

IN THE MATTER OF
COMMUNITY ENTERPRISE, INC. - LEGAL OWNER
AND PETITIONER FOR SPECIAL HEARING AND
VARIANCE ON THE PROPERTY LOCATED AT
4217 FITCH AVENUE

14TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 16-328-SPHA

* * * * *

ORDER OF DISMISSAL

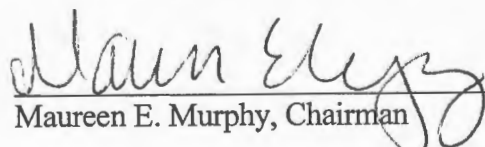
This matter comes to the Board of Appeals by way of an appeal filed by Edward J. Gilliss, Esquire on behalf of Community Enterprise, Inc., Legal Owner/Petitioner, from a final decision of the Administrative Law Judge dated August 24, 2016, in which the requested variance relief was denied, and Amended Opinion and Order of the Administrative Law Judge dated September 9, 2016 wherein the requested variance relief was denied and the requested special hearing relief was dismissed as moot.

WHEREAS, the Board is in receipt of a Motion to Dismiss filed on December 1, 2016 by Edward J. Gilliss, Esquire on behalf of Community Enterprise, Inc. requesting that the appeal in this matter be dismissed as of December 1, 2016; and

WHEREAS, the Board is in receipt of People's Counsel for Baltimore County's Response to the Motion to Dismiss, filed December 2, 2016 wherein People's Counsel does not oppose the dismissal of this matter.

IT IS ORDERED this 9th day of December, 2016 by the Board of Appeals of Baltimore County that the appeal taken in Case No. 16-328-SPHA be and the same is hereby **DISMISSED with prejudice**.

**BOARD OF APPEALS
OF BALTIMORE COUNTY**


Maureen E. Murphy, Chairman



Board of Appeals of Baltimore County

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



December 9, 2016

Edward J. Gilliss, Esquire
Royston, Mueller, McLean & Reid, LLP
The Royston Building
102 West Pennsylvania Avenue, Suite 600
Towson, Maryland 21204-4575

RE: In the Matter of: *Community Enterprise, Inc. – Legal Owner*
Case No.: 16-328-SPHA

Dear Mr. Gilliss:

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

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Krysundra "Sunny" Cannington
Administrator

KLC/tam
Enclosure

c: Paul Redding, President/Community Enterprise, Inc.
Thomas J. Hoff
Gloria Kelly
Mike Pierce
Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Deputy Administrative Officer, and Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law



KEVIN KAMENETZ
County Executive

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

October 4, 2016

RECEIVED

OCT 04 2016

BALTIMORE COUNTY
BOARD OF APPEALS

James S. Pezzulla, Esq.
28 Allegheny Avenue
Suite 1207
Towson, Maryland 21204

RE: **APPEAL TO BOARD OF APPEALS** - Petition for Special Hearing
Case No. 2016-0328-SPH
Location: 4217 Fitch Avenue

Dear Mr. Pezzulla:

Please be advised that an appeal of the above-referenced case was filed in this Office on October 4, 2016. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals ("Board").

If you are the person or party taking the appeal, you should notify other similarly interested parties or persons known to you of the appeal. If you are an attorney of record, it is your responsibility to notify your client.

If you have any questions concerning this matter, please do not hesitate to contact the Board at 410-887-3180.

Sincerely, ...

A handwritten signature in black ink, appearing to read "L. Stahl", is written over the word "Sincerely".

LAWRENCE M. STAHL
Managing Administrative Law Judge
for Baltimore County

LMS/dlw

c: Baltimore County Board of Appeals
People's Counsel for Baltimore County
Gloria Kelly, 7843 St. Thomas Drive, Nottingham, Maryland 21236
Mike Pierce, 7448 Bradshaw Road, Kingsville, Maryland 21087
Edward J. Gilliss, Esq., Royston, Mueller, McLean & Reid, LLP,
102 W. Pennsylvania Ave., Suite 600, Towson, MD 21204

JB 8-22-16

IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
AND VARIANCE	
(4217 Fitch Avenue) *	OFFICE OF
14 th Election District *	ADMINISTRATIVE HEARINGS
5 th Council District *	
Community Enterprise, Inc. *	FOR BALTIMORE COUNTY
Owner *	
Petitioner *	Case No. 2016-0328-SPHA

* * * * *

AMENDED
OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed on behalf of Community Enterprise, Inc., legal owner ("Petitioner"). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R") to determine if the sorting of material from a construction site by a tenant, a general contractor, can be done on-site, outside of the building, prior to hauling the material to a recycling center. In addition, a Petition for Variance seeks to reduce the setback from a residential zone boundary to 35 ft. in lieu of the required 100 ft., for construction equipment storage as shown on the "Plan to Accompany Petition," which was marked and accepted into evidence as Petitioner's Ex. 1.

Appearing at the public hearing in support of the requests were Paul Redding and landscape architect Thomas Hoff. James S. Pezzulla, Esq. represented the Petitioner. Several members of the community attended and opposed the requests. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were received from the Bureau of Development Plans Review (DPR) and the Department of Planning (DOP). In addition, the zoning review office indicated it "does not permit someone to sort materials outside of a structure."

The subject property is 3.52 acres in size and is zoned ML-IM. The site is bound on two sides by D.R. zoned parcels. For many years an 84 Lumber store operated at the site, and Petitioner acquired the property in 2010. The site is leased to a company known as A-L Abatement, Inc. (A-L), which is a general contractor. Mr. Redding explained A-L brings to the site by truck construction waste materials (from its own projects) such as concrete, metal and wood. These materials are then sorted and placed into separate dumpsters, which are later taken from the site to be sold or disposed of. In addition, asbestos containing products removed from construction projects are brought to the site by A-L and are stored in an enclosed truck trailer at the site, and the witness stated such materials are handled safely in compliance with federal and state regulations.

In addition to a special hearing request, Petitioner requests a variance to reduce the "setback from a residential zone boundary to 35' in lieu of the required 100' for construction equipment storage." Having reviewed the M.L. zone regulations, I do not believe the Administrative Law Judge (ALJ) is authorized to grant the request.

Under the B.C.Z.R., the ALJ is authorized to grant variances from height and area, parking and sign regulations only. Indeed, the Regulations state the ALJ "shall have no power to grant any other variances." B.C.Z.R. §307.1. In this case, I do not believe the referenced 100' is a "setback" or area regulation. The applicable setbacks in the M.L. zone are set forth at B.C.Z.R. §255. That regulation provides that if the yard area is located within 100 feet of a residential zone boundary the applicable setbacks are those found in the M.R. zone. B.C.Z.R. §255.2. Under the M.R. regulations, side and rear yards must be at least 50 ft., while the front yard setback is 75 ft. B.C.Z.R. §243.1, 243.2 and 243.3.

The 100' buffer at issue in this case is found at B.C.Z.R. §253.4, which governs "uses" in the M.L. zone within 100 feet of a residential zone boundary. If a property is located within 100 ft. of a residential zone boundary (as this property is), the only uses permitted are passenger vehicle parking and those uses permitted in the M.R. zone. The uses allowed in the M.R. zone are listed at B.C.Z.R. §241. A "contractor's equipment storage yard" or "construction equipment storage yard" is not permitted. In fact, all of the uses allowed in the zone must be conducted "entirely within an enclosed building," a point highlighted by the zoning review office.

As such I do not believe the 100 ft. requirement is a "setback." Instead, it is a buffer, the reduction of which would in my opinion constitute a "use variance" not permitted under the B.C.Z.R. In other words, by reducing the buffer to 35 ft. the Petitioner would be entitled to engage in a much greater number of uses (as specified in B.C.Z.R. §253.1) including a "construction equipment storage yard." Under the regulations only height, area, sign and parking variances may be granted, and thus I believe the Petition must be denied. Under the circumstances, the petition for special hearing is rendered moot by the variance denial.

THEREFORE, IT IS ORDERED this 24th day of August, 2016, by this Administrative Law Judge that the Petition for Variance which seeks to reduce the setback from a residential zone boundary to 35 ft. in lieu of the required 100 ft. for construction equipment storage as shown on the "Plan to Accompany Petition," be and is hereby DENIED.

IT IS FURTHER ORDERED that the Petition for Spécial Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.) to determine if the sorting of material from a construction site by a tenant, a general contractor, can be done on-site, outside of the building, prior to hauling the material to a recycling center, be and is hereby DISMISSED as Moot.

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



JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/dlw

IN RE: PETITIONS FOR SPECIAL HEARING *
AND VARIANCE
(4217 Fitch Avenue) *
14th Election District *
5th Council District *
Community Enterprise, Inc. *
Owner *
Petitioner *

BEFORE THE
OFFICE OF
ADMINISTRATIVE HEARINGS
FOR BALTIMORE COUNTY
Case No. 2016-0328-SPHA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed on behalf of Community Enterprise, Inc., legal owner ("Petitioner"). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R") to determine if the sorting of material from a construction site by a tenant, a general contractor, can be done on-site, outside of the building, prior to hauling the material to a recycling center. In addition, a Petition for Variance seeks to reduce the setback from a residential zone boundary to 35 ft. in lieu of the required 100 ft., for construction equipment storage as shown on the "Plan to Accompany Petition," which was marked and accepted into evidence as Petitioner's Ex. 1.

Appearing at the public hearing in support of the requests were Paul Redding and landscape architect Thomas Hoff. James S. Pezzulla, Esq. represented the Petitioner. Several members of the community attended and opposed the requests. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were received from the Bureau of Development Plans Review (DPR) and the Department of Planning (DOP). In addition, the zoning review office indicated it "does not permit someone to sort materials outside of a structure."

The subject property is 3.52 acres in size and is zoned ML-IM. The site is bound on two sides by D.R. zoned parcels. For many years an 84 Lumber store operated at the site, and Petitioner acquired the property in 2010. The site is leased to a company known as A-L Abatement, Inc. (A-L), which is a general contractor. Mr. Redding explained A-L brings to the site by truck construction waste materials (from its own projects) such as concrete, metal and wood. These materials are then sorted and placed into separate dumpsters, which are later taken from the site to be sold or disposed of. In addition, asbestos containing products removed from construction projects are brought to the site by A-L and are stored in an enclosed truck trailer at the site, and the witness stated such materials are handled safely in compliance with federal and state regulations.

In addition to a special hearing request, Petitioner requests a variance to reduce the "setback from a residential zone boundary to 35' in lieu of the required 100' for construction equipment storage." Having reviewed the M.L. zone regulations, I do not believe the Administrative Law Judge (ALJ) is authorized to grant the request.

Under the B.C.Z.R., the ALJ is authorized to grant variances from height and area, parking and sign regulations only. Indeed, the Regulations state the ALJ "shall have no power to grant any other variances." B.C.Z.R. §307.1. In this case, I do not believe the referenced 100' is a "setback" or area regulation. The applicable setbacks in the M.L. zone are set forth at B.C.Z.R. §255. That regulation provides that if the yard area is located within 100 feet of a residential zone boundary the applicable setbacks are those found in the M.R. zone. B.C.Z.R. §255.2. Under the M.R. regulations, side and rear yards must be at least 50 ft., while the front yard setback is 75 ft. B.C.Z.R. §243.1, 243.2 and 243.3.

The 100' buffer at issue in this case is found at B.C.Z.R. §253.4, which governs "uses" in the M.L. zone within 100 feet of a residential zone boundary. If a property is located within 100 ft. of a residential zone boundary (as this property is), the only uses permitted are passenger vehicle parking and those uses permitted in the M.R. zone. The uses allowed in the M.R. zone are listed at B.C.Z.R. §241. A "contractor's equipment storage yard" or "construction equipment storage yard" is not permitted. In fact, all of the uses allowed in the zone must be conducted "entirely within an enclosed building," a point highlighted by the zoning review office.

As such I do not believe the 100 ft. requirement is a "setback." Instead, it is a buffer, the reduction of which would in my opinion constitute a "use variance" not permitted under the B.C.Z.R. In other words, by reducing the buffer to 35 ft. the Petitioner would be entitled to engage in a much greater number of uses (as specified in B.C.Z.R. §253.1) including a "construction equipment storage yard." Under the regulations only height, area, sign and parking variances may be granted, and thus I believe the Petition must be denied.

THEREFORE, IT IS ORDERED this 24th day of August, 2016, by this Administrative Law Judge that the Petition for Variance which seeks to reduce the setback from a residential zone boundary to 35 ft. in lieu of the required 100 ft. for construction equipment storage as shown on the "Plan to Accompany Petition," be and is hereby DENIED.

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

JEB/sln


JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

C H E C K L I S TSupport/Oppose/
Conditions/
Comments/
No CommentComment
ReceivedDepartment

7/5/16

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

C

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

FIRE DEPARTMENT

7/7/16

PLANNING
(if not received, date e-mail sent _____)NO obj
w/ condition

6/29/16

STATE HIGHWAY ADMINISTRATION

NO obj

TRAFFIC ENGINEERING

COMMUNITY ASSOCIATION

ADJACENT PROPERTY OWNERS

NOTE FROM JASON Seidelman ZONING REVIEW

ZONING VIOLATION (Case No. _____)

PRIOR ZONING (Case No. _____)

NEWSPAPER ADVERTISEMENT

Date: 8/2/16

SIGN POSTING

Date: 7/29/16

by Ogle

PEOPLE'S COUNSEL APPEARANCE

Yes ☒ No ☐

PEOPLE'S COUNSEL COMMENT LETTER

Yes ☐ No ☐

Comments, if any: _____

TO: DAILY RECORD
Tuesday, August 2, 2016 Issue

Please forward billing to:

Paul Redding
Community Enterprise
17293 Wesley Chapel Road
Monkton, MD 21111

443-462-1528

NOTICE OF ZONING HEARING

The Administrative Law Judge of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 2016-0328-SPHA

4217 Fitch Avenue

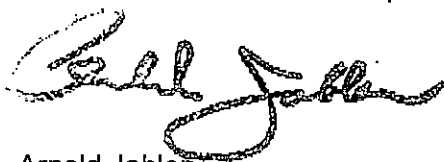
SW/s Fitch Avenue at the intersection of Fitch Avenue and Weaver Road

14th Election District – 5th Councilmanic District

Legal Owners: Community Enterprise, Inc.

Special Hearing to determine if the sorting of material from a construction by the tenant, a general contractor, can be done onsite, outside of the building prior to hauling the material to a recycling center. **Variance** to reduce the setback from a residential zone boundary to 35 ft. in lieu of the required 100 ft. for construction equipment storage as shown on the Plan to Accompany Petition for Variance and Special Hearing.

Hearing: Monday, August 22, 2016 at 1:30 p.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204



Arnold Jablon

Director of Permits, Approvals and Inspections for Baltimore County

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



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 4217 Fitch Avenue which is presently zoned ML IM
Deed References: 30301 / 230 10 Digit Tax Account # 1 9 0 0 0 0 4 0 9 2
Property Owner(s) Printed Name(s) Community Enterprise, Inc.

(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 attachment

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

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

See attachment

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 _____ / By _____ Telephone # _____ / Email Address _____

Legal Owners (Petitioners):

Community Enterprise, Inc. /

Name #1 - Type or Print _____ Name #2 - Type or Print _____

Signature #1 Paul Redding, Signature #2 _____

President
17293 Wesley Chapel Road, Monkton, MD

Mailing Address _____ City _____ State _____

21111 / (443) 462-1528 / predding922@gmail.com
Zip Code Telephone # Email Address

Attorney for Petitioner:

James S. Pezzulla, Esquire

Name- Type or Print _____

Signature _____

28 Allegheny Ave., Suite 1207, Towson, MD
Mailing Address _____ City _____ State _____

21204 / (410) 821-5235 / jamie@pezzulla.com
Zip Code Telephone # Email Address

Representative to be contacted:

Thomas J. Hoff

Name - Type or Print _____

Signature _____

512 Virginia Ave., Towson, MD
Mailing Address _____ City _____ State _____

21286 / (410) 296-3669 / tom@thomasjhoff.com
Zip Code Telephone # Email Address

CASE NUMBER 2016-0328-SP4 Filing Date 6/16/16

Do Not Schedule Dates: _____ Reviewer JS

Attachment to Petition for Variance and Special Hearing – 4217 Fitch Avenue

Zoning Relief Requested:

Section 253.4 - Variance to reduce the setback from a residential zone boundary to 35' in lieu of the required 100' for construction equipment storage as shown on the "Plan to Accompany Petition for Variance and Special Hearing – 4217 Fitch Avenue".

REASONS FOR THE REQUEST TO BE PRESENTED AT THE HEARING.

Special Hearing to determine if the sorting of material from a construction site by the tenant, a general contractor, can be done onsite, outside of the building, prior to hauling the material to a recycling center.

THOMAS J. HOFF
Landscape Architects and Land Development Consultants
512 VIRGINIA AVENUE
TOWSON, MD. 21286
410-296-3668
FAX 410-825-3887

June 16, 2016

Description of 4299 Fitch Avenue to Accompany Petition for a Variance and Special Hearing, 14th Election District, 5th Councilmanic District

BEGINNING FOR THE SAME at a point on the southwest side of Fitch Avenue (60' R/W), at the intersection of Fitch Avenue and Wever Road (60' R/W).

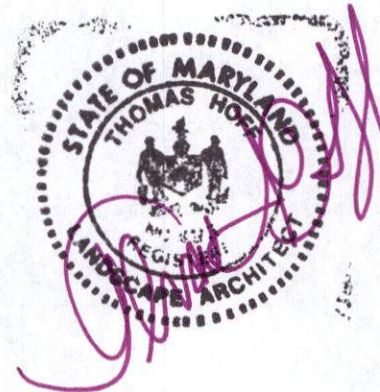
Thence binding on the west side of Wever Road,

- 1) South 15 degrees 59 minutes 30 seconds East 28.90 feet, thence,
- 2) South 27 degrees 44 minutes 30 seconds East 611.68 feet, thence, leaving the west side of Wever Road
- 3) North 84 degrees 43 minutes 23 seconds West 216.38 feet, thence,
- 4) North 27 degrees 44 minutes 30 seconds East 723.20 feet, thence, binding on the southwest side of Fitch Avenue,
- 5) South 59 degrees 43 minutes 36 seconds East 180.16 feet, to the place of beginning.

Containing 3.1052 acres of land more or less.

Note:

This Description has been prepared for zoning purposes only.



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

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The Baltimore County Zoning Regulations (BCZR) require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the legal owner/petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least fifteen (15) days before the hearing.

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the legal owner/petitioner is responsible for the costs associated with these requirements. The newspaper will bill the person listed below for the advertising. This advertising is due upon receipt and should be remitted directly to the newspaper.

OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.

For Newspaper Advertising:

Case Number: 2016-0328-SP4A

Property Address: 4217 FITCH AVE.

Property Description: _____

Legal Owners (Petitioners): COMMUNITY ENTERPRISE, INC.

Contract Purchaser/Lessee: _____

PLEASE FORWARD ADVERTISING BILL TO:

Name: PAUL REDDING

Company/Firm (if applicable): COMMUNITY ENTERPRISE, INC.

Address: 17293 WESLEY CHAPEL ROAD
MONKTON, MD 21111

Telephone Number: 443-462-1528

Revised 5/20/2014

Permits, Approvals, and Inspections
Code Inspections & Enforcement
County Office Building, Rm. 213
111 West Chesapeake Ave
Towson, Maryland 21204



Code Enforcement 410-887-3351
Electrical Inspection 410-887-3960
Plumbing Inspection 410-887-3620
Building Inspection 410-887-3953

www.baltimorecountymd.gov/Agencies/permits/

CODE ENFORCEMENT & INSPECTION CITATION

COMMUNITY ENTERPRISE INC
4299 FITCH AVENUE STE B
BALTIMORE, MD 21236

CASE NUMBER	PROP.TAX ID
CC1601609	1900004092
VIOLATION ADDRESS	
4299 FITCH AVE NOTTINGHAM, MD 21236	

DID UNLAWFULLY VIOLATE THE FOLLOWING BALTIMORE COUNTY CODES AND/OR REGULATIONS:

County Codes/Regulations	Inspector's Comments
Other Violation(s)	BCZR 253.4 - Failure to cease storage of all materials, equipment and vehicles <u>w/in 100ft of any</u> residential zone, other than passenger vehicles which must be parked in the designated screened area
	BCZR 253 - Failure to cease recycling, sorting, storage of discarded materials and scrapping in a ML zone
	ZCPM 500.9; BCC 32-3-102; BCZR 253.4 - Failure to comply w/Zoning Commissioners Ruling <u>83-146-V</u> , C-83-318: 1) replace and/or maintain all evergreen <u>trees</u> along Fitch Ave and St. Thomas Ave, 2) repair or replace <u>fencing</u> in disrepair, 3) cease parking of vehicles in the storage and shed areas
B.C.Z.R 410A: Non permitted class II Trucking Facility	Failure to cease use of property as an class II trucking facility - remove truck/shipping containers

Pursuant to Section 1-2-217, Baltimore County Code, civil penalty has been assessed, as a result of the violation(s) cited herein, in the amount indicated:

\$10000

A quasi-judicial hearing has been pre-scheduled in:
Jefferson Building, 105 W. Chesapeake Ave, Rm 205
Towson, Maryland, 21204

DATE: 06/22/2016 TIME: 09:00 A.M.

IF A VIOLATOR DOES NOT APPEAR AT THE CODE ENFORCEMENT HEARING, THE CITATION AND ANY CIVIL PENALTY ARE DEEMED A NON-APPEALABLE FINAL ORDER OF THE CODE OFFICIAL OR THE DIRECTOR.

I do solemnly declare and affirm, under the penalty of perjury, that the contents stated above are true and correct to the best of my knowledge, information, and belief.

Inspector Printed Name	Inspector Signature	Issued Date
Christina Frink		05/20/2016

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

No. 141319

Date: 6/16/16

PAID RECEIPT

BUSINESS ACTUAL TIME DRN
6/17/2016 6/16/2016 11:12:59 2

RES WSO2 MAIL JEE
YD RECEIPT R 948814 6/16/2016 GFLR

Dept S 528 ZONING VERIFICATION
NO. 141319

Recpt Tot \$1,000.00
\$1,000.00 OK \$5.00 CA
Baltimore County, Maryland

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Obj	Dept Obj	BS Acct	Amount
001	806	0000		6150				\$1000.00

Total: \$1000.00

Rec From: COMMUNITY ENTERPRISES INC

For: 2016-0328-SPHA

DISTRIBUTION

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

CASHIER'S
VALIDATION

IN RE: PETITION FOR VARIANCE
SW/S Fitch Avenue, 160' E of
the e/1 of St. Thomas Drive
(4299 Fitch Avenue)
14th Election District
6th Councilmanic District

Pierce Hardy Real Estate Co.
Petitioner

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 94-377-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner as a Petition for Variance for that property known as 4299 Fitch Avenue, located in the Fullerton area of eastern Baltimore County. The Petition was filed by the owner of the property, the Pierce Hardy Real Estate Company, by Joseph A. Hardy. The Petitioner seeks relief from Sections 255.2 and 255.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a rear yard setback of 5 feet in lieu of the required 50 feet for a proposed warehouse storage shed, a distance between an existing shed and the proposed warehouse storage shed of 37 feet in lieu of the required 100 feet, and a distance between existing sheds of 50 feet in lieu of the required 60 feet. The subject property and relief sought are more particularly described on the three-page plans submitted into evidence as Petitioner's Exhibit 1.

Appearing on behalf of the Petition were William Myrick and Edward Cadler for 84 Lumber, Contract Lessee of the subject property. Appearing as Protestants in the matter were Sylvester J. Henkel, Jr., Gloria Kelly and Mildred C. Dempsey, all residents of St. Thomas Drive located directly behind the subject site.

Testimony revealed that the subject property consists of 3.11 acres, more or less, zoned M.L.-I.M. and is improved with a warehouse and

retail building and two storage sheds used by 84 Lumber. The Petitioner proposes to construct a 20' x 200' warehouse storage shed approximately 5 feet from the northwest property line and 37 feet from an existing 38' x 225' shed to provide additional warehouse storage space. The proposed shed will be located immediately adjacent to the residential properties of the Protestants who appeared at the hearing. As a result of its close proximity to the Protestants' properties and the existing shed, the requested variances are necessary in order to proceed as proposed. In addition to the proposed shed, the Petitioner proposes to construct a 20' x 75' addition to the existing 20' x 200' shed on the southeast side of the subject site. Although a variance is not needed for the proposed addition, a variance is needed to legalize the distance between the two existing sheds that have been on the property for many years. These two sheds are approximately 50 feet apart and not 60 feet as required, and thus, a variance is necessary.

Appearing in opposition to the Petitioner's request were Sylvester Henkel, Gloria Kelly and Mildred Dempsey, long-time residents of this area. All of the Protestants reside on St. Thomas Drive immediately adjacent to the location of the proposed warehouse storage shed. The Protestants object to the proposed location of this shed in such close proximity to their properties. Furthermore, they object to the noise that emanates from the subject site by virtue of the forklift trucks used in the warehouse operation. The Protestants feel that the proposed expansion will infringe upon their privacy and cause their properties to depreciate in value. They also believe that the storage of lumber products this close to their properties would be deemed a fire hazard in the event a fire broke out in the proposed shed.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

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

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

The Petitioner requested three variances, one of which is to permit the two existing sheds to remain a distance of 50 feet apart. Inasmuch as these sheds have existed on the property for many years, it appears that a practical difficulty and unreasonable hardship would result if strict compliance were required. In addition, the variance requested will not cause any injury to the public health, safety or general welfare and meets the spirit and intent of the B.C.Z.R. Therefore, this portion of the variance request shall be granted.

As to the relief requested for the proposed warehouse storage shed, in the opinion of this Deputy Zoning Commissioner the relief requested should be denied. The proposed building will be located too close to the residential uses nearby. Furthermore, the subject property is already overburdened by the existing buildings. There simply is not enough room on the site to permit an additional 20' x 200' warehouse storage shed as

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Date

By

proposed. I do not believe the relief requested is appropriate, and should therefore be denied.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested shall be granted in part and denied in part.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 17th day of May, 1994 that the Petition for Variance seeking relief from Sections 255.2 and 255.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a rear yard setback of 5 feet in lieu of the required 50 feet for a proposed warehouse storage shed, and a distance between the existing and proposed warehouse storage shed of 37 feet in lieu of the required 100 feet, in accordance with Petitioner's Exhibit 1, be and is hereby DENIED; and,

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Sections 255.2 and 255.1 of the B.C.Z.R. to permit a distance between the two existing sheds of 50 feet in lieu of the required 60 feet, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restriction:

- 1) The Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.

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Date

By

TMK:bjs


TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

IN RE: PETITION FOR VARIANCE
SW/S Fitch Avenue, 160'E of
the c/l of St. Thomas Drive
(4299 Fitch Avenue)
14th Election District
6th Councilmanic District

Pierce Hardy Real Estate Co.
Petitioner

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 94-377-A
*

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner as a Petition for Variance for that property known as 4299 Fitch Avenue, located in the Fullerton area of eastern Baltimore County. The Petition was filed by the owner of the property, the Pierce Hardy Real Estate Company, by Joseph A. Hardy. The Petitioner seeks relief from Sections 255.2 and 255.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a rear yard setback of 5 feet in lieu of the required 50 feet for a proposed warehouse storage shed, a distance between an existing shed and the proposed warehouse storage shed of 37 feet in lieu of the required 100 feet, and a distance between existing sheds of 50 feet in lieu of the required 60 feet. The subject property and relief sought are more particularly described on the three-page plans submitted into evidence as Petitioner's Exhibit 1.

Appearing on behalf of the Petition were William Myrick and Edward Sadler for 84 Lumber, Contract Lessee of the subject property. Appearing as Protestants in the matter were Sylvester J. Henkel, Jr., Gloria Kelly and Mildred C. Dempsey, all residents of St. Thomas Drive located directly behind the subject site.

Testimony revealed that the subject property consists of 3.11 acres, more or less, zoned M.L.-I.M. and is improved with a warehouse and

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Appearing in opposition to the Petitioner's request were Sylvester Henkel, Gloria Kelly and Mildred Dempsey, long-time residents of this area. All of the Protestants reside on St. Thomas Drive immediately adjacent to the location of the proposed warehouse storage shed. The Protestants object to the proposed location of this shed in such close proximity to their properties. Furthermore, they object to the noise that emanates from the subject site by virtue of the forklift trucks used in the warehouse operation. The Protestants feel that the proposed expansion will infringe upon their privacy and cause their properties to depreciate in value. They also believe that the storage of lumber products this close to their properties would be deemed a fire hazard in the event a fire broke out in the proposed shed.

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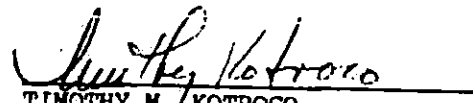
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- 1) The Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.


TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

ORDER RECEIVED FOR FILING

Date 5/17/94

By [Signature]

Any appeal from this decision must be in accordance with
Section 500.10 of the Baltimore County Zoning Regulations with
30 days.



William E. Bell
Zoning Commissioner
of
Baltimore County

plans shall have been previously approved by the Office of Planning and the Department of Public Works of Baltimore County."

Testimony at the hearing indicated that the Defendant is guilty of violating the above referenced Baltimore County Zoning Regulations in that full compliance with the site plan, approved June 4, 1982, has not been attained.

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 17th day of May, 1983, that any inconsistencies with the site plan must be corrected within 90 days from the date of this Order as set forth and agreed to by both parties:

1. 84 Lumber Company will plant evergreen trees at a distance similar to those planted on Fitch Avenue in accordance with the sketch shown on Attachment 2. The evergreens will be maintained in a living condition and if they turn brown or die, they will be replaced immediately or when agreed to by the parties concerned, upon notification by the residents of St. Thomas Drive.

2. 84 Lumber Company will install an additional section of screening on the fence as shown on Attachment 2.

3. 84 Lumber Company will maintain and regravell the gravelled area as necessary to keep the gravelled area from becoming muddy.

4. Parking of automobiles, trucks, vans, campers, etc., will be restricted to the designated parking areas shown on the overall site plan. Parking will not be permitted in the storage shed areas.

5. Lighting will be corrected to ensure that the residential homes adjacent to the 84 Lumber Company property are not illuminated.

6. 84 Lumber Company will take any necessary action to ensure that the area outside the fenced area of their property will be properly maintained, i.e., picking up litter, etc.

7. 84 Lumber Company will either remove the commercial sign which has been erected near Fitch Avenue or obtain a permit to keep it there. The sign is not shown on the existing site plan.

RE: ALLEGED ZONING VIOLATION : BEFORE THE
 4217 Fitch Avenue : ZONING COMMISSIONER
 14th Election District :
 84 Lumber Company : OF
 c/o David Darchuk :
 Land Development Director : BALTIMORE COUNTY
 P.O. Box 300 :
 Joppa, Maryland 21085 : 83-146-V, C-83-318
 Defendant :
 84 Lumber Company :
 c/o Lee Steiner, Manager :
 4217 Fitch Avenue :
 Baltimore, Maryland 21236 :
 Defendant :

: : : : : : : : : : :

A complaint has been filed with the Zoning Office concerning an alleged violation of the Baltimore County Zoning Regulations on property at the above location. A hearing was held to determine whether a violation exists.

The following Baltimore County Zoning Regulations are involved:

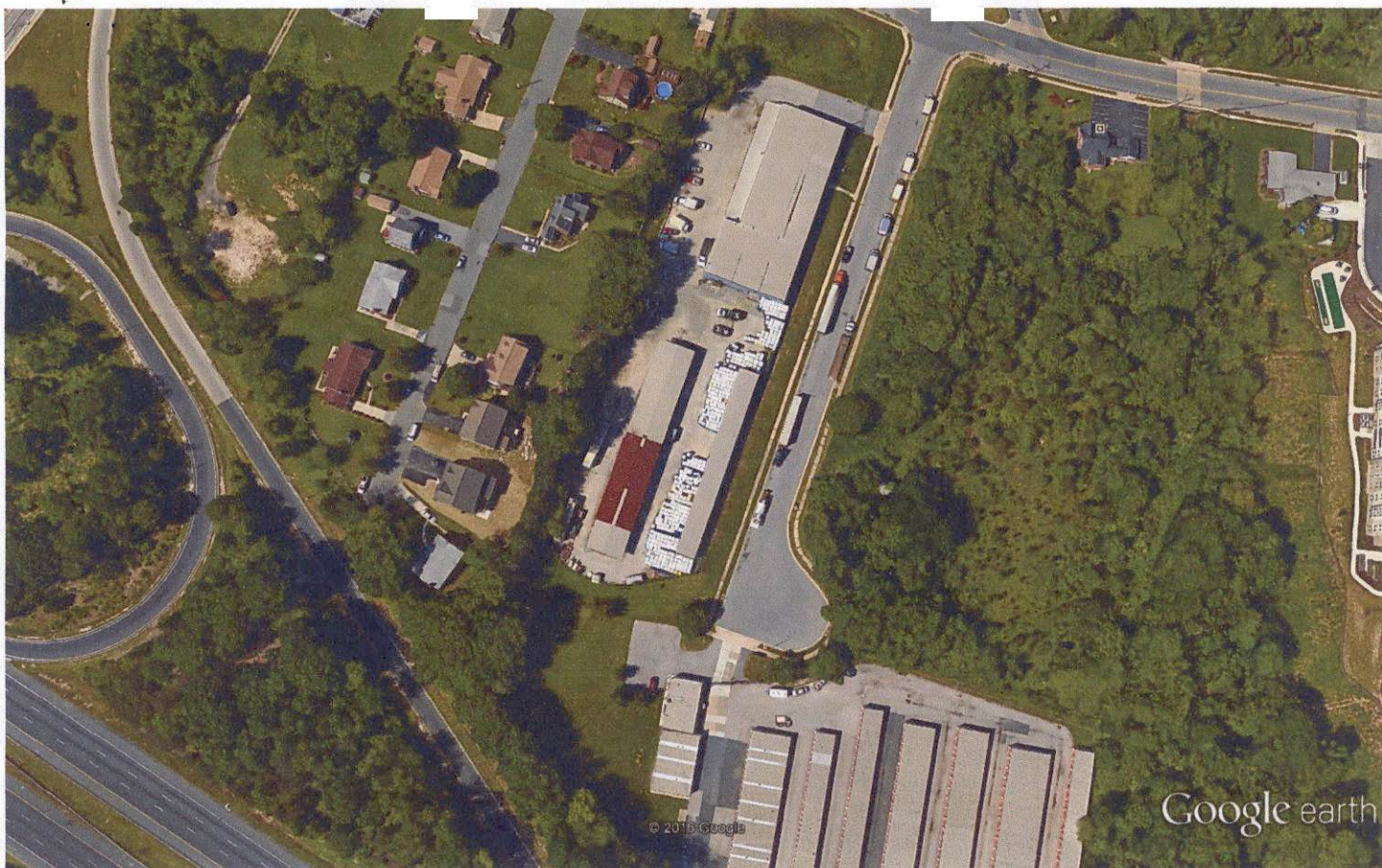
Section 102.1 - "No land shall be used or occupied and no building or structure shall be erected, altered, located, or used except in conformity with these regulations and this shall include any extension of a lawful nonconforming use."

Section 248 - "Use Regulations (M.L.R. Zone)."

Section 409.2.c(1) - "Screening - Offstreet parking facilities for more than five vehicles shall be screened by a wall, fence, or compact planting when adjoining or facing the side or rear lot line of residential or institutional premises or when they are across the street from such premises. Screening shall be at least 4 feet high. Planting shall not encroach on adjoining property. Screening shall not be so placed or maintained as to provide a traffic hazard through obstruction of visibility."

Section 413 - "Signs"

Section 500.9 - "The Zoning Commissioner shall have the power to require the production of plats of developments or subdivisions of land, or of any land in connection with which application for building or use permits or petitions for a Special Exception, a reclassification, or a temporary use shall be made, such plats to show the location of streets or roads and of buildings or other structures proposed to be erected, repaired, altered, or added to. All such plats shall be drawn to scale and shall clearly indicate the proposed location, size, front, side and rear setbacks from property lines and elevation plans of proposed buildings or other structures. Such details shall conform in all respects with Zoning Regulations. No such plats or plans, showing the opening or laying out of roads or streets, shall be approved by the Zoning Commissioner unless such plats or



Google earth

feet
meters



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4217 Fitch Avenue :
14th Election District : ZONING COMMISSIONER

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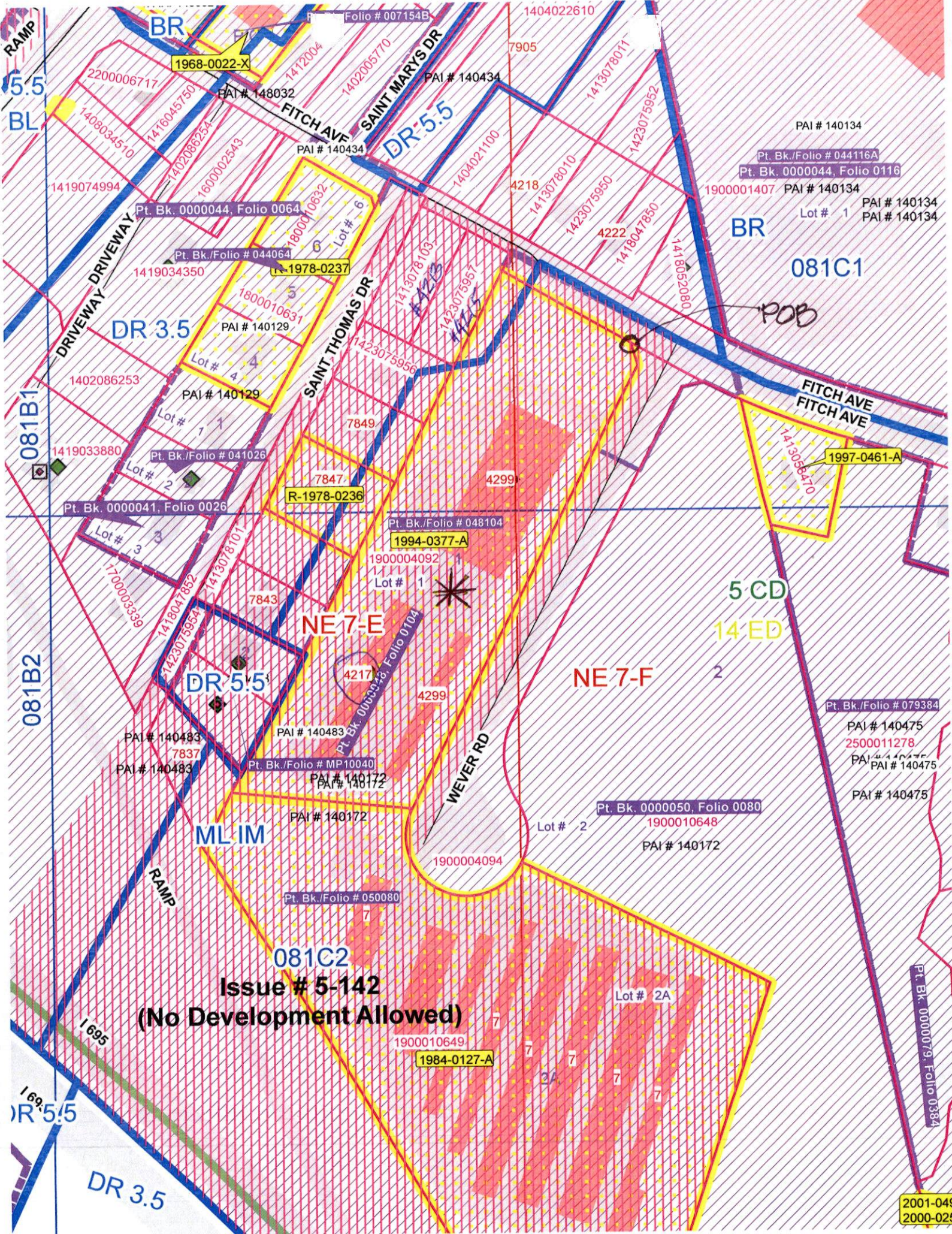
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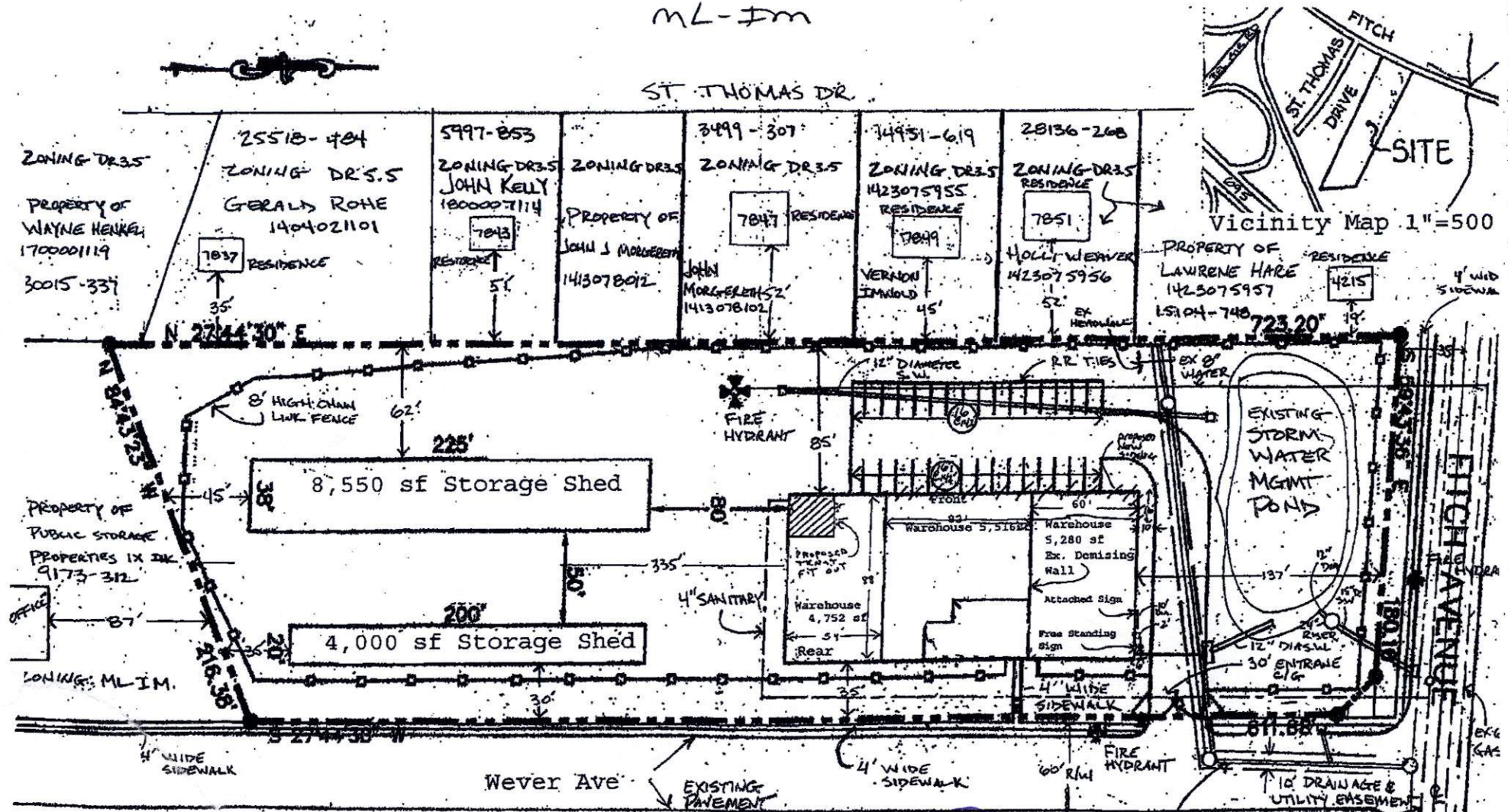
Zoning Commissioner
of
Baltimore County



**Issue # 5-142
(No Development Allowed)**

4299 Fitch Ave

ML-IM



4299 Fitch Ave
Scale 1" = 50'
Property zoned: ML IM
6th Councilmanic District
Property: +/- 3.1 acres gross area
F.A.R. = 17,248 / 135036 = 0.126
F.A.R. allowed =
A.O.S. - None required

Parking Data - Office General
office - 1,700 sf
3.3 spaces / 1,000 sf
3.3 x 1.7 = 6 spaces required
32 spaces shown
Typical spacing size 8.8 x 18
Paving Type: Macadam
Spaces permanently striped

Zoning Hearing Case No. 94-377A
May 10, 1994
Denied new shed at NW property line
Approved 50' in leau of 60' distance
between sheds



EX 24" STORM WATER
EX 8" SANITARY
EX 12" WATER
EX 36" STORM WATER