD 21204

Larry Hogan, Governor  
Boyd K. Rutherford, Lt. Governor



Pete K. Rahn, Secretary  
Gregory C. Johnson, P.E., Administrator

Date: 11/24/15

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

RE: Baltimore County  
Item No. 2016-0123-SPH  
*Special Hearing*  
*Julia B. Silber*  
*523 Morris Avenue*

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. 2016-0123-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,

A handwritten signature in dark ink, appearing to read 'Richard Zeller', is written over the word 'Sincerely,'.

David W. Peake  
Metropolitan District Engineer - District 4  
Baltimore & Harford Counties

DWP/RAZ

My telephone number/toll-free number is \_\_\_\_\_

Maryland Relay Service for Impaired Hearing or Speech 1-800-735-2258 Statewide Toll-Free  
Street Address: 320 West Warren Road • Hunt Valley, Maryland 21030 • Phone 410-229-2300 or 1-866-998-0367 • Fax 301-527-4690  
[www.roads.maryland.gov](http://www.roads.maryland.gov)

**BALTIMORE COUNTY, MARYLAND**

**INTEROFFICE CORRESPONDENCE**

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

**FROM:** <sup>DAK</sup> Dennis A. Kennedy, Supervisor  
Bureau of Development Plans Review

**SUBJECT:** Zoning Advisory Committee Meeting  
For November 23, 2015  
Item No. 2016-0123

**DATE:** November 23, 2015

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

The plat of Luther Villa was recorded in 1924, prior to floodplain and greenway regulations. Roland Run is a master planned environmental greenway. The County owns portions of the greenway/floodplain. This portion of the greenway/floodplain should be dedicated to the County.

The Director of Public Works will comment on the setback request.

\*

\*

\*

\*

\*

\*

DAK  
cc:file

ZAC-ITEM NO 16-0123-11232015.doc

# BALTIMORE COUNTY, MARYLAND

## INTER-OFFICE MEMORANDUM

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

**DATE:** December 1, 2015

**FROM:** Andrea Van Arsdale  
Director, Department of Planning

**SUBJECT:** ZONING ADVISORY COMMITTEE COMMENTS  
Case Number: 16-123

**INFORMATION:**

**Property Address:** 523 Morris Avenue  
**Petitioner:** Julia Silber  
**Zoning:** DR 5.5  
**Requested Action:** Special Hearing

The Department of Planning has reviewed the petition for special hearing to determine whether or not the Administrative Law Judge should approve allow a waiver of the public works standards (DPW Plate DF-1) to allow for a 10.5' setback in lieu of the required 20' setback from the 1' freeboard line of the 100 year floodplain to a dwelling.

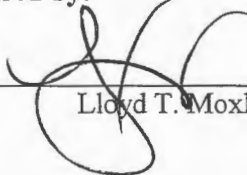
The property is within the Community Conservation Plan for Lutherville adopted by Baltimore County Council on February 20, 1996 and made part of the Master Plan 2020. A recommended action in the Community Conservation Plan calls for practices that protect Roland Run (Page 8. Action 3).

The Department has no objection to granting the petitioned zoning relief and recommends the following condition be made part of the Order.

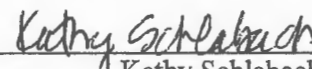
- The 100 year floodplain area shall revert to natural vegetation and not be maintained as lawn.

For further information concerning the matters stated herein, please contact Wally Lippincott at 410-887-3480.

**Prepared by:**

  
\_\_\_\_\_  
Lloyd T. Moxley

**Division Chief:**

  
\_\_\_\_\_  
Kathy Schlabach

AVA/KS/LTM/ka

c: Wally Lippincott  
Timothy M. Kotroco, Esquire  
Office of the Administrative Hearings  
People's Counsel for Baltimore County

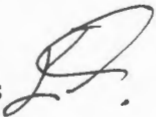
BALTIMORE COUNTY, MARYLAND  
INTER OFFICE CORRESPONDENCE

12/11/15  
TO WCR  
f file

**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



DEC 10 2015

**DATE:** December 4, 2015

**SUBJECT:** Case No: 2016-0123-SPH  
523 Morris Avenue, Lutherville, Maryland 21093-4915

Special Hearing to determine whether or not the Administrative Law Judge should approve a waiver to the 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 an addition for a residential building.

The Special Hearing involves an existing residence to be given an addition within 20 feet of the 100-year riverine floodplain.

The plans and documents submitted were reviewed and the Department of Public Works takes no exception to the approval of the waiver.

Please note that this office has been advised by members of the community of significant opposition to this waiver request.

ECA/TWC/s

**CC:** Dennis Kennedy, Chief, Development Plans Review and Building Plan Review  
Peter M. Zimmerman, People's Council  
John A. Fischer, 1605 Trebor Court  
Eric G. Rockel, 1610 Riderwood Drive

## Debra Wiley

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**From:** Debra Wiley  
**Sent:** Friday, February 05, 2016 2:31 PM  
**To:** Marcie Goodman  
**Subject:** ZAC Comments - Case No. 2016-0123-SPH  
**Attachments:** 20160205143351552.pdf

Marcie,

Per your request, please find attached Zoning Advisory Committee (ZAC) comments for the above-referenced matter.

Thanks.

-----Original Message-----

**From:** adminhearingscpr@baltimorecountymd.gov [mailto:adminhearingscpr@baltimorecountymd.gov]  
**Sent:** Friday, February 05, 2016 2:34 PM  
**To:** Debra Wiley <dwiley@baltimorecountymd.gov>  
**Subject:** Admin Hearings Copier

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

Scan Date: 02.05.2016 14:33:51 (-0500)  
Queries to: adminhearingscpr@baltimorecountymd.gov

## Debra Wiley

---

**From:** Debra Wiley  
**Sent:** Friday, February 05, 2016 2:27 PM  
**To:** Marcie Goodman  
**Subject:** DISREGARD MY LAST EMAIL RE: Case No. 2016-0123-SPH

Marcie,

I apologize. The file is still here til Monday. Give me a few minutes and I can scan and email them to you.

Sorry about that ...

---

**From:** Marcie Goodman  
**Sent:** Friday, February 05, 2016 2:13 PM  
**To:** Debra Wiley <dwiley@baltimorecountymd.gov>  
**Subject:** Case No. 2016-0123-SPH

Hi Deb,

Hope all is going well, as it has been a very long time since I have seen you.

I'm wondering if you have the ZAC comments from Planning, Development Plans Review and Public Works on the above case. If so, is it possible to email or photocopy and get them to me? Our office cannot put our hands on them. Or I can pick them up next week if that is easier.

Thanks very much and have a great weekend.

Marcie

## Debra Wiley

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**From:** Debra Wiley  
**Sent:** Friday, February 05, 2016 2:25 PM  
**To:** Marcie Goodman  
**Subject:** RE: Case No. 2016-0123-SPH

Hi Marcie,

So glad to hear from you and I hope everyone is well.

Unfortunately, the Opinion & Order and the 30-day appeal period has expired. Therefore, the file and all its contents have been returned to the Office of Zoning Review (who are the keepers of the file). I am sure if you contact someone in Carl Richards office at x3391, they can access the copies for you.

Take care and have a wonderful weekend !

---

**From:** Marcie Goodman  
**Sent:** Friday, February 05, 2016 2:13 PM  
**To:** Debra Wiley <dwiley@baltimorecountymd.gov>  
**Subject:** Case No. 2016-0123-SPH

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Thanks very much and have a great weekend.

Marcie



KeyCite Yellow Flag - Negative Treatment

Distinguished by [Marzullo v. Kahl](#), Md., October 12, 2001

308 Md. 239

Court of Appeals of Maryland.

**PERMANENT** FINANCIAL  
CORPORATION, Trustee

v.

MONTGOMERY COUNTY, Maryland et al.

No. 69 Sept. Term 1985. | Dec. 5, 1986.

Builder sought judicial review of decision of the county board of appeals denying it relief from suspension and stop work order and refusing to grant variance. The Circuit Court, Montgomery County, Stanley Frosh, J., affirmed, and builder appealed. The Court of Special Appeals affirmed, and builder petitioned for certiorari. The Court of Appeals, McAuliffe, J., held that: (1) penthouse failed to qualify as "roof structure housing mechanical equipment," so that penthouse was not exempted from height controls imposed by local zoning ordinance; (2) county was estopped from claiming that fourth floor of building exceeded height controls imposed by local zoning ordinance; (3) structures contained within penthouse did not qualify as "rooftop mechanical structures," under local zoning ordinance providing that area occupied by such mechanical structures is not included in gross floor area of building for purpose of area restrictions; and (4) county was not barred by laches from enforcing local zoning requirements against builder.

Affirmed.

West Headnotes (6)

[1] **Zoning and Planning**

✦ **Height of buildings or structures**

Penthouse did not have "mansard roof," for purpose of height controls imposed by local zoning ordinance, where roof had no greater slope than was necessary for drainage purposes.

[Cases that cite this headnote](#)

[2] **Zoning and Planning**

✦ **Height of buildings or structures**

Penthouse failed to qualify as "roof structure housing mechanical equipment," so that penthouse was not exempted from height controls imposed by local zoning ordinance, where penthouse not only housed various mechanical equipment, but also contained office for janitorial or security personnel.

[Cases that cite this headnote](#)

[3] **Zoning and Planning**

✦ **Estoppel or inducement**

County was equitably estopped from claiming that building's upper floor exceeded height control imposed by local zoning ordinance, where builder had designed and constructed building in reliance on building permit and on long-standing and reasonable interpretation of county as to how building's height should be calculated.

[15 Cases that cite this headnote](#)

[4] **Zoning and Planning**

✦ **Height of buildings or structures**

Structures enclosed within penthouse that had structural head room of six feet, six inches were not "rooftop mechanical structures," under local zoning ordinance providing that area of such mechanical structures is not included in gross floor area of building for purpose of area restrictions.

[1 Cases that cite this headnote](#)

[5] **Zoning and Planning**

✦ **Matters or evidence considered**

Court of Appeals would permit builder to argue that building did not violate local setback requirements, though stop work order from which builder appealed referred only to building's alleged violations of local height and area limitations, where county had notified builder subsequent to appeal that its stop work order was also based on building's failure to comply with local setback requirements, and

question of setbacks was fully considered by county board of appeals.

[7 Cases that cite this headnote](#)

## [6] Zoning and Planning

### 🔑 Time for proceedings

County was not barred by laches from enforcing local zoning requirements against builder, though county had waited more than eight months after it had issued building permit and after construction had begun to issue stop work order, and though builder had by that time spent more than \$2 million on project, where record disclosed that county acted promptly when violations were brought to its attention by neighboring property owners.

[1 Cases that cite this headnote](#)

## Attorneys and Law Firms

**\*\*124 \*241** Joseph P. Blocker and Larry A. Gordon (Linowes & Blocher, on brief), Silver Spring, for appellant.

Clyde C. Henning, Asst. Co. Atty. (Paul A. McGuckian, Co. Atty. and Alan M. Wright, Sr. Asst. Co. Atty., on brief), Rockville, for Montgomery County, Md., part of appellees.

Nancy M. Floreen, Silver Spring (David O. Stewart and Miller, Cassidy, Larroca & Lewin, on brief), Washington, D.C. for the et al. part of the appellees.

Arthur S. Drea, Jr., Kenneth P. Barnhart, Silver Spring, for The Maryland-National Capital Park and Planning Com'n, other appellees.

Argued before MURPHY, C.J., and SMITH, \* ELDRIDGE, COLE, RODOWSKY, COUCH and McAULIFFE, JJ.

## Opinion

McAULIFFE, Judge.

Pursuant to the authority of a building permit issued by Montgomery County, a developer undertook construction of an office building in Silver Spring, Maryland. Eight and one-half months and more than two million dollars later, when the shell of the building was complete, the County suspended the

building permit and issued a stop work order on the grounds that the building violated statutory height **\*242** limitations, set-back requirements, and floor area ratio restrictions. The developer appealed to the Montgomery County Board of Appeals ("the Board") and concurrently filed with that body an application for variances to exempt the building from any requirements of the Zoning Code with which it might not comply. The Board denied relief from the suspension and stop work order and refused to grant any variance. The Circuit Court for Montgomery County affirmed, and that action was affirmed by the Court of Special Appeals in an unreported *per curiam* opinion. We granted certiorari principally to consider the developer's contention that the doctrine of equitable **estoppel** should be applied against the County. We conclude the County is estopped from contending that the fourth floor of the building violates the height limitations of the Montgomery County Code. We further conclude, however, that the building as constructed is otherwise in violation of the code and that the Board did not err in refusing to set aside the suspension and stop work order or in refusing to grant the requested variances.

**Permanent** Financial Corporation ("**Permanent**"), as trustee for others, began the development of this commercial office building by obtaining a building permit from the Montgomery County Department of Environmental Protection (DEP) on January 11, 1982. Six months later **Permanent** obtained a revision of the permit by which DEP approved an increase in the size of the first floor. The building as erected is on a rectangular lot that comprises an area of 18,750 square feet and has no unusual topographical features. The land is zoned CBD-1, which is a central business district zone intended for use in areas where high densities are not appropriate. Montgomery County Code (1972, 1977 Repl.Vol.) § 59-C-6.211(b).<sup>1</sup> The building contains four floors of above ground office space and a "penthouse" or fifth floor designed **\*\*125** primarily to house mechanical **\*243** equipment. Each of the second, third, and fourth floors is larger than the floor beneath it, giving the building a trapezoidal shape.

## The Height Limitation

[1] The height limitation for a building erected in the CBD-1 zone under the method of development utilized here is established by § 59-C-6.235. Ordinarily, the maximum permissible building height is 60 feet. However, where the property adjoins or is directly across the street from certain residential zones, as is the case here, the maximum building

height is "35 [feet] plus an additional 8 feet for nonhabitable structures." Section 59-A-2.1 specifies how the height of a building is to be determined:

The vertical distance measured from the level of approved street grade opposite the middle of the front of a building to the highest point of roof surface of a flat roof; to the deck line of a mansard floor; and to the mean height level between eaves and ridge of a gable, hip or gambrel roof; except, that if a building is located on a terrace, the height above the street grade may be increased by the height of the terrace....

**Permanent** appears to have abandoned its earlier claim that the building is located on a terrace. In any event, the evidence was sufficient to support the Board's finding that the building is not, and that the beginning point of the measurement is the level of the approved street grade opposite the middle of the front of the building. Using that point of reference, the building measures 43 feet to the top of the fourth floor and 53 feet to the highest point of the roof of the penthouse.

**Permanent** persists in its claim that the penthouse has a mansard roof, and that the measurement must therefore be made to "the deck line of [the] mansard floor" which **Permanent** says is coincident with the roof of the fourth floor. We need not consider **Permanent's** strained interpretation of what constitutes the deck line of a mansard floor, because the record fully supports the finding of the Board \*244 that the penthouse does not have a mansard roof. The Montgomery County Zoning Code did not at the time define a mansard roof;<sup>2</sup> however, there was testimony that it is a roof having a double slope on all four sides, the lower slope usually being steeper. The gambrel roof often seen on barns exemplifies the double slope of a mansard roof—the difference being that the gambrel roof has two gable ends as opposed to the double slope configuration of all sides of a mansard roof.

The testimony and exhibits within this record show the penthouse roof as essentially flat, and having a parapet similar to the one on the flat roof of the fourth floor. Any slope that the penthouse roof does have is negative, and appears no greater than might be desired for drainage. Although the four walls of the penthouse have a positive slope, it requires at the very least a creative imagination to envision them as the lower

slopes of a roof. The Board was not clearly wrong in finding that this penthouse does not have a mansard roof. *Board of Educ., Mont. County v. Paynter*, 303 Md. 22, 491 A.2d 1186 (1985); *Ramsay, Scarlett & Co. v. Comptroller*, 302 Md. 825, 490 A.2d 1296 (1985).

**Permanent** next contends that even if the measurements show the height of the building to be 53 feet to the top of the penthouse and 43 feet to the top of the \*\*126 fourth floor, there is no violation of the code. Concerning the penthouse, **Permanent** argues that as a roof structure housing mechanical equipment incident to the use of the building, the penthouse is exempt from height controls. Concerning the fourth floor, **Permanent** argues that the code permits 35 feet plus 8 feet for nonhabitable structures, and that because the fourth floor will be used for offices rather than \*245 living space it is "nonhabitable" within the meaning of the code. We shall examine the contentions separately.

[2] The exemptions from height control existing at the time of the issuance of the building permit in this case were contained in § 59-B-1.1 as follows:

The building height limits set forth in this chapter shall not apply to belfries, chimneys, cupolas, domes, flagpoles, flues, monuments, radio towers, television antennae or aerials, spires, tanks, water towers, water tanks, air conditioning units or similar roof structures and mechanical appurtenances, except where such structures are located within an airport approach area, as designated on the zoning map. No such roof structure, however, shall have a total area greater than twenty-five percent of the roof area; nor shall such structure be used for any purpose other than a use incidental to the main use of the building.

The penthouse fails to qualify for an exemption in at least two respects. First, the plans show an office in the penthouse for janitorial or security personnel, and an office is not an exempt roof structure. Second, the penthouse occupies forty-six percent of the roof area, nearly double the twenty-five percent coverage permitted by the code.<sup>3</sup> The penthouse, as built, does not conform with the requirements of the code.

[3] The problem presented by the fourth floor is entirely different. As we have noted, § 59-C-6.235 permits a height of 35 feet "plus an additional 8 feet for nonhabitable structures."

**Permanent** views "nonhabitable structures" as the converse of "habitable space," and draws its definition \*246 of the latter from § 201.0 of the BOCA Basic Building Code, 1981:

*Habitable space:* Space in a structure for living, sleeping, eating, or cooking. Bathrooms, toilet compartments, closets, halls, storage or utility spaces and similar areas are not considered habitable space.

The BOCA Basic Building Code has been adopted by Montgomery County as its Building Code, Montgomery County Code (1972, 1977 Repl. Vol.) § 8-14, and definitions contained in the BOCA Code therefore apply in the interpretation of the Montgomery County Building code. This does not mean, as **Permanent** suggests, that the BOCA Code definitions apply to every other portion of the Montgomery County Code. While the officials of DEP might reasonably be expected to look to a definition contained in other sections of the code for guidance, that definition is not binding.

Appellees, on the other hand, contend that the term "nonhabitable structures" is intended to include only space occupied by water towers, water tanks, air conditioning units or similar mechanical appurtenances,<sup>4</sup> and that office space cannot properly be considered "nonhabitable."

The record before the Board discloses that the County had consistently applied the interpretation urged by **Permanent**, and had uniformly permitted a height of 43 feet for office buildings in these circumstances. It further discloses, however, that the Montgomery County Planning Board of the Maryland National Capital Park and Planning Commission held quite a different view. The Board of Appeals concluded that the definition urged by Appellees and the Planning Board was correct, and determined the maximum permitted height of \*\*127 this building to be 35 feet. Abandoning its long standing prior position, the County \*247 now adopts the Board's interpretation as the correct one, and has amended its code accordingly.<sup>5</sup>

We will not disturb the Board's determination of the correct meaning of "nonhabitable structures" as that term is used in § 59-C-6.235. We do not, however, agree with the Board's observation that the section is "quite clear and unambiguous." The ambiguity *vel non* of the section is an important

consideration in assessing the validity of **Permanent's** claim of equitable **estoppel**, to which we now turn.

As we pointed out in *Salisbury Beauty Schools v. St. Bd.*, 268 Md. 32, 62, 300 A.2d 367 (1973), we have adopted and continually applied the definition of equitable **estoppel** set forth at 3 J. Pomeroy, *Equity Jurisprudence*, § 804 (5th ed., 1941), as follows:

Equitable **estoppel** is the effect of the voluntary conduct of a party whereby he is absolutely precluded, both at law and in equity, from asserting rights which might have otherwise existed, either of property, or contract or of remedy, as against another person who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse and who on his part acquires some corresponding right, either of property, of contract, or of remedy.

In *Fitch v. Double "U" Sales Corp.*, 212 Md. 324, 339, 129 A.2d 93 (1957), we said:

Equitable **estoppel** operates to prevent a party from asserting his rights under a general technical rule of law, when that party has so conducted himself that it would be contrary to equity and good conscience to allow him to do so.

There is no settled rule in this country as to when, and under what circumstances, equitable **estoppel** is available against a municipal corporation. More than a century ago, in *Rogers v. Burlington*, 70 U.S. (3 Wall) 654, 18 L.Ed. 79 (1865), the United States Supreme Court approved the application \*248 of an equitable **estoppel** against the city of Burlington, Iowa. In that case, for the purpose of making a loan in aid of development to the Burlington and Missouri River Railroad Company, the city issued bonds having a face amount of \$75,000 which provided for payment of ten percent per annum interest, and payment of the principal amount after twenty years. Instead of selling the bonds and making a loan of the proceeds to the railroad company, the city elected to issue the bonds to the railroad company for it to sell, and took first mortgage bonds of the company as collateral. Thereafter, when the city refused payment of interest to Rogers, a bona fide purchaser of some of the bonds, he brought suit. The

CASE NAME 523 Morris Ave.  
CASE NUMBER 2016-0123  
DATE 1-7-16

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city demurred, claiming it was without authority to issue the bonds, and the issuance was void because it was not for any municipal purpose. Finding against the city, Mr. Justice Clifford said for the Supreme Court:

[T]he rule that a corporation quite as much as an individual is held to fair dealing with other parties, applies with all its force, and we repeat, that corporations cannot by their acts, representations, or silence, involve others in onerous engagements, and be permitted to defeat the calculations and claims which their own conduct has superinduced.

*Id.* at 667.

A collection of cases dealing with the applicability of the doctrine of **estoppel** against a municipal corporation may be found at 9A McQuillin, *Municipal Corporations* § 27.56 (3rd ed. rev.), where it is stated:

Although there is authority to the effect that the doctrine of **estoppel** does not apply as against a city, many decisions have held that the doctrine may be applied to municipal, as well as to private, corporations and citizens, when appropriate circumstances, justice and right so require. The assertion of the doctrine in proceedings to enjoin the violation or the enforcement of municipal ordinances ... is common. However, mere nonaction of \*\*128 municipal officers is not enough to establish an **estoppel**; \*249 there must have been some positive acts by such officers that have induced the action of the adverse party. It must appear, moreover, that the party asserting the doctrine incurred a substantial change of position or made extensive expenditures in reliance on the act.

See also 9A McQuillin, *supra*, §§ 26.213 and 26.214. For a more activist position, as well as criticism of this Court and of other courts for imposing certain restrictions upon the use of equitable **estoppel** against municipal corporations, see 2 Antieau, *Municipal Corporation Law* ch. 16A (1986).

Although our predecessors said in *Gaver v. Frederick Cty.*, 175 Md. 639, 649, 3 A.2d 463 (1939), that “[t]here is nothing

in the nature of a municipal corporation to exempt it from the application of the doctrine of **estoppel** as it would apply to a natural person or a business corporation,” in practice we have applied the doctrine more narrowly. See *City of Hagerstown v. Long Meadow*, 264 Md. 481, 287 A.2d 242 (1972); *Kent County v. Abel*, 246 Md. 395, 228 A.2d 247 (1967); *Berwyn Heights v. Rogers*, 228 Md. 271, 179 A.2d 712 (1962); *Lipsitz v. Parr*, 164 Md. 222, 164 A. 743 (1933). Judge Prescott summarized the principles of law applicable to this type of case in *Berwyn Heights v. Rogers*, *supra*, 228 Md. at 279-80, 179 A.2d 712:

Some authorities hold that the principle of **estoppel** does not apply against a city, but the majority rule is to the effect that the doctrine of **estoppel** in pais is applied to municipal, as well as to private, corporations and individuals at least where the acts of its officers are within the scope of their authority and justice and right require that the public be estopped.... And it has been held that municipalities may be estopped by reason of the issuance of permits.... However, the cases and text writers very generally state that a municipality is not estopped to set up the illegality of a permit.... And the issuance of an illegal permit creates no “vested rights” in the permittee.... (citations omitted).

In discussing the spectrum of problems that may arise from the revocation of a permit, Judge Weintraub, speaking for \*250 the Superior Court of New Jersey in *Jantausch v. Borough of Verona*, 41 N.J. Super. 89, 124 A.2d 14, 16-17 (1956), *aff’d*, 24 N.J. 326, 131 A.2d 881 (1957), said:

Our cases clearly settle the controlling principles at the extreme poles of the problem. Where the permit is regularly issued in accordance with the ordinance, it may not be revoked after reliance unless there be fraud.... On the other hand, where there is no semblance of compliance with or authorization in the ordinance, the deficiency is deemed jurisdictional and reliance will not bar even a collateral attack....

But what of the intermediate situation in which the administrative official in good faith and within the ambit of his duty makes an erroneous and debatable interpretation

of the ordinance and the property owner in like good faith relies thereon?

Although the New Jersey appellate courts did not find it necessary in *Jantausch* to answer the question thus posed, it was later answered in *Jesse A. Howland & Sons v. Borough of Freehold*, 143 N.J. Super. 484, 363 A.2d 913, 916, cert. denied, 72 N.J. 466, 371 A.2d 70 (1976). There the Superior Court of New Jersey, Appellate Division, held that **estoppel** would apply in the circumstances described by Judge Weintraub, provided one further condition were met:

The requirement we would add ... is the necessity for the appearance of an issue of construction of the zoning ordinance or statute, which, although ultimately not too debatable, yet was, when the permit was issued, sufficiently substantial to render doubtful a charge that the administrative official acted *without any reasonable basis* or that the owner proceeded without good faith. (emphasis in original).

**\*\*129** The development of Maryland law has proceeded along similar lines. We said in *Lipsitz v. Parr, supra*, 164 Md. at 227, 164 A. 743, that “[a] municipality may be estopped by the act of its officers if done within the scope and in the course of their authority or employment, but **estoppel** does not arise should the act be in violation of law.” Acknowledging **\*251** the potential application of the doctrine of **estoppel** to the “intermediate situation” described by Justice Weintraub, we said in *City of Hagerstown v. Long Meadow*, 264 Md. at 493, 287 A.2d 242:

Nor do we think the facts of this case permit the successful use of the argument that the Building Inspector was following a long standing administrative interpretation when he informed Callas and Long Meadow that no building permit was required. This rule, when applicable, must be bottomed on the need for the interpretation or clarification of an ambiguous statute or ordinance, which latter element is not here present.

In the case before us, we conclude that the definition of “nonhabitable structures” within the meaning of § 59-C-6.235 was open to at least two reasonable and debatable interpretations. We further conclude that the County shared the interpretation given this section by **Permanent** at the time of the issuance of the building permit, and that the County had consistently applied that interpretation for a significant period of time prior thereto. Indeed, it is apparent that the County persisted in that interpretation well into the hearing of this case by the Board, becoming convinced of the validity of a contrary interpretation only after considering the testimony of the chairman of the Planning Commission or perhaps the decision of the Board. Illustrative of this persistence is the fact that the County's stop work order stated that the building exceeded “the maximum height of 43 feet.” Additionally, in response to **Permanent's** request for specifics, the County wrote that the building's measured height of 53 feet exceeded the maximum allowable height of 43 feet. In a later letter supplementing the reasons for the stop work order, the County included allegations of violation of required building setbacks, but again failed to suggest that the building through its fourth floor violated any height restrictions. Finally, at the initial hearing, the assistant county attorney informed the Board that the County's interpretation of “nonhabitable **\*252** structures” varied from that of the Planning Commission and interested neighbors:

So in that context I think that it is very important to hear, and again, I am characterizing it as an opposing point of view but we are not putting on the gloves and fighting it out because it is the Department's position that both interpretations are reasonable ones. And it is good that this is a de novo type hearing because that is one question that you are going to have to answer.

What is the proper interpretation of those words, and you can see, I do not know whether it is in their Motion to Intervene or in their Motion to Dismiss, the intervenors indicate that they have got a different interpretation and that we misapplied those words. And Mr. Barnhart is here from Park and Planning, I know, and he can state on the record, that Park and Planning feels the same way.

**Permanent** clearly relied upon the interpretation the County had given to the height limitation in its design of the building. In the initial application for a building permit, **Permanent** stated the height of the proposed building as “37 + 8.” Appellees do not disagree that “37” was a typographical error, and that “35” was intended. Moreover, the measurement of the building as shown on the plans submitted with the

application was 43 feet to the top of the fourth floor. We have no doubt that **Permanent** designed and built its building to a height of 43 feet through the fourth floor in reliance upon the long standing interpretation of the County, and that this interpretation, while subsequently found by the Board of Appeals to be incorrect, was **\*\*130** nevertheless reasonable and debatable. Although the issue is somewhat clouded by the fact that the County should not have issued the building permit because of other deficiencies, it is at least clear that this portion of the decision to issue the permit was not the result of oversight by the County, but rather was consistent with its practice. This being the case, and **Permanent** having expended substantial funds in reliance upon the permit, it **\*253** would be inequitable to now permit the County to require the removal of the fourth floor.

### *The Floor Area Ratio*

[4] The floor area ratio ("FAR") permitted by the Code for this building is 1.0, meaning that the gross floor area of the building must not exceed the area of the lot upon which it is built. In its application for a building permit, **Permanent** calculated the gross floor area as 18,700 square feet, which produced an acceptable FAR of .99. This calculation was apparently correct if the area of the penthouse was not included in the computation. In its revised plans submitted six months later, **Permanent** expanded the area of the first floor. The County now contends that it erroneously failed to include the area of the penthouse when it initially made the computation of gross floor area, and that the inclusion of the penthouse as well as the enlarged portion of the first floor now produces an unacceptable FAR of 1.26. **Permanent** does not contest the accuracy of the figures, but contends the penthouse need not be included in the computation of gross floor area for purposes of determining the FAR.

Section 59-A-2.1 defines "gross floor area" as follows:

The sum of the gross horizontal areas of the several floors of all buildings on the lot, measured from the exterior faces of exterior walls and from the center line of walls separating two buildings. The term gross floor area shall include basements, elevator shafts and stairwells at each story, floor space used for mechanical equipment (with structural headroom

of six feet, six inches or more) penthouses, attic space (whether or not a floor has actually been laid, providing structural headroom of six feet, six inches or more), interior balconies and mezzanines. The term "gross floor area" shall not include cellars, outside balconies which do not exceed a projection of six feet beyond the exterior walls of the building, parking or rooftop mechanical structures.

**\*254** We find no ambiguity in this definition, at least as applied to the penthouse that is currently constructed on **Permanent's** building. While "rooftop mechanical structures" are excluded from the computation, this exclusion obviously does not apply to rooftop mechanical structures enclosed within a penthouse or other enclosure having a structural headroom of six feet, six inches or more. The building exceeds the prescribed FAR, and the County is not estopped to require correction of that deficiency.

### *The Setback Requirement*

[5] Before considering the substantive issues involved in this aspect of the case, we must deal with a threshold procedural question. Appellees contend the administrative appeal was taken only from the initial action of the County in suspending the permit and issuing a stop work order. They point out that this order referred only to violations of the height limitations and the FAR. Appellees acknowledge that later letters from the County to **Permanent** detailed the alleged setback violations as well, but they note the administrative appeal was taken before those letters were sent. The Board agreed that the question of setbacks was not before it in the administrative appeal, but it did consider **Permanent's** consolidated request for a variance from required setbacks.

**Permanent's** appeal was from the action of DEP in issuing a stop work order and suspending the building permit. That action was taken on May 4, 1983, and the appeal was timely filed on June 2, 1983. **\*\*131** After the appeal was taken, DEP informed **Permanent** that it was also relying upon violations of setback requirements. At the initial hearing before the Board on June 22, 1983, the Board discussed with the parties the impact of § 59-G-3.1(e) which

mandated a particular procedure when an administrative appeal challenged a calculation of building height or FAR. Because this section required that such appeals be considered according to the provisions governing appeals for a variance rather than according to those governing an administrative \*255 appeal, and because as a part of that procedure the Board was required to request technical advice from the Planning Commission, the parties and the Board were unsure of how best to proceed. It was ultimately agreed that the County would give formal notice to Permanent of its intent to include alleged setback violations as a reason for its previous action, and that Permanent would file a separate application for variances which would then be consolidated with the administrative appeal. Appellees contend that it was also understood Permanent would file an additional administrative appeal from the notice of inclusion of setback violations, but this is not evident from the record.

Whatever may have been contemplated by the parties, the DEP did not issue a new stop work order containing reasons for its action. Rather, it wrote Permanent on June 23 advising of violation of building setbacks, and concluded by stating:

These setback violations serve as a basis for this Department's prior suspension of the above referenced building permit. The "stop work order" was previously issued and continues to remain in effect as a necessary consequence of the suspension of the building permit.

The practical effect of the procedure employed by the parties was to permit the County to amend the reasons assigned for the actions taken on May 4. Permanent was not required to file a new administrative appeal in order to have the Board consider the alleged setback violations in connection with the stop work order and suspension of permit.

Ordinarily, we would direct that the case be remanded to the Board for initial consideration of the issue by that administrative agency. However, because the question of setbacks was before the Board in connection with Permanent's appeal for a variance, and was fully considered by the Board, we will consider it.

The substantive question is not complicated, and it must be resolved against Permanent. Section 59-C-6.236(b)(2) \*256 requires a one foot setback from any right-of-way for every six feet of height by which a building exceeds 30

feet. The building as currently constructed is 53 feet high and requires setbacks from the right-of-way lines of three feet, ten inches. As currently constructed, a portion of the cellar wall and portions of the third and fourth floors violate these setback requirements along Wayne Avenue and Cedar Street. Elimination of the penthouse in the computation of the height of the building would have assisted Permanent with its setback problems, but for reasons previously stated the height of the building as now constructed must be computed to the roof of the penthouse.

### *Laches*

[6] Permanent also attempts to set up the doctrine of laches as a bar to the enforcement of the code by the County. What we said about laches in *Lipsitz v. Parr, supra*, 164 Md. at 226-27, 164 A. 743, is apposite:

Laches is an equitable defense. It is an inexcusable delay, without necessary reference to duration, in the assertion of a right.... Laches and estoppel possess elements in common, and difficulty is encountered in clearly stating the distinction, particularly as the courts have studiously avoided a general or inflexible definition of laches, in order to be free to apply its principles to the particular circumstances of the instant case....

\*\*132 Unless mounting to the statutory period of limitations, whose application is not denied upon equitable considerations, mere delay is not sufficient to constitute laches, if the delay has not worked a disadvantage to another.

The record discloses that the County acted promptly when the violations were brought to its attention by neighboring property owners. The delay alleged is the eight and one-half months during which the building was under construction. The consequences of that delay form an integral part of our earlier consideration of the doctrine of equitable estoppel, and we see no separate ground for the application of laches in this case.

### *\*257 Denial of Variances*

After finding Permanent in violation of height, setback and FAR requirements, the Board denied Permanent's request for a variance from each of those requirements. Acknowledging that the county employees should have

detected the errors in the plans, the Board found that **Permanent** was also the author of its own misfortune in failing to submit properly prepared plans. The Board also found that the code criterion for the grant of a variance had not been met. Section 59-G-3.1(a) provides that the Board of Appeals may grant petitions for variances on proof by a preponderance of the evidence that:

- (a) By reason of exceptional narrowness, shallowness, shape, topographical conditions or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property;
- (b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions;
- (c) ....
- (d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties....

The Board was not clearly in error when it concluded that **Permanent** had failed to prove those matters legislatively

determined to be appropriate conditions for the issuance of a variance.

### Conclusion

For the reasons we have outlined, the County is estopped to prevent construction of this building to a height of 43 feet. If the penthouse is modified to fit within the exemptions from height controls, **Permanent** will have satisfied the height restrictions of the ordinance. However, because the building currently violates height, setback and FAR \*258 restrictions, the building permit was properly suspended and the stop work order properly issued.

JUDGMENT OF THE COURT OF SPECIAL APPEALS  
AFFIRMED. COSTS TO BE PAID ONE-HALF BY  
APPELLANT AND ONE-HALF BY MONTGOMERY  
COUNTY, MARYLAND.

### All Citations

308 Md. 239, 518 A.2d 123

### Footnotes

- \* Smith, J., now retired, participated in the hearing and conference of this case while an active member of this Court; after being recalled pursuant to the [Constitution, Article IV, Section 3A](#), he also participated in the decision and adoption of this opinion.
- 1 Hereinafter all code references are to the Montgomery County Code unless otherwise indicated.
- 2 Section 59-A-2 was amended March 4, 1986, to provide a definition of a mansard roof, and to further provide that the measurement of height is to be made to the mean height level between the eaves and ridge of a mansard roof.
- 3 **Permanent** suggests that its penthouse structure might lawfully occupy up to thirty-three and one-third percent of the roof area, and in support of this argument it cites the definition section of the BOCA Basic Building Code. While this issue is not directly before us, inasmuch as the penthouse as built clearly exceeds even that percentage, we observe that the general definition of a penthouse contained in the BOCA Basic Building Code has no direct applicability to the Zoning Code. See text, *infra*.
- 4 Section 59-C-6.235 was amended in 1984 to provide that the additional 8 feet was "for air conditioners or similar rooftop structures and mechanical appurtenances...."
- 5 *Id.*



**WALLACE  
MONTGOMERY**

Engineers . Planners . Surveyors . Construction Managers

10150 York Road, Suite 200  
Hunt Valley, Maryland 21030  
www.wallacemontgomery.com  
T 410.494.9093  
F 410.667.0925

February 24, 2014

Mr. David L. Thomas, P.E.  
Department of Public Works  
County Office Building  
111 West Chesapeake Avenue  
Towson, MD 21204

RE: Roland Run Flood Study  
MA 1264, Task 3  
WM&A No. 209007.03

Dear Mr. Thomas:

Wallace Montgomery & Associated, LLP, (WM), was hired by Baltimore County to prepare a hydraulic model of Roland Run.

Roland Run is a part of the Jones Falls watershed and has a drainage area of 5.93 square miles, extends from the mouth of Lake Roland to just downstream of Timonium Road and is approximately 4.2 miles in length. The hydrology that was used as part of this study was taken from the Baltimore County Department of Public Works approved "Hydrologic Report for Jones Falls", completed by Wallace Montgomery. Hydraulic analyses were prepared for ultimate conditions for the 2, 10, and 100-year storms.

Work is in accordance with the requirements of the Design Manual and the adopted policy, "Recommendations and Procedures for Watershed Studies, Floodplain Studies and Waterway Crossing Studies", (Appendix I to the Bureau of Development Plans Review Policy Manual). WM staff that contributed in the preparation of this study was:

George Labuda P.E., Design Engineer  
Charles Main II P.E., Project Engineer  
Glenn Marschke P.E., Senior Associate

Attached is a bond copy of the report, floodplain maps (with the aerial imagery shown) and floodplain maps (without the aerial imagery), showing only County GIS data and contours. Also included is a copy of the report and HEC-RAS input data on a compact disk.

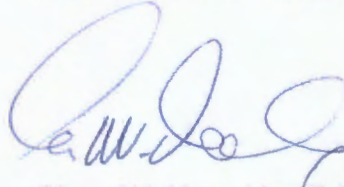
Roland Run Flood Study  
MA 1264, Task 3  
WM&A No. 209007.03  
February 24, 2014  
Page 2

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. 16142, Expiration 8-17-14.

Please let us know if you have any questions or require further information.

Very truly yours,

WALLACE MONTGOMERY & ASSOCIATES, LLP



Glenn W. Marschke, P.E.  
Senior Associate



GWS:mrp  
Task 3  
Enclosures

**BALTIMORE COUNTY, MARYLAND  
DEPARTMENT OF PUBLIC WORKS**

**HYDRAULIC REPORT**

**FOR**

**ROLAND RUN**



2-24-14



**CONSULTING ENGINEERS  
February 2014**

## RESULTS

The 100-year water surface elevations from the HEC-RAS model are shown in Table 2.

Table 2: Summary of the 100-year Water Surface Elevation (WSEL) at each cross section along Roland Run

| Cross Section                         | 100-Year WSEL | Cross Section                       | 100-Year WSEL |
|---------------------------------------|---------------|-------------------------------------|---------------|
| 1                                     | 235.30        | 20                                  | 289.73        |
| Lhiondelle Club Road                  |               | 21                                  | 291.41        |
| 2                                     | 235.96        | I-695                               |               |
| 3                                     | 239.55        | 22                                  | 298.15        |
| Circle Road                           |               | 23                                  | 298.20        |
| 4                                     | 239.61        | 24                                  | 297.53        |
| 5                                     | 240.15        | Light Rail Bridge upstream of I-695 |               |
| Ruxton Road                           |               | 24.9                                | 302.12        |
| 6                                     | 241.64        | 200                                 | 279.68        |
| 7                                     | 244.95        | 201                                 | 294.83        |
| Roland Avenue                         |               | 202                                 | 299.08        |
| 8                                     | 248.17        | 203                                 | 301.94        |
| 9                                     | 248.56        | 25                                  | 301.97        |
| 10                                    | 253.89        | 26                                  | 302.43        |
| Joppa Road                            |               | 27                                  | 302.70        |
| 11                                    | 257.54        | 28                                  | 305.54        |
| 11.25                                 | 260.01        | Seminary Avenue                     |               |
| 11.50                                 | 261.74        | 29                                  | 308.74        |
| 11.75                                 | 262.00        | 30                                  | 313.22        |
| 12                                    | 264.52        | Morris Avenue                       |               |
| 13                                    | 267.68        | 31                                  | 315.24        |
| Essex Farm Road                       |               | 31.5                                | 315.73        |
| 14                                    | 271.88        | 21                                  | 317.36        |
| 14.5                                  | 272.70        | 33                                  | 323.89        |
| 15                                    | 272.74        | 34                                  | 334.52        |
| 16                                    | 272.89        | 35                                  | 355.44        |
| 16.9                                  | 278.07        | 36                                  | 357.39        |
| 17                                    | 278.74        | Business Park Drive                 |               |
| Light Rail Bridge downstream of I-695 |               | 37                                  | 358.30        |
| 18                                    | 289.79        | 38                                  | 369.35        |
| 19                                    | 290.14        |                                     |               |

## SUMMARY AND CONCLUSIONS

Wallace Montgomery was tasked by the County to prepare a hydraulic model for Roland Run. Hydraulic modeling was prepared utilizing existing topography along with hydrology based on ultimate land use conditions. Results for the 2-year, 10-year, 100-year and 500-year water surface elevations are included in Appendix B. Cross sections and profiles utilized in HEC-RAS are included in Appendix D.

**C H E C K L I S T**

Support/Oppose/  
Conditions/  
Comments/  
No Comment

Comment  
Received

Department

11/23

DEVELOPMENT PLANS REVIEW  
(if not received, date e-mail sent \_\_\_\_\_)

C

12/3

DEPS  
(if not received, date e-mail sent \_\_\_\_\_)

N/C

\_\_\_\_\_

FIRE DEPARTMENT

12/1

PLANNING  
(if not received, date e-mail sent \_\_\_\_\_)

no Obj. w/ comment

11/24

STATE HIGHWAY ADMINISTRATION

no Obj

12/4/15

TRAFFIC ENGINEERING  
Dept. of Public Works

Comment

\_\_\_\_\_

COMMUNITY ASSOCIATION

\_\_\_\_\_

ADJACENT PROPERTY OWNERS

ZONING VIOLATION (Case No. \_\_\_\_\_)

PRIOR ZONING (Case No. \_\_\_\_\_)

NEWSPAPER ADVERTISEMENT Date: 12/17/15

SIGN POSTING Date: 12/18/15

by Alison

PEOPLE'S COUNSEL APPEARANCE Yes ☒ No ☐

PEOPLE'S COUNSEL COMMENT LETTER Yes ☐ No ☐

Comments, if any: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

### Real Property Data Search ( w3)

## Guide to searching the database

## Search Result for BALTIMORE COUNTY

| View Map                                                       |          | View GroundRent Redemption                              |                        |                                          |                                       | View GroundRent Registration            |                            |                                |                       |
|----------------------------------------------------------------|----------|---------------------------------------------------------|------------------------|------------------------------------------|---------------------------------------|-----------------------------------------|----------------------------|--------------------------------|-----------------------|
| Account Identifier:                                            |          | District - 08 Account Number - 0808033570               |                        |                                          |                                       |                                         |                            |                                |                       |
| Owner Information                                              |          |                                                         |                        |                                          |                                       |                                         |                            |                                |                       |
| Owner Name:                                                    |          | SILBER JULIA B                                          |                        |                                          |                                       | Use:                                    |                            | RESIDENTIAL                    |                       |
| Mailing Address:                                               |          | 523 MORRIS AVE<br>LUTHERVILLE TIMONIUM MD<br>21093-4915 |                        |                                          |                                       | Principal Residence:<br>Deed Reference: |                            | YES<br>/36241/ 00065           |                       |
| Location & Structure Information                               |          |                                                         |                        |                                          |                                       |                                         |                            |                                |                       |
| Premises Address:                                              |          | 523 MORRIS AVE<br>LUTHERVILLE TIMONIUM 21093-4915       |                        |                                          |                                       | Legal Description:                      |                            | 523 MORRIS AVE<br>LUTHER VILLA |                       |
| Map:                                                           | Grid:    | Parcel:                                                 | Sub District:          | Subdivision:                             | Section:                              | Block:                                  | Lot:                       | Assessment Year:               | Plat No:<br>Plat Ref: |
| 0060                                                           | 0017     | 0568                                                    |                        | 0000                                     | J                                     |                                         | 1                          | 2014                           | 1<br>0007/<br>0128    |
| Special Tax Areas:                                             |          |                                                         |                        |                                          | Town:<br>Ad Valorem:<br>Tax Class:    |                                         | NONE                       |                                |                       |
| Primary Structure Built                                        |          | Above Grade Enclosed Area                               |                        | Finished Basement Area                   |                                       | Property Land Area                      |                            | County Use                     |                       |
| 1948                                                           |          | 1,008 SF                                                |                        | 224 SF                                   |                                       | 7,720 SF                                |                            | 04                             |                       |
| Stories                                                        | Basement | Type                                                    | Exterior               | Full/Half Bath                           | Garage                                | Last Major Renovation                   |                            |                                |                       |
| 1 1/2                                                          | YES      | STANDARD UNIT                                           | SIDING                 | 1 full/ 1 half                           |                                       |                                         |                            |                                |                       |
| Value Information                                              |          |                                                         |                        |                                          |                                       |                                         |                            |                                |                       |
| Base Value                                                     |          |                                                         | Value As of 01/01/2014 |                                          | Phase-in Assessments As of 07/01/2015 |                                         | As of 07/01/2016           |                                |                       |
| Land:                                                          |          |                                                         | 121,700                |                                          |                                       |                                         |                            |                                |                       |
| Improvements                                                   |          |                                                         | 91,200                 |                                          |                                       |                                         |                            |                                |                       |
| Total:                                                         |          |                                                         | 212,900                |                                          |                                       |                                         |                            |                                |                       |
| Preferential Land:                                             |          |                                                         | 0                      |                                          |                                       |                                         |                            |                                |                       |
| Transfer Information                                           |          |                                                         |                        |                                          |                                       |                                         |                            |                                |                       |
| Seller: VASQUEZ BARTOLOME PEREZ<br>Type: ARMS LENGTH IMPROVED  |          |                                                         |                        | Date: 06/01/2015<br>Deed1: /36241/ 00065 |                                       |                                         | Price: \$180,000<br>Deed2: |                                |                       |
| Seller: VASQUEZ BARTOLOME PEREZ<br>Type: NON-ARMS LENGTH OTHER |          |                                                         |                        | Date: 11/18/2009<br>Deed1: /28887/ 00269 |                                       |                                         | Price: \$0<br>Deed2:       |                                |                       |
| Seller: HENDRICKS DAVID EDWARD<br>Type: ARMS LENGTH IMPROVED   |          |                                                         |                        | Date: 04/26/2005<br>Deed1: /21773/ 00534 |                                       |                                         | Price: \$264,000<br>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:<br>Exempt Class:                                   |          |                                                         |                        | Special Tax Recapture:<br>NONE           |                                       |                                         |                            |                                |                       |
| Homestead Application Information                              |          |                                                         |                        |                                          |                                       |                                         |                            |                                |                       |
| Homestead Application Status: Approved 08/17/2015              |          |                                                         |                        |                                          |                                       |                                         |                            |                                |                       |

## Baltimore County

**New Search (<http://sdat.dat.maryland.gov/RealProperty>)**

**District: 08      Account Number: 0808033570**



The information shown on this map has been compiled from deed descriptions and plats and is not a property survey. The map should not be used for legal descriptions. Users noting errors are urged to notify the Maryland Department of Planning Mapping, 301 W. Preston Street, Baltimore MD 21201.

If a plat for a property is needed, contact the local Land Records office where the property is located. Plats are also available online through the Maryland State Archives at [www.plats.net](http://www.plats.net) (<http://www.plats.net>).

Property maps provided courtesy of the Maryland Department of Planning.

For more information on electronic mapping applications, visit the Maryland Department of Planning web site at [www.mdp.state.md.us/OurProducts/OurProducts.shtml](http://www.mdp.state.md.us/OurProducts/OurProducts.shtml) (<http://www.mdp.state.md.us/OurProducts/OurProducts.shtml>).



KEVIN KAMENETZ  
County Executive

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

December 30, 2015

Julia B. Silber  
523 Morris Avenue  
Lutherville MD 21093

RE: Case Number: 2016-0123 SPH, Address: 523 Morris Avenue

Dear Ms. Silber:

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits, Approvals, and Inspection (PAI) on November 9, 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,

A handwritten signature in black ink, reading "W. Carl Richards, Jr." in a cursive style.

W. Carl Richards, Jr.  
Supervisor, Zoning Review

WCR: jaw

Enclosures

c: People's Counsel  
Timothy M Kotroco, Esquire, 305 Washington Avenue, Suite 502, Towson MD 21204

Larry Hogan, Governor  
Boyd K. Rutherford, Lt. Governor



Pete K. Rahn, Secretary  
Gregory C. Johnson, P.E., Administrator

Date: 11/24/15

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

RE: Baltimore County  
Item No. 2016-0123-SPH  
Special Hearing  
Julia B. Silber  
523 Morris Avenue

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. 2016-0123-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,

A handwritten signature in black ink, appearing to read 'David W. Peake', is written over a horizontal line.

David W. Peake  
Metropolitan District Engineer – District 4  
Baltimore & Harford Counties

DWP/RAZ

My telephone number/toll-free number is \_\_\_\_\_

Maryland Relay Service for Impaired Hearing or Speech 1-800-735-2258 Statewide Toll-Free  
Street Address: 320 West Warren Road • Hunt Valley, Maryland 21030 • Phone 410-229-2300 or 1-866-998-0367 • Fax 301-527-4690  
[www.roads.maryland.gov](http://www.roads.maryland.gov)

RECEIVED

BALTIMORE COUNTY, MARYLAND

DEC 03 2015

Inter-Office Correspondence

OFFICE OF ADMINISTRATIVE HEARINGS



TO: Hon. Lawrence M. Stahl; Managing Administrative Law Judge  
Office of Administrative Hearings

FROM: Jeff Livingston, Department of Environmental Protection and  
Sustainability (EPS) - Development Coordination

DATE: December 3, 2015

SUBJECT: DEPS Comment for Zoning Item # 2016-0123-SPH  
Address 523 Morris Avenue  
(Silber Property, LLC)

Zoning Advisory Committee Meeting of November 30, 2015.

X The Department of Environmental Protection and Sustainability has no  
comment on the above-referenced zoning item.

Reviewer: *Jeff Livingston – Development Coordination*

# BALTIMORE COUNTY, MARYLAND

## INTER-OFFICE MEMORANDUM

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

**DATE:** December 1, 2015

**FROM:** Andrea Van Arsdale  
Director, Department of Planning

**SUBJECT:** ZONING ADVISORY COMMITTEE COMMENTS  
Case Number: 16-123

RECEIVED

DEC 09 2015

**INFORMATION:**

**Property Address:** 523 Morris Avenue  
**Petitioner:** Julia Silber  
**Zoning:** DR 5.5  
**Requested Action:** Special Hearing

OFFICE OF ADMINISTRATIVE HEARINGS

The Department of Planning has reviewed the petition for special hearing to determine whether or not the Administrative Law Judge should approve allow a waiver of the public works standards (DPW Plate DF-1) to allow for a 10.5' setback in lieu of the required 20' setback from the 1' freeboard line of the 100 year floodplain to a dwelling.

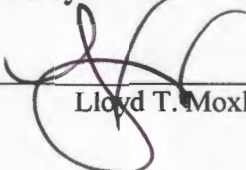
The property is within the Community Conservation Plan for Lutherville adopted by Baltimore County Council on February 20, 1996 and made part of the Master Plan 2020. A recommended action in the Community Conservation Plan calls for practices that protect Roland Run (Page 8. Action 3).

The Department has no objection to granting the petitioned zoning relief and recommends the following condition be made part of the Order.

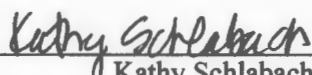
- The 100 year floodplain area shall revert to natural vegetation and not be maintained as lawn.

For further information concerning the matters stated herein, please contact Wally Lippincott at 410-887-3480.

**Prepared by:**

  
Lloyd T. Moxley

**Division Chief:**

  
Kathy Schlabach

AVA/KS/LTM/ka

c: Wally Lippincott  
Timothy M. Kotroco, Esquire  
Office of the Administrative Hearings  
People's Counsel for Baltimore County

# BALTIMORE COUNTY, MARYLAND

## INTER-OFFICE MEMORANDUM

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

**DATE:** December 1, 2015

**FROM:** Andrea Van Arsdale  
Director, Department of Planning

**SUBJECT: ZONING ADVISORY COMMITTEE COMMENTS**  
Case Number: 16-123

**INFORMATION:**

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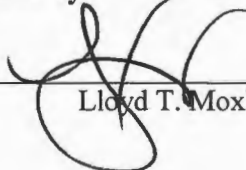
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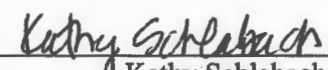
- The 100 year floodplain area shall revert to natural vegetation and not be maintained as lawn.

For further information concerning the matters stated herein, please contact Wally Lippincott at 410-887-3480.

**Prepared by:**

  
\_\_\_\_\_  
Lloyd T. Moxley

**Division Chief:**

  
\_\_\_\_\_  
Kathy Schlabach

AVA/KS/LTM/ka

c: Wally Lippincott  
Timothy M. Kotroco, Esquire  
Office of the Administrative Hearings  
People's Counsel for Baltimore County

**BALTIMORE COUNTY, MARYLAND**

**INTEROFFICE CORRESPONDENCE**

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

**DATE:** November 23, 2015

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

**SUBJECT:** Zoning Advisory Committee Meeting  
For November 23, 2015  
Item No. 2016-0123

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

The plat of Luther Villa was recorded in 1924, prior to floodplain and greenway regulations. Roland Run is a master planned environmental greenway. The County owns portions of the greenway/floodplain. This portion of the greenway/floodplain should be dedicated to the County.

The Director of Public Works will comment on the setback request.

\* \* \* \* \*

DAK  
cc:file

ZAC-ITEM NO 16-0123-11232015.doc

12/11/15  
TO WCR  
f file

**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:** December 4, 2015

**SUBJECT:** Case No: 2016-0123-SPH  
523 Morris Avenue, Lutherville, Maryland 21093-4915



Special Hearing to determine whether or not the Administrative Law Judge should approve a waiver to the 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 an addition for a residential building.

The Special Hearing involves an existing residence to be given an addition within 20 feet of the 100-year riverine floodplain.

The plans and documents submitted were reviewed and the Department of Public Works takes no exception to the approval of the waiver.

Please note that this office has been advised by members of the community of significant opposition to this waiver request.

ECA/TWC/s

**CC:** Dennis Kennedy, Chief, Development Plans Review and Building Plan Review  
Peter M. Zimmerman, People's Council  
John A. Fischer, 1605 Trebor Court  
Eric G. Rockel, 1610 Riderwood Drive



PETITIONER'S

EXHIBIT NO. \_\_\_\_\_



**PRIVATE  
PROPERTY  
NO TRESPASSING**

Property with Hidden  
VIDEO bb



Hillman Sign Center

Made in U.S.A.

B40147  
03-5182-045







EXHIBIT

60

60







**MILLER**  
SINCE 1978  
410-688-4723  
410-452-5668





## **John Motsco P.E.**

Maryland Professional Engineer License Number 44112

Little & Associates, Inc.

1055 Taylor Avenue, Suite 307

Towson, MD 21286

410-296-1636

### **Work Experience**

*Little & Associates, Inc., Towson, MD - Project Engineer / Manager*

*September 2004 - Current*

Schedule, design, and manage all engineering, permitting, land planning and public contract administration, for a variety of residential and commercial projects, supervising a group of 3 - 5 junior engineers and CADD draftsmen. Act as the primary liaison between Investors, Construction Superintendents, and Government Agencies. Provide construction inspection and Utility As-Built documentation for security reduction and contract suitability.

---

### **Education**

*The Pennsylvania State University*

*Bachelors of Science - Civil Engineering - Graduated May 2004*

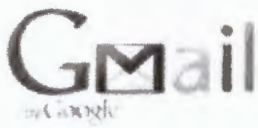
---

### **Training, Certifications and Awards**

Maryland Professional Engineer License Number 44112

State of Maryland - Erosion & Sediment Control (Green Card) Certification

Petitioner No. 4



Julia Silber &lt;juliasilber1@gmail.com&gt;

**523 Morris Ave**

1 message

**Geraldine Klauber -OAH-** <geraldine.klauber@maryland.gov>  
To: juliasilber1@gmail.com

Thu, Oct 8, 2015 at 11:19 AM

To Whom it May Concern:

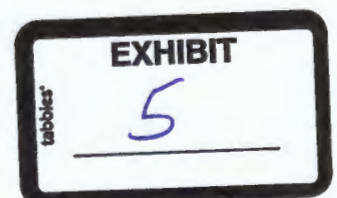
My name is Geraldine Klauber and I have resided at 818 Morris Ave for almost three years. I am writing this letter in support of Julia Silber, who is currently renovating the property located at 523 Morris Ave. Even before I knew it was Julie renovating the property, I was thrilled when I saw that the house was undergoing extensive renovations. I have walked my dogs by that house every day since i have lived in the neighborhood and I was always distressed to see the deplorable condition of the home that was an eyesore and health concern. The grounds were unkempt with high grass and weeds. The house looked like it was about to fall down and appeared to have multiple families that resided within. The work that Julia has done so far is fantastic. The design of the home fits in with the quaint style of the neighborhood.

I am so grateful for what Julia is doing to the property as this home and Julia will be a wonderful addition to Luthervillage

Sincerely,

Geraldine A. Klauber  
**Geraldine A. Klauber**  
**Administrative Law Judge**  
**11101 Gilroy Road**  
**Hunt Valley, Maryland 21031**  
**geraldine.klauber@maryland.gov**

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David Thomas, Director  
Department of Public Works  
Baltimore County Government  
Towson, MD 21204

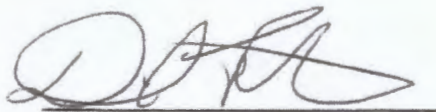
Dear Mr. Thomas:

My name is David Testerman and I reside at 522 Morris Ave. I am writing this letter in support of my neighbor, Julia Silber, of 523 Morris Avenue, Lutherville, MD 21093 who is involved in a construction project. I enthusiastically support her efforts in this project. I have been a resident of Lutherville at 522 Morris since 1980 and I truly appreciate the significant renovations and the quality home project that Julia has committed to at the 523 Morris Avenue structure.

For your information, the previous owners of 523 Morris Avenue, left the property in horrible disarray for the past 4 years. It was an eyesore for the neighborhood. There was no working furnace, the grass was rarely cut and as many as 20 people were living in this single family dwelling when the home was foreclosed upon.

She plans to live in the neighborhood for a number of years and she will be a great addition to the community. I understand her home is not in the flood plain. I also understand that when a home built in 1948 sits in disrepair for 4 years without a working furnace there will be mold issues and termite damage issues in the home. Julia has made us aware of these issues and the extra unforeseen expense she has had to incur in the reconstruction of this new home. We fully support her project and appreciate the Quality her home brings to our community.

Sincerely Yours,



10/7/15

David Thomas, Director  
Baltimore County  
Department of public Works  
Towson, Maryland 21204

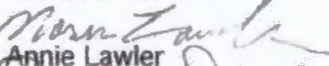
Dear Mr. Thomas;

We are in support of Julia Silber's single family house reconstruction in progress at 523 Morris Avenue, Lutherville, MD 21093. Her project is correcting what had been an ongoing neighborhood problem caused by the previous house being vacant for years, often inhabited by vagrants. After it was purchased by the prior owners, the structure and lot were not maintained and was occupied as a defacto dormitory.

We regret, are angered, and embarrassed by the delays causing her added expense while holding up the completion of a residence that will improve our neighborhood while following a design in keeping with existing homes. This is a rarity in Baltimore Co. for 50+ year old neighborhoods, including Historic Lutherville! With numerous homes for sale this autumn in our neighborhood (not ours), it is a darn shame for sellers to have such an improvement be delayed rather than completed to add to the appeal of our neighborhood.

Sincerely,

Norm Lawler

  
Annie Lawler



511 Spring Ave.  
Lutherville, MD  
21093

David Thomas, Director  
Department of Public Works  
Baltimore County Government  
Towson, MD 21204

Dear Mr. Thomas:

My name is Dawn Baker and I reside at 502 College Ave 21093. I am writing this letter in support of my neighbor, Julia Silber, of 523 Morris Avenue, Lutherville, MD 21093 who is involved in a construction project. I enthusiastically support her efforts in this project. I have been a resident of Lutherville at 502 College Ave since 1999 and I truly appreciate the significant renovations and the quality home project that Julia has committed to at the 523 Morris Avenue structure.

For your information, the previous owners of 523 Morris Avenue, left the property in horrible disarray for the past 4 years. It was an eyesore for the neighborhood. There was no working furnace, the grass was rarely cut and as many as 20 people were living in this single family dwelling when the home was foreclosed upon.

She plans to live in the neighborhood for a number of years and she will be a great addition to the community. I understand her home is not in the flood plain. I also understand that when a home built in 1948 sits in disrepair for 4 years without a working furnace there will be mold issues and termite damage issues in the home. Julia has made us aware of these issues and the extra unforeseen expense she has had to incur in the reconstruction of this new home. We fully support her project and appreciate the Quality her home brings to our community.

Sincerely Yours,

Dawn Baker



Pt. Bk. 0000022, Folio 0008

Lot # 11

Pt. Bk. 0000030, Folio 0140

0826040560

R-1963-0072

Pt. Bk./Folio # 030140

528

0816001150

Lot # 5

526

0818073020

Lot # 4

0803049500

Lot # 6

531

0801074375

Lot # 5

529

1983-0020-A

0810000400

Lot # 4

527

0813042080

Lot # 3

0814011280

525

0802005030

Lot # 2

PAI # 080034

3 CD NW 12-A

8 ED 060C3

0804023600

Lot # 10

DR 5.5

523

Pt. Bk./Folio # 007128

0808033570

Lot # 1

Lot # 11 0811018530

502

Lot # 12

0823015400

500

COLLEGE AVE

Lot # 9

0808034280

Lot # 9

DR 1

Lot # 4 0803026020

Pt. Bk. 0000007, Folio 0128

Lot # 3

0812025640

509

507

0808004490

Lot # 2

0816004640

Pt. Bk. 0000013, Folio 0070

Lot # 1

0809055500

505

0813077630

Lot # 4

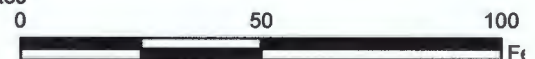
MORRIS AVE

# 523 Morris Avenue 2016-0123-SPH

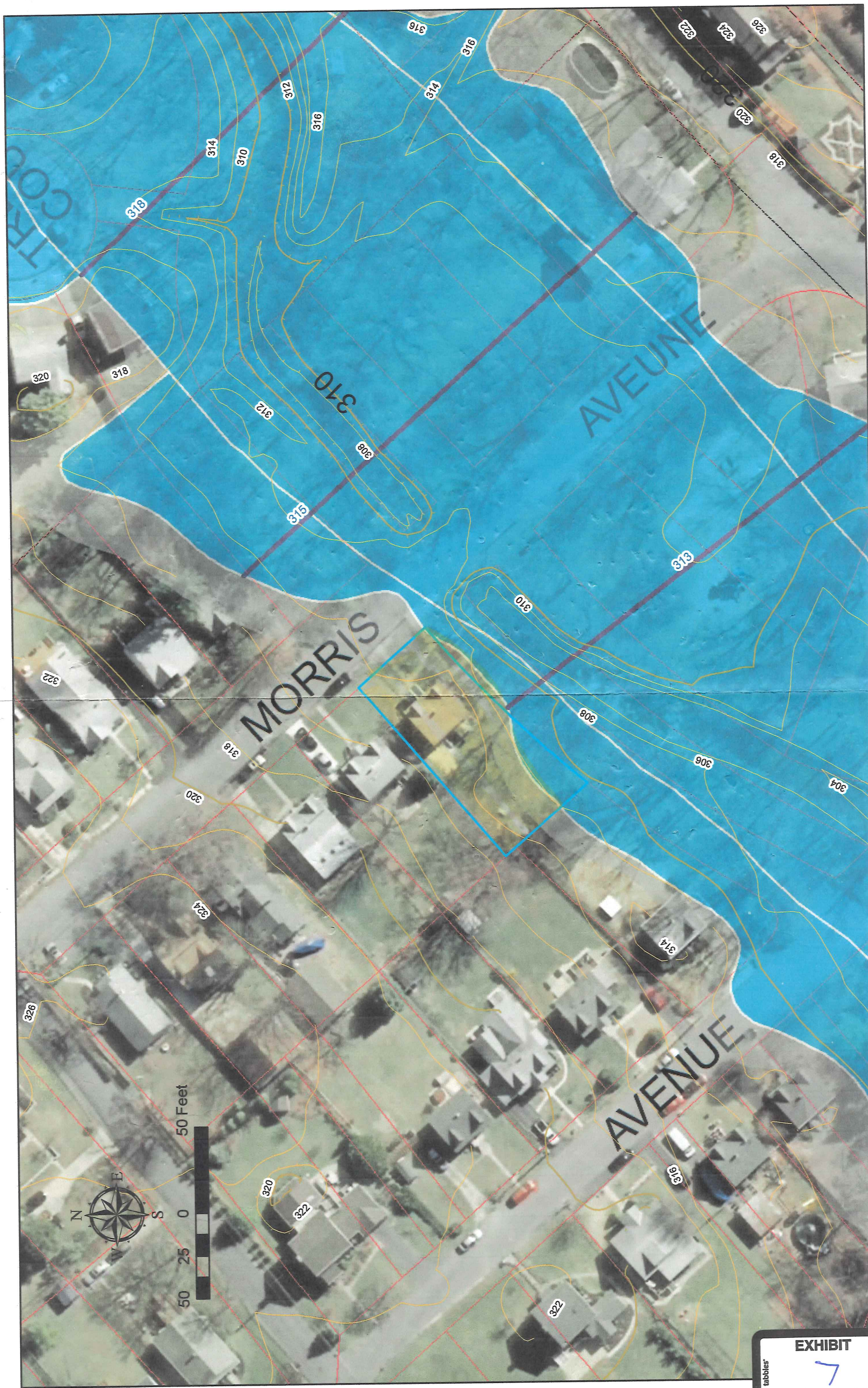


Publication Date: March 24, 2011  
 Publication Agency: Department of Permits & Development Management  
 Projection/Datum: Maryland State Plane,  
 FIPS 1900, NAD 1983/91 HARN, US Foot

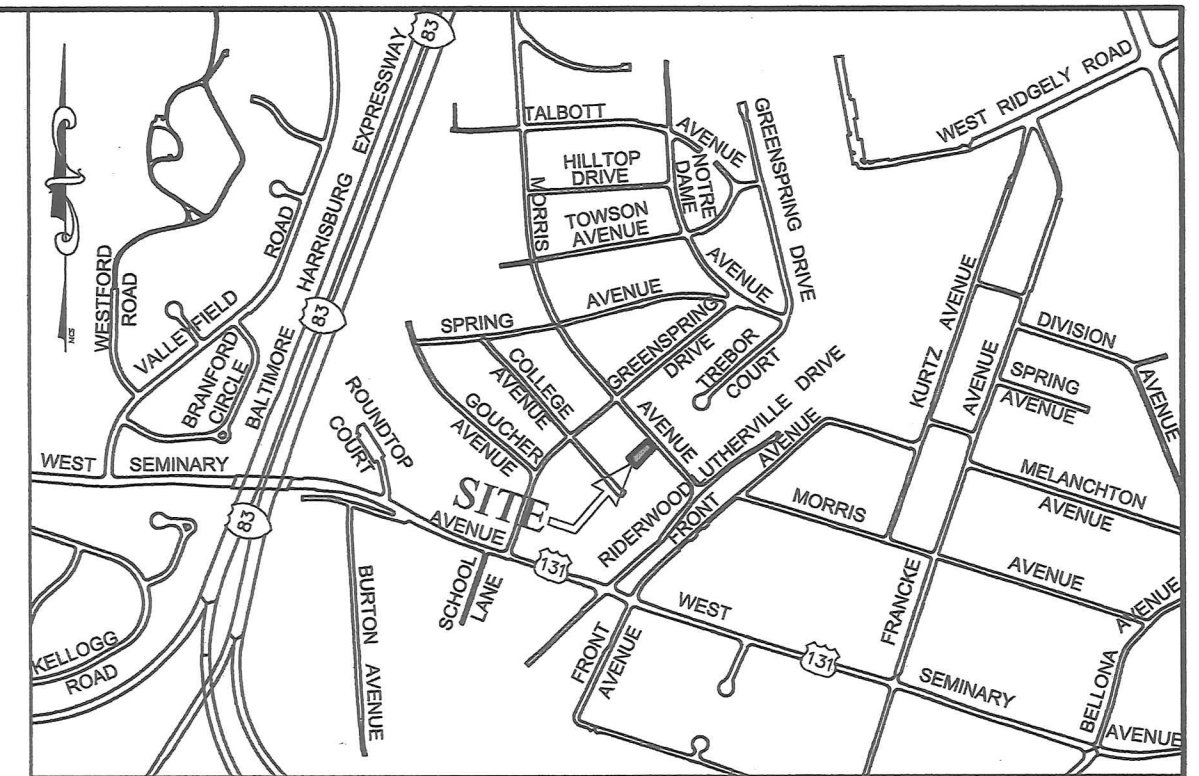
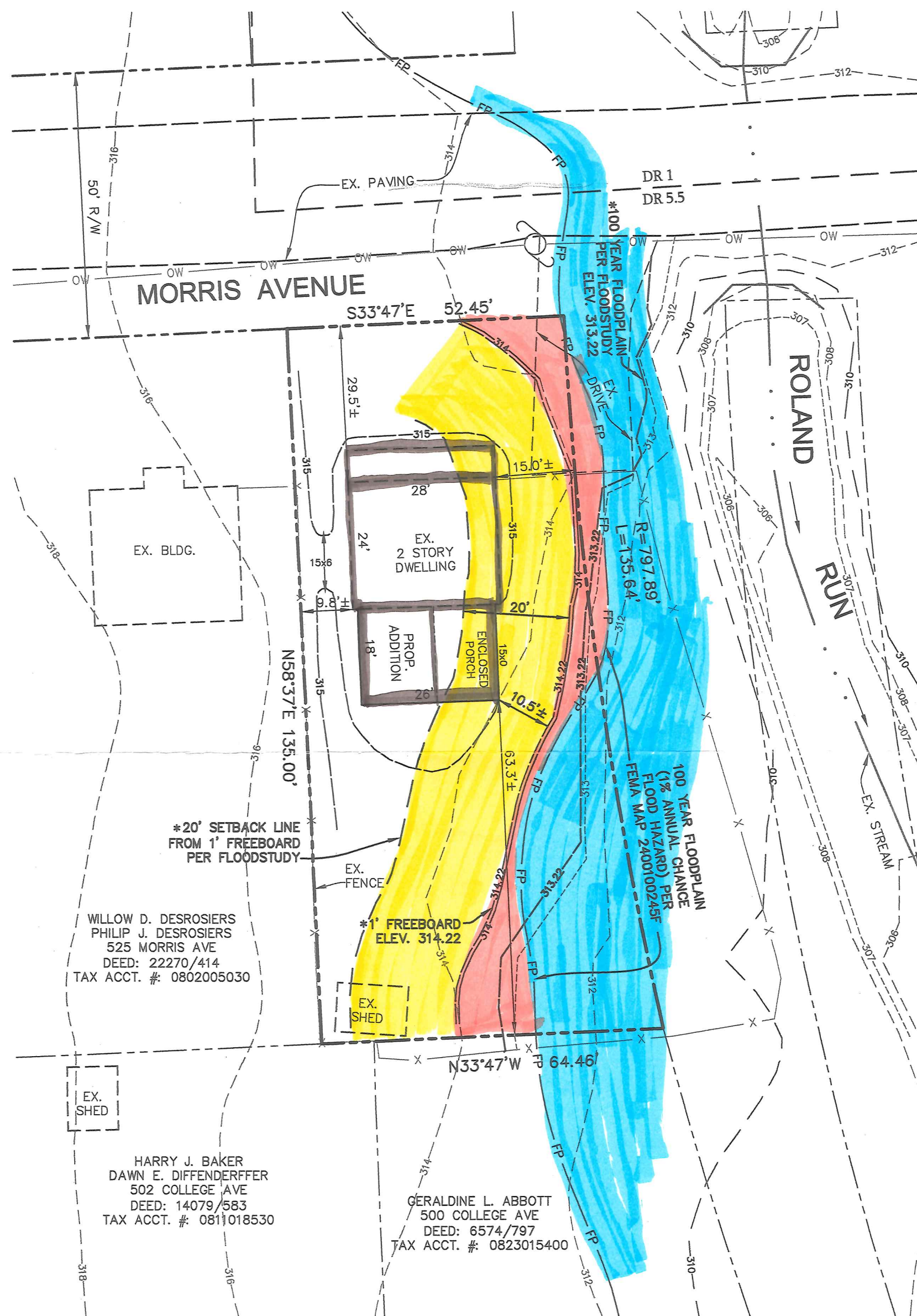
DQ Map Notes



1 inch = 40 feet



Y:\MORRIS AVE (4523) 15052.dwg AS SUBMITTED\EXHIBIT AS FILED 2015-10-28.dwg, 10/28/2015 9:34:36 AM, VeariEC, User3076, 1:20



VICINITY MAP

SCALE: 1"=1000'

SITE DATA

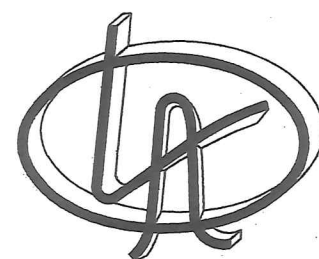
1. AREA: NET/GROSS TRACT AREA: 0.177 AC± (7,720 SF)
2. EXISTING ZONING IS DR 5.5, 200 SCALE MAP 060C3.
3. OWNER:  
JULIA B. SILBER  
523 MORRIS AVE  
LUTHERVILLE-TIMONIUM, MD 21093-4915
4. TAX ACCOUNT NUMBER: 0808033570
5. PLAT: 7/128 SECTION: J, LOT: 1
6. DEED: 36241/65
7. TAX MAP NO.: 60 GRID: 17 PARCEL: 568
8. TOPOGRAPHY SHOWN HEREON IS BASED ON THE BALTIMORE COUNTY GIS PORTAL OBTAINED ON SEPTEMBER 17, 2015 AND FIELD RUN TOPOGRAPHY PERFORMED BY LITTLE & ASSOCIATES, INC. ON OCTOBER 9, 2015.
9. EXISTING LAND USE WITHIN 200' OF THE SITE IS SINGLE FAMILY RESIDENTIAL.
10. THIS SITE IS NOT LOCATED WITHIN ANY DEFICIENT AREAS BASED ON THE 2015 WATER AND SEWER BASIC SERVICES MAPS, PURSUANT TO SECTION 4A02, BCZR. THE SITE IS LOCATED WITHIN A LEVEL 'D' AREA BASED ON THE 2015 TRANSPORTATION BASIC SERVICES MAP, PURSUANT TO SECTION 4A02, BCZR.
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12. THIS SITE IS NOT LOCATED WITHIN THE CHESAPEAKE BAY CRITICAL AREA.
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14. THE SITE HAS NO PRIOR ZONING HISTORY.
- \*15. THE 100 YEAR FLOODPLAIN AND 1' FREEBOARD AND THEIR ASSOCIATED ELEVATIONS ARE BASED ON THE HYDRAULIC REPORT FOR ROLAND RUN PREPARED BY WALLACE MONTGOMERY ON FEBRUARY 24, 2014.

REASON FOR **Special Hearing**

A WAIVER OF THE PUBLIC WORKS STANDARDS (DPW PLATE DF-1) TO ALLOW FOR A 10.5' SETBACK IN LIEU OF THE REQUIRED 20' SETBACK FROM THE 1' FREEBOARD LINE OF THE 100 YEAR FLOODPLAIN TO A DWELLING.



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. 16019, EXPIRATION DATE: 5/8/16.



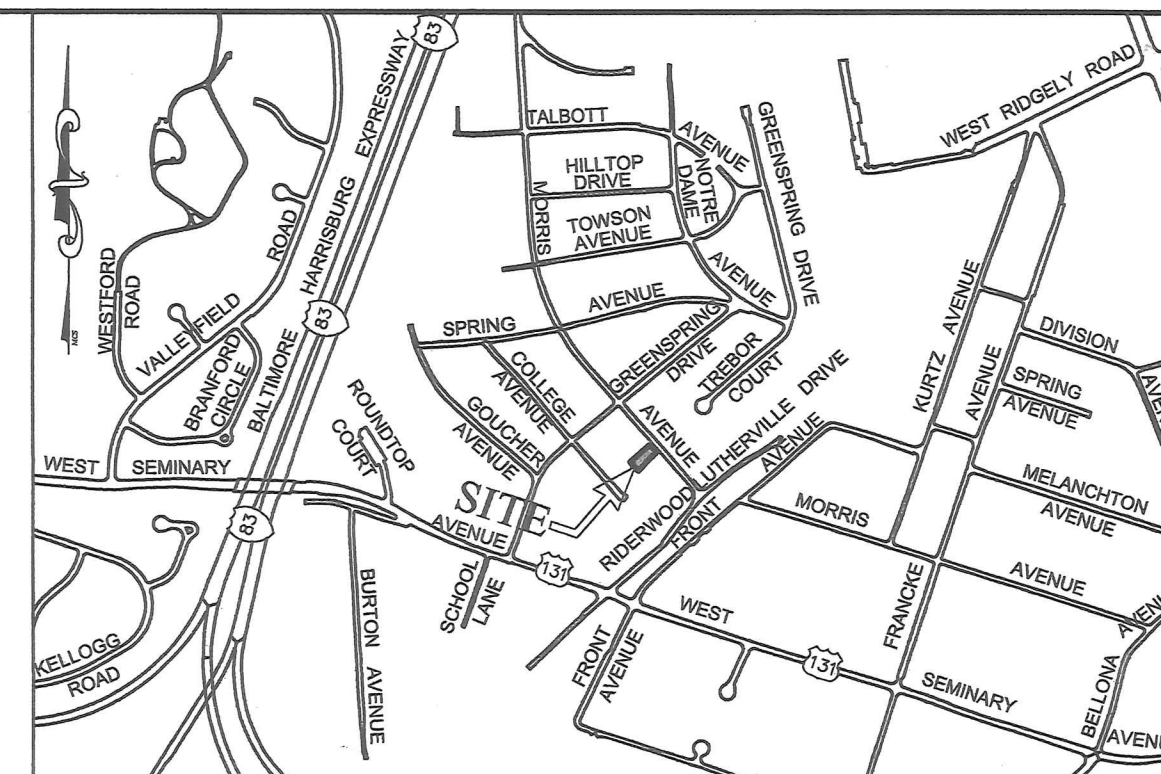
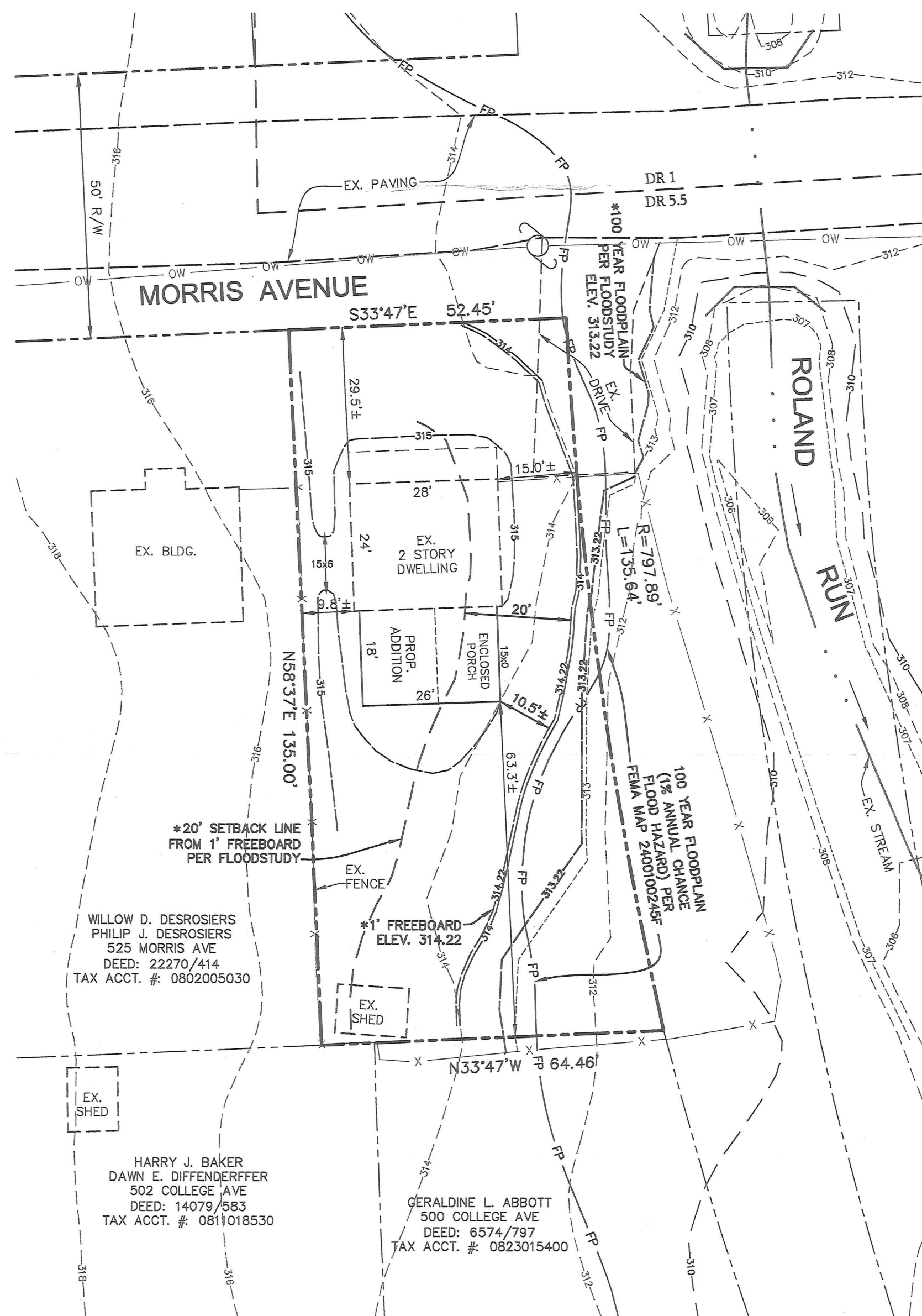
LITTLE & ASSOCIATES, INC.  
ENGINEERS~LAND PLANNERS~SURVEYORS  
1055 TAYLOR AVENUE, SUITE 307  
TOWSON, MARYLAND 21286  
PHONE: (410)296-1636 FAX: (410)296-1639



EXHIBIT TO ACCOMPANY SPECIAL HEARING  
#523 MORRIS AVENUE

SECTION: J  
LOT #: 1  
DISTRICT 8c3  
SCALE: 1"=20'

PLAT: 7/128  
BALTIMORE COUNTY, MD  
OCTOBER 28, 2015



**VICINITY MAP**

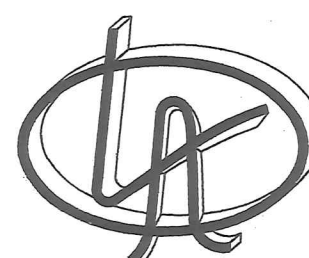
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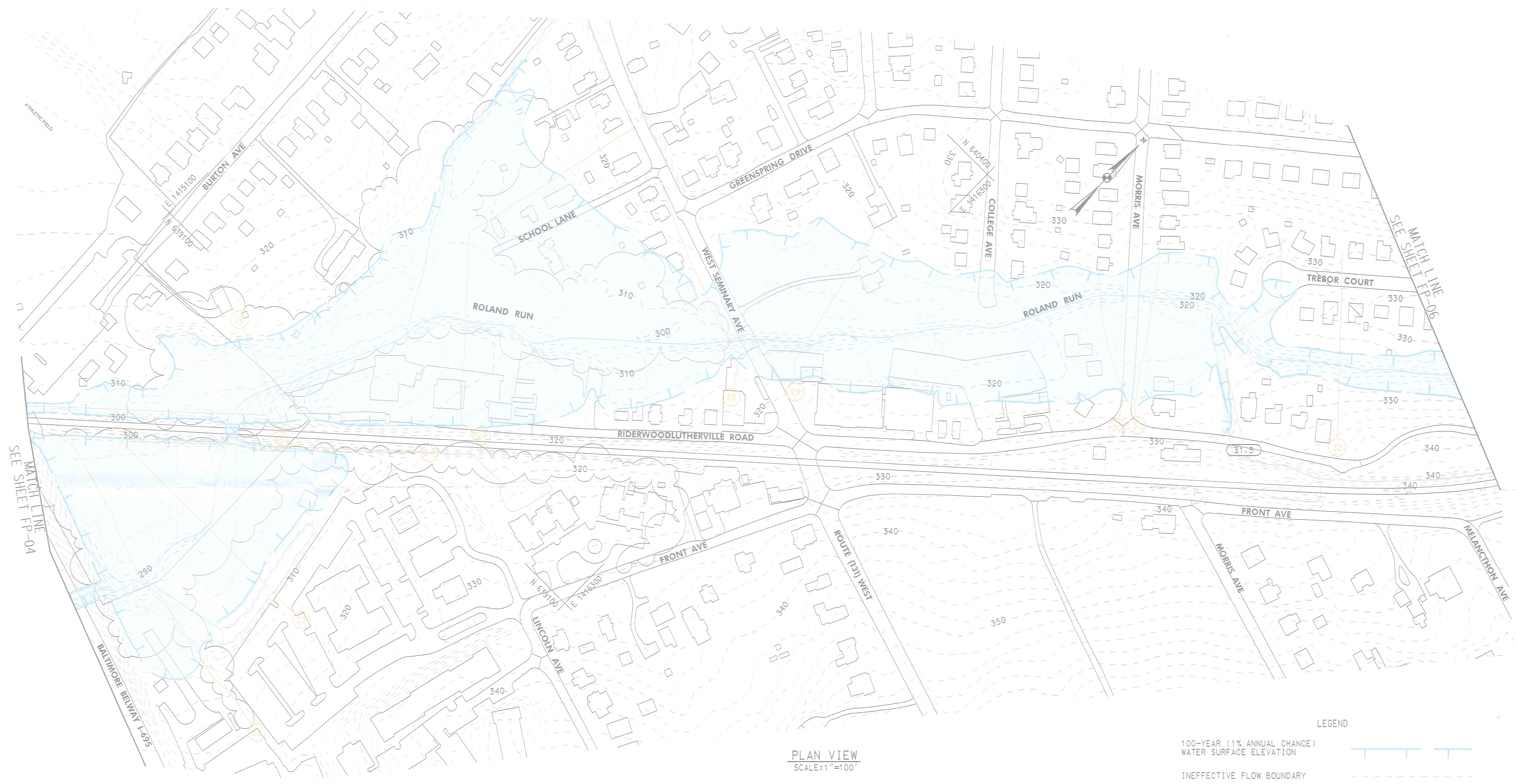
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I HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MARYLAND, LICENSE NO. 16019, EXPIRATION DATE: 5/8/16.

**EXHIBIT TO ACCOMPANY SPECIAL HEARING  
#523 MORRIS AVENUE**

SECTION: J  
LOT #: 1  
DISTRICT 8c3  
SCALE: 1"=20'

PLAT: 7/128  
BALTIMORE COUNTY, MD  
OCTOBER 28, 2015



PLAN VIEW  
SCALE: 1"=100'

LEGEND

100-YEAR (1% ANNUAL CHANCE)  
WATER SURFACE ELEVATION

INEFFECTIVE FLOW BOUNDARY



**WALLACE  
MONTGOMERY**  
ENGINEERS • PLANNERS • SURVEYORS • CONSTRUCTION MANAGERS  
10150 York Road, Suite 200  
Hunt Valley, Maryland 21030  
410.494.9093 Tel / 410.667.0925 Fax  
www.WallaceMontgomery.com A Limited Liability Partnership



| AS-BUILT PER RECORD PRINT |          | REVISION                               | DATE      | BY       | P. W. A. NO. | KEY SHEETS   | POSITION SHEETS | DRAWING SCALE       | DEPARTMENT OF PUBLIC WORKS |                                    |
|---------------------------|----------|----------------------------------------|-----------|----------|--------------|--------------|-----------------|---------------------|----------------------------|------------------------------------|
| DRAFTSMAN                 | DATE     |                                        |           |          |              |              |                 | PLAN :<br>PROFILE : | APPROVED                   | DIRECTOR                           |
|                           |          |                                        |           |          | RIGHT OF WAY |              |                 |                     | DATE                       |                                    |
| ENGINEER:                 | DSGN BY: | BUREAU OF ENGINEERING AND CONSTRUCTION | BUILDINGS | HIGHWAYS | STRUCTURES   | STORM DRAINS | SEWER           | WATER               | FIELD ENGINEER             | BUR. OF ENGINEERING & CONSTRUCTION |
| DATE:                     | DWN BY:  | REVIEWED                               |           |          |              |              |                 |                     | APPROVED                   | CHIEF                              |
| LIC. NO.:                 | CHKD BY: | DATE                                   |           |          |              |              |                 |                     | DATE                       |                                    |

BALTIMORE COUNTY DEPARTMENT OF PUBLIC WORKS BUREAU OF ENGINEERING & CONSTRUCTION

ROLAND RUN 100-YEAR (1% ANNUAL CHANCE) FLOODPLAIN MAPPING

SUBDIVISION:

ELECT. DISTRICT NO.

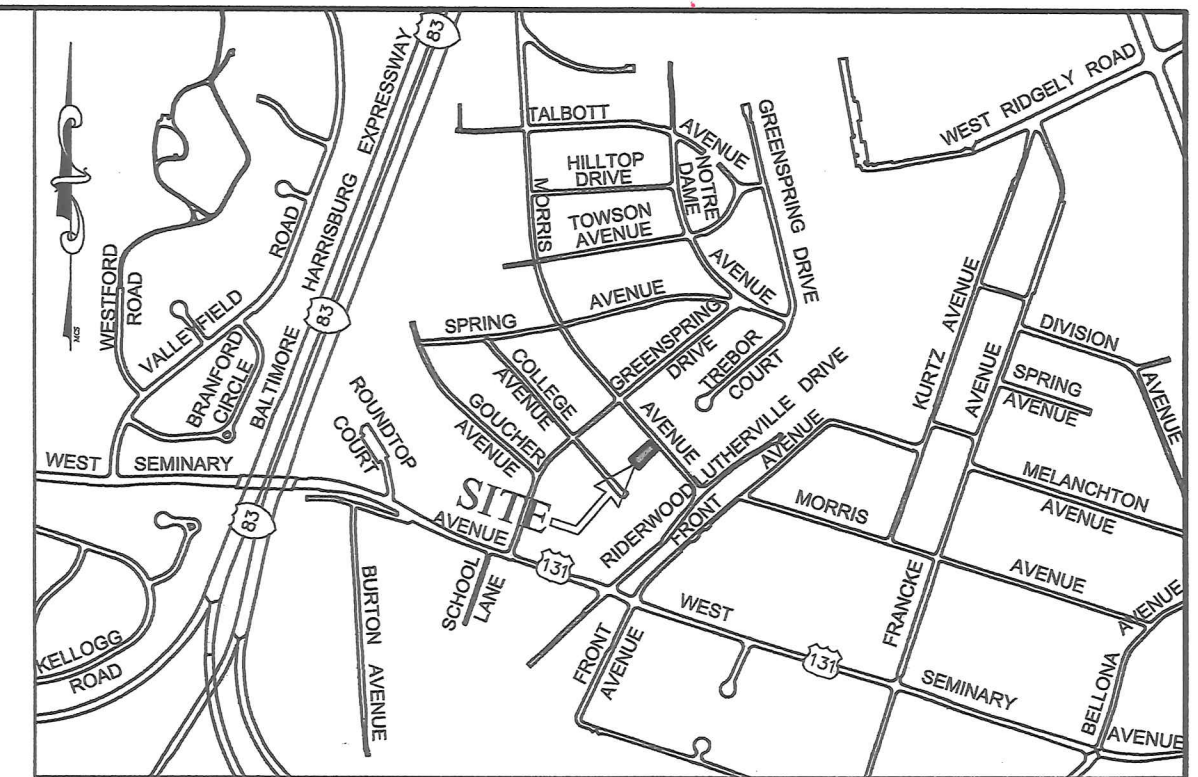
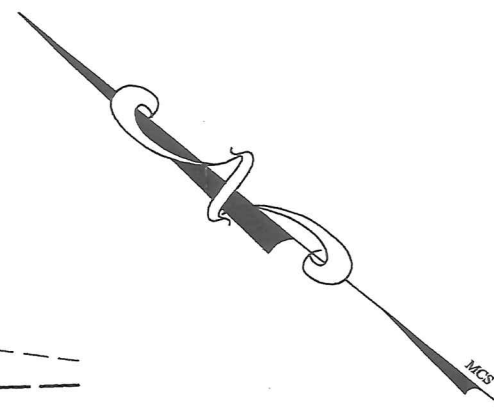
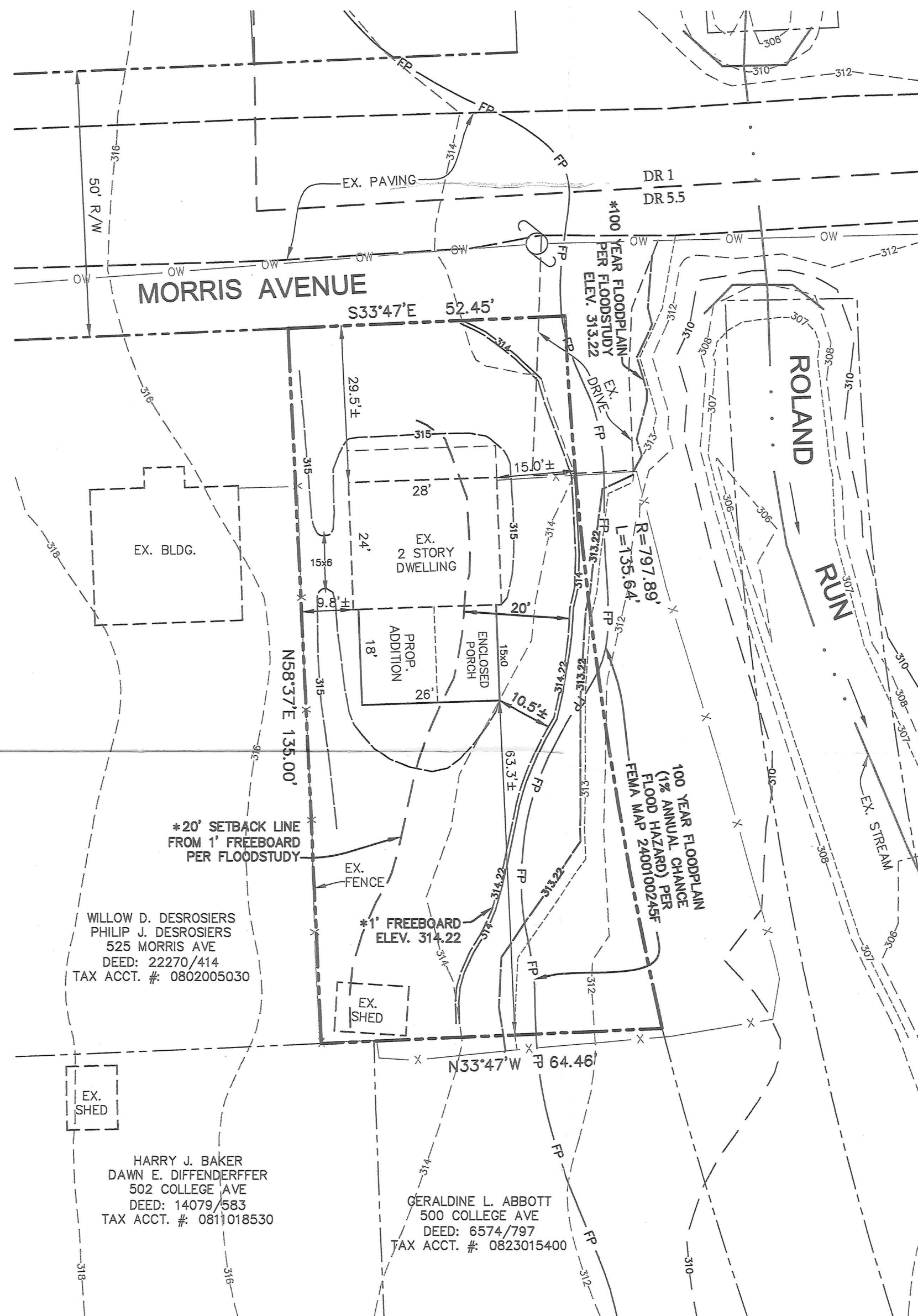
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|-------------------|---------------|
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|                   | JOB ORDER NO. |
|                   |               |
| SHEET OF          |               |
| DRAWING NO.       |               |
| FP- 05            |               |
| FILE NO.          |               |



9848

PLOTTED: Wednesday, January 08, 2014 AT 10:26 AM  
BY: #USERNAME#  
FILE:

DWG FILENAME:



VICINITY MAP

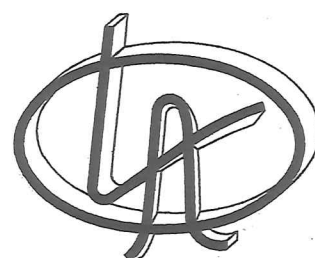
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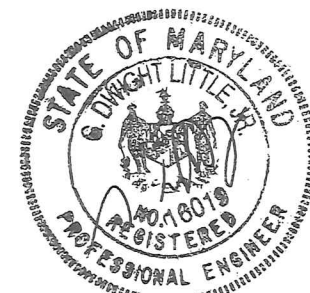
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2016-0123SPH