



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 21, 2016

Michael C. Lam
2709 Louise Avenue
Baltimore, Maryland 21214

RE: In the matter of: Michael Lam
Case No.: 17-003-A

Dear Mr. Lam:

The enclosed material was received by this office on December 19, 2016, is herewith returned to you.

The Board concluded the hearing in the subject matter on December 15, 2016, at which time the record was closed. The Public Deliberation occurred immediately following the hearing. The Board has made a determination and will be issuing a written Opinion and Order in the near future. A copy of the Minutes of Deliberation are enclosed for your convenience.

Therefore, I am returning to you the enclosed documents which cannot be placed in the subject file nor become a part of the record in this matter, which was closed on December 15, 2016.

Very truly yours,

A handwritten signature in black ink that reads "Sunny Cannington". The signature is written in a cursive, flowing style.

Krysundra "Sunny" Cannington
Administrator

Enclosures: Correspondence received from Michael C. Lam
Minutes of Deliberation

c (without enclosures):
Peter M. Zimmerman, Office of People's Counsel
David Dannenman
Frank Jording

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Michael C. Lam

17-003-A

DATE: December 15, 2016

BOARD/PANEL: Maureen E. Murphy, Chairman
Meryl W. Rosen
Benfred B. Alston

RECORDED BY: Tammy A. McDiarmid/Legal Secretary

PURPOSE: To deliberate the following:

1. Petition for Variance from BCZR Section 1B02.3.C.2 and 303.1 to permit a proposed single family dwelling to be on a parcel 50' wide and have a front yard setback of 31' in lieu of the required 55', and front yard average of 37.7', respectively; and
2. Amendment to Petition for Zoning Hearing to add a request for approval of an undersized lot per BCZR Section 304.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- The Board convened for a Hearing, then immediately following held the Public Deliberation.
- The Board noted that the original Petition for Variance in this case was filed requesting relief under Section 307, and the Amended Petition requests relief under Section 304.
- The Petitioner, Protestants and People's Counsel held discussions prior to the Hearing in an attempt to reach certain understandings on how to proceed.
- There was discussion as to whether or not the Petitioner should dismiss his appeal, and refile a new Petition for an undersized lot per BCZR Section 304.
- At the hearing the parties agreed that the Board will remand the case to the Administrative Law Judge with instructions that he remand the case to the appropriate County agencies to process the Petition under Section 304. The County agencies will provide their recommendations to the Administrative Law Judge, who will then hold a hearing.
- People's Counsel has agreed not to object to the review under Section 304, and will not make a claim of collateral estoppel or *res judicata*.

FINAL DECISION: After thorough review of the facts, testimony and law in the matter, the Board unanimously agreed to REMAND the case to the Administrative Law Judge, with instruction to remand to the appropriate County agencies to process the request under BCZR Section 304.

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

Respectfully Submitted,



Tammy A. McDiarmid



Board of Appeals of Baltimore County

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

October 28, 2016

NOTICE OF ASSIGNMENT

IN THE MATTER OF:

Michael C. Lam
6803 Woodrow Avenue
17-003-A 12th Election District; 7th Councilmanic District

Re: Petition for Variance relief from Sections 1B02.3.C.1 and 303.1 of the BCZR to permit a proposed single family dwelling to be on a parcel 50' wide and have a front yard setback of 31' in lieu of the required 55', and front yard average of 37.7', respectively.

9/19/16 Opinion and Order of the Administrative Law Judge wherein the Petition for Variance was DENIED.

10/12/16 Administrative Law Judge Order on Motion for Reconsideration wherein the Motion was DENIED.

ASSIGNED FOR: THURSDAY, DECEMBER 15, 2016, AT 10:00 A.M.

LOCATION:

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

NOTICE:

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

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

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

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

Krysundra "Sunny" Cannington, Administrator

c: Petitioner/Legal Owner

: Michael C. Lam

Protestants

: David Dannenman, Frank Jording

Ebenezer Olarewaju

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

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



Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Jefferson Building
105 West Chesapeake Avenue, Room 204
Towson, Maryland 21204

410-887-2188
Fax: 410-823-4236

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

December 6, 2016

HAND-DELIVERED
Maureen Murphy, Chair
County Board of Appeals of Baltimore County
The Jefferson Building
105 West Chesapeake Avenue, Suite 203
Towson, MD 21204

RECEIVED
DEC 06 2016

BALTIMORE COUNTY
BOARD OF APPEALS

Re: Michael Lam
6803 Woodrow Avenue
Case No.: 2017-003-A
Hearing Date: December 15, 2016 at 10:00 a.m.

Dear Ms. Murphy:

Upon review of the file, we note that on November 22, 2016, the Petitioner has filed an "Amendment to Petition for Zoning Hearing." The gist of the proposed amendment is to add a request for approval of an undersized lot per BCZR Sec. 304. We also note a reference to this section in his October 17, 2016 "Request for Zoning Variance (sic) Appeal.

Under these circumstances, we must address a threshold issue concerning jurisdiction to consider such an amendment.

The July 1, 2016 zoning petition, as filed, requested only a variance from BCZR Sec. 1B02.3.C.2 and 303.1. There was no request for consideration or approval of an undersized lot under BCZR Sec. 304.

Subsequently, in his September 19, 2016 opinion and order, ALJ John Beverungen denied the variance relief. While the opinion mentioned the hypothetical possibility of a petition under BCZR Sec. 304, he noted that, "In any event, the Petitioner did not seek relief under B.C.Z.R. Sec. 304 and it will be up to the zoning review office in the first instance to determine whether the owner can seek a building permit in these circumstances."

On October 1, 2016, Petitioner filed with the ALJ a "Request for Zoning Variance (sic) Reconsideration", adding an expanded request for an undersized lot under BCZR Sec. 304. ALJ Beverungen denied the request in his October 12, 2016 Order on Motion for Reconsideration. He wrote,

"Now pending is a Motion for Reconsideration, filed by Petitioner on October 1, 2016. Therein, Petitioner contends he is entitled to relief under B.C.Z.R. §304.1, concerning undersized lots.

As noted in the original Order, Petitioner sought only variance relief under B.C.Z.R. §§ 1B02.3.C.1 and 303.1. The petition did not contain a special hearing request under B.C.Z.R. §304.1 not was an amendment sought at the hearing to include such a request. As such, the Motion for Reconsideration must be denied.

WHEREFORE, IT IS ORDERED, this 12th day of October, **2016**, by the Administrative Law Judge for Baltimore County, that the Petitioner's Motion for Reconsideration, be and is hereby DENIED"

Please note that BCZR Sec. 304 has a different set of standards from the variance standards under BCZR Sec. 307.1 and is subject also to public notice, a public hearing request, and both threshold and compatibility standards. BCZR Sec. 304.1 to 304.7.

Our office agrees with ALJ Beverungen that Petitioner's added or expanded request under BCZR Sec. 304 may not be considered because not within the scope of the zoning petition. In this context, the public notice, opportunity to be heard, and ALJ hearing were all within the framework and jurisdiction of the petition as filed for a zoning variance only.

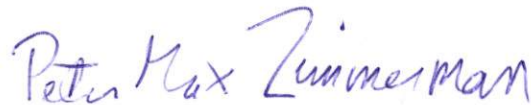
A similar issue arose in Carol Morris/CG Homes, CBA Case No. 15-302-A, 206 Morris Avenue. Our office moved to dismiss a virtually identical CBA amendment to the petition on appeal to add an undersized lot request, where the request likewise had arisen for the first time after the ALJ hearing and upon motion for reconsideration of an ALJ variance denial. There, in its October 24, 2016 Opinion and Order, the CBA majority concluded that it was improper and jurisdictionally objectionable for Petitioners to introduce, post-ALJ hearing and/or on appeal, an added or expanded request for undersized lot where the zoning petition was for a variance only. We enclose the CBA decision, along with a November 7, 2016 Amended Decision which just amended the caption to encompass separate case 16-201-SPH. The Petitioners there decided to sell the property to the adjacent property owner, Walter Brewer, who did not wish to develop the subject property on 206 Morris Avenue. So, those cases are over.

For all these reasons, there is no jurisdiction for the CBA to consider, add, or include an undersized lot request in the context of the appeal of the present denial of Petitioner's request for variance. Whether or not such may be considered upon the filing of a subsequent

new petition is a question which is not ripe to answer here, but may be considered in the event Petitioner undertakes to file such a separate petition.

We ask the Board to consider the aforesaid jurisdictional issue as a preliminary legal issue at the commencement of the December 15, 2016 hearing. We are sending copies of this letter to Petitioner (and to his e-mail address) and to other listed interested parties.

Very truly yours,



Peter Max Zimmerman
People's Counsel for Baltimore County

PMZ/rmw
Enclosures

cc: Michael C. Lam, 2709 Louise Avenue, Baltimore, MD 21214, Petitioner,
sent via first class mail and e-mail
Ebenezer Olarewaju, 3607 Langrehr Rd, Baltimore, MD 21244,
Petitioner's Representative
David Dannenman, 6801 Woodrow Avenue, Baltimore, MD 21224
Frank Jording, 6805 Woodrow Avenue, Baltimore, MD 21224

IN THE MATTER OF:
CAROL LYNN MORRIS AND
C.G. HOMES
206 MORRIS AVENUE

8th Election District
3rd Councilmanic District

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. 15-302-SPHA and 16-201-SPH

* * * * *
AMENDED OPINION

On October 24, 2016, this Board issued an Opinion and Order in the above-captioned matter.

Rule 11 of the Board's Rules of Practice and Procedure states as follows:

Within thirty (30) days after the entry of an order, the board shall have revisory power and control over the order in the event of fraud, mistake or irregularity.

Accordingly, the Board has reviewed its Opinion and Order issued in these proceedings and finds that an error existed within that Opinion and Order. The caption failed to include related case number 16-201-SPH even though the Majority and Dissenting Opinions discussed a request to consolidate the cases.

IT IS THEREFORE ORDERED that the caption of the Opinion and Order is hereby amended to read:

IN THE MATTER OF:
CAROL LYNN MORRIS AND
C.G. HOMES
206 MORRIS AVENUE

8th Election District
3rd Councilmanic District

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. 15-302-SPHA and 16-201-SPH

Amended Opinion
In the matter of: C.G. Homes
Case number 15-302-SPHA and 16-201-SPH

No other changes having been made, any Petition for Judicial Review will be filed from the date of the Board's original Opinion and Order issued October 24, 2016.

BOARD OF APPEALS
OF BALTIMORE COUNTY

Benjamin B. Alston
Benjamin B. Alston, Panel Chairman

Jason S. Garber
Jason S. Garber

James H. West / KC
James H. West

IN THE MATTER OF:
CAROL LYNN MORRIS AND
C.G. HOMES
206 MORRIS AVENUE

8th Election District
3rd Councilmanic District

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. 2015-302-SPHA

* * * * *

OPINION AND ORDER

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

Procedural History

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

In the Matter of Carol Lynn Morris/C.G. Homes /2015-302-SPHA

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

Special Hearing to approve a confirmation that density of the surrounding neighborhood is not being affected. Variance to permit a proposed dwelling with a side setback of 10 feet in lieu of the minimum setback of 15 feet with a sum of 25 feet in lieu of required 40 feet; to permit a lot width of 63 feet in lieu of the required 100 feet, a lot area of 14,189 sq. ft. in lieu of the required 20,000 sq. ft.

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

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

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

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

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

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

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

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

Discussion

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This is not a matter where a full public hearing can be dispensed with either. To be excused from a hearing, the property must be an owner-occupied lot zoned residential, and in order to receive a variance without a hearing, the petitioner is required to file a supporting affidavit with the petition under oath made on the personal knowledge of the petitioner that sets forth facts that would otherwise satisfy the petitioner's burden of proof if a hearing were to be required. (BCC §§32-3-303(a)(1), (a)(2)(i).) The affidavit is in addition to the information required by the Administrative Law Judge³ on the petition. (BCC §32-3-303 (a)(2)(ii).) The Administrative Law Judge may not grant a variance under this section unless notice of the petition is conspicuously posted on the property for a period of at least 15 days following the filing of the application in accordance with the requirement of the Department of Permits, Approvals and Inspections. (BCC §32-3-303(a)(3).)

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

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

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

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

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

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

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

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

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

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

Conclusion

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

ORDER

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

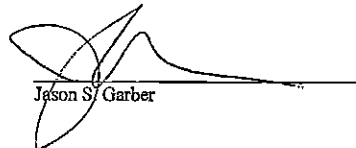
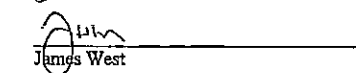
ORDERED that People's Counsel's Motion to Dismiss is hereby GRANTED. The Petitioners' §304 Reconsideration Petition and related Amended Petition are DISMISSED; and

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

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

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

BOARD OF APPEALS
OF BALTIMORE COUNTY


Jason S. Garber

James West

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

* * * * *

DISSENTING OPINION

I respectfully disagree with the Majority's Opinion as it relates to their interpretation of the public notice requirements enumerated in Section 304 of the Baltimore County Zoning Regulations (BCZR) and their conclusion that the Petition for Special Hearing filed by Carol Lynn Morris and C.G. Homes (hereinafter collectively referred to as the "Petitioners") should be dismissed because there was inadequate public notice provided to the Lutherville Community Association and several nearby property owners (the "Protestants") and that the Board of Appeals of Baltimore County lacked jurisdiction to conduct a *de novo* Special Hearing.

On June 25, 2011, the Petitioners filed a zoning petition for a D.R. 2 zoned lot located in the historic district of Lutherville, known as 206 Morris Avenue (the "Subject Property"), requesting a Special Hearing under BCZR Section 500.7 and Variances of the area size and setback requirements enumerated in BCZR Section 1B02.3.C.1 (Development Standards for Small Lots or Tracts in a D.R. Zone). The public notice requirement attached to the June 17, 2015 Site Plan was consistent with the Petitioner's proposed dwelling outline and setbacks. In accordance with BCZR 307.1 (Authority to Grant Variances; Procedures and Restrictions) and Baltimore County Code (BCC) Section 32-3-303 (Administrative Special Hearing), signs were timely and properly posted on the Subject Property and thereafter a hearing was held on September 4, 2015 (the "September

4th Hearing”) before Administrative Law Judge John E. Beverungen (the “ALJ”). The Lutherville Community Association and other nearby neighbors, David and Marie Frederick, Walter Brewer, Jr. and Martin Reis, were present at the September 4th Hearing before the ALJ¹. The Lutherville Community Association was also represented by legal counsel.

In his Opinion and Order dated September 9, 2015, the ALJ denied the Petitioners their requested relief because the Subject Property lacked the “inherent attributes or uniqueness required to obtain variance relief under BCZR Section 307.1...” Although the ALJ denied the Petitioners’ request for a variance, he opined the following:

Instead, and as discussed at the hearing, B.C.Z.R. §304 (entitled ‘Use of Undersized Single-Family Lots’) was designed to address the scenario in this case; i.e., where a lot of record, by virtue of a subsequent down-zoning, becomes undersized or deficient, preventing the owner from erecting a house thereon. In Mueller v. People’s Counsel, 177 Md. App. 43 (2007), the court of special appeals described the two methods by which an owner may receive permission to construct a dwelling on an undersized lot: B.C.Z.R. §307, which requires a showing of uniqueness and practical difficulty, and B.C.Z.R. §304, which does not. Id. at 87. While Petitioners satisfy two of the required elements under §304 (a lot recorded prior to 1955 and they own no adjoining land), they do not satisfy the area requirements of the zone (i.e., side yard setbacks). Assuming Petitioners could construct on this lot a dwelling which complied with the setback requirements of the D.R. 2 zone, they could take advantage of §304.

Apparently based upon the ALJ’s comments, on September 18, 2015, the Petitioners filed a Motion for Reconsideration requesting that the ALJ grant the Petitioners relief from the area size and setback restrictions imposed by BCZR Section 1B02.3.C.1 under BCZR Section 304 (Use of Undersized Single Family Lots). On October 2, 2015, the Protestants represented by legal counsel filed an Opposition to the Motion for Reconsideration. No additional public notice was requested by the Petitioners and none of the parties to the dispute requested that the ALJ hold a hearing on

¹ The Citizen’s Sign-in Sheet show that 14 Lutherville residents appeared at the September 4th Hearing.

the Motion for Reconsideration.

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

On December 1, 2015, the Petitioners filed an Amended Petition for Variance and Special Hearing. On January 20, 2016, People’s Counsel filed a Motion to Dismiss the Petition for Variance and Special Hearing. People’s Counsel asserted that the Petitioner’s failed to provide adequate public notice and therefore must be dismissed by the Board. A Majority of the Board agreed stating that the Petitioner failed to provide adequate notice pursuant to §304 of the Baltimore County Zoning Regulations (BCZR); therefore, its amended Petition for Variance and Special Hearing must be dismissed without a *de novo* hearing.

DISCUSSION

I respectfully disagree with the Majority that the Board lacked jurisdiction to hear this matter because the Petitioner’s failed to provide adequate notice. The purpose of the requirement of public notice is to inform any affected party there is a request or application that is intended to affect the zoning of a particular property. See, Largo Civic Association v. Prince George’s County, 21 Md. App. 318 (1974). Where there has been substantial compliance the statute or rule by one party and the other party has not been prejudiced, technical irregularities cannot be used to deny a person’s legal rights. Furthermore, failure to provide proper notice is a jurisdictional issue and perhaps fatal to the petitioner’s action, the requirement of notification may be satisfied if the objecting party actually appears at the hearing. McLay v. Maryland Assemblies, Inc., 269 Md. 465 (1973).

The notice requirements enumerated in Sections 304² and 307³ of the Baltimore County Zoning Regulations (BCZR) are substantially similar. The public notice requirements issued for the Petitioner's request to deviate from the requirements set forth in §303 of the BCZR clearly advertized to the persons interested that a specific activity would affect the Subject Property. The public notice clearly put all interested persons on notice that the Petitioner wanted a variance to construct a house on an undersized lot. In the ALJ hearing, it was determined that the Petitioner had not met her burden to support the issuance of a variance. However, at that same hearing, the Protestants raised the issue *sua sponte* that the Petitioner could have used §304 of the BCZR (Use of Undersized Lots) to construct a dwelling on the Subject Property. In fact, ALJ stated in the Petitioner's Motion for Reconsideration that the Protestants provided extensive testimony on the use of §304 of the BCZR to construct a dwelling on the Subject Property. Based upon the Motion for Reconsideration and over the opposition filed by the Protestants, the ALJ held that, pursuant §304.4 of the BCZR, the Petitioner could construct a dwelling on the Subject Property subject to certain conditions.

Pursuant to §4-305 of the Land Use Article of the Annotated Code of Maryland (the "Land Use Article"), the Board may "hear and decide appeals when it is alleged that there is an error in any order, requirement, decision, or determination made by an administrative officer or unit under this division or of any local law adopted under this division. As such, clearly, the appeal of the ALJ Reconsideration Opinion was within the purview of the Board.

The Protestants were fully aware that the Petitioner wanted to construct a dwelling on the undersized Subject Property pursuant to the terms and conditions set forth in §304 of the BCZR. The Protestants filed an opposition to the Petitioner's Motion for Reconsideration as such it cannot

² See, Section 304.3 of the BCZR at Appendix, Page 20.

³ See, Section 32-3-302 of the BCC at Appendix, Page 22.

be said that they were unaware of subject matter of the Special Hearing. Indeed, the Protestant's participated in every proceeding involving the Subject Property. Also, the grounds for the Special Hearing were properly formulated and issues to be presented in the Special Hearing were adequately delineated. See, Board of County Commissioners v. Southern Residential Management, 154 Md. App. 10 (2003). In addition, the Protestants were neither surprised nor prejudiced by the impending Special Hearing that was to be held by the Board and could have adequately defended their position that the Petitioner did not meet the statutory requirements set forth in §304 of the BCZR.

Even though a hearing before the Board may not have offered the Petitioner the relief they sought, the Board had jurisdiction because the Protestants had adequate notice and it is a matter squarely within §4-305 of the Land Use Article. In sum, there was substantial notice because (1) the publication issued by Petitioner, pursuant to §307.1 of the BCZR, is very similar to the publication requirements set forth in §304.3 of the BCZR, (2) the Protestants actually participated in every aspect of the proceedings involving the Subject Property, (3) the grounds for the Special Hearing were properly formulated and issues to be presented in the Special Hearing were adequately delineated for Protestants review and (4) the Protestants were they neither prejudiced nor surprised by any issue that would have been adjudicated, *de novo*, before the Board.

For the reasons stated above, I respectfully disagree with the Majority Opinion that the Board lacked jurisdiction to hear this matter because the Petitioner's failed to provide adequate notice.

October 24, 2016
Date

Benfred B. Alston
Benfred B. Alston

APPENDIX

ARTICLE 3 (BCZR). Exceptions to Height and Area Requirements

SECTION 300 Height Exceptions

§300.1. Applicability.

- A. The height limitations of these regulations shall not apply to barns and silos, grain elevators or other accessory agricultural buildings, nor to church spires, belfries, cupolas, domes, radio or television aerials, drive-in theater screens, observation, transmission or radio towers, or poles, flagstaffs, chimneys, parapet walls which extend not more than four feet above the limiting height, bulkheads, water tanks and towers, elevator shafts, penthouses and similar structures, provided that are such structures shall not have a horizontal area greater than 25% of the roof area of the building. A satellite receiving dish is subject to the height limitations of the zone in which the dish is located.
However, in residential zones, the height of an accessory satellite dish may not exceed 15 feet, unless it is located on the roof of a building.
- B. Notwithstanding the provisions of Subsection 300.1.A, no appurtenances to any building in a B.L. B.M. or B.R. Zone shall exceed the heights specified in Section 231 except any flagstaff, any church spire and any pole for a radio and television aerial not exceeding 50 feet in height *above* the base thereof and not displaying any lettering, sign or other advertising emblem or device.

SECTION 303. Front Yard Depths in Residence and Business Zones

§303.1. Standards for D.R.2, D.R.3.5 and D.R.5.5 Zones.

In D.R.2, D.R.3.5 and D.R.5.5 Zones, the front yard depth of any building hereafter erected shall be the average of the front yard depths of the lots immediately adjoining on each side, provided such adjoining lots are improved with principal buildings situate within 200 feet of the joint side property line, but where said immediately adjoining lots are not both so improved, then the depth of the front yard of any building hereafter erected shall be not less than the average depth of the front yards of all improved lots within 200 feet on each side thereof, provided that no dwelling shall be required to be set back more than 60 feet in D.R.2 Zones, 50 feet in D.R.3.5 Zones and 40 feet in D.R.5.5 Zones. In no case, however, shall nonresidential principal buildings have front yards of

less depth than those specified therefore in the area regulations for D.R.2, D.R.3.5 and D.R.5.5 Zones respectively.

SECTION 304. Use of Undersized Single-Family Lots

§ 304.1. Types of dwellings allowed; conditions.

Except as provided in Section 4A03, a one-family detached or semidetached dwelling may be erected on a lot having an area or width at the building line less than that required by the area regulations contained in these regulations if:

- A. Such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to March 30, 1955;
- B. All other requirements of the height and area regulations are complied with; and
- C. The owner of the lot does not own sufficient adjoining land to conform to the width and area requirements contained in these regulations.

§304.2. Building permit application.

- A. Any person desiring to erect a dwelling pursuant to the provisions of this section shall file with the Department of Permits, Approvals and Inspections, at the time of application for a building permit, plans sufficient to allow the Department of Planning to prepare the guidelines provided in Subsection B below. Elevation drawings may be required in addition to plans and drawings otherwise required to be submitted as part of the application for a building permit. Photographs representative of the neighborhood where the lot or tract is situated may be required by the Department of Planning in order to determine appropriateness of the proposed new building in relation to existing structures in the neighborhood.
- B. At the time of application for the building permit, as provided above, the Director of Permits, Approvals and Inspections shall request comments from the Director of the Department of Planning (the "Director"). Within 15 days of receipt of a request from the Director of Permits, Approvals and Inspections, the Director shall provide to the Department of Permits, Approvals and Inspections written recommendations concerning the application with regard to the following:
1. Site design. New buildings shall be appropriate in the context of the neighborhood in which they are proposed to be located. Appropriateness shall be evaluated on the basis of new building size, lot

coverage, building orientation and location on the lot or tract.

2. Architectural design. Appropriateness shall be evaluated based upon one or more of these architectural design elements or aspects:

- a. Height.
- b. Bulk or massing.
- c. Major divisions, or architectural rhythm, of facades.
- d. Proportions of openings such as windows and doors in relation to walls.
- e. Roof design and treatment.
- f. Materials and colors, and other aspects of facade texture or appearance.

3. Design amendments. The Director may recommend approval, disapproval or modification of the building permit to conform with the recommendations proposed by the Department of Planning.

§304.3. Public notice.

Upon application for a building permit pursuant to this section, the subject property shall be posted conspicuously, under the direction of the Department of Permits, Approvals and Inspections, with notice of the application for a period of at least 15 days.

§304.4. Public hearing.

Within the fifteen-day posting period: (1) Any owner or occupant within 1,000 feet of the lot may file a written request for a public hearing with the Department of Permits, Approvals and Inspections, or (2) the Director of Permits, Approvals and Inspections may require a public hearing. The Department of Permits, Approvals and Inspections shall notify the applicant within 20 days of the receipt of a request for a public hearing. A hearing before the Zoning Commissioner shall be scheduled within 30 days from receipt of the request for public hearing. At the public hearing, the Zoning Commissioner shall make a determination whether the proposed dwelling is appropriate.

SECTION 307. Variances

§ 307.1 Authority to grant variances; procedures and restrictions.

The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations, and from sign regulations only in cases where

special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. No increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations, and only in such manner as to grant relief without injury to public health, safety and general welfare. They shall have no power to grant any other variances. Before granting any variance, the Zoning Commissioner shall require public notice to be given and shall hold a public hearing upon any application for a variance in the same manner as in the case of a petition for reclassification. Any order by the Zoning Commissioner or the County Board of Appeals granting a variance shall contain a finding of fact setting forth and specifying the reason or reasons for making such variance.

SUBTITLE 3 (BCC). Variances

§ 32-3-301. - Authority Of Zoning Commissioner.

- (a) *In general.* Except as provided in § 32-3-515 of this title and consistent with the general purpose, intent, and conditions set forth in the Baltimore County Zoning Regulations, upon petition, the Zoning Commissioner may:
- (1) Grant variances from area and height regulations;
 - (2) Interpret the zoning regulations; and
 - (3) Grant special exceptions.
- (b) *Appeal.* A decision of the Zoning Commissioner under subsection (a) of this section may be appealed to the Board of Appeals as provided in this article.
- (c) *Conditional or restricted variance.* The Zoning Commissioner may grant a variance with conditions or restrictions that the Zoning Commissioner determines are appropriate for the purpose of protecting the health, safety, or general welfare of the surrounding community.

§ 32-3-302. - Same - Hearing Required; Notice.

- (a) *In general.* Except as provided in § 32-3-303 of this subtitle, the Department of Permits, Approvals and Inspections shall schedule a public hearing on a petition for a variance or special exception for a date not less than 21 days and not more than 90 days after the petition is accepted for filing.
- (b) *Notice.*
1. The Department of Permits, Approvals and Inspections shall ensure that notice of the time and place of the hearing relating to the property under

petition be provided:

- (i) By conspicuously posting the notice on the property for a period of at least 20 days before the date of the hearing;
- (ii) By a notice in at least one newspaper of general circulation at least 20 days before the hearing; and

(iii) By posting notice on the county's internet website.

2. The notice shall provide:

- (i) The address of the property under petition or, if not available, a description of the property; and
- (ii) The action requested by the petition.

(c) *Referral to Director of Planning.* Once a hearing date for a petition is established, the Department of Permits, Approvals and Inspections shall promptly forward a copy of the petition to the Director or Deputy Director of the Department of Planning for consideration and a written report containing findings relating to planning factors.

§ 32-3-303. - Same - Administrative Special Hearing.

(a) *In general*

(1) Notwithstanding the hearing requirements under § 32-3-302 of this subtitle, the Zoning Commissioner may grant variances from area and height regulations without a public hearing if the variance petition involves an owner-occupied lot zoned residential, as defined by the Baltimore County Zoning Regulations.

(2) (i) In order to receive a variance without a hearing, the petitioner shall file a supporting affidavit with the petition under oath made on the personal knowledge of the petitioner that sets forth facts that would otherwise satisfy the petitioner's burden of proof if a hearing were to be required.

(ii) The affidavit is in addition to the information required by the Zoning Commissioner on the petition.

(3) The Zoning Commissioner may not grant a variance under this section unless notice of the petition is conspicuously posted on the property for a period of at least 15 days following the filing of the application in accordance with the requirement of the Department of Permits, Approvals and Inspections.

1. *Request for public hearing.*

- Within the 15 day posting period required under subsection (a)(3) of this

section, an occupant or owner within 1,000 feet of the lot in question may file a written request for a public hearing with the Department of Permits, Approvals and Inspections.

- The Department shall schedule a hearing to be held on a date within 75 days after receiving a request for a public hearing.

2. *Discretion of Commissioner to require a hearing.* If a written request for a public hearing is not filed, the Zoning Commissioner may:

- Grant the variance without a public hearing, if the requested variance is in strict harmony with the spirit and intent of the height and area requirements of the Baltimore County Zoning Regulations, and any other applicable requirement; or
- Require a public hearing during which the petitioner shall be required to satisfy the burden of proof required by the Baltimore County Zoning Regulations for the variance to be granted.

Section 4-305 of the Land Use Article of the Annotated Code of Maryland

A board of appeals may:

- A. hear and decide appeals when it is alleged that there is an error in any order, requirement, decision, or determination made by an administrative officer or unit under this division or of any local law adopted under this division;
- B. hear and decide special exceptions to the terms of a local law on which the board is required to pass under the local law; and
- C. authorize on appeal in specific cases a variance from the terms of a local law.

AMENDMENT TO PETITION FOR ZONING HEARING- Case No.: 2017-0003 A

Re: 6803 Woodrow Avenue, Baltimore County, Maryland.

Now comes the Owner, Michael C. Lam, and says:

The undersigned legal owner of the above referenced property situate in Baltimore County, Maryland and which is described in the original petition and plan and says:

1. Petitioner is also seeking relief pursuant to B.C.Z.R Section 304 which provides:

Except as provided in Section 4A03, a one-family detached or semidetached dwelling may be erected on a lot having an area or width at the building line less than that required by the area regulations contained in these regulations if:

A.

Such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to March 30, 1955;

B.

All other requirements of the height and area regulations are complied with; and

C.

The owner of the lot does not own sufficient adjoining land to conform to the width and area requirements contained in these regulations.

Wherefore the Petitioner requests, that in addition to and/or in the alternative to the relief previously requested, that he be permitted to build a dwelling in conformity with the above referenced citation.

Owner: Michael Lam: Michael C. Lam
2709 Louise Ave., Baltimore, Md. 21214
443 506 754#

RECEIVED
NOV 22 2016

BALTIMORE COUNTY
BOARD OF APPEALS



KEVIN KAMENETZ
County Executive

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

October 20, 2016

Michael C. Lam
2709 Louise Avenue
Baltimore, Maryland 21214

RECEIVED
OCT 20 2016

RE: **APPEAL TO BOARD OF APPEALS**
Case Nos. 2017-0003-A
Location: 6803 Woodrow Avenue

BALTIMORE COUNTY
BOARD OF APPEALS

Dear Mr. Lam:

Please be advised that an appeal of the above-referenced case was filed in this Office on October 17, 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 a horizontal line.

LAWRENCE M. STAHL
Managing Administrative Law Judge
for Baltimore County

LMS/sln

c: Baltimore County Board of Appeals
Peter Max Zimmerman, People's Counsel for Baltimore County
Ebenezer Olarewaju, 3607 Langrehr Road, Baltimore, Maryland 21244
David Dannenman, 6801 Woodrow Avenue, Baltimore, Maryland 21224
Frank Jording, 6805 Woodrow Avenue, Baltimore, Maryland 21224



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

January 12, 2017

Michael C. Lam
2709 Louise Avenue
Baltimore, Maryland 21214

RE: *In the Matter of: Michael C. Lam*
Case No.: 17-003-A

Dear Mr. Lam:

Enclosed please find a copy of the Remand Order 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,

A handwritten signature in cursive script that reads "Sunny Cannington Han".

Krysundra "Sunny" Cannington
Administrator

KLC/tam
Enclosure

c: David Dannenman
Frank Jording
Ebenezer Olarewaju
Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Deputy Administrative Officer and Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law

IN THE MATTER OF
MICHAEL C. LAM - PETITIONER
6803 Woodrow Avenue
Baltimore, MD 21224

Re: Petition for Variance

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. 17-003-A

* * * * *

REMAND ORDER

This matter comes before this Board on appeal of the denial by the Administrative Law Judge (“ALJ”) as contained in the Opinion and Order dated September 19, 2016 regarding a Petition for Variance from §§1B02.3.C.1 and 303.1 of the Baltimore County Zoning Regulations (“BCZR”) to permit a proposed single family dwelling to be on a parcel 50’ wide and have a front yard setback of 31’ in lieu of the required 55’ and front yard average of 37.7’, respectively, and from the denial by the ALJ of a Motion for Reconsideration dated October 12, 2016.

On or about November 22, 2016, the Petitioner, Michael C. Lam, (“Mr. Lam”) filed with this Board, *pro se*, a document styled “Amendment to Petition for Zoning Hearing” (the “Amended Petition”). In the Amended Petition, Mr. Lam sought relief under BCZR §304 entitled “Use of Undersized Single-Family Lots” (a “304 Case”).

This Board held a *de novo* hearing on December 15, 2016. Mr. Law appeared *pro se*. Peter Max Zimmerman, People’s Counsel for Baltimore County, attended the hearing. Also in attendance were Protestants David Dannenman and Frank Jording. Following the hearing, the Board publically deliberated.

Decision

Prior to the Board’s deliberation, People’s Counsel advised the Board that a 304 case involves

a process which is separate and apart from a request for variance relief under BCZR §307. People's Counsel further advised that this Board would not have jurisdiction to consider a 304 Case without the appropriate application having first been filed, and proper procedures having been followed, as set forth in BCZR §304 *et seq.* We agree.

Consistent with the Majority Opinion as written *In the Matter of Carol Lynn Morris/C.G. Homes*, Case No.: 15-302-SPHA, this Board's authority to hear a case *de novo* is an exercise of appellate jurisdiction rather than original jurisdiction. *Halle Companies v. Crofton Civic Ass'n*, 339 Md. 131, 143; 661 A.2d 682, 687-88 (1995). See also *Hardy v. State*, 279 Md. 489, 492, 369 A.2d 1043, 1046 (1977).

Mr. Lam and People's Counsel consented to this Board issuing the instant Remand Order such that this case would be remanded to the ALJ with instructions to remand this case to the appropriate County agencies as designated in BCZR §304. Mr. Lam agreed to file the application for a 304 case and to follow the proper procedures as set forth in BCZR §§304.2, 304.3, 304.4, 304.5 and if necessary, 304.6. Mr. Lam further understood and acknowledged that this Remand Order is *not* an approval to obtain a building permit under BCZR §304, but rather a procedural necessity to commence a 304 Case.

People's Counsel and the Protestants agreed that when the case is heard on the merits, they would not object to the filing of a 304 Case on any procedural grounds, including *res judicata* and *collateral estoppel*.

ORDER

Upon consideration of the arguments of the Parties at the hearing, it is this 12th day of

January, 2017, by the Board of Appeals of Baltimore County,

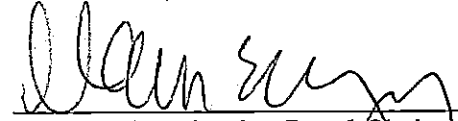
ORDERED that said above-captioned case be, and it is hereby **REMANDED** to the

Administrative Law Judge with instructions to **REMAND** the case to the appropriate County agencies as set forth in BCZR §304; and it is further,

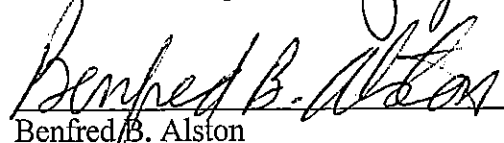
ORDERED, that Mr. Lam shall file the appropriate application and follow the proper procedures as set forth in BCZR §304.2, §304.3, §304.4, §304.5 and if necessary, §304.6 on appeal to this Board; and it is further,

ORDERED, that neither People's Counsel nor the Protestants shall oppose the 304 Case any procedural grounds, including *res judicata* and *collateral estoppel*.

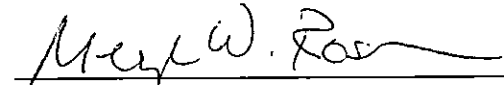
**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Maureen E. Murphy, Panel Chairman



Benfred B. Alston



Meryl W. Rosen



KEVIN KAMENETZ
County Executive

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

February 22, 2017

Michael C. Lam
2709 Louise Avenue
Baltimore, Maryland 21214

RE: **REMAND FROM BOARD OF APPEALS**
Petition for Variance / Property: 6803 Woodrow Avenue, 21224
Case No. 2017-0003-A

Dear Mr. Lam:

By memorandum dated February 14, 2017, the case file in the above matter was returned to this office by the Baltimore County Board of Appeals. In its order dated January 12, 2017, the Board instructed this Office to "remand" this case "to the appropriate County agencies as set forth in Baltimore County Zoning Regulations (B.C.Z.R.) § 304."

Unfortunately, the Office of Administrative Hearings (OAH) does not have authority to "remand" a case to County agencies for further review. If in fact you intend to seek relief under § 304, it will be incumbent upon you to contact the Baltimore County Office of Zoning Review and to file with that agency whatever application, petition and/or documents are required under the circumstances. You would also need to satisfy the posting and advertisement procedures set forth in the B.C.Z.R. Thereafter, the case would be scheduled for a public hearing.

Sincerely,


JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:dlw

c: Ebenezer Olarewaju, 3607 Langrehr Road, Baltimore, Maryland 21244
David Dannenman, 6801 Woodrow Avenue, Baltimore, Maryland 21224
Frank Jording, 6805 Woodrow Avenue, Baltimore, Maryland 21224
Office of People's Counsel
Kristen Lewis, PAI

BALTIMORE COUNTY, MARYLAND

Board of Appeals of Baltimore County

Interoffice Correspondence

Phone: 410-887-3180

Fax: 410-887-3182

To: John Beverungen, Administrative Law Judge

From: Tammy McDiarmid, Legal Secretary

Date: February 14, 2017

Re: In the Matter of: Michael C. Lam
Case No.: 17-003-A

Attached please find the Board of Appeals file for the above-referenced matter. The Board has remanded this matter to you for further action consistent with the Board's Order. After you have issued the necessary Order or Opinion, please send a copy to us for our records.

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

Thank you.

A handwritten signature in blue ink, appearing to read "Tammy McDiarmid", is written in a cursive style.

Debra Wiley

From: Debra Wiley
Sent: Wednesday, February 22, 2017 8:13 AM
To: Kristen L Lewis
Subject: Case No. 2017-0003-A - REMAND FROM BOA
Attachments: 20170222082022299.pdf

Hi Kristen,

Please see ALJ Beverungen's correspondence regarding the above matter.

Thanks.

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

From: adminhearingscpr@baltimorecountymd.gov [mailto:adminhearingscpr@baltimorecountymd.gov]
Sent: Wednesday, February 22, 2017 8:20 AM
To: Debra Wiley <dwiley@baltimorecountymd.gov>
Subject: Admin Hearings Copier

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

Scan Date: 02.22.2017 08:20:22 (-0500)

Queries to: adminhearingscpr@baltimorecountymd.gov

Board of Appeals

Case No: 17-003-A Case Name: Michael C. Lam

Exhibit List

Party: People's Counsel Date: 12-15-16

Exhibit No:	Description:
✓ 1	People's Counsel Sign-in sheet dated 12-15-16
VERIFIED BY <u>KC</u> DATE: <u>1/6/17</u>	

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE MEMORANDUM



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

DATE: July 27, 2016

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: ZONING ADVISORY COMMITTEE COMMENTS
Case Number: 17-003

INFORMATION:

Property Address: 6803 Woodrow Avenue
Petitioner: Michael C. Lam
Zoning: DR 5.5
Requested Action: Variance

The Department of Planning has reviewed the petition for a variance to permit a proposed single family dwelling to be on a parcel 50 feet wide and have a front yard setback of 31 feet in lieu of the required 55 feet wide and front yard average of 37.7 feet, respectively.

A site visit was conducted on July 19, 2016.

The Department of Planning has no objections to granting the requested zoning relief.

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

Prepared by:

Lloyd T. Moxley

Division Chief:

Kathy Schlabach

AVA/KS/LTM/ka

c: Krystle Patchak
Ebenezer Olarewaju
Office of the Administrative Hearings
People's Counsel for Baltimore County

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



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: July 11, 2016

SUBJECT: DEPS Comment for Zoning Item # 2017-0003-A
Address 6803 Woodrow Avenue
(Lam Property)

Zoning Advisory Committee Meeting of **July 18, 2016**.

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

Reviewer: Steve Ford

Date: 07-11-2016

TO: PATUXENT PUBLISHING COMPANY
Thursday, August 25, 2016 Issue - Jeffersonian

Please forward billing to:
Ebenezer Olarewaju
3607 Langrehr Road
Baltimore, MD 21244

410-984-1057

NOTICE OF ZONING HEARING

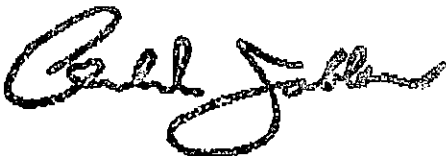
The Administrative Law Judge of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 2017-0003-A

6803 Woodrow Avenue
S/s Woodrow Avenue, 248 ft. w/of 45th Street
12th Election District – 7th Councilmanic District
Legal Owners: Michael Lam

Variance to permit a proposed single family dwelling to be on a parcel 50 ft. wide and have front yard setback of 31 ft. in lieu of the required 55 ft. and front yard average of 37.7 ft., respectively.

Hearing: Thursday, September 15, 2016 at 11:00 a.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204



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

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

**DEPARTMENT OF PERMITS, 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: 2017-0003-A
Property Address: 6803 Woodrow Ave
Property Description: South side of Woodrow Ave
248' west of 45th St.
Legal Owners (Petitioners): M C Lam
Contract Purchaser/Lessee: _____

PLEASE FORWARD ADVERTISING BILL TO:

Name: EBENEZER OLAREWAJU
Company/Firm (if applicable): _____
Address: 3607 LANGREHR ROAD
BALTIMORE MD 21244
Telephone Number: 410-984-1057

Revised 5/20/2014

C H E C K L I S T**Comment
Received****Department****Support/Oppose/
Conditions/
Comments/
No Comment**7/18DEVELOPMENT PLANS REVIEW
(if not received, date e-mail sent _____)N/C7/11DEPS
(if not received, date e-mail sent _____)N/C7/27

FIRE DEPARTMENT

PLANNING
(if not received, date e-mail sent _____)NO Obj7/11

STATE HIGHWAY ADMINISTRATION

NO Obj

TRAFFIC ENGINEERING

COMMUNITY ASSOCIATION

ADJACENT PROPERTY OWNERS

ZONING VIOLATION (Case No. _____)

PRIOR ZONING (Case No. _____)

NEWSPAPER ADVERTISEMENT

Date: 8-23-16

SIGN POSTING

Date: 8-26-16 by O' heefe

PEOPLE'S COUNSEL APPEARANCE

Yes ☒ No ☐

PEOPLE'S COUNSEL COMMENT LETTER

Yes ☐ No ☐

Comments, if any: _____

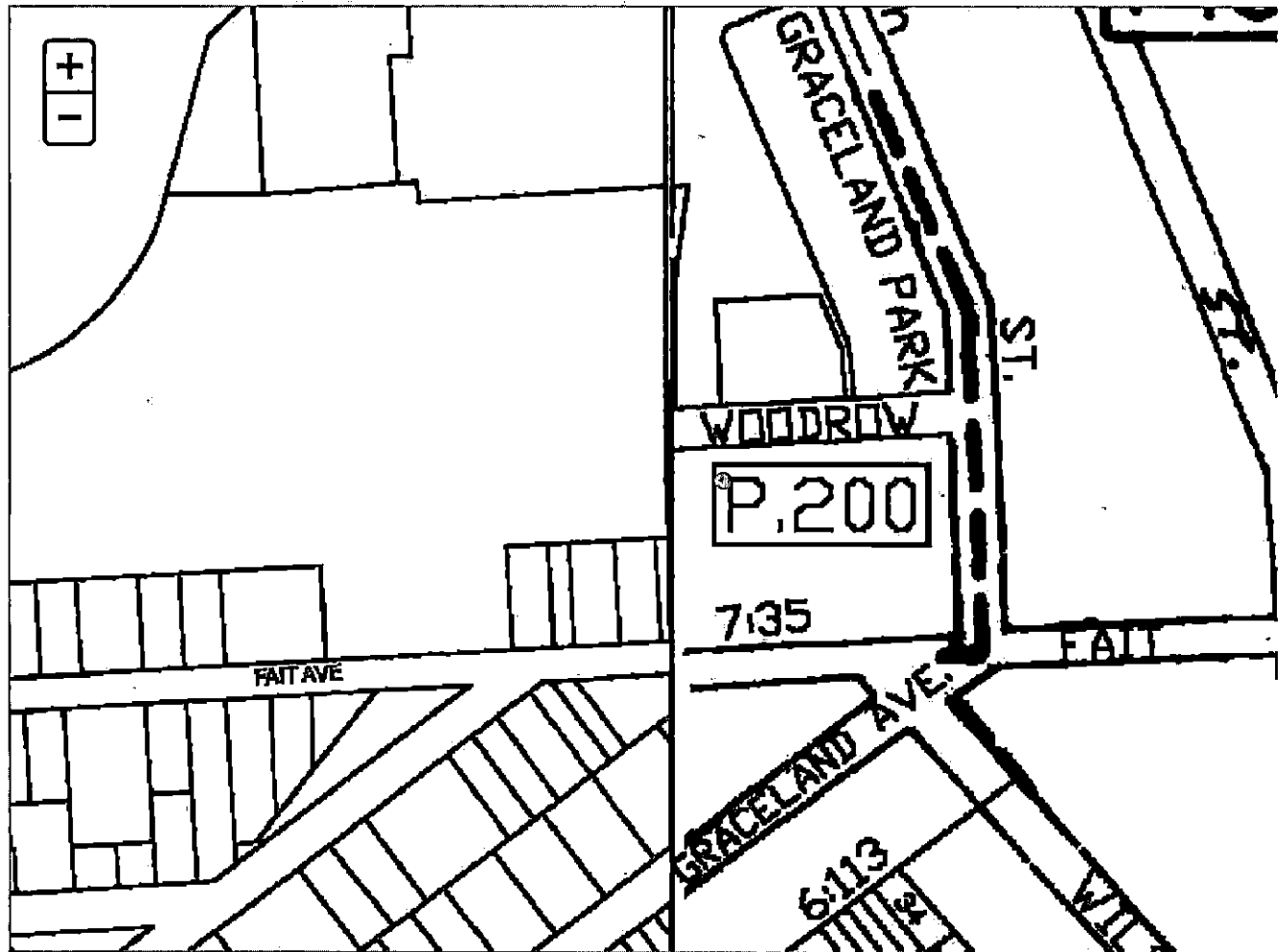
Real Property Data Search (w2)

Guide to searching the database

Search Result for BALTIMORE COUNTY

View Map		View GroundRent Redemption		View GroundRent Registration	
Account Identifier:		District - 12 Account Number - 1219001110			
Owner Information					
Owner Name:		LAM MICHAEL C		Use:	RESIDENTIAL
Mailing Address:		2709 LOUISE AVE BALTIMORE MD 21214-1213		Principal Residence:	NO
				Deed Reference:	/26526/ 00507
Location & Structure Information					
Premises Address:		WOODROW AVE 0-0000		Legal Description:	LT 399,400 TXSLE 03-C-06-010164 GRACELAND PARK
Map:	Grid:	Parcel:	Sub District:	Subdivision:	Section: Block: Lot: Assessment Year: Plat No: Plat Ref:
0096	0021	0200		0000	3 399 2015 0006/0113
Special Tax Areas:			Town: NONE		
			Ad Valorem:		
			Tax Class:		
Primary Structure Built	Above Grade Enclosed Area		Finished Basement Area	Property Land Area	County Use
				6,250 SF	04
Stories	Basement	Type	Exterior	Full/Half Bath	Garage Last Major Renovation
Value Information					
		Base Value	Value As of 01/01/2015	Phase-in Assessments As of 07/01/2016 As of 07/01/2017	
Land:		6,200	6,200		
Improvements		0	0		
Total:		6,200	6,200	6,200	6,200
Preferential Land:		0			0
Transfer Information					
Seller: SAFCHUCH PAUL L		Date: 12/28/2007		Price: \$0	
Type: NON-ARMS LENGTH OTHER		Deed1: /26526/ 00507		Deed2:	
Seller: HAPPEL F		Date: 05/26/1947		Price: \$0	
Type: NON-ARMS LENGTH OTHER		Deed1: /01562/ 00230		Deed2:	
Seller:		Date:		Price:	
Type:		Deed1:		Deed2:	
Exemption Information					
Partial Exempt Assessments:	Class	07/01/2016		07/01/2017	
County:	000	0.00			
State:	000	0.00			
Municipal:	000	0.00 0.00		0.00 0.00	
Tax Exempt:		Special Tax Recapture:			
Exempt Class:		NONE			
Homestead Application Information					
Homestead Application Status: No Application					

Baltimore County

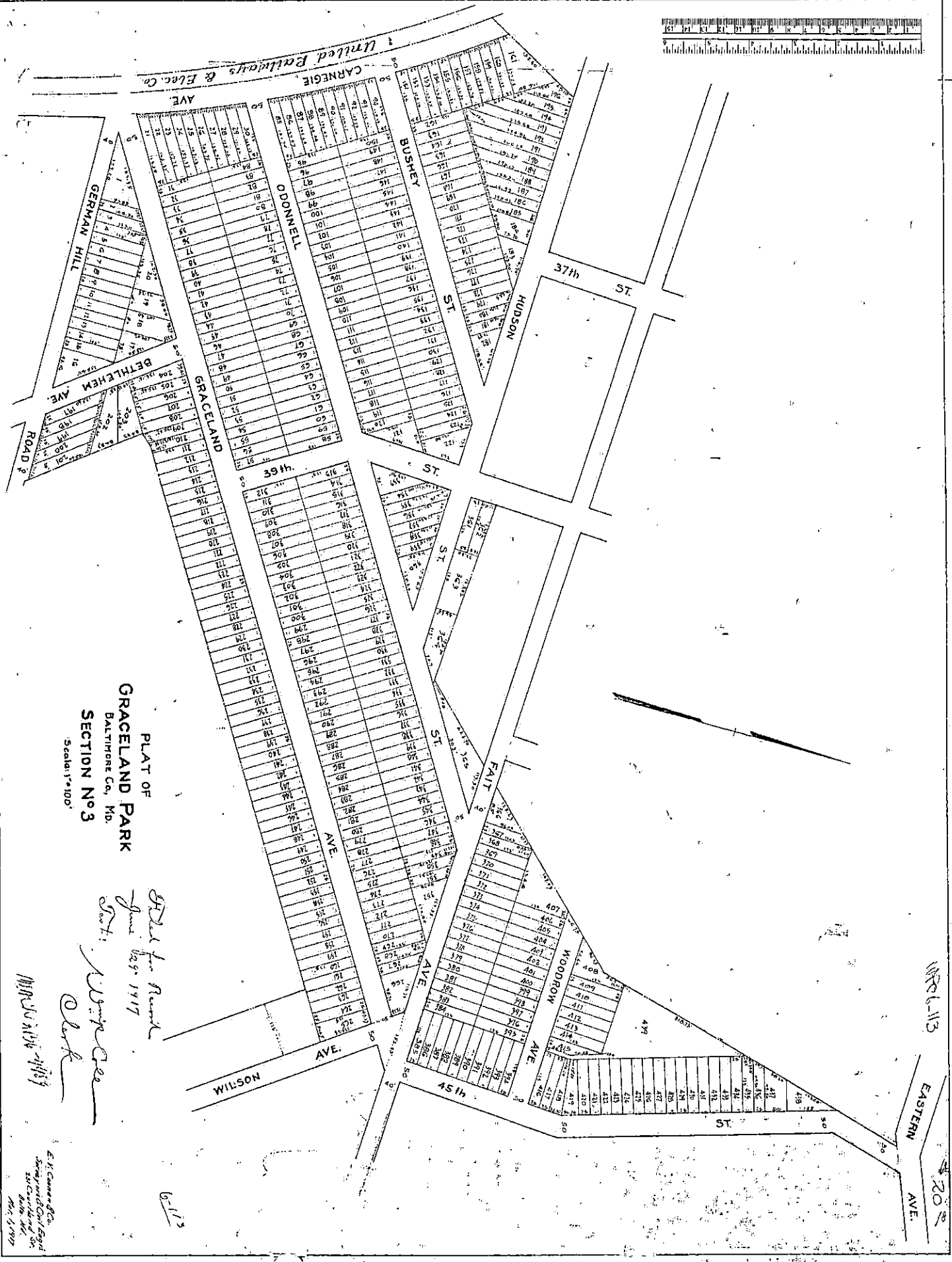
New Search (<http://sdat.dat.maryland.gov/RealProperty>)District: **12** Account Number: **1219001110**

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>).

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>).



PLAT OF
GRACELAND PARK
BALTIMORE CO., MD.
SECTION No 3
Scale 1"=100'

Attest for Record
June 18th 1917
Notary Public
Clark

E. H. Carson & Co.
Surveyors & Engineers
Baltimore, Md.
Dec. 1, 1907

1086-113
208
EASTERN AVE.



KEVIN KAMENETZ
County Executive

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

October 20, 2016

Michael C. Lam
2709 Louise Avenue
Baltimore, Maryland 21214

RECEIVED
OCT 20 2016

RE: **APPEAL TO BOARD OF APPEALS**
Case Nos. 2017-0003-A
Location: 6803 Woodrow Avenue

BALTIMORE COUNTY
BOARD OF APPEALS

Dear Mr. Lam:

Please be advised that an appeal of the above-referenced case was filed in this Office on October 17, 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 a horizontal line.

LAWRENCE M. STAHL
Managing Administrative Law Judge
for Baltimore County

LMS/sln

c: Baltimore County Board of Appeals
Peter Max Zimmerman, People's Counsel for Baltimore County
Ebenezer Olarewaju, 3607 Langrehr Road, Baltimore, Maryland 21244
David Dannenman, 6801 Woodrow Avenue, Baltimore, Maryland 21224
Frank Jording, 6805 Woodrow Avenue, Baltimore, Maryland 21224



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 8803 Woodrow Avenue which is presently zoned DR S-5
Deed References: 26526/00507 10 Digit Tax Account # 1219001110
Property Owner(s) Printed Name(s) Michael C. Lam

(SELECT THE HEARING(S) BY MARKING ☒ 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. ☐ a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

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

3. ☒ a Variance from Section(s)

Sections 1802.3.C.1 and 303.1 – to permit a proposed single family dwelling to be on a parcel 50 feet wide and have a front yard setback of 31 feet in lieu of the required 55 feet and front yard average of 37.7 feet, respectively.

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

to be presented at hearing

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

I, or we, agree to pay expenses of above petition(s), advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

Legal Owner(s) Affirmation: I / we do so solemnly declare and affirm, under the penalties of perjury, that I / We are the legal owner(s) of the property which is the subject of this / these Petition(s).

Contract Purchaser/Lessee:

Name- Type or Print

Signature

Mailing Address

City

State

Zip Code

Telephone #

Email Address

Attorney for Petitioner:

Name- Type or Print

Signature

Date

Mailing Address

BY

City

State

Zip Code

Telephone #

Email Address

Legal Owners (Petitioners):

Michael C. Lam

Name #1 - Type or Print

Name #2 - Type or Print

Signature #1

Signature #2

2709 Louise Ave Baltimore MD

Mailing Address

City

State

21214, 443-506-7541, mclam2709@

Zip Code

Telephone #

Email Address

comcast.net

Representative to be contacted:

EBENEZER OLAREWAJU

Name - Type or Print

Signature

3607 Langrehr Rd. Baltimore MD

Mailing Address

City

State

21244, 410-984-1057 femi@femfica.com

Zip Code

Telephone #

Email Address

CASE NUMBER 2017-0003-A Filing Date 7/6/16

Do Not Schedule Dates:

Reviewer RJ

ZONING PROPERTY DESCRIPTION FOR WOODROW AVENUE
TAX #12-19-001-110

Beginning at a point on the south side of Woodrow Avenue, which has a 50-foot right of way, at the distance of 248 feet west of the centerline of the nearest improved intersecting road 45th Street, which has a 50-foot right of way. Being Lots #399 and #400, Section #3 in the subdivision of Graceland Park as recorded in Baltimore County Plat Book #6, Folio #113 containing 6250 square feet. Located in the 12th Election District and the 7th Councilmanic District.

Item #0003

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

No. 141335

Date: 7/6/16

PAID RECEIPT

BUSINESS ACTUAL TIME DMN
7/08/2016 7/06/2016 14:57:40 3

RE H503 WALKIN CAN
>> RECEIPT # 683218 7/06/2016 OFLN

Fund	Dept	Unit	Sub Unit	Rev Source/	Sub Rev/	Obj	Sub Obj	Dept Obj	BS Acct	Amount
001	806	0000		6150						575.00

Dept 5 528 ZONING VERIFICATION
CA NO. 141335

Recpt Tot \$75.00
\$75.00 CK \$1.00 CA
Baltimore County, Maryland

Total: 575.00

Rec From:
For: Zoning hearing - case # 2017-0003-A

DISTRIBUTION

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

CASHIER'S
VALIDATION

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

№ 143311

Date:

10/17/16

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

Total:

265.00

Rec From:

Michael Ham

(OAH)

For:

2017-C003-A

6803 Woodrow Ave

DISTRIBUTION

WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

GOLD - ACCOUNTING

PLEASE PRESS HARD!!!!

PAID RECEIPT

BUSINESS ACTUAL TIME DRW

10/18/2016 10/17/2016 10:10:37 5

REG 0505 WALKIN LRB

>>RECEIPT # 873952 10/17/2016 OFLN

Dept 5 528 ZONING VERIFICATION

CR NO. 143311

Recpt Tot \$265.00

\$1.00 CK \$280.00 CA

\$15.00- CG

Baltimore County, Maryland

**CASHIER'S
 VALIDATION**

117151

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October 17, 2016

To: Board of Appeals
The Jefferson Building, Suite 203
105 West Chesapeake Avenue
Towson, Maryland 21204

RECEIVED

OCT 17 2016

OFFICE OF ADMINISTRATIVE HEARINGS

From: Michael C. Lam (property owner)
2709 Louise Avenue
Baltimore, Maryland 21214

Reason: **REQUEST FOR ZONING VARIANCE APPEAL**

Case No. 2017-0003-A (denied September 19, 2016)

Motion for Reconsideration filed October 01, 2016 (denied October 12, 2016)

Property: 6803 Woodrow Avenue (lots 399 and 400, the lot)

Dear Sir or Madam,

Due to a Medical Emergency in Florida, other than signing the petition, I did not participate in preparing the petition nor was I able to attend the September 15, 2016 hearing. The variance request was denied September 19, 2016. A Motion for Reconsideration was filed on October 01, 2016 and denied on October 12, 2016. I do not believe I was properly represented, therefore I respectfully request an Appeal for Case No. 2017-003-A.

I do not know or understand the reason for the front yard setback request and do hereby request for that issue to be deleted from the petition as it will not be needed. Baltimore County Regulations provide adequate setbacks and will be followed.

Baltimore County Zoning Regulations allow a single family residence to be built on an undersized lot as outlined in code § 304.1 Types of dwellings allowed; conditions. [Bill Nos. 64-1999; 28-2001] which states:

Except as provided in Section 403, a one-family detached or semidetached dwelling may be erected on a lot having an area or width at the building line less than that required by the area regulations contained in these regulations if:

- A. Such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to March 30, 1955;
- B. All other requirements of the height and area regulations are complied with; and

[illegible]

1. The first step is to identify the problem. This involves understanding the current situation and what needs to be changed.

[illegible][illegible]

128 2010年12月

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- C. The owner of the lot does not own sufficient adjoining land to conform to the width and area requirements contained in these regulations.

6803 Woodrow Avenue meets all three conditions of the BCZR 304 as such:

- A. The lot in question lies in the subdivision of Graceland Park as shown on a valid plat recorded in 1917.
- B. All requirements of the Department of Permits including height and area regulations will be complied with; and
- C. The owner of the lot does not own sufficient adjoining land to conform to the width and area requirements contained in the regulations.

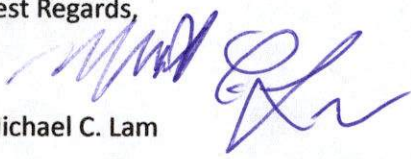
Further, the Court of Special Appeals of Maryland in the case of Herman MUELLER, Jr., et al. v. PEOPLE'S COUNSEL FOR BALTIMORE COUNTY. No. 319, Sept. Term, 2006. Decided: November 2, 2007 found in part:

V. -BCZR § 304 is a "grandfather" provision that protects a landowner from a change in the zoning laws if, inter alia, the lot was recorded by deed prior to 1955, or the lot was recorded as part of a validly approved subdivision prior to 1955.

Finally, attached hereto please find a letter from Zoning Review with included letters from the State Highway Administration, the Bureau of Development Plans Review, the Department of Planning, and the Department of Environmental Protection and Sustainability. None of those agencies offered any resistance to the requested variance.

Henceforth, I respectfully request a reversal of the denied variance and to be granted the exception requested to build a single family residence on a lot, 50 foot wide instead of the required 55 foot wide, at 6803 Woodrow Avenue (Lots 399 and 400 Graceland Park). Thanks in advance for your prompt attention to this Appeal and if any additional information is required, please contact me.

Best Regards,


Michael C. Lam

(Cell phone – 443-506-7541)

Enclosures:



KEVIN KAMENETZ
County Executive

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

September 8, 2016

Michael C Lam
2709 Louise Avenue
Baltimore MD 21214

RE: Case Number: 2017-0003 A, Address: 6803 Woodrow Avenue

Dear Mr. Lam:

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits, Approvals, and Inspection (PAI) on July 6, 2016. 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
Ebenezer Olarewaju, 3607 Langehr Road, Baltimore MD 21244

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



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

Date: 7/11/16

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

Dear Ms. Lewis:

Thank you for the opportunity to review your referral request on the subject of the Case number referenced below. 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 Case No. 2017-0003-A

VARIANCE
Michael C. Lamm
6803 Woodrow Avenue

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).

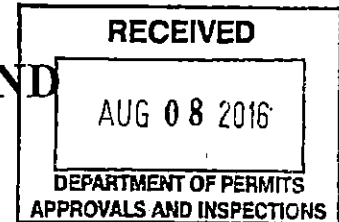
Sincerely,

A handwritten signature in black ink, appearing to read 'Wendy Wolcott'.

Wendy Wolcott, PLA
Acting Metropolitan District Engineer – District 4
Baltimore & Harford Counties

WW/RAZ

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE MEMORANDUM



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

DATE: July 27, 2016

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: ZONING ADVISORY COMMITTEE COMMENTS
Case Number: 17-003

INFORMATION:

Property Address: 6803 Woodrow Avenue
Petitioner: Michael C. Lam
Zoning: DR 5.5
Requested Action: Variance

The Department of Planning has reviewed the petition for a variance to permit a proposed single family dwelling to be on a parcel 50 feet wide and have a front yard setback of 31 feet in lieu of the required 55 feet wide and front yard average of 37.7 feet, respectively.

A site visit was conducted on July 19, 2016.

The Department of Planning has no objections to granting the requested zoning relief.

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

Prepared by:

A handwritten signature in black ink, appearing to be "Lloyd T. Moxley", written over a horizontal line.

Lloyd T. Moxley

Division Chief:

A handwritten signature in black ink, appearing to be "Kathy Schlabach", written over a horizontal line.

Kathy Schlabach

AVA/KS/LTM/ka

c: Krystle Patchak
Ebenezer Olarewaju
Office of the Administrative Hearings
People's Counsel for Baltimore County

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



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: July 11, 2016

SUBJECT: DEPS Comment for Zoning Item # 2017-0003-A
Address 6803 Woodrow Avenue
(Lam Property)

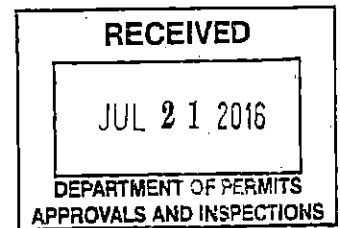
Zoning Advisory Committee Meeting of **July 18, 2016**.

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

Reviewer: Steve Ford

Date: 07-11-2016

BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE



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

FROM: ^{DAK} Dennis A. Kennedy, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For July 18, 2016
Item No. 2016-0337, 0338, 0339, 0340 and
2017-0003

DATE: July 18, 2016

The Bureau of Development Plans Review has reviewed the subject zoning items and we have no comments.

DAK:CEN
cc:file

G:\DevPlanRev\ZAC -No Comments\ZAC07182016.doc



KEVIN KAMENETZ
County Executive

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

October 12, 2016

Michael C. Lam
2709 Louise Avenue
Baltimore, Maryland 21214

RE: **Motion for Reconsideration**
Case No. 2017-0003-A
Property: 6803 Woodrow Avenue

Dear Mr. Lam:

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

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

Sincerely,


JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:slh

Enclosure

c: Ebenezer Olarewaju, 3607 Langrehr Road, Baltimore, Maryland 21244
David Dannenman, 6801 Woodrow Avenue, Baltimore, Maryland 21224
Frank Jording, 6805 Woodrow Avenue, Baltimore, Maryland 21224

IN RE: PETITION FOR VARIANCE
(6803 Woodrow Avenue)
12th Election District
7th Council District
Michael C. Lam
Petitioner

* BEFORE THE OFFICE
* OF ADMINISTRATIVE
* HEARINGS FOR
* BALTIMORE COUNTY
* **CASE NO. 2017-0003-A**

* * * * *

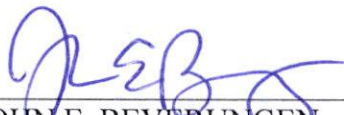
ORDER ON MOTION FOR RECONSIDERATION

Now pending is a Motion for Reconsideration, filed by Petitioner on October 1, 2016. Therein, Petitioner contends he is entitled to relief under B.C.Z.R. §304.1, concerning undersized lots.

As noted in the original Order, Petitioner sought only variance relief under B.C.Z.R. §§1B02.3.C.1 and 303.1. The petition did not contain a special hearing request under B.C.Z.R. §304.1 nor was an amendment sought at the hearing to include such a request. As such, the Motion for Reconsideration must be denied.

WHEREFORE, IT IS ORDERED, this 12th day of October, **2016**, by the Administrative Law Judge for Baltimore County, that the Petitioner's Motion for Reconsideration, be and is hereby DENIED.

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:slh

ORDER RECEIVED FOR FILING

Date 10/12/16
By slh

October 1, 2016

To: John E. Beverungen
Administration Law Judge
Office of Administration Hearings
105 West Chesapeake Avenue, Suite 103
Towson, Maryland 21204

From: Michael C. Lam
2709 Louise Avenue
Baltimore, Maryland 21214

Reason: **REQUEST FOR ZONING VARIENCE RECONSIDERAION**
Case No. 2017-0003-A (denied September 19, 2016)
Property: 6803 Woodrow Avenue (lots 399 and 400, the lot)

Dear Judge Beverungen,

Due to a Medical Emergency in Florida, other than signing the petition, I did not participate in preparing the petition nor was I able to attend the September 15, 2016 hearing. Therefore I respectfully request a reconsideration for the above referenced case.

I do not know or understand the reason for the front yard setback request and do hereby request for that issue to be deleted from the petition as it will not be needed. Baltimore County Regulations provide adequate setbacks and will be followed.

Baltimore County Zoning Regulations allow a single family residence to be built on an undersized lot as outlined in code § 304.1 Types of dwellings allowed; conditions. [Bill Nos. 64-1999; 28-2001] which states:

Except as provided in Section 4A03, a one-family detached or semidetached dwelling may be erected on a lot having an area or width at the building line less than that required by the area regulations contained in these regulations if:

- A. Such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to March 30, 1955;
- B. All other requirements of the height and area regulations are complied with; and
- C. The owner of the lot does not own sufficient adjoining land to conform to the width and area requirements contained in these regulations.

6803 Woodrow Avenue meets all three conditions of the BCZR 304 as such:

- A. The lot in question lies in the subdivision of Graceland Park as shown on a valid plat recorded in 1917.
- B. All requirements of the Department of Permits including height and area regulations will be complied with; and
- C. The owner of the lot does not own sufficient adjoining land to conform to the width and area requirements contained in the regulations.

Further, the Court of Special Appeals of Maryland in the case of Herman MUELLER, Jr., et al. v. PEOPLE'S COUNSEL FOR BALTIMORE COUNTY. No. 319, Sept. Term, 2006. Decided: November 2, 2007 found in part:

V. -BCZR § 304 is a "grandfather" provision that protects a landowner from a change in the zoning laws if, inter alia, the lot was recorded by deed prior to 1955, or the lot was recorded as part of a validly approved subdivision prior to 1955.

Finally, attached hereto please find a letter from Zoning Review with included letters from the State Highway Administration, the Bureau of Development Plans Review, the Department of Planning, and the Department of Environmental Protection and Sustainability. None of those agencies offered any resistance to the requested variance.

Henceforth, I respectfully request a reversal of the denied variance and to be granted the exception requested to build a single family residence on a lot, 50 foot wide instead of the required 55 foot wide, at 6803 Woodrow Avenue (Lots 399 and 400 Graceland Park). Thanks in advance for your reconsideration and if any additional information is required, please contact me.

Best Regards,

Michael C. Lam

(Cell phone – 443-506-7541)

Enclosures:



KEVIN KAMENETZ
County Executive

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

September 19, 2016

Michael C. Lam
2709 Louise Avenue
Baltimore, Maryland 21214

RE: Petition for Variance
Case No. 2017-0003-A
Property: 6803 Woodrow Avenue

Dear Mr. Lam:

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", with a long horizontal line extending to the right.

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln
Enclosure

c: Ebenezer Olarewaju, 3607 Langrehr Road, Baltimore, Maryland 21244
David Dannenman, 6801 Woodrow Avenue, Baltimore, Maryland 21224
Frank Jording, 6805 Woodrow Avenue, Baltimore, Maryland 21224

IN RE: PETITION FOR VARIANCE
(6803 Woodrow Avenue)
12th Election District
7th Council District
Michael C. Lam
Petitioner

* BEFORE THE OFFICE
* OF ADMINISTRATIVE
* HEARINGS FOR
* BALTIMORE COUNTY
* **CASE NO. 2017-0003-A**

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Michael C. Lam, owner of the subject property ("Petitioner"). The Petitioner is requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a proposed single-family dwelling to be constructed on a parcel 50 ft. wide with a front yard setback of 31 ft. in lieu of the required 55 ft. and front yard average of 37.7 ft., respectively. A site plan was marked as Petitioner's Exhibit 1.

Ebenezer Olarewaju appeared in support of the petition. Neighbors adjoining the subject property attended the hearing and opposed the request. The Petition was advertised and posted as required by the B.C.Z.R. No substantive Zoning Advisory Committee (ZAC) comments were received from any of the county agencies.

The subject property is approximately 6,250 square feet and is zoned DR 5.5. The property is unimproved and Petitioner proposes to construct a single-family dwelling on the lot. Neighbors oppose the request and are concerned with the noise and disruption of constructing a new home on the lot. They also contend the zoning code should be enforced as written.

It is clear the lot is undersized in that it is 50' wide while the B.C.Z.R. requires 55 ft. I respectfully disagree with the County's determination that the front yard setback required is 37.7

ORDER RECEIVED FOR FILING

Date 9-19-16

By den

ft. I understand how that average setback was obtained under B.C.Z.R. §303.1, but I do not believe that provision is applicable here. These lots (Nos. 399 & 400) were created by the plat of Graceland Park, recorded in 1917. As such, these lots are ones described in B.C.Z.R. §1B02.3.A.3, 4, and 5. The "small lot" table specifies for this property a 55 ft. width requirement and front yard depth of 25 ft. So in my opinion Petitioner requires relief for the lot width deficiency but not the front yard setback, which is shown on the plan as 31 ft.

As noted many times previously, obtaining a variance in a contested case is an uphill battle, and Maryland courts have stated variances should only be granted sparingly. A variance request involves a two-step process, summarized as follows:

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

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

Petitioner cannot satisfy these requirements. The lots in question are virtually identical to the more than 400 other lots shown on the plat of Graceland Park. There is simply no basis upon which a variance can be granted.

Petitioner's only request was for variance relief. But Petitioner may be entitled to construct a dwelling on the property pursuant to B.C.Z.R. §304, which concerns undersized lots. That regulation permits an owner to construct a dwelling on property which does not satisfy the minimum lot width requirement. It also requires the owner to comply with all other zoning requirements. As such, the pivotal question becomes whether the applicable front yard depth is 37.7 ft. or 25 ft. as provided in the small lot table. If the former, as determined by County zoning staff, the Petitioner would not be entitled to construct the dwelling. In any event, the Petitioner

ORDER RECEIVED FOR FILING

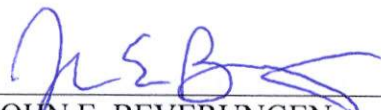
Date 9-19-16

By slh

did not seek relief under B.C.Z.R. § 304 and it will be up to the zoning review office in the first instance to determine whether the owner can seek a building permit in these circumstances.

THEREFORE, IT IS ORDERED, this 19th day of September, **2016**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit a proposed single-family dwelling to be constructed on a parcel 50 ft. wide with a front yard setback of 31 ft. in lieu of the required 55 ft. and front yard average of 37.7 ft., respectively, be and is hereby DENIED.

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:slh

ORDER RECEIVED FOR FILING

Date 9-19-16

By slh



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 Woodrow Avenue

which is presently zoned DR S-5

Deed References: 26526/00507

10 Digit Tax Account # 1219001110

Property Owner(s) Printed Name(s) Michael C. Lam

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

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

3. a Variance from Section(s)

Sections 1B02.3.C.1 and 303.1 – to permit a proposed single family dwelling to be on a parcel 50 feet wide and have a front yard setback of 31 feet in lieu of the required 55 feet and front yard average of 37.7 feet, respectively.

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

to be presented at hearing

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

I, or we, agree to pay expenses of above petition(s), advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

Legal Owner(s) Affirmation: I / we do so solemnly declare and affirm, under the penalties of perjury, that I / We are the legal owner(s) of the property which is the subject of this / these Petition(s).

Contract Purchaser/Lessee:

Name- Type or Print

Signature

Mailing Address

City

State

Zip Code

Telephone #

Email Address

Attorney for Petitioner:

Name- Type or Print

Signature

Mailing Address

City

State

Zip Code

Telephone #

Email Address

Legal Owners (Petitioners):

Michael C. Lam,

Name #1 – Type or Print

Name #2 – Type or Print

Signature #1

Signature #2

2709 Louise Ave. Baltimore MD

Mailing Address

City

State

21214, 443-506-7541, mclam2709@

Zip Code

Telephone #

Email Address

comcast.net

Representative to be contacted:

Ebenezer Olarewaju

Name – Type or Print

Signature

3607 Langrehr Rd. Baltimore MD

Mailing Address

City

State

21244, 410-984-1057, femi@femrica.com

Zip Code

Telephone #

Email Address

CASE NUMBER 2017-0003-A

Filing Date 7, 6, 16

Do Not Schedule Dates:

Reviewer

ZONING PROPERTY DESCRIPTION FOR WOODROW AVENUE
TAX #12-19-001-110

Beginning at a point on the south side of Woodrow Avenue, which has a 50-foot right of way, at the distance of 248 feet west of the centerline of the nearest improved intersecting road 45th Street, which has a 50-foot right of way. Being Lots #399 and #400, Section #3 in the subdivision of Graceland Park as recorded in Baltimore County Plat Book #6, Folio #113 containing 6250 square feet. Located in the 12th Election District and the 7th Councilmanic District.

Item #0003



KEVIN KAMENETZ
County Executive

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

August 4, 2016

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: 2017-0003-A

6803 Woodrow Avenue
S/s Woodrow Avenue, 248 ft. w/of 45th Street
12th Election District – 7th Councilmanic District
Legal Owners: Michael Lam

Variance to permit a proposed single family dwelling to be on a parcel 50 ft. wide and have front yard setback of 31 ft. in lieu of the required 55 ft. and front yard average of 37.7 ft., respectively.

Hearing: Thursday, September 15, 2016 at 11:00 a.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204

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

Arnold Jablon
Director

AJ:kl

C: Michael Lam, 2709 Louise Avenue, Baltimore 21214
Ebenezer Olarewaju, 3607 Langrehr Road, Baltimore 21244

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY FRIDAY, AUGUST 26, 2016**
- (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.



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 4398790

Sold To:

Ebenezer Olarewaju - CU00556696
3607 Langrehr Rd
Windsor Mill, MD 21244-3031

Bill To:

Ebenezer Olarewaju - CU00556696
3607 Langrehr Rd
Windsor Mill, MD 21244-3031

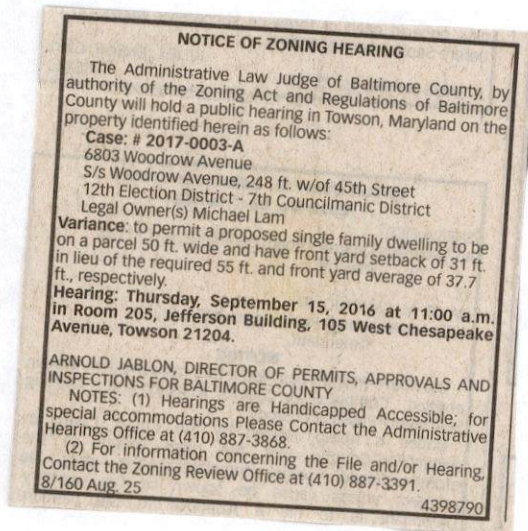
Was published in "Jeffersonian", "Bi-Weekly", a newspaper printed and published in Baltimore County on the following dates:

Aug 23, 2016

The Baltimore Sun Media Group

By *S. Wilkinson*

Legal Advertising



CERTIFICATE OF POSTING

ATTENTION: KRISTEN LEWIS

DATE: 8/27/2016

Case Number: 2017-0003-A

Petitioner / Developer: EBENER OLAREWAJU

Date of Hearing (Closing): SEPTEMBER 15, 2016

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:
6803 WOODROW AVENUE

The sign(s) were posted on: AUGUST 26, 2016



Linda O'Keefe
(Signature of Sign Poster)

Linda O'Keefe
(Printed Name of Sign Poster)

523 Penny Lane
(Street Address of Sign Poster)

Hunt Valley, Maryland 21030
(City, State, Zip of Sign Poster)

410 - 666 - 5366
(Telephone Number of Sign Poster)

RE: PETITION FOR VARIANCE
6803 Woodrow Avenue; S/S Woodrow
Avenue, 248' W of c/line of 45th Street
12th Election & 7th Councilmanic Districts
Legal Owner(s): Michael C. Lam
Petitioner(s)

* BEFORE THE OFFICE
* OF ADMINISTRATIVE
* HEARINGS FOR
* BALTIMORE COUNTY
* 2017-003-A

* * * * *

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
JUL 19 2016

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 19th day of July, 2016, a copy of the foregoing Entry of Appearance was mailed to Ebenezer Olarewaju, 3607 Langrehr Road, Baltimore, Maryland 21233, Representative for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

CASE NAME _____
CASE NUMBER _____
DATE _____

[illegible]



KEVIN KAMENETZ
County Executive

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

September 8, 2016

Michael C Lam
2709 Louise Avenue
Baltimore MD 21214

RE: Case Number: 2017-0003 A, Address: 6803 Woodrow Avenue

Dear Mr. Lam:

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits, Approvals, and Inspection (PAI) on July 6, 2016. 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
Ebenezer Olarewaju, 3607 Langehr Road, Baltimore MD 21244

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



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

Date: 7/11/16

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

Dear Ms. Lewis:

Thank you for the opportunity to review your referral request on the subject of the Case number referenced below. 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 Case No. 2017-0003-A

*Variorco
Michael C. Law
6803 Woodrow Avenue*

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 'Wendy Wolcott'.

Wendy Wolcott, PLA
Acting Metropolitan District Engineer – District 4
Baltimore & Harford Counties

WW/RAZ

BALTIMORE COUNTY, MARYLAND

RECEIVED

Inter-Office Correspondence

JUL 11 2016

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: July 11, 2016

SUBJECT: DEPS Comment for Zoning Item # 2017-0003-A
Address 6803 Woodrow Avenue
(Lam Property)

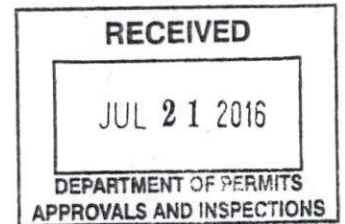
Zoning Advisory Committee Meeting of **July 18, 2016**.

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

Reviewer: Steve Ford

Date: 07-11-2016

BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE



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

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

SUBJECT: Zoning Advisory Committee Meeting
For July 18, 2016
Item No. 2016-0337, 0338, 0339, 0340 and
2017-0003

DATE: July 18, 2016

The Bureau of Development Plans Review has reviewed the subject zoning items and we have no comments.

DAK:CEN
cc:file

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9-15

BALTIMORE COUNTY, MARYLAND INTER-OFFICE MEMORANDUM

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

DATE: July 27, 2016

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: ZONING ADVISORY COMMITTEE COMMENTS
Case Number: 17-003

RECEIVED

AUG 01 2016

OFFICE OF ADMINISTRATIVE HEARINGS

INFORMATION:

Property Address: 6803 Woodrow Avenue
Petitioner: Michael C. Lam
Zoning: DR 5.5
Requested Action: Variance

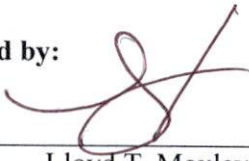
The Department of Planning has reviewed the petition for a variance to permit a proposed single family dwelling to be on a parcel 50 feet wide and have a front yard setback of 31 feet in lieu of the required 55 feet wide and front yard average of 37.7 feet, respectively.

A site visit was conducted on July 19, 2016.

The Department of Planning has no objections to granting the requested zoning relief.

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

Prepared by:



Lloyd T. Moxley

Division Chief:



Kathy Schlabach

AVA/KS/LTM/ka

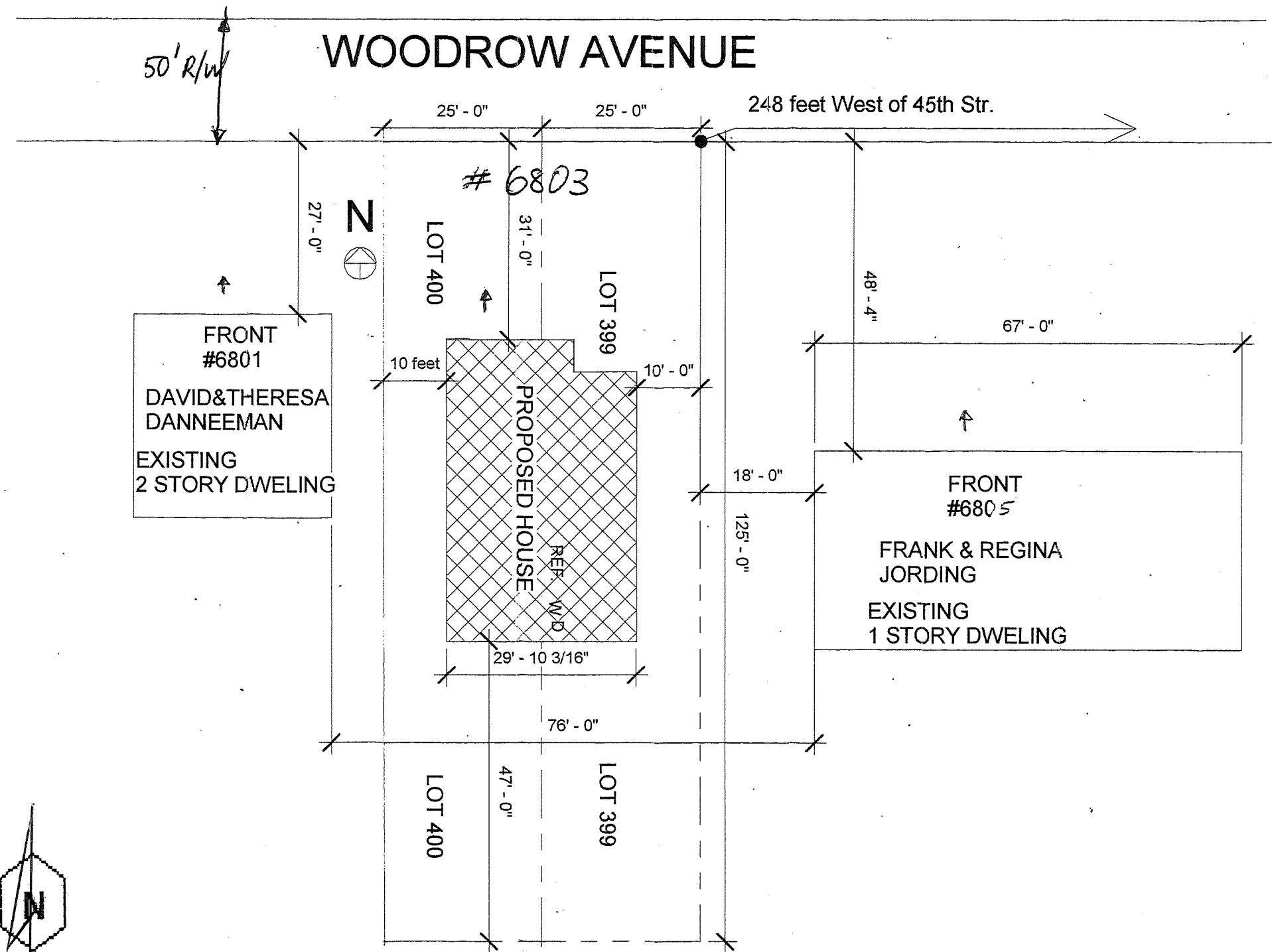
c: Krystle Patchak
Ebenezer Olarewaju
Office of the Administrative Hearings
People's Counsel for Baltimore County

ZONING HEARING PLAN FOR VARIANCE X FOR SPECIAL HEARING _____ (MARK TYPE REQUESTED WITH X)

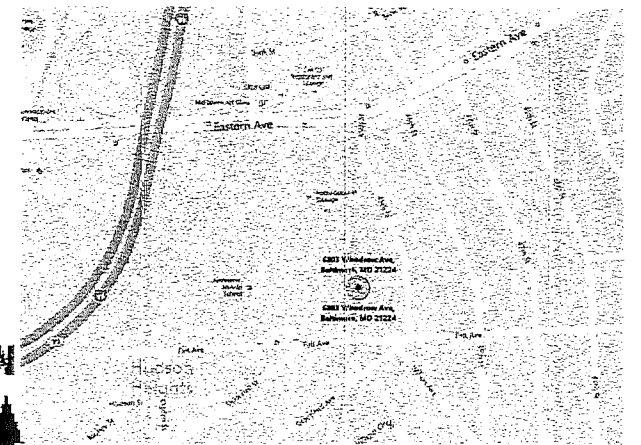
ADDRESS ⁶⁸⁰³ WOODROW AVE. OWNER(S) NAME(S) MICHAEL C. LAM

SUBDIVISION NAME GRACELAND PARK LOT # 399&400 LOCK # _____ SECTION # 3

PLAT BOOK # 6 FOLIO # 113 10 DIGIT TAX # 1219001110 DEED REF. # 26526 / 00507



PLAN DRAWN BY EBENEZER OLAREWAJU DATE 6/29/2016 SCALE: 1 INCH = 1" = 20' FEET



MAP IS NOT TO SCALE
 ZONING MAP# 096B3
 SITE ZONED DR 5.5
 ELECTION DISTRICT 12
 COUNCIL DISTRICT 7
 LOT AREA ACREAGE _____
 OR SQUARE FEET 6250
 HISTORIC? NO
 IN CBCA? NO
 IN FLOOD PLAIN? NO
 UTILITIES? MARK WITH X
 WATER IS:
 PUBLIC X PRIVATE _____
 SEWER IS:
 PUBLIC X PRIVATE _____
 PRIOR HEARING? NO
 IF SO GIVE CASE NUMBER
 AND ORDER RESULT BELOW

VIOLATION CASE INFO:

#2017-0003-A

R.D.J.

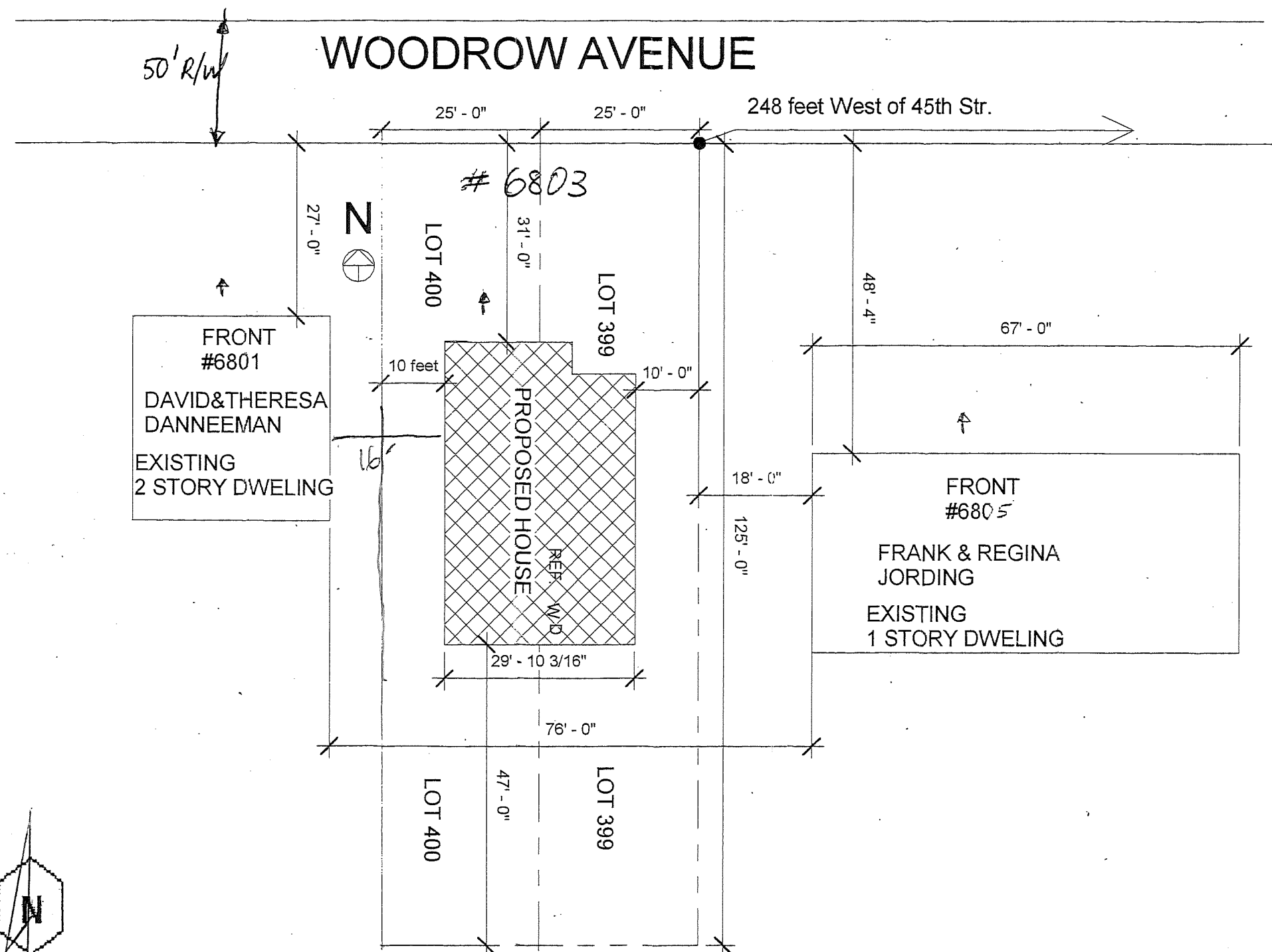
Petitioner No. 1

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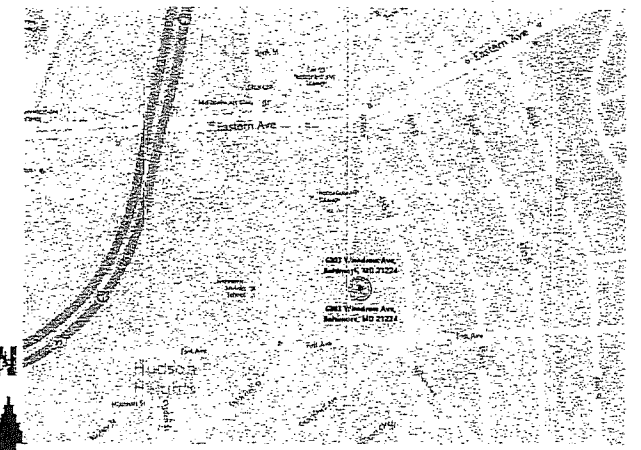
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