IN THE MATTER OF DONNA V. BAIR – LEGAL OWNER AND PETITIONER FOR SPECIAL HEARING AND VARIANCE ON THE PROPERTY LOCATED AT 4607 PROSPECT AVENUE	*	BEFORE THE BOARD OF APPEALS OF
4TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BALTIMORE COUNTY
	*	CASE NO. 19-342-SPHA

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

RULING ON MOTION FOR RECONSIDERATION

This case comes to the Board of Appeals for Baltimore County ("Board") on a Motion for Reconsideration ("Motion") which was timely filed by Tom and Kim Montanye ("Protestants") *pro se,* requesting a limited review and reconsideration by the Board of its decision regarding the relocation of the fence and gate on the south side of the Bair property adjoining the Montanye residence.

The original Petitioner and property owner, Donna Bair, by her attorneys, Lawrence E. Schmidt and Smith, Gildea & Schmidt, LLC, submitted a Response to the Protestants' Motion for Reconsideration, and People's Counsel filed an email response.

This matter originally came before the Board on a Petition for Special Hearing and Variances filed by Petitioner Bair. The Board held three days of hearing and issued its Opinion and Order on June 7, 2021, granting in part and denying in part the request relief.

The Board held its deliberation on the Motion to Reconsider on August 31, 2021, and for the reasons that follow, denied the Motion.

The language in the Order regarding the fence is based on the evidence presented at the hearing where the Board found that the gate to the Bair's rear yard was previously located at the rear of the Bair residence and then Ms. Bair impermissibly moved the gate, and the supporting

fence, to the front of her house. No evidence was presented as to the precise location of the gate prior to its being moved.

The Board ordered that the fence extension and gate must be moved to the rear building line of the Bair residence, so as not to impede visibility for vehicles exiting the Montanye's driveway. The Board did not require the remaining portion of the fence be further re-aligned.

The Board finds there is no indication of the existence of new law or evidence not available at the time of the hearing. The Board also notes that its revisory power is limited by its Rule 11 which states "the Board shall have revisory power and control over the order in the event of fraud, mistake or irregularity." The Motion did not allege any such fraud, mistake or irregularity.

Conclusion

After reviewing the Motion and the case record, the Board unanimously finds none of the issues raised warrant revising its decision, and accordingly, the Motion should be denied.

ORDER

THEREFORE, IT IS THIS 9th day of November, 2021, by the Board of Appeals of Baltimore County,

ORDERED, that the Motion for Reconsideration is hereby **DENIED** for the reasons set forth herein.

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

Deborah C. Dopkin, Chair

See following page
Andrew M. Belt

Bryan T. Pennington /tag
Bryan T. Pennington

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

See previous page
Deborah C. Dopkin, Chair

Andrew M. Belt

See previous page
Bryan T. Pennington

Board of Appeals of Baltimore County

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

November 9, 2021

Lawrence E. Schmidt, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204

Thomas and Kimberly Montanye
4609 Prospect Avenue
Glyndon, Maryland 21136

Peter M. Zimmerman, Esquire
Carole S. Demilio, Esquire
Office of People's Counsel
The Jefferson Building, Suite 204
105 W. Chesapeake Avenue
Towson, Maryland 21204

RE: *In the Matter of: Donna V. Bair – Legal Owner*
Case No.: 19-342-SPHA

Dear Mr. and Mrs. Montanye and Counsel:

Enclosed please find a copy of the final Ruling on Motion for Reconsideration issued this date by the Board of Appeals of Baltimore County in the above subject matter.

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

Very truly yours,

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Multiple Original Cover Letters
Enclosure

c: See Distribution List following

In the matter of: Donna V. Bair – Legal Owner
Case No.: 19-342-SPHA
November 9, 2021
Distribution List

Donna V. Bair
Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz
Paul M. Mayhew, Managing Administrative Law Judge
Stephen Lafferty, Director/Office of Planning
C. Pete Gutwald, Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
James R. Benjamin, Jr., County Attorney/Office of Law

IN THE MATTER OF DONNA V. BAIR – LEGAL OWNER AND PETITIONER FOR SPECIAL HEARING AND VARIANCE ON THE PROPERTY LOCATED AT 4607 PROSPECT AVENUE	*	BEFORE THE BOARD OF APPEALS OF
4TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BALTIMORE COUNTY
	*	CASE NO. 19-342-SPHA

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

OPINION

This case comes to the County Board of Appeals ("CBA") on appeal of an Opinion and Order of the Administrative Law Judge dated August 19, 2020 granting in part and denying in part a Petition for Special Hearing and Variances filed by Donna V. Bair ("Petitioner/ Appellant") the legal owner of the property at 4607 Prospect Avenue (the "Property") in the Glyndon area of Baltimore County.

The Special Hearing Petition was filed pursuant to Baltimore County Zoning Regulations ("BCZR") §500.7 (1) to approve a nonconforming lot width and lot area pursuant to BCZR §104.1; (2) to approve a nonconforming dwelling side yard setback, pursuant to BCZR §104.1; and (3) to confirm an existing fence (swimming pool enclosure) with a height of 6 ft. is in compliance with BCZR §427.1 and Baltimore County Code ("BCC") §13-6-101.

The Petition for Variance seeks (1) to permit an existing 12 ft. by 28 ft. attached garage addition with a side yard of 0 ft. in lieu of the required 20 ft.; (2) to permit an existing 12 ft. by 28 ft. attached garage addition with a sum of side yards of 14.9 ft. in lieu of the required 50 ft.; (3) to permit an existing shed with a sideyard setback of 26 inches in lieu of the required 30 inches; and 4) to permit, if necessary, an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum 42 inches.

Appellant was represented by Lawrence E. Schmidt, Esquire and Zachary J. Wilkins, Esquire, of Smith, Gildea and Schmidt, LLC. Also appearing for Appellant as an expert was John Motsco, a licensed engineer in the State of Maryland. Ms. Bair also testified.

Numerous neighbors and an umbrella community association appeared in opposition, including both adjoining neighbors. Robin Coffin, and attorney who resides on Prospect Avenue, facilitated Protestants' case and testimony, and also testified personally as did the adjoining property owners.

The Board held three days of hearings, one in person on February 6, 2020 and two virtually on March 23, 2021 and March 25, 2021. A public deliberation was held virtually on April 20, 2021.

FACTUAL BACKGROUND

Petitioner Bair acquired the Property in 2014. At the time the Property was improved with a single family dwelling, attached garage, two driveways, an in-ground swimming pool, shed, and a fence enclosing a large portion of the rear yard and the pool area.

In 2017 Petitioner undertook additions to the house, adding to the front to create a master bedroom suite, adding a second garage, removing an existing fence and mature landscaping around the fence, and adding a new fence. Those improvements led to the current case and much acrimony among neighbors. In particular, the second garage extends several feet into the property of the neighbors on the north, Mr. and Mrs. Stephen Fradkin. The neighbors on the south, Mr. and Mrs. Thomas Montanye, object to the location of the replacement fence which extends into their front yard, and which creates a safety hazard by obstructing visibility for cars leaving the Montanye property. Mr. Montanye also disputes the location of the common property line and alleges that Petitioner tampered with surveyor's stakes to be more favorable to her

property. Both neighbors alleged that the improvements created additional runoff and flooding conditions on each of their properties.

Ms. Bair testified that she hired a contractor, though she did not identify that contractor to the CBA, nor did she know his whereabouts or current status. Ms. Bair assumed the contractor would obtain permits and other required approvals. No survey was conducted either at the time of Bair's purchase nor at the time of the work being undertaken. No zoning or permit approvals were investigated or sought for the building improvements or the fence.

The neighbors complained to the Baltimore County Office of Code Enforcement, who cited multiple violations at Petitioner's Property, and which ultimately led to filing of the subject petitions.

Petitioner's engineer John Motsco testified to the zoning history of the Property. The lot was created prior to the1945 adoption and 1955 codification of zoning by Baltimore County. Mr. Motsco stated that in 1970, Baltimore County adopted the D.R. zones (Density Residential), at which time the Property was designated D.R. 2. In 1996, the current D.R. 1 classification was applied to the Property.

APPLICABLE LAW

A Special Hearing Petition is effectively a request for declaratory judgment. BCZR §500.7, *Antwerpen v. Baltimore County*, 163 Md. App. 194, 209 (2005). The main question to be determined by the Board is whether the current configuration of the lot is permitted as a non-conforming use per BCZR §104.1. A collateral issue under BCZR §104.3 concerns whether the addition to the house extends beyond 25% of the ground floor area of the house prior to the addition.

Petitioner bears the burden of presenting evidence (customarily through experts) on which the Board can assess whether a zoning request pursuant to the BCZR may be approved. While the BCZR provides no specific criteria for the granting of a Request for Special Hearing, "the administrative practice in Baltimore County has been to determine whether the proposed Special Hearing would be compatible with the community and generally consistent with the spirit and intent of the regulations." *Kiesling v. Long*, Unreported Opinion, No. 1485, Md. Ct. Spec. App. (Sept. Term 2016).

A nonconforming use is one that predates the zoning imposed on a property. It is defined in BCZR §101 as a legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use. Under BCZR §104.3, no nonconforming building or structure may be extended more than 25% of the ground floor area of the building so used.

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

(1) The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is – in and of itself – unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property; and

(2) If that first step results in a supportable finding of uniqueness or unusualness, then a second step is taken in the process, *i.e.*, a determination of whether practical difficulty and/or unreasonable hardship, resulting from the disproportionate impact of the ordinance *caused by* the property's uniqueness, exists. *Cromwell*, 102 Md. App. at 694-95, 651 A.2d at 426.

Further, that hardship or difficulty must not be of the Petitioner's own making. 102, Md. App. at pp 694-5.

DISCUSSION

THE LOT: Petitioner's engineer John Motsco testified that the subject lot is a .74 acre parcel, classified D.R. 1 with a small portion being R.C. 2 (Resource Conservation). The lot was created by a plat entitled "Plat of Land belonging to B.F. Bennett and Joshua Regester", dated October 31, 1883 and recorded among the Plat Records of Baltimore County, Maryland in Plat Book No. 2 page 18. The lot lines are unchanged since its creation.

Mr. Motsco also testified that the original residence was constructed in 1951. Using old aerial photographic records, Mr. Motsco determined that the house configuration rendered the side yards of 9.5 feet on the north side and 14.9 feet on the south side, with a sum of the sideyard setbacks of 24.4 feet.

Based on the documentary evidence and testimony of Mr. Motsco, the Board finds that the lot width and area meet the definition of the BCZR as a valid nonconforming use that may continue. The lot configuration pre-dates any zoning in Baltimore County by at least sixty years, and despite the fact that the lot width and area do not meet current regulations, these may continue. In addition, the Board finds that the side yard setbacks existing prior to Petitioner's new construction were in existence prior to the 1996 zoning, perhaps longer, and as such may continue - measuring 9.5 feet on the north side and 14 feet on the south. Further testimony, undisputed though imprecise, persuaded the Board that the shed in the rear of the Property predates the current zoning, and may also remain in its current location, having a setback of 26 inches.

THE BEDROOM ADDITION: Petitioner built an addition to the house which extended the front building and roof lines to create a straight front building line where a "notch" or recess previously existed. According to Mr. Motsco, that addition measures 14 x 22 feet (for a total of

308 sq. ft.). Under BCZR §104.3, no nonconforming building or use may be extended by more than 25% of the ground floor area of the building so used.

Mr. Motsco offered testimony and documentary evidence that the ground floor area of the residence prior to the bedroom addition was 1,554 sq. ft. and that the bedroom addition amounts to less than 25% (or a maximum of 388 sq. ft.) permitted. Mr. Motsco also testified that this addition maintained the previous side yard setback of 14 feet from the south property line shared with the Montanye's.

Based on these facts, the Board finds that the bedroom addition is a permitted extension of the nonconforming structure.

THE GARAGE ADDITION: Though there was much testimony offered by Ms. Bair regarding the addition of a second garage based on her need to protect her vehicles from debris and droppings from trees on her lot, the Board found none of that testimony in any way pertained to the variance findings required under a *Cromwell* analysis. The majority of the Board found that the Property is so similar in size, shape and topography to other lots in the zone as to be indistinguishable for zoning purposes and, as such, does not meet a finding of uniqueness.

Even were the lot found to be unique, any hardship is entirely of Petitioner's own doing: failure to obtain a survey; failure to investigate, apply for or obtain zoning approvals; failure to investigate, apply for or obtain building permits; failure to pursue normal due diligence in either purchasing the Property or in vetting the contractor she hired to perform seemingly substantial and costly improvements to her residence. The Board found Petitioner's testimony lacking in credibility and unpersuasive on this point. Accordingly, the Board denies the requested variances for the garage addition and the side yard of 0 ft. on the north side of the Property.

THE FENCE: Petitioner removed an existing fence and landscaping and replaced that fence with a 6 ft. high fence in lieu of an otherwise permitted 42-inch fence. Petitioner also extended the new fence along the south side of her property and relocated the gate closer to the front building line of her house. By being so located, the fence was impermissibly installed since it was parallel to the adjoining neighbor's front yard.

The Board recognizes that BCC §13-601 (Swimming Pool Enclosure) requires a fence of *not less than 4 feet (48 inches)* (emphasis added), without specifying any height limitation. This Code provision conflicts with the limitation on fence height of 42 inches set forth in BCZR §427.1B.1. BCZR §427 does not permit a side yard fence of a resident's property to be installed in such a manner that it is parallel to the front yard of an adjacent dwelling. Based on this unique set of facts and law, the Board finds that the extension of the fence and gate from the rear building line of the Bair residence, its previous location, to its current location creates an unsafe condition and violates BCZR §427.1.B.1 and must be moved back. However, subject to the relocation of the gate as described herein, the fence height of 6 ft. will be permitted.

CONCLUSION

Based on the foregoing discussion, the Board grants in part, and denies in part the relief sought. In reaching its conclusion, the Board entertained much testimony irrelevant to the zoning issues within the Board's purview as well as much evidence of the acrimony among neighbors. The Board declines to countenance the acts of a property owner who disregards the most basic legal requirements governing the use of his or her property.

ORDER

THEREFORE, IT IS this 7th day of June, 2021, by the Board of Appeals for Baltimore County

ORDERED, that the Petition for Special Hearing: (1) to approve a nonconforming lot width and area; and (2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of the required 30 inches, be and is hereby **GRANTED**; and it is further

ORDERED, that the Petition for Special Hearing: (1) to approve nonconforming dwelling side yards of 9.5 ft. on the north side and 14.9 ft. on the south side, with a sum of the side yard setbacks of 24.4 ft. is hereby **GRANTED**; and it is further

ORDERED, that the Petition for Special Hearing to confirm an existing fence (swimming pool enclosure) with a height of 6 ft. is in compliance with BCZR §427.1 and BCC §13-6 -101, subject to the modification described herein, be and is hereby **GRANTED**; and it is further

ORDERED, that the Petition for Variance: (1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.; (2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of side yards of 14.9 ft. in lieu of the required 50 ft.; and (3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches, be and is hereby **DENIED**.

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

Deborah C. Dopkin, Chair

Andrew M. Belt

see following page
William A. McComas

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

See previous page
Deborah C. Dopkin, Chair

See previous page
Andrew M. Belt

William A. McComas

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

June 7, 2021

Peter M. Zimmerman, Esquire
Carole S. Demilio, Esquire
Office of People's Counsel
The Jefferson Building, Suite 204
105 W. Chesapeake Avenue
Towson, Maryland 21204

Lawrence E. Schmidt, Esquire
Zachary J. Wilkins, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204

RE: *In the Matter of: Donna V. Bair – Legal Owner*
Case No.: 19-342-SPHA

Dear Counsel:

Enclosed please find a copy of the final Opinion and 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,

Sunny Cannington

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure

c: See Distribution List following

In the matter of: Donna V. Bair – Legal Owner
Case No.: 19-342-SPHA
June 7, 2021
Distribution List

Donna V. Bair
John E. Lemmerman/RTF Associates, Inc.
Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
Kim and Tom Montanye
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz
Paul M. Mayhew, Managing Administrative Law Judge
Stephen Lafferty, Director/Office of Planning
C. Pete Gutwald, Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
James R. Benjamin, Jr., County Attorney/Office of Law

IN RE: **PETITIONS FOR SPECIAL HEARING AND VARIANCE** (4607 Prospect Avenue) 4th Election District 3rd Council District Donna V. Bair, *Legal Owner*	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY
Petitioner	*	**Case No. 2019-0342-SPHA**

* * * * * * * *

ORDER ON MOTION FOR RECONSIDERATION

This matter is a request for a reconsideration of an Order issued by Judge Beverungen on August 19, 2019, granting in part and denying in part request for Special Hearing and Variance. Counsel for the Petitioner herein moves for reconsideration as to only one issue: namely the clarification of the status of the original structure constructed in 1951 as well as the setbacks existing at that time.

I have reviewed the record and evidence submitted an find that, notwithstanding the additional structures which were the subject of Judge Beverungen' s August 19, 2019 Order, the original structure and setbacks existing in 1951 are still clearly in effect and are entitled to status as nonconforming.

THEREFORE, IT IS ORDERED this **25th** day of **September, 2019**, that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms set forth in Baltimore County Zoning Regulations ("BCZR") § 104; and

IT IS FURTHER ORDERED that all new construction must comply with current setbacks and restrictions existing at the time of new construction.

ORDER RECEIVED FOR FILING

Date 9/25/19

By

IT IS FURTHER ORDERED that in all other matter and respects Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

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

LAWRENCE M. STAHL
Administrative Law Judge
for Baltimore County

LMS:sln

ORDER RECEIVED FOR FILING
Date 9/25/19
By sln

JOHN A. OLSZEWSKI, JR.
County Executive

ADMINISTRATIVE LAW JUDGE
Office of Administrative Hearings

September 25, 2019

Lawrence E. Schmidt, Esq.
Zachary J. Wilkins, Esq.
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204

RE: **MOTION FOR RECONSIDERATION –**
Petitions for Special Hearing and Variance
Case No. 2019-0342-SPHA
Property: 4607 Prospect Avenue

Dear Counsel:

Enclosed please find a copy of the Order on Motion for Reconsideration 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,

LAWRENCE M. STAHL
Administrative Law Judge
for Baltimore County

LMS:sln
Enclosure

c: Pamela Becker, 24 Chatsworth Avenue, Glyndon, Maryland 21071
Richard Stanley, 215 Central Avenue, Glyndon, Maryland 21071
Shirley Winebarger, 80 Hanover Road, Reisterstown, Maryland 21136
Teresa Moore, 29 Waugh Avenue, Reisterstown, Maryland 21136
Vernene Lenz, 4722 Butler Road, Glyndon, Maryland 21071

Kim Karlsen, 304 Hammond Avenue, Glyndon, Maryland 21071
Martha Wist, 3834 Ivy Hill Drive, Hampstead, Maryland 21074
Ann Rea, 1015 Caren Drive, Eldersburg, Maryland 21784
Lyle Montanye, 4342 Butler Road, Glyndon, Maryland 21071
Frances Acle, 4606 Prospect Avenue, Glyndon, Maryland 21071
Kim & Tom Montanye, 4609 Prospect Avenue, Glyndon, Maryland 21071
Charles & Anna Welsh, 4601 Prospect Avenue, Glyndon, Maryland 21071
Robin Coffin, 4511 Prospect Avenue, Glyndon, Maryland 21071
Raymond & Linda Long, 114 Hanover Road, Glyndon, Maryland 21136
Steve & Patricia Fradkin, 4605 Prospect Avenue, Glyndon, Maryland 21136
Ramzi & Roula Hemady, 4603 Prospect Avenue, Glyndon, Maryland 21136
Robert Gehman, 4612 Prospect Avenue, Glyndon, Maryland 21136
Cynthia Morrison 4500 Prospect Avenue, Glyndon, Maryland 21071

IN RE: **PETITIONS FOR SPECIAL HEARING AND VARIANCE**	*	BEFORE THE
(4607 Prospect Avenue) 4th Election District 3rd Council District Donna V. Bair, *Legal Owner*	*	OFFICE OF ADMINISTRATIVE HEARINGS
	*	FOR BALTIMORE COUNTY
Petitioner	*	**Case No. 2019-0342-SPHA**

* * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings ("OAH") for consideration of Petitions for Special Hearing and Variance filed on behalf of Donna V. Bair, legal owner ("Petitioner"). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("BCZR") as follows: (1) to approve a nonconforming lot width and lot area, pursuant to BCZR Section 104.1.; (2) to approve a nonconforming dwelling side yard setback, pursuant to BCZR Section 104.1; and (3) to confirm that an existing fence (swimming pool enclosure) with a height of 6 ft. is in compliance with BCZR Section 427.1 and BCC §13-6-101.

A Petition for Variance seeks: (1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.; (2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; (3) to permit an existing shed with a side yard setback of 26 inches in lieu of the required 30 inches; and (4) to permit, if necessary, an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches. A site plan was marked and accepted into evidence as Petitioner's Exhibit 1.

Donna Bair and surveyor John Lemmerman appeared in support of the requests. Lawrence E. Schmidt, Esq. and Zachary J. Wilkins, Esq. represented Petitioner. Numerous neighbors and

ORDER RECEIVED FOR FILING
Date 8/19/19
By ____

members of the community opposed the requests. The Petition was advertised and posted as required by the BCZR. A substantive Zoning Advisory Committee ("ZAC") comment was received from the Department of Planning ("DOP"). That agency opposed certain of the zoning requests.

SPECIAL HEARING

The subject property is shown as Lot 10 on the Plat of Glyndon, filed long before adoption of the BCZR. As such it is obvious the size and width of the lot (neither of which satisfy current DR1 zone requirements) are lawfully nonconforming. This means the lot was properly created long ago, and became nonconforming when the BCZR was adopted in 1955. That aspect of the special hearing request will be granted.

Similarly, the existing shed in the rear yard appears to have been constructed many years ago, likely before the BCZR required a 2 ½ ft. setback for accessory structures. The shed is 26 inches from the property boundary, which is just 4 inches shy of the required setback. As such, though included as a variance request, this will be approved as a lawful nonconforming structure under the special hearing petition.

But I believe the remainder of the special hearing requests must be denied as a matter of law. While the side yard setbacks were deficient and likely nonconforming when Petitioner purchased the property in 2014, improvements were made on both sides of the dwelling since that time. As discussed at the hearing Petitioner failed to obtain a building permit for these recent improvements and the setbacks are in violation of the BCZR. As a result the side yard setbacks (of 0' and 14.9') are not lawfully nonconforming. With respect to the fence, I do not believe it complies with the BCZR and therefore that aspect of the special hearing must also be denied. While the BCZR specifies fences surrounding pools are exempt from the 42" height limitation,

ORDER RECEIVED FOR FILING
Date 8/19/19
By Den

another section of the same regulation states the exemption is not applicable in an historic district, like Glyndon. BCZR §427.1.A.

VARIANCE

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

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

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

Based on the site plan, photos and other exhibits I do not believe the subject property is unique in a zoning sense. The shape, size and topography of the lot is similar to many other properties in the community. While Glyndon is a historic district, the subject property itself is not historic. As such I do not believe that attribute can render this property unique; *i.e.,* unlike surrounding properties.

In addition, while Petitioner's counsel is correct that the boundary dispute issue must be resolved in circuit court, I do not believe variance relief can be properly granted in a case when the result would be to countenance a trespass onto another's property. It is undisputed, as shown on the site plan, that the improvements intrude 2.5 ft. onto the property owned by the Fradkins. It would be inappropriate, in my opinion, to grant a variance to "legitimize" from a zoning perspective the *status quo*. The BCZR specifies that variances must be in "strict harmony with the spirit and intent" of the regulations, and must not be injurious to the general welfare. BCZR §307.1. I do not believe that the requested variances would satisfy either criterion.

THEREFORE, IT IS ORDERED this **19th** day of **August, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing: (1) to approve a nonconforming lot width and

ORDER RECEIVED FOR FILING

Date 8/19/19

By Sen

area; and (2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of the required 30 inches, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Hearing: (1) to approve a nonconforming dwelling side yard setback; and (2) to confirm that an existing fence (swimming pool enclosure) with a height of 6 ft. is in compliance with BCZR Section 427.1 and BCC Section 13-6-101, be and is hereby DENIED.

IT IS FURTHER ORDERED that the Petition for Variance: (1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.; (2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of side yards of 14.9 ft. in lieu of the required 50 ft.; and (3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches, 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:sln

ORDER RECEIVED FOR FILING
Date 8/19/19
By Sln

JOHN A. OLSZEWSKI, JR.
County Executive

ADMINISTRATIVE LAW JUDGE
Office of Administrative Hearings

August 19, 2019

Lawrence E. Schmidt, Esq.
Zachary J. Wilkins, Esq.
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204

RE: Petitions for Special Hearing and Variance
Case No. 2019-0342-SPHA
Property: 4607 Prospect Avenue

Dear Counsel:

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

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

Sincerely,

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln
Enclosure

c: Pamela Becker, 24 Chatsworth Avenue, Glyndon, Maryland 21071
Richard Stanley, 215 Central Avenue, Glyndon, Maryland 21071
Shirley Winebarger, 80 Hanover Road, Reisterstown, Maryland 21136
Teresa Moore, 29 Waugh Avenue, Reisterstown, Maryland 21136
Vernene Lenz, 4722 Butler Road, Glyndon,Maryland 21071

Kim Karlsen, 304 Hammond Avenue, Glyndon, Maryland 21071
Martha Wist, 3834 Ivy Hill Drive, Hampstead, Maryland 21074
Ann Rea, 1015 Caren Drive, Eldersburg, Maryland 21784
Lyle Montanye, 4342 Butler Road, Glyndon, Maryland 21071
Frances Acle, 4606 Prospect Avenue, Glyndon, Maryland 21071
Kim & Tom Montanye, 4609 Prospect Avenue, Glyndon, Maryland 21071
Charles & Anna Welsh, 4601 Prospect Avenue, Glyndon, Maryland 21071
Robin Coffin, 4511 Prospect Avenue, Glyndon, Maryland 21071
Raymond & Linda Long, 114 Hanover Road, Glyndon, Maryland 21136
Steve & Patricia Fradkin, 4605 Prospect Avenue, Glyndon, Maryland 21136
Ramzi & Roula Hemady, 4603 Prospect Avenue, Glyndon, Maryland 21136
Robert Gehman, 4612 Prospect Avenue, Glyndon, Maryland 21136
Cynthia Morrison 4500 Prospect Avenue, Glyndon, Maryland 21071

IN THE MATTER OF DONNA V. BAIR – LEGAL OWNER AND PETITIONER FOR SPECIAL HEARING AND VARIANCE ON THE PROPERTY LOCATED AT 4607 PROSPECT AVENUE	*	BEFORE THE BOARD OF APPEALS OF
4TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BALTIMORE COUNTY
	*	CASE NO. 19-342-SPHA

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

RULING ON MOTION FOR RECONSIDERATION

This case comes to the Board of Appeals for Baltimore County ("Board") on a Motion for Reconsideration ("Motion") which was timely filed by Tom and Kim Montanye ("Protestants") *pro se,* requesting a limited review and reconsideration by the Board of its decision regarding the relocation of the fence and gate on the south side of the Bair property adjoining the Montanye residence.

The original Petitioner and property owner, Donna Bair, by her attorneys, Lawrence E. Schmidt and Smith, Gildea & Schmidt, LLC, submitted a Response to the Protestants' Motion for Reconsideration, and People's Counsel filed an email response.

This matter originally came before the Board on a Petition for Special Hearing and Variances filed by Petitioner Bair. The Board held three days of hearing and issued its Opinion and Order on June 7, 2021, granting in part and denying in part the request relief.

The Board held its deliberation on the Motion to Reconsider on August 31, 2021, and for the reasons that follow, denied the Motion.

The language in the Order regarding the fence is based on the evidence presented at the hearing where the Board found that the gate to the Bair's rear yard was previously located at the rear of the Bair residence and then Ms. Bair impermissibly moved the gate, and the supporting

fence, to the front of her house. No evidence was presented as to the precise location of the gate prior to its being moved.

The Board ordered that the fence extension and gate must be moved to the rear building line of the Bair residence, so as not to impede visibility for vehicles exiting the Montanye's driveway. The Board did not require the remaining portion of the fence be further re-aligned.

The Board finds there is no indication of the existence of new law or evidence not available at the time of the hearing. The Board also notes that its revisory power is limited by its Rule 11 which states "the Board shall have revisory power and control over the order in the event of fraud, mistake or irregularity." The Motion did not allege any such fraud, mistake or irregularity.

Conclusion

After reviewing the Motion and the case record, the Board unanimously finds none of the issues raised warrant revising its decision, and accordingly, the Motion should be denied.

ORDER

THEREFORE, IT IS THIS 9th day of November, 2021, by the Board of Appeals of Baltimore County,

ORDERED, that the Motion for Reconsideration is hereby **DENIED** for the reasons set forth herein.

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

Deborah C. Dopkin, Chair

See following page
Andrew M. Belt

Bryan T. Pennington /tay
Bryan T. Pennington

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

See previous page
Deborah C. Dopkin, Chair

Andrew M. Belt

See previous page
Bryan T. Pennington

Board of Appeals of Baltimore County

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

November 9, 2021

Lawrence E. Schmidt, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204

Thomas and Kimberly Montanye
4609 Prospect Avenue
Glyndon, Maryland 21136

Peter M. Zimmerman, Esquire
Carole S. Demilio, Esquire
Office of People's Counsel
The Jefferson Building, Suite 204
105 W. Chesapeake Avenue
Towson, Maryland 21204

RE: *In the Matter of: Donna V. Bair – Legal Owner*
Case No.: 19-342-SPHA

Dear Mr. and Mrs. Montanye and Counsel:

Enclosed please find a copy of the final Ruling on Motion for Reconsideration issued this date by the Board of Appeals of Baltimore County in the above subject matter.

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

Very truly yours,

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Multiple Original Cover Letters
Enclosure

c: See Distribution List following

In the matter of: Donna V. Bair – Legal Owner
Case No.: 19-342-SPHA
November 9, 2021
Distribution List

Donna V. Bair
Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz
Paul M. Mayhew, Managing Administrative Law Judge
Stephen Lafferty, Director/Office of Planning
C. Pete Gutwald, Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
James R. Benjamin, Jr., County Attorney/Office of Law

IN THE MATTER OF DONNA V. BAIR – LEGAL OWNER AND PETITIONER FOR SPECIAL HEARING AND VARIANCE ON THE PROPERTY LOCATED AT 4607 PROSPECT AVENUE	*	BEFORE THE BOARD OF APPEALS OF
4TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BALTIMORE COUNTY
	*	CASE NO. 19-342-SPHA

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

OPINION

This case comes to the County Board of Appeals ("CBA") on appeal of an Opinion and Order of the Administrative Law Judge dated August 19, 2020 granting in part and denying in part a Petition for Special Hearing and Variances filed by Donna V. Bair ("Petitioner/ Appellant") the legal owner of the property at 4607 Prospect Avenue (the "Property") in the Glyndon area of Baltimore County.

The Special Hearing Petition was filed pursuant to Baltimore County Zoning Regulations ("BCZR") §500.7 (1) to approve a nonconforming lot width and lot area pursuant to BCZR §104.1; (2) to approve a nonconforming dwelling side yard setback, pursuant to BCZR §104.1; and (3) to confirm an existing fence (swimming pool enclosure) with a height of 6 ft. is in compliance with BCZR §427.1 and Baltimore County Code ("BCC") §13-6-101.

The Petition for Variance seeks (1) to permit an existing 12 ft. by 28 ft. attached garage addition with a side yard of 0 ft. in lieu of the required 20 ft.; (2) to permit an existing 12 ft. by 28 ft. attached garage addition with a sum of side yards of 14.9 ft. in lieu of the required 50 ft.; (3) to permit an existing shed with a sideyard setback of 26 inches in lieu of the required 30 inches; and 4) to permit, if necessary, an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum 42 inches.

Appellant was represented by Lawrence E. Schmidt, Esquire and Zachary J. Wilkins, Esquire, of Smith, Gildea and Schmidt, LLC. Also appearing for Appellant as an expert was John Motsco, a licensed engineer in the State of Maryland. Ms. Bair also testified.

Numerous neighbors and an umbrella community association appeared in opposition, including both adjoining neighbors. Robin Coffin, and attorney who resides on Prospect Avenue, facilitated Protestants' case and testimony, and also testified personally as did the adjoining property owners.

The Board held three days of hearings, one in person on February 6, 2020 and two virtually on March 23, 2021 and March 25, 2021. A public deliberation was held virtually on April 20, 2021.

FACTUAL BACKGROUND

Petitioner Bair acquired the Property in 2014. At the time the Property was improved with a single family dwelling, attached garage, two driveways, an in-ground swimming pool, shed, and a fence enclosing a large portion of the rear yard and the pool area.

In 2017 Petitioner undertook additions to the house, adding to the front to create a master bedroom suite, adding a second garage, removing an existing fence and mature landscaping around the fence, and adding a new fence. Those improvements led to the current case and much acrimony among neighbors. In particular, the second garage extends several feet into the property of the neighbors on the north, Mr. and Mrs. Stephen Fradkin. The neighbors on the south, Mr. and Mrs. Thomas Montanye, object to the location of the replacement fence which extends into their front yard, and which creates a safety hazard by obstructing visibility for cars leaving the Montanye property. Mr. Montanye also disputes the location of the common property line and alleges that Petitioner tampered with surveyor's stakes to be more favorable to her

property. Both neighbors alleged that the improvements created additional runoff and flooding conditions on each of their properties.

Ms. Bair testified that she hired a contractor, though she did not identify that contractor to the CBA, nor did she know his whereabouts or current status. Ms. Bair assumed the contractor would obtain permits and other required approvals. No survey was conducted either at the time of Bair's purchase nor at the time of the work being undertaken. No zoning or permit approvals were investigated or sought for the building improvements or the fence.

The neighbors complained to the Baltimore County Office of Code Enforcement, who cited multiple violations at Petitioner's Property, and which ultimately led to filing of the subject petitions.

Petitioner's engineer John Motsco testified to the zoning history of the Property. The lot was created prior to the1945 adoption and 1955 codification of zoning by Baltimore County. Mr. Motsco stated that in 1970, Baltimore County adopted the D.R. zones (Density Residential), at which time the Property was designated D.R. 2. In 1996, the current D.R. 1 classification was applied to the Property.

APPLICABLE LAW

A Special Hearing Petition is effectively a request for declaratory judgment. BCZR §500.7, *Antwerpen v. Baltimore County*, 163 Md. App. 194, 209 (2005). The main question to be determined by the Board is whether the current configuration of the lot is permitted as a non-conforming use per BCZR §104.1. A collateral issue under BCZR §104.3 concerns whether the addition to the house extends beyond 25% of the ground floor area of the house prior to the addition.

Petitioner bears the burden of presenting evidence (customarily through experts) on which the Board can assess whether a zoning request pursuant to the BCZR may be approved. While the BCZR provides no specific criteria for the granting of a Request for Special Hearing, "the administrative practice in Baltimore County has been to determine whether the proposed Special Hearing would be compatible with the community and generally consistent with the spirit and intent of the regulations." *Kiesling v. Long*, Unreported Opinion, No. 1485, Md. Ct. Spec. App. (Sept. Term 2016).

A nonconforming use is one that predates the zoning imposed on a property. It is defined in BCZR §101 as a legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use. Under BCZR §104.3, no nonconforming building or structure may be extended more than 25% of the ground floor area of the building so used.

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

(1) The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is – in and of itself – unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property; and

(2) If that first step results in a supportable finding of uniqueness or unusualness, then a second step is taken in the process, *i.e.*, a determination of whether practical difficulty and/or unreasonable hardship, resulting from the disproportionate impact of the ordinance *caused by* the property's uniqueness, exists. *Cromwell*, 102 Md. App. at 694-95, 651 A.2d at 426.

Further, that hardship or difficulty must not be of the Petitioner's own making. 102, Md. App. at pp 694-5.

DISCUSSION

THE LOT: Petitioner's engineer John Motsco testified that the subject lot is a .74 acre parcel, classified D.R. 1 with a small portion being R.C. 2 (Resource Conservation). The lot was created by a plat entitled "Plat of Land belonging to B.F. Bennett and Joshua Regester", dated October 31, 1883 and recorded among the Plat Records of Baltimore County, Maryland in Plat Book No. 2 page 18. The lot lines are unchanged since its creation.

Mr. Motsco also testified that the original residence was constructed in 1951. Using old aerial photographic records, Mr. Motsco determined that the house configuration rendered the side yards of 9.5 feet on the north side and 14.9 feet on the south side, with a sum of the sideyard setbacks of 24.4 feet.

Based on the documentary evidence and testimony of Mr. Motsco, the Board finds that the lot width and area meet the definition of the BCZR as a valid nonconforming use that may continue. The lot configuration pre-dates any zoning in Baltimore County by at least sixty years, and despite the fact that the lot width and area do not meet current regulations, these may continue. In addition, the Board finds that the side yard setbacks existing prior to Petitioner's new construction were in existence prior to the 1996 zoning, perhaps longer, and as such may continue - measuring 9.5 feet on the north side and 14 feet on the south. Further testimony, undisputed though imprecise, persuaded the Board that the shed in the rear of the Property predates the current zoning, and may also remain in its current location, having a setback of 26 inches.

THE BEDROOM ADDITION: Petitioner built an addition to the house which extended the front building and roof lines to create a straight front building line where a "notch" or recess previously existed. According to Mr. Motsco, that addition measures 14 x 22 feet (for a total of

308 sq. ft.). Under BCZR §104.3, no nonconforming building or use may be extended by more than 25% of the ground floor area of the building so used.

Mr. Motsco offered testimony and documentary evidence that the ground floor area of the residence prior to the bedroom addition was 1,554 sq. ft. and that the bedroom addition amounts to less than 25% (or a maximum of 388 sq. ft.) permitted. Mr. Motsco also testified that this addition maintained the previous side yard setback of 14 feet from the south property line shared with the Montanye's.

Based on these facts, the Board finds that the bedroom addition is a permitted extension of the nonconforming structure.

THE GARAGE ADDITION: Though there was much testimony offered by Ms. Bair regarding the addition of a second garage based on her need to protect her vehicles from debris and droppings from trees on her lot, the Board found none of that testimony in any way pertained to the variance findings required under a *Cromwell* analysis. The majority of the Board found that the Property is so similar in size, shape and topography to other lots in the zone as to be indistinguishable for zoning purposes and, as such, does not meet a finding of uniqueness.

Even were the lot found to be unique, any hardship is entirely of Petitioner's own doing: failure to obtain a survey; failure to investigate, apply for or obtain zoning approvals; failure to investigate, apply for or obtain building permits; failure to pursue normal due diligence in either purchasing the Property or in vetting the contractor she hired to perform seemingly substantial and costly improvements to her residence. The Board found Petitioner's testimony lacking in credibility and unpersuasive on this point. Accordingly, the Board denies the requested variances for the garage addition and the side yard of 0 ft. on the north side of the Property.

THE FENCE: Petitioner removed an existing fence and landscaping and replaced that fence with a 6 ft. high fence in lieu of an otherwise permitted 42-inch fence. Petitioner also extended the new fence along the south side of her property and relocated the gate closer to the front building line of her house. By being so located, the fence was impermissibly installed since it was parallel to the adjoining neighbor's front yard.

The Board recognizes that BCC §13-601 (Swimming Pool Enclosure) requires a fence of *not less than 4 feet (48 inches)* (emphasis added), without specifying any height limitation. This Code provision conflicts with the limitation on fence height of 42 inches set forth in BCZR §427.1B.1. BCZR §427 does not permit a side yard fence of a resident's property to be installed in such a manner that it is parallel to the front yard of an adjacent dwelling. Based on this unique set of facts and law, the Board finds that the extension of the fence and gate from the rear building line of the Bair residence, its previous location, to its current location creates an unsafe condition and violates BCZR §427.1.B.1 and must be moved back. However, subject to the relocation of the gate as described herein, the fence height of 6 ft. will be permitted.

CONCLUSION

Based on the foregoing discussion, the Board grants in part, and denies in part the relief sought. In reaching its conclusion, the Board entertained much testimony irrelevant to the zoning issues within the Board's purview as well as much evidence of the acrimony among neighbors. The Board declines to countenance the acts of a property owner who disregards the most basic legal requirements governing the use of his or her property.

ORDER

THEREFORE, IT IS this 7th day of June, 2021, by the Board of Appeals for Baltimore County

ORDERED, that the Petition for Special Hearing: (1) to approve a nonconforming lot width and area; and (2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of the required 30 inches, be and is hereby **GRANTED**; and it is further

ORDERED, that the Petition for Special Hearing: (1) to approve nonconforming dwelling side yards of 9.5 ft. on the north side and 14.9 ft. on the south side, with a sum of the side yard setbacks of 24.4 ft. is hereby **GRANTED**; and it is further

ORDERED, that the Petition for Special Hearing to confirm an existing fence (swimming pool enclosure) with a height of 6 ft. is in compliance with BCZR §427.1 and BCC §13-6 -101, subject to the modification described herein, be and is hereby **GRANTED**; and it is further

ORDERED, that the Petition for Variance: (1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.; (2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of side yards of 14.9 ft. in lieu of the required 50 ft.; and (3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches, be and is hereby **DENIED**.

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

Deborah C. Dopkin, Chair

Andrew M. Belt

see following page
William A. McComas

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

See previous page
Deborah C. Dopkin, Chair

See previous page
Andrew M. Belt

William A. McComas

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

June 7, 2021

Peter M. Zimmerman, Esquire
Carole S. Demilio, Esquire
Office of People's Counsel
The Jefferson Building, Suite 204
105 W. Chesapeake Avenue
Towson, Maryland 21204

Lawrence E. Schmidt, Esquire
Zachary J. Wilkins, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204

RE: *In the Matter of: Donna V. Bair – Legal Owner*
Case No.: 19-342-SPHA

Dear Counsel:

Enclosed please find a copy of the final Opinion and 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,

Sunny Cannington

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure

c: See Distribution List following

In the matter of: Donna V. Bair – Legal Owner
Case No.: 19-342-SPHA
June 7, 2021
Distribution List

Donna V. Bair
John E. Lemmerman/RTF Associates, Inc.
Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
Kim and Tom Montanye
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz
Paul M. Mayhew, Managing Administrative Law Judge
Stephen Lafferty, Director/Office of Planning
C. Pete Gutwald, Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
James R. Benjamin, Jr., County Attorney/Office of Law

Address List

Petitioner/Appellant:

Donna V. Bair
4607 Prospect Avenue
Glyndon, MD 21071
Legal Owner

Lawrence E. Schmidt, Esquire
Zachary J. Wilkins, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue
Suite 200
Towson, MD 21204
lschmidt@sgs-law.com
zwilkins@sgs-law.com

John E. Lemmerman
RTF Associates, Inc.
142 East Main Street
Westminster, MD 21157

Interested Persons/ Protestants:

Pamela Becker
24 Chatsworth Avenue
Glyndon, MD 21071

Richard Stanley
215 Central Avenue
Glyndon, MD 21071

Shirley Winebarger
80 Hanover Road
Reisterstown, MD 21136

Teresa Moore
29 Waugh Avenue
Reisterstown, MD 21136

Vernene Lenz
4722 Butler Road
Glyndon, MD 21071

Kim Karlsen
304 Hammond Avenue
Glyndon, MD 21071

Martha Wist
3834 Ivy Hill Drive
Hampstead, MD 21074

Ann Rea
1015 Caren Drive
Eldersburg, MD 21784

Lyle Montanye
4342 Butler Road
Glyndon, MD 21071

Frances Acle
4606 Prospect Avenue
Glyndon, MD 21136

Kim and Tom Montanye
4609 Prospect Avenue
Glyndon, MD 21136

Charles & Anna Welsh
4601 Prospect Avenue
Glyndon, MD 21071

Robin Coffin
4511 Prospect Avenue
Glyndon, MD 21071

Raymond & Linda Long
114 Hanover Road
Glyndon, MD 21136

Steve & Patricia Fradkin
4605 Prospect Avenue
Glyndon, MD 21136

Ramzi & Roula Hemady
4603 Prospect Avenue
Glyndon, MD 21136

Robert Gehman
4612 Prospect Avenue
Glyndon, MD 21136

Cynthia Morrison
4500 Prospect Avenue
Glyndon, MD 21071

Interoffice:

Office of People's Counsel
Paul M. Mayhew, Managing Administrative Law Judge
C. Pete Gutwald, Director/Department of Planning
Michael D. Mallinoff, Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law

IN THE MATTER OF DONNA V. BAIR – LEGAL OWNER AND PETITIONER FOR SPECIAL HEARING AND VARIANCE ON THE PROPERTY LOCATED AT 4607 PROSPECT AVENUE	*	BEFORE THE BOARD OF APPEALS OF
4TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BALTIMORE COUNTY
	*	CASE NO. 19-342-SPHA

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

RULING ON MOTION FOR RECONSIDERATION

This case comes to the Board of Appeals for Baltimore County ("Board") on a Motion for Reconsideration ("Motion") which was timely filed by Tom and Kim Montanye ("Protestants") *pro se,* requesting a limited review and reconsideration by the Board of its decision regarding the relocation of the fence and gate on the south side of the Bair property adjoining the Montanye residence.

The original Petitioner and property owner, Donna Bair, by her attorneys, Lawrence E. Schmidt and Smith, Gildea & Schmidt, LLC, submitted a Response to the Protestants' Motion for Reconsideration, and People's Counsel filed an email response.

This matter originally came before the Board on a Petition for Special Hearing and Variances filed by Petitioner Bair. The Board held three days of hearing and issued its Opinion and Order on June 7, 2021, granting in part and denying in part the request relief.

The Board held its deliberation on the Motion to Reconsider on August 31, 2021, and for the reasons that follow, denied the Motion.

The language in the Order regarding the fence is based on the evidence presented at the hearing where the Board found that the gate to the Bair's rear yard was previously located at the rear of the Bair residence and then Ms. Bair impermissibly moved the gate, and the supporting

fence, to the front of her house. No evidence was presented as to the precise location of the gate prior to its being moved.

The Board ordered that the fence extension and gate must be moved to the rear building line of the Bair residence, so as not to impede visibility for vehicles exiting the Montanye's driveway. The Board did not require the remaining portion of the fence be further re-aligned.

The Board finds there is no indication of the existence of new law or evidence not available at the time of the hearing. The Board also notes that its revisory power is limited by its Rule 11 which states "the Board shall have revisory power and control over the order in the event of fraud, mistake or irregularity." The Motion did not allege any such fraud, mistake or irregularity.

Conclusion

After reviewing the Motion and the case record, the Board unanimously finds none of the issues raised warrant revising its decision, and accordingly, the Motion should be denied.

ORDER

THEREFORE, IT IS THIS 9th day of November, 2021, by the Board of Appeals of Baltimore County,

ORDERED, that the Motion for Reconsideration is hereby **DENIED** for the reasons set forth herein.

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

Deborah C. Dopkin, Chair

See following page
Andrew M. Belt

Bryan T. Pennington /tag
Bryan T. Pennington

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

See previous page
Deborah C. Dopkin, Chair

Andrew M. Belt

See previous page
Bryan T. Pennington

Board of Appeals of Baltimore County

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

November 9, 2021

Lawrence E. Schmidt, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204

Thomas and Kimberly Montanye
4609 Prospect Avenue
Glyndon, Maryland 21136

Peter M. Zimmerman, Esquire
Carole S. Demilio, Esquire
Office of People's Counsel
The Jefferson Building, Suite 204
105 W. Chesapeake Avenue
Towson, Maryland 21204

RE: *In the Matter of: Donna V. Bair – Legal Owner*
Case No.: 19-342-SPHA

Dear Mr. and Mrs. Montanye and Counsel:

Enclosed please find a copy of the final Ruling on Motion for Reconsideration issued this date by the Board of Appeals of Baltimore County in the above subject matter.

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

Very truly yours,

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Multiple Original Cover Letters
Enclosure

c: See Distribution List following

In the matter of: Donna V. Bair – Legal Owner
Case No.: 19-342-SPHA
November 9, 2021
Distribution List

Donna V. Bair
Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz
Paul M. Mayhew, Managing Administrative Law Judge
Stephen Lafferty, Director/Office of Planning
C. Pete Gutwald, Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
James R. Benjamin, Jr., County Attorney/Office of Law

From:	Lawrence Schmidt
To:	Peter Max Zimmerman; Appeals Board; Krysundra Cannington
Cc:	Tom@montanye.net; reistlaxcoach@gmail.com; rscoffin@verizon.net; Bair, Donna (donna.bair@yahoo.com)
Subject:	RE: Case No. 19-342-SPHA; Donna Bair, Tom Montanye"s Motion for Reconsideration
Date:	Wednesday, August 25, 2021 3:56:37 PM

CAUTION: This message from lschmidt@sgs-law.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Ms. Cannington: According to the Board's notice of deliberation, all responses to the Motion for Reconsideration were to be filed by 3:00 p.m. August 24, 2021 (yesterday). As Mr. Zimmerman's submittal is untimely, I request that it not be considered by the Board.

Thank you.

Larry Schmidt

Lawrence E. Schmidt | Partner
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
lschmidt@sgs-law.com | http://secure-web.cisco.com/14fA-HelnfCO1OFl2ohP-Ct34sJL4yvNKzC973xSUUNNFxPUNEKb3qva3lC9_EpULnlr7evpdM95yqk46un0BhDz-8MHNwRszJN20nJkWBoHw-8EwSovQSHjB13ykTjVrhBEYYw15s36QI97ZbbbXuF7jOZ8MrLyMbjd2Rl6Vn3xAeIf4BW9QuBuJi0Sch6gcYYDv6SgRgR4HQzPO_RbXmMn_SjCVaFFv79cyHNJaurc8vbnjivHWQVRRNC8tIMkPRRnW6U77lZbzyqUsx0XiXyZ3i-xroL5MPd5LnSLe_Nsuenm3yfEG2Ij3sMttJYEB9itX3qvPLkUeKjYP6EJVREKhVNyYhGrxA4LpoE2ofcf8PQzNQFNTZEmFvA2OtOwlW_kjIbO1p62ADk3qIQBggNv4WvU2X-irKfdT7ILgT-kLyttA0HKd3QikJV1hPn2opp6X9gRPt07JuAKpnhUXvg/http%3A%2F%2Fwww.sgs-law.com

This email contains information from the law firm of Smith, Gildea & Schmidt, LLC which may be confidential and/or privileged. The information is intended to be for the exclusive use of the individual or entity named above. If you are not the intended recipient, be advised that any disclosure, copying, distribution or other use of this information is strictly prohibited. If you have received this e-mail in error, please notify Smith, Gildea & Schmidt, LLC by telephone immediately.

From: Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov>
Sent: Wednesday, August 25, 2021 3:02 PM
To: Appeals Board <appealsboard@baltimorecountymd.gov>; Krysundra Cannington <kcannington@baltimorecountymd.gov>
Cc: Lawrence Schmidt <lschmidt@sgs-law.com>; Tom@montanye.net; reistlaxcoach@gmail.com; rscoffin@verizon.net
Subject: Case No. 19-342-SPHA; Donna Bair, Tom Montanye's Motion for Reconsideration

To the Appeals Board,

This matter is scheduled for further deliberation by the Board on August 31, 2021.

Upon review of the Motion for Reconsideration filed by Tom and Kim Montanye, the Response just filed yesterday by Petitioner, the Board's June 7, 2021 Opinion and Order, and the prior April 20,

2021 deliberation minutes, please allow me to recap these observations.

The June 7, 2021 Order itself does not specify the location where the fence is to be removed and/or relocated. Rather, it refers on Page 8 to "the modification described herein." It turns out that the description of fence relocation on Page 7 of the Opinion is ambiguous and/or inconsistent with the Board's April 20, 2021 decision made in public deliberation. I attach both the opinion and the minutes.

It was my impression in listening to the public deliberation that even to the rear of the Bair house's rear building line, the fence was to be moved away from the Montanye boundary, to the more distant location of the previous picket fence, which also was lower in height. This would provide some transitional buffer. Such a buffer would not be prejudicial to Ms. Bair and would reduce the likelihood of further friction.

The Montanyes' motion's reference to the Board's deliberation minutes is apt:

> "The Board found that a reasonable solution is to relocate the fence and gate to its original location, which will provide pool security and address the driveway concern."

Here is the entire section of the Board's deliberation devoted to the fence issue on Page 2:

> "The Board discussed the request to permit an existing fence (swimming pool enclosure) with a height of 6 ft. in lieu of the permitted 42 in. The Board noted there are competing statutes regarding fences. The 6 ft. fence extends into the front yard of the adjoining property and along the parking area/driveway of the neighbors. The Board noted that the fence impedes the ability of the neighbors to see when they pull out of their driveway, which is a public safety hazard. The Board found that a reasonable solution is to relocate the fence and gate to its original location, which will provide pool security and address the driveway concern. The Board granted the Variance relief, with conditions."

In addition to the Board's recognition of the Petitioner's problematic fence location forward of her rear yard and adjacent to the Montanye front yard, especially near the driveway, there was thus also a recognition that the rear yard fence location as constructed along the property boundary required adjustment. As I previously observed, the fence location extending into the rear yard is way beyond what is necessary to protect children from venturing into the pool. It is actually a privacy fence which is counterproductive to the essential legislative purpose because it leaves open a wide area in which children who play may venture easily into the pool. Moreover, it does not need to be six feet high. Forty-eight inches would be enough even if it is generously called a swimming pool protection fence.

To sum up, I think it was the Board's intent, and within the scope of the Montanye motion to relocate the fence to its previous location, thus providing some buffer area and implicitly adjusting the fence height to the height of the previous fence.

Accordingly, further specification in the order is warranted. This should include a very specific description of the location, and the clarification of a transitional buffer to the previous rear location

would be appropriate. This would include the use of the helpful photographs and overlay diagram attached to the Montanye motion and/or a specification of the distance from the Montanye boundary and the height of the previous fence.

The more specific the order, the better. This would also reduce the likelihood of further disharmony between these neighbors.

This has been a very challenging and difficult case in many ways. To wrap it up, I respectfully posit that the fence aspect does deserve clarification and adjustment consistent with the deliberation.

Respectfully, Peter Max Zimmerman, People's Counsel 410 887-2188

Get your COVID-19 vaccine today.

CONNECT WITH BALTIMORE COUNTY

www.baltimorecountymd.gov

From:	Peter Max Zimmerman
To:	Appeals Board; Krysundra Cannington
Cc:	Lawrence Schmidt; Tom@montanye.net; reistlaxcoach@gmail.com; rscoffin@verizon.net
Subject:	Case No. 19-342-SPHA; Donna Bair, Tom Montanye"s Motion for Reconsideration
Date:	Wednesday, August 25, 2021 3:02:29 PM
Attachments:	Bair Delib Minutes - 2019-342-SPHA.pdf Bair Donna - 2019-342-SPHA - CBA Opinion.pdf

To the Appeals Board,

This matter is scheduled for further deliberation by the Board on August 31, 2021.

Upon review of the Motion for Reconsideration filed by Tom and Kim Montanye, the Response just filed yesterday by Petitioner, the Board's June 7, 2021 Opinion and Order, and the prior April 20, 2021 deliberation minutes, please allow me to recap these observations.

The June 7, 2021 Order itself does not specify the location where the fence is to be removed and/or relocated. Rather, it refers on Page 8 to "the modification described herein." It turns out that the description of fence relocation on Page 7 of the Opinion is ambiguous and/or inconsistent with the Board's April 20, 2021 decision made in public deliberation. I attach both the opinion and the minutes.

It was my impression in listening to the public deliberation that even to the rear of the Bair house's rear building line, the fence was to be moved away from the Montanye boundary, to the more distant location of the previous picket fence, which also was lower in height. This would provide some transitional buffer. Such a buffer would not be prejudicial to Ms. Bair and would reduce the likelihood of further friction.

The Montanyes' motion's reference to the Board's deliberation minutes is apt:

> "The Board found that a reasonable solution is to relocate the fence and gate to its original location, which will provide pool security and address the driveway concern."

Here is the entire section of the Board's deliberation devoted to the fence issue on Page 2:

> "The Board discussed the request to permit an existing fence (swimming pool enclosure) with a height of 6 ft. in lieu of the permitted 42 in. The Board noted there are competing statutes regarding fences. The 6 ft. fence extends into the front yard of the adjoining property and along the parking area/driveway of the neighbors. The Board noted that the fence impedes the ability of the neighbors to see when they pull out of their driveway, which is a public safety hazard. The Board found that a reasonable solution is to relocate the fence and gate to its original location, which will provide pool security and address the driveway concern. The Board granted the Variance relief, with conditions."

In addition to the Board's recognition of the Petitioner's problematic fence location forward of her rear yard and adjacent to the Montanye front yard, especially near the driveway, there was thus also

a recognition that the rear yard fence location as constructed along the property boundary required adjustment. As I previously observed, the fence location extending into the rear yard is way beyond what is necessary to protect children from venturing into the pool. It is actually a privacy fence which is counterproductive to the essential legislative purpose because it leaves open a wide area in which children who play may venture easily into the pool. Moreover, it does not need to be six feet high. Forty-eight inches would be enough even if it is generously called a swimming pool protection fence.

To sum up, I think it was the Board's intent, and within the scope of the Montanye motion to relocate the fence to its previous location, thus providing some buffer area and implicitly adjusting the fence height to the height of the previous fence.

Accordingly, further specification in the order is warranted. This should include a very specific description of the location, and the clarification of a transitional buffer to the previous rear location would be appropriate. This would include the use of the helpful photographs and overlay diagram attached to the Montanye motion and/or a specification of the distance from the Montanye boundary and the height of the previous fence.

The more specific the order, the better. This would also reduce the likelihood of further disharmony between these neighbors.

This has been a very challenging and difficult case in many ways. To wrap it up, I respectfully posit that the fence aspect does deserve clarification and adjustment consistent with the deliberation.

Respectfully, Peter Max Zimmerman, People's Counsel 410 887-2188

IN RE: THE PETITION FOR SPECIAL HEARING AND VARIANCE	*	BEFORE THE
4607 Prospect Avenue	*	COUNTY BOARD
4th Election District 3rd Councilmanic District	*	OF APPEALS
	*	FOR
Donna V. Bair *Legal Owner*	*	BALTIMORE COUNTY
	*	**Case No.: 2019-342-SPHA**

* *

PETITIONER'S RESPONSE TO MOTION FOR RECONSIDERATION

The property owner, Donna V. Bair ("Petitioner"), by and through her attorneys, Lawrence E. Schmidt, Zachary J. Wilkins, and Smith, Gildea & Schmidt, LLC, submits this Response to Motion for Reconsideration filed by Tom and Kim Montanye, and states the following:

1. The Motion filed by Mr. and Mrs. Montanye states, "(w)e wish to have the Order reviewed and reconsidered on the fence opinion only. Not for a change of decision, but only for needed clarity on a single issue. We believe the wording of the written Opinion raises confusion and contains insufficient clarity." The Motion further states that the Board's "written opinion raises confusion and contains insufficient clarity to enable Baltimore County Code Enforcement to reasonably enforce the opinion as agreed upon by the CBA panel in the public deliberation, and also as recorded in the deliberation minutes".

2. Petitioner does not feel that the Opinion is confusing or unclear, but rather simple and concise. The Board discussed during the public deliberation that a 6-foot fence provides safety for the pool; a fence height of 42 inches is permitted in the side/front yard of an adjoining property (BCRZ 427.1B); and, any safety concerns due to the alterations of the fence extended along the south (Montanye) side of the property. The Board discussed where a shorter portion of the new 6-foot fence should start and stop. Board members voted to grant the Variance relief for the fence, with conditions... "subject to the relocation of the gate as described herein, the fence height of 6 ft. will be permitted" (Opinion, Page 7, Paragraph 2). The Opinion simply states that a portion of the 6-foot fence (along the south side of the property and adjacent to the Montanyes property) previously 42 inches in height, be lowered back to the permitted 42 inches and that the gate be moved back to the rear building line of the Bair residence, it's previous location.[1]
3. The mandated changes in the Opinion are clear and unambiguous.
4. The Petitioner is prepared to make such changes.
5. It is also noted that the Motion for Reconsideration presents no new facts, changes in law, fraud, mistake or irregularity**.** Thus, there is no legal basis on which the Motion to Reconsideration can be granted.

[1] The rear building line of the Bair residence is 4 feet back (East) from the rear foundation of the residence, as there is a 4 foot building overhang along that back corner.

Wherefore, having addressed the allegations in the Motion for Reconsideration, the Petitioner requests,

- That the Motion for Reconsideration be DENIED; and
- For such other and further relief as the nature of her cause may require.



LAWRENCE E. SCHMIDT
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
(410) 821-0070
lschmidt@sgs-law.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this **24th** day of August**,** 2021 a copy of the foregoing Response to Motion for Reconsideration was emailed to:

Thomas & Kim Montayne
Tom@montanye.net

Kimberly Karlsen
perandkim@aol.com

Steve & Patricia Fradkin
reistlaxcoach@gmail.com

Sue Benson
sbensoncomm@aol.com

Robin Coffin
rscoffin@verizon.net

Mary Molinaro
mmolinaro@reisterstown.com

Peter Max Zimmerman, Esquire
People's Counsel for Baltimore County
peoplescounsel@baltimorecountymd.gov



LAWRENCE E. SCHMIDT

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
July 15, 2021

NOTICE OF DELIBERATION ON MOTION FOR RECONSIDERATION

IN THE MATTER OF: Donna V. Bair – Legal Owner
4607 Prospect Avenue
19-342-SPHA 4th Election District; 3rd Councilmanic District

Re: Motion for Reconsideration dated July 2, 2021 filed by Tom and Kim Montanye, Protestants *pro* se.

Pursuant to Rule 10 of the Board of Appeals' Rules of Practice and Procedure, a public deliberation on the Motion for Reconsideration and any response thereto is

ASSIGNED FOR: AUGUST 31, 2021 AT 9:00 A.M.

The above scheduled public deliberation will be held remotely using WebEx for audio and video participation. **Call-in information and a link to the public deliberation will be posted on our web calendar the night before at** www.baltimorecountymd.gov/Agencies/appeals/index.html.

NOTE: Any Responses to the Motion for Reconsideration are due on AUGUST 24, 2021 no later than 3:00 p.m.
ELECTRONIC COPY ONLY
emailed to appealsboard@baltimorecountymd.gov

NOTE: PUBLIC DELIBERATIONS ARE OPEN WORK SESSIONS WHICH ALLOW THE PUBLIC TO WITNESS THE DECISION-MAKING PROCESS. A WRITTEN OPINION AND ORDER WILL BE ISSUED BY THE BOARD WITHIN A REASONABLE TIMEFRAME AFTER DELIBERATION AND A COPY SENT TO ALL PARTIES.

If you do not have access to a computer or smart device, please contact our office for the call-in information the day before the scheduled deliberation.

Krysundra Cannington, Administrator

c.	Counsel for Petitioners	: Lawrence E. Schmidt, Esquire
	Legal Owner	: Donna Bair
	People's Counsel for Baltimore County	: Peter M. Zimmerman, Esquire
	Protestants *pro se*	: Ann Rea Charles and Anna Welsh Cynthia Morrison Frances Acle John E. Lemmerman/RTF Associates, Inc. Kim and Tom Montanye Kim Karlsen Lyle Montanye Martha Wist Pamela Becker Ramzi and Roula Hemady Raymond and Linda Long Richard Stanley Robert Gehman Robin Coffin Shirley Winebarger Steve and Patricia Fradkin Teresa Moore Vernene Lenz

Paul M. Mayhew, Managing Administrative Law Judge
Steve Lafferty, Director/Department of Planning
C. Pete Gutwald, Director/PAI
James R. Benjamin, Jr., County Attorney
Nancy C. West, Assistant County Attorney

July 2, 2021

Tom & Kim Montanye, Protestants
4609 Prospect Avenue
Glyndon, MD 21136

Via Email - AppealsBoard@BaltimoreCountyMD.Gov

RECEIVED
JUL 06 2021
BALTIMORE COUNTY
BOARD OF APPEALS

Board of Appeals of Baltimore County
Jefferson Building
105 West Chesapeake Avenue, Suite 203
Towson, MD 21204

Re: Bair – 4607 Prospect Ave
Case No. **2019-342-SPHA**

Dear Board of Appeals,

Please find enclosed a Motion for Reconsideration for filing in the above matter.

We wish to have the order reviewed and reconsidered on the fence opinion only. Not for a change of decision, but only for needed clarity on a single issue.

We believe the wording of the written opinion raises confusion and contains insufficient clarity to enable Baltimore County Code Enforcement to reasonably enforce the opinion as agreed upon by the CBA panel in the Public Deliberation, and also as recorded in the deliberation minutes.

Since this opinion was a partial grant/ partial deny, sufficient clarity is required. We ask that the CBA append or rewrite the fence ruling to exactly reflect the panel's agreement on the fence, so that it can be reasonably enforced, and the matter settled successfully and finally. We highlight and clarify certain hearing exhibits to assist to this end.

We're happy to appear for further explanation or to have the Motion considered based only on these pleadings, as you deem appropriate.

Thank you for your consideration in this matter.

Sincerely,

Tom & Kim Montanye

Cc: Office of the People's Council
Lawrence Schmidt
Steve and Patti Fradkin
Robin Coffin
Kim Karlsen
Sue Bensen
Mary Molinero
Cookie Stone

RECEIVED
JUL 06 2021
BALTIMORE COUNTY
BOARD OF APPEALS

RE: Petition for Special Hearing and Variance, Board of Appeals
Case 2019-342-SPHA
Donna Bair, 4607 Prospect Ave, Glyndon

Motion for Reconsideration

7/2/2021, Tom & Kim Montanye, Neighbors @ 4609 Prospect Ave

Tom and Kim Montanye, the Protestant neighbors at 4609 Prospect Avenue, submit this Motion for Reconsideration (MFR) pursuant to Rule 10 of the County Board of Appeals (CBA), and respectfully request that the CBA revises its' Opinion issued dated June 7, 2021 relating to the above referenced matter.

The fence opinion

During the public deliberation, there was a clear agreement among the CBA panel that the fence that was constructed by the petitioner could stand, with the exception of the *new* portion positioned along the Montanye's driveway/front yard property line. The minutes of the deliberation state *"The Board found that a reasonable solution is to relocate the fence and gate to its original location, which will provide pool security and address the driveway concern."*

However, the resulting opinion confuses the issue by stating *"...the Board finds that the extension of the fence from the rear of the building line of the Bair residence, its previous location, to its current location creates an unsafe condition and violates BCRZ §427.1.B.1 and must be moved back."*

The confusion is caused by two ambiguities in the opinion.

1. "*...from the rear of the building line of the Bair residence...*" – this references a "from" location but not a "to" location, making it unclear the direction or distance of the original fence from that point.
2. "*...its previous location...*" and "*must be moved back*" – only photo exhibits were admitted showing the previous fence, no drawings or surveys.

In order for Code Enforcement to execute the *"relocate the fence and gate to its original location"* sentiment from the deliberation, and "*subject to the modification described herin*" in the Order, the original location must be made clear, using the best available resources from the hearings.

The Petitioner's survey drawing is not helpful in this regard. It contains no indication of the property condition prior to the work being done, including the prior fence location, because it was created after-the-fact.

However, there were two photo exhibits in particular, from the hearings, that can help reconstruct the previous condition. Using these two photo exhibits we offer, as a helpful inclusion, a drawing overlay to the survey, showing the previous fence location. We also include the photo exhibits used to substantiate the accuracy of the drawing overlay.

Protestant's Exhibit 25C / Petitioner's Exhibit 2D

The original gate & fence location

Protestant's Exhibit 25C (included), a photo taken from the Bair view, clearly shows the prior location of the gate and fence. This same photo was also presented into evidence, among other photos in a grouping labeled "4607 Before", as **Petitioner's Exhibit 2D**.

For additional clarity, we have included a "marked up" version of the exhibit photo to assist with the following description of the original fence/gate configuration. There are "call-outs" on the markup corresponding to the letters (a-e) below.

The "marked up" exhibit photo shows that the original gate started near the back corner of the house (a), and that it ran toward the rear yard (parallel to the side of the house and property line, not parallel to the back of the house or "rear of the building line"). In other words, the prior gate faced the Montanye-side property line, not the street. The photo also shows that the gate crossed over the paver walkway and connected with a small portion of 6' tall fence (b) which intersected the 6' tall cabana wall (c).

Where the 6' tall portion of the prior cabana/fence ended

It also shows that the 6' tall fence/cabana along the property line (d) stopped and turned 90 degrees toward the Bair property at the Holly tree (e). This turn is aligned exactly at the end of the Montanye driveway. Recall, the extension of the 6' fence along the driveway was determined to be a public safety hazard due to the lack of ability to see when pulling out of the driveway.

Protestant's Exhibit 6A

Protestant's photo Exhibit 6A (included) is taken from the opposite view (from the Montanye view) of Petitioners photo Exhibit 2D. It confirms that the 6' tall fence/cabana ended at the holly tree and turned 90 degrees into the Bair property. It also confirms that the holly tree aligns exactly at the end of the Montanye driveway.

4607 Survey Overlay Diagram

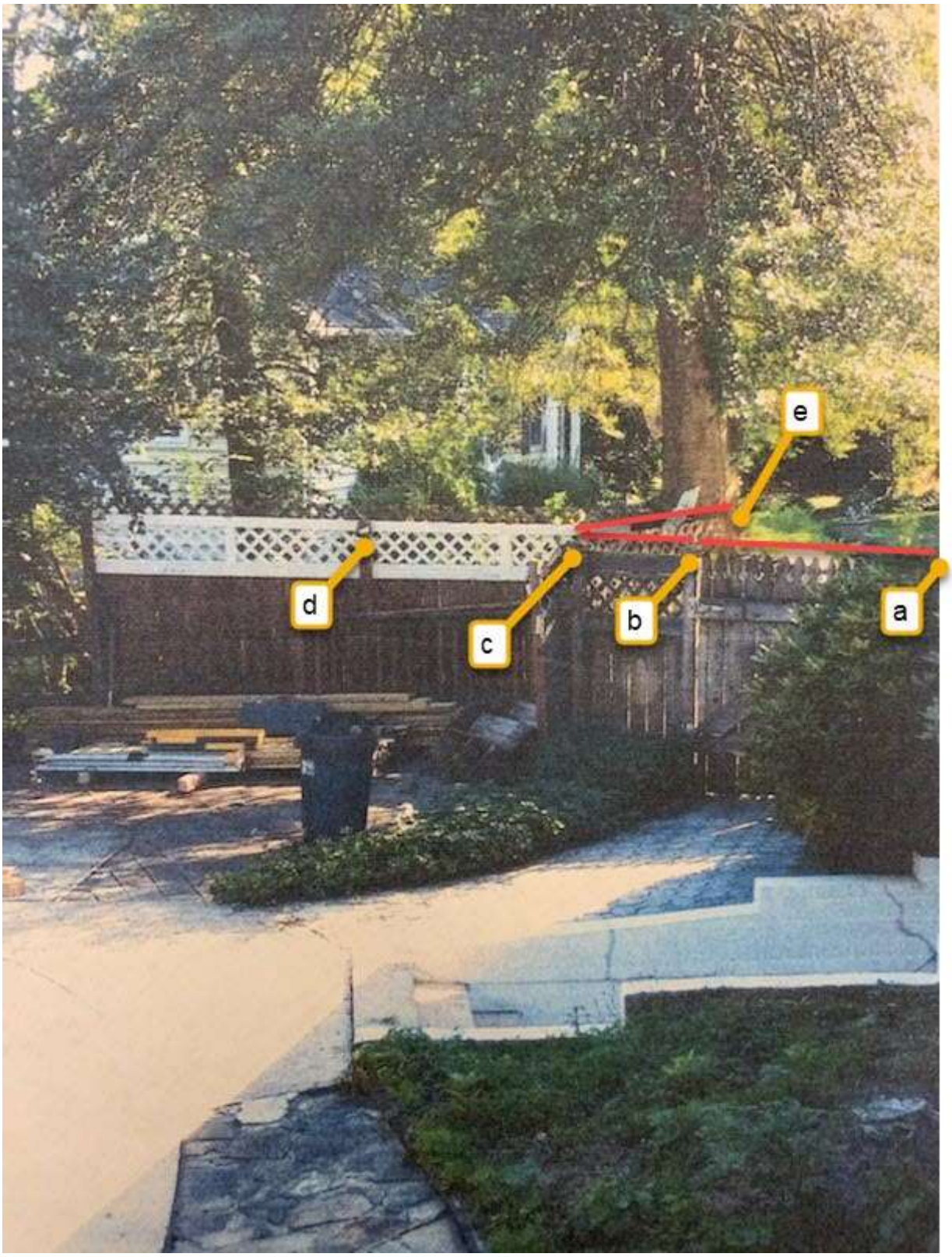
Using the two above photos, and the holly tree landmark, this overlay was created to represent the fence and gate original location. It should suffice to resolve the matter if followed.

Summary

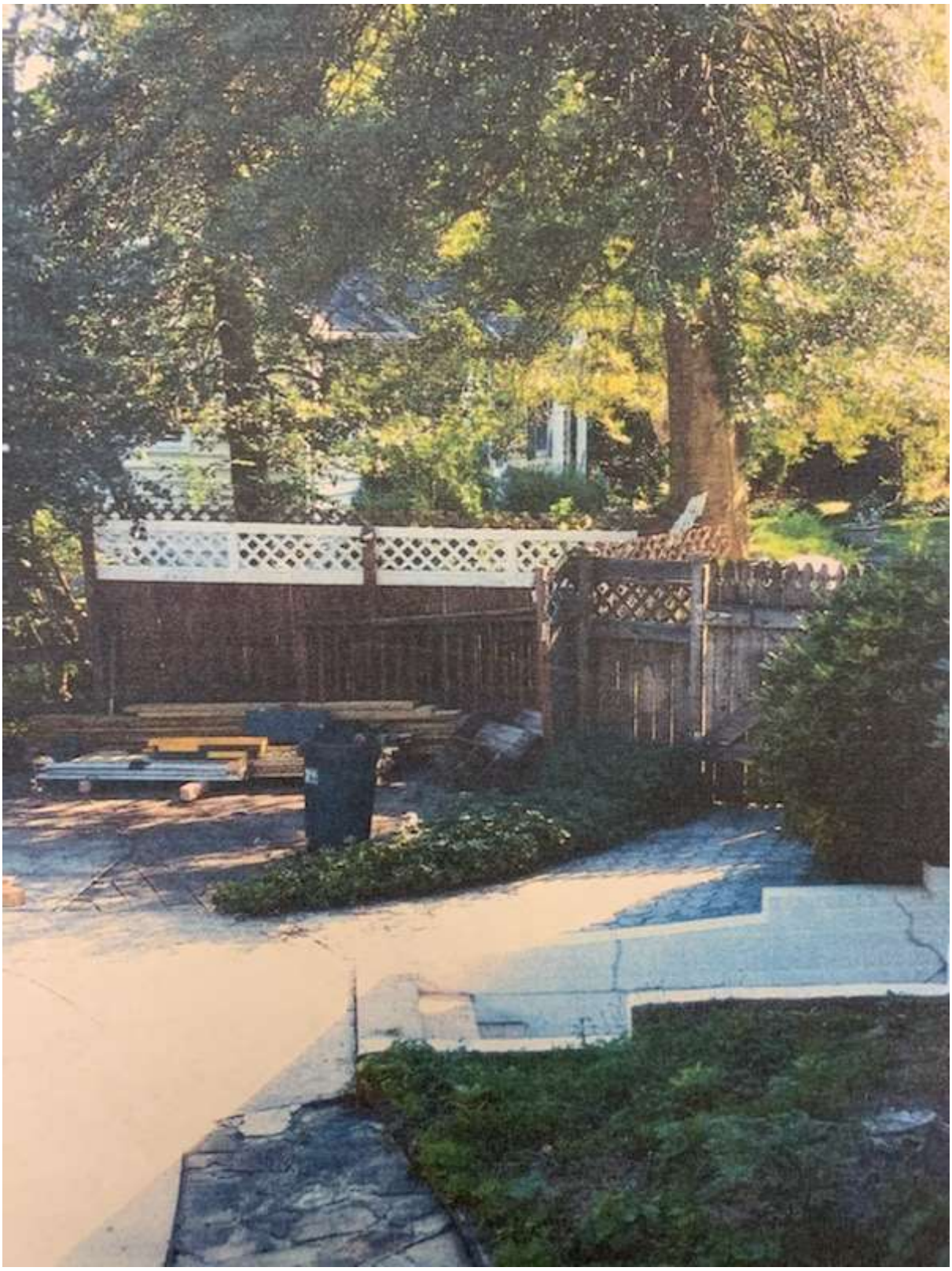
To be clear, we are not requesting a change of the CBA decision, as discussed in the public deliberation and reflected in the minutes. We only request that the opinion on the fence be rewritten with sufficient specificity to be used by the Code Enforcement Division to assure that the corrections are made as intended by the CBA. We wish to avoid further issues that will likely result from the current ambiguity of the Opinion, and assure the fence matter is truly settled. Perhaps including the drawing overlay and/or photo exhibits, or references to them, or another sufficiently clear alternative with the order, would help achieve this end.

Fence exhibits/ inclusions follow.

“Marked Up” Protestant’s Exhibit 25C & Petitioner’s Exhibit 2D



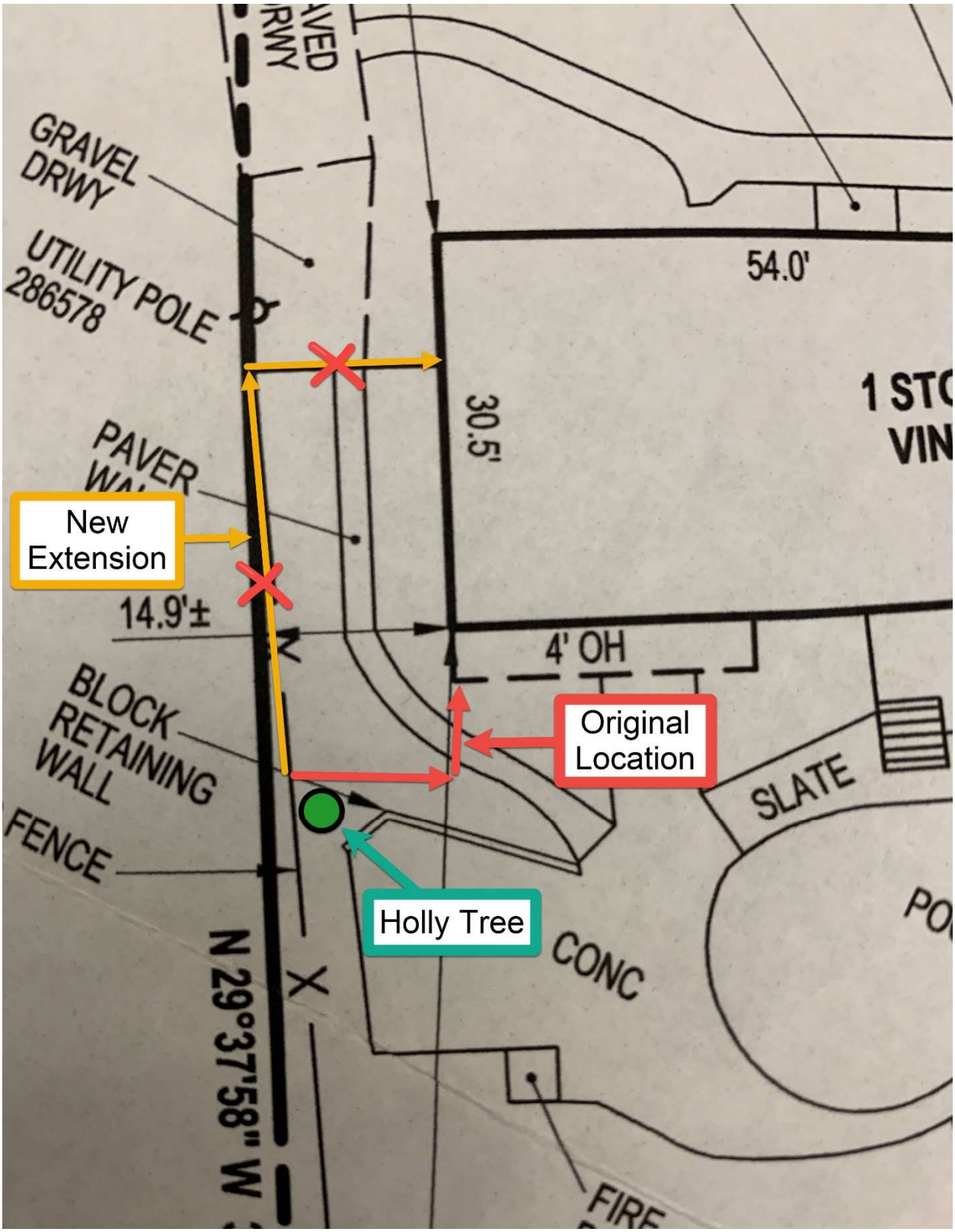
Original Protestant's Exhibit 25C & Petitioner's Exhibit 2D



Protestant's Exhibit 6A – Montanye driveway and view of the fence turning at the holly tree



4607 Survey Overlay Diagram



IN THE MATTER OF DONNA V. BAIR – LEGAL OWNER AND PETITIONER FOR SPECIAL HEARING AND VARIANCE ON THE PROPERTY LOCATED AT 4607 PROSPECT AVENUE	*	BEFORE THE BOARD OF APPEALS OF
4TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BALTIMORE COUNTY
	*	CASE NO. 19-342-SPHA

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

OPINION

This case comes to the County Board of Appeals ("CBA") on appeal of an Opinion and Order of the Administrative Law Judge dated August 19, 2020 granting in part and denying in part a Petition for Special Hearing and Variances filed by Donna V. Bair ("Petitioner/ Appellant") the legal owner of the property at 4607 Prospect Avenue (the "Property") in the Glyndon area of Baltimore County.

The Special Hearing Petition was filed pursuant to Baltimore County Zoning Regulations ("BCZR") §500.7 (1) to approve a nonconforming lot width and lot area pursuant to BCZR §104.1; (2) to approve a nonconforming dwelling side yard setback, pursuant to BCZR §104.1; and (3) to confirm an existing fence (swimming pool enclosure) with a height of 6 ft. is in compliance with BCZR §427.1 and Baltimore County Code ("BCC") §13-6-101.

The Petition for Variance seeks (1) to permit an existing 12 ft. by 28 ft. attached garage addition with a side yard of 0 ft. in lieu of the required 20 ft.; (2) to permit an existing 12 ft. by 28 ft. attached garage addition with a sum of side yards of 14.9 ft. in lieu of the required 50 ft.; (3) to permit an existing shed with a sideyard setback of 26 inches in lieu of the required 30 inches; and 4) to permit, if necessary, an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum 42 inches.

Appellant was represented by Lawrence E. Schmidt, Esquire and Zachary J. Wilkins, Esquire, of Smith, Gildea and Schmidt, LLC. Also appearing for Appellant as an expert was John Motsco, a licensed engineer in the State of Maryland. Ms. Bair also testified.

Numerous neighbors and an umbrella community association appeared in opposition, including both adjoining neighbors. Robin Coffin, and attorney who resides on Prospect Avenue, facilitated Protestants' case and testimony, and also testified personally as did the adjoining property owners.

The Board held three days of hearings, one in person on February 6, 2020 and two virtually on March 23, 2021 and March 25, 2021. A public deliberation was held virtually on April 20, 2021.

FACTUAL BACKGROUND

Petitioner Bair acquired the Property in 2014. At the time the Property was improved with a single family dwelling, attached garage, two driveways, an in-ground swimming pool, shed, and a fence enclosing a large portion of the rear yard and the pool area.

In 2017 Petitioner undertook additions to the house, adding to the front to create a master bedroom suite, adding a second garage, removing an existing fence and mature landscaping around the fence, and adding a new fence. Those improvements led to the current case and much acrimony among neighbors. In particular, the second garage extends several feet into the property of the neighbors on the north, Mr. and Mrs. Stephen Fradkin. The neighbors on the south, Mr. and Mrs. Thomas Montanye, object to the location of the replacement fence which extends into their front yard, and which creates a safety hazard by obstructing visibility for cars leaving the Montanye property. Mr. Montanye also disputes the location of the common property line and alleges that Petitioner tampered with surveyor's stakes to be more favorable to her

property. Both neighbors alleged that the improvements created additional runoff and flooding conditions on each of their properties.

Ms. Bair testified that she hired a contractor, though she did not identify that contractor to the CBA, nor did she know his whereabouts or current status. Ms. Bair assumed the contractor would obtain permits and other required approvals. No survey was conducted either at the time of Bair's purchase nor at the time of the work being undertaken. No zoning or permit approvals were investigated or sought for the building improvements or the fence.

The neighbors complained to the Baltimore County Office of Code Enforcement, who cited multiple violations at Petitioner's Property, and which ultimately led to filing of the subject petitions.

Petitioner's engineer John Motsco testified to the zoning history of the Property. The lot was created prior to the1945 adoption and 1955 codification of zoning by Baltimore County. Mr. Motsco stated that in 1970, Baltimore County adopted the D.R. zones (Density Residential), at which time the Property was designated D.R. 2. In 1996, the current D.R. 1 classification was applied to the Property.

APPLICABLE LAW

A Special Hearing Petition is effectively a request for declaratory judgment. BCZR §500.7, *Antwerpen v. Baltimore County*, 163 Md. App. 194, 209 (2005). The main question to be determined by the Board is whether the current configuration of the lot is permitted as a non-conforming use per BCZR §104.1. A collateral issue under BCZR §104.3 concerns whether the addition to the house extends beyond 25% of the ground floor area of the house prior to the addition.

Petitioner bears the burden of presenting evidence (customarily through experts) on which the Board can assess whether a zoning request pursuant to the BCZR may be approved. While the BCZR provides no specific criteria for the granting of a Request for Special Hearing, "the administrative practice in Baltimore County has been to determine whether the proposed Special Hearing would be compatible with the community and generally consistent with the spirit and intent of the regulations." *Kiesling v. Long*, Unreported Opinion, No. 1485, Md. Ct. Spec. App. (Sept. Term 2016).

A nonconforming use is one that predates the zoning imposed on a property. It is defined in BCZR §101 as a legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use. Under BCZR §104.3, no nonconforming building or structure may be extended more than 25% of the ground floor area of the building so used.

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

(1) The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is – in and of itself – unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property; and

(2) If that first step results in a supportable finding of uniqueness or unusualness, then a second step is taken in the process, *i.e.*, a determination of whether practical difficulty and/or unreasonable hardship, resulting from the disproportionate impact of the ordinance *caused by* the property's uniqueness, exists. *Cromwell*, 102 Md. App. at 694-95, 651 A.2d at 426.

Further, that hardship or difficulty must not be of the Petitioner's own making. 102, Md. App. at pp 694-5.

DISCUSSION

THE LOT: Petitioner's engineer John Motsco testified that the subject lot is a .74 acre parcel, classified D.R. 1 with a small portion being R.C. 2 (Resource Conservation). The lot was created by a plat entitled "Plat of Land belonging to B.F. Bennett and Joshua Regester", dated October 31, 1883 and recorded among the Plat Records of Baltimore County, Maryland in Plat Book No. 2 page 18. The lot lines are unchanged since its creation.

Mr. Motsco also testified that the original residence was constructed in 1951. Using old aerial photographic records, Mr. Motsco determined that the house configuration rendered the side yards of 9.5 feet on the north side and 14.9 feet on the south side, with a sum of the sideyard setbacks of 24.4 feet.

Based on the documentary evidence and testimony of Mr. Motsco, the Board finds that the lot width and area meet the definition of the BCZR as a valid nonconforming use that may continue. The lot configuration pre-dates any zoning in Baltimore County by at least sixty years, and despite the fact that the lot width and area do not meet current regulations, these may continue. In addition, the Board finds that the side yard setbacks existing prior to Petitioner's new construction were in existence prior to the 1996 zoning, perhaps longer, and as such may continue - measuring 9.5 feet on the north side and 14 feet on the south. Further testimony, undisputed though imprecise, persuaded the Board that the shed in the rear of the Property predates the current zoning, and may also remain in its current location, having a setback of 26 inches.

THE BEDROOM ADDITION: Petitioner built an addition to the house which extended the front building and roof lines to create a straight front building line where a "notch" or recess previously existed. According to Mr. Motsco, that addition measures 14 x 22 feet (for a total of

308 sq. ft.). Under BCZR §104.3, no nonconforming building or use may be extended by more than 25% of the ground floor area of the building so used.

Mr. Motsco offered testimony and documentary evidence that the ground floor area of the residence prior to the bedroom addition was 1,554 sq. ft. and that the bedroom addition amounts to less than 25% (or a maximum of 388 sq. ft.) permitted. Mr. Motsco also testified that this addition maintained the previous side yard setback of 14 feet from the south property line shared with the Montanye's.

Based on these facts, the Board finds that the bedroom addition is a permitted extension of the nonconforming structure.

THE GARAGE ADDITION: Though there was much testimony offered by Ms. Bair regarding the addition of a second garage based on her need to protect her vehicles from debris and droppings from trees on her lot, the Board found none of that testimony in any way pertained to the variance findings required under a *Cromwell* analysis. The majority of the Board found that the Property is so similar in size, shape and topography to other lots in the zone as to be indistinguishable for zoning purposes and, as such, does not meet a finding of uniqueness.

Even were the lot found to be unique, any hardship is entirely of Petitioner's own doing: failure to obtain a survey; failure to investigate, apply for or obtain zoning approvals; failure to investigate, apply for or obtain building permits; failure to pursue normal due diligence in either purchasing the Property or in vetting the contractor she hired to perform seemingly substantial and costly improvements to her residence. The Board found Petitioner's testimony lacking in credibility and unpersuasive on this point. Accordingly, the Board denies the requested variances for the garage addition and the side yard of 0 ft. on the north side of the Property.

THE FENCE: Petitioner removed an existing fence and landscaping and replaced that fence with a 6 ft. high fence in lieu of an otherwise permitted 42-inch fence. Petitioner also extended the new fence along the south side of her property and relocated the gate closer to the front building line of her house. By being so located, the fence was impermissibly installed since it was parallel to the adjoining neighbor's front yard.

The Board recognizes that BCC §13-601 (Swimming Pool Enclosure) requires a fence of *not less than 4 feet (48 inches)* (emphasis added), without specifying any height limitation. This Code provision conflicts with the limitation on fence height of 42 inches set forth in BCZR §427.1B.1. BCZR §427 does not permit a side yard fence of a resident's property to be installed in such a manner that it is parallel to the front yard of an adjacent dwelling. Based on this unique set of facts and law, the Board finds that the extension of the fence and gate from the rear building line of the Bair residence, its previous location, to its current location creates an unsafe condition and violates BCZR §427.1.B.1 and must be moved back. However, subject to the relocation of the gate as described herein, the fence height of 6 ft. will be permitted.

CONCLUSION

Based on the foregoing discussion, the Board grants in part, and denies in part the relief sought. In reaching its conclusion, the Board entertained much testimony irrelevant to the zoning issues within the Board's purview as well as much evidence of the acrimony among neighbors. The Board declines to countenance the acts of a property owner who disregards the most basic legal requirements governing the use of his or her property.

ORDER

THEREFORE, IT IS this 7th day of June, 2021, by the Board of Appeals for Baltimore County

ORDERED, that the Petition for Special Hearing: (1) to approve a nonconforming lot width and area; and (2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of the required 30 inches, be and is hereby **GRANTED**; and it is further

ORDERED, that the Petition for Special Hearing: (1) to approve nonconforming dwelling side yards of 9.5 ft. on the north side and 14.9 ft. on the south side, with a sum of the side yard setbacks of 24.4 ft. is hereby **GRANTED**; and it is further

ORDERED, that the Petition for Special Hearing to confirm an existing fence (swimming pool enclosure) with a height of 6 ft. is in compliance with BCZR §427.1 and BCC §13-6 -101, subject to the modification described herein, be and is hereby **GRANTED**; and it is further

ORDERED, that the Petition for Variance: (1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.; (2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of side yards of 14.9 ft. in lieu of the required 50 ft.; and (3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches, be and is hereby **DENIED**.

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

Deborah C. Dopkin, Chair

Andrew M. Belt

see following page
William A. McComas

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

See previous page
Deborah C. Dopkin, Chair

See previous page
Andrew M. Belt

William A. McComas

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

June 7, 2021

Peter M. Zimmerman, Esquire
Carole S. Demilio, Esquire
Office of People's Counsel
The Jefferson Building, Suite 204
105 W. Chesapeake Avenue
Towson, Maryland 21204

Lawrence E. Schmidt, Esquire
Zachary J. Wilkins, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204

RE: *In the Matter of: Donna V. Bair – Legal Owner*
Case No.: 19-342-SPHA

Dear Counsel:

Enclosed please find a copy of the final Opinion and 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,

Sunny Cannington

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure

c: See Distribution List following

In the matter of: Donna V. Bair – Legal Owner
Case No.: 19-342-SPHA
June 7, 2021
Distribution List

Donna V. Bair
John E. Lemmerman/RTF Associates, Inc.
Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
Kim and Tom Montanye
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz
Paul M. Mayhew, Managing Administrative Law Judge
Stephen Lafferty, Director/Office of Planning
C. Pete Gutwald, Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
James R. Benjamin, Jr., County Attorney/Office of Law

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Donna V. Bair – Legal Owner 19-342-SPHA

DATE: April 20, 2021

BOARD/PANEL: Deborah C. Dopkin, Chair
Andrew M. Belt
William A. McComas

RECORDED BY: Tammy A. Zahner, Legal Secretary

PURPOSE: To deliberate the following:

Petition for Special Hearing pursuant to BCZR §500.7:

1) to approve a nonconforming lot width and lot area, pursuant to BCZR §104.1;
2) to approve a nonconforming dwelling side yard setback, pursuant to BCZR §104.1; and
3) to confirm that an existing fence (swimming pool enclosure) with a height of 6 ft. is in compliance with BCZR §427.1 and BCC §13-6-101.

Petition for Variance from BCZR:

1) §1B02.3.C.1 to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.;
2) §1B02.3.C.1 to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.;
3) §400.1 to permit an existing shed with a side yard setback of 26 inches in lieu of the required 30 inches;
4) §427.1 to permit, if necessary, an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches; and
5) in the alternative, if necessary, to permit an existing dwelling with a lot width of 98 ft. in lieu of the minimal required 150 ft. and to permit a lot area of 31,000 sq. ft. ± in lieu of the minimal required 40,000 sq. ft. pursuant to §1B02.3.C.1

PANEL MEMBERS DISCUSSED THE FOLLOWING:

DISCUSSION

- The Board reviewed the Petitioner's request and held three days of hearings.

- The Board first discussed the request for a nonconforming lot width and lot area. The Board found that the lot width and lot area pre-date the current regulations and granted the request.

- The Board discussed the request for a nonconforming dwelling side yard setback. The Board reviewed the pictures of before and after the addition. The house did not share a common roof, and now does. The Board noted there was an addition to the original footprint of the home to enlarge a bedroom, but the side yard setback was not impacted. The Board found that the side yard setback on the south (Montanye) side falls within the 25% allowed for nonconforming

lots. There was no evidence or testimony to support the side yard setback on the north (Fradkin) side where the garage is located.

- The Board discussed the requested variance relief and the uniqueness requirement of *Cromwell*. The Board noted that the garage encroaches on the adjoining property. Petitioner's expert argues that the topography of the property makes it unique as it slopes to one side. Protestants argue that the subject property is similar in size and shape to others in the neighborhood. One Board Member was persuaded that the property is somewhat unique as it is smaller than others, even though it is similarly shaped. The remaining members found the property is similar to others located on Prospect Avenue and is not unique.

- The Board next discussed the hardship factor in *Cromwell*. The Board noted that the house was purchased without a survey, and substantially expanded without a survey or permit. The garage was expanded from the original one-car garage to a two-car garage. The Board found that any hardship of the Petitioner was self-imposed.

- The Board discussed the request to permit an existing fence (swimming pool enclosure) with a height of 6 ft. in lieu of the permitted 42 in. The Board noted there are competing statutes regarding fences. The 6 ft. fence extends into the front yard of the adjoining property and along the parking area/driveway of the neighbors. The Board noted that the fence impedes the ability of the neighbors to see when they pull out of their driveway, which is a public safety hazard. The Board found that a reasonable solution is to relocate the fence and gate to its original location, which will provide pool security and address the driveway concern. The Board granted the Variance relief, with conditions.

- The Board briefly discussed the alternative relief noted on the redlined Plan. The Board noted there was no evidence presented at the hearing and found the alternative relief MOOT.

CONCLUSION: After thorough review of the facts, testimony, and law in the matter, the Board unanimously agreed that the Petitions for Special Hearing and Variance would be DENIED in part, and GRANTED in part, with conditions.

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,

/s
Tammy A. Zahner

IN RE: THE PETITION FOR SPECIAL HEARING AND VARIANCE **4607 Prospect Avenue**	*	BEFORE THE
	*	COUNTY BOARD
4th Election District 3rd Councilmanic District	*	OF APPEALS
	*	FOR
Donna V. Bair *Legal Owner*	*	BALTIMORE COUNTY
	*	**Case No.: 2019-342-SPHA**

* *

CLOSING MEMORANDUM

The property owner, Donna V. Bair ("Petitioner"), by and through her attorneys, Lawrence E. Schmidt, Zachary J. Wilkins, and Smith, Gildea & Schmidt, LLC, submit this Closing Memorandum in support of the Petition for Special Hearing and Variance relief for the above referenced matter and state:

STATEMENT OF THE CASE

This matter comes before the Board of Appeals of Baltimore County (the "Board") as a *de novo* appeal of the Opinion and Order dated August 19, 2019 by the Administrative Law Judge ("ALJ") and the Order on Motion for Reconsideration dated September 25, 2019 by the ALJ of a Petition for Special Hearing and Petition for Variance relief for the property located at 4607 Prospect Avenue (hereinafter the "Property"). In applying the *de novo* standard, the Board's findings of fact and conclusions of law will be the record made before it.

The Special Hearing relief was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("BCZR") for an interpretation of the proper application of the BCZR. As it

relates to the issues in the instant appeal,[1] the Special Hearing relief seeks (1) approval of nonconforming dwelling side yard setbacks of 9.5 feet and 14.9 feet, with a sum of the side yard setback of 24.4 feet; and (2) to confirm that an existing fence (swimming pool enclosure) with a height of 6 feet is in compliance with BCZR § 427.1 and Baltimore County Code ("BCC") § 13-6-101. The Variance relief was filed pursuant to BCZR § 307.1 and seeks (1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft; (2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; and (3) If necessary, to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches.

The public hearing before the Board consumed three non-consecutive days on February 6, 2020, March 23, 2021, and March 25, 2021. At the conclusion of the hearing, the Board directed that the parties submit written closing memoranda setting out their respective arguments. The relevant facts and testimony will be recounted as appropriate herein.

STATEMENT OF THE FACTS

Many of the facts relating to the Property are not in dispute. The Property is located in the Glyndon community of northwestern Baltimore County and is approximately 0.74 acres (32,234 sf.). The Property is predominantly zoned DR 1 (Density Residential), but contains a small sliver in the rear which is zoned RC 2 (Resource Conservation).[2] The Property is identified as Lot 10, as shown on the Plat dated October 31, 1880 and titled "Plat of Land belonging to B.F. Bennett and Joshua Register" which was recorded in the Land Records of Baltimore County at Plat Book 126,

[1] Neither Petitioner nor Protestants appealed the ALJ's approval as to the lawfully nonconforming status of the size and width of the lot (delineated as Special Hearing request number 1within the Petition), and the lawfully nonconforming status of the setback of the shed. These issues are not before the Board for consideration.

[2] The RC 2 portion of the Property contains no improvements and is immaterial for the Board's consideration in the instant case.

Page 371 ('Plat"). The Property was purchased by the Petitioner in 2014, as reflected in a deed dated July 18, 2014, which is recorded in the Land Records of Baltimore County at Liber 35307, Folio 489.

Due to a need for more family living space and the need for additional privacy and safety for the in-ground pool, Petitioner hired a contractor to construct (1) a dwelling addition built on the west side of the house, (2) two sections of a 6 ft. fence constructed on the boundary line with the neighboring properties on the east and west sides of the Property, and (3) a 12 x 28 ft. single car garage to the east of the existing garage. As is now apparent, the contractor hired to construct the improvements committed fraud on the Petitioner and failed to obtain the necessary permits and approvals. Upon determining that the work had been done illegally, the Petitioner set out to bring the Property into compliance.

A. Baltimore County Landmarks Preservation Commission

Like many of the individual properties in Glyndon, the Property is located within the Glyndon Historic District and the design and compatibility of certain improvements to the Property are subject to review and approval by the Landmarks Preservation Commission ("LPC"), but the dwelling itself is not designated as a "contributing structure". In accordance with Title 7 – Historical and Architectural Preservation of the Baltimore County Code ("BCC"), the LPC has jurisdiction to review changes to historically-designation properties. The LPC comprises fifteen volunteer members who live in Baltimore County and "[p]ossess a demonstrated interest, knowledge, or training in historic preservation, history, architecture, conservation or related discipline." BCC § 3-3-1202(b). Pursuant to BCC §§ 32-7-101 & 32-7-405, property owners must obtain a "Certificate of Appropriateness" from the LPC "indicating its approval of plans for construction, alteration, reconstruction, moving or demolition."

Petitioner submitted 3 Ex post facto Certificate of Appropriateness requests to the LPC on February 19, 2019 seeking approval of the dwelling addition, fence construction, and the 12x28 ft. single car garage addition. Thereafter on March 11, 2019, a Department of Planning staff member as well as three LPC Commissioners conducted a site visit of the Property and generated a technical report of the request, which was shared with the LPC for their consideration.

Specifically, the technical report found:

> "***The changes to their property follow design guidelines for non-contributing structures in a historic district.*** The new garage and house addition use the same style siding, windows, shutters, and garage door … These changes do not overpower the appearance of the existing dwelling. The ***new fences*** are constructed of pressure treated wood with vertical planks and a top cap rail. They ***provide privacy and safety in the back yards with limited visibility from the street***. ***The Technical Committee recognized that because the owner has followed design guidelines for non-contributing structures, it is likely that these changes would have been approved if the request had been submitted in accordance with Baltimore County requirements***." (emphasis added) Petitioner's Exhibit 20.

When considering applications for additions and fences, the LPC utilizes the Baltimore County Historic Preservation Design Guidelines, which were adopted by the LPC and approved by the Director of Planning on November 25, 2011. The LPC met on March 14, 2019 and considered Petitioner's requests. At the meeting, Tom Montanye, resident of 4609 Prospect Avenue, testified and explained that his main objection involved the portion of the new fence that was directly adjacent to his driveway. The LPC voted 9-1 to approve Petitioner's three Ex Post Facto Certificates of Appropriateness requests.

B. *Proceedings before the Board of Appeals*

Petitioner testified during the Board's hearing and generally explained the events leading up to the instant case. Petitioner testified that she did not take a mortgage out when she purchased the Property. Because there was no bank involved, the Petitioner did not perform a survey for the Property. As such, Petitioner generally relied on the existing conditions (tree line and fence line)

of the Property as well as a boundary line drawling obtained from Steven Fradkin, the adjacent property owner located at 4605 Prospect Avenue. As shown in Petitioner's Exhibit 2 and as testified to, at the time of Petitioner's acquisition, the Property was improved with a detached single family dwelling, an attached one car garage, a small storage shed, a swimming pool, and a fence. Petitioner testified that the swimming pool is located immediately adjacent to the rear of the house. The existing fence ranged in height between 6 ½ - 8 ft. and was falling down in certain sections.

Due to a need for more family living space and the need for additional privacy and safety for the in-ground pool, Petitioner hired a contractor in 2017 to construct (1) a dwelling addition, (2) two sections of a 6 ft. fence on the boundary line with the neighboring properties on the east and west side of the Property, and (3) a 12x28 ft. single car garage addition to the east of the existing garage. Prior to moving ahead with the improvements, Petitioner notified both Mr. Fradkin and Mr. Montanye, the adjacent property owners located at 4605 Prospect Avenue and 4609 Prospect Avenue respectively, who voiced no objection. Petitioner assumed that the contractor hired would undertake the work lawfully after securing all necessary permits. She explained that she was quoted for and paid both the construction costs and permit fees. Candidly, Petitioner admitted that she wasn't paying much attention to the construction at the time because she was taking care of her mother who eventually died from lung cancer. As is now apparent, the contractor committed fraud on the Petitioner and did not obtain the necessary permits. Petitioner testified that in 2018, she received a complaint from Baltimore County alleging failure to obtain the necessary permits for the improvements. This resulted in ALJ Stahl issuing an Order requiring that Petitioner file the instant zoning relief and obtain LPC approval. Thereafter, Petitioner

submitted an application to the LPC and obtain approval for the dwelling addition, fence construction, and garage addition on March 14, 2019.

Petitioner's expert engineer, John Motsco, testified during the Board hearing and described the neighborhood and Property layout, including the current improvements on the Property. The neighborhood is a historic one characterized by a variety of housing types, large and small, ranging from large lots having larger dimensions than the subject property, to small lots. As Mr. Motsco explained, there are regulations in the BCZR and BCC regarding fences.

Specifically, BCZR § 427.1.A. provides:

> "***Notwithstanding any other provisions*** of this Code or the Baltimore County Code, in a D.R. or R.C. 5 Zone located in a historic district, the maximum height of a ***residential occupancy fence*** is 42 inches if the fence is erected ***in the side yard of a lot that adjoins a public road***." (emphasis added)

Mr. Motsco testified that the 42 inch height limitation in BCZR § 427.1.A is not applicable to the Property. First, Mr. Motsco explained that the Property nor any of the adjacent properties (i.e. 4605 & 4609 Prospect Avenue) adjoin a public road. The reference to a public road in BCZR § 427.1.A is referring to a corner lot, in which a property abuts a public road in both the front and side yard. Otherwise, as Mr. Motsco explained, every property would satisfy the "abut a public road" classification, in which case, there would be no need to incorporate such qualifier in BCZR § 427.1.A.

BCZR § 427.1.B provides:

> 1. "A residential occupancy fence may not be erected in the rear or side yard of a lot which adjoins the front yard of another on which a residence has been built, except in accordance with the provisions of this section.
> 2. The fence may not exceed 42 inches in height if situated within ten feet of the adjoining front yard property line.
> 3. Any person may request a variance from the requirements of this subsection."

Mr. Motsco testified that the conditions in BCZR § 427.1.B are not applicable due to the pool on Property.

Specifically, BCZR § 427.1.C. Titled: Applicability provides:

> "1. ***Subsection B of this section does not apply to a fence required by § 13-6-101 of the Baltimore County Code***, as revised, to be constructed in order to screen a ***swimming pool***. (emphasis added).

BCC § 13-6-101 provides the following:

> (a)Required. ***A person who owns land on which there is a swimming pool*** that contains 24 inches (610 mm) or more of water in depth at any point ***shall erect and maintain*** on the land ***an adequate enclosure surrounding either the property or pool area*** sufficient to make the body of water inaccessible to small children. (emphasis added).
>
> (b)Height. A ***swimming pool enclosure, including gates***, ***may not be less than 4 feet above the underlying ground***, except that for a semi-public swimming pool located outdoors without a lifeguard on duty, the enclosure, including gates, may not be less than 5 feet above the underlying ground and may not have more than a two-inch gap from the ground to the bottom of the fence.

Mr. Motsco testified that the swimming pool on the Property contains a depth of more than 24 inches and that the fence fully encloses the swimming pool, which is located in the rear yard of the Property. He further explained that the 72 inch fence is compliant because BCC § 13-6-101 contains a minimum requirement of 4 feet (48 inches) and no maximum restriction. As such, Mr. Motsco offered undisputed expert opinion that the height of the 72 inch fence is compliant with the all applicable regulations in the BCZR and BCC.

As to the setback issues, Mr. Motsco testified that the Property is predominantly zoned DR 1 and the setback requirement applicable to the Property is established in BCZR § 1B02.3.C. A minimum side yard setback of 20 ft. is required. Additionally, a sum of the side yard setbacks of 50 ft. is required. Therefore, a property owner could have a 30 ft. setback on one side and a 20 ft. setback on the other; or a 25 ft. setback on each side, or some similar combination; for so long as each side yard setback is at least 20 ft. in dimension, and they total 50 ft. Mr. Motsco testified

that prior to Petitioner's 2017 construction, the dwelling had side yard setbacks of 9.5 ft. and 14.9 ft., with a sum of the side yard setback of 24.4 ft. Thus, both the individual side yards setbacks and sum of the side yards setbacks did not meet the current DR 1 standard.

As it relates to the specific Special Hearing request "to approve a nonconforming dwelling side yard setback, pursuant to BCZR § 104.1," Mr. Motsco explained that the BCZR § 104 permits the continuation of non-conforming uses and structures. The special hearing process is the zoning tool by which non-conforming uses are recognized. The designation "non-conforming" allows the use/condition to continue as legally "grandfathered". Mr. Motsco testified that a non-conforming designation is appropriate for uses and conditions that have existed prior to the adoption of the regulation that now governs the property at issue.

According to the property tax report issued by the State Department of Assessments and Taxation ("SDAT"), the detached single family dwelling was originally constructed in 1951. Mr. Motsco explained the zoning history of the Property. Although the County's first zoning regulations were adopted in 1945, they were rudimentary in nature and the current regulations and requirements therein spring from the comprehensively amended regulations adopted in 1955. Additionally, the DR zoning classification came into being in 1970, at which time the County Council enacted Bill 100-70. Mr. Motsco testified that in 1971, the Property was rezoned to DR 2, and later rezoned to DR 1 in 1996. Because the DR 1 requirements now apply to the Property, Mr. Motsco testified that 1996 is the relevant date in considering the non-conforming nature of the property and improvements thereon.

Utilizing historic aerial photos, Mr. Motsco opined that the 1951 dwelling contained the 9.5 ft. side yard setback. At some point between 1951 and 1976, the dwelling side yard setback on the opposite side decreased to 14.9 ft, at which point the dwelling contained side yard setbacks

which were 9.5 ft. and 14.9 ft., with a sum of the side yard setback of 24.4 ft. Mr. Motsco explained that given the lack of detail provided in historic aerial photos and Baltimore County's practice of discarding building permits after 5 years, it is impossible to determine when or what specific construction occurred at the Property between 1951 and 1976. As such, Mr. Motsco opined that such setbacks are existing conditions, well prior to the adoption of the now applicable governing standard in the BCZR, and thus, the Petitioner is entitled to grandfathered status for the dwelling side yard setbacks, which were 9.5 ft. and 14.9 ft., with a sum of the side yard setback of 24.4 ft.

Mr. Motsco testified that he measured the 2017 house addition and calculated the addition to be 14 x 22 ft. (rather than 13 x 13 ft.). Mr. Motsco explained that the dwelling addition did not alter in any way the existing 14.9 ft. setback from the property line. Mr. Motsco testified that the 2017 dwelling addition is a legally permissible extension of a nonconforming use/building pursuant to BCZR § 104.3.

BCZR § 104.3 provides:

> "No nonconforming building or structure and no nonconforming use of a building, structure or parcel of land ***shall hereafter be extended more than 25 percent of the ground floor area of the building*** so used." (emphasis added).

As Mr. Motsco explained, the ground floor area of the nonconforming dwelling (as existed prior to 2017 construction) was 1,554 sf. The 14 x 22 ft. dwelling addition totaled 308 sf. The dwelling addition increased the ground floor area of the dwelling by 19.8%. As such, Mr. Motsco offered undisputed expert opinion that the dwelling addition is permitted as an extension of a non-conforming use because the dwelling addition did not increase the existing 14.9 ft. setback and did not increase the ground floor area of the dwelling by more than 25%.

Mr. Motsco testified that in 2017, Petitioner constructed a 12 ft. x 28 ft. attached garage addition that decreased the side yard setback to 0 ft. Mr. Motsco offered undisputed expert opinion

that the Petitioner satisfied the criteria for variance relief in BCZR § 307.1, namely that the Property is unique and the Petitioner would experience a practical difficulty or unreasonably hardship if denied the variance. Specifically, as it relates to uniqueness, Mr. Motsco cited to the Property acreage, dimensional width, and length in support. Additionally, the topography provides little flat area for development on the Property. Prospect Avenue sits on a higher elevation compared to the rear of the Property. Mr. Motsco opined that given the topography, it would not be possible to construct a garage in the rear yard. Further, as Mr. Motsco explained, there are additional large trees that restrict access to the rear yard. As it relates to practical difficulty, Mr. Motsco testified that the relocation of the garage would be too remote from the dwelling and would detract from day to day use. Conversely, not constructing a garage would subject Petitioner's vehicles to substantial damage caused by the trees in the front yard.

Several neighbors appeared in opposition to the Petition and were represented by People's Counsel Peter Zimmerman during the proceedings before the Board (the "Protestants"). Protestants offered no expert testimony to contradict Mr. Motsco's opinions. Certainly, an expert would have been presented to rebut Mr. Motsco's findings and conclusions, if a contrary opinion was formulated. As importantly, the Protestants fundamental objections to the relief are not legally relevant to the standard that the Board must apply. Through testimony, the Protestants indicated that their primary concerns were that Petitioner did not "play by the rules." Other complaints were also legally illegitimate. For example, Protestants attach great significance to the fact that Petitioner was at one time a licensed real estate agent and should have possessed requisite understanding of the BCZR and BCC. Such objections demonstrate the Protestants misunderstanding of the legal analysis required. The fact of such knowledge has no legal significance. The Court of Appeals has found it unnecessary to limit one seeking a variance based

on an alleged hardship because the owner purchased the property with full knowledge of the zoning restriction of which she sought relief. *Frankel v. City of Baltimore,* 223 Md. 97 (1960); *McLean v. Solev,* 270 Md. 208 (1973). One of the Protestants, Mr. Fradkin (adjacent neighbor), candidly admitted that he too did not know where the boundary line was between 4605 Prosect Avenue and the Property. One of the Protestants introduced an aerial photo which purportedly depicts conditions on the Property in the late 1970s. Subsequent to the hearing, the undersigned determined that such photographs are protected under copyright law and were apparently illegally obtained.[3] Nonetheless, the photograph is not dated and is of little value, in that there are no dimensions shown relating to the size and configuration of the dwelling which existed at that time.

ARGUMENT

There are three improvements which are before the Board for consideration which include (1) a dwelling addition, (2) a fence (swimming pool enclosure), and (3) a garage addition. The BCZR governs both the allowed uses on the Property and the scope/size of improvements permitted for properties zoned DR 1. Undoubtedly, the single-family dwelling, attached garage, and fence are permitted uses in the DR 1. The question presented in this case is not as to the use, but whether the improvements satisfy the scope/size (also referred to as the "bulk") regulations in the BCZR. The three improvements at issue should be separately considered by the Board and are discussed separately below.

A. <u>The 2017 dwelling addition (14 x 22) is a legally permissible extension of a nonconforming use/building</u>

It is apparent that the Board can grant relief necessary to permit the dwelling addition either as a non-conforming use or via a variance. The relevant DR 1 setback requirements are pursuant

[3] See attached Exhibit A of this Closing Memo.

to the "Small Lot" table in BCZR § 1B02.3.A.4.: Titled Special Regulations for certain Existing Developments or Subdivisions and for Small Lots or Tracts in DR Zones.

In particular, subparagraph 3 provides:

> "Any lot or tract of lots in single ownership which is not in an existing development or subdivision, as described in Subsection A.1 or A.2, and which is too small in gross area to accommodate six dwelling or density units in accordance with the maximum permitted density in the D.R. Zone in which such tract is located"

BCZR § 1B02.3.C. then sets forth the Development Standards of such lots:

> "1. Any dwelling hereafter constructed on a lot or tract described in Subsection A.3 or A.4 shall comply with the requirements of the following table:"

The table sets forth the width, frontage and yard requirements which pertain to such small lots. It is significant to note that this provision was adopted in 1970 when the County adopted major comprehensive revisions to regulations governing residential zones. The apparent legislative intent of each section was to preserve the building rights on undersized lots that would otherwise be rendered unusable upon adoption of new regulations.

Although the dwelling meets the required front yard and rear yard setbacks, the dwelling's side yard setbacks do not satisfy the current DR 1 requirements. As noted above, the Property did not satisfy these requirements when the Petitioner acquired the Property in 2014. In fact, the dwelling's side yard setbacks of 9.5 ft. and 14.9 ft., with a sum of the side yard setback of 24.4 ft. have existed for at least 45 years, but possibly closer to 70 years.

BCZR § 104.1 provides:

> "A nonconforming use may continue except as otherwise specifically provided in these regulations, provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, the right to continue or resume such nonconforming use shall terminate."

Nonconforming status is a designation for uses and conditions that have existed prior to the adoption of the regulation that now governs the property at issue. At the time the Property was rezoned to DR 1 in 1996, the dwelling maintained side yard setbacks of 9.5 ft. and 14.9 ft., with a sum of the side yard setback of 24.4 ft. There is no evidence whatsoever to suggest that prior to 1996, the dwelling was an illegal use or was overwise in violation of the BCZR. As previously noted, Baltimore County has historically discarded building permits after 5 years. As such, Mr. Motsco offered undisputed expert testimony that 1996 is the relevant date in considering the non-conforming nature of the Property and improvements thereon. Since a nonconforming use was lawfully in existence at the time and the Property was rezoned in 1996, there is a vested right in the continuation of the nonconforming use once the ordinance takes effect.

After the 2017 construction of the dwelling addition, the side yard setbacks remained the same. That is, the dwelling addition did not reduce the setback from 14.9 ft., but merely extended the length of the side of the dwelling on that side. Thus, the Board should find that the dwelling addition is permitted as a matter of right.

Notwithstanding, the Board can still approve the dwelling addition because the dwelling addition did not violate the limitations proscribed in BCZR § 104.3 regarding allowable expansion of a non-conforming building.

BCZR § 104.3, titled "Limit on extension of nonconforming buildings and uses; exception", states as follows:

> No nonconforming building or structure and no nonconforming use of a building, structure or parcel of land shall hereafter be extended more than ***25% of the ground floor area of the building so used***… (Emphasis added).

At the time the nonconforming building/use was grandfathered on the Property in 1996, the ground floor area of the dwelling encompassed 1,554 sf. Pursuant to BCZR § 104.3, the

maximum allowable expansion of the non-conforming dwelling would be 25% or an additional 388.5 sf. The 14 x 22 dwelling addition totaled 308 sf or 19.8%. As such, the dwelling addition is a permissible expansion of the non-conforming building.

Alternatively, this Board can grant variance relief for the side yard setbacks of 9.5 ft. and 14.9 ft., with a sum of the side yard setback of 24.4 ft. While not specifically requested in the Petition, such request is within the spirit and intent of the instant matter. In accordance with due process, parties are required to be given reasonable notice and opportunity to participate in the Board's hearing and consideration of the zoning proposal. Significantly, the Supreme Court of the United States has explained that the essence of due process is the requirement that a party be given notice and an opportunity to be heard "…at a meaningful time and in a meaningful manner." *Mathews v. Eldridge,* 424 US. 319, 333, 348-49 (1976). Further, proper public notice of the requests was afforded consistent with the principles stated by the Court of Appeals in *Cassidy v. Baltimore County Board of Appeals,* 218 Md. 418 (1958). All parties in the instant case were given proper public notice of the issues presented. Thus, it is apparent that the Board can grant relief necessary to permit the dwelling addition either as a non-conforming use or via variance relief.

B. *The existing fence (swimming pool enclosure) with a height of 6 ft. is compliant*

At the hearing, the Petitioner presented a photograph showing that there previously existed a 7ft – 7.5 ft. high fence on the Property adjacent to the Montanye property. In 2017, Petitioner repaired/modified the existing fence and constructed a 6 ft. high fence (swimming pool enclosure) in its place.

As previously noted, BCZR § 427.1.A. limits a fence to 42 inches if the fence is located in the side yard of the property which adjoins a public road. Here, neither the Property nor the adjacent properties adjoin a public road. As testified to by Mr. Motsco, the reference to a public

road in BCZR § 427.1.A refers to a corner lot, in which a property abuts a public road on both the front and side yard. Therefore, the provisions of BCZR § 427.1.A. do not apply because of the qualifying language within the BCZR and layout of the Property.

BCZR § 427.1.B.1 indicates that a fence cannot exceed the height of 42 inches if it abuts the front yard of the adjacent dwelling. However, such 42 inch limitation does not apply because of the exclusionary language in BCZR § 427.1.C.1. That section states that the 42 inch limitation does not apply when a pool fence is required. In this regard, BCC § 13-6-101 requires a fence or similar enclosure around a pool. The reasons for this requirement are obvious. The justification to provide for the public safety and prevent any tragedy due to pool's attractive nuisance character trumps the aesthetic considerations in BCZR § 427.1 Moreover, the BCC provisions mandating a fence or similar enclosure provide no height limitation. Furthermore, the County's Landmark Preservation Commission has approved the fence, arguably satisfying any applicable requirement imposed by BCZR § 427.1.

C. Petitioner is entitled to Variance Relief

The Board should conclude that Petitioner is entitled to variance relief in the instant case. Petitioner seeks relief from BCZR § 1B02.3.C.1 to permit an existing 12 x 28 ft. attached garage addition with a side yard setback of 0 feet and a sum of the side yards of 14.9 feet. In addition, Petitioner seeks relief from BCZR § 427.1, if necessary, to permit an existing fence (swimming pool enclosure) with a height of 72 inches.

In Baltimore County, zoning variance are permitted and analyzed under BCZR § 307 and the case law interpreting that provision. Significantly, to obtain a zoning variance in Baltimore County requires a two-pronged analysis showing that:

(1) The property is unique; and

(2) If variance relief is denied, petitioner will experience a practical difficulty or unreasonable hardship. BCZR § 307.1; *Cromwell v. Ward,* 102 Md. App. 691, 694-95 (1995).

Petitioner is entitled to variance relief because the Property is unique, and Petitioner would experience a practical difficulty and unreasonable hardship if the variance is denied.

The Court in *Cromwell* defined the term "uniqueness" and stated:

> In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "Uniqueness" of a property for zoning purposes requires that the subject property has an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or not-access to navigable waters, practical restrictions imposed by abutting properties or other similar restrictions. *Cromwell v. Ward,* 102 Md. App. 691 (1995).

Due to the events that led to the creation and configuration of the Property, special circumstances and conditions exist which make the Property unique. The testimony of Mr. Motsco at the Board's hearing, along with aerials entered into evidence, show that the Property is substantially different than other properties in the area with differences in size and shape. That is, the fact that this is a narrow, yet deep parcel, and was created over 140 years ago drives the need for variance relief. No other property in the vicinity has these precise dimensions. Additionally, the Property was created prior to modern zoning laws, meaning the Property will be impacted by the BCZR in a different way than other lots in the neighborhood that were created subsequent to the regulations. Combined with the unique shape and size of the Property, the lack of feasible building area is exacerbated by the combination of these factors. The Property's physical peculiarities will cause Petitioner to suffer disproportionately due to the application of BCZR. As such, the Property has an inherent characteristic not shared by other properties in the area and satisfies the "unique" test required under *Cromwell v. Ward*. Furthermore, as noted at the hearing, a number of properties in this immediate neighborhood have been afforded variance relief. The

property immediately across the street obtained a variance in Case No. 05-444-A. The Fradkin property (immediately next door) also was granted a variance in Case No. 84-332-A. Other variances granted in the neighborhood include one for a reduced side yard setback (the same type of relief as sought in the instant matter) for the property located at 4626 Butler Road (Case No. 64-94-A) and 3 Waugh Avenue (Case 94-307-A), which also requested a variance to a side yard setback less than required. Counsel does not cite these cases because approval in one case mandates the same result in another. Certainly, each request must be considered on its own. But all of these cases relate to properties on the plat which created the Property. The ALJ in these cases has consistently determined that lots created by this plat are unique and therefore qualify for variance relief. The same result is appropriate and mandated here.

Courts have interpretated the "practical difficulty or unreasonable hardship" standard to be disjunctive, meaning that satisfaction of either of the conditions may warrant a variance. *Loyola Loan Ass'n v. Buschman,* 227 Md. 243, 250-51 (1961). The Court in Mclean v. Soley, 270 Md. 216 (1973) established criteria for determining practical difficulty or unreasonable hardship:

> (1) Whether compliance with the strict letter of the restrictions governing various variances would unreasonably prevent the owner form using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
> (2) Whether a grant of the variance applied would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
> (3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed, and public safety and welfare secured.

The undersize nature of the Property and strict application of BCZR would unreasonably prevent Petitioner from using the Property for the permitted purpose of a single family dwelling. The imposition of the new regulations, i.e. BCZR § 1B02.3.C, impacts the Property, which was apart of an existing plat, disproportionately as compared to lots in the neighborhood laid out in

accord with the regulations. A denial of the variance would deprive the Petitioner of the right to reasonably develop her property in accordance with regulations and would constitute a practical difficulty under these circumstances. Mr. Motsco testified that the Petitioner will suffer practical difficulty if her request is denied, because there is no location on the Property where a garage could be constructed in conformance with BCZR § 1B02.3.C.

Further, a grant of the relief will not detrimentally impact adjacent properties. Mr. Motsco testified that considering the LPC approval, the surrounding neighborhood, and the site constraints at issue, the garage construction is consistent with DR 1 zoning regulations and would not cause injury to the public health, safety, or general welfare. As such, Petitioner will experience practical difficulty or unreasonable hardship if the requested variances are denied.

CONCLUSION

Therefore, for the foregoing reasons, the Board should grant Petitioner's requested relief.



ZACHARY J. WILKINS
LAWRENCE E. SCHMIDT
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
(410) 821-0070
zwilkins@sgs-law.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of April, 2021 a copy of the foregoing Memorandum was mailed, via email to:

Thomas & Kim Montayne
Tom@montanye.net

Kimberly Karlsen
perandkim@aol.com

Steve & Patricia Fradkin
reistlaxcoach@gmail.com

Sue Benson
sbensoncomm@aol.com

Robin Coffin
rscoffin@verizon.net

Mary Molinaro
mmolinaro@reisterstown.com

Peter Max Zimmerman, Esquire
People's Counsel for Baltimore County
peoplescounsel@baltimorecountymd.gov



ZACHARY J. WILKINS

Dear Baltimore County Board of Appeal Members:

It has been brought to our attention that someone has presented an unauthorized copy of our intellectual property in a hearing regarding 4607 Prospect Avenue, Glyndon, MD. These images were taken from HistoricAeriels.com and asked that they be entered as exhibits. Please know that these unauthorized images marked with "Copyright Material" are an infringement of our copyright and we did not grant their use. In the event that our photos are requested for use in a professional or legal manner, after purchase, we diligently confirm the location and date information for each purchased item. This is done for all authorized copies from our imagery database, in order to confirm their authenticity, and a necessity in order maintain the standard our customers expect from us in the professional and legal environment. We offer a notarized affidavit of authenticity with any legal acquisition of our imagery, upon request. Without proper authentication, we cannot stand behind the claims made in regards to any screen shots taken from our website containing watermarked imagery. Thank you for your attention to this request.

Jeff Teasley
Director of HistoricAerials.com

Exhibit A

RE: PETITION FOR VARIANCE
4507 Prospect Avenue
Petitioners: Donna Bair

Memorandum submitted by the Protestants

The Bair's are requesting a Zero variance between their property line and the Fradkin property for the purpose of adding a second bay to current garage. In fact, the Bair's have already added this addition without any variance. This addition encroaches over the Fradkin's property by two plus feet. Prior to the addition of the second bay there was a 25ft set back between the Fradkin's property and 11 ft. set back from the Bair's to the Fradkin's property line. The requested improvement of a 2nd bay cannot be accomplished without the 2 plus feet encroachment onto the Fradkin's property. As the requested need for the variance cannot be done without an encroachment there no need for the variance to be granted. There are no submitted drawings to support the use of the property as a carport or even a small storage area. There is certainly no impact upon the use of the Bair's property without the granting of these variances. Further, Mrs. Bair suggested in the third day of the hearing, in rebuttal, that I provided a map and told her where our property line was located. The timing of this statement alone calls into question its veracity.

Further, we oppose the Zero' variance request as a should a situation arise where heavy equipment is required to access the rear yard of the Bair property, there would be no way to do that without damaging either the Fradkin or Montanye properties. This is foreseeable as there is a pool in the backyard of the Bair property.
Another reason we oppose the Zero variance is that Glyndon is a preferred place to live due to its open spaces and quiet neighborhoods. Building up to property lines sets the precedent of creating a community that is no longer valued for its open spaces and neighborhood feel. This is not town home living. This is a community where people value and purchase their home for the open spaces and solitude.

We oppose the room addition on the Montanye side for several reasons as well. One, the clear change in topography and the addition of impervious surfaces that have increased the volume of water directed towards the Montanye property. This is also true on the Fradkin property side.

The granting of variance relief in this case would set a precedent that if you build without following the rules, you will get relief. A relief that they well could not have been granted if they had gone through the correct channels. A validation of a build now, ask for permission later without regard to the effects on neighbors and the neighborhood in general. We oppose all variance requests made by the Bair's and respectfully agree with Judge Beverungen's decision to "deny" all variance requests.

We would like to thank Mr. Peter Zimmerman and the People's Council for their help in this case and their dedication to their craft.

Steven M. Fradkin



Patti J. Fradkin

Patt J Fradkin

04/09/2021

and there was nothing you could do about it? This would only bring conflict to the neighborly relationship.

Following the normal process affords the local community and LPC an opportunity to provide feedback that includes suggesting alternatives that will work to meet the homeowner goals within the confines of the county codes. It avoids the neighborhood conflict we are faced with today – a black-and-white decision on the "as-built." It is understandable that the CA's would highlight this fact above others in their section 8 submissions.

Conclusion

Mrs. Bair has acted on this only in a way as required by law. Not in a way in keeping with maintaining peace within the community in which she now lives.

Despite her convincing testimony, presented without any evidence, the Protestants and the People's Council have disproven her testimony and demonstrated her willingness to deceive and defraud not only her immediate neighbors, but the community and the County.

Without demonstrating true uniqueness of property and structures, without a demonstrated hardship, and *with* demonstrated harm to the general welfare of the community, **we see not a single justification for any relief being granted.**

-Tom and Kim Montanye

Thomas R Montanye 4/8/2021

Kimberly S Montanye 4/8/2021

RE: Petition for Special Hearing and Variance, Board of Appeals
Case 2019-342-SPHA
Donna Bair, 4607 Prospect Ave, Glyndon

Montanye Protestant's Memorandum

4/2/2021, Tom & Kim Montanye, Neighbors @ 4609 Prospect Ave

Table of Contents

Introduction 2
Summary of Adverse Impacts on Montanye's/ 4609 Prospect Ave. 2
Privacy Fence in Front and Side Yards 2
Water/Silt/Erosion from Master Bedroom/Bathroom Suite Addition 3
Adverse Safety Concerns 3
Argument 4
Uniqueness 4
Hardship/ Practical Difficulty 5
General Welfare and Community Interest 7
1976 Addition and the 104.3 Limit on Extension of Non-Conforming…/ 25% Rule 8
1976 Addition Dimensions – 329 sqft 8
1971 Home – 1,448 sqft. 8
Deficiencies 8
Deficient Submission/ "As-Built" Advantage 8
Defective Exhibits - Petitioner's Fence 9
Petitioner's 'Victim' Testimony 10
Licensed Real Estate Agent 11
Normal Process is Crucial 11
Conclusion 12

Introduction

Summary of Adverse Impacts on Montanye's/ 4609 Prospect Ave.

Privacy Fence in Front and Side Yards

BCZR 427.1 limits front-yard fences to 42". Mrs. Bair's new fence projects 50 feet along our adjoining front yard.

Historic District guidelines further limit side-yard fences to 42" (*ref. 427.1 A, B*). Mrs. Bair's entire fence is in front of our foundation, the balance of the distance in our side yard. (*Protestant's exhibit 6N*).

Facts of "before" Fences

On the Montanye/4609 Prospect side, since at least 1991, there existed **two different fences, and a "cabana" structure in-between them**, front-to-back as follows:

- An **18-24" decorative white picket garden fence**, which started about 4-5' behind the ~1976 addition foundation, and continued toward the back at a distance of about 2' from the property line, meeting up with the cabana at exactly the large Bair Holly tree, which is just past the end of the Montanye driveway. It was not a privacy fence. *(See Protestant's exhibits 6B, 6D)*.
- A **cabana,** approximately 6' tall, which started exactly at the Holly tree and continued ~12'-14' toward the back *(See Protestant's exhibit 6A and Petitioner's exhibit 2C)*.
- **A 48" 3-board wood paddock fence**, which started exactly where the cabana ended and continued some ~30' back along our side yard, inside (Bair side) of the Rose of Sharon hedgerow. This fence can be seen *behind* the hedgerow in *Protestant's exhibits 6A and 6H*. **It was not a privacy fence**, as Mrs. Bair testified.
- **A 6'-high gate** (Montanye-side) was located **>10' from the property line** (*see Petitioner's exhibit 2D*), connecting the inside end of the cabana to the back corner of the house.

These two fences and the cabana, *along with the privacy hedgerow*, were completely removed and replaced by a 6' tall solid-board privacy fence. The new fence is located **closer to the Montanye property** (by approximately 1-2 feet in the front and 3-4' in the back), now on the other/Montanye side of where the hedgerow used to be, and **extending farther back** by approximately 6'.

Privacy Justification – False Premise #1

The entire justification Mrs. Bair presented to justify a 6'-high fence that violates the County and Historic restrictions, was to provide needed privacy. In *Protestant's exhibits 6A&B* (Montanye & street view – before) verses 6C (Montanye street view – after), it's clear that **no privacy issue existed prior to the new fence**, and that overall **privacy was actually reduced** as a result of the removal of the 14' high, established hedgerow *(See Protestant's exhibits 6E, 6G, 6L – after, vs. 6H and 6J - before)*.

Gate Had to be Moved Forward – False Premise #2

The prior gate was about 6' tall, located more than 10' from the property line, and opened inward toward the pool, which is in violation with the pool fence code. Mrs. Bair testified that her fence company suggested that the ***only* alternative** to make the gate compliant was to **move it** all the way up to where it exists today, some **29' forward**, and now *on* the property line at the front-most point.

Per my testimony, before the fence was constructed, I explained that we would not agree to this change as it would impact our property and not be compliant with fence codes, and that an **easy solution** would

be to keep the gate where it was, remove the pavers where the gate existed, **regrade to add a step** in the walkway, and then the gate in it's prior location could swing out, as required. This suggestion was rejected, and the fence was constructed. Mrs. Bair's testimony that she "explained things to the neighbors in advance" and "there were no issues" is inaccurate in this regard.

Furthermore, Mrs. Bair added **a new side window** (despite her testimony otherwise, *Protestant's exhibits 6B – before vs 6C - after*) along the Montanye driveway, further reducing privacy in both directions. This is **self-inflicted**, so the 6' fence cannot be used to justify the need.

Curb Appeal Adverse Impact

From the street and upon entering our driveway, it is apparent in *Protestant's exhibits 6A-D* that ***the entire nature of the boundary*** **between 4607 and 4609 has completely changed for the worse**. A formerly attractive, natural and more private boundary was replaced with a less effective wooden wall, decreasing the street appeal enjoyed by all in the Historic Glyndon community, and negatively affecting the property value. **Glyndon is not known as the land of grass and privacy fences; it's the land of old trees and beautiful natural landscaping.**

Water/Silt/Erosion from Master Bedroom/Bathroom Suite Addition

As shown in *Protestant's exhibit photos 10A-C,* and video *exhibit 12*, after experiencing silt flowing down her side walkway, Mrs. Bair intentionally created a ***new*** **impervious swale** to redirect and force all water/silt to flow to a 6"-wide mud trench on the exact edge of the property (same effect as extending the downspout to the edge of the property), **forcing it to flow instead onto the Montanye property**. The video clearly shows *no* water flowing under the new fence gate/Bair property, despite the testimony of expert witness Mr. Motsco, who said it would stay on her property.

On the **Fradkin's side**, a **new impervious ~12'x18' (216 sqft) concrete pad** was constructed to lead to the new 2nd garage bay, extending even beyond the Bair property. The water that used to be absorbed on the Bair property in that area now flows onto the Fradkin property. In addition, the excess water from the area of the **new garage bay 12 x 28' (336 sqft)**, is now directed only onto the Fradkin property. **This totals 552 sqft of new impervious area**. All flowing entirely onto the Fradkin property.

The balance of all the water from the sloping front yard, the impervious auxiliary driveway and walkway on the Montanye side, plus the water from the new impervious master bedroom/bathroom suite (**329**/308 **sqft**), **is now channeled into the mud trench**. **There is virtually no pathway for the excess water to remain on the Bair property on either side.**

Adverse Safety Concerns

There are significant safety issues having these structures stand even a day longer, let alone for 2+ more years while litigating further appeals, postponements, reconsiderations, etc. It seems the County enforcement arm will take no punitive action until the whole case is exhausted. This puts the neighbors and community at continued risk for what could be a total of 6 or more years from the time of initial construction. This is dangerous and puts the rights of an offender above the ongoing safety of the community!

1. No evidence that licensed professionals performed the work. In fact, given the magnitude and visibility of the work, and being on a public street, it's unlikely, as they know they could lose their license and livelihood as a result.

2. No inspections have been performed. We have zero assurances that the structures are safe and sound. Issues can happen at any time post-construction, as a result.
   2.1. Electrical safety codes, smoke detectors up to standard – possible fire hazard
   2.2. Plumbing (including natural gas) – possible explosion hazard
   2.3. Masonry (garage and addition foundations)
   2.4. Structural safety codes
3. In fact, **a gas leak** was already detected and corrected (*Protestant's exhibit 16*) in the precise area where the addition was built on the Montanye side, right on the corner of the new construction, just 15' from our driveway. In talking with the contractor during the repair, he said the gas line was nicked there, where the hole was dug, as proven in the photograph.
4. Furthermore, prior to the Gas issue, the initial garage foundation collapsed and had to be rebuilt - a clear indication that perhaps there was a level of incompetence with the workers, and an early heads-up for Mrs. Bair to investigate the contractor's status.
5. **The Bairs shouldn't even be living in this space for the last 3 years.** There was no "use and occupancy" issued, nor should there be. This happens after it's all inspected and deemed okay.
6. The 6' privacy fence that terminates with a gate, abruptly where we back out of our driveway, and poses the risk of a child running into our driveway without any ability to see it coming. A line-of-sight issue.

What assurances do we neighbors have that we, or our properties, won't be damaged should something serious happen in the near future?

Argument

Variances, outlined in BCRZ 307.1, allow they be granted:

1. "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"…
2. "and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship"…

   These are two hurdles - the first has to be met, and only if so, then the second is considered and must also be met. (*ref. Cromwell v. Ward*)
   Furthermore…

3. "and only in such manner as to grant relief without injury to public health, safety and general welfare."

Uniqueness

In the first place, on the first bar to be met, peculiarity or uniqueness of the land or structure:

1. **I struggle to find *any* characteristics of the land or structure that are peculiar or unique compared with the surrounding properties**, at least in the condition prior to these improvements, **or to find any arguments offered by the Petitioner that support this.**
   1.1. **The lot** is similarly…
      1.1.1. **Rectangular** in **length and width ratios** of it's immediate neighbor's and many others,
      1.1.2. Similar **terrain**…slopes downward from front to back (see *Petitioner's topographical exhibit*), same as all houses on Prospect and Waugh, both sides,

1.1.3. No cliffs, drop-offs, rock out-crops, rivers or streams, like all the surrounding houses on this side of the street and even the other side.
1.1.4. Same public utilities available to all, water, sewer, cable, etc.
1.1.5. The structure, prior to the improvements, did not meet current side set-back or lot square footage requirements for DR1 or even DR, same as many of the properties on Prospect (4609, 4611, 4613), all/most on Waugh Ave and Fiske Ave. *(See Protestant's exhibit 27)*
1.1.6. No two lots in Historic Glyndon are exactly alike. Are they therefore all unique, qualifying for relief? They are all formed on top of existing ground and terrain, around streams and hills and valleys, forests and fields, existing roads…and it is nearly impossible to *make* them identical. **A dictionary definition of 'unique' is not particularly helpful to variance determinations. It is a relative comparison that is appropriate.**
1.1.7. Mr. Schmidt's cross examination of Ms. Coffin attempted to imply that:
1.1.7.1. Because 4605 had gotten a variance in 1984, it was considered unique
1.1.7.2. Because 4605, 4607, and 4609 were very similar, they were therefore all unique
1.1.7.3. Also, Mr. Schmidt's opening exhibits in both the lower court and the de novo appeal emphasize the number of variances awarded in the Historic Glyndon area
1.1.7.4. Yet, under another objection, Mr. Schmidt argued that each case must stand on its own, and that no single variance sets a precedence…
1.1.7.5. …Pardon my confusion in this circular logic and contradiction.
1.1.7.6. Plus, the 1984 variance on 4605 Prospect pre-dates the Cromwell v. Ward landmark case arguing the importance of uniqueness and resulting hardship, which has since somewhat restricted the issuance of variances.
1.1.7.7. Finally, the 1984 variance on 4605 Prospect not only had no opposition in the community, nor broader environmental concerns…it had **signed support from every single property owner on Prospect Ave**. The nearest residence is over 230' from the new 25' setback. Which County ALJ would go against this support, and deny a variance under the circumstances, opening themselves up for warranted criticism by the community?!

2. In Mr. Motsco's testimony, he stated that the Bair property was unique because of the slope. Yet he further stated, in cross-examination, that the slopes on the neighboring properties on the south side of Prospect Ave. were the same. This sameness is supported by the topographical map introduced toward the end of Mrs. Bair's second testimony (*Petitioner's exhibit 25*).
3. Further, Mr. Motsco testified that building a detached garage in the back of the property would introduce a hardship in walking from the house to the garage. This argument of hardship caused by an unbuilt alternative, to an illegally built 2nd bay, would be self-inflicted. Plus, other front-yard options exist.

Hardship/ Practical Difficulty

In the next place, even if it were determined that the land/structures were somehow peculiar and unique, the second bar would not be met because no reasonable hardship is caused by the uniqueness, except the ones they created themselves in doing the improvements without considering the zoning restrictions and in creating the adverse impact on the neighbors and neighborhood.

1. Every neighbor in the community has had to make compromises and choices about improving their property within the confines of the County zoning and building codes.

2. In the case of wanting a 2-car garage,
   2.1. First and foremost, **it's not a hardship if you don't have a two-car garage; it's a luxury if you do.**
   2.2. It's a luxury if you have a single car garage, in this area. In fact, many garages in the area have been converted into living spaces (3, 5, 7 Waugh Ave), showing actual homeowner choices in practice over time, that living space is preferred over garage, which is more of a luxury.
   2.3. It's not a hardship if you have to walk from your house to your luxury detached garage.
   2.4. Further, **other options exist**.
      2.4.1. There's **room in the rear of the property** (200' - 30' setback = 170') **for a detached 2-car garage** within the zoning constraints, like several of the properties on Prospect (4606/Acle, 4610/Gehman, 4615/Meavers, 4511…), and many more in Historic Glyndon.
      2.4.2. There is **room in the front** (77.4' - 20' county right-of-way -25' setback = 32.4') for expansion within the zoning constraints. Two houses on Prospect alone have detached garages in the front of the properties (4601/Welsh, 4612/Gehman).
      2.4.3. There is room in the front for an attached, 2-car garage with a side entry, same/similar configuration as 4 Waugh Ave (*Petitioner's exhibit 7C*), perhaps with a more reasonable variance request, requiring no further reduction in existing non-conforming setbacks.
   2.5. If we allow a **zero-foot setback precedent**, would our DR1 zone turn into a community where structures were touching each other? Like town homes…as we all got exceptions to the rules, to be fair, even though none of us had met the bars for exceptions according to the laws passed by the elected legislature?
   2.6. One must consider the long-term impact of these decisions. This line of thinking leads to a turbulent community of conflict and angst, instead of peace and harmony.
3. In the case of the **second addition**, the new master bedroom and bathroom suite, **other options exist**, same thing,
   3.1. First and foremost, again, there was **no hardship with the existing living space**.
      3.1.1. Mrs. Bair purchased a 3 bedroom, 2-1/2 bath property, with room for overnight guests with children (daughters, grandchildren) already, with lower level and upper level family rooms.
      3.1.2. Families in 4607, in the last 30 years since we've been next door, included 3 with two children each;
         3.1.2.1. Hamilton's, Towles, Devaney's.
         3.1.2.2. Back in the seventies, the Bergeson family had 3 kids in that house, one of whom was friends with my brother.
      3.1.3. This clearly demonstrates there is no hardship to reasonably use the property as a residence, as it was before these improvements. The extra space added is totally a luxury.
      3.1.4. Further, the Bair's **could have expanded in the front or the back instead** of to the side, which is already non-conforming and where the issues are…or even **considered a second story** (like many of the houses on Prospect and Waugh Ave), in order to meet zoning restrictions.
   3.2. In fact, they covered a portion of their back deck with a roof and screened it in, as their first unpermitted improvement (one violation the county didn't pick up on, though it's documented in her own exhibits). **Instead of doing that, they could have used this 19'x12' area, and/or the area adjacent to it on the Montanye side giving them 36' wide x12' deep**, which is in the

center of the property, for extra indoor living space comparable to what they did in the front. It would be within the zoning restrictions.

4. In the case of **the fence**, other options exist, same thing…
   4.1. All of the confusion suggested by Mr. Schmidt with conflicting requirements…between the base County code requirements, the County pool requirements, and the County historic requirements…seem to me easy to sort out.
   4.2. **Pool requirements** can be met by enclosing the pool with its own minimum 48" fence, at least 10' in from the property line to satisfy zoning. This is the way many of the neighbors have handled it. This is how the Fradkin house handles it (*Protestant's exhibit 5*), as do many other properties in Glyndon.
   4.3. If they want a **yard fence** on the property line also, on the front/side, it can be brought to the required 42" (*ref. 427.1.A "…located in a historic district, the maximum height of a residential occupancy fence is 42 inches if the fence is erected in the side yard of a lot that adjoins a public road",B.2 "The fence may not exceed 42 inches in height if situated within ten feet of the adjoining front yard property line."*). **Privacy** can be handled very effectively **using hedges and shrubs**, like it was before this non-conforming fence replaced them, as is most common in Historic Glyndon.
   4.4. I have repeatedly, personally offered a reasonable alternative that would be acceptable to us on our side (*Petitioner's letter exhibit*) without requiring 2 fences....before the construction, after the construction, at the lower hearing, and since the appeal hearing. But it was rejected outright on all occasions. My proposal would still have required relief. The offer was made in good faith, as a negotiation, for the purpose of bringing this dispute to a more rapid resolution, before a hearing and County and community involvement was required, which did not happen.
5. These arguments and options demonstrate there is absolutely no need for relief of any kind on the fence, the garage, or the bedroom/bathroom addition.

General Welfare and Community Interest

Setbacks provide desirable buffers between neighbors and are extremely important to the general welfare. They promote peace and harmony in the community. Each property owner agrees to restrict expanding in these areas equally. When one property owner fails to do so, the immediate neighbor is adversely impacted, as is the neighborhood more broadly. Granting of a zero-foot setback is neither reasonable nor necessary for the Bair's to enjoy and even expand their property as a residential dwelling in Glyndon. Same with the master bedroom/bathroom expansion. **Because other options exist, granting relief is not necessary and negatively impacts the buffer between properties, perpetuating the non-conforming issues unfairly.**

The protested privacy fence along the adjoining front- and side-yards likewise perpetuates an unfair and undesirable condition for the immediate neighbors and the Historic Glyndon community. Our other neighboring fence, at 4611, also does in fact extend 5' into our front yard (measured after testimony), but is a 48" 3-board fence that was rebuilt exactly where/as it was 40+ years ago, and is 40' from our house, behind a hedgerow. It's not in any way comparable to a new 6' solid fence, newly installed, extending 50' into our front yard, and 2' from where we park. Therefore, we did not object.

1976 Addition and the 104.3 Limit on Extension of Non-Conforming…/ 25% Rule

The 4607 Prospect property became non-conforming in 1971 when the DR2 zoning designation went into place, with a garage-side setback of only 11' instead of the required minimum of 15'.

1976 Addition Dimensions – 329 sqft

When the ~1976 improvement was added onto 4607 on the Montanye's-side (see *Protestant's exhibit 2*), the property was zoned **DR2**. Side setbacks for DR2 are minimum **15'/ sum of 40'** (*ref. BC Zoning Regulations 1B02.3.C.1.*) This addition violated the 15' (14.9) and the "sum of" setback requirements (14.9'+11'=25.9'), and therefore the ~1976 addition counts toward the 25% rule.

The Math

Using the RTF survey drawing to determine of the width of this ~1976 addition, by measuring the "4' overhang" (OH), with a scale of 1"=30', this makes the width conservatively 23.5'. **This overhang *is* the 1976 addition**.

Mr. Motsco's testimony that the new addition is "approximately 14'x22'", determined by looking at the structure itself, "as best he could tell"…we'll **use his 14' depth dimension**, for lack of any other. **This makes the ~1976 addition ~14' x 23.5', or 329 sqft**.

1971 Home – 1,448 sqft.

Again, using the RTF survey, the original home "ground floor area" (before the 1976 addition), measured:

The Math

- **Main Home** – 54' on survey - 23.5' ~1976 addition = 30.5'.
  30.5' width x 30.5' depth on survey = 930 sqft.
- **Utility/ Mud room** - 30.5' - 5.8' step-back = 24.7'.
  24.7' x 8.6' width = 212.42 sqft.
- **Garage** – 28.3' x (24.3'-2.5' encroachment – 11' original setback = 10.8') = 305.64 sqft.
- **Total ground floor sqft** – 930 + 212.42 + 305.64 = **1,448 sqft.**
- 1448 sqft x .25 = **362.02 sqft. maximum allowed extension**.
  362.02 sqft (25%) – 329 sqft. 1976 addition = **33.02 sqft left on the 25% rule.**
  Therefore, the 104.3/ 25% rule does not cover the 2019 addition of 329 sqft.

Mr. Motsco testified that the 1991 zoning change was the point-in-time to consider. The Zoning Master Plan cycle is not intended to provide a "reset" mechanism for expansion. Therefore, 1971 applies here.

Deficiencies

Deficient Submission/ "As-Built" Advantage

The **RTF survey** is the only thing submitted with any dimensions of the recent improvements and is seriously deficient with details pertinent to the case. (*ref. BCZR Article 5, 500.9, 502.1*)

It shows only the "as-built" *total* dimensions, and **lacks information** specifically relevant to the relief request, including:

- What was the prior vs. the new setback of the 2nd bay garage?
- What is the size (length, width, sqft) of the new master bedroom/bathroom suite seeking relief?

- How far is the new 6’ privacy fence, seeking relief, from the property line on the Montanye side?

In other words, *what specific change is the appeal tribunal approving or denying (before/after)?*

Mrs. Bair got Ex Post Facto approval from LPC for a **13’x13’ addition** on the Montanye’s side (*Petitioner’s exhibit 5*). These numbers are way wrong, it’s been established above at 14’x23.5’. Where did they come from? Assuredly from the request by the petitioner to LPC, as there were no dimensions in the code complaints or citations (*Petitioner’s exhibit 4*).

On the garage side, who certified what the old setback was? It could be determined only after the survey, and by looking carefully at the construction done, might even require pulling siding or drywall. What evidence has been presented to verify the setbacks represented in the reconsideration? It's not on the survey. An aerial view measurement shows about a 14' extension, based on the roofline, but that can't be considered precise.

An **“as-built” submission** process **may grant an advantage** over a “normal” process, because:

- People are naturally more sympathetic to the consequences of denying exceptions in the case of the as-built, because if declined, it has to be removed, likely at significant expense. It's a difficult and punitive decision.
- If *plans* to build are declined, the applicant simply has to re-work the plans to make them conforming, with far less cost. This is a far less difficult decision, not punitive.
- This gives an advantage to the "as-built" approach, which is a bad precedence because it encourages more residents to follow the thinking that "it's easier to ask forgiveness than permission." This thinking is destructive to our communities and our civil society more broadly. It's not a law-abiding approach, it's a "catch me if you can" approach. It would result in more hearings just like this one, more arguments, a less peaceful community. That's an adverse effect.

Defective Exhibits - Petitioner’s Fence

The photographs and measurements presented in Petitioner’s exhibits 8A-I serve only to show that “other fences exist in Historic Glyndon”. **No relevant context is provided** with the photos, such as:

- Where are the fences? Front-yard, side-yard, back-yard?
- Do they adjoin a neighbor’s front- or side-yard?
- Along a busy state highway (MD128/Butler Rd) with a public sidewalk? Or, a dead-end street?
- Do they surround a pool? Do they protect a tennis court?
- Do they help shield from a public or private facility? (church, private pool)
- How far are they from the property line?
- How long have they been there? (Prior to zoning? Historic?)
- Are they on a Historic/ contributing property or non-contributing?
- Did the neighbors/community protest or support?
- Are they solid-board, stockade privacy fences, or 3-board paddock or split rail, or picket?

Most of the heights given in testimony are exaggerated. One can easily find a spot or two along a 4’ fence line where it exceeds or is less than 4’, due to the terrain or imperfections in construction. Additionally, the “measuring stick” used has no visible number measurements indicated and appears to

be a telescopic device (can be extended manually and imprecisely). Why not a tape measure? Certain neighbors who attended the hearing saw their fences in the exhibits and contested the measurements.

Only a single fence pictured/listed is relevant: *Petitioner's exhibit 8B*. The wooden fence (behind the featured black metal fence) at **2 Waugh Ave**. is a 6' privacy fence, along a front & side yard, with a pool involved. These two fences were the object of **years of opposition from the Historic Glyndon community**, where the Petitioner lost the lower-court ALJ hearing and filed an appeal. The HGI and GCA organizations ran out of legal fees to contest the appeal, and the **appeal case was ultimately dropped** by BC BOA (**appeal never even scheduled**, get it off the books) citing "**lack of prosecution**" by BC to enforce the lower court finding, so it still stands today. Yet, it's also included in *Petitioner's exhibit 26*, (twice) listed as "approved"?

The same issues exist with *Petitioner's exhibit 26* (fence chart). Corrections and some relevant context added below. Mr. Schmidt did not provide the exhibit, so this is partial from what was displayed, but makes the point.

Address	Height/Type	Yard Location	Comment/Context
29 Chatsworth	6' Privacy	Back & Side	Shields from Glyndon Pool, corner lot, no neighbor
25 Waugh	6' Privacy	Back	No adjoining front/side yard
8 Waugh	6' Privacy	Back	No adjoining front/side yard
6 Waugh	None	None	**Duplicate**, Vacant lot, 6' fence seen is 4612 Prospect
4722 Butler	6', 7' Privacy	Back	~15' from property line
4702 Butler	42" Picket	Side	**Duplicate**, 6' fence seen is 3 Waugh fence
3 Waugh	6' Privacy	Side & Back	Vacant lot next to fence
2 Waugh	6' Privacy	Side & Front	Dropped for Lack of Prosecution (**not approved**)
4612 Prospect	6' Privacy	Back	Surrounds only pool
4711 Butler	6' Privacy	Back	Shielding Glyndon UM Church side
121 Central	6' Privacy	Back	Begins ~40 behind foundation
37 Waugh	52" Paddock	Side & Back	Borders Emory Grove Camp
4606 Prospect	None	None	**No fence** on Acle property
4605 Prospect	5' Metal	Back	Surrounds pool only, not near property line

Petitioner's 'Victim' Testimony

Petitioner testimony asserts that she was defrauded by her contractor, and that she had no knowledge that:

- Property lines and setbacks were not determined or followed,
- LPC procedures were not followed,

- Permits were not requested or granted.

Only Mrs. Bair's testimony was presented as evidence to these claims. Not a single correspondence, contract, receipt, payment or other artifact from the contractor was presented. No contact information or contractor name was presented, no evidence of pursuing damages with this contractor. With one exception… A statement from a fence company was presented, showing a charge for a permit that was not in fact obtained by the fence company. This was a small fraction of the total improvements made. In addition, fence companies rely on the customer to verify the location and other characteristics requested by the customer to be accurate and conforming.

Furthermore, it is always the **complete and total responsibility of the homeowner** to be knowledgeable and assure their compliance and the compliance of the contractors they employ.

Licensed Real Estate Agent

Mrs. Bair was a **licensed and active MD real estate agent when the work was performed** (PC exhibit), having just participated in the purchase transaction of her own residence. One must be an active agent to participate in a transaction, an in order to be an active agent one must be current on licensing and continuing education requirements. As Cookie Stone, expert Real Estate witness for the Protestant's testified, a basic knowledge of zoning, permitting, and using only MHIC licensed contractors is standard and emphasized in the RE licensing and continuing education training curricula required by all.

Refer to *People's Council exhibit 15*, which outlines "Basic Maryland Real Estate Licensing Requirements", with the last bullet reading "**Planning, Zoning, and Environmental Hazard**." In addition, RE Agents are trained extensively in the importance of good contracts, compliance and disclosure. COMAR 09.11.02.01, Relations to the Public, paragraph C includes: "The licensee shall protect the public against fraud, misrepresentation, or unethical practices…"

Protestant's exhibits 18A-D (security video) demonstrated the willingness and audacity on Mrs. Bair's part to **delegitimize two different surveys done for the purpose of resolving the issues in this case**, putting into serious question all of her testimony not backed with legitimate evidence.

Normal Process is Crucial

Mr. Schmidt spent an inordinate amount of time in cross examination attempting to convey to the panel that, despite the proclamation of each community association in their Rule 8 submissions, the *only* reason any of the relief requests were opposed is because the Petitioner did not get permits or follow the proper process.

In fact, the **documents submitted by each organization clearly oppose the garage 0' setback, the bedroom/bathroom addition, and the fence**. While it's true there was a paragraph *highlighting* that this case is particularly egregious because the normal process was not followed, **that's not to say that is the only reason…it's just one they chose to highlight**. The issue was initially reviewed in detail by these organizations over a year-and- a-half prior to the representatives giving testimony.

Also, it's not fair to argue "*they didn't have any problem with it beforehand*" when, in fact, it was unknown beforehand that there were so many violations and issues. It was assumed by all that proper setbacks were being followed, proper designs were submitted and approved, proper safety inspections were performed. **To what end would a neighbor oppose the work if it were approved and legitimate**

and there was nothing you could do about it? This would only bring conflict to the neighborly relationship.

Following the normal process affords the local community and LPC an opportunity to provide feedback that includes suggesting alternatives that will work to meet the homeowner goals within the confines of the county codes. It avoids the neighborhood conflict we are faced with today – a black-and-white decision on the "as-built." It is understandable that the CA's would highlight this fact above others in their section 8 submissions.

Conclusion

Mrs. Bair has acted on this only in a way as required by law. Not in a way in keeping with maintaining peace within the community in which she now lives.

Despite her convincing testimony, presented without any evidence, the Protestants and the People's Council have disproven her testimony and demonstrated her willingness to deceive and defraud not only her immediate neighbors, but the community and the County.

Without demonstrating true uniqueness of property and structures, without a demonstrated hardship, and *with* demonstrated harm to the general welfare of the community, **we see not a single justification for any relief being granted.**

-Tom and Kim Montanye

RE:	PETITION FOR SPECIAL HEARING AND VARIANCE	*	BEFORE THE
	4607 Prospect Avenue; SE/S of Prospect Avenue, 410' NE of Waugh Avenue	*	BOARD OF
	4th Election & 3rd Councilmanic Districts	*	APPEALS FOR
	Legal Owner(s): Donna V. Bair Petitioner(s)	*	BALTIMORE COUNTY
		*	2019-342-SPHA

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

MEMORANDUM OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

TABLE OF CONTENTS

2014: Coming to Prospect Avenue 1

Circa 2017: The Case of the Errant Encroachments 3

The Neighborhood and Historic Glyndon 3

2018-19: Things Fall Apart, Mere Anarchy 4

Relevant Baltimore County Zoning Regulations and Code Provisions 6

The ALJ Decision 6

The ALJ Order on Motion for Reconsideration 6

Argument 7

Zoning History, Nonconforming Use, Illegal Extensions, Variance Disqualification 7

Variance Law: "Uniqueness" Explained --- Delusions Exposed 9

Interlude: "Other" Fences, Garages, Variances Diversion 11

The Landmarks Preservation Commission Sidetrack 12

The "Carport" and "Accessory Building" Plays 12

The Fence Law Evasion 13

Variance Law: Uniqueness Resulting in Practical Difficulty 14

A. The Bair Property Presents No Difficulties, Much Less Any Peculiar Difficulties ... 17

B. Application of the "Practical Difficulty" Criteria 19

Variance Law: The Insidious Self-Created Difficulty Problem 21

Conclusion 23

APPENDIX

BCZR

§ 101.1 – Nonconforming Use 1

§ 104.1 – Continuation of Nonconformance; Exceptions 1

§ 104.3 – Limit on Extension of Nonconforming Buildings and Uses; Exceptions 1

§ 1B02.3.C – Development Standards for Small Lots or Tracts 2

§ 307.1 – Variances - Authority to Grant Variances; Procedures and Restrictions 3

§ 427.1 – Fences – Conditions for use; exceptions 4

Baltimore County Code § 13-6-101 – Swimming Pool Enclosure 5

Prince George's County v. E.L. Gardner 293 Md. 259 (1982) 6

Cromwell v. Ward 102 Md. App. 691 (1995) 9

Riffin v. People's Counsel 137 Md. App. 90, cert. denied 363 Md. 660 (2001) 17

Easter v. Mayor & City Council 195 Md. 395 (1950) 20

Park Shopping Center v. Lexington Park Theatre Co. 216 Md. 271 (1958) 22

RE:	PETITION FOR SPECIAL HEARING AND VARIANCE	*	BEFORE THE
	4607 Prospect Avenue; SE/S of Prospect Avenue, 410' NE of Waugh Avenue	*	BOARD OF
	4th Election & 3rd Councilmanic Districts	*	APPEALS FOR
	Legal Owner(s): Donna V. Bair Petitioner(s)	*	BALTIMORE COUNTY
		*	2019-342-SPHA

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

MEMORANDUM OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

"There must be some kind of way out of here,
Said the Joker to the Thief.
There's too much confusion,
I can't get no relief.
Businessmen drink my wine,
And the plowmen ruin my earth,
None of them along the line,
Know what any of it is worth.
Bob Dylan (Jimi Hendrix cover), All Along the Watchtower (1967)

2014: Coming to Prospect Avenue

In 2014, Donna Bair (hereafter "Donna") moved from Carroll County to Glyndon. She bought the home at 4607 Prospect Avenue from Timothy Devaney for $320,500.[1] The lot is about 34,000 square feet, .75 acre. The dates from 1951/ For the last several decades, it was occupied by the Hamiltons, Towles, and Devaneys.

Donna has a real estate license. She was associated with Century 21. She activated her license to buy her newly acquired dwelling. She said it was recently on referral.

The neighbors at 4609 Prospect Avenue are Tom and Kim Montanye ("Tom"). They have lived there since 1991. Tom grew nearby. Steve and Patty Fradkin ("Steve" and "Patty") are on the other side at 4605 Prospect Avenue. They came in 2014.[2]

The Bair residence as of 2014 had about 1552 square feet ground floor area. It was a standard house with 2 full baths and 1 half bath, a basement, a 1-car garage, and an

[1] Details are in the State Department of Assessments ("SDAT) Real Property Data, P.C. Exh.11.
[2] The SDAT Data in P.C. Exh. 11 provide helpful information and statistics on the Bair, Fradkin, Montanye, and other Prospect Avenue properties.

ample driveway. This included an addition, about 14' x 22' (308 square feet) on the Montanye side. It was built around 1976, attached mostly to the rearmost side of the dwelling and a few feet to the rear. It was about 14 feet from the Montanye boundary. The attached 1-car garage was set back about 10 or 11 feet from the Fradkin boundary.

There were spacious front and rear yards, a swimming pool, and an open rear deck. The kidney-shaped swimming pool, within a 36' x 22' rectangle, spanned about 792 square feet, per Bair engineer John Motsco. An attractive white picket fence a few feet high ran back from the house on the side closest to the Montanyes. It was not on the boundary. There was also an open-air cabana, kind of a lean-to. On the Fradkin side, there was a three-rail wood fence, apparently 40-something inches high. There was a 13'7" x 10'1" wood shed in the far rear yard about 26 inches from the Fradkin property.

Donna's site plan, Pet, Exh. 1, does not depict the situation in 2014, so there is no drawing or schematic of how things precisely were laid out with the one addition, the one-car garage, the white picket fence and cabana, and the three-rail fence.

Soon after moving in, Donna decided to make new home improvements.

She wanted a second garage bay, extending to the Fradkin property line. It would be 12' x 28'. She would also move her HVAC unit toward the rear of this garage.

She wanted a second bedroom addition on the Montanye side, filling the area in front of the first addition, extending along the side to the front of the dwelling, again about 14' x 22'. Her attorney called it a "notch," apparently to minimize it."[3]

She wanted a new residential privacy fence, six-feet high and solid, along both sides of her property; about 3 feet from Tom's side, to beyond the front of her dwelling, mostly adjacent to the Montanye front yard; crossing the rear yard of her property to the Fradkin boundary; and coming back up to the rear of her dwelling, a fourth side. The length of the fence crossing the rear yard, --- on the site plan and in Bair engineer John Motsco's testimony --- is about 95, with side sections about around 77'. Motsco calculated the area enclosed by the fence as 7700 square feet. The distance from the pool

[3] This is a misnomer. A "notch" is a v-shaped indentation or hollow, or a half-moon. Webster's Third New International Dictionary 1543.

to the fence is about 30 feet.[4] This entailed removal of the existing fences and the cabana, and of substantial plantings near the side boundaries.

She also wanted to enclose the rear deck.

Circa 2017: The Case of the Errant Encroachments

Donna secured estimates from two contractors, itemizing and pricing the work. She wanted it done cheaper, went to Craig's List, and found a Steve, last name lost. He agreed to do the work on a cash basis. There was no written contract, no survey, no permits, no check with county zoning, none of that.

Donna says she relied on Steve to take care of things. She knew about zoning and permits, but didn't think it was hers to know or check.[5]

The garage construction initially collapsed. Steve finished the jobs before exiting, but problematically. The case of errant encroachments was just around the corner.

Donna did not produce this Steve as a witness, and did not produce any records of dealings with him.[6] His later whereabouts are said to be uncertain.

The Neighborhood and Historic Glyndon

The County Board of Appeals ("CBA") heard much evidence on Prospect and Waugh Avenues, lot locations and configurations, and Historic Glyndon. Steve, Patty, Tom, and Robin Coffin ("Robin") described well the immediate neighborhood. Cookie Stone gave an excellent take on the real estate situation and impact. Kim Karlsen, Mary Molinaro, and Susan Benson all testified cogently about Glyndon, Baltimore County's

---

[4] As we discuss later, the new fence exceeds what is "adequate" and appropriate to protect children from wandering into the pool. It does the opposite, leaving room for kids to wander about. Bair conceded it is a privacy fence. Motsco tried to spin it as pool protection to weasel more allowable height.

[5] An ordinary citizen should know to check zoning and permits for such extensive work. A real estate agent has a higher obligation to address applicable regulations under Md. Code Bus. Occupations and Professions Art. Sec. 17-532. P.C. Exh. 16.

[6] Would Steve agree with Donna's blame-shifting to him? Did he broach a survey and permit? What would be his side of the story? Donna never took action later to hold Steve accountable or remedy the situation. Rather, she wants his work ratified, less the trespass. His absence raises a fair inference that his testimony would not be favorable to the petition.

first legislated Historic District and National Register Historic District, with exhibits. Their associations targeted the lack of permits. But they also testified individually, as was their right, to the unsuitability and incompatibility of the construction.[7] More of this later.

The undisputed evidence shows the Bair lot to be sizable in the area, with a mild slope downward like other lots on Prospect Avenue and area lots. There were the SDAT Data on Prospect Avenue lots; and My Neighborhood, GIS and Google layouts and photos. Steve's helpful chart produced a plethora of statistics. Prot. Exh. 27.

2018-19: Things Fall Apart, Mere Anarchy
William Butler Yeats, The Second Coming (2019)

Tom became concerned about the construction. There were boundary issues. A new stream of water ran in a trench or swale along or next to his driveway. There didn't seem to be any permits. There were eventually surveys done. Survey stakes were being moved, as shown his videos. It appeared there might be issues under County law.

Tom filed a complaint. There was a Code Enforcement Correction Notice issued in late 2018 for multiple violations. There followed a citation on January 24, 2019.

There was a hearing before Administrative Law Judge (ALJ) Lawrence Stahl on February 6, 2019. His February 11th Final Order states Assistant County Attorney Marissa Merrick and Donna Bair attended. He imposed the cited $1000.00 penalty, but suspended it to allow Donna to file for zoning relief or correct the non-compliance by April 12, 2019. Pet. Exh. 4. Donna did not timely comply with the Order. She contacted attorney Lawrence Schmidt. He filed her Petition for Special Hearing on May 28, 2019.

Meanwhile, Donna's survey showed her new garage extended 2-3 feet into Steve and Patty's property and the fence about 7 feet into their property. It also showed the front of the driveway cut off part of Tom's property at the Prospect Avenue frontage.

Donna, Steve and Patty had been friendly. Before filing the zoning petition, Donna sent text messages to Patty. Prot. Exh. 28. She described the encroachment and at some

[7] We occasionally deal with the spurious objection that citizens who live more than a short distance away should not be allowed to testify. It is settled and well-known that any interested person may participate. Dorsey v. Bethel A.M.E. Church 375 Md. 59 (2005).

point showed the survey to the Fradkins. There are two versions in Prot. Exh. 29A-B, one complete and one with the edge cut off to hide the encroachment on Tom's side.

The Fradkins had been enduring a bankruptcy after Steve lost a great job at Northwest Honda when that property was acquired, and its purchaser had other plans.

When Donna approached them, she asked Steve and Patty to give her a property interest in the area encroached. She described it as an easement.[8] For various reasons, Steve and Patty declined it as "lose-lose." Steve was also concerned whether it could be done during bankruptcy. Donna said she talked to a bankruptcy attorney, and told Steve it was good. She said she offered Steve $15,000.[9]

Donna's text messages admitted the encroachment of the garage and fence. The messaging mentions her then imminent zoning petition. She said cryptically that the county will only be looking at the setback, which she didn't have even before adding the garage. She said her attorney would like the Fradkins to sign a letter that they do not object. But she would respect their decision whatever it is. Donna later texted,

> "You don't need to attend unless you want to disputed (sic) the variance we are requesting which is to have 14.9 feet instead of 50 feet combined on the two sides of our property according to current zoning code."

This incompletely or inaccurately described the multiple zoning requests. It shows some familiarity with zoning terms. Donna did not mention the zero' garage setback and fence height variances. She was anyway unable to secure Steve and Patty's agreement.

In the normal course, a hearing ensued before ALJ John Beverungen. He entered an opinion and order on August 19, 2019 and an Order on Motion for Reconsideration on September 25, 2019. From these decisions, Donna entered a *de novo* appeal from denial of the multiple variances.

---

[8] Whether an easement is the right description of a property interest to relocate a boundary is debatable, but it shows Donna had some currency in real estate concepts and law.

[9] Steve testified it was brought up to go "under the table." He declined.

Relevant Baltimore County Zoning Regulations and Code Provisions

The zoning petition for special hearing and variances brought into play a multiple zoning regulations and a county code provisions:

BCZR § 101.1: NONCONFORMING USE --- Definition
BCZR § 104.1. - CONTINUATION OF NONCONFORMANCE; EXCEPTIONS.
BCZR § 104.3. - LIMIT ON EXTENSION OF NONCONFORMING BUILDINGS AND USES; EXCEPTION**.**
BCZR § 1B02.3.C. Development standards for small lots or tracts.
"BCZR SECTION 307- VARIANCES
307.1. - Authority to Grant Variances; Procedures and Restrictions
BCZR § 427 – Fences
§ 427.1. - Conditions for use; exceptions.
CODE § 13-6-101. - SWIMMING POOL ENCLOSURE.

For convenience, these are reprinted in an appendix at this memo's conclusion.

The ALJ Decision

To conclude his excellent decision, ALJ Beverungen entered this order:

> THEREFORE, IT IS ORDERED this **19th** day of **August, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing: (1) to approve a nonconforming lot width and area; and (2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of the required 30 inches, be and is hereby GRANTED.
>
> IT IS FURTHER ORDERED that the Petition for Special Hearing: (1) to approve a nonconforming dwelling side yard setback; and (2) to confirm that an existing fence (swimming pool enclosure) with a height of 6 ft. is in compliance with BCZR Section 427.1 and BCC Section 13-6-101, be and is hereby DENIED.
>
> IT IS FURTHER ORDERED that the Petition for Variance: (1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.; (2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of side yards of 14.9 ft. in lieu of the required 50 ft.; and (3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches, be and is hereby DENIED.

ALJ Beverungen thus approved the lot nonconforming lot width and area, and nonconforming shed. He denied the second garage bay, second addition, and new fence.

The ALJ Order on Motion for Reconsideration

ALJ Beverungen concluded his subsequent denial of Donna's Motion for Reconsideration with this Order:

THEREFORE, IT IS ORDERED this **25th** day of **September, 2019**, that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms set forth in Baltimore County Zoning Regulations ("BCZR") § 104; and

IT IS FURTHER ORDERED that all new construction must comply with current setbacks and restrictions existing at the time of new construction.

IT IS FURTHER ORDERED that in all other matter and respects Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

ALJ Beverungen thus denied all post-2014 construction. As for approval of setbacks existing in 1951, he did not specify them. As we have seen, they did not include the 1976 first addition on the Montanye side. All issues relating to new construction are subject to review.

Argument

"No reason to get excited, The thief he kindly spoke.
There are those among us, Who feel that life is but a joke.
But you and I we've been through that, And this is not our fate.
So let us not talk falsely now, The hour is getting late."
Dylan, Hendrix, op. cit.

Zoning History, Nonconforming Use, Illegal Extensions, Variance Disqualification

Let us survey the zoning history shown in P.C. Exh. 12, also conceded by engineer Motsco. In 1970, County Council Bill 100 established the Density Residential Zones. In 1971, this area was rezoned D.R. 2, in place when the first addition came circa 1976.

Bill 100 also covered existing lots and charted a table for lot sizes, lot widths, and setbacks. BCZR Sec. 1B02.3.C. For D.R. 2 Zone, the lot met the 20,000 square feet minimum, equaled the 100 feet front lot width, and met front yard and rear yard 40 feet minimum setbacks. But the first garage 10-feet setback did not meet the 15 feet side yard setback.[10] It also fell just short of the minimum sum of side yards widths of 40 feet, prior to the first addition, with just under 30 feet on the Montanye side and 10 feet on the Fradkin side. Even if we overlook this last shortage, the garage setback plainly did not conform to D.R. 2. So, as of 1971, the residence was already a nonconforming use.

[10] There is no dispute the new second garage is 12 feet wide and extends 2-3 feet into the Fradkin property, so the first garage was about 10 feet away.

This brings us to 1976, the year of the first addition. BCZR Sec. 104.3 allows an extension of a nonconforming use up to 25% of the ground floor area (GFA). Because the addition took up 308 square feet, it was 19.8%, less than 25%, of the 1552 square feet GFASo, it was allowable, but left only another 5.2% for any additional extension.

Motsco discussed BCZR Sec. 104.3, but assumed incorrectly that the first addition was there since 1951 and so did not count as an extension. He was unaware 1976 was the year it was added. Motsco also omitted mention of the second garage and fence as extensions, either particularly or together with the other improvements.

The next key date is 1996. There is no dispute the County Council rezoned the area, including the Bair lot, from D.R. 2 to D.R. 1. If we look again at the table, we see this rendered the lot area and width both nonconforming as to the minimum limits: 40,000 square feet and 100 feet, respectively. This also magnified the side yard setback nonconformity of the original garage, providing a 20 feet minimum, and the sum side yard setback sum nonconformity, raising the minimum to 50 feet.

As a matter of law, pursuant to BCZR Secs. 104.1 and 104.3 and the case law, all of the new additions -- garage, fence, and side bedroom ---- are significant extensions beyond the 25% of ground floor area limit. They were all new amenities and facilities. As such, they were illegal extensions or expansions of a nonconforming use. These are construed strictly and prohibited. Prince George's County v. E.L. Gardner 293 Md. 259, 267-68 (1982), attached. See, e.g. Jahnigen v. Staley 245 Md. 130, 137-38 (1967).

Pursuant to BCZR Sec. 104.1, any change to a nonconforming use terminates the use. An extension or expansion beyond that allowed by statute is such a change.[11]

As a matter of law, there are no special exceptions, variances, or other such approvals allowed for nonconforming uses. Prince George's County v. Gardner, *supra.*

[11] Even if the first addition dated from 1951, so the 2017 second bedroom might arguably be credited as an allowable 19.8% first extension, it plainly would not allow the compound second garage and new fence. Anyway, the argument for the 2014 addition as just a 19.8% extension would still be without merit because it came about with multiple combined extensions which amounted to a collective or cumulative change and cannot properly be viewed in isolation.

They are governed strictly by the nonconforming use statute. Intentionally or not, this disqualification was overlooked in Petitioner's presentation and Motsco's testimony.

The proper application of nonconforming use law thus precludes all the recent improvements. This effectively makes it unnecessary to reach the variance and fence law issues. But we will of course address them as well.

Variance Law: "Uniqueness" Explained --- Delusions Exposed

Even if the petition for variances were not disqualified based on nonconforming use expansion, the variance requests would have no merit. Let us turn to variance law.

Donna's attorney's view of "uniqueness" is errant and pettifogging. He asserted a property is unique if no other property is exactly the same. Of course, that can be said of every property. If he were correct, there would never be the denial of any variance for lack of uniqueness. This view also obscures the connection to practical difficulty.

Contextually, under BCZR Sec. 307.1, uniqueness must result in practical difficulty. Trinity Assembly of God v. People's Counsel 407 Md. 53, 79-86 (2008). The main purpose of variance law is to preserve some reasonable use of the property, and in a way consistent with the public safety, health, and welfare.

Riffin v. People's Counsel 137 Md. App. 90, 97-98, cert. denied 363 Md. 660 (2001) followed the landmark Cromwell v. Ward 102 Md. App. 691 (1995). Both are attached. The Riffin Court affirmed this CBA's denial of multiple variances,

> "In denying the appellant's requests for variances, the Board explained:
>
> > Section 307.1 of the *Baltimore County Zoning Regulations* states, in pertinent part, as follows:
> >
> > "... [T]he County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area 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* ... Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area … regulations, and only in such manner as to grant relief without injury to public health, safety, and general welfare."

As well, this Board enjoys the guidance provided by the Court of Special Appeals in *Cromwell v. Ward,* 102 Md.App. 691 [651 A.2d 424] (1995). In requiring a pre-requisite finding of "uniqueness," the Court defined the term and stated:

> In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. *"Uniqueness" of a property for zoning purposes requires that the subject property has an inherent characteristic not shared by other properties in the area, i.e.,* its shape, topography, subsurface condition, environmental factors, historical significance, access, or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions....

It is this Board's finding that the proposed site is in no way unique, unusual or different from the other properties that are existent in this M.L.-I.M. zone. **The Maryland Department of Assessments and Taxation, real Property System map, shows just how similar in size and shape all of the properties are along Greenspring Drive. Testimony by Mr. Patton indicated that this property was consistent with others in the community, and he noted that the gentle slope off of Greenspring Drive was consistent with other properties, further noting that some chose to fill in their properties before building and have entrances at the rear of their locations....** At no time in the hearing did the appellant entertain any historical significance to the site nor were environmental or subsurface conditions documented. Mr. Riffin did testify as to the damage to the interior of his building but did not document the same with photographic exhibits, receipts for repairs or documentation by some authority regarding the nature or extent of this damage. **There was no testimony or evidence regarding abutting properties restricting his activities or imposing any unique characteristics upon his site.** ***In the absence of an initial finding of uniqueness, the inquiry under Section 307.1 stops and, in this case, the three variances must be denied.***
(Emphasis supplied). We see no error. Bold font supplied by (People's Counsel).

Here, there is likewise convincing evidence that the Bair lot is similar in shape and topography to nearby lots, larger than many, and with advantageous pre-existing amenities. The age of the dwelling is similar to others in the subdivision. The gentle downward slope is typical. The SDAT Data, maps, Steve's chart, and all the testimony corroborate there is nothing unique to see here.

Donna's counsel loudly mocked our questions about similarity because, he said, the statute does not use the words "fairly similar." His deprecation of our office's position disregards the sensible meaning under the case law. It is propaganda.

In sum, Donna's property does not get past the threshold test of uniqueness, even before we get to any issue of resulting practical difficulty.

Interlude: "Other" Fences, Garages, Variances Diversion

We pause before discussing the practical difficulty criteria to expose the other diversionary tactics which pervaded Donna's attorney's presentation.

To divert attention, Donna scavenged the area for other fences, garages and pools. She devoted much testimony to this effort. She found eight fences said to be more than 42 inches high, with two perhaps six feet high. Pet. Exh. 8A-I. There was no indication of the precise locations, history, or legal status. Tom disputed her allegation about his fence, 8G, and others were questionable. She found eight lots with 2-car or 3-car garages, again without examination of location, history, or legal status. Pet. Exh. 7A-I. None of them, such as the Fradkins', were on or immediately adjacent to property lines. She also produced opinions approving other variances, generally unopposed and very different in location and circumstance. These were accepted for identification only. Pet. Exh. 9.

Anyway, the existence of even arguably similar additions or uses --- whether with variances, nonconforming, or in violation --- are irrelevant. Easter v. Mayor and City Council 195 Md. 395, 400-01 (1950); Park Shopping Center v. Lexington Park Theatre Co. 216 Md. 271. (1958), attached. These are still good law.

In Easter, the Court dealt with the claim that there were other existing additions reaching the same building line as Easter's desired addition. The Court of Appeals reversed the zoning board's grant of the[i] setback variance. Judge Henderson wrote,

> "The fact that the lot is irregular has no bearing on the question, nor is it material that three buildings, some distance to the north, extend to the building line. These may have been built before the passage of the Ordinance, or they may have been built under permit or without permit. As was said in Potts v. Board of Adjustment, 133 N.J.L. 230, 43 A.2d 850, 854: 'Prior exceptions granted by the adjustment board are not in themselves controlling. Ill-advised or illegal variances do not furnish grounds for a repetition of the wrong. If that were not so, one variation would sustain if it did not compel others, and thus the general regulation eventually would be nullified. The annulment of zoning is a legislative function that is beyond the domain of the zoning board.'"
>
> * * *
>
> "But we think the detriment to the applicant must be weighed against the benefit to the community in maintaining the general plan. 'It is by these gradual encroachments, individually or relative insignificance, that the integrity of the general scheme is undermined and ultimately shattered. One departure serves as justification for another * * *.' Dubin v. Wich, 120 N.J.L. 469, 200 A. 751, 754. In the case of non-conforming uses,

> the ordinance tolerates their continuance, but looks towards their ultimate elimination. Colati v. Jirout, supra.

Chief Judge Brune quoted Easter with approval in Park Shopping Center, 216 Md. at 276.

In the present case, the other situations Donna dug up are not even comparable. They amount to a protracted exercise in distraction, fog, and obfuscation. Even if they were comparable, they would not be germane under the case law.

The Landmarks Preservation Commission Sidetrack

Donna went to the Landmarks Preservation Commission (LPC) in 2019. It is covered by County Code § 3-3-1201, et seq. She highlighted their approval of her construction. She also put in the record that Tom had a driveway project approved.

LPC meetings are relatively informal, and their focus is on the historic aesthetics.

There is no dispute that the property here is identified as "non-contributing" to the Historic District. Apparently, the LPC has a narrow focus and did not find the additions have a historic aesthetic impact. Tom testified he was so informed. Whether the LPC should have a broader vision is debatable. The bottom line is that they do not.

They do not deal with the broader aspects of zoning and the manifold criteria. They do not examine the general impact on the neighborhood. They leave that to the zoning process. The LPC approval here is just another sidetrack.[12]

The "Carport" and "Accessory Building" Plays

Another detour is Donna's attorney's speculative sideshow for a carport to replace the garage or a separation of the garage from the dwelling. These further charades are not in the petition and so not properly the Board. People's Counsel v. Mangione 85 Md. App. 738 (1991). They would also require other variances. Anyway, virtually the same legal analysis which precludes the garage and other variances here would preclude such a carport or accessory building.

The CBA should nevertheless resolve the situation. The CBA should rule that carport or accessory building variances were not requested and anyway lack merit.

[12] This does not necessarily mean, conversely, that the Historic Glyndon location is irrelevant to the broader public safety, health and welfare issues under BCZR § 307.1, even for the impact of situations of non-contributing structures.

There should not be another pathway to delay enforcement and removal of the offending construction. Otherwise, this litigation may slouch to the next decade, even beyond potential judicial review of the CBA's denial of the immediate requests.

The Fence Law Evasion

Another evasive tactic came clothed with legal argument. This centers on the statutory construction of BCZR § 427.1, which we republish in our appendix.

BCZR § 427.1.A applies. Notwithstanding any other county provision, it sets in a historic district a maximum 42" height limit for a residential occupancy fence in a D.R. Zone erected in the side yard of a lot that adjoins a public road. This applies because Donna's fence spans both side yards of the lot on Prospect Avenue, a public road.

To evade this subsection, John Motsco tried to spin that only corner lots are on public roads. He did not deny that the fence is a residential occupancy fence.

We have often challenged the perfunctory acceptance of so-called expert opinions of engineers and surveyors on matters of legal interpretation. Their favorable slants often take the form of linguistic spin which crosses into propaganda.

There is no dispute that this section of Prospect Avenue is a public road. The Court of Appeals has referred to the common definition of public roads as "roads used by the public." Atran v. Furness 251 Md. 216 (1968). These are distinguished from private roads, where the property owner has the right to limit or refuse permission. Walmsley v. State 35 Md. App. 148, 151-54 (1977). It is an exercise in illiteracy to say that only corner lots are on public roads, to argue that Prospect Avenue is not public.

Motsco's errant effort to evade § 427.1.A led him to rationalize Donna's fence as allowable under § 427.1.B, incorporating Code § 13-6-101. Subsection B.1 precludes residential occupancy fences in the rear or side yards of a lot which adjoins the front yard of another on which a residence has been built. However, there is an exception in subsection 3, via Code § 13-6-101, for fences necessary to protect children,

> "A person who owns land on which there is a swimming pool ... shall erect and maintain on the land an adequate enclosure surrounding either the property or pool area sufficient to make the body of water inaccessible to small children."

Such fences should be "not less than 4 feet above the underlying ground."

But Donna anyway cannot properly take advantage of this provision. As we have seen, the three-sided fence here, with the house rear as a kind of fourth side, surrounds an area of 7700 square feet, while the pool spans about 792 square feet. The distances from the pool to the fence range from 15 to 30 feet. This is far more than what is adequate to protect children. Indeed, it does just the opposite. They can run around the rear yard in front of the fence and get into trouble at the pool. Commonly, protective pool fences have four sides and are close to the pool. Even were this a true pool protection fence, it does not mean that 6 feet is necessary or appropriate.

. **Variance Law: Uniqueness Resulting in Practical Difficulty**

We quoted earlier from Riffin the heart of the BCZR § 307.1 standards. Let us now review together the case law on uniqueness and resulting practical difficulty.

As we have said, the integral elements to prove a variance are the peculiarity of the property, commonly described as "uniqueness," and resulting "practical difficulty." We return to Cromwell v. Ward 102 Md. App. 691 (1995):

> "The general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances. *See, e.g.,* A. Rathkopf, 3 The Law of Zoning and Planning §38 (1979)." 102 Md. App. at 703.

He analyzed the "uniqueness" element, 102 Md. App. at 710,

> "In the zoning context the 'unique' aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property.'
>
> 'Uniqueness' of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls."

Judge Cathell concluded,

> "We conclude that the law in Maryland and in Baltimore County under its charter and ordinance remains as it has always been-a property's peculiar characteristic or unusual circumstances relating only and uniquely to that property must exist in conjunction with the ordinance's more severe impact on the specific property because of the property's uniqueness before any consideration will be given to whether practical difficulty or unnecessary hardship exists."

It bears repeating the "the extent of improvements upon the property" are irrelevant to "uniqueness." So, the very nice dwelling in Glyndon with a garage, driveway deck, pool, shed, and fences --- acquired freely for $320,000 --- has nothing to do with uniqueness. Anyway, the amenities are advantages and not difficulties.

Turning to causation, we reiterate the settled law of the requisite causal connection between uniqueness and practical difficulty. Often, as in this case, petitioners circumvent causation, starting with distorted versions of uniqueness. They "complain" their property is not square or rectangular, or slightly different in some obscure way, and then they are off to the races for extra amenities with "experts" in the promotional saddle.

Easter v. Mayor & City Council 195 Md. 395 (1950) described the heavy burden of proof on an applicant for a variance,

> "The burden of showing facts to justify an exception or variance rests upon the applicant, and it must be shown that the hardship affects the particular premises and is not common to other property in the neighborhood."

In Marino v. City of Baltimore, 215 Md. 206 (1957), the Court explained:

> "The expression 'practical difficulties or unnecessary hardships' means difficulties which are peculiar to the situation of the applicant for the permit and are not necessary to carry out the spirit of the ordinance and which are of such a degree of severity that their existence amounts to a substantial and unnecessary injustice to the applicant."

> "[I]t was incumbent upon the Marinos to have shown... (ii) that the difficulties or hardships were peculiar to the property in question in contrast with those of other property owners in the same district."

Judge Glenn Harrell revisited variance law in Trinity Assembly, affirming this CBA's findings in denying variances, 407 Md. at 82-83,

> "In *Umerley v. People's Counsel for Balto. County,* the Court of Special Appeals opined that a zoning authority must determine, as part of its uniqueness inquiry, whether 'the uniqueness or peculiarity of the property causes the zoning provision [at issue] to have a disproportionate impact.' 108 Md. App. 497, 506 (1996). Assuming that a disproportionate impact must be found before a local zoning authority may grant a variance, it is a logical fallacy to say that Board erred on this score. The disproportionate impact consideration, if viable, exists because of the notion that it is not enough for a landowneror user to show merely that the property is somehow physically peculiar or unique; she, he, or it also must prove, to the satisfaction of the

> tribunal, a connection between the property's inherent characteristics and the manner in which the zoning law hurts the landowner or user. Where a property's physical characteristics do not cause the landowner to suffer disproportionately due to application of the zoning enactment in question, the property is not 'unique' in the law of variances. For example, if a property has physical characteristics that might justify variance relief from drainage or sewage regulation, those attributes probably would have no bearing on how that property is affected by an ordinance establishing the maximum height for a fence. Here, the Board concluded simply that the physical attributes of the Property are not distinguishing. That conclusion is supported by substantial evidence."

Judge Harrell went on to discuss the criteria for "practical difficulty." 407 Md. App. at 83-85." He brought forward McLean v. Soley 270 Md. 208, 213-15 (1973), where the Court had "… adopted from Professor Rathkopf's treatise a three-part inquiry to guide local zoning authorities in determining whether a landowner established this element:

> "1) Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
>
> 2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
>
> 3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured."

This tracks the national pattern. The purpose of variance law is to allow relief so a property owner has some reasonable use of his property. See 2 Salkin, American Law of Zoning 5th, § 13:.1. A key point is that the property owner's inability to comply with zoning law for the purpose of a selected use does not justify a variance. Otherwise, a variance would have to be granted in every case; and zoning law would collapse.

Carney v. Baltimore 201 Md. 130, 137 (1952), also a setback variance case, held,

> "'The need sufficient to justify an exception must be substantial and urgent and not merely for the convenience of the applicant, inasmuch as the aim of the ordinance is to prevent exceptions as far as possible, and a liberal construction allowing exceptions for reasons that are not substantial and urgent would have the tendency to cause discrimination and eventually destroy the usefulness of the ordinance. * * *
>
> 'The expression 'practical difficulties or unnecessary hardships' means difficulties or hardships which are peculiar to the situation of the applicant for the permit and are not

> necessary to carry out the spirit of the ordinance and which are of such a degree of severity that their existence amounts to a substantial and unnecessary injustice to the applicant.'"

The appellate courts quoted this in Marino, 215 Md. at 216-17 and Montgomery County v. Rotwein 176 Md. App. 716, 732 (2006).

A. The Bair Property Presents No Difficulties, Much Less Any Peculiar Difficulties

We explained there is nothing, in context, unique about Donna's property. It is also crystal-clear there are no difficulties. For perspective, we review illustrative cases.

Easter v. Mayor & City Council 195 Md. 395 (1950). This involved a front yard and occupancy variance for a one-story and basement addition for a tavern and dwelling on Belair Road. The proposed addition varied the minimum front yard setback of 10 feet. The zoning board had granted the variances, finding the "The lot in question is of very shallow depth and irregular in shape …." They also had found "… several buildings constructed up to the front lines of the lot and the proposed addition would not affect access for light and air to any neighboring properties, nor would it even cut off the view up and down the street." The Court of Appeals reversed, stating the irregularity of the lot and existence even of nonconforming or possibly illegal neighboring buildings did not justify deviation from the general zoning plan. Judge Henderson observed,

> "But we think the detriment to the applicant must be weighed against the benefit to the community in maintaining the general plan. 'It is by these gradual encroachments, individually or relative insignificance, that the integrity of the general scheme is undermined and ultimately shattered. One departure serves as justification for another * * *"

North v. St. Mary's County 99 Md. App. 502, 514-20 (1994) foreshadowed Cromwell in reversing the grant of a mean high water mark setback variance for a gazebo of about 234 square feet. The property had a ranch home and outbuildings. North claimed a deprivation of property rights because he needed the gazebo to enhance his view, contemplate, read, have shade and protect from rain. He also posited that other property owners had built closer to the water. Judge Cathell noted these were probably nonconforming. Among other things, there was nothing unique about the property. The case brings to mind Donna's artificial complaint about sap from the maple tree.

Cromwell v. Ward, *supra*, involved an accessory building for a garage, wine cellar, and storage area for a Ruxton residence. The building height of 21 feet exceeded the 15 feet maximum, just six feet too high. This was nowhere near the excessiveness of Donna's massive construction. As it reversed this CBA's grant of the height variance, Judge Cathell also covered practical difficulty, 102 Md. App. at 697,

> "Simply stated, the variance that is desired (and the difficulties that would exist if it is not granted) cannot be the source of the first prong of the variance process-an inherent uniqueness of the subject property not shared by surrounding properties."

Among cases from other states, Judge Cathell discussed Xanthos v. v. Board of Adjustment 685 P.2d 1032 (Utah 1984), denying front yard variance for duplex addition to dwelling and Prince William County Bd. Of Zoning Appeals v. Bond 300 S.E. 2d 781 (Va. 1983), affirming denial of variance for conversion of garage into dwelling. Even the difficulties presented by a substandard lot or oceanfront lot restrictions do not justify a variance where this characteristic is common to area properties. Sibley v. Inhabitants of the Town of Wells 462 A.2 27, 30-31 (1983); Town of Indialantic v. Nance 400 So.2d 37, 40 (Fla. App. 1981), aff'd 419 So.2d 1041 (Fla. 1982).

Chester Haven Beach Partnership v. Board of Appeals 103 Md. App. 324, 337-41 (1995) followed Cromwell. Petitioner appealed the denial of a conditional use and variances for a residential subdivision. The primary alleged difficulty were Chesapeake Bay Critical Area environmental constraints. Judge Cathell observed there was no evidence that the environmental constraints were unique to this critical area property. He went further and criticized the professional staff, stating that the staff "… abdicated its responsibility in its role in respect to conditional uses and variances." 103 Md. App. at 340. Despite the fairly serious environmental constraints, Judge Cathell wrote,

> "It is not, however, the function of staff to make such policy decisions in the absence of legislative action. We do not perceive that it was the legislative intention in passing the State or local critical area legislation that zoning variance procedures would be prostituted in order to alleviate the harshness of environmental regulation. If that is the intention of the legislative entities, they have the power to express clearly that intention."

Even more clearly, the limited LPC approval here has no bearing and does not eviscerate zoning variance procedures.

Riffin v. People's Counsel, *supra*, involved an active litigant known to this Board. He proposed a special exception for a bungee jumping operation as well as nine variances for a modification of his office building on Greenspring Drive. The property was situated between Greenspring Drive in front and the MTA light rail track in back. In affirming the CBA denial of several variances. We have already quoted Judge Moylan's analysis.

Montgomery County v. Rotwein 169 Md. App. 716 (2004) involved front and side yard setback variances to build a 2-car garage and walkway. Her property was about three-quarters of an acre, with a one-story residence, finished basement, open carport, rear deck, slate patio, swimming pool, and tennis court --- fairly similar to here.

The zoning board denied the variances. Citing Cromwell, the Court sustained the denial. Judge Krauser described Rotwein's main arguments for uniqueness as her mobility problems and the substantial additional expense for alternative relocation of the garage. Neither of these, however, constituted peculiar or unusual practical difficulties.

B. Application of the "Practical Difficulty" Criteria

Let us discuss the McLean/Trinity Assembly of God criteria, having in mind that variances are to be granted sparingly and based on substantial and urgent need, not merely for the convenience of the applicant.

> "1) Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome."

Here, Donna's application is for extra amenities to enlarge and surround a very nice property and dwelling which various owners have enjoyed since 1951. Her current proposal, after the fact, is based on personal preferences, and has nothing to do with any real difficulty or hardship involving the property. To repeat, she already is fortunate to have an enviable and wonderful use of property in a very nice neighborhood.

It should be underlined that the evaluation of reasonable use involves consideration of the entire property/ In North, Cathell underlined that the entire property must be considered, along with the improvements, 99 Md. App. at 517,

> "The applicant, Mr. Enoch, the county, and the trial judge for that matter, when discussing the reasonable use of the property seem to restrict their considerations to just the part of the property where Enoch desires to construct the gazebo. That is incorrect. The property at issue here is the 4+ acre site already developed with a ranchhouse of approximately 1,100 square feet with extensive decking, an improved walkway, and a pier, from which expansive views are present. Thus, the property already is subject to a reasonable use."

Donna was not forced to buy her very nice house and property. She has to adjust to the law. The zoning law is not there for Donna's convenience.

The Court also addressed practical difficulty in Rotwein. Judge Krauser applied the law quoted earlier. He wrote, 169 Md. App. at 733,

> "But Rotwein has not demonstrated that, unless her application is granted it will be 'impossible [for her] to make reasonable use of the property.' *Id.* Indeed, she has made more reasonable use of the property, as it houses not only her residence, but, among other things, a swimming pool and a tennis court."

Rotwein, moreover, had made a sympathy argument based on her physical limitations. As a matter of law, this did not, however, justify the setback variances.

In sum, the zoning law does not prevent Donna from making a reasonable use of the property and does not impose an unnecessary burden.

> "2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners."

For essentially the above reasons, there is no injustice to Donna. She has a satisfactory and even privileged use of this very nice property. The proposal, already there, does, however, work an injustice to area property owners. Steve, Patty, and Tom testified at length to the immediate visual and environmental impacts, excessive scale, and incompatibility with the area. Robin corroborated the problematic impacts. Steve also identified an emergency vehicle access problem due to the garage obstruction.

Real estate expert Cookie Stone provided credible and undisputed testimony to the negative impact on the future sales price or value of the Montanye and Fradkin properties. She corroborated the incompatibility of the new construction.

Attention should also be paid to the community association representatives. Their concerns went beyond procedure to the merits, precedent, and "slippery slope."

In affirming the denial of variances, Chesley v. City of Annapolis 176 Md. App. 413, 441-45 (2007) highlighted similar testimony by neighbors about visual impact and property values. One neighbor posited that, "overbuilding and overcrowding loom on the horizon …." The Court accepted, among other things, legitimate concerns about overcrowding and imposing structures which harm area views and enjoyment.

"3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured."

These variance requests are excessive, offensive, and unjust. They conflict significantly with the spirit and intent of the ordinance and public safety and welfare.

Variance Law: The Insidious Self-Created Difficulty Problem

Lastly, there is a threshold problem. The alleged practical difficulty here is self-created. If construction is done without proper approvals, or with mistaken applications, then this is self-created. It does not have to be reckless or deliberate. Nor is blaming the contractor an excuse. Donna's real estate license is an added factor.

Cromwell reversed the CBA approval of just a single height variance --- 21' in excess of the maximum 15' --- for a residential accessory building. Ward's contractor did apply for a permit. But the flawed application did not state the height or have a scale. The height could possibly have been computed indirectly from horizontal dimensions on the drawing. The county mistakenly issued the permit. When the violation was discovered, Ward applied for a variance after the fact. 102 Md. App. at 696-97.

Judge Cathell stressed the difficulty was self-created. 102 Md. App. a 721-23,

"Self–Inflicted Hardship

> "We have before referred to *Marino v. Mayor and City Council of Baltimore,* 215 Md. 206, 137 A.2d 198. There, the Court said, "it was incumbent [on the applicant] to [show] ... that the hardship was not the result of the applicants' own actions." *Id.* at 218, 137 A.2d 198. The Court of Appeals ***722*** noted in *AD + Soil, Inc. v. County Comm'rs,* 307 Md. at 340, 513 A.2d 893:
>
> > The essence of AD + Soil's argument ... is that the setback requirements ... would cause ... unwarranted hardship because it had obtained its first state permit and

> constructed its transfer station before it learned of these local requirements.... The Board declined to grant the variances, concluding that Ad + Soil's "hardship" was self-inflicted ... and therefore not the kind of hardship cognizable under the Zoning Ordinance.
>
> The Court affirmed the Board. Foreign jurisdictions are generally in accord. *See Pollard v. Zoning Bd. of Appeals,* 186 Conn. 32, 438 A.2d 1186, 1190 (1982) **(" '[S]elf-inflicted or self-created hardship ... is never considered proper grounds for a variance.' ... '[W]here the applicant ... creates a nonconformity, the board lacks power to grant a variance.' ")** (citations omitted); … **("[T]he hardship, if any, was self-inflicted. The placement of the improvements ... was within the control of the Garretts and their contractor, Raintree.").** *See also Shafer, supra; VanLandschoot, supra; Walkingstick, supra; Xanthos, supra; St. Clair, supra.* Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted."

Ward's contractor at least made an application, however flawed. Donna's contractor did not bother. Nor did she. It is unnecessary to parse the level of fault in Donna's admitted "mistake." It is enough that the difficulty arose from her project. Ironically, if Donna had taken a few minutes to check with the zoning office, or asked for permits, she could have done things the right way. Instead, she spent many hours to try to get an "easement;" talk informally to a bankruptcy attorney; cajole the Fradkins to transfer property; dig up their previous owner's minor shed variance;; interject random different fences; complain about Tom's driveway project even though it had no zoning conflict; and cast a bad light on her neighbors generally.

Effective zoning law depends on voluntary citizen compliance. There is no police state. If not for Tom's concern and alertness, the violation would have escaped scrutiny.

There are over 300 zoning petitions annually, and development and permit applications. With rare exceptions, county citizens make diligent inquiries and file proper applications. If more than a few citizens acted unilaterally, the system would break down. There is scant incentive to comply with the law if variances were readily available after the fact. Another problem is that even after denial of these variances, and affirmance on judicial review, there will still be an enforcement task, likely with more litigation.

Conclusion

For these reasons, the law compels denial of all the variances, including every matter on appeal.

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of April, 2021 a copy of the foregoing Memorandum of People's Counsel for Baltimore County was sent via email to Thomas & Kim Montanye, Tom@montanye.net; Kimberly Karlsen, perandkim@aol.com; Steve & Patricia Fradkin, reistlaxcoach@gmail.com; Sue Benson, sbensoncomm@aol.com; Robin Coffin, rscoffin@verizon.net, Mary Molinaro, mmolinaro@reisterstown.com; and Lawrence E. Schmidt, Esquire, Smith, Gildea & Schmidt, LLC, 600 Washington Avenue, Suite 200, Towson, Maryland 21204, lschmidt@sgs-law.com, Attorney for Petitioner.

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Appendix: Zoning Regulations and County Code Provision

BCZR § 101.1 NONCONFORMING USE — A legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use. A specifically named use described by the adjective "nonconforming" is a nonconforming use.

BCZR § 104.1. - CONTINUATION OF NONCONFORMANCE; EXCEPTIONS.
A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these regulations, provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, the right to continue or resume such nonconforming use shall terminate.

BCZR § 104.3. - LIMIT ON EXTENSION OF NONCONFORMING BUILDINGS AND USES; EXCEPTION.
No nonconforming building or structure and no nonconforming use of a building, structure or parcel of land shall hereafter be extended more than 25 percent of the ground floor area of the building so used. This provision does not apply to structures or uses restored pursuant to Section 104.2, except as authorized by the Zoning Commissioner pursuant to Section 307.

BCZR § 1B02.3.C. Development standards for small lots or tracts.

1. Any dwelling hereafter constructed on a lot or tract described in Subsection A.3 or A.4 shall comply with the requirements of the following table:

Zoning Classification	Minimum Net Lot Area per Dwelling Unit (square feet)	Minimum Lot Width (feet)	Minimum Front Yard Depth (feet)	Minimum Width of Individual Side Yard (feet)	Minimum Sum of Side Yard Widths (feet)	Minimum Rear Yard Depth (feet)
D.R.1	40,000	150	50	20	50	50
D.R.2	20,000	100	40	15	40	40
D.R.3.5	10,000	70	30	10	25	30
D.R.5.5	6,000	55	25	10	—	30
D.R.10.5	3,000	20	10	10	—	50
D.R.16	2,500	20	10	25	—	30

2. Other standards for development of small lots on tracts as so described shall be as set forth in provisions adopted pursuant to the authority of Section 504.

"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. [1] "

BCZR 427 – Fences

§ 427.1. - Conditions for use; exceptions.

A. Notwithstanding any other provisions of this Code or the Baltimore County Code, in a D.R. or R.C. 5 Zone located in a historic district, the maximum height of a residential occupancy fence is 42 inches if the fence is erected in the side yard of a lot that adjoins a public road.

B. 1. A residential occupancy fence may not be erected in the rear or side yard of a lot which adjoins the front yard of another on which a residence has been built, except in accordance with the provisions of this section.

2. The fence may not exceed 42 inches in height if situated within ten feet of the adjoining front yard property line.

3. Any person may request a variance from the requirements of this subsection.

C. Applicability.

1. Subsection B of this section does not apply to a fence required by § 13-6-101 of the Baltimore County Code, as revised, to be constructed in order to screen a swimming pool.

2. Subsection B of this section does not apply if the residences on the adjoining lots are more than 200 feet apart."

"§ 13-6-101. - SWIMMING POOL ENCLOSURE.

(a) *Required.* A person who owns land on which there is a swimming pool that contains 24 inches (610 mm) or more of water in depth at any point shall erect and maintain on the land an adequate enclosure surrounding either the property or pool area sufficient to make the body of water inaccessible to small children.

(b) *Height.* A swimming pool enclosure, including gates, may not be less than 4 feet above the underlying ground, except that for a semi-public swimming pool located outdoors without a lifeguard on duty, the enclosure, including gates, may not be less than 5 feet above the underlying ground and may not have more than a two-inch gap from the ground to the bottom of the fence.

(c) *Gates.* All gates shall be self-latching with latches placed 4 feet above the underlying ground and otherwise made inaccessible from the outside to small children.

(d) *Alternative enclosures.*

(1) For purposes of this section, the owner may use a natural barrier, hedge, or other protective device approved by the Department of Permits, Approvals and Inspections if the degree of protection afforded by the substituted devices or structures is not less than the protection afforded by the enclosure, gate, and latch described in subsections (a) through (c) of this section.

(2) A swimming pool cover is not another protective device that may be approved by the Department of Permits, Approvals and Inspections.

(e) *Enforcement.* The Code Official may enforce the provisions of this section in accordance with Article 3, Title 6 of the Code.

(f) *Exceptions.* This section does not apply to a public swimming pool or bathing beach as defined in Subtitle 2 of this title."

293 Md. 259
Court of Appeals of Maryland.

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, Maryland
v.
E. L. GARDNER, INC.

No. 11.
|
April 2, 1982.

Synopsis
County council denied landowner's requested special exception to operate a sand and gravel wet-processing facility at location at which owner operated nonconforming surface mining sand and gravel operations. The Circuit Court, Prince George's County, Albert T. Blackwell, Jr., J., reversed, and the county appealed. The Court of Special Appeals, 47 Md.App. 471, 424 A.2d 392, affirmed. Petition for certiorari was granted. The Court of Appeals, Davidson, J., held that although sand and gravel mining operation which existed prior to zoning was a legal nonconforming use by virtue of use and occupancy permit, the owner was not entitled to special exception to operate a sand and gravel wet-processing facility at the location where mining operations and wet-processing facilities were separate and distinct special exceptions and each had different standards, regulations and requirements.

Judgment of Court of Special Appeals reversed and case remanded with directions.

West Headnotes (4)

[1] **Zoning and Planning** Enlargement or Extension of Use

Purpose of restrictions on alteration or expansion of a nonconforming use is to achieve ultimate elimination of such uses through economic attrition and physical obsolescence.

3 Cases that cite this headnote

[2] **Zoning and Planning** Continuance or change of use in general

Zoning and Planning Enlargement or Extension of Use

Zoning and Planning Repair, Alteration, or Reconstruction of Buildings or Structures

Whether a nonconforming use can be changed, extended, enlarged, altered, repaired, restored, or recommenced after abandonment ordinarily is governed by provisions of the applicable local ordinances and regulations.

3 Cases that cite this headnote

[3] **Zoning and Planning** Strict or liberal construction in general

Zoning ordinances and regulations must be strictly construed to effectuate the purpose of eliminating nonconforming uses.

4 Cases that cite this headnote

[4] **Zoning and Planning** Mining and minerals; sand and gravel

Although sand and gravel mining operation which existed prior to zoning was a legal nonconforming use by virtue of use and occupancy permit, the owner was not entitled to special exception to operate a sand and gravel wet-processing facility at the location where mining operations and wet-processing facilities were separate and distinct special exceptions and each had different standards, regulations and requirements.

5 Cases that cite this headnote

Attorneys and Law Firms

****115** ***260** Steven M. Gilbert, Associate County Atty., Upper Marlboro (Robert B. Ostrom, County Atty. and Michael O. Connaughton, Deputy County Atty., on the brief), for appellant.

Paul B. Rodbell, Riverdale (William V. Meyers and Meyers & Billingsley, P. A., Riverdale, on the brief), for appellee.

Argued before MURPHY, C. J., and SMITH, DIGGES,* ELDRIDGE, COLE, DAVIDSON and RODOWSKY, JJ.

Opinion

DAVIDSON, Judge.

This case presents a question concerning nonconforming uses. More particularly, it involves the question whether, under the applicable provisions of the Prince George's County Code (1979), Subtitle 27.Zoning, the owner of a nonconforming surface mining sand and gravel operation can obtain a special exception to operate a sand and gravel wet-processing facility at the same location. The relevant provisions of the Prince George's County Code are as follows.

Section 27-101 provides in pertinent part:

"(a) Terms used in this Subtitle are defined as follows:

"(110.1) Nonconforming Building or Structure: Any building or structure not in conformity with a regulation of the zone in which it is situated, which regulation was adopted subsequent to the lawful erection of such building or structure....

"(111) Nonconforming Use: Use of any building, structure, or land, or portion thereof, not in conformity with a regulation of the zone in which it is situated, including any regulation of Division 36 (Special Exceptions) applicable to said ****116** use, which regulation was adopted subsequent to the lawful establishment of such use.... The term 'nonconforming use' shall be deemed to include any building, structure, or other facility utilized in connection with a nonconforming use....

"(152) Use: The principal purpose for which a lot, and/or the main building thereon, is designed, arranged, or intended and for which it may be used, occupied, or maintained."

Section 27-107(a) provides:

"(a) Any nonconforming building, structure, or use, as defined in Section 27-101, may be continued, ***262** repaired, or maintained without enlargement or extension, unless otherwise provided by this Subtitle." (Emphasis added.)

Section 27-107(e) provides in pertinent part:

"(e) No nonconforming use may be changed to any use other than that provided by ... permits under which the nonconforming use operated at the time the nonconforming use was established." (Emphasis added.)

Section 27-108(a) provides in pertinent part:

"(a) A nonconforming building, structure, or use may only be enlarged or extended if such enlargement or extension shall conform to the provisions of this Subtitle for the zone in which it is located and a special exception has been approved by the District Council, as provided in Division 36 (Special Exceptions) of this Subtitle." (Emphasis added.)

Section 27-482(a) provides in pertinent part:

"(a) Any nonconforming building, structure, or use as defined in Section 27-101, may be continued, subject to the regulations of Section 27-107, and may be structurally expanded or extended, subject to the provisions of Division 36 (Special Exceptions) of this Subtitle." (Emphasis added.)

Section 27-553 provides in pertinent part:

"(a) Any nonconforming building, structure, or use, as defined in Section 27-101 herein ... may be enlarged, extended, or demolished and reconstructed, if the applicant can show generally that such enlargement, extension, or reconstruction will not adversely affect the use of adjacent properties and the neighborhood, subject to the following requirements and conditions:

"(1) A nonconforming building or structure, or a ***263** building or structure utilized in connection with a nonconforming use, may be enlarged in height or bulk....

"(2) A nonconforming use may be extended throughout a part or whole of a building in which such nonconforming use lawfully exists, or to the bounding lot lines of the lot....

"(3) A nonconforming use may be reconstructed within the bounding lot lines of the lot....

"(4) Any addition to an existing building or structure, or any new building or structure, constructed in connection with a nonconforming use shall, at a minimum, conform to the requirements relative to building lines, setbacks, yards,

and height limits in the zone in which such nonconforming use is situated....” (Emphasis added.)

The respondent, E. L. Gardner, Inc. (owner), owns approximately 450 acres of land (subject property) located in Prince George's County. The subject property was originally zoned R-R (rural-residential, 15,000 square foot minimum lot size) by the comprehensive zoning map adopted 2 December 1966. It was reclassified to the O-S zone (open space, single-family residential, 5 acre minimum lot size) by the comprehensive zoning map adopted 12 July 1977. Neither a sand, gravel or clay pit, nor a wet-processing facility is a permitted use in the O-S zone. Both, however, are special exception uses in that zone. s 27-537(a)(1) and s 27-538.1(a).[1]

**117 *264 Before the subject property was zoned, it was used for the mining of sand and gravel. This use has been established as a legal nonconforming use by the issuance of a use and occupancy permit. s 27-108(b).[2] In 1977, an application was filed, pursuant to s 27-538.1, for a special exception for the wet processing of sand and gravel.

The technical staff of the Maryland-National Capital Park and Planning Commission and the Prince George's County Planning Board recommended approval, with conditions, as did the Zoning Hearing Examiner. Thereafter, the County Council sitting as the District Council for Prince George's County (Council) rejected those recommendations and entered an order denying the requested special exception. In its written findings and conclusions, the Council, among other things, said:

“5. Council further concludes that to grant this special exception would be an unwarranted extension and expansion of a nonconforming use, contrary to the provisions of COUNTY CODE Sect. 27-107. This proposed sand and gravel processing facility would obviously encourage the further continuation of sand and gravel extraction operations, contrary to the purposes of the County's *265 Zoning Ordinance, which has the object of discouraging nonconforming uses.”

The owner appealed to the Circuit Court for Prince George's County which reversed the action of the Council. In its opinion the trial court said:

“Penultimately, the District Council concluded that to grant Gardner's special exception would be an ‘unwarranted extension and expansion’ of the Petitioner's nonconforming use, and would be contrary to s 27-107 of the County Code.

“The Court notes that enlargement or extension of a nonconforming use is contemplated by the Code, and that the criteria for a ‘permitted’ enlargement or extension are set forth in s 27-553 of the Code. However, the Court finds that the requested special exception is not an extension or enlargement as contemplated by the Code, see s 27-533, but rather an intensification of Gardner's ongoing nonconforming use.”

The Council appealed to the Court of Special Appeals which affirmed the judgment of the trial court. Prince George's County v. E. L. Gardner, Inc., 47 Md.App. 471, 424 A.2d 392 (1981). In its opinion, that Court said:

“If the controversy here considered involved only the question whether the contemplated use of the land owned by the appellee amounted to an illegal enlargement or expansion of its non-conforming use of the premises, it would not present a difficult question to be decided. The problem in this case, however, is that the proposed use of the appellee's property does not depend on the non-conforming use, but rather on the right to a special **118 exception established by the Prince George's County Zoning Ordinance.

*266 “Under the circumstances revealed by the record, we agree with the appellee that the non-conforming use status of the appellee's property is irrelevant in the determination of this controversy.

“The sole question to be answered in this appeal then is whether (the trial court) erred in concluding that based on the evidence before the District Council the record did not raise an issue before the administrative body which was ‘fairly debatable.’

“Our examination of the record convinces us that the applicant more than met its burden of producing probative and credible evidence on all the issues required to be proven, and that the evidence of the protestants was so vague and indefinite as to fail to raise fair debate in a reasoning mind. Therefore, we find that the action of the District Council, in refusing to grant the special exception was arbitrary, capricious, and illegal.” E. L. Gardner, Inc., 47 Md.App. at 477-78, 480, 424 A.2d at 395-97.

The Council filed a petition for a writ of certiorari that we granted. We shall reverse the judgment of the Court of Special Appeals.

One of the basic tenets of zoning is that some uses of land are incompatible with others, and that more efficient employment of land resources is achieved if such incompatible uses are separated. An admixture of incompatible land uses is avoided by dividing the community into use districts, each restricted to industrial, commercial or residential occupation.

As a practical matter, however, homogeneous land use has not been achieved. Major movement of population from rural to urban areas had begun half a century before the first comprehensive zoning ordinance was enacted in the United States. As a result, land to be zoned was not always vacant. *267 Indeed, frequently it was occupied by landowners who had developed their land unfettered by any significant degree of governmental control. Thus, use districts, designed to be homogeneous, unavoidably include land devoted to uses proscribed by the zoning regulations. Such nonconforming uses pose a formidable threat to the success of zoning. They limit the effectiveness of land use controls, contribute to urban blight, imperil the success of the community plan, and injure property values. 1 R. M. Anderson, American Law of Zoning s 602 (2d ed. 1976).

[1] This Court has repeatedly recognized that one of the fundamental problems of zoning is the inability to eliminate incompatible nonconforming land uses. In Grant v. Mayor and City Council of Baltimore, 212 Md. 301, 307, 129 A.2d 363, 365 (1957), this Court said:

“Nonconforming uses have been a problem since the inception of zoning. Originally they were not regarded as serious handicaps to its effective operation; it was felt they would be few and likely to be eliminated by the passage of time and restrictions on their expansion. For these reasons and because it was thought that to require immediate cessation would be harsh and unreasonable, a deprivation of rights in property out of proportion to the public benefits to be obtained and, so, unconstitutional, and finally a red flag to property owners at a time when strong opposition might have jeopardized the chance of any zoning, most, if not all, zoning ordinances provided that lawful uses existing on the effective date of the law could continue although such uses could not thereafter be begun. Nevertheless, the earnest aim and ultimate purpose of zoning was and is to reduce nonconformance to conformance as speedily as possible with due regard to the legitimate interests of all concerned, and the ordinances forbid or limit expansion of nonconforming uses and forfeit the right to them upon abandonment of the use or the destruction of the improvements housing the use.”

**119 *268 Thus, this Court has recognized that the problem inherent in accommodating existing vested rights in incompatible land uses with the future planned development of a community is ordinarily resolved, under local ordinances, by permitting existing uses to continue as nonconforming uses subject to various limitations upon the right to change, expand, alter, repair, restore, or recommence after abandonment. Moreover, this Court has further recognized that the purpose of such restrictions is to achieve the ultimate elimination of nonconforming uses through economic attrition and physical obsolescence. The Arundel Corp. v. Board of Zoning Appeals of Howard County, 255 Md. 78, 83-4, 257 A.2d 142, 146 (1969); Stieff v. Collins, 237 Md. 601, 604, 207 A.2d 489, 491 (1965); Colati v. Jirout, 186 Md. 652, 655, 657, 47 A.2d 613, 614-15 (1946); Beyer v. Mayor of Baltimore, 182 Md. 444, 446, 34 A.2d 765, 766 (1943); see Kastendike v. Baltimore Ass'n for Retarded Children, Inc., 267 Md. 389, 397, 297 A.2d 745, 749-50 (1972).

[2] [3] Whether a nonconforming use can be changed, extended, enlarged, altered, repaired, restored, or recommenced after abandonment ordinarily is governed by the provisions of the applicable local ordinances and regulations. Feldstein v. LaVale Zoning Board, 246 Md. 204, 211, 227 A.2d 731, 734 (1967); Phillips v. Zoning Comm'r of Howard County, 225 Md. 102, 109, 169 A.2d 410, 413 (1961); Board of Zoning Appeals of Baltimore County v. Gue, 217 Md. 16, 21-22, 141 A.2d 510, 513 (1958). These local ordinances and regulations must be strictly construed in order to effectuate the purpose of eliminating nonconforming uses. Mayor of Baltimore v. Byrd, 191 Md. 632, 638, 62 A.2d 588, 591 (1948); Colati, 186 Md. at 658-59, 47 A.2d at 616; Knox v. Mayor of Baltimore, 180 Md. 88, 96, 23 A.2d 15, 18 (1941); see City of Hagerstown v. Wood, 257 Md. 558, 563, 263 A.2d 532, 534 (1970); Hewitt v. County Comm'rs of Baltimore County, 220 Md. 48, 59, 151 A.2d 144, 150 (1959).

[4] Applying these principles to the instant case produces a clear result. Section 27-107(a) provides that any nonconforming use may be continued without enlargement *269 or extension. Section 27-107(e) explicitly provides that “no nonconforming use may be changed to any use other than that provided by ... permits under which the nonconforming use operated.” Section 27-108(a) provides

that a nonconforming use may be enlarged or expanded if a special exception is obtained. Sections 27-482(a) and 27-553(a) provide that a nonconforming use may be structurally expanded or extended subject to certain structural requirements. These provisions embody a statutory scheme that explicitly prohibits an existing nonconforming use from being changed to any other use while it explicitly permits an existing nonconforming use to be enlarged or extended under specified circumstances. Under the applicable local ordinances, there is, therefore, a significant and critical difference between changing an existing nonconforming use to another use and enlarging or extending an existing nonconforming use.

Here the record shows that a sand and gravel mining operation existed on the subject property before zoning was applicable. This use has been established as a legal nonconforming use by the issuance of a use and occupancy permit. Section 27-537 delineates sand, gravel, and clay pits as a separate and distinct special exception use in which heavy machinery for washing or processing is explicitly prohibited unless a special exception for wet processing is obtained. Section 27-538 delineates wet-processing facilities as a separate and distinct special exception use. Each of these uses has differing standards, regulations, and requirements. Thus, there can be no question that the ordinance itself establishes that these two uses are indeed different. Consequently, the addition of the wet-processing facility to the existing nonconforming sand and gravel mining operation necessarily involves a change in the use of the subject property. Such a change in use is explicitly prohibited by s 27-107.

Under the circumstances here, the Council had no authority to grant the requested special exception. The trial court erred **120 when it reversed the Council's denial of the requested *270 special exception. Accordingly, we shall reverse the judgment of the Court of Special Appeals that affirmed the judgment of the trial court.

JUDGMENT OF THE COURT OF SPECIAL APPEALS REVERSED. CASE REMANDED TO THAT COURT WITH DIRECTIONS TO REVERSE THE JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AND TO REMAND THE CASE TO THAT COURT WITH DIRECTIONS TO ENTER AN ORDER AFFIRMING THE DECISION OF THE COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY. COSTS TO BE PAID BY APPELLEE.

All Citations

293 Md. 259, 443 A.2d 114

Footnotes

* Digges, J., now retired, participated in the hearing and conference of this case while an active member of this Court; after being recalled pursuant to the Constitution Article IV, Section 3A, he also participated in the decision and adoption of this opinion.

1 s 27-537(a)(1) provides:
"Sec. 27-537. Sand, gravel or clay pits; rock or stone quarries; mining removal of earth or topsoil; extraction and removal of natural materials or deposits.
"(a) In all zones, the use of land for any or all of the purposes or uses of this Section, subject to the following conditions:
"(1) Except in the I-2 Zone there shall be no use of heavy machinery for washing, refining, or other processing or manufacturing, unless a special exception is granted for sand and gravel wet processing under the provisions of Section 27-538.1. The use of heavy machinery for extraction and removal of natural material or deposits from the site is permissible." (Emphasis added.)
s 27-538.1(a) provides in pertinent part:
"Sec. 27-538.1. Sand and/or gravel wet-processing....
"(a) In all zones, except the I-3 and I-4 Zones wherein such uses are prohibited, and in the I-2 Zone wherein such uses are permitted, the use of land for wet-processing, including washing, sorting, refining, and stockpiling of natural materials, and in the I-2 Zone only, including such facilities as concrete batching plants, asphalt or cement mixing plants, and similar facilities...." (Emphasis added.)

2 s 27-108(b) provides in pertinent part:
"(b) Satisfactory evidence as to the actual existence of a nonconforming use is a prerequisite to its continuance and shall be established by the issuance of a use and occupancy permit by the Building Inspector upon approval and certification by the Planning Board." (Emphasis added.)

County Council of Prince George's County v. E. L. Gardner, Inc., 293 Md. 259 (1982)
443 A.2d 114

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

KeyCite Yellow Flag - Negative Treatment
Declined to Follow by Richmarr Holly Hills, Inc. v. American PCS, L.P., Md.App., October 30, 1997

102 Md.App. 691
Court of Special Appeals of Maryland.

David **CROMWELL**, et al.
v.
Arthur Thomas **WARD**, III.

No. 617, Sept. Term, 1994.
|
Decided Jan. 4, 1995.

Synopsis

The Circuit Court, Baltimore County, Lawrence Daniels, J., affirmed order of board of appeals granting height variance for accessory building already built by owner. Appeal was taken. The Court of Special Appeals, Cathell, J., held that: (1) no variance was appropriate where property was not shown to be unusual or unique from surrounding properties before variance based on practical difficulty or unreasonable hardship was sought; (2) landowner's self-created hardship arising from construction of accessory building before variance was sought was not grounds for grant; and (3) approval of building permit for accessory building did not support grant of variance sought.

Reversed.

West Headnotes (5)

[1] Zoning and Planning Effect of determination in general; res judicata and collateral estoppel

City was not estopped from refusing to grant variance from height restriction on auxiliary building merely because owner submitted and obtained construction permit, at least where owner's plan's elevation schematics contained neither elevation dimensions nor scale and elevation was not stated; while zoning inspectors might have been able to extrapolate dimensions from other schematics, they were not required to do so in light of owner's affirmative statement in application of compliance with zoning requirements. Code 1957, Art. 66B, § 7.03; Baltimore, Md., Zoning Ordinance § 307.

[2] Zoning and Planning Unique or peculiar hardship in general

Under law on variances in Maryland and under Baltimore County's charter and ordinance, property's peculiar characteristics or unusual circumstances relating only and uniquely to that property must exist in conjunction with ordinance's more severe impact on specific property because of property's uniqueness before any consideration will be given to whether requisite practical difficulty or unnecessary hardship exists. Code 1957, Art. 66B, § 7.03; Baltimore, Md., Zoning Ordinance § 307.

16 Cases that cite this headnote

[3] Zoning and Planning Self-created hardship; prior knowledge

Practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted. Code 1957, Art. 66B, § 7.03; Baltimore, Md., Zoning Ordinance § 307.

14 Cases that cite this headnote

[4] Zoning and Planning Unique or peculiar hardship in general

Mistake of county official cannot be the "practical difficulty" unique to subject property required to authorize grant of variance. Code 1957, Art. 66B, § 7.03; Baltimore, Md., Zoning Ordinance § 307.

20 Cases that cite this headnote

[5] Zoning and Planning Height of buildings or structures

Granting of variance from height restrictions on auxiliary building was arbitrary and illegal where subject site was not in any way peculiar, unusual or unique when compared to other properties in neighborhood and thus was not disproportionately affected by height restriction; self-created hardship arising from owner's failure to disclose height dimensions in applying for permit and construction of building in nonconformity were self-imposed or created hardships that could not support variance. Code 1957, Art. 66B, § 7.03; Baltimore, Md., Zoning Ordinance § 307.

13 Cases that cite this headnote

Attorneys and Law Firms

**425 *693 Michael Paul Smith (Thomas G. Bodie and Bodie, Nagle, Dolina, Smith & Hobbs, P.A., on the brief) Towson, for appellants.

Newton A. Williams (Nolan, Plumhoff & Williams, Chtd., on the brief) Towson, for appellee.

Argued before WENNER, CATHELL and MURPHY, JJ.

Opinion

CATHELL, Judge.

Appellant, David **Cromwell**, appeals from the judgment of the Circuit Court for Baltimore County (Daniels, J., presiding) affirming the order of the Board of Appeals granting a height variance for an accessory building already built by appellee, Arthur Thomas **Ward**, III. Appellant poses the following questions:

I. Whether the self-imposed or self-created hardship discussed in the Maryland case law on variances *694 requires an intentional act, such as ignoring or flaunting [sic] the zoning regulations.

II. Does the record before the Honorable Lawrence Daniels support a finding that had the accessory building been built in accordance with the height regulations of Baltimore County, the accessory building would necessarily require a different pitch from all other buildings on the property?

III. Can a difference in roof pitches between an accessory building and a home constitute a "practical difficulty or unreasonable hardship" within the meaning of § 307 of the Baltimore County Zoning Regulations?

**426 While those questions are limited, appellant expands in his arguments supporting the questions and argues that

> [t]he restrictions of the applicable ordinance, *taken in conjunction with the unique circumstances affecting the property,* must be the proximate cause of the hardship [Emphasis added.]

and

> Section 307.1 requires that variances only be granted in cases where special circumstances or conditions exist *that are peculiar to the land or structure* which is the subject of the variance request.... [Emphasis added.]

and

> Mr. **Ward's** property *is not unique* from the others in the Ruxton area. [Emphasis added.]

Although somewhat indirectly, appellant has pointed out an important aspect of the nature of the *variance* process, *i.e.,* it is at least a two-step process. The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is—in and of itself—unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property. Unless there is a finding that the property is unique, unusual, or different, the process stops here and *695 the variance is denied without any consideration of practical difficulty or unreasonable hardship. If that first step results in a supportable finding of uniqueness or unusualness, then a second step is taken in the process, *i.e.,* a determination of whether practical difficulty and/or[1] unreasonable hardship, resulting from the disproportionate impact of the ordinance *caused by* the property's uniqueness, exists. Further consideration must then be given to the general purposes of the zoning ordinance.

What we have recently observed in Baltimore County, and in other jurisdictions as well, and what occurred in the case at bar, is a reversal of the required process. Instead of first determining whether the subject property is unusual or unique, the zoning authorities are first determining whether a practical difficulty or unreasonable hardship exists. That determination is then used to create a unique and unusual situation as to the subject property because surrounding properties do not experience the hardship or difficulty.

In the case *sub judice,* appellee's act of constructing a building of such a height as to produce a roof pitched at the angle he

desired caused the roof to extend above the fifteen-foot height limit. This fact alone was found by the Board (and affirmed by the trial court) to make the property's problems unique. Simply stated, the variance that is desired (and the difficulties that would exist if it is not granted) cannot be the source of the first prong of the variance process—an inherent uniqueness of the subject property not shared by surrounding properties.

***696 The Facts**

Appellee's contractor, Donald S. Huber and Company, Inc. (Huber), prepared plans for a garage, wine cellar, and storage area on appellee's property. Using these plans, Huber, on appellee's behalf, applied for a building permit, noting on the application that it was to construct a two story "garage and wine cellar;" "[second] story to be used as storage, [first] floor for garage and wine testing room. Cellar will be for wine." The application indicates that some prior height indication was marked over on the application for a permit and a new mark was made indicating the anticipated height of the structure to be fourteen feet. Huber admitted that he had little experience with the zoning requirements for accessory buildings and ****427** was unaware of the height limitations. The County's automated tracking system, in creating its general permit application data on the subject property, noted: "Height: 14' " and "Stories: 2+ CELL."

The plans presented to the County included a "Left Side Elevation" but no height is shown on the elevation plan. Neither, as far as we have been able to find, does the plan contain a scale from which the "Left Side elevation" can be determined. The plans also include a "Front Elevation" from which actual proposed heights are also conspicuously, almost suspiciously, absent given that all other dimensions appear to be included on the plans.

We have, however, extrapolated from a horizontal distance indicated on the lower right-hand corner of the "Second Floor Plan" that fourteen feet five and one-half inches equals slightly over three and one-half inches on our ruler. It would appear that the front elevation plan indicates five and one-fourth inches on our ruler or approximately twenty-one and one-half feet in height. When measured in similar fashion, the left side elevation indicates a similar height. Thus, if the other measurements are correct, a method existed in which, even absent a scale, rough height elevations might have been discernable, though we are at a loss to understand why the ***697** elevations were not given in feet and why the plans contained no scale.[2]

After receiving a building permit, appellee proceeded to construct the building that violated the fifteen foot height requirement. During the building process, inspections were made of footings, foundations, framing, and electrical service. Final occupancy was then given. Later, the building was discovered to be twenty-one feet in height.[3] Appellee then successfully applied for an after the fact variance. Appellant appealed to the Board of Appeals and it, in a two to one decision, granted the variance that the circuit court ultimately affirmed.

The Law

The State Zoning Enabling Act was first passed in 1927 by Chapter 705 of the Acts of 1927. It has since been codified as Article 66B of the Annotated Code of Maryland (1957, 1988 Repl.Vol., 1994 Cum.Supp.). While it was generally believed that local subdivisions did not have to enact zoning regulations (and some did not), if enacted, they normally had to conform to the provisions of Article 66B.

Baltimore County, however, is a charter county and is exempt from many of the provisions in Md.Code Art. 66B. See Md.Code Art. 66B § 7.03 which provides "Except as provided in [sections not pertinent here] ... this article does not apply to the chartered counties of Maryland." Nevertheless, the language of Art. 66B relating to variances is virtually identical to the provisions of the Baltimore County ordinance.

***698** The Article 66B provision that provides for variance authority in local zoning ordinances is section 1.00(j). As relevant to an area variance, this section defines a variance under Art. 66B as follows:

> [M]odification only of density, bulk, or area requirements in the zoning ordinance ... where *owing to conditions peculiar to the property, and not the result of any action taken by the applicant,* a literal enforcement ... would result in either, as specified by the local governing body in a zoning ordinance, unnecessary hardship or practical difficulty. [Emphasis added.]

The Baltimore County Zoning Ordinance in section 307, "Variances," provides, in relevant part, that variances from the ordinances provision, *i.e.,* height, may be granted

> 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 ... would result in practical difficulty ****428** or unreasonable hardship. [Emphasis added.]

Accordingly, we shall, in our discussion of cases, refer extensively to cases under the provisions relating to Art. 66B as well as cases under the Baltimore County provisions.

The Baltimore County ordinance requires "conditions ... peculiar to the land ... and ... practical difficulty...." Both must exist. But the terms "practical difficulty" and "unreasonable hardship" are stated in the ordinance disjunctively. Thus, at least as to variances other than use variances,[4] if the property is found to be unique, the practical difficulty standard would then apply. We address practical difficulty at some length hereafter. However, as is clear from the language of the Baltimore County ordinance, the initial factor that must be established before the practical difficulties, if any, are addressed, is the abnormal impact the ordinance has on a specific piece of property because of the peculiarity and ***699** uniqueness of *that* piece of property, not the uniqueness or peculiarity of the practical difficulties alleged to exist. It is only when that uniqueness is first established that we then concern ourselves with the practical difficulties (or unnecessary hardships in use variance cases).

Because we have discerned that some of the confusion in this and other jurisdictions may have arisen because of a tendency to intermingle the concepts of special exceptions/conditional uses[5] (where normally an applicant has an easier burden) and variances, we shall first discuss the cases (local as well as foreign) and treatises in which the terms are distinguished. We shall then discuss our cases and certain of those elsewhere in which the proper (and, on occasion, improper) applications of variance law have been applied. The Baltimore County statute will then be restated and applied to the facts and circumstances of the case *sub judice.*

Special Exceptions (and Conditional Uses) and Variance —Distinguished

The treatise writers define the concept as:

> A variance is an authorization for [that] ... which is prohibited by a zoning ordinance....
>
> ... [T]he difference between the two [variances and special exceptions] ... is of practical significance....
>
> "... [T]he variance and exception are designed to meet two entirely different needs. The variance contemplates a departure from the terms of the ordinance in order to preclude confiscation of property, while the exception ***700** contemplates a permitted use ... [once] the prescribed conditions therefor are met."
>
> ... [A] variance is "authority ... to use his property in a manner forbidden ...," while an exception "allows him to put his property to a use which the enactment expressly permits."
>
> ... [T]he standards for ... exceptions are usually less stringent than in the case of variances. A Maryland court summarized this difference and the reason for it.
>
> "A special exception ... is one which is controlled and ... permissible in a given zone. It is granted ... upon a finding conditions of the zoning ordinance are satisfied. A variance is authorized ... where the literal enforcement of its terms would result in unnecessary hardships."

3 Robert M. Anderson, *American Law of Zoning* § 18.02–03 (2d ed. 1977) (footnotes omitted) (quoting in part *Stacy v. Montgomery County,* 239 Md. 189, 193, 210 A.2d 540 (1965)). *See also* ****429** *Schultz v. Pritts,* 291 Md. 1, 11, 432 A.2d 1319 (1981); *People's Counsel v. Mangione,* 85 Md.App. 738, 748, 584 A.2d 1318 (1991).

> A distinction commonly is made between [special] exceptions ... and variances.... An "exception" ... is a dispensation permissible where a board ... finds existing those facts ... specified in the ordinance as sufficient.... "... But zoning ordinances usually provide for another kind of dispensation, ... by which a variance ... may be authorized ... where a literal enforcement ... would result in unnecessary hardship."

8 Eugene McQuillin, *Municipal Corporations* § 25.160 (3d ed. rev. 1991) (footnotes omitted).

> The general rule is that variances and exceptions are to be granted sparingly, only in rare instances and under peculiar and exceptional circumstances.... A variance should be strictly construed....

Id. § 25.162 (footnotes omitted). *See also* 5 Norman Williams, Jr. et al., *American Land Planning Law* § 133.01 (1985 rev.); 3 Arden H. Rathkopf, *The Law of Zoning and Planning* ***701** § 38.01 (4th ed. 1981); 3 E.C. Yokley, *Zoning Law and Practice*

§ 21–6 (4th ed. 1979); 3 Robert M. Anderson, *American Law of Zoning* § 14.55 (1968); Anderson, *supra* § 18.30 (2d ed.).

Maryland courts, and courts elsewhere, have generally made the same distinction.

> There is a marked distinction between "variance" and "special exception" in Montgomery County. A special exception ... is expressly permissible.... [A zoning board has authority to grant] variances from the strict application of this chapter when by reason of exceptional narrowness, shallowness, or shape of specific parcels of property ... or by reason of exceptional topographical conditions or other extraordinary situations ... of specific parcels of property, the strict application ... would result in ... unusual practical difficulties to, or exceptional or undue hardship....

Stacy, 239 Md. at 193, 210 A.2d 540.

Judge Hammond for the Court of Appeals noted in *Montgomery County v. Merlands Club, Inc.,* 202 Md. 279, 288–91, 96 A.2d 261 (1953):

> It is the common practice to join an application for an exception with an application for a variance, leaving it to the Board to decide on which ground it will grant the application. As a result, many cases discuss exceptions and variances without differentiation, yet the two do differ, and one important distinction is that where a specific use is permitted by the legislative body in a given area ... the application can be granted without a showing of hardship or other conditions which are necessary for the allowance of a variance....
>
> ....
>
> ... There is a distinction between ... the ordinance provisions ... in those cases [Baltimore City cases] and the facts and the ordinance provision in this case....

See also our case of *Martin Marietta Aggregates v. Citizens,* 41 Md.App. 26, 34–35, 395 A.2d 179 (1978).

***702** A conditional use is not a variance. The primary difference between the two is that a conditional use is not an exceptional [6] use. A conditional use is a desirable use which is attended with detrimental effects which require that certain conditions be met.... While a variance is a departure from the terms of an ordinance, a conditional use is a permitted use ... so long as ... conditions are met. Therefore, conditional use grants cannot be encompassed within the ... statutory authority to grant variances. *Eberhart v. Indiana Waste Systems, Inc.,* 452 N.E.2d 455, 459 (Ind.App. 3 Dist.1983) (citations omitted).

In a case affirming the granting of a special exception, the court in *Ash v. Rush County Bd. of Zoning Appeals,* 464 N.E.2d 347, 350 (Ind.App. 1 Dist.1984), opined:

> A great deal of confusion has been generated ... because of the parties' failure to distinguish among rezoning amendments, variances, and special exceptions.... A variance involves a deviation ... from the ****430** legislated zoning classification.... A special exception involves a use which is permitted ... once certain statutory criteria have been satisfied. [Citations omitted.]

See also Lindquist v. Board of Adjustment, 490 So.2d 16, 18 (Ala.Civ.App.1986) ("Thus a special exception is not truly an exception to the zoning regulations at all") and ("a special exception may not be used as a substitute for a variance in order to avoid the ... burden of proving ... hardship"); *Wolfner v. Board of Adjustment,* 672 S.W.2d 147, 150 (Mo.App.1984) ("an exception is legislatively permitted whereas a variance is legislatively prohibited, but may be allowed for special reasons"); *Urban Farms, Inc. v. Franklin Lakes,* 179 N.J.Super. 203, 431 A.2d 163, 167 (A.D.), *cert. denied,* 87 N.J. 428, 434 A.2d 1099 (1981) (special exception and variance defined—case decided on zoning estoppel basis); ***703** *A.J. Grosek & Associates v. Zoning Hearing Bd.,* 69 Pa.Cmwlth. 38, 450 A.2d 263, 265 (1982); *Bell v. City Council,* 224 Va. 490, 297 S.E.2d 810, 813–14 (1982).

VARIANCE—

The First Step—Uniqueness or Peculiarity of the Subject Property

> The general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances. *See, e.g.,* A. Rathkopf, 3 The Law of Zoning and Planning § 38 (1979).
> *Doorack v. Board of Adjustment,* 709 S.W.2d 140, 143 (Mo.App.1986). *See also McMorrow v. Board of Adjustment,* 765 S.W.2d 700, 701–02 (Mo.App.1989); *Taylor v. Board of Zoning Adjustment,* 738 S.W.2d 141, 144 (Mo.App.1987).

The requirement of uniqueness of the subject property, as we have indicated, is specifically set out for noncharter counties in the State enabling legislation, Md.Code Article 66B, and it

is also set out in the Baltimore County ordinance applicable here. Additionally, it has been a necessary prerequisite almost since the inclusion of variance practice in zoning laws—and, before that, it was a part of Maryland case law. That case law is in accord generally with the case law elsewhere as we shall later discuss.

Early on, prior to the State specifically empowering local governments to delegate the granting of variances to zoning boards, the Maryland Court of Appeals found that the delegation of power to an administrative board to grant variances from the terms of a zoning "type" ordinance was improper because

> the board of zoning appeals is in effect given the power to set aside or annul the ordinance ... with no more definite standard or guide than that such action may only be taken when there are "practical difficulties or unnecessary hardships".... [U]nder our system of written constitutions it is essential that they accomplish those ... objects in conformity with the restrictions, rules, and limitations which the law itself provides and not in disregard of them.... For such ***704** phrases as "practical difficulties," "unnecessary hardships," "substantial justice," are too general and indefinite to furnish such a guide, or to mark the limits or control the exercise of the power conferred....

Jack Lewis, Inc. v. Mayor and City Council of Baltimore, 164 Md. 146, 151, 164 A. 220, *appeal dismissed,* 290 U.S. 585, 54 S.Ct. 56, 78 L.Ed. 517 (1933) (though it questioned the variance provisions under which the appellant sought a variance to operate a funeral home, it upheld the restriction prohibiting the funeral home in the first instance). In *Sugar v. North Baltimore Methodist Protestant Church,* 164 Md. 487, 165 A. 703 (1933), the Court likewise found the board's powers to grant special exceptions to permit a confectionery store where otherwise prohibited to be invalid for the same reasons.

In moving towards an acceptance of variance procedures, the Court noted that the "increasing need for garages in the cities was one of the main reasons for the rapid spread of zoning in this country." *Heath v. Mayor and City Council of Baltimore,* 187 Md. 296, 300, 49 A.2d 799 (1946). By the time of its decision in *Heath,* the Court had accepted the inevitable need for formal variance and special exception provisions, noting that "[c]haos would result if [a building engineer] were allowed to make exceptions or variances ****431** in his own discretion." 187 Md. at 301, 49 A.2d 799. The Court further pointed to the special exception powers of the Board of Zoning Appeals as a legally acceptable alternative. The Court also observed that, in response to its decisions in *Jack Lewis* and *Sugar,* the city had amended the Baltimore City ordinance to incorporate additional standards to guide the Board. The Court then correctly defined an exception as "a dispensation permissible where the Board ... finds ... those facts ... specified in the ordinance...." *Id.* 187 Md. at 303, 49 A.2d 799.

It was then that the court, for the first time that we can discern, combined exceptions and variances when discussing conformity to the rules in regard to the grant of either. This is the first instance where the two concepts were intermingled with respect to the Baltimore City ordinance. To a certain extent, this intermingling has, from time to time, created some ***705** confusion in the cases arising out of Baltimore City. Because of the proportionately larger number of cases arising out of that jurisdiction, that confusion can be seen in subsequent cases arising from other jurisdictions. This intermingling increased over the years and, during this time, Baltimore City amended its ordinance and eventually became subject to an ordinance that does not distinguish between variances and exceptions except as to the title of their respective sections. In other words, Baltimore City, by the terms of its ordinance, applies the same standards to both variances and special exceptions; this standard is the one used elsewhere for variances. Thus, the Baltimore City special exceptions procedure is one only by title. For all practical purposes, it is also a variance procedure.

Caution should always be used therefore when a court is concerned with special exceptions, as reliance on the cases from Baltimore City may well lead one to rely on inapposite zoning concepts and cases. Judge Marbury, for the Court of Appeals, noticed this unusual circumstance in *Dampman v. Mayor and City Council of Baltimore,* 231 Md. 280, 285, 189 A.2d 631 (1963) ("In Baltimore City there appears to be no distinction between the two terms....").[7] We also attempted to indicate the problem in *North v. St. Mary's County,* 99 Md.App. 502, 510, 638 A.2d 1175 (1994), in footnote 3:

> Baltimore City's zoning code makes no distinction between special exceptions and variances. Its code treats special exceptions as if they were variances.... [I]t is generally inexact to rely on Baltimore City cases when a special exception is at issue in another jurisdiction, but would be appropriate when a variance is at issue.

In any event, as to variances, the Court of Appeals, applying the uniqueness standard, stated:

***706** [I]t was incumbent upon the Marinos to have shown ... (ii) that the difficulties or hardships *were peculiar to the property in question in contrast with those of other property owners in the same district, and* (iii) that the hardship was not the result of the applicants' own actions.

Marino v. Mayor and City Council of Baltimore, 215 Md. 206, 218, 137 A.2d 198 (1957) (emphasis added). *Salisbury Bd. of Zoning Appeals v. Bounds,* 240 Md. 547, 214 A.2d 810 (1965), also involved the completion of structural improvements in violation of an ordinance and a subsequent request for an after the fact variance. The Court opined:

> The only evidence before the Board as to hardship or injustice involving the property was the fact that repairs and alteration work had been substantially completed before an application for either a variance or a building permit had been made and that what had been done could not be undone without financial hardship to appellees....

240 Md. at 554, 214 A.2d 810. The Court first quoted from 2 Rathkopf, *The Law of Zoning and Planning,* § 48–1, and then noted:

> "Where property, due to unique circumstances applicable to it, cannot reasonably be adopted to use in conformity with the restrictions ... hardship ****432** arises.... The restrictions of the ordinance, taken in conjunction with the unique circumstances *affecting the property* must be the proximate cause of the hardship.... [T]he hardship, arising as a result of the act of the owner ... will be regarded as having been self-created, barring relief...."
>
> The instant case fits squarely within the above general rule.... [I]f the appellees had used proper diligence ... and then made accurate measurements ... [the resultant hardship could have been avoided]. The hardship ... was entirely self-created....

Id. at 554–55, 214 A.2d 810 (emphasis added). Had **Ward's** contractor, Huber, in the case at bar, checked the ordinance's height limitation, the situation that now exists could easily have been avoided. *See also Burns v. Mayor and City* ***707** *Council of Baltimore,* 251 Md. 554, 559, 248 A.2d 103 (1968); *Pem Constr. Co. v. Mayor and City Council of Baltimore,* 233 Md. 372, 378, 196 A.2d 879 (1964) ("[There was] no evidence of any limitation ... by ... size of yards, irregularity of shape of land or buildings, topography, grade or accessibility"....); *Mayor and City Council v. Sapero,* 230 Md. 291, 186 A.2d 884 (1962); *Frankel v. Mayor and City Council of Baltimore,* 223 Md. 97, 104, 162 A.2d 447 (1960) ("It was incumbent ... to show that the hardship ... affected his particular premises and was not ... common to other property in the neighborhood.... [H]e met the burden...."); *Park Shopping Center, Inc. v. Lexington Park Theatre Co., Inc.,* 216 Md. 271, 277–78, 139 A.2d 843 (1958).

> Secs. 14(b), 14(d) and 16 ... have been held not to authorize a granting for the mere convenience to the owner but to require a showing of urgent necessity, hardship peculiar to the particular property....

Mayor and City Council v. Polakoff, 233 Md. 1, 9, 194 A.2d 819 (1963).

The Court in *Kennerly v. Mayor and City Council of Baltimore,* 247 Md. 601, 606–07, 233 A.2d 800 (1967), dismissed an appeal of the grant of a height variance for lack of standing, but, in doing so, nevertheless opined:

> Our dismissal of the appeal is not to be taken as showing that if the appeal properly was here we would affirm the Board. To grant a variance the Board must find from the evidence more than that the building allowed would be suitable or desirable or could do no harm or would be convenient for or profitable to its owner. The Board must find there was proof of "*urgent necessity, hardship peculiar to the particular property....*" ... Specific reasons, specific bases to support the finding must be revealed by the evidence before the Board. [Emphasis added, citation omitted.]

In *McLean v. Soley,* 270 Md. 208, 210, 310 A.2d 783 (1973), one of the few reported Maryland appellate cases approving of a variance, the applicant for an area variance in connection ***708** with an application to build forty units asserted that it was his desire to retain the "present trees and natural growth, terrain, and topography which provides excellent drainage and natural screening and beauty." There was evidence that, if the applicant destroyed the existing trees, he could have built 330 units without needing a variance. It was established that a number of attractive trees along the western boundary would have to be destroyed absent a variance. The Court noted that "there was considerable evidence to show the natural beauty of these trees and their importance to the ecology." 270 Md. at 211, 310 A.2d 783. The Court, seeming to acknowledge that it was making a detour from Maryland variance law, opined:

> Given the unique facts of this case, we think those criteria are met by this evidence: That the construction of the buildings in strict compliance with the sideyard requirements would result in the destruction of the trees; that the preservation of trees in the construction of the first section had contributed to full occupancy ... that the benefits of retaining the trees would accrue to the general public; that greater density would result from strict compliance....
>
> ....
>
> Concededly, this is a close case, but it is nevertheless sufficient....

****433** *Id.* at 215, 310 A.2d 783. We would have to agree that it is a close case. The opinion does not make mention that the practical difficulty resulted from the fact that the uniqueness of the property caused the ordinance to have a different impact on it than on adjoining property. Also, there was no evidence that the neighboring properties were in any way different than the subject property. If the presence of trees on a particular lot was unique, that might have been a basis, but the court did not make that connection. Thus, this case, coupled with *Loyola Federal Savings & Loan Assoc. v. Buschman,* 227 Md. 243, 176 A.2d 355 (1961), and *Frankel v. Mayor & City Council of Baltimore,* 223 Md. 97, 162 A.2d 447 (1960), is among the affirmances of variances that we perceive to be, at best, extremely close calls and, as we shall indicate, exceedingly rare.

***709** The Court in the sludge storage case of *AD + Soil, Inc. v. County Comm'rs,* 307 Md. 307, 513 A.2d 893 (1986), reiterated the standards applicable to variances when it affirmed a trial court's affirmance of a zoning agency's denial of an area and other variances. The variances were necessary to satisfy the requirements for a conditional use permit to operate the sludge storage and distribution operation. The Court of Appeals noted that the trial court, in affirming the agency's denial of a variance, agreed that "the only hardships facing Ad + Soil were of its own making." 307 Md. at 317, 513 A.2d 893. After addressing the important preemption issues therein raised, the Court directed its attention to the area variances sought and, referring to the Board's findings, stated that, in Queen Anne's County, the Board's authority to grant variances was limited to a situation where "there are exceptional or extraordinary circumstances or special conditions applying to the property in question ... that do not apply generally to other properties ... in the ... district." *Id.* at 340, 513 A.2d 893. The Court concluded:

> The board declined to grant the variances, concluding that Ad + Soil's "hardship" was self-inflicted, and, in any event, that it was not the result of exceptional or extraordinary *characteristics* of the *land itself* and therefore not the kind of hardship cognizable under the Zoning Ordinance....
>
> We think the Board's decisions ... reflect no error of law.

Id. at 340–41, 513 A.2d 893 (emphasis added).

In *Red Roof Inns, Inc. v. People's Counsel,* 96 Md.App. 219, 224, 624 A.2d 1281 (1993), after noting the standard of review, we said:

> In reviewing the zoning authority's decision, the court must consider all of the evidence in the administrative record. The reviewing court's role, however, is confined to determining the legality of the procedure employed and whether the decision was fairly debatable in light of the evidence adduced before the zoning authority.
>
> ***710** The role of this Court "is essentially to repeat the task for the circuit court; that is, to be certain the circuit court did not err in its review." [Citations omitted.]

We then discussed the legal standards to utilize in respect to variances construing the same statute that applies in the case at bar, saying that variances may be granted "where special circumstances or conditions exist *that are peculiar to the land* ... and where strict compliance ... would result in practical difficulty...." *Id.* (emphasis added). We noted that, in regards to area variances, we were only concerned that the conditions peculiar to the land in question presented practical difficulties. In concluding that the Board had not acted wrongly in denying the variance at issue (a sign variance), we noted: "Zoning matters, including sign variance requests, depend upon the unique facts and circumstances *of a particular location* and must be analyzed individually." *Id.* at 227–28, 624 A.2d 1281 (emphasis added).

In *North v. St. Mary's County,* 99 Md.App. at 512, 638 A.2d 1175, we held that the ordinance there required a finding that "special conditions or circumstances exist that are peculiar to the land...." We there stated that, in the zoning context, the term "unique" has a customized meaning:

> In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. ****434** "Uniqueness" of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, *i.e.,* its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by

abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls.

....

In some zoning ordinances, the specialness or uniqueness requirement is more explicitly set out. The Court of Appeals, ***711** in *Ad + Soil, Inc. v. County Comm'rs,* 307 Md. 307, 339, 513 A.2d 893 (1986), quoted from the Queen Anne's County ordinance:

> Where by reason of the exceptional narrowness, shallowness, or unusual shape of a specific ... property ..., or by reason of exceptional topographic conditions or other extraordinary situation or special condition of ... property ... the literal enforcement ... would make it exceptionally difficult ... to comply ... and would cause unwarranted hardship and injustice....

The general thrust of the meaning of special features or uniqueness of property for variance purposes relates to the type of uniqueness discussed by the Court in *Ad + Soil, Inc.* *Id.* at 514–15, 638 A.2d 1175.

One indication of the general rule that variances are rarely appropriate is that, in our review of the reported Maryland cases since the creation of the state zoning enabling act in 1927, we have found only five reported Maryland cases in which the grant of a variance has been affirmed or the denial of a variance has been reversed. The cases are *McLean, supra; Stacy, supra; Sapero, supra; Loyola Federal Savings & Loan Assoc., supra* (a Baltimore County case); and *Frankel, supra.* All of these cases were decided over a twelve-year period and the last of them was decided more than twenty-one years ago. Three of them, *Frankel, Loyola,* and *McLean* appear to be somewhat at odds with accepted Maryland law. *McLean* was described by the Court as a "[c]oncededly ... close case...." *Frankel* has caused some confusion in that it has later been viewed by some as lowering the standards for the granting of variances. *Mayor and City Council of Baltimore v. Borinsky,* 239 Md. 611, 212 A.2d 508 (1965), involved one of the same issues that was presented in *Frankel, i.e.,* whether a zoning restriction so compromised the use of property as to constitute an unconstitutional taking absent the granting of a variance—a variance Frankel was granted. The Court noted that the trial court had found *Frankel* controlling. The Court of Appeals disagreed. The Court acknowledged ***712** that Borinsky had the "same expert witness," "he was asked the same general questions ... and gave the same answers," and that the "economic suicide" present in *Frankel* was "doubly true in this instance." *Id.* 239 Md. at 624, 212 A.2d 508. The Court, nevertheless, made a factual distinction and declined to apply *Frankel.* Judge Barnes opined in dissent that, based on what the Court had done in *Frankel,* the facts for variances were stronger in *Borinsky. Sapero* and *Stacy* met traditional standards for the granting of variances. *Frankel, Loyola,* and *McLean* were anomalous cases.

In any event, nowhere in those five cases, or any others, has the Court of Appeals ever changed the Maryland rule relating to uniqueness and peculiarity of the subject property.

Cases from other jurisdictions are generally in accord.

The Supreme Court of Nebraska in *Bowman v. City of York,* 240 Neb. 201, 482 N.W.2d 537 (1992), reversed the grant of a variance for a structure after, pursuant to the variance, the structure was constructed. Citing an earlier Nebraska case, *Frank v. Russell,* 160 Neb. 354, 70 N.W.2d 306 (1955), and noting that the Nebraska statute had been made more specific in light of *Frank,* the court said 482 N.W.2d at 545: "[A] variance [may be granted] ... only if strict application of the regulation, because of the unusual physical characteristics of the property existing at the time of the enactment, [of ****435** the zoning ordinance] 'would result in peculiar and exceptional practical difficulties ... or exceptional ... hardships....' "

In *Shafer v. Zoning Bd. of Appeals,* 24 Mass.App. 966, 511 N.E.2d 635 (1987), the property owner had conveyed away several parcels from a larger tract leaving a parcel, the size of which was prohibited under the ordinance. The Board granted him a variance, the trial court reversed it, and the appellate court affirmed the trial court. The appellate court reiterated the trial court's finding:

> There was no evidence ... regarding "soil conditions, shape or topography of [the property] ... especially affecting [the property] but not affecting generally the zoning district in which it is located".... The ... argument that ***713** the insufficient width ... constitutes a special circumstance of "shape" is unpersuasive, particularly as the deficiency is one which they themselves produced through subdivision of the land they originally owned at a time when the 125 foot width requirement pertained.

511 N.E.2d at 636–37 (citation omitted). *See also VanLandschoot v. City of Mendota Heights,* 336 N.W.2d 503, 509 (Minn.1983) ("the plight of respondent was not due to circumstances 'unique to his property.' ... [S]ome of the problems were the result of illegal acts of respondent's predecessor in title, of which respondent was aware....")

In *St. Clair v. Skagit County,* 43 Wash.App. 122, 715 P.2d 165 (1986), a landowner applied for a variance of a lot width requirement on the grounds that the county had given him a permit to install a trailer on her fifty-foot wide lot even though the ordinance mandated a width of at least seventy feet. The zoning board, approving the variance, determined that she had applied for the permit in good faith. The Skagit County ordinance, as does the instant statute, provided that a variance had to be "because of special circumstances applicable to subject property, including size, shape, topography, location or surroundings...." 715 P.2d at 167. The code also required that an application for a variance include a narration that "special conditions and circumstances exist ... peculiar to the land...." *Id.* The court then noted that the applicant had done there what **Ward** attempts to do in the case *sub judice:*

> [The appellant] relied primarily upon the fact that the County issued a building permit ... and that she acted in good faith....

Id. at 168. The court responded: "Reasons for a variance must be reasons pertaining to the property itself.... Evidence of hardship or difficulty that will support a variance must relate to the land itself and not to the owner-applicant." *Id.* (citation omitted). The court added that "the 75–foot width and aggregation requirements do not put a burden on [appellant's] property which does not apply to other properties in the vicinity...." *Id.* at 169. In the case *sub judice,* the ***714** Baltimore County fifteen foot height limitation for accessory buildings does not affect **Ward's** property alone; it applies to all of the properties in the neighborhood.

In *Walkingstick v. Board of Adjustment,* 706 P.2d 899 (Okla.1985), the zoning board, having failed to comply with notice requirements, granted a permit for an oil drilling well. Amoco had expended considerable sums before the board's omission was discovered. The relevant part of the ordinance involved was similar to the one in the instant case. After the court noted that the hardships alleged were not peculiar to the subject site, it stated the general rule that "a hardship created by the owner ... constitutes no valid basis for a variance.... [D]eprivation of an advantage does not constitute an unnecessary hardship." 706 P.2d at 904. It concluded:

> The need to expose tools to the ravages of the environment may be peculiar to Amoco. But, the language of section 44–107(2) [as does the language in the Baltimore County ordinance] clearly refers to conditions peculiar to the property, *not to activities peculiar to the owner of such property.*

Id. at 904–05 (emphasis added).

In a decision somewhat difficult to understand, which carried the variance limitations to the extreme and predated the 1992 case of ****436** *Lucas v. South Carolina Coastal Council,* —— U.S. ——, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992), but had facts similar to *Lucas,* the Supreme Court of Delaware in *Baker v. Connell,* 488 A.2d 1303 (Del.Supr.1985), upheld a trial court's reversal of the grant of a variance even though the ordinance limited the use of applicant's entire lot to open space only. The zoning board had found that the property was unique because the entire property was zoned open space and *nothing* could be constructed there. The board permitted a variance to allow two semi-detached dwellings. The trial court reversed on the grounds that the 0–1 zoning did not make the property unique. The trial court noted that a need for a variance arises only when the plight of the property is unique in that it cannot reasonably be put to a conforming use. The trial court found that there was no evidence that the ***715** property could not conform to open space land. The appellate court affirmed, stating:

> [F]inancial return ... alone, never justifies a variance. As to the unique character of the land, the mere fact that it sits entirely within the 0–1 zone does not make it unique. There is no evidence that this lot is the only one of its type in Rehoboth. Nor does it become unique because it adjoins the R–2 zone containing multi-family units.

488 A.2d at 1309. Whether this Delaware opinion remains viable in light of *Lucas* and *Dolan v. City of Tigard,* 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994), is doubtful.

The case of *Xanthos v. Board of Adjustment,* 685 P.2d 1032 (Utah 1984), involved a factual scenario similar to the case *sub judice.* The Xanthoses received notice that they were in violation of the city zoning code. The building of a duplex by the Xanthoses caused a pre-existing dwelling to lose frontage on a public street and to violate set-back and parking requirements. The Xanthoses requested variances in reference to the violations. The court initially noted that, "in order to justify a variance ... the applicant [must] show ... that there are special conditions with regard to the property...." 685 P.2d at 1035–36. The court continued:

> What must be shown ... is that the property itself contains some special circumstance that relates to the hardship complained of....

> ... The property is neither unusual topographically or by shape, nor is there anything extraordinary about the piece of property itself. Simply having an old building on land upon which a new building has been constructed does not constitute special circumstances.
>
> ....
>
> Hardship is not demonstrated by economic loss alone. It must be tied to the special circumstances, none of which have been proven here. Every person requesting a variance can indicate some economic loss. To allow a variance anytime any economic loss is alleged would make a mockery of the zoning program. Further, the Xanthos[es] brought ***716** their losses upon themselves. The application affirmatively alleged ... that no dwelling existed....[8]

Id. at 1036–37 (footnotes omitted).

[1] The Xanthoses also argued, in a fashion similar to the argument in the case *sub judice,* that the city should be estopped because the plot plan submitted to the city showed the dwelling and the fact that the city failed to realize it misled them to their detriment. The court noted, in rejecting the Xanthoses' argument: "[T]o hold that the city should have been put on notice ... in the face of an affirmative statement that no such dwelling existed, would put a premium on prevarication ... and ... shift the burden of proof in variance cases to the city. None of these results is acceptable." *Id.* at 1038. In the case at bar, appellants' application for the permit contained a clear statement that he would comply with the zoning requirements. His plan's elevation schematics contained neither elevation dimensions nor scale. While the zoning inspectors might have been able to extrapolate dimensions from other schematics, they certainly were not required ****437** to do so in light of appellants' affirmative statement of compliance.

See also Chambers v. Smithfield City, 714 P.2d 1133, 1135 (Utah 1986), where the court stated: "[T]here is no evidence of special conditions attached to the property itself which do not also attach to other property in the vicinity. The property is neither unusual topographically or by shape, nor is there anything extraordinary about the piece of property itself." (Footnote omitted.) In a case involving the conversion of a garage into a dwelling, the Supreme Court of Virginia in *Prince William County Bd. of Zoning Appeals v. Bond,* 225 Va. 177, 300 S.E.2d 781 (1983), reversed a trial court decision reversing a zoning board's denial of a variance. The court noted that the conversion was underway when the Bonds discovered a need and applied for a variance. It opined that, ***717** in order to grant a variance, the hardship allegedly created by the ordinance must "not [be] shared generally by other properties in the same zoning district and the same vicinity." 300 S.E.2d at 783. It then held: "The limitation imposed by the zoning ordinance is one shared by all property owners in the A–1 district." *Id.*

The court in *Richardson v. Town of Salisbury,* 123 N.H. 93, 455 A.2d 1059, 1061 (1983), noted:

> We have defined unnecessary hardship as follows:
>
> > "A hardship exists only if due to special conditions *unique* to a *particular parcel of land,* the ordinance unduly restricts the use.... The hardship must relate to the special character of the land rather than to the personal circumstances of the landowner." [Emphasis added.]

See also Margate Motel, Inc. v. Gilford, 130 N.H. 91, 534 A.2d 717 (1987); *Ryan v. City of Manchester Zoning Bd. of Adjustment,* 123 N.H. 170, 459 A.2d 244 (1983).

In *Sibley v. Inhabitants of the Town of Wells,* 462 A.2d 27, 30–31 (1983), the Supreme Judicial Court of Maine upheld the denial of a variance, holding:

> [T]he need for a variance [must be] due to the unique circumstances of the property and not to the general conditions in the neighborhood;
>
> ....
>
> ... [T]he hardship [must] not [be] the result of action taken by the appellant or a prior owner.
>
> ....
>
> ... However, the mere fact that the lot is substandard is not a unique circumstance; all the undeveloped lots in that neighborhood are of substandard size....
>
> ... However, when a landowner purchases land with actual or constructive knowledge of the zoning restrictions, he may not be granted a variance on the grounds of undue hardship.

See also Williams v. Salem Township, 92 Pa.Cmwlth. 634, 500 A.2d 933 (1985) *alloc. denied,* 516 Pa. 615, 531 A.2d 781 (1987); ***718** *Hersh v. Zoning Hearing Bd. of Marlborough Township,* 90 Pa.Cmwlth. 15, 493 A.2d 807 (1985); *Serban v. Zoning Hearing Bd. of the City of Bethlehem,* 84 Pa.Cmwlth. 558, 480 A.2d 362 (1984) (burden sustained); *Davis v. Zoning Bd. of Adjustment,* 78 Pa.Cmwlth. 645, 468 A.2d 1183 (1983) (burden sustained); *Malakoff v. Zoning Bd. of Adjustment,* 72 Pa.Cmwlth. 109, 456 A.2d 1110 (1983); *Immordino v. Zoning Hearing Bd.,* 65 Pa.Cmwlth. 79, 441 A.2d 818, 821 (1982) ("[P]roperty owner must sustain the heavy burden of proving that the zoning ordinance imposes an unnecessary hardship *which is unique to his particular property*....") (Emphasis added.)

> A prerequisite to the granting of a hardship zoning variance is the presence of an exceptional and unique hardship to the individual landowner, *unique to that parcel* and not shared by other property owners in the area.... Indialantic's zoning restrictions are common difficulties shared by all other oceanfront lot owners in the area, and are therefore not the unique hardship required to support a variance.

Town of Indialantic v. Nance, 400 So.2d 37, 40 (Fla.App. 5th Dist.1981), *aff'd,* 419 So.2d 1041 (1982) (citation omitted). *See also Fort Lauderdale Bd. of Adjustment v. Nash,* 425 So.2d 578, 579 (Fla.App. 4th Dist.1983); *City of Naples v. Clam Court Marina Trust,* 413 So.2d 475, 477 (Fla.App. 2d Dist.1982); *Lakeshore* ****438** *Property Owners Ass'n v. City of New Orleans Zoning Bd. of Appeals and Adjustments,* 481 So.2d 162, 168 (La.App. 4th Cir.1985), *cert. denied,* 484 So.2d 674 (1986).

We mentioned earlier that there are very few Maryland cases upholding the grant of a variance (or the reversal of a denial). We likewise note that this is also the case in foreign jurisdictions. We mentioned two cases from Pennsylvania above where this occurred. We now discuss several others.

A minimum lot area variance was affirmed in *Russell v. District of Columbia Bd. of Zoning Adjustment,* 402 A.2d 1231 (D.C.App.1979), where, due to the size of the lot, no viable economical use of the property could be had without the ***719** variance. It was determined that the lot was the only lot in the area that had been subdivided into smaller lots prior to the adoption of the zoning ordinance. The Supreme Court of New Hampshire reversed the denial of a variance in *U–Haul Co. of New Hampshire & Vermont, Inc. v. City of Concord,* 122 N.H. 910, 451 A.2d 1315, 1317 (1982), saying: "The location and characteristics of the property involved create greater security requirements ... than ... other property in the area because the parcel ... is less central ... less populated and ... less serviced by law enforcement patrols. This hardship arises from the uniqueness of the building and the land itself." In *Atwood v. City of Portland,* 55 Or.App. 215, 637 P.2d 1302 (1981), *cert. denied,* 292 Or. 722, 644 P.2d 1131 (1982), application for a variance was granted and affirmed on appeal in part because the site was a steep and rocky slope, the former site of a landfill. *See also Higgins v. Township of Radnor,* 13 Pa.Cmwlth. 195, 318 A.2d 761, 763 (1974).

The treatise writers also are in accord with the rule that variances should only be granted when the uniqueness or peculiarity of a subject property is not shared by neighboring property and where the uniqueness of that property results in an extraordinary impact upon it by the operation of the statute, thus creating undue difficulty (or unnecessary hardship in respect to use variances).

> It is *fundamental* that the difficulties or hardships must be unique to justify a variance; they must be peculiar to the application of zoning restrictions *to particular property* and not general in character.... [I]t is not uniqueness of the plight of the owner, but uniqueness of the land causing the plight, which is the criterion. If the hardship is common to the whole neighborhood, it may be ground for an exception or special use permit [if the statute so provides].... [T]he hardship [in order to justify a variance, however,] ... must relate to the particular property of the applicant....

McQuillin, *supra* § 25.167 (emphasis added, footnotes omitted).

> ***720** [I]t is held that a variance may be granted only for hardship which relates specifically to the applicant's land. Thus, a landowner was not entitled to a variance to relieve his land from a restriction which applied equally to all lots of similar size.

Anderson, *supra* § 14.55 (1968).

> It follows that the unnecessary hardship ... must relate to the land, not to the applicant-owner. Hardship which is merely personal to the current owner of real property will not justify the granting of a variance....
>
> In each case [where the variance was denied], the hardship results from an error on the part of the landowner, not from an unduly severe impact of the regulations upon the land in question....
>
> ....
>
> Reviewing a wide variety of variance applications based upon reasons personal to the applicant, the courts have consistently held that such personal difficulties do not constitute unnecessary hardship.

Anderson, *supra* § 18.30 (2d ed.) (footnotes omitted).

> The most important part of [the] law of variances depends upon a distinction between two kinds of hardship. In one type of case, hardship in developing a given lot ... arises from circumstances peculiar to that lot ...; and in that case the appropriate remedy is ... a variance.... In the other types of cases, the hardship ... may arise because of conditions which are general in the neighborhood; ... it is often ****439** held that the appropriate remedy is a change in the zoning.... [T]he courts have usually (but not always) held that variances are inappropriate in that situation.

Williams, *supra* § 142.

> The great strengthening of the criteria for granting variances, ... has thus been particularly evident in the number of cases emphasizing the requirement that hardship must arise from circumstances unique to the particular lot in question.... Moreover, the courts have again emphasized that a variance granted to take care of some hardship ***721** personal to the applicant is not a unique hardship resulting from circumstances peculiar to the piece of land.

Id. § 142.06. *See also* Rathkopf, *supra* § 38.04; Yokley, *supra* § 21–6. ("The burden of proof is on the applicant to establish that his land is uniquely affected resulting in unnecessary hardship.").

Yokley quotes from *Taxpayers Association v. Board of Zoning Appeals,* 301 N.Y. 215, 93 N.E.2d 645, 647 (1950):

> [T]he record does not show that the property suffers a unique or singular disadvantage, not common to other property in the district, through the operation of the zoning ordinance. Here, the hardship, if any, is general and characteristic of the entire area, and the remedy lies in a revision of the zoning ordinance through legislative action, not by the granting of a variance to a single property owner.

Yokley, *supra* § 21–6.

[2] We conclude that the law in Maryland and in Baltimore County under its charter and ordinance remains as it has always been—a property's peculiar characteristic or unusual circumstances relating only and uniquely to that property must exist in conjunction with the ordinance's more severe impact on the specific property because of the property's uniqueness before any consideration will be given to whether practical difficulty or unnecessary hardship exists. Before applying the facts of the instant case to the law and, thus, resolving the case *sub judice,* we must touch upon two other aspects of the process, *i.e.,* the self-inflicted injury and the zoning authorities' acquiescence in issuing a building permit based on plans that left unclear the elevation of the structure and the subsequent inspection.

Self–Inflicted Hardship

[3] We have before referred to *Marino v. Mayor and City Council of Baltimore,* 215 Md. 206, 137 A.2d 198. There, the Court said, "it was incumbent [on the applicant] to [show] ... that the hardship was not the result of the applicants' own actions." *Id.* at 218, 137 A.2d 198. The Court of Appeals ***722** noted in *AD + Soil, Inc. v. County Comm'rs,* 307 Md. at 340, 513 A.2d 893:

> The essence of AD + Soil's argument ... is that the setback requirements ... would cause ... unwarranted hardship because it had obtained its first state permit and constructed its transfer station before it learned of these local requirements.... The Board declined to grant the variances, concluding that Ad + Soil's "hardship" was self-inflicted ... and therefore not the kind of hardship cognizable under the Zoning Ordinance.

The Court affirmed the Board. Foreign jurisdictions are generally in accord. *See Pollard v. Zoning Bd. of Appeals,* 186 Conn. 32, 438 A.2d 1186, 1190 (1982) (" '[S]elf-inflicted or self-created hardship ... is never considered proper grounds for a variance.' ... '[W]here the applicant ... creates a nonconformity, the board lacks power to grant a variance.' ") (citations omitted); *Volkman v. City of Kirkwood,* 624 S.W.2d 58 (Mo.App.1981); *Matter of Schrader,* 660 P.2d 135 (Okl.1983); *Ex Parte La Quinta Motor Inns, Inc. v. Greenville County Bd. of Zoning Appeals,* 279 S.C. 598, 310 S.E.2d 438 (App.1983); *McClurkan v. Board of Zoning Appeals,* 565 S.W.2d 495 (Tenn.1977); *Steele v. Fluvanna County Bd. of Zoning Appeals,* 246 Va. 502, 436 S.E.2d 453, 456 (1993) ("[T]he hardship, if any, was self-inflicted. The placement of the improvements ... was within the control of the Garretts and their contractor, Raintree."). *See also Shafer, supra; VanLandschoot, supra; Walkingstick, supra; Xanthos, supra; St. Clair, supra.* Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively ****440** not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted.

The Granting of the Permit

In *Francis v. MacGill,* 196 Md. 77, 75 A.2d 91 (1950), a property owner sought equitable injunctive relief. The facts ***723** were that while the enactment of a zoning ordinance was pending, the property owner obtained a building permit to construct that which would not be permitted after the enactment of the ordinance. After the ordinance was enacted, the owner constructed, pursuant to the permit, a building that had become prohibited by reason of the passage of the ordinance. The Court noted:

> "Adoption of zoning ordinance *ipso facto* revokes permit for construction ... where no construction has begun."
>
> ... They completely ignored the Zoning Regulations, and they were engaged in an unlawful act.

196 Md. at 85, 75 A.2d 91 (citation omitted). The Court affirmed the revocation of the building permit.

The Court noted, pursuant to a timely appeal, in *Mayor and City Council of Baltimore v. Shapiro,* 187 Md. 623, 634, 51 A.2d 273 (1947), *overruled on other grounds in Nutter v. Non–Profit Housing Co.,* 230 Md. 6, 185 A.2d 360 (1962), where the ordinance was changed prior to commencement of construction under a permit, and where the change made that use, which was previously permitted, prohibited, that the "mere issuance of a permit ... does not create a vested right, or estop[9] the municipal authorities from revoking it." In a case for the issuance of a mandatory injunction that involved an attempt to obtain a permit for what was alleged would be a nonconforming use the court opined in *Board of County Comm'rs v. Snyder,* 186 Md. 342, 347, 46 A.2d 689 (1946): "No permit was issued, and if it had been, it would have conferred no vested right, nor would it have created an estoppel."

In the mandamus case of *County Comm'rs v. Ward,* 186 Md. 330, 340, 46 A.2d 684 (1946), the Court held:

> The Board ..., as an administrative body, was bound to follow the regulations it adopted, in the exercise of ... ***724** delegated legislative power. The fact that it might have rezoned ... does not alter its obligation to adhere to existing regulations....

In the case of *Lipsitz v. Parr,* 164 Md. 222, 164 A. 743 (1933), a case seeking injunctive relief by way of a restraining order, a city officer mistakenly issued a building permit for an ice factory when the statute prohibited ice factories. The Court there held:

> A municipality may be estopped by the act of its officers if done within the scope and in the course of their authority or employment, but estoppel does not arise should the act be in violation of law.... [T]he ordinance forbade the officials ... to grant the permit which the plaintiff asked and obtained....
>
> ... [I]t was therefore unlawful for the officers ... to grant the permit, and it would be unlawful for the licensee to do what the purporting permit apparently sanctioned. A permit thus issued ... does not ... prevent the permit from being unlawful nor from being denounced by the municipality because of its illegality.... *Every one dealing* with the officers and agents of a municipality *is charged with knowledge of the nature of their duties and the extent of their powers, and therefore such a person cannot be considered to have been deceived or misled* by their acts when done without legal authority.
>
> So, even where a municipality has the power, but has done nothing, to ratify or sanction the unauthorized act ... it is not estopped by the unauthorized or wrongful act of its officer ... in issuing a permit that is forbidden by the explicit terms of an ordinance.... *Valentine v. Rds. Directors,* ****441** 146 Md. 199, 206 [126 A. 147] [(1924)].... [Citations omitted, emphasis added.]

164 Md. at 227–28, 164 A. 743.

The Court cited *Lipsitz* in *Inlet Associates v. Assateague House Condominium Assoc.,* 313 Md. 413, 545 A.2d 1296 (1988), a case seeking specific performance and injunctive relief, and also cited *City of Hagerstown v. Long Meadow* ***725** *Shopping Center,* 264 Md. 481, 287 A.2d 242 (1972), a case of a timely appeal of the denial of a building permit. In *Inlet Associates,* the Court opined that "[c]onsequently, '[e]veryone dealing with officers and agents of a municipality is charged with knowledge of the nature of their duties and the extent of their powers, and therefore such a person cannot be considered to have been deceived or misled by their acts when done without legal authority.' " 313 Md. at 437, 545 A.2d 1296. The Court added: "[T]he doctrine of equitable estoppel 'cannot be ... invoked to defeat the ... enforcement of ... ordinances, because of an error or mistake committed by one of its officers ... which has been relied on by the third party to his detriment.' " *Id.*

[4] Accordingly, it appears clear that the mistake of a county official cannot be the "practical difficulty" unique to the

subject property required in order to authorize the grant of the variance sought and obtained by **Ward**.

The authorities elsewhere are in accord.

> The master also erred in finding that unnecessary hardship resulted from the plaintiffs' reliance upon representations by the selectmen. This finding disregards the principal that hardship relates to the special character of the *land,* not to the circumstances of the *owner.*

Richardson, 455 A.2d at 1062.

> [R]elator argues the Board should be estopped from denying the height variance because a city building inspector visited the premises several times and observed the construction taking place but made no complaint....
>
> In any case there is no authority on the part of a building inspector to grant a variance....

Katz v. Board of Zoning Adjustments, 232 So.2d 546, 548 (La.App. 4th Cir.1970). *See also Klanke v. Zoning Bd. of Adjustment,* 83 Pa.Cmwlth. 441, 477 A.2d 907, 909 (1984), and *Walkingstick, supra; Xanthos, supra; and St. Clair, supra.*

***726 Resolution**

We resolve here only the issue of the granting of the variance sought and applied for by **Ward**.

[5] There was no evidence submitted to the Board that the subject site was in any way peculiar, unusual, or unique when compared to other properties in the neighborhood such that the ordinance's height restriction's impact upon the subject property would be different than the restriction's impact upon neighboring properties. In essence, the impact would be the same. The first step of the variance process was thus not met. Had there been evidence before the Board indicating that the subject property was peculiar or unusual and, thus, disproportionately affected by the height restriction, then we might have been able to conclude that the Board was correct. There was, however, no such evidence presented. Therefore, the Board's granting of the variance was arbitrary and illegal.

It is not the purpose of variance procedures to effect a legalization of a property owner's intentional or unintentional violations of zoning requirements. When administrative entities such as zoning authorities take it upon themselves to ignore the provisions of the statutes enacted by the legislative branch of government, they substitute their policies for those of the policymakers. That is improper. We shall reverse.

JUDGMENT REVERSED; COSTS TO BE PAID BY APPELLEE.

All Citations

102 Md.App. 691, 651 A.2d 424

Footnotes

1 Some ordinances use the conjunctive, “and,” creating a requirement that both practical difficulty “and” unreasonable hardship exist. Because hardship is the most severe standard, this means that it is the standard used regardless of whether an area or use variance is sought. Some ordinances use the disjunctive, “or,” to separate the two standards. These jurisdictions construe the ordinance to require the unreasonable hardship standard to be used when “use” variances are sought, because use variances are believed to be more disruptive of zoning goals and purposes, but require the lesser “practical difficulty” standard when “area” variances are sought.

2 Appellee, several times in his brief, states that the plans “clearly” show the height of the building. We are tempted to respond with a short rejoinder. We resist. The heights shown on the plans are not clearly shown—they are not shown at all—but must be computed, as we have done, without the benefit of a scale by a difficult reference to dimensions that are given for horizontal distances.

3 As we have said, the application, building permit and the county data indicated that its height was to be fourteen feet.

4 It is not clear that section 307, “Variances,” would even permit any use variances except perhaps as to signs or parking, as the section is framed primarily in terms of “area” variance requests.

5 Matters relating to area issues are intended to be, and usually are, addressed as special exceptions. Matters relating to “use” issues are intended to be, and usually are, addressed as conditional uses. The terms, however, are, with some frequency, intermixed. Because both concepts envision that they are permitted so long as certain conditions are met, the indiscriminate use of the two terms has created little difficulty. In a pure sense, however, “conditional uses” refer to uses while exceptions normally apply to area, *i.e.,* yard, height, and density matters. In either event, conditional uses and special exceptions are permitted uses, so long as the conditions set out in the ordinance are met.

6 Exceptional is used here in its generic sense.

7 Another typical Baltimore City case in that regard is *Easter v. Mayor and City Council of Baltimore,* 195 Md. 395, 400, 73 A.2d 491 (1950), where the Court noted “facts to justify an exception ... [show] that the hardship affects the particular premises and is not common to other property in the neighborhood.” This is a variance standard.

8 The application and plans in the case *sub judice* were, at best, vague and unclear as to the height of the structure.

9 The applicability of the “doctrine of zoning estoppel” has still not been accepted (or rejected) by the Court of Appeals in spite of the opportunity presenting itself to that Court as recently as our case of *Offen v. County Council,* 96 Md.App. 526, 625 A.2d 424 (1993), *rev'd in part,* 334 Md. 499, 639 A.2d 1070 (1994).

Cromwell v. Ward, 102 Md.App. 691 (1995)
651 A.2d 424

End of Document © 2021 Thomson Reuters. No claim to original U.S. Government Works.

137 Md.App. 90
Court of Special Appeals of Maryland.

James RIFFIN,
v.
PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY, Maryland, et al.

No. 3002, Sept. Term, 1999.
|
March 2, 2001.

Synopsis
Landowner appealed decision of the county board of appeals denying request for a special exception to construct a commercial recreation facility to accommodate bungee jumping. The Circuit Court, Baltimore County, Thomas J. Bollinger, Sr., J., affirmed. Landowner appealed. The Court of Special Appeals, Moylan, J., held that the proposed use was a "bungee jumping operation" prohibited by state law and county ordinance.

Affirmed.

West Headnotes (7)

[1] **Administrative Law and Procedure** Substantial evidence

The standard of review of an administrative agency's findings of fact requires the Court of Special Appeals to determine whether substantial evidence on the record as a whole supports its conclusions.

[2] **Administrative Law and Procedure** Substitution of reviewing court's discretion or judgment

The Court of Special Appeals cannot substitute its judgment for that of an administrative agency on findings of fact, but must exercise a restrained and disciplined judicial judgment so as not to interfere with the agency's factual conclusions.

[3] **Zoning and Planning** Entertainment and recreation; theaters and clubs

Landowner's proposed commercial recreation facility to accommodate bungee jumping was a "bungee jumping operation" prohibited by state law and county ordinance, rather than a "commercial recreational facility," and, thus, the landowner was not entitled to a special exception; the crane operator acknowledged payment by the landowner, and the county ordinance defined "commercial recreational facility" to exclude an amusement park or similar use. Code, Business Regulation, § 3–503.

[4] **Zoning and Planning** Grounds for grant or denial in general

The county board of appeals cannot grant a special exception for a use that is neither permitted by law nor by county zoning regulations.

[5] **Zoning and Planning** Entertainment and recreation; theaters and clubs

Evidence supported conclusions by the county board of appeals that a one-story office building was not unique and that the landowner was not entitled to special exception and variances to construct a commercial recreation facility.

[6] **Zoning and Planning** Nature and necessity in general

A "variance," if granted, permits a use that is normally prohibited and presumed to be in conflict with the ordinance.

[7] **Zoning and Planning** Presumptions and burden of proof

An applicant for a variance bears the burden of overcoming the presumption that the proposed use is unsuitable.

Attorneys and Law Firms

****923** ***91** James Riffin, Timonium, for appellant.

Peter Max Zimmerman and Carole S. Demilio, Towson, for appellees.

***92** Submitted before MOYLAN,* SONNER and PAUL E. ALPERT (retired, specially assigned), JJ.

Opinion

MOYLAN, Judge.

The appellant, James Riffin, challenges an Order issued by Judge Thomas J. Bollinger in the Circuit Court for Baltimore County affirming the decision of the Baltimore County Board of Appeals, which denied his petitions for a special hearing, special exception, and five separate zoning variances. On appeal, he contends:

1. that the Board erred in finding that the appellant's proposed use of the property constituted a "bungee jumping operation"; and

2. that the Board acted arbitrarily and capriciously in denying his petitions.[1]

At some point in the spring of 1998, the appellant petitioned the Baltimore County Zoning Commissioner for a Special Hearing, for a Special Exception, and for nine area parking and sign variances in an effort to operate a "Commercial Recreational Facility" at 1941 Greenspring Avenue Drive in Timonium. At that time, there existed on the property an old one-story building which was rented for office space. The property was zoned for M.L. (Manufacturing–Light). It was the appellant's intention in seeking the exception and the variances to create a commercial/recreation facility that would accommodate bungee jumping.

On June 1, 1998, the Zoning Commissioner granted four of the requested nine variances for existing non-conforming front and side-yard setbacks but denied all of the other requests. The appellant appealed that decision to the Baltimore County Board of Appeals ("the Board") and a three day public hearing ***93** began on November 25, 1998.[2] In the course of that hearing, the Board heard extensive testimony from the appellant regarding his plans for the property. The Board also heard testimony from adjacent property owners, from the Office of the People's Counsel, and from a representative from the Greater Timonium Community Council, all of whom testified in opposition to the appellant's petitions.

On December 31, 1998, the Board issued an extensive written Opinion denying the appellant's request for both the Special Hearing and Special Exception for bungee jumping and for the requested variances that had been denied by the Zoning Commissioner. The appellant appealed to the Circuit Court for Baltimore County. On October 4, 1999 a hearing was held before Judge Bollinger. On October 7, Judge Bollinger affirmed the Board's decision, finding that it was supported by substantial evidence and was not premised on any error of law. The appellant noted this timely appeal.

[1] **[2]** With regard to the standard of review to be applied in a case such as this, we explained in *Stover v. Prince George's County,* 132 Md.App. 373, 380–81, 752 A.2d 686 (2000), that:

> [w]hen reviewing a decision of the administrative agency, this Court's role is "precisely the same as that of the circuit court." "Judicial review of administrative agency action is narrow. The court's task on review is *not* to 'substitute its judgment for the expertise of those persons who constitute the administrative agency."
>
> ****924** Rather, "*[t]o the extent the issues on appeal turn on the correctness of an agency's findings of fact, such findings must be reviewed on the substantial evidence test.*" The reviewing court's task is to determine "whether there was substantial evidence before the administrative agency on the record as a whole to support its conclusions." *The court cannot substitute its judgment for that of the agency, but* ***94** *instead must exercise a "restrained and disciplined judicial judgment so as not to interfere with the agency's factual conclusions.*"

(Citations omitted; emphasis supplied).

[3] The appellant first contends that the trial court erred in denying his petition for a Special Hearing and a Special Exception in order to accommodate bungee jumping. The appellant specifically contends that the trial court erred in finding that his proposed use of the property would amount to a "bungee jumping operation," which both parties agree is prohibited in Maryland,[3] rather than a "recreational use," which is permissible. We are not persuaded.

In its Opinion denying the appellant's request for a Special Hearing and Special Exception, the Board set out, in great detail, its findings with respect to the appellant's proposed use:

> The Board has carefully considered the testimony produced and the numerous exhibits of the evidence admitted and items marked for identification and weight assessment. This Board's initial review involved bungee jumping and how it is addressed in the Maryland Code. A review of the law and supporting documents afforded the Board members some insight into the thinking of the legislature on this subject.... *The Board concluded that the bungee jumping operations as proposed by the appellant/petitioner was in actuality a bungee jumping operation.* Regardless of ***95** whether using the word "operation" or the word "activity," it is semantical and one resembles the other. The inference regarding fees came out in the testimony by a crane operator who acknowledged that he was paid by Mr. Riffin for operating the crane, and that he expected to continue on as a crane operator if Mr. Riffin were allowed to have a bungee jumping operation. As well, Mr. Riffin indicated that individuals would be able to rent the crane and /or any needed equipment in order to perform bungee jumping activities. *These representations produce the appearance of being a bungee jumping operation, which is not allowed by Maryland law, this would not be a permitted use under the Baltimore County Zoning Regulations ["BCZR"].*

The Board then explored whether the appellant's proposed use could in any way be viewed as a Commercial Recreational Facility, a permissible use for the property under the zoning regulations. In rejecting the appellant's contention, the Board stated:

> The Board then looked at the definitions of Commercial Recreational Facilities under BCZR 101.... *The definition notes that a commercial recreational facility shall not include an amusement park or similar use.* Throughout the numerous discussions as to what bungee jumping would be considered, it came up ****925** that it was frequently done in conjunction with amusement-like operations and was described by expert witnesses as a "thrill seeking activity." It was noted that State legislation regarding bungee jumping was put in that Section of the Annotated Code as amusement activities.

In rejecting the appellant's final two arguments with respect to his request for a Special Exception, the Board found 1) that bungee jumping did not qualify as a permitted use under Section 253 of the BCZR, which permits practice or physical training conditioning facilities and fields for amateur or professional sports organizations; and 2) that bungee jumping did not qualify as a use permitted without special exception under Section 270 of the BCZR 2–115 Schedule of Special Exceptions. That Schedule provides that a community building, ***96** swimming pool, or other structural or land use devoted to civic, social or recreational and educational activities is a use permitted without special exception.

[4] The appellant is correct in that a requested special exception should be granted unless there is substantial evidence that it would have an adverse effect above and beyond those inherently associated with such a special exception use irrespective of its location within the zone. What the appellant fails to acknowledge, however, is that the Board made a factual finding that the appellant's proposed use of the property amounted to a "bungee jumping operation," not a "recreational facility." That finding alone required the Board to deny the petition for the special exception. The Board simply cannot grant a special exception for a use that is neither permitted by law nor by Baltimore County Zoning Regulations. There is substantial evidence in the record to support that finding by the Board. We see no error.

[5] Additionally, we note that even assuming *arguendo* that the Board erred in finding that the appellant's proposed use was an illegal "bungee jumping operation," we would still hold that the Board did not err in denying the appellant's petition for a Special Exception. In its Opinion the Board carefully examined the criteria for granting a request for a special exception under Section 502.1 of the BCZR.[4] After ***97** doing so, the Board found that the appellant failed to satisfy those criteria. We hold that there was substantial evidence on the record supporting that decision.

[6] **[7]** With regard to the appellant's variance requests, we note that a variance, if granted, permits a use that is normally prohibited and presumed to be in conflict with the ordinance. *North v. St. Mary's County,* 99 Md.App. 502, 510, 638 A.2d 1175 (1994). "An applicant for a variance bears the burden of overcoming the presumption that the proposed use is unsuitable. That is done, if at all, by satisfying fully the dictates of the statute authorizing the variance." *North,* 99 Md.App. at 510, 638 A.2d 1175.

In denying the appellant's requests for variances, the Board explained:

Section 307.1 of the *Baltimore County Zoning Regulations* states, in pertinent part, as follows:

> ****926** "... [T]he County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area 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* ... Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area .. regulations, and only in such manner as to grant relief without injury to public health, safety, and general welfare."

As well, this Board enjoys the guidance provided by the Court of Special Appeals in *Cromwell v. Ward,* 102 Md.App. 691 [651 A.2d 424] (1995). In requiring a pre-requisite finding of "uniqueness," the Court defined the term and stated:

> ***98** In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. *"Uniqueness" of a property for zoning purposes requires that the subject property has an inherent characteristic not shared by other properties in the area, i.e.,* it shape, topography, subsurface condition, environmental factors, historical significance, access, or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions....
>
> *It is this Board's finding that the proposed site is in no way unique, unusual or different from the other properties that are existent in this M.L.-I.M. zone.* The Maryland Department of Assessments and Taxation, real Property System map, shows just how similar in size and shape all of the properties are along Greenspring Drive. Testimony by Mr. Patton indicated that this property was consistent with others in the community, and he noted that the gentle slope off of Greenspring Drive was consistent with other properties, further noting that some chose to fill in their properties before building and have entrances at the rear of their locations.... At no time in the hearing did the appellant entertain any historical significance to the site nor were environmental or subsurface conditions documented. Mr. Riffin did testify as to the damage to the interior of his building but did not document the same with photographic exhibits, receipts for repairs or documentation by some authority regarding the nature or extent of this damage. There was no testimony or evidence regarding abutting properties restricting his activities or imposing any unique characteristics upon his site. *In the absence of an initial finding of uniqueness, the inquiry under Section 307.1 stops and, in this case, the three variances must be denied.*

(Emphasis supplied). We see no error.

JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANT.

All Citations

137 Md.App. 90, 767 A.2d 922

Footnotes

* Moylan, J., participated in the hearing and conference of this case while an active member of this Court; he participated in the adoption of this opinion as a retired, specially assigned member of this Court.

1 We note that in his brief to this Court, the appellant raised five issues with approximately twenty subcontentions. We have condensed those subcontentions into two.

2 The public hearing was held on November 25, December 15, and December 17, 1998.

3 Md.Code, Business Regulation, § 3–503 specifically provides:
§ 3–503. **Prohibition on bungee jumping operation.**
(a) *Definitions.*—(1) in this section the following words have the meaning indicated.
(2) "Bungee jump" means jumping or falling by an individual from a height while attached to a rope or cord that is elastic, rubber, or latex.
(3) "Bungee jumping operation" means an operation that allows an individual to bungee jump for a fee or dues.
(b) *Prohibition.*—A person may not conduct a bungee jumping operation.
(c) *Penalties.*—A person who violates subsection (b) of this section is guilty of a misdemeanor and, on conviction, is subject to a fine not exceeding $2,500 or imprisonment not exceeding 6 months or both.

4 Section 502.1 specifically provides:

Before any Special Exception may be granted, it must appear that the uses for which the Special exception is requested will not:

a. Be detrimental to the health, safety or general welfare of the locality involved;
b. Tend to create congestion in roads, streets or alley therein;
c. Create a potential hazard from fire, panic, or other dangers;
d. Tend to overcrowd land and cause undue concentration of population;
e. Interfere with adequate provisions for schools, parks, water, sewerage, transformations or other public requirements, convenience, or improvements;
f. Interfere with adequate light and air;
g. Be consistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; nor
h. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations.

End of Document © 2021 Thomson Reuters. No claim to original U.S. Government Works.

KeyCite Yellow Flag - Negative Treatment
Distinguished by Montgomery County v. Merlands Club, Inc., Md., April 17, 1953

195 Md. 395
Court of Appeals of Maryland.

EASTER

v.

MAYOR & CITY COUNCIL OF BALTIMORE et al.

No. 176.
|
May 12, 1950.

Synopsis

Action by Andrew J. **Easter** against **Mayor** and City Council of Baltimore and others challenging validity of city's approval of construction of addition on front of store and dwelling. The Baltimore City Court, Emory H. Niles, J., rendered judgment for defendants and plaintiff appealed. The Court of Appeals, Henderson, J., held that granting of variance of setback requirements and occupancy rule was not warranted.

Reversed.

West Headnotes (5)

[1] **Zoning and Planning** Grounds for grant or denial in general

Board of Zoning Appeals of City of Baltimore in granting special exceptions must consider the factors set out as standard in zoning ordinance, and its action must be reasonable in light of these and all other pertinent facts.

1 Cases that cite this headnote

[2] **Zoning and Planning** Nature and extent of power

The power of Board of Zoning Appeals on City of Baltimore under zoning ordinance to grant exceptions must be strictly construed.

1 Cases that cite this headnote

[3] **Zoning and Planning** Necessity of showing

Zoning and Planning Presumptions and burden of proof

Burden of showing facts to justify an exception of variance under zoning ordinance rests upon applicants, and it must be shown that hardship affects particular premises and is not common to other property in neighborhood.

8 Cases that cite this headnote

[4] **Zoning and Planning** Profit or disadvantage; financial considerations

Mere fact that variance would make property more profitable is not a sufficient ground to justify granting of variance from setback requirements of Baltimore Zoning Ordinance.

8 Cases that cite this headnote

[5] **Zoning and Planning** Building or setback lines

That other buildings extended to front line of lot and lot was irregular did not authorize Board of Municipal and Zoning Appeals of City of Baltimore to grant a permit for construction of addition on front of store and dwelling in variance of setback rules and occupancy requirement on ground of hardship.

3 Cases that cite this headnote

Attorneys and Law Firms

***397** ****491** John F. Heath, Baltimore, for appellant.

***398** Benjamin Kann and Malcolm J. Coan, Baltimore, for appellees J. P. **Easter** and wife.

Thomas N. Biddison, City Sol., Edwin, Harlan, Deputy City Sol., and Hamilton O'Dunne, Asst.City Sol., Baltimore, for appellee **Mayor** and City Council of Baltimore.

Before MARBURY, C. J., and DELAPLAINE, COLLINS, GRASON, HENDERSON and MARKELL, JJ.

Opinion

HENDERSON, Judge.

This appeal is from a judgment of the Baltimore City Court affirming the action of the Board of Municipal and Zoning Appeals in granting a permit for the construction of a one-story and basement addition on the front of a store and dwelling at 6418 Belair Road, owned by John P. **Easter**. The only protestant, Andrew J. **Easter**, is a brother of the permittee, residing at 6420 Belair Road, where he conducts a tavern.

As stated by the trial Court, 'The property is in a First Commercial Use, C. Area District, and the permit would allow the store front to be brought out to the building line, in contravention of paragraph 24 of the Zoning Ordinance, which requires a 10-foot minimum depth of front yard in the area in question, and of the percentage of occupancy requirements under paragraph 21, bringing the percentage of occupancy to 85% as opposed to 60%, as provided in the Ordinance. The Board of Municipal and Zoning Appeals granted the permit under the provision of Paragraph 33(c) on the ground that '* * * due to its peculiar location and surroundings it is a case of practical difficulty and unnecessary hardship, since the Tavern already obstructs the view of the store where the addition is now proposed''. The court thought there was 'evidence sufficient to support the legal definition of a hardship and * * * in fact, it would be a hardship to allow one brother ****492** to have a tavern all the way out to the street, and to deny the other brother the right to build his store out to the same line as the tavern.'

The Board found that the store was 'on the west side of Belair Road, 105 feet south of **Easter** Terrace. * * * ***399** Adjacent to the premises under appeal is a building containing a tavern which is built out to the front line of the lot. To the north between **Easter** Avenue and Kenwood Avenue there are several buildings constructed to the front lines of the lot and the proposed addition would not affect access of light and air to any neighboring properties, nor would it even cut off the view up and down the street. The lot in question is of very shallow depth and irregular in shape * * *.' The store and tavern were built as semidetached buildings. In 1935 Andrew J. **Easter** obtained a permit to build a sort of covered entrance-way out to the building line. John P. **Easter** did not object, and there were no protests. In his present application John P. **Easter** states that since his brother 'has built out in front of us it has hid our store making it difficult to rent.' There is a small triangular vacant lot to the south of 6418, and a church property adjoining to the south, across an alley laid out but apparently not opened. The church is set back the required distance. Andrew J. **Easter** has applied for a permit, and obtained the approval of the Board, to develop the land to the north, comprising about six acres, as a shopping center with off-street parking facilities and the required set-back. If this project is carried out, he states that he proposes to remove the entrance in front of his tavern.

[1] **[2]** We may assume here, as we have assumed in previous cases, that the delegation to the Board of Zoning Appeals of the power to make special exceptions or variances is valid, and that the standards set up in Section 32(j) are adequate. Colati v. Jirout, 186 Md. 652, 656, 47 A.2d 613; Heath v. **Mayor** and City Council of Baltimore, 187 Md. 296, 49 A.2d 799; Heath v. **Mayor** and City Council of Baltimore, Md., 58 A.2d 896, 898. The Board must consider the factors set out in that section and 'its action must be reasonable in the light of these and all other pertinent facts.' Heath v. **Mayor** and City Council of Baltimore, supra, 187 Md. 305, 49 A.2d 804. The power to grant exceptions ***400** must be strictly construed. Colati v. Jirout, supra, 186 Md. page 659, 47 A.2d 613.

[3] **[4]** The burden of showing facts to justify an exception or variance rests upon the applicant, and it must be shown that the hardship affects the particular premises and is not common to other property in the neighborhood. Rathkopf, Zoning, 2d Ed., p. 215; Levy v. Board of Standards and Appeals, 267 N.Y. 347, 196 N.E. 284. The mere fact that the variance would make the property more profitable is not a sufficient ground to justify a relaxation of setback requirements. Garden View Homes v. Board of Adjustment, 137 N.J.L. 44, 57 A.2d 677.

In the instant case there is no suggestion that the Board failed to 'act as a fact-finding body' or to 'give consideration to the rules, regulations, restrictions, guides and standards set forth' in the Ordinance (paragraph 33(c)). The question is whether the undisputed facts support the Board's action. The fact that the lot is irregular has no bearing on the question, nor is it material that three buildings, some distance to the north, extend to the building line. These may have been built before the passage of the Ordinance, or they may have been built under permit or without permit. As was said in Potts v. Board of Adjustment, 133 N.J.L. 230, 43 A.2d 850, 854: 'Prior exceptions granted by the adjustment board are not in themselves controlling. Ill-advised or illegal variances do not

furnish grounds for a repetition of the wrong. If that were not so, one variation would sustain if it did not compel others, and thus the general regulation eventually would be nullified. The annulment of zoning is a legislative function that is beyond the domain of the zoning board.' See also the cases collected in a note 168 A.L.R. 13, 41-44. The same principle was announced and applied in **493 Heath v. Mayor and City Council of Baltimore, supra, Md., 58 A.2d 896, 898, Mayor and City Council of Baltimore v. Byrd, Md., 62 A.2d 588, 591, and Cassel v. Mayor and City Council of Baltimore, Md., 73 A.2d 486.

*401 The principal fact relied upon to justify an exception to the area and set-back rules, adopted in the general interest under the police power, is the existence of an exception on the adjoining lot. Undoubtedly this is detrimental to the applicant, although his case is somewhat weakened by his tacit acceptance of the situation over a period of years. But we think the detriment to the applicant must be weighed against the benefit to the community in maintaining the general plan. 'It is by these gradual encroachments, individually or relative insignificance, that the integrity of the general scheme is undermined and ultimately shattered. One departure serves as justification for another * * *.' Dubin v. Wich, 120 N.J.L. 469, 200 A. 751, 754. In the case of non-conforming uses, the ordinance tolerates their continuance, but looks towards their ultimate elimination. Colati v. Jirout, supra. The same principle applies to special exceptions. Heath v. Mayor and City Council of Baltimore, supra, Md., 58 A.2d 896. Use variances are doubtless more serious than dimensional changes, but that is only a matter of degree.

In People ex rel. Fordham Manor Reformed Church v. Walsh, 244 N.Y. 280, 286, 155 N.E. 575, 577, it was contended that the existence of a garage immediately adjoining the proposed garage was sufficient justification for the grant of an exception on the ground of unnecessary hardship. But the Court, speaking through Chief Judge Cardozo, said: 'We think the reasons assigned are insufficient to supply a basis for a departure from the map. They amount to nothing more than this, that a garage may be built because there is another one next door.' See also Ventresca v. Exley, 358 Pa. 98, 56 A.2d 210, 212. No estoppel can be raised against the Board by reason of its approval of similar extensions in other cases. Appeal of Valicenti, 298 Pa. 276, 148 A. 308; Note 119 A.L.R. 1509, 1517.

[5] Under the circumstances we think the action of the Board cannot be sustained.

Judgment reversed, with costs.

All Citations

195 Md. 395, 73 A.2d 491

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

216 Md. 271
Court of Appeals of Maryland.

PARK SHOPPING CENTER, Inc., and St. Mary's County Planning and Zoning Comms.
v.
LEXINGTON PARK THEATRE CO., Inc., et al. and Zoning Board of Appeals for St. Mary's Co.

No. 150.
|
April 1, 1958.

Synopsis
Proceeding on application to municipal zoning and planning commission for use and occupancy permits for certain premises. The commission disapproved the application, and applicant appealed to zoning board of appeals for the county which reversed the decision of the commission, and the commission appealed. The Circuit Court, St. Mary's County, John B. Gray, Jr., J., affirmed action of board, and commission appealed. The Court of Appeals, Brune, C. J., held that there was no substantial evidence to support a finding that use and conformity with zoning restrictions would prevent applicants from making a reasonable use of their property and in view of absence of evidence of any hardship or injustice resulting from requiring applicants to conform, action of zoning board of appeals in granting a variance was unwarranted and erroneous.

Order reversed and case remanded for entry of an order in accordance with opinion.

West Headnotes (3)

[1] **Zoning and Planning** Effect of other applications or nonconforming uses
It is not proper to consider the existence of surrounding ill-advised or illegal zoning variances as grounds for granting additional variances.
2 Cases that cite this headnote

[2] **Zoning and Planning** What constitutes in general
The criterion for determining unnecessary hardship, as a ground for granting a zoning variance, is whether the applicable zoning restriction, when applied to the property in the setting of its environment, is so unreasonable as to constitute an arbitrary and capricious interference with the basic right of private ownership.

[3] **Zoning and Planning** Grounds for grant or denial in general
In proceeding on application for use and occupancy permits at variance with zoning restrictions there was no substantial evidence to support a finding that use and conformity with zoning restrictions would prevent applicants from making a reasonable use of their property, and in view of absence of evidence of any hardship or injustice resulting from requiring applicants to conform, action of zoning board of appeals in granting a variance was unwarranted and erroneous.

Attorneys and Law Firms

***273** ****843** Arthur L. Rysticken, Lexington Park (Joseph D. Weiner, Leonardtown, on the brief), for Park Shopping Center, Inc.

William O. E. Sterling, Leonardtown, for St. Mary's County Planning & Zoning Comms.

William M. Loker, Jr., Leonardtown (Loker, Wigginton & Loker, Leonardtown, on the brief), for appellees.

Before BRUNE, C. J., and HENDERSON, HAMMOND, PRESCOTT and HORNEY, JJ.

Opinion

BRUNE, Chief Judge.

This is an appeal from an order of the Circuit Court for St. Mary's County, ****844** Maryland, affirming the action of the Board of Zoning Appeals for St. Mary's County in reversing the decision of the St. Mary's County Planning and Zoning Commission which denied Certificates of Use and Occupancy to the appellees. The action of the Circuit Court resulted in granting to the appellees a variance from the Zoning Ordinance for St. Mary's County.

On March 2, 1955, the Lexington Park Theatre Company, Inc. (the 'Theatre Company'), located in Lexington Park, Maryland, applied to the St. Mary's Planning and Zoning Commission for a Use and Occupancy Permit for a one story building to contain storage space, a lobby for the adjoining theatre, and one retail store. On April 9, the Planning and Zoning Commission granted approval of the plans for ***274** the one story building upon condition that the Theatre Company would remove that part of the building which was to extend into the 25-foot rear yard and thus constituted a violation of Section VIII D (5) of the Zoning Ordinance for St. Mary's County (approved August 24, 1945, and corrected, revised and amended February 26, 1952.) On June 30, 1955, the Theatre Company filed a new application requesting authority to add a second floor for use as office space. This application was also approved. The Theatre Company then proceeded with construction of the building and by the summer of 1956 the building was substantially completed.

The completed building was not in compliance with the permits granted by the Planning and Zoning Commission in that it still contained the extension which encroached upon the 25-foot back yard, and the upstairs portion of the building was not used in compliance with the original Use and Occupancy Permit, since, instead of leasing the rooms for use as offices, the Theatre Company had installed kitchens in four of the units and rented them as apartments and also rented the remaining rooms as individual living quarters.

In December of 1956 the Theatre Company filed applications for Use and Occupancy Permits for the first floor as one retail store unit, and the second floor as apartments and living quarters. The Zoning and Planning Commission disapproved this application on the ground that the plans were in violation of the Zoning Ordinances (presumably with reference to the encroachment on the 25-foot back yard, and the use of the upper floor as residences without providing for a 30-foot side or rear yard as required by Section VIII D (3) of the Zoning Ordinance.) From this decision the Theatre Company appealed to the Zoning Board of Appeals for St. Mary's County, claiming, *inter alia*, that the decision of the Planning and Zoning Commission was arbitrary and capricious. After publication of a notice (which did not specifically state that the Theatre Company was asking for a variance) and a hearing, the Zoning Board of Appeals rendered its decision reversing the action of the Planning and Zoning Commission on the ground that there was evidence of so many other violations of the Zoning Ordinance in the ***275** vicinity of the Theatre Company's building that it would be unjust to enforce the ordinance against the Theatre Company alone. The Board of Zoning Appeals stated in its opinion that 'Violations apparent from existing uses of the property in respect of the required space for loading and unloading of goods and materials appear frequent and to have been passed by the Zoning Commission and the usual Certificate[s] of Use and Occupancy were issued to the buildings notwithstanding such violations * * *.'

The Board of Zoning Appeals also found as a fact that the Theatre Company had knowingly violated the Zoning Ordinance when it built the extension into the 25-foot year yard and used the upper floor for residential purposes and said that, 'if it were not for the existence of what appears to have been almost a customary thing for ****845** minor violations to be overlooked or condoned by the Zoning Commission we would not say that the Appellants [appellees here] were in the best position to ask that a variance be condoned in the present instance.' The Board found it difficult to decide what category, as defined by the Zoning Ordinance Section II, the second floor residences fitted into and apparently did not reach a conclusion on that question, but held they were not multiple dwellings.

The appellants, Park Shopping Center, Inc. and the County Planning and Zoning Commission, appealed from this decision to the Circuit Court for St. Mary's County, and the cases were consolidated for hearing (as they are here). After a full hearing the Circuit Court ruled that there was sufficient evidence before the Zoning Board of Appeals to grant the variance for the first floor of the building. It also found that the second floor of the building constituted a 'multiple dwelling' as defined by Section II of the Zoning Ordinance for St. Mary's County, and that although the Zoning Board of Appeals had not specifically granted a veriance for this second story, it could have determined from the evidence before it that no appreciable mischief would be done to the surrounding area or to the public interest by granting a

variance for the second story. Thereupon the Court affirmed the decision of the Zoning Board of Appeals.

***276** The appellants make three contentions: first, that the decision of the Zoning Board was arbitrary and capricious because there was no showing of any such unwarranted hardship as would be necessary to justify a variance; second, that the Circuit Court could not properly grant a variance for the use of the second floor as a multiple dwelling when the Zoning Board of Appeals itself did not decide that this was a multiple dwelling unit and therefore granted no variance; and third, that the notice of hearing published by the Zoning Board of Appeals was not legally sufficient since it did not state that the matter of a variance was in issue.

With respect to the appellants' first contention, it is evident from both the opinion of the Board of Zoning Appeals and the opinion of the Circuit Court that the Board used the existence of other violations or variances in the immediate area tolerated or granted by the Planning and Zoning Commission to justify the issuance of the Certificates of Use and Occupancy here in question.

[1] This Court has held that it is not proper to consider the existence of surrounding ill-advised or illegal variances as grounds for granting additional variances. As stated in Easter v. Mayor and City Council of Baltimore, 195 Md. 395, 400, 73 A.2d 491, 492, 'Prior exceptions granted by the adjustment board are not in themselves controlling. Ill-advised or illegal variances do not furnish grounds for a repetition of the wrong. If that were not so, one variation would sustain if it did not compel others, and thus the general regulation eventually would be nullified.' In Marino v. City of Baltimore, 215 Md. 206, 220, 137 A.2d 198, 203, Judge Horney stated for the Court: 'Certainly a prior exception granted by the Board does not control the granting of a subsequent exception.'

The authority under which the Board of Zoning Appeals can grant a variance is found in Section XVIII (3) of the Zoning Ordinance for St. Mary's County which states that the Board shall have power '[t]o authorize upon appeal in specific cases such variance from the terms of the ordinances as will not be contrary to the public interest, where, owing to special conditions, the enforcement of the provisions of ***277** this ordinance will result in *unwarranted hardship and injustice*, but which will most nearly accomplish the purpose and intent of the Zoning Plan and of the Zoning Regulations.' (Emphasis supplied.) It is in language typical of a variance as distinguished from an exception. ****846** Montgomery County v. Merlands Club, 202 Md. 279, 288, 96 A.2d 261. Cf. Marino v. City of Baltimore, supra, which points out that under the Baltimore City Ordinance an 'exception' perhaps overlaps a 'variance' in cases of 'practical difficulties or unnecessary hardships' and the two are accordingly discussed without distinction in many cases arising under that Ordinance. 215 Md. 216, 137 A.2d 202. The section before us is an almost verbatim copy of the enabling act, Section 22(g)(3), Article 66B of the Maryland Code (1957 Ed.).

[2] This Court has had many occasions to pass upon the question of what constitutes such a hardship and injustice as to sustain the granting of a variance. It has most recently done so in Judge Horney's clear and exhaustive opinion in Marino v. City of Baltimore, supra. No useful purpose would be served by repeating here what was well said there beyond quoting the test of hardship therein stated (215 Md. 217, 137 A.2d 202): 'The criterion for determining unnecessary hardship is whether the applicable zoning restriction when applied to the property in the setting of its environment is so unreasonable as to constitute an arbitrary and capricious interference with the basic right of private ownership. [Citing Carney v. City of Baltimore, 1952, 201 Md. 130, 137, 93 A.2d 74, 76-77.]'

[3] The Theatre Company has not made any showing of hardship such as to justify the granting of a variance. We find no substantial evidence in the record to support a finding that use in conformity with the Zoning restrictions would prevent the appellees from making a reasonable use of the property as to either the first or second floor. On the contrary, the testimony establishes the fact that when the St. Mary's County Planning and Zoning Commission approved the first application for a Certificate of Use and Occupancy for the first floor of the building to be used as a retail store, lobby space for the theatre, and storage, the Theatre Company had ***278** agreed to remove the obstruction in the rear yard shown on the building plans. It is difficult to believe that it would have so readily acquiesced in this removal if it had felt that it would prevent a reasonable use of its property. The chief, if not the only, stated ground for the Theatre Company's objection to removing that structure is that it 'was unfair to have to, the other stores had not but I said I would move it.' (Testimony of Mr. Dean, described as 'one of the owners of the building under consideration,' before the Zoning Board of Appeals.) There is no showing, so far as we can discover, as to either the cost or difficulty of removing the 25-foot extension and transferring the equipment therein to the main building.

As to the second floor, the evidence of hardship is perhaps even less. When asked by a member of the Board of Zoning

Appeals whether the upstairs had been used, Mr. Dean replied: 'To some extent for rooms instead of offices. If the business for rooms drops off, we can use them for offices.'

In view of the absence of evidence of any hardship or injustice, we are of the opinion that the Zoning Board of Appeals' action was unwarranted and erroneous.

Our decision on this ground makes it unnecessary to consider the other questions raised by the appellants.

Order reversed, and case remanded for the entry of an order in accordance with this opinion; costs to be paid by appellees.

All Citations

216 Md. 271, 139 A.2d 843

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

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

March 30, 2021

NOTICE OF DELIBERATION

IN THE MATTER OF: Donna V. Bair – Legal Owner
4607 Prospect Avenue
19-342-SPHA 4th Election District; 3rd Councilmanic District

8/9/19 Opinion and Order of the Administrative Law Judge wherein the:

- Petition for Special Hearing: 1) to approve a nonconforming lot width and lot area; and 2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of 30 inches was GRANTED; the
- Petition for Special Hearing: 1) to approve a nonconforming dwelling side yard setback; and 2) to confirm that an existing fence (swimming pool enclosure) with a height of 6' is in compliance with BCZR §427.1 and BCC §13-6-101 was DENIED; and the
- Petition for Variance: 1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.; 2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; and 3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches was DENIED

9/9/19 Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire on behalf of Donna V. Bair, Petitioner.

9/25/19 Order on Motion for Reconsideration issued by the Administrative Law Judge wherein it was Ordered:

- that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms in BCZR §104;
- that all new construction must comply with current setbacks and restrictions at the time of new construction; and
- all other matters and respects of Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

This matter having been heard on February 6, 2020, March 23, 2021, and concluded on March 25, 2021, a public deliberation has been

ASSIGNED FOR: APRIL 20, 2021, AT 9:00 A.M.

The above scheduled public deliberation will be held remotely using WebEx for audio and video participation. **Call-in information and a link to the public deliberation will be posted on our web calendar the night before at** www.baltimorecountymd.gov/Agencies/appeals/index.html.

NOTE: Closing briefs are due on **APRIL 9, 2021 no later than 3:00 p.m.**
ELECTRONIC COPY ONLY
emailed to appealsboard@baltimorecountymd.gov

NOTE: PUBLIC DELIBERATIONS ARE OPEN WORK SESSIONS WHICH ALLOW THE PUBLIC TO WITNESS THE DECISION-MAKING PROCESS. A WRITTEN OPINION AND ORDER WILL BE ISSUED BY THE BOARD WITHIN A REASONABLE TIMEFRAME AFTER DELIBERATION AND A COPY SENT TO ALL PARTIES.

If you do not have access to a computer or smart device, please contact our office for the call-in information the day before the scheduled deliberation.

Krysundra Cannington, Administrator

c. Counsel for Petitioners : Lawrence E. Schmidt, Esquire
Legal Owner : Donna Bair

People's Counsel for Baltimore County : Peter M. Zimmerman, Esquire

Protestants *pro se* : Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
John E. Lemmerman/RTF Associates, Inc.
Kim and Tom Montanye
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz

Paul M. Mayhew, Managing Administrative Law Judge
Steve Lafferty, Director/Department of Planning
C. Pete Gutwald, Director/PAI
James R. Benjamin, Jr., County Attorney
Nancy C. West, Assistant County Attorney

Board of Appeals

Case No: 19-342 SPHA. Case Name: Donna Bair.

Exhibit List

Party: Petitioner Date: 2/6/2020

Exhibit No:	Description:
✓ 1	Plan to Accompany Pet Zoning Hearing.
✓ 2A-E	Photos before construction
✓ 3A-3Q	Photos present time
✓ 4	Code Violation Order 2/11/19 and Citations
✓ 5A-5C	Landmarks Preservation Comm Meeting 3/14/19
✓ 6	Landmarks Preservation Comm Meeting 10/10/19
✓ 7A-7I	Photos of neighborhood garages.
✓ 8A-8I	Photos of neighborhood fences
✓ 9	My Neighborhood Balt County Map
✓ 9A-9D	Zoning Commissions / BOA Orders.
✓ 10A-10C	Photos of Bair Trees.
✓ 11	Pyle Tree Co. Invoice 3/21/2017
✓ 12	John Motsco PE, CV
✓ 13	1880 Record Plat
	VERIFIED BY KC DATE: 2/7/2020

ID Only

Board of Appeals

Case No: 19-342 SPHA Case Name: Donna Bair

Exhibit List

Party: Petitioners Date: 2/6/2020

Exhibit No:	Description:
14	SDAT Info on Bair Property.
✓ 15	BCZR 421.1 - Fences. + BCC 13-6-107
✓ 16	BCZR § 104.3 - NCU
	VERIFIED BY _____ DATE: _____

KC 2/7/2020

Board of Appeals

Case No: 19-342 SPHA Case Name: Donna Bair

Exhibit List

Party: People's Counsel Date: 2/6/2020

Exhibit No:	Description:
✓ 1	Neighborhood Aerial Photo 2017
✓ 2	PC Sign In Sheet.
✓ 3	Dept Labor Website Realtor Info
✓ 2A	PC Additional Sign In Sheet.
✓ 4A-E	Dept Labor Realtor Supp Info.
	VERIFIED BY _____ DATE: _____

ID only

KC 2/7/2020

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 21, 2021

NOTICE OF REASSIGNMENT - DAYS 2 and 3

IN THE MATTER OF: Donna V. Bair – Legal Owner
4607 Prospect Avenue
19-342-SPHA 4th Election District; 3rd Councilmanic District

8/9/19 Opinion and Order of the Administrative Law Judge wherein the:
- Petition for Special Hearing: 1) to approve a nonconforming lot width and lot area; and 2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of 30 inches was GRANTED; the
- Petition for Special Hearing: 1) to approve a nonconforming dwelling side yard setback; and 2) to confirm that an existing fence (swimming pool enclosure) with a height of 6' is in compliance with BCZR §427.1 and BCC §13-6-101 was DENIED; and the
- Petition for Variance: 1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.; 2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; and 3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches was DENIED

9/9/19 Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire on behalf of Donna V. Bair, Petitioner.

9/25/19 Order on Motion for Reconsideration issued by the Administrative Law Judge wherein it was Ordered:
- that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms in BCZR §104;
- that all new construction must comply with current setbacks and restrictions at the time of new construction; and
- all other matters and respects of Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

The Board convened for hearing on February 6, 2020. This matter did not conclude. This matter has been

ASSIGNED FOR: MARCH 23, 2021, AT 10:00 A.M. – Day 2;
and: MARCH 25, 2021, AT 10:00 A.M. – Day 3

The above scheduled hearing will be held remotely using WebEx for audio and video participation. **Call-in information and a link to the hearing will be posted on our web calendar at** www.baltimorecountymd.gov/Agencies/appeals/index.html **the night before.**

A complete set of **exhibits must be emailed** at least **48 hours before the hearing** to **appealsboard@baltimorecountymd.gov** in a format that complies with MDEC (Maryland Electronic Court) standards.

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 require special accommodations, please contact this office at least one week prior to hearing date.

If you do not have access to a computer or smart device, please contact our office for the call-in information the day before the scheduled hearing.

Krysundra Cannington, Administrator

c. Counsel for Petitioners : Lawrence E. Schmidt, Esquire
Legal Owner : Donna Bair

People's Counsel for Baltimore County : Peter M. Zimmerman, Esquire

Protestants *pro se* : Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
John E. Lemmerman/RTF Associates, Inc.
Kim and Tom Montanye
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz

Paul M. Mayhew, Managing Administrative Law Judge
Steve Lafferty, Director/Department of Planning
C. Pete Gutwald, Director/PAI
James R. Benjamin, Jr., County Attorney
Nancy C. West, Assistant County Attorney

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 5, 2021

NOTICE OF POSTPONEMENT

IN THE MATTER OF: Donna V. Bair – Legal Owner
4607 Prospect Avenue
19-342-SPHA 4th Election District; 3rd Councilmanic District

8/9/19 Opinion and Order of the Administrative Law Judge wherein the:
- Petition for Special Hearing: 1) to approve a nonconforming lot width and lot area; and 2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of 30 inches was GRANTED; the
- Petition for Special Hearing: 1) to approve a nonconforming dwelling side yard setback; and 2) to confirm that an existing fence (swimming pool enclosure) with a height of 6' is in compliance with BCZR §427.1 and BCC §13-6-101 was DENIED; and the
- Petition for Variance: 1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.; 2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; and 3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches was DENIED

9/9/19 Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire on behalf of Donna V. Bair, Petitioner.

9/25/19 Order on Motion for Reconsideration issued by the Administrative Law Judge wherein it was Ordered:
- that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms in BCZR §104;
- that all new construction must comply with current setbacks and restrictions at the time of new construction; and
- all other matters and respects of Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

The Board convened for hearing on February 6, 2020. This matter did not conclude. This matter was assigned for hearing days 2 and 3 on February 23 and 25, 2021. By request of Counsel, these dates have been postponed and will be reassigned to later dates.

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 require special accommodations, please contact this office at least one week prior to hearing date.

If you do not have access to a computer or smart device, please contact our office for the call-in information the day before the scheduled hearing.

Krysundra Cannington, Administrator

c. Counsel for Petitioners : Lawrence E. Schmidt, Esquire
Legal Owner : Donna Bair

People's Counsel for Baltimore County : Peter M. Zimmerman, Esquire

Protestants *pro se* : Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
John E. Lemmerman/RTF Associates, Inc.
Kim and Tom Montanye
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz

C. Pete Gutwald, Director/Department of Planning
Michael D. Mallinoff, Director/PAI
James R. Benjamin, Jr., County Attorney

Paul M. Mayhew, Managing Administrative Law Judge
Nancy C. West, Assistant County Attorney

SMITH, GILDEA & SCHMIDT LLC

MICHAEL PAUL SMITH
DAVID K. GILDEA
LAWRENCE E. SCHMIDT
JASON T. VETTORI
MARIELA C. D'ALESSIO*
MELISSA L. ENGLISH**
* Admitted in MD, PA, FL
** Admitted in MD, NC

LAUREN S. FLEMING
NICOLE LAMBDIN
CARMELO D. MORABITO
ZACHARY J. WILKINS
of counsel:
EUGENE A. ARBAUGH, JR.
MARY G. LOKER
STEPHEN J. NOLAN

January 4, 2021

Via Email Only
Krysundra L. Cannington
County Board of Appeals of Baltimore County
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204
appealsboard@baltimorecountymd.gov

Re: In the Matter of: Donna V. Bair
Property: 4607 Prospect Avenue
Case No. 19-342-SPHA

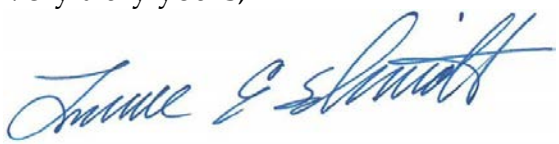
Dear Sunny,

I write by way of follow up to the Notice of Assignment for Days 2 and 3 dated December 15, 2020 in the above referenced matter scheduling this matter for additional hearing dates on February 23, 2021 and February 25, 2021.

Please note that Mrs. Bair and her husband are scheduled to be out of the Country on a pre-planned, pre-paid work trip from February 21 – February 27, 2021. Additionally, they plan to participate in this hearing at our office and we would appreciate a quarantine period for them of 7-10 days. As such, we respectfully request that this matter be rescheduled any time after March 10, 2021.

Thank you for your consideration of this request. Please contact me should you have any questions.

Very truly yours,



Lawrence E. Schmidt

LES/am
cc: Peter Max Zimmerman, Esquire
Tom Montanye (via email: Tom@montanye.net)
Robin S. Coffin (via email: Rscoffin@verizon.net)
Steven Fradkin (via email: Reistlaxcoach@gmail.com)
Donna Bair (via email: donna.bair@yahoo.com)

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 15, 2020

NOTICE OF ASSIGNMENT - DAYS 2 and 3

IN THE MATTER OF: Donna V. Bair – Legal Owner
4607 Prospect Avenue
19-342-SPHA 4th Election District; 3rd Councilmanic District

8/9/19 Opinion and Order of the Administrative Law Judge wherein the:
- Petition for Special Hearing: 1) to approve a nonconforming lot width and lot area; and 2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of 30 inches was GRANTED; the
- Petition for Special Hearing: 1) to approve a nonconforming dwelling side yard setback; and 2) to confirm that an existing fence (swimming pool enclosure) with a height of 6' is in compliance with BCZR §427.1 and BCC §13-6-101 was DENIED; and the
- Petition for Variance: 1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.; 2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; and 3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches was DENIED

9/9/19 Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire on behalf of Donna V. Bair, Petitioner.

9/25/19 Order on Motion for Reconsideration issued by the Administrative Law Judge wherein it was Ordered:
- that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms in BCZR §104;
- that all new construction must comply with current setbacks and restrictions at the time of new construction; and
- all other matters and respects of Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

The Board convened for hearing on February 6, 2020. This matter did not conclude. This matter has been

ASSIGNED FOR: FEBRUARY 23, 2021, AT 10:00 A.M. – Day 2;
and: FEBRUARY 25, 2021, AT 10:00 A.M. – Day 3

The above scheduled hearing will be held remotely using WebEx for audio and video participation. **Call-in information and a link to the hearing will be posted on our web calendar at** www.baltimorecountymd.gov/Agencies/appeals/index.html **the night before.**

A complete set of **exhibits must be emailed** at least **48 hours before the hearing** to **appealsboard@baltimorecountymd.gov** in a format that complies with MDEC (Maryland Electronic Court) standards.

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 require special accommodations, please contact this office at least one week prior to hearing date.

If you do not have access to a computer or smart device, please contact our office for the call-in information the day before the scheduled hearing.

Krysundra Cannington, Administrator

c. Counsel for Petitioners : Lawrence E. Schmidt, Esquire
Legal Owner : Donna Bair

People's Counsel for Baltimore County : Peter M. Zimmerman, Esquire

Protestants *pro se* : Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
John E. Lemmerman/RTF Associates, Inc.
Kim and Tom Montanye
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz

C. Pete Gutwald, Director/Department of Planning
Michael D. Mallinoff, Director/PAI
Paul M. Mayhew, Managing Administrative Law Judge

James R. Benjamim, Jr., County Attorney
Nancy C. West, Assistant County Attorney

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

June 17, 2020

William A. McComas Chairman
Andrew M. Belt, Panel Member
Maureen E. Murphy, Panel Member
Board of Appeals of Baltimore County
105 West Chesapeake Avenue, Suite 203
Towson, Maryland 21204

Re: Donna Bair, Petitioner
4607 Prospect Avenue
Case Nos.: 2019-342-SPHA

Dear Chairman McComas and Panel Members Murphy and Belt,

This responds to the June 8 e-mail from County Board of Appeals (CBA) administrator Krysundra Cannington, we respectfully object to the arrangement of a Webex remote event for a second trial hearing day (and any other days, if necessary) in the above Bair case. This objection is accentuated here because Petitioner Donna Bair (Bair) presented her case in open hearing on February 6, 2020. This discrimination is unfair and contravenes due process of law.

The scheduled second hearing day of April 7 was cancelled because of the pandemic after Governor Lawrence Hogan's order of March 16. There were also orders by Chief Judge Mary Ellen Barbera effectively closing the courts except for specified emergency or other priority cases.

We recognize the good faith effort of the CBA to resume activities backlogged by the pandemic. This includes the balanced and reasonable resumption of public deliberations and several of our cases and potential oral arguments on motions or for on-the-record appeals.

Here, while further delay prolongs the presence of dwelling additions and fencing in conflict with zoning law, due process warrants a moderate additional delay for a plenary in-person trial hearing, where, as noted, Bair had the benefit of such a hearing to present her case. We have e-mailed and phoned the leading Protestants --- Steve Fradkin, Tom Montanye, and Robin Coffin --- and they agree that a remote trial is inappropriate and unfair.

The CBA should assess soon the county's social reopening and schedule two days of plenary public hearings. We note that the District Courts are opening for non-jury trials June 22. The Circuit Courts are currently under the phased Maryland Court of Appeals Order for Phase V reopening in October. The CBA could reasonably proceed to schedule Bair in September or October, subject to adjustment if judicial guidelines or the pandemic demand it.

A few more months delay in this multi-year litigation will assure fairness and due process of law. Maryland Aggregates v. State 337 Md. 658, 686-87 (1995); Calvert County Pl. Comm'n v. Howlin Realty Mgt, Inc. 364 Md. 301, 322 (2001). Anyway. It it will likely be late July or August before a remote trial could be held, if then, given summer schedules of many participants.

Chief Judge Mary Ellen Barbera of the Maryland Court of Appeals implicitly recognized the practical problems of remote trials in her latest administrative order for the court system. Neither jury or non-jury trials are allowed until October. They are not allowed remotely in the phased transition which allows remote oral arguments. While this order does not apply directly to the County Board of Appeals, it appears reasonable to follow it.

Here are several practical problems for remote events:

1. Notice, compulsion of witness attendance, subpoenas, pretrial disclosures. A remote trial involves additional complexities and fairness issues here. There have to be notice provisions to enable all members of the public to attend and participate, not just those already identified. As the Court of Appeals observed, any hearing legislatively provided as "public" must be open to the public, even if not a contested case hearing. Sugarloaf Citizens v. Waste Disposal Authority 323 Md. 641, 657 n.12 (1991). Any person interested in the case may participate. Dorsey v. Bethel AME Church 375 Md. 59, 75-77 (2003).There would have also to be provisions for web compulsion of witnesses, subpoenas, and production of exhibits by all members of the public. If pretrial production of exhibits is involved, this entails pretrial identification of witnesses. Bair did not have to make any pretrial disclosures.

2. Trying the case: Trials are not scripted. Parties adjust to ongoing testimony, exhibits, and rulings. This occurs even more in *de novo* hearings. There are necessarily attorney/intraparty communications. Attorneys, clients, participants and experts communicate with each other in the hearing room during the trial or at recesses. This may include determination, scheduling, and scope of witnesses, unforeseen eventualities. It will not be possible to do that at a Webex activity.

3. Evaluating impact and credibility of witnesses. Testimony on a computer screen does not have the same impact as in-person testimony. Moreover, there is little or no body language on a computer screen. The dynamics of attorney/witness interactions are not the same. Webex hinders evaluation of impact and credibility.

4. Limited screen space for videos of participants. Our experience with Zoom and Skype reflects screen space for a relatively small number of videos. In land use cases, there are often many participants. Here, we have 3 CBA panel members, 2 or more attorneys (with Bair associates or Deputy People's Counsel), expert(s), at least 3 nearby property owners, community association representatives, and many others. It is unpredictable who will be shown on the screen at any time. This hinders the ability of participants to observe the proceedings. It is also unpredictable whether the screen will focus efficiently as speakers shift with high frequency at times.

5. Screening of exhibits. How are exhibits to be placed on the screen, especially site plans; photographs, some large; and pattern books where the fine print is already almost illegible. How do we question witnesses about exhibits? How does one point to, mark, or otherwise make use of exhibits, as is often done? What if there are physical exhibits?

6. Other exhibit problems. What happens when it becomes apparent during the course of the hearing that additional exhibits are appropriate, not anticipated or identified prior to the hearing? Does pretrial identification of exhibits apply to all parties before the first day of hearing? How can area citizens possibly anticipate what exhibits they will need until they observe a petitioner's case? Why should they have to provide any exhibits at all until they see what a petitioner has to say?

7. Evidentiary rulings. Dealing with evidentiary objections and rulings is already often challenging, including the opportunity for various parties to argue, and occasionally the opportunity for CBA members to confer with each other. This will be even more challenging and likely protracted by Webex.

8. Legal issues. Sometimes legal issues arise during the hearing, whether evidentiary or other. Sometimes, It may be helpful to provide copies of appellate cases. This cannot be done by Webex.

9. Technical issues. Citizens may have technical problems linking in, based on computer capability or location. Also, will the recording of the Webex work well? Will a transcriber know who is speaking?

10. Vacation and social distance issues. Even though the pandemic is limiting travel, some parties may be away in the region in July and August, whether for vacation or to socially distance. It makes sense to envision a September or October resumption, with normal public hearings and social distancing if then warranted.

11. Press access. The public character of hearings requires availability to the press. There are news publications which cover Baltimore County land use cases, including regional publications such as The Country Crier, The Peak, and The Villager. How would the Webex be made available to them.

12. Stress. It is uncertain to what degree it is stressful for participants to concentrate on the computer screen all day. While a day at a public zoning hearing may also be challenging, it is likely not challenging to that degree.

These problems are just aggravated here where the remote Webex is injected in the middle of the case. Bair has had the advantage of the usual open *de novo* hearing, with all of its accoutrements and presentational benefits and impacts, and without any pretrial disclosure of witnesses or exhibits. The shift to remote for Protestants and our office will suffer from all the enumerated infirmities and newly advance disclosure of exhibits and to an extent, witnesses. Such bifurcation of this case would manifestly be prejudicial and unfair.

Our office is anxious to make progress. Unfortunately, the wheels of justice grind slower than ever due to the pandemic. But the better and proper course is to envision the resumption and scheduling of proper normal public hearings. With an optimistic approach, it should very soon be plausible to schedule this case for two hearing days in September or October. The benefits to due process and the efficient administration of justice will outweigh by far the impairment of due process of law in the Webex setting.

We trust the CBA will appreciate our office's concerns. It is noteworthy there are also legal issues regarding the adequacy of the predicate for Webex or other remote proceedings. Nevertheless, as a matter of public interest, in view of the pandemic, we shall not enumerate them at this time. We are approaching this situation from the point of view of a balance between progress and fairness. We also refer to Chief Judge Barbera's orders as useful guides.

Thank you for your attention to this important matter.

Sincerely,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio
Deputy People's Counsel

cc: Lawrence Schmidt, Attorney for Donna Bair, sent via email
Steven Fradkin, sent via email
Robin S. Coffin, sent via email
Tom Montanye, sent via email
Nancy C. West, Assistant County Attorney

Board of Appeals of Baltimore County

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

February 21, 2020

NOTICE OF ASSIGNMENT - DAY 2

IN THE MATTER OF: Donna V. Bair – Legal Owner
4607 Prospect Avenue
19-342-SPHA 4th Election District; 3rd Councilmanic District

8/9/19 Opinion and Order of the Administrative Law Judge wherein the:
- Petition for Special Hearing:
  1) to approve a nonconforming lot width and lot area; and
  2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of 30 inches was GRANTED; the
- Petition for Special Hearing:
  1) to approve a nonconforming dwelling side yard setback; and
  2) to confirm that an existing fence (swimming pool enclosure) with a height of 6' is in compliance with BCZR §427.1 and BCC §13-6-101 was DENIED; and the
- Petition for Variance:
  1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.;
  2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; and
  3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches was DENIED

9/9/19 Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire on behalf of Donna V. Bair, Petitioner.

9/25/19 Order on Motion for Reconsideration issued by the Administrative Law Judge wherein it was Ordered:
- that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms in BCZR §104;
- that all new construction must comply with current setbacks and restrictions at the time of new construction; and
- all other matters and respects of Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

The Board convened for hearing on February 6, 2020. This matter did not conclude. Upon agreement of the parties, a second day of hearing has been

ASSIGNED FOR: APRIL 7, 2020, 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.
- Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits with the Board unless otherwise requested. Said Motions, Memoranda and exhibits must be in MDEC compliant formats pursuant to the Maryland Rules, unless otherwise requested
- Please contact our office for information about projection equipment. 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 Cannington, Administrator

c. Counsel for Petitioners : Lawrence E. Schmidt, Esquire
Legal Owner : Donna Bair

Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
John E. Lemmerman/RTF Associates, Inc.
Kim and Tom Montanye
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz

C. Pete Gutwald, Director/Department of Planning
James R. Benjamim, Jr., County Attorney
Michael D. Mallinoff, Director/PAI
Nancy C. West, Assistant County Attorney
Office of People's Counsel
Paul M. Mayhew, Managing Administrative Law Judge

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 13, 2019

NOTICE OF POSTPONEMENT AND REASSIGNMENT

IN THE MATTER OF: Donna V. Bair – Legal Owner
4607 Prospect Avenue
19-342-SPHA 4th Election District; 3rd Councilmanic District

8/9/19 Opinion and Order of the Administrative Law Judge wherein the:
- Petition for Special Hearing:
  1) to approve a nonconforming lot width and lot area; and
  2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of 30 inches was GRANTED; the
- Petition for Special Hearing:
  1) to approve a nonconforming dwelling side yard setback; and
  2) to confirm that an existing fence (swimming pool enclosure) with a height of 6' is in compliance with BCZR §427.1 and BCC §13-6-101 was DENIED; and the
- Petition for Variance:
  1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.;
  2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; and
  3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches was DENIED

9/9/19 Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire on behalf of Donna V. Bair, Petitioner.

9/25/19 Order on Motion for Reconsideration issued by the Administrative Law Judge wherein it was Ordered:
- that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms in BCZR §104;
- that all new construction must comply with current setbacks and restrictions at the time of new construction; and
- all other matters and respects of Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

This matter was scheduled for January 9, 2020 and has been postponed by request of Counsel. This matter has been

REASSIGNED FOR: FEBRUARY 6, 2020, 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.
- Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits with the Board unless otherwise requested. Said Motions, Memoranda and exhibits must be in MDEC compliant formats pursuant to the Maryland Rules, unless otherwise requested
- Please contact our office for information about projection equipment. 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 Cannington, Administrator

c. Counsel for Petitioners : Lawrence E. Schmidt, Esquire
Legal Owner : Donna Bair

Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
John E. Lemmerman/RTF Associates, Inc.
Kim and Tom Montanye
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz

C. Pete Gutwald, Director/Department of Planning
Michael D. Mallinoff, Director/PAI
James R. Benjamin, Jr., County Attorney
Nancy C. West, Assistant County Attorney
Office of People's Counsel
Paul M. Mayhew, Managing Administrative Law Judge

Board of Appeals of Baltimore County

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

November 14, 2019

NOTICE OF ASSIGNMENT

IN THE MATTER OF: Donna V. Bair – Legal Owner
4607 Prospect Avenue
19-342-SPHA 4th Election District; 3rd Councilmanic District

8/9/19 Opinion and Order of the Administrative Law Judge wherein the:
- Petition for Special Hearing:
  1) to approve a nonconforming lot width and lot area; and
  2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of 30 inches was GRANTED; the
- Petition for Special Hearing:
  1) to approve a nonconforming dwelling side yard setback; and
  2) to confirm that an existing fence (swimming pool enclosure) with a height of 6' is in compliance with BCZR §427.1 and BCC §13-6-101 was DENIED; and the
- Petition for Variance:
  1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.;
  2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; and
  3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches was DENIED

9/9/19 Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire on behalf of Donna V. Bair, Petitioner.

9/25/19 Order on Motion for Reconsideration issued by the Administrative Law Judge wherein it was Ordered:
- that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms in BCZR §104;
- that all new construction must comply with current setbacks and restrictions at the time of new construction; and
- all other matters and respects of Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

ASSIGNED FOR: **JANUARY 9, 2020, 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.
- Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits with the Board unless otherwise requested. Said Motions, Memoranda and exhibits must be in MDEC compliant formats pursuant to the Maryland Rules, unless otherwise requested
- Please contact our office for information about projection equipment. 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 Cannington, Administrator

c. Counsel for Petitioners : Lawrence E. Schmidt, Esquire
Legal Owner : Donna Bair

Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
John E. Lemmerman/RTF Associates, Inc.
Kim and Tom Montanye
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz

C. Pete Gutwald, Director/Department of Planning
Michael D. Mallinoff, Director/PAI
Michael E. Field, County Attorney
Nancy C. West, Assistant County Attorney
Office of People's Counsel
Paul M. Mayhew, Managing Administrative Law Judge

IN THE MATTER OF DONNA V. BAIR – LEGAL OWNER AND PETITIONER FOR SPECIAL HEARING AND VARIANCE ON THE PROPERTY LOCATED AT 4607 PROSPECT AVENUE	*	BEFORE THE BOARD OF APPEALS OF
4TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BALTIMORE COUNTY
	*	CASE NO. 19-342-SPHA

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

RULING ON MOTION FOR RECONSIDERATION

This case comes to the Board of Appeals for Baltimore County ("Board") on a Motion for Reconsideration ("Motion") which was timely filed by Tom and Kim Montanye ("Protestants") *pro se,* requesting a limited review and reconsideration by the Board of its decision regarding the relocation of the fence and gate on the south side of the Bair property adjoining the Montanye residence.

The original Petitioner and property owner, Donna Bair, by her attorneys, Lawrence E. Schmidt and Smith, Gildea & Schmidt, LLC, submitted a Response to the Protestants' Motion for Reconsideration, and People's Counsel filed an email response.

This matter originally came before the Board on a Petition for Special Hearing and Variances filed by Petitioner Bair. The Board held three days of hearing and issued its Opinion and Order on June 7, 2021, granting in part and denying in part the request relief.

The Board held its deliberation on the Motion to Reconsider on August 31, 2021, and for the reasons that follow, denied the Motion.

The language in the Order regarding the fence is based on the evidence presented at the hearing where the Board found that the gate to the Bair's rear yard was previously located at the rear of the Bair residence and then Ms. Bair impermissibly moved the gate, and the supporting

fence, to the front of her house. No evidence was presented as to the precise location of the gate prior to its being moved.

The Board ordered that the fence extension and gate must be moved to the rear building line of the Bair residence, so as not to impede visibility for vehicles exiting the Montanye's driveway. The Board did not require the remaining portion of the fence be further re-aligned.

The Board finds there is no indication of the existence of new law or evidence not available at the time of the hearing. The Board also notes that its revisory power is limited by its Rule 11 which states "the Board shall have revisory power and control over the order in the event of fraud, mistake or irregularity." The Motion did not allege any such fraud, mistake or irregularity.

Conclusion

After reviewing the Motion and the case record, the Board unanimously finds none of the issues raised warrant revising its decision, and accordingly, the Motion should be denied.

ORDER

THEREFORE, IT IS THIS 9th day of November, 2021, by the Board of Appeals of Baltimore County,

ORDERED, that the Motion for Reconsideration is hereby **DENIED** for the reasons set forth herein.

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

Deborah C. Dopkin, Chair

See following page
Andrew M. Belt

Bryan T. Pennington /tag
Bryan T. Pennington

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

See previous page
Deborah C. Dopkin, Chair

Andrew M. Belt

See previous page
Bryan T. Pennington

Board of Appeals of Baltimore County

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

November 9, 2021

Lawrence E. Schmidt, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204

Thomas and Kimberly Montanye
4609 Prospect Avenue
Glyndon, Maryland 21136

Peter M. Zimmerman, Esquire
Carole S. Demilio, Esquire
Office of People's Counsel
The Jefferson Building, Suite 204
105 W. Chesapeake Avenue
Towson, Maryland 21204

RE: *In the Matter of: Donna V. Bair – Legal Owner*
Case No.: 19-342-SPHA

Dear Mr. and Mrs. Montanye and Counsel:

Enclosed please find a copy of the final Ruling on Motion for Reconsideration issued this date by the Board of Appeals of Baltimore County in the above subject matter.

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

Very truly yours,

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Multiple Original Cover Letters
Enclosure

c: See Distribution List following

In the matter of: Donna V. Bair – Legal Owner
Case No.: 19-342-SPHA
November 9, 2021
Distribution List

Donna V. Bair
Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz
Paul M. Mayhew, Managing Administrative Law Judge
Stephen Lafferty, Director/Office of Planning
C. Pete Gutwald, Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
James R. Benjamin, Jr., County Attorney/Office of Law

From:	Lawrence Schmidt
To:	Peter Max Zimmerman; Appeals Board; Krysundra Cannington
Cc:	Tom@montanye.net; reistlaxcoach@gmail.com; rscoffin@verizon.net; Bair, Donna (donna.bair@yahoo.com)
Subject:	RE: Case No. 19-342-SPHA; Donna Bair, Tom Montanye"s Motion for Reconsideration
Date:	Wednesday, August 25, 2021 3:56:37 PM

CAUTION: This message from lschmidt@sgs-law.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Ms. Cannington: According to the Board's notice of deliberation, all responses to the Motion for Reconsideration were to be filed by 3:00 p.m. August 24, 2021 (yesterday). As Mr. Zimmerman's submittal is untimely, I request that it not be considered by the Board.

Thank you.

Larry Schmidt

Lawrence E. Schmidt | Partner
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
lschmidt@sgs-law.com | http://secure-web.cisco.com/14fA-HelnfCO1OFl2ohP-Ct34sJL4yvNKzC973xSUUNNFxPUNEKb3qva3lC9_EpULnlr7evpdM95yqk46un0BhDz-8MHNwRszJN20nJkWBoHw-8EwSovQSHjB13ykTjVrhBEYYw15s36QI97ZbbbXuF7jOZ8MrLyMbjd2Rl6Vn3xAeIf4BW9QuBuJi0Sch6gcYYDv6SgRgR4HQzPO_RbXmMn_SjCVaFFv79cyHNJaurc8vbnjivHWQVRRNC8tIMkPRRnW6U77lZbzyqUsx0XiXyZ3i-xroL5MPd5LnSLe_Nsuenm3yfEG2Ij3sMttJYEB9itX3qvPLkUeKjYP6EJVREKhVNyYhGrxA4LpoE2ofcf8PQzNQFNTZEmFvA2OtOwlW_kjIbO1p62ADk3qIQBggNv4WvU2X-irKfdT7ILgT-kLyttA0HKd3QikJV1hPn2opp6X9gRPt07JuAKpnhUXvg/http%3A%2F%2Fwww.sgs-law.com

This email contains information from the law firm of Smith, Gildea & Schmidt, LLC which may be confidential and/or privileged. The information is intended to be for the exclusive use of the individual or entity named above. If you are not the intended recipient, be advised that any disclosure, copying, distribution or other use of this information is strictly prohibited. If you have received this e-mail in error, please notify Smith, Gildea & Schmidt, LLC by telephone immediately.

From: Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov>
Sent: Wednesday, August 25, 2021 3:02 PM
To: Appeals Board <appealsboard@baltimorecountymd.gov>; Krysundra Cannington <kcannington@baltimorecountymd.gov>
Cc: Lawrence Schmidt <lschmidt@sgs-law.com>; Tom@montanye.net; reistlaxcoach@gmail.com; rscoffin@verizon.net
Subject: Case No. 19-342-SPHA; Donna Bair, Tom Montanye's Motion for Reconsideration

To the Appeals Board,

This matter is scheduled for further deliberation by the Board on August 31, 2021.

Upon review of the Motion for Reconsideration filed by Tom and Kim Montanye, the Response just filed yesterday by Petitioner, the Board's June 7, 2021 Opinion and Order, and the prior April 20,

2021 deliberation minutes, please allow me to recap these observations.

The June 7, 2021 Order itself does not specify the location where the fence is to be removed and/or relocated. Rather, it refers on Page 8 to "the modification described herein." It turns out that the description of fence relocation on Page 7 of the Opinion is ambiguous and/or inconsistent with the Board's April 20, 2021 decision made in public deliberation. I attach both the opinion and the minutes.

It was my impression in listening to the public deliberation that even to the rear of the Bair house's rear building line, the fence was to be moved away from the Montanye boundary, to the more distant location of the previous picket fence, which also was lower in height. This would provide some transitional buffer. Such a buffer would not be prejudicial to Ms. Bair and would reduce the likelihood of further friction.

The Montanyes' motion's reference to the Board's deliberation minutes is apt:

> "The Board found that a reasonable solution is to relocate the fence and gate to its original location, which will provide pool security and address the driveway concern."

Here is the entire section of the Board's deliberation devoted to the fence issue on Page 2:

> "The Board discussed the request to permit an existing fence (swimming pool enclosure) with a height of 6 ft. in lieu of the permitted 42 in. The Board noted there are competing statutes regarding fences. The 6 ft. fence extends into the front yard of the adjoining property and along the parking area/driveway of the neighbors. The Board noted that the fence impedes the ability of the neighbors to see when they pull out of their driveway, which is a public safety hazard. The Board found that a reasonable solution is to relocate the fence and gate to its original location, which will provide pool security and address the driveway concern. The Board granted the Variance relief, with conditions."

In addition to the Board's recognition of the Petitioner's problematic fence location forward of her rear yard and adjacent to the Montanye front yard, especially near the driveway, there was thus also a recognition that the rear yard fence location as constructed along the property boundary required adjustment. As I previously observed, the fence location extending into the rear yard is way beyond what is necessary to protect children from venturing into the pool. It is actually a privacy fence which is counterproductive to the essential legislative purpose because it leaves open a wide area in which children who play may venture easily into the pool. Moreover, it does not need to be six feet high. Forty-eight inches would be enough even if it is generously called a swimming pool protection fence.

To sum up, I think it was the Board's intent, and within the scope of the Montanye motion to relocate the fence to its previous location, thus providing some buffer area and implicitly adjusting the fence height to the height of the previous fence.

Accordingly, further specification in the order is warranted. This should include a very specific description of the location, and the clarification of a transitional buffer to the previous rear location

would be appropriate. This would include the use of the helpful photographs and overlay diagram attached to the Montanye motion and/or a specification of the distance from the Montanye boundary and the height of the previous fence.

The more specific the order, the better. This would also reduce the likelihood of further disharmony between these neighbors.

This has been a very challenging and difficult case in many ways. To wrap it up, I respectfully posit that the fence aspect does deserve clarification and adjustment consistent with the deliberation.

Respectfully, Peter Max Zimmerman, People's Counsel 410 887-2188

Get your COVID-19 vaccine today.

CONNECT WITH BALTIMORE COUNTY

www.baltimorecountymd.gov

From:	Peter Max Zimmerman
To:	Appeals Board; Krysundra Cannington
Cc:	Lawrence Schmidt; Tom@montanye.net; reistlaxcoach@gmail.com; rscoffin@verizon.net
Subject:	Case No. 19-342-SPHA; Donna Bair, Tom Montanye"s Motion for Reconsideration
Date:	Wednesday, August 25, 2021 3:02:29 PM
Attachments:	Bair Delib Minutes - 2019-342-SPHA.pdf Bair Donna - 2019-342-SPHA - CBA Opinion.pdf

To the Appeals Board,

This matter is scheduled for further deliberation by the Board on August 31, 2021.

Upon review of the Motion for Reconsideration filed by Tom and Kim Montanye, the Response just filed yesterday by Petitioner, the Board's June 7, 2021 Opinion and Order, and the prior April 20, 2021 deliberation minutes, please allow me to recap these observations.

The June 7, 2021 Order itself does not specify the location where the fence is to be removed and/or relocated. Rather, it refers on Page 8 to "the modification described herein." It turns out that the description of fence relocation on Page 7 of the Opinion is ambiguous and/or inconsistent with the Board's April 20, 2021 decision made in public deliberation. I attach both the opinion and the minutes.

It was my impression in listening to the public deliberation that even to the rear of the Bair house's rear building line, the fence was to be moved away from the Montanye boundary, to the more distant location of the previous picket fence, which also was lower in height. This would provide some transitional buffer. Such a buffer would not be prejudicial to Ms. Bair and would reduce the likelihood of further friction.

The Montanyes' motion's reference to the Board's deliberation minutes is apt:

> "The Board found that a reasonable solution is to relocate the fence and gate to its original location, which will provide pool security and address the driveway concern."

Here is the entire section of the Board's deliberation devoted to the fence issue on Page 2:

> "The Board discussed the request to permit an existing fence (swimming pool enclosure) with a height of 6 ft. in lieu of the permitted 42 in. The Board noted there are competing statutes regarding fences. The 6 ft. fence extends into the front yard of the adjoining property and along the parking area/driveway of the neighbors. The Board noted that the fence impedes the ability of the neighbors to see when they pull out of their driveway, which is a public safety hazard. The Board found that a reasonable solution is to relocate the fence and gate to its original location, which will provide pool security and address the driveway concern. The Board granted the Variance relief, with conditions."

In addition to the Board's recognition of the Petitioner's problematic fence location forward of her rear yard and adjacent to the Montanye front yard, especially near the driveway, there was thus also

a recognition that the rear yard fence location as constructed along the property boundary required adjustment. As I previously observed, the fence location extending into the rear yard is way beyond what is necessary to protect children from venturing into the pool. It is actually a privacy fence which is counterproductive to the essential legislative purpose because it leaves open a wide area in which children who play may venture easily into the pool. Moreover, it does not need to be six feet high. Forty-eight inches would be enough even if it is generously called a swimming pool protection fence.

To sum up, I think it was the Board's intent, and within the scope of the Montanye motion to relocate the fence to its previous location, thus providing some buffer area and implicitly adjusting the fence height to the height of the previous fence.

Accordingly, further specification in the order is warranted. This should include a very specific description of the location, and the clarification of a transitional buffer to the previous rear location would be appropriate. This would include the use of the helpful photographs and overlay diagram attached to the Montanye motion and/or a specification of the distance from the Montanye boundary and the height of the previous fence.

The more specific the order, the better. This would also reduce the likelihood of further disharmony between these neighbors.

This has been a very challenging and difficult case in many ways. To wrap it up, I respectfully posit that the fence aspect does deserve clarification and adjustment consistent with the deliberation.

Respectfully, Peter Max Zimmerman, People's Counsel 410 887-2188

IN RE: THE PETITION FOR SPECIAL HEARING AND VARIANCE	*	BEFORE THE
4607 Prospect Avenue	*	COUNTY BOARD
4th Election District 3rd Councilmanic District	*	OF APPEALS
	*	FOR
Donna V. Bair *Legal Owner*	*	BALTIMORE COUNTY
	*	**Case No.: 2019-342-SPHA**

* *

PETITIONER'S RESPONSE TO MOTION FOR RECONSIDERATION

The property owner, Donna V. Bair ("Petitioner"), by and through her attorneys, Lawrence E. Schmidt, Zachary J. Wilkins, and Smith, Gildea & Schmidt, LLC, submits this Response to Motion for Reconsideration filed by Tom and Kim Montanye, and states the following:

1. The Motion filed by Mr. and Mrs. Montanye states, "(w)e wish to have the Order reviewed and reconsidered on the fence opinion only. Not for a change of decision, but only for needed clarity on a single issue. We believe the wording of the written Opinion raises confusion and contains insufficient clarity." The Motion further states that the Board's "written opinion raises confusion and contains insufficient clarity to enable Baltimore County Code Enforcement to reasonably enforce the opinion as agreed upon by the CBA panel in the public deliberation, and also as recorded in the deliberation minutes".

2. Petitioner does not feel that the Opinion is confusing or unclear, but rather simple and concise. The Board discussed during the public deliberation that a 6-foot fence provides safety for the pool; a fence height of 42 inches is permitted in the side/front yard of an adjoining property (BCRZ 427.1B); and, any safety concerns due to the alterations of the fence extended along the south (Montanye) side of the property. The Board discussed where a shorter portion of the new 6-foot fence should start and stop. Board members voted to grant the Variance relief for the fence, with conditions... "subject to the relocation of the gate as described herein, the fence height of 6 ft. will be permitted" (Opinion, Page 7, Paragraph 2). The Opinion simply states that a portion of the 6-foot fence (along the south side of the property and adjacent to the Montanyes property) previously 42 inches in height, be lowered back to the permitted 42 inches and that the gate be moved back to the rear building line of the Bair residence, it's previous location.[1]
3. The mandated changes in the Opinion are clear and unambiguous.
4. The Petitioner is prepared to make such changes.
5. It is also noted that the Motion for Reconsideration presents no new facts, changes in law, fraud, mistake or irregularity**.** Thus, there is no legal basis on which the Motion to Reconsideration can be granted.

[1] The rear building line of the Bair residence is 4 feet back (East) from the rear foundation of the residence, as there is a 4 foot building overhang along that back corner.

Wherefore, having addressed the allegations in the Motion for Reconsideration, the Petitioner requests,

- That the Motion for Reconsideration be DENIED; and
- For such other and further relief as the nature of her cause may require.



LAWRENCE E. SCHMIDT
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
(410) 821-0070
lschmidt@sgs-law.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this **24th** day of August**,** 2021 a copy of the foregoing Response to Motion for Reconsideration was emailed to:

Thomas & Kim Montayne
Tom@montanye.net

Kimberly Karlsen
perandkim@aol.com

Steve & Patricia Fradkin
reistlaxcoach@gmail.com

Sue Benson
sbensoncomm@aol.com

Robin Coffin
rscoffin@verizon.net

Mary Molinaro
mmolinaro@reisterstown.com

Peter Max Zimmerman, Esquire
People's Counsel for Baltimore County
peoplescounsel@baltimorecountymd.gov



LAWRENCE E. SCHMIDT

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
July 15, 2021

NOTICE OF DELIBERATION ON MOTION FOR RECONSIDERATION

IN THE MATTER OF: Donna V. Bair – Legal Owner
4607 Prospect Avenue
19-342-SPHA 4th Election District; 3rd Councilmanic District

Re: Motion for Reconsideration dated July 2, 2021 filed by Tom and Kim Montanye, Protestants *pro* se.

Pursuant to Rule 10 of the Board of Appeals' Rules of Practice and Procedure, a public deliberation on the Motion for Reconsideration and any response thereto is

ASSIGNED FOR: AUGUST 31, 2021 AT 9:00 A.M.

The above scheduled public deliberation will be held remotely using WebEx for audio and video participation. **Call-in information and a link to the public deliberation will be posted on our web calendar the night before at** www.baltimorecountymd.gov/Agencies/appeals/index.html.

NOTE: Any Responses to the Motion for Reconsideration are due on AUGUST 24, 2021 no later than 3:00 p.m.
ELECTRONIC COPY ONLY
emailed to appealsboard@baltimorecountymd.gov

NOTE: PUBLIC DELIBERATIONS ARE OPEN WORK SESSIONS WHICH ALLOW THE PUBLIC TO WITNESS THE DECISION-MAKING PROCESS. A WRITTEN OPINION AND ORDER WILL BE ISSUED BY THE BOARD WITHIN A REASONABLE TIMEFRAME AFTER DELIBERATION AND A COPY SENT TO ALL PARTIES.

If you do not have access to a computer or smart device, please contact our office for the call-in information the day before the scheduled deliberation.

Krysundra Cannington, Administrator

c.	Counsel for Petitioners	: Lawrence E. Schmidt, Esquire
	Legal Owner	: Donna Bair
	People's Counsel for Baltimore County	: Peter M. Zimmerman, Esquire
	Protestants *pro se*	: Ann Rea Charles and Anna Welsh Cynthia Morrison Frances Acle John E. Lemmerman/RTF Associates, Inc. Kim and Tom Montanye Kim Karlsen Lyle Montanye Martha Wist Pamela Becker Ramzi and Roula Hemady Raymond and Linda Long Richard Stanley Robert Gehman Robin Coffin Shirley Winebarger Steve and Patricia Fradkin Teresa Moore Vernene Lenz

Paul M. Mayhew, Managing Administrative Law Judge
Steve Lafferty, Director/Department of Planning
C. Pete Gutwald, Director/PAI
James R. Benjamin, Jr., County Attorney
Nancy C. West, Assistant County Attorney

July 2, 2021

Tom & Kim Montanye, Protestants
4609 Prospect Avenue
Glyndon, MD 21136

Via Email - AppealsBoard@BaltimoreCountyMD.Gov

RECEIVED
JUL 06 2021
BALTIMORE COUNTY
BOARD OF APPEALS

Board of Appeals of Baltimore County
Jefferson Building
105 West Chesapeake Avenue, Suite 203
Towson, MD 21204

Re: Bair – 4607 Prospect Ave
Case No. **2019-342-SPHA**

Dear Board of Appeals,

Please find enclosed a Motion for Reconsideration for filing in the above matter.

We wish to have the order reviewed and reconsidered on the fence opinion only. Not for a change of decision, but only for needed clarity on a single issue.

We believe the wording of the written opinion raises confusion and contains insufficient clarity to enable Baltimore County Code Enforcement to reasonably enforce the opinion as agreed upon by the CBA panel in the Public Deliberation, and also as recorded in the deliberation minutes.

Since this opinion was a partial grant/ partial deny, sufficient clarity is required. We ask that the CBA append or rewrite the fence ruling to exactly reflect the panel's agreement on the fence, so that it can be reasonably enforced, and the matter settled successfully and finally. We highlight and clarify certain hearing exhibits to assist to this end.

We're happy to appear for further explanation or to have the Motion considered based only on these pleadings, as you deem appropriate.

Thank you for your consideration in this matter.

Sincerely,

Tom & Kim Montanye

Cc: Office of the People's Council
Lawrence Schmidt
Steve and Patti Fradkin
Robin Coffin
Kim Karlsen
Sue Bensen
Mary Molinero
Cookie Stone

RECEIVED
JUL 06 2021
BALTIMORE COUNTY
BOARD OF APPEALS

RE: Petition for Special Hearing and Variance, Board of Appeals
Case 2019-342-SPHA
Donna Bair, 4607 Prospect Ave, Glyndon

Motion for Reconsideration

7/2/2021, Tom & Kim Montanye, Neighbors @ 4609 Prospect Ave

Tom and Kim Montanye, the Protestant neighbors at 4609 Prospect Avenue, submit this Motion for Reconsideration (MFR) pursuant to Rule 10 of the County Board of Appeals (CBA), and respectfully request that the CBA revises its' Opinion issued dated June 7, 2021 relating to the above referenced matter.

The fence opinion

During the public deliberation, there was a clear agreement among the CBA panel that the fence that was constructed by the petitioner could stand, with the exception of the *new* portion positioned along the Montanye's driveway/front yard property line. The minutes of the deliberation state *"The Board found that a reasonable solution is to relocate the fence and gate to its original location, which will provide pool security and address the driveway concern."*

However, the resulting opinion confuses the issue by stating *"...the Board finds that the extension of the fence from the rear of the building line of the Bair residence, its previous location, to its current location creates an unsafe condition and violates BCRZ §427.1.B.1 and must be moved back."*

The confusion is caused by two ambiguities in the opinion.

1. "*...from the rear of the building line of the Bair residence...*" – this references a "from" location but not a "to" location, making it unclear the direction or distance of the original fence from that point.
2. "*...its previous location...*" and "*must be moved back*" – only photo exhibits were admitted showing the previous fence, no drawings or surveys.

In order for Code Enforcement to execute the *"relocate the fence and gate to its original location"* sentiment from the deliberation, and "*subject to the modification described herin*" in the Order, the original location must be made clear, using the best available resources from the hearings.

The Petitioner's survey drawing is not helpful in this regard. It contains no indication of the property condition prior to the work being done, including the prior fence location, because it was created after-the-fact.

However, there were two photo exhibits in particular, from the hearings, that can help reconstruct the previous condition. Using these two photo exhibits we offer, as a helpful inclusion, a drawing overlay to the survey, showing the previous fence location. We also include the photo exhibits used to substantiate the accuracy of the drawing overlay.

Protestant's Exhibit 25C / Petitioner's Exhibit 2D

The original gate & fence location

Protestant's Exhibit 25C (included), a photo taken from the Bair view, clearly shows the prior location of the gate and fence. This same photo was also presented into evidence, among other photos in a grouping labeled "4607 Before", as **Petitioner's Exhibit 2D**.

For additional clarity, we have included a "marked up" version of the exhibit photo to assist with the following description of the original fence/gate configuration. There are "call-outs" on the markup corresponding to the letters (a-e) below.

The "marked up" exhibit photo shows that the original gate started near the back corner of the house (a), and that it ran toward the rear yard (parallel to the side of the house and property line, not parallel to the back of the house or "rear of the building line"). In other words, the prior gate faced the Montanye-side property line, not the street. The photo also shows that the gate crossed over the paver walkway and connected with a small portion of 6' tall fence (b) which intersected the 6' tall cabana wall (c).

Where the 6' tall portion of the prior cabana/fence ended

It also shows that the 6' tall fence/cabana along the property line (d) stopped and turned 90 degrees toward the Bair property at the Holly tree (e). This turn is aligned exactly at the end of the Montanye driveway. Recall, the extension of the 6' fence along the driveway was determined to be a public safety hazard due to the lack of ability to see when pulling out of the driveway.

Protestant's Exhibit 6A

Protestant's photo Exhibit 6A (included) is taken from the opposite view (from the Montanye view) of Petitioners photo Exhibit 2D. It confirms that the 6' tall fence/cabana ended at the holly tree and turned 90 degrees into the Bair property. It also confirms that the holly tree aligns exactly at the end of the Montanye driveway.

4607 Survey Overlay Diagram

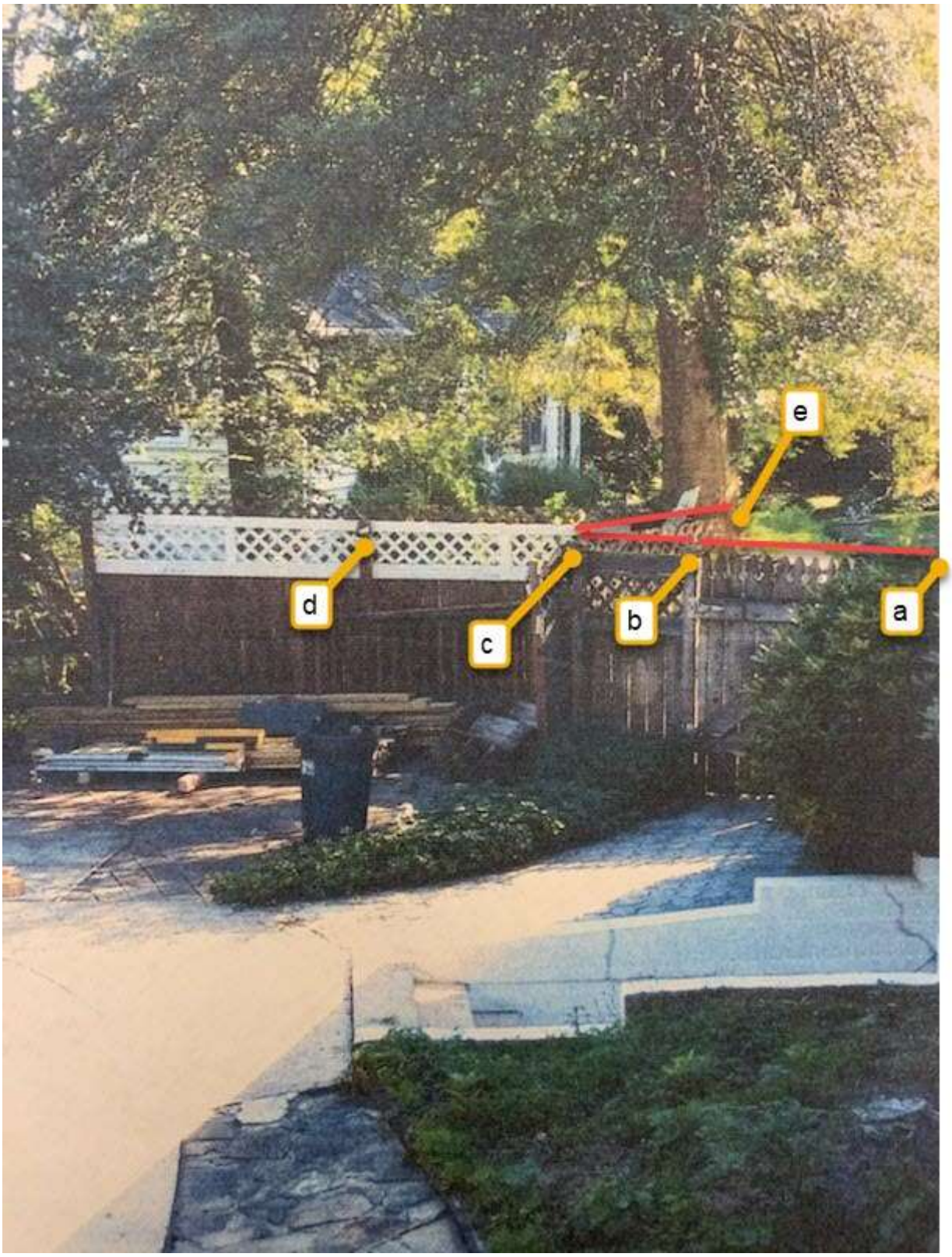
Using the two above photos, and the holly tree landmark, this overlay was created to represent the fence and gate original location. It should suffice to resolve the matter if followed.

Summary

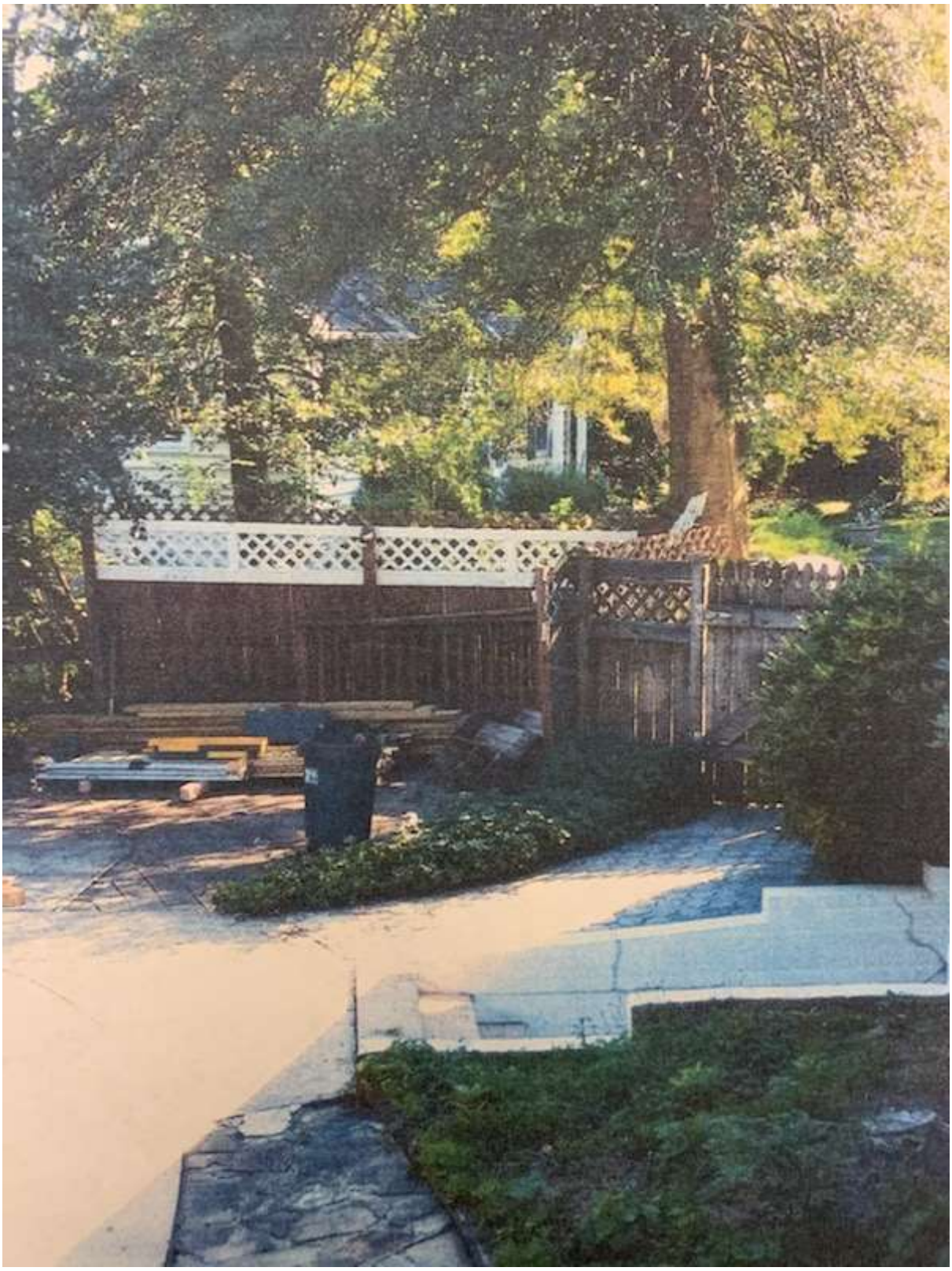
To be clear, we are not requesting a change of the CBA decision, as discussed in the public deliberation and reflected in the minutes. We only request that the opinion on the fence be rewritten with sufficient specificity to be used by the Code Enforcement Division to assure that the corrections are made as intended by the CBA. We wish to avoid further issues that will likely result from the current ambiguity of the Opinion, and assure the fence matter is truly settled. Perhaps including the drawing overlay and/or photo exhibits, or references to them, or another sufficiently clear alternative with the order, would help achieve this end.

Fence exhibits/ inclusions follow.

“Marked Up” Protestant’s Exhibit 25C & Petitioner’s Exhibit 2D



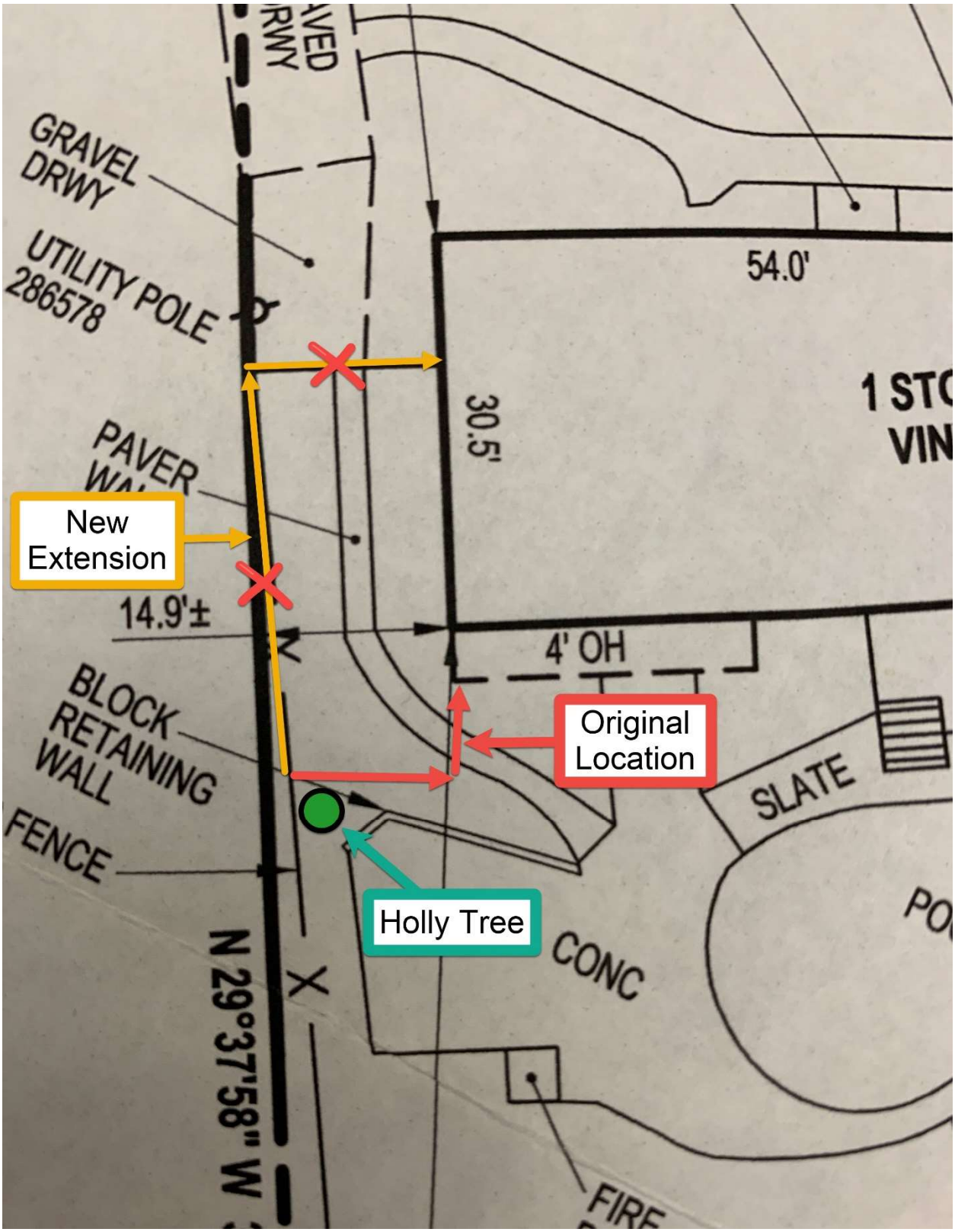
Original Protestant's Exhibit 25C & Petitioner's Exhibit 2D



Protestant's Exhibit 6A – Montanye driveway and view of the fence turning at the holly tree



4607 Survey Overlay Diagram



IN THE MATTER OF DONNA V. BAIR – LEGAL OWNER AND PETITIONER FOR SPECIAL HEARING AND VARIANCE ON THE PROPERTY LOCATED AT 4607 PROSPECT AVENUE	*	BEFORE THE BOARD OF APPEALS OF
4TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BALTIMORE COUNTY
	*	CASE NO. 19-342-SPHA

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

OPINION

This case comes to the County Board of Appeals ("CBA") on appeal of an Opinion and Order of the Administrative Law Judge dated August 19, 2020 granting in part and denying in part a Petition for Special Hearing and Variances filed by Donna V. Bair ("Petitioner/ Appellant") the legal owner of the property at 4607 Prospect Avenue (the "Property") in the Glyndon area of Baltimore County.

The Special Hearing Petition was filed pursuant to Baltimore County Zoning Regulations ("BCZR") §500.7 (1) to approve a nonconforming lot width and lot area pursuant to BCZR §104.1; (2) to approve a nonconforming dwelling side yard setback, pursuant to BCZR §104.1; and (3) to confirm an existing fence (swimming pool enclosure) with a height of 6 ft. is in compliance with BCZR §427.1 and Baltimore County Code ("BCC") §13-6-101.

The Petition for Variance seeks (1) to permit an existing 12 ft. by 28 ft. attached garage addition with a side yard of 0 ft. in lieu of the required 20 ft.; (2) to permit an existing 12 ft. by 28 ft. attached garage addition with a sum of side yards of 14.9 ft. in lieu of the required 50 ft.; (3) to permit an existing shed with a sideyard setback of 26 inches in lieu of the required 30 inches; and 4) to permit, if necessary, an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum 42 inches.

Appellant was represented by Lawrence E. Schmidt, Esquire and Zachary J. Wilkins, Esquire, of Smith, Gildea and Schmidt, LLC. Also appearing for Appellant as an expert was John Motsco, a licensed engineer in the State of Maryland. Ms. Bair also testified.

Numerous neighbors and an umbrella community association appeared in opposition, including both adjoining neighbors. Robin Coffin, and attorney who resides on Prospect Avenue, facilitated Protestants' case and testimony, and also testified personally as did the adjoining property owners.

The Board held three days of hearings, one in person on February 6, 2020 and two virtually on March 23, 2021 and March 25, 2021. A public deliberation was held virtually on April 20, 2021.

FACTUAL BACKGROUND

Petitioner Bair acquired the Property in 2014. At the time the Property was improved with a single family dwelling, attached garage, two driveways, an in-ground swimming pool, shed, and a fence enclosing a large portion of the rear yard and the pool area.

In 2017 Petitioner undertook additions to the house, adding to the front to create a master bedroom suite, adding a second garage, removing an existing fence and mature landscaping around the fence, and adding a new fence. Those improvements led to the current case and much acrimony among neighbors. In particular, the second garage extends several feet into the property of the neighbors on the north, Mr. and Mrs. Stephen Fradkin. The neighbors on the south, Mr. and Mrs. Thomas Montanye, object to the location of the replacement fence which extends into their front yard, and which creates a safety hazard by obstructing visibility for cars leaving the Montanye property. Mr. Montanye also disputes the location of the common property line and alleges that Petitioner tampered with surveyor's stakes to be more favorable to her

property. Both neighbors alleged that the improvements created additional runoff and flooding conditions on each of their properties.

Ms. Bair testified that she hired a contractor, though she did not identify that contractor to the CBA, nor did she know his whereabouts or current status. Ms. Bair assumed the contractor would obtain permits and other required approvals. No survey was conducted either at the time of Bair's purchase nor at the time of the work being undertaken. No zoning or permit approvals were investigated or sought for the building improvements or the fence.

The neighbors complained to the Baltimore County Office of Code Enforcement, who cited multiple violations at Petitioner's Property, and which ultimately led to filing of the subject petitions.

Petitioner's engineer John Motsco testified to the zoning history of the Property. The lot was created prior to the1945 adoption and 1955 codification of zoning by Baltimore County. Mr. Motsco stated that in 1970, Baltimore County adopted the D.R. zones (Density Residential), at which time the Property was designated D.R. 2. In 1996, the current D.R. 1 classification was applied to the Property.

APPLICABLE LAW

A Special Hearing Petition is effectively a request for declaratory judgment. BCZR §500.7, *Antwerpen v. Baltimore County*, 163 Md. App. 194, 209 (2005). The main question to be determined by the Board is whether the current configuration of the lot is permitted as a non-conforming use per BCZR §104.1. A collateral issue under BCZR §104.3 concerns whether the addition to the house extends beyond 25% of the ground floor area of the house prior to the addition.

Petitioner bears the burden of presenting evidence (customarily through experts) on which the Board can assess whether a zoning request pursuant to the BCZR may be approved. While the BCZR provides no specific criteria for the granting of a Request for Special Hearing, "the administrative practice in Baltimore County has been to determine whether the proposed Special Hearing would be compatible with the community and generally consistent with the spirit and intent of the regulations." *Kiesling v. Long*, Unreported Opinion, No. 1485, Md. Ct. Spec. App. (Sept. Term 2016).

A nonconforming use is one that predates the zoning imposed on a property. It is defined in BCZR §101 as a legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use. Under BCZR §104.3, no nonconforming building or structure may be extended more than 25% of the ground floor area of the building so used.

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

(1) The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is – in and of itself – unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property; and

(2) If that first step results in a supportable finding of uniqueness or unusualness, then a second step is taken in the process, *i.e.*, a determination of whether practical difficulty and/or unreasonable hardship, resulting from the disproportionate impact of the ordinance *caused by* the property's uniqueness, exists. *Cromwell*, 102 Md. App. at 694-95, 651 A.2d at 426.

Further, that hardship or difficulty must not be of the Petitioner's own making. 102, Md. App. at pp 694-5.

DISCUSSION

THE LOT: Petitioner's engineer John Motsco testified that the subject lot is a .74 acre parcel, classified D.R. 1 with a small portion being R.C. 2 (Resource Conservation). The lot was created by a plat entitled "Plat of Land belonging to B.F. Bennett and Joshua Regester", dated October 31, 1883 and recorded among the Plat Records of Baltimore County, Maryland in Plat Book No. 2 page 18. The lot lines are unchanged since its creation.

Mr. Motsco also testified that the original residence was constructed in 1951. Using old aerial photographic records, Mr. Motsco determined that the house configuration rendered the side yards of 9.5 feet on the north side and 14.9 feet on the south side, with a sum of the sideyard setbacks of 24.4 feet.

Based on the documentary evidence and testimony of Mr. Motsco, the Board finds that the lot width and area meet the definition of the BCZR as a valid nonconforming use that may continue. The lot configuration pre-dates any zoning in Baltimore County by at least sixty years, and despite the fact that the lot width and area do not meet current regulations, these may continue. In addition, the Board finds that the side yard setbacks existing prior to Petitioner's new construction were in existence prior to the 1996 zoning, perhaps longer, and as such may continue - measuring 9.5 feet on the north side and 14 feet on the south. Further testimony, undisputed though imprecise, persuaded the Board that the shed in the rear of the Property predates the current zoning, and may also remain in its current location, having a setback of 26 inches.

THE BEDROOM ADDITION: Petitioner built an addition to the house which extended the front building and roof lines to create a straight front building line where a "notch" or recess previously existed. According to Mr. Motsco, that addition measures 14 x 22 feet (for a total of

308 sq. ft.). Under BCZR §104.3, no nonconforming building or use may be extended by more than 25% of the ground floor area of the building so used.

Mr. Motsco offered testimony and documentary evidence that the ground floor area of the residence prior to the bedroom addition was 1,554 sq. ft. and that the bedroom addition amounts to less than 25% (or a maximum of 388 sq. ft.) permitted. Mr. Motsco also testified that this addition maintained the previous side yard setback of 14 feet from the south property line shared with the Montanye's.

Based on these facts, the Board finds that the bedroom addition is a permitted extension of the nonconforming structure.

THE GARAGE ADDITION: Though there was much testimony offered by Ms. Bair regarding the addition of a second garage based on her need to protect her vehicles from debris and droppings from trees on her lot, the Board found none of that testimony in any way pertained to the variance findings required under a *Cromwell* analysis. The majority of the Board found that the Property is so similar in size, shape and topography to other lots in the zone as to be indistinguishable for zoning purposes and, as such, does not meet a finding of uniqueness.

Even were the lot found to be unique, any hardship is entirely of Petitioner's own doing: failure to obtain a survey; failure to investigate, apply for or obtain zoning approvals; failure to investigate, apply for or obtain building permits; failure to pursue normal due diligence in either purchasing the Property or in vetting the contractor she hired to perform seemingly substantial and costly improvements to her residence. The Board found Petitioner's testimony lacking in credibility and unpersuasive on this point. Accordingly, the Board denies the requested variances for the garage addition and the side yard of 0 ft. on the north side of the Property.

THE FENCE: Petitioner removed an existing fence and landscaping and replaced that fence with a 6 ft. high fence in lieu of an otherwise permitted 42-inch fence. Petitioner also extended the new fence along the south side of her property and relocated the gate closer to the front building line of her house. By being so located, the fence was impermissibly installed since it was parallel to the adjoining neighbor's front yard.

The Board recognizes that BCC §13-601 (Swimming Pool Enclosure) requires a fence of *not less than 4 feet (48 inches)* (emphasis added), without specifying any height limitation. This Code provision conflicts with the limitation on fence height of 42 inches set forth in BCZR §427.1B.1. BCZR §427 does not permit a side yard fence of a resident's property to be installed in such a manner that it is parallel to the front yard of an adjacent dwelling. Based on this unique set of facts and law, the Board finds that the extension of the fence and gate from the rear building line of the Bair residence, its previous location, to its current location creates an unsafe condition and violates BCZR §427.1.B.1 and must be moved back. However, subject to the relocation of the gate as described herein, the fence height of 6 ft. will be permitted.

CONCLUSION

Based on the foregoing discussion, the Board grants in part, and denies in part the relief sought. In reaching its conclusion, the Board entertained much testimony irrelevant to the zoning issues within the Board's purview as well as much evidence of the acrimony among neighbors. The Board declines to countenance the acts of a property owner who disregards the most basic legal requirements governing the use of his or her property.

ORDER

THEREFORE, IT IS this 7th day of June, 2021, by the Board of Appeals for Baltimore County

ORDERED, that the Petition for Special Hearing: (1) to approve a nonconforming lot width and area; and (2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of the required 30 inches, be and is hereby **GRANTED**; and it is further

ORDERED, that the Petition for Special Hearing: (1) to approve nonconforming dwelling side yards of 9.5 ft. on the north side and 14.9 ft. on the south side, with a sum of the side yard setbacks of 24.4 ft. is hereby **GRANTED**; and it is further

ORDERED, that the Petition for Special Hearing to confirm an existing fence (swimming pool enclosure) with a height of 6 ft. is in compliance with BCZR §427.1 and BCC §13-6 -101, subject to the modification described herein, be and is hereby **GRANTED**; and it is further

ORDERED, that the Petition for Variance: (1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.; (2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of side yards of 14.9 ft. in lieu of the required 50 ft.; and (3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches, be and is hereby **DENIED**.

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

Deborah C. Dopkin, Chair

Andrew M. Belt

see following page
William A. McComas

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

See previous page
Deborah C. Dopkin, Chair

See previous page
Andrew M. Belt

William A. McComas

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

June 7, 2021

Peter M. Zimmerman, Esquire
Carole S. Demilio, Esquire
Office of People's Counsel
The Jefferson Building, Suite 204
105 W. Chesapeake Avenue
Towson, Maryland 21204

Lawrence E. Schmidt, Esquire
Zachary J. Wilkins, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204

RE: *In the Matter of: Donna V. Bair – Legal Owner*
Case No.: 19-342-SPHA

Dear Counsel:

Enclosed please find a copy of the final Opinion and 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,

Sunny Cannington

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure

c: See Distribution List following

In the matter of: Donna V. Bair – Legal Owner
Case No.: 19-342-SPHA
June 7, 2021
Distribution List

Donna V. Bair
John E. Lemmerman/RTF Associates, Inc.
Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
Kim and Tom Montanye
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz
Paul M. Mayhew, Managing Administrative Law Judge
Stephen Lafferty, Director/Office of Planning
C. Pete Gutwald, Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
James R. Benjamin, Jr., County Attorney/Office of Law

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Donna V. Bair – Legal Owner 19-342-SPHA

DATE: April 20, 2021

BOARD/PANEL: Deborah C. Dopkin, Chair
Andrew M. Belt
William A. McComas

RECORDED BY: Tammy A. Zahner, Legal Secretary

PURPOSE: To deliberate the following:

Petition for Special Hearing pursuant to BCZR §500.7:

1) to approve a nonconforming lot width and lot area, pursuant to BCZR §104.1;
2) to approve a nonconforming dwelling side yard setback, pursuant to BCZR §104.1; and
3) to confirm that an existing fence (swimming pool enclosure) with a height of 6 ft. is in compliance with BCZR §427.1 and BCC §13-6-101.

Petition for Variance from BCZR:

1) §1B02.3.C.1 to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.;
2) §1B02.3.C.1 to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.;
3) §400.1 to permit an existing shed with a side yard setback of 26 inches in lieu of the required 30 inches;
4) §427.1 to permit, if necessary, an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches; and
5) in the alternative, if necessary, to permit an existing dwelling with a lot width of 98 ft. in lieu of the minimal required 150 ft. and to permit a lot area of 31,000 sq. ft. ± in lieu of the minimal required 40,000 sq. ft. pursuant to §1B02.3.C.1

PANEL MEMBERS DISCUSSED THE FOLLOWING:

DISCUSSION

- The Board reviewed the Petitioner's request and held three days of hearings.

- The Board first discussed the request for a nonconforming lot width and lot area. The Board found that the lot width and lot area pre-date the current regulations and granted the request.

- The Board discussed the request for a nonconforming dwelling side yard setback. The Board reviewed the pictures of before and after the addition. The house did not share a common roof, and now does. The Board noted there was an addition to the original footprint of the home to enlarge a bedroom, but the side yard setback was not impacted. The Board found that the side yard setback on the south (Montanye) side falls within the 25% allowed for nonconforming

lots. There was no evidence or testimony to support the side yard setback on the north (Fradkin) side where the garage is located.

- The Board discussed the requested variance relief and the uniqueness requirement of *Cromwell*. The Board noted that the garage encroaches on the adjoining property. Petitioner's expert argues that the topography of the property makes it unique as it slopes to one side. Protestants argue that the subject property is similar in size and shape to others in the neighborhood. One Board Member was persuaded that the property is somewhat unique as it is smaller than others, even though it is similarly shaped. The remaining members found the property is similar to others located on Prospect Avenue and is not unique.

- The Board next discussed the hardship factor in *Cromwell*. The Board noted that the house was purchased without a survey, and substantially expanded without a survey or permit. The garage was expanded from the original one-car garage to a two-car garage. The Board found that any hardship of the Petitioner was self-imposed.

- The Board discussed the request to permit an existing fence (swimming pool enclosure) with a height of 6 ft. in lieu of the permitted 42 in. The Board noted there are competing statutes regarding fences. The 6 ft. fence extends into the front yard of the adjoining property and along the parking area/driveway of the neighbors. The Board noted that the fence impedes the ability of the neighbors to see when they pull out of their driveway, which is a public safety hazard. The Board found that a reasonable solution is to relocate the fence and gate to its original location, which will provide pool security and address the driveway concern. The Board granted the Variance relief, with conditions.

- The Board briefly discussed the alternative relief noted on the redlined Plan. The Board noted there was no evidence presented at the hearing and found the alternative relief MOOT.

CONCLUSION: After thorough review of the facts, testimony, and law in the matter, the Board unanimously agreed that the Petitions for Special Hearing and Variance would be DENIED in part, and GRANTED in part, with conditions.

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,

/s
Tammy A. Zahner

Baltimore County - My Neighborhood



March 2019 Submission to Landmark Preservation Commission (LPC)

For 4609 Prospect Avenue, Glyndon, MD 21136

(non-contributing property in the Glyndon Historic District)

Please accept the following home improvement items for LPC approval. I'm hoping to group the items below into a two or three permit requests, to reduce time away from work and cost.

1- Driveway Maintenance

Work was started August 30th and completed September 3rd, 2018. Before proceeding, I checked the permit requirements for this work thoroughly online, and found it was not necessary. This was before my communications with LPC and learning that all work, even if it didn't require a permit through the normal process, now requires LPC approval and a permit. This LPC/permit procedure and requirement was introduced well after my most recent interaction with Historic Glyndon Inc., in the winter of 1999-2000, when we added an addition to the back of our house. No change notification was ever sent to us. In addition, when inquiring about my neighbor's October complaint, shortly after completing the work, Hunter Rowe at the Baltimore County office closed the case with no action necessary on our part. In talking with him 3/5/19, after receiving a correction notice 3/4/19, he said he had made a mistake, and we did in fact need LPC approval and a permit. Photos included for your review.

The work involved

- resurfacing the dark gray stone driveway, put in place prior to 2000, with millings (recycled blacktop stones) of the same gray color and porous properties,
- filling in some ruts/areas that had eroded,
- reclaiming about 12" of the original footprint along the edges, where grass had encroached over the 20+ years, and
- widening one small portion – a minimal triangular strip 24" at the wide end, coming to a point at the other end, less than 30 feet in length (~15 square feet). Contrast this with Mrs. Bair's ~10x 15' (150 sqft) concrete expansion in front of her new 2nd garage bay.

The whole driveway is 100' long, from the street to the front of our house, starting as a single lane at the street and then widening at the house to hold 2 cars side-by-side.

The widening was necessary to meet the needs of our growing family. After 30 years of living here, we now have 4 driving-aged children living at home (6 drivers and 6 cars), with frequent friends and family visitors. We can now fit all 6 cars in the driveway. This minimal widening, to allow a 3rd row of two cars, was the least costly and least impactful solution to our parking needs.

Note: First verbally, then via first class letters, I advised Mrs. Bair well in advance that we would be widening our driveway. Because her auxiliary parking area (Mrs. Bair's actual driveway is on the other, garage side of her property) encroaches quite significantly on our property (see attached survey), our widening resulted in going right up to it. In discussing this concern with her, I offered to restore separation via a small grass strip, half on our side of the property line, and half on hers. This would require her to alter her auxiliary parking area to resolve the encroachment issue and she declined. When driving around all of Historic Glyndon, I can find no other property that has been allowed a driveway/parking area on both sides of the property. I was, however, able to find multiple driveways that adjoined on the property line, and many stone driveways. Also related to Mrs. Bair's concern about the minor widening, we withheld further widening in one specific area, and conceded instead to put in a planter box and narrow sky pencil holly trees to better define separation and accommodate. Ironically, she added that work to her complaint against us.

Another factor: Because we have a fire hydrant in front of our house, our street-front parking area is abnormally very limited. We have to stay 15' away from the hydrant in either direction. Mrs. Bair has repeatedly called the police if we

breech the 15' requirement, even if we're not actually blocking the hydrant, and we have actually gotten a ticket at her insistence when only 10' away. Also, the area we *can* park in at the street is directly under a neighbor's 100 year-old oak tree that is known to drop car-smashing branches.

I seek LPC approval (after the fact) for this work, and forgiveness for not knowing the new process and requirements at the time. I didn't encounter any information about an LPC requirement while looking earnestly at the county codes prior to the work.

2 - Shed Maintenance

Our shed was built as part of our 1999-2000 addition project and matches the house in features. We re-used a kitchen window and French doors from the original house, built in 1949, on the shed in our rear yard. These re-used parts need to be re-painted and the sill & threshold replaced from rot. I intend to replace the sills with a composite replica and paint them white to match the house and shed trim. In addition, there are two small overhang roofs, front and back, that need new sheathing, plus their supporting 2x4's which have insect (wood bees) damage. I'll also replace the shingles with architectural shingles that match the newly completed house roof, and add new gutters to protect the window and doors from further exposure. Finally, I want to build a new 12x12 platform with composite decking in front of the shed, to replace the treated plywood wood ramp, allowing an area to do small maintenance projects such as bicycle and mower maintenance. Photos included.

3 - Front Angle Bay Maintenance

Replace rotted frame and sills as needed with like pine, wrapped with aluminum trim coil to match the rest of the house, re-paint same color (white) where needed to match. Replace the asphalt roof shingles with copper as an upgrade to further highlight this feature and match the cupola. Photos included.

4 - Cupola

We plan to add a cupola on our roof. There are several cupolas on our street, and more in Historic Glyndon. Photo included.

5 – Picket and/or Lattice Enclosure Around Trash Cans & Utility Service – Side

Build a picket enclosure to hide unsightly trash cans and gas/electric meters from view, while still allowing access. Photos included.

9 - Privacy Along Parking Area

Our neighbor recently installed a security camera on her new 6' fence, which also monitors our parking area, such that every time we get into or out of our cars or pull in and out, the motion light and camera are activated. To allow for privacy, we will install 3 wood trellises, 2'x6' (photo included) and plant some ivy and Clematis to eventually cover them. See plot plan for location along driveway.

10 - Deck

18 years ago we added a back addition, with a space designed for a future deck, and are only now in a position to afford to build it. Aside from the access steps, it will be positioned mostly behind/beside the house, not visible from the front/street, and the steps will be mostly shielded from view because of our established front/side holly tree. Plans attached.

11 - Balcony

Build a 14' x 8' balcony off of our master bedroom, replacing the regress window with an exterior door. Composite decking with treated pine rails and black aluminum balusters to match the main deck construction. Site photo attached.

12 - Foot Path

Install a gravel-and-stone foot path leading from the front of the house to the new deck, when complete. This shaded area is impossible to sustain sufficiently plush grass to allow safe foot traffic. Illustration included on plot plan, photo.

13 - Rear Yard Pet Fence & Driveway Decorative Fence

We intend to install a new 42"-high wood fence to contain our pets in the flattest area (about half) of the back yard, see plot plan for location detail. The fencing from the deck to the property line and forward will be picket (photo attached) to match the trash can enclosure in the same area. From the deck to, and around, the back yard will be paddock style. The new hedges will hide the transition from one to the other.

Also, we will install an 18" high decorative white picket fence along our driveway to help hide the muddy trench resulting from runoff from our neighbor's addition and re-grading.

14 - New Landscape Wall Around Oaks, Back Yard

There are two oaks in the back yard on the edge of a slope, and the back/ slope-side is experiencing erosion, exposing the roots. I will install a minimal (9-15") gray stone landscape wall around the back side to better level out the bed and prevent further erosion, protect the health of the trees, and retain the mulch during heavy rains.

15 - Stone Around Mailbox

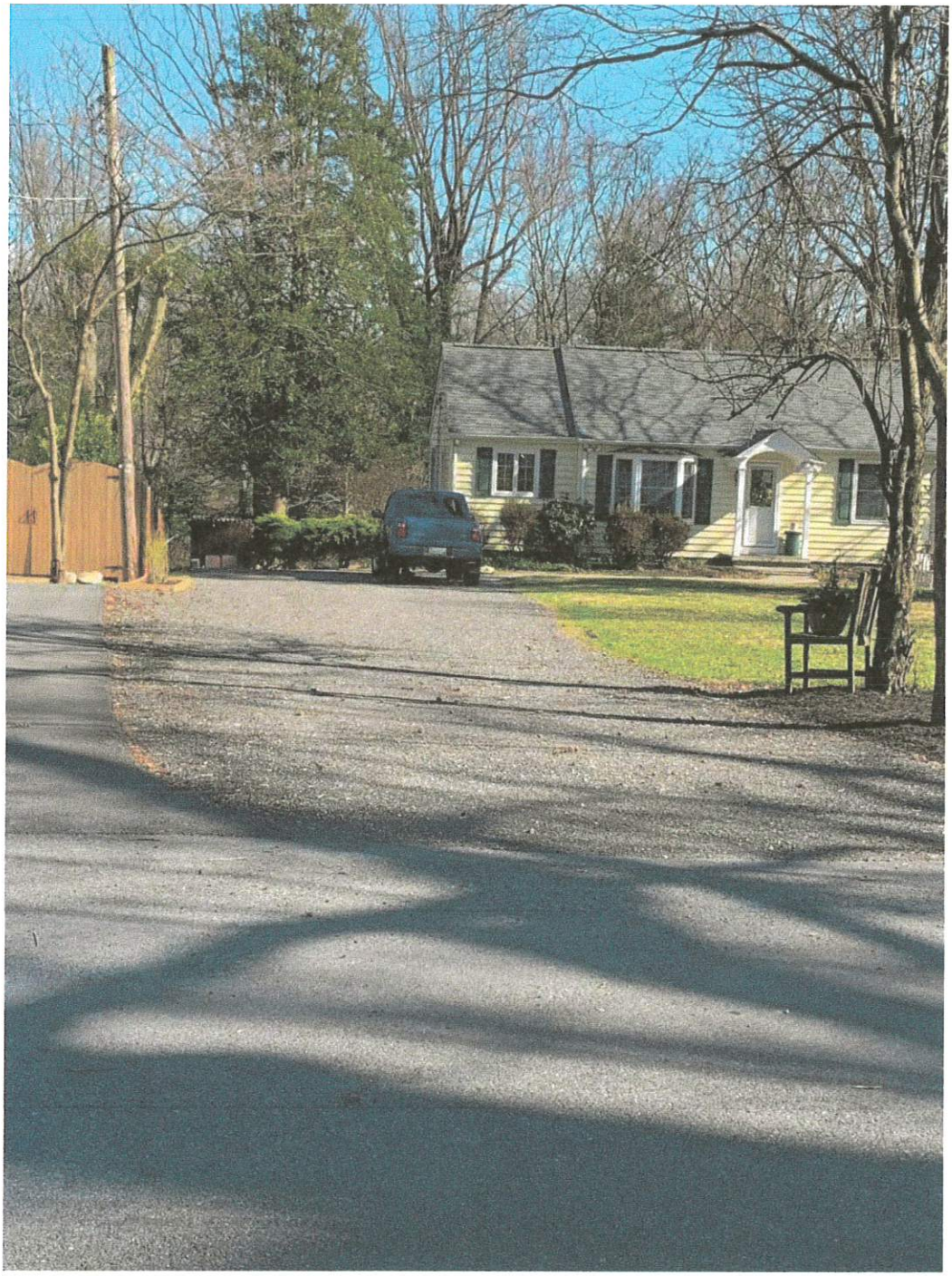
Install a stone frame around the mailbox post to upgrade appearance. Photos included.

17 - Drainage in Front of House

Bury drain tile in front of the house where water gathers and leaks into the basement, to carry the water to either side of the house. See photo.

Photos and Supporting Drawings, Etc.

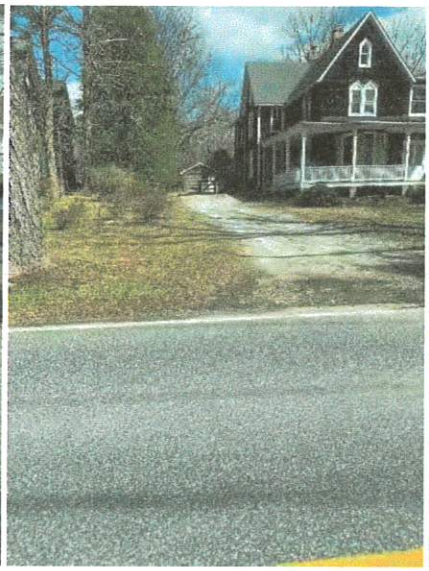
1- Driveway Photos



4609 Prospect Ave, stone driveway resurfaced



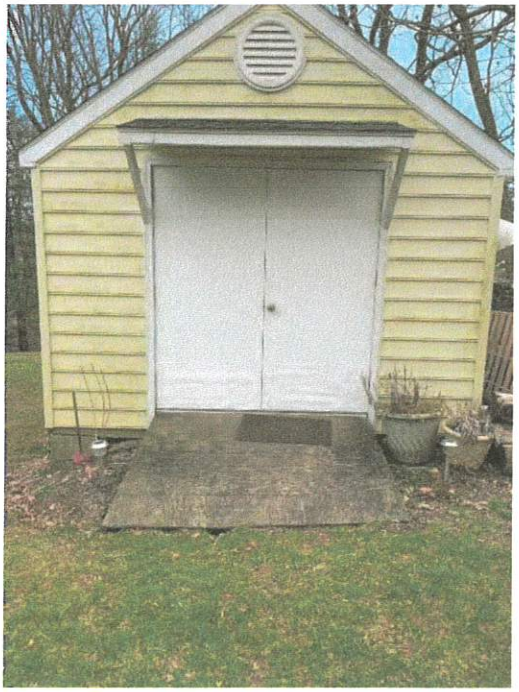

Joint driveways on Butler Rd and Central Ave, Historic Glyndon district.

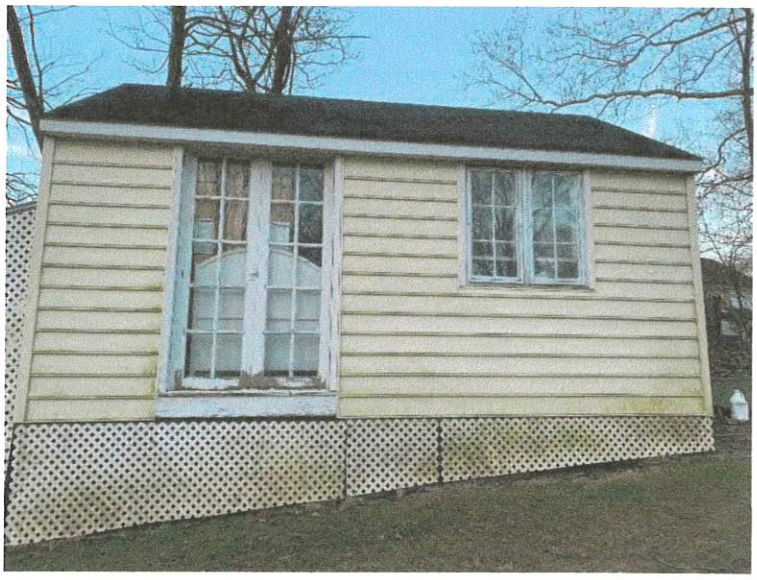






Stone driveways on Central, Waugh, and Prospect Avenues in Historic Glyndon. Also, photo of our limited street-front parking.

2 – Shed Maintenance





Replace sheathing and studs supporting small roof over doors, add 12x12 gray composite deck platform (same as other decks on house) to replace rotted ramp.



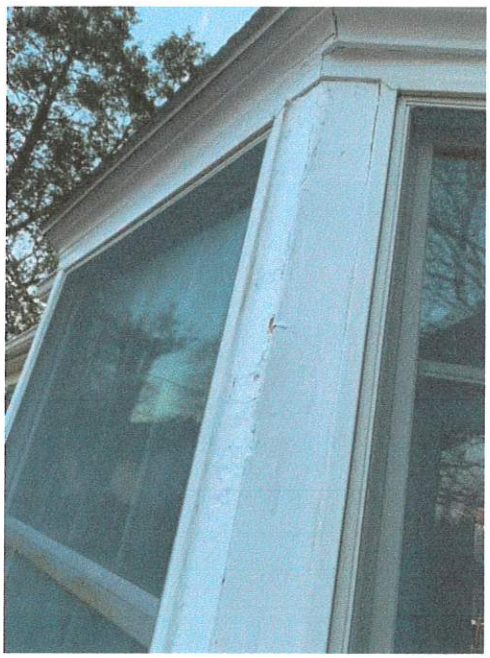


Replace door threshold (left) and window sill (right) wood with wood composite cut to fit, re-paint white



3 – Front Angle Bay Maintenance





Replace rotted wood frame with pine, wrap with white aluminum coil to match the rest of the house & protect.



Replace bay shingles with copper to highlight this feature.

4 – Cupola



Add a cupola on roof peak, centered with front porch on house, 27" single louver, painted white.

5 – Enclosure around trash cans and utilities, ground cover.





Build a treated wood structure around trash can area (picture above left), open top, with picket doors to access trash cans & utilities, even with front of house and only deep enough to hold recycle/ trash cans as shown. Will look very similar to picture (right) above but housing 3 trash/recycle cans along the side of the house, measuring 6'wide by 42" tall by 28" deep. From the street, one would only see a 28" wide picket fence 42" high starting where the rain gutter corner is in the photo on the left. (There actually used to be a 28" wide by 42" high picket fence shield hiding just the front of the trash can area but it rotted and I removed it.)

9 – Trellises for privacy in driveway





Install 3 trellises (photo above left) along property line by driveway (location on plot plan, and shown in photo) to shield from neighbor's new obtrusive security camera (circled top right). Photo shows my neighbor's house, fence, and security camera circled in red. The planned trellises between the telephone pole shown and the fence, along the property line, the same height as the fence shown, so the "future" picture would basically show trellises and Ivy/Clematis blocking this view of the camera, fence, and stone walk, providing mutual privacy. When we moved into our house 30 years ago, and until the fence was installed in this location, there was a trellis with a beautiful and established Clematis; we want to restore it.

belongs to 4607

10 – Deck Features (Main/NE Side, see also plot plan & concept drawing)



Rails to be 2x4 composite gray to match decking, with shown aluminum balusters. Posts 4x4 treated pine.

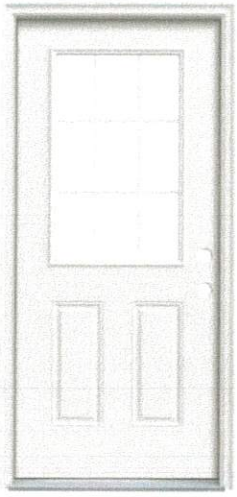




Decking & Step material (gray composite)

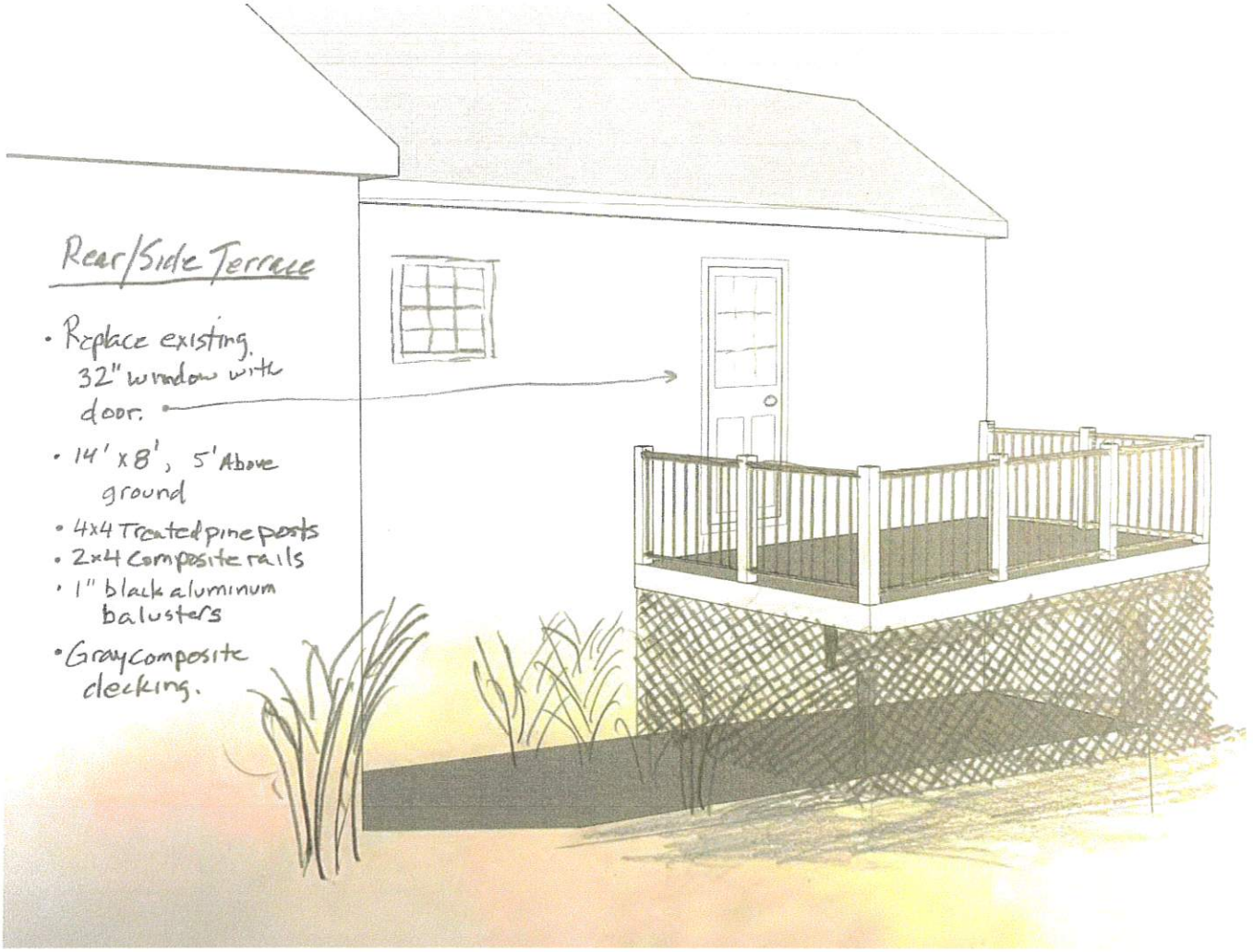
11 – Balcony Location off of Master Bedroom (SW side at back of house, see plot plan)







Site location shown 14' (along house) x8', replace window with exterior pre-hung metal paneled door with glass & full glass aluminum painted storm door, similar to previously approved front door. Same materials as deck on other side of house (see above), not visible from street.



12 – Foot path to new main deck (similar gravel and stone, see plot plan location)



13 – Rear /side yard fence to contain pets (see plot plan for placement), 42" spaced picket from the deck forward (side yard), and paddock style from the deck into and around the back yard.





Rear yard fence above, location as shown on plot plan.







Driveway decorative 18" picket fence to help hide muddy trench from neighbor's water runoff caused by regrading and addition.

Y607 ground cover removed by Y609

15 – Stone mailbox post



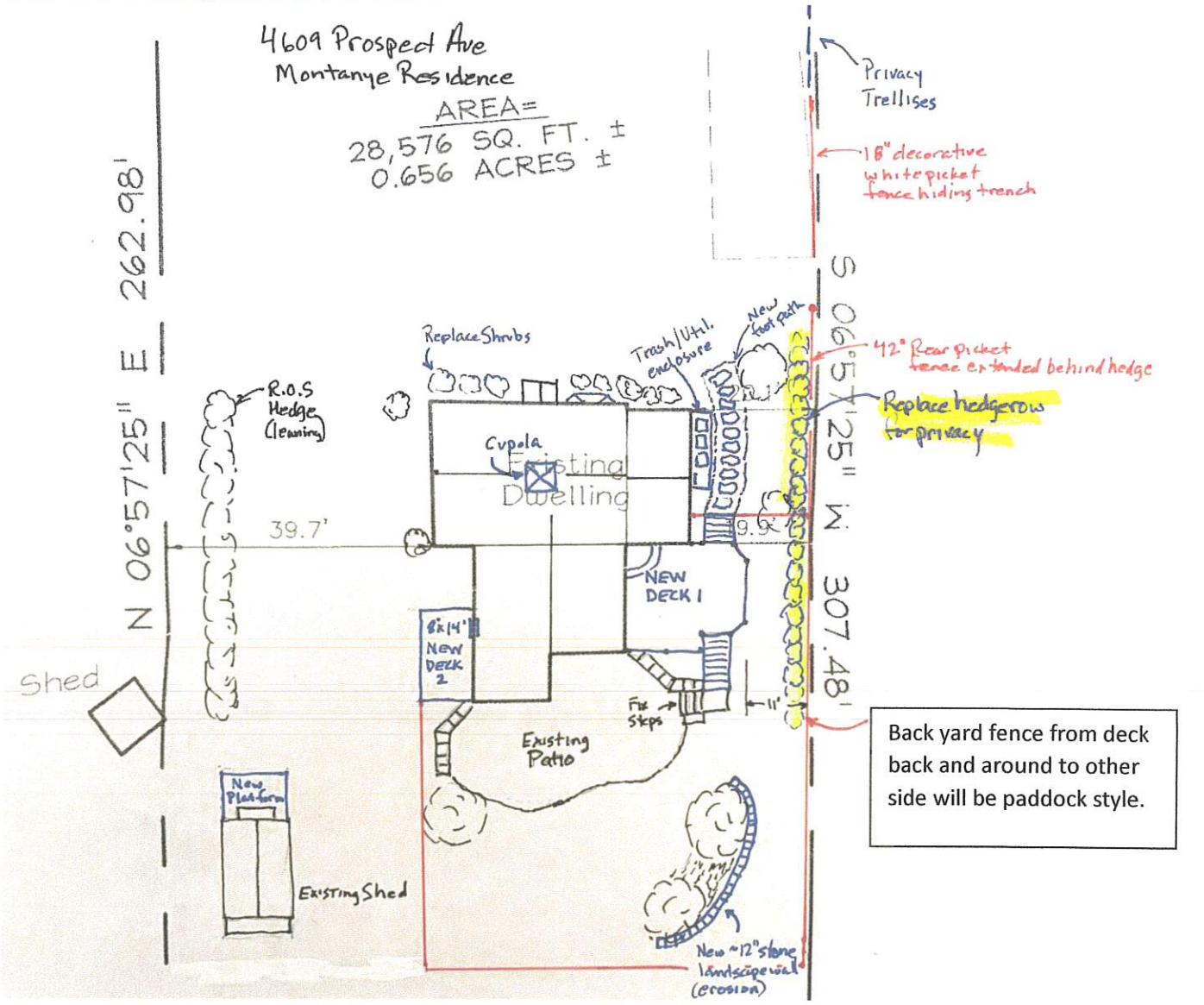

Upgrade wood mailbox post with stone upgrade

17 – Drain tile front of house

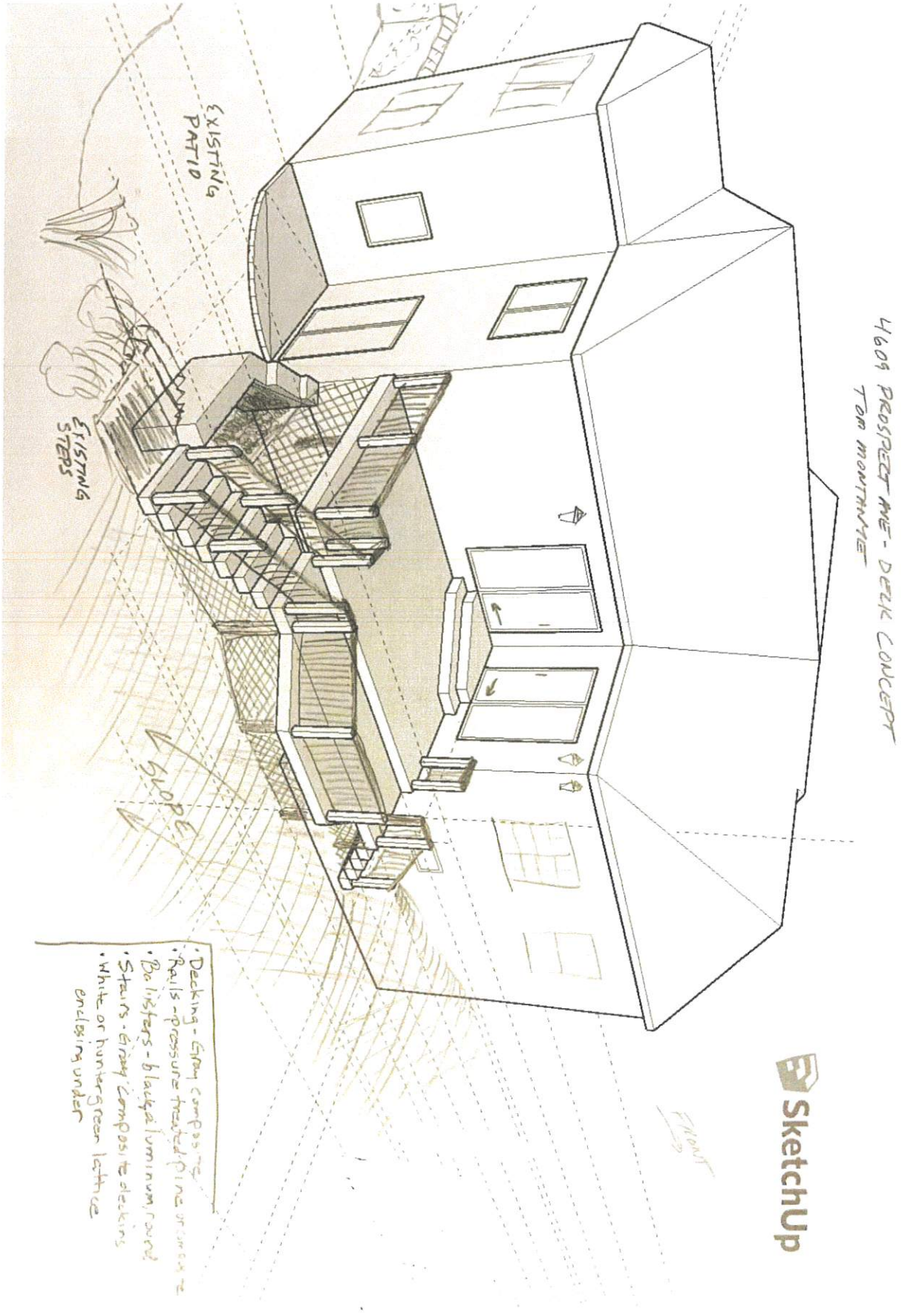


Bury drain tile closest to camera, slope and run underground away from camera to edge of driveway/bush, to carry away captured water around house, which leaks into basement.

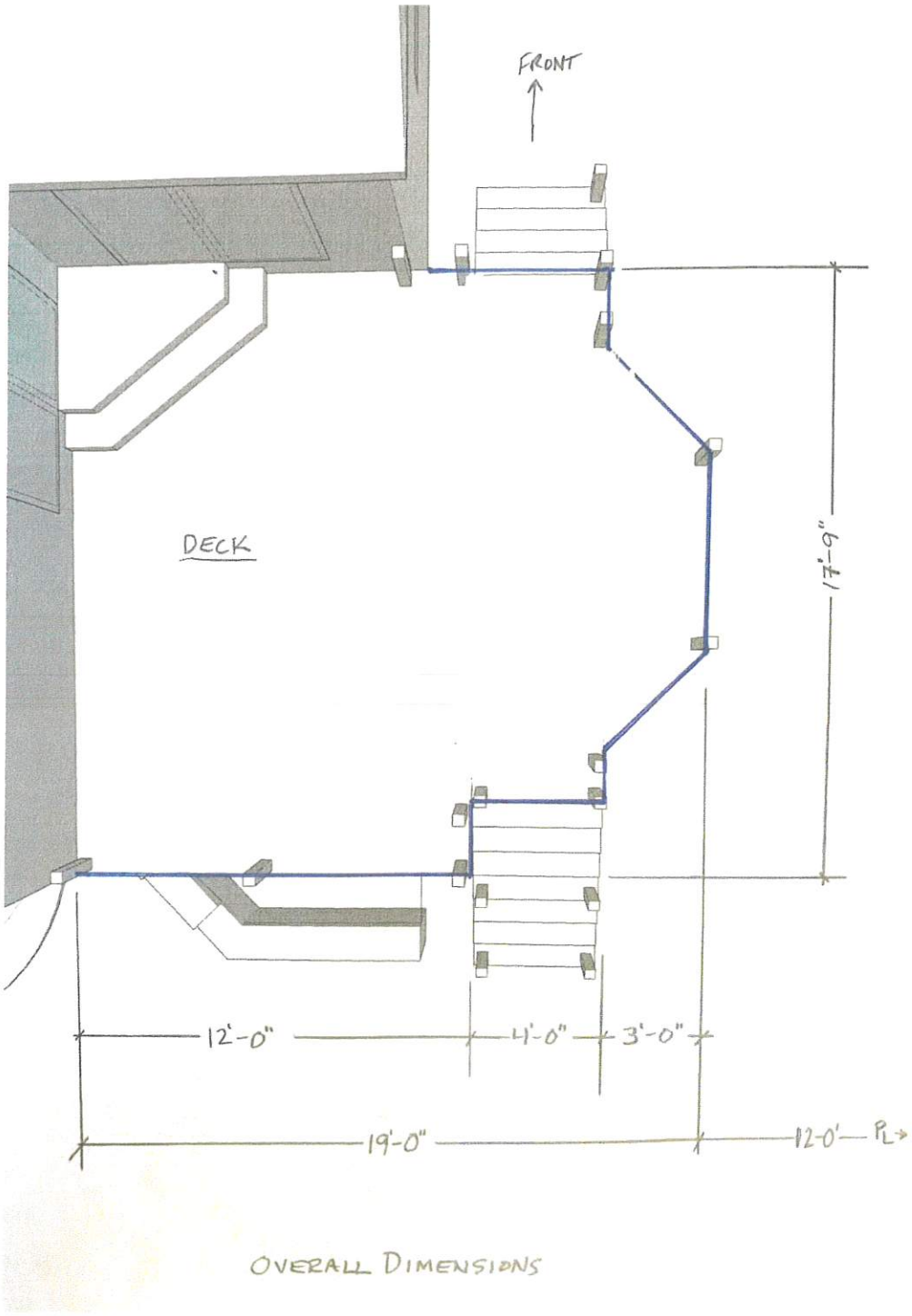
Plot Plan Showing Locations of Work



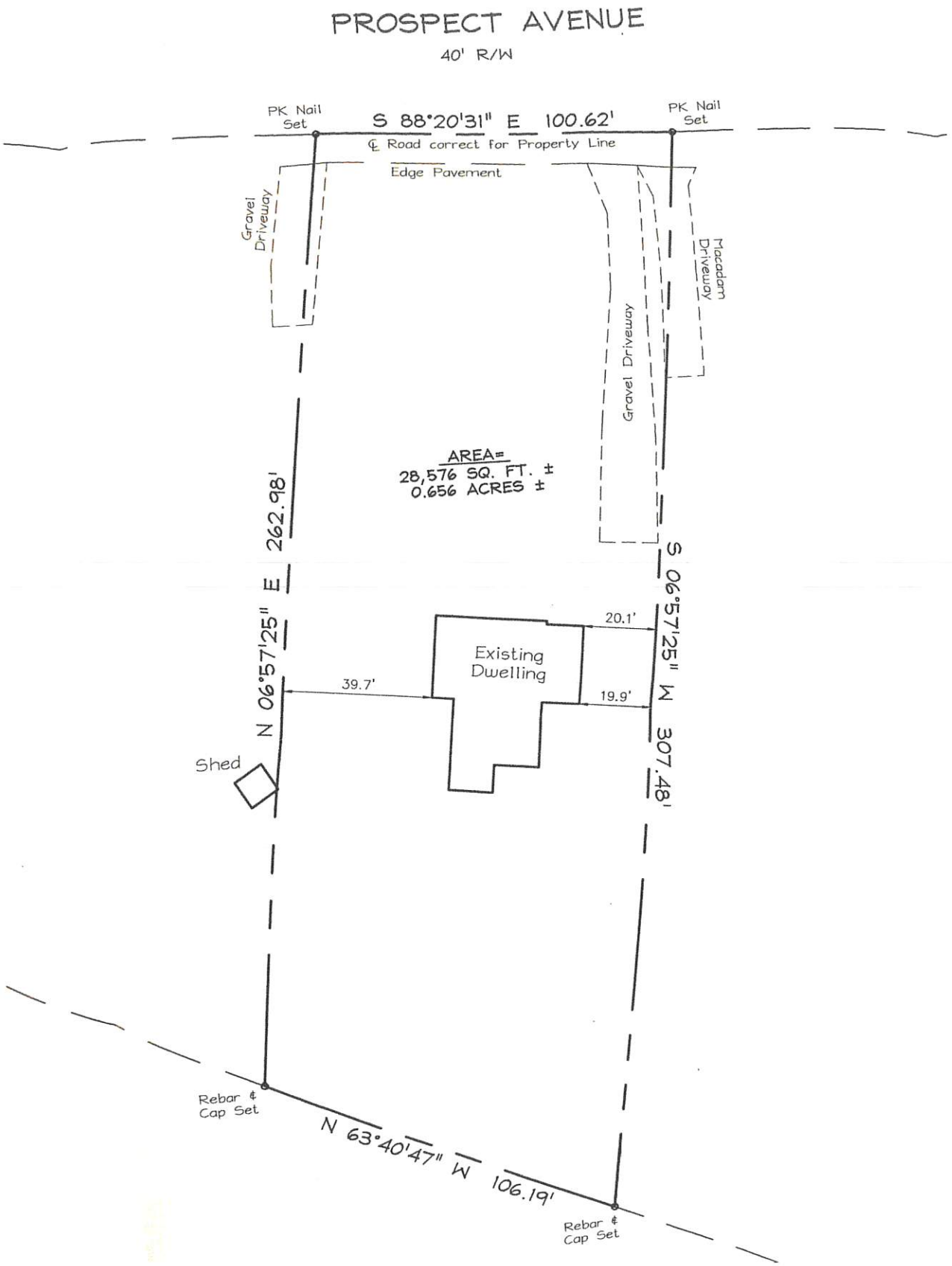
Main Deck Concept Drawing



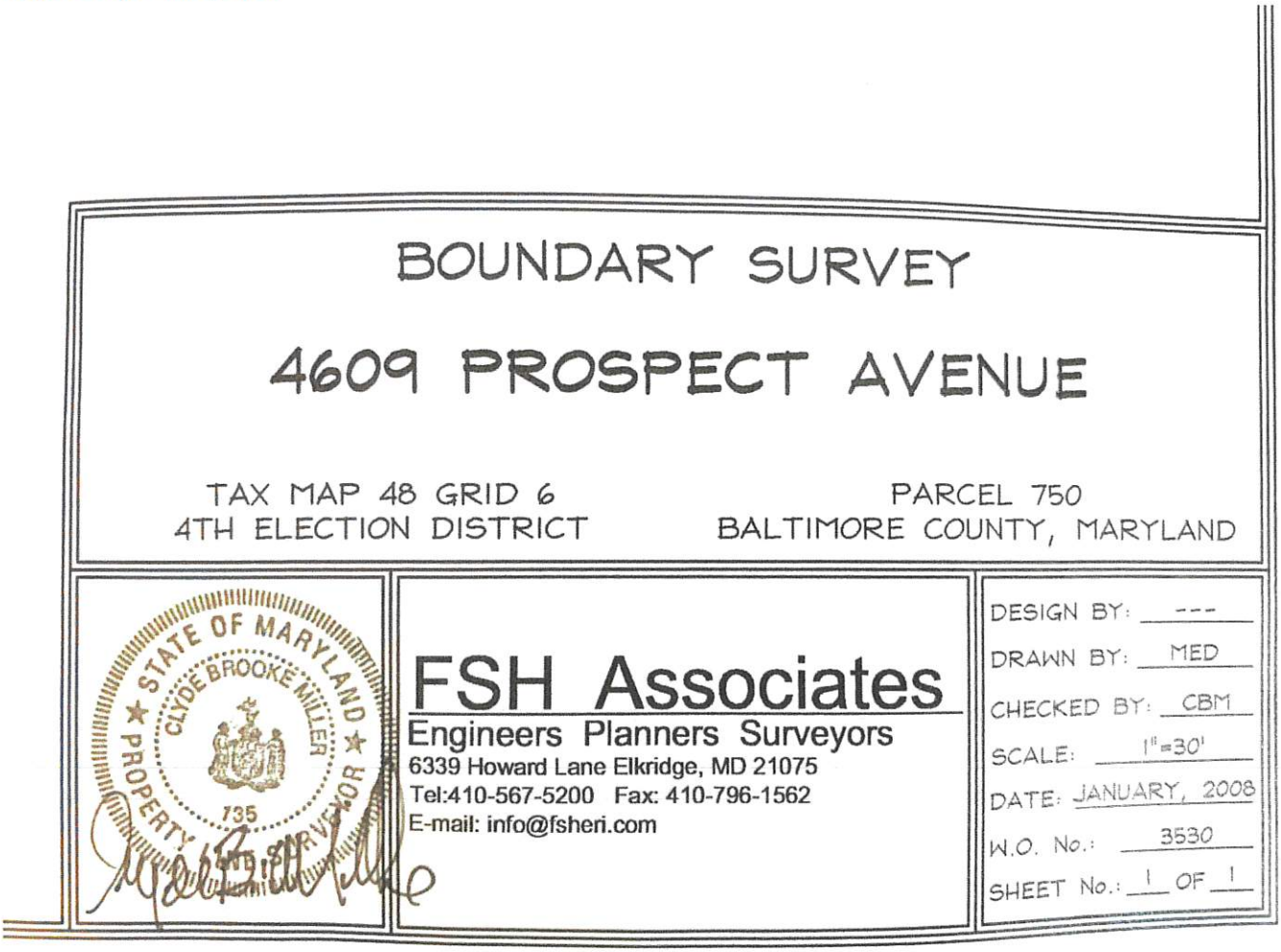
Main Deck Overall Dimensions



Full Boundary Survey



Boundary Survey Seal



*Note: My property corners in street will be re-established by our surveyor soon, since they were paved over in October 2017, when they repaved Prospect Avenue. Mrs. Bair's property markers currently along my driveway are fraudulent, as they were installed on our property by she and her husband, after her surveyor left the job.

April 11, 2019

LPC Technical Committee Report

4609 Prospect Avenue

Glyndon Historic District

On April 9, 2019, a Technical Committee consisting of commissioners, Wendy McIver and Steve Myer and Baltimore County staff member Teri Rising met on site with the owner to review changes that the owner is planning to make to his home and property. The house is a single story, frame single family dwelling. It is a non-contributing structure in the Glyndon Historic District. The first change to the property is the enlargement of the driveway to make room for additional cars in the owner's family. The existing driveway was stone surfaced. Bituminous concrete road millings were used to expand the driveway to accommodate six cars. This work has already been constructed by the owner and is being reviewed ex post facto. The balance of the changes are being proposed and have not been made. Along part of their driveway, the owner wants to screen off the glare of the neighbor's security camera with about six feet of trellises covered with clematis. A white picket fence garden border will be placed along the northwest edge of the driveway for about twenty feet. In addition, a pressure treated wood picket fence will be built screening off the trash can holding area and the BGE gas and electric meters. Extending from the northwest corner of the picket privacy fence will be a pressure treated wood reil on post pet containment fence with welded fabric lining the inside. This will match the same style fence that their neighbors have. Along the front of the house, the owner will install corrugated drain tile bedded in stone to absorb surface water and direct it to the back yard. On the front of the house, the existing bay window will be repaired due to a rotting frame and clad in aluminum. The roof of the bay window will be replaced with a copper standing seam roof. Matching the copper on the bay window roof, the owner wants to install a copper cupola on the center ridge of the house roof. Extending out from the northwest corner of the house, the owner wishes to build a deck which had been planned when an addition was put on the house 18 years ago. The deck will be made of composite materials and will extend out from the existing sliding doors on two sides. The deck floor will be two steps down from the access to the house. On the southeast corner, the owner wants to build a balcony from the master bedroom and expand an existing window into a door access. The balcony will also be constructed from composite materials. The shed in the backyard will be rebuilt where wood framing and sills have rotted. The back of the shed will receive a new overhang roof and a front door ramp and platform for access for the lawn equipment and to be used as an area for equipment maintenance. The shed trim will match the house. The existing mailbox will receive a faux stone post. The oak trees in the backyard will be edged with garden blocks and mulched.

The changes to their property follow design guidelines for non-contributing structures in a historic district. Based upon the observations of the technical committee, these changes do not overpower the appearance of the existing dwelling. The major construction, which is comprised of the deck and the balcony, is being built in the rear of the house and therefore would not be visible from the road.

Steve Myer



Fences in Historic Glydon

14- 6 foot; **3**- 5 foot; **18**- 52 inches; **9**-4 foot; 2-42 inch; 1-20+ feet = **45 over 42 inches/height**

29 Chatsworth Ave	6 foot privacy wood	Front of neighbor foundation

25 Waugh Ave	6 foot privacy wood	
8 Waugh	6 foot privacy white	
6 Waugh	6 foot privacy wood	
4722 Butler Rd	6 & 8 foot privacy wood	
4702 Butler	6 foot privacy wood	
3 Waugh	6 foot privacy wood	
2 Waugh	6 foot privacy wood (pool)	Variance approved
4612 Prospect Ave	6 foot privacy wood (pool)	
4711 Butler	6 foot	5/17/20 permit B969795
121 Central Ave	6 foot	1/28/20 permit B967319
37 Waugh	6 foot pig/chain fencing	
4606 Prospect	6 foot pig/chain fencing	
2 Waugh	5 foot rod iron	Variance approved
4605 Prospect	5 foot rod iron (pool)	
4511 Prospect	5 foot rod iron (pool)	
4802 Butler	52 inch 3 split rail along road	
4708 Butler	52 inch 3 split rail to road	
7 Waugh	48 inch 3 split rail	8/30/18 permit B943654
19 Waugh	52 inch 3 split rail	
29 Waugh	52 inch 3 split rail along road	

4 Waugh	52 inch 3 split rail to road	variance

5 Waugh	52 inch 3 split rail	
28 Chatsworth Ave	52 inch 3 split rail	

37 Waugh	52 inch 3 split rail	
Entrance to Emery Grove	52 inch 3 split rail along road	

4611 Prospect	52+ inch 3 split rail	5/21/19 permit B959741
4605 Prospect	52 inch split rail (pool)	
4601 Prospect	52 inch split rail	
4716 Butler	52 inch chain link	
4606 Prospect	52 inch chain link	
4612 Prospect	52 inch chain link	
4316 Butler	52 inch chain link	
Along Butler Rd/Glyndon sign 32 Waugh	48 inch picket (white pvc) 48 inch picket	
4704 Butler	48 inch picket	
3 Waugh	48 inch picket	
4702 Butler	42 inch picket	
4609 Prospect	42 inch picket	11/14/19 permit B965721
4802 Butler (Glyndon sign)	20-25 foot chain/mesh	
222 Central	4 foot	1/22/15 permit B868364
201 Central	4 foot	8/29/13 permit B825515
207 Central	4 foot	12/16/12 permit B804828
24 Chatsworth Ave	4 foot	3/11/15 permit B871664
16 Chatsworth	4 foot	9/8/19 permit B963656

4611 Prospect Behar #B959741 May 21, 2019 4 foot fence
7 Waugh DMA Investments #B943654 August 30, 2018 4 foot fence
4711 Butler Rd Eric Donatelli #B969795 May 17, 2020 6 foot fence
121 Central Ave Joseph Geipe, Jr. #B967319 January 28, 2020 6 foot fence
222 Central Ave Martha Healy #B868364 January 22 2015 4 foot fence
201 Central Ave Susan & Peter Kennedy #B825515 August 29, 2013 4 foot fence
207 Central Ave Jennifer & Ernesto Diaz #B804828 December 16, 2012 48" fence
24 Chatsworth Ave Pamela Becker #B871664 March 11, 2015 4 foot fence
16 Chatsworth Ave Sierra Waldman #B963656 September 8, 2019 4 foot fence

3/11/21 } 4708 Butler Rd. CPC agenda approved 3 board split rail
4716 Butler Rd. " " " replace with 2 board chain link + 3 board split rail

6 foot privacy (wood except where noted):

1. 25 Waugh Ave
2. 8 Waugh (white)
3. 6 Waugh
4. 4722 Butler (also an 8 foot tall)
5. 4702 Butler (two sections)
6. 3 Waugh
7. 2 Waugh (Inground pool)
8. 4612 Prospect (Inground pool)
9. 4711 Butler
10. 121 Central Ave
11. 29 Chatsworth Ave (new - in front of front foundation)
12. 4802 Butler Ave

6 foot gardening pig fence

1. 37 Waugh Ave
2. 4606 Prospect Ave

5 foot black rod iron

1. 2 Waugh
2. 4605 Prospect Ave
3. 4511 Prospect Ave (inground pool)

Permits for 4 foot fences

1. 121 Central Ave
2. 222 Central Ave
3. 201 Central Ave
4. 207 Central Ave
5. 24 Chatsworth Ave
6. 16 Chatsworth Ave

3 rail split - approximately 52 inches

1. 4802 Butler (along road)
2. 4708 Butler (up to the road) On LPC agenda for 3/11/21 to add 3 rail split around back yard
3. 7 Waugh Ave
4. 19 Waugh Ave
5. 29 Waugh Ave (along the road)
6. 4 Waugh
7. 37 Waugh Ave
8. Entrance to Emery Grove (along the road)
9. 4611 Prospect Ave
10. 4605 Prospect Ave (inground pool)
11. 4601 Prospect Ave
12. 28 Chatsworth Ave
13. 4704 Butler Road
14. 5 Waugh Ave

52 inch chain link (not to be allowed by LPC)

1. 4716 Butler On LPC agenda for 3/11/21 to replace like kind and add 3 rail split back yard
2. 4606 Prospect Ave
3. 4612 Prospect Ave
4. 4316 Butler

48 inch picket

1. 32 Waugh Ave
2. 4704 Butler
3. 3 Waugh Ave
4. Along Butler Road where Welcome to Glyndon sign is posted (white plastic/pvc)

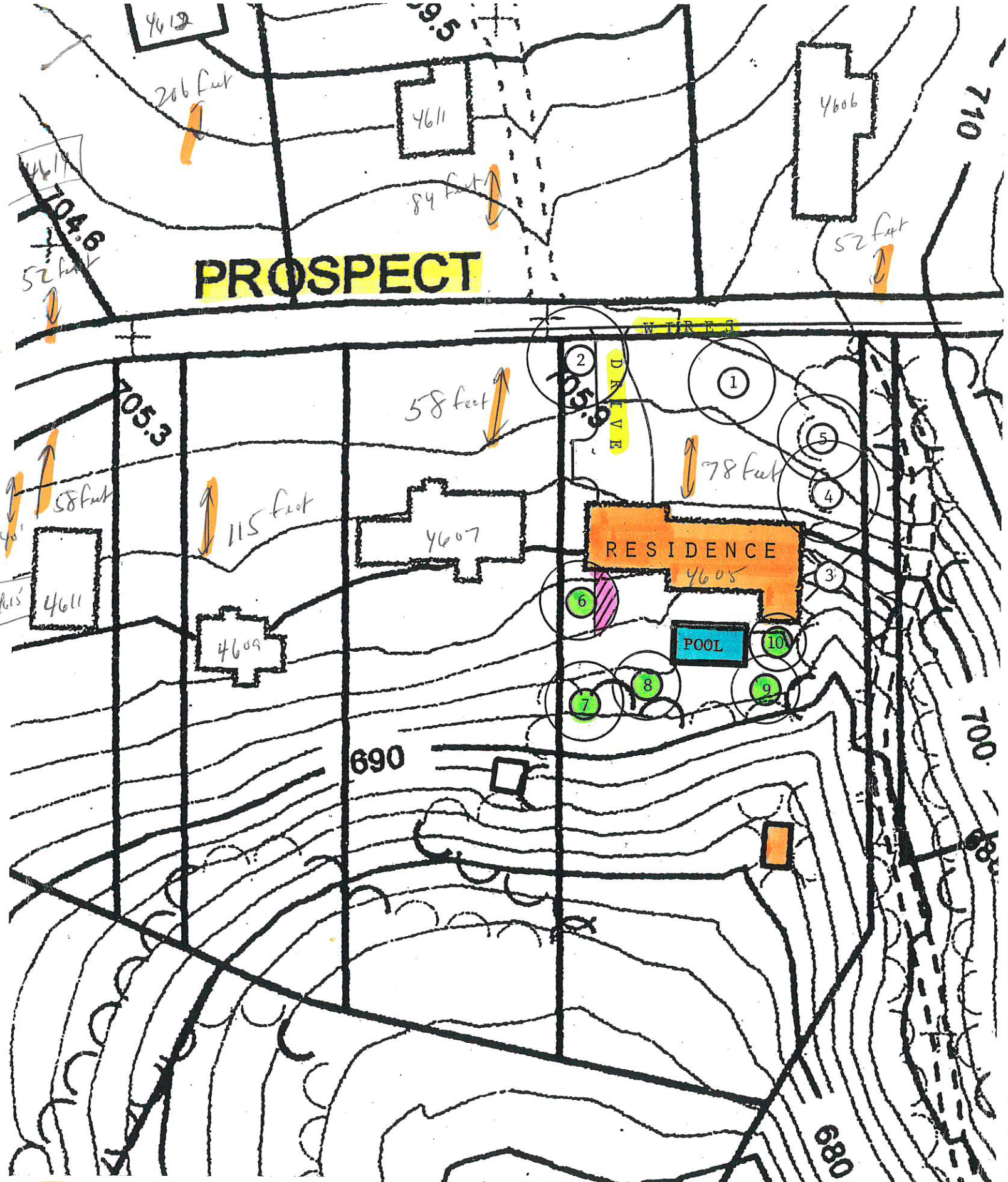
42 inch picket

1. 4702 Butler
2. 4609 Prospect Ave

Glyndon sign on Butler Road - 4802 has chain link fence with mesh - approximately 25-20 feet

2/9/2020





08-31-14 - TREE PRESERVATION PLAN

For: The Stephen M. Fradkin Res.
4605 Prospect Avenue
Reisterstwon, MD 21136-3800

Tel. 443-744-1225 / Loc. BC 16 C-5

IN RE: THE PETITION FOR SPECIAL HEARING AND VARIANCE **4607 Prospect Avenue**	*	BEFORE THE
	*	COUNTY BOARD
4th Election District 3rd Councilmanic District	*	OF APPEALS
	*	FOR
Donna V. Bair *Legal Owner*	*	BALTIMORE COUNTY
	*	**Case No.: 2019-342-SPHA**

* *

CLOSING MEMORANDUM

The property owner, Donna V. Bair ("Petitioner"), by and through her attorneys, Lawrence E. Schmidt, Zachary J. Wilkins, and Smith, Gildea & Schmidt, LLC, submit this Closing Memorandum in support of the Petition for Special Hearing and Variance relief for the above referenced matter and state:

STATEMENT OF THE CASE

This matter comes before the Board of Appeals of Baltimore County (the "Board") as a *de novo* appeal of the Opinion and Order dated August 19, 2019 by the Administrative Law Judge ("ALJ") and the Order on Motion for Reconsideration dated September 25, 2019 by the ALJ of a Petition for Special Hearing and Petition for Variance relief for the property located at 4607 Prospect Avenue (hereinafter the "Property"). In applying the *de novo* standard, the Board's findings of fact and conclusions of law will be the record made before it.

The Special Hearing relief was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("BCZR") for an interpretation of the proper application of the BCZR. As it

relates to the issues in the instant appeal,[1] the Special Hearing relief seeks (1) approval of nonconforming dwelling side yard setbacks of 9.5 feet and 14.9 feet, with a sum of the side yard setback of 24.4 feet; and (2) to confirm that an existing fence (swimming pool enclosure) with a height of 6 feet is in compliance with BCZR § 427.1 and Baltimore County Code ("BCC") § 13-6-101. The Variance relief was filed pursuant to BCZR § 307.1 and seeks (1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft; (2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; and (3) If necessary, to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches.

The public hearing before the Board consumed three non-consecutive days on February 6, 2020, March 23, 2021, and March 25, 2021. At the conclusion of the hearing, the Board directed that the parties submit written closing memoranda setting out their respective arguments. The relevant facts and testimony will be recounted as appropriate herein.

STATEMENT OF THE FACTS

Many of the facts relating to the Property are not in dispute. The Property is located in the Glyndon community of northwestern Baltimore County and is approximately 0.74 acres (32,234 sf.). The Property is predominantly zoned DR 1 (Density Residential), but contains a small sliver in the rear which is zoned RC 2 (Resource Conservation).[2] The Property is identified as Lot 10, as shown on the Plat dated October 31, 1880 and titled "Plat of Land belonging to B.F. Bennett and Joshua Register" which was recorded in the Land Records of Baltimore County at Plat Book 126,

[1] Neither Petitioner nor Protestants appealed the ALJ's approval as to the lawfully nonconforming status of the size and width of the lot (delineated as Special Hearing request number 1within the Petition), and the lawfully nonconforming status of the setback of the shed. These issues are not before the Board for consideration.

[2] The RC 2 portion of the Property contains no improvements and is immaterial for the Board's consideration in the instant case.

Page 371 ('Plat"). The Property was purchased by the Petitioner in 2014, as reflected in a deed dated July 18, 2014, which is recorded in the Land Records of Baltimore County at Liber 35307, Folio 489.

Due to a need for more family living space and the need for additional privacy and safety for the in-ground pool, Petitioner hired a contractor to construct (1) a dwelling addition built on the west side of the house, (2) two sections of a 6 ft. fence constructed on the boundary line with the neighboring properties on the east and west sides of the Property, and (3) a 12 x 28 ft. single car garage to the east of the existing garage. As is now apparent, the contractor hired to construct the improvements committed fraud on the Petitioner and failed to obtain the necessary permits and approvals. Upon determining that the work had been done illegally, the Petitioner set out to bring the Property into compliance.

A. Baltimore County Landmarks Preservation Commission

Like many of the individual properties in Glyndon, the Property is located within the Glyndon Historic District and the design and compatibility of certain improvements to the Property are subject to review and approval by the Landmarks Preservation Commission ("LPC"), but the dwelling itself is not designated as a "contributing structure". In accordance with Title 7 – Historical and Architectural Preservation of the Baltimore County Code ("BCC"), the LPC has jurisdiction to review changes to historically-designation properties. The LPC comprises fifteen volunteer members who live in Baltimore County and "[p]ossess a demonstrated interest, knowledge, or training in historic preservation, history, architecture, conservation or related discipline." BCC § 3-3-1202(b). Pursuant to BCC §§ 32-7-101 & 32-7-405, property owners must obtain a "Certificate of Appropriateness" from the LPC "indicating its approval of plans for construction, alteration, reconstruction, moving or demolition."

Petitioner submitted 3 Ex post facto Certificate of Appropriateness requests to the LPC on February 19, 2019 seeking approval of the dwelling addition, fence construction, and the 12x28 ft. single car garage addition. Thereafter on March 11, 2019, a Department of Planning staff member as well as three LPC Commissioners conducted a site visit of the Property and generated a technical report of the request, which was shared with the LPC for their consideration.

Specifically, the technical report found:

> "***The changes to their property follow design guidelines for non-contributing structures in a historic district.*** The new garage and house addition use the same style siding, windows, shutters, and garage door … These changes do not overpower the appearance of the existing dwelling. The ***new fences*** are constructed of pressure treated wood with vertical planks and a top cap rail. They ***provide privacy and safety in the back yards with limited visibility from the street***. ***The Technical Committee recognized that because the owner has followed design guidelines for non-contributing structures, it is likely that these changes would have been approved if the request had been submitted in accordance with Baltimore County requirements***." (emphasis added) Petitioner's Exhibit 20.

When considering applications for additions and fences, the LPC utilizes the Baltimore County Historic Preservation Design Guidelines, which were adopted by the LPC and approved by the Director of Planning on November 25, 2011. The LPC met on March 14, 2019 and considered Petitioner's requests. At the meeting, Tom Montanye, resident of 4609 Prospect Avenue, testified and explained that his main objection involved the portion of the new fence that was directly adjacent to his driveway. The LPC voted 9-1 to approve Petitioner's three Ex Post Facto Certificates of Appropriateness requests.

B. *Proceedings before the Board of Appeals*

Petitioner testified during the Board's hearing and generally explained the events leading up to the instant case. Petitioner testified that she did not take a mortgage out when she purchased the Property. Because there was no bank involved, the Petitioner did not perform a survey for the Property. As such, Petitioner generally relied on the existing conditions (tree line and fence line)

of the Property as well as a boundary line drawling obtained from Steven Fradkin, the adjacent property owner located at 4605 Prospect Avenue. As shown in Petitioner's Exhibit 2 and as testified to, at the time of Petitioner's acquisition, the Property was improved with a detached single family dwelling, an attached one car garage, a small storage shed, a swimming pool, and a fence. Petitioner testified that the swimming pool is located immediately adjacent to the rear of the house. The existing fence ranged in height between 6 ½ - 8 ft. and was falling down in certain sections.

Due to a need for more family living space and the need for additional privacy and safety for the in-ground pool, Petitioner hired a contractor in 2017 to construct (1) a dwelling addition, (2) two sections of a 6 ft. fence on the boundary line with the neighboring properties on the east and west side of the Property, and (3) a 12x28 ft. single car garage addition to the east of the existing garage. Prior to moving ahead with the improvements, Petitioner notified both Mr. Fradkin and Mr. Montanye, the adjacent property owners located at 4605 Prospect Avenue and 4609 Prospect Avenue respectively, who voiced no objection. Petitioner assumed that the contractor hired would undertake the work lawfully after securing all necessary permits. She explained that she was quoted for and paid both the construction costs and permit fees. Candidly, Petitioner admitted that she wasn't paying much attention to the construction at the time because she was taking care of her mother who eventually died from lung cancer. As is now apparent, the contractor committed fraud on the Petitioner and did not obtain the necessary permits. Petitioner testified that in 2018, she received a complaint from Baltimore County alleging failure to obtain the necessary permits for the improvements. This resulted in ALJ Stahl issuing an Order requiring that Petitioner file the instant zoning relief and obtain LPC approval. Thereafter, Petitioner

submitted an application to the LPC and obtain approval for the dwelling addition, fence construction, and garage addition on March 14, 2019.

Petitioner's expert engineer, John Motsco, testified during the Board hearing and described the neighborhood and Property layout, including the current improvements on the Property. The neighborhood is a historic one characterized by a variety of housing types, large and small, ranging from large lots having larger dimensions than the subject property, to small lots. As Mr. Motsco explained, there are regulations in the BCZR and BCC regarding fences.

Specifically, BCZR § 427.1.A. provides:

> "***Notwithstanding any other provisions*** of this Code or the Baltimore County Code, in a D.R. or R.C. 5 Zone located in a historic district, the maximum height of a ***residential occupancy fence*** is 42 inches if the fence is erected ***in the side yard of a lot that adjoins a public road***." (emphasis added)

Mr. Motsco testified that the 42 inch height limitation in BCZR § 427.1.A is not applicable to the Property. First, Mr. Motsco explained that the Property nor any of the adjacent properties (i.e. 4605 & 4609 Prospect Avenue) adjoin a public road. The reference to a public road in BCZR § 427.1.A is referring to a corner lot, in which a property abuts a public road in both the front and side yard. Otherwise, as Mr. Motsco explained, every property would satisfy the "abut a public road" classification, in which case, there would be no need to incorporate such qualifier in BCZR § 427.1.A.

BCZR § 427.1.B provides:

> 1. "A residential occupancy fence may not be erected in the rear or side yard of a lot which adjoins the front yard of another on which a residence has been built, except in accordance with the provisions of this section.
> 2. The fence may not exceed 42 inches in height if situated within ten feet of the adjoining front yard property line.
> 3. Any person may request a variance from the requirements of this subsection."

Mr. Motsco testified that the conditions in BCZR § 427.1.B are not applicable due to the pool on Property.

Specifically, BCZR § 427.1.C. Titled: Applicability provides:

> "1. ***Subsection B of this section does not apply to a fence required by § 13-6-101 of the Baltimore County Code***, as revised, to be constructed in order to screen a ***swimming pool***. (emphasis added).

BCC § 13-6-101 provides the following:

> (a)Required. ***A person who owns land on which there is a swimming pool*** that contains 24 inches (610 mm) or more of water in depth at any point ***shall erect and maintain*** on the land ***an adequate enclosure surrounding either the property or pool area*** sufficient to make the body of water inaccessible to small children. (emphasis added).
>
> (b)Height. A ***swimming pool enclosure, including gates***, ***may not be less than 4 feet above the underlying ground***, except that for a semi-public swimming pool located outdoors without a lifeguard on duty, the enclosure, including gates, may not be less than 5 feet above the underlying ground and may not have more than a two-inch gap from the ground to the bottom of the fence.

Mr. Motsco testified that the swimming pool on the Property contains a depth of more than 24 inches and that the fence fully encloses the swimming pool, which is located in the rear yard of the Property. He further explained that the 72 inch fence is compliant because BCC § 13-6-101 contains a minimum requirement of 4 feet (48 inches) and no maximum restriction. As such, Mr. Motsco offered undisputed expert opinion that the height of the 72 inch fence is compliant with the all applicable regulations in the BCZR and BCC.

As to the setback issues, Mr. Motsco testified that the Property is predominantly zoned DR 1 and the setback requirement applicable to the Property is established in BCZR § 1B02.3.C. A minimum side yard setback of 20 ft. is required. Additionally, a sum of the side yard setbacks of 50 ft. is required. Therefore, a property owner could have a 30 ft. setback on one side and a 20 ft. setback on the other; or a 25 ft. setback on each side, or some similar combination; for so long as each side yard setback is at least 20 ft. in dimension, and they total 50 ft. Mr. Motsco testified

that prior to Petitioner's 2017 construction, the dwelling had side yard setbacks of 9.5 ft. and 14.9 ft., with a sum of the side yard setback of 24.4 ft. Thus, both the individual side yards setbacks and sum of the side yards setbacks did not meet the current DR 1 standard.

As it relates to the specific Special Hearing request "to approve a nonconforming dwelling side yard setback, pursuant to BCZR § 104.1," Mr. Motsco explained that the BCZR § 104 permits the continuation of non-conforming uses and structures. The special hearing process is the zoning tool by which non-conforming uses are recognized. The designation "non-conforming" allows the use/condition to continue as legally "grandfathered". Mr. Motsco testified that a non-conforming designation is appropriate for uses and conditions that have existed prior to the adoption of the regulation that now governs the property at issue.

According to the property tax report issued by the State Department of Assessments and Taxation ("SDAT"), the detached single family dwelling was originally constructed in 1951. Mr. Motsco explained the zoning history of the Property. Although the County's first zoning regulations were adopted in 1945, they were rudimentary in nature and the current regulations and requirements therein spring from the comprehensively amended regulations adopted in 1955. Additionally, the DR zoning classification came into being in 1970, at which time the County Council enacted Bill 100-70. Mr. Motsco testified that in 1971, the Property was rezoned to DR 2, and later rezoned to DR 1 in 1996. Because the DR 1 requirements now apply to the Property, Mr. Motsco testified that 1996 is the relevant date in considering the non-conforming nature of the property and improvements thereon.

Utilizing historic aerial photos, Mr. Motsco opined that the 1951 dwelling contained the 9.5 ft. side yard setback. At some point between 1951 and 1976, the dwelling side yard setback on the opposite side decreased to 14.9 ft, at which point the dwelling contained side yard setbacks

which were 9.5 ft. and 14.9 ft., with a sum of the side yard setback of 24.4 ft. Mr. Motsco explained that given the lack of detail provided in historic aerial photos and Baltimore County's practice of discarding building permits after 5 years, it is impossible to determine when or what specific construction occurred at the Property between 1951 and 1976. As such, Mr. Motsco opined that such setbacks are existing conditions, well prior to the adoption of the now applicable governing standard in the BCZR, and thus, the Petitioner is entitled to grandfathered status for the dwelling side yard setbacks, which were 9.5 ft. and 14.9 ft., with a sum of the side yard setback of 24.4 ft.

Mr. Motsco testified that he measured the 2017 house addition and calculated the addition to be 14 x 22 ft. (rather than 13 x 13 ft.). Mr. Motsco explained that the dwelling addition did not alter in any way the existing 14.9 ft. setback from the property line. Mr. Motsco testified that the 2017 dwelling addition is a legally permissible extension of a nonconforming use/building pursuant to BCZR § 104.3.

BCZR § 104.3 provides:

> "No nonconforming building or structure and no nonconforming use of a building, structure or parcel of land ***shall hereafter be extended more than 25 percent of the ground floor area of the building*** so used." (emphasis added).

As Mr. Motsco explained, the ground floor area of the nonconforming dwelling (as existed prior to 2017 construction) was 1,554 sf. The 14 x 22 ft. dwelling addition totaled 308 sf. The dwelling addition increased the ground floor area of the dwelling by 19.8%. As such, Mr. Motsco offered undisputed expert opinion that the dwelling addition is permitted as an extension of a non-conforming use because the dwelling addition did not increase the existing 14.9 ft. setback and did not increase the ground floor area of the dwelling by more than 25%.

Mr. Motsco testified that in 2017, Petitioner constructed a 12 ft. x 28 ft. attached garage addition that decreased the side yard setback to 0 ft. Mr. Motsco offered undisputed expert opinion

that the Petitioner satisfied the criteria for variance relief in BCZR § 307.1, namely that the Property is unique and the Petitioner would experience a practical difficulty or unreasonably hardship if denied the variance. Specifically, as it relates to uniqueness, Mr. Motsco cited to the Property acreage, dimensional width, and length in support. Additionally, the topography provides little flat area for development on the Property. Prospect Avenue sits on a higher elevation compared to the rear of the Property. Mr. Motsco opined that given the topography, it would not be possible to construct a garage in the rear yard. Further, as Mr. Motsco explained, there are additional large trees that restrict access to the rear yard. As it relates to practical difficulty, Mr. Motsco testified that the relocation of the garage would be too remote from the dwelling and would detract from day to day use. Conversely, not constructing a garage would subject Petitioner's vehicles to substantial damage caused by the trees in the front yard.

Several neighbors appeared in opposition to the Petition and were represented by People's Counsel Peter Zimmerman during the proceedings before the Board (the "Protestants"). Protestants offered no expert testimony to contradict Mr. Motsco's opinions. Certainly, an expert would have been presented to rebut Mr. Motsco's findings and conclusions, if a contrary opinion was formulated. As importantly, the Protestants fundamental objections to the relief are not legally relevant to the standard that the Board must apply. Through testimony, the Protestants indicated that their primary concerns were that Petitioner did not "play by the rules." Other complaints were also legally illegitimate. For example, Protestants attach great significance to the fact that Petitioner was at one time a licensed real estate agent and should have possessed requisite understanding of the BCZR and BCC. Such objections demonstrate the Protestants misunderstanding of the legal analysis required. The fact of such knowledge has no legal significance. The Court of Appeals has found it unnecessary to limit one seeking a variance based

on an alleged hardship because the owner purchased the property with full knowledge of the zoning restriction of which she sought relief. *Frankel v. City of Baltimore,* 223 Md. 97 (1960); *McLean v. Solev,* 270 Md. 208 (1973). One of the Protestants, Mr. Fradkin (adjacent neighbor), candidly admitted that he too did not know where the boundary line was between 4605 Prosect Avenue and the Property. One of the Protestants introduced an aerial photo which purportedly depicts conditions on the Property in the late 1970s. Subsequent to the hearing, the undersigned determined that such photographs are protected under copyright law and were apparently illegally obtained.[3] Nonetheless, the photograph is not dated and is of little value, in that there are no dimensions shown relating to the size and configuration of the dwelling which existed at that time.

ARGUMENT

There are three improvements which are before the Board for consideration which include (1) a dwelling addition, (2) a fence (swimming pool enclosure), and (3) a garage addition. The BCZR governs both the allowed uses on the Property and the scope/size of improvements permitted for properties zoned DR 1. Undoubtedly, the single-family dwelling, attached garage, and fence are permitted uses in the DR 1. The question presented in this case is not as to the use, but whether the improvements satisfy the scope/size (also referred to as the "bulk") regulations in the BCZR. The three improvements at issue should be separately considered by the Board and are discussed separately below.

A. <u>The 2017 dwelling addition (14 x 22) is a legally permissible extension of a nonconforming use/building</u>

It is apparent that the Board can grant relief necessary to permit the dwelling addition either as a non-conforming use or via a variance. The relevant DR 1 setback requirements are pursuant

[3] See attached Exhibit A of this Closing Memo.

to the "Small Lot" table in BCZR § 1B02.3.A.4.: Titled Special Regulations for certain Existing Developments or Subdivisions and for Small Lots or Tracts in DR Zones.

In particular, subparagraph 3 provides:

> "Any lot or tract of lots in single ownership which is not in an existing development or subdivision, as described in Subsection A.1 or A.2, and which is too small in gross area to accommodate six dwelling or density units in accordance with the maximum permitted density in the D.R. Zone in which such tract is located"

BCZR § 1B02.3.C. then sets forth the Development Standards of such lots:

> "1. Any dwelling hereafter constructed on a lot or tract described in Subsection A.3 or A.4 shall comply with the requirements of the following table:"

The table sets forth the width, frontage and yard requirements which pertain to such small lots. It is significant to note that this provision was adopted in 1970 when the County adopted major comprehensive revisions to regulations governing residential zones. The apparent legislative intent of each section was to preserve the building rights on undersized lots that would otherwise be rendered unusable upon adoption of new regulations.

Although the dwelling meets the required front yard and rear yard setbacks, the dwelling's side yard setbacks do not satisfy the current DR 1 requirements. As noted above, the Property did not satisfy these requirements when the Petitioner acquired the Property in 2014. In fact, the dwelling's side yard setbacks of 9.5 ft. and 14.9 ft., with a sum of the side yard setback of 24.4 ft. have existed for at least 45 years, but possibly closer to 70 years.

BCZR § 104.1 provides:

> "A nonconforming use may continue except as otherwise specifically provided in these regulations, provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, the right to continue or resume such nonconforming use shall terminate."

Nonconforming status is a designation for uses and conditions that have existed prior to the adoption of the regulation that now governs the property at issue. At the time the Property was rezoned to DR 1 in 1996, the dwelling maintained side yard setbacks of 9.5 ft. and 14.9 ft., with a sum of the side yard setback of 24.4 ft. There is no evidence whatsoever to suggest that prior to 1996, the dwelling was an illegal use or was overwise in violation of the BCZR. As previously noted, Baltimore County has historically discarded building permits after 5 years. As such, Mr. Motsco offered undisputed expert testimony that 1996 is the relevant date in considering the non-conforming nature of the Property and improvements thereon. Since a nonconforming use was lawfully in existence at the time and the Property was rezoned in 1996, there is a vested right in the continuation of the nonconforming use once the ordinance takes effect.

After the 2017 construction of the dwelling addition, the side yard setbacks remained the same. That is, the dwelling addition did not reduce the setback from 14.9 ft., but merely extended the length of the side of the dwelling on that side. Thus, the Board should find that the dwelling addition is permitted as a matter of right.

Notwithstanding, the Board can still approve the dwelling addition because the dwelling addition did not violate the limitations proscribed in BCZR § 104.3 regarding allowable expansion of a non-conforming building.

BCZR § 104.3, titled "Limit on extension of nonconforming buildings and uses; exception", states as follows:

> No nonconforming building or structure and no nonconforming use of a building, structure or parcel of land shall hereafter be extended more than ***25% of the ground floor area of the building so used***… (Emphasis added).

At the time the nonconforming building/use was grandfathered on the Property in 1996, the ground floor area of the dwelling encompassed 1,554 sf. Pursuant to BCZR § 104.3, the

maximum allowable expansion of the non-conforming dwelling would be 25% or an additional 388.5 sf. The 14 x 22 dwelling addition totaled 308 sf or 19.8%. As such, the dwelling addition is a permissible expansion of the non-conforming building.

Alternatively, this Board can grant variance relief for the side yard setbacks of 9.5 ft. and 14.9 ft., with a sum of the side yard setback of 24.4 ft. While not specifically requested in the Petition, such request is within the spirit and intent of the instant matter. In accordance with due process, parties are required to be given reasonable notice and opportunity to participate in the Board's hearing and consideration of the zoning proposal. Significantly, the Supreme Court of the United States has explained that the essence of due process is the requirement that a party be given notice and an opportunity to be heard "…at a meaningful time and in a meaningful manner." *Mathews v. Eldridge,* 424 US. 319, 333, 348-49 (1976). Further, proper public notice of the requests was afforded consistent with the principles stated by the Court of Appeals in *Cassidy v. Baltimore County Board of Appeals,* 218 Md. 418 (1958). All parties in the instant case were given proper public notice of the issues presented. Thus, it is apparent that the Board can grant relief necessary to permit the dwelling addition either as a non-conforming use or via variance relief.

B. *The existing fence (swimming pool enclosure) with a height of 6 ft. is compliant*

At the hearing, the Petitioner presented a photograph showing that there previously existed a 7ft – 7.5 ft. high fence on the Property adjacent to the Montanye property. In 2017, Petitioner repaired/modified the existing fence and constructed a 6 ft. high fence (swimming pool enclosure) in its place.

As previously noted, BCZR § 427.1.A. limits a fence to 42 inches if the fence is located in the side yard of the property which adjoins a public road. Here, neither the Property nor the adjacent properties adjoin a public road. As testified to by Mr. Motsco, the reference to a public

road in BCZR § 427.1.A refers to a corner lot, in which a property abuts a public road on both the front and side yard. Therefore, the provisions of BCZR § 427.1.A. do not apply because of the qualifying language within the BCZR and layout of the Property.

BCZR § 427.1.B.1 indicates that a fence cannot exceed the height of 42 inches if it abuts the front yard of the adjacent dwelling. However, such 42 inch limitation does not apply because of the exclusionary language in BCZR § 427.1.C.1. That section states that the 42 inch limitation does not apply when a pool fence is required. In this regard, BCC § 13-6-101 requires a fence or similar enclosure around a pool. The reasons for this requirement are obvious. The justification to provide for the public safety and prevent any tragedy due to pool's attractive nuisance character trumps the aesthetic considerations in BCZR § 427.1 Moreover, the BCC provisions mandating a fence or similar enclosure provide no height limitation. Furthermore, the County's Landmark Preservation Commission has approved the fence, arguably satisfying any applicable requirement imposed by BCZR § 427.1.

C. Petitioner is entitled to Variance Relief

The Board should conclude that Petitioner is entitled to variance relief in the instant case. Petitioner seeks relief from BCZR § 1B02.3.C.1 to permit an existing 12 x 28 ft. attached garage addition with a side yard setback of 0 feet and a sum of the side yards of 14.9 feet. In addition, Petitioner seeks relief from BCZR § 427.1, if necessary, to permit an existing fence (swimming pool enclosure) with a height of 72 inches.

In Baltimore County, zoning variance are permitted and analyzed under BCZR § 307 and the case law interpreting that provision. Significantly, to obtain a zoning variance in Baltimore County requires a two-pronged analysis showing that:

(1) The property is unique; and

(2) If variance relief is denied, petitioner will experience a practical difficulty or unreasonable hardship. BCZR § 307.1; *Cromwell v. Ward,* 102 Md. App. 691, 694-95 (1995).

Petitioner is entitled to variance relief because the Property is unique, and Petitioner would experience a practical difficulty and unreasonable hardship if the variance is denied.

The Court in *Cromwell* defined the term "uniqueness" and stated:

> In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "Uniqueness" of a property for zoning purposes requires that the subject property has an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or not-access to navigable waters, practical restrictions imposed by abutting properties or other similar restrictions. *Cromwell v. Ward,* 102 Md. App. 691 (1995).

Due to the events that led to the creation and configuration of the Property, special circumstances and conditions exist which make the Property unique. The testimony of Mr. Motsco at the Board's hearing, along with aerials entered into evidence, show that the Property is substantially different than other properties in the area with differences in size and shape. That is, the fact that this is a narrow, yet deep parcel, and was created over 140 years ago drives the need for variance relief. No other property in the vicinity has these precise dimensions. Additionally, the Property was created prior to modern zoning laws, meaning the Property will be impacted by the BCZR in a different way than other lots in the neighborhood that were created subsequent to the regulations. Combined with the unique shape and size of the Property, the lack of feasible building area is exacerbated by the combination of these factors. The Property's physical peculiarities will cause Petitioner to suffer disproportionately due to the application of BCZR. As such, the Property has an inherent characteristic not shared by other properties in the area and satisfies the "unique" test required under *Cromwell v. Ward*. Furthermore, as noted at the hearing, a number of properties in this immediate neighborhood have been afforded variance relief. The

property immediately across the street obtained a variance in Case No. 05-444-A. The Fradkin property (immediately next door) also was granted a variance in Case No. 84-332-A. Other variances granted in the neighborhood include one for a reduced side yard setback (the same type of relief as sought in the instant matter) for the property located at 4626 Butler Road (Case No. 64-94-A) and 3 Waugh Avenue (Case 94-307-A), which also requested a variance to a side yard setback less than required. Counsel does not cite these cases because approval in one case mandates the same result in another. Certainly, each request must be considered on its own. But all of these cases relate to properties on the plat which created the Property. The ALJ in these cases has consistently determined that lots created by this plat are unique and therefore qualify for variance relief. The same result is appropriate and mandated here.

Courts have interpretated the "practical difficulty or unreasonable hardship" standard to be disjunctive, meaning that satisfaction of either of the conditions may warrant a variance. *Loyola Loan Ass'n v. Buschman,* 227 Md. 243, 250-51 (1961). The Court in Mclean v. Soley, 270 Md. 216 (1973) established criteria for determining practical difficulty or unreasonable hardship:

> (1) Whether compliance with the strict letter of the restrictions governing various variances would unreasonably prevent the owner form using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
> (2) Whether a grant of the variance applied would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
> (3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed, and public safety and welfare secured.

The undersize nature of the Property and strict application of BCZR would unreasonably prevent Petitioner from using the Property for the permitted purpose of a single family dwelling. The imposition of the new regulations, i.e. BCZR § 1B02.3.C, impacts the Property, which was apart of an existing plat, disproportionately as compared to lots in the neighborhood laid out in

accord with the regulations. A denial of the variance would deprive the Petitioner of the right to reasonably develop her property in accordance with regulations and would constitute a practical difficulty under these circumstances. Mr. Motsco testified that the Petitioner will suffer practical difficulty if her request is denied, because there is no location on the Property where a garage could be constructed in conformance with BCZR § 1B02.3.C.

Further, a grant of the relief will not detrimentally impact adjacent properties. Mr. Motsco testified that considering the LPC approval, the surrounding neighborhood, and the site constraints at issue, the garage construction is consistent with DR 1 zoning regulations and would not cause injury to the public health, safety, or general welfare. As such, Petitioner will experience practical difficulty or unreasonable hardship if the requested variances are denied.

CONCLUSION

Therefore, for the foregoing reasons, the Board should grant Petitioner's requested relief.



ZACHARY J. WILKINS
LAWRENCE E. SCHMIDT
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
(410) 821-0070
zwilkins@sgs-law.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of April, 2021 a copy of the foregoing Memorandum was mailed, via email to:

Thomas & Kim Montayne
Tom@montanye.net

Kimberly Karlsen
perandkim@aol.com

Steve & Patricia Fradkin
reistlaxcoach@gmail.com

Sue Benson
sbensoncomm@aol.com

Robin Coffin
rscoffin@verizon.net

Mary Molinaro
mmolinaro@reisterstown.com

Peter Max Zimmerman, Esquire
People's Counsel for Baltimore County
peoplescounsel@baltimorecountymd.gov



ZACHARY J. WILKINS

Dear Baltimore County Board of Appeal Members:

It has been brought to our attention that someone has presented an unauthorized copy of our intellectual property in a hearing regarding 4607 Prospect Avenue, Glyndon, MD. These images were taken from HistoricAeriels.com and asked that they be entered as exhibits. Please know that these unauthorized images marked with "Copyright Material" are an infringement of our copyright and we did not grant their use. In the event that our photos are requested for use in a professional or legal manner, after purchase, we diligently confirm the location and date information for each purchased item. This is done for all authorized copies from our imagery database, in order to confirm their authenticity, and a necessity in order maintain the standard our customers expect from us in the professional and legal environment. We offer a notarized affidavit of authenticity with any legal acquisition of our imagery, upon request. Without proper authentication, we cannot stand behind the claims made in regards to any screen shots taken from our website containing watermarked imagery. Thank you for your attention to this request.

Jeff Teasley
Director of HistoricAerials.com

Exhibit A

Baltimore County
GOVERNMENT

Montanye complaint

10/1/18 Grading Complaint CG1800180

Register for an Account Login

Home Animal Complaint License Residential Parking Permits Land Management

Code Complaint CZMP Online Payments Permits

Submit a Complaint Search Complaints

Record CG1800180:
Grading Complaint
Record Status: In Compliance

Record Info

Property Location

4609 PROSPECT AVE
REISTERSTOWN MD 21136

Could not connect to the GIS Server.

Application Details

Complaint Description:

Dug swale from downspout to direct flow onto complainant's property.

RE: PETITION FOR VARIANCE
4507 Prospect Avenue
Petitioners: Donna Bair

Memorandum submitted by the Protestants

The Bair's are requesting a Zero variance between their property line and the Fradkin property for the purpose of adding a second bay to current garage. In fact, the Bair's have already added this addition without any variance. This addition encroaches over the Fradkin's property by two plus feet. Prior to the addition of the second bay there was a 25ft set back between the Fradkin's property and 11 ft. set back from the Bair's to the Fradkin's property line. The requested improvement of a 2nd bay cannot be accomplished without the 2 plus feet encroachment onto the Fradkin's property. As the requested need for the variance cannot be done without an encroachment there no need for the variance to be granted. There are no submitted drawings to support the use of the property as a carport or even a small storage area. There is certainly no impact upon the use of the Bair's property without the granting of these variances. Further, Mrs. Bair suggested in the third day of the hearing, in rebuttal, that I provided a map and told her where our property line was located. The timing of this statement alone calls into question its veracity.

Further, we oppose the Zero' variance request as a should a situation arise where heavy equipment is required to access the rear yard of the Bair property, there would be no way to do that without damaging either the Fradkin or Montanye properties. This is foreseeable as there is a pool in the backyard of the Bair property.
Another reason we oppose the Zero variance is that Glyndon is a preferred place to live due to its open spaces and quiet neighborhoods. Building up to property lines sets the precedent of creating a community that is no longer valued for its open spaces and neighborhood feel. This is not town home living. This is a community where people value and purchase their home for the open spaces and solitude.

We oppose the room addition on the Montanye side for several reasons as well. One, the clear change in topography and the addition of impervious surfaces that have increased the volume of water directed towards the Montanye property. This is also true on the Fradkin property side.

The granting of variance relief in this case would set a precedent that if you build without following the rules, you will get relief. A relief that they well could not have been granted if they had gone through the correct channels. A validation of a build now, ask for permission later without regard to the effects on neighbors and the neighborhood in general. We oppose all variance requests made by the Bair's and respectfully agree with Judge Beverungen's decision to "deny" all variance requests.

We would like to thank Mr. Peter Zimmerman and the People's Council for their help in this case and their dedication to their craft.

Steven M. Fradkin



Patti J. Fradkin

Patt J Fradkin

04/09/2021

and there was nothing you could do about it? This would only bring conflict to the neighborly relationship.

Following the normal process affords the local community and LPC an opportunity to provide feedback that includes suggesting alternatives that will work to meet the homeowner goals within the confines of the county codes. It avoids the neighborhood conflict we are faced with today – a black-and-white decision on the "as-built." It is understandable that the CA's would highlight this fact above others in their section 8 submissions.

Conclusion

Mrs. Bair has acted on this only in a way as required by law. Not in a way in keeping with maintaining peace within the community in which she now lives.

Despite her convincing testimony, presented without any evidence, the Protestants and the People's Council have disproven her testimony and demonstrated her willingness to deceive and defraud not only her immediate neighbors, but the community and the County.

Without demonstrating true uniqueness of property and structures, without a demonstrated hardship, and *with* demonstrated harm to the general welfare of the community, **we see not a single justification for any relief being granted.**

-Tom and Kim Montanye

Thomas R Montanye 4/8/2021

Kimberly S Montanye 4/8/2021

RE: Petition for Special Hearing and Variance, Board of Appeals
Case 2019-342-SPHA
Donna Bair, 4607 Prospect Ave, Glyndon

Montanye Protestant's Memorandum

4/2/2021, Tom & Kim Montanye, Neighbors @ 4609 Prospect Ave

Table of Contents

Introduction 2
Summary of Adverse Impacts on Montanye's/ 4609 Prospect Ave. 2
Privacy Fence in Front and Side Yards 2
Water/Silt/Erosion from Master Bedroom/Bathroom Suite Addition 3
Adverse Safety Concerns 3
Argument 4
Uniqueness 4
Hardship/ Practical Difficulty 5
General Welfare and Community Interest 7
1976 Addition and the 104.3 Limit on Extension of Non-Conforming…/ 25% Rule 8
1976 Addition Dimensions – 329 sqft 8
1971 Home – 1,448 sqft. 8
Deficiencies 8
Deficient Submission/ "As-Built" Advantage 8
Defective Exhibits - Petitioner's Fence 9
Petitioner's 'Victim' Testimony 10
Licensed Real Estate Agent 11
Normal Process is Crucial 11
Conclusion 12

Introduction

Summary of Adverse Impacts on Montanye's/ 4609 Prospect Ave.

Privacy Fence in Front and Side Yards

BCZR 427.1 limits front-yard fences to 42". Mrs. Bair's new fence projects 50 feet along our adjoining front yard.

Historic District guidelines further limit side-yard fences to 42" (*ref. 427.1 A, B*). Mrs. Bair's entire fence is in front of our foundation, the balance of the distance in our side yard. (*Protestant's exhibit 6N*).

Facts of "before" Fences

On the Montanye/4609 Prospect side, since at least 1991, there existed **two different fences, and a "cabana" structure in-between them**, front-to-back as follows:

- An **18-24" decorative white picket garden fence**, which started about 4-5' behind the ~1976 addition foundation, and continued toward the back at a distance of about 2' from the property line, meeting up with the cabana at exactly the large Bair Holly tree, which is just past the end of the Montanye driveway. It was not a privacy fence. *(See Protestant's exhibits 6B, 6D)*.
- A **cabana,** approximately 6' tall, which started exactly at the Holly tree and continued ~12'-14' toward the back *(See Protestant's exhibit 6A and Petitioner's exhibit 2C)*.
- **A 48" 3-board wood paddock fence**, which started exactly where the cabana ended and continued some ~30' back along our side yard, inside (Bair side) of the Rose of Sharon hedgerow. This fence can be seen *behind* the hedgerow in *Protestant's exhibits 6A and 6H*. **It was not a privacy fence**, as Mrs. Bair testified.
- **A 6'-high gate** (Montanye-side) was located **>10' from the property line** (*see Petitioner's exhibit 2D*), connecting the inside end of the cabana to the back corner of the house.

These two fences and the cabana, *along with the privacy hedgerow*, were completely removed and replaced by a 6' tall solid-board privacy fence. The new fence is located **closer to the Montanye property** (by approximately 1-2 feet in the front and 3-4' in the back), now on the other/Montanye side of where the hedgerow used to be, and **extending farther back** by approximately 6'.

Privacy Justification – False Premise #1

The entire justification Mrs. Bair presented to justify a 6'-high fence that violates the County and Historic restrictions, was to provide needed privacy. In *Protestant's exhibits 6A&B* (Montanye & street view – before) verses 6C (Montanye street view – after), it's clear that **no privacy issue existed prior to the new fence**, and that overall **privacy was actually reduced** as a result of the removal of the 14' high, established hedgerow *(See Protestant's exhibits 6E, 6G, 6L – after, vs. 6H and 6J - before)*.

Gate Had to be Moved Forward – False Premise #2

The prior gate was about 6' tall, located more than 10' from the property line, and opened inward toward the pool, which is in violation with the pool fence code. Mrs. Bair testified that her fence company suggested that the ***only* alternative** to make the gate compliant was to **move it** all the way up to where it exists today, some **29' forward**, and now *on* the property line at the front-most point.

Per my testimony, before the fence was constructed, I explained that we would not agree to this change as it would impact our property and not be compliant with fence codes, and that an **easy solution** would

be to keep the gate where it was, remove the pavers where the gate existed, **regrade to add a step** in the walkway, and then the gate in it's prior location could swing out, as required. This suggestion was rejected, and the fence was constructed. Mrs. Bair's testimony that she "explained things to the neighbors in advance" and "there were no issues" is inaccurate in this regard.

Furthermore, Mrs. Bair added **a new side window** (despite her testimony otherwise, *Protestant's exhibits 6B – before vs 6C - after*) along the Montanye driveway, further reducing privacy in both directions. This is **self-inflicted**, so the 6' fence cannot be used to justify the need.

Curb Appeal Adverse Impact

From the street and upon entering our driveway, it is apparent in *Protestant's exhibits 6A-D* that ***the entire nature of the boundary*** **between 4607 and 4609 has completely changed for the worse**. A formerly attractive, natural and more private boundary was replaced with a less effective wooden wall, decreasing the street appeal enjoyed by all in the Historic Glyndon community, and negatively affecting the property value. **Glyndon is not known as the land of grass and privacy fences; it's the land of old trees and beautiful natural landscaping.**

Water/Silt/Erosion from Master Bedroom/Bathroom Suite Addition

As shown in *Protestant's exhibit photos 10A-C,* and video *exhibit 12*, after experiencing silt flowing down her side walkway, Mrs. Bair intentionally created a ***new*** **impervious swale** to redirect and force all water/silt to flow to a 6"-wide mud trench on the exact edge of the property (same effect as extending the downspout to the edge of the property), **forcing it to flow instead onto the Montanye property**. The video clearly shows *no* water flowing under the new fence gate/Bair property, despite the testimony of expert witness Mr. Motsco, who said it would stay on her property.

On the **Fradkin's side**, a **new impervious ~12'x18' (216 sqft) concrete pad** was constructed to lead to the new 2nd garage bay, extending even beyond the Bair property. The water that used to be absorbed on the Bair property in that area now flows onto the Fradkin property. In addition, the excess water from the area of the **new garage bay 12 x 28' (336 sqft)**, is now directed only onto the Fradkin property. **This totals 552 sqft of new impervious area**. All flowing entirely onto the Fradkin property.

The balance of all the water from the sloping front yard, the impervious auxiliary driveway and walkway on the Montanye side, plus the water from the new impervious master bedroom/bathroom suite (**329**/308 **sqft**), **is now channeled into the mud trench**. **There is virtually no pathway for the excess water to remain on the Bair property on either side.**

Adverse Safety Concerns

There are significant safety issues having these structures stand even a day longer, let alone for 2+ more years while litigating further appeals, postponements, reconsiderations, etc. It seems the County enforcement arm will take no punitive action until the whole case is exhausted. This puts the neighbors and community at continued risk for what could be a total of 6 or more years from the time of initial construction. This is dangerous and puts the rights of an offender above the ongoing safety of the community!

1. No evidence that licensed professionals performed the work. In fact, given the magnitude and visibility of the work, and being on a public street, it's unlikely, as they know they could lose their license and livelihood as a result.

2. No inspections have been performed. We have zero assurances that the structures are safe and sound. Issues can happen at any time post-construction, as a result.
   2.1. Electrical safety codes, smoke detectors up to standard – possible fire hazard
   2.2. Plumbing (including natural gas) – possible explosion hazard
   2.3. Masonry (garage and addition foundations)
   2.4. Structural safety codes
3. In fact, **a gas leak** was already detected and corrected (*Protestant's exhibit 16*) in the precise area where the addition was built on the Montanye side, right on the corner of the new construction, just 15' from our driveway. In talking with the contractor during the repair, he said the gas line was nicked there, where the hole was dug, as proven in the photograph.
4. Furthermore, prior to the Gas issue, the initial garage foundation collapsed and had to be rebuilt - a clear indication that perhaps there was a level of incompetence with the workers, and an early heads-up for Mrs. Bair to investigate the contractor's status.
5. **The Bairs shouldn't even be living in this space for the last 3 years.** There was no "use and occupancy" issued, nor should there be. This happens after it's all inspected and deemed okay.
6. The 6' privacy fence that terminates with a gate, abruptly where we back out of our driveway, and poses the risk of a child running into our driveway without any ability to see it coming. A line-of-sight issue.

What assurances do we neighbors have that we, or our properties, won't be damaged should something serious happen in the near future?

Argument

Variances, outlined in BCRZ 307.1, allow they be granted:

1. "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"…
2. "and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship"…

   These are two hurdles - the first has to be met, and only if so, then the second is considered and must also be met. (*ref. Cromwell v. Ward*)
   Furthermore…

3. "and only in such manner as to grant relief without injury to public health, safety and general welfare."

Uniqueness

In the first place, on the first bar to be met, peculiarity or uniqueness of the land or structure:

1. **I struggle to find *any* characteristics of the land or structure that are peculiar or unique compared with the surrounding properties**, at least in the condition prior to these improvements, **or to find any arguments offered by the Petitioner that support this.**
   1.1. **The lot** is similarly…
      1.1.1. **Rectangular** in **length and width ratios** of it's immediate neighbor's and many others,
      1.1.2. Similar **terrain**…slopes downward from front to back (see *Petitioner's topographical exhibit*), same as all houses on Prospect and Waugh, both sides,

1.1.3. No cliffs, drop-offs, rock out-crops, rivers or streams, like all the surrounding houses on this side of the street and even the other side.
1.1.4. Same public utilities available to all, water, sewer, cable, etc.
1.1.5. The structure, prior to the improvements, did not meet current side set-back or lot square footage requirements for DR1 or even DR, same as many of the properties on Prospect (4609, 4611, 4613), all/most on Waugh Ave and Fiske Ave. *(See Protestant's exhibit 27)*
1.1.6. No two lots in Historic Glyndon are exactly alike. Are they therefore all unique, qualifying for relief? They are all formed on top of existing ground and terrain, around streams and hills and valleys, forests and fields, existing roads…and it is nearly impossible to *make* them identical. **A dictionary definition of 'unique' is not particularly helpful to variance determinations. It is a relative comparison that is appropriate.**
1.1.7. Mr. Schmidt's cross examination of Ms. Coffin attempted to imply that:
1.1.7.1. Because 4605 had gotten a variance in 1984, it was considered unique
1.1.7.2. Because 4605, 4607, and 4609 were very similar, they were therefore all unique
1.1.7.3. Also, Mr. Schmidt's opening exhibits in both the lower court and the de novo appeal emphasize the number of variances awarded in the Historic Glyndon area
1.1.7.4. Yet, under another objection, Mr. Schmidt argued that each case must stand on its own, and that no single variance sets a precedence…
1.1.7.5. …Pardon my confusion in this circular logic and contradiction.
1.1.7.6. Plus, the 1984 variance on 4605 Prospect pre-dates the Cromwell v. Ward landmark case arguing the importance of uniqueness and resulting hardship, which has since somewhat restricted the issuance of variances.
1.1.7.7. Finally, the 1984 variance on 4605 Prospect not only had no opposition in the community, nor broader environmental concerns…it had **signed support from every single property owner on Prospect Ave**. The nearest residence is over 230' from the new 25' setback. Which County ALJ would go against this support, and deny a variance under the circumstances, opening themselves up for warranted criticism by the community?!

2. In Mr. Motsco's testimony, he stated that the Bair property was unique because of the slope. Yet he further stated, in cross-examination, that the slopes on the neighboring properties on the south side of Prospect Ave. were the same. This sameness is supported by the topographical map introduced toward the end of Mrs. Bair's second testimony (*Petitioner's exhibit 25*).
3. Further, Mr. Motsco testified that building a detached garage in the back of the property would introduce a hardship in walking from the house to the garage. This argument of hardship caused by an unbuilt alternative, to an illegally built 2nd bay, would be self-inflicted. Plus, other front-yard options exist.

Hardship/ Practical Difficulty

In the next place, even if it were determined that the land/structures were somehow peculiar and unique, the second bar would not be met because no reasonable hardship is caused by the uniqueness, except the ones they created themselves in doing the improvements without considering the zoning restrictions and in creating the adverse impact on the neighbors and neighborhood.

1. Every neighbor in the community has had to make compromises and choices about improving their property within the confines of the County zoning and building codes.

2. In the case of wanting a 2-car garage,
   2.1. First and foremost, **it's not a hardship if you don't have a two-car garage; it's a luxury if you do.**
   2.2. It's a luxury if you have a single car garage, in this area. In fact, many garages in the area have been converted into living spaces (3, 5, 7 Waugh Ave), showing actual homeowner choices in practice over time, that living space is preferred over garage, which is more of a luxury.
   2.3. It's not a hardship if you have to walk from your house to your luxury detached garage.
   2.4. Further, **other options exist**.
      2.4.1. There's **room in the rear of the property** (200' - 30' setback = 170') **for a detached 2-car garage** within the zoning constraints, like several of the properties on Prospect (4606/Acle, 4610/Gehman, 4615/Meavers, 4511…), and many more in Historic Glyndon.
      2.4.2. There is **room in the front** (77.4' - 20' county right-of-way -25' setback = 32.4') for expansion within the zoning constraints. Two houses on Prospect alone have detached garages in the front of the properties (4601/Welsh, 4612/Gehman).
      2.4.3. There is room in the front for an attached, 2-car garage with a side entry, same/similar configuration as 4 Waugh Ave (*Petitioner's exhibit 7C*), perhaps with a more reasonable variance request, requiring no further reduction in existing non-conforming setbacks.
   2.5. If we allow a **zero-foot setback precedent**, would our DR1 zone turn into a community where structures were touching each other? Like town homes…as we all got exceptions to the rules, to be fair, even though none of us had met the bars for exceptions according to the laws passed by the elected legislature?
   2.6. One must consider the long-term impact of these decisions. This line of thinking leads to a turbulent community of conflict and angst, instead of peace and harmony.
3. In the case of the **second addition**, the new master bedroom and bathroom suite, **other options exist**, same thing,
   3.1. First and foremost, again, there was **no hardship with the existing living space**.
      3.1.1. Mrs. Bair purchased a 3 bedroom, 2-1/2 bath property, with room for overnight guests with children (daughters, grandchildren) already, with lower level and upper level family rooms.
      3.1.2. Families in 4607, in the last 30 years since we've been next door, included 3 with two children each;
         3.1.2.1. Hamilton's, Towles, Devaney's.
         3.1.2.2. Back in the seventies, the Bergeson family had 3 kids in that house, one of whom was friends with my brother.
      3.1.3. This clearly demonstrates there is no hardship to reasonably use the property as a residence, as it was before these improvements. The extra space added is totally a luxury.
      3.1.4. Further, the Bair's **could have expanded in the front or the back instead** of to the side, which is already non-conforming and where the issues are…or even **considered a second story** (like many of the houses on Prospect and Waugh Ave), in order to meet zoning restrictions.
   3.2. In fact, they covered a portion of their back deck with a roof and screened it in, as their first unpermitted improvement (one violation the county didn't pick up on, though it's documented in her own exhibits). **Instead of doing that, they could have used this 19'x12' area, and/or the area adjacent to it on the Montanye side giving them 36' wide x12' deep**, which is in the

center of the property, for extra indoor living space comparable to what they did in the front. It would be within the zoning restrictions.

4. In the case of **the fence**, other options exist, same thing…
   4.1. All of the confusion suggested by Mr. Schmidt with conflicting requirements…between the base County code requirements, the County pool requirements, and the County historic requirements…seem to me easy to sort out.
   4.2. **Pool requirements** can be met by enclosing the pool with its own minimum 48" fence, at least 10' in from the property line to satisfy zoning. This is the way many of the neighbors have handled it. This is how the Fradkin house handles it (*Protestant's exhibit 5*), as do many other properties in Glyndon.
   4.3. If they want a **yard fence** on the property line also, on the front/side, it can be brought to the required 42" (*ref. 427.1.A "…located in a historic district, the maximum height of a residential occupancy fence is 42 inches if the fence is erected in the side yard of a lot that adjoins a public road",B.2 "The fence may not exceed 42 inches in height if situated within ten feet of the adjoining front yard property line."*). **Privacy** can be handled very effectively **using hedges and shrubs**, like it was before this non-conforming fence replaced them, as is most common in Historic Glyndon.
   4.4. I have repeatedly, personally offered a reasonable alternative that would be acceptable to us on our side (*Petitioner's letter exhibit*) without requiring 2 fences....before the construction, after the construction, at the lower hearing, and since the appeal hearing. But it was rejected outright on all occasions. My proposal would still have required relief. The offer was made in good faith, as a negotiation, for the purpose of bringing this dispute to a more rapid resolution, before a hearing and County and community involvement was required, which did not happen.
5. These arguments and options demonstrate there is absolutely no need for relief of any kind on the fence, the garage, or the bedroom/bathroom addition.

General Welfare and Community Interest

Setbacks provide desirable buffers between neighbors and are extremely important to the general welfare. They promote peace and harmony in the community. Each property owner agrees to restrict expanding in these areas equally. When one property owner fails to do so, the immediate neighbor is adversely impacted, as is the neighborhood more broadly. Granting of a zero-foot setback is neither reasonable nor necessary for the Bair's to enjoy and even expand their property as a residential dwelling in Glyndon. Same with the master bedroom/bathroom expansion. **Because other options exist, granting relief is not necessary and negatively impacts the buffer between properties, perpetuating the non-conforming issues unfairly.**

The protested privacy fence along the adjoining front- and side-yards likewise perpetuates an unfair and undesirable condition for the immediate neighbors and the Historic Glyndon community. Our other neighboring fence, at 4611, also does in fact extend 5' into our front yard (measured after testimony), but is a 48" 3-board fence that was rebuilt exactly where/as it was 40+ years ago, and is 40' from our house, behind a hedgerow. It's not in any way comparable to a new 6' solid fence, newly installed, extending 50' into our front yard, and 2' from where we park. Therefore, we did not object.

1976 Addition and the 104.3 Limit on Extension of Non-Conforming…/ 25% Rule

The 4607 Prospect property became non-conforming in 1971 when the DR2 zoning designation went into place, with a garage-side setback of only 11' instead of the required minimum of 15'.

1976 Addition Dimensions – 329 sqft

When the ~1976 improvement was added onto 4607 on the Montanye's-side (see *Protestant's exhibit 2*), the property was zoned **DR2**. Side setbacks for DR2 are minimum **15'/ sum of 40'** (*ref. BC Zoning Regulations 1B02.3.C.1.*) This addition violated the 15' (14.9) and the "sum of" setback requirements (14.9'+11'=25.9'), and therefore the ~1976 addition counts toward the 25% rule.

The Math

Using the RTF survey drawing to determine of the width of this ~1976 addition, by measuring the "4' overhang" (OH), with a scale of 1"=30', this makes the width conservatively 23.5'. **This overhang *is* the 1976 addition**.

Mr. Motsco's testimony that the new addition is "approximately 14'x22'", determined by looking at the structure itself, "as best he could tell"…we'll **use his 14' depth dimension**, for lack of any other. **This makes the ~1976 addition ~14' x 23.5', or 329 sqft**.

1971 Home – 1,448 sqft.

Again, using the RTF survey, the original home "ground floor area" (before the 1976 addition), measured:

The Math

- **Main Home** – 54' on survey - 23.5' ~1976 addition = 30.5'.
  30.5' width x 30.5' depth on survey = 930 sqft.
- **Utility/ Mud room** - 30.5' - 5.8' step-back = 24.7'.
  24.7' x 8.6' width = 212.42 sqft.
- **Garage** – 28.3' x (24.3'-2.5' encroachment – 11' original setback = 10.8') = 305.64 sqft.
- **Total ground floor sqft** – 930 + 212.42 + 305.64 = **1,448 sqft.**
- 1448 sqft x .25 = **362.02 sqft. maximum allowed extension**.
  362.02 sqft (25%) – 329 sqft. 1976 addition = **33.02 sqft left on the 25% rule.**
  Therefore, the 104.3/ 25% rule does not cover the 2019 addition of 329 sqft.

Mr. Motsco testified that the 1991 zoning change was the point-in-time to consider. The Zoning Master Plan cycle is not intended to provide a "reset" mechanism for expansion. Therefore, 1971 applies here.

Deficiencies

Deficient Submission/ "As-Built" Advantage

The **RTF survey** is the only thing submitted with any dimensions of the recent improvements and is seriously deficient with details pertinent to the case. (*ref. BCZR Article 5, 500.9, 502.1*)

It shows only the "as-built" *total* dimensions, and **lacks information** specifically relevant to the relief request, including:

- What was the prior vs. the new setback of the 2nd bay garage?
- What is the size (length, width, sqft) of the new master bedroom/bathroom suite seeking relief?

- How far is the new 6’ privacy fence, seeking relief, from the property line on the Montanye side?

In other words, *what specific change is the appeal tribunal approving or denying (before/after)?*

Mrs. Bair got Ex Post Facto approval from LPC for a **13’x13’ addition** on the Montanye’s side (*Petitioner’s exhibit 5*). These numbers are way wrong, it’s been established above at 14’x23.5’. Where did they come from? Assuredly from the request by the petitioner to LPC, as there were no dimensions in the code complaints or citations (*Petitioner’s exhibit 4*).

On the garage side, who certified what the old setback was? It could be determined only after the survey, and by looking carefully at the construction done, might even require pulling siding or drywall. What evidence has been presented to verify the setbacks represented in the reconsideration? It's not on the survey. An aerial view measurement shows about a 14' extension, based on the roofline, but that can't be considered precise.

An **“as-built” submission** process **may grant an advantage** over a “normal” process, because:

- People are naturally more sympathetic to the consequences of denying exceptions in the case of the as-built, because if declined, it has to be removed, likely at significant expense. It's a difficult and punitive decision.
- If *plans* to build are declined, the applicant simply has to re-work the plans to make them conforming, with far less cost. This is a far less difficult decision, not punitive.
- This gives an advantage to the "as-built" approach, which is a bad precedence because it encourages more residents to follow the thinking that "it's easier to ask forgiveness than permission." This thinking is destructive to our communities and our civil society more broadly. It's not a law-abiding approach, it's a "catch me if you can" approach. It would result in more hearings just like this one, more arguments, a less peaceful community. That's an adverse effect.

Defective Exhibits - Petitioner’s Fence

The photographs and measurements presented in Petitioner’s exhibits 8A-I serve only to show that “other fences exist in Historic Glyndon”. **No relevant context is provided** with the photos, such as:

- Where are the fences? Front-yard, side-yard, back-yard?
- Do they adjoin a neighbor’s front- or side-yard?
- Along a busy state highway (MD128/Butler Rd) with a public sidewalk? Or, a dead-end street?
- Do they surround a pool? Do they protect a tennis court?
- Do they help shield from a public or private facility? (church, private pool)
- How far are they from the property line?
- How long have they been there? (Prior to zoning? Historic?)
- Are they on a Historic/ contributing property or non-contributing?
- Did the neighbors/community protest or support?
- Are they solid-board, stockade privacy fences, or 3-board paddock or split rail, or picket?

Most of the heights given in testimony are exaggerated. One can easily find a spot or two along a 4’ fence line where it exceeds or is less than 4’, due to the terrain or imperfections in construction. Additionally, the “measuring stick” used has no visible number measurements indicated and appears to

be a telescopic device (can be extended manually and imprecisely). Why not a tape measure? Certain neighbors who attended the hearing saw their fences in the exhibits and contested the measurements.

Only a single fence pictured/listed is relevant: *Petitioner's exhibit 8B*. The wooden fence (behind the featured black metal fence) at **2 Waugh Ave**. is a 6' privacy fence, along a front & side yard, with a pool involved. These two fences were the object of **years of opposition from the Historic Glyndon community**, where the Petitioner lost the lower-court ALJ hearing and filed an appeal. The HGI and GCA organizations ran out of legal fees to contest the appeal, and the **appeal case was ultimately dropped** by BC BOA (**appeal never even scheduled**, get it off the books) citing "**lack of prosecution**" by BC to enforce the lower court finding, so it still stands today. Yet, it's also included in *Petitioner's exhibit 26*, (twice) listed as "approved"?

The same issues exist with *Petitioner's exhibit 26* (fence chart). Corrections and some relevant context added below. Mr. Schmidt did not provide the exhibit, so this is partial from what was displayed, but makes the point.

Address	Height/Type	Yard Location	Comment/Context
29 Chatsworth	6' Privacy	Back & Side	Shields from Glyndon Pool, corner lot, no neighbor
25 Waugh	6' Privacy	Back	No adjoining front/side yard
8 Waugh	6' Privacy	Back	No adjoining front/side yard
6 Waugh	None	None	**Duplicate**, Vacant lot, 6' fence seen is 4612 Prospect
4722 Butler	6', 7' Privacy	Back	~15' from property line
4702 Butler	42" Picket	Side	**Duplicate**, 6' fence seen is 3 Waugh fence
3 Waugh	6' Privacy	Side & Back	Vacant lot next to fence
2 Waugh	6' Privacy	Side & Front	Dropped for Lack of Prosecution (**not approved**)
4612 Prospect	6' Privacy	Back	Surrounds only pool
4711 Butler	6' Privacy	Back	Shielding Glyndon UM Church side
121 Central	6' Privacy	Back	Begins ~40 behind foundation
37 Waugh	52" Paddock	Side & Back	Borders Emory Grove Camp
4606 Prospect	None	None	**No fence** on Acle property
4605 Prospect	5' Metal	Back	Surrounds pool only, not near property line

Petitioner's 'Victim' Testimony

Petitioner testimony asserts that she was defrauded by her contractor, and that she had no knowledge that:

- Property lines and setbacks were not determined or followed,
- LPC procedures were not followed,

- Permits were not requested or granted.

Only Mrs. Bair's testimony was presented as evidence to these claims. Not a single correspondence, contract, receipt, payment or other artifact from the contractor was presented. No contact information or contractor name was presented, no evidence of pursuing damages with this contractor. With one exception… A statement from a fence company was presented, showing a charge for a permit that was not in fact obtained by the fence company. This was a small fraction of the total improvements made. In addition, fence companies rely on the customer to verify the location and other characteristics requested by the customer to be accurate and conforming.

Furthermore, it is always the **complete and total responsibility of the homeowner** to be knowledgeable and assure their compliance and the compliance of the contractors they employ.

Licensed Real Estate Agent

Mrs. Bair was a **licensed and active MD real estate agent when the work was performed** (PC exhibit), having just participated in the purchase transaction of her own residence. One must be an active agent to participate in a transaction, an in order to be an active agent one must be current on licensing and continuing education requirements. As Cookie Stone, expert Real Estate witness for the Protestant's testified, a basic knowledge of zoning, permitting, and using only MHIC licensed contractors is standard and emphasized in the RE licensing and continuing education training curricula required by all.

Refer to *People's Council exhibit 15*, which outlines "Basic Maryland Real Estate Licensing Requirements", with the last bullet reading "**Planning, Zoning, and Environmental Hazard**." In addition, RE Agents are trained extensively in the importance of good contracts, compliance and disclosure. COMAR 09.11.02.01, Relations to the Public, paragraph C includes: "The licensee shall protect the public against fraud, misrepresentation, or unethical practices…"

Protestant's exhibits 18A-D (security video) demonstrated the willingness and audacity on Mrs. Bair's part to **delegitimize two different surveys done for the purpose of resolving the issues in this case**, putting into serious question all of her testimony not backed with legitimate evidence.

Normal Process is Crucial

Mr. Schmidt spent an inordinate amount of time in cross examination attempting to convey to the panel that, despite the proclamation of each community association in their Rule 8 submissions, the *only* reason any of the relief requests were opposed is because the Petitioner did not get permits or follow the proper process.

In fact, the **documents submitted by each organization clearly oppose the garage 0' setback, the bedroom/bathroom addition, and the fence**. While it's true there was a paragraph *highlighting* that this case is particularly egregious because the normal process was not followed, **that's not to say that is the only reason…it's just one they chose to highlight**. The issue was initially reviewed in detail by these organizations over a year-and- a-half prior to the representatives giving testimony.

Also, it's not fair to argue "*they didn't have any problem with it beforehand*" when, in fact, it was unknown beforehand that there were so many violations and issues. It was assumed by all that proper setbacks were being followed, proper designs were submitted and approved, proper safety inspections were performed. **To what end would a neighbor oppose the work if it were approved and legitimate**

and there was nothing you could do about it? This would only bring conflict to the neighborly relationship.

Following the normal process affords the local community and LPC an opportunity to provide feedback that includes suggesting alternatives that will work to meet the homeowner goals within the confines of the county codes. It avoids the neighborhood conflict we are faced with today – a black-and-white decision on the "as-built." It is understandable that the CA's would highlight this fact above others in their section 8 submissions.

Conclusion

Mrs. Bair has acted on this only in a way as required by law. Not in a way in keeping with maintaining peace within the community in which she now lives.

Despite her convincing testimony, presented without any evidence, the Protestants and the People's Council have disproven her testimony and demonstrated her willingness to deceive and defraud not only her immediate neighbors, but the community and the County.

Without demonstrating true uniqueness of property and structures, without a demonstrated hardship, and *with* demonstrated harm to the general welfare of the community, **we see not a single justification for any relief being granted.**

-Tom and Kim Montanye

RE:	PETITION FOR SPECIAL HEARING AND VARIANCE	*	BEFORE THE
	4607 Prospect Avenue; SE/S of Prospect Avenue, 410' NE of Waugh Avenue	*	BOARD OF
	4th Election & 3rd Councilmanic Districts	*	APPEALS FOR
	Legal Owner(s): Donna V. Bair Petitioner(s)	*	BALTIMORE COUNTY
		*	2019-342-SPHA

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

MEMORANDUM OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

TABLE OF CONTENTS

2014: Coming to Prospect Avenue 1

Circa 2017: The Case of the Errant Encroachments 3

The Neighborhood and Historic Glyndon 3

2018-19: Things Fall Apart, Mere Anarchy 4

Relevant Baltimore County Zoning Regulations and Code Provisions 6

The ALJ Decision 6

The ALJ Order on Motion for Reconsideration 6

Argument 7

Zoning History, Nonconforming Use, Illegal Extensions, Variance Disqualification 7

Variance Law: "Uniqueness" Explained --- Delusions Exposed 9

Interlude: "Other" Fences, Garages, Variances Diversion 11

The Landmarks Preservation Commission Sidetrack 12

The "Carport" and "Accessory Building" Plays 12

The Fence Law Evasion 13

Variance Law: Uniqueness Resulting in Practical Difficulty 14

A. The Bair Property Presents No Difficulties, Much Less Any Peculiar Difficulties ... 17

B. Application of the "Practical Difficulty" Criteria 19

Variance Law: The Insidious Self-Created Difficulty Problem 21

Conclusion 23

APPENDIX

BCZR

§ 101.1 – Nonconforming Use 1

§ 104.1 – Continuation of Nonconformance; Exceptions 1

§ 104.3 – Limit on Extension of Nonconforming Buildings and Uses; Exceptions 1

§ 1B02.3.C – Development Standards for Small Lots or Tracts 2

§ 307.1 – Variances - Authority to Grant Variances; Procedures and Restrictions 3

§ 427.1 – Fences – Conditions for use; exceptions 4

Baltimore County Code § 13-6-101 – Swimming Pool Enclosure 5

Prince George's County v. E.L. Gardner 293 Md. 259 (1982) 6

Cromwell v. Ward 102 Md. App. 691 (1995) 9

Riffin v. People's Counsel 137 Md. App. 90, cert. denied 363 Md. 660 (2001) 17

Easter v. Mayor & City Council 195 Md. 395 (1950) 20

Park Shopping Center v. Lexington Park Theatre Co. 216 Md. 271 (1958) 22

RE:	PETITION FOR SPECIAL HEARING AND VARIANCE	*	BEFORE THE
	4607 Prospect Avenue; SE/S of Prospect Avenue, 410' NE of Waugh Avenue	*	BOARD OF
	4th Election & 3rd Councilmanic Districts	*	APPEALS FOR
	Legal Owner(s): Donna V. Bair Petitioner(s)	*	BALTIMORE COUNTY
		*	2019-342-SPHA

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

MEMORANDUM OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

"There must be some kind of way out of here,
Said the Joker to the Thief.
There's too much confusion,
I can't get no relief.
Businessmen drink my wine,
And the plowmen ruin my earth,
None of them along the line,
Know what any of it is worth.
Bob Dylan (Jimi Hendrix cover), All Along the Watchtower (1967)

2014: Coming to Prospect Avenue

In 2014, Donna Bair (hereafter "Donna") moved from Carroll County to Glyndon. She bought the home at 4607 Prospect Avenue from Timothy Devaney for $320,500.[1] The lot is about 34,000 square feet, .75 acre. The dates from 1951/ For the last several decades, it was occupied by the Hamiltons, Towles, and Devaneys.

Donna has a real estate license. She was associated with Century 21. She activated her license to buy her newly acquired dwelling. She said it was recently on referral.

The neighbors at 4609 Prospect Avenue are Tom and Kim Montanye ("Tom"). They have lived there since 1991. Tom grew nearby. Steve and Patty Fradkin ("Steve" and "Patty") are on the other side at 4605 Prospect Avenue. They came in 2014.[2]

The Bair residence as of 2014 had about 1552 square feet ground floor area. It was a standard house with 2 full baths and 1 half bath, a basement, a 1-car garage, and an

[1] Details are in the State Department of Assessments ("SDAT) Real Property Data, P.C. Exh.11.
[2] The SDAT Data in P.C. Exh. 11 provide helpful information and statistics on the Bair, Fradkin, Montanye, and other Prospect Avenue properties.

ample driveway. This included an addition, about 14' x 22' (308 square feet) on the Montanye side. It was built around 1976, attached mostly to the rearmost side of the dwelling and a few feet to the rear. It was about 14 feet from the Montanye boundary. The attached 1-car garage was set back about 10 or 11 feet from the Fradkin boundary.

There were spacious front and rear yards, a swimming pool, and an open rear deck. The kidney-shaped swimming pool, within a 36' x 22' rectangle, spanned about 792 square feet, per Bair engineer John Motsco. An attractive white picket fence a few feet high ran back from the house on the side closest to the Montanyes. It was not on the boundary. There was also an open-air cabana, kind of a lean-to. On the Fradkin side, there was a three-rail wood fence, apparently 40-something inches high. There was a 13'7" x 10'1" wood shed in the far rear yard about 26 inches from the Fradkin property.

Donna's site plan, Pet, Exh. 1, does not depict the situation in 2014, so there is no drawing or schematic of how things precisely were laid out with the one addition, the one-car garage, the white picket fence and cabana, and the three-rail fence.

Soon after moving in, Donna decided to make new home improvements.

She wanted a second garage bay, extending to the Fradkin property line. It would be 12' x 28'. She would also move her HVAC unit toward the rear of this garage.

She wanted a second bedroom addition on the Montanye side, filling the area in front of the first addition, extending along the side to the front of the dwelling, again about 14' x 22'. Her attorney called it a "notch," apparently to minimize it."[3]

She wanted a new residential privacy fence, six-feet high and solid, along both sides of her property; about 3 feet from Tom's side, to beyond the front of her dwelling, mostly adjacent to the Montanye front yard; crossing the rear yard of her property to the Fradkin boundary; and coming back up to the rear of her dwelling, a fourth side. The length of the fence crossing the rear yard, --- on the site plan and in Bair engineer John Motsco's testimony --- is about 95, with side sections about around 77'. Motsco calculated the area enclosed by the fence as 7700 square feet. The distance from the pool

[3] This is a misnomer. A "notch" is a v-shaped indentation or hollow, or a half-moon. Webster's Third New International Dictionary 1543.

to the fence is about 30 feet.[4] This entailed removal of the existing fences and the cabana, and of substantial plantings near the side boundaries.

She also wanted to enclose the rear deck.

Circa 2017: The Case of the Errant Encroachments

Donna secured estimates from two contractors, itemizing and pricing the work. She wanted it done cheaper, went to Craig's List, and found a Steve, last name lost. He agreed to do the work on a cash basis. There was no written contract, no survey, no permits, no check with county zoning, none of that.

Donna says she relied on Steve to take care of things. She knew about zoning and permits, but didn't think it was hers to know or check.[5]

The garage construction initially collapsed. Steve finished the jobs before exiting, but problematically. The case of errant encroachments was just around the corner.

Donna did not produce this Steve as a witness, and did not produce any records of dealings with him.[6] His later whereabouts are said to be uncertain.

The Neighborhood and Historic Glyndon

The County Board of Appeals ("CBA") heard much evidence on Prospect and Waugh Avenues, lot locations and configurations, and Historic Glyndon. Steve, Patty, Tom, and Robin Coffin ("Robin") described well the immediate neighborhood. Cookie Stone gave an excellent take on the real estate situation and impact. Kim Karlsen, Mary Molinaro, and Susan Benson all testified cogently about Glyndon, Baltimore County's

---

[4] As we discuss later, the new fence exceeds what is "adequate" and appropriate to protect children from wandering into the pool. It does the opposite, leaving room for kids to wander about. Bair conceded it is a privacy fence. Motsco tried to spin it as pool protection to weasel more allowable height.

[5] An ordinary citizen should know to check zoning and permits for such extensive work. A real estate agent has a higher obligation to address applicable regulations under Md. Code Bus. Occupations and Professions Art. Sec. 17-532. P.C. Exh. 16.

[6] Would Steve agree with Donna's blame-shifting to him? Did he broach a survey and permit? What would be his side of the story? Donna never took action later to hold Steve accountable or remedy the situation. Rather, she wants his work ratified, less the trespass. His absence raises a fair inference that his testimony would not be favorable to the petition.

first legislated Historic District and National Register Historic District, with exhibits. Their associations targeted the lack of permits. But they also testified individually, as was their right, to the unsuitability and incompatibility of the construction.[7] More of this later.

The undisputed evidence shows the Bair lot to be sizable in the area, with a mild slope downward like other lots on Prospect Avenue and area lots. There were the SDAT Data on Prospect Avenue lots; and My Neighborhood, GIS and Google layouts and photos. Steve's helpful chart produced a plethora of statistics. Prot. Exh. 27.

2018-19: Things Fall Apart, Mere Anarchy
William Butler Yeats, The Second Coming (2019)

Tom became concerned about the construction. There were boundary issues. A new stream of water ran in a trench or swale along or next to his driveway. There didn't seem to be any permits. There were eventually surveys done. Survey stakes were being moved, as shown his videos. It appeared there might be issues under County law.

Tom filed a complaint. There was a Code Enforcement Correction Notice issued in late 2018 for multiple violations. There followed a citation on January 24, 2019.

There was a hearing before Administrative Law Judge (ALJ) Lawrence Stahl on February 6, 2019. His February 11th Final Order states Assistant County Attorney Marissa Merrick and Donna Bair attended. He imposed the cited $1000.00 penalty, but suspended it to allow Donna to file for zoning relief or correct the non-compliance by April 12, 2019. Pet. Exh. 4. Donna did not timely comply with the Order. She contacted attorney Lawrence Schmidt. He filed her Petition for Special Hearing on May 28, 2019.

Meanwhile, Donna's survey showed her new garage extended 2-3 feet into Steve and Patty's property and the fence about 7 feet into their property. It also showed the front of the driveway cut off part of Tom's property at the Prospect Avenue frontage.

Donna, Steve and Patty had been friendly. Before filing the zoning petition, Donna sent text messages to Patty. Prot. Exh. 28. She described the encroachment and at some

[7] We occasionally deal with the spurious objection that citizens who live more than a short distance away should not be allowed to testify. It is settled and well-known that any interested person may participate. Dorsey v. Bethel A.M.E. Church 375 Md. 59 (2005).

point showed the survey to the Fradkins. There are two versions in Prot. Exh. 29A-B, one complete and one with the edge cut off to hide the encroachment on Tom's side.

The Fradkins had been enduring a bankruptcy after Steve lost a great job at Northwest Honda when that property was acquired, and its purchaser had other plans.

When Donna approached them, she asked Steve and Patty to give her a property interest in the area encroached. She described it as an easement.[8] For various reasons, Steve and Patty declined it as "lose-lose." Steve was also concerned whether it could be done during bankruptcy. Donna said she talked to a bankruptcy attorney, and told Steve it was good. She said she offered Steve $15,000.[9]

Donna's text messages admitted the encroachment of the garage and fence. The messaging mentions her then imminent zoning petition. She said cryptically that the county will only be looking at the setback, which she didn't have even before adding the garage. She said her attorney would like the Fradkins to sign a letter that they do not object. But she would respect their decision whatever it is. Donna later texted,

> "You don't need to attend unless you want to disputed (sic) the variance we are requesting which is to have 14.9 feet instead of 50 feet combined on the two sides of our property according to current zoning code."

This incompletely or inaccurately described the multiple zoning requests. It shows some familiarity with zoning terms. Donna did not mention the zero' garage setback and fence height variances. She was anyway unable to secure Steve and Patty's agreement.

In the normal course, a hearing ensued before ALJ John Beverungen. He entered an opinion and order on August 19, 2019 and an Order on Motion for Reconsideration on September 25, 2019. From these decisions, Donna entered a *de novo* appeal from denial of the multiple variances.

---

[8] Whether an easement is the right description of a property interest to relocate a boundary is debatable, but it shows Donna had some currency in real estate concepts and law.

[9] Steve testified it was brought up to go "under the table." He declined.

Relevant Baltimore County Zoning Regulations and Code Provisions

The zoning petition for special hearing and variances brought into play a multiple zoning regulations and a county code provisions:

BCZR § 101.1: NONCONFORMING USE --- Definition
BCZR § 104.1. - CONTINUATION OF NONCONFORMANCE; EXCEPTIONS.
BCZR § 104.3. - LIMIT ON EXTENSION OF NONCONFORMING BUILDINGS AND USES; EXCEPTION**.**
BCZR § 1B02.3.C. Development standards for small lots or tracts.
"BCZR SECTION 307- VARIANCES
307.1. - Authority to Grant Variances; Procedures and Restrictions
BCZR § 427 – Fences
§ 427.1. - Conditions for use; exceptions.
CODE § 13-6-101. - SWIMMING POOL ENCLOSURE.

For convenience, these are reprinted in an appendix at this memo's conclusion.

The ALJ Decision

To conclude his excellent decision, ALJ Beverungen entered this order:

> THEREFORE, IT IS ORDERED this **19th** day of **August, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing: (1) to approve a nonconforming lot width and area; and (2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of the required 30 inches, be and is hereby GRANTED.
>
> IT IS FURTHER ORDERED that the Petition for Special Hearing: (1) to approve a nonconforming dwelling side yard setback; and (2) to confirm that an existing fence (swimming pool enclosure) with a height of 6 ft. is in compliance with BCZR Section 427.1 and BCC Section 13-6-101, be and is hereby DENIED.
>
> IT IS FURTHER ORDERED that the Petition for Variance: (1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.; (2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of side yards of 14.9 ft. in lieu of the required 50 ft.; and (3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches, be and is hereby DENIED.

ALJ Beverungen thus approved the lot nonconforming lot width and area, and nonconforming shed. He denied the second garage bay, second addition, and new fence.

The ALJ Order on Motion for Reconsideration

ALJ Beverungen concluded his subsequent denial of Donna's Motion for Reconsideration with this Order:

THEREFORE, IT IS ORDERED this **25th** day of **September, 2019**, that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms set forth in Baltimore County Zoning Regulations ("BCZR") § 104; and

IT IS FURTHER ORDERED that all new construction must comply with current setbacks and restrictions existing at the time of new construction.

IT IS FURTHER ORDERED that in all other matter and respects Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

ALJ Beverungen thus denied all post-2014 construction. As for approval of setbacks existing in 1951, he did not specify them. As we have seen, they did not include the 1976 first addition on the Montanye side. All issues relating to new construction are subject to review.

Argument

"No reason to get excited, The thief he kindly spoke.
There are those among us, Who feel that life is but a joke.
But you and I we've been through that, And this is not our fate.
So let us not talk falsely now, The hour is getting late."
Dylan, Hendrix, op. cit.

Zoning History, Nonconforming Use, Illegal Extensions, Variance Disqualification

Let us survey the zoning history shown in P.C. Exh. 12, also conceded by engineer Motsco. In 1970, County Council Bill 100 established the Density Residential Zones. In 1971, this area was rezoned D.R. 2, in place when the first addition came circa 1976.

Bill 100 also covered existing lots and charted a table for lot sizes, lot widths, and setbacks. BCZR Sec. 1B02.3.C. For D.R. 2 Zone, the lot met the 20,000 square feet minimum, equaled the 100 feet front lot width, and met front yard and rear yard 40 feet minimum setbacks. But the first garage 10-feet setback did not meet the 15 feet side yard setback.[10] It also fell just short of the minimum sum of side yards widths of 40 feet, prior to the first addition, with just under 30 feet on the Montanye side and 10 feet on the Fradkin side. Even if we overlook this last shortage, the garage setback plainly did not conform to D.R. 2. So, as of 1971, the residence was already a nonconforming use.

[10] There is no dispute the new second garage is 12 feet wide and extends 2-3 feet into the Fradkin property, so the first garage was about 10 feet away.

This brings us to 1976, the year of the first addition. BCZR Sec. 104.3 allows an extension of a nonconforming use up to 25% of the ground floor area (GFA). Because the addition took up 308 square feet, it was 19.8%, less than 25%, of the 1552 square feet GFASo, it was allowable, but left only another 5.2% for any additional extension.

Motsco discussed BCZR Sec. 104.3, but assumed incorrectly that the first addition was there since 1951 and so did not count as an extension. He was unaware 1976 was the year it was added. Motsco also omitted mention of the second garage and fence as extensions, either particularly or together with the other improvements.

The next key date is 1996. There is no dispute the County Council rezoned the area, including the Bair lot, from D.R. 2 to D.R. 1. If we look again at the table, we see this rendered the lot area and width both nonconforming as to the minimum limits: 40,000 square feet and 100 feet, respectively. This also magnified the side yard setback nonconformity of the original garage, providing a 20 feet minimum, and the sum side yard setback sum nonconformity, raising the minimum to 50 feet.

As a matter of law, pursuant to BCZR Secs. 104.1 and 104.3 and the case law, all of the new additions -- garage, fence, and side bedroom ---- are significant extensions beyond the 25% of ground floor area limit. They were all new amenities and facilities. As such, they were illegal extensions or expansions of a nonconforming use. These are construed strictly and prohibited. Prince George's County v. E.L. Gardner 293 Md. 259, 267-68 (1982), attached. See, e.g. Jahnigen v. Staley 245 Md. 130, 137-38 (1967).

Pursuant to BCZR Sec. 104.1, any change to a nonconforming use terminates the use. An extension or expansion beyond that allowed by statute is such a change.[11]

As a matter of law, there are no special exceptions, variances, or other such approvals allowed for nonconforming uses. Prince George's County v. Gardner, *supra.*

[11] Even if the first addition dated from 1951, so the 2017 second bedroom might arguably be credited as an allowable 19.8% first extension, it plainly would not allow the compound second garage and new fence. Anyway, the argument for the 2014 addition as just a 19.8% extension would still be without merit because it came about with multiple combined extensions which amounted to a collective or cumulative change and cannot properly be viewed in isolation.

They are governed strictly by the nonconforming use statute. Intentionally or not, this disqualification was overlooked in Petitioner's presentation and Motsco's testimony.

The proper application of nonconforming use law thus precludes all the recent improvements. This effectively makes it unnecessary to reach the variance and fence law issues. But we will of course address them as well.

Variance Law: "Uniqueness" Explained --- Delusions Exposed

Even if the petition for variances were not disqualified based on nonconforming use expansion, the variance requests would have no merit. Let us turn to variance law.

Donna's attorney's view of "uniqueness" is errant and pettifogging. He asserted a property is unique if no other property is exactly the same. Of course, that can be said of every property. If he were correct, there would never be the denial of any variance for lack of uniqueness. This view also obscures the connection to practical difficulty.

Contextually, under BCZR Sec. 307.1, uniqueness must result in practical difficulty. Trinity Assembly of God v. People's Counsel 407 Md. 53, 79-86 (2008). The main purpose of variance law is to preserve some reasonable use of the property, and in a way consistent with the public safety, health, and welfare.

Riffin v. People's Counsel 137 Md. App. 90, 97-98, cert. denied 363 Md. 660 (2001) followed the landmark Cromwell v. Ward 102 Md. App. 691 (1995). Both are attached. The Riffin Court affirmed this CBA's denial of multiple variances,

> "In denying the appellant's requests for variances, the Board explained:
>
> > Section 307.1 of the *Baltimore County Zoning Regulations* states, in pertinent part, as follows:
> >
> > "... [T]he County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area 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* ... Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area … regulations, and only in such manner as to grant relief without injury to public health, safety, and general welfare."

As well, this Board enjoys the guidance provided by the Court of Special Appeals in *Cromwell v. Ward,* 102 Md.App. 691 [651 A.2d 424] (1995). In requiring a pre-requisite finding of "uniqueness," the Court defined the term and stated:

> In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. *"Uniqueness" of a property for zoning purposes requires that the subject property has an inherent characteristic not shared by other properties in the area, i.e.,* its shape, topography, subsurface condition, environmental factors, historical significance, access, or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions....

It is this Board's finding that the proposed site is in no way unique, unusual or different from the other properties that are existent in this M.L.-I.M. zone. **The Maryland Department of Assessments and Taxation, real Property System map, shows just how similar in size and shape all of the properties are along Greenspring Drive. Testimony by Mr. Patton indicated that this property was consistent with others in the community, and he noted that the gentle slope off of Greenspring Drive was consistent with other properties, further noting that some chose to fill in their properties before building and have entrances at the rear of their locations....** At no time in the hearing did the appellant entertain any historical significance to the site nor were environmental or subsurface conditions documented. Mr. Riffin did testify as to the damage to the interior of his building but did not document the same with photographic exhibits, receipts for repairs or documentation by some authority regarding the nature or extent of this damage. **There was no testimony or evidence regarding abutting properties restricting his activities or imposing any unique characteristics upon his site.** ***In the absence of an initial finding of uniqueness, the inquiry under Section 307.1 stops and, in this case, the three variances must be denied.***
(Emphasis supplied). We see no error. Bold font supplied by (People's Counsel).

Here, there is likewise convincing evidence that the Bair lot is similar in shape and topography to nearby lots, larger than many, and with advantageous pre-existing amenities. The age of the dwelling is similar to others in the subdivision. The gentle downward slope is typical. The SDAT Data, maps, Steve's chart, and all the testimony corroborate there is nothing unique to see here.

Donna's counsel loudly mocked our questions about similarity because, he said, the statute does not use the words "fairly similar." His deprecation of our office's position disregards the sensible meaning under the case law. It is propaganda.

In sum, Donna's property does not get past the threshold test of uniqueness, even before we get to any issue of resulting practical difficulty.

Interlude: "Other" Fences, Garages, Variances Diversion

We pause before discussing the practical difficulty criteria to expose the other diversionary tactics which pervaded Donna's attorney's presentation.

To divert attention, Donna scavenged the area for other fences, garages and pools. She devoted much testimony to this effort. She found eight fences said to be more than 42 inches high, with two perhaps six feet high. Pet. Exh. 8A-I. There was no indication of the precise locations, history, or legal status. Tom disputed her allegation about his fence, 8G, and others were questionable. She found eight lots with 2-car or 3-car garages, again without examination of location, history, or legal status. Pet. Exh. 7A-I. None of them, such as the Fradkins', were on or immediately adjacent to property lines. She also produced opinions approving other variances, generally unopposed and very different in location and circumstance. These were accepted for identification only. Pet. Exh. 9.

Anyway, the existence of even arguably similar additions or uses --- whether with variances, nonconforming, or in violation --- are irrelevant. Easter v. Mayor and City Council 195 Md. 395, 400-01 (1950); Park Shopping Center v. Lexington Park Theatre Co. 216 Md. 271. (1958), attached. These are still good law.

In Easter, the Court dealt with the claim that there were other existing additions reaching the same building line as Easter's desired addition. The Court of Appeals reversed the zoning board's grant of the[i] setback variance. Judge Henderson wrote,

> "The fact that the lot is irregular has no bearing on the question, nor is it material that three buildings, some distance to the north, extend to the building line. These may have been built before the passage of the Ordinance, or they may have been built under permit or without permit. As was said in Potts v. Board of Adjustment, 133 N.J.L. 230, 43 A.2d 850, 854: 'Prior exceptions granted by the adjustment board are not in themselves controlling. Ill-advised or illegal variances do not furnish grounds for a repetition of the wrong. If that were not so, one variation would sustain if it did not compel others, and thus the general regulation eventually would be nullified. The annulment of zoning is a legislative function that is beyond the domain of the zoning board.'"
>
> * * *
>
> "But we think the detriment to the applicant must be weighed against the benefit to the community in maintaining the general plan. 'It is by these gradual encroachments, individually or relative insignificance, that the integrity of the general scheme is undermined and ultimately shattered. One departure serves as justification for another * * *.' Dubin v. Wich, 120 N.J.L. 469, 200 A. 751, 754. In the case of non-conforming uses,

> the ordinance tolerates their continuance, but looks towards their ultimate elimination. Colati v. Jirout, supra.

Chief Judge Brune quoted Easter with approval in Park Shopping Center, 216 Md. at 276.

In the present case, the other situations Donna dug up are not even comparable. They amount to a protracted exercise in distraction, fog, and obfuscation. Even if they were comparable, they would not be germane under the case law.

The Landmarks Preservation Commission Sidetrack

Donna went to the Landmarks Preservation Commission (LPC) in 2019. It is covered by County Code § 3-3-1201, et seq. She highlighted their approval of her construction. She also put in the record that Tom had a driveway project approved.

LPC meetings are relatively informal, and their focus is on the historic aesthetics.

There is no dispute that the property here is identified as "non-contributing" to the Historic District. Apparently, the LPC has a narrow focus and did not find the additions have a historic aesthetic impact. Tom testified he was so informed. Whether the LPC should have a broader vision is debatable. The bottom line is that they do not.

They do not deal with the broader aspects of zoning and the manifold criteria. They do not examine the general impact on the neighborhood. They leave that to the zoning process. The LPC approval here is just another sidetrack.[12]

The "Carport" and "Accessory Building" Plays

Another detour is Donna's attorney's speculative sideshow for a carport to replace the garage or a separation of the garage from the dwelling. These further charades are not in the petition and so not properly the Board. People's Counsel v. Mangione 85 Md. App. 738 (1991). They would also require other variances. Anyway, virtually the same legal analysis which precludes the garage and other variances here would preclude such a carport or accessory building.

The CBA should nevertheless resolve the situation. The CBA should rule that carport or accessory building variances were not requested and anyway lack merit.

[12] This does not necessarily mean, conversely, that the Historic Glyndon location is irrelevant to the broader public safety, health and welfare issues under BCZR § 307.1, even for the impact of situations of non-contributing structures.

There should not be another pathway to delay enforcement and removal of the offending construction. Otherwise, this litigation may slouch to the next decade, even beyond potential judicial review of the CBA's denial of the immediate requests.

The Fence Law Evasion

Another evasive tactic came clothed with legal argument. This centers on the statutory construction of BCZR § 427.1, which we republish in our appendix.

BCZR § 427.1.A applies. Notwithstanding any other county provision, it sets in a historic district a maximum 42" height limit for a residential occupancy fence in a D.R. Zone erected in the side yard of a lot that adjoins a public road. This applies because Donna's fence spans both side yards of the lot on Prospect Avenue, a public road.

To evade this subsection, John Motsco tried to spin that only corner lots are on public roads. He did not deny that the fence is a residential occupancy fence.

We have often challenged the perfunctory acceptance of so-called expert opinions of engineers and surveyors on matters of legal interpretation. Their favorable slants often take the form of linguistic spin which crosses into propaganda.

There is no dispute that this section of Prospect Avenue is a public road. The Court of Appeals has referred to the common definition of public roads as "roads used by the public." Atran v. Furness 251 Md. 216 (1968). These are distinguished from private roads, where the property owner has the right to limit or refuse permission. Walmsley v. State 35 Md. App. 148, 151-54 (1977). It is an exercise in illiteracy to say that only corner lots are on public roads, to argue that Prospect Avenue is not public.

Motsco's errant effort to evade § 427.1.A led him to rationalize Donna's fence as allowable under § 427.1.B, incorporating Code § 13-6-101. Subsection B.1 precludes residential occupancy fences in the rear or side yards of a lot which adjoins the front yard of another on which a residence has been built. However, there is an exception in subsection 3, via Code § 13-6-101, for fences necessary to protect children,

> "A person who owns land on which there is a swimming pool ... shall erect and maintain on the land an adequate enclosure surrounding either the property or pool area sufficient to make the body of water inaccessible to small children."

Such fences should be "not less than 4 feet above the underlying ground."

But Donna anyway cannot properly take advantage of this provision. As we have seen, the three-sided fence here, with the house rear as a kind of fourth side, surrounds an area of 7700 square feet, while the pool spans about 792 square feet. The distances from the pool to the fence range from 15 to 30 feet. This is far more than what is adequate to protect children. Indeed, it does just the opposite. They can run around the rear yard in front of the fence and get into trouble at the pool. Commonly, protective pool fences have four sides and are close to the pool. Even were this a true pool protection fence, it does not mean that 6 feet is necessary or appropriate.

. **Variance Law: Uniqueness Resulting in Practical Difficulty**

We quoted earlier from Riffin the heart of the BCZR § 307.1 standards. Let us now review together the case law on uniqueness and resulting practical difficulty.

As we have said, the integral elements to prove a variance are the peculiarity of the property, commonly described as "uniqueness," and resulting "practical difficulty." We return to Cromwell v. Ward 102 Md. App. 691 (1995):

> "The general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances. *See, e.g.,* A. Rathkopf, 3 The Law of Zoning and Planning §38 (1979)." 102 Md. App. at 703.

He analyzed the "uniqueness" element, 102 Md. App. at 710,

> "In the zoning context the 'unique' aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property.'
>
> 'Uniqueness' of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls."

Judge Cathell concluded,

> "We conclude that the law in Maryland and in Baltimore County under its charter and ordinance remains as it has always been-a property's peculiar characteristic or unusual circumstances relating only and uniquely to that property must exist in conjunction with the ordinance's more severe impact on the specific property because of the property's uniqueness before any consideration will be given to whether practical difficulty or unnecessary hardship exists."

It bears repeating the "the extent of improvements upon the property" are irrelevant to "uniqueness." So, the very nice dwelling in Glyndon with a garage, driveway deck, pool, shed, and fences --- acquired freely for $320,000 --- has nothing to do with uniqueness. Anyway, the amenities are advantages and not difficulties.

Turning to causation, we reiterate the settled law of the requisite causal connection between uniqueness and practical difficulty. Often, as in this case, petitioners circumvent causation, starting with distorted versions of uniqueness. They "complain" their property is not square or rectangular, or slightly different in some obscure way, and then they are off to the races for extra amenities with "experts" in the promotional saddle.

Easter v. Mayor & City Council 195 Md. 395 (1950) described the heavy burden of proof on an applicant for a variance,

> "The burden of showing facts to justify an exception or variance rests upon the applicant, and it must be shown that the hardship affects the particular premises and is not common to other property in the neighborhood."

In Marino v. City of Baltimore, 215 Md. 206 (1957), the Court explained:

> "The expression 'practical difficulties or unnecessary hardships' means difficulties which are peculiar to the situation of the applicant for the permit and are not necessary to carry out the spirit of the ordinance and which are of such a degree of severity that their existence amounts to a substantial and unnecessary injustice to the applicant."

> "[I]t was incumbent upon the Marinos to have shown... (ii) that the difficulties or hardships were peculiar to the property in question in contrast with those of other property owners in the same district."

Judge Glenn Harrell revisited variance law in Trinity Assembly, affirming this CBA's findings in denying variances, 407 Md. at 82-83,

> "In *Umerley v. People's Counsel for Balto. County,* the Court of Special Appeals opined that a zoning authority must determine, as part of its uniqueness inquiry, whether 'the uniqueness or peculiarity of the property causes the zoning provision [at issue] to have a disproportionate impact.' 108 Md. App. 497, 506 (1996). Assuming that a disproportionate impact must be found before a local zoning authority may grant a variance, it is a logical fallacy to say that Board erred on this score. The disproportionate impact consideration, if viable, exists because of the notion that it is not enough for a landowneror user to show merely that the property is somehow physically peculiar or unique; she, he, or it also must prove, to the satisfaction of the

> tribunal, a connection between the property's inherent characteristics and the manner in which the zoning law hurts the landowner or user. Where a property's physical characteristics do not cause the landowner to suffer disproportionately due to application of the zoning enactment in question, the property is not 'unique' in the law of variances. For example, if a property has physical characteristics that might justify variance relief from drainage or sewage regulation, those attributes probably would have no bearing on how that property is affected by an ordinance establishing the maximum height for a fence. Here, the Board concluded simply that the physical attributes of the Property are not distinguishing. That conclusion is supported by substantial evidence."

Judge Harrell went on to discuss the criteria for "practical difficulty." 407 Md. App. at 83-85." He brought forward McLean v. Soley 270 Md. 208, 213-15 (1973), where the Court had "… adopted from Professor Rathkopf's treatise a three-part inquiry to guide local zoning authorities in determining whether a landowner established this element:

> "1) Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
>
> 2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
>
> 3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured."

This tracks the national pattern. The purpose of variance law is to allow relief so a property owner has some reasonable use of his property. See 2 Salkin, American Law of Zoning 5th, § 13:.1. A key point is that the property owner's inability to comply with zoning law for the purpose of a selected use does not justify a variance. Otherwise, a variance would have to be granted in every case; and zoning law would collapse.

Carney v. Baltimore 201 Md. 130, 137 (1952), also a setback variance case, held,

> "'The need sufficient to justify an exception must be substantial and urgent and not merely for the convenience of the applicant, inasmuch as the aim of the ordinance is to prevent exceptions as far as possible, and a liberal construction allowing exceptions for reasons that are not substantial and urgent would have the tendency to cause discrimination and eventually destroy the usefulness of the ordinance. * * *
>
> 'The expression 'practical difficulties or unnecessary hardships' means difficulties or hardships which are peculiar to the situation of the applicant for the permit and are not

> necessary to carry out the spirit of the ordinance and which are of such a degree of severity that their existence amounts to a substantial and unnecessary injustice to the applicant.'"

The appellate courts quoted this in Marino, 215 Md. at 216-17 and Montgomery County v. Rotwein 176 Md. App. 716, 732 (2006).

A. The Bair Property Presents No Difficulties, Much Less Any Peculiar Difficulties

We explained there is nothing, in context, unique about Donna's property. It is also crystal-clear there are no difficulties. For perspective, we review illustrative cases.

Easter v. Mayor & City Council 195 Md. 395 (1950). This involved a front yard and occupancy variance for a one-story and basement addition for a tavern and dwelling on Belair Road. The proposed addition varied the minimum front yard setback of 10 feet. The zoning board had granted the variances, finding the "The lot in question is of very shallow depth and irregular in shape …." They also had found "… several buildings constructed up to the front lines of the lot and the proposed addition would not affect access for light and air to any neighboring properties, nor would it even cut off the view up and down the street." The Court of Appeals reversed, stating the irregularity of the lot and existence even of nonconforming or possibly illegal neighboring buildings did not justify deviation from the general zoning plan. Judge Henderson observed,

> "But we think the detriment to the applicant must be weighed against the benefit to the community in maintaining the general plan. 'It is by these gradual encroachments, individually or relative insignificance, that the integrity of the general scheme is undermined and ultimately shattered. One departure serves as justification for another * * *"

North v. St. Mary's County 99 Md. App. 502, 514-20 (1994) foreshadowed Cromwell in reversing the grant of a mean high water mark setback variance for a gazebo of about 234 square feet. The property had a ranch home and outbuildings. North claimed a deprivation of property rights because he needed the gazebo to enhance his view, contemplate, read, have shade and protect from rain. He also posited that other property owners had built closer to the water. Judge Cathell noted these were probably nonconforming. Among other things, there was nothing unique about the property. The case brings to mind Donna's artificial complaint about sap from the maple tree.

Cromwell v. Ward, *supra*, involved an accessory building for a garage, wine cellar, and storage area for a Ruxton residence. The building height of 21 feet exceeded the 15 feet maximum, just six feet too high. This was nowhere near the excessiveness of Donna's massive construction. As it reversed this CBA's grant of the height variance, Judge Cathell also covered practical difficulty, 102 Md. App. at 697,

> "Simply stated, the variance that is desired (and the difficulties that would exist if it is not granted) cannot be the source of the first prong of the variance process-an inherent uniqueness of the subject property not shared by surrounding properties."

Among cases from other states, Judge Cathell discussed Xanthos v. v. Board of Adjustment 685 P.2d 1032 (Utah 1984), denying front yard variance for duplex addition to dwelling and Prince William County Bd. Of Zoning Appeals v. Bond 300 S.E. 2d 781 (Va. 1983), affirming denial of variance for conversion of garage into dwelling. Even the difficulties presented by a substandard lot or oceanfront lot restrictions do not justify a variance where this characteristic is common to area properties. Sibley v. Inhabitants of the Town of Wells 462 A.2 27, 30-31 (1983); Town of Indialantic v. Nance 400 So.2d 37, 40 (Fla. App. 1981), aff'd 419 So.2d 1041 (Fla. 1982).

Chester Haven Beach Partnership v. Board of Appeals 103 Md. App. 324, 337-41 (1995) followed Cromwell. Petitioner appealed the denial of a conditional use and variances for a residential subdivision. The primary alleged difficulty were Chesapeake Bay Critical Area environmental constraints. Judge Cathell observed there was no evidence that the environmental constraints were unique to this critical area property. He went further and criticized the professional staff, stating that the staff "… abdicated its responsibility in its role in respect to conditional uses and variances." 103 Md. App. at 340. Despite the fairly serious environmental constraints, Judge Cathell wrote,

> "It is not, however, the function of staff to make such policy decisions in the absence of legislative action. We do not perceive that it was the legislative intention in passing the State or local critical area legislation that zoning variance procedures would be prostituted in order to alleviate the harshness of environmental regulation. If that is the intention of the legislative entities, they have the power to express clearly that intention."

Even more clearly, the limited LPC approval here has no bearing and does not eviscerate zoning variance procedures.

Riffin v. People's Counsel, *supra*, involved an active litigant known to this Board. He proposed a special exception for a bungee jumping operation as well as nine variances for a modification of his office building on Greenspring Drive. The property was situated between Greenspring Drive in front and the MTA light rail track in back. In affirming the CBA denial of several variances. We have already quoted Judge Moylan's analysis.

Montgomery County v. Rotwein 169 Md. App. 716 (2004) involved front and side yard setback variances to build a 2-car garage and walkway. Her property was about three-quarters of an acre, with a one-story residence, finished basement, open carport, rear deck, slate patio, swimming pool, and tennis court --- fairly similar to here.

The zoning board denied the variances. Citing Cromwell, the Court sustained the denial. Judge Krauser described Rotwein's main arguments for uniqueness as her mobility problems and the substantial additional expense for alternative relocation of the garage. Neither of these, however, constituted peculiar or unusual practical difficulties.

B. Application of the "Practical Difficulty" Criteria

Let us discuss the McLean/Trinity Assembly of God criteria, having in mind that variances are to be granted sparingly and based on substantial and urgent need, not merely for the convenience of the applicant.

> "1) Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome."

Here, Donna's application is for extra amenities to enlarge and surround a very nice property and dwelling which various owners have enjoyed since 1951. Her current proposal, after the fact, is based on personal preferences, and has nothing to do with any real difficulty or hardship involving the property. To repeat, she already is fortunate to have an enviable and wonderful use of property in a very nice neighborhood.

It should be underlined that the evaluation of reasonable use involves consideration of the entire property/ In North, Cathell underlined that the entire property must be considered, along with the improvements, 99 Md. App. at 517,

> "The applicant, Mr. Enoch, the county, and the trial judge for that matter, when discussing the reasonable use of the property seem to restrict their considerations to just the part of the property where Enoch desires to construct the gazebo. That is incorrect. The property at issue here is the 4+ acre site already developed with a ranchhouse of approximately 1,100 square feet with extensive decking, an improved walkway, and a pier, from which expansive views are present. Thus, the property already is subject to a reasonable use."

Donna was not forced to buy her very nice house and property. She has to adjust to the law. The zoning law is not there for Donna's convenience.

The Court also addressed practical difficulty in Rotwein. Judge Krauser applied the law quoted earlier. He wrote, 169 Md. App. at 733,

> "But Rotwein has not demonstrated that, unless her application is granted it will be 'impossible [for her] to make reasonable use of the property.' *Id.* Indeed, she has made more reasonable use of the property, as it houses not only her residence, but, among other things, a swimming pool and a tennis court."

Rotwein, moreover, had made a sympathy argument based on her physical limitations. As a matter of law, this did not, however, justify the setback variances.

In sum, the zoning law does not prevent Donna from making a reasonable use of the property and does not impose an unnecessary burden.

> "2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners."

For essentially the above reasons, there is no injustice to Donna. She has a satisfactory and even privileged use of this very nice property. The proposal, already there, does, however, work an injustice to area property owners. Steve, Patty, and Tom testified at length to the immediate visual and environmental impacts, excessive scale, and incompatibility with the area. Robin corroborated the problematic impacts. Steve also identified an emergency vehicle access problem due to the garage obstruction.

Real estate expert Cookie Stone provided credible and undisputed testimony to the negative impact on the future sales price or value of the Montanye and Fradkin properties. She corroborated the incompatibility of the new construction.

Attention should also be paid to the community association representatives. Their concerns went beyond procedure to the merits, precedent, and "slippery slope."

In affirming the denial of variances, Chesley v. City of Annapolis 176 Md. App. 413, 441-45 (2007) highlighted similar testimony by neighbors about visual impact and property values. One neighbor posited that, "overbuilding and overcrowding loom on the horizon …." The Court accepted, among other things, legitimate concerns about overcrowding and imposing structures which harm area views and enjoyment.

"3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured."

These variance requests are excessive, offensive, and unjust. They conflict significantly with the spirit and intent of the ordinance and public safety and welfare.

Variance Law: The Insidious Self-Created Difficulty Problem

Lastly, there is a threshold problem. The alleged practical difficulty here is self-created. If construction is done without proper approvals, or with mistaken applications, then this is self-created. It does not have to be reckless or deliberate. Nor is blaming the contractor an excuse. Donna's real estate license is an added factor.

Cromwell reversed the CBA approval of just a single height variance --- 21' in excess of the maximum 15' --- for a residential accessory building. Ward's contractor did apply for a permit. But the flawed application did not state the height or have a scale. The height could possibly have been computed indirectly from horizontal dimensions on the drawing. The county mistakenly issued the permit. When the violation was discovered, Ward applied for a variance after the fact. 102 Md. App. at 696-97.

Judge Cathell stressed the difficulty was self-created. 102 Md. App. a 721-23,

"Self–Inflicted Hardship

> "We have before referred to *Marino v. Mayor and City Council of Baltimore,* 215 Md. 206, 137 A.2d 198. There, the Court said, "it was incumbent [on the applicant] to [show] ... that the hardship was not the result of the applicants' own actions." *Id.* at 218, 137 A.2d 198. The Court of Appeals ***722*** noted in *AD + Soil, Inc. v. County Comm'rs,* 307 Md. at 340, 513 A.2d 893:
>
> > The essence of AD + Soil's argument ... is that the setback requirements ... would cause ... unwarranted hardship because it had obtained its first state permit and

> constructed its transfer station before it learned of these local requirements.... The Board declined to grant the variances, concluding that Ad + Soil's "hardship" was self-inflicted ... and therefore not the kind of hardship cognizable under the Zoning Ordinance.
>
> The Court affirmed the Board. Foreign jurisdictions are generally in accord. *See Pollard v. Zoning Bd. of Appeals,* 186 Conn. 32, 438 A.2d 1186, 1190 (1982) **(" '[S]elf-inflicted or self-created hardship ... is never considered proper grounds for a variance.' ... '[W]here the applicant ... creates a nonconformity, the board lacks power to grant a variance.' ")** (citations omitted); … **("[T]he hardship, if any, was self-inflicted. The placement of the improvements ... was within the control of the Garretts and their contractor, Raintree.").** *See also Shafer, supra; VanLandschoot, supra; Walkingstick, supra; Xanthos, supra; St. Clair, supra.* Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted."

Ward's contractor at least made an application, however flawed. Donna's contractor did not bother. Nor did she. It is unnecessary to parse the level of fault in Donna's admitted "mistake." It is enough that the difficulty arose from her project. Ironically, if Donna had taken a few minutes to check with the zoning office, or asked for permits, she could have done things the right way. Instead, she spent many hours to try to get an "easement;" talk informally to a bankruptcy attorney; cajole the Fradkins to transfer property; dig up their previous owner's minor shed variance;; interject random different fences; complain about Tom's driveway project even though it had no zoning conflict; and cast a bad light on her neighbors generally.

Effective zoning law depends on voluntary citizen compliance. There is no police state. If not for Tom's concern and alertness, the violation would have escaped scrutiny.

There are over 300 zoning petitions annually, and development and permit applications. With rare exceptions, county citizens make diligent inquiries and file proper applications. If more than a few citizens acted unilaterally, the system would break down. There is scant incentive to comply with the law if variances were readily available after the fact. Another problem is that even after denial of these variances, and affirmance on judicial review, there will still be an enforcement task, likely with more litigation.

Conclusion

For these reasons, the law compels denial of all the variances, including every matter on appeal.

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of April, 2021 a copy of the foregoing Memorandum of People's Counsel for Baltimore County was sent via email to Thomas & Kim Montanye, Tom@montanye.net; Kimberly Karlsen, perandkim@aol.com; Steve & Patricia Fradkin, reistlaxcoach@gmail.com; Sue Benson, sbensoncomm@aol.com; Robin Coffin, rscoffin@verizon.net, Mary Molinaro, mmolinaro@reisterstown.com; and Lawrence E. Schmidt, Esquire, Smith, Gildea & Schmidt, LLC, 600 Washington Avenue, Suite 200, Towson, Maryland 21204, lschmidt@sgs-law.com, Attorney for Petitioner.

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Appendix: Zoning Regulations and County Code Provision

BCZR § 101.1 NONCONFORMING USE — A legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use. A specifically named use described by the adjective "nonconforming" is a nonconforming use.

BCZR § 104.1. - CONTINUATION OF NONCONFORMANCE; EXCEPTIONS.
A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these regulations, provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, the right to continue or resume such nonconforming use shall terminate.

BCZR § 104.3. - LIMIT ON EXTENSION OF NONCONFORMING BUILDINGS AND USES; EXCEPTION.
No nonconforming building or structure and no nonconforming use of a building, structure or parcel of land shall hereafter be extended more than 25 percent of the ground floor area of the building so used. This provision does not apply to structures or uses restored pursuant to Section 104.2, except as authorized by the Zoning Commissioner pursuant to Section 307.

BCZR § 1B02.3.C. Development standards for small lots or tracts.

1. Any dwelling hereafter constructed on a lot or tract described in Subsection A.3 or A.4 shall comply with the requirements of the following table:

Zoning Classification	Minimum Net Lot Area per Dwelling Unit (square feet)	Minimum Lot Width (feet)	Minimum Front Yard Depth (feet)	Minimum Width of Individual Side Yard (feet)	Minimum Sum of Side Yard Widths (feet)	Minimum Rear Yard Depth (feet)
D.R.1	40,000	150	50	20	50	50
D.R.2	20,000	100	40	15	40	40
D.R.3.5	10,000	70	30	10	25	30
D.R.5.5	6,000	55	25	10	—	30
D.R.10.5	3,000	20	10	10	—	50
D.R.16	2,500	20	10	25	—	30

2. Other standards for development of small lots on tracts as so described shall be as set forth in provisions adopted pursuant to the authority of Section 504.

"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. [1] "

BCZR 427 – Fences

§ 427.1. - Conditions for use; exceptions.

A. Notwithstanding any other provisions of this Code or the Baltimore County Code, in a D.R. or R.C. 5 Zone located in a historic district, the maximum height of a residential occupancy fence is 42 inches if the fence is erected in the side yard of a lot that adjoins a public road.

B. 1. A residential occupancy fence may not be erected in the rear or side yard of a lot which adjoins the front yard of another on which a residence has been built, except in accordance with the provisions of this section.

2. The fence may not exceed 42 inches in height if situated within ten feet of the adjoining front yard property line.

3. Any person may request a variance from the requirements of this subsection.

C. Applicability.

1. Subsection B of this section does not apply to a fence required by § 13-6-101 of the Baltimore County Code, as revised, to be constructed in order to screen a swimming pool.

2. Subsection B of this section does not apply if the residences on the adjoining lots are more than 200 feet apart."

"§ 13-6-101. - SWIMMING POOL ENCLOSURE.

(a) *Required.* A person who owns land on which there is a swimming pool that contains 24 inches (610 mm) or more of water in depth at any point shall erect and maintain on the land an adequate enclosure surrounding either the property or pool area sufficient to make the body of water inaccessible to small children.

(b) *Height.* A swimming pool enclosure, including gates, may not be less than 4 feet above the underlying ground, except that for a semi-public swimming pool located outdoors without a lifeguard on duty, the enclosure, including gates, may not be less than 5 feet above the underlying ground and may not have more than a two-inch gap from the ground to the bottom of the fence.

(c) *Gates.* All gates shall be self-latching with latches placed 4 feet above the underlying ground and otherwise made inaccessible from the outside to small children.

(d) *Alternative enclosures.*

(1) For purposes of this section, the owner may use a natural barrier, hedge, or other protective device approved by the Department of Permits, Approvals and Inspections if the degree of protection afforded by the substituted devices or structures is not less than the protection afforded by the enclosure, gate, and latch described in subsections (a) through (c) of this section.

(2) A swimming pool cover is not another protective device that may be approved by the Department of Permits, Approvals and Inspections.

(e) *Enforcement.* The Code Official may enforce the provisions of this section in accordance with Article 3, Title 6 of the Code.

(f) *Exceptions.* This section does not apply to a public swimming pool or bathing beach as defined in Subtitle 2 of this title."

293 Md. 259
Court of Appeals of Maryland.

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, Maryland
v.
E. L. GARDNER, INC.

No. 11.
|
April 2, 1982.

Synopsis
County council denied landowner's requested special exception to operate a sand and gravel wet-processing facility at location at which owner operated nonconforming surface mining sand and gravel operations. The Circuit Court, Prince George's County, Albert T. Blackwell, Jr., J., reversed, and the county appealed. The Court of Special Appeals, 47 Md.App. 471, 424 A.2d 392, affirmed. Petition for certiorari was granted. The Court of Appeals, Davidson, J., held that although sand and gravel mining operation which existed prior to zoning was a legal nonconforming use by virtue of use and occupancy permit, the owner was not entitled to special exception to operate a sand and gravel wet-processing facility at the location where mining operations and wet-processing facilities were separate and distinct special exceptions and each had different standards, regulations and requirements.

Judgment of Court of Special Appeals reversed and case remanded with directions.

West Headnotes (4)

[1] **Zoning and Planning** Enlargement or Extension of Use

Purpose of restrictions on alteration or expansion of a nonconforming use is to achieve ultimate elimination of such uses through economic attrition and physical obsolescence.

3 Cases that cite this headnote

[2] **Zoning and Planning** Continuance or change of use in general

Zoning and Planning Enlargement or Extension of Use

Zoning and Planning Repair, Alteration, or Reconstruction of Buildings or Structures

Whether a nonconforming use can be changed, extended, enlarged, altered, repaired, restored, or recommenced after abandonment ordinarily is governed by provisions of the applicable local ordinances and regulations.

3 Cases that cite this headnote

[3] **Zoning and Planning** Strict or liberal construction in general

Zoning ordinances and regulations must be strictly construed to effectuate the purpose of eliminating nonconforming uses.

4 Cases that cite this headnote

[4] **Zoning and Planning** Mining and minerals; sand and gravel

Although sand and gravel mining operation which existed prior to zoning was a legal nonconforming use by virtue of use and occupancy permit, the owner was not entitled to special exception to operate a sand and gravel wet-processing facility at the location where mining operations and wet-processing facilities were separate and distinct special exceptions and each had different standards, regulations and requirements.

5 Cases that cite this headnote

Attorneys and Law Firms

****115** ***260** Steven M. Gilbert, Associate County Atty., Upper Marlboro (Robert B. Ostrom, County Atty. and Michael O. Connaughton, Deputy County Atty., on the brief), for appellant.

Paul B. Rodbell, Riverdale (William V. Meyers and Meyers & Billingsley, P. A., Riverdale, on the brief), for appellee.

Argued before MURPHY, C. J., and SMITH, DIGGES,* ELDRIDGE, COLE, DAVIDSON and RODOWSKY, JJ.

Opinion

DAVIDSON, Judge.

This case presents a question concerning nonconforming uses. More particularly, it involves the question whether, under the applicable provisions of the Prince George's County Code (1979), Subtitle 27.Zoning, the owner of a nonconforming surface mining sand and gravel operation can obtain a special exception to operate a sand and gravel wet-processing facility at the same location. The relevant provisions of the Prince George's County Code are as follows.

Section 27-101 provides in pertinent part:

"(a) Terms used in this Subtitle are defined as follows:

"(110.1) Nonconforming Building or Structure: Any building or structure not in conformity with a regulation of the zone in which it is situated, which regulation was adopted subsequent to the lawful erection of such building or structure....

"(111) Nonconforming Use: Use of any building, structure, or land, or portion thereof, not in conformity with a regulation of the zone in which it is situated, including any regulation of Division 36 (Special Exceptions) applicable to said ****116** use, which regulation was adopted subsequent to the lawful establishment of such use.... The term 'nonconforming use' shall be deemed to include any building, structure, or other facility utilized in connection with a nonconforming use....

"(152) Use: The principal purpose for which a lot, and/or the main building thereon, is designed, arranged, or intended and for which it may be used, occupied, or maintained."

Section 27-107(a) provides:

"(a) Any nonconforming building, structure, or use, as defined in Section 27-101, may be continued, ***262** repaired, or maintained without enlargement or extension, unless otherwise provided by this Subtitle." (Emphasis added.)

Section 27-107(e) provides in pertinent part:

"(e) No nonconforming use may be changed to any use other than that provided by ... permits under which the nonconforming use operated at the time the nonconforming use was established." (Emphasis added.)

Section 27-108(a) provides in pertinent part:

"(a) A nonconforming building, structure, or use may only be enlarged or extended if such enlargement or extension shall conform to the provisions of this Subtitle for the zone in which it is located and a special exception has been approved by the District Council, as provided in Division 36 (Special Exceptions) of this Subtitle." (Emphasis added.)

Section 27-482(a) provides in pertinent part:

"(a) Any nonconforming building, structure, or use as defined in Section 27-101, may be continued, subject to the regulations of Section 27-107, and may be structurally expanded or extended, subject to the provisions of Division 36 (Special Exceptions) of this Subtitle." (Emphasis added.)

Section 27-553 provides in pertinent part:

"(a) Any nonconforming building, structure, or use, as defined in Section 27-101 herein ... may be enlarged, extended, or demolished and reconstructed, if the applicant can show generally that such enlargement, extension, or reconstruction will not adversely affect the use of adjacent properties and the neighborhood, subject to the following requirements and conditions:

"(1) A nonconforming building or structure, or a ***263** building or structure utilized in connection with a nonconforming use, may be enlarged in height or bulk....

"(2) A nonconforming use may be extended throughout a part or whole of a building in which such nonconforming use lawfully exists, or to the bounding lot lines of the lot....

"(3) A nonconforming use may be reconstructed within the bounding lot lines of the lot....

"(4) Any addition to an existing building or structure, or any new building or structure, constructed in connection with a nonconforming use shall, at a minimum, conform to the requirements relative to building lines, setbacks, yards,

and height limits in the zone in which such nonconforming use is situated....” (Emphasis added.)

The respondent, E. L. Gardner, Inc. (owner), owns approximately 450 acres of land (subject property) located in Prince George's County. The subject property was originally zoned R-R (rural-residential, 15,000 square foot minimum lot size) by the comprehensive zoning map adopted 2 December 1966. It was reclassified to the O-S zone (open space, single-family residential, 5 acre minimum lot size) by the comprehensive zoning map adopted 12 July 1977. Neither a sand, gravel or clay pit, nor a wet-processing facility is a permitted use in the O-S zone. Both, however, are special exception uses in that zone. s 27-537(a)(1) and s 27-538.1(a).[1]

**117 *264 Before the subject property was zoned, it was used for the mining of sand and gravel. This use has been established as a legal nonconforming use by the issuance of a use and occupancy permit. s 27-108(b).[2] In 1977, an application was filed, pursuant to s 27-538.1, for a special exception for the wet processing of sand and gravel.

The technical staff of the Maryland-National Capital Park and Planning Commission and the Prince George's County Planning Board recommended approval, with conditions, as did the Zoning Hearing Examiner. Thereafter, the County Council sitting as the District Council for Prince George's County (Council) rejected those recommendations and entered an order denying the requested special exception. In its written findings and conclusions, the Council, among other things, said:

“5. Council further concludes that to grant this special exception would be an unwarranted extension and expansion of a nonconforming use, contrary to the provisions of COUNTY CODE Sect. 27-107. This proposed sand and gravel processing facility would obviously encourage the further continuation of sand and gravel extraction operations, contrary to the purposes of the County's *265 Zoning Ordinance, which has the object of discouraging nonconforming uses.”

The owner appealed to the Circuit Court for Prince George's County which reversed the action of the Council. In its opinion the trial court said:

“Penultimately, the District Council concluded that to grant Gardner's special exception would be an ‘unwarranted extension and expansion’ of the Petitioner's nonconforming use, and would be contrary to s 27-107 of the County Code.

“The Court notes that enlargement or extension of a nonconforming use is contemplated by the Code, and that the criteria for a ‘permitted’ enlargement or extension are set forth in s 27-553 of the Code. However, the Court finds that the requested special exception is not an extension or enlargement as contemplated by the Code, see s 27-533, but rather an intensification of Gardner's ongoing nonconforming use.”

The Council appealed to the Court of Special Appeals which affirmed the judgment of the trial court. Prince George's County v. E. L. Gardner, Inc., 47 Md.App. 471, 424 A.2d 392 (1981). In its opinion, that Court said:

“If the controversy here considered involved only the question whether the contemplated use of the land owned by the appellee amounted to an illegal enlargement or expansion of its non-conforming use of the premises, it would not present a difficult question to be decided. The problem in this case, however, is that the proposed use of the appellee's property does not depend on the non-conforming use, but rather on the right to a special **118 exception established by the Prince George's County Zoning Ordinance.

*266 “Under the circumstances revealed by the record, we agree with the appellee that the non-conforming use status of the appellee's property is irrelevant in the determination of this controversy.

“The sole question to be answered in this appeal then is whether (the trial court) erred in concluding that based on the evidence before the District Council the record did not raise an issue before the administrative body which was ‘fairly debatable.’

“Our examination of the record convinces us that the applicant more than met its burden of producing probative and credible evidence on all the issues required to be proven, and that the evidence of the protestants was so vague and indefinite as to fail to raise fair debate in a reasoning mind. Therefore, we find that the action of the District Council, in refusing to grant the special exception was arbitrary, capricious, and illegal.” E. L. Gardner, Inc., 47 Md.App. at 477-78, 480, 424 A.2d at 395-97.

The Council filed a petition for a writ of certiorari that we granted. We shall reverse the judgment of the Court of Special Appeals.

One of the basic tenets of zoning is that some uses of land are incompatible with others, and that more efficient employment of land resources is achieved if such incompatible uses are separated. An admixture of incompatible land uses is avoided by dividing the community into use districts, each restricted to industrial, commercial or residential occupation.

As a practical matter, however, homogeneous land use has not been achieved. Major movement of population from rural to urban areas had begun half a century before the first comprehensive zoning ordinance was enacted in the United States. As a result, land to be zoned was not always vacant. *267 Indeed, frequently it was occupied by landowners who had developed their land unfettered by any significant degree of governmental control. Thus, use districts, designed to be homogeneous, unavoidably include land devoted to uses proscribed by the zoning regulations. Such nonconforming uses pose a formidable threat to the success of zoning. They limit the effectiveness of land use controls, contribute to urban blight, imperil the success of the community plan, and injure property values. 1 R. M. Anderson, American Law of Zoning s 602 (2d ed. 1976).

[1] This Court has repeatedly recognized that one of the fundamental problems of zoning is the inability to eliminate incompatible nonconforming land uses. In Grant v. Mayor and City Council of Baltimore, 212 Md. 301, 307, 129 A.2d 363, 365 (1957), this Court said:

“Nonconforming uses have been a problem since the inception of zoning. Originally they were not regarded as serious handicaps to its effective operation; it was felt they would be few and likely to be eliminated by the passage of time and restrictions on their expansion. For these reasons and because it was thought that to require immediate cessation would be harsh and unreasonable, a deprivation of rights in property out of proportion to the public benefits to be obtained and, so, unconstitutional, and finally a red flag to property owners at a time when strong opposition might have jeopardized the chance of any zoning, most, if not all, zoning ordinances provided that lawful uses existing on the effective date of the law could continue although such uses could not thereafter be begun. Nevertheless, the earnest aim and ultimate purpose of zoning was and is to reduce nonconformance to conformance as speedily as possible with due regard to the legitimate interests of all concerned, and the ordinances forbid or limit expansion of nonconforming uses and forfeit the right to them upon abandonment of the use or the destruction of the improvements housing the use.”

**119 *268 Thus, this Court has recognized that the problem inherent in accommodating existing vested rights in incompatible land uses with the future planned development of a community is ordinarily resolved, under local ordinances, by permitting existing uses to continue as nonconforming uses subject to various limitations upon the right to change, expand, alter, repair, restore, or recommence after abandonment. Moreover, this Court has further recognized that the purpose of such restrictions is to achieve the ultimate elimination of nonconforming uses through economic attrition and physical obsolescence. The Arundel Corp. v. Board of Zoning Appeals of Howard County, 255 Md. 78, 83-4, 257 A.2d 142, 146 (1969); Stieff v. Collins, 237 Md. 601, 604, 207 A.2d 489, 491 (1965); Colati v. Jirout, 186 Md. 652, 655, 657, 47 A.2d 613, 614-15 (1946); Beyer v. Mayor of Baltimore, 182 Md. 444, 446, 34 A.2d 765, 766 (1943); see Kastendike v. Baltimore Ass'n for Retarded Children, Inc., 267 Md. 389, 397, 297 A.2d 745, 749-50 (1972).

[2] [3] Whether a nonconforming use can be changed, extended, enlarged, altered, repaired, restored, or recommenced after abandonment ordinarily is governed by the provisions of the applicable local ordinances and regulations. Feldstein v. LaVale Zoning Board, 246 Md. 204, 211, 227 A.2d 731, 734 (1967); Phillips v. Zoning Comm'r of Howard County, 225 Md. 102, 109, 169 A.2d 410, 413 (1961); Board of Zoning Appeals of Baltimore County v. Gue, 217 Md. 16, 21-22, 141 A.2d 510, 513 (1958). These local ordinances and regulations must be strictly construed in order to effectuate the purpose of eliminating nonconforming uses. Mayor of Baltimore v. Byrd, 191 Md. 632, 638, 62 A.2d 588, 591 (1948); Colati, 186 Md. at 658-59, 47 A.2d at 616; Knox v. Mayor of Baltimore, 180 Md. 88, 96, 23 A.2d 15, 18 (1941); see City of Hagerstown v. Wood, 257 Md. 558, 563, 263 A.2d 532, 534 (1970); Hewitt v. County Comm'rs of Baltimore County, 220 Md. 48, 59, 151 A.2d 144, 150 (1959).

[4] Applying these principles to the instant case produces a clear result. Section 27-107(a) provides that any nonconforming use may be continued without enlargement *269 or extension. Section 27-107(e) explicitly provides that “no nonconforming use may be changed to any use other than that provided by ... permits under which the nonconforming use operated.” Section 27-108(a) provides

that a nonconforming use may be enlarged or expanded if a special exception is obtained. Sections 27-482(a) and 27-553(a) provide that a nonconforming use may be structurally expanded or extended subject to certain structural requirements. These provisions embody a statutory scheme that explicitly prohibits an existing nonconforming use from being changed to any other use while it explicitly permits an existing nonconforming use to be enlarged or extended under specified circumstances. Under the applicable local ordinances, there is, therefore, a significant and critical difference between changing an existing nonconforming use to another use and enlarging or extending an existing nonconforming use.

Here the record shows that a sand and gravel mining operation existed on the subject property before zoning was applicable. This use has been established as a legal nonconforming use by the issuance of a use and occupancy permit. Section 27-537 delineates sand, gravel, and clay pits as a separate and distinct special exception use in which heavy machinery for washing or processing is explicitly prohibited unless a special exception for wet processing is obtained. Section 27-538 delineates wet-processing facilities as a separate and distinct special exception use. Each of these uses has differing standards, regulations, and requirements. Thus, there can be no question that the ordinance itself establishes that these two uses are indeed different. Consequently, the addition of the wet-processing facility to the existing nonconforming sand and gravel mining operation necessarily involves a change in the use of the subject property. Such a change in use is explicitly prohibited by s 27-107.

Under the circumstances here, the Council had no authority to grant the requested special exception. The trial court erred **120 when it reversed the Council's denial of the requested *270 special exception. Accordingly, we shall reverse the judgment of the Court of Special Appeals that affirmed the judgment of the trial court.

JUDGMENT OF THE COURT OF SPECIAL APPEALS REVERSED. CASE REMANDED TO THAT COURT WITH DIRECTIONS TO REVERSE THE JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AND TO REMAND THE CASE TO THAT COURT WITH DIRECTIONS TO ENTER AN ORDER AFFIRMING THE DECISION OF THE COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY. COSTS TO BE PAID BY APPELLEE.

All Citations

293 Md. 259, 443 A.2d 114

Footnotes

* Digges, J., now retired, participated in the hearing and conference of this case while an active member of this Court; after being recalled pursuant to the Constitution Article IV, Section 3A, he also participated in the decision and adoption of this opinion.

1 s 27-537(a)(1) provides:
"Sec. 27-537. Sand, gravel or clay pits; rock or stone quarries; mining removal of earth or topsoil; extraction and removal of natural materials or deposits.
"(a) In all zones, the use of land for any or all of the purposes or uses of this Section, subject to the following conditions:
"(1) Except in the I-2 Zone there shall be no use of heavy machinery for washing, refining, or other processing or manufacturing, unless a special exception is granted for sand and gravel wet processing under the provisions of Section 27-538.1. The use of heavy machinery for extraction and removal of natural material or deposits from the site is permissible." (Emphasis added.)
s 27-538.1(a) provides in pertinent part:
"Sec. 27-538.1. Sand and/or gravel wet-processing....
"(a) In all zones, except the I-3 and I-4 Zones wherein such uses are prohibited, and in the I-2 Zone wherein such uses are permitted, the use of land for wet-processing, including washing, sorting, refining, and stockpiling of natural materials, and in the I-2 Zone only, including such facilities as concrete batching plants, asphalt or cement mixing plants, and similar facilities...." (Emphasis added.)

2 s 27-108(b) provides in pertinent part:
"(b) Satisfactory evidence as to the actual existence of a nonconforming use is a prerequisite to its continuance and shall be established by the issuance of a use and occupancy permit by the Building Inspector upon approval and certification by the Planning Board." (Emphasis added.)

County Council of Prince George's County v. E. L. Gardner, Inc., 293 Md. 259 (1982)
443 A.2d 114

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

KeyCite Yellow Flag - Negative Treatment
Declined to Follow by Richmarr Holly Hills, Inc. v. American PCS, L.P., Md.App., October 30, 1997

102 Md.App. 691
Court of Special Appeals of Maryland.

David **CROMWELL**, et al.
v.
Arthur Thomas **WARD**, III.

No. 617, Sept. Term, 1994.
|
Decided Jan. 4, 1995.

Synopsis

The Circuit Court, Baltimore County, Lawrence Daniels, J., affirmed order of board of appeals granting height variance for accessory building already built by owner. Appeal was taken. The Court of Special Appeals, Cathell, J., held that: (1) no variance was appropriate where property was not shown to be unusual or unique from surrounding properties before variance based on practical difficulty or unreasonable hardship was sought; (2) landowner's self-created hardship arising from construction of accessory building before variance was sought was not grounds for grant; and (3) approval of building permit for accessory building did not support grant of variance sought.

Reversed.

West Headnotes (5)

[1] Zoning and Planning Effect of determination in general; res judicata and collateral estoppel

City was not estopped from refusing to grant variance from height restriction on auxiliary building merely because owner submitted and obtained construction permit, at least where owner's plan's elevation schematics contained neither elevation dimensions nor scale and elevation was not stated; while zoning inspectors might have been able to extrapolate dimensions from other schematics, they were not required to do so in light of owner's affirmative statement in application of compliance with zoning requirements. Code 1957, Art. 66B, § 7.03; Baltimore, Md., Zoning Ordinance § 307.

[2] Zoning and Planning Unique or peculiar hardship in general

Under law on variances in Maryland and under Baltimore County's charter and ordinance, property's peculiar characteristics or unusual circumstances relating only and uniquely to that property must exist in conjunction with ordinance's more severe impact on specific property because of property's uniqueness before any consideration will be given to whether requisite practical difficulty or unnecessary hardship exists. Code 1957, Art. 66B, § 7.03; Baltimore, Md., Zoning Ordinance § 307.

16 Cases that cite this headnote

[3] Zoning and Planning Self-created hardship; prior knowledge

Practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted. Code 1957, Art. 66B, § 7.03; Baltimore, Md., Zoning Ordinance § 307.

14 Cases that cite this headnote

[4] Zoning and Planning Unique or peculiar hardship in general

Mistake of county official cannot be the "practical difficulty" unique to subject property required to authorize grant of variance. Code 1957, Art. 66B, § 7.03; Baltimore, Md., Zoning Ordinance § 307.

20 Cases that cite this headnote

[5] Zoning and Planning Height of buildings or structures

Granting of variance from height restrictions on auxiliary building was arbitrary and illegal where subject site was not in any way peculiar, unusual or unique when compared to other properties in neighborhood and thus was not disproportionately affected by height restriction; self-created hardship arising from owner's failure to disclose height dimensions in applying for permit and construction of building in nonconformity were self-imposed or created hardships that could not support variance. Code 1957, Art. 66B, § 7.03; Baltimore, Md., Zoning Ordinance § 307.

13 Cases that cite this headnote

Attorneys and Law Firms

**425 *693 Michael Paul Smith (Thomas G. Bodie and Bodie, Nagle, Dolina, Smith & Hobbs, P.A., on the brief) Towson, for appellants.

Newton A. Williams (Nolan, Plumhoff & Williams, Chtd., on the brief) Towson, for appellee.

Argued before WENNER, CATHELL and MURPHY, JJ.

Opinion

CATHELL, Judge.

Appellant, David **Cromwell**, appeals from the judgment of the Circuit Court for Baltimore County (Daniels, J., presiding) affirming the order of the Board of Appeals granting a height variance for an accessory building already built by appellee, Arthur Thomas **Ward**, III. Appellant poses the following questions:

I. Whether the self-imposed or self-created hardship discussed in the Maryland case law on variances *694 requires an intentional act, such as ignoring or flaunting [sic] the zoning regulations.

II. Does the record before the Honorable Lawrence Daniels support a finding that had the accessory building been built in accordance with the height regulations of Baltimore County, the accessory building would necessarily require a different pitch from all other buildings on the property?

III. Can a difference in roof pitches between an accessory building and a home constitute a "practical difficulty or unreasonable hardship" within the meaning of § 307 of the Baltimore County Zoning Regulations?

**426 While those questions are limited, appellant expands in his arguments supporting the questions and argues that

> [t]he restrictions of the applicable ordinance, *taken in conjunction with the unique circumstances affecting the property,* must be the proximate cause of the hardship [Emphasis added.]

and

> Section 307.1 requires that variances only be granted in cases where special circumstances or conditions exist *that are peculiar to the land or structure* which is the subject of the variance request.... [Emphasis added.]

and

> Mr. **Ward's** property *is not unique* from the others in the Ruxton area. [Emphasis added.]

Although somewhat indirectly, appellant has pointed out an important aspect of the nature of the *variance* process, *i.e.,* it is at least a two-step process. The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is—in and of itself—unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property. Unless there is a finding that the property is unique, unusual, or different, the process stops here and *695 the variance is denied without any consideration of practical difficulty or unreasonable hardship. If that first step results in a supportable finding of uniqueness or unusualness, then a second step is taken in the process, *i.e.,* a determination of whether practical difficulty and/or[1] unreasonable hardship, resulting from the disproportionate impact of the ordinance *caused by* the property's uniqueness, exists. Further consideration must then be given to the general purposes of the zoning ordinance.

What we have recently observed in Baltimore County, and in other jurisdictions as well, and what occurred in the case at bar, is a reversal of the required process. Instead of first determining whether the subject property is unusual or unique, the zoning authorities are first determining whether a practical difficulty or unreasonable hardship exists. That determination is then used to create a unique and unusual situation as to the subject property because surrounding properties do not experience the hardship or difficulty.

In the case *sub judice,* appellee's act of constructing a building of such a height as to produce a roof pitched at the angle he

desired caused the roof to extend above the fifteen-foot height limit. This fact alone was found by the Board (and affirmed by the trial court) to make the property's problems unique. Simply stated, the variance that is desired (and the difficulties that would exist if it is not granted) cannot be the source of the first prong of the variance process—an inherent uniqueness of the subject property not shared by surrounding properties.

***696 The Facts**

Appellee's contractor, Donald S. Huber and Company, Inc. (Huber), prepared plans for a garage, wine cellar, and storage area on appellee's property. Using these plans, Huber, on appellee's behalf, applied for a building permit, noting on the application that it was to construct a two story "garage and wine cellar;" "[second] story to be used as storage, [first] floor for garage and wine testing room. Cellar will be for wine." The application indicates that some prior height indication was marked over on the application for a permit and a new mark was made indicating the anticipated height of the structure to be fourteen feet. Huber admitted that he had little experience with the zoning requirements for accessory buildings and ****427** was unaware of the height limitations. The County's automated tracking system, in creating its general permit application data on the subject property, noted: "Height: 14' " and "Stories: 2+ CELL."

The plans presented to the County included a "Left Side Elevation" but no height is shown on the elevation plan. Neither, as far as we have been able to find, does the plan contain a scale from which the "Left Side elevation" can be determined. The plans also include a "Front Elevation" from which actual proposed heights are also conspicuously, almost suspiciously, absent given that all other dimensions appear to be included on the plans.

We have, however, extrapolated from a horizontal distance indicated on the lower right-hand corner of the "Second Floor Plan" that fourteen feet five and one-half inches equals slightly over three and one-half inches on our ruler. It would appear that the front elevation plan indicates five and one-fourth inches on our ruler or approximately twenty-one and one-half feet in height. When measured in similar fashion, the left side elevation indicates a similar height. Thus, if the other measurements are correct, a method existed in which, even absent a scale, rough height elevations might have been discernable, though we are at a loss to understand why the ***697** elevations were not given in feet and why the plans contained no scale.[2]

After receiving a building permit, appellee proceeded to construct the building that violated the fifteen foot height requirement. During the building process, inspections were made of footings, foundations, framing, and electrical service. Final occupancy was then given. Later, the building was discovered to be twenty-one feet in height.[3] Appellee then successfully applied for an after the fact variance. Appellant appealed to the Board of Appeals and it, in a two to one decision, granted the variance that the circuit court ultimately affirmed.

The Law

The State Zoning Enabling Act was first passed in 1927 by Chapter 705 of the Acts of 1927. It has since been codified as Article 66B of the Annotated Code of Maryland (1957, 1988 Repl.Vol., 1994 Cum.Supp.). While it was generally believed that local subdivisions did not have to enact zoning regulations (and some did not), if enacted, they normally had to conform to the provisions of Article 66B.

Baltimore County, however, is a charter county and is exempt from many of the provisions in Md.Code Art. 66B. See Md.Code Art. 66B § 7.03 which provides "Except as provided in [sections not pertinent here] ... this article does not apply to the chartered counties of Maryland." Nevertheless, the language of Art. 66B relating to variances is virtually identical to the provisions of the Baltimore County ordinance.

***698** The Article 66B provision that provides for variance authority in local zoning ordinances is section 1.00(j). As relevant to an area variance, this section defines a variance under Art. 66B as follows:

> [M]odification only of density, bulk, or area requirements in the zoning ordinance ... where *owing to conditions peculiar to the property, and not the result of any action taken by the applicant,* a literal enforcement ... would result in either, as specified by the local governing body in a zoning ordinance, unnecessary hardship or practical difficulty. [Emphasis added.]

The Baltimore County Zoning Ordinance in section 307, "Variances," provides, in relevant part, that variances from the ordinances provision, *i.e.,* height, may be granted

> 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 ... would result in practical difficulty ****428** or unreasonable hardship. [Emphasis added.]

Accordingly, we shall, in our discussion of cases, refer extensively to cases under the provisions relating to Art. 66B as well as cases under the Baltimore County provisions.

The Baltimore County ordinance requires "conditions ... peculiar to the land ... and ... practical difficulty...." Both must exist. But the terms "practical difficulty" and "unreasonable hardship" are stated in the ordinance disjunctively. Thus, at least as to variances other than use variances,[4] if the property is found to be unique, the practical difficulty standard would then apply. We address practical difficulty at some length hereafter. However, as is clear from the language of the Baltimore County ordinance, the initial factor that must be established before the practical difficulties, if any, are addressed, is the abnormal impact the ordinance has on a specific piece of property because of the peculiarity and ***699** uniqueness of *that* piece of property, not the uniqueness or peculiarity of the practical difficulties alleged to exist. It is only when that uniqueness is first established that we then concern ourselves with the practical difficulties (or unnecessary hardships in use variance cases).

Because we have discerned that some of the confusion in this and other jurisdictions may have arisen because of a tendency to intermingle the concepts of special exceptions/conditional uses[5] (where normally an applicant has an easier burden) and variances, we shall first discuss the cases (local as well as foreign) and treatises in which the terms are distinguished. We shall then discuss our cases and certain of those elsewhere in which the proper (and, on occasion, improper) applications of variance law have been applied. The Baltimore County statute will then be restated and applied to the facts and circumstances of the case *sub judice.*

Special Exceptions (and Conditional Uses) and Variance —Distinguished

The treatise writers define the concept as:

> A variance is an authorization for [that] ... which is prohibited by a zoning ordinance....
>
> ... [T]he difference between the two [variances and special exceptions] ... is of practical significance....
>
> "... [T]he variance and exception are designed to meet two entirely different needs. The variance contemplates a departure from the terms of the ordinance in order to preclude confiscation of property, while the exception ***700** contemplates a permitted use ... [once] the prescribed conditions therefor are met."
>
> ... [A] variance is "authority ... to use his property in a manner forbidden ...," while an exception "allows him to put his property to a use which the enactment expressly permits."
>
> ... [T]he standards for ... exceptions are usually less stringent than in the case of variances. A Maryland court summarized this difference and the reason for it.
>
> "A special exception ... is one which is controlled and ... permissible in a given zone. It is granted ... upon a finding conditions of the zoning ordinance are satisfied. A variance is authorized ... where the literal enforcement of its terms would result in unnecessary hardships."

3 Robert M. Anderson, *American Law of Zoning* § 18.02–03 (2d ed. 1977) (footnotes omitted) (quoting in part *Stacy v. Montgomery County,* 239 Md. 189, 193, 210 A.2d 540 (1965)). *See also* ****429** *Schultz v. Pritts,* 291 Md. 1, 11, 432 A.2d 1319 (1981); *People's Counsel v. Mangione,* 85 Md.App. 738, 748, 584 A.2d 1318 (1991).

> A distinction commonly is made between [special] exceptions ... and variances.... An "exception" ... is a dispensation permissible where a board ... finds existing those facts ... specified in the ordinance as sufficient.... "... But zoning ordinances usually provide for another kind of dispensation, ... by which a variance ... may be authorized ... where a literal enforcement ... would result in unnecessary hardship."

8 Eugene McQuillin, *Municipal Corporations* § 25.160 (3d ed. rev. 1991) (footnotes omitted).

> The general rule is that variances and exceptions are to be granted sparingly, only in rare instances and under peculiar and exceptional circumstances.... A variance should be strictly construed....

Id. § 25.162 (footnotes omitted). *See also* 5 Norman Williams, Jr. et al., *American Land Planning Law* § 133.01 (1985 rev.); 3 Arden H. Rathkopf, *The Law of Zoning and Planning* ***701** § 38.01 (4th ed. 1981); 3 E.C. Yokley, *Zoning Law and Practice*

§ 21–6 (4th ed. 1979); 3 Robert M. Anderson, *American Law of Zoning* § 14.55 (1968); Anderson, *supra* § 18.30 (2d ed.).

Maryland courts, and courts elsewhere, have generally made the same distinction.

> There is a marked distinction between "variance" and "special exception" in Montgomery County. A special exception ... is expressly permissible.... [A zoning board has authority to grant] variances from the strict application of this chapter when by reason of exceptional narrowness, shallowness, or shape of specific parcels of property ... or by reason of exceptional topographical conditions or other extraordinary situations ... of specific parcels of property, the strict application ... would result in ... unusual practical difficulties to, or exceptional or undue hardship....

Stacy, 239 Md. at 193, 210 A.2d 540.

Judge Hammond for the Court of Appeals noted in *Montgomery County v. Merlands Club, Inc.,* 202 Md. 279, 288–91, 96 A.2d 261 (1953):

> It is the common practice to join an application for an exception with an application for a variance, leaving it to the Board to decide on which ground it will grant the application. As a result, many cases discuss exceptions and variances without differentiation, yet the two do differ, and one important distinction is that where a specific use is permitted by the legislative body in a given area ... the application can be granted without a showing of hardship or other conditions which are necessary for the allowance of a variance....
>
> ....
>
> ... There is a distinction between ... the ordinance provisions ... in those cases [Baltimore City cases] and the facts and the ordinance provision in this case....

See also our case of *Martin Marietta Aggregates v. Citizens,* 41 Md.App. 26, 34–35, 395 A.2d 179 (1978).

***702** A conditional use is not a variance. The primary difference between the two is that a conditional use is not an exceptional [6] use. A conditional use is a desirable use which is attended with detrimental effects which require that certain conditions be met.... While a variance is a departure from the terms of an ordinance, a conditional use is a permitted use ... so long as ... conditions are met. Therefore, conditional use grants cannot be encompassed within the ... statutory authority to grant variances. *Eberhart v. Indiana Waste Systems, Inc.,* 452 N.E.2d 455, 459 (Ind.App. 3 Dist.1983) (citations omitted).

In a case affirming the granting of a special exception, the court in *Ash v. Rush County Bd. of Zoning Appeals,* 464 N.E.2d 347, 350 (Ind.App. 1 Dist.1984), opined:

> A great deal of confusion has been generated ... because of the parties' failure to distinguish among rezoning amendments, variances, and special exceptions.... A variance involves a deviation ... from the ****430** legislated zoning classification.... A special exception involves a use which is permitted ... once certain statutory criteria have been satisfied. [Citations omitted.]

See also Lindquist v. Board of Adjustment, 490 So.2d 16, 18 (Ala.Civ.App.1986) ("Thus a special exception is not truly an exception to the zoning regulations at all") and ("a special exception may not be used as a substitute for a variance in order to avoid the ... burden of proving ... hardship"); *Wolfner v. Board of Adjustment,* 672 S.W.2d 147, 150 (Mo.App.1984) ("an exception is legislatively permitted whereas a variance is legislatively prohibited, but may be allowed for special reasons"); *Urban Farms, Inc. v. Franklin Lakes,* 179 N.J.Super. 203, 431 A.2d 163, 167 (A.D.), *cert. denied,* 87 N.J. 428, 434 A.2d 1099 (1981) (special exception and variance defined—case decided on zoning estoppel basis); ***703** *A.J. Grosek & Associates v. Zoning Hearing Bd.,* 69 Pa.Cmwlth. 38, 450 A.2d 263, 265 (1982); *Bell v. City Council,* 224 Va. 490, 297 S.E.2d 810, 813–14 (1982).

VARIANCE—

The First Step—Uniqueness or Peculiarity of the Subject Property

> The general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances. *See, e.g.,* A. Rathkopf, 3 The Law of Zoning and Planning § 38 (1979).
> *Doorack v. Board of Adjustment,* 709 S.W.2d 140, 143 (Mo.App.1986). *See also McMorrow v. Board of Adjustment,* 765 S.W.2d 700, 701–02 (Mo.App.1989); *Taylor v. Board of Zoning Adjustment,* 738 S.W.2d 141, 144 (Mo.App.1987).

The requirement of uniqueness of the subject property, as we have indicated, is specifically set out for noncharter counties in the State enabling legislation, Md.Code Article 66B, and it

is also set out in the Baltimore County ordinance applicable here. Additionally, it has been a necessary prerequisite almost since the inclusion of variance practice in zoning laws—and, before that, it was a part of Maryland case law. That case law is in accord generally with the case law elsewhere as we shall later discuss.

Early on, prior to the State specifically empowering local governments to delegate the granting of variances to zoning boards, the Maryland Court of Appeals found that the delegation of power to an administrative board to grant variances from the terms of a zoning "type" ordinance was improper because

> the board of zoning appeals is in effect given the power to set aside or annul the ordinance ... with no more definite standard or guide than that such action may only be taken when there are "practical difficulties or unnecessary hardships".... [U]nder our system of written constitutions it is essential that they accomplish those ... objects in conformity with the restrictions, rules, and limitations which the law itself provides and not in disregard of them.... For such ***704** phrases as "practical difficulties," "unnecessary hardships," "substantial justice," are too general and indefinite to furnish such a guide, or to mark the limits or control the exercise of the power conferred....

Jack Lewis, Inc. v. Mayor and City Council of Baltimore, 164 Md. 146, 151, 164 A. 220, *appeal dismissed,* 290 U.S. 585, 54 S.Ct. 56, 78 L.Ed. 517 (1933) (though it questioned the variance provisions under which the appellant sought a variance to operate a funeral home, it upheld the restriction prohibiting the funeral home in the first instance). In *Sugar v. North Baltimore Methodist Protestant Church,* 164 Md. 487, 165 A. 703 (1933), the Court likewise found the board's powers to grant special exceptions to permit a confectionery store where otherwise prohibited to be invalid for the same reasons.

In moving towards an acceptance of variance procedures, the Court noted that the "increasing need for garages in the cities was one of the main reasons for the rapid spread of zoning in this country." *Heath v. Mayor and City Council of Baltimore,* 187 Md. 296, 300, 49 A.2d 799 (1946). By the time of its decision in *Heath,* the Court had accepted the inevitable need for formal variance and special exception provisions, noting that "[c]haos would result if [a building engineer] were allowed to make exceptions or variances ****431** in his own discretion." 187 Md. at 301, 49 A.2d 799. The Court further pointed to the special exception powers of the Board of Zoning Appeals as a legally acceptable alternative. The Court also observed that, in response to its decisions in *Jack Lewis* and *Sugar,* the city had amended the Baltimore City ordinance to incorporate additional standards to guide the Board. The Court then correctly defined an exception as "a dispensation permissible where the Board ... finds ... those facts ... specified in the ordinance...." *Id.* 187 Md. at 303, 49 A.2d 799.

It was then that the court, for the first time that we can discern, combined exceptions and variances when discussing conformity to the rules in regard to the grant of either. This is the first instance where the two concepts were intermingled with respect to the Baltimore City ordinance. To a certain extent, this intermingling has, from time to time, created some ***705** confusion in the cases arising out of Baltimore City. Because of the proportionately larger number of cases arising out of that jurisdiction, that confusion can be seen in subsequent cases arising from other jurisdictions. This intermingling increased over the years and, during this time, Baltimore City amended its ordinance and eventually became subject to an ordinance that does not distinguish between variances and exceptions except as to the title of their respective sections. In other words, Baltimore City, by the terms of its ordinance, applies the same standards to both variances and special exceptions; this standard is the one used elsewhere for variances. Thus, the Baltimore City special exceptions procedure is one only by title. For all practical purposes, it is also a variance procedure.

Caution should always be used therefore when a court is concerned with special exceptions, as reliance on the cases from Baltimore City may well lead one to rely on inapposite zoning concepts and cases. Judge Marbury, for the Court of Appeals, noticed this unusual circumstance in *Dampman v. Mayor and City Council of Baltimore,* 231 Md. 280, 285, 189 A.2d 631 (1963) ("In Baltimore City there appears to be no distinction between the two terms....").[7] We also attempted to indicate the problem in *North v. St. Mary's County,* 99 Md.App. 502, 510, 638 A.2d 1175 (1994), in footnote 3:

> Baltimore City's zoning code makes no distinction between special exceptions and variances. Its code treats special exceptions as if they were variances.... [I]t is generally inexact to rely on Baltimore City cases when a special exception is at issue in another jurisdiction, but would be appropriate when a variance is at issue.

In any event, as to variances, the Court of Appeals, applying the uniqueness standard, stated:

***706** [I]t was incumbent upon the Marinos to have shown ... (ii) that the difficulties or hardships *were peculiar to the property in question in contrast with those of other property owners in the same district, and* (iii) that the hardship was not the result of the applicants' own actions.

Marino v. Mayor and City Council of Baltimore, 215 Md. 206, 218, 137 A.2d 198 (1957) (emphasis added). *Salisbury Bd. of Zoning Appeals v. Bounds,* 240 Md. 547, 214 A.2d 810 (1965), also involved the completion of structural improvements in violation of an ordinance and a subsequent request for an after the fact variance. The Court opined:

> The only evidence before the Board as to hardship or injustice involving the property was the fact that repairs and alteration work had been substantially completed before an application for either a variance or a building permit had been made and that what had been done could not be undone without financial hardship to appellees....

240 Md. at 554, 214 A.2d 810. The Court first quoted from 2 Rathkopf, *The Law of Zoning and Planning,* § 48–1, and then noted:

> "Where property, due to unique circumstances applicable to it, cannot reasonably be adopted to use in conformity with the restrictions ... hardship ****432** arises.... The restrictions of the ordinance, taken in conjunction with the unique circumstances *affecting the property* must be the proximate cause of the hardship.... [T]he hardship, arising as a result of the act of the owner ... will be regarded as having been self-created, barring relief...."
>
> The instant case fits squarely within the above general rule.... [I]f the appellees had used proper diligence ... and then made accurate measurements ... [the resultant hardship could have been avoided]. The hardship ... was entirely self-created....

Id. at 554–55, 214 A.2d 810 (emphasis added). Had **Ward's** contractor, Huber, in the case at bar, checked the ordinance's height limitation, the situation that now exists could easily have been avoided. *See also Burns v. Mayor and City* ***707** *Council of Baltimore,* 251 Md. 554, 559, 248 A.2d 103 (1968); *Pem Constr. Co. v. Mayor and City Council of Baltimore,* 233 Md. 372, 378, 196 A.2d 879 (1964) ("[There was] no evidence of any limitation ... by ... size of yards, irregularity of shape of land or buildings, topography, grade or accessibility"....); *Mayor and City Council v. Sapero,* 230 Md. 291, 186 A.2d 884 (1962); *Frankel v. Mayor and City Council of Baltimore,* 223 Md. 97, 104, 162 A.2d 447 (1960) ("It was incumbent ... to show that the hardship ... affected his particular premises and was not ... common to other property in the neighborhood.... [H]e met the burden...."); *Park Shopping Center, Inc. v. Lexington Park Theatre Co., Inc.,* 216 Md. 271, 277–78, 139 A.2d 843 (1958).

> Secs. 14(b), 14(d) and 16 ... have been held not to authorize a granting for the mere convenience to the owner but to require a showing of urgent necessity, hardship peculiar to the particular property....

Mayor and City Council v. Polakoff, 233 Md. 1, 9, 194 A.2d 819 (1963).

The Court in *Kennerly v. Mayor and City Council of Baltimore,* 247 Md. 601, 606–07, 233 A.2d 800 (1967), dismissed an appeal of the grant of a height variance for lack of standing, but, in doing so, nevertheless opined:

> Our dismissal of the appeal is not to be taken as showing that if the appeal properly was here we would affirm the Board. To grant a variance the Board must find from the evidence more than that the building allowed would be suitable or desirable or could do no harm or would be convenient for or profitable to its owner. The Board must find there was proof of "*urgent necessity, hardship peculiar to the particular property....*" ... Specific reasons, specific bases to support the finding must be revealed by the evidence before the Board. [Emphasis added, citation omitted.]

In *McLean v. Soley,* 270 Md. 208, 210, 310 A.2d 783 (1973), one of the few reported Maryland appellate cases approving of a variance, the applicant for an area variance in connection ***708** with an application to build forty units asserted that it was his desire to retain the "present trees and natural growth, terrain, and topography which provides excellent drainage and natural screening and beauty." There was evidence that, if the applicant destroyed the existing trees, he could have built 330 units without needing a variance. It was established that a number of attractive trees along the western boundary would have to be destroyed absent a variance. The Court noted that "there was considerable evidence to show the natural beauty of these trees and their importance to the ecology." 270 Md. at 211, 310 A.2d 783. The Court, seeming to acknowledge that it was making a detour from Maryland variance law, opined:

> Given the unique facts of this case, we think those criteria are met by this evidence: That the construction of the buildings in strict compliance with the sideyard requirements would result in the destruction of the trees; that the preservation of trees in the construction of the first section had contributed to full occupancy ... that the benefits of retaining the trees would accrue to the general public; that greater density would result from strict compliance....
>
> ....
>
> Concededly, this is a close case, but it is nevertheless sufficient....

****433** *Id.* at 215, 310 A.2d 783. We would have to agree that it is a close case. The opinion does not make mention that the practical difficulty resulted from the fact that the uniqueness of the property caused the ordinance to have a different impact on it than on adjoining property. Also, there was no evidence that the neighboring properties were in any way different than the subject property. If the presence of trees on a particular lot was unique, that might have been a basis, but the court did not make that connection. Thus, this case, coupled with *Loyola Federal Savings & Loan Assoc. v. Buschman,* 227 Md. 243, 176 A.2d 355 (1961), and *Frankel v. Mayor & City Council of Baltimore,* 223 Md. 97, 162 A.2d 447 (1960), is among the affirmances of variances that we perceive to be, at best, extremely close calls and, as we shall indicate, exceedingly rare.

***709** The Court in the sludge storage case of *AD + Soil, Inc. v. County Comm'rs,* 307 Md. 307, 513 A.2d 893 (1986), reiterated the standards applicable to variances when it affirmed a trial court's affirmance of a zoning agency's denial of an area and other variances. The variances were necessary to satisfy the requirements for a conditional use permit to operate the sludge storage and distribution operation. The Court of Appeals noted that the trial court, in affirming the agency's denial of a variance, agreed that "the only hardships facing Ad + Soil were of its own making." 307 Md. at 317, 513 A.2d 893. After addressing the important preemption issues therein raised, the Court directed its attention to the area variances sought and, referring to the Board's findings, stated that, in Queen Anne's County, the Board's authority to grant variances was limited to a situation where "there are exceptional or extraordinary circumstances or special conditions applying to the property in question ... that do not apply generally to other properties ... in the ... district." *Id.* at 340, 513 A.2d 893. The Court concluded:

> The board declined to grant the variances, concluding that Ad + Soil's "hardship" was self-inflicted, and, in any event, that it was not the result of exceptional or extraordinary *characteristics* of the *land itself* and therefore not the kind of hardship cognizable under the Zoning Ordinance....
>
> We think the Board's decisions ... reflect no error of law.

Id. at 340–41, 513 A.2d 893 (emphasis added).

In *Red Roof Inns, Inc. v. People's Counsel,* 96 Md.App. 219, 224, 624 A.2d 1281 (1993), after noting the standard of review, we said:

> In reviewing the zoning authority's decision, the court must consider all of the evidence in the administrative record. The reviewing court's role, however, is confined to determining the legality of the procedure employed and whether the decision was fairly debatable in light of the evidence adduced before the zoning authority.
>
> ***710** The role of this Court "is essentially to repeat the task for the circuit court; that is, to be certain the circuit court did not err in its review." [Citations omitted.]

We then discussed the legal standards to utilize in respect to variances construing the same statute that applies in the case at bar, saying that variances may be granted "where special circumstances or conditions exist *that are peculiar to the land* ... and where strict compliance ... would result in practical difficulty...." *Id.* (emphasis added). We noted that, in regards to area variances, we were only concerned that the conditions peculiar to the land in question presented practical difficulties. In concluding that the Board had not acted wrongly in denying the variance at issue (a sign variance), we noted: "Zoning matters, including sign variance requests, depend upon the unique facts and circumstances *of a particular location* and must be analyzed individually." *Id.* at 227–28, 624 A.2d 1281 (emphasis added).

In *North v. St. Mary's County,* 99 Md.App. at 512, 638 A.2d 1175, we held that the ordinance there required a finding that "special conditions or circumstances exist that are peculiar to the land...." We there stated that, in the zoning context, the term "unique" has a customized meaning:

> In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. ****434** "Uniqueness" of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, *i.e.,* its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by

abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls.

....

In some zoning ordinances, the specialness or uniqueness requirement is more explicitly set out. The Court of Appeals, ***711** in *Ad + Soil, Inc. v. County Comm'rs,* 307 Md. 307, 339, 513 A.2d 893 (1986), quoted from the Queen Anne's County ordinance:

> Where by reason of the exceptional narrowness, shallowness, or unusual shape of a specific ... property ..., or by reason of exceptional topographic conditions or other extraordinary situation or special condition of ... property ... the literal enforcement ... would make it exceptionally difficult ... to comply ... and would cause unwarranted hardship and injustice....

The general thrust of the meaning of special features or uniqueness of property for variance purposes relates to the type of uniqueness discussed by the Court in *Ad + Soil, Inc.* *Id.* at 514–15, 638 A.2d 1175.

One indication of the general rule that variances are rarely appropriate is that, in our review of the reported Maryland cases since the creation of the state zoning enabling act in 1927, we have found only five reported Maryland cases in which the grant of a variance has been affirmed or the denial of a variance has been reversed. The cases are *McLean, supra; Stacy, supra; Sapero, supra; Loyola Federal Savings & Loan Assoc., supra* (a Baltimore County case); and *Frankel, supra.* All of these cases were decided over a twelve-year period and the last of them was decided more than twenty-one years ago. Three of them, *Frankel, Loyola,* and *McLean* appear to be somewhat at odds with accepted Maryland law. *McLean* was described by the Court as a "[c]oncededly ... close case...." *Frankel* has caused some confusion in that it has later been viewed by some as lowering the standards for the granting of variances. *Mayor and City Council of Baltimore v. Borinsky,* 239 Md. 611, 212 A.2d 508 (1965), involved one of the same issues that was presented in *Frankel, i.e.,* whether a zoning restriction so compromised the use of property as to constitute an unconstitutional taking absent the granting of a variance—a variance Frankel was granted. The Court noted that the trial court had found *Frankel* controlling. The Court of Appeals disagreed. The Court acknowledged ***712** that Borinsky had the "same expert witness," "he was asked the same general questions ... and gave the same answers," and that the "economic suicide" present in *Frankel* was "doubly true in this instance." *Id.* 239 Md. at 624, 212 A.2d 508. The Court, nevertheless, made a factual distinction and declined to apply *Frankel.* Judge Barnes opined in dissent that, based on what the Court had done in *Frankel,* the facts for variances were stronger in *Borinsky. Sapero* and *Stacy* met traditional standards for the granting of variances. *Frankel, Loyola,* and *McLean* were anomalous cases.

In any event, nowhere in those five cases, or any others, has the Court of Appeals ever changed the Maryland rule relating to uniqueness and peculiarity of the subject property.

Cases from other jurisdictions are generally in accord.

The Supreme Court of Nebraska in *Bowman v. City of York,* 240 Neb. 201, 482 N.W.2d 537 (1992), reversed the grant of a variance for a structure after, pursuant to the variance, the structure was constructed. Citing an earlier Nebraska case, *Frank v. Russell,* 160 Neb. 354, 70 N.W.2d 306 (1955), and noting that the Nebraska statute had been made more specific in light of *Frank,* the court said 482 N.W.2d at 545: "[A] variance [may be granted] ... only if strict application of the regulation, because of the unusual physical characteristics of the property existing at the time of the enactment, [of ****435** the zoning ordinance] 'would result in peculiar and exceptional practical difficulties ... or exceptional ... hardships....' "

In *Shafer v. Zoning Bd. of Appeals,* 24 Mass.App. 966, 511 N.E.2d 635 (1987), the property owner had conveyed away several parcels from a larger tract leaving a parcel, the size of which was prohibited under the ordinance. The Board granted him a variance, the trial court reversed it, and the appellate court affirmed the trial court. The appellate court reiterated the trial court's finding:

> There was no evidence ... regarding "soil conditions, shape or topography of [the property] ... especially affecting [the property] but not affecting generally the zoning district in which it is located".... The ... argument that ***713** the insufficient width ... constitutes a special circumstance of "shape" is unpersuasive, particularly as the deficiency is one which they themselves produced through subdivision of the land they originally owned at a time when the 125 foot width requirement pertained.

511 N.E.2d at 636–37 (citation omitted). *See also VanLandschoot v. City of Mendota Heights,* 336 N.W.2d 503, 509 (Minn.1983) ("the plight of respondent was not due to circumstances 'unique to his property.' ... [S]ome of the problems were the result of illegal acts of respondent's predecessor in title, of which respondent was aware....")

In *St. Clair v. Skagit County,* 43 Wash.App. 122, 715 P.2d 165 (1986), a landowner applied for a variance of a lot width requirement on the grounds that the county had given him a permit to install a trailer on her fifty-foot wide lot even though the ordinance mandated a width of at least seventy feet. The zoning board, approving the variance, determined that she had applied for the permit in good faith. The Skagit County ordinance, as does the instant statute, provided that a variance had to be "because of special circumstances applicable to subject property, including size, shape, topography, location or surroundings...." 715 P.2d at 167. The code also required that an application for a variance include a narration that "special conditions and circumstances exist ... peculiar to the land...." *Id.* The court then noted that the applicant had done there what **Ward** attempts to do in the case *sub judice:*

> [The appellant] relied primarily upon the fact that the County issued a building permit ... and that she acted in good faith....

Id. at 168. The court responded: "Reasons for a variance must be reasons pertaining to the property itself.... Evidence of hardship or difficulty that will support a variance must relate to the land itself and not to the owner-applicant." *Id.* (citation omitted). The court added that "the 75–foot width and aggregation requirements do not put a burden on [appellant's] property which does not apply to other properties in the vicinity...." *Id.* at 169. In the case *sub judice,* the ***714** Baltimore County fifteen foot height limitation for accessory buildings does not affect **Ward's** property alone; it applies to all of the properties in the neighborhood.

In *Walkingstick v. Board of Adjustment,* 706 P.2d 899 (Okla.1985), the zoning board, having failed to comply with notice requirements, granted a permit for an oil drilling well. Amoco had expended considerable sums before the board's omission was discovered. The relevant part of the ordinance involved was similar to the one in the instant case. After the court noted that the hardships alleged were not peculiar to the subject site, it stated the general rule that "a hardship created by the owner ... constitutes no valid basis for a variance.... [D]eprivation of an advantage does not constitute an unnecessary hardship." 706 P.2d at 904. It concluded:

> The need to expose tools to the ravages of the environment may be peculiar to Amoco. But, the language of section 44–107(2) [as does the language in the Baltimore County ordinance] clearly refers to conditions peculiar to the property, *not to activities peculiar to the owner of such property.*

Id. at 904–05 (emphasis added).

In a decision somewhat difficult to understand, which carried the variance limitations to the extreme and predated the 1992 case of ****436** *Lucas v. South Carolina Coastal Council,* —— U.S. ——, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992), but had facts similar to *Lucas,* the Supreme Court of Delaware in *Baker v. Connell,* 488 A.2d 1303 (Del.Supr.1985), upheld a trial court's reversal of the grant of a variance even though the ordinance limited the use of applicant's entire lot to open space only. The zoning board had found that the property was unique because the entire property was zoned open space and *nothing* could be constructed there. The board permitted a variance to allow two semi-detached dwellings. The trial court reversed on the grounds that the 0–1 zoning did not make the property unique. The trial court noted that a need for a variance arises only when the plight of the property is unique in that it cannot reasonably be put to a conforming use. The trial court found that there was no evidence that the ***715** property could not conform to open space land. The appellate court affirmed, stating:

> [F]inancial return ... alone, never justifies a variance. As to the unique character of the land, the mere fact that it sits entirely within the 0–1 zone does not make it unique. There is no evidence that this lot is the only one of its type in Rehoboth. Nor does it become unique because it adjoins the R–2 zone containing multi-family units.

488 A.2d at 1309. Whether this Delaware opinion remains viable in light of *Lucas* and *Dolan v. City of Tigard,* 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994), is doubtful.

The case of *Xanthos v. Board of Adjustment,* 685 P.2d 1032 (Utah 1984), involved a factual scenario similar to the case *sub judice.* The Xanthoses received notice that they were in violation of the city zoning code. The building of a duplex by the Xanthoses caused a pre-existing dwelling to lose frontage on a public street and to violate set-back and parking requirements. The Xanthoses requested variances in reference to the violations. The court initially noted that, "in order to justify a variance ... the applicant [must] show ... that there are special conditions with regard to the property...." 685 P.2d at 1035–36. The court continued:

> What must be shown ... is that the property itself contains some special circumstance that relates to the hardship complained of....

> ... The property is neither unusual topographically or by shape, nor is there anything extraordinary about the piece of property itself. Simply having an old building on land upon which a new building has been constructed does not constitute special circumstances.
>
> ....
>
> Hardship is not demonstrated by economic loss alone. It must be tied to the special circumstances, none of which have been proven here. Every person requesting a variance can indicate some economic loss. To allow a variance anytime any economic loss is alleged would make a mockery of the zoning program. Further, the Xanthos[es] brought ***716** their losses upon themselves. The application affirmatively alleged ... that no dwelling existed....[8]

Id. at 1036–37 (footnotes omitted).

[1] The Xanthoses also argued, in a fashion similar to the argument in the case *sub judice,* that the city should be estopped because the plot plan submitted to the city showed the dwelling and the fact that the city failed to realize it misled them to their detriment. The court noted, in rejecting the Xanthoses' argument: "[T]o hold that the city should have been put on notice ... in the face of an affirmative statement that no such dwelling existed, would put a premium on prevarication ... and ... shift the burden of proof in variance cases to the city. None of these results is acceptable." *Id.* at 1038. In the case at bar, appellants' application for the permit contained a clear statement that he would comply with the zoning requirements. His plan's elevation schematics contained neither elevation dimensions nor scale. While the zoning inspectors might have been able to extrapolate dimensions from other schematics, they certainly were not required ****437** to do so in light of appellants' affirmative statement of compliance.

See also Chambers v. Smithfield City, 714 P.2d 1133, 1135 (Utah 1986), where the court stated: "[T]here is no evidence of special conditions attached to the property itself which do not also attach to other property in the vicinity. The property is neither unusual topographically or by shape, nor is there anything extraordinary about the piece of property itself." (Footnote omitted.) In a case involving the conversion of a garage into a dwelling, the Supreme Court of Virginia in *Prince William County Bd. of Zoning Appeals v. Bond,* 225 Va. 177, 300 S.E.2d 781 (1983), reversed a trial court decision reversing a zoning board's denial of a variance. The court noted that the conversion was underway when the Bonds discovered a need and applied for a variance. It opined that, ***717** in order to grant a variance, the hardship allegedly created by the ordinance must "not [be] shared generally by other properties in the same zoning district and the same vicinity." 300 S.E.2d at 783. It then held: "The limitation imposed by the zoning ordinance is one shared by all property owners in the A–1 district." *Id.*

The court in *Richardson v. Town of Salisbury,* 123 N.H. 93, 455 A.2d 1059, 1061 (1983), noted:

> We have defined unnecessary hardship as follows:
>
> > "A hardship exists only if due to special conditions *unique* to a *particular parcel of land,* the ordinance unduly restricts the use.... The hardship must relate to the special character of the land rather than to the personal circumstances of the landowner." [Emphasis added.]

See also Margate Motel, Inc. v. Gilford, 130 N.H. 91, 534 A.2d 717 (1987); *Ryan v. City of Manchester Zoning Bd. of Adjustment,* 123 N.H. 170, 459 A.2d 244 (1983).

In *Sibley v. Inhabitants of the Town of Wells,* 462 A.2d 27, 30–31 (1983), the Supreme Judicial Court of Maine upheld the denial of a variance, holding:

> [T]he need for a variance [must be] due to the unique circumstances of the property and not to the general conditions in the neighborhood;
>
> ....
>
> ... [T]he hardship [must] not [be] the result of action taken by the appellant or a prior owner.
>
> ....
>
> ... However, the mere fact that the lot is substandard is not a unique circumstance; all the undeveloped lots in that neighborhood are of substandard size....
>
> ... However, when a landowner purchases land with actual or constructive knowledge of the zoning restrictions, he may not be granted a variance on the grounds of undue hardship.

See also Williams v. Salem Township, 92 Pa.Cmwlth. 634, 500 A.2d 933 (1985) *alloc. denied,* 516 Pa. 615, 531 A.2d 781 (1987); ***718** *Hersh v. Zoning Hearing Bd. of Marlborough Township,* 90 Pa.Cmwlth. 15, 493 A.2d 807 (1985); *Serban v. Zoning Hearing Bd. of the City of Bethlehem,* 84 Pa.Cmwlth. 558, 480 A.2d 362 (1984) (burden sustained); *Davis v. Zoning Bd. of Adjustment,* 78 Pa.Cmwlth. 645, 468 A.2d 1183 (1983) (burden sustained); *Malakoff v. Zoning Bd. of Adjustment,* 72 Pa.Cmwlth. 109, 456 A.2d 1110 (1983); *Immordino v. Zoning Hearing Bd.,* 65 Pa.Cmwlth. 79, 441 A.2d 818, 821 (1982) ("[P]roperty owner must sustain the heavy burden of proving that the zoning ordinance imposes an unnecessary hardship *which is unique to his particular property*....") (Emphasis added.)

> A prerequisite to the granting of a hardship zoning variance is the presence of an exceptional and unique hardship to the individual landowner, *unique to that parcel* and not shared by other property owners in the area.... Indialantic's zoning restrictions are common difficulties shared by all other oceanfront lot owners in the area, and are therefore not the unique hardship required to support a variance.

Town of Indialantic v. Nance, 400 So.2d 37, 40 (Fla.App. 5th Dist.1981), *aff'd,* 419 So.2d 1041 (1982) (citation omitted). *See also Fort Lauderdale Bd. of Adjustment v. Nash,* 425 So.2d 578, 579 (Fla.App. 4th Dist.1983); *City of Naples v. Clam Court Marina Trust,* 413 So.2d 475, 477 (Fla.App. 2d Dist.1982); *Lakeshore* ****438** *Property Owners Ass'n v. City of New Orleans Zoning Bd. of Appeals and Adjustments,* 481 So.2d 162, 168 (La.App. 4th Cir.1985), *cert. denied,* 484 So.2d 674 (1986).

We mentioned earlier that there are very few Maryland cases upholding the grant of a variance (or the reversal of a denial). We likewise note that this is also the case in foreign jurisdictions. We mentioned two cases from Pennsylvania above where this occurred. We now discuss several others.

A minimum lot area variance was affirmed in *Russell v. District of Columbia Bd. of Zoning Adjustment,* 402 A.2d 1231 (D.C.App.1979), where, due to the size of the lot, no viable economical use of the property could be had without the ***719** variance. It was determined that the lot was the only lot in the area that had been subdivided into smaller lots prior to the adoption of the zoning ordinance. The Supreme Court of New Hampshire reversed the denial of a variance in *U–Haul Co. of New Hampshire & Vermont, Inc. v. City of Concord,* 122 N.H. 910, 451 A.2d 1315, 1317 (1982), saying: "The location and characteristics of the property involved create greater security requirements ... than ... other property in the area because the parcel ... is less central ... less populated and ... less serviced by law enforcement patrols. This hardship arises from the uniqueness of the building and the land itself." In *Atwood v. City of Portland,* 55 Or.App. 215, 637 P.2d 1302 (1981), *cert. denied,* 292 Or. 722, 644 P.2d 1131 (1982), application for a variance was granted and affirmed on appeal in part because the site was a steep and rocky slope, the former site of a landfill. *See also Higgins v. Township of Radnor,* 13 Pa.Cmwlth. 195, 318 A.2d 761, 763 (1974).

The treatise writers also are in accord with the rule that variances should only be granted when the uniqueness or peculiarity of a subject property is not shared by neighboring property and where the uniqueness of that property results in an extraordinary impact upon it by the operation of the statute, thus creating undue difficulty (or unnecessary hardship in respect to use variances).

> It is *fundamental* that the difficulties or hardships must be unique to justify a variance; they must be peculiar to the application of zoning restrictions *to particular property* and not general in character.... [I]t is not uniqueness of the plight of the owner, but uniqueness of the land causing the plight, which is the criterion. If the hardship is common to the whole neighborhood, it may be ground for an exception or special use permit [if the statute so provides].... [T]he hardship [in order to justify a variance, however,] ... must relate to the particular property of the applicant....

McQuillin, *supra* § 25.167 (emphasis added, footnotes omitted).

> ***720** [I]t is held that a variance may be granted only for hardship which relates specifically to the applicant's land. Thus, a landowner was not entitled to a variance to relieve his land from a restriction which applied equally to all lots of similar size.

Anderson, *supra* § 14.55 (1968).

> It follows that the unnecessary hardship ... must relate to the land, not to the applicant-owner. Hardship which is merely personal to the current owner of real property will not justify the granting of a variance....
>
> In each case [where the variance was denied], the hardship results from an error on the part of the landowner, not from an unduly severe impact of the regulations upon the land in question....
>
> ....
>
> Reviewing a wide variety of variance applications based upon reasons personal to the applicant, the courts have consistently held that such personal difficulties do not constitute unnecessary hardship.

Anderson, *supra* § 18.30 (2d ed.) (footnotes omitted).

> The most important part of [the] law of variances depends upon a distinction between two kinds of hardship. In one type of case, hardship in developing a given lot ... arises from circumstances peculiar to that lot ...; and in that case the appropriate remedy is ... a variance.... In the other types of cases, the hardship ... may arise because of conditions which are general in the neighborhood; ... it is often ****439** held that the appropriate remedy is a change in the zoning.... [T]he courts have usually (but not always) held that variances are inappropriate in that situation.

Williams, *supra* § 142.

> The great strengthening of the criteria for granting variances, ... has thus been particularly evident in the number of cases emphasizing the requirement that hardship must arise from circumstances unique to the particular lot in question.... Moreover, the courts have again emphasized that a variance granted to take care of some hardship ***721** personal to the applicant is not a unique hardship resulting from circumstances peculiar to the piece of land.

Id. § 142.06. *See also* Rathkopf, *supra* § 38.04; Yokley, *supra* § 21–6. ("The burden of proof is on the applicant to establish that his land is uniquely affected resulting in unnecessary hardship.").

Yokley quotes from *Taxpayers Association v. Board of Zoning Appeals,* 301 N.Y. 215, 93 N.E.2d 645, 647 (1950):

> [T]he record does not show that the property suffers a unique or singular disadvantage, not common to other property in the district, through the operation of the zoning ordinance. Here, the hardship, if any, is general and characteristic of the entire area, and the remedy lies in a revision of the zoning ordinance through legislative action, not by the granting of a variance to a single property owner.

Yokley, *supra* § 21–6.

[2] We conclude that the law in Maryland and in Baltimore County under its charter and ordinance remains as it has always been—a property's peculiar characteristic or unusual circumstances relating only and uniquely to that property must exist in conjunction with the ordinance's more severe impact on the specific property because of the property's uniqueness before any consideration will be given to whether practical difficulty or unnecessary hardship exists. Before applying the facts of the instant case to the law and, thus, resolving the case *sub judice,* we must touch upon two other aspects of the process, *i.e.,* the self-inflicted injury and the zoning authorities' acquiescence in issuing a building permit based on plans that left unclear the elevation of the structure and the subsequent inspection.

Self–Inflicted Hardship

[3] We have before referred to *Marino v. Mayor and City Council of Baltimore,* 215 Md. 206, 137 A.2d 198. There, the Court said, "it was incumbent [on the applicant] to [show] ... that the hardship was not the result of the applicants' own actions." *Id.* at 218, 137 A.2d 198. The Court of Appeals ***722** noted in *AD + Soil, Inc. v. County Comm'rs,* 307 Md. at 340, 513 A.2d 893:

> The essence of AD + Soil's argument ... is that the setback requirements ... would cause ... unwarranted hardship because it had obtained its first state permit and constructed its transfer station before it learned of these local requirements.... The Board declined to grant the variances, concluding that Ad + Soil's "hardship" was self-inflicted ... and therefore not the kind of hardship cognizable under the Zoning Ordinance.

The Court affirmed the Board. Foreign jurisdictions are generally in accord. *See Pollard v. Zoning Bd. of Appeals,* 186 Conn. 32, 438 A.2d 1186, 1190 (1982) (" '[S]elf-inflicted or self-created hardship ... is never considered proper grounds for a variance.' ... '[W]here the applicant ... creates a nonconformity, the board lacks power to grant a variance.' ") (citations omitted); *Volkman v. City of Kirkwood,* 624 S.W.2d 58 (Mo.App.1981); *Matter of Schrader,* 660 P.2d 135 (Okl.1983); *Ex Parte La Quinta Motor Inns, Inc. v. Greenville County Bd. of Zoning Appeals,* 279 S.C. 598, 310 S.E.2d 438 (App.1983); *McClurkan v. Board of Zoning Appeals,* 565 S.W.2d 495 (Tenn.1977); *Steele v. Fluvanna County Bd. of Zoning Appeals,* 246 Va. 502, 436 S.E.2d 453, 456 (1993) ("[T]he hardship, if any, was self-inflicted. The placement of the improvements ... was within the control of the Garretts and their contractor, Raintree."). *See also Shafer, supra; VanLandschoot, supra; Walkingstick, supra; Xanthos, supra; St. Clair, supra.* Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively ****440** not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted.

The Granting of the Permit

In *Francis v. MacGill,* 196 Md. 77, 75 A.2d 91 (1950), a property owner sought equitable injunctive relief. The facts ***723** were that while the enactment of a zoning ordinance was pending, the property owner obtained a building permit to construct that which would not be permitted after the enactment of the ordinance. After the ordinance was enacted, the owner constructed, pursuant to the permit, a building that had become prohibited by reason of the passage of the ordinance. The Court noted:

> "Adoption of zoning ordinance *ipso facto* revokes permit for construction ... where no construction has begun."
>
> ... They completely ignored the Zoning Regulations, and they were engaged in an unlawful act.

196 Md. at 85, 75 A.2d 91 (citation omitted). The Court affirmed the revocation of the building permit.

The Court noted, pursuant to a timely appeal, in *Mayor and City Council of Baltimore v. Shapiro,* 187 Md. 623, 634, 51 A.2d 273 (1947), *overruled on other grounds in Nutter v. Non–Profit Housing Co.,* 230 Md. 6, 185 A.2d 360 (1962), where the ordinance was changed prior to commencement of construction under a permit, and where the change made that use, which was previously permitted, prohibited, that the "mere issuance of a permit ... does not create a vested right, or estop[9] the municipal authorities from revoking it." In a case for the issuance of a mandatory injunction that involved an attempt to obtain a permit for what was alleged would be a nonconforming use the court opined in *Board of County Comm'rs v. Snyder,* 186 Md. 342, 347, 46 A.2d 689 (1946): "No permit was issued, and if it had been, it would have conferred no vested right, nor would it have created an estoppel."

In the mandamus case of *County Comm'rs v. Ward,* 186 Md. 330, 340, 46 A.2d 684 (1946), the Court held:

> The Board ..., as an administrative body, was bound to follow the regulations it adopted, in the exercise of ... ***724** delegated legislative power. The fact that it might have rezoned ... does not alter its obligation to adhere to existing regulations....

In the case of *Lipsitz v. Parr,* 164 Md. 222, 164 A. 743 (1933), a case seeking injunctive relief by way of a restraining order, a city officer mistakenly issued a building permit for an ice factory when the statute prohibited ice factories. The Court there held:

> A municipality may be estopped by the act of its officers if done within the scope and in the course of their authority or employment, but estoppel does not arise should the act be in violation of law.... [T]he ordinance forbade the officials ... to grant the permit which the plaintiff asked and obtained....
>
> ... [I]t was therefore unlawful for the officers ... to grant the permit, and it would be unlawful for the licensee to do what the purporting permit apparently sanctioned. A permit thus issued ... does not ... prevent the permit from being unlawful nor from being denounced by the municipality because of its illegality.... *Every one dealing* with the officers and agents of a municipality *is charged with knowledge of the nature of their duties and the extent of their powers, and therefore such a person cannot be considered to have been deceived or misled* by their acts when done without legal authority.
>
> So, even where a municipality has the power, but has done nothing, to ratify or sanction the unauthorized act ... it is not estopped by the unauthorized or wrongful act of its officer ... in issuing a permit that is forbidden by the explicit terms of an ordinance.... *Valentine v. Rds. Directors,* ****441** 146 Md. 199, 206 [126 A. 147] [(1924)].... [Citations omitted, emphasis added.]

164 Md. at 227–28, 164 A. 743.

The Court cited *Lipsitz* in *Inlet Associates v. Assateague House Condominium Assoc.,* 313 Md. 413, 545 A.2d 1296 (1988), a case seeking specific performance and injunctive relief, and also cited *City of Hagerstown v. Long Meadow* ***725** *Shopping Center,* 264 Md. 481, 287 A.2d 242 (1972), a case of a timely appeal of the denial of a building permit. In *Inlet Associates,* the Court opined that "[c]onsequently, '[e]veryone dealing with officers and agents of a municipality is charged with knowledge of the nature of their duties and the extent of their powers, and therefore such a person cannot be considered to have been deceived or misled by their acts when done without legal authority.' " 313 Md. at 437, 545 A.2d 1296. The Court added: "[T]he doctrine of equitable estoppel 'cannot be ... invoked to defeat the ... enforcement of ... ordinances, because of an error or mistake committed by one of its officers ... which has been relied on by the third party to his detriment.' " *Id.*

[4] Accordingly, it appears clear that the mistake of a county official cannot be the "practical difficulty" unique to the

subject property required in order to authorize the grant of the variance sought and obtained by **Ward**.

The authorities elsewhere are in accord.

> The master also erred in finding that unnecessary hardship resulted from the plaintiffs' reliance upon representations by the selectmen. This finding disregards the principal that hardship relates to the special character of the *land,* not to the circumstances of the *owner.*

Richardson, 455 A.2d at 1062.

> [R]elator argues the Board should be estopped from denying the height variance because a city building inspector visited the premises several times and observed the construction taking place but made no complaint....
>
> In any case there is no authority on the part of a building inspector to grant a variance....

Katz v. Board of Zoning Adjustments, 232 So.2d 546, 548 (La.App. 4th Cir.1970). *See also Klanke v. Zoning Bd. of Adjustment,* 83 Pa.Cmwlth. 441, 477 A.2d 907, 909 (1984), and *Walkingstick, supra; Xanthos, supra; and St. Clair, supra.*

***726 Resolution**

We resolve here only the issue of the granting of the variance sought and applied for by **Ward**.

[5] There was no evidence submitted to the Board that the subject site was in any way peculiar, unusual, or unique when compared to other properties in the neighborhood such that the ordinance's height restriction's impact upon the subject property would be different than the restriction's impact upon neighboring properties. In essence, the impact would be the same. The first step of the variance process was thus not met. Had there been evidence before the Board indicating that the subject property was peculiar or unusual and, thus, disproportionately affected by the height restriction, then we might have been able to conclude that the Board was correct. There was, however, no such evidence presented. Therefore, the Board's granting of the variance was arbitrary and illegal.

It is not the purpose of variance procedures to effect a legalization of a property owner's intentional or unintentional violations of zoning requirements. When administrative entities such as zoning authorities take it upon themselves to ignore the provisions of the statutes enacted by the legislative branch of government, they substitute their policies for those of the policymakers. That is improper. We shall reverse.

JUDGMENT REVERSED; COSTS TO BE PAID BY APPELLEE.

All Citations

102 Md.App. 691, 651 A.2d 424

Footnotes

1 Some ordinances use the conjunctive, “and,” creating a requirement that both practical difficulty “and” unreasonable hardship exist. Because hardship is the most severe standard, this means that it is the standard used regardless of whether an area or use variance is sought. Some ordinances use the disjunctive, “or,” to separate the two standards. These jurisdictions construe the ordinance to require the unreasonable hardship standard to be used when “use” variances are sought, because use variances are believed to be more disruptive of zoning goals and purposes, but require the lesser “practical difficulty” standard when “area” variances are sought.

2 Appellee, several times in his brief, states that the plans “clearly” show the height of the building. We are tempted to respond with a short rejoinder. We resist. The heights shown on the plans are not clearly shown—they are not shown at all—but must be computed, as we have done, without the benefit of a scale by a difficult reference to dimensions that are given for horizontal distances.

3 As we have said, the application, building permit and the county data indicated that its height was to be fourteen feet.

4 It is not clear that section 307, “Variances,” would even permit any use variances except perhaps as to signs or parking, as the section is framed primarily in terms of “area” variance requests.

5 Matters relating to area issues are intended to be, and usually are, addressed as special exceptions. Matters relating to “use” issues are intended to be, and usually are, addressed as conditional uses. The terms, however, are, with some frequency, intermixed. Because both concepts envision that they are permitted so long as certain conditions are met, the indiscriminate use of the two terms has created little difficulty. In a pure sense, however, “conditional uses” refer to uses while exceptions normally apply to area, *i.e.,* yard, height, and density matters. In either event, conditional uses and special exceptions are permitted uses, so long as the conditions set out in the ordinance are met.

6 Exceptional is used here in its generic sense.

7 Another typical Baltimore City case in that regard is *Easter v. Mayor and City Council of Baltimore,* 195 Md. 395, 400, 73 A.2d 491 (1950), where the Court noted “facts to justify an exception ... [show] that the hardship affects the particular premises and is not common to other property in the neighborhood.” This is a variance standard.

8 The application and plans in the case *sub judice* were, at best, vague and unclear as to the height of the structure.

9 The applicability of the “doctrine of zoning estoppel” has still not been accepted (or rejected) by the Court of Appeals in spite of the opportunity presenting itself to that Court as recently as our case of *Offen v. County Council,* 96 Md.App. 526, 625 A.2d 424 (1993), *rev'd in part,* 334 Md. 499, 639 A.2d 1070 (1994).

Cromwell v. Ward, 102 Md.App. 691 (1995)
651 A.2d 424

End of Document © 2021 Thomson Reuters. No claim to original U.S. Government Works.

137 Md.App. 90
Court of Special Appeals of Maryland.

James RIFFIN,
v.
PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY, Maryland, et al.

No. 3002, Sept. Term, 1999.
|
March 2, 2001.

Synopsis
Landowner appealed decision of the county board of appeals denying request for a special exception to construct a commercial recreation facility to accommodate bungee jumping. The Circuit Court, Baltimore County, Thomas J. Bollinger, Sr., J., affirmed. Landowner appealed. The Court of Special Appeals, Moylan, J., held that the proposed use was a "bungee jumping operation" prohibited by state law and county ordinance.

Affirmed.

West Headnotes (7)

[1] **Administrative Law and Procedure** Substantial evidence

The standard of review of an administrative agency's findings of fact requires the Court of Special Appeals to determine whether substantial evidence on the record as a whole supports its conclusions.

[2] **Administrative Law and Procedure** Substitution of reviewing court's discretion or judgment

The Court of Special Appeals cannot substitute its judgment for that of an administrative agency on findings of fact, but must exercise a restrained and disciplined judicial judgment so as not to interfere with the agency's factual conclusions.

[3] **Zoning and Planning** Entertainment and recreation; theaters and clubs

Landowner's proposed commercial recreation facility to accommodate bungee jumping was a "bungee jumping operation" prohibited by state law and county ordinance, rather than a "commercial recreational facility," and, thus, the landowner was not entitled to a special exception; the crane operator acknowledged payment by the landowner, and the county ordinance defined "commercial recreational facility" to exclude an amusement park or similar use. Code, Business Regulation, § 3–503.

[4] **Zoning and Planning** Grounds for grant or denial in general

The county board of appeals cannot grant a special exception for a use that is neither permitted by law nor by county zoning regulations.

[5] **Zoning and Planning** Entertainment and recreation; theaters and clubs

Evidence supported conclusions by the county board of appeals that a one-story office building was not unique and that the landowner was not entitled to special exception and variances to construct a commercial recreation facility.

[6] **Zoning and Planning** Nature and necessity in general

A "variance," if granted, permits a use that is normally prohibited and presumed to be in conflict with the ordinance.

[7] **Zoning and Planning** Presumptions and burden of proof

An applicant for a variance bears the burden of overcoming the presumption that the proposed use is unsuitable.

Attorneys and Law Firms

****923** ***91** James Riffin, Timonium, for appellant.

Peter Max Zimmerman and Carole S. Demilio, Towson, for appellees.

***92** Submitted before MOYLAN,* SONNER and PAUL E. ALPERT (retired, specially assigned), JJ.

Opinion

MOYLAN, Judge.

The appellant, James Riffin, challenges an Order issued by Judge Thomas J. Bollinger in the Circuit Court for Baltimore County affirming the decision of the Baltimore County Board of Appeals, which denied his petitions for a special hearing, special exception, and five separate zoning variances. On appeal, he contends:

1. that the Board erred in finding that the appellant's proposed use of the property constituted a "bungee jumping operation"; and

2. that the Board acted arbitrarily and capriciously in denying his petitions.[1]

At some point in the spring of 1998, the appellant petitioned the Baltimore County Zoning Commissioner for a Special Hearing, for a Special Exception, and for nine area parking and sign variances in an effort to operate a "Commercial Recreational Facility" at 1941 Greenspring Avenue Drive in Timonium. At that time, there existed on the property an old one-story building which was rented for office space. The property was zoned for M.L. (Manufacturing–Light). It was the appellant's intention in seeking the exception and the variances to create a commercial/recreation facility that would accommodate bungee jumping.

On June 1, 1998, the Zoning Commissioner granted four of the requested nine variances for existing non-conforming front and side-yard setbacks but denied all of the other requests. The appellant appealed that decision to the Baltimore County Board of Appeals ("the Board") and a three day public hearing ***93** began on November 25, 1998.[2] In the course of that hearing, the Board heard extensive testimony from the appellant regarding his plans for the property. The Board also heard testimony from adjacent property owners, from the Office of the People's Counsel, and from a representative from the Greater Timonium Community Council, all of whom testified in opposition to the appellant's petitions.

On December 31, 1998, the Board issued an extensive written Opinion denying the appellant's request for both the Special Hearing and Special Exception for bungee jumping and for the requested variances that had been denied by the Zoning Commissioner. The appellant appealed to the Circuit Court for Baltimore County. On October 4, 1999 a hearing was held before Judge Bollinger. On October 7, Judge Bollinger affirmed the Board's decision, finding that it was supported by substantial evidence and was not premised on any error of law. The appellant noted this timely appeal.

[1] **[2]** With regard to the standard of review to be applied in a case such as this, we explained in *Stover v. Prince George's County,* 132 Md.App. 373, 380–81, 752 A.2d 686 (2000), that:

> [w]hen reviewing a decision of the administrative agency, this Court's role is "precisely the same as that of the circuit court." "Judicial review of administrative agency action is narrow. The court's task on review is *not* to 'substitute its judgment for the expertise of those persons who constitute the administrative agency."
>
> ****924** Rather, "*[t]o the extent the issues on appeal turn on the correctness of an agency's findings of fact, such findings must be reviewed on the substantial evidence test.*" The reviewing court's task is to determine "whether there was substantial evidence before the administrative agency on the record as a whole to support its conclusions." *The court cannot substitute its judgment for that of the agency, but* ***94** *instead must exercise a "restrained and disciplined judicial judgment so as not to interfere with the agency's factual conclusions.*"

(Citations omitted; emphasis supplied).

[3] The appellant first contends that the trial court erred in denying his petition for a Special Hearing and a Special Exception in order to accommodate bungee jumping. The appellant specifically contends that the trial court erred in finding that his proposed use of the property would amount to a "bungee jumping operation," which both parties agree is prohibited in Maryland,[3] rather than a "recreational use," which is permissible. We are not persuaded.

In its Opinion denying the appellant's request for a Special Hearing and Special Exception, the Board set out, in great detail, its findings with respect to the appellant's proposed use:

> The Board has carefully considered the testimony produced and the numerous exhibits of the evidence admitted and items marked for identification and weight assessment. This Board's initial review involved bungee jumping and how it is addressed in the Maryland Code. A review of the law and supporting documents afforded the Board members some insight into the thinking of the legislature on this subject.... *The Board concluded that the bungee jumping operations as proposed by the appellant/petitioner was in actuality a bungee jumping operation.* Regardless of ***95** whether using the word "operation" or the word "activity," it is semantical and one resembles the other. The inference regarding fees came out in the testimony by a crane operator who acknowledged that he was paid by Mr. Riffin for operating the crane, and that he expected to continue on as a crane operator if Mr. Riffin were allowed to have a bungee jumping operation. As well, Mr. Riffin indicated that individuals would be able to rent the crane and /or any needed equipment in order to perform bungee jumping activities. *These representations produce the appearance of being a bungee jumping operation, which is not allowed by Maryland law, this would not be a permitted use under the Baltimore County Zoning Regulations ["BCZR"].*

The Board then explored whether the appellant's proposed use could in any way be viewed as a Commercial Recreational Facility, a permissible use for the property under the zoning regulations. In rejecting the appellant's contention, the Board stated:

> The Board then looked at the definitions of Commercial Recreational Facilities under BCZR 101.... *The definition notes that a commercial recreational facility shall not include an amusement park or similar use.* Throughout the numerous discussions as to what bungee jumping would be considered, it came up ****925** that it was frequently done in conjunction with amusement-like operations and was described by expert witnesses as a "thrill seeking activity." It was noted that State legislation regarding bungee jumping was put in that Section of the Annotated Code as amusement activities.

In rejecting the appellant's final two arguments with respect to his request for a Special Exception, the Board found 1) that bungee jumping did not qualify as a permitted use under Section 253 of the BCZR, which permits practice or physical training conditioning facilities and fields for amateur or professional sports organizations; and 2) that bungee jumping did not qualify as a use permitted without special exception under Section 270 of the BCZR 2–115 Schedule of Special Exceptions. That Schedule provides that a community building, ***96** swimming pool, or other structural or land use devoted to civic, social or recreational and educational activities is a use permitted without special exception.

[4] The appellant is correct in that a requested special exception should be granted unless there is substantial evidence that it would have an adverse effect above and beyond those inherently associated with such a special exception use irrespective of its location within the zone. What the appellant fails to acknowledge, however, is that the Board made a factual finding that the appellant's proposed use of the property amounted to a "bungee jumping operation," not a "recreational facility." That finding alone required the Board to deny the petition for the special exception. The Board simply cannot grant a special exception for a use that is neither permitted by law nor by Baltimore County Zoning Regulations. There is substantial evidence in the record to support that finding by the Board. We see no error.

[5] Additionally, we note that even assuming *arguendo* that the Board erred in finding that the appellant's proposed use was an illegal "bungee jumping operation," we would still hold that the Board did not err in denying the appellant's petition for a Special Exception. In its Opinion the Board carefully examined the criteria for granting a request for a special exception under Section 502.1 of the BCZR.[4] After ***97** doing so, the Board found that the appellant failed to satisfy those criteria. We hold that there was substantial evidence on the record supporting that decision.

[6] **[7]** With regard to the appellant's variance requests, we note that a variance, if granted, permits a use that is normally prohibited and presumed to be in conflict with the ordinance. *North v. St. Mary's County,* 99 Md.App. 502, 510, 638 A.2d 1175 (1994). "An applicant for a variance bears the burden of overcoming the presumption that the proposed use is unsuitable. That is done, if at all, by satisfying fully the dictates of the statute authorizing the variance." *North,* 99 Md.App. at 510, 638 A.2d 1175.

In denying the appellant's requests for variances, the Board explained:

Section 307.1 of the *Baltimore County Zoning Regulations* states, in pertinent part, as follows:

> ****926** "... [T]he County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area 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* ... Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area .. regulations, and only in such manner as to grant relief without injury to public health, safety, and general welfare."

As well, this Board enjoys the guidance provided by the Court of Special Appeals in *Cromwell v. Ward,* 102 Md.App. 691 [651 A.2d 424] (1995). In requiring a pre-requisite finding of "uniqueness," the Court defined the term and stated:

> ***98** In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. *"Uniqueness" of a property for zoning purposes requires that the subject property has an inherent characteristic not shared by other properties in the area, i.e.,* it shape, topography, subsurface condition, environmental factors, historical significance, access, or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions....
>
> *It is this Board's finding that the proposed site is in no way unique, unusual or different from the other properties that are existent in this M.L.-I.M. zone.* The Maryland Department of Assessments and Taxation, real Property System map, shows just how similar in size and shape all of the properties are along Greenspring Drive. Testimony by Mr. Patton indicated that this property was consistent with others in the community, and he noted that the gentle slope off of Greenspring Drive was consistent with other properties, further noting that some chose to fill in their properties before building and have entrances at the rear of their locations.... At no time in the hearing did the appellant entertain any historical significance to the site nor were environmental or subsurface conditions documented. Mr. Riffin did testify as to the damage to the interior of his building but did not document the same with photographic exhibits, receipts for repairs or documentation by some authority regarding the nature or extent of this damage. There was no testimony or evidence regarding abutting properties restricting his activities or imposing any unique characteristics upon his site. *In the absence of an initial finding of uniqueness, the inquiry under Section 307.1 stops and, in this case, the three variances must be denied.*

(Emphasis supplied). We see no error.

JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANT.

All Citations

137 Md.App. 90, 767 A.2d 922

Footnotes

* Moylan, J., participated in the hearing and conference of this case while an active member of this Court; he participated in the adoption of this opinion as a retired, specially assigned member of this Court.

1 We note that in his brief to this Court, the appellant raised five issues with approximately twenty subcontentions. We have condensed those subcontentions into two.

2 The public hearing was held on November 25, December 15, and December 17, 1998.

3 Md.Code, Business Regulation, § 3–503 specifically provides:
§ 3–503. **Prohibition on bungee jumping operation.**
(a) *Definitions.*—(1) in this section the following words have the meaning indicated.
(2) "Bungee jump" means jumping or falling by an individual from a height while attached to a rope or cord that is elastic, rubber, or latex.
(3) "Bungee jumping operation" means an operation that allows an individual to bungee jump for a fee or dues.
(b) *Prohibition.*—A person may not conduct a bungee jumping operation.
(c) *Penalties.*—A person who violates subsection (b) of this section is guilty of a misdemeanor and, on conviction, is subject to a fine not exceeding $2,500 or imprisonment not exceeding 6 months or both.

4 Section 502.1 specifically provides:

Before any Special Exception may be granted, it must appear that the uses for which the Special exception is requested will not:

a. Be detrimental to the health, safety or general welfare of the locality involved;
b. Tend to create congestion in roads, streets or alley therein;
c. Create a potential hazard from fire, panic, or other dangers;
d. Tend to overcrowd land and cause undue concentration of population;
e. Interfere with adequate provisions for schools, parks, water, sewerage, transformations or other public requirements, convenience, or improvements;
f. Interfere with adequate light and air;
g. Be consistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; nor
h. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations.

End of Document © 2021 Thomson Reuters. No claim to original U.S. Government Works.

KeyCite Yellow Flag - Negative Treatment
Distinguished by Montgomery County v. Merlands Club, Inc., Md., April 17, 1953

195 Md. 395
Court of Appeals of Maryland.

EASTER

v.

MAYOR & CITY COUNCIL OF BALTIMORE et al.

No. 176.
|
May 12, 1950.

Synopsis

Action by Andrew J. **Easter** against **Mayor** and City Council of Baltimore and others challenging validity of city's approval of construction of addition on front of store and dwelling. The Baltimore City Court, Emory H. Niles, J., rendered judgment for defendants and plaintiff appealed. The Court of Appeals, Henderson, J., held that granting of variance of setback requirements and occupancy rule was not warranted.

Reversed.

West Headnotes (5)

[1] **Zoning and Planning** Grounds for grant or denial in general

Board of Zoning Appeals of City of Baltimore in granting special exceptions must consider the factors set out as standard in zoning ordinance, and its action must be reasonable in light of these and all other pertinent facts.

1 Cases that cite this headnote

[2] **Zoning and Planning** Nature and extent of power

The power of Board of Zoning Appeals on City of Baltimore under zoning ordinance to grant exceptions must be strictly construed.

1 Cases that cite this headnote

[3] **Zoning and Planning** Necessity of showing

Zoning and Planning Presumptions and burden of proof

Burden of showing facts to justify an exception of variance under zoning ordinance rests upon applicants, and it must be shown that hardship affects particular premises and is not common to other property in neighborhood.

8 Cases that cite this headnote

[4] **Zoning and Planning** Profit or disadvantage; financial considerations

Mere fact that variance would make property more profitable is not a sufficient ground to justify granting of variance from setback requirements of Baltimore Zoning Ordinance.

8 Cases that cite this headnote

[5] **Zoning and Planning** Building or setback lines

That other buildings extended to front line of lot and lot was irregular did not authorize Board of Municipal and Zoning Appeals of City of Baltimore to grant a permit for construction of addition on front of store and dwelling in variance of setback rules and occupancy requirement on ground of hardship.

3 Cases that cite this headnote

Attorneys and Law Firms

***397** ****491** John F. Heath, Baltimore, for appellant.

***398** Benjamin Kann and Malcolm J. Coan, Baltimore, for appellees J. P. **Easter** and wife.

Thomas N. Biddison, City Sol., Edwin, Harlan, Deputy City Sol., and Hamilton O'Dunne, Asst.City Sol., Baltimore, for appellee **Mayor** and City Council of Baltimore.

Before MARBURY, C. J., and DELAPLAINE, COLLINS, GRASON, HENDERSON and MARKELL, JJ.

Opinion

HENDERSON, Judge.

This appeal is from a judgment of the Baltimore City Court affirming the action of the Board of Municipal and Zoning Appeals in granting a permit for the construction of a one-story and basement addition on the front of a store and dwelling at 6418 Belair Road, owned by John P. **Easter**. The only protestant, Andrew J. **Easter**, is a brother of the permittee, residing at 6420 Belair Road, where he conducts a tavern.

As stated by the trial Court, 'The property is in a First Commercial Use, C. Area District, and the permit would allow the store front to be brought out to the building line, in contravention of paragraph 24 of the Zoning Ordinance, which requires a 10-foot minimum depth of front yard in the area in question, and of the percentage of occupancy requirements under paragraph 21, bringing the percentage of occupancy to 85% as opposed to 60%, as provided in the Ordinance. The Board of Municipal and Zoning Appeals granted the permit under the provision of Paragraph 33(c) on the ground that '* * * due to its peculiar location and surroundings it is a case of practical difficulty and unnecessary hardship, since the Tavern already obstructs the view of the store where the addition is now proposed''. The court thought there was 'evidence sufficient to support the legal definition of a hardship and * * * in fact, it would be a hardship to allow one brother ****492** to have a tavern all the way out to the street, and to deny the other brother the right to build his store out to the same line as the tavern.'

The Board found that the store was 'on the west side of Belair Road, 105 feet south of **Easter** Terrace. * * * ***399** Adjacent to the premises under appeal is a building containing a tavern which is built out to the front line of the lot. To the north between **Easter** Avenue and Kenwood Avenue there are several buildings constructed to the front lines of the lot and the proposed addition would not affect access of light and air to any neighboring properties, nor would it even cut off the view up and down the street. The lot in question is of very shallow depth and irregular in shape * * *.' The store and tavern were built as semidetached buildings. In 1935 Andrew J. **Easter** obtained a permit to build a sort of covered entrance-way out to the building line. John P. **Easter** did not object, and there were no protests. In his present application John P. **Easter** states that since his brother 'has built out in front of us it has hid our store making it difficult to rent.' There is a small triangular vacant lot to the south of 6418, and a church property adjoining to the south, across an alley laid out but apparently not opened. The church is set back the required distance. Andrew J. **Easter** has applied for a permit, and obtained the approval of the Board, to develop the land to the north, comprising about six acres, as a shopping center with off-street parking facilities and the required set-back. If this project is carried out, he states that he proposes to remove the entrance in front of his tavern.

[1] **[2]** We may assume here, as we have assumed in previous cases, that the delegation to the Board of Zoning Appeals of the power to make special exceptions or variances is valid, and that the standards set up in Section 32(j) are adequate. Colati v. Jirout, 186 Md. 652, 656, 47 A.2d 613; Heath v. **Mayor** and City Council of Baltimore, 187 Md. 296, 49 A.2d 799; Heath v. **Mayor** and City Council of Baltimore, Md., 58 A.2d 896, 898. The Board must consider the factors set out in that section and 'its action must be reasonable in the light of these and all other pertinent facts.' Heath v. **Mayor** and City Council of Baltimore, supra, 187 Md. 305, 49 A.2d 804. The power to grant exceptions ***400** must be strictly construed. Colati v. Jirout, supra, 186 Md. page 659, 47 A.2d 613.

[3] **[4]** The burden of showing facts to justify an exception or variance rests upon the applicant, and it must be shown that the hardship affects the particular premises and is not common to other property in the neighborhood. Rathkopf, Zoning, 2d Ed., p. 215; Levy v. Board of Standards and Appeals, 267 N.Y. 347, 196 N.E. 284. The mere fact that the variance would make the property more profitable is not a sufficient ground to justify a relaxation of setback requirements. Garden View Homes v. Board of Adjustment, 137 N.J.L. 44, 57 A.2d 677.

In the instant case there is no suggestion that the Board failed to 'act as a fact-finding body' or to 'give consideration to the rules, regulations, restrictions, guides and standards set forth' in the Ordinance (paragraph 33(c)). The question is whether the undisputed facts support the Board's action. The fact that the lot is irregular has no bearing on the question, nor is it material that three buildings, some distance to the north, extend to the building line. These may have been built before the passage of the Ordinance, or they may have been built under permit or without permit. As was said in Potts v. Board of Adjustment, 133 N.J.L. 230, 43 A.2d 850, 854: 'Prior exceptions granted by the adjustment board are not in themselves controlling. Ill-advised or illegal variances do not

furnish grounds for a repetition of the wrong. If that were not so, one variation would sustain if it did not compel others, and thus the general regulation eventually would be nullified. The annulment of zoning is a legislative function that is beyond the domain of the zoning board.' See also the cases collected in a note 168 A.L.R. 13, 41-44. The same principle was announced and applied in **493 Heath v. Mayor and City Council of Baltimore, supra, Md., 58 A.2d 896, 898, Mayor and City Council of Baltimore v. Byrd, Md., 62 A.2d 588, 591, and Cassel v. Mayor and City Council of Baltimore, Md., 73 A.2d 486.

*401 The principal fact relied upon to justify an exception to the area and set-back rules, adopted in the general interest under the police power, is the existence of an exception on the adjoining lot. Undoubtedly this is detrimental to the applicant, although his case is somewhat weakened by his tacit acceptance of the situation over a period of years. But we think the detriment to the applicant must be weighed against the benefit to the community in maintaining the general plan. 'It is by these gradual encroachments, individually or relative insignificance, that the integrity of the general scheme is undermined and ultimately shattered. One departure serves as justification for another * * *.' Dubin v. Wich, 120 N.J.L. 469, 200 A. 751, 754. In the case of non-conforming uses, the ordinance tolerates their continuance, but looks towards their ultimate elimination. Colati v. Jirout, supra. The same principle applies to special exceptions. Heath v. Mayor and City Council of Baltimore, supra, Md., 58 A.2d 896. Use variances are doubtless more serious than dimensional changes, but that is only a matter of degree.

In People ex rel. Fordham Manor Reformed Church v. Walsh, 244 N.Y. 280, 286, 155 N.E. 575, 577, it was contended that the existence of a garage immediately adjoining the proposed garage was sufficient justification for the grant of an exception on the ground of unnecessary hardship. But the Court, speaking through Chief Judge Cardozo, said: 'We think the reasons assigned are insufficient to supply a basis for a departure from the map. They amount to nothing more than this, that a garage may be built because there is another one next door.' See also Ventresca v. Exley, 358 Pa. 98, 56 A.2d 210, 212. No estoppel can be raised against the Board by reason of its approval of similar extensions in other cases. Appeal of Valicenti, 298 Pa. 276, 148 A. 308; Note 119 A.L.R. 1509, 1517.

[5] Under the circumstances we think the action of the Board cannot be sustained.

Judgment reversed, with costs.

All Citations

195 Md. 395, 73 A.2d 491

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

216 Md. 271
Court of Appeals of Maryland.

PARK SHOPPING CENTER, Inc., and St. Mary's County Planning and Zoning Comms.
v.
LEXINGTON PARK THEATRE CO., Inc., et al. and Zoning Board of Appeals for St. Mary's Co.

No. 150.
|
April 1, 1958.

Synopsis
Proceeding on application to municipal zoning and planning commission for use and occupancy permits for certain premises. The commission disapproved the application, and applicant appealed to zoning board of appeals for the county which reversed the decision of the commission, and the commission appealed. The Circuit Court, St. Mary's County, John B. Gray, Jr., J., affirmed action of board, and commission appealed. The Court of Appeals, Brune, C. J., held that there was no substantial evidence to support a finding that use and conformity with zoning restrictions would prevent applicants from making a reasonable use of their property and in view of absence of evidence of any hardship or injustice resulting from requiring applicants to conform, action of zoning board of appeals in granting a variance was unwarranted and erroneous.

Order reversed and case remanded for entry of an order in accordance with opinion.

West Headnotes (3)

[1] **Zoning and Planning** Effect of other applications or nonconforming uses
It is not proper to consider the existence of surrounding ill-advised or illegal zoning variances as grounds for granting additional variances.
2 Cases that cite this headnote

[2] **Zoning and Planning** What constitutes in general
The criterion for determining unnecessary hardship, as a ground for granting a zoning variance, is whether the applicable zoning restriction, when applied to the property in the setting of its environment, is so unreasonable as to constitute an arbitrary and capricious interference with the basic right of private ownership.

[3] **Zoning and Planning** Grounds for grant or denial in general
In proceeding on application for use and occupancy permits at variance with zoning restrictions there was no substantial evidence to support a finding that use and conformity with zoning restrictions would prevent applicants from making a reasonable use of their property, and in view of absence of evidence of any hardship or injustice resulting from requiring applicants to conform, action of zoning board of appeals in granting a variance was unwarranted and erroneous.

Attorneys and Law Firms

***273** ****843** Arthur L. Rysticken, Lexington Park (Joseph D. Weiner, Leonardtown, on the brief), for Park Shopping Center, Inc.

William O. E. Sterling, Leonardtown, for St. Mary's County Planning & Zoning Comms.

William M. Loker, Jr., Leonardtown (Loker, Wigginton & Loker, Leonardtown, on the brief), for appellees.

Before BRUNE, C. J., and HENDERSON, HAMMOND, PRESCOTT and HORNEY, JJ.

Opinion

BRUNE, Chief Judge.

This is an appeal from an order of the Circuit Court for St. Mary's County, ****844** Maryland, affirming the action of the Board of Zoning Appeals for St. Mary's County in reversing the decision of the St. Mary's County Planning and Zoning Commission which denied Certificates of Use and Occupancy to the appellees. The action of the Circuit Court resulted in granting to the appellees a variance from the Zoning Ordinance for St. Mary's County.

On March 2, 1955, the Lexington Park Theatre Company, Inc. (the 'Theatre Company'), located in Lexington Park, Maryland, applied to the St. Mary's Planning and Zoning Commission for a Use and Occupancy Permit for a one story building to contain storage space, a lobby for the adjoining theatre, and one retail store. On April 9, the Planning and Zoning Commission granted approval of the plans for ***274** the one story building upon condition that the Theatre Company would remove that part of the building which was to extend into the 25-foot rear yard and thus constituted a violation of Section VIII D (5) of the Zoning Ordinance for St. Mary's County (approved August 24, 1945, and corrected, revised and amended February 26, 1952.) On June 30, 1955, the Theatre Company filed a new application requesting authority to add a second floor for use as office space. This application was also approved. The Theatre Company then proceeded with construction of the building and by the summer of 1956 the building was substantially completed.

The completed building was not in compliance with the permits granted by the Planning and Zoning Commission in that it still contained the extension which encroached upon the 25-foot back yard, and the upstairs portion of the building was not used in compliance with the original Use and Occupancy Permit, since, instead of leasing the rooms for use as offices, the Theatre Company had installed kitchens in four of the units and rented them as apartments and also rented the remaining rooms as individual living quarters.

In December of 1956 the Theatre Company filed applications for Use and Occupancy Permits for the first floor as one retail store unit, and the second floor as apartments and living quarters. The Zoning and Planning Commission disapproved this application on the ground that the plans were in violation of the Zoning Ordinances (presumably with reference to the encroachment on the 25-foot back yard, and the use of the upper floor as residences without providing for a 30-foot side or rear yard as required by Section VIII D (3) of the Zoning Ordinance.) From this decision the Theatre Company appealed to the Zoning Board of Appeals for St. Mary's County, claiming, *inter alia*, that the decision of the Planning and Zoning Commission was arbitrary and capricious. After publication of a notice (which did not specifically state that the Theatre Company was asking for a variance) and a hearing, the Zoning Board of Appeals rendered its decision reversing the action of the Planning and Zoning Commission on the ground that there was evidence of so many other violations of the Zoning Ordinance in the ***275** vicinity of the Theatre Company's building that it would be unjust to enforce the ordinance against the Theatre Company alone. The Board of Zoning Appeals stated in its opinion that 'Violations apparent from existing uses of the property in respect of the required space for loading and unloading of goods and materials appear frequent and to have been passed by the Zoning Commission and the usual Certificate[s] of Use and Occupancy were issued to the buildings notwithstanding such violations * * *.'

The Board of Zoning Appeals also found as a fact that the Theatre Company had knowingly violated the Zoning Ordinance when it built the extension into the 25-foot year yard and used the upper floor for residential purposes and said that, 'if it were not for the existence of what appears to have been almost a customary thing for ****845** minor violations to be overlooked or condoned by the Zoning Commission we would not say that the Appellants [appellees here] were in the best position to ask that a variance be condoned in the present instance.' The Board found it difficult to decide what category, as defined by the Zoning Ordinance Section II, the second floor residences fitted into and apparently did not reach a conclusion on that question, but held they were not multiple dwellings.

The appellants, Park Shopping Center, Inc. and the County Planning and Zoning Commission, appealed from this decision to the Circuit Court for St. Mary's County, and the cases were consolidated for hearing (as they are here). After a full hearing the Circuit Court ruled that there was sufficient evidence before the Zoning Board of Appeals to grant the variance for the first floor of the building. It also found that the second floor of the building constituted a 'multiple dwelling' as defined by Section II of the Zoning Ordinance for St. Mary's County, and that although the Zoning Board of Appeals had not specifically granted a veriance for this second story, it could have determined from the evidence before it that no appreciable mischief would be done to the surrounding area or to the public interest by granting a

variance for the second story. Thereupon the Court affirmed the decision of the Zoning Board of Appeals.

***276** The appellants make three contentions: first, that the decision of the Zoning Board was arbitrary and capricious because there was no showing of any such unwarranted hardship as would be necessary to justify a variance; second, that the Circuit Court could not properly grant a variance for the use of the second floor as a multiple dwelling when the Zoning Board of Appeals itself did not decide that this was a multiple dwelling unit and therefore granted no variance; and third, that the notice of hearing published by the Zoning Board of Appeals was not legally sufficient since it did not state that the matter of a variance was in issue.

With respect to the appellants' first contention, it is evident from both the opinion of the Board of Zoning Appeals and the opinion of the Circuit Court that the Board used the existence of other violations or variances in the immediate area tolerated or granted by the Planning and Zoning Commission to justify the issuance of the Certificates of Use and Occupancy here in question.

[1] This Court has held that it is not proper to consider the existence of surrounding ill-advised or illegal variances as grounds for granting additional variances. As stated in Easter v. Mayor and City Council of Baltimore, 195 Md. 395, 400, 73 A.2d 491, 492, 'Prior exceptions granted by the adjustment board are not in themselves controlling. Ill-advised or illegal variances do not furnish grounds for a repetition of the wrong. If that were not so, one variation would sustain if it did not compel others, and thus the general regulation eventually would be nullified.' In Marino v. City of Baltimore, 215 Md. 206, 220, 137 A.2d 198, 203, Judge Horney stated for the Court: 'Certainly a prior exception granted by the Board does not control the granting of a subsequent exception.'

The authority under which the Board of Zoning Appeals can grant a variance is found in Section XVIII (3) of the Zoning Ordinance for St. Mary's County which states that the Board shall have power '[t]o authorize upon appeal in specific cases such variance from the terms of the ordinances as will not be contrary to the public interest, where, owing to special conditions, the enforcement of the provisions of ***277** this ordinance will result in *unwarranted hardship and injustice*, but which will most nearly accomplish the purpose and intent of the Zoning Plan and of the Zoning Regulations.' (Emphasis supplied.) It is in language typical of a variance as distinguished from an exception. ****846** Montgomery County v. Merlands Club, 202 Md. 279, 288, 96 A.2d 261. Cf. Marino v. City of Baltimore, supra, which points out that under the Baltimore City Ordinance an 'exception' perhaps overlaps a 'variance' in cases of 'practical difficulties or unnecessary hardships' and the two are accordingly discussed without distinction in many cases arising under that Ordinance. 215 Md. 216, 137 A.2d 202. The section before us is an almost verbatim copy of the enabling act, Section 22(g)(3), Article 66B of the Maryland Code (1957 Ed.).

[2] This Court has had many occasions to pass upon the question of what constitutes such a hardship and injustice as to sustain the granting of a variance. It has most recently done so in Judge Horney's clear and exhaustive opinion in Marino v. City of Baltimore, supra. No useful purpose would be served by repeating here what was well said there beyond quoting the test of hardship therein stated (215 Md. 217, 137 A.2d 202): 'The criterion for determining unnecessary hardship is whether the applicable zoning restriction when applied to the property in the setting of its environment is so unreasonable as to constitute an arbitrary and capricious interference with the basic right of private ownership. [Citing Carney v. City of Baltimore, 1952, 201 Md. 130, 137, 93 A.2d 74, 76-77.]'

[3] The Theatre Company has not made any showing of hardship such as to justify the granting of a variance. We find no substantial evidence in the record to support a finding that use in conformity with the Zoning restrictions would prevent the appellees from making a reasonable use of the property as to either the first or second floor. On the contrary, the testimony establishes the fact that when the St. Mary's County Planning and Zoning Commission approved the first application for a Certificate of Use and Occupancy for the first floor of the building to be used as a retail store, lobby space for the theatre, and storage, the Theatre Company had ***278** agreed to remove the obstruction in the rear yard shown on the building plans. It is difficult to believe that it would have so readily acquiesced in this removal if it had felt that it would prevent a reasonable use of its property. The chief, if not the only, stated ground for the Theatre Company's objection to removing that structure is that it 'was unfair to have to, the other stores had not but I said I would move it.' (Testimony of Mr. Dean, described as 'one of the owners of the building under consideration,' before the Zoning Board of Appeals.) There is no showing, so far as we can discover, as to either the cost or difficulty of removing the 25-foot extension and transferring the equipment therein to the main building.

As to the second floor, the evidence of hardship is perhaps even less. When asked by a member of the Board of Zoning

Appeals whether the upstairs had been used, Mr. Dean replied: 'To some extent for rooms instead of offices. If the business for rooms drops off, we can use them for offices.'

In view of the absence of evidence of any hardship or injustice, we are of the opinion that the Zoning Board of Appeals' action was unwarranted and erroneous.

Our decision on this ground makes it unnecessary to consider the other questions raised by the appellants.

Order reversed, and case remanded for the entry of an order in accordance with this opinion; costs to be paid by appellees.

All Citations

216 Md. 271, 139 A.2d 843

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Bair Day 3 Ex. List

People's Counsel
Exh. 14 - Code Sections
Ex 15 - Internet Realtor Info.

Petitioners
Exh 17 - Real Estate Testimony
Ex 18 - Ar. Plath
Ex 19 CBC Applic.
Ex 20 CBC Approv
Ex 21 County Complaint
Ex 22 Photos "Frame"
Ex 23 Frame Height
Ex 24 Photos Property
Ex 25 Drawing
Ex 26 - Signs

Protestants -
As previously submitted via email

Ex 30	Ex 14a-d	Withdrawn Ex.
Ex 24	Ex 18a-b	16a-e
Ex 28	Ex 18c-e	15a-d
Ex 6a-m	Ex 17a-f	25-a-d
Ex 10a-c		33
Ex 12		
Ex 11a-b		

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

March 30, 2021

NOTICE OF DELIBERATION

IN THE MATTER OF: Donna V. Bair – Legal Owner
4607 Prospect Avenue
19-342-SPHA 4th Election District; 3rd Councilmanic District

8/9/19 Opinion and Order of the Administrative Law Judge wherein the:

- Petition for Special Hearing: 1) to approve a nonconforming lot width and lot area; and 2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of 30 inches was GRANTED; the
- Petition for Special Hearing: 1) to approve a nonconforming dwelling side yard setback; and 2) to confirm that an existing fence (swimming pool enclosure) with a height of 6' is in compliance with BCZR §427.1 and BCC §13-6-101 was DENIED; and the
- Petition for Variance: 1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.; 2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; and 3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches was DENIED

9/9/19 Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire on behalf of Donna V. Bair, Petitioner.

9/25/19 Order on Motion for Reconsideration issued by the Administrative Law Judge wherein it was Ordered:

- that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms in BCZR §104;
- that all new construction must comply with current setbacks and restrictions at the time of new construction; and
- all other matters and respects of Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

This matter having been heard on February 6, 2020, March 23, 2021, and concluded on March 25, 2021, a public deliberation has been

ASSIGNED FOR: APRIL 20, 2021, AT 9:00 A.M.

The above scheduled public deliberation will be held remotely using WebEx for audio and video participation. **Call-in information and a link to the public deliberation will be posted on our web calendar the night before at** www.baltimorecountymd.gov/Agencies/appeals/index.html.

NOTE: Closing briefs are due on **APRIL 9, 2021 no later than 3:00 p.m.**
ELECTRONIC COPY ONLY
emailed to appealsboard@baltimorecountymd.gov

NOTE: PUBLIC DELIBERATIONS ARE OPEN WORK SESSIONS WHICH ALLOW THE PUBLIC TO WITNESS THE DECISION-MAKING PROCESS. A WRITTEN OPINION AND ORDER WILL BE ISSUED BY THE BOARD WITHIN A REASONABLE TIMEFRAME AFTER DELIBERATION AND A COPY SENT TO ALL PARTIES.

If you do not have access to a computer or smart device, please contact our office for the call-in information the day before the scheduled deliberation.

Krysundra Cannington, Administrator

c. Counsel for Petitioners : Lawrence E. Schmidt, Esquire
Legal Owner : Donna Bair

People's Counsel for Baltimore County : Peter M. Zimmerman, Esquire

Protestants *pro se* : Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
John E. Lemmerman/RTF Associates, Inc.
Kim and Tom Montanye
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz

Paul M. Mayhew, Managing Administrative Law Judge
Steve Lafferty, Director/Department of Planning
C. Pete Gutwald, Director/PAI
James R. Benjamin, Jr., County Attorney
Nancy C. West, Assistant County Attorney

From:	Peoples Counsel
To:	Appeals Board
Cc:	Tom@montanye.net; "Steve Fradkin"; "Lawrence Schmidt"; "Sue Benson"; mmolinaro@reisterstown.com; "Kimberley Karlsen"; Robin Coffin
Subject:	Donna Bair - 2019-342-SPHA - PC Exhibits
Date:	Friday, March 26, 2021 8:56:18 AM
Attachments:	PCExh14-Md Code 17-532.pdf PCExh15- Real Estate Lic Req..pdf

---

Good Morning,

Attached please find the following exhibits introduced at yesterday's hearing:

PC Exh. 14	MD Code Sec. 17-532
PC Exh. 15	MD Real Estate License Requirements

Thank you for your consideration.

Rebecca Wheatley, Legal Secretary
Office of People's Counsel
410-887-2188

About This Maryland Real Estate Salesperson (MRES) Exam Study Guide

Taking the exam for the first time | Retaking the exam

The Maryland Real Estate Salesperson (MRES) exam is a crucial step in becoming a licensed Real Estate salesperson in the state of Maryland. It consists of two sections designed to cover national-and state-specific questions about the real estate. Our professional instructors have developed a comprehensive study guide to help you prepare for this exam. As part of our study guide, lessons, quizzes, practice tests and flashcards can help you perfect your knowledge of the exam content areas.

Check out our Real Estate test prep (https://study.com/real-estate/index.html) materials! We've got comprehensive Real Estate study guides (https://study.com/real-estate/real-estate-study-guides.html) to help you study, Real Estate practice tests (https://study.com/real-estate/real-estate-practice-tests.html) to test your knowledge, and informational Real Estate resources (https://study.com/real-estate/real-estate-resources.html) to get you up to speed on testing logistics.

Exam Course Information

This course is designed to prepare you for the Maryland Real Estate Salesperson exam, covering all of the topics outlined in the official test materials provided by PSI Examination Services. Our professional instructors created this comprehensive course to help you master these objectives. Some of the topics covered in this course are listed below:

National topics:

- Explain the basics of property ownership
- Describe the types of land use controls and regulations
- Understand general principles of valuation and market analysis
- Detail key concepts of financing and landing
- Point out general principles of agency and property disclosures
- Outline the basics of contract law
- Share the fundamentals of leasing and property management
- Relate the elements of the transfer of title
- Summarize the practice of real estate
- Utilize basic real estate calculations

Maryland state-specific topics:

- Identify the duties and powers of the Maryland Real Estate Commission
- Explain licensing requirements in the state of Maryland
- Describe the listing agreements and the types of agency disclosures
- Perform supervision duties
- Assess types of business conduct
- Demonstrate the general ethics principles

Maryland Real Estate Salesperson Exam Course Format

Our Maryland Real Estate Salesperson Exam study guide course is broken down into 19 chapters and 155 lessons which coincide with the national and state-specific portions of questions from the exam. In the chapters, video lessons are followed with quizzes, and each of the chapters offers a practice test for you to gauge your knowledge on the topic.

Maryland Real Estate Salesperson Exam Information

- **Number of Questions**: 110 questions
- **Question Type**: multiple choice
- **Time Limit**: 120 minutes (90 minutes for the national portion and 30 minutes for the state-specific portion)
- **Exam Cost**: $61

Maryland Real Estate Salesperson Exam Breakdown

National Portion

Maryland Real Estate Salesperson Exam Concept - National	Percentage of Subtest	Approximate Number of Questions
Property ownership	8%	6
Land use control and regulation	5%	4
Valuation and market analysis	7%	6
Financing	10%	8
General principles of agency	13%	10
Property disclosures	6%	5
Contracts	17%	14
Leasing and property management	3%	2
Transfer of title	8%	6
Practice of real estate	13%	10
Real estate calculations	10%	8

State Portion

Maryland Real Estate Salesperson Exam Concept - State	Percentage of Subtest	Approximate Number of Questions
Duties and power of the real estate commission	13%	4
Licensing requirements	13%	4
Agency	23%	7
Supervision	17%	5
Business conduct	20%	6
Ethics	13%	4

Registering and Preparing for the Maryland Real Estate Salesperson Exam

Your education provider will verify your eligibility to PSI after successful completion of all requirements. After this, you will receive a confirmation email with instructions on how to pay for and schedule the examination. There are several registration options for this exam: online, standard mail, telephone, fax, and email.

This study guide can help you become more efficient in answering exam questions under the required timeline. It offers tests at the end of each chapter, as well as a comprehensive practice exam to gauge your knowledge on the subject. Should you need additional help regarding the content of the study guide, you can submit questions to our professional instructors who are available for personalized support.

For more information on registering and preparing for the Maryland Real Estate Salesperson Exam check out our Maryland Real Estate Salesperson Exam Informational Resources (https://study.com/real-estate/real-estate-resources.html).

Subscribe to our Newsletters

Fit Small Business

Fit Small Business content and reviews are editorially independent. We may make money when you click on links to our partners. Learn More.

Real Estate > Real Estate Careers | How To

How to Become a Real Estate Agent in Maryland

NOVEMBER 15, 2017



WRITTEN BY: Jen Gregorio

In this guide you'll learn all the details you need to know to get your license and become a real estate agent in Maryland.

You'll learn the basic real estate licensing requirements in Maryland, information about the exam including pass rates and test prep, reciprocity rules, county by county breakdowns of the most expensive real estate in Maryland, and more.

Okay, grab a cup of coffee, and let's start at the beginning.

Basic Maryland Real Estate Licensing Requirements

Getting a real estate license in Maryland is rather easy compared to other states. You only need a total of 60 classroom hours of commission-approved pre-licensing courses. In comparison, to get a license in Texas, real estate licenses require applicants to complete 180 hours of courses. Here's a quick breakdown of the real estate licensing requirements in Maryland.

Pre-licensing Courses Required in Maryland

In order to get a real estate license in Maryland, you will need to complete 60 hours of real estate pre-licensing courses that will cover such topics as:

- The Real Estate Business
- License Law and Qualifications for Licensure
- License Law and Commission Rules
- Authorized Relationships, Duties, and Disclosure
- Real Estate Brokerage Activities and Procedures
- Violations of License Law, Penalties, and Procedures
- Federal and State Laws Pertaining to Real Estate
- Property Rights: Estates and Tenancies, Condominiums, Cooperatives, and Time Sharing
- Title, Deeds, and Ownership Restrictions

- Legal Descriptions
- Real Estate Contracts
- Residential Mortgages
- Types of Mortgages and Sources of Financing
- Computations and Closing of Transactions
- The Real Estate Market and Analysis
- Real Estate Appraisal
- Real Estate Investments and Business Opportunity Brokerage
- Taxes Affecting Real Estate
- Planning, Zoning, and Environmental Hazard

Maryland Real Estate Exam Information

While the Maryland Real Estate License exam has a lower passing rate (less than 50 percent) than other states, that shouldn't scare you away from taking the test.

Even though the passing rate is low, if you work hard and take the courses seriously you should have no problem passing the exam. If you're looking for help studying for the test, we recommend Real Estate Exam Scholar's Exam prep course. They offer top-notch exam prep for an affordable price. Even better, they also offer a money back guarantee if you don't pass on the first try.

Visit Real Estate Exam Scholar

Maryland Pre-Licensing Exam Questions

Total of 110 multiple-choice questions (80 for the national and 30 for the state-specific questions) to be completed in 120 minutes total.

What to Bring to the Exam

- 2 valid forms of identification with signatures. One ID must be a government-issued Photo ID
- Confirmation number when the test reservation was made.

Passing Score

You must earn a score of 70% or better to pass the Maryland Real Estate Salesperson Exam (56/80 for the national and 21/30 for the state portion)

Pass Rate

Less than 50%

Maryland Real Estate License Fee

$110 for original salesperson license ($90 for renewal)

Exam Fee in Maryland

$61.00

Education Requirements

You need to have at least a high school diploma or GED in order to apply for a license in Maryland

apply for a license in Maryland.

Age

Applicants must be at least 18 of age or older

Residency

Any U.S. citizen or a lawfully admitted alien can apply.

Exemptions

Any active member of the Maryland Bar who is in good standing and qualified under the real estate license law is exempt from taking the real estate sales associate prerequisite course.

Criminal Background

Applicants who have an existing criminal record may still apply for a real estate license. It would be best if applicants were to include their criminal history along with the necessary documents related to the conviction, if any, on their application. After submitting your fingerprints, your application will be forwarded to the Division of Criminal Justice Information Systems and to the Federal Bureau of Investigation. Upon investigation, each applicant will be considered on their own merits.

Processing Time

On average, it will take anywhere from 2 weeks to 2 months from education to license in hand, depending on the pre-licensing classes you take.

Online Real Estate Schools in Maryland

While taking your real estate pre-licensing course in person can be helpful, online courses are much cheaper and offer the exact same courses. Mbition – Learn Real Estate is a solid choice.

Visit Mbition – Learn Real Estate

Maryland Real Estate License Reciprocity and Portability

If you plan on working in states besides Maryland, then you need to know the real estate license reciprocity and portability laws for Maryland.

- **Reciprocity:** Maryland doesn't have reciprocity with any other state.
- **Portability:** Cooperative

To learn more about real estate license portability in Maryland, check out our guide on real estate license reciprocity and portability here.

How to Choose the Right Real Estate Company to Work For in Maryland

Let's face it. Choosing the right brokerage to work for in any state isn't easy. In order to make your choice a little bit easier, check out our in-depth guide on choosing the right real estate company to work for.

Once you've finished reading the guide, check out our buyer's guide comparing Keller Williams, RE/MAX, and Century 21 here.

If you're curious about which Maryland brokerages are the most successful, check out Real Trends list of the top real estate brokerages in Maryland for 2020 below.

Washington D.C./Arlington/Alexandria

Real Estate Brokerage	Sales Volume (2020)
Long & Foster Companies, Inc.	$13,918,354,853
CENTURY 21 New Millennium	$2,888,952,964
TTR Sotheby's International Realty	$2,501,489,575
Coldwell Banker Residential Brokerage/NRT	$2,386,529,000
Berkshire Hathaway HomeServices PenFed Realty	$2,521,310,501

Baltimore

Real Estate Brokerage	Sales Volume (2020)
Long & Foster Companies, Inc.	$4,866,253,542
Coldwell Banker Residential Brokerage/NRT	$2,863,694,000
Keller Williams Realty Centre	$900,716,150
Keller Williams Integrity	$860,442,755
RE/MAX Advantage Realty	$853,961,406

*Data from Real Trends Market Leaders 2020

Maryland Counties with Highest Average Listing Price and Highest Median Sales Price 2020

Let's face it, higher listing prices mean higher commission checks! To get a sense of which counties offer the best opportunities for big bucks in Maryland check out this sales data from Trulia's Maryland home price page below (week ending June 21):

County	Average List Price	Median Sales price
Montgomery	$750,595	$424,000
Talbot	$706,866	$277,500
Howard	$556,021	$396,500
Queen Anne's	$481,318	$297,350

JUSTIA

View the 2019 Maryland Code | View Other Versions of the Maryland Code

Maryland Business Occupations and Professions Section 17-532

Article - Business Occupations and Professions

§ 17-532.

(a) In this section, "client" includes a prospective buyer or lessee under a presumed buyer's agency relationship or a presumed lessee's agency relationship as described in § 17-533 of this subtitle.

(b) A licensee shall comply with the provisions of this section when providing real estate brokerage services.

(c) (1) A licensee shall:

(i) act in accordance with the terms of the brokerage agreement;

(ii) promote the interests of the client by:

1. seeking a sale or lease of real estate at a price or rent specified in the brokerage agreement or at a price or rent acceptable to the client;

2. seeking a sale or lease of real estate on terms specified in the brokerage agreement or on terms acceptable to the client; and

3. unless otherwise specified in the brokerage agreement, presenting in a timely manner all written offers or counteroffers to and from the client, even if the real estate is subject to an existing contract of sale or lease;

(iii) disclose to the client all material facts as required under § 17-322 of this title;

(iv) treat all parties to the transaction honestly and fairly and answer all questions truthfully;

(v) in a timely manner account for all trust money received;

(vi) exercise reasonable care and diligence; and

(vii) comply with all:

1. requirements of this title;

2. applicable federal, State, and local fair housing laws and regulations; and

3. other applicable laws and regulations.

(2) Unless the client consents in writing to the disclosure, a licensee may not disclose confidential information received from or about a client to any other party or licensee acting as the agent of that party or other representative of that party.

(3) Unless the client to whom the confidential information relates consents in writing to a disclosure of that confidential information, a licensee who receives confidential information from or about the licensee's own past or present client or a past or present client of the licensee's broker may not disclose that information to:

(i) any of the licensee's other clients;

(ii) any of the clients of the licensee's broker;

(iii) any other party;

(iv) any licensee acting as an agent for another party; or

(v) any representative of another party.

(4) Unless otherwise specified in the brokerage agreement, a licensee is not required to seek additional offers to purchase or lease real estate while the real estate is subject to an existing contract of sale or lease.

(5) An intra-company agent may disclose confidential information to the broker or dual agent for whom the intra-company agent works but the broker or dual agent may not disclose that confidential information to the other party or the intra-company agent for the other party, as provided in § 17-530(d).

(d) A licensee does not breach any duty or obligation to the client by:

(1) showing other available properties to prospective buyers or lessees;

(2) representing other clients who have or are looking for similar properties for sale or lease;

(3) representing other sellers or lessors who have similar properties to that sought by the buyer or lessee; and

(4) showing the buyer other available properties.

(e) This title does not limit the applicability of § 10-702 of the Real Property Article.

(f) The requirements of this section are in addition to any other duties required of the agent by law that are not inconsistent with these duties.

(g) The duties specified in this section may not be waived or modified.

(h) A licensee who performs ministerial acts for a person may not be construed to:

(1) violate the licensee's duties to the client, provided that the client has consented in the brokerage agreement to the licensee's provision of ministerial acts; or

(2) form an agency relationship between the licensee and the person for whom the ministerial acts are performed.

Exhibits 3/23/21

Peoples Coun. Exhibits
Exhs 5 through 12 Admitted as noted in Folder in F.T.P.
Ex. 13- Witness Description

Petitioner Ex.
Ex 17. - Real Estate Testing Topics

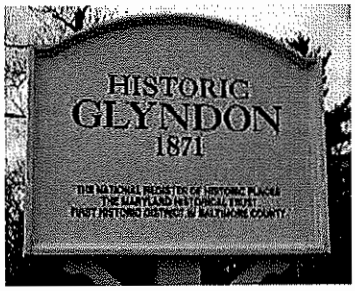
Protestants Ex - As Identified in F.T.P Folder

29a	7	20
29b	26a	23
32a.	26b	21
1	8	22
2	9	
3a	13a	
3b	13b	
4.	13c	
5.	19	

Glyndon, Maryland

Glyndon is an unincorporated community in Baltimore County, Maryland, United States. Founded in 1871 by Dr. Charles A. Leas, the village is located in the northwest section of Baltimore County[1] and is primarily a residential suburb of metropolitan Baltimore City. The village is characterized by the predominance of historic Victorian homes and a strong sense of community among its residents. Glyndon is listed on the National Register of Historic Places (1973) and on the Maryland Inventory of Historic Properties[2] (1973); the Glyndon Historic District was also designated as the first historic district in Baltimore County[3] (1981).

Also listed on the National Register of Historic Places is the Worthington Valley Historic District.[4]



A roadside sign marking Historic Glyndon.

Contents

History[5]
Geography
Demographics
Education
Community organizations
Famous/renowned residents
Places and points of interest
References
External links

History[5]

Glyndon still maintains much of the charm it had as a Victorian summer village over 100 years ago. The arrival of the Western Maryland Rail Road in 1860 promoted the early location and growth of Glyndon. The area itself was beautiful with green expanses and tall trees; an elevation above sea level of almost 700 feet provided delightful summers and mild winters.

Prior to 1871, Dr. Charles A. Leas, the first health officer of Baltimore City and a former American consul, made several purchases of land in what is now Glyndon. When he discovered that farming was not his metier, he decided to found a small town. He employed the Baltimore surveyor Augustus Bouldin to lay out the lots and streets, planting rows of maples along the avenues. Baltimore County businessman Samuel P. Townsend also promoted the growth of the town with his purchase and development of a substantial number of acres. He assumed an active role in the community as a merchant, a railroad agent, and a postmaster.

Affluent Baltimorians acquired summer homes in early Glyndon to escape the heat of the city. The proximity of the railroad to Glyndon allowed easy commuting for the businessmen to their jobs in the city some 25 miles away. Two- and three-story Victorian homes, with large airy rooms, wide halls from front to rear, and spacious porches, was the type of architecture chosen by the majority of the builders. Additionally, several boarding houses invited city folks to live in the country during the summer months.

A small business district grew up around the railroad station to service the needs of Glyndon's growing population. Besides the station, along Railroad Avenue there were a post office, a general store, a town hall, a blacksmith shop, a livery, a wheelwright shop, and an ice cream parlor. Along nearby Chatsworth Avenue (originally Reisterstown Avenue) there were a general store, a bakery, a butchery, an ice house, a carpenter, and the town magistrate's office. There was, however, no candlestick maker.

The Western Maryland Railway and a later streetcar line, the Pikesville, Reisterstown & Emory Grove Railway, also brought summer people to Emory Grove (http://emorygrove.homestead.com), a Methodist religious campground founded before Glyndon in 1868. Across Butler Road (what was then called Dover Road) to the south is Glyndon Park, established in 1887 as a temperance camp meeting ground, the first of its kind in the nation south of the Mason and Dixon's Line.

In 1878, the Glyndon United Methodist Church (http://glyndonumchurch.org/index.html)(then called the Glyndon Methodist Episcopal Church) was constructed on Dover Road. The original brown-shingled chapel was destroyed by fire in 1929 and the present stone structure was dedicated in 1931. In 1873 the cornerstone was laid for Sacred Heart Church (http://www.shgparish.org/), at the time the only Catholic church between Westminster and Baltimore. The handsome Gothic structure was built with marble from the nearby quarry at the foot of "Dark Hollow Hill" (the Hill now being part of Butler Road).

There were two schools in the immediate area. St. George's Hall (https://web.archive.org/web/20110724000905/http://external.bcpl.lib.md.us/hcdo/cfdocs/photopage.cfm?id=16491), located at the end of Central Avenue where Bond Avenue crosses the railroad tracks (506 Bond), was established by Prof. J. C. Kinear in 1876 as a private boarding school for boys. The original building was destroyed by fire in 1896; it was replaced with the current structure.

The two-room Glyndon School (https://web.archive.org/web/20110724000929/http://external.bcpl.lib.md.us/hcdo/cfdocs/photopage.cfm?id=7460) on Butler Road was built in 1887 when the growing year-round population of Glyndon necessitated a public school. The school house was abandoned in 1930 after consolidation with Franklin Elementary School in Reisterstown. In 1932 it became the home of the Woman's Club of Glyndon (http://www.gfwcmd.org/clubs/baltimore/glyndon.html). The Club was originally established in 1898 by some ladies who were "summering" in Glyndon and who gathered on a regular basis on a neighbor's porch to read together. They called themselves the Glyndon Porch Class. Today the Woman's Club of Glyndon promotes literary and social activities as well as interest in local civic problems and in national and world affairs.

The Glyndon Volunteer Fire Department (http://www.gvfd40.org/) has been active since 1904. Over the years its members have worked hard to provide the most modern and effective fire protection possible for the residents of the Glyndon community and of the surrounding area. The Ladies Auxiliary, organized in 1953, helps with this mission by raising funds for the work of the Company.

Geography

Glyndon is located at a latitude of 39.4764935 North and a longitude of 76.8158100 West at an elevation of 689 feet.[6] Butler Road, formerly Dover Road, is the main road.

Demographics

According to the 2000 census,[7] the population of Glyndon was 424 (female 210, male 214). The median age was 39.6. The average household size was 2.72 and the average family size 3.30. The population was 96.5% White, 1.2% Black, 0.5% Asian, 1.9% of two or more races and 0.2% Hispanic/Latino. Of the population aged 25 and over, 96.1% had achieved high school graduation or higher and 51.3% a bachelor's degree or higher.

Education

Public schools
The public schools serving the children of Glyndon are:

- Franklin Elementary
- Franklin Middle
- Franklin High

Franklin High School is the oldest high school in Baltimore County, founded in Reisterstown in 1820 as the private school Franklin Academy.[8] Local lore contends that Edgar Allan Poe applied to be principal of the Academy in the 1830s but was turned down by the school's trustees. Students may opt to attend a number of magnet schools within the public school system.

Private schools
Some Glyndon children attend nearby Sacred Heart School (K-8), a Catholic parish school. Others attend any number of private schools in the greater Baltimore area, such as

- Gilman School
- St. Paul's School
- St. Paul's School for Girls
- Boys' Latin School of Maryland
- Friends School of Baltimore
- Maryvale Preparatory School
- Loyola Blakefield
- Calvert Hall College High School
- Garrison Forest School
- Bryn Mawr School
- McDonogh School

Higher education
There are a number of institutions of higher learning within a 25-mile radius of Glyndon, offering various levels and intensity of education:

- Stevenson University
- University of Maryland, Baltimore County
- McDaniel College
- Towson University
- Goucher College
- Loyola University Maryland
- Notre Dame of Maryland University
- Johns Hopkins University
- Maryland Institute College of Art
- University of Baltimore
- Coppin State University
- Community College of Baltimore County
- Carroll Community College

Community organizations

Glyndon Community Association (GCA)
The exact date of the first community association meeting in Glyndon is not known, but by early 1945 several community leaders and residents decided to formalize the activities of their group. On February 28, 1945, the group was incorporated under the name of The Glyndon Corporation. According to the original corporate charter, the founding fathers of GCA were Thomas Kooken, Donald P. Bellows, Eugene H. Ryer, as the incorporators; Mr. Bellows, along with John O. Cockey, Rosemund E. Smith, and Ira L. Wales as the first members of the board of directors. Bellows was also the first resident agent.

The name of the community association was changed to the Glyndon Community Association in 1956. The Board of Directors approved the name change on April 23, 1956, and the membership approved the name change at the May 3 membership meeting. The formal change of name was registered with the charter division of the State of Maryland on July 27, 1956.

As stated in its bylaws, the purpose of the GCA is to promote and maintain a strong community spirit in Glyndon, to bring about improved conditions in all things that affect the community in general, and to promote other non-profit purposes.

Membership is open to all individuals 18 years or older who own or occupy residential real property in Glyndon. GCA also has an *emeritus* membership which is limited to past members of GCA who no longer qualify as a regular member and whose request for Esuch status has been approved by GCA. Membership dues are minimal and a family discount is available.

For the purposes of GCA, Glyndon is the area within a line that generally runs from Emory Grove, including Seven Farms at Worthington Valley, east to Butler Road, across Worthington Avenue, then south to the south side of St. Paul Avenue, out to Central Avenue, north along Central to 350 Central and then west to the railroad tracks and then north across Butler Road back to Emory Grove.

GCA holds its annual meeting, at which its officers and directors are elected, in February. GCA also holds quarterly membership meetings. The board is composed of a president, a first and second vice president, a secretary, a treasurer, six directors elected at large and the immediate past president of GCA. The term of office is one year for officers and two years for directors to ensure both participation from the entire neighborhood and the preservation of institutional memory.

GCA sponsors several events during the course of the year, all currently without charge to the public, even those outside of Glyndon proper. For many years there has been an Easter Egg Hunt. Currently, this is held the Saturday before Easter in Glyndon Station Park, preceded the night before by an egg-stuffing event held at a neighborhood home and attended exclusively by parents.

A long-standing tradition of GCA has been a parade on Independence Day. The parade commences at 10:00 am at the intersection of Albright and Central avenues and proceeds north to Chatsworth, turns left to Railroad Avenue, and then again to the starting point and the historic O'Meara lawn. There, the federal flag is affixed to the end of an extended fire-truck ladder, a prayer is said, and all join in the singing of the national anthem, followed by hot dogs, lemonade and cookies. The parade is in essence a bike parade with children and adults marching the route. The Glyndon Volunteer Fire Department leads the event with one of its trucks, accompanied on occasion by a historic vehicle or lawn tractor.

In autumn, there is a Halloween Party at the firehouse and, at Christmas, GCA lights a local tree and sings carols at its Christmas Tree Lighting and Festival of Carols Without Lessons.

Historic Glyndon, Inc.(HGI)
Historic Glyndon, Inc. was founded in 1972. It began as a committee under the aegis of the Glyndon Community Association and became a separate organization after the town's centennial in 1971. This organization is responsible for having had Glyndon declared a historic district at three levels: national, state and county.

HGI's mission is "to preserve and protect Glyndon's cultural, social, economic and architectural history, as well as to conduct educational and beautification projects which enrich Glyndon's historical heritage."

The organization consists of officers (president, 1st vice-president, 2nd vice-president, treasurer and secretary), nine additional board members, a number of committees and a general membership. Membership is open to anyone with an interest in Glyndon and its mission. The committees include Membership, Architectural Design & Review, Historic House Plaques' Welcome and Holiday Open House

Regular events of HGI include the annual spring meeting of the general membership, a spring clean-up around the train station and post office, a biennial fall Celebrate Glyndon! display, and the Holiday Open House in December. Other endeavors have included the publication of a history book about the village (*Glyndon: The Story of a Victorian Village*, 1990), a 125th anniversary weekend celebration in 1996, historic town markers, historic street signs, historic house plaques and a house and garden tour.

Famous/renowned residents

Dr. Charles A. Leas
Dr. Charles A. Leas, Glyndon's founder, was Baltimore City's first public health officer. During the Crimean War, he went to Russia at the request of the Russian Minister to serve on the army's medical staff. For this service, he was knighted by Czar Alexander II with the Imperial Order of St. Stanislaus. After the war, President Buchanan appointed him U.S. Consul to Russia. In subsequent years, he also served as American Consul to Sweden, Madeira and British Honduras. Leas eventually returned to Baltimore and shortly thereafter retired and moved to the country. A *Baltimore Sun* article from February 13, 1952, states, "He soon found that running a farm was not his métier, so he decided to found a little town, where he could live amongst congenial people of his own tastes and inclinations."

The entrance to the Leas homestead, the oldest home in Glyndon, is located at the corner of Albright and Railroad avenues. The main part of the dwelling, more than 200 years old, was originally a farmhouse when bought by Leas and his second wife, Elizabeth Frush, who was known as Lizzie. Leas had three daughters, two with his first wife Eliza Moore Leas, who died in 1850, and one with Lizzie.[9]

T. Rowe Price
Thomas Rowe Price, Jr., founder of the investment firm T. Rowe Price, was born in Glyndon in 1898 and spent his childhood there in the home that his father built at 4801 Butler Road. His father was T. Rowe Price, Sr., a country doctor who raised three children in Glyndon with his wife Ella (*née* Black). The young Price graduated from nearby Franklin High School in 1914 and went on to receive a bachelor's degree in chemistry in 1919 from Swarthmore College. After working for a short time as a chemist for the DuPont Company, Price switched to selling stocks and bonds and eventually launched his own investment counseling firm in 1937. He is primarily known as a pioneer of the growth stock approach as well as helping to build the mutual-fund industry. Price died in Baltimore, Maryland, in 1983.

Places and points of interest

- Emory Grove
- Glyndon Park
- Glyndon Station Park
- Train station/post office
- Glyndon School/Woman's Club of Glyndon
- Glyndon Square Shopping Center
- Glyndon Village Shopping Center
- Glyndon Bank building

References

1. "Google Maps, Glyndon, Maryland" (https://maps.google.com/maps?f=q&source=s_q&hl=en&geocode=&q=Glyndon,+Maryland&sll=37.0625,-95.677068&sspn=38.092988,81.914062&ie=UTF8&ll=39.47685,-76.816599&spn=0.009076,0.020149&z=16&iwloc=addr).
2. "Search the Maryland Inventory of Historic Properties" (http://mht.maryland.gov/survey_mihp_search.html).
3. "Historic Districts Enacted by the Baltimore County Council" (http://www.baltimorecountymd.gov/Agencies/planning/historic_preservation/bchistdist.html).
4. "National Register Information System" (https://npgallery.nps.gov/NRHP). *National Register of Historic Places*. National Park Service. April 15, 2008.
5. *Glyndon: The Story of a Victorian Village*. Historic Glyndon, Inc. 2010.
6. "U.S. Geological Survey, Geographic Names System" (http://geonames.usgs.gov/pls/gnispublic/f?p=127:3:1752772008373983::NO:3:P3_FID,P3_TITLE:590340%2CGlyndon).

7. "U.S. Census Bureau, 2000 Census Fact Sheet" (https://archive.today/20200212050241/http://factfinder.census.gov/servlet/SAFFFacts?_event=Search&geo_id=&_geoContext=&_street=&_county=21071&_cityTown=21071&_state=04000US24&_zip=21071&_lang=en&_sse=on&pctxt=fph&pgsl=010&show_2003_tab=&redirect=Y). Archived from the original (http://factfinder.census.gov/servlet/SAFFFacts?_event=Search&geo_id=&_geoContext=&_street=&_county=21071&_cityTown=21071&_state=04000US24&_zip=21071&_lang=en&_sse=on&pctxt=fph&pgsl=010&show_2003_tab=&redirect=Y) on 2020-02-12. Retrieved 2010-09-15.
8. Reister's Desire—Reisterstown, 1758-1976. Compiled by Carrol Pollack. 1976.
9. *Glyndon: The Story of a Victorian Village*. Historic Glyndon, Inc. 1991.

External links

- Historic Glyndon, Inc. (http://www.historicglyndon.org/)
- Woman's Club of Glyndon (http://www.gfwcmd.org/clubs/baltimore/glyndon.html)
- Glyndon Volunteer Fire Department (http://www.gvfd40.org/)
- Emory Grove, Maryland (http://emorygrove.homestead.com/index.html)
- Baltimore County Office of Planning, Historic Preservation (http://www.baltimorecountymd.gov/Agencies/planning/historic_preservation/index.html)
- Reisterstown, Owings Mills, Glyndon Chamber of Commerce (http://www.romgchamber.org/)
- Glyndon United Methodist Church (http://glyndonumchurch.org/)
- Sacred Heart Parish of Glyndon (http://www.sacredheartofglyndonmd.org/)

Retrieved from "https://en.wikipedia.org/w/index.php?title=Glyndon,_Maryland&oldid=984847292"

This page was last edited on 22 October 2020, at 13:31 (UTC).

Text is available under the Creative Commons Attribution-ShareAlike License; additional terms may apply. By using this site, you agree to the Terms of Use and Privacy Policy. Wikipedia® is a registered trademark of the Wikimedia Foundation, Inc., a non-profit organization.

Board of Appeals

Case No: 19-342 SPHA Case Name: Donna Bair

Exhibit List

Party: People's Counsel Date: 2/6/2020

Exhibit No:	Description:
✓ 1	Neighborhood Aerial Photo 2017
✓ 2	PC Sign In Sheet.
✓ 3	Dept Labor Website Realtor Info
✓ 2A	PC Additional Sign In Sheet.
✓ 4A-B	Dept Labor Realtor Supp Info.
	VERIFIED BY _____ DATE: _____

ID only

KC 2/7/2020

People's Counsel Sign-In Sheet

People's Counsel
CBA Exhibit
2

Case Name: DONNA BAIR
Case No.: 2019-342-SPHA
Date: 2/6/2020

The Office of People's Counsel was created by the County Charter to participate in zoning matters on behalf of the public interest. While it does not actually represent community groups or protestants, it will assist in the presentation of their concerns, whether they have their own attorney or not. If you wish to be assisted by People's Counsel, please sign below.

Check to testify	Name	Address	Phone #	Email	Group you represent	Basis of your concerns
	RAMZI HEMADY	4603 Prospect Ave	410-2181638	ramzi.hemady59@gmail.com		
✓	Susan Benson	4813 Butler Rd. Glyndon	410-925-4047	sbenson gomma@aol.com	HGI	Oppose variances after
	Karen Cervino	4716 Butler Rd, Glyndon	410-299-2541	kwcervino@gmail.com	HGI	oppose the fact variances after the fact
	Bryan Maynard	822A Berrymans Ln Reist.	410 2596251	mogman1120@yahoo.com	ROG	Failure of Bult. Co. Permits Dept
	Patricia Gordon	823A Berrymans Ln Reist	410 833-0508	pgordonmaynard@yahoo.com	ROG	over Neighbors property
	Mary Molinaro	215 Chartley Dr. Reist	410-908-0724	mmolinaro@reisterstown.com	ROG	no permits built on someone else's property
	Noel Levy	11 Windsong Ct. 21208	410-486-1541	megamapster@verizon.net		Property Rights violation
	David Hughes	2 Albright Ave. 21071	410-526-0248	davidghugherrpt@comcast.net		oppose variances
	Judith Hughes	2 Albright Ave 21071	"			against variance
	CARLYLE MONTANYE	4600 PROSPECT AVE, 21071	410-833-0820	LYLE@LT-MONLINE.NET		OPPOSE ALL VARIANCES
	Jacob Wroe	317 Central AVE, 21071	443-797-9042	jacobwroe@gmail.com		against variances
	JAMES WROE	4804 BUTLER RD 21071	443 690 4673	wroe@mindspring.com	HGI, GCA, RESIDENT	"OPPOSE" VARIANCES
	RAYMOND LONG	114 HANOVER RD 21136	443-797-4961	linda.long769@gmail		" "
	Linda Long	" " " "	443 797 4965	"	"	" "
	CHARLES WELSH	4601 PROSPECT AVE, 21071	410-207-6607	prospect1990@msn.com		OPPOSE VARIANCES
	Anna Welsh	4601 Prospect Ave 21071	410 526 0688	prospect1990@msn.com		*NO PERMITS OPPOSE VARIANCES
	Frances Acle	4606 Prospect Ave 21071	410-627-8415	franacle@aol.com		OPPOSE ALL Variances
	Kim Montanye	4609 Prospect Ave. 21136				
	Cookie Stone	233 Tidyman Rd 21136	410-984-2554	cstone@longfestaw		oppose variances
	Kim KARLSEN	304 Hammond Ave PO306	4109609302	perardkim@aol.com	Glyndon Comm. Assoc	oppose appeal for variance encroachment variance
	Patricia Fradkin	4605 Prospect Ave GLYNDON 21071	443-744-1225	PFradkin003@gmail		

People's Counsel Sign-In Sheet

Case Name: Donna Bair

Case No.: 2019-342-SPHA

Date: 2/6/2020

The Office of People's Counsel was created by the County Charter to participate in zoning matters on behalf of the public interest. While it does not actually represent community groups or protestants, it will assist in the presentation of their concerns, whether they have their own attorney or not. If you wish to be assisted by People's Counsel, please sign below.

Check to testify	Name	Address	Phone #	Email	Group you represent	Basis of your concerns
✓	STEVE FRANCIS	4605 PROSPECT AVE	443 841 6700	WESTLAXCOACH@GMAIL.COM	OPPOSE ALL VARIANCES	
✓	Thomas Montanye	4609 Prospect Ave	4109353526	tome.montanye.net	Oppose Variances	

People's Counsel Sign-In Sheet

Case Name: Donna V. Bair
Case No.: 2019 342 SPHA
Date: 2-6-20

People's Counsel
CBA Exhibit
2A

The Office of People's Counsel was created by the County Charter to participate in zoning matters on behalf of the public interest. While it does not actually represent community groups or protestants, it will assist in the presentation of their concerns, whether they have their own attorney or not. If you wish to be assisted by People's Counsel, please sign below.

Check to testify	Name	Address	Phone #	Email	Group you represent	Basis of your concerns
	Jeffrey Beher	4611 Prospect Ave	410-905-8074	jeb52055@msn.com		concerned neighbor.
	See attached					

NOEL LEVY

for Democratic Central Committee
District 11, Baltimore County



Vote in the Democratic Primary, Tuesday, June 26

11 Windsong Court
Pikesville, MD 21208-1930
410-486-1541
megamapster@verizon.net

34

Maryland
DEPARTMENT OF LABOR

Results for Active Licensed Real Estate: 3

The following results do not include current licensees who are on inactive status.

Name	Trade Name	Address	City	State	Zip	Expiration	Category	Reg. #
DONNA V BAIR	CENTURY 21 THE REAL ESTATE	8230 RITCHIE HIGHWAY RITCHIE HWY	PASADENA	MD	21122	2020-03-04	SALESPERSON	533281
DANA K BAIRD	REGAL REALTY	100 WEST ROAD SUITE 300	TOWSON	MD	21204	2021-02-28	SALESPERSON	623874
DAVID WALLACE BAIRD IV	CUSHMAN & WAKEFIELD OF MARYLAND LLC	ONE EAST PRATT STREET SUITE 700	BALTIMORE	MD	21202	2021-01-28	ASSOCIATE BROKER	17047

[NEW SEARCH FOR ACTIVE LICENSED INDIVIDUALS]

[Home] [Return to Licensing Queries]

ID only

People's Counsel
CBA Exhibit
3

Maryland
DEPARTMENT OF LABOR

Results for Active Licensed Real Estate: 1

The following results do not include current licensees who are on inactive status.

Name	Trade Name	Address	City	State	Zip	Expiration	Category	Reg. #
DONNA V BAIR	CENTURY 21 THE REAL ESTATE	8230 RITCHIE HIGHWAY RITCHIE HWY	PASADENA	MD	21122	2020-03-04	SALESPERSON	533281

[NEW SEARCH FOR ACTIVE LICENSED INDIVIDUALS]

[Home] [Return to Licensing Queries]

3 of 5

People's Counsel
CBA Exhibit
4A-4B

importance : selling agent highlighted

Agent Full

4607 Prospect Ave, Glyndon, MD 21071 | **Closed** | **Residential** | **$320,500**





MLS #:	1003026450	Beds:	3
Tax ID #:	04040416015450	Baths:	2 / 1
Ownership Interest:	Fee Simple	Year Built:	1951
Structure Type:	Detached	Style:	Ranch/Rambler
Levels/Stories:	2	Central Air:	Yes
Waterfront:	No	Basement:	Yes
Garage:	Yes		

Location

County:	Baltimore, MD	Election District:	4
Subdiv / Neigh:	GLYNDON		

Taxes and Assessment

Tax Annual Amt / Year:	$3,800 / 2013	Tax Assessed Value:	$246,800 / 2014
County Tax:	$2,991 / Annually	Imprv. Assessed Value:	$164,400
		Land Assessed Value:	$82,400
		Special Assmt:	Annually
		Tax Other Annual Assmt:	$809
		Historic:	No

Rooms

			Bed	Bath
Den:	Lower 1	12 x 8	Main	3	2 Full, 1 Half
Family Room:	Lower 1	18 x 13			
Bedroom:	Main	11 x 9			
Master Bedroom:	Main	12 x 9			
Bedroom:	Main	11 x 9			
Dining Room:	Main	15 x 8			
Kitchen:	Main	10 x 8			
Living Room:	Main	15 x 11, Fireplace - Wood Burning			
Other:	Main	6 x 9			

Building Info

Tax Total Fin SQFT:	1,493	Construction Materials:	Vinyl Siding
Basement Type:	Connecting Stairway, Fully Finished, Heated, Improved, Outside Entrance		

Lot

Lot Acres / SQFT:	0.78a / 33,976sf

Interior Features

Interior Features:	Dining Area, 1 Fireplace(s), Dishwasher, Disposal, Dryer-Front Loading, Exhaust Fan, Extra Refrigerator/Freezer, Microwave, Oven/Range-Gas, Refrigerator, Washer- Fr Accessibility Features: None

Exterior Features

Exterior Features:	Pool: Yes - Personal, Other Structures: Cabana/Pool House, Shed

Parking

Parking:	Attached Garage, 1 Total Garage Spaces, 1 Attached Garage Spaces, 1 Total Garage and Parking

EXHIBIT 4B

Spaces

Utilities

Utilities:	Central A/C, Cooling Fuel: Electric, Heating: Forced Air, Heating Fuel: Natural Gas, Wood, Hot Water: Natural Gas, Water Source: Public, Sewer: Public Septic, Public Sewer

Remarks

Inclusions:	Parking Included In ListPrice,Parking Included In SalePrice
Agent:	CHARMING RANCHER IN HISTORIC GLYNDON. GREAT FOR ENTERTAINING WITH LARGE LEVEL LOT WITH IN-GROUND POOL ON PRIVATE CUL-DE-SAC. POOL HAS NEW LINER, FILTER AND HIGH QUALITY COVER. HANG OUT ON THE 2 TEIR DECK OR THE POOLSIDE CABANA. ROAST MARSHMELLOWS IN THE FIRE PIT THIS SUMMER. 2 A/C UNITS, 1 CAR GARAGE, 2 DRIVEWAYS. BATHROOMS REMODELED, STAINLESS STEEL APPLIANCES, FIREPLACE IN THE LIVING ROOM
Public:	CHARMING RANCHER IN HISTORIC GLYNDON. GREAT FOR ENTERTAINING WITH LARGE LEVEL LOT WITH IN-GROUND POOL ON PRIVATE CUL-DE-SAC. POOL HAS NEW LINER, FILTER AND HIGH QUALITY COVER. HANG OUT ON THE 2 TEIR DECK OR THE POOLSIDE CABANA. ROAST MARSHMELLOWS IN THE FIRE PIT THIS SUMMER. 2 A/C UNITS, 1 CAR GARAGE, 2 DRIVEWAYS. BATHROOMS REMODELED, STAINLESS STEEL APPLIANCES, FIREPLACE IN THE LIVING ROOM

Listing Office

Listing Agent:	Stacy Buckley (3054311) (Lic# Unknown)		(443) 277-0030
Listing Agent Email:	sbuckley3.1.6@gmail.com		
Broker of Record:	Shawn Guzzo (3049188) (Lic# 6291 - MD)		
Listing Office:	Coldwell Banker Residential Brokerage (CBRB35) (Lic# Unknown) 1130 Baltimore Blvd, Westminster, MD 21157-0000		
Office Manager:	Sharon Crisafulli (77620) (Lic# Unknown)		
Office Phone:	(410) 876-1666	Office Fax:	(410) 876-2662
Co-Listing Agent:	Robert Korrell (28128)		(443) 398-4858
Co-Listing Agent Email:	robert.korrell@century21.com		

Directions

Butler to Waugh, slight right on Prospect, property on the right

Compensation

Buyer Agency Comp:	2.5%%	Sub Agency Comp:	2.5%%
		Dual/Var Comm:	No

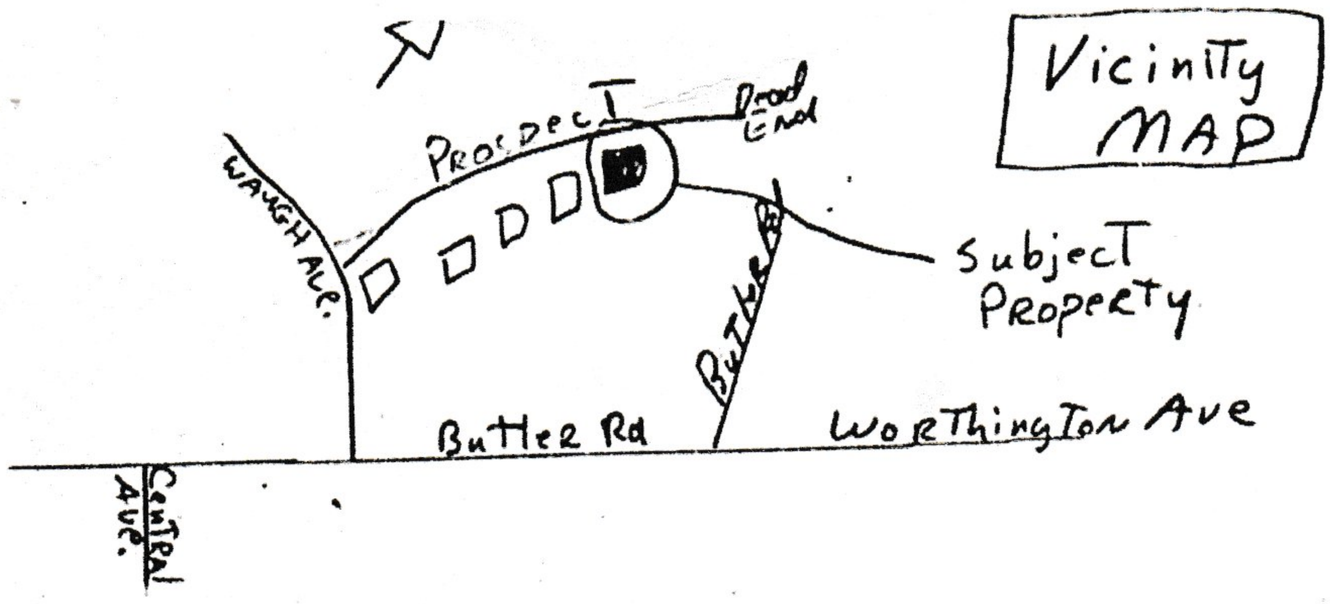
Listing Details

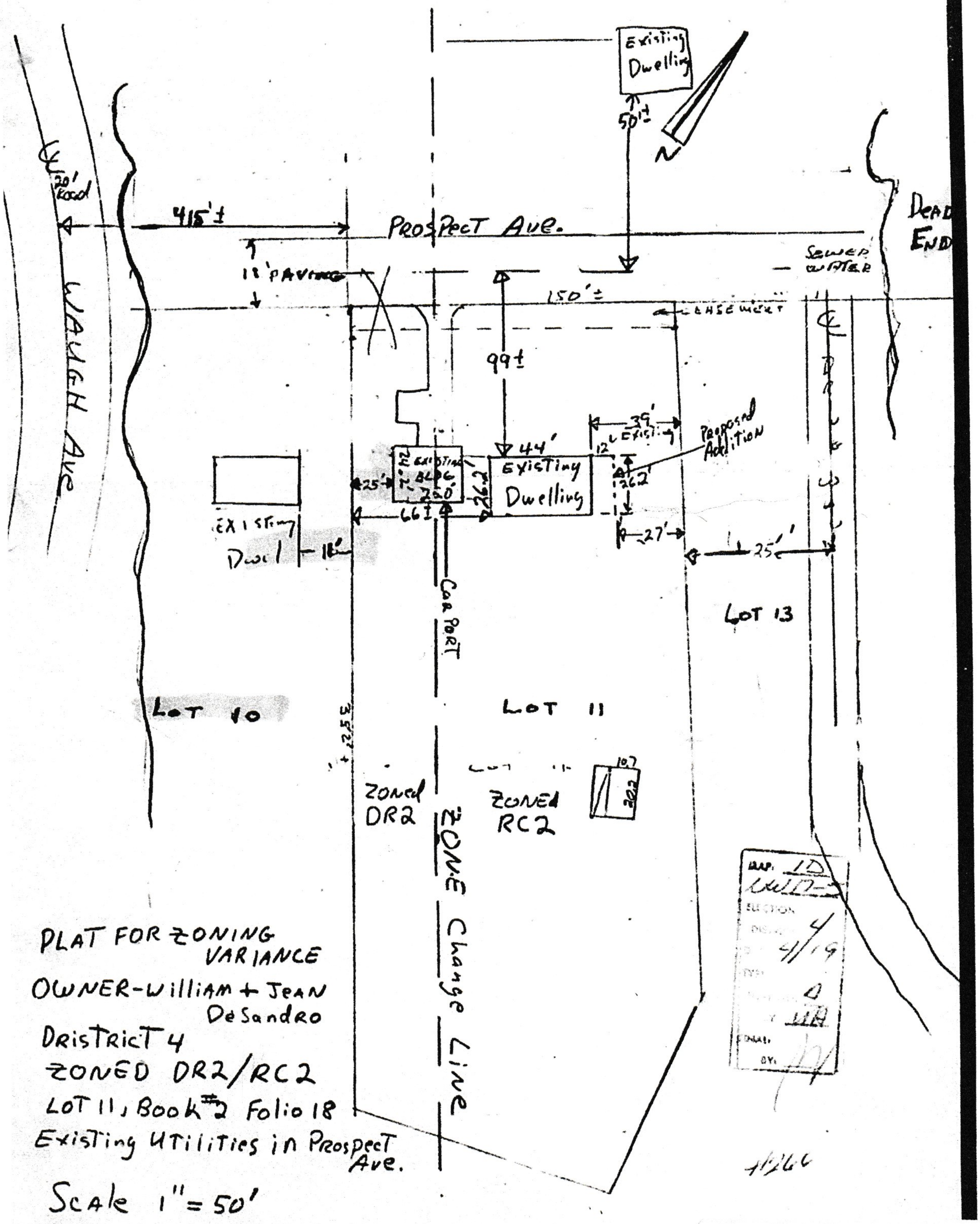
Original Price:	$339,000	Owner Name:	Devaney
Vacation Rental:	No	DOM / CDOM:	11 / 11
Listing Agrmnt Type:	Exclusive Right	Original MLS Name:	MRIS
Prospects Excluded:	No	Off Market Date:	07/19/14
Dual Agency:	Yes		
Sale Type:	Standard		
Original MLS Number:	BC8363040		
Listing Term Begins:	05/30/2014		
Listing Entry Date:	05/30/2014		
Possession:	Negotiable		
Disclosures:	Prop Disclosure		

Sale/Lease Contract

Selling Agent:	Donna Bair (78898) (Lic# Unknown)		(443) 929-2255
Selling Agent Email:	donna.bair@yahoo.com		
Selling Office:	CENTURY 21 The Real Estate Centre (CREC2) (Lic# Unknown) Gary Hoffer (51417) (Lic# 517288 - MD) 135 East Main St, Westminster, MD 21157-0000		
Office Phone:	(410) 876-1477	Office Fax:	(410) 876-9218
Selling Office Email:	garyhoffer@realtysells.com		
Concessions:	No		
Agreement of Sale Dt:	06/09/14	Close Date:	07/18/14
		Close Price:	$320,500.00
Buyer Financing:	Cash	Last List Price:	$339,000.00

© BRIGHT MLS - All information, regardless of source, should be verified by personal inspection by and/or with the appropriate professional(s). The information is not guaranteed. Measurements are solely for the purpose of marketing, may not be exact, and should not be relied upon for loan, valuation, or other purposes. Copyright 2020. Created: 01/22/2020 11:21 PM


Vicinity MAP
PROSPECT
Dead End
WAUGH AVE.
BUTLER RD
Subject Property
Butler Rd
Worthington Ave
Central Ave.


Existing Dwelling
50'±
N
20' Road
WAUGH AVE
415'±
PROSPECT AVE.
DEAD END
18' PAVING
150'±
SEWER & WATER
EASEMENT
99±
44'
39'
12' EXISTING
Proposed Addition
26.2'
EXISTING Dwelling
25'
66'±
EXISTING Dwel
18'
CAR PORT
27'
25'
LOT 13
LOT 10
LOT 11
225'±
ZONED DR2
ZONED RC2
ZONE Change Line
107
202
PLAT FOR ZONING VARIANCE
OWNER-William + Jean DeSandro
DISTRICT 4
ZONED DR2/RC2
LOT 11, Book #2 Folio 18
Existing UTILITIES in Prospect Ave.
Scale 1" = 50'

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a

Variance from Section 1A01.3.A.1 To permit a sideyard setback of 25 feet

instead of the required 35 feet

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (Indicate hardship or practical difficulty)

1. As a matter of right
2. County Council to rezone in November, 1984, and we are petitioning the council as well
3. Property in question is already hooked up to county sewer and water
4. Part of property is zoned OS2 and other part of property is zoned DC2
5. Design and layout of the house precludes constructing the proposed addition in any other way.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

I/We do 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 Petition.

Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State

Attorney for Petitioner:

(Type or Print Name)

Signature

Address

City and State

Legal Owner(s):

William K. DeSandro

(Type or Print Name)

William K. DeSandro

Signature

Joan M. DeSandro

(Type or Print Name)

Joan M. DeSandro

Signature

4605 Prospect Avenue 594-1706

Address Phone No.

Glyndon, Maryland 21071

City and State

Name, address and phone number of legal owner, con-tract purchaser or representative to be contacted

William K. DeSandro

Name

4605 Prospect Ave. 517-1930

Address Business Phone No.

Attorney's Telephone No.:

ORDERED By The Zoning Commissioner of Baltimore County, this 11th day of April, 1984, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation through-out Baltimore County, that property be posted, and that the public hearing be held before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 9th day of May, 1984, at 9:45, a.m.

Zoning Commissioner of Baltimore County.

(over)

BALTIMORE COUNTY

ZONING PLANS

ADVISORY COMMITTEE

PETITION AND SITE PLAN

EVALUATION COMMENTS

Item #266 (1983-1984)
Property Owner: William K. DeSandro, et ux
Location: S/S Prospect Avenue 415' S/E of Waugh Avenue (4605 Prospect Avenue)
Acres: 100 x 150
District: 8th

84-332-A

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. Arnold Jablon, Zoning Commissioner
Office of Planning and Zoning Date: May 15, 1984

FROM: Ian J. Forrest

SUBJECT: Zoning Variance Items
Meeting - April 17, 1984

The Baltimore County Department of Health has reviewed the following zoning items and does not anticipate any health hazards at this time regarding these items.

Item #260 - Dennis Fisher, et ux
Item #262 - Arthur H. Dingley, III, et ux
Item #266 - William K. DeSandro, et ux
Item #267 - Joseph D. Deigert, et al
Item #268 - Robert N. Lewis, et ux
Item #269 - Dale G. Forte

Ian J. Forrest, Director
BUREAU OF ENVIRONMENTAL SERVICES

IJF/fth

84-332-A

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Your petition has been received and accepted for filing this 17th day of April, 1984.

Arnold Jablon
Zoning Commissioner

Petitioner: William K. DeSandro, et ux Received by: William K. DeSandro
Petitioner's Attorney:

Nicholas B. Commodari
Chairman, Zoning Plans Advisory Committee

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

May 21, 1984

County Office Bldg.
111 W. Chesapeake Ave.
Towson, Maryland 21204

Nicholas B. Commodari
Chairman

MEMBERS
Bureau of Engineering
Department of Traffic Engineering
State Roads Commission
Bureau of Fire Prevention
Health Department
Project Planning
Building Department
Board of Education
Zoning Administration
Industrial Development

Mr. & Mrs. William K. DeSandro
4605 Prospect Avenue
Glyndon, Maryland 21071

RE: Item No. 266 - Case No. 84-332-A
William K. DeSandro, et ux
Variance Petition

Dear Mr. & Mrs. DeSandro:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. The Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

In view of your proposal to construct an addition to the side of the existing dwelling within 25 feet of the side property line, this hearing is required. As stated in our previous conversation, the site plan indicates a setback of 27 feet from the side property line. However, it was your decision to have the petition advertised as requesting a 25 foot side setback to allow some flexibility in construction.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours,

Nicholas B. Commodari
NICHOLAS B. COMMODARI, Chairman
Zoning Plans Advisory Committee

NBC:bsc
Enclosures

BALTIMORE COUNTY
DEPARTMENT OF PUBLIC WORKS
TOWSON, MARYLAND 21204

PAUL H. REINCKE
CHIEF

May 17, 1984

Mr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Re: Item #266 (1983-1984)
Property Owner: William K. DeSandro, et ux
S/S Prospect Avenue 415' S/E from centerline Waugh Avenue
Acres: 100 x 150 (to be all "Deeded to Depletion" - 1.5)
District: 8th

Dear Mr. Jablon:

The following comments are furnished in regard to the plat submitted to this office for review by the Zoning Advisory Committee in connection with the subject item.

General:

Baltimore County highway and utility improvements are not directly involved.

Prospect Avenue, an existing public road, is proposed to be further improved in the future as a 30-foot closed section roadway on a 50-foot right-of-way with a standard type roadway termination at the end thereof.

Development of this property through stripping, grading and stabilization could result in a sediment pollution problem, damaging private and public holdings downstream of the property. A grading permit is, therefore, necessary for all grading, including the stripping of top soil.

The Petitioner must provide necessary drainage facilities (temporary or permanent) to prevent creating any nuisances or damages to adjacent properties, especially by the concentration of surface waters. Correction of any problem which may result, due to improper grading or improper installation of drainage facilities, would be the full responsibility of the Petitioner.

This office has no further comment in regard to the plan submitted for Zoning Advisory Committee review in connection with this item (1983-1984).

Very truly yours,

Robert A. Morton
ROBERT A. MORTON, P.E., Chief
Bureau of Public Services

RAM:EAH:ss

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
TOWSON, MARYLAND 21204
494-3351

WILLIAM E. HAMMOND
DIRECTOR

Mr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

4-26-84

Re: Zoning Advisory Meeting of 4-17-84
Item # 266
Property Owner: William K. DeSandro, et ux
Location: S/S Prospect Ave., 415' S/E of c/l of Waugh Ave.

Dear Mr. Jablon:

The Division of Current Planning and Development has reviewed the subject petition and offers the following comments. The items checked below are applicable.

(X) There are no site planning factors requiring comment.
( ) A County Review Group Meeting is required.
( ) A County Review Group Meeting was held and the minutes will be forwarded by the Bureau of Public Services.
( ) This site is part of a larger tract; therefore it is defined as a subdivision. The plan must show the entire tract.
( ) A record plat will be required and must be recorded prior to issuance of a building permit.
( ) The access is not satisfactory.
( ) The circulation on this site is not satisfactory.
( ) The parking arrangement is not satisfactory.
( ) Parking calculations must be shown on the plan.
( ) This property contains soils which are defined as wetlands, and development on these soils is prohibited.
( ) Construction in or alteration of the floodplain is prohibited under the provisions of Section 22-98 of the Development Regulations.
( ) Development of this site may constitute a potential conflict with the Baltimore County Master Plan.
( ) The amended Development Plan was approved by the Planning Board on
( ) Landscaping should be provided on this site and shown on the plan.
( ) The property is located in a traffic area controlled by a "D" level intersection as defined by Bill 178-79, and as conditions change traffic capacity may become more limited. The Basic Services Areas are re-evaluated annually by the County Council.
( ) Additional comments:

Eugene A. Bober
Chief, Current Planning and Development

cc: James Hoswell

BALTIMORE COUNTY
FIRE DEPARTMENT
TOWSON, MARYLAND 21204-2586
494-4500

PAUL H. REINCKE
CHIEF

May 7, 1984

Mr. William Hammond
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, Maryland 21204

Attention: Nick Commodari, Chairman
Zoning Plans Advisory Committee

RE: Property Owner: William K. DeSandro, et ux

Location: S/S Prospect Avenue 415' S/E from c/l Waugh Avenue

Item No.: 266 Zoning Agenda: Meeting of 4/17/84

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

( ) 1. Fire hydrants for the referenced property are required and shall be located at intervals of _____ feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.

( ) 2. A second means of vehicle access is required for the site.

( ) 3. The vehicle dead end condition shown at _____

EXCEEDS the maximum allowed by the Fire Department.

( ) 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

(X) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1976 Edition prior to occupancy.

( ) 6. Site plans are approved, as drawn.

( ) 7. The Fire Prevention Bureau has no comments, at this time.

Reviewer: Lt. Howard Kelly Approved: George M. Wagner
Planning Group
Special Inspection Division

Noted and Approved: George M. Wagner
Fire Prevention Bureau

jmb

BALTIMORE COUNTY
DEPARTMENT OF PERMITS & LICENSES
TOWSON, MARYLAND 21204
494-3610

TED ZALESKI, JR.
DIRECTOR

Mr. Arnold Jablon, Zoning Commissioner
Office of Planning and Zoning
County Office Building
Towson, Maryland 21204

April 23, 1984

Dear Mr. Jablon:

Comments on Item # 266 Zoning Advisory Committee Meeting are as follows:

Property Owner: William K. DeSandro, et ux
Location: S/S Prospect Avenue 415' S/E of c/l Waugh Avenue
Existing Zoning: D.R. 3.5 & D.C. 2
Proposed Zoning: Variance to permit a side yard setback of 25' in lieu of the required 35'.

Acres: Lot #11 "Deeded to Depletion" 0.18
District: 8th

The items checked below are applicable:

( ) All structures shall conform to the Baltimore County Building Code (BOCA/Supplement and the Council of American Building Officials (CABO) Standards and other applicable Codes.

( ) A building( ) shall ( ) other _____ permit shall be required before beginning construction.

( ) Residential: Three sets of construction drawings are required to file a permit application. Architect/Engineer seal is/are not required. Non-residential sets and signatures are required on Plans and Technical Data.

( ) Commercial: Three sets of construction drawings with a Maryland Registered Architect or Engineer shall be required to file a permit application.

( ) An exterior wall erected within 6'0 feet of an adjacent lot line shall be of one hour fire resistive construction, no openings permitted within 3'0 of lot lines. A firewall is required of construction or as the 1st time, see Table 401, line 2, Section 1407 and Table 1401, also Section 505.1.

( ) Requested variance appears to conflict with the Baltimore County Building Code, Section/s _____

( ) A change of occupancy shall be applied for, along with an alternate permit application, and three required sets of drawings indicating how the structure will meet the Code requirements for the proposed change. Drawings may require a professional seal.

( ) Before this office can comment on the above structure, please have the owner, thru the services of a Registered in Maryland Architect or Engineer certify to this office, that, the structure for which a proposed change in use is proposed can comply with the height/area requirements of Table 505 and the required construction classification of Table 601.

( ) Comments

NOTE: These comments reflect only on the information provided by the drawings submitted to the office of Planning and Zoning and are not intended to be construed as the full extent of any permit. If desired, additional information may be obtained by visiting Room 122 (Plans Review) at 111 W. Chesapeake Ave., Towson.

Very truly yours,

Charles E. Burnham, Chief
Plans Review

CEB:rrj

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Elizabeth K Dinges
4603 Prospect Ave
Glyndon, Md 21071

PETITIONER'S EXHIBIT 1

MICROFILMED

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Barry W. Thomas
4606 Prospect Ave.
Glyndon, Md.
21071

MICROFILMED

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

[illegible]
4607 Prospect Ave
Glyndon, Md. 21071
[illegible]

MICROFILMED

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Marie Maevere
(Mrs Karl F.)
4615 Prospect Av
Glyndon, Md
21071

MICROFILMED

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Carlyle N Montenegro Jr.
4500 Prospect Ave.
Glyndon, MD 21071

MICROFILMED

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Thos. P. Walton
4610 Prospect ave
Glyndon, Md 21071

MICROFILMED

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Alma S. Whiteside
4601 Prospect Ave
Glyndon, Md. 21071

MICROFILMED

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

84-332-A

District: R.C.
Date of Posting: 5-11-84
Posted for: Variance
Petitioner: William R. DeSandro et ux
Location of property: S.E/S of Prospect Ave., 415' NE of Waugh Avenue (4605 Prospect Ave.)
Location of Signs: in front of 4605 Prospect Avenue
Remarks:
Posted by: [illegible]
Signature
Date of return: 5-18-84
Number of Signs: 1

MICROFILMED

[illegible]NITY NEWSPAPERS OF MARYLAND, INC.

Westminster, Md., May 10 19 84

[illegible]TIFY that the annexed Petition for Variance [illegible] (one) successive weeks/days previous [illegible]y of May 19 84 in the [illegible]ounty Times, a daily newspaper published in Westminster, Carroll County, Maryland. [illegible]rroll Herald, a weekly newspaper published in Eldersburg, Carroll County, Maryland. [illegible]y Times, a weekly newspaper published in Reisterstown, Baltimore County, Maryland.

[illegible]NITY NEWSPAPERS OF MARYLAND, INC.

Per

MICROFILMED

MAR 14 1985

appearing that strict compliance with the Baltimore County Zoning Regulations would ~~unable~~ result in practical difficulty and unreasonable hardship upon the Petitioner(s) and the granting of the variance(s) requested will will not adversely affect the health, safety, and general welfare of the community, the variance(s) should ~~should~~ not be granted.

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 22nd day of June, 19 84, that the herein Petition for Variance(s) to permit A side yard setback of 27 feet in lieu of the required 35 feet for the proposed addition, in accordance with the site plan filed herein, is GRANTED, from and after the date of this Order, subject, however, to the approval of a site plan by the Office of Planning and Zoning.

Deputy Zoning Commissioner of Baltimore County

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Elizabeth K Dinges
4603 Prospect Ave
Glyndon, Md 21071

PETITIONER'S EXHIBIT 1

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Sally W Thomas
4608 Prospect Ave
Glyndon Md 21071

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Marie Meyers
(Mrs Karl 7),
4615 Prospect Ave
Glyndon, Md
21071

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Carlyle W Montanye Jr.
4500 Prospect Ave
Glyndon, MD 21071

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Thos L Walsh
4610 Prospect ave
Glyndon, md 21071

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Alma L Wolcott
4601 Prospect Ave
Glyndon Md 21071

ZONING DESCRIPTION

Beginning on the southeast side of Prospect Avenue, at the distance of 415 feet measured along the northeast side measured straight to intersect the centerline of Waugh Avenue. Being lot #11 on the plat of Bennett to Regester Book #2, Folio 18. Fourth Election District. Also known as 4605 Prospect Avenue.

PETITION FOR VARIANCE

4th Election District

ZONING: Petition for Variance

LOCATION: Southeast side Prospect Ave., 415 ft. Northeast of Waugh Avenue (4605 Prospect Avenue)

DATE & TIME: Tuesday, May 29, 1984 at 9:45 A.M.

PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

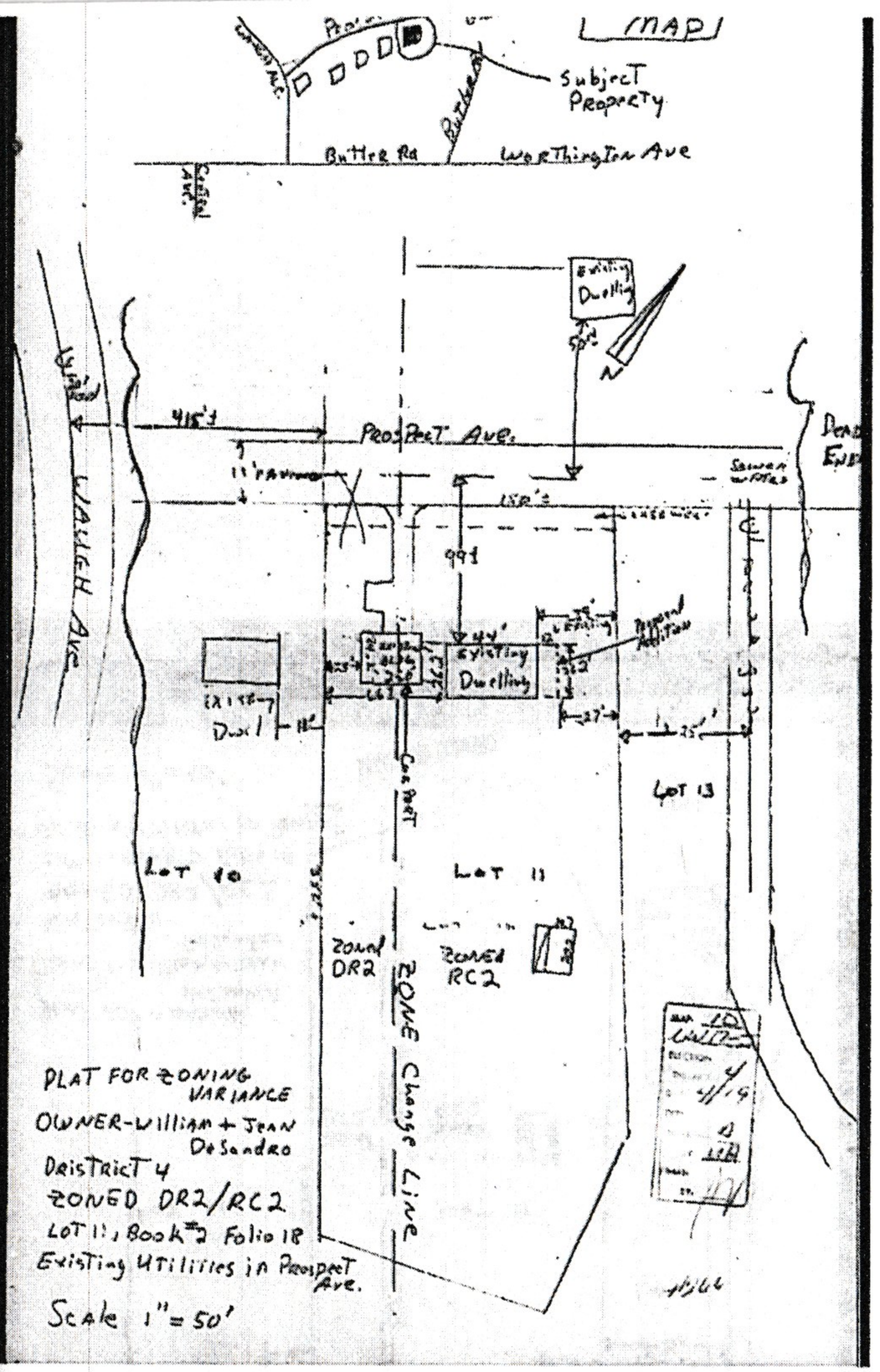
The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

Petition for Variance to permit a side yard setback of 25 ft. instead of the required 35 ft.

Being the property of William R. DeSandro, et ux, as shown on plat plan filed with the Zoning Department.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be received in writing by the date of the hearing set above or made at the hearing.

BY ORDER OF
ARNOLD JABLON
ZONING COMMISSIONER
OF BALTIMORE COUNTY



RE: PETITION FOR VARIANCE
SE/S Prospect Ave., 415' NE of Waugh Ave. (4605 Prospect Ave.);
4th District

WILLIAM R. DeSANDRO, et ux,
Petitioners

: BEFORE THE ZONING COMMISSIONER
: OF BALTIMORE COUNTY
:
: Case No. 84-332-A

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notices should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

Phyllis Cole Friedman
People's Counsel

Peter Max Zimmerman
Deputy People's Counsel
Rm. 223, Court House
Towson, MD 21204
494-2188

I HEREBY CERTIFY that on this 9th day of May, 1984, a copy of the foregoing Entry of Appearance was mailed to Mr. and Mrs. William R. DeSandro, 4605 Prospect Ave., Glyndon, MD 21071, Petitioners.

Peter Max Zimmerman

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

ARNOLD JABLON
ZONING COMMISSIONER

May 22, 1984

Mr. & Mrs. William R. DeSandro
4605 Prospect Avenue
Glyndon, Maryland 21071

Re: Petition for Variance
SE/S Prospect Ave., 415' NE of Waugh Avenue (4605 Prospect Avenue)
Case No. 84-332-A

Dear Mr. & Mrs. DeSandro:

This is to advise you that $51.35 is due for advertising and posting of the above property.

This fee must be paid and our zoning sign and post returned on the day of the hearing before an Order is issued. Do not remove sign until day of hearing.

Please make the check payable to Baltimore County, Maryland, and remit to Mrs. Arlene January, Zoning Office, Room 113, County Office Building, Towson, Maryland 21204, before the hearing.

Sincerely,

ARNOLD JABLON
Zoning Commissioner

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 130510

DATE 5/29/84 ACCOUNT R-01-615-000
AMOUNT $51.35
RECEIVED Jean M. DeSandro
FOR advertising and posting Case #84-332-A

B 684******51350 E284A

VALIDATION OR SIGNATURE OF CASHIER

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Douglas A. Rodgers
4609 Prospect Ave

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Mr. & Mrs. Laurence E. Evans
(Selma E. Evans)
4612 Prospect Ave
Glyndon, Md. 21071

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

ARNOLD JABLON
ZONING COMMISSIONER

June 14, 1984

Mr. and Mrs. William R. DeSandro
4605 Prospect Avenue
Glyndon, Maryland 21071

RE: Petition for Variance
SE/S Prospect Avenue,
415' NE Waugh Avenue
(4605 Prospect Avenue) -
4th Election District
William R. DeSandro, et ux -
Petitioner
No. 84-332-A (Item No. 266)

Dear Mr. and Mrs. DeSandro:

I have this date passed my Order in the above referenced matter in accordance with the attached.

Very truly yours,

JEAN M. H. JUNG
Deputy Zoning Commissioner

JMHJ:mc

Attachments

cc: People's Counsel

May 1, 1984

Mr. & Mrs. William R. DeSandro
4605 Prospect Avenue
Glyndon, Maryland 21071

NOTICE OF HEARING

Re: Petition for Variance
SE/S Prospect Ave., 415' NE of Waugh Avenue (4605 Prospect Avenue)
Case No. 84-332-A

TIME: 9:45 A.M.

DATE: Tuesday, May 29, 1984

PLACE: Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland

Zoning Commissioner
Ste County

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 128246

DATE 4/5/84 ACCOUNT R-01-615000
AMOUNT 35.00
RECEIVED Wm. R. DeSandro
FOR Postage for Item #266
(Ck.) B 835******35001b E084A

VALIDATION OR SIGNATURE OF CASHIER

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

84-332-A

District 8th
Date of Posting 5-11-84
Posted for: Variance
Petitioner: William R. DeSandro, et ux
Location of property: S/S/E of Prospect Ave., 415' NE of Waugh Avenue (4605 Prospect Ave.)
Location of Signs: In front of 4605 Prospect Avenue
Remarks:
Posted by: D. Rath (Signature)
Number of Signs: 1
Date of return: 5-18-84

Petition for Variance
4th Election District

ZONING: Petition for Variance to permit a setback of 25 ft. in lieu of the required 35 ft. and to permit a side yard setback of 10 ft. in lieu of the required 15 ft.
LOCATION: SE/S Prospect Ave., 415 ft. N/East of centerline of Waugh Ave. (4605 Prospect Ave.)
DATE & TIME: Tuesday, May 29, 1984 at 9:45 A.M.
PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Ave., Towson, Maryland

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

Petition for a variance to permit a side yard setback of 10 ft. in lieu of the required 15 ft. and a rear yard setback of 25 ft. in lieu of the required 35 ft. for an existing dwelling.

The Zoning Regulations to be excepted as follows: Section 1A01.3.B.3 of the Baltimore County Zoning Regulations.

All that parcel of land in the Fourth District of Baltimore County

Being the property of William R. DeSandro, et ux as shown on plat plan filed with the Zoning Office.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be received in writing by the date of the hearing set above or presented at the hearing.

BY ORDER OF
ARNOLD JABLON
ZONING COMMISSIONER
OF BALTIMORE COUNTY

COMMUNITY NEWSPAPERS OF MARYLAND, INC.

Westminster, Md. May 10 19 84

...IFY that the annexed Petition for Variance
(Case)..... successive weeks/days previous
...y of..... May ..... 19..84..... in the
...unty Times, a daily newspaper published
in Westminster, Carroll County, Maryland.
...roll Herald, a weekly newspaper published
in Eldersburg, Carroll County, Maryland.
... Times, a weekly newspaper published
...n Reisterstown, Baltimore County, Maryland.

CARROLL COMMUNITY NEWSPAPERS OF MARYLAND, INC.

Per.....

84-332-A

CERTIFICATE OF PUBLICATION



TOWSON, MD., May 10, 19 84

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., ~~successive~~ of ...one... ~~successive~~ before the ...29th... day of ...May..., 19 84, the ~~first~~ publication appearing on the ...10th... day of ...May..., 19 84.

THE JEFFERSONIAN,
D. Frank Streeter
Manager

Cost of Advertisement, $.....

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a

Variance from Section 1401.3.B.1 To permit a pleasure setback of 25 feet

instead of the required 35 feet.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (Indicate hardship or practical difficulty)

1. As a matter of right
2. County Council to rezone in November, 1984, and we are petitioning the council as well
3. Property in question is already hooked up to county sewer and water
4. Part of property is zoned DR2 and other part of property is zoned RC2
5. Design and layout of the house precludes constructing the proposed addition in any other way.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, 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.

I/We do 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 Petition.

Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State

Attorney for Petitioner:

(Type or Print Name)

Signature

Address

City and State

Attorney's Telephone No.:

Legal Owner(s):

William R. DeSandro
(Type or Print Name)
William R. DeSandro
Signature

Joan M. DeSandro
(Type or Print Name)
Joan M. DeSandro
Signature

4605 Prospect Avenue 526-5792
Address Phone No.

Glyndon, Maryland 21071
City and State

Name, address and phone number of legal owner, con-tract purchaser or representative to be contacted

William R. DeSandro
Name

4605 Prospect Ave. 257-1936
Address Business Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 17th day of April, 1984, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 29th day of May, 1984, at 11:15 o'clock A.M.

Zoning Commissioner of Baltimore County.

(over)

BY Mary Carpenter (Clerk)

84-332-A

Posted 4/19

Hearing 4/19

Date 4/19

Phone 4/19

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
TOWSON, MARYLAND 21204
494-3211

NORMAN E. GERBER
DIRECTOR

4-26-84

Mr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Re: Zoning Advisory Meeting of 4-17-84
Item # 266
Property Owner: William R. DeSandro, et ux
Location: S/E/S Prospect Ave., 415' S/E of Waugh Ave.
Existing Zoning: D.R. 1 & D.R. 2
Proposed Zoning: Variance to permit a side yard setback of 15' in lieu of the required 35'.

Dear Mr. Jablon:

The Division of Current Planning and Development has reviewed the subject petition and offers the following comments. The items checked below are applicable.

(X) There are no site planning factors requiring comment.
( ) A County Review Group meeting is required.
( ) A County Review Group meeting was held and the minutes will be forwarded by the Bureau of Public Services.
( ) This site is part of a larger tract; therefore it is defined as a subdivision. The plat must show the entire tract.
( ) A record plat will be required and must be recorded prior to issuance of a building permit.
( ) The access is not satisfactory.
( ) The circulation on this site is not satisfactory.
( ) The parking arrangement is not satisfactory.
( ) Parking calculations must be shown on the plan.
( ) This property contains soils which are defined as wetlands, and development on these soils is prohibited.
( ) Construction in or alteration of the floodplain is prohibited under the provisions of Section 22-98 of the Development Regulations.
( ) Development of this site may constitute a potential conflict with the Baltimore County Master Plan.
( ) The unmapped Development Plan was approved by the Planning Board on
( ) Landscaping should be provided on this site and shown on the plan.
( ) The property is located in a deficient service area as defined by Bill 178-79. No building permit may be issued until a Reserve Capacity Use Certificate has been issued. The deficient service is
( ) The property is located in a traffic area controlled by a "D" level intersection as defined by Bill 178-79, and as conditions change traffic capacity may become more limited. The Basic Services Areas are re-evaluated annually by the County Council.
( ) Additional comments:

Eugene A. Bober
Eugene A. Bober
Chief, Current Planning and Development

cc: James Hoswell

RE: PETITION FOR VARIANCE
SE/S Prospect Ave., 415' NE of Waugh Ave. (4605 Prospect Ave.)
4th District

WILLIAM R. DeSANDRO, et ux,
Petitioners

: BEFORE THE ZONING COMMISSIONER
: OF BALTIMORE COUNTY
: Case No. 84-332-A

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notices should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

Phyllis Cole Friedman
Phyllis Cole Friedman
People's Counsel

Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel
Rm. 223, Court House
Towson, MD 21204
494-2188

I HEREBY CERTIFY that on this 9th day of May, 1984, a copy of the foregoing Entry of Appearance was mailed to Mr. and Mrs. William R. DeSandro, 4605 Prospect Ave., Glyndon, MD 21071, Petitioners.

Peter Max Zimmerman
Peter Max Zimmerman

MICROFILMED

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. Arnold Jablon, Zoning Commissioner
Office of Planning and Zoning
Date: May 16, 1984

FROM: Ian J. Forrest

SUBJECT: Zoning Variance Items
Meeting - April 17, 1984

The Baltimore County Department of Health has reviewed the following zoning items and does not anticipate any Health hazards at this time regarding these items.

Item #260 - Dennis Fisher, et ux
Item #262 - Arthur B. Singley, III, et ux
Item #266 - William R. DeSandro, et ux
Item #267 - Joseph D. Deignet, et al
Item #268 - Robert H. Lonas, et ux
Item #2[illegible] - Lulie G. Forte

Ian J. Forrest, Director
BUREAU OF ENVIRONMENTAL SERVICES

IJF/fth

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

May 21, 1984

COUNTY OFFICE BLDG.
111 W. Chesapeake Ave.
Towson, Maryland 21204

Nicholas B. Commodari
Chairman

MEMBERS
Bureau of Engineering
Department of Traffic Engineering
State Roads Commission
Bureau of Fire Prevention
Health Department
Project Planning
Building Department
Board of Education
Zoning Administration
Industrial Development

Mr. & Mrs. William R. DeSandro
4605 Prospect Avenue
Glyndon, Maryland 21071

RE: Item No. 266 - Case No. 84-332-A
William R. DeSandro, et ux
Variance Petition

Dear Mr. & Mrs. DeSandro:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. The Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

In view of your proposal to construct an addition to the side of the existing dwelling within 25 feet of the side property line, this hearing is required. As stated in our previous conversation, the site plan indicates a setback of 27 feet from the side property line. However, it was your decision to have the petition advertised as requesting a 25 foot side setback to allow some flexibility in construction.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours,
Nicholas B. Commodari
NICHOLAS B. COMMODARI, Chairman
Zoning Plans Advisory Committee

NBC:bsc
Enclosures

BALTIMORE COUNTY
DEPARTMENT OF PUBLIC WORKS
TOWSON, MARYLAND 21204

HARRY J. PISTEL, P.E.
DIRECTOR

W-SW Key Sheet
66 & 67 NW 37 & 38
Pos. Sheets
NW 17 J Topo
43 Tax Map

July 17, 1984

Mr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Re: Item #266 (1983-1984)
Property Owner: William R. DeSandro, et ux
S/ES Prospect Avenue 415' S/E from centerline Waugh Avenue
Acres: Lot #11 "Bennett to Register" 2-18
District: 4th

Dear Mr. Jablon:

The following comments are furnished in regard to the plat submitted to this office for review by the Zoning Advisory Committee in connection with the subject item.

General:

Baltimore County highway and utility improvements are not directly involved.

Prospect Avenue, an existing public road, is proposed to be further improved in the future as a 30-foot closed section roadway on a 50-foot right-of-way with a standard type roadway termination at the end thereof.

Development of this property through stripping, grading and stabilization could result in a sediment pollution problem, damaging private and public holdings downstream of the property. A grading permit is, therefore, necessary for all grading, including the stripping of top soil.

The Petitioner must provide necessary drainage facilities (temporary or permanent) to prevent creating any nuisances or damages to adjacent properties, especially by the concentration of surface waters. Correction of any problem which may result, due to improper grading or improper installation of drainage facilities, would be the full responsibility of the Petitioner.

This office has no further comment in regard to the plan submitted for Zoning Advisory Committee review in connection with this Item 266 (1983-1984).

Very truly yours,
Robert A. Morris
ROBERT A. MORRIS, P.E., Chief
Bureau of Public Services

RAM:EAM:FWR:ss

BALTIMORE COUNTY
FIRE DEPARTMENT
TOWSON, MARYLAND 21204-2586
494-4500

HALE H. REMOTE
CHIEF

May 3, 1984

Mr. William Hammond
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, Maryland 21204

Attention: Nick Commodari, Chairman
Zoning Plans Advisory Committee

RE: Property Owner: William R. DeSandro, et ux

Location: SE/S Prospect Avenue 415' S/E from c/l Waugh Avenue

Item No.: 266 Zoning Agenda: Meeting of 4/17/84

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

( ) 1. Fire hydrants for the referenced property are required and shall be located at intervals or _____ feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.

( ) 2. A second means of vehicle access is required for the site.

( ) 3. The vehicle dead end condition shown at _____

EXCEEDS the maximum allowed by the Fire Department.

( ) 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

(X) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1976 Edition prior to occupancy.

( ) 6. Site plans are approved, as drawn.

( ) 7. The Fire Prevention Bureau has no comments, at this time.

Reviewer: Noted and Approved: George M. Zepp
Planning Group
Special Inspection Division
Fire Prevention Bureau

mb

BALTIMORE COUNTY
DEPARTMENT OF PERMITS & LICENSES
TOWSON, MARYLAND 21204
494-3610

TED ZALESKI JR.
DIRECTOR

April 23, 1984

Mr. Arnold Jablon, Zoning Commissioner
Office of Planning and Zoning
County Office Building
Towson, Maryland 21204

Dear Mr. Jablon:

Comments on Item # 266 Zoning Advisory Committee Meeting are as follows:

Property Owner: William R. DeSandro, et ux
Location: SE/S Prospect Avenue 415' S/E from c/l Waugh Avenue
Existing Zoning: D.R. 1 & D.R. 2
Proposed Zoning: Variance to permit a side yard setback of 15' in lieu of the required 35'.

Acres: Lot #11 "Bennett to Register" 2-18
District: 4th

The items checked below are applicable:

(X) A. All structures shall conform to the Baltimore County Building Code 1981/Council Bill 4-82 [illegible] and other applicable Codes.

(X) B. A building & other [illegible] permit shall be required before beginning construction.

C. Residential: Three sets of construction drawings are required to file a permit application. Architect/Engineer seal is/is not required. Non-reproduced seals and signatures are required on Prints and Technical Data.

D. Commercial: Three sets of construction drawings with a Maryland Registered Architect or Engineer shall be required to file a permit application.

E. An exterior wall erected within 6'0 for Commercial uses or 3'0 for One & Two Family use group of an adjacent lot line shall be of one hour fire resistive construction, no openings permitted within 3'0 of lot lines. A firewall is required if construction is on the lot line, see Table 401, Line 2, Section 1407 and Table 1406, also Section 503.2.

F. Requested variance appears to conflict with the Baltimore County Building Code, Section/s _____.

G. A change of occupancy shall be applied for, along with an alteration permit application, and three required sets of drawings indicating how the structure will meet the Code requirements for the proposed change. Drawings may require a professional seal.

H. Before this office can comment on the above structure, please have the owner, thru the services of a Registered in Maryland Architect or Engineer certify to this office, that the structure for which a proposed change in use is proposed can comply with the height/area requirements of Table 505 and the required construction classification of Table 601.

I. Comments:

NOTE: These comments reflect only on the information provided by the drawings submitted to the office of Planning and Zoning and are not intended to be construed as the full extent of any permit. If desired, additional information may be obtained by visiting Room 122 (Plans Review) at 111 W. Chesapeake Ave., Towson.

Very truly yours,
Charles E. Burnham
Charles E. Burnham, Chief
Plans Review

CEB:rrj

result in practical difficulty and unreasonable hardship upon the Petitioner(s) and the granting of the variance(s) requested will not adversely affect the health, safety, and general welfare of the community, the variance(s) should ~~should~~ not be granted.

Therefore, IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County, this 14th day of June, 1984, that the herein Petition for Variance(s) to permit a side yard setback of 27 feet in lieu of the required 35 feet for the proposed addition, in accordance with the site plan filed herein, is GRANTED, from and after the date of this Order, subject, however, to the approval of a site plan by the Office of Planning and Zoning.

Deputy Zoning Commissioner of Baltimore County

June 14, 1984 (cont.)
BY Mary Commissioner

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

ARNOLD JABLON
ZONING COMMISSIONER

June 14, 1984

Mr. and Mrs. William R. DeSandro
4605 Prospect Avenue
Glyndon, Maryland 21071

RE: Petition for Variance
SE/S Prospect Avenue,
415' NE Waugh Avenue
(4605 Prospect Avenue) -
4th Election District
William R. DeSandro, et ux -
Petitioner
No. 84-332-A (Item No. 266)

Dear Mr. and Mrs. DeSandro:

I have this date passed my Order in the above referenced matter in accordance with the attached.

Very truly yours,

JEAN M. H. JUNG
Deputy Zoning Commissioner

JMHJ:mc

Attachments

cc: People's Counsel

MICROFILMED

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

ARNOLD JABLON
ZONING COMMISSIONER

May 22, 1984

Mr. & Mrs. William R. DeSandro
4605 Prospect Avenue
Glyndon, Maryland 21071

Re: Petition for Variance
SE/S Prospect Ave., 415' NE of Waugh
Avenue (4605 Prospect Avenue)
Case No. 84-332-A

Dear Mr. & Mrs. DeSandro:

This is to advise you that $51.35 is due for advertising and posting of the above property.

This fee must be paid and our zoning sign and post returned on the day of the hearing before an Order is issued. Do not remove sign until day of hearing.

Please make the check payable to Baltimore County, Maryland, and remit to Mrs. Arlene January, Zoning Office, Room 113, County Office Building, Towson, Maryland 21204, before the hearing.

Sincerely,

ARNOLD JABLON
Zoning Commissioner

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 130510

DATE 5/29/84 ACCOUNT R-01-615-000
AMOUNT $51.35
RECEIVED FROM Jean M. DeSandro
FOR advertising and posting Case #84-332-A

VALIDATION OR SIGNATURE OF CASHIER

MICROFILMED

May 1, 19[illegible]

Mr. & Mrs. William R. DeSandro
4605 Prospect Avenue
Glyndon, Maryland 21071

NOTICE OF HEARING

Re: Petition for Variance
SE/S Prospect Ave., 415' NE of Waugh
Avenue (4605 Prospect Avenue)
Case No. 84-332-A

TIME: 9:45 A.M.

DATE: Tuesday, May 29, 1984

PLACE: Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland

Zoning Commissioner
of Baltimore County

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 128246

DATE 4/5/84 ACCOUNT R-01-615-000
AMOUNT 35.00
RECEIVED FROM Wm. DeSandro
FOR Zoning for Prop. #266

VALIDATION OR SIGNATURE OF CASHIER

MICROFILMED

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Douglas A Dalzyrk
4609 Prospect Ave

MICROFILMED

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Mr. & Mrs. Laurence E. Snow
(Helen + Larry)
4612 Prospect Ave.
Glyndon Md 21071

MICROFILMED

ZONING DESCRIPTION

Beginning on the southeast side of Prospect Avenue, at the distance of 415 feet measured along the northeast side measured straight to intersect the centerline of Waugh Avenue. Being lot #11 on the plat of Bennett to Regester Book #2, Folio 18. Fourth Election District. Also known as 4605 Prospect Avenue.

MICROFILMED

PETITION FOR VARIANCE

4th Election District

ZONING: Petition for Variance

LOCATION: Southeast side Prospect Ave., 415 ft. Northeast of Waugh Avenue (4605 Prospect Avenue)

DATE & TIME: Tuesday, May 29, 1984 at 9:45 A.M.

PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

Petition for Variance to permit a side yard setback of 25 ft. instead of the required 35 ft.

Being the property of William R. DeSandro, et ux, as shown on plat plan filed with the Zoning Department.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be received in writing by the date of the hearing set above or made at the hearing.

BY ORDER OF
ARNOLD JABLON
ZONING COMMISSIONER
OF BALTIMORE COUNTY

MICROFILMED

84-332-A

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

County Office Building
111 . Chesapeake Avenue
Towson, Maryland 21204

Your petition has been received and accepted for filing this 17th day of April, 19 84

ARNOLD JABLON
Zoning Commissioner

Petitioner William R. DeSandro, et al
Petitioner's Attorney

Received by: Nicholas B. Commodari
Chairman, Zoning Plans Advisory Committee

84-332-A

CERTIFICATE OF PUBLICATION

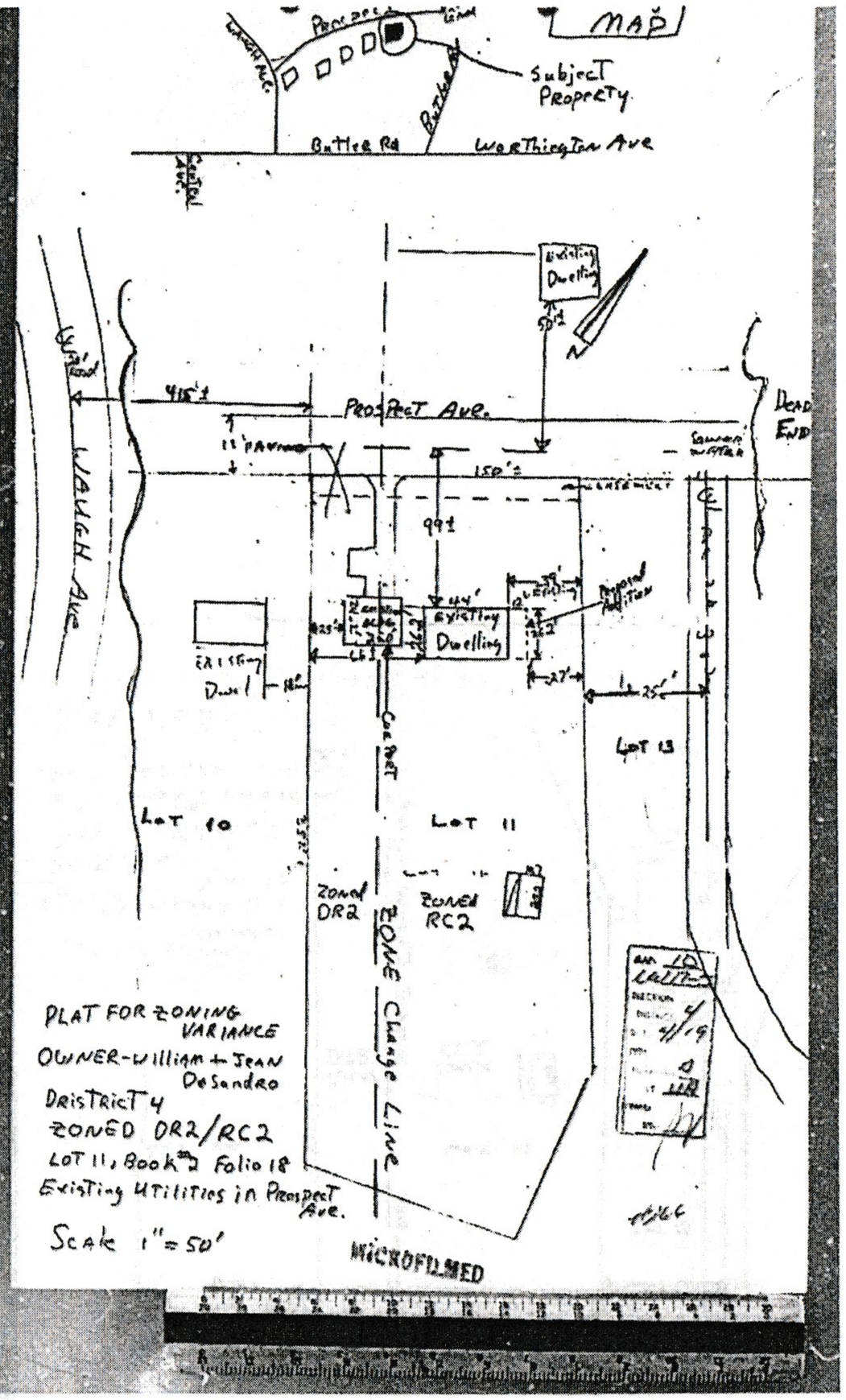
TOWSON, MD., May 10, 19 84

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., of one time before the 29th day of May, 1984, the publication appearing on the 10th day of May 19 84.

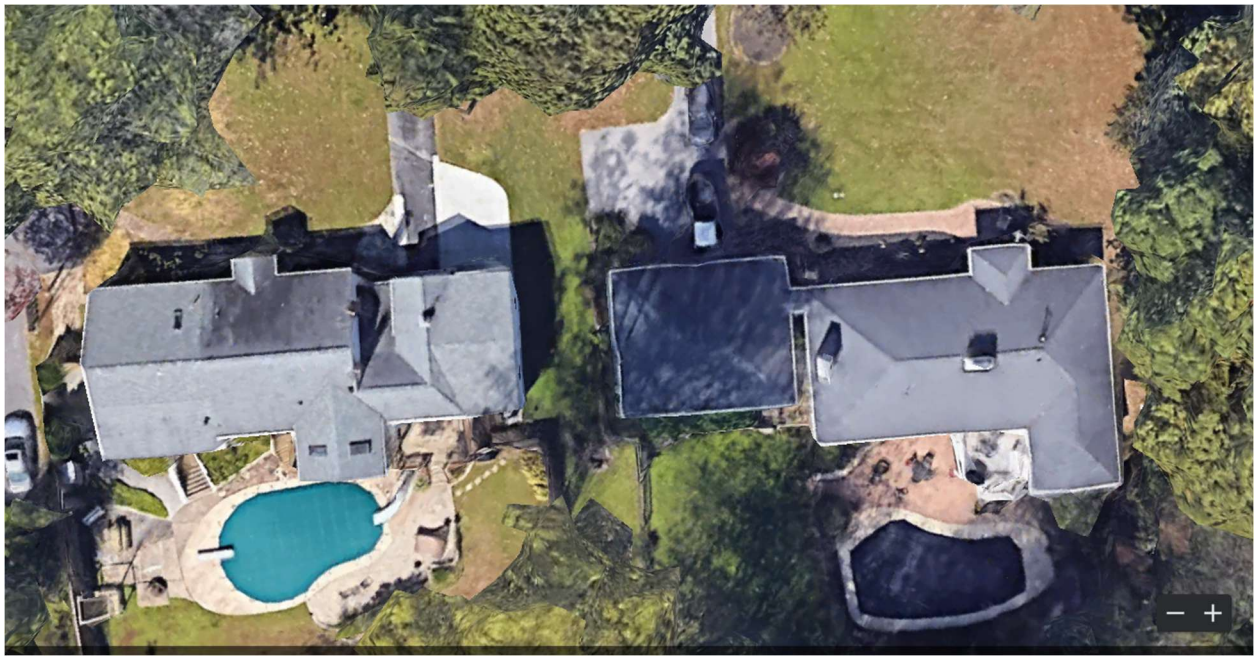
THE JEFFERSONIAN
G. Frank Siriotti
Manager.

Cost of Advertisement, $ 18.00

MICROFILMED



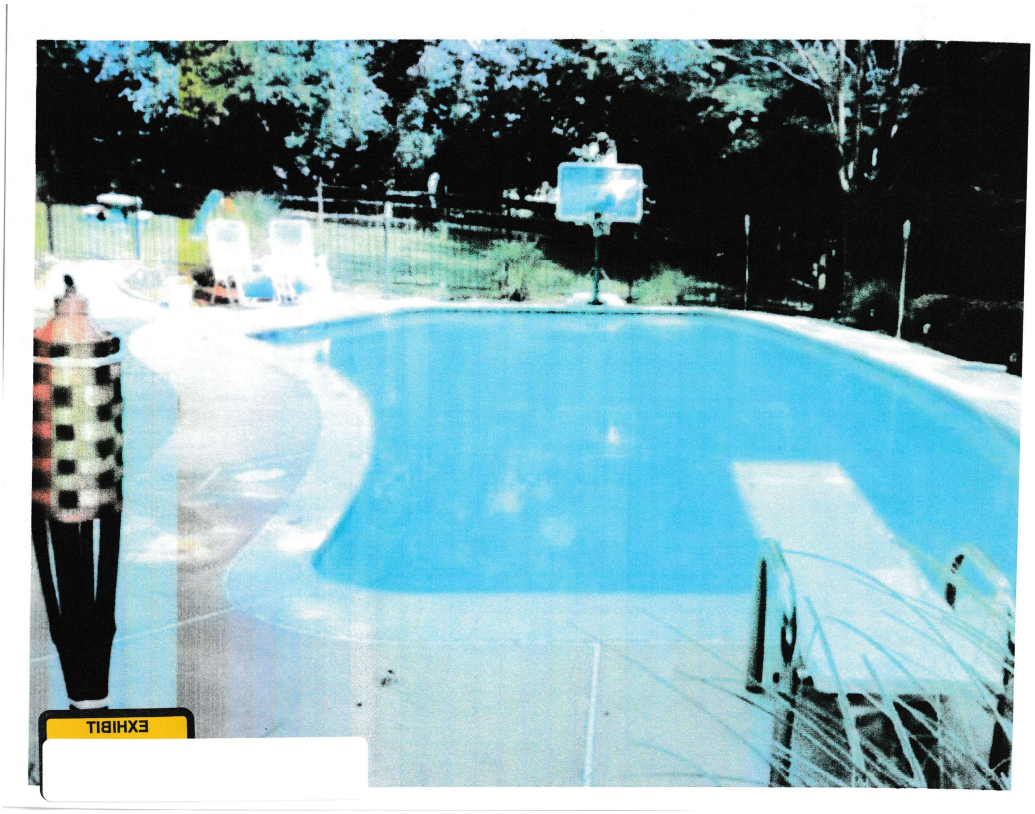
Recent arial depicting destruction of easement between 4607 and 4605 Prospect Avenue. Permitting a zero easement will allow no space should anything happen and need access to rear of property. The white driveway addition and the garage are 2.5’ onto 4605 Prospect Avenue’s property.



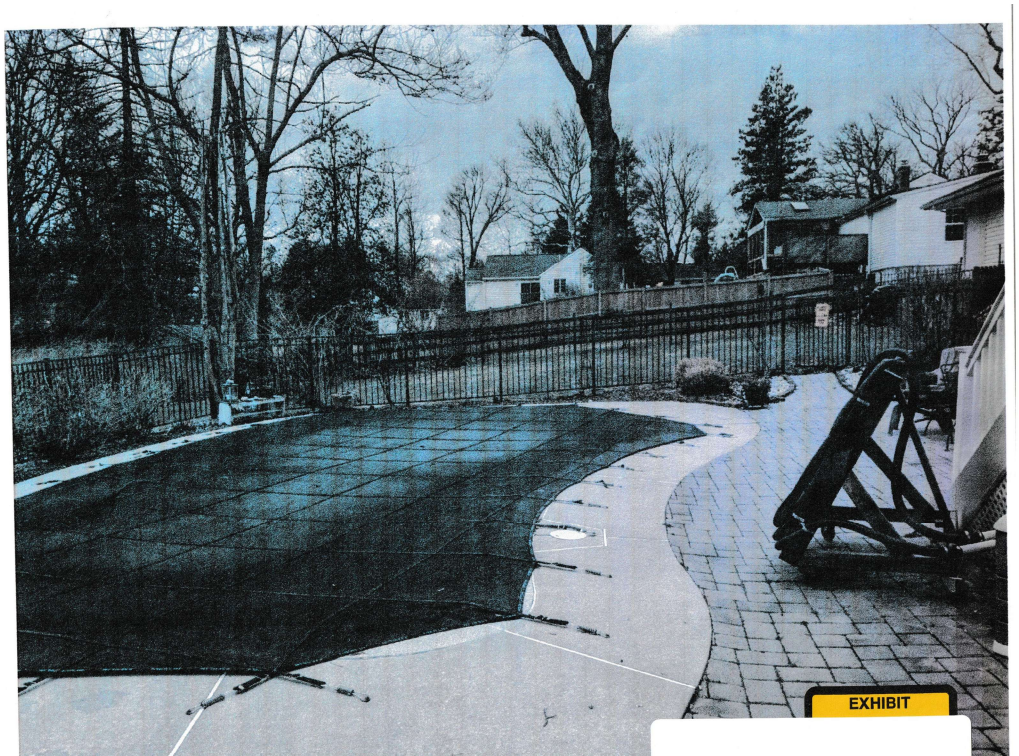
Same issue on 4609 side: no access to rear of property should the need arise.



View from 4605 towards 4607 prior to removing hedges



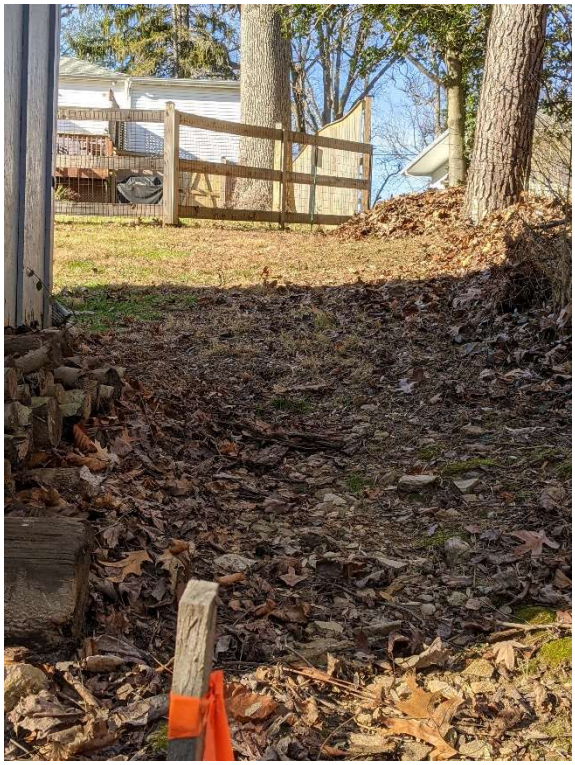
Same view after removal of hedges and installation of fence.



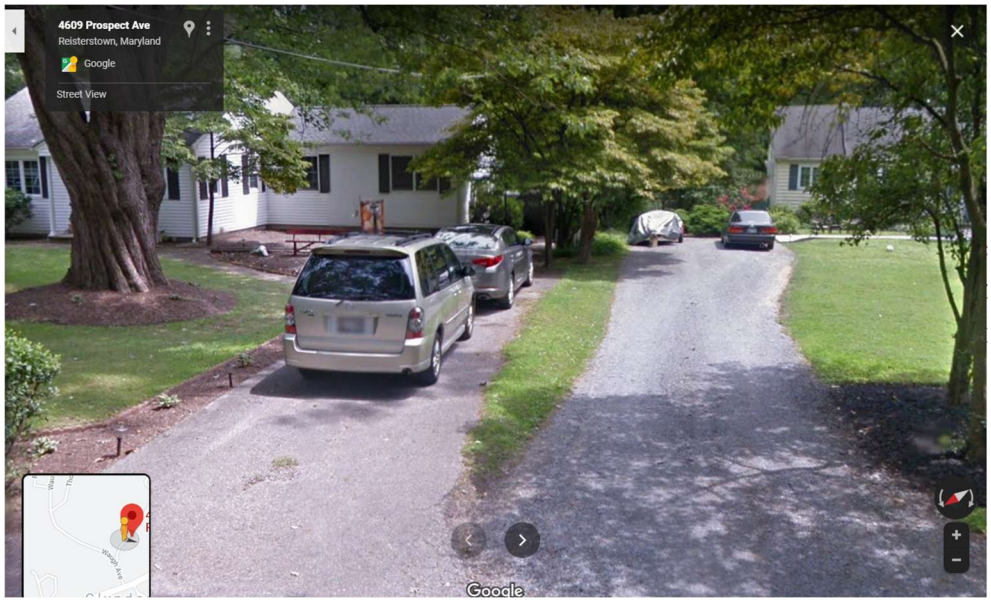
4607 Prospect Ave looking straight down tree line. Clearly, garage is well over the line. First two zoning signs are on 4605 property. The Bair's have since removed the shrubs that were on 4605's property.



Rear yard looking toward 4607 back yard. Stake in foreground, tree is on 4605 property.



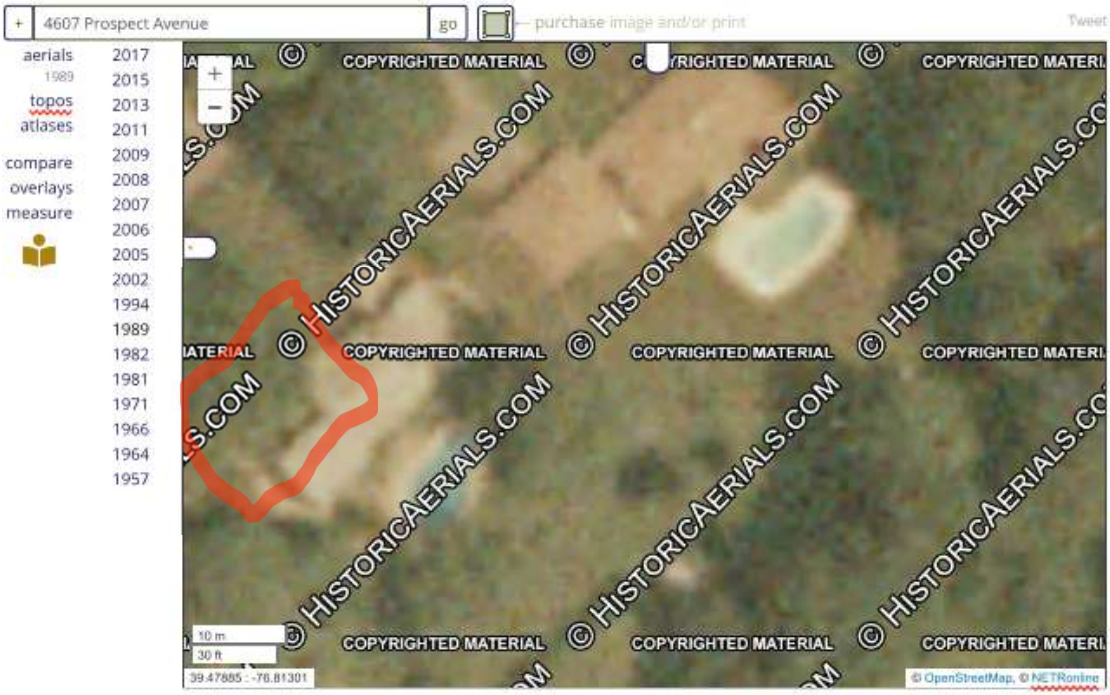
Prior to filling the opening addition. Note the previous non-permitted addition roof peak is on the downslope of the rear of the original structure.



The addition filling the opening. Note new roofing for size perspective.



4607 Prospect Ave 4605 Prospect Ave 1989 arial



Note above the opening created by the first non-permitted addition done after 1971? Could find no permits for that addition either. Clearly visible the addition expanse by the new roofing shingles below in a recent arial of property.



Recent arial 4607 rear enclosure



Pre-purchase sales brochure of rear deck, not enclosed. Permits again not acquired.



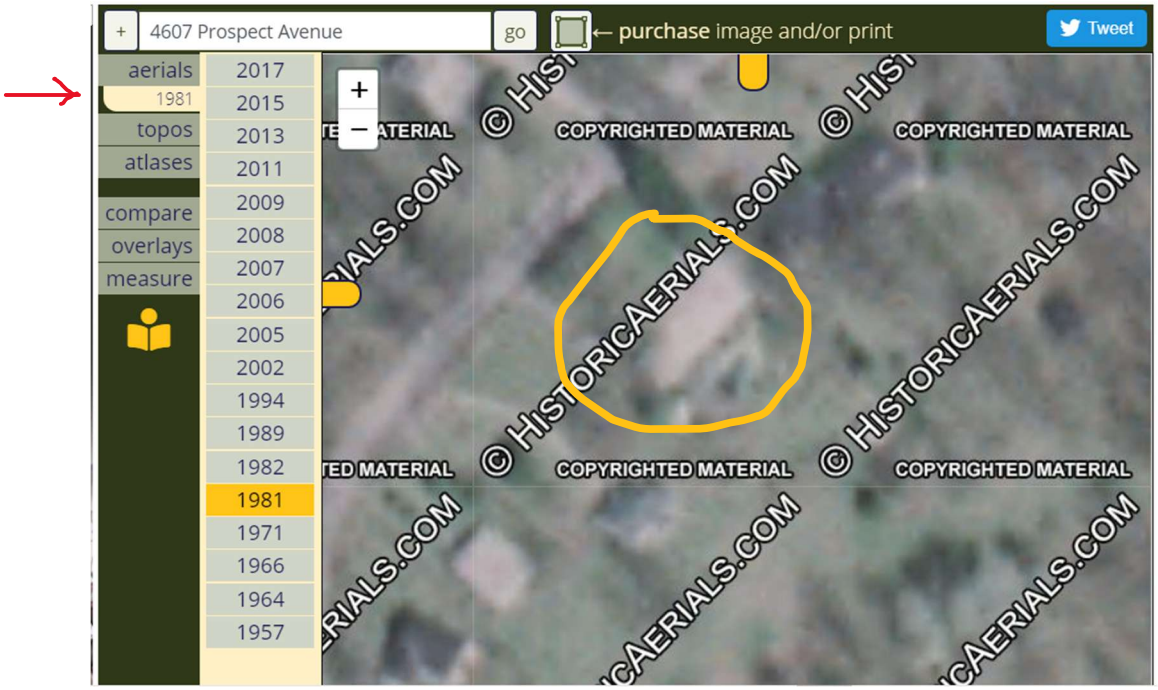
1971 arial 4607 Prospect Avenue

Clearly, no first non-permitted addition on the left side. DR zoning regulation adopted in 1970.

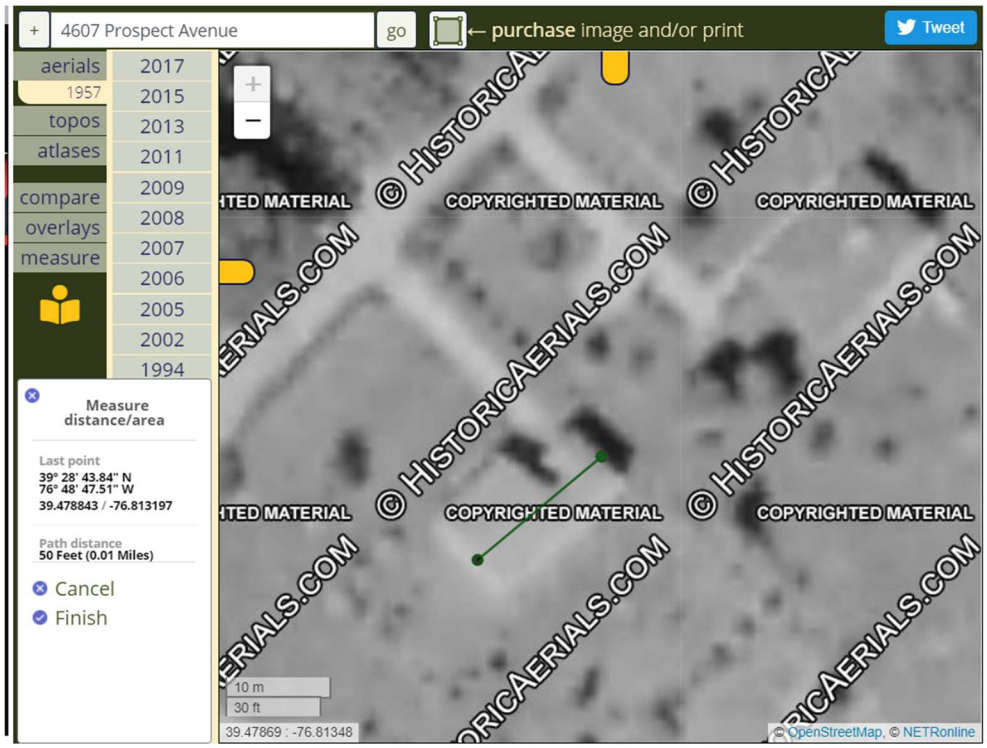


1981 arial 4607 Prospect Avenue

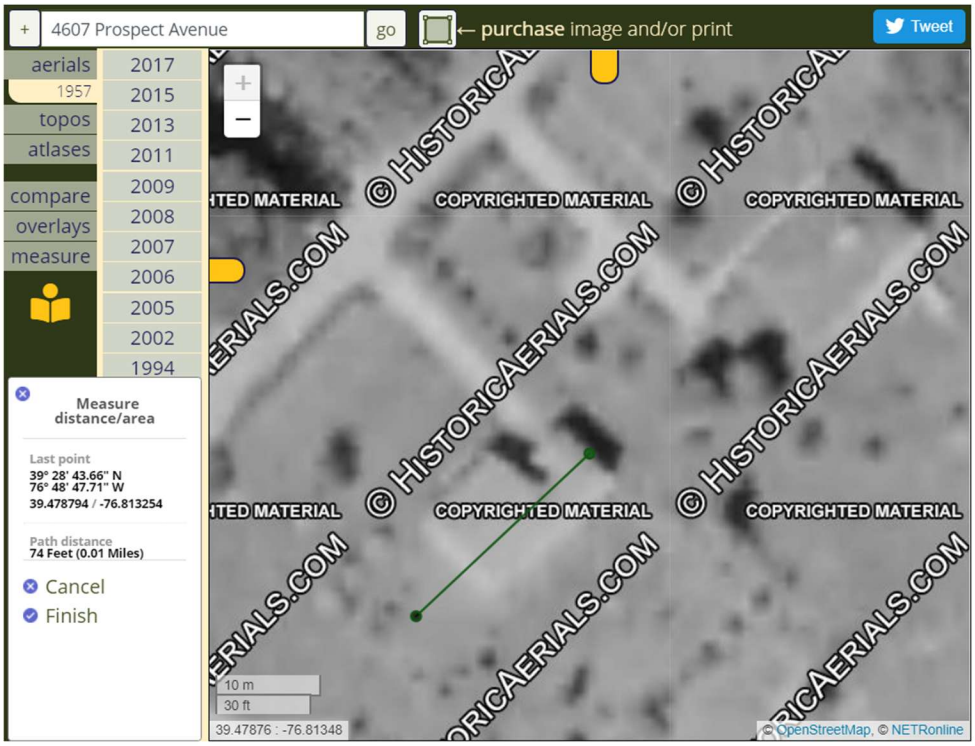
While not as clear, it is clear that the first non-permitted addition is in place. This addition erected with no permits either: we could not find any in the county record. Had this been done properly, the county would have then made the proper decision at that time.



1957 arial with 50’ length superimposed.



1957 arial with 74’ length (non-permitted addition length) superimposed.





4605 meadow oversaturated with runoff. Shoes come off suctioned into the depth of the mud.

Glyndon vicinity. 4607 Prospect is highlighted teal. 4615 Prospect in green.



4615 Prospect Avenue.





Fence is over 7’ on 4605 property, garage drainage is further still.



Close up of drainage, can make out beginning of gulley being formed by runoff.



4605 meadow looking towards 4607 rear yard.







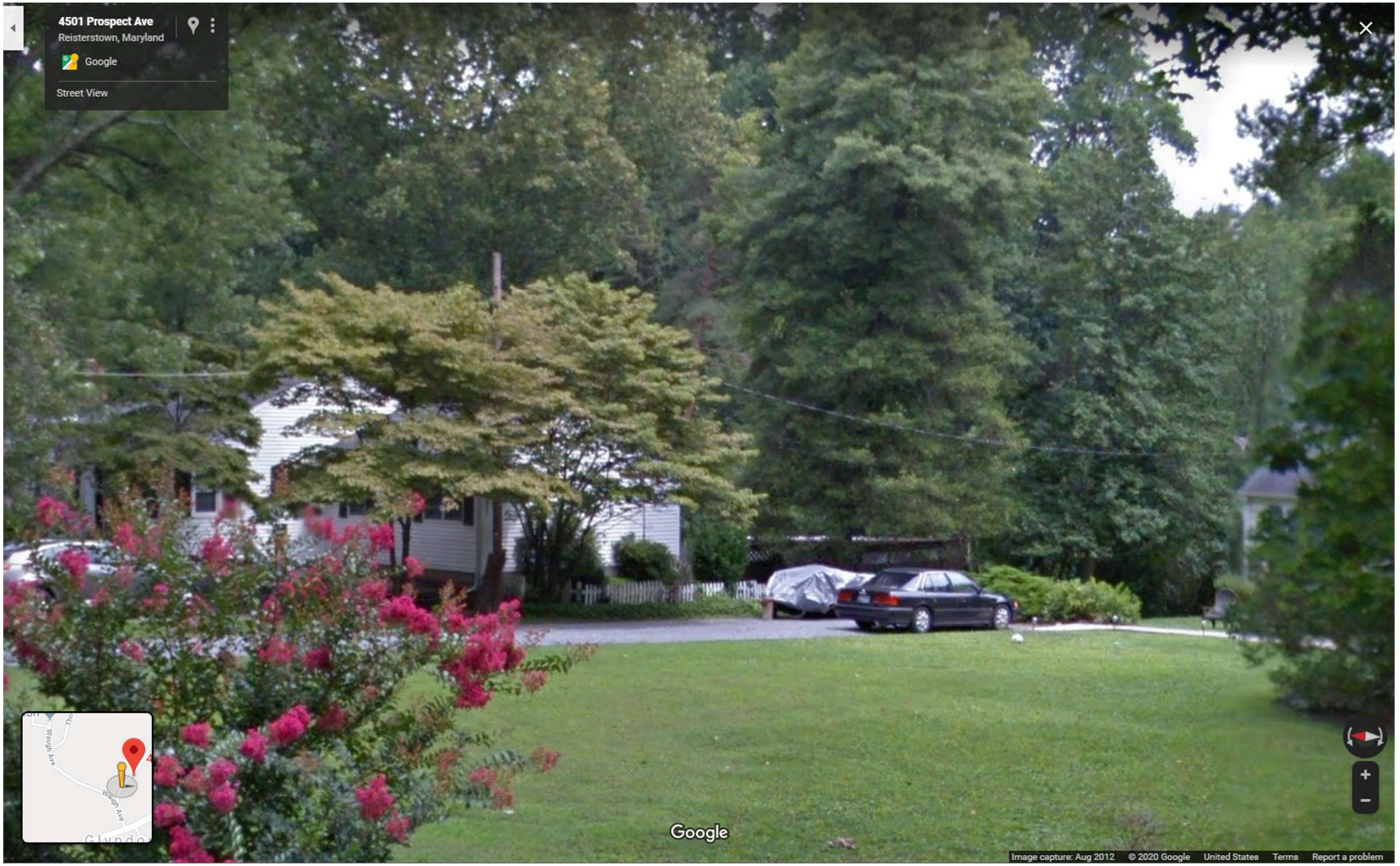










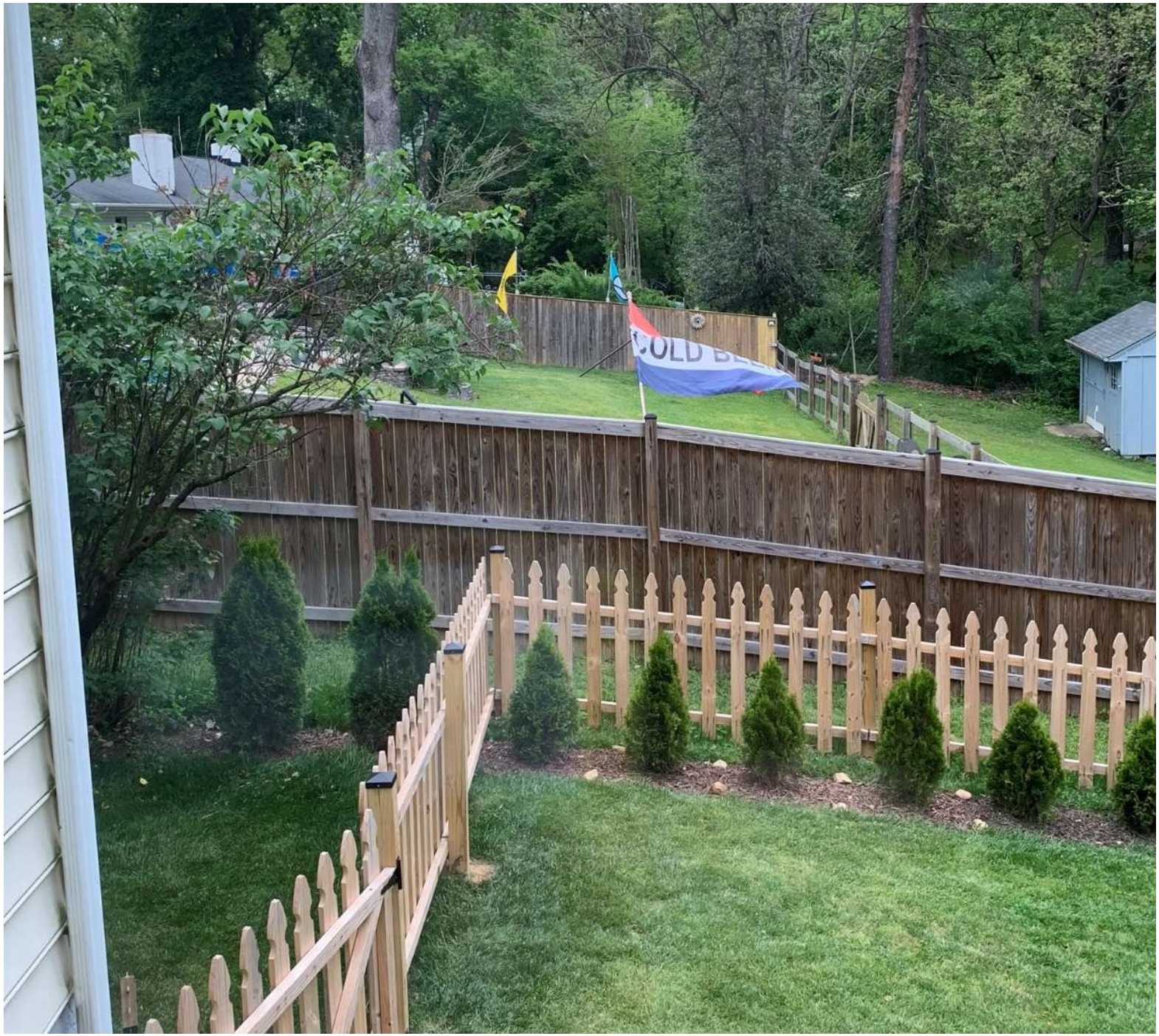

4501 Prospect Ave
Reisterstown, Maryland
Google
Street View
Google
Image capture: Aug 2012 © 2020 Google United States Terms Report a problem




4501 Prospect Ave
Reisterstown, Maryland
Google
Street View
Google
Image capture: Aug 2012 © 2020 Google United States Terms Report a problem











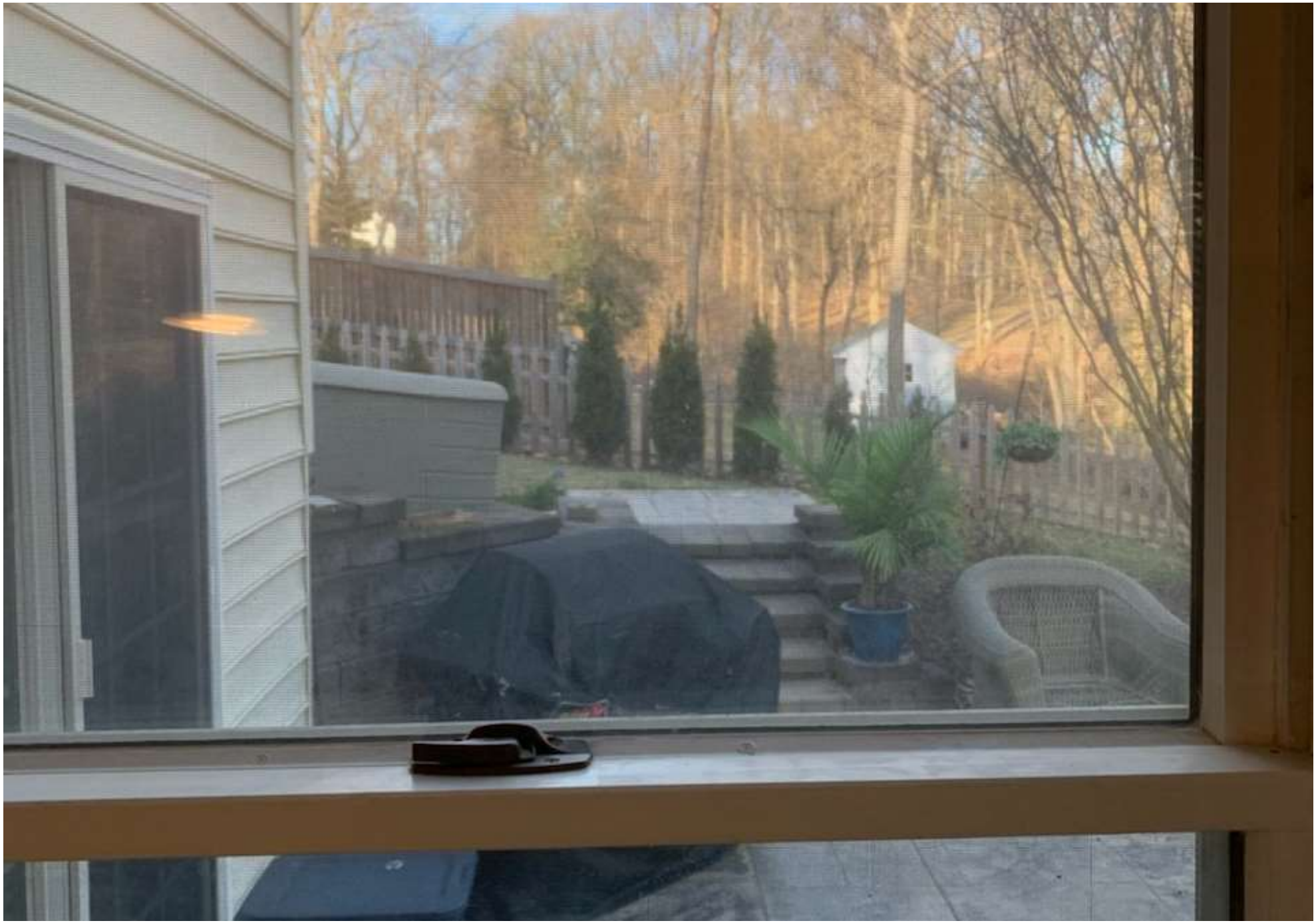




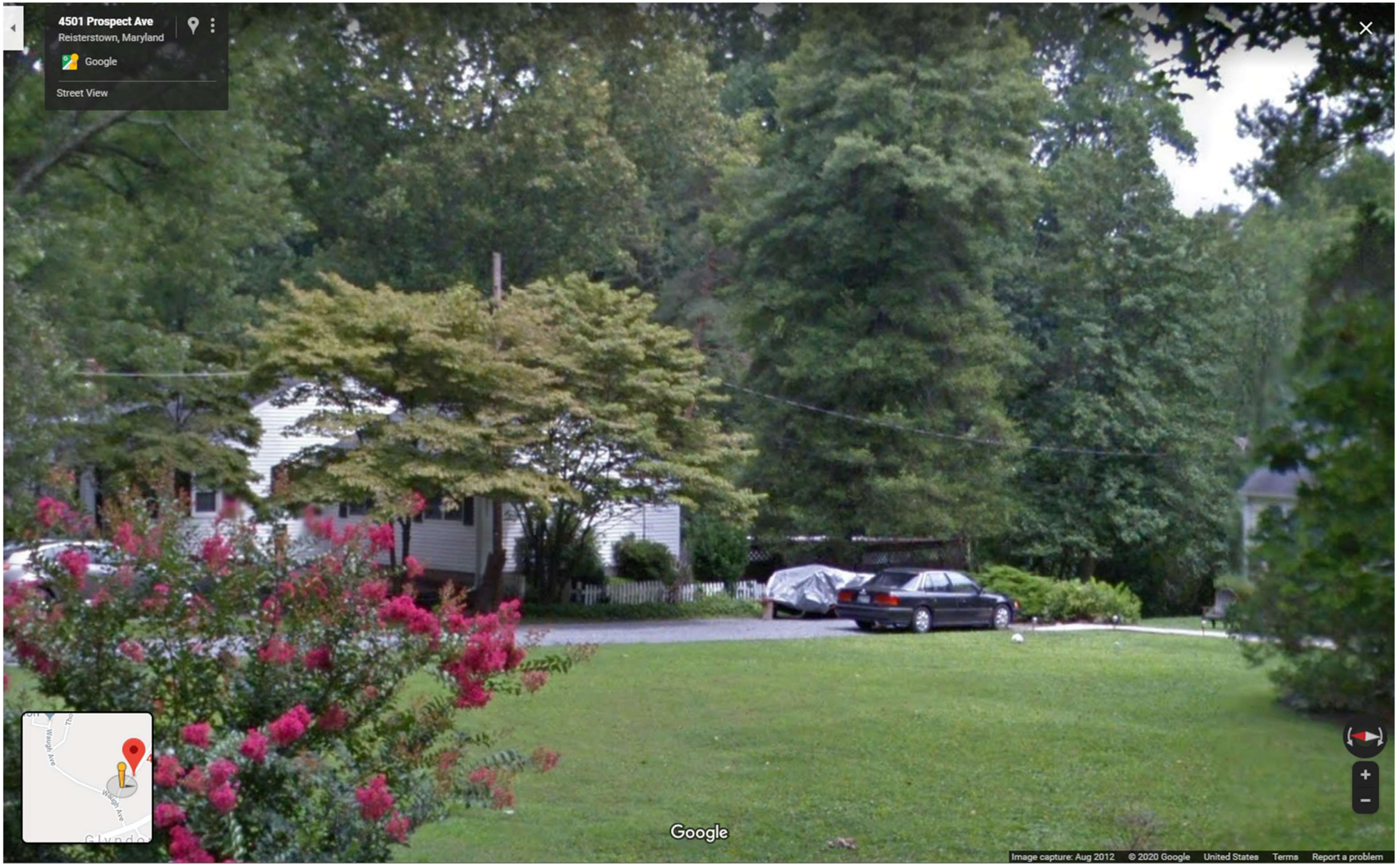

COLD BEER

Protestant's Exhibit 6 View from back patio of Montanye privacy on other side 6M







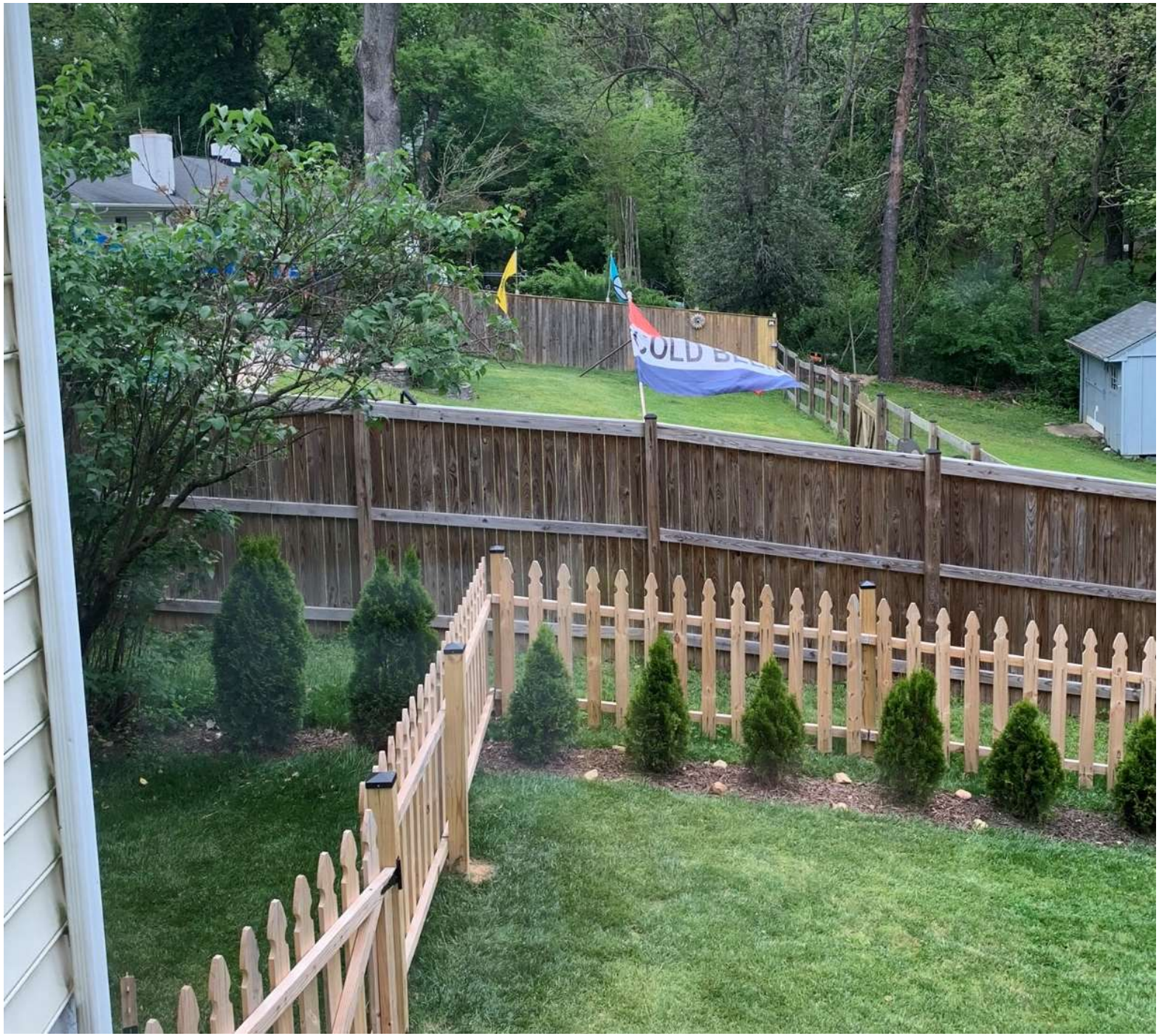

4501 Prospect Ave
Reisterstown, Maryland
Google
Street View
Google
Image capture: Aug 2012 © 2020 Google United States Terms Report a problem




4501 Prospect Ave
Reisterstown, Maryland
Google
Street View
Google
Image capture: Aug 2012 © 2020 Google United States Terms Report a problem











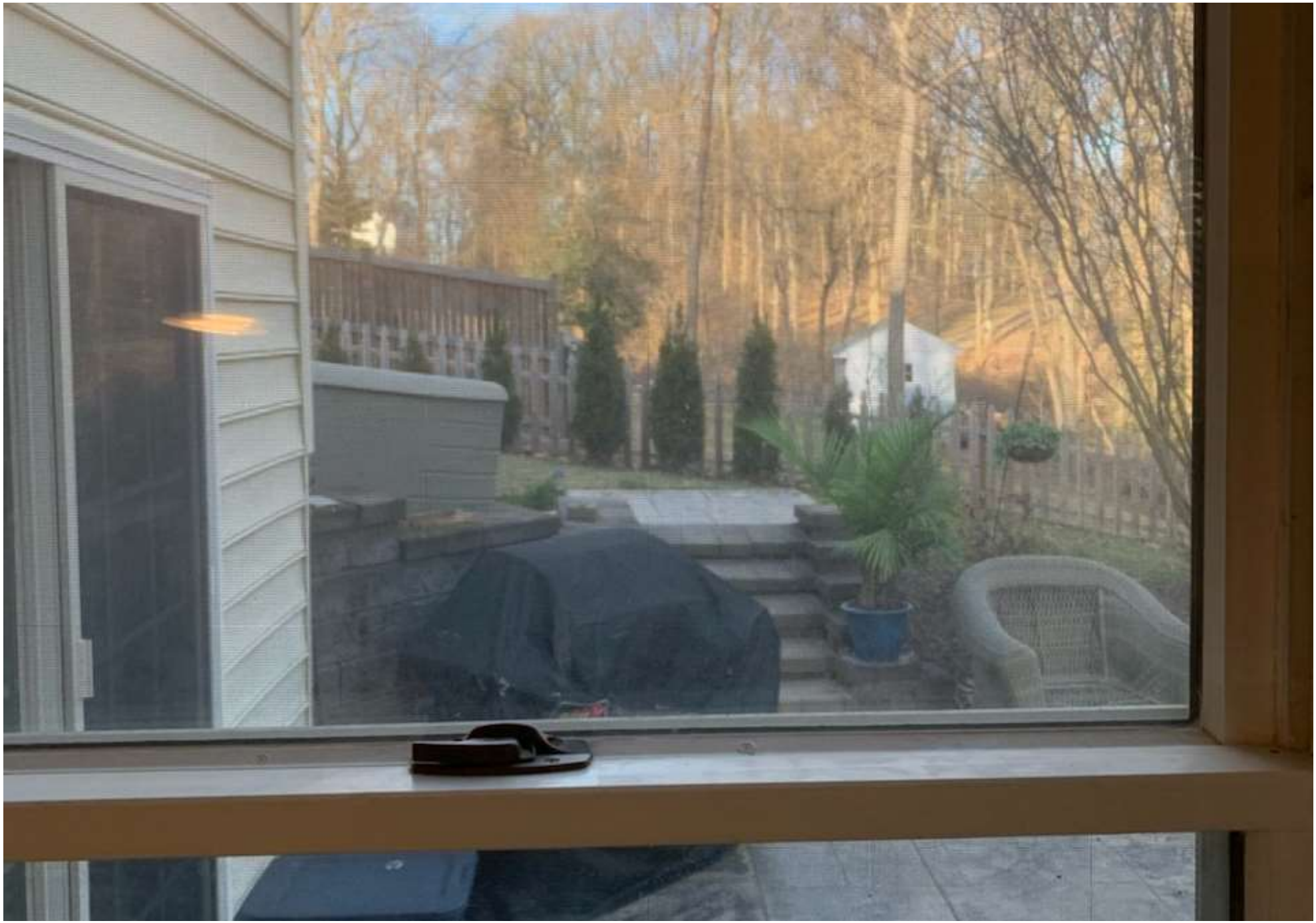





COLD BEER

Protestant's Exhibit 6 View from back patio of Montanye privacy on other side 6M





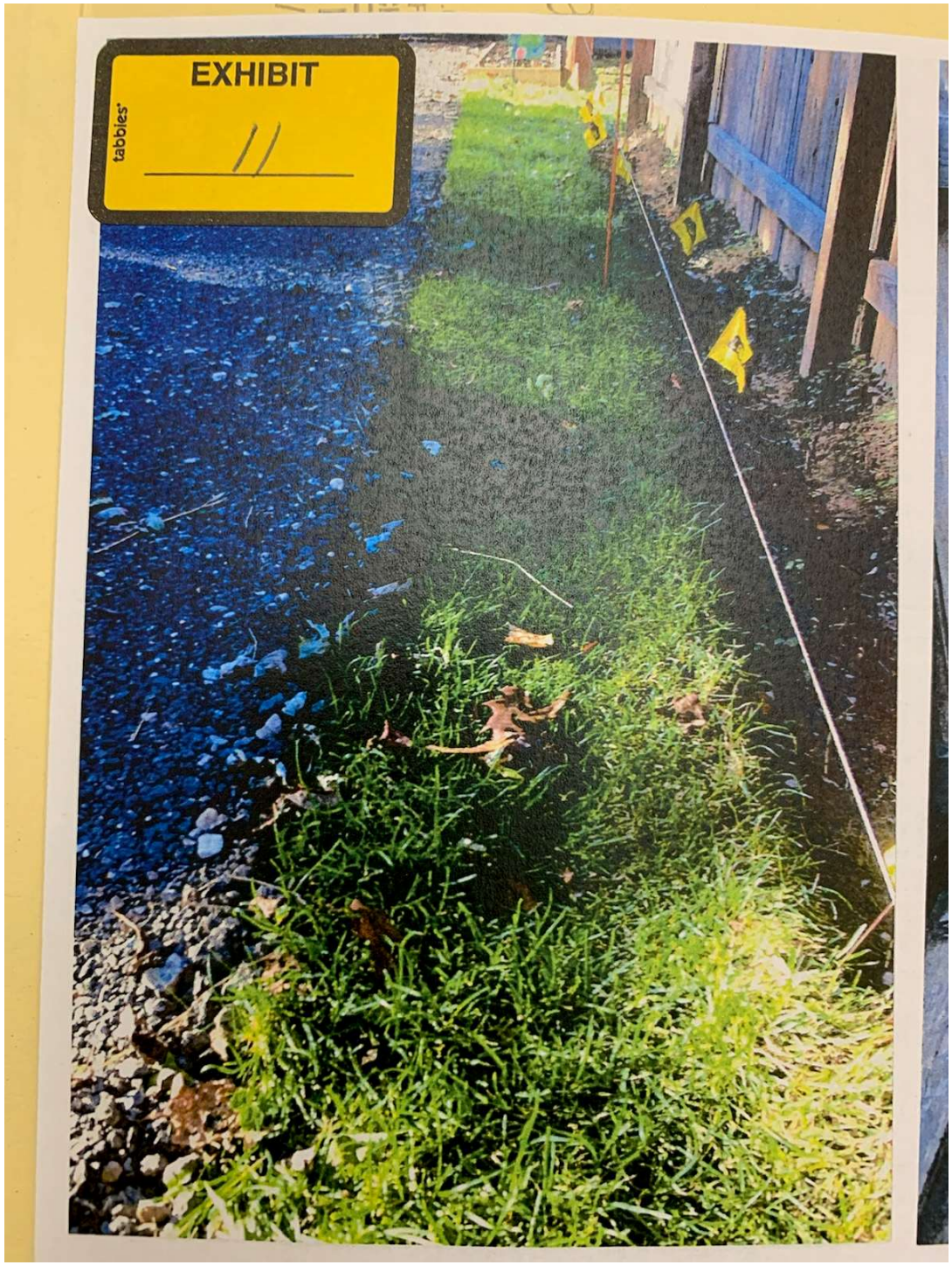


EXHIBIT
tabbies
//









Protestant's Exhibit 17 Moved stake #3 17D









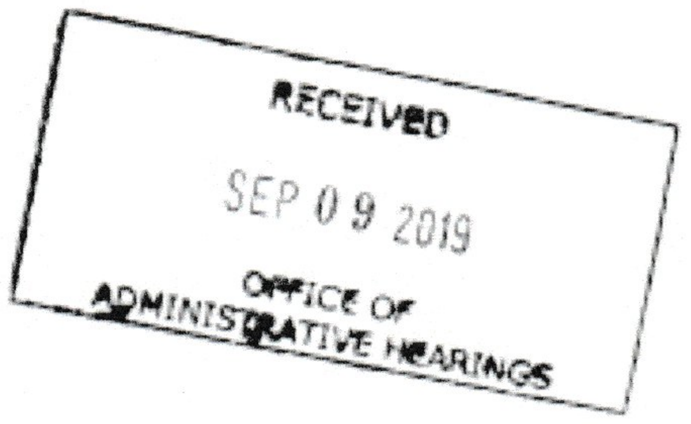

09804M8

SMITH, GILDEA & SCHMIDT LLC

MICHAEL PAUL SMITH
DAVID K. GILDEA
LAWRENCE E. SCHMIDT
MICHAEL G. DEHAVEN
JASON T. VETTORI
MARIELA C. D'ALESSIO*
MELISSA L. ENGLISH
*Admitted in MD, FL, PA

LAUREN D. BENJAMIN
SARAH A. ZADROZNY
CARMELO D. MORABITO
ZACHARY J. WILKINS
of counsel:
EUGENE A. ARBAUGH, JR.
DAVID T. LAMPTON
MARY G. LOKER
STEPHEN J. NOLAN

September 9, 2019



Via Hand Delivery
Honorable Lawrence M. Stahl
Office of Administrative Hearings
105 W. Chesapeake Avenue, Suite 103
Towson, MD 21204

Re: Bair – 4607 Prospect Avenue
Case No. 2019-342-SPHA

Dear Honorable Judge Stahl:

Please find enclosed a Motion for Reconsideration for filing in the above matter. This filing is somewhat complicated by the fact that the order for which we seek reconsideration was issued by former ALJ Beverungen. I am aware that he is now retired and no longer a County employee. Thus, I enclose a copy of his opinion and order for your reference.

Additionally, although the order was signed by former ALJ Beverungen, it is certainly a decision that is the product of the Office of Administrative Hearings ("OAH"). As such, I believe that you, or whoever replaces ALJ Beverungen, has authority to review the Motion and revise the Order. OAH's refusal to reconsider the Opinion and Order of ALJ Beverungen would restrict and impair the jurisdiction and efficiency of OAH and be inconsistent with the long held principle that any action of a court remains within the control of the court until and unless that decision is final (See e.g. *Scott v. State* 379 Md. 170 (2004)). This Motion is timely filed and thus within the jurisdiction of OAH.

In an administrative law setting, I believe the situation here is akin to similar circumstances that I have encountered at the Board of Appeals. Frequently, a Board member may resign or leave the Board for whatever reason. I have seen circumstances where new panel members are assigned as needed. Recently, I was involved in a case where a remand to the Board was required by order of the appellate court and two of the three original members were no longer on the Board. Two "replacements" were inserted and the matter continued on. Thus, I do not view ALJ Beverungen's departure as an event preventing review of the Motion.

As you are aware, Rule K of the Rules of Practice and Procedure also allow the OHA to reconvene the hearing. A reconvened hearing is at the discretion of your office. At that hearing,.the subject matter is limited to only the issue(s) identified in the Motion. The hearing may be limited to argument, or additional evidence might be allowed. As you will note from the Motion, the request for reconsideration is limited to a single issue. I am pleased to proceed in any manner that you deem appropriate and do not believe that a new hearing is mandated unless you believe it necessary. The Motion can be considered based only on the pleadings or I am pleased to appear if you prefer.

Thank you for your consideration of this matter.

Very truly yours,

Lawrence E. Schmidt

LES/amf
Enclosures
cc: Donna Bair
Peter Max Zimmerman, Esquire
Pamela Becker
Richard Stanley
Vernene Lenz
Shirley Winebarger
Teresa Moore
Kimberley Karlsen
Martha Wist
Ann Rea
Lyle Montanye
Tom and Kim Montanye
Charles and Anna Welsh
Robin Coffin
Frances Acle
Steve and Patricia Fradkin
Cynthia Morrison
Robert Gehman
Ramzi and Roula Hemady
Raymond and Linda Long

IN RE: PETITION FOR SPECIAL HEARING AND VARIANCE **4607 Prospect Avenue** 4th Election District 3rd Councilmanic District Donna V. Bair *Legal Owner*	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY **Case No.: 2019-342-SPHA**

* *

MOTION FOR RECONSIDERATION

The Petitioner/Property Owner, Donna V. Bair, ("Petitioner"), by Lawrence E. Schmidt, Esquire, and Smith Gildea and Schmidt, LLC, her attorneys, submits this Motion for Reconsideration pursuant to Rule K of the Rules of Practice and Procedure of the Zoning Commissioner/Hearing Officer of Baltimore County (now Administrative Law Judge or "ALJ") and respectfully requests that the Office of Administrative Hearings revise its' Opinion and Order issued in the above captioned matter dated August 19, 2019. In support of this Motion, the Petitioner offers the following:

I. Procedural History

This matter came before then ALJ John Beverungen on Petitions for Variance and Special Hearing for the property located at 4607 Prospect Avenue in the community known as Glyndon, in northwestern Baltimore County. The Petitions were filed by Donna Bair, property owner. The subject property at issue is a residential property, zoned DR 1 and is improved with a dwelling in which Petitioner resides. Other

improvements on the property include a two bay attached garage, a swimming pool, shed and deck.

As they relate to certain of the issues presented, several of the requests within the Petitions are presented in the alternative as either via a Special Hearing or Variance. A special hearing has been likened to an action for declaratory judgment and is used to establish a non-conforming use. (See *Antwerpen v. Baltimore County*, 163 Md. App. 194, 2005). A variance seeks relief from a bulk regulation; in this case, certain building setbacks for the sideyards.

II. Statement of Facts

Testimony and evidence presented established that the subject property is approximately three quarters of an acre in size (33,976 square feet) predominantly zoned DR 1 (Density Residential, 1 unit per acre). A small sliver of the property in the rear is zoned RC 2 (Resource Conservation). None of the improvements are within the RC zone. The property is designated as Lot 10 on the plat recorded in the Land Records of Baltimore County in Plat Book 126, Page 371. This plat subdivided the property known as "the lands belonging to B.F. Bennett and Joshua Regester" into residential building lots and was recorded on October 31, 1880, long before the adoption of Baltimore County's first zoning regulations in 1945.

The property is improved with a detached single family dwelling that was constructed in 1951. Evidence of the age of the dwelling was established through the submittal of a property tax report issued by the State Department of Assessments and Taxation (Petitioner's Ex. No. 4). For convenience, another copy of that exhibit is

attached to this Motion. Although the County's first zoning regulations were adopted in 1945, they were rudimentary in nature and the current regulations and requirements therein spring from the comprehensively amended regulations adopted in 1955. Additionally, the DR zoning classification came into being in 1970, at which time the County Council enacted Bill 100-70. Therefore, both the lot and the house itself predate the regulations that govern its use and setbacks. The property is located within the Glyndon historic district which has been overlaid in this area but the dwelling itself is not designated as a contributing structure. Many of the individual properties in Glyndon are historically significant and the houses quite old.

The petitioner acquired the property by deed dated July 18, 2014. At the time of her acquisition, the property was improved with the dwelling, an attached one car garage, a small storage shed and a swimming pool. It is not in dispute that the dwelling, at the time of Petitioner's acquisition, was in the same configuration, size and footprint as it had existed since its construction in 1951. Since her acquisition, the Petitioner has further improved the property by expanding the garage to create a second bay (on the left side of the house when facing the same from the street), a small addition "squaring off" the dwelling on the right side of the house and a new/replacement fence enclosing the pool. Petitioner requested and obtained the approval of these improvements from the Baltimore County Landmarks Preservation Commission ("LPC") (Petitioner's Ex. No. 7). The LPC's approval was required due to the property's location in the historic district.

III. Relief Requested

By his opinion and order, ALJ Beverungen granted some of the relief requested and denied other requests. For example, he granted the Petition for Special Hearing finding that the subject property (lot) was non-conforming, but denied the Petition for Variance related to the garage addition and the fence. **This Motion for Reconsideration is limited in scope and is filed only as to one specific finding by the ALJ.** The Petitioner avers that the ALJ clearly erred as to this single issue. Specifically, the Petitioner requests that ALJ Beverungen's opinion and order be revised to include a finding that the side yard setbacks as they existed in 1951 and at the time of Petitioner's acquisition in 1951, are "non-conforming". Petitioner avers that this conclusion is entirely supported by the evidence presented and the applicable provisions of law. Judge Beverungen erred when he denied that portion of the Special Hearing. His order incorrectly states a denial of a "non-conforming dwelling side yard setback".

BCZR § 104 permits the continuation of non-conforming uses and structures. This is a designation for uses and conditions that have existed prior to the adoption of the regulation that now governs the property at issue. The designation "non-conforming" allows the use/condition to continue as legally "grandfathered". The special hearing process is that zoning tool by which non-conforming uses are recognized. Unrefuted evidence presented at the hearing (Petitioner's Ex. No. 4) established that the dwelling was constructed on the Property in 1951. This documentary evidence was corroborated by the Petitioner and the neighbors did not dispute it.

Within his decision (wherein he approved the Lot as non-conforming), ALJ Beverungen specifically stated on page two of his decision that the applicable date to establish the non-conforming use/condition was 1955. This date is correct insofar as considering the lot. However, the proper date in considering the dwelling is, at the least, 1970, when, as noted above, the DR zoning regulations came into being. But the precise determination of the applicable date makes no practical difference, because the dwelling (constructed in 1951) pre-dates both of those dates.

Although the existing dwelling meets the required front yard and rear yard setbacks, the dwelling's side yard setbacks do not meet the current DR 1 standard. BCZR § 1B02.3.C establishes setbacks required in the DR 1 zone. A minimum side yard setback of 20 feet is required. Additionally, a sum of the side yard setbacks of 50 feet is required. Therefore, a property owner could have a 30 foot setback on one side and a 20 foot setback on the other; or a 25 foot setback on each side, or some similar combination; for so long as each side yard setback is at least 20 feet in dimension and they total fifty feet. As noted above, the property did not meet these requirements when the Petitioner acquired the property. Therefore, the deficiency is non-conforming. When one faces the dwelling from the street, the side yard setback on the right (southwest) side is 14.9 feet. This dimension (obviously) is less than the twenty feet required. Ms. Bair added an addition to this part of the dwelling, but that addition did **NOT** reduce/alter the existing setback. It was 14.9 feet before and remains the same. She merely "squared off" the corner of the dwelling and did not alter the setback. The dwelling is no closer to the side property line than it was before. Therefore, the dimension of 14.9 feet is non-

conforming on the southwest (right) side of the dwelling. Judge Beverungen erred when he did not approve this setback as "non-conforming."

On the other side of the dwelling (the northeast or left side), the previously existing setback was 9.5 feet. After her acquisition, Petitioner expanded the garage so as to add a second garage bay to that side of the dwelling. There was a previously existing one car attached garage on that side and the Petitioner added a second bay to accommodate a second vehicle. The Petitioner, in the instant case, requested a variance to allow the further reduced setback (to zero feet) as the garage is built up to (actually slightly over) the property line with the neighbor on that side. The Petitioner does not, through this Motion, ask the Office of Administrative Hearings to reconsider that variance. That variance was denied by ALJ Beverungen. But the Petitioner insists, that if she removes the garage addition, that the previous setback be determined to be no-conforming. That is, the previous setback (9.5 feet) is not technically compliant with the current regulations but is also grandfathered. If this Motion were denied and ALJ Beverungen's order stands, then the Petitioner would need to comply with current setbacks (i.e. 20 feet minimum per side and fifty feet total) which would require the removal of nearly the entire house, which has existed with 14.9 and 9.5 setbacks for nearly seventy years. ALJ Beverungen's decision in this regard is simply erroneous when he wholly denied non conforming setbacks reflecting the location of the dwelling since 1951.

Although the Petitioner presented evidence of the dwelling's size/configuration at the hearing, attached hereto is an aerial photograph that has been obtained from a public data source. The photo was taken in 1957. Although to quality is not good, it does show the house on the subject property at that time and provides further verification that the dwelling constructed in 1951 remained in the same condition through when the Petitioner bought it. This is further corroborating evidence above and beyond the SDAT printout and testimony offered at the hearing.

In sum, Petitioner requests that ALJ Beverungen's opinion and order be revised to approve non conforming side yard setbacks of 9.5 feet and 14.9 feet, with a total of 24.4 feet. Thus, both the individual side yards do not meet the current standard, nor does the sum of the side yards. But these are existing conditions, dating to when the house was constructed, well prior to the adoption of the governing standard in the BCZR. The Petitioner is evaluating her options insofar as the garage addition that she added, but seeks assurance that if the prior setbacks are restored, then the dwelling is not subject to a violation hearing due to its failure to comply with current standards.

A copy of this Motion is being sent to all who appeared. Although the neighbors who appeared objected as to the fence and garage addition, Petitioner believes that the neighbors do not object to the setbacks as they existed at the time Petitioner purchased the property. Certainly, they may respond to this Motion and correct this representation if it is incorrect. But Petitioner and her undersigned counsel do not believe that the Protestants object to the setbacks as they existed when this dwelling was built.

Respectfully submitted,

LAWRENCE E. SCHMIDT
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
(410) 821-0070
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of **September, 2019,** a copy of the foregoing Motion for Reconsideration was mailed first-class pre-paid postage to:

Peter Max Zimmerman, Esquire
People's Counsel for Baltimore County
The Jefferson Building
105 West Chesapeake Avenue, Rm 204
Towson, MD 21204

Pamela Becker
24 Chatsworth Avenue
Glyndon, MD 21071

Richard Stanley
215 Central Avenue
Glyndon, MD 21071

Vernene Lenz
4722 Butler Road
Glyndon, MD 21071

Shirley Winebarger
80 Hanover Road
Reisterstown, MD 21136

Teresa Moore
29 Waugh Avenue
Reisterstown, MD 21136

Kimberley Karlsen
304 Hammond Avenue
Glyndon, MD 21071

Martha Wist
3834 Ivy Hill Drive
Hampstead, MD 21074

Ann Rea
1015 Caren Drive
Eldersburg, MD 21784

Lyle Montanye
4342 Butler Road
Glyndon, MD 21071

Tom and Kim Montanye
4609 Prospect Avenue
Glyndon, MD 21136

Charles and Anna Welsh
4601 Prospect Avenue
Glyndon, MD 21071

Robin Coffin
4511 Prospect Avenue
Glyndon, MD 21071

Frances Acle
4606 Prospect Avenue
Glyndon, MD 21071

Steve and Patricia Fradkin
4605 Prospect Avenue
Glyndon, MD 21136

Cynthia Morrison
4500 Prospect Avenue
Glyndon, MD 21071

Robert Gehman
4612 Prospect Avenue
Glyndon, MD 21136

Ramzi and Roula Hemady
4603 Prospect Avenue
Glyndon, MD 21136

Raymond and Linda Long
114 Hanover Road
Reisterstown, MD 21136

LAWRENCE E. SCHMIDT

5/22/19 10:02 AM

Donna Bair

Hey neighbors... we're all so busy doesn't look like we'll get time to get together before we file variance request with the County next Tuesday. Patty mentioned you guys didn't really know where the actual property line is, so we wanted to give you a copy of the survey we had done when we realized some of the garage and fence is over the line and encroaching on your property. The zoning attorney who is filing the variance papers said we don't need to involve our deeds or mortgage companies because the County will only be looking at the fact that we



The zoning attorney who is filing the variance papers said we don't need to involve our deeds or mortgage companies because the County will only be looking at the fact that we don't have the required feet of setback (which we didn't have even before adding the garage!) The zoning attorney said it would be helpful to know if you will object to the variance or if you will sign a letter for him to present at the hearing to say you do not object to the variance. Please lmk if you want us to leave the survey and proposed letter to sign on your front door, or if you want us to bring them over sometime this evening. Would just like to know your feelings on the variance

Would just like to know your feelings on the variance request and what your wishes are with the garage and fence encroachment before this Friday so we can inform the attorney before he files. We're really sorry we are in this situation and we will respect whatever you're decision is. We'd love to give you more details but life is so crazy for us all right now. Thanks, Donna n Denny

5/22/19 10:37 AM

Hey Donna if you could leave it taped to the door just because we're really busy as well this way it'll give me time to look at it and send it to Steve sinc it's alreadv Wednesdav and It

it's already Wednesday and It will give us time to look at the line and see where it actually is. what is bothering us at this point is that it seems that previous owners have taken property that was ours and now you guys have moved in on property that is ours and we pay all the taxes. So knowing where the actual line is will help us have a clear decision as to where are decision will go. PS we were thinking it was a couple feet of yard when this conversation started.

5/22/19 11:01 AM

Donna Bair

Sounds good! Yeah, it's 2.5 feet over with garage. The

Donna Bair

Sounds good! Yeah, it's 2.5 feet over with garage. The fence is 7+ feet and that's an easy fix to move it over. I understand your concerns and we want you to decide how you feel without thinking it will affect our friendship. It was our mistake and we apologize we're now in this position. We're just trying to make it right however we can. Thanks! Have a good day.

We totally agree

Thanks Donna

Donna Bair

We totally agree

Thanks Donna

Donna Bair

Liked “Thanks Donna ”

5/22/19 11:27 AM

Steve Honey
Bunny

Can't affect our friendship: this has nothing to do with that.

Donna Bair

Loved “Can't affect our friendship: this has nothing to do with that. ”

6/15/19 8:33 PM

6/30/19 8:18 PM

Hi Donna, did you say there is a scheduled court date? Hope you enjoyed the great day today.

Sent

6/30/19 8:48 PM

Yes. Sign should be posted tomorrow or Tuesday on our property. You don't need to attend unless you want to disputed the variance we are requesting which is to have only 14.9 feet setback instead of 50 feet setback combined on the two sides of our property according to current zoning code. Lets talk about it

zoning code. Lets talk about it so if this doesn't make sense and/or if you guys have any questions. Thanks and have a good rest of the day! 😊

Yes. Sign should be posted tomorrow or Tuesday on our property. You don't need to attend unless you want to disputed the variance we are requesting which is to have only 14.9 feet setback instead of 50 feet setback combined on the two sides of our property according to current zoning code. Lets talk about it so if this doesn't make sense and/or if you guys have any questions. Thanks and have a good rest of the day! 😊

7/18/19 8:04 PM

Donna Bair

We got more clarity from attorney today about what to expect at hearing on Monday. Let us know if you have 10-15 mins sometime before Monday and we'll fill you guys in. Hope Buck is healthy and feeling better!

7/19/19 7:46 AM

We are around this weekend in and out of course but we will catch up.

7/19/19 7:52 AM

Donna Bair

Liked "We are around this weekend in and out of course

7/21/19 4:56 PM

Donna Bair

Lyk if you want to chat sometime tonight and hearing tomorrow. You guys can come out to the pool or inside! 10 mins or more! Drinks or not! Hope you're having a good day and staying cool!😎

7/21/19 5:37 PM

Running late had dinner Steve dropping me off at bus I have a run tonight. He will be home in a bit,

Delivered

7/21/19 8:53 PM

Donna Bair

a week later in writing. Have a good rest of the weekend.

Steve Honey
Bunny

Patti is still working, so we really can't tonight.

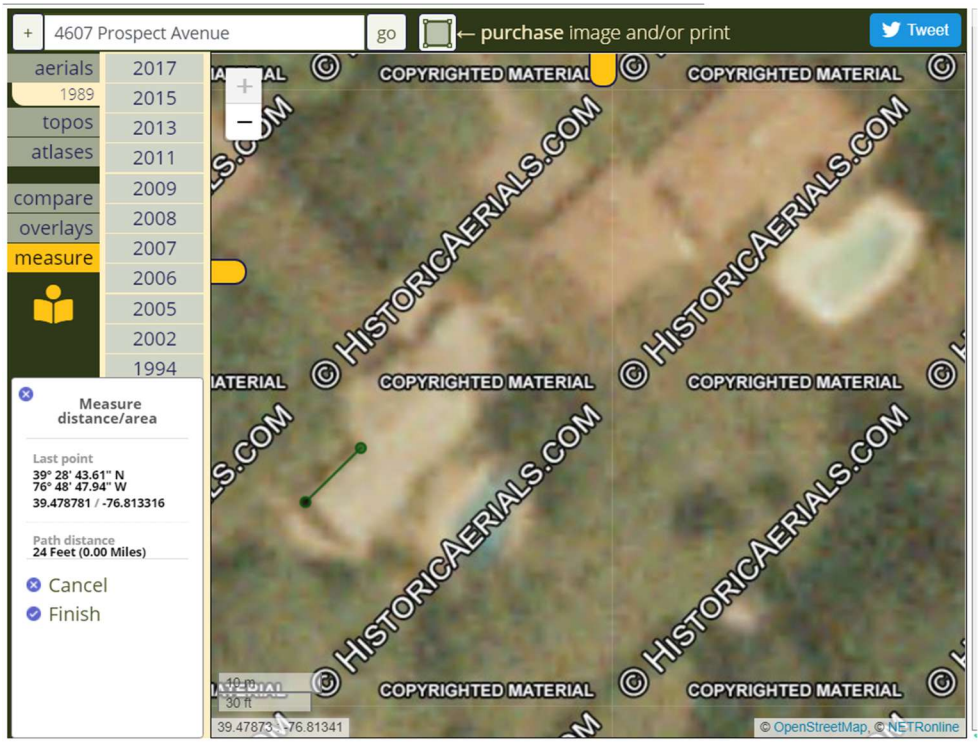
7/22/19 3:13 PM

Donna Bair

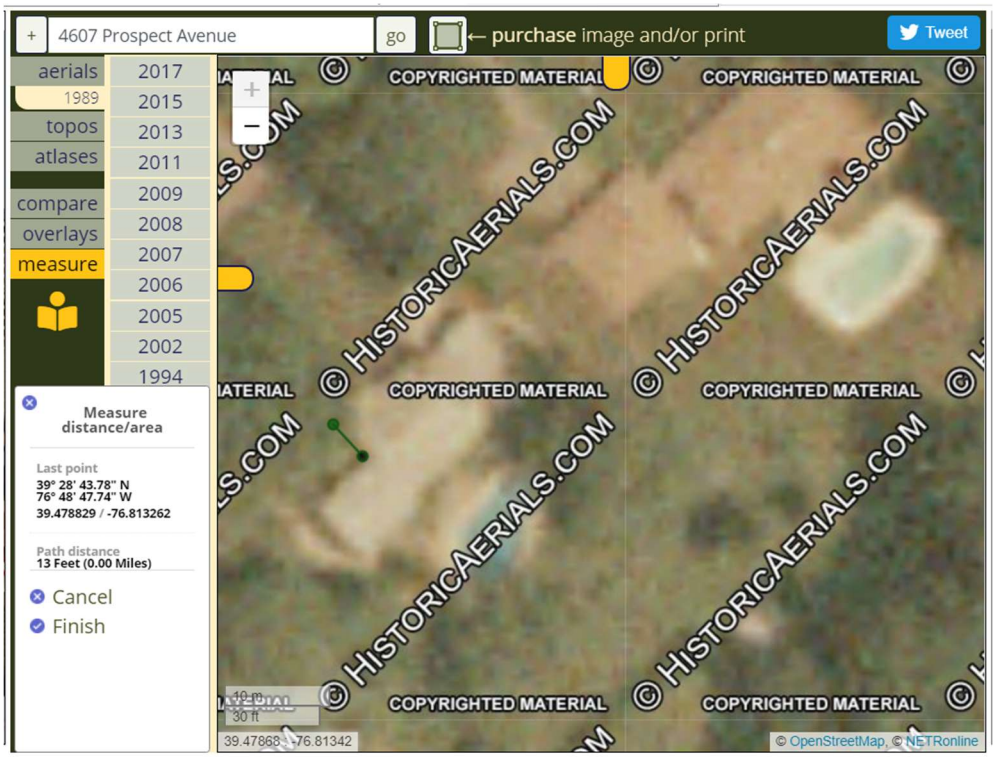
If you can send me your email address, Steve, the attorney wants to send you an email that has some information for you.... with name and contact number of company that posted zoning signs.

7/22/19 8:45 PM

Steve Honey
Bunny



Above arial from 1989 showing measurement length of the opening at 4607 Prospect Avenue. Length of opening 24'. Below arial from 1989 showing measurement width of the opening at 4607 Prospect Avenue.



BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF PLANNING

Memorandum

TO: Donna V. Bair **DATE:** March 19, 2019

FROM: Teri Rising, Administrator/Secretary
Landmarks Preservation Commission

SUBJECT: 4607 Prospect Avenue, Glyndon

At its March 14, 2019 meeting, the Baltimore County Landmarks Preservation Commission (LPC) voted to issue an Ex Post Facto Certificate of Appropriateness for the following items as proposed:

- 6 foot high wood privacy fence (Code Enforcement Case # CC1814071)
- 12 foot x 28 foot single car garage addition (Code Enforcement Correction Notice # CB1800693)
- 13 foot by 13 foot addition (Code Enforcement Correction Notice # CB1800693)

This action is in accordance with Baltimore County Code Section 32-7-403 and 32-7-405 citing Baltimore County Historic Design Guidelines: Fences & Landscape, p. 4; Additions & Infill, pp. 5-7.

Please note, the work will require a Baltimore County building permit. Applications for building permits are obtained from the Department of Permits, Approvals and Inspections located at 111 Chesapeake Avenue in Towson. Information regarding building permits is available on the County's website. https://www.baltimorecountymd.gov/Agencies/permits/index.html Questions regarding that process should be directed to the Permits, Approvals & Inspections Office.

EXHIBIT

Petitioner's Exhibit 7

Landscaping on 4605 Property by 4607.
Orange ribbon marks line: shrubs to left of ribbon are on 4605 property.



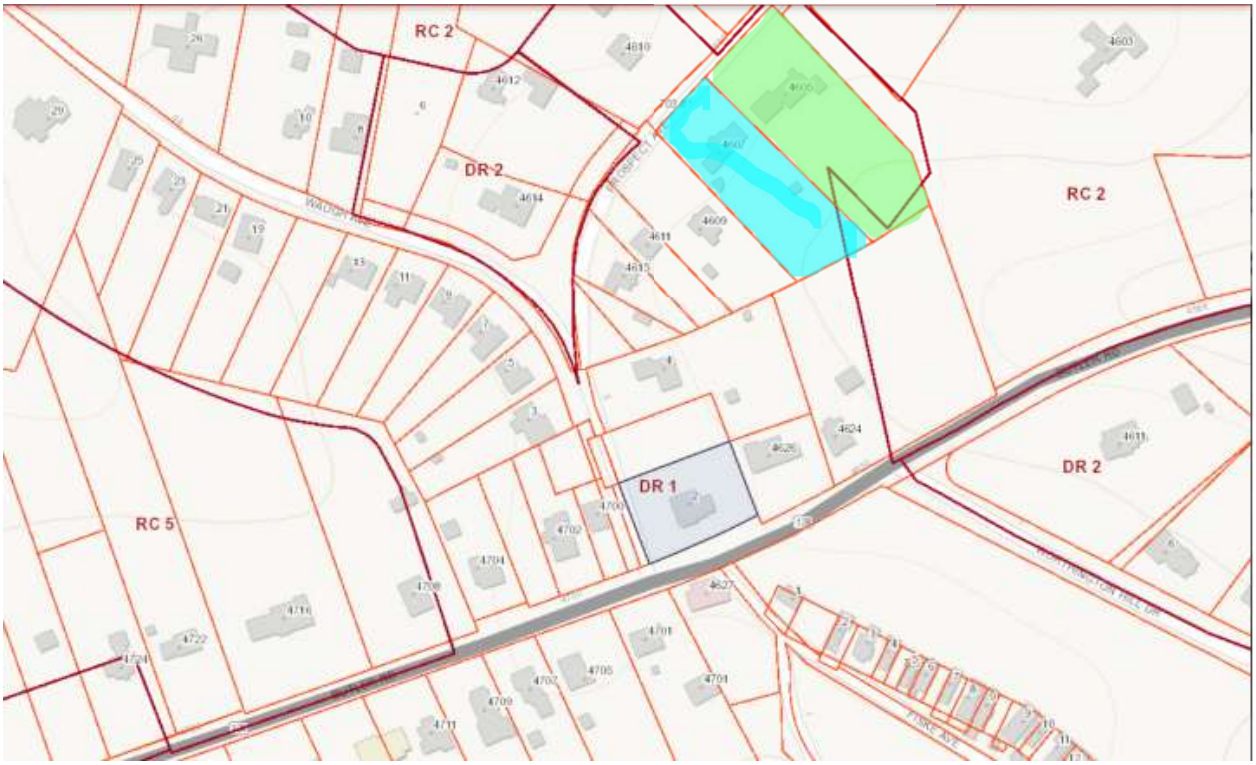
Glyndon vicinity. 4607 Prospect is highlighted teal. 4609 Prospect in green.



4609 Prospect Avenue.



Glyndon vicinity. 4607 Prospect is highlighted teal, 4605 Prospect in green.



4605 Prospect Avenue.



Glyndon vicinity. 4607 Prospect is highlighted teal. 4611 Prospect in green.



4611 Prospect Avenue.



Glyndon vicinity. 4607 Prospect is highlighted teal.



4607 Prospect Avenue



Opposition to 4607 Prospect Ave Appeal, Case # 2019-0342-SPHA

To: Baltimore County Board of Appeals

I oppose exceptions for 4607 Prospect Ave, case # 2019-0342-SPHA.

Name Pamela Bucks Signature Pamela Bucks

Street Address 24 Chatsworth Ave, Glyndon

Name Nan Kaestner Signature Nan I. Kaestner

Street Address 117 Central Ave Glyndon, MD 21071

Name Eleanor Taylor Signature Eleanor Taylor

Street Address 16 Worthington Hall Dr.

Name Marti Clements Signature Marti Clements

Street Address 227 Central Ave Glyndon 21071

Name Sue Benson Signature Sue Benson

Street Address 4813 Butler Rd., P.O. Box 282 Glyndon, MD 21071-0282

Name _____ Signature _____

Street Address _____

Name _____ Signature _____

Street Address _____

Name _____ Signature _____

Street Address _____

Name _____ Signature _____

Street Address _____

EXHIBIT

Opposition to 4607 Prospect Ave Appeal, Case # 2019-0342-SPHA

To: Baltimore County Board of Appeals

I oppose exceptions for 4607 Prospect Ave, case # 2019-0342-SPHA.

Name Charles C Wells Signature Charles C Wells

Street Address 15 Glyndon Ave, Glyndon MD 21071

Name Robin Coffin Signature

Street Address 4511 Prospect Ave 21071

Name_____ Signature_____

Street Address_____

Name_____ Signature_____

Street Address_____

Name_____ Signature_____

Street Address_____

Name_____ Signature_____

Street Address_____

Name_____ Signature_____

Street Address_____

Name_____ Signature_____

Street Address_____

Name_____ Signature_____

Street Address_____

Opposition to 4607 Prospect Ave Appeal, Case # 2019-0342-SPHA

To: Baltimore County Board of Appeals

I oppose exceptions for 4607 Prospect Ave, case # 2019-0342-SPHA.

Name Frances Acle Signature Frances M. Acle

Street Address 4606 Prospect Ave., Glyndon, MD 21071

Name Karen Solheim Signature Karen Solheim

Street Address 329 Central Ave Glyndon, MD 21071

Name Rebecca Boykin Signature

Street Address 4709 Butler Road, Glyndon, MD 21071

Name Signature

Street Address

Name Signature

Street Address

Name Signature

Street Address

Name Signature

Street Address

Name Signature

Street Address

Name Signature

Street Address

Opposition to 4607 Prospect Ave Appeal, Case # 2019-0342-SPHA

To: Baltimore County Board of Appeals

I oppose exceptions for 4607 Prospect Ave, case # 2019-0342-SPHA.

Name Tami Daniel Signature _____

Street Address 225 Central Ave Glyndon

Name _____ Signature _____

Street Address _____

Name _____ Signature _____

Street Address _____

Name _____ Signature _____

Street Address _____

Name _____ Signature _____

Street Address _____

Name _____ Signature _____

Street Address _____

Name _____ Signature _____

Street Address _____

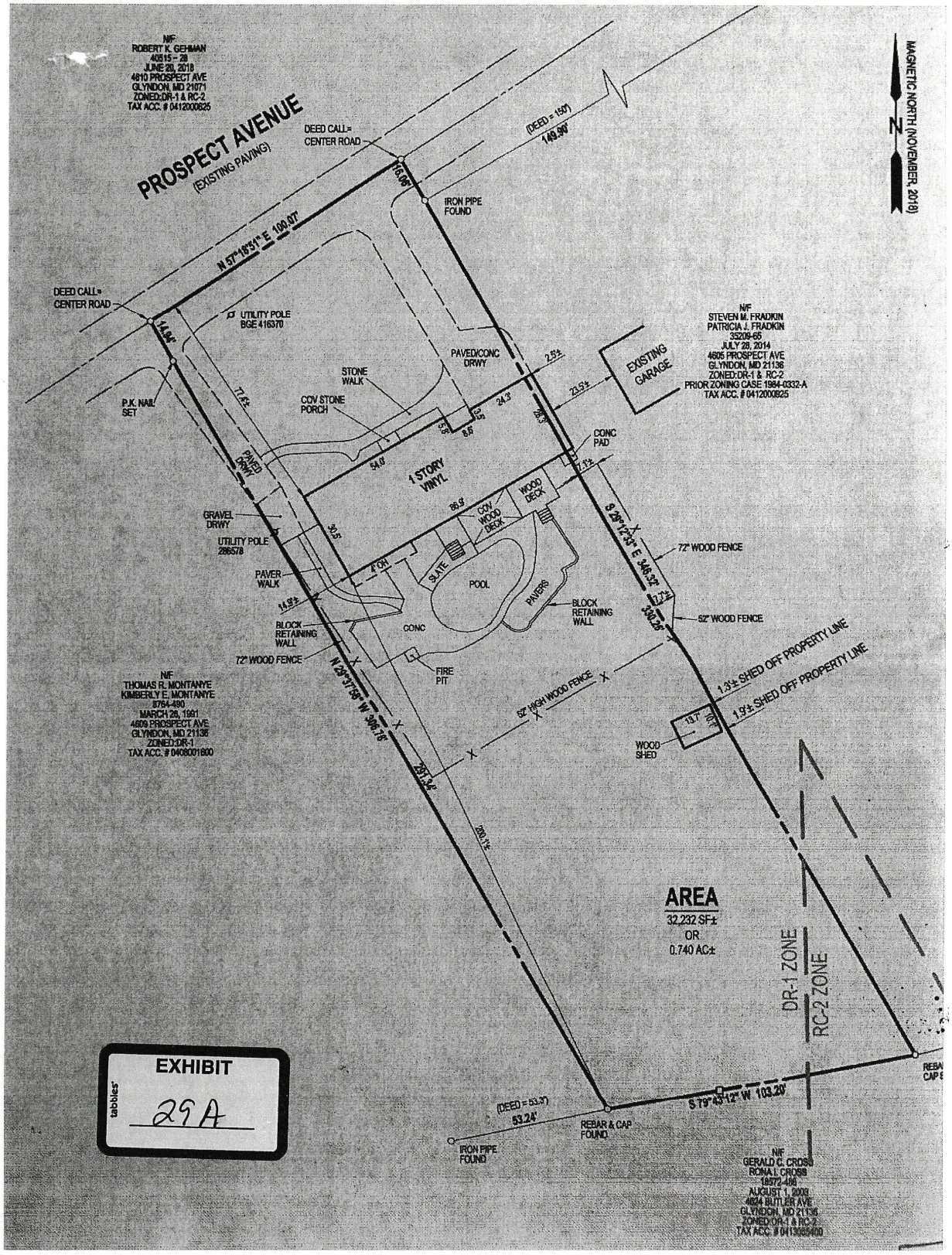
Name _____ Signature _____

Street Address _____

Name _____ Signature _____

Street Address _____

Bair's survey complete. Note cutoff at top of Montanye's driveway. Excluded on Fradkin's provided copy.



Opposition to 4607 Prospect Ave Appeal, Case # 2019-0342-SPHA

To: Baltimore County Board of Appeals

I oppose exceptions for 4607 Prospect Ave, case # 2019-0342-SPHA

Name Polly Papp Signature [signature]

Street Address 25 Waugh Avenue, Reisterstown, MD 21136

Name Kim KAELSEN Signature [signature]

Street Address 304 Hammond Avenue GLYNDON MD 21071.

Name _____ Signature _____

Street Address _____

Name _____ Signature _____

Street Address _____

Name _____ Signature _____

Street Address _____

Name _____ Signature _____

Street Address _____

Name _____ Signature _____

Street Address _____

Name _____ Signature _____

Street Address _____

Name _____ Signature _____

Street Address _____

Opposition to 4607 Prospect Ave Appeal, Case # 2019-0342-SPHA

To: Baltimore County Board of Appeals

I oppose exceptions for 4607 Prospect Ave, case # 2019-0342-SPHA.

Name MARC SZPARAGA Signature _____

Street Address 18 CHATSWORTH AVE. GLYNDON, MD 21071

Name Patty Szparaga Signature _____

Street Address 18 Chatsworth Ave Glyndon Md 21071

Name Diane Playhart Signature _____

Street Address 9719 Butler Rd Box 2 Glyndon MD 21071

Name _____ Signature _____

Street Address _____

Name _____ Signature _____

Street Address _____

Name _____ Signature _____

Street Address _____

Name _____ Signature _____

Street Address _____

Name _____ Signature _____

Street Address _____

Name _____ Signature _____

Street Address _____

Opposition to 4607 Prospect Ave Appeal, Case # 2019-0342-SPHA

To: Baltimore County Board of Appeals

I oppose exceptions for 4607 Prospect Ave, case # 2019-0342-SPHA.

Name Marian Macdonald Signature Marian Macdonald

Street Address 111 Central Avenue, Glyndon, MD 21071

Name David Hughes Signature David D. Hughes

Street Address 2 Albright Ave. Glyndon, MD 21071

Name Teresa Moore Signature Teresa Moore

Street Address 29 Waugh Ave Glyndon MD 21136

Name Lauren Teixeira Signature Lauren Teixeira

Street Address 301 Railroad Ave, Glyndon, MD 21071

Name Vernene Rodgers Lenz Signature Vernene Rodgers Lenz

Street Address 4722 Butler Rd, PO Box 279, Glyndon, MD 21071

Name [illegible] Signature [illegible]

Street Address 4804 BUTLER ROAD GLYNDON MD 21071

Name _____ Signature _____

Street Address _____

Name _____ Signature _____

Street Address _____

Name _____ Signature _____

Street Address _____

Opposition to 4607 Prospect Ave Appeal, Case # 2019-0342-SPHA

To: Baltimore County Board of Appeals

I oppose exceptions for 4607 Prospect Ave, case # 2019-0342-SPHA.

Name Karen Cerwins Signature Karen Cerwins

Street Address 4716 Butler Rd, Glyndon, MD 21071

Name Sarah Bosmans Signature

Street Address 26 Waugh Avenue, Glyndon MD 21136

Name Barbara Whitman Signature Barbara C. Whitman

Street Address 4702 Butler Rd., Glyndon, Md. 21071

Name Sandy Arnette Signature Sandra Arnette

Street Address 15 Belle View Avenue, Glyndon, MD 21071

Name_____ Signature_____

Street Address_____

Name_____ Signature_____

Street Address_____

Name_____ Signature_____

Street Address_____

Name_____ Signature_____

Street Address_____

Bair's survey provided to Fradkin's.



From:	Peoples Counsel
To:	Appeals Board
Cc:	Tom@montanye.net; Steve Fradkin; Lawrence Schmidt; Sue Benson; mmolinaro@reisterstown.com; Peter Max Zimmerman; Kimberley Karlsen
Subject:	Donna Bair - 2019-342-SPHA -Day 2 - Exhibits
Date:	Thursday, March 18, 2021 3:00:05 PM
Attachments:	PCExh5 -Historic Glyndon Inc - Rule 8 Papers.pdf PCExh6 - Glyndon Community - Rule 8 Papers.pdf PCExh7-Reisterstown- Owings Mills- Glyndon - Rule 8 Papers.pdf PCExh8 -GIS Aerial.pdf PCExh9-Google Map.pdf PCExh10a-c -Historic Districts -Glyndon Map - Bill 48-81.pdf PCExh11-SDAT Printouts.pdf PCExh12 -Zoning History.pdf

---

Good Afternoon,

Attached please find the following documents for submission as exhibits in the Donna Bair hearing scheduled for March 23, 2021:

PC Exh. 5	Rule 8 documents for Historic Glyndon Inc.
PC. Exh. 6	Rule 8 documents for Glyndon Community Association
PC Exh. 7	Rule 8 documents – Reisterstown-Owings Mills- Glyndon
PC Exh. 8	GIS Aerial
PC Exh. 9	Google Map
PC Exh. 10a	Historic Districts enacted by Baltimore County Council
PC Exh. 10b	Glyndon Historic District Map
PC Exh. 10c	County Council Bill 48-81
PC Exh. 11	SDAT Printouts
PC Exh. 12	Zoning History

Thank you for your consideration.

Rebecca Wheatley, Legal Secretary
Office of People's Counsel
410-887-2188

From:	Peoples Counsel
To:	Appeals Board
Cc:	Tom@montanye.net; Steve Fradkin; Lawrence Schmidt; Sue Benson; mmolinaro@reisterstown.com; Peter Max Zimmerman; Kimberley Karlsen
Subject:	Donna Bair - 2019-342-SPHA -Day 2 - Exhibits
Date:	Thursday, March 18, 2021 3:00:05 PM
Attachments:	PCExh5 -Historic Glyndon Inc - Rule 8 Papers.pdf PCExh6 - Glyndon Community - Rule 8 Papers.pdf PCExh7-Reisterstown- Owings Mills- Glyndon - Rule 8 Papers.pdf PCExh8 -GIS Aerial.pdf PCExh9-Google Map.pdf PCExh10a-c -Historic Districts -Glyndon Map - Bill 48-81.pdf PCExh11-SDAT Printouts.pdf PCExh12 -Zoning History.pdf

---

Good Afternoon,

Attached please find the following documents for submission as exhibits in the Donna Bair hearing scheduled for March 23, 2021:

PC Exh. 5	Rule 8 documents for Historic Glyndon Inc.
PC. Exh. 6	Rule 8 documents for Glyndon Community Association
PC Exh. 7	Rule 8 documents – Reisterstown-Owings Mills- Glyndon
PC Exh. 8	GIS Aerial
PC Exh. 9	Google Map
PC Exh. 10a	Historic Districts enacted by Baltimore County Council
PC Exh. 10b	Glyndon Historic District Map
PC Exh. 10c	County Council Bill 48-81
PC Exh. 11	SDAT Printouts
PC Exh. 12	Zoning History

Thank you for your consideration.

Rebecca Wheatley, Legal Secretary
Office of People's Counsel
410-887-2188

Real Property Data Search

Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Special Tax Recapture: None

Account Identifier: District - 04 Account Number - 0412000925

Owner Information

Owner Name:	FRADKIN STEVEN M FRADKIN PATRICIA J	**Use:** **Principal Residence:**	RESIDENTIAL YES
Mailing Address:	4605 PROSPECT AVE REISTERSTOWN MD 21136-	**Deed Reference:**	/35209/ 00065

Location & Structure Information

Premises Address:	4605 PROSPECT AVE GLYNDON MD 21136-	**Legal Description:**	4605 PROSPECT AVE B F BENNETT&JOSHUA REGE

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:	
0048	0008	0752	4020023.04	0000			11	2019	Plat Ref:	0002/ 0018

Special Tax Areas: None **Town:** None
Ad Valorem: None
Tax Class: None

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1953	1,458 SF	600 SF	1.0100 AC	04

Stories	Basement	Type	Exterior	Quality	Full/Half Bath	Garage	Last Notice of Major Improvements
1	YES	STANDARD UNIT	BRICK/	5	2 full	1 Attached	

Value Information

	Base Value	Value As of 01/01/2019	Phase-in Assessments As of 07/01/2019	As of 07/01/2020
Land:	120,100	120,100		
Improvements	226,600	168,200		
Total:	346,700	308,300	308,300	308,300
Preferential Land:	0			0

Transfer Information

Seller: BINDER ISAAK	**Date:** 07/30/2014	**Price:** $350,000
Type: ARMS LENGTH IMPROVED	**Deed1:** /35209/ 00065	**Deed2:**
Seller: WOLF CYNTHIA E	**Date:** 11/13/2013	**Price:** $166,000
Type: ARMS LENGTH IMPROVED	**Deed1:** /34429/ 00185	**Deed2:**
Seller: BENDER TRACY V	**Date:** 06/30/2008	**Price:** $479,000
Type: ARMS LENGTH IMPROVED	**Deed1:** /27148/ 00343	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2019	07/01/2020
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Special Tax Recapture: None

Homestead Application Information

Homestead Application Status: Approved 09/09/2014

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application **Date:**

Baltimore County

New Search (https://sdat.dat.maryland.gov/RealProperty)

District: 04 **Account Number:** 0412000925



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 http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx (http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx).

P.C. Exh. 11

Real Property Data Search

Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Special Tax Recapture: None

Account Identifier: District - 04 Account Number - 0408067270

Owner Information

Owner Name:	ACLE SERGIO A TRUSTEE ACLE FRANCES M TRUSTEE	**Use:** **Principal Residence:**	RESIDENTIAL YES
Mailing Address:	4608 PROSPECT AV GLYNDON MD 21071	**Deed Reference:**	/39466/ 00170

Location & Structure Information

Premises Address:	4608 PROSPECT AVE GLYNDON 21071-	**Legal Description:**	2.27 AC WS PROSPECT 2640 FR GLYNDON STATIO

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0048	0006	0762	4020023.04	0000				2019	Plat Ref:

Special Tax Areas: None

Town: None
Ad Valorem: None
Tax Class: None

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1917	3,632 SF		2.2700 AC	04

Stories	Basement	Type	Exterior	Quality	Full/Half Bath	Garage	Last Notice of Major Improvements
2	YES	STANDARD UNIT	SIDING/	5	2 full	1Det/1Carport	

Value Information

	Base Value	Value As of 01/01/2019	Phase-in Assessments As of 07/01/2019	As of 07/01/2020
Land:	135,200	135,200		
Improvements	264,200	304,000		
Total:	399,400	439,200	412,667	425,933
Preferential Land:	0			0

Transfer Information

Seller: ACLE SERGIO A	**Date:** 10/02/2017	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /39466/ 00170	**Deed2:**
Seller: THOMAS BARRY WAYNE	**Date:** 06/19/1989	**Price:** $180,000
Type: ARMS LENGTH IMPROVED	**Deed1:** /08202/ 00743	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2019	07/01/2020
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Special Tax Recapture: None

Homestead Application Information

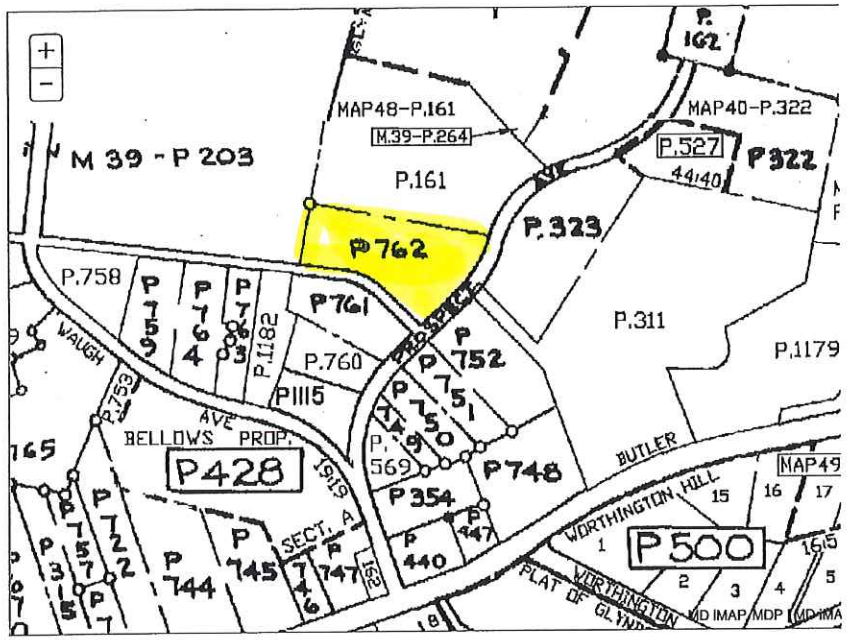
Homestead Application Status: Approved 09/11/2012

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application **Date:**

Baltimore County New Search (https://sdat.dat.maryland.gov/RealProperty)

District: 04 **Account Number:** 0408067270



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 http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx (http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx).

Real Property Data Search

Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Special Tax Recapture: None

Account Identifier: District - 04 Account Number - 0416015450

Owner Information

Owner Name:	BAIR DONNA V	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	4607 PROSPECT AVE GLYNDON MD 21071-3800	**Deed Reference:**	/35307/ 00489

Location & Structure Information

Premises Address:	4607 PROSPECT AVE 0-0000	**Legal Description:**	.78 AC 4607 PROSPECT AVE SWS 200FT NE OF WAUGH AVE

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0048	0008	0751	4020023.04	0000				2019	Plat Ref:

Special Tax Areas: None

Town: None
Ad Valorem: None
Tax Class: None

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1951	1,493 SF	800 SF	33,976 SF	04

Stories	Basement	Type	Exterior	Quality	Full/Half Bath	Garage	Last Notice of Major Improvements
1	YES	STANDARD UNIT	SIDING/	4	2 full/ 1 half	1 Attached	

Value Information

	Base Value	Value As of 01/01/2019	Phase-In Assessments As of 07/01/2019	As of 07/01/2020
Land:	82,400	82,400		
Improvements	161,300	204,500		
Total:	243,700	286,900	258,100	272,500
Preferential Land:	0			0

Transfer Information

Seller: DEVANEY TIMOTHY W	**Date:** 08/28/2014	**Price:** $320,500
Type: NON-ARMS LENGTH OTHER	**Deed1:** /35307/ 00489	**Deed2:**
Seller: TOWLES MARK	**Date:** 08/04/2011	**Price:** $235,000
Type: NON-ARMS LENGTH OTHER	**Deed1:** /31063/ 00346	**Deed2:**
Seller: HAMILTON BRIAN R	**Date:** 05/25/2005	**Price:** $344,900
Type: ARMS LENGTH IMPROVED	**Deed1:** /21925/ 00100	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2019	07/01/2020
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Special Tax Recapture: None

Homestead Application Information

Homestead Application Status: Approved 02/12/2015

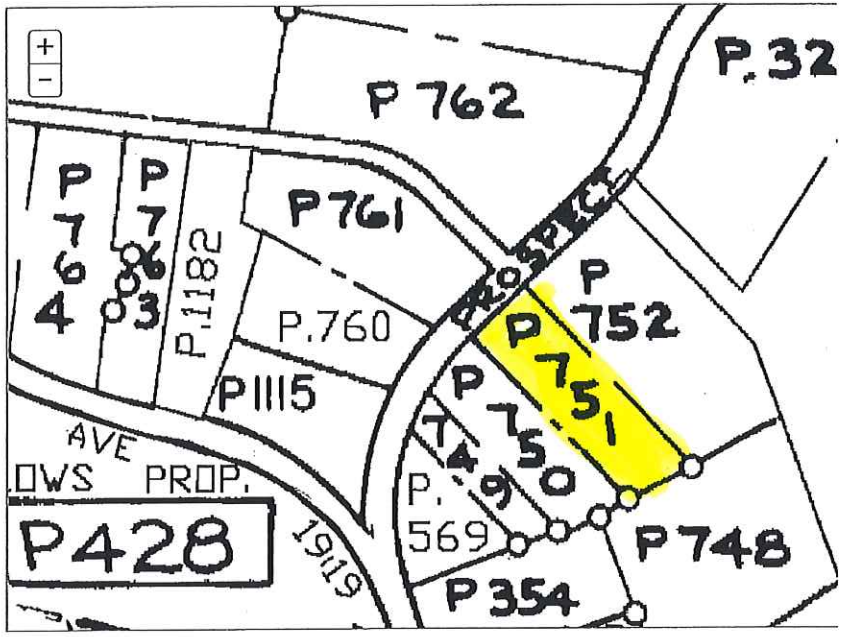
Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application **Date:**

Baltimore County

New Search (https://sdat.dat.maryland.gov/RealProperty)

District: **04** Account Number: **0416015450**



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 http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx (http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx).

Real Property Data Search

Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Special Tax Recapture: None

Account Identifier: District - 04 Account Number - 0408001600

Owner Information

Owner Name:	MONTANYE THOMAS R MONTANYE KIMBERLY E	**Use:** **Principal Residence:**	RESIDENTIAL YES
Mailing Address:	4609 PROSPECT AV GLYNDON MD 21136-3800	**Deed Reference:**	/08764/ 00490

Location & Structure Information

Premises Address:	4609 PROSPECT AVE GLYNDON 21136-3800	**Legal Description:**	LT SES PROSPECT AV .69 AC 300 NE WAUGH AV

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0048	0006	0750	4020023.04	0000				2019	Plat Ref:

Special Tax Areas: None

Town: None
Ad Valorem: None
Tax Class: None

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1949	1,380 SF		30,056 SF	04

Stories	Basement	Type	Exterior	Quality	Full/Half Bath	Garage	Last Notice of Major Improvements
1	YES	STANDARD UNIT	SIDING/	3	2 full		

Value Information

	Base Value	Value As of 01/01/2019	Phase-in Assessments As of 07/01/2019	As of 07/01/2020
Land:	81,500	81,500		
Improvements	94,100	109,400		
Total:	175,600	190,900	180,700	185,800
Preferential Land:	0			0

Transfer Information

Seller: HALL ROBERT G,3RD	**Date:** 04/19/1991	**Price:** $92,000
Type: ARMS LENGTH IMPROVED	**Deed1:** /08764/ 00490	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2019	07/01/2020
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Special Tax Recapture: None

Homestead Application Information

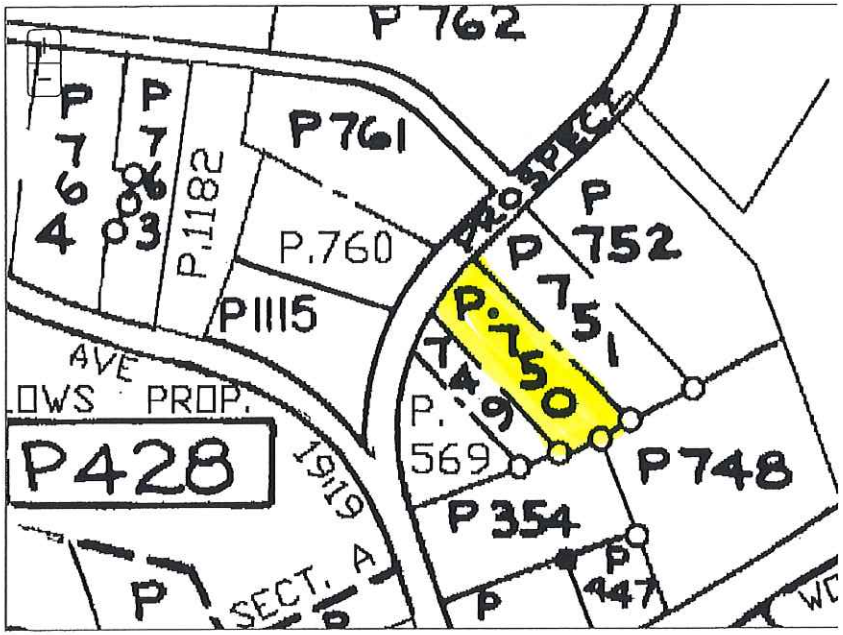
Homestead Application Status: Approved 02/18/2014

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application **Date:**

Baltimore County New Search (https://sdat.dat.maryland.gov/RealProperty)

District: 04 **Account Number:** 0408001600



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 http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx (http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx).

Real Property Data Search

Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Special Tax Recapture: None

Account Identifier: District - 04 Account Number - 0412000625

Owner Information

Owner Name:	GEHMAN ROBERT K	**Use:**	RESIDENTIAL
		Principal Residence:	NO
Mailing Address:	4610 PROSPECT AV GLYNDON MD 21071	**Deed Reference:**	/40515/ 00028

Location & Structure Information

Premises Address:	4610 PROSPECT AVE GLYNDON 21071-	**Legal Description:**	1.12 AC 4610 PROSPECT AV NS 700 N BUTLER RD

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0048	0006	0761	4020023.04	0000				2019	Plat Ref:

Special Tax Areas: None

Town: None
Ad Valorem: None
Tax Class: None

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1852	1,995 SF		1.1200 AC	04

Stories	Basement	Type	Exterior	Quality	Full/Half Bath	Garage	Last Notice of Major Improvements
2	YES	STANDARD UNIT	ASBESTOS SHINGLE/	4	2 full	1 Detached	

Value Information

	Base Value	Value As of 01/01/2019	Phase-In Assessments As of 07/01/2019	As of 07/01/2020
Land:	121,400	121,400		
Improvements	107,100	130,000		
Total:	228,500	251,400	236,133	243,767
Preferential Land:	0			0

Transfer Information

Seller: WILLIAMS THOMAS L	**Date:** 07/30/2018	**Price:** $215,000
Type: NON-ARMS LENGTH OTHER	**Deed1:** /40515/ 00028	**Deed2:**
Seller: WILLIAMS THOMAS L	**Date:** 04/15/1993	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /09711/ 00129	**Deed2:**
Seller: LARKINS MARY J	**Date:** 09/01/1982	**Price:** $82,000
Type: ARMS LENGTH IMPROVED	**Deed1:** /06429/ 00450	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2019	07/01/2020
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Special Tax Recapture: None

Homestead Application Information

Homestead Application Status: No Application

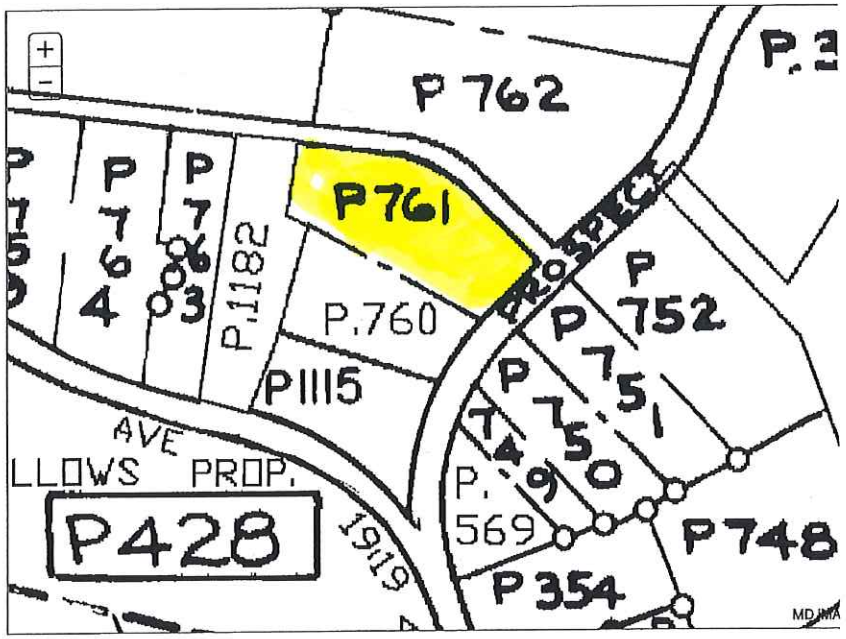
Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application **Date:**

Baltimore County

New Search (https://sdat.dat.maryland.gov/RealProperty)

District: 04 **Account Number:** 0412000625



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 http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx (http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx).

Real Property Data Search

Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Special Tax Recapture: None

Account Identifier: District - 04 Account Number - 0408055460

Owner Information

Owner Name:	BEHAR JEFFREY M FARINA CAROL L	**Use:** **Principal Residence:**	RESIDENTIAL YES
Mailing Address:	4611 PROSPECT AVE GLYNDON MD 21071-4203	**Deed Reference:**	/40587/ 00234

Location & Structure Information

Premises Address:	4611 PROSPECT AVE GLYNDON 21071-4203	**Legal Description:**	.42 AC 4611 PROSPECT AVE 500FT NE OF BUTLER RD

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0040	0006	0749	4020023.04	0000				2019	Plat Ref:

Special Tax Areas: None

Town: None
Ad Valorem: None
Tax Class: None

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1958	850 SF	800 SF	18,295 SF	04

Stories	Basement	Type	Exterior	Quality	Full/Half Bath	Garage	Last Notice of Major Improvements
1	YES	STANDARD UNIT	BRICK/	3	2 full		

Value Information

	Base Value	Value As of 01/01/2019	Phase-in Assessments As of 07/01/2019	As of 07/01/2020
Land:	78,500	78,500		
Improvements	105,300	149,200		
Total:	183,800	227,700	198,433	213,067
Preferential Land:	0			0

Transfer Information

Seller: BEHAR JEFFREY M	**Date:** 08/20/2018	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /40587/ 00234	**Deed2:**
Seller: CROW BRUCE A	**Date:** 03/26/2008	**Price:** $270,000
Type: ARMS LENGTH IMPROVED	**Deed1:** /26816/ 00016	**Deed2:**
Seller: JONES ROBERT J	**Date:** 08/04/2003	**Price:** $195,000
Type: NON-ARMS LENGTH OTHER	**Deed1:** /18510/ 00261	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2019	07/01/2020
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Special Tax Recapture: None

Homestead Application Information

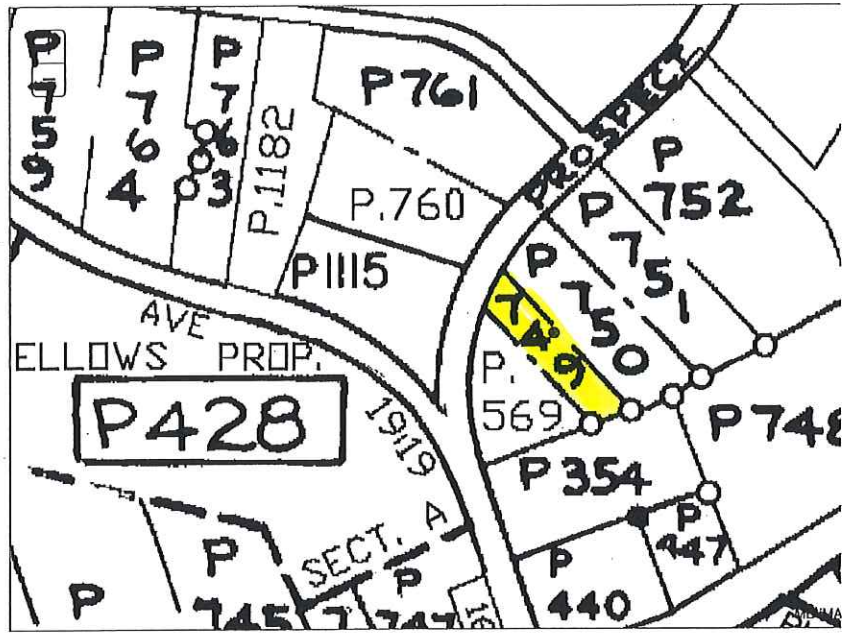
Homestead Application Status: Approved 07/09/2008

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application **Date:**

Baltimore County New Search (https://sdat.dat.maryland.gov/RealProperty)

District: 04 **Account Number:** 0408055460



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 http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx (http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx).

Real Property Data Search

Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Special Tax Recapture: None

Account Identifier: District - 04 Account Number - 0418087075

Owner Information

Owner Name:	GEHMAN ROBERT K SR	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	4612 PROSPECT AVE GLYNDON MD 21071-5314	**Deed Reference:**	/31722/ 00177

Location & Structure Information

Premises Address:	4612 PROSPECT AVE GLYNDON 21071-	**Legal Description:**	.75998 AC 4612 PROSPECT AVE WS 200 FT N WAUGH AVE

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0048	0006	0760	4020023.04	0000				2019	Plat Ref:

Special Tax Areas: None

Town: None
Ad Valorem: None
Tax Class: None

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1927	1,624 SF		0.7600 AC	04

Stories	Basement	Type	Exterior	Quality	Full/Half Bath	Garage	Last Notice of Major Improvements
2	NO	STANDARD UNIT	WOOD SHINGLE/	4	2 full	1 Detached	

Value Information

	Base Value	Value As of 01/01/2019	Phase-In Assessments As of 07/01/2019	As of 07/01/2020
Land:	82,200	82,200		
Improvements	158,300	201,600		
Total:	240,500	283,800	254,933	269,367
Preferential Land:	0			0

Transfer Information

Seller: GEHMAN ROBERT K SR	**Date:** 02/16/2012	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /31722/ 00177	**Deed2:**
Seller: ENSOR LAWRENCE E	**Date:** 01/16/2001	**Price:** $243,000
Type: ARMS LENGTH MULTIPLE	**Deed1:** /14921/ 00041	**Deed2:**
Seller: RYER EUGENE H	**Date:** 06/28/1973	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /05372/ 00479	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2019	07/01/2020
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Special Tax Recapture: None

Homestead Application Information

Homestead Application Status: Approved 11/08/2012

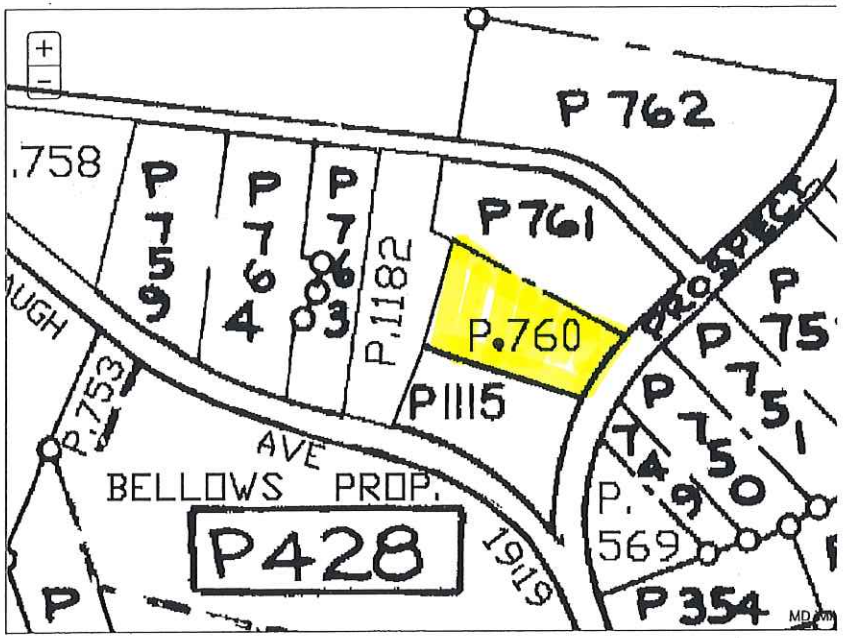
Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application **Date:**

Baltimore County

New Search (https://sdat.dat.maryland.gov/RealProperty)

District: 04 **Account Number:** 0418087075



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 http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx (http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx).

Real Property Data Search

Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Special Tax Recapture: None

Account Identifier: District - 04 Account Number - 2200011167

Owner Information

Owner Name:	EBELEIN RONALD L EBELEIN PATRICIA	**Use:** **Principal Residence:**	RESIDENTIAL YES
Mailing Address:	4614 PROSPECT AVE GLYNDON MD 21071-3864	**Deed Reference:**	/13487/ 00746

Location & Structure Information

Premises Address:	4614 PROSPECT AVE 0-0000	**Legal Description:**	.47005 AC NES PROSPECT AVE COR WAUGH AVE

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:	MS
0048	0006	1115	4020023.04	0000			2	2019	Plat Ref:	

Special Tax Areas: None

Town: None
Ad Valorem: None
Tax Class: None

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
2002	2,407 SF		20,475 SF	04

Stories	Basement	Type	Exterior	Quality	Full/Half Bath	Garage	Last Notice of Major Improvements
1 1/2	YES	STANDARD UNIT	SIDING/	5	2 full/ 1 half	1 Attached	2001

Value Information

	Base Value	Value As of 01/01/2019	Phase-In Assessments As of 07/01/2019	As of 07/01/2020
Land:	79,100	79,100		
Improvements	276,900	391,400		
Total:	356,000	470,500	394,167	432,333
Preferential Land:	0			0

Transfer Information

Seller: STEUART ENSOR AND SMITH COMPANY	**Date:** 01/29/1999	**Price:** $90,000
Type: ARMS LENGTH MULTIPLE	**Deed1:** /13487/ 00746	**Deed2:**
Seller: GREENSPRING REALTY INC	**Date:** 08/02/1993	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /10781/ 00186	**Deed2:**
Seller: ENSOR LAWRENCE E	**Date:** 03/13/1992	**Price:** $1
Type: ARMS LENGTH IMPROVED	**Deed1:** /09095/ 00190	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2019	07/01/2020
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Special Tax Recapture: None

Homestead Application Information

Homestead Application Status: Approved 12/31/2012

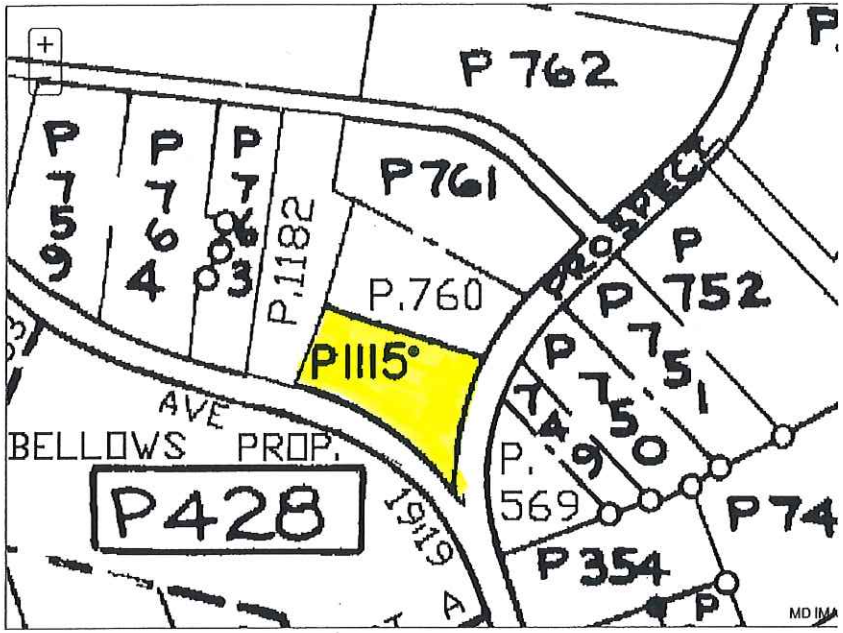
Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application **Date:**

Baltimore County

New Search (https://sdat.dat.maryland.gov/RealProperty)

District: 04 **Account Number: 2200011167**



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 http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx (http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx).

Real Property Data Search

Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Special Tax Recapture: None

Account Identifier: District - 04 Account Number - 1600009610

Owner Information

Owner Name:	MAEVERS MARIE C	Use: Principal Residence:	RESIDENTIAL YES
Mailing Address:	4615 PROSPECT AV GLYNDON MD 21071	Deed Reference:	/40629/ 00349

Location & Structure Information

Premises Address:	4615 PROSPECT AVE GLYNDON 21071-	Legal Description:	.59 AC ES PROSPECT AVENUE 200 N BUTLER ROAD

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0048	0006	0568	4020023.04	0000				2019	Plat Ref:

Special Tax Areas: None

Town: None
Ad Valorem: None
Tax Class: None

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1951	1,752 SF		25,700 SF	04

Stories	Basement	Type	Exterior	Quality	Full/Half Bath	Garage	Last Notice of Major Improvements
1 1/2	YES	STANDARD UNIT	STUCCO/ SIDING	3	1 full	1 Detached	

Value Information

	Base Value	Value As of 01/01/2019	Phase-In Assessments As of 07/01/2019	As of 07/01/2020
Land:	80,400	80,400		
Improvements	120,600	139,500		
Total:	201,000	219,900	207,300	213,600
Preferential Land:	0			0

Transfer Information

Seller: MAEVERS KARL F	Date: 09/04/2018	Price: $0
Type: NON-ARMS LENGTH OTHER	Deed1: /40629/ 00349	Deed2:
Seller:	Date:	Price: $0
Type: NON-ARMS LENGTH OTHER	Deed1: /04930/ 00151	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:

Exemption Information

Partial Exempt Assessments:	Class	07/01/2019	07/01/2020
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Special Tax Recapture: None

Homestead Application Information

Homestead Application Status: Approved 10/16/2012

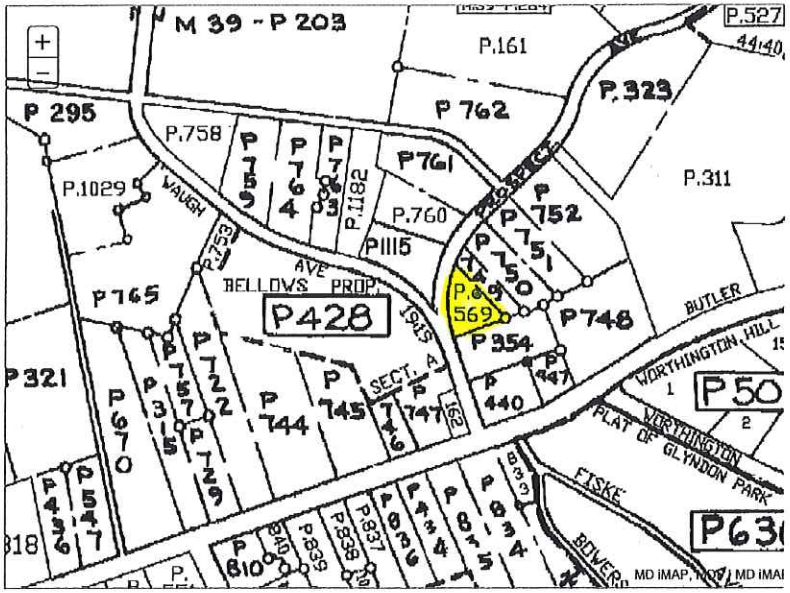
Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application Date:

Baltimore County

New Search (https://sdat.dat.maryland.gov/RealProperty)

District: 04 Account Number: 1600009610

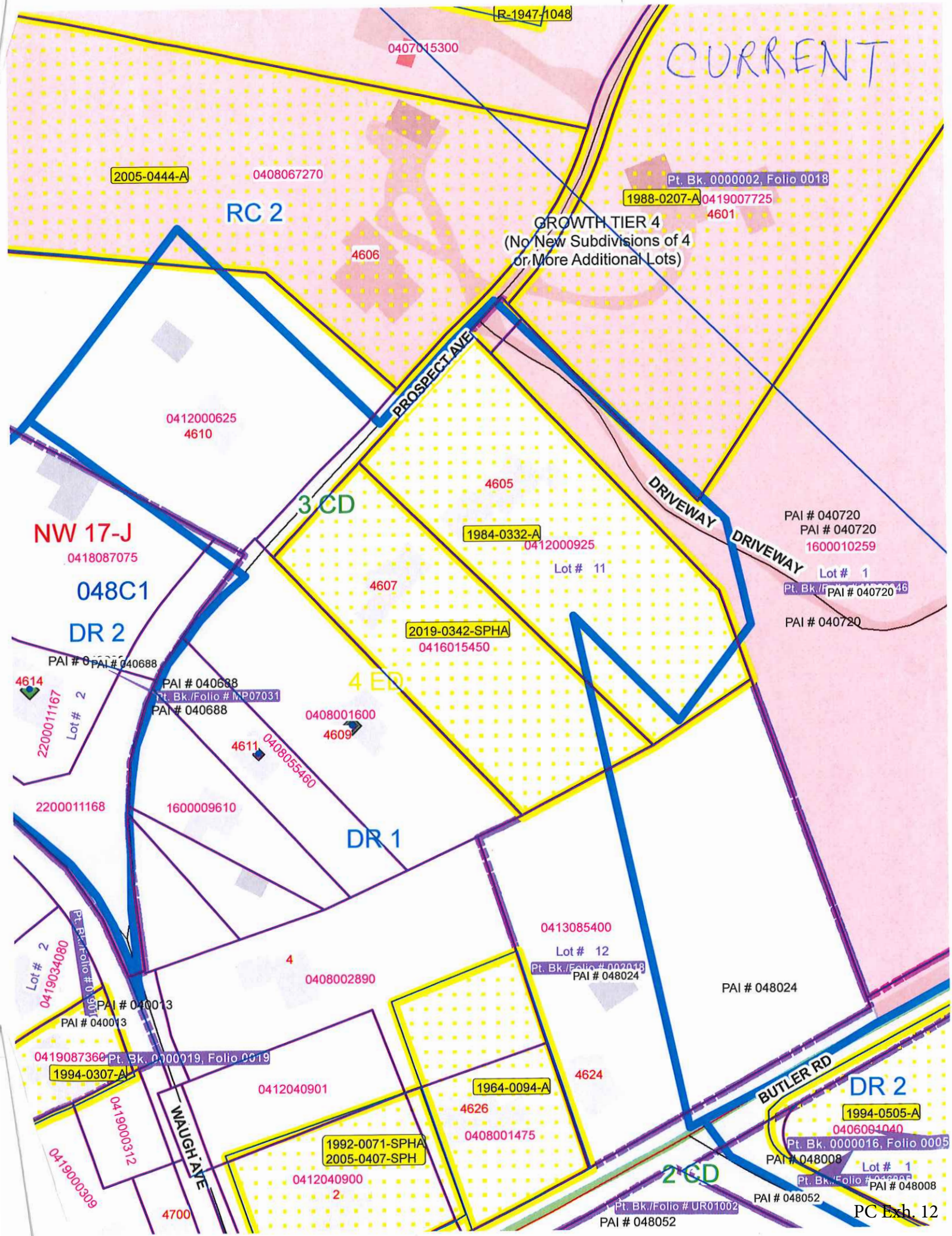


The information shown on this map has been compiled from deed descriptions and plats and is not a property survey. The map should not be used for legal descriptions. Users noting errors are urged to notify the Maryland Department of Planning Mapping, 301 W. Preston Street, Baltimore MD 21201.

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).

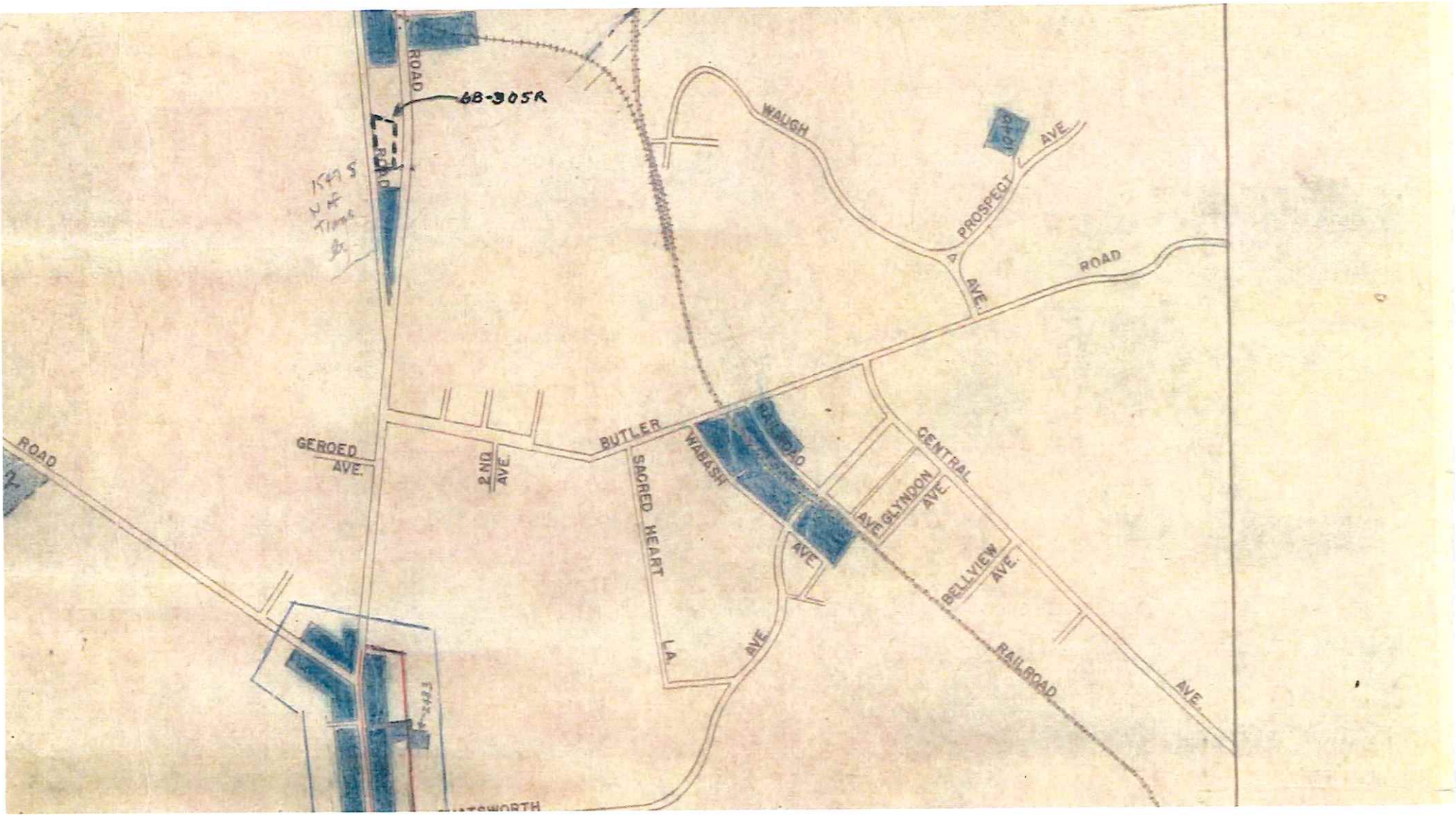
Property maps provided courtesy of the Maryland Department of Planning.

For more information on electronic mapping applications, visit the Maryland Department of Planning web site at http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx (http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx).


CURRENT
R-1947-1048
0407015300
2005-0444-A
0408067270
RC 2
Pt. Bk. 0000002, Folio 0018
1988-0207-A
0419007725
4601
GROWTH TIER 4
(No New Subdivisions of 4
or More Additional Lots)
4606
PROSPECT AVE
0412000625
4610
4605
3 CD
DRIVEWAY
DRIVEWAY
PAI # 040720
PAI # 040720
1600010259
NW 17-J
0418087075
1984-0332-A
0412000925
Lot # 11
Lot # 1
PAI # 040720
PAI # 040720
048C1
4607
DR 2
2019-0342-SPHA
0416015450
PAI # 040688
4614
PAI # 040688
Pt. Bk./Folio # MP07031
PAI # 040688
4 ED
2200011167
Lot # 2
0408001600
4609
4611
0408055460
2200011168
1600009610
DR 1
0413085400
Lot # 12
Pt. Bk./Folio # 002048
PAI # 048024
PAI # 048024
4
0408002890
Lot # 2
0419034080
Pt. Bk./Folio # 0001
PAI # 040013
PAI # 040013
0419087360
Pt. Bk. 0000019, Folio 0019
1994-0307-A
0412040901
4624
1964-0094-A
BUTLER RD
DR 2
1994-0505-A
0406001040
Pt. Bk. 0000016, Folio 0005
PAI # 048008
Lot # 1
PAI # 048008
0419000312
WAUGH AVE
4626
0408001475
1992-0071-SPHA
2005-0407-SPH
2 CD
0419000309
0412040900
2
4700
Pt. Bk./Folio # UR01002
PAI # 048052
PAI # 048052

PC Exh. 12

1945


ROAD
BB-305R
WAUGH
PROSPECT
AVE.
ROAD
BUTLER
GEROED
AVE.
2ND
AVE
SACRED HEART
LA
AVE.
WABASH
RAILROAD
CENTRAL
AVE.
GLYNDON
AVE.
BELLVIEW
AVE.
RAILROAD
AVE.
ROAD

1945 Key

USE DISTRICT MAP

FOURTH ELECTION DISTRICT OF BALTIMORE COUNTY

SECTION "A"

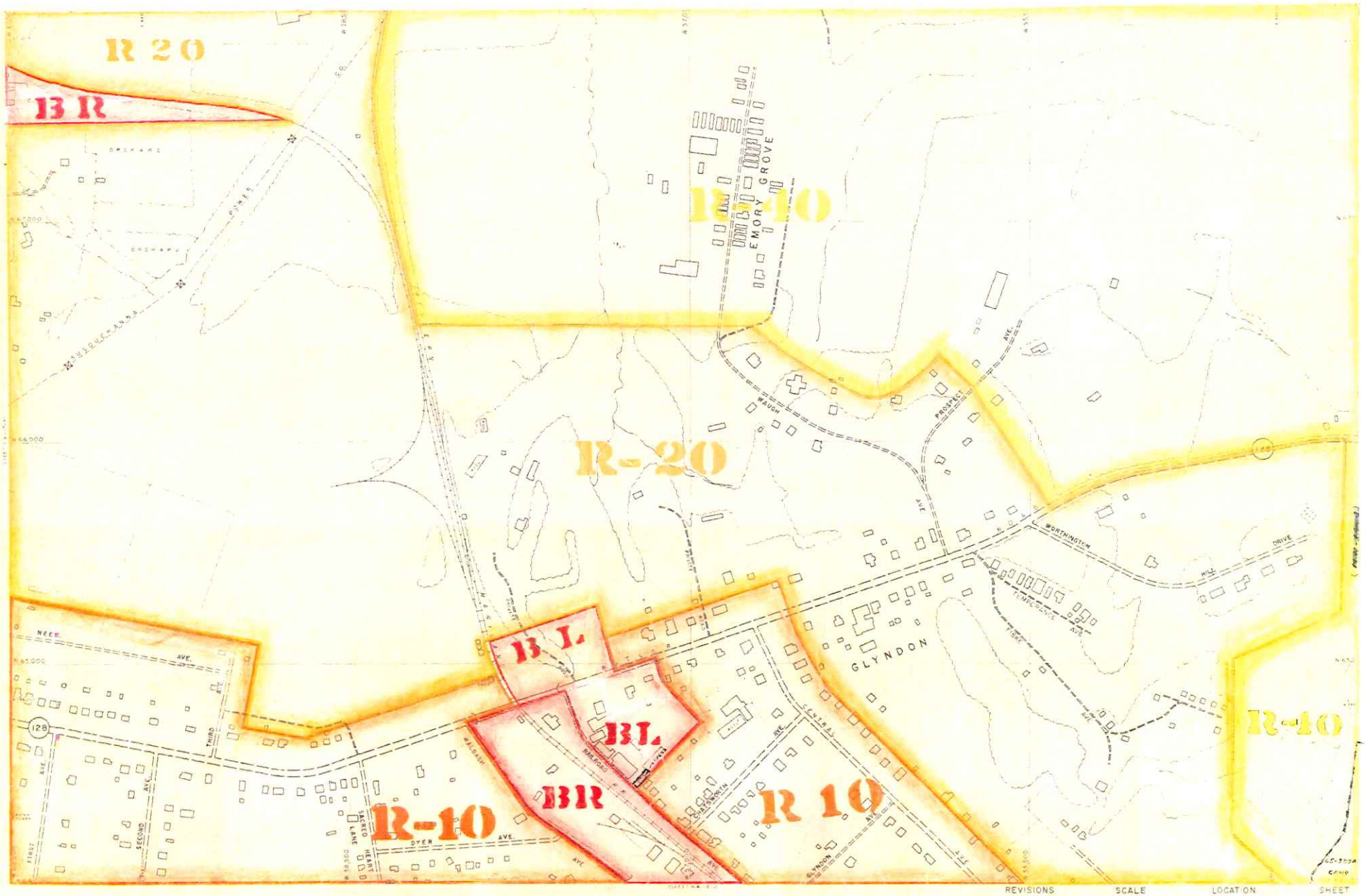
SCALE

0 1000 2000 3000 4000

1000 FEET TO ONE INCH

LEGEND

- "A" RESIDENCE ZONE - R-6
- "B" RESIDENCE ZONE - R-6
- "C" RESIDENCE ZONE - R-A.
- "D" RESIDENCE ZONE - R-G.
- "E" COMMERCIAL ZONE - B-L.
- "F" INDUSTRIAL ZONE - M.L.



PHOTOGRAMMETRIC MAP OF
BALTIMORE COUNTY METROPOLITAN AREA

REVISIONS		SCALE	LOCATION	SHEET
BY	DATE	1" = 200'	GLYNDON REISTERSTOWN AREA	NW 17-J

DATE OF PHOTOGRAPHY APRIL 1955

Compiled by Photogrammetric Methods
AERO SERVICE CORPORATION - PHILADELPHIA, PA

4TH Dist.

X-SE W-SW

ADOPTED BY THE
BALTIMORE COUNTY COUNCIL
MARCH 24, 1971

PHOTOGRAMMETRIC MAP OF

BALTIMORE COUNTY METROPOLITAN AREA

OFFICIAL ZONING MAP

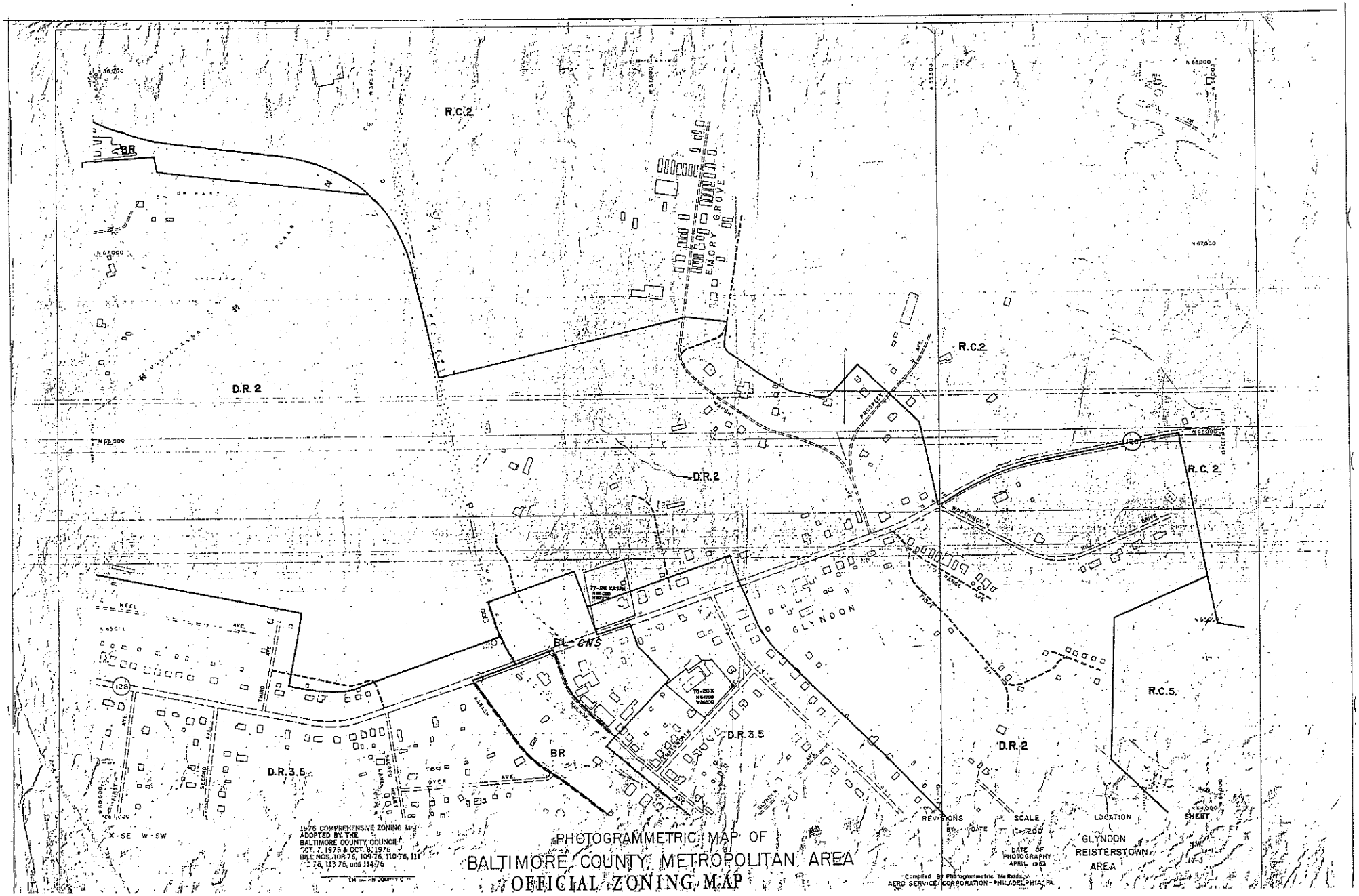
REVISIONS BY	DATE	SCALE	LOCATION	SHEET
		1" = 200'	GLYNDON REISTERSTOWN AREA	N.W. 17-J

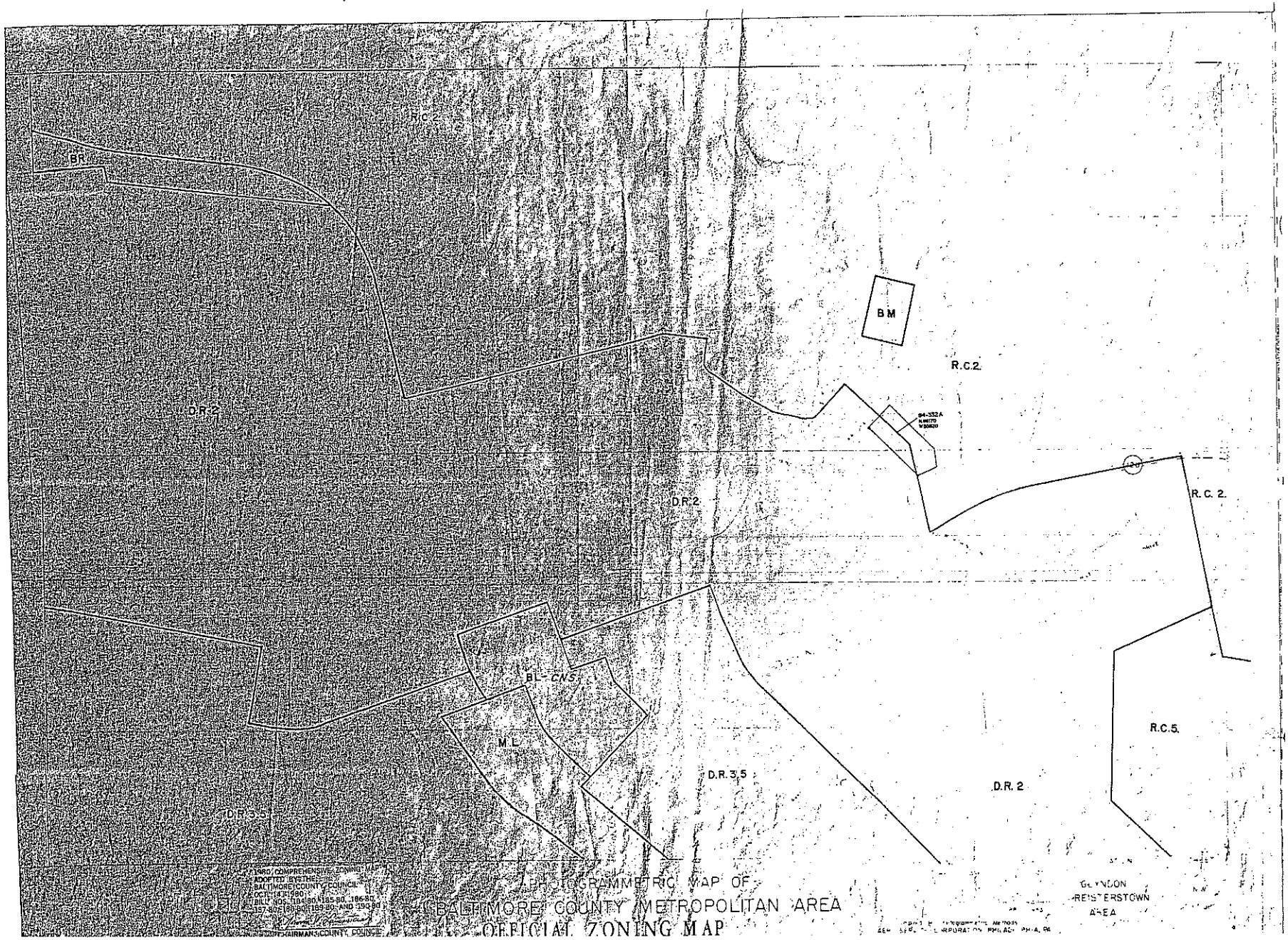
DATE OF PHOTOGRAPHY APRIL 1963

Compiled By Photogrammetric Methods

PLAN HOLD

MW-17-J


R.C.2
BR
EMORY GROVE
D.R.2
R.C.2
D.R.2
R.C.2
GLYNDON
BL-CNS
BR
D.R.3.5
D.R.3.5
D.R.2
R.C.5
128
X-SE W-SW
1976 COMPREHENSIVE ZONING MAP
ADOPTED BY THE
BALTIMORE COUNTY COUNCIL
OCT. 7, 1976 & OCT. 8, 1976
BILL NOS. 108-76, 109-76, 110-76, 111-76, 113-76, and 114-76
PHOTOGRAMMETRIC MAP OF
BALTIMORE COUNTY METROPOLITAN AREA
OFFICIAL ZONING MAP
REVISIONS
BY
DATE
SCALE
1"=200'
DATE OF PHOTOGRAPHY APRIL 1963
LOCATION
GLYNDON
REISTERSTOWN
AREA
SHEET
Compiled By Photogrammetric Methods
AERO SERVICE CORPORATION - PHILADELPHIA, PA.



PHOTOGRAMMETRIC MAP OF BALTIMORE COUNTY METROPOLITAN AREA

OFFICIAL ZONING MAP

X-SE W-SW

1984 COMPREHENSIVE ZONING MAP
ADOPTED BY THE
BALTIMORE COUNTY COUNCIL
NOV. 13, 1984
BILL NOS. 133-84, 134-84, 135-84, 137-84 AND 139-84

CHAIRMAN, COUNTY COUNCIL

PHOTOGRAMMETRIC MAP OF BALTIMORE COUNTY METROPOLITAN AREA

REVISIONS | BY | DATE

SCALE 1" = 200'

BASE OF PHOTOGRAPHY APRIL 1953

Compiled by Photogrammetric Methods
AERO SERVICE CORPORATION - PHILADELPHIA, PA.

LOCATION
GLYNDON
REISTERSTOWN
AREA

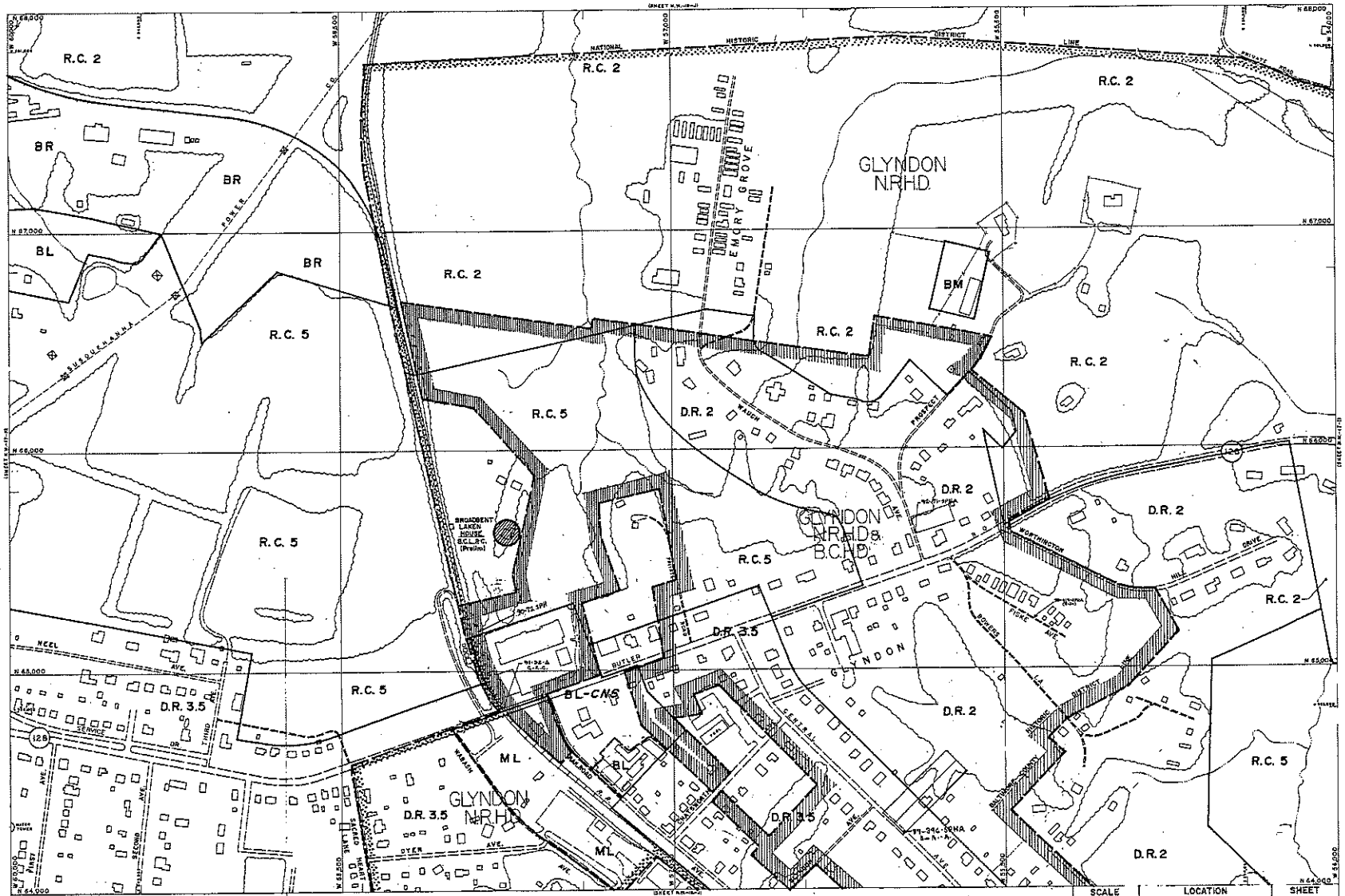
SHEET N.W. 17-J

DRAWING NUMBER NW 17-J

DRAWING NUMBER

DRAWING NUMBER

DRAWING NUMBER



X-SE W-SW

1988 COMPREHENSIVE ZONING MAP
Adopted by the Baltimore County Council
Oct. 13, 1988
Bill Nos. 144-88, 145-88, 146-88, 147-88, 148-88, 149-88, 150-88, 151-88

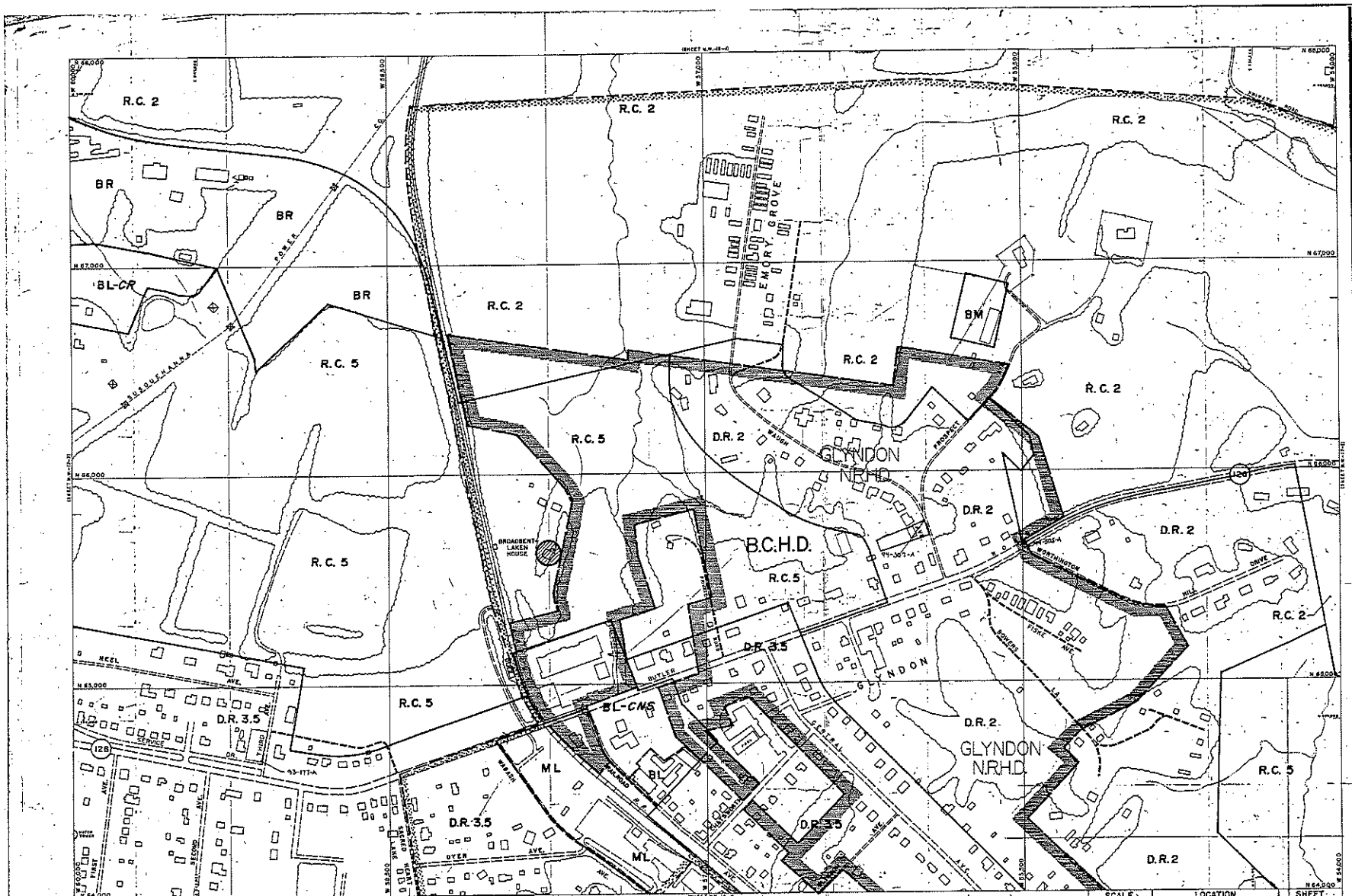
Chairman, County Council

THIS MAP HAS BEEN REVISED IN SELECTED AREAS.
TOPOGRAPHY COMPILED BY PHOTOGRAMMETRIC METHODS
BY MICHART-HORN, INC. BALTIMORE, MD. 21210

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
OFFICIAL ZONING MAP

SCALE	LOCATION	SHEET
1" = 200' ±	GLYNDON REISTERSTOWN AREA	N.W. 17-J
DATE OF PHOTOGRAPHY JANUARY 1986		

DRAWING NUMBER
DRAWING NUMBER
DRAWING NUMBER
DRAWING NUMBER
NW 17-J



X-SE W-SW

THIS MAP HAS BEEN REVISED IN SELECTED AREAS.
TOPOGRAPHY COMPILED BY PHOTOGRAMMETRIC METHODS
BY BUCHART-HORN, INC. BALTIMORE, MD. 21210

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
OFFICIAL ZONING MAP

1992 COMPREHENSIVE ZONING MAP
Adopted by the Baltimore County Council
Oct. 15, 1992

Chairman, County Council

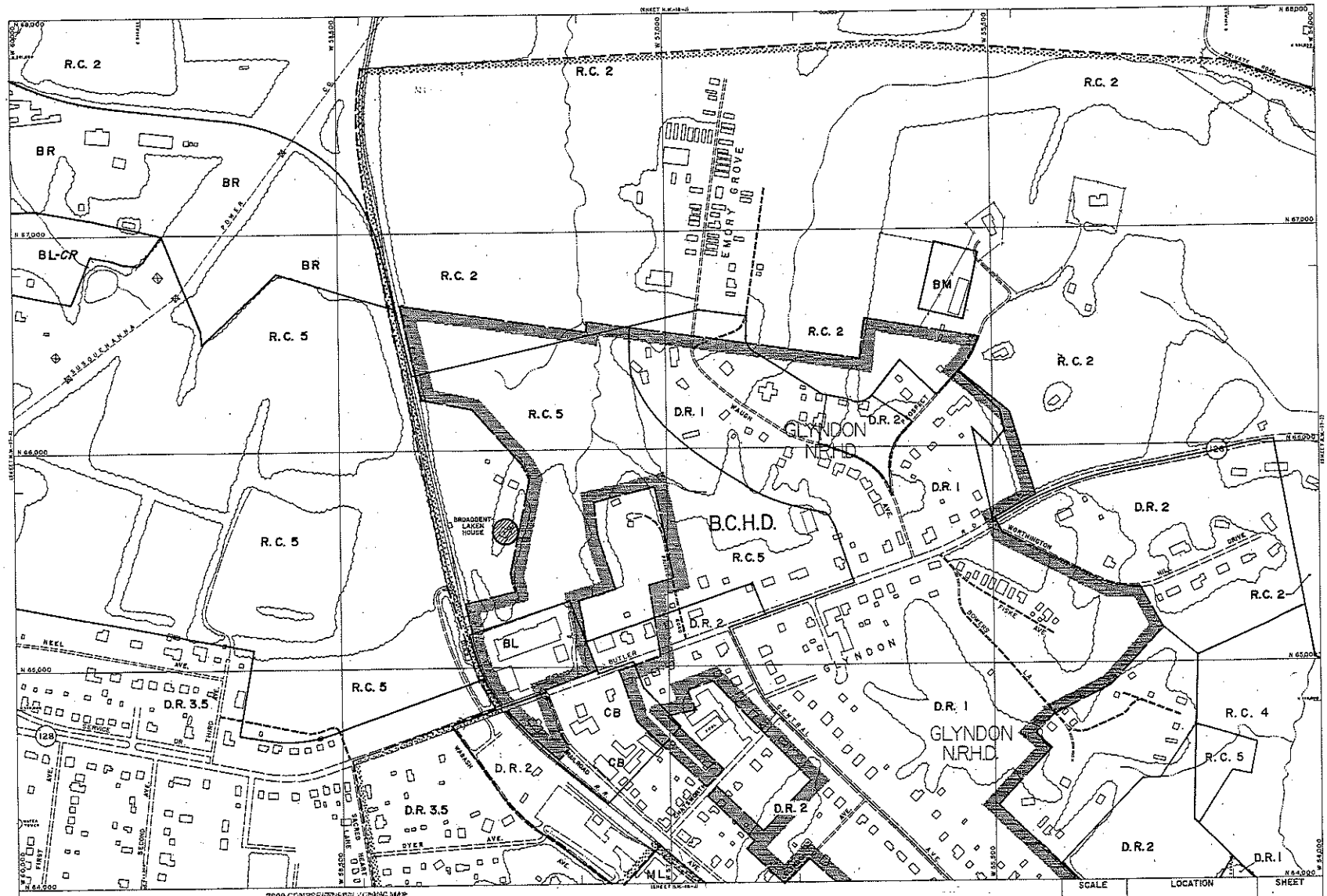
SCALE	LOCATION	SHEET
1" = 200'±	GLYNDON REISTERSTOWN AREA	N.W. 17-J
DATE OF PHOTOGRAPHY JANUARY 1986		

DRAWING NUMBER

DRAWING NUMBER

DRAWING NUMBER

DRAWING NUMBER NW 17-J



X-SE W-SW

2000 COMPREHENSIVE ZONING MAP
ADOPTED by
THE BALTIMORE COUNTY COUNCIL
OCTOBER 16, 2000
Bills Nos. 97-00, 82-00, 85-00, 90-00, 91-00, 92-00, 93-00.

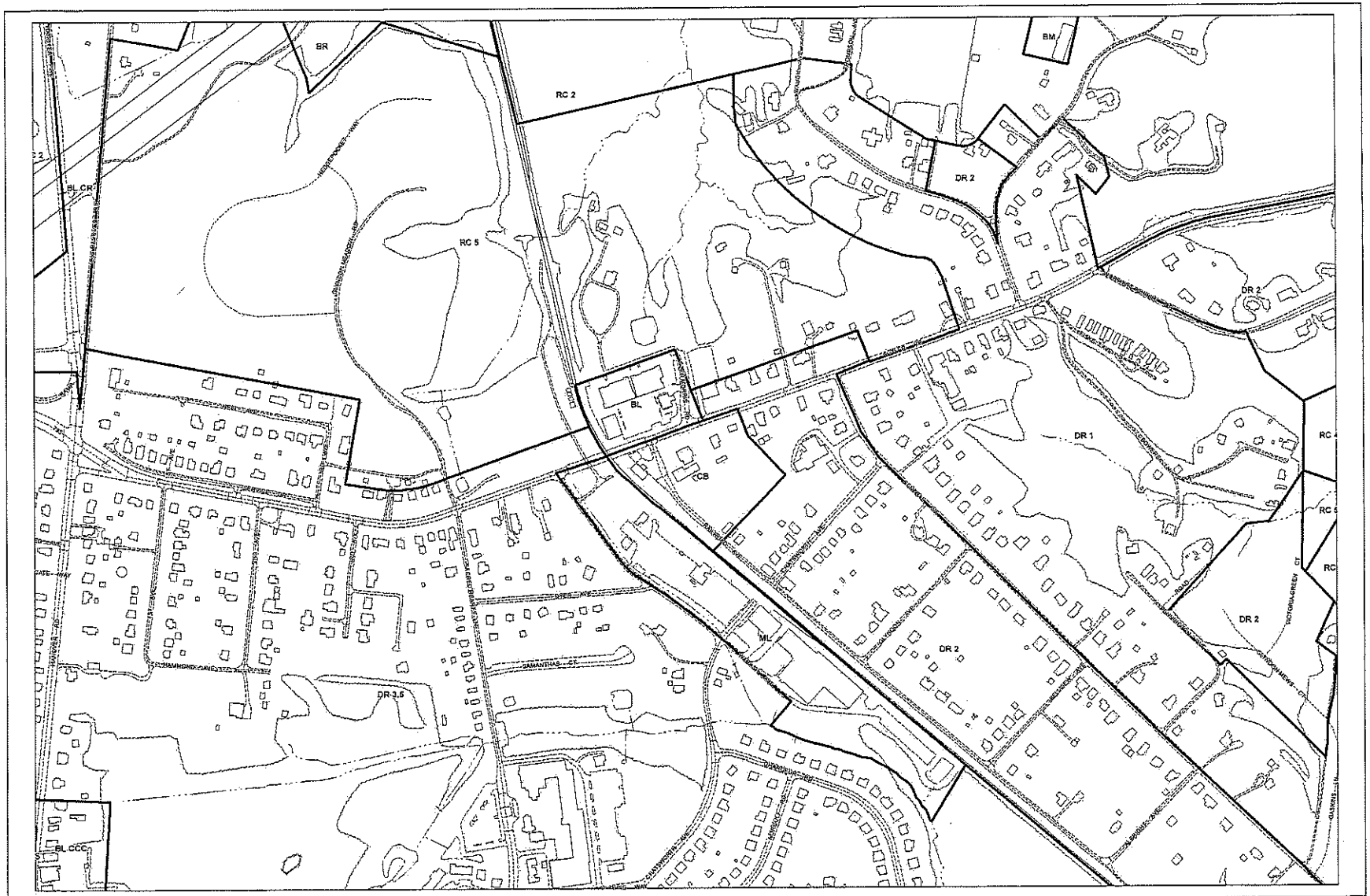
THIS MAP HAS BEEN REVISED IN SELECTED AREAS.
TOPOGRAPHY COMPILED BY PHOTOGRAMMETRIC METHODS
BY BUCHART-HORN, INC. BALTIMORE, MD. 21210

Chairman, County Council

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
OFFICIAL ZONING MAP

SCALE	LOCATION	SHEET
1" = 200'	GLYNDON REISTERSTOWN AREA	N.W. 17-J
DATE OF PHOTOGRAPHY JANUARY 1986		

NW 17 J



Plan Sheet: 048C1

Note:
The zoning depicted in this application incorporates the actions associated with County Council Bills #2-04, #3-04, #4-04, #5-04, #6-04, #7-04, #8-04, and #9-04 adopted by the County Council on August 31, 2004. The action associated with County Council Bill #30-04 adopted on December 6, 2004 is also depicted. In addition, County Board of Appeals actions from MC #5-01, MC #6-02, MC #3-03, and MC #3-04 on February 8, 2005 are represented in this application.

Legend

Buildings — Streams — Vegetation
Zoning — Roads — Rail Lines

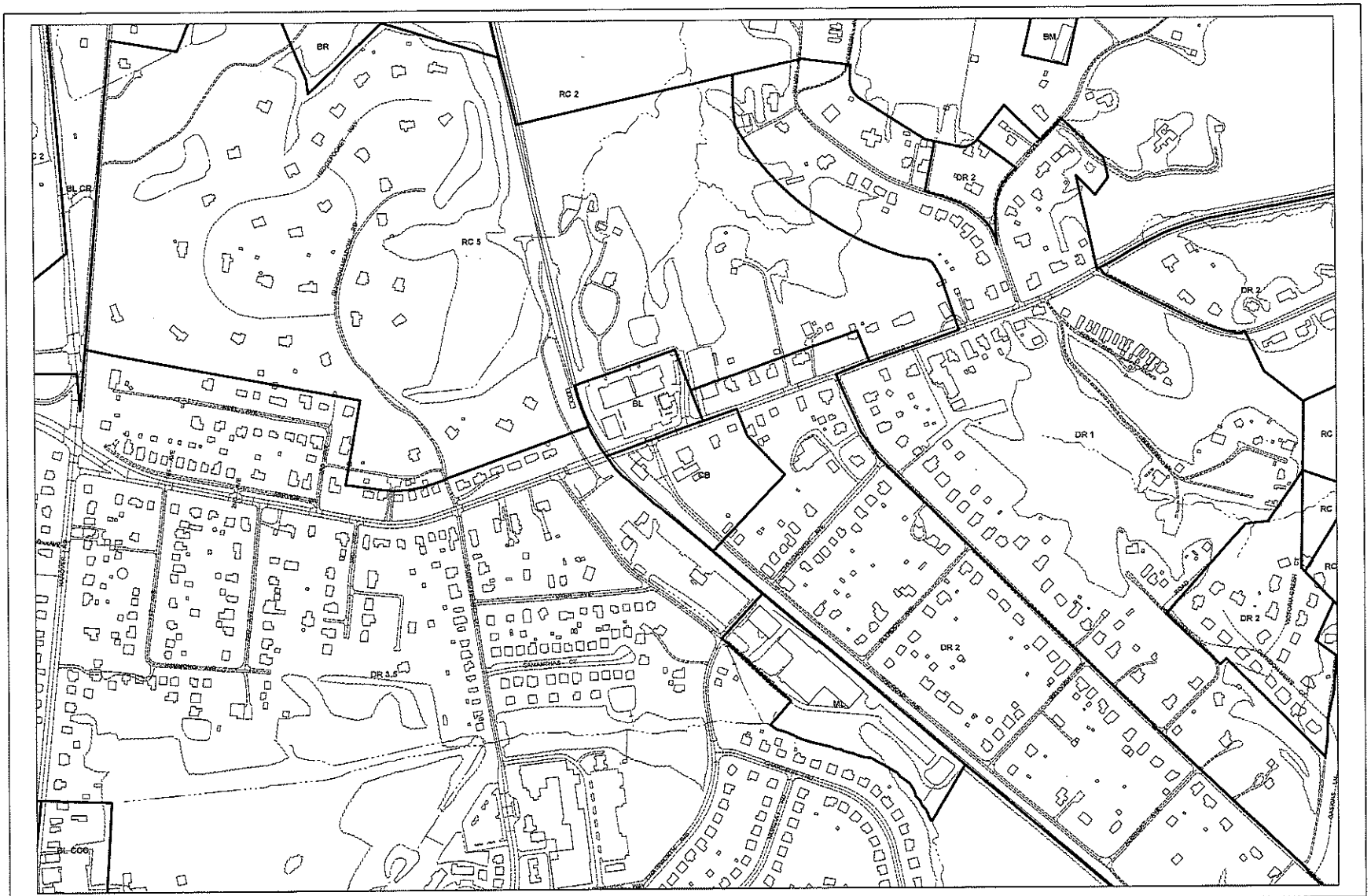
Baltimore County
Office of Planning and Zoning
Official Zoning Map

039A3	039B3	039C3	040A3	040B3
048A1	048B1	048C1	040A1	040B1
048A2	048B2	048C2	040A2	040B2

Scale
1" = 200'
0 100 200 400
Feet

N

Data Sources:
Planimetric Data - Baltimore County
CITICS Services Unit
1:2400, from 1998/99 photography
Zoning - Baltimore County Office of Planning
1:2400, 2004



Plan Sheet: *048C1*

Note:
The zoning depicted in this application incorporates the actions associated with 2008 Comprehensive Zoning Map Process, zoning changes associated with an adopted Community Plan and Baltimore County Board of Appeals actions through December 31, 2008.

Legend

Buildings — Streams — Vegetation
Zoning — Roads — Rail Lines

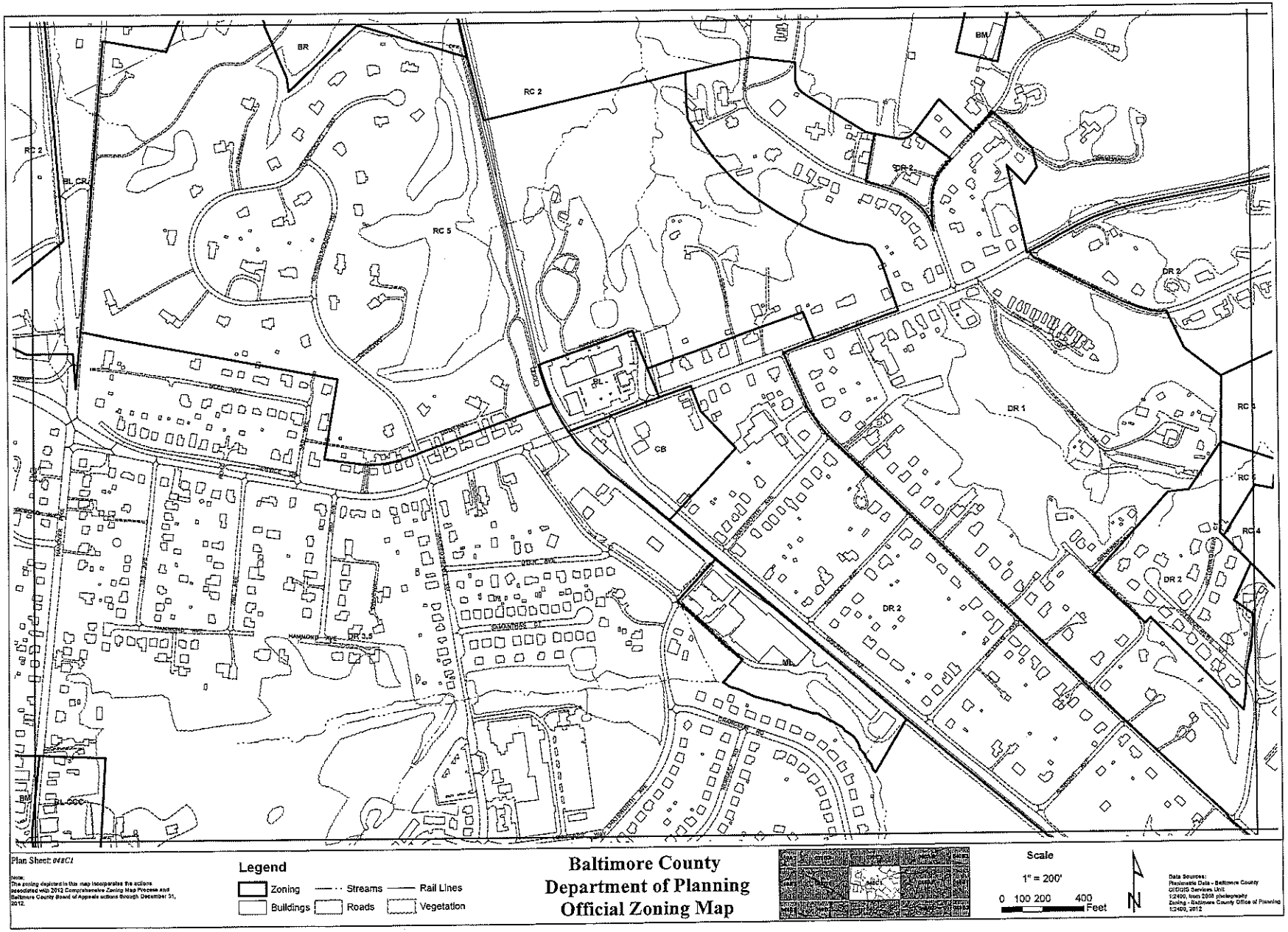
Baltimore County
Office of Planning and Zoning
Official Zoning Map

039A3	039B3	039C3	040A3	040B3
048A1	048B1	048C1	049A1	049B1
048A2	048B2	048C2	049A2	049B2

Scale
1" = 200'
0 100 200 400 Feet

N

Data Sources:
Planimetric Data - Baltimore County
OIT/GIS Services Unit
1:2400, from 1995/96 photography
Zoning - Baltimore County Office of Planning
1:2400, 2008



Plan Sheet: 048C1

Note:
The zoning depicted in this map incorporates the actions associated with 2012 Comprehensive Zoning Map Process and Baltimore County Board of Appeals actions through December 31, 2012.

Legend

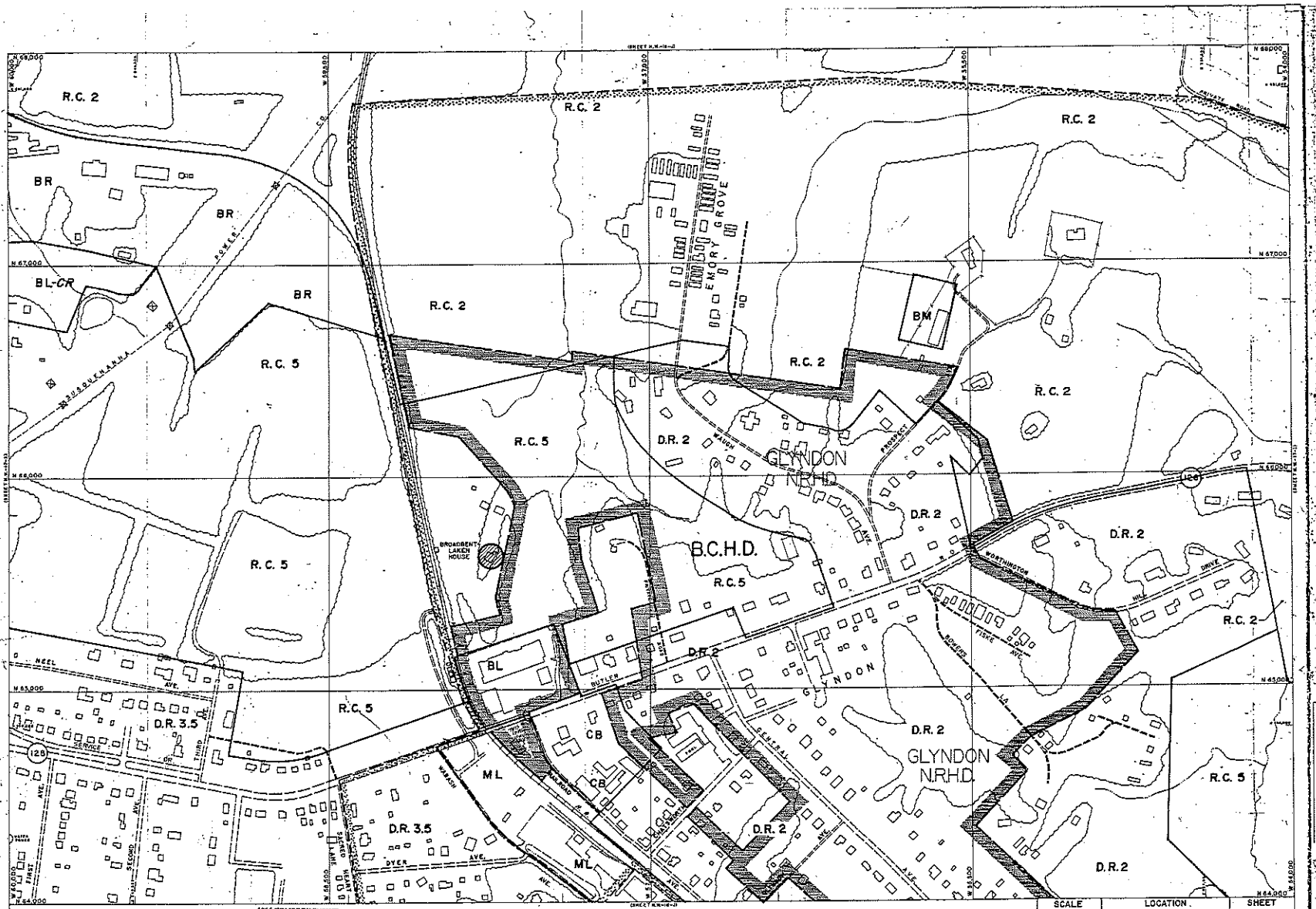
Zoning — Streams — Rail Lines
Buildings — Roads — Vegetation

Baltimore County
Department of Planning
Official Zoning Map

Scale
1" = 200'
0 100 200 400 Feet

N

Data Sources:
Planimetric Data - Baltimore County
GIS/GIS Services Unit
1:2400, from 2008 photography
Zoning - Baltimore County Office of Planning
1:2400, 2012



X-SE W-SW

1996 COMPREHENSIVE ZONING MAP
ADOPTED by
THE BALTIMORE COUNTY COUNCIL
OCTOBER 8, 1996
Bills Nos. 129-96, 130-96, 131-96, 132-96, 133-96, 134-96, 135-96

Kevin Kamenetz
Chairman, County Council

THIS MAP HAS BEEN REVISED IN SELECTED AREAS.
TOPOGRAPHY COMPILED BY PHOTOGRAMMETRIC METHODS
BY BUCHART-HORN, INC. BALTIMORE, MD. 21210

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
OFFICIAL ZONING MAP

SCALE	LOCATION	SHEET
1" = 200'±	GLYNDON REISTERSTOWN AREA	N.W. 17-J
DATE OF PHOTOGRAPHY JANUARY 1986		

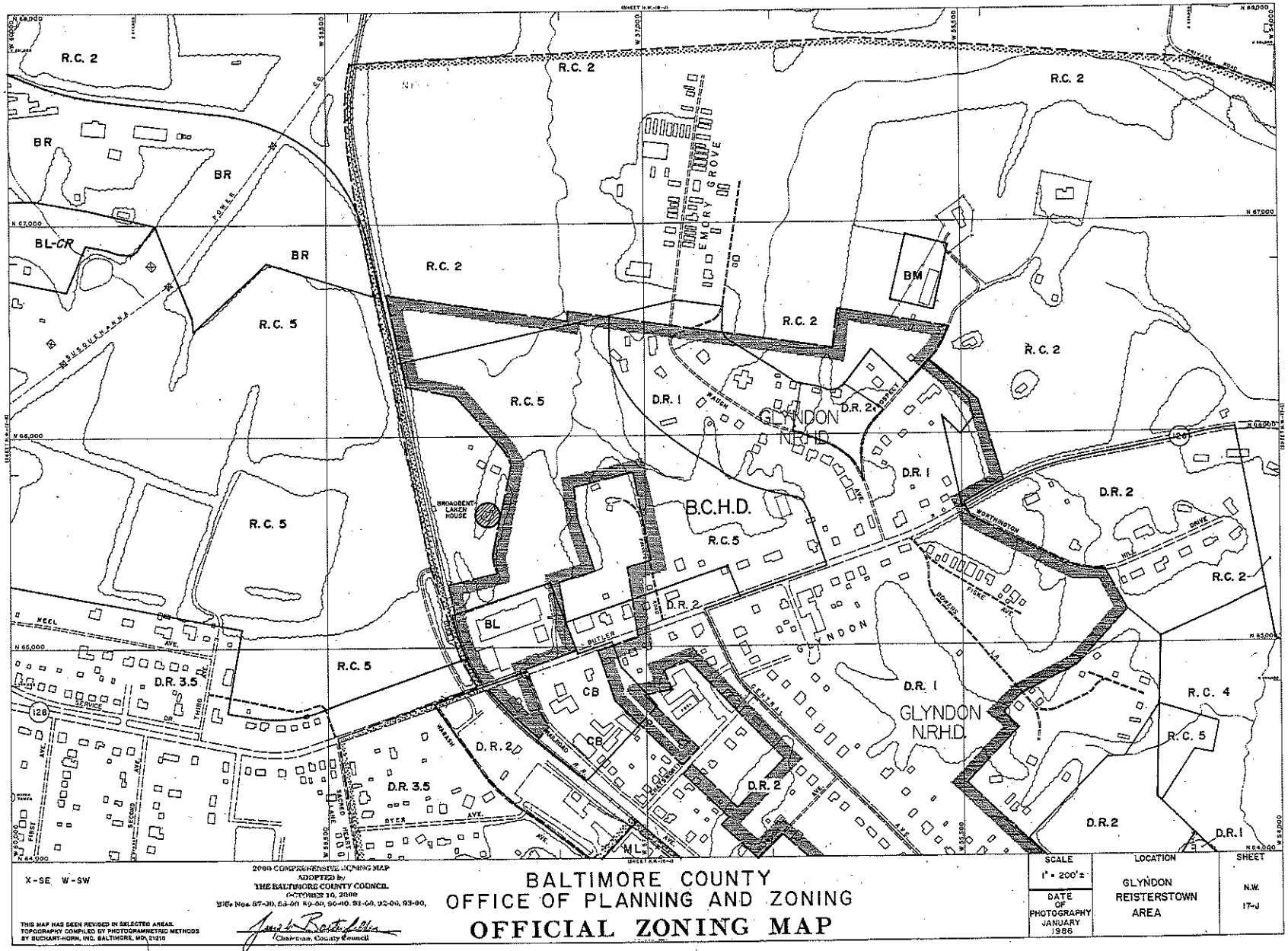
DRAWING NUMBER

DRAWING NUMBER

DRAWING NUMBER

DRAWING NUMBER

NW 17-J



X-SE W-SW

2000 COMPREHENSIVE ZONING MAP
ADOPTED by
THE BALTIMORE COUNTY COUNCIL
OCTOBER 10, 2000
Bills Nos. 87-00, 88-00, 89-00, 90-00, 91-00, 92-00, 93-00,

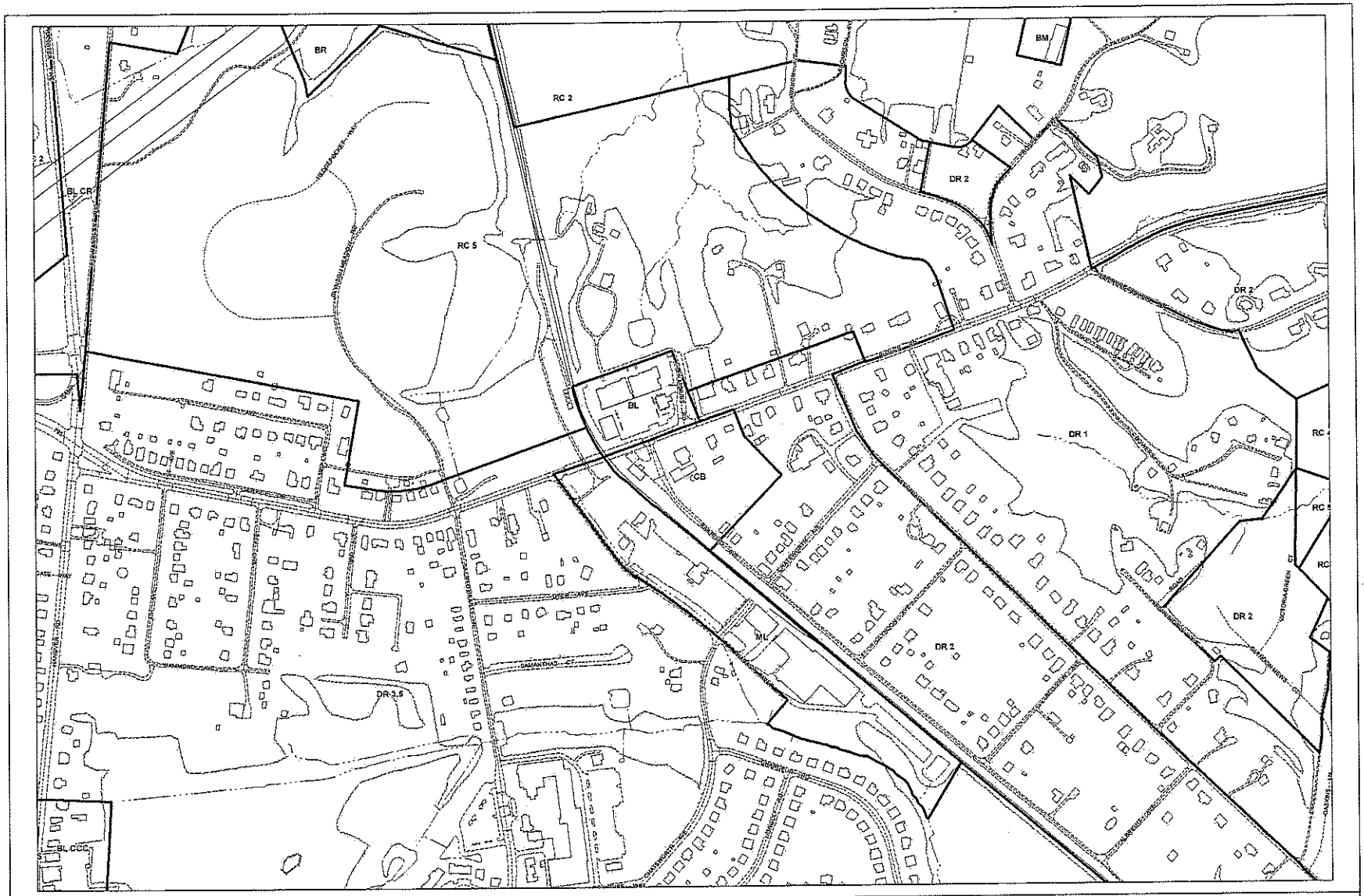
THIS MAP HAS BEEN REVISED IN SELECTED AREAS.
TOPOGRAPHY COMPILED BY PHOTOGRAMMETRIC METHODS
BY BUCHART-HORN, INC. BALTIMORE, MD. 21210

James T. Smith, Jr.
Chairman, County Council

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
OFFICIAL ZONING MAP

SCALE	LOCATION	SHEET
1" = 200'±	GLYNDON REISTERSTOWN AREA	N.W. 17-J
DATE OF PHOTOGRAPHY JANUARY 1986		

NW 17 J



Plan Sheet: *048C1*

Note:
The zoning depicted in this application incorporates the actions associated with County Council Bills #2-04, #3-04, #4-04, #5-04, #6-04, #7-04, #8-04, and #9-04 adopted by the County Council on August 31, 2004. The action associated with County Council Bill #30-04 adopted on December 6, 2004 is also depicted. In addition, County Board of Appeals actions from MC 05-91, MC 05-02, MC 05-03, and MC 05-04 on February 9, 2005 are represented in this application.

Legend

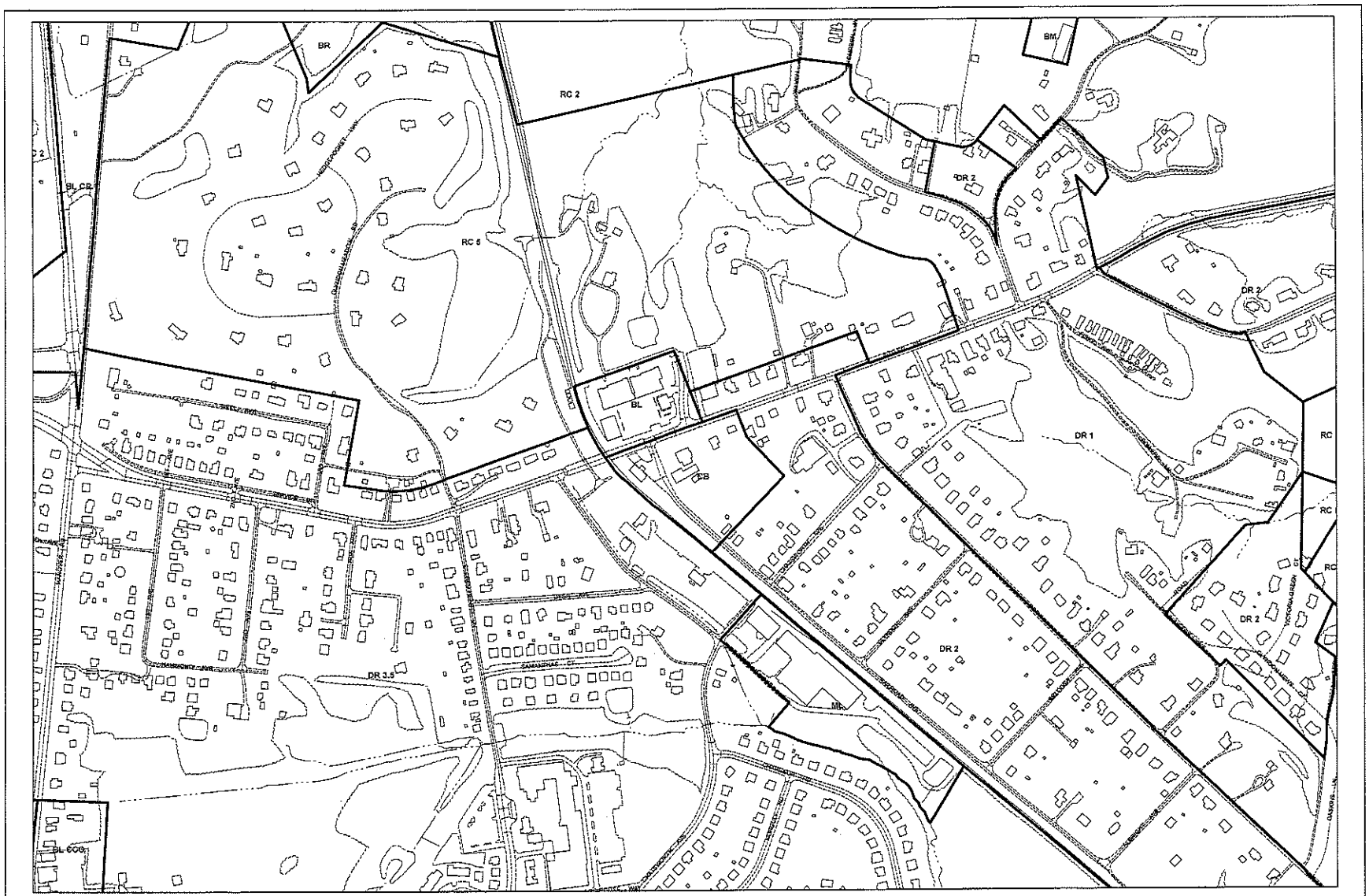
Buildings — Streams — Vegetation
Zoning — Roads — Rail Lines

Baltimore County
Office of Planning and Zoning
Official Zoning Map

039A2	039B3	039C3	040A3	040B3
048A1	048B1	048C1	049A1	049B1
048A2	048B2	048C2	049A2	049B2

Scale
1" = 200'
0 100 200 400
Feet

Data Sources:
Planimetric Data - Baltimore County OIT/GIS Services Unit
1:2400, from 1995/96 photography
Zoning - Baltimore County Office of Planning
1:2400, 2004



Plan Sheet: *048C1*

Note:
The zoning depicted in this application incorporates the actions associated with 2008 Comprehensive Zoning Map Process, zoning changes associated with an adopted Community Plan and Baltimore County Board of Appeals actions through December 31, 2008.

Legend

Buildings — Streams — Vegetation
Zoning — Roads — Rail Lines

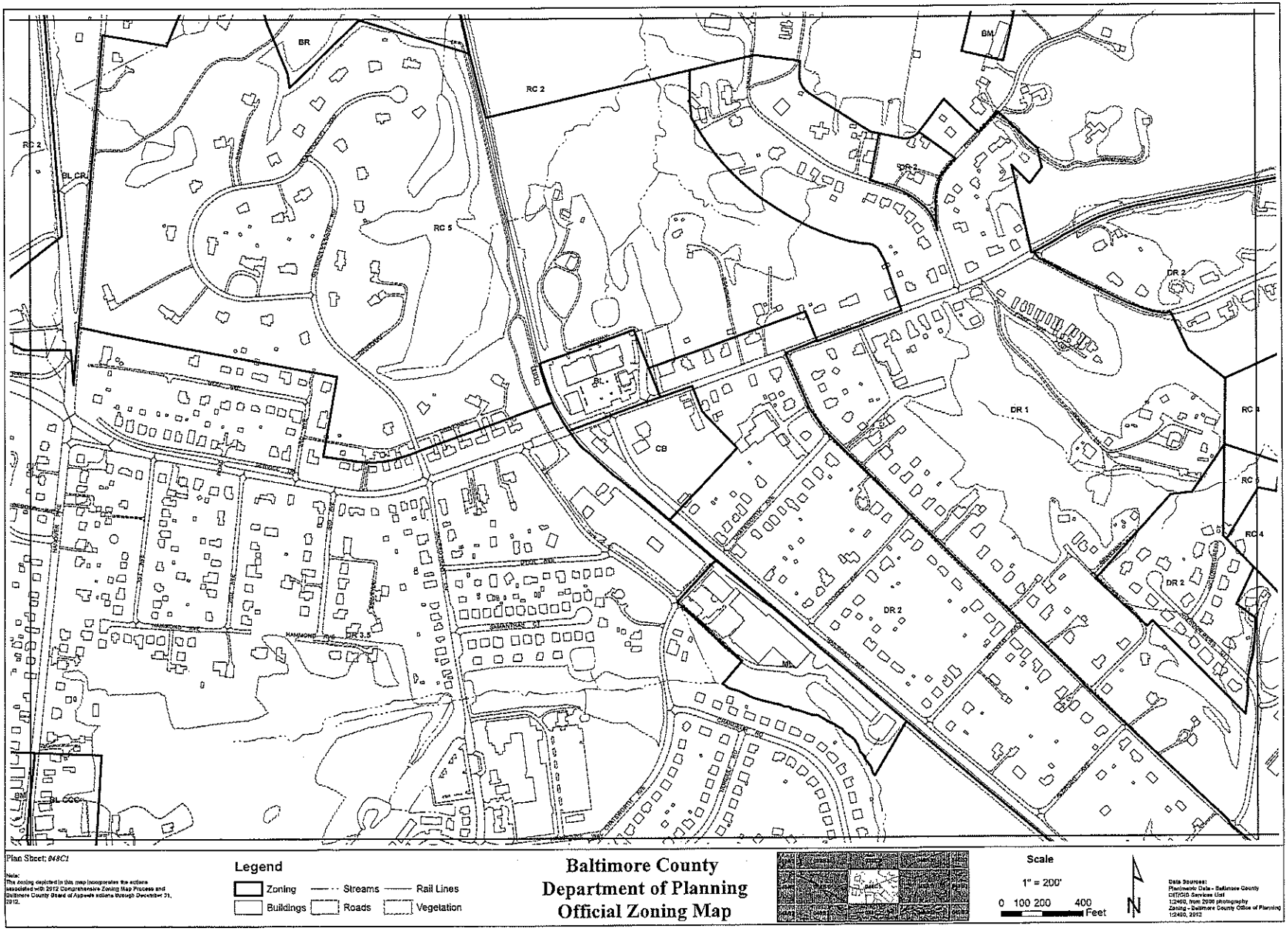
Baltimore County
Office of Planning and Zoning
Official Zoning Map

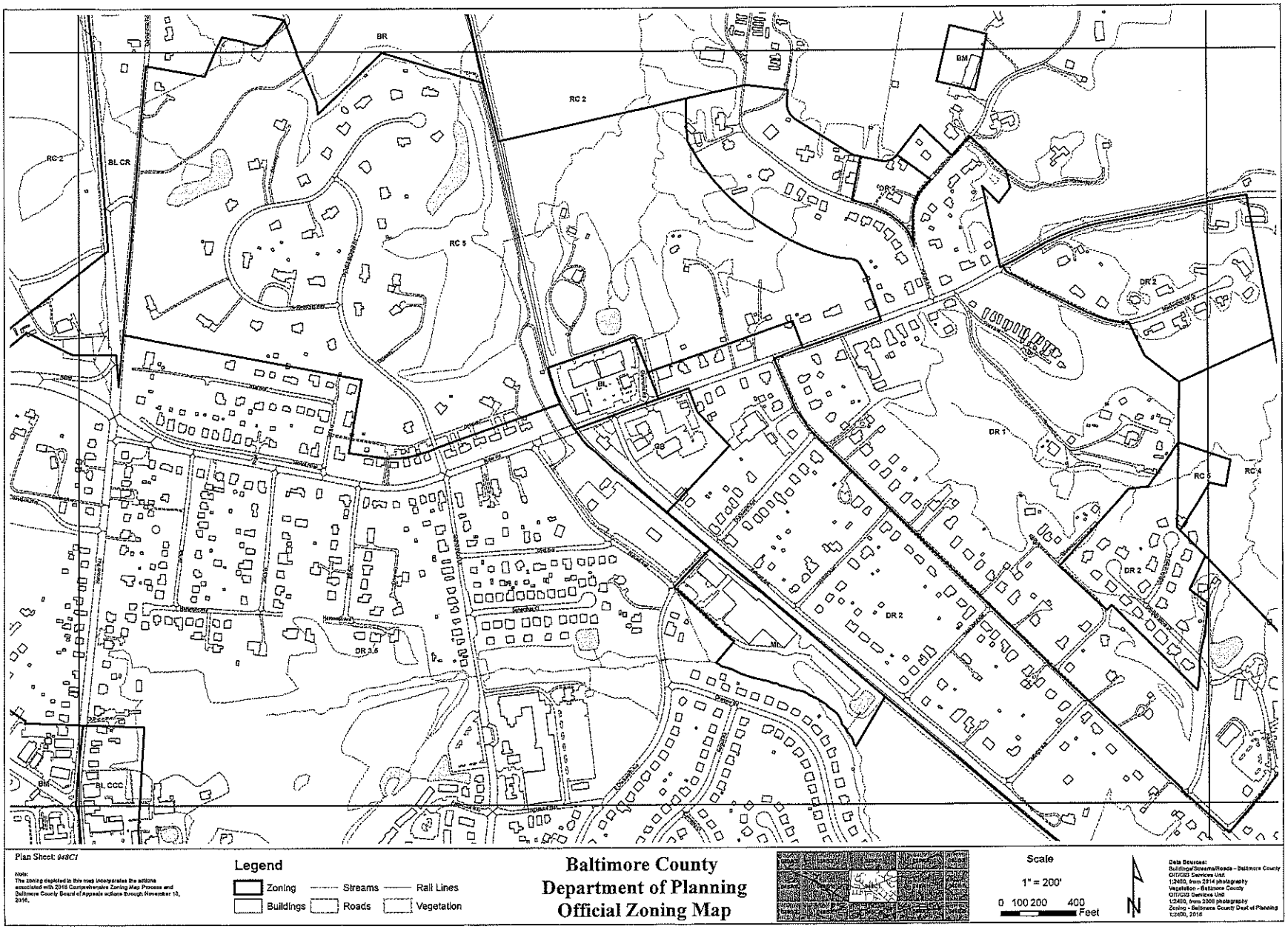
036A3	036B3	036C3	040A3	040B3
046A1	046B1	048C1	048A1	048B1
046A2	046B2	048C2	048A2	048B2

Scale
1" = 200'
0 100 200 400 Feet

N

Data Sources:
Planimetric Data - Baltimore County
OITCIS Services Unit
1:2400, from 1995/96 photography
Zoning - Baltimore County Office of Planning
1:2400, 2008


BR
RC 2
BM
RC 2
BL-CR
RC 5
DR 2
DR 2
BL
CB
DR 1
RC 4
RC 4
RC 4
DR 2
DR 2
BM
BL-CCC
Plan Sheet: 84BC1
Note:
This zoning depicted in this map incorporates the actions associated with 2012 Comprehensive Zoning Map Process and Baltimore County Board of Appeals actions through December 31, 2012.
Legend
Zoning
Streams
Rail Lines
Buildings
Roads
Vegetation
Baltimore County
Department of Planning
Official Zoning Map
Scale
1" = 200'
0 100 200 400
Feet
Data Sources:
Planimetric Data - Baltimore County
OITGIS Services East
1:2400, from 2006 photography
Zoning - Baltimore County Office of Planning
1:2400, 2012


BR
RC 2
BM
RC 2
BL CR
RC 5
DR 2
DR 2
BL
DR 1
RC 5
RC 4
DR 2
DR 2
DR 3.5
BM
BL CCC
Plan Sheet: 94SC1
Note:
The zoning depicted in this map incorporates the actions associated with 2016 Comprehensive Zoning Map Process and Baltimore County Board of Appeals actions through November 10, 2016.
Legend
Zoning
Streams
Rail Lines
Buildings
Roads
Vegetation
Baltimore County
Department of Planning
Official Zoning Map
Scale
1" = 200'
0 100 200 400
Feet
N
Data Sources:
Buildings/Streams/Roads - Baltimore County OIT/GIS Services Unit
1:2400, from 2014 photography
Vegetation - Baltimore County
OIT/GIS Services Unit
1:2400, from 2008 photography
Zoning - Baltimore County Dept of Planning
1:2400, 2016

Historic Glyndon Incorporated

P.O. Box 3641
Glyndon, Maryland 21071-3641

RESOLVED: That at the ANNUAL meeting of HISTORIC GLYNDON, INC. (HGI) held on JANUARY 27, 2020, it was decided by HGI membership that responsibility for review and action on all zoning matters for the period JANUARY 27, 2020 – JANUARY 27, 2021 be placed in the HGI Board of Directors, which includes the following members, each of whom is hereby authorized to testify on positions adopted by the HGI board before the County Board of Appeals or other duly constituted zoning agency, body, or commission:

Susan Benson
Nicole Crumpler
Richard Stanley
Jayme Provencher
Paul Crampton
Pam Becker
Vernene Lenz
Polly Papp
Jamal Robinson
Missy Fanshaw
Joyce Geipe
Diane Flayhart
Nan Kaestner
Marian MacDonald
Patty Szparaga

AS WITNESS OUR HANDS AND SEAL THIS _27th_day of _January_____, _2020_____

ATTEST:

Jayme Provencher
Secretary

Historic Glyndon, Inc.

Susan Benson
President

P.C. Exh. 5

Historic Glyndon Incorporated

P.O. Box 3641
Glyndon, Maryland 21071-3641

AFFIDAVIT

STATE OF MARYLAND
BALTIMORE COUNTY, SS:

TO WIT:

I, Susan M. Benson, hereby swear upon penalty of perjury that I am currently a duly elected member of the Board of Directors of Historic Glyndon, Inc. (HGI).

ATTEST:

Jayme Provencher

Secretary

Historic Glyndon, Inc. (HGI)

Susan M. Benson

President

DATE: 1/28/2020

Historic Glyndon Incorporated

P.O. Box 3641
Glyndon, Maryland 21071-3641

RESOLVED: That the position of Historic Glyndon, Inc. (HGI), as adopted by the Board of Directors on the zoning matter known as:

Donna Bair - Case No. 2019-342- SPHA (4607 Prospect Ave)

is that:

The Board of Directors and the general membership of Historic Glyndon, Inc. (HGI) **strongly oppose** the variances that Donna Bair, Respondent, is seeking. At its Annual Meeting on Monday, January 27, 2020, the membership of Historic Glyndon, Inc., unanimously voted to oppose the Petition for Variances, case #2019-0342-SPHA, on all of the former denials, including:

- "To approve a non-conforming dwelling side yard setback, pursuant to BCZR 104.1."
- "To confirm that an existing fence (swimming pool enclosure) with a height of 6 feet is in compliance with BCZR 427.1 and BCC 13-6-101."
- "Variance to permit an existing 12x28 feet attached garage addition with a side yard setback of 0 feet in lieu of the required 20 feet."
- "To permit an existing 12x28 feet attached garage addition with a sum of the side yards of 14.9 feet in lieu of the required 50 feet. BCZR 400.1."
- "To permit, if necessary, an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches."

Historic Glyndon was the first designated historic district in Baltimore County. HGI's mission is to preserve and protect Glyndon's cultural, social, economic, and architectural history, as well as to conduct educational and beautification projects that enrich Glyndon's historical heritage.

To that end, we believe that all homeowners within Historic Glyndon should follow Baltimore County laws and procedures relating to property improvement. This includes, but is not limited to, obtaining required approvals from the Baltimore County Landmarks Preservation Commission, seeking required building permits, completing land surveys when applicable, and assuring compliance with zoning codes prior to commencing any property improvement projects.

Donna Bair complied with none of those requirements when undertaking work on her home.

HGI regularly publishes recommended best practices for home improvements within the Historic District in our newsletters. The newsletters are distributed to all homeowners in the Historic District two times a year. We expect all homeowners to follow these guidelines with the understanding that some properties deemed as contributing structures may have to undergo an additional approval process.

Therefore, we continue to oppose the approval of any variances after the completion of work for 4607 Prospect Avenue. Doing so would set a bad precedent that would only serve to erode the expected responsibilities of our community property owners.

AS WITNESS OUR HANDS AND SEAL THIS __27th_____ day of _January_____, __2020_____.

ATTEST:

Jayme Provencher

Secretary

Historic Glyndon, Inc.

Susan M. Benson

President

Historic Glyndon Incorporated

P.O. Box 3641
Glyndon, Maryland 21071-3641

July 18, 2019

VIA email (administrativehearings@baltimorecountymd.gov)
And via hand delivery at meeting
Baltimore County Office of Administrative Hearing

13x2 26
18 20
50 5155

RE: **Zoning Notice for Case #2019-0342-SPHA**
Property at 4607 Prospect Avenue, Glyndon
Hearing Date: July 22, 2019

This letter is to **express strong opposition** by Historic Glyndon, Inc. (HGI), on behalf of the Board of Directors, for the request of building variances/special exceptions **after the completion** of structures/modifications at 4607 Prospect Avenue, Glyndon, MD. This letter specifically refers to case #2019-0342-SPHA. Refer to page 2 for specific BCRZ codes.

The mission of HGI is to preserve and protect Glyndon's cultural, social, economic and architectural history, as well as to conduct educational and beautification projects which enrich Glyndon's historical heritage.

To that end, we believe that all homeowners within the Historic Glyndon District should follow Baltimore County laws and procedures relating to property improvement. This includes, but is not limited to, obtaining required approvals from the Baltimore County Landmarks Preservation Commission, seeking required building permits, completing land surveys when applicable, and assuring compliance to zoning codes prior to beginning any property improvement projects.

HGI routinely publishes recommended best practices for home improvements within the Historic District in our newsletters. The newsletters are distributed to all homeowners in the Historic Glyndon District. We expect all homeowners to follow these guidelines with the understanding that some properties deemed as contributing structures may have to undergo additional approval processes.

Therefore, we strongly oppose approving the variances after the completion of work for 4607 Prospect Avenue. This would set a precedent, and serve only to further erode the expected responsibilities of our community property owners.

Sincerely,

Pamela Becker

Pamela Becker
President, Historic Glyndon, Inc.

"It has been said that, at its best, preservation engages the past in a conversation with the present over a mutual concern for the future."

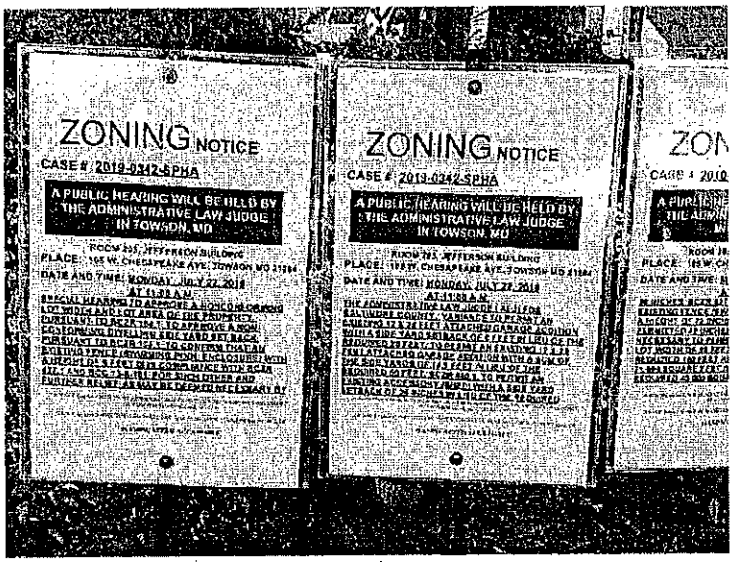
– William Murtagh, first keeper of the National Register of Historic Places

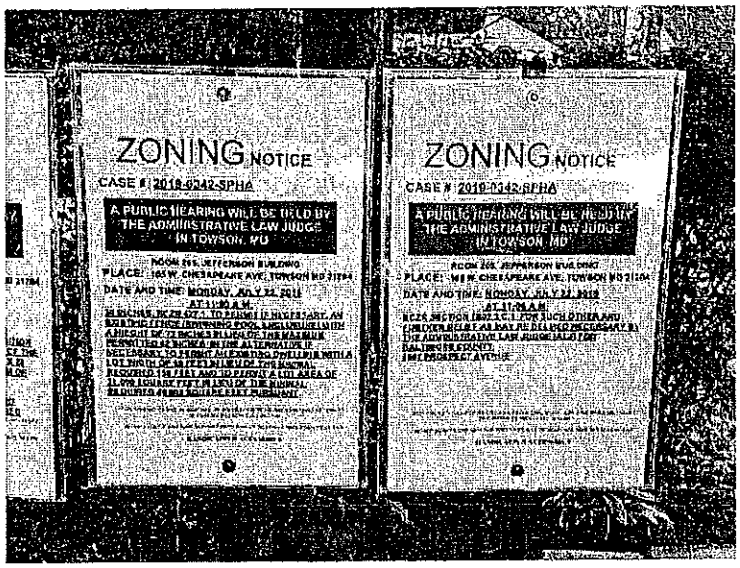
This letter specifically addresses the below applications:

Application for variance/exceptions of newly-built structures (non-conforming, built without permits)

- Zero side-yard set-back for left-side garage (on the property line, in lieu of 20' back)
- 14'-9" set-back for right-side front addition (in lieu of 30' back/ sum of 50' both sides)
- 72" high front-yard fence (in lieu of 42" max)

(Zoning sign photos below for the exact BCRZ codes for exception)





The mission of HGI is to preserve and protect Glyndon's cultural, social, economic, and architectural history, as well as to conduct educational and beautification projects which enrich Glyndon's historical heritage,

Glyndon Community Association & Historic Glyndon, Inc.

Opposition to Baltimore County Zoning Case #2019-0342-SPHA

4607 Prospect Ave., Glyndon, Baltimore County, MD

Application for variance/exceptions of newly-built structures (non-conforming, built without permits)

- Zero side-yard set-back for left-side garage (on the property line, in lieu of 20' back)
- 14'-9" set-back for right-side front addition (in lieu of 30' back/ sum of 50' both sides)
- 72" high front-yard fence (in lieu of 42" max)

(Zoning sign photos below for the exact BCRZ codes for exception)

Signatures of Community Members Opposing Above:

Signature	Print Name	Street Address
	GERARD CROSS	4624 Butler Glyndon
	Michael Pristoop	4 Waugh Av
Joan M Davenport	Joan M Davenport	7 Waugh Ave
Sarah Schlegelmilch	Sarah Schlegelmilch	7 Waugh Ave.
Robyn Mue	Robyn Mue	10 Waugh Ave
	Lee Woe	10 Waugh Ave
Robert K. Behman	Robert K. Behman	4612 Prospect Ave
Marie Maevers	MARIE MAEVERS	4615 PROSPECT AV
	STEVE EHRENPREIS	3 WAUGH AVE.
Barbara C. Whitman	Barbara C. Whitman	4707 Butler Rd. 21071
	Diane Flaghart	4719 Butler Rd 21071
	NICK ST. AMANT	5 CENTRAL 21071
	John Michael O'Neill	4724 Butler Rd 21071

Signatures of Community Members Opposing (continued):

Signature	Print Name	Street Address
	James W Rees	4804 Butler Rd Glyndon MD 21071
	Gary Wink	4802 Butler Rd Glyndon MD 21071
	Terry Vinson	4806 Butler Rd
	Claudette LeBlanc	Claudette LeBlanc ↑
	Alek Vinson	↑
	Matt Reitzel	4811 Butler Rd
	Bryan Benson	4813 Butler Rd
	Linda Myers	26 Chatsworth
	Jim MacDonald	111 Central Ave 21071
	Nan Kaestner	117 Central Ave, 21071
	Robert Kaestner	117 Central Ave 21071
	Eleanor H. Taylor	16 Worthington Hill Dr. 21071
	Martha Clements	222 Central Ave 21071
	[illegible]	222 Central Ave 21071
	Jennifer Diaz	207 Central Ave 21071
	Kmontanye	4609 Prospect Avenue 21136
	Thomas Montanye	4609 Prospect Ave
	Frances M. Acle	4606 Prospect Ave

Reisterstown~Owings Mills~ Glyndon
Coordinating Council

The undersigned hereby acknowledge and attest that on 7/1/19 the Membership, with a quorum present, of the Reisterstown-Owings Mills-Glyndon Coordinating Council, Inc. (ROG), a Maryland corporation, in accordance with Section 2-408 of the Maryland Corporations and Associations Code and its Charter and By-Laws, approved the Resolution set forth herein:

RESOLVED: That the Board empowers and instructs Mark Stewart, Mary Molinaro, Gary Lenz and George Harman, President, 1st Vice President, 2nd Vice President, and Immediate Past President, respectively, to individually or jointly represent ROG at any hearings before the Administrative Law Judge of Baltimore County and anybody of appropriate jurisdiction for any subsequent appeals. Mr. Stewart, Ms. Molinaro, Mr. Lenz, and Mr. Harman to appear at those hearings for ROG and make known the position of ROG in this matter, to wit, that:

Furthermore, Mr. Stewart, Ms. Molinaro, Mr. Lenz, and Mr. Harman are authorized to explain or amplify as they see fit, stated positions until June 30, 2020.

AS WITNESS OUR HANDS AND SEAL THIS 1st day of July, 2019.

ATTEST: Reisterstown-Owings Mills-Glyndon Coordinating Council, Inc.

_____, Secretary

_____, President

RESOLVED, that at this meeting of ROG on July 1, 2019, that the responsibility for the official presentation of positions for actions on all zoning and development matters is hereby assigned only to the President, Vice Presidents, and Immediate Past President as of July 1, 2019. The President and Vice Presidents may authorize in writing with two signatures, the delegation of this authority to other members of the organization.

AS WITNESS OUR HANDS AND SEAL THIS 1st day of July 1, 2019.

ATTEST: Reisterstown-Owings Mills-Glyndon Coordinating Council, Inc.

_____, Secretary

_____, President

Reisterstown~Owings Mills~ Glyndon
Coordinating Council

AFFIDAVIT

STATE OF MARYLAND
BALTIMORE COUNTY

TO WIT:

I hereby swear upon penalty of perjury that I am currently a duly elected member of the Board of Directors of the Reisterstown – Owings Mills – Glyndon Coordinating Council.

Mark Stewart, President
Mary Molinaro, 1st Vice President
Gary Lenz, 2nd Vice President
George Harman, Immediate Past President

ATTEST:

Reisterstown – Owings Mills – Glyndon Coordinating Council

Secretary

President

Date: 2/3/2020

P.O. Box 117 Reisterstown, Maryland 21136

Reisterstown~Owings Mills~ Glyndon
Coordinating Council

The undersigned hereby acknowledge and attest that on 2/3/2020 the Membership, with a quorum present, of the Reisterstown-Owings Mills-Glyndon Coordinating Council, Inc. (ROG), a Maryland corporation, in accordance with Section 2-408 of the Maryland Corporations and Associations Code and its Charter and By-Laws, approved the Resolution set forth herein:

RESOLVED: That ROG is opposed to Bair, Donna – 4607 Prospect Avenue, Case No: 19-0342-SPHA requesting nonconforming dwelling side yard setback, height of swimming pool enclosure, and various setbacks to property lines requests and authorizes its officers and Board members to submit a letter and speak to this effect at any and all hearings and court cases that may arise and as may continue.

AND FURTHER RESOLVED: That the Board empowers and instructs Mark Stewart, Mary Molinaro, Gary Lenz and George Harman, President, 1st Vice President, 2nd Vice President, and Immediate Past President, respectively, to individually or jointly represent ROG at any hearings before the Administrative Law Judge of Baltimore County and anybody of appropriate jurisdiction for any subsequent appeals. Mr. Stewart, Ms. Molinaro, Mr. Lenz, and Mr. Harman to appear at those hearings for ROG and make known the position of ROG in this matter, to wit, that:

Furthermore, Mr. Stewart, Ms. Molinaro, Mr. Lenz, and Mr. Harman are authorized to explain or amplify as they see fit, this stated position.

AS WITNESS OUR HANDS AND SEAL THIS 3rd day of February, 2019.

ATTEST: Reisterstown-Owings Mills-Glyndon Coordinating Council, Inc.

Marilyn Fuda, Secretary

Mark Stewart, President

RESOLVED, that at this meeting of ROG on February 3, 2020, that the responsibility for the official presentation of positions for actions on all zoning and development matters is hereby assigned only to the President, Vice Presidents, and Immediate Past President as of July 1, 2019. The President and Vice Presidents may authorize in writing with two signatures, the delegation of this authority to other members of the organization.

AS WITNESS OUR HANDS AND SEAL THIS 3rd day of February, 2020.

ATTEST: Reisterstown-Owings Mills-Glyndon Coordinating Council, Inc.

Marilyn Fuda, Secretary

Mark Stewart, President

Reisterstown~Owings Mills~ Glyndon
Coordinating Council

March 14, 2021

Re: 4607 Prospect Avenue
Case No: 19-0342-SPHA

To Whom it May Concern:

At the 2/3/2020 Membership meeting, ROG resolved to oppose the request by Donna Bair for multiple variances which include:

1) A nonconforming dwelling, zero side-yard setback for left-side garage on the property line. Current laws require a 20-foot setback and we believe it is a bad precedent to the community to allow this variance.

2) 72" height of swimming pool enclosure when the zoning law indicates a maximum of 42"

3) 14' 9" set-back for front side addition when the zoning law is 30' setback with a sum of 50' both sides

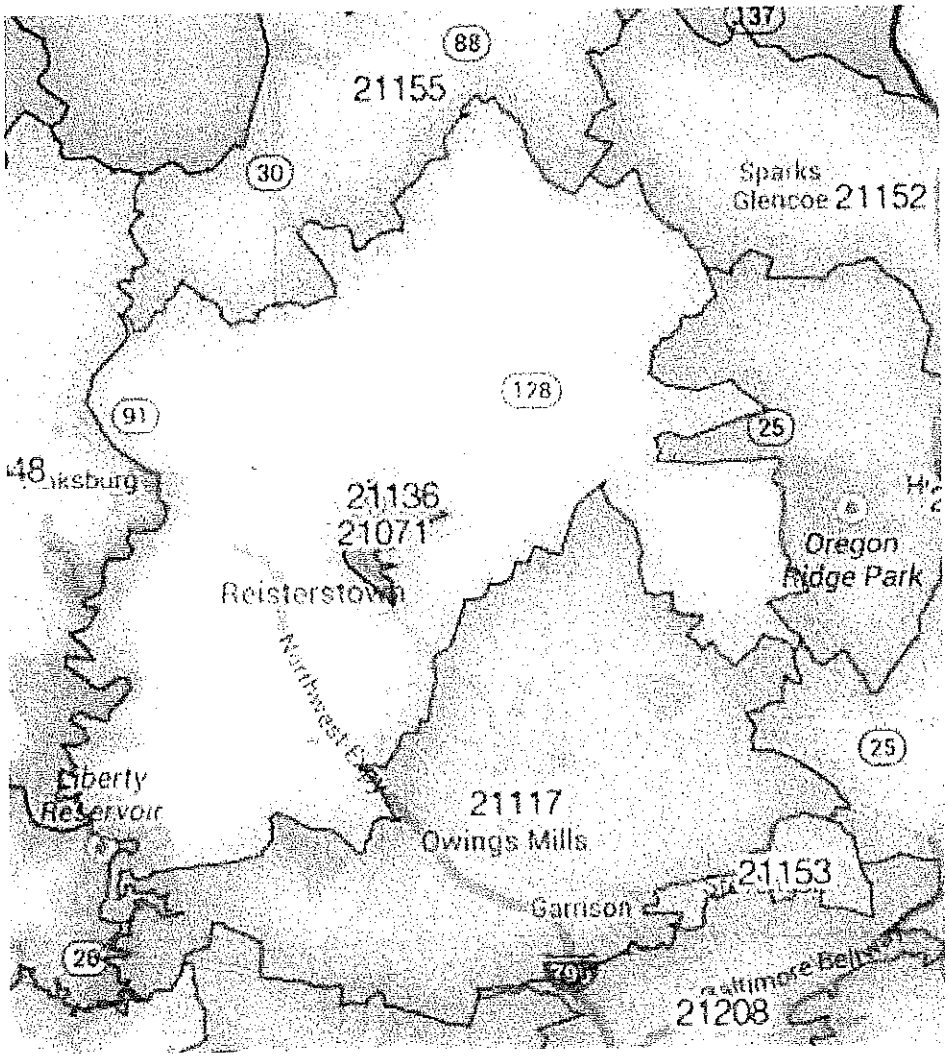
Our organization monitors zoning hearings and supports community concerns when homeowners do not follow Baltimore County regulations. We feel it is a bad precedent to ignore existing regulations as happened on this property. It is important that permits are obtained prior to modifications. A homeowner should know their property lines so they do not impinge on their neighbors.

Sincerely,

Mark Stewart

Mark Stewart
President

P.O. Box 117 Reisterstown, Maryland 21136


88
21155
30
Sparks
Glencoe 21152
91
178
25
21136
21071
Reisterstown
Oregon
Ridge Park
Northwest Expy
Liberty
Reservoir
21117
Owings Mills
21153
Garrison
26
70
21208


ROBERTS AVE
THOMPSON AVE
EMORY GROVE CAMP MEETING ASSN
MONTANYE CARLYLE III
MONTANYE CARLYLE N JR
MONTANYE CARLYLE N JR
GETTIER MONTANYE INC
COFFIN ROBIN S
RITTER CLARENCE E
ROZENCWAIG ERIC S
WELSH CHARLES F
ACLE SERGIO A TRUSTEE
MCGEEVY JACOB
GULLEY JAMES A
FLICKINGER BARRY M
DOSMAS BRYAN
WADE CLARK LEE
SMITH ALTWOOD R
GEHMAN ROBERT K SR
GEHMAN ROBERT K
HEMADY RAMZI K
HEMADY RAMZI K
HEMADY RAMZI K
HEMADY RAMZI K
WAUGH AVE
PROSPECT AVE
DRIVEWAY
GEHMAN ROBERT K SR
FRADKIN STEVEN M
BAIR DONNA V
GREB CHRISTOPHER JAMES
WAKEEN JOSEPH R
VOCA JOHN T
CHARNAWSKY ANCERA
SIMMONS CHARLES P III
SIMMONS CHARLES P III
KNIGHT EDITH D
KNIGHT JEANNE A
DAVENPORT JOHN M
SHAEFER JAMES DAVID SR
EHRENPREIS STEVE
GROVER ROBERT O
EBELEIN RONALD L
BALTIMORE COUNTY MARYLAND
EBELEIN RONALD L
MONTANYE THOMAS R
GERARD JEFFREY M
MAEVERS MARIE C
MAEVERS MARIE C
MAEVERS MARIE C
BUTLER RD
CROSS GERARD C
PRISTOOP MICHAEL ALAN
WELSH CHARLES F
WELSH CHARLES F
WELSH CHARLES F

Historic Districts Enacted by Baltimore County Council

	Acreages (and Percentages)			County Council	
District	**Total**	**Participating***	**Not Participating****	**Bill Number**	**Date of Vote**
Glyndon Map (PDF)	163.71 (100%)	154.22 (83.9%)	29.64 (16.1%)	48-81	April 20, 1981
Monkton Map (PDF)	55.78 (100%)	55.78 (100%)	---	49-81	April 20, 1981
Corbett Map (PDF)	64.35 (100%)	54.74 (85.1%)	9.61 (14.9%)	130-85	August 5, 1985
Lutherville Map (PDF)	103.86 (100%)	90.59 (87.2%)	13.27 (12.8%)	156-87	December 7, 1987
Sudbrook Park Map (PDF)	86.83 (100%)	70.64 (81.4%)	16.19 (18.6%)	25-93	March 15, 1993

Rippling Run (Single Property) Map (PDF)	15 (100%)	15 (100%)	---	80-95	June 5, 1995
Sudbrook Park (Expansion Number One, Cliveden Road) Map (PDF)	1.4 (100%)	1.2 (85.7%)	0.2 (14.3%)	81-95	June 5, 1995
Franklinville Map (PDF)	17.27 (100%)	14.8 (85.9%)	2.43 (14.1%)	107-95	July 3, 1995
Relay Map (PDF)	134.29 (100%)	108.45 (80.0%)	25.84 (19.2%)	144-96	November 4, 1996
Sudbrook Park (Expansion Number Two, Adana Road) Map (PDF)	4.7 (100%)	4.01 (85.4%)	0.69 (14.7%)	95-99	November 15, 1999
Fieldstone Map (PDF)	31.38 (100%)	24.65 (78.6%)	6.73 (21.4%)	59-01	August 6, 2001
Ahearn–Braid House (Single Property) Map (PDF)	0.80 (100%)	0.80 (100%)	---	14-06	February 12, 2006
English Consul House (Single Property) Map (PDF)	0.378 (100%)	0.378 (100%)	---	15-06	February 12, 2006
Overlea House (Single Property) Map (PDF)	1.34 (100%)	1.34 (100%)	---	16-06	February 12, 2006

Rest–Melby House (Single Property) Map (PDF)	1.19 (100%)	1.19 (100%)	---	17-06	February 12, 2006
The Ridge (Single Property) Lot 12 only Map (PDF)	1.52 (100%)	1.52 (100%)	---	18-06	February 12, 2006
Wicks House (aka Taylor House) (Single Property) Map (PDF)	0.13 (100%)	0.13 (100%)	---	19-06	February 12, 2006

*Participating indicates that the owner(s) of the properties signed the Petition requesting designation of the Historic District.

**Not Participating indicates that the owner(s) did not sign (and might or might not also have expressed opposition to) the District's enactment.

Revised November 20, 2018

DEPARTMENT OF PLANNING

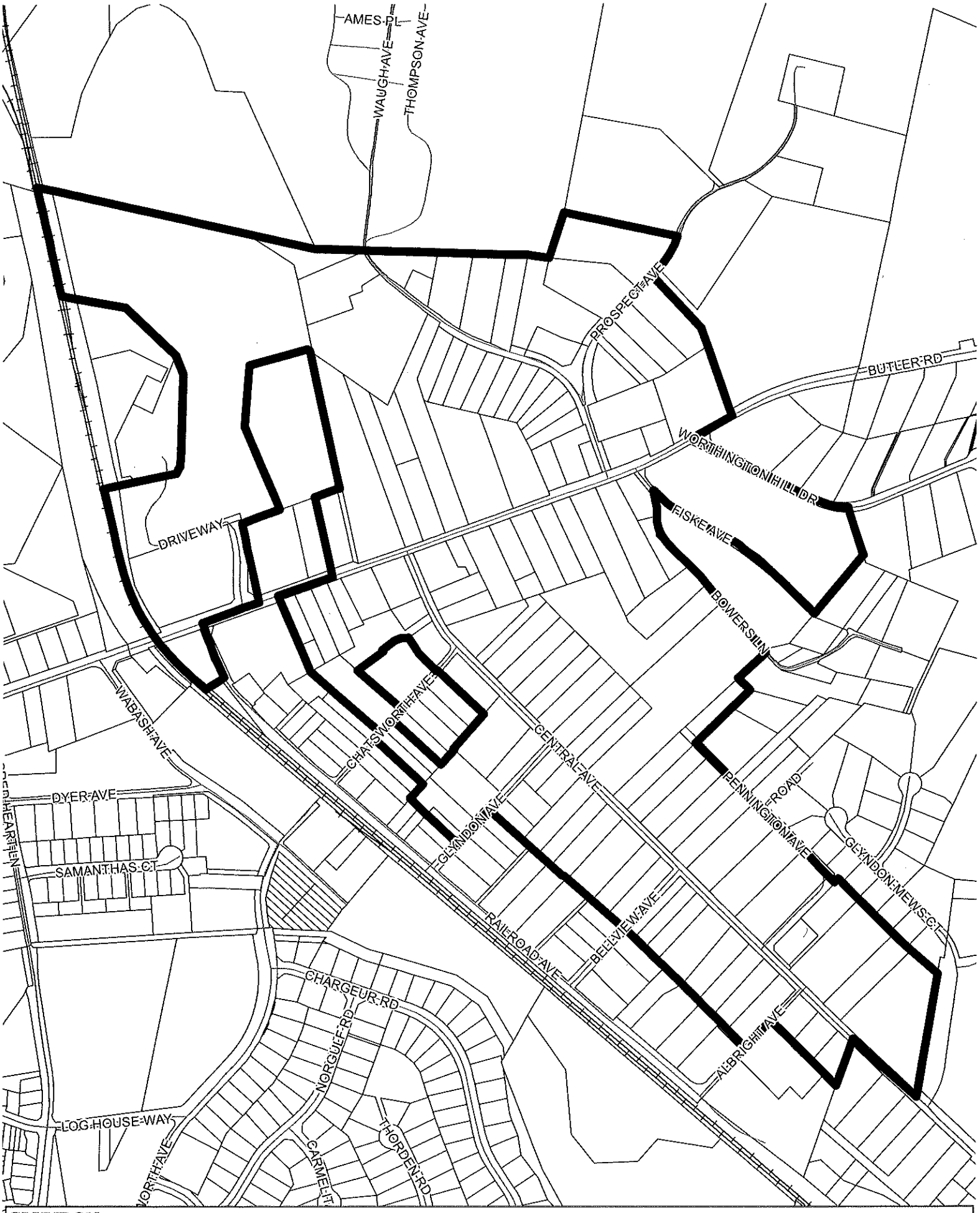
Baltimore County Government

Historic Courthouse
400 Washington Avenue
Towson, Maryland 21204

Directions >>

BALTCO

Download on the App Store


AMES PL
WAUGH AVE
THOMPSON AVE
PROSPECT AVE
BUTLER RD
WORTHINGTON HILL DR
FISKE AVE
BOWERSTON
DRIVEWAY
WABASH AVE
CHATSWORTH AVE
CENTRAL AVE
PENNINGTON AVE
GLYNDON AVE
GLYNDON MEWS CT
DYER AVE
SAMANTHAS CT
RAILROAD AVE
BELLVIEW AVE
ALBRIGHT AVE
CHARGEUR RD
NORGUEF RD
THORDEN RD
CARMEL CT
LOG HOUSE WAY
NORTH AVE
GLYNDON
N
Baltimore County Historic District Boundary
Parcel Boundaries
Rail
0 125 250 500 Feet

P.C. Exh. 10B

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND

Legislative Session 1981, Legislative Day No. 7

BILL NO. 48-81

Mr. James T. Smith, Jr., Councilman

By the County Council, April 6, 1981

A BILL
ENTITLED

AN ORDINANCE concerning.

Glyndon Historic District-Creation

FOR the purpose of establishing the Glyndon Historic District in accordance with the provisions of Section 22-149 of the Baltimore County Code, 1978.

WHEREAS, the Landmarks Preservation Commission and the County Executive have recommended the creation of the Glyndon Historic District and all requirements necessary for the creation of such district, including notice and public hearing, have been satisfied.

SECTION 1. Be it ordained by the County Council of Baltimore County, Maryland, that the area outlined and the map attached hereto and incorporated by reference herein, be and it is hereby designated and established as the "Glyndon Historic District" (as amended).

SECTION 2. Be if further ordained, that the Map attached hereto be and it is hereby adopted as the "Official Glyndon Historic District Map" and that the boundaries of the Glyndon Historic District shall be determined by reference to said Map (as amended).

SECTION 3. Be it further ordained, that the Official Glyndon Historic District Map shll be authenticated by the signature of the Chairman of the County Council and after enactment of this Ordinance, the same shall be delivered to the Director of Planning and Zoning for custody.

SECTION 4. And be it further ordained, that this Ordinance shall take effect forty-five days after its enactment.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike-out~~ indicates matter stricken from bill.
Underlining indicates amendments to bill.

P.C. Exh. 10C

READ AND PASSED this 4th day of May, 1981

BY ORDER

Thomas Toporovich
Secretary

PRESENTED to the County Executive for his approval this 6th day of May, 1981

Thomas Toporovich
Secretary

APPROVED AND ENACTED:

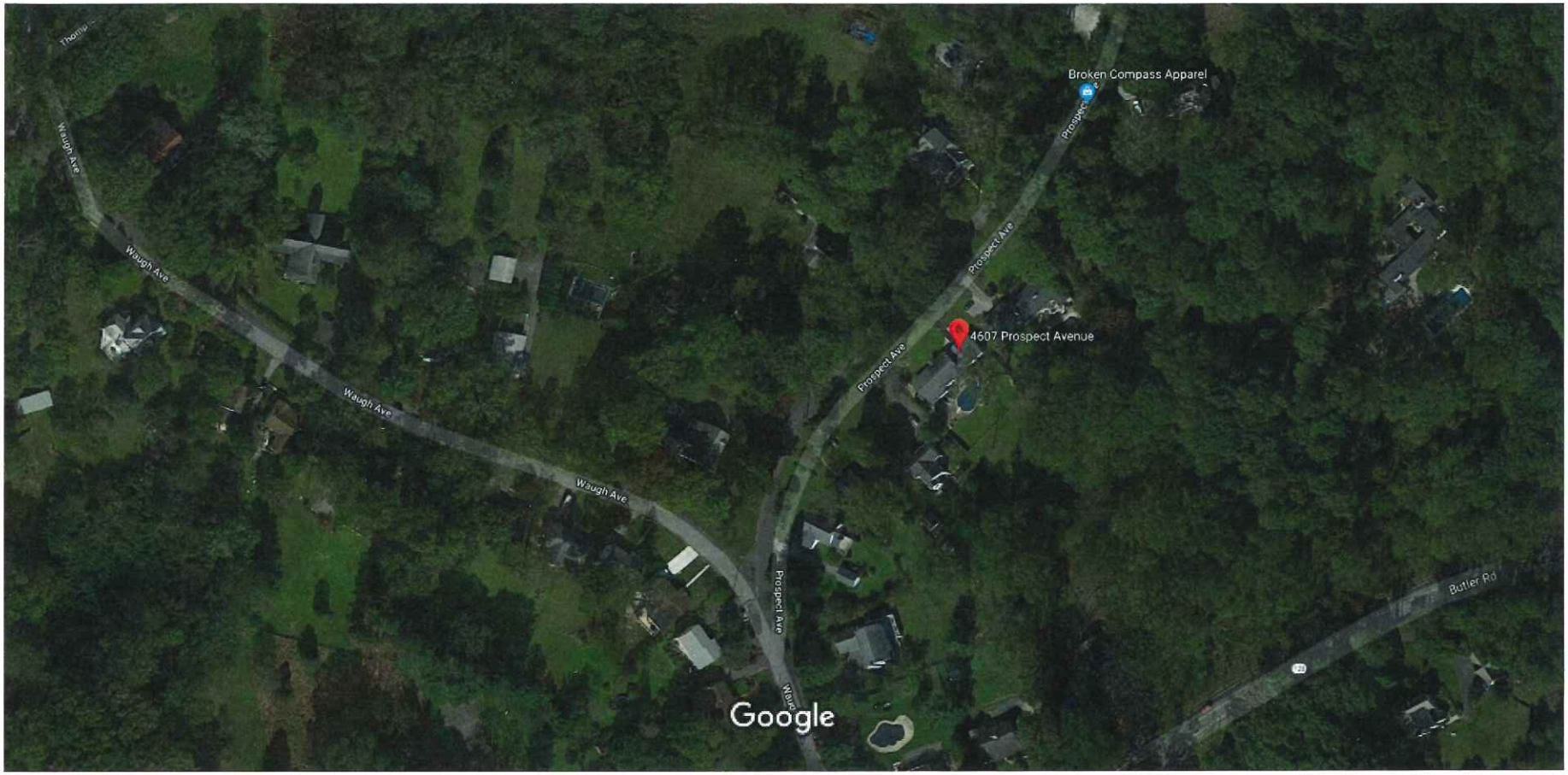
5/15/81

Donald P. Hutchinson
County Executive

I HEREBY CERTIFY THAT BILL NO. 48-81 IS TRUE AND CORRECT AND TOOK EFFECT ON June 29, 1981.

Ronald B. Hickernell
Chairman, County Council

Google Maps 4607 Prospect Ave



Imagery ©2019 Google, Map data ©2019 100 ft

P.C. Exh. 9

Board of Appeals

Case No: 19-342 SPHA. Case Name: Donna Bair.

Exhibit List

Party: Petitioner Date: 2/6/2020

Exhibit No:	Description:
✓ 1	Plan to Accompany Pet Zoning Hearing.
✓ 2A-E	Photos before construction
✓ 3A-3Q	Photos present time
✓ 4	Code Violation Order 2/11/19 and Citations
✓ 5A-5C	Landmarks Preservation Comm Meeting 3/14/19
✓ 6	Landmarks Preservation Comm Meeting 10/10/19
✓ 7A-7I	Photos of neighborhood garages.
✓ 8A-8I	Photos of neighborhood fences
✓ 9	My Neighborhood Balt County Map
✓ 9A-9D	Zoning Commissions / BOA Orders.
✓ 10A-10C	Photos of Bair Trees.
✓ 11	Pyle Tree Co. Invoice 3/21/2017
✓ 12	John Motsco PE, CV
✓ 13	1880 Record Plat
	VERIFIED BY KC DATE: 2/7/2020

ID Only

Board of Appeals

Case No: 19-342 SPHA Case Name: Donna Bair

Exhibit List

Party: Petitioners Date: 2/6/2020

Exhibit No:	Description:
14	SDAT Info on Bair Property.
✓ 15	BCZR 421.1 - Fences. + BCC 13-6-107
✓ 16	BCZR § 104.3 - NCU
	VERIFIED BY _____ DATE: _____

KC 2/7/2020

Board of Appeals

Case No: 19-342 SPHA Case Name: Donna Bair

Exhibit List

Party: People's Counsel Date: 2/6/2020

Exhibit No:	Description:
✓ 1	Neighborhood Aerial Photo 2017
✓ 2	PC Sign In Sheet.
✓ 3	Dept Labor Website Realtor Info
✓ 2A	PC Additional Sign In Sheet.
✓ 4A-E	Dept Labor Realtor Supp Info.
	VERIFIED BY _____ DATE: _____

ID only

KC 2/7/2020

Board of Appeals

Case No: 19-342 SPHA. Case Name: Donna Bair.

Exhibit List

Party: Petitioner Date: 2/6/2020

Exhibit No:	Description:
✓ 1	Plan to Accompany Pet Zoning Hearing.
✓ 2A-E	Photos before construction
✓ 3A-3Q	Photos present time
✓ 4	Code Violation Order 2/11/19 and Citations
✓ 5A-5C	Landmarks Preservation Comm Meeting 3/14/19
✓ 6	Landmarks Preservation Comm Meeting 10/10/19
✓ 7A-7I	Photos of neighborhood garages.
✓ 8A-8I	Photos of neighborhood fences
✓ 9	My Neighborhood Balt County Map
✓ 9A-9D	Zoning Commissions / BOA Orders.
✓ 10A-10C	Photos of Bair Trees.
✓ 11	Pyle Tree Co. Invoice 3/21/2017
✓ 12	John Motsco PE, CV
✓ 13	1880 Record Plat
	VERIFIED BY KC DATE: 2/7/2020

ID Only

Board of Appeals

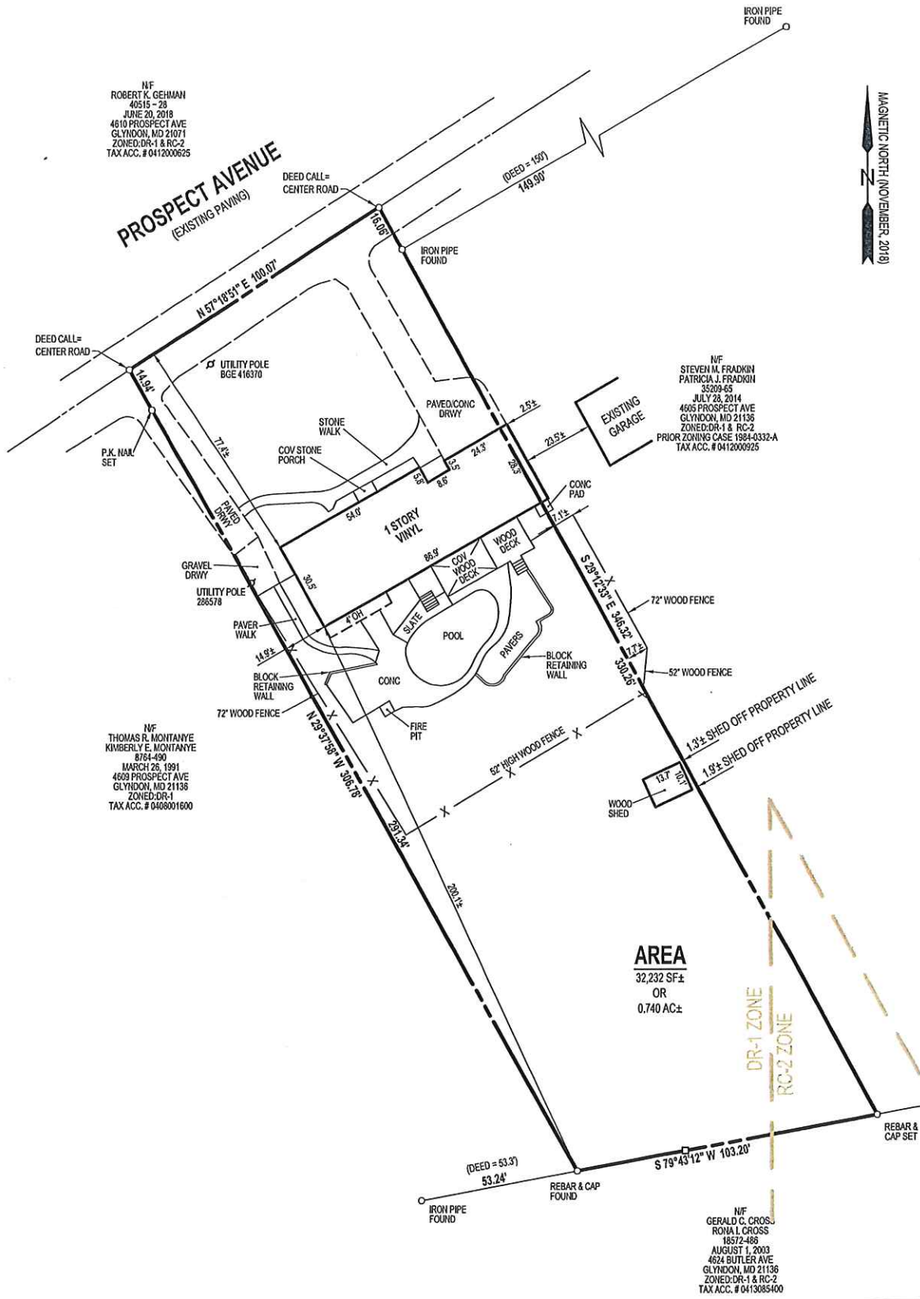
Case No: 19-342 SPHA Case Name: Donna Bair

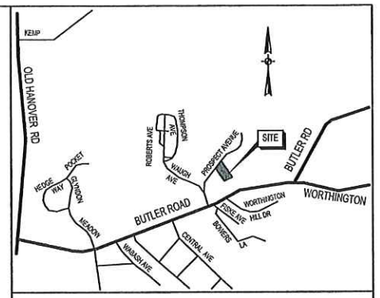
Exhibit List

Party: Petitioners Date: 2/6/2020

Exhibit No:	Description:
14	SDAT Info on Bair Property.
✓ 15	BCZR 421.1 - Fences. + BCC 13-6-107
✓ 16	BCZR § 104.3 - NCU
	VERIFIED BY _____ DATE: _____

KC 2/7/2020





VICINITY MAP

SCALE: 1" = 2000'

SPECIAL HEARING RELIEF:

1. TO APPROVE A NONCONFORMING LOT WIDTH AND LOT AREA OF THE PROPERTY, PURSUANT TO BCZR §104.1;
2. TO APPROVE A NONCONFORMING DWELLING SIDE YARD SETBACK, PURSUANT TO BCZR §104.1;
3. TO CONFIRM THAT AN EXISTING FENCE (SWIMMING POOL ENCLOSURE) WITH A HEIGHT OF 6 FEET IS IN COMPLIANCE WITH BCZR §427.1 AND BCC §13-6-101; AND
4. FOR SUCH OTHER AND FURTHER RELIEF AS MAY BE DEEMED NECESSARY BY THE ADMINISTRATIVE LAW JUDGE ("ALJ") FOR BALTIMORE COUNTY.

VARIANCE RELIEF FROM:

1. BCZR §1B02.3.C.1. TO PERMIT AN EXISTING 12 x 28 FOOT ATTACHED GARAGE ADDITION WITH A SIDE YARD SETBACK OF 0 FEET IN LIEU OF THE REQUIRED 20 FEET.
2. BCZR §1B02.3.C.1. TO PERMIT AN EXISTING 12 x 28 FEET ATTACHED GARAGE ADDITION WITH A SUM OF THE SIDE YARDS OF 14.9 FEET IN LIEU OF THE REQUIRED 50 FEET.
3. BCZR §400.1. TO PERMIT AN EXISTING ACCESSORY STRUCTURE (SHED) WITH A SIDE YARD SETBACK OF 1.3 FEET IN LIEU OF THE REQUIRED 2.5 FEET.
4. BCZR §427.1. TO PERMIT, IF NECESSARY, AN EXISTING FENCE (SWIMMING POOL ENCLOSURE) WITH A HEIGHT OF 72 INCHES IN LIEU OF THE MAXIMUM PERMITTED 42 INCHES;
5. BCZR §1B02.3.C.1. IN THE ALTERNATIVE, IF NECESSARY, TO PERMIT AN EXISTING DWELLING WITH A LOT WIDTH OF 98 FEET IN LIEU OF THE MINIMAL REQUIRED 150 FEET AND TO PERMIT A LOT AREA OF 31,000 SQUARE FEET IN LIEU OF THE MINIMAL REQUIRED 40,000 SQUARE FEET, AND
6. FOR SUCH OTHER AND FURTHER RELIEF AS MAY BE DEEMED NECESSARY BY THE ADMINISTRATIVE LAW JUDGE ("ALJ") FOR BALTIMORE COUNTY.

GENERAL NOTES:

1. **OWNER & APPLICANT:**
   DONNA V. BAIR
   4607 PROSPECT AVENUE
   GLYNDON, MARYLAND 21071
2. **PROPERTY REFERENCE:**
   TAX MAP 48, GRID 6, PARCEL 751
   TAX ACCOUNT #: 0416015450
   DEED = 35307 ~ 489
3. **FLOODPLAIN:** NO IDENTIFIED FEMA FLOODPLAIN ON SITE
4. **SITE AREA:** 0.740 ACRES. ±
5. **EXISTING USE:** RESIDENTIAL
6. **ZONING HISTORY:** NONE
7. THE SITE IS NOT LOCATED WITHIN THE CHESAPEAKE BAY CRITICAL AREA.
8. EXISTING ZONING: DR-1 (PRIMARY) AND RC-2
9. DR-1 ZONE
   - 9.1. MINIMUM NET LOT AREA PER DWELLING UNIT = 40,000 SQ. FT.
   - 9.2. MINIMUM LOT WIDTH = 150 FEET
   - 9.3. MINIMUM FRONT YARD DEPTH = 50 FEET
   - 9.4. MINIMUM WIDTH OF INDIVIDUAL SIDE YARD = 20 FEET
   - 9.5. MINIMUM SUM OF SIDE YARDS = 50 FEET
   - 9.6. MINIMUM REAR YARD DEPTH = 50 FEET
10. THE FIELD SURVEY SHOWN HEREON WAS PERFORMED BY RTF ASSOCIATES, INC. ON NOVEMBER 12, 2018 AND VERIFIED MAY 8, 2019.

PLAN TO ACCOMPANY
PETITION FOR ZONING HEARING
ON

BAIR PROPERTY

4607 PROSPECT AVENUE
4TH ELECTION DISTRICT, BALTIMORE CO. MD
COUNCILMANIC DISTRICT 3
TAX MAP: 48, GRID: 6, PARCEL: 751

NOTE:
THIS SURVEY WAS COMPLETED WITHOUT THE BENEFIT OF A TITLE REPORT.

NOTE:
A LICENSEE EITHER PERSONALLY PREPARED THIS BOUNDARY SURVEY OR WAS IN RESPONSIBLE CHARGE OVER ITS PREPARATION AND THE SURVEY WORK REFLECTED IN IT, IN COMPLIANCE WITH REQUIREMENTS SET FORTH IN §09.13.06.12 OF THE ANNOTATED CODE OF MARYLAND.

REVISIONS	
DATE	REASON
5-10-2019	ATTORNEY REVIEW
7-19-2019	UPDATE VARIANCES

JOHN E. LEMMERMAN
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 21096
EXP. 8-3-19

TITLE REFERENCE
DONNA V. BAIR 35307-489 JULY 18, 2014

STATE OF MARYLAND · JOHN E. LEMMERMAN · No. 21096 · PROFESSIONAL LAND SURVEYOR

RTF Associates, Inc.
LAND SURVEYORS & PLANNERS
142 EAST MAIN STREET WESTMINSTER, MD 21157
410-848-2040 FAX# 443-289-8942 410-876-1222
EMAIL: RTF142@GMAIL.COM WWW.RTFSURVEYING.COM

CHECKED BY: JEL DATE: 5-9-2019
DRAWN BY: SP & JL DATE: 11-16-18 & 5-8-19
SCALE: 1" = 30' RTF JOB#: 18-147

Petitioner
CBA Exhibit
1

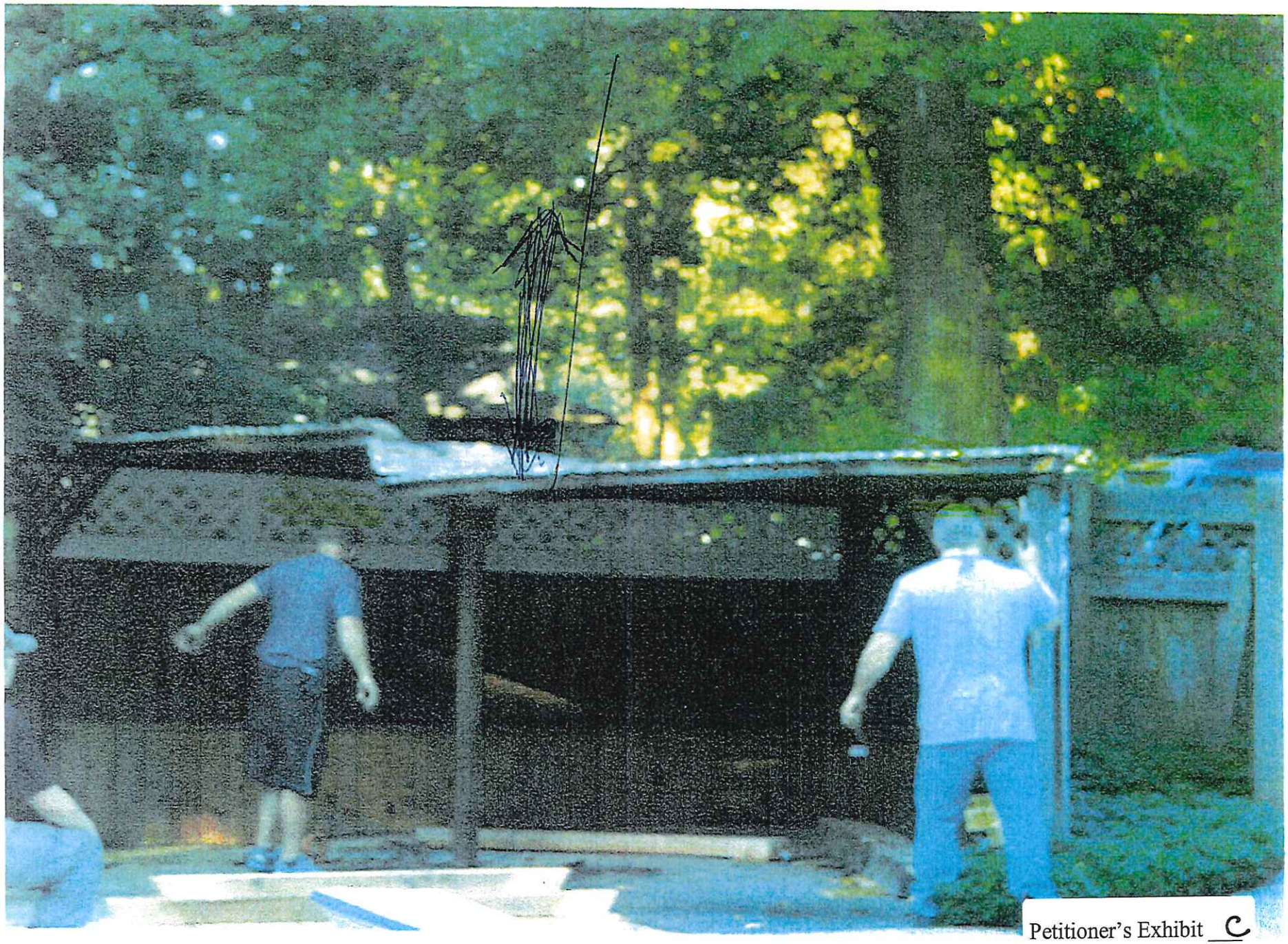
Petitioner's Exhibit 1

Petitioner's Exhibit 4

Petitioner
CBA Exhibit
24-22



Petitioner's Exhibit B



Petitioner's Exhibit C

Petitioner's Exhibit D

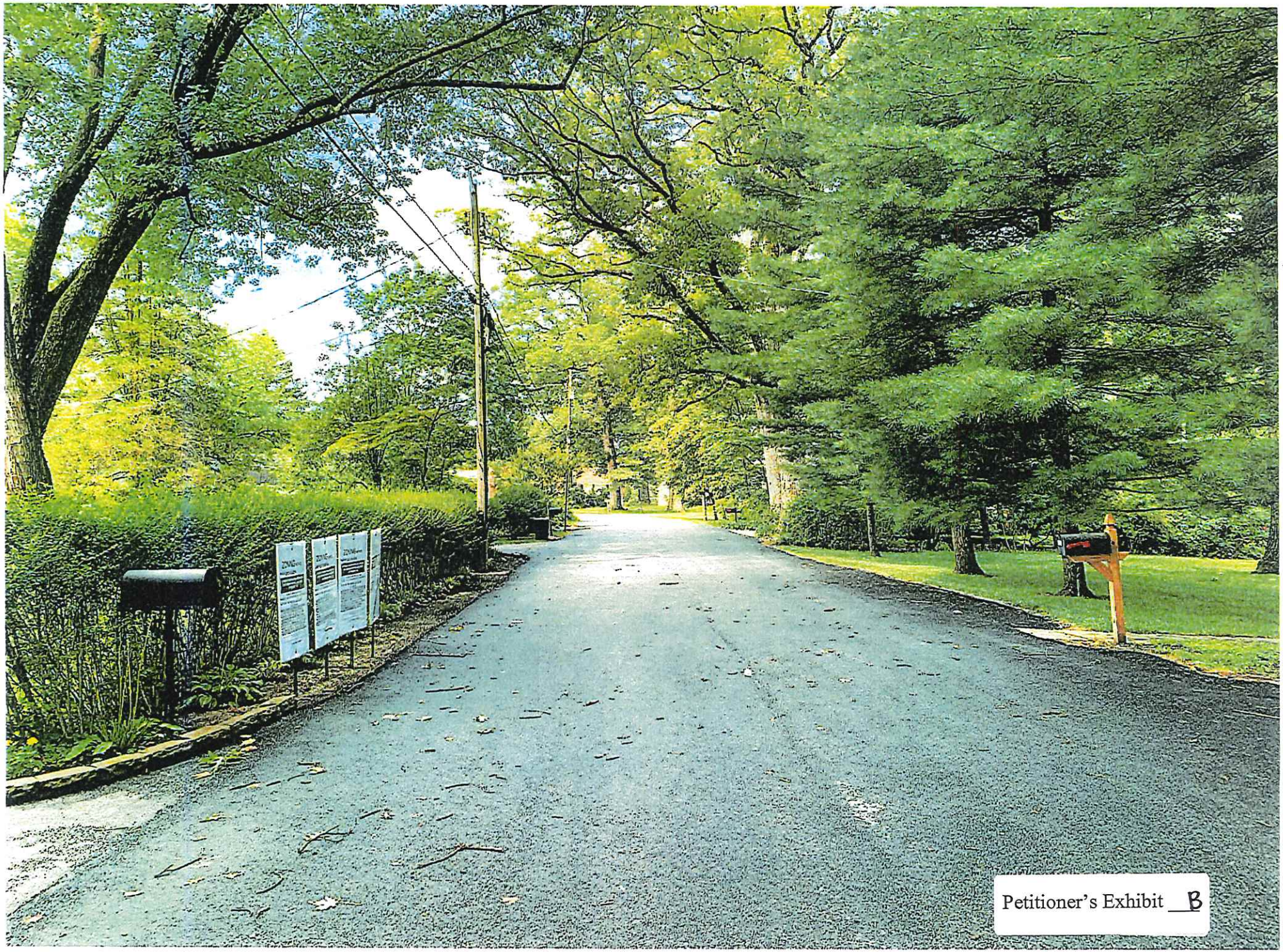


Petitioner's Exhibit E



Petitioner
CBA Exhibit
3A-3Q

Petitioner's Exhibit A


Petitioner's Exhibit B


Petitioner's Exhibit C


4DA6782
Petitioner's Exhibit D


Petitioner's Exhibit E

Petitioner's Exhibit F

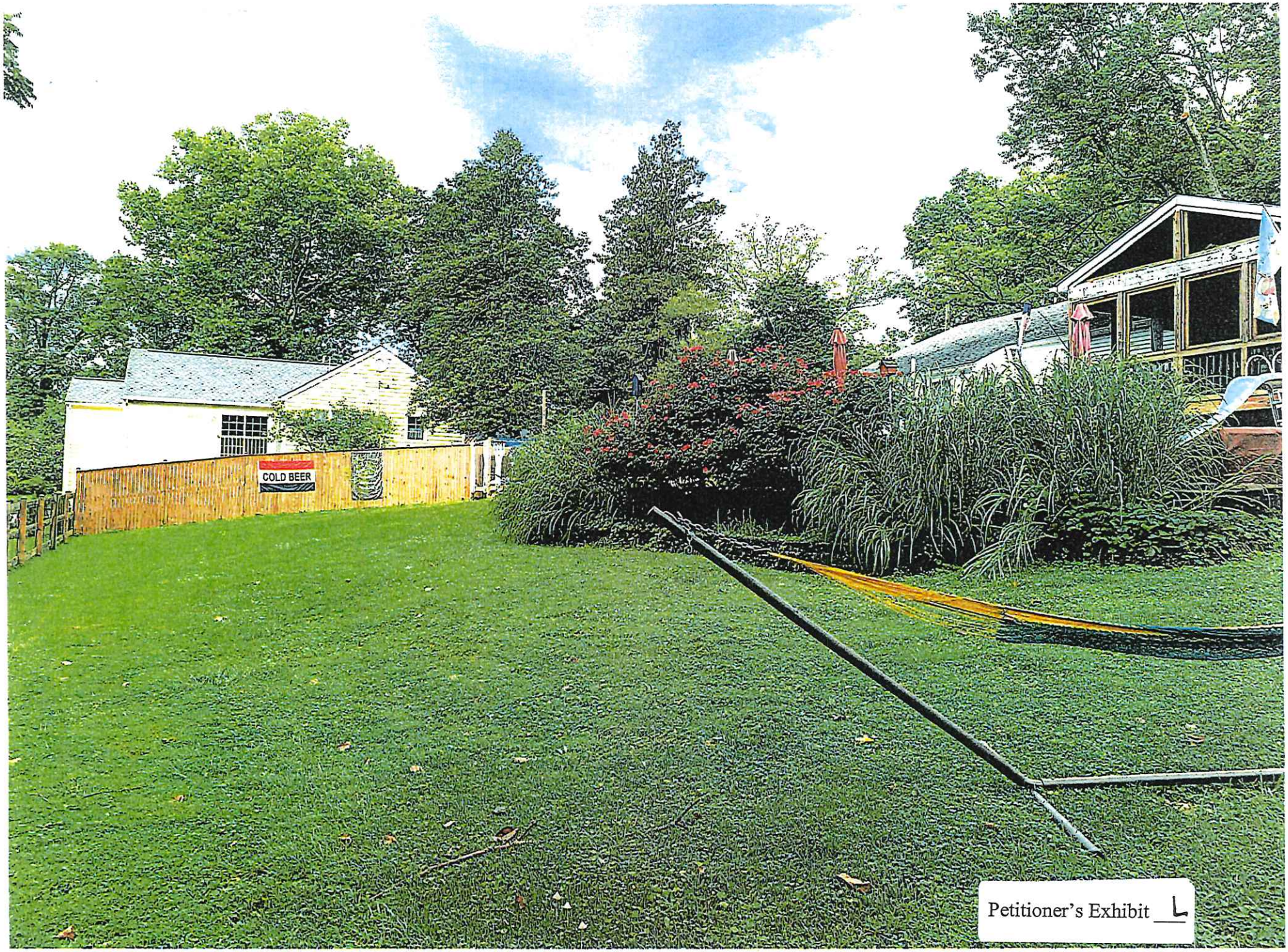

Petitioner's Exhibit 6


Petitioner's Exhibit H


COLD BEER
Petitioner's Exhibit I


Petitioner's Exhibit J


Petitioner's Exhibit K



Petitioner's Exhibit L


Petitioner's Exhibit M


Petitioner's Exhibit N


Petitioner's Exhibit D


Petitioner's Exhibit P


Petitioner's Exhibit Q

Civil Citation No. CC1814071
(4607 Prospect Avenue)

Donna Bair
4607 Prospect Avenue
Baltimore, Maryland 21071

FINAL ORDER

The matter came before the Administrative Law Judge on February 6, 2019, for a hearing on a Code Inspections and Enforcement Citation ("Citation"), for specified violations of the Baltimore County Code ("B.C.C.") or Zoning Regulations ("B.C.Z.R."). The Citation names the owners of record, as published in the Maryland State Tax Assessment Database, as Respondents. The Citation was served upon Respondent(s) in a manner consistent with Section 3-6-205(c)(2) of the Baltimore County Code. The Citation, which is included in the case file and is incorporated herein by reference, proposes a civil penalty in the amount of $1,000.00.

The following persons appeared for the Hearing: Donna Bair, Respondent, and Assistant County Attorney, Marissa L. Merrick, on behalf of Baltimore County.

Based on the testimony, photographs, documents and other exhibits I find for the reasons stated at the conclusion of the hearing Baltimore County has proven by a preponderance of the evidence that Respondent(s) is in violation of the ordinances or regulations set forth in the civil Citation.

THEREFORE, IT IS ORDERED this 11th day of February, 2018, by the Administrative Law Judge for Baltimore County that a civil penalty of $1,000.00 be imposed and suspended.

IT IS FURTHER ORDERED, that Respondent shall file for the appropriate zoning relief, or, shall otherwise correct and abate violations pursuant to this ORDER, by April 12, 2019.

Petitioner's Exhibit ___

Petitioner
CBA Exhibit
4

IT IS FURTHER ORDERED, that if the subject property is not brought into compliance pursuant to this Order by April 12, 2019, the suspended $1,000.00 civil penalty may be imposed without need for further hearing or order; and, that Baltimore County shall be authorized to send an employee or authorized contractor to enter the property to correct the violation(s), the costs and expenses of which shall be assessed against Respondents.

LAWRENCE M. STAHL
Administrative Law Judge
for Baltimore County

NOTICE: Pursuant to §3-6-301(a) of the Baltimore County Code, the Respondent or Baltimore County may appeal this order to the Baltimore County Board of Appeals within fifteen (15) days from the date of this order. Any such appeal requires the filing of a petition setting forth the grounds for appeal, payment of a filing fee of $225.00 and the posting of security in the amount of the penalty assessed.

Send payments to:

Baltimore County Office of Budget and Finance

400 Washington Ave, Rm 150

Towson, MD 21204

LMS/hk

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

www.baltimorecountymd.gov/Agencies/permits/

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

CODE ENFORCEMENT & INSPECTION CITATION

CASE NUMBER	PROP.TAX ID
CC1814071	04-16-015450

VIOLATION ADDRESS
4607 PROSPECT AVE
REISTERSTOWN, MD 21136

BAIR DONNA V
4607 PROSPECT AVE
GLYNDON, MD 21071-3800

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

County Codes/Regulations	Inspector's Comments
B.C.C. 35-2-301: Obtain building/ fence/ sign permit B.C.Z.R 400: Illegal accessory structure — ? fence	Failure to comply with correction notice issued back on 10/11/18 regarding fence. . There is no record of permit nor Landmark Preservation approval plus illegal placement of fence.

Pursuant to Section 1-2-217, Baltimore County Code, civil penalty has been assessed, as a result of the violation(s) cited herein, in the amount indicated: **$1000**

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

DATE: 02/06/2019 **TIME:** 09:00 **A.M.**

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

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

Inspector Badge Number		Issued Date
101		01/24/2019

Permits, Approvals, and Inspections
Code Inspections & Enforcement
County Office Building, Rm. 213
111 West Chesapeake Ave
Towson, Maryland 21204
www.baltimorecountymd.gov/Agencies/permits/

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

CODE ENFORCEMENT CORRECTION NOTICE

CASE NUMBER	PROP.TAX ID
CC1814071	04-16-015450

VIOLATION ADDRESS
4607 PROSPECT AVE
REISTERSTOWN, MD 21136

BAIR DONNA V
4607 PROSPECT AVE
GLYNDON, MD 21071-3800

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

County Codes/Regulations	Inspector's Comments
B.C.C. 35-2-301: Obtain building/ fence/ sign permit B.C.Z.R 400: Illegal accessory structure	There are multiple violations pertaining to the privacy fence installed on property. There is no record of obtained permit. Permit needs to be obtained and will need to get Landmark preservation approval. Secondly, the placement of fence is illegal based on height, location, etc.... Fence must not protrude past yours or neighboring properties front foundation. It is recommended you contact Baltimore County zoning in working to resolve these violations.

Failure to comply with this correction notice, may result in a $200.00 fine/penalty per day, per violation pursuant to BCC: 1-2-217; 32-3-602 and/or the County sending a contractor to correct the violation(s) at your expense. Call the inspector for more information and details.

COMPLIANCE DATE: 10/30/2018	INSPECTOR ID: 101
	ISSUED DATE: 10/11/2018

IMPORTANT INFORMATION TO THE PERSON'S CHARGED

1. It is important that you read this document carefully, as it charges you with the commission of a crime.
2. If you fail to correct the violations noted by the date dictated, a citation may be issued, and a trial scheduled at which you may be penalized by a fine, imprisonment, or both.
3. If the County is required to bring your property into compliance, all costs and fines shall become a lien and shall be collectible in the manner provided for collection of real estate taxes; or may be collected in the same manner as any civil money judgment or debt collected.
4. A lawyer can give important assistance to you:
   (a) on how to correct the violation(s) in order to avoid trial or
   (b) at trial, if you failed to correct the violation(s) noted. Assistance may be provided to determine whether there are any defenses to the charges against you or any circumstances helpful to you that should be brought to the trial. A lawyer can help you by developing and presenting information, which could effect how you correct the violation(s).
5. A conviction for each violation will subject you to potential fines of $200, $500, $1000 per day per violation, depending on the violation, or 90 days in jail, or both Baltimore County Code section 1-2-217 and 32-3-602.
6. It is your responsibility to obtain any required permit(s) to correct the cited violation(s). All repairs must be in accordance with applicable laws, Code of Baltimore County Regulations, and standards.
7. Upon correction of these violation(s), contact the inspector for re-inspection. If you have any questions contact the inspector promptly.

Permits, Approvals, and Inspections
Code Inspections & Enforcement
County Office Building, Rm. 213
111 West Chesapeake Ave
Towson, Maryland 21204
www.baltimorecountymd.gov/Agencies/permits/

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

CODE ENFORCEMENT CORRECTION NOTICE

CASE NUMBER	PROP.TAX ID
CC1814071	04-16-015450

VIOLATION ADDRESS
4607 PROSPECT AVE
REISTERSTOWN, MD 21136

BAIR DONNA V
4607 PROSPECT AVE
GLYNDON, MD 21071-3800

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

County Codes/Regulations	Inspector's Comments
B.C.C. 35-2-301: Obtain building/ fence/ sign permit	There are multiple violations pertaining to the privacy fence installed on property. There is no record of obtained permit. Permit needs to be obtained and will need to get Landmark preservation approval. Secondly, the placement of fence is illegal based on height, location, etc.... Fence must not protrude past yours or neighboring properties front foundation. It is recommended you contact Baltimore County zoning in working to resolve these violations.
B.C.Z.R 400: Illegal accessory structure	

Failure to comply with this correction notice, may result in a $200.00 fine/penalty per day, per violation pursuant to BCC: 1-2-217; 32-3-602 and/or the County sending a contractor to correct the violation(s) at your expense. Call the inspector for more information and details.

COMPLIANCE DATE: 10/30/2018	INSPECTOR ID: 101
	ISSUED DATE: 10/11/2018

IMPORTANT INFORMATION TO THE PERSON'S CHARGED

1. It is important that you read this document carefully, as it charges you with the commission of a crime.
2. If you fail to correct the violations noted by the date dictated, a citation may be issued, and a trial scheduled at which you may be penalized by a fine, imprisonment, or both.
3. If the County is required to bring your property into compliance, all costs and fines shall become a lien and shall be collectible in the manner provided for collection of real estate taxes; or may be collected in the same manner as any civil money judgment or debt collected.
4. A lawyer can give important assistance to you:
   (a) on how to correct the violation(s) in order to avoid trial or
   (b) at trial, if you failed to correct the violation(s) noted. Assistance may be provided to determine whether there are any defenses to the charges against you or any circumstances helpful to you that should be brought to the trial. A lawyer can help you by developing and presenting information, which could effect how you correct the violation(s).
5. A conviction for each violation will subject you to potential fines of $200, $500, $1000 per day per violation, depending on the violation, or 90 days in jail, or both Baltimore County Code section 1-2-217 and 32-3-602.
6. It is your responsibility to obtain any required permit(s) to correct the cited violation(s). All repairs must be in accordance with applicable laws, Code of Baltimore County Regulations, and standards.
7. Upon correction of these violation(s), contact the inspector for re-inspection. If you have any questions contact the inspector promptly.

Baltimore County
Department of Permits,
Approvals And Inspections

OFFICE HOURS 7:30 am - 3:30 pm

Building Inspection: 410-887-3953

Code Inspections and Enforcement
County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

Plumbing Inspection: 410-887-3620
Electrical Inspection: 410-887-3960

BALTIMORE COUNTY UNIFORM CODE ENFORCEMENT CORRECTION NOTICE

Citation Case No. CB1800693 Property No. 04160154S0 Zoning:

Name(s): DONNA Beir

Address: 4607 PROSPECT AVE
GLYNDON MD 3107

Violation Location: SAME

DID UNLAWFULLY VIOLATE THE FOLLOWING BALTIMORE COUNTY LAWS:

2003 BALTIMORE COUNTY CODE SUBTITLE 3 SECTION 35-2-301 PERMITS AND INSPECTIONS REQUIRED FOR BALTIMORE COUNTY CODE CODE 40-12 PART 120 APPROVE PERMITS AND LANDMARK PRESERVATION COMMITTEE REQUIRED FOR ADDITIONS ON SFD, PERMIT REQUIRED FOR FENCE INSTALLED WITHOUT PERMIT

YOU ARE HEREBY ORDERED TO CORRECT THESE VIOLATION(S) ON OR BEFORE:

ON OR BEFORE: 10/26/18 DATE ISSUED: 10/5/18

FAILURE TO COMPLY WITH THE DEADLINE STATED IS A MISDEMEANOR. A CONVICTION FOR EACH VIOLATION SUBJECTS YOU TO POTENTIAL FINES OF $200, $500, OR $1,000 PER DAY, PER VIOLATION, DEPENDING ON VIOLATION, OR 90 DAYS IN JAIL, OR BOTH.

INSPECTOR: [signature] PRINT NAME: Hunter Rowe

STOP WORK NOTICE

PURSUANT TO INSEPCTION OF THE FOREGOING VIOLATIONS, YOU SHALL CEASE ALL WORK UNTIL THE VIOLATIONS ARE CORRECTED AND/OR PROPER PERMITS OBTAINED. WORK CAN RESUME WITH THE APPROVAL OF THE DIVISION OF CODE INSPECTIONS AND ENFORCEMENT. THESE CONDITIONS MUST BE CORRECTED NO LATER THAN:

ON OR BEFORE: _____ DATE ISSUED: _____

INSPECTOR: _____ PRINT NAME: _____

COPIES: PINK – AGENCY, YELLOW - VIOLATION SITE, GOLD – DEFENDANT, WHITE – INSPECTOR

REV. 2/13

PAI BI 10

Minutes
Baltimore County Landmarks Preservation Commission
March 14, 2019 Meeting

Call to order; introduction of Commission members; pledge of allegiance to the Flag; statement of purpose and operating procedures

Mr. Rob Brennan, Chairperson, opened the regular monthly meeting of the Baltimore County Landmarks Preservation Commission (LPC) at 6:07 p.m. The following Commission members were:

Present	Not Present
Ms. Carol Allen	Mr. C. Bruce Boswell
Mr. Robert P. Brennan, Chair	Mr. Ed Hord
Mr. Louis Diggs	Ms. Nancy W. Horst, Vice-Chair
Mr. Mitch Kellman	Mr. David S. Thaler
Ms. Wendy McIver	
Mr. Stephen P. Myer	
Ms. Faith Nevins Hawks	
Ms. Cathryn Pinheiro	
Mr. Raymond Scott	
Mr. Qutub U. K. Syed	

Attending County staff, Teri Rising (Preservation Services staff), Kaylee Justice (Planning staff), Jeff Mayhew (Acting Director) and Jenifer Nugent (Chief of Development Review and Strategic Planning).

Mr. Diggs joined the meeting at 6:08 PM.

Mr. Brennan welcomed the two new members of the Landmarks Preservation Commission, Mr. Raymond Scott, representing County Council District 7 and Ms. Catherine Pinheiro, representing the Planning Board.

Ms. Nevins-Hawks and Mr. Syed joined the meeting at 6:13 PM.

Special Presentation

Petitioner's Exhibit B

Petitioner
CBA Exhibit
5A-5C

Ms. Rising presented information on the nomination of the Day Village District to the National Register of Historic Places. Her presentation described the architectural features of the various buildings, general history of the Turner Station community and the World War II era development of the Day Village complex. She indicated the nomination was justified under criteria A and C.

Mr. Brennan recognized Sarah Vonesh, representing E.H.T. Traceries, the preservation consultants responsible for the preparation of the National Register nomination on behalf of the property's owner. Ms. Vonesh expressed support for the nomination and introduced Mr. Joowan Lee with Chelsea Investment, who explained they were the owners, and interested in a redevelopment project involving the site. Ms. Vonesh stated that the owners were in the process of preparing plans for rehabilitation in order to receive historic tax credits, which was the reason the nomination was prepared.

Ms. Allen questioned the ownership of the site as written on the National Register notification letter. Mr. Lee responded that the information was correct and MCAP and Chelsea Investment intended to be partners in the application process. Ms. Allen asked if both entities were in support of the nomination. Ms. Rising indicated that owner support was necessary for National Register nominations to move forward. Ms. Allen commented that the background information helped her better understand similar sites and suggested a marker be placed with information about the property's history. Mr. Lee offered information about his previous involvement with historic renovations in New England and agreed that a plaque was warranted for the recognition.

Ms. Allen asked if the renters were still predominately African American and Mr. Lee replied they were. He added that he had met earlier that afternoon with the Turner Station conservation group to share details about the project rehabilitation and they were very excited and supportive.

Ms. Rising provided information about the virtual Turner Station Exploration Trail Story Map on the Baltimore County web page that contained historic background information on the community, including Day Village.

Mr. Scott offered his support for the nomination and commented that Day Village has been continuously well maintained and looked unchanged from his experiences working in the Turner Station community in the 1970s.

Mr. Diggs shared information about his book on the history of Turner Station with Mr. Lee that also included Day Village. He added that he was extremely knowledgeable about the community. Mr. Diggs noted the past impact of rising water on the community and asked Mr. Lee if they planned to take this into consideration in the renovations. Mr. Lee responded that they hired an engineering firm to evaluate the site and develop drainage solutions to resolve standing water issues and to add landscaping features to help mitigate the problem. Mr. Diggs

asked if they planned to recognize specific building units that have special history in their own right. Mr. Lee offered appreciation for information Mr. Diggs would be willing to share.

Ms. Nevins-Hawks asked about the specifics of the renovations. Mr. Lee replied they would be adding 23 accessible units without compromising the historic integrity of the site and adding related amenities to aid with site accessibility. He also described the different rehabilitation and remodeling work that was anticipated, including the addition of modern plumbing and heating. Ms. Vonesh stated the work would follow the Secretary of the Interior's Standards because it was for a historic tax credit.

Mr. Diggs asked if the units would still be affordable to the residents after the renovation, he was concerned they might be forced out by higher rents. Mr. Lee replied they had a relocation plan and would be using funding sources with the intention of retaining their affordably so the residents would be affected as little as possible. Ms. Rising explained that she understood the accessibility upgrades were intended to help residents age in place.

Mr. Diggs moved to support the Day Village Historic District nomination, under National Register criteria A and C. Mr. Nevins-Hawks seconded the motion which passed with affirmative votes being cast by Ms. Allen, Mr. Brennan, Mr. Diggs, Mr. Kellman, Ms. McIver, Mr. Myer, Ms. Nevins-Hawks, Ms. Pinheiro, Mr. Scott and Mr. Syed. There were no dissenting votes.

Citing CLG procedural regulations (National Park Service)

1. **Review of the Agenda**

Ms. Rising reported there were no changes to the Preliminary Agenda published March 7th, 2019.

2. **Approval of the Minutes**

Mr. Brennan asked if anyone proposed changes to the February 14, 2019 Minutes. Hearing none, Mr. Brennan called for a motion to approve the Minutes as drafted. Mr. Diggs moved to approve the Minutes as drafted. Ms. Allen seconded the motion, which passed with affirmative votes being cast by Ms. Allen, Mr. Brennan, Mr. Diggs, Mr. Kellman, Ms. McIver, Mr. Myer, Ms. Nevins-Hawks, Ms. Pinheiro, Mr. Scott and Mr. Syed. There were no dissenting votes.

3. **Consent Agenda**

Ms. Rising read the Action Recommendation for Consent Agenda Item 4.

Mr. Brennan called for a motion. Mr. Myer moved to approve the Consent Agenda item as presented. Ms. McIver seconded the motion, which passed with affirmative votes being cast by Ms. Allen, Mr. Brennan, Mr. Diggs, Mr. Kellman, Ms. McIver, Mr. Myer, Ms. Nevins-Hawks, Ms.

Pinheiro, Mr. Scott and Mr. Syed. There were no dissenting votes.

Items for Discussion and Vote

**4. O'Neill property, 713 Cliveden Road, Sudbrook Park; Contributing structure in the Sudbrook Park County Historic District; Ex post facto garage demolition due to destruction from fallen tree (Code Enforcement Correction Notice # CB1900044) [County Council District # 2]

Approved via the Consent Agenda to issue an Ex post facto Notice to Proceed

Citing County Code, Sec 32-7-405; 32-7-403

5. Bair property, 4607 Prospect Avenue, Glyndon; Non-contributing structure in the Glyndon County Historic District; Ex post facto installation of a 6 foot high wood privacy fence; Ex post facto construction of a 12 foot x 28 foot single car garage addition; Ex post facto construction of a 13 foot by 13 foot addition (Baltimore County Code Enforcement Case # CC1814071; Baltimore County Code Enforcement Correction Notice # CB1800693) [County Council District # 2]

Ms. Rising gave an overview of the item which involved 2 separate Code Enforcement complaints. In response, the applicant submitted 3 separate Ex post facto requests for items already constructed. She shared that a Technical Committee consisting of herself, Ms. McIver and Mr. Myer visited the site and met with the applicant on March 11, 2019 and generated a report that was shared with the Commission prior to the meeting. Ms. Rising described Code Enforcement Case # CC1814071, which involved the prior installation of a 6 foot high wood privacy fence. She added that the complaint included zoning violations related to the fence installation which were not under the purview of the LPC. Pursuant to the Final Order issued by the Office of Administrative Hearings on February 11, 2019, the proposal was being brought forward prior to the April 12, 2019 date of correction specified on the Order. Ms. Rising also provided details related to Code Enforcement Correction Notice # CB1800693 involving the construction of a 12 foot x 28 foot single car garage addition to the eastern elevation of the structure and a 13 foot by 13 foot addition involving the northwest section of the structure. She stated that this correction notice also involved zoning violations not under the purview of the LPC. Permit applications involving all the items were requested from PAI on February 4, 2019 and were tabled pending LPC review. Ms. Rising explained how fences were considered under the Baltimore County Historic Design Guidelines. She added that they were usually recommend to be constructed of wood and located to the rear of the property. Ms. Rising indicated that the already constructed wood fence was a style previously approved by the Commission. She went on to describe the applicability of the Historic Design Guidelines to structural alterations involving a non-contributing house in terms of compatibility and effect to the overall Historic District and explained that Prospect Avenue was a dead end street on the outer edge of the Glyndon County Historic District.

Mr. Brennan asked the Technical Committee to summarize their report. Mr. Myer confirmed the details of the work items as explained by staff and explained they felt if the proposal had been submitted normally, it would have been approved. Ms. McIver agreed with Mr. Myer. Mr. Brennan noted that two people signed up to speak on this item. He recognized Mr. Tom Montanye, resident of 4609 Prospect Avenue, who introduced himself as the neighbor of the subject property on the other side of the fence. Mr. Montanye explained that he was speaking primarily out of concern for the fence and added that he had no issues with the other items assuming the proper processes and codes were followed. He clarified that his main objection involved the portion of the new fence that was directly adjacent to his driveway which had replaced shrubs and a previously existing cosmetic picket fence. Mr. Montanye stated that he believed the new fence was not built to code based on the siting of the two properties and their front and side yards. He added that the relationship of the fence to his driveway has negatively changed his view. Mr. Montanye remarked that he would like to see the expansion of the fence adjacent to his driveway be removed.

Ms. McIver asked Mr. Montanye if he had discussed his concerns with the neighbor before it was constructed. He replied that Ms. Bair had made him aware of the fence project and its proposed new location but had not expected the height and location being in such close proximity to the property line and parking pad. Ms. McIver asked if the fence was on the neighboring property and Mr. Montanye replied that it was.

Mr. Kellman remarked that there was information in the zoning regulations for fences unrelated to historic review and asked if the applicant had applied for a fence permit. Ms. Rising responded that a fence permit application had been filed and confirmed it was her understanding a zoning hearing would be scheduled. Mr. Kellman explained there were zoning regulations involving the erection of a fence in the side and rear yard adjoining a neighboring front yard. He added that the fence needed to be a certain height and distance away from the property line to avoid problems but stated there were certain exceptions. Mr. Kellman encouraged Mr. Montanye to look into the regulations but agreed there could be a conflict. Ms. Rising commented that she was not familiar with the details of the zoning issues as it was not under the purview of the LPC. She clarified the applicant may have to come back with a new plan depending on whether or not relief was granted. Mr. Montanye stated that he had tried to resolve the issue directly with his neighbor but was unsuccessful which led him to contact the County for assistance.

Mr. Brennan recognized Ms. Donna Bair as the owner of the property and invited her to speak. Ms. Rising clarified for the record that the LPC members had received Ms. Bair's letters and materials that summarized the situation prior to the meeting. Ms. Bair stated she wished to keep her fence because of her pool and privacy and added the company responsible for the fence installation had indicated they applied for a permit when they had not done so. She further explained that the fence had been discussed with her neighbor but blocking noise from their cars and dogs was an additional reason for why it was installed. Ms. Bair said the neighbor also moved their driveway closer to her house after the fence was installed. She clarified that her house actually sits in front of the neighbor's house and her pool sits in front of

their foundation, consequently the fence was for added safety of her grandchildren and privacy to enjoy the yard.

Mr. Brennan stated they were only concerned with the design issues and thanked both speakers for their testimony.

Ms. Nevins-Hawks commented that the front gate as specified in the plans was not aligned with the back of the house. Ms. Bair responded that because of the pool the County Code required the fence gate to open out. She said the house was on a slope, with the front of the house going down, and added the existence of a walkway led the fence installers to suggest the gate be moved forward so it could open outward. Consequently they could avoid disturbing the walkway by not having to dig down.

Ms. Pinheiro remarked that the permit situation was not within the Commission's purview and noted the Technical Committee's opinion that the work would have been approved. Ms. Pinheiro added she thought the fence looked good and along guidelines.

Ms. Rising commented it was unfortunate that the contractor doing the work did not apply for the permit as was stated on the invoice and paid for by the owner since any outstanding issues relating to historic review and zoning would have been flagged. She encouraged the Commission to focus on the design.

Ms. McIver moved to issue an Ex post facto Certificate of Appropriateness for the fence, and the 2 additions, as currently constructed. Mr. Diggs seconded the motion which passed with affirmative votes being cast by Ms. Allen, Mr. Brennan, Mr. Diggs, Mr. Kellman, Ms. McIver, Mr. Myer, Ms. Pinheiro, Mr. Scott and Mr. Syed. Ms. Nevins-Hawks voted nay.

(Citing Baltimore County Historic Design Guidelines: Fences & Landscape, p. 4; Additions & Infill, pp. 5-7) County Code, Sec 32-7-405; 32-7-403

The following historic property tax credit applications were reported as approved by staff as either an emergency repair or due to the receipt of Part II approval for work reviewed by MHT:

North Property, 1100 Copper Hill Road, Bare Hills; Technical Committee approval for amendment to Pt II to upgrade cooling and dehumidification units. [County Council District # 2]

Other Business

Ms. Rising provided Code Enforcement updates for several properties including 3605 Stoneybrook Road, 501 Bond Avenue and 5120 South Rolling Road.

Ms. Rising also identified 2 items in the binder of interest to Commission members including a schedule of programs being offered by the Maryland Association of Historic District

Commissions and an event flyer for the upcoming spring speaker series hosted by the Community College of Baltimore County.

Ms. Allen offered to share an article from the New York Times about Hudson Yards and a website developed by UMBC called Early Baltimore.

Ms. Pinheiro moved to adjourn the meeting. Mr. Scott seconded the motion which passed with affirmative votes being cast by Ms. Allen, Mr. Brennan, Mr. Diggs, Mr. Kellman, Ms. McIver, Mr. Myer, Ms. Nevins-Hawks, Ms. Pinheiro, Mr. Scott and Mr. Syed. There were no dissenting votes.

The meeting adjourned at 7:24 p.m.

TDR:tdr

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF PLANNING

Memorandum

TO: Donna V. Bair **DATE:** March 19, 2019

FROM: Teri Rising, Administrator/Secretary
Landmarks Preservation Commission

SUBJECT: 4607 Prospect Avenue, Glyndon

At its March 14, 2019 meeting, the Baltimore County Landmarks Preservation Commission (LPC) voted to issue an Ex Post Facto Certificate of Appropriateness for the following items as proposed:

- 6 foot high wood privacy fence (Code Enforcement Case # CC1814071)
- 12 foot x 28 foot single car garage addition (Code Enforcement Correction Notice # CB1800693)
- 13 foot by 13 foot addition (Code Enforcement Correction Notice # CB1800693)

This action is in accordance with Baltimore County Code Section 32-7-403 and 32-7-405 citing Baltimore County Historic Design Guidelines: Fences & Landscape, p. 4; Additions & Infill, pp. 5-7.

Please note, the work will require a Baltimore County building permit. Applications for building permits are obtained from the Department of Permits, Approvals and Inspections located at 111 Chesapeake Avenue in Towson. Information regarding building permits is available on the County's website. https://www.baltimorecountymd.gov/Agencies/permits/index.html Questions regarding that process should be directed to the Permits, Approvals & Inspections Office.

Petitioner's Exhibit B

March 13, 2019

LPC Technical Committee Report

4607 Prospect Avenue

Glyndon Historic District

On March 11, 2019, a Technical Committee consisting of commissioners, Wendy McIver and Steve Myer met with Baltimore County staff member Teri Rising on site with the owner to examine ex post facto the changes that they had made to their home and property. The meeting was the result of a Baltimore County Code Enforcement Correction Notice that had been issued for these changes. The house is a single story, frame single family dwelling. It is a non-contributing structure in the Glyndon Historic District. Due to a need for more family living space and the need for additional privacy and safety due to their in-ground pool, the owner added a second 12X28 foot single car garage to the east of the existing garage, had a 13X13 foot addition built on the west side of the house, and had two sections of a 6 foot privacy fence constructed on the property lines with the neighboring properties on the east and west sides of their property.

The changes to their property follow design guidelines for non-contributing structures in a historic district. The new garage and house addition use the same style siding, windows, shutters, and garage door. The new garage connects to the east side of the house with a shed roof. These changes do not overpower the appearance of the existing dwelling. The new fences are constructed of pressure treated wood with vertical planks and a top cap rail. They provide privacy and safety in the back yards with limited visibility from the street. The Technical Committee recognized that because the owner has followed design guidelines for non-contributing structures, it is likely that these changes would have been approved if the request had been submitted in accordance with Baltimore County requirements.

Steve Myer

Petitioner's Exhibit C

Minutes
Baltimore County Landmarks Preservation Commission
October 10, 2019 Meeting

Call to order; introduction of Commission members; pledge of allegiance to the Flag; statement of purpose and operating procedures

Mr. Rob Brennan, Chairperson, opened the regular monthly meeting of the Baltimore County Landmarks Preservation Commission (LPC) at 6:03 p.m. The following Commission members were:

Present	Not Present
Mr. C. Bruce Boswell	Ms. Cathryn Pinheiro
Mr. Robert P. Brennan, Chair	Mr. Jon Schmidt
Mr. Louis Diggs	Mr. Qutub U. K. Syed
Mr. John Holman	
Mr. Ed Hord	
Mr. Mitch Kellman, Vice-Chair	
Ms. Wendy McIver	
Mr. Stephen P. Myer	
Ms. Faith Nevins-Hawks	
Mr. Raymond Scott	
Mr. David S. Thaler	
Mr. Christopher Weston	

Attending County staff included Teri Rising (Preservation Services staff), Taylor Bensley (Preservation Services staff), Jenifer Nugent (Strategic Planning Division Chief), and C. Pete Gutwald (Director, Department of Planning).

1. **Review of the Agenda**

Ms. Rising reported there were no changes to the Preliminary Agenda published October 3, 2019.

2. **Approval of the Minutes**

Mr. Brennan asked if anyone proposed changes to the September 12th, 2019 Minutes. Hearing none, Mr. Brennan called for a motion to approve the Minutes as drafted. Mr. Hord moved to approve the Minutes as drafted. Mr. Myer seconded the motion, which passed with affirmative votes being cast by Mr. Boswell, Mr. Brennan, Mr. Diggs, Mr. Holman, Mr. Hord, Mr. Kellman, Ms. McIver, Mr. Myer, Ms. Nevins-Hawks, Mr. Scott, Mr. Thaler, and Mr. Weston. There were no dissenting votes.

Petitioner
CBA Exhibit
6

3. **Consent Agenda**

Ms. Rising gave background information and read the Action Recommendations for Consent Agenda Items 5, 6 and 7.

Mr. Brennan called for a motion on the items. Mr. Thaler moved to approve the Consent Agenda items as proposed. Mr. Boswell seconded the motion, which passed with affirmative votes being cast by Mr. Boswell, Mr. Brennan, Mr. Diggs, Mr. Holman, Mr. Hord, Mr. Kellman, Ms. McIver, Mr. Myer, Ms. Nevins-Hawks, Mr. Scott, Mr. Thaler, and Mr. Weston. There were no dissenting votes.

Items for Discussion and Vote

4. Rauser Property, 1727 Magnolia Avenue, Relay; Contributing structure in the Relay County Historic District; Removal and expansion of a side entrance porch with roof [County Council District # 1]

Ms. Bensley introduced the project, which involved the removal of an existing side entrance porch and a rebuild complete with a roof. She explained that the property was a corner lot at the intersection of Magnolia and Hazel Avenues, and was the last property before Hazel Avenue came to a dead end at the 195 sound wall. The proposed porch was similar to the front porch, which was approved by the Commission in October of 2016. The footprint including the roof overhang was proposed to be 12' by 10'. Ms. Bensley continued that the roof of the porch would have Gaf Ultra Shingles to match the existing roof and the rail height solid porch wall would have shingles that matched those on the home and existing front porch; the porch would have aluminum downspouts and gutters and pressure treated wood stairs. She added that the homeowners were in the process of filing for an administrative variance for a 15.5' side yard setback in lieu of the required 25' side yard setback and that a site visit was conducted on September 30th, 2019.

Mr. Weston questioned if the 2' roof overhang was appropriate for the proposed porch. Mr. Brennan agreed, but noted he felt it was the homeowner's intent to match the existing front porch overhang.

Mr. Brennan informed the Commission that he, Ms. Nevins-Hawks, Ms. Rising, and Ms. Bensley visited the site and spoke with the homeowner on September 30th, 2019.

Mr. Boswell asked if anyone knew the distance of the overhang of the existing front porch. Ms. Nevins-Hawks commented that she felt it was properly represented on the drawing of the front elevation. Mr. Boswell commented the overhang of the existing front porch appeared to be 12" to 18" per the plans.

Ms. Nevins-Hawks shared that the homeowner expressed the underside of the stairs would have lattice, similar to the existing front porch, however it was not depicted in the drawings.

Mr. Weston moved to issue a Certificate of Appropriateness with the conditions that the distance of the proposed porch roof overhang match the distance of the existing front porch overhang and that the underside of the stairs be screened with lattice to match the existing front porch. Mr. Thaler seconded the motion, which passed with affirmative votes being cast by Mr. Boswell, Mr. Brennan, Mr. Diggs, Mr. Holman, Mr. Hord, Mr. Kellman, Ms. McIver, Mr. Myer, Ms. Nevins-Hawks, Mr. Scott, Mr. Thaler, and Mr. Weston. There were no dissenting votes.

Citing Baltimore County Historic Design Guidelines: Porches & Steps, p. 6; Additions & Infill, p. 4; County Code, Sec 32-7-302

**5. Klinger Property, 719 Anneslie Road, Anneslie; Contributing structure in the Anneslie National Register Historic District; Part II approval for the in-kind replacement of approximately 30 slate roof tiles [County Council District # 5]

Approved via the Consent Agenda to issue a Certificate of Appropriateness.

Citing Baltimore County Historic Design Guidelines: Roofs, p. 9; County Code, Sec 11-2-201

**6. "Planters Paradise" and setting (Hoeing Property), 2316 Bauernschmidt Drive, Essex vicinity; Final Landmark # 110; MIHP # BA-263; Installation of a wood fence, gate, and pine arbor [County Council District # 7]

Approved via the Consent Agenda to issue a Certificate of Appropriateness.

Citing Baltimore County Historic Design Guidelines: Fences & Landscape, p. 4; County Code, Sec 32-7-403

**7. Kline Property, 308 Central Avenue, Glyndon; Contributing structure in the Glyndon County Historic District; MIHP # BA-796; Part II approval for a boiler replacement, installation of chimney liner, and asbestos remediation [County Council District # 2]

Approved via the Consent Agenda to issue a Certificate of Appropriateness.

Citing National Park Service, Technical Preservation Services, Preservation Brief # 24 - Heating, Ventilating, and Cooling Historic Buildings—Problems and Recommended Approaches; County Code, Sec 11-2-201

8. "Butler House", 517 Bond Avenue, Glyndon; Final Landmark # 128; MIHP # BA-764; Modifications to a previously approved window style [County Council District # 2]

Ms. Rising explained the project, which was an amendment to a previously approved window style for the historic residence at 30 Greensborough Road, formerly 517 Bond Avenue, which was approved by the Commission October 17th, 2017. She elaborated that the 49 double hung sash windows were comprised of 21 replacement wood clad windows with double pane glass, 27 original all wood windows with single pane glass, and one vinyl replacement window. She continued that at the October 2017 meeting, it was believed the 21 replacement windows were all wood. However, the Pella representative informed the owners that the 21 replacement

windows were wood clad, not all wood, and that proposed replacement for the 27 original all wood windows would not match the existing 21 windows staying in place. Consequently, the applicants were seeking approval to amend the proposed replacement window style with a wood clad window that identically matched the wood clad windows staying in place.

Mr. Brennan acknowledged the owner, Mr. Michael Greenspun of Bond Property, LLC.

Mr. Greenspun gave background information on the property, which is a Victorian, three-level home that is being renovated as a community benefit for the Victoria Crossing PUD. He clarified that there was no all wood style window that would match the remaining wood clad windows, which was why he was seeking an amendment.

Mr. Brennan noted that the originally approved windows were Kolbe, however the proposed amendment was Pella windows. Mr. Greenspun stated his contractor preferred to work with Pella.

Mr. Boswell commented that he believed the cladding of the windows should have been mentioned in the application, and that it was important to apply correct terminology.

Mr. Boswell moved to issue a Certificate of Appropriateness for the amendment as proposed with the notation that the cladding material be specified. Ms. Nevins-Hawks seconded the motion. Mr. Hord questioned if the Commission should note the cladding type. Mr. Weston shared he believed it was a metal clad and Mr. Brennan confirmed. Ms. Rising informed the Commission that the cladding material was stated in the specifications sheet of the meeting materials and the Commission could reference that. Mr. Thaler commented that the motion should be amended to specify the approved cladding materials were those according to the Pella contract dated August 22nd, 2019 and presented to the Commission October 10th, 2019. Mr. Boswell accepted the amendment to the motion. Ms. Nevins-Hawks seconded the amended motion, which passed with affirmative votes being cast by Mr. Boswell, Mr. Brennan, Mr. Diggs, Mr. Holman, Mr. Hord, Mr. Kellman, Ms. McIver, Mr. Myer, Ms. Nevins-Hawks, Mr. Scott, and Mr. Weston. There were no dissenting votes. Mr. Thaler abstained from voting.

Citing Baltimore County Historic Design Guidelines: Windows & Doors, p. 8; County Code, Sec 32-7-403

9. Bair Property; 4607 Prospect Avenue, Glyndon; Non-contributing structure in the Glyndon County Historic District; Lowering of a 6' wood privacy fence to 42"; relocating existing 6' wood privacy fence by nine feet; installation of a 42" tall paddock fence between two shared driveways [County Council District # 3]

Ms. Rising introduced the agenda item, which included three separate proposals. The first proposal was for the lowering of a 6' wood privacy fence to 42"; the second proposal was for the relocation of the wood privacy fence in nine feet so it was not encroaching on a neighboring property; the third proposal was for the installation of a 42" tall paddock fence between two conjoined driveways. Ms. Rising explained that the lowering and relocation of the existing wood privacy fence was submitted in response to a Final Order issued by the Office of Administrative

Hearings on August 19th, 2019 that denied the requests to retain the existing fence's height and location. In regards to the third proposal, Ms. Rising shared that, upon the advice of the Office of Law, staff recommended the proposal be tabled pending the resolution of lot line issues outlined in the Final Order, as well as several outstanding code enforcement issues. Ms. Rising elaborated that the homeowner would not be able to obtain a permit until all outstanding issues with Code Enforcement had been reconciled.

Mr. Brennan recognized Mr. Steve Fradkin, the property owner of 4605 Prospect Avenue, Glyndon.

Mr. Fradkin remarked that he and his wife had no problem with the lowering and relocation of the 6' wood privacy fence, as the fence was encroaching 7' onto their property. He expressed he did not support the proposal for a new fence between the two connected driveways of 4607 and 4609 Prospect Avenue as it was not in continuity with the rest of the historic neighborhood. He elaborated he would like the person who completed Ms. Bair's survey to come back to the property with him or members of the Commission present so it could be certain the fence was moved off his property.

Mr. Brennan recognized Mr. Tom Montanye and Ms. Kim Montanye, the property owners of 4609 Prospect Avenue, Glyndon.

Mr. Montanye shared that he had concerns with the 42" tall paddock style fence between the two conjoined driveways. He provided a survey he had completed, as well as a survey Ms. Bair had completed, which he stated showed the proposed location of the fence was on his property.

Mr. Brennan commented that this property boundary was under dispute.

Ms. Rising explained that staff, upon advice from the Office of Law, was recommending the new proposal be tabled because of outstanding code violations, an ongoing lot line dispute, and zoning compliance issues. She elaborated that Code Enforcement was responsible for overseeing that the work was conforming to the Final Order.

Mr. Thaler asked for clarification on what the lot line dispute was. Mr. Montanye explained that Ms. Bair's driveway was encroaching on his property and that numerous surveys had confirmed this; consequently, the proposed location of the paddock style fence was also located on his property.

Mr. Thaler asked who completed the survey. Mr. Montanye stated that BPR Surveyors completed his survey.

Mr. Thaler asked if Ms. Bair disputed the results of Mr. Montanye's survey. Mr. Montanye explained he had two separate surveys, both of which Ms. Bair disputed. He noted that Ms. Bair also had a survey, which he disputed.

Mr. Thaler clarified that if Ms. Bair built something on Mr. Montanye's property it would be trespassing and the proper venue for resolution would be Circuit Court.

Ms. Montanye asked if anyone on the Commission was able to assist her and her husband with the property line dispute. Mr. Thaler confirmed that the Commission focused on historical aspects and consequently, issues related to surveys and titles were not within the purview of administrative agencies within Baltimore County Government; he reiterated the disputes would need to be resolved in Circuit Court. Mr. Thaler continued that he did not believe the Commission would ever knowingly approve a project on someone else's property, but that it was not within the Commission purview to delve into property boundaries.

Ms. Rising noted that if the neighbors felt the work was not completed in accordance with the permits or the Final Order, they should contact Code Enforcement.

Mr. Boswell asked for clarification about the fence that projected beyond the front elevation of the home. Ms. Rising clarified that the fence was the new proposal between two conjoined driveways that staff has recommended be tabled.

Mr. Brennan asked if the property boundary between 4605 and 4607 Prospect Avenue was disputed. Ms. Rising responded that, based on discussions with the Office of Law regarding the Final Order, as well as discussions with Code Enforcement, she did not believe so and only the property boundary between 4607 and 4609 Prospect Avenue was disputed.

Mr. Brennan clarified that the Commission was okay to approve the lowering and relocation of the wood privacy fence since the lot line was not disputed. Ms. Rising confirmed this and stated that approving those proposals would allow Ms. Bair to be in accordance with the Final Order. Ms. Rising noted that Code Enforcement would be the agency to confirm the work was completed correctly.

Ms. Fradkin requested that the Commission specify someone from the survey company be present when relocating the fence to be sure it was moved off his property. He elaborated that he believed the stakes delineating his property line had been tampered with. Mr. Thaler stated that was not within the Commission's purview, but that he believed moving property line stakes was illegal.

Ms. Rising clarified that if the fence was moved in conjunction with lot lines that had been tampered with, it would be reasonable to file a Code Enforcement complaint. The inspector would then need to go out and inspect the location based on the site plan provided with the permit, the Final Order, and the completed work; if work was not done as specified, it would be a code violation.

Mr. Thaler stated that you could not determine property boundaries based off the site plan supplied for a fence permit. Mr. Hord agreed. Ms. Rising confirmed that Code Enforcement would still need to be involved as complaints were tied to that agency.

Mr. Kellman provided that he did not believe any County Commission or body could approve any permit until all outstanding code violations were resolved. Ms. Rising confirmed this, and continued that the applicant had not yet applied for a permit. Ms. Rising noted that this was one of the reasons the Office of Law recommended the proposal be tabled.

Mr. Boswell moved to issue a Certificate of Appropriateness for the lowering of a 6' wood privacy fence to 42", to issue a Certificate of Appropriateness for the relocation of an existing 6' wood privacy fence by nine feet, and to table the application for a new 42" tall paddock fence between two conjoined driveways due to outstanding lot line and code enforcement issues. Mr. Thaler seconded the motion, which passed with affirmative votes being cast by Mr. Boswell, Mr. Brennan, Mr. Diggs, Mr. Holman, Mr. Hord, Mr. Kellman, Ms. McIver, Mr. Myer, Ms. Nevins-Hawks, Mr. Scott, Mr. Thaler, and Mr. Weston. There were no dissenting votes.

Citing Baltimore County Historic Design Guidelines: Porches & Steps, p. 6; Additions & Infill, p. 2; Office of Administrative Hearings, Final Order - August 19, 2019 - Case # 2019-0342-SPHA; County Code, Sec 32-7-403

10. Santoni's Marketplace and Catering, 4854 Butler Road, Glyndon; Non-contributing structure in the Glyndon County Historic District; Installation of a vestibule to the front of the store; expansion of the loading dock [County Council District # 3]

Ms. Rising stated the address for the property and noted that it was a non-contributing structure in the Glyndon County Historic District, not a contributing structure as described on the preliminary agenda.

Ms. Bensley provided background on the project, which involved two additions to Santoni's Marketplace and Catering. The first addition was an 8' x 20' vestibule at the entrance on the south side of the building. She continued that the vestibule was proposed to have automatic swing doors for entry, egress on both sides, and board and batten, trim, details, and coloring that all matched the existing façade. The second addition was an 8' by 62' enclosure of the loading dock area on the west side of the building. Ms. Bensley stated that the existing loading platform would be expanded approximately 34' to meet the existing sidewalk grade, and six new overhead doors would be installed; the entire docking area will be enclosed. Additionally, she provided detail that the existing roofline would be extended to meet the new exterior wall, and all proposed materials, including the architectural asphalt shingle roof, board and batten, trim, details, and color, would match the existing façade.

Mr. Brennan recognized Mr. Lou Santoni, owner of Santoni's Marketplace and Catering.

Mr. Brennan asked if Mr. Santoni owned the building. Mr. Santoni explained that he owned the business that occupied that portion of the building and that the building was owned by P. Fred Obrect Management Company. Mr. Santoni elaborated that he worked alongside the building owners with the proposal and that they would be doing the construction.

Mr. Brennan commented that the drawings were clear and consistent, and he felt the additions fit with the site.

Mr. Myer moved to issue a Certificate of Appropriateness for the additions as proposed. Mr. Diggs seconded the motion, which passed with affirmative votes being cast by Mr. Boswell, Mr. Brennan, Mr. Diggs, Mr. Holman, Mr. Hord, Mr. Kellman, Ms. McIver, Mr. Myer, Ms. Nevins-Hawks, Mr. Scott, Mr. Thaler, and Mr. Weston. There were no dissenting votes.

Citing Baltimore County Historic Design Guidelines: Additions & Infill, p. 4; County Code, Sec 32-7-403

11. "Randallstown Community Bank (Center), 9000 Liberty Road, Fieldstone; Final Landmark # 191; Contributing structure in the Fieldstone County Historic District; MIHP # BA-2903; Addition of a lobby; addition above an existing one-story portion of the building [County Council District # 4]

Ms. Rising introduced the item, which was an amended plan for alterations originally reviewed by the Commission September 12th, 2019. The updated plans included a 1,480 square foot lobby addition to the rear of the building, a 264 square foot addition above an existing one-story portion of the building, the installation of an enclosure for electric signage, and derelict window replacement. She further explained that no details were provided in regards to the sign enclosure or the window replacement. Ms. Rising informed the Commission that the September 11th, 2014 meeting minutes reflected that the windows were character defining features, and that the second floor windows had been recently scraped and repainted; any deterioration that had occurred since then, which prompted the proposed replacement, would need to be addressed as a separate issue. Additionally, Ms. Rising noted that all elevations of a historic building, contributing or non-contributing, were subject to review, and that the proposed addition would not be easily reversible, should a future owner wish to remove the addition.

Mr. Brennan recognized Mr. Robert Charles and Mr. Mark Levin, both of Levin Brown Architects.

Mr. Thaler questioned if the architects had adjusted the plans following the Commissions suggestions at the September 12th, 2019 meeting. Mr. Levin confirmed that changes had been made.

Mr. Charles and Mr. Levin delivered a presentation highlighting the modifications made following staffs suggestions. Ms. Rising clarified that the suggestions came from the Commission, not from staff. Mr. Charles explained that the addition above the warming kitchen had been pushed back to preserve one of the windows on the second floor of the building, and that the addition had a window that replicated those on the Liberty Road façade of the building.

Mr. Brennan asked what the materials of the addition were, and confirmed it was what the Commission reviewed last month. Mr. Levin replied it was different than what had previously been reviewed, as it was a different color. Mr. Charles stated it was Trespa. Ms. Rising confirmed it was the plastic material as previously reviewed. Mr. Charles explained it was a multi-colored arrangement and that the Trespa material was a high-pressure, compact,

laminate panel, reinforced with wood-based fibers. He explained that a multi-colored arrangement was chosen to better compliment the random ashlar stone of the building.

Mr. Charles explained that the fenestration of the existing windows was a narrow band on the bottom, a wide band in the middle, and a narrow band at the top. Because of this, the fenestration of the glass for the rear lobby addition was adjusted to match the pattern. He then provided detail that the color palette had been adjusted to better compliment the colors of the random ashlar stone.

Mr. Charles presented a photo of the Randallstown Elementary School, located at 9013 Liberty Road, and explained how it had rust colored framing similar to what was proposed, and was across the street. Ms. Rising noted that it was not in within the bounds of the Fieldstone County Historic District or a Final Landmark. Mr. Charles stated he was looking at the community at large.

Mr. Brennan clarified Mr. Charles was referring the color of the window system. Mr. Levin confirmed he was. Mr. Charles explained that the Trespa color proposed for the addition was not inconsistent for the area.

Mr. Levin stated that the building appeared gray in renderings, but was actually quite varied because of the random ashlar stone; providing a range of Trespa colors would pick up on the variation.

Mr. Brennan asked if anyone on the Commission had experience working with Trespa. Mr. Hord offered he had. Mr. Brennan questioned if it was plastic. Mr. Hord confirmed it was. Ms. Nevins-Hawks advised it was durable and a through-body product, meaning it would maintain its color even if scratched. Mr. Brennan questioned if it was an appropriate material in this application. Ms. Nevins-Hawks stated she believed it was.

Mr. Boswell explained that he felt the Trespa cube-like portion of the addition on page 15 of the provided plans appeared very jarring in juxtaposition with the current buildings masonry structure. Mr. Brennan agreed and noted that bringing the corners of the cube-like portion to the ground may improve the design.

Mr. Brennan remarked that the addition was very prominent and did not preserve a significant portion of the original building. Additionally, he explained he felt the curve of the rear lobby addition was a gratuitous element. Mr. Levin responded the curve responded to the rear of the pocket park located adjacent to the site.

Mr. Hord expressed he felt the plans were moving in the correct directions and that the architects had addressed the suggestions the Commission made at the September 12th, 2019 meeting.

Mr. Diggs shared that he liked the addition.

Ms. McIver questioned why the applicants proposed such a strong color, especially for the warming kitchen. Mr. Levin explained they modeled the colors off the existing random ashlar stone.

Mr. Levin explained that people driving by would only see a sliver of the curve of the glass lobby, and only those entering the building would see the extent of the addition.

Mr. Hord stated the colors of the Trespa were picking up on the colors of the stone.

Ms. McIver commented she felt the addition was better than the original proposal, but that it could stand to be a bit more stubble. Mr. Levin stated art was subjective.

Mr. Weston asked if the Commission was voting on the electrified sign even though no additional information was provided and it was not on the renderings. Mr. Charles stated that the sign was shown on the two-dimensional drawings provided but not the renderings; he continued that it was a minor component and could likely be tabled.

Mr. Charles stated that Levin Brown Architects had received feedback from the community, the County Councilman, the Liberty Road Business Association, Fieldstone, and state representatives; the feedback was supportive of the modern feel of the addition and expressed that it made the site stand out. Consequently, Mr. Charles advised making the design more subtle would lessen the emphasis of the addition.

Mr. Levin asked if he could elaborate on the signage. Mr. Brennan asked Ms. Rising if the Commission should vote on the proposal. Ms. Rising explained there was not enough information about the signage, therefore staff did not feel comfortable making a recommendation. Mr. Kellman asked if it was free-standing. Mr. Levin confirmed it was. Mr. Kellman asked if it was changeable copy. Mr. Levin replied it would depend what was permitted for the area. Mr. Brennan clarified the Commission would not vote on the sign.

Mr. Brennan provided he believed the addition should be dialed back a bit. He offered suggestions that the Trespa cube-like portion at the rear of the building be adjusted to better flow, that the side addition be better integrated with the existing one-story portion beneath it, and that it would be ideal to preserve a second window on the side façade of the building where the warming kitchen was proposed. Mr. Levin stated they could not push the warming kitchen addition back any further without losing the functionality.

Mr. Brennan asked the material of the band on the glass of the windows and confirmed it was a different color from the rest of the addition. Mr. Levin stated it was proposed to be clear, but he felt the color should be adjusted to a champagne color to better compliment the addition.

Mr. Thaler asked Mr. Brennan's feelings on the color of the warming kitchen. Mr. Brennan shared he felt it was a bit distracting and could be better integrated. Mr. Boswell stated he did not have a significant concern with the color, but was concerned with the massing of the rear

addition. Mr. Hord expressed he was okay with the colors, as it made the distinction that it was a new addition.

Mr. Weston agreed with Mr. Brennan about the massing of the side addition, and noted that the proportions of the window on the warming kitchen did not match the proportions of any of the existing windows.

Ms. Nevins-Hawks stated she felt the addition was appropriate and she enjoyed the modern look of it. She agreed that the columns from the cube-like portion of the rear addition needed to be adjusted.

Mr. Thaler asked if the Commission was close enough to vote on the addition and if the Commission could form a working group to advise the applicants. Ms. Rising stated that the Commission had brought up numerous modifications, which made it difficult for staff to approve a final plan at the time of permit. She elaborated she felt additional review from the Commission as an entity would be helpful.

Mr. Thaler reiterated the applicants should form a working group with the architects of the Commission.

Mr. Scott explained his opinion of the project would change drastically if the pocket park at the corner of Liberty and McDonough Roads was not there. Mr. Thaler noted it was a Baltimore County public park. Mr. Scott observed the addition will look quite different in the winter when the trees at the park were not full and screening the building.

Mr. Hord suggested the Commission should make a motion outlining the discussed comments.

Mr. Brennan recognized Ms. Anne Gryczon, the Executive Director of the Preservation Alliance of Baltimore County.

Ms. Gryczon advised that Preservation Alliance felt the addition should be done in a way that the historic building stays intact and the addition can be removed in the future.

Mr. Weston observed that the plans called for the removal of 16' to 20' of the rear wall for the lobby addition. Mr. Charles commented that was something the architects has considered.

Ms. Rising noted that she felt it would be appropriate for a Technical Committee to work with the architects, but that the Commission should not delegate the responsibility of approving the plans on behalf of the Commission as too many modifications had been outlined. Mr. Hord agreed that comments should be given and that the plans should be reviewed by the Commission at a later date.

Mr. Boswell asked to further discuss the removal of the existing stone wall. Mr. Levin confirmed it was approximately 20' in total, but there were two existing windows. He elaborated that they could modify the plans to remove less.

Ms. Rising reminded the Commission that they still needed to make a motion to not issue a Certificate of Appropriateness or a Notice to Proceed if they were not approving the application presented to them. She further explained that the Commission should outline the modifications in any motion.

Mr. Thaler asked why the Commission had to vote to not approve the plans. Ms. Rising replied that the Commission was required to act in accordance with Title 7 of the Baltimore County Code, which indicated they must vote on an application once it has been deemed complete.

Mr. Thaler moved to not issue a Certificate of Appropriateness or a Notice to Proceed, but invited the applicants to come back with modifications. Ms. Nevins-Hawks stated the modification of adjusting the columns below the Trespa cube on the rear of the building to be more consistent with the proportions of the addition. She elaborated that possible adjustments included the cube could be stretched to the ground, or the columns could be pushed back to the wall to not be as prominent. Mr. Hord stated the modification of removing less of the existing stone building from the second floor. Ms. Nevins-Hawks stated the modification of adjusting the proportions of the warming kitchen window to better replicate the windows on the Liberty Road façade of the building. Mr. Brennan stated the modifications of providing a lighter range of Trespa colors for the whole addition and the modification of better integrating the warming kitchen to the stone below it. Mr. Holman seconded the motion, which passed with affirmative votes being cast by Mr. Boswell, Mr. Brennan, Mr. Diggs, Mr. Holman, Mr. Hord, Mr. Kellman, Ms. McIver, Mr. Myer, Ms. Nevins-Hawks, Mr. Scott, Mr. Thaler, and Mr. Weston. There were no dissenting votes.

Citing Baltimore County Historic Design Guidelines: Additions & Infill, pp. 1-7; National Park Service, Technical Preservation Services, Preservation Brief # 14 - New Exterior Additions to Historic Buildings: Preservation Concerns; Fieldstone Historic District Design Guidelines – Adopted November 13, 2003; County Code, Sec 32-7-403

Other Business

Ms. Rising reported on the following historic property tax credit applications that were approved by staff as either an emergency repair or due to the receipt of Part II approval for work reviewed by MHT:

> Nass-Teret Property, 323 Hopkins Road, Rodgers Forge; MHT approval for an in-kind asphalt shingle roof replacement. [County Council District # 5]
>
> Kysiak Property, 406 Dunkirk Road, Rodgers Forge; MHT approval for an amended scope of work for the installation of a fireplace and chimney liner. [County Council District # 5]
>
> "Willow Glen" (van den Beemt Property), 16616 Remare Road, Monkton; MHT approval for the in-kind replacement of a boiler. [County Council District # 3]

Ms. Rising stated that the 2020 meeting schedule was now available. She noted that the April date was changed due to Passover.

Mr. Diggs announced he was stepping down from the Commission and this was his last meeting. He expressed his gratitude for the Commission members and staff. Members of the Commission thanked him for his preservation efforts.

Mr. Thaler acknowledged Mr. Hord's retirement from the practice of architecture.

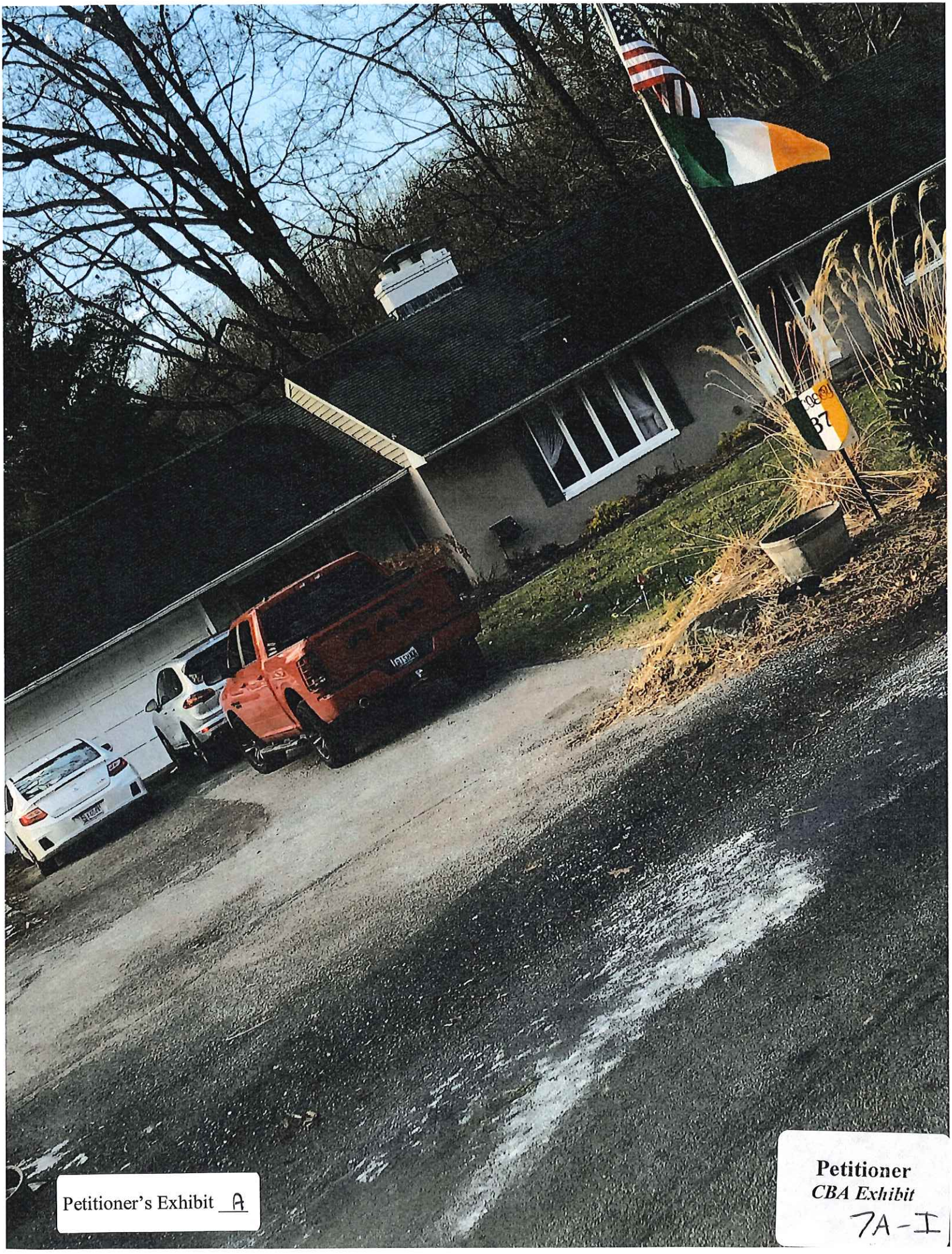
Mr. Thaler reminded the Commission and citizens that meetings are recorded and public information. He cited a legal suit a Commission member was involved in.

Mr. Brennan stated that the 6th annual Doors Open Baltimore was a success with tours of 57 unique buildings and sites in Baltimore City; he invited anyone interested to attend next year's event.

Mr. Diggs moved to adjourn the meeting. Ms. McIver seconded the motion, which passed with affirmative votes being cast by Mr. Boswell, Mr. Brennan, Mr. Diggs, Mr. Holman, Mr. Hord, Mr. Kellman, Ms. McIver, Mr. Myer, Ms. Nevins-Hawks, Mr. Scott, Mr. Thaler, and Mr. Weston. There were no dissenting votes.

The meeting adjourned at 7:48 PM.

TAB:tab



Petitioner's Exhibit A

Petitioner
CBA Exhibit
7A-I

Petitioner's Exhibit B


Petitioner's Exhibit C


Petitioner's Exhibit D



Petitioner's Exhibit 6



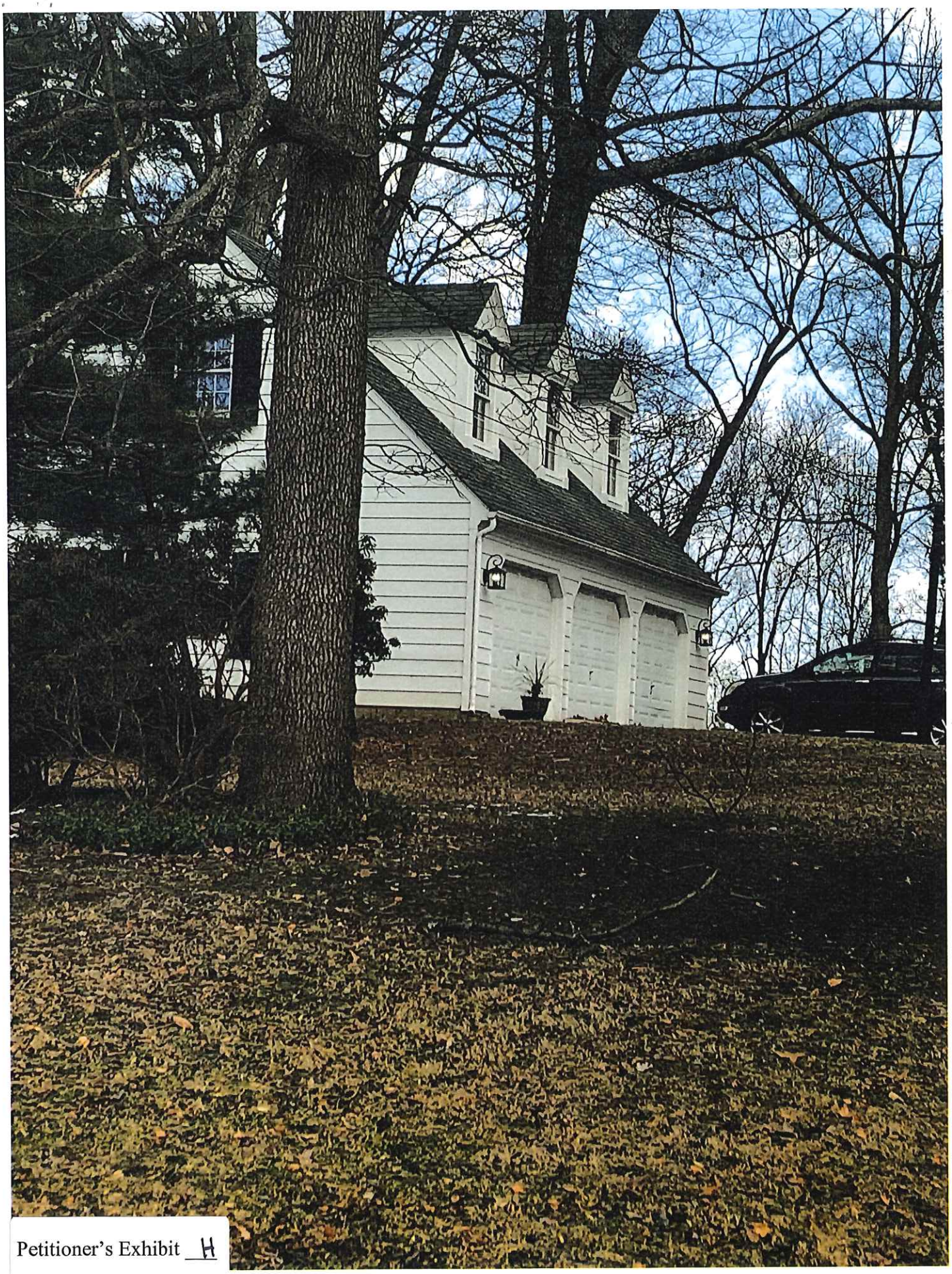
Petitioner's Exhibit F

4610 Prospect



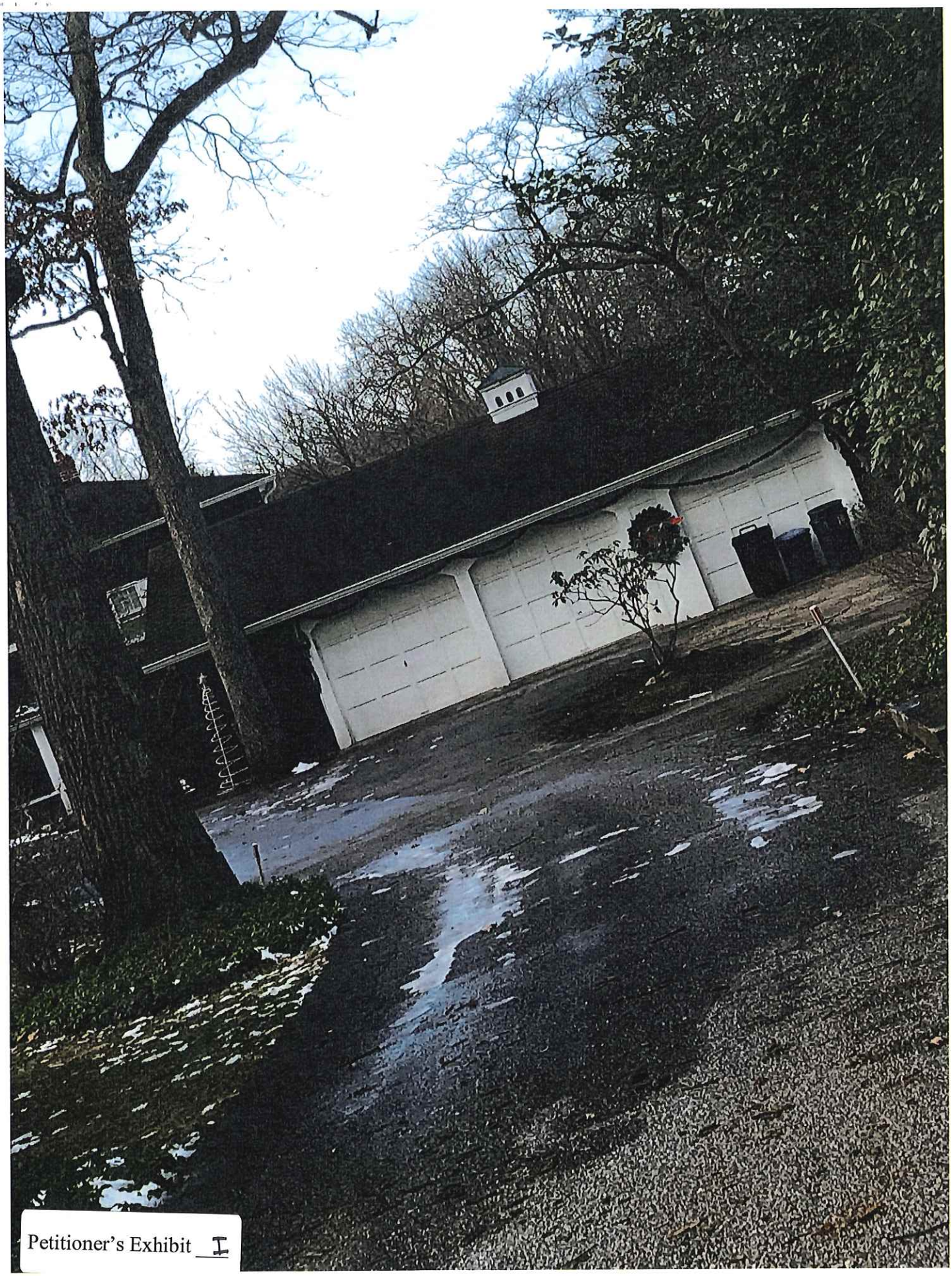
Petitioner's Exhibit 6

4606 Prospect



Petitioner's Exhibit H

4601 Prospect



Petitioner's Exhibit I

4612 Prospect



Butler Road Under HIstoric Glyndon

Petitioner's Exhibit A

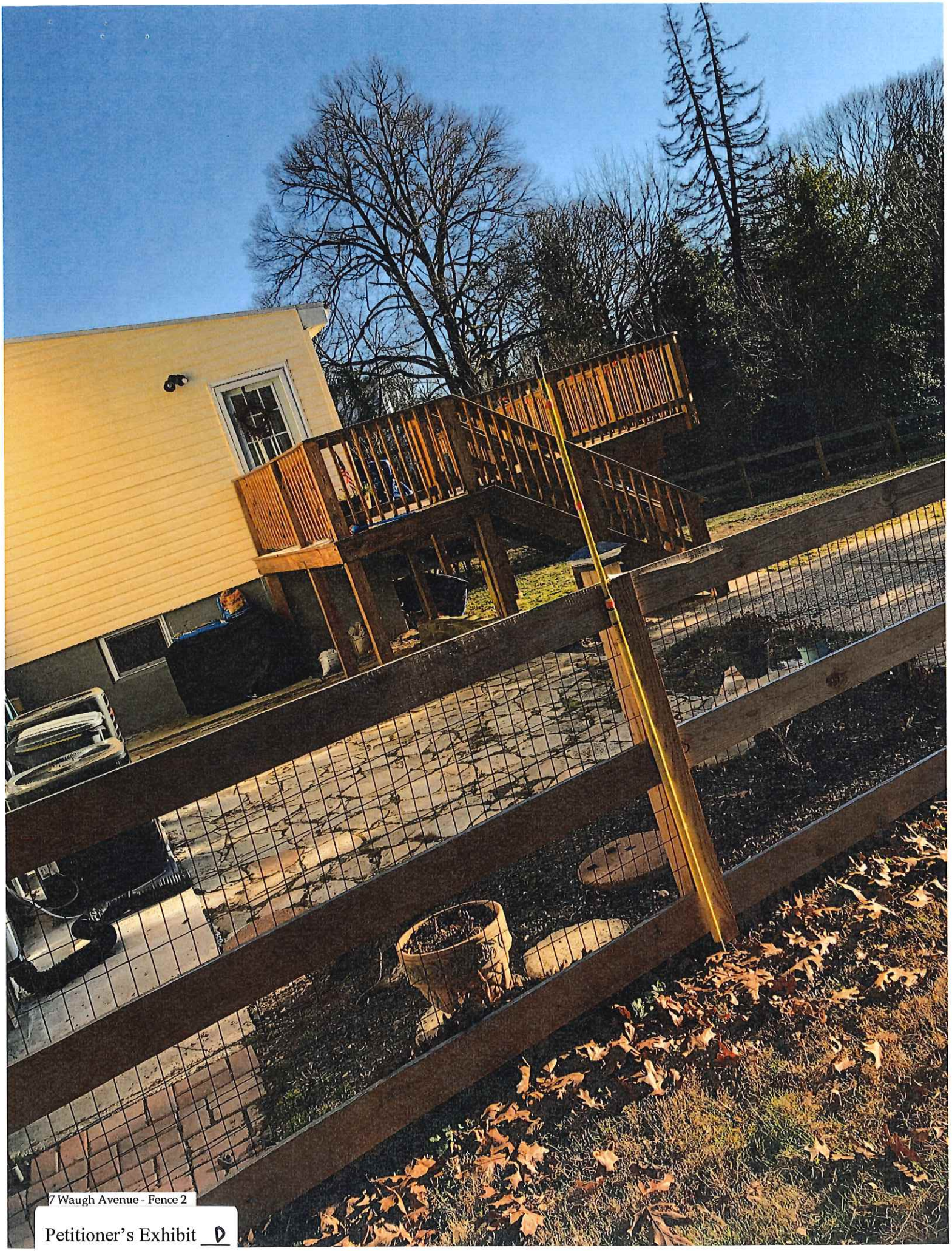
Petitioner
CBA Exhibit
8A - 8I



2 Waugh Avenue - Fence

Petitioner's Exhibit B


3 Waugh Avenue - Fence
Petitioner's Exhibit C



7 Waugh Avenue - Fence 2

Petitioner's Exhibit D


7 Waugh Avenue - Fence 1
Petitioner's Exhibit 6



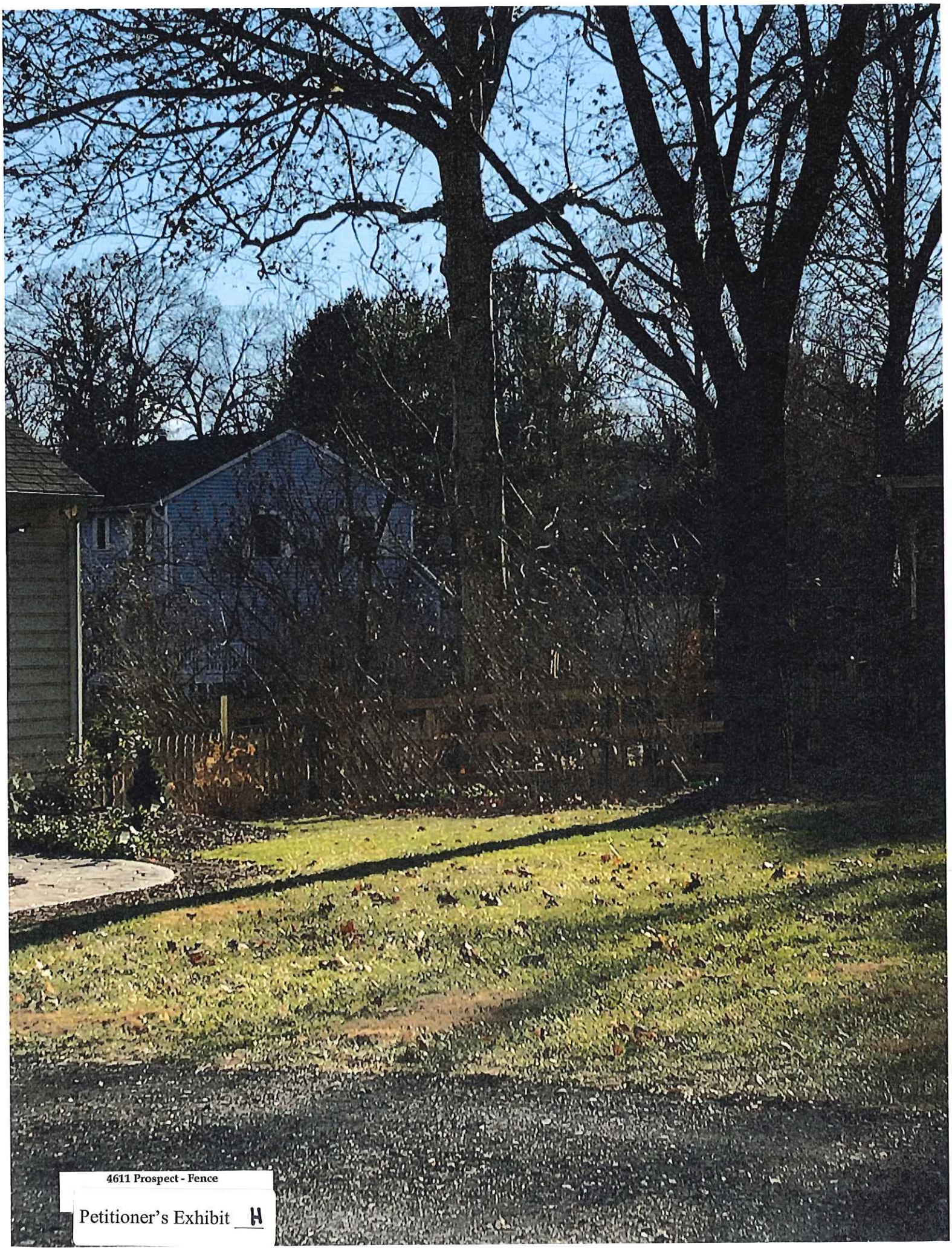
4603 Prospect Avenue - Fence

Petitioner's Exhibit F



4609 Prospect - New Fence

Petitioner's Exhibit G

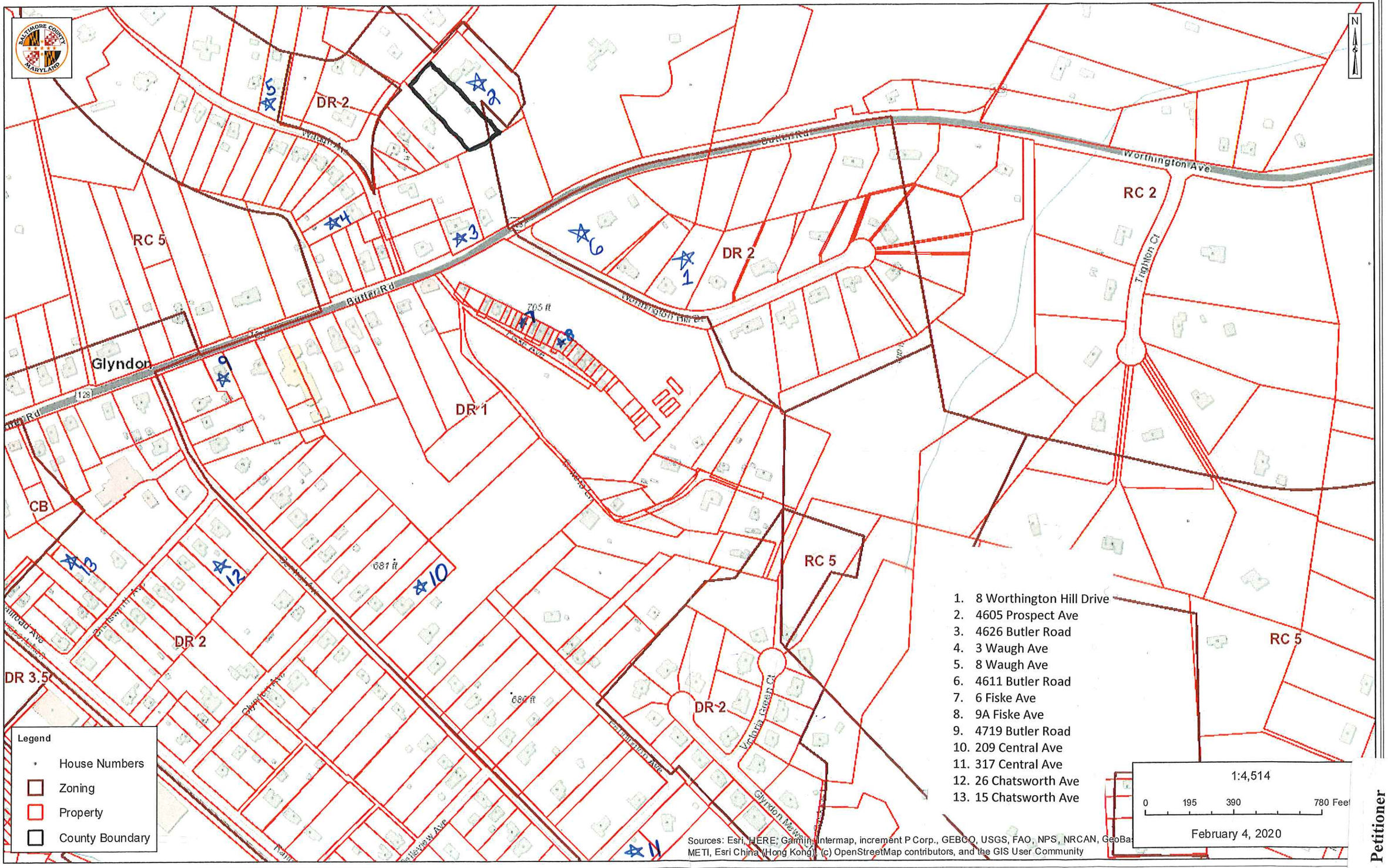


4611 Prospect - Fence

Petitioner's Exhibit H


4709 Butler Road - Fence
Petitioner's Exhibit I

Baltimore County - My Neighborhood



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community

Baltimore County Government, Carroll County, Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA |

Petitioner
CBA Exhibit
9

#1

IN RE: PETITION FOR ADMIN. VARIANCE	*	BEFORE THE
(8 Worthington Hill Drive)		
4th Election District	*	OFFICE OF ADMINISTRATIVE
2nd Council District		
Allen H. & Susan Wroe	*	HEARINGS FOR
Petitioners		
	*	BALTIMORE COUNTY
	*	**CASE NO. 2018-0261-A**

* * * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings ("OAH") as a Petition for Administrative Variance filed by the legal owners of the property, Allen H. and Susan Wroe ("Petitioners"). The Petitioners are requesting Variance relief from §§ 400.1 and 1B02.3.C.1 of the Baltimore County Zoning Regulations ("BCZR") and § 400.1.d. (2) of the Zoning Commissioner's Policy Manual ("ZCPM"), to permit a proposed detached accessory structure (shed) to be located in the side yard with a front street setback of 28.5 ft. in lieu of the required rear yard and a setback of 40 ft. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners' Exhibit 1.

The Zoning Advisory Committee ("ZAC") comments were received and are made part of the record of this case. A ZAC comment was received from the Department of Environmental Protection and Sustainability ("DEPS") dated April 4, 2018, indicating "Ground Water Management must review any proposed permit(s) for a shed, since the property is served by well and septic."

The Petitioners having filed a Petition for Administrative Variance and the subject property having been posted on April 5, 2018 and April 17, 2018, and there being no request for a public hearing, a decision shall be rendered based upon the documentation presented.

The Petitioners have filed the supporting affidavits as required by Section 32-3-303 of the Baltimore County Code ("BCC"). Based upon the information available, there is no evidence in the file to indicate that the requested variance would adversely affect the health, safety or general welfare of the public and should therefore be granted. In the opinion of the Administrative Law Judge, the information, photographs, and affidavits submitted provide sufficient facts that comply with the requirements of Section 307.1 of the BCZR. Furthermore, strict compliance with the BCZR would result in practical difficulty and/or unreasonable hardship upon the Petitioners.

Pursuant to the posting of the property and the provisions of both the BCC and the BCZR, and for the reasons given above, the requested variance should be granted.

THEREFORE, IT IS ORDERED, this **27th** day of **April, 2018**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance relief from §§ 400.1 and 1B02.3.C.1 of the Baltimore County Zoning Regulations ("BCZR") and § 400.1.d. (2) of the Zoning Commissioner's Policy Manual ("ZCPM"), to permit a proposed detached accessory structure (shed) to be located in the side yard with a front street setback of 28.5 ft. in lieu of the required rear yard and a setback of 40 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioners may apply for their appropriate permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.

- Petitioners must comply with the DEPS ZAC comment dated April 4, 2018; a copy of which is attached hereto and made a part hereof.

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

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:dlw

★2

PETITION FOR ZONING VARIANCE 84-332-A

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a

Variance from Section 1A01.3.B.3 To permit a sideyard setback of 25 feet instead of the required 35 feet.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (indicate hardship or practical difficulty)

1. As a matter of right
2. County Council to rezone in November, 1984, and we are petitioning the council as well
3. Property in question is already hooked up to county sewer and water
4. Part of property is zoned DR2 and other part of property is zoned RC2
5. Design and layout of the house precludes constructing the proposed addition in any other way.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

I/We do 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 Petition.

Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State

Attorney for Petitioner:

(Type or Print Name)

Signature

Address

City and State

Attorney's Telephone No.: ____

Legal Owner(s):

William R. DeSandro
(Type or Print Name)

William R. DeSandro
Signature

Jean M. DeSandro
(Type or Print Name)

Jean M. DeSandro
Signature

4605 Prospect Avenue 526-5792
Address Phone No.

Glyndon, Maryland 21071
City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

William R. DeSandro
Name

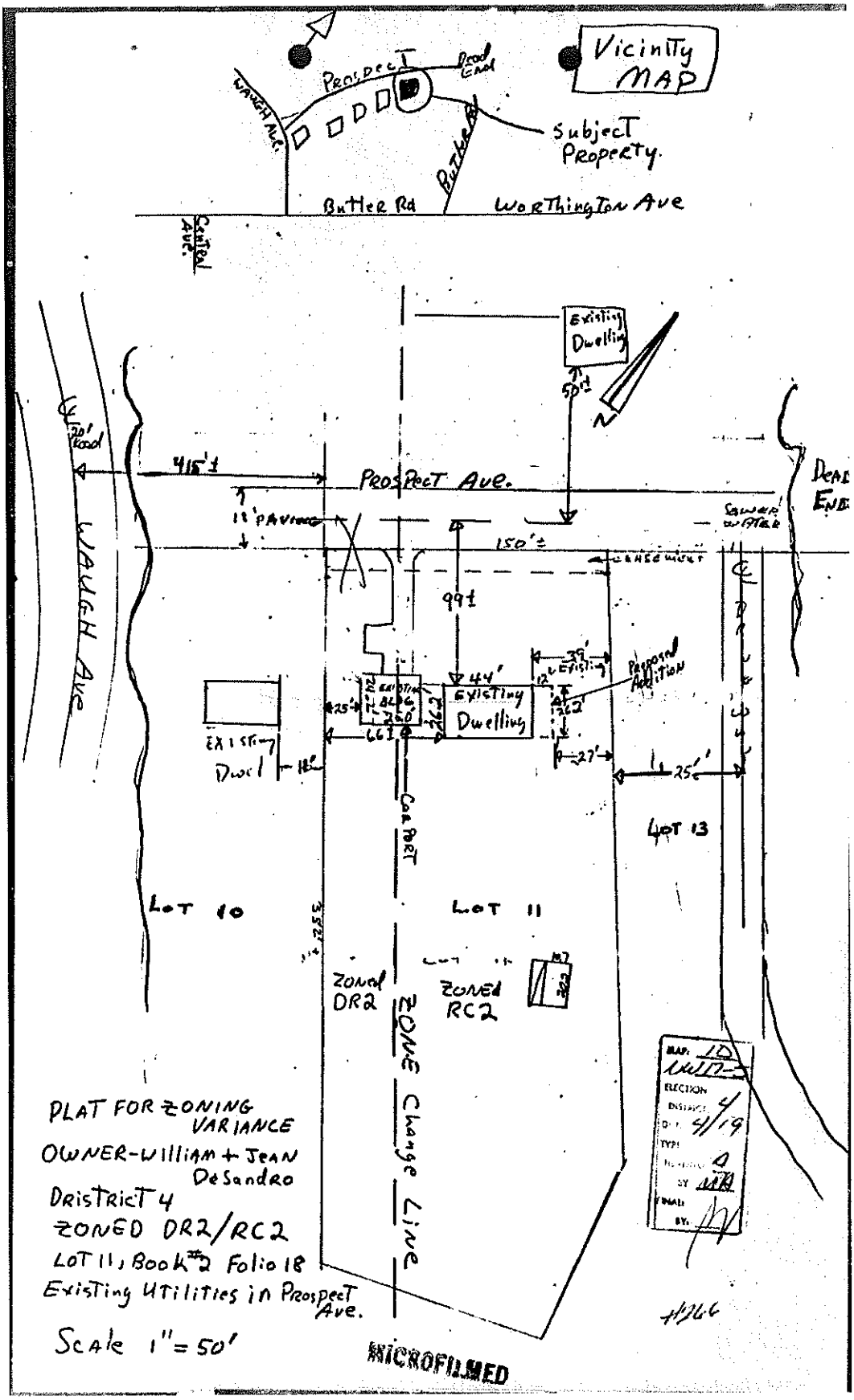
4605 Prospect Ave. 237-1936
Address Business Phone No.

DATE June 14, 1984 (Thurs.)
BY Mary Campagna

ORDERED By The Zoning Commissioner of Baltimore County, this 17th day of April, 1984, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 29th day of May, 1984, at 9:45 o'clock A. M.

Zoning Commissioner of Baltimore County.

(over)



PLAT FOR ZONING VARIANCE
OWNER-William + Jean DeSandro
DRISTRICT 4
ZONED DR2/RC2
LOT 11, Book #2 Folio 18
Existing Utilities in Prospect Ave.

Pursuant to the advertisement, posting of property, and public hearing on the Petition and it appearing that strict compliance with the Baltimore County Zoning Regulations would/~~would not~~ result in practical difficulty and unreasonable hardship upon the Petitioner(s) and the granting of the variance(s) requested will/will not adversely affect the health, safety, and general welfare of the community, the variance(s) should /~~should not~~ be granted.

Therefore, IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County, this 14th day of June, 1984, that the herein Petition for Variance(s) to permit a side yard setback of 27 feet in lieu of the required 35 feet for the proposed addition, in accordance with the site plan filed herein, is GRANTED, from and after the date of this Order, subject, however, to the approval of a site plan by the Office of Planning and Zoning.

Jean M. H. Jung
Deputy Zoning Commissioner of
Baltimore County

ORDER RECEIVED FOR FILING
DATE June 14, 1984 (Clerk)
BY Mary Campbell

#3

PETITION FOR ZONING VARIANCE FROM AREA AND HEIGHT REGULATIONS

64-94A

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, WILLIAM E. HAMMOND / DOROTHY D. HAMMOND legal owner s of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof,

hereby petition for a Variance from Section 205.3 Side Yards - to permit [redacted] side yard of 6'8" instead of required 15's

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (indicate hardship or practical difficulty) Impractical to locate addition on rear or other side - due to location of rooms and accessability.

See Attached Description

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

WILLIAM E. HAMMOND

Dorothy D. Hammond

DOROTHY D. HAMMOND Legal Owner

Address Butler Road, Glyndon, Md.

Contract purchaser

Address

Petitioner's Attorney

Address

Protestant's Attorney

ORDERED By The Zoning Commissioner of Baltimore County, this 13th day of February, 1964, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County, in Room 106, County Office Building in Towson, Baltimore County, on the 30th day of March, 1964, at 1:00 o'clock P.M.

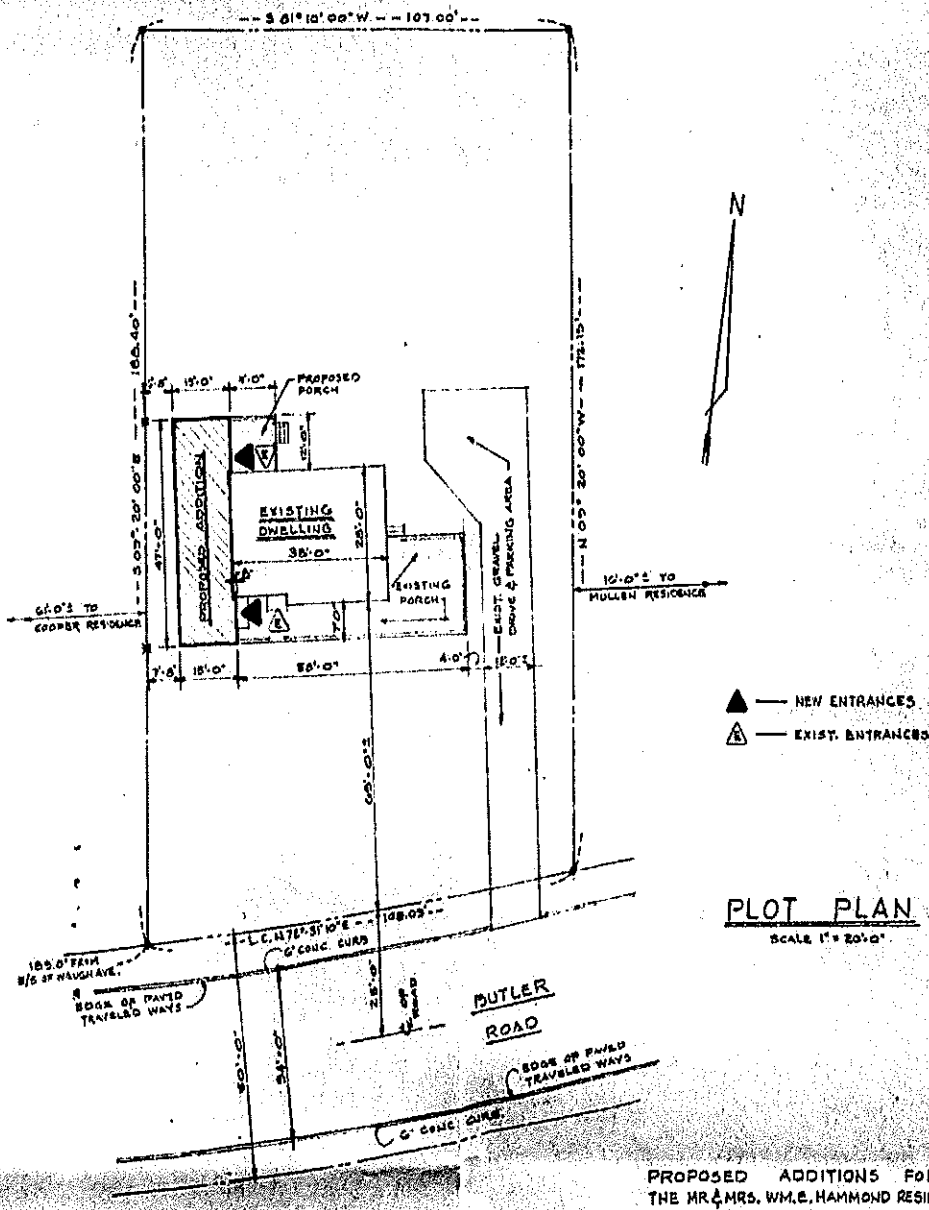
FEB 13 '64

OFFICE OF PLANNING & ZONING

Zoning Commissioner of Baltimore County.

(over)

1:00 P 2/30/64



PLOT PLAN

SCALE 1" = 20'-0"

PROPOSED ADDITIONS FOR
THE MR. & MRS. WM. E. HAMMOND RESIDENCE
BUTLER ROAD GLYNDON
4TH DISTRICT, BALTIMORE CO., MARYLAND

DAVE KEHNG

Pursuant to the advertisement, posting of property, and public hearing on the above petition and it appearing that by reason of the following finding of facts that the granting of the Variance would grant relief to the petitioner without substantial injury to the health, safety and general welfare of the location involved,

the above Variance should be had; and it further appearing that by reason of

fom Variance to permit side yard of 6'8" instead of the required 15' should be granted.

IT IS ORDERED by the Zoning Commissioner of Baltimore County this 30 day of March, 1964, that the herein Petition for a Variance should be and the same is granted, from and after the date of this order, to permit side yard of 6 feet 8 inches instead of the required 15 feet.

Edward D. Hardesty
Deputy Zoning Commissioner of Baltimore County

Pursuant to the advertisement, posting of property and public hearing on the above petition and it appearing that by reason of

the above Variance should NOT BE GRANTED.

IT IS ORDERED by the Zoning Commissioner of Baltimore County, this .....day of ....., 196..., that the above Variance be and the same is hereby DENIED.

Zoning Commissioner of Baltimore County

MICROFILMED

☆4

Petition for Administrative Variance

94-307-A

to the Zoning Commissioner of Baltimore County

for the property located at 3 Waugh Ave. Glyndon, Md.
which is presently zoned DR 2

This Petition shall be filed with the Office of Zoning Administration & Development Management.
The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s)

1B02.3.B To permit a side yard setback of 1.5 feet in lieu of the required 7 feet for a proposed addition (family & Dinning Room).

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (indicate hardship or practical difficulty)

1. Addition would be close to adjoining property.
(See reverse for additional information.)

Property is to be posted and advertised as prescribed by Zoning Regulations.
I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do 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 Petition.

Contract Purchaser/Lessee

(Type or Print Name)

Signature

Address

City State Zipcode

Attorney for Petitioner

(Type or Print Name)

Signature

Address Phone No

City State Zipcode

Legal Owner(s)

Russell G. McKay
(Type or Print Name)

Signature

Rebekah J McKay
(Type or Print Name)

Rebekah J. McKay
Signature

3 Waugh Ave. 526-5341
Address Phone No

Glyndon, Md 21071
City State Zipcode

Name, Address and phone number of representative to be contacted

Rebekah J. McKay
Name

3 Waugh Ave. 526-5341
Address Phone No

Glyndon, Md 21071

A Public Hearing having been requested and/or found to be required, it is ordered by the Zoning Commissioner of Baltimore County, this ___ day of _____ 19___ that the subject matter of this petition be set for a public hearing, advertised, as required by the Zoning Regulations of Baltimore County, in two newspapers of general circulation throughout Baltimore County, and that the property be reposted.

Zoning Commissioner of Baltimore County

REVIEWED BY: R.T DATE: 2/8/94

ESTIMATED POSTING DATE: 2/20/94

Printed with Soybean Ink on Recycled Paper

ITEM #: 307

Affidavit in support of Administrative Variance

The undersigned hereby affirms under the penalties of perjury to the Zoning Commissioner of Baltimore County, as follows:

That the information herein given is within the personal knowledge of the Affiant(s) and that Affiant(s) is/are competent to testify thereto in the event that a public hearing is scheduled in the future with regard thereto.

That the Affiant(s) does/do presently reside at 3 Waugh Ave. (address)

Glyndon, Md 21071 (City, State, Zip Code)

That based upon personal knowledge, the following are the facts upon which I/we base the request for an Administrative Variance at the above address (indicate hardship or practical difficulty)

Espand living space at this address rather than relocate.
To expand rear of home would distrub mature trees, existing deck, gardens, and patio.

That Affiant(s) acknowledge(s) that if a protest is filed, Affiant(s) will be required to pay a posting and advertising fee and may be required to provide additional information.

Russell G. McKay (signature)
Russell G McKay (type or print name)

Rebekah J McKay (signature)
Rebekah J McKay (type or print name)

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, this 19th day of February, 19 94, before me, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared

Russell G McKay and Rebekah J McKay

the Affiants(s) herein, personally known or satisfactorily identified to me as such Affiant(s), and made oath in due form of law that the matters and facts hereinabove set forth are true and correct to the best of his/her/their knowledge and belief.

AS WITNESS my hand and Notarial Seal

2/19/94 (date)

Notary Public

My Commission Expires: 10/1/97

MICROFILMED

Plat to accompany Petition for Zoning [X] Variance [ ] Special Hearing

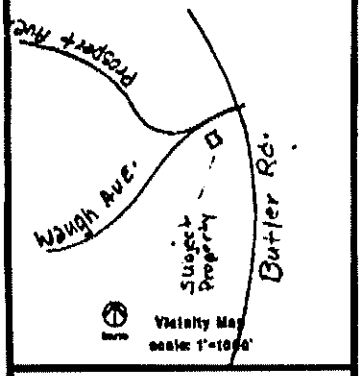
PROPERTY ADDRESS: 3 Waugh Ave. Glyndon, Md.

see pages 5 & 6 of the CHECKLIST for additional required information

Subdivision name: Bellows Property

plat book 19 folio 19 lot 1 section A

OWNER: Russell & Rebekah McKay



LOCATION INFORMATION

Election District: 3

Councilmanic District: 4

1"=200' scale map#: N. W. 17-3

Zoning: DR 2

Lot size: .370 acreage 16,120 square feet

	public	private
SEWER:	[X]	[ ]
WATER:	[X]	[ ]

Chesapeake Bay Critical Area: [ ] [X]

Prior Zoning Hearings: NONE

Zoning Office USE ONLY!

reviewed by:	ITEM #:	CASE#:
R.T.	307	

by: Rebekah McKay Scale of Drawing: 1"= 40

☆4

IN RE: PETITION FOR ADMINISTRATIVE ZONING VARIANCE
W/S Waugh Avenue, 20 ft. W of the c/l Prospect Avenue
3 Waugh Avenue
4th Election District
3rd Councilmanic District
Russell G. McKay, et ux
Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 94-307-A

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as an administrative variance filed by Russell G. McKay and Rebekah J. McKay, his wife, for that property known as 3 Waugh Avenue in the Bellows property subdivision of Baltimore County. The Petitioners herein seek a variance from Section 1B02.3.B of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a side yard setback of 1.5 ft. in lieu of the required 7 ft. for a proposed addition (family and dining room), as more particularly described on Petitioners' Exhibit No. 1, the plat to accompany the Petition.

The Petitioners having filed a Petition for Residential Variance and the subject property having been posted, and there being no request for a public hearing, a decision shall be rendered based upon the documentation presented.

ORDER RECEIVED FOR FILING
Date 3/1/94
By

The Petitioners have filed the supporting affidavits as required by Section 26-127 (b)(1) of the Baltimore County Code. Based upon the information available, there is no evidence in the file to indicate that the requested variance would adversely affect the health, safety or general welfare of the public and should therefore be granted. In the opinion of the Zoning Commissioner, the information, photographs, and affidavits submitted provide sufficient facts that comply with the requirements of Section 307.1 of the B.C.Z.R. Furthermore, strict compliance with the

MICROFILMED

B.C.Z.R. would result in practical difficulty and/or unreasonable hardship upon the Petitioners.

Pursuant to the posting of the property and the provisions of both the Baltimore County Code and the Baltimore County Zoning Regulations, and for the reasons given above, the requested variance should be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 11th day of March, 1994 that the Petition for a Zoning Variance from Section 1B02.3.B of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a side yard setback of 1.5 ft. in lieu of the required 7 ft. for a proposed addition (family and dining room), be and is hereby GRANTED, subject, however, to the following restriction which are conditions precedent to the relief granted herein:

1. The Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER
FOR BALTIMORE COUNTY

LES:mmn

ORDER RECEIVED FOR FILING
Date 3/11/94
By

MICROFILMED

#5

244-A

PETITION FOR ZONING VARIANCE FROM AREA AND HEIGHT REGULATIONS

68-244-A

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, Harry A. Batchelor ..... legal owner of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 205.1 to permit a lot width at the front building line of 79.91 feet instead of the required 100 feet.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (indicate hardship or practical difficulty)

In order to subdivide land into two parcels and make new parcel legal variance will be necessary.

See attached description

ORDER RECEIVED FOR FILING

4/30/68 Jc Harris Clk

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

Harry A. Batchelor
10 Wauch Avenue
Glyndon, Md. 21071

Contract purchaser

Legal Owner

Address

Address

Petitioner's Attorney

Protestant's Attorney

Address

ORDERED By The Zoning Commissioner of Baltimore County, this 26th day of March, 1968, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 29th day of April, 1968, at 10:30 o'clock A. M.

Zoning Commissioner of Baltimore County.

(over)

N/S of Magee Ave. 705' W of Butler Road

Pursuant to the advertisement, posting of property, and public hearing on the above petition and it appearing that by reason of the following finding of facts that strict compliance with the Baltimore County Zoning Regulations would result in practical difficulty and unreasonable hardship upon the Petitioner and the Variance requested would grant relief without substantial injury to the public health, safety and general welfare of the locality involved.

the above Variance should be had; ~~and it further appearing that by reason of~~

a Variance to permit a lot width at the front building line of 79.91' instead of the required 100' should be granted.

IT IS ORDERED by the Zoning Commissioner of Baltimore County this 30th day of April, 1968, that the herein Petition for a Variance should be and the same is granted, from and after the date of this order, to permit a lot width at the front building line of 79.91' instead of the required 100', subject to approval of the site plan by the Bureau of Public Services and the Office of Planning and Zoning.

Zoning Commissioner of Baltimore County

Pursuant to the advertisement, posting of property and public hearing on the above petition and it appearing that by reason of

the above Variance should NOT BE GRANTED.

IT IS ORDERED by the Zoning Commissioner of Baltimore County, this ..... day of ..... 196 ... that the above Variance be and the same is hereby DENIED.

Zoning Commissioner of Baltimore County

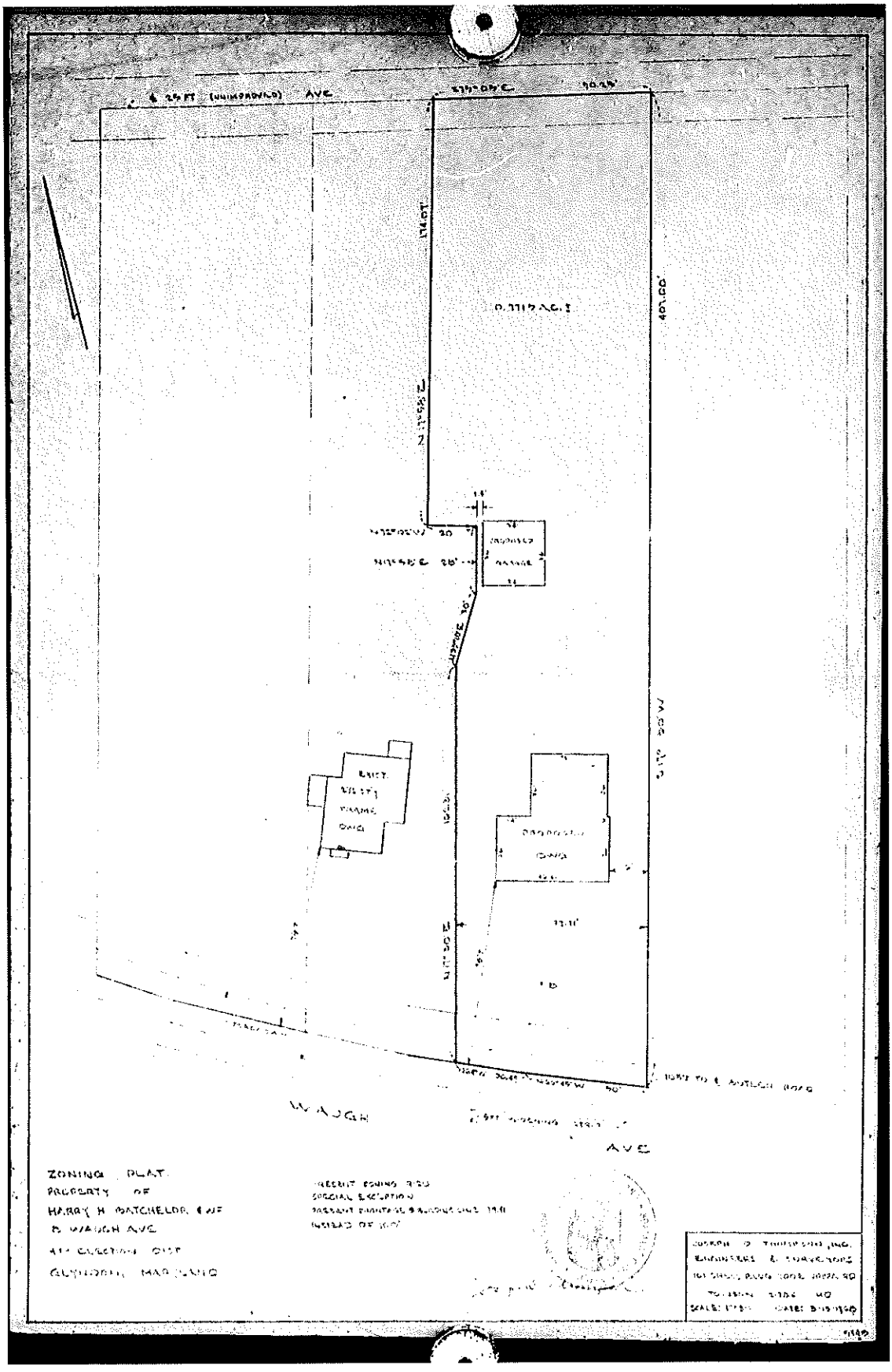
ORDER RECEIVED FOR FILING

DATE 4/30/68 - J C Harris Clk

BY

ADMINISTRATIVE ASSISTANT

MICROFILMED



AVE
WAUGH
AVE
ZONING PLAT
PROPERTY OF
HARRY H BATCHELOR & WF
B WAUGH AVE
4TH ELECTION DIST
GLYNDON, MARYLAND
PRESENT ZONING
SPECIAL EXCEPTION
INSTEAD OF

★6

Petition for Administrative Variance

94-[illegible]

to the Zoning Commissioner of Baltimore County

for the property located at 4611 Butler Road, Glyndon MD 21071

which is presently zoned DR2

This Petition shall be filed with the Office of Zoning Administration & Development Management.

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s) 1.1 (1945 BCZR) DEFINITION OF AN ACCESSORY BUILDING WHICH MAY NOT EXCEED 15 FEET IN HEIGHT TO PERMIT A HEIGHT OF 22 FEET FOR A PROPOSED DETACHED GARAGE.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons. (indicate hardship or practical difficulty) We are demolishing a dilapidated 2-car shed-type garage and want to erect a larger 3-car garage in the style of a Victorian garage. The height variance is requested so that we may build in a loft for additional storage space and so that we may install a cross-gabled roof more in keeping with th style of our house and the contiguous Glyndon Historic District.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County

I/We do 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 Petition

Contract Purchaser/Lessee

(Type or Print Name)

Signature

Address

City State Zipcode

Attorney for Petitioner

(Type or Print Name)

Signature

Address Phone No

City State Zipcode

Legal Owner(s)

David M. Porter
(Type or Print Name)

[signature]
Signature

Mary Ellen Porter
(Type or Print Name)

Mary Ellen Porter
Signature

4611 Butler Road 833-3771
Address Phone No

Glyndon Maryland 21071
City State Zipcode

Name, Address and phone number of representative to be contacted

David M. Porter
Name

Same 333-6813
Address Phone No

A Public Hearing having been requested and/or found to be required, it is ordered by the Zoning Commissioner of Baltimore County, this ___ day of _____ 19__ that the subject matter of this petition be set for a public hearing, advertised, as required by the Zoning Regulations of Baltimore County in two newspapers of general circulation throughout Baltimore County, and that the property be reposted

Zoning Commissioner of Baltimore County

ORDER RE
Date 2/13/94
By [illegible]

REVIEWED BY: [illegible] DATE: 6/13/94

ESTIMATED POSTING DATE 6/24/94

Printed with Soybean Ink on Recycled Paper

ITEM #: 493

Affidavit in support of Administrative Variance

The undersigned hereby affirms under the penalties of perjury to the Zoning Commissioner of Baltimore County, as follows:

That the information herein given is within the personal knowledge of the Affiant(s) and that Affiant(s) is/are competent to testify thereto in the event that a public hearing is scheduled in the future with regard thereto.

That the Affiant(s) does/do presently reside at 4611 Butler Road
(address)
Glyndon (City) Maryland (State) 21071 (Zip Code)

That based upon personal knowledge, the following are the facts upon which I/we base the request for an Administrative Variance at the above address: (indicate hardship or practical difficulty)

We are demolishing a dilapidated 2-car shed-type garage and want to erect a larger 3-car garage in the style of a Victorian barn. The height variance is requested so that we may build in a loft for additional storage space and so that we may install a cross-gabled roof more in keeping with the style of our house and the contiguous Glyndon Historic District.

That Affiant(s) acknowledge(s) that if a protest is filed, Affiant(s) will be required to pay a reposting and advertising fee and may be required to provide additional information.

(signature) David M. Porter
(type or print name) David M. Porter

(signature) Mary Ellen Porter
(type or print name) Mary Ellen Porter

STATE OF MARYLAND, City COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, this 10th day of June, 19 94, before me, a Notary Public of the State of Maryland, in and for the City aforesaid, personally appeared David M. and Mary Ellen Porter

the Affiants(s) herein, personally known or satisfactorily identified to me as such Affiant(s), and made oath in due form of law that the matters and facts hereinabove set forth are true and correct to the best of his/her/their knowledge and belief.

AS WITNESS my hand and Notarial Seal.

June 10, 1994
(date)

NOTARY PUBLIC

My Commission Expires: 7-1-95

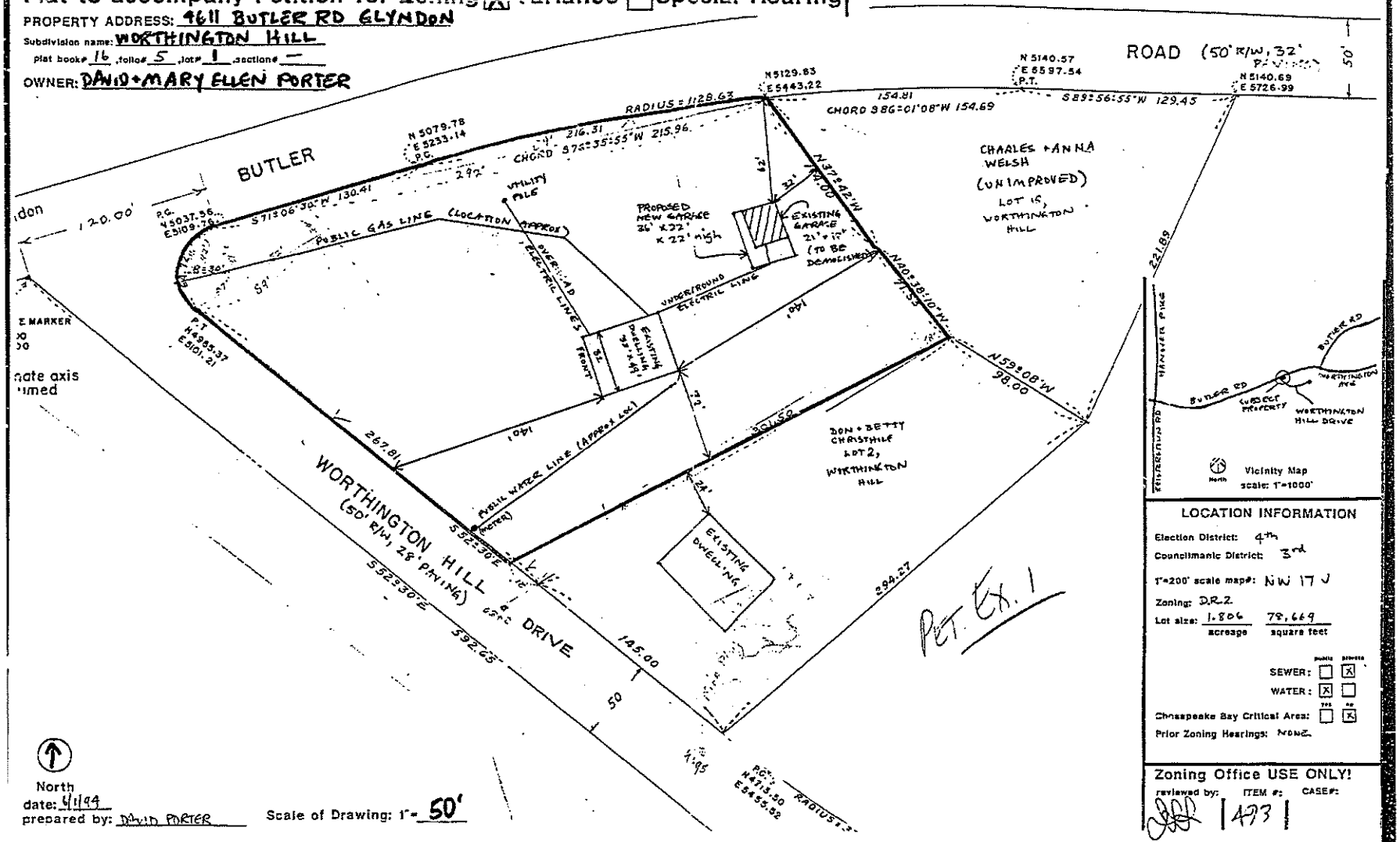
Plat to accompany Petition for Zoning [X] Variance [ ] Special Hearing

PROPERTY ADDRESS: 4611 BUTLER RD GLYNDON

Subdivision name: WORTHINGTON HILL

plat book# 16 folio# 5 lot# 1 section# —

OWNER: DAVID + MARY ELLEN PORTER



Pet Ex. 1

LOCATION INFORMATION

Election District: 4th

Councilmanic District: 3rd

1"=200' scale map#: NW 17 J

Zoning: D.R.2

Lot size: 1.806 acreage / 78,669 square feet

SEWER: [ ] PUBLIC [X] PRIVATE

WATER: [X] PUBLIC [ ] PRIVATE

Chesapeake Bay Critical Area: [ ] YES [X] NO

Prior Zoning Hearings: NONE

Zoning Office USE ONLY!

reviewed by: JJW ITEM #: 173 CASE#:

North

date: 4/1/99

prepared by: DAVID PORTER

Scale of Drawing: 1"= 50'

IN RE: PETITION FOR ADMIN. VARIANCE
SE/Corner Butler Road and
Worthington Hill Drive
(4611 Butler Road)
4th Election District
3rd Councilmanic District

David M. Porter, et ux
Petitioners

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 94-505-A
*

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner as a Petition for Administrative Variance filed by the owners of the property, David M. and Mary Ellen Porter. The Petitioners seek relief from Section 1.1 of the 1945 Baltimore County Zoning Regulations (B.C.Z.R.) to permit a height of 22 feet in lieu of the maximum permitted 15 feet for a proposed accessory structure (detached garage) in accordance with the plat submitted into evidence as Petitioner's Ehxibit 1.

The Petitioners having filed a Petition for Administrative Variance and the subject property having been posted and there being no requests for public hearing, a decision shall be rendered based upon the documentation presented.

The Petitioners have filed the supporting affidavits as required by Section 26-127 (b)(1) of the Baltimore County Code. Based upon the information available, there is no evidence in the file to indicate that the requested variances would adversely affect the health, safety or general welfare of the public and should therefore be granted. In the opinion of the Deputy Zoning Commissioner, the information, pictures, and affidavits submitted provide sufficient facts that comply with the requirements of Section 307.1 of the B.C.Z.R. Furthermore, strict compliance with the B.C.Z.R. would result in practical difficulty and/or unreasonable hardship

ORDER RECEIVED

upon the Petitioners.

Pursuant to the posting of the property and the provisions of both the Baltimore County Code and the B.C.Z.R. having been met, and for the reasons set forth above, the relief requested should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 15th day of July, 1994 that the Petition for Administrative Variance seeking relief from Section 1.1 (1945 B.C.Z.R.), as to its definition of an accessory structure, to permit a height of 22 feet in lieu of the maximum permitted 15 feet for a proposed detached garage in accordance with the plat submitted into evidence as Petitioner's Ehxibit 1, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.

2) The Petitioners shall not allow or cause the accessory structure to be converted to a second dwelling unit and/or apartments. The garage shall contain no living or sleeping quarters, and no kitchen or bathroom facilities. The garage shall be limited to use for storage purposes, only.

3) Upon request and reasonable notice, Petitioners shall permit a representative of the Zoning Enforcement Division to make an inspection of the subject property to insure compliance with this Order in the event it becomes necessary to do so as a result of a complaint.

4) When applying for a building permit, the site plan filed must reference this case and set forth and address the restrictions of this Order.

ORDER RECEIVED FOR Public
Date 7/15/94
By

Timothy M. Kotroco

TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

ADMINISTRATIVE ZONING PETITION

FOR ADMINISTRATIVE VARIANCE – OR – ADMINISTRATIVE SPECIAL HEARING
To be filed with the Department of Permits, Approvals and Inspections
To the Office of Administrative Hearings for Baltimore County for the property located at:

Address 6 FISKE AVENUE, GLYNDON 21071 **Currently zoned** DR-1
Deed Reference 06078 100197 10 Digit Tax Account # 0412020581
Owner(s) Printed Name(s) JOHN MICHAEL O'NEILL & ANN B. O'NEILL

(SELECT THE HEARING(S) BY MARKING X AT THE APPROPRIATE SELECTION(S) AND ADDING THE PETITION REQUEST)

For Administrative Variances, the Affidavit on the reverse of this Petition form must be completed and notarized.

The undersigned, who own and occupy the property situate in Baltimore County and which is described in the plan/plat attached hereto and made a part hereof, hereby petition for an:

1. X **ADMINISTRATIVE VARIANCE** from Section(s) 1B02.3.C.1. ; BCZR, TO PERMIT A SIDEYARD SETBACK OF 6' IN LIEU OF THE REQUIRED 30 FT. AND AN EXISTING SIDEYARD SETBACK OF 2.21' IN LIEU OF THE REQUIRED 20 FT. AND A SUM OF SIDEYARDS OF 8.21' IN LIEU OF THE REQUIRED 50'.
of the zoning regulations of Baltimore County, to the zoning law of Baltimore County.

2. ____ **ADMINISTRATIVE SPECIAL HEARING** to approve a waiver pursuant to Section 32-4-107(b) of the Baltimore County Code: (*indicate type of work in this space: i.e., to raze, alter or construct addition to building*)

of the Baltimore County Code, to the development law of Baltimore County.

Property is to be posted and advertised as prescribed by the zoning regulations.
I/ we agree to pay expenses of above petition(s), advertising, posting, etc. and further agree to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

Owner(s)/Petitioner(s):

JOHN MICHAEL O'NEILL ANN B. O'NEILL
Name #1 – Type or Print Name #2 – Type or Print

Signature #1 Signature # 2

PO Box 5 GLYNDON MD
Mailing Address City State

21071-0005 410-526-5147 jannoneill@verizon.net
Zip Code Telephone # Email Address

Attorney for Owner(s)/Petitioner(s):

Name- Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

ORDER RECEIVED FOR FILING
Date 6-2-15
By (DW)

Representative to be contacted:

Name – Type or Print

Signature

SAME

Mailing Address City State

Zip Code Telephone # Email Address

A PUBLIC HEARING having been formally demanded and/or found to be required, it is ordered by the Office of Administrative Hearings for Baltimore County, this 31 day of _____, _____ that the subject matter of this petition be set for a public hearing, advertised, and re-posted as required by the zoning regulations of Baltimore County.

Administrative Law Judge for Baltimore County

CASE NUMBER 2015-0278A Filing Date 6/3/15 Estimated Posting Date ___/___/___ Reviewer JCM

Rev 08/18/2014

6 Fiske Avenue, Glyndon
John Michael & Ann B. O'Neill

Zoning Application

We are requesting a zoning variance in set-back regulations to allow one or two small additions to be built onto our house. Our house is a small, one-bedroom, one-bathroom cottage built c. 1900. It is located in the Glyndon Historic District of Baltimore County. The current amount of living space is 932 sq. ft. The land area is 1306 sq. ft.

Having only one bathroom and one bedroom places limitations on the use of the house, as does the small area designated as a living room. For example, there is no space for overnight guests, such as our grandchildren. These limitations also extremely affect the future resale market of the property.

This house was built as a small summer cottage, most likely with only one or perhaps two rooms, in the late 1890s or very early 1900s. It was part of a temperance camp-meeting ground established in 1887. Over the decades it has had numerous additions added and porches enclosed, as well as being winterized in the 1940s. There are 12 other original neighboring cottages in what is known as Glyndon Park. All of them have expanded in the same manner, some with additions and changes in footprints in the past two decades. Additionally, all of the cottages are set in very close proximity to one another. Our one next-door-neighbor's cottage is positioned only 4 ft 4 in. from ours. It is the nature of these historic structures to evolve and grow in this way to meet people's needs at various times.

We would like to live our retirement years in this home and very much need certain spaces to do so reasonably and comfortably. Thus we are seeking approval for a small addition (14'x19') to include a small bedroom, a full bath, and a laundry area. We also would like to bump out a rear wall in our living room by three feet to add an additional 39 sq. ft. of living space and the addition of a small fireplace. However, based on the final cost of construction for both additions, we would like the option of deleting the living room expansion from the plan should it exceed our budget.

We also understand, given approval of this requested variance, that our building plans would need the additional approval of the Landmarks Preservation Commission of Baltimore County.

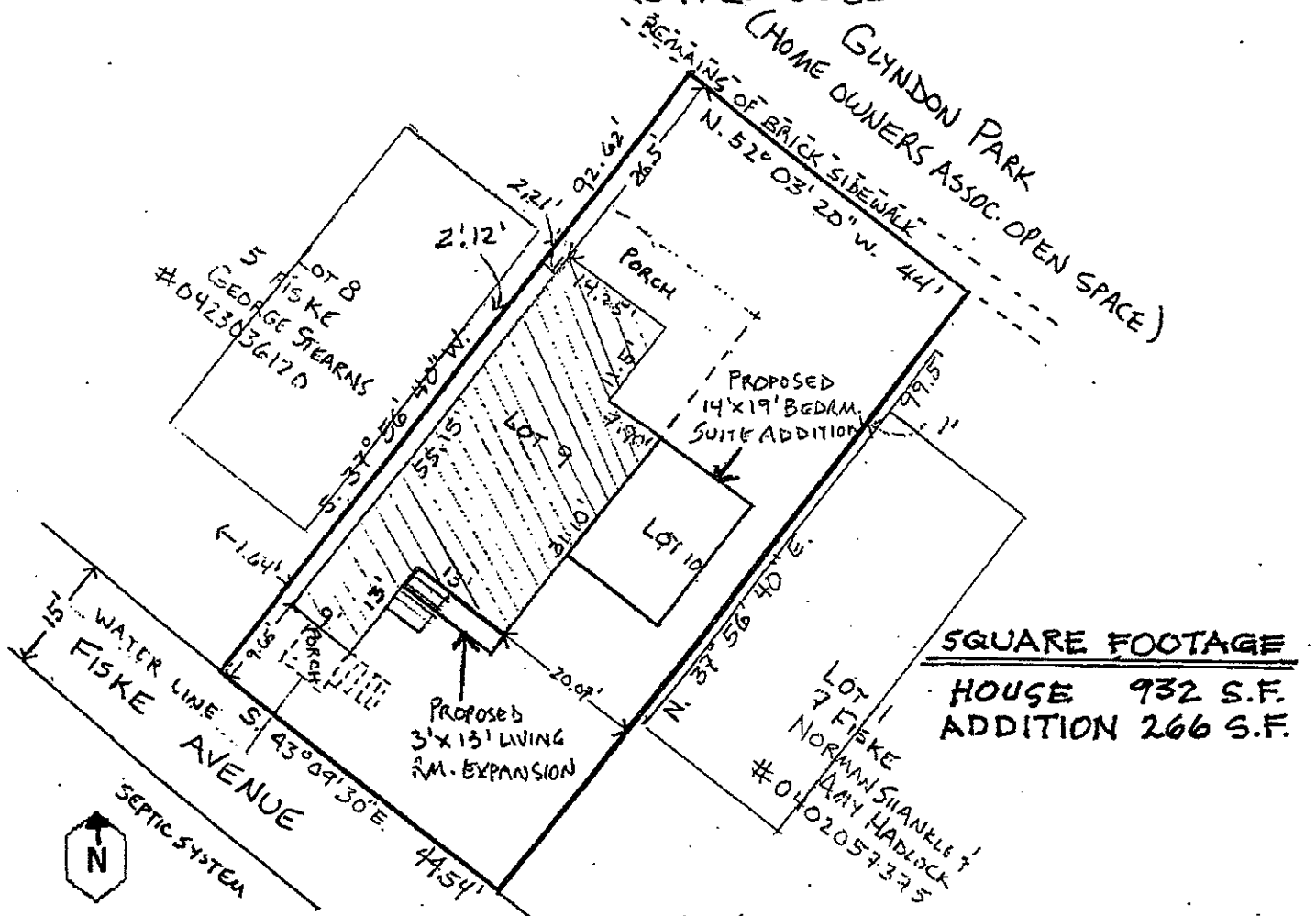
ZONING HEARING PLAN FOR VARIANCE X FOR SPECIAL HEARING ____ (MARK TYPE REQUESTED WITH X)

ADDRESS 6 FISKE AVENUE, GLYNDON OWNER(S) NAME(S) JOHN MICHAEL & ANN O'NEILL

SUBDIVISION NAME GLYNDON PARK CAMP GROUNDS LOT # 9 & 10 BLOCK # ____ SECTION # ____

PLAT BOOK # 239 FOLIO # 426 10 DIGIT TAX # 0412020511 DEED REF. # 0607810019 7

0412020582



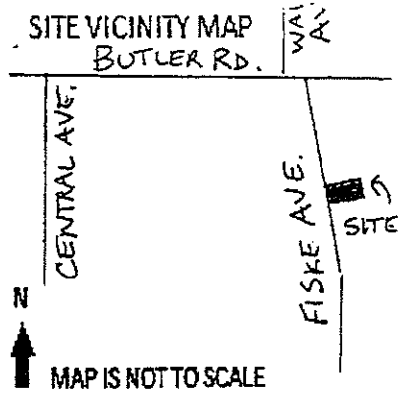
SQUARE FOOTAGE

HOUSE 932 S.F.

ADDITION 266 S.F.

PLAN DRAWN BY ANN O'NEILL DATE 5/30/2015 SCALE: 1 INCH = 20 FEET

SITE VICINITY MAP



MAP IS NOT TO SCALE

ZONING MAP# ____

SITE ZONED DR 1

ELECTION DISTRICT 4

COUNCIL DISTRICT 2

LOT AREA ACREAGE .06

OR SQUARE FEET 2,612

HISTORIC ? YES

IN CBCA ? NO

IN FLOOD PLAIN ? NO

UTILITIES ? MARK WITH

WATER IS:

PUBLIC ✓ PRIVATE ____

SEWER IS:

PUBLIC ____ PRIVATE ✓

PRIOR HEARING ? NO

IF SO GIVE CASE NUMBER AND ORDER RESULT BELOW

VIOLATION CASE INFO:

IN RE: PETITION FOR ADMIN. VARIANCE	*	BEFORE THE
(6 Fiske Avenue)		
4th Election District	*	OFFICE OF ADMINISTRATIVE
2nd Council District		
John M. and Ann B. O'Neill	*	HEARINGS FOR
Petitioners		
	*	BALTIMORE COUNTY
	*	**CASE NO. 2015-0278-A**

* * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Administrative Variance filed by the legal owners of the property, John M. and Ann B. O'Neill. The Petitioners are requesting Variance relief from § 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a side yard setback of 6 ft. in lieu of the required 30 ft. and an existing side yard setback of 2.21 ft. in lieu of the required 20 ft. and a sum of side yards of 8.21 ft. in lieu of the required 50 ft. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners' Exhibit 1.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. There were no adverse ZAC comments received from any of the County reviewing agencies. However, it is to be noted that the Landmarks Preservation Commission (LPC) will consider this application at their next meeting on Thursday, July 9, 2015.

The Petitioners having filed a Petition for Administrative Variance and the subject property having been posted on June 12, 2015, and there being no request for a public hearing, a decision shall be rendered based upon the documentation presented.

The Petitioners have filed the supporting affidavits as required by Section 32-3-303 of the Baltimore County Code (B.C.C.). Based upon the information available, there is no evidence in the file to indicate that the requested variance would adversely affect the health, safety or general

ORDER RECEIVED FOR FILING
Date 7-2-15
By

welfare of the public and should therefore be granted. In the opinion of the Administrative Law Judge, the information, photographs, and affidavits submitted provide sufficient facts that comply with the requirements of Section 307.1 of the B.C.Z.R. Furthermore, strict compliance with the B.C.Z.R. would result in practical difficulty and/or unreasonable hardship upon the Petitioners.

Pursuant to the posting of the property and the provisions of both the Baltimore County Code and the Baltimore County Zoning Regulations, and for the reasons given above, the requested variance should be granted.

THEREFORE, IT IS ORDERED, this 2nd day of **July, 2015**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking Variance relief from § 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a side yard setback of 6 ft. in lieu of the required 30 ft. and an existing side yard setback of 2.21 ft. in lieu of the required 20 ft. and a sum of side yards of 8.21 ft. in lieu of the required 50 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

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

2. Petitioners must comply with the Landmarks Preservation Commission (LPC) comments.

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

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:dlw

ORDER RECEIVED FOR FILING
Date 7-2-15
By

☆8

PETITION FOR ZONING VARIANCE

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: 90-419-SPHA

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a

Variance from Section See Attached

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County: for the following reasons: (indicate hardship or practical difficulty) Lots are locatedin Glyndon Park originally platted by deed in 1906. Home on Lot 18 is existing and predates zoning regs impossible to comply with certain regs. Petitioner is using all of his vacant property (lots 15,16,17) to construct new home. It is impossible to comply with current regulations for DR-2 zone. Home is designed and aligned to be in keeping wit existing homes. Strict application of regulations would prohibit construction of proposed dwelling. Most of the existing homes are located on 20' lots. Petitioner is combining 3 lots - all that are vacant for a house 22' wide.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

I/We do 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 Petition.

Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State

Legal Owner(s):

William A. Fowble, III.
(Type or Print Name)

William A. Fowble III
Signature

(Type or Print Name)

Signature

Attorney for Petitioner:

Charles E. Brooks
(Type or Print Name)

Charles E Brooks
Signature

610 Bosley Avenue
Address

Towson, Maryland 21204
City and State

Attorney's Telephone No.: (301) 296-2600

3 Fiske Avenue 833-9087
Address Phone No.

Glyndon, Maryland 21071
City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

Charles E. Brooks
Name

610 Bosley Avenue 296-2600
Address Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 7th day of March, 1990, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 24 day of April, 1990, at 9:30 o'clock A.M.

J. Robert Haines
Zoning Commissioner of Baltimore County.

(over)

PETITION FOR SPECIAL HEARING

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: 90-419-SPHA

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve

See attached

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of the above Special Hearing advertising, posting, etc., upon filing of this Petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do 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 Petition.

Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State

Attorney for Petitioner:

Charles E. Brooks
(Type or Print Name)

Charles E. Brooks
Signature

610 Bosley Avenue
Address

Towson, Maryland 21204
City and State

Attorney's Telephone No.: (301)296-2600

Legal Owner(s):

William A. Fowble, III
(Type or Print Name)

William A. Fowble III
Signature

(Type or Print Name)

Signature

3 Fiske Avenue 833-9087
Address Phone No.

Glyndon, Maryland 21071
City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

Charles E. Brooks
Name (301)296-2600

610 Bosley Avenue, Towson, MD
Address Phone No.

MAP NW 17-5
D-1
S.D. 474
DATE 12/6/91
ZOO JR
1002
OP G-ZC

ORDERED By The Zoning Commissioner of Baltimore County, this 7 day of March, 1990, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 24 day of April, 1990, at 9:30 o'clock A. M.

J. Robert Haines
Zoning Commissioner of Baltimore County

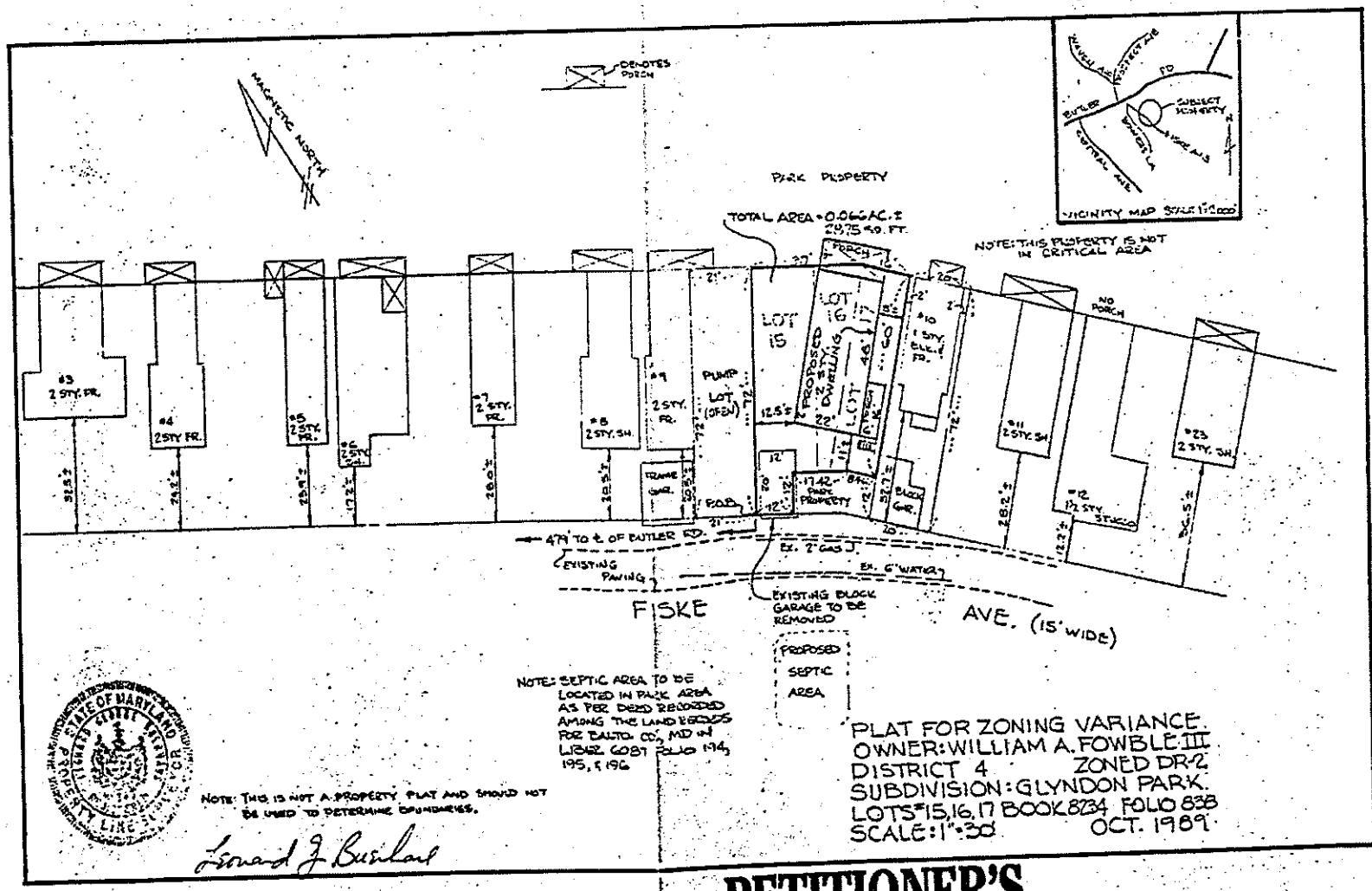
ORDER RECEIVED FOR FILING
Date
By

(over)

Z.C.O.—No. 1

ESTIMATED LENGTH OF HEARING -1/2HR. +1HR.
AVAILABLE FOR HEARING 1/2 DAY
MON./TUES./WED. - NEXT TWO MONTHS
ALL ✓ OTHER
REVIEWED BY: CAM DATE 12 Feb 90

90-419-SPHA



PETITIONER'S EXHIBIT 5

90-419 SPHA

261

IN RE: PETITIONS FOR SPECIAL HEARING AND ZONING VARIANCE
N/S Fiske Ave., 479' E of Butler Road
9-1/2 & 10 Fiske Avenue
4th Election District
3rd Councilmanic District
William A. Fowble, III
Petitioner

BEFORE THE
ZONING COMMISSIONER
OF BALTIMORE COUNTY
CASE # 90-419-SPHA

****

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests a special hearing to approve the placement of a porch and septic area on property other than the subject site and the approval of a lot 2,785 sq.ft. for a single family dwelling in lieu of the required 20,000 sq. ft. and zoning variances from (1) Section 1B02.3.C.1. to permit a dwelling to be constructed on lots 15, 16 and 17 with minimum total width of 37.88 ft. in lieu of the required 100 ft.; (2) Section 1B02.3.C.1. to permit a rear yard depth of 11 ft. in lieu of the required 40 ft.; (3) Section 1B02.3.C.1. to permit individual side yards of 8 ft. and 12.5 ft. in lieu of required 15 ft. minimum and a sum of side yard widths of 20.5 ft. in lieu of required 40 ft.; (4) Section 301.1 to permit a 6 foot wide open porch on S/E side with setback of 2 ft. in lieu of required 11.25 ft.; (5) Section 1B02.3.C.1. to permit dwelling unit to remain as is on 20 ft. lot (lot 18) instead of required 100 ft. with side yard setbacks of 2 ft. on each side in lieu of minimum 15 ft. on each, and a sum of side yards of 4 ft. in lieu of required 40 ft., as more particularly described on Petitioner's Exhibit 1.

The Petitioner, William A. Fowble, III, appeared, testified and was represented by Charles E. Brooks, Esquire. Appearing on behalf of Petition was Ralph Driscoll. Appearing and testifying as Protestants were Michael and

ORDER RECEIVED FOR FILING
Date 5/9/90
By M. Norsh

Ann O'Neill and Eileen Wuerthele. Appearing and noting their opposition to Petitioner's request were Elizabeth Steele, Sharon Herb, Eleanor H. Taylor, Anna Welsh, Samuel E. Scruggs and Ellen Cray.

Testimony indicated that the subject property known as 9-1/2 and 10 Fiske Avenue consists of .066 acres +/- zoned D.R.2 and is currently unimproved. Testimony indicated that the subject property is located within the "historic" Glyndon area adjoining Glyndon Park, as indicated on Petitioner's Exhibit No. 1.

The Petitioner testified that he is desirous of constructing a single family dwelling on combined lots No. 15, 16 and 17 with a 22 x 48 ft. footprint. Testimony indicated that the subject lots predate 1945. The Petitioner also desires to place a porch on the southeast side of the proposed house which will extend onto park property, as well as the proposed septic system, also to be located on Park property. The Petitioner testified that, pursuant to the deed of easement dated September 7, 1979, the Petitioner has the permission of the Glyndon Park Chatauqua Association to locate the septic system on park property. The Petitioner further testified that the rear of the proposed house will face Fiske Avenue from which a driveway will be constructed. The Petitioner concluded by stating that the proposed house would be consistent with the existing architecture in the neighborhood and, also, that should the requested relief be denied, he would suffer an undue hardship and practical difficulty.

Mr. Ralph Driscoll testified that he has lived in this community for the past 67 years. Mr. Driscoll testified that he has known the Petitioner and his family for many years and is familiar with the Petitioner's plans for the subject property. Mr. Driscoll testified that he supports Petition-

ORDER RECEIVED FOR FILING
Date 5/9/90
By M. Novak

er's request and believes that Petitioner's proposed home would be complimentary to this community.

Mr. J. Michael O'Neill appeared as a Protestant and testified that his primary concern, regarding the Petitioner's request, was safety. Mr. O'Neill testified that Fiske Avenue is an extremely roadway with vehicular parking on one side of the roadway only. He testified that he was concerning that Petitioner's proposed house will not match the architecture of the existing dwellings and that the proposed house is too large for the subject site.

Mrs. Ann O'Neill testified and concurred with the testimony of her husband.

After due consideration of the testimony and evidence presented, it is clear that a practical difficulty or unreasonable hardship would result if the relief requested in the special hearing were not granted in part. It has been established that the requirements from which the Petitioner seeks relief would unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the relief requested, if granted in part, will not be detrimental to the public health, safety and general welfare.

Based upon the testimony and evidence presented, it is clear that the Zoning Commission lacks authority to grant variance relief on property not owned by the Petitioner or properly brought under his jurisdiction by a properly filed Petition. Therefore, the special hearing relief relative to the subject porch must be denied. However, as Petitioner does have permission and authority, pursuant to the Confirmatory Deed of Easement, marked Petitioner's Exhibit No. 7, to locate the proposed septic system on park property, the special hearing request relative to the septic system shall be

ORDER RECEIVED FOR FILING
Date 7/9/90
By

granted. Further, Petitioner's special hearing request for a lot of 2,875 sq. ft. for single family dwelling in lieu of the required 20,000 sq. ft. shall be granted.

The Petitioner has also requested variance relief which is set forth specifically above.

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

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

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

It is clear from the testimony that if the variance is granted, such use as proposed would not be contrary to the spirit of the B.C.Z.R. and would not result in substantial detriment to the public good.

After due consideration of the testimony and evidence presented, it is clear that a practical difficulty or unreasonable hardship would result if the variances were not granted. It has been established that the requirements from which the Petitioner seeks relief would unduly restrict the use of the land due to the special conditions unique to this particular parcel.

ORDER RECEIVED FOR FILING
Date 5/9/90
By M. Novak

In addition, the variances requested will not be detrimental to the public health, safety and general welfare.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 9th day of May, 1990 that Petition for Special Hearing to approve the construction of a porch extending onto property not owned by Petitioner is hereby DENIED; and,

IT IS FURTHER ORDERED that the Petition for Special Hearing to approve the placement of a septic area on property other than that of Petitioner, pursuant to the Confirmatory Deed of Easement, marked Petitioner's Exhibit No. is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Special Hearing to grant a lot of 2,875 sq. ft. for a single family dwelling in lieu of the required 20,000 sq. ft. is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Zoning Variance from Section 1B02.3.3.C.1 to permit a dwelling to be constructed on lots 15, 16 and 17 with a minimum total width of 37.88 ft. in lieu of the required 100 ft. is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Zoning Variance from Section 1B02.3.C.1. to permit a rear yard depth of 11 ft. in lieu of the required 40 ft. is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Zoning Variance from Section 1B02.3.C.1. to permit individual side yards of 8 ft. and 12.5 ft. in lieu of required 15 ft. minimum and a sum of side yard widths of 20.5 ft. in lieu of required 40 ft. is hereby GRANTED; and,

ORDER RECEIVED FOR FILING
Date 5/9/90
By

IT IS FURTHER ORDERED that the Petition for Zoning Variance from Section 301.1 to permit a 6 foot wide open porch on S/E side with setback of 2 ft. in lieu of required 11.25 ft. is hereby DENIED; and,

IT IS FURTHER ORDERED that the Petition for Zoning Variance from Section 1B02.3.C.1. to permit dwelling unit to remain as is on 20 ft. lot (lot 18) instead of required 100 ft. with side yard setbacks of 2 ft. on each side in lieu of minimum 15 ft. on each, and a sum of side yards of 4 ft. in lieu of required 40 ft., is hereby GRANTED, subject, however, to the following restrictions which are conditions precedent to the relief granted herein:

1. The Petitioner may apply for his building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.

2. Upon request and reasonable notice, the Petitioner shall permit a representative of the Zoning Enforcement Division to make an inspection of the subject property to insure compliance with this Order.

3. The subject property shall be developed as a single family dwelling unit only.

J. Robert Haines
J. ROBERT HAINES
Zoning Commissioner for
Baltimore County

ORDER RECEIVED FOR FILING
Date 5/9/90
By M. Bowles

JRH:mmn
cc: Peoples Counsel
cc: Protestants

TAX ACC# 04 02058500 ★9

Petition for Administrative Variance

to the Zoning Commissioner of Baltimore County

for the property located at 4719 Butler Rd

which is presently zoned DR 1

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s) BCZR 1B02.3.C.1

To permit an addition in the side yard of a single family dwelling with a side yard setback of 15ft and a sum of the side yards of 44ft in lieu of the required setbacks of 20ft and 50ft respectively.

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the reasons indicated on the back of this petition form.

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Variance, 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.

I/We do 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 Petition.

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address Telephone No.

City State Zip Code

Legal Owner(s):

Diane C. Flayhart
Name - Type or Print

x Diane C Flayhart
Signature

William H. Flayhart
Name - Type or Print

x [signature]
Signature

4719 Butler Rd. 410-526-2134
Address Telephone No.

Glyndon MD 21071
City State Zip Code

Representative to be Contacted:

Name

Address Telephone No

City State Zip Code

A Public Hearing having been formally demanded and/or found to be required, it is ordered by the Zoning Commissioner of Baltimore County, this ____ day of _____, _____ that the subject matter of this petition be set for a public hearing, advertised, as required by the zoning regulations of Baltimore County and that the property be reposted.

Zoning Commissioner of Baltimore County

CASE NO. 08-308-A **Reviewed By** AT/[illegible] **Date** 1/14/08

REV 10/25/01

[illegible] 2-21-08

Estimated Posting Date _____

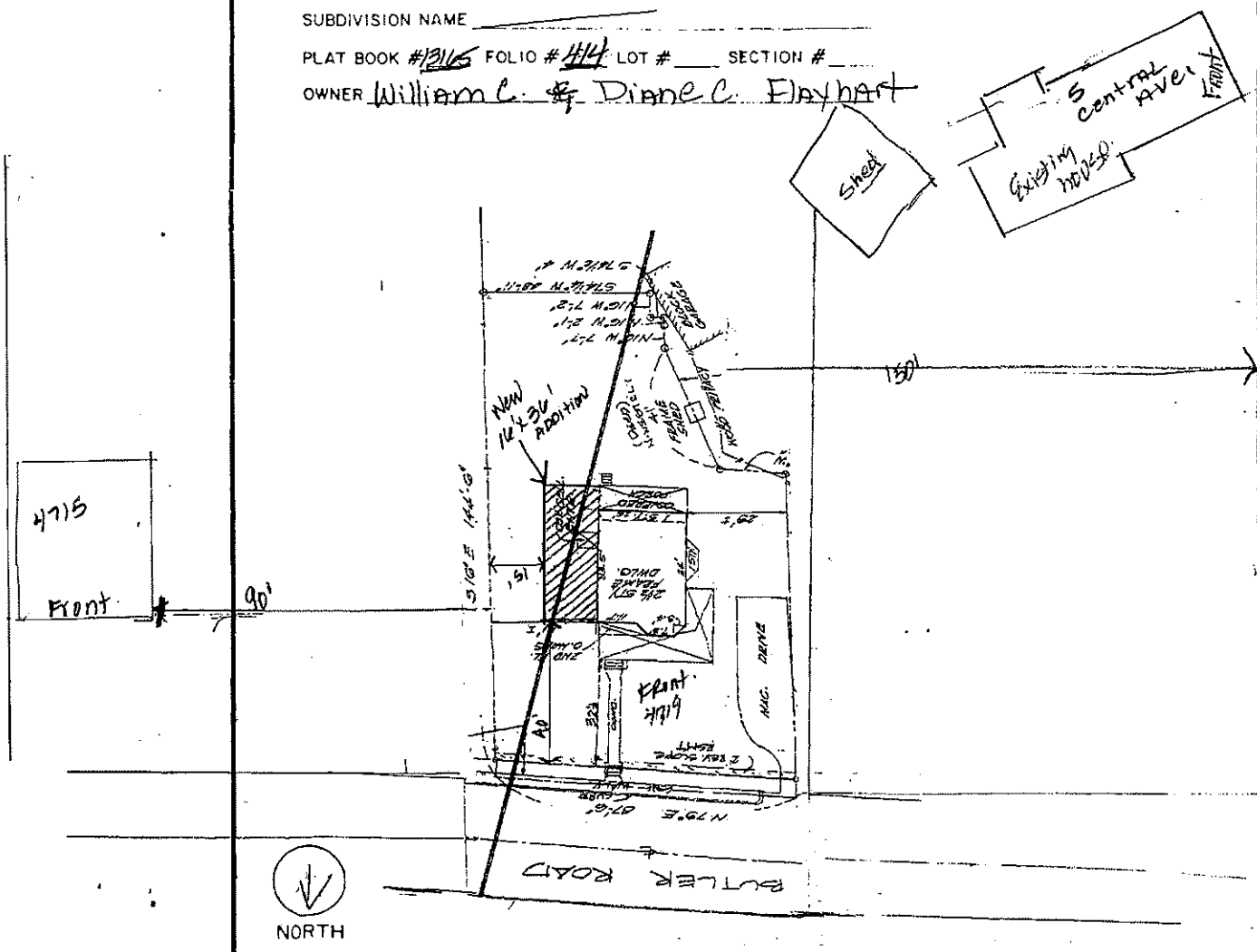
PLAT TO ACCOMPANY PETITION FOR ZONING [X] VARIANCE [ ] SPECIAL HEARING

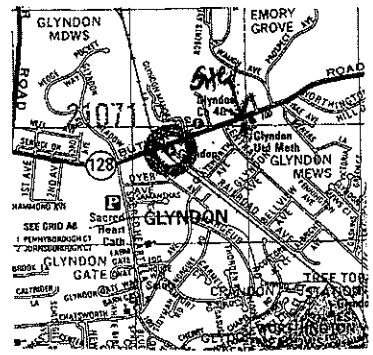
PROPERTY ADDRESS 4719 Butler Road — SEE PAGES 5 & 6 OF THE CHECKLIST FOR ADDITIONAL REQUIRED INFORMATION

SUBDIVISION NAME _____

PLAT BOOK # 13165 FOLIO # 414 LOT # ____ SECTION # ____

OWNER William C. & Diane C. Elyhart





VICINITY MAP
SCALE: 1" = 1000'

LOCATION INFORMATION

ELECTION DISTRICT 4th

COUNCILMANIC DISTRICT 3rd

1"=200' SCALE MAP # 084C1

ZONING DR1

LOT SIZE ____ ACREAGE 12901 SQUARE FEET

	PUBLIC	PRIVATE
SEWER	[X]	[ ]
WATER	[X]	[ ]

	YES	NO
CHESAPEAKE BAY CRITICAL AREA	[ ]	[X]
100 YEAR FLOOD PLAIN	[ ]	[X]
HISTORIC PROPERTY/ BUILDING	[ ]	[ ]

PRIOR ZONING HEARING N/A.

ZONING OFFICE USE ONLY

REVIEWED BY	ITEM #	CASE #
JW/ATeam	308	08-308-A

NORTH

PREPARED BY Beverly True

SCALE OF DRAWING: 1" = 30'

IN RE: PETITION FOR ADMIN. VARIANCE S side Butler Road, 200 feet E of c/l Central Avenue 4th Election District 3rd Councilmanic District **(4719 Butler Road)** Diane C. and William H. Flayhart *Petitioners*	*	BEFORE THE DEPUTY ZONING COMMISSIONER FOR BALTIMORE COUNTY **Case No. 08-308-A**

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Administrative Variance filed by the legal owners of the subject property, Diane C. and William H. Flayhart for property located at 4719 Butler Road. The variance request is from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an addition in the side yard of a single family dwelling with a side yard setback of 15 feet and a sum of the side yards of 44 feet in lieu of the required setbacks of 20 feet and 50 feet respectively. The subject property and requested relief are more particularly described on Petitioners' Exhibit No. 1. The Petitioners wish to construct an addition measuring 16 feet x 36 feet in size. The addition will contain a family room and library. Due to the location of the existing home and driveway it would be difficult to place the addition anywhere else on the property. The home was constructed in 1886, long before the imposition of DR 1 zoning on the property.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The comments indicate no opposition or other recommendations concerning the requested relief.

RECEIVED FOR FILING
Date 2.21.08
By

The Petitioners having filed a Petition for Administrative Variance and the subject property having been posted on January 27, 2008 and there being no request for a public hearing, a decision shall be rendered based upon the documentation presented.

The Petitioners have filed the supporting affidavits as required by Section 32-3-303 of the Baltimore County Code. Based upon the information available, there is no evidence in the file to indicate that the requested variance would adversely affect the health, safety or general welfare of the public and should therefore be granted. In the opinion of the Deputy Zoning Commissioner, the information, photographs, and affidavits submitted provide sufficient facts that comply with the requirements of Section 307.1 of the B.C.Z.R. Furthermore, strict compliance with the B.C.Z.R. would result in practical difficulty and/or unreasonable hardship upon the Petitioners.

Pursuant to the posting of the property and the provisions of both the Baltimore County Code and the Baltimore County Zoning Regulations, and for the reasons given above, the requested variance should be granted.

THEREFORE, IT IS ORDERED, by the Deputy Zoning Commissioner for Baltimore County, this 21st day of February, 2008 that a variance from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an addition in the side yard of a single family dwelling with a side yard setback of 15 feet and a sum of the side yards of 44 feet in lieu of the required setbacks of 20 feet and 50 feet respectively is hereby GRANTED, subject to the following:

1. The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.

ORDER RECEIVED FOR FILING
Date 2.21.08
By

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

THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz

RECEIVED FOR FILING
Date 2-28-08
By PZ

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

IN THE MATTER OF THE THE APPLICATION OF RONALD F. JONES, ET UX FOR A SPECIAL HEARING AND VARIANCE ON PROPERTY LOCATED ON THE NORTHEAST SIDE OF CENTRAL AVENUE, 60 FEET SOUTHEAST OF GLYNDON AVENUE (209 CENTRAL AVENUE 4TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 89-396-SPHA

* * * * * * * * * * *

NOTICE OF DISMISSAL

MADAM CLERK:

Please dismiss the above case pursuant to Maryland 2-506. This case is an appeal filed pursuant to Md. Rules B-13, Administrative Agencies.

Respectfully submitted,

Nevett Steele, Jr.
211 Central Avenue
Glyndon, MD 21071
(301) 296-8164 (Work)
(301) 833-6564 (Home)

Elizabeth B. Steele
211 Central Avenue
Glyndon, MD 21071
(301) 833-6564 (Home)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of May, 1991, a copy of the foregoing Order for Appeal was mailed to Eleanor J. Lipsitz, Esquire, 100 Church Lane, Baltimore, Maryland 21208; Charles B. Heyman, Esquire, Kaplan, Heyman, Greenberg, Engleman & Belgrad, P.A., Tenth Floor, Sun Life Bldg., 20 S. Charles Street, Baltimore, MD 21201; and Linda Kuszmaul, Board of Appeals, 111 W. Chesapeake Avenue, Towson, Maryland 21204.

Nevett Steele, Jr.

- 2 -

IN THE MATTER OF THE THE APPLICATION OF THE HOMESTEAD GROUP, LTD. AND RONALD F. JONES, ET UX FOR A SPECIAL HEARING AND VARIANCE ON PROPERTY LOCATED ON THE NORTH-EAST SIDE OF CENTRAL AVENUE, 60 FEET SOUTHEAST OF GLYNDON AVENUE (207 AND 209 CENTRAL AVENUE, RESPECTIVELY) 4TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 89-16-SPHA AND 89-396-SPHA

* * * * * * * * * * *

OPINION

These two cases 89-396-SPHA, Ronald F. Jones, et ux, and 89-16-SPHA, The Homestead Group, Ltd., come before this Board on appeal from a ruling of the Zoning Commissioner denying in part and granting in part said Petitions. These two cases consumed some five days of testimony and evidence.

It is important at the outset to establish just what issues the Board is confronted with. In 89-396-SPHA, the matter is whether or not the structure at 209 Central Avenue is in fact a nonconforming use for six apartments, a variance to permit side yard setbacks of 12 feet zero inches and 12 feet six inches in lieu of the required 20 foot setback for one side and 40 feet or 50 feet the sum of both sides and to permit a total lot width of 65 feet in lieu of the required 90 feet. In case 89-16-SPHA, the Petition is for the Board to find that lot 207 Central Avenue is totally separate from Lot 209 and is unencumbered by any use of 209 and to permit the erection of a building on a 65 foot lot (207) in lieu of the 70 foot lot width in a D.R.3.5 zone. The proposed building to be totally within the D.R.3.5 zoned area.

Counsel for the Petitioner in 89-396-SPHA made Motion to dismiss Protestants' appeal claiming that the required notice period before the Zoning Commissioner was not complied with and

therefore this Board lacks jurisdiction to hear the case. The Board denied this Motion and assumed jurisdiction.

In light of the fact that much testimony and evidence to be received would be pertinent to both cases, it was decided to hear the cases in combination. At the conclusion of the second witness it became obvious that it was impractical to try these as combined cases and the decision was made to bifurcate the cases and hear case 89-396-SPHA first with the understanding that the testimony and evidence received from the first two witnesses could be applied to both cases.

Much of the testimony received in these five days of hearing was cumulative, was not on point, was alleged testimony, and was to some degree hearsay evidence which in an administrative hearing is permitted. The testimony of each witness will not be detailed in this opinion but let the record speak for itself.

A very brief encapsulation of each witness who testified and their position on the matter before the Board will be stated. Ronald Jones purchased the property known as 209 Central Avenue in June of 1988. It was his understanding that this was a six apartment building with 27 rooms and it was his intention to continue this use. Mr. Jones was aware that in March of 1989 the adjoining vacant lot known as 207 Central Avenue had been sold. Zelma Ensor, a real estate broker, testified as to her familiarity with the property at 209, testified that it had always been an apartment use, that it constituted no detriment to the health and welfare of the neighborhood, and that the house planned for construction on 207 would be nonobjectionable and the plans had

been accepted by the Landmarks Commission. Aileen Singer testified that she owned Lots 209 and 207 Central Avenue since 1978. She testified as to the use of the property as six apartments, two on each floor, and that she sold it to Mr. Jones as a six apartment use. She alleged that she inquired from Baltimore County as to the feasibility to the separate sale of Lot 207 and received assurances that there was no problem. Cookie Stone, a real estate agent, testified that she handled the sale of 209 Central Avenue.

On July 24, 1990, testimony was taken from Mrs. Sue Susimehl who is 88 years old and resides in California. All proper parties were present for this telephone testimony. Mrs. Susimehl testified that she purchased the two lots in 1941 and that the building on 209 was in existence but was not converted to apartments. Beginning in 1941, she and her husband converted the building to six apartments complete with individual and separate electric meters, kitchens, baths, etc. Her husband, an electrical contractor, did most of the work and the plumbing work was done by a man named Zepp. As this conversion project was undertaken during World War II, plumbing and electrical supplies were scarce. It was Mrs. Susimehl's testimony that because of this scarcity, this conversion took several years but was completed in 1945. It was interesting to the Board to note that this 88 year old lady not only remembered the six apartments but the name of each renter in each apartment. She testified that she sold the property to a Mr. Redder in 1966. She testified that there were six parking spaces along the side of the house adjacent to 207 and that while 207 was used as a driveway it was just a dirt driveway. This concluded

Mrs. Susimehl's testimony. This same day testimony was received from James E. Redder, a long time Glyndon resident. He testified that he purchased 209 and 207 in 1966 for an investment only and that he never lived there but that its use at that time was identical to what it was in 1945, six apartments. He testified that he sold the two lots in 1968 and th t no further improvements had been made to the property. Testimony was then taken from Thaddeus Hense, an attorney who specializes in title searches. He testified that he did a title search of 209 as far back as 1926 and that 209 and 207 were always two separate recorded lots. Cookie Stone was recalled as the real estate agent involved int he sale and testified that in 1970, she listed the property as two parcels and another agent sold them and that she checked with Baltimore County to see if the parcels could be separated and was so assured. Colleen Thompson Chance, another real estate agent, testified that she listed the properties in December of 1987 and was assured by Baltimore County that they were two separate parcels. This concluded Petitioner's case in 89-396-SPHA. Protestants presented Carol Ann Wildesen, the real estate agent involved in the sale of 207. She testified that she checked the Land Records to see if these were separate parcels and found this to be true. It was her testimony that there was no question that this was a separate lot entitled to all the privileges attached thereto. Ronald Jones was recalled and testified that when he purchased 209, 207 had already been sold. Mark Laken, President of the Glyndon Community Association, entered their opposition to the granting of these two Petitions. Eleanor Taylor, a member of Historic Glyndon, Inc.,

read into the record their position in opposition to the granting of these Petitions. She further testified that she was acquainted with the property at 209 which prior to 1940 was first a boarding house and then converted to multiple apartments. Nevitt Steele who lives at 211 Central Avenue, next door to 209, testified as to his opposition to the two Petitions. It was his contention that 207 had always been the parking lot for 209 and that if this property is bifurcated from 209 that the six unit apartment building would no longer be a nonconforming use. This concluded Protestants case in 89-396-SPHA. Testimony was then received in case 89-16-SPHA, The Homestead Group. The first witness from the Homestead Group was Audrey Fox, President of the Homestead Group - Builders. She testified that their business was the design of homes to suit specific sites and specific areas. She testified that the proposed home was approved by the Landmarks Commission and of their agreement to relocate the driveway from 207 to 209. She entered the plans for the proposed building and testified that the proposed house met with approval of both the Landmarks Commission and the National Historic Register. William F. Kirwin, a land planner, testified that this lot is 65 feet wide by some 390 feet deep and that the proposed house meets all the side yard requirements and the only variance needed is the lot width in D.R.3.5 requiring an area variance from 70 feet to the 65 feet as the lot exists. Aileen Singer was then called in this case. She testified that the two lots had always been separate. She further testified that she inquired from Baltimore County as to whether a residence could be built on 207 and as far as she knew there were no problems.

Colleen T. Chance, the real estate agent, testified she listed 207 and 209 Central Avenue as two listings and was assured by Baltimore County that these were separate and buildable lots. Cookie Stone, a real estate agent actually involved in the sale, testified that she sold 207 to the Homestead Group as a buildable lot. This was the last witness for the Petitioner. Protestants presented Eleanor Taylor who testified as a member of the Board of Historic Glyndon and indicated their opposition to the variance as to lot width. She testified that Glyndon Park was founded in 1887 as a vacation resort and that there were large open areas in front of these buildings. In addition to the Board's opposition, she testified to her personal opposition since the proposed house would severely reduce the open space now existing on these two lots. Charles Wells, a member of the Board of the Glyndon Community Association, voiced their objection to the variance and testified that it would change the character of the neighborhood. Nevitt Steele, the neighbor of 209 Central Avenue, testified to his opposition to the granting of the variance. He testified it was his opinion that 209 was already in violation and that to grant the variance would put both lots in violation. He also testified that he attended the April, 1988 Land Preservation Meeting, looked at the plans for 207 and voiced no objection at that time. This concluded Protestants testimony in case 89-16-SPHA. The Board will once again reiterate that the aforegoing encapsulation is in no way intended to portray the depth and detail of all the testimony which is a part of the case record.

A10

Sometime prior to January 2, 1945, a structure was erected on lots 207 and 209. Since 1947, an apartment house consisting of at least four apartment units was maintained on lots 207 and 209. Since January 2, 1945 through 1988, a driveway and parking lot serving the building situated on lot 209 has been maintained on lot 207.

Notwithstanding the areas of agreement, several key facts remain in dispute. There is a genuine dispute as to whether an apartment dwelling was situated on lots 207 and 209 prior to January 2, 1945. Petitioners' Exhibit 3, an out of court statement not subject to cross-examination, indicates that property "consisting of house and lot at 209 Central Avenue" were purchased by Louis E. and Anita C. Susemihl on March 27, 1941. This statement further asserts that "upon settlement," the Susemihls "remodeled house into six apartments - two on each floor." Mr. Reter, who purchased lots 207 and 209 in 1965, recalls delivering groceries to the "apartment house" in the 1946 to 1947 time frame. Mr. Reter was born on October 24, 1931. Ms. Enzer testified that lots 207 and 209 were used for an apartment building since 1941. Mrs. Hammond testified that substantial improvements were made to the structure erected on lot 209 during the summer of 1947. Protestants' Exhibit 11, which consists of tax assessment records indicates that a dramatic increase in the assessed value of the improvements to lots 207 and 209 occurred in 1947.

The evidence presented before the Zoning Commissioner does not conclusively show that an apartment building with six units existed on January 2, 1945. The most likely scenario given the facts presented, is that the house was converted to an apartment house in 1947. This conversion was not consistent with the Baltimore County Zoning Regulations and effectively created an illegal apartment use. Since this use is illegal, the Petitioners' request for the Zoning Commissioner to determine that a legal nonconforming use exists should be denied.

Assuming, arguendo, that the Zoning Commissioner finds that a legal nonconforming use existed as of January 2, 1945, this use must be defined. Given the undisputed testimony, it is clear that any nonconforming apartment use included lots 207 and 209. The improvements to lot 207 (parking lot and driveway) were devoted to the apartment building situated on lot 209. In fact, the nonconforming use can only be defined as one parcel (lots 207 and 209) with improvements (apartment house, parking lot and driveway).

The erection of a single family dwelling on lot 207 is a change to another use. The nonconforming use encompasses the entire parcel of land. Employing a portion of this parcel for another legal use, a single family dwelling, is in violation of Section 104.1. When there is any change from a nonconforming use to any other use whatsoever, the right to continue or resume such nonconforming use shall terminate.

The factors set forth in McKemy also indicate that the proposed activity on lots 207 and 209 is not within the scope of the original nonconforming use. The proposed use, as a six unit apartment and single family dwelling, does not reflect the nature and purpose of the original nonconforming use. The original nonconforming use permitted a very large structure to fit into the ambiance and character of Historic Glyndon. The open space created by the landscaped areas of lot 207 diminished the impact of the oversized apartment building and provided an architectural scope to the large structure which was more in keeping with the expansive front yards and green spaces of Central Avenue.

The proposed use is different in character, nature and kind from the original nonconforming use. The original use was a single structure containing between four and six apartment units. The proposed use shall include the addition of a use permitted as a matter of right in a wholly new structure. The character of the parcel will change dramatically in that the land area dedicated to buildings will increase by almost two fold. The parking and driveway access previously situated on lot 207 is now cramped onto lot 209. Two driveway accesses are now required where only one was needed previously. The additional driveway access chops up the expansive lawn area which was consistent with the historic ambiance and especially open character of the community.

The proposed use will have a substantially different effect upon the neighborhood. The original use, although expansive in size and impact, was when placed in the context of

the total parcel, was more in keeping with the general character of the neighborhood. If the proposed single family dwelling is permitted on lot 207, there will be an overcrowding of the land and a degradation of the large lot, expansive open space, and pleasant landscaping and lawns previously associated with this portion of Central Avenue. Additionally, if all of the relief requested is granted, it will serve to encourage other owners to sell off adjacent "double lots," create additional variance requests, overcrowd Historic Glyndon and lead to the disintegration of the character of the community.

The proposed use is also a drastic enlargement or extension of the original nonconforming use. The relocation of the parking lot and driveway to lot 209 and proposed erection of a single family dwelling on lot 207 are an expansion, and not a mere intensification of the nonconforming use. See Odell v. City of Fagen, Young v. Board of Zoning Appeals, Huse v. Zoning Hearing Board, Jahnigen v. Staley, and Phillips v. Zoning Commissioner, supra.

The footprint of the existing apartment dwelling, including the front porch, equals 2,290 square feet. The footprint of the proposed single family dwelling is approximately 1,640 square feet. This represents a greater than 70 percent increase in the land area committed to structures. Section 104.1 only permits an extension of up to 25 percent of the ground floor area of buildings so used. This 70 percent extension of the ground floor area of the apartment building is clearly in violation of Section 104.1 and a drastic enlargement or extension

of the original nonconforming use. After reviewing the factors set forth in McKemy, it is clear that the proposed uses are not within the scope of the original nonconforming use. As such, the Zoning Commissioner should deny the Petition for Special Hearing to approve a multifamily apartment dwelling and lot at 209 Central Avenue as a legal nonconforming use for six apartment units.

(b) Conversion of Dwellings Pursuant to Section 402.

Section 402 permits the conversion of dwellings for residential uses. The dimensional requirements are set forth in a conversion table found on Page 4-3, RC2R. Protestants' Exhibit 7 is two letters which address, among other things, the application of Section 402 to the instant case. One letter, is from Messrs. Kellman and Dyer of the Office of Planning and Zoning to Ms. Coleen Thompson, Realtor for the Singers in the sale of lot 209 to the Joneses. The other portion of Protestants' Exhibit 7 is a letter from Messrs. Richards and Dyer to Mr. Steele. Both letters analyze the conversion of the existing improvements on lot 209 pursuant to the tables contained in Section 402. The conclusion reached by the zoning office is that only two units are allowed under County law.

Mr. Malmud, a land surveyor, testified on behalf of the Joneses that the conversion tables of Section 402 would permit a conversion to six units on lot 209. Mr. Malmud disagreed with the conclusions reached in Protestants' Exhibit 7 by the zoning office . Mr. Malmud did not offer any explanation for his disagreement with the zoning office opinions of Messrs. Dyer,

Richards and Kellman and did not present any calculations based upon Section 402 to show that six units were permitted. Further, Petitioners' Exhibit 7, the Plat to Accompany Zoning Petition for Special Hearing, indicates minimum frontage and lot area requirements. According to Mr. Malmud, 150 feet of frontage is required, while 65 feet is provided. Additionally, 28,500 square feet of lot area is provided, while 25,449 square feet is provided. Mr. Malmud could not indicate where these requirements are set forth in the Zoning Regulations. Nor does the Petition for Zoning Variance seek relief for the minimum lot area required as shown on the Petitioners' Exhibit 7.

The evidence clearly shows that only two apartment units are permitted pursuant to Section 402. The evidence also brings into question whether the lot area requirements as shown on Petitioners' Exhibit 7 have been met. A variance of this asserted lot area requirement has not been requested.

2. Petition for Zoning Variance (209)

The Petition for Zoning Variance seeks relief from the side yard and lot width requirements of the Zoning Regulations. Section 307 sets forth the test for the granting of any variance from the bulk regulations. Such variances should be granted only in cases where strict compliance with the Zoning Regulations would result in practical difficulty or unreasonable hardship. Furthermore, any such variance should be granted only if in strict harmony with the spirit and intent of the bulk regulations, and only in such manner as to grant relief without substantial injury to public health, safety and general welfare.

The need sufficient to justify a variance must be substantial and urgent and not merely for the Petitioners' convenience. McLean v. Soley, 270 Md. 208, 310 A.2d 783 (1973). A petitioner seeking a variance must exercise proper diligence in ascertaining zoning requirements prior to acquiring property in order to avoid a resultant hardship. If such diligence is not exercised, the hardship is self-created and the variance may be properly refused. Wilson v. Mayor and Commissioners of Town of Elkton, 35 Md. App. 417, 371 A.2d 443 (1977). If the grant of a variance would effect the aesthetic ambiance of the residences in the immediate area, such variance would be in disharmony with the spirit and intent of the Zoning Regulations. Dahl v. County Board of Appeals of Baltimore County, 258 Md. 257, 265 A.2d 227 (1970). The mere fact that a variance, if granted, would make the property more profitable is not a sufficient ground to justify the relaxation of bulk requirements. Easter v. Mayor and City Council of Baltimore, 195 Md. 395, 73 A.2d 491 (1950).

If the peculiar circumstances which render property incapable of meeting the zoning requirements have themselves been caused or created by the property owner or his predecessor in title, the essential basis of a variance is lacking. An act on the part of the property owner or his predecessor which has physically so affected the property as to create a unique circumstance or which in itself created either a practical difficulty or hardship in conforming to the restrictions of the Zoning Regulations bars relief. Salisbury Board of Zoning Appeals v. Bounds, 240 Md. 547, 214 A.2d 810 (1965).

The undisputed testimony indicates that the Joneses went to settlement on June 24, 1988. It is also undisputed that prior to settlement, Mr. Steele conversed with the Joneses and their counsel regarding the potential zoning violations surrounding the proposed uses for lots 207 and 209. Protestants' Exhibit 10 is a letter sent to the Joneses' counsel prior to their settlement confirming the existence of these issues and concerns. The record is so filled with examples of notice to the Joneses' predecessor in title, the Singers, it is unnecessary to reiterate them in this memorandum. Suffice it to say that Mr. Steele placed the Singers on notice of the potential zoning problems associated with their proposed uses of lots 207 and 209 prior to the respective settlements for lots 207 and 209..

The variances requested must be denied based upon the doctrine of self-inflicted hardship. Had the Singers or the Joneses acted with reasonable diligence regarding lot 209, they would have either obtained written confirmation from the zoning office that the proposed use of lot 209 as a six unit apartment was consistent with the Zoning Regulations or had filed the appropriate petitions to confirm compliance. At best, the realtor for the Singers received oral information from a zoning technician the exact substance and basis for which is clearly in question. Because the Petitioner did not act diligently and inflicted the hardship from which it seeks relief, the variances requested must be denied.

B. 207 CENTRAL AVENUE

1. Petition For Special Hearing.

Assuming, arguendo, that the Petitioner is not barred by the doctrine of self-inflicted hardship, the only testimony offered regarding compliance with the requirements of Section 307 came from Mr. Malmud. Mr. Malmud testified that the important requirements of Section 307 have been met. However, he merely stated conclusions without supporting them by explanation or reference to the facts of the case.

Mr. Malmud's credibility and credentials as an expert witness were severely called into question during the hearing. Mr. Malmud was offered as a "surveyor." He was not offered as an expert in real estate appraisal, civil engineering or land planning. Additionally, Mr. Malmud had not even read the petitions for special hearing or zoning variance filed by his clients, the Joneses. Further, his superficial analysis of Section 402 and the zoning office's interpretation of same genuinely call into question Mr. Malmud's ability to interpret the Zoning Regulations.

The record contains grossly insufficient evidence to support the requirements of Section 307. The Petitioner, who clearly has the burden of proving practical difficulty or unreasonable hardship pursuant to the Zoning Regulations, has failed to offer any substantial evidence in support of its Petition for Zoning Variance. Since the Petitioner has failed to meet its burden under Section 307, the Petitions for Zoning Variance must be denied.

In Muse v. Zoning Hearing Board, 415 A.2d 1255 (Pa. Cmwlth., 1980), the Court approved a zoning board's expansion of a country club through the addition of tennis courts. In Pennsylvania law, structures may be erected on open land previously devoted to a nonconforming use, as a matter of right. The erection of structures upon land not previously so used, may only be accomplished by way of variance. In the Muse case, the Zoning Board approved the expansion of the country club without a variance.

In reviewing the Board's approval, the Muse Court indicated that the threshold question is whether the land on which the country club proposes to locate the tennis courts has been devoted to the country club's nonconforming use. After reviewing the evidence introduced regarding the use of the land in question, the Court agreed that the land upon which the tennis courts were to be erected had been devoted to the country club's nonconforming use. Since it had been properly devoted, the court agreed that the construction of the tennis courts was a natural expansion of the club's activity and should therefore be permitted.

In the instant case, there are a number of undisputed facts which can be identified. In the 19th century, lots 207 and 209 were subdivided pursuant to a recorded plat. In the late 19th century, lots 207 and 209 came under the same ownership. From that time until lots 207 and 209 were conveyed to the Homestead Group and the Joneses, respectively, they were always held under the same ownership and transferred by the same deed.

Petitioner would like to seek relief, it should file a new petition for special hearing which accurately describes the relief requested.

The Protestants are not opposed to the continued use of lots 207 and 209 as a nonconforming apartment use. The focus of the Protestants' concerns relate to the improvement of lot 207 with a single family dwelling. If the relief requested in the Petition for Special Hearing is granted, then the nonconforming apartment use must be terminated. Such an outcome would be unfair and unreasonable in light of the long history of the apartment use and its previous condition served by the parking lot and driveway on lot 207. Prior to the Singers' attempts to exact greater profits from the sale of their parcel, the neighbors did not assert that the apartment use was an illegal use and not in conformity with the nonconforming use requirements of the Zoning Regulations.

2. Petition For Zoning Variance.

The Homestead Group seeks relief from the lot width requirements of the Zoning Regulations. For all the reasons set forth in reference to the Petition for Zoning Variance filed by the Joneses, the zoning variance must be denied. The record clearly indicates that the Singers were put on notice by Mr. Steele of the zoning problems associated with their proposed transfer of lots 207 and 209. Portions of Mrs. Singer's testimony support the Protestants' assertion that the Homestead Group was likewise apprised of Mr. Steele's concerns.

or tracts in DR zones. This section must be viewed as a part of a whole. The whole includes Section 104 and the law governing nonconforming uses. The purpose of Section 1B02.3 was to provide lot owners with relief from the more stringent requirements of the Zoning Regulations where existing developments or subdivisions have occurred.

In the instant case, the owners of the structure now used as an apartment building have owned and operated lots 207 and 209 as one parcel for at least 45 years, and possibly as long as 100 years.

Additionally, Section 304 of the Zoning Regulations offers further guidance on the Petition for Variance as well as the Petition for Special Hearing. Section 304 permits the erection of a single family dwelling on an undersized lot provided the following requirements are met:

> A. That such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to adoption of these Regulations; and
>
> B. That all other requirements of the height and area regulations are complied with; and
>
> C. That the owner of the lot does not own sufficient adjoining land to conform substantially to the width and area requirements.

In the instant case, it appears that Section 304.A has been met. Section 304.B is subject to question. There has not been any testimony offered that all other requirements of the height and area regulations are being complied with. In particular, there has been no testimony offered regarding whether

Section 1B01.2.C1 or 2 regarding distances between separate buildings and distances related to windows, respectively, have been met. The Protestants hesitate to concede a point of law where the record does not reflect that the Petitioner has addressed a requirement of the Zoning Regulations.

Section 304.C has clearly not been met. The Singers, prior to the sale of lot 207 to the Homestead Group, did own substantial adjoining land which would permit substantial conformance to the width and area requirements of the Zoning Regulations. RM-15 and RM-16 of the Zoning Policy Manual provide guidance as to the requirements of Section 304 and 307. The six year rule described in RM-16, when applied to the current case, clearly shows that Section 304.C has not been met. Therefore, a variance is required pursuant to Section 307 from the lot width requirements of Section 1B02.3C1.

The policy of the Zoning Regulations as supported by Sections 104, 1B02.3 and 304, is to provide a land owner with a reasonable use of its property. These sections acknowledge the historical and legal changes that may adversely affect the productive use of land. However, public policy does not support an unnecessary extension of a nonconforming use and overcrowding of land with detrimental impacts upon the character and ambiance of an Historic District merely for the economic gain of the land owner. The nonconforming apartment use, if approved, will provide the land owner with a more than adequate and reasonable

use of its land consistent with the spirit and intent of the Zoning Regulations and the character and ambiance of Historic Glyndon.

CONCLUSIONS

The Singers and the Petitioners have created a situation where someone must lose. The Petitioners want the Zoning Commissioner to ignore the self-inflicted nature of their hardship and provide the relief requested. However, to do so would require that the Zoning Commissioner also ignore the substantial harm to the welfare of the Glyndon community. As all of the Protestants who testified indicated, the relief, if granted, would dramatically impact the character and ambiance of their historic community. The erection of a single family dwelling on lot 207 will overcrowd the land, conflict with the character and ambiance of Central Avenue and dramatically reduce the open space which has provided a proper setting for the imposing apartment structure. It is unfair to the Glyndon community and inconsistent with the spirit and intent of the Baltimore County Zoning Regulations and the law governing nonconforming uses to grant the relief requested. The Singers and the Petitioners have created a hardship and are now before you asking that that hardship be relieved from their shoulders and placed on the backs of the residents of Historic Glyndon. Requiring the neighborhood to bear the burden of the Petitioners' lack of diligence would not be an act of justice. It will only reinforce the irresponsible behavior of the Singers and the Petitioners. If any relief is to be granted, a nonconforming

apartment use on lots 207 and 209 should be granted and the Singers and Petitioners should be forced to solve their own problems.

Respectfully submitted,

G. Scott Barhight

GSB:sb
cc: Hewett Steele, Jr., Esquire
Charles B. Heyman, Esquire
Eleanor J. Lipsitz, Esquire

IN THE MATTER OF THE APPLICATION OF THE HOMESTEAD GROUP, LTD. AND RONALD F. JONES, ET UX FOR A SPECIAL HEARING AND VARIANCE ON PROPERTY LOCATED ON THE NORTH-EAST SIDE OF CENTRAL AVENUE, 60 FEET SOUTHEAST OF GLYNDON AVENUE (207 AND 209 CENTRAL AVENUE, RESPECTIVELY) 4TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 89-16-SPHA AND 89-396-SPHA

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

OPINION

These two cases 89-396-SPHA, Ronald F. Jones, et ux, and 89-16-SPHA, The Homestead Group, Ltd., come before this Board on appeal from a ruling of the Zoning Commissioner denying in part and granting in part said Petitions. These two cases consumed some five days of testimony and evidence.

It is important at the outset to establish just what issues the Board is confronted with. In 89-396-SPHA, the matter is whether or not the structure at 209 Central Avenue is in fact a nonconforming use for six apartments, a variance to permit side yard setbacks of 12 feet zero inches and 12 feet six inches in lieu of the required 20 foot setback for one side and 40 feet or 50 feet the sum of both sides and to permit a total lot width of 65 feet in lieu of the required 90 feet. In case 89-16-SPHA, the Petition is for the Board to find that lot 207 Central Avenue is totally separate from Lot 209 and is unencumbered by any use of 209 and to permit the erection of a building on a 65 foot lot (207) in lieu of the 70 foot lot width in a D.R.3.5 zone. The proposed building to be totally within the D.R.3.5 zoned area.

Counsel for the Petitioner in 89-396-SPHA made Motion to dismiss Protestants' appeal claiming that the required notice period before the Zoning Commissioner was not complied with and

therefore this Board lacks jurisdiction to hear the case. The Board denied this Motion and assumed jurisdiction.

In light of the fact that much testimony and evidence to be received would be pertinent to both cases, it was decided to hear the cases in combination. At the conclusion of the second witness it became obvious that it was impractical to try these as combined cases and the decision was made to bifurcate the cases and hear case 89-396-SPHA first with the understanding that the testimony and evidence received from the first two witnesses could be applied to both cases.

Much of the testimony received in these five days of hearing was cumulative, was not on point, was alleged testimony, and was to some degree hearsay evidence which in an administrative hearing is permitted. The testimony of each witness will not be detailed in this opinion but let the record speak for itself.

A very brief encapsulation of each witness who testified and their position on the matter before the Board will be stated. Ronald Jones purchased the property known as 209 Central Avenue in June of 1989. It was his understanding that this was a six apartment building with 27 rooms and it was his intention to continue this use. Mr. Jones was aware that in March of 1988 the adjoining vacant lot known as 207 Central Avenue had been sold. Zelma Ensor, a real estate broker, testified as to her familiarity with the property at 209, testified that it had always been an apartment use, that it constit[illegible]d no detriment to the health and welfare of the neighborhood, and that the house planned for construction on 207 would be nonobjectionable and the plans had

been accepted by the Landmarks Commission. Aileen Singer testified that she owned Lots 209 and 207 Central Avenue since 1978. She testified as to the use of the property as six apartments, two on each floor, and that she sold it to Mr. Jones as a six apartment use. She alleged that she inquired from Baltimore County as to the feasibility to the separate sale of Lot 207 and received assurances that there was no problem. Cookie Stone, a real estate agent, testified that she handled the sale of 209 Central Avenue.

On July 24, 1990, testimony was taken from Mrs. Sue Susimehl who is 88 years old and resides in California. All proper parties were present for this telephone testimony. Mrs. Susimehl testified that she purchased the two lots in 1941 and that the building on 209 was in existence but was not converted to apartments. Beginning in 1941, she and her husband converted the building to six apartments complete with individual and separate electric me[illegible]rs, kitchens, baths, etc. Her husband, on electrical contractor, did most of the work and the plumbing work was done by a man named Zepp. As this conversion project was undertaken during World War II, plumbing and electrical supplies were scarce. It was Mrs. Susimehl's testimony that because of this scarcity, this conversion took several years but was completed in 1945. It was interesting to the Board to note that this 88 year old lady not only remembered the six apartments but the name of each renter in each apartment. She testified that she sold the property to a Mr. Redder in 1966. She testified that there were six parking spaces along the side of the house adjacent to 207 and that while 207 was used as a driveway it was just a dirt driveway. This concluded

Mrs. Susimehl's testimony. This same day testimony was received from James E. Redder, a long time Glyndon resident. He testified that he purchased 209 and 207 in 1966 for an investment only and that he never lived there but that its use at that time was identical to what it was in 1945, six apartments. He testified that he sold the two lots in 1968 and that no further improvements had been made to the property. Testimony was then taken from Thaddeus Hense, an attorney who specializes in title searches. He testified that he did a title search of 209 as far back as 1926 and that 209 and 207 were always two separate recorded lots. Cookie Stone was recalled as the real estate agent involved int he sale and testified that in 1970, she listed the property as two parcels and another agent sold them and that she checked with Baltimore County to see if the parcels could be separated and was so assured. Colleen Thompson Chance, another real estate agent, testified that she listed the properties in December of 1987 and was assured by Baltimore County that they were two separate parcels. This concluded Petitioner's case in 89-396-SPHA. Protestants presented Carol Ann Wildesen, the real estate agent involved in the sale of 207. She testified that she checked the Land Records to see if these were separate parcels and found this to be true. It was her testimony that there was no question that this was a separate lot entitled to all the privileges attached thereto. Ronald Jones was recalled and testified that when he purchased 209, 207 had already been sold. Mark Laken, President of the Glyndon Community Association, entered their opposition to the granting of these two Petitions. Eleanor Taylor, a member of Historic Glyndon, Inc.,

read into the record their position in opposition to the granting of these Petitions. She further testified that she was acquainted with the property at 209 which prior to 1940 was first a boarding house and then converted to multiple apartments. Nevitt Steele who lives at 211 Central Avenue, next door to 209, testified as to his opposition to the two Petitions. It was his contention that 207 had always been the parking lot for 209 and that if this property is bifurcated from 209 that the six unit apartment building would no longer be a nonconforming use. This concluded Protestants case in 89-396-SPHA. Testimony was then received in case 89-16-SPHA, The Homestead Group. The first witness from the Homestead Group was Audrey Fox, President of the Homestead Group - Builders. She testified that their business was the design of homes to suit specific sites and specific areas. She testified that the proposed home was approved by the Landmarks Comission and of their agreement to relocate the driveway from 207 to 209. She entered the plans for the proposed building and testified that the proposed house met with approval of both the Landmarks Comission and the National Historic Register. William F. Kirwin, a land planner, testified that this lot is 65 feet wide by some 190 feet deep and that the proposed house meets all the side yard requirements and the only variance needed is the lot width in D.R.3.5 requiring an area variance from 70 feet to the 65 feet as the lot exists. Aileen Singer was then called in this case. She testified that the two lots had always been separate. She further testified that she inquired from Baltimore County as to whether a residence could be built on 207 and as far as she knew there were no problems.

Colleen T. Chance, the real estate agent, testified she listed 207 and 209 Central Avenue as two listings and was assured by Baltimore County that these were separate and buildable lots. Cookie Stone, a real estate agent actually involved in the sale, testified that she sold 207 to the Homestead Group as a buildable lot. This was the last witness for the Petitioner. Protestants presented Eleanor Taylor who testified as a member of the Board of Historic Glyndon and indicated their opposition to the variance as to lot width. She testified that Glyndon Park was founded in 1887 as a vacation resort and that there were large open areas in front of these buildings. In addition to the Board's opposition, she testified to her personal opposition since the proposed house would severely reduce t[illegible] open space now existing on these two lots. Charles Wells, a member of the Board of the Glyndon Community Association, voiced their objection to the variance and testified that it would change the character of the neighborhood. Nevitt Steele, the neighbor of 209 Central Avenue, testified to his opposition to the granting of the variance. He testified it was his opinion that 209 was already in violation and that to grant the variance would put both lots in violation. He also testified that he attended the April, 1988 Land Preservation Meeting, looked at the plans for 207 and voiced no objection at that time. This concluded Protestants testimony in case 89-16-SPHA. The Board will once again reiterate that the aforegoing encapsulation is in no way intended to portray the depth and detail of all the testimony which is a part of the case record.

The Board in this Opinion will first address case 89-396-SPHA (Ronald F. Jones, et ux). From the plethora of testimony and evidence and allegations received some facts can be determined. It was uncontested that somewhere near the turn of the century a building of significant size was erected at 209 Central Avenue. There was uncontradicted testimony that this building was used at that time as a weekend country vacation spot for city residents. In 1941, Mr. and Mrs. Susimehl purchased the two lots and began the conversion of the building on 209 to six apartments. There was testimony that this six apartment use has continued up until the purchase of the site by Mr. Jones. Mrs. Susimehl testified that the lot at 207 did in fact contain an unpaved dirt driveway that was used for automobile access to 209. There was also testimony that parking for several vehicles was provided at the rear of 209. The Protestants claim that the use of this dirt driveway on 207 is vital to the noncontorming use of the property at 209. The Board will not find this so. While it is true that up until Mr. Jones's purchase the two lots were always conveyed as one sale but were always designated as two separate parcels, certainly the owners of an improved and an unimproved lot should be allowed the use of the unimproved lot in any incidental way they see fit. If 207 had been used as a garden to provide food for 209 would this then mean that 207 could never be anything but a garden as long as the structure on 209 existed. The use of the dirt driveway was a convenience to the owner of both lots and was an incidental use to the owner since he owned both lots. To rule that this incidental use by an owner perpetuates that use forever in conjunction with the legal

nonconforming use would appear to this Board to be arbitrary. The Board will further note in this Opinion that when Mr. Jones purchased the property at 209, he applied for and was granted the right to construct a driveway on 209. Mr. Steele, the neighbor at 211, complained because the driveway was to be constructed adjacent to his lot and that parking was to be provided in front of the structure on 209 and, as a result thereof, Mr. Jones relocated the driveway to the other side of the lot and provided the parking in the rear of the lot. There was testimony that during some of the time Aileen Singer owned the site she did not rent one of the first floor apartments but merely opened the connecting door between the two apartments and used them for a time for her own personal use. The Board will note that absolutely no changes were made in this nonrented apartment. It still retained its own meter system, its own kitchen, and its own bathroom. Section 104.1 provides that if a nonconforming use is abandoned or discontinued for a period of one year the right to continue or resume such nonconforming use shall terminate. Since no physical changes whatsoever were made in this nonrented apartment there is no evidence of intent to abandon and since there was no abandonment of this use the right to resume that use must exist.

After consideration of all the testimony and evidence and for all of the above reasons, the Board is of the opinion that the nonconforming use of the property at 209 Central Avenue as a six apartment dwelling should be affirmed and will so order. As to the requested variances on the property at 209 Central Avenue, the Board will note that the structure was built many many years prior

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

RONALD F. JONES and : Case No. 89-396-SPHA
SUZANNE LUSSIER-JONES, : NE/S Central Avenue, 125 SE
Appellants : Glyndon Avenue

APPELLANTS' BRIEF

Statement of Facts

The Appellants, Ronald F. Jones and Suzanne Lussier-Jones (hereinafter referred to as "Jones"), acquired title to property known as 209 Central Avenue, Glyndon, Maryland, on June 24, 1988. The property consists of a lot containing 25,545 square feet of land, more or less, and an existing structure, located in D.R. 2 and D.R. 3.5 zones. (See plats accompanying Appellants' petitions filed herein below). The structure has existed since before 1898. The building located at 209 Central Avenue has been operated as a boarding house and/or apartment house since, at least, the late 1800's.

209 Central Avenue and the adjacent lot known as 207 Central Avenue have been conveyed in one instrument, but as two separate lots, for at least sixty years. In March, 1988, the vacant lot known as 207 Central Avenue was sold by Aileen Singer (hereinafter referred to as "Singer") to the Homestead Group (hereinafter referred to as "Homestead"). 209 Central Avenue was

CCH MJ 22 JUN 16

subsequently conveyed by Singer to Jones by deed dated June 24, 1988.

(The Zoning Commissioner found that 207 and 209 are and have been two separate lots. Appellants do not dispute that part of the commissioner's decision, but adopt that finding.)

Prior to conveying the vacant lot at 207 Central Avenue to Homestead, Singer relocated a driveway and parking lot which from time to time had been, and was then, situated on 207 Central Avenue and had been used for access to 209 Central Avenue and for parking. Singer obtained a building permit to construct the driveway and parking lot on 209 Central Avenue. (Photographs in evidence show that the construction of the driveway was accomplished by putting down a stone surface. No curb cut was necessary.) She complied with the recommendations and/or requests of the Baltimore County Landmarks Preservation Commission.

Appellants received Citation No. 89-038, Citation For Civil Zoning Violation, dated August 10, 1988, citing a violation of section 101; 402; 1B01.1A, the alleged violation being "use of property zoned D.R. 3.5 to commit the following:

> Apartment building located on residential property that lacks required lot area and minimum dimensional (width/side yard) standards."

At trial of that matter, the County Solicitor agreed to enter a "stet" provided Jones filed the appropriate petitions with the Zoning Commissioner. Jones filed their petition for special hearing and petition for variance. Hearings thereon were held before Zoning Commissioner J. Robert Haines. This appeal is taken from the decision of the Zoning Commissioner denying Jones' petition for special hearing and petition for variance.

Questions Presented

1. Was the hearing date scheduled by the Zoning Commissioner advertised for fifteen (15) days prior thereto so as to comply with the requisite notice provisions of the zoning regulations to properly bring the matter before the Zoning Commissioner and, subsequently, properly before this Board?

2. Does the operation of a six unit apartment building at 209 Central Avenue, Glyndon, Maryland qualify as a nonconforming use?

3. Should Appellants' request for a variance from section 402.1 of the Baltimore County Zoning Code to permit side yard setback of 12.0 feet and 12.6 feet in lieu of required 20 feet for one side and 40 feet and/or 50 feet for the sum of both side yard setbacks and to permit a lot width of 65 feet in lieu

of the required 90 feet or greater as may be determined be granted?

Argument

1. The hearing date scheduled by the Zoning Commissioner was not advertised for fifteen (15) days prior thereto and hence, did not comply with the requisite notice provisions of the zoning regulations. This matter was not properly before the Zoning Commissioner and, subsequently, this Board is without authority to entertain the matter.

Hearing of Appellants' two petitions was originally scheduled before the Zoning Commissioner for April 4, 1989. Prior to the commencement of that scheduled hearing, Appellants argued that the scheduled hearing was not in compliance with the provisions of Sec. 500.7 B.C.Z.R. which provides, in pertinent part:

> "the Zoning Commissioner shall schedule a public hearing for a date not less than 30 days after the petition is accepted for filing". (Emphasis supplied.)

The Zoning Commissioner, noting that the date on the notification that the Jones' petitions were accepted for filing was March 8, 1989, agreed that recited provision had not been met. At that time, April 4, 1989, the Commissioner rescheduled the hearing on Appellants' petitions for April 17, 1989. The property at 209 Central Avenue was then posted with a notice of the new, April 17, 1989 hearing date. Appellants contended then, and continue to contend, that the April 17, 1989 date and posting of the property with notice of that date did not conform with the provision of Sec. 500.7 B.C.Z.R. which provides:

> If the petition related to a specific property, notice of the time and place of the hearing shall be conspicuously posted on the property for a period of at least 15 days before the time of the hearing. (Emphasis supplied.)

Clearly posting the property at 209 Central Avenue on April 4, 1989 with notice of an April 17, 1989 hearing date does not comply with the B.C.Z.R. provision that such notice be posted for a "period of at least 15 days before the time of the hearing". Assuming the notice of the April 17, 1989 was posted on the same date that the Commissioner scheduled that date, i.e. at April 4, 1989, there was not 15 days notice. The hearing on April 17, 1989 was not properly before the Commissioner.

This matter, not properly before the Zoning Commissioner, is, therefore, not within the jurisdiction of this Board. See Cassidy et al. v. County Board of Appeals of Baltimore County et al., 218 Md. 418, 146 A2d 896 (1958). In that case, the Court of Appeals of Maryland reiterated the clear legal principle that "the failure of an administrative official or board to give a proper notice of a hearing, required by law, is fatal to the jurisdiction of the official or the board" (146 A2d 896, at 898). In Cassidy, as here, the issue evolved from hearing before the Zoning Commissioner of Baltimore County, and the subsequent hearing on appeal before the Board of Appeals, both administrative proceedings. (Appellant's reserved this issue in their memorandum to the Commissioner and raised it again prior to the commencement of the hearing before this Board. They have in no way waived the 15 days notice requirement of Sec. 500.7.) The Zoning Commissioner had no jurisdiction to hear

Appellants' petitions on April 17, 1989 because of the failure to meet the requirements of law for notice of a hearing for a "period of at least 15 days before the time of the hearing". (B.C.Z.R. 500.7) The administrative hearing before the Zoning Commissioner was improper. This Board is therefore without jurisdiction in this matter.

2. The operation of a six unit apartment building at 209 Central Avenue, Glyndon, Maryland is a nonconforming use.

The determination of a nonconforming is essentially two part. First, there must be a finding that a lawful use existed prior to the adoption of zoning regulations. (See Section 101, B.C.Z.R., 1955; Bill No. 18, 1976) Second, it must be shown that that use has continued without interruption or change. (See Section 104, B.C.Z.R., 1955, Bill 18, 1976) Also see McKemy v. Baltimore County, Md., 39 A.2d. 257, 385 A.2d 96 (1978).

January 2, 1945 marks the inception of the Baltimore County zoning regulations. The County Commissioners then adopted a comprehensive set of zoning regulations. McKemy supra, at 98; Kahl v. Cons. Gas El. Lt. & Pwr. Co., 191 Md. 249, 254, 60 A.2d 754 (1948); Calhoun v. County Bd. of Appeals, 262 Md. 265 277 A.2d 589 (1971). Section XI, 1945, B.C.Z.R. first provided for nonconforming uses. On March 30, 1955, the County Commissioners adopted a new set of comprehensive zoning regulations. See McKemy. Section 104 of those regulations dealt with nonconforming uses. Currently, Section 104.1, as adopted on March 15, 1976 by Bill No. 18-76, of the Baltimore County Zoning

Regulations provides for nonconforming uses. In pertinent part, Section 104.1 provides:

> "A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these Regulations; provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, . . . the right to continue or resume such nonconforming use shall terminate. . . ."

The evidence herein patently shows that 209 Central Avenue has been, and continues to be, operated as a multi-family (six unit apartment) dwelling since prior to the adoption of the original Baltimore County Zoning Regulations in January, 1945, without any change from that usage, and without any abandonment or discontinuance. The testimony of Anita Susemihl, Ronald Jones, James Reter, Zelma Ensor, Aileen Singer, Cookie Stone and Colleen Thompson Chance establish that 209 Central Avenue has been a boarding house and/or six unit apartment house for as long as anyone can remember, since, perhaps the 1890's; it has been a six unit apartment building since prior to January, 1945. None of Respondents' witnesses disputed Appellants' evidence that 209 Central Avenue has been operated as a boarding house or multi-family apartment house since well before the inception of zoning regulation for Baltimore County, hence, Appellants submit, the question of the existence of a legal nonconforming use is undisputed and not in issue.

Appellants produced evidence of the existence of six units at 209 Central Avenue since the early 1940's. Anita Susemihl testified that, in 1941, she and Louis Susemihl, her

late husband, acquired the property (then a boarding house) and converted it to six apartments. (Appellants' introduced photographs taken by Susemihl of 209 Central Avenue in 1941.) Mr. Susemihl did much of the conversion work himself. Mrs. Susemihl is not aware of any requirements for permits for the conversion nor does she remember any inspections being made by any county personnel during the time of the conversion. She was able to recall the names of many of the tenants. She stated that the conversion was undertaken shortly after she and her husband acquired the property and and completed before January, 1945. (She was not certain when the outside and balcony trim were finished but she stated that everything was completed by 1946.) Mrs. Susemihl was able to name several of the then tenants. She further stated that parking was against the side of the building closest to 207 Central Avenue. The driveway was unpaved. 207 Central Avenue was well wooded with many trees and underbrush. Mrs. Susemihl testified that she could think of no other use for the 27 room structure except the continuation of the six unit apartments and was at a loss to understand why the six units were being questioned now.

James Reter testified to the continuance of the six unit apartment building usage from the time of his childhood (he is in his sixties now) to the present time. His family bought a grocery store in Glyndon in 1945 and operated it for years. He remembers delivering grocery orders to various units in 209 in his youth, both in the company of his father and later on his own. He is not aware of any construction by the Susemihls during 1945 or thereafter. He has lived in the area for many years and

is familiar with the property. He owned both 207 and 209 Central Avenue from 1966 until 1968. To his knowledge, the building has contained six apartments since at least 1945. Mr. Reter testified that he had planned to construct a separate resident on 207 Central Avenue and knew of no impediment to that development nor of any potential problem with regard to the operation of 209 Central Avenue as a six unit apartment building. A dirt driveway serviced the properties. The parking area was unpaved.

Telma Ensor, an area resident and real estate broker, testified that she is and has been familiar with the Glyndon area. The apartment building at 209 Central Avenue has been there for as long as she can remember, at least 50 years. Her wedding reception in 1941 was held on Central Avenue. Her first child was born in 1946 while Mrs. Ensor lived on Central Avenue. Mrs. Ensor has been in 209 Central Avenue as early as the 1940's. It has always been a three story building with a center hall and with an apartment unit on either side of the hall on each floor. She further stated that the property and building was an asset to the community, filled a need and had no negative effect on the community.

Aileen Singer acquired the both 207 and 209 Central Avenue in 1978. She sold 207 to Homestead in March, 1988 and 209 to Jones in June, 1988. 209 Central Avenue contained six apartments, two on each of three floors. During her ownership, each of the six units had its separate gas meter, bath and kitchen. There was a time that she occupied both units on the first floor. That was accomplished by merely opening a door

between the units. No physical or structural changes were made. The first floor still had two gas meters, two bath and kitchen facilities. This did not, Appellants submit, constitute an abandonment or discontinuance of the nonconforming use. See Feldstein v. LaVale Zoning Board, 227 A.2d 713, 246 Md.204 (1967). At most this was a temporary abatement of the six unit use to five units. The maintenance of two separate facilities, temporarily combined, supports a finding of a temporary abatement. There is no clear indication of intention, action or inaction which is mandated to extinguish a nonconforming use. See Feldstein, supra, at 734.

In 1978 Mrs. Singer made inquiries at the Baltimore County Zoning Office concerning 207 and 209 Central Avenue when she considered building a home on 207 Central. She was informed that such development would pose no problem. She made inquiries twice more prior to the sale of the lot at 207 Central Avenue. She learned of no necessity for both lots to remain together. Prior to her relocating the driveway and parking from 207 to 209, Mrs. Singer obtained a permit from Baltimore County and approval of Landmark Preservation. At no time during this process was there an interdiction in connection with the relocation of the driveway along the property line between 207 and 209 or relocation of the parking to the rear of 209 and behind the building. In fact, the parking area was located behind the structure in order to accommodate the neighbouring home owners, Nevett and Betsy Steele, who objected to parking on the front of the lot at 209 Central Avenue.

Colleen Thompson Chance, a real estate agent who listed both properties for Mrs. Singer, testified that she made inquiries at the Baltimore County Zoning Office concerning the separation of 207 and 209 Central Avenue and was never told that the lots could not be separate and independent. She made inquiries about the continued use of 209 Central Avenue as a six unit apartment building and concluded that, at worst, a special hearing to recognize the non-conforming use would be necessary. She did not interpret the correspondence presented by Respondents between the Steeles and various community and county groups as anything more than Steeles asserting their opinions. (Nevett Steele, on cross examination by Appellants, could not point to any language which said that the the six units at 209 Central Avenue was illegal.) She testified that she would not ha listed 209 as six units if she had firm information to the contrary. Although Nevett and Betsy Steele had indicated their unhappiness with the separation of 207 from 209 Central Avenue, Chance felt that they were unhappy neighbors. She testified that Mr. Steele informed her that he would do anything possible to prevent the separation sales of the two lots and that she interpreted the Steeles' subsequent actions as their efforts to advance their stated crusade. To her, the Steeles seemed to be casting around for any reason to prevent the separate sales to Homestead and Jones and the planned development of 207 Central Avenue and raisnd new objections each time a prior matter was resolved. She gave little credence to the Steeles' varying demands and positions. Indeed, Mr. Steele himself

testified that he did not "know the strength of his convictions" with regard to the applicable zoning for 209 Central Avenue.

Cookie Stone, the selling agent for 209 Central Avenue testified that she concurred Chance's interpretation of the zoning situation for 209 Central Avenue. She had had a listing earlier for 209 and was aware that it had been six units. She foresaw no problem other than a possible need to show the nonconforming use at a hearing.

Respondents introduced affidavits which they assert show the number of units contained in 209 Central Avenue. None of the affidavits were procured by Appellants or at their direction or by Respondents. There is no evidence that Appellants received the affidavits prior to settlement on 209 Central Avenue. In one instance, the existence of "four or more" units is mentioned, in another, six units. This does not contradict Appellants' position that there have been and are six units. While the remaining affidavits suggest the existence of four or five units, the preponderance of the evidence supports the continued use of the property as a six unit apartment building since prior to the inception of the Baltimore County Zoning Regulations. Mrs. Chance was notified that the nonconforming use could not be obtained by affidavit, but should properly be addressed by appropriate proceedings and hearings before the Zoning Commissioner. She did not believe that the six units at 209 Central Avenue was not a permitted use.

Respondents did not controvert the existence of the boarding house and/or apartment building at 209 Central Avenue before the adoption of the Baltimore County Zoning Regulations, nor did they successfully controvert the continued existence of six units at 209 Central Avenue during the critical period.

Respondents attempted to educe evidence to support their contention that the use of 209 Central Avenue has changed in such a manner to terminate the prior nonconforming use. Appellants urge that the evidence shows that the only changes in the use and operation of 209 Central Avenue since at least 1945 has been the relocation of the driveway and parking lot, from 207 Central Avenue to 209 Central Avenue. Further, applying the guidelines set out in McKemy v. Baltimore County, Maryland, 385 A.2d 96, 39 Md. App. 257 (1978), this is not a showing of any change of the nonconforming use which would terminate the right to continue the nonconforming, six unit apartment use already existing at 209 Central Avenue, since, at least, January 2, 1945.

McKemy, supra, at 104, clearly set forth the criteria to be applied in determining whether or not there has been a change in the use of the property which would serve to break the continued nature of the nonconforming use. These are:

> "(1) to what extent does the current use of these lots reflect the nature and purpose of the original non-conforming use;
> (2) is the current use merely a different manner of utilizing the original non-conforming use or does it constitute a use different in character, nature, and kind;
> (3) does the current use have a substantially different effect upon the neighborhood;

> (4) is the current use a 'drastic enlargement or extension' of the original non-conforming use."

Appellants presented large photographs showing 209 Central Avenue as it exists today and a small photograph showing the property when acquired by the Susemihls in 1941. A driveway runs parallel to and along the property line between 207 and 209 Central Avenue. No parking is visible from Central Avenue. The parking lot for 209 Central Avenue is located to the rear of the structure located thereon. The photographs show no change in the structure other than cosmetic improvements.

Evidence shows that the use of 209 Central Avenue as a multi-family dwelling has "changed" since the adoption of zoning regulations, if at all, only in the relocation of the driveway and parking lot on 209 Central Avenue. At various times, testimony indicates the driveway on 207 served both 207 and 209; at various times parking for 209 was on 209 and/or 207. The nonconforming use operating at 209 Central Avenue is the same six unit apartment building that has existed, and been in operation in the same manner, over the period of years predating the enactment of the Baltimore County Zoning Regulations to present. The location of the driveway and parking lot on 209 Central Avenue in no way changes the continuous operation of the six unit apartment building. It does not, in any way, reflect a different nature and purpose of use than existed prior to 1945. The driveway and parking lot are a part of the operation of the six units at 209 Central Avenue, not a new or different usage of the property. Indeed, the testimony of Mrs. Susemihl that 209 was used for parking. The drive way and parking represent no

difference in the basic use of the property. There is nothing about 209 Central Avenue to reflect anything but the nature and purpose of the original nonconforming use.

The current use reflects totally the nature and purpose of the original nonconforming use, a six unit dwelling. The property, as always, is being used as a six unit multi-family dwelling. The fact that the parking for the residents of 209 Central Avenue is now totally on that property and behind the building does not in any way reflect a new usage of the property. Parking and access are normal and established use associated with residents. This does not constitute a usage different in character, nature and kind than that which has long existed, i.e., a six unit multi-family dwelling. Usage has not changed from apartments to office, apartments to commercial or apartments to anything else.

The current use does not have a substantially different effect upon the neighborhood. The density of 209 Central Avenue has not changed since prior to zoning. The building has not changed in size, shape or character since the early 1940's. Its operation as a six unit multi-family dwelling has not changed. The location of the parking lot and driveway on the lot has not substantially changed the effect of the operation of 209 Central Avenue on the community. The operation of the apartment building had not undergone any substantial change since 1945, supporting Appellants position. The parking and driveway are not, Appellants reiterate, a change in the original use. The parking is now to the rear of the building on 209 Central Avenue. Parked vehicles are not visible from Central Avenue by

virtue of the very location of the lot behind the structure. If anything, this effects the community beneficially by limiting the visibility of parked vehicles. The location of both the driveway and the parking lot were approved by the Baltimore County Landmarks Preservation Commission and the work was done in compliance with a permit from Baltimore County. There was no showing of opposition by the community to the application or issuance of the permit.

Opposition to the continued nonconforming use and the granting of the requested variances is best represented by the position of the Glyndon Community Association, Inc, letter dated October 12, 1990 and introduced by Respondents. That letter states, in part:

> "[Glyndon residents] "appreciate the historic flavor of the community and are committed to maintaining and improving the beautiful Victorian houses and large lots on which they are situated. . . .[The Board] has voted unanimously to oppose this appeal until such time as the contiguous lot [207] can once again be used to support the parking lot and driveway requirements for a six unit facility."

Thus, the opposition is not to the nonconforming use of 209 Central Avenue, not to the "maintaining and improving the beautiful Victorian houses", but rather to the separate use of the lot at 207 Central Avenue. The community may well and properly object to what they perceive as the loss of open space at 207 Central Avenue, however the instant appeal of Jones is not the appropriate arena. There is no real showing of community resistance to the continued nonconforming use of 209, rather there is evidence of community dissatisfaction with the loss of the undeveloped lot. The opposition to development of 207 should

consideration in this appeal from decisions affecting

the current use of the property is

of the original usage. It

ough is permissible so

Phillips v.

4.2d 410

to the existing Zoning Regulations and that to deny the side yard variances or the 65 foot lot width in lieu of the required 70 feet would create extreme hardship since the only way this can be accomplished would be to tear the building down. The Board is therefore of the opinion that the requested variances should be granted and will so order.

The Board will next address in this Opinion case 89-16-SPHA (The Homestead Group, Ltd.). The Petition in 89-16-SPHA asks two things, that lot 207 be found an entity totally separate from lot 209 and be unencumbered by any use of 209 and to permit the erection of a building on a 65 foot lot (207) in lieu of the required 70 feet in the D.R.3.5 zoned area of the lot. After consideration of all the testimony and evidence and especially in light of the Board's finding in case 89-396-SPHA that the operation of 209 is a legal nonconforming use and that the two lots have always been separate deeded parcels, the Board will find as a fact that 207 is not encumbered by any use of 209 and is a buildable lot contingent on the granting of a five foot variance from the required 70 foot lot width to 65 feet. The Board of Appeals under Section 307.1 is given the power to grant an area variance where strict compliance with the Zoning Regulations would result in practical difficulty or unreasonable hardship. To deny this five foot variance would transfer a sizeable lot from a usable lot to an unusable lot and in the Board's opinion would result in unreasonable hardship and will therefore grant the requested variance.

ORDER

It is therefore this 12th day of April, 1991 by the County Board of Appeals of Baltimore County with reference to case 89-396-SPHA (Ronald F. Jones) ORDERED that the structure at 209 Central Avenue is in fact a nonconforming use for six apartments, that the variance to permit a side yard setback of 12 feet zero inches and 12 feet six inches in lieu of the required 20 foot setback for one side and 40 or 50 feet the sum of both sides and to permit a total lot width of 65 feet in lieu of the required 90 feet be and the same is hereby GRANTED.

IT IS FURTHER ORDERED that with reference to case 89-16-SPHA (The Homestead Group, Ltd.) that the property known as 207 Central Avenue be GRANTED the variance to permit construction on a 65 foot lot in lieu of the required 70 feet and that the property at 207 be declared an unencumbered property separate from 209 with the following restriction:

1) approval be obtained from the Landmarks Commission as to the format and style of the residence to be constructed so that it is in conformity to the community and not a detriment to the same.

Any appeal from this decision must be made in accordance with Rules B-1 through B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman

Harry E. Buchheister, Jr.
Harry E. Buchheister, Jr.

IN THE MATTER OF THE APPLICATION OF RONALD F. JONES, ET UX FOR A SPECIAL HEARING AND VARIANCE ON PROPERTY LOCATED ON THE NORTHEAST SIDE OF CENTRAL AVENUE, 50 FEET SOUTHEAST OF GLYNDON AVENUE (209 CENTRAL AVENUE) 4TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 89-396-SPHA

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

DISSENTING OPINION

This case comes before the Board as a companion case of 89-16-SPHA (The Homestead Group, Ltd.). It is an appeal from an adverse decision of the Zoning Commissioner of Baltimore County. The Petitioner requests the approval of a multi-family apartment dwelling at 209 Central Avenue as a legal nonconforming use or as an alternative approve the existing improvements and lot pursuant to Baltimore County Zoning Regulations (BCZR) that apply to conversion of dwellings to apartment use. Also requested are several variances.

I agree with the Chairman that much of the testimony was not on point and was alleged testimony, but would add that much testimony was supported to a high degree by lapsed memories and poor judgment. I would disagree with the Chairman as to what anyone believed in this case. It is difficult for me to figure out what Mr. Jones and Mrs. Singer had in mind after being given notice of zoning problems from Mr. Steele, a neighbor and attorney.

As the Chairman did not detail the testimony, I also will let the record speak for itself.

A nonconforming use must be proved by the Petitioner. The County does not have to prove the nonconforming use does not exist.

A nonconforming use can be extinguished if there is a change

in the use or if the use stops for at least one year. Nonconforming uses are inherently incompatible with uses permitted in a zone. Boyce v. Sembly, 25 Md. App. 43. Nonconforming uses pose a threat to the success of zoning, limit the effectiveness of land controls, imperil the success of community plans and injure property values. The purpose of restrictions on nonconforming uses is to achieve the ultimate elimination of such uses through economic attrition and physical obsolescence. County Council of Prince George's County v. E.L. Gardner, Inc., 293 Md. 259.

There was testimony as to the number of apartments in the building at 209 Central Avenue, that number being four, five or six apartments at various times.

The Zoning Commissioner of Baltimore County did not have testimony from Mrs. Susemihl who was the owner of the property when it was converted to the apartments. Mrs. Susemihl testified from the West Coast over the telephone. Mrs. Susemihl, who owned Lots 207 and 209 during the 1940's, could not conclusively testify that six apartments existed prior to January 2, 1945. She stated that the conversion to apartments was not completed until 1946 or 1947. Mrs. Susemihl also stated that the driveway and parking area for the apartment building were situated on Lot 207.

From additional testimony, it is my opinion that if I were to take a photograph of this use, prior to the sale of 207 Central Avenue, I would have a photograph of a large apartment building to one side of a 130' wide lot known as 209 Central Avenue, and on the other side of this 130' wide lot would be open space and a driveway to a parking pad covered with crusher run, known as 207 Central

Avenue.

In June of 1988, Ronald F. Jones purchased 209 Central Avenue from Mrs. Singer. If we now take another photograph of the use, we would see a very large apartment building with a driveway to the rear of the apartment building and an unimproved lot on the other 65' lot.

Baltimore County Zoning Regulations set forth the requirement for nonconforming uses. Section 104.1 states in part:

> A nonconforming use may continue except as otherwise specifically provided in these regulations provided that upon any change from such nonconforming use to any other use whatsoever, . . . , the right to continue or resume such nonconforming use shall terminate. No nonconforming building or structure and no nonconforming use of a building, structure, or parcel of land shall hereafter be extended more than 25% of the ground floor area of building so used.

In McKeny v. Baltimore County, 39 Md. App. 257, the standard to determine if the present use is within the scope of a nonconforming use:

> 1) To what extent does the current use of these lots reflect the nature and purpose of the original nonconforming use?
>
> 2) Is the current use merely a different manner of utilizing the original nonconforming use or does it constitute a use different in character, nature and kind?
>
> 3) Does the current use have a substantially different effect upon the neighborhood?
>
> 4) Is the current use a drastic enlargement or extension of the original nonconforming use?

In order to answer the above four questions let's look and compare the two photographs.

1) Clearly there has been a change from the original nonconforming use. A review of two photographs now shows an

unimproved lot at 207 Central Avenue which is not now supplying area to reduce the overall bulk of the building. In addition, parking areas are now behind 209 Central Avenue.

2) Yes there is a change in the use and that use is different in character, nature and kind. There have been very drastic changes in the use of 207 Central Avenue. The parking area and the supporting open space are not now located at 207 Central Avenue but are now all located on the 209 Central Avenue lot. The total legal density for the two lots is 5 units. Each lot would support 2.8 units. The new higher density that we would be left with if the petitions are approved would far exceed the density for these lots. The building of the new house at 207 Central Avenue would nearly double the bulk of the lots.

3) Yes the current use has a substantially different effect on the neighborhood. The original use, although both expansive in size and impact, was more in keeping with the general character of the neighborhood. If 209 Central Avenue is granted a nonconforming use as a six apartment building and all of the supporting services that were provided on 209 Central Avenue are shifted to 209 Central Avenue, there will be an overcrowding of the land and a degradation of the large lot, expansive open space, and pleasant landscaping.

4) Yes this proposed use is a drastic enlargement or

extension of the original nonconforming use. The existing structure covers 2,298 square feet of land. The proposed single-family dwelling will cover about 1,600 square feet of land. This is about a 70% increase in the land area used for structures. The BCZR allows only a 25% increase. On the other hand if we take and separate the lots, we find that the supporting services as such shifted to 209 Central Avenue have a drastic enlargement of the density on 209 and reducing what little open space as there may have been on 209.

After reviewing all of the testimony, exhibits, Memoranda, and argument, I find that the use of the property has changed since at least June, 1988.

Therefore, it is my opinion that 209 Central Avenue is an illegal use and not a legal nonconforming use.

It is also my opinion that the Petitioner does not fall within the meaning of the spirit and intent of the BCZR that apply to the conversion of dwellings to apartment use. The issue of granting the variance should be moot at this time.

DATE: April 12, 1991

John G. Disney
John G. Disney

THE
COMMISSIONER
BALTIMORE COUNTY
89-396-SPHA

OF LAW

Hearing to approve the
Central Avenue as a legal
that said lot (209) and
the B.C.Z.R. that apply to
a variance from Section
et and 12.6 feet in lieu of
for 50 feet for the sum of
mit a lot width of 65 feet
arly described on Peti-

eared, testified and was
followed witnessed ap-
Hyman, Herbert Malmud, Reg-
Green, Keith W. Mumford, Au-
linger and Zelma Kemer.
re represented by C. Scott
& Revett Steele, Jr.,
Joanne M. Hammond, Terry
ago and John Knee, Gren
by Sheft, Sam E. Scruggs,

not be a consideration in this appeal from decisions affecting 209 Central Avenue.

Appellants urge that the current use of the property is not a drastic enlargement or extension of the original usage. It is at most a mere intensification and as such is permissible so long as the nature of use, as here, in not changed. Phillips v. Zoning Commissioner of Howard County, 255 Md. 102, 169 A.2d 410 (1961). As the Court recognized in Phillips, the determination of drastic enlargement or extension or mere intensification is to be made of the facts of each case. There is nothing in the instant case to show a change from one nonconforming use to another or a substitution of one nonconforming use for another. The property is still, as ever, a six unit multi-family dwelling. It has not been converted any different usage by the location of the parking lot and driveway serving, and a part of the operations of, the existing nonconforming use. The current usage contesplates only the continuation of that usage, nothing more. Appellants contend there is no evidence upon which to base a finding of drastic enlargement or extension.

3. Appellants' request for a variance from section 402.1 of the Baltimore County Zoning Code to permit side yard setback of 12.0 feet and 12.6 feet in lieu of required 20 feet for one side and 40 feet and/or 50 feet for the sum of both side yard setbacks and to permit a lot width of 65 feet in lieu of the required 80 feet or greater as may be determined should be granted.

The granting of a variance is not properly a popularity contest. Such determination is to be based upon judicial principles and zoning regulations. The proper criteria are:

a. whether strict compliance with the zoning regulations for Baltimore County result in practical difficulty or unreasonable hardship

b. whether the granting of a variance will result in substantial injury to public health, safety and general welfare;

c. whether the granting of the requested variance will be inharmonic with the spirit and intent of applicable zoning regulations; and

d. whether the hardship complained of, and which is the basis of Appellants request for variances self-inflicted.

[B.C.Z.R., 1955; Bills No. 87, 1961; No. 13, 1962; also see, Salisbury Board of Zoning Appeals v. Bounds, 240 Md. 547, 214 A.2d 810 (1965).]

Obviously, if the current side yard setback and lot width requirements are applied to 209 Central Avenue practical difficulty and unreasonable hardship would result. The lot known as 209 Central Avenue exists and the structure, erected thereon in the 1890's exists. To try to squeeze the property and building into the limitations of current zoning requirements would be judicially unfair and physically impossible without the destruction of the building. The building was erected prior to any requirements imposed by zoning and must be allowed to continue in that form. It has not changed. There is no way to stretch the given land to accommodate the present zoning rules and regulations.

The granting of the requested variances will not result in any, much less, substantial injury to public health, safety and general welfare. There was no evidence to support any such injury at the hearing herein. At least one witness, Zelma Ensor, characterized 209 Central Avenue as an asset to the community. Not only is there absence of any such harm, but the granting of such variances merely recognizes the long existing situation with regard to lot size of 209 Central Avenue, the location of the building thereon. The community desires to maintain the Glyndon ambience and characteristics. This, Appellants urge, dictates that the requested and necessary variances be granted to permit the continued existence of the pre-1900 building. The existence and operation of the property are not injurious to the public health, safety or general welfare. There is no change in the density on 209 Central Avenue. The granting of the variance will not add any new demands, nor increase existing demands, on the community or community services.

There was no showing that the granting of the variances sought will be inharmonious with the spirit and intent of applicable zoning regulations. The gist of the zoning regulations for Baltimore County support appropriate use and re-use of large dwellings in residential zones. Even the conversion of the structure, if that were the case, would support the granting of the variances. (Respondents are resolute in their desire to maintain the ambiance of the Glyndon area. To grant the necessary variances for 209 Central Avenue is compatible, perhaps even required, to protect the very existence of the

structure at 209 Central Avenue, a part of the ambience and history of Glyndon.)

The facts surrounding 209 Central Avenue clearly reflect that the criteria for granting a variance have been fully met. Bounds, supra, would deny the granting of a variance, even where otherwise appropriate, if the circumstances requiring the variance have been created by the property owner or a predecessor in title. This, Appellants urge, is not the case in the instant situation.

Clearly the Appellants did nothing to cause the hardship complained of here. The evidence shows that Appellants had entered into a contract with Singer prior to any official notification of any possible zoning violations. (Again, Mr. Steele stated that he was not certain of the strength of his convictions with regard to the zoning applicable to 209 Central. If he, an attorney was not certain, why should lay people, as are the Jones, rely on his impression or position with regard to the zoning?)

The testimony further shows that Appellants had been assured that the property at 209 Central Avenue conformed with zoning regulations by the real estate people involved. The Appellants are not knowledgeable in real estate transactions. Ronald Jones testified that this was the first experience he or his wife had with zoning. The record shows that Jones previous real estate experience was the acquisition and sale of their family residences and the purchase of an Ocean City condominium. He testified that he had conversations with neighbors and was led

to believe that no problem related to the continued operation of the 6 units, but rather with the proposed development of 207 Central Avenue. Appellants believed that the worst case scenario with regard to the zoning of 209 Central Avenue would be a requirement that they "grandfather" the six unit use or show that it had existed before the zoning regulations. It was not until the Appellants received a citation dated 8-10-88 that they were given official notice of any potential zoning problem. Jones had conversations with the Steeles which indicated to Jones that the Steeles' objections to 209 Central Avenue related to the location of the driveway and parking, which had been resolved, that Steeles' opposition was to the development of 207 Central Avenue, not to the continued nonconforming use of 209 Central Avenue. Singer had sold the adjoining lot in March, 1988. Between March and June, 1988, Appellants had communications with citizens of the area which led them to believe that 209 Central Avenue met zoning requirements. Jones have no expertise in real estate matters. They may have been naive in their acquisition of 209 Central Avenue, but that does not constitute the self-inflicted hardship referred to in Bounds, supra. Respondents attempt to make some value of the execution of the second contract of sale between Jones and Singer. Mr. Jones repeatedly said that it was upon assurances that the property would be considered a nonconforming use and knowledge of similar situations in the area that he and his wife went through with the purchase of the property.

There is ample evidence that predecessors in title made ample efforts to determine that 209 Central Avenue was a lot independent of and separate from 207 Central Avenue. Singer, who conveyed the property to the Appellants made inquiries of the Baltimore County Zoning office to determine whether 207 and 209 Central Avenue were so connected as to deny their separation. She was informed of no bar to the separate development of 207 Central Avenue nor to the continued operation of 6 units at 209 Central Avenue. She made three separate inquiries at different times. Chance made similar inquiries and reached similar conclusions. Stone concurred with Chance. Appellants submit that none of the correspondence with county offices and personnel which was introduced by Respondents states that six units are not a permitted use of 209 Central Avenue; rather, the correspondence indicates what procedures may be necessary to have the County "grant" a nonconforming use status to 209. James Reter, who owned both lots in the 1960's, testified that it was his intention to develop and sell 207 Central Avenue and had never known that that would not be possible.

Unlike the situation in Bounds, there was no cavalier delegation of responsibility for obtaining the necessary permits or information. There was no failure to get permits or to inspect the permit that was issued. Singer was granted a permit to construct a parking lot and driveway on 209 Central Avenue and which was to be used in conjunction with the operation of that property as a 6 unit apartment building. She made efforts to assure herself of the viability of the six units at 209

Central Avenue independent of 207 Central Avenue. At the time of settlement on 209 Central Avenue, in June, 1988, some three months after the transfer of 207 Central Avenue to Homestead there were no zoning violations outstanding on that property. It was not until well after Appellants' settlement on the property that they received any notification from any county official of a potential zoning problem. There is nil in this case to support an argument for self-inflicted hardship.

The testimony and evidence supports a finding that there was no self-inflicted hardship; that the granting of the variances will not be contrary to the spirit of the B.C.Z.R. nor result in substantial detriment to the public health, safety and general welfare. The granting will relieve a hardship due to unique circumstances which cannot be alleviated otherwise.

Conclusion

For the reasons stated, the decision of the Zoning Commissioner should be reversed and Appellants' petition for special hearing to recognize the legal, nonconforming use of 209 Central Avenue as a six unit apartment building and petition for

variance should be granted.

Respectfully submitted,

ELEANOR J. LIPSITZ
100 Church Lane
Baltimore, Maryland 21208
(301) 484-3050,
Attorney for Appellants

I hereby certify that a copy of the foregoing brief was mailed to Charles B. Heyman, Esquire, 10th Floor, Sun Life Building, 20 South Charles Street, Baltimore, Maryland 21201 and to G. Scott Barhight, Esquire, 300 Lafayette Building, 40 West Chesapeake Avenue, Towson, Maryland 21204, this 22nd day of January, 1991.

ELEANOR J. LIPSITZ,
Attorney for Appellants

66 2nd Day 4-18-89 66 89-396SPHA

PLEASE PRINT CLEARLY — PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
Darlene L. Scheyer	301 Central Ave. Glyndon
Darlene M. Scheyer	301 Central Ave Glyndon
Jeanne W. Hammond	308 Central Ave Glyndon
Edward A. Wilson	14 Glyndon Ave Glyndon
Margaret M. Wilson	14 Glyndon Ave Glyndon
CHARLES WELSH	4601 PROSPECT AVE GLYN
Anne Welsh	4601 Prospect Ave Glynd
Ann Kershner	Box 308 Glyndon Md 21071
Shawn Taylor	Baynes, Glyndon, Md. 21071
Martha S. Healy	222 Central Ave. Glyndon Md 21071
Andrea Jones	46A Butler Rd Glyndon Md 21071
Karen L. Klein	308 Central Ave. Glyndon
Elizabeth B Klein	211 Central Ave Glyndon
Charles C. Boulbrooks	210 Glyndon Ave Glyndon
Patricia A. Hammond	206 Mallard Ct. Glyndon
M.E. Brainard	28 Butler Rd. Glyndon
Priscilla O'Neill	15 Glyndon Ave Glyndon
LINDA T. BURT	25 Wright Ave Glyndon
Sharon S. Hoch	312 Central Ave Glyndon
Karol Jurisich	412 Butler Rd Glyndon
Ruth Smith	4412 Butler Rd. Glyndon Md 21071
Joseph P. Boyd	119 Central Ave Glyndon
Janice D. Boyd	119 Central 21071
Mark Hoch	311 Central Ave 21071
Thomas Robert Long	47228 Butler Rd Glyndon
K Eugene Riley	325 Central Ave Glyn...

89-165SPHA

PLEASE PRINT CLEARLY — PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
CHARLES B. Heyman	500 Cliff Road - 10th Floor, 210 E. CHARLES ST., BALTO, MD 21202
Audrey Lee	16 Autumn Wind Ct. Baltimore 21136
Ronald E. Jones	210 CHURCH RD. REISTERSTOWN, MD 21136
Pauline R. Hyman	11500 Woodland Dr. 20903 Hyattsville

89-165SPHA
396

PLEASE PRINT CLEARLY — PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
Eleanor Lipsitz	100 Church Lane
Eleanor Lipsitz	100 Church Lane

89-396SPHA

PLEASE PRINT CLEARLY — PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
Eleanor J. Lipsitz	100 Church Lane 21208
Cedric Stone	222 Thomas Rd, Reisterstown, Md 21136
Ronald E. Jones	210 CHURCH RD. REISTERSTOWN 21136
Pauline Bethmann	11500 Woodland Dr. Hyattsville, Md. 20903
Audrey Lee	16 Autumn Wind Ct. Reisterstown 21136

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

RONALD F. JONES and SUZANNE LUSSIER-JONES, Petitioners : Case No. 89-396-SPHA, NE/S Central Avenue, 125 SE Glyndon Avenue

SUMMONS

Please issue a summons for the following witness:

REV. LLOYD AIKEN
Sacred Heart Catholic Church
Sacred Heart Lane
Glyndon, Maryland

to appear and to testify for petitioners at a hearing before the Zoning Commissioner on April 14, 1989 at 9:00 a.m., Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland.

ELEANOR J. LIPSITZ
100 Church Lane
Baltimore, Maryland 21208
(301) 484-3050
Attorney for Petitioners

Private Process Server:

Please process this summons in accordance with Zoning Commission Rule IV(c).

J. Robert Haines
Zoning Commissioner of Baltimore County

Law Offices
BENJAMIN LIPSITZ
ELEANOR J. LIPSITZ
100 Church Lane
Baltimore, Maryland 21208-3785
Area Code 301-484 3050
Telecopier 301-653-1546

RECEIVED
APR 7 1989
ZONING OFFICE

April 6, 1989

J. Robert Haines,
Zoning Commissioner of Baltimore County
Office of Planning and Zoning
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: Case No. 89-396-SPHA
Ronald F. Jones et ux.

Dear Mr. Haines:

I would like to arrange a meeting with you and interested counsel, at your earliest convenience, to discuss the possibility of a continuing procedural problem with regard to my clients' captioned, pending petitions and the hearing scheduled thereon. It would, I believe, be appropriate to resolve this question prior to the proposed hearing set for April 17, 1989.

Very truly yours,

Eleanor J. Lipsitz

EJL/ds

cc: Nevett Steele, Jr., Esquire
G. Scott Barhight, Esquire
Charles B. Heyman, Esquire
Mr. and Mrs. Ronald F. Jones

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
494-3353

J. Robert Haines
Zoning Commissioner

April 8, 1988

Mr. Nevett Steele, Jr.
211 Central Avenue
Glyndon, Maryland 21071

Re: 201-203 Central Avenue
Glyndon, Maryland
NE/S Central Avenue, Variable
Glyndon Avenue - Zoned DR 3.5 & 2
4th Election District

Dear Mr. Steele:

Thank you for your letters of concern to the Zoning Commissioner written March 5, 7, and 31st, concerning the above referenced property which was referred to me for reply. We have taken over the telephone and as a result of separation, you have enclosed information that was helpful with your correspondence.

By using the lot survey and other information that you provided, we have made the following determinations:

1. That the property is zoned DR.3.5. 160 feet parallel and northwest of the center line of Central Avenue. The balance of the property is zoned DR.2.

2. By utilizing the conversion provisions contained in Section 402 of the Baltimore County Zoning Regulations) for existing dwellings, and combining separate calculations for the total units allowed in each zone, we arrive at a total of 2 units allowed based on square footage. Obviously, if the adjoining lot has been sold, we could only approve a conversion to 2 units on the remaining lot provided that:

A. a variance would be granted to permit a lot width of 65 ft. in lieu of the required 80 ft. (DR.3.5), and

B. that a variance would be granted to permit side yard setbacks of approximately 12 feet each and a sum of 24 feet in lieu of the required 20 foot setback for one sideyard and a sum of 50 feet for both sideyard setbacks (DR.2).

3. That it would be an apparent violation of the Baltimore County Zoning Regulations if as indicated, the adjoining lot (that was a part of the property for years) was sold to a separate party, leaving the apartment building on the remaining 65 foot lot without the benefit of a legally established non-conforming use for six apartments on that single lot only.

Mr. Nevett Steele, Jr.
April 8, 1988
Page 2

4. That the request for a conditional non-conforming use for six apartments by the real estate agent for this property will not be approved by this office via the affidavit procedure and could only be resolved by a public hearing. (See attached letter by Mitchell Kellman of this office dated today)

5. That the issues of the driveway and parking lot relocation, the effect of the Glyndon National Historical District on the intentions of the owners or sub-sequent purchasers, and the input of other County agencies i.e. Buildings Engineer - Permits & Licenses, Fire Department, Department of Environmental Protection and Resource Management, and Public Works can be separately addressed to each department by any concerned individual. These separate departments would also have input into a zoning hearing as members of the Zoning Plans Advisory Committee and their separate concerns and jurisdictional requirements would be taken into consideration by the Zoning Commissioner when deciding a zoning case.

6. If the owners of the apartment building do not proceed with a zoning hearing to establish a non-conforming use on the property, then you or any other concerned individual c. id request a public hearing before the Zoning Commissioner pursuant to Section 500.7 (Baltimore County Zoning Regulations) to determine if a zoning violation would exist.

I am enclosing a copy of the zoning map with the property plotted on it, a letter sent today to the real estate agent, a copy of zoning regulations Section 402 and 500.7, and a copy of the location survey with the zoning lines plotted on it. I am also returning to you the exhibits "A" and "C" of the house and driveway not drawn to scale. If you have any further or more detailed explanations involving these properties, or need any further or more detailed explanations concerning the application of the zoning regulations, or if you would need information concerning the filing of a zoning hearing, please contact me in this office.

Very truly yours,

JAMES E. DYER
Zoning Supervisor

By W. CARL RICHARDS
Zoning Coordinator

JED:WCR:cer

cc: James V. Constable, Chairman
Landmarks Preservation Commission
Colleen Thompson, Realtor
Coldwell Banker Real Estate
Allen H. and George Singer
Carol A. Wildesen, Esquire
J. Norris Byrnes, Esquire
Mr. & Mrs. A. Hardy Harmond
Mr. & Mrs. Mark H. Clements
Mr. & Mrs. Charles C. Wells
Mr. & Mrs. William A. Elline
Mr. & Mrs. Arlen Herb
Mrs. Marie C. Smith
Mrs. Darlene M. Scheyer
Mrs. Jane B. Fanshaw

Darlene Scheyer
301 Central Avenue
Glyndon, Maryland 21071
(301) 833-4577

March 31, 1989

RECEIVED
APR 4 1989
ZONING OFFICE

J. Robert Haines
Zoning Comissioner of Baltimore County
Office of Planning and Zoning
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

RE: 89-16-SPHA & 89-396-SPHA, May 4, 1989
NE/S Central Avenue 60' SE Glyndon Av
(207-209 Central Avenue)

Dear Mr. Haines,

I want to voice my objection to the zoning variances proposed in the hearings identified above.

As I'm sure you are already aware, Glyndon is designated a National and State historic district. The community is also recognized by the Baltimore County Landmarks Commission. It seems to me that granting exceptional zoning is in direct contradiction to a concerted effort to preserve the character of a historic district. Allowing the variances requested would set a terribly destructive precedent...opening the door for development that is no longer obliged to comply with the longstanding "checks and balances" developed over the years to help shape the very character that desred Glyndon the first community designated by the Baltimore County Landmarks Comission.

Please take the time to consider the long range implications of granting special exceptions to zoning regulations in our area. Instead, I would like to see your office concentrating more on strengthening (rather than undermining) the role of the Baltimore County Landmarks Comission by supporting existing regulations and zoning and possibly by implementing new controls to prevent "spot" development from further eroding the quality of life in the established older communities throughout Baltimore County. The changes in setbacks at 207 and 209 Central Avenue will make this lot unpleasantly exceptional in appearance and the existing house, on a much smaller lot, cannot support six apartments without taking on the appearance of a small business enterprise.

The above described variances should not be granted, in my opinion, and I hope that you will take my concerns into consideration when hearing this case(s).

Sincerely,

Darlene Scheyer

cc: Mr. Carl Richards (Office of Planning and Zoning)
Nevett Steele, Jr.

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
494-3353

J. Robert Haines
Zoning Commissioner

April 8, 1988

Ms. Colleen Thompson, Realtor
Coldwell Banker Real Estate
Crossroad Square Shopping Center
Route 140
625 - D Baltimore Boulevard
Westminster, Maryland 21157

Dennis F. Rasmussen
County Executive

RE: Apartment Affidavits Approval
209 Central Avenue
NE/S approx. 60' S. centerline of
Glyndon Avenue extended
D.R. 3.5 and D.R. 2
4th Election District

Dear Ms. Thompson:

I am writing this letter to confirm our refusal to approve your request for this office to conditionally approve six non-conforming apartments at the above address for the following reasons:

1. The affidavits signed by Hildred Muse and Mary E. Lloyd clearly list four apartments; the one by Emma Belt lists five apartments, the one by Zelma Enson lists four or more and the one by Robert Belt, heating contractor states that the heating system was designed for six apartments but that it may have been occupied by less than six families since 1945. These affidavits are not conclusive and would be unacceptable by themselves without further documentation of six apartments existing and being used continuously. However,

2. It is of an even greater concern to us that as you state, and has been conveyed to this office by the neighbors that the adjoining lot that has been a part of this property ownership for many years has just recently been sold or is about to be sold to a separate party. If this has been accomplished, then this office would consider the six apartments on the remaining lot an apparent violation of the Baltimore County Zoning Regulations until such time as a proper application is made for a public hearing and subsequently granted for six non-conforming apartments existing solely on the remaining lot.

Without the benefit of the additional lot, only two units could be approved by this office by utilizing the conversion tables in Section 402 of the Baltimore County Zoning Regulations provided that variances for lot width and side setbacks would be granted.

Ms. Colleen Thompson, Realtor
April 8, 1988
Page 2

Please contact me in this office for any further clarification, filing information, or any additional zoning information.

Very truly yours,

Mitchell Kellman

By Mitchell Kellman
Planning and Zoning Associate III

James E. Dyer
Zoning Supervisor

MK:dt

cc: Mr. & Mrs. George Singer
209 Central Avenue
Glyndon, Maryland 21071

Mr. Nevett Steele, Jr.
211 Central Avenue
Glyndon, Maryland 21071

THE PROPERTY SHOWN HEREON IS SUBJECT TO ANY AND ALL AGREEMENTS, EASEMENTS, RIGHTS OF WAY AND/OR COVENANTS OF RECORD AND LAW.

NOTES

1. OWNER: RONALD F. JONES & SUZANNE LUSSIER JONES
   DEED REFERENCE: LIBER 7766, FOLIO 880
2. ZONING: D.R. 3.5 & D.R. 2
3. PROPERTY OUTLINE SHOWN HEREON IS FROM AVAILABLE DATA AND NOT FROM A PROPERTY LINE SURVEY.
4. SITE DATA FOR 6 APARTMENT UNITS:
   A. Existing Zoning: D.R.3.5
   B. Minimum Frontage Required: 70 feet + 15 feet X 4 = 130 feet Required. Provided = 65 feet
   C. Lot Area Required: 12,500 S.F. + 4000 S.F. X 4 = 28,500 Square Feet Required. Provided = 25,449 Square Feet
5. THIS PROPERTY WAS SUBDIVIDED BY DEED MARCH 21, 1961.
6. PUBLIC UTILITIES EXIST IN CENTRAL AVENUE.
7. PARKING DATA:
   6 UNIT APARTMENT: 6 X 1.33 = 8.18 (10 SPACES REQUIRED) (10 SPACES PROVIDED)

S 30° 27' 23" E

65'

SURROUNDING 6' HIGH STOCKADE FENCE W/ 1' HIGH CHAIN LINK EXTENSION, EXHIBIT

EX. DWELL # 211

EX. 8 STY FRAME

EX. 8 STY FRAME

EX. CONC. PORCH

ZONING LINE

ZONED: D.R.2

ZONED: D.R.3.5

N 59° 46' 12" W 391.55'

S 59° 46' 12" E 391.55'

150.5'

160'

EX. DWELL # 207

EX. DWELL # 205

EX. DWELL # 203

EX. 12" WATER

EX. 8" SEWER

EX. 8" GAS LINE

125' ± TO GLYDON AVE.

N 30° 28' 21" W 65'

± ROAD # DEED LINE

CENTRAL AVENUE

BEGINNING OF DESCRIPTION

EX. DWELL # 208

EX. DWELL # 206

EX. DWELL # 204

EX. DWELL # 202

EX. DWELL # 208

EX. DWELL # 210

EX. DWELL # 212

EX. DWELL # 214

EX. DWELL # 216

EX. DWELL # 218

EX. DWELL # 220

EX. DWELL # 222

EX. DWELL # 224

EX. DWELL # 226

EX. DWELL #

IN RE: PETITIONS FOR SPECIAL HEARING * BEFORE THE
AND ZONING VARIANCE
NES Central Ave. 60' SE Glyndon* ZONING COMMISSIONER
Ave. (209 Central Avenue)
4th Election District * OF BALTIMORE COUNTY
3rd Councilmanic District
* CASE # 89-396-SPHA
Ronald F. Jones, et ux
Petitioners *

****

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests a Special Hearing to approve the multi-family apartment dwelling and lot at 209 Central Avenue as a legal nonconforming use for six (6) apartment units or that said lot (209) and improvements conform to the spirit and intent of the B.C.Z.R. that apply to the conversion of dwellings for apartment use; and, a variance from Section 402.1 to permit a side yard setback of 12.0 feet and 12.6 feet in lieu of the required 20 feet for one side and 10 feet and/or 50 feet for the sum of both side yard setbacks and, a variance to permit a lot width of 65 feet in lieu of the required 80 feet, as more particularly described on Petitioners' Exhibit 7 in case No. 89-396-SPHA.

The Petitioner, Ronald F. Jones, appeared, testified and was represented by Eleanor J. Lipsitz, Esquire. The following witnesses appeared on behalf of the Petitioner: Pauline R. Hyman, Herbert Malsud, Registered Land Surveyor, Cookie Stone, Colleen Thompson, Keith E. Ronald, Audrey Fox, James E. Reter, George Singer, Aileen Singer and Zelma Ensor.

The following Protestants appeared and were represented by G. Scott Barbight, Esquire: Doris R. Hammond, Elizabath B. & Nevett Steele, Jr., Sharon L. Kline, Jane Gelpe, Marjorie H. Wilson, Jeanne W. Hammond, Terry Stanley, Martha Clements, Meredith B. Wells, George and Jean Moon, Gene Bewley, Anna Welsh, Pat Beaver, Vernene Lons, Kathy Swoo, Sam E. Scruggs,

CASE RECEIVED FOR FILING
Date 10/24/89
By [illegible]

-1-

Barbara Whitman, Ann and John H. O'Neill, Donald Wilson, Charles Welsh, Martha Healy, Charles and Mary Broderick, Sharon Herb, Sandy Laken, Nan Kaestner, H. Eugene Bosley, Darlene Scheyer, Marie C. Smith, Carol Wissel and Eleanor Taylor.

During the first hearing concerning case No. 89-16-SPHA, one of the Protestants, Nevett Steele, Jr., Esquire, represented himself and some of his neighbors. Mr. Steele generally presented objections on behalf of those Protestants. Later, the appearance of G. Scott Barbight, Esquire was entered on behalf of both Nevett Steele and all of the above listed Protestants.

The first hearing on this matter was held on April 4, 1989. At that time the Petitioner requested dismissal of this case and/or a postponement, because the hearing was less than 30 days from the date the Petition was received and accepted for filing on March 8, 1989. The hearing was rescheduled for April 17, 1989 to correct the 30 day notice issue.

The Petitioner has not and does not currently accept this corrective action by the Zoning Commissioner. Petitioner, Jones, does not believe he was afforded his legal rights. He does not suggest the complete remedy he is seeking, because a dismissal would only serve to cause a zoning violation to be brought on these same issues in the Maryland District Court. A postponement to allow the proper time to elapse is the only logical result.

There is no doubt that the Petitioners had notice of the hearings and that the additional thirteen (13) days added to the original twenty-seven (27) days complies with the requirements for notice. The Baltimore County Code, Section 22-26, requires a hearing not less than thirty (30) days after the date the Petition is accepted. The purpose of this law is to provide notice and a chance to prepare and be heard. The Petitioner, clearly, had notice and presented a complete case.

CASE RECEIVED FOR FILING
Date 10/24/89
By [illegible]

-2-

This matter and zoning case #89-16-SPHA have a long and very interdependent history. The evidence, clearly, established that this matter was inter-related with the lot of land known as 207 Central Avenue. I most steadfastly believe that the issues raised by this Petitioner cannot properly be resolved without a review of the two lots, namely, 207 Central Avenue and 209 Central Avenue, concurrently. However, each case will have its own final resolution, decision and Order.

For this reason, I continued the hearing in case No. 89-16-SPHA to allow that Petitioner time to correct their request by filing an additional Petition for Special Hearing. I was also desirous of having the owners of 209 Central Avenue file Petitions for relief concerning the continued use of that property as an apartment house. Finally, I decided that the original and new Petitions for 207 Central Avenue and the relief requested herein for 209 Central Avenue would be heard at the same time as companion cases. Both cases were processed for hearing and the hearings were held on April 17, 1989 and April 28, 1989.

By the very nature of these cases, some of the facts that apply to one case also apply in the other. Likewise, some of the exhibits are marked for one case or another and some are marked for both cases. I will attempt to recount herein only that testimony and evidence necessary to the final resolution of these cases.

In order to establish the basic factual framework, I will reduce the testimony of most of the witnesses to as few printed words as possible.

The following information was provided by the Petitioner, Ronald F. Jones:

CASE RECEIVED FOR FILING
Date 10/24/89
By [illegible]

-3-

The Petitioners, Ronald F. Jones and Suzanne Lussier-Jones, acquired title to property known as 209 Central Avenue, Glyndon, Maryland, the subject of the instant petition for special hearing and petition for variance on June 24, 1988. The property consists of a lot containing 25, 545 square foot of land, more or less, and an existing structure, located in D.R. 2 and D. R. 3.5 zones. The structure has existed since approximately 1890. (Petitioners' Exhibit 1 in case No. 89-396-SPHA). A notarized letter from Anita Sussmihl (Petitioners' Exhibit 3 in case no. 89-396-SPHA) states that the conversion of the improvements to six (6) apartment units was undertaken after she and her husband acquired title to the property in March, 1941. There was no opportunity to cross-examine this very important witness. That 209 Central Avenue was subsequently conveyed by Aileen Singer to Ronald F. Jones and Suzanne Lussier-Jones by deed dated June 24, 1988.

Mr. Jones claims he had no knowledge of any problem with the use of 209 Central Avenue as or for an apartment house of six apartments. He states that he was told that Baltimore County authorized the use of the property as an apartment house. He says that the house has always been an apartment house, as far as he knows, and there is no other use of the property.

Testimony was taken from Mrs. Audrey Fox, President of Homestead Group, Ltd. (hereinafter called "Homestead"). Mrs. Fox testified that Homestead is a company engaged in the business of building houses and that it acquired the lot known as 207 Central Avenue for this purpose. Settlement occurred for said the lot on March 29, 1988, pursuant to a contract entered into on January 23, 1988. She stated the lot was represented as a buildable lot by the real estate agent and by the listing agreement. (Petitioner's Exhibit 6 in case 89-16-SPHA) Mrs. Fox said she was aware that

CASE RECEIVED FOR FILING
Date 10/24/89
By [illegible]

-4-

207 Central Avenue was in a historic district and that plans for the dwelling to be erected on said lot had to be approved by the Landmark Preservation Commission ("LPC").

Mrs. Fox claims she went to the Zoning Office to apply for a window variance and, at that time, she was informed that a window variance was not necessary, but that the lot was undersized by 5 feet and that a variance was needed in order to build any house on 207 Central Avenue. An appointment was made to file the Petition for Zoning Variance which led to the original case No. 89-16-SPHA. Homestead continued to process plans for the proposed house, a Victorian style single-family dwelling, before LPC and approval was granted by LPC. (Petitioner's Exhibit 3 in 89-16-SPHA)

Mr. William Kirwin was called as an expert witness on behalf of Homestead and he testified that he has personally viewed 207 Central Avenue, the surrounding properties and neighborhood. That he is familiar with the Glyndon area. With regard to the variance for 207 Central Avenue, Mr. Kirwin testified that the granting of the variance and the development of the property as proposed would not do any substantial injury to the public health, safety or general welfare. In his opinion, there would be no adverse affects from an environmental standpoint. He believes that because the house is a single-family dwelling and there would be no overcrowding of the land; it would not tend to create traffic congestion or have any adverse affects as to air and noise pollution. Further, it was Mr. Kirwin's specific testimony that the variance, if granted, in his view, would not be inconsistent with the zoning or the spirit and intent of the zoning regulations.

Mr. Reter testified for the Petitioner concerning his ownership of 207 and 209 Central Avenue from 1965 to 1968. He also claims he visited the

ORDER RECEIVED FOR FILING
Date 10/24/89
By [illegible]

-5-

apartment house during 1946 and 1947. He claims there were six (6) apartments in the house at 209 Central Avenue when he was in the building.

The next witness called on behalf of Homestead was Colleen Thompson, the listing real estate agent. She testified that the lot was listed for sale as a buildable lot and that she personally investigated whether or not it was a buildable lot. Mrs. Thompson claims that she went to the Baltimore County Zoning Office with a copy of a plat and the deeds for 207 and 209 Central Avenue. She claims she advised the Zoning Office of the manner in which both lots were being used, and of the proposal to sell the vacant lot separately from the sale of the lot improved with the apartment building. Mrs. Thompson stated that she was advised that this could be done and there was no problem building on the unimproved lot. Mrs. Thompson further testified that the lot was represented to Homestead as a buildable lot and that at no time prior to or at settlement was Homestead ever advised that there was any question as to whether or not this lot could be improved. Mrs. Thompson further testified that prior to settlement for 207 Central Avenue, she never understood that there was any question with regard to building on that lot. It is her opinion that the only issue raised by the Protestants, as of that time, related to the use of the property known as 209 Central Avenue and, in particular, the number of apartment units that could be occupied on that property and the location of a new driveway on 209 Central Avenue.

Mrs. Thompson could not provide any evidence concerning the information she claims to have received from the Office of Zoning. She did not know who she talked to and she did not obtain written confirmation of the information she received. She also had no explanation about why she did not check her information more closely when she received the letter of

ORDER RECEIVED FOR FILING
Date 10/24/89
By [illegible]

-6-

April 8, 1989 from James E. Dyer and W. Carl Richards of the Baltimore County Office of Zoning to Nevett Steele, Jr., indicating there are problems with the lots known as 207-209 Central Avenue. See Protestants' Exhibit 7 in case No. 89-396-SPHA. Likewise, Mrs. Thompson had no answer why she took no action after receiving the April 8, 1988 letter from Mitchell Kellman and James E. Dyer of the Baltimore County Office of Zoning.

Mrs. Aileen Singer, the seller of 207 and 209 Central Avenue, testified that, prior to selling either of said lots, she had consulted the Baltimore County Zoning Office on two occasions regarding the sale of these lots as separate lots and the ability to build on lot 207. Mrs. Singer stated that, after reviewing the zoning maps and the situation with regard to the lots, she was advised that she could apply and obtain a building permit for lot 207. She claims she originally made such investigation because she thought she might want to build her home on the lot known as 207 Central Avenue.

Upon cross examination, Mrs. Singer could not provide any information concerning who she dealt with in the Office of Zoning, nor did she ever present any evidence of any of these meetings. In fact, she was very vague about who she spoke to, what facts were presented and what proof she provided to establish this alleged nonconforming use. It is nearly impossible to judge the legal and factual basis upon which the judgments, that were supposedly rendered granting authority to use the lots as claimed, were made.

Mrs. Singer did not respond to any of the letters written by Mr. Steele concerning her property and the alleged legal problems. In fact, Mrs. Singer does not attempt to justify her lack of action after she admits she received the letters marked Protestants' Exhibits No. 2 and 3 in case No. 89-16-SPHA. Mrs. Singer does not deny that she was aware of the contents of

ORDER RECEIVED FOR FILING
Date 10/24/89
By [illegible]

-7-

Protestants' Exhibit No. 7 in case No. 89-396-SPHA addressed to her agent, Mrs. Thompson, and she offered no reason for not informing Homestead of any of these letters and she does not claim to have informed the Jones of any of these letters.

Whether or not Mrs. Thompson and/or Mrs. Singer were, as they claim, told by the Zoning Office that the vacant lot could be developed, is really not controlling of the relief requested herein. It has been established in Maryland, since virtually the advent of zoning, that an impermissible use not only must be denied, but also must be revoked where allowed by mistaken official action. In other words, the doctrine of estoppel does not operate to protect an illegal zoning use from permit revocation. Lipsits v. Parr, 164 Md. 222, 743 (1933). See e.g., Park Shopping Center v. Lexington Park Theatre Co., 216 Md. 271, 139 A.2d 843 (1958).

Therefore, what they claim they were told is not the issue in light of the fact this is not a violation hearing. No punishment is envisioned in these cases, only the correct enforcement of the regulations. The Zoning Commissioner is not estopped from preventing the possible illegal development of these lots.

Continuing with a review of testimony and evidence, Mr. Herbert Malsud, a Registered Land Surveyor, testified for Petitioner, Ronald Jones. He stated that he believes the apartment house at 209 Central Avenue is a proper use, as provided by the within the B.C.Z.R. in the D.R. 3.5 zone. Mr. Malsud testified that, in his opinion, the single lot known as 209 Central Avenue was large enough to support the density of the six (6) apartments. Mr. Malsud listed certain calculations on Petitioner's Exhibit 7 in case No. 89-396-SPHA which do not make sense in light of the requirements listed in the B.C.Z.R. for the D.R. zone. He made no attempt to ex-

ORDER RECEIVED FOR FILING
Date 10/24/89
By [illegible]

-8-

plain his opinion or the basis for his calculations. It appears to me that there is no basis for Mr. Malmud's opinions and he is stating a position in support of a client with no realistic belief that it is true.

Mrs. Zelma Ensor also testified on behalf of Homestead. She is a Real Estate Broker with 31 years of experience in and around the Glyndon area. She is very active in the historic preservation of Glyndon. Mrs. Ensor was of the opinion that the proposed house at 207 Central Avenue would not harm the health, safety, or welfare; that the house was well-planned and, as situated on the lot, would have no adverse affect on the properties in the area, their values or the neighborhood, but, on the contrary, would have a good affect on the area and values of the property.

Mrs. Eleanor Taylor, past President and Member of the Board of Historic Glyndon, Incorporated, testified in opposition. Mrs. Taylor stated that a lot of time and effort was devoted to having Glyndon accepted by the LPC. Mrs. Taylor stated it was a protective measure because the objective of LPC is to try to have structures built that fit in architecturally and with the general appearance of the properties nearby. Mrs. Taylor acknowledged that the dwelling to be erected at 207 Central Avenue had been approved by the LPC and that the LPC would not have approved the plans if it did not feel that it was compatible with the present structures in the neighborhood. With regard to the width of the lot, Mrs. Taylor took the position that if the B.C.Z.R. require certain size lots, there should be no deviation therefrom under any circumstances. Mrs. Taylor basically felt that 207 Central Avenue ought to remain as a vacant lot to support 209 Central Avenue and the big house with all the apartments.

Mrs. Taylor also testified that many of the other small lots in the area are outside the official historical district. She does not believe

the second house on lot 207 Central Avenue is correct and good for the community. She stated that she has been in the house at 209 Central Avenue many times and for years the first floor was used as one apartment, not two. the nonconforming use for six apartments was lost, in her opinion, when the first floor was used as one apartment and not two.

Mr. Donald H. Wilson testified in opposition to all of the relief requested in both cases. He believes the variances requested are improper and will lead to over use of the land. He went on to say that the parking in the area is very bad and the big house on 209 Central Avenue needs the land from both lots to support all the cars, people, dogs and activity.

Mr. Wilson said he thinks the large house on 209 Central Avenue needs the open space of 207 Central Avenue to permit the house to fit into the community. The area of the land is needed to support the area and bulk of the house. These are not seperate lots for use purposes. He agreed with the other witnesses that the requirements of the B.C.Z.R. must be strictly enforced. He does not want any variances. Mr. Wilson also acknowledged, however, that he heard Mrs. Taylor's testimony and characterization of LPC and that he knew nothing about the plans and made his comments without any knowledge of what house was contemplated for the lot.

Mrs. Doris Harmond testified as a Protestant and she acknowledged that Historic Glyndon, Incorporated participated in the LPC meetings and that she was present as an observer at the LPC meetings at which the house to be erected on 207 Central Avenue was discussed. Mrs. Harmond voiced opposition to improvements being erected on 207 Central Avenue stating that she thought it ought to remain as a vacant lot as part of the use at 209 Central Avenue.

Mrs. Harmond stated she has lived across the street from this apartment house at 209 Central Avenue, since 1947. She knows that the first floor has not always been used as two apartments. In fact, when the owners live on site, the first floor was used as one apartment only. The doors between the two areas open up to make one big apartment.

Mrs. Harmond also testified how 207 and 209 Central Avenue have always been used together. She told how the parking and driveway were on the vacant area and how the people used 207 Central Avenue as the yard area. There is no doubt in her mind that the land from both lots have been used over the years to support the activities and needs of all the residents in the apartment building.

Also testifying for the Protestants was Mark Laken, President of Glyndon Community Association. Mr. Laken acknowledged that he saw the plans and felt they were irrelevant. In his mind the issue was that Glyndon has a very special designation given by the United States and Baltimore County and should have a more strict zoning code, but at the very least, there should be no deviation from the strict requirements of the present zoning code. He, therefore, felt that without regard to any impact, if a lot does not comply, it should not be built upon. He agreed that if plans are approved by LPC, this would mean that the type of house is compatible with the Historic District of Glyndon.

One of the main Protestants was Hewett Steele, Esquire, who is also the author of several letters, marked Protestant's Exhibits 2 and 3 collectively in zoning case No. 89-16SPHA. Mr. Steele's testimony, clearly, shows that he was aware of the possible sale of these lots and he did not believe the sale was proper. The exact nature of his complaint and the issues he raised have changed in form and nature over time. However, the un-

disputed fact is the Singers, the original owners of both 207 and 209 Central Avenue, knew that Mr. Steele questioned the sale of the lots to separate and different owners.

Mr. Steele testified he was concerned that, if various relief requested is permitted, the Victorian quality of the homes in the community will be disturbed. He stated that the purpose of LPC is to make sure the dwellings are compatible with the neighborhood. Mr. Steele testified he was not dissatisfied with the architecture or size of the proposed house, but in essence he feels that the lot at 207 Central Avenue should remain as a vacant lot joined together with 209 Central Avenue and the apartment house use thereon.

Mr. Steele's letter of February 26, 1988, marked Protestant's Exhibit 2 in case No. 89-16-SPHA, clearly raises issue with the proposed sale of the properties at 207 and 209 Central Avenue. In the first paragraph, of the letter, he raises the issue of sale of some area of land for a new house. In the second paragraph, there is a direct reference to the Baltimore County Zoning laws.

It is very interesting that Mr. and Mrs. Singer were also copied on the letters of March 5, 1988 and March 7, 1988 from Mr. Steele to the Baltimore County Zoning Commissioner, but Mrs. Singer found no need to take further action after receiving a copy of these letters. Also, Mrs. Singer received a copy of the March 30, 1988 letter from Mr. Steele to Carl Richards of the Baltimore County Zoning Office. All of these letters are found as part of Protestants' Exhibit 3 in case No. 89-16-SPHA. Mrs. Thompson and Mr. and Mrs. Singer both were mailed a copy of the nonconforming use denial letter from Mitchell Kellman, Zoning Associate, on April 8, 1988 which is marked Protestants' Exhibit 4 in case No. 89-16-SPHA.

Thirdly, the letters from Mr. Steele raise issue with the transfer of the parking lot and the continuation of the nonconforming apartment house use. In fact, the April 8, 1988 letter to Mrs. Thompson from Mitchell Kellman which refers to approve the alleged six (6) apartment house as a nonconforming use.

Mrs. Thompson never denied receiving these letters, nor does she attempt to explain why she did not take positive action to investigate the matter. Her only explanation concerning the issues raised in all of these letters is that her property was not involved. The letters were about the "other lot". She then returns to her testimony about her visits to the Baltimore County Zoning Office. Her handling of these potential problems takes no reason and her testimony about the whole subject is totally unconvincing. She attempts to hide behind the statements she claims she received from the Zoning Office and scorn how the letters from Mr. Steele are unimportant.

Neither Mrs. Thompson nor Mrs. Singer offered any explanation why they did not take any action after they received the April 8, 1988 letter, which is marked Protestants Exhibit 4 in case No. 89-16-SPHA. They did not even attempt to inform Homestead, who had just purchased the lot at 207 Central Avenue, nor did they inform the Jones, who would not settle on 209 Central Avenue for another two (2) months.

In fact, Mrs. Singer received a letter of March 25, 1988 from John W. McGrain, (Petitioner's Exhibit No. 6 in case 89-396-SPHA) that approves the parking area for 209 Central Avenue behind the house. Petitioner Jones argues that this letter supports his right to continue to use the six (6) apartments. Of course, neither Mrs. Singer nor Mr. Jones ever followed up on the requirements set out in paragraph No. 3 of that letter. They never

checked to confirm compliance with the ". . . zoning ordinance of Baltimore County. . . ".

Likewise, Mrs. Singer claims she received a permit for the transfer of the parking area (Petitioner's Exhibit No. 5 in case 89-396-SPHA) and the ". . . County. . . ", therefore, approved the six apartment house use. This is an interesting argument, but totally unfounded in either fact or law. The facts are the permit is a grading permit that is not reviewed by the Office of Zoning. Legally, she was referred to Landmarks Preservation Commission, who warned her of her need to comply with zoning in the letter of March 25, 1988. See Petitioner's Exhibit No. 6 in case No. 89-396-SPHA. Mrs. Singer failed to respond to any of the warnings to comply with the B.C.Z.R.

The Petitioners, in both cases, rely heavily upon the testimony of Mrs. Thompson and Mrs. Singer. I understand the Petitioner's desire to have this reliance upon the alleged statements of the Zoning Office carry the weight of persuasion in these cases.

The Petitioner's problem is very simple. Mrs. Singer and Mrs. Thompson, as her agent, did not react in anything close to a reasonable manner. No reasonable person would have ignored the problems raised in all of the letters. Mrs. Thompson and Mrs. Singer very carefully protected Homestead by not informing them of the letters dated February 26, March 5, March 7 and April 8, 1988. In fact, the first three letters were received at least three (3) weeks before the Homestead settlement. It appears Mrs. Singer, also, did not inform Petitioner, Jones, of the problems they had been forewarned of on at least six (6) different occasions and they completed the sale even after they had received official word from Baltimore County that the house was not a nonconforming apartment house.

There are certain underlying facts which are not in dispute and should be settled at this point. They are:

1. The parcels of land known as 207 and 209 Central Avenue have been for many years separately described lots. This has been true since prior to January 2, 1945.

2. During the time January 2, 1945 through and including March 28, 1988, the lots known as 207 and 209 Central Avenue have always been jointly owned. That 209 Central Avenue has been improved with a large building used as a multi-family dwelling unit for many years.

3. On March 28, 1988, Aileen N. Singer transferred 207 Central Avenue to Homestead Group, Ltd. (Protestant's Exhibit #1).

4. The land known as 207 Central Avenue is an unimproved lot except for the parking area, driveway and open space that, until March 28, 1988, serviced 209 Central Avenue for the past fifty (50) years, or so.

5. The Baltimore County Zoning Regulations (B.C.Z.R.) do not permit a multi-family, six (6) unit, apartment house to be located at 209 Central Avenue.

6. The lot known as 207 Central Avenue is too narrow to permit the construction of a single family home without a variance. All other area and set back requirements can be met by the proposal on Petitioner's Exhibit 4.

7. That Mrs. Singer decided to sell the two lots (207 and 209 Central Avenue) as two separate lots for two different uses and followed through on that decision on March 28, 1988.

The Protestants have argued that the relief requested herein cannot be granted if the two lots, 207 and 209 Central Avenue, are viewed as one parcel required to support the six apartments on 209 Central Avenue. This is

true in a fashion, but this view of the case will not answer all of the issues before the Zoning Commissioner.

Turning now to the legal decisions before the Zoning Commissioner, the proper place to begin is with the use of these lots prior to January 2, 1945, (The beginning of modern zoning in Baltimore County). All of the decisions concerning these lots are interrelated. There is no one answer to this case, but a series of decisions that begin on January 2, 1945. Therefore, the use of 207 Central Avenue is tied to the use of 209 Central Avenue, as the Protestants argue, but 209 Central Avenue does not totally control the use of 207 Central Avenue, as I will explain herein.

The reason for this format is very simple. When the two cases are viewed together, they raise several issues, namely, an alleged nonconforming use, the possible continuation of that use, after the removal of nearly fifty (50%) percent of the land area for a totally different and unrelated use, and a new single family home. The issue of the alleged nonconforming apartment house must be reviewed first.

The first principal to determine a nonconforming use as outlined in Section 101.1 of the B.C.Z.R. and as applied by McKemy v. Baltimore County, Maryland, 39 Md. App. 257, 385 A2d 96 (1978) is to determine whether or not there was a pre-existing lawful nonconforming use prior to January 2, 1945. This is both a factual decision and a legal decision.

Aileen Singer owned both lots and used them to support the apartment house. In this capacity, she was acting no different than every owner before her for many years. She owned what she believed was a valid apartment house at 209 Central Avenue and a vacant lot at 207 Central Avenue.

Prior to March 29, 1988, 207 and 209 Central Avenue were separately deeded lots, which were owned jointly from at least January 2, 1945. From

January 2, 1945 until March 29, 1988, 207 Central Avenue was used as a parking lot driveway, open space and yard area for a very large old house known as 209 Central Avenue. It is clear the house at 209 Central Avenue has been an apartment house for many years. When exactly it became an apartment house is somewhat unclear, but the best evidence is that it was an apartment house prior to January 2, 1945. The number of units in the apartment house is debatable. All of the evidence collectively establishes that 207 and 209 Central Avenue have been, for many years, used as one parcel of ground with one use, namely, an apartment house. The o[illegible] lot at 207 Central Avenue has always supported the apartment house.

Now, at first brush, this appears to be a nonconforming use apartment house and ends the review of these cases. The few facts listed above appear to comply with the requirements of Section 104.1, of the B.C.Z.R. for a nonconforming use. Section 104. says in pertinent part:

> "A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these regulations; provided that upon any change from such nonconforming use to any other use whatsoever, . . ., the right to continue or resume such nonconforming use shall terminate. No nonconforming building or structure and no nonconforming use of a building, structure, or parcel of land shall hereafter be extended more than 25% of the ground floor area of buildings so used."

Of course, Petitioner Jones in support of the case for 209 Central Avenue, Case No. 89-396-SPHA, claims the inquiry ends at this point; it does not. That type of review is too simplistic. Likewise, Petitioner, Homestead for 207 Central Avenue claims the separate lot is an individual lot and it is entitled to be used with no connection to the apartment house and 209 Central Avenue. Again, this is a simplistic view of the issues involved and an inappropriate review in this case. This type of review

ignores some of the basic underlying principals of a nonconforming use, namely, that the area incorporated into the actual nonconforming use must be determined; that the area required to support the continuation of an alleged nonconforming use must remain consistent; that the scope of the use must be determined; that the extent of the alleged nonconforming use must be established; and many other factors that must be defined and determined to complete the inquiry.

Continuing with a review of the alleged nonconforming use apartment house, the weight of the evidence has established an apartment house use for 207/209 Central Avenue. This nonconforming use, clearly, rests upon both 207 and 209 Central Avenue. The entire land area must be considered.

As to the issue of the number of units, the maximum claimed is six (6). There is no doubt that the first floor has been used as one apartment, at different points in time. Therefore, there have been lapses in the six (6) apartment use to a maximum of five (5) apartments. Those lapses have lasted for several years. The Petitioners, Mr. and Mrs. Jones, in case no. 89-396-SPHA, argue, very fiercely, the point about the number of units.

Petitioner, Jones, argues that their evidence proves six (6) apartments. There are so many holes in this argument that I will not list them all in this opinion. However, a short list includes: no proof of the date of establishment of the six (6) apartments, no evidence at all concerning the years 1951 through 1963, and no evidence concerning continued use during the years 1969 through 1976.

Petitioner, Jones, claims to substantiate his case with the evidence of Mr. Reter and Mrs. Singer. Mr. Reter only testified to having been present in the house at 209 Central Avenue during 1946 and 1947; then,

again, when he owned the building from 1965 through 1968. Mrs. Singer has no knowledge of the use of this property prior to 1976. She can prove nothing about its use during the 1940s, 1950s, 1960s or the early 1970s. This evidence simply does not meet the requirements of Section 104 of the B.C.Z.R. concerning continued use.

There is no debate that the maximum number of units is five (5). There is evidence of a few as three (3) apartments. There is very strong evidence to suggest a reduction to three (3) or four (4) apartments for multi-year periods of time during the 1960s and/or 1970s. However, as I will explain below, the discussion about the number of units is moot and the proof of continued use is incomplete and fails to establish a nonconforming use. Petitioner, Jones, failed to meet his burden of proof for the alleged nonconforming apartment house.

It is important to keep in mind that the burden of proving a nonconforming use rests always with the Petitioner. This burden may not be shifted to the Protestants, as Mr. and Mrs. Jones have attempted to do, nor may it be shifted to Baltimore County, Maryland. The Petitioners claim that the witnesses for the Protestants failed to controvert the existence of the six (6) unit nonconforming apartment house. This is a total misplacement of legal burden by Jones. I will not accept the Petitioner's attempt to shirt the burden of disproof upon the Protestants.

By definition, nonconforming uses are inherently incompatible with uses permitted in a zone. Boyce v. Sembly, 25 Md. App. 43, 334 A.2d 137 (1975). Nonconforming uses pose a threat to the success of zoning, limit the effectiveness of land use controls, imperil the success of community plans and injure property values. The purpose of restrictions on

nonconforming uses is to achieve the ultimate elimination of such uses through economic attrition and physical obsolescence.

Clearly, nonconforming uses are disfavored at law and are to be restricted. Furthermore, a nonconforming use is limited to the land on which the activity operates. If the activity is conducted within a building or structure this helps to define the use and to further limit the scope of the nonconforming use.

Petitioner, Jones, failed to prove a basis for the legal establishment of this apartment house as nonconforming use and he failed to prove a history of continuing use of a six (6) unit apartment house. The first principal, required by McKemy, supra, is not met by the weak evidence claimed for the nonconforming apartment house use prior to January 2, 1945 through March 29, 1988. I believe this nonconforming use must fail at this point and must, therefore, be rejected. However, for the purposes of argument, I will review the remaining principals of McKemy, supra, and review the remaining underlying legal principals raised by the parties.

Returning to the review of the nonconforming use, the inquiry now shifts to March 29, 1988 when Mrs. Singer transferred 207 Central Avenue to Homestead, a separate and unrelated buyer, for a distinct, different and unrelated use from the apartment house use at 209 Central Avenue. The inquiry then centers on the issues of change and/or lapses of the alleged nonconforming use.

As stated in McKemy v. Baltimore County, Maryland, 39 Md. App. 257, 385 A2d. 96 (1978), the second principal to be applied, as specified in Section 104.1, is whether or not there has been a change in the use of the subject property. A determination must be made as to whether or not the change is a different use and, therefore, breaks the continued nature of

the nonconforming use. If the change in use is found to be different than the original use, the current use of the property shall not be considered nonconforming.

The first part of this principal is a finding of whether or not there have been changes. I believe there have been changes. First, there has been a very drastic change in the use of 207 Central Avenue which was one-half of the land that always supported the apartment house use. That lot no longer supports the apartment house at 209 Central Avenue. The parking area and supporting open space, and yard space, is not located on 207 Central Avenue to diffuse or spread the apartment house use to a larger land area.

Secondly, the new house to be located at 207 Central Avenue will increase overall density for the total area of the original nonconforming use area which was originally both 207 and 209 Central Avenue.

Clearly, the total legal density for the two lots is five (5) units. Each lot has a separate density of 2.8 units which would only permit two (2) actual units per lot. What the Petitioners, jointly, want to establish on the total area would represent seven (7) density units (6 apartments and one house). There are only six (6) units currently and have been as few as five (5) units as recently as 1985. This new higher density would far exceed the density permitted for these lots, either jointly or severally.

Thirdly, the construction of a new house on 207 Central Avenue will nearly double the bulk of both lots. The new house will change the effect upon the community. The land area covered by improvements will also double. To claim as the Jones do that there is no change when density increases from five (5) to seven (7) units is to live with one's head in the sand. Density must be viewed as one of the hallmark considerations

of impact upon the community. Density is the fundamental basis of residential zoning in Baltimore County. Furthermore, to claim that the additional house with the additional bulk and parking is not a change, is unacceptable. The parking was never before upon 209 Central Avenue.

For all of the reasons listed above, including, but not limited to, the change in density, the change in parking, the loss of open space, the increase in overall density when the new house is built, and the change in special relationship between the old large house on two lots to the community; there is no other finding possible other than a change in use as envisioned by the McKemy, supra, standard. The new uses of the two lots is, clearly, different from the use on the two lots jointly for the past fifty (50) years.

I want to make it very clear that I believe Mrs. Singer had a right to transfer the lots to separate owners. The issue herein is the affect of her decision, not whether she had a right to make the decision to sell the lot. The owner of separately deeded lots has a right to sell them. However, the use of the lots is a zoning issue and will ri-htfully be determined by the Zoning Commissioner for Baltimore County.

When Mrs. Singer decided to sell 207 Central Avenue as a building lot, she was removing that land area and support services area from the apartment house. She is permitted to undertake this action, however, she is subjected to the consequences of that decision. The consequences of that decision is to change the nonconforming use apartment house into two new uses. One use is the old apartment house on a different land area with additional facilities and accessory uses, and the other use is the new single family house at 207 Central Avenue. Therefore, these new uses break the continuing nature of the alleged nonconforming use and the original

use, therefore, terminates. As held in McKemy, supra; the current use of the property shall not be considered nonconforming.

Now, turning to the final principal of Section 104.1 of the B.C.Z.R., as established in McKemy, supra.

When the claimed nonconforming use has changed, or expanded, then the Zoning Commissioner must determine whether or not the current use represents a permissible intensification of the original use or an actual change from the prior legal use. In order to decide whether or not the current activity is within the scope of the nonconforming use, the Zoning Commissioner should consider the following factors:

> "(a) To what extent does the current use of these lots reflect the nature and purpose of the original nonconforming use;
>
> (b) Is the current use merely a different manner of utilizing the original nonconforming use or does it constitute a use different in character, nature and kind;
>
> (c) Does the current use have a substantially different effect upon the neighborhood;
>
> (d) Is the current use a 'drastic enlargement or extension' of the original nonconforming use?"

A review of these standards, clearly, evidence a change in density. The nature of the current nonconforming apartment house use now has twice the impact upon the land and community. The land area is one-half the original land area. The new use of an apartment house at 209 Central Avenue and a new house at 207 Central Avenue will have a substantially different impact upon the neighborhood. There is no way that the reduction in land area committed to the big house at 209 Central Avenue does not double the impact of that oversized and over density use upon the neighborhood.

Using the factors set forth in McKemy, supra, also indicate that the proposed activity on lots 207 and 209 is not within the scope of the original nonconforming use. The proposed use, as a six (6) unit apartment house and single family dwelling, does not reflect the nature and purpose of the original nonconforming use. The original nonconforming use permitted a very large structure to fit into the ambiance and character of Historic Glyndon. The open space created by the landscaped areas of the lot at 207 diminished the impact of the oversized apartment building and provided an architectural scope to the large structure which was more in keeping with the expansive yards and green spaces of Central Avenue.

The proposed use is also a drastic enlargement of the original nonconforming use. The relocation of the parking lot and driveway on to lot 209 and proposed erection of a single family dwelling unit on lot 207 is an expansion, and not a mere intensification of the nonconforming use. See Odell v. City of Eagan, 348 N.W. 2d 792 (Minn.App. 1984), Young v. Board of Zoning Appeals, 307 N.Y.S. 2d 895 (1970), Muse v. Zoning Hearing Board, 415 A. 2d 1255 (Pa. Cmwlth., 1980), Jahnigen v. Staley, 245 Md. 130, 225 A. 2d 277 (1967) and Phillips v. Zoning Commissioner, 225 Md. 102, 169 A.2d 410 (1961).

The inquiry into the nonconforming use now ends with the following conclusions:

- the sale of 207 Central Avenue for a separate and different purpose from the 209 Central Avenue apartment house is proper, acceptable and legal.
- the use of 209 Central Avenue without the support of 207 Central Avenue does not meet the requirements of Section 104 of the B.C.Z.R., as applied by the principals set forth in McKemy, supra, for the continuation of a nonconforming use.

-the change in the use of both 207 and 209 Central Avenue terminates the nonconforming use for the alleged six (6) unit apartment house and the right to continue that nonconforming use shall cease.

This completes the inquiry as to the use of the two lots and the status of the use of the apartment house.

Turning now to a determination as to the future use of 209 Central Avenue. The house may not be used as a six (6) unit apartment building. However, it may be used as a single family dwelling unit, as a matter of right.

The Petitioner has requested a variance from certain parts of Section 402 of the B.C.Z.R. Section 402 deals with the conversion of dwellings to apartments. The Petitioner's computations shown on Petitioner's Exhibit No. 7 in case No. 89-396-SPHA do not reflect an acceptable application of the requirements of Section 402 of the B.C.Z.R. Most of the area and bulk of this building is found within the D.R.2 zone and the Petitioner has used the D.R. 3.5 requirements. The area requirement is not met, the front yard requirement is not met, and the side yard requirements are not met.

The Petitioner has left open the possibility that variances may be required. I believe this property should be viewed for purposes of Section 402, as a D.R.2 zoned property which requires 125 feet of width of front yard, a lot area of 25,000 square feet and side yards of 20 and 50 feet. If variances were granted to lot width and side yard distances, this house could have two (2) apartment units. There is no variance requested for the lot area and the lot only contains 25,449 square feet and two units would require 25,000 square feet of lot area.

Section 307.1, Baltimore County Zoning Regulations (B.C.Z.R.) states that the Baltimore County Zoning Commissioner shall have the power to

ORDER RECEIVED FOR FILING
Date 10/24/89
By [illegible]

create variances from an area regulation where strict compliance with the zoning regulations for Baltimore County would result in practical difficulty or unreasonable hardship.

In reviewing the Petition, it must be kept in mind that "(t)he standard for granting a variance. . . is . . . whether strict compliance with the regulations would result in 'practical difficulty or unreasonable hardship'; and that it should be granted only if in strict harmony with the spirit and intent of the Zoning regulations; and only in such manner as to grant relief without substantial injury to the public health, safety and general welfare." McLean v. Soley, 270 Md. 208 (1973)

Clearly, the evidence shows that Petitioner, Jones, does not have enough land to meet the requirements for lot width. The problem is the sale of 207 Central Avenue to Homestead. This sale raises the issue of a self-created hardship by the Petitioner's predecessor in title, Mrs. Singer.

Variances should be granted only in cases where strict compliance with the Zoning Regulations would result in practical difficulty or unreasonable hardship. Variances should be granted only if in strict harmony with the spirit and intent of the bulk regulations, and only in such a manner as to grant relief without substantial injury to the public health, safety and general welfare.

The need sufficient to justify a variance must be substantial and urgent and not merely for the Petitioners' convenience. McLean v. Soley, 270 Md. 208, 310 A.2d 783 (1973). A Petitioner seeking a variance must exercise proper diligence in ascertaining zoning requirements prior to acquiring property in order to avoid a resultant hardship. If such diligence is not exercised, the hardship is self-created and the variance may be properly refused. Wilson v. Mayor and Commissioners of Town of

ORDER RECEIVED FOR FILING
Date 10/24/89
By [illegible]

Elkton, 35 Md. App. 417, 371 A.2d 443 (1977). If the grant of a variance would affect the aesthetic ambiance of the residences in the immediate area, such variance would be in disharmony with the spirit and intent of the Zoning Regulations. Dahl v. County Board of Appeals of Baltimore County, 258 Md. 157, 265 A.2d 227 (1970). The mere fact that a variance, if granted, would make the property more profitable is not sufficient ground to justify the relaxation of bulk requirements. Easter v. Mayor and City Council of Baltimore, 195 Md. 395, 73 A.2d 491 (1950).

If the peculiar circumstances which render property incapable of meeting the zoning requirements have themselves been caused or created by the property owner or his predecessor in title, the essential basis of a variance is lacking. An act on the part of the property owner, or his predecessor in title, which has physically so affected the property as to create a unique circumstance or which in itself created either a practical difficulty or hardship in conforming to the restrictions of the Zoning Regulations bars relief. Salisbury Board of Zoning Appeals v. Bounds, 240 Md. 547, 214 A.2d 810 (1965).

The undisputed testimony indicates that Petitioner, Jones, went to settlement on June 24, 1988. It is also undisputed that prior to settlement, Mr. Steele conversed with the Petitioners and their counsel regarding the potential zoning violations surrounding the proposed uses for lots 207 and 209. Protestants' Exhibit 10, in case No. 89-396-SPHA, is a letter sent to the Jones' counsel prior to their settlement confirming the existence of these issues and concerns. The record is so filled with examples of notice to the Jones' predecessor in title, Mrs. Singers, it is unnecessary to reiterate them. See Protestants' Exhibit 4, 5, 6 and 7 in case No. 89-396-SPH.

ORDER RECEIVED FOR FILING
Date 10/24/89
By [illegible]

The variances requested must be denied based upon the doctrine of self-inflicted hardship. Had the Singers or Jones acted with reasonable diligence regarding lot 209, they would have either obtained written confirmation from the zoning office that the proposed use of lot 209 as a six (6) unit apartment was consistent with the Zoning Regulations or had filed the appropriate petitions to confirm compliance. At best, the realtor for the Singers received oral information from a zoning technician the exact substance and basis for which is, clearly, in question. The Petitioner did not act diligently and inflicted the hardship from which it seeks relief upon himself and, therefore, the variances requested must be denied.

The record contains grossly insufficient evidence to support the requirements of Section 307.1. The Petitioner who, clearly, has the burden of proving practical difficulty or unreasonable hardship, pursuant to the Zoning Regulations, has failed to offer any substantial evidence in support of its Petition for Zoning Variance. Since the Petitioner has failed to meet his burden, the Petition for Zoning Variance must be denied.

Pursuant to the advertisement, posting of the property and public hearing on the Petitions held, and for the reasons given above, the relief requested should be denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County, this 24th day of Oct., 1989 that the Petition for Special Hearing to approve the use of six (6) unit apartment dwelling located at 209 Central Avenue as a legal nonconforming use be and is hereby DENIED; and,

ORDER RECEIVED FOR FILING
Date 10/24/89
By [illegible]

IT IS FURTHER ORDERED that the Petition for Zoning Variance to permit a lot width of 65 feet in lieu of the required 70 feet be and is hereby DENIED; and,

IT IS FURTHER ORDERED that the Petition for Zoning Variance from Section 402.1 to permit a side yard setback of 12.0 feet and 12.6 feet in lieu of the required 20 feet for one side and 40 feet and/or 50 feet for the sum of both side yard setbacks be and is hereby DENIED; and,

IT IS FURTHER ORDERED that the Petitioner shall permit, upon request and reasonable notice, a representative of the Zoning Enforcement Division to make an inspection of the subject property to insure compliance with this Order.

IT IS FURTHER ORDERED that the Petition for Special Hearing to approve the improvements at 209 Central Avenue as conforming to the spirit and intent of the B.C.Z.R., Section 402, for the conversion of dwellings to apartments be and is hereby DENIED.

ORDER RECEIVED FOR FILING
Date 10/24/89
By [illegible]

J. Robert Haines
J. ROBERT HAINES
Zoning Commissioner for
Baltimore County

JRH:rw
cc: Peoples Counsel
cc: Petitioners
cc: Protestants

PETITION FOR SPECIAL HEARING

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve a 3-story multi family apartment dwelling and lot at 209 Central Avenue as a legal nonconforming use for six (6) apartment units or the said lot (209) and improvements conform to the spirit and intent of the B.C.Z.R. that apply to the conversion of dwellings for apartment use.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of the above Special Hearing advertising, posting, etc., upon filing of this Petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do 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 Petition.

Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State

Legal Owner(s):

Ronald F. Jones
(Type or Print Name)
Ronald F. Jones
Signature

Suzanne Lussier-Jones
(Type or Print Name)
Suzanne Lussier-Jones
Signature

Attorney for Petitioner:

Eleanor J. Hyatt
(Type or Print Name)
Eleanor J. Hyatt
Signature

100 Church Lane
Address

Baltimore, Maryland 21208
City and State

Attorney's Telephone No.: 484-3050

312 Church Road 833-2244
Address Phone No.

Reisterstown, Maryland 21136
City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

Ronald F. Jones
Name

312 Church Road 833-2244
Address Phone No.

ORDER RECEIVED FOR FILING
Date 10/24/89
By [illegible]

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 065788

DATE 1-31-89 ACCOUNT [illegible]
AMOUNT $ 70.00
RECEIVED [illegible]
FROM: [illegible]
FOR: 89-396-SPHA
VALIDATION OR SIGNATURE OF CASHIER

this ..... day
this petition be advertised, as
of general circulation through-
aring be had before the Zoning
Building in Towson, Baltimore
..., 19..., at ..... o'clock

Robert Haines
missioner of Baltimore County.

PETITION FOR ZONING VARIANCE Item # 356

89-396-SPHA

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 402.1 to permit side yard setbacks of 12.0 ft. and 12.6 ft. in lieu of the required 20 ft. for one side and 40 ft. and/or 50 ft. for the sum of both side yard setbacks. Also to permit a lot width of 65 ft. in lieu of the required 70 ft. or greater as may be determined.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (Indicate hardship or practical difficulty)

TO BE DETERMINED AT THE PUBLIC HEARING

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

I/We do 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 Petition.

Contract Purchaser:

Legal Owner(s):

Ronald F. Jones
(Type or Print Name)
Ronald F. Jones
Signature

Suzanne Lussier-Jones
(Type or Print Name)
Suzanne Lussier-Jones
Signature

312 Church Road 833-2244
Address Phone No.

Reisterstown, Maryland 21136
City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

Ronald F. Jones
Name

312 Church Road 833-2244
Address Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 2nd day of Feb., 19 89, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 9th day of March, 19 89, at 2 o'clock P.M.

J. Robert Haines
Zoning Commissioner of Baltimore County

(over)

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 065787

DATE 2-21-89 ACCOUNT R-01-615-000
AMOUNT $ 110.00
RECEIVED Ronald F. Jones
FROM: [illegible] ITEM #356
FOR: [illegible]
[illegible] 110.00 CK
VALIDATION OR SIGNATURE OF CASHIER

[illegible]
Name)

ter-Jones
Name)

[illegible]
[illegible]

[illegible]
[illegible]

MAR 17 1989
DATE 10/24/89
ACCOUNT R-01-615-000
AMOUNT $110.00
CK

[illegible]oad 833-2244
Phone No.

Maryland 21136

phone number of legal owner, con-
representative to be

[illegible]
[illegible]

312 Church Road 833-2244
Address Phone No.

H. MALHUB & ASSOCIATES, INC.
100 CHURCH LANE
BALTIMORE, MARYLAND 21208

TELEPHONE (301) 653-9511

356

ZONING DESCRIPTION
4th ELECTION DISTRICT
BALTIMORE COUNTY, MARYLAND

Beginning at a point in the center of Central Avenue, 30 feet wide, at a distance of 325 feet, more or less, measured southeasterly from the center of Glyndon Avenue, thence leaving the center of Central Avenue and running the three (3) following courses and distances:

(1) North 59° 46' 12" East 391.53 feet;

(2) South 30° 27' 23" East 65.00 feet and

(3) South 59° 46' 12" West 391.53 feet to the center of Central Avenue, thence with Central Avenue,

(4) North 30° 28' 41 West 65.00 feet to the place of beginning.

Containing 25449 square feet or 0.584 of an acre of land, more or less.

This description is intended for zoning purposes only and not for the conveyance of title.

Herbert Malaub
Registered Land Surveyor
Maryland # 7558
December 17, 1989

File: Central Res 209 DH

LAW OFFICES

KAPLAN, HEYMAN, GREENBERG, ENGELMAN & BELGRAD, P.A.

TENTH FLOOR SUN LIFE BUILDING

20 SOUTH CHARLES STREET

BALTIMORE, MARYLAND 21201

(301)539-6967

TELECOPIER

(301)332-8083

January 22, 1991

HAND DELIVERED

County Board of Appeals
of Baltimore County
111 W. Chesapeake Avenue, Room 315
Towson, Maryland 1204

RE: Case No. 89-16-SPHA The Homestead Group, Ltd.
207 Central Avenue, Glyndon, Maryland

Gentlemen:

Please file the enclosed original and two copies of Memorandum in the above-entitled case. Copies are being sent to counsel for Ronald F. Jones and counsel for the Protestants.

Sincerely,

Charles B. Heyman

CBH:rb

cc: Eleanor Lipsitz (w/ Encl.)
Attorney for Ronald F. Jones
Scott Barhight (w/ Encl.)
Counsel for Protestants/Appellants

85 AM 22 MAY 16

2/8/90 - Following parties notified of hearing set for Tues., ... 26, 1990 at 10:00 a.m.:

Eleanor J. Lipsitz, Esquire
James E. Reter
John W. McGrain
Charles B. Heyman, Esquire
Audrey Fox
O. Scott Barhight, Esquire
Doris R. Hammond
Sharon L. Kline
Mr. & Mrs. Donald Wilson
Meredith B. Wells
Vernene Lenz
Mr. & Mrs. Charles Broderick
Nan Kanstner
Darlene Scheyer
Carol Wissel
Eleanor Taylor
Elizabeth B. Shule
Robin Smith
P. David Fields
J. Robert Haines
James E. Dyer
Docket Clerk - Zoning
Mr. & Mrs. Ronald F. Jones
Rev. Lloyd Aiken
Pauline R. Hyman
Cookie Stone
Mr. & Mrs. George Singer
Jean W. Hammond
Mr. & Mrs. Havett Steele, Jr.
Jane Geipe
Martha Clements
Mr. & Mrs. Charles Welsh
Martha Healy
Sharon Herb
M. Eugene Bosley
Marie C. Smith
Mr. & Mrs. Mark Laken
Patricia A. Waskevich
Linda T. Barr
People's Counsel
Pat Keller
Ann M. Nastarovicz
W. Carl Richards, Jr.
Arnold Jublon

7/2/90 - Above parties notified of hearing set for Friday, October 12, 1990 (Day #21 @ 1:00 p.m. and November 9, 1990, Friday (Day #31@ 10:00 a.m.

10/12/90 - Above parties sent Amended Notice Day #4 October 26, 1990 at 9:00 a.m. and Day #5 November 9, 1990 at 9:00 a.m.

10/26/90 -Notice of Assignment sent to above; correction to date of Z.C. order and also to reverse subject of petitions in each case (shown in reverse on prior Notice).

11/09/90 -Hearing completed; memos due 12/12/90.

12/05/90 -Per telephone conversation w/S. Barhight, deadline for filing memos extended to 1/14/91 w/agreement of counsel; possible settlement; will advise Board Letter sent to all counsel confirming extension. (WTH)

1/11/91 - Per telephone conversation w/S. Barhight, deadline for filing memos extended to 1/22/91 w/agreement of counsel; possible settlement; All parties notified per conference call. WTH acknowledged.

IN THE MATTER OF THE PETITIONS FOR SPECIAL HEARING AND ZONING VARIANCE
NES Central Avenue 60' SE Glyndon Avenue (209 Central Avenue)
4th Election District
3rd Councilmanic District

Ronald F. Jones, et ux
Petitioners

BEFORE THE
COUNTY BOARD OF APPEALS
FOR BALTIMORE COUNTY
CASE NO. 89-396-SPHA

****

SUBPOENA DUCES TECUM

Please issue a Subpoena Duces Tecum for the following witness to appear and testify before the County Board of Appeals for Baltimore County and to produce the documents listed below Hearing Room 301, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland 21204, on behalf of the Protestants, Havett Steele, Jr., et al, on Friday, October 12, 1990 at 1:00 p.m.

RECEIVED
COUNTY BOARD OF APPEALS
90 OCT 11 AM 10:14

Witness: Corporate Designee
Carroll County Bank and Trust Company
45 W. Main Street
Westminster, Maryland 21157

Documents: Please direct the witness to produce any and all documents in her possession or control regarding the sale by Eileen Singer and the purchase by Ronald and Suzanne Lussier-Jones of the property known as 209 Central Avenue, including but not limited to all contract documents, correspondence, title binder, title commitment, loan documents, settlement documents and any other writings which relate to the property at 209 Central Avenue.

O. Scott Barhight
WHITEFORD, TAYLOR & PRESTON
500 Court Towers
210 West Pennsylvania Avenue
Towson, Maryland 21204

CERTIFICATE OF MAILING:

Eleanor J. Lipsitz, Esquire
(100 Church Lane, Baltimore,
Maryland 21208)

Charles Heyman, Esquire
(Kaplan, Heyman, Greenberg, Engleman & Belgrad, Tenth Floor, Sun Life Building, 203 S. Charles Street, Baltimore, MD 21201)

Re: 89-396-SPHA
89-16-SPHA

RECEIVED
COUNTY BOARD OF APPEALS
90 JUN 26 PM 12:59

June 26, 1990
312 Central Ave.
Glyndon, MD 2103

Dear Mr. Buchheister, Mr. Hackett and Mr. Disney,

I apologize for handwriting this letter. Please read it even though it's not typed. Truly, I appreciate your taking the time to consider the reflections of a layman interested in maintaining the integrity of her neighborhood.

Let me briefly begin by saying that I'm a maverick - my opinion allies me with the Protestants but with variances.

Historic Glyndon, Inc. and the Glyndon Community Association recently submitted detailed, well-organized guidelines toward the latest Baltimore County Master Plan. We worked long and hard because as you can readily see historic preservation runs afoul of modern development and zoning. Each case for zoning variance, non-conforming use, etc. poses a lethal threat to this architecture and landscape preservation effort we residents cherish, not to mention the investment stability of our properties.

So, legal "wherefores" aside, here's the practical reality of the situation. Part of this reality doesn't jive with G. Scott Barhight's agreement with Mr. Haines' decision regarding two apartments for Mr. Jones at 209 Central (89-396-SPHA). His property, if you would view it, is obviously an old boarding house, one of three in Glyndon. As a Summer community, at the turn of the century, these boarding houses accomodated

Re: 89-396-SPHA
89-16-SPHA

-2-

June 26, 1990

Summer residents escaping the city's heat. Obviously, boarding houses are no longer in vogue, nor is Glyndon only a Summer community. To get to the bottom line, in lieu of seasonal boarders, this 209 Central property has been successfully used as 4-to apartments since the World War II era. But only with the adjoining lot of 207 Central Ave which supplied parking and recreation for the residents - all these years.

The photo finish of my layperson proposal, which hopefully comes close enough to existing codes and regulations to be viable. Leave Mr. Jones six apartments, maximum, and make him buy the lot of 207 Central. So the property remains as it always has. This solves two problems: 1) Mr. Jones can't financially make it with that big old beast of a building getting rent from only two apartments, and 2) a modern home, semi-old looking, won't be squashed on a too small a lot right next to this tall structure.

Not only will this phony old house look squished in and aesthetically wrpy, but each newer house built in my neighborhood undermines my property value. The central air, maintenance free exteriors, heat pumps, and other modern conveniences places the re-sale of my home in a one-down position.

Or my final idea is to make Eileen Singer buy back both properties (allegedly separate lots) and have her re-sell as one unit as it has been. After all she sorta took the zoning codes into her own hands by dividing 207 and 209 in the first place.

Thank you for recognizing my concerns by reading this.

Sincerely, Mrs. Sharon Herb

County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

December 5, 1990

Elizabeth J. Lipsitz, Esquire
100 Church Lane
Baltimore, MD 21208

Charles B. Heyman, Esquire
Sun Life Building, 10th Floor
20 S. Charles Street
Baltimore, MD 21201

G. Scott Barhight, Esquire
WHITEFORD, TAYLOR & PRESTON
210 W. Pennsylvania Avenue, Suite 500
Towson, MD 21204

Re: Case No. 89-16-SPHA /The Homestead Group, Ltd.
Case No. 89-396-SPHA /Ronald F. Jones, et ux

Dear Counsel:

Pursuant to a telephone conversation with Mr. Barhight this date and with agreement of all counsel, the deadline date for filing memorandums in the subject matter with this Board has been extended from December 12, 1990, to January 14, 1991.

Very truly yours,

William T. Hackett
William T. Hackett, Chairman
County Board of Appeals

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

RONALD F. JONES and SUZANNE LUSSIER-JONES, Petitioners : Case No. 89-396-SPHA
NE/S Central Avenue, 125 SE Glyndon Avenue

APPEAL

MR. ZONING COMMISSIONER:

Please enter an appeal to the Board of Appeals for Baltimore County in this matter on behalf of Petitioners.

Eleanor J. Lipsitz
ELEANOR J. LIPSITZ
100 Church Lane
Baltimore, Maryland 21208
(301) 484-3050
Attorney for Petitioners

I hereby certify that a copy of the foregoing Appeal was mailed, postage prepaid, to People's Counsel, Court House, Towson, Maryland 21204, G. Scott Barhight, Esquire, 300 Lafayette Building, 40 West Chesapeake Avenue, Towson, Maryland 21204, Attorney for Protestants and to Charles B. Heyman, Esquire, 10th Floor, Sun Life Building, 20 South Charles Street, Baltimore, Maryland 21201, Attorney for The Homestead Group, this 21 day of November, 1989.

Eleanor J. Lipsitz
ELEANOR J. LIPSITZ
Attorney for Petitioners

RECEIVED NOV 21 1989

IN RE: PETITION FOR SPECIAL HEARING AND ZONING VARIANCES
207 Central Avenue

The Homestead Group, Inc.
Petitioner

IN RE: PETITION FOR SPECIAL HEARING AND ZONING VARIANCES
209 Central Avenue

Ronald F. Jones and
Suzanna Lussler-Jones
Petitioners

BEFORE THE COUNTY
BOARD OF APPEALS
OF BALTIMORE COUNTY
Case No. 89-16-SPHA

BEFORE THE COUNTY
BOARD OF APPEALS
OF BALTIMORE COUNTY
Case No. 89-396-SPHA

PROTESTANTS' MEMORANDUM OF LAW

The Protestants, Hewett Steele, Jr., et al. (the "Protestants"), by their attorneys, G. Scott Barbight and Whiteford, Taylor & Preston, respectfully submit this memorandum regarding the above-captioned matters. This memorandum will set forth the Protestants' position as to each petition filed in both cases.

STATEMENT OF THE CASE

The Petitioners, the Homestead Group, Inc. ("Homestead") (Case No. 89-16-SPHA) and Ronald F. Jones and Suzanne Lussler-Jones (the "Joneses") (Case No. 89-396-SPHA) filed their respective Petitions before the Zoning Commissioner of Baltimore County. The cases were heard at the same time as companion cases. By Orders dated October 24, 1989, the Zoning

Commissioner denied the Petitions for Special Hearing and Variances in Case No. 89-396-SPHA and the Zoning Commissioner granted and denied portions of the Petition for Special Hearing and granted the Zoning Variance in Case No. 89-16-SPHA.

The Protestants appealed the Zoning Commissioner's Order in Case No. 89-16-SPHA to the County Board of Appeals of Baltimore County (the "Board"). The Joneses appealed the Zoning Commissioner's Order in Case No. 89-396 to the Board. After beginning its hearings on both cases in a consolidated fashion, the Board bifurcated the cases, hearing Case No. 89-396 first. The Board requested that the parties file Memorandum to support their respective positions.

A. CASE NO. 89-396, 209 CENTRAL AVENUE

1. Petition for Special Hearing.

The Petitioners in Case No. 89-396-SPHA, the Joneses, have requested that the Zoning Commissioner approve a multifamily apartment dwelling and lot at 209 Central Avenue as a legal nonconforming use for six apartment units. In the alternative, the Joneses' Petition requests that you approve the existing improvements and lot pursuant to the spirit and intent of the Baltimore County Zoning Regulations ("BCZR") that apply to the conversion of dwellings for apartment uses. For the purposes of this memorandum, it is assumed that the unnamed section relating to conversion of dwellings is Section 402.

(a) Nonconforming Use.

The Joneses seek an order approving the existing dwelling on the lot at 209 Central Avenue as a legal nonconforming use for six apartment units. The primary issues in determining whether a legal nonconforming use exists in the instant case are as follows:

(1) Whether Petitioner has met its burden of proof that a six unit apartment has been in existence since January 2, 1945; and

(2) Whether the relocation of the parking lot and driveway previously situated on lots 207 and 209 and the proposed erection of a single family dwelling on lot 207 has so changed the asserted nonconforming use such that it has been terminated.

The burden of proving the existence of a legal nonconforming use is on the Joneses, who lay claim to the use. Calhoun v. County Board of Appeals of Baltimore County, 262 Md. 265, 277 A.2d 589 (1971). By definition, nonconforming uses are inherently incompatible with uses permitted in a zone. Boyce v. Sembly, 25 Md. App. 43, 334 A.2d 137 (1975). Nonconforming uses pose a threat to the success of zoning, limit the effectiveness of land use controls, imperil the success of community plans and injure property values. The purpose of restrictions on nonconforming uses is to achieve the ultimate elimination of such uses through economic attrition and physical obsolescence. County Council of Prince George's County v. E.J. Gardner, Inc., 293 Md. 259, 443 A.2d 114 (1982). Therefore, nonconforming uses

should not be perpetuated any longer than necessary. Green v. Garrett, 192 Md. 52, 66 A.2d 412 (1949). Further, the spirit and intent of Zoning Regulations is to restrict rather than increase nonconforming uses. Phillips v. Zoning Commissioner, 225 Md. 102, 169 A.2d 410 (1961). As the above cases clearly indicate, the stated public policy is to severely limit nonconforming uses and bring about their eventual elimination.

The Baltimore County Zoning Regulations in Section 104 sets forth the requirements for nonconforming uses. Section 104.1 sets forth in pertinent part:

> A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these regulations; provided that upon any change from such nonconforming use to any other use whatsoever, ... the right to continue or resume such nonconforming use shall terminate. No nonconforming building or structure and no nonconforming use of a building, structure, or parcel of land shall hereafter be extended more than 25% of the ground floor area of buildings so used.

In McKeny v. Baltimore County, 39 Md. App. 257, 385 A.2d 96 (1978), the Court of Appeals set forth the following factors to be considered in determining whether a current activity is within the scope of a nonconforming use:

(1) To what extent does the current use of these lots reflect the nature and purpose of the original nonconforming use;

(2) Is the current use merely a different manner of utilizing the original nonconforming use or does it constitute a use different in character, nature and kind;

(3) Does the current use have a substantially different effect upon the neighborhood;

(4) Is the current use a "drastic enlargement or extension" of the original nonconforming use.

An intensification of a nonconforming use is generally permissible so long as the nature and character of the use is unchanged and substantially the same facilities are used. Phillips v. Zoning Commissioner, supra. However, an opportunity to intensify a nonconforming use does not confer on a land owner the right to subsequently change or add to that use a new and different one amounting to a drastic enlargement or extension of the prior existing use. Jahnigen v. Staley, 245 Md. 130, 225 A.2d 277 (1967). The general rule is that where there is a change from one nonconforming use to a new and different use, there is an extension of the use. Whereas, the more frequent present use of the property for the same or similar use is a lawful intensification and not an extension. Feldstein v. Javale Zoning Board, 246 Md. 204, 227 A.2d 731 (1967).

In Odell v. City of Eagen, 348 N.W.2d 792 (Minn. App. 1984), the Court of Appeals of Minnesota reviewed a decision by the Eagen City Council denying appellant's application for preliminary plat approval based on the existence of a nonconforming garage. The City Council refused to approve the subdivision of a lot on which a nonconforming garage was situated, saying that the building in question "is currently a nonconforming use and to authorize a split of the lot . . . would cause an expansion of a nonconforming use . . . ." Id. at 796.

The Court disagreed with the definition of the garage as a nonconforming use. Instead, based upon the distinctions made in the zoning ordinance between nonconforming structures and uses, the Court determined that the garage was a nonconforming structure and that the failure of the garage to comply with bulk requirements was not a reasonable basis on which to deny the appellant's preliminary plat application. However, the City Council's reasoning does stand for the proposition that subdividing a parcel would cause an expansion rather than an intensification of a nonconforming use.

In Young v. Board of Zoning Appeals, 307 N.Y.S.2d 895 (1970), the Supreme Court of Nassau County reviewed an owner's right to sell off an unimproved portion of a plot of land on which a nonconforming structure was situated. The denial of a variance from rear yard and side wall requirements so that a building may be constructed on unimproved land was held to be improper. The Court reasoned that reduction of the size of the plot on which stands a building nonconforming as to height, setback and the like, does not affect the right to continue the nonconformance, so long as the size of the reduced plot is conforming. In the Young case, unimproved land which did not serve the nonconforming use was permitted to be parcelled off from a plot upon which a nonconforming building was situated, so long as the bulk regulations were met.

In Muse v. Zoning Hearing Board, 415 A.2d 1255 (Pa. Cmwlth., 1980), the Court approved a zoning board's expansion of a country club through the addition of tennis courts. In

Pennsylvania law, structures may be erected on open land previously devoted to a nonconforming use, as a matter of right. The erection of structures upon land not previously so used, may only be accomplished by way of variance. In the Muse case, the Zoning Board approved the expansion of the country club without a variance.

In reviewing the Board's approval, the Muse Court indicated that the threshold question is whether the land on which the country club proposes to locate the tennis courts has been devoted to the country club's nonconforming use. After reviewing the evidence introduced regarding the use of the land in question, the Court agreed that the land upon which the tennis courts were to be erected had been devoted to the country club's nonconforming use. Since it had been properly devoted, the court agreed that the construction of the tennis courts was a natural expansion of the club's activity and should therefore be permitted.

In the instant case, there are a number of undisputed facts which can be identified. Prior to the adoption of Zoning Regulations in Baltimore County, lots 207 and 209 were subdivided pursuant to a recorded plat. Lots 207 and 209 have always been conveyed as one tract, held under the same ownership and transferred by the same deed. Sometime prior to January 2, 1945, a structure was erected on lots 207 and 209. Since 1947, an apartment house consisting of at least four apartment units was

maintained on lots 207 and 209. Since January 2, 1945 through 1988, a driveway and parking lot serving the building situated on lot 209 has been maintained on lot 207.

The Petitioner's witnesses failed to provide sufficient evidence to support the existence of a nonconforming six unit apartment prior to January 2, 1945. Mrs. Ensor, who had only a passing familiarity with the apartment house testified that there were "at least four" units on the premises.

Mrs. Susemihl, who owned lots 207 and 209 during the 1940's could not conclusively testify that a six unit apartment was in existence by January 2, 1945. In fact, she stated that the conversion into the apartment units was not completed until 1946 or 1947. Mrs. Susemihl also stated that the driveway and parking area for the apartment were situated on lot 207.

The evidence presented before the Board does not conclusively show that an apartment building with six units existed on January 2, 1945. The most likely scenario given the facts presented, is that the house was converted to an apartment house in 1946 or 1947. This conversion was not consistent with the Baltimore County Zoning Regulations and effectively created an illegal apartment use. Since this use is illegal, the Petitioners' request for the Board to determine that a legal nonconforming use exists should be denied.

Assuming, arguendo, that the Board finds that a legal nonconforming use existed as of January 2, 1945, this use must be defined. Given the undisputed testimony, it is clear that any nonconforming apartment use included lots 207 and 209. The

improvements to lot 207 (parking lot and driveway) were devoted to the apartment building situated on lot 209. In fact, the nonconforming use can only be defined as one parcel (lots 207 and 209) with improvements (apartment house, parking lot and driveway).

The erection of a single family dwelling on lot 207 is a change to another use. The nonconforming use encompasses the entire parcel of land. Employing a portion of this parcel for another legal use, a single family dwelling, is in violation of Section 104.1. When there is any change from a nonconforming use to any other use whatsoever, the right to continue or resume such nonconforming use shall terminate.

The factors set forth in McKemy also indicate that the proposed activity on lots 207 and 209 is not within the scope of the original nonconforming use. The proposed use, as a six unit apartment and single family dwelling, does not reflect the nature and purpose of the original nonconforming use. The original nonconforming use permitted a very large structure to fit into the ambiance and character of Historic Glyndon. The open space created by the landscaped areas of lot 207 diminished the impact of the oversized apartment building and provided an architectural scope to the large structure which was more in keeping with the expansive front yards and green spaces of Central Avenue.

The proposed use is different in character, nature and kind from the original nonconforming use. The original use was a single structure containing between four and six apartment units. The proposed use shall include the addition of a use permitted as

a matter of right in a wholly new structure. The character of the parcel will change dramatically in that the land area dedicated to buildings will increase by almost two fold. The parking and driveway access previously situated on lot 207 is now cramped onto lot 209. Two driveway accesses are now required where only one was needed previously. The additional driveway access chops up the expansive lawn area which was consistent with the historic ambiance and especially open character of the community.

The proposed use will have a substantially different effect upon the neighborhood. The original use, although expansive in size and impact, when placed in the context of the total parcel, was more in keeping with the general character of the neighborhood. If the proposed single family dwelling is permitted on lot 207, there will be an overcrowding of the land and a degradation of the large lot, expansive open space, and pleasant landscaping and lawns previously associated with this portion of Central Avenue. Additionally, if all of the relief requested is granted, it will serve to encourage other owners to sell off adjacent "double lots," create additional variance requests, overcrowd Historic Glyndon and lead to the disintegration of the character of the community.

The proposed use is also a drastic enlargement or extension of the original nonconforming use. The relocation of the parking lot and driveway to lot 209 and proposed erection of a single family dwelling on lot 207 are an expansion, and not a mere intensification of the nonconforming use. See Odell v. City

of Eagan, Young v. Board of Zoning Appeals, Huse v. Zoning Hearing Board, Jahnigen v. Staley, and Phillips v. Zoning Commissioner, supra.

The footprint of the existing apartment dwelling, including the front porch, equals 2,290 square feet. The footprint of the proposed single family dwelling is approximately 1,640 square feet. This represents a greater than 70 percent increase in the land area committed to structures. Section 104.1 only permits an extension of up to 25 percent of the ground floor area of buildings so used. This 70 percent extension of the ground floor area of the apartment building is clearly in violation of Section 104.1 and a drastic enlargement or extension of the original nonconforming use. After reviewing the factors set forth in McKemy, it is clear that the proposed uses are not within the scope of the original nonconforming use. As such, the Board should deny the Petition for Special Hearing to approve a multi-family apartment dwelling and lot at 209 Central Avenue as a legal nonconforming use for six apartment units.

In his very well reasoned opinion below, the Zoning Commissioner denied the nonconforming use because (1) there has been a very drastic change in the use of lot 207, which was one-half of the land that always supported the apartment house use, (2) the new house on lot 207 will increase overall density for the total area of the original nonconforming use area which was originally both lots 207 and 209, and (3) the construction of a new house on lot 207 will nearly double the bulk of both lots.

Given the analysis required by McKemy, the Zoning Commissioner held that approval of the proposed nonconforming use would have a substantially different impact upon the neighborhood.

(b) Conversion of Dwellings Pursuant to Section 402.

Section 402 permits the conversion of dwellings for residential uses. The dimensional requirements are set forth in a conversion table found on Page 4-3, BCZR. Protestants' Exhibits 6A and 6B are two letters which address, among other things, the application of Section 402 to the instant case. One letter, Exhibit 6B, is from Messrs. Kellman and Dyer of the Office of Planning and Zoning to Ms. Coleen Thompson, Realtor for the Singers in the sale of lot 209 to the Joneses. Exhibit 6A is a letter from Messrs. Richards and Dyer to Mr. Steele. Both letters analyze the conversion of the existing improvements on lot 209 pursuant to the tables contained in Section 402. The conclusion reached by the zoning office is that only two units are allowed under County law. The Zoning Commissioner's Order below confirms this conclusion.

The evidence clearly shows that only two apartment units are permitted pursuant to Section 402. The Petition for Special Hearing seeking approval for the existing improvements as being in compliance with Section 402 must be denied.

2. Petition for Zoning Variance (209)

The Petition for Zoning Variance seeks relief from the side yard and lot width requirements of the Zoning Regulations. Section 307 sets forth the test for the granting of any variance from the bulk regulations. Such variances should be granted only

in cases where strict compliance with the Zoning Regulations would result in practical difficulty or unreasonable hardship. Furthermore, any such variance should be granted only if in strict harmony with the spirit and intent of the bulk regulations, and only in such manner as to grant relief without substantial injury to public health, safety and general welfare.

The need sufficient to justify a variance must be substantial and urgent and not merely for the Petitioners' convenience. McLean v. Soley, 270 Md. 208, 310 A.2d 783 (1973). A petitioner seeking a variance must exercise proper diligence in ascertaining zoning requirements prior to acquiring property in order to avoid a resultant hardship. If such diligence is not exercised, the hardship is self-created and the variance may be properly refused. Wilson v. Mayor and Commissioners of Town of Elkton, 35 Md. App. 417, 371 A.2d 443 (1977). If the grant of a variance would effect the aesthetic ambiance of the residences in the immediate area, such variance would be in disharmony with the spirit and intent of the Zoning Regulations. Daihl v. County Board of Appeals of Baltimore County, 258 Md. 157, 265 A.2d 227 (1970). The mere fact that a variance, if granted, would make the property more profitable is not a sufficient ground to justify the relaxation of bulk requirements. Easter v. Mayor and City Council of Baltimore, 195 Md. 395, 73 A.2d 491 (1950).

If the peculiar circumstances which render property incapable of meeting the zoning requirements have themselves been caused or created by the property owner or his predecessor in title, the essential basis of a variance is lacking. An act on

the part of the property owner or his predecessor which has physically so affected the property as to create a unique circumstance or which in itself created either a practical difficulty or hardship in conforming to the restrictions of the Zoning Regulations bars relief. Salisbury Board of Zoning Appeals v. Bounds, 240 Md. 547, 214 A.2d 810 (1965).

The undisputed testimony indicates that the Joneses went to settlement on June 24, 1988. Prior to settlement, Mr. Steele conversed with the Joneses and their counsel regarding the potential zoning violations surrounding the proposed uses for lots 207 and 209. Protestants' Exhibit 7 is a letter sent to the Joneses' counsel prior to their settlement confirming the existence of these issues and concerns. Most importantly, the second contract of sale, dated May 26, 1988, contains language showing that the Joneses were well aware of the zoning problems and assumed the risk that these problems created. The record is so filled with examples of notice to the Joneses' predecessor in title, the Singers, and the knowledge of the Joneses, it is unnecessary to reiterate them in this memorandum. See Protestant's Exhibits 1-8, 10, 17 and 18. Suffice it to say that the Singers and the Joneses were well aware of the potential zoning problems associated with their proposed uses of lots 207 and 209 prior to the respective settlements for lots 207 and 209.

The variances requested must be denied based upon the doctrine of self-inflicted hardship. Had the Singers or the Joneses acted with reasonable diligence regarding lot 209, they would have either obtained written confirmation from the zoning

office that the proposed use of lot 209 as a six unit apartment was consistent with the Zoning Regulations or had filed the appropriate petitions to confirm compliance. At best, the realtor for the Singers received oral information from a zoning technician the exact substance and basis for which is clearly in question. The Petitioner did not act diligently and inflicted the hardship from which it seeks relief upon himself and, therefore, the variances requested must be denied.

Assuming, arguendo, that the Petitioner is not barred by the doctrine of self-inflicted hardship, the record contains grossly insufficient evidence to support the requirements of Section 307. The Petitioner, who clearly has the burden of proving practical difficulty or unreasonable hardship pursuant to the Zoning Regulations, has failed to offer any substantial evidence in support of its Petition for Zoning Variance. Since the Petitioner has failed to meet its burden under Section 307, the Petitions for Zoning Variance must be denied.

B. CASE NO. 89-16-SPHA, 207 CENTRAL AVENUE

1. Petition For Special Hearing.

The Petitioner, the Homestead Group, Inc., has filed a Petition for Special Hearing requesting the Board to approve the "unimproved" lot at 207 Central Avenue as a building lot separate, apart and unencumbered by the adjoining lot and improvements at 209 Central Avenue. Whether the relief requested by this petition can be granted is inextricably tied to the

Board's decision regarding the Joneses' Petition for Special Hearing and the issues surrounding the definition of the nonconforming apartment use.

If the Board determines that the nonconforming apartment use includes both of the lots and all improvements, then lot 207 may not be improved by a single family dwelling unless the nonconforming apartment use is terminated. If the nonconforming apartment use is permitted to exist on lot 207 without benefit of the improvements on lot 209, then the Petition for Special Hearing may be granted provided all other sections of the Zoning Regulations have been met.

It is important to note that the Petition for Special Hearing asserts that the lot at 207 Central Avenue is "unimproved." The uncontradicted testimony in the record is that lot 207 has been improved by a driveway and parking lot which has served the building on lot 209 since at least the early 1940's. This factual misrepresentation in the petition should be sufficient to require a denial of the petition filed. If the Petitioner would like to seek relief, it should file a new petition for special hearing which accurately describes the relief requested.

The Protestants are not opposed to the continued use of lots 207 and 209 as a nonconforming apartment use. The focus of the Protestants' concerns relate to the improvement of lot 207 with a single family dwelling in addition to a six unit apartment on lot 209. If the relief requested in the Petition for Special Hearing is granted, then the nonconforming apartment use must be

terminated. If the relief requested is denied, then the apartment building may be able to continue its operation on lots 207 and 209.

2. Petition For Zoning Variance.

The Homestead Group seeks relief from the lot width requirements of the Zoning Regulations. Section 307 sets forth the test for the granting of any variance from the bulk regulations. Such variances should be granted only in cases where strict compliance with the Zoning Regulations would result in practical difficulty or unreasonable hardship. Furthermore, any such variance should be granted only if in strict harmony with the spirit and intent of the bulk regulations, and only in such manner as to grant relief without substantial injury to public health, safety and general welfare.

The need sufficient to justify a variance must be substantial and urgent and not merely for the Petitioners' convenience. Nolsen v. Soley, 270 Md. 208, 310 A.2d 783 (1973). A petitioner seeking a variance must exercise proper diligence in ascertaining zoning requirements prior to acquiring property in order to avoid a resultant hardship. If such diligence is not exercised, the hardship is self-created and the variance may be properly refused. Wilson v. Mayor and Commissioners of Town of Elkton, 35 Md. App. 417, 371 A.2d 443 (1977). If the grant of a variance would effect the aesthetic ambiance of the residences in the immediate area, such variance would be in disharmony with the spirit and intent of the Zoning Regulations. Daihl v. County Board of Appeals of Baltimore County, 258 Md. 157, 265 A.2d 227

(1970). The mere fact that a variance, if granted, would make the property more profitable is not a sufficient ground to justify the relaxation of bulk requirements. Easter v. Mayor and City Council of Baltimore, 195 Md. 395, 73 A.2d 491 (1950).

If the peculiar circumstances which render property incapable of meeting the zoning requirements have themselves been caused or created by the property owner or his predecessor in title, the essential basis of a variance is lacking. An act on the part of the property owner or his predecessor which has physically affected the property as to create a unique circumstance or which in itself created either a practical difficulty or hardship in conforming to the restrictions of the Zoning Regulations bars relief. Salisbury Board of Zoning Appeals v. Bounds, 240 Md. 547, 214 A.2d 810 (1965).

The Homestead's petition for variance must fail, due to the doctrine of self-inflicted hardship. The doctrine applies not only because of the actions of the Singers (the Homestead's predecessor in title) but also because of the actions of Homestead.

Homestead settled on lot 207 on March 28, 1988. Prior to settlement, Mr. Steele put Homestead's predecessor on notice that there were numerous zoning problems associated with their proposed actions of selling lots 207 and 209 separately, of constructing a new dwelling on lot 207 and of continuing to operate an apartment house on lot 209. See Protestant's Exhibits

1-3. The third sentence of the second paragraph of Protestant's Exhibit 1 specifically refers to violating the zoning requirements by constructing a dwelling on lot 207.

Prior to the settlement on March 28, 1988, the Singers had sufficient lands to construct a single family home without the need of any variances. Selling lot 207, without altering the lot lines so that a variance would not be necessary, inflicted the hardship upon themselves,. The lot width required could have been accomplished by resubdividing the property. However, the Singers greed blinded them to the problems and they sold lot 207 as a "buildable" lot, ignoring the lot width requirements and Mr. Steele's warnings.

Notwithstanding the unconscionable actions of the Singers, Homestead also failed to act diligently. Ms. Fox admitted that she failed to independently investigate the need for any variances on lot 207, as she had done on every other lot she has purchased. A simple letter to the Zoning Office would have confirmed that a variance was required for lot width. Ms. Fox claims that had she known a variance was required, she would not have purchased lot 207. However, she did not know a variance was required because she chose to accept the flimsy representations of the Singers and failed to take any steps to confirm the need for a variance on her own.

Ms. Fox's failure to investigate the need for a variance is in violation of the requirements of Wilson v. Elkton. A petitioner seeking a variance must exercise proper diligence in ascertaining zoning requirements prior to acquiring property in

order to avoid a resultant hardship. Ms. Fox caused her own hardship. If she had contacted the Zoning Office or a competent zoning attorney, as she had done in every other purchase, she would have been warned of the variance. According to Ms. Fox, she would not have then purchased lot 207 and she would be free of the hardship that she has imposed upon herself.

Before the Zoning Commissioner, Homestead claimed relief under Section 304 of the Zoning Regulations. Section 304 permits the erection of a single family dwelling on an undersized lot provided the following requirements are met:

> A. That such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to adoption of these Regulations; and
>
> B. That all other requirements of the height and area regulations are complied with; and
>
> C. That the owner of the lot does not own sufficient adjoining land to conform substantially to the width and area requirements.

The previous debate surrounding this issue concerned bad faith and/or whether adjoining land is available. Section 304 does not apply because sufficient adjoining land was owned by Mrs. Singer prior to the sale to Homestead.

Section 304.C has clearly not been met. The Singers, prior to the sale of lot 207 to the Homestead Group, did own substantial adjoining land which would permit substantial conformance to the width and area requirements of the Zoning Regulations. RM-15 and RM-16 of the Zoning Policy Manual provide guidance as to the requirements of Section 304 and 307. The six

year rule described in RM-16, when applied to the current case, clearly shows that Section 304.C has not been met. Therefore, a variance is required pursuant to Section 307 from the lot width requirements of Section 1B02.3.c.1.

CONCLUSIONS

The Singers and both Petitioners have created a situation where the neighborhood is being asked to suffer for their lack of diligence, mistakes and greed. The Petitioners want the Board to ignore the self-inflicted nature of their hardship and provide the relief requested. However, to do so would require that the Board also ignore the substantial harm to the welfare of the Glyndon community.

The Joneses have failed to meet their burden, as they also filed before the Zoning Commissioner, to prove the existence of a nonconforming six unit apartment. There is insufficient evidence to show that a six unit apartment existed prior to January 2, 1945. Further, the loss of lot 207 has so drastically altered the apartment use that any nonconforming status has been terminated.

As all of the Protestants who testified indicated, the construction of a single family home on lot 207 would dramatically impact the character and ambiance of their historic community. The erection of a single family dwelling on lot 207 will overcrowd the land, conflict with the character and ambiance of Central Avenue and dramatically reduce the open space which has provided a proper setting for the imposing apartment structure. It is unfair to the Glyndon community and

inconsistent with the requirements of Maryland case law regarding variances to grant the relief requested. The Singers and the Homestead have created a hardship and are now before you asking that their self-inflicted hardship be lifted from their shoulders and placed on the backs of the residents of Historic Glyndon. Requiring the neighborhood to bear the burden of the Homestead's lack of diligence would not be an act of justice. It will only reinforce the irresponsible behavior of the Singers and the Petitioners.

Respectfully submitted,

G. Scott Barnight

GSB:eh
cc: Hewett Steele, Jr., Esquire
Charles B. Heyman, Esquire
Eleanor J. Lipsitz, Esquire

D.B.H.

County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) ~~XXXXXX~~ 887-3180

HEARING ROOM -
Room 301, County Office Bldg.

July 2, 1990

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASON. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 89-16-SPHA — THE HOMESTEAD GROUP, LTD.
SPH-to improve unimproved lots; VAR-lot width
AND
CASE NO. 89-398-SPHA — 10/24/89 - Z.C.'s Order GRANTING in part; DENYING in part
RONALD F. JONES, ET UX
SPH-nonconforming use apts.;
(Day Nos. 2 and 3 from 6/26/90) — VAR-setbacks & lot widths
10/25/89 - Z.C.'s Order DENYING Petitions
NE/s Central Avenue, 60' SE of Glyndon Avenue (207 & 209 Central Avenue, respectively)
4th Election District; 3rd Councilmanic District

ASSIGNED FOR: FRIDAY, OCTOBER 12, 1990 at 1:00 p.m. and
FRIDAY, NOVEMBER 9, 1990 at 10:00 a.m.

cc: Eleanor J. Lipsitz, Esquire — Counsel for Mr. and Mrs. Jones
Charles B. Heyman, Esquire — Counsel for The Homestead Group, Ltd.
G. Scott Barnight, Esquire — Counsel for Protestants/Appellants
Audrey Fox, President - The Homestead Group, Ltd.
Mr. and Mrs. Ronald F. Jones
Mr. & Mrs. Hewett Steele, Jr.
Mr. & Mrs. Mark Laken
Ms. Sharon Kline
Terry Stanley
Mr. Eugene Bosley
Ms. Kathy Sves
Ms. Barbara Whitman
Ms. Darlene Schryer
Ms. Carol Wissel
Ms. Sharon Herb
Ms. Doris Hammond
Ms. Jane Gelpe
Mr. & Mrs. Don Wilson
Ms. Jean Hammond
Mr. & Mrs. Mark Clements
Mr. & Mrs. George Wroe
Mr. & Mrs. Charles Welsh
Ms. Vernese Lenz
Ms. Martha Healy
Ms. Eleanor Taylor
Ms. Nan Kestner
Meredith B. Wells
Mr. & Mrs. John O'Neill
Mr. & Mrs. Charles Broderick
Ms. Marie C. Smith
Ms. Pauline R. Hyman
Ms. Connie Stone
Mr. James E. Reter
Mr. & Mrs. George Singer
Rev. Lloyd Aiken
Mr. John M. McGrain
Ms. Patricia Waskevich
Ms. Elizabeth B. Shale
Ms. Linda T. Barr
Ms. Robin Smith
F. David Fields
Pat Keller
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, County Attorney

Lindalee M. Kuszmaul
Legal Secretary

CERTIFICATE OF POSTING 89-396-SPHA
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 4th Date of Posting January 6, 1989
Posted for: Appeal
Petitioner: Ronald E. Jones, Jr. et ux
Location of property: 0.01 S Central Aven. 60' S E. Glyndon Aven.
209 Central Avenue
Location of Signs: In front of 209 Central Avenue
Remarks:
Posted by: A. J. Ganter Date of return: January 11, 1989
Signature

Maryland Historical Trust
Inventory Number

PETITIONER'S EXHIBIT 1 89-396SPHA

DISTRICT 4 - continued

776 CAPLES HOUSE - Before 1898 - 211 Central Avenue. Shown in 1898 atlases as Frank D. Orrick's, father of present owner. House was called Cromwell Park. Victorian structure, frame with covering of clapboard and fish-scale shingles; gable roof, stone foundation. Owner: owner, at 1972.NR survey, Elizabeth O. Caples. Owners: Nevett Steele, Jr.

777 MEADOWS HOUSE - Before 1898 - 209 Central Avenue. Shown in 1898 atlas as C. Montelle's and in 1915 as A. Bailey's. Possibly designed as a boarding house. Montelle's and in 1915 as A. Bailey's. Possibly designed as a boarding house. Frame and clapboard house in a stripped-down Italianate style, with shed roof, stone foundation. Bracketed cornice, two-story high porch with slim posts. Owner: Louis A. Bladgett.

778 OKIFE HOUSE - Before 1898 - 113 Central Avenue. Shown in 1898 and 1915 atlases as G.Bellows house. Frame structure with wood shingle covering, built in Victorian Downing-Vaux cottage style with gable roof and stone foundation. Leaded windows sometime in pairs. Owner: Joseph P. Beips.

779 BELT HOUSE - Before 1898 - 117 Central Avenue. Shown in 1898 and 1915 atlases as G. Longnecker's. Victorian house in frame and wooden shingle with gable roof and stone foundation. Owner: Edward W. Belt.

780 BOARDMAN HOUSE - Before 1898 - 115 Central Avenue. Shown in 1898 atlas as C.E. Montell's and in 1915 as J. Warfield's. Victorian house in frame and composition shingles, with gable roof and stone foundation. Owner: Scott A. Brandbast.

781 BOLLINGER HOUSE - Before 1915 - 111 Central Avenue. Shown as H. Stringer's in 1915 atlas. Frame, wood-shingled house in shingle style with gable roof in 1915 atlas. Frame, wood-shingled house in shingle style with gable roof and stone foundation. Small 2nd-story windows. Owner: D. Howard Bollinger.

782 WHITE HOUSE - Before 1915 - 109 Central Avenue. Shown in 1915 atlas as J. Zouck's. Colonial revival house in frame and wood shingles with hip roof and stone foundation. Massive stone end chimney. Owner: Ellis S. White.

783 ROSE HOUSE - Before 1898 - 107 Central Avenue. Shown in 1898 atlas as W.C. Bishop's and in 1915 as Jacob Zouck's. Victorian house, frame and clapboard with gable roof and stone foundation. Owner: Everett Rose.

784 GRIFFIN HOUSE - Before 1898 - 11 Central Avenue. Shown in atlas of 1898 and 1915 as the F.J. Williams house. Small, low 1½ storey frame and clapboard cottage in Victorian style with gable roof and stone foundation. Decorated with bargeboards. Owner: John J. Griffin.

October 26, 1988

To Whom It May Concern -

This is to certify on March 27, 1941 Louis E. Susenihl and Anita C. Susenihl purchased property consisting of house and lot at 209 Central Ave. Glyndon, Md. from Mrs Shirley J Reisenstein, Md.

Upon settlement of this property owners remodled house into six apartments - two on each floor.

Owners sold this property in 1966 to Mr. Peter of Glyndon, Md.

Very Truly Yours,
Anita C. Susenihl

State of California)
County of Los Angeles)

Acknowledgement

On October 27, 1988, before me, the undersigned officer, personally appeared Anita C. Susenihl, personally to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledge that the subscriber executed it.

Julie Parrick
Julie Parrick

OFFICIAL SEAL
JULIE PARRICK
NOTARY PUBLIC - CALIFORNIA
LOS ANGELES COUNTY
My comm. expires NOV 16, 1991

PETITIONER'S EXHIBIT 3 89-396SPHA

PETITIONER'S EXHIBIT

PROTESTANT'S EXHIBIT 9 89-396 SPHA

April 3, 1989

The Honorable J. Robert Haines
Zoning Commissioner of Baltimore County
Office of Planning and Zoning
Towson, Maryland 21204

PROTESTANT'S EXHIBIT 5 89-165SPHA

Re: Case Number 89-16-SPHA
Case Number 89-396-SPHA

Dear Mr. Haines:

The community of Glyndon is justifiably proud of our lovely Victorian houses located on spacious lots on small, tree lined streets. Because of these features, Glyndon has been placed on the National Register of Historic Places and has the honor of being named as the very first historic district in all of Baltimore County. This combination of history and beauty has attracted a very special type of home owner to Glyndon. People who live or consider buying homes in Glyndon appreciate the historic flavor of the community and are committed to maintaining and improving the beautiful Victorian houses and large lots on which they are situated.

Central Avenue is the main residential street in Glyndon and contains many of the historic Victorian homes that have helped to make Glyndon special. The property in question is located right in the midst of many of Glyndon's most beautiful and historic properties.

The Board of Directors of the Glyndon Community Association has voted unanimously to oppose all of these proposed changes. The variances being requested would have a significantly negative impact on the nature of our community and the scale of residences and lots on Central Avenue.

Approving such changes could be seen as establishing precedent which could severely inhibit our ability to maintain that unique combination of history and tradition that is Glyndon.

Historic Glyndon Incorporated
Glyndon, Maryland 21071

April 17, 1989

To whom it may concern

Eleanor Taylor is our ex-president and member ex-officio of Historic Glyndon Inc. She is authorized to speak on behalf of the Board of Directors at the zoning variance hearings on 207 and 209 Central Ave., Glyndon, Md.

Sincerely,
Arlen Hirst
President

PROTESTANT'S EXHIBIT 2 89-396SPHA

PROTESTANT'S EXHIBIT 11 89-396SPHA

PROTESTANT'S EXHIBIT 1 89-396SPHA

O'CONOR, PIPER & FLYNN REALTORS

Selling Office: OPF Roehampton — Phone: 832-3400
Selling Associate: Carrie Stone — 832-1643
Listing Office: Northwestern — Phone: 396-4440
Listing Associate: Colleen Thompson — 396-4447

LIBER 5320
FOLIO 566
MSA # SE 15304-4

THIS AGREEMENT OF SALE, made this 21st day of March, 19 89, between (Name) Alden Sayer, (Address) 207 Central Avenue, Glyndon, Maryland 21071, Seller and (Name) Ronald E. Jones, Jr. and Deanna L. Jessen-Jones (Husband), (Address) 211 Church Lane, Reisterstown, Maryland 21136, Buyer.

Witness that Seller does hereby bargain and sell unto Buyer, and Buyer does hereby purchase from Seller the following described fee simple/leasehold property, known as 209 Central Avenue, Glyndon, Maryland 21071, lying in Baltimore County of the State of Maryland, including improvements thereon and all rights and appurtenances thereto belonging or in anywise pertaining, that is to say:

AT and for the sum of Two Hundred and Twenty-Five Thousand ($225,000.00) DOLLARS as $225,000.00
of which a deposit of One Thousand ($1,000.00) Dollars as $1,000.00
in the form of Check has been paid to the Selling Agent, the receipt of which is hereby acknowledged, the balance to be paid as follows:

An additional sum of $1,000.00 Dollars, within 5 days from the date of contract, and the remaining balance of the purchase price will be paid to Seller in cash at settlement which shall be on or before May 30, 1989 or sooner by mutual agreement between the parties.

1. GROUND RENT (IF APPLICABLE): The Property is subject to a existing annual ground rent of n/a, as provided in a lease recorded among the Land Records of n/a County, Maryland. Buyer agrees not to redeem said ground rent nor to buy out the reversionary interest in the ground rent unless within an option of said ground pursuant to Section 8-110 of the Real Property Article, Annotated Code of Maryland. As a result of such redemption action, the reversionary owner of the ground rent may be discharged from the lease and all duties to the property in fee.

2. FINANCING: Buyer expressly agrees to apply for a Conventional mortgage loan within five (5) days from the date of contract, to pursue all necessary steps and documentation required to complete processing of such application, and to otherwise diligently and in good faith take all steps necessary to obtain a 30 year mortgage loan in the amount of $ 180,000.00 with initial interest not to exceed 9.5% per annum (this interest rate may be fixed, variable or graduated) and with a loan placement fee (points) not to exceed (the maximum) 2 % of which Seller agrees to pay the first 2 % and Buyer agrees to pay the next 0 %. If changed, Buyer agrees to promptly furnish a copy of such commitment to the Seller or Seller's agent, in the event Buyer cannot obtain a commitment for the aforementioned financing on or before May 5, 1989 through no fault of his own or good faith on Buyer's part, this Agreement shall be declared void and all monies paid hereunder shall be refunded to Buyer. Any action taken by Buyer after acceptance of this Agreement which is considered to be qualifying the Buyer for financing shall give the Seller the right to declare the deposit forfeited. Buyer's mortgage application fee is to be paid by Buyer. Buyer agrees to pay the cost of the instrument and/or recording of the deed. Monthly payments including principal and interest are to be made on the 1st day of each month beginning on the 1st day of the month following settlement. Buyer agrees to pay private mortgage insurance premium (PMI) and flood insurance premium if required.

3. ALTERNATE FINANCING: It is further understood and agreed that if Buyer makes application for financing through a lending institution other than the one mentioned above, and if Buyer has not set forth therein correct information in the application, and if Buyer fails to secure such financing at the interest rate, terms of payment, or amount of Loan set forth herein, then upon notification to the Buyer from the lending institution to such effect, this Agreement shall be declared void and all monies paid hereunder shall be refunded to Buyer. If a proceeding mortgage commitment is issued by the lending institution to Buyer, but the lending institution subsequently refuses to fund said mortgage loan, then this Agreement shall be declared void and all monies paid hereunder shall be refunded to Buyer. Buyer agrees to use his best efforts to secure the mortgage commitment as called for above.

4. TERMITE CLAUSE: Seller authorizes Buyer or Buyer's agent, a termite clear from a licensed pest control company no more than 10 days prior to settlement, which shall be at Seller's expense. Should said inspection reveal any infestation, Buyer shall have the option of terminating this Agreement and receiving back his deposit, or Buyer may elect to have the property treated for termites at the expense of Seller. Seller shall furnish a certificate showing that the property is free from termites and that any damage caused by any previous or prior infestation shall be repaired at Seller's expense prior to settlement. Buyer's mortgage application fee is to be paid by Buyer. Buyer agrees to pay the cost of the instrument and/or recording of the deed. Monthly payments including principal and interest are to be made on the 1st day of each month beginning on the 1st day of the month following settlement. Buyer agrees to pay private mortgage insurance premium (PMI) and flood insurance premium if required.

5. INCLUSIONS: Included in the purchase price shall be all built-in fixtures and the following: All electrical and plumbing fixtures, all attached shades, blinds, window treatments, curtain rods, drapery hardware, awnings, screens and storm windows, carpeting, mirrors, TV aerials, doorbells, garbage disposal, central air conditioning and wall to wall carpeting. Also included shall be the following: All Stoves as described in the Property Inventory, as is.

6. SPECIAL CONDITIONS OR EXCLUSIONS: Except Roof, Asphalt Shed to be given at time of Settlement. Roofed Asphalt Shall be once between buyers and Seller Roofing to Match as near as possible at the time of settlement.

7. ASSESSMENTS: If the property is subject to an association dues, ground rent, road, and water rent which is assessed and apportioned as of the date of settlement, and all taxes, general or special and all other public or governmental charges or assessments, fees or encumbrances for sewer, water, paving, drainage or (including Metropolitan District, Sanitary Commission or water benefit charges, assessments, fees or encumbrances for sewer, water, paving, drainage or other public improvement, whether or not connections have been made to the property), which are a lien against the property, assessed or to be assessed by any public authority as of the date of settlement and are to be assumed and paid thereafter by Buyer, which at settlement have been levied, are due and payable or which are scheduled to be levied or assessed within sixty days after the date of settlement shall be apportioned as of the date of settlement and are to be assumed and paid thereafter by Buyer. Any rollback taxes that may become due and payable as a result of the transfer of the property to Buyer or his assignee shall be the sole responsibility of Buyer. Any unpaid taxes for prior years shall be paid by Seller at settlement. Cost of documentary stamps required to be affixed to the deed to effectuate transfer of title to the property shall be equally borne by Seller and Buyer. Cost of transfer taxes, if any, shall be equally borne by Seller and Buyer. Water charges shall be adjusted on the basis of the last actual reading unless otherwise agreed upon by the parties. Buyer shall pay the cost of installing a water meter, if required by law. Sewer charges shall be adjusted on the basis of the last actual reading unless otherwise agreed upon by the parties. Buyer shall pay the cost of installing a sewer meter, if required by law. Seller represents that he pays sewer charges on the basis of a fixed annual charge. Seller represents that he pays water charges on the basis of a fixed annual charge

Pet. Exh #2

THIS DEED, made this 24th day of June, in the year nineteen hundred and eighty-eight, by and between AILEEN N. SINGER, Grantor, and RONALD F. JONES and SUZANNE LUSSIER-JONES, his wife, Grantees.

WITNESSETH, that for and in consideration of the sum of ONE HUNDRED NINETY THOUSAND DOLLARS ($190,000.00), and other good and valuable considerations, the receipt whereof is hereby acknowledged, the said Grantor does hereby grant and convey unto the said Grantees, as tenants by the entireties, their assigns, the survivor of them, and the personal representatives and assigns of the survivor of them, forever in fee simple, all that lot or parcel of land situate on Central Avenue, in the Fourth Election District of Baltimore County, Maryland, and containing 25,545 square feet of land, more or less. The improvements thereon now being known as 209 Central Avenue.

BEING the second parcel of land conveyed unto the Grantor herein by deed from Louis A. Bladgett and Mary K. Bladgett, his wife, dated September 2, 1977, and recorded among the Land Records of Baltimore County, Maryland, in Liber E.H.K. Jr. No. 5799, folio 420 &c.

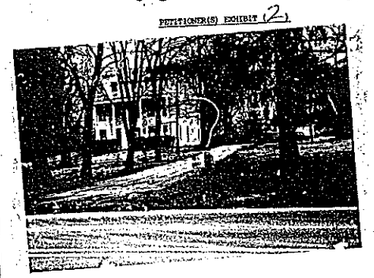
TOGETHER with the buildings and improvements thereon, and all and singular the rights, roads, ways, waters, privileges, appurtenances and advantages thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the above mentioned property unto the Grantees, as tenants by the entireties, their assigns, the survivor of them, and the personal representatives and assigns of the survivor of them, forever in fee simple.

AND the said Grantor hereby covenants that she has not done or suffered to be done any act, matter or thing whatsoever to encumber the property hereby conveyed; that she will warrant specially the property hereby granted; and that she will execute such other and further assurances of the same as may be requisite.

89-396SPHA

PETITIONER(S) EXHIBIT (2)



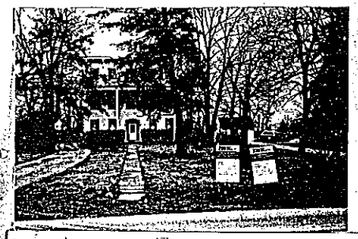


Spring 1989

Pet Exh #3

89-396SPHA

PETITIONER(S) EXHIBIT (2)



AFFIDAVIT

The undersigned hereby affirms under the penalties of perjury to the Zoning Commissioner of Baltimore County, as follows:

That the information herein given is within the personal knowledge of the Affiant and Affiant is competent to testify thereto in the event that a public hearing is scheduled in the future with regard thereto.

PROTESTANT'S EXHIBIT 8 — 89-396 SPHA

Mary E. Lloyd
AFFIANT (Signature)
MARY E. LLOYD
NOTARY (Printed Name)

Based upon your personal knowledge, please answer the following questions by indicating yes or no in the space provided:

1. Can you verify by this affidavit, and/or testify in Court if necessary, that the home located at 209 Central Avenue Glyndon, Maryland has been occupied as a 4 (two, three, etc.) apartment dwelling since May (month), 1942 (year)? Yes (answer)

2. Can you also verify and testify, if necessary, that said apartments have been occupied by renters every year since March (month), 1942 (year)? Yes (answer)

3. Will you realize any gain from the sale of this Property? (answer)

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, this 23rd day of March, 1988, before me, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared Mary E. Lloyd, and I am satisfactorily identified to me as such the Affiant herein, personally known to me to be the Affiant, and made oath in due form of law that the matters and facts hereinabove set forth are true and correct to the best of his/her knowledge and belief.

AS WITNESS my hand and Notarial Seal.

Donna M. Young
NOTARY PUBLIC

My Commission Expires: July 1, 1990

BCBA Protestant's Ex 4

Nevett Steele, Jr.
211 Central Avenue
Glyndon, Maryland 21071

March 30, 1988

HAND DELIVERED

Mr. Carl Richards
Office of Planning and Zoning
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

PROTESTANT'S EXHIBIT 6 — 89-396SPHA

Re: 207-209 Central Avenue
Glyndon, Maryland
Property of Aileen N. Singer

Dear Mr. Richards:

In accordance with our recent conversation I am enclosing a copy of a plat of the Singer's property and survey description which is marked as Exhibit A. I believe that this is a copy of the plat that was presented to the Landmark Preservation Commission at the hearing conducted on March 10, 1988 concerning the Singers' property. Using the scale indicated on the plat of one inch to fifty feet, it would appear to me that the distance between the Singer's building and the property line separating their property and our property is approximately twelve and a half feet.

Attached as Exhibit B is an outline of the Singer property, not drawn to scale, which outlines a proposed driveway between the Singer building and our driveway, ending in a parking lot behind the Singer building. This drawing although not drawn to scale seems to indicate that the distance between the building and the property line is perhaps a bit more than ten feet. Enclosed as Exhibit C is a drawing with a proposed horseshoe driveway/parking lot in the front lawn of the Singer property. Exhibits B and C were also presented at the Landmark Preservation Commission hearing of March 10, 1988.

I am also enclosing as Exhibit D a copy of the deed whereby Aileen N. Singer bought the lots identified as 207 and 209 Central Avenue from Mr. and Mrs. Badgett in 1977. The deed gives square footage information, as well as other references regarding the location and description of the property.

Protestant's Ex 5

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
494-3353

J. Robert Haines
Zoning Commissioner

PROTESTANT'S EXHIBIT 4 — 89-165SPHA

April 8, 1988

Mr. Nevett Steele, Jr.
211 Central Avenue
Glyndon, Maryland 21071

Re: 207-209 Central Avenue
Glyndon, Maryland
NE/S Central Avenue, opposite
Glyndon Avenue - Zoned DR 3.5/DR 2
4th Election District

PROTESTANT'S EXHIBIT 7 — 89-396 SPHA

Dear Mr. Steele:

Thank you for your letters of concern to the Zoning Commissioner written on March 5, 7, and 30th, concerning the above referenced property which have been referred to me for reply. We have talked over the telephone and as I had requested, you have enclosed information that was helpful with your last correspondence.

By using the lot survey and other information that you provided, we have made the following determinations:

1. That the property is zoned DR.3.5. 160 feet parallel and northeast of the center line of Central Avenue. The balance of the property is zoned DR.2.

2. By utilizing the conversion provisions contained in Section 402 (Baltimore County Zoning Regulations) for existing dwellings, and combining the separate calculations for the total units allowed in each zone, we arrive at a total of 2 units allowed based on square footage. Obviously, if the adjoining lot has been sold, we could only approve a conversion to 2 units on the remaining lot provided that:

   A. a variance would be granted to permit a lot width of 65 ft. in lieu of the required 90 ft. (DR.3.5), and

   B. that a variance would be granted to permit side yard setbacks of approximately 12 feet each and a sum of 24 feet in lieu of the required 20 foot setback for one sideyard and a sum of 50 feet for both sideyard setbacks (DR.2).

3. That it would be an apparent violation of the Baltimore County Zoning Regulations if as indicated, the adjoining lot (that was a part of the property for years) was sold to a separate party, leaving the apartment building on the remaining 65 foot lot without the benefit of a legally established non-conforming use for six apartments on that single lot only.

Protestant's Ex 6A

BCBA

DP 3
1/79

Permit

NOTE: A SEPARATE PERMIT IS REQUIRED FOR ALL ELECTRICAL & PLUMBING WORK WHICH MUST BE DONE BY AN ELECTRICIAN OR PLUMBER LICENSED IN BALTIMORE COUNTY.

County Executive
Dennis F. Rasmussen

APPLICATION FOR PERMIT
BALTIMORE COUNTY MARYLAND
OFFICE OF THE BUILDING ENGINEER
TOWSON, MARYLAND 21204 CJB

DISTRICT 04-07-086570 — HR Appl.

BUILDING ADDRESS: 209 CENTRAL AVE.
OWNER'S NAME: AILEEN SINGER — 101622
MAILING ADDRESS OF OWNER: 209 CENTRAL AVE. GLYNDON, MD 21071 — GR
LESSEE
BUILDING CONTRACTOR: OWNER
ENGINEER OR ARCHITECT
E. KNOWN CONTRACTS FOR ELECTRICAL WORK AND PLUMBING
PRESENT OR PROPOSED DESCRIPTION: E/S CENTRAL AVE. 100' S OF GLYNDON AVE.

SITE MADE: APR 11 1988

A. TYPE OF IMPROVEMENT
1 ☐ NEW BUILDING CONSTRUCTION
2 ☐ ADDITION
3 ☐ ALTERATION
4 ☐ REPAIR
5 ☐ WRECK (NO ENTER NO SAFE REQUIRED)
6 ☐ MOVING
7 ☒ OTHER GRADING

RESIDENTIAL
10 ☐ ONE FAMILY
11 ☐ TWO FAMILY
12 ☐ THREE AND FOUR FAMILY
13 ☐ FIVE OR MORE FAMILY (ENTER NO. UNITS)
14 ☐ SWIMMING POOL
15 ☐ GARAGE
16 ☒ OTHER GRADING

C. TYPE OF USE
NON-RESIDENTIAL
30 ☐ AMUSEMENT, RECREATION, PLACE OF ASSEMBLY
31 ☐ CHURCH OTHER RELIGIOUS BUILDING
32 ☐ FENCE (HEIGHT)
33 ☐ INDUSTRIAL STORAGE BUILDING
34 ☐ PARKING GARAGE
35 ☐ SERVICE STATION, REPAIR GARAGE
36 ☐ HOSPITAL, INSTITUTIONAL, NURSING HOME
37 ☐ OFFICE BANK, PROFESSIONAL
38 ☐ PUBLIC UTILITY
39 ☐ SCHOOL, COLLEGE, OTHER EDUCATIONAL
40 ☐ SIGN
41 ☐ STORE ☐ MERCANTILE ☐ RESTAURANT
SPECIFY TYPE
42 ☐ SWIMMING POOL AND HEALTH CLUBS (NOT APPR. ABOVE)
43 ☐ TOWER
44 ☐ TRANSIENT HOTEL, MOTEL (NO. UNITS)
45 ☐ OTHER

GRADE LESS THAN 5,000 S.F. FOR RELOCATING DRIVEWAY; OK TO FILE; J.M.B.; THE BALTIMORE COUNTY LANDMARKS PRESERVATION COMMISSION REQUESTED THAT THIS APPLICATION BE MADE. THIS PERMIT EXPIRES 2 YEARS FROM DATE ISSUED.

1988 ☒ NEW CODE ☐ OLD CODE

B. OWNERSHIP
1 ☒ PRIVATELY OWNED 2 ☐ PUBLICLY OWNED

ESTIMATED COST OF WORK $ 3,000

OFFICE APPROXIMATE CLASSIFICATIONS FOR RESIDENTIAL ONLY

	1 FAMILY	2 FAMILY	3 & 4 FAMILY	5 OR MORE FAMILY
NO. OF BUILDINGS				
NO. OF UNITS				

FOUNDATION: BASEMENT ☐ FULL ☐ PARTIAL ☐ NONE ☐ SLAB ☐ BLOCK ☐ CONCRETE

PROPOSED USE(S): SAME & GRADING
PRESENT USE(S): SFD, DIVIDED INTO APTS.

THIS PERMIT MUST BE POSTED
SEE OTHER SIDE FOR INSPECTIONS

PETITIONER'S EXHIBIT 5 — 89-396SPHA

BCBA
Petitioners Ex 7

Maryland Historical Trust Inventory Number

PETITIONER'S EXHIBIT — 89-396SPHA

DISTRICT 4 - continued

775 CAPLES HOUSE - Before 1898 - 211 Central Avenue. House was called Cromwell Park. as Frank D. Ortitz's, father of present owner. House was called Cromwell Park. Victorian structure, frame with covering of clapboard and fish-scale shingles; gable roof, stone foundation. Former owners, at 1972 NR survey, Elizabeth O. Caples. Owner: Nevett Steele, Jr.

BA 777 BLADGETT HOUSE - Before 1898 - 209 Central Avenue. Shown in 1898 atlas as C. Mantell's and in 1915 as A. Bailey's. Possibly designed as a boarding house. Frame and clapboard house in a cottage-style with shed roof; stone foundation. Bracketed cornice, two-story high porch with Atis posts. Owner: Louis A. Bladgett.

778 GRIFE HOUSE - Before 1898 - 119 Central Avenue. Shown in 1898 and 1915 atlases as G.Bellows house. Frame structure with wood shingle covering, built in Victorian Downing-Vaux cottage style with gable roof and stone foundation. Lancet windows sometimes in pairs. Owner: Joseph T. Grife.

779 KEEY HOUSE - Before 1898 - 117 Central Avenue. Shown in 1898 and 1915 atlases as G. Longenecker's. Victorian house in frame and wooden shingle with gable roof and stone foundation. Owner: Edward W. Keir.

780 BROADBENT HOUSE - Before 1898 - 115 Central Avenue. Shown in 1898 atlas as C.E. Mantell's and in 1915 as J. Warfield's. Victorian house in frame and composition shingles, with gable roof and stone foundation. Owner: Scott A. Broadbent.

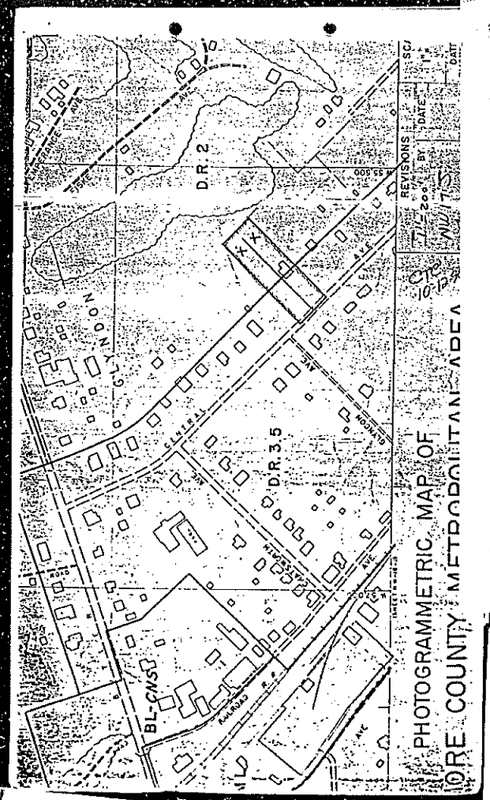
781 BOLLINGER HOUSE - Before 1915 - 111 Central Avenue. Shown as M. Stringer's in 1915 atlas. Frame, wood-shingled house in shingle style with gable roof and stone foundation. Small 2nd-storey windows. Owner: D. Howard Bollinger.

782 WHITE HOUSE - Before 1915 - 109 Central Avenue. Shown in 1915 atlas as J. Zouck's. Colonial revival house in frame and wood shingles with hip roof and stone foundation. Massive stone and chimney. Owner: Elsie S. White.

783 ROSE HOUSE - Before 1898 - 107 Central Avenue. Shown in 1898 atlas as W.G. Bishop's and in 1915 as Jacob Zouck's. Victorian house, frame and clapboard with gable roof and stone foundation. Owner: Everett Rose.

784 GRIFFIN HOUSE - Before 1898 - 11 Central Avenue. Shown in atlas of 1898 and 1915 as the F.J. Williams house. Small, low 1-½ storey frame and clapboard cottage in Victorian style with gable roof and stone foundation. Decorated with bargeboards. Owner: John J. Griffin.

Pet. Exh #5



PROTESTANT'S EXHIBIT 10 89-396 SPHA

347-8756

May 5, 1988

PROTESTANT'S EXHIBIT ____

Ellie Lipsitz, Esquire
6609 Reisterstown Road
Suite 102
Baltimore, Maryland 21215

RE: 207-209 Central Avenue
Glyndon, Maryland
Property of Aileen H. Singer

Dear Ellie:

Enclosed is a copy of a letter dated April 8, 1988 from the Zoning Commission's office in Baltimore County to me with various attachments. Included in the attachments is a letter dated April 8, 1988 to Colleen Thompson, the realtor for the Singers.

It was nice chatting with you and your dad the other day.

Very truly yours,

Nevett Steele, Jr.

NS/nov
enclosure

Protestant's Ex 7
BCBA

PROTESTANT'S EXHIBIT 3 89-16 SPHA

LAW OFFICES
WHITEFORD, TAYLOR & PRESTON

SUITE 1400
SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1626
301 347-8700
TELEX: 510 001 1954
Fax: 301 752-7092

NEVETT STEELE, JR.

July 14, 1988

RECEIVED
JUL 15 1988
ZONING OFFICE

The Honorable J. Robert Haines
Zoning Commissioner, Baltimore County
Office of Planning and Zoning
Towson, Maryland 21204

RE: 207-209 Central Avenue
Glyndon, Maryland

Dear Mr. Commissioner:

It is our understanding that a hearing has been set for July 27, 1988 in regard to a variance that is being applied for in connection with the proposed construction of a new house on 207 Central Avenue. The variance, we believe, is being requested because of the insufficient width of the property.

207 Central Avenue was formerly connected with 209 Central Avenue and 207 was in fact the situs of the driveway and parking lot for the structure on 209 which is presently a six-unit apartment building.

We wanted to register our opposition to the proposed variance for lot 207 and to point out that this is another significant zoning problem created by the sale of the lot (207) which was formerly part of the entire 1.2 acre premises that served as the site for a six-unit apartment building. As indicated in Mr. Richard's letter of April 8, 1988, the current zoning situation regarding the apartment building on 209 Central Avenue has become exacerbated by the sale of the lot (207). There is not sufficient land space to justify the existence of a six-unit apartment building, there is not sufficient front footage, and there is a side yard set back deficiency. The separation of these lots has resulted in both lots being of insufficient size and dimensions to support the proposed structure on 207 and the existing structure on 209.

We would suggest that both matters be reviewed by the Zoning Commission and ask the Comission to treat this letter as a complaint concerning the existing zoning violations in regard

Protestant's Ex 8
BCBA

August 10, 1988

The Honorable J. Robert Haines
Zoning Commissioner, Baltimore County
Office of Planning and Zoning
Towson, Maryland 21204

RE: 207-209 Central Avenue
Glyndon, Maryland
Case No: 89-16-A

Dear Commissioner Haines:

I am in receipt of Ms. Lipsitz's letter to you of August 9, 1988. In that letter, she indicated that Mr. and Mrs. Jones had never received any notice that a zoning violation existed with regard to their property.

I spoke with Ms. Lipsitz after having spoken to Mr. and Mrs. Jones concerning the letter dated April 8, 1988 from Mr. Dyer and Mr. Richards of your office to me.

After those conversations, I then sent Ms. Lipsitz, on May 5, 1988, prior to the purchase of the property by Mr. and Mrs. Jones, a copy of the April 8, 1988 letter from your office.

Very truly yours,

Nevett Steele, Jr.

NS/nov
cc: Charles B. Heyman, Esquire
Ellie Lipsitz, Esquire

Prot. Exh #12

Law Offices
BENJAMIN LIPSITZ
ELEANOR J. LIPSITZ
100 Church Lane
Baltimore, Maryland 21208-3785
Area Code 301-484-3050
Telecopier 301-653-1546

RECEIVED
AUG 15 1988

Respond to this

Dear Mr. Haines:

[illegible] letter which Shirley [illegible] Jones had written to you on August 5, 1988, during the [illegible] conversation I had with Mr. Heyman, I told him that my client, Aileen H. Jones, had not reached a decision as to what, if any, action should be with regard to the construction at 209 Central Avenue. In all fairness to the [illegible] Mrs. Jones' request to know the [illegible] with regard to asking [illegible] that Mrs. Jones was not in agreement with respect to the property which is [illegible] at 209 Central Avenue, nor as it may relate to his [illegible] any second home request, that is, the [illegible] with Mr. Jones, 305 Stevenson Avenue, Towson, Maryland [illegible] to her knowledge about the zoning [illegible] of second hand comments made to him by assorted [illegible], none of whom seemed to be speaking with any authority. He and Mrs. Jones will take whatever reasonable steps are required to have their property at 209 Central Avenue comply with appropriate zoning rules. They have heard such "rumblings", but have never received any notice that a zoning violation exists with regard to their property. In the absence of some notice from your office, they do not know what it is they are supposed to do. Neither they nor any one else I spoke to them attended the hearing referred to in Mr. Heyman's letter.

Cont. Exh #11

Mr. Haines
August [illegible], 1988
Page Two

I am scheduled to be out of town during the week of [illegible] and hence will not be able to attend a [illegible] meeting the time suggested in Mr. Heyman's letter. I will also be away on September 6, 1988.

Very truly yours,

Eleanor J. Lipsitz

cc: Charles B. Heyman, Esquire
Nevett Steele, Jr., Esquire
Mr. and Mrs. Ronald F. Jones

BY-LAWS
OF
GLYNDON COMMUNITY ASSOCIATION, INCORPORATED

ARTICLE I
NAME

SECTION 1. This association shall be known as "Glyndon Community Association, Incorporated."

ARTICLE II
PURPOSES

SECTION 1. The purposes and objects of this Association shall be to organize and operate an association to promote and maintain a stronger community spirit in Glyndon (hereinafter called the community), to bring about improved conditions in all things that affect the community in general, and to promote other non-profitable purposes, no part of the net earnings of which is to inure to the benefit of any member.

ARTICLE III
TERRITORIAL LIMITS - MEMBERSHIP - DUES

SECTION 1. The territorial limits of the Community of Glyndon shall be that area in Baltimore County within the confines of the Glyndon zip code 21071 postal area, and also includes the area designated as the Glyndon National Register Historic District.

SECTION 2. The membership of this association shall be limited to residents of the Community of Glyndon who have attained the age of eighteen (18) years and who have resided in Glyndon for a period of at least ninety (90) days.

SECTION 3. Membership in this Association shall be comprised of two (2) types: Resident and Associate. Resident membership will be limited to those individuals and families who own real estate or reside within the Community and who meet the requirements of the other sections of this article. Associate membership will include those individuals and families who have an interest in the Community but do not reside in the Community or own property in the Community.

SECTION 4. Any person, meeting the requirements of Sections 2 and 3 above, shall be entitled to membership in this Association and shall automatically become a member upon payment of current dues.

O'CONOR PITEPLAIN REALTORS

BCBA Ex 9

CONV

LIBER 5320
FOLIO 466
WSS # BC 151494-4

Selling Office: ORF Rockville — Phone: 881-3000
Selling Associate: Rosie Shaw — 881-1541
Listing Office: Hutchinson — Phone: 876-4440
Listing Associate: Colleen Thompson — 560-6467

THIS AGREEMENT OF SALE, made this 31st day of March, 19 88, between
(Name) Aileen Singer, Seller
(Address) 209 Central Avenue, Glyndon, Maryland 21071 and
(Name) Ronald F. Jones and Shirley Jones (Husband), Buyer
(Address) 305 Stevenson Road, Towson, Maryland 21204

Witness that Seller does hereby bargain and sell unto Buyer, and Buyer does hereby purchase from Seller the following described fee simple real property, known as 209 Central Avenue, Glyndon, Maryland 21071.

and all rights and appurtenances pertaining or belonging unto the same, and Buyer does hereby purchase from Seller the following described personal property, known as Refrigerator, Stove, Washer and Dryer, which, if they have been installed, are represented by Seller to be free of liens, and all of which are hereby declared to be and remain fixtures and a part of the realty, and which are now on the premises aforesaid, and Seller shall not remove any of the aforesaid property from the premises aforesaid, and Seller will warrant specially the property hereby agreed to be conveyed, and will execute such further assurances of the same as may be requisite, for the total consideration of One Hundred Fifty Two Thousand Dollars ($152,000.00)

1. DEPOSIT: As evidence of good faith and as a deposit on account of the purchase price, Buyer has paid or will pay to Seller's Settlement Agent the sum of Five Thousand Dollars ($5,000.00) to be held in escrow by Seller's Settlement Agent pending settlement hereunder, which deposit shall be credited to Buyer at settlement. In the event Buyer defaults in the performance of this Agreement, Seller may declare the deposit forfeited, and Seller may pursue any and all remedies at law or equity. In the event Seller defaults in the performance of this Agreement, Buyer may pursue any and all remedies at law or equity.

2. FINANCING: Buyer agrees to apply for a Conventional mortgage loan within seven (7) days from the date of contract, to pursue the necessary steps and furnish any and all information and papers as may be required by the lender in connection with such application, and to use reasonable diligence and in good faith to take all necessary steps to secure a 30 year mortgage loan in the amount of $ 121,600.00, with principal and interest not to exceed 10.5% per annum (this interest rate may be fixed, variable or graduated) and with a loan placement fee charge of a maximum not exceeding 1% in the aggregate. Buyer agrees to pay the Rate of 10.5% and Buyer agrees to pay the rent of $ 1,026.00 per month. Buyer agrees to promptly furnish a copy of such application to the Seller or Seller's agent, and in the event Buyer's mortgage loan application is not approved as above provided, Buyer shall so notify Seller in writing within 10 days from the date of contract, and this Agreement shall be void and the deposit shall be returned to Buyer. Any action taken by Buyer after acceptance of this Agreement which is detrimental to qualifying the Buyer for financing shall give the Seller the right to declare the deposit forfeited. Buyer's mortgage application shall not be considered approved for the purpose of Buyer's property sales contingency unless a written Agreement, whereby payment is to be in equal principal and interest plus one twelfth (1/12) of the annual real estate taxes, hazard property insurance, ground rent and private mortgage insurance (if any) and flood insurance if required.

3. ALTERNATE FINANCING: In the further and event it is agreed should Buyer make application for financing through a lending institution other than one of which Buyer will have made a payment, or procured at least fifty (50) percent of the financing as above mentioned, then in such case it is agreed that the Buyer from said lending institution or party that is the financing as applied for has been approved and a loan commitment granted, the proceeding provisions of this agreement shall be deemed to be fully satisfied and of no further effect, provided said financing mortgage terms do not increase closing costs to Seller or exceed the sum allowed to secure the mortgage commitment as called for above.

4. TERMITE CLAUSE: Seller authorizes Buyer and/or assignee, at Buyer's expense, a certificate from a licensed pest control operator that the Property is free and clear of any visible termites and other wood boring insects. If any infestation or any damage is present, then the Property shall be treated at Seller's expense to correct any such infestation and any damage caused by any present or prior infestation shall be repaired at Seller's expense. In the event that the cost of the treatment and repairs called for above exceed 2% of the purchase price of the Agreement, then Seller shall have the option of not proceeding from this Agreement; however, if Buyer, at Buyer's option and expense, shall choose to pay the cost of the treatment and repairs in excess of 2% then this Agreement shall remain in effect. All decisions regarding the above shall be made and communicated in writing to the other party within 10 days from the receipt of the inspection report. In the event this Agreement is voided and/or this provision, then all deposits thereunder shall be returned in full to Buyer. The property subject to this provision shall be residential dwellings, and attached garages but shall not include outbuildings or trailers.

5. INCLUSIONS: Included in the purchase price shall be all fixtures now on the Property as of date of settlement, if any, if not excepted herein, and the number of installed appliances now in the house if required by law. The purchase price shall also include the following, as and if now installed or on the premises: kitchen and oven, all attic, storm doors and windows, curtain rods, drapery hardware, awnings, fuel and shrubbery, light fixtures, TV aerials, dishwasher, garbage disposal, central air conditioning and wall to wall carpeting. Also included shall be the following: All Stove and Refrigerator also in Use, specifically, Window Shades
Excluded - Chandelier Light Fixtures, Some Drapes

GLYNDON
COMMUNITY ASSOCIATION, INC. GLYNDON, MARYLAND 21071

Prot. Exh #14

October 12, 1990

Baltimore County Board of Appeals
County Office Building Room 315
Towson, Md 21204

Re: Case Number 89-396-SPHA

Dear Board:

The community of Glyndon is justifiably proud of our lovely Victorian houses located on spacious lots on small, tree lined streets. Because of these features, Glyndon has been placed on the National Register of Historic Places and has the honor of being r ..ed as the very first historic district in all of Baltimore County. This combination of history and beauty has attracted a very special type of home owner to Glyndon. People who live or consider buying homes in Glyndon appreciate the historic flavor of the community and are committed to maintaining and improving the beautiful Victorian houses and large lots on which they are situated.

Central Avenue is the main residential street in Glyndon and contains many of the historic Victorian homes that have helped to make Glyndon special. The property in question is located right in the midst of many of Glyndon's most beautiful and historic properties.

The Board of Directors of the Glyndon Community Association has voted unanimously to oppose this appeal until such time as the contiguous lot can once again be used to support the parking lot and driveway requirements for a six unit facility. The appeal being requested would have a significantly negative impact on the nature of our community and the scale of residences and lots on Central Avenue.

We urge you to support the dedicated and tireless work of hundreds of Glyndon residents and deny this appeal.

Sincerely,

GLYNDON COMMUNITY ASSOCIATION

Mark Laken
Mark Laken
President

Duly resolved by the Board of Directors on October 11, 1990.

Mark Laken
Mark Laken
President

Darlene Schoyer
Darlene Schoyer
Secretary

LEVIN, GANN & HANKIN

Mr. & Mrs. George Singer, Sr.
Page 2
April 4, 1988

nonconforming use, as you would not likely be able to obtain a "conversion" to five dwelling units with the remaining lot size. It is unclear however, what effect both the outconveyance of 207 Central Avenue and the zoning line that bisects the lot will have on the conversion calculation and should this become a dispute, there may be possible avenues to resolution of the larger problem.

In any event, from what you have told me about your current disputes and differences, I suspect that an amicable resolution will likely be possible. Should you have any further questions or should I need be of any assistance to you, please do not hesitate to give me a call.

Sincerely,

Stuart E. Kaplow

SEK/tbh

Historic Glyndon Incorporated
Glyndon, Maryland 21071
October 23, 1990

Mr. J. Robert Haines
Zoning Commissioner of Baltimore County
Office of Planning and Zoning
111 W. Chesapeake Avenue
Towson, MD 21204

Dear Mr. Haines,

The board members of Historic Glyndon Inc. would like to express opposition to the granting of variances in case numbers 89-16-SPHA and 89-396-SPHA. We feel that allowing these changes would set an undesirable precedent for the future in the Glyndon Historic District.

The importance of maintaining the historic integrity of our houses and properties in spirit and in fact is not taken lightly by those of us who have chosen to live here and should be recognized by our appointed and elected officials as well. Adding new homes to the community is not at issue but we feel in this instance the changes allowed by the proposed variances could encourage developers to seek out similar properties and further variances. A community of once stately homes and spacious lawns could be chopped into small lots of unsuitable dimensions.

National, State and County designations have been put in place in Glyndon to afford some protection for its unique character and we feel that local boards and commissions should do everything in their power to uphold the laws which grant these designations.

We hope for your much needed and appreciated support by not granting these variances.

Sincerely,

Ann B. O'Neill
Ann B. O'Neill, President
Historic Glyndon, Inc.

Prot. Exh #15

Historic Glyndon Incorporated
Glyndon, Maryland 21071
October 23, 1990

To Whom It May Concern:

Historic Glyndon Incorporated is an historic organization of 141 members. The territorial boundary of Historic Glyndon Incorporated, as stated in the by-laws, "shall be the community known as Glyndon, Maryland which shall be deemed to contain the areas known as "Emory Grove" and "St. Georges" and which shall be deemed to contain the property known as the "Sacred Heart Catholic Church on Sacred Heart Lane, Glyndon, Maryland."

The Board of Directors is authorized by the by-laws of the Corporation to conduct all business, including items related to zoning issues. The Board has resolved that Mrs. Eleanor Taylor is authorized to present our views with respect to cases 89-16-SPHA and 89-396-SPHA.

Sincerely,

Ann B. O'Neill
Mrs. Ann B. O'Neill, President

Lynne Maher
Mrs. Lynne Maher, Secretary

Prot. Exh #16

LAW OFFICES
LEVIN, GANN & HANKIN
A PROFESSIONAL ASSOCIATION
305 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
301-321-0600
FAX 301-296-2501

ELLIS LEVIN (1893-1960)

BALTIMORE OFFICE
40 LIGHT STREET
BALTIMORE, MD 21202
301-539-1700
FAX 301-625-9055

CARROLL COUNTY OFFICE
RAY UTILITY ROAD
SYKESVILLE, MD 21784
301-795-8400

April 4, 1988

Mr. & Mrs. George Singer, Sr.
209 Central Avenue
Glyndon, Maryland 21071

Re: 207 and 209 Central Avenue

Dear George and Aileen:

I thought that I would drop you a quick note to confirm our telephone conversation of the other day with respect to a possible zoning violation for a multiple family dwelling use of 209 Central Avenue.

As we discussed, such a utilization of the property would be a "nonconforming use" under the current zoning regulations, however, it may continue as a legal use, if it meets the requirements of Section 104.1 of those regulations. While I am not familiar with the details of your current difficulties, it appears clear that the outconveyance of 207 Central Avenue has served to exacerbate the situation.

While I am unclear as to the nature of the Zoning Office's current involvement with this matter, I can only assume that it was as a result of someone attempting to obtain a certificate of zoning compliance incident to your contract to sell the property. It is extremely unlikely that the involvement was as a result of a citizen complaint because such a complaint would have been referred to the local zoning inspector, Ms. Robin Clarke and not to Carl Richards. In any event, as you likely have a settlement date for your contract, all efforts should be made to resolve this matter informally and with due haste. (before any written responses are promulgated by the Zoning Office), as hearings before the Zoning Commissioner are now being scheduled some four months from now and violation hearings before the District Court are now being scheduled almost five months from nov.

Assuming that your current difficulties are in securing a certificate of zoning compliance, you may be faced with the prospect of having the Zoning Comissioner validate your

Prot. Exh #17

GLYNDON COMMUNITY ASSOCIATION
MINUTES
General Meeting, February 27, 1990

Prot. Exh #13

President Mark Laken called the meeting to order at 7:40 P.M. There were 55 members in attendance. The minutes of the November 28, 1988 general meeting were approved as read. The Treasurer's report (attached) was approved as read.

COMMITTEE REPORTS

Traffic -- the intersection of Butler Rd. & Rt. #30 was downgraded to a Class F intersection.

Zoning -- No report.

BOG -- No report.

Improvement -- No report.

Master Plan - No report.

Environment -- The former National Circuits property (Rts. 140 & 30) has been found to contain high levels of hazardous waste products. Clean-up evaluation is currently in progress, but the surrounding communities have been told that there is no need to panic.

It was reported that a storm water management pond near 350 Central Ave. has presented some problems for the residents there. The gentleman reported that children have been playing in the approximately 8 feet of water and that there was an anticipated mosquito problem. He has followed this up with numerous phone calls to the proper Balto. Co. agencies and is making a diligent effort to correct the problems.

OLD BUSINESS

207 - 209 Central Avenue...An appeal date has been set for June.

Glyndon Square Parking Exp....The Zoning Commissioner said he would take a personal look at the site prior to making a decision. To date no further has been heard.

State Highway Property...There has been no new information.

Glyndon Historical Sign...George Wroe will continue investigation into replacing the sign. Total replacement seems to be less expensive than repairing the damaged sign.

W. LEE THOMAS, P.A.
ATTORNEY AT LAW
SUITE 3-A
408 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
TELEPHONE (301) 296-6777

W. LEE THOMAS
DAVID A. WILSON
LEITH E. ARNOLD
CAL G. COOPER

TELECOPIER
(301) 821-5404

May 10, 1988

Mr. William E. Doyle
5312 Emerald Drive
Sykesville, MD 21784

Re: Aileen M. Singer, 207 Central Avenue
Your File: No. 223-6

Dear Mr. Doyle:

This office represents Mrs. Singer in her effort to establish a non-conforming use at the above-referenced property.

In order to file a Petition for Special Hearing with the Office of the Zoning Commissioner for Baltimore County, I shall need a plat. I understand that you have already prepared one, which certainly can serve as a start.

As you may know, however, Baltimore County requires certain specific information on each plat. A copy of their checklist is enclosed for your reference.

In addition to the information set forth therein, I would also request that you include the following information on the plat:

1) location of new driveway and parking lot on 209 Central Avenue;

2) location and description of existing trees, shrubs and other screening on south property line; and

3) location of dwelling and screening on adjacent property (211 Central Avenue) owned by Mr. Steele, the primary opponent to Mrs. Singer.

I would appreciate your prompt attention to this matter so that I may file the petition at the earliest possible date. Should you have any questions or if I may be of any assistance, please do not hesitate to contact me.

RONALD F. JONES, ET UX

89-396-SPHA

NE/s Central Ave., 60' SE Glyndon Ave. (209 Central Ave.)

4th Election District
3rd Councilmanic District

Petition filed by Eleanor J. Lipsitz, Esquire on behalf of Ronald F. Jones, et ux for a Special Hearing to approve the multi-family apartment dwelling and lot at 209 Central Avenue as a legal nonconforming use for six apartment units or that said lot (209) and improvements conform to the spirit and intent of the BCZR that apply to the conversion of dwellings for apartment use.

Petition filed by Eleanor J. Lipsitz, Esquire on behalf of Ronald F. Jones, et ux for Variances to permit side yard setbacks of 12 ft. and 12.6 ft. in lieu of the required 20 ft. for one side and 40 ft. and/or 50 ft. for the sum of both side yard setbacks. Also to permit a lot width of 65 ft. in lieu of the required 90 ft. or greater as may be determined.

March 15, 1989	Comments of Baltimore County Zoning Plans Advisory Committee.
March 17	Publication in newspaper.
March 17	Certificate of Posting of property.
April 4	Hearing held on Petition by the Zoning Commissioner.
June 2	Petitioner's Brief filed by Eleanor J. Lipsitz, Esquire.
	Protestants' Memorandum of Law filed by G. Scott Barhight, Esquire.
October 24	Order of the Zoning Comaissioner DENYING Petitions for Special Hearing and Variances.
November 21	Notice of Appeal received from Eleanor J. Lipsitz, Esquire on behalf of Petitioner.
June 26, 1990	Hearing before the Board of Appeals.
July 24	Continued Hearing before the Board of Appeals (telephone testimony).
October 12	Continued Hearing before the Board of Appeals.
October 26	Concluded Hearing before the Board of Appeals.

RONALD F. JONES, ET UX

89-396-SPHA

NE/s Central Ave., 60' SE Glyndon Ave. (209 Central Ave.)

4th Election District
3rd Councilmanic District

January 22, 1991	Appellants' Brief filed by Eleanor J. Lipsitz, Esquire.
January 22	Protestants' Memorandum of Law filed by G. Scott Barhight, Esquire.
April 12	Opinion and Order of the Board GRANTING the Petitions for Special Hearing for nonconforming use and for requested Variances.
April 12	Dissenting Opinion by John G. Disney.
May 13	Order for Appeal filed in the Circuit Court for Baltimore County by Nevett Steele, Jr., et ux.
	Petition to accompany appeal filed in the Circuit Court for Baltimore County by Nevett Steele, Jr., et ux.
May 14	Certificate of Notice sent to interested parties.
	Transcript of testimony; Record of Proceedings filed in Circuit Court for Baltimore County.
May 22, 1991	Notice of Dismissal of appeal filed in CCt,BCo by Nevett Steele, Jr., Plaintiff/Appellant.
May 30	Above Notice of Dismissal stamped and filed by Clerk of the Court.

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

App N/A

IN THE MATTER OF THE APPLICATION OF RONALD F. JONES, ET UX FOR A SPECIAL HEARING AND VARIANCE ON PROPERTY LOCATED ON THE NORTHEAST SIDE OF CENTRAL AVENUE, 60 FEET SOUTHEAST OF GLYNDON AVENUE (209 CENTRAL AVENUE 4TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT

BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

CASE NO. 89-396-SPHA

91 CG 2061

94/90

NOTICE OF DISMISSAL

MADAM CLERK:

Please dismiss the above case pursuant to Maryland 2-506.

This case is an appeal filed pursuant to Md. Rules B-12, Administrative Agencies.

Respectfully submitted,

Nevett Steele, Jr.
211 Central Avenue
Glyndon, MD 21071
(301) 296-8164 (Work)
(301) 833-6564 (Home)

Elizabeth B. Steele
211 Central Avenue
Glyndon, MD 21071
(301) 833-6564 (Home)

PAID
MAY 29 1991
SUZANNE MENSH, CLERK
PER

FILED MAY 30 1991

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29 day of May, 1991, a copy of the foregoing Order for Appeal was mailed to Eleanor J. Lipsitz, Esquire, 100 Church Lane, Baltimore, Maryland 21208; Charles B. Heyman, Esquire, Kaplan, Heyman, Greenberg, Engleman & Belgrad, P.A., Tenth Floor, Sun Life Bldg., 20 S. Charles Street, Baltimore, MD 21201; and Linda Kuszmaul, Board of Appeals, 111 W. Chesapeake Avenue, Towson, Maryland 21204.

Nevett Steele, Jr.

Baltimore County Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

receipt

Account R-001-6150
Number

Date

FOR: FILING OF APPEAL

	QTY	UNIT
TOTAL		$ 35.00

Please Make Checks Payable To: Baltimore County

$35.00

Cashier Validation

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL GENERAL

DOCKET 94 PAGE 90 CASE NO. 91CG2061 CATEGORY APPEAL

IN THE MATTER OF THE APPLICATION OF RONALD F. JONES, ET UX FOR A SPECIAL HEARING AND VARIANCE ON PROPERTY LOCATED ON THE NORTHEAST SIDE OF CENTRAL AVENUE, 60 FEET SOUTHEAST OF GLYNDON AVENUE 209 CENTRAL AVENUE 4TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT

ATTORNEYS

Nevett Steele, Jr.
Elizabeth B. Steele
211 Central Ave, Glyndon 21071
296-8164, 833 6564

E

(1) May 13, 1991 - Order from Appeal from the Opinion and Order of the Baltimore County Board of Appeals fd. (89-396-SPHA)

(2) May 14, 1991 - Certificate of notice, fd.

COSTS

CV CIR ...
CV CLK ...
CV GEN $120.61
CV CLK 10.00
CHECK TL 10.00

MAY 30 1991

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
494-3353

J. Robert Haines
Zoning Commissioner

Date: 3/20/89

Donald F. Rasmussen
County Executive

Mr. & Mrs. Ronald F. Jones
315 Church Road
Reisterstown, Maryland 21136

Re: Petition for Special Hearing and Zoning Variance
CASE NUMBER: 89-396-SPHA
NE/S Central Avenue, 125' SE Glydon Avenue
(209 Central Avenue)
4th Election District - 3rd Councilmanic
Petitioner(s): Ronald F. Jones, et ux
HEARING SCHEDULED TUESDAY, APRIL 4, 1989 at 9:00 a.m.

Dear Mr. & Mrs. Jones:

Please be advised that $118.32 is due for advertising and posting of the above-referenced property. All fees must be paid prior to the hearing. Do not remove the sign and post set(s) from the time it is posted by this office until the day of the hearing itself.

THIS FEE MUST BE PAID AND THE ZONING SIGN(S) AND POST(S) RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT BE ISSUED.

Please make your check payable to Baltimore County, Maryland and bring it along with the sign(s) and post(s) back to the Zoning Office, County Office Building, Room 113, Towson, Maryland 21204 not later than 10:00 minutes before the hearing.

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 067538

DATE 4/4/89 ACCOUNT R01-615-000

AMOUNT $ 127.32

RECEIVED FROM Arnold Jan

FOR P.A. 4/4/89 Zoning 89-396-SPHA

B B013####127321a 0641F

VALIDATION OR SIGNATURE OF CASHIER

cc: Eleanor J. Lipsitz, Esq.
file

Case No. 89-396-SPHA

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 4th Date of Posting 4/5/89
Posted for: Special Hearing & Zoning Variance
Petitioner: Ronald F. Jones et ux
Location of property: NE/S Central Ave, 125' SE Glydon Ave (209 Central Ave)
Location of Signs: Front yard of subject property
Remarks:
Posted by: Signature Date of return:
Number of Signs: 2

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

89-396-SPHA

District 4th Date of Posting 3-17-89
Posted for: Special Hearing & Zoning Variance
Petitioner: Ronald F. Jones, et ux
Location of property: NE/S Central Avenue, 125 SE Glydon Ave
209 Central Avenue
Location of Signs: Front yard of subject property
Remarks:
Posted by: Signature Date of return:
Number of Signs: 2

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

RONALD F. JONES and SUZANNE LUSSIER-JONES, Petitioners : Case No. 89-396-SPHA NE/S Central Avenue, 125 SE Glyndon Avenue

APPEAL

MR. ZONING COMMISSIONER:

Please enter an appeal to the Board of Appeals for Baltimore County in this matter on behalf of Petitioners.

ELEANOR J. LIPSITZ
100 Church Lane
Baltimore, Maryland 21208
(301) 484-3050
Attorney for Petitioners

Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

receipt

Account R-001-6150
Number № 449

Date

	QTY	UNIT
FILING FEE		
POST OF ALL OTHER ORDERS	2 X	$150.00
ZONE POSTING SIGNS - ADVERTISING	1 X	125.00
	TOTAL:	$275.00

LAST NAME OF OWNER: LIPSITZ

CASE # 89-396-SPHA

B 075####275001a 0235F

Please make checks payable to: Baltimore County

Cashier Validation:

CERTIFICATE OF PUBLICATION

TOWSON, MD., March 17, 1989

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on March 16, 1989.

THE JEFFERSONIAN,

S. Zeke Orlinsky
Publisher

PO 10818
M27075
price 97.32

CERTIFICATE OF PUBLICATION

TOWSON, MD., March 16, 1989

THIS IS TO CERTIFY, that the annexed advertisement was published in the OWINGS MILLS TIMES, a weekly newspaper printed and published in Towson, Baltimore County, Md., appearing on March 16, 1989.

OWINGS MILLS TIMES,

S. Zeke Orlinsky
Publisher

PO 10818
M 27075
price 97.32

Baltimore County
Fire Department
Towson, Maryland 21204-2586
494-4500

Paul H. Reincke
Chief

J. Robert Haines, Zoning Commissioner
Office of Planning & Zoning
Baltimore County Office Building
Towson, Maryland 21204

Donald F. Rasmussen
County Executive

Re: Property Owner: Ronald F. Jones, et ux
Location: NE/S Central Avenue, 125' SE of Glyndon Avenue
Item No.: 356 Zoning Agenda: February 28, 1989

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

( ) 1. Fire hydrants for the referenced property are required and shall be located at intervals or ____ feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.

( ) 2. A second means of vehicle access is required for the site.

( ) 3. The vehicle dead end condition shown at _____ EXCEEDS the maximum allowed by the Fire Department.

( ) 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

(X) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code," 1976 edition prior to occupancy.

( ) 6. Site plans are approved, as drawn.

( ) 7. The Fire Prevention Bureau has no comments at this time.

REVIEWER: Lt. Robert Kelly 3-17-89 Planning Group Special Inspection Division

NOTED & APPROVED: Capt. William T. Bradley Fire Prevention Bureau

89-396-SPHA

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Your petition has been received and accepted for filing this 17th day of March, 1989.

J. ROBERT HAINES
ZONING COMMISSIONER

Petitioner Ronald F. Jones, et ux
Petitioner's Attorney Eleanor J. Lipsitz

Received by: James E. Dyer, Chairman, Plans Advisory Committee

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

RONALD F. JONES and SUZANNE LUSSIER-JONES, Petitioners : Case No. 89-395-SPHA
: NE/S Central Avenue, 125 SE
: Glyndon Avenue

RECEIVED
JUN 2 1989
ZONING OFFICE

PETITIONERS' BRIEF

Statement of Facts

The petitioners, Ronald F. Jones and Suzanne Lussier-Jones, acquired title to property known as 209 Central Avenue, Glyndon, Maryland, the subject of the instant petiton for special hearing and p ition for variance, on June 24, 1988. The property consists of a lot containing 25,545 square feet of land, more or less, and an existing structure, located in D.R. 2 and D.R. 3.5 zones. (See plats accompanying Petitioners' petitions filed herein). The structure has existed since before 1898. (Petitioners' Exhibit 1). The evidence shows that the building located at 209 Central Avenue has been operated as a boarding house and/or apartment house since, at least, the early 1900's. Even Protestant's Exhibit 8 indicates that prior to the enactment of the Baltimore County zoning regulations, 209 Central Avenue was operated as a multi-unit apartment building. A notarized letter from Anita Susemihl (Petitioner's Exhibit 3) states that the conversion of the improvements to six apartment units was

-2-

undertaken after she and her husband acquired title to the property in March, 1941.

The 209 Central Avenue and the adjacent lot known as 207 Central Avenue have been conveyed in one instrument, but as two separate lots, for at least ninety years. In March, 1988, the vacant lot known as 207 Central Avenue was sold by Aileen Singer to the Homestead Group. (Protestants' Exhibit 11). 209 Central Avenue was subsequently conveyed by Aileen Singer to Ronald F. Jones and Suzanne Lussier-Jones by deed dated June 24, 1988. The Zoning Commissioner, at the conclusion of the hearing herein, found that 207 and 209 are and have been two separate lots. [Since that issue is not addressed here.]

Prior to conveying the vacant lot at 207 Central Avenue, Singer relocated a driveway and parking lot from that lot to the lot known as 209 Central Avenue. Singer obtained a building permit (Petitioners' Exhibit 5) prior to locating the driveway and parking lot on 209 Central Avenue and met with the requests of the Baltimore County Landmarks Preservation Commission with regard to the location of both the driveway and the parking lot. (Petitioners' Exhibit 6).

Petitioners Jones received Citation No. 89-038, Citation for Civil Zoning Violation, dated August 10, 1988, citing a violation of section 101; 402; 1B01.1B, the alleged violation being "use of property zoned D.R. 3.5 to commit the following: Apartment building located on residential property that lacks required lot area and minimum dimensional (width/side yard) standards." At trial of that matter, the County Solicitor

-3-

agreed to enter a "stet," provided the Jonses filed the appropriate petitions with the Zoning Commissioner. Hence, this matter comes before the Zoning Commissioner for hearing on petitioners' petition for special hearing and petition for variance.

Questions Presented

1. Does the operation of a six unit apartment building at 209 Central Avenue, Glyndon, Maryland qualify as a nonconforming use?

2. Should Petitioners' request for a variance from section 402.1 of the Baltimore County Zoning Code to permit side yard setback of 12.0 feet and 12.6 feet in lieu of required 20 feet for one side and 40 feet and/or 50 feet for the sum of both side yard setbacks and to permit a lot width of 65 feet in lieu of the required 80 feet or greater as may be determined be granted?

[Petitioners do not abandon the issue of the timeliness of the hearing on their petitions as raised prior to the presentation of their evidence. In deference to the direction of the Zoning Commissioners to address certain issues, this position is not specifically addressed. However, Petitioners do not relinquish their position that the hearing date was not properly advertised to afford the 15 days notice required by the zoning regulations.]

-4-

Argument

1. The operation of a six unit apartment building at 209 Central Avenue, Glyndon, Maryland qualifies as a nonconforming use.

The determination of a nonconforming is essentially two part. First, there must be a finding that a lawful use existed prior to the adoption of zoning regulations. (See Section 101, B.C.Z.R., 1955; Bill No. 18, 1976) Second, it must be shown that that use has continued without interruption or change. (See Section 104, B.C.Z.R., 1955, Bill 18, 1976) Also see McKemy v. Baltimore County, Md., 30 Md.App. 257, 385 A.2d 96 (1978).

January 2, 1945 marks the inception of the Baltimore County zoning regulations. The County Commissioners then adopted a comprehensive set of zoning regulations. McKemy supra, at 98; Kahl v. Cons. Gas El. Lt. & Pwr. Co., 191 Md. 249, 254, 60 A.2d 754 (1948); Calhoun v. County Bd. of Appeals, 262 Md. 265, 277 A.2d 589 (1971). Section XI, 1945, B.C.Z.R. first provided for nonconforming uses. On March 30, 1955, the County Commissioners adopted a new set of comprehensive zoning regulations. See McKemy. Section 104 of those regulations dealt with nonconforming uses. Currently, Section 104.1, as adopted on March 15, 1976 by Bill No. 18-76, of the Baltimore County Zoning Regulations provides for nonconforming uses. In pertinent part, Section 104.1 provides:

> "A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these Regulations; provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such

-5-

nonconforming use for a period of one year or more, the right to continue or resume such nonconforming use shall terminate. . . .

Evidence produced at the special hearing herein patently shows that the structure at 209 Central Avenue has been, and continues to be, operated as a multi-family dwelling since prior to the adoption of the original Baltimore County Zoning Regulations in January, 1945. Even the testimony of Protestants' witnesses establishes such multi-family use prior to 1945. 209 Central Avenue was known as a boarding house and/or apartment house since the childhood of not less than one 66 year old witness, which establishes such multi-family use prior to 1945. None of Protestants' witnesses disputed Petitioners' evidence that 209 Central Avenue has been operated as a boarding house or multifamily apartment house since well before the inception of zoning regulation for Baltimore County, hence, petitioners submit, the question of the existence of a legal nonconforming use is undisputed and not in issue.

Petitioners produced evidence, both written and testimonial, to substantiate the existence of six units at 209 Central Avenue since the early 1940's. In 1941 Louis and Anita Susemihl acquired the property and converted it to six apartments (Pet. Ex. 3). James Reter and Aileen Singer testified to the continuance of the apartment building usage from Mr. Reter's childhood (he is in his sixties now) to the present time.

-6-

Petitioners submit that no witness for the Protestants disputed the petitioners' evidence of six units. Protestants' witnesses, at best, could say that they were uncertain of the exact number of apartments in the building. None of them, from their personal knowledge, could successfully challenge the existence of six units. At best, Protestants' witnesses had been in some, but not all of the units in the building, and therefore, could not identify the actual number of units. Protestants' Exhibit 8 is not, Petitioners submit, conclusive evidence of the number of units in the building except as being not less than 4. Those affidavits assert, in two instances, the existence of 4 units; in one instance, the existence of "four or more" units, in another instance, 5 units and in the remaining instance, six units. The testimony of one of Protestants' witnesses, Mrs. Hammond, attempted to show that substantial improvements were made to 209 Central Avenue in the late 1940's. This testimony was vague at best. She testified that she had no actual knowledge of what was transpiring at 209 Central Avenue and had personally seen one delivery of materials there. The preponderance of the evidence supports Petitioners' position as to the continued use of the property as a six unit apartment building.

In summary, Protestants did not controvert the existence of the boarding house and/or apartment building at 209 Central Avenue before the adoption of the Baltimore County Zoning Regulations, nor did they successfully controvert the existence of six units at 209 Central Avenue.

-7-

There is evidence that Aileen Singer and her husband occupied two units on the first floor of the building. Testimony further shows that there were separate kitchen and bath facilities maintained for each unit. The occupancy of two units by a single family does not, Petitioners assert, constitute an abandonment or discontinuance of the nonconforming use. See Feldstein v. LaVale Zoning Board, 227 A.2d 713, 246 Md.204 (1967). At most this was a temporary abatement of the six unit use. The maintenance of two separate kitchen and bath facilities for the temporarily combined two units support the contention of a temporary abatement rather than being a clear indication of intention; action or inaction which is mandated to extinguish a nonconforming use. Id. at 734.

The evidence produced by Protestants at hearing of the instant petitions, at best, shows that the only changes in the use and operation of 209 Central Avenue since at least 1945 has been the location of the driveway and parking lot, formerly located on the lot known as 207 Central Avenue, on 209 Central Avenue. Petitioners urge that, applying the guidelines set out in McKemy v. Baltimore County, Maryland, 385 A.2d 96, 39 Md. App. 257 (1978), there has been no showing of any change of the nonconforming use to any other use so as to terminate the right to continue the nonconforming, six unit apartment use already existing at 209 Central Avenue.

-8-

McKemy, supra, at 104, clearly set forth the criteria to be applied in determining whether or not there has been a change in the use of the property which would serve to break the continued nature of the nonconforming use. These are:

> "(1) to what extent does the current use of these lots reflect the nature and purpose of the original non-conforming use;
> (2) is the current use merely a different manner of utilizing the original non-conforming use or does it constitute a use different in character, nature, and kind;
> (3) does the current use have a substantially different effect upon the neighborhood;
> (4) is the current use a 'drastic enlargement or extension' of the original non-conforming use."

Petitioners' Exhibit 2 shows 209 Central Avenue as it exists today. A driveway runs parallel to and along the property line between 207 and 209 Central Avenue. No parking is visible from Central Avenue. The parking lot for 209 Central Avenue is located to the rear of the structure located thereon. Evidence shows that the use of 209 Central Avenue as a multi-family dwelling has changed since the adoption of zoning regulations only in the locating of the driveway and parking lot on 209 Central Avenue. The nonconforming use operating at 209 Central Avenue is the same six unit apartment building that has existed, and been in operation in the same manner, over the period of years predating the enactment of the Baltimore County Zoning Regulations. The location of the driveway and parking lot on 209 Central Avenue in no way changes the continuous operation of the six unit apartment building. It does not, in any way, reflect a

different nature and purpose of use than existed prior to 1945. The driveway and parking lot are an intimate part of the operation of the six units at 209 Central Avenue, not a new or different usage of the property; they represent no difference in the basic use of the property than existed prior to March, 1988. There has, thus, been no change in operation of the premises at 209 Central Avenue that reflects anythi, but the nature and purpose of the original nonconforming use.

The current use reflects totally the nature and purpose of the original nonconforming use. The property, as always, is being used as a multi-f. ly dwelling. The fact that the parking for the residents of 209 Central Avenue is now on that property and behind the building does not in any way reflect a new usage of the property. This does not constitute a usage different in character, nature and kind than that which has long existed, i.e., a multi-family dwelling.

The current use does not have a substantially different effect upon the neighborhood. The building, as testimony of even Protestants's witnesses shows, has not changed in size, shape or character since the early 1940's. Its operation as a multi-family dwelling has not changed. The location of the parking lot and driveway on the lot has not substantially changed the effect of the operation of 209 Central Avenue on the community. Some of Protestants' witnesses testified that the operation of the apartment building had not undergone any substantial change since 1945, supporting Petitioners position. A complaint relating to dust caused by crusher run surfacing of the

driveway, go not to the effect of the usage but to the composition of the driveway surface, a condition which can be easily corrected and should not go to the issue of the nonconforming usage. The parking and driveway are not, Petitioners reiterate, a change in the original use. The parking is now to the rear of the building on 209 Central Avenue. Parked vehicles are not visible from Central Avenue by virtue of the very location of the building behind the structure. If anything, this "stacks" the parked vehicles. The location of both the driveway and the parking lot were approved by the Baltimore County Landmarks Preservation Commission (Petitioners' Exhibit 6) and the work done in compliance with a permit from Baltimore County (Petitioners' Exhibit 5). There was no showing of opposition by the community to the application or issuance of the permit.

Petitioners urge that the current use of the property is not a drastic enlargement or extension of the original usage. It is at most a mere intensification and as such is permissible so long as the nature of use, as here, in not changed. Phillips v. Zoning Commissioner of Howard County, 255 Md. 102, 169 A.2d 410 (1961). As the Court recognized in Phillips, the determination of drastic enlargement or extension or mere intensification is to be made of the facts of each case. There is nothing in the instant case to show a change from one nonconforming use to another or a substitution of one nonconforming use for another. The property is still, as ever, a multi-family dwelling. It has not been converted any different usage by the location of the

parking lot and driveway serving, and a part of the continuation of, the existing nonconforming use. The current usage contemplates only the continuation of that usage, nothing more. Petitioners contend there is no evidence upon which there is a finding of drastic enlargement or extension.

2. Petitioners' request for a variance from section 402.1 of the Baltimore County Zoning Code to permit side yard setback of 12.0 feet and 12.6 feet in lieu of required 15 feet for one side and 40 feet and/or 50 feet for the sum of both side yard setbacks and to permit a lot width of 65 feet in lieu of the required 90 feet or greater as may be determined should be granted.

The granting of a variance is not properly a popularity contest. Such determination is to be based upon judicial principles and zoning regulations. The proper criteria are:

a. whether strict compliance with the zoning regulations for Baltimore County result in practical difficulty or unreasonable hardship

b. whether the granting of a variance will result in substantial injury to public health, safety and general welfare;

c. whether the granting of the requested variance will be inharmonious with the spirit and intent of applicable zoning regulations; and

d. whether the hardship complained of, and which is the basis of petitioners request for variances self-inflicted.

[B.C.Z.R., 1955; Bills No. 87, 1961; No. 19, 1962; Also see, Salisbury Board of Zoning Appeals v. Bounds, 240 Md. 547, 214 A.2d 810 (1965).]

Obviously, if the current side yard setback and lot width requirements are applied to 209 Central Avenue practical difficulty and unreasonable hardship would result. The lot known as 209 Central Avenue exists and the structure, erected thereon in the 1890's (Petitioners's Exhibit 1), exists. To try to squeeze the property and building into the limitations of current zoning requirements would be judicially unfair and physically impossible without the destruction of the building. The building was erected prior to any requirements imposed by zoning and must be allowed to continue in that form since it has not changed since prior to zoning. There is no way to stretch the given land to accommodate the present zoning rules and regulations.

The granting of the requested variances will not result in any, much less, substantial injury to public health, safety and general welfare. There was no evidence to support any such injury at the hearing herein. At least one witness, Zelma Enaor, characterized 209 Central Avenue as an asset to the community. Even Protestants witnesses, while not necessarily happy with the proposed development of the adjacent lot, identified no harm which would result to the community by the granting of the requested variances. In fact, again, the evidence shows not only the absence of any such harm, but the fact that the granting of such variances only recognizes the long existing situation with regard to lot size of 209 Central Avenue and the location of the

building thereon and that the existance and operation of the property are not injurious to the public health, safety or general welfare. One complaint heard concerned dust caused by the new crusher run surface on the driveway. This concern can be addressed by using some other surface or other corrective methods to control the dust production. The discomfort complained of is caused not by the driveway and its location but by the material used. This can easily be rectified well short of denial of a variance.

There was no showing that the granting of the variances sought will be inharmonious with the spirit and intent of applicable zoning regulations. The gist of the zoning regulations for Baltimore County support appropriate use and re-use of large dwellings in residential zones. Even the conversion of the structure, if that were the case, would support the granting of the variances. (Protestants repeatedly referred to their desire to maintain the ambiance of the Gylndon area. To grant the necessary variances for 209 Central Avenue is compatible, perhaps even required, to protect the very existence of the structure at 209 Central Avenue.)

The facts surrounding 209 Central Avenue clearly reflect that the criteria for granting a variance have been fully met.

Bounds, supra, would deny the granting of a variance even where otherwise appropriate if the circumstances requiring the variance have been created by the property owner or a predecessor in title. This, Petitioners urge, is not the case in the instant situation.

Clearly the Petitioners did nothing to cause the hardship complained of here. The evidence shows that Petitioners had entered into a contract with Aileen Singer prior to any official notification of any possible zoning violations. The testimony offered further shows that Petitioners had been assured that the property at 209 Central Avenue conformed with zoning regulations. The Petitioners are not knowledgeable in real estate transactions. Ronald Jones testified that this was the first experience he or his wife had with zoning. He testified that he had conversations with neighbors and was led to believe that no problem related to the continued operation of the 6 units, but rather with the proposed development of 207 Central Avenue. It was not until the Petitioners received a citation dated 8-10-88 that they were made aware of any zoning problem. Mrs. Singer had sold the adjoining lot in March, 1988. Between March and June, 1988, Petitioners had verbal communications with citizens of the area which led them to believe that 209 Central Avenue met zoning requirements. The Joneses are not experience in real estate. They may have been naive in their acquisition of 209 Central Avenue, but that does not constitute the self-inflicted hardship referred to in

There is evidence that predecessors in title made efforts to determine that 209 Central Avenue was a lot independent of 207 Central Avenue in the event of separate ownership of the lots. Aileen Singer, who conveyed the property to the Petitioners, testified that on two occasions she approached the Baltimore County Zoning office to determine

whether 207 and 209 Central Avenue were so connected as to deny their separation. On both occasions, she was informed of no bar to the separate development of 207 Central Avenue nor to the continued operation of 6 units at 209 Central Avenue. James Reter, who owned both lots in the 1960's, testified that it was his intention to develop and sell 207 Central Avenue and had never known that that would not be possible.

Unlike the situation in Bounds, there was no cavalier delegation of responsibility for obtaining the necessary permits or information. There was no failure to get permits or to inspect the permit that was issued. In fact Singer was granted a permit for a parking lot and driveway (Petitioners Exhibit 5) located on 209 Central Avenue and used in conjunction with the operation of that property as a 6 unit apartment building. At the time of settlement on 209 Central Avenue, in June, 1988, some three months after the transfer of 207 Central Avenue to the Homestead Group, there were no zoning violations outstanding on that property. It was not until well after Petitioners' settlement on the property that they received any official notification of a potential zoning problem. The evidence shows no self-inflicted hardship any where in the chain of title.

The testimony and evidence supports a finding that there was no self-inflicted hardship; that the granting of the variances will not be contrary to the spirit of the B.C.R.Z. nor result in substantial detriment to the public health, safety and general welfare. The granting will relieve a hardship due to unique circumstances which cannot be alleviated otherwise.

Conclusion

For the reasons stated, Petitioners' petition for special hearing to recognize the legal, nonconforming use of 209 Central Avenue as a six unit apartment building and petition for variance should be granted.

Respectfully submitted,

ELEANOR J. HIPSLEY
100 Church Lane
Baltimore, Maryland 21208
(301) 484-3050
Attorney for Petitioners

I hereby certify that a copy of the foregoing brief was mailed to Charles B. Heyman, Esquire, 10th Floor, Sun Life Building, 20 South Charles Street, Baltimore, Maryland 21201 and to G. Scott Barbight, Esquire, 300 Lafayette Building, 40 West Chesapeake Avenue, Towson, Maryland 21204, this 2nd day of June, 1989.

ELEANOR J. HIPSLEY
Attorney for Petitioners

#11

Petition for Administrative Variance

96-303-A

to the Zoning Commissioner of Baltimore County

for the property located at 317 Central Avenue, Glyndon, MD 21071

which is presently zoned DR 3.5

This Petition shall be filed with the Office of Zoning Administration & Development Management.

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s) 1 B02.3.C.1 to permit a side (street) setback of as close as 5 feet in lieu of the required 25 feet for an existing Dwelling with a proposed addition (5' set back to proposed Right of way) Actual set back 10ft

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (indicate hardship or practical difficulty)

Built in 1878*, the existing house was constructed long before current right of ways and set backs were established. Our desire is to add a two car garage, a family room and modernize the kitchen. After residing in the house for over twelve years, with many hours of careful consideration, we feel that our layout and design is the most asthetically

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do 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 Petition.

Contract Purchaser/Lessee:

(Type or Print Name)

Signature

Address

City State Zipcode

Attorney for Petitioner:

(Type or Print Name)

Signature

Address Phone No.

City State Zipcode

Legal Owner(s):

James T. Cook
(Type or Print Name)

James T. Cook
Signature

Elizabeth A. Cook
(Type or Print Name)

Elizabeth A. Cook
Signature

317 Central Avenue 410-526-3970 (h)
Address Phone No.

Glyndon, MD 21071 410-526-0100 (w)
City State Zipcode

Name, Address and phone number of representative to be contacted.

Name

Address Phone No.

ORDER RECEIVED FOR FILING
Date 2/15/96
By

A Public Hearing having been requested and/or found to be required, it is ordered by the Zoning Commissioner of Baltimore County, this ___ day of _____, 19___, that the subject matter of this petition be set for a public hearing, advertised, as required by the Zoning Regulations of Baltimore County, in two newspapers of general circulation throughout Baltimore County, and that the property be reposted.

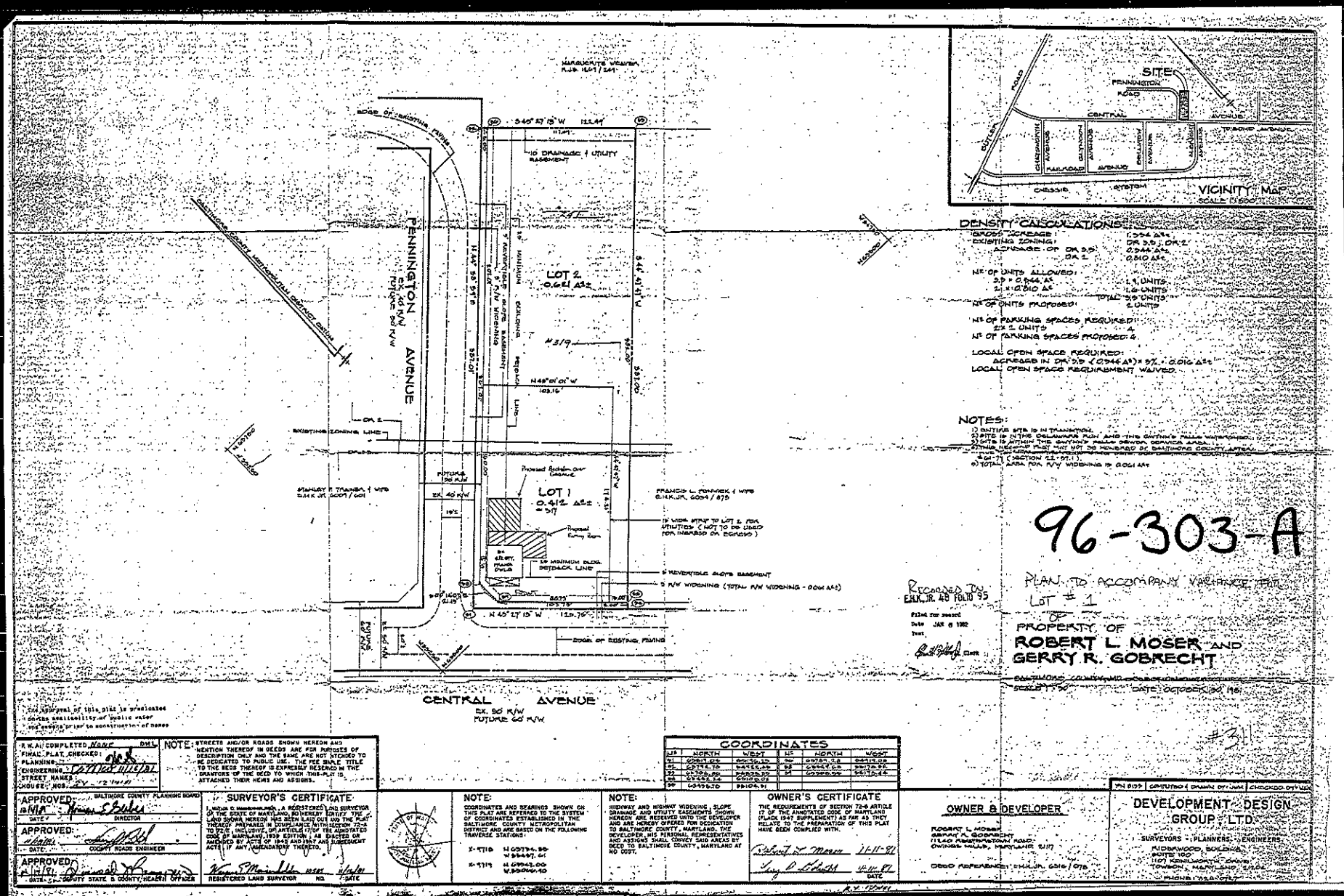
Zoning Commissioner of Baltimore County

REVIEWED BY: JJS DATE: 2/15/96

ESTIMATED POSTING DATE: 2/25/96

Printed with Soybean Ink on Recycled Paper

ITEM #: 311



DENSITY CALCULATIONS:

GROSS ACREAGE: 1.334 AS±
EXISTING ZONING: DR 3.5 ; DR 2
ACREAGE OF DR 3.5: 0.944 AS±
DR 2: 0.810 AS±

NR OF UNITS ALLOWED:
3.5 × 0.944 AS± = 3.4 UNITS
2 × 0.810 AS± = 1.6 UNITS
TOTAL 5.0 UNITS
NR OF UNITS PROPOSED: 2 UNITS

NR OF PARKING SPACES REQUIRED:
2 X 2 UNITS = 4
NR OF PARKING SPACES PROVIDED: 4

LOCAL OPEN SPACE REQUIRED:
ACREAGE IN DR 3.5 (0.944 AS±) × 5% = 0.016 AS±
LOCAL OPEN SPACE REQUIREMENT WAIVED.

NOTES:
1) ENTIRE SITE IS IN TRANSITION.
2) SITE IS IN THE CHESAPEAKE BAY AND THE GWYNNS FALLS WATERSHEDS.
3) SITE IS WITHIN THE GWYNNS FALLS SEWER SERVICE AREA.
4) PUBLIC WATER AND SEWER MUST NOT BE REQUIRED BY BALTIMORE COUNTY AGENCIES. (SECTION 22-95.1)
5) TOTAL AREA FOR R/W WIDENING IS 0.004 AS±

96-303-A

PLAN TO ACCOMPANY VARIANCE ITEM
LOT # 1
OF
PROPERTY OF
ROBERT L. MOSER AND
GERRY R. GOBRECHT
BALTIMORE COUNTY, MD.
SCALE: 1"=50'
DATE: OCTOBER 30, 1991

#311

Recorded in E.H.K. JR. 48 FOLIO 95
Filed for record
Date JAN 8 1992
Test

The approval of this plat is predicated upon the availability of public water and sewage prior to construction of homes

R.M.A.I. COMPLETED: None DWL
FINAL PLAT CHECKED:
PLANNING:
ENGINEERING: Contact utilities
STREET NAMES:
HOUSE NOS.:

NOTE: STREETS AND/OR ROADS SHOWN HEREON AND MENTION THEREOF IN DEEDS ARE FOR PURPOSES OF DESCRIPTION ONLY AND THE SAME ARE NOT INTENDED TO BE DEDICATED TO PUBLIC USE. THE FEE SIMPLE TITLE TO THE BEDS THEREOF IS EXPRESSLY RESERVED IN THE GRANTORS OF THE DEED TO WHICH THIS PLAT IS ATTACHED THEIR HEIRS AND ASSIGNS.

COORDINATES					
LP	NORTH	WEST	LP	NORTH	WEST
91	60811.02	89015.10	94	60751.28	89419.09
92	60778.70	89455.49	95	60947.00	89170.96
93	60752.20	89503.20	96	60909.99	89170.44
94	60948.34	89019.05			
95	60949.70	89104.91			

APPROVED: n/a — Thomas E. Stokes — DIRECTOR, BALTIMORE COUNTY PLANNING BOARD — DATE:
APPROVED: — COUNTY ROADS ENGINEER — DATE:
APPROVED: 1/13/92 — COUNTY STATE & COUNTY HEALTH OFFICER — DATE:

SURVEYOR'S CERTIFICATE

I, WILLIAM D. MACMILLAN, JR., A REGISTERED LAND SURVEYOR OF THE STATE OF MARYLAND, DO HEREBY CERTIFY THAT THE LAND SHOWN HEREON HAS BEEN SURVEYED AND THAT THE PLAT THEREOF PREPARED IN CONFORMANCE WITH SECTION 22-8 TO 22-11, INCLUSIVE, OF ARTICLE 17 OF THE ANNOTATED CODE OF MARYLAND, 1939 EDITION, AS AMENDED OR AMENDED BY ACTS OF 1945 AND 1947 AND SUBSEQUENT ACTS, IF ANY, AMENDATORY THERETO.

William D. MacMillan, Jr. — 11548 — REGISTERED LAND SURVEYOR — NO. — 1/16/92 — DATE

NOTE: COORDINATES AND BEARINGS SHOWN ON THIS PLAT ARE REFERRED TO THE SYSTEM OF COORDINATES ESTABLISHED IN THE BALTIMORE COUNTY METROPOLITAN DISTRICT AND ARE BASED ON THE FOLLOWING TRAVERSE STATIONS:

X-9716 N 60734.80 W 89447.61
X-9719 N 61147.00 W 89040.40

NOTE: HIGHWAY AND HIGHWAY WIDENING, SLOPE, DRAINAGE AND UTILITY EASEMENTS SHOWN HEREON ARE RESERVED UNTO THE DEVELOPER AND ARE HEREBY OFFERED FOR DEDICATION TO BALTIMORE COUNTY, MARYLAND. THE DEVELOPER, HIS PERSONAL REPRESENTATIVES AND ASSIGNS SHALL CONVEY SAID AREAS BY DEED TO BALTIMORE COUNTY, MARYLAND AT NO COST.

OWNER'S CERTIFICATE

THE REQUIREMENTS OF SECTION 22-9 ARTICLE 17 OF THE ANNOTATED CODE OF MARYLAND (FLACK 1947 SUPPLEMENT) AS FAR AS THEY RELATE TO THE PREPARATION OF THIS PLAT HAVE BEEN COMPLIED WITH.

Robert L. Moser — 12-11-91
Gerry R. Gobrecht — 12-11-91
DATE

OWNER & DEVELOPER

ROBERT L. MOSER
GERRY R. GOBRECHT
11540 PENNINGTON ROAD
OWINGS MILLS, MARYLAND 21117

DEED REFERENCE: E.H.K. JR. 6009 / 870

DEVELOPMENT DESIGN GROUP, LTD.
SURVEYORS - PLANNERS - ENGINEERS
RIDGEWOOD BUILDING
SUITE 100
1071 KENILWORTH DRIVE
TOWSON, MARYLAND 21204
PHONE: (410) 823-4510

PN 8109 | COMPUTED & DRAWN BY: JWK | CHECKED BY: WDM

IN RE: PETITION FOR ADMIN. VARIANCE
SE/Corner Central Avenue and
Pennington Avenue
(317 Central Avenue)
4th Election District
3rd Councilmanic District

James T. Cook, et ux
Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 96-303-A
*

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Variance for that property known as 317 Central Avenue, located in the vicinity of Butler Road in Glyndon. The Petition was filed by the owners of the property, James T. and Elizabeth A. Cook. The Petitioners seek relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a side street setback of as close as 5 feet in lieu of the minimum required 25 feet for an existing dwelling and proposed additions. The subject property and relief sought are more particularly described on the site plan submitted which was accepted and marked into evidence as Petitioner's Exhibit 1.

The Petitioners having filed a Petition for Administrative Variance and the subject property having been posted and there being no requests for public hearing, a decision shall be rendered based upon the documentation presented.

The Petitioners have filed the supporting affidavits as required by Section 26-127 (b)(1) of the Baltimore County Code. Based upon the information available, there is no evidence in the file to indicate that the requested variances would adversely affect the health, safety or general welfare of the public and should therefore be granted. In the opinion of the Zoning Commissioner, the information, pictures, and affidavits

ORDER RECEIVED FOR FILING
Date 3/14/96
By

submitted provide sufficient facts that comply with the requirements of Section 307.1 of the B.C.Z.R. Furthermore, strict compliance with the B.C.Z.R. would result in practical difficulty and/or unreasonable hardship upon the Petitioners.

Pursuant to the posting of the property and the provisions of both the Baltimore County Code and the B.C.Z.R. having been met, and for the reasons set forth above, the relief requested should be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 18th day of March, 1996 that the Petition for Administrative Variance seeking relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a side street setback of as close as 5 feet in lieu of the minimum required 25 feet for an existing dwelling and proposed additions, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject, however, to the following restrictions:

1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.

2) The subject property must continue to be used as a single family dwelling. The Petitioners shall not allow or cause the proposed improvements to be converted for use as a second dwelling unit or an apartment.

3) When applying for a building permit, the site plan filed must reference this case and set forth and address the restrictions of this Order.

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

ORDER RECEIVED FOR FILING
Date 3/18/96
By bjs

#12

IN RE: PETITION FOR ADMIN. VARIANCE (26 Chatsworth Avenue)	*	BEFORE THE
4th Election District	*	OFFICE OF ADMINISTRATIVE
2nd Council District		
Linda A. Brandenburg	*	HEARINGS FOR
Petitioner		
	*	BALTIMORE COUNTY
	*	**CASE NO. 2017-0205-A**

* * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Administrative Variance filed by the legal owner of the property, Linda A. Brandenburg ("Petitioner"). The Petitioner is requesting variance relief from § 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a rear yard addition with a combined side yard setback of 34 ft. in lieu of the required 40 ft. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioner's Exhibit 1.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. There were no adverse ZAC comments submitted by any of the County reviewing agencies.

The Petitioner having filed a Petition for Administrative Variance and the subject property having been posted on February 10, 2017, and there being no request for a public hearing, a decision shall be rendered based upon the documentation presented.

Based upon the information available, there is no evidence in the file to indicate that the requested variance would adversely affect the health, safety or general welfare of the public and should therefore be granted. In the opinion of the Administrative Law Judge, the information and

photographs submitted provide sufficient facts that comply with the requirements of Section 307.1 of the B.C.Z.R. Furthermore, strict compliance with the B.C.Z.R. would result in practical difficulty and/or unreasonable hardship upon the Petitioner.

Pursuant to the posting of the property and the provisions of both the Baltimore County Code and the Baltimore County Zoning Regulations, and for the reasons given above, the requested variance should be granted.

THEREFORE, IT IS ORDERED, this **14th** day of **April, 2017**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from § 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a rear yard addition with a combined side yard setback of 34 ft. in lieu of the required 40 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioner may apply for her appropriate permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at her own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.

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

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:dlw

Petition for Administrative Variance #13

to the Zoning Commissioner of Baltimore County

for the property located at 15 Chatsworth Ave

which is presently zoned DR2

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s)

400.1 and 400.3, BCZR to permit a 0' side setback in lieu of 2½' and a 20' height in lieu of 15' for an accessory structure (garage).

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the reasons indicated on the back of this petition form.

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Variance, 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.

I/We do 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 Petition.

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address Telephone No.

City State Zip Code

Legal Owner(s):

× EUGENE G. RICKS
Name - Type or Print

× Signature

× Name - Type or Print

× Signature

× 15 CHATSWORTH AV 410-526-7405
Address Telephone No.

× GLENSIDE MD 21071
City State Zip Code

Representative to be Contacted:

× Sheldon Forcheimer
Name

× 9474 Deereco Rd 410-252-4663
Address Telephone No.

× Timonium MD 21093
City State Zip Code

A Public Hearing having been formally demanded and/or found to be required, it is ordered by the Zoning Commissioner of Baltimore County, this ____ day of ____ that the subject matter of this petition be set for a public hearing, advertised, as required by the zoning regulations of Baltimore County and that the property be reposted.

Zoning Commissioner of Baltimore County

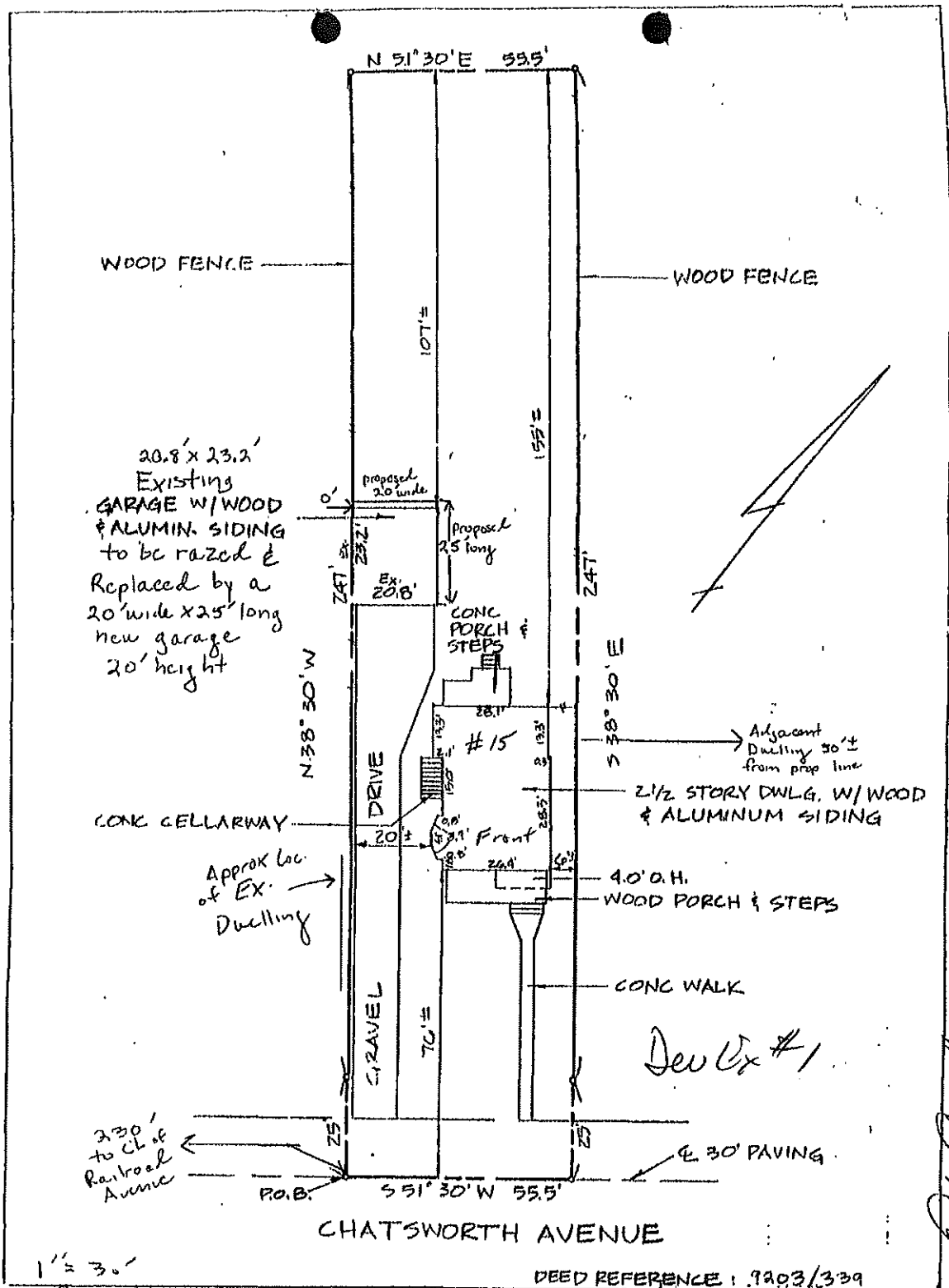
CASE NO. 03-102-A

Reviewed By JNP Date 9/3/02

Estimated Posting Date 9/16/02

REV 10/25/01

ORDER RECEIVED FOR FILING
Date 9/18/02
By JNP



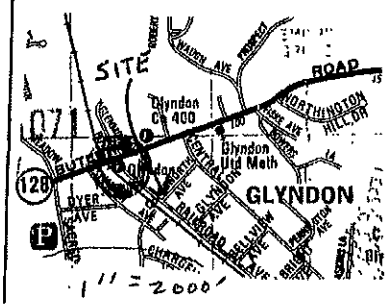
DEED REFERENCE : 9203/339

Dev Ex #1

General Notes

1. Owner: Eugene G. Ricks
2. Address: 15 Chatsworth Avenue
3. Election District 4; Council District 3
4. 1" = 200' Zoning Map is NW 17 J
5. There are no prior zoning hearings on the property
6. Zoning: DR 2; Lot size: 13,908.5 sf or .315 Ac.
7. Site is served by public water and sewer
8. The site is not within a floodplain or the CBCA
9. The site is located within the Glyndon NRHD
10. Site is not within a recorded subdivision
11. The existing dwelling is a historic structure.

Vicinity Map



Plan to Accompany Administrative Variance
for #15 Chatsworth Avenue

03-102-A

IN RE: PETITION FOR ADMIN. VARIANCE NW/S Chatsworth Avenue, 230' E centerline of Railroad Avenue 4th Election District 3rd Councilmanic District (15 Chatsworth Avenue) Eugene G. Ricks Petitioners	*	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY CASE NO. 03-102-A

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Administrative Variance filed by Eugene G. Ricks, the legal owner of the subject property. The Petitioner is requesting variance relief for property he owns at 15 Chatsworth Avenue in the Glyndon area of Baltimore County. The variance request is from Sections 400.1 and 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a 0 ft. side yard setback in lieu of the permitted 2 ½ ft. and a building height of 20 ft. in lieu of 15 ft. for an accessory structure. The subject property and requested relief are more particularly described on Petitioner's Exhibit No. 1, the plat to accompany the Petition for Administrative Variance.

Appearing on behalf of the request were Mr. and Mrs. Ricks, the owners of the subject property. No one appeared in opposition at the hearing.

Testimony and evidence indicated that the property, which is the subject of this administrative variance request, consists of 0.315 acres, more or less, zoned D.R.2. The subject property is improved with a 2-½-story dwelling wherein the property owners reside. To the rear of the subject site there exists an old garage. The property owners are interested in tearing down the old garage and replacing it with a new building. The property owners are interested in constructing the new garage over the existing footprint of the old one. The old garage currently has a 0 ft. side yard setback to the property line. They simply wish to reconstruct this new building where the old garage is situated. Furthermore, they intend to have a steeper pitched roof

11/15/02

on the new structure to be built. Accordingly, the peak of the roof will stand at 20 ft. in height in lieu of the permitted 15 ft. for an accessory structure. After considering the testimony and evidence offered at the hearing, I find that the variance should be granted to allow the Ricks' to move forward with their plans.

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

1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;

2) whether a grant of the variance would do a substantial justice to the applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give sufficient relief; and,

3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

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

After due consideration of the testimony and evidence presented, it is clear that practical difficulty or unreasonable hardship will result if the variance is not granted. It has been established that special circumstances or conditions exist that are peculiar to the property which is the subject of this request and that the requirements from which the Petitioner seeks relief will unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the relief requested will not cause any injury to the public health, safety or general welfare, and meets the spirit and intent of the B.C.Z.R.

Pursuant to the posting of the property and the provisions of both the Baltimore County Code and the Baltimore County Zoning Regulations, and for the reasons given above, the requested variance should be granted.

11/15/02

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 18th day of November, 2002, that a variance from Sections 400.1 and 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a 0 ft. side yard setback in lieu of the permitted 2 ½ ft. and a building height of 20 ft. in lieu of 15 ft. for an accessory structure, be and is hereby GRANTED, subject, however, to the following restrictions which are conditions precedent to the relief granted herein:

1. The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.

2. The Petitioners or subsequent owners shall be prohibited from converting the accessory structure into separate living quarters. In addition, the accessory structure should not be used for commercial purposes.

3. When applying for a building permit, the site plan filed must reference this case and set forth and address the restrictions of this Order.

Timothy Kotroco

TIMOTHY M. KOTROCO
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

TMK:raj

11/18/02



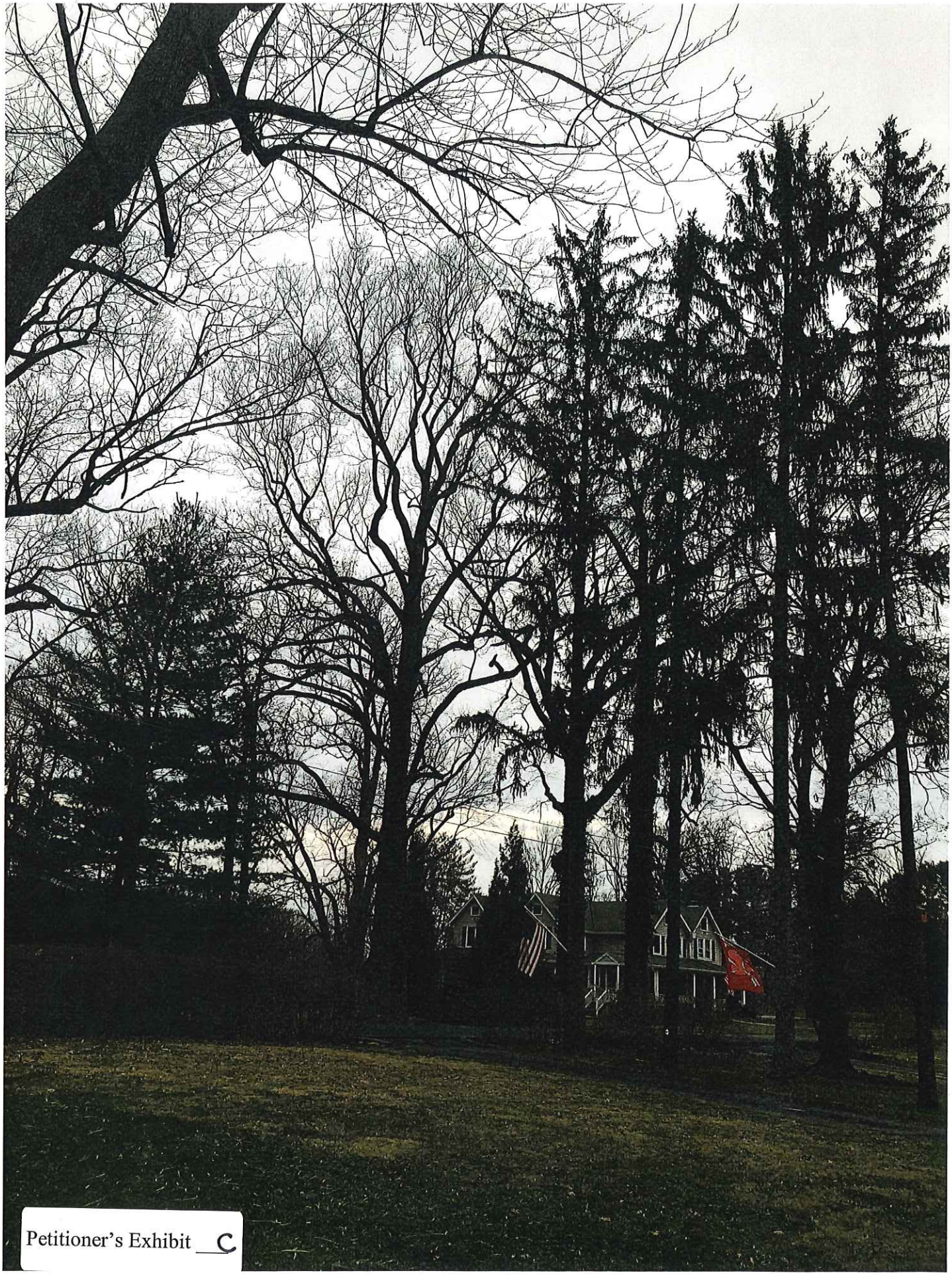
Petitioner's Exhibit A

Petitioner
CBA Exhibit
10A-10C

100yr old trees infront of 4607 Prospect



Petitioner's Exhibit B



Petitioner's Exhibit C

Statement

PYLE FENCE CO. INC (N)
4710 Harford Road
Baltimore MD 21214
Phone # 410-426-8319

Date
3/27/2017

To:

DONNA BAIR
4607 PROSPECT AVENUE
GLYNDON MD 21136

Amount Due	Amount Enc.
$4,246.00	

Date	Transaction	Amount	Balance
02/27/2017	Balance forward		0.00
03/27/2017	INV Due 03/27/2017.	6,349.00	6,349.00
	--- PADDOCK $6,349.00		
	--- Tax: Exempt @ 0.0% = 0.00		
03/27/2017	PMT #297.	-2,123.00	4,226.00
03/27/2017	INV #PO# 926875. Due 03/27/2017.	20.00	4,246.00
	--- PERMITS FEE $20.00		
	--- Tax: Exempt @ 0.0% = 0.00		

Petitioner
CBA Exhibit
//

CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
4,246.00	0.00	0.00	0.00	0.00	$4,246.00

John Motsco P.E.

Maryland Professional Engineer License Number 44112
10710 Gilroy Road Hunt Valley, MD 21031
410-705-5020 jmotsco@centuryeng.com

Technical Skills

AutoCAD 2004, 2007	TR-20, TR-55	HEC-HMS
HEC-RAS	eONE Design Assistant 8.0	Microsoft Office

Technical Knowledge

Septic System Design
Floodplain analyses
Storm Drain Hydrology and Hydraulics
Geometric Road Design
Site Grading
Pressure Sewer Design
Sediment Control Design
Environmental Site Design
Stormwater Management Design
Erosion and Sediment Control

Work Experience

Little & Associates, a Division of Century Engineering, Inc., Hunt Valley, MD
Senior Project Engineer / Manager
April 2019 - Current

Little & Associates, Inc., Towson, MD – Senior Project Engineer / Manager
September 2004 – April 2019

Schedule, design, and manage all engineering, permitting and public contract administration, for a variety of residential and commercial projects, supervising a group of 6 – 9 junior engineers and CADD draftsmen. Act as the primary liaison between Investors, Construction Superintendents, and Government Agencies. Provide construction inspection and Utility As-Built documentation for security reduction and contract suitability.

Provide expert testimony in matters of Land Development, Land Planning, Zoning, Stormwater Management, and Engineering. Accepted as an expert witness by the Baltimore County Administrative Law Judge and the Baltimore County Board of Appeals

Instruct New Hires in company policy and procedures aid familiarity with corporate and governmental design standards. Train employees in basic and advanced AutoCAD commands and techniques. Revised CAD layering standards to comply with AIA standards and coordinated rollout company wide. Supervise Workstation and Networking maintenance and upgrades. Perform repairs and maintenance on large format printer. Manage web-based E-Mail server.

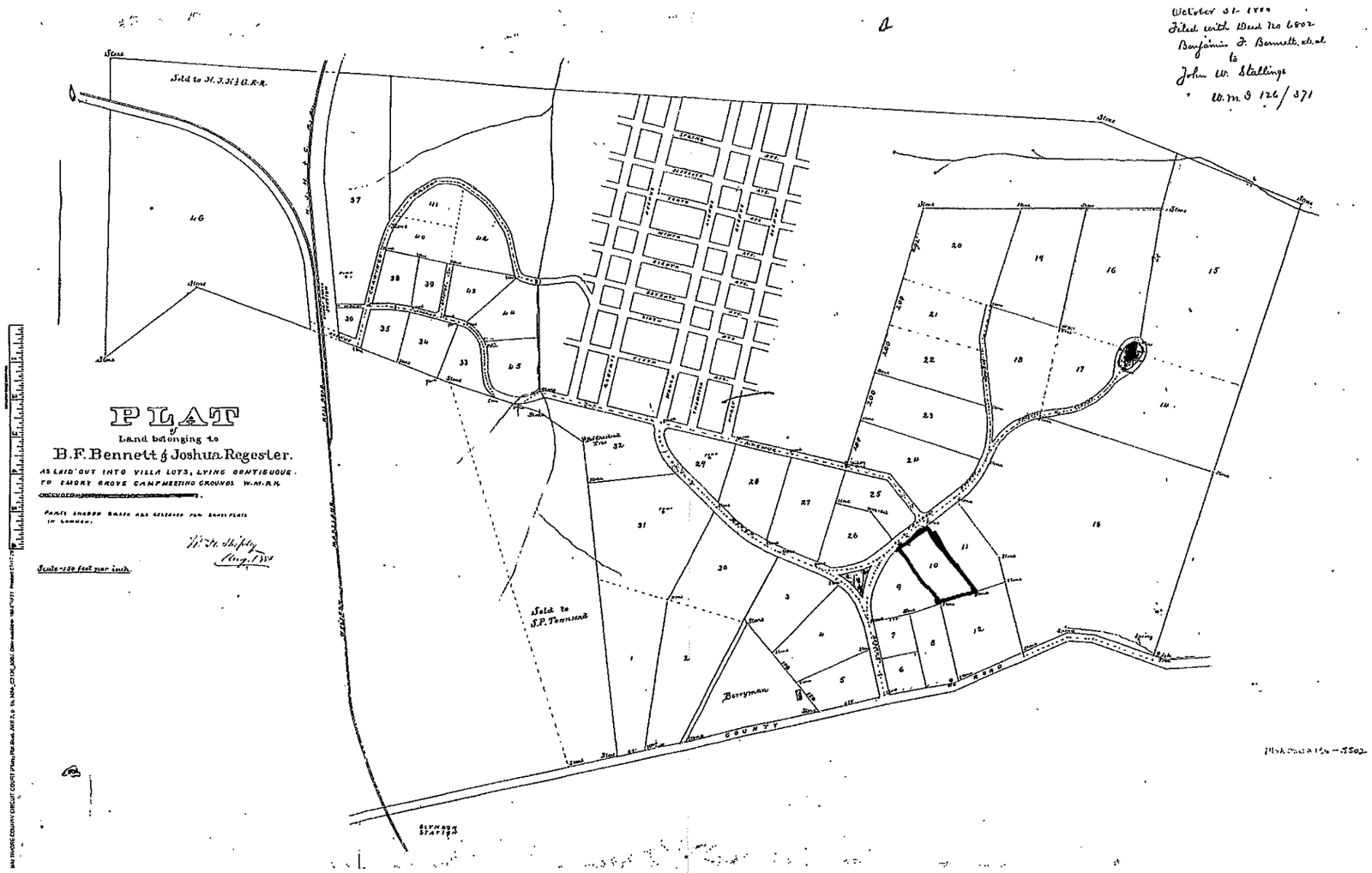
Education

The Pennsylvania State University
Bachelors of Science – Civil Engineering – Graduated May 2004

Training, Certifications and Awards

Maryland Professional Engineer License Number 44112
State of Maryland – Erosion & Sediment Control (Green Card) Certification
Baltimore County Soil Conservation District Consulting Firm of the Year – 2004, 2005 & 2016
Maximizing AutoCAD Productivity Seminar

Petitioner
CBA Exhibit
12



Petitioner's Exhibit ___

Petitioner
CBA Exhibit
13

§ 427.1. - Conditions for use; exceptions.

A. Notwithstanding any other provisions of this Code or the Baltimore County Code, in a D.R. or R.C. 5 Zone located in a historic district, the maximum height of a residential occupancy fence is 42 inches if the fence is erected in the side yard of a lot that adjoins a public road.

B.

1. A residential occupancy fence may not be erected in the rear or side yard of a lot which adjoins the front yard of another on which a residence has been built, except in accordance with the provisions of this section.
2. The fence may not exceed 42 inches in height if situated within ten feet of the adjoining front yard property line.
3. Any person may request a variance from the requirements of this subsection.

C. Applicability.

1. Subsection B of this section does not apply to a fence required by § 13-6-101 of the Baltimore County Code, as revised, to be constructed in order to screen a swimming pool.
2. Subsection B of this section does not apply if the residences on the adjoining lots are more than 200 feet apart.

Petitioner
CBA Exhibit
15

Petitioner's Exhibit A

TITLE 6. - SWIMMING POOLS AND BATHING BEACHES

SUBTITLE 1. - IN GENERAL

§ 13-6-101. - SWIMMING POOL ENCLOSURE.

(a) *Required.* A person who owns land on which there is a swimming pool that contains 24 inches (610 mm) or more of water in depth at any point shall erect and maintain on the land an adequate enclosure surrounding either the property or pool area sufficient to make the body of water inaccessible to small children.

(b) *Height.* A swimming pool enclosure, including gates, may not be less than 4 feet above the underlying ground.

(c) *Gates.* All gates shall be self-latching with latches placed 4 feet above the underlying ground and otherwise made inaccessible from the outside to small children.

(d) *Alternative enclosures.*

(1) For purposes of this section, the owner may use a natural barrier, hedge, or other protective device approved by the Department of Permits, Approvals and Inspections if the degree of protection afforded by the substituted devices or structures is not less than the protection afforded by the enclosure, gate, and latch described in subsections (a) through (c) of this section.

(2) A swimming pool cover is not another protective device that may be approved by the Department of Permits, Approvals and Inspections.

(e) *Enforcement.* The Code Official may enforce the provisions of this section in accordance with Article 3, Title 6 of the Code.

(f) *Exceptions.* This section does not apply to a public swimming pool or bathing beach as defined in Subtitle 2 of this title.

(1988 Code, § 20-5) (Bill No. 94-95, § 1, 8-19-1995; Bill No. 105-00, § 2, 7-1-2004; Bill No. 82-06, § 4, 8-24-2006; Bill No. 122-10, §§ 6, 30, 1-16-2011)

SUBTITLE 2. - PUBLIC SWIMMING POOLS AND BATHING BEACHES

§ 13-6-201. - DEFINITIONS.

(a) *In general.* In this subtitle the following words have the meanings indicated.

(b) "Approving authority" means the Health Officer or the Health Officer's designee.

(c) *Private swimming pool.* "Private swimming pool" means a swimming pool located on a

Petitioner's Exhibit B

§ 104.3. - Limit on extension of nonconforming buildings and uses; exception.

[Bill No. 124-1991]

No nonconforming building or structure and no nonconforming use of a building, structure or parcel of land shall hereafter be extended more than 25 percent of the ground floor area of the building so used. This provision does not apply to structures or uses restored pursuant to Section 104.2, except as authorized by the Zoning Commissioner pursuant to Section 307.

Petitioner
CBA Exhibit
16

Letters of Opposition

RECEIVED
FEB 05 2020
BALTIMORE COUNTY
BOARD OF APPEALS

Historic Glyndon Inc.

P.O. Box 3641
Glyndon, Maryland 21071-3641

VIA email (administrativehearings@baltimorecountymd.gov and
appealsboard@baltimorecountymd.gov
And via hand delivery at meeting
Baltimore County Office of Administrative Hearing

RE: Donna V. Bair -- Case No. 2019-342-SPHA
Property at 4607 Prospect Avenue, Glyndon
Hearing Date: Feb. 6, 2020

This letter is to express **strong opposition** by the Board of Directors and the general membership of Historic Glyndon, Inc. (HGI) to the variances that Donna Bair, Respondent, is seeking.

At its Annual Meeting on Monday, January 27, 2020, the membership of Historic Glyndon, Inc., unanimously voted to oppose the Petition for Variances, case #2019-0342-SPHA, on all of the former denials, including:

- "To approve a non-conforming dwelling side yard setback, pursuant to BCZR 104.1."
- "To confirm that an existing fence (swimming pool enclosure) with a height of 6 feet is in compliance with BCZR 427.1 and BCC 13-6-101."
- "Variance to permit an existing 12x28 feet attached garage addition with a side yard setback of 0 feet in lieu of the required 20 feet."
- "To permit an existing 12x28 feet attached garage addition with a sum of the side yards of 14.9 feet in lieu of the required 50 feet. BCZR 400.1."
- "To permit, if necessary, an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches."

Historic Glyndon was the first designated historic district in Baltimore County. Historic Glyndon, Inc.'s mission is to preserve and protect Glyndon's cultural, social, economic, and architectural history, as well as to conduct educational and beautification projects that enrich Glyndon's historical heritage.

To that end, we believe that all homeowners within Historic Glyndon should follow Baltimore County laws and procedures relating to property improvement. This includes, but is not limited to, obtaining required approvals from the Baltimore County Landmarks Preservation Commission, seeking required building permits, completing land surveys when applicable, and assuring compliance with zoning codes prior to commencing any property improvement projects.
Donna Bair complied with none of those requirements when undertaking work on her home.

HGI regularly publishes recommended best practices for home improvements within the Historic District in our newsletters. The newsletters are distributed to all homeowners in the Historic

Historic Glyndon Inc.
P.O. Box 3641
Glyndon, Maryland 21071-3641

District two times a year. We expect all homeowners to follow these guidelines with the understanding that some properties deemed as contributing structures may have to undergo an additional approval process.

Therefore, we continue to oppose the approval of any variances after the completion of work for 4607 Prospect Avenue. Doing so would set a bad precedent that would only serve to erode the expected responsibilities of our community property owners.

Sincerely,

Susan Benson
President, Historic Glyndon, Inc.

Tammy Zahner

From: Pamela Becker <hgiglyndonmd@yahoo.com>
Sent: Tuesday, February 4, 2020 8:37 PM
To: Administrative Hearings; Appeals Board
Subject: Hearing: 2/6/2020; Case no.; 2019-342-SPHA, Property at 4607 Prospect Avenue, Glyndon
Attachments: Historic Glyndon, Inc. (HGI) Opposition to Variances in Case 2019-0342-SPHAv2.pdf

CAUTION: This message from hgiglyndonmd@yahoo.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Dear Sir/Madam:

Attached please find the Board of Directors of Historic Glyndon, Inc.'s letter expressing their opposition to the approval of variances being heard at the appeal hearing on February 6, 2020 on case no.2019-342-SPHA.

The Historic Glyndon, Inc. and its membership recently met and voted to formally express our opposition to these requests for variances after the fact on this property.

Thank you for your consideration of our letter. if you should need anything else, please let us know.

Respectfully

Board of Directors
Historic Glyndon, Inc.

RECEIVED
FEB 05 2020
BALTIMORE COUNTY
BOARD OF APPEALS

Sherry Nuffer

From: Pamela Becker <hgiglyndonmd@yahoo.com>
Sent: Tuesday, February 4, 2020 8:37 PM
To: Administrative Hearings; Appeals Board
Subject: Hearing: 2/6/2020; Case no.; 2019-342-SPHA, Property at 4607 Prospect Avenue, Glyndon
Attachments: Historic Glyndon, Inc. (HGI) Opposition to Variances in Case 2019-0342-SPHAv2.pdf

CAUTION: This message from hgiglyndonmd@yahoo.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Dear Sir/Madam:

Attached please find the Board of Directors of Historic Glyndon, Inc.'s letter expressing their opposition to the approval of variances being heard at the appeal hearing on February 6, 2020 on case no.2019-342-SPHA.

The Historic Glyndon, Inc. and its membership recently met and voted to formally express our opposition to these requests for variances after the fact on this property.

Thank you for your consideration of our letter. if you should need anything else, please let us know.

Respectfully

Board of Directors
Historic Glyndon, Inc.

RECEIVED
FEB 05 2020
BALTIMORE COUNTY
BOARD OF APPEALS

Historic Glyndon Inc.

P.O. Box 3641
Glyndon, Maryland 21071-3641

RECEIVED
FEB 05 2020
BALTIMORE COUNTY
BOARD OF APPEALS

VIA email (administrativehearings@baltimorecountymd.gov and appealsboard@baltimorecountymd.gov
And via hand delivery at meeting
Baltimore County Office of Administrative Hearing

RE: Donna V. Bair -- Case No. 2019-342-SPHA
Property at 4607 Prospect Avenue, Glyndon
Hearing Date: Feb. 6, 2020

This letter is to express **strong opposition** by the Board of Directors and the general membership of Historic Glyndon, Inc. (HGI) to the variances that Donna Bair, Respondent, is seeking.

At its Annual Meeting on Monday, January 27, 2020, the membership of Historic Glyndon, Inc., unanimously voted to oppose the Petition for Variances, case #2019-0342-SPHA, on all of the former denials, including:

- "To approve a non-conforming dwelling side yard setback, pursuant to BCZR 104.1."
- "To confirm that an existing fence (swimming pool enclosure) with a height of 6 feet is in compliance with BCZR 427.1 and BCC 13-6-101."
- "Variance to permit an existing 12x28 feet attached garage addition with a side yard setback of 0 feet in lieu of the required 20 feet."
- "To permit an existing 12x28 feet attached garage addition with a sum of the side yards of 14.9 feet in lieu of the required 50 feet. BCZR 400.1."
- "To permit, if necessary, an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches."

Historic Glyndon was the first designated historic district in Baltimore County. Historic Glyndon, Inc.'s mission is to preserve and protect Glyndon's cultural, social, economic, and architectural history, as well as to conduct educational and beautification projects that enrich Glyndon's historical heritage.

To that end, we believe that all homeowners within Historic Glyndon should follow Baltimore County laws and procedures relating to property improvement. This includes, but is not limited to, obtaining required approvals from the Baltimore County Landmarks Preservation Commission, seeking required building permits, completing land surveys when applicable, and assuring compliance with zoning codes prior to commencing any property improvement projects.
Donna Bair complied with none of those requirements when undertaking work on her home.

HGI regularly publishes recommended best practices for home improvements within the Historic District in our newsletters. The newsletters are distributed to all homeowners in the Historic

Historic Glyndon Inc.
P.O. Box 3641
Glyndon, Maryland 21071-3641

District two times a year. We expect all homeowners to follow these guidelines with the understanding that some properties deemed as contributing structures may have to undergo an additional approval process.

Therefore, we continue to oppose the approval of any variances after the completion of work for 4607 Prospect Avenue. Doing so would set a bad precedent that would only serve to erode the expected responsibilities of our community property owners.

Sincerely,

Susan Benson
President, Historic Glyndon, Inc.

John E. Beverungen

From: Steve Fradkin <reistlaxcoach@gmail.com>
Sent: Sunday, July 21, 2019 11:17 PM
To: John E. Beverungen
Subject: Case 2019-0342-SPHA
Attachments: Letter Bair case.pdf

CAUTION: This message from reistlaxcoach@gmail.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Dear Judge Beverungen,
Attached are some thoughts concerning case 2019-0342-SPHA. Thank you for your time sir.

Steve Fradkin
4605 Prospect Avenue
Glyndon, MD 21136-3800

Steve Fradkin
reistlaxcoach@gmail.com

Debra Wiley

From: Tom Montanye <Tom@montanye.net>
Sent: Tuesday, July 23, 2019 9:57 PM
To: Administrative Hearings; John E. Beverungen
Cc: Kim Montanye
Subject: Re: Opposition to Case # 2019-0342-SPHA
Attachments: 12-13-17 IMG_1218.JPG; 12-13-17 IMG_1216.JPG; 7-29-17 IMG_0785.JPG; 12-13-17 IMG_1210.JPG; 2-18-18 IMG_1411.JPG

CAUTION: This message from tmontanye@gmail.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Judge Beverungen,

Attached are several photos taken over the last 2 years supporting the water/sediment run-off issue resulting from the bedroom addition. My wife, Kim, had these at the hearing but forgot to leave with you for the case file.

-Tom and Kim Montanye (immediate neighbor to Mrs. Bair 4607 Prospect)
4609 Prospect Ave, Glyndon, MD 21136

On Mon, Jul 22, 2019 at 8:54 AM Tom Montanye <Tom@montanye.net> wrote:

RECEIVED
JUL 24 2019
OFFICE OF
ADMINISTRATIVE HEARINGS

From:
Thomas and Kimberly Montanye
4609 Prospect Ave.
Glyndon MD 21136
(immediate neighbor)

To whom it may concern,

I'm writing in total opposition to the variances and special exceptions requested in Case # 2019-0342-SPHA, 4607 Prospect Ave., Glyndon Historic District, Baltimore County.

Please direct my arguments below to the Administrative Law Judge for consideration when reviewing this case.

Arguments Opposing 4607 Prospect Ave Variances/Special Exceptions

Case # 2019-0342-SPHA

Variances/Exceptions

1. In the first place, the procedures and restriction regarding variances, outlined in BCRZ 307.1, allow they be granted
    a. **"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"**...

b. **"and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship."**
c. These are two hurdles - the first has to be met, and only if so, then also the second is considered and must also be met.
d. On the **first bar** to be met, peculiarity or uniqueness of the land or structure
    i. I struggle to find *any* characteristics of the land or structure that are peculiar or unique compared with the surrounding properties, or to find any arguments offered by the applicant that support this.
        1. It's similarly rectangular in length and width ratios, similar terrain...slopes downward from front to back...like all the surrounding houses on this side of the street.
        2. The structure, prior to the recent improvements, did not meet *current* side set-back, requirements for DR1 or even DR2, same as many of the properties on the street.
        3. LPC recently reviewed the house, considering exactly the characteristics of the structure, and found nothing out of the ordinary from that perspective.
    ii. Since there is nothing peculiar, or unique only to this land or structure, there are no hardships that the others on the street, and more broadly in the community of Historic Glyndon, don't also have... therefore no exceptions should be granted. They simply shouldn't be granted special treatment.
e. These same arguments are well outlined, and expanded on, with numerous examples of similar situations and conclusions, **in the case of Cromwell v. Ward, No. 617, September Term, 1994, which I submit for the ALJ to include and consider in this case**.

2. In the next place, even if it were determined that the land/structures were somehow peculiar and unique, the **second bar** would not be met because there is no hardship except the ones they created on themselves by doing the improvements prior to applying for permission.
    a. Every neighbor in the community has had to make compromises and choices about improving their property within the confines of the County zoning and building codes.
    b. In the case of wanting a 2-car garage, **other options exist**. There's room in front to accomplish this within the zoning constraints, or at least easily within the boundaries of the formerly existing foundation constrains, with a more reasonable variance/exception request
    c. In the case of the second addition, **other options exist**, same thing,
    d. In the case of the fence, **other options exist**, same thing
    e. In the case of the fence, the beginning of the conflict, I personally offered reasonable alternatives that would be acceptable to me and the codes, and they were rejected outright.
    f. In the case of the second addition, the same (with regard to the sediment control/ run-off issue); rejected outright.
    g. We did not directly address the garage with this neighbor, as this was on the other side
        i. We support the general notion that set-backs are very important for the community in general
        ii. If I proposed a zero set-back garage addition on our side, near their non-conforming 14.9', would this neighbor agree? Would other neighbors agree and want precedence set that made this "normal"?
        iii. Would our DR1 zone turn into a community where structures were touching each other, like town homes, as we all got exceptions to the rules, to be fair, even though none of us had met the bars for exceptions according to the laws passed by the elected legislature?
        iv. One has to consider the long-term impact of these decisions. This line of thinking leads to a turbulent community.

3. In the next place,
    a. These requests are submitted based on the newly as-built structures as a complete package, which were built unlawfully, without applications for permits and variances beforehand, instead of on each improvement standing alone.
    b. Considering the "as-built" vs. the "before-built" are two different things,

i. People are naturally more sympathetic to the consequences of denying exceptions in the case of the as-built, because if declined, it has to be removed, likely at significant expense. It's a punitive decision.
ii. If plans to build are declined, the applicant simply has to re-work the plans to make them conformant, with far less cost.
iii. This gives an advantage to the "as-built" approach, which is **a bad precedence** because it encourages more residents to follow the thinking that "it's easier to ask forgiveness than permission." This thinking is destructive to the health of our communities and our civil society more broadly. It's not a law-abiding approach, it's a "catch me if you can" approach.

4. Finally, **this neighbor knows better**
   a. This particular applicant is a **licensed MD Real Estate Agent**, with professional training, which few of the other neighbors here have, and they absolutely know better
   b. I spent 12 years in the RE industry, in training
      i. Should recommend a survey with every purchase
      ii. Should hire only licensed professionals
         1. Who was the contractor that operated without a permit? The electrician?
         2. How do I know it's not unsafe, and that this house will not burn down because electrical inspections were not done, and that it won't spread through their illegal fence and onto my cars parked in my driveway and my trees and onto my house?
         3. There could be a lack of up-to-date smoke detectors that wouldn't adequately alert the owners of a fire
   c. In addition, **I educated this neighbor along the way** while opposing the fence and, in particular, the way the construction was being conducted (without any sediment control), and **offered very reasonable measures she could take to solve the issues. I gave a 60 day verbal warning followed by two separate written notices... that I was not to be ignored, and warned I would have no choice but to call the county for help.**
   d. These were **met with not just total rejection ("you'll get used to it"), but with aggression and continued provocation**, resulting in us having to call the police on multiple occasions for destruction of property and trespassing. **Police reviewed security video evidence**. I did not press charges, in hopes that these would be sufficient warning for them to compromise and address our minor grievances.
   e. Throughout this process this neighbor has also attempted to steal our property, where their driveway is encroaching on my property, being used only with permission, by **removing legitimately installed surveyor's markers from two different surveyors, mine and hers, and installing her own**, where she wants the property line to be but not where it actually is. This cost me $1500 which wouldn't have to have been spent had she not insisted she disputed the line. Security video evidence will be available at the hearing and after, should you decide to review it.
   f. We believe they have recently dropped dead frogs, found in their pool filter, over the fence onto our side. A perfect example of a bully, just some of the ongoing provocations.
   g. She has caused all of these opposing, law-abiding citizens to this take away from their work or vacation time, their limited time on this earth, to come out here, and time before this to organize and learn what's happening here... when will this end?
      It will end when people are held accountable for their actions, is my answer. Not until then.
   h. The Glyndon Community Association opposes this
   i. Historic Glyndon Inc. opposes this.
   j. Not a single neighbor I spoke to was in support of variances/exceptions in this case - dozens. Being on a dead-end street, word was slow to get out and many people have yet to be aware.

5. **If this neighbor, with her lawyers, are somehow able to convince an ALJ that what was done here, and how it was done, is somehow okay to stand, I and this entire community will see this as a complete abuse of both the**

spirit and the letter of the law. The illegal actions taken by this neighbor are exactly what BCRZ 307.1 was intended to prevent.

Thank you for your consideration.

-Thomas and Kimberly Montanye











Debra Wiley

From: Vernene Lenz <travelanduniqueventures@comcast.net>
Sent: Tuesday, July 23, 2019 7:26 PM
To: Administrative Hearings
Subject: GCAProspect.docx
Attachments: GCAProspect.docx

CAUTION: This message from travelanduniqueventures@comcast.net originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Sent from my iPad



Glyndon Community Association

PO Box 84

Glyndon, MD 21071

GcaPres@gmail.com

July 19th, 2019

To Whom It May Concern:

On behalf of the Glyndon Community Association's Board of Directors, this letter serves to notify all interested parties as to our strong opposition to any and all variances and special exceptions requested by the property owners of 4607 Prospect Avenue, Glyndon, Md applied for after completion of buildings and modifications. This letter applies to case #2019-0342-SPHA. This letter specifically addresses the following applications for variances/exceptions of newly-built structures, non conforming and constructed without permit application.

- Zero side-yard setback for left-side garage (on the property line, in lieu of 20 feet setback as required)
- 14'-9" set-back for front side addition (in lieu of 30' setback/sum of 50' both sides)
- 72" high front yard fence (42" max required by zoning)

The Glyndon Community Association strives to foster uniform and fair community standards, community awareness, relationships amongst community members, and exciting and unique opportunities that bring neighbors together for the benefit of the community. We believe that all residents, regardless of any identifying characteristics, should adhere to all Baltimore County zoning regulations, laws and procedures relating to modifications of existing structures as well as newly-built dwellings. This includes but is not limited to obtaining required permits PRIOR to starting construction or improvements, completion of land surveys to properly delineate property lines, obtaining and adherence to all environmental regulations with regards to storm water run-off, erosion control, etc., and obtaining an opinion and/or approval from Baltimore County Landmarks Commission as Glyndon is a historic district as defined by the National Historic District Commission.

As such, we believe that the modifications and improvements made to the property at 4607 Prospect Ave were done without many of the regulations and approvals required, and allowing said modifications and improvements would create a dangerous precedent which would or potentially could have a negative impact on other homeowners and the Glyndon community at large in the future. We do not have an opinion as to the aesthetics of the improvements, rather, it is the precedent that is our primary concern as well as allowing construction on another homeowners property to proceed unabated.

Regards,

Daryan V. Rodgers Lenz

President, Glyndon Community Association Inc.

Dear Judge Beverungen,

My name is Steve Fradkin, I am, along with my wife Patti, the residents at 4605 Prospect Avenue. Below are some thoughts that come to mind regarding the case number 2019-0342-SPHA.

Blatant disregard for neighbor's feelings.
Blatant disregard for neighbor's property.
Blatant disregard for the law.
Preface ALL of this by saying, had the proper procedures been followed, we would not be standing before your honor today.

We need to treat this as if NOTHING has been erected yet, no construction has taken place. We personally know one of the previous owners at 4607, and Mark Towels said he tried to get a garage built there for years, but was consistently turned down, due to laws. Which also brings to the forefront, if the easement parameters are a total of fifty feet (say, 20' on this side, 30' on that side), and the available easement on the Montanye's side is 14.9', that tells me that there should be 35.1' of easement on the Bair's side of our property line: 14.9 + 35.1 yields 50'. From the last "plat" I've viewed, there were 11' from the end of the single garage to the property line, which also tells me some previous owner essentially did the same thing: ignore permits and just build. We could carry further, but in truth, I don't have an issue with the original garage, just the additional one and the pavement added that are clearly sloped toward our property. This all being said, yes. We are against the garage, we are against the 0' easement. What I believe is being also overlooked is that the easement is also a safety net for access to the rear of the properties should an emergency arise, or a repair on a pool. Granting a zero easement essentially says that if any of these things occur, the Bair property would remain unscathed while either my or the Montanye properties will have whatever heavy equipment and gear tearing up our grounds. No, I speak for Patti and myself in saying no to the 0' easement. Garage being built, collapsed the first go round. "Builder" had paper in his hands, I assumed they were permits. I asked Denny to come with me to the road, look down at our houses. "Have you ever seen 4 white pines grow like that? A perfectly straight line?" Looking down the line, regardless of who put the trees up, the garage, fence and A/C units are all well beyond the tree line. Doesn't matter which house planted them. Denny turned white and admitted they started this process without permits. I made a call to the county and they said they don't deal with property line disputes, that I would need to hire an attorney. Our current situation makes the retaining of an attorney near impossible. The Bair's, however, were forced to do a land survey because of this case, and disclosed that they are indeed on our property. Since the

garage has gone up, the A/C unit installed, we have been experiencing more water down in our meadow. Last year, I could cut the grass down there. Now, sometimes I can barely walk down there without losing a shoe, it's a swamp. All the drainage from the garage, and the A/C unit are directed towards our property, and not down towards the back of the Bair property. We had water issues when we purchased this house, and corrected them by not directing water to the neighbors, but directing it further down our own hill. Since that time, we've had no issues in the meadow until the garage was erected.

The topography has changed such that the water now flows either toward my house, or apparently, the Montanye's house.

There is nothing "unique" about the Bair house that would condone the 0' easement, as set in the building code. Their house and property are right in line with ours and the Montanye's. In fact, I had asked about the fact that Donna, being a licensed real estate agent, didn't know to obtain permits first, before putting one shovel to the dirt. Never heard a respectable answer to that question. Too, I wonder about a "builder" that would construct something like this without a permit. Or, construct the additional bedroom on the Montanye's side, changing the topography for them. You don't build and then ask for the permission to build. Part of the permit process involves regulating water flow, regulating mud and silt: none of this was ever done, and it has changed the way water acts in our neighborhood. We have called the county and asked them to rebuild our small berm at the top of our driveway, as water was coming down in torrents. They took care of the issue for us. I also took it upon myself to put another "drain" on the street that shuffled water down between the Bair's and our house, on our side of the line. Every now and again, I see the header to my channel "rearranged"...

The signage posted for this hearing. Note that three of the signs are on my property. Again, there are eight. Eight of them. I overheard the conversation third party that Donna asked those posting the signs to not put them all on her property... why. I'm not asking for any variances, I've not broken any building laws or codes. My guess is that it looked embarrassing. Most times I pass a sign. A sign, not eight, on a piece of property.

Too, I find it interesting, to say the least, that the police get called for someone parking within 2' of a fire hydrant on the street, but that all of this should just be swept away under the proverbial rug, and not be disturbed again. This is not a townhouse community: this community is about privacy, open spaces, friendly neighbors. We moved here for peace and quite, on a dead end street, on purpose, to eliminate these type of confrontations. If you wish to live in a community where you're permitted to build on top of one another, this is not the proper community for you.

As far as the fence on our side of the property, go right ahead and put it right on the property line. Truthfully, we don't care. And make it 72" high if you wish. But, don't channel your runoff towards our property. Build the proper drainage and have it run down towards the woods. Please, use some common sense. Which brings me to several other points. Once the garage, A/C and fence are removed, the topography should be returned to it's pre-garage status, at the Baer's cost, using a contractor of our choice. We were not the ones who violated the law. And, here we are, in the courthouse, when I should be working. Who is going to compensate those of us who really shouldn't even be here? Had the proper procedures and laws been followed, I dare say we wouldn't be having these conversations.

smf

John E. Beverungen

From: Roula Hemady <rouhem@gmail.com>
Sent: Sunday, July 21, 2019 2:54 PM
To: John E. Beverungen; Lawrence Stahl
Subject: Case Number: 2019-0342-SPHA for 4607 Prospect Avenue

CAUTION: This message from rouhem@gmail.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Your honors,

Prospect Avenue is a dead end street in Glyndon, Maryland. A sleepy street but very quaint and charming. I love this neighborhood and proud to call it home. People are very caring and friendly. There is a strong sense of community, closeness and pride.
Although my husband and I moved in only in October of 2013, we both feel as if we lived our entire lives in this area. We were welcomed as soon as we moved in.
Seeing the signs come up in front of the Ms. BLair's house few weeks ago, advising the public of this hearing broke that sense of closeness and peace. Tension rose among neighbors and the love and calm was quickly replaced by anger. I feel we were pushed to take sides.
I would not have liked to be in the Fradkins' and Montanyas' position, taken to court to settle issues that violate the law, to be bullied, to fight to gain back my property, my rights and my privacy. This is not typical of our community. We all are proud of our homes/ our lots (big or small) and cherish our privacy.

Thank you for taking the time to read my email.
Roula Hemady
4603 Prospect Avenue

Glyndon

Seeing

Glyndon Community Association
PO Box 84
Glyndon, MD 21071
GcaPres@gmail.com

July 19th, 2019

To Whom It May Concern:
On behalf of the Glyndon Community Association's Board of Directors, this letter serves to notify all interested parties as to our strong opposition to any and all variances and special exceptions requested by the property owners of 4607 Prospect Avenue, Glyndon, Md applied for after completion of buildings and modifications. This letter applies to case #2019-0342-SPHA. This letter specifically addresses the following applications for variances/exceptions of newly-built structures, non conforming and constructed without permit application.

- Zero side-yard setback for left-side garage (on the property line, in lieu of 20 feet setback as required)
- 14'-9" set-back for front side addition (in lieu of 30' setback/sum of 50' both sides)
- 72" high front yard fence (42" max required by zoning)

The Glyndon Community Association strives to foster uniform and fair community standards, community awareness, relationships amongst community members, and exciting and unique opportunities that bring neighbors together for the benefit of the community. We believe that all residents, regardless of any identifying characteristics, should adhere to all Baltimore County zoning regulations, laws and procedures relating to modifications of existing structures as well as newly-built dwellings. This includes but is not limited to obtaining required permits PRIOR to starting construction or improvements, completion of land surveys to properly delineate property lines, obtaining and adherence to all environmental regulations with regards to storm water run-off, erosion control, etc., and obtaining an opinion and/or approval from Baltimore County Landmarks Commission as Glyndon is a historic district as defined by the National Historic District Commission.

As such, we believe that the modifications and improvements made to the property at 4607 Prospect Ave were done without many of the regulations and approvals required, and allowing said modifications and improvements would create a dangerous precedent which would or potentially could have a negative impact on other homeowners and the Glyndon community at large in the future. We do not have an opinion as to the aesthetics of the improvements, rather, it is the precedent that is our primary concern as well as allowing construction on another homeowners property to proceed unabated.

Regards,

Daryan V. Rodgers Lenz
President, Glyndon Community Association Inc.

Historic Glyndon Incorporated

P.O. Box 3641
Glyndon, Maryland 21071-3641

July 18, 2019

VIA email (administrativehearings@baltimorecountymd.gov)
And via hand delivery at meeting
Baltimore County Office of Administrative Hearing

13x2 26
18 24
50 sigs

RE: **Zoning Notice for Case #2019-0342-SPHA**
Property at 4607 Prospect Avenue, Glyndon
Hearing Date: July 22, 2019

This letter is to **express strong opposition** by Historic Glyndon, Inc. (HGI), on behalf of the Board of Directors, for the request of building variances/special exceptions **after the completion** of structures/modifications at 4607 Prospect Avenue, Glyndon, MD. This letter specifically refers to case #2019-0342-SPHA. Refer to page 2 for specific BCRZ codes.

The mission of HGI is to preserve and protect Glyndon's cultural, social, economic and architectural history, as well as to conduct educational and beautification projects which enrich Glyndon's historical heritage.

To that end, we believe that all homeowners within the Historic Glyndon District should follow Baltimore County laws and procedures relating to property improvement. This includes, but is not limited to, obtaining required approvals from the Baltimore County Landmarks Preservation Commission, seeking required building permits, completing land surveys when applicable, and assuring compliance to zoning codes prior to beginning any property improvement projects.

HGI routinely publishes recommended best practices for home improvements within the Historic District in our newsletters. The newsletters are distributed to all homeowners in the Historic Glyndon District. We expect all homeowners to follow these guidelines with the understanding that some properties deemed as contributing structures may have to undergo additional approval processes.

Therefore, we strongly oppose approving the variances after the completion of work for 4607 Prospect Avenue. This would set a precedent, and serve only to further erode the expected responsibilities of our community property owners.

Sincerely,

Pamela Becker

Pamela Becker
President, Historic Glyndon, Inc.

"It has been said that, at its best, preservation engages the past in a conversation with the present over a mutual concern for the future."

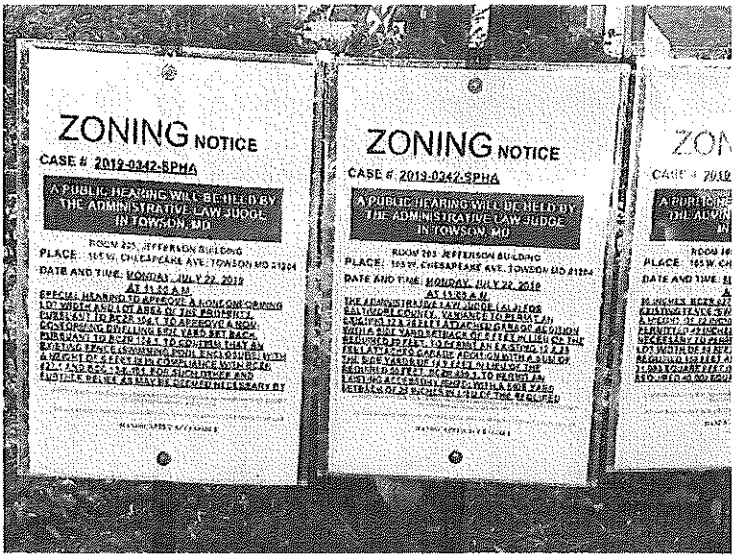
– William Murtagh, first keeper of the National Register of Historic Places

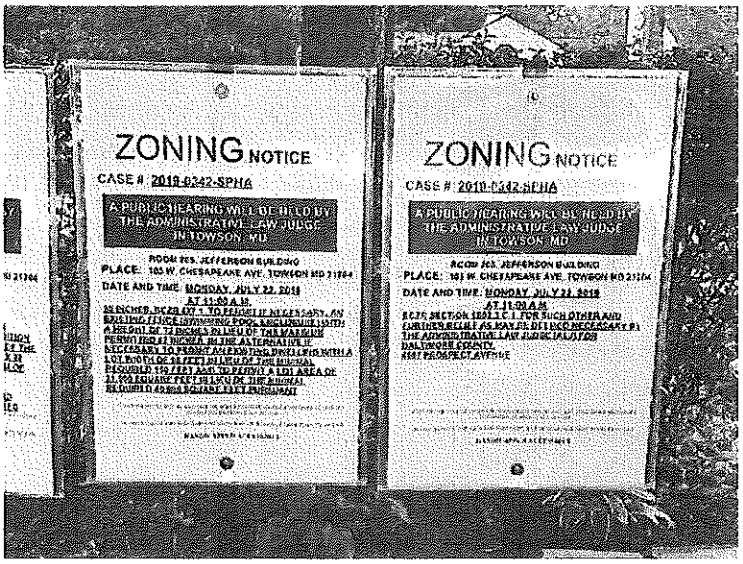
This letter specifically addresses the below applications:

Application for variance/exceptions of newly-built structures (non-conforming, built without permits)

- Zero side-yard set-back for left-side garage (on the property line, in lieu of 20' back)
- 14'-9" set-back for right-side front addition (in lieu of 30' back/ sum of 50' both sides)
- 72" high front-yard fence (in lieu of 42" max)

(Zoning sign photos below for the exact BCRZ codes for exception)





The mission of HGI is to preserve and protect Glyndon's cultural, social, economic, and architectural history, as well as to conduct educational and beautification projects which enrich Glyndon's historical heritage,

Glyndon Community Association & Historic Glyndon, Inc.

Opposition to Baltimore County Zoning Case #2019-0342-SPHA

4607 Prospect Ave., Glyndon, Baltimore County, MD

Application for variance/exceptions of newly-built structures (non-conforming, built without permits)

- Zero side-yard set-back for left-side garage (on the property line, in lieu of 20' back)
- 14'-9" set-back for right-side front addition (in lieu of 30' back/ sum of 50' both sides)
- 72" high front-yard fence (in lieu of 42" max)

(Zoning sign photos below for the exact BCRZ codes for exception)

Signatures of Community Members Opposing Above:

Signature	Print Name	Street Address
	Gerard Cross	4624 Butler Glyndon
	Michael Pristoop	4 Waugh Av
Joan M Davenport	Joan M Davenport	7 Waugh Ave
Sarah Schlegel	Sarah Schlegel	7 Waugh Ave.
Robyn Wroe	Robyn Wroe	10 Waugh Ave
	Lee Wroe	10 Waugh Ave
Robert K. Behman	Robert K. Behman	4612 Prospect Ave
Marie Maevers	MARIE MAEVERS	4615 PROSPECT AV
Steve Ehrenpreis	STEVE EHRENPREIS	3 WAUGH AVE.
Barbara C. Whitman	Barbara C. Whitman	4707 Butler Rd. 21071
Diane Flaherty	Diane Flaherty	4719 Butler Rd 21071
	NICK ST. AMANT	5 CENTRAL 21071
John Michael O'Neill	John Michael O'Neill	4724 Butler Rd 21071

Signatures of Community Members Opposing (continued):

Signature	Print Name	Street Address
	JAMES W ECCE	4804 BUTLER RD GLYNDON MD 21071
	[illegible]	4802 BUTLER RD GLYNDON MD 21071
	TERRY VINSON	4806 Butler Rd
Claudette LeBlanc	Claudette LeBlanc	↑
Alek vinson	Alek vinson	↑
	MATT FLETCHER	4811 BUTLER RD
	Bryan Benson	4813 Butler Rd
Linda Myers	Linda Myers	26 Chatsworth
Jim MacDonald	Jim MacDonald	111 Central Ave 21071
Nan Kaestner	Nan Kaestner	117 Central Ave, 21071
Robert Kaestner	Robert Kaestner	117 Central Ave 21071
Eleanor H. Taylor	Eleanor H. Taylor	16 Worthington Hill Dr. 21071
Martha Clements	Martha Clements	222 Central Ave. 21071
M H Clements	M H Clements	222 Central Ave 21071
	Jennifer Diaz	207 Central Ave 21071
Kmontanye	Kmontanye	4609 Prospect Avenue 21136
Thomas Montanye	Thomas Montanye	4609 Prospect Ave
Frances M. Acle	Frances M. Acle	4606 Prospect Ave

Glyndon Community Association & Historic Glyndon, Inc.

Opposition to Baltimore County Zoning Case #2019-0342-SPHA

4607 Prospect Ave., Glyndon, Baltimore County, MD

Application for variance/exceptions of newly-built structures (non-conforming, built without permits)

- Zero side-yard set-back for left-side garage (on the property line, in lieu of 20' back)
- 14'-9" set-back for right-side front addition (in lieu of 30' back/ sum of 50' both sides)
- 72" high front-yard fence (in lieu of 42" max)

(Zoning sign photos below for the exact BCRZ codes for exception)

Signatures of Community Members Opposing Above:

Signature	Print Name	Street Address
Susan Donnelly	SUSAN DONNELLY	225 CHARTLEY DR Reisterstown MD 21136
Robin Long	Robin Long	8 Wolf Avenue Reisterstown MD 21136
Joan P. Long	JOAN P. LONG	105 CHARTLEY DR. REISTERSTOWN, 21136
Joseph E Roop Jr	JOSEPH E ROOP JR	P.O. Box 224 REISTERSTOWN 21136
Shirley M. Winebarger	Shirley M. Winebarger	80 HANOVER ROAD Reisterstown, MD. 21136
C. Thomas Winebarger	C. Thomas Winebarger	80 Hanover Road Reisterstown, Md. 21136
Kelly W Smith	Kelly L Smith	82 Hanover Road Reist., MD 21136
Raymond Long	RAYMOND LONG	114 HANOVER RD. REISTERSTOWN 21136
Linda Long	Linda Long	114 Hanover Rd 21136
Dana J Geppi-Frampton	Dana J Geppi-Frampton	106 Fairlawn Rd 21136
Kevin E Long	Kevin E. Long	114 Hanover Rd Reisterstown 21136
Anna Welsh	Anna Welsh	4601 Prospect Ave 21071
Charles Welsh	CHARLES WELSH	4601 Prospect Ave 21071

Signatures of Community Members Opposing (continued):

Signature	Print Name	Street Address
Richard Stanley	RICHARD STANLEY	215 Central Ave, Glyndon MD
	STEVE FRADKIN	4605 Prospect Ave Glyndon
Patricia J Fradkin	Patricia J Fradkin	4605 Prospect Ave Glynda md
Cynthia Morrison	Cindy Morrison	4500 Prospect Avenue 21071
Martha Wist	Martha Wist	3834 Ivy Hill Dr. 21074
	Robin Coffin	4511 Prospect Ave Glyndon 21071

Glyndon Community Association & Historic Glyndon, Inc.

Opposition to Baltimore County Zoning Case #2019-0342-SPHA

4607 Prospect Ave., Glyndon, Baltimore County, MD

Application for variance/exceptions of newly-built structures (non-conforming, built without permits)

- Zero side-yard set-back for left-side garage (on the property line, in lieu of 20' back)
- 14'-9" set-back for right-side front addition (in lieu of 30' back/ sum of 50' both sides)
- 72" high front-yard fence (in lieu of 42" max)

(Zoning sign photos below for the exact BCRZ codes for exception)

Signatures of Community Members Opposing Above:

Signature	Print Name	Street Address
Teresa Moore	Teresa Moore	29 Waugh Ave
	Joseph Lurzeski	27 Waugh Ave
C Gulley	Cassandra Gulley	32 Waugh Ave.
Roula Hemady	Roula Hemady	4603 Prospect Ave.
	RAMZI HEMADY	" " "
	Justin Montanye	4510 Prospect Ave
Kaylyn Gray	Kaylyn Gray	4510 prospect Ave.
	Tom Montanye	4510 Prospect Ave.
Robin Flickinger	Robin Flickinger	33 Waugh ave
Barry Flickinger	Barry Flickinger	33 Waugh Ave
	Jeffrey Beher	411 Prospect Ave
Carlyle Montanye	J. Carlyle Montanye Jr	4500 Prospect Ave
Grace E. Montanye	GRACE MONTANYE	4500 Prospect Ave.

John E. Beverungen

From: ramzi hemady <ramzi.hemady59@gmail.com>
Sent: Sunday, July 21, 2019 2:30 PM
To: John E. Beverungen
Subject: case # 2019-0342-SPHA; 4607 prospect ave, glyndon

CAUTION: This message from ramzi.hemady59@gmail.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Your Honor,
My name is Ramzi Hemady. I live at 4603 Prospect Ave in Glyndon. My wife and I are neighbors to the properties involved in the above case. We are cordial with all involved. However, if it is correct that the owners of the property at 4607 Prospect Ave violated numerous zoning/building laws (I apologize if I am not using the proper legal verbiage), including building without a permit, building on a neighbors property without consent, and disregarding easement laws, I find that completely unacceptable. In my opinion, if allowed, it would set a dangerous precedence.
Thank you,
Ramzi Hemady



Debra Wiley

From: Nick St.Amant <nick.st.amant@verizon.net>
Sent: Monday, July 22, 2019 9:23 AM
To: Administrative Hearings
Subject: Case # 2019-0342-SPHA

CAUTION: This message from nick.st.amant@verizon.net originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

RE: Zoning Variances, 4607 Prospect Avenue

I recently became aware of a request for zoning variances in my neighborhood, for which I'd like to offer my concerns.

Some, if not all, of the requested variances relate to work that has already been done in violation of our DR-1 Code. This is not good, and in my mind would reward someone for ignoring the codes.

Glyndon is a lovely area, and Prospect Avenue is a charming street. There's no question that any building not on one's property must be remedied. But the offset rules also should be followed. They are just common sense.

I believe there are six requests for variance, and I urge the county not to grant any of them. Were any to be granted it would set a terrible precedent that others may feel they can take advantage. And then … 'there goes the neighborhood,' as they say.

Respectfully,

Nick St. Amant
5 Central Avenue
Glyndon

Past President, Glyndon Community Association
Past Board Member, Historic Glyndon Inc.

RECEIVED
JUL 22 2019
OFFICE OF
ADMINISTRATIVE HEARINGS

Debra Wiley

From: Tom Montanye <Tom@montanye.net>
Sent: Monday, July 22, 2019 8:55 AM
To: Administrative Hearings
Cc: Tom@Montanye.net; Kim Montanye
Subject: Opposition to Case # 2019-0342-SPHA

CAUTION: This message from tmontanye@gmail.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

From:
Thomas and Kimberly Montanye
4609 Prospect Ave.
Glyndon MD 21136
(immediate neighbor)

RECEIVED
JUL 2 2 2019
OFFICE OF
ADMINISTRATIVE HEARINGS

To whom it may concern,

I'm writing in total opposition to the variances and special exceptions requested in Case # 2019-0342-SPHA, 4607 Prospect Ave., Glyndon Historic District, Baltimore County.

Please direct my arguments below to the Administrative Law Judge for consideration when reviewing this case.

Arguments Opposing 4607 Prospect Ave Variances/Special Exceptions

Case # 2019-0342-SPHA

Variances/Exceptions

1. In the first place, the procedures and restriction regarding variances, outlined in BCRZ 307.1, allow they be granted
    a. "**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**"...
    b. "**and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship**."
    c. These are two hurdles - the first has to be met, and only if so, then also the second is considered and must also be met.
    d. On the **first bar** to be met, peculiarity or uniqueness of the land or structure
        i. I struggle to find *any* characteristics of the land or structure that are peculiar or unique compared with the surrounding properties, or to find any arguments offered by the applicant that support this.
            1. It's similarly rectangular in length and width ratios, similar terrain...slopes downward from front to back...like all the surrounding houses on this side of the street.
            2. The structure, prior to the recent improvements, did not meet *current* side set-back, requirements for DR1 or even DR2, same as many of the properties on the street.
            3. LPC recently reviewed the house, considering exactly the characteristics of the structure, and found nothing out of the ordinary from that perspective.

ii. Since there is nothing peculiar, or unique only to this land or structure, there are no hardships that the others on the street, and more broadly in the community of Historic Glyndon, don't also have... therefore no exceptions should be granted. They simply shouldn't be granted special treatment.

e. These same arguments are well outlined, and expanded on, with numerous examples of similar situations and conclusions, **in the case of Cromwell v. Ward, No. 617, September Term, 1994, which I submit for the ALJ to include and consider in this case**.

2. In the next place, even if it were determined that the land/structures were somehow peculiar and unique, the **second bar** would not be met because there is no hardship except the ones they created on themselves by doing the improvements prior to applying for permission.
   a. Every neighbor in the community has had to make compromises and choices about improving their property within the confines of the County zoning and building codes.
   b. In the case of wanting a 2-car garage, **other options exist**. There's room in front to accomplish this within the zoning constraints, or at least easily within the boundaries of the formerly existing foundation constrains, with a more reasonable variance/exception request
   c. In the case of the second addition, **other options exist**, same thing,
   d. In the case of the fence, **other options exist**, same thing
   e. In the case of the fence, the beginning of the conflict, I personally offered reasonable alternatives that would be acceptable to me and the codes, and they were rejected outright.
   f. In the case of the second addition, the same (with regard to the sediment control/ run-off issue); rejected outright.
   g. We did not directly address the garage with this neighbor, as this was on the other side
      i. We support the general notion that set-backs are very important for the community in general
      ii. If I proposed a zero set-back garage addition on our side, near their non-conforming 14.9', would this neighbor agree? Would other neighbors agree and want precedence set that made this "normal"?
      iii. Would our DR1 zone turn into a community where structures were touching each other, like town homes, as we all got exceptions to the rules, to be fair, even though none of us had met the bars for exceptions according to the laws passed by the elected legislature?
      iv. One has to consider the long-term impact of these decisions. This line of thinking leads to a turbulent community.

3. In the next place,
   a. These requests are submitted based on the newly as-built structures as a complete package, which were built unlawfully, without applications for permits and variances beforehand, instead of on each improvement standing alone.
   b. Considering the "as-built" vs. the "before-built" are two different things,
      i. People are naturally more sympathetic to the consequences of denying exceptions in the case of the as-built, because if declined, it has to be removed, likely at significant expense. It's a punitive decision.
      ii. If plans to build are declined, the applicant simply has to re-work the plans to make them conformant, with far less cost.
      iii. This gives an advantage to the "as-built" approach, which is **a bad precedence** because it encourages more residents to follow the thinking that "it's easier to ask forgiveness than permission." This thinking is destructive to the health of our communities and our civil society more broadly. It's not a law-abiding approach, it's a "catch me if you can" approach.

4. Finally, **this neighbor knows better**
   a. This particular applicant is a **licensed MD Real Estate Agent**, with professional training, which few of the other neighbors here have, and they absolutely know better
   b. I spent 12 years in the RE industry, in training
      i. Should recommend a survey with every purchase
      ii. Should hire only licensed professionals
         1. Who was the contractor that operated without a permit? The electrician?

2. How do I know it's not unsafe, and that this house will not burn down because electrical inspections were not done, and that it won't spread through their illegal fence and onto my cars parked in my driveway and my trees and onto my house?
3. There could be a lack of up-to-date smoke detectors that wouldn't adequately alert the owners of a fire

c. In addition, **I educated this neighbor along the way** while opposing the fence and, in particular, the way the construction was being conducted (without any sediment control), and **offered very reasonable measures she could take to solve the issues. I gave a 60 day verbal warning followed by two separate written notices... that I was not to be ignored, and warned I would have no choice but to call the county for help.**
d. These were **met with not just total rejection ("you'll get used to it"), but with aggression and continued provocation**, resulting in us having to call the police on multiple occasions for destruction of property and trespassing. **Police reviewed security video evidence**. I did not press charges, in hopes that these would be sufficient warning for them to compromise and address our minor grievances.
e. Throughout this process this neighbor has also attempted to steal our property, where their driveway is encroaching on my property, being used only with permission, by **removing legitimately installed surveyor's markers from two different surveyors, mine and hers, and installing her own**, where she wants the property line to be but not where it actually is. This cost me $1500 which wouldn't have to have been spent had she not insisted she disputed the line. Security video evidence will be available at the hearing and after, should you decide to review it.
f. We believe they have recently dropped dead frogs, found in their pool filter, over the fence onto our side. A perfect example of a bully, just some of the ongoing provocations.
g. She has caused all of these opposing, law-abiding citizens to this take away from their work or vacation time, their limited time on this earth, to come out here, and time before this to organize and learn what's happening here... when will this end?
   It will end when people are held accountable for their actions, is my answer. Not until then.
h. The Glyndon Community Association opposes this
i. Historic Glyndon Inc. opposes this.
j. Not a single neighbor I spoke to was in support of variances/exceptions in this case - dozens. Being on a dead-end street, word was slow to get out and many people have yet to be aware.

5. **If this neighbor, with her lawyers, are somehow able to convince an ALJ that what was done here, and how it was done, is somehow okay to stand, I and this entire community will see this as a complete abuse of both the spirit and the letter of the law. The illegal actions taken by this neighbor are exactly what BCRZ 307.1 was intended to prevent.**

Thank you for your consideration.

-Thomas and Kimberly Montanye

Debra Wiley

From: Bob Gehman <rkgehman@gmail.com>
Sent: Monday, July 22, 2019 9:42 AM
To: Administrative Hearings
Subject: Zoning case #2019-0342-SPHA

CAUTION: This message from rkgehman@gmail.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

To whom it may concern:
My name is Bob Gehman and I live at 4612 Prospect Ave across the street from the zoning case above.
I'm very much opposed to the variance requested since it's a clear violation and disrespect for community values and county codes. Also this violation of codes has caused unnecessary confusion and stress for the neighbors of the subject property.
I hope the county codes will be upheld and the variance request denied.
Thanks.
Bob Gehman

RECEIVED
JUL 22 2019
OFFICE OF
ADMINISTRATIVE HEARINGS

JB 7-22-19
11 AM

Debra Wiley

Letters of opposition that came in today July 22nd.

MATTHEW <MATTHEWFLETCHER@comcast.net>
Sunday, July 21, 2019 10:33 PM
Administrative Hearings
Matthew Fletcher
Case # 2019-0342-SPHA

CAUTION: This message from matthewfletcher@comcast.net originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

To whom it may concern,

I express my opposition to the non-permitted, invasive construction done at 4607 Prospect Avenue.

Setbacks, easements and the provisions within the permitting process are there for a reason, legally for purposes of clarity, and the benefit and sensible protection of all neighbors and their properties.

Garages, fences, privacy hedges adjusted and built at 4607 without neighborly consultation and without proper permitting are multiple flagrant violations of the rules we all have to adhere to.

Matt Fletcher
4811 Butler Road, Glyndon, MD, 21071

Sent from XFINITY Connect Mobile App

RECEIVED
JUL 22 2019
OFFICE OF
ADMINISTRATIVE HEARINGS

Debra Wiley

From: Jennifer Diaz <cadwallader39@aol.com>
Sent: Sunday, July 21, 2019 3:46 PM
To: Administrative Hearings
Subject: Case #2019-0342-SPHA

CAUTION: This message from cadwallader39@aol.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

To Whom It May Concern,

My name is Jennifer Diaz and I live at 207 Central Ave, Glyndon MD 21071. I am writing to express my concerns regarding the property on Prospect Ave in Glyndon, Md. I hope that you will NOT grant special permission for the property owners to be exempt from the rules that have been established in our community. To grant special permission could set a precedent that current and future home owners could make changes without following the proper permitting procedures and regulations. Thank you for your consideration on this matter.

Sincerely,

Jennifer Diaz

Sent from my iPad

RECEIVED
JUL 22 2019
OFFICE OF
ADMINISTRATIVE HEARINGS

Debra Wiley

From: NAN KAESTNER <nantk@comcast.net>
Sent: Sunday, July 21, 2019 3:45 PM
To: Administrative Hearings
Subject: case #2019-0342-SPHA

CAUTION: This message from nantk@comcast.net originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

To Whom it May Concern,

I am writing in strong opposition to the request for variances on 4607 Prospect Avenue. To grant variances on this property AFTER the property owner completely bypassed the Zoning permit process would be an affront to law abiding citizens in Glyndon and all neighborhoods who take the time and compliance to go through the zoning process correctly!!!

In Glyndon we are keenly aware and thankful for the restrictions that we have, not only basic zoning restrictions, but also the restrictions that we have being in an Historic District. As a community, we have worked tirelessly for years to uphold correct zoning and to expect neighbors to do the same. We realize that Zoning laws are in place for a REASON! Those who disregard the whole zoning process should not be rewarded for their negligence by the granting of exceptions.

What a horrible precedent that would set. Down the road others would simply say "Oh the property at 4607 just didn't even bother to go through Zoning and they just got variances!" That makes a mockery of the zoning rules in place. Variances are for situations that are very special- topography, hills, cliffs, exceptionally narrow situations etc. They are NOT for people who blatantly ignore the law.

Thanks you for your time on this important issue.

RECEIVED
JUL 22 2019
OFFICE OF
ADMINISTRATIVE HEARINGS

Nan Kaestner

117 Central Avenue

Glyndon, MD 21071

Debra Wiley

From: terry vinson <tvnature@verizon.net>
Sent: Sunday, July 21, 2019 1:29 PM
To: Administrative Hearings
Subject: Case 2019-0342-SPHA

CAUTION: This message from tvnature@verizon.net originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

I am a resident in Glyndon and oppose the zoning variance requested in the above case. Glyndon is the County's first historical neighborhood, and as such, it is important to continue the uniqueness and historical quality of the neighborhood. Zoning rules are in place for many reasons. I am opposed to the variances requested.

RECEIVED
JUL 22 2019
OFFICE OF
ADMINISTRATIVE HEARINGS

Debra Wiley

From: Marti Clements <balletmom4@comcast.net>
Sent: Sunday, July 21, 2019 11:07 AM
To: Administrative Hearings
Subject: Case # 2019-0342-SPHA

CAUTION: This message from balletmom4@comcast.net originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

As a third generation resident of Glyndon, I have worked to help retain the unique quality of our little village.

As past President of Historic Glyndon, and having served numerous times on the Board of the Glyndon Community Association, I have worked to ensure zoning codes were not downgraded when the comprehensive maps were open, and with the Landmarks Preservation Committee.

This issue before you is merely an act of not following the written law. It is a flagrant violation of existing zoning codes we must all follow.

Please do not allow this breach of the law to stand. If you allow this variance, it will set a dangerous precident!

I appreciate your consideration and urge you to come visit Glyndon!

Sincerely,
Marti B. Clements. 443-326-3306



Debra Wiley

From: Michael O'Neill <jmichaeloneill@verizon.net>
Sent: Saturday, July 20, 2019 9:21 PM
To: Administrative Hearings
Subject: Case # 2019-0342-SPHA

CAUTION: This message from jmichaeloneill@verizon.net originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Dear Administrative Law Judge,

I wish to express in the strongest terms my opposition to the granting of the zoning variances requested for 4607 Prospect Ave. 21136-3800. I also wish that all structures that were built is violation of existing setbacks be ordered to be torn down at the property owner's expense immediately. Where applicable, impose fines for every day that the structures remain in violation of set backs.

Blatant violations of the rule of law, such as these, can not be allowed to stand.

Furthermore, any granting of the variances for this property would forever set a precedent for destruction of the neighborhood.

Variances Opposed:
All as described on the four boards posted in front of 4607 Prospect Ave. 21136-3800.

John Michael O'Neill
4724 Butler Rd.
Glyndon, MD 21071



Debra Wiley

From: Steve Ehrenpreis <ehrenpreis1@verizon.net>
Sent: Saturday, July 20, 2019 12:55 PM
To: Administrative Hearings
Subject: Case # 2019-0342-SPHA

CAUTION: This message from ehrenpreis1@verizon.net originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

To Whom This May Concern:

I am opposed to the actions that have been outlines and specifically listed under this case.

Sincerely,

Steve Ehrenpreis

RECEIVED
JUL 22 2019
OFFICE OF
ADMINISTRATIVE HEARINGS

Sherry Nuffer

From: Pamela Jane Becker <pamelajaneb24@gmail.com>
Sent: Friday, July 19, 2019 7:25 AM
To: Administrative Hearings
Cc: Teri Rising; Tom Montanye
Subject: Case #2019-0342-SPHA
Attachments: Historic Glyndon, Inc (HGI) Response for Case 2019-0342-SPHA.pdf

CAUTION: This message from pamelajaneb24@gmail.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Dear Sir/Madam:

On behalf of Historic Glyndon, Inc. ("HGI") and myself, please find our attached formal letter of opposition to the requested variances/special exceptions for Case #2019-0342-SPHA for the property located at 4607 Prospect Avenue. I would appreciate you providing this letter to the Administrative Judge who will be presiding over the hearing set for Monday, July 22, 2019 at 11 a.m.

Historic Glyndon, Inc. is Glyndon's volunteer organization that oversees the preservation and history of our lovely community. We were created in 1981 as a result of Glyndon being designated as Baltimore County's first historic district.

Myself and several Board members of HGI also plan to attend the Monday hearing. If appropriate, we would be happy to speak to expand on our stated oppositions and clarify any questions the Administrative Judge might have.

Thank you for your consideration.

Respectfully,

Pamela Becker
President, Historic Glyndon, Inc.



Sherry Nuffer

From: Mary Ellen Porter <meporter@gilman.edu>
Sent: Thursday, July 18, 2019 6:12 PM
To: Administrative Hearings
Subject: Zoning Hearing for Case #2019-0342-SPHA

CAUTION: This message from meporter@gilman.edu originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

To Whom It May Concern,

We are emailing to express our strong opposition to the variances and special exceptions requested after the fact at 4607 Prospect Avenue in Glyndon, MD. The homeowners erected a fence that exceeds the allowable height (72" vs. 42"), added an addition with no side-yard set back instead of the required 30', and built a garage on the left side of the house that is on the property line instead of leaving a 20' set back as required. Additionally, they completed all of the work without bothering to complete surveys or pull permits.

Zoning regulations exist to promote the health, safety, and general welfare of the community and to protect and conserve the value of property. The owners of 4607 Prospect Avenue clearly chose to ignore all regulations pertaining to their property. Their additions are encroaching upon their neighbors' properties with no concern for the effect on the neighbors' safety or on the value of their homes. Additionally, the homeowners did not consult with Landmarks, as is required by their location within a historic district.

We urge you not to issue variances and exceptions after the fact. This sets a terrible precedent that would serve as a green light to everyone in the community to do whatever they want with their property with no regard for the law or for the wellbeing of their neighbors. Additionally, we ask that you require the owners to remove the fence and the additions.

Thank you for your consideration of our concerns and requests.



Sincerely,

Mary Ellen and David Porter
4611 Butler Road
Glyndon, MD

This message is for the designated recipient only and may contain privileged, proprietary, or otherwise private information. If you have received it in error, please notify the sender immediately and delete the original. Any other use of this email is prohibited.

Sherry Nuffer

From: Vernene Lenz <travelanduniqueventures@comcast.net>
Sent: Thursday, July 18, 2019 5:40 PM
To: Administrative Hearings
Subject: Glyndon and the hearing upcoming Monday....

CAUTION: This message from travelanduniqueventures@comcast.net originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

To whom I may concern:

We must stress that all residents apply for the permits from the County, prior to beginning the building of additions. Asking for Variances, after the building is completed, is not a good practice.

Sincerely,
Vernene Lenz
PO Box 279
Glyndon, Md 21071

Sent from my iPhone



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 5, 2021

NOTICE OF POSTPONEMENT

IN THE MATTER OF: Donna V. Bair – Legal Owner
4607 Prospect Avenue
19-342-SPHA 4th Election District; 3rd Councilmanic District

8/9/19 Opinion and Order of the Administrative Law Judge wherein the:
- Petition for Special Hearing: 1) to approve a nonconforming lot width and lot area; and 2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of 30 inches was GRANTED; the
- Petition for Special Hearing: 1) to approve a nonconforming dwelling side yard setback; and 2) to confirm that an existing fence (swimming pool enclosure) with a height of 6' is in compliance with BCZR §427.1 and BCC §13-6-101 was DENIED; and the
- Petition for Variance: 1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.; 2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; and 3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches was DENIED

9/9/19 Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire on behalf of Donna V. Bair, Petitioner.

9/25/19 Order on Motion for Reconsideration issued by the Administrative Law Judge wherein it was Ordered:
- that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms in BCZR §104;
- that all new construction must comply with current setbacks and restrictions at the time of new construction; and
- all other matters and respects of Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

The Board convened for hearing on February 6, 2020. This matter did not conclude. This matter was assigned for hearing days 2 and 3 on February 23 and 25, 2021. By request of Counsel, these dates have been postponed and will be reassigned to later dates.

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 require special accommodations, please contact this office at least one week prior to hearing date.

If you do not have access to a computer or smart device, please contact our office for the call-in information the day before the scheduled hearing.

Krysundra Cannington, Administrator

c. Counsel for Petitioners : Lawrence E. Schmidt, Esquire
Legal Owner : Donna Bair

People's Counsel for Baltimore County : Peter M. Zimmerman, Esquire

Protestants *pro se* : Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
John E. Lemmerman/RTF Associates, Inc.
Kim and Tom Montanye
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz

C. Pete Gutwald, Director/Department of Planning
Michael D. Mallinoff, Director/PAI
James R. Benjamin, Jr., County Attorney

Paul M. Mayhew, Managing Administrative Law Judge
Nancy C. West, Assistant County Attorney

Krysundra Cannington

From: Alyssa Moyers <amoyers@sgs-law.com>
Sent: Monday, January 4, 2021 1:55 PM
To: Krysundra Cannington
Cc: Tom@montanye.net; rscoffin@verizon.net; reistlaxcoach@gmail.com; donna.bair@yahoo.com; Peoples Counsel; Peter Max Zimmerman; Lawrence Schmidt; Zachary Wilkins
Subject: Zoning Case No.2019-342-SPHA, Donna Bair, Petitioner, 4607 Prospect Avenue
Attachments: Letter to BOA requesting new dates in 2021.PDF

CAUTION: This message from amoyers@sgs-law.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Sunny,

Please see the attached letter in connection with the above referenced matter.

- *Alyssa*

Alyssa Fiore Moyers | Paralegal
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
amoyers@sgs-law.com | www.sgs-law.com

This email contains information from the law firm of Smith, Gildea & Schmidt, LLC which may be confidential and/or privileged. The information is intended to be for the exclusive use of the individual or entity named above. If you are not the intended recipient, be advised that any disclosure, copying, distribution or other use of this information is strictly prohibited. If you have received this e-mail in error, please notify Smith, Gildea & Schmidt, LLC by telephone immediately.

Please consider the environment before printing this email.

SMITH, GILDEA & SCHMIDT LLC

MICHAEL PAUL SMITH
DAVID K. GILDEA
LAWRENCE E. SCHMIDT
JASON T. VETTORI
MARIELA C. D'ALESSIO*
MELISSA L. ENGLISH**
* Admitted in MD, PA, FL
** Admitted in MD, NC

LAUREN S. FLEMING
NICOLE LAMBDIN
CARMELO D. MORABITO
ZACHARY J. WILKINS
of counsel:
EUGENE A. ARBAUGH, JR.
MARY G. LOKER
STEPHEN J. NOLAN

January 4, 2021

Via Email Only
Krysundra L. Cannington
County Board of Appeals of Baltimore County
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204
appealsboard@baltimorecountymd.gov

Re: In the Matter of: Donna V. Bair
Property: 4607 Prospect Avenue
Case No. 19-342-SPHA

Dear Sunny,

I write by way of follow up to the Notice of Assignment for Days 2 and 3 dated December 15, 2020 in the above referenced matter scheduling this matter for additional hearing dates on February 23, 2021 and February 25, 2021.

Please note that Mrs. Bair and her husband are scheduled to be out of the Country on a pre-planned, pre-paid work trip from February 21 – February 27, 2021. Additionally, they plan to participate in this hearing at our office and we would appreciate a quarantine period for them of 7-10 days. As such, we respectfully request that this matter be rescheduled any time after March 10, 2021.

Thank you for your consideration of this request. Please contact me should you have any questions.

Very truly yours,

Lawrence E. Schmidt

LES/am
cc: Peter Max Zimmerman, Esquire
Tom Montanye (via email: Tom@montanye.net)
Robin S. Coffin (via email: Rscoffin@verizon.net)
Steven Fradkin (via email: Reistlaxcoach@gmail.com)
Donna Bair (via email: donna.bair@yahoo.com)

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 15, 2020

NOTICE OF ASSIGNMENT - DAYS 2 and 3

IN THE MATTER OF: Donna V. Bair – Legal Owner
4607 Prospect Avenue
19-342-SPHA 4th Election District; 3rd Councilmanic District

8/9/19 Opinion and Order of the Administrative Law Judge wherein the:
- Petition for Special Hearing: 1) to approve a nonconforming lot width and lot area; and 2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of 30 inches was GRANTED; the
- Petition for Special Hearing: 1) to approve a nonconforming dwelling side yard setback; and 2) to confirm that an existing fence (swimming pool enclosure) with a height of 6' is in compliance with BCZR §427.1 and BCC §13-6-101 was DENIED; and the
- Petition for Variance: 1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.; 2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; and 3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches was DENIED

9/9/19 Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire on behalf of Donna V. Bair, Petitioner.

9/25/19 Order on Motion for Reconsideration issued by the Administrative Law Judge wherein it was Ordered:
- that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms in BCZR §104;
- that all new construction must comply with current setbacks and restrictions at the time of new construction; and
- all other matters and respects of Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

The Board convened for hearing on February 6, 2020. This matter did not conclude. This matter has been

ASSIGNED FOR: FEBRUARY 23, 2021, AT 10:00 A.M. – Day 2;
and: FEBRUARY 25, 2021, AT 10:00 A.M. – Day 3

The above scheduled hearing will be held remotely using WebEx for audio and video participation. **Call-in information and a link to the hearing will be posted on our web calendar at** www.baltimorecountymd.gov/Agencies/appeals/index.html **the night before.**

A complete set of **exhibits must be emailed** at least **48 hours before the hearing** to **appealsboard@baltimorecountymd.gov** in a format that complies with MDEC (Maryland Electronic Court) standards.

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 require special accommodations, please contact this office at least one week prior to hearing date.

If you do not have access to a computer or smart device, please contact our office for the call-in information the day before the scheduled hearing.

Krysundra Cannington, Administrator

c. Counsel for Petitioners : Lawrence E. Schmidt, Esquire
Legal Owner : Donna Bair

People's Counsel for Baltimore County : Peter M. Zimmerman, Esquire

Protestants *pro se* : Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
John E. Lemmerman/RTF Associates, Inc.
Kim and Tom Montanye
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz

C. Pete Gutwald, Director/Department of Planning
Michael D. Mallinoff, Director/PAI
Paul M. Mayhew, Managing Administrative Law Judge

James R. Benjamim, Jr., County Attorney
Nancy C. West, Assistant County Attorney

Krysundra Cannington

From: Lawrence Schmidt <lschmidt@sgs-law.com>
Sent: Thursday, October 29, 2020 1:38 PM
To: Peter Max Zimmerman
Cc: Krysundra Cannington; Tom@montanye.net; rscoffin@verizon.net; reistlaxcoach@gmail.com; Alyssa Moyers; donna.bair@yahoo.com
Subject: Re: Zoning Case No.2019-342-SPHA, Donna Bair, Petitioner, 4607 Prospect Avenue

CAUTION: This message from lschmidt@sgs-law.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Sunny
Ok we me.
I'd suggest you give us multiple dates as there are a number of persons to coordinate.
And 2021 is fine too
Thanks to all
Larry Schmidt

Sent from my iPhone

On Oct 29, 2020, at 12:56 PM, Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov> wrote:

Krysundra Cannington
County Board of Appeals Administrator

Dear Ms. Cannington,

On July 1, the Board of Appeals granted our office's request for continuance made in my June 17, 2020 letter.

At that time, we anticipated that the county would be up and running for in-person hearings by September or October. Unfortunately, that has not happened, and there is no specific schedule to reopen.

Upon review with the lead interested protestants, we have come to the conclusion that we should resume with a remote webex hearing, despite the challenges and issues.

In view of the many interested parties and/or witnesses, we ask if you could provide some options for dates. Just in case, if it is feasible to schedule 2 additional days, that might be prudent.
I suggest they be in January, after the holiday season and so everyone has ample time to reboot remotely as well.

Thank you again for your attention to this matter.

Respectfully, Peter Max Zimmerman, People's Counsel, 410 887-2188

Krysundra Cannington

From: Peter Max Zimmerman
Sent: Thursday, October 29, 2020 12:56 PM
To: Krysundra Cannington
Cc: 'Lawrence Schmidt'; Tom@montanye.net; rscoffin@verizon.net; reistlaxcoach@gmail.com
Subject: Zoning Case No.2019-342-SPHA, Donna Bair, Petitioner, 4607 Prospect Avenue

Krysundra Cannington
County Board of Appeals Administrator

Dear Ms. Cannington,

On July 1, the Board of Appeals granted our office's request for continuance made in my June 17, 2020 letter.

At that time, we anticipated that the county would be up and running for in-person hearings by September or October. Unfortunately, that has not happened, and there is no specific schedule to reopen.

Upon review with the lead interested protestants, we have come to the conclusion that we should resume with a remote webex hearing, despite the challenges and issues.

In view of the many interested parties and/or witnesses, we ask if you could provide some options for dates. Just in case, if it is feasible to schedule 2 additional days, that might be prudent.
I suggest they be in January, after the holiday season and so everyone has ample time to reboot remotely as well.

Thank you again for your attention to this matter.

Respectfully, Peter Max Zimmerman, People's Counsel, 410 887-2188

Krysundra Cannington

From: Krysundra Cannington
Sent: Wednesday, July 1, 2020 10:34 AM
To: 'Lawrence Schmidt'; Peter Max Zimmerman; J. Carroll Holzer, Esquire (jcholzer38 @gmail.com)
Cc: reistlaxcoach@gmail.com; tom@montanye.net; rscoffin@verizon.net; Carole Demilio; Rebecca Wheatley; Dave Hash; Sue Benson; Alyssa Moyers; Bair, Donna (donna.bair@yahoo.com)
Subject: RE: April 7 hearing --- Donna Bair case --- County Board of Appeals Schedule

Good morning Counsel,

I spoke with the Board and they have agreed to grant the request for continuance of this matter until such time as we can safely hold in-person hearings.

Thank you,

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

Confidentiality Statement

This electronic mail transmission contains confidential information belonging to the sender which is legally privileged and confidential. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or taking of any action based on the contents of this electronic mail transmission is strictly prohibited. If you have received this electronic mail transmission in error, please immediately notify the sender.

From: Lawrence Schmidt <lschmidt@sgs-law.com>
Sent: Monday, June 29, 2020 9:19 AM
To: Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov>; Krysundra Cannington <kcannington@baltimorecountymd.gov>
Cc: reistlaxcoach@gmail.com; tom@montanye.net; rscoffin@verizon.net; Carole Demilio <cdemilio@baltimorecountymd.gov>; Rebecca Wheatley <rwheatley@baltimorecountymd.gov>; J. Carroll Holzer, Esquire (jcholzer38@gmail.com) (jcholzer38@gmail.com) <jcholzer38@gmail.com>; Dave Hash <dhash@jhmi.edu>; Sue Benson <sbensoncomm@aol.com>; Alyssa Moyers <amoyers@sgs-law.com>; Bair, Donna (donna.bair@yahoo.com) <donna.bair@yahoo.com>
Subject: RE: April 7 hearing --- Donna Bair case --- County Board of Appeals Schedule

Krysundra Cannington

From: Lawrence Schmidt <lschmidt@sgs-law.com>
Sent: Monday, June 29, 2020 9:19 AM
To: Peter Max Zimmerman; Krysundra Cannington
Cc: reistlaxcoach@gmail.com; tom@montanye.net; rscoffin@verizon.net; Carole Demilio; Rebecca Wheatley; J. Carroll Holzer, Esquire (jcholzer38@gmail.com) (jcholzer38 @gmail.com); Dave Hash; Sue Benson; Alyssa Moyers; Bair, Donna (donna.bair@yahoo.com)
Subject: RE: April 7 hearing --- Donna Bair case --- County Board of Appeals Schedule

CAUTION: This message from lschmidt@sgs-law.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Ms. Cannington
I wanted to take this opportunity to respond to Mr. Zimmerman's emails regarding the continuation of the Board's hearing on the above matter. After conferring with my client, please note that we agree to move forward in whatever manner the Board deems appropriate and proper. We recognize the multiple issues caused by the coronavirus pandemic and resulting shut down of the Board and will defer to whatever course of action the Board deems proper. Thank you.

Lawrence E. Schmidt | Partner
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
lschmidt@sgs-law.com | www.sgs-law.com

This email contains information from the law firm of Smith, Gildea & Schmidt, LLC which may be confidential and/or privileged. The information is intended to be for the exclusive use of the individual or entity named above. If you are not the intended recipient, be advised that any disclosure, copying, distribution or other use of this information is strictly prohibited. If you have received this e-mail in error, please notify Smith, Gildea & Schmidt, LLC by telephone immediately.

From: Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov>
Sent: Friday, March 27, 2020 11:33 AM
To: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Cc: Lawrence Schmidt <lschmidt@sgs-law.com>; reistlaxcoach@gmail.com; tom@montanye.net; rscoffin@verizon.net; Carole Demilio <cdemilio@baltimorecountymd.gov>; Rebecca Wheatley <rwheatley@baltimorecountymd.gov>; J. Carroll Holzer, Esquire (jcholzer38@gmail.com) (jcholzer38@gmail.com) <jcholzer38@gmail.com>; Dave Hash <dhash@jhmi.edu>; Sue Benson <sbensoncomm@aol.com>
Subject: April 7 hearing --- Donna Bair case --- County Board of Appeals Schedule

Dear Ms. Cannington, the Board, and everybody,

As much as we would all wish to progress with this case on April 7, I do not see how that is practical given the coronavirus situation and social distancing and congregational limits. There are many witnesses and interested persons, and we would exceed 10 present.

Krysundra Cannington

From: Peter Max Zimmerman
Sent: Wednesday, June 17, 2020 11:54 AM
To: Krysundra Cannington
Cc: Lawrence Schmidt; rscoffin@verizon.net; reistlaxcoach@gmail.com; tom@montanye.net; Nancy C. West; Carole Demilio
Subject: Follow-up on scheduling of Bair continuation

Dear Ms. Cannington,

To follow up, at this time, we are objecting specifically only to continuation of the Bair trial remotely for reasons expressed in our office's letter. We submit that a regular trial can reasonably be scheduled with all deliberate speed for a September or October plenary trial.

The Bair case is the only pending trial hearing in midstream in which we are participating actively. In this context, we felt it incumbent to state our concerns as soon as possible.

This case appears to be the first case to come up, as it involves a continuation. So it is the only case we have looked at particularly.

Sincerely, Peter Max Zimmerman

Krysundra Cannington

From: Lawrence Schmidt <lschmidt@sgs-law.com>
Sent: Wednesday, June 17, 2020 11:49 AM
To: Krysundra Cannington; Peter Max Zimmerman
Cc: reistlaxcoach@gmail.com; tom@montanye.net; rscoffin@verizon.net; Carole Demilio; Nancy C. West
Subject: RE: Donna Bair - 4607 Prospect Avenue - Case No 2019-342-SPHA

CAUTION: This message from lschmidt@sgs-law.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Sunny: Maybe I have figured it out. I looked through my emails and noticed one from you dated June 8 (that date is referenced in Mr. Z's letter) which provided what I would call "generic" info about the Board's plans insofar as reopening and conducting hearings. To me, this seemed to be in line with what the ALJ is doing (I actually have a hearing there next week) and the Courts.

I suppose Mr. Zimmerman is objecting to the Bair case being one of the ones being conducted in this format.

Given the nature of the beast (i.e. that all cases at the Board are, by nature, contested) it would seem that his objections would apply to all and that he doesn't want the Board to re-open, at all.

In any event. I will review his letter, confer with my client, and let you know our position.

If you do actually assign a date for this matter, then I am sure that you will let me know.

Larry Schmidt

Lawrence E. Schmidt | Partner
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
lschmidt@sgs-law.com | www.sgs-law.com

This email contains information from the law firm of Smith, Gildea & Schmidt, LLC which may be confidential and/or privileged. The information is intended to be for the exclusive use of the individual or entity named above. If you are not the intended recipient, be advised that any disclosure, copying, distribution or other use of this information is strictly prohibited. If you have received this e-mail in error, please notify Smith, Gildea & Schmidt, LLC by telephone immediately.

From: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Sent: Wednesday, June 17, 2020 11:24 AM
To: Lawrence Schmidt <lschmidt@sgs-law.com>; Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov>
Cc: reistlaxcoach@gmail.com; tom@montanye.net; rscoffin@verizon.net; Carole Demilio <cdemilio@baltimorecountymd.gov>; Nancy C. West <nwest@baltimorecountymd.gov>
Subject: RE: Donna Bair - 4607 Prospect Avenue - Case No 2019-342-SPHA

Mr. Schmidt,

As I also just received this email at 11:05 a.m. today, I do not have any answers yet. I will let you know as soon as possible.

Krysundra Cannington

From: Krysundra Cannington
Sent: Wednesday, June 17, 2020 11:24 AM
To: Lawrence Schmidt; Peter Max Zimmerman
Cc: reistlaxcoach@gmail.com; tom@montanye.net; rscoffin@verizon.net; Carole Demilio; Nancy C. West
Subject: RE: Donna Bair - 4607 Prospect Avenue - Case No 2019-342-SPHA

Mr. Schmidt,

As I also just received this email at 11:05 a.m. today, I do not have any answers yet. I will let you know as soon as possible.

Thank you,

Sunny

From: Lawrence Schmidt <lschmidt@sgs-law.com>
Sent: Wednesday, June 17, 2020 11:21 AM
To: Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov>; Krysundra Cannington <kcannington@baltimorecountymd.gov>
Cc: reistlaxcoach@gmail.com; tom@montanye.net; rscoffin@verizon.net; Carole Demilio <cdemilio@baltimorecountymd.gov>; Nancy C. West <nwest@baltimorecountymd.gov>
Subject: RE: Donna Bair - 4607 Prospect Avenue - Case No 2019-342-SPHA

CAUTION: This message from lschmidt@sgs-law.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Ms. Cannington:

I received today the email below from Mr. Zimmerman. This is the first I have heard of this. I have not received any email, or any notice. Can you advise what the Board is proposing at this point?

Thanks.

Larry

Lawrence E. Schmidt | Partner
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
lschmidt@sgs-law.com | www.sgs-law.com

This email contains information from the law firm of Smith, Gildea & Schmidt, LLC which may be confidential and/or privileged. The information is intended to be for the exclusive use of the individual or entity named above. If you are not the intended recipient, be advised that any disclosure, copying, distribution or other use of this information is strictly prohibited. If you have received this e-mail in error, please notify Smith, Gildea & Schmidt, LLC by telephone immediately.

Krysundra Cannington

From: Lawrence Schmidt <lschmidt@sgs-law.com>
Sent: Wednesday, June 17, 2020 11:21 AM
To: Peter Max Zimmerman; Krysundra Cannington
Cc: reistlaxcoach@gmail.com; tom@montanye.net; rscoffin@verizon.net; Carole Demilio; Nancy C. West
Subject: RE: Donna Bair - 4607 Prospect Avenue - Case No 2019-342-SPHA

CAUTION: This message from lschmidt@sgs-law.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Ms. Cannington:

I received today the email below from Mr. Zimmerman. This is the first I have heard of this. I have not received any email, or any notice. Can you advise what the Board is proposing at this point?

Thanks.

Larry

Lawrence E. Schmidt | Partner
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
lschmidt@sgs-law.com | www.sgs-law.com

This email contains information from the law firm of Smith, Gildea & Schmidt, LLC which may be confidential and/or privileged. The information is intended to be for the exclusive use of the individual or entity named above. If you are not the intended recipient, be advised that any disclosure, copying, distribution or other use of this information is strictly prohibited. If you have received this e-mail in error, please notify Smith, Gildea & Schmidt, LLC by telephone immediately.

From: Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov>
Sent: Wednesday, June 17, 2020 11:05 AM
To: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Cc: Lawrence Schmidt <lschmidt@sgs-law.com>; reistlaxcoach@gmail.com; tom@montanye.net; rscoffin@verizon.net; Carole Demilio <cdemilio@baltimorecountymd.gov>; Nancy C. West <nwest@baltimorecountymd.gov>
Subject: Donna Bair - 4607 Prospect Avenue - Case No 2019-342-SPHA

Dear Ms. Cannington, County Board of Appeals Administrator,

The attached letter expresses our office's issues and objections concerning the proposed remote Webex trial for continuation of the Bair case. We submit that two in-person hearing days should be scheduled in September or October, subject to any guidelines then applicable.

Krysundra Cannington

From: Krysundra Cannington
Sent: Wednesday, June 17, 2020 11:20 AM
To: Peter Max Zimmerman
Cc: Lawrence Schmidt; reistlaxcoach@gmail.com; tom@montanye.net; rscoffin@verizon.net; Carole Demilio; Nancy C. West; Wheatley, Rebecca
Subject: RE: Donna Bair - 4607 Prospect Avenue - Case No 2019-342-SPHA

Pete,

To be clear, are you only objecting to the scheduling of a remote hearing in the Bair matter?

Sunny

From: Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov>
Sent: Wednesday, June 17, 2020 11:05 AM
To: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Cc: Lawrence Schmidt <lschmidt@sgs-law.com>; reistlaxcoach@gmail.com; tom@montanye.net; rscoffin@verizon.net; Carole Demilio <cdemilio@baltimorecountymd.gov>; Nancy C. West <nwest@baltimorecountymd.gov>
Subject: Donna Bair - 4607 Prospect Avenue - Case No 2019-342-SPHA

Dear Ms. Cannington, County Board of Appeals Administrator,

The attached letter expresses our office's issues and objections concerning the proposed remote Webex trial for continuation of the Bair case. We submit that two in-person hearing days should be scheduled in September or October, subject to any guidelines then applicable.

Thank you and the Board members for your attention to this matter,

Sincerely, Peter Max Zimmerman, People's Counsel, 410 887-2188

Krysundra Cannington

From:	Peter Max Zimmerman
Sent:	Wednesday, June 17, 2020 11:05 AM
To:	Krysundra Cannington
Cc:	Lawrence Schmidt; reistlaxcoach@gmail.com; tom@montanye.net; rscoffin@verizon.net; Carole Demilio; Nancy C. West
Subject:	Donna Bair - 4607 Prospect Avenue - Case No 2019-342-SPHA
Attachments:	Ltr to Panel Members on Donna Bair - 4607 Prospect Avenue - 2019-342-SPHA.pdf

Dear Ms. Cannington, County Board of Appeals Administrator,

The attached letter expresses our office's issues and objections concerning the proposed remote Webex trial for continuation of the Bair case. We submit that two in-person hearing days should be scheduled in September or October, subject to any guidelines then applicable.

Thank you and the Board members for your attention to this matter,

Sincerely, Peter Max Zimmerman, People's Counsel, 410 887-2188

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

June 17, 2020

William A. McComas Chairman
Andrew M. Belt, Panel Member
Maureen E. Murphy, Panel Member
Board of Appeals of Baltimore County
105 West Chesapeake Avenue, Suite 203
Towson, Maryland 21204

Re: Donna Bair, Petitioner
4607 Prospect Avenue
Case Nos.: 2019-342-SPHA

Dear Chairman McComas and Panel Members Murphy and Belt,

This responds to the June 8 e-mail from County Board of Appeals (CBA) administrator Krysundra Cannington, we respectfully object to the arrangement of a Webex remote event for a second trial hearing day (and any other days, if necessary) in the above Bair case. This objection is accentuated here because Petitioner Donna Bair (Bair) presented her case in open hearing on February 6, 2020. This discrimination is unfair and contravenes due process of law.

The scheduled second hearing day of April 7 was cancelled because of the pandemic after Governor Lawrence Hogan's order of March 16. There were also orders by Chief Judge Mary Ellen Barbera effectively closing the courts except for specified emergency or other priority cases.

We recognize the good faith effort of the CBA to resume activities backlogged by the pandemic. This includes the balanced and reasonable resumption of public deliberations and several of our cases and potential oral arguments on motions or for on-the-record appeals.

Here, while further delay prolongs the presence of dwelling additions and fencing in conflict with zoning law, due process warrants a moderate additional delay for a plenary in-person trial hearing, where, as noted, Bair had the benefit of such a hearing to present her case. We have e-mailed and phoned the leading Protestants --- Steve Fradkin, Tom Montanye, and Robin Coffin --- and they agree that a remote trial is inappropriate and unfair.

The CBA should assess soon the county's social reopening and schedule two days of plenary public hearings. We note that the District Courts are opening for non-jury trials June 22. The Circuit Courts are currently under the phased Maryland Court of Appeals Order for Phase V reopening in October. The CBA could reasonably proceed to schedule Bair in September or October, subject to adjustment if judicial guidelines or the pandemic demand it.

A few more months delay in this multi-year litigation will assure fairness and due process of law. Maryland Aggregates v. State 337 Md. 658, 686-87 (1995); Calvert County Pl. Comm'n v. Howlin Realty Mgt, Inc. 364 Md. 301, 322 (2001). Anyway. It it will likely be late July or August before a remote trial could be held, if then, given summer schedules of many participants.

Chief Judge Mary Ellen Barbera of the Maryland Court of Appeals implicitly recognized the practical problems of remote trials in her latest administrative order for the court system. Neither jury or non-jury trials are allowed until October. They are not allowed remotely in the phased transition which allows remote oral arguments. While this order does not apply directly to the County Board of Appeals, it appears reasonable to follow it.

Here are several practical problems for remote events:

1. Notice, compulsion of witness attendance, subpoenas, pretrial disclosures. A remote trial involves additional complexities and fairness issues here. There have to be notice provisions to enable all members of the public to attend and participate, not just those already identified. As the Court of Appeals observed, any hearing legislatively provided as "public" must be open to the public, even if not a contested case hearing. Sugarloaf Citizens v. Waste Disposal Authority 323 Md. 641, 657 n.12 (1991). Any person interested in the case may participate. Dorsey v. Bethel AME Church 375 Md. 59, 75-77 (2003).There would have also to be provisions for web compulsion of witnesses, subpoenas, and production of exhibits by all members of the public. If pretrial production of exhibits is involved, this entails pretrial identification of witnesses. Bair did not have to make any pretrial disclosures.

2. Trying the case: Trials are not scripted. Parties adjust to ongoing testimony, exhibits, and rulings. This occurs even more in *de novo* hearings. There are necessarily attorney/intraparty communications. Attorneys, clients, participants and experts communicate with each other in the hearing room during the trial or at recesses. This may include determination, scheduling, and scope of witnesses, unforeseen eventualities. It will not be possible to do that at a Webex activity.

3. Evaluating impact and credibility of witnesses. Testimony on a computer screen does not have the same impact as in-person testimony. Moreover, there is little or no body language on a computer screen. The dynamics of attorney/witness interactions are not the same. Webex hinders evaluation of impact and credibility.

4. Limited screen space for videos of participants. Our experience with Zoom and Skype reflects screen space for a relatively small number of videos. In land use cases, there are often many participants. Here, we have 3 CBA panel members, 2 or more attorneys (with Bair associates or Deputy People's Counsel), expert(s), at least 3 nearby property owners, community association representatives, and many others. It is unpredictable who will be shown on the screen at any time. This hinders the ability of participants to observe the proceedings. It is also unpredictable whether the screen will focus efficiently as speakers shift with high frequency at times.

5. Screening of exhibits. How are exhibits to be placed on the screen, especially site plans; photographs, some large; and pattern books where the fine print is already almost illegible. How do we question witnesses about exhibits? How does one point to, mark, or otherwise make use of exhibits, as is often done? What if there are physical exhibits?

6. Other exhibit problems. What happens when it becomes apparent during the course of the hearing that additional exhibits are appropriate, not anticipated or identified prior to the hearing? Does pretrial identification of exhibits apply to all parties before the first day of hearing? How can area citizens possibly anticipate what exhibits they will need until they observe a petitioner's case? Why should they have to provide any exhibits at all until they see what a petitioner has to say?

7. Evidentiary rulings. Dealing with evidentiary objections and rulings is already often challenging, including the opportunity for various parties to argue, and occasionally the opportunity for CBA members to confer with each other. This will be even more challenging and likely protracted by Webex.

8. Legal issues. Sometimes legal issues arise during the hearing, whether evidentiary or other. Sometimes, It may be helpful to provide copies of appellate cases. This cannot be done by Webex.

9. Technical issues. Citizens may have technical problems linking in, based on computer capability or location. Also, will the recording of the Webex work well? Will a transcriber know who is speaking?

10. Vacation and social distance issues. Even though the pandemic is limiting travel, some parties may be away in the region in July and August, whether for vacation or to socially distance. It makes sense to envision a September or October resumption, with normal public hearings and social distancing if then warranted.

11. Press access. The public character of hearings requires availability to the press. There are news publications which cover Baltimore County land use cases, including regional publications such as The Country Crier, The Peak, and The Villager. How would the Webex be made available to them.

12. Stress. It is uncertain to what degree it is stressful for participants to concentrate on the computer screen all day. While a day at a public zoning hearing may also be challenging, it is likely not challenging to that degree.

These problems are just aggravated here where the remote Webex is injected in the middle of the case. Bair has had the advantage of the usual open *de novo* hearing, with all of its accoutrements and presentational benefits and impacts, and without any pretrial disclosure of witnesses or exhibits. The shift to remote for Protestants and our office will suffer from all the enumerated infirmities and newly advance disclosure of exhibits and to an extent, witnesses. Such bifurcation of this case would manifestly be prejudicial and unfair.

Our office is anxious to make progress. Unfortunately, the wheels of justice grind slower than ever due to the pandemic. But the better and proper course is to envision the resumption and scheduling of proper normal public hearings. With an optimistic approach, it should very soon be plausible to schedule this case for two hearing days in September or October. The benefits to due process and the efficient administration of justice will outweigh by far the impairment of due process of law in the Webex setting.

We trust the CBA will appreciate our office's concerns. It is noteworthy there are also legal issues regarding the adequacy of the predicate for Webex or other remote proceedings. Nevertheless, as a matter of public interest, in view of the pandemic, we shall not enumerate them at this time. We are approaching this situation from the point of view of a balance between progress and fairness. We also refer to Chief Judge Barbera's orders as useful guides.

Thank you for your attention to this important matter.

Sincerely,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio
Deputy People's Counsel

cc: Lawrence Schmidt, Attorney for Donna Bair, sent via email
Steven Fradkin, sent via email
Robin S. Coffin, sent via email
Tom Montanye, sent via email
Nancy C. West, Assistant County Attorney

Krysundra Cannington

From: Rebecca Wheatley
Sent: Tuesday, June 9, 2020 1:07 PM
To: Krysundra Cannington
Cc: Peter Max Zimmerman
Subject: Donna Bair 2019-342-SPHA

Good Afternoon,

Our office kindly requests a CD copy of the first day of hearing in the Donna Bair matter. The first day of hearing was February 6, 2020.

Thank you in advance for your consideration.

Rebecca Wheatley, Legal Secretary
Office of People's Counsel for Baltimore County
410-887-2188

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

May 26, 2020

Ms. Donna V. Bair
4607 Prospect Avenue
Glyndon, Maryland 21071

Re: In the Matter of: Donna V. Bair
Case No.: 19-342-SPHA

Dear Ms. Bair:

In accordance with the request of Lawrence E. Schmidt, Esquire, kindly find enclosed a CD of the February 6, 2020 hearing held in your case.

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

Sincerely,

Tammy A. Zahner

Tammy A. Zahner
Legal Secretary

/taz
Enclosure

c: Lawrence E. Schmidt, Esquire

SMITH, GILDEA & SCHMIDT LLC

MICHAEL PAUL SMITH
DAVID K. GILDEA
LAWRENCE E. SCHMIDT
JASON T. VETTORI
MARIELA C. D'ALESSIO*
MELISSA L. ENGLISH**
* Admitted in MD, PA, FL
** Admitted in MD, NC

ROBERT B. HAMILTON
NICOLE LAMBDIN
CARMELO D. MORABITO
ZACHARY J. WILKINS
of counsel:
EUGENE A. ARBAUGH, JR.
MARY G. LOKER
STEPHEN J. NOLAN

May 19, 2020

Sent Via Email and First Class Mail
Ms. Krysundra L. Cannington, Administrator
Board of Appeals of Baltimore County
Jefferson Building
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204

RECEIVED
MAY 26 2020
BALTIMORE COUNTY
BOARD OF APPEALS

Re: In the Matter of: Donna V. Bair
4607 Prospect Avenue
19-342-SPHA

Dear Ms. Cannington,

I am writing to request a CD copy of the February 6, 2020 hearing held in the above referenced matter. I have enclosed a check in the amount of $50 which covers the fee for this request.

In light of the COVID pandemic and the continued remote access for most of us, the Board included, I have enclosed an envelope, postage prepaid, for you to send the copied CD to my client directly once you have had the opportunity to complete this request.

Please contact me should you have any questions. Thank you.

Very truly yours,

Lawrence E. Schmidt

LES:am
Enclosure

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

March 30, 2020

To whom it may concern:

Due to concerns about COVID-19, all Board of Appeals hearings and deliberations are being cancelled through May 1, 2020. Including but not limited to the matters of:

MGJ Properties, LLC, Case No.: 18-342-SPH;
Donna Bair, Case No.: 19-342-SPHA;
Robb Cohen and Gail Schwartz, Case No.: CBA-20-013;
NPR, LLC, Case No.: 19-364-XA;

We will continue to evaluate and adjust as the situation progresses. All hearings and deliberations will be reassigned as soon as possible. Notices will be sent upon rescheduling and our website, www.baltimorecountymd.gov/Agencies/appeals/index.html, will be updated with any changes.

We kindly request that you forward this letter to the parties, or anyone else you know involved in this matter.

Please contact our office with any questions.

Very truly yours,

Krysundra Cannington HOP

Krysundra Cannington
Administrator

Board of Appeals of Baltimore County

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

February 21, 2020

NOTICE OF ASSIGNMENT - DAY 2

IN THE MATTER OF: Donna V. Bair – Legal Owner
4607 Prospect Avenue
19-342-SPHA 4th Election District; 3rd Councilmanic District

8/9/19 Opinion and Order of the Administrative Law Judge wherein the:
- Petition for Special Hearing:
  1) to approve a nonconforming lot width and lot area; and
  2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of 30 inches was GRANTED; the
- Petition for Special Hearing:
  1) to approve a nonconforming dwelling side yard setback; and
  2) to confirm that an existing fence (swimming pool enclosure) with a height of 6' is in compliance with BCZR §427.1 and BCC §13-6-101 was DENIED; and the
- Petition for Variance:
  1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.;
  2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; and
  3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches was DENIED

9/9/19 Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire on behalf of Donna V. Bair, Petitioner.

9/25/19 Order on Motion for Reconsideration issued by the Administrative Law Judge wherein it was Ordered:
- that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms in BCZR §104;
- that all new construction must comply with current setbacks and restrictions at the time of new construction; and
- all other matters and respects of Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

The Board convened for hearing on February 6, 2020. This matter did not conclude. Upon agreement of the parties, a second day of hearing has been

ASSIGNED FOR: **APRIL 7, 2020, 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.
- Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits with the Board unless otherwise requested. Said Motions, Memoranda and exhibits must be in MDEC compliant formats pursuant to the Maryland Rules, unless otherwise requested
- Please contact our office for information about projection equipment. 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 Cannington, Administrator

c. Counsel for Petitioners : Lawrence E. Schmidt, Esquire
Legal Owner : Donna Bair

Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
John E. Lemmerman/RTF Associates, Inc.
Kim and Tom Montanye
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz

C. Pete Gutwald, Director/Department of Planning
James R. Benjamim, Jr., County Attorney
Michael D. Mallinoff, Director/PAI
Nancy C. West, Assistant County Attorney
Office of People's Counsel
Paul M. Mayhew, Managing Administrative Law Judge

Krysundra Cannington

From: Peter Max Zimmerman
Sent: Thursday, February 20, 2020 9:04 AM
To: Krysundra Cannington; Steve Fradkin
Cc: Tom Montanye; Peter Max Zimmerman; Lawrence Schmidt, Esquire; rscoffin@verizon.net; Alyssa Moyers (amoyers@sgs-law.com); Patti Fradkin
Subject: RE: The Bair Petition, Case No. 19-342-SPHA

Ms. Cannington,

Our office is ok with April 7th.

Thank you.

Rebecca Wheatley
People's Counsel Secretary

From: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Sent: Tuesday, February 18, 2020 2:57 PM
To: Steve Fradkin <reistlaxcoach@gmail.com>
Cc: Tom Montanye <Tom@montanye.net>; Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov>; Lawrence Schmidt, Esquire <lschmidt@sgs-law.com>; rscoffin@verizon.net; Alyssa Moyers (amoyers@sgs-law.com) <amoyers@sgs-law.com>; Rebecca Wheatley <rwheatley@baltimorecountymd.gov>; Patti Fradkin <pfradkin003@gmail.com>
Subject: RE: The Bair Petition, Case No. 19-342-SPHA

Mr. and Mrs. Fradkin,

I understand your frustration with not being included. Please be assured, I make sure that you, Mr. Montanye, and Ms. Coffin are on every email I send.

While Mr. Schmidt may have concluded his case on February 6th, he is entitled to question any witnesses any other party calls to testify. Mr. Schmidt will still need to attend and participate in any further hearings.

Again, the dates currently available for our Board are: April 7, May 12, 27, and 28. Please let me know by Friday whether these dates work for you. Once we have a date that works for everyone, we will send a formal assignment notice.

Please feel free to call our office with any questions.

Thank you for your cooperation in scheduling this matter.

Sunny

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

Krysundra Cannington

From: Tom Montanye <Tom@montanye.net>
Sent: Wednesday, February 19, 2020 5:09 PM
To: Krysundra Cannington
Subject: Re: The Bair Petition, Case No. 19-342-SPHA

CAUTION: This message from tmontanye@gmail.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Ms. Cannington,

The Montanye's are okay with 4/7.

Thanks,

-Tom Montanye

On Tue, Feb 18, 2020 at 2:04 PM Krysundra Cannington <kcannington@baltimorecountymd.gov> wrote:

> Good afternoon,
>
> I would like to clarify. We held a hearing in the above referenced matter on February 6, 2020. This matter did not conclude on that date. At this point, we are trying to find a date that works for everyone for a second day of hearings. No one has asked for a postponement.
>
> The following dates are currently available for our panel: April 7, May 12, 27 or 28.
>
> Please advise by Friday, February 21, 2020 as to your availability.
>
> Thank you,
>
> Sunny
>
> Krysundra "Sunny" Cannington
>
> Administrator

Krysundra Cannington

From: Patti Fradkin <pfradkin003@gmail.com>
Sent: Wednesday, February 19, 2020 9:52 PM
To: Krysundra Cannington
Subject: BOA Case # 2019-0342-SPHA

CAUTION: This message from pfradkin003@gmail.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Ms. Cannington,
Mr. and Mrs. Fradkin are both available April 7. Thank you very much.

Patti Fradkin

Krysundra Cannington

From: Alyssa Moyers <amoyers@sgs-law.com>
Sent: Wednesday, February 19, 2020 8:58 AM
To: Krysundra Cannington; Steve Fradkin
Cc: Tom Montanye; Peter Max Zimmerman; Lawrence Schmidt; rscoffin@verizon.net; Rebecca Wheatley; Patti Fradkin
Subject: RE: The Bair Petition, Case No. 19-342-SPHA

CAUTION: This message from amoyers@sgs-law.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Sunny,

Our team is available any of the offered dates: April 7, May 12, 27, and 28.

Thank you.

- *Alyssa*

Alyssa Fiore Moyers | Paralegal
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
amoyers@sgs-law.com | www.sgs-law.com

This email contains information from the law firm of Smith, Gildea & Schmidt, LLC which may be confidential and/or privileged. The information is intended to be for the exclusive use of the individual or entity named above. If you are not the intended recipient, be advised that any disclosure, copying, distribution or other use of this information is strictly prohibited. If you have received this e-mail in error, please notify Smith, Gildea & Schmidt, LLC by telephone immediately.

Please consider the environment before printing this email.

From: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Sent: Tuesday, February 18, 2020 2:57 PM
To: Steve Fradkin <reistlaxcoach@gmail.com>
Cc: Tom Montanye <Tom@montanye.net>; Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov>; Lawrence Schmidt <lschmidt@sgs-law.com>; rscoffin@verizon.net; Alyssa Moyers <amoyers@sgs-law.com>; Rebecca Wheatley <rwheatley@baltimorecountymd.gov>; Patti Fradkin <pfradkin003@gmail.com>
Subject: RE: The Bair Petition, Case No. 19-342-SPHA

Mr. and Mrs. Fradkin,

I understand your frustration with not being included. Please be assured, I make sure that you, Mr. Montanye, and Ms. Coffin are on every email I send.

While Mr. Schmidt may have concluded his case on February 6th, he is entitled to question any witnesses any other party calls to testify. Mr. Schmidt will still need to attend and participate in any further hearings.

Again, the dates currently available for our Board are: April 7, May 12, 27, and 28. Please let me know by Friday whether these dates work for you. Once we have a date that works for everyone, we will send a formal assignment notice.

Krysundra Cannington

From: Krysundra Cannington
Sent: Wednesday, February 19, 2020 8:40 AM
To: 'Steve Fradkin'
Cc: Tom Montanye; rscoffin@verizon.net; Lawrence Schmidt, Esquire; Peter Max Zimmerman; Wheatley, Rebecca; Alyssa Moyers (amoyers@sgs-law.com)
Subject: RE: The Bair Petition, Case No. 19-342-SPHA

Good morning Mr. Fradkin,

All parties have the right to call rebuttal witnesses.

If you need more explanation, I suggest you consult an attorney as my ability to answer your questions is limited.

Sunny

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

Confidentiality Statement

This electronic mail transmission contains confidential information belonging to the sender which is legally privileged and confidential. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or taking of any action based on the contents of this electronic mail transmission is strictly prohibited. If you have received this electronic mail transmission in error, please immediately notify the sender.

From: Steve Fradkin <reistlaxcoach@gmail.com>
Sent: Tuesday, February 18, 2020 6:00 PM
To: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Subject: Re: The Bair Petition, Case No. 19-342-SPHA

CAUTION: This message from reistlaxcoach@gmail.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Yes ma'am, we understand that. We understand that Mr. Schmidt will want to question us as well. My point was that Mr. Schmidt made it sound like he was done with his line of inquiry from his side. Then Mr. Montanye told me on Monday that the dates were being changed again because an expert witness for Mr. Schmidt couldn't attend the dates you had offered. My only point was, I thought Mr. Schmidt was done with his side of the hearing, that's all. Patti and I were not in the original thread, so none of the information disseminated reached us, so we were simply confused as to why the absence of another expert witness for Mr. Schmidt was the reason for the date changes, that's all. Again, not having that information is why all the questions. We will check our schedules and see what days coincide with the days offered.

Krysundra Cannington

From: Steve Fradkin <reistlaxcoach@gmail.com>
Sent: Tuesday, February 18, 2020 6:00 PM
To: Krysundra Cannington
Subject: Re: The Bair Petition, Case No. 19-342-SPHA

CAUTION: This message from reistlaxcoach@gmail.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Yes ma'am, we understand that. We understand that Mr. Schmidt will want to question us as well. My point was that Mr. Schmidt made it sound like he was done with his line of inquiry from his side. Then Mr. Montanye told me on Monday that the dates were being changed again because an expert witness for Mr. Schmidt couldn't attend the dates you had offered. My only point was, I thought Mr. Schmidt was done with his side of the hearing, that's all. Patti and I were not in the original thread, so none of the information disseminated reached us, so we were simply confused as to why the absence of another expert witness for Mr. Schmidt was the reason for the date changes, that's all. Again, not having that information is why all the questions. We will check our schedules and see what days coincide with the days offered.
Thank you for your help and knowledge.

Patti and Steve Fradkin
reistlaxcoach@gmail.com

On Feb 18, 2020, at 2:57 PM, Krysundra Cannington <kcannington@baltimorecountymd.gov> wrote:

Mr. and Mrs. Fradkin,

I understand your frustration with not being included. Please be assured, I make sure that you, Mr. Montanye, and Ms. Coffin are on every email I send.

While Mr. Schmidt may have concluded his case on February 6th, he is entitled to question any witnesses any other party calls to testify. Mr. Schmidt will still need to attend and participate in any further hearings.

Again, the dates currently available for our Board are: April 7, May 12, 27, and 28. Please let me know by Friday whether these dates work for you. Once we have a date that works for everyone, we will send a formal assignment notice.

Please feel free to call our office with any questions.

Thank you for your cooperation in scheduling this matter.

Sunny

Krysundra Cannington

From: Krysundra Cannington
Sent: Tuesday, February 18, 2020 2:57 PM
To: 'Steve Fradkin'
Cc: Tom Montanye; Peter Max Zimmerman; Lawrence Schmidt, Esquire; rscoffin@verizon.net; Alyssa Moyers (amoyers@sgs-law.com); Rebecca Wheatley; Patti Fradkin
Subject: RE: The Bair Petition, Case No. 19-342-SPHA

Mr. and Mrs. Fradkin,

I understand your frustration with not being included. Please be assured, I make sure that you, Mr. Montanye, and Ms. Coffin are on every email I send.

While Mr. Schmidt may have concluded his case on February 6th, he is entitled to question any witnesses any other party calls to testify. Mr. Schmidt will still need to attend and participate in any further hearings.

Again, the dates currently available for our Board are: April 7, May 12, 27, and 28. Please let me know by Friday whether these dates work for you. Once we have a date that works for everyone, we will send a formal assignment notice.

Please feel free to call our office with any questions.

Thank you for your cooperation in scheduling this matter.

Sunny

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

Confidentiality Statement

This electronic mail transmission contains confidential information belonging to the sender which is legally privileged and confidential. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or taking of any action based on the contents of this electronic mail transmission is strictly prohibited. If you have received this electronic mail transmission in error, please immediately notify the sender.

From: Steve Fradkin <reistlaxcoach@gmail.com>
Sent: Tuesday, February 18, 2020 2:18 PM
To: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Cc: Tom Montanye <Tom@montanye.net>; Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov>; Lawrence Schmidt, Esquire <lschmidt@sgs-law.com>; rscoffin@verizon.net; Alyssa Moyers (amoyers@sgs-law.com) <amoyers@sgs-law.com>; Rebecca Wheatley <rwheatley@baltimorecountymd.gov>; Patti Fradkin

Krysundra Cannington

From: Steve Fradkin <reistlaxcoach@gmail.com>
Sent: Tuesday, February 18, 2020 2:18 PM
To: Krysundra Cannington
Cc: Tom Montanye; Peter Max Zimmerman; Lawrence Schmidt, Esquire; rscoffin@verizon.net; Alyssa Moyers (amoyers@sgs-law.com); Rebecca Wheatley; Patti Fradkin
Subject: Re: The Bair Petition, Case No. 19-342-SPHA

CAUTION: This message from reistlaxcoach@gmail.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Yes ma'am, I understand that. Again, I did not receive an email proposing another day, I was not included in that email thread. What I said was I thought Mr. Schmidt was done, as that is essentially what he said at the end of the hearing on 02/06/20. Mr. Zimmerman was getting ready to call a witness, but the judges asked that we wait and carry on to another day. All I'm saying is that we are requesting that the second day of the hearing be done on one of the dates for continuance mentioned, or at least prior to 04/17, as was suggested by Mr. Montanye. My apologies for not utilizing the legal vocabulary on my first correspondence.

Patti and Steve Fradkin
reistlaxcoach@gmail.com

On Feb 18, 2020, at 2:04 PM, Krysundra Cannington <kcannington@baltimorecountymd.gov> wrote:

Good afternoon,

I would like to clarify. We held a hearing in the above referenced matter on February 6, 2020. This matter did not conclude on that date. At this point, we are trying to find a date that works for everyone for a second day of hearings. No one has asked for a postponement.

The following dates are currently available for our panel: April 7, May 12, 27 or 28.

Please advise by Friday, February 21, 2020 as to your availability.

Thank you,

Sunny

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

Krysundra Cannington

From: Krysundra Cannington
Sent: Tuesday, February 18, 2020 2:05 PM
To: 'Steve Fradkin'; Tom Montanye; Peter Max Zimmerman; Lawrence Schmidt, Esquire; 'rscoffin@verizon.net'
Cc: Alyssa Moyers (amoyers@sgs-law.com); Rebecca Wheatley; Patti Fradkin
Subject: RE: The Bair Petition, Case No. 19-342-SPHA

Good afternoon,

I would like to clarify. We held a hearing in the above referenced matter on February 6, 2020. This matter did not conclude on that date. At this point, we are trying to find a date that works for everyone for a second day of hearings. No one has asked for a postponement.

The following dates are currently available for our panel: April 7, May 12, 27 or 28.

Please advise by Friday, February 21, 2020 as to your availability.

Thank you,

Sunny

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

Confidentiality Statement

This electronic mail transmission contains confidential information belonging to the sender which is legally privileged and confidential. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or taking of any action based on the contents of this electronic mail transmission is strictly prohibited. If you have received this electronic mail transmission in error, please immediately notify the sender.

From: Steve Fradkin <reistlaxcoach@gmail.com>
Sent: Tuesday, February 18, 2020 9:30 AM
To: Tom Montanye <Tom@montanye.net>
Cc: Krysundra Cannington <kcannington@baltimorecountymd.gov>; Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov>; Lawrence Schmidt, Esquire <lschmidt@sgs-law.com>; Alyssa Moyers (amoyers@sgs-law.com) <amoyers@sgs-law.com>; Rebecca Wheatley <rwheatley@baltimorecountymd.gov>; Patti Fradkin <pfradkin003@gmail.com>
Subject: Re: The Bair Petition, Case No. 19-342-SPHA

Krysundra Cannington

From: Steve Fradkin <reistlaxcoach@gmail.com>
Sent: Tuesday, February 18, 2020 9:30 AM
To: Tom Montanye
Cc: Krysundra Cannington; Peter Max Zimmerman; Lawrence Schmidt, Esquire; Alyssa Moyers (amoyers@sgs-law.com); Rebecca Wheatley; Patti Fradkin
Subject: Re: The Bair Petition, Case No. 19-342-SPHA

CAUTION: This message from reistlaxcoach@gmail.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Good morning Ms. Carrington.
Apparently Patti and I were not included in the loop somewhere along the line, I found out about the request for postponement from Tom Montanye yesterday morning. I was under the impression that at the end of the day of the hearing Mr. Schmidt had said he had nothing further, and we were, in fact, contemplating calling on one of Mr. Zimmerman's witnesses who said "they would be quick." The judges had commented "It's not the witness we're concerned about, it's the attorney's that we are," as the judges had issued a "hard stop" at 1545 hours. I will have to concur with Mr. Montanye and too, ask that the hearing recommence on 4/17 or earlier so resolution can be obtained in a timely fashion.

Thank you for your time.

We are,

Patti and Steve Fradkin
reistlaxcoach@gmail.com

On Feb 17, 2020, at 11:26 PM, Tom Montanye <Tom@montanye.net> wrote:

Ms. Cannington,

I protest to a delay of the 2nd day beyond the 4/1 reasonable date proposed. There are no facts a second engineer (reason for the delay) will determine that have not already been revealed in the original ALJ hearing and the first full BOA day. Schedules on our side become difficult after mid/late-April. Please propose the first & second opportunity in April, if possible, prior to 4/17. Consider that structures are, and have been, encroaching on 4605 Prospect for years now, and time is of the essence to settle the matter.

Thank you for your consideration.

-Tom Montanye

Krysundra Cannington

From: Tom Montanye <Tom@montanye.net>
Sent: Monday, February 17, 2020 11:26 PM
To: Krysundra Cannington
Cc: Peter Max Zimmerman; Lawrence Schmidt, Esquire; Alyssa Moyers (amoyers@sgs-law.com); Rebecca Wheatley; Steve Fradkin
Subject: Re: The Bair Petition, Case No. 19-342-SPHA

CAUTION: This message from tmontanye@gmail.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Ms. Cannington,

I protest to a delay of the 2nd day beyond the 4/1 reasonable date proposed. There are no facts a second engineer (reason for the delay) will determine that have not already been revealed in the original ALJ hearing and the first full BOA day. Schedules on our side become difficult after mid/late-April. Please propose the first & second opportunity in April, if possible, prior to 4/17. Consider that structures are, and have been, encroaching on 4605 Prospect for years now, and time is of the essence to settle the matter.

Thank you for your consideration.

-Tom Montanye

On Fri, Feb 14, 2020 at 8:13 AM Krysundra Cannington <kcannington@baltimorecountymd.gov> wrote:

> Good morning Mr. Montanye,
>
> Thank you for your prompt response. I am hoping Mr. Zimmerman and Mr. Schmidt respond today. As you indicated March 4 is quickly approaching and to meet our 15-day notice requirement, we would need to issue the assignment notice no later than Tuesday.
>
> Thank you,
>
> Sunny

2/14/2020

No Pete

No 4/8

4/28 & 29

Pete was available both days.

Krysundra Cannington

From: Alyssa Moyers <amoyers@sgs-law.com>
Sent: Friday, February 14, 2020 10:05 AM
To: Krysundra Cannington; 'Tom@montanye.net'
Cc: Peter Max Zimmerman; Lawrence Schmidt; Rebecca Wheatley
Subject: RE: The Bair Petition, Case No. 19-342-SPHA

CAUTION: This message from amoyers@sgs-law.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Sunny,

As a follow up to my email below, and to aide in efficiently rescheduling, our team in unavailable the following dates:

April – 1, 2, 3, 8, 14, 27 and 28
May 4-8 and 13-26

Thank you.

- *Alyssa*

Alyssa Fiore Moyers | Paralegal
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
amoyers@sgs-law.com | www.sgs-law.com

This email contains information from the law firm of Smith, Gildea & Schmidt, LLC which may be confidential and/or privileged. The information is intended to be for the exclusive use of the individual or entity named above. If you are not the intended recipient, be advised that any disclosure, copying, distribution or other use of this information is strictly prohibited. If you have received this e-mail in error, please notify Smith, Gildea & Schmidt, LLC by telephone immediately.

Please consider the environment before printing this email.

From: Alyssa Moyers
Sent: Friday, February 14, 2020 8:41 AM
To: 'Krysundra Cannington' <kcannington@baltimorecountymd.gov>; Tom@montanye.net
Cc: Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov>; Lawrence Schmidt <lschmidt@sgs-law.com>; Rebecca Wheatley <rwheatley@baltimorecountymd.gov>
Subject: RE: The Bair Petition, Case No. 19-342-SPHA

All,

I apologize for our delayed response. We were trying to rearrange some things on our end, however, neither date will work. Our engineer has a conflict with April 1st and Mr. Schmidt has a conflict attending a conference in the Federal Court on March 4th.

At this time, the rest of April looks fairly open other than April 14th. If looking into May, however, please keep in mind that Mr. Schmidt is out of town May 13-26th.

Krysundra Cannington

From: Alyssa Moyers <amoyers@sgs-law.com>
Sent: Friday, February 14, 2020 8:41 AM
To: Krysundra Cannington; Tom@montanye.net
Cc: Peter Max Zimmerman; Lawrence Schmidt; Rebecca Wheatley
Subject: RE: The Bair Petition, Case No. 19-342-SPHA

CAUTION: This message from amoyers@sgs-law.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

All,

I apologize for our delayed response. We were trying to rearrange some things on our end, however, neither date will work. Our engineer has a conflict with April 1st and Mr. Schmidt has a conflict attending a conference in the Federal Court on March 4th.

At this time, the rest of April looks fairly open other than April 14th. If looking into May, however, please keep in mind that Mr. Schmidt is out of town May 13-26th.

Thank you for coordinating.

- *Alyssa*

Alyssa Fiore Moyers | Paralegal
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
amoyers@sgs-law.com | www.sgs-law.com

This email contains information from the law firm of Smith, Gildea & Schmidt, LLC which may be confidential and/or privileged. The information is intended to be for the exclusive use of the individual or entity named above. If you are not the intended recipient, be advised that any disclosure, copying, distribution or other use of this information is strictly prohibited. If you have received this e-mail in error, please notify Smith, Gildea & Schmidt, LLC by telephone immediately.

Please consider the environment before printing this email.

From: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Sent: Friday, February 14, 2020 8:13 AM
To: Tom@montanye.net
Cc: Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov>; Lawrence Schmidt <lschmidt@sgs-law.com>; Alyssa Moyers <amoyers@sgs-law.com>; Rebecca Wheatley <rwheatley@baltimorecountymd.gov>
Subject: RE: The Bair Petition, Case No. 19-342-SPHA

Good morning Mr. Montanye,

Thank you for your prompt response. I am hoping Mr. Zimmerman and Mr. Schmidt respond today. As you indicated March 4 is quickly approaching and to meet our 15-day notice requirement, we would need to issue the assignment notice no later than Tuesday.

Thank you,

Krysundra Cannington

From: Tom Montanye <Tom@montanye.net>
Sent: Thursday, February 13, 2020 9:42 PM
To: Krysundra Cannington
Cc: Peter Max Zimmerman
Subject: Re: The Bair Petition, Case No. 19-342-SPHA

CAUTION: This message from tmontanye@gmail.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Ms. Cannington,

I'm not sure who has gotten back to you from the protestant side. I think most of us responded to an email from Mr. Zimmerman. The Montanye's (Kim and me, immediate neighbors) are okay with either proposed day. I have also heard from (I believe) everyone else that either day works, including the Fradkins (other immediate neighbors), the Glyndon Community Association (Kim Karlsen), Historic Glyndon Inc. (Sue Benson), ROG (Mary Molinaro), Robin Coffin, and several other neighbors on the street who wish to testify.

As 2/4 is right around the corner, I would hope that if that were the day chosen, it would happen tomorrow (Friday), Monday being a holiday (President's Day), in order to give all of us time to adjust our schedules, ask off from work, etc.

Thank you and I look forward to hearing from you.

-Tom Montanye

On Tue, Feb 11, 2020 at 8:49 AM Krysundra Cannington <kcannington@baltimorecountymd.gov> wrote:

> Good morning,
>
> We have the following dates available March 4 or April 1.
>
> Please let me know as soon as possible which of these dates works best for you.
>
> Thank you,
>
> Sunny

Krysundra Cannington

From: Krysundra Cannington
Sent: Tuesday, February 11, 2020 8:50 AM
To: Peter Max Zimmerman; Lawrence Schmidt, Esquire
Cc: 'reistlaxcoach@gmail.com'; 'tom@montanye.net'; 'rscoffin@verizon.net'; Alyssa Moyers (amoyers@sgs-law.com)
Subject: RE: The Bair Petition, Case No. 19-342-SPHA

Good morning,

We have the following dates available March 4 or April 1.

Please let me know as soon as possible which of these dates works best for you.

Thank you,

Sunny

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

Confidentiality Statement

This electronic mail transmission contains confidential information belonging to the sender which is legally privileged and confidential. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or taking of any action based on the contents of this electronic mail transmission is strictly prohibited. If you have received this electronic mail transmission in error, please immediately notify the sender.

Krysundra Cannington

From: Peter Max Zimmerman
Sent: Monday, February 10, 2020 12:24 PM
To: Lawrence Schmidt; Krysundra Cannington; Peter Max Zimmerman
Cc: reistlaxcoach@gmail.com; tom@montanye.net; rscoffin@verizon.net; Alyssa Moyers
Subject: RE: The Bair Petition, Case No. 19-342-SPHA

Ms. Cannington,

People's Counsel does not object to Mr. Andrew Belt's continued participation as a panel member.

Thank you for the Board's consideration of this matter.

Peter Max Zimmerman

From: Lawrence Schmidt <lschmidt@sgs-law.com>
Sent: Friday, February 7, 2020 12:31 PM
To: Krysundra Cannington <kcannington@baltimorecountymd.gov>; Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov>
Cc: reistlaxcoach@gmail.com; tom@montanye.net; rscoffin@verizon.net; Alyssa Moyers <amoyers@sgs-law.com>
Subject: RE: The Bair Petition, Case No. 19-342-SPHA

CAUTION: This message from lschmidt@sgs-law.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

I have no objection to Mr. Belt continuing on the panel. I know both Mr. Belt and Ms. Coffin and they are of the highest integrity. I do not believe that there is any inappropriate conflict.

Larry Schmidt

Lawrence E. Schmidt | Partner
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
lschmidt@sgs-law.com | www.sgs-law.com

This email contains information from the law firm of Smith, Gildea & Schmidt, LLC which may be confidential and/or privileged. The information is intended to be for the exclusive use of the individual or entity named above. If you are not the intended recipient, be advised that any disclosure, copying, distribution or other use of this information is strictly prohibited. If you have received this e-mail in error, please notify Smith, Gildea & Schmidt, LLC by telephone immediately.

From: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Sent: Friday, February 7, 2020 11:55 AM
To: Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov>; Lawrence Schmidt <lschmidt@sgs-law.com>
Cc: reistlaxcoach@gmail.com; tom@montanye.net; rscoffin@verizon.net; Alyssa Moyers <amoyers@sgs-law.com>
Subject: RE: The Bair Petition, Case No. 19-342-SPHA

Good afternoon,

I am working on dates with the Board members and will get back to you as soon as I can.

Krysundra Cannington

From: Lawrence Schmidt <lschmidt@sgs-law.com>
Sent: Friday, February 7, 2020 12:31 PM
To: Krysundra Cannington; Peter Max Zimmerman
Cc: reistlaxcoach@gmail.com; tom@montanye.net; rscoffin@verizon.net; Alyssa Moyers
Subject: RE: The Bair Petition, Case No. 19-342-SPHA

CAUTION: This message from lschmidt@sgs-law.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

I have no objection to Mr. Belt continuing on the panel. I know both Mr. Belt and Ms. Coffin and they are of the highest integrity. I do not believe that there is any inappropriate conflict.

Larry Schmidt

Lawrence E. Schmidt | Partner
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
lschmidt@sgs-law.com | www.sgs-law.com

This email contains information from the law firm of Smith, Gildea & Schmidt, LLC which may be confidential and/or privileged. The information is intended to be for the exclusive use of the individual or entity named above. If you are not the intended recipient, be advised that any disclosure, copying, distribution or other use of this information is strictly prohibited. If you have received this e-mail in error, please notify Smith, Gildea & Schmidt, LLC by telephone immediately.

From: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Sent: Friday, February 7, 2020 11:55 AM
To: Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov>; Lawrence Schmidt <lschmidt@sgs-law.com>
Cc: reistlaxcoach@gmail.com; tom@montanye.net; rscoffin@verizon.net; Alyssa Moyers <amoyers@sgs-law.com>
Subject: RE: The Bair Petition, Case No. 19-342-SPHA

Good afternoon,

I am working on dates with the Board members and will get back to you as soon as I can.

I was advised this morning that toward the end of the day yesterday, Ms. Coffin came into the hearing and sat with the Protestants. Mr. Belt advised me that he worked with Ms. Coffin in the State's Attorney's Office approximately 20 years ago. While Mr. Belt does not feel that this would bias him in any way regarding this case, he asked me to disclose this information to you. Please contact me as soon as possible if you think this will cause any problems with Mr. Belt remaining on the panel for this case.

Thank you,

Sunny

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

Krysundra Cannington

From: Krysundra Cannington
Sent: Friday, February 7, 2020 11:55 AM
To: Peter Max Zimmerman; Lawrence Schmidt, Esquire
Cc: reistlaxcoach@gmail.com; tom@montanye.net; rscoffin@verizon.net; Alyssa Moyers (amoyers@sgs-law.com)
Subject: RE: The Bair Petition, Case No. 19-342-SPHA

Good afternoon,

I am working on dates with the Board members and will get back to you as soon as I can.

I was advised this morning that toward the end of the day yesterday, Ms. Coffin came into the hearing and sat with the Protestants. Mr. Belt advised me that he worked with Ms. Coffin in the State's Attorney's Office approximately 20 years ago. While Mr. Belt does not feel that this would bias him in any way regarding this case, he asked me to disclose this information to you. Please contact me as soon as possible if you think this will cause any problems with Mr. Belt remaining on the panel for this case.

Thank you,

Sunny

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

Confidentiality Statement

This electronic mail transmission contains confidential information belonging to the sender which is legally privileged and confidential. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or taking of any action based on the contents of this electronic mail transmission is strictly prohibited. If you have received this electronic mail transmission in error, please immediately notify the sender.

Krysundra Cannington

From: Lawrence Schmidt <lschmidt@sgs-law.com>
Sent: Friday, February 7, 2020 10:49 AM
To: Peter Max Zimmerman
Cc: Krysundra Cannington; Alyssa Moyers
Subject: RE: The Bair Petition, Case No. 19-342-SPHA

CAUTION: This message from lschmidt@sgs-law.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Thanks. Hopefully we can all coordinate up front so Sunny does not have to schedule, then re-schedule due to conflicts.

Larry

Lawrence E. Schmidt | Partner
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
lschmidt@sgs-law.com | www.sgs-law.com

This email contains information from the law firm of Smith, Gildea & Schmidt, LLC which may be confidential and/or privileged. The information is intended to be for the exclusive use of the individual or entity named above. If you are not the intended recipient, be advised that any disclosure, copying, distribution or other use of this information is strictly prohibited. If you have received this e-mail in error, please notify Smith, Gildea & Schmidt, LLC by telephone immediately.

From: Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov>
Sent: Friday, February 7, 2020 10:45 AM
To: Lawrence Schmidt <lschmidt@sgs-law.com>
Cc: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Subject: FW: The Bair Petition, Case No. 19-342-SPHA

Larry, I forgot to CC you on this email I just sent to Ms. Cannington on scheduling, so I am now forwarding it to you.
Peter

From: Peter Max Zimmerman
Sent: Friday, February 7, 2020 10:37 AM
To: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Cc: 'reistlaxcoach@gmail.com' <reistlaxcoach@gmail.com>; 'tom@montanye.net' <tom@montanye.net>; 'rscoffin@verizon.net' <rscoffin@verizon.net>
Subject: The Bair Petition, Case No. 19-342-SPHA

Dear Ms. Cannington,

I note Lawrence Schmidt's email re scheduling of a second day of hearing.

It will facilitate scheduling if you would kindly include Steven Fradkin (reistlaxcoach@gmail.com); Thomas Montanye (tom@montanye.net) and Robin Coffin (rscoffin@verizon.net) in any emails regarding possible dates. They will help spread the word to other interested citizens.

Thank you very much.

Krysundra Cannington

From: Peter Max Zimmerman
Sent: Friday, February 7, 2020 10:45 AM
To: Lawrence Schmidt
Cc: Krysundra Cannington
Subject: FW: The Bair Petition, Case No. 19-342-SPHA

Larry, I forgot to CC you on this email I just sent to Ms. Cannington on scheduling, so I am now forwarding it to you. Peter

From: Peter Max Zimmerman
Sent: Friday, February 7, 2020 10:37 AM
To: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Cc: 'reistlaxcoach@gmail.com' <reistlaxcoach@gmail.com>; 'tom@montanye.net' <tom@montanye.net>; 'rscoffin@verizon.net' <rscoffin@verizon.net>
Subject: The Bair Petition, Case No. 19-342-SPHA

Dear Ms. Cannington,

I note Lawrence Schmidt's email re scheduling of a second day of hearing.

It will facilitate scheduling if you would kindly include Steven Fradkin (reistlaxcoach@gmail.com); Thomas Montanye (tom@montanye.net) and Robin Coffin (rscoffin@verizon.net) in any emails regarding possible dates. They will help spread the word to other interested citizens.

Thank you very much.

Peter Max Zimmerman, People's Counsel 410 887-2188

Krysundra Cannington

From: Peter Max Zimmerman
Sent: Friday, February 7, 2020 10:37 AM
To: Krysundra Cannington
Cc: reistlaxcoach@gmail.com; tom@montanye.net; rscoffin@verizon.net
Subject: The Bair Petition, Case No. 19-342-SPHA

Dear Ms. Cannington,

I note Lawrence Schmidt's email re scheduling of a second day of hearing.

It will facilitate scheduling if you would kindly include Steven Fradkin (reistlaxcoach@gmail.com); Thomas Montanye (tom@montanye.net) and Robin Coffin (rscoffin@verizon.net) in any emails regarding possible dates. They will help spread the word to other interested citizens.

Thank you very much.

Peter Max Zimmerman, People's Counsel 410 887-2188

Krysundra Cannington

From: Lawrence Schmidt <lschmidt@sgs-law.com>
Sent: Friday, February 7, 2020 10:23 AM
To: Krysundra Cannington
Cc: Alyssa Moyers; Zachary J. Wilkins; Peoples Counsel; 'Donna Bair'
Subject: Bair Property

CAUTION: This message from lschmidt@sgs-law.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Hi Sunny: I assume you are aware that the Bair hearing (Prospect Ave.) did not finish yesterday and that we need a second date. The Protestants are not represented by counsel although there are three folks who are the "spokesmen". They are Mr. Montanye, Mr. Fradkin and Ms. Coffin. Ms. Coffin is an attorney and I have known her for many years. She is the Deputy State's Attorney for Baltimore County and does not practice zoning law.

I volunteered after the hearing to help coordinate rescheduling and advised them that when you circulated possible dates, I would forward that info on to them so they could determine any conflicts.

I am pleased to do that. And Peter Max is in the case as well.

Let us know when you are looking at another date. By the way, we completed the Petitioners case (I am fairly certain of that) and I would be optimistic that only one more date is needed.
Thanks.
Larry Schmidt

Lawrence E. Schmidt | Partner
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
lschmidt@sgs-law.com | www.sgs-law.com

This email contains information from the law firm of Smith, Gildea & Schmidt, LLC which may be confidential and/or privileged. The information is intended to be for the exclusive use of the individual or entity named above. If you are not the intended recipient, be advised that any disclosure, copying, distribution or other use of this information is strictly prohibited. If you have received this e-mail in error, please notify Smith, Gildea & Schmidt, LLC by telephone immediately.

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 13, 2019

NOTICE OF POSTPONEMENT AND REASSIGNMENT

IN THE MATTER OF: Donna V. Bair – Legal Owner
4607 Prospect Avenue
19-342-SPHA 4th Election District; 3rd Councilmanic District

8/9/19 Opinion and Order of the Administrative Law Judge wherein the:

- Petition for Special Hearing:
  1) to approve a nonconforming lot width and lot area; and
  2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of 30 inches was GRANTED; the
- Petition for Special Hearing:
  1) to approve a nonconforming dwelling side yard setback; and
  2) to confirm that an existing fence (swimming pool enclosure) with a height of 6' is in compliance with BCZR §427.1 and BCC §13-6-101 was DENIED; and the
- Petition for Variance:
  1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.;
  2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; and
  3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches was DENIED

9/9/19 Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire on behalf of Donna V. Bair, Petitioner.

9/25/19 Order on Motion for Reconsideration issued by the Administrative Law Judge wherein it was Ordered:

- that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms in BCZR §104;
- that all new construction must comply with current setbacks and restrictions at the time of new construction; and
- all other matters and respects of Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

This matter was scheduled for January 9, 2020 and has been postponed by request of Counsel. This matter has been

REASSIGNED FOR: FEBRUARY 6, 2020, 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.
- Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits with the Board unless otherwise requested. Said Motions, Memoranda and exhibits must be in MDEC compliant formats pursuant to the Maryland Rules, unless otherwise requested
- Please contact our office for information about projection equipment. 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 Cannington, Administrator

c. Counsel for Petitioners : Lawrence E. Schmidt, Esquire
Legal Owner : Donna Bair

Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
John E. Lemmerman/RTF Associates, Inc.
Kim and Tom Montanye
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz

C. Pete Gutwald, Director/Department of Planning
Michael D. Mallinoff, Director/PAI
James R. Benjamin, Jr., County Attorney
Nancy C. West, Assistant County Attorney
Office of People's Counsel
Paul M. Mayhew, Managing Administrative Law Judge

SMITH, GILDEA & SCHMIDT LLC

MICHAEL PAUL SMITH
DAVID K. GILDEA
LAWRENCE E. SCHMIDT
MICHAEL G. DEHAVEN
JASON T. VETTORI
MARIELA C. D'ALESSIO*
MELISSA L. ENGLISH**
* Admitted in MD, PA, FL
** Admitted in MD, NC

LAUREN D. BENJAMIN
CARMELO D. MORABITO
ZACHARY J. WILKINS
of counsel:
EUGENE A. ARBAUGH, JR.
MARY G. LOKER
STEPHEN J. NOLAN

RECEIVED
NOV 25 2019
BALTIMORE COUNTY
BOARD OF APPEALS

November 20, 2019

Sent Via First Class Mail
Ms. Krysundra L. Cannington, Administrator
Board of Appeals of Baltimore County
Jefferson Building
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204

Re: In the Matter of: Donna V. Bair
4607 Prospect Avenue
19-342-SPHA

Dear Ms. Cannington,

I am in receipt of the Board's Notice of Assignment in connection with the above referenced matter. I understand that this matter has been scheduled for a hearing on January 9, 2020 beginning at 10:00 a.m. Unfortunately, I am scheduled to be out of town from January 6 through January 20, 2020, and my client, the is out of town through the following week. As such, I am respectfully requesting a postponement in accordance with Rule 2B of the Board of Appeals Rules of Practice and Procedure until February when both myself and my client have returned.

Thank you for your courtesy. I look forward to hearing from you.

Very truly yours,

Lawrence E. Schmidt

LES:kmb

Board of Appeals of Baltimore County

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

November 14, 2019

NOTICE OF ASSIGNMENT

IN THE MATTER OF: Donna V. Bair – Legal Owner
4607 Prospect Avenue
19-342-SPHA 4th Election District; 3rd Councilmanic District

8/9/19 Opinion and Order of the Administrative Law Judge wherein the:
- Petition for Special Hearing:
  1) to approve a nonconforming lot width and lot area; and
  2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of 30 inches was GRANTED; the
- Petition for Special Hearing:
  1) to approve a nonconforming dwelling side yard setback; and
  2) to confirm that an existing fence (swimming pool enclosure) with a height of 6' is in compliance with BCZR §427.1 and BCC §13-6-101 was DENIED; and the
- Petition for Variance:
  1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.;
  2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; and
  3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches was DENIED

9/9/19 Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire on behalf of Donna V. Bair, Petitioner.

9/25/19 Order on Motion for Reconsideration issued by the Administrative Law Judge wherein it was Ordered:
- that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms in BCZR §104;
- that all new construction must comply with current setbacks and restrictions at the time of new construction; and
- all other matters and respects of Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

ASSIGNED FOR: **JANUARY 9, 2020, 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.
- Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits with the Board unless otherwise requested. Said Motions, Memoranda and exhibits must be in MDEC compliant formats pursuant to the Maryland Rules, unless otherwise requested
- Please contact our office for information about projection equipment. 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 Cannington, Administrator

c. Counsel for Petitioners : Lawrence E. Schmidt, Esquire
Legal Owner : Donna Bair

Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
John E. Lemmerman/RTF Associates, Inc.
Kim and Tom Montanye
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz

C. Pete Gutwald, Director/Department of Planning
Michael D. Mallinoff, Director/PAI
Michael E. Field, County Attorney
Nancy C. West, Assistant County Attorney
Office of People's Counsel
Paul M. Mayhew, Managing Administrative Law Judge

JOHN A. OLSZEWSKI, JR.
County Executive

PAUL M. MAYHEW
Managing Administrative Law Judge
LAWRENCE M. STAHL
Administrative Law Judge

October 25, 2019

Lawrence E. Schmidt, Esq.
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204

RECEIVED
OCT 25 2019
BALTIMORE COUNTY
BOARD OF APPEALS

RE: **APPEAL TO BOARD OF APPEALS**
Case No. 2019-0342-SPHA
Location: 4607 Prospect Avenue

Dear Mr. Schmidt:

Please be advised that an appeal of the above-referenced case was filed in this Office on October 24, 2019. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals ("Board").

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

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

Sincerely,

LAWRENCE M. STAHL
Administrative Law Judge
for Baltimore County

LMS/sln

c: Baltimore County Board of Appeals
People's Counsel for Baltimore County

Pamela Becker, 24 Chatsworth Avenue, Glyndon, Maryland 21071
Richard Stanley, 215 Central Avenue, Glyndon, Maryland 21071
Shirley Winebarger, 80 Hanover Road, Reisterstown, Maryland 21136
Teresa Moore, 29 Waugh Avenue, Reisterstown, Maryland 21136
Vernene Lenz, 4722 Butler Road, Glyndon,Maryland 21071
Kim Karlsen, 304 Hammond Avenue, Glyndon, Maryland 21071
Martha Wist, 3834 Ivy Hill Drive, Hampstead, Maryland 21074
Ann Rea, 1015 Caren Drive, Eldersburg, Maryland 21784
Lyle Montanye, 4342 Butler Road, Glyndon, Maryland 21071
Frances Acle, 4606 Prospect Avenue, Glyndon, Maryland 21071
Kim & Tom Montanye, 4609 Prospect Avenue, Glyndon, Maryland 21071
Charles & Anna Welsh, 4601 Prospect Avenue, Glyndon, Maryland 21071
Robin Coffin, 4511 Prospect Avenue, Glyndon, Maryland 21071
Raymond & Linda Long, 114 Hanover Road, Glyndon, Maryland 21136
Steve & Patricia Fradkin, 4605 Prospect Avenue, Glyndon, Maryland 21136
Ramzi & Roula Hemady, 4603 Prospect Avenue, Glyndon, Maryland 21136
Robert Gehman, 4612 Prospect Avenue, Glyndon, Maryland 21136
Cynthia Morrison 4500 Prospect Avenue, Glyndon, Maryland 21071

APPEAL

Petitions for Special Hearing and Variance
(4607 Prospect Avenue)
4th Election District – 3rd Councilmanic District
***Legal Owner*: Donna V. Bair**
Case No. 2019-0342-SPHA

Petition for Variance Hearing (May 28, 2019)

Zoning Description of Property

Notice of Zoning Hearing (June 25, 2019)

Certificate of Publication (July 2, 2019) The Daily Record

Certificate of Posting 1st posting (July 2, 2019) –Linda O'Keefe

Certificate of Posting 2nd posting (July 20, 2019)- Linda O'Keefe

Entry of Appearance by People's Counsel – June 6, 2019

Petitioner(s) Sign-in Sheet – One
Citizen(s) Sign-in Sheet –Four sheets

Zoning Advisory Committee (ZAC) Comments

Petitioner(s) Exhibits:

1. Site Plan
2. Plat-Glyndon
3. 3A-3C Aerial photos
4. SDAT Record
5. 5A-5U site photos
6. Code Citation Order
7. 3-19-2019 memo re: LPC
8. 8A-8B Code & BCZR Sections
9. 9A-9G photos pre-construction
10. 10A & 10B Prior zoning orders

Protestants Exhibits:

Miscellaneous (Not Marked as Exhibits)- Petitioner's Post-Hearing Memorandum, Code Enforcement violation and citation, letters of opposition, photos, miscellaneous e-mails and SDAT.

Administrative Law Judge Order and Letter (August 19, 2019 DENIED)

Motion for Reconsideration filed by Lawrence E. Schmidt, Esq. on September 9, 2019

Administrative Law Judge Order and Letter on Motion for Reconsideration (September 25, 2019 DENIED)

Notice of Appeal – filed by Lawrence E. Schmidt, Esq. on October 24, 2019.

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

No. 174835

Date: 10/24/19

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount
01	806	000		6150				600.00 CR

Total: 600.00

Rec From: Smith, Gildea & Schmidt

For: 2019-0342-SPHA

4107 Prospect Avenue

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER GOLD - ACCOUNTING

PLEASE PRESS HARD!!!!

PAID RECEIPT
BUSINESS ACTUAL TIME DRW
10/25/2019 10/24/2019 14:59:30 3
REG WS03 WALKIN CAM
>>RECEIPT # 036125 10/24/2019 CFLN
Dept 5 528 ZONING VERIFICATION
NO. 174835
Recpt Tot $ 600.00
600.00 CK .00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

IN RE:	*	BEFORE THE
PETITIONS FOR SPECIAL HEARING AND VARIANCE **4607 Prospect Avenue**	*	BOARD OF APPEALS OF
Donna V. Bair – Petitioner **4607 Prospect Avenue** **Glyndon, MD 21071**	*	BALTIMORE COUNTY
4th Election District 3rd Councilmanic District	*	**Case No. 2019-0342-SPHA**

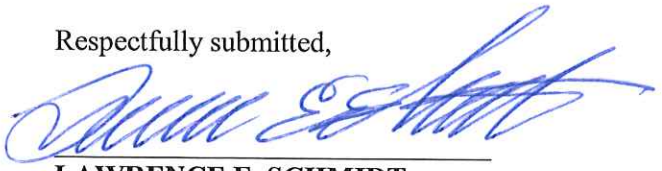
RECEIVED
OCT 24 2019
OFFICE OF
ADMINISTRATIVE HEARINGS

* *

NOTICE OF APPEAL

The Petitioner, Donna V. Bair, by and through her attorneys, Lawrence E. Schmidt, and Smith, Gildea, and Schmidt, LLC, feeling aggrieved by the denial of the Petition for Special Hearing to approve nonconforming dwelling side yard setbacks pursuant to Baltimore County Zoning Regulation ("BCZR") Section 104.1, by the denial of the Petition for Special Hearing to confirm that an existing fence (swimming pool enclosure) with a height of 6 ft. is in compliance with BCZR Section 427.1 and Baltimore County Code ("BCC") Section 13-6-101, by the denial of the Petition for Variance to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft., by the denial of the Petition for Variance to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft., by the denial of the Petition for Variance to permit, if necessary, an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of 42 inches as stated in the Opinion and Order dated August 19, 2019 by the Administrative Law Judge for Baltimore County and the Order on Motion for Reconsideration dated September 25, 2019 by the Administrative Law Judge for Baltimore in the above-captioned matter, hereby note this appeal to the County Board of Appeals for Baltimore County, as to those issues only, in accordance with Baltimore County Code §32-4-281. The Appellant does not appeal the ALJ's findings as to the lawfully nonconforming status of the size and width of the lot, the lawfully nonconforming status of the setback of the shed, and the lawfully nonconforming status of the original dwelling and setbacks existing in 1951.

Respectfully submitted,



LAWRENCE E. SCHMIDT
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
(410) 821-0070
lschmidt@sgs-law.com
Attorneys for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of **October, 2019,** a copy of the foregoing Notice of Appeal was mailed first-class pre-paid postage to:

Peter Max Zimmerman, Esquire
People's Counsel for Baltimore County
The Jefferson Building
105 West Chesapeake Avenue, Rm 204
Towson, MD 21204

Pamela Becker
24 Chatsworth Avenue
Glyndon, MD 21071

Richard Stanley
215 Central Avenue
Glyndon, MD 21071

Vernene Lenz
4722 Butler Road
Glyndon, MD 21071

Shirley Winebarger
80 Hanover Road
Reisterstown, MD 21136

Teresa Moore
29 Waugh Avenue
Reisterstown, MD 21136

Kimberley Karlsen
304 Hammond Avenue
Glyndon, MD 21071

Martha Wist
3834 Ivy Hill Drive
Hampstead, MD 21074

Ann Rea
1015 Caren Drive
Eldersburg, MD 21784

Lyle Montanye
4342 Butler Road
Glyndon, MD 21071

Tom and Kim Montanye
4609 Prospect Avenue
Glyndon, MD 21136

Charles and Anna Welsh
4601 Prospect Avenue
Glyndon, MD 21071

Robin Coffin
4511 Prospect Avenue
Glyndon, MD 21071

Frances Acle
4606 Prospect Avenue
Glyndon, MD 21071

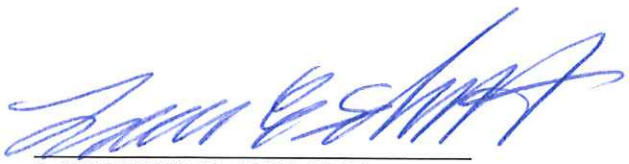
Steve and Patricia Fradkin
4605 Prospect Avenue
Glyndon, MD 21136

Cynthia Morrison
4500 Prospect Avenue
Glyndon, MD 21071

Robert Gehman
4612 Prospect Avenue
Glyndon, MD 21136

Ramzi and Roula Hemady
4603 Prospect Avenue
Glyndon, MD 21136

Raymond and Linda Long
114 Hanover Road
Reisterstown, MD 21136



LAWRENCE E. SCHMIDT

IN RE:	*	BEFORE THE
PETITIONS FOR SPECIAL HEARING AND VARIANCE **4607 Prospect Avenue**	*	BOARD OF APPEALS OF
Donna V. Bair – Petitioner **4607 Prospect Avenue** **Glyndon, MD 21071**	*	BALTIMORE COUNTY
4th Election District 3rd Councilmanic District	*	**Case No. 2019-0342-SPHA**

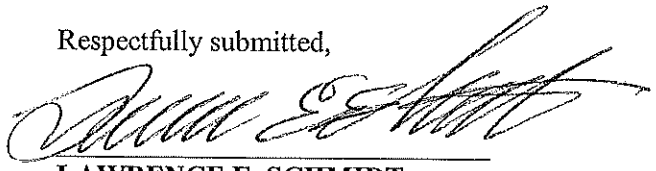
RECEIVED
OCT 24 2019
BALTIMORE COUNTY
BOARD OF APPEALS

* *

NOTICE OF APPEAL

The Petitioner, Donna V. Bair, by and through her attorneys, Lawrence E. Schmidt, and Smith, Gildea, and Schmidt, LLC, feeling aggrieved by the denial of the Petition for Special Hearing to approve nonconforming dwelling side yard setbacks pursuant to Baltimore County Zoning Regulation ("BCZR") Section 104.1, by the denial of the Petition for Special Hearing to confirm that an existing fence (swimming pool enclosure) with a height of 6 ft. is in compliance with BCZR Section 427.1 and Baltimore County Code ("BCC") Section 13-6-101, by the denial of the Petition for Variance to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft., by the denial of the Petition for Variance to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft., by the denial of the Petition for Variance to permit, if necessary, an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of 42 inches as stated in the Opinion and Order dated August 19, 2019 by the Administrative Law Judge for Baltimore County and the Order on Motion for Reconsideration dated September 25, 2019 by the Administrative Law Judge for Baltimore in the above-captioned matter, hereby note this appeal to the County Board of Appeals for Baltimore County, as to those issues only, in accordance with Baltimore County Code §32-4-281. The Appellant does not appeal the ALJ's findings as to the lawfully nonconforming status of the size and width of the lot, the lawfully nonconforming status of the setback of the shed, and the lawfully nonconforming status of the original dwelling and setbacks existing in 1951.

Respectfully submitted,



LAWRENCE E. SCHMIDT
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
(410) 821-0070
lschmidt@sgs-law.com
Attorneys for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of **October, 2019,** a copy of the foregoing Notice of Appeal was mailed first-class pre-paid postage to:

Peter Max Zimmerman, Esquire
People's Counsel for Baltimore County
The Jefferson Building
105 West Chesapeake Avenue, Rm 204
Towson, MD 21204

Pamela Becker
24 Chatsworth Avenue
Glyndon, MD 21071

Richard Stanley
215 Central Avenue
Glyndon, MD 21071

Vernene Lenz
4722 Butler Road
Glyndon, MD 21071

Shirley Winebarger
80 Hanover Road
Reisterstown, MD 21136

Teresa Moore
29 Waugh Avenue
Reisterstown, MD 21136

Kimberley Karlsen
304 Hammond Avenue
Glyndon, MD 21071

Martha Wist
3834 Ivy Hill Drive
Hampstead, MD 21074

Ann Rea
1015 Caren Drive
Eldersburg, MD 21784

Lyle Montanye
4342 Butler Road
Glyndon, MD 21071

Tom and Kim Montanye
4609 Prospect Avenue
Glyndon, MD 21136

Charles and Anna Welsh
4601 Prospect Avenue
Glyndon, MD 21071

Robin Coffin
4511 Prospect Avenue
Glyndon, MD 21071

Frances Acle
4606 Prospect Avenue
Glyndon, MD 21071

Steve and Patricia Fradkin
4605 Prospect Avenue
Glyndon, MD 21136

Cynthia Morrison
4500 Prospect Avenue
Glyndon, MD 21071

Robert Gehman
4612 Prospect Avenue
Glyndon, MD 21136

Ramzi and Roula Hemady
4603 Prospect Avenue
Glyndon, MD 21136

Raymond and Linda Long
114 Hanover Road
Reisterstown, MD 21136

LAWRENCE E. SCHMIDT

Sherry Nuffer

From: Paul Mayhew
Sent: Tuesday, October 22, 2019 2:08 PM
To: Sherry Nuffer
Cc: Lawrence Stahl
Subject: FW: Bair case

fyi

From: Paul Mayhew
Sent: Tuesday, October 22, 2019 2:07 PM
To: 'lschmidt@sgs-law.com' <lschmidt@sgs-law.com>
Subject: Bair case

Larry,
I do not feel comfortable meeting with you about the Bair case. First of all, I have personal friends that were among the neighbors who testified in opposition. Second, regardless of that I would not feel comfortable giving an informal "advisory opinion" interpreting John and Larry's rulings. Paul

Paul M. Mayhew
Managing Administrative Law Judge
105 West Chesapeake Ave., Suite 103
Towson, Maryland 21204
410-887-3868
pmayhew@baltimorecountymd.gov

Sherry Nuffer

From: Lawrence Schmidt <lschmidt@sgs-law.com>
Sent: Tuesday, October 22, 2019 1:21 PM
To: Sherry Nuffer
Subject: RE: Meet Paul

CAUTION: This message from lschmidt@sgs-law.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Sherry: Please pass this on to Paul.

My question relates to the Bair case. This was a variance that John heard. He granted in part and denied in part. There was a portion of the decision that I didn't understand so I filed a motion for reconsideration. John was gone by then and Larry considered the Motion. He has issued an order that is frankly more confusing that John's. I talked to Carl Richards about this and he can't figure it out either. I didn't want to have an ex parte communication with Larry, and Carl suggested that I talk to Paul. I may end up appealing the matter to the Board of Appeals but I (and Carl) were trying to figure out what the decisions mean as to this one issue.

You can advise Paul that I have never had ex parte communications with John , or Bill Wiseman before him. This is not a pending case. Carl is trying to figure out if he can issue a permit as it relates to this one portion of the case.

If he feels uncomfortable in talking to me, than I will respect that. However, I'd be interested in getting his input if he is willing.

Larry

Lawrence E. Schmidt | Partner
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
lschmidt@sgs-law.com | www.sgs-law.com

This email contains information from the law firm of Smith, Gildea & Schmidt, LLC which may be confidential and/or privileged. The information is intended to be for the exclusive use of the individual or entity named above. If you are not the intended recipient, be advised that any disclosure, copying, distribution or other use of this information is strictly prohibited. If you have received this e-mail in error, please notify Smith, Gildea & Schmidt, LLC by telephone immediately.

From: Sherry Nuffer [mailto:snuffer@baltimorecountymd.gov]
Sent: Tuesday, October 22, 2019 11:43 AM
To: Lawrence Schmidt
Subject:

Debra Wiley

From: Debra Wiley
Sent: Wednesday, October 2, 2019 9:31 AM
To: David W Kirby
Subject: MOTION FOR RECONSIDERATION ORDER - Case No. 2019-0342-SPHA
Attachments: 20191002092916183.pdf

Hi David,

It appears you've requested the original order back in August; however, I was not aware that you didn't receive this one. Just wanted you to be up-to-date with the records.

Thanks and have a good day.

-----Original Message-----
From: adminhearingscpr@baltimorecountymd.gov <adminhearingscpr@baltimorecountymd.gov>
Sent: Wednesday, October 2, 2019 9:29 AM
To: Debra Wiley <dwiley@baltimorecountymd.gov>
Subject: Message from "RNP002673F6C9D3"

This E-mail was sent from "RNP002673F6C9D3" (MP 3055).

Scan Date: 10.02.2019 09:29:16 (-0400)
Queries to: adminhearingscpr@baltimorecountymd.gov

JOHN A. OLSZEWSKI, JR.
County Executive

ADMINISTRATIVE LAW JUDGE
Office of Administrative Hearings

September 25, 2019

Lawrence E. Schmidt, Esq.
Zachary J. Wilkins, Esq.
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204

RE: **MOTION FOR RECONSIDERATION** –
Petitions for Special Hearing and Variance
Case No. 2019-0342-SPHA
Property: 4607 Prospect Avenue

Dear Counsel:

Enclosed please find a copy of the Order on Motion for Reconsideration 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,

LAWRENCE M. STAHL
Administrative Law Judge
for Baltimore County

LMS:sln
Enclosure

c: Pamela Becker, 24 Chatsworth Avenue, Glyndon, Maryland 21071
Richard Stanley, 215 Central Avenue, Glyndon, Maryland 21071
Shirley Winebarger, 80 Hanover Road, Reisterstown, Maryland 21136
Teresa Moore, 29 Waugh Avenue, Reisterstown, Maryland 21136
Vernene Lenz, 4722 Butler Road, Glyndon, Maryland 21071

Kim Karlsen, 304 Hammond Avenue, Glyndon, Maryland 21071
Martha Wist, 3834 Ivy Hill Drive, Hampstead, Maryland 21074
Ann Rea, 1015 Caren Drive, Eldersburg, Maryland 21784
Lyle Montanye, 4342 Butler Road, Glyndon, Maryland 21071
Frances Acle, 4606 Prospect Avenue, Glyndon, Maryland 21071
Kim & Tom Montanye, 4609 Prospect Avenue, Glyndon, Maryland 21071
Charles & Anna Welsh, 4601 Prospect Avenue, Glyndon, Maryland 21071
Robin Coffin, 4511 Prospect Avenue, Glyndon, Maryland 21071
Raymond & Linda Long, 114 Hanover Road, Glyndon, Maryland 21136
Steve & Patricia Fradkin, 4605 Prospect Avenue, Glyndon, Maryland 21136
Ramzi & Roula Hemady, 4603 Prospect Avenue, Glyndon, Maryland 21136
Robert Gehman, 4612 Prospect Avenue, Glyndon, Maryland 21136
Cynthia Morrison 4500 Prospect Avenue, Glyndon, Maryland 21071

IN RE: **PETITIONS FOR SPECIAL HEARING AND VARIANCE** (4607 Prospect Avenue) 4th Election District 3rd Council District Donna V. Bair, *Legal Owner*	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY
Petitioner	*	**Case No. 2019-0342-SPHA**

* * * * * * * *

ORDER ON MOTION FOR RECONSIDERATION

This matter is a request for a reconsideration of an Order issued by Judge Beverungen on August 19, 2019, granting in part and denying in part request for Special Hearing and Variance. Counsel for the Petitioner herein moves for reconsideration as to only one issue: namely the clarification of the status of the original structure constructed in 1951 as well as the setbacks existing at that time.

I have reviewed the record and evidence submitted an find that, notwithstanding the additional structures which were the subject of Judge Beverungen' s August 19, 2019 Order, the original structure and setbacks existing in 1951 are still clearly in effect and are entitled to status as nonconforming.

THEREFORE, IT IS ORDERED this **25th** day of **September, 2019**, that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms set forth in Baltimore County Zoning Regulations ("BCZR") § 104; and

IT IS FURTHER ORDERED that all new construction must comply with current setbacks and restrictions existing at the time of new construction.

ORDER RECEIVED FOR FILING

Date 9/25/19

By

IT IS FURTHER ORDERED that in all other matter and respects Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

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

LAWRENCE M. STAHL
Administrative Law Judge
for Baltimore County

LMS:sln

ORDER RECEIVED FOR FILING
Date 9/25/19
By sln

SMITH, GILDEA & SCHMIDT LLC

MICHAEL PAUL SMITH
DAVID K. GILDEA
LAWRENCE E. SCHMIDT
MICHAEL G. DEHAVEN
JASON T. VETTORI
MARIELA C. D'ALESSIO*
MELISSA L. ENGLISH
*Admitted in MD, FL, PA

LAUREN D. BENJAMIN
SARAH A. ZADROZNY
CARMELO D. MORABITO
ZACHARY J. WILKINS
of counsel:
EUGENE A. ARBAUGH, JR.
DAVID T. LAMPTON
MARY G. LOKER
STEPHEN J. NOLAN

September 9, 2019

Via Hand Delivery
Honorable Lawrence M. Stahl
Office of Administrative Hearings
105 W. Chesapeake Avenue, Suite 103
Towson, MD 21204



Re: Bair – 4607 Prospect Avenue
Case No. 2019-342-SPHA

Dear Honorable Judge Stahl:

Please find enclosed a Motion for Reconsideration for filing in the above matter. This filing is somewhat complicated by the fact that the order for which we seek reconsideration was issued by former ALJ Beverungen. I am aware that he is now retired and no longer a County employee. Thus, I enclose a copy of his opinion and order for your reference.

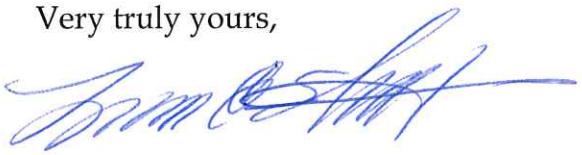
Additionally, although the order was signed by former ALJ Beverungen, it is certainly a decision that is the product of the Office of Administrative Hearings ("OAH"). As such, I believe that you, or whoever replaces ALJ Beverungen, has authority to review the Motion and revise the Order. OAH's refusal to reconsider the Opinion and Order of ALJ Beverungen would restrict and impair the jurisdiction and efficiency of OAH and be inconsistent with the long held principle that any action of a court remains within the control of the court until and unless that decision is final (See e.g. *Scott v. State* 379 Md. 170 (2004)). This Motion is timely filed and thus within the jurisdiction of OAH.

In an administrative law setting, I believe the situation here is akin to similar circumstances that I have encountered at the Board of Appeals. Frequently, a Board member may resign or leave the Board for whatever reason. I have seen circumstances where new panel members are assigned as needed. Recently, I was involved in a case where a remand to the Board was required by order of the appellate court and two of the three original members were no longer on the Board. Two "replacements" were inserted and the matter continued on. Thus, I do not view ALJ Beverungen's departure as an event preventing review of the Motion.

As you are aware, Rule K of the Rules of Practice and Procedure also allow the OHA to reconvene the hearing. A reconvened hearing is at the discretion of your office. At that hearing, the subject matter is limited to only the issue(s) identified in the Motion. The hearing may be limited to argument, or additional evidence might be allowed. As you will note from the Motion, the request for reconsideration is limited to a single issue. I am pleased to proceed in any manner that you deem appropriate and do not believe that a new hearing is mandated unless you believe it necessary. The Motion can be considered based only on the pleadings or I am pleased to appear if you prefer.

Thank you for your consideration of this matter.

Very truly yours,



Lawrence E. Schmidt

LES/amf
Enclosures
cc: Donna Bair
Peter Max Zimmerman, Esquire
Pamela Becker
Richard Stanley
Vernene Lenz
Shirley Winebarger
Teresa Moore
Kimberley Karlsen
Martha Wist
Ann Rea
Lyle Montanye
Tom and Kim Montanye
Charles and Anna Welsh
Robin Coffin
Frances Acle
Steve and Patricia Fradkin
Cynthia Morrison
Robert Gehman
Ramzi and Roula Hemady
Raymond and Linda Long

IN RE: PETITION FOR SPECIAL HEARING AND VARIANCE **4607 Prospect Avenue** 4th Election District 3rd Councilmanic District Donna V. Bair *Legal Owner*	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY **Case No.: 2019-342-SPHA**

* *

MOTION FOR RECONSIDERATION

The Petitioner/Property Owner, Donna V. Bair, ("Petitioner"), by Lawrence E. Schmidt, Esquire, and Smith Gildea and Schmidt, LLC, her attorneys, submits this Motion for Reconsideration pursuant to Rule K of the Rules of Practice and Procedure of the Zoning Commissioner/Hearing Officer of Baltimore County (now Administrative Law Judge or "ALJ") and respectfully requests that the Office of Administrative Hearings revise its' Opinion and Order issued in the above captioned matter dated August 19, 2019. In support of this Motion, the Petitioner offers the following:

I. Procedural History

This matter came before then ALJ John Beverungen on Petitions for Variance and Special Hearing for the property located at 4607 Prospect Avenue in the community known as Glyndon, in northwestern Baltimore County. The Petitions were filed by Donna Bair, property owner. The subject property at issue is a residential property, zoned DR 1 and is improved with a dwelling in which Petitioner resides. Other

improvements on the property include a two bay attached garage, a swimming pool, shed and deck.

As they relate to certain of the issues presented, several of the requests within the Petitions are presented in the alternative as either via a Special Hearing or Variance. A special hearing has been likened to an action for declaratory judgment and is used to establish a non-conforming use. (See *Antwerpen v. Baltimore County,* 163 Md. App. 194, 2005). A variance seeks relief from a bulk regulation; in this case, certain building setbacks for the sideyards.

II. Statement of Facts

Testimony and evidence presented established that the subject property is approximately three quarters of an acre in size (33,976 square feet) predominantly zoned DR 1 (Density Residential, 1 unit per acre). A small sliver of the property in the rear is zoned RC 2 (Resource Conservation). None of the improvements are within the RC zone. The property is designated as Lot 10 on the plat recorded in the Land Records of Baltimore County in Plat Book 126, Page 371. This plat subdivided the property known as "the lands belonging to B.F. Bennett and Joshua Regester" into residential building lots and was recorded on October 31, 1880, long before the adoption of Baltimore County's first zoning regulations in 1945.

The property is improved with a detached single family dwelling that was constructed in 1951. Evidence of the age of the dwelling was established through the submittal of a property tax report issued by the State Department of Assessments and Taxation (Petitioner's Ex. No. 4). For convenience, another copy of that exhibit is

attached to this Motion. Although the County's first zoning regulations were adopted in 1945, they were rudimentary in nature and the current regulations and requirements therein spring from the comprehensively amended regulations adopted in 1955. Additionally, the DR zoning classification came into being in 1970, at which time the County Council enacted Bill 100-70. Therefore, both the lot and the house itself predate the regulations that govern its use and setbacks. The property is located within the Glyndon historic district which has been overlaid in this area but the dwelling itself is not designated as a contributing structure. Many of the individual properties in Glyndon are historically significant and the houses quite old.

The petitioner acquired the property by deed dated July 18, 2014. At the time of her acquisition, the property was improved with the dwelling, an attached one car garage, a small storage shed and a swimming pool. It is not in dispute that the dwelling, at the time of Petitioner's acquisition, was in the same configuration, size and footprint as it had existed since its construction in 1951. Since her acquisition, the Petitioner has further improved the property by expanding the garage to create a second bay (on the left side of the house when facing the same from the street), a small addition "squaring off" the dwelling on the right side of the house and a new/replacement fence enclosing the pool. Petitioner requested and obtained the approval of these improvements from the Baltimore County Landmarks Preservation Commission ("LPC") (Petitioner's Ex. No. 7). The LPC's approval was required due to the property's location in the historic district.

III. Relief Requested

By his opinion and order, ALJ Beverungen granted some of the relief requested and denied other requests. For example, he granted the Petition for Special Hearing finding that the subject property (lot) was non-conforming, but denied the Petition for Variance related to the garage addition and the fence. **This Motion for Reconsideration is limited in scope and is filed only as to one specific finding by the ALJ.** The Petitioner avers that the ALJ clearly erred as to this single issue. Specifically, the Petitioner requests that ALJ Beverungen's opinion and order be revised to include a finding that the side yard setbacks as they existed in 1951 and at the time of Petitioner's acquisition in 1951, are "non-conforming". Petitioner avers that this conclusion is entirely supported by the evidence presented and the applicable provisions of law. Judge Beverungen erred when he denied that portion of the Special Hearing. His order incorrectly states a denial of a "non-conforming dwelling side yard setback".

BCZR § 104 permits the continuation of non-conforming uses and structures. This is a designation for uses and conditions that have existed prior to the adoption of the regulation that now governs the property at issue. The designation "non-conforming" allows the use/condition to continue as legally "grandfathered". The special hearing process is that zoning tool by which non-conforming uses are recognized. Unrefuted evidence presented at the hearing (Petitioner's Ex. No. 4) established that the dwelling was constructed on the Property in 1951. This documentary evidence was corroborated by the Petitioner and the neighbors did not dispute it.

Within his decision (wherein he approved the Lot as non-conforming), ALJ Beverungen specifically stated on page two of his decision that the applicable date to establish the non-conforming use/condition was 1955. This date is correct insofar as considering the lot. However, the proper date in considering the dwelling is, at the least, 1970, when, as noted above, the DR zoning regulations came into being. But the precise determination of the applicable date makes no practical difference, because the dwelling (constructed in 1951) pre-dates both of those dates.

Although the existing dwelling meets the required front yard and rear yard setbacks, the dwelling's side yard setbacks do not meet the current DR 1 standard. BCZR § 1B02.3.C establishes setbacks required in the DR 1 zone. A minimum side yard setback of 20 feet is required. Additionally, a sum of the side yard setbacks of 50 feet is required. Therefore, a property owner could have a 30 foot setback on one side and a 20 foot setback on the other; or a 25 foot setback on each side, or some similar combination; for so long as each side yard setback is at least 20 feet in dimension and they total fifty feet. As noted above, the property did not meet these requirements when the Petitioner acquired the property. Therefore, the deficiency is non-conforming. When one faces the dwelling from the street, the side yard setback on the right (southwest) side is 14.9 feet. This dimension (obviously) is less than the twenty feet required. Ms. Bair added an addition to this part of the dwelling, but that addition did **NOT** reduce/alter the existing setback. It was 14.9 feet before and remains the same. She merely "squared off" the corner of the dwelling and did not alter the setback. The dwelling is no closer to the side property line than it was before. Therefore, the dimension of 14.9 feet is non-

conforming on the southwest (right) side of the dwelling. Judge Beverungen erred when he did not approve this setback as "non-conforming."

On the other side of the dwelling (the northeast or left side), the previously existing setback was 9.5 feet. After her acquisition, Petitioner expanded the garage so as to add a second garage bay to that side of the dwelling. There was a previously existing one car attached garage on that side and the Petitioner added a second bay to accommodate a second vehicle. The Petitioner, in the instant case, requested a variance to allow the further reduced setback (to zero feet) as the garage is built up to (actually slightly over) the property line with the neighbor on that side. The Petitioner does not, through this Motion, ask the Office of Administrative Hearings to reconsider that variance. That variance was denied by ALJ Beverungen. But the Petitioner insists, that if she removes the garage addition, that the previous setback be determined to be no-conforming. That is, the previous setback (9.5 feet) is not technically compliant with the current regulations but is also grandfathered. If this Motion were denied and ALJ Beverungen's order stands, then the Petitioner would need to comply with current setbacks (i.e. 20 feet minimum per side and fifty feet total) which would require the removal of nearly the entire house, which has existed with 14.9 and 9.5 setbacks for nearly seventy years. ALJ Beverungen's decision in this regard is simply erroneous when he wholly denied non conforming setbacks reflecting the location of the dwelling since 1951.

Although the Petitioner presented evidence of the dwelling's size/configuration at the hearing, attached hereto is an aerial photograph that has been obtained from a public data source. The photo was taken in 1957. Although to quality is not good, it does show the house on the subject property at that time and provides further verification that the dwelling constructed in 1951 remained in the same condition through when the Petitioner bought it. This is further corroborating evidence above and beyond the SDAT printout and testimony offered at the hearing.

In sum, Petitioner requests that ALJ Beverungen's opinion and order be revised to approve non conforming side yard setbacks of 9.5 feet and 14.9 feet, with a total of 24.4 feet. Thus, both the individual side yards do not meet the current standard, nor does the sum of the side yards. But these are existing conditions, dating to when the house was constructed, well prior to the adoption of the governing standard in the BCZR. The Petitioner is evaluating her options insofar as the garage addition that she added, but seeks assurance that if the prior setbacks are restored, then the dwelling is not subject to a violation hearing due to its failure to comply with current standards.

A copy of this Motion is being sent to all who appeared. Although the neighbors who appeared objected as to the fence and garage addition, Petitioner believes that the neighbors do not object to the setbacks as they existed at the time Petitioner purchased the property. Certainly, they may respond to this Motion and correct this representation if it is incorrect. But Petitioner and her undersigned counsel do not believe that the Protestants object to the setbacks as they existed when this dwelling was built.

Respectfully submitted,

LAWRENCE E. SCHMIDT
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
(410) 821-0070
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of **September, 2019,** a copy of the foregoing Motion for Reconsideration was mailed first-class pre-paid postage to:

Peter Max Zimmerman, Esquire
People's Counsel for Baltimore County
The Jefferson Building
105 West Chesapeake Avenue, Rm 204
Towson, MD 21204

Pamela Becker
24 Chatsworth Avenue
Glyndon, MD 21071

Richard Stanley
215 Central Avenue
Glyndon, MD 21071

Vernene Lenz
4722 Butler Road
Glyndon, MD 21071

Shirley Winebarger
80 Hanover Road
Reisterstown, MD 21136

Teresa Moore
29 Waugh Avenue
Reisterstown, MD 21136

Kimberley Karlsen
304 Hammond Avenue
Glyndon, MD 21071

Martha Wist
3834 Ivy Hill Drive
Hampstead, MD 21074

Ann Rea
1015 Caren Drive
Eldersburg, MD 21784

Lyle Montanye
4342 Butler Road
Glyndon, MD 21071

Tom and Kim Montanye
4609 Prospect Avenue
Glyndon, MD 21136

Charles and Anna Welsh
4601 Prospect Avenue
Glyndon, MD 21071

Robin Coffin
4511 Prospect Avenue
Glyndon, MD 21071

Frances Acle
4606 Prospect Avenue
Glyndon, MD 21071

Steve and Patricia Fradkin
4605 Prospect Avenue
Glyndon, MD 21136

Cynthia Morrison
4500 Prospect Avenue
Glyndon, MD 21071

Robert Gehman
4612 Prospect Avenue
Glyndon, MD 21136

Ramzi and Roula Hemady
4603 Prospect Avenue
Glyndon, MD 21136

Raymond and Linda Long
114 Hanover Road
Reisterstown, MD 21136

LAWRENCE E. SCHMIDT

Real Property Data Search (w3)

Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Tax Exempt: | **Special Tax Recapture:**
Exempt Class: NONE

Account Identifier: District - 04 Account Number - 0416015450

Owner Information

Owner Name:	BAIR DONNA V	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	4607 PROSPECT AVE GLYNDON MD 21071-3800	**Deed Reference:**	/35307/ 00489

Location & Structure Information

Premises Address:	4607 PROSPECT AVE 0-0000	**Legal Description:**	.78 AC 4607 PROSPECT AVE SWS 200FT NE OF WAUGH AVE

Map:	Grid:	Parcel:	Sub District:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0048	0006	0751		0000				2019	Plat Ref:

Special Tax Areas: | **Town:** NONE
Ad Valorem:
Tax Class:

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1951	1,493 SF	800 SF	33,976 SF	04

Stories	Basement	Type	Exterior	Full/Half Bath	Garage	Last Major Renovation
1	YES	STANDARD UNIT	SIDING	2 full/ 1 half	1 Attached	

Value Information

	Base Value	Value As of 01/01/2019	Phase-in Assessments As of 07/01/2018	Phase-in Assessments As of 07/01/2019
Land:	82,400	82,400		
Improvements	161,300	204,500		
Total:	243,700	286,900	243,700	258,100
Preferential Land:	0			0

Transfer Information

Seller: DEVANEY TIMOTHY W	**Date:** 08/28/2014	**Price:** $320,500
Type: NON-ARMS LENGTH OTHER	**Deed1:** /35307/ 00489	**Deed2:**
Seller: TOWLES MARK	**Date:** 08/04/2011	**Price:** $235,000
Type: NON-ARMS LENGTH OTHER	**Deed1:** /31063/ 00346	**Deed2:**
Seller: HAMILTON BRIAN R	**Date:** 05/25/2005	**Price:** $344,900
Type: ARMS LENGTH IMPROVED	**Deed1:** /21925/ 00100	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2018	07/01/2019
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Tax Exempt: | **Special Tax Recapture:**
Exempt Class: NONE

Homestead Application Information

Homestead Application Status: Approved 02/12/2015

Homeowners' Tax Credit Application Information

Petitioner's Exhibit 4

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF PLANNING

Memorandum

TO: Donna V. Bair **DATE:** March 19, 2019

FROM: Teri Rising, Administrator/Secretary
Landmarks Preservation Commission

SUBJECT: 4607 Prospect Avenue, Glyndon

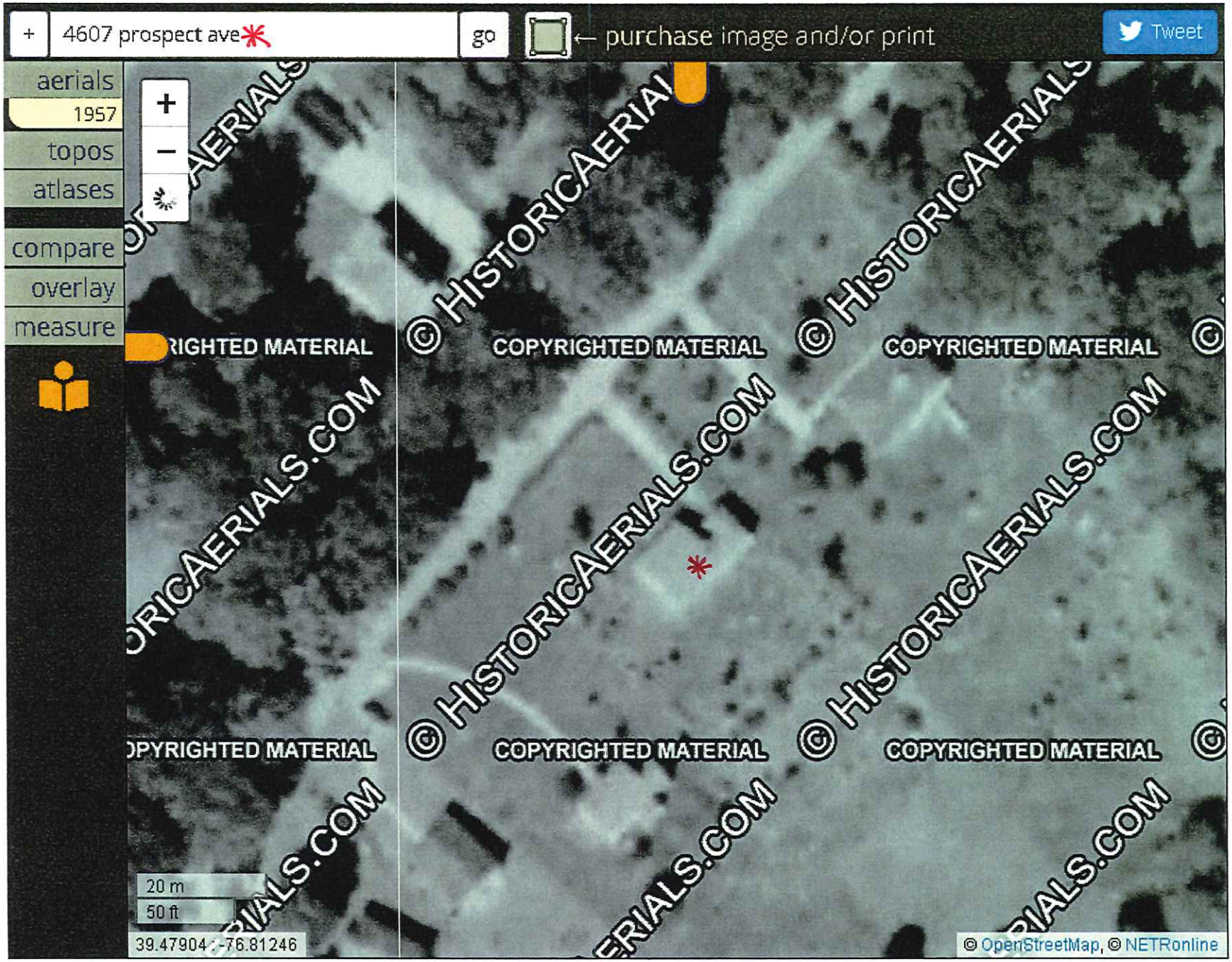
At its March 14, 2019 meeting, the Baltimore County Landmarks Preservation Commission (LPC) voted to issue an Ex Post Facto Certificate of Appropriateness for the following items as proposed:

- 6 foot high wood privacy fence (Code Enforcement Case # CC1814071)
- 12 foot x 28 foot single car garage addition (Code Enforcement Correction Notice # CB1800693)
- 13 foot by 13 foot addition (Code Enforcement Correction Notice # CB1800693)

This action is in accordance with Baltimore County Code Section 32-7-403 and 32-7-405 citing Baltimore County Historic Design Guidelines: Fences & Landscape, p. 4; Additions & Infill, pp. 5-7.

Please note, the work will require a Baltimore County building permit. Applications for building permits are obtained from the Department of Permits, Approvals and Inspections located at 111 Chesapeake Avenue in Towson. Information regarding building permits is available on the County's website. https://www.baltimorecountymd.gov/Agencies/permits/index.html Questions regarding that process should be directed to the Permits, Approvals & Inspections Office.

Petitioner's Exhibit 7


+
4607 prospect ave
go
← purchase image and/or print
Tweet
aerials
1957
topos
atlases
compare
overlay
measure
+
−
© HISTORICAERIALS.COM
COPYRIGHTED MATERIAL
20 m
50 ft
39.47904, -76.81246
© OpenStreetMap, © NETRonline

JOHN A. OLSZEWSKI, JR.
County Executive

ADMINISTRATIVE LAW JUDGE
Office of Administrative Hearings

August 19, 2019

Lawrence E. Schmidt, Esq.
Zachary J. Wilkins, Esq.
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204

RE: Petitions for Special Hearing and Variance
Case No. 2019-0342-SPHA
Property: 4607 Prospect Avenue

Dear Counsel:

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

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

Sincerely,

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln
Enclosure

c: Pamela Becker, 24 Chatsworth Avenue, Glyndon, Maryland 21071
Richard Stanley, 215 Central Avenue, Glyndon, Maryland 21071
Shirley Winebarger, 80 Hanover Road, Reisterstown, Maryland 21136
Teresa Moore, 29 Waugh Avenue, Reisterstown, Maryland 21136
Vernene Lenz, 4722 Butler Road, Glyndon,Maryland 21071

Kim Karlsen, 304 Hammond Avenue, Glyndon, Maryland 21071
Martha Wist, 3834 Ivy Hill Drive, Hampstead, Maryland 21074
Ann Rea, 1015 Caren Drive, Eldersburg, Maryland 21784
Lyle Montanye, 4342 Butler Road, Glyndon, Maryland 21071
Frances Acle, 4606 Prospect Avenue, Glyndon, Maryland 21071
Kim & Tom Montanye, 4609 Prospect Avenue, Glyndon, Maryland 21071
Charles & Anna Welsh, 4601 Prospect Avenue, Glyndon, Maryland 21071
Robin Coffin, 4511 Prospect Avenue, Glyndon, Maryland 21071
Raymond & Linda Long, 114 Hanover Road, Glyndon, Maryland 21136
Steve & Patricia Fradkin, 4605 Prospect Avenue, Glyndon, Maryland 21136
Ramzi & Roula Hemady, 4603 Prospect Avenue, Glyndon, Maryland 21136
Robert Gehman, 4612 Prospect Avenue, Glyndon, Maryland 21136
Cynthia Morrison 4500 Prospect Avenue, Glyndon, Maryland 21071

IN RE: **PETITIONS FOR SPECIAL HEARING AND VARIANCE**	*	BEFORE THE
(4607 Prospect Avenue)	*	OFFICE OF
4th Election District		
3rd Council District	*	ADMINISTRATIVE HEARINGS
Donna V. Bair, *Legal Owner*		
	*	FOR BALTIMORE COUNTY
Petitioner	*	**Case No. 2019-0342-SPHA**

* * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings ("OAH") for consideration of Petitions for Special Hearing and Variance filed on behalf of Donna V. Bair, legal owner ("Petitioner"). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("BCZR") as follows: (1) to approve a nonconforming lot width and lot area, pursuant to BCZR Section 104.1.; (2) to approve a nonconforming dwelling side yard setback, pursuant to BCZR Section 104.1; and (3) to confirm that an existing fence (swimming pool enclosure) with a height of 6 ft. is in compliance with BCZR Section 427.1 and BCC §13-6-101.

A Petition for Variance seeks: (1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.; (2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; (3) to permit an existing shed with a side yard setback of 26 inches in lieu of the required 30 inches; and (4) to permit, if necessary, an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches. A site plan was marked and accepted into evidence as Petitioner's Exhibit 1.

Donna Bair and surveyor John Lemmerman appeared in support of the requests. Lawrence E. Schmidt, Esq. and Zachary J. Wilkins, Esq. represented Petitioner. Numerous neighbors and

ORDER RECEIVED FOR FILING
Date 8/19/19
By ___

members of the community opposed the requests. The Petition was advertised and posted as required by the BCZR. A substantive Zoning Advisory Committee ("ZAC") comment was received from the Department of Planning ("DOP"). That agency opposed certain of the zoning requests.

SPECIAL HEARING

The subject property is shown as Lot 10 on the Plat of Glyndon, filed long before adoption of the BCZR. As such it is obvious the size and width of the lot (neither of which satisfy current DR1 zone requirements) are lawfully nonconforming. This means the lot was properly created long ago, and became nonconforming when the BCZR was adopted in 1955. That aspect of the special hearing request will be granted.

Similarly, the existing shed in the rear yard appears to have been constructed many years ago, likely before the BCZR required a 2 ½ ft. setback for accessory structures. The shed is 26 inches from the property boundary, which is just 4 inches shy of the required setback. As such, though included as a variance request, this will be approved as a lawful nonconforming structure under the special hearing petition.

But I believe the remainder of the special hearing requests must be denied as a matter of law. While the side yard setbacks were deficient and likely nonconforming when Petitioner purchased the property in 2014, improvements were made on both sides of the dwelling since that time. As discussed at the hearing Petitioner failed to obtain a building permit for these recent improvements and the setbacks are in violation of the BCZR. As a result the side yard setbacks (of 0' and 14.9') are not lawfully nonconforming. With respect to the fence, I do not believe it complies with the BCZR and therefore that aspect of the special hearing must also be denied. While the BCZR specifies fences surrounding pools are exempt from the 42" height limitation,

ORDER RECEIVED FOR FILING
Date 8/19/19
By Ash

another section of the same regulation states the exemption is not applicable in an historic district, like Glyndon. BCZR §427.1.A.

VARIANCE

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

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

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

Based on the site plan, photos and other exhibits I do not believe the subject property is unique in a zoning sense. The shape, size and topography of the lot is similar to many other properties in the community. While Glyndon is a historic district, the subject property itself is not historic. As such I do not believe that attribute can render this property unique; *i.e.,* unlike surrounding properties.

In addition, while Petitioner's counsel is correct that the boundary dispute issue must be resolved in circuit court, I do not believe variance relief can be properly granted in a case when the result would be to countenance a trespass onto another's property. It is undisputed, as shown on the site plan, that the improvements intrude 2.5 ft. onto the property owned by the Fradkins. It would be inappropriate, in my opinion, to grant a variance to "legitimize" from a zoning perspective the *status quo*. The BCZR specifies that variances must be in "strict harmony with the spirit and intent" of the regulations, and must not be injurious to the general welfare. BCZR §307.1. I do not believe that the requested variances would satisfy either criterion.

THEREFORE, IT IS ORDERED this **19th** day of **August, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing: (1) to approve a nonconforming lot width and

ORDER RECEIVED FOR FILING
Date 8/19/19
By Sen

area; and (2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of the required 30 inches, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Hearing: (1) to approve a nonconforming dwelling side yard setback; and (2) to confirm that an existing fence (swimming pool enclosure) with a height of 6 ft. is in compliance with BCZR Section 427.1 and BCC Section 13-6-101, be and is hereby DENIED.

IT IS FURTHER ORDERED that the Petition for Variance: (1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.; (2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of side yards of 14.9 ft. in lieu of the required 50 ft.; and (3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches, 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:sln

ORDER RECEIVED FOR FILING
Date 8/19/19
By sln

Debra Wiley

From: Debra Wiley
Sent: Monday, August 19, 2019 8:04 AM
To: David W Kirby
Subject: Case No. 2019-0342-SPHA - 4607 Prospect Ave.
Attachments: 20190819080329363.pdf

Good Morning David,

Per our telephone conversation on July 31st, please find attached a copy of ALJ Beverungen's Order dated today.

Have a great day !

-----Original Message-----
From: adminhearingscpr@baltimorecountymd.gov <adminhearingscpr@baltimorecountymd.gov>
Sent: Monday, August 19, 2019 8:03 AM
To: Debra Wiley <dwiley@baltimorecountymd.gov>
Subject: Message from "RNP002673F6C9D3"

This E-mail was sent from "RNP002673F6C9D3" (MP 3055).

Scan Date: 08.19.2019 08:03:29 (-0400)
Queries to: adminhearingscpr@baltimorecountymd.gov

JB 7-22-19

IN RE: PETITION FOR SPECIAL HEARING AND VARIANCE **4607 Prospect Avenue** 4th Election District 3rd Councilmanic District Donna V. Bair *Legal Owner*	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY **Case No.: 2019-342-SPHA**

RECEIVED
AUG 01 2019
OFFICE OF
ADMINISTRATIVE HEARINGS

* *

PETITIONER'S POST-HEARING MEMORANDUM

The Petitioner/Property Owner, Donna V. Bair, ("Petitioner"), by Lawrence E. Schmidt, Esquire, and Smith Gildea and Schmidt, LLC, her attorneys, submits this Post-Hearing Memorandum in support of the petitions for special hearing and/or variance for the above referenced matter.

I. Procedural History

This matter comes before the Administrative Law Judge on petitions for variance and special hearing for the property located at 4607 Prospect Avenue in the community known as Glyndon, in northwestern Baltimore County. The petitions were filed by Donna Bair, property owner. As they relate to certain of the issues presented, several of the requests within the petitions are presented in the alternative as either via a special hearing or variance. A special hearing has been likened to an action for declaratory judgment and is used to establish a non-conforming use. (See *Antwerpen v. Baltimore County,* 163 Md. App. 194, 2005). A variance seeks relief from a bulk regulation; in this case, certain building setbacks.

II. Statement of Facts

Testimony and evidence presented established that the subject property is approximately three quarters of an acre in size (33,976 square feet) predominantly zoned DR 1 (Density Residential, 1 unit per acre). A small sliver of the property in the rear is zoned RC 2 (Resource Conservation). None of the improvements are within the RC zone. The property is designated as Lot 10 on the plat recorded in the Land Records of Baltimore County in Plat Book 126, Page 371. This plat subdivided the property known as "the lands belonging to B.F. Bennett and Joshua Regester" into residential building lots and was recorded on October 31, 1880; long before the adoption of Baltimore County's first zoning regulations in 1945.

The property is improved with a detached single family dwelling that was constructed in 1951. Although the County's first zoning regulations were adopted in 1945, they were rudimentary in nature and the current regulations and requirements therein spring from the comprehensively amended regulations adopted in 1955. Additionally, the DR zoning classification came into being in 1970, at which time the County Council enacted Bill No. 100. Therefore, both the lot and the house itself predate the regulations that govern its use. The property is located within the Glyndon historic district which has been overlaid in this area. Many of the individual properties in Glyndon are historically significant and the houses quite old.

The petitioner acquired the property by deed dated July 18, 2014. At the time of her acquisition, the property was improved with the dwelling, an attached one car garage, a small storage shed and a swimming pool. Since her acquisition, the petitioner

has further improved the property with a second attached one car garage and a fence enclosing the pool.

III. Relief Requested

The specific relief requested in the instant petitions is as follows:

1. Lot Area and Width: Under the DR 1 zoning regulations, lots with that zoning classification shall be a minimum of 40,000 square feet in area and 150 feet in width (See Baltimore County Zoning Regulations ("BCZR") § 1B02.3.C). As is the case with many lots in this neighborhood, and often the case with many older subdivisions in Baltimore County, the subject property fails to meet these zoning requirements. However, BCZR § 104 permits the continuation of "non-conforming uses." This is a designation for uses and conditions that have existed prior to the adoption of the regulation that now governs the property at issue. The designation "non-conforming" allows the use/condition to continue as legally "grandfathered". The special hearing process is that zoning tool by which non-conforming uses are recognized. As this property was laid out and created in the above referenced 1880 plat, its width and size are clearly non-conforming and should therefore be permitted to continue under the petition for special hearing filed. In the alternative, a variance can be granted to permit the lot size and width indicated.

2. Storage Shed: As noted above, there is a small storage shed in the rear yard which houses lawn equipment and similar household items. This shed is classified as an "accessory structure" under BCZR § 400.1. That section further provides that such structures be located in the rear yard (which it is) and be two and one half feet (30

inches) from the property line. According to a survey completed by the petitioner's surveyor, John Lemmerman, the shed is 26 inches from the property line. Thus, a variance for these four (4) inches is requested. The neighbors who adjoin the Bair lot on that side (Steve and Patricia Fradkin) were present at the public hearing and indicated no opposition to that request. The placement of the shed appears to be due to the topography of the lot and the drainage pattern. Moreover, although the age of the shed is not determined, as it predates Ms. Bair's ownership, it too may be non-conforming.

3. Dwelling setbacks: Although the existing dwelling meets the required front yard and rear yard setbacks, relief is requested as to the side yard setbacks. Actually, this deficiency too is an existing condition, although construction by Ms. Bair has increased the setback deficiency on one side of the dwelling. BCZR § 1B02.3.C establishes setbacks required in the DR 1 zone. A minimum side yard setback of 20 feet is required. Additionally, a sum of the side yard setbacks of 50 feet is required. Therefore, a property owner could have a 30 foot setback on one side and a 20 foot setback on the other; or a 25 foot setback on each side, or some similar combination; for so long as the side yard setbacks are at least 20 feet in dimension and they total fifty feet. As noted above, the property did not meet these requirements when the Petitioner acquired the property. Therefore, the deficiency is non-conforming. When one faces the dwelling from the street, the side yard setback on the right (southwest) side is 14.9 feet. This dimension (obviously) is less than the twenty feet required. Ms. Bair added an addition to this part of the dwelling, but that addition did **NOT** reduce/alter the existing setback. It was 14.9 feet before and remains the same. The construction on this

side only "squared off" that corner of the dwelling and did not alter the setback. Therefore, the dimension of 14.9 feet is non-conforming on the southwest (right) side of the dwelling.

On the other side of the dwelling (the northeast or left side), the previously existing setback was 9.5 feet. This is determined by the fact that the Petitioner constructed a 12 foot wide second attached garage. However, as shown on the survey submitted, this garage infringes into the adjacent property (Fradkin lot) by approximately 2.5 feet. Thus, the previously existing setback on this side was 9.5 feet (i.e. 12 - 2.5 = 9.5) Coupled with the 14.9 feet on the other side, the sum of the side yard setbacks were also non-compliant as they totaled less than the fifty feet required (i.e. 14.9 + 9.5 = 24.5). Thus, both the individual side yards do not meet the current standard, nor does the sum of the side yards. But these are existing conditions, dating to when the house was constructed.

As acknowledged at the hearing, Ms. Bair's garage addition further reduced the setback on the Fradkin side. Her building actually extends into the neighbor's property (Fradkin) approximately 2.5 feet and thus may constitute a trespass. Ms. Bair was unaware of the location of the property line at the time the addition was constructed. As noted at the hearing (and shown in an old photograph of that side of the property) the prior owner had constructed improvements (i.e. landscaping, stairs, etc.) on that side of the property. Based on the location of those improvements, Ms. Bair placed the garage where these improvements were located and assumed that the addition was not infringing onto her neighbor's property.

Whatever the extent and resolution of the trespass issue with Mr. & Mrs. Fradkin, that matter is not within the jurisdiction of the Office of Administrative Hearings and the authority of the Administrative Law Judge. Their authority is as to the zoning regulations and not to adjudicate civil law property disputes between neighbors. Ms. Bair has offered to acquire an easement (at her sole cost) from the Fradkins to legitimize this infringement and will continue to seek a resolution of the issue that is agreeable to her neighbors. But from a zoning standpoint, she seeks variance relief to permit a 14.9 foot setback on one side, zero feet on the other and a sum of the two of 14.9 feet. As noted above, the non-conforming situation was 14.9 feet on the one side and 9.5 feet on the other for a sum of 24.5 feet.

4. Fence: The final issue relates to a six foot high fence that Ms. Bair constructed which surrounds the swimming pool that is located in the rear yard. On the southeast (Fradkin) side, the fence (like the addition) was incorrectly constructed on the neighbor's property. The Petitioner understands this violation and will relocate it to her property. This relocation has not occurred at this point in time as Ms. Bair wanted to ascertain what remedial changes might need be made before work began on the property. Thus, she would pay for and make any changes required at one time. The primary issue, however, relates to the height of the fence on the other side. The neighbors on this side are the Montanye's and they object to the height of the fence. Photographs show that the fence is located solely on the Bair property.

At the hearing, the Petitioner presented a photograph showing that there previously existed a seven to seven and one-half foot high structure/fence in the side

yard next to the Montanye property. This fence actually had a lattice top and roof. This "structure" apparently provided shelter/storage space near the pool. It is not clear when that structure was constructed but, it too, could be non-conforming.

BCZR § 427.1 regulates residential fences in Baltimore County. Subsection B of that regulation indicates that a fence cannot exceed the height of 42 inches if it abuts the front yard of the adjacent dwelling. The Montanye dwelling is set back a significant distance from the road (Prospect Ave.) so that its front yard abuts the side and rear yard of the Bair lot. Although BCZR § 427.1.B.1 appears to limit the Bair fence to 42 inches, BCZR § 427.1.C.1 provides an exclusion from that requirement. That section states that the 42 inch limitation does not apply when a pool fence is required. In this regard, Baltimore County Code § 13-6-101 requires a fence or similar enclosure around a pool. The reasons for this requirement are obvious. The justification to provide for the public safety and prevent any tragedy due to pool's attractive nuisance character trumps the aesthetic considerations in BCZR § 427.1 Moreover, the County Code provisions mandating a fence or similar enclosure provide no height limitation.

The only other potentially relevant regulation is BCZR § 427.1.A. This section limits a fence height to 42 inches for properties zoned DR (or RC) which are located in a historic district. This property is within the Glyndon Historic District. However, the regulation is read to prohibit a 42 inch height that is located in the side yard of the property which adjoins a public road. Here, the subject property's front yard adjoins the public road and thus this sub-section is not applicable. Therefore, the provisions of BCZR § 427 do not apply due to the exclusionary language within the County Code and

the layout of this lot. Moreover, as noted above, the County's Landscape Preservation Commission has approved the building additions and fence, arguably satisfying any applicable requirement imposed by BCZR § 427.1.A.

IV. The Legal Standard

The legal standard for zoning variance relief is well settled and is no doubt well familiar to the ALJ. (See *Cromwell v. Ward,* 102 Md. App. 691, 1995 and its progeny) There is a two part test; namely, a showing that the property is unique and a finding of practical difficulty. Admittedly, variances are not favored under law. But this does not mean that they should never be granted. If that were the case, the statute would be reduced to a nullity as it would have no application. Here, the property is undoubtedly unique. "Unique" means "one of a kind" or "different from others." A mere viewing of the plat shows that there are no other properties in this locale of the same shape and size of the subject property. This is not some cookie cutter subdivision where all lots are identically shaped and sized. The significant depth and corresponding lack of width, make compliance with the regulations impossible. As noted above, the lot's width is approximately two thirds of what is required. The lot width and setbacks are insufficient because this lot was created many years before the drafters of the BCZR codified the required bulk regulations for the DR 1 zone.

The property is also unique because of its topography and location within a historic district. The property slopes significantly from front to rear. It is simply not possible to locate a garage (and provide driveway access thereto) if it were located in the rear yard. Additionally, a separate garage structure in the rear would not be

compatible with the architecture of the houses in the Glyndon Historic District. The photos (including aerials) show no detached garages in the rear yards of houses in this neighborhood.

Insofar as practical difficulty, the Petitioner seeks only improvements common to what other neighbors in the area enjoy. The single car garage addition was constructed to provide storage for a second vehicle, which is a common necessity for residents in this area. Ms. Bair indicated that there are large trees on her and the neighbors' properties which could cause damage to vehicles parked outside during storms and loss of limbs. Prospect Avenue is a narrow street and, as the photos show, street parking is not practical.

V. Neighbors' Objections

A primary reason that the undersigned counsel asked for the opportunity to submit this written memorandum in lieu of oral argument was to review the correspondence and emails that many of the neighbors submitted to the ALJ regarding this matter. The undersigned appreciates that these neighbors are not represented by counsel and thus do not appreciate the inappropriate nature of ex parte communications with the ALJ. In responding to these communications, it is noted that perhaps the single biggest objection is not that the Bair dwelling is inappropriate or incompatible with the locale, rather than Ms. Bair did not "play by the rules." Although that is not a substantive factor upon the relief requested should be adjudged, a response is warranted. As was indicated at the hearing, the Petitioner hired contractors to construct both the additions and the fence. She assumed (as would most any home

owner) that the individuals hired would undertake the work lawfully and after securing all necessary permits. They apparently did not. The Petitioner was unaware of the fact that permits were not issued. Had permits been requested, then the zoning issues which are now presented would have come to light. No construction would have been allowed without the relief requested herein having been granted. The fraud perpetuated on the Petitioner was likewise perpetuated on at least one neighbor. In this regard, Mr. Montanye testified that he questioned an individual working on the roof of the addition to the dwelling; asking, "do you have permits for this work?" The individual answered in the affirmative.

Upon determining that the work had been done illegally, the Petitioner set out to bring the property into compliance. She first made application for approval of the additions and fence to the Landmark Preservation Commission ("LPC"). This approval is required due to the property's location in a historic district. After a hearing, the LPC approved the request. This is significant as the LPC's findings concluded that the additions/fence were compatible with the dwelling and consistent with historic Glyndon. The Petitioner thereafter engaged counsel and has sought the instant zoning relief. If that is obtained, permits will then be applied for. Admittedly, this matter has not followed the proper course. But the Petitioner, upon learning of the lack of permits and approvals, has openly and honestly sought them.

The obvious principle of law which has often been stated should also be emphasized here; to wit, that zoning decisions should not be made by plebiscite. Whether the request is supported by the neighbors or opposed, the ALJ must adjudge

this case by the requirements of law and not because the neighbors do not like the Petitioner or believe that she didn't "follow the rules."

Finally, as noted at the hearing, a number of properties in this immediate neighborhood have been afforded variance relief. One of the neighbors who testified in opposition (Fran Acle) obtained a variance in Case No. 05-444-A. In that decision, the Zoning Commissioner specifically opined that the request complied "with the requirements of Section 307.1 of the BCZR." (Acle opinion, page 2). This property is immediately across the street. The Fradkin property (immediately next door) also was granted a variance when owned by a previous owner (Case No. 84-332-A). Other variances granted in the neighborhood include one for a reduced side yard setback (the same type of relief as sought in the instant matter) for the property located at 4626 Butler Road (Case No. 64-94-A) and 3 Waugh Avenue (Case 94-307-A), which also requested a variance to a side yard setback less than required. These cases are not cited to the ALJ because approval in one case mandates the same result in another. Certainly, each request must be considered on its own. But all of these cases relate to properties on the plat which created the subject lot.[1] The Zoning Commissioner in these cases has consistently determined that lots created by this plat are unique and therefore qualify for variance relief. The same result is appropriate and mandated here.

[1] There are two other cases which are of note but neither was for properties shown on this plat. Rather, they were for properties on the other side of Butler Road. They are still in Historic Glyndon. In Case No. 2015-278-A (6 Fiske Ave), ALJ Beverungen granted relief allowing side yards (both individually and in total) to be less than required. In Case No. 90-419-SPH, difference side yard setbacks were allowed notwithstanding significant community opposition. These cases mirror the situation here.

VI. Conclusion

This case is not about an individual who didn't "follow the rules" or who her neighbors don't like. Based upon the testimony and evidence offered, it is clear that much of the relief sought is based upon the non-conforming nature of the property/dwelling. Other relief is warranted under the variance criteria established in Cromwell, *infra.* The Petitioner requests that relief wound be granted as indicated herein.

Respectfully submitted,

LAWRENCE E. SCHMIDT
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
(410) 821-0070
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of **August, 2019,** a copy of the foregoing Post-Hearing Memorandum was mailed first-class pre-paid postage to:

Peter Max Zimmerman, Esquire
People's Counsel for Baltimore County
The Jefferson Building
105 West Chesapeake Avenue, Rm 204
Towson, MD 21204

Pamela Becker
24 Chatsworth Avenue
Glyndon, MD 21071

Richard Stanley
215 Central Avenue
Glyndon, MD 21071

Vernene Lenz
4722 Butler Road
Glyndon, MD 21071

Shirley Winebarger
80 Hanover Road
Reisterstown, MD 21136

Teresa Moore
29 Waugh Avenue
Reisterstown, MD 21136

Kimberley Karlsen
304 Hammond Avenue
Glyndon, MD 21071

Martha Wist
3834 Ivy Hill Drive
Hampstead, MD 21074

Ann Rea
1015 Caren Drive
Eldersburg, MD 21784

Lyle Montanye
4342 Butler Road
Glyndon, MD 21071

Tom and Kim Montanye
4609 Prospect Avenue
Glyndon, MD 21136

Charles and Anna Welsh
4601 Prospect Avenue
Glyndon, MD 21071

Robin Coffin
4511 Prospect Avenue
Glyndon, MD 21071

Frances Acle
4606 Prospect Avenue
Glyndon, MD 21071

Steve and Patricia Fradkin
4605 Prospect Avenue
Glyndon, MD 21136

Cynthia Morrison
4500 Prospect Avenue
Glyndon, MD 21071

Robert Gehman
4612 Prospect Avenue
Glyndon, MD 21136

Ramzi and Roula Hemady
4603 Prospect Avenue
Glyndon, MD 21136

Raymond and Linda Long
114 Hanover Road
Reisterstown, MD 21136

LAWRENCE E. SCHMIDT

PLEASE PRINT CLEARLY

CASE NAME 2019-342-SPHA
CASE NUMBER
DATE

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E - MAIL
Lawrence E. Schmidt	600 Washington Ave	Towson, MD	lschmidt@sgs-law.com
Zachary Wilkins	600 Washington Ave	Towson, MD	zwilkins@sgs-law.com
Donna Bair	4607 Prospect Ave	Glyndon, MD	donna.bair@yahoo.
JOHN LEMMERMAN	142 E. MAIN ST.	WESTMINSTER, MD 21157	JOHN.RTF@GMAIL.COM
Dennis Bair	4607 Prospect Ave	Glyndon, MD 21136	dennis.bair@crystalfarms.com

PLEASE PRINT CLEARLY

CASE NAME 2019-342-SPHA
CASE NUMBER
DATE

CITIZEN'S SIGN - IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E - MAIL
Pamela Becker	24 Chatsworth Ave	Glyndon, MD 21071	pamelajaneb24@gmail.com
Richard Stanley	215 Central Ave	"	swisstrix@gmail.com
Shirley Winebarger	80 Hanover Road	Reisterstown, Md. 21136	
Teresa Moore	29 Waugh Ave	" "	tmoore84@comcast.net
Vernene Lenz	4722 Butler Rd	Glyndon 21071	Travelanduniqueventures@comcast.net

PLEASE PRINT CLEARLY

CASE NAME _____
CASE NUMBER _____
DATE _____

CITIZEN'S SIGN - IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E - MAIL
Kim Karlsen	304 Hammond Ave	Glyndon MD 21071	perandkim@aol.com
Martha Wist	3834 Ivy Hill Dr	Hampstead MD 21074	marthaw19@yahoo
Ann Rea	1015 Caren Dr	Eldersburg, MD 21784	aerea@comcast.net
LYLE MONTANYE	4342 BUTLER RD.	21071	LYLE@G-MONLINE.NET

PLEASE PRINT CLEARLY

CASE NAME _____
CASE NUMBER _____
DATE _____

CITIZEN'S SIGN - IN SHEET

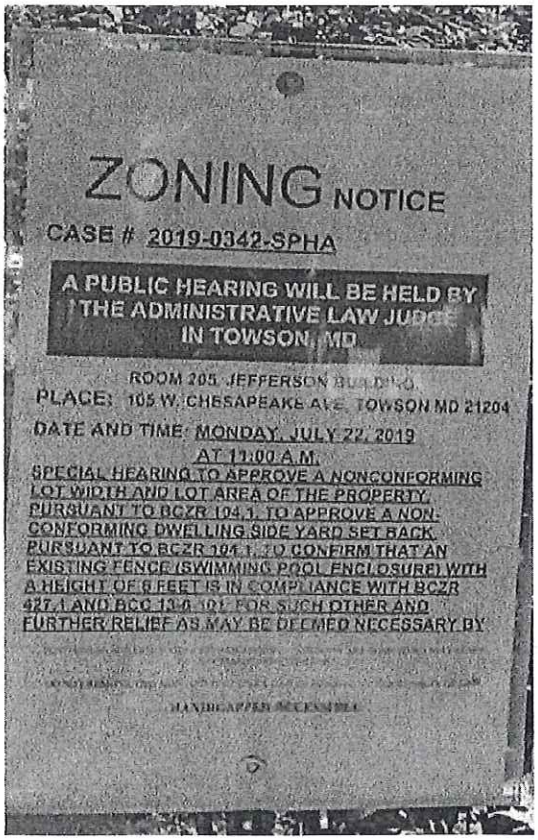
NAME	ADDRESS	CITY, STATE, ZIP	E - MAIL
Linda Long	114 Hanover Ra	21136 md	—
Raymond Long	114 HANOVER RD	21136 MD	
Patricia J Fradkin	4605 Prospect Ave	21136 MD	Pfradkin0U3@gm[illegible]-ou
RAMZZ a ROULA HEMADS	4603 Prospect Ave	Glyndon, MD 21136	
Robert Gehman	4612 Prospect Ave	Glyndon 21136	RKgehman@gmail.com
Cynthia Morrison	4500 Prospect Ave	Glyndon 21071	cmmjultim1@verizon.net
STEVE FRADKIN	4605 PROSPECT AVE	GLYNDON 21136-3800	RRISTLAXCOACH@GMAIL

SECOND CERTIFICATE OF POSTING

ATTENTION: SHERRY NUFFER
DATE: 7/20/2019
Case Number: 2019-0342-SPHA
Petitioner / Developer: ZACHARY WILKENS, ESQ. ~ DONNA BAIR
Date of Hearing: JULY 22, 2019

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:
4607 PROSPECT AVENUE

The sign(s) were posted on: JULY 2, 2019
The sign(s) were re-photographed on: JULY 20, 2019



Linda O'Keefe
(Signature of Sign Poster)

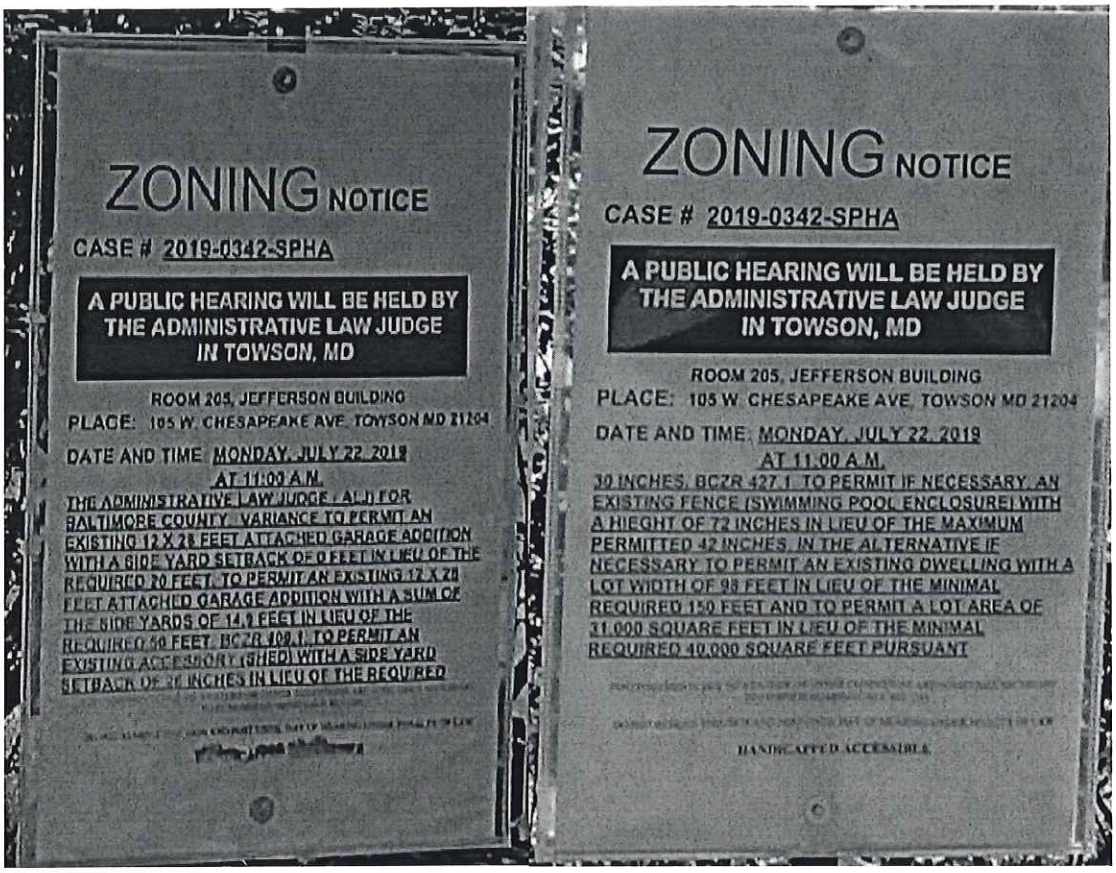
Linda O'Keefe
(Printed Name of Sign Poster)

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)

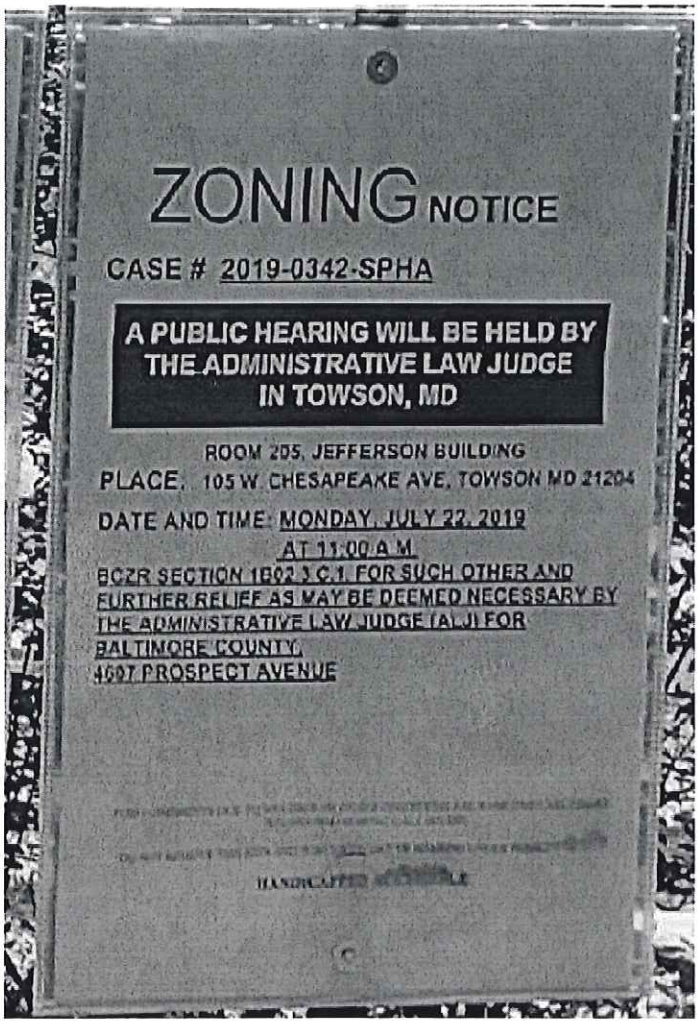
RECEIVED
JUL 22 2019
OFFICE OF
ADMINISTRATIVE HEARINGS



SIGN # 2 SIGN #3

RE-PHOTOGRAPHED @ 4607 PROSPECT AVENUE ~ 7/20/2019
CASE # 2019-0342-SPHA

RECEIVED
JUL 22 2019
OFFICE OF
ADMINISTRATIVE HEARINGS



SIGN #4

RE-PHOTOGRAPHED @ 4607 PROSPECT AVENUE ~ 7/20/20

CASE # 2019-0342-SPHA

RECEIVED

JUL 22 2019

OFFICE OF
ADMINISTRATIVE HEARINGS

Debra Wiley

From: Linda Okeefe <luckylinda1954@yahoo.com>
Sent: Sunday, July 21, 2019 12:25 AM
To: Administrative Hearings
Subject: Cert. Case # 2019-0342-SPHA @ 4607 Prospect Ave.
Attachments: Prospect Ave. Cert. .jpeg; Prospect Ave. Photos #1.docx; Prospect Ave. Photos #2.docx

CAUTION: This message from luckylinda1954@yahoo.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Hi Debbie,

I have another Cert. ready for you for Case # 2019-0342-SPHA @ 4607 Prospect Avenue.
Thank you,

Linda

Linda O'Keefe
523 Penny Lane
Hunt Valley MD 21030
Phone # 410-666-5366
Cell# 443-604-6431
Fax# 410-666-0929
luckylinda1954@yahoo.com

RECEIVED
JUL 22 2019
OFFICE OF
ADMINISTRATIVE HEARINGS

JOHN A. OLSZEWSKI, JR.
County Executive

MICHAEL D. MALLINOFF, *Director*
Department of Permits, Approvals & Inspections

July 16, 2019

Zachary J. Wilkins
600 Washington Ave Suite 200
Towson MD 21204

RE: Case Number: 2019-0342-SPHA, 4607 Prospect Ave

To Whom It May Concern:

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits, Approvals, and Inspection (PAI) on May 28, 2019. This letter is not an approval, but only a **NOTIFICATION.**

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR/kl

Enclosures

c: People's Counsel
Donna V. Bair 4607 Prospect Ave Glyndon MD 21071

ZAC Comments

7-22

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE MEMORANDUM

TO: Michael D. Mallinoff
Director, Department of Permits, Approvals and Inspections

DATE: 7/2/2019

FROM: C. Pete Gutwald
Director, Department of Planning

SUBJECT: **ZONING ADVISORY COMMITTEE COMMENTS**
Case Number: 19-342



INFORMATION:
Property Address: 4607 Prospect Avenue
Petitioner: Donna V. Bair
Zoning: RC 2, DR 1
Requested Action: Special Hearing, Variance

The Department of Planning has reviewed the petition for special hearing and the petition for variance to determine whether or not the Administrative Law Judge (ALJ) should approve, confirm and or permit the relief identified on the attachment submitted in support of the petitions.

A site visit was conducted on June 11, 2019. The site was the subject to review by the Landmarks Preservation Committee at their March 14, 2019 meeting wherein a Certificate of Appropriateness addressing privacy fencing and additions to the dwelling were approved.

The Department has no objection to granting the petitioned zoning relief in part, and opposes same, in part.

- The Department will concur with the ALJ as to the non-conforming status of the lot in terms of area and width.
- The Department does not oppose variance request #3.
- The Department opposes any confirmation of the non-conforming status or grant of variance relief for any component of the site shown to be encroaching on the adjacent property as shown on the site plan submitted by the petitioners.

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

Prepared by:

Lloyd T. Moxley

Division Chief:

Jenifer G. Nugent

CPG/JGN/LTM/
c: Bill Skibinski
Zachary J. Wilkins, Smith, Gildea & Schmidt, LLC
Office of the Administrative Hearings
People's Counsel for Baltimore County

s:\planning\dev rev\zac\zacs 2019\19-342.docx

M-22

RECEIVED
JUN 11 2019
OFFICE OF
ADMINISTRATIVE HEARINGS

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: June 11, 2019

SUBJECT: DEPS Comment for Zoning Item # 2019-0342-SPHA
Address 4607 Prospect Avenue
(Bair Property)

Zoning Advisory Committee Meeting of **June 10, 2019**.

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

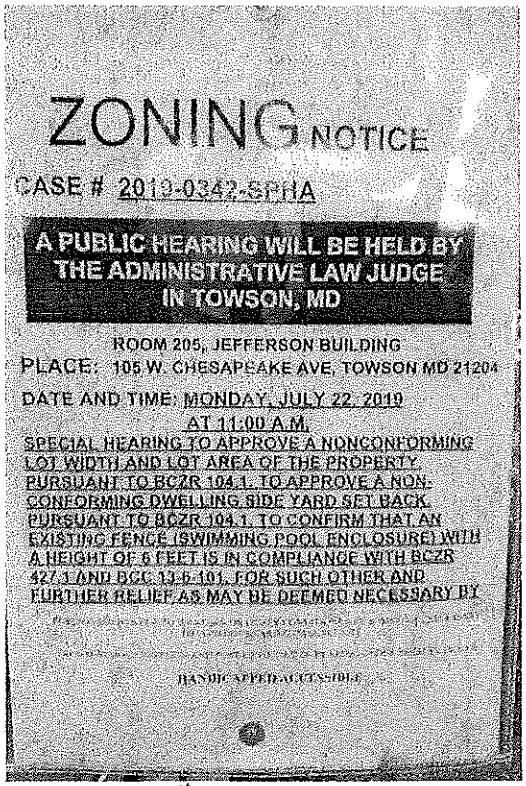
Reviewer: Steve Ford

CERTIFICATE OF POSTING

ATTENTION: KRISTEN LEWIS
DATE: 7/2/2019
Case Number: 2019-0342-SPHA
Petitioner / Developer: ZACHARY WILKINS, ESQ. ~ DONNA BAIR
Date of Hearing: JULY 22, 2019

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:
4607 PROSPECT AVENUE

The sign(s) were posted on: JULY 2, 2019



1st SIGN

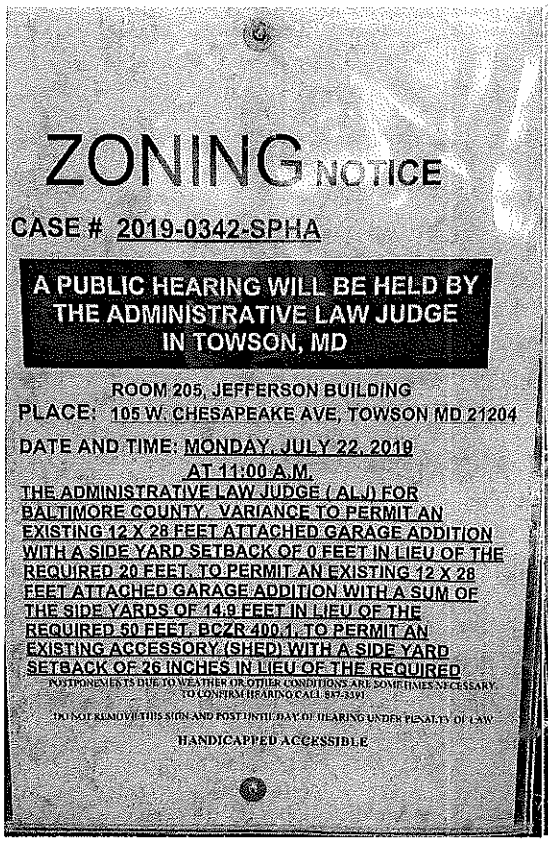
Linda O'Keefe
(Signature of Sign Poster)

Linda O'Keefe
(Printed Name of Sign Poster)

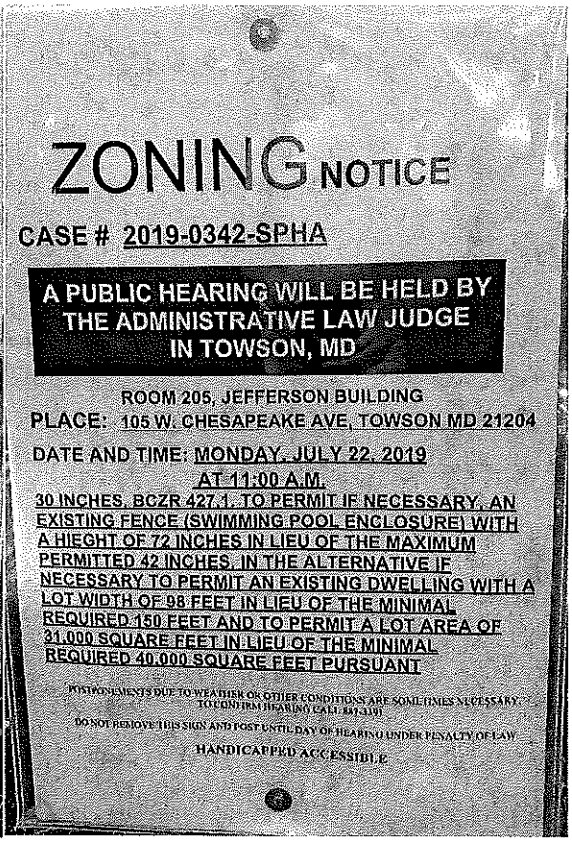
523 Penny Lane
(Street Address of Sign Poster)

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

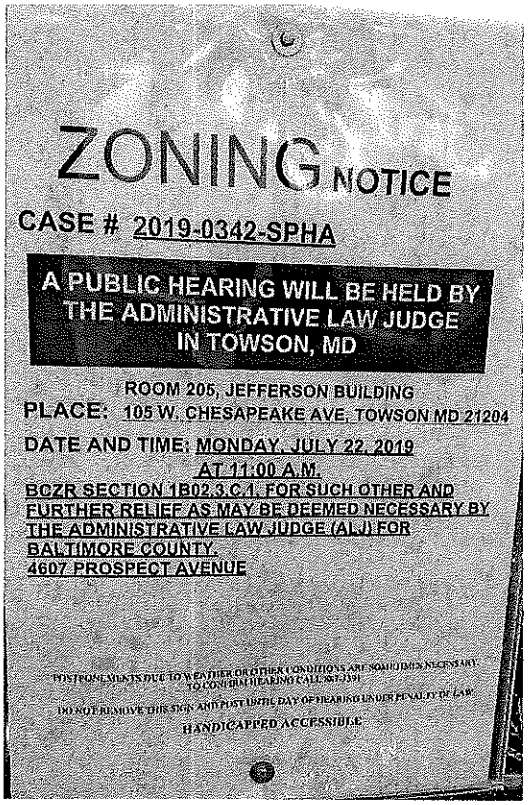
410 – 666 – 5366
(Telephone Number of Sign Poster)



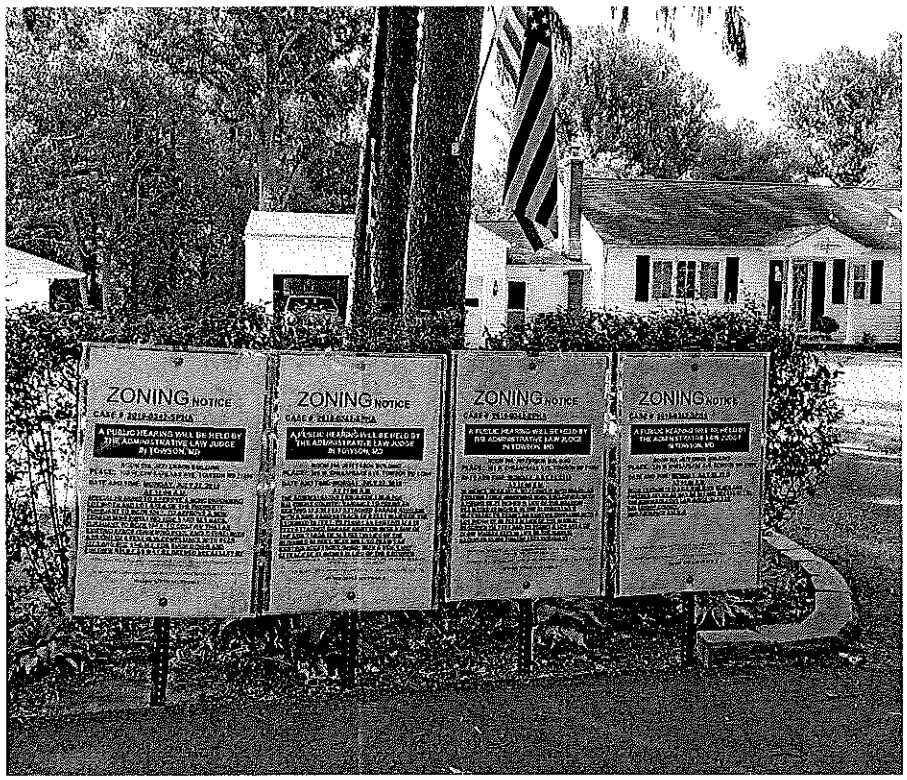
SIGN #2



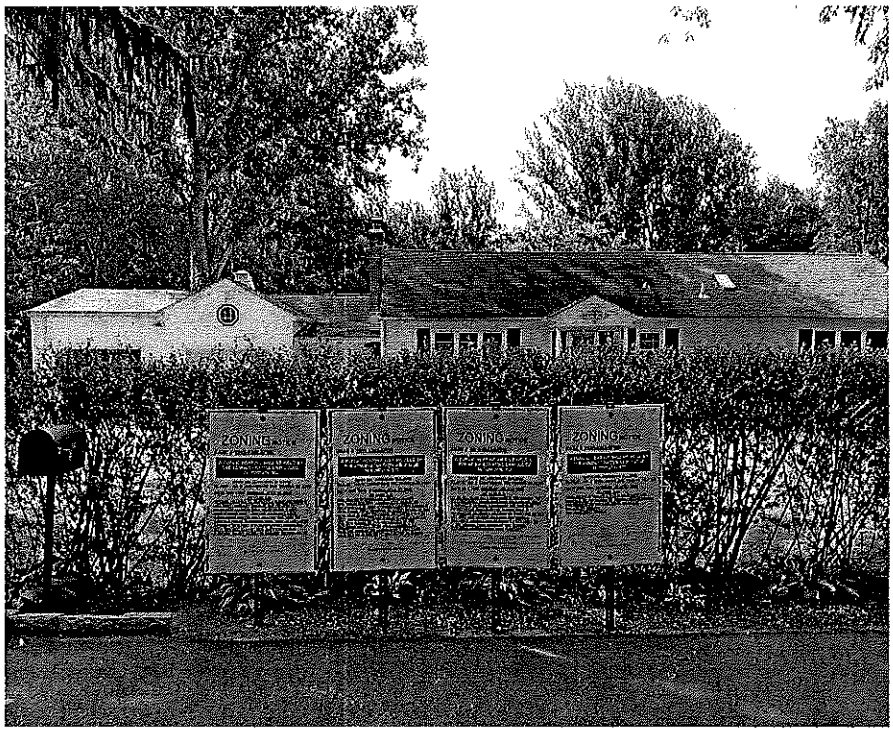
SIGN #3



SIGN #4 @ 4607 Prospect Ave. 7/2/2019 ~ **CASE # 2019-0342-SPHA**



Background Photo 1st Set of Signs @ 4607 Prospect Ave. ~ 7/2/2019



Background Photo 2nd Set of Signs @ 4607 Prospect Ave. ~ 7/2/2019

CASE # 2019-0342-SPHA

The Daily Record

11 East Saratoga Street
Baltimore, MD 21202-2199
(443) 524-8100
http://www.thedailyrecord.com

Order #: 11762662
Case #: 2019-0342-SPHA
Description:

NOTICE OF ZONING HEARING CASE NUMBER: 2019-0342-SPHA

PUBLISHER'S AFFIDAVIT

We hereby certify that the annexed advertisement was published in **The Daily Record**, a daily newspaper published in the State of Maryland 1 times on the following dates:

7/2/2019

Darlene Miller

Darlene Miller, Public Notice Coordinator
(Representative Signature)

Baltimore County

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: 2019-0342-SPHA
4607 Prospect Avenue
Southeast side of Prospect Avenue, northeast of Waugh Avenue
4th Election District - 3rd Councilmanic District
Legal Owners: Donna Bair

Special Hearing to approve a nonconforming lot width and lot area of the property, pursuant to BCZR 104.1. To approve a nonconforming dwelling side yard setback, pursuant to BCZR 104.1. To confirm that an existing fence (swimming pool enclosure) with a height of 6 feet is in compliance with BCZR 427.1 and BCC 13-6-101. For such other and further relief as may be deemed necessary by the Administrative Law Judge (ALJ) for Baltimore County. Variance to permit an existing 12x28 feet attached garage addition with a side yard setback of 0 feet in lieu of the required 20 feet. To permit an existing 12x28 feet attached garage addition with a sum of the side yards of 14.9 feet in lieu of the required 50 feet. BCZR 400.1. To permit an existing accessory (shed) with a side yard setback of 26 inches in lieu of the required 30 inches. BCZR 427.1. To permit if necessary, an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches. In the alternative if necessary to permit an existing dwelling with a lot width of 98 feet in lieu of the minimal required 150 feet and to permit a lot area of 31,000 square feet in lieu of minimal required 40,000 square feet pursuant BCZR Section 1B02.3.C.1. For such other and further relief as may be deemed necessary by the Administrative Law Judge (ALJ) for Baltimore County.

Hearing: Monday, July 22, 2019 at 11:00 a.m. in Room 205, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204

Michael Mallinoff
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.

jy2

JOHN A. OLSZEWSKI, JR.
County Executive

MICHAEL D. MALLINOFF, *Director*
Department of Permits, Approvals & Inspections

June 25, 2019

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: 2019-0342-SPHA
4607 Prospect Avenue
Southeast side of Prospect Avenue, northeast of Waugh Avenue
4th Election District – 3rd Councilmanic District
Legal Owners: Donna Bair

Special Hearing to approve a nonconforming lot width and lot area of the property, pursuant to BCZR 104.1. To approve a nonconforming dwelling side yard setback, pursuant to BCZR 104.1. To confirm that an existing fence (swimming pool enclosure) with a height of 6 feet is in compliance with BCZR 427.1 and BCC 13-6-101. For such other and further relief as may be deemed necessary by the Administrative Law Judge (ALJ) for Baltimore County. Variance to permit an existing 12x28 feet attached garage addition with a side yard setback of 0 feet in lieu of the required 20 feet. To permit an existing 12x28 feet attached garage addition with a sum of the side yards of 14.9 feet in lieu of the required 50 feet. BCZR 400.1. To permit an existing accessory (shed) with a side yard setback of 26 inches in lieu of the required 30 inches. BCZR 427.1. To permit if necessary, an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches. In the alternative if necessary to permit an existing dwelling with a lot width of 98 feet in lieu of the minimal required 150 feet and to permit a lot area of 31,000 square feet in lieu of minimal required 40,000 square feet pursuant BCZR Section 1B02.3.C.1. For such other and further relief as may be deemed necessary by the Administrative Law Judge (ALJ) for Baltimore County.

Hearing: Monday, July 22, 2019 at 11:00 a.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204

Michael Mallinoff
Director

MM:kl

C: Zachary Wilkins, 600 Washington Avenue, Ste. 200, Towson 21204
Donna Bair, 4607 Prospect Avenue, Glyndon 21071

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, JULY 2, 2019.**
(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.

RE: PETITION FOR SPECIAL HEARING AND VARIANCE 4607 Prospect Avenue; SE/S of Prospect Avenue, 410' NE of Waugh Avenue 4th Election & 3rd Councilmanic Districts Legal Owner(s): Donna V. Bair Petitioner(s)	*	BEFORE THE OFFICE OF ADMINSTRATIVE HEARINGS FOR BALTIMORE COUNTY	
	*	2019-342-SPHA	

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

ENTRY OF APPEARANCE

Pursuant to Baltimore County Charter § 524.1, please enter the appearance of People's Counsel for Baltimore County as an interested party in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence sent and all documentation filed in the case.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

RECEIVED
JUN 06 2019

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 6th day of June, 2019, a copy of the foregoing Entry of Appearance was mailed to Zachary J. Wilkins, Esquire, 600 Washington Avenue, Suite 200, Towson, Maryland 21204, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

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 4607 Prospect Avenue **which is presently zoned** RC 2 and DR 1

Deed References: 35307/489 10 Digit Tax Account # 0416015450

Property Owner(s) Printed Name(s) Donna V. Bair

(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

Please see attached.

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

3. ✓ **a Variance** from Section(s)

Please see attached.

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).

ORDER RECEIVED FOR FILING
Date 8/14/19
By AEN

Contract Purchaser/Lessee:

Name- Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

Legal Owners (Petitioners):

Donna V. Bair /

Name #1 – Type or Print Name #2 – Type or Print

Signature #1 Signature # 2

4607 Prospect Avenue Glyndon MD

Mailing Address City State

21071 / /

Zip Code Telephone # Email Address

Attorney for Petitioner:

Zachary J. Wilkins, Smith, Gildea & Schmidt, LLC

Name- Type or Print

Signature

600 Washington Avenue, Suite 200 Towson MD

Mailing Address City State

21204 / (410) 821-0070 / zwilkins@sgs-law.com

Zip Code Telephone # Email Address

Representative to be contacted:

Zachary J. Wilkins, Smith, Gildea & Schmidt, LLC

Name – Type or Print

Signature

600 Washington Avenue, Suite 200 Towson MD

Mailing Address City State

21204 / (410) 821-0070 / zwilkins@sgs-law.com

Zip Code Telephone # Email Address

CASE NUMBER 2019-0342-SPHA **Filing Date** 5/28/2019 **Do Not Schedule Dates:** _____ **Reviewer** JNP

amayers@sgs-law.com

REV. 10/4/11

ATTACHMENT TO PETITION FOR ZONING HEARING

4607 Prospect Avenue

Special Hearing relief:

1. To approve a nonconforming lot width and lot area of the property, pursuant to BCZR §104.1;

2. To approve a nonconforming dwelling side yard setback, pursuant to BCZR §104.1;

3. To confirm that an existing fence (swimming pool enclosure) with a height of 6 ft. is in compliance with BCZR §427.1. and BCC § 13-6-101; and

4. For such other and further relief as may be deemed necessary by the Administrative Law Judge ("ALJ") for Baltimore County.

Variance relief from:

1. BCZR §1B02.3.C.1. To permit an existing 12x28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.

2. BCZR §1B02.3.C.1. To permit an existing 12x28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50ft.

3. BCZR §400.1. To permit an existing accessory structure (shed) with a side yard setback of 26 inches in lieu of the required 30 inches.

4. BCZR §427.1. To permit, if necessary, an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches; and

6 6. For such other and further relief as may be deemed necessary by the Administrative Law Judge ("ALJ") for Baltimore County.

5. In the alternative, if necessary, to permit an existing dwelling with a lot width of 98 feet in lieu of the minimal required 150 feet and to permit a lot area of ± 31,000 square feet in lieu of minimal required 40,000 square feet pursuant BCZR Section 1B02.3.C.1.

RTF ASSOCIATES, INC. *LAND SURVEYORS & PLANNERS*

142 East Main Street
Westminster, Maryland 21157
Phone 410-848-2040, 410-876-1222
Web RTFsurveying.com
Fax 443-289-8942

May 13, 2019
JOB # 18-147

ZONING LEGAL DESCRIPTION

BEGINNING FOR THE SAME at a point in the center of Prospect Avenue 40 feet wide at the end of the north 51 degrees east 50 feet in a deed described the second parcel of land from M. Earl M. Hammond and wife to Lester S. Wheeler dated July 31, 1946 and recorded among the Land Records of Baltimore County in Liber R.J.S. No. 1473, folio 449, thence running as surveyed July 1946 binding on the center of Prospect Avenue and by outline of said second parcel of land North 57 degrees 30 minutes East 100 feet; thence by lines of division South 31 degrees 56 minutes East 355.8 feet intersecting the south 73 ½ degree West 156.5 foot line of said second parcel of land; thence binding thereon South 76 degrees West 103.2 feet; thence by line of division North 32 degrees 15 minutes West 322.2 feet to the place of beginning. Containing 78/100 of an acre of land more or less.



JOHN E. LEMMERMAN
PROFESSIONAL LAND SURVEYOR NO. 21096
CURRENT LICENSE EXPIRES AUGUST 3, 2019

2019-0342-SPHA

Constituent Complaint

Baltimore County
GOVERNMENT

Register for an Account Login

Home Animal Complaint License Residential Parking Permits
Land Management Code Complaint CZMP

Submit a Complaint Search Complaints

first at 1/28/19 from Hunter Rowe but Dave Kirby has this?

Record CC1814071:
Constituent Complaint
Record Status: Inspection Scheduled

Record Info

Code Enforcement Complaint and Violation

Property Location

4607 PROSPECT AVE
REISTERSTOWN MD 21136

Application Details

Complaint Description:

6 FT FENCE IN THE FRONT AND SIDE YARDS, SHE HAD WORK DONE TO HE HOUSE AND AS A RESULT OF NOT HAVING A SILT FENCE, SHE CREATED SWALE TO AFFECT THE FLOW OF THE WATER AND IS NOW DIRECTING THE WATER AT THE COMPLAINANT'S PROPERTY. SHE ALSO ADDED A 2ND BAY TO HER GARAGE AND COMPLAINANT

9/10/18
Inspection Scheduled 9/10
" Status Due 10/8
marked as Pending TBD

Permits, Approvals, and Inspections
Code Inspections & Enforcement
County Office Building, Rm. 213
111 West Chesapeake Ave
Towson, Maryland 21204
www.baltimorecountymd.gov/Agencies/permits/

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

CODE ENFORCEMENT CORRECTION NOTICE

CASE NUMBER	PROP.TAX ID
CC1814071	04-16-015450

VIOLATION ADDRESS
4607 PROSPECT AVE
REISTERSTOWN, MD 21136

BAIR DONNA V
4607 PROSPECT AVE
GLYNDON, MD 21071-3800

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

County Codes/Regulations	Inspector's Comments
B.C.C. 35-2-301: Obtain building/ fence/ sign permit B.C.Z.R 400: Illegal accessory structure	There are multiple violations pertaining to the privacy fence installed on property. There is no record of obtained permit. Permit needs to be obtained and will need to get Landmark preservation approval. Secondly, the placement of fence is illegal based on height, location, etc.... Fence must not protrude past yours or neighboring properties front foundation. It is recommended you contact Baltimore County zoning in working to resolve these violations.

Failure to comply with this correction notice, may result in a $200.00 fine/penalty per day, per violation pursuant to BCC: 1-2-217; 32-3-602 and/or the County sending a contractor to correct the violation(s) at your expense. Call the inspector for more information and details.

COMPLIANCE DATE: 10/30/2018	INSPECTOR ID: 101
	ISSUED DATE: 10/11/2018

IMPORTANT INFORMATION TO THE PERSON'S CHARGED

1. It is important that you read this document carefully, as it charges you with the commission of a crime.
2. If you fail to correct the violations noted by the date dictated, a citation may be issued, and a trial scheduled at which you may be penalized by a fine, imprisonment, or both.
3. If the County is required to bring your property into compliance, all costs and fines shall become a lien and shall be collectible in the manner provided for collection of real estate taxes; or may be collected in the same manner as any civil money judgment or debt collected.
4. A lawyer can give important assistance to you:
   (a) on how to correct the violation(s) in order to avoid trial or
   (b) at trial, if you failed to correct the violation(s) noted. Assistance may be provided to determine whether there are any defenses to the charges against you or any circumstances helpful to you that should be brought to the trial. A lawyer can help you by developing and presenting information, which could effect how you correct the violation(s).
5. A conviction for each violation will subject you to potential fines of $200, $500, $1000 per day per violation, depending on the violation, or 90 days in jail, or both Baltimore County Code section 1-2-217 and 32-3-602.
6. It is your responsibility to obtain any required permit(s) to correct the cited violation(s). All repairs must be in accordance with applicable laws, Code of Baltimore County Regulations, and standards.
7. Upon correction of these violation(s), contact the inspector for re-inspection. If you have any questions contact the inspector promptly.

BALTIMORE COUNTY MARYLAND

INTER-OFFICE CORRESPONDENCE

DATE:

TO: W. Carl Richards, Jr.
Zoning Review Supervisor

From: Matt Gawel
Chief Building Inspector

SUBJECT: Item No: 2019-0342-SPHA
Legal Owner/Petitioner: DONNA BAER
Contract Purchaser: None
Property Address: 4609 PROSPECT AVE
Location Description:
SE/S OF PROSPECT AVE 410' NE OF WINCH AVE

VIOLATION INFORMATION: Case No.: 0342
Defendents: DONNA BAER

Please be advised that the aforementioned petition is the subject of an active violation case.
When the petition is for a public hearing, please notify the following person(s) regarding the hearing date:

NAME	ADDRESS
TOM MONTANYE	4609 PROSPECT AVE GLYNDON MD 21071

In addition, please find attached a duplicate copy of the following pertinent documents relative to the violation case, for review by the Zoning Commissioner's Office:

- ☑ 1. Complaint letter/memo/email/fax (if applicable)
- ☑ 2. Complaint intake from/Code Enforcement Officer's report and notes
- ☐ 3. State Tax Assessment printout
- ☐ 4. State Tax Parcel Map (if applicable)
- ☐ 5. MVA Registration printout (if applicable)
- ☐ 6. Deed (if applicable)
- ☐ 7. Lease-Residential or Commercial (if applicable
- ☑ 8. Photographs including dates taken
- ☑ 9. Correction Notice/Code Violation Notice
- ☐ 10. Citation and Proof of Service (if applicable)
- ☐ 11. Certified Mail Receipt(s) (if applicable)
- ☐ 12. Final Order of the Code Official/Hearing Officer (if applicable)
- ☐ 13. Office of Budget & Finance Billing Notice/Property Lien Sheet (if applicable)
- ☐ 14. Complete Chronology of Events, beginning with the first complaint through the Billing Notice/Property Lien Sheet (if applicable)

After the public hearing is held, please send a copy of the Zoning Commissioner's order to Kristin Lewis in Room 111 in order that the appropriate action may be taken relative to the violation case.

Zoning Form

Baltimore County
Department of Permits,
Approvals And Inspections

OFFICE HOURS 7:30 am - 3:30 pm

Building Inspection: 410-887-3953

Code Inspections and Enforcement
County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

Plumbing Inspection: 410-887-3620
Electrical Inspection: 410-887-3960

BALTIMORE COUNTY UNIFORM CODE ENFORCEMENT CORRECTION NOTICE

Citation Case No. CB1300693 Property No. 04160154500 Zoning:

Name(s): DONNA Beir

Address: 4607 PROSPECT AVE
GLYNDON MD 3107

Violation Location: SAME

DID UNLAWFULLY VIOLATE THE FOLLOWING BALTIMORE COUNTY LAWS:

2003 BALTIMORE COUNTY CODE SUB TITLE 3 SECTION 35-2-301 PERMITS AND INSPECTIONS REQUIRED FOR BALTIMORE COUNTY CODE CODE 40-12 PART 120 APPROVE PERMITS AND LANDMARK PRESERVATION COMMITTEE REQUIRED FOR ADDITIONS ON SFD, PERMIT REQUIRED FOR FENCE INSTALLED WITHOUT PERMIT

YOU ARE HEREBY ORDERED TO CORRECT THESE VIOLATION(S) ON OR BEFORE:

ON OR BEFORE: 10/26/13 DATE ISSUED: 10/5/13

FAILURE TO COMPLY WITH THE DEADLINE STATED IS A MISDEMEANOR. A CONVICTION FOR EACH VIOLATION SUBJECTS YOU TO POTENTIAL FINES OF $200, $500, OR $1,000 PER DAY, PER VIOLATION, DEPENDING ON VIOLATION, OR 90 DAYS IN JAIL, OR BOTH.

INSPECTOR: PRINT NAME: Rowe

STOP WORK NOTICE

PURSUANT TO INSEPCTION OF THE FOREGOING VIOLATIONS, YOU SHALL CEASE ALL WORK UNTIL THE VIOLATIONS ARE CORRECTED AND/OR PROPER PERMITS OBTAINED. WORK CAN RESUME WITH THE APPROVAL OF THE DIVISION OF CODE INSPECTIONS AND ENFORCEMENT. THESE CONDITIONS MUST BE CORRECTED NO LATER THAN:

ON OR BEFORE: DATE ISSUED:

INSPECTOR: PRINT NAME:

COPIES: PINK – AGENCY, YELLOW - VIOLATION SITE, GOLD – DEFENDANT, WHITE – INSPECTOR

CODE ENFORCEMENT REPORT

DATE: 10 / 1 /18 INTAKE BY: LK CASE#: 1800693 INSPEC: H. ROWE

COMPLAINT
LOCATION: 4607 PROSPECT AVE

ZIP CODE: DIST: 4

COMPLAINT
NAME: TOM MONTAGNYE PHONE#:(H) 410-935-8526 (W)

ADDRESS: 4609 PROSPECT AVE ZIP CODE:

PROBLEM: BUILT 2 ADDITIONS ONTO SFD (~~REAR~~ ~~SIDE~~ 2ND BAY ON GARAGE AND 10' EXTENTION ON SIDE) W/OUT PERMITS L.P.C.

IS THIS A RENTAL UNIT? YES NO
IF YES, IS THIS SECTION 8? YES NO
OWNER/TENANT
INFORMATION

TAX ACCOUNT #: ZONING:

INSPECTION:

REINSPECTION:

REINSPECTION:

REINSPECTION:

Department of Permits, Approvals & Inspections
Complaint Report

Record Id: CB1800693

Record ID	Assigned To	Assigned Date	Received Date	Status	Compliance Date	Hearing Date
CB1800693	Hunter Rowe	10/01/2018	10/01/2018	Inspection Scheduled		

Complaint Description: Built 2 additions onto SFD (2nd bay on garage and 10' extension on side) without permits. L.P.C

Property
4607 PROSPECT AVE
REISTERSTOWN, MD 21136
Tax Id: 0416015450

Owner
BAIR DONNA V
4607 PROSPECT AVE
GLYNDON, MD 21071-3800

Complainant
Tom Montainye
4609 Prospect Avenue
Glyndon MD, 21071
410-935-3526

Inspection Details

Inspector	Date	Service	Result	Action	Complied On
Hunter Rowe		Initial Inspection	Scheduled		

Lien Information - No Lien

Comments Detail - No Comments

10/5/18 VISITED SITE TOOK PICTURES NOTICE WRITTEN P.V. 10/26/18
ADDITIONS ON BOTH SIDES OF SFD AND FENCE ALL REQUIRE PERMITS PER L.P.C.
H.R


10/5/18


10/5/18


4607 Prospect Rd
10/5/18


10/5/16


10/5/18


10/5/18


10/5/18

Real Property Data Search

Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Tax Exempt: **Special Tax Recapture:**
Exempt Class: NONE

Account Identifier: **District -** 04 **Account Number -** 0416015450

Owner Information

Owner Name:	BAIR DONNA V	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	4607 PROSPECT AVE GLYNDON MD 21071-3800	**Deed Reference:**	/35307/ 00489

Location & Structure Information

Premises Address:	4607 PROSPECT AVE 0-0000	**Legal Description:**	.78 AC 4607 PROSPECT AVE SWS 200FT NE OF WAUGH AVE

Map:	Grid:	Parcel:	Sub District:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0048	0006	0751		0000				2019	Plat Ref:

Special Tax Areas: **Town:** NONE
Ad Valorem:
Tax Class:

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1951	1,493 SF	800 SF	33,976 SF	04

Stories	Basement	Type	Exterior	Full/Half Bath	Garage	Last Major Renovation
1	YES	STANDARD UNIT	SIDING	2 full/ 1 half	1 Attached	

Value Information

	Base Value	Value	Phase-in Assessments	
		As of 01/01/2019	As of 07/01/2018	As of 07/01/2019
Land:	82,400	82,400		
Improvements	161,300	204,500		
Total:	243,700	286,900	243,700	258,100
Preferential Land:	0			0

Transfer Information

Seller: DEVANEY TIMOTHY W	**Date:** 08/28/2014	**Price:** $320,500
Type: NON-ARMS LENGTH OTHER	**Deed1:** /35307/ 00489	**Deed2:**
Seller: TOWLES MARK	**Date:** 08/04/2011	**Price:** $235,000
Type: NON-ARMS LENGTH OTHER	**Deed1:** /31063/ 00346	**Deed2:**
Seller: HAMILTON BRIAN R	**Date:** 05/25/2005	**Price:** $344,900
Type: ARMS LENGTH IMPROVED	**Deed1:** /21925/ 00100	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2018	07/01/2019
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: Appro[illegible] 02/12/2015

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application **Date:**

7/22
11 Am

Case No.: 2019-0342-SPHA 4607 Prospect Ave.

Exhibit Sheet

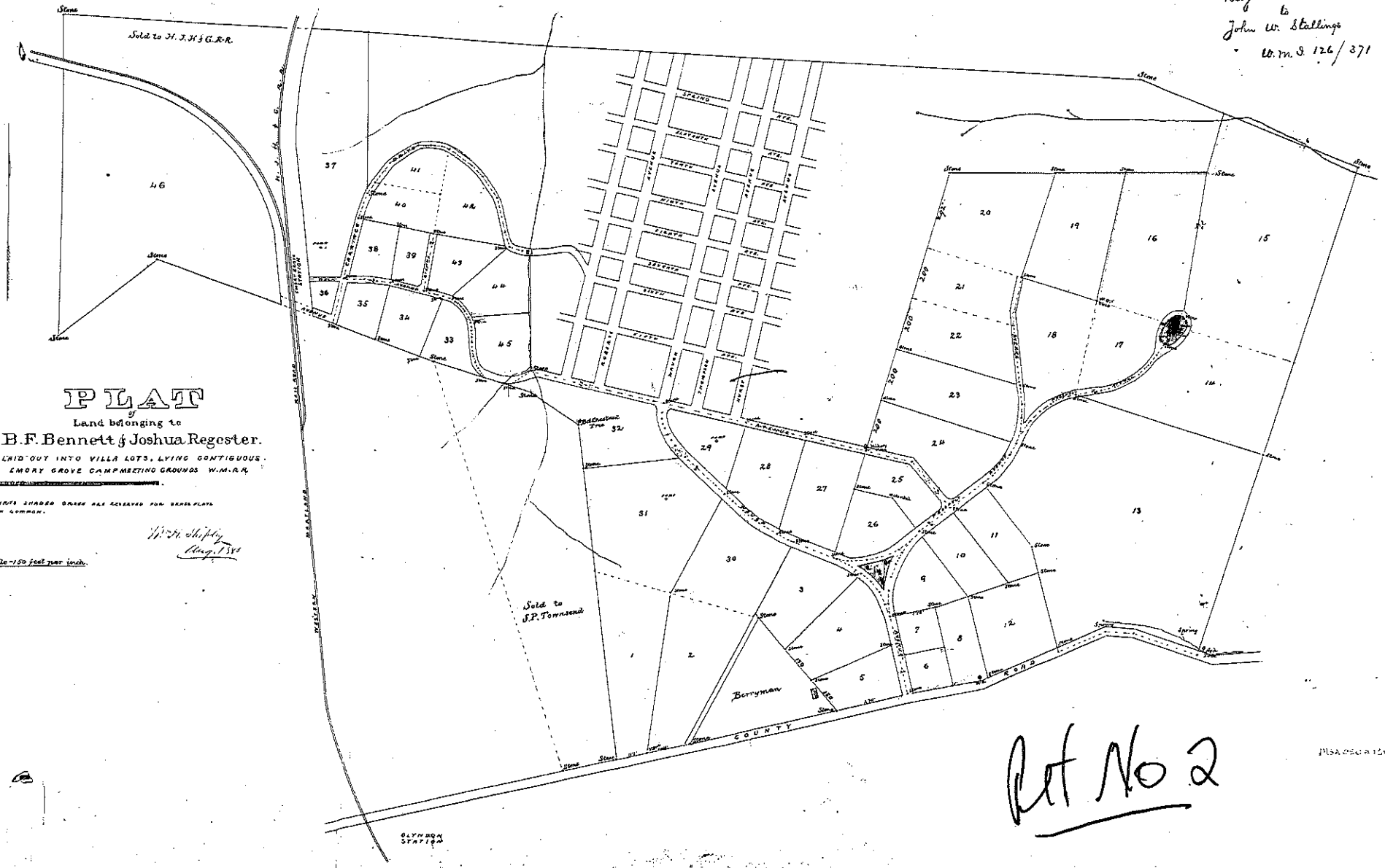
Petitioner/Developer

Protestants

Sln 8/19/19

No. 1	Site plan	
No. 2	Plat – Glyndon	
No. 3	3A-3C Aerial photos	
No. 4	SDAT record	
No. 5	5A-5U Site photos	
No. 6	Code citation Order	
No. 7	3-19-2019 memo re: LPC	
No. 8	8A, 8B > Code + BLZR Sections	
No. 9	Photos pre-construction 9A~9G	
No. 10	Prior zoning orders 10A+10B	
No. 11		
No. 12		

October 31- 1880
Filed with Deed No 6802
Benjamin F. Bennett, &c. et
to
John W. Stallings
W. M. S. 126/371



PLAT

of

Land belonging to

B.F. Bennett & Joshua Regester.

AS LAID OUT INTO VILLA LOTS, LYING CONTIGUOUS TO EMORY GROVE CAMPMEETING GROUNDS W.M.R.R.

PARTS SHADED GREEN ARE RESERVED FOR GRASS PLOTS IN COMMON.

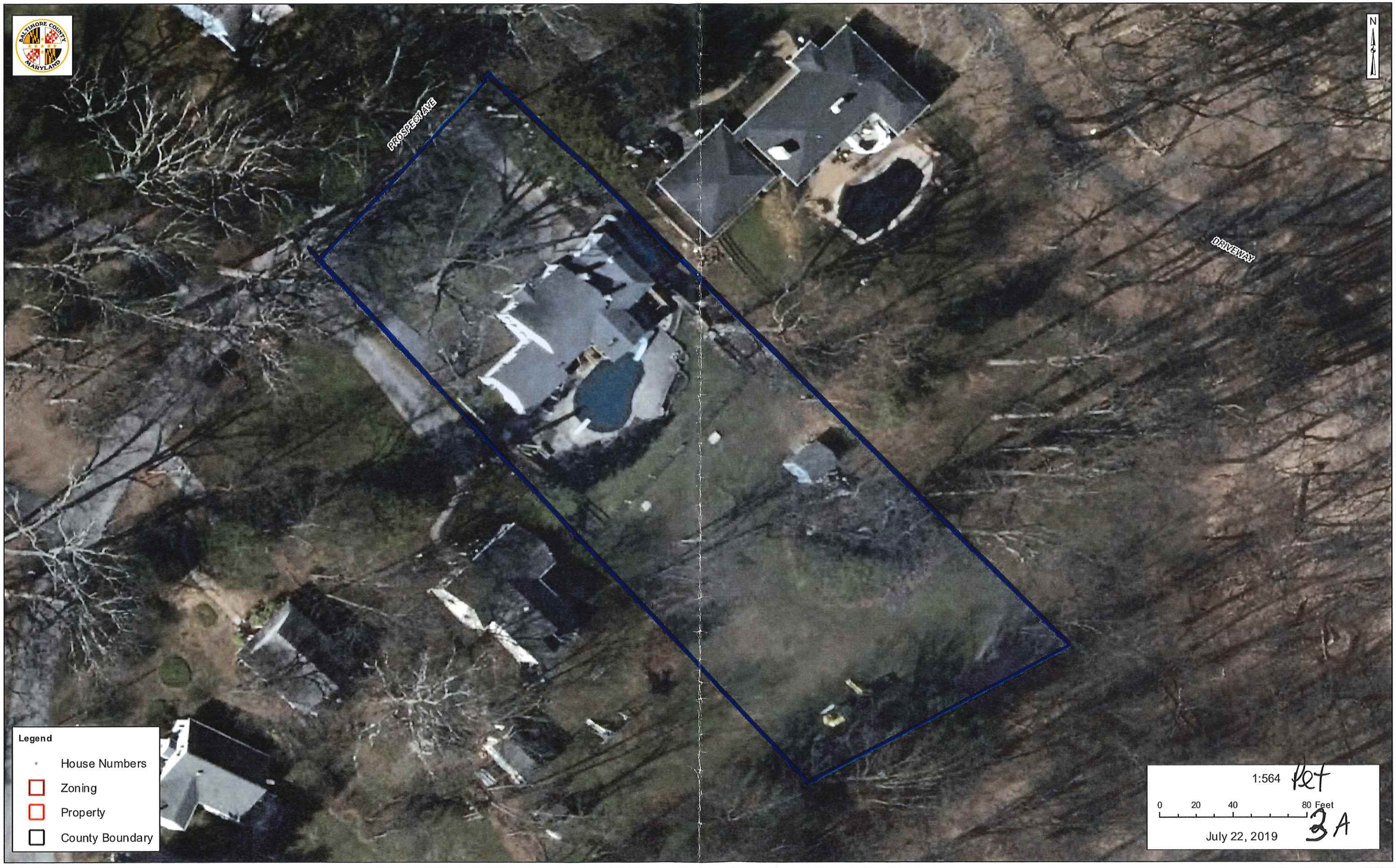
Wm. H. Shipley
Surv. 1881

Scale - 150 feet per inch.

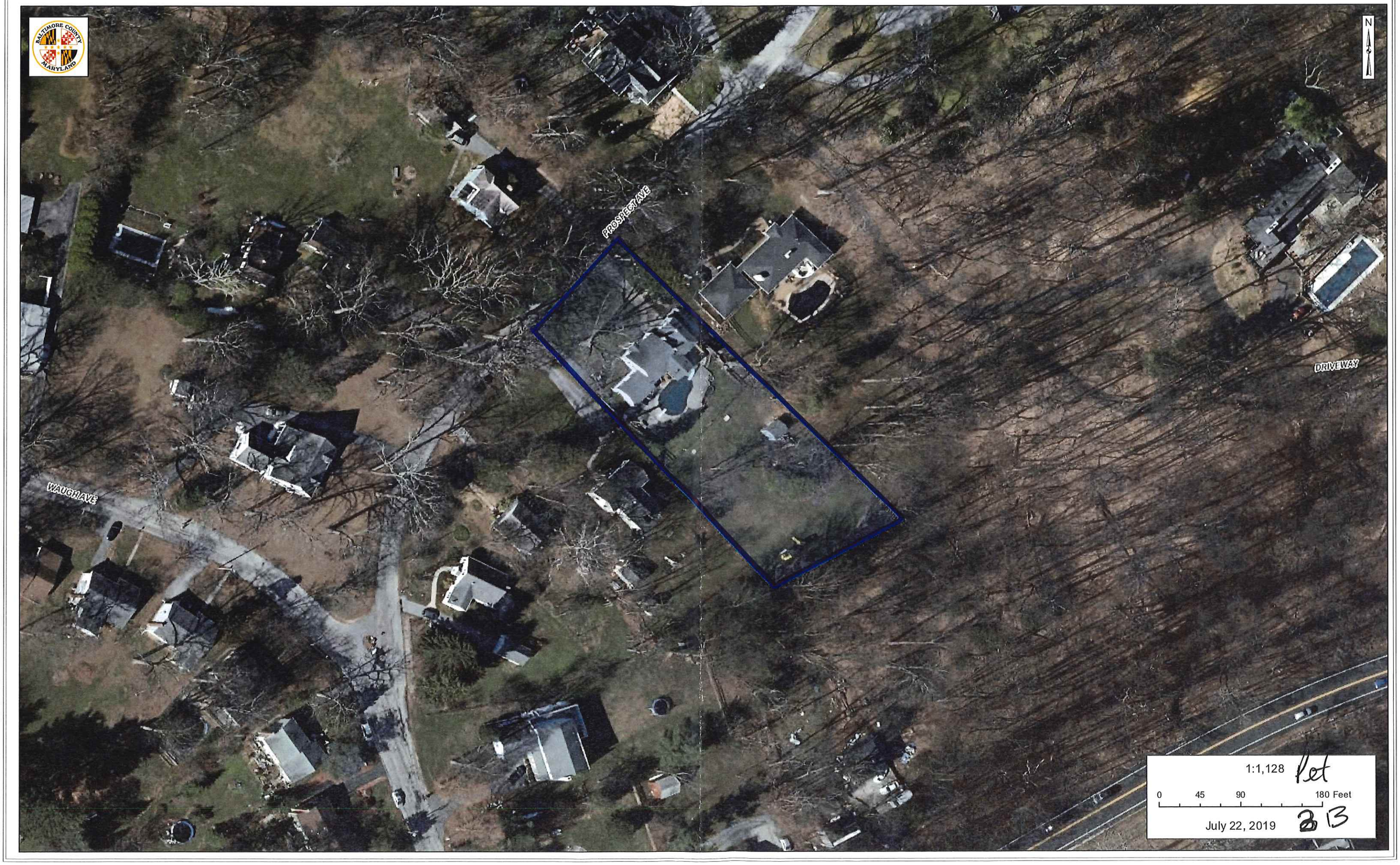
Plat No 2

MSA CE 126 - 3502

Baltimore County - My Neighborhood



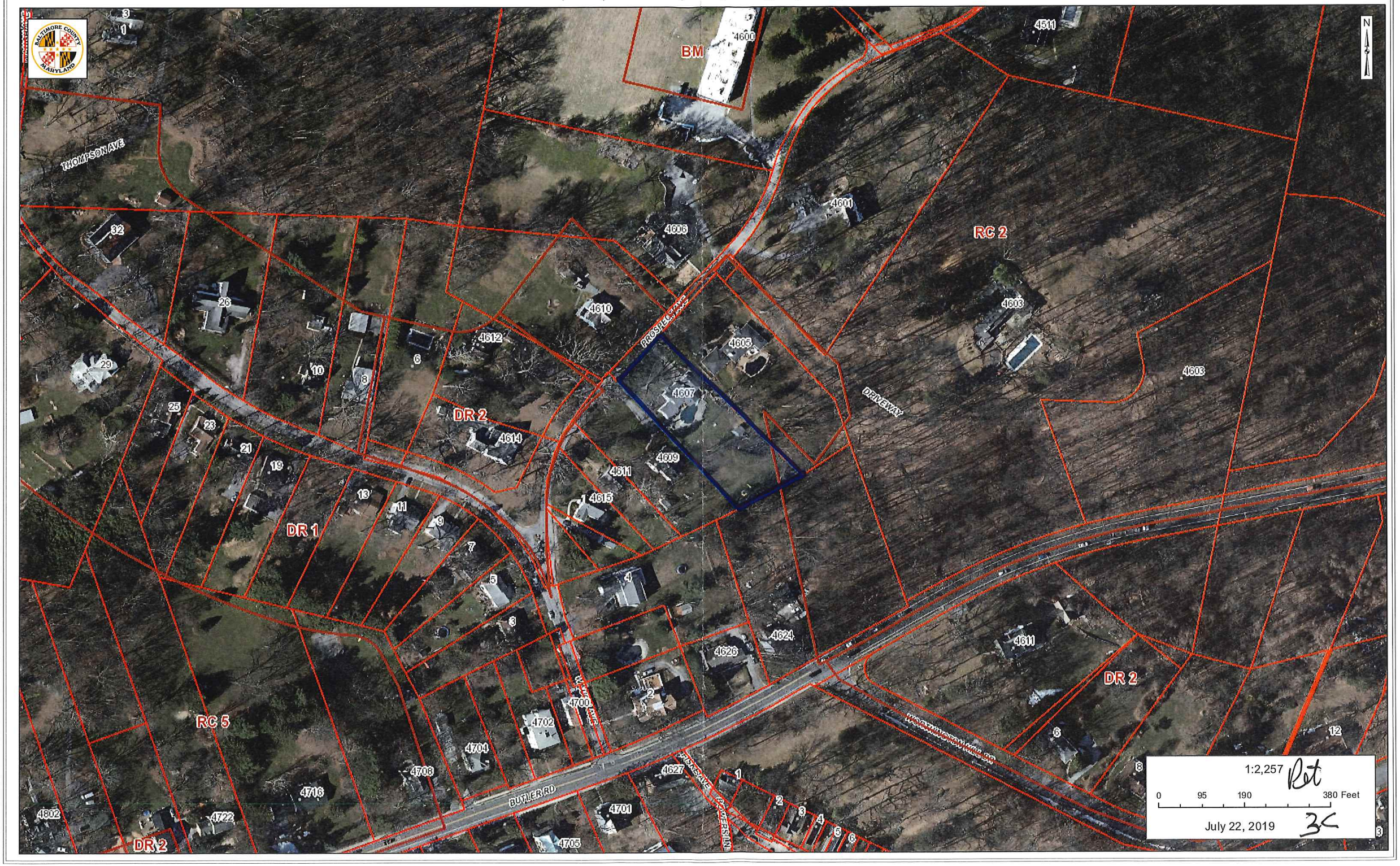
Baltimore County - My Neighborhood



Pet

2 B

Baltimore County - My Neighborhood



Real Property Data Search (w3)

Pet No 4

Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Tax Exempt: **Special Tax Recapture:**
Exempt Class: NONE

Account Identifier: **District -** 04 **Account Number -** 0416015450

Owner Information

Owner Name:	BAIR DONNA V	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	4607 PROSPECT AVE GLYNDON MD 21071-3800	**Deed Reference:**	/35307/ 00489

Location & Structure Information

Premises Address:	4607 PROSPECT AVE 0-0000	**Legal Description:**	.78 AC 4607 PROSPECT AVE SWS 200FT NE OF WAUGH AVE

Map:	Grid:	Parcel:	Sub District:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0048	0006	0751		0000				2019	Plat Ref:

Special Tax Areas: **Town:** NONE
Ad Valorem:
Tax Class:

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1951	1,493 SF	800 SF	33,976 SF	04

Stories	Basement	Type	Exterior	Full/Half Bath	Garage	Last Major Renovation
1	YES	STANDARD UNIT	SIDING	2 full/ 1 half	1 Attached	

Value Information

	Base Value	Value As of 01/01/2019	Phase-in Assessments As of 07/01/2018	Phase-in Assessments As of 07/01/2019
Land:	82,400	82,400		
Improvements	161,300	204,500		
Total:	243,700	286,900	243,700	258,100
Preferential Land:	0			0

Transfer Information

Seller: DEVANEY TIMOTHY W	**Date:** 08/28/2014	**Price:** $320,500
Type: NON-ARMS LENGTH OTHER	**Deed1:** /35307/ 00489	**Deed2:**
Seller: TOWLES MARK	**Date:** 08/04/2011	**Price:** $235,000
Type: NON-ARMS LENGTH OTHER	**Deed1:** /31063/ 00346	**Deed2:**
Seller: HAMILTON BRIAN R	**Date:** 05/25/2005	**Price:** $344,900
Type: ARMS LENGTH IMPROVED	**Deed1:** /21925/ 00100	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2018	07/01/2019
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Tax Exempt: **Special Tax Recapture:**
Exempt Class: NONE

Homestead Application Information

Homestead Application Status: Approved 02/12/2015

Homeowners' Tax Credit Application Information



Petitioner's Exhibit 5A



Petitioner's Exhibit 5B


Petitioner's Exhibit 5c


Petitioner's Exhibit 5D



Petitioner's Exhibit 5E



Petitioner's Exhibit 5F


Petitioner's Exhibit 56

Petitioner's Exhibit 5A


Petitioner's Exhibit 5I


Petitioner's Exhibit 5J


Petitioner's Exhibit 5K

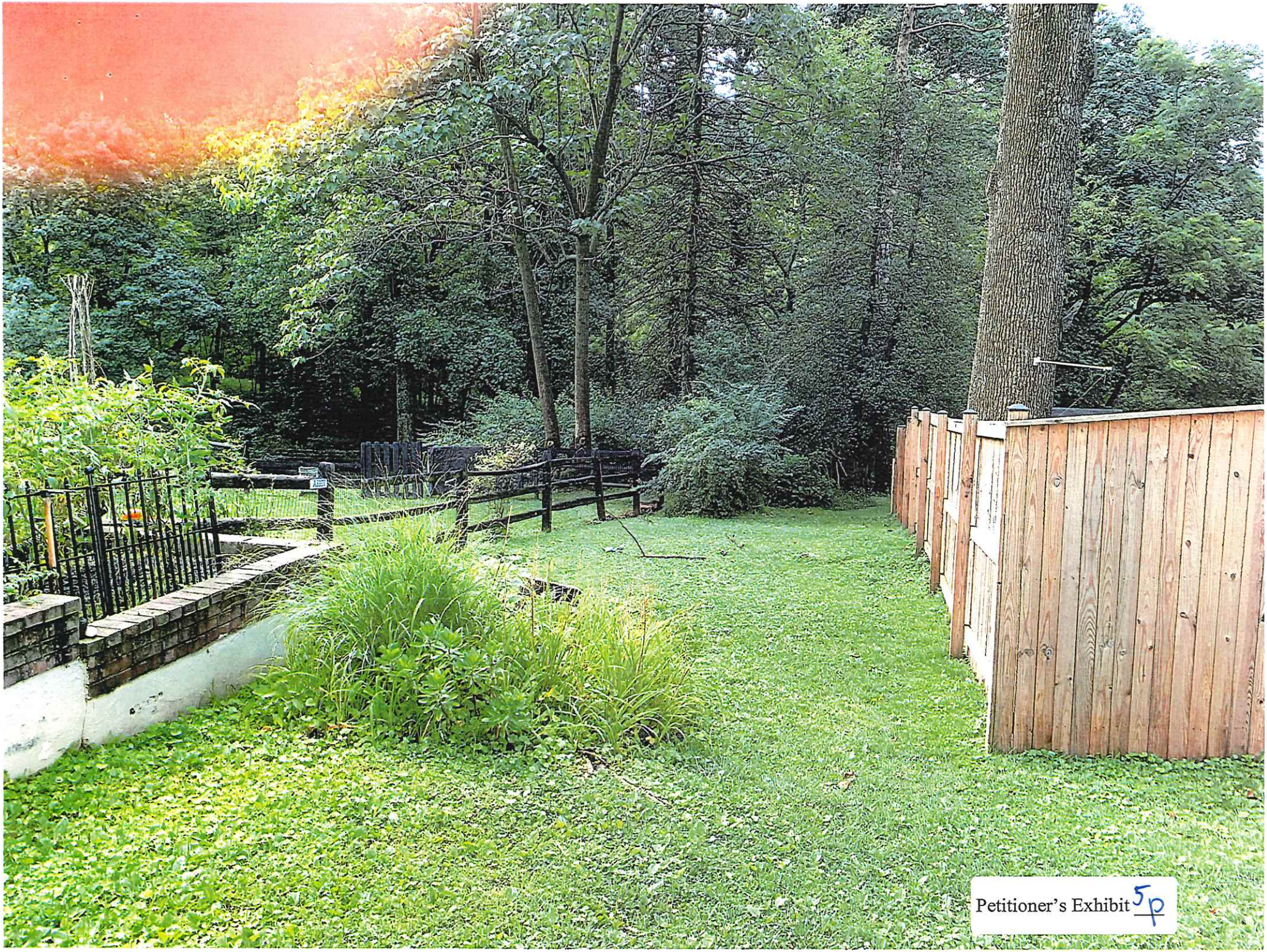

COLD BEER
Petitioner's Exhibit 5L


Petitioner's Exhibit 5M


Petitioner's Exhibit 5n



Petitioner's Exhibit 50


Petitioner's Exhibit 5p


Petitioner's Exhibit 5g


Petitioner's Exhibit 5r


Petitioner's Exhibit 5s


Petitioner's Exhibit 5+



Petitioner's Exhibit 5u

Civil Citation No. CC1814071
(4607 Prospect Avenue)

Ret No 6

Donna Bair
4607 Prospect Avenue
Baltimore, Maryland 21071

FINAL ORDER

The matter came before the Administrative Law Judge on February 6, 2019, for a hearing on a Code Inspections and Enforcement Citation ("Citation"), for specified violations of the Baltimore County Code ("B.C.C.") or Zoning Regulations ("B.C.Z.R."). The Citation names the owners of record, as published in the Maryland State Tax Assessment Database, as Respondents. The Citation was served upon Respondent(s) in a manner consistent with Section 3-6-205(c)(2) of the Baltimore County Code. The Citation, which is included in the case file and is incorporated herein by reference, proposes a civil penalty in the amount of $1,000.00.

The following persons appeared for the Hearing: Donna Bair, Respondent, and Assistant County Attorney, Marissa L. Merrick, on behalf of Baltimore County.

Based on the testimony, photographs, documents and other exhibits I find for the reasons stated at the conclusion of the hearing Baltimore County has proven by a preponderance of the evidence that Respondent(s) is in violation of the ordinances or regulations set forth in the civil Citation.

THEREFORE, IT IS ORDERED this 11th day of February, 2018, by the Administrative Law Judge for Baltimore County that a civil penalty of $1,000.00 be imposed and suspended.

IT IS FURTHER ORDERED, that Respondent shall file for the appropriate zoning relief, or, shall otherwise correct and abate violations pursuant to this ORDER, by April 12, 2019.

IT IS FURTHER ORDERED, that if the subject property is not brought into compliance pursuant to this Order by April 12, 2019, the suspended $1,000.00 civil penalty may be imposed without need for further hearing or order; and, that Baltimore County shall be authorized to send an employee or authorized contractor to enter the property to correct the violation(s), the costs and expenses of which shall be assessed against Respondents.

LAWRENCE M. STAHL
Administrative Law Judge
for Baltimore County

NOTICE: Pursuant to §3-6-301(a) of the Baltimore County Code, the Respondent or Baltimore County may appeal this order to the Baltimore County Board of Appeals within fifteen (15) days from the date of this order. Any such appeal requires the filing of a petition setting forth the grounds for appeal, payment of a filing fee of $225.00 and the posting of security in the amount of the penalty assessed.

Send payments to:

Baltimore County Office of Budget and Finance

400 Washington Ave, Rm 150

Towson, MD 21204

LMS/hk

Ref No7

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF PLANNING

Memorandum

TO: Donna V. Bair **DATE:** March 19, 2019

FROM: Teri Rising, Administrator/Secretary
Landmarks Preservation Commission

SUBJECT: 4607 Prospect Avenue, Glyndon

At its March 14, 2019 meeting, the Baltimore County Landmarks Preservation Commission (LPC) voted to issue an Ex Post Facto Certificate of Appropriateness for the following items as proposed:

- 6 foot high wood privacy fence (Code Enforcement Case # CC1814071)
- 12 foot x 28 foot single car garage addition (Code Enforcement Correction Notice # CB1800693)
- 13 foot by 13 foot addition (Code Enforcement Correction Notice # CB1800693)

This action is in accordance with Baltimore County Code Section 32-7-403 and 32-7-405 citing Baltimore County Historic Design Guidelines: Fences & Landscape, p. 4; Additions & Infill, pp. 5-7.

Please note, the work will require a Baltimore County building permit. Applications for building permits are obtained from the Department of Permits, Approvals and Inspections located at 111 Chesapeake Avenue in Towson. Information regarding building permits is available on the County's website. https://www.baltimorecountymd.gov/Agencies/permits/index.html Questions regarding that process should be directed to the Permits, Approvals & Inspections Office.

[Bill Nos. 111-1986; 137-2004; 65-2005 [1]]

Footnotes:

--- (1) ---

1. Editor's Note— See also Section 3111.0 of the Building Code of Baltimore County.

§ 427.1. - Conditions for use; exceptions.

A. Notwithstanding any other provisions of this Code or the Baltimore County Code, in a D.R. or R.C. 5 Zone located in a historic district, the maximum height of a residential occupancy fence is 42 inches if the fence is erected in the side yard of a lot that adjoins a public road.

B.

1. A residential occupancy fence may not be erected in the rear or side yard of a lot which adjoins the front yard of another on which a residence has been built, except in accordance with the provisions of this section.
2. The fence may not exceed 42 inches in height if situated within ten feet of the adjoining front yard property line.
3. Any person may request a variance from the requirements of this subsection.

C. Applicability.

1. Subsection B of this section does not apply to a fence required by § 13-6-101 of the Baltimore County Code, as revised, to be constructed in order to screen a swimming pool.
2. Subsection B of this section does not apply if the residences on the adjoining lots are more than 200 feet apart.

SUBTITLE 1. - IN GENERAL

§13

§ 13-6-101. - SWIMMING POOL ENCLOSURE.

(a) *Required.* A person who owns land on which there is a swimming pool that contains 24 inches (610 mm) or more of water in depth at any point shall erect and maintain on the land an adequate enclosure surrounding either the property or pool area sufficient to make the body of water inaccessible to small children.

(b) *Height.* A swimming pool enclosure, including gates, may not be less than 4 feet above the underlying ground.

(c) *Gates.* All gates shall be self-latching with latches placed 4 feet above the underlying ground and otherwise made inaccessible from the outside to small children.

(d) *Alternative enclosures.*

(1) For purposes of this section, the owner may use a natural barrier, hedge, or other protective device approved by the Department of Permits, Approvals and Inspections if the degree of protection afforded by the substituted devices or structures is not less than the protection afforded by the enclosure, gate, and latch described in subsections (a) through (c) of this section.

(2) A swimming pool cover is not another protective device that may be approved by the Department of Permits, Approvals and Inspections.

(e) *Enforcement.* The Code Official may enforce the provisions of this section in accordance with Article 3, Title 6 of the Code.

(f) *Exceptions.* This section does not apply to a public swimming pool or bathing beach as defined in Subtitle 2 of this title.

(1988 Code, § 20-5) (Bill No. 94-95, § 1, 8-19-1995; Bill No. 105-00, § 2, 7-1-2004; Bill No. 82-06, § 4, 8-24-2006; Bill No. 122-10, §§ 6, 30, 1-16-2011)

SUBTITLE 2. - PUBLIC SWIMMING POOLS AND BATHING BEACHES

§ 13-6-201. - DEFINITIONS.

(a) *In general.* In this subtitle the following words have the meanings indicated.

(b) "Approving authority" means the Health Officer or the Health Officer's designee.

(c) *Private swimming pool.* "Private swimming pool" means a swimming pool located on a private residential property, under the control of a single resident, the use of which is limited to members of the resident's family and invited guests.

(d) *Public bathing beach.*

(1) "Public bathing beach" means a natural bathing beach together with any buildings, appurtenances, or other improvements, at a pond, lake, quarry, stream, or bay, intended to be used collectively by numbers of individuals for swimming or recreational bathing, regardless of whether a fee is charged for use.

(2) "Public bathing beach" includes a bathing beach at a private club.

(e) *Public swimming pool.*

(1) (i) "Public swimming pool" means a swimming pool intended to be used collectively by numbers of individuals for swimming or bathing, operated by any person including an owner, lessee, operator, licensee, or concessionaire, regardless of whether a fee is charged for use.

(ii) "Public swimming pool" includes a swimming pool at a private club.

(2) "Public swimming pool" does not include a private swimming pool.

(f) *Swimming pool.*

(1) "Swimming pool" means an artificial structure, basin, chamber, or tank containing a body of water for the primary purpose of swimming, diving, or recreational bathing.

(2) "Swimming pool" includes a wading pool.

(g) *Wading pool.* "Wading pool" means a swimming pool not normally in excess of 2 feet deep at its maximum depth and usually reserved for use by small children.

(1988 Code, § 17-96) (Bill No. 173, 1989, § 2, 1-26-1990; Bill No. 105-00, § 2, 7-1-2004; Bill No. 73-03, § 10, 7-1-2004; Bill No. 122-10, § 6, 1-16-2011; Bill No. 80-15, § 1, 11-29-2015)

§ 13-6-202. - CONSTRUCTION, ALTERATION, OR RENOVATION OF A SWIMMING POOL.

(a) *In general.*

(1) A person may not begin construction of or substantial alteration or reconstruction of any public swimming pool or public bathing beach without first submitting plans and specifications to the Department of Health for review and approval.

(2) The plans shall be prepared and copies submitted to the Department of Health for review and approval within a reasonable time.

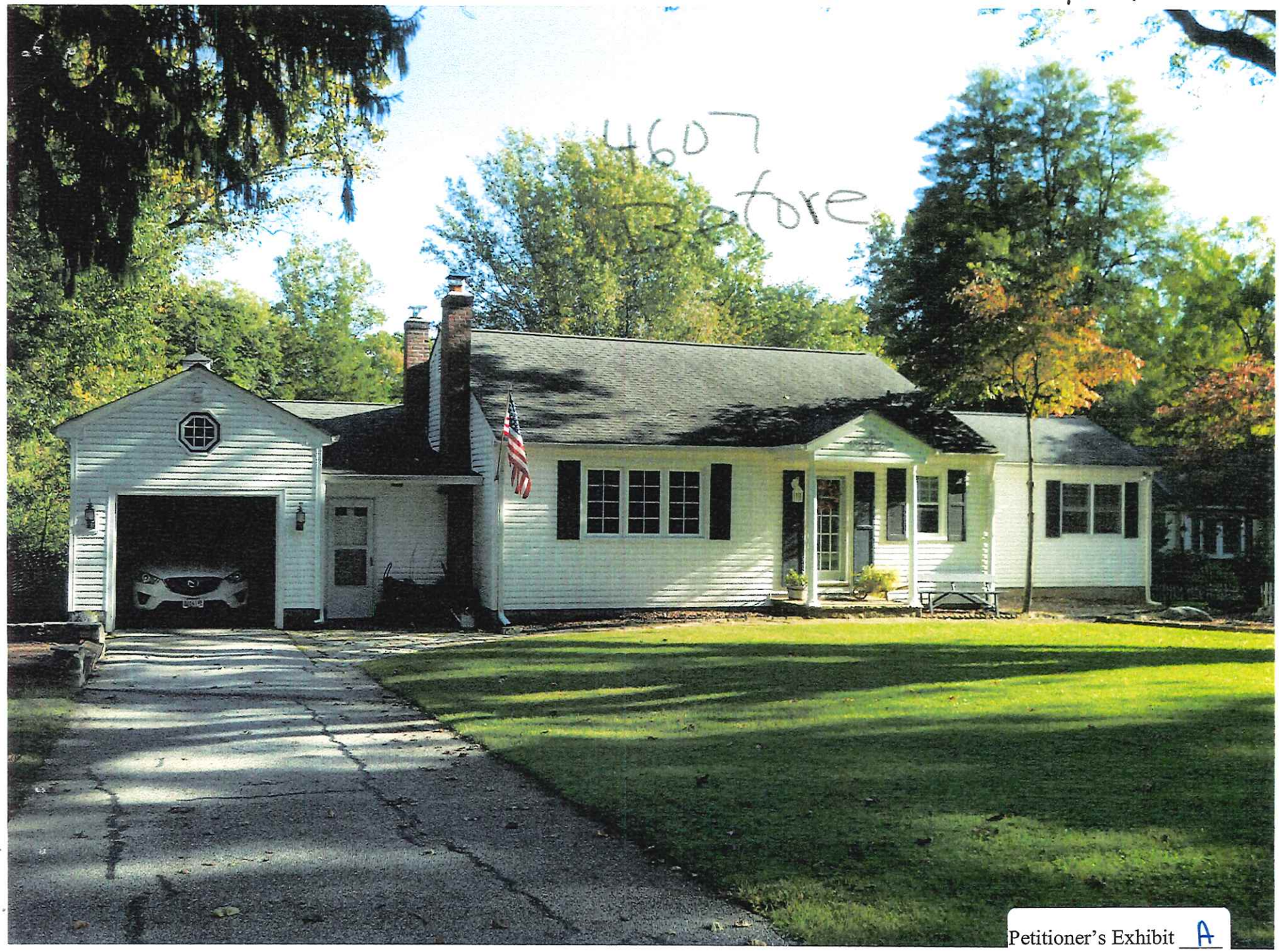
(b) *Standards for review and approval.*

(1) The Department of Health shall review plans in accordance with the standards set forth in regulations adopted by the Health Officer.

(2) The regulations are adopted and incorporated by reference in this subsection as if fully set forth.

(c) *Permit application.* If a building permit is required, the applicant for a permit shall submit an application on forms required by the Department of Permits, Approvals and

Pet 9



Petitioner's Exhibit A

Petitioner's Exhibit B

Petitioner's Exhibit C

Petitioner's Exhibit D



Petitioner's Exhibit E



Petitioner's Exhibit F





* 6' trellises to be installed and + foliage to make fence little wall

Install 3 trellises (photo above left) along property line by driveway (location on plot plan, and shown in photo) to shield from neighbor's new obtrusive security camera (circled top right). Photo shows my neighbor's house, fence, and security camera circled in red. The planned trellises between the telephone pole shown and the fence, along the property line, the same height as the fence shown, so the "future" picture would basically show trellises and Ivy/Clematis blocking this view of the camera, fence, and stone walk, providing mutual privacy. When we moved into our house 30 years ago, and until the fence was installed in this location, there was a trellis with a beautiful and established Clematis; we want to restore it.

10 – Deck Features (Main/NE Side, see also plot pl...

"Privacy along parking area"

Petitioner's Exhibit 6

Petition 10 A

PETITION FOR ZONING VARIANCE 84-332-A

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a

Variance from Section 1801.B.6.b To permit a sideyard setback of 25 feet

instead of the required 35 feet.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (Indicate hardship or practical difficulty)

1. As a matter of right
2. County Council to rezone in November, 1984, and we are petitioning the council as well
3. Property in question is already hooked up to county sewer and water
4. Part of property is zoned DR2 and other part of property is zoned RC7
5. Design and layout of the house precludes constructing the proposed addition in any other way.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

I/We do 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 Petition.

Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State

Attorney for Petitioner:

(Type or Print Name)

Signature

Address

City and State

Attorney's Telephone No.:

Legal Owner(s):

William R. DeSandro
(Type or Print Name)

William R. DeSandro
Signature

Joan M. DeSandro
(Type or Print Name)

Joan M. DeSandro
Signature

4005 Prospect Avenue 526-2704
Address Phone No.

Glyndon, Maryland 21071
City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

William R. DeSandro
Name

4005 Prospect Ave. 517-1935
Address Business Phone No.

ORDERED By the Zoning Commissioner of Baltimore County, this 17th day of April, 1984, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be held before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 9th day of May, 1984, at 2:45 o'clock P.M.

Zoning Commissioner of Baltimore County.

(over)

DATE 4/26/84 BY Judy Cappos (Cont)

Variance from Section 1801.B.6.b To permit a sideyard setback of 25 feet instead of the required 35 feet.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I/We do 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 Petition.

Legal Owner(s):

William R. DeSandro
(Type or Print Name)

William R. DeSandro
Signature

Joan M. DeSandro
(Type or Print Name)

Joan M. DeSandro
Signature

4005 Prospect Avenue 526-2704
Address Phone No.

Glyndon, Maryland 21071
City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

William R. DeSandro
Name

4005 Prospect Ave. 517-1935
Address Business Phone No.

ORDERED By the Zoning Commissioner of Baltimore County, this 17th day of April, 1984, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be held before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 9th day of May, 1984, at 2:45 o'clock P.M.

Zoning Commissioner of Baltimore County.

(over)

BALTIMORE COUNTY

ZONING PLANS

ADVISORY COMMITTEE

PETITION AND SITE PLAN

EVALUATION COMMENTS

84-332-A

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Petitioner William R. DeSandro et ux
Petitioner's Attorney

Reviewed by [illegible]
Chairman, Zoning Plans Advisory Committee

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

May 21, 1984

Mr. & Mrs. William R. DeSandro
4005 Prospect Avenue
Glyndon, Maryland 21071

RE: Item No. 266 - Case No. 84-332-A
William R. DeSandro, et ux
Variance Petition

Dear Mr. & Mrs. DeSandro:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. The Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

In view of your proposal to construct an addition to the side of the existing dwelling within 25 feet of the side property line, this hearing is required. As stated in our previous conversation, the site plan indicates a setback of 27 feet from the side property line. However, it was your decision to have the petition advertised as requesting a 25 foot side setback to allow some flexibility in construction.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours,

NICHOLAS B. COMMODARI, Chairman
Zoning Plans Advisory Committee

NBC:bsc
Enclosures

BALTIMORE COUNTY
DEPARTMENT OF PUBLIC WORKS
TOWSON, MARYLAND 21204

May 17, 1984

Mr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Re: Item #266 (1983-1984)
Property Owner: William R. DeSandro, et ux
E/S/E Prospect Avenue 415' S/E from centerline Waugh Avenue
Acres: Lot #11 "Bennett to Register" 2.10
District: 4th

Dear Mr. Jablon:

The following comments are furnished in regard to the plat submitted to this office for review by the Zoning Advisory Committee in connection with the subject item.

General:

Baltimore County highway and utility improvements are not directly involved.

Prospect Avenue, an existing public road, is proposed to be further improved in the future as a 30-foot closed section roadway on a 50-foot right-of-way with a standard type roadway termination at the end thereof.

Development of this property through stripping, grading and stabilization could result in a sediment pollution problem, damaging private and public coldings downstream of the property. A grading permit is, therefore, necessary for all grading, including the stripping of top soil.

The Petitioner must provide necessary drainage facilities (temporary or permanent) to prevent creating any nuisances or damages to adjacent properties, especially by the concentration of surface waters. Correction of any problem which may result, due to improper grading or improper installation of drainage facilities, would be the full responsibility of the Petitioner.

This office has no further comment in regard to the plan submitted for Zoning Advisory Committee review in connection with this Item 266 (1983-1984).

Very truly yours,

ROBERT A. MORTON, P.E., Chief
Bureau of Public Services

RAM:EAM:FWR:ss

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
TOWSON, MARYLAND 21204
494-3211

NORMAN E. GERBER
DIRECTOR

Mr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

4-26-84

Re: Zoning Advisory Meeting of 4-17-84
Item # 266
Property Owner: William R. DeSandro, et ux
Location: E/S/E Prospect Ave., SE of Waugh Ave.

Dear Mr. Jablon:

The Division of Current Planning and Development has reviewed the subject petition and offers the following comments. The items checked below are applicable.

(X) There are no site planning factors requiring comment.
( ) A County Review Group Meeting is required.
( ) A County Review Group meeting was held and the minutes will be forwarded by the Bureau of Public Services.
( ) This site is part of a larger tract; therefore it is defined as a subdivision. The plan must show the entire tract.
( ) A record plat will be required and must be recorded prior to issuance of a building permit.
( ) The access is not satisfactory.
( ) The circulation on this site is not satisfactory.
( ) The parking arrangement is not satisfactory.
( ) Parking calculations must be shown on the plan.
( ) This property contains soils which are defined as wetlands, and development on these soils is prohibited.
( ) Construction in or alteration of the floodplain is prohibited under the provisions of Section 22-98 of the Development Regulations.
( ) Development of this site may constitute a potential conflict with the Baltimore County Master Plan.
( ) The amended Development Plan was approved by the Planning Board on _____.
( ) Landscaping shall be provided in accordance with the requirements of Section 419 of the Zoning Regulations and shall be shown on the plan.
( ) This property is located in a traffic area controlled by a "D" level intersection as defined by Bill 178-79, and as conditions change traffic capacity may become more limited. The Basic Services Areas are re-evaluated annually by the County Council.
( ) Additional comments:

Eugene A. Bober
Chief, Current Planning and Development

cc: James Dyer

5/29 84-332-A

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. Arnold Jablon, Zoning Commissioner, Office of Planning and Zoning Date: May 16, 1984

FROM: Ian J. Forrest

SUBJECT: Zoning Variance Item
Meeting - April 17, 1984

The Baltimore County Department of Health has reviewed the following zoning items and does not anticipate any health hazards at this time regarding these items.

Item #260 - Dennis Fisher, et ux
Item #262 - Arthur S. Singley, III, et ux
Item #266 - William R. DeSandro, et ux
Item #267 - Joseph D. Delgorr, et al
Item #268 - Robert B. Lohan, et ux
Item #269 - Lottie G. Ports

Ian J. Forrest, Director
BUREAU OF ENVIRONMENTAL SERVICES

IJF/fth

BALTIMORE COUNTY
FIRE DEPARTMENT
TOWSON, MARYLAND 21204-2586
494-4500

PAUL H. REINCKE
CHIEF

May 3, 1984

Mr. William Hammond
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, Maryland 21204

Attention: Nick Commodari, Chairman
Zoning Plans Advisory Committee

RE: Property Owner: William R. DeSandro, et ux

Location: SE/S Prospect Avenue 415' S/E from c/l Waugh Avenue

Item No.: 266 Zoning Agenda: Meeting of 4/17/84

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

( ) 1. Fire hydrants for the referenced property are required and shall be located at intervals of _____ feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.

( ) 2. A second means of vehicle access is required for the site.

( ) 3. The vehicle dead end condition shown at _____ EXCEEDS the maximum allowed by the Fire Department.

( ) 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

(X) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1976 Edition prior to occupancy.

( ) 6. Site plans are approved, as drawn.

( ) 7. The Fire Prevention Bureau has no comments, at this time.

Reviewed and Approved: George M. Kragnott
Fire Prevention Bureau

Planning Group
Special Inspection Division

Jab

BALTIMORE COUNTY
DEPARTMENT OF PERMITS & LICENSES
TOWSON, MARYLAND 21204
494-3610

TED ZALESKI, JR.
DIRECTOR

April 27, 1984

Mr. Arnold Jablon, Zoning Commissioner
Office of Planning and Zoning
County Office Building
Towson, Maryland 21204

Dear Mr. Jablon:

Comments on Item # 266 Zoning Advisory Committee Meeting are as follows:

Property Owner: William R. DeSandro, et ux
Location: SE/S Prospect Avenue 415' S/E from c/l Waugh Avenue
Existing Zoning: D.R. 2 & D.R. 5
Proposed Zoning: Variance to permit a side yard setback of 25' in lieu of the required 35'.

Acres: Lot #11 "Bennett to Register" 2.10
District: 4th

The items checked below are applicable:

( ) A. All structures shall conform to the Baltimore County Building Code 1981/Council Bill [illegible] and other applicable codes.

( ) B. A building/s shall be required before beginning construction.

( ) C. Residential: Three sets of construction drawings are required to file a permit application. Architect/Engineer seal is/is not required. Non-registered seals and signatures are required on Plans and Technical Data.

( ) D. Commercial: Three sets of construction drawings with a Maryland Registered Architect or Engineer shall be required to file a permit application.

( ) E. An exterior wall erected within 6'0 (or Commercial uses or 3'0 for One & Two Family use groups) of an adjacent lot line shall be of no less fire resistive construction. no openings permitted within 3'0 of lot lines. A firewall is required if construction is on the lot line, see Table 401, Line 7, Section 1407 and 1604, of the Building Code.

( ) F. Requested variance appears to conflict with the Baltimore County Building Code, Section/s _____.

( ) G. A change of occupancy shall be applied for, along with an alteration permit application, and three complete sets of drawings indicating how the structure will meet the Code requirements for the proposed change. Drawings may require a preliminary meet.

( ) H. Before this office can comment on the above structure, please have the owner, thru the services of a Registered in Maryland Architect or Engineer certify to this office, that the structure for which a proposed change in use is proposed will comply with the height/area requirements of Table 505 and the required construction classification of Table 501.

( ) I. Comments

NOTE: These comments reflect only on the information provided by the drawings submitted to the office of Planning and Zoning and are not intended to be construed as the full extent of any permits. If desired, additional information may be obtained by visiting Room 122 (Plans Review) at 111 W. Chesapeake Ave., Towson.

Very truly yours,

Charles E. Burnham, Chief
Plans Review

CEBrae

PETITION FOR ZONING VARIANCE 84-332-A

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 1801.1.B.1.c To permit a sideyard setback of 25 feet in lieu of the required 35 feet.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County, for the following reasons: (Indicate hardship or practical difficulty)

1. An Addition of right
2. County Council to vacate in November, 1984, and we are petitioning the Council as well.
3. Property in question is already hooked up to county sewer and water
4. Part of property is zoned DR2 and other part of property is zoned RC2
5. Design and layout of the house precludes constructing the proposed addition in any other way.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

I/We do 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 Petition.

Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State

Attorney for Petitioner:

(Type or Print Name)

Signature

Address

City and State

Legal Owner(s):

William R. DeSandro
(Type or Print Name)
William R. DeSandro
Signature

Joan M. DeSandro
(Type or Print Name)
Joan M. DeSandro
Signature

4605 Prospect Avenue 426-5792
Address Phone No.

Glyndon, Maryland 21071
City and State

Name, address and phone number of legal owner, con-tract purchaser or representative to be contacted

William R. DeSandro
Name

4605 Prospect Ave. 237-1936
Address Business Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 17th day of April 1984 that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation through-out Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 29th day of May 1984, at 9:45 o'clock A.M.

Zoning Commissioner of Baltimore County.

(over)

DATE: June 11, 1984
BY: Wiley Gryphon (Code)

84-332-A

BALTIMORE COUNTY, MARYLAND
OFFICE OF PLANNING AND ZONING
TOWSON, MARYLAND 21204
494-3211

NORMAN E. GERBER
DIRECTOR

Mr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

4-26-84

Re: Zoning Advisory Meeting of 4-17-84
Item # 266
Property Owner: William R. DeSandro, et ux
Location: SE/S Prospect Ave., NE of Waugh Ave.

Dear Mr. Jablon:

The Division of Current Planning and Development has reviewed the subject petition and offers the following comments. The items checked below are applicable.

( ) There are no site planning factors requiring comment.
( ) A County Review Group Meeting was held and the minutes will be forwarded by the Bureau of Public Services.
( ) This site is part of a larger tract; therefore it is defined as a subdivision. The plat must show the entire tract.
( ) A record plat will be required and must be recorded prior to issuance of a building permit.
( ) The access is not satisfactory.
( ) The circulation on this site is not satisfactory.
( ) The parking arrangement is not satisfactory.
Parking calculations must be shown on the plan.
( ) This property contains soils which are defined as wetlands, and development on these soils is prohibited.
( ) Construction in or alteration of the floodplain is prohibited under the provisions of Section 22-95 of the Development Regulations.
( ) Development of this site may constitute a potential conflict with the Baltimore County Master Plan.
( ) The amended Development Plan was approved by the Planning Board on
( ) Landscaping should be provided on this site and shown on the plan.
( ) This property is located in a deficient service area as defined by Bill 178-79. No building permit may be issued until adequate service capacity is certified. The deficient service is
( ) This property is located in a traffic area controlled by a "no level" intersection as defined by Bill 178-79, and no construction or traffic capacity may become available until the basic services are re-evaluated annually by the County Council.
( ) Additional comments:

Eugene A. Bober
Chief, Current Planning and Development

Zoning Item # 266, Zoning Advisory Committee Meeting of April 17, 1984
Property Owner: William R. DeSandro, et ux
Location: SE/S Prospect Ave., NE of Waugh Ave.
Page 2

( ) 7. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1976 Edition prior to occupancy.

( ) 8. Site plans are approved, as drawn.

( ) 9. The Fire Prevention Bureau has no comments, at this time.

Noted and Approved:
Fire Prevention Bureau

Special Inspection Division

/mb

IN RE: PETITION FOR VARIANCE
SE/S Prospect Ave., 415' NE of Waugh Ave. (4605 Prospect Ave.)
4th District

WILLIAM R. DeSANDRO, et ux,
Petitioners

BEFORE THE ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 84-332-A

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notices should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

Phyllis Cole Friedman
People's Counsel

Peter Max Zimmerman
Deputy People's Counsel
Rm. 223, Court House
Towson, MD 21204
494-2188

I HEREBY CERTIFY that on this 9th day of May, 1984, a copy of the foregoing Entry of Appearance was mailed to Mr. and Mrs. William R. DeSandro, 4605 Prospect Ave., Glyndon, MD 21071, Petitioners.

Peter Max Zimmerman

MICROFILMED

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

May 21, 1984

County Office Bldg.
111 W. Chesapeake Ave.
Towson, Maryland 21204

Mr. & Mrs. William R. DeSandro
4605 Prospect Avenue
Glyndon, Maryland 21071

RE: Item No. 266 - Case No. 84-332-A
William R. DeSandro, et ux
Variance Petition

Dear Mr. & Mrs. DeSandro:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. The Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

In view of your proposal to construct an addition to the side of the existing dwelling within 25 feet of the side property line, this hearing is required. As stated in our previous conversation, the site plan indicates a setback of 27 feet from the side property line. However, it was your decision to have the petition advertised as requesting a 25 foot side setback to allow some flexibility in construction.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours,

Nicholas B. Commodari
NICHOLAS B. COMMODARI, Chairman
Zoning Plans Advisory Committee

NBC:bsc
Enclosures

BALTIMORE COUNTY
DEPARTMENT OF PUBLIC WORKS
TOWSON, MARYLAND 21204

HARRY J. PISTEL, P.E.
DIRECTOR

W-SW Key Sheet
66 & 67 NW 37 & 38
Pos. Sheets
NW 17 J Topo
48 Tax Map

May 17, 1984

Mr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Re: Item #266 (1983-1984)
Property Owner: William R. DeSandro, et ux
S/ES Prospect Avenue 415' N/E from centerline Waugh Avenue
Acres: Lot #12 "Bennett to Register" 2-18
District: 4th

Dear Mr. Jablon:

The following comments are furnished in regard to the plat submitted to this office for review by the Zoning Advisory Committee in connection with the subject item.

General:

Baltimore County Highway and utility improvements are not directly involved.

Prospect Avenue, an existing public road, is proposed to be further improved in the future as a 30-foot closed section roadway on a 50-foot right-of-way with a standard type cowdrey termination at the end thereof.

Development of this property through stripping, grading and stabilization could result in a sediment pollution problem, damaging private and public holdings downstream of the property. A grading permit is, therefore, necessary for all grading, including the stripping of top soil.

The Petitioner must provide necessary drainage facilities (temporary or permanent) to prevent creating any nuisances or damages to adjacent properties, especially by the concentration of surface waters. Correction of any problem which may result, due to improper grading or improper installation of drainage facilities, would be the full responsibility of the Petitioner.

This office has no further comment in regard to the plan submitted for Zoning Advisory Committee review in connection with this Item 266 (1983-1984).

Very truly yours,

Robert A. Morton, P.E., Chief
Bureau of Public Services

RAM:EAM:FWR:ss

BALTIMORE COUNTY
FIRE DEPARTMENT
TOWSON, MARYLAND 21204-2586
494-4500

PAUL H. REINCKE
CHIEF

May 3, 1984

Mr. William Hammond
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, Maryland 21204

Attention: Nick Commodari, Chairman
Zoning Plans Advisory Committee

RE: Property Owner: William R. DeSandro, et ux

Location: SE/S Prospect Avenue 415' N/E from c/l Waugh Avenue

Item No.: 266 Zoning Agenda: Meeting of 4/17/84

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

( ) 1. Fire hydrants for the referenced property are required and shall be located at intervals of feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.

( ) 2. A second means of vehicle access is required for the site.

( ) 3. The vehicle dead end condition shown at

EXCEEDS the maximum allowed by the Fire Department.

( ) 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

(X) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1976 Edition prior to occupancy.

( ) 6. Site plans are approved, as drawn.

( ) 7. The Fire Prevention Bureau has no comments, at this time.

REVIEWER: Lt. Gary Kelly Noted and Approved: George M. Kegerreis
Planning Group Fire Prevention Bureau
Special Inspection Division

/mb

BALTIMORE COUNTY
DEPARTMENT OF HEALTH
TOWSON, MARYLAND 21204
494-3600

ED KALBACH, JR.
DIRECTOR

April 23, 1984

Mr. Arnold Jablon, Zoning Commissioner
Office of Planning and Zoning
County Office Building
Towson, Maryland 21204

Dear Mr. Jablon:

Comments on Item # 266 Zoning Advisory Committee Meeting are as follows:

Property Owner: William R. DeSandro, et ux
Location: SE/S Prospect Avenue 415' S/E from c/l Waugh Avenue
Existing Zoning: D.R. 5.5 & D.R. 2
Proposed Zoning: Variance to permit a side yard setback of 25' in lieu of the required 35'.

Acres: Lot #12 "Bennett to Register" 2-18
District: 4th

The items checked below are applicable:

( ) All structures shall conform to the Baltimore County Building Code 1981, Council Bill 1-82 as amended and other applicable Codes.

( ) A building, & other permit shall be required before beginning construction.

( ) Residential: Three sets of construction drawings are required to file a permit application. Architect/Engineer seal is/is not required. Wells are/are not required. Site plan with gradings is/is not required.

( ) Commercial: Three sets of construction drawings with a Maryland Registered Architect or Engineer shall be required to file a permit application.

( ) An accessible unit complying with the Code is/is not required to be provided in the facility. Each unit is/is not to be identified by the use of the International Symbol of Accessibility.

( ) Food service facilities must comply with all applicable requirements of the Baltimore County Health Department.

( ) Prior approval must be obtained from the Department of Health for the use and/or construction of any well or septic system.

( ) Soil percolation tests have been/must be conducted. The results are/are not adequate for a septic system.

( ) A permit to construct from the Department of Health is required for the construction of the proposed swimming pool. Two sets of complete plans and specifications must be submitted.

( ) Prior approval must be obtained from the Department of Health for the removal of any underground storage tanks for petroleum products or any other hazardous substances.

( ) Others

Very truly yours,

Charles E. Burnham, Chief
Plans Review

CEB:ss

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Mr. Arnold Jablon, Zoning Commissioner
Office of Planning and Zoning
Date: May 14, 1984

FROM: Ian J. Forrest

SUBJECT: Zoning Variance Items
Meeting - April 17, 1984

The Baltimore County Department of Health has reviewed the following zoning items and does not anticipate any health hazards at this time regarding these items.

Item #260 - Dennis Fisher, et ux
Item #262 - Arthur D. Singley, III, et ux
Item #266 - William R. DeSandro, et ux
Item #267 - Joseph D. Delgert, et al
Item #268 - Robert H. Lonas, et ux
Item #26[illegible] - Lutie C. Forte

Ian J. Forrest, Director
BUREAU OF ENVIRONMENTAL SERVICES

IJF/fth

Pursuant to the advertisement, posting of property, and public hearing on the Petition and it appearing that strict compliance with the Baltimore County Zoning Regulations would ~~unreasonable~~ not result in practical difficulty and unreasonable hardship upon the Petitioner(s) and the granting of the variance(s) requested will/will not adversely affect the health, safety, and general welfare of the community, the variance(s) should /~~should~~ not be granted.

Therefore, IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County, this 14th day of June, 1984, that the herein Petition for Variance(s) to permit a side yard setback of 27 feet in lieu of the required 35 feet for the proposed addition, in accordance with the site plan filed herein, is GRANTED, from and after the date of this Order, subject, however, to the approval of a site plan by the Office of Planning and Zoning.

Jean M H Jones
Deputy Zoning Commissioner of Baltimore County

ORDER RECEIVED FOR FILING
Date June 14 1984 (Clerk)
BY Mary Campbell
Jean M H Jones

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Elizabeth K Dinger
4603 Prospect Ave
Glyndon, Md 21071

PETITIONER'S EXHIBIT 1

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Barry W Thomas
4606 Prospect Ave.
Glyndon, Md.
21071

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

[illegible]

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Marie Maurer
(Mrs Karl F.)
4615 Prospect Av
Glyndon, Md
21071

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Carlyle N Montanye Jr.
4500 Prospect Ave.
Glyndon, MD 21071

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Thos L. Willis
4610 Prospect ave
Glyndon, Md 21071

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Alma S Whiteside
4601 Prospect Ave
Glyndon, Md. 21071

Pursuant to the advertisement, posting of property, and public hearing on the Petition and it appearing that strict compliance with the Baltimore County Zoning Regulations would/would not result in practical difficulty and unreasonable hardship upon the Petitioner(s) and the granting of the variance(s) requested will/will not adversely affect the health, safety, and general welfare of the community, the variance(s) should/should not be granted.

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 14th day of June, 19 84, that the herein Petition for Variance(s) to permit: a side yard setback of 27 feet in lieu of the required 35 feet for the proposed addition, in accordance with the site plan filed herein, is GRANTED, from and after the date of this Order, subject, however, to the approval of a site plan by the Office of Planning and Zoning.

Deputy Zoning Commissioner of Baltimore County

ORDER RECEIVED FOR FILING
Date: June 14, 1984
By: Zoning Commissioner (Hearing Officer)

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

ARNOLD JABLON
ZONING COMMISSIONER

June 14, 1984

Mr. and Mrs. William R. DeSandro
4605 Prospect Avenue
Glyndon, Maryland 21071

RE: Petition for Variance
SE/S Prospect Avenue, 415' NE Waugh Avenue (4605 Prospect Avenue) - 4th Election District
William R. DeSandro, et ux - Petitioner
No. 84-332-A (Item No. 266)

Dear Mr. and Mrs. DeSandro:

I have this date passed my Order in the above referenced matter in accordance with the attached.

Very truly yours,

JEAN M. H. JUNG
Deputy Zoning Commissioner

JMHJ:mc

Attachments

cc: People's Counsel

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

ARNOLD JABLON
ZONING COMMISSIONER

May 22, 1984

Mr. & Mrs. William R. DeSandro
4605 Prospect Avenue
Glyndon, Maryland 21071

Re: Petition for Variance
SE/S Prospect Ave., 415' NE of Waugh Avenue (4605 Prospect Avenue)
Case No. 84-332-A

Dear Mr. & Mrs. DeSandro:

This is to advise you that $51.38 is due for advertising and posting of the above property.

This fee must be paid and our zoning sign and post returned on the day of the hearing before an Order is issued. Do not remove sign until day of hearing.

Please make the check payable to Baltimore County, Maryland, and remit to Mrs. Arlene January, Zoning Office, Room 113, County Office Building, Towson, Maryland 21204, before the hearing.

Sincerely,

ARNOLD JABLON
Zoning Commissioner

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 130510
DATE 5/29/84 ACCOUNT R-01-615-000
AMOUNT $51.38
RECEIVED Jean M. DeSandro
FOR advertising and posting Case #84-332-A
B 0524*****5138Fb 6298A
VALIDATION OR SIGNATURE OF CASHIER

MICROFILMED

May 31, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Douglas A DeGroote
4609 Prospect Ave

MICROFILMED

May 31, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Mr. + Mrs. Laurence E. Evans
(Lenore V. Evans)
4612 Prospect Ave.
Glyndon Md 21071

MICROFILMED

May 1, 1984

Mr. & Mrs. William R. DeSandro
4605 Prospect Avenue
Glyndon, Maryland 21071

NOTICE OF HEARING

Re: Petition for Variance
SE/S Prospect Ave., 415' NE of Waugh Avenue (4605 Prospect Avenue)
Case No. 84-332-A

TIME: 9:45 A.M.

DATE: Tuesday, May 29, 1984

PLACE: Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland

Zoning Commissioner
Baltimore County

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 128246
DATE 4/15/84 ACCOUNT R-01-615-000
AMOUNT $35.00
RECEIVED Mr. & Mrs. DeSandro
FOR Deposit for Hearing #266
B 0524*****3500b 6298A
VALIDATION OR SIGNATURE OF CASHIER

MICROFILMED

ZONING DESCRIPTION

Beginning on the southeast side of Prospect Avenue, at the distance of 415 feet measured along the northeast side measured straight to intersect the centerline of Waugh Avenue. Being lot #71 on the plat of Bennett to Hagerer Book #2, Folio 18, Fourth Election District. Also known as 4605 Prospect Avenue.

MICROFILMED

PETITION FOR VARIANCE

4th Election District

ZONING: Petition for Variance

LOCATION: Southeast side Prospect Ave., 415 ft. Northeast of Waugh Avenue (4605 Prospect Avenue)

DATE & TIME: Tuesday, May 29, 1984 at 9:45 A.M.

PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

Petition for Variance to permit a side yard setback of 25 ft. instead of the required 35 ft.

Being the property of William R. DeSandro, et ux, as shown on plat plan filed with the Zoning Department.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be received in writing by the date of the hearing set above or made at the hearing.

BY ORDER OF
ARNOLD JABLON
ZONING COMMISSIONER
OF BALTIMORE COUNTY

MICROFILMED

RE: PETITION FOR VARIANCE
SE/S Prospect Ave., 415' NE of Waugh Ave. (4605 Prospect Ave.);
4th District
WILLIAM R. DeSANDRO, et ux,
Petitioners

: BEFORE THE ZONING COMMISSIONER
: OF BALTIMORE COUNTY
: Case No. 84-332-A

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notices should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

Phyllis Cole Friedman
People's Counsel

Peter Max Zimmerman
Deputy People's Counsel
Rm. 223, Court House
Towson, MD 21204
494-2188

I HEREBY CERTIFY that on this 9th day of May, 1984, a copy of the foregoing Entry of Appearance was mailed to Mr. and Mrs. William R. DeSandro, 4605 Prospect Ave., Glyndon, MD 21071, Petitioners.

Peter Max Zimmerman

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

ARNOLD JABLON
ZONING COMMISSIONER

May 22, 1984

Mr. & Mrs. William R. DeSandro
4605 Prospect Avenue
Glyndon, Maryland 21071

Re: Petition for Variance
SE/S Prospect Ave., 415' NE of Waugh Avenue (4605 Prospect Avenue)
Case No. 84-332-A

Dear Mr. & Mrs. DeSandro:

This is to advise you that $51.35 is due for advertising and posting of the above property.

This fee must be paid and our zoning sign and post returned on the day of the hearing before an Order is issued. Do not remove sign until day of hearing.

Please make the check payable to Baltimore County, Maryland, and remit to Mrs. Arlene January, Zoning Office, Room 113, County Office Building, Towson, Maryland 21204, before the hearing.

Sincerely,

ARNOLD JABLON
Zoning Commissioner

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 130510
DATE 5/29/84
ACCOUNT R-01-615-000
AMOUNT $51.35
RECEIVED Wm. M. DeSandro
advertising and posting Case #84-332-A
VALIDATION OR SIGNATURE OF CASHIER

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Douglas A DeLoycht
4609 Prospect Ave

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Mr. & Mrs. Lawrence E. Emert
(Edna + Larry)
4612 Prospect Ave
Glyndon, Md 21071

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

ARNOLD JABLON
ZONING COMMISSIONER

June 14, 1984

Mr. and Mrs. William R. DeSandro
4605 Prospect Avenue
Glyndon, Maryland 21071

RE: Petition for Variance
SE/S Prospect Avenue,
415' NE Waugh Avenue
(4605 Prospect Avenue) -
4th Election District
William R. DeSandro, et ux -
Petitioner
No. 84-332-A (Item No. 266)

Dear Mr. and Mrs. DeSandro:

I have this date passed my Order in the above referenced matter in accordance with the attached.

Very truly yours,

JOAN M. H. JUNG
Deputy Zoning Commissioner

JMHJ:mc
Attachments
cc: People's Counsel

May 1, 1984

Mr. & Mrs. William R. DeSandro
4605 Prospect Avenue
Glyndon, Maryland 21071

NOTICE OF HEARING
Re: Petition for Variance
SE/S Prospect Ave., 415' NE of Waugh Avenue (4605 Prospect Avenue)
Case No. 84-332-A

TIME: 9:45 A.M.
DATE: Tuesday, May 29, 1984
PLACE: Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland

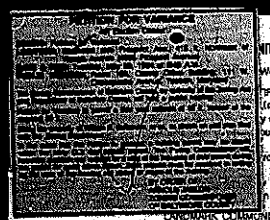
Zoning Commissioner
Baltimore County

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 128246
DATE 5/15/84
R-01-615-000
35.00
FOR Filing of Appeal for Case #84-332-A
VALIDATION OR SIGNATURE OF CASHIER

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

84-332-A

District 4th
Date of Posting 5-11-84
Posted for: Variance
Petitioner: William R. DeSandro, et ux
Location of property: S/S of Prospect Ave., 415' NE of Waugh Avenue (4605 Prospect Ave.)
Location of Signs: In front of 4605 Prospect Avenue
Remarks:
Posted by: [signature] Date of return: 5-15-84
Number of Signs: 1



LANDMARK COMMUNITY NEWSPAPERS OF MARYLAND, INC.

Westminster, Md., May 10, 19 84

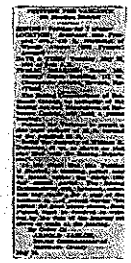
THIS IS TO CERTIFY that the annexed Petition for Variance was inserted in the following ... successive weeks/days previous, ... May, 19 84, in the ... County Times, a daily newspaper published in Westminster, Carroll County, Maryland. ... Herald, a weekly newspaper published in Eldersburg, Carroll County, Maryland. ... Times, a weekly newspaper published in Reisterstown, Baltimore County, Maryland.

LANDMARK COMMUNITY NEWSPAPERS OF MARYLAND, INC.

Per

84-332-A

CERTIFICATE OF PUBLICATION



TOWSON, MD., May 10, 19 84

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., ~~ONE TIME~~ ~~SUCCESSIVE WEEKS~~ before the 22nd day of May, 1984, the first publication appearing on the 10th day of May, 19 84.

THE JEFFERSONIAN

Manager.

Cost of Advertisement, $ 51.35

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Elizabeth K Dinges
4603 Prospect Ave
Glyndon, Md 21071

PETITIONER'S EXHIBIT 1

MICROFILMED

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Barry W. Thomas
4606 Prospect Ave.
Glyndon, Md.
21071

MICROFILMED

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

[illegible]
4607 Prospect Ave.
Glyndon, MD. 21071
[illegible]

MICROFILMED

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Marie Meeuwe
(Mrs Karl F.)
4615 Prospect Av
Glyndon, Md
21071

MICROFILMED

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Carlyle N Montanye Jr.
4500 Prospect Ave.
Glyndon, MD 21071

MICROFILMED

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Thos L. Willi[illegible]
4610 Prospect ave
Glyndon, md 21071

MICROFILMED

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Alma S. Whiteside
4611 Prospect Ave
Glyndon, Md. 21071

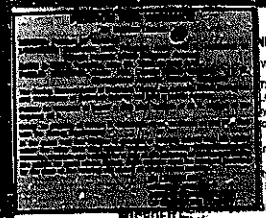
MICROFILMED

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

84-332-A

District: 8th Date of Posting: 5-11-84
Posted for: Variance
Petitioner: William R. DeSandro et ux
Location of property: S.E/S of Prospect Ave., 415' NE of Waugh Avenue (4605 Prospect Ave.)
Location of Signs: in front of 4605 Prospect Avenue
Remarks:
Posted by: [illegible] Date of return: 5-18-84
Number of Signs: 1

MICROFILMED



[illegible]NITY NEWSPAPERS OF MARYLAND, INC.

Westminster, Md., May 10 19 84

[illegible]TIFY that the annexed Petition for Variance [illegible] (one) successive weeks/days previous [illegible]y of May 19 84 in the [illegible]ounty Times, a daily newspaper published in Westminster, Carroll County, Maryland, [illegible]rroll Herald, a weekly newspaper published in Eldersburg, Carroll County, Maryland, [illegible]ty Times, a weekly newspaper published in Reisterstown, Baltimore County, Maryland.

[illegible]NITY NEWSPAPERS OF MARYLAND, INC.

Per

MICROFILMED

MAR 14 1985

ZONING DESCRIPTION

Beginning on the southeast side of Prospect Avenue, at the distance of 415 feet measured along the northeast side measured straight to intersect the centerline of Waugh Avenue. Being lot #11 on the plat of Bennett to Regester Book #2, Folio 18. Fourth Election District. Also known as 4605 Prospect Avenue.

PETITION FOR VARIANCE

4th Election District

ZONING: Petition for Variance

LOCATION: Southeast side Prospect Ave., 415 ft. Northeast of Waugh Avenue (4605 Prospect Avenue)

DATE & TIME: Tuesday, May 29, 1984 at 9:45 A.M.

PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

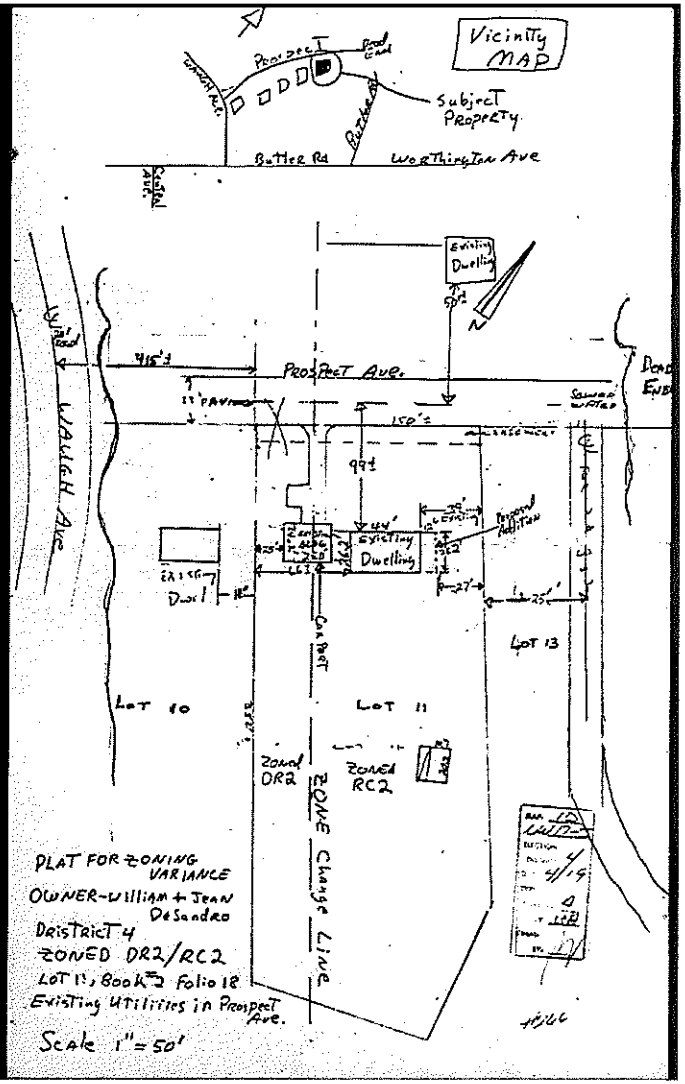
The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

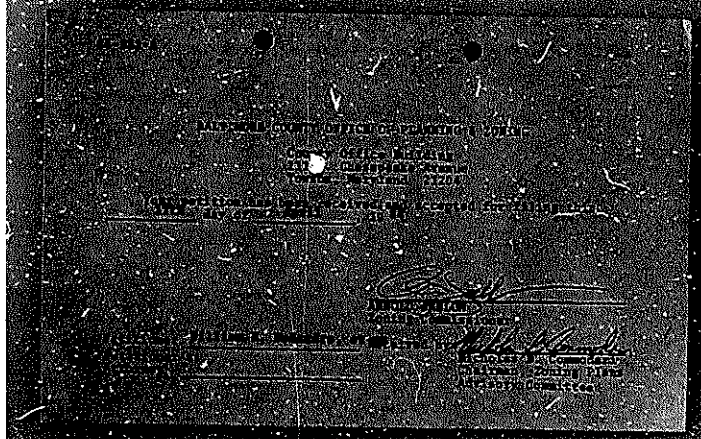
Petition for Variance to permit a side yard setback of 25 ft. instead of the required 35 ft.

Being the property of William R. DeSandro, et ux, as shown on plat plan filed with the Zoning Department.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be received in writing by the date of the hearing set above or made at the hearing.

BY ORDER OF
ARNOLD JABLON
ZONING COMMISSIONER
OF BALTIMORE COUNTY





84-332-A

CERTIFICATE OF PUBLICATION



TOWSON, MD., May 10, 19 84

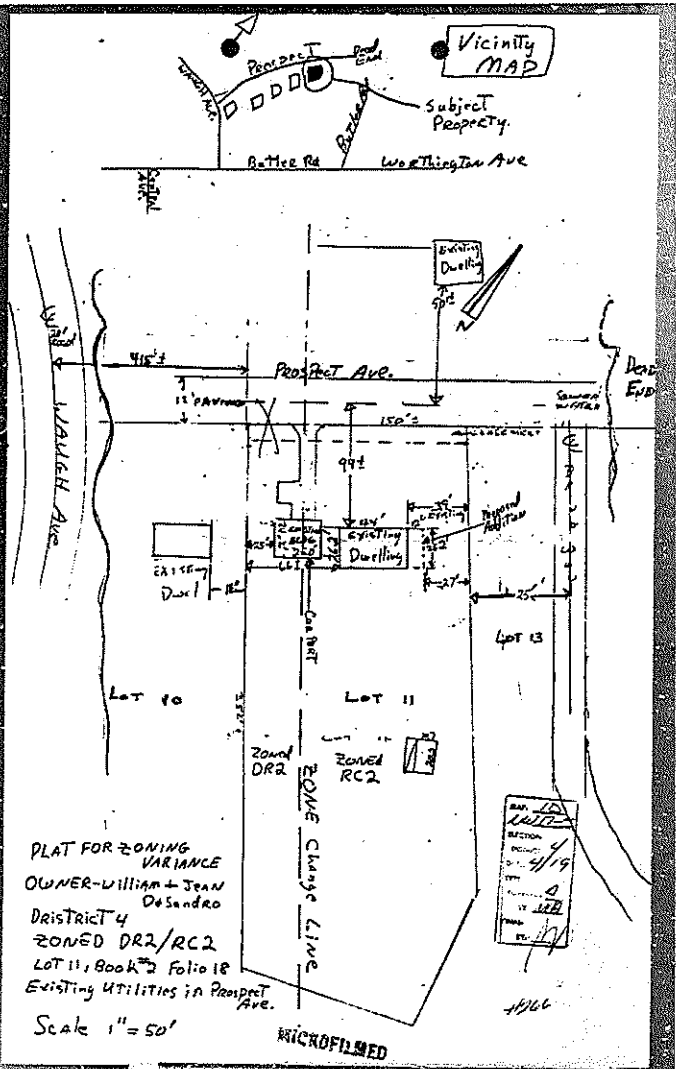
THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., ~~xxxxxxxxxx~~ of one time ~~xxxxxxxxxx~~ before the 29th day of May, 19~~xx~~ 84, the ~~xxx~~ publication appearing on the 10th day of May, 19 84.

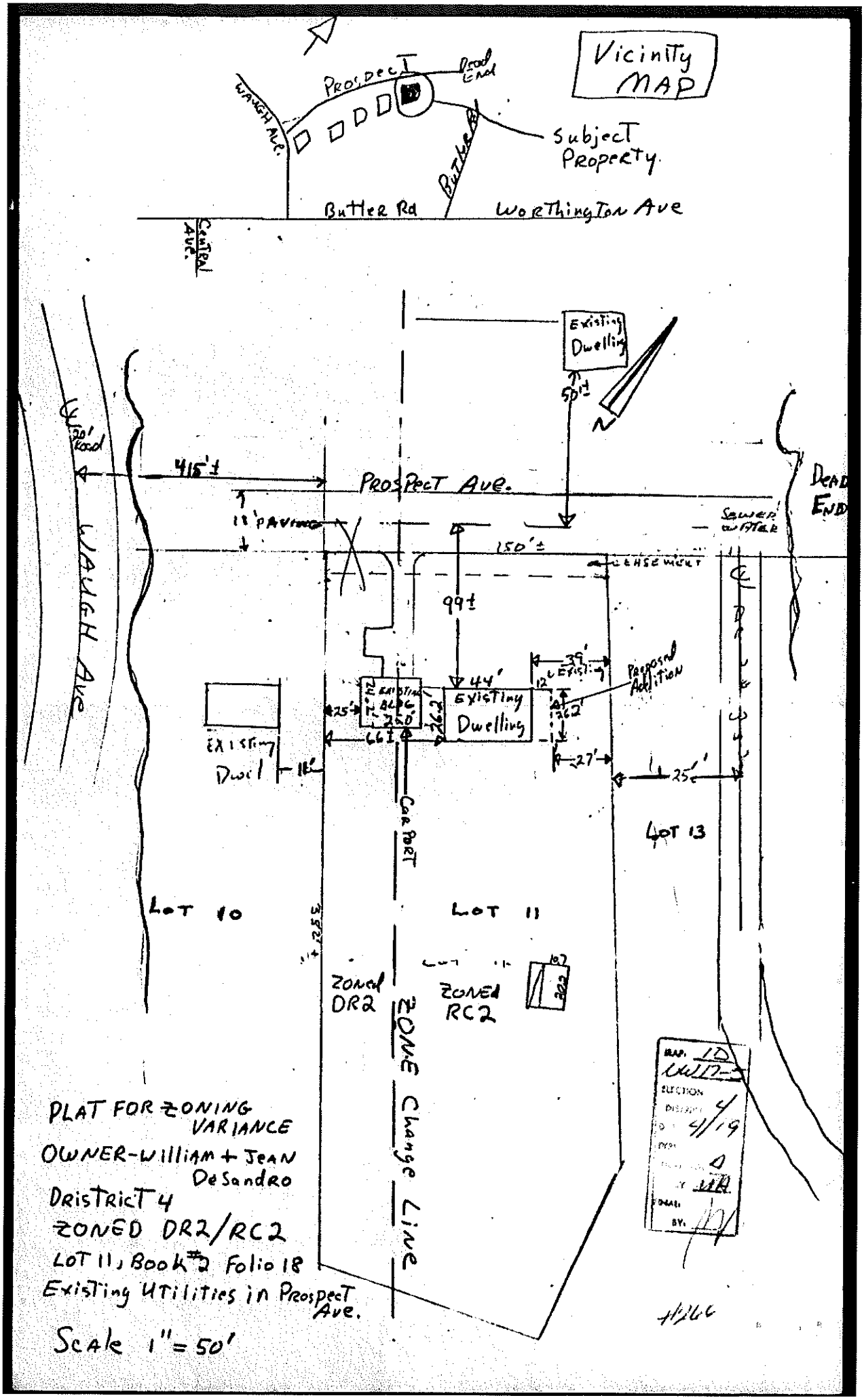
THE JEFFERSONIAN,

L. Frank Griffin
Manager.

Cost of Advertisement, $ 17.00

MICROFILMED





PLAT FOR ZONING VARIANCE

OWNER-William + Jean DeSandro

District 4

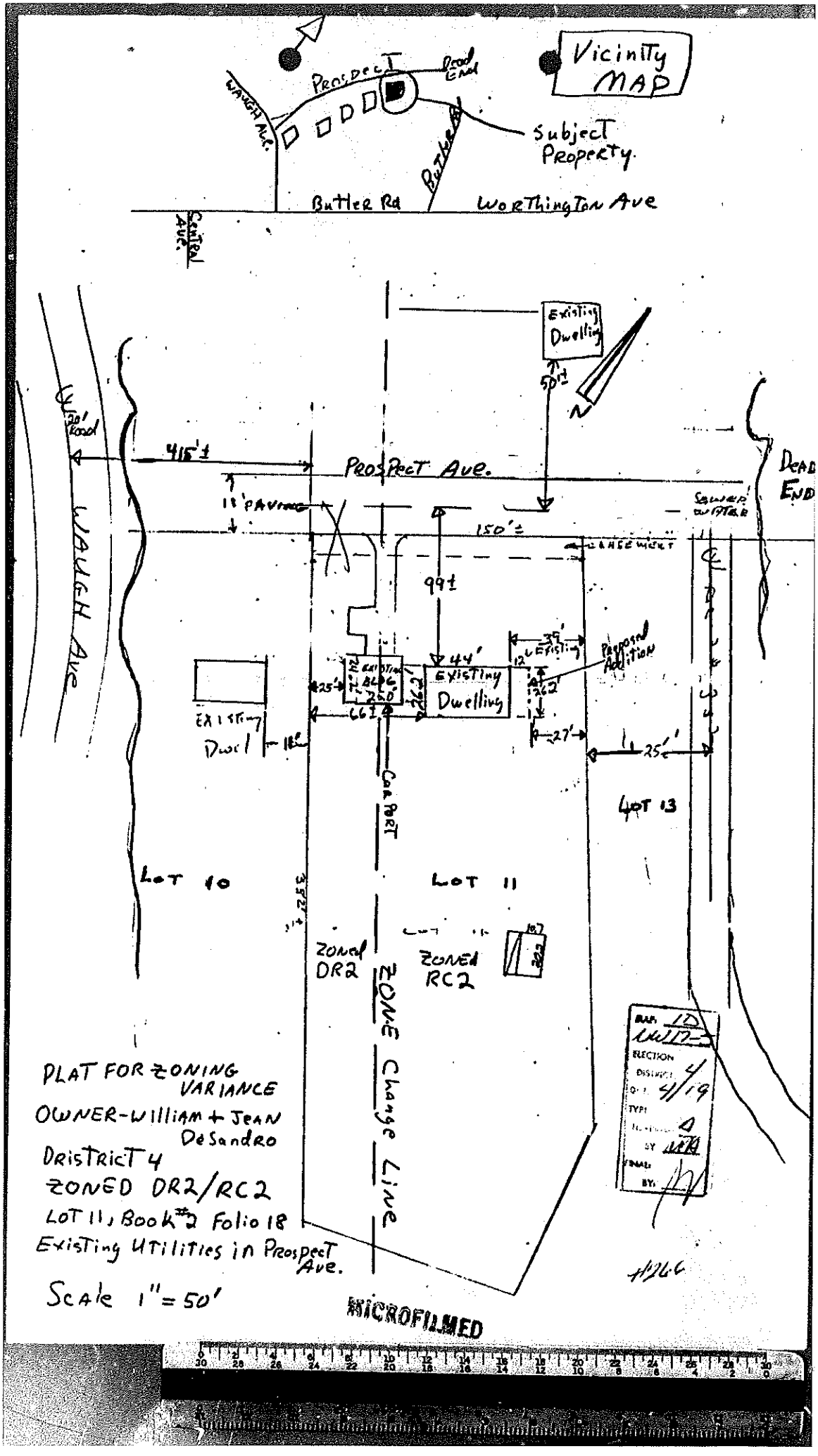
ZONED DR2/RC2

Lot 11, Book #2 Folio 18

Existing Utilities in Prospect Ave.

Scale 1" = 50'

4/26/66


Vicinity MAP
Prospect
Dead End
Waugh Ave.
Butler Rd
Subject Property.
Butler Rd
Worthington Ave
Central Ave.
Existing Dwelling
50'±
30' Road
415'±
Prospect Ave.
11' PAVING
150'±
SEWER & WATER
EASEMENT
DEAD END
WAUGH AVE
99±
44'
EXISTING Dwelling
Proposed Addition
12'
27'
25'
Existing Dwel
18'
66'±
CARPORT
LOT 13
LOT 10
LOT 11
ZONED DR2
ZONED RC2
ZONE Change Line
PLAT FOR ZONING VARIANCE
OWNER-William + Jean DeSandro
DISTRICT 4
ZONED DR2/RC2
LOT 11, Book #2 Folio 18
Existing UTilities in Prospect Ave.
Scale 1" = 50'
MICROFILMED

IN RE: PETITION FOR ADMIN. VARIANCE
W/S of Prospect Avenue, 742' NE
centerline of Waugh Avenue
4th Election District
3rd Councilmanic District
(4606 Prospect Avenue)

Fran & Sergio Acle
Petitioners

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* CASE NO. 05-444-A
*

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

Pet 103

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Administrative Variance filed by the legal owners of the subject property, Fran and Sergio Acle. The administrative variance is requested for property located at 4606 Prospect Avenue in the Glyndon area of Baltimore County. The administrative variance request is from Section 400 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a replacement free standing garage with a height of 21 ft. in lieu of the maximum allowed 15 ft. height. The subject property and requested relief are more particularly described on Petitioners' Exhibit No. 1, the plat to accompany the Petition for Variance.

The Petitioners having filed a Petition for Administrative Variance and the subject property having been posted on March 20, 2005, and there being no request for a public hearing, a decision shall be rendered based upon the documentation presented.

Zoning Advisory Committee Comments

The Zoning Advisory Committee (ZAC) comments are made part of the record of this case and contain the following highlights: A ZAC comment was received from the Office of Planning dated April 8, 2005, a copy of which is attached hereto and made a part hereof.

Applicable Law

Section 307 of the B.C.Z.R. – ***Variances***.

MADE RECEIVED FOR FILING
Date 4/12/05
By

"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 the 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."

The Petitioners have filed the supporting affidavits as required by Section 32-3-303 of the Baltimore County Code. Based upon the information available, there is no evidence in the file to indicate that the requested variance would adversely affect the health, safety or general welfare of the public and should therefore be granted. In the opinion of the Deputy Zoning Commissioner, the information, photographs, and affidavits submitted provide sufficient facts that comply with the requirements of Section 307.1 of the B.C.Z.R. Furthermore, strict compliance with the B.C.Z.R. would result in practical difficulty and/or unreasonable hardship upon the Petitioners.

Pursuant to the posting of the property and the provisions of both the Baltimore County Code and the Baltimore County Zoning Regulations, and for the reasons given above, I find that the requested variance should be GRANTED.

THEREFORE, IT IS ORDERED, this 12 day of April, 2005, by this Deputy Zoning Commissioner, that the Petitioners' request for variance from Section 400 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a replacement free standing garage with a height of 21 ft. in lieu of the maximum allowed 15 ft. height, be and is hereby GRANTED,

IMAGES RECEIVED FOR FILMING
Date: 4/12/05
By:

subject, however, to the following restrictions which are conditions precedent to the relief granted herein:

1. The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition;

2. Compliance with the ZAC comments submitted by the Office of Planning dated April 8, 2005, a copy of which is attached hereto and made a part hereof;

3. When applying for a building permit, the site plan field must reference this case and set forth and address the restrictions of this Order.

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

John V. Murphy

JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

JVM:raj

ORDER RECEIVED FOR FILING
Date 4/12/05
By Raj

Zoning Commissioner

Suite 405, County Courts Building
401 Bosley Avenue
Towson, Maryland 21204
Tel: 410-887-3868 • Fax: 410-887-3468

Baltimore County

James T. Smith, Jr., County Executive
William J. Wiseman III, Zoning Commissioner

April 12, 2005

Mr. & Mrs. Sergio Acle
4606 Prospect Avenue
Glyndon, Maryland 21071

Re: Petition for Administrative Variance
Case No. 05-444-A
Property: 4606 Prospect Avenue

Dear Mr. & Mrs. Acle:

Enclosed please find the decision rendered in the above-captioned case. The petition for administrative variance has been granted in accordance with the enclosed Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days from the date of the Order to the Department of Permits and Development Management. If you require additional information concerning filing an appeal, please feel free to contact our appeals clerk at 410-887-3391.

Very truly yours,

John V. Murphy

John V. Murphy
Deputy Zoning Commissioner

JVM:raj
Enclosure

c: Joseph Duschl, 8825 Orchard Road, Baltimore, MD 21208

Printed on Recycled Paper

HISTORIC

Petition for Administrative Variance

to the Zoning Commissioner of Baltimore County

for the property located at 4606 PROSPECT AVE.

which is presently zoned RC 2

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s) 400 BCZR TO PERMIT A REPLACEMENT FREE STANDING GARAGE WITH A HEIGHT OF 21 FT IN LIEU. OF THE MAXIMUM 15 FT. HEIGHT.

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the reasons indicated on the back of this petition form.

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Variance, 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.

I/We do 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 Petition.

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address Telephone No.

City State Zip Code

Legal Owner(s):

SERGIO ACLE
Name - Type or Print

Signature

FRAN ACLE
Name - Type or Print

Frances M. Acle
Signature

4606 PROSPECT AVENUE 410-833-1923
Address Telephone No

GLYNDON MD 21071
City State Zip Code

Representative to be Contacted:

JOSEPH DUSCHL
Name

8825 ORCHARD RD 410-370-9007 cell 410-602-0685 office
Address Telephone No

BALTIMORE MD. 21208
City State Zip Code

A Public Hearing having been formally demanded and/or found to be required, it is ordered by the Zoning Commissioner of Baltimore County, this ____ day of _____, _____ that the subject matter of this petition be set for a public hearing, advertised, as required by the zoning regulations of Baltimore County and that the property be reposted.

Zoning Commissioner of Baltimore County

ORDER RECEIVED FOR FILING
4/20/05

CASE NO. 05 444 A

Reviewed By JL Date 3/08/05

Estimated Posting Date 3/20/05

REV 10/25/01

5

Affidavit in Support of Administrative Variance

The undersigned hereby affirms under the penalties of perjury to the Zoning Commissioner of Baltimore County, as follows: That the information herein given is within the personal knowledge of the Affiant(s) and that Affiant(s) is/are competent to testify thereto in the event that a public hearing is scheduled in the future with regard thereto.

That the Affiant(s) does/do presently reside at 4606 PROSPECT AVENUE
Address

BALTIMORE MD. 21071
City State Zip Code

That based upon personal knowledge, the following are the facts upon which I/we base the request for an Administrative Variance at the above address (indicate hardship or practical difficulty):

- Extensive Termite damage to existing garage
- Extensive damage to existing Concrete floor
- Wood boring bee damage.
- Structure is of no historical value (Circa 1950's)
- Existing structure contains an upper level storage area as does the new structure, will tranfer items which are currently stored.
- 3 car garage will block view of commercial buiding on adjacent Property.
- Neighbor (4601 Prospect Ave) has a similar detatched structure with 2nd story storage.

That the Affiant(s) acknowledge(s) that if a formal demand is filed, Affiant(s) will be required to pay a reposting and advertising fee and may be required to provide additional information.

Signature

SERGIO ACLE
Name - Type or Print

Signature

FRAN ACLE
Name - Type or Print

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, this 7th day of March 2005 before me, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared Sergio Acle & Fran Acle the Affiant(s) herein, personally known or satisfactorily identified to me as such Affiant(s).

AS WITNESS my hand and Notarial Seal

Notary Public

My Commission Expires 10/1/05

REV 10/25/01

Affidavit in Support of Administrative Variance

The undersigned hereby affirms under the penalties of perjury to the Zoning Commissioner of Baltimore County, as follows: That the information herein given is within the personal knowledge of the Affiant(s) and that Affiant(s) is/are competent to testify thereto in the event that a public hearing is scheduled in the future with regard thereto.

That the Affiant(s) does/do presently reside at 4606 PROSPECT AVENUE
Address

BALTIMORE MD. 21071
City State Zip Code

That based upon personal knowledge, the following are the facts upon which I/we base the request for an Administrative Variance at the above address (indicate hardship or practical difficulty):

- Extensive Termite damage to existing garage
- Extensive damage to existing concrete floor.
- wood boring bee damage
- structure is of no historical value (circa 1950's)
- Existing structure contains an upper level storage area as does the new structure. Will transfer items which are currently stored.
- 3 car garage will block view of commercial building on adjacent property.
- Neighbor (4601 Prospect) has a similar detached structure with 2nd story storage.

That the Affiant(s) acknowledge(s) that if a formal demand is filed, Affiant(s) will be required to pay a reposting and advertising fee and may be required to provide additional information.

Signature

SERGIO ACLE
Name - Type or Print

Signature

FRAN ACLE
Name - Type or Print

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, this 7th day of March 2005, before me, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared Sergio Acle & Fran Acle the Affiant(s) herein, personally known or satisfactorily identified to me as such Affiant(s).

AS WITNESS my hand and Notarial Seal

Notary Public

My Commission Expires 10/1/05

REV 10/25/01

Petition for Administrative Variance

to the Zoning Commissioner of Baltimore County

for the property located at 4606 PROSPECT AVE.

which is presently zoned RC 2

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s) 400 BCZR TO PERMIT A REPLACEMENT FREE STANDING GARAGE WITH A HEIGHT OF 21 FT IN LIEU OF THE MAXIMUM 15 FT. HEIGHT

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the reasons indicated on the back of this petition form.

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Variance, 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.

I/We do 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 Petition.

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address Telephone No.

City State Zip Code

Legal Owner(s):

SERGIO AGLE

Name - Type or Print

Signature

FRAN AGLE

Name - Type or Print

Frances M. Agle

Signature

4606 PROSPECT AVENUE 410-83-192

Address Telephone No

GLYNDON MD 21071

City State Zip Code

Representative to be Contacted:

JOSEPH DUSCHL

Name 410-370-9007 cc

8825 ORCHARD RD 410-602-0685 of

Address Telephone No

BALTIMORE MD. 21208

City State Zip Code

A Public Hearing having been formally demanded and/or found to be required, it is ordered by the Zoning Commissioner of Baltimore County, this ____ day of _____, _____ that the subject matter of this petition be set for a public hearing, advertised, as required by the zoning regulations of Baltimore County and that the property be reposted.

Zoning Commissioner of Baltimore County

CASE NO. 05 444 A

Reviewed By JL **Date** 3/08/05

REV 10/25/01

Estimated Posting Date 3/20/05

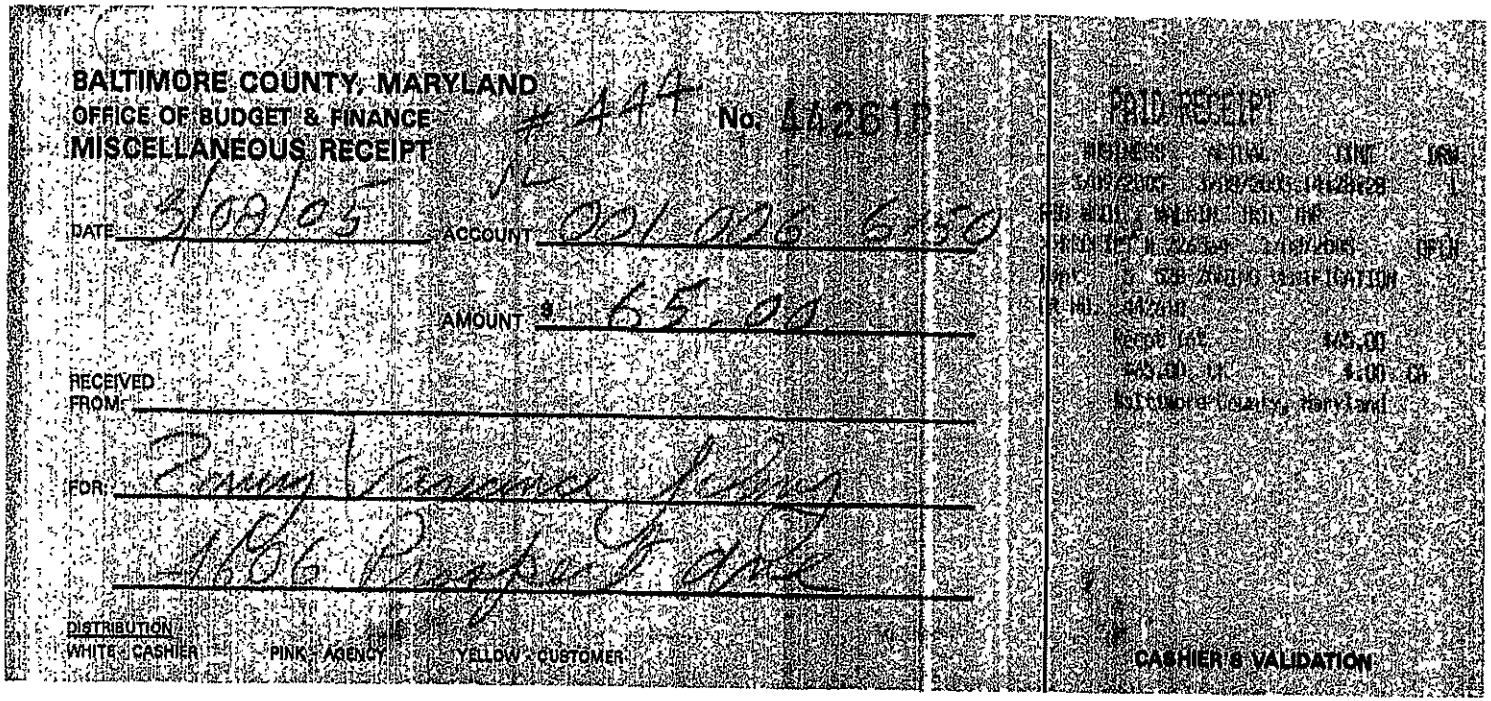
ZONING DESCRIPTION FOR 4606 Prospect Avenue

Begining at a point on the west side of Prospect Avenue, which is 20' +/- wide at a distance of 742' +/- northeast of the centerline of Waugh Avenue which is 20' +/- wide, containing 2.54 acres. Also known as 4606 Prospect Avenue and located in the fourth Election District, ~~second~~ THIRD Councilmanic District.

As recorded in Deed Liber 8208, Folio 743 and includes the measurements and metes and bounds here and on the plat in the correct location.

Metes & Bounds: N.51 20'07"E. 150 ft., N.51 26'31"E. 50 ft., N.46 43'44"E. 50.21 ft., N.37 50.08 ft., N.31 59'30"E. 52.30 ft., N.70 30'00"W. 526.00 ft., S.18 14' 53"W. 200.00 ft., S.73 55'02" E. 175.00 ft., S 37 40'02" E. 228.19 ft.

444



BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

#444 No. 442618

DATE 3/08/05 ACCOUNT 001 006 6150

AMOUNT $ 65.00

RECEIVED FROM:

FOR: Zoning Variance Filing
1606 Prospect Ave

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT

BUSINESS	ACTUAL	CONT	DRW
3/09/2005	3/08/2005	14:28:28	1

[illegible]
[illegible] 3/08/2005 OPEN
[illegible] CLASSIFICATION
[illegible] 442618
Receipt Int $65.00
$65.00 CK $.00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

CERTIFICATE OF POSTING

ATTENTION: KRISTEN MATTHEWS

Date May 5, 2005

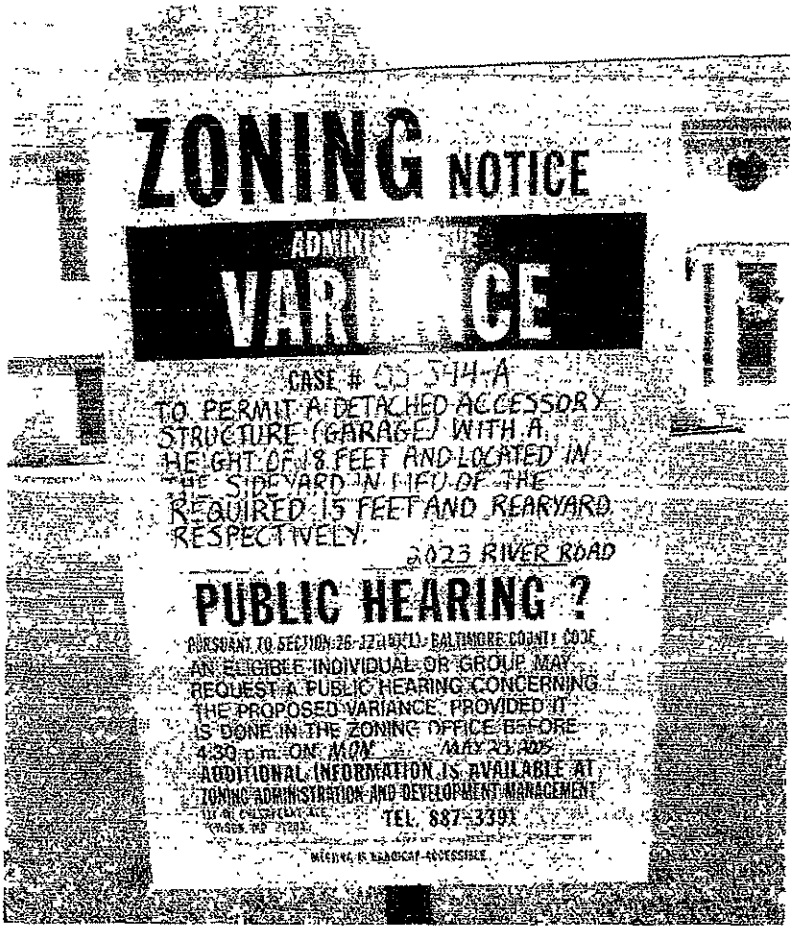
RE: Case Number 05-444-A

Petitioner/Developer PAUL MILLER / BUCK JONES

Date of Hearing/Closing) MAY 23, 2005

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 2023 RIVER ROAD

The sign(s) were posted on May 4, 2005



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 Code of Sign Poster)

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

CERTIFICATE OF POSTING

ATTENTION: KRISTEN MATTHEWS

Date March 20, 2005

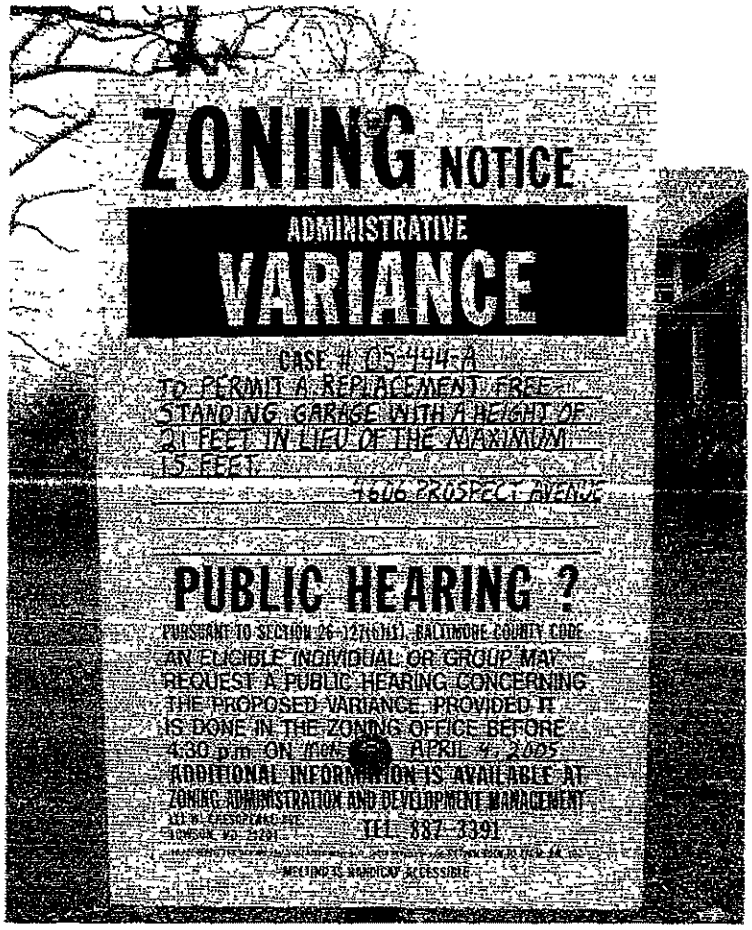
RE: Case Number 05-444-A

Petitioner/Developer SERGIO + FRAN ACLE / DIVERSIFIED BUILDERS GROUP

Date of Hearing/Closing) April 4, 2005

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 4606 PROSPECT AVENUE

The sign(s) were posted on March 20, 2005



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 Code of Sign Poster)

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

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

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

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

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

For Newspaper Advertising:

Item Number or Case Number: 05-444-A

Petitioner: Sergio & Fran Acle

Address or Location: 4606 Prospect Ave

PLEASE FORWARD ADVERTISING BILL TO:

Name: Joseph Duschl

Address: 8825 Orchard Rd

Baltimore, MD, 21208

Telephone Number: 410-370-9007

Revised 2/20/98 - SCJ

APP HAS ORIG + POSTER FORM.

BALTIMORE COUNTY DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
ZONING REVIEW

ADMINISTRATIVE VARIANCE INFORMATION SHEET AND DATES

Case Number 05-444-A Address 4606 PROSPECT AVE.

Contact Person: JOHN LEWIS Phone Number: 410-887-3391
Planner, Please Print Your Name

Filing Date: 3/08/05 **Posting Date:** 3/20/05 **Closing Date:** 4/04/05

Any contact made with this office regarding the status of the administrative variance should be through the contact person (planner) using the case number.

1. **POSTING/COST:** The petitioner must use one of the sign posters on the approved list (on the reverse side of this form) and the petitioner is responsible for all printing/posting costs. Any reposting must be done only by one of the sign posters on the approved list and the petitioner is again responsible for all associated costs. The zoning notice sign must be visible on the property on or before the posting date noted above. It should remain there through the closing date.

2. **DEADLINE:** The closing date is the deadline for an occupant or owner within 1,000 feet to file a formal request for a public hearing. Please understand that even if there is no formal request for a public hearing, the process is not complete on the closing date.

3. **ORDER:** After the closing date, the file will be reviewed by the zoning or deputy zoning commissioner. He may: (a) grant the requested relief; (b) deny the requested relief; or (c) order that the matter be set in for a public hearing. You will receive written notification (typically within 7 to 10 days of the closing date) as to whether the petition has been granted, denied, or will go to public hearing. The order will be mailed to you by First Class mail.

4. **POSSIBLE PUBLIC HEARING AND REPOSTING:** In cases that must go to a public hearing (whether due to a neighbor's formal request or by order of the zoning or deputy zoning commissioner), notification will be forwarded to you. The sign on the property must be changed giving notice of the hearing date, time and location. As when the sign was originally posted, certification of this change and a photograph of the altered sign must be forwarded to this office.

(Detach Along Dotted Line)

Petitioner: This Part of the Form is for the Sign Poster Only

USE THE ADMINISTRATIVE VARIANCE SIGN FORMAT

Case Number 05-444-A Address 4606 PROSPECT AVE.

Petitioner's Name SERGIO & FRAN ~~ALICE~~ ACLE Telephone 410-833-1923

Posting Date: 3/20/05 **Closing Date:** 4/04/05

Wording for Sign: To Permit A REPLACEMENT FREESTANDING GARAGE WITH A HEIGHT OF 21 FT. IN LIEU OF THE MAXIMUM 15 FT.

WCR - Revised 6/25/04

Department of Permits and Development Management

Development Processing
County Office Building
111 W Chesapeake Avenue
Towson, Maryland 21204

Baltimore County

James T Smith, Jr., County Executive
Timothy M Kotroco, Director

April 4, 2005

Sergio Acle
Fran Acle
4606 Prospect Avenue
Glyndon, Maryland 21071

Dear Mr. and Mrs.Acle:

RE: Case Number: 05-444-A, 4606 Prospect Avenue

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on March 8, 2005.

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR: clb

Enclosures

c: People's Counsel
Joseph Duschl 8825 Orchard Road Baltimore 21208

Printed on Recycled Paper

Fire Department

700 East Joppa Road
Towson, Maryland 21286-5500
Tel: 410-887-4500

Baltimore County

James T. Smith, Jr., County Executive
John J Hohman, Chief

County Office Building, Room 111
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

March 23, 2005

ATTENTION: Zoning Review planners

Distribution Meeting of: March 21, 2005

Item No.: 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455,457, 461, 462.

Pursuant to your request, the referenced plan(s) have been reviewed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

The Fire Marshal's Office has no comments at this time.

Acting Lieutenant Don W. Muddiman
Lieutenant Franklin J. Cook
Fire Marshal's Office
(O)410-887-4881 (C)443-829-2946
MS-1102F

cc: File

Printed on Recycled Paper

Robert L. Ehrlich, Jr., *Governor*
Michael S Steele, *Lt. Governor*

SHA State Highway Administration — Driven to Excel

Robert L Flanagan, *Secretary*
Neil J. Pedersen, *Administrator*

Maryland Department of Transportation

Date: 3.18.05

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

RE: Baltimore County
Item No. 444 JLL

Dear. Ms. Matthews:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not affected by any State Highway Administration projects.

Should you have any questions regarding this matter, please contact Larry Gredlein at 410-545-5606 or by E-mail at (lgredlein@sha.state.md.us).

Very truly yours,

S. D. Foster

Steven D. Foster, Chief
Engineering Access Permits Division

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO: Tim Kotroco

FROM: John D. Oltman, Jr JDO

DATE: April 19, 2005

SUBJECT: Zoning Items # See List Below

Zoning Advisory Committee Meeting of March 21, 2005

__X__ The Department of Environmental Protection and Resource Management has no comments on the following zoning items:

05-444
~~05-448~~
05-449

Reviewers: Sue Farinetti, Dave Lykens

S:\Devcoord\ZAC SHELL 11-20-03.doc

4/21

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits and
Development Management

DATE: April 8, 2005

FROM: Arnold F. 'Pat' Keller, III
Director, Office of Planning

SUBJECT: **5-444 – Administrative Variance**

The Office of Planning does not oppose the petitioner's request to permit an accessory structure with a height of 21 feet in lieu of the maximum permitted 15 feet provided the following conditions are met:

1. The petitioner or subsequent owners shall not convert the subject accessory structure into a dwelling unit or apartment. The structure shall not contain any sleeping quarters, living area, kitchen or bathroom facilities.
2. The accessory structure shall not be used for commercial purposes.

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

Prepared by: Mark A Cunningham

Section Chief: Lyn Lanham

AFK/LL: MAC

ORDER RECEIVED FOR FILING
4/12/05
Rej
By

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits & Development Management

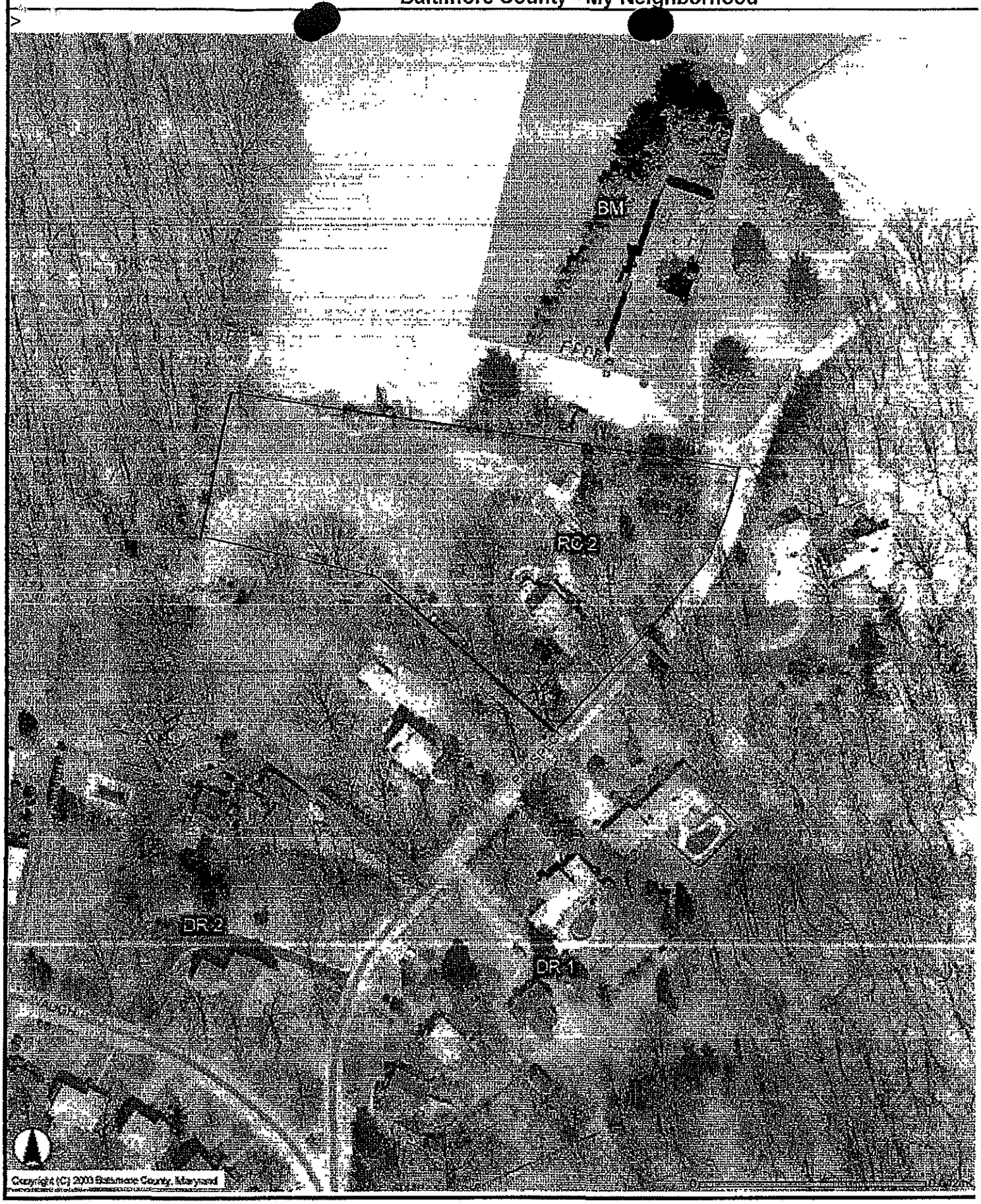
DATE: April 6, 2005

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

SUBJECT: Zoning Advisory Committee Meeting
for March 28, 2005
Item No. 444, 446, 447, 448, 449
450, 451, 452, 453, 454 and 455

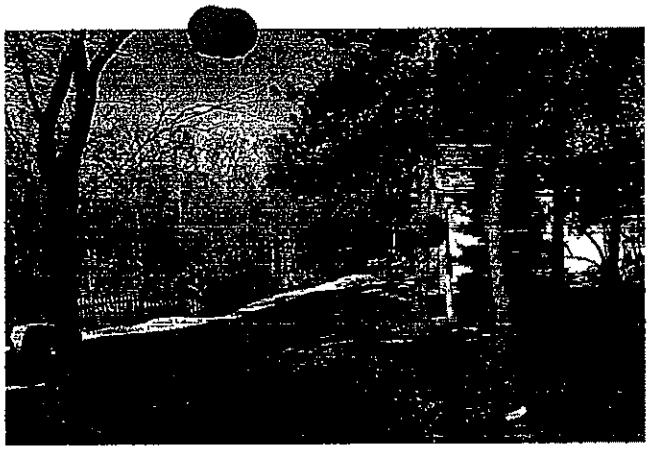
The Bureau of Development Plans Review has reviewed the subject zoning items and we have no comments.

DAK:CEN:clw
cc: file



444











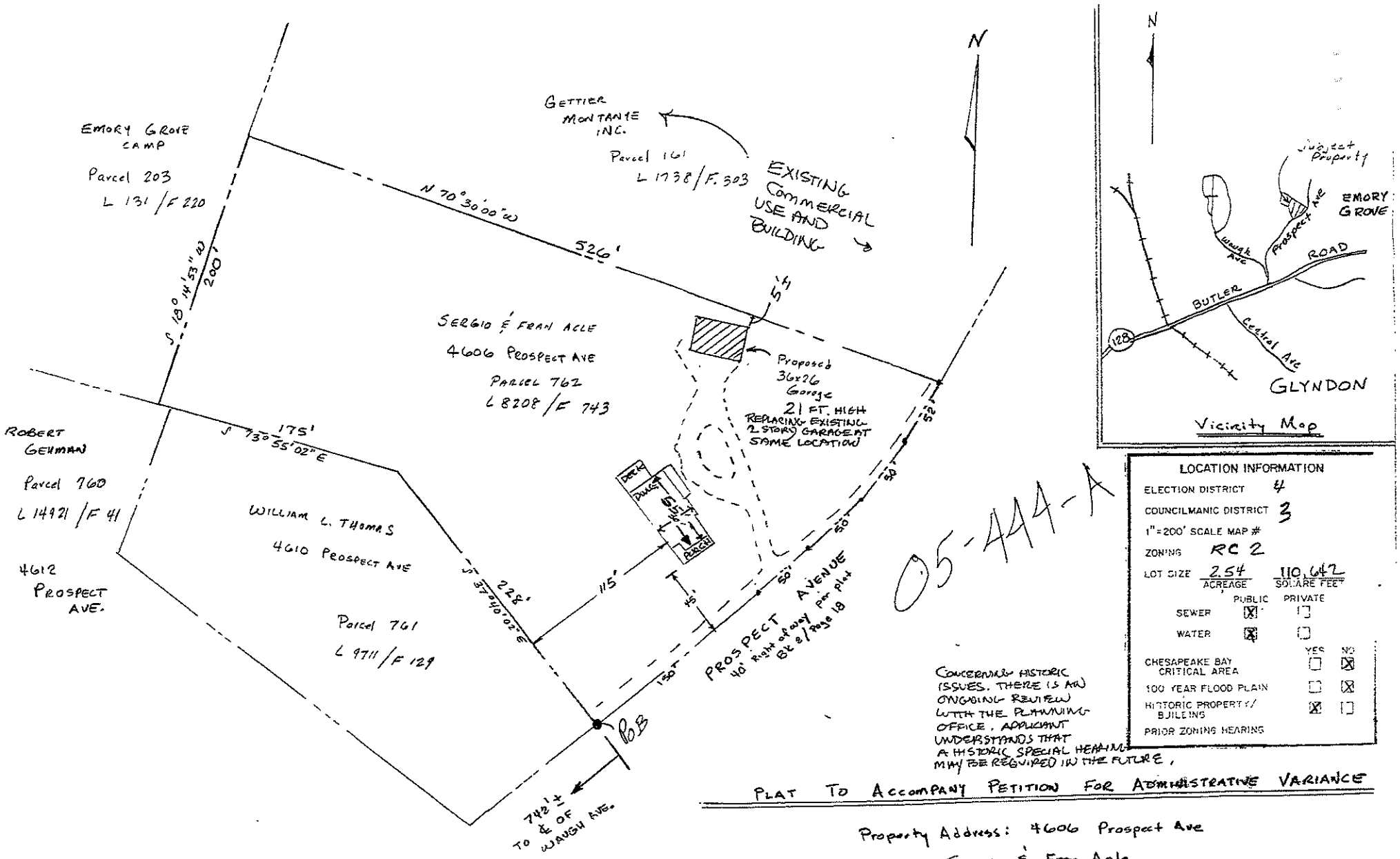




Acle
4606 Prospect Ave
Glyndon Md
21071

Photos of existing garage

444



05-444-A

LOCATION INFORMATION		
ELECTION DISTRICT	4	
COUNCILMANIC DISTRICT	3	
1"=200' SCALE MAP #		
ZONING	RC 2	
LOT SIZE	2.54 ACREAGE	110,642 SQUARE FEET

	PUBLIC	PRIVATE
SEWER	X	
WATER	X	

	YES	NO
CHESAPEAKE BAY CRITICAL AREA		X
100 YEAR FLOOD PLAIN		X
HISTORIC PROPERTY/ BUILDING	X	
PRIOR ZONING HEARING		

CONCERNING HISTORIC ISSUES. THERE IS AN ONGOING REVIEW WITH THE PLANNING OFFICE. APPLICANT UNDERSTANDS THAT A HISTORIC SPECIAL HEARING MAY BE REQUIRED IN THE FUTURE.

PLAT TO ACCOMPANY PETITION FOR ADMINISTRATIVE VARIANCE

Property Address: 4606 Prospect Ave

Owner: Sergio & Fran Acle

Scale of Drawing: 1" = 60'

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 21, 2021

NOTICE OF REASSIGNMENT - DAYS 2 and 3

IN THE MATTER OF: Donna V. Bair – Legal Owner
4607 Prospect Avenue
19-342-SPHA 4th Election District; 3rd Councilmanic District

8/9/19 Opinion and Order of the Administrative Law Judge wherein the:
- Petition for Special Hearing: 1) to approve a nonconforming lot width and lot area; and 2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of 30 inches was GRANTED; the
- Petition for Special Hearing: 1) to approve a nonconforming dwelling side yard setback; and 2) to confirm that an existing fence (swimming pool enclosure) with a height of 6' is in compliance with BCZR §427.1 and BCC §13-6-101 was DENIED; and the
- Petition for Variance: 1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.; 2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; and 3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches was DENIED

9/9/19 Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire on behalf of Donna V. Bair, Petitioner.

9/25/19 Order on Motion for Reconsideration issued by the Administrative Law Judge wherein it was Ordered:
- that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms in BCZR §104;
- that all new construction must comply with current setbacks and restrictions at the time of new construction; and
- all other matters and respects of Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

The Board convened for hearing on February 6, 2020. This matter did not conclude. This matter has been

ASSIGNED FOR: MARCH 23, 2021, AT 10:00 A.M. – Day 2;
and: MARCH 25, 2021, AT 10:00 A.M. – Day 3

The above scheduled hearing will be held remotely using WebEx for audio and video participation. **Call-in information and a link to the hearing will be posted on our web calendar at** www.baltimorecountymd.gov/Agencies/appeals/index.html **the night before.**

A complete set of **exhibits must be emailed** at least **48 hours before the hearing** to **appealsboard@baltimorecountymd.gov** in a format that complies with MDEC (Maryland Electronic Court) standards.

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 require special accommodations, please contact this office at least one week prior to hearing date.

If you do not have access to a computer or smart device, please contact our office for the call-in information the day before the scheduled hearing.

Krysundra Cannington, Administrator

c. Counsel for Petitioners : Lawrence E. Schmidt, Esquire
Legal Owner : Donna Bair

People's Counsel for Baltimore County : Peter M. Zimmerman, Esquire

Protestants *pro se* : Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
John E. Lemmerman/RTF Associates, Inc.
Kim and Tom Montanye
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz

Paul M. Mayhew, Managing Administrative Law Judge
Steve Lafferty, Director/Department of Planning
C. Pete Gutwald, Director/PAI
James R. Benjamin, Jr., County Attorney
Nancy C. West, Assistant County Attorney

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 5, 2021

NOTICE OF POSTPONEMENT

IN THE MATTER OF: Donna V. Bair – Legal Owner
4607 Prospect Avenue
19-342-SPHA 4th Election District; 3rd Councilmanic District

8/9/19 Opinion and Order of the Administrative Law Judge wherein the:
- Petition for Special Hearing: 1) to approve a nonconforming lot width and lot area; and 2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of 30 inches was GRANTED; the
- Petition for Special Hearing: 1) to approve a nonconforming dwelling side yard setback; and 2) to confirm that an existing fence (swimming pool enclosure) with a height of 6' is in compliance with BCZR §427.1 and BCC §13-6-101 was DENIED; and the
- Petition for Variance: 1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.; 2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; and 3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches was DENIED

9/9/19 Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire on behalf of Donna V. Bair, Petitioner.

9/25/19 Order on Motion for Reconsideration issued by the Administrative Law Judge wherein it was Ordered:
- that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms in BCZR §104;
- that all new construction must comply with current setbacks and restrictions at the time of new construction; and
- all other matters and respects of Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

The Board convened for hearing on February 6, 2020. This matter did not conclude. This matter was assigned for hearing days 2 and 3 on February 23 and 25, 2021. By request of Counsel, these dates have been postponed and will be reassigned to later dates.

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 require special accommodations, please contact this office at least one week prior to hearing date.

If you do not have access to a computer or smart device, please contact our office for the call-in information the day before the scheduled hearing.

Krysundra Cannington, Administrator

c. Counsel for Petitioners : Lawrence E. Schmidt, Esquire
Legal Owner : Donna Bair

People's Counsel for Baltimore County : Peter M. Zimmerman, Esquire

Protestants *pro se* : Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
John E. Lemmerman/RTF Associates, Inc.
Kim and Tom Montanye
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz

C. Pete Gutwald, Director/Department of Planning
Michael D. Mallinoff, Director/PAI
James R. Benjamin, Jr., County Attorney

Paul M. Mayhew, Managing Administrative Law Judge
Nancy C. West, Assistant County Attorney

SMITH, GILDEA & SCHMIDT LLC

MICHAEL PAUL SMITH
DAVID K. GILDEA
LAWRENCE E. SCHMIDT
JASON T. VETTORI
MARIELA C. D'ALESSIO*
MELISSA L. ENGLISH**
* Admitted in MD, PA, FL
** Admitted in MD, NC

LAUREN S. FLEMING
NICOLE LAMBDIN
CARMELO D. MORABITO
ZACHARY J. WILKINS
of counsel:
EUGENE A. ARBAUGH, JR.
MARY G. LOKER
STEPHEN J. NOLAN

January 4, 2021

Via Email Only
Krysundra L. Cannington
County Board of Appeals of Baltimore County
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204
appealsboard@baltimorecountymd.gov

Re: In the Matter of: Donna V. Bair
Property: 4607 Prospect Avenue
Case No. 19-342-SPHA

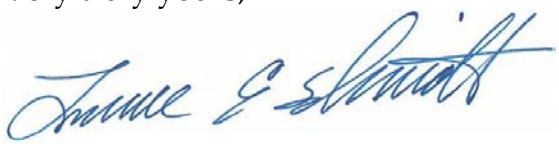
Dear Sunny,

I write by way of follow up to the Notice of Assignment for Days 2 and 3 dated December 15, 2020 in the above referenced matter scheduling this matter for additional hearing dates on February 23, 2021 and February 25, 2021.

Please note that Mrs. Bair and her husband are scheduled to be out of the Country on a pre-planned, pre-paid work trip from February 21 – February 27, 2021. Additionally, they plan to participate in this hearing at our office and we would appreciate a quarantine period for them of 7-10 days. As such, we respectfully request that this matter be rescheduled any time after March 10, 2021.

Thank you for your consideration of this request. Please contact me should you have any questions.

Very truly yours,



Lawrence E. Schmidt

LES/am
cc: Peter Max Zimmerman, Esquire
Tom Montanye (via email: Tom@montanye.net)
Robin S. Coffin (via email: Rscoffin@verizon.net)
Steven Fradkin (via email: Reistlaxcoach@gmail.com)
Donna Bair (via email: donna.bair@yahoo.com)

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 15, 2020

NOTICE OF ASSIGNMENT - DAYS 2 and 3

IN THE MATTER OF: Donna V. Bair – Legal Owner
4607 Prospect Avenue
19-342-SPHA 4th Election District; 3rd Councilmanic District

8/9/19 Opinion and Order of the Administrative Law Judge wherein the:
- Petition for Special Hearing: 1) to approve a nonconforming lot width and lot area; and 2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of 30 inches was GRANTED; the
- Petition for Special Hearing: 1) to approve a nonconforming dwelling side yard setback; and 2) to confirm that an existing fence (swimming pool enclosure) with a height of 6' is in compliance with BCZR §427.1 and BCC §13-6-101 was DENIED; and the
- Petition for Variance: 1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.; 2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; and 3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches was DENIED

9/9/19 Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire on behalf of Donna V. Bair, Petitioner.

9/25/19 Order on Motion for Reconsideration issued by the Administrative Law Judge wherein it was Ordered:
- that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms in BCZR §104;
- that all new construction must comply with current setbacks and restrictions at the time of new construction; and
- all other matters and respects of Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

The Board convened for hearing on February 6, 2020. This matter did not conclude. This matter has been

ASSIGNED FOR: FEBRUARY 23, 2021, AT 10:00 A.M. – Day 2;
and: FEBRUARY 25, 2021, AT 10:00 A.M. – Day 3

The above scheduled hearing will be held remotely using WebEx for audio and video participation. **Call-in information and a link to the hearing will be posted on our web calendar at** www.baltimorecountymd.gov/Agencies/appeals/index.html **the night before.**

A complete set of **exhibits must be emailed** at least **48 hours before the hearing** to **appealsboard@baltimorecountymd.gov** in a format that complies with MDEC (Maryland Electronic Court) standards.

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 require special accommodations, please contact this office at least one week prior to hearing date.

If you do not have access to a computer or smart device, please contact our office for the call-in information the day before the scheduled hearing.

Krysundra Cannington, Administrator

c. Counsel for Petitioners : Lawrence E. Schmidt, Esquire
Legal Owner : Donna Bair

People's Counsel for Baltimore County : Peter M. Zimmerman, Esquire

Protestants *pro se* : Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
John E. Lemmerman/RTF Associates, Inc.
Kim and Tom Montanye
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz

C. Pete Gutwald, Director/Department of Planning
Michael D. Mallinoff, Director/PAI
Paul M. Mayhew, Managing Administrative Law Judge

James R. Benjamim, Jr., County Attorney
Nancy C. West, Assistant County Attorney

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

June 17, 2020

William A. McComas Chairman
Andrew M. Belt, Panel Member
Maureen E. Murphy, Panel Member
Board of Appeals of Baltimore County
105 West Chesapeake Avenue, Suite 203
Towson, Maryland 21204

Re: Donna Bair, Petitioner
4607 Prospect Avenue
Case Nos.: 2019-342-SPHA

Dear Chairman McComas and Panel Members Murphy and Belt,

This responds to the June 8 e-mail from County Board of Appeals (CBA) administrator Krysundra Cannington, we respectfully object to the arrangement of a Webex remote event for a second trial hearing day (and any other days, if necessary) in the above Bair case. This objection is accentuated here because Petitioner Donna Bair (Bair) presented her case in open hearing on February 6, 2020. This discrimination is unfair and contravenes due process of law.

The scheduled second hearing day of April 7 was cancelled because of the pandemic after Governor Lawrence Hogan's order of March 16. There were also orders by Chief Judge Mary Ellen Barbera effectively closing the courts except for specified emergency or other priority cases.

We recognize the good faith effort of the CBA to resume activities backlogged by the pandemic. This includes the balanced and reasonable resumption of public deliberations and several of our cases and potential oral arguments on motions or for on-the-record appeals.

Here, while further delay prolongs the presence of dwelling additions and fencing in conflict with zoning law, due process warrants a moderate additional delay for a plenary in-person trial hearing, where, as noted, Bair had the benefit of such a hearing to present her case. We have e-mailed and phoned the leading Protestants --- Steve Fradkin, Tom Montanye, and Robin Coffin --- and they agree that a remote trial is inappropriate and unfair.

The CBA should assess soon the county's social reopening and schedule two days of plenary public hearings. We note that the District Courts are opening for non-jury trials June 22. The Circuit Courts are currently under the phased Maryland Court of Appeals Order for Phase V reopening in October. The CBA could reasonably proceed to schedule Bair in September or October, subject to adjustment if judicial guidelines or the pandemic demand it.

A few more months delay in this multi-year litigation will assure fairness and due process of law. Maryland Aggregates v. State 337 Md. 658, 686-87 (1995); Calvert County Pl. Comm'n v. Howlin Realty Mgt, Inc. 364 Md. 301, 322 (2001). Anyway. It it will likely be late July or August before a remote trial could be held, if then, given summer schedules of many participants.

Chief Judge Mary Ellen Barbera of the Maryland Court of Appeals implicitly recognized the practical problems of remote trials in her latest administrative order for the court system. Neither jury or non-jury trials are allowed until October. They are not allowed remotely in the phased transition which allows remote oral arguments. While this order does not apply directly to the County Board of Appeals, it appears reasonable to follow it.

Here are several practical problems for remote events:

1. Notice, compulsion of witness attendance, subpoenas, pretrial disclosures. A remote trial involves additional complexities and fairness issues here. There have to be notice provisions to enable all members of the public to attend and participate, not just those already identified. As the Court of Appeals observed, any hearing legislatively provided as "public" must be open to the public, even if not a contested case hearing. Sugarloaf Citizens v. Waste Disposal Authority 323 Md. 641, 657 n.12 (1991). Any person interested in the case may participate. Dorsey v. Bethel AME Church 375 Md. 59, 75-77 (2003).There would have also to be provisions for web compulsion of witnesses, subpoenas, and production of exhibits by all members of the public. If pretrial production of exhibits is involved, this entails pretrial identification of witnesses. Bair did not have to make any pretrial disclosures.

2. Trying the case: Trials are not scripted. Parties adjust to ongoing testimony, exhibits, and rulings. This occurs even more in *de novo* hearings. There are necessarily attorney/intraparty communications. Attorneys, clients, participants and experts communicate with each other in the hearing room during the trial or at recesses. This may include determination, scheduling, and scope of witnesses, unforeseen eventualities. It will not be possible to do that at a Webex activity.

3. Evaluating impact and credibility of witnesses. Testimony on a computer screen does not have the same impact as in-person testimony. Moreover, there is little or no body language on a computer screen. The dynamics of attorney/witness interactions are not the same. Webex hinders evaluation of impact and credibility.

4. Limited screen space for videos of participants. Our experience with Zoom and Skype reflects screen space for a relatively small number of videos. In land use cases, there are often many participants. Here, we have 3 CBA panel members, 2 or more attorneys (with Bair associates or Deputy People's Counsel), expert(s), at least 3 nearby property owners, community association representatives, and many others. It is unpredictable who will be shown on the screen at any time. This hinders the ability of participants to observe the proceedings. It is also unpredictable whether the screen will focus efficiently as speakers shift with high frequency at times.

5. Screening of exhibits. How are exhibits to be placed on the screen, especially site plans; photographs, some large; and pattern books where the fine print is already almost illegible. How do we question witnesses about exhibits? How does one point to, mark, or otherwise make use of exhibits, as is often done? What if there are physical exhibits?

6. Other exhibit problems. What happens when it becomes apparent during the course of the hearing that additional exhibits are appropriate, not anticipated or identified prior to the hearing? Does pretrial identification of exhibits apply to all parties before the first day of hearing? How can area citizens possibly anticipate what exhibits they will need until they observe a petitioner's case? Why should they have to provide any exhibits at all until they see what a petitioner has to say?

7. Evidentiary rulings. Dealing with evidentiary objections and rulings is already often challenging, including the opportunity for various parties to argue, and occasionally the opportunity for CBA members to confer with each other. This will be even more challenging and likely protracted by Webex.

8. Legal issues. Sometimes legal issues arise during the hearing, whether evidentiary or other. Sometimes, It may be helpful to provide copies of appellate cases. This cannot be done by Webex.

9. Technical issues. Citizens may have technical problems linking in, based on computer capability or location. Also, will the recording of the Webex work well? Will a transcriber know who is speaking?

10. Vacation and social distance issues. Even though the pandemic is limiting travel, some parties may be away in the region in July and August, whether for vacation or to socially distance. It makes sense to envision a September or October resumption, with normal public hearings and social distancing if then warranted.

11. Press access. The public character of hearings requires availability to the press. There are news publications which cover Baltimore County land use cases, including regional publications such as The Country Crier, The Peak, and The Villager. How would the Webex be made available to them.

12. Stress. It is uncertain to what degree it is stressful for participants to concentrate on the computer screen all day. While a day at a public zoning hearing may also be challenging, it is likely not challenging to that degree.

These problems are just aggravated here where the remote Webex is injected in the middle of the case. Bair has had the advantage of the usual open *de novo* hearing, with all of its accoutrements and presentational benefits and impacts, and without any pretrial disclosure of witnesses or exhibits. The shift to remote for Protestants and our office will suffer from all the enumerated infirmities and newly advance disclosure of exhibits and to an extent, witnesses. Such bifurcation of this case would manifestly be prejudicial and unfair.

Our office is anxious to make progress. Unfortunately, the wheels of justice grind slower than ever due to the pandemic. But the better and proper course is to envision the resumption and scheduling of proper normal public hearings. With an optimistic approach, it should very soon be plausible to schedule this case for two hearing days in September or October. The benefits to due process and the efficient administration of justice will outweigh by far the impairment of due process of law in the Webex setting.

We trust the CBA will appreciate our office's concerns. It is noteworthy there are also legal issues regarding the adequacy of the predicate for Webex or other remote proceedings. Nevertheless, as a matter of public interest, in view of the pandemic, we shall not enumerate them at this time. We are approaching this situation from the point of view of a balance between progress and fairness. We also refer to Chief Judge Barbera's orders as useful guides.

Thank you for your attention to this important matter.

Sincerely,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio
Deputy People's Counsel

cc: Lawrence Schmidt, Attorney for Donna Bair, sent via email
Steven Fradkin, sent via email
Robin S. Coffin, sent via email
Tom Montanye, sent via email
Nancy C. West, Assistant County Attorney

Board of Appeals of Baltimore County

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

February 21, 2020

NOTICE OF ASSIGNMENT - DAY 2

IN THE MATTER OF: Donna V. Bair – Legal Owner
4607 Prospect Avenue
19-342-SPHA 4th Election District; 3rd Councilmanic District

8/9/19 Opinion and Order of the Administrative Law Judge wherein the:
- Petition for Special Hearing:
  1) to approve a nonconforming lot width and lot area; and
  2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of 30 inches was GRANTED; the
- Petition for Special Hearing:
  1) to approve a nonconforming dwelling side yard setback; and
  2) to confirm that an existing fence (swimming pool enclosure) with a height of 6' is in compliance with BCZR §427.1 and BCC §13-6-101 was DENIED; and the
- Petition for Variance:
  1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.;
  2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; and
  3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches was DENIED

9/9/19 Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire on behalf of Donna V. Bair, Petitioner.

9/25/19 Order on Motion for Reconsideration issued by the Administrative Law Judge wherein it was Ordered:
- that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms in BCZR §104;
- that all new construction must comply with current setbacks and restrictions at the time of new construction; and
- all other matters and respects of Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

The Board convened for hearing on February 6, 2020. This matter did not conclude. Upon agreement of the parties, a second day of hearing has been

ASSIGNED FOR: APRIL 7, 2020, 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.
- Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits with the Board unless otherwise requested. Said Motions, Memoranda and exhibits must be in MDEC compliant formats pursuant to the Maryland Rules, unless otherwise requested
- Please contact our office for information about projection equipment. 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 Cannington, Administrator

c. Counsel for Petitioners : Lawrence E. Schmidt, Esquire
Legal Owner : Donna Bair

Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
John E. Lemmerman/RTF Associates, Inc.
Kim and Tom Montanye
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz

C. Pete Gutwald, Director/Department of Planning
James R. Benjamim, Jr., County Attorney
Michael D. Mallinoff, Director/PAI
Nancy C. West, Assistant County Attorney
Office of People's Counsel
Paul M. Mayhew, Managing Administrative Law Judge

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 13, 2019

NOTICE OF POSTPONEMENT AND REASSIGNMENT

IN THE MATTER OF: Donna V. Bair – Legal Owner
4607 Prospect Avenue
19-342-SPHA 4th Election District; 3rd Councilmanic District

8/9/19 Opinion and Order of the Administrative Law Judge wherein the:
- Petition for Special Hearing:
  1) to approve a nonconforming lot width and lot area; and
  2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of 30 inches was GRANTED; the
- Petition for Special Hearing:
  1) to approve a nonconforming dwelling side yard setback; and
  2) to confirm that an existing fence (swimming pool enclosure) with a height of 6' is in compliance with BCZR §427.1 and BCC §13-6-101 was DENIED; and the
- Petition for Variance:
  1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.;
  2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; and
  3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches was DENIED

9/9/19 Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire on behalf of Donna V. Bair, Petitioner.

9/25/19 Order on Motion for Reconsideration issued by the Administrative Law Judge wherein it was Ordered:
- that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms in BCZR §104;
- that all new construction must comply with current setbacks and restrictions at the time of new construction; and
- all other matters and respects of Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

This matter was scheduled for January 9, 2020 and has been postponed by request of Counsel. This matter has been

REASSIGNED FOR: FEBRUARY 6, 2020, 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.
- Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits with the Board unless otherwise requested. Said Motions, Memoranda and exhibits must be in MDEC compliant formats pursuant to the Maryland Rules, unless otherwise requested
- Please contact our office for information about projection equipment. 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 Cannington, Administrator

c. Counsel for Petitioners : Lawrence E. Schmidt, Esquire
Legal Owner : Donna Bair

Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
John E. Lemmerman/RTF Associates, Inc.
Kim and Tom Montanye
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz

C. Pete Gutwald, Director/Department of Planning
Michael D. Mallinoff, Director/PAI
James R. Benjamin, Jr., County Attorney
Nancy C. West, Assistant County Attorney
Office of People's Counsel
Paul M. Mayhew, Managing Administrative Law Judge

Board of Appeals of Baltimore County

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

November 14, 2019

NOTICE OF ASSIGNMENT

IN THE MATTER OF: Donna V. Bair – Legal Owner
4607 Prospect Avenue
19-342-SPHA 4th Election District; 3rd Councilmanic District

8/9/19 Opinion and Order of the Administrative Law Judge wherein the:
- Petition for Special Hearing:
  1) to approve a nonconforming lot width and lot area; and
  2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of 30 inches was GRANTED; the
- Petition for Special Hearing:
  1) to approve a nonconforming dwelling side yard setback; and
  2) to confirm that an existing fence (swimming pool enclosure) with a height of 6' is in compliance with BCZR §427.1 and BCC §13-6-101 was DENIED; and the
- Petition for Variance:
  1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.;
  2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; and
  3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches was DENIED

9/9/19 Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire on behalf of Donna V. Bair, Petitioner.

9/25/19 Order on Motion for Reconsideration issued by the Administrative Law Judge wherein it was Ordered:
- that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms in BCZR §104;
- that all new construction must comply with current setbacks and restrictions at the time of new construction; and
- all other matters and respects of Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

ASSIGNED FOR: **JANUARY 9, 2020, 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.
- Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits with the Board unless otherwise requested. Said Motions, Memoranda and exhibits must be in MDEC compliant formats pursuant to the Maryland Rules, unless otherwise requested
- Please contact our office for information about projection equipment. 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 Cannington, Administrator

c. Counsel for Petitioners : Lawrence E. Schmidt, Esquire
Legal Owner : Donna Bair

Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
John E. Lemmerman/RTF Associates, Inc.
Kim and Tom Montanye
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz

C. Pete Gutwald, Director/Department of Planning
Michael D. Mallinoff, Director/PAI
Michael E. Field, County Attorney
Nancy C. West, Assistant County Attorney
Office of People's Counsel
Paul M. Mayhew, Managing Administrative Law Judge

IN RE: **PETITIONS FOR SPECIAL HEARING AND VARIANCE** (4607 Prospect Avenue) 4th Election District 3rd Council District Donna V. Bair, *Legal Owner*	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY
Petitioner	*	**Case No. 2019-0342-SPHA**

* * * * * * * *

ORDER ON MOTION FOR RECONSIDERATION

This matter is a request for a reconsideration of an Order issued by Judge Beverungen on August 19, 2019, granting in part and denying in part request for Special Hearing and Variance. Counsel for the Petitioner herein moves for reconsideration as to only one issue: namely the clarification of the status of the original structure constructed in 1951 as well as the setbacks existing at that time.

I have reviewed the record and evidence submitted an find that, notwithstanding the additional structures which were the subject of Judge Beverungen' s August 19, 2019 Order, the original structure and setbacks existing in 1951 are still clearly in effect and are entitled to status as nonconforming.

THEREFORE, IT IS ORDERED this **25th** day of **September, 2019**, that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms set forth in Baltimore County Zoning Regulations ("BCZR") § 104; and

IT IS FURTHER ORDERED that all new construction must comply with current setbacks and restrictions existing at the time of new construction.

ORDER RECEIVED FOR FILING

Date 9/25/19

By

IT IS FURTHER ORDERED that in all other matter and respects Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

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

LAWRENCE M. STAHL
Administrative Law Judge
for Baltimore County

LMS:sln

ORDER RECEIVED FOR FILING
Date 9/25/19
By sln

JOHN A. OLSZEWSKI, JR.
County Executive

ADMINISTRATIVE LAW JUDGE
Office of Administrative Hearings

September 25, 2019

Lawrence E. Schmidt, Esq.
Zachary J. Wilkins, Esq.
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204

RE: **MOTION FOR RECONSIDERATION –**
Petitions for Special Hearing and Variance
Case No. 2019-0342-SPHA
Property: 4607 Prospect Avenue

Dear Counsel:

Enclosed please find a copy of the Order on Motion for Reconsideration 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,

LAWRENCE M. STAHL
Administrative Law Judge
for Baltimore County

LMS:sln
Enclosure

c: Pamela Becker, 24 Chatsworth Avenue, Glyndon, Maryland 21071
Richard Stanley, 215 Central Avenue, Glyndon, Maryland 21071
Shirley Winebarger, 80 Hanover Road, Reisterstown, Maryland 21136
Teresa Moore, 29 Waugh Avenue, Reisterstown, Maryland 21136
Vernene Lenz, 4722 Butler Road, Glyndon, Maryland 21071

Kim Karlsen, 304 Hammond Avenue, Glyndon, Maryland 21071
Martha Wist, 3834 Ivy Hill Drive, Hampstead, Maryland 21074
Ann Rea, 1015 Caren Drive, Eldersburg, Maryland 21784
Lyle Montanye, 4342 Butler Road, Glyndon, Maryland 21071
Frances Acle, 4606 Prospect Avenue, Glyndon, Maryland 21071
Kim & Tom Montanye, 4609 Prospect Avenue, Glyndon, Maryland 21071
Charles & Anna Welsh, 4601 Prospect Avenue, Glyndon, Maryland 21071
Robin Coffin, 4511 Prospect Avenue, Glyndon, Maryland 21071
Raymond & Linda Long, 114 Hanover Road, Glyndon, Maryland 21136
Steve & Patricia Fradkin, 4605 Prospect Avenue, Glyndon, Maryland 21136
Ramzi & Roula Hemady, 4603 Prospect Avenue, Glyndon, Maryland 21136
Robert Gehman, 4612 Prospect Avenue, Glyndon, Maryland 21136
Cynthia Morrison 4500 Prospect Avenue, Glyndon, Maryland 21071

IN RE: **PETITIONS FOR SPECIAL HEARING AND VARIANCE**	*	BEFORE THE
(4607 Prospect Avenue) 4th Election District 3rd Council District Donna V. Bair, *Legal Owner*	*	OFFICE OF ADMINISTRATIVE HEARINGS
	*	FOR BALTIMORE COUNTY
Petitioner	*	**Case No. 2019-0342-SPHA**

* * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings ("OAH") for consideration of Petitions for Special Hearing and Variance filed on behalf of Donna V. Bair, legal owner ("Petitioner"). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("BCZR") as follows: (1) to approve a nonconforming lot width and lot area, pursuant to BCZR Section 104.1.; (2) to approve a nonconforming dwelling side yard setback, pursuant to BCZR Section 104.1; and (3) to confirm that an existing fence (swimming pool enclosure) with a height of 6 ft. is in compliance with BCZR Section 427.1 and BCC §13-6-101.

A Petition for Variance seeks: (1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.; (2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; (3) to permit an existing shed with a side yard setback of 26 inches in lieu of the required 30 inches; and (4) to permit, if necessary, an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches. A site plan was marked and accepted into evidence as Petitioner's Exhibit 1.

Donna Bair and surveyor John Lemmerman appeared in support of the requests. Lawrence E. Schmidt, Esq. and Zachary J. Wilkins, Esq. represented Petitioner. Numerous neighbors and

ORDER RECEIVED FOR FILING
Date 8/19/19
By ____

members of the community opposed the requests. The Petition was advertised and posted as required by the BCZR. A substantive Zoning Advisory Committee ("ZAC") comment was received from the Department of Planning ("DOP"). That agency opposed certain of the zoning requests.

SPECIAL HEARING

The subject property is shown as Lot 10 on the Plat of Glyndon, filed long before adoption of the BCZR. As such it is obvious the size and width of the lot (neither of which satisfy current DR1 zone requirements) are lawfully nonconforming. This means the lot was properly created long ago, and became nonconforming when the BCZR was adopted in 1955. That aspect of the special hearing request will be granted.

Similarly, the existing shed in the rear yard appears to have been constructed many years ago, likely before the BCZR required a 2 ½ ft. setback for accessory structures. The shed is 26 inches from the property boundary, which is just 4 inches shy of the required setback. As such, though included as a variance request, this will be approved as a lawful nonconforming structure under the special hearing petition.

But I believe the remainder of the special hearing requests must be denied as a matter of law. While the side yard setbacks were deficient and likely nonconforming when Petitioner purchased the property in 2014, improvements were made on both sides of the dwelling since that time. As discussed at the hearing Petitioner failed to obtain a building permit for these recent improvements and the setbacks are in violation of the BCZR. As a result the side yard setbacks (of 0' and 14.9') are not lawfully nonconforming. With respect to the fence, I do not believe it complies with the BCZR and therefore that aspect of the special hearing must also be denied. While the BCZR specifies fences surrounding pools are exempt from the 42" height limitation,

ORDER RECEIVED FOR FILING
Date 8/19/19
By Den

another section of the same regulation states the exemption is not applicable in an historic district, like Glyndon. BCZR §427.1.A.

VARIANCE

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

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

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

Based on the site plan, photos and other exhibits I do not believe the subject property is unique in a zoning sense. The shape, size and topography of the lot is similar to many other properties in the community. While Glyndon is a historic district, the subject property itself is not historic. As such I do not believe that attribute can render this property unique; *i.e.,* unlike surrounding properties.

In addition, while Petitioner's counsel is correct that the boundary dispute issue must be resolved in circuit court, I do not believe variance relief can be properly granted in a case when the result would be to countenance a trespass onto another's property. It is undisputed, as shown on the site plan, that the improvements intrude 2.5 ft. onto the property owned by the Fradkins. It would be inappropriate, in my opinion, to grant a variance to "legitimize" from a zoning perspective the *status quo*. The BCZR specifies that variances must be in "strict harmony with the spirit and intent" of the regulations, and must not be injurious to the general welfare. BCZR §307.1. I do not believe that the requested variances would satisfy either criterion.

THEREFORE, IT IS ORDERED this **19th** day of **August, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing: (1) to approve a nonconforming lot width and

ORDER RECEIVED FOR FILING

Date 8/19/19

By Sen

area; and (2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of the required 30 inches, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Hearing: (1) to approve a nonconforming dwelling side yard setback; and (2) to confirm that an existing fence (swimming pool enclosure) with a height of 6 ft. is in compliance with BCZR Section 427.1 and BCC Section 13-6-101, be and is hereby DENIED.

IT IS FURTHER ORDERED that the Petition for Variance: (1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.; (2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of side yards of 14.9 ft. in lieu of the required 50 ft.; and (3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches, 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:sln

ORDER RECEIVED FOR FILING
Date 8/19/19
By Sln

JOHN A. OLSZEWSKI, JR.
County Executive

ADMINISTRATIVE LAW JUDGE
Office of Administrative Hearings

August 19, 2019

Lawrence E. Schmidt, Esq.
Zachary J. Wilkins, Esq.
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204

RE: Petitions for Special Hearing and Variance
Case No. 2019-0342-SPHA
Property: 4607 Prospect Avenue

Dear Counsel:

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

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

Sincerely,

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln
Enclosure

c: Pamela Becker, 24 Chatsworth Avenue, Glyndon, Maryland 21071
Richard Stanley, 215 Central Avenue, Glyndon, Maryland 21071
Shirley Winebarger, 80 Hanover Road, Reisterstown, Maryland 21136
Teresa Moore, 29 Waugh Avenue, Reisterstown, Maryland 21136
Vernene Lenz, 4722 Butler Road, Glyndon,Maryland 21071

Kim Karlsen, 304 Hammond Avenue, Glyndon, Maryland 21071
Martha Wist, 3834 Ivy Hill Drive, Hampstead, Maryland 21074
Ann Rea, 1015 Caren Drive, Eldersburg, Maryland 21784
Lyle Montanye, 4342 Butler Road, Glyndon, Maryland 21071
Frances Acle, 4606 Prospect Avenue, Glyndon, Maryland 21071
Kim & Tom Montanye, 4609 Prospect Avenue, Glyndon, Maryland 21071
Charles & Anna Welsh, 4601 Prospect Avenue, Glyndon, Maryland 21071
Robin Coffin, 4511 Prospect Avenue, Glyndon, Maryland 21071
Raymond & Linda Long, 114 Hanover Road, Glyndon, Maryland 21136
Steve & Patricia Fradkin, 4605 Prospect Avenue, Glyndon, Maryland 21136
Ramzi & Roula Hemady, 4603 Prospect Avenue, Glyndon, Maryland 21136
Robert Gehman, 4612 Prospect Avenue, Glyndon, Maryland 21136
Cynthia Morrison 4500 Prospect Avenue, Glyndon, Maryland 21071

Address List

Petitioner/Appellant:

Donna V. Bair
4607 Prospect Avenue
Glyndon, MD 21071
Legal Owner

Lawrence E. Schmidt, Esquire
Zachary J. Wilkins, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue
Suite 200
Towson, MD 21204
lschmidt@sgs-law.com
zwilkins@sgs-law.com

John E. Lemmerman
RTF Associates, Inc.
142 East Main Street
Westminster, MD 21157

Interested Persons/ Protestants:

Pamela Becker
24 Chatsworth Avenue
Glyndon, MD 21071

Richard Stanley
215 Central Avenue
Glyndon, MD 21071

Shirley Winebarger
80 Hanover Road
Reisterstown, MD 21136

Teresa Moore
29 Waugh Avenue
Reisterstown, MD 21136

Vernene Lenz
4722 Butler Road
Glyndon, MD 21071

Kim Karlsen
304 Hammond Avenue
Glyndon, MD 21071

Martha Wist
3834 Ivy Hill Drive
Hampstead, MD 21074

Ann Rea
1015 Caren Drive
Eldersburg, MD 21784

Lyle Montanye
4342 Butler Road
Glyndon, MD 21071

Frances Acle
4606 Prospect Avenue
Glyndon, MD 21136

Kim and Tom Montanye
4609 Prospect Avenue
Glyndon, MD 21136

Charles & Anna Welsh
4601 Prospect Avenue
Glyndon, MD 21071

Robin Coffin
4511 Prospect Avenue
Glyndon, MD 21071

Raymond & Linda Long
114 Hanover Road
Glyndon, MD 21136

Steve & Patricia Fradkin
4605 Prospect Avenue
Glyndon, MD 21136

Ramzi & Roula Hemady
4603 Prospect Avenue
Glyndon, MD 21136

Robert Gehman
4612 Prospect Avenue
Glyndon, MD 21136

Cynthia Morrison
4500 Prospect Avenue
Glyndon, MD 21071

Interoffice:

Office of People's Counsel
Paul M. Mayhew, Managing Administrative Law Judge
C. Pete Gutwald, Director/Department of Planning
Michael D. Mallinoff, Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law

Address List

Petitioner/Appellant:

Donna V. Bair
4607 Prospect Avenue
Glyndon, MD 21071
Legal Owner

Lawrence E. Schmidt, Esquire
Zachary J. Wilkins, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue
Suite 200
Towson, MD 21204
lschmidt@sgs-law.com
zwilkins@sgs-law.com

John E. Lemmerman
RTF Associates, Inc.
142 East Main Street
Westminster, MD 21157

Interested Persons/ Protestants:

Pamela Becker
24 Chatsworth Avenue
Glyndon, MD 21071

Richard Stanley
215 Central Avenue
Glyndon, MD 21071

Shirley Winebarger
80 Hanover Road
Reisterstown, MD 21136

Teresa Moore
29 Waugh Avenue
Reisterstown, MD 21136

Vernene Lenz
4722 Butler Road
Glyndon, MD 21071

Kim Karlsen
304 Hammond Avenue
Glyndon, MD 21071

Martha Wist
3834 Ivy Hill Drive
Hampstead, MD 21074

Ann Rea
1015 Caren Drive
Eldersburg, MD 21784

Lyle Montanye
4342 Butler Road
Glyndon, MD 21071

Frances Acle
4606 Prospect Avenue
Glyndon, MD 21136

Kim and Tom Montanye
4609 Prospect Avenue
Glyndon, MD 21136

Charles & Anna Welsh
4601 Prospect Avenue
Glyndon, MD 21071

Robin Coffin
4511 Prospect Avenue
Glyndon, MD 21071

Raymond & Linda Long
114 Hanover Road
Glyndon, MD 21136

Steve & Patricia Fradkin
4605 Prospect Avenue
Glyndon, MD 21136

Ramzi & Roula Hemady
4603 Prospect Avenue
Glyndon, MD 21136

Robert Gehman
4612 Prospect Avenue
Glyndon, MD 21136

Cynthia Morrison
4500 Prospect Avenue
Glyndon, MD 21071

Interoffice:

Office of People's Counsel
Paul M. Mayhew, Managing Administrative Law Judge
C. Pete Gutwald, Director/Department of Planning
Michael D. Mallinoff, Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law

IN THE MATTER OF DONNA V. BAIR – LEGAL OWNER AND PETITIONER FOR SPECIAL HEARING AND VARIANCE ON THE PROPERTY LOCATED AT 4607 PROSPECT AVENUE	*	BEFORE THE BOARD OF APPEALS OF
4TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BALTIMORE COUNTY
	*	CASE NO. 19-342-SPHA

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

RULING ON MOTION FOR RECONSIDERATION

This case comes to the Board of Appeals for Baltimore County ("Board") on a Motion for Reconsideration ("Motion") which was timely filed by Tom and Kim Montanye ("Protestants") *pro se,* requesting a limited review and reconsideration by the Board of its decision regarding the relocation of the fence and gate on the south side of the Bair property adjoining the Montanye residence.

The original Petitioner and property owner, Donna Bair, by her attorneys, Lawrence E. Schmidt and Smith, Gildea & Schmidt, LLC, submitted a Response to the Protestants' Motion for Reconsideration, and People's Counsel filed an email response.

This matter originally came before the Board on a Petition for Special Hearing and Variances filed by Petitioner Bair. The Board held three days of hearing and issued its Opinion and Order on June 7, 2021, granting in part and denying in part the request relief.

The Board held its deliberation on the Motion to Reconsider on August 31, 2021, and for the reasons that follow, denied the Motion.

The language in the Order regarding the fence is based on the evidence presented at the hearing where the Board found that the gate to the Bair's rear yard was previously located at the rear of the Bair residence and then Ms. Bair impermissibly moved the gate, and the supporting

fence, to the front of her house. No evidence was presented as to the precise location of the gate prior to its being moved.

The Board ordered that the fence extension and gate must be moved to the rear building line of the Bair residence, so as not to impede visibility for vehicles exiting the Montanye's driveway. The Board did not require the remaining portion of the fence be further re-aligned.

The Board finds there is no indication of the existence of new law or evidence not available at the time of the hearing. The Board also notes that its revisory power is limited by its Rule 11 which states "the Board shall have revisory power and control over the order in the event of fraud, mistake or irregularity." The Motion did not allege any such fraud, mistake or irregularity.

Conclusion

After reviewing the Motion and the case record, the Board unanimously finds none of the issues raised warrant revising its decision, and accordingly, the Motion should be denied.

ORDER

THEREFORE, IT IS THIS 9th day of November, 2021, by the Board of Appeals of Baltimore County,

ORDERED, that the Motion for Reconsideration is hereby **DENIED** for the reasons set forth herein.

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

Deborah C. Dopkin, Chair

See following page
Andrew M. Belt

Bryan T. Pennington /tag
Bryan T. Pennington

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

See previous page
Deborah C. Dopkin, Chair

Andrew M. Belt

See previous page
Bryan T. Pennington

Board of Appeals of Baltimore County

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

November 9, 2021

Lawrence E. Schmidt, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204

Thomas and Kimberly Montanye
4609 Prospect Avenue
Glyndon, Maryland 21136

Peter M. Zimmerman, Esquire
Carole S. Demilio, Esquire
Office of People's Counsel
The Jefferson Building, Suite 204
105 W. Chesapeake Avenue
Towson, Maryland 21204

RE: *In the Matter of: Donna V. Bair – Legal Owner*
Case No.: 19-342-SPHA

Dear Mr. and Mrs. Montanye and Counsel:

Enclosed please find a copy of the final Ruling on Motion for Reconsideration issued this date by the Board of Appeals of Baltimore County in the above subject matter.

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

Very truly yours,

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Multiple Original Cover Letters
Enclosure

c: See Distribution List following

In the matter of: Donna V. Bair – Legal Owner
Case No.: 19-342-SPHA
November 9, 2021
Distribution List

Donna V. Bair
Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz
Paul M. Mayhew, Managing Administrative Law Judge
Stephen Lafferty, Director/Office of Planning
C. Pete Gutwald, Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
James R. Benjamin, Jr., County Attorney/Office of Law

From:	Lawrence Schmidt
To:	Peter Max Zimmerman; Appeals Board; Krysundra Cannington
Cc:	Tom@montanye.net; reistlaxcoach@gmail.com; rscoffin@verizon.net; Bair, Donna (donna.bair@yahoo.com)
Subject:	RE: Case No. 19-342-SPHA; Donna Bair, Tom Montanye"s Motion for Reconsideration
Date:	Wednesday, August 25, 2021 3:56:37 PM

CAUTION: This message from lschmidt@sgs-law.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Ms. Cannington: According to the Board's notice of deliberation, all responses to the Motion for Reconsideration were to be filed by 3:00 p.m. August 24, 2021 (yesterday). As Mr. Zimmerman's submittal is untimely, I request that it not be considered by the Board.

Thank you.

Larry Schmidt

Lawrence E. Schmidt | Partner
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
lschmidt@sgs-law.com | http://secure-web.cisco.com/14fA-HelnfCO1OFl2ohP-Ct34sJL4yvNKzC973xSUUNNFxPUNEKb3qva3lC9_EpULnlr7evpdM95yqk46un0BhDz-8MHNwRszJN20nJkWBoHw-8EwSovQSHjB13ykTjVrhBEYYw15s36QI97ZbbbXuF7jOZ8MrLyMbjd2Rl6Vn3xAeIf4BW9QuBuJi0Sch6gcYYDv6SgRgR4HQzPO_RbXmMn_SjCVaFFv79cyHNJaurc8vbnjivHWQVRRNC8tIMkPRRnW6U77lZbzyqUsx0XiXyZ3i-xroL5MPd5LnSLe_Nsuenm3yfEG2Ij3sMttJYEB9itX3qvPLkUeKjYP6EJVREKhVNyYhGrxA4LpoE2ofcf8PQzNQFNTZEmFvA2OtOwlW_kjIbO1p62ADk3qIQBggNv4WvU2X-irKfdT7ILgT-kLyttA0HKd3QikJV1hPn2opp6X9gRPt07JuAKpnhUXvg/http%3A%2F%2Fwww.sgs-law.com

This email contains information from the law firm of Smith, Gildea & Schmidt, LLC which may be confidential and/or privileged. The information is intended to be for the exclusive use of the individual or entity named above. If you are not the intended recipient, be advised that any disclosure, copying, distribution or other use of this information is strictly prohibited. If you have received this e-mail in error, please notify Smith, Gildea & Schmidt, LLC by telephone immediately.

From: Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov>
Sent: Wednesday, August 25, 2021 3:02 PM
To: Appeals Board <appealsboard@baltimorecountymd.gov>; Krysundra Cannington <kcannington@baltimorecountymd.gov>
Cc: Lawrence Schmidt <lschmidt@sgs-law.com>; Tom@montanye.net; reistlaxcoach@gmail.com; rscoffin@verizon.net
Subject: Case No. 19-342-SPHA; Donna Bair, Tom Montanye's Motion for Reconsideration

To the Appeals Board,

This matter is scheduled for further deliberation by the Board on August 31, 2021.

Upon review of the Motion for Reconsideration filed by Tom and Kim Montanye, the Response just filed yesterday by Petitioner, the Board's June 7, 2021 Opinion and Order, and the prior April 20,

2021 deliberation minutes, please allow me to recap these observations.

The June 7, 2021 Order itself does not specify the location where the fence is to be removed and/or relocated. Rather, it refers on Page 8 to "the modification described herein." It turns out that the description of fence relocation on Page 7 of the Opinion is ambiguous and/or inconsistent with the Board's April 20, 2021 decision made in public deliberation. I attach both the opinion and the minutes.

It was my impression in listening to the public deliberation that even to the rear of the Bair house's rear building line, the fence was to be moved away from the Montanye boundary, to the more distant location of the previous picket fence, which also was lower in height. This would provide some transitional buffer. Such a buffer would not be prejudicial to Ms. Bair and would reduce the likelihood of further friction.

The Montanyes' motion's reference to the Board's deliberation minutes is apt:

> "The Board found that a reasonable solution is to relocate the fence and gate to its original location, which will provide pool security and address the driveway concern."

Here is the entire section of the Board's deliberation devoted to the fence issue on Page 2:

> "The Board discussed the request to permit an existing fence (swimming pool enclosure) with a height of 6 ft. in lieu of the permitted 42 in. The Board noted there are competing statutes regarding fences. The 6 ft. fence extends into the front yard of the adjoining property and along the parking area/driveway of the neighbors. The Board noted that the fence impedes the ability of the neighbors to see when they pull out of their driveway, which is a public safety hazard. The Board found that a reasonable solution is to relocate the fence and gate to its original location, which will provide pool security and address the driveway concern. The Board granted the Variance relief, with conditions."

In addition to the Board's recognition of the Petitioner's problematic fence location forward of her rear yard and adjacent to the Montanye front yard, especially near the driveway, there was thus also a recognition that the rear yard fence location as constructed along the property boundary required adjustment. As I previously observed, the fence location extending into the rear yard is way beyond what is necessary to protect children from venturing into the pool. It is actually a privacy fence which is counterproductive to the essential legislative purpose because it leaves open a wide area in which children who play may venture easily into the pool. Moreover, it does not need to be six feet high. Forty-eight inches would be enough even if it is generously called a swimming pool protection fence.

To sum up, I think it was the Board's intent, and within the scope of the Montanye motion to relocate the fence to its previous location, thus providing some buffer area and implicitly adjusting the fence height to the height of the previous fence.

Accordingly, further specification in the order is warranted. This should include a very specific description of the location, and the clarification of a transitional buffer to the previous rear location

would be appropriate. This would include the use of the helpful photographs and overlay diagram attached to the Montanye motion and/or a specification of the distance from the Montanye boundary and the height of the previous fence.

The more specific the order, the better. This would also reduce the likelihood of further disharmony between these neighbors.

This has been a very challenging and difficult case in many ways. To wrap it up, I respectfully posit that the fence aspect does deserve clarification and adjustment consistent with the deliberation.

Respectfully, Peter Max Zimmerman, People's Counsel 410 887-2188

Get your COVID-19 vaccine today.

CONNECT WITH BALTIMORE COUNTY

www.baltimorecountymd.gov

From:	Peter Max Zimmerman
To:	Appeals Board; Krysundra Cannington
Cc:	Lawrence Schmidt; Tom@montanye.net; reistlaxcoach@gmail.com; rscoffin@verizon.net
Subject:	Case No. 19-342-SPHA; Donna Bair, Tom Montanye"s Motion for Reconsideration
Date:	Wednesday, August 25, 2021 3:02:29 PM
Attachments:	Bair Delib Minutes - 2019-342-SPHA.pdf Bair Donna - 2019-342-SPHA - CBA Opinion.pdf

To the Appeals Board,

This matter is scheduled for further deliberation by the Board on August 31, 2021.

Upon review of the Motion for Reconsideration filed by Tom and Kim Montanye, the Response just filed yesterday by Petitioner, the Board's June 7, 2021 Opinion and Order, and the prior April 20, 2021 deliberation minutes, please allow me to recap these observations.

The June 7, 2021 Order itself does not specify the location where the fence is to be removed and/or relocated. Rather, it refers on Page 8 to "the modification described herein." It turns out that the description of fence relocation on Page 7 of the Opinion is ambiguous and/or inconsistent with the Board's April 20, 2021 decision made in public deliberation. I attach both the opinion and the minutes.

It was my impression in listening to the public deliberation that even to the rear of the Bair house's rear building line, the fence was to be moved away from the Montanye boundary, to the more distant location of the previous picket fence, which also was lower in height. This would provide some transitional buffer. Such a buffer would not be prejudicial to Ms. Bair and would reduce the likelihood of further friction.

The Montanyes' motion's reference to the Board's deliberation minutes is apt:

> "The Board found that a reasonable solution is to relocate the fence and gate to its original location, which will provide pool security and address the driveway concern."

Here is the entire section of the Board's deliberation devoted to the fence issue on Page 2:

> "The Board discussed the request to permit an existing fence (swimming pool enclosure) with a height of 6 ft. in lieu of the permitted 42 in. The Board noted there are competing statutes regarding fences. The 6 ft. fence extends into the front yard of the adjoining property and along the parking area/driveway of the neighbors. The Board noted that the fence impedes the ability of the neighbors to see when they pull out of their driveway, which is a public safety hazard. The Board found that a reasonable solution is to relocate the fence and gate to its original location, which will provide pool security and address the driveway concern. The Board granted the Variance relief, with conditions."

In addition to the Board's recognition of the Petitioner's problematic fence location forward of her rear yard and adjacent to the Montanye front yard, especially near the driveway, there was thus also

a recognition that the rear yard fence location as constructed along the property boundary required adjustment. As I previously observed, the fence location extending into the rear yard is way beyond what is necessary to protect children from venturing into the pool. It is actually a privacy fence which is counterproductive to the essential legislative purpose because it leaves open a wide area in which children who play may venture easily into the pool. Moreover, it does not need to be six feet high. Forty-eight inches would be enough even if it is generously called a swimming pool protection fence.

To sum up, I think it was the Board's intent, and within the scope of the Montanye motion to relocate the fence to its previous location, thus providing some buffer area and implicitly adjusting the fence height to the height of the previous fence.

Accordingly, further specification in the order is warranted. This should include a very specific description of the location, and the clarification of a transitional buffer to the previous rear location would be appropriate. This would include the use of the helpful photographs and overlay diagram attached to the Montanye motion and/or a specification of the distance from the Montanye boundary and the height of the previous fence.

The more specific the order, the better. This would also reduce the likelihood of further disharmony between these neighbors.

This has been a very challenging and difficult case in many ways. To wrap it up, I respectfully posit that the fence aspect does deserve clarification and adjustment consistent with the deliberation.

Respectfully, Peter Max Zimmerman, People's Counsel 410 887-2188

IN RE: THE PETITION FOR SPECIAL HEARING AND VARIANCE	*	BEFORE THE
4607 Prospect Avenue	*	COUNTY BOARD
4th Election District 3rd Councilmanic District	*	OF APPEALS
	*	FOR
Donna V. Bair *Legal Owner*	*	BALTIMORE COUNTY
	*	**Case No.: 2019-342-SPHA**

* *

PETITIONER'S RESPONSE TO MOTION FOR RECONSIDERATION

The property owner, Donna V. Bair ("Petitioner"), by and through her attorneys, Lawrence E. Schmidt, Zachary J. Wilkins, and Smith, Gildea & Schmidt, LLC, submits this Response to Motion for Reconsideration filed by Tom and Kim Montanye, and states the following:

1. The Motion filed by Mr. and Mrs. Montanye states, "(w)e wish to have the Order reviewed and reconsidered on the fence opinion only. Not for a change of decision, but only for needed clarity on a single issue. We believe the wording of the written Opinion raises confusion and contains insufficient clarity." The Motion further states that the Board's "written opinion raises confusion and contains insufficient clarity to enable Baltimore County Code Enforcement to reasonably enforce the opinion as agreed upon by the CBA panel in the public deliberation, and also as recorded in the deliberation minutes".

2. Petitioner does not feel that the Opinion is confusing or unclear, but rather simple and concise. The Board discussed during the public deliberation that a 6-foot fence provides safety for the pool; a fence height of 42 inches is permitted in the side/front yard of an adjoining property (BCRZ 427.1B); and, any safety concerns due to the alterations of the fence extended along the south (Montanye) side of the property. The Board discussed where a shorter portion of the new 6-foot fence should start and stop. Board members voted to grant the Variance relief for the fence, with conditions... "subject to the relocation of the gate as described herein, the fence height of 6 ft. will be permitted" (Opinion, Page 7, Paragraph 2). The Opinion simply states that a portion of the 6-foot fence (along the south side of the property and adjacent to the Montanyes property) previously 42 inches in height, be lowered back to the permitted 42 inches and that the gate be moved back to the rear building line of the Bair residence, it's previous location.[1]
3. The mandated changes in the Opinion are clear and unambiguous.
4. The Petitioner is prepared to make such changes.
5. It is also noted that the Motion for Reconsideration presents no new facts, changes in law, fraud, mistake or irregularity**.** Thus, there is no legal basis on which the Motion to Reconsideration can be granted.

[1] The rear building line of the Bair residence is 4 feet back (East) from the rear foundation of the residence, as there is a 4 foot building overhang along that back corner.

Wherefore, having addressed the allegations in the Motion for Reconsideration, the Petitioner requests,

- That the Motion for Reconsideration be DENIED; and
- For such other and further relief as the nature of her cause may require.



LAWRENCE E. SCHMIDT
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
(410) 821-0070
lschmidt@sgs-law.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this **24th** day of August**,** 2021 a copy of the foregoing Response to Motion for Reconsideration was emailed to:

Thomas & Kim Montayne
Tom@montanye.net

Kimberly Karlsen
perandkim@aol.com

Steve & Patricia Fradkin
reistlaxcoach@gmail.com

Sue Benson
sbensoncomm@aol.com

Robin Coffin
rscoffin@verizon.net

Mary Molinaro
mmolinaro@reisterstown.com

Peter Max Zimmerman, Esquire
People's Counsel for Baltimore County
peoplescounsel@baltimorecountymd.gov



LAWRENCE E. SCHMIDT

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
July 15, 2021

NOTICE OF DELIBERATION ON MOTION FOR RECONSIDERATION

IN THE MATTER OF: Donna V. Bair – Legal Owner
4607 Prospect Avenue
19-342-SPHA 4th Election District; 3rd Councilmanic District

Re: Motion for Reconsideration dated July 2, 2021 filed by Tom and Kim Montanye, Protestants *pro* se.

Pursuant to Rule 10 of the Board of Appeals' Rules of Practice and Procedure, a public deliberation on the Motion for Reconsideration and any response thereto is

ASSIGNED FOR: AUGUST 31, 2021 AT 9:00 A.M.

The above scheduled public deliberation will be held remotely using WebEx for audio and video participation. **Call-in information and a link to the public deliberation will be posted on our web calendar the night before at** www.baltimorecountymd.gov/Agencies/appeals/index.html.

NOTE: Any Responses to the Motion for Reconsideration are due on AUGUST 24, 2021 no later than 3:00 p.m.
ELECTRONIC COPY ONLY
emailed to appealsboard@baltimorecountymd.gov

NOTE: PUBLIC DELIBERATIONS ARE OPEN WORK SESSIONS WHICH ALLOW THE PUBLIC TO WITNESS THE DECISION-MAKING PROCESS. A WRITTEN OPINION AND ORDER WILL BE ISSUED BY THE BOARD WITHIN A REASONABLE TIMEFRAME AFTER DELIBERATION AND A COPY SENT TO ALL PARTIES.

If you do not have access to a computer or smart device, please contact our office for the call-in information the day before the scheduled deliberation.

Krysundra Cannington, Administrator

c.	Counsel for Petitioners	: Lawrence E. Schmidt, Esquire
	Legal Owner	: Donna Bair
	People's Counsel for Baltimore County	: Peter M. Zimmerman, Esquire
	Protestants *pro se*	: Ann Rea Charles and Anna Welsh Cynthia Morrison Frances Acle John E. Lemmerman/RTF Associates, Inc. Kim and Tom Montanye Kim Karlsen Lyle Montanye Martha Wist Pamela Becker Ramzi and Roula Hemady Raymond and Linda Long Richard Stanley Robert Gehman Robin Coffin Shirley Winebarger Steve and Patricia Fradkin Teresa Moore Vernene Lenz

Paul M. Mayhew, Managing Administrative Law Judge
Steve Lafferty, Director/Department of Planning
C. Pete Gutwald, Director/PAI
James R. Benjamin, Jr., County Attorney
Nancy C. West, Assistant County Attorney

July 2, 2021

Tom & Kim Montanye, Protestants
4609 Prospect Avenue
Glyndon, MD 21136

Via Email - AppealsBoard@BaltimoreCountyMD.Gov

RECEIVED
JUL 06 2021
BALTIMORE COUNTY
BOARD OF APPEALS

Board of Appeals of Baltimore County
Jefferson Building
105 West Chesapeake Avenue, Suite 203
Towson, MD 21204

Re: Bair – 4607 Prospect Ave
Case No. **2019-342-SPHA**

Dear Board of Appeals,

Please find enclosed a Motion for Reconsideration for filing in the above matter.

We wish to have the order reviewed and reconsidered on the fence opinion only. Not for a change of decision, but only for needed clarity on a single issue.

We believe the wording of the written opinion raises confusion and contains insufficient clarity to enable Baltimore County Code Enforcement to reasonably enforce the opinion as agreed upon by the CBA panel in the Public Deliberation, and also as recorded in the deliberation minutes.

Since this opinion was a partial grant/ partial deny, sufficient clarity is required. We ask that the CBA append or rewrite the fence ruling to exactly reflect the panel's agreement on the fence, so that it can be reasonably enforced, and the matter settled successfully and finally. We highlight and clarify certain hearing exhibits to assist to this end.

We're happy to appear for further explanation or to have the Motion considered based only on these pleadings, as you deem appropriate.

Thank you for your consideration in this matter.

Sincerely,

Tom & Kim Montanye

Cc: Office of the People's Council
Lawrence Schmidt
Steve and Patti Fradkin
Robin Coffin
Kim Karlsen
Sue Bensen
Mary Molinero
Cookie Stone

RECEIVED
JUL 06 2021
BALTIMORE COUNTY
BOARD OF APPEALS

RE: Petition for Special Hearing and Variance, Board of Appeals
Case 2019-342-SPHA
Donna Bair, 4607 Prospect Ave, Glyndon

Motion for Reconsideration

7/2/2021, Tom & Kim Montanye, Neighbors @ 4609 Prospect Ave

Tom and Kim Montanye, the Protestant neighbors at 4609 Prospect Avenue, submit this Motion for Reconsideration (MFR) pursuant to Rule 10 of the County Board of Appeals (CBA), and respectfully request that the CBA revises its' Opinion issued dated June 7, 2021 relating to the above referenced matter.

The fence opinion

During the public deliberation, there was a clear agreement among the CBA panel that the fence that was constructed by the petitioner could stand, with the exception of the *new* portion positioned along the Montanye's driveway/front yard property line. The minutes of the deliberation state *"The Board found that a reasonable solution is to relocate the fence and gate to its original location, which will provide pool security and address the driveway concern."*

However, the resulting opinion confuses the issue by stating *"...the Board finds that the extension of the fence from the rear of the building line of the Bair residence, its previous location, to its current location creates an unsafe condition and violates BCRZ §427.1.B.1 and must be moved back."*

The confusion is caused by two ambiguities in the opinion.

1. "*...from the rear of the building line of the Bair residence...*" – this references a "from" location but not a "to" location, making it unclear the direction or distance of the original fence from that point.
2. "*...its previous location...*" and "*must be moved back*" – only photo exhibits were admitted showing the previous fence, no drawings or surveys.

In order for Code Enforcement to execute the *"relocate the fence and gate to its original location"* sentiment from the deliberation, and "*subject to the modification described herin*" in the Order, the original location must be made clear, using the best available resources from the hearings.

The Petitioner's survey drawing is not helpful in this regard. It contains no indication of the property condition prior to the work being done, including the prior fence location, because it was created after-the-fact.

However, there were two photo exhibits in particular, from the hearings, that can help reconstruct the previous condition. Using these two photo exhibits we offer, as a helpful inclusion, a drawing overlay to the survey, showing the previous fence location. We also include the photo exhibits used to substantiate the accuracy of the drawing overlay.

Protestant's Exhibit 25C / Petitioner's Exhibit 2D

The original gate & fence location

Protestant's Exhibit 25C (included), a photo taken from the Bair view, clearly shows the prior location of the gate and fence. This same photo was also presented into evidence, among other photos in a grouping labeled "4607 Before", as **Petitioner's Exhibit 2D**.

For additional clarity, we have included a "marked up" version of the exhibit photo to assist with the following description of the original fence/gate configuration. There are "call-outs" on the markup corresponding to the letters (a-e) below.

The "marked up" exhibit photo shows that the original gate started near the back corner of the house (a), and that it ran toward the rear yard (parallel to the side of the house and property line, not parallel to the back of the house or "rear of the building line"). In other words, the prior gate faced the Montanye-side property line, not the street. The photo also shows that the gate crossed over the paver walkway and connected with a small portion of 6' tall fence (b) which intersected the 6' tall cabana wall (c).

Where the 6' tall portion of the prior cabana/fence ended

It also shows that the 6' tall fence/cabana along the property line (d) stopped and turned 90 degrees toward the Bair property at the Holly tree (e). This turn is aligned exactly at the end of the Montanye driveway. Recall, the extension of the 6' fence along the driveway was determined to be a public safety hazard due to the lack of ability to see when pulling out of the driveway.

Protestant's Exhibit 6A

Protestant's photo Exhibit 6A (included) is taken from the opposite view (from the Montanye view) of Petitioners photo Exhibit 2D. It confirms that the 6' tall fence/cabana ended at the holly tree and turned 90 degrees into the Bair property. It also confirms that the holly tree aligns exactly at the end of the Montanye driveway.

4607 Survey Overlay Diagram

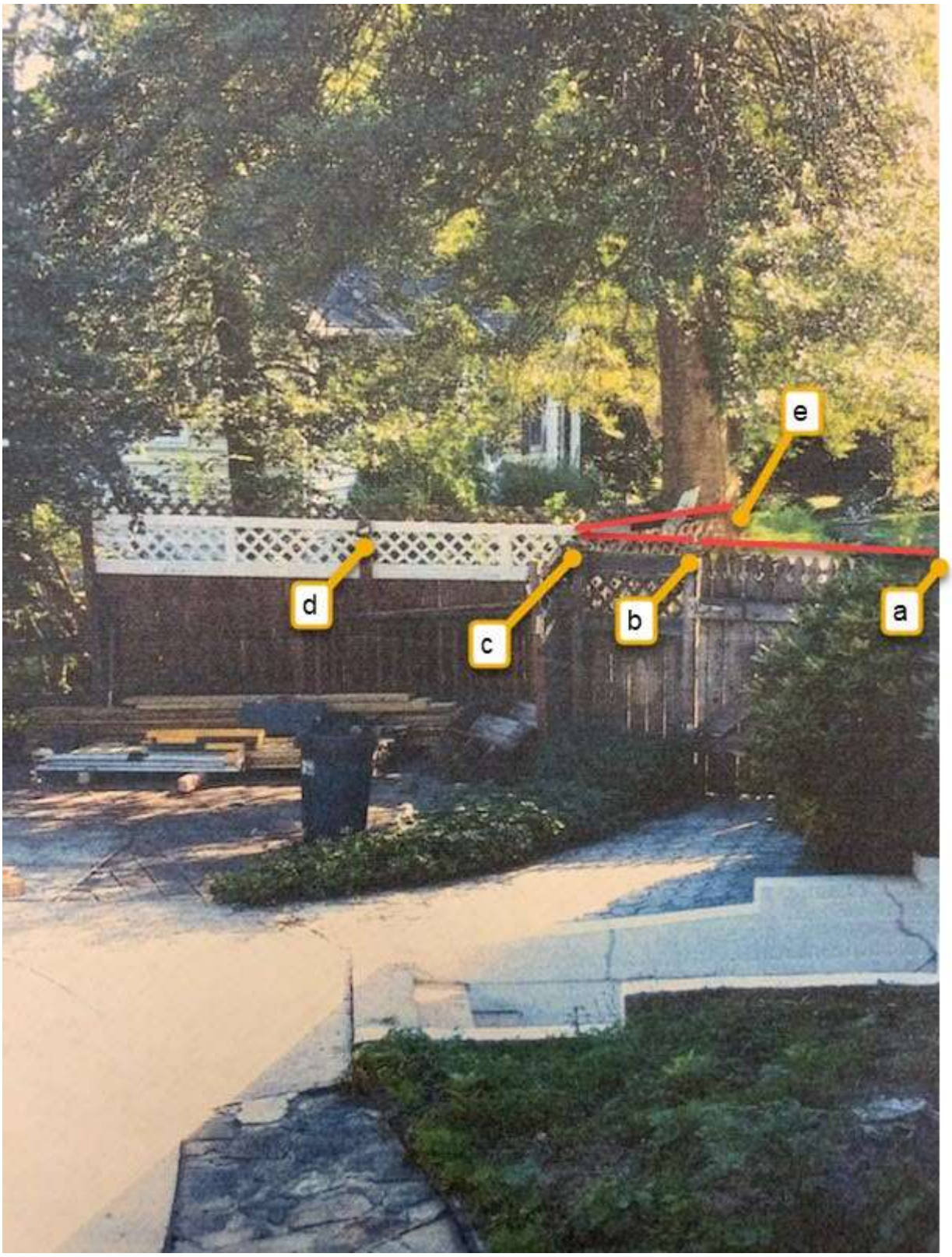
Using the two above photos, and the holly tree landmark, this overlay was created to represent the fence and gate original location. It should suffice to resolve the matter if followed.

Summary

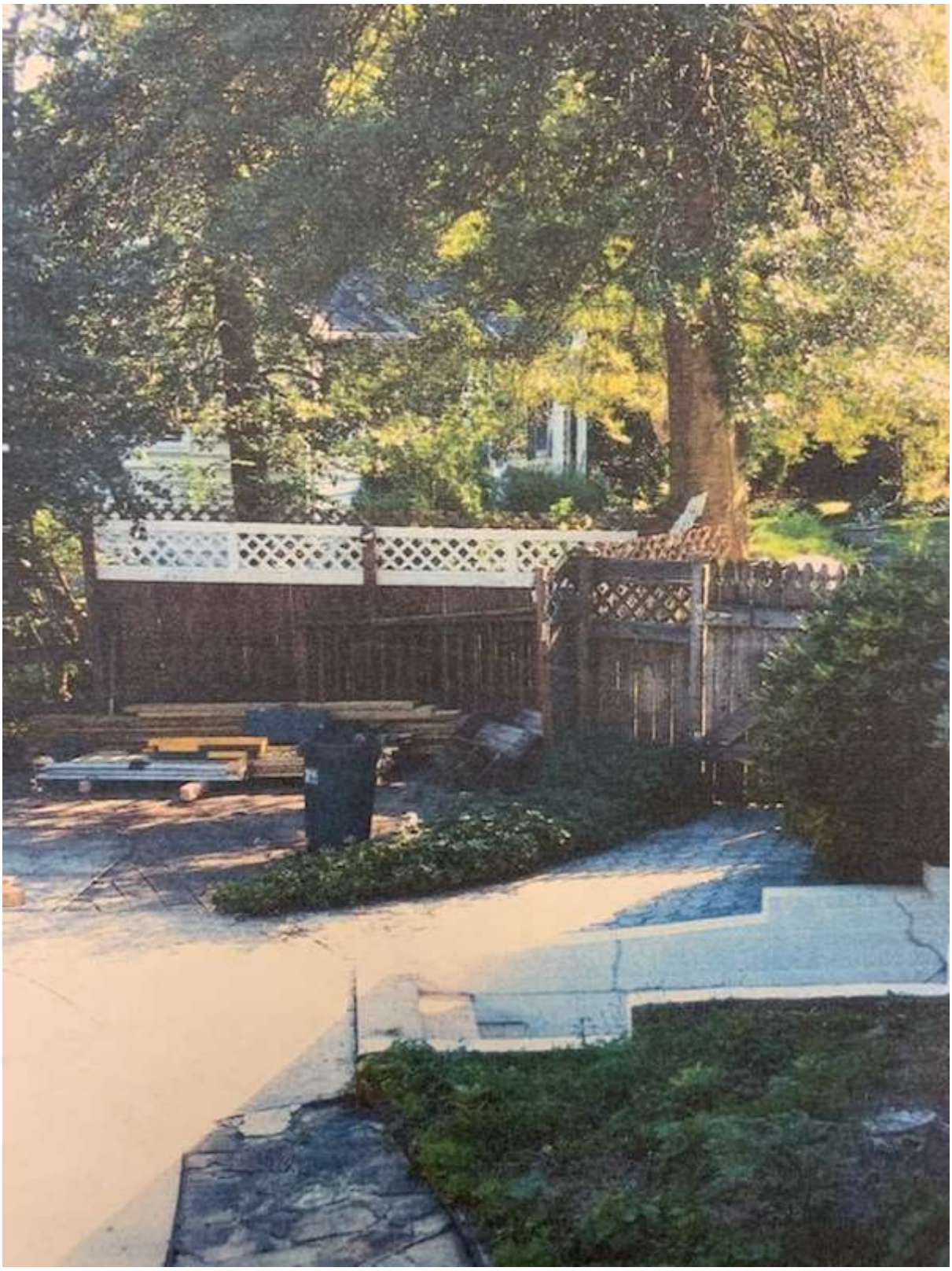
To be clear, we are not requesting a change of the CBA decision, as discussed in the public deliberation and reflected in the minutes. We only request that the opinion on the fence be rewritten with sufficient specificity to be used by the Code Enforcement Division to assure that the corrections are made as intended by the CBA. We wish to avoid further issues that will likely result from the current ambiguity of the Opinion, and assure the fence matter is truly settled. Perhaps including the drawing overlay and/or photo exhibits, or references to them, or another sufficiently clear alternative with the order, would help achieve this end.

Fence exhibits/ inclusions follow.

“Marked Up” Protestant’s Exhibit 25C & Petitioner’s Exhibit 2D



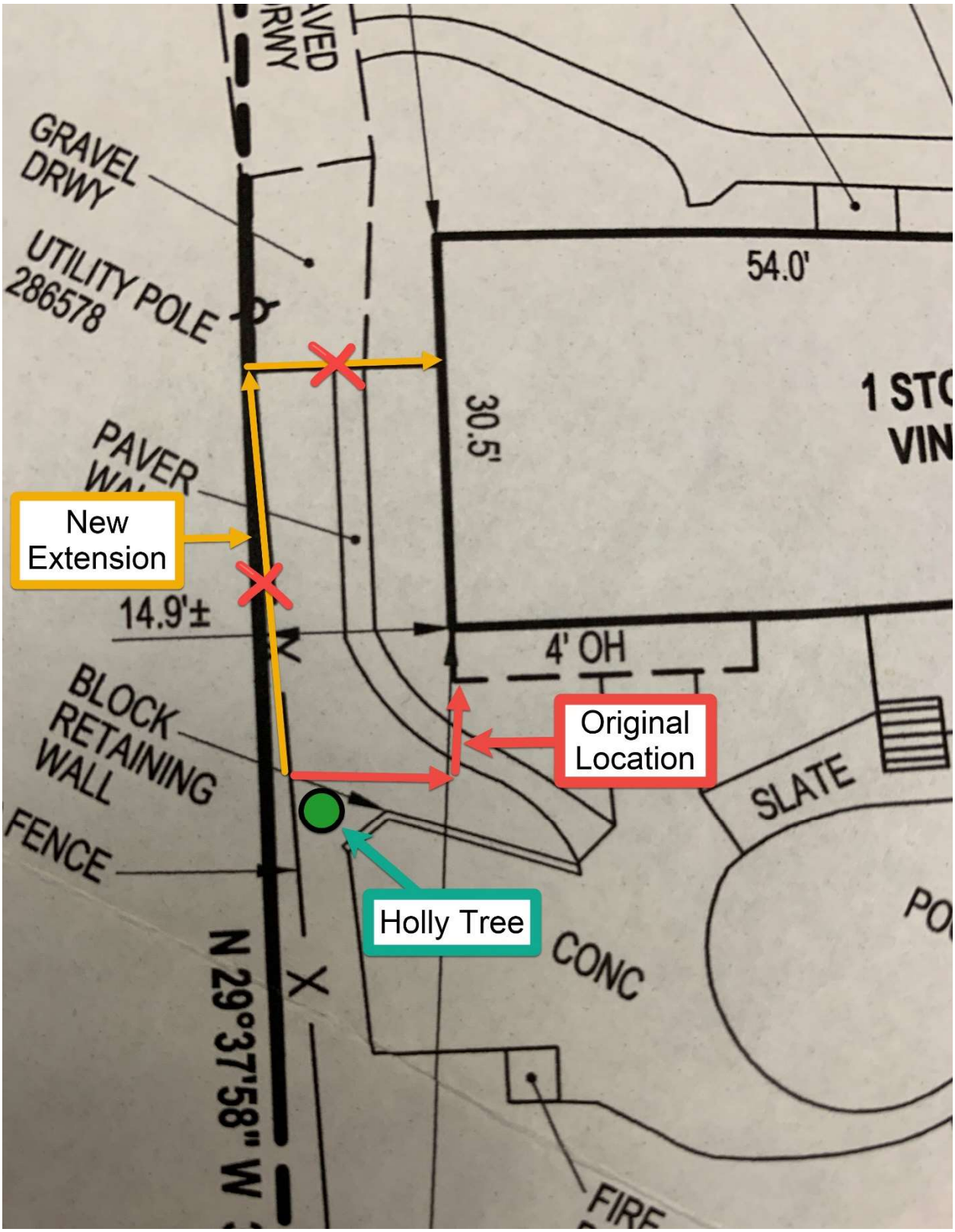
Original Protestant's Exhibit 25C & Petitioner's Exhibit 2D



Protestant's Exhibit 6A – Montanye driveway and view of the fence turning at the holly tree



4607 Survey Overlay Diagram



IN THE MATTER OF DONNA V. BAIR – LEGAL OWNER AND PETITIONER FOR SPECIAL HEARING AND VARIANCE ON THE PROPERTY LOCATED AT 4607 PROSPECT AVENUE	*	BEFORE THE BOARD OF APPEALS OF
4TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BALTIMORE COUNTY
	*	CASE NO. 19-342-SPHA

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

OPINION

This case comes to the County Board of Appeals ("CBA") on appeal of an Opinion and Order of the Administrative Law Judge dated August 19, 2020 granting in part and denying in part a Petition for Special Hearing and Variances filed by Donna V. Bair ("Petitioner/ Appellant") the legal owner of the property at 4607 Prospect Avenue (the "Property") in the Glyndon area of Baltimore County.

The Special Hearing Petition was filed pursuant to Baltimore County Zoning Regulations ("BCZR") §500.7 (1) to approve a nonconforming lot width and lot area pursuant to BCZR §104.1; (2) to approve a nonconforming dwelling side yard setback, pursuant to BCZR §104.1; and (3) to confirm an existing fence (swimming pool enclosure) with a height of 6 ft. is in compliance with BCZR §427.1 and Baltimore County Code ("BCC") §13-6-101.

The Petition for Variance seeks (1) to permit an existing 12 ft. by 28 ft. attached garage addition with a side yard of 0 ft. in lieu of the required 20 ft.; (2) to permit an existing 12 ft. by 28 ft. attached garage addition with a sum of side yards of 14.9 ft. in lieu of the required 50 ft.; (3) to permit an existing shed with a sideyard setback of 26 inches in lieu of the required 30 inches; and 4) to permit, if necessary, an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum 42 inches.

Appellant was represented by Lawrence E. Schmidt, Esquire and Zachary J. Wilkins, Esquire, of Smith, Gildea and Schmidt, LLC. Also appearing for Appellant as an expert was John Motsco, a licensed engineer in the State of Maryland. Ms. Bair also testified.

Numerous neighbors and an umbrella community association appeared in opposition, including both adjoining neighbors. Robin Coffin, and attorney who resides on Prospect Avenue, facilitated Protestants' case and testimony, and also testified personally as did the adjoining property owners.

The Board held three days of hearings, one in person on February 6, 2020 and two virtually on March 23, 2021 and March 25, 2021. A public deliberation was held virtually on April 20, 2021.

FACTUAL BACKGROUND

Petitioner Bair acquired the Property in 2014. At the time the Property was improved with a single family dwelling, attached garage, two driveways, an in-ground swimming pool, shed, and a fence enclosing a large portion of the rear yard and the pool area.

In 2017 Petitioner undertook additions to the house, adding to the front to create a master bedroom suite, adding a second garage, removing an existing fence and mature landscaping around the fence, and adding a new fence. Those improvements led to the current case and much acrimony among neighbors. In particular, the second garage extends several feet into the property of the neighbors on the north, Mr. and Mrs. Stephen Fradkin. The neighbors on the south, Mr. and Mrs. Thomas Montanye, object to the location of the replacement fence which extends into their front yard, and which creates a safety hazard by obstructing visibility for cars leaving the Montanye property. Mr. Montanye also disputes the location of the common property line and alleges that Petitioner tampered with surveyor's stakes to be more favorable to her

property. Both neighbors alleged that the improvements created additional runoff and flooding conditions on each of their properties.

Ms. Bair testified that she hired a contractor, though she did not identify that contractor to the CBA, nor did she know his whereabouts or current status. Ms. Bair assumed the contractor would obtain permits and other required approvals. No survey was conducted either at the time of Bair's purchase nor at the time of the work being undertaken. No zoning or permit approvals were investigated or sought for the building improvements or the fence.

The neighbors complained to the Baltimore County Office of Code Enforcement, who cited multiple violations at Petitioner's Property, and which ultimately led to filing of the subject petitions.

Petitioner's engineer John Motsco testified to the zoning history of the Property. The lot was created prior to the1945 adoption and 1955 codification of zoning by Baltimore County. Mr. Motsco stated that in 1970, Baltimore County adopted the D.R. zones (Density Residential), at which time the Property was designated D.R. 2. In 1996, the current D.R. 1 classification was applied to the Property.

APPLICABLE LAW

A Special Hearing Petition is effectively a request for declaratory judgment. BCZR §500.7, *Antwerpen v. Baltimore County*, 163 Md. App. 194, 209 (2005). The main question to be determined by the Board is whether the current configuration of the lot is permitted as a non-conforming use per BCZR §104.1. A collateral issue under BCZR §104.3 concerns whether the addition to the house extends beyond 25% of the ground floor area of the house prior to the addition.

Petitioner bears the burden of presenting evidence (customarily through experts) on which the Board can assess whether a zoning request pursuant to the BCZR may be approved. While the BCZR provides no specific criteria for the granting of a Request for Special Hearing, "the administrative practice in Baltimore County has been to determine whether the proposed Special Hearing would be compatible with the community and generally consistent with the spirit and intent of the regulations." *Kiesling v. Long*, Unreported Opinion, No. 1485, Md. Ct. Spec. App. (Sept. Term 2016).

A nonconforming use is one that predates the zoning imposed on a property. It is defined in BCZR §101 as a legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use. Under BCZR §104.3, no nonconforming building or structure may be extended more than 25% of the ground floor area of the building so used.

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

(1) The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is – in and of itself – unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property; and

(2) If that first step results in a supportable finding of uniqueness or unusualness, then a second step is taken in the process, *i.e.*, a determination of whether practical difficulty and/or unreasonable hardship, resulting from the disproportionate impact of the ordinance *caused by* the property's uniqueness, exists. *Cromwell*, 102 Md. App. at 694-95, 651 A.2d at 426.

Further, that hardship or difficulty must not be of the Petitioner's own making. 102, Md. App. at pp 694-5.

DISCUSSION

THE LOT: Petitioner's engineer John Motsco testified that the subject lot is a .74 acre parcel, classified D.R. 1 with a small portion being R.C. 2 (Resource Conservation). The lot was created by a plat entitled "Plat of Land belonging to B.F. Bennett and Joshua Regester", dated October 31, 1883 and recorded among the Plat Records of Baltimore County, Maryland in Plat Book No. 2 page 18. The lot lines are unchanged since its creation.

Mr. Motsco also testified that the original residence was constructed in 1951. Using old aerial photographic records, Mr. Motsco determined that the house configuration rendered the side yards of 9.5 feet on the north side and 14.9 feet on the south side, with a sum of the sideyard setbacks of 24.4 feet.

Based on the documentary evidence and testimony of Mr. Motsco, the Board finds that the lot width and area meet the definition of the BCZR as a valid nonconforming use that may continue. The lot configuration pre-dates any zoning in Baltimore County by at least sixty years, and despite the fact that the lot width and area do not meet current regulations, these may continue. In addition, the Board finds that the side yard setbacks existing prior to Petitioner's new construction were in existence prior to the 1996 zoning, perhaps longer, and as such may continue - measuring 9.5 feet on the north side and 14 feet on the south. Further testimony, undisputed though imprecise, persuaded the Board that the shed in the rear of the Property predates the current zoning, and may also remain in its current location, having a setback of 26 inches.

THE BEDROOM ADDITION: Petitioner built an addition to the house which extended the front building and roof lines to create a straight front building line where a "notch" or recess previously existed. According to Mr. Motsco, that addition measures 14 x 22 feet (for a total of

308 sq. ft.). Under BCZR §104.3, no nonconforming building or use may be extended by more than 25% of the ground floor area of the building so used.

Mr. Motsco offered testimony and documentary evidence that the ground floor area of the residence prior to the bedroom addition was 1,554 sq. ft. and that the bedroom addition amounts to less than 25% (or a maximum of 388 sq. ft.) permitted. Mr. Motsco also testified that this addition maintained the previous side yard setback of 14 feet from the south property line shared with the Montanye's.

Based on these facts, the Board finds that the bedroom addition is a permitted extension of the nonconforming structure.

THE GARAGE ADDITION: Though there was much testimony offered by Ms. Bair regarding the addition of a second garage based on her need to protect her vehicles from debris and droppings from trees on her lot, the Board found none of that testimony in any way pertained to the variance findings required under a *Cromwell* analysis. The majority of the Board found that the Property is so similar in size, shape and topography to other lots in the zone as to be indistinguishable for zoning purposes and, as such, does not meet a finding of uniqueness.

Even were the lot found to be unique, any hardship is entirely of Petitioner's own doing: failure to obtain a survey; failure to investigate, apply for or obtain zoning approvals; failure to investigate, apply for or obtain building permits; failure to pursue normal due diligence in either purchasing the Property or in vetting the contractor she hired to perform seemingly substantial and costly improvements to her residence. The Board found Petitioner's testimony lacking in credibility and unpersuasive on this point. Accordingly, the Board denies the requested variances for the garage addition and the side yard of 0 ft. on the north side of the Property.

THE FENCE: Petitioner removed an existing fence and landscaping and replaced that fence with a 6 ft. high fence in lieu of an otherwise permitted 42-inch fence. Petitioner also extended the new fence along the south side of her property and relocated the gate closer to the front building line of her house. By being so located, the fence was impermissibly installed since it was parallel to the adjoining neighbor's front yard.

The Board recognizes that BCC §13-601 (Swimming Pool Enclosure) requires a fence of *not less than 4 feet (48 inches)* (emphasis added), without specifying any height limitation. This Code provision conflicts with the limitation on fence height of 42 inches set forth in BCZR §427.1B.1. BCZR §427 does not permit a side yard fence of a resident's property to be installed in such a manner that it is parallel to the front yard of an adjacent dwelling. Based on this unique set of facts and law, the Board finds that the extension of the fence and gate from the rear building line of the Bair residence, its previous location, to its current location creates an unsafe condition and violates BCZR §427.1.B.1 and must be moved back. However, subject to the relocation of the gate as described herein, the fence height of 6 ft. will be permitted.

CONCLUSION

Based on the foregoing discussion, the Board grants in part, and denies in part the relief sought. In reaching its conclusion, the Board entertained much testimony irrelevant to the zoning issues within the Board's purview as well as much evidence of the acrimony among neighbors. The Board declines to countenance the acts of a property owner who disregards the most basic legal requirements governing the use of his or her property.

ORDER

THEREFORE, IT IS this 7th day of June, 2021, by the Board of Appeals for Baltimore County

ORDERED, that the Petition for Special Hearing: (1) to approve a nonconforming lot width and area; and (2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of the required 30 inches, be and is hereby **GRANTED**; and it is further

ORDERED, that the Petition for Special Hearing: (1) to approve nonconforming dwelling side yards of 9.5 ft. on the north side and 14.9 ft. on the south side, with a sum of the side yard setbacks of 24.4 ft. is hereby **GRANTED**; and it is further

ORDERED, that the Petition for Special Hearing to confirm an existing fence (swimming pool enclosure) with a height of 6 ft. is in compliance with BCZR §427.1 and BCC §13-6 -101, subject to the modification described herein, be and is hereby **GRANTED**; and it is further

ORDERED, that the Petition for Variance: (1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.; (2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of side yards of 14.9 ft. in lieu of the required 50 ft.; and (3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches, be and is hereby **DENIED**.

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

Deborah C. Dopkin, Chair

Andrew M. Belt

see following page
William A. McComas

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

See previous page
Deborah C. Dopkin, Chair

See previous page
Andrew M. Belt

William A. McComas

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

June 7, 2021

Peter M. Zimmerman, Esquire
Carole S. Demilio, Esquire
Office of People's Counsel
The Jefferson Building, Suite 204
105 W. Chesapeake Avenue
Towson, Maryland 21204

Lawrence E. Schmidt, Esquire
Zachary J. Wilkins, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204

RE: *In the Matter of: Donna V. Bair – Legal Owner*
Case No.: 19-342-SPHA

Dear Counsel:

Enclosed please find a copy of the final Opinion and 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,

Sunny Cannington

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure

c: See Distribution List following

In the matter of: Donna V. Bair – Legal Owner
Case No.: 19-342-SPHA
June 7, 2021
Distribution List

Donna V. Bair
John E. Lemmerman/RTF Associates, Inc.
Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
Kim and Tom Montanye
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz
Paul M. Mayhew, Managing Administrative Law Judge
Stephen Lafferty, Director/Office of Planning
C. Pete Gutwald, Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
James R. Benjamin, Jr., County Attorney/Office of Law

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Donna V. Bair – Legal Owner 19-342-SPHA

DATE: April 20, 2021

BOARD/PANEL: Deborah C. Dopkin, Chair
Andrew M. Belt
William A. McComas

RECORDED BY: Tammy A. Zahner, Legal Secretary

PURPOSE: To deliberate the following:

Petition for Special Hearing pursuant to BCZR §500.7:

1) to approve a nonconforming lot width and lot area, pursuant to BCZR §104.1;
2) to approve a nonconforming dwelling side yard setback, pursuant to BCZR §104.1; and
3) to confirm that an existing fence (swimming pool enclosure) with a height of 6 ft. is in compliance with BCZR §427.1 and BCC §13-6-101.

Petition for Variance from BCZR:

1) §1B02.3.C.1 to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.;
2) §1B02.3.C.1 to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.;
3) §400.1 to permit an existing shed with a side yard setback of 26 inches in lieu of the required 30 inches;
4) §427.1 to permit, if necessary, an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches; and
5) in the alternative, if necessary, to permit an existing dwelling with a lot width of 98 ft. in lieu of the minimal required 150 ft. and to permit a lot area of 31,000 sq. ft. ± in lieu of the minimal required 40,000 sq. ft. pursuant to §1B02.3.C.1

PANEL MEMBERS DISCUSSED THE FOLLOWING:

DISCUSSION

- The Board reviewed the Petitioner's request and held three days of hearings.

- The Board first discussed the request for a nonconforming lot width and lot area. The Board found that the lot width and lot area pre-date the current regulations and granted the request.

- The Board discussed the request for a nonconforming dwelling side yard setback. The Board reviewed the pictures of before and after the addition. The house did not share a common roof, and now does. The Board noted there was an addition to the original footprint of the home to enlarge a bedroom, but the side yard setback was not impacted. The Board found that the side yard setback on the south (Montanye) side falls within the 25% allowed for nonconforming

lots. There was no evidence or testimony to support the side yard setback on the north (Fradkin) side where the garage is located.

- The Board discussed the requested variance relief and the uniqueness requirement of *Cromwell*. The Board noted that the garage encroaches on the adjoining property. Petitioner's expert argues that the topography of the property makes it unique as it slopes to one side. Protestants argue that the subject property is similar in size and shape to others in the neighborhood. One Board Member was persuaded that the property is somewhat unique as it is smaller than others, even though it is similarly shaped. The remaining members found the property is similar to others located on Prospect Avenue and is not unique.

- The Board next discussed the hardship factor in *Cromwell*. The Board noted that the house was purchased without a survey, and substantially expanded without a survey or permit. The garage was expanded from the original one-car garage to a two-car garage. The Board found that any hardship of the Petitioner was self-imposed.

- The Board discussed the request to permit an existing fence (swimming pool enclosure) with a height of 6 ft. in lieu of the permitted 42 in. The Board noted there are competing statutes regarding fences. The 6 ft. fence extends into the front yard of the adjoining property and along the parking area/driveway of the neighbors. The Board noted that the fence impedes the ability of the neighbors to see when they pull out of their driveway, which is a public safety hazard. The Board found that a reasonable solution is to relocate the fence and gate to its original location, which will provide pool security and address the driveway concern. The Board granted the Variance relief, with conditions.

- The Board briefly discussed the alternative relief noted on the redlined Plan. The Board noted there was no evidence presented at the hearing and found the alternative relief MOOT.

CONCLUSION: After thorough review of the facts, testimony, and law in the matter, the Board unanimously agreed that the Petitions for Special Hearing and Variance would be DENIED in part, and GRANTED in part, with conditions.

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,

/s
Tammy A. Zahner

IN RE: THE PETITION FOR SPECIAL HEARING AND VARIANCE **4607 Prospect Avenue**	*	BEFORE THE
	*	COUNTY BOARD
4th Election District 3rd Councilmanic District	*	OF APPEALS
	*	FOR
Donna V. Bair *Legal Owner*	*	BALTIMORE COUNTY
	*	**Case No.: 2019-342-SPHA**

* *

CLOSING MEMORANDUM

The property owner, Donna V. Bair ("Petitioner"), by and through her attorneys, Lawrence E. Schmidt, Zachary J. Wilkins, and Smith, Gildea & Schmidt, LLC, submit this Closing Memorandum in support of the Petition for Special Hearing and Variance relief for the above referenced matter and state:

STATEMENT OF THE CASE

This matter comes before the Board of Appeals of Baltimore County (the "Board") as a *de novo* appeal of the Opinion and Order dated August 19, 2019 by the Administrative Law Judge ("ALJ") and the Order on Motion for Reconsideration dated September 25, 2019 by the ALJ of a Petition for Special Hearing and Petition for Variance relief for the property located at 4607 Prospect Avenue (hereinafter the "Property"). In applying the *de novo* standard, the Board's findings of fact and conclusions of law will be the record made before it.

The Special Hearing relief was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("BCZR") for an interpretation of the proper application of the BCZR. As it

relates to the issues in the instant appeal,[1] the Special Hearing relief seeks (1) approval of nonconforming dwelling side yard setbacks of 9.5 feet and 14.9 feet, with a sum of the side yard setback of 24.4 feet; and (2) to confirm that an existing fence (swimming pool enclosure) with a height of 6 feet is in compliance with BCZR § 427.1 and Baltimore County Code ("BCC") § 13-6-101. The Variance relief was filed pursuant to BCZR § 307.1 and seeks (1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft; (2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; and (3) If necessary, to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches.

The public hearing before the Board consumed three non-consecutive days on February 6, 2020, March 23, 2021, and March 25, 2021. At the conclusion of the hearing, the Board directed that the parties submit written closing memoranda setting out their respective arguments. The relevant facts and testimony will be recounted as appropriate herein.

STATEMENT OF THE FACTS

Many of the facts relating to the Property are not in dispute. The Property is located in the Glyndon community of northwestern Baltimore County and is approximately 0.74 acres (32,234 sf.). The Property is predominantly zoned DR 1 (Density Residential), but contains a small sliver in the rear which is zoned RC 2 (Resource Conservation).[2] The Property is identified as Lot 10, as shown on the Plat dated October 31, 1880 and titled "Plat of Land belonging to B.F. Bennett and Joshua Register" which was recorded in the Land Records of Baltimore County at Plat Book 126,

[1] Neither Petitioner nor Protestants appealed the ALJ's approval as to the lawfully nonconforming status of the size and width of the lot (delineated as Special Hearing request number 1within the Petition), and the lawfully nonconforming status of the setback of the shed. These issues are not before the Board for consideration.

[2] The RC 2 portion of the Property contains no improvements and is immaterial for the Board's consideration in the instant case.

Page 371 ('Plat"). The Property was purchased by the Petitioner in 2014, as reflected in a deed dated July 18, 2014, which is recorded in the Land Records of Baltimore County at Liber 35307, Folio 489.

Due to a need for more family living space and the need for additional privacy and safety for the in-ground pool, Petitioner hired a contractor to construct (1) a dwelling addition built on the west side of the house, (2) two sections of a 6 ft. fence constructed on the boundary line with the neighboring properties on the east and west sides of the Property, and (3) a 12 x 28 ft. single car garage to the east of the existing garage. As is now apparent, the contractor hired to construct the improvements committed fraud on the Petitioner and failed to obtain the necessary permits and approvals. Upon determining that the work had been done illegally, the Petitioner set out to bring the Property into compliance.

A. Baltimore County Landmarks Preservation Commission

Like many of the individual properties in Glyndon, the Property is located within the Glyndon Historic District and the design and compatibility of certain improvements to the Property are subject to review and approval by the Landmarks Preservation Commission ("LPC"), but the dwelling itself is not designated as a "contributing structure". In accordance with Title 7 – Historical and Architectural Preservation of the Baltimore County Code ("BCC"), the LPC has jurisdiction to review changes to historically-designation properties. The LPC comprises fifteen volunteer members who live in Baltimore County and "[p]ossess a demonstrated interest, knowledge, or training in historic preservation, history, architecture, conservation or related discipline." BCC § 3-3-1202(b). Pursuant to BCC §§ 32-7-101 & 32-7-405, property owners must obtain a "Certificate of Appropriateness" from the LPC "indicating its approval of plans for construction, alteration, reconstruction, moving or demolition."

Petitioner submitted 3 Ex post facto Certificate of Appropriateness requests to the LPC on February 19, 2019 seeking approval of the dwelling addition, fence construction, and the 12x28 ft. single car garage addition. Thereafter on March 11, 2019, a Department of Planning staff member as well as three LPC Commissioners conducted a site visit of the Property and generated a technical report of the request, which was shared with the LPC for their consideration.

Specifically, the technical report found:

> "***The changes to their property follow design guidelines for non-contributing structures in a historic district.*** The new garage and house addition use the same style siding, windows, shutters, and garage door … These changes do not overpower the appearance of the existing dwelling. The ***new fences*** are constructed of pressure treated wood with vertical planks and a top cap rail. They ***provide privacy and safety in the back yards with limited visibility from the street***. ***The Technical Committee recognized that because the owner has followed design guidelines for non-contributing structures, it is likely that these changes would have been approved if the request had been submitted in accordance with Baltimore County requirements***." (emphasis added) Petitioner's Exhibit 20.

When considering applications for additions and fences, the LPC utilizes the Baltimore County Historic Preservation Design Guidelines, which were adopted by the LPC and approved by the Director of Planning on November 25, 2011. The LPC met on March 14, 2019 and considered Petitioner's requests. At the meeting, Tom Montanye, resident of 4609 Prospect Avenue, testified and explained that his main objection involved the portion of the new fence that was directly adjacent to his driveway. The LPC voted 9-1 to approve Petitioner's three Ex Post Facto Certificates of Appropriateness requests.

B. *Proceedings before the Board of Appeals*

Petitioner testified during the Board's hearing and generally explained the events leading up to the instant case. Petitioner testified that she did not take a mortgage out when she purchased the Property. Because there was no bank involved, the Petitioner did not perform a survey for the Property. As such, Petitioner generally relied on the existing conditions (tree line and fence line)

of the Property as well as a boundary line drawling obtained from Steven Fradkin, the adjacent property owner located at 4605 Prospect Avenue. As shown in Petitioner's Exhibit 2 and as testified to, at the time of Petitioner's acquisition, the Property was improved with a detached single family dwelling, an attached one car garage, a small storage shed, a swimming pool, and a fence. Petitioner testified that the swimming pool is located immediately adjacent to the rear of the house. The existing fence ranged in height between 6 ½ - 8 ft. and was falling down in certain sections.

Due to a need for more family living space and the need for additional privacy and safety for the in-ground pool, Petitioner hired a contractor in 2017 to construct (1) a dwelling addition, (2) two sections of a 6 ft. fence on the boundary line with the neighboring properties on the east and west side of the Property, and (3) a 12x28 ft. single car garage addition to the east of the existing garage. Prior to moving ahead with the improvements, Petitioner notified both Mr. Fradkin and Mr. Montanye, the adjacent property owners located at 4605 Prospect Avenue and 4609 Prospect Avenue respectively, who voiced no objection. Petitioner assumed that the contractor hired would undertake the work lawfully after securing all necessary permits. She explained that she was quoted for and paid both the construction costs and permit fees. Candidly, Petitioner admitted that she wasn't paying much attention to the construction at the time because she was taking care of her mother who eventually died from lung cancer. As is now apparent, the contractor committed fraud on the Petitioner and did not obtain the necessary permits. Petitioner testified that in 2018, she received a complaint from Baltimore County alleging failure to obtain the necessary permits for the improvements. This resulted in ALJ Stahl issuing an Order requiring that Petitioner file the instant zoning relief and obtain LPC approval. Thereafter, Petitioner

submitted an application to the LPC and obtain approval for the dwelling addition, fence construction, and garage addition on March 14, 2019.

Petitioner's expert engineer, John Motsco, testified during the Board hearing and described the neighborhood and Property layout, including the current improvements on the Property. The neighborhood is a historic one characterized by a variety of housing types, large and small, ranging from large lots having larger dimensions than the subject property, to small lots. As Mr. Motsco explained, there are regulations in the BCZR and BCC regarding fences.

Specifically, BCZR § 427.1.A. provides:

> "***Notwithstanding any other provisions*** of this Code or the Baltimore County Code, in a D.R. or R.C. 5 Zone located in a historic district, the maximum height of a ***residential occupancy fence*** is 42 inches if the fence is erected ***in the side yard of a lot that adjoins a public road***." (emphasis added)

Mr. Motsco testified that the 42 inch height limitation in BCZR § 427.1.A is not applicable to the Property. First, Mr. Motsco explained that the Property nor any of the adjacent properties (i.e. 4605 & 4609 Prospect Avenue) adjoin a public road. The reference to a public road in BCZR § 427.1.A is referring to a corner lot, in which a property abuts a public road in both the front and side yard. Otherwise, as Mr. Motsco explained, every property would satisfy the "abut a public road" classification, in which case, there would be no need to incorporate such qualifier in BCZR § 427.1.A.

BCZR § 427.1.B provides:

> 1. "A residential occupancy fence may not be erected in the rear or side yard of a lot which adjoins the front yard of another on which a residence has been built, except in accordance with the provisions of this section.
> 2. The fence may not exceed 42 inches in height if situated within ten feet of the adjoining front yard property line.
> 3. Any person may request a variance from the requirements of this subsection."

Mr. Motsco testified that the conditions in BCZR § 427.1.B are not applicable due to the pool on Property.

Specifically, BCZR § 427.1.C. Titled: Applicability provides:

> "1. ***Subsection B of this section does not apply to a fence required by § 13-6-101 of the Baltimore County Code***, as revised, to be constructed in order to screen a ***swimming pool***. (emphasis added).

BCC § 13-6-101 provides the following:

> (a)Required. ***A person who owns land on which there is a swimming pool*** that contains 24 inches (610 mm) or more of water in depth at any point ***shall erect and maintain*** on the land ***an adequate enclosure surrounding either the property or pool area*** sufficient to make the body of water inaccessible to small children. (emphasis added).
>
> (b)Height. A ***swimming pool enclosure, including gates***, ***may not be less than 4 feet above the underlying ground***, except that for a semi-public swimming pool located outdoors without a lifeguard on duty, the enclosure, including gates, may not be less than 5 feet above the underlying ground and may not have more than a two-inch gap from the ground to the bottom of the fence.

Mr. Motsco testified that the swimming pool on the Property contains a depth of more than 24 inches and that the fence fully encloses the swimming pool, which is located in the rear yard of the Property. He further explained that the 72 inch fence is compliant because BCC § 13-6-101 contains a minimum requirement of 4 feet (48 inches) and no maximum restriction. As such, Mr. Motsco offered undisputed expert opinion that the height of the 72 inch fence is compliant with the all applicable regulations in the BCZR and BCC.

As to the setback issues, Mr. Motsco testified that the Property is predominantly zoned DR 1 and the setback requirement applicable to the Property is established in BCZR § 1B02.3.C. A minimum side yard setback of 20 ft. is required. Additionally, a sum of the side yard setbacks of 50 ft. is required. Therefore, a property owner could have a 30 ft. setback on one side and a 20 ft. setback on the other; or a 25 ft. setback on each side, or some similar combination; for so long as each side yard setback is at least 20 ft. in dimension, and they total 50 ft. Mr. Motsco testified

that prior to Petitioner's 2017 construction, the dwelling had side yard setbacks of 9.5 ft. and 14.9 ft., with a sum of the side yard setback of 24.4 ft. Thus, both the individual side yards setbacks and sum of the side yards setbacks did not meet the current DR 1 standard.

As it relates to the specific Special Hearing request "to approve a nonconforming dwelling side yard setback, pursuant to BCZR § 104.1," Mr. Motsco explained that the BCZR § 104 permits the continuation of non-conforming uses and structures. The special hearing process is the zoning tool by which non-conforming uses are recognized. The designation "non-conforming" allows the use/condition to continue as legally "grandfathered". Mr. Motsco testified that a non-conforming designation is appropriate for uses and conditions that have existed prior to the adoption of the regulation that now governs the property at issue.

According to the property tax report issued by the State Department of Assessments and Taxation ("SDAT"), the detached single family dwelling was originally constructed in 1951. Mr. Motsco explained the zoning history of the Property. Although the County's first zoning regulations were adopted in 1945, they were rudimentary in nature and the current regulations and requirements therein spring from the comprehensively amended regulations adopted in 1955. Additionally, the DR zoning classification came into being in 1970, at which time the County Council enacted Bill 100-70. Mr. Motsco testified that in 1971, the Property was rezoned to DR 2, and later rezoned to DR 1 in 1996. Because the DR 1 requirements now apply to the Property, Mr. Motsco testified that 1996 is the relevant date in considering the non-conforming nature of the property and improvements thereon.

Utilizing historic aerial photos, Mr. Motsco opined that the 1951 dwelling contained the 9.5 ft. side yard setback. At some point between 1951 and 1976, the dwelling side yard setback on the opposite side decreased to 14.9 ft, at which point the dwelling contained side yard setbacks

which were 9.5 ft. and 14.9 ft., with a sum of the side yard setback of 24.4 ft. Mr. Motsco explained that given the lack of detail provided in historic aerial photos and Baltimore County's practice of discarding building permits after 5 years, it is impossible to determine when or what specific construction occurred at the Property between 1951 and 1976. As such, Mr. Motsco opined that such setbacks are existing conditions, well prior to the adoption of the now applicable governing standard in the BCZR, and thus, the Petitioner is entitled to grandfathered status for the dwelling side yard setbacks, which were 9.5 ft. and 14.9 ft., with a sum of the side yard setback of 24.4 ft.

Mr. Motsco testified that he measured the 2017 house addition and calculated the addition to be 14 x 22 ft. (rather than 13 x 13 ft.). Mr. Motsco explained that the dwelling addition did not alter in any way the existing 14.9 ft. setback from the property line. Mr. Motsco testified that the 2017 dwelling addition is a legally permissible extension of a nonconforming use/building pursuant to BCZR § 104.3.

BCZR § 104.3 provides:

> "No nonconforming building or structure and no nonconforming use of a building, structure or parcel of land ***shall hereafter be extended more than 25 percent of the ground floor area of the building*** so used." (emphasis added).

As Mr. Motsco explained, the ground floor area of the nonconforming dwelling (as existed prior to 2017 construction) was 1,554 sf. The 14 x 22 ft. dwelling addition totaled 308 sf. The dwelling addition increased the ground floor area of the dwelling by 19.8%. As such, Mr. Motsco offered undisputed expert opinion that the dwelling addition is permitted as an extension of a non-conforming use because the dwelling addition did not increase the existing 14.9 ft. setback and did not increase the ground floor area of the dwelling by more than 25%.

Mr. Motsco testified that in 2017, Petitioner constructed a 12 ft. x 28 ft. attached garage addition that decreased the side yard setback to 0 ft. Mr. Motsco offered undisputed expert opinion

that the Petitioner satisfied the criteria for variance relief in BCZR § 307.1, namely that the Property is unique and the Petitioner would experience a practical difficulty or unreasonably hardship if denied the variance. Specifically, as it relates to uniqueness, Mr. Motsco cited to the Property acreage, dimensional width, and length in support. Additionally, the topography provides little flat area for development on the Property. Prospect Avenue sits on a higher elevation compared to the rear of the Property. Mr. Motsco opined that given the topography, it would not be possible to construct a garage in the rear yard. Further, as Mr. Motsco explained, there are additional large trees that restrict access to the rear yard. As it relates to practical difficulty, Mr. Motsco testified that the relocation of the garage would be too remote from the dwelling and would detract from day to day use. Conversely, not constructing a garage would subject Petitioner's vehicles to substantial damage caused by the trees in the front yard.

Several neighbors appeared in opposition to the Petition and were represented by People's Counsel Peter Zimmerman during the proceedings before the Board (the "Protestants"). Protestants offered no expert testimony to contradict Mr. Motsco's opinions. Certainly, an expert would have been presented to rebut Mr. Motsco's findings and conclusions, if a contrary opinion was formulated. As importantly, the Protestants fundamental objections to the relief are not legally relevant to the standard that the Board must apply. Through testimony, the Protestants indicated that their primary concerns were that Petitioner did not "play by the rules." Other complaints were also legally illegitimate. For example, Protestants attach great significance to the fact that Petitioner was at one time a licensed real estate agent and should have possessed requisite understanding of the BCZR and BCC. Such objections demonstrate the Protestants misunderstanding of the legal analysis required. The fact of such knowledge has no legal significance. The Court of Appeals has found it unnecessary to limit one seeking a variance based

on an alleged hardship because the owner purchased the property with full knowledge of the zoning restriction of which she sought relief. *Frankel v. City of Baltimore,* 223 Md. 97 (1960); *McLean v. Solev,* 270 Md. 208 (1973). One of the Protestants, Mr. Fradkin (adjacent neighbor), candidly admitted that he too did not know where the boundary line was between 4605 Prosect Avenue and the Property. One of the Protestants introduced an aerial photo which purportedly depicts conditions on the Property in the late 1970s. Subsequent to the hearing, the undersigned determined that such photographs are protected under copyright law and were apparently illegally obtained.[3] Nonetheless, the photograph is not dated and is of little value, in that there are no dimensions shown relating to the size and configuration of the dwelling which existed at that time.

ARGUMENT

There are three improvements which are before the Board for consideration which include (1) a dwelling addition, (2) a fence (swimming pool enclosure), and (3) a garage addition. The BCZR governs both the allowed uses on the Property and the scope/size of improvements permitted for properties zoned DR 1. Undoubtedly, the single-family dwelling, attached garage, and fence are permitted uses in the DR 1. The question presented in this case is not as to the use, but whether the improvements satisfy the scope/size (also referred to as the "bulk") regulations in the BCZR. The three improvements at issue should be separately considered by the Board and are discussed separately below.

A. <u>The 2017 dwelling addition (14 x 22) is a legally permissible extension of a nonconforming use/building</u>

It is apparent that the Board can grant relief necessary to permit the dwelling addition either as a non-conforming use or via a variance. The relevant DR 1 setback requirements are pursuant

[3] See attached Exhibit A of this Closing Memo.

to the "Small Lot" table in BCZR § 1B02.3.A.4.: Titled Special Regulations for certain Existing Developments or Subdivisions and for Small Lots or Tracts in DR Zones.

In particular, subparagraph 3 provides:

> "Any lot or tract of lots in single ownership which is not in an existing development or subdivision, as described in Subsection A.1 or A.2, and which is too small in gross area to accommodate six dwelling or density units in accordance with the maximum permitted density in the D.R. Zone in which such tract is located"

BCZR § 1B02.3.C. then sets forth the Development Standards of such lots:

> "1. Any dwelling hereafter constructed on a lot or tract described in Subsection A.3 or A.4 shall comply with the requirements of the following table:"

The table sets forth the width, frontage and yard requirements which pertain to such small lots. It is significant to note that this provision was adopted in 1970 when the County adopted major comprehensive revisions to regulations governing residential zones. The apparent legislative intent of each section was to preserve the building rights on undersized lots that would otherwise be rendered unusable upon adoption of new regulations.

Although the dwelling meets the required front yard and rear yard setbacks, the dwelling's side yard setbacks do not satisfy the current DR 1 requirements. As noted above, the Property did not satisfy these requirements when the Petitioner acquired the Property in 2014. In fact, the dwelling's side yard setbacks of 9.5 ft. and 14.9 ft., with a sum of the side yard setback of 24.4 ft. have existed for at least 45 years, but possibly closer to 70 years.

BCZR § 104.1 provides:

> "A nonconforming use may continue except as otherwise specifically provided in these regulations, provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, the right to continue or resume such nonconforming use shall terminate."

Nonconforming status is a designation for uses and conditions that have existed prior to the adoption of the regulation that now governs the property at issue. At the time the Property was rezoned to DR 1 in 1996, the dwelling maintained side yard setbacks of 9.5 ft. and 14.9 ft., with a sum of the side yard setback of 24.4 ft. There is no evidence whatsoever to suggest that prior to 1996, the dwelling was an illegal use or was overwise in violation of the BCZR. As previously noted, Baltimore County has historically discarded building permits after 5 years. As such, Mr. Motsco offered undisputed expert testimony that 1996 is the relevant date in considering the non-conforming nature of the Property and improvements thereon. Since a nonconforming use was lawfully in existence at the time and the Property was rezoned in 1996, there is a vested right in the continuation of the nonconforming use once the ordinance takes effect.

After the 2017 construction of the dwelling addition, the side yard setbacks remained the same. That is, the dwelling addition did not reduce the setback from 14.9 ft., but merely extended the length of the side of the dwelling on that side. Thus, the Board should find that the dwelling addition is permitted as a matter of right.

Notwithstanding, the Board can still approve the dwelling addition because the dwelling addition did not violate the limitations proscribed in BCZR § 104.3 regarding allowable expansion of a non-conforming building.

BCZR § 104.3, titled "Limit on extension of nonconforming buildings and uses; exception", states as follows:

> No nonconforming building or structure and no nonconforming use of a building, structure or parcel of land shall hereafter be extended more than ***25% of the ground floor area of the building so used***… (Emphasis added).

At the time the nonconforming building/use was grandfathered on the Property in 1996, the ground floor area of the dwelling encompassed 1,554 sf. Pursuant to BCZR § 104.3, the

maximum allowable expansion of the non-conforming dwelling would be 25% or an additional 388.5 sf. The 14 x 22 dwelling addition totaled 308 sf or 19.8%. As such, the dwelling addition is a permissible expansion of the non-conforming building.

Alternatively, this Board can grant variance relief for the side yard setbacks of 9.5 ft. and 14.9 ft., with a sum of the side yard setback of 24.4 ft. While not specifically requested in the Petition, such request is within the spirit and intent of the instant matter. In accordance with due process, parties are required to be given reasonable notice and opportunity to participate in the Board's hearing and consideration of the zoning proposal. Significantly, the Supreme Court of the United States has explained that the essence of due process is the requirement that a party be given notice and an opportunity to be heard "…at a meaningful time and in a meaningful manner." *Mathews v. Eldridge,* 424 US. 319, 333, 348-49 (1976). Further, proper public notice of the requests was afforded consistent with the principles stated by the Court of Appeals in *Cassidy v. Baltimore County Board of Appeals,* 218 Md. 418 (1958). All parties in the instant case were given proper public notice of the issues presented. Thus, it is apparent that the Board can grant relief necessary to permit the dwelling addition either as a non-conforming use or via variance relief.

B. *The existing fence (swimming pool enclosure) with a height of 6 ft. is compliant*

At the hearing, the Petitioner presented a photograph showing that there previously existed a 7ft – 7.5 ft. high fence on the Property adjacent to the Montanye property. In 2017, Petitioner repaired/modified the existing fence and constructed a 6 ft. high fence (swimming pool enclosure) in its place.

As previously noted, BCZR § 427.1.A. limits a fence to 42 inches if the fence is located in the side yard of the property which adjoins a public road. Here, neither the Property nor the adjacent properties adjoin a public road. As testified to by Mr. Motsco, the reference to a public

road in BCZR § 427.1.A refers to a corner lot, in which a property abuts a public road on both the front and side yard. Therefore, the provisions of BCZR § 427.1.A. do not apply because of the qualifying language within the BCZR and layout of the Property.

BCZR § 427.1.B.1 indicates that a fence cannot exceed the height of 42 inches if it abuts the front yard of the adjacent dwelling. However, such 42 inch limitation does not apply because of the exclusionary language in BCZR § 427.1.C.1. That section states that the 42 inch limitation does not apply when a pool fence is required. In this regard, BCC § 13-6-101 requires a fence or similar enclosure around a pool. The reasons for this requirement are obvious. The justification to provide for the public safety and prevent any tragedy due to pool's attractive nuisance character trumps the aesthetic considerations in BCZR § 427.1 Moreover, the BCC provisions mandating a fence or similar enclosure provide no height limitation. Furthermore, the County's Landmark Preservation Commission has approved the fence, arguably satisfying any applicable requirement imposed by BCZR § 427.1.

C. Petitioner is entitled to Variance Relief

The Board should conclude that Petitioner is entitled to variance relief in the instant case. Petitioner seeks relief from BCZR § 1B02.3.C.1 to permit an existing 12 x 28 ft. attached garage addition with a side yard setback of 0 feet and a sum of the side yards of 14.9 feet. In addition, Petitioner seeks relief from BCZR § 427.1, if necessary, to permit an existing fence (swimming pool enclosure) with a height of 72 inches.

In Baltimore County, zoning variance are permitted and analyzed under BCZR § 307 and the case law interpreting that provision. Significantly, to obtain a zoning variance in Baltimore County requires a two-pronged analysis showing that:

(1) The property is unique; and

(2) If variance relief is denied, petitioner will experience a practical difficulty or unreasonable hardship. BCZR § 307.1; *Cromwell v. Ward,* 102 Md. App. 691, 694-95 (1995).

Petitioner is entitled to variance relief because the Property is unique, and Petitioner would experience a practical difficulty and unreasonable hardship if the variance is denied.

The Court in *Cromwell* defined the term "uniqueness" and stated:

> In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "Uniqueness" of a property for zoning purposes requires that the subject property has an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or not-access to navigable waters, practical restrictions imposed by abutting properties or other similar restrictions. *Cromwell v. Ward,* 102 Md. App. 691 (1995).

Due to the events that led to the creation and configuration of the Property, special circumstances and conditions exist which make the Property unique. The testimony of Mr. Motsco at the Board's hearing, along with aerials entered into evidence, show that the Property is substantially different than other properties in the area with differences in size and shape. That is, the fact that this is a narrow, yet deep parcel, and was created over 140 years ago drives the need for variance relief. No other property in the vicinity has these precise dimensions. Additionally, the Property was created prior to modern zoning laws, meaning the Property will be impacted by the BCZR in a different way than other lots in the neighborhood that were created subsequent to the regulations. Combined with the unique shape and size of the Property, the lack of feasible building area is exacerbated by the combination of these factors. The Property's physical peculiarities will cause Petitioner to suffer disproportionately due to the application of BCZR. As such, the Property has an inherent characteristic not shared by other properties in the area and satisfies the "unique" test required under *Cromwell v. Ward*. Furthermore, as noted at the hearing, a number of properties in this immediate neighborhood have been afforded variance relief. The

property immediately across the street obtained a variance in Case No. 05-444-A. The Fradkin property (immediately next door) also was granted a variance in Case No. 84-332-A. Other variances granted in the neighborhood include one for a reduced side yard setback (the same type of relief as sought in the instant matter) for the property located at 4626 Butler Road (Case No. 64-94-A) and 3 Waugh Avenue (Case 94-307-A), which also requested a variance to a side yard setback less than required. Counsel does not cite these cases because approval in one case mandates the same result in another. Certainly, each request must be considered on its own. But all of these cases relate to properties on the plat which created the Property. The ALJ in these cases has consistently determined that lots created by this plat are unique and therefore qualify for variance relief. The same result is appropriate and mandated here.

Courts have interpretated the "practical difficulty or unreasonable hardship" standard to be disjunctive, meaning that satisfaction of either of the conditions may warrant a variance. *Loyola Loan Ass'n v. Buschman,* 227 Md. 243, 250-51 (1961). The Court in Mclean v. Soley, 270 Md. 216 (1973) established criteria for determining practical difficulty or unreasonable hardship:

> (1) Whether compliance with the strict letter of the restrictions governing various variances would unreasonably prevent the owner form using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
> (2) Whether a grant of the variance applied would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
> (3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed, and public safety and welfare secured.

The undersize nature of the Property and strict application of BCZR would unreasonably prevent Petitioner from using the Property for the permitted purpose of a single family dwelling. The imposition of the new regulations, i.e. BCZR § 1B02.3.C, impacts the Property, which was apart of an existing plat, disproportionately as compared to lots in the neighborhood laid out in

accord with the regulations. A denial of the variance would deprive the Petitioner of the right to reasonably develop her property in accordance with regulations and would constitute a practical difficulty under these circumstances. Mr. Motsco testified that the Petitioner will suffer practical difficulty if her request is denied, because there is no location on the Property where a garage could be constructed in conformance with BCZR § 1B02.3.C.

Further, a grant of the relief will not detrimentally impact adjacent properties. Mr. Motsco testified that considering the LPC approval, the surrounding neighborhood, and the site constraints at issue, the garage construction is consistent with DR 1 zoning regulations and would not cause injury to the public health, safety, or general welfare. As such, Petitioner will experience practical difficulty or unreasonable hardship if the requested variances are denied.

CONCLUSION

Therefore, for the foregoing reasons, the Board should grant Petitioner's requested relief.



ZACHARY J. WILKINS
LAWRENCE E. SCHMIDT
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
(410) 821-0070
zwilkins@sgs-law.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of April, 2021 a copy of the foregoing Memorandum was mailed, via email to:

Thomas & Kim Montayne
Tom@montanye.net

Kimberly Karlsen
perandkim@aol.com

Steve & Patricia Fradkin
reistlaxcoach@gmail.com

Sue Benson
sbensoncomm@aol.com

Robin Coffin
rscoffin@verizon.net

Mary Molinaro
mmolinaro@reisterstown.com

Peter Max Zimmerman, Esquire
People's Counsel for Baltimore County
peoplescounsel@baltimorecountymd.gov



ZACHARY J. WILKINS

Dear Baltimore County Board of Appeal Members:

It has been brought to our attention that someone has presented an unauthorized copy of our intellectual property in a hearing regarding 4607 Prospect Avenue, Glyndon, MD. These images were taken from HistoricAeriels.com and asked that they be entered as exhibits. Please know that these unauthorized images marked with "Copyright Material" are an infringement of our copyright and we did not grant their use. In the event that our photos are requested for use in a professional or legal manner, after purchase, we diligently confirm the location and date information for each purchased item. This is done for all authorized copies from our imagery database, in order to confirm their authenticity, and a necessity in order maintain the standard our customers expect from us in the professional and legal environment. We offer a notarized affidavit of authenticity with any legal acquisition of our imagery, upon request. Without proper authentication, we cannot stand behind the claims made in regards to any screen shots taken from our website containing watermarked imagery. Thank you for your attention to this request.

Jeff Teasley
Director of HistoricAerials.com

Exhibit A

RE: PETITION FOR VARIANCE
4507 Prospect Avenue
Petitioners: Donna Bair

Memorandum submitted by the Protestants

The Bair's are requesting a Zero variance between their property line and the Fradkin property for the purpose of adding a second bay to current garage. In fact, the Bair's have already added this addition without any variance. This addition encroaches over the Fradkin's property by two plus feet. Prior to the addition of the second bay there was a 25ft set back between the Fradkin's property and 11 ft. set back from the Bair's to the Fradkin's property line. The requested improvement of a 2nd bay cannot be accomplished without the 2 plus feet encroachment onto the Fradkin's property. As the requested need for the variance cannot be done without an encroachment there no need for the variance to be granted. There are no submitted drawings to support the use of the property as a carport or even a small storage area. There is certainly no impact upon the use of the Bair's property without the granting of these variances. Further, Mrs. Bair suggested in the third day of the hearing, in rebuttal, that I provided a map and told her where our property line was located. The timing of this statement alone calls into question its veracity.

Further, we oppose the Zero' variance request as a should a situation arise where heavy equipment is required to access the rear yard of the Bair property, there would be no way to do that without damaging either the Fradkin or Montanye properties. This is foreseeable as there is a pool in the backyard of the Bair property.
Another reason we oppose the Zero variance is that Glyndon is a preferred place to live due to its open spaces and quiet neighborhoods. Building up to property lines sets the precedent of creating a community that is no longer valued for its open spaces and neighborhood feel. This is not town home living. This is a community where people value and purchase their home for the open spaces and solitude.

We oppose the room addition on the Montanye side for several reasons as well. One, the clear change in topography and the addition of impervious surfaces that have increased the volume of water directed towards the Montanye property. This is also true on the Fradkin property side.

The granting of variance relief in this case would set a precedent that if you build without following the rules, you will get relief. A relief that they well could not have been granted if they had gone through the correct channels. A validation of a build now, ask for permission later without regard to the effects on neighbors and the neighborhood in general. We oppose all variance requests made by the Bair's and respectfully agree with Judge Beverungen's decision to "deny" all variance requests.

We would like to thank Mr. Peter Zimmerman and the People's Council for their help in this case and their dedication to their craft.

Steven M. Fradkin



Patti J. Fradkin

Patt J Fradkin

04/09/2021

and there was nothing you could do about it? This would only bring conflict to the neighborly relationship.

Following the normal process affords the local community and LPC an opportunity to provide feedback that includes suggesting alternatives that will work to meet the homeowner goals within the confines of the county codes. It avoids the neighborhood conflict we are faced with today – a black-and-white decision on the "as-built." It is understandable that the CA's would highlight this fact above others in their section 8 submissions.

Conclusion

Mrs. Bair has acted on this only in a way as required by law. Not in a way in keeping with maintaining peace within the community in which she now lives.

Despite her convincing testimony, presented without any evidence, the Protestants and the People's Council have disproven her testimony and demonstrated her willingness to deceive and defraud not only her immediate neighbors, but the community and the County.

Without demonstrating true uniqueness of property and structures, without a demonstrated hardship, and *with* demonstrated harm to the general welfare of the community, **we see not a single justification for any relief being granted.**

-Tom and Kim Montanye

Thomas R Montanye 4/8/2021

Kimberly S Montanye 4/8/2021

RE: Petition for Special Hearing and Variance, Board of Appeals
Case 2019-342-SPHA
Donna Bair, 4607 Prospect Ave, Glyndon

Montanye Protestant's Memorandum

4/2/2021, Tom & Kim Montanye, Neighbors @ 4609 Prospect Ave

Table of Contents

Introduction 2
Summary of Adverse Impacts on Montanye's/ 4609 Prospect Ave. 2
Privacy Fence in Front and Side Yards 2
Water/Silt/Erosion from Master Bedroom/Bathroom Suite Addition 3
Adverse Safety Concerns 3
Argument 4
Uniqueness 4
Hardship/ Practical Difficulty 5
General Welfare and Community Interest 7
1976 Addition and the 104.3 Limit on Extension of Non-Conforming…/ 25% Rule 8
1976 Addition Dimensions – 329 sqft 8
1971 Home – 1,448 sqft. 8
Deficiencies 8
Deficient Submission/ "As-Built" Advantage 8
Defective Exhibits - Petitioner's Fence 9
Petitioner's 'Victim' Testimony 10
Licensed Real Estate Agent 11
Normal Process is Crucial 11
Conclusion 12

Introduction

Summary of Adverse Impacts on Montanye's/ 4609 Prospect Ave.

Privacy Fence in Front and Side Yards

BCZR 427.1 limits front-yard fences to 42". Mrs. Bair's new fence projects 50 feet along our adjoining front yard.

Historic District guidelines further limit side-yard fences to 42" (*ref. 427.1 A, B*). Mrs. Bair's entire fence is in front of our foundation, the balance of the distance in our side yard. (*Protestant's exhibit 6N*).

Facts of "before" Fences

On the Montanye/4609 Prospect side, since at least 1991, there existed **two different fences, and a "cabana" structure in-between them**, front-to-back as follows:

- An **18-24" decorative white picket garden fence**, which started about 4-5' behind the ~1976 addition foundation, and continued toward the back at a distance of about 2' from the property line, meeting up with the cabana at exactly the large Bair Holly tree, which is just past the end of the Montanye driveway. It was not a privacy fence. *(See Protestant's exhibits 6B, 6D)*.
- A **cabana,** approximately 6' tall, which started exactly at the Holly tree and continued ~12'-14' toward the back *(See Protestant's exhibit 6A and Petitioner's exhibit 2C)*.
- **A 48" 3-board wood paddock fence**, which started exactly where the cabana ended and continued some ~30' back along our side yard, inside (Bair side) of the Rose of Sharon hedgerow. This fence can be seen *behind* the hedgerow in *Protestant's exhibits 6A and 6H*. **It was not a privacy fence**, as Mrs. Bair testified.
- **A 6'-high gate** (Montanye-side) was located **>10' from the property line** (*see Petitioner's exhibit 2D*), connecting the inside end of the cabana to the back corner of the house.

These two fences and the cabana, *along with the privacy hedgerow*, were completely removed and replaced by a 6' tall solid-board privacy fence. The new fence is located **closer to the Montanye property** (by approximately 1-2 feet in the front and 3-4' in the back), now on the other/Montanye side of where the hedgerow used to be, and **extending farther back** by approximately 6'.

Privacy Justification – False Premise #1

The entire justification Mrs. Bair presented to justify a 6'-high fence that violates the County and Historic restrictions, was to provide needed privacy. In *Protestant's exhibits 6A&B* (Montanye & street view – before) verses 6C (Montanye street view – after), it's clear that **no privacy issue existed prior to the new fence**, and that overall **privacy was actually reduced** as a result of the removal of the 14' high, established hedgerow *(See Protestant's exhibits 6E, 6G, 6L – after, vs. 6H and 6J - before)*.

Gate Had to be Moved Forward – False Premise #2

The prior gate was about 6' tall, located more than 10' from the property line, and opened inward toward the pool, which is in violation with the pool fence code. Mrs. Bair testified that her fence company suggested that the ***only* alternative** to make the gate compliant was to **move it** all the way up to where it exists today, some **29' forward**, and now *on* the property line at the front-most point.

Per my testimony, before the fence was constructed, I explained that we would not agree to this change as it would impact our property and not be compliant with fence codes, and that an **easy solution** would

be to keep the gate where it was, remove the pavers where the gate existed, **regrade to add a step** in the walkway, and then the gate in it's prior location could swing out, as required. This suggestion was rejected, and the fence was constructed. Mrs. Bair's testimony that she "explained things to the neighbors in advance" and "there were no issues" is inaccurate in this regard.

Furthermore, Mrs. Bair added **a new side window** (despite her testimony otherwise, *Protestant's exhibits 6B – before vs 6C - after*) along the Montanye driveway, further reducing privacy in both directions. This is **self-inflicted**, so the 6' fence cannot be used to justify the need.

Curb Appeal Adverse Impact

From the street and upon entering our driveway, it is apparent in *Protestant's exhibits 6A-D* that ***the entire nature of the boundary*** **between 4607 and 4609 has completely changed for the worse**. A formerly attractive, natural and more private boundary was replaced with a less effective wooden wall, decreasing the street appeal enjoyed by all in the Historic Glyndon community, and negatively affecting the property value. **Glyndon is not known as the land of grass and privacy fences; it's the land of old trees and beautiful natural landscaping.**

Water/Silt/Erosion from Master Bedroom/Bathroom Suite Addition

As shown in *Protestant's exhibit photos 10A-C,* and video *exhibit 12*, after experiencing silt flowing down her side walkway, Mrs. Bair intentionally created a ***new*** **impervious swale** to redirect and force all water/silt to flow to a 6"-wide mud trench on the exact edge of the property (same effect as extending the downspout to the edge of the property), **forcing it to flow instead onto the Montanye property**. The video clearly shows *no* water flowing under the new fence gate/Bair property, despite the testimony of expert witness Mr. Motsco, who said it would stay on her property.

On the **Fradkin's side**, a **new impervious ~12'x18' (216 sqft) concrete pad** was constructed to lead to the new 2nd garage bay, extending even beyond the Bair property. The water that used to be absorbed on the Bair property in that area now flows onto the Fradkin property. In addition, the excess water from the area of the **new garage bay 12 x 28' (336 sqft)**, is now directed only onto the Fradkin property. **This totals 552 sqft of new impervious area**. All flowing entirely onto the Fradkin property.

The balance of all the water from the sloping front yard, the impervious auxiliary driveway and walkway on the Montanye side, plus the water from the new impervious master bedroom/bathroom suite (**329**/308 **sqft**), **is now channeled into the mud trench**. **There is virtually no pathway for the excess water to remain on the Bair property on either side.**

Adverse Safety Concerns

There are significant safety issues having these structures stand even a day longer, let alone for 2+ more years while litigating further appeals, postponements, reconsiderations, etc. It seems the County enforcement arm will take no punitive action until the whole case is exhausted. This puts the neighbors and community at continued risk for what could be a total of 6 or more years from the time of initial construction. This is dangerous and puts the rights of an offender above the ongoing safety of the community!

1. No evidence that licensed professionals performed the work. In fact, given the magnitude and visibility of the work, and being on a public street, it's unlikely, as they know they could lose their license and livelihood as a result.

2. No inspections have been performed. We have zero assurances that the structures are safe and sound. Issues can happen at any time post-construction, as a result.
   2.1. Electrical safety codes, smoke detectors up to standard – possible fire hazard
   2.2. Plumbing (including natural gas) – possible explosion hazard
   2.3. Masonry (garage and addition foundations)
   2.4. Structural safety codes
3. In fact, **a gas leak** was already detected and corrected (*Protestant's exhibit 16*) in the precise area where the addition was built on the Montanye side, right on the corner of the new construction, just 15' from our driveway. In talking with the contractor during the repair, he said the gas line was nicked there, where the hole was dug, as proven in the photograph.
4. Furthermore, prior to the Gas issue, the initial garage foundation collapsed and had to be rebuilt - a clear indication that perhaps there was a level of incompetence with the workers, and an early heads-up for Mrs. Bair to investigate the contractor's status.
5. **The Bairs shouldn't even be living in this space for the last 3 years.** There was no "use and occupancy" issued, nor should there be. This happens after it's all inspected and deemed okay.
6. The 6' privacy fence that terminates with a gate, abruptly where we back out of our driveway, and poses the risk of a child running into our driveway without any ability to see it coming. A line-of-sight issue.

What assurances do we neighbors have that we, or our properties, won't be damaged should something serious happen in the near future?

Argument

Variances, outlined in BCRZ 307.1, allow they be granted:

1. "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"…
2. "and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship"…

   These are two hurdles - the first has to be met, and only if so, then the second is considered and must also be met. (*ref. Cromwell v. Ward*)
   Furthermore…

3. "and only in such manner as to grant relief without injury to public health, safety and general welfare."

Uniqueness

In the first place, on the first bar to be met, peculiarity or uniqueness of the land or structure:

1. **I struggle to find *any* characteristics of the land or structure that are peculiar or unique compared with the surrounding properties**, at least in the condition prior to these improvements, **or to find any arguments offered by the Petitioner that support this.**
   1.1. **The lot** is similarly…
      1.1.1. **Rectangular** in **length and width ratios** of it's immediate neighbor's and many others,
      1.1.2. Similar **terrain**…slopes downward from front to back (see *Petitioner's topographical exhibit*), same as all houses on Prospect and Waugh, both sides,

1.1.3. No cliffs, drop-offs, rock out-crops, rivers or streams, like all the surrounding houses on this side of the street and even the other side.
1.1.4. Same public utilities available to all, water, sewer, cable, etc.
1.1.5. The structure, prior to the improvements, did not meet current side set-back or lot square footage requirements for DR1 or even DR, same as many of the properties on Prospect (4609, 4611, 4613), all/most on Waugh Ave and Fiske Ave. *(See Protestant's exhibit 27)*
1.1.6. No two lots in Historic Glyndon are exactly alike. Are they therefore all unique, qualifying for relief? They are all formed on top of existing ground and terrain, around streams and hills and valleys, forests and fields, existing roads…and it is nearly impossible to *make* them identical. **A dictionary definition of 'unique' is not particularly helpful to variance determinations. It is a relative comparison that is appropriate.**
1.1.7. Mr. Schmidt's cross examination of Ms. Coffin attempted to imply that:
1.1.7.1. Because 4605 had gotten a variance in 1984, it was considered unique
1.1.7.2. Because 4605, 4607, and 4609 were very similar, they were therefore all unique
1.1.7.3. Also, Mr. Schmidt's opening exhibits in both the lower court and the de novo appeal emphasize the number of variances awarded in the Historic Glyndon area
1.1.7.4. Yet, under another objection, Mr. Schmidt argued that each case must stand on its own, and that no single variance sets a precedence…
1.1.7.5. …Pardon my confusion in this circular logic and contradiction.
1.1.7.6. Plus, the 1984 variance on 4605 Prospect pre-dates the Cromwell v. Ward landmark case arguing the importance of uniqueness and resulting hardship, which has since somewhat restricted the issuance of variances.
1.1.7.7. Finally, the 1984 variance on 4605 Prospect not only had no opposition in the community, nor broader environmental concerns…it had **signed support from every single property owner on Prospect Ave**. The nearest residence is over 230' from the new 25' setback. Which County ALJ would go against this support, and deny a variance under the circumstances, opening themselves up for warranted criticism by the community?!

2. In Mr. Motsco's testimony, he stated that the Bair property was unique because of the slope. Yet he further stated, in cross-examination, that the slopes on the neighboring properties on the south side of Prospect Ave. were the same. This sameness is supported by the topographical map introduced toward the end of Mrs. Bair's second testimony (*Petitioner's exhibit 25*).
3. Further, Mr. Motsco testified that building a detached garage in the back of the property would introduce a hardship in walking from the house to the garage. This argument of hardship caused by an unbuilt alternative, to an illegally built 2nd bay, would be self-inflicted. Plus, other front-yard options exist.

Hardship/ Practical Difficulty

In the next place, even if it were determined that the land/structures were somehow peculiar and unique, the second bar would not be met because no reasonable hardship is caused by the uniqueness, except the ones they created themselves in doing the improvements without considering the zoning restrictions and in creating the adverse impact on the neighbors and neighborhood.

1. Every neighbor in the community has had to make compromises and choices about improving their property within the confines of the County zoning and building codes.

2. In the case of wanting a 2-car garage,
   2.1. First and foremost, **it's not a hardship if you don't have a two-car garage; it's a luxury if you do.**
   2.2. It's a luxury if you have a single car garage, in this area. In fact, many garages in the area have been converted into living spaces (3, 5, 7 Waugh Ave), showing actual homeowner choices in practice over time, that living space is preferred over garage, which is more of a luxury.
   2.3. It's not a hardship if you have to walk from your house to your luxury detached garage.
   2.4. Further, **other options exist**.
      2.4.1. There's **room in the rear of the property** (200' - 30' setback = 170') **for a detached 2-car garage** within the zoning constraints, like several of the properties on Prospect (4606/Acle, 4610/Gehman, 4615/Meavers, 4511…), and many more in Historic Glyndon.
      2.4.2. There is **room in the front** (77.4' - 20' county right-of-way -25' setback = 32.4') for expansion within the zoning constraints. Two houses on Prospect alone have detached garages in the front of the properties (4601/Welsh, 4612/Gehman).
      2.4.3. There is room in the front for an attached, 2-car garage with a side entry, same/similar configuration as 4 Waugh Ave (*Petitioner's exhibit 7C*), perhaps with a more reasonable variance request, requiring no further reduction in existing non-conforming setbacks.
   2.5. If we allow a **zero-foot setback precedent**, would our DR1 zone turn into a community where structures were touching each other? Like town homes…as we all got exceptions to the rules, to be fair, even though none of us had met the bars for exceptions according to the laws passed by the elected legislature?
   2.6. One must consider the long-term impact of these decisions. This line of thinking leads to a turbulent community of conflict and angst, instead of peace and harmony.
3. In the case of the **second addition**, the new master bedroom and bathroom suite, **other options exist**, same thing,
   3.1. First and foremost, again, there was **no hardship with the existing living space**.
      3.1.1. Mrs. Bair purchased a 3 bedroom, 2-1/2 bath property, with room for overnight guests with children (daughters, grandchildren) already, with lower level and upper level family rooms.
      3.1.2. Families in 4607, in the last 30 years since we've been next door, included 3 with two children each;
         3.1.2.1. Hamilton's, Towles, Devaney's.
         3.1.2.2. Back in the seventies, the Bergeson family had 3 kids in that house, one of whom was friends with my brother.
      3.1.3. This clearly demonstrates there is no hardship to reasonably use the property as a residence, as it was before these improvements. The extra space added is totally a luxury.
      3.1.4. Further, the Bair's **could have expanded in the front or the back instead** of to the side, which is already non-conforming and where the issues are…or even **considered a second story** (like many of the houses on Prospect and Waugh Ave), in order to meet zoning restrictions.
   3.2. In fact, they covered a portion of their back deck with a roof and screened it in, as their first unpermitted improvement (one violation the county didn't pick up on, though it's documented in her own exhibits). **Instead of doing that, they could have used this 19'x12' area, and/or the area adjacent to it on the Montanye side giving them 36' wide x12' deep**, which is in the

center of the property, for extra indoor living space comparable to what they did in the front. It would be within the zoning restrictions.

4. In the case of **the fence**, other options exist, same thing…
   4.1. All of the confusion suggested by Mr. Schmidt with conflicting requirements…between the base County code requirements, the County pool requirements, and the County historic requirements…seem to me easy to sort out.
   4.2. **Pool requirements** can be met by enclosing the pool with its own minimum 48" fence, at least 10' in from the property line to satisfy zoning. This is the way many of the neighbors have handled it. This is how the Fradkin house handles it (*Protestant's exhibit 5*), as do many other properties in Glyndon.
   4.3. If they want a **yard fence** on the property line also, on the front/side, it can be brought to the required 42" (*ref. 427.1.A "…located in a historic district, the maximum height of a residential occupancy fence is 42 inches if the fence is erected in the side yard of a lot that adjoins a public road",B.2 "The fence may not exceed 42 inches in height if situated within ten feet of the adjoining front yard property line."*). **Privacy** can be handled very effectively **using hedges and shrubs**, like it was before this non-conforming fence replaced them, as is most common in Historic Glyndon.
   4.4. I have repeatedly, personally offered a reasonable alternative that would be acceptable to us on our side (*Petitioner's letter exhibit*) without requiring 2 fences....before the construction, after the construction, at the lower hearing, and since the appeal hearing. But it was rejected outright on all occasions. My proposal would still have required relief. The offer was made in good faith, as a negotiation, for the purpose of bringing this dispute to a more rapid resolution, before a hearing and County and community involvement was required, which did not happen.
5. These arguments and options demonstrate there is absolutely no need for relief of any kind on the fence, the garage, or the bedroom/bathroom addition.

General Welfare and Community Interest

Setbacks provide desirable buffers between neighbors and are extremely important to the general welfare. They promote peace and harmony in the community. Each property owner agrees to restrict expanding in these areas equally. When one property owner fails to do so, the immediate neighbor is adversely impacted, as is the neighborhood more broadly. Granting of a zero-foot setback is neither reasonable nor necessary for the Bair's to enjoy and even expand their property as a residential dwelling in Glyndon. Same with the master bedroom/bathroom expansion. **Because other options exist, granting relief is not necessary and negatively impacts the buffer between properties, perpetuating the non-conforming issues unfairly.**

The protested privacy fence along the adjoining front- and side-yards likewise perpetuates an unfair and undesirable condition for the immediate neighbors and the Historic Glyndon community. Our other neighboring fence, at 4611, also does in fact extend 5' into our front yard (measured after testimony), but is a 48" 3-board fence that was rebuilt exactly where/as it was 40+ years ago, and is 40' from our house, behind a hedgerow. It's not in any way comparable to a new 6' solid fence, newly installed, extending 50' into our front yard, and 2' from where we park. Therefore, we did not object.

1976 Addition and the 104.3 Limit on Extension of Non-Conforming…/ 25% Rule

The 4607 Prospect property became non-conforming in 1971 when the DR2 zoning designation went into place, with a garage-side setback of only 11' instead of the required minimum of 15'.

1976 Addition Dimensions – 329 sqft

When the ~1976 improvement was added onto 4607 on the Montanye's-side (see *Protestant's exhibit 2*), the property was zoned **DR2**. Side setbacks for DR2 are minimum **15'/ sum of 40'** (*ref. BC Zoning Regulations 1B02.3.C.1.*) This addition violated the 15' (14.9) and the "sum of" setback requirements (14.9'+11'=25.9'), and therefore the ~1976 addition counts toward the 25% rule.

The Math

Using the RTF survey drawing to determine of the width of this ~1976 addition, by measuring the "4' overhang" (OH), with a scale of 1"=30', this makes the width conservatively 23.5'. **This overhang *is* the 1976 addition**.

Mr. Motsco's testimony that the new addition is "approximately 14'x22'", determined by looking at the structure itself, "as best he could tell"…we'll **use his 14' depth dimension**, for lack of any other. **This makes the ~1976 addition ~14' x 23.5', or 329 sqft**.

1971 Home – 1,448 sqft.

Again, using the RTF survey, the original home "ground floor area" (before the 1976 addition), measured:

The Math

- **Main Home** – 54' on survey - 23.5' ~1976 addition = 30.5'.
  30.5' width x 30.5' depth on survey = 930 sqft.
- **Utility/ Mud room** - 30.5' - 5.8' step-back = 24.7'.
  24.7' x 8.6' width = 212.42 sqft.
- **Garage** – 28.3' x (24.3'-2.5' encroachment – 11' original setback = 10.8') = 305.64 sqft.
- **Total ground floor sqft** – 930 + 212.42 + 305.64 = **1,448 sqft.**
- 1448 sqft x .25 = **362.02 sqft. maximum allowed extension**.
  362.02 sqft (25%) – 329 sqft. 1976 addition = **33.02 sqft left on the 25% rule.**
  Therefore, the 104.3/ 25% rule does not cover the 2019 addition of 329 sqft.

Mr. Motsco testified that the 1991 zoning change was the point-in-time to consider. The Zoning Master Plan cycle is not intended to provide a "reset" mechanism for expansion. Therefore, 1971 applies here.

Deficiencies

Deficient Submission/ "As-Built" Advantage

The **RTF survey** is the only thing submitted with any dimensions of the recent improvements and is seriously deficient with details pertinent to the case. (*ref. BCZR Article 5, 500.9, 502.1*)

It shows only the "as-built" *total* dimensions, and **lacks information** specifically relevant to the relief request, including:

- What was the prior vs. the new setback of the 2nd bay garage?
- What is the size (length, width, sqft) of the new master bedroom/bathroom suite seeking relief?

- How far is the new 6’ privacy fence, seeking relief, from the property line on the Montanye side?

In other words, *what specific change is the appeal tribunal approving or denying (before/after)?*

Mrs. Bair got Ex Post Facto approval from LPC for a **13’x13’ addition** on the Montanye’s side (*Petitioner’s exhibit 5*). These numbers are way wrong, it’s been established above at 14’x23.5’. Where did they come from? Assuredly from the request by the petitioner to LPC, as there were no dimensions in the code complaints or citations (*Petitioner’s exhibit 4*).

On the garage side, who certified what the old setback was? It could be determined only after the survey, and by looking carefully at the construction done, might even require pulling siding or drywall. What evidence has been presented to verify the setbacks represented in the reconsideration? It's not on the survey. An aerial view measurement shows about a 14' extension, based on the roofline, but that can't be considered precise.

An **“as-built” submission** process **may grant an advantage** over a “normal” process, because:

- People are naturally more sympathetic to the consequences of denying exceptions in the case of the as-built, because if declined, it has to be removed, likely at significant expense. It's a difficult and punitive decision.
- If *plans* to build are declined, the applicant simply has to re-work the plans to make them conforming, with far less cost. This is a far less difficult decision, not punitive.
- This gives an advantage to the "as-built" approach, which is a bad precedence because it encourages more residents to follow the thinking that "it's easier to ask forgiveness than permission." This thinking is destructive to our communities and our civil society more broadly. It's not a law-abiding approach, it's a "catch me if you can" approach. It would result in more hearings just like this one, more arguments, a less peaceful community. That's an adverse effect.

Defective Exhibits - Petitioner’s Fence

The photographs and measurements presented in Petitioner’s exhibits 8A-I serve only to show that “other fences exist in Historic Glyndon”. **No relevant context is provided** with the photos, such as:

- Where are the fences? Front-yard, side-yard, back-yard?
- Do they adjoin a neighbor’s front- or side-yard?
- Along a busy state highway (MD128/Butler Rd) with a public sidewalk? Or, a dead-end street?
- Do they surround a pool? Do they protect a tennis court?
- Do they help shield from a public or private facility? (church, private pool)
- How far are they from the property line?
- How long have they been there? (Prior to zoning? Historic?)
- Are they on a Historic/ contributing property or non-contributing?
- Did the neighbors/community protest or support?
- Are they solid-board, stockade privacy fences, or 3-board paddock or split rail, or picket?

Most of the heights given in testimony are exaggerated. One can easily find a spot or two along a 4’ fence line where it exceeds or is less than 4’, due to the terrain or imperfections in construction. Additionally, the “measuring stick” used has no visible number measurements indicated and appears to

be a telescopic device (can be extended manually and imprecisely). Why not a tape measure? Certain neighbors who attended the hearing saw their fences in the exhibits and contested the measurements.

Only a single fence pictured/listed is relevant: *Petitioner's exhibit 8B*. The wooden fence (behind the featured black metal fence) at **2 Waugh Ave**. is a 6' privacy fence, along a front & side yard, with a pool involved. These two fences were the object of **years of opposition from the Historic Glyndon community**, where the Petitioner lost the lower-court ALJ hearing and filed an appeal. The HGI and GCA organizations ran out of legal fees to contest the appeal, and the **appeal case was ultimately dropped** by BC BOA (**appeal never even scheduled**, get it off the books) citing "**lack of prosecution**" by BC to enforce the lower court finding, so it still stands today. Yet, it's also included in *Petitioner's exhibit 26*, (twice) listed as "approved"?

The same issues exist with *Petitioner's exhibit 26* (fence chart). Corrections and some relevant context added below. Mr. Schmidt did not provide the exhibit, so this is partial from what was displayed, but makes the point.

Address	Height/Type	Yard Location	Comment/Context
29 Chatsworth	6' Privacy	Back & Side	Shields from Glyndon Pool, corner lot, no neighbor
25 Waugh	6' Privacy	Back	No adjoining front/side yard
8 Waugh	6' Privacy	Back	No adjoining front/side yard
6 Waugh	None	None	**Duplicate**, Vacant lot, 6' fence seen is 4612 Prospect
4722 Butler	6', 7' Privacy	Back	~15' from property line
4702 Butler	42" Picket	Side	**Duplicate**, 6' fence seen is 3 Waugh fence
3 Waugh	6' Privacy	Side & Back	Vacant lot next to fence
2 Waugh	6' Privacy	Side & Front	Dropped for Lack of Prosecution (**not approved**)
4612 Prospect	6' Privacy	Back	Surrounds only pool
4711 Butler	6' Privacy	Back	Shielding Glyndon UM Church side
121 Central	6' Privacy	Back	Begins ~40 behind foundation
37 Waugh	52" Paddock	Side & Back	Borders Emory Grove Camp
4606 Prospect	None	None	**No fence** on Acle property
4605 Prospect	5' Metal	Back	Surrounds pool only, not near property line

Petitioner's 'Victim' Testimony

Petitioner testimony asserts that she was defrauded by her contractor, and that she had no knowledge that:

- Property lines and setbacks were not determined or followed,
- LPC procedures were not followed,

- Permits were not requested or granted.

Only Mrs. Bair's testimony was presented as evidence to these claims. Not a single correspondence, contract, receipt, payment or other artifact from the contractor was presented. No contact information or contractor name was presented, no evidence of pursuing damages with this contractor. With one exception… A statement from a fence company was presented, showing a charge for a permit that was not in fact obtained by the fence company. This was a small fraction of the total improvements made. In addition, fence companies rely on the customer to verify the location and other characteristics requested by the customer to be accurate and conforming.

Furthermore, it is always the **complete and total responsibility of the homeowner** to be knowledgeable and assure their compliance and the compliance of the contractors they employ.

Licensed Real Estate Agent

Mrs. Bair was a **licensed and active MD real estate agent when the work was performed** (PC exhibit), having just participated in the purchase transaction of her own residence. One must be an active agent to participate in a transaction, an in order to be an active agent one must be current on licensing and continuing education requirements. As Cookie Stone, expert Real Estate witness for the Protestant's testified, a basic knowledge of zoning, permitting, and using only MHIC licensed contractors is standard and emphasized in the RE licensing and continuing education training curricula required by all.

Refer to *People's Council exhibit 15*, which outlines "Basic Maryland Real Estate Licensing Requirements", with the last bullet reading "**Planning, Zoning, and Environmental Hazard**." In addition, RE Agents are trained extensively in the importance of good contracts, compliance and disclosure. COMAR 09.11.02.01, Relations to the Public, paragraph C includes: "The licensee shall protect the public against fraud, misrepresentation, or unethical practices…"

Protestant's exhibits 18A-D (security video) demonstrated the willingness and audacity on Mrs. Bair's part to **delegitimize two different surveys done for the purpose of resolving the issues in this case**, putting into serious question all of her testimony not backed with legitimate evidence.

Normal Process is Crucial

Mr. Schmidt spent an inordinate amount of time in cross examination attempting to convey to the panel that, despite the proclamation of each community association in their Rule 8 submissions, the *only* reason any of the relief requests were opposed is because the Petitioner did not get permits or follow the proper process.

In fact, the **documents submitted by each organization clearly oppose the garage 0' setback, the bedroom/bathroom addition, and the fence**. While it's true there was a paragraph *highlighting* that this case is particularly egregious because the normal process was not followed, **that's not to say that is the only reason…it's just one they chose to highlight**. The issue was initially reviewed in detail by these organizations over a year-and- a-half prior to the representatives giving testimony.

Also, it's not fair to argue "*they didn't have any problem with it beforehand*" when, in fact, it was unknown beforehand that there were so many violations and issues. It was assumed by all that proper setbacks were being followed, proper designs were submitted and approved, proper safety inspections were performed. **To what end would a neighbor oppose the work if it were approved and legitimate**

and there was nothing you could do about it? This would only bring conflict to the neighborly relationship.

Following the normal process affords the local community and LPC an opportunity to provide feedback that includes suggesting alternatives that will work to meet the homeowner goals within the confines of the county codes. It avoids the neighborhood conflict we are faced with today – a black-and-white decision on the "as-built." It is understandable that the CA's would highlight this fact above others in their section 8 submissions.

Conclusion

Mrs. Bair has acted on this only in a way as required by law. Not in a way in keeping with maintaining peace within the community in which she now lives.

Despite her convincing testimony, presented without any evidence, the Protestants and the People's Council have disproven her testimony and demonstrated her willingness to deceive and defraud not only her immediate neighbors, but the community and the County.

Without demonstrating true uniqueness of property and structures, without a demonstrated hardship, and *with* demonstrated harm to the general welfare of the community, **we see not a single justification for any relief being granted.**

-Tom and Kim Montanye

RE:	PETITION FOR SPECIAL HEARING AND VARIANCE	*	BEFORE THE
	4607 Prospect Avenue; SE/S of Prospect Avenue, 410' NE of Waugh Avenue	*	BOARD OF
	4th Election & 3rd Councilmanic Districts	*	APPEALS FOR
	Legal Owner(s): Donna V. Bair Petitioner(s)	*	BALTIMORE COUNTY
		*	2019-342-SPHA

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

MEMORANDUM OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

TABLE OF CONTENTS

2014: Coming to Prospect Avenue 1

Circa 2017: The Case of the Errant Encroachments 3

The Neighborhood and Historic Glyndon 3

2018-19: Things Fall Apart, Mere Anarchy 4

Relevant Baltimore County Zoning Regulations and Code Provisions 6

The ALJ Decision 6

The ALJ Order on Motion for Reconsideration 6

Argument 7

Zoning History, Nonconforming Use, Illegal Extensions, Variance Disqualification 7

Variance Law: "Uniqueness" Explained --- Delusions Exposed 9

Interlude: "Other" Fences, Garages, Variances Diversion 11

The Landmarks Preservation Commission Sidetrack 12

The "Carport" and "Accessory Building" Plays 12

The Fence Law Evasion 13

Variance Law: Uniqueness Resulting in Practical Difficulty 14

A. The Bair Property Presents No Difficulties, Much Less Any Peculiar Difficulties ... 17

B. Application of the "Practical Difficulty" Criteria 19

Variance Law: The Insidious Self-Created Difficulty Problem 21

Conclusion 23

APPENDIX

BCZR

§ 101.1 – Nonconforming Use 1

§ 104.1 – Continuation of Nonconformance; Exceptions 1

§ 104.3 – Limit on Extension of Nonconforming Buildings and Uses; Exceptions 1

§ 1B02.3.C – Development Standards for Small Lots or Tracts 2

§ 307.1 – Variances - Authority to Grant Variances; Procedures and Restrictions 3

§ 427.1 – Fences – Conditions for use; exceptions 4

Baltimore County Code § 13-6-101 – Swimming Pool Enclosure 5

Prince George's County v. E.L. Gardner 293 Md. 259 (1982) 6

Cromwell v. Ward 102 Md. App. 691 (1995) 9

Riffin v. People's Counsel 137 Md. App. 90, cert. denied 363 Md. 660 (2001) 17

Easter v. Mayor & City Council 195 Md. 395 (1950) 20

Park Shopping Center v. Lexington Park Theatre Co. 216 Md. 271 (1958) 22

RE:	PETITION FOR SPECIAL HEARING AND VARIANCE	*	BEFORE THE
	4607 Prospect Avenue; SE/S of Prospect Avenue, 410' NE of Waugh Avenue	*	BOARD OF
	4th Election & 3rd Councilmanic Districts	*	APPEALS FOR
	Legal Owner(s): Donna V. Bair Petitioner(s)	*	BALTIMORE COUNTY
		*	2019-342-SPHA

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

MEMORANDUM OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

"There must be some kind of way out of here,
Said the Joker to the Thief.
There's too much confusion,
I can't get no relief.
Businessmen drink my wine,
And the plowmen ruin my earth,
None of them along the line,
Know what any of it is worth.
Bob Dylan (Jimi Hendrix cover), All Along the Watchtower (1967)

2014: Coming to Prospect Avenue

In 2014, Donna Bair (hereafter "Donna") moved from Carroll County to Glyndon. She bought the home at 4607 Prospect Avenue from Timothy Devaney for $320,500.[1] The lot is about 34,000 square feet, .75 acre. The dates from 1951/ For the last several decades, it was occupied by the Hamiltons, Towles, and Devaneys.

Donna has a real estate license. She was associated with Century 21. She activated her license to buy her newly acquired dwelling. She said it was recently on referral.

The neighbors at 4609 Prospect Avenue are Tom and Kim Montanye ("Tom"). They have lived there since 1991. Tom grew nearby. Steve and Patty Fradkin ("Steve" and "Patty") are on the other side at 4605 Prospect Avenue. They came in 2014.[2]

The Bair residence as of 2014 had about 1552 square feet ground floor area. It was a standard house with 2 full baths and 1 half bath, a basement, a 1-car garage, and an

[1] Details are in the State Department of Assessments ("SDAT) Real Property Data, P.C. Exh.11.
[2] The SDAT Data in P.C. Exh. 11 provide helpful information and statistics on the Bair, Fradkin, Montanye, and other Prospect Avenue properties.

ample driveway. This included an addition, about 14' x 22' (308 square feet) on the Montanye side. It was built around 1976, attached mostly to the rearmost side of the dwelling and a few feet to the rear. It was about 14 feet from the Montanye boundary. The attached 1-car garage was set back about 10 or 11 feet from the Fradkin boundary.

There were spacious front and rear yards, a swimming pool, and an open rear deck. The kidney-shaped swimming pool, within a 36' x 22' rectangle, spanned about 792 square feet, per Bair engineer John Motsco. An attractive white picket fence a few feet high ran back from the house on the side closest to the Montanyes. It was not on the boundary. There was also an open-air cabana, kind of a lean-to. On the Fradkin side, there was a three-rail wood fence, apparently 40-something inches high. There was a 13'7" x 10'1" wood shed in the far rear yard about 26 inches from the Fradkin property.

Donna's site plan, Pet, Exh. 1, does not depict the situation in 2014, so there is no drawing or schematic of how things precisely were laid out with the one addition, the one-car garage, the white picket fence and cabana, and the three-rail fence.

Soon after moving in, Donna decided to make new home improvements.

She wanted a second garage bay, extending to the Fradkin property line. It would be 12' x 28'. She would also move her HVAC unit toward the rear of this garage.

She wanted a second bedroom addition on the Montanye side, filling the area in front of the first addition, extending along the side to the front of the dwelling, again about 14' x 22'. Her attorney called it a "notch," apparently to minimize it."[3]

She wanted a new residential privacy fence, six-feet high and solid, along both sides of her property; about 3 feet from Tom's side, to beyond the front of her dwelling, mostly adjacent to the Montanye front yard; crossing the rear yard of her property to the Fradkin boundary; and coming back up to the rear of her dwelling, a fourth side. The length of the fence crossing the rear yard, --- on the site plan and in Bair engineer John Motsco's testimony --- is about 95, with side sections about around 77'. Motsco calculated the area enclosed by the fence as 7700 square feet. The distance from the pool

[3] This is a misnomer. A "notch" is a v-shaped indentation or hollow, or a half-moon. Webster's Third New International Dictionary 1543.

to the fence is about 30 feet.[4] This entailed removal of the existing fences and the cabana, and of substantial plantings near the side boundaries.

She also wanted to enclose the rear deck.

Circa 2017: The Case of the Errant Encroachments

Donna secured estimates from two contractors, itemizing and pricing the work. She wanted it done cheaper, went to Craig's List, and found a Steve, last name lost. He agreed to do the work on a cash basis. There was no written contract, no survey, no permits, no check with county zoning, none of that.

Donna says she relied on Steve to take care of things. She knew about zoning and permits, but didn't think it was hers to know or check.[5]

The garage construction initially collapsed. Steve finished the jobs before exiting, but problematically. The case of errant encroachments was just around the corner.

Donna did not produce this Steve as a witness, and did not produce any records of dealings with him.[6] His later whereabouts are said to be uncertain.

The Neighborhood and Historic Glyndon

The County Board of Appeals ("CBA") heard much evidence on Prospect and Waugh Avenues, lot locations and configurations, and Historic Glyndon. Steve, Patty, Tom, and Robin Coffin ("Robin") described well the immediate neighborhood. Cookie Stone gave an excellent take on the real estate situation and impact. Kim Karlsen, Mary Molinaro, and Susan Benson all testified cogently about Glyndon, Baltimore County's

---

[4] As we discuss later, the new fence exceeds what is "adequate" and appropriate to protect children from wandering into the pool. It does the opposite, leaving room for kids to wander about. Bair conceded it is a privacy fence. Motsco tried to spin it as pool protection to weasel more allowable height.

[5] An ordinary citizen should know to check zoning and permits for such extensive work. A real estate agent has a higher obligation to address applicable regulations under Md. Code Bus. Occupations and Professions Art. Sec. 17-532. P.C. Exh. 16.

[6] Would Steve agree with Donna's blame-shifting to him? Did he broach a survey and permit? What would be his side of the story? Donna never took action later to hold Steve accountable or remedy the situation. Rather, she wants his work ratified, less the trespass. His absence raises a fair inference that his testimony would not be favorable to the petition.

first legislated Historic District and National Register Historic District, with exhibits. Their associations targeted the lack of permits. But they also testified individually, as was their right, to the unsuitability and incompatibility of the construction.[7] More of this later.

The undisputed evidence shows the Bair lot to be sizable in the area, with a mild slope downward like other lots on Prospect Avenue and area lots. There were the SDAT Data on Prospect Avenue lots; and My Neighborhood, GIS and Google layouts and photos. Steve's helpful chart produced a plethora of statistics. Prot. Exh. 27.

2018-19: Things Fall Apart, Mere Anarchy
William Butler Yeats, The Second Coming (2019)

Tom became concerned about the construction. There were boundary issues. A new stream of water ran in a trench or swale along or next to his driveway. There didn't seem to be any permits. There were eventually surveys done. Survey stakes were being moved, as shown his videos. It appeared there might be issues under County law.

Tom filed a complaint. There was a Code Enforcement Correction Notice issued in late 2018 for multiple violations. There followed a citation on January 24, 2019.

There was a hearing before Administrative Law Judge (ALJ) Lawrence Stahl on February 6, 2019. His February 11th Final Order states Assistant County Attorney Marissa Merrick and Donna Bair attended. He imposed the cited $1000.00 penalty, but suspended it to allow Donna to file for zoning relief or correct the non-compliance by April 12, 2019. Pet. Exh. 4. Donna did not timely comply with the Order. She contacted attorney Lawrence Schmidt. He filed her Petition for Special Hearing on May 28, 2019.

Meanwhile, Donna's survey showed her new garage extended 2-3 feet into Steve and Patty's property and the fence about 7 feet into their property. It also showed the front of the driveway cut off part of Tom's property at the Prospect Avenue frontage.

Donna, Steve and Patty had been friendly. Before filing the zoning petition, Donna sent text messages to Patty. Prot. Exh. 28. She described the encroachment and at some

[7] We occasionally deal with the spurious objection that citizens who live more than a short distance away should not be allowed to testify. It is settled and well-known that any interested person may participate. Dorsey v. Bethel A.M.E. Church 375 Md. 59 (2005).

point showed the survey to the Fradkins. There are two versions in Prot. Exh. 29A-B, one complete and one with the edge cut off to hide the encroachment on Tom's side.

The Fradkins had been enduring a bankruptcy after Steve lost a great job at Northwest Honda when that property was acquired, and its purchaser had other plans.

When Donna approached them, she asked Steve and Patty to give her a property interest in the area encroached. She described it as an easement.[8] For various reasons, Steve and Patty declined it as "lose-lose." Steve was also concerned whether it could be done during bankruptcy. Donna said she talked to a bankruptcy attorney, and told Steve it was good. She said she offered Steve $15,000.[9]

Donna's text messages admitted the encroachment of the garage and fence. The messaging mentions her then imminent zoning petition. She said cryptically that the county will only be looking at the setback, which she didn't have even before adding the garage. She said her attorney would like the Fradkins to sign a letter that they do not object. But she would respect their decision whatever it is. Donna later texted,

> "You don't need to attend unless you want to disputed (sic) the variance we are requesting which is to have 14.9 feet instead of 50 feet combined on the two sides of our property according to current zoning code."

This incompletely or inaccurately described the multiple zoning requests. It shows some familiarity with zoning terms. Donna did not mention the zero' garage setback and fence height variances. She was anyway unable to secure Steve and Patty's agreement.

In the normal course, a hearing ensued before ALJ John Beverungen. He entered an opinion and order on August 19, 2019 and an Order on Motion for Reconsideration on September 25, 2019. From these decisions, Donna entered a *de novo* appeal from denial of the multiple variances.

---

[8] Whether an easement is the right description of a property interest to relocate a boundary is debatable, but it shows Donna had some currency in real estate concepts and law.

[9] Steve testified it was brought up to go "under the table." He declined.

Relevant Baltimore County Zoning Regulations and Code Provisions

The zoning petition for special hearing and variances brought into play a multiple zoning regulations and a county code provisions:

BCZR § 101.1: NONCONFORMING USE --- Definition
BCZR § 104.1. - CONTINUATION OF NONCONFORMANCE; EXCEPTIONS.
BCZR § 104.3. - LIMIT ON EXTENSION OF NONCONFORMING BUILDINGS AND USES; EXCEPTION**.**
BCZR § 1B02.3.C. Development standards for small lots or tracts.
"BCZR SECTION 307- VARIANCES
307.1. - Authority to Grant Variances; Procedures and Restrictions
BCZR § 427 – Fences
§ 427.1. - Conditions for use; exceptions.
CODE § 13-6-101. - SWIMMING POOL ENCLOSURE.

For convenience, these are reprinted in an appendix at this memo's conclusion.

The ALJ Decision

To conclude his excellent decision, ALJ Beverungen entered this order:

> THEREFORE, IT IS ORDERED this **19th** day of **August, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing: (1) to approve a nonconforming lot width and area; and (2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of the required 30 inches, be and is hereby GRANTED.
>
> IT IS FURTHER ORDERED that the Petition for Special Hearing: (1) to approve a nonconforming dwelling side yard setback; and (2) to confirm that an existing fence (swimming pool enclosure) with a height of 6 ft. is in compliance with BCZR Section 427.1 and BCC Section 13-6-101, be and is hereby DENIED.
>
> IT IS FURTHER ORDERED that the Petition for Variance: (1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.; (2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of side yards of 14.9 ft. in lieu of the required 50 ft.; and (3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches, be and is hereby DENIED.

ALJ Beverungen thus approved the lot nonconforming lot width and area, and nonconforming shed. He denied the second garage bay, second addition, and new fence.

The ALJ Order on Motion for Reconsideration

ALJ Beverungen concluded his subsequent denial of Donna's Motion for Reconsideration with this Order:

THEREFORE, IT IS ORDERED this **25th** day of **September, 2019**, that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms set forth in Baltimore County Zoning Regulations ("BCZR") § 104; and

IT IS FURTHER ORDERED that all new construction must comply with current setbacks and restrictions existing at the time of new construction.

IT IS FURTHER ORDERED that in all other matter and respects Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

ALJ Beverungen thus denied all post-2014 construction. As for approval of setbacks existing in 1951, he did not specify them. As we have seen, they did not include the 1976 first addition on the Montanye side. All issues relating to new construction are subject to review.

Argument

"No reason to get excited, The thief he kindly spoke.
There are those among us, Who feel that life is but a joke.
But you and I we've been through that, And this is not our fate.
So let us not talk falsely now, The hour is getting late."
Dylan, Hendrix, op. cit.

Zoning History, Nonconforming Use, Illegal Extensions, Variance Disqualification

Let us survey the zoning history shown in P.C. Exh. 12, also conceded by engineer Motsco. In 1970, County Council Bill 100 established the Density Residential Zones. In 1971, this area was rezoned D.R. 2, in place when the first addition came circa 1976.

Bill 100 also covered existing lots and charted a table for lot sizes, lot widths, and setbacks. BCZR Sec. 1B02.3.C. For D.R. 2 Zone, the lot met the 20,000 square feet minimum, equaled the 100 feet front lot width, and met front yard and rear yard 40 feet minimum setbacks. But the first garage 10-feet setback did not meet the 15 feet side yard setback.[10] It also fell just short of the minimum sum of side yards widths of 40 feet, prior to the first addition, with just under 30 feet on the Montanye side and 10 feet on the Fradkin side. Even if we overlook this last shortage, the garage setback plainly did not conform to D.R. 2. So, as of 1971, the residence was already a nonconforming use.

[10] There is no dispute the new second garage is 12 feet wide and extends 2-3 feet into the Fradkin property, so the first garage was about 10 feet away.

This brings us to 1976, the year of the first addition. BCZR Sec. 104.3 allows an extension of a nonconforming use up to 25% of the ground floor area (GFA). Because the addition took up 308 square feet, it was 19.8%, less than 25%, of the 1552 square feet GFASo, it was allowable, but left only another 5.2% for any additional extension.

Motsco discussed BCZR Sec. 104.3, but assumed incorrectly that the first addition was there since 1951 and so did not count as an extension. He was unaware 1976 was the year it was added. Motsco also omitted mention of the second garage and fence as extensions, either particularly or together with the other improvements.

The next key date is 1996. There is no dispute the County Council rezoned the area, including the Bair lot, from D.R. 2 to D.R. 1. If we look again at the table, we see this rendered the lot area and width both nonconforming as to the minimum limits: 40,000 square feet and 100 feet, respectively. This also magnified the side yard setback nonconformity of the original garage, providing a 20 feet minimum, and the sum side yard setback sum nonconformity, raising the minimum to 50 feet.

As a matter of law, pursuant to BCZR Secs. 104.1 and 104.3 and the case law, all of the new additions -- garage, fence, and side bedroom ---- are significant extensions beyond the 25% of ground floor area limit. They were all new amenities and facilities. As such, they were illegal extensions or expansions of a nonconforming use. These are construed strictly and prohibited. Prince George's County v. E.L. Gardner 293 Md. 259, 267-68 (1982), attached. See, e.g. Jahnigen v. Staley 245 Md. 130, 137-38 (1967).

Pursuant to BCZR Sec. 104.1, any change to a nonconforming use terminates the use. An extension or expansion beyond that allowed by statute is such a change.[11]

As a matter of law, there are no special exceptions, variances, or other such approvals allowed for nonconforming uses. Prince George's County v. Gardner, *supra.*

[11] Even if the first addition dated from 1951, so the 2017 second bedroom might arguably be credited as an allowable 19.8% first extension, it plainly would not allow the compound second garage and new fence. Anyway, the argument for the 2014 addition as just a 19.8% extension would still be without merit because it came about with multiple combined extensions which amounted to a collective or cumulative change and cannot properly be viewed in isolation.

They are governed strictly by the nonconforming use statute. Intentionally or not, this disqualification was overlooked in Petitioner's presentation and Motsco's testimony.

The proper application of nonconforming use law thus precludes all the recent improvements. This effectively makes it unnecessary to reach the variance and fence law issues. But we will of course address them as well.

Variance Law: "Uniqueness" Explained --- Delusions Exposed

Even if the petition for variances were not disqualified based on nonconforming use expansion, the variance requests would have no merit. Let us turn to variance law.

Donna's attorney's view of "uniqueness" is errant and pettifogging. He asserted a property is unique if no other property is exactly the same. Of course, that can be said of every property. If he were correct, there would never be the denial of any variance for lack of uniqueness. This view also obscures the connection to practical difficulty.

Contextually, under BCZR Sec. 307.1, uniqueness must result in practical difficulty. Trinity Assembly of God v. People's Counsel 407 Md. 53, 79-86 (2008). The main purpose of variance law is to preserve some reasonable use of the property, and in a way consistent with the public safety, health, and welfare.

Riffin v. People's Counsel 137 Md. App. 90, 97-98, cert. denied 363 Md. 660 (2001) followed the landmark Cromwell v. Ward 102 Md. App. 691 (1995). Both are attached. The Riffin Court affirmed this CBA's denial of multiple variances,

> "In denying the appellant's requests for variances, the Board explained:
>
> > Section 307.1 of the *Baltimore County Zoning Regulations* states, in pertinent part, as follows:
> >
> > "... [T]he County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area 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* ... Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area … regulations, and only in such manner as to grant relief without injury to public health, safety, and general welfare."

As well, this Board enjoys the guidance provided by the Court of Special Appeals in *Cromwell v. Ward,* 102 Md.App. 691 [651 A.2d 424] (1995). In requiring a pre-requisite finding of "uniqueness," the Court defined the term and stated:

> In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. *"Uniqueness" of a property for zoning purposes requires that the subject property has an inherent characteristic not shared by other properties in the area, i.e.,* its shape, topography, subsurface condition, environmental factors, historical significance, access, or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions....

It is this Board's finding that the proposed site is in no way unique, unusual or different from the other properties that are existent in this M.L.-I.M. zone. **The Maryland Department of Assessments and Taxation, real Property System map, shows just how similar in size and shape all of the properties are along Greenspring Drive. Testimony by Mr. Patton indicated that this property was consistent with others in the community, and he noted that the gentle slope off of Greenspring Drive was consistent with other properties, further noting that some chose to fill in their properties before building and have entrances at the rear of their locations....** At no time in the hearing did the appellant entertain any historical significance to the site nor were environmental or subsurface conditions documented. Mr. Riffin did testify as to the damage to the interior of his building but did not document the same with photographic exhibits, receipts for repairs or documentation by some authority regarding the nature or extent of this damage. **There was no testimony or evidence regarding abutting properties restricting his activities or imposing any unique characteristics upon his site.** ***In the absence of an initial finding of uniqueness, the inquiry under Section 307.1 stops and, in this case, the three variances must be denied.***
(Emphasis supplied). We see no error. Bold font supplied by (People's Counsel).

Here, there is likewise convincing evidence that the Bair lot is similar in shape and topography to nearby lots, larger than many, and with advantageous pre-existing amenities. The age of the dwelling is similar to others in the subdivision. The gentle downward slope is typical. The SDAT Data, maps, Steve's chart, and all the testimony corroborate there is nothing unique to see here.

Donna's counsel loudly mocked our questions about similarity because, he said, the statute does not use the words "fairly similar." His deprecation of our office's position disregards the sensible meaning under the case law. It is propaganda.

In sum, Donna's property does not get past the threshold test of uniqueness, even before we get to any issue of resulting practical difficulty.

Interlude: "Other" Fences, Garages, Variances Diversion

We pause before discussing the practical difficulty criteria to expose the other diversionary tactics which pervaded Donna's attorney's presentation.

To divert attention, Donna scavenged the area for other fences, garages and pools. She devoted much testimony to this effort. She found eight fences said to be more than 42 inches high, with two perhaps six feet high. Pet. Exh. 8A-I. There was no indication of the precise locations, history, or legal status. Tom disputed her allegation about his fence, 8G, and others were questionable. She found eight lots with 2-car or 3-car garages, again without examination of location, history, or legal status. Pet. Exh. 7A-I. None of them, such as the Fradkins', were on or immediately adjacent to property lines. She also produced opinions approving other variances, generally unopposed and very different in location and circumstance. These were accepted for identification only. Pet. Exh. 9.

Anyway, the existence of even arguably similar additions or uses --- whether with variances, nonconforming, or in violation --- are irrelevant. Easter v. Mayor and City Council 195 Md. 395, 400-01 (1950); Park Shopping Center v. Lexington Park Theatre Co. 216 Md. 271. (1958), attached. These are still good law.

In Easter, the Court dealt with the claim that there were other existing additions reaching the same building line as Easter's desired addition. The Court of Appeals reversed the zoning board's grant of the[i] setback variance. Judge Henderson wrote,

> "The fact that the lot is irregular has no bearing on the question, nor is it material that three buildings, some distance to the north, extend to the building line. These may have been built before the passage of the Ordinance, or they may have been built under permit or without permit. As was said in Potts v. Board of Adjustment, 133 N.J.L. 230, 43 A.2d 850, 854: 'Prior exceptions granted by the adjustment board are not in themselves controlling. Ill-advised or illegal variances do not furnish grounds for a repetition of the wrong. If that were not so, one variation would sustain if it did not compel others, and thus the general regulation eventually would be nullified. The annulment of zoning is a legislative function that is beyond the domain of the zoning board.'"
>
> * * *
>
> "But we think the detriment to the applicant must be weighed against the benefit to the community in maintaining the general plan. 'It is by these gradual encroachments, individually or relative insignificance, that the integrity of the general scheme is undermined and ultimately shattered. One departure serves as justification for another * * *.' Dubin v. Wich, 120 N.J.L. 469, 200 A. 751, 754. In the case of non-conforming uses,

> the ordinance tolerates their continuance, but looks towards their ultimate elimination. Colati v. Jirout, supra.

Chief Judge Brune quoted Easter with approval in Park Shopping Center, 216 Md. at 276.

In the present case, the other situations Donna dug up are not even comparable. They amount to a protracted exercise in distraction, fog, and obfuscation. Even if they were comparable, they would not be germane under the case law.

The Landmarks Preservation Commission Sidetrack

Donna went to the Landmarks Preservation Commission (LPC) in 2019. It is covered by County Code § 3-3-1201, et seq. She highlighted their approval of her construction. She also put in the record that Tom had a driveway project approved.

LPC meetings are relatively informal, and their focus is on the historic aesthetics.

There is no dispute that the property here is identified as "non-contributing" to the Historic District. Apparently, the LPC has a narrow focus and did not find the additions have a historic aesthetic impact. Tom testified he was so informed. Whether the LPC should have a broader vision is debatable. The bottom line is that they do not.

They do not deal with the broader aspects of zoning and the manifold criteria. They do not examine the general impact on the neighborhood. They leave that to the zoning process. The LPC approval here is just another sidetrack.[12]

The "Carport" and "Accessory Building" Plays

Another detour is Donna's attorney's speculative sideshow for a carport to replace the garage or a separation of the garage from the dwelling. These further charades are not in the petition and so not properly the Board. People's Counsel v. Mangione 85 Md. App. 738 (1991). They would also require other variances. Anyway, virtually the same legal analysis which precludes the garage and other variances here would preclude such a carport or accessory building.

The CBA should nevertheless resolve the situation. The CBA should rule that carport or accessory building variances were not requested and anyway lack merit.

[12] This does not necessarily mean, conversely, that the Historic Glyndon location is irrelevant to the broader public safety, health and welfare issues under BCZR § 307.1, even for the impact of situations of non-contributing structures.

There should not be another pathway to delay enforcement and removal of the offending construction. Otherwise, this litigation may slouch to the next decade, even beyond potential judicial review of the CBA's denial of the immediate requests.

The Fence Law Evasion

Another evasive tactic came clothed with legal argument. This centers on the statutory construction of BCZR § 427.1, which we republish in our appendix.

BCZR § 427.1.A applies. Notwithstanding any other county provision, it sets in a historic district a maximum 42" height limit for a residential occupancy fence in a D.R. Zone erected in the side yard of a lot that adjoins a public road. This applies because Donna's fence spans both side yards of the lot on Prospect Avenue, a public road.

To evade this subsection, John Motsco tried to spin that only corner lots are on public roads. He did not deny that the fence is a residential occupancy fence.

We have often challenged the perfunctory acceptance of so-called expert opinions of engineers and surveyors on matters of legal interpretation. Their favorable slants often take the form of linguistic spin which crosses into propaganda.

There is no dispute that this section of Prospect Avenue is a public road. The Court of Appeals has referred to the common definition of public roads as "roads used by the public." Atran v. Furness 251 Md. 216 (1968). These are distinguished from private roads, where the property owner has the right to limit or refuse permission. Walmsley v. State 35 Md. App. 148, 151-54 (1977). It is an exercise in illiteracy to say that only corner lots are on public roads, to argue that Prospect Avenue is not public.

Motsco's errant effort to evade § 427.1.A led him to rationalize Donna's fence as allowable under § 427.1.B, incorporating Code § 13-6-101. Subsection B.1 precludes residential occupancy fences in the rear or side yards of a lot which adjoins the front yard of another on which a residence has been built. However, there is an exception in subsection 3, via Code § 13-6-101, for fences necessary to protect children,

> "A person who owns land on which there is a swimming pool ... shall erect and maintain on the land an adequate enclosure surrounding either the property or pool area sufficient to make the body of water inaccessible to small children."

Such fences should be "not less than 4 feet above the underlying ground."

But Donna anyway cannot properly take advantage of this provision. As we have seen, the three-sided fence here, with the house rear as a kind of fourth side, surrounds an area of 7700 square feet, while the pool spans about 792 square feet. The distances from the pool to the fence range from 15 to 30 feet. This is far more than what is adequate to protect children. Indeed, it does just the opposite. They can run around the rear yard in front of the fence and get into trouble at the pool. Commonly, protective pool fences have four sides and are close to the pool. Even were this a true pool protection fence, it does not mean that 6 feet is necessary or appropriate.

. **Variance Law: Uniqueness Resulting in Practical Difficulty**

We quoted earlier from Riffin the heart of the BCZR § 307.1 standards. Let us now review together the case law on uniqueness and resulting practical difficulty.

As we have said, the integral elements to prove a variance are the peculiarity of the property, commonly described as "uniqueness," and resulting "practical difficulty." We return to Cromwell v. Ward 102 Md. App. 691 (1995):

> "The general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances. *See, e.g.,* A. Rathkopf, 3 The Law of Zoning and Planning §38 (1979)." 102 Md. App. at 703.

He analyzed the "uniqueness" element, 102 Md. App. at 710,

> "In the zoning context the 'unique' aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property.'
>
> 'Uniqueness' of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls."

Judge Cathell concluded,

> "We conclude that the law in Maryland and in Baltimore County under its charter and ordinance remains as it has always been-a property's peculiar characteristic or unusual circumstances relating only and uniquely to that property must exist in conjunction with the ordinance's more severe impact on the specific property because of the property's uniqueness before any consideration will be given to whether practical difficulty or unnecessary hardship exists."

It bears repeating the "the extent of improvements upon the property" are irrelevant to "uniqueness." So, the very nice dwelling in Glyndon with a garage, driveway deck, pool, shed, and fences --- acquired freely for $320,000 --- has nothing to do with uniqueness. Anyway, the amenities are advantages and not difficulties.

Turning to causation, we reiterate the settled law of the requisite causal connection between uniqueness and practical difficulty. Often, as in this case, petitioners circumvent causation, starting with distorted versions of uniqueness. They "complain" their property is not square or rectangular, or slightly different in some obscure way, and then they are off to the races for extra amenities with "experts" in the promotional saddle.

Easter v. Mayor & City Council 195 Md. 395 (1950) described the heavy burden of proof on an applicant for a variance,

> "The burden of showing facts to justify an exception or variance rests upon the applicant, and it must be shown that the hardship affects the particular premises and is not common to other property in the neighborhood."

In Marino v. City of Baltimore, 215 Md. 206 (1957), the Court explained:

> "The expression 'practical difficulties or unnecessary hardships' means difficulties which are peculiar to the situation of the applicant for the permit and are not necessary to carry out the spirit of the ordinance and which are of such a degree of severity that their existence amounts to a substantial and unnecessary injustice to the applicant."

> "[I]t was incumbent upon the Marinos to have shown... (ii) that the difficulties or hardships were peculiar to the property in question in contrast with those of other property owners in the same district."

Judge Glenn Harrell revisited variance law in Trinity Assembly, affirming this CBA's findings in denying variances, 407 Md. at 82-83,

> "In *Umerley v. People's Counsel for Balto. County,* the Court of Special Appeals opined that a zoning authority must determine, as part of its uniqueness inquiry, whether 'the uniqueness or peculiarity of the property causes the zoning provision [at issue] to have a disproportionate impact.' 108 Md. App. 497, 506 (1996). Assuming that a disproportionate impact must be found before a local zoning authority may grant a variance, it is a logical fallacy to say that Board erred on this score. The disproportionate impact consideration, if viable, exists because of the notion that it is not enough for a landowneror user to show merely that the property is somehow physically peculiar or unique; she, he, or it also must prove, to the satisfaction of the

> tribunal, a connection between the property's inherent characteristics and the manner in which the zoning law hurts the landowner or user. Where a property's physical characteristics do not cause the landowner to suffer disproportionately due to application of the zoning enactment in question, the property is not 'unique' in the law of variances. For example, if a property has physical characteristics that might justify variance relief from drainage or sewage regulation, those attributes probably would have no bearing on how that property is affected by an ordinance establishing the maximum height for a fence. Here, the Board concluded simply that the physical attributes of the Property are not distinguishing. That conclusion is supported by substantial evidence."

Judge Harrell went on to discuss the criteria for "practical difficulty." 407 Md. App. at 83-85." He brought forward McLean v. Soley 270 Md. 208, 213-15 (1973), where the Court had "… adopted from Professor Rathkopf's treatise a three-part inquiry to guide local zoning authorities in determining whether a landowner established this element:

> "1) Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
>
> 2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
>
> 3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured."

This tracks the national pattern. The purpose of variance law is to allow relief so a property owner has some reasonable use of his property. See 2 Salkin, American Law of Zoning 5th, § 13:.1. A key point is that the property owner's inability to comply with zoning law for the purpose of a selected use does not justify a variance. Otherwise, a variance would have to be granted in every case; and zoning law would collapse.

Carney v. Baltimore 201 Md. 130, 137 (1952), also a setback variance case, held,

> "'The need sufficient to justify an exception must be substantial and urgent and not merely for the convenience of the applicant, inasmuch as the aim of the ordinance is to prevent exceptions as far as possible, and a liberal construction allowing exceptions for reasons that are not substantial and urgent would have the tendency to cause discrimination and eventually destroy the usefulness of the ordinance. * * *
>
> 'The expression 'practical difficulties or unnecessary hardships' means difficulties or hardships which are peculiar to the situation of the applicant for the permit and are not

> necessary to carry out the spirit of the ordinance and which are of such a degree of severity that their existence amounts to a substantial and unnecessary injustice to the applicant.'"

The appellate courts quoted this in Marino, 215 Md. at 216-17 and Montgomery County v. Rotwein 176 Md. App. 716, 732 (2006).

A. The Bair Property Presents No Difficulties, Much Less Any Peculiar Difficulties

We explained there is nothing, in context, unique about Donna's property. It is also crystal-clear there are no difficulties. For perspective, we review illustrative cases.

Easter v. Mayor & City Council 195 Md. 395 (1950). This involved a front yard and occupancy variance for a one-story and basement addition for a tavern and dwelling on Belair Road. The proposed addition varied the minimum front yard setback of 10 feet. The zoning board had granted the variances, finding the "The lot in question is of very shallow depth and irregular in shape …." They also had found "… several buildings constructed up to the front lines of the lot and the proposed addition would not affect access for light and air to any neighboring properties, nor would it even cut off the view up and down the street." The Court of Appeals reversed, stating the irregularity of the lot and existence even of nonconforming or possibly illegal neighboring buildings did not justify deviation from the general zoning plan. Judge Henderson observed,

> "But we think the detriment to the applicant must be weighed against the benefit to the community in maintaining the general plan. 'It is by these gradual encroachments, individually or relative insignificance, that the integrity of the general scheme is undermined and ultimately shattered. One departure serves as justification for another * * *"

North v. St. Mary's County 99 Md. App. 502, 514-20 (1994) foreshadowed Cromwell in reversing the grant of a mean high water mark setback variance for a gazebo of about 234 square feet. The property had a ranch home and outbuildings. North claimed a deprivation of property rights because he needed the gazebo to enhance his view, contemplate, read, have shade and protect from rain. He also posited that other property owners had built closer to the water. Judge Cathell noted these were probably nonconforming. Among other things, there was nothing unique about the property. The case brings to mind Donna's artificial complaint about sap from the maple tree.

Cromwell v. Ward, *supra*, involved an accessory building for a garage, wine cellar, and storage area for a Ruxton residence. The building height of 21 feet exceeded the 15 feet maximum, just six feet too high. This was nowhere near the excessiveness of Donna's massive construction. As it reversed this CBA's grant of the height variance, Judge Cathell also covered practical difficulty, 102 Md. App. at 697,

> "Simply stated, the variance that is desired (and the difficulties that would exist if it is not granted) cannot be the source of the first prong of the variance process-an inherent uniqueness of the subject property not shared by surrounding properties."

Among cases from other states, Judge Cathell discussed Xanthos v. v. Board of Adjustment 685 P.2d 1032 (Utah 1984), denying front yard variance for duplex addition to dwelling and Prince William County Bd. Of Zoning Appeals v. Bond 300 S.E. 2d 781 (Va. 1983), affirming denial of variance for conversion of garage into dwelling. Even the difficulties presented by a substandard lot or oceanfront lot restrictions do not justify a variance where this characteristic is common to area properties. Sibley v. Inhabitants of the Town of Wells 462 A.2 27, 30-31 (1983); Town of Indialantic v. Nance 400 So.2d 37, 40 (Fla. App. 1981), aff'd 419 So.2d 1041 (Fla. 1982).

Chester Haven Beach Partnership v. Board of Appeals 103 Md. App. 324, 337-41 (1995) followed Cromwell. Petitioner appealed the denial of a conditional use and variances for a residential subdivision. The primary alleged difficulty were Chesapeake Bay Critical Area environmental constraints. Judge Cathell observed there was no evidence that the environmental constraints were unique to this critical area property. He went further and criticized the professional staff, stating that the staff "… abdicated its responsibility in its role in respect to conditional uses and variances." 103 Md. App. at 340. Despite the fairly serious environmental constraints, Judge Cathell wrote,

> "It is not, however, the function of staff to make such policy decisions in the absence of legislative action. We do not perceive that it was the legislative intention in passing the State or local critical area legislation that zoning variance procedures would be prostituted in order to alleviate the harshness of environmental regulation. If that is the intention of the legislative entities, they have the power to express clearly that intention."

Even more clearly, the limited LPC approval here has no bearing and does not eviscerate zoning variance procedures.

Riffin v. People's Counsel, *supra*, involved an active litigant known to this Board. He proposed a special exception for a bungee jumping operation as well as nine variances for a modification of his office building on Greenspring Drive. The property was situated between Greenspring Drive in front and the MTA light rail track in back. In affirming the CBA denial of several variances. We have already quoted Judge Moylan's analysis.

Montgomery County v. Rotwein 169 Md. App. 716 (2004) involved front and side yard setback variances to build a 2-car garage and walkway. Her property was about three-quarters of an acre, with a one-story residence, finished basement, open carport, rear deck, slate patio, swimming pool, and tennis court --- fairly similar to here.

The zoning board denied the variances. Citing Cromwell, the Court sustained the denial. Judge Krauser described Rotwein's main arguments for uniqueness as her mobility problems and the substantial additional expense for alternative relocation of the garage. Neither of these, however, constituted peculiar or unusual practical difficulties.

B. Application of the "Practical Difficulty" Criteria

Let us discuss the McLean/Trinity Assembly of God criteria, having in mind that variances are to be granted sparingly and based on substantial and urgent need, not merely for the convenience of the applicant.

> "1) Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome."

Here, Donna's application is for extra amenities to enlarge and surround a very nice property and dwelling which various owners have enjoyed since 1951. Her current proposal, after the fact, is based on personal preferences, and has nothing to do with any real difficulty or hardship involving the property. To repeat, she already is fortunate to have an enviable and wonderful use of property in a very nice neighborhood.

It should be underlined that the evaluation of reasonable use involves consideration of the entire property/ In North, Cathell underlined that the entire property must be considered, along with the improvements, 99 Md. App. at 517,

> "The applicant, Mr. Enoch, the county, and the trial judge for that matter, when discussing the reasonable use of the property seem to restrict their considerations to just the part of the property where Enoch desires to construct the gazebo. That is incorrect. The property at issue here is the 4+ acre site already developed with a ranchhouse of approximately 1,100 square feet with extensive decking, an improved walkway, and a pier, from which expansive views are present. Thus, the property already is subject to a reasonable use."

Donna was not forced to buy her very nice house and property. She has to adjust to the law. The zoning law is not there for Donna's convenience.

The Court also addressed practical difficulty in Rotwein. Judge Krauser applied the law quoted earlier. He wrote, 169 Md. App. at 733,

> "But Rotwein has not demonstrated that, unless her application is granted it will be 'impossible [for her] to make reasonable use of the property.' *Id.* Indeed, she has made more reasonable use of the property, as it houses not only her residence, but, among other things, a swimming pool and a tennis court."

Rotwein, moreover, had made a sympathy argument based on her physical limitations. As a matter of law, this did not, however, justify the setback variances.

In sum, the zoning law does not prevent Donna from making a reasonable use of the property and does not impose an unnecessary burden.

> "2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners."

For essentially the above reasons, there is no injustice to Donna. She has a satisfactory and even privileged use of this very nice property. The proposal, already there, does, however, work an injustice to area property owners. Steve, Patty, and Tom testified at length to the immediate visual and environmental impacts, excessive scale, and incompatibility with the area. Robin corroborated the problematic impacts. Steve also identified an emergency vehicle access problem due to the garage obstruction.

Real estate expert Cookie Stone provided credible and undisputed testimony to the negative impact on the future sales price or value of the Montanye and Fradkin properties. She corroborated the incompatibility of the new construction.

Attention should also be paid to the community association representatives. Their concerns went beyond procedure to the merits, precedent, and "slippery slope."

In affirming the denial of variances, Chesley v. City of Annapolis 176 Md. App. 413, 441-45 (2007) highlighted similar testimony by neighbors about visual impact and property values. One neighbor posited that, "overbuilding and overcrowding loom on the horizon …." The Court accepted, among other things, legitimate concerns about overcrowding and imposing structures which harm area views and enjoyment.

"3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured."

These variance requests are excessive, offensive, and unjust. They conflict significantly with the spirit and intent of the ordinance and public safety and welfare.

Variance Law: The Insidious Self-Created Difficulty Problem

Lastly, there is a threshold problem. The alleged practical difficulty here is self-created. If construction is done without proper approvals, or with mistaken applications, then this is self-created. It does not have to be reckless or deliberate. Nor is blaming the contractor an excuse. Donna's real estate license is an added factor.

Cromwell reversed the CBA approval of just a single height variance --- 21' in excess of the maximum 15' --- for a residential accessory building. Ward's contractor did apply for a permit. But the flawed application did not state the height or have a scale. The height could possibly have been computed indirectly from horizontal dimensions on the drawing. The county mistakenly issued the permit. When the violation was discovered, Ward applied for a variance after the fact. 102 Md. App. at 696-97.

Judge Cathell stressed the difficulty was self-created. 102 Md. App. a 721-23,

"Self–Inflicted Hardship

> "We have before referred to *Marino v. Mayor and City Council of Baltimore,* 215 Md. 206, 137 A.2d 198. There, the Court said, "it was incumbent [on the applicant] to [show] ... that the hardship was not the result of the applicants' own actions." *Id.* at 218, 137 A.2d 198. The Court of Appeals ***722*** noted in *AD + Soil, Inc. v. County Comm'rs,* 307 Md. at 340, 513 A.2d 893:
>
> > The essence of AD + Soil's argument ... is that the setback requirements ... would cause ... unwarranted hardship because it had obtained its first state permit and

> constructed its transfer station before it learned of these local requirements.... The Board declined to grant the variances, concluding that Ad + Soil's "hardship" was self-inflicted ... and therefore not the kind of hardship cognizable under the Zoning Ordinance.
>
> The Court affirmed the Board. Foreign jurisdictions are generally in accord. *See Pollard v. Zoning Bd. of Appeals,* 186 Conn. 32, 438 A.2d 1186, 1190 (1982) **(" '[S]elf-inflicted or self-created hardship ... is never considered proper grounds for a variance.' ... '[W]here the applicant ... creates a nonconformity, the board lacks power to grant a variance.' ")** (citations omitted); … **("[T]he hardship, if any, was self-inflicted. The placement of the improvements ... was within the control of the Garretts and their contractor, Raintree.").** *See also Shafer, supra; VanLandschoot, supra; Walkingstick, supra; Xanthos, supra; St. Clair, supra.* Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted."

Ward's contractor at least made an application, however flawed. Donna's contractor did not bother. Nor did she. It is unnecessary to parse the level of fault in Donna's admitted "mistake." It is enough that the difficulty arose from her project. Ironically, if Donna had taken a few minutes to check with the zoning office, or asked for permits, she could have done things the right way. Instead, she spent many hours to try to get an "easement;" talk informally to a bankruptcy attorney; cajole the Fradkins to transfer property; dig up their previous owner's minor shed variance;; interject random different fences; complain about Tom's driveway project even though it had no zoning conflict; and cast a bad light on her neighbors generally.

Effective zoning law depends on voluntary citizen compliance. There is no police state. If not for Tom's concern and alertness, the violation would have escaped scrutiny.

There are over 300 zoning petitions annually, and development and permit applications. With rare exceptions, county citizens make diligent inquiries and file proper applications. If more than a few citizens acted unilaterally, the system would break down. There is scant incentive to comply with the law if variances were readily available after the fact. Another problem is that even after denial of these variances, and affirmance on judicial review, there will still be an enforcement task, likely with more litigation.

Conclusion

For these reasons, the law compels denial of all the variances, including every matter on appeal.

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of April, 2021 a copy of the foregoing Memorandum of People's Counsel for Baltimore County was sent via email to Thomas & Kim Montanye, Tom@montanye.net; Kimberly Karlsen, perandkim@aol.com; Steve & Patricia Fradkin, reistlaxcoach@gmail.com; Sue Benson, sbensoncomm@aol.com; Robin Coffin, rscoffin@verizon.net, Mary Molinaro, mmolinaro@reisterstown.com; and Lawrence E. Schmidt, Esquire, Smith, Gildea & Schmidt, LLC, 600 Washington Avenue, Suite 200, Towson, Maryland 21204, lschmidt@sgs-law.com, Attorney for Petitioner.

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Appendix: Zoning Regulations and County Code Provision

BCZR § 101.1 NONCONFORMING USE — A legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use. A specifically named use described by the adjective "nonconforming" is a nonconforming use.

BCZR § 104.1. - CONTINUATION OF NONCONFORMANCE; EXCEPTIONS.
A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these regulations, provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, the right to continue or resume such nonconforming use shall terminate.

BCZR § 104.3. - LIMIT ON EXTENSION OF NONCONFORMING BUILDINGS AND USES; EXCEPTION.
No nonconforming building or structure and no nonconforming use of a building, structure or parcel of land shall hereafter be extended more than 25 percent of the ground floor area of the building so used. This provision does not apply to structures or uses restored pursuant to Section 104.2, except as authorized by the Zoning Commissioner pursuant to Section 307.

BCZR § 1B02.3.C. Development standards for small lots or tracts.

1. Any dwelling hereafter constructed on a lot or tract described in Subsection A.3 or A.4 shall comply with the requirements of the following table:

Zoning Classification	Minimum Net Lot Area per Dwelling Unit (square feet)	Minimum Lot Width (feet)	Minimum Front Yard Depth (feet)	Minimum Width of Individual Side Yard (feet)	Minimum Sum of Side Yard Widths (feet)	Minimum Rear Yard Depth (feet)
D.R.1	40,000	150	50	20	50	50
D.R.2	20,000	100	40	15	40	40
D.R.3.5	10,000	70	30	10	25	30
D.R.5.5	6,000	55	25	10	—	30
D.R.10.5	3,000	20	10	10	—	50
D.R.16	2,500	20	10	25	—	30

2. Other standards for development of small lots on tracts as so described shall be as set forth in provisions adopted pursuant to the authority of Section 504.

"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. [1] "

BCZR 427 – Fences

§ 427.1. - Conditions for use; exceptions.

A. Notwithstanding any other provisions of this Code or the Baltimore County Code, in a D.R. or R.C. 5 Zone located in a historic district, the maximum height of a residential occupancy fence is 42 inches if the fence is erected in the side yard of a lot that adjoins a public road.

B. 1. A residential occupancy fence may not be erected in the rear or side yard of a lot which adjoins the front yard of another on which a residence has been built, except in accordance with the provisions of this section.

2. The fence may not exceed 42 inches in height if situated within ten feet of the adjoining front yard property line.

3. Any person may request a variance from the requirements of this subsection.

C. Applicability.

1. Subsection B of this section does not apply to a fence required by § 13-6-101 of the Baltimore County Code, as revised, to be constructed in order to screen a swimming pool.

2. Subsection B of this section does not apply if the residences on the adjoining lots are more than 200 feet apart."

"§ 13-6-101. - SWIMMING POOL ENCLOSURE.

(a) *Required.* A person who owns land on which there is a swimming pool that contains 24 inches (610 mm) or more of water in depth at any point shall erect and maintain on the land an adequate enclosure surrounding either the property or pool area sufficient to make the body of water inaccessible to small children.

(b) *Height.* A swimming pool enclosure, including gates, may not be less than 4 feet above the underlying ground, except that for a semi-public swimming pool located outdoors without a lifeguard on duty, the enclosure, including gates, may not be less than 5 feet above the underlying ground and may not have more than a two-inch gap from the ground to the bottom of the fence.

(c) *Gates.* All gates shall be self-latching with latches placed 4 feet above the underlying ground and otherwise made inaccessible from the outside to small children.

(d) *Alternative enclosures.*

(1) For purposes of this section, the owner may use a natural barrier, hedge, or other protective device approved by the Department of Permits, Approvals and Inspections if the degree of protection afforded by the substituted devices or structures is not less than the protection afforded by the enclosure, gate, and latch described in subsections (a) through (c) of this section.

(2) A swimming pool cover is not another protective device that may be approved by the Department of Permits, Approvals and Inspections.

(e) *Enforcement.* The Code Official may enforce the provisions of this section in accordance with Article 3, Title 6 of the Code.

(f) *Exceptions.* This section does not apply to a public swimming pool or bathing beach as defined in Subtitle 2 of this title."

293 Md. 259
Court of Appeals of Maryland.

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, Maryland
v.
E. L. GARDNER, INC.

No. 11.
|
April 2, 1982.

Synopsis
County council denied landowner's requested special exception to operate a sand and gravel wet-processing facility at location at which owner operated nonconforming surface mining sand and gravel operations. The Circuit Court, Prince George's County, Albert T. Blackwell, Jr., J., reversed, and the county appealed. The Court of Special Appeals, 47 Md.App. 471, 424 A.2d 392, affirmed. Petition for certiorari was granted. The Court of Appeals, Davidson, J., held that although sand and gravel mining operation which existed prior to zoning was a legal nonconforming use by virtue of use and occupancy permit, the owner was not entitled to special exception to operate a sand and gravel wet-processing facility at the location where mining operations and wet-processing facilities were separate and distinct special exceptions and each had different standards, regulations and requirements.

Judgment of Court of Special Appeals reversed and case remanded with directions.

West Headnotes (4)

[1] **Zoning and Planning** Enlargement or Extension of Use

Purpose of restrictions on alteration or expansion of a nonconforming use is to achieve ultimate elimination of such uses through economic attrition and physical obsolescence.

3 Cases that cite this headnote

[2] **Zoning and Planning** Continuance or change of use in general

Zoning and Planning Enlargement or Extension of Use

Zoning and Planning Repair, Alteration, or Reconstruction of Buildings or Structures

Whether a nonconforming use can be changed, extended, enlarged, altered, repaired, restored, or recommenced after abandonment ordinarily is governed by provisions of the applicable local ordinances and regulations.

3 Cases that cite this headnote

[3] **Zoning and Planning** Strict or liberal construction in general

Zoning ordinances and regulations must be strictly construed to effectuate the purpose of eliminating nonconforming uses.

4 Cases that cite this headnote

[4] **Zoning and Planning** Mining and minerals; sand and gravel

Although sand and gravel mining operation which existed prior to zoning was a legal nonconforming use by virtue of use and occupancy permit, the owner was not entitled to special exception to operate a sand and gravel wet-processing facility at the location where mining operations and wet-processing facilities were separate and distinct special exceptions and each had different standards, regulations and requirements.

5 Cases that cite this headnote

Attorneys and Law Firms

****115** ***260** Steven M. Gilbert, Associate County Atty., Upper Marlboro (Robert B. Ostrom, County Atty. and Michael O. Connaughton, Deputy County Atty., on the brief), for appellant.

Paul B. Rodbell, Riverdale (William V. Meyers and Meyers & Billingsley, P. A., Riverdale, on the brief), for appellee.

Argued before MURPHY, C. J., and SMITH, DIGGES,* ELDRIDGE, COLE, DAVIDSON and RODOWSKY, JJ.

Opinion

DAVIDSON, Judge.

This case presents a question concerning nonconforming uses. More particularly, it involves the question whether, under the applicable provisions of the Prince George's County Code (1979), Subtitle 27.Zoning, the owner of a nonconforming surface mining sand and gravel operation can obtain a special exception to operate a sand and gravel wet-processing facility at the same location. The relevant provisions of the Prince George's County Code are as follows.

Section 27-101 provides in pertinent part:

"(a) Terms used in this Subtitle are defined as follows:

"(110.1) Nonconforming Building or Structure: Any building or structure not in conformity with a regulation of the zone in which it is situated, which regulation was adopted subsequent to the lawful erection of such building or structure....

"(111) Nonconforming Use: Use of any building, structure, or land, or portion thereof, not in conformity with a regulation of the zone in which it is situated, including any regulation of Division 36 (Special Exceptions) applicable to said ****116** use, which regulation was adopted subsequent to the lawful establishment of such use.... The term 'nonconforming use' shall be deemed to include any building, structure, or other facility utilized in connection with a nonconforming use....

"(152) Use: The principal purpose for which a lot, and/or the main building thereon, is designed, arranged, or intended and for which it may be used, occupied, or maintained."

Section 27-107(a) provides:

"(a) Any nonconforming building, structure, or use, as defined in Section 27-101, may be continued, ***262** repaired, or maintained without enlargement or extension, unless otherwise provided by this Subtitle." (Emphasis added.)

Section 27-107(e) provides in pertinent part:

"(e) No nonconforming use may be changed to any use other than that provided by ... permits under which the nonconforming use operated at the time the nonconforming use was established." (Emphasis added.)

Section 27-108(a) provides in pertinent part:

"(a) A nonconforming building, structure, or use may only be enlarged or extended if such enlargement or extension shall conform to the provisions of this Subtitle for the zone in which it is located and a special exception has been approved by the District Council, as provided in Division 36 (Special Exceptions) of this Subtitle." (Emphasis added.)

Section 27-482(a) provides in pertinent part:

"(a) Any nonconforming building, structure, or use as defined in Section 27-101, may be continued, subject to the regulations of Section 27-107, and may be structurally expanded or extended, subject to the provisions of Division 36 (Special Exceptions) of this Subtitle." (Emphasis added.)

Section 27-553 provides in pertinent part:

"(a) Any nonconforming building, structure, or use, as defined in Section 27-101 herein ... may be enlarged, extended, or demolished and reconstructed, if the applicant can show generally that such enlargement, extension, or reconstruction will not adversely affect the use of adjacent properties and the neighborhood, subject to the following requirements and conditions:

"(1) A nonconforming building or structure, or a ***263** building or structure utilized in connection with a nonconforming use, may be enlarged in height or bulk....

"(2) A nonconforming use may be extended throughout a part or whole of a building in which such nonconforming use lawfully exists, or to the bounding lot lines of the lot....

"(3) A nonconforming use may be reconstructed within the bounding lot lines of the lot....

"(4) Any addition to an existing building or structure, or any new building or structure, constructed in connection with a nonconforming use shall, at a minimum, conform to the requirements relative to building lines, setbacks, yards,

and height limits in the zone in which such nonconforming use is situated....” (Emphasis added.)

The respondent, E. L. Gardner, Inc. (owner), owns approximately 450 acres of land (subject property) located in Prince George's County. The subject property was originally zoned R-R (rural-residential, 15,000 square foot minimum lot size) by the comprehensive zoning map adopted 2 December 1966. It was reclassified to the O-S zone (open space, single-family residential, 5 acre minimum lot size) by the comprehensive zoning map adopted 12 July 1977. Neither a sand, gravel or clay pit, nor a wet-processing facility is a permitted use in the O-S zone. Both, however, are special exception uses in that zone. s 27-537(a)(1) and s 27-538.1(a).[1]

**117 *264 Before the subject property was zoned, it was used for the mining of sand and gravel. This use has been established as a legal nonconforming use by the issuance of a use and occupancy permit. s 27-108(b).[2] In 1977, an application was filed, pursuant to s 27-538.1, for a special exception for the wet processing of sand and gravel.

The technical staff of the Maryland-National Capital Park and Planning Commission and the Prince George's County Planning Board recommended approval, with conditions, as did the Zoning Hearing Examiner. Thereafter, the County Council sitting as the District Council for Prince George's County (Council) rejected those recommendations and entered an order denying the requested special exception. In its written findings and conclusions, the Council, among other things, said:

“5. Council further concludes that to grant this special exception would be an unwarranted extension and expansion of a nonconforming use, contrary to the provisions of COUNTY CODE Sect. 27-107. This proposed sand and gravel processing facility would obviously encourage the further continuation of sand and gravel extraction operations, contrary to the purposes of the County's *265 Zoning Ordinance, which has the object of discouraging nonconforming uses.”

The owner appealed to the Circuit Court for Prince George's County which reversed the action of the Council. In its opinion the trial court said:

“Penultimately, the District Council concluded that to grant Gardner's special exception would be an ‘unwarranted extension and expansion’ of the Petitioner's nonconforming use, and would be contrary to s 27-107 of the County Code.

“The Court notes that enlargement or extension of a nonconforming use is contemplated by the Code, and that the criteria for a ‘permitted’ enlargement or extension are set forth in s 27-553 of the Code. However, the Court finds that the requested special exception is not an extension or enlargement as contemplated by the Code, see s 27-533, but rather an intensification of Gardner's ongoing nonconforming use.”

The Council appealed to the Court of Special Appeals which affirmed the judgment of the trial court. Prince George's County v. E. L. Gardner, Inc., 47 Md.App. 471, 424 A.2d 392 (1981). In its opinion, that Court said:

“If the controversy here considered involved only the question whether the contemplated use of the land owned by the appellee amounted to an illegal enlargement or expansion of its non-conforming use of the premises, it would not present a difficult question to be decided. The problem in this case, however, is that the proposed use of the appellee's property does not depend on the non-conforming use, but rather on the right to a special **118 exception established by the Prince George's County Zoning Ordinance.

*266 “Under the circumstances revealed by the record, we agree with the appellee that the non-conforming use status of the appellee's property is irrelevant in the determination of this controversy.

“The sole question to be answered in this appeal then is whether (the trial court) erred in concluding that based on the evidence before the District Council the record did not raise an issue before the administrative body which was ‘fairly debatable.’

“Our examination of the record convinces us that the applicant more than met its burden of producing probative and credible evidence on all the issues required to be proven, and that the evidence of the protestants was so vague and indefinite as to fail to raise fair debate in a reasoning mind. Therefore, we find that the action of the District Council, in refusing to grant the special exception was arbitrary, capricious, and illegal.” E. L. Gardner, Inc., 47 Md.App. at 477-78, 480, 424 A.2d at 395-97.

The Council filed a petition for a writ of certiorari that we granted. We shall reverse the judgment of the Court of Special Appeals.

One of the basic tenets of zoning is that some uses of land are incompatible with others, and that more efficient employment of land resources is achieved if such incompatible uses are separated. An admixture of incompatible land uses is avoided by dividing the community into use districts, each restricted to industrial, commercial or residential occupation.

As a practical matter, however, homogeneous land use has not been achieved. Major movement of population from rural to urban areas had begun half a century before the first comprehensive zoning ordinance was enacted in the United States. As a result, land to be zoned was not always vacant. *267 Indeed, frequently it was occupied by landowners who had developed their land unfettered by any significant degree of governmental control. Thus, use districts, designed to be homogeneous, unavoidably include land devoted to uses proscribed by the zoning regulations. Such nonconforming uses pose a formidable threat to the success of zoning. They limit the effectiveness of land use controls, contribute to urban blight, imperil the success of the community plan, and injure property values. 1 R. M. Anderson, American Law of Zoning s 602 (2d ed. 1976).

[1] This Court has repeatedly recognized that one of the fundamental problems of zoning is the inability to eliminate incompatible nonconforming land uses. In Grant v. Mayor and City Council of Baltimore, 212 Md. 301, 307, 129 A.2d 363, 365 (1957), this Court said:

“Nonconforming uses have been a problem since the inception of zoning. Originally they were not regarded as serious handicaps to its effective operation; it was felt they would be few and likely to be eliminated by the passage of time and restrictions on their expansion. For these reasons and because it was thought that to require immediate cessation would be harsh and unreasonable, a deprivation of rights in property out of proportion to the public benefits to be obtained and, so, unconstitutional, and finally a red flag to property owners at a time when strong opposition might have jeopardized the chance of any zoning, most, if not all, zoning ordinances provided that lawful uses existing on the effective date of the law could continue although such uses could not thereafter be begun. Nevertheless, the earnest aim and ultimate purpose of zoning was and is to reduce nonconformance to conformance as speedily as possible with due regard to the legitimate interests of all concerned, and the ordinances forbid or limit expansion of nonconforming uses and forfeit the right to them upon abandonment of the use or the destruction of the improvements housing the use.”

**119 *268 Thus, this Court has recognized that the problem inherent in accommodating existing vested rights in incompatible land uses with the future planned development of a community is ordinarily resolved, under local ordinances, by permitting existing uses to continue as nonconforming uses subject to various limitations upon the right to change, expand, alter, repair, restore, or recommence after abandonment. Moreover, this Court has further recognized that the purpose of such restrictions is to achieve the ultimate elimination of nonconforming uses through economic attrition and physical obsolescence. The Arundel Corp. v. Board of Zoning Appeals of Howard County, 255 Md. 78, 83-4, 257 A.2d 142, 146 (1969); Stieff v. Collins, 237 Md. 601, 604, 207 A.2d 489, 491 (1965); Colati v. Jirout, 186 Md. 652, 655, 657, 47 A.2d 613, 614-15 (1946); Beyer v. Mayor of Baltimore, 182 Md. 444, 446, 34 A.2d 765, 766 (1943); see Kastendike v. Baltimore Ass'n for Retarded Children, Inc., 267 Md. 389, 397, 297 A.2d 745, 749-50 (1972).

[2] [3] Whether a nonconforming use can be changed, extended, enlarged, altered, repaired, restored, or recommenced after abandonment ordinarily is governed by the provisions of the applicable local ordinances and regulations. Feldstein v. LaVale Zoning Board, 246 Md. 204, 211, 227 A.2d 731, 734 (1967); Phillips v. Zoning Comm'r of Howard County, 225 Md. 102, 109, 169 A.2d 410, 413 (1961); Board of Zoning Appeals of Baltimore County v. Gue, 217 Md. 16, 21-22, 141 A.2d 510, 513 (1958). These local ordinances and regulations must be strictly construed in order to effectuate the purpose of eliminating nonconforming uses. Mayor of Baltimore v. Byrd, 191 Md. 632, 638, 62 A.2d 588, 591 (1948); Colati, 186 Md. at 658-59, 47 A.2d at 616; Knox v. Mayor of Baltimore, 180 Md. 88, 96, 23 A.2d 15, 18 (1941); see City of Hagerstown v. Wood, 257 Md. 558, 563, 263 A.2d 532, 534 (1970); Hewitt v. County Comm'rs of Baltimore County, 220 Md. 48, 59, 151 A.2d 144, 150 (1959).

[4] Applying these principles to the instant case produces a clear result. Section 27-107(a) provides that any nonconforming use may be continued without enlargement *269 or extension. Section 27-107(e) explicitly provides that “no nonconforming use may be changed to any use other than that provided by ... permits under which the nonconforming use operated.” Section 27-108(a) provides

that a nonconforming use may be enlarged or expanded if a special exception is obtained. Sections 27-482(a) and 27-553(a) provide that a nonconforming use may be structurally expanded or extended subject to certain structural requirements. These provisions embody a statutory scheme that explicitly prohibits an existing nonconforming use from being changed to any other use while it explicitly permits an existing nonconforming use to be enlarged or extended under specified circumstances. Under the applicable local ordinances, there is, therefore, a significant and critical difference between changing an existing nonconforming use to another use and enlarging or extending an existing nonconforming use.

Here the record shows that a sand and gravel mining operation existed on the subject property before zoning was applicable. This use has been established as a legal nonconforming use by the issuance of a use and occupancy permit. Section 27-537 delineates sand, gravel, and clay pits as a separate and distinct special exception use in which heavy machinery for washing or processing is explicitly prohibited unless a special exception for wet processing is obtained. Section 27-538 delineates wet-processing facilities as a separate and distinct special exception use. Each of these uses has differing standards, regulations, and requirements. Thus, there can be no question that the ordinance itself establishes that these two uses are indeed different. Consequently, the addition of the wet-processing facility to the existing nonconforming sand and gravel mining operation necessarily involves a change in the use of the subject property. Such a change in use is explicitly prohibited by s 27-107.

Under the circumstances here, the Council had no authority to grant the requested special exception. The trial court erred **120 when it reversed the Council's denial of the requested *270 special exception. Accordingly, we shall reverse the judgment of the Court of Special Appeals that affirmed the judgment of the trial court.

JUDGMENT OF THE COURT OF SPECIAL APPEALS REVERSED. CASE REMANDED TO THAT COURT WITH DIRECTIONS TO REVERSE THE JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AND TO REMAND THE CASE TO THAT COURT WITH DIRECTIONS TO ENTER AN ORDER AFFIRMING THE DECISION OF THE COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY. COSTS TO BE PAID BY APPELLEE.

All Citations

293 Md. 259, 443 A.2d 114

Footnotes

* Digges, J., now retired, participated in the hearing and conference of this case while an active member of this Court; after being recalled pursuant to the Constitution Article IV, Section 3A, he also participated in the decision and adoption of this opinion.

1 s 27-537(a)(1) provides:
"Sec. 27-537. Sand, gravel or clay pits; rock or stone quarries; mining removal of earth or topsoil; extraction and removal of natural materials or deposits.
"(a) In all zones, the use of land for any or all of the purposes or uses of this Section, subject to the following conditions:
"(1) Except in the I-2 Zone there shall be no use of heavy machinery for washing, refining, or other processing or manufacturing, unless a special exception is granted for sand and gravel wet processing under the provisions of Section 27-538.1. The use of heavy machinery for extraction and removal of natural material or deposits from the site is permissible." (Emphasis added.)
s 27-538.1(a) provides in pertinent part:
"Sec. 27-538.1. Sand and/or gravel wet-processing....
"(a) In all zones, except the I-3 and I-4 Zones wherein such uses are prohibited, and in the I-2 Zone wherein such uses are permitted, the use of land for wet-processing, including washing, sorting, refining, and stockpiling of natural materials, and in the I-2 Zone only, including such facilities as concrete batching plants, asphalt or cement mixing plants, and similar facilities...." (Emphasis added.)

2 s 27-108(b) provides in pertinent part:
"(b) Satisfactory evidence as to the actual existence of a nonconforming use is a prerequisite to its continuance and shall be established by the issuance of a use and occupancy permit by the Building Inspector upon approval and certification by the Planning Board." (Emphasis added.)

County Council of Prince George's County v. E. L. Gardner, Inc., 293 Md. 259 (1982)
443 A.2d 114

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

KeyCite Yellow Flag - Negative Treatment
Declined to Follow by Richmarr Holly Hills, Inc. v. American PCS, L.P., Md.App., October 30, 1997

102 Md.App. 691
Court of Special Appeals of Maryland.

David **CROMWELL**, et al.
v.
Arthur Thomas **WARD**, III.

No. 617, Sept. Term, 1994.
|
Decided Jan. 4, 1995.

Synopsis

The Circuit Court, Baltimore County, Lawrence Daniels, J., affirmed order of board of appeals granting height variance for accessory building already built by owner. Appeal was taken. The Court of Special Appeals, Cathell, J., held that: (1) no variance was appropriate where property was not shown to be unusual or unique from surrounding properties before variance based on practical difficulty or unreasonable hardship was sought; (2) landowner's self-created hardship arising from construction of accessory building before variance was sought was not grounds for grant; and (3) approval of building permit for accessory building did not support grant of variance sought.

Reversed.

West Headnotes (5)

[1] Zoning and Planning Effect of determination in general; res judicata and collateral estoppel

City was not estopped from refusing to grant variance from height restriction on auxiliary building merely because owner submitted and obtained construction permit, at least where owner's plan's elevation schematics contained neither elevation dimensions nor scale and elevation was not stated; while zoning inspectors might have been able to extrapolate dimensions from other schematics, they were not required to do so in light of owner's affirmative statement in application of compliance with zoning requirements. Code 1957, Art. 66B, § 7.03; Baltimore, Md., Zoning Ordinance § 307.

[2] Zoning and Planning Unique or peculiar hardship in general

Under law on variances in Maryland and under Baltimore County's charter and ordinance, property's peculiar characteristics or unusual circumstances relating only and uniquely to that property must exist in conjunction with ordinance's more severe impact on specific property because of property's uniqueness before any consideration will be given to whether requisite practical difficulty or unnecessary hardship exists. Code 1957, Art. 66B, § 7.03; Baltimore, Md., Zoning Ordinance § 307.

16 Cases that cite this headnote

[3] Zoning and Planning Self-created hardship; prior knowledge

Practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted. Code 1957, Art. 66B, § 7.03; Baltimore, Md., Zoning Ordinance § 307.

14 Cases that cite this headnote

[4] Zoning and Planning Unique or peculiar hardship in general

Mistake of county official cannot be the "practical difficulty" unique to subject property required to authorize grant of variance. Code 1957, Art. 66B, § 7.03; Baltimore, Md., Zoning Ordinance § 307.

20 Cases that cite this headnote

[5] Zoning and Planning Height of buildings or structures

Granting of variance from height restrictions on auxiliary building was arbitrary and illegal where subject site was not in any way peculiar, unusual or unique when compared to other properties in neighborhood and thus was not disproportionately affected by height restriction; self-created hardship arising from owner's failure to disclose height dimensions in applying for permit and construction of building in nonconformity were self-imposed or created hardships that could not support variance. Code 1957, Art. 66B, § 7.03; Baltimore, Md., Zoning Ordinance § 307.

13 Cases that cite this headnote

Attorneys and Law Firms

**425 *693 Michael Paul Smith (Thomas G. Bodie and Bodie, Nagle, Dolina, Smith & Hobbs, P.A., on the brief) Towson, for appellants.

Newton A. Williams (Nolan, Plumhoff & Williams, Chtd., on the brief) Towson, for appellee.

Argued before WENNER, CATHELL and MURPHY, JJ.

Opinion

CATHELL, Judge.

Appellant, David **Cromwell**, appeals from the judgment of the Circuit Court for Baltimore County (Daniels, J., presiding) affirming the order of the Board of Appeals granting a height variance for an accessory building already built by appellee, Arthur Thomas **Ward**, III. Appellant poses the following questions:

I. Whether the self-imposed or self-created hardship discussed in the Maryland case law on variances *694 requires an intentional act, such as ignoring or flaunting [sic] the zoning regulations.

II. Does the record before the Honorable Lawrence Daniels support a finding that had the accessory building been built in accordance with the height regulations of Baltimore County, the accessory building would necessarily require a different pitch from all other buildings on the property?

III. Can a difference in roof pitches between an accessory building and a home constitute a "practical difficulty or unreasonable hardship" within the meaning of § 307 of the Baltimore County Zoning Regulations?

**426 While those questions are limited, appellant expands in his arguments supporting the questions and argues that

> [t]he restrictions of the applicable ordinance, *taken in conjunction with the unique circumstances affecting the property,* must be the proximate cause of the hardship [Emphasis added.]

and

> Section 307.1 requires that variances only be granted in cases where special circumstances or conditions exist *that are peculiar to the land or structure* which is the subject of the variance request.... [Emphasis added.]

and

> Mr. **Ward's** property *is not unique* from the others in the Ruxton area. [Emphasis added.]

Although somewhat indirectly, appellant has pointed out an important aspect of the nature of the *variance* process, *i.e.,* it is at least a two-step process. The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is—in and of itself—unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property. Unless there is a finding that the property is unique, unusual, or different, the process stops here and *695 the variance is denied without any consideration of practical difficulty or unreasonable hardship. If that first step results in a supportable finding of uniqueness or unusualness, then a second step is taken in the process, *i.e.,* a determination of whether practical difficulty and/or[1] unreasonable hardship, resulting from the disproportionate impact of the ordinance *caused by* the property's uniqueness, exists. Further consideration must then be given to the general purposes of the zoning ordinance.

What we have recently observed in Baltimore County, and in other jurisdictions as well, and what occurred in the case at bar, is a reversal of the required process. Instead of first determining whether the subject property is unusual or unique, the zoning authorities are first determining whether a practical difficulty or unreasonable hardship exists. That determination is then used to create a unique and unusual situation as to the subject property because surrounding properties do not experience the hardship or difficulty.

In the case *sub judice,* appellee's act of constructing a building of such a height as to produce a roof pitched at the angle he

desired caused the roof to extend above the fifteen-foot height limit. This fact alone was found by the Board (and affirmed by the trial court) to make the property's problems unique. Simply stated, the variance that is desired (and the difficulties that would exist if it is not granted) cannot be the source of the first prong of the variance process—an inherent uniqueness of the subject property not shared by surrounding properties.

***696 The Facts**

Appellee's contractor, Donald S. Huber and Company, Inc. (Huber), prepared plans for a garage, wine cellar, and storage area on appellee's property. Using these plans, Huber, on appellee's behalf, applied for a building permit, noting on the application that it was to construct a two story "garage and wine cellar;" "[second] story to be used as storage, [first] floor for garage and wine testing room. Cellar will be for wine." The application indicates that some prior height indication was marked over on the application for a permit and a new mark was made indicating the anticipated height of the structure to be fourteen feet. Huber admitted that he had little experience with the zoning requirements for accessory buildings and ****427** was unaware of the height limitations. The County's automated tracking system, in creating its general permit application data on the subject property, noted: "Height: 14' " and "Stories: 2+ CELL."

The plans presented to the County included a "Left Side Elevation" but no height is shown on the elevation plan. Neither, as far as we have been able to find, does the plan contain a scale from which the "Left Side elevation" can be determined. The plans also include a "Front Elevation" from which actual proposed heights are also conspicuously, almost suspiciously, absent given that all other dimensions appear to be included on the plans.

We have, however, extrapolated from a horizontal distance indicated on the lower right-hand corner of the "Second Floor Plan" that fourteen feet five and one-half inches equals slightly over three and one-half inches on our ruler. It would appear that the front elevation plan indicates five and one-fourth inches on our ruler or approximately twenty-one and one-half feet in height. When measured in similar fashion, the left side elevation indicates a similar height. Thus, if the other measurements are correct, a method existed in which, even absent a scale, rough height elevations might have been discernable, though we are at a loss to understand why the ***697** elevations were not given in feet and why the plans contained no scale.[2]

After receiving a building permit, appellee proceeded to construct the building that violated the fifteen foot height requirement. During the building process, inspections were made of footings, foundations, framing, and electrical service. Final occupancy was then given. Later, the building was discovered to be twenty-one feet in height.[3] Appellee then successfully applied for an after the fact variance. Appellant appealed to the Board of Appeals and it, in a two to one decision, granted the variance that the circuit court ultimately affirmed.

The Law

The State Zoning Enabling Act was first passed in 1927 by Chapter 705 of the Acts of 1927. It has since been codified as Article 66B of the Annotated Code of Maryland (1957, 1988 Repl.Vol., 1994 Cum.Supp.). While it was generally believed that local subdivisions did not have to enact zoning regulations (and some did not), if enacted, they normally had to conform to the provisions of Article 66B.

Baltimore County, however, is a charter county and is exempt from many of the provisions in Md.Code Art. 66B. See Md.Code Art. 66B § 7.03 which provides "Except as provided in [sections not pertinent here] ... this article does not apply to the chartered counties of Maryland." Nevertheless, the language of Art. 66B relating to variances is virtually identical to the provisions of the Baltimore County ordinance.

***698** The Article 66B provision that provides for variance authority in local zoning ordinances is section 1.00(j). As relevant to an area variance, this section defines a variance under Art. 66B as follows:

> [M]odification only of density, bulk, or area requirements in the zoning ordinance ... where *owing to conditions peculiar to the property, and not the result of any action taken by the applicant,* a literal enforcement ... would result in either, as specified by the local governing body in a zoning ordinance, unnecessary hardship or practical difficulty. [Emphasis added.]

The Baltimore County Zoning Ordinance in section 307, "Variances," provides, in relevant part, that variances from the ordinances provision, *i.e.,* height, may be granted

> 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 ... would result in practical difficulty ****428** or unreasonable hardship. [Emphasis added.]

Accordingly, we shall, in our discussion of cases, refer extensively to cases under the provisions relating to Art. 66B as well as cases under the Baltimore County provisions.

The Baltimore County ordinance requires "conditions ... peculiar to the land ... and ... practical difficulty...." Both must exist. But the terms "practical difficulty" and "unreasonable hardship" are stated in the ordinance disjunctively. Thus, at least as to variances other than use variances,[4] if the property is found to be unique, the practical difficulty standard would then apply. We address practical difficulty at some length hereafter. However, as is clear from the language of the Baltimore County ordinance, the initial factor that must be established before the practical difficulties, if any, are addressed, is the abnormal impact the ordinance has on a specific piece of property because of the peculiarity and ***699** uniqueness of *that* piece of property, not the uniqueness or peculiarity of the practical difficulties alleged to exist. It is only when that uniqueness is first established that we then concern ourselves with the practical difficulties (or unnecessary hardships in use variance cases).

Because we have discerned that some of the confusion in this and other jurisdictions may have arisen because of a tendency to intermingle the concepts of special exceptions/conditional uses[5] (where normally an applicant has an easier burden) and variances, we shall first discuss the cases (local as well as foreign) and treatises in which the terms are distinguished. We shall then discuss our cases and certain of those elsewhere in which the proper (and, on occasion, improper) applications of variance law have been applied. The Baltimore County statute will then be restated and applied to the facts and circumstances of the case *sub judice.*

Special Exceptions (and Conditional Uses) and Variance —Distinguished

The treatise writers define the concept as:

> A variance is an authorization for [that] ... which is prohibited by a zoning ordinance....
>
> ... [T]he difference between the two [variances and special exceptions] ... is of practical significance....
>
> "... [T]he variance and exception are designed to meet two entirely different needs. The variance contemplates a departure from the terms of the ordinance in order to preclude confiscation of property, while the exception ***700** contemplates a permitted use ... [once] the prescribed conditions therefor are met."
>
> ... [A] variance is "authority ... to use his property in a manner forbidden ...," while an exception "allows him to put his property to a use which the enactment expressly permits."
>
> ... [T]he standards for ... exceptions are usually less stringent than in the case of variances. A Maryland court summarized this difference and the reason for it.
>
> "A special exception ... is one which is controlled and ... permissible in a given zone. It is granted ... upon a finding conditions of the zoning ordinance are satisfied. A variance is authorized ... where the literal enforcement of its terms would result in unnecessary hardships."

3 Robert M. Anderson, *American Law of Zoning* § 18.02–03 (2d ed. 1977) (footnotes omitted) (quoting in part *Stacy v. Montgomery County,* 239 Md. 189, 193, 210 A.2d 540 (1965)). *See also* ****429** *Schultz v. Pritts,* 291 Md. 1, 11, 432 A.2d 1319 (1981); *People's Counsel v. Mangione,* 85 Md.App. 738, 748, 584 A.2d 1318 (1991).

> A distinction commonly is made between [special] exceptions ... and variances.... An "exception" ... is a dispensation permissible where a board ... finds existing those facts ... specified in the ordinance as sufficient.... "... But zoning ordinances usually provide for another kind of dispensation, ... by which a variance ... may be authorized ... where a literal enforcement ... would result in unnecessary hardship."

8 Eugene McQuillin, *Municipal Corporations* § 25.160 (3d ed. rev. 1991) (footnotes omitted).

> The general rule is that variances and exceptions are to be granted sparingly, only in rare instances and under peculiar and exceptional circumstances.... A variance should be strictly construed....

Id. § 25.162 (footnotes omitted). *See also* 5 Norman Williams, Jr. et al., *American Land Planning Law* § 133.01 (1985 rev.); 3 Arden H. Rathkopf, *The Law of Zoning and Planning* ***701** § 38.01 (4th ed. 1981); 3 E.C. Yokley, *Zoning Law and Practice*

§ 21–6 (4th ed. 1979); 3 Robert M. Anderson, *American Law of Zoning* § 14.55 (1968); Anderson, *supra* § 18.30 (2d ed.).

Maryland courts, and courts elsewhere, have generally made the same distinction.

> There is a marked distinction between "variance" and "special exception" in Montgomery County. A special exception ... is expressly permissible.... [A zoning board has authority to grant] variances from the strict application of this chapter when by reason of exceptional narrowness, shallowness, or shape of specific parcels of property ... or by reason of exceptional topographical conditions or other extraordinary situations ... of specific parcels of property, the strict application ... would result in ... unusual practical difficulties to, or exceptional or undue hardship....

Stacy, 239 Md. at 193, 210 A.2d 540.

Judge Hammond for the Court of Appeals noted in *Montgomery County v. Merlands Club, Inc.,* 202 Md. 279, 288–91, 96 A.2d 261 (1953):

> It is the common practice to join an application for an exception with an application for a variance, leaving it to the Board to decide on which ground it will grant the application. As a result, many cases discuss exceptions and variances without differentiation, yet the two do differ, and one important distinction is that where a specific use is permitted by the legislative body in a given area ... the application can be granted without a showing of hardship or other conditions which are necessary for the allowance of a variance....
>
> ....
>
> ... There is a distinction between ... the ordinance provisions ... in those cases [Baltimore City cases] and the facts and the ordinance provision in this case....

See also our case of *Martin Marietta Aggregates v. Citizens,* 41 Md.App. 26, 34–35, 395 A.2d 179 (1978).

***702** A conditional use is not a variance. The primary difference between the two is that a conditional use is not an exceptional [6] use. A conditional use is a desirable use which is attended with detrimental effects which require that certain conditions be met.... While a variance is a departure from the terms of an ordinance, a conditional use is a permitted use ... so long as ... conditions are met. Therefore, conditional use grants cannot be encompassed within the ... statutory authority to grant variances. *Eberhart v. Indiana Waste Systems, Inc.,* 452 N.E.2d 455, 459 (Ind.App. 3 Dist.1983) (citations omitted).

In a case affirming the granting of a special exception, the court in *Ash v. Rush County Bd. of Zoning Appeals,* 464 N.E.2d 347, 350 (Ind.App. 1 Dist.1984), opined:

> A great deal of confusion has been generated ... because of the parties' failure to distinguish among rezoning amendments, variances, and special exceptions.... A variance involves a deviation ... from the ****430** legislated zoning classification.... A special exception involves a use which is permitted ... once certain statutory criteria have been satisfied. [Citations omitted.]

See also Lindquist v. Board of Adjustment, 490 So.2d 16, 18 (Ala.Civ.App.1986) ("Thus a special exception is not truly an exception to the zoning regulations at all") and ("a special exception may not be used as a substitute for a variance in order to avoid the ... burden of proving ... hardship"); *Wolfner v. Board of Adjustment,* 672 S.W.2d 147, 150 (Mo.App.1984) ("an exception is legislatively permitted whereas a variance is legislatively prohibited, but may be allowed for special reasons"); *Urban Farms, Inc. v. Franklin Lakes,* 179 N.J.Super. 203, 431 A.2d 163, 167 (A.D.), *cert. denied,* 87 N.J. 428, 434 A.2d 1099 (1981) (special exception and variance defined—case decided on zoning estoppel basis); ***703** *A.J. Grosek & Associates v. Zoning Hearing Bd.,* 69 Pa.Cmwlth. 38, 450 A.2d 263, 265 (1982); *Bell v. City Council,* 224 Va. 490, 297 S.E.2d 810, 813–14 (1982).

VARIANCE—

The First Step—Uniqueness or Peculiarity of the Subject Property

> The general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances. *See, e.g.,* A. Rathkopf, 3 The Law of Zoning and Planning § 38 (1979).
> *Doorack v. Board of Adjustment,* 709 S.W.2d 140, 143 (Mo.App.1986). *See also McMorrow v. Board of Adjustment,* 765 S.W.2d 700, 701–02 (Mo.App.1989); *Taylor v. Board of Zoning Adjustment,* 738 S.W.2d 141, 144 (Mo.App.1987).

The requirement of uniqueness of the subject property, as we have indicated, is specifically set out for noncharter counties in the State enabling legislation, Md.Code Article 66B, and it

is also set out in the Baltimore County ordinance applicable here. Additionally, it has been a necessary prerequisite almost since the inclusion of variance practice in zoning laws—and, before that, it was a part of Maryland case law. That case law is in accord generally with the case law elsewhere as we shall later discuss.

Early on, prior to the State specifically empowering local governments to delegate the granting of variances to zoning boards, the Maryland Court of Appeals found that the delegation of power to an administrative board to grant variances from the terms of a zoning "type" ordinance was improper because

> the board of zoning appeals is in effect given the power to set aside or annul the ordinance ... with no more definite standard or guide than that such action may only be taken when there are "practical difficulties or unnecessary hardships".... [U]nder our system of written constitutions it is essential that they accomplish those ... objects in conformity with the restrictions, rules, and limitations which the law itself provides and not in disregard of them.... For such ***704** phrases as "practical difficulties," "unnecessary hardships," "substantial justice," are too general and indefinite to furnish such a guide, or to mark the limits or control the exercise of the power conferred....

Jack Lewis, Inc. v. Mayor and City Council of Baltimore, 164 Md. 146, 151, 164 A. 220, *appeal dismissed,* 290 U.S. 585, 54 S.Ct. 56, 78 L.Ed. 517 (1933) (though it questioned the variance provisions under which the appellant sought a variance to operate a funeral home, it upheld the restriction prohibiting the funeral home in the first instance). In *Sugar v. North Baltimore Methodist Protestant Church,* 164 Md. 487, 165 A. 703 (1933), the Court likewise found the board's powers to grant special exceptions to permit a confectionery store where otherwise prohibited to be invalid for the same reasons.

In moving towards an acceptance of variance procedures, the Court noted that the "increasing need for garages in the cities was one of the main reasons for the rapid spread of zoning in this country." *Heath v. Mayor and City Council of Baltimore,* 187 Md. 296, 300, 49 A.2d 799 (1946). By the time of its decision in *Heath,* the Court had accepted the inevitable need for formal variance and special exception provisions, noting that "[c]haos would result if [a building engineer] were allowed to make exceptions or variances ****431** in his own discretion." 187 Md. at 301, 49 A.2d 799. The Court further pointed to the special exception powers of the Board of Zoning Appeals as a legally acceptable alternative. The Court also observed that, in response to its decisions in *Jack Lewis* and *Sugar,* the city had amended the Baltimore City ordinance to incorporate additional standards to guide the Board. The Court then correctly defined an exception as "a dispensation permissible where the Board ... finds ... those facts ... specified in the ordinance...." *Id.* 187 Md. at 303, 49 A.2d 799.

It was then that the court, for the first time that we can discern, combined exceptions and variances when discussing conformity to the rules in regard to the grant of either. This is the first instance where the two concepts were intermingled with respect to the Baltimore City ordinance. To a certain extent, this intermingling has, from time to time, created some ***705** confusion in the cases arising out of Baltimore City. Because of the proportionately larger number of cases arising out of that jurisdiction, that confusion can be seen in subsequent cases arising from other jurisdictions. This intermingling increased over the years and, during this time, Baltimore City amended its ordinance and eventually became subject to an ordinance that does not distinguish between variances and exceptions except as to the title of their respective sections. In other words, Baltimore City, by the terms of its ordinance, applies the same standards to both variances and special exceptions; this standard is the one used elsewhere for variances. Thus, the Baltimore City special exceptions procedure is one only by title. For all practical purposes, it is also a variance procedure.

Caution should always be used therefore when a court is concerned with special exceptions, as reliance on the cases from Baltimore City may well lead one to rely on inapposite zoning concepts and cases. Judge Marbury, for the Court of Appeals, noticed this unusual circumstance in *Dampman v. Mayor and City Council of Baltimore,* 231 Md. 280, 285, 189 A.2d 631 (1963) ("In Baltimore City there appears to be no distinction between the two terms....").[7] We also attempted to indicate the problem in *North v. St. Mary's County,* 99 Md.App. 502, 510, 638 A.2d 1175 (1994), in footnote 3:

> Baltimore City's zoning code makes no distinction between special exceptions and variances. Its code treats special exceptions as if they were variances.... [I]t is generally inexact to rely on Baltimore City cases when a special exception is at issue in another jurisdiction, but would be appropriate when a variance is at issue.

In any event, as to variances, the Court of Appeals, applying the uniqueness standard, stated:

***706** [I]t was incumbent upon the Marinos to have shown ... (ii) that the difficulties or hardships *were peculiar to the property in question in contrast with those of other property owners in the same district, and* (iii) that the hardship was not the result of the applicants' own actions.

Marino v. Mayor and City Council of Baltimore, 215 Md. 206, 218, 137 A.2d 198 (1957) (emphasis added). *Salisbury Bd. of Zoning Appeals v. Bounds,* 240 Md. 547, 214 A.2d 810 (1965), also involved the completion of structural improvements in violation of an ordinance and a subsequent request for an after the fact variance. The Court opined:

> The only evidence before the Board as to hardship or injustice involving the property was the fact that repairs and alteration work had been substantially completed before an application for either a variance or a building permit had been made and that what had been done could not be undone without financial hardship to appellees....

240 Md. at 554, 214 A.2d 810. The Court first quoted from 2 Rathkopf, *The Law of Zoning and Planning,* § 48–1, and then noted:

> "Where property, due to unique circumstances applicable to it, cannot reasonably be adopted to use in conformity with the restrictions ... hardship ****432** arises.... The restrictions of the ordinance, taken in conjunction with the unique circumstances *affecting the property* must be the proximate cause of the hardship.... [T]he hardship, arising as a result of the act of the owner ... will be regarded as having been self-created, barring relief...."
>
> The instant case fits squarely within the above general rule.... [I]f the appellees had used proper diligence ... and then made accurate measurements ... [the resultant hardship could have been avoided]. The hardship ... was entirely self-created....

Id. at 554–55, 214 A.2d 810 (emphasis added). Had **Ward's** contractor, Huber, in the case at bar, checked the ordinance's height limitation, the situation that now exists could easily have been avoided. *See also Burns v. Mayor and City* ***707** *Council of Baltimore,* 251 Md. 554, 559, 248 A.2d 103 (1968); *Pem Constr. Co. v. Mayor and City Council of Baltimore,* 233 Md. 372, 378, 196 A.2d 879 (1964) ("[There was] no evidence of any limitation ... by ... size of yards, irregularity of shape of land or buildings, topography, grade or accessibility"....); *Mayor and City Council v. Sapero,* 230 Md. 291, 186 A.2d 884 (1962); *Frankel v. Mayor and City Council of Baltimore,* 223 Md. 97, 104, 162 A.2d 447 (1960) ("It was incumbent ... to show that the hardship ... affected his particular premises and was not ... common to other property in the neighborhood.... [H]e met the burden...."); *Park Shopping Center, Inc. v. Lexington Park Theatre Co., Inc.,* 216 Md. 271, 277–78, 139 A.2d 843 (1958).

> Secs. 14(b), 14(d) and 16 ... have been held not to authorize a granting for the mere convenience to the owner but to require a showing of urgent necessity, hardship peculiar to the particular property....

Mayor and City Council v. Polakoff, 233 Md. 1, 9, 194 A.2d 819 (1963).

The Court in *Kennerly v. Mayor and City Council of Baltimore,* 247 Md. 601, 606–07, 233 A.2d 800 (1967), dismissed an appeal of the grant of a height variance for lack of standing, but, in doing so, nevertheless opined:

> Our dismissal of the appeal is not to be taken as showing that if the appeal properly was here we would affirm the Board. To grant a variance the Board must find from the evidence more than that the building allowed would be suitable or desirable or could do no harm or would be convenient for or profitable to its owner. The Board must find there was proof of "*urgent necessity, hardship peculiar to the particular property....*" ... Specific reasons, specific bases to support the finding must be revealed by the evidence before the Board. [Emphasis added, citation omitted.]

In *McLean v. Soley,* 270 Md. 208, 210, 310 A.2d 783 (1973), one of the few reported Maryland appellate cases approving of a variance, the applicant for an area variance in connection ***708** with an application to build forty units asserted that it was his desire to retain the "present trees and natural growth, terrain, and topography which provides excellent drainage and natural screening and beauty." There was evidence that, if the applicant destroyed the existing trees, he could have built 330 units without needing a variance. It was established that a number of attractive trees along the western boundary would have to be destroyed absent a variance. The Court noted that "there was considerable evidence to show the natural beauty of these trees and their importance to the ecology." 270 Md. at 211, 310 A.2d 783. The Court, seeming to acknowledge that it was making a detour from Maryland variance law, opined:

> Given the unique facts of this case, we think those criteria are met by this evidence: That the construction of the buildings in strict compliance with the sideyard requirements would result in the destruction of the trees; that the preservation of trees in the construction of the first section had contributed to full occupancy ... that the benefits of retaining the trees would accrue to the general public; that greater density would result from strict compliance....
>
> ....
>
> Concededly, this is a close case, but it is nevertheless sufficient....

****433** *Id.* at 215, 310 A.2d 783. We would have to agree that it is a close case. The opinion does not make mention that the practical difficulty resulted from the fact that the uniqueness of the property caused the ordinance to have a different impact on it than on adjoining property. Also, there was no evidence that the neighboring properties were in any way different than the subject property. If the presence of trees on a particular lot was unique, that might have been a basis, but the court did not make that connection. Thus, this case, coupled with *Loyola Federal Savings & Loan Assoc. v. Buschman,* 227 Md. 243, 176 A.2d 355 (1961), and *Frankel v. Mayor & City Council of Baltimore,* 223 Md. 97, 162 A.2d 447 (1960), is among the affirmances of variances that we perceive to be, at best, extremely close calls and, as we shall indicate, exceedingly rare.

***709** The Court in the sludge storage case of *AD + Soil, Inc. v. County Comm'rs,* 307 Md. 307, 513 A.2d 893 (1986), reiterated the standards applicable to variances when it affirmed a trial court's affirmance of a zoning agency's denial of an area and other variances. The variances were necessary to satisfy the requirements for a conditional use permit to operate the sludge storage and distribution operation. The Court of Appeals noted that the trial court, in affirming the agency's denial of a variance, agreed that "the only hardships facing Ad + Soil were of its own making." 307 Md. at 317, 513 A.2d 893. After addressing the important preemption issues therein raised, the Court directed its attention to the area variances sought and, referring to the Board's findings, stated that, in Queen Anne's County, the Board's authority to grant variances was limited to a situation where "there are exceptional or extraordinary circumstances or special conditions applying to the property in question ... that do not apply generally to other properties ... in the ... district." *Id.* at 340, 513 A.2d 893. The Court concluded:

> The board declined to grant the variances, concluding that Ad + Soil's "hardship" was self-inflicted, and, in any event, that it was not the result of exceptional or extraordinary *characteristics* of the *land itself* and therefore not the kind of hardship cognizable under the Zoning Ordinance....
>
> We think the Board's decisions ... reflect no error of law.

Id. at 340–41, 513 A.2d 893 (emphasis added).

In *Red Roof Inns, Inc. v. People's Counsel,* 96 Md.App. 219, 224, 624 A.2d 1281 (1993), after noting the standard of review, we said:

> In reviewing the zoning authority's decision, the court must consider all of the evidence in the administrative record. The reviewing court's role, however, is confined to determining the legality of the procedure employed and whether the decision was fairly debatable in light of the evidence adduced before the zoning authority.
>
> ***710** The role of this Court "is essentially to repeat the task for the circuit court; that is, to be certain the circuit court did not err in its review." [Citations omitted.]

We then discussed the legal standards to utilize in respect to variances construing the same statute that applies in the case at bar, saying that variances may be granted "where special circumstances or conditions exist *that are peculiar to the land* ... and where strict compliance ... would result in practical difficulty...." *Id.* (emphasis added). We noted that, in regards to area variances, we were only concerned that the conditions peculiar to the land in question presented practical difficulties. In concluding that the Board had not acted wrongly in denying the variance at issue (a sign variance), we noted: "Zoning matters, including sign variance requests, depend upon the unique facts and circumstances *of a particular location* and must be analyzed individually." *Id.* at 227–28, 624 A.2d 1281 (emphasis added).

In *North v. St. Mary's County,* 99 Md.App. at 512, 638 A.2d 1175, we held that the ordinance there required a finding that "special conditions or circumstances exist that are peculiar to the land...." We there stated that, in the zoning context, the term "unique" has a customized meaning:

> In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. ****434** "Uniqueness" of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, *i.e.,* its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by

abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls.

....

In some zoning ordinances, the specialness or uniqueness requirement is more explicitly set out. The Court of Appeals, ***711** in *Ad + Soil, Inc. v. County Comm'rs,* 307 Md. 307, 339, 513 A.2d 893 (1986), quoted from the Queen Anne's County ordinance:

> Where by reason of the exceptional narrowness, shallowness, or unusual shape of a specific ... property ..., or by reason of exceptional topographic conditions or other extraordinary situation or special condition of ... property ... the literal enforcement ... would make it exceptionally difficult ... to comply ... and would cause unwarranted hardship and injustice....

The general thrust of the meaning of special features or uniqueness of property for variance purposes relates to the type of uniqueness discussed by the Court in *Ad + Soil, Inc.* *Id.* at 514–15, 638 A.2d 1175.

One indication of the general rule that variances are rarely appropriate is that, in our review of the reported Maryland cases since the creation of the state zoning enabling act in 1927, we have found only five reported Maryland cases in which the grant of a variance has been affirmed or the denial of a variance has been reversed. The cases are *McLean, supra; Stacy, supra; Sapero, supra; Loyola Federal Savings & Loan Assoc., supra* (a Baltimore County case); and *Frankel, supra.* All of these cases were decided over a twelve-year period and the last of them was decided more than twenty-one years ago. Three of them, *Frankel, Loyola,* and *McLean* appear to be somewhat at odds with accepted Maryland law. *McLean* was described by the Court as a "[c]oncededly ... close case...." *Frankel* has caused some confusion in that it has later been viewed by some as lowering the standards for the granting of variances. *Mayor and City Council of Baltimore v. Borinsky,* 239 Md. 611, 212 A.2d 508 (1965), involved one of the same issues that was presented in *Frankel, i.e.,* whether a zoning restriction so compromised the use of property as to constitute an unconstitutional taking absent the granting of a variance—a variance Frankel was granted. The Court noted that the trial court had found *Frankel* controlling. The Court of Appeals disagreed. The Court acknowledged ***712** that Borinsky had the "same expert witness," "he was asked the same general questions ... and gave the same answers," and that the "economic suicide" present in *Frankel* was "doubly true in this instance." *Id.* 239 Md. at 624, 212 A.2d 508. The Court, nevertheless, made a factual distinction and declined to apply *Frankel.* Judge Barnes opined in dissent that, based on what the Court had done in *Frankel,* the facts for variances were stronger in *Borinsky. Sapero* and *Stacy* met traditional standards for the granting of variances. *Frankel, Loyola,* and *McLean* were anomalous cases.

In any event, nowhere in those five cases, or any others, has the Court of Appeals ever changed the Maryland rule relating to uniqueness and peculiarity of the subject property.

Cases from other jurisdictions are generally in accord.

The Supreme Court of Nebraska in *Bowman v. City of York,* 240 Neb. 201, 482 N.W.2d 537 (1992), reversed the grant of a variance for a structure after, pursuant to the variance, the structure was constructed. Citing an earlier Nebraska case, *Frank v. Russell,* 160 Neb. 354, 70 N.W.2d 306 (1955), and noting that the Nebraska statute had been made more specific in light of *Frank,* the court said 482 N.W.2d at 545: "[A] variance [may be granted] ... only if strict application of the regulation, because of the unusual physical characteristics of the property existing at the time of the enactment, [of ****435** the zoning ordinance] 'would result in peculiar and exceptional practical difficulties ... or exceptional ... hardships....' "

In *Shafer v. Zoning Bd. of Appeals,* 24 Mass.App. 966, 511 N.E.2d 635 (1987), the property owner had conveyed away several parcels from a larger tract leaving a parcel, the size of which was prohibited under the ordinance. The Board granted him a variance, the trial court reversed it, and the appellate court affirmed the trial court. The appellate court reiterated the trial court's finding:

> There was no evidence ... regarding "soil conditions, shape or topography of [the property] ... especially affecting [the property] but not affecting generally the zoning district in which it is located".... The ... argument that ***713** the insufficient width ... constitutes a special circumstance of "shape" is unpersuasive, particularly as the deficiency is one which they themselves produced through subdivision of the land they originally owned at a time when the 125 foot width requirement pertained.

511 N.E.2d at 636–37 (citation omitted). *See also VanLandschoot v. City of Mendota Heights,* 336 N.W.2d 503, 509 (Minn.1983) ("the plight of respondent was not due to circumstances 'unique to his property.' ... [S]ome of the problems were the result of illegal acts of respondent's predecessor in title, of which respondent was aware....")

In *St. Clair v. Skagit County,* 43 Wash.App. 122, 715 P.2d 165 (1986), a landowner applied for a variance of a lot width requirement on the grounds that the county had given him a permit to install a trailer on her fifty-foot wide lot even though the ordinance mandated a width of at least seventy feet. The zoning board, approving the variance, determined that she had applied for the permit in good faith. The Skagit County ordinance, as does the instant statute, provided that a variance had to be "because of special circumstances applicable to subject property, including size, shape, topography, location or surroundings...." 715 P.2d at 167. The code also required that an application for a variance include a narration that "special conditions and circumstances exist ... peculiar to the land...." *Id.* The court then noted that the applicant had done there what **Ward** attempts to do in the case *sub judice:*

> [The appellant] relied primarily upon the fact that the County issued a building permit ... and that she acted in good faith....

Id. at 168. The court responded: "Reasons for a variance must be reasons pertaining to the property itself.... Evidence of hardship or difficulty that will support a variance must relate to the land itself and not to the owner-applicant." *Id.* (citation omitted). The court added that "the 75–foot width and aggregation requirements do not put a burden on [appellant's] property which does not apply to other properties in the vicinity...." *Id.* at 169. In the case *sub judice,* the ***714** Baltimore County fifteen foot height limitation for accessory buildings does not affect **Ward's** property alone; it applies to all of the properties in the neighborhood.

In *Walkingstick v. Board of Adjustment,* 706 P.2d 899 (Okla.1985), the zoning board, having failed to comply with notice requirements, granted a permit for an oil drilling well. Amoco had expended considerable sums before the board's omission was discovered. The relevant part of the ordinance involved was similar to the one in the instant case. After the court noted that the hardships alleged were not peculiar to the subject site, it stated the general rule that "a hardship created by the owner ... constitutes no valid basis for a variance.... [D]eprivation of an advantage does not constitute an unnecessary hardship." 706 P.2d at 904. It concluded:

> The need to expose tools to the ravages of the environment may be peculiar to Amoco. But, the language of section 44–107(2) [as does the language in the Baltimore County ordinance] clearly refers to conditions peculiar to the property, *not to activities peculiar to the owner of such property.*

Id. at 904–05 (emphasis added).

In a decision somewhat difficult to understand, which carried the variance limitations to the extreme and predated the 1992 case of ****436** *Lucas v. South Carolina Coastal Council,* —— U.S. ——, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992), but had facts similar to *Lucas,* the Supreme Court of Delaware in *Baker v. Connell,* 488 A.2d 1303 (Del.Supr.1985), upheld a trial court's reversal of the grant of a variance even though the ordinance limited the use of applicant's entire lot to open space only. The zoning board had found that the property was unique because the entire property was zoned open space and *nothing* could be constructed there. The board permitted a variance to allow two semi-detached dwellings. The trial court reversed on the grounds that the 0–1 zoning did not make the property unique. The trial court noted that a need for a variance arises only when the plight of the property is unique in that it cannot reasonably be put to a conforming use. The trial court found that there was no evidence that the ***715** property could not conform to open space land. The appellate court affirmed, stating:

> [F]inancial return ... alone, never justifies a variance. As to the unique character of the land, the mere fact that it sits entirely within the 0–1 zone does not make it unique. There is no evidence that this lot is the only one of its type in Rehoboth. Nor does it become unique because it adjoins the R–2 zone containing multi-family units.

488 A.2d at 1309. Whether this Delaware opinion remains viable in light of *Lucas* and *Dolan v. City of Tigard,* 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994), is doubtful.

The case of *Xanthos v. Board of Adjustment,* 685 P.2d 1032 (Utah 1984), involved a factual scenario similar to the case *sub judice.* The Xanthoses received notice that they were in violation of the city zoning code. The building of a duplex by the Xanthoses caused a pre-existing dwelling to lose frontage on a public street and to violate set-back and parking requirements. The Xanthoses requested variances in reference to the violations. The court initially noted that, "in order to justify a variance ... the applicant [must] show ... that there are special conditions with regard to the property...." 685 P.2d at 1035–36. The court continued:

> What must be shown ... is that the property itself contains some special circumstance that relates to the hardship complained of....

> ... The property is neither unusual topographically or by shape, nor is there anything extraordinary about the piece of property itself. Simply having an old building on land upon which a new building has been constructed does not constitute special circumstances.
>
> ....
>
> Hardship is not demonstrated by economic loss alone. It must be tied to the special circumstances, none of which have been proven here. Every person requesting a variance can indicate some economic loss. To allow a variance anytime any economic loss is alleged would make a mockery of the zoning program. Further, the Xanthos[es] brought ***716** their losses upon themselves. The application affirmatively alleged ... that no dwelling existed....[8]

Id. at 1036–37 (footnotes omitted).

[1] The Xanthoses also argued, in a fashion similar to the argument in the case *sub judice,* that the city should be estopped because the plot plan submitted to the city showed the dwelling and the fact that the city failed to realize it misled them to their detriment. The court noted, in rejecting the Xanthoses' argument: "[T]o hold that the city should have been put on notice ... in the face of an affirmative statement that no such dwelling existed, would put a premium on prevarication ... and ... shift the burden of proof in variance cases to the city. None of these results is acceptable." *Id.* at 1038. In the case at bar, appellants' application for the permit contained a clear statement that he would comply with the zoning requirements. His plan's elevation schematics contained neither elevation dimensions nor scale. While the zoning inspectors might have been able to extrapolate dimensions from other schematics, they certainly were not required ****437** to do so in light of appellants' affirmative statement of compliance.

See also Chambers v. Smithfield City, 714 P.2d 1133, 1135 (Utah 1986), where the court stated: "[T]here is no evidence of special conditions attached to the property itself which do not also attach to other property in the vicinity. The property is neither unusual topographically or by shape, nor is there anything extraordinary about the piece of property itself." (Footnote omitted.) In a case involving the conversion of a garage into a dwelling, the Supreme Court of Virginia in *Prince William County Bd. of Zoning Appeals v. Bond,* 225 Va. 177, 300 S.E.2d 781 (1983), reversed a trial court decision reversing a zoning board's denial of a variance. The court noted that the conversion was underway when the Bonds discovered a need and applied for a variance. It opined that, ***717** in order to grant a variance, the hardship allegedly created by the ordinance must "not [be] shared generally by other properties in the same zoning district and the same vicinity." 300 S.E.2d at 783. It then held: "The limitation imposed by the zoning ordinance is one shared by all property owners in the A–1 district." *Id.*

The court in *Richardson v. Town of Salisbury,* 123 N.H. 93, 455 A.2d 1059, 1061 (1983), noted:

> We have defined unnecessary hardship as follows:
>
> > "A hardship exists only if due to special conditions *unique* to a *particular parcel of land,* the ordinance unduly restricts the use.... The hardship must relate to the special character of the land rather than to the personal circumstances of the landowner." [Emphasis added.]

See also Margate Motel, Inc. v. Gilford, 130 N.H. 91, 534 A.2d 717 (1987); *Ryan v. City of Manchester Zoning Bd. of Adjustment,* 123 N.H. 170, 459 A.2d 244 (1983).

In *Sibley v. Inhabitants of the Town of Wells,* 462 A.2d 27, 30–31 (1983), the Supreme Judicial Court of Maine upheld the denial of a variance, holding:

> [T]he need for a variance [must be] due to the unique circumstances of the property and not to the general conditions in the neighborhood;
>
> ....
>
> ... [T]he hardship [must] not [be] the result of action taken by the appellant or a prior owner.
>
> ....
>
> ... However, the mere fact that the lot is substandard is not a unique circumstance; all the undeveloped lots in that neighborhood are of substandard size....
>
> ... However, when a landowner purchases land with actual or constructive knowledge of the zoning restrictions, he may not be granted a variance on the grounds of undue hardship.

See also Williams v. Salem Township, 92 Pa.Cmwlth. 634, 500 A.2d 933 (1985) *alloc. denied,* 516 Pa. 615, 531 A.2d 781 (1987); ***718** *Hersh v. Zoning Hearing Bd. of Marlborough Township,* 90 Pa.Cmwlth. 15, 493 A.2d 807 (1985); *Serban v. Zoning Hearing Bd. of the City of Bethlehem,* 84 Pa.Cmwlth. 558, 480 A.2d 362 (1984) (burden sustained); *Davis v. Zoning Bd. of Adjustment,* 78 Pa.Cmwlth. 645, 468 A.2d 1183 (1983) (burden sustained); *Malakoff v. Zoning Bd. of Adjustment,* 72 Pa.Cmwlth. 109, 456 A.2d 1110 (1983); *Immordino v. Zoning Hearing Bd.,* 65 Pa.Cmwlth. 79, 441 A.2d 818, 821 (1982) ("[P]roperty owner must sustain the heavy burden of proving that the zoning ordinance imposes an unnecessary hardship *which is unique to his particular property*....") (Emphasis added.)

> A prerequisite to the granting of a hardship zoning variance is the presence of an exceptional and unique hardship to the individual landowner, *unique to that parcel* and not shared by other property owners in the area.... Indialantic's zoning restrictions are common difficulties shared by all other oceanfront lot owners in the area, and are therefore not the unique hardship required to support a variance.

Town of Indialantic v. Nance, 400 So.2d 37, 40 (Fla.App. 5th Dist.1981), *aff'd,* 419 So.2d 1041 (1982) (citation omitted). *See also Fort Lauderdale Bd. of Adjustment v. Nash,* 425 So.2d 578, 579 (Fla.App. 4th Dist.1983); *City of Naples v. Clam Court Marina Trust,* 413 So.2d 475, 477 (Fla.App. 2d Dist.1982); *Lakeshore* ****438** *Property Owners Ass'n v. City of New Orleans Zoning Bd. of Appeals and Adjustments,* 481 So.2d 162, 168 (La.App. 4th Cir.1985), *cert. denied,* 484 So.2d 674 (1986).

We mentioned earlier that there are very few Maryland cases upholding the grant of a variance (or the reversal of a denial). We likewise note that this is also the case in foreign jurisdictions. We mentioned two cases from Pennsylvania above where this occurred. We now discuss several others.

A minimum lot area variance was affirmed in *Russell v. District of Columbia Bd. of Zoning Adjustment,* 402 A.2d 1231 (D.C.App.1979), where, due to the size of the lot, no viable economical use of the property could be had without the ***719** variance. It was determined that the lot was the only lot in the area that had been subdivided into smaller lots prior to the adoption of the zoning ordinance. The Supreme Court of New Hampshire reversed the denial of a variance in *U–Haul Co. of New Hampshire & Vermont, Inc. v. City of Concord,* 122 N.H. 910, 451 A.2d 1315, 1317 (1982), saying: "The location and characteristics of the property involved create greater security requirements ... than ... other property in the area because the parcel ... is less central ... less populated and ... less serviced by law enforcement patrols. This hardship arises from the uniqueness of the building and the land itself." In *Atwood v. City of Portland,* 55 Or.App. 215, 637 P.2d 1302 (1981), *cert. denied,* 292 Or. 722, 644 P.2d 1131 (1982), application for a variance was granted and affirmed on appeal in part because the site was a steep and rocky slope, the former site of a landfill. *See also Higgins v. Township of Radnor,* 13 Pa.Cmwlth. 195, 318 A.2d 761, 763 (1974).

The treatise writers also are in accord with the rule that variances should only be granted when the uniqueness or peculiarity of a subject property is not shared by neighboring property and where the uniqueness of that property results in an extraordinary impact upon it by the operation of the statute, thus creating undue difficulty (or unnecessary hardship in respect to use variances).

> It is *fundamental* that the difficulties or hardships must be unique to justify a variance; they must be peculiar to the application of zoning restrictions *to particular property* and not general in character.... [I]t is not uniqueness of the plight of the owner, but uniqueness of the land causing the plight, which is the criterion. If the hardship is common to the whole neighborhood, it may be ground for an exception or special use permit [if the statute so provides].... [T]he hardship [in order to justify a variance, however,] ... must relate to the particular property of the applicant....

McQuillin, *supra* § 25.167 (emphasis added, footnotes omitted).

> ***720** [I]t is held that a variance may be granted only for hardship which relates specifically to the applicant's land. Thus, a landowner was not entitled to a variance to relieve his land from a restriction which applied equally to all lots of similar size.

Anderson, *supra* § 14.55 (1968).

> It follows that the unnecessary hardship ... must relate to the land, not to the applicant-owner. Hardship which is merely personal to the current owner of real property will not justify the granting of a variance....
>
> In each case [where the variance was denied], the hardship results from an error on the part of the landowner, not from an unduly severe impact of the regulations upon the land in question....
>
> ....
>
> Reviewing a wide variety of variance applications based upon reasons personal to the applicant, the courts have consistently held that such personal difficulties do not constitute unnecessary hardship.

Anderson, *supra* § 18.30 (2d ed.) (footnotes omitted).

> The most important part of [the] law of variances depends upon a distinction between two kinds of hardship. In one type of case, hardship in developing a given lot ... arises from circumstances peculiar to that lot ...; and in that case the appropriate remedy is ... a variance.... In the other types of cases, the hardship ... may arise because of conditions which are general in the neighborhood; ... it is often ****439** held that the appropriate remedy is a change in the zoning.... [T]he courts have usually (but not always) held that variances are inappropriate in that situation.

Williams, *supra* § 142.

> The great strengthening of the criteria for granting variances, ... has thus been particularly evident in the number of cases emphasizing the requirement that hardship must arise from circumstances unique to the particular lot in question.... Moreover, the courts have again emphasized that a variance granted to take care of some hardship ***721** personal to the applicant is not a unique hardship resulting from circumstances peculiar to the piece of land.

Id. § 142.06. *See also* Rathkopf, *supra* § 38.04; Yokley, *supra* § 21–6. ("The burden of proof is on the applicant to establish that his land is uniquely affected resulting in unnecessary hardship.").

Yokley quotes from *Taxpayers Association v. Board of Zoning Appeals,* 301 N.Y. 215, 93 N.E.2d 645, 647 (1950):

> [T]he record does not show that the property suffers a unique or singular disadvantage, not common to other property in the district, through the operation of the zoning ordinance. Here, the hardship, if any, is general and characteristic of the entire area, and the remedy lies in a revision of the zoning ordinance through legislative action, not by the granting of a variance to a single property owner.

Yokley, *supra* § 21–6.

[2] We conclude that the law in Maryland and in Baltimore County under its charter and ordinance remains as it has always been—a property's peculiar characteristic or unusual circumstances relating only and uniquely to that property must exist in conjunction with the ordinance's more severe impact on the specific property because of the property's uniqueness before any consideration will be given to whether practical difficulty or unnecessary hardship exists. Before applying the facts of the instant case to the law and, thus, resolving the case *sub judice,* we must touch upon two other aspects of the process, *i.e.,* the self-inflicted injury and the zoning authorities' acquiescence in issuing a building permit based on plans that left unclear the elevation of the structure and the subsequent inspection.

Self–Inflicted Hardship

[3] We have before referred to *Marino v. Mayor and City Council of Baltimore,* 215 Md. 206, 137 A.2d 198. There, the Court said, "it was incumbent [on the applicant] to [show] ... that the hardship was not the result of the applicants' own actions." *Id.* at 218, 137 A.2d 198. The Court of Appeals ***722** noted in *AD + Soil, Inc. v. County Comm'rs,* 307 Md. at 340, 513 A.2d 893:

> The essence of AD + Soil's argument ... is that the setback requirements ... would cause ... unwarranted hardship because it had obtained its first state permit and constructed its transfer station before it learned of these local requirements.... The Board declined to grant the variances, concluding that Ad + Soil's "hardship" was self-inflicted ... and therefore not the kind of hardship cognizable under the Zoning Ordinance.

The Court affirmed the Board. Foreign jurisdictions are generally in accord. *See Pollard v. Zoning Bd. of Appeals,* 186 Conn. 32, 438 A.2d 1186, 1190 (1982) (" '[S]elf-inflicted or self-created hardship ... is never considered proper grounds for a variance.' ... '[W]here the applicant ... creates a nonconformity, the board lacks power to grant a variance.' ") (citations omitted); *Volkman v. City of Kirkwood,* 624 S.W.2d 58 (Mo.App.1981); *Matter of Schrader,* 660 P.2d 135 (Okl.1983); *Ex Parte La Quinta Motor Inns, Inc. v. Greenville County Bd. of Zoning Appeals,* 279 S.C. 598, 310 S.E.2d 438 (App.1983); *McClurkan v. Board of Zoning Appeals,* 565 S.W.2d 495 (Tenn.1977); *Steele v. Fluvanna County Bd. of Zoning Appeals,* 246 Va. 502, 436 S.E.2d 453, 456 (1993) ("[T]he hardship, if any, was self-inflicted. The placement of the improvements ... was within the control of the Garretts and their contractor, Raintree."). *See also Shafer, supra; VanLandschoot, supra; Walkingstick, supra; Xanthos, supra; St. Clair, supra.* Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively ****440** not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted.

The Granting of the Permit

In *Francis v. MacGill,* 196 Md. 77, 75 A.2d 91 (1950), a property owner sought equitable injunctive relief. The facts ***723** were that while the enactment of a zoning ordinance was pending, the property owner obtained a building permit to construct that which would not be permitted after the enactment of the ordinance. After the ordinance was enacted, the owner constructed, pursuant to the permit, a building that had become prohibited by reason of the passage of the ordinance. The Court noted:

> "Adoption of zoning ordinance *ipso facto* revokes permit for construction ... where no construction has begun."
>
> ... They completely ignored the Zoning Regulations, and they were engaged in an unlawful act.

196 Md. at 85, 75 A.2d 91 (citation omitted). The Court affirmed the revocation of the building permit.

The Court noted, pursuant to a timely appeal, in *Mayor and City Council of Baltimore v. Shapiro,* 187 Md. 623, 634, 51 A.2d 273 (1947), *overruled on other grounds in Nutter v. Non–Profit Housing Co.,* 230 Md. 6, 185 A.2d 360 (1962), where the ordinance was changed prior to commencement of construction under a permit, and where the change made that use, which was previously permitted, prohibited, that the "mere issuance of a permit ... does not create a vested right, or estop[9] the municipal authorities from revoking it." In a case for the issuance of a mandatory injunction that involved an attempt to obtain a permit for what was alleged would be a nonconforming use the court opined in *Board of County Comm'rs v. Snyder,* 186 Md. 342, 347, 46 A.2d 689 (1946): "No permit was issued, and if it had been, it would have conferred no vested right, nor would it have created an estoppel."

In the mandamus case of *County Comm'rs v. Ward,* 186 Md. 330, 340, 46 A.2d 684 (1946), the Court held:

> The Board ..., as an administrative body, was bound to follow the regulations it adopted, in the exercise of ... ***724** delegated legislative power. The fact that it might have rezoned ... does not alter its obligation to adhere to existing regulations....

In the case of *Lipsitz v. Parr,* 164 Md. 222, 164 A. 743 (1933), a case seeking injunctive relief by way of a restraining order, a city officer mistakenly issued a building permit for an ice factory when the statute prohibited ice factories. The Court there held:

> A municipality may be estopped by the act of its officers if done within the scope and in the course of their authority or employment, but estoppel does not arise should the act be in violation of law.... [T]he ordinance forbade the officials ... to grant the permit which the plaintiff asked and obtained....
>
> ... [I]t was therefore unlawful for the officers ... to grant the permit, and it would be unlawful for the licensee to do what the purporting permit apparently sanctioned. A permit thus issued ... does not ... prevent the permit from being unlawful nor from being denounced by the municipality because of its illegality.... *Every one dealing* with the officers and agents of a municipality *is charged with knowledge of the nature of their duties and the extent of their powers, and therefore such a person cannot be considered to have been deceived or misled* by their acts when done without legal authority.
>
> So, even where a municipality has the power, but has done nothing, to ratify or sanction the unauthorized act ... it is not estopped by the unauthorized or wrongful act of its officer ... in issuing a permit that is forbidden by the explicit terms of an ordinance.... *Valentine v. Rds. Directors,* ****441** 146 Md. 199, 206 [126 A. 147] [(1924)].... [Citations omitted, emphasis added.]

164 Md. at 227–28, 164 A. 743.

The Court cited *Lipsitz* in *Inlet Associates v. Assateague House Condominium Assoc.,* 313 Md. 413, 545 A.2d 1296 (1988), a case seeking specific performance and injunctive relief, and also cited *City of Hagerstown v. Long Meadow* ***725** *Shopping Center,* 264 Md. 481, 287 A.2d 242 (1972), a case of a timely appeal of the denial of a building permit. In *Inlet Associates,* the Court opined that "[c]onsequently, '[e]veryone dealing with officers and agents of a municipality is charged with knowledge of the nature of their duties and the extent of their powers, and therefore such a person cannot be considered to have been deceived or misled by their acts when done without legal authority.' " 313 Md. at 437, 545 A.2d 1296. The Court added: "[T]he doctrine of equitable estoppel 'cannot be ... invoked to defeat the ... enforcement of ... ordinances, because of an error or mistake committed by one of its officers ... which has been relied on by the third party to his detriment.' " *Id.*

[4] Accordingly, it appears clear that the mistake of a county official cannot be the "practical difficulty" unique to the

subject property required in order to authorize the grant of the variance sought and obtained by **Ward**.

The authorities elsewhere are in accord.

> The master also erred in finding that unnecessary hardship resulted from the plaintiffs' reliance upon representations by the selectmen. This finding disregards the principal that hardship relates to the special character of the *land,* not to the circumstances of the *owner.*

Richardson, 455 A.2d at 1062.

> [R]elator argues the Board should be estopped from denying the height variance because a city building inspector visited the premises several times and observed the construction taking place but made no complaint....
>
> In any case there is no authority on the part of a building inspector to grant a variance....

Katz v. Board of Zoning Adjustments, 232 So.2d 546, 548 (La.App. 4th Cir.1970). *See also Klanke v. Zoning Bd. of Adjustment,* 83 Pa.Cmwlth. 441, 477 A.2d 907, 909 (1984), and *Walkingstick, supra; Xanthos, supra; and St. Clair, supra.*

***726 Resolution**

We resolve here only the issue of the granting of the variance sought and applied for by **Ward**.

[5] There was no evidence submitted to the Board that the subject site was in any way peculiar, unusual, or unique when compared to other properties in the neighborhood such that the ordinance's height restriction's impact upon the subject property would be different than the restriction's impact upon neighboring properties. In essence, the impact would be the same. The first step of the variance process was thus not met. Had there been evidence before the Board indicating that the subject property was peculiar or unusual and, thus, disproportionately affected by the height restriction, then we might have been able to conclude that the Board was correct. There was, however, no such evidence presented. Therefore, the Board's granting of the variance was arbitrary and illegal.

It is not the purpose of variance procedures to effect a legalization of a property owner's intentional or unintentional violations of zoning requirements. When administrative entities such as zoning authorities take it upon themselves to ignore the provisions of the statutes enacted by the legislative branch of government, they substitute their policies for those of the policymakers. That is improper. We shall reverse.

JUDGMENT REVERSED; COSTS TO BE PAID BY APPELLEE.

All Citations

102 Md.App. 691, 651 A.2d 424

Footnotes

1 Some ordinances use the conjunctive, “and,” creating a requirement that both practical difficulty “and” unreasonable hardship exist. Because hardship is the most severe standard, this means that it is the standard used regardless of whether an area or use variance is sought. Some ordinances use the disjunctive, “or,” to separate the two standards. These jurisdictions construe the ordinance to require the unreasonable hardship standard to be used when “use” variances are sought, because use variances are believed to be more disruptive of zoning goals and purposes, but require the lesser “practical difficulty” standard when “area” variances are sought.

2 Appellee, several times in his brief, states that the plans “clearly” show the height of the building. We are tempted to respond with a short rejoinder. We resist. The heights shown on the plans are not clearly shown—they are not shown at all—but must be computed, as we have done, without the benefit of a scale by a difficult reference to dimensions that are given for horizontal distances.

3 As we have said, the application, building permit and the county data indicated that its height was to be fourteen feet.

4 It is not clear that section 307, “Variances,” would even permit any use variances except perhaps as to signs or parking, as the section is framed primarily in terms of “area” variance requests.

5 Matters relating to area issues are intended to be, and usually are, addressed as special exceptions. Matters relating to “use” issues are intended to be, and usually are, addressed as conditional uses. The terms, however, are, with some frequency, intermixed. Because both concepts envision that they are permitted so long as certain conditions are met, the indiscriminate use of the two terms has created little difficulty. In a pure sense, however, “conditional uses” refer to uses while exceptions normally apply to area, *i.e.,* yard, height, and density matters. In either event, conditional uses and special exceptions are permitted uses, so long as the conditions set out in the ordinance are met.

6 Exceptional is used here in its generic sense.

7 Another typical Baltimore City case in that regard is *Easter v. Mayor and City Council of Baltimore,* 195 Md. 395, 400, 73 A.2d 491 (1950), where the Court noted “facts to justify an exception ... [show] that the hardship affects the particular premises and is not common to other property in the neighborhood.” This is a variance standard.

8 The application and plans in the case *sub judice* were, at best, vague and unclear as to the height of the structure.

9 The applicability of the “doctrine of zoning estoppel” has still not been accepted (or rejected) by the Court of Appeals in spite of the opportunity presenting itself to that Court as recently as our case of *Offen v. County Council,* 96 Md.App. 526, 625 A.2d 424 (1993), *rev'd in part,* 334 Md. 499, 639 A.2d 1070 (1994).

Cromwell v. Ward, 102 Md.App. 691 (1995)
651 A.2d 424

End of Document © 2021 Thomson Reuters. No claim to original U.S. Government Works.

137 Md.App. 90
Court of Special Appeals of Maryland.

James RIFFIN,
v.
PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY, Maryland, et al.

No. 3002, Sept. Term, 1999.
|
March 2, 2001.

Synopsis
Landowner appealed decision of the county board of appeals denying request for a special exception to construct a commercial recreation facility to accommodate bungee jumping. The Circuit Court, Baltimore County, Thomas J. Bollinger, Sr., J., affirmed. Landowner appealed. The Court of Special Appeals, Moylan, J., held that the proposed use was a "bungee jumping operation" prohibited by state law and county ordinance.

Affirmed.

West Headnotes (7)

[1] **Administrative Law and Procedure** Substantial evidence

The standard of review of an administrative agency's findings of fact requires the Court of Special Appeals to determine whether substantial evidence on the record as a whole supports its conclusions.

[2] **Administrative Law and Procedure** Substitution of reviewing court's discretion or judgment

The Court of Special Appeals cannot substitute its judgment for that of an administrative agency on findings of fact, but must exercise a restrained and disciplined judicial judgment so as not to interfere with the agency's factual conclusions.

[3] **Zoning and Planning** Entertainment and recreation; theaters and clubs

Landowner's proposed commercial recreation facility to accommodate bungee jumping was a "bungee jumping operation" prohibited by state law and county ordinance, rather than a "commercial recreational facility," and, thus, the landowner was not entitled to a special exception; the crane operator acknowledged payment by the landowner, and the county ordinance defined "commercial recreational facility" to exclude an amusement park or similar use. Code, Business Regulation, § 3–503.

[4] **Zoning and Planning** Grounds for grant or denial in general

The county board of appeals cannot grant a special exception for a use that is neither permitted by law nor by county zoning regulations.

[5] **Zoning and Planning** Entertainment and recreation; theaters and clubs

Evidence supported conclusions by the county board of appeals that a one-story office building was not unique and that the landowner was not entitled to special exception and variances to construct a commercial recreation facility.

[6] **Zoning and Planning** Nature and necessity in general

A "variance," if granted, permits a use that is normally prohibited and presumed to be in conflict with the ordinance.

[7] **Zoning and Planning** Presumptions and burden of proof

An applicant for a variance bears the burden of overcoming the presumption that the proposed use is unsuitable.

Attorneys and Law Firms

****923** ***91** James Riffin, Timonium, for appellant.

Peter Max Zimmerman and Carole S. Demilio, Towson, for appellees.

***92** Submitted before MOYLAN,* SONNER and PAUL E. ALPERT (retired, specially assigned), JJ.

Opinion

MOYLAN, Judge.

The appellant, James Riffin, challenges an Order issued by Judge Thomas J. Bollinger in the Circuit Court for Baltimore County affirming the decision of the Baltimore County Board of Appeals, which denied his petitions for a special hearing, special exception, and five separate zoning variances. On appeal, he contends:

1. that the Board erred in finding that the appellant's proposed use of the property constituted a "bungee jumping operation"; and

2. that the Board acted arbitrarily and capriciously in denying his petitions.[1]

At some point in the spring of 1998, the appellant petitioned the Baltimore County Zoning Commissioner for a Special Hearing, for a Special Exception, and for nine area parking and sign variances in an effort to operate a "Commercial Recreational Facility" at 1941 Greenspring Avenue Drive in Timonium. At that time, there existed on the property an old one-story building which was rented for office space. The property was zoned for M.L. (Manufacturing–Light). It was the appellant's intention in seeking the exception and the variances to create a commercial/recreation facility that would accommodate bungee jumping.

On June 1, 1998, the Zoning Commissioner granted four of the requested nine variances for existing non-conforming front and side-yard setbacks but denied all of the other requests. The appellant appealed that decision to the Baltimore County Board of Appeals ("the Board") and a three day public hearing ***93** began on November 25, 1998.[2] In the course of that hearing, the Board heard extensive testimony from the appellant regarding his plans for the property. The Board also heard testimony from adjacent property owners, from the Office of the People's Counsel, and from a representative from the Greater Timonium Community Council, all of whom testified in opposition to the appellant's petitions.

On December 31, 1998, the Board issued an extensive written Opinion denying the appellant's request for both the Special Hearing and Special Exception for bungee jumping and for the requested variances that had been denied by the Zoning Commissioner. The appellant appealed to the Circuit Court for Baltimore County. On October 4, 1999 a hearing was held before Judge Bollinger. On October 7, Judge Bollinger affirmed the Board's decision, finding that it was supported by substantial evidence and was not premised on any error of law. The appellant noted this timely appeal.

[1] **[2]** With regard to the standard of review to be applied in a case such as this, we explained in *Stover v. Prince George's County,* 132 Md.App. 373, 380–81, 752 A.2d 686 (2000), that:

> [w]hen reviewing a decision of the administrative agency, this Court's role is "precisely the same as that of the circuit court." "Judicial review of administrative agency action is narrow. The court's task on review is *not* to 'substitute its judgment for the expertise of those persons who constitute the administrative agency."
>
> ****924** Rather, "*[t]o the extent the issues on appeal turn on the correctness of an agency's findings of fact, such findings must be reviewed on the substantial evidence test.*" The reviewing court's task is to determine "whether there was substantial evidence before the administrative agency on the record as a whole to support its conclusions." *The court cannot substitute its judgment for that of the agency, but* ***94** *instead must exercise a "restrained and disciplined judicial judgment so as not to interfere with the agency's factual conclusions.*"

(Citations omitted; emphasis supplied).

[3] The appellant first contends that the trial court erred in denying his petition for a Special Hearing and a Special Exception in order to accommodate bungee jumping. The appellant specifically contends that the trial court erred in finding that his proposed use of the property would amount to a "bungee jumping operation," which both parties agree is prohibited in Maryland,[3] rather than a "recreational use," which is permissible. We are not persuaded.

In its Opinion denying the appellant's request for a Special Hearing and Special Exception, the Board set out, in great detail, its findings with respect to the appellant's proposed use:

> The Board has carefully considered the testimony produced and the numerous exhibits of the evidence admitted and items marked for identification and weight assessment. This Board's initial review involved bungee jumping and how it is addressed in the Maryland Code. A review of the law and supporting documents afforded the Board members some insight into the thinking of the legislature on this subject.... *The Board concluded that the bungee jumping operations as proposed by the appellant/petitioner was in actuality a bungee jumping operation.* Regardless of ***95** whether using the word "operation" or the word "activity," it is semantical and one resembles the other. The inference regarding fees came out in the testimony by a crane operator who acknowledged that he was paid by Mr. Riffin for operating the crane, and that he expected to continue on as a crane operator if Mr. Riffin were allowed to have a bungee jumping operation. As well, Mr. Riffin indicated that individuals would be able to rent the crane and /or any needed equipment in order to perform bungee jumping activities. *These representations produce the appearance of being a bungee jumping operation, which is not allowed by Maryland law, this would not be a permitted use under the Baltimore County Zoning Regulations ["BCZR"].*

The Board then explored whether the appellant's proposed use could in any way be viewed as a Commercial Recreational Facility, a permissible use for the property under the zoning regulations. In rejecting the appellant's contention, the Board stated:

> The Board then looked at the definitions of Commercial Recreational Facilities under BCZR 101.... *The definition notes that a commercial recreational facility shall not include an amusement park or similar use.* Throughout the numerous discussions as to what bungee jumping would be considered, it came up ****925** that it was frequently done in conjunction with amusement-like operations and was described by expert witnesses as a "thrill seeking activity." It was noted that State legislation regarding bungee jumping was put in that Section of the Annotated Code as amusement activities.

In rejecting the appellant's final two arguments with respect to his request for a Special Exception, the Board found 1) that bungee jumping did not qualify as a permitted use under Section 253 of the BCZR, which permits practice or physical training conditioning facilities and fields for amateur or professional sports organizations; and 2) that bungee jumping did not qualify as a use permitted without special exception under Section 270 of the BCZR 2–115 Schedule of Special Exceptions. That Schedule provides that a community building, ***96** swimming pool, or other structural or land use devoted to civic, social or recreational and educational activities is a use permitted without special exception.

[4] The appellant is correct in that a requested special exception should be granted unless there is substantial evidence that it would have an adverse effect above and beyond those inherently associated with such a special exception use irrespective of its location within the zone. What the appellant fails to acknowledge, however, is that the Board made a factual finding that the appellant's proposed use of the property amounted to a "bungee jumping operation," not a "recreational facility." That finding alone required the Board to deny the petition for the special exception. The Board simply cannot grant a special exception for a use that is neither permitted by law nor by Baltimore County Zoning Regulations. There is substantial evidence in the record to support that finding by the Board. We see no error.

[5] Additionally, we note that even assuming *arguendo* that the Board erred in finding that the appellant's proposed use was an illegal "bungee jumping operation," we would still hold that the Board did not err in denying the appellant's petition for a Special Exception. In its Opinion the Board carefully examined the criteria for granting a request for a special exception under Section 502.1 of the BCZR.[4] After ***97** doing so, the Board found that the appellant failed to satisfy those criteria. We hold that there was substantial evidence on the record supporting that decision.

[6] **[7]** With regard to the appellant's variance requests, we note that a variance, if granted, permits a use that is normally prohibited and presumed to be in conflict with the ordinance. *North v. St. Mary's County,* 99 Md.App. 502, 510, 638 A.2d 1175 (1994). "An applicant for a variance bears the burden of overcoming the presumption that the proposed use is unsuitable. That is done, if at all, by satisfying fully the dictates of the statute authorizing the variance." *North,* 99 Md.App. at 510, 638 A.2d 1175.

In denying the appellant's requests for variances, the Board explained:

Section 307.1 of the *Baltimore County Zoning Regulations* states, in pertinent part, as follows:

> ****926** "... [T]he County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area 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* ... Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area .. regulations, and only in such manner as to grant relief without injury to public health, safety, and general welfare."

As well, this Board enjoys the guidance provided by the Court of Special Appeals in *Cromwell v. Ward,* 102 Md.App. 691 [651 A.2d 424] (1995). In requiring a pre-requisite finding of "uniqueness," the Court defined the term and stated:

> ***98** In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. *"Uniqueness" of a property for zoning purposes requires that the subject property has an inherent characteristic not shared by other properties in the area, i.e.,* it shape, topography, subsurface condition, environmental factors, historical significance, access, or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions....
>
> *It is this Board's finding that the proposed site is in no way unique, unusual or different from the other properties that are existent in this M.L.-I.M. zone.* The Maryland Department of Assessments and Taxation, real Property System map, shows just how similar in size and shape all of the properties are along Greenspring Drive. Testimony by Mr. Patton indicated that this property was consistent with others in the community, and he noted that the gentle slope off of Greenspring Drive was consistent with other properties, further noting that some chose to fill in their properties before building and have entrances at the rear of their locations.... At no time in the hearing did the appellant entertain any historical significance to the site nor were environmental or subsurface conditions documented. Mr. Riffin did testify as to the damage to the interior of his building but did not document the same with photographic exhibits, receipts for repairs or documentation by some authority regarding the nature or extent of this damage. There was no testimony or evidence regarding abutting properties restricting his activities or imposing any unique characteristics upon his site. *In the absence of an initial finding of uniqueness, the inquiry under Section 307.1 stops and, in this case, the three variances must be denied.*

(Emphasis supplied). We see no error.

JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANT.

All Citations

137 Md.App. 90, 767 A.2d 922

Footnotes

* Moylan, J., participated in the hearing and conference of this case while an active member of this Court; he participated in the adoption of this opinion as a retired, specially assigned member of this Court.

1 We note that in his brief to this Court, the appellant raised five issues with approximately twenty subcontentions. We have condensed those subcontentions into two.

2 The public hearing was held on November 25, December 15, and December 17, 1998.

3 Md.Code, Business Regulation, § 3–503 specifically provides:
§ 3–503. **Prohibition on bungee jumping operation.**
(a) *Definitions.*—(1) in this section the following words have the meaning indicated.
(2) "Bungee jump" means jumping or falling by an individual from a height while attached to a rope or cord that is elastic, rubber, or latex.
(3) "Bungee jumping operation" means an operation that allows an individual to bungee jump for a fee or dues.
(b) *Prohibition.*—A person may not conduct a bungee jumping operation.
(c) *Penalties.*—A person who violates subsection (b) of this section is guilty of a misdemeanor and, on conviction, is subject to a fine not exceeding $2,500 or imprisonment not exceeding 6 months or both.

4 Section 502.1 specifically provides:

Before any Special Exception may be granted, it must appear that the uses for which the Special exception is requested will not:

a. Be detrimental to the health, safety or general welfare of the locality involved;
b. Tend to create congestion in roads, streets or alley therein;
c. Create a potential hazard from fire, panic, or other dangers;
d. Tend to overcrowd land and cause undue concentration of population;
e. Interfere with adequate provisions for schools, parks, water, sewerage, transformations or other public requirements, convenience, or improvements;
f. Interfere with adequate light and air;
g. Be consistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; nor
h. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations.

End of Document © 2021 Thomson Reuters. No claim to original U.S. Government Works.

KeyCite Yellow Flag - Negative Treatment
Distinguished by Montgomery County v. Merlands Club, Inc., Md., April 17, 1953

195 Md. 395
Court of Appeals of Maryland.

EASTER

v.

MAYOR & CITY COUNCIL OF BALTIMORE et al.

No. 176.
|
May 12, 1950.

Synopsis

Action by Andrew J. **Easter** against **Mayor** and City Council of Baltimore and others challenging validity of city's approval of construction of addition on front of store and dwelling. The Baltimore City Court, Emory H. Niles, J., rendered judgment for defendants and plaintiff appealed. The Court of Appeals, Henderson, J., held that granting of variance of setback requirements and occupancy rule was not warranted.

Reversed.

West Headnotes (5)

[1] **Zoning and Planning** Grounds for grant or denial in general

Board of Zoning Appeals of City of Baltimore in granting special exceptions must consider the factors set out as standard in zoning ordinance, and its action must be reasonable in light of these and all other pertinent facts.

1 Cases that cite this headnote

[2] **Zoning and Planning** Nature and extent of power

The power of Board of Zoning Appeals on City of Baltimore under zoning ordinance to grant exceptions must be strictly construed.

1 Cases that cite this headnote

[3] **Zoning and Planning** Necessity of showing

Zoning and Planning Presumptions and burden of proof

Burden of showing facts to justify an exception of variance under zoning ordinance rests upon applicants, and it must be shown that hardship affects particular premises and is not common to other property in neighborhood.

8 Cases that cite this headnote

[4] **Zoning and Planning** Profit or disadvantage; financial considerations

Mere fact that variance would make property more profitable is not a sufficient ground to justify granting of variance from setback requirements of Baltimore Zoning Ordinance.

8 Cases that cite this headnote

[5] **Zoning and Planning** Building or setback lines

That other buildings extended to front line of lot and lot was irregular did not authorize Board of Municipal and Zoning Appeals of City of Baltimore to grant a permit for construction of addition on front of store and dwelling in variance of setback rules and occupancy requirement on ground of hardship.

3 Cases that cite this headnote

Attorneys and Law Firms

***397** ****491** John F. Heath, Baltimore, for appellant.

***398** Benjamin Kann and Malcolm J. Coan, Baltimore, for appellees J. P. **Easter** and wife.

Thomas N. Biddison, City Sol., Edwin, Harlan, Deputy City Sol., and Hamilton O'Dunne, Asst.City Sol., Baltimore, for appellee **Mayor** and City Council of Baltimore.

Before MARBURY, C. J., and DELAPLAINE, COLLINS, GRASON, HENDERSON and MARKELL, JJ.

Opinion

HENDERSON, Judge.

This appeal is from a judgment of the Baltimore City Court affirming the action of the Board of Municipal and Zoning Appeals in granting a permit for the construction of a one-story and basement addition on the front of a store and dwelling at 6418 Belair Road, owned by John P. **Easter**. The only protestant, Andrew J. **Easter**, is a brother of the permittee, residing at 6420 Belair Road, where he conducts a tavern.

As stated by the trial Court, 'The property is in a First Commercial Use, C. Area District, and the permit would allow the store front to be brought out to the building line, in contravention of paragraph 24 of the Zoning Ordinance, which requires a 10-foot minimum depth of front yard in the area in question, and of the percentage of occupancy requirements under paragraph 21, bringing the percentage of occupancy to 85% as opposed to 60%, as provided in the Ordinance. The Board of Municipal and Zoning Appeals granted the permit under the provision of Paragraph 33(c) on the ground that '* * * due to its peculiar location and surroundings it is a case of practical difficulty and unnecessary hardship, since the Tavern already obstructs the view of the store where the addition is now proposed''. The court thought there was 'evidence sufficient to support the legal definition of a hardship and * * * in fact, it would be a hardship to allow one brother ****492** to have a tavern all the way out to the street, and to deny the other brother the right to build his store out to the same line as the tavern.'

The Board found that the store was 'on the west side of Belair Road, 105 feet south of **Easter** Terrace. * * * ***399** Adjacent to the premises under appeal is a building containing a tavern which is built out to the front line of the lot. To the north between **Easter** Avenue and Kenwood Avenue there are several buildings constructed to the front lines of the lot and the proposed addition would not affect access of light and air to any neighboring properties, nor would it even cut off the view up and down the street. The lot in question is of very shallow depth and irregular in shape * * *.' The store and tavern were built as semidetached buildings. In 1935 Andrew J. **Easter** obtained a permit to build a sort of covered entrance-way out to the building line. John P. **Easter** did not object, and there were no protests. In his present application John P. **Easter** states that since his brother 'has built out in front of us it has hid our store making it difficult to rent.' There is a small triangular vacant lot to the south of 6418, and a church property adjoining to the south, across an alley laid out but apparently not opened. The church is set back the required distance. Andrew J. **Easter** has applied for a permit, and obtained the approval of the Board, to develop the land to the north, comprising about six acres, as a shopping center with off-street parking facilities and the required set-back. If this project is carried out, he states that he proposes to remove the entrance in front of his tavern.

[1] **[2]** We may assume here, as we have assumed in previous cases, that the delegation to the Board of Zoning Appeals of the power to make special exceptions or variances is valid, and that the standards set up in Section 32(j) are adequate. Colati v. Jirout, 186 Md. 652, 656, 47 A.2d 613; Heath v. **Mayor** and City Council of Baltimore, 187 Md. 296, 49 A.2d 799; Heath v. **Mayor** and City Council of Baltimore, Md., 58 A.2d 896, 898. The Board must consider the factors set out in that section and 'its action must be reasonable in the light of these and all other pertinent facts.' Heath v. **Mayor** and City Council of Baltimore, supra, 187 Md. 305, 49 A.2d 804. The power to grant exceptions ***400** must be strictly construed. Colati v. Jirout, supra, 186 Md. page 659, 47 A.2d 613.

[3] **[4]** The burden of showing facts to justify an exception or variance rests upon the applicant, and it must be shown that the hardship affects the particular premises and is not common to other property in the neighborhood. Rathkopf, Zoning, 2d Ed., p. 215; Levy v. Board of Standards and Appeals, 267 N.Y. 347, 196 N.E. 284. The mere fact that the variance would make the property more profitable is not a sufficient ground to justify a relaxation of setback requirements. Garden View Homes v. Board of Adjustment, 137 N.J.L. 44, 57 A.2d 677.

In the instant case there is no suggestion that the Board failed to 'act as a fact-finding body' or to 'give consideration to the rules, regulations, restrictions, guides and standards set forth' in the Ordinance (paragraph 33(c)). The question is whether the undisputed facts support the Board's action. The fact that the lot is irregular has no bearing on the question, nor is it material that three buildings, some distance to the north, extend to the building line. These may have been built before the passage of the Ordinance, or they may have been built under permit or without permit. As was said in Potts v. Board of Adjustment, 133 N.J.L. 230, 43 A.2d 850, 854: 'Prior exceptions granted by the adjustment board are not in themselves controlling. Ill-advised or illegal variances do not

furnish grounds for a repetition of the wrong. If that were not so, one variation would sustain if it did not compel others, and thus the general regulation eventually would be nullified. The annulment of zoning is a legislative function that is beyond the domain of the zoning board.' See also the cases collected in a note 168 A.L.R. 13, 41-44. The same principle was announced and applied in **493 Heath v. Mayor and City Council of Baltimore, supra, Md., 58 A.2d 896, 898, Mayor and City Council of Baltimore v. Byrd, Md., 62 A.2d 588, 591, and Cassel v. Mayor and City Council of Baltimore, Md., 73 A.2d 486.

*401 The principal fact relied upon to justify an exception to the area and set-back rules, adopted in the general interest under the police power, is the existence of an exception on the adjoining lot. Undoubtedly this is detrimental to the applicant, although his case is somewhat weakened by his tacit acceptance of the situation over a period of years. But we think the detriment to the applicant must be weighed against the benefit to the community in maintaining the general plan. 'It is by these gradual encroachments, individually or relative insignificance, that the integrity of the general scheme is undermined and ultimately shattered. One departure serves as justification for another * * *.' Dubin v. Wich, 120 N.J.L. 469, 200 A. 751, 754. In the case of non-conforming uses, the ordinance tolerates their continuance, but looks towards their ultimate elimination. Colati v. Jirout, supra. The same principle applies to special exceptions. Heath v. Mayor and City Council of Baltimore, supra, Md., 58 A.2d 896. Use variances are doubtless more serious than dimensional changes, but that is only a matter of degree.

In People ex rel. Fordham Manor Reformed Church v. Walsh, 244 N.Y. 280, 286, 155 N.E. 575, 577, it was contended that the existence of a garage immediately adjoining the proposed garage was sufficient justification for the grant of an exception on the ground of unnecessary hardship. But the Court, speaking through Chief Judge Cardozo, said: 'We think the reasons assigned are insufficient to supply a basis for a departure from the map. They amount to nothing more than this, that a garage may be built because there is another one next door.' See also Ventresca v. Exley, 358 Pa. 98, 56 A.2d 210, 212. No estoppel can be raised against the Board by reason of its approval of similar extensions in other cases. Appeal of Valicenti, 298 Pa. 276, 148 A. 308; Note 119 A.L.R. 1509, 1517.

[5] Under the circumstances we think the action of the Board cannot be sustained.

Judgment reversed, with costs.

All Citations

195 Md. 395, 73 A.2d 491

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

216 Md. 271
Court of Appeals of Maryland.

PARK SHOPPING CENTER, Inc., and St. Mary's County Planning and Zoning Comms.
v.
LEXINGTON PARK THEATRE CO., Inc., et al. and Zoning Board of Appeals for St. Mary's Co.

No. 150.
|
April 1, 1958.

Synopsis
Proceeding on application to municipal zoning and planning commission for use and occupancy permits for certain premises. The commission disapproved the application, and applicant appealed to zoning board of appeals for the county which reversed the decision of the commission, and the commission appealed. The Circuit Court, St. Mary's County, John B. Gray, Jr., J., affirmed action of board, and commission appealed. The Court of Appeals, Brune, C. J., held that there was no substantial evidence to support a finding that use and conformity with zoning restrictions would prevent applicants from making a reasonable use of their property and in view of absence of evidence of any hardship or injustice resulting from requiring applicants to conform, action of zoning board of appeals in granting a variance was unwarranted and erroneous.

Order reversed and case remanded for entry of an order in accordance with opinion.

West Headnotes (3)

[1] **Zoning and Planning** Effect of other applications or nonconforming uses
It is not proper to consider the existence of surrounding ill-advised or illegal zoning variances as grounds for granting additional variances.
2 Cases that cite this headnote

[2] **Zoning and Planning** What constitutes in general
The criterion for determining unnecessary hardship, as a ground for granting a zoning variance, is whether the applicable zoning restriction, when applied to the property in the setting of its environment, is so unreasonable as to constitute an arbitrary and capricious interference with the basic right of private ownership.

[3] **Zoning and Planning** Grounds for grant or denial in general
In proceeding on application for use and occupancy permits at variance with zoning restrictions there was no substantial evidence to support a finding that use and conformity with zoning restrictions would prevent applicants from making a reasonable use of their property, and in view of absence of evidence of any hardship or injustice resulting from requiring applicants to conform, action of zoning board of appeals in granting a variance was unwarranted and erroneous.

Attorneys and Law Firms

***273** ****843** Arthur L. Rysticken, Lexington Park (Joseph D. Weiner, Leonardtown, on the brief), for Park Shopping Center, Inc.

William O. E. Sterling, Leonardtown, for St. Mary's County Planning & Zoning Comms.

William M. Loker, Jr., Leonardtown (Loker, Wigginton & Loker, Leonardtown, on the brief), for appellees.

Before BRUNE, C. J., and HENDERSON, HAMMOND, PRESCOTT and HORNEY, JJ.

Opinion

BRUNE, Chief Judge.

This is an appeal from an order of the Circuit Court for St. Mary's County, ****844** Maryland, affirming the action of the Board of Zoning Appeals for St. Mary's County in reversing the decision of the St. Mary's County Planning and Zoning Commission which denied Certificates of Use and Occupancy to the appellees. The action of the Circuit Court resulted in granting to the appellees a variance from the Zoning Ordinance for St. Mary's County.

On March 2, 1955, the Lexington Park Theatre Company, Inc. (the 'Theatre Company'), located in Lexington Park, Maryland, applied to the St. Mary's Planning and Zoning Commission for a Use and Occupancy Permit for a one story building to contain storage space, a lobby for the adjoining theatre, and one retail store. On April 9, the Planning and Zoning Commission granted approval of the plans for ***274** the one story building upon condition that the Theatre Company would remove that part of the building which was to extend into the 25-foot rear yard and thus constituted a violation of Section VIII D (5) of the Zoning Ordinance for St. Mary's County (approved August 24, 1945, and corrected, revised and amended February 26, 1952.) On June 30, 1955, the Theatre Company filed a new application requesting authority to add a second floor for use as office space. This application was also approved. The Theatre Company then proceeded with construction of the building and by the summer of 1956 the building was substantially completed.

The completed building was not in compliance with the permits granted by the Planning and Zoning Commission in that it still contained the extension which encroached upon the 25-foot back yard, and the upstairs portion of the building was not used in compliance with the original Use and Occupancy Permit, since, instead of leasing the rooms for use as offices, the Theatre Company had installed kitchens in four of the units and rented them as apartments and also rented the remaining rooms as individual living quarters.

In December of 1956 the Theatre Company filed applications for Use and Occupancy Permits for the first floor as one retail store unit, and the second floor as apartments and living quarters. The Zoning and Planning Commission disapproved this application on the ground that the plans were in violation of the Zoning Ordinances (presumably with reference to the encroachment on the 25-foot back yard, and the use of the upper floor as residences without providing for a 30-foot side or rear yard as required by Section VIII D (3) of the Zoning Ordinance.) From this decision the Theatre Company appealed to the Zoning Board of Appeals for St. Mary's County, claiming, *inter alia*, that the decision of the Planning and Zoning Commission was arbitrary and capricious. After publication of a notice (which did not specifically state that the Theatre Company was asking for a variance) and a hearing, the Zoning Board of Appeals rendered its decision reversing the action of the Planning and Zoning Commission on the ground that there was evidence of so many other violations of the Zoning Ordinance in the ***275** vicinity of the Theatre Company's building that it would be unjust to enforce the ordinance against the Theatre Company alone. The Board of Zoning Appeals stated in its opinion that 'Violations apparent from existing uses of the property in respect of the required space for loading and unloading of goods and materials appear frequent and to have been passed by the Zoning Commission and the usual Certificate[s] of Use and Occupancy were issued to the buildings notwithstanding such violations * * *.'

The Board of Zoning Appeals also found as a fact that the Theatre Company had knowingly violated the Zoning Ordinance when it built the extension into the 25-foot year yard and used the upper floor for residential purposes and said that, 'if it were not for the existence of what appears to have been almost a customary thing for ****845** minor violations to be overlooked or condoned by the Zoning Commission we would not say that the Appellants [appellees here] were in the best position to ask that a variance be condoned in the present instance.' The Board found it difficult to decide what category, as defined by the Zoning Ordinance Section II, the second floor residences fitted into and apparently did not reach a conclusion on that question, but held they were not multiple dwellings.

The appellants, Park Shopping Center, Inc. and the County Planning and Zoning Commission, appealed from this decision to the Circuit Court for St. Mary's County, and the cases were consolidated for hearing (as they are here). After a full hearing the Circuit Court ruled that there was sufficient evidence before the Zoning Board of Appeals to grant the variance for the first floor of the building. It also found that the second floor of the building constituted a 'multiple dwelling' as defined by Section II of the Zoning Ordinance for St. Mary's County, and that although the Zoning Board of Appeals had not specifically granted a veriance for this second story, it could have determined from the evidence before it that no appreciable mischief would be done to the surrounding area or to the public interest by granting a

variance for the second story. Thereupon the Court affirmed the decision of the Zoning Board of Appeals.

***276** The appellants make three contentions: first, that the decision of the Zoning Board was arbitrary and capricious because there was no showing of any such unwarranted hardship as would be necessary to justify a variance; second, that the Circuit Court could not properly grant a variance for the use of the second floor as a multiple dwelling when the Zoning Board of Appeals itself did not decide that this was a multiple dwelling unit and therefore granted no variance; and third, that the notice of hearing published by the Zoning Board of Appeals was not legally sufficient since it did not state that the matter of a variance was in issue.

With respect to the appellants' first contention, it is evident from both the opinion of the Board of Zoning Appeals and the opinion of the Circuit Court that the Board used the existence of other violations or variances in the immediate area tolerated or granted by the Planning and Zoning Commission to justify the issuance of the Certificates of Use and Occupancy here in question.

[1] This Court has held that it is not proper to consider the existence of surrounding ill-advised or illegal variances as grounds for granting additional variances. As stated in Easter v. Mayor and City Council of Baltimore, 195 Md. 395, 400, 73 A.2d 491, 492, 'Prior exceptions granted by the adjustment board are not in themselves controlling. Ill-advised or illegal variances do not furnish grounds for a repetition of the wrong. If that were not so, one variation would sustain if it did not compel others, and thus the general regulation eventually would be nullified.' In Marino v. City of Baltimore, 215 Md. 206, 220, 137 A.2d 198, 203, Judge Horney stated for the Court: 'Certainly a prior exception granted by the Board does not control the granting of a subsequent exception.'

The authority under which the Board of Zoning Appeals can grant a variance is found in Section XVIII (3) of the Zoning Ordinance for St. Mary's County which states that the Board shall have power '[t]o authorize upon appeal in specific cases such variance from the terms of the ordinances as will not be contrary to the public interest, where, owing to special conditions, the enforcement of the provisions of ***277** this ordinance will result in *unwarranted hardship and injustice*, but which will most nearly accomplish the purpose and intent of the Zoning Plan and of the Zoning Regulations.' (Emphasis supplied.) It is in language typical of a variance as distinguished from an exception. ****846** Montgomery County v. Merlands Club, 202 Md. 279, 288, 96 A.2d 261. Cf. Marino v. City of Baltimore, supra, which points out that under the Baltimore City Ordinance an 'exception' perhaps overlaps a 'variance' in cases of 'practical difficulties or unnecessary hardships' and the two are accordingly discussed without distinction in many cases arising under that Ordinance. 215 Md. 216, 137 A.2d 202. The section before us is an almost verbatim copy of the enabling act, Section 22(g)(3), Article 66B of the Maryland Code (1957 Ed.).

[2] This Court has had many occasions to pass upon the question of what constitutes such a hardship and injustice as to sustain the granting of a variance. It has most recently done so in Judge Horney's clear and exhaustive opinion in Marino v. City of Baltimore, supra. No useful purpose would be served by repeating here what was well said there beyond quoting the test of hardship therein stated (215 Md. 217, 137 A.2d 202): 'The criterion for determining unnecessary hardship is whether the applicable zoning restriction when applied to the property in the setting of its environment is so unreasonable as to constitute an arbitrary and capricious interference with the basic right of private ownership. [Citing Carney v. City of Baltimore, 1952, 201 Md. 130, 137, 93 A.2d 74, 76-77.]'

[3] The Theatre Company has not made any showing of hardship such as to justify the granting of a variance. We find no substantial evidence in the record to support a finding that use in conformity with the Zoning restrictions would prevent the appellees from making a reasonable use of the property as to either the first or second floor. On the contrary, the testimony establishes the fact that when the St. Mary's County Planning and Zoning Commission approved the first application for a Certificate of Use and Occupancy for the first floor of the building to be used as a retail store, lobby space for the theatre, and storage, the Theatre Company had ***278** agreed to remove the obstruction in the rear yard shown on the building plans. It is difficult to believe that it would have so readily acquiesced in this removal if it had felt that it would prevent a reasonable use of its property. The chief, if not the only, stated ground for the Theatre Company's objection to removing that structure is that it 'was unfair to have to, the other stores had not but I said I would move it.' (Testimony of Mr. Dean, described as 'one of the owners of the building under consideration,' before the Zoning Board of Appeals.) There is no showing, so far as we can discover, as to either the cost or difficulty of removing the 25-foot extension and transferring the equipment therein to the main building.

As to the second floor, the evidence of hardship is perhaps even less. When asked by a member of the Board of Zoning

Appeals whether the upstairs had been used, Mr. Dean replied: 'To some extent for rooms instead of offices. If the business for rooms drops off, we can use them for offices.'

In view of the absence of evidence of any hardship or injustice, we are of the opinion that the Zoning Board of Appeals' action was unwarranted and erroneous.

Our decision on this ground makes it unnecessary to consider the other questions raised by the appellants.

Order reversed, and case remanded for the entry of an order in accordance with this opinion; costs to be paid by appellees.

All Citations

216 Md. 271, 139 A.2d 843

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

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

March 30, 2021

NOTICE OF DELIBERATION

IN THE MATTER OF: Donna V. Bair – Legal Owner
4607 Prospect Avenue
19-342-SPHA 4th Election District; 3rd Councilmanic District

8/9/19 Opinion and Order of the Administrative Law Judge wherein the:

- Petition for Special Hearing: 1) to approve a nonconforming lot width and lot area; and 2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of 30 inches was GRANTED; the
- Petition for Special Hearing: 1) to approve a nonconforming dwelling side yard setback; and 2) to confirm that an existing fence (swimming pool enclosure) with a height of 6' is in compliance with BCZR §427.1 and BCC §13-6-101 was DENIED; and the
- Petition for Variance: 1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.; 2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; and 3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches was DENIED

9/9/19 Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire on behalf of Donna V. Bair, Petitioner.

9/25/19 Order on Motion for Reconsideration issued by the Administrative Law Judge wherein it was Ordered:

- that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms in BCZR §104;
- that all new construction must comply with current setbacks and restrictions at the time of new construction; and
- all other matters and respects of Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

This matter having been heard on February 6, 2020, March 23, 2021, and concluded on March 25, 2021, a public deliberation has been

ASSIGNED FOR: APRIL 20, 2021, AT 9:00 A.M.

The above scheduled public deliberation will be held remotely using WebEx for audio and video participation. **Call-in information and a link to the public deliberation will be posted on our web calendar the night before at** www.baltimorecountymd.gov/Agencies/appeals/index.html.

NOTE: Closing briefs are due on **APRIL 9, 2021 no later than 3:00 p.m.**
ELECTRONIC COPY ONLY
emailed to appealsboard@baltimorecountymd.gov

NOTE: PUBLIC DELIBERATIONS ARE OPEN WORK SESSIONS WHICH ALLOW THE PUBLIC TO WITNESS THE DECISION-MAKING PROCESS. A WRITTEN OPINION AND ORDER WILL BE ISSUED BY THE BOARD WITHIN A REASONABLE TIMEFRAME AFTER DELIBERATION AND A COPY SENT TO ALL PARTIES.

If you do not have access to a computer or smart device, please contact our office for the call-in information the day before the scheduled deliberation.

Krysundra Cannington, Administrator

c. Counsel for Petitioners : Lawrence E. Schmidt, Esquire
Legal Owner : Donna Bair

People's Counsel for Baltimore County : Peter M. Zimmerman, Esquire

Protestants *pro se* : Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
John E. Lemmerman/RTF Associates, Inc.
Kim and Tom Montanye
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz

Paul M. Mayhew, Managing Administrative Law Judge
Steve Lafferty, Director/Department of Planning
C. Pete Gutwald, Director/PAI
James R. Benjamin, Jr., County Attorney
Nancy C. West, Assistant County Attorney

Board of Appeals

Case No: 19-342 SPHA. Case Name: Donna Bair.

Exhibit List

Party: Petitioner Date: 2/6/2020

Exhibit No:	Description:
✓ 1	Plan to Accompany Pet Zoning Hearing.
✓ 2A-E	Photos before construction
✓ 3A-3Q	Photos present time
✓ 4	Code Violation Order 2/11/19 and Citations
✓ 5A-5C	Landmarks Preservation Comm Meeting 3/14/19
✓ 6	Landmarks Preservation Comm Meeting 10/10/19
✓ 7A-7I	Photos of neighborhood garages.
✓ 8A-8I	Photos of neighborhood fences
✓ 9	My Neighborhood Balt County Map
✓ 9A-9D	Zoning Commissions / BOA Orders.
✓ 10A-10C	Photos of Bair Trees.
✓ 11	Pyle Tree Co. Invoice 3/21/2017
✓ 12	John Motsco PE, CV
✓ 13	1880 Record Plat
	VERIFIED BY KC DATE: 2/7/2020

ID Only

Board of Appeals

Case No: 19-342 SPHA Case Name: Donna Bair

Exhibit List

Party: Petitioners Date: 2/6/2020

Exhibit No:	Description:
14	SDAT Info on Bair Property.
✓ 15	BCZR 421.1 - Fences. + BCC 13-6-107
✓ 16	BCZR § 104.3 - NCU
	VERIFIED BY _____ DATE: _____

KC 2/7/2020

Board of Appeals

Case No: 19-342 SPHA Case Name: Donna Bair

Exhibit List

Party: People's Counsel Date: 2/6/2020

Exhibit No:	Description:
✓ 1	Neighborhood Aerial Photo 2017
✓ 2	PC Sign In Sheet.
✓ 3	Dept Labor Website Realtor Info
✓ 2A	PC Additional Sign In Sheet.
✓ 4A-E	Dept Labor Realtor Supp Info.
	VERIFIED BY _____ DATE: _____

ID only

KC 2/7/2020

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 21, 2021

NOTICE OF REASSIGNMENT - DAYS 2 and 3

IN THE MATTER OF: Donna V. Bair – Legal Owner
4607 Prospect Avenue
19-342-SPHA 4th Election District; 3rd Councilmanic District

8/9/19 Opinion and Order of the Administrative Law Judge wherein the:
- Petition for Special Hearing: 1) to approve a nonconforming lot width and lot area; and 2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of 30 inches was GRANTED; the
- Petition for Special Hearing: 1) to approve a nonconforming dwelling side yard setback; and 2) to confirm that an existing fence (swimming pool enclosure) with a height of 6' is in compliance with BCZR §427.1 and BCC §13-6-101 was DENIED; and the
- Petition for Variance: 1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.; 2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; and 3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches was DENIED

9/9/19 Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire on behalf of Donna V. Bair, Petitioner.

9/25/19 Order on Motion for Reconsideration issued by the Administrative Law Judge wherein it was Ordered:
- that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms in BCZR §104;
- that all new construction must comply with current setbacks and restrictions at the time of new construction; and
- all other matters and respects of Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

The Board convened for hearing on February 6, 2020. This matter did not conclude. This matter has been

ASSIGNED FOR: MARCH 23, 2021, AT 10:00 A.M. – Day 2;
and: MARCH 25, 2021, AT 10:00 A.M. – Day 3

The above scheduled hearing will be held remotely using WebEx for audio and video participation. **Call-in information and a link to the hearing will be posted on our web calendar at** www.baltimorecountymd.gov/Agencies/appeals/index.html **the night before.**

A complete set of **exhibits must be emailed** at least **48 hours before the hearing** to **appealsboard@baltimorecountymd.gov** in a format that complies with MDEC (Maryland Electronic Court) standards.

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 require special accommodations, please contact this office at least one week prior to hearing date.

If you do not have access to a computer or smart device, please contact our office for the call-in information the day before the scheduled hearing.

Krysundra Cannington, Administrator

c. Counsel for Petitioners : Lawrence E. Schmidt, Esquire
Legal Owner : Donna Bair

People's Counsel for Baltimore County : Peter M. Zimmerman, Esquire

Protestants *pro se* : Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
John E. Lemmerman/RTF Associates, Inc.
Kim and Tom Montanye
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz

Paul M. Mayhew, Managing Administrative Law Judge
Steve Lafferty, Director/Department of Planning
C. Pete Gutwald, Director/PAI
James R. Benjamin, Jr., County Attorney
Nancy C. West, Assistant County Attorney

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 5, 2021

NOTICE OF POSTPONEMENT

IN THE MATTER OF: Donna V. Bair – Legal Owner
4607 Prospect Avenue
19-342-SPHA 4th Election District; 3rd Councilmanic District

8/9/19 Opinion and Order of the Administrative Law Judge wherein the:
- Petition for Special Hearing: 1) to approve a nonconforming lot width and lot area; and 2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of 30 inches was GRANTED; the
- Petition for Special Hearing: 1) to approve a nonconforming dwelling side yard setback; and 2) to confirm that an existing fence (swimming pool enclosure) with a height of 6' is in compliance with BCZR §427.1 and BCC §13-6-101 was DENIED; and the
- Petition for Variance: 1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.; 2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; and 3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches was DENIED

9/9/19 Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire on behalf of Donna V. Bair, Petitioner.

9/25/19 Order on Motion for Reconsideration issued by the Administrative Law Judge wherein it was Ordered:
- that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms in BCZR §104;
- that all new construction must comply with current setbacks and restrictions at the time of new construction; and
- all other matters and respects of Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

The Board convened for hearing on February 6, 2020. This matter did not conclude. This matter was assigned for hearing days 2 and 3 on February 23 and 25, 2021. By request of Counsel, these dates have been postponed and will be reassigned to later dates.

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 require special accommodations, please contact this office at least one week prior to hearing date.

If you do not have access to a computer or smart device, please contact our office for the call-in information the day before the scheduled hearing.

Krysundra Cannington, Administrator

c. Counsel for Petitioners : Lawrence E. Schmidt, Esquire
Legal Owner : Donna Bair

People's Counsel for Baltimore County : Peter M. Zimmerman, Esquire

Protestants *pro se* : Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
John E. Lemmerman/RTF Associates, Inc.
Kim and Tom Montanye
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz

C. Pete Gutwald, Director/Department of Planning
Michael D. Mallinoff, Director/PAI
James R. Benjamin, Jr., County Attorney

Paul M. Mayhew, Managing Administrative Law Judge
Nancy C. West, Assistant County Attorney

SMITH, GILDEA & SCHMIDT LLC

MICHAEL PAUL SMITH
DAVID K. GILDEA
LAWRENCE E. SCHMIDT
JASON T. VETTORI
MARIELA C. D'ALESSIO*
MELISSA L. ENGLISH**
* Admitted in MD, PA, FL
** Admitted in MD, NC

LAUREN S. FLEMING
NICOLE LAMBDIN
CARMELO D. MORABITO
ZACHARY J. WILKINS
of counsel:
EUGENE A. ARBAUGH, JR.
MARY G. LOKER
STEPHEN J. NOLAN

January 4, 2021

Via Email Only
Krysundra L. Cannington
County Board of Appeals of Baltimore County
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204
appealsboard@baltimorecountymd.gov

Re: In the Matter of: Donna V. Bair
Property: 4607 Prospect Avenue
Case No. 19-342-SPHA

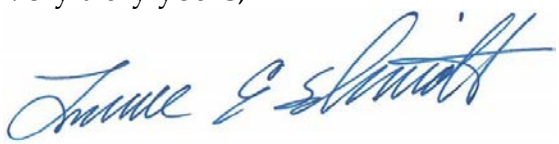
Dear Sunny,

I write by way of follow up to the Notice of Assignment for Days 2 and 3 dated December 15, 2020 in the above referenced matter scheduling this matter for additional hearing dates on February 23, 2021 and February 25, 2021.

Please note that Mrs. Bair and her husband are scheduled to be out of the Country on a pre-planned, pre-paid work trip from February 21 – February 27, 2021. Additionally, they plan to participate in this hearing at our office and we would appreciate a quarantine period for them of 7-10 days. As such, we respectfully request that this matter be rescheduled any time after March 10, 2021.

Thank you for your consideration of this request. Please contact me should you have any questions.

Very truly yours,



Lawrence E. Schmidt

LES/am
cc: Peter Max Zimmerman, Esquire
Tom Montanye (via email: Tom@montanye.net)
Robin S. Coffin (via email: Rscoffin@verizon.net)
Steven Fradkin (via email: Reistlaxcoach@gmail.com)
Donna Bair (via email: donna.bair@yahoo.com)

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 15, 2020

NOTICE OF ASSIGNMENT - DAYS 2 and 3

IN THE MATTER OF: Donna V. Bair – Legal Owner
4607 Prospect Avenue
19-342-SPHA 4th Election District; 3rd Councilmanic District

8/9/19 Opinion and Order of the Administrative Law Judge wherein the:
- Petition for Special Hearing: 1) to approve a nonconforming lot width and lot area; and 2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of 30 inches was GRANTED; the
- Petition for Special Hearing: 1) to approve a nonconforming dwelling side yard setback; and 2) to confirm that an existing fence (swimming pool enclosure) with a height of 6' is in compliance with BCZR §427.1 and BCC §13-6-101 was DENIED; and the
- Petition for Variance: 1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.; 2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; and 3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches was DENIED

9/9/19 Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire on behalf of Donna V. Bair, Petitioner.

9/25/19 Order on Motion for Reconsideration issued by the Administrative Law Judge wherein it was Ordered:
- that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms in BCZR §104;
- that all new construction must comply with current setbacks and restrictions at the time of new construction; and
- all other matters and respects of Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

The Board convened for hearing on February 6, 2020. This matter did not conclude. This matter has been

ASSIGNED FOR: FEBRUARY 23, 2021, AT 10:00 A.M. – Day 2;
and: FEBRUARY 25, 2021, AT 10:00 A.M. – Day 3

The above scheduled hearing will be held remotely using WebEx for audio and video participation. **Call-in information and a link to the hearing will be posted on our web calendar at** www.baltimorecountymd.gov/Agencies/appeals/index.html **the night before.**

A complete set of **exhibits must be emailed** at least **48 hours before the hearing** to **appealsboard@baltimorecountymd.gov** in a format that complies with MDEC (Maryland Electronic Court) standards.

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 require special accommodations, please contact this office at least one week prior to hearing date.

If you do not have access to a computer or smart device, please contact our office for the call-in information the day before the scheduled hearing.

Krysundra Cannington, Administrator

c. Counsel for Petitioners : Lawrence E. Schmidt, Esquire
Legal Owner : Donna Bair

People's Counsel for Baltimore County : Peter M. Zimmerman, Esquire

Protestants *pro se* : Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
John E. Lemmerman/RTF Associates, Inc.
Kim and Tom Montanye
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz

C. Pete Gutwald, Director/Department of Planning
Michael D. Mallinoff, Director/PAI
Paul M. Mayhew, Managing Administrative Law Judge

James R. Benjamim, Jr., County Attorney
Nancy C. West, Assistant County Attorney

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

June 17, 2020

William A. McComas Chairman
Andrew M. Belt, Panel Member
Maureen E. Murphy, Panel Member
Board of Appeals of Baltimore County
105 West Chesapeake Avenue, Suite 203
Towson, Maryland 21204

Re: Donna Bair, Petitioner
4607 Prospect Avenue
Case Nos.: 2019-342-SPHA

Dear Chairman McComas and Panel Members Murphy and Belt,

This responds to the June 8 e-mail from County Board of Appeals (CBA) administrator Krysundra Cannington, we respectfully object to the arrangement of a Webex remote event for a second trial hearing day (and any other days, if necessary) in the above Bair case. This objection is accentuated here because Petitioner Donna Bair (Bair) presented her case in open hearing on February 6, 2020. This discrimination is unfair and contravenes due process of law.

The scheduled second hearing day of April 7 was cancelled because of the pandemic after Governor Lawrence Hogan's order of March 16. There were also orders by Chief Judge Mary Ellen Barbera effectively closing the courts except for specified emergency or other priority cases.

We recognize the good faith effort of the CBA to resume activities backlogged by the pandemic. This includes the balanced and reasonable resumption of public deliberations and several of our cases and potential oral arguments on motions or for on-the-record appeals.

Here, while further delay prolongs the presence of dwelling additions and fencing in conflict with zoning law, due process warrants a moderate additional delay for a plenary in-person trial hearing, where, as noted, Bair had the benefit of such a hearing to present her case. We have e-mailed and phoned the leading Protestants --- Steve Fradkin, Tom Montanye, and Robin Coffin --- and they agree that a remote trial is inappropriate and unfair.

The CBA should assess soon the county's social reopening and schedule two days of plenary public hearings. We note that the District Courts are opening for non-jury trials June 22. The Circuit Courts are currently under the phased Maryland Court of Appeals Order for Phase V reopening in October. The CBA could reasonably proceed to schedule Bair in September or October, subject to adjustment if judicial guidelines or the pandemic demand it.

A few more months delay in this multi-year litigation will assure fairness and due process of law. Maryland Aggregates v. State 337 Md. 658, 686-87 (1995); Calvert County Pl. Comm'n v. Howlin Realty Mgt, Inc. 364 Md. 301, 322 (2001). Anyway. It it will likely be late July or August before a remote trial could be held, if then, given summer schedules of many participants.

Chief Judge Mary Ellen Barbera of the Maryland Court of Appeals implicitly recognized the practical problems of remote trials in her latest administrative order for the court system. Neither jury or non-jury trials are allowed until October. They are not allowed remotely in the phased transition which allows remote oral arguments. While this order does not apply directly to the County Board of Appeals, it appears reasonable to follow it.

Here are several practical problems for remote events:

1. Notice, compulsion of witness attendance, subpoenas, pretrial disclosures. A remote trial involves additional complexities and fairness issues here. There have to be notice provisions to enable all members of the public to attend and participate, not just those already identified. As the Court of Appeals observed, any hearing legislatively provided as "public" must be open to the public, even if not a contested case hearing. Sugarloaf Citizens v. Waste Disposal Authority 323 Md. 641, 657 n.12 (1991). Any person interested in the case may participate. Dorsey v. Bethel AME Church 375 Md. 59, 75-77 (2003).There would have also to be provisions for web compulsion of witnesses, subpoenas, and production of exhibits by all members of the public. If pretrial production of exhibits is involved, this entails pretrial identification of witnesses. Bair did not have to make any pretrial disclosures.

2. Trying the case: Trials are not scripted. Parties adjust to ongoing testimony, exhibits, and rulings. This occurs even more in *de novo* hearings. There are necessarily attorney/intraparty communications. Attorneys, clients, participants and experts communicate with each other in the hearing room during the trial or at recesses. This may include determination, scheduling, and scope of witnesses, unforeseen eventualities. It will not be possible to do that at a Webex activity.

3. Evaluating impact and credibility of witnesses. Testimony on a computer screen does not have the same impact as in-person testimony. Moreover, there is little or no body language on a computer screen. The dynamics of attorney/witness interactions are not the same. Webex hinders evaluation of impact and credibility.

4. Limited screen space for videos of participants. Our experience with Zoom and Skype reflects screen space for a relatively small number of videos. In land use cases, there are often many participants. Here, we have 3 CBA panel members, 2 or more attorneys (with Bair associates or Deputy People's Counsel), expert(s), at least 3 nearby property owners, community association representatives, and many others. It is unpredictable who will be shown on the screen at any time. This hinders the ability of participants to observe the proceedings. It is also unpredictable whether the screen will focus efficiently as speakers shift with high frequency at times.

5. Screening of exhibits. How are exhibits to be placed on the screen, especially site plans; photographs, some large; and pattern books where the fine print is already almost illegible. How do we question witnesses about exhibits? How does one point to, mark, or otherwise make use of exhibits, as is often done? What if there are physical exhibits?

6. Other exhibit problems. What happens when it becomes apparent during the course of the hearing that additional exhibits are appropriate, not anticipated or identified prior to the hearing? Does pretrial identification of exhibits apply to all parties before the first day of hearing? How can area citizens possibly anticipate what exhibits they will need until they observe a petitioner's case? Why should they have to provide any exhibits at all until they see what a petitioner has to say?

7. Evidentiary rulings. Dealing with evidentiary objections and rulings is already often challenging, including the opportunity for various parties to argue, and occasionally the opportunity for CBA members to confer with each other. This will be even more challenging and likely protracted by Webex.

8. Legal issues. Sometimes legal issues arise during the hearing, whether evidentiary or other. Sometimes, It may be helpful to provide copies of appellate cases. This cannot be done by Webex.

9. Technical issues. Citizens may have technical problems linking in, based on computer capability or location. Also, will the recording of the Webex work well? Will a transcriber know who is speaking?

10. Vacation and social distance issues. Even though the pandemic is limiting travel, some parties may be away in the region in July and August, whether for vacation or to socially distance. It makes sense to envision a September or October resumption, with normal public hearings and social distancing if then warranted.

11. Press access. The public character of hearings requires availability to the press. There are news publications which cover Baltimore County land use cases, including regional publications such as The Country Crier, The Peak, and The Villager. How would the Webex be made available to them.

12. Stress. It is uncertain to what degree it is stressful for participants to concentrate on the computer screen all day. While a day at a public zoning hearing may also be challenging, it is likely not challenging to that degree.

These problems are just aggravated here where the remote Webex is injected in the middle of the case. Bair has had the advantage of the usual open *de novo* hearing, with all of its accoutrements and presentational benefits and impacts, and without any pretrial disclosure of witnesses or exhibits. The shift to remote for Protestants and our office will suffer from all the enumerated infirmities and newly advance disclosure of exhibits and to an extent, witnesses. Such bifurcation of this case would manifestly be prejudicial and unfair.

Our office is anxious to make progress. Unfortunately, the wheels of justice grind slower than ever due to the pandemic. But the better and proper course is to envision the resumption and scheduling of proper normal public hearings. With an optimistic approach, it should very soon be plausible to schedule this case for two hearing days in September or October. The benefits to due process and the efficient administration of justice will outweigh by far the impairment of due process of law in the Webex setting.

We trust the CBA will appreciate our office's concerns. It is noteworthy there are also legal issues regarding the adequacy of the predicate for Webex or other remote proceedings. Nevertheless, as a matter of public interest, in view of the pandemic, we shall not enumerate them at this time. We are approaching this situation from the point of view of a balance between progress and fairness. We also refer to Chief Judge Barbera's orders as useful guides.

Thank you for your attention to this important matter.

Sincerely,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio
Deputy People's Counsel

cc: Lawrence Schmidt, Attorney for Donna Bair, sent via email
Steven Fradkin, sent via email
Robin S. Coffin, sent via email
Tom Montanye, sent via email
Nancy C. West, Assistant County Attorney

Board of Appeals of Baltimore County

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

February 21, 2020

NOTICE OF ASSIGNMENT - DAY 2

IN THE MATTER OF: Donna V. Bair – Legal Owner
4607 Prospect Avenue
19-342-SPHA 4th Election District; 3rd Councilmanic District

8/9/19 Opinion and Order of the Administrative Law Judge wherein the:
- Petition for Special Hearing:
  1) to approve a nonconforming lot width and lot area; and
  2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of 30 inches was GRANTED; the
- Petition for Special Hearing:
  1) to approve a nonconforming dwelling side yard setback; and
  2) to confirm that an existing fence (swimming pool enclosure) with a height of 6' is in compliance with BCZR §427.1 and BCC §13-6-101 was DENIED; and the
- Petition for Variance:
  1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.;
  2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; and
  3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches was DENIED

9/9/19 Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire on behalf of Donna V. Bair, Petitioner.

9/25/19 Order on Motion for Reconsideration issued by the Administrative Law Judge wherein it was Ordered:
- that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms in BCZR §104;
- that all new construction must comply with current setbacks and restrictions at the time of new construction; and
- all other matters and respects of Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

The Board convened for hearing on February 6, 2020. This matter did not conclude. Upon agreement of the parties, a second day of hearing has been

ASSIGNED FOR: APRIL 7, 2020, 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.
- Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits with the Board unless otherwise requested. Said Motions, Memoranda and exhibits must be in MDEC compliant formats pursuant to the Maryland Rules, unless otherwise requested
- Please contact our office for information about projection equipment. 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 Cannington, Administrator

c. Counsel for Petitioners : Lawrence E. Schmidt, Esquire
Legal Owner : Donna Bair

Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
John E. Lemmerman/RTF Associates, Inc.
Kim and Tom Montanye
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz

C. Pete Gutwald, Director/Department of Planning
James R. Benjamim, Jr., County Attorney
Michael D. Mallinoff, Director/PAI
Nancy C. West, Assistant County Attorney
Office of People's Counsel
Paul M. Mayhew, Managing Administrative Law Judge

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 13, 2019

NOTICE OF POSTPONEMENT AND REASSIGNMENT

IN THE MATTER OF: Donna V. Bair – Legal Owner
4607 Prospect Avenue
19-342-SPHA 4th Election District; 3rd Councilmanic District

8/9/19 Opinion and Order of the Administrative Law Judge wherein the:
- Petition for Special Hearing:
  1) to approve a nonconforming lot width and lot area; and
  2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of 30 inches was GRANTED; the
- Petition for Special Hearing:
  1) to approve a nonconforming dwelling side yard setback; and
  2) to confirm that an existing fence (swimming pool enclosure) with a height of 6' is in compliance with BCZR §427.1 and BCC §13-6-101 was DENIED; and the
- Petition for Variance:
  1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.;
  2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; and
  3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches was DENIED

9/9/19 Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire on behalf of Donna V. Bair, Petitioner.

9/25/19 Order on Motion for Reconsideration issued by the Administrative Law Judge wherein it was Ordered:
- that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms in BCZR §104;
- that all new construction must comply with current setbacks and restrictions at the time of new construction; and
- all other matters and respects of Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

This matter was scheduled for January 9, 2020 and has been postponed by request of Counsel. This matter has been

REASSIGNED FOR: FEBRUARY 6, 2020, 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.
- Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits with the Board unless otherwise requested. Said Motions, Memoranda and exhibits must be in MDEC compliant formats pursuant to the Maryland Rules, unless otherwise requested
- Please contact our office for information about projection equipment. 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 Cannington, Administrator

c. Counsel for Petitioners : Lawrence E. Schmidt, Esquire
Legal Owner : Donna Bair

Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
John E. Lemmerman/RTF Associates, Inc.
Kim and Tom Montanye
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz

C. Pete Gutwald, Director/Department of Planning
Michael D. Mallinoff, Director/PAI
James R. Benjamin, Jr., County Attorney
Nancy C. West, Assistant County Attorney
Office of People's Counsel
Paul M. Mayhew, Managing Administrative Law Judge

Board of Appeals of Baltimore County

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

November 14, 2019

NOTICE OF ASSIGNMENT

IN THE MATTER OF: Donna V. Bair – Legal Owner
4607 Prospect Avenue
19-342-SPHA 4th Election District; 3rd Councilmanic District

8/9/19 Opinion and Order of the Administrative Law Judge wherein the:
- Petition for Special Hearing:
  1) to approve a nonconforming lot width and lot area; and
  2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of 30 inches was GRANTED; the
- Petition for Special Hearing:
  1) to approve a nonconforming dwelling side yard setback; and
  2) to confirm that an existing fence (swimming pool enclosure) with a height of 6' is in compliance with BCZR §427.1 and BCC §13-6-101 was DENIED; and the
- Petition for Variance:
  1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.;
  2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; and
  3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches was DENIED

9/9/19 Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire on behalf of Donna V. Bair, Petitioner.

9/25/19 Order on Motion for Reconsideration issued by the Administrative Law Judge wherein it was Ordered:
- that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms in BCZR §104;
- that all new construction must comply with current setbacks and restrictions at the time of new construction; and
- all other matters and respects of Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

ASSIGNED FOR: **JANUARY 9, 2020, 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.
- Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits with the Board unless otherwise requested. Said Motions, Memoranda and exhibits must be in MDEC compliant formats pursuant to the Maryland Rules, unless otherwise requested
- Please contact our office for information about projection equipment. 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 Cannington, Administrator

c. Counsel for Petitioners : Lawrence E. Schmidt, Esquire
Legal Owner : Donna Bair

Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
John E. Lemmerman/RTF Associates, Inc.
Kim and Tom Montanye
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz

C. Pete Gutwald, Director/Department of Planning
Michael D. Mallinoff, Director/PAI
Michael E. Field, County Attorney
Nancy C. West, Assistant County Attorney
Office of People's Counsel
Paul M. Mayhew, Managing Administrative Law Judge

IN THE MATTER OF DONNA V. BAIR – LEGAL OWNER AND PETITIONER FOR SPECIAL HEARING AND VARIANCE ON THE PROPERTY LOCATED AT 4607 PROSPECT AVENUE	*	BEFORE THE BOARD OF APPEALS OF
4TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BALTIMORE COUNTY
	*	CASE NO. 19-342-SPHA

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

RULING ON MOTION FOR RECONSIDERATION

This case comes to the Board of Appeals for Baltimore County ("Board") on a Motion for Reconsideration ("Motion") which was timely filed by Tom and Kim Montanye ("Protestants") *pro se,* requesting a limited review and reconsideration by the Board of its decision regarding the relocation of the fence and gate on the south side of the Bair property adjoining the Montanye residence.

The original Petitioner and property owner, Donna Bair, by her attorneys, Lawrence E. Schmidt and Smith, Gildea & Schmidt, LLC, submitted a Response to the Protestants' Motion for Reconsideration, and People's Counsel filed an email response.

This matter originally came before the Board on a Petition for Special Hearing and Variances filed by Petitioner Bair. The Board held three days of hearing and issued its Opinion and Order on June 7, 2021, granting in part and denying in part the request relief.

The Board held its deliberation on the Motion to Reconsider on August 31, 2021, and for the reasons that follow, denied the Motion.

The language in the Order regarding the fence is based on the evidence presented at the hearing where the Board found that the gate to the Bair's rear yard was previously located at the rear of the Bair residence and then Ms. Bair impermissibly moved the gate, and the supporting

fence, to the front of her house. No evidence was presented as to the precise location of the gate prior to its being moved.

The Board ordered that the fence extension and gate must be moved to the rear building line of the Bair residence, so as not to impede visibility for vehicles exiting the Montanye's driveway. The Board did not require the remaining portion of the fence be further re-aligned.

The Board finds there is no indication of the existence of new law or evidence not available at the time of the hearing. The Board also notes that its revisory power is limited by its Rule 11 which states "the Board shall have revisory power and control over the order in the event of fraud, mistake or irregularity." The Motion did not allege any such fraud, mistake or irregularity.

Conclusion

After reviewing the Motion and the case record, the Board unanimously finds none of the issues raised warrant revising its decision, and accordingly, the Motion should be denied.

ORDER

THEREFORE, IT IS THIS 9th day of November, 2021, by the Board of Appeals of Baltimore County,

ORDERED, that the Motion for Reconsideration is hereby **DENIED** for the reasons set forth herein.

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

Deborah C. Dopkin, Chair

See following page
Andrew M. Belt

Bryan T. Pennington /tag
Bryan T. Pennington

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

See previous page
Deborah C. Dopkin, Chair

Andrew M. Belt

See previous page
Bryan T. Pennington

Board of Appeals of Baltimore County

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

November 9, 2021

Lawrence E. Schmidt, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204

Thomas and Kimberly Montanye
4609 Prospect Avenue
Glyndon, Maryland 21136

Peter M. Zimmerman, Esquire
Carole S. Demilio, Esquire
Office of People's Counsel
The Jefferson Building, Suite 204
105 W. Chesapeake Avenue
Towson, Maryland 21204

RE: *In the Matter of: Donna V. Bair – Legal Owner*
Case No.: 19-342-SPHA

Dear Mr. and Mrs. Montanye and Counsel:

Enclosed please find a copy of the final Ruling on Motion for Reconsideration issued this date by the Board of Appeals of Baltimore County in the above subject matter.

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

Very truly yours,

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Multiple Original Cover Letters
Enclosure

c: See Distribution List following

In the matter of: Donna V. Bair – Legal Owner
Case No.: 19-342-SPHA
November 9, 2021
Distribution List

Donna V. Bair
Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz
Paul M. Mayhew, Managing Administrative Law Judge
Stephen Lafferty, Director/Office of Planning
C. Pete Gutwald, Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
James R. Benjamin, Jr., County Attorney/Office of Law

From:	Lawrence Schmidt
To:	Peter Max Zimmerman; Appeals Board; Krysundra Cannington
Cc:	Tom@montanye.net; reistlaxcoach@gmail.com; rscoffin@verizon.net; Bair, Donna (donna.bair@yahoo.com)
Subject:	RE: Case No. 19-342-SPHA; Donna Bair, Tom Montanye"s Motion for Reconsideration
Date:	Wednesday, August 25, 2021 3:56:37 PM

CAUTION: This message from lschmidt@sgs-law.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Ms. Cannington: According to the Board's notice of deliberation, all responses to the Motion for Reconsideration were to be filed by 3:00 p.m. August 24, 2021 (yesterday). As Mr. Zimmerman's submittal is untimely, I request that it not be considered by the Board.

Thank you.

Larry Schmidt

Lawrence E. Schmidt | Partner
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
lschmidt@sgs-law.com | http://secure-web.cisco.com/14fA-HelnfCO1OFl2ohP-Ct34sJL4yvNKzC973xSUUNNFxPUNEKb3qva3lC9_EpULnlr7evpdM95yqk46un0BhDz-8MHNwRszJN20nJkWBoHw-8EwSovQSHjB13ykTjVrhBEYYw15s36QI97ZbbbXuF7jOZ8MrLyMbjd2Rl6Vn3xAeIf4BW9QuBuJi0Sch6gcYYDv6SgRgR4HQzPO_RbXmMn_SjCVaFFv79cyHNJaurc8vbnjivHWQVRRNC8tIMkPRRnW6U77lZbzyqUsx0XiXyZ3i-xroL5MPd5LnSLe_Nsuenm3yfEG2Ij3sMttJYEB9itX3qvPLkUeKjYP6EJVREKhVNyYhGrxA4LpoE2ofcf8PQzNQFNTZEmFvA2OtOwlW_kjIbO1p62ADk3qIQBggNv4WvU2X-irKfdT7ILgT-kLyttA0HKd3QikJV1hPn2opp6X9gRPt07JuAKpnhUXvg/http%3A%2F%2Fwww.sgs-law.com

This email contains information from the law firm of Smith, Gildea & Schmidt, LLC which may be confidential and/or privileged. The information is intended to be for the exclusive use of the individual or entity named above. If you are not the intended recipient, be advised that any disclosure, copying, distribution or other use of this information is strictly prohibited. If you have received this e-mail in error, please notify Smith, Gildea & Schmidt, LLC by telephone immediately.

From: Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov>
Sent: Wednesday, August 25, 2021 3:02 PM
To: Appeals Board <appealsboard@baltimorecountymd.gov>; Krysundra Cannington <kcannington@baltimorecountymd.gov>
Cc: Lawrence Schmidt <lschmidt@sgs-law.com>; Tom@montanye.net; reistlaxcoach@gmail.com; rscoffin@verizon.net
Subject: Case No. 19-342-SPHA; Donna Bair, Tom Montanye's Motion for Reconsideration

To the Appeals Board,

This matter is scheduled for further deliberation by the Board on August 31, 2021.

Upon review of the Motion for Reconsideration filed by Tom and Kim Montanye, the Response just filed yesterday by Petitioner, the Board's June 7, 2021 Opinion and Order, and the prior April 20,

2021 deliberation minutes, please allow me to recap these observations.

The June 7, 2021 Order itself does not specify the location where the fence is to be removed and/or relocated. Rather, it refers on Page 8 to "the modification described herein." It turns out that the description of fence relocation on Page 7 of the Opinion is ambiguous and/or inconsistent with the Board's April 20, 2021 decision made in public deliberation. I attach both the opinion and the minutes.

It was my impression in listening to the public deliberation that even to the rear of the Bair house's rear building line, the fence was to be moved away from the Montanye boundary, to the more distant location of the previous picket fence, which also was lower in height. This would provide some transitional buffer. Such a buffer would not be prejudicial to Ms. Bair and would reduce the likelihood of further friction.

The Montanyes' motion's reference to the Board's deliberation minutes is apt:

> "The Board found that a reasonable solution is to relocate the fence and gate to its original location, which will provide pool security and address the driveway concern."

Here is the entire section of the Board's deliberation devoted to the fence issue on Page 2:

> "The Board discussed the request to permit an existing fence (swimming pool enclosure) with a height of 6 ft. in lieu of the permitted 42 in. The Board noted there are competing statutes regarding fences. The 6 ft. fence extends into the front yard of the adjoining property and along the parking area/driveway of the neighbors. The Board noted that the fence impedes the ability of the neighbors to see when they pull out of their driveway, which is a public safety hazard. The Board found that a reasonable solution is to relocate the fence and gate to its original location, which will provide pool security and address the driveway concern. The Board granted the Variance relief, with conditions."

In addition to the Board's recognition of the Petitioner's problematic fence location forward of her rear yard and adjacent to the Montanye front yard, especially near the driveway, there was thus also a recognition that the rear yard fence location as constructed along the property boundary required adjustment. As I previously observed, the fence location extending into the rear yard is way beyond what is necessary to protect children from venturing into the pool. It is actually a privacy fence which is counterproductive to the essential legislative purpose because it leaves open a wide area in which children who play may venture easily into the pool. Moreover, it does not need to be six feet high. Forty-eight inches would be enough even if it is generously called a swimming pool protection fence.

To sum up, I think it was the Board's intent, and within the scope of the Montanye motion to relocate the fence to its previous location, thus providing some buffer area and implicitly adjusting the fence height to the height of the previous fence.

Accordingly, further specification in the order is warranted. This should include a very specific description of the location, and the clarification of a transitional buffer to the previous rear location

would be appropriate. This would include the use of the helpful photographs and overlay diagram attached to the Montanye motion and/or a specification of the distance from the Montanye boundary and the height of the previous fence.

The more specific the order, the better. This would also reduce the likelihood of further disharmony between these neighbors.

This has been a very challenging and difficult case in many ways. To wrap it up, I respectfully posit that the fence aspect does deserve clarification and adjustment consistent with the deliberation.

Respectfully, Peter Max Zimmerman, People's Counsel 410 887-2188

Get your COVID-19 vaccine today.

CONNECT WITH BALTIMORE COUNTY

www.baltimorecountymd.gov

From:	Peter Max Zimmerman
To:	Appeals Board; Krysundra Cannington
Cc:	Lawrence Schmidt; Tom@montanye.net; reistlaxcoach@gmail.com; rscoffin@verizon.net
Subject:	Case No. 19-342-SPHA; Donna Bair, Tom Montanye"s Motion for Reconsideration
Date:	Wednesday, August 25, 2021 3:02:29 PM
Attachments:	Bair Delib Minutes - 2019-342-SPHA.pdf Bair Donna - 2019-342-SPHA - CBA Opinion.pdf

To the Appeals Board,

This matter is scheduled for further deliberation by the Board on August 31, 2021.

Upon review of the Motion for Reconsideration filed by Tom and Kim Montanye, the Response just filed yesterday by Petitioner, the Board's June 7, 2021 Opinion and Order, and the prior April 20, 2021 deliberation minutes, please allow me to recap these observations.

The June 7, 2021 Order itself does not specify the location where the fence is to be removed and/or relocated. Rather, it refers on Page 8 to "the modification described herein." It turns out that the description of fence relocation on Page 7 of the Opinion is ambiguous and/or inconsistent with the Board's April 20, 2021 decision made in public deliberation. I attach both the opinion and the minutes.

It was my impression in listening to the public deliberation that even to the rear of the Bair house's rear building line, the fence was to be moved away from the Montanye boundary, to the more distant location of the previous picket fence, which also was lower in height. This would provide some transitional buffer. Such a buffer would not be prejudicial to Ms. Bair and would reduce the likelihood of further friction.

The Montanyes' motion's reference to the Board's deliberation minutes is apt:

> "The Board found that a reasonable solution is to relocate the fence and gate to its original location, which will provide pool security and address the driveway concern."

Here is the entire section of the Board's deliberation devoted to the fence issue on Page 2:

> "The Board discussed the request to permit an existing fence (swimming pool enclosure) with a height of 6 ft. in lieu of the permitted 42 in. The Board noted there are competing statutes regarding fences. The 6 ft. fence extends into the front yard of the adjoining property and along the parking area/driveway of the neighbors. The Board noted that the fence impedes the ability of the neighbors to see when they pull out of their driveway, which is a public safety hazard. The Board found that a reasonable solution is to relocate the fence and gate to its original location, which will provide pool security and address the driveway concern. The Board granted the Variance relief, with conditions."

In addition to the Board's recognition of the Petitioner's problematic fence location forward of her rear yard and adjacent to the Montanye front yard, especially near the driveway, there was thus also

a recognition that the rear yard fence location as constructed along the property boundary required adjustment. As I previously observed, the fence location extending into the rear yard is way beyond what is necessary to protect children from venturing into the pool. It is actually a privacy fence which is counterproductive to the essential legislative purpose because it leaves open a wide area in which children who play may venture easily into the pool. Moreover, it does not need to be six feet high. Forty-eight inches would be enough even if it is generously called a swimming pool protection fence.

To sum up, I think it was the Board's intent, and within the scope of the Montanye motion to relocate the fence to its previous location, thus providing some buffer area and implicitly adjusting the fence height to the height of the previous fence.

Accordingly, further specification in the order is warranted. This should include a very specific description of the location, and the clarification of a transitional buffer to the previous rear location would be appropriate. This would include the use of the helpful photographs and overlay diagram attached to the Montanye motion and/or a specification of the distance from the Montanye boundary and the height of the previous fence.

The more specific the order, the better. This would also reduce the likelihood of further disharmony between these neighbors.

This has been a very challenging and difficult case in many ways. To wrap it up, I respectfully posit that the fence aspect does deserve clarification and adjustment consistent with the deliberation.

Respectfully, Peter Max Zimmerman, People's Counsel 410 887-2188

IN RE: THE PETITION FOR SPECIAL HEARING AND VARIANCE	*	BEFORE THE
4607 Prospect Avenue	*	COUNTY BOARD
4th Election District 3rd Councilmanic District	*	OF APPEALS
	*	FOR
Donna V. Bair *Legal Owner*	*	BALTIMORE COUNTY
	*	**Case No.: 2019-342-SPHA**

* *

PETITIONER'S RESPONSE TO MOTION FOR RECONSIDERATION

The property owner, Donna V. Bair ("Petitioner"), by and through her attorneys, Lawrence E. Schmidt, Zachary J. Wilkins, and Smith, Gildea & Schmidt, LLC, submits this Response to Motion for Reconsideration filed by Tom and Kim Montanye, and states the following:

1. The Motion filed by Mr. and Mrs. Montanye states, "(w)e wish to have the Order reviewed and reconsidered on the fence opinion only. Not for a change of decision, but only for needed clarity on a single issue. We believe the wording of the written Opinion raises confusion and contains insufficient clarity." The Motion further states that the Board's "written opinion raises confusion and contains insufficient clarity to enable Baltimore County Code Enforcement to reasonably enforce the opinion as agreed upon by the CBA panel in the public deliberation, and also as recorded in the deliberation minutes".

2. Petitioner does not feel that the Opinion is confusing or unclear, but rather simple and concise. The Board discussed during the public deliberation that a 6-foot fence provides safety for the pool; a fence height of 42 inches is permitted in the side/front yard of an adjoining property (BCRZ 427.1B); and, any safety concerns due to the alterations of the fence extended along the south (Montanye) side of the property. The Board discussed where a shorter portion of the new 6-foot fence should start and stop. Board members voted to grant the Variance relief for the fence, with conditions... "subject to the relocation of the gate as described herein, the fence height of 6 ft. will be permitted" (Opinion, Page 7, Paragraph 2). The Opinion simply states that a portion of the 6-foot fence (along the south side of the property and adjacent to the Montanyes property) previously 42 inches in height, be lowered back to the permitted 42 inches and that the gate be moved back to the rear building line of the Bair residence, it's previous location.[1]
3. The mandated changes in the Opinion are clear and unambiguous.
4. The Petitioner is prepared to make such changes.
5. It is also noted that the Motion for Reconsideration presents no new facts, changes in law, fraud, mistake or irregularity**.** Thus, there is no legal basis on which the Motion to Reconsideration can be granted.

[1] The rear building line of the Bair residence is 4 feet back (East) from the rear foundation of the residence, as there is a 4 foot building overhang along that back corner.

Wherefore, having addressed the allegations in the Motion for Reconsideration, the Petitioner requests,

- That the Motion for Reconsideration be DENIED; and
- For such other and further relief as the nature of her cause may require.



LAWRENCE E. SCHMIDT
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
(410) 821-0070
lschmidt@sgs-law.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this **24th** day of August**,** 2021 a copy of the foregoing Response to Motion for Reconsideration was emailed to:

Thomas & Kim Montayne
Tom@montanye.net

Kimberly Karlsen
perandkim@aol.com

Steve & Patricia Fradkin
reistlaxcoach@gmail.com

Sue Benson
sbensoncomm@aol.com

Robin Coffin
rscoffin@verizon.net

Mary Molinaro
mmolinaro@reisterstown.com

Peter Max Zimmerman, Esquire
People's Counsel for Baltimore County
peoplescounsel@baltimorecountymd.gov



LAWRENCE E. SCHMIDT

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
July 15, 2021

NOTICE OF DELIBERATION ON MOTION FOR RECONSIDERATION

IN THE MATTER OF: Donna V. Bair – Legal Owner
4607 Prospect Avenue
19-342-SPHA 4th Election District; 3rd Councilmanic District

Re: Motion for Reconsideration dated July 2, 2021 filed by Tom and Kim Montanye, Protestants *pro* se.

Pursuant to Rule 10 of the Board of Appeals' Rules of Practice and Procedure, a public deliberation on the Motion for Reconsideration and any response thereto is

ASSIGNED FOR: AUGUST 31, 2021 AT 9:00 A.M.

The above scheduled public deliberation will be held remotely using WebEx for audio and video participation. **Call-in information and a link to the public deliberation will be posted on our web calendar the night before at** www.baltimorecountymd.gov/Agencies/appeals/index.html.

NOTE: Any Responses to the Motion for Reconsideration are due on AUGUST 24, 2021 no later than 3:00 p.m.
ELECTRONIC COPY ONLY
emailed to appealsboard@baltimorecountymd.gov

NOTE: PUBLIC DELIBERATIONS ARE OPEN WORK SESSIONS WHICH ALLOW THE PUBLIC TO WITNESS THE DECISION-MAKING PROCESS. A WRITTEN OPINION AND ORDER WILL BE ISSUED BY THE BOARD WITHIN A REASONABLE TIMEFRAME AFTER DELIBERATION AND A COPY SENT TO ALL PARTIES.

If you do not have access to a computer or smart device, please contact our office for the call-in information the day before the scheduled deliberation.

Krysundra Cannington, Administrator

c.	Counsel for Petitioners	: Lawrence E. Schmidt, Esquire
	Legal Owner	: Donna Bair
	People's Counsel for Baltimore County	: Peter M. Zimmerman, Esquire
	Protestants *pro se*	: Ann Rea Charles and Anna Welsh Cynthia Morrison Frances Acle John E. Lemmerman/RTF Associates, Inc. Kim and Tom Montanye Kim Karlsen Lyle Montanye Martha Wist Pamela Becker Ramzi and Roula Hemady Raymond and Linda Long Richard Stanley Robert Gehman Robin Coffin Shirley Winebarger Steve and Patricia Fradkin Teresa Moore Vernene Lenz

Paul M. Mayhew, Managing Administrative Law Judge
Steve Lafferty, Director/Department of Planning
C. Pete Gutwald, Director/PAI
James R. Benjamin, Jr., County Attorney
Nancy C. West, Assistant County Attorney

July 2, 2021

Tom & Kim Montanye, Protestants
4609 Prospect Avenue
Glyndon, MD 21136

Via Email - AppealsBoard@BaltimoreCountyMD.Gov

RECEIVED
JUL 06 2021
BALTIMORE COUNTY
BOARD OF APPEALS

Board of Appeals of Baltimore County
Jefferson Building
105 West Chesapeake Avenue, Suite 203
Towson, MD 21204

Re: Bair – 4607 Prospect Ave
Case No. **2019-342-SPHA**

Dear Board of Appeals,

Please find enclosed a Motion for Reconsideration for filing in the above matter.

We wish to have the order reviewed and reconsidered on the fence opinion only. Not for a change of decision, but only for needed clarity on a single issue.

We believe the wording of the written opinion raises confusion and contains insufficient clarity to enable Baltimore County Code Enforcement to reasonably enforce the opinion as agreed upon by the CBA panel in the Public Deliberation, and also as recorded in the deliberation minutes.

Since this opinion was a partial grant/ partial deny, sufficient clarity is required. We ask that the CBA append or rewrite the fence ruling to exactly reflect the panel's agreement on the fence, so that it can be reasonably enforced, and the matter settled successfully and finally. We highlight and clarify certain hearing exhibits to assist to this end.

We're happy to appear for further explanation or to have the Motion considered based only on these pleadings, as you deem appropriate.

Thank you for your consideration in this matter.

Sincerely,

Tom & Kim Montanye

Cc: Office of the People's Council
Lawrence Schmidt
Steve and Patti Fradkin
Robin Coffin
Kim Karlsen
Sue Bensen
Mary Molinero
Cookie Stone

RECEIVED
JUL 06 2021
BALTIMORE COUNTY
BOARD OF APPEALS

RE: Petition for Special Hearing and Variance, Board of Appeals
Case 2019-342-SPHA
Donna Bair, 4607 Prospect Ave, Glyndon

Motion for Reconsideration

7/2/2021, Tom & Kim Montanye, Neighbors @ 4609 Prospect Ave

Tom and Kim Montanye, the Protestant neighbors at 4609 Prospect Avenue, submit this Motion for Reconsideration (MFR) pursuant to Rule 10 of the County Board of Appeals (CBA), and respectfully request that the CBA revises its' Opinion issued dated June 7, 2021 relating to the above referenced matter.

The fence opinion

During the public deliberation, there was a clear agreement among the CBA panel that the fence that was constructed by the petitioner could stand, with the exception of the *new* portion positioned along the Montanye's driveway/front yard property line. The minutes of the deliberation state *"The Board found that a reasonable solution is to relocate the fence and gate to its original location, which will provide pool security and address the driveway concern."*

However, the resulting opinion confuses the issue by stating *"...the Board finds that the extension of the fence from the rear of the building line of the Bair residence, its previous location, to its current location creates an unsafe condition and violates BCRZ §427.1.B.1 and must be moved back."*

The confusion is caused by two ambiguities in the opinion.

1. "*...from the rear of the building line of the Bair residence...*" – this references a "from" location but not a "to" location, making it unclear the direction or distance of the original fence from that point.
2. "*...its previous location...*" and "*must be moved back*" – only photo exhibits were admitted showing the previous fence, no drawings or surveys.

In order for Code Enforcement to execute the *"relocate the fence and gate to its original location"* sentiment from the deliberation, and "*subject to the modification described herin*" in the Order, the original location must be made clear, using the best available resources from the hearings.

The Petitioner's survey drawing is not helpful in this regard. It contains no indication of the property condition prior to the work being done, including the prior fence location, because it was created after-the-fact.

However, there were two photo exhibits in particular, from the hearings, that can help reconstruct the previous condition. Using these two photo exhibits we offer, as a helpful inclusion, a drawing overlay to the survey, showing the previous fence location. We also include the photo exhibits used to substantiate the accuracy of the drawing overlay.

Protestant's Exhibit 25C / Petitioner's Exhibit 2D

The original gate & fence location

Protestant's Exhibit 25C (included), a photo taken from the Bair view, clearly shows the prior location of the gate and fence. This same photo was also presented into evidence, among other photos in a grouping labeled "4607 Before", as **Petitioner's Exhibit 2D**.

For additional clarity, we have included a "marked up" version of the exhibit photo to assist with the following description of the original fence/gate configuration. There are "call-outs" on the markup corresponding to the letters (a-e) below.

The "marked up" exhibit photo shows that the original gate started near the back corner of the house (a), and that it ran toward the rear yard (parallel to the side of the house and property line, not parallel to the back of the house or "rear of the building line"). In other words, the prior gate faced the Montanye-side property line, not the street. The photo also shows that the gate crossed over the paver walkway and connected with a small portion of 6' tall fence (b) which intersected the 6' tall cabana wall (c).

Where the 6' tall portion of the prior cabana/fence ended

It also shows that the 6' tall fence/cabana along the property line (d) stopped and turned 90 degrees toward the Bair property at the Holly tree (e). This turn is aligned exactly at the end of the Montanye driveway. Recall, the extension of the 6' fence along the driveway was determined to be a public safety hazard due to the lack of ability to see when pulling out of the driveway.

Protestant's Exhibit 6A

Protestant's photo Exhibit 6A (included) is taken from the opposite view (from the Montanye view) of Petitioners photo Exhibit 2D. It confirms that the 6' tall fence/cabana ended at the holly tree and turned 90 degrees into the Bair property. It also confirms that the holly tree aligns exactly at the end of the Montanye driveway.

4607 Survey Overlay Diagram

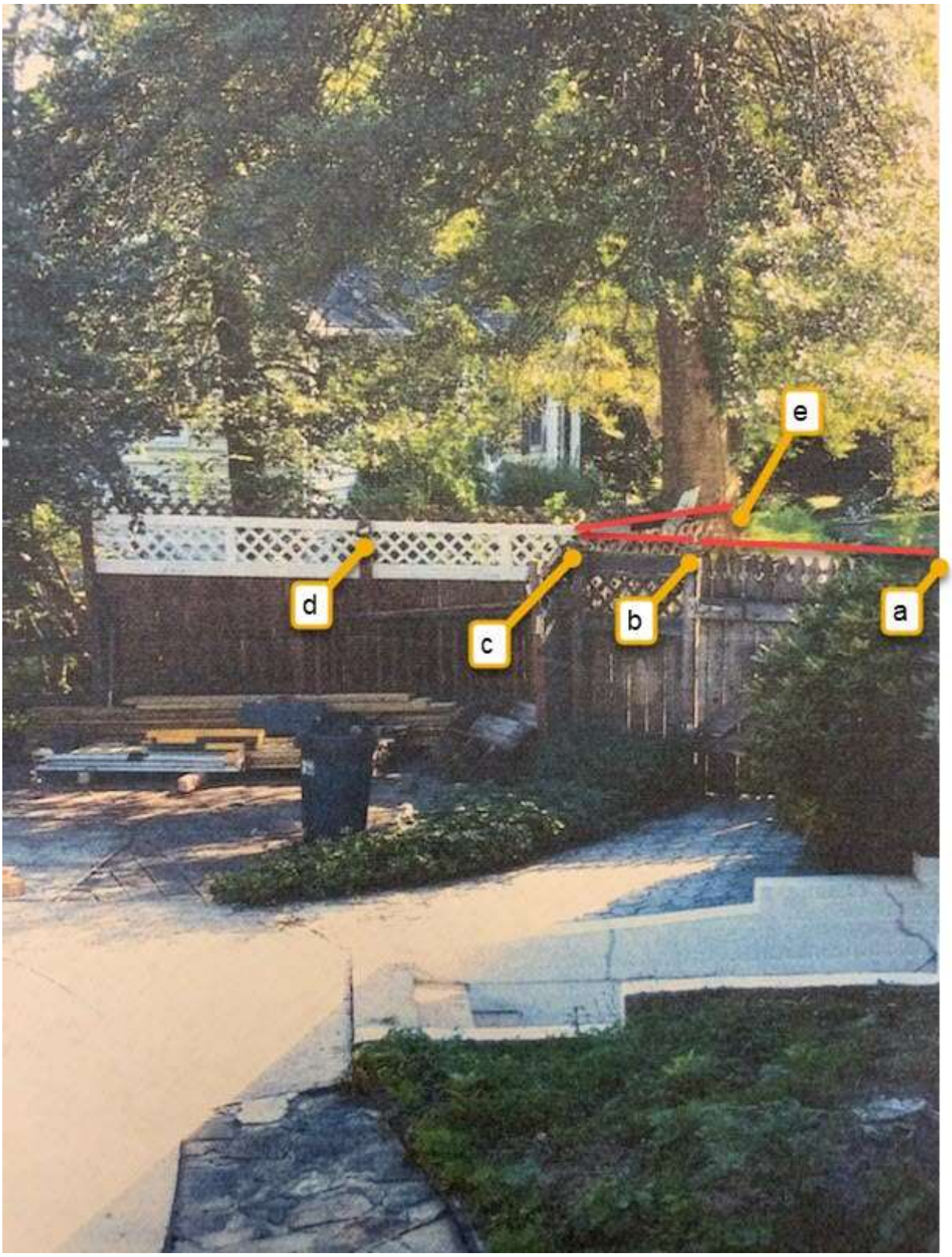
Using the two above photos, and the holly tree landmark, this overlay was created to represent the fence and gate original location. It should suffice to resolve the matter if followed.

Summary

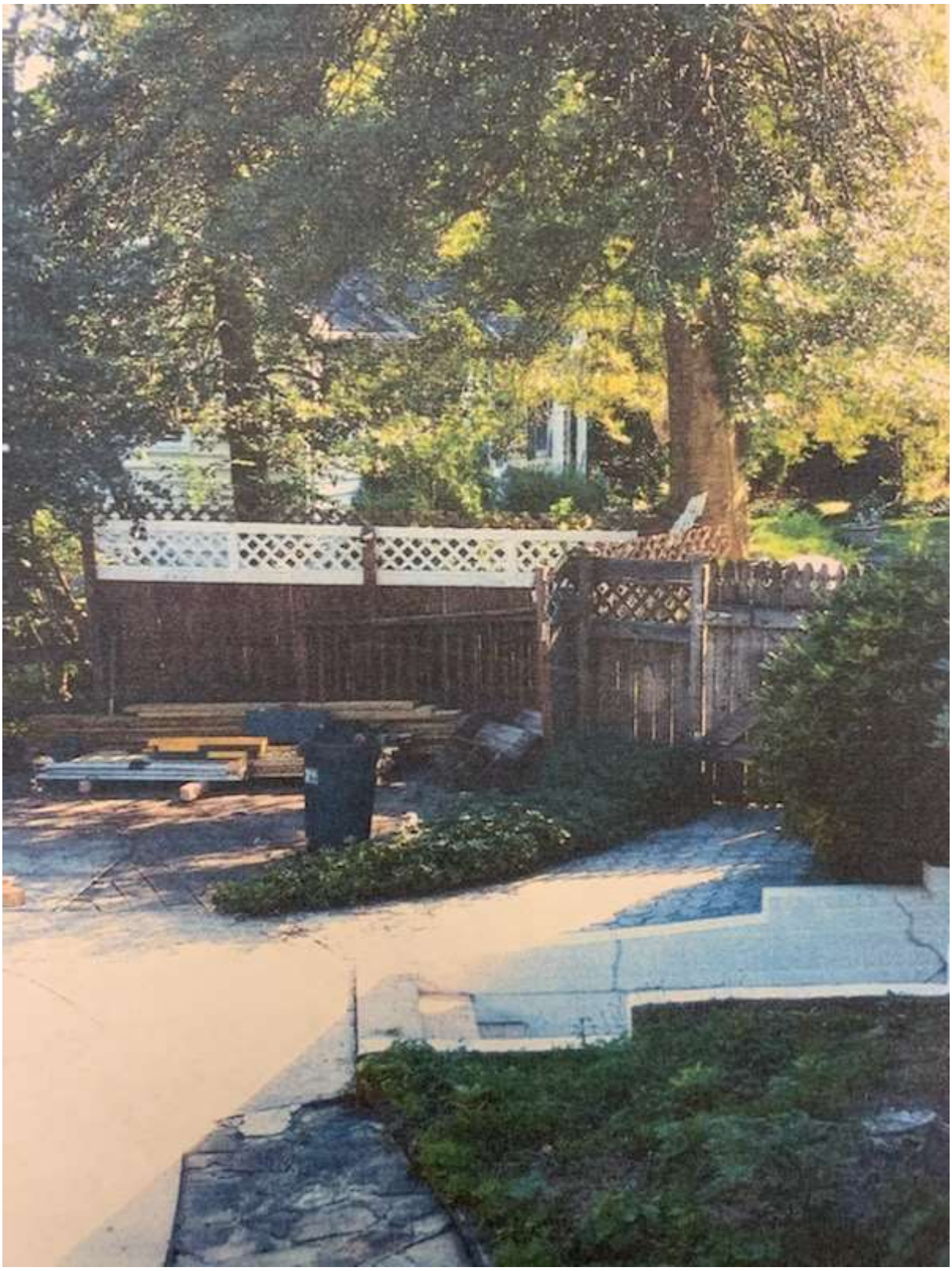
To be clear, we are not requesting a change of the CBA decision, as discussed in the public deliberation and reflected in the minutes. We only request that the opinion on the fence be rewritten with sufficient specificity to be used by the Code Enforcement Division to assure that the corrections are made as intended by the CBA. We wish to avoid further issues that will likely result from the current ambiguity of the Opinion, and assure the fence matter is truly settled. Perhaps including the drawing overlay and/or photo exhibits, or references to them, or another sufficiently clear alternative with the order, would help achieve this end.

Fence exhibits/ inclusions follow.

“Marked Up” Protestant’s Exhibit 25C & Petitioner’s Exhibit 2D



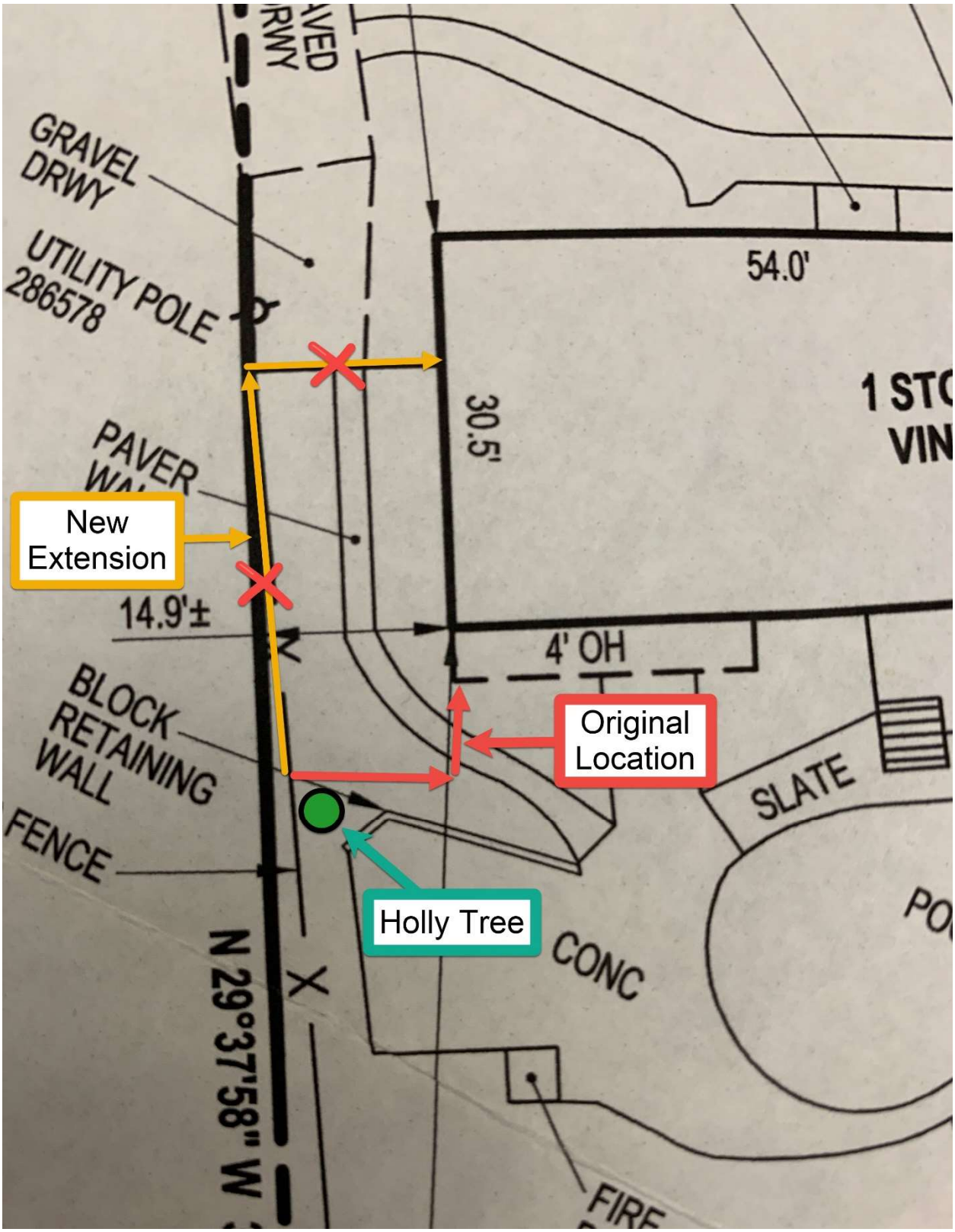
Original Protestant's Exhibit 25C & Petitioner's Exhibit 2D



Protestant's Exhibit 6A – Montanye driveway and view of the fence turning at the holly tree



4607 Survey Overlay Diagram



IN THE MATTER OF DONNA V. BAIR – LEGAL OWNER AND PETITIONER FOR SPECIAL HEARING AND VARIANCE ON THE PROPERTY LOCATED AT 4607 PROSPECT AVENUE	*	BEFORE THE BOARD OF APPEALS OF
4TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BALTIMORE COUNTY
	*	CASE NO. 19-342-SPHA

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

OPINION

This case comes to the County Board of Appeals ("CBA") on appeal of an Opinion and Order of the Administrative Law Judge dated August 19, 2020 granting in part and denying in part a Petition for Special Hearing and Variances filed by Donna V. Bair ("Petitioner/ Appellant") the legal owner of the property at 4607 Prospect Avenue (the "Property") in the Glyndon area of Baltimore County.

The Special Hearing Petition was filed pursuant to Baltimore County Zoning Regulations ("BCZR") §500.7 (1) to approve a nonconforming lot width and lot area pursuant to BCZR §104.1; (2) to approve a nonconforming dwelling side yard setback, pursuant to BCZR §104.1; and (3) to confirm an existing fence (swimming pool enclosure) with a height of 6 ft. is in compliance with BCZR §427.1 and Baltimore County Code ("BCC") §13-6-101.

The Petition for Variance seeks (1) to permit an existing 12 ft. by 28 ft. attached garage addition with a side yard of 0 ft. in lieu of the required 20 ft.; (2) to permit an existing 12 ft. by 28 ft. attached garage addition with a sum of side yards of 14.9 ft. in lieu of the required 50 ft.; (3) to permit an existing shed with a sideyard setback of 26 inches in lieu of the required 30 inches; and 4) to permit, if necessary, an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum 42 inches.

Appellant was represented by Lawrence E. Schmidt, Esquire and Zachary J. Wilkins, Esquire, of Smith, Gildea and Schmidt, LLC. Also appearing for Appellant as an expert was John Motsco, a licensed engineer in the State of Maryland. Ms. Bair also testified.

Numerous neighbors and an umbrella community association appeared in opposition, including both adjoining neighbors. Robin Coffin, and attorney who resides on Prospect Avenue, facilitated Protestants' case and testimony, and also testified personally as did the adjoining property owners.

The Board held three days of hearings, one in person on February 6, 2020 and two virtually on March 23, 2021 and March 25, 2021. A public deliberation was held virtually on April 20, 2021.

FACTUAL BACKGROUND

Petitioner Bair acquired the Property in 2014. At the time the Property was improved with a single family dwelling, attached garage, two driveways, an in-ground swimming pool, shed, and a fence enclosing a large portion of the rear yard and the pool area.

In 2017 Petitioner undertook additions to the house, adding to the front to create a master bedroom suite, adding a second garage, removing an existing fence and mature landscaping around the fence, and adding a new fence. Those improvements led to the current case and much acrimony among neighbors. In particular, the second garage extends several feet into the property of the neighbors on the north, Mr. and Mrs. Stephen Fradkin. The neighbors on the south, Mr. and Mrs. Thomas Montanye, object to the location of the replacement fence which extends into their front yard, and which creates a safety hazard by obstructing visibility for cars leaving the Montanye property. Mr. Montanye also disputes the location of the common property line and alleges that Petitioner tampered with surveyor's stakes to be more favorable to her

property. Both neighbors alleged that the improvements created additional runoff and flooding conditions on each of their properties.

Ms. Bair testified that she hired a contractor, though she did not identify that contractor to the CBA, nor did she know his whereabouts or current status. Ms. Bair assumed the contractor would obtain permits and other required approvals. No survey was conducted either at the time of Bair's purchase nor at the time of the work being undertaken. No zoning or permit approvals were investigated or sought for the building improvements or the fence.

The neighbors complained to the Baltimore County Office of Code Enforcement, who cited multiple violations at Petitioner's Property, and which ultimately led to filing of the subject petitions.

Petitioner's engineer John Motsco testified to the zoning history of the Property. The lot was created prior to the1945 adoption and 1955 codification of zoning by Baltimore County. Mr. Motsco stated that in 1970, Baltimore County adopted the D.R. zones (Density Residential), at which time the Property was designated D.R. 2. In 1996, the current D.R. 1 classification was applied to the Property.

APPLICABLE LAW

A Special Hearing Petition is effectively a request for declaratory judgment. BCZR §500.7, *Antwerpen v. Baltimore County*, 163 Md. App. 194, 209 (2005). The main question to be determined by the Board is whether the current configuration of the lot is permitted as a non-conforming use per BCZR §104.1. A collateral issue under BCZR §104.3 concerns whether the addition to the house extends beyond 25% of the ground floor area of the house prior to the addition.

Petitioner bears the burden of presenting evidence (customarily through experts) on which the Board can assess whether a zoning request pursuant to the BCZR may be approved. While the BCZR provides no specific criteria for the granting of a Request for Special Hearing, "the administrative practice in Baltimore County has been to determine whether the proposed Special Hearing would be compatible with the community and generally consistent with the spirit and intent of the regulations." *Kiesling v. Long*, Unreported Opinion, No. 1485, Md. Ct. Spec. App. (Sept. Term 2016).

A nonconforming use is one that predates the zoning imposed on a property. It is defined in BCZR §101 as a legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use. Under BCZR §104.3, no nonconforming building or structure may be extended more than 25% of the ground floor area of the building so used.

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

(1) The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is – in and of itself – unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property; and

(2) If that first step results in a supportable finding of uniqueness or unusualness, then a second step is taken in the process, *i.e.*, a determination of whether practical difficulty and/or unreasonable hardship, resulting from the disproportionate impact of the ordinance *caused by* the property's uniqueness, exists. *Cromwell*, 102 Md. App. at 694-95, 651 A.2d at 426.

Further, that hardship or difficulty must not be of the Petitioner's own making. 102, Md. App. at pp 694-5.

DISCUSSION

THE LOT: Petitioner's engineer John Motsco testified that the subject lot is a .74 acre parcel, classified D.R. 1 with a small portion being R.C. 2 (Resource Conservation). The lot was created by a plat entitled "Plat of Land belonging to B.F. Bennett and Joshua Regester", dated October 31, 1883 and recorded among the Plat Records of Baltimore County, Maryland in Plat Book No. 2 page 18. The lot lines are unchanged since its creation.

Mr. Motsco also testified that the original residence was constructed in 1951. Using old aerial photographic records, Mr. Motsco determined that the house configuration rendered the side yards of 9.5 feet on the north side and 14.9 feet on the south side, with a sum of the sideyard setbacks of 24.4 feet.

Based on the documentary evidence and testimony of Mr. Motsco, the Board finds that the lot width and area meet the definition of the BCZR as a valid nonconforming use that may continue. The lot configuration pre-dates any zoning in Baltimore County by at least sixty years, and despite the fact that the lot width and area do not meet current regulations, these may continue. In addition, the Board finds that the side yard setbacks existing prior to Petitioner's new construction were in existence prior to the 1996 zoning, perhaps longer, and as such may continue - measuring 9.5 feet on the north side and 14 feet on the south. Further testimony, undisputed though imprecise, persuaded the Board that the shed in the rear of the Property predates the current zoning, and may also remain in its current location, having a setback of 26 inches.

THE BEDROOM ADDITION: Petitioner built an addition to the house which extended the front building and roof lines to create a straight front building line where a "notch" or recess previously existed. According to Mr. Motsco, that addition measures 14 x 22 feet (for a total of

308 sq. ft.). Under BCZR §104.3, no nonconforming building or use may be extended by more than 25% of the ground floor area of the building so used.

Mr. Motsco offered testimony and documentary evidence that the ground floor area of the residence prior to the bedroom addition was 1,554 sq. ft. and that the bedroom addition amounts to less than 25% (or a maximum of 388 sq. ft.) permitted. Mr. Motsco also testified that this addition maintained the previous side yard setback of 14 feet from the south property line shared with the Montanye's.

Based on these facts, the Board finds that the bedroom addition is a permitted extension of the nonconforming structure.

THE GARAGE ADDITION: Though there was much testimony offered by Ms. Bair regarding the addition of a second garage based on her need to protect her vehicles from debris and droppings from trees on her lot, the Board found none of that testimony in any way pertained to the variance findings required under a *Cromwell* analysis. The majority of the Board found that the Property is so similar in size, shape and topography to other lots in the zone as to be indistinguishable for zoning purposes and, as such, does not meet a finding of uniqueness.

Even were the lot found to be unique, any hardship is entirely of Petitioner's own doing: failure to obtain a survey; failure to investigate, apply for or obtain zoning approvals; failure to investigate, apply for or obtain building permits; failure to pursue normal due diligence in either purchasing the Property or in vetting the contractor she hired to perform seemingly substantial and costly improvements to her residence. The Board found Petitioner's testimony lacking in credibility and unpersuasive on this point. Accordingly, the Board denies the requested variances for the garage addition and the side yard of 0 ft. on the north side of the Property.

THE FENCE: Petitioner removed an existing fence and landscaping and replaced that fence with a 6 ft. high fence in lieu of an otherwise permitted 42-inch fence. Petitioner also extended the new fence along the south side of her property and relocated the gate closer to the front building line of her house. By being so located, the fence was impermissibly installed since it was parallel to the adjoining neighbor's front yard.

The Board recognizes that BCC §13-601 (Swimming Pool Enclosure) requires a fence of *not less than 4 feet (48 inches)* (emphasis added), without specifying any height limitation. This Code provision conflicts with the limitation on fence height of 42 inches set forth in BCZR §427.1B.1. BCZR §427 does not permit a side yard fence of a resident's property to be installed in such a manner that it is parallel to the front yard of an adjacent dwelling. Based on this unique set of facts and law, the Board finds that the extension of the fence and gate from the rear building line of the Bair residence, its previous location, to its current location creates an unsafe condition and violates BCZR §427.1.B.1 and must be moved back. However, subject to the relocation of the gate as described herein, the fence height of 6 ft. will be permitted.

CONCLUSION

Based on the foregoing discussion, the Board grants in part, and denies in part the relief sought. In reaching its conclusion, the Board entertained much testimony irrelevant to the zoning issues within the Board's purview as well as much evidence of the acrimony among neighbors. The Board declines to countenance the acts of a property owner who disregards the most basic legal requirements governing the use of his or her property.

ORDER

THEREFORE, IT IS this 7th day of June, 2021, by the Board of Appeals for Baltimore County

ORDERED, that the Petition for Special Hearing: (1) to approve a nonconforming lot width and area; and (2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of the required 30 inches, be and is hereby **GRANTED**; and it is further

ORDERED, that the Petition for Special Hearing: (1) to approve nonconforming dwelling side yards of 9.5 ft. on the north side and 14.9 ft. on the south side, with a sum of the side yard setbacks of 24.4 ft. is hereby **GRANTED**; and it is further

ORDERED, that the Petition for Special Hearing to confirm an existing fence (swimming pool enclosure) with a height of 6 ft. is in compliance with BCZR §427.1 and BCC §13-6 -101, subject to the modification described herein, be and is hereby **GRANTED**; and it is further

ORDERED, that the Petition for Variance: (1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.; (2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of side yards of 14.9 ft. in lieu of the required 50 ft.; and (3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches, be and is hereby **DENIED**.

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

Deborah C. Dopkin, Chair

Andrew M. Belt

see following page
William A. McComas

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

See previous page
Deborah C. Dopkin, Chair

See previous page
Andrew M. Belt

William A. McComas

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

June 7, 2021

Peter M. Zimmerman, Esquire
Carole S. Demilio, Esquire
Office of People's Counsel
The Jefferson Building, Suite 204
105 W. Chesapeake Avenue
Towson, Maryland 21204

Lawrence E. Schmidt, Esquire
Zachary J. Wilkins, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204

RE: *In the Matter of: Donna V. Bair – Legal Owner*
Case No.: 19-342-SPHA

Dear Counsel:

Enclosed please find a copy of the final Opinion and 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,

Sunny Cannington

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure

c: See Distribution List following

In the matter of: Donna V. Bair – Legal Owner
Case No.: 19-342-SPHA
June 7, 2021
Distribution List

Donna V. Bair
John E. Lemmerman/RTF Associates, Inc.
Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
Kim and Tom Montanye
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz
Paul M. Mayhew, Managing Administrative Law Judge
Stephen Lafferty, Director/Office of Planning
C. Pete Gutwald, Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
James R. Benjamin, Jr., County Attorney/Office of Law

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Donna V. Bair – Legal Owner 19-342-SPHA

DATE: April 20, 2021

BOARD/PANEL: Deborah C. Dopkin, Chair
Andrew M. Belt
William A. McComas

RECORDED BY: Tammy A. Zahner, Legal Secretary

PURPOSE: To deliberate the following:

Petition for Special Hearing pursuant to BCZR §500.7:

1) to approve a nonconforming lot width and lot area, pursuant to BCZR §104.1;
2) to approve a nonconforming dwelling side yard setback, pursuant to BCZR §104.1; and
3) to confirm that an existing fence (swimming pool enclosure) with a height of 6 ft. is in compliance with BCZR §427.1 and BCC §13-6-101.

Petition for Variance from BCZR:

1) §1B02.3.C.1 to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.;
2) §1B02.3.C.1 to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.;
3) §400.1 to permit an existing shed with a side yard setback of 26 inches in lieu of the required 30 inches;
4) §427.1 to permit, if necessary, an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches; and
5) in the alternative, if necessary, to permit an existing dwelling with a lot width of 98 ft. in lieu of the minimal required 150 ft. and to permit a lot area of 31,000 sq. ft. ± in lieu of the minimal required 40,000 sq. ft. pursuant to §1B02.3.C.1

PANEL MEMBERS DISCUSSED THE FOLLOWING:

DISCUSSION

- The Board reviewed the Petitioner's request and held three days of hearings.

- The Board first discussed the request for a nonconforming lot width and lot area. The Board found that the lot width and lot area pre-date the current regulations and granted the request.

- The Board discussed the request for a nonconforming dwelling side yard setback. The Board reviewed the pictures of before and after the addition. The house did not share a common roof, and now does. The Board noted there was an addition to the original footprint of the home to enlarge a bedroom, but the side yard setback was not impacted. The Board found that the side yard setback on the south (Montanye) side falls within the 25% allowed for nonconforming

lots. There was no evidence or testimony to support the side yard setback on the north (Fradkin) side where the garage is located.

- The Board discussed the requested variance relief and the uniqueness requirement of *Cromwell*. The Board noted that the garage encroaches on the adjoining property. Petitioner's expert argues that the topography of the property makes it unique as it slopes to one side. Protestants argue that the subject property is similar in size and shape to others in the neighborhood. One Board Member was persuaded that the property is somewhat unique as it is smaller than others, even though it is similarly shaped. The remaining members found the property is similar to others located on Prospect Avenue and is not unique.

- The Board next discussed the hardship factor in *Cromwell*. The Board noted that the house was purchased without a survey, and substantially expanded without a survey or permit. The garage was expanded from the original one-car garage to a two-car garage. The Board found that any hardship of the Petitioner was self-imposed.

- The Board discussed the request to permit an existing fence (swimming pool enclosure) with a height of 6 ft. in lieu of the permitted 42 in. The Board noted there are competing statutes regarding fences. The 6 ft. fence extends into the front yard of the adjoining property and along the parking area/driveway of the neighbors. The Board noted that the fence impedes the ability of the neighbors to see when they pull out of their driveway, which is a public safety hazard. The Board found that a reasonable solution is to relocate the fence and gate to its original location, which will provide pool security and address the driveway concern. The Board granted the Variance relief, with conditions.

- The Board briefly discussed the alternative relief noted on the redlined Plan. The Board noted there was no evidence presented at the hearing and found the alternative relief MOOT.

CONCLUSION: After thorough review of the facts, testimony, and law in the matter, the Board unanimously agreed that the Petitions for Special Hearing and Variance would be DENIED in part, and GRANTED in part, with conditions.

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,

/s
Tammy A. Zahner

Baltimore County - My Neighborhood



March 2019 Submission to Landmark Preservation Commission (LPC)

For 4609 Prospect Avenue, Glyndon, MD 21136

(non-contributing property in the Glyndon Historic District)

Please accept the following home improvement items for LPC approval. I'm hoping to group the items below into a two or three permit requests, to reduce time away from work and cost.

1- Driveway Maintenance

Work was started August 30th and completed September 3rd, 2018. Before proceeding, I checked the permit requirements for this work thoroughly online, and found it was not necessary. This was before my communications with LPC and learning that all work, even if it didn't require a permit through the normal process, now requires LPC approval and a permit. This LPC/permit procedure and requirement was introduced well after my most recent interaction with Historic Glyndon Inc., in the winter of 1999-2000, when we added an addition to the back of our house. No change notification was ever sent to us. In addition, when inquiring about my neighbor's October complaint, shortly after completing the work, Hunter Rowe at the Baltimore County office closed the case with no action necessary on our part. In talking with him 3/5/19, after receiving a correction notice 3/4/19, he said he had made a mistake, and we did in fact need LPC approval and a permit. Photos included for your review.

The work involved

- resurfacing the dark gray stone driveway, put in place prior to 2000, with millings (recycled blacktop stones) of the same gray color and porous properties,
- filling in some ruts/areas that had eroded,
- reclaiming about 12" of the original footprint along the edges, where grass had encroached over the 20+ years, and
- widening one small portion – a minimal triangular strip 24" at the wide end, coming to a point at the other end, less than 30 feet in length (~15 square feet). Contrast this with Mrs. Bair's ~10x 15' (150 sqft) concrete expansion in front of her new 2nd garage bay.

The whole driveway is 100' long, from the street to the front of our house, starting as a single lane at the street and then widening at the house to hold 2 cars side-by-side.

The widening was necessary to meet the needs of our growing family. After 30 years of living here, we now have 4 driving-aged children living at home (6 drivers and 6 cars), with frequent friends and family visitors. We can now fit all 6 cars in the driveway. This minimal widening, to allow a 3rd row of two cars, was the least costly and least impactful solution to our parking needs.

Note: First verbally, then via first class letters, I advised Mrs. Bair well in advance that we would be widening our driveway. Because her auxiliary parking area (Mrs. Bair's actual driveway is on the other, garage side of her property) encroaches quite significantly on our property (see attached survey), our widening resulted in going right up to it. In discussing this concern with her, I offered to restore separation via a small grass strip, half on our side of the property line, and half on hers. This would require her to alter her auxiliary parking area to resolve the encroachment issue and she declined. When driving around all of Historic Glyndon, I can find no other property that has been allowed a driveway/parking area on both sides of the property. I was, however, able to find multiple driveways that adjoined on the property line, and many stone driveways. Also related to Mrs. Bair's concern about the minor widening, we withheld further widening in one specific area, and conceded instead to put in a planter box and narrow sky pencil holly trees to better define separation and accommodate. Ironically, she added that work to her complaint against us.

Another factor: Because we have a fire hydrant in front of our house, our street-front parking area is abnormally very limited. We have to stay 15' away from the hydrant in either direction. Mrs. Bair has repeatedly called the police if we

breech the 15' requirement, even if we're not actually blocking the hydrant, and we have actually gotten a ticket at her insistence when only 10' away. Also, the area we *can* park in at the street is directly under a neighbor's 100 year-old oak tree that is known to drop car-smashing branches.

I seek LPC approval (after the fact) for this work, and forgiveness for not knowing the new process and requirements at the time. I didn't encounter any information about an LPC requirement while looking earnestly at the county codes prior to the work.

2 - Shed Maintenance

Our shed was built as part of our 1999-2000 addition project and matches the house in features. We re-used a kitchen window and French doors from the original house, built in 1949, on the shed in our rear yard. These re-used parts need to be re-painted and the sill & threshold replaced from rot. I intend to replace the sills with a composite replica and paint them white to match the house and shed trim. In addition, there are two small overhang roofs, front and back, that need new sheathing, plus their supporting 2x4's which have insect (wood bees) damage. I'll also replace the shingles with architectural shingles that match the newly completed house roof, and add new gutters to protect the window and doors from further exposure. Finally, I want to build a new 12x12 platform with composite decking in front of the shed, to replace the treated plywood wood ramp, allowing an area to do small maintenance projects such as bicycle and mower maintenance. Photos included.

3 - Front Angle Bay Maintenance

Replace rotted frame and sills as needed with like pine, wrapped with aluminum trim coil to match the rest of the house, re-paint same color (white) where needed to match. Replace the asphalt roof shingles with copper as an upgrade to further highlight this feature and match the cupola. Photos included.

4 - Cupola

We plan to add a cupola on our roof. There are several cupolas on our street, and more in Historic Glyndon. Photo included.

5 – Picket and/or Lattice Enclosure Around Trash Cans & Utility Service – Side

Build a picket enclosure to hide unsightly trash cans and gas/electric meters from view, while still allowing access. Photos included.

9 - Privacy Along Parking Area

Our neighbor recently installed a security camera on her new 6' fence, which also monitors our parking area, such that every time we get into or out of our cars or pull in and out, the motion light and camera are activated. To allow for privacy, we will install 3 wood trellises, 2'x6' (photo included) and plant some ivy and Clematis to eventually cover them. See plot plan for location along driveway.

10 - Deck

18 years ago we added a back addition, with a space designed for a future deck, and are only now in a position to afford to build it. Aside from the access steps, it will be positioned mostly behind/beside the house, not visible from the front/street, and the steps will be mostly shielded from view because of our established front/side holly tree. Plans attached.

11 - Balcony

Build a 14' x 8' balcony off of our master bedroom, replacing the regress window with an exterior door. Composite decking with treated pine rails and black aluminum balusters to match the main deck construction. Site photo attached.

12 - Foot Path

Install a gravel-and-stone foot path leading from the front of the house to the new deck, when complete. This shaded area is impossible to sustain sufficiently plush grass to allow safe foot traffic. Illustration included on plot plan, photo.

13 - Rear Yard Pet Fence & Driveway Decorative Fence

We intend to install a new 42"-high wood fence to contain our pets in the flattest area (about half) of the back yard, see plot plan for location detail. The fencing from the deck to the property line and forward will be picket (photo attached) to match the trash can enclosure in the same area. From the deck to, and around, the back yard will be paddock style. The new hedges will hide the transition from one to the other.

Also, we will install an 18" high decorative white picket fence along our driveway to help hide the muddy trench resulting from runoff from our neighbor's addition and re-grading.

14 - New Landscape Wall Around Oaks, Back Yard

There are two oaks in the back yard on the edge of a slope, and the back/ slope-side is experiencing erosion, exposing the roots. I will install a minimal (9-15") gray stone landscape wall around the back side to better level out the bed and prevent further erosion, protect the health of the trees, and retain the mulch during heavy rains.

15 - Stone Around Mailbox

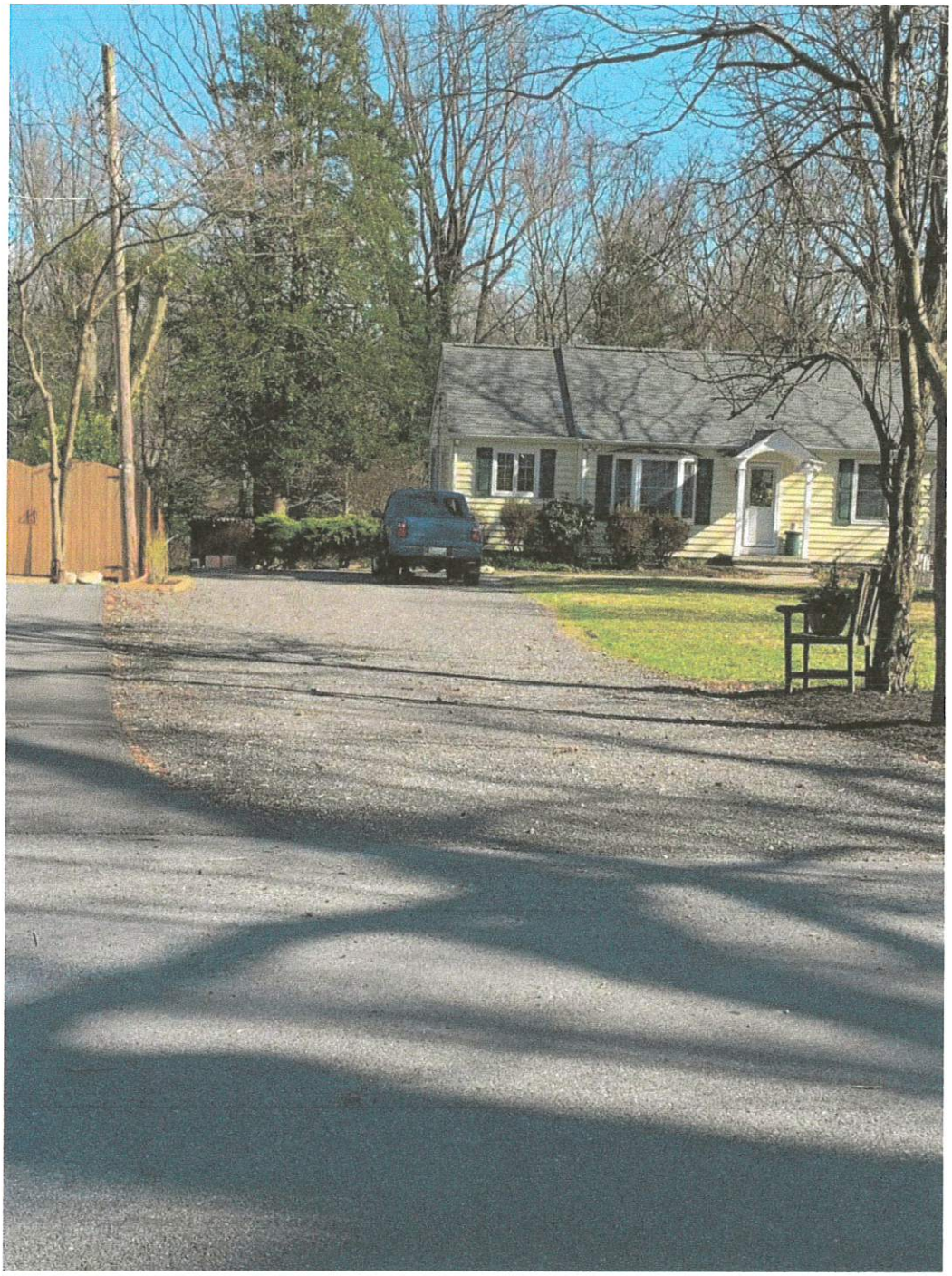
Install a stone frame around the mailbox post to upgrade appearance. Photos included.

17 - Drainage in Front of House

Bury drain tile in front of the house where water gathers and leaks into the basement, to carry the water to either side of the house. See photo.

Photos and Supporting Drawings, Etc.

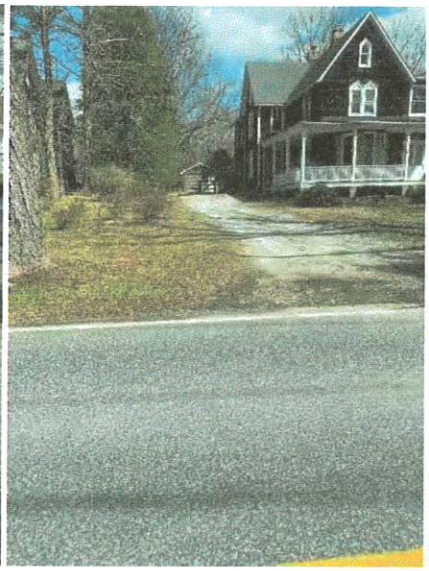
1- Driveway Photos



4609 Prospect Ave, stone driveway resurfaced



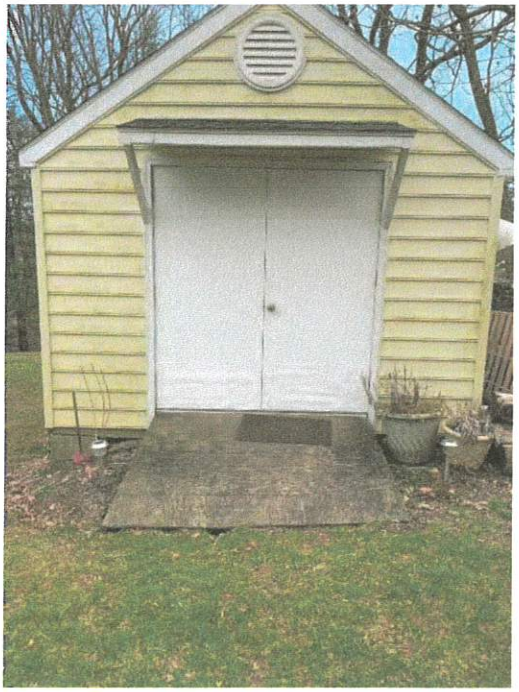

Joint driveways on Butler Rd and Central Ave, Historic Glyndon district.

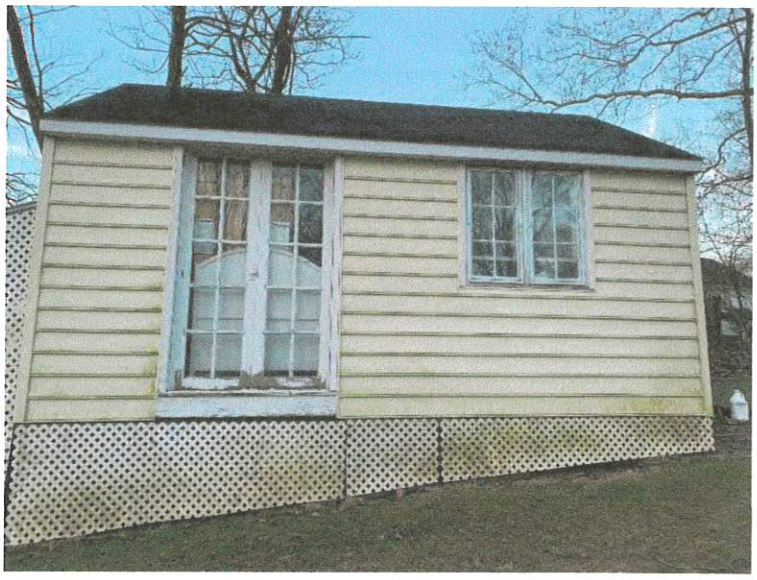






Stone driveways on Central, Waugh, and Prospect Avenues in Historic Glyndon. Also, photo of our limited street-front parking.

2 – Shed Maintenance





Replace sheathing and studs supporting small roof over doors, add 12x12 gray composite deck platform (same as other decks on house) to replace rotted ramp.



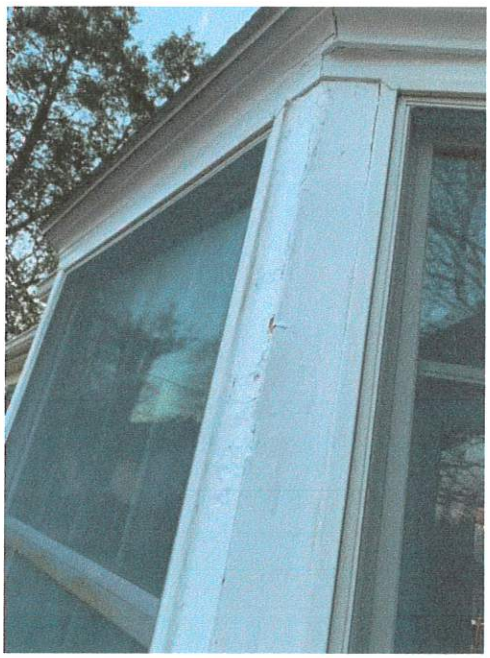


Replace door threshold (left) and window sill (right) wood with wood composite cut to fit, re-paint white



3 – Front Angle Bay Maintenance





Replace rotted wood frame with pine, wrap with white aluminum coil to match the rest of the house & protect.



Replace bay shingles with copper to highlight this feature.

4 – Cupola



Add a cupola on roof peak, centered with front porch on house, 27" single louver, painted white.

5 – Enclosure around trash cans and utilities, ground cover.





Build a treated wood structure around trash can area (picture above left), open top, with picket doors to access trash cans & utilities, even with front of house and only deep enough to hold recycle/ trash cans as shown. Will look very similar to picture (right) above but housing 3 trash/recycle cans along the side of the house, measuring 6'wide by 42" tall by 28" deep. From the street, one would only see a 28" wide picket fence 42" high starting where the rain gutter corner is in the photo on the left. (There actually used to be a 28" wide by 42" high picket fence shield hiding just the front of the trash can area but it rotted and I removed it.)

9 – Trellises for privacy in driveway





Install 3 trellises (photo above left) along property line by driveway (location on plot plan, and shown in photo) to shield from neighbor's new obtrusive security camera (circled top right). Photo shows my neighbor's house, fence, and security camera circled in red. The planned trellises between the telephone pole shown and the fence, along the property line, the same height as the fence shown, so the "future" picture would basically show trellises and Ivy/Clematis blocking this view of the camera, fence, and stone walk, providing mutual privacy. When we moved into our house 30 years ago, and until the fence was installed in this location, there was a trellis with a beautiful and established Clematis; we want to restore it.

belongs to 4607

10 – Deck Features (Main/NE Side, see also plot plan & concept drawing)



Rails to be 2x4 composite gray to match decking, with shown aluminum balusters. Posts 4x4 treated pine.

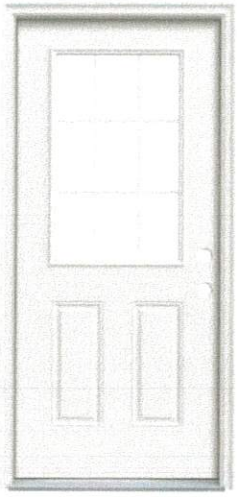




Decking & Step material (gray composite)

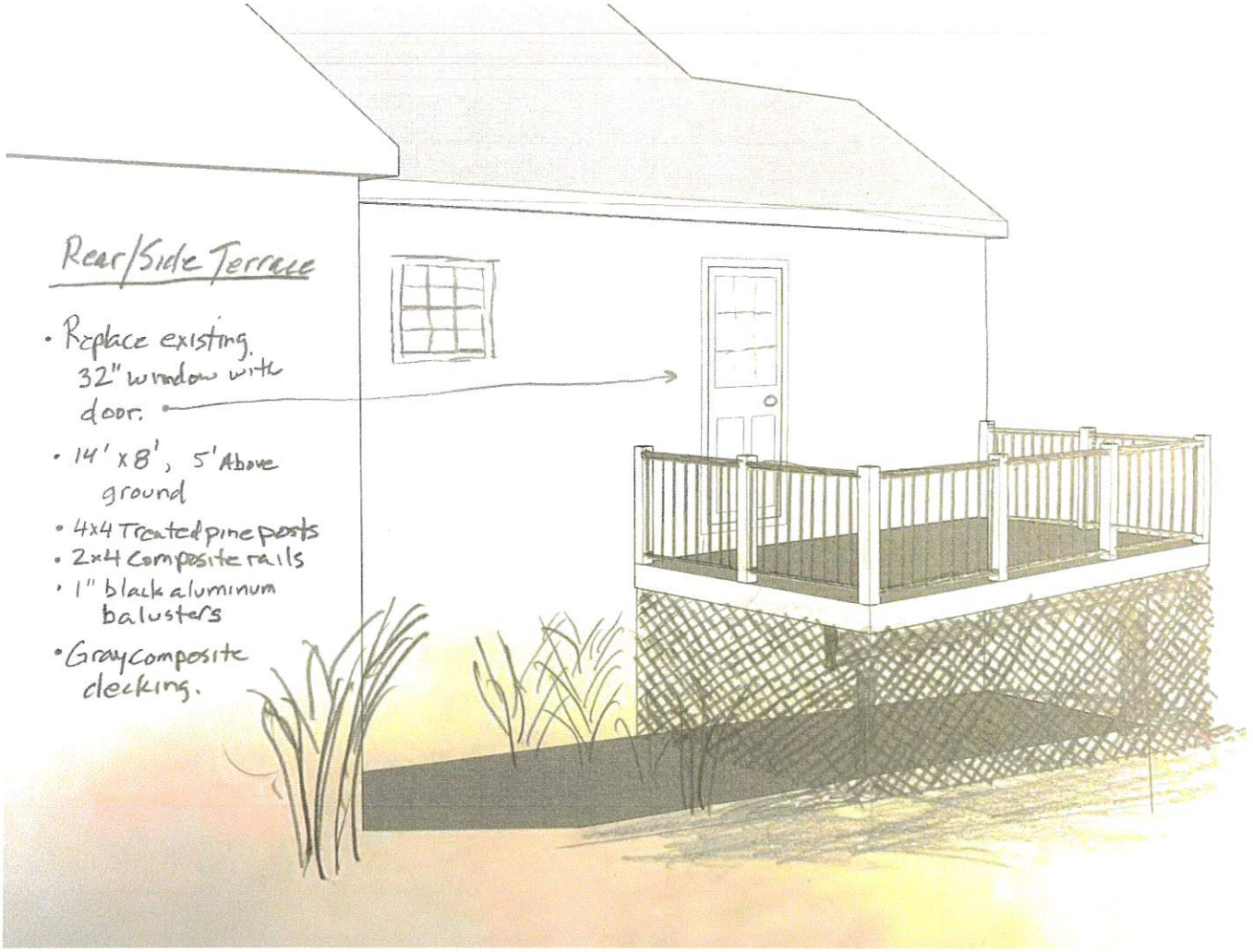
11 – Balcony Location off of Master Bedroom (SW side at back of house, see plot plan)







Site location shown 14' (along house) x8', replace window with exterior pre-hung metal paneled door with glass & full glass aluminum painted storm door, similar to previously approved front door. Same materials as deck on other side of house (see above), not visible from street.



12 – Foot path to new main deck (similar gravel and stone, see plot plan location)



13 – Rear /side yard fence to contain pets (see plot plan for placement), 42" spaced picket from the deck forward (side yard), and paddock style from the deck into and around the back yard.





Rear yard fence above, location as shown on plot plan.







Driveway decorative 18" picket fence to help hide muddy trench from neighbor's water runoff caused by regrading and addition.

Y607 ground cover removed by Y609

15 – Stone mailbox post



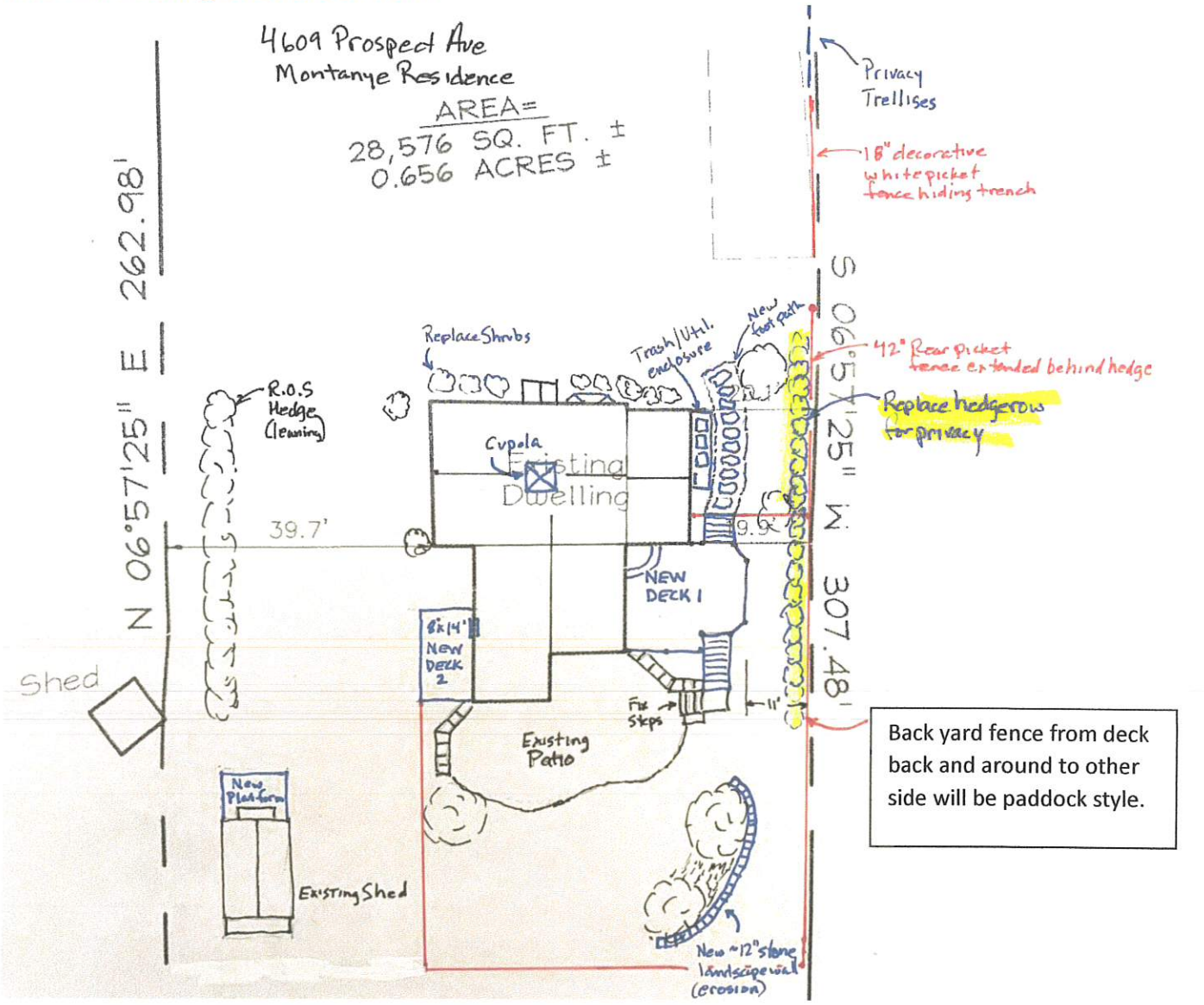

Upgrade wood mailbox post with stone upgrade

17 – Drain tile front of house

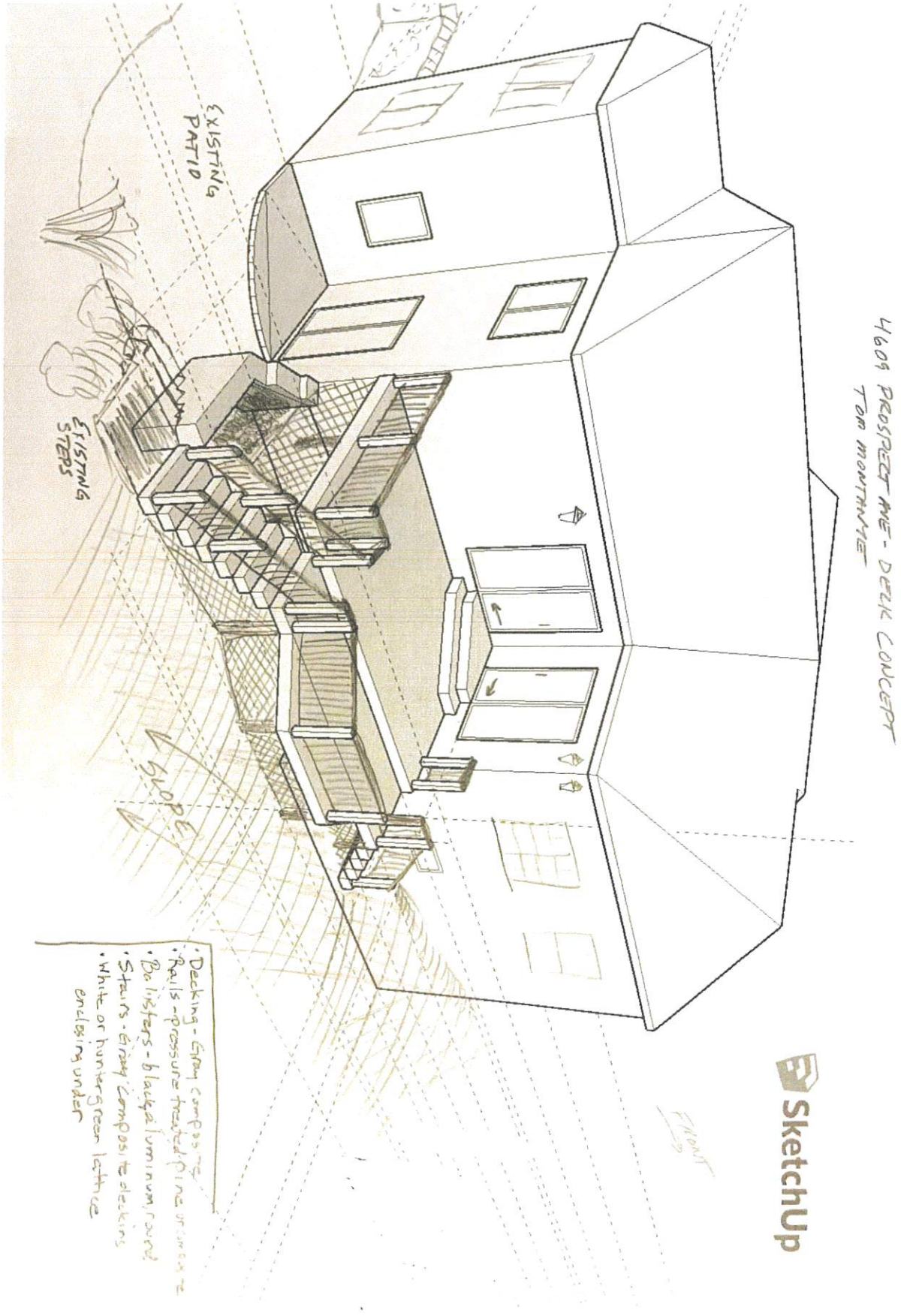


Bury drain tile closest to camera, slope and run underground away from camera to edge of driveway/bush, to carry away captured water around house, which leaks into basement.

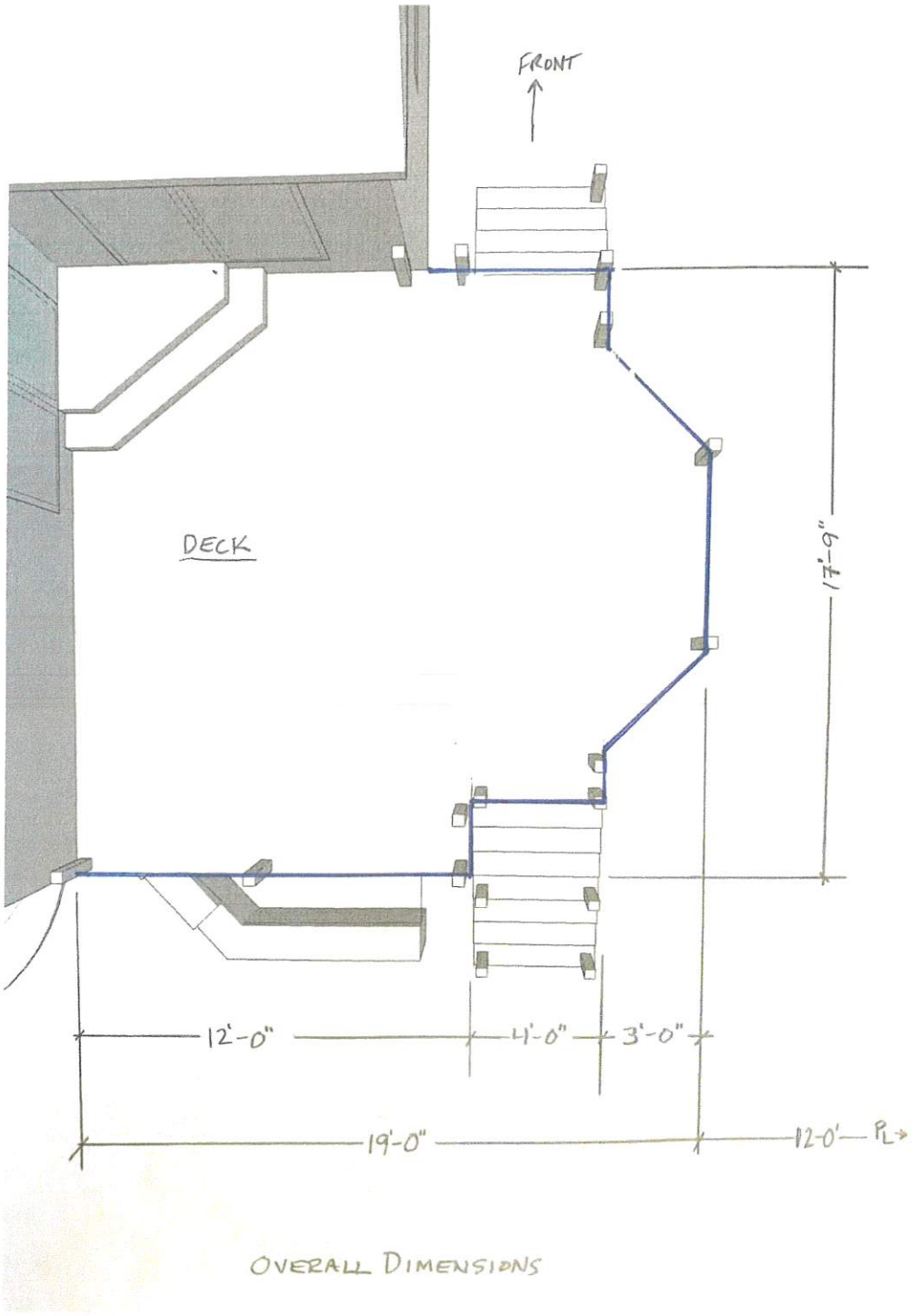
Plot Plan Showing Locations of Work



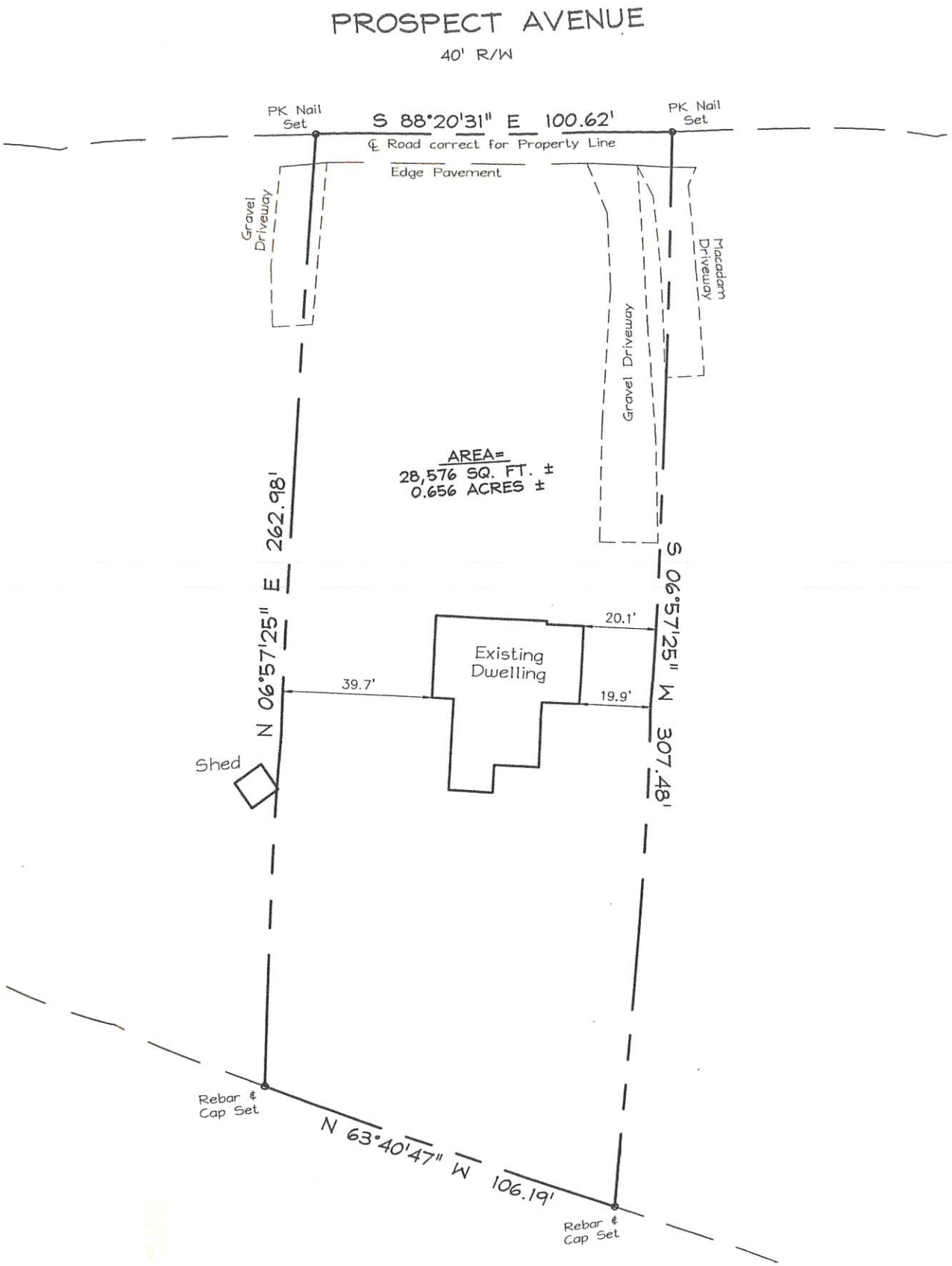
Main Deck Concept Drawing



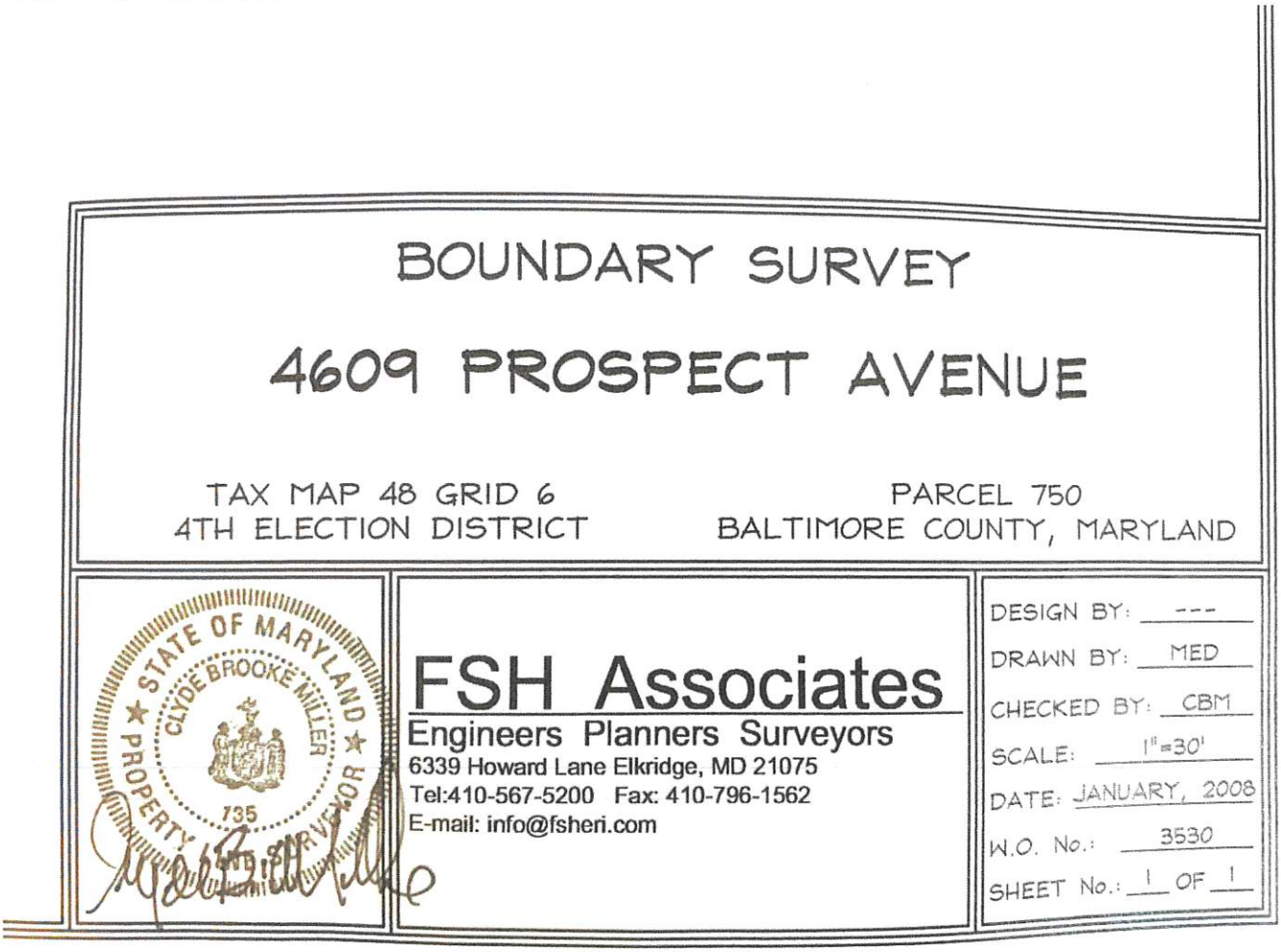
Main Deck Overall Dimensions



Full Boundary Survey



Boundary Survey Seal



*Note: My property corners in street will be re-established by our surveyor soon, since they were paved over in October 2017, when they repaved Prospect Avenue. Mrs. Bair's property markers currently along my driveway are fraudulent, as they were installed on our property by she and her husband, after her surveyor left the job.

April 11, 2019

LPC Technical Committee Report

4609 Prospect Avenue

Glyndon Historic District

On April 9, 2019, a Technical Committee consisting of commissioners, Wendy McIver and Steve Myer and Baltimore County staff member Teri Rising met on site with the owner to review changes that the owner is planning to make to his home and property. The house is a single story, frame single family dwelling. It is a non-contributing structure in the Glyndon Historic District. The first change to the property is the enlargement of the driveway to make room for additional cars in the owner's family. The existing driveway was stone surfaced. Bituminous concrete road millings were used to expand the driveway to accommodate six cars. This work has already been constructed by the owner and is being reviewed ex post facto. The balance of the changes are being proposed and have not been made. Along part of their driveway, the owner wants to screen off the glare of the neighbor's security camera with about six feet of trellises covered with clematis. A white picket fence garden border will be placed along the northwest edge of the driveway for about twenty feet. In addition, a pressure treated wood picket fence will be built screening off the trash can holding area and the BGE gas and electric meters. Extending from the northwest corner of the picket privacy fence will be a pressure treated wood reil on post pet containment fence with welded fabric lining the inside. This will match the same style fence that their neighbors have. Along the front of the house, the owner will install corrugated drain tile bedded in stone to absorb surface water and direct it to the back yard. On the front of the house, the existing bay window will be repaired due to a rotting frame and clad in aluminum. The roof of the bay window will be replaced with a copper standing seam roof. Matching the copper on the bay window roof, the owner wants to install a copper cupola on the center ridge of the house roof. Extending out from the northwest corner of the house, the owner wishes to build a deck which had been planned when an addition was put on the house 18 years ago. The deck will be made of composite materials and will extend out from the existing sliding doors on two sides. The deck floor will be two steps down from the access to the house. On the southeast corner, the owner wants to build a balcony from the master bedroom and expand an existing window into a door access. The balcony will also be constructed from composite materials. The shed in the backyard will be rebuilt where wood framing and sills have rotted. The back of the shed will receive a new overhang roof and a front door ramp and platform for access for the lawn equipment and to be used as an area for equipment maintenance. The shed trim will match the house. The existing mailbox will receive a faux stone post. The oak trees in the backyard will be edged with garden blocks and mulched.

The changes to their property follow design guidelines for non-contributing structures in a historic district. Based upon the observations of the technical committee, these changes do not overpower the appearance of the existing dwelling. The major construction, which is comprised of the deck and the balcony, is being built in the rear of the house and therefore would not be visible from the road.

Steve Myer



Fences in Historic Glydon

14- 6 foot; **3**- 5 foot; **18**- 52 inches; **9**-4 foot; 2-42 inch; 1-20+ feet = **45 over 42 inches/height**

29 Chatsworth Ave	6 foot privacy wood	Front of neighbor foundation

25 Waugh Ave	6 foot privacy wood	
8 Waugh	6 foot privacy white	
6 Waugh	6 foot privacy wood	
4722 Butler Rd	6 & 8 foot privacy wood	
4702 Butler	6 foot privacy wood	
3 Waugh	6 foot privacy wood	
2 Waugh	6 foot privacy wood (pool)	Variance approved
4612 Prospect Ave	6 foot privacy wood (pool)	
4711 Butler	6 foot	5/17/20 permit B969795
121 Central Ave	6 foot	1/28/20 permit B967319
37 Waugh	6 foot pig/chain fencing	
4606 Prospect	6 foot pig/chain fencing	
2 Waugh	5 foot rod iron	Variance approved
4605 Prospect	5 foot rod iron (pool)	
4511 Prospect	5 foot rod iron (pool)	
4802 Butler	52 inch 3 split rail along road	
4708 Butler	52 inch 3 split rail to road	
7 Waugh	48 inch 3 split rail	8/30/18 permit B943654
19 Waugh	52 inch 3 split rail	
29 Waugh	52 inch 3 split rail along road	

4 Waugh	52 inch 3 split rail to road	variance

5 Waugh	52 inch 3 split rail	
28 Chatsworth Ave	52 inch 3 split rail	

37 Waugh	52 inch 3 split rail	
Entrance to Emery Grove	52 inch 3 split rail along road	

4611 Prospect	52+ inch 3 split rail	5/21/19 permit B959741
4605 Prospect	52 inch split rail (pool)	
4601 Prospect	52 inch split rail	
4716 Butler	52 inch chain link	
4606 Prospect	52 inch chain link	
4612 Prospect	52 inch chain link	
4316 Butler	52 inch chain link	
Along Butler Rd/Glyndon sign 32 Waugh	48 inch picket (white pvc) 48 inch picket	
4704 Butler	48 inch picket	
3 Waugh	48 inch picket	
4702 Butler	42 inch picket	
4609 Prospect	42 inch picket	11/14/19 permit B965721
4802 Butler (Glyndon sign)	20-25 foot chain/mesh	
222 Central	4 foot	1/22/15 permit B868364
201 Central	4 foot	8/29/13 permit B825515
207 Central	4 foot	12/16/12 permit B804828
24 Chatsworth Ave	4 foot	3/11/15 permit B871664
16 Chatsworth	4 foot	9/8/19 permit B963656

4611 Prospect Behar #B959741 May 21, 2019 4 foot fence
7 Waugh DMA Investments #B943654 August 30, 2018 4 foot fence
4711 Butler Rd Eric Donatelli #B969795 May 17, 2020 6 foot fence
121 Central Ave Joseph Geipe, Jr. #B967319 January 28, 2020 6 foot fence
222 Central Ave Martha Healy #B868364 January 22 2015 4 foot fence
201 Central Ave Susan & Peter Kennedy #B825515 August 29, 2013 4 foot fence
207 Central Ave Jennifer & Ernesto Diaz #B804828 December 16, 2012 48" fence
24 Chatsworth Ave Pamela Becker #B871664 March 11, 2015 4 foot fence
16 Chatsworth Ave Sierra Waldman #B963656 September 8, 2019 4 foot fence

3/11/21 } 4708 Butler Rd. CPC agenda approved 3 board split rail
4716 Butler Rd. " " " replace with 2 board chain link + 3 board split rail

6 foot privacy (wood except where noted):

1. 25 Waugh Ave
2. 8 Waugh (white)
3. 6 Waugh
4. 4722 Butler (also an 8 foot tall)
5. 4702 Butler (two sections)
6. 3 Waugh
7. 2 Waugh (Inground pool)
8. 4612 Prospect (Inground pool)
9. 4711 Butler
10. 121 Central Ave
11. 29 Chatsworth Ave (new - in front of front foundation)
12. 4802 Butler Ave

6 foot gardening pig fence

1. 37 Waugh Ave
2. 4606 Prospect Ave

5 foot black rod iron

1. 2 Waugh
2. 4605 Prospect Ave
3. 4511 Prospect Ave (inground pool)

Permits for 4 foot fences

1. 121 Central Ave
2. 222 Central Ave
3. 201 Central Ave
4. 207 Central Ave
5. 24 Chatsworth Ave
6. 16 Chatsworth Ave

3 rail split - approximately 52 inches

1. 4802 Butler (along road)
2. 4708 Butler (up to the road) On LPC agenda for 3/11/21 to add 3 rail split around back yard
3. 7 Waugh Ave
4. 19 Waugh Ave
5. 29 Waugh Ave (along the road)
6. 4 Waugh
7. 37 Waugh Ave
8. Entrance to Emery Grove (along the road)
9. 4611 Prospect Ave
10. 4605 Prospect Ave (inground pool)
11. 4601 Prospect Ave
12. 28 Chatsworth Ave
13. 4704 Butler Road
14. 5 Waugh Ave

52 inch chain link (not to be allowed by LPC)

1. 4716 Butler On LPC agenda for 3/11/21 to replace like kind and add 3 rail split back yard
2. 4606 Prospect Ave
3. 4612 Prospect Ave
4. 4316 Butler

48 inch picket

1. 32 Waugh Ave
2. 4704 Butler
3. 3 Waugh Ave
4. Along Butler Road where Welcome to Glyndon sign is posted (white plastic/pvc)

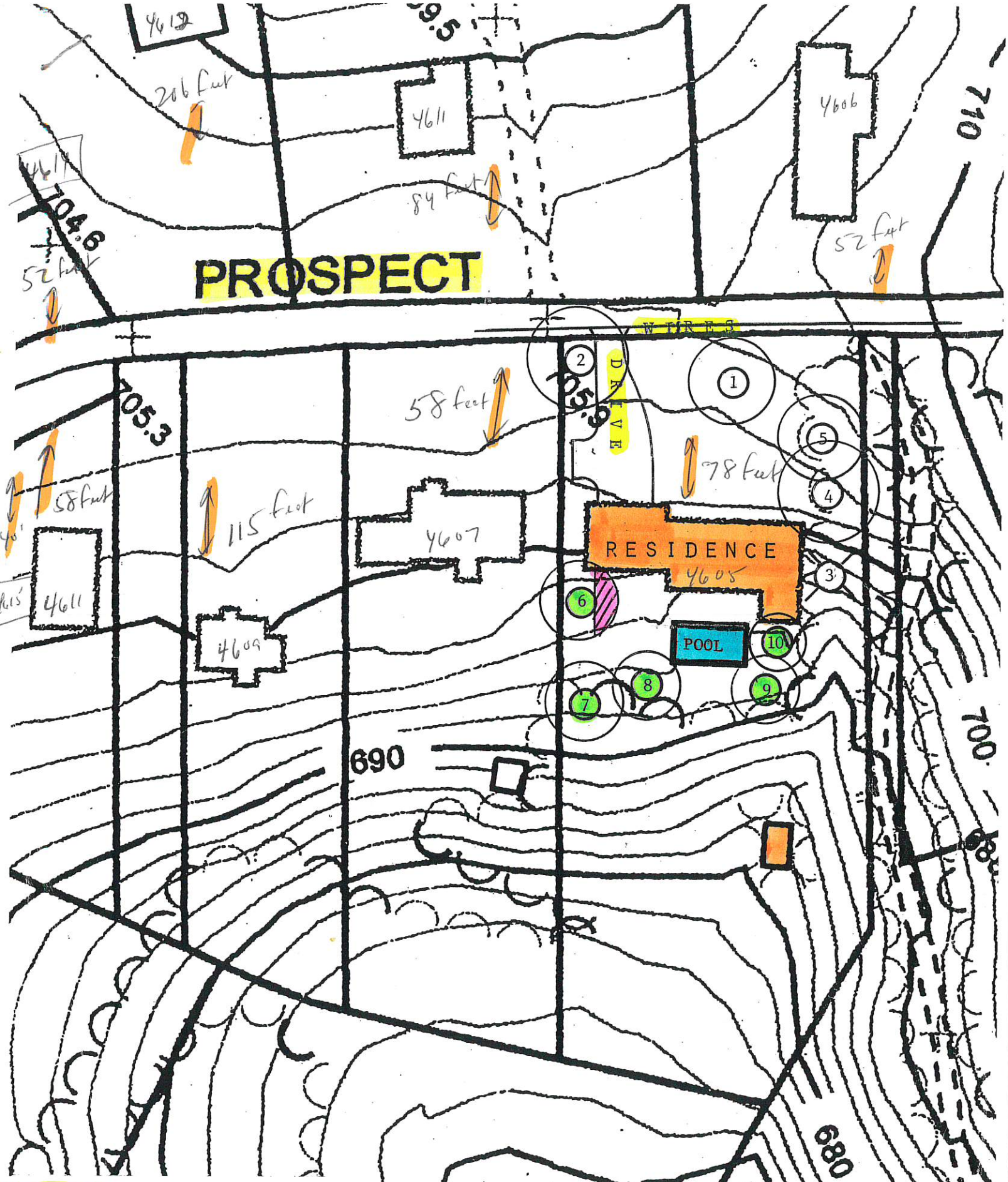
42 inch picket

1. 4702 Butler
2. 4609 Prospect Ave

Glyndon sign on Butler Road - 4802 has chain link fence with mesh - approximately 25-20 feet

2/9/2020





08-31-14 - TREE PRESERVATION PLAN

For: The Stephen M. Fradkin Res.
4605 Prospect Avenue
Reisterstwon, MD 21136-3800

Tel. 443-744-1225 / Loc. BC 16 C-5

IN RE: THE PETITION FOR SPECIAL HEARING AND VARIANCE **4607 Prospect Avenue**	*	BEFORE THE
	*	COUNTY BOARD
4th Election District 3rd Councilmanic District	*	OF APPEALS
	*	FOR
Donna V. Bair *Legal Owner*	*	BALTIMORE COUNTY
	*	**Case No.: 2019-342-SPHA**

* *

CLOSING MEMORANDUM

The property owner, Donna V. Bair ("Petitioner"), by and through her attorneys, Lawrence E. Schmidt, Zachary J. Wilkins, and Smith, Gildea & Schmidt, LLC, submit this Closing Memorandum in support of the Petition for Special Hearing and Variance relief for the above referenced matter and state:

STATEMENT OF THE CASE

This matter comes before the Board of Appeals of Baltimore County (the "Board") as a *de novo* appeal of the Opinion and Order dated August 19, 2019 by the Administrative Law Judge ("ALJ") and the Order on Motion for Reconsideration dated September 25, 2019 by the ALJ of a Petition for Special Hearing and Petition for Variance relief for the property located at 4607 Prospect Avenue (hereinafter the "Property"). In applying the *de novo* standard, the Board's findings of fact and conclusions of law will be the record made before it.

The Special Hearing relief was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("BCZR") for an interpretation of the proper application of the BCZR. As it

relates to the issues in the instant appeal,[1] the Special Hearing relief seeks (1) approval of nonconforming dwelling side yard setbacks of 9.5 feet and 14.9 feet, with a sum of the side yard setback of 24.4 feet; and (2) to confirm that an existing fence (swimming pool enclosure) with a height of 6 feet is in compliance with BCZR § 427.1 and Baltimore County Code ("BCC") § 13-6-101. The Variance relief was filed pursuant to BCZR § 307.1 and seeks (1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft; (2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; and (3) If necessary, to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches.

The public hearing before the Board consumed three non-consecutive days on February 6, 2020, March 23, 2021, and March 25, 2021. At the conclusion of the hearing, the Board directed that the parties submit written closing memoranda setting out their respective arguments. The relevant facts and testimony will be recounted as appropriate herein.

STATEMENT OF THE FACTS

Many of the facts relating to the Property are not in dispute. The Property is located in the Glyndon community of northwestern Baltimore County and is approximately 0.74 acres (32,234 sf.). The Property is predominantly zoned DR 1 (Density Residential), but contains a small sliver in the rear which is zoned RC 2 (Resource Conservation).[2] The Property is identified as Lot 10, as shown on the Plat dated October 31, 1880 and titled "Plat of Land belonging to B.F. Bennett and Joshua Register" which was recorded in the Land Records of Baltimore County at Plat Book 126,

[1] Neither Petitioner nor Protestants appealed the ALJ's approval as to the lawfully nonconforming status of the size and width of the lot (delineated as Special Hearing request number 1within the Petition), and the lawfully nonconforming status of the setback of the shed. These issues are not before the Board for consideration.

[2] The RC 2 portion of the Property contains no improvements and is immaterial for the Board's consideration in the instant case.

Page 371 ('Plat"). The Property was purchased by the Petitioner in 2014, as reflected in a deed dated July 18, 2014, which is recorded in the Land Records of Baltimore County at Liber 35307, Folio 489.

Due to a need for more family living space and the need for additional privacy and safety for the in-ground pool, Petitioner hired a contractor to construct (1) a dwelling addition built on the west side of the house, (2) two sections of a 6 ft. fence constructed on the boundary line with the neighboring properties on the east and west sides of the Property, and (3) a 12 x 28 ft. single car garage to the east of the existing garage. As is now apparent, the contractor hired to construct the improvements committed fraud on the Petitioner and failed to obtain the necessary permits and approvals. Upon determining that the work had been done illegally, the Petitioner set out to bring the Property into compliance.

A. Baltimore County Landmarks Preservation Commission

Like many of the individual properties in Glyndon, the Property is located within the Glyndon Historic District and the design and compatibility of certain improvements to the Property are subject to review and approval by the Landmarks Preservation Commission ("LPC"), but the dwelling itself is not designated as a "contributing structure". In accordance with Title 7 – Historical and Architectural Preservation of the Baltimore County Code ("BCC"), the LPC has jurisdiction to review changes to historically-designation properties. The LPC comprises fifteen volunteer members who live in Baltimore County and "[p]ossess a demonstrated interest, knowledge, or training in historic preservation, history, architecture, conservation or related discipline." BCC § 3-3-1202(b). Pursuant to BCC §§ 32-7-101 & 32-7-405, property owners must obtain a "Certificate of Appropriateness" from the LPC "indicating its approval of plans for construction, alteration, reconstruction, moving or demolition."

Petitioner submitted 3 Ex post facto Certificate of Appropriateness requests to the LPC on February 19, 2019 seeking approval of the dwelling addition, fence construction, and the 12x28 ft. single car garage addition. Thereafter on March 11, 2019, a Department of Planning staff member as well as three LPC Commissioners conducted a site visit of the Property and generated a technical report of the request, which was shared with the LPC for their consideration.

Specifically, the technical report found:

> "***The changes to their property follow design guidelines for non-contributing structures in a historic district.*** The new garage and house addition use the same style siding, windows, shutters, and garage door … These changes do not overpower the appearance of the existing dwelling. The ***new fences*** are constructed of pressure treated wood with vertical planks and a top cap rail. They ***provide privacy and safety in the back yards with limited visibility from the street***. ***The Technical Committee recognized that because the owner has followed design guidelines for non-contributing structures, it is likely that these changes would have been approved if the request had been submitted in accordance with Baltimore County requirements***." (emphasis added) Petitioner's Exhibit 20.

When considering applications for additions and fences, the LPC utilizes the Baltimore County Historic Preservation Design Guidelines, which were adopted by the LPC and approved by the Director of Planning on November 25, 2011. The LPC met on March 14, 2019 and considered Petitioner's requests. At the meeting, Tom Montanye, resident of 4609 Prospect Avenue, testified and explained that his main objection involved the portion of the new fence that was directly adjacent to his driveway. The LPC voted 9-1 to approve Petitioner's three Ex Post Facto Certificates of Appropriateness requests.

B. *Proceedings before the Board of Appeals*

Petitioner testified during the Board's hearing and generally explained the events leading up to the instant case. Petitioner testified that she did not take a mortgage out when she purchased the Property. Because there was no bank involved, the Petitioner did not perform a survey for the Property. As such, Petitioner generally relied on the existing conditions (tree line and fence line)

of the Property as well as a boundary line drawling obtained from Steven Fradkin, the adjacent property owner located at 4605 Prospect Avenue. As shown in Petitioner's Exhibit 2 and as testified to, at the time of Petitioner's acquisition, the Property was improved with a detached single family dwelling, an attached one car garage, a small storage shed, a swimming pool, and a fence. Petitioner testified that the swimming pool is located immediately adjacent to the rear of the house. The existing fence ranged in height between 6 ½ - 8 ft. and was falling down in certain sections.

Due to a need for more family living space and the need for additional privacy and safety for the in-ground pool, Petitioner hired a contractor in 2017 to construct (1) a dwelling addition, (2) two sections of a 6 ft. fence on the boundary line with the neighboring properties on the east and west side of the Property, and (3) a 12x28 ft. single car garage addition to the east of the existing garage. Prior to moving ahead with the improvements, Petitioner notified both Mr. Fradkin and Mr. Montanye, the adjacent property owners located at 4605 Prospect Avenue and 4609 Prospect Avenue respectively, who voiced no objection. Petitioner assumed that the contractor hired would undertake the work lawfully after securing all necessary permits. She explained that she was quoted for and paid both the construction costs and permit fees. Candidly, Petitioner admitted that she wasn't paying much attention to the construction at the time because she was taking care of her mother who eventually died from lung cancer. As is now apparent, the contractor committed fraud on the Petitioner and did not obtain the necessary permits. Petitioner testified that in 2018, she received a complaint from Baltimore County alleging failure to obtain the necessary permits for the improvements. This resulted in ALJ Stahl issuing an Order requiring that Petitioner file the instant zoning relief and obtain LPC approval. Thereafter, Petitioner

submitted an application to the LPC and obtain approval for the dwelling addition, fence construction, and garage addition on March 14, 2019.

Petitioner's expert engineer, John Motsco, testified during the Board hearing and described the neighborhood and Property layout, including the current improvements on the Property. The neighborhood is a historic one characterized by a variety of housing types, large and small, ranging from large lots having larger dimensions than the subject property, to small lots. As Mr. Motsco explained, there are regulations in the BCZR and BCC regarding fences.

Specifically, BCZR § 427.1.A. provides:

> "***Notwithstanding any other provisions*** of this Code or the Baltimore County Code, in a D.R. or R.C. 5 Zone located in a historic district, the maximum height of a ***residential occupancy fence*** is 42 inches if the fence is erected ***in the side yard of a lot that adjoins a public road***." (emphasis added)

Mr. Motsco testified that the 42 inch height limitation in BCZR § 427.1.A is not applicable to the Property. First, Mr. Motsco explained that the Property nor any of the adjacent properties (i.e. 4605 & 4609 Prospect Avenue) adjoin a public road. The reference to a public road in BCZR § 427.1.A is referring to a corner lot, in which a property abuts a public road in both the front and side yard. Otherwise, as Mr. Motsco explained, every property would satisfy the "abut a public road" classification, in which case, there would be no need to incorporate such qualifier in BCZR § 427.1.A.

BCZR § 427.1.B provides:

> 1. "A residential occupancy fence may not be erected in the rear or side yard of a lot which adjoins the front yard of another on which a residence has been built, except in accordance with the provisions of this section.
> 2. The fence may not exceed 42 inches in height if situated within ten feet of the adjoining front yard property line.
> 3. Any person may request a variance from the requirements of this subsection."

Mr. Motsco testified that the conditions in BCZR § 427.1.B are not applicable due to the pool on Property.

Specifically, BCZR § 427.1.C. Titled: Applicability provides:

> "1. ***Subsection B of this section does not apply to a fence required by § 13-6-101 of the Baltimore County Code***, as revised, to be constructed in order to screen a ***swimming pool***. (emphasis added).

BCC § 13-6-101 provides the following:

> (a)Required. ***A person who owns land on which there is a swimming pool*** that contains 24 inches (610 mm) or more of water in depth at any point ***shall erect and maintain*** on the land ***an adequate enclosure surrounding either the property or pool area*** sufficient to make the body of water inaccessible to small children. (emphasis added).
>
> (b)Height. A ***swimming pool enclosure, including gates***, ***may not be less than 4 feet above the underlying ground***, except that for a semi-public swimming pool located outdoors without a lifeguard on duty, the enclosure, including gates, may not be less than 5 feet above the underlying ground and may not have more than a two-inch gap from the ground to the bottom of the fence.

Mr. Motsco testified that the swimming pool on the Property contains a depth of more than 24 inches and that the fence fully encloses the swimming pool, which is located in the rear yard of the Property. He further explained that the 72 inch fence is compliant because BCC § 13-6-101 contains a minimum requirement of 4 feet (48 inches) and no maximum restriction. As such, Mr. Motsco offered undisputed expert opinion that the height of the 72 inch fence is compliant with the all applicable regulations in the BCZR and BCC.

As to the setback issues, Mr. Motsco testified that the Property is predominantly zoned DR 1 and the setback requirement applicable to the Property is established in BCZR § 1B02.3.C. A minimum side yard setback of 20 ft. is required. Additionally, a sum of the side yard setbacks of 50 ft. is required. Therefore, a property owner could have a 30 ft. setback on one side and a 20 ft. setback on the other; or a 25 ft. setback on each side, or some similar combination; for so long as each side yard setback is at least 20 ft. in dimension, and they total 50 ft. Mr. Motsco testified

that prior to Petitioner's 2017 construction, the dwelling had side yard setbacks of 9.5 ft. and 14.9 ft., with a sum of the side yard setback of 24.4 ft. Thus, both the individual side yards setbacks and sum of the side yards setbacks did not meet the current DR 1 standard.

As it relates to the specific Special Hearing request "to approve a nonconforming dwelling side yard setback, pursuant to BCZR § 104.1," Mr. Motsco explained that the BCZR § 104 permits the continuation of non-conforming uses and structures. The special hearing process is the zoning tool by which non-conforming uses are recognized. The designation "non-conforming" allows the use/condition to continue as legally "grandfathered". Mr. Motsco testified that a non-conforming designation is appropriate for uses and conditions that have existed prior to the adoption of the regulation that now governs the property at issue.

According to the property tax report issued by the State Department of Assessments and Taxation ("SDAT"), the detached single family dwelling was originally constructed in 1951. Mr. Motsco explained the zoning history of the Property. Although the County's first zoning regulations were adopted in 1945, they were rudimentary in nature and the current regulations and requirements therein spring from the comprehensively amended regulations adopted in 1955. Additionally, the DR zoning classification came into being in 1970, at which time the County Council enacted Bill 100-70. Mr. Motsco testified that in 1971, the Property was rezoned to DR 2, and later rezoned to DR 1 in 1996. Because the DR 1 requirements now apply to the Property, Mr. Motsco testified that 1996 is the relevant date in considering the non-conforming nature of the property and improvements thereon.

Utilizing historic aerial photos, Mr. Motsco opined that the 1951 dwelling contained the 9.5 ft. side yard setback. At some point between 1951 and 1976, the dwelling side yard setback on the opposite side decreased to 14.9 ft, at which point the dwelling contained side yard setbacks

which were 9.5 ft. and 14.9 ft., with a sum of the side yard setback of 24.4 ft. Mr. Motsco explained that given the lack of detail provided in historic aerial photos and Baltimore County's practice of discarding building permits after 5 years, it is impossible to determine when or what specific construction occurred at the Property between 1951 and 1976. As such, Mr. Motsco opined that such setbacks are existing conditions, well prior to the adoption of the now applicable governing standard in the BCZR, and thus, the Petitioner is entitled to grandfathered status for the dwelling side yard setbacks, which were 9.5 ft. and 14.9 ft., with a sum of the side yard setback of 24.4 ft.

Mr. Motsco testified that he measured the 2017 house addition and calculated the addition to be 14 x 22 ft. (rather than 13 x 13 ft.). Mr. Motsco explained that the dwelling addition did not alter in any way the existing 14.9 ft. setback from the property line. Mr. Motsco testified that the 2017 dwelling addition is a legally permissible extension of a nonconforming use/building pursuant to BCZR § 104.3.

BCZR § 104.3 provides:

> "No nonconforming building or structure and no nonconforming use of a building, structure or parcel of land ***shall hereafter be extended more than 25 percent of the ground floor area of the building*** so used." (emphasis added).

As Mr. Motsco explained, the ground floor area of the nonconforming dwelling (as existed prior to 2017 construction) was 1,554 sf. The 14 x 22 ft. dwelling addition totaled 308 sf. The dwelling addition increased the ground floor area of the dwelling by 19.8%. As such, Mr. Motsco offered undisputed expert opinion that the dwelling addition is permitted as an extension of a non-conforming use because the dwelling addition did not increase the existing 14.9 ft. setback and did not increase the ground floor area of the dwelling by more than 25%.

Mr. Motsco testified that in 2017, Petitioner constructed a 12 ft. x 28 ft. attached garage addition that decreased the side yard setback to 0 ft. Mr. Motsco offered undisputed expert opinion

that the Petitioner satisfied the criteria for variance relief in BCZR § 307.1, namely that the Property is unique and the Petitioner would experience a practical difficulty or unreasonably hardship if denied the variance. Specifically, as it relates to uniqueness, Mr. Motsco cited to the Property acreage, dimensional width, and length in support. Additionally, the topography provides little flat area for development on the Property. Prospect Avenue sits on a higher elevation compared to the rear of the Property. Mr. Motsco opined that given the topography, it would not be possible to construct a garage in the rear yard. Further, as Mr. Motsco explained, there are additional large trees that restrict access to the rear yard. As it relates to practical difficulty, Mr. Motsco testified that the relocation of the garage would be too remote from the dwelling and would detract from day to day use. Conversely, not constructing a garage would subject Petitioner's vehicles to substantial damage caused by the trees in the front yard.

Several neighbors appeared in opposition to the Petition and were represented by People's Counsel Peter Zimmerman during the proceedings before the Board (the "Protestants"). Protestants offered no expert testimony to contradict Mr. Motsco's opinions. Certainly, an expert would have been presented to rebut Mr. Motsco's findings and conclusions, if a contrary opinion was formulated. As importantly, the Protestants fundamental objections to the relief are not legally relevant to the standard that the Board must apply. Through testimony, the Protestants indicated that their primary concerns were that Petitioner did not "play by the rules." Other complaints were also legally illegitimate. For example, Protestants attach great significance to the fact that Petitioner was at one time a licensed real estate agent and should have possessed requisite understanding of the BCZR and BCC. Such objections demonstrate the Protestants misunderstanding of the legal analysis required. The fact of such knowledge has no legal significance. The Court of Appeals has found it unnecessary to limit one seeking a variance based

on an alleged hardship because the owner purchased the property with full knowledge of the zoning restriction of which she sought relief. *Frankel v. City of Baltimore,* 223 Md. 97 (1960); *McLean v. Solev,* 270 Md. 208 (1973). One of the Protestants, Mr. Fradkin (adjacent neighbor), candidly admitted that he too did not know where the boundary line was between 4605 Prosect Avenue and the Property. One of the Protestants introduced an aerial photo which purportedly depicts conditions on the Property in the late 1970s. Subsequent to the hearing, the undersigned determined that such photographs are protected under copyright law and were apparently illegally obtained.[3] Nonetheless, the photograph is not dated and is of little value, in that there are no dimensions shown relating to the size and configuration of the dwelling which existed at that time.

ARGUMENT

There are three improvements which are before the Board for consideration which include (1) a dwelling addition, (2) a fence (swimming pool enclosure), and (3) a garage addition. The BCZR governs both the allowed uses on the Property and the scope/size of improvements permitted for properties zoned DR 1. Undoubtedly, the single-family dwelling, attached garage, and fence are permitted uses in the DR 1. The question presented in this case is not as to the use, but whether the improvements satisfy the scope/size (also referred to as the "bulk") regulations in the BCZR. The three improvements at issue should be separately considered by the Board and are discussed separately below.

A. <u>The 2017 dwelling addition (14 x 22) is a legally permissible extension of a nonconforming use/building</u>

It is apparent that the Board can grant relief necessary to permit the dwelling addition either as a non-conforming use or via a variance. The relevant DR 1 setback requirements are pursuant

[3] See attached Exhibit A of this Closing Memo.

to the "Small Lot" table in BCZR § 1B02.3.A.4.: Titled Special Regulations for certain Existing Developments or Subdivisions and for Small Lots or Tracts in DR Zones.

In particular, subparagraph 3 provides:

> "Any lot or tract of lots in single ownership which is not in an existing development or subdivision, as described in Subsection A.1 or A.2, and which is too small in gross area to accommodate six dwelling or density units in accordance with the maximum permitted density in the D.R. Zone in which such tract is located"

BCZR § 1B02.3.C. then sets forth the Development Standards of such lots:

> "1. Any dwelling hereafter constructed on a lot or tract described in Subsection A.3 or A.4 shall comply with the requirements of the following table:"

The table sets forth the width, frontage and yard requirements which pertain to such small lots. It is significant to note that this provision was adopted in 1970 when the County adopted major comprehensive revisions to regulations governing residential zones. The apparent legislative intent of each section was to preserve the building rights on undersized lots that would otherwise be rendered unusable upon adoption of new regulations.

Although the dwelling meets the required front yard and rear yard setbacks, the dwelling's side yard setbacks do not satisfy the current DR 1 requirements. As noted above, the Property did not satisfy these requirements when the Petitioner acquired the Property in 2014. In fact, the dwelling's side yard setbacks of 9.5 ft. and 14.9 ft., with a sum of the side yard setback of 24.4 ft. have existed for at least 45 years, but possibly closer to 70 years.

BCZR § 104.1 provides:

> "A nonconforming use may continue except as otherwise specifically provided in these regulations, provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, the right to continue or resume such nonconforming use shall terminate."

Nonconforming status is a designation for uses and conditions that have existed prior to the adoption of the regulation that now governs the property at issue. At the time the Property was rezoned to DR 1 in 1996, the dwelling maintained side yard setbacks of 9.5 ft. and 14.9 ft., with a sum of the side yard setback of 24.4 ft. There is no evidence whatsoever to suggest that prior to 1996, the dwelling was an illegal use or was overwise in violation of the BCZR. As previously noted, Baltimore County has historically discarded building permits after 5 years. As such, Mr. Motsco offered undisputed expert testimony that 1996 is the relevant date in considering the non-conforming nature of the Property and improvements thereon. Since a nonconforming use was lawfully in existence at the time and the Property was rezoned in 1996, there is a vested right in the continuation of the nonconforming use once the ordinance takes effect.

After the 2017 construction of the dwelling addition, the side yard setbacks remained the same. That is, the dwelling addition did not reduce the setback from 14.9 ft., but merely extended the length of the side of the dwelling on that side. Thus, the Board should find that the dwelling addition is permitted as a matter of right.

Notwithstanding, the Board can still approve the dwelling addition because the dwelling addition did not violate the limitations proscribed in BCZR § 104.3 regarding allowable expansion of a non-conforming building.

BCZR § 104.3, titled "Limit on extension of nonconforming buildings and uses; exception", states as follows:

> No nonconforming building or structure and no nonconforming use of a building, structure or parcel of land shall hereafter be extended more than ***25% of the ground floor area of the building so used***… (Emphasis added).

At the time the nonconforming building/use was grandfathered on the Property in 1996, the ground floor area of the dwelling encompassed 1,554 sf. Pursuant to BCZR § 104.3, the

maximum allowable expansion of the non-conforming dwelling would be 25% or an additional 388.5 sf. The 14 x 22 dwelling addition totaled 308 sf or 19.8%. As such, the dwelling addition is a permissible expansion of the non-conforming building.

Alternatively, this Board can grant variance relief for the side yard setbacks of 9.5 ft. and 14.9 ft., with a sum of the side yard setback of 24.4 ft. While not specifically requested in the Petition, such request is within the spirit and intent of the instant matter. In accordance with due process, parties are required to be given reasonable notice and opportunity to participate in the Board's hearing and consideration of the zoning proposal. Significantly, the Supreme Court of the United States has explained that the essence of due process is the requirement that a party be given notice and an opportunity to be heard "…at a meaningful time and in a meaningful manner." *Mathews v. Eldridge,* 424 US. 319, 333, 348-49 (1976). Further, proper public notice of the requests was afforded consistent with the principles stated by the Court of Appeals in *Cassidy v. Baltimore County Board of Appeals,* 218 Md. 418 (1958). All parties in the instant case were given proper public notice of the issues presented. Thus, it is apparent that the Board can grant relief necessary to permit the dwelling addition either as a non-conforming use or via variance relief.

B. *The existing fence (swimming pool enclosure) with a height of 6 ft. is compliant*

At the hearing, the Petitioner presented a photograph showing that there previously existed a 7ft – 7.5 ft. high fence on the Property adjacent to the Montanye property. In 2017, Petitioner repaired/modified the existing fence and constructed a 6 ft. high fence (swimming pool enclosure) in its place.

As previously noted, BCZR § 427.1.A. limits a fence to 42 inches if the fence is located in the side yard of the property which adjoins a public road. Here, neither the Property nor the adjacent properties adjoin a public road. As testified to by Mr. Motsco, the reference to a public

road in BCZR § 427.1.A refers to a corner lot, in which a property abuts a public road on both the front and side yard. Therefore, the provisions of BCZR § 427.1.A. do not apply because of the qualifying language within the BCZR and layout of the Property.

BCZR § 427.1.B.1 indicates that a fence cannot exceed the height of 42 inches if it abuts the front yard of the adjacent dwelling. However, such 42 inch limitation does not apply because of the exclusionary language in BCZR § 427.1.C.1. That section states that the 42 inch limitation does not apply when a pool fence is required. In this regard, BCC § 13-6-101 requires a fence or similar enclosure around a pool. The reasons for this requirement are obvious. The justification to provide for the public safety and prevent any tragedy due to pool's attractive nuisance character trumps the aesthetic considerations in BCZR § 427.1 Moreover, the BCC provisions mandating a fence or similar enclosure provide no height limitation. Furthermore, the County's Landmark Preservation Commission has approved the fence, arguably satisfying any applicable requirement imposed by BCZR § 427.1.

C. Petitioner is entitled to Variance Relief

The Board should conclude that Petitioner is entitled to variance relief in the instant case. Petitioner seeks relief from BCZR § 1B02.3.C.1 to permit an existing 12 x 28 ft. attached garage addition with a side yard setback of 0 feet and a sum of the side yards of 14.9 feet. In addition, Petitioner seeks relief from BCZR § 427.1, if necessary, to permit an existing fence (swimming pool enclosure) with a height of 72 inches.

In Baltimore County, zoning variance are permitted and analyzed under BCZR § 307 and the case law interpreting that provision. Significantly, to obtain a zoning variance in Baltimore County requires a two-pronged analysis showing that:

(1) The property is unique; and

(2) If variance relief is denied, petitioner will experience a practical difficulty or unreasonable hardship. BCZR § 307.1; *Cromwell v. Ward,* 102 Md. App. 691, 694-95 (1995).

Petitioner is entitled to variance relief because the Property is unique, and Petitioner would experience a practical difficulty and unreasonable hardship if the variance is denied.

The Court in *Cromwell* defined the term "uniqueness" and stated:

> In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "Uniqueness" of a property for zoning purposes requires that the subject property has an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or not-access to navigable waters, practical restrictions imposed by abutting properties or other similar restrictions. *Cromwell v. Ward,* 102 Md. App. 691 (1995).

Due to the events that led to the creation and configuration of the Property, special circumstances and conditions exist which make the Property unique. The testimony of Mr. Motsco at the Board's hearing, along with aerials entered into evidence, show that the Property is substantially different than other properties in the area with differences in size and shape. That is, the fact that this is a narrow, yet deep parcel, and was created over 140 years ago drives the need for variance relief. No other property in the vicinity has these precise dimensions. Additionally, the Property was created prior to modern zoning laws, meaning the Property will be impacted by the BCZR in a different way than other lots in the neighborhood that were created subsequent to the regulations. Combined with the unique shape and size of the Property, the lack of feasible building area is exacerbated by the combination of these factors. The Property's physical peculiarities will cause Petitioner to suffer disproportionately due to the application of BCZR. As such, the Property has an inherent characteristic not shared by other properties in the area and satisfies the "unique" test required under *Cromwell v. Ward*. Furthermore, as noted at the hearing, a number of properties in this immediate neighborhood have been afforded variance relief. The

property immediately across the street obtained a variance in Case No. 05-444-A. The Fradkin property (immediately next door) also was granted a variance in Case No. 84-332-A. Other variances granted in the neighborhood include one for a reduced side yard setback (the same type of relief as sought in the instant matter) for the property located at 4626 Butler Road (Case No. 64-94-A) and 3 Waugh Avenue (Case 94-307-A), which also requested a variance to a side yard setback less than required. Counsel does not cite these cases because approval in one case mandates the same result in another. Certainly, each request must be considered on its own. But all of these cases relate to properties on the plat which created the Property. The ALJ in these cases has consistently determined that lots created by this plat are unique and therefore qualify for variance relief. The same result is appropriate and mandated here.

Courts have interpretated the "practical difficulty or unreasonable hardship" standard to be disjunctive, meaning that satisfaction of either of the conditions may warrant a variance. *Loyola Loan Ass'n v. Buschman,* 227 Md. 243, 250-51 (1961). The Court in Mclean v. Soley, 270 Md. 216 (1973) established criteria for determining practical difficulty or unreasonable hardship:

> (1) Whether compliance with the strict letter of the restrictions governing various variances would unreasonably prevent the owner form using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
> (2) Whether a grant of the variance applied would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
> (3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed, and public safety and welfare secured.

The undersize nature of the Property and strict application of BCZR would unreasonably prevent Petitioner from using the Property for the permitted purpose of a single family dwelling. The imposition of the new regulations, i.e. BCZR § 1B02.3.C, impacts the Property, which was apart of an existing plat, disproportionately as compared to lots in the neighborhood laid out in

accord with the regulations. A denial of the variance would deprive the Petitioner of the right to reasonably develop her property in accordance with regulations and would constitute a practical difficulty under these circumstances. Mr. Motsco testified that the Petitioner will suffer practical difficulty if her request is denied, because there is no location on the Property where a garage could be constructed in conformance with BCZR § 1B02.3.C.

Further, a grant of the relief will not detrimentally impact adjacent properties. Mr. Motsco testified that considering the LPC approval, the surrounding neighborhood, and the site constraints at issue, the garage construction is consistent with DR 1 zoning regulations and would not cause injury to the public health, safety, or general welfare. As such, Petitioner will experience practical difficulty or unreasonable hardship if the requested variances are denied.

CONCLUSION

Therefore, for the foregoing reasons, the Board should grant Petitioner's requested relief.



ZACHARY J. WILKINS
LAWRENCE E. SCHMIDT
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
(410) 821-0070
zwilkins@sgs-law.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of April, 2021 a copy of the foregoing Memorandum was mailed, via email to:

Thomas & Kim Montayne
Tom@montanye.net

Kimberly Karlsen
perandkim@aol.com

Steve & Patricia Fradkin
reistlaxcoach@gmail.com

Sue Benson
sbensoncomm@aol.com

Robin Coffin
rscoffin@verizon.net

Mary Molinaro
mmolinaro@reisterstown.com

Peter Max Zimmerman, Esquire
People's Counsel for Baltimore County
peoplescounsel@baltimorecountymd.gov



ZACHARY J. WILKINS

Dear Baltimore County Board of Appeal Members:

It has been brought to our attention that someone has presented an unauthorized copy of our intellectual property in a hearing regarding 4607 Prospect Avenue, Glyndon, MD. These images were taken from HistoricAeriels.com and asked that they be entered as exhibits. Please know that these unauthorized images marked with "Copyright Material" are an infringement of our copyright and we did not grant their use. In the event that our photos are requested for use in a professional or legal manner, after purchase, we diligently confirm the location and date information for each purchased item. This is done for all authorized copies from our imagery database, in order to confirm their authenticity, and a necessity in order maintain the standard our customers expect from us in the professional and legal environment. We offer a notarized affidavit of authenticity with any legal acquisition of our imagery, upon request. Without proper authentication, we cannot stand behind the claims made in regards to any screen shots taken from our website containing watermarked imagery. Thank you for your attention to this request.

Jeff Teasley
Director of HistoricAerials.com

Exhibit A

Baltimore County
GOVERNMENT

Montanye complaint

10/1/18 Grading Complaint CG1800180

Register for an Account Login

Home Animal Complaint License Residential Parking Permits Land Management

Code Complaint CZMP Online Payments Permits

Submit a Complaint Search Complaints

Record CG1800180:
Grading Complaint
Record Status: In Compliance

Record Info

Property Location

4609 PROSPECT AVE
REISTERSTOWN MD 21136

Could not connect to the GIS Server.

Application Details

Complaint Description:

Dug swale from downspout to direct flow onto complainant's property.

RE: PETITION FOR VARIANCE
4507 Prospect Avenue
Petitioners: Donna Bair

Memorandum submitted by the Protestants

The Bair's are requesting a Zero variance between their property line and the Fradkin property for the purpose of adding a second bay to current garage. In fact, the Bair's have already added this addition without any variance. This addition encroaches over the Fradkin's property by two plus feet. Prior to the addition of the second bay there was a 25ft set back between the Fradkin's property and 11 ft. set back from the Bair's to the Fradkin's property line. The requested improvement of a 2nd bay cannot be accomplished without the 2 plus feet encroachment onto the Fradkin's property. As the requested need for the variance cannot be done without an encroachment there no need for the variance to be granted. There are no submitted drawings to support the use of the property as a carport or even a small storage area. There is certainly no impact upon the use of the Bair's property without the granting of these variances. Further, Mrs. Bair suggested in the third day of the hearing, in rebuttal, that I provided a map and told her where our property line was located. The timing of this statement alone calls into question its veracity.

Further, we oppose the Zero' variance request as a should a situation arise where heavy equipment is required to access the rear yard of the Bair property, there would be no way to do that without damaging either the Fradkin or Montanye properties. This is foreseeable as there is a pool in the backyard of the Bair property.
Another reason we oppose the Zero variance is that Glyndon is a preferred place to live due to its open spaces and quiet neighborhoods. Building up to property lines sets the precedent of creating a community that is no longer valued for its open spaces and neighborhood feel. This is not town home living. This is a community where people value and purchase their home for the open spaces and solitude.

We oppose the room addition on the Montanye side for several reasons as well. One, the clear change in topography and the addition of impervious surfaces that have increased the volume of water directed towards the Montanye property. This is also true on the Fradkin property side.

The granting of variance relief in this case would set a precedent that if you build without following the rules, you will get relief. A relief that they well could not have been granted if they had gone through the correct channels. A validation of a build now, ask for permission later without regard to the effects on neighbors and the neighborhood in general. We oppose all variance requests made by the Bair's and respectfully agree with Judge Beverungen's decision to "deny" all variance requests.

We would like to thank Mr. Peter Zimmerman and the People's Council for their help in this case and their dedication to their craft.

Steven M. Fradkin



Patti J. Fradkin

Patt J Fradkin

04/09/2021

and there was nothing you could do about it? This would only bring conflict to the neighborly relationship.

Following the normal process affords the local community and LPC an opportunity to provide feedback that includes suggesting alternatives that will work to meet the homeowner goals within the confines of the county codes. It avoids the neighborhood conflict we are faced with today – a black-and-white decision on the "as-built." It is understandable that the CA's would highlight this fact above others in their section 8 submissions.

Conclusion

Mrs. Bair has acted on this only in a way as required by law. Not in a way in keeping with maintaining peace within the community in which she now lives.

Despite her convincing testimony, presented without any evidence, the Protestants and the People's Council have disproven her testimony and demonstrated her willingness to deceive and defraud not only her immediate neighbors, but the community and the County.

Without demonstrating true uniqueness of property and structures, without a demonstrated hardship, and *with* demonstrated harm to the general welfare of the community, **we see not a single justification for any relief being granted.**

-Tom and Kim Montanye

Thomas R Montanye 4/8/2021

Kimberly S Montanye 4/8/2021

RE: Petition for Special Hearing and Variance, Board of Appeals
Case 2019-342-SPHA
Donna Bair, 4607 Prospect Ave, Glyndon

Montanye Protestant's Memorandum

4/2/2021, Tom & Kim Montanye, Neighbors @ 4609 Prospect Ave

Table of Contents

Introduction 2
Summary of Adverse Impacts on Montanye's/ 4609 Prospect Ave. 2
Privacy Fence in Front and Side Yards 2
Water/Silt/Erosion from Master Bedroom/Bathroom Suite Addition 3
Adverse Safety Concerns 3
Argument 4
Uniqueness 4
Hardship/ Practical Difficulty 5
General Welfare and Community Interest 7
1976 Addition and the 104.3 Limit on Extension of Non-Conforming…/ 25% Rule 8
1976 Addition Dimensions – 329 sqft 8
1971 Home – 1,448 sqft. 8
Deficiencies 8
Deficient Submission/ "As-Built" Advantage 8
Defective Exhibits - Petitioner's Fence 9
Petitioner's 'Victim' Testimony 10
Licensed Real Estate Agent 11
Normal Process is Crucial 11
Conclusion 12

Introduction

Summary of Adverse Impacts on Montanye's/ 4609 Prospect Ave.

Privacy Fence in Front and Side Yards

BCZR 427.1 limits front-yard fences to 42". Mrs. Bair's new fence projects 50 feet along our adjoining front yard.

Historic District guidelines further limit side-yard fences to 42" (*ref. 427.1 A, B*). Mrs. Bair's entire fence is in front of our foundation, the balance of the distance in our side yard. (*Protestant's exhibit 6N*).

Facts of "before" Fences

On the Montanye/4609 Prospect side, since at least 1991, there existed **two different fences, and a "cabana" structure in-between them**, front-to-back as follows:

- An **18-24" decorative white picket garden fence**, which started about 4-5' behind the ~1976 addition foundation, and continued toward the back at a distance of about 2' from the property line, meeting up with the cabana at exactly the large Bair Holly tree, which is just past the end of the Montanye driveway. It was not a privacy fence. *(See Protestant's exhibits 6B, 6D)*.
- A **cabana,** approximately 6' tall, which started exactly at the Holly tree and continued ~12'-14' toward the back *(See Protestant's exhibit 6A and Petitioner's exhibit 2C)*.
- **A 48" 3-board wood paddock fence**, which started exactly where the cabana ended and continued some ~30' back along our side yard, inside (Bair side) of the Rose of Sharon hedgerow. This fence can be seen *behind* the hedgerow in *Protestant's exhibits 6A and 6H*. **It was not a privacy fence**, as Mrs. Bair testified.
- **A 6'-high gate** (Montanye-side) was located **>10' from the property line** (*see Petitioner's exhibit 2D*), connecting the inside end of the cabana to the back corner of the house.

These two fences and the cabana, *along with the privacy hedgerow*, were completely removed and replaced by a 6' tall solid-board privacy fence. The new fence is located **closer to the Montanye property** (by approximately 1-2 feet in the front and 3-4' in the back), now on the other/Montanye side of where the hedgerow used to be, and **extending farther back** by approximately 6'.

Privacy Justification – False Premise #1

The entire justification Mrs. Bair presented to justify a 6'-high fence that violates the County and Historic restrictions, was to provide needed privacy. In *Protestant's exhibits 6A&B* (Montanye & street view – before) verses 6C (Montanye street view – after), it's clear that **no privacy issue existed prior to the new fence**, and that overall **privacy was actually reduced** as a result of the removal of the 14' high, established hedgerow *(See Protestant's exhibits 6E, 6G, 6L – after, vs. 6H and 6J - before)*.

Gate Had to be Moved Forward – False Premise #2

The prior gate was about 6' tall, located more than 10' from the property line, and opened inward toward the pool, which is in violation with the pool fence code. Mrs. Bair testified that her fence company suggested that the ***only* alternative** to make the gate compliant was to **move it** all the way up to where it exists today, some **29' forward**, and now *on* the property line at the front-most point.

Per my testimony, before the fence was constructed, I explained that we would not agree to this change as it would impact our property and not be compliant with fence codes, and that an **easy solution** would

be to keep the gate where it was, remove the pavers where the gate existed, **regrade to add a step** in the walkway, and then the gate in it's prior location could swing out, as required. This suggestion was rejected, and the fence was constructed. Mrs. Bair's testimony that she "explained things to the neighbors in advance" and "there were no issues" is inaccurate in this regard.

Furthermore, Mrs. Bair added **a new side window** (despite her testimony otherwise, *Protestant's exhibits 6B – before vs 6C - after*) along the Montanye driveway, further reducing privacy in both directions. This is **self-inflicted**, so the 6' fence cannot be used to justify the need.

Curb Appeal Adverse Impact

From the street and upon entering our driveway, it is apparent in *Protestant's exhibits 6A-D* that ***the entire nature of the boundary*** **between 4607 and 4609 has completely changed for the worse**. A formerly attractive, natural and more private boundary was replaced with a less effective wooden wall, decreasing the street appeal enjoyed by all in the Historic Glyndon community, and negatively affecting the property value. **Glyndon is not known as the land of grass and privacy fences; it's the land of old trees and beautiful natural landscaping.**

Water/Silt/Erosion from Master Bedroom/Bathroom Suite Addition

As shown in *Protestant's exhibit photos 10A-C,* and video *exhibit 12*, after experiencing silt flowing down her side walkway, Mrs. Bair intentionally created a ***new*** **impervious swale** to redirect and force all water/silt to flow to a 6"-wide mud trench on the exact edge of the property (same effect as extending the downspout to the edge of the property), **forcing it to flow instead onto the Montanye property**. The video clearly shows *no* water flowing under the new fence gate/Bair property, despite the testimony of expert witness Mr. Motsco, who said it would stay on her property.

On the **Fradkin's side**, a **new impervious ~12'x18' (216 sqft) concrete pad** was constructed to lead to the new 2nd garage bay, extending even beyond the Bair property. The water that used to be absorbed on the Bair property in that area now flows onto the Fradkin property. In addition, the excess water from the area of the **new garage bay 12 x 28' (336 sqft)**, is now directed only onto the Fradkin property. **This totals 552 sqft of new impervious area**. All flowing entirely onto the Fradkin property.

The balance of all the water from the sloping front yard, the impervious auxiliary driveway and walkway on the Montanye side, plus the water from the new impervious master bedroom/bathroom suite (**329**/308 **sqft**), **is now channeled into the mud trench**. **There is virtually no pathway for the excess water to remain on the Bair property on either side.**

Adverse Safety Concerns

There are significant safety issues having these structures stand even a day longer, let alone for 2+ more years while litigating further appeals, postponements, reconsiderations, etc. It seems the County enforcement arm will take no punitive action until the whole case is exhausted. This puts the neighbors and community at continued risk for what could be a total of 6 or more years from the time of initial construction. This is dangerous and puts the rights of an offender above the ongoing safety of the community!

1. No evidence that licensed professionals performed the work. In fact, given the magnitude and visibility of the work, and being on a public street, it's unlikely, as they know they could lose their license and livelihood as a result.

2. No inspections have been performed. We have zero assurances that the structures are safe and sound. Issues can happen at any time post-construction, as a result.
   2.1. Electrical safety codes, smoke detectors up to standard – possible fire hazard
   2.2. Plumbing (including natural gas) – possible explosion hazard
   2.3. Masonry (garage and addition foundations)
   2.4. Structural safety codes
3. In fact, **a gas leak** was already detected and corrected (*Protestant's exhibit 16*) in the precise area where the addition was built on the Montanye side, right on the corner of the new construction, just 15' from our driveway. In talking with the contractor during the repair, he said the gas line was nicked there, where the hole was dug, as proven in the photograph.
4. Furthermore, prior to the Gas issue, the initial garage foundation collapsed and had to be rebuilt - a clear indication that perhaps there was a level of incompetence with the workers, and an early heads-up for Mrs. Bair to investigate the contractor's status.
5. **The Bairs shouldn't even be living in this space for the last 3 years.** There was no "use and occupancy" issued, nor should there be. This happens after it's all inspected and deemed okay.
6. The 6' privacy fence that terminates with a gate, abruptly where we back out of our driveway, and poses the risk of a child running into our driveway without any ability to see it coming. A line-of-sight issue.

What assurances do we neighbors have that we, or our properties, won't be damaged should something serious happen in the near future?

Argument

Variances, outlined in BCRZ 307.1, allow they be granted:

1. "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"…
2. "and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship"…

   These are two hurdles - the first has to be met, and only if so, then the second is considered and must also be met. (*ref. Cromwell v. Ward*)
   Furthermore…

3. "and only in such manner as to grant relief without injury to public health, safety and general welfare."

Uniqueness

In the first place, on the first bar to be met, peculiarity or uniqueness of the land or structure:

1. **I struggle to find *any* characteristics of the land or structure that are peculiar or unique compared with the surrounding properties**, at least in the condition prior to these improvements, **or to find any arguments offered by the Petitioner that support this.**
   1.1. **The lot** is similarly…
      1.1.1. **Rectangular** in **length and width ratios** of it's immediate neighbor's and many others,
      1.1.2. Similar **terrain**…slopes downward from front to back (see *Petitioner's topographical exhibit*), same as all houses on Prospect and Waugh, both sides,

1.1.3. No cliffs, drop-offs, rock out-crops, rivers or streams, like all the surrounding houses on this side of the street and even the other side.
1.1.4. Same public utilities available to all, water, sewer, cable, etc.
1.1.5. The structure, prior to the improvements, did not meet current side set-back or lot square footage requirements for DR1 or even DR, same as many of the properties on Prospect (4609, 4611, 4613), all/most on Waugh Ave and Fiske Ave. *(See Protestant's exhibit 27)*
1.1.6. No two lots in Historic Glyndon are exactly alike. Are they therefore all unique, qualifying for relief? They are all formed on top of existing ground and terrain, around streams and hills and valleys, forests and fields, existing roads…and it is nearly impossible to *make* them identical. **A dictionary definition of 'unique' is not particularly helpful to variance determinations. It is a relative comparison that is appropriate.**
1.1.7. Mr. Schmidt's cross examination of Ms. Coffin attempted to imply that:
1.1.7.1. Because 4605 had gotten a variance in 1984, it was considered unique
1.1.7.2. Because 4605, 4607, and 4609 were very similar, they were therefore all unique
1.1.7.3. Also, Mr. Schmidt's opening exhibits in both the lower court and the de novo appeal emphasize the number of variances awarded in the Historic Glyndon area
1.1.7.4. Yet, under another objection, Mr. Schmidt argued that each case must stand on its own, and that no single variance sets a precedence…
1.1.7.5. …Pardon my confusion in this circular logic and contradiction.
1.1.7.6. Plus, the 1984 variance on 4605 Prospect pre-dates the Cromwell v. Ward landmark case arguing the importance of uniqueness and resulting hardship, which has since somewhat restricted the issuance of variances.
1.1.7.7. Finally, the 1984 variance on 4605 Prospect not only had no opposition in the community, nor broader environmental concerns…it had **signed support from every single property owner on Prospect Ave**. The nearest residence is over 230' from the new 25' setback. Which County ALJ would go against this support, and deny a variance under the circumstances, opening themselves up for warranted criticism by the community?!

2. In Mr. Motsco's testimony, he stated that the Bair property was unique because of the slope. Yet he further stated, in cross-examination, that the slopes on the neighboring properties on the south side of Prospect Ave. were the same. This sameness is supported by the topographical map introduced toward the end of Mrs. Bair's second testimony (*Petitioner's exhibit 25*).
3. Further, Mr. Motsco testified that building a detached garage in the back of the property would introduce a hardship in walking from the house to the garage. This argument of hardship caused by an unbuilt alternative, to an illegally built 2nd bay, would be self-inflicted. Plus, other front-yard options exist.

Hardship/ Practical Difficulty

In the next place, even if it were determined that the land/structures were somehow peculiar and unique, the second bar would not be met because no reasonable hardship is caused by the uniqueness, except the ones they created themselves in doing the improvements without considering the zoning restrictions and in creating the adverse impact on the neighbors and neighborhood.

1. Every neighbor in the community has had to make compromises and choices about improving their property within the confines of the County zoning and building codes.

2. In the case of wanting a 2-car garage,
   2.1. First and foremost, **it's not a hardship if you don't have a two-car garage; it's a luxury if you do.**
   2.2. It's a luxury if you have a single car garage, in this area. In fact, many garages in the area have been converted into living spaces (3, 5, 7 Waugh Ave), showing actual homeowner choices in practice over time, that living space is preferred over garage, which is more of a luxury.
   2.3. It's not a hardship if you have to walk from your house to your luxury detached garage.
   2.4. Further, **other options exist**.
      2.4.1. There's **room in the rear of the property** (200' - 30' setback = 170') **for a detached 2-car garage** within the zoning constraints, like several of the properties on Prospect (4606/Acle, 4610/Gehman, 4615/Meavers, 4511…), and many more in Historic Glyndon.
      2.4.2. There is **room in the front** (77.4' - 20' county right-of-way -25' setback = 32.4') for expansion within the zoning constraints. Two houses on Prospect alone have detached garages in the front of the properties (4601/Welsh, 4612/Gehman).
      2.4.3. There is room in the front for an attached, 2-car garage with a side entry, same/similar configuration as 4 Waugh Ave (*Petitioner's exhibit 7C*), perhaps with a more reasonable variance request, requiring no further reduction in existing non-conforming setbacks.
   2.5. If we allow a **zero-foot setback precedent**, would our DR1 zone turn into a community where structures were touching each other? Like town homes…as we all got exceptions to the rules, to be fair, even though none of us had met the bars for exceptions according to the laws passed by the elected legislature?
   2.6. One must consider the long-term impact of these decisions. This line of thinking leads to a turbulent community of conflict and angst, instead of peace and harmony.
3. In the case of the **second addition**, the new master bedroom and bathroom suite, **other options exist**, same thing,
   3.1. First and foremost, again, there was **no hardship with the existing living space**.
      3.1.1. Mrs. Bair purchased a 3 bedroom, 2-1/2 bath property, with room for overnight guests with children (daughters, grandchildren) already, with lower level and upper level family rooms.
      3.1.2. Families in 4607, in the last 30 years since we've been next door, included 3 with two children each;
         3.1.2.1. Hamilton's, Towles, Devaney's.
         3.1.2.2. Back in the seventies, the Bergeson family had 3 kids in that house, one of whom was friends with my brother.
      3.1.3. This clearly demonstrates there is no hardship to reasonably use the property as a residence, as it was before these improvements. The extra space added is totally a luxury.
      3.1.4. Further, the Bair's **could have expanded in the front or the back instead** of to the side, which is already non-conforming and where the issues are…or even **considered a second story** (like many of the houses on Prospect and Waugh Ave), in order to meet zoning restrictions.
   3.2. In fact, they covered a portion of their back deck with a roof and screened it in, as their first unpermitted improvement (one violation the county didn't pick up on, though it's documented in her own exhibits). **Instead of doing that, they could have used this 19'x12' area, and/or the area adjacent to it on the Montanye side giving them 36' wide x12' deep**, which is in the

center of the property, for extra indoor living space comparable to what they did in the front. It would be within the zoning restrictions.

4. In the case of **the fence**, other options exist, same thing…
   4.1. All of the confusion suggested by Mr. Schmidt with conflicting requirements…between the base County code requirements, the County pool requirements, and the County historic requirements…seem to me easy to sort out.
   4.2. **Pool requirements** can be met by enclosing the pool with its own minimum 48" fence, at least 10' in from the property line to satisfy zoning. This is the way many of the neighbors have handled it. This is how the Fradkin house handles it (*Protestant's exhibit 5*), as do many other properties in Glyndon.
   4.3. If they want a **yard fence** on the property line also, on the front/side, it can be brought to the required 42" (*ref. 427.1.A "…located in a historic district, the maximum height of a residential occupancy fence is 42 inches if the fence is erected in the side yard of a lot that adjoins a public road",B.2 "The fence may not exceed 42 inches in height if situated within ten feet of the adjoining front yard property line."*). **Privacy** can be handled very effectively **using hedges and shrubs**, like it was before this non-conforming fence replaced them, as is most common in Historic Glyndon.
   4.4. I have repeatedly, personally offered a reasonable alternative that would be acceptable to us on our side (*Petitioner's letter exhibit*) without requiring 2 fences....before the construction, after the construction, at the lower hearing, and since the appeal hearing. But it was rejected outright on all occasions. My proposal would still have required relief. The offer was made in good faith, as a negotiation, for the purpose of bringing this dispute to a more rapid resolution, before a hearing and County and community involvement was required, which did not happen.
5. These arguments and options demonstrate there is absolutely no need for relief of any kind on the fence, the garage, or the bedroom/bathroom addition.

General Welfare and Community Interest

Setbacks provide desirable buffers between neighbors and are extremely important to the general welfare. They promote peace and harmony in the community. Each property owner agrees to restrict expanding in these areas equally. When one property owner fails to do so, the immediate neighbor is adversely impacted, as is the neighborhood more broadly. Granting of a zero-foot setback is neither reasonable nor necessary for the Bair's to enjoy and even expand their property as a residential dwelling in Glyndon. Same with the master bedroom/bathroom expansion. **Because other options exist, granting relief is not necessary and negatively impacts the buffer between properties, perpetuating the non-conforming issues unfairly.**

The protested privacy fence along the adjoining front- and side-yards likewise perpetuates an unfair and undesirable condition for the immediate neighbors and the Historic Glyndon community. Our other neighboring fence, at 4611, also does in fact extend 5' into our front yard (measured after testimony), but is a 48" 3-board fence that was rebuilt exactly where/as it was 40+ years ago, and is 40' from our house, behind a hedgerow. It's not in any way comparable to a new 6' solid fence, newly installed, extending 50' into our front yard, and 2' from where we park. Therefore, we did not object.

1976 Addition and the 104.3 Limit on Extension of Non-Conforming…/ 25% Rule

The 4607 Prospect property became non-conforming in 1971 when the DR2 zoning designation went into place, with a garage-side setback of only 11' instead of the required minimum of 15'.

1976 Addition Dimensions – 329 sqft

When the ~1976 improvement was added onto 4607 on the Montanye's-side (see *Protestant's exhibit 2*), the property was zoned **DR2**. Side setbacks for DR2 are minimum **15'/ sum of 40'** (*ref. BC Zoning Regulations 1B02.3.C.1.*) This addition violated the 15' (14.9) and the "sum of" setback requirements (14.9'+11'=25.9'), and therefore the ~1976 addition counts toward the 25% rule.

The Math

Using the RTF survey drawing to determine of the width of this ~1976 addition, by measuring the "4' overhang" (OH), with a scale of 1"=30', this makes the width conservatively 23.5'. **This overhang *is* the 1976 addition**.

Mr. Motsco's testimony that the new addition is "approximately 14'x22'", determined by looking at the structure itself, "as best he could tell"…we'll **use his 14' depth dimension**, for lack of any other. **This makes the ~1976 addition ~14' x 23.5', or 329 sqft**.

1971 Home – 1,448 sqft.

Again, using the RTF survey, the original home "ground floor area" (before the 1976 addition), measured:

The Math

- **Main Home** – 54' on survey - 23.5' ~1976 addition = 30.5'.
  30.5' width x 30.5' depth on survey = 930 sqft.
- **Utility/ Mud room** - 30.5' - 5.8' step-back = 24.7'.
  24.7' x 8.6' width = 212.42 sqft.
- **Garage** – 28.3' x (24.3'-2.5' encroachment – 11' original setback = 10.8') = 305.64 sqft.
- **Total ground floor sqft** – 930 + 212.42 + 305.64 = **1,448 sqft.**
- 1448 sqft x .25 = **362.02 sqft. maximum allowed extension**.
  362.02 sqft (25%) – 329 sqft. 1976 addition = **33.02 sqft left on the 25% rule.**
  Therefore, the 104.3/ 25% rule does not cover the 2019 addition of 329 sqft.

Mr. Motsco testified that the 1991 zoning change was the point-in-time to consider. The Zoning Master Plan cycle is not intended to provide a "reset" mechanism for expansion. Therefore, 1971 applies here.

Deficiencies

Deficient Submission/ "As-Built" Advantage

The **RTF survey** is the only thing submitted with any dimensions of the recent improvements and is seriously deficient with details pertinent to the case. (*ref. BCZR Article 5, 500.9, 502.1*)

It shows only the "as-built" *total* dimensions, and **lacks information** specifically relevant to the relief request, including:

- What was the prior vs. the new setback of the 2nd bay garage?
- What is the size (length, width, sqft) of the new master bedroom/bathroom suite seeking relief?

- How far is the new 6’ privacy fence, seeking relief, from the property line on the Montanye side?

In other words, *what specific change is the appeal tribunal approving or denying (before/after)?*

Mrs. Bair got Ex Post Facto approval from LPC for a **13’x13’ addition** on the Montanye’s side (*Petitioner’s exhibit 5*). These numbers are way wrong, it’s been established above at 14’x23.5’. Where did they come from? Assuredly from the request by the petitioner to LPC, as there were no dimensions in the code complaints or citations (*Petitioner’s exhibit 4*).

On the garage side, who certified what the old setback was? It could be determined only after the survey, and by looking carefully at the construction done, might even require pulling siding or drywall. What evidence has been presented to verify the setbacks represented in the reconsideration? It's not on the survey. An aerial view measurement shows about a 14' extension, based on the roofline, but that can't be considered precise.

An **“as-built” submission** process **may grant an advantage** over a “normal” process, because:

- People are naturally more sympathetic to the consequences of denying exceptions in the case of the as-built, because if declined, it has to be removed, likely at significant expense. It's a difficult and punitive decision.
- If *plans* to build are declined, the applicant simply has to re-work the plans to make them conforming, with far less cost. This is a far less difficult decision, not punitive.
- This gives an advantage to the "as-built" approach, which is a bad precedence because it encourages more residents to follow the thinking that "it's easier to ask forgiveness than permission." This thinking is destructive to our communities and our civil society more broadly. It's not a law-abiding approach, it's a "catch me if you can" approach. It would result in more hearings just like this one, more arguments, a less peaceful community. That's an adverse effect.

Defective Exhibits - Petitioner’s Fence

The photographs and measurements presented in Petitioner’s exhibits 8A-I serve only to show that “other fences exist in Historic Glyndon”. **No relevant context is provided** with the photos, such as:

- Where are the fences? Front-yard, side-yard, back-yard?
- Do they adjoin a neighbor’s front- or side-yard?
- Along a busy state highway (MD128/Butler Rd) with a public sidewalk? Or, a dead-end street?
- Do they surround a pool? Do they protect a tennis court?
- Do they help shield from a public or private facility? (church, private pool)
- How far are they from the property line?
- How long have they been there? (Prior to zoning? Historic?)
- Are they on a Historic/ contributing property or non-contributing?
- Did the neighbors/community protest or support?
- Are they solid-board, stockade privacy fences, or 3-board paddock or split rail, or picket?

Most of the heights given in testimony are exaggerated. One can easily find a spot or two along a 4’ fence line where it exceeds or is less than 4’, due to the terrain or imperfections in construction. Additionally, the “measuring stick” used has no visible number measurements indicated and appears to

be a telescopic device (can be extended manually and imprecisely). Why not a tape measure? Certain neighbors who attended the hearing saw their fences in the exhibits and contested the measurements.

Only a single fence pictured/listed is relevant: *Petitioner's exhibit 8B*. The wooden fence (behind the featured black metal fence) at **2 Waugh Ave**. is a 6' privacy fence, along a front & side yard, with a pool involved. These two fences were the object of **years of opposition from the Historic Glyndon community**, where the Petitioner lost the lower-court ALJ hearing and filed an appeal. The HGI and GCA organizations ran out of legal fees to contest the appeal, and the **appeal case was ultimately dropped** by BC BOA (**appeal never even scheduled**, get it off the books) citing "**lack of prosecution**" by BC to enforce the lower court finding, so it still stands today. Yet, it's also included in *Petitioner's exhibit 26*, (twice) listed as "approved"?

The same issues exist with *Petitioner's exhibit 26* (fence chart). Corrections and some relevant context added below. Mr. Schmidt did not provide the exhibit, so this is partial from what was displayed, but makes the point.

Address	Height/Type	Yard Location	Comment/Context
29 Chatsworth	6' Privacy	Back & Side	Shields from Glyndon Pool, corner lot, no neighbor
25 Waugh	6' Privacy	Back	No adjoining front/side yard
8 Waugh	6' Privacy	Back	No adjoining front/side yard
6 Waugh	None	None	**Duplicate**, Vacant lot, 6' fence seen is 4612 Prospect
4722 Butler	6', 7' Privacy	Back	~15' from property line
4702 Butler	42" Picket	Side	**Duplicate**, 6' fence seen is 3 Waugh fence
3 Waugh	6' Privacy	Side & Back	Vacant lot next to fence
2 Waugh	6' Privacy	Side & Front	Dropped for Lack of Prosecution (**not approved**)
4612 Prospect	6' Privacy	Back	Surrounds only pool
4711 Butler	6' Privacy	Back	Shielding Glyndon UM Church side
121 Central	6' Privacy	Back	Begins ~40 behind foundation
37 Waugh	52" Paddock	Side & Back	Borders Emory Grove Camp
4606 Prospect	None	None	**No fence** on Acle property
4605 Prospect	5' Metal	Back	Surrounds pool only, not near property line

Petitioner's 'Victim' Testimony

Petitioner testimony asserts that she was defrauded by her contractor, and that she had no knowledge that:

- Property lines and setbacks were not determined or followed,
- LPC procedures were not followed,

- Permits were not requested or granted.

Only Mrs. Bair's testimony was presented as evidence to these claims. Not a single correspondence, contract, receipt, payment or other artifact from the contractor was presented. No contact information or contractor name was presented, no evidence of pursuing damages with this contractor. With one exception… A statement from a fence company was presented, showing a charge for a permit that was not in fact obtained by the fence company. This was a small fraction of the total improvements made. In addition, fence companies rely on the customer to verify the location and other characteristics requested by the customer to be accurate and conforming.

Furthermore, it is always the **complete and total responsibility of the homeowner** to be knowledgeable and assure their compliance and the compliance of the contractors they employ.

Licensed Real Estate Agent

Mrs. Bair was a **licensed and active MD real estate agent when the work was performed** (PC exhibit), having just participated in the purchase transaction of her own residence. One must be an active agent to participate in a transaction, an in order to be an active agent one must be current on licensing and continuing education requirements. As Cookie Stone, expert Real Estate witness for the Protestant's testified, a basic knowledge of zoning, permitting, and using only MHIC licensed contractors is standard and emphasized in the RE licensing and continuing education training curricula required by all.

Refer to *People's Council exhibit 15*, which outlines "Basic Maryland Real Estate Licensing Requirements", with the last bullet reading "**Planning, Zoning, and Environmental Hazard**." In addition, RE Agents are trained extensively in the importance of good contracts, compliance and disclosure. COMAR 09.11.02.01, Relations to the Public, paragraph C includes: "The licensee shall protect the public against fraud, misrepresentation, or unethical practices…"

Protestant's exhibits 18A-D (security video) demonstrated the willingness and audacity on Mrs. Bair's part to **delegitimize two different surveys done for the purpose of resolving the issues in this case**, putting into serious question all of her testimony not backed with legitimate evidence.

Normal Process is Crucial

Mr. Schmidt spent an inordinate amount of time in cross examination attempting to convey to the panel that, despite the proclamation of each community association in their Rule 8 submissions, the *only* reason any of the relief requests were opposed is because the Petitioner did not get permits or follow the proper process.

In fact, the **documents submitted by each organization clearly oppose the garage 0' setback, the bedroom/bathroom addition, and the fence**. While it's true there was a paragraph *highlighting* that this case is particularly egregious because the normal process was not followed, **that's not to say that is the only reason…it's just one they chose to highlight**. The issue was initially reviewed in detail by these organizations over a year-and- a-half prior to the representatives giving testimony.

Also, it's not fair to argue "*they didn't have any problem with it beforehand*" when, in fact, it was unknown beforehand that there were so many violations and issues. It was assumed by all that proper setbacks were being followed, proper designs were submitted and approved, proper safety inspections were performed. **To what end would a neighbor oppose the work if it were approved and legitimate**

and there was nothing you could do about it? This would only bring conflict to the neighborly relationship.

Following the normal process affords the local community and LPC an opportunity to provide feedback that includes suggesting alternatives that will work to meet the homeowner goals within the confines of the county codes. It avoids the neighborhood conflict we are faced with today – a black-and-white decision on the "as-built." It is understandable that the CA's would highlight this fact above others in their section 8 submissions.

Conclusion

Mrs. Bair has acted on this only in a way as required by law. Not in a way in keeping with maintaining peace within the community in which she now lives.

Despite her convincing testimony, presented without any evidence, the Protestants and the People's Council have disproven her testimony and demonstrated her willingness to deceive and defraud not only her immediate neighbors, but the community and the County.

Without demonstrating true uniqueness of property and structures, without a demonstrated hardship, and *with* demonstrated harm to the general welfare of the community, **we see not a single justification for any relief being granted.**

-Tom and Kim Montanye

RE:	PETITION FOR SPECIAL HEARING AND VARIANCE	*	BEFORE THE
	4607 Prospect Avenue; SE/S of Prospect Avenue, 410' NE of Waugh Avenue	*	BOARD OF
	4th Election & 3rd Councilmanic Districts	*	APPEALS FOR
	Legal Owner(s): Donna V. Bair Petitioner(s)	*	BALTIMORE COUNTY
		*	2019-342-SPHA

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

MEMORANDUM OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

TABLE OF CONTENTS

2014: Coming to Prospect Avenue 1

Circa 2017: The Case of the Errant Encroachments 3

The Neighborhood and Historic Glyndon 3

2018-19: Things Fall Apart, Mere Anarchy 4

Relevant Baltimore County Zoning Regulations and Code Provisions 6

The ALJ Decision 6

The ALJ Order on Motion for Reconsideration 6

Argument 7

Zoning History, Nonconforming Use, Illegal Extensions, Variance Disqualification 7

Variance Law: "Uniqueness" Explained --- Delusions Exposed 9

Interlude: "Other" Fences, Garages, Variances Diversion 11

The Landmarks Preservation Commission Sidetrack 12

The "Carport" and "Accessory Building" Plays 12

The Fence Law Evasion 13

Variance Law: Uniqueness Resulting in Practical Difficulty 14

A. The Bair Property Presents No Difficulties, Much Less Any Peculiar Difficulties ... 17

B. Application of the "Practical Difficulty" Criteria 19

Variance Law: The Insidious Self-Created Difficulty Problem 21

Conclusion 23

APPENDIX

BCZR

§ 101.1 – Nonconforming Use 1

§ 104.1 – Continuation of Nonconformance; Exceptions 1

§ 104.3 – Limit on Extension of Nonconforming Buildings and Uses; Exceptions 1

§ 1B02.3.C – Development Standards for Small Lots or Tracts 2

§ 307.1 – Variances - Authority to Grant Variances; Procedures and Restrictions 3

§ 427.1 – Fences – Conditions for use; exceptions 4

Baltimore County Code § 13-6-101 – Swimming Pool Enclosure 5

Prince George's County v. E.L. Gardner 293 Md. 259 (1982) 6

Cromwell v. Ward 102 Md. App. 691 (1995) 9

Riffin v. People's Counsel 137 Md. App. 90, cert. denied 363 Md. 660 (2001) 17

Easter v. Mayor & City Council 195 Md. 395 (1950) 20

Park Shopping Center v. Lexington Park Theatre Co. 216 Md. 271 (1958) 22

RE:	PETITION FOR SPECIAL HEARING AND VARIANCE	*	BEFORE THE
	4607 Prospect Avenue; SE/S of Prospect Avenue, 410' NE of Waugh Avenue	*	BOARD OF
	4th Election & 3rd Councilmanic Districts	*	APPEALS FOR
	Legal Owner(s): Donna V. Bair Petitioner(s)	*	BALTIMORE COUNTY
		*	2019-342-SPHA

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

MEMORANDUM OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

"There must be some kind of way out of here,
Said the Joker to the Thief.
There's too much confusion,
I can't get no relief.
Businessmen drink my wine,
And the plowmen ruin my earth,
None of them along the line,
Know what any of it is worth.
Bob Dylan (Jimi Hendrix cover), All Along the Watchtower (1967)

2014: Coming to Prospect Avenue

In 2014, Donna Bair (hereafter "Donna") moved from Carroll County to Glyndon. She bought the home at 4607 Prospect Avenue from Timothy Devaney for $320,500.[1] The lot is about 34,000 square feet, .75 acre. The dates from 1951/ For the last several decades, it was occupied by the Hamiltons, Towles, and Devaneys.

Donna has a real estate license. She was associated with Century 21. She activated her license to buy her newly acquired dwelling. She said it was recently on referral.

The neighbors at 4609 Prospect Avenue are Tom and Kim Montanye ("Tom"). They have lived there since 1991. Tom grew nearby. Steve and Patty Fradkin ("Steve" and "Patty") are on the other side at 4605 Prospect Avenue. They came in 2014.[2]

The Bair residence as of 2014 had about 1552 square feet ground floor area. It was a standard house with 2 full baths and 1 half bath, a basement, a 1-car garage, and an

[1] Details are in the State Department of Assessments ("SDAT) Real Property Data, P.C. Exh.11.
[2] The SDAT Data in P.C. Exh. 11 provide helpful information and statistics on the Bair, Fradkin, Montanye, and other Prospect Avenue properties.

ample driveway. This included an addition, about 14' x 22' (308 square feet) on the Montanye side. It was built around 1976, attached mostly to the rearmost side of the dwelling and a few feet to the rear. It was about 14 feet from the Montanye boundary. The attached 1-car garage was set back about 10 or 11 feet from the Fradkin boundary.

There were spacious front and rear yards, a swimming pool, and an open rear deck. The kidney-shaped swimming pool, within a 36' x 22' rectangle, spanned about 792 square feet, per Bair engineer John Motsco. An attractive white picket fence a few feet high ran back from the house on the side closest to the Montanyes. It was not on the boundary. There was also an open-air cabana, kind of a lean-to. On the Fradkin side, there was a three-rail wood fence, apparently 40-something inches high. There was a 13'7" x 10'1" wood shed in the far rear yard about 26 inches from the Fradkin property.

Donna's site plan, Pet, Exh. 1, does not depict the situation in 2014, so there is no drawing or schematic of how things precisely were laid out with the one addition, the one-car garage, the white picket fence and cabana, and the three-rail fence.

Soon after moving in, Donna decided to make new home improvements.

She wanted a second garage bay, extending to the Fradkin property line. It would be 12' x 28'. She would also move her HVAC unit toward the rear of this garage.

She wanted a second bedroom addition on the Montanye side, filling the area in front of the first addition, extending along the side to the front of the dwelling, again about 14' x 22'. Her attorney called it a "notch," apparently to minimize it."[3]

She wanted a new residential privacy fence, six-feet high and solid, along both sides of her property; about 3 feet from Tom's side, to beyond the front of her dwelling, mostly adjacent to the Montanye front yard; crossing the rear yard of her property to the Fradkin boundary; and coming back up to the rear of her dwelling, a fourth side. The length of the fence crossing the rear yard, --- on the site plan and in Bair engineer John Motsco's testimony --- is about 95, with side sections about around 77'. Motsco calculated the area enclosed by the fence as 7700 square feet. The distance from the pool

[3] This is a misnomer. A "notch" is a v-shaped indentation or hollow, or a half-moon. Webster's Third New International Dictionary 1543.

to the fence is about 30 feet.[4] This entailed removal of the existing fences and the cabana, and of substantial plantings near the side boundaries.

She also wanted to enclose the rear deck.

Circa 2017: The Case of the Errant Encroachments

Donna secured estimates from two contractors, itemizing and pricing the work. She wanted it done cheaper, went to Craig's List, and found a Steve, last name lost. He agreed to do the work on a cash basis. There was no written contract, no survey, no permits, no check with county zoning, none of that.

Donna says she relied on Steve to take care of things. She knew about zoning and permits, but didn't think it was hers to know or check.[5]

The garage construction initially collapsed. Steve finished the jobs before exiting, but problematically. The case of errant encroachments was just around the corner.

Donna did not produce this Steve as a witness, and did not produce any records of dealings with him.[6] His later whereabouts are said to be uncertain.

The Neighborhood and Historic Glyndon

The County Board of Appeals ("CBA") heard much evidence on Prospect and Waugh Avenues, lot locations and configurations, and Historic Glyndon. Steve, Patty, Tom, and Robin Coffin ("Robin") described well the immediate neighborhood. Cookie Stone gave an excellent take on the real estate situation and impact. Kim Karlsen, Mary Molinaro, and Susan Benson all testified cogently about Glyndon, Baltimore County's

---

[4] As we discuss later, the new fence exceeds what is "adequate" and appropriate to protect children from wandering into the pool. It does the opposite, leaving room for kids to wander about. Bair conceded it is a privacy fence. Motsco tried to spin it as pool protection to weasel more allowable height.

[5] An ordinary citizen should know to check zoning and permits for such extensive work. A real estate agent has a higher obligation to address applicable regulations under Md. Code Bus. Occupations and Professions Art. Sec. 17-532. P.C. Exh. 16.

[6] Would Steve agree with Donna's blame-shifting to him? Did he broach a survey and permit? What would be his side of the story? Donna never took action later to hold Steve accountable or remedy the situation. Rather, she wants his work ratified, less the trespass. His absence raises a fair inference that his testimony would not be favorable to the petition.

first legislated Historic District and National Register Historic District, with exhibits. Their associations targeted the lack of permits. But they also testified individually, as was their right, to the unsuitability and incompatibility of the construction.[7] More of this later.

The undisputed evidence shows the Bair lot to be sizable in the area, with a mild slope downward like other lots on Prospect Avenue and area lots. There were the SDAT Data on Prospect Avenue lots; and My Neighborhood, GIS and Google layouts and photos. Steve's helpful chart produced a plethora of statistics. Prot. Exh. 27.

2018-19: Things Fall Apart, Mere Anarchy
William Butler Yeats, The Second Coming (2019)

Tom became concerned about the construction. There were boundary issues. A new stream of water ran in a trench or swale along or next to his driveway. There didn't seem to be any permits. There were eventually surveys done. Survey stakes were being moved, as shown his videos. It appeared there might be issues under County law.

Tom filed a complaint. There was a Code Enforcement Correction Notice issued in late 2018 for multiple violations. There followed a citation on January 24, 2019.

There was a hearing before Administrative Law Judge (ALJ) Lawrence Stahl on February 6, 2019. His February 11th Final Order states Assistant County Attorney Marissa Merrick and Donna Bair attended. He imposed the cited $1000.00 penalty, but suspended it to allow Donna to file for zoning relief or correct the non-compliance by April 12, 2019. Pet. Exh. 4. Donna did not timely comply with the Order. She contacted attorney Lawrence Schmidt. He filed her Petition for Special Hearing on May 28, 2019.

Meanwhile, Donna's survey showed her new garage extended 2-3 feet into Steve and Patty's property and the fence about 7 feet into their property. It also showed the front of the driveway cut off part of Tom's property at the Prospect Avenue frontage.

Donna, Steve and Patty had been friendly. Before filing the zoning petition, Donna sent text messages to Patty. Prot. Exh. 28. She described the encroachment and at some

[7] We occasionally deal with the spurious objection that citizens who live more than a short distance away should not be allowed to testify. It is settled and well-known that any interested person may participate. Dorsey v. Bethel A.M.E. Church 375 Md. 59 (2005).

point showed the survey to the Fradkins. There are two versions in Prot. Exh. 29A-B, one complete and one with the edge cut off to hide the encroachment on Tom's side.

The Fradkins had been enduring a bankruptcy after Steve lost a great job at Northwest Honda when that property was acquired, and its purchaser had other plans.

When Donna approached them, she asked Steve and Patty to give her a property interest in the area encroached. She described it as an easement.[8] For various reasons, Steve and Patty declined it as "lose-lose." Steve was also concerned whether it could be done during bankruptcy. Donna said she talked to a bankruptcy attorney, and told Steve it was good. She said she offered Steve $15,000.[9]

Donna's text messages admitted the encroachment of the garage and fence. The messaging mentions her then imminent zoning petition. She said cryptically that the county will only be looking at the setback, which she didn't have even before adding the garage. She said her attorney would like the Fradkins to sign a letter that they do not object. But she would respect their decision whatever it is. Donna later texted,

> "You don't need to attend unless you want to disputed (sic) the variance we are requesting which is to have 14.9 feet instead of 50 feet combined on the two sides of our property according to current zoning code."

This incompletely or inaccurately described the multiple zoning requests. It shows some familiarity with zoning terms. Donna did not mention the zero' garage setback and fence height variances. She was anyway unable to secure Steve and Patty's agreement.

In the normal course, a hearing ensued before ALJ John Beverungen. He entered an opinion and order on August 19, 2019 and an Order on Motion for Reconsideration on September 25, 2019. From these decisions, Donna entered a *de novo* appeal from denial of the multiple variances.

---

[8] Whether an easement is the right description of a property interest to relocate a boundary is debatable, but it shows Donna had some currency in real estate concepts and law.

[9] Steve testified it was brought up to go "under the table." He declined.

Relevant Baltimore County Zoning Regulations and Code Provisions

The zoning petition for special hearing and variances brought into play a multiple zoning regulations and a county code provisions:

BCZR § 101.1: NONCONFORMING USE --- Definition
BCZR § 104.1. - CONTINUATION OF NONCONFORMANCE; EXCEPTIONS.
BCZR § 104.3. - LIMIT ON EXTENSION OF NONCONFORMING BUILDINGS AND USES; EXCEPTION**.**
BCZR § 1B02.3.C. Development standards for small lots or tracts.
"BCZR SECTION 307- VARIANCES
307.1. - Authority to Grant Variances; Procedures and Restrictions
BCZR § 427 – Fences
§ 427.1. - Conditions for use; exceptions.
CODE § 13-6-101. - SWIMMING POOL ENCLOSURE.

For convenience, these are reprinted in an appendix at this memo's conclusion.

The ALJ Decision

To conclude his excellent decision, ALJ Beverungen entered this order:

> THEREFORE, IT IS ORDERED this **19th** day of **August, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing: (1) to approve a nonconforming lot width and area; and (2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of the required 30 inches, be and is hereby GRANTED.
>
> IT IS FURTHER ORDERED that the Petition for Special Hearing: (1) to approve a nonconforming dwelling side yard setback; and (2) to confirm that an existing fence (swimming pool enclosure) with a height of 6 ft. is in compliance with BCZR Section 427.1 and BCC Section 13-6-101, be and is hereby DENIED.
>
> IT IS FURTHER ORDERED that the Petition for Variance: (1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.; (2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of side yards of 14.9 ft. in lieu of the required 50 ft.; and (3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches, be and is hereby DENIED.

ALJ Beverungen thus approved the lot nonconforming lot width and area, and nonconforming shed. He denied the second garage bay, second addition, and new fence.

The ALJ Order on Motion for Reconsideration

ALJ Beverungen concluded his subsequent denial of Donna's Motion for Reconsideration with this Order:

THEREFORE, IT IS ORDERED this **25th** day of **September, 2019**, that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms set forth in Baltimore County Zoning Regulations ("BCZR") § 104; and

IT IS FURTHER ORDERED that all new construction must comply with current setbacks and restrictions existing at the time of new construction.

IT IS FURTHER ORDERED that in all other matter and respects Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

ALJ Beverungen thus denied all post-2014 construction. As for approval of setbacks existing in 1951, he did not specify them. As we have seen, they did not include the 1976 first addition on the Montanye side. All issues relating to new construction are subject to review.

Argument

"No reason to get excited, The thief he kindly spoke.
There are those among us, Who feel that life is but a joke.
But you and I we've been through that, And this is not our fate.
So let us not talk falsely now, The hour is getting late."
Dylan, Hendrix, op. cit.

Zoning History, Nonconforming Use, Illegal Extensions, Variance Disqualification

Let us survey the zoning history shown in P.C. Exh. 12, also conceded by engineer Motsco. In 1970, County Council Bill 100 established the Density Residential Zones. In 1971, this area was rezoned D.R. 2, in place when the first addition came circa 1976.

Bill 100 also covered existing lots and charted a table for lot sizes, lot widths, and setbacks. BCZR Sec. 1B02.3.C. For D.R. 2 Zone, the lot met the 20,000 square feet minimum, equaled the 100 feet front lot width, and met front yard and rear yard 40 feet minimum setbacks. But the first garage 10-feet setback did not meet the 15 feet side yard setback.[10] It also fell just short of the minimum sum of side yards widths of 40 feet, prior to the first addition, with just under 30 feet on the Montanye side and 10 feet on the Fradkin side. Even if we overlook this last shortage, the garage setback plainly did not conform to D.R. 2. So, as of 1971, the residence was already a nonconforming use.

[10] There is no dispute the new second garage is 12 feet wide and extends 2-3 feet into the Fradkin property, so the first garage was about 10 feet away.

This brings us to 1976, the year of the first addition. BCZR Sec. 104.3 allows an extension of a nonconforming use up to 25% of the ground floor area (GFA). Because the addition took up 308 square feet, it was 19.8%, less than 25%, of the 1552 square feet GFASo, it was allowable, but left only another 5.2% for any additional extension.

Motsco discussed BCZR Sec. 104.3, but assumed incorrectly that the first addition was there since 1951 and so did not count as an extension. He was unaware 1976 was the year it was added. Motsco also omitted mention of the second garage and fence as extensions, either particularly or together with the other improvements.

The next key date is 1996. There is no dispute the County Council rezoned the area, including the Bair lot, from D.R. 2 to D.R. 1. If we look again at the table, we see this rendered the lot area and width both nonconforming as to the minimum limits: 40,000 square feet and 100 feet, respectively. This also magnified the side yard setback nonconformity of the original garage, providing a 20 feet minimum, and the sum side yard setback sum nonconformity, raising the minimum to 50 feet.

As a matter of law, pursuant to BCZR Secs. 104.1 and 104.3 and the case law, all of the new additions -- garage, fence, and side bedroom ---- are significant extensions beyond the 25% of ground floor area limit. They were all new amenities and facilities. As such, they were illegal extensions or expansions of a nonconforming use. These are construed strictly and prohibited. Prince George's County v. E.L. Gardner 293 Md. 259, 267-68 (1982), attached. See, e.g. Jahnigen v. Staley 245 Md. 130, 137-38 (1967).

Pursuant to BCZR Sec. 104.1, any change to a nonconforming use terminates the use. An extension or expansion beyond that allowed by statute is such a change.[11]

As a matter of law, there are no special exceptions, variances, or other such approvals allowed for nonconforming uses. Prince George's County v. Gardner, *supra.*

[11] Even if the first addition dated from 1951, so the 2017 second bedroom might arguably be credited as an allowable 19.8% first extension, it plainly would not allow the compound second garage and new fence. Anyway, the argument for the 2014 addition as just a 19.8% extension would still be without merit because it came about with multiple combined extensions which amounted to a collective or cumulative change and cannot properly be viewed in isolation.

They are governed strictly by the nonconforming use statute. Intentionally or not, this disqualification was overlooked in Petitioner's presentation and Motsco's testimony.

The proper application of nonconforming use law thus precludes all the recent improvements. This effectively makes it unnecessary to reach the variance and fence law issues. But we will of course address them as well.

Variance Law: "Uniqueness" Explained --- Delusions Exposed

Even if the petition for variances were not disqualified based on nonconforming use expansion, the variance requests would have no merit. Let us turn to variance law.

Donna's attorney's view of "uniqueness" is errant and pettifogging. He asserted a property is unique if no other property is exactly the same. Of course, that can be said of every property. If he were correct, there would never be the denial of any variance for lack of uniqueness. This view also obscures the connection to practical difficulty.

Contextually, under BCZR Sec. 307.1, uniqueness must result in practical difficulty. Trinity Assembly of God v. People's Counsel 407 Md. 53, 79-86 (2008). The main purpose of variance law is to preserve some reasonable use of the property, and in a way consistent with the public safety, health, and welfare.

Riffin v. People's Counsel 137 Md. App. 90, 97-98, cert. denied 363 Md. 660 (2001) followed the landmark Cromwell v. Ward 102 Md. App. 691 (1995). Both are attached. The Riffin Court affirmed this CBA's denial of multiple variances,

> "In denying the appellant's requests for variances, the Board explained:
>
> > Section 307.1 of the *Baltimore County Zoning Regulations* states, in pertinent part, as follows:
> >
> > "... [T]he County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area 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* ... Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area … regulations, and only in such manner as to grant relief without injury to public health, safety, and general welfare."

As well, this Board enjoys the guidance provided by the Court of Special Appeals in *Cromwell v. Ward,* 102 Md.App. 691 [651 A.2d 424] (1995). In requiring a pre-requisite finding of "uniqueness," the Court defined the term and stated:

> In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. *"Uniqueness" of a property for zoning purposes requires that the subject property has an inherent characteristic not shared by other properties in the area, i.e.,* its shape, topography, subsurface condition, environmental factors, historical significance, access, or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions....

It is this Board's finding that the proposed site is in no way unique, unusual or different from the other properties that are existent in this M.L.-I.M. zone. **The Maryland Department of Assessments and Taxation, real Property System map, shows just how similar in size and shape all of the properties are along Greenspring Drive. Testimony by Mr. Patton indicated that this property was consistent with others in the community, and he noted that the gentle slope off of Greenspring Drive was consistent with other properties, further noting that some chose to fill in their properties before building and have entrances at the rear of their locations....** At no time in the hearing did the appellant entertain any historical significance to the site nor were environmental or subsurface conditions documented. Mr. Riffin did testify as to the damage to the interior of his building but did not document the same with photographic exhibits, receipts for repairs or documentation by some authority regarding the nature or extent of this damage. **There was no testimony or evidence regarding abutting properties restricting his activities or imposing any unique characteristics upon his site.** ***In the absence of an initial finding of uniqueness, the inquiry under Section 307.1 stops and, in this case, the three variances must be denied.***
(Emphasis supplied). We see no error. Bold font supplied by (People's Counsel).

Here, there is likewise convincing evidence that the Bair lot is similar in shape and topography to nearby lots, larger than many, and with advantageous pre-existing amenities. The age of the dwelling is similar to others in the subdivision. The gentle downward slope is typical. The SDAT Data, maps, Steve's chart, and all the testimony corroborate there is nothing unique to see here.

Donna's counsel loudly mocked our questions about similarity because, he said, the statute does not use the words "fairly similar." His deprecation of our office's position disregards the sensible meaning under the case law. It is propaganda.

In sum, Donna's property does not get past the threshold test of uniqueness, even before we get to any issue of resulting practical difficulty.

Interlude: "Other" Fences, Garages, Variances Diversion

We pause before discussing the practical difficulty criteria to expose the other diversionary tactics which pervaded Donna's attorney's presentation.

To divert attention, Donna scavenged the area for other fences, garages and pools. She devoted much testimony to this effort. She found eight fences said to be more than 42 inches high, with two perhaps six feet high. Pet. Exh. 8A-I. There was no indication of the precise locations, history, or legal status. Tom disputed her allegation about his fence, 8G, and others were questionable. She found eight lots with 2-car or 3-car garages, again without examination of location, history, or legal status. Pet. Exh. 7A-I. None of them, such as the Fradkins', were on or immediately adjacent to property lines. She also produced opinions approving other variances, generally unopposed and very different in location and circumstance. These were accepted for identification only. Pet. Exh. 9.

Anyway, the existence of even arguably similar additions or uses --- whether with variances, nonconforming, or in violation --- are irrelevant. Easter v. Mayor and City Council 195 Md. 395, 400-01 (1950); Park Shopping Center v. Lexington Park Theatre Co. 216 Md. 271. (1958), attached. These are still good law.

In Easter, the Court dealt with the claim that there were other existing additions reaching the same building line as Easter's desired addition. The Court of Appeals reversed the zoning board's grant of the[i] setback variance. Judge Henderson wrote,

> "The fact that the lot is irregular has no bearing on the question, nor is it material that three buildings, some distance to the north, extend to the building line. These may have been built before the passage of the Ordinance, or they may have been built under permit or without permit. As was said in Potts v. Board of Adjustment, 133 N.J.L. 230, 43 A.2d 850, 854: 'Prior exceptions granted by the adjustment board are not in themselves controlling. Ill-advised or illegal variances do not furnish grounds for a repetition of the wrong. If that were not so, one variation would sustain if it did not compel others, and thus the general regulation eventually would be nullified. The annulment of zoning is a legislative function that is beyond the domain of the zoning board.'"
>
> * * *
>
> "But we think the detriment to the applicant must be weighed against the benefit to the community in maintaining the general plan. 'It is by these gradual encroachments, individually or relative insignificance, that the integrity of the general scheme is undermined and ultimately shattered. One departure serves as justification for another * * *.' Dubin v. Wich, 120 N.J.L. 469, 200 A. 751, 754. In the case of non-conforming uses,

> the ordinance tolerates their continuance, but looks towards their ultimate elimination. Colati v. Jirout, supra.

Chief Judge Brune quoted Easter with approval in Park Shopping Center, 216 Md. at 276.

In the present case, the other situations Donna dug up are not even comparable. They amount to a protracted exercise in distraction, fog, and obfuscation. Even if they were comparable, they would not be germane under the case law.

The Landmarks Preservation Commission Sidetrack

Donna went to the Landmarks Preservation Commission (LPC) in 2019. It is covered by County Code § 3-3-1201, et seq. She highlighted their approval of her construction. She also put in the record that Tom had a driveway project approved.

LPC meetings are relatively informal, and their focus is on the historic aesthetics.

There is no dispute that the property here is identified as "non-contributing" to the Historic District. Apparently, the LPC has a narrow focus and did not find the additions have a historic aesthetic impact. Tom testified he was so informed. Whether the LPC should have a broader vision is debatable. The bottom line is that they do not.

They do not deal with the broader aspects of zoning and the manifold criteria. They do not examine the general impact on the neighborhood. They leave that to the zoning process. The LPC approval here is just another sidetrack.[12]

The "Carport" and "Accessory Building" Plays

Another detour is Donna's attorney's speculative sideshow for a carport to replace the garage or a separation of the garage from the dwelling. These further charades are not in the petition and so not properly the Board. People's Counsel v. Mangione 85 Md. App. 738 (1991). They would also require other variances. Anyway, virtually the same legal analysis which precludes the garage and other variances here would preclude such a carport or accessory building.

The CBA should nevertheless resolve the situation. The CBA should rule that carport or accessory building variances were not requested and anyway lack merit.

[12] This does not necessarily mean, conversely, that the Historic Glyndon location is irrelevant to the broader public safety, health and welfare issues under BCZR § 307.1, even for the impact of situations of non-contributing structures.

There should not be another pathway to delay enforcement and removal of the offending construction. Otherwise, this litigation may slouch to the next decade, even beyond potential judicial review of the CBA's denial of the immediate requests.

The Fence Law Evasion

Another evasive tactic came clothed with legal argument. This centers on the statutory construction of BCZR § 427.1, which we republish in our appendix.

BCZR § 427.1.A applies. Notwithstanding any other county provision, it sets in a historic district a maximum 42" height limit for a residential occupancy fence in a D.R. Zone erected in the side yard of a lot that adjoins a public road. This applies because Donna's fence spans both side yards of the lot on Prospect Avenue, a public road.

To evade this subsection, John Motsco tried to spin that only corner lots are on public roads. He did not deny that the fence is a residential occupancy fence.

We have often challenged the perfunctory acceptance of so-called expert opinions of engineers and surveyors on matters of legal interpretation. Their favorable slants often take the form of linguistic spin which crosses into propaganda.

There is no dispute that this section of Prospect Avenue is a public road. The Court of Appeals has referred to the common definition of public roads as "roads used by the public." Atran v. Furness 251 Md. 216 (1968). These are distinguished from private roads, where the property owner has the right to limit or refuse permission. Walmsley v. State 35 Md. App. 148, 151-54 (1977). It is an exercise in illiteracy to say that only corner lots are on public roads, to argue that Prospect Avenue is not public.

Motsco's errant effort to evade § 427.1.A led him to rationalize Donna's fence as allowable under § 427.1.B, incorporating Code § 13-6-101. Subsection B.1 precludes residential occupancy fences in the rear or side yards of a lot which adjoins the front yard of another on which a residence has been built. However, there is an exception in subsection 3, via Code § 13-6-101, for fences necessary to protect children,

> "A person who owns land on which there is a swimming pool ... shall erect and maintain on the land an adequate enclosure surrounding either the property or pool area sufficient to make the body of water inaccessible to small children."

Such fences should be "not less than 4 feet above the underlying ground."

But Donna anyway cannot properly take advantage of this provision. As we have seen, the three-sided fence here, with the house rear as a kind of fourth side, surrounds an area of 7700 square feet, while the pool spans about 792 square feet. The distances from the pool to the fence range from 15 to 30 feet. This is far more than what is adequate to protect children. Indeed, it does just the opposite. They can run around the rear yard in front of the fence and get into trouble at the pool. Commonly, protective pool fences have four sides and are close to the pool. Even were this a true pool protection fence, it does not mean that 6 feet is necessary or appropriate.

. **Variance Law: Uniqueness Resulting in Practical Difficulty**

We quoted earlier from Riffin the heart of the BCZR § 307.1 standards. Let us now review together the case law on uniqueness and resulting practical difficulty.

As we have said, the integral elements to prove a variance are the peculiarity of the property, commonly described as "uniqueness," and resulting "practical difficulty." We return to Cromwell v. Ward 102 Md. App. 691 (1995):

> "The general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances. *See, e.g.,* A. Rathkopf, 3 The Law of Zoning and Planning §38 (1979)." 102 Md. App. at 703.

He analyzed the "uniqueness" element, 102 Md. App. at 710,

> "In the zoning context the 'unique' aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property.'
>
> 'Uniqueness' of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls."

Judge Cathell concluded,

> "We conclude that the law in Maryland and in Baltimore County under its charter and ordinance remains as it has always been-a property's peculiar characteristic or unusual circumstances relating only and uniquely to that property must exist in conjunction with the ordinance's more severe impact on the specific property because of the property's uniqueness before any consideration will be given to whether practical difficulty or unnecessary hardship exists."

It bears repeating the "the extent of improvements upon the property" are irrelevant to "uniqueness." So, the very nice dwelling in Glyndon with a garage, driveway deck, pool, shed, and fences --- acquired freely for $320,000 --- has nothing to do with uniqueness. Anyway, the amenities are advantages and not difficulties.

Turning to causation, we reiterate the settled law of the requisite causal connection between uniqueness and practical difficulty. Often, as in this case, petitioners circumvent causation, starting with distorted versions of uniqueness. They "complain" their property is not square or rectangular, or slightly different in some obscure way, and then they are off to the races for extra amenities with "experts" in the promotional saddle.

Easter v. Mayor & City Council 195 Md. 395 (1950) described the heavy burden of proof on an applicant for a variance,

> "The burden of showing facts to justify an exception or variance rests upon the applicant, and it must be shown that the hardship affects the particular premises and is not common to other property in the neighborhood."

In Marino v. City of Baltimore, 215 Md. 206 (1957), the Court explained:

> "The expression 'practical difficulties or unnecessary hardships' means difficulties which are peculiar to the situation of the applicant for the permit and are not necessary to carry out the spirit of the ordinance and which are of such a degree of severity that their existence amounts to a substantial and unnecessary injustice to the applicant."

> "[I]t was incumbent upon the Marinos to have shown... (ii) that the difficulties or hardships were peculiar to the property in question in contrast with those of other property owners in the same district."

Judge Glenn Harrell revisited variance law in Trinity Assembly, affirming this CBA's findings in denying variances, 407 Md. at 82-83,

> "In *Umerley v. People's Counsel for Balto. County,* the Court of Special Appeals opined that a zoning authority must determine, as part of its uniqueness inquiry, whether 'the uniqueness or peculiarity of the property causes the zoning provision [at issue] to have a disproportionate impact.' 108 Md. App. 497, 506 (1996). Assuming that a disproportionate impact must be found before a local zoning authority may grant a variance, it is a logical fallacy to say that Board erred on this score. The disproportionate impact consideration, if viable, exists because of the notion that it is not enough for a landowneror user to show merely that the property is somehow physically peculiar or unique; she, he, or it also must prove, to the satisfaction of the

> tribunal, a connection between the property's inherent characteristics and the manner in which the zoning law hurts the landowner or user. Where a property's physical characteristics do not cause the landowner to suffer disproportionately due to application of the zoning enactment in question, the property is not 'unique' in the law of variances. For example, if a property has physical characteristics that might justify variance relief from drainage or sewage regulation, those attributes probably would have no bearing on how that property is affected by an ordinance establishing the maximum height for a fence. Here, the Board concluded simply that the physical attributes of the Property are not distinguishing. That conclusion is supported by substantial evidence."

Judge Harrell went on to discuss the criteria for "practical difficulty." 407 Md. App. at 83-85." He brought forward McLean v. Soley 270 Md. 208, 213-15 (1973), where the Court had "… adopted from Professor Rathkopf's treatise a three-part inquiry to guide local zoning authorities in determining whether a landowner established this element:

> "1) Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
>
> 2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
>
> 3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured."

This tracks the national pattern. The purpose of variance law is to allow relief so a property owner has some reasonable use of his property. See 2 Salkin, American Law of Zoning 5th, § 13:.1. A key point is that the property owner's inability to comply with zoning law for the purpose of a selected use does not justify a variance. Otherwise, a variance would have to be granted in every case; and zoning law would collapse.

Carney v. Baltimore 201 Md. 130, 137 (1952), also a setback variance case, held,

> "'The need sufficient to justify an exception must be substantial and urgent and not merely for the convenience of the applicant, inasmuch as the aim of the ordinance is to prevent exceptions as far as possible, and a liberal construction allowing exceptions for reasons that are not substantial and urgent would have the tendency to cause discrimination and eventually destroy the usefulness of the ordinance. * * *
>
> 'The expression 'practical difficulties or unnecessary hardships' means difficulties or hardships which are peculiar to the situation of the applicant for the permit and are not

> necessary to carry out the spirit of the ordinance and which are of such a degree of severity that their existence amounts to a substantial and unnecessary injustice to the applicant.'"

The appellate courts quoted this in Marino, 215 Md. at 216-17 and Montgomery County v. Rotwein 176 Md. App. 716, 732 (2006).

A. The Bair Property Presents No Difficulties, Much Less Any Peculiar Difficulties

We explained there is nothing, in context, unique about Donna's property. It is also crystal-clear there are no difficulties. For perspective, we review illustrative cases.

Easter v. Mayor & City Council 195 Md. 395 (1950). This involved a front yard and occupancy variance for a one-story and basement addition for a tavern and dwelling on Belair Road. The proposed addition varied the minimum front yard setback of 10 feet. The zoning board had granted the variances, finding the "The lot in question is of very shallow depth and irregular in shape …." They also had found "… several buildings constructed up to the front lines of the lot and the proposed addition would not affect access for light and air to any neighboring properties, nor would it even cut off the view up and down the street." The Court of Appeals reversed, stating the irregularity of the lot and existence even of nonconforming or possibly illegal neighboring buildings did not justify deviation from the general zoning plan. Judge Henderson observed,

> "But we think the detriment to the applicant must be weighed against the benefit to the community in maintaining the general plan. 'It is by these gradual encroachments, individually or relative insignificance, that the integrity of the general scheme is undermined and ultimately shattered. One departure serves as justification for another * * *"

North v. St. Mary's County 99 Md. App. 502, 514-20 (1994) foreshadowed Cromwell in reversing the grant of a mean high water mark setback variance for a gazebo of about 234 square feet. The property had a ranch home and outbuildings. North claimed a deprivation of property rights because he needed the gazebo to enhance his view, contemplate, read, have shade and protect from rain. He also posited that other property owners had built closer to the water. Judge Cathell noted these were probably nonconforming. Among other things, there was nothing unique about the property. The case brings to mind Donna's artificial complaint about sap from the maple tree.

Cromwell v. Ward, *supra*, involved an accessory building for a garage, wine cellar, and storage area for a Ruxton residence. The building height of 21 feet exceeded the 15 feet maximum, just six feet too high. This was nowhere near the excessiveness of Donna's massive construction. As it reversed this CBA's grant of the height variance, Judge Cathell also covered practical difficulty, 102 Md. App. at 697,

> "Simply stated, the variance that is desired (and the difficulties that would exist if it is not granted) cannot be the source of the first prong of the variance process-an inherent uniqueness of the subject property not shared by surrounding properties."

Among cases from other states, Judge Cathell discussed Xanthos v. v. Board of Adjustment 685 P.2d 1032 (Utah 1984), denying front yard variance for duplex addition to dwelling and Prince William County Bd. Of Zoning Appeals v. Bond 300 S.E. 2d 781 (Va. 1983), affirming denial of variance for conversion of garage into dwelling. Even the difficulties presented by a substandard lot or oceanfront lot restrictions do not justify a variance where this characteristic is common to area properties. Sibley v. Inhabitants of the Town of Wells 462 A.2 27, 30-31 (1983); Town of Indialantic v. Nance 400 So.2d 37, 40 (Fla. App. 1981), aff'd 419 So.2d 1041 (Fla. 1982).

Chester Haven Beach Partnership v. Board of Appeals 103 Md. App. 324, 337-41 (1995) followed Cromwell. Petitioner appealed the denial of a conditional use and variances for a residential subdivision. The primary alleged difficulty were Chesapeake Bay Critical Area environmental constraints. Judge Cathell observed there was no evidence that the environmental constraints were unique to this critical area property. He went further and criticized the professional staff, stating that the staff "… abdicated its responsibility in its role in respect to conditional uses and variances." 103 Md. App. at 340. Despite the fairly serious environmental constraints, Judge Cathell wrote,

> "It is not, however, the function of staff to make such policy decisions in the absence of legislative action. We do not perceive that it was the legislative intention in passing the State or local critical area legislation that zoning variance procedures would be prostituted in order to alleviate the harshness of environmental regulation. If that is the intention of the legislative entities, they have the power to express clearly that intention."

Even more clearly, the limited LPC approval here has no bearing and does not eviscerate zoning variance procedures.

Riffin v. People's Counsel, *supra*, involved an active litigant known to this Board. He proposed a special exception for a bungee jumping operation as well as nine variances for a modification of his office building on Greenspring Drive. The property was situated between Greenspring Drive in front and the MTA light rail track in back. In affirming the CBA denial of several variances. We have already quoted Judge Moylan's analysis.

Montgomery County v. Rotwein 169 Md. App. 716 (2004) involved front and side yard setback variances to build a 2-car garage and walkway. Her property was about three-quarters of an acre, with a one-story residence, finished basement, open carport, rear deck, slate patio, swimming pool, and tennis court --- fairly similar to here.

The zoning board denied the variances. Citing Cromwell, the Court sustained the denial. Judge Krauser described Rotwein's main arguments for uniqueness as her mobility problems and the substantial additional expense for alternative relocation of the garage. Neither of these, however, constituted peculiar or unusual practical difficulties.

B. Application of the "Practical Difficulty" Criteria

Let us discuss the McLean/Trinity Assembly of God criteria, having in mind that variances are to be granted sparingly and based on substantial and urgent need, not merely for the convenience of the applicant.

> "1) Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome."

Here, Donna's application is for extra amenities to enlarge and surround a very nice property and dwelling which various owners have enjoyed since 1951. Her current proposal, after the fact, is based on personal preferences, and has nothing to do with any real difficulty or hardship involving the property. To repeat, she already is fortunate to have an enviable and wonderful use of property in a very nice neighborhood.

It should be underlined that the evaluation of reasonable use involves consideration of the entire property/ In North, Cathell underlined that the entire property must be considered, along with the improvements, 99 Md. App. at 517,

> "The applicant, Mr. Enoch, the county, and the trial judge for that matter, when discussing the reasonable use of the property seem to restrict their considerations to just the part of the property where Enoch desires to construct the gazebo. That is incorrect. The property at issue here is the 4+ acre site already developed with a ranchhouse of approximately 1,100 square feet with extensive decking, an improved walkway, and a pier, from which expansive views are present. Thus, the property already is subject to a reasonable use."

Donna was not forced to buy her very nice house and property. She has to adjust to the law. The zoning law is not there for Donna's convenience.

The Court also addressed practical difficulty in Rotwein. Judge Krauser applied the law quoted earlier. He wrote, 169 Md. App. at 733,

> "But Rotwein has not demonstrated that, unless her application is granted it will be 'impossible [for her] to make reasonable use of the property.' *Id.* Indeed, she has made more reasonable use of the property, as it houses not only her residence, but, among other things, a swimming pool and a tennis court."

Rotwein, moreover, had made a sympathy argument based on her physical limitations. As a matter of law, this did not, however, justify the setback variances.

In sum, the zoning law does not prevent Donna from making a reasonable use of the property and does not impose an unnecessary burden.

> "2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners."

For essentially the above reasons, there is no injustice to Donna. She has a satisfactory and even privileged use of this very nice property. The proposal, already there, does, however, work an injustice to area property owners. Steve, Patty, and Tom testified at length to the immediate visual and environmental impacts, excessive scale, and incompatibility with the area. Robin corroborated the problematic impacts. Steve also identified an emergency vehicle access problem due to the garage obstruction.

Real estate expert Cookie Stone provided credible and undisputed testimony to the negative impact on the future sales price or value of the Montanye and Fradkin properties. She corroborated the incompatibility of the new construction.

Attention should also be paid to the community association representatives. Their concerns went beyond procedure to the merits, precedent, and "slippery slope."

In affirming the denial of variances, Chesley v. City of Annapolis 176 Md. App. 413, 441-45 (2007) highlighted similar testimony by neighbors about visual impact and property values. One neighbor posited that, "overbuilding and overcrowding loom on the horizon …." The Court accepted, among other things, legitimate concerns about overcrowding and imposing structures which harm area views and enjoyment.

"3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured."

These variance requests are excessive, offensive, and unjust. They conflict significantly with the spirit and intent of the ordinance and public safety and welfare.

Variance Law: The Insidious Self-Created Difficulty Problem

Lastly, there is a threshold problem. The alleged practical difficulty here is self-created. If construction is done without proper approvals, or with mistaken applications, then this is self-created. It does not have to be reckless or deliberate. Nor is blaming the contractor an excuse. Donna's real estate license is an added factor.

Cromwell reversed the CBA approval of just a single height variance --- 21' in excess of the maximum 15' --- for a residential accessory building. Ward's contractor did apply for a permit. But the flawed application did not state the height or have a scale. The height could possibly have been computed indirectly from horizontal dimensions on the drawing. The county mistakenly issued the permit. When the violation was discovered, Ward applied for a variance after the fact. 102 Md. App. at 696-97.

Judge Cathell stressed the difficulty was self-created. 102 Md. App. a 721-23,

"Self–Inflicted Hardship

> "We have before referred to *Marino v. Mayor and City Council of Baltimore,* 215 Md. 206, 137 A.2d 198. There, the Court said, "it was incumbent [on the applicant] to [show] ... that the hardship was not the result of the applicants' own actions." *Id.* at 218, 137 A.2d 198. The Court of Appeals ***722*** noted in *AD + Soil, Inc. v. County Comm'rs,* 307 Md. at 340, 513 A.2d 893:
>
> > The essence of AD + Soil's argument ... is that the setback requirements ... would cause ... unwarranted hardship because it had obtained its first state permit and

> constructed its transfer station before it learned of these local requirements.... The Board declined to grant the variances, concluding that Ad + Soil's "hardship" was self-inflicted ... and therefore not the kind of hardship cognizable under the Zoning Ordinance.
>
> The Court affirmed the Board. Foreign jurisdictions are generally in accord. *See Pollard v. Zoning Bd. of Appeals,* 186 Conn. 32, 438 A.2d 1186, 1190 (1982) **(" '[S]elf-inflicted or self-created hardship ... is never considered proper grounds for a variance.' ... '[W]here the applicant ... creates a nonconformity, the board lacks power to grant a variance.' ")** (citations omitted); … **("[T]he hardship, if any, was self-inflicted. The placement of the improvements ... was within the control of the Garretts and their contractor, Raintree.").** *See also Shafer, supra; VanLandschoot, supra; Walkingstick, supra; Xanthos, supra; St. Clair, supra.* Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted."

Ward's contractor at least made an application, however flawed. Donna's contractor did not bother. Nor did she. It is unnecessary to parse the level of fault in Donna's admitted "mistake." It is enough that the difficulty arose from her project. Ironically, if Donna had taken a few minutes to check with the zoning office, or asked for permits, she could have done things the right way. Instead, she spent many hours to try to get an "easement;" talk informally to a bankruptcy attorney; cajole the Fradkins to transfer property; dig up their previous owner's minor shed variance;; interject random different fences; complain about Tom's driveway project even though it had no zoning conflict; and cast a bad light on her neighbors generally.

Effective zoning law depends on voluntary citizen compliance. There is no police state. If not for Tom's concern and alertness, the violation would have escaped scrutiny.

There are over 300 zoning petitions annually, and development and permit applications. With rare exceptions, county citizens make diligent inquiries and file proper applications. If more than a few citizens acted unilaterally, the system would break down. There is scant incentive to comply with the law if variances were readily available after the fact. Another problem is that even after denial of these variances, and affirmance on judicial review, there will still be an enforcement task, likely with more litigation.

Conclusion

For these reasons, the law compels denial of all the variances, including every matter on appeal.

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of April, 2021 a copy of the foregoing Memorandum of People's Counsel for Baltimore County was sent via email to Thomas & Kim Montanye, Tom@montanye.net; Kimberly Karlsen, perandkim@aol.com; Steve & Patricia Fradkin, reistlaxcoach@gmail.com; Sue Benson, sbensoncomm@aol.com; Robin Coffin, rscoffin@verizon.net, Mary Molinaro, mmolinaro@reisterstown.com; and Lawrence E. Schmidt, Esquire, Smith, Gildea & Schmidt, LLC, 600 Washington Avenue, Suite 200, Towson, Maryland 21204, lschmidt@sgs-law.com, Attorney for Petitioner.

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Appendix: Zoning Regulations and County Code Provision

BCZR § 101.1 NONCONFORMING USE — A legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use. A specifically named use described by the adjective "nonconforming" is a nonconforming use.

BCZR § 104.1. - CONTINUATION OF NONCONFORMANCE; EXCEPTIONS.
A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these regulations, provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, the right to continue or resume such nonconforming use shall terminate.

BCZR § 104.3. - LIMIT ON EXTENSION OF NONCONFORMING BUILDINGS AND USES; EXCEPTION.
No nonconforming building or structure and no nonconforming use of a building, structure or parcel of land shall hereafter be extended more than 25 percent of the ground floor area of the building so used. This provision does not apply to structures or uses restored pursuant to Section 104.2, except as authorized by the Zoning Commissioner pursuant to Section 307.

BCZR § 1B02.3.C. Development standards for small lots or tracts.

1. Any dwelling hereafter constructed on a lot or tract described in Subsection A.3 or A.4 shall comply with the requirements of the following table:

Zoning Classification	Minimum Net Lot Area per Dwelling Unit (square feet)	Minimum Lot Width (feet)	Minimum Front Yard Depth (feet)	Minimum Width of Individual Side Yard (feet)	Minimum Sum of Side Yard Widths (feet)	Minimum Rear Yard Depth (feet)
D.R.1	40,000	150	50	20	50	50
D.R.2	20,000	100	40	15	40	40
D.R.3.5	10,000	70	30	10	25	30
D.R.5.5	6,000	55	25	10	—	30
D.R.10.5	3,000	20	10	10	—	50
D.R.16	2,500	20	10	25	—	30

2. Other standards for development of small lots on tracts as so described shall be as set forth in provisions adopted pursuant to the authority of Section 504.

"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. [1] "

BCZR 427 – Fences

§ 427.1. - Conditions for use; exceptions.

A. Notwithstanding any other provisions of this Code or the Baltimore County Code, in a D.R. or R.C. 5 Zone located in a historic district, the maximum height of a residential occupancy fence is 42 inches if the fence is erected in the side yard of a lot that adjoins a public road.

B. 1. A residential occupancy fence may not be erected in the rear or side yard of a lot which adjoins the front yard of another on which a residence has been built, except in accordance with the provisions of this section.

2. The fence may not exceed 42 inches in height if situated within ten feet of the adjoining front yard property line.

3. Any person may request a variance from the requirements of this subsection.

C. Applicability.

1. Subsection B of this section does not apply to a fence required by § 13-6-101 of the Baltimore County Code, as revised, to be constructed in order to screen a swimming pool.

2. Subsection B of this section does not apply if the residences on the adjoining lots are more than 200 feet apart."

"§ 13-6-101. - SWIMMING POOL ENCLOSURE.

(a) *Required.* A person who owns land on which there is a swimming pool that contains 24 inches (610 mm) or more of water in depth at any point shall erect and maintain on the land an adequate enclosure surrounding either the property or pool area sufficient to make the body of water inaccessible to small children.

(b) *Height.* A swimming pool enclosure, including gates, may not be less than 4 feet above the underlying ground, except that for a semi-public swimming pool located outdoors without a lifeguard on duty, the enclosure, including gates, may not be less than 5 feet above the underlying ground and may not have more than a two-inch gap from the ground to the bottom of the fence.

(c) *Gates.* All gates shall be self-latching with latches placed 4 feet above the underlying ground and otherwise made inaccessible from the outside to small children.

(d) *Alternative enclosures.*

(1) For purposes of this section, the owner may use a natural barrier, hedge, or other protective device approved by the Department of Permits, Approvals and Inspections if the degree of protection afforded by the substituted devices or structures is not less than the protection afforded by the enclosure, gate, and latch described in subsections (a) through (c) of this section.

(2) A swimming pool cover is not another protective device that may be approved by the Department of Permits, Approvals and Inspections.

(e) *Enforcement.* The Code Official may enforce the provisions of this section in accordance with Article 3, Title 6 of the Code.

(f) *Exceptions.* This section does not apply to a public swimming pool or bathing beach as defined in Subtitle 2 of this title."

293 Md. 259
Court of Appeals of Maryland.

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, Maryland
v.
E. L. GARDNER, INC.

No. 11.
|
April 2, 1982.

Synopsis
County council denied landowner's requested special exception to operate a sand and gravel wet-processing facility at location at which owner operated nonconforming surface mining sand and gravel operations. The Circuit Court, Prince George's County, Albert T. Blackwell, Jr., J., reversed, and the county appealed. The Court of Special Appeals, 47 Md.App. 471, 424 A.2d 392, affirmed. Petition for certiorari was granted. The Court of Appeals, Davidson, J., held that although sand and gravel mining operation which existed prior to zoning was a legal nonconforming use by virtue of use and occupancy permit, the owner was not entitled to special exception to operate a sand and gravel wet-processing facility at the location where mining operations and wet-processing facilities were separate and distinct special exceptions and each had different standards, regulations and requirements.

Judgment of Court of Special Appeals reversed and case remanded with directions.

West Headnotes (4)

[1] **Zoning and Planning** Enlargement or Extension of Use

Purpose of restrictions on alteration or expansion of a nonconforming use is to achieve ultimate elimination of such uses through economic attrition and physical obsolescence.

3 Cases that cite this headnote

[2] **Zoning and Planning** Continuance or change of use in general

Zoning and Planning Enlargement or Extension of Use

Zoning and Planning Repair, Alteration, or Reconstruction of Buildings or Structures

Whether a nonconforming use can be changed, extended, enlarged, altered, repaired, restored, or recommenced after abandonment ordinarily is governed by provisions of the applicable local ordinances and regulations.

3 Cases that cite this headnote

[3] **Zoning and Planning** Strict or liberal construction in general

Zoning ordinances and regulations must be strictly construed to effectuate the purpose of eliminating nonconforming uses.

4 Cases that cite this headnote

[4] **Zoning and Planning** Mining and minerals; sand and gravel

Although sand and gravel mining operation which existed prior to zoning was a legal nonconforming use by virtue of use and occupancy permit, the owner was not entitled to special exception to operate a sand and gravel wet-processing facility at the location where mining operations and wet-processing facilities were separate and distinct special exceptions and each had different standards, regulations and requirements.

5 Cases that cite this headnote

Attorneys and Law Firms

****115** ***260** Steven M. Gilbert, Associate County Atty., Upper Marlboro (Robert B. Ostrom, County Atty. and Michael O. Connaughton, Deputy County Atty., on the brief), for appellant.

Paul B. Rodbell, Riverdale (William V. Meyers and Meyers & Billingsley, P. A., Riverdale, on the brief), for appellee.

Argued before MURPHY, C. J., and SMITH, DIGGES,* ELDRIDGE, COLE, DAVIDSON and RODOWSKY, JJ.

Opinion

DAVIDSON, Judge.

This case presents a question concerning nonconforming uses. More particularly, it involves the question whether, under the applicable provisions of the Prince George's County Code (1979), Subtitle 27.Zoning, the owner of a nonconforming surface mining sand and gravel operation can obtain a special exception to operate a sand and gravel wet-processing facility at the same location. The relevant provisions of the Prince George's County Code are as follows.

Section 27-101 provides in pertinent part:

"(a) Terms used in this Subtitle are defined as follows:

"(110.1) Nonconforming Building or Structure: Any building or structure not in conformity with a regulation of the zone in which it is situated, which regulation was adopted subsequent to the lawful erection of such building or structure....

"(111) Nonconforming Use: Use of any building, structure, or land, or portion thereof, not in conformity with a regulation of the zone in which it is situated, including any regulation of Division 36 (Special Exceptions) applicable to said ****116** use, which regulation was adopted subsequent to the lawful establishment of such use.... The term 'nonconforming use' shall be deemed to include any building, structure, or other facility utilized in connection with a nonconforming use....

"(152) Use: The principal purpose for which a lot, and/or the main building thereon, is designed, arranged, or intended and for which it may be used, occupied, or maintained."

Section 27-107(a) provides:

"(a) Any nonconforming building, structure, or use, as defined in Section 27-101, may be continued, ***262** repaired, or maintained without enlargement or extension, unless otherwise provided by this Subtitle." (Emphasis added.)

Section 27-107(e) provides in pertinent part:

"(e) No nonconforming use may be changed to any use other than that provided by ... permits under which the nonconforming use operated at the time the nonconforming use was established." (Emphasis added.)

Section 27-108(a) provides in pertinent part:

"(a) A nonconforming building, structure, or use may only be enlarged or extended if such enlargement or extension shall conform to the provisions of this Subtitle for the zone in which it is located and a special exception has been approved by the District Council, as provided in Division 36 (Special Exceptions) of this Subtitle." (Emphasis added.)

Section 27-482(a) provides in pertinent part:

"(a) Any nonconforming building, structure, or use as defined in Section 27-101, may be continued, subject to the regulations of Section 27-107, and may be structurally expanded or extended, subject to the provisions of Division 36 (Special Exceptions) of this Subtitle." (Emphasis added.)

Section 27-553 provides in pertinent part:

"(a) Any nonconforming building, structure, or use, as defined in Section 27-101 herein ... may be enlarged, extended, or demolished and reconstructed, if the applicant can show generally that such enlargement, extension, or reconstruction will not adversely affect the use of adjacent properties and the neighborhood, subject to the following requirements and conditions:

"(1) A nonconforming building or structure, or a ***263** building or structure utilized in connection with a nonconforming use, may be enlarged in height or bulk....

"(2) A nonconforming use may be extended throughout a part or whole of a building in which such nonconforming use lawfully exists, or to the bounding lot lines of the lot....

"(3) A nonconforming use may be reconstructed within the bounding lot lines of the lot....

"(4) Any addition to an existing building or structure, or any new building or structure, constructed in connection with a nonconforming use shall, at a minimum, conform to the requirements relative to building lines, setbacks, yards,

and height limits in the zone in which such nonconforming use is situated....” (Emphasis added.)

The respondent, E. L. Gardner, Inc. (owner), owns approximately 450 acres of land (subject property) located in Prince George's County. The subject property was originally zoned R-R (rural-residential, 15,000 square foot minimum lot size) by the comprehensive zoning map adopted 2 December 1966. It was reclassified to the O-S zone (open space, single-family residential, 5 acre minimum lot size) by the comprehensive zoning map adopted 12 July 1977. Neither a sand, gravel or clay pit, nor a wet-processing facility is a permitted use in the O-S zone. Both, however, are special exception uses in that zone. s 27-537(a)(1) and s 27-538.1(a).[1]

**117 *264 Before the subject property was zoned, it was used for the mining of sand and gravel. This use has been established as a legal nonconforming use by the issuance of a use and occupancy permit. s 27-108(b).[2] In 1977, an application was filed, pursuant to s 27-538.1, for a special exception for the wet processing of sand and gravel.

The technical staff of the Maryland-National Capital Park and Planning Commission and the Prince George's County Planning Board recommended approval, with conditions, as did the Zoning Hearing Examiner. Thereafter, the County Council sitting as the District Council for Prince George's County (Council) rejected those recommendations and entered an order denying the requested special exception. In its written findings and conclusions, the Council, among other things, said:

“5. Council further concludes that to grant this special exception would be an unwarranted extension and expansion of a nonconforming use, contrary to the provisions of COUNTY CODE Sect. 27-107. This proposed sand and gravel processing facility would obviously encourage the further continuation of sand and gravel extraction operations, contrary to the purposes of the County's *265 Zoning Ordinance, which has the object of discouraging nonconforming uses.”

The owner appealed to the Circuit Court for Prince George's County which reversed the action of the Council. In its opinion the trial court said:

“Penultimately, the District Council concluded that to grant Gardner's special exception would be an ‘unwarranted extension and expansion’ of the Petitioner's nonconforming use, and would be contrary to s 27-107 of the County Code.

“The Court notes that enlargement or extension of a nonconforming use is contemplated by the Code, and that the criteria for a ‘permitted’ enlargement or extension are set forth in s 27-553 of the Code. However, the Court finds that the requested special exception is not an extension or enlargement as contemplated by the Code, see s 27-533, but rather an intensification of Gardner's ongoing nonconforming use.”

The Council appealed to the Court of Special Appeals which affirmed the judgment of the trial court. Prince George's County v. E. L. Gardner, Inc., 47 Md.App. 471, 424 A.2d 392 (1981). In its opinion, that Court said:

“If the controversy here considered involved only the question whether the contemplated use of the land owned by the appellee amounted to an illegal enlargement or expansion of its non-conforming use of the premises, it would not present a difficult question to be decided. The problem in this case, however, is that the proposed use of the appellee's property does not depend on the non-conforming use, but rather on the right to a special **118 exception established by the Prince George's County Zoning Ordinance.

*266 “Under the circumstances revealed by the record, we agree with the appellee that the non-conforming use status of the appellee's property is irrelevant in the determination of this controversy.

“The sole question to be answered in this appeal then is whether (the trial court) erred in concluding that based on the evidence before the District Council the record did not raise an issue before the administrative body which was ‘fairly debatable.’

“Our examination of the record convinces us that the applicant more than met its burden of producing probative and credible evidence on all the issues required to be proven, and that the evidence of the protestants was so vague and indefinite as to fail to raise fair debate in a reasoning mind. Therefore, we find that the action of the District Council, in refusing to grant the special exception was arbitrary, capricious, and illegal.” E. L. Gardner, Inc., 47 Md.App. at 477-78, 480, 424 A.2d at 395-97.

The Council filed a petition for a writ of certiorari that we granted. We shall reverse the judgment of the Court of Special Appeals.

One of the basic tenets of zoning is that some uses of land are incompatible with others, and that more efficient employment of land resources is achieved if such incompatible uses are separated. An admixture of incompatible land uses is avoided by dividing the community into use districts, each restricted to industrial, commercial or residential occupation.

As a practical matter, however, homogeneous land use has not been achieved. Major movement of population from rural to urban areas had begun half a century before the first comprehensive zoning ordinance was enacted in the United States. As a result, land to be zoned was not always vacant. *267 Indeed, frequently it was occupied by landowners who had developed their land unfettered by any significant degree of governmental control. Thus, use districts, designed to be homogeneous, unavoidably include land devoted to uses proscribed by the zoning regulations. Such nonconforming uses pose a formidable threat to the success of zoning. They limit the effectiveness of land use controls, contribute to urban blight, imperil the success of the community plan, and injure property values. 1 R. M. Anderson, American Law of Zoning s 602 (2d ed. 1976).

[1] This Court has repeatedly recognized that one of the fundamental problems of zoning is the inability to eliminate incompatible nonconforming land uses. In Grant v. Mayor and City Council of Baltimore, 212 Md. 301, 307, 129 A.2d 363, 365 (1957), this Court said:

“Nonconforming uses have been a problem since the inception of zoning. Originally they were not regarded as serious handicaps to its effective operation; it was felt they would be few and likely to be eliminated by the passage of time and restrictions on their expansion. For these reasons and because it was thought that to require immediate cessation would be harsh and unreasonable, a deprivation of rights in property out of proportion to the public benefits to be obtained and, so, unconstitutional, and finally a red flag to property owners at a time when strong opposition might have jeopardized the chance of any zoning, most, if not all, zoning ordinances provided that lawful uses existing on the effective date of the law could continue although such uses could not thereafter be begun. Nevertheless, the earnest aim and ultimate purpose of zoning was and is to reduce nonconformance to conformance as speedily as possible with due regard to the legitimate interests of all concerned, and the ordinances forbid or limit expansion of nonconforming uses and forfeit the right to them upon abandonment of the use or the destruction of the improvements housing the use.”

**119 *268 Thus, this Court has recognized that the problem inherent in accommodating existing vested rights in incompatible land uses with the future planned development of a community is ordinarily resolved, under local ordinances, by permitting existing uses to continue as nonconforming uses subject to various limitations upon the right to change, expand, alter, repair, restore, or recommence after abandonment. Moreover, this Court has further recognized that the purpose of such restrictions is to achieve the ultimate elimination of nonconforming uses through economic attrition and physical obsolescence. The Arundel Corp. v. Board of Zoning Appeals of Howard County, 255 Md. 78, 83-4, 257 A.2d 142, 146 (1969); Stieff v. Collins, 237 Md. 601, 604, 207 A.2d 489, 491 (1965); Colati v. Jirout, 186 Md. 652, 655, 657, 47 A.2d 613, 614-15 (1946); Beyer v. Mayor of Baltimore, 182 Md. 444, 446, 34 A.2d 765, 766 (1943); see Kastendike v. Baltimore Ass'n for Retarded Children, Inc., 267 Md. 389, 397, 297 A.2d 745, 749-50 (1972).

[2] [3] Whether a nonconforming use can be changed, extended, enlarged, altered, repaired, restored, or recommenced after abandonment ordinarily is governed by the provisions of the applicable local ordinances and regulations. Feldstein v. LaVale Zoning Board, 246 Md. 204, 211, 227 A.2d 731, 734 (1967); Phillips v. Zoning Comm'r of Howard County, 225 Md. 102, 109, 169 A.2d 410, 413 (1961); Board of Zoning Appeals of Baltimore County v. Gue, 217 Md. 16, 21-22, 141 A.2d 510, 513 (1958). These local ordinances and regulations must be strictly construed in order to effectuate the purpose of eliminating nonconforming uses. Mayor of Baltimore v. Byrd, 191 Md. 632, 638, 62 A.2d 588, 591 (1948); Colati, 186 Md. at 658-59, 47 A.2d at 616; Knox v. Mayor of Baltimore, 180 Md. 88, 96, 23 A.2d 15, 18 (1941); see City of Hagerstown v. Wood, 257 Md. 558, 563, 263 A.2d 532, 534 (1970); Hewitt v. County Comm'rs of Baltimore County, 220 Md. 48, 59, 151 A.2d 144, 150 (1959).

[4] Applying these principles to the instant case produces a clear result. Section 27-107(a) provides that any nonconforming use may be continued without enlargement *269 or extension. Section 27-107(e) explicitly provides that “no nonconforming use may be changed to any use other than that provided by ... permits under which the nonconforming use operated.” Section 27-108(a) provides

that a nonconforming use may be enlarged or expanded if a special exception is obtained. Sections 27-482(a) and 27-553(a) provide that a nonconforming use may be structurally expanded or extended subject to certain structural requirements. These provisions embody a statutory scheme that explicitly prohibits an existing nonconforming use from being changed to any other use while it explicitly permits an existing nonconforming use to be enlarged or extended under specified circumstances. Under the applicable local ordinances, there is, therefore, a significant and critical difference between changing an existing nonconforming use to another use and enlarging or extending an existing nonconforming use.

Here the record shows that a sand and gravel mining operation existed on the subject property before zoning was applicable. This use has been established as a legal nonconforming use by the issuance of a use and occupancy permit. Section 27-537 delineates sand, gravel, and clay pits as a separate and distinct special exception use in which heavy machinery for washing or processing is explicitly prohibited unless a special exception for wet processing is obtained. Section 27-538 delineates wet-processing facilities as a separate and distinct special exception use. Each of these uses has differing standards, regulations, and requirements. Thus, there can be no question that the ordinance itself establishes that these two uses are indeed different. Consequently, the addition of the wet-processing facility to the existing nonconforming sand and gravel mining operation necessarily involves a change in the use of the subject property. Such a change in use is explicitly prohibited by s 27-107.

Under the circumstances here, the Council had no authority to grant the requested special exception. The trial court erred **120 when it reversed the Council's denial of the requested *270 special exception. Accordingly, we shall reverse the judgment of the Court of Special Appeals that affirmed the judgment of the trial court.

JUDGMENT OF THE COURT OF SPECIAL APPEALS REVERSED. CASE REMANDED TO THAT COURT WITH DIRECTIONS TO REVERSE THE JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AND TO REMAND THE CASE TO THAT COURT WITH DIRECTIONS TO ENTER AN ORDER AFFIRMING THE DECISION OF THE COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY. COSTS TO BE PAID BY APPELLEE.

All Citations

293 Md. 259, 443 A.2d 114

Footnotes

* Digges, J., now retired, participated in the hearing and conference of this case while an active member of this Court; after being recalled pursuant to the Constitution Article IV, Section 3A, he also participated in the decision and adoption of this opinion.

1 s 27-537(a)(1) provides:
"Sec. 27-537. Sand, gravel or clay pits; rock or stone quarries; mining removal of earth or topsoil; extraction and removal of natural materials or deposits.
"(a) In all zones, the use of land for any or all of the purposes or uses of this Section, subject to the following conditions:
"(1) Except in the I-2 Zone there shall be no use of heavy machinery for washing, refining, or other processing or manufacturing, unless a special exception is granted for sand and gravel wet processing under the provisions of Section 27-538.1. The use of heavy machinery for extraction and removal of natural material or deposits from the site is permissible." (Emphasis added.)
s 27-538.1(a) provides in pertinent part:
"Sec. 27-538.1. Sand and/or gravel wet-processing....
"(a) In all zones, except the I-3 and I-4 Zones wherein such uses are prohibited, and in the I-2 Zone wherein such uses are permitted, the use of land for wet-processing, including washing, sorting, refining, and stockpiling of natural materials, and in the I-2 Zone only, including such facilities as concrete batching plants, asphalt or cement mixing plants, and similar facilities...." (Emphasis added.)

2 s 27-108(b) provides in pertinent part:
"(b) Satisfactory evidence as to the actual existence of a nonconforming use is a prerequisite to its continuance and shall be established by the issuance of a use and occupancy permit by the Building Inspector upon approval and certification by the Planning Board." (Emphasis added.)

County Council of Prince George's County v. E. L. Gardner, Inc., 293 Md. 259 (1982)
443 A.2d 114

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

KeyCite Yellow Flag - Negative Treatment
Declined to Follow by Richmarr Holly Hills, Inc. v. American PCS, L.P., Md.App., October 30, 1997

102 Md.App. 691
Court of Special Appeals of Maryland.

David **CROMWELL**, et al.
v.
Arthur Thomas **WARD**, III.

No. 617, Sept. Term, 1994.
|
Decided Jan. 4, 1995.

Synopsis

The Circuit Court, Baltimore County, Lawrence Daniels, J., affirmed order of board of appeals granting height variance for accessory building already built by owner. Appeal was taken. The Court of Special Appeals, Cathell, J., held that: (1) no variance was appropriate where property was not shown to be unusual or unique from surrounding properties before variance based on practical difficulty or unreasonable hardship was sought; (2) landowner's self-created hardship arising from construction of accessory building before variance was sought was not grounds for grant; and (3) approval of building permit for accessory building did not support grant of variance sought.

Reversed.

West Headnotes (5)

[1] Zoning and Planning Effect of determination in general; res judicata and collateral estoppel

City was not estopped from refusing to grant variance from height restriction on auxiliary building merely because owner submitted and obtained construction permit, at least where owner's plan's elevation schematics contained neither elevation dimensions nor scale and elevation was not stated; while zoning inspectors might have been able to extrapolate dimensions from other schematics, they were not required to do so in light of owner's affirmative statement in application of compliance with zoning requirements. Code 1957, Art. 66B, § 7.03; Baltimore, Md., Zoning Ordinance § 307.

[2] Zoning and Planning Unique or peculiar hardship in general

Under law on variances in Maryland and under Baltimore County's charter and ordinance, property's peculiar characteristics or unusual circumstances relating only and uniquely to that property must exist in conjunction with ordinance's more severe impact on specific property because of property's uniqueness before any consideration will be given to whether requisite practical difficulty or unnecessary hardship exists. Code 1957, Art. 66B, § 7.03; Baltimore, Md., Zoning Ordinance § 307.

16 Cases that cite this headnote

[3] Zoning and Planning Self-created hardship; prior knowledge

Practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted. Code 1957, Art. 66B, § 7.03; Baltimore, Md., Zoning Ordinance § 307.

14 Cases that cite this headnote

[4] Zoning and Planning Unique or peculiar hardship in general

Mistake of county official cannot be the "practical difficulty" unique to subject property required to authorize grant of variance. Code 1957, Art. 66B, § 7.03; Baltimore, Md., Zoning Ordinance § 307.

20 Cases that cite this headnote

[5] Zoning and Planning Height of buildings or structures

Granting of variance from height restrictions on auxiliary building was arbitrary and illegal where subject site was not in any way peculiar, unusual or unique when compared to other properties in neighborhood and thus was not disproportionately affected by height restriction; self-created hardship arising from owner's failure to disclose height dimensions in applying for permit and construction of building in nonconformity were self-imposed or created hardships that could not support variance. Code 1957, Art. 66B, § 7.03; Baltimore, Md., Zoning Ordinance § 307.

13 Cases that cite this headnote

Attorneys and Law Firms

**425 *693 Michael Paul Smith (Thomas G. Bodie and Bodie, Nagle, Dolina, Smith & Hobbs, P.A., on the brief) Towson, for appellants.

Newton A. Williams (Nolan, Plumhoff & Williams, Chtd., on the brief) Towson, for appellee.

Argued before WENNER, CATHELL and MURPHY, JJ.

Opinion

CATHELL, Judge.

Appellant, David **Cromwell**, appeals from the judgment of the Circuit Court for Baltimore County (Daniels, J., presiding) affirming the order of the Board of Appeals granting a height variance for an accessory building already built by appellee, Arthur Thomas **Ward**, III. Appellant poses the following questions:

I. Whether the self-imposed or self-created hardship discussed in the Maryland case law on variances *694 requires an intentional act, such as ignoring or flaunting [sic] the zoning regulations.

II. Does the record before the Honorable Lawrence Daniels support a finding that had the accessory building been built in accordance with the height regulations of Baltimore County, the accessory building would necessarily require a different pitch from all other buildings on the property?

III. Can a difference in roof pitches between an accessory building and a home constitute a "practical difficulty or unreasonable hardship" within the meaning of § 307 of the Baltimore County Zoning Regulations?

**426 While those questions are limited, appellant expands in his arguments supporting the questions and argues that

> [t]he restrictions of the applicable ordinance, *taken in conjunction with the unique circumstances affecting the property,* must be the proximate cause of the hardship [Emphasis added.]

and

> Section 307.1 requires that variances only be granted in cases where special circumstances or conditions exist *that are peculiar to the land or structure* which is the subject of the variance request.... [Emphasis added.]

and

> Mr. **Ward's** property *is not unique* from the others in the Ruxton area. [Emphasis added.]

Although somewhat indirectly, appellant has pointed out an important aspect of the nature of the *variance* process, *i.e.,* it is at least a two-step process. The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is—in and of itself—unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property. Unless there is a finding that the property is unique, unusual, or different, the process stops here and *695 the variance is denied without any consideration of practical difficulty or unreasonable hardship. If that first step results in a supportable finding of uniqueness or unusualness, then a second step is taken in the process, *i.e.,* a determination of whether practical difficulty and/or[1] unreasonable hardship, resulting from the disproportionate impact of the ordinance *caused by* the property's uniqueness, exists. Further consideration must then be given to the general purposes of the zoning ordinance.

What we have recently observed in Baltimore County, and in other jurisdictions as well, and what occurred in the case at bar, is a reversal of the required process. Instead of first determining whether the subject property is unusual or unique, the zoning authorities are first determining whether a practical difficulty or unreasonable hardship exists. That determination is then used to create a unique and unusual situation as to the subject property because surrounding properties do not experience the hardship or difficulty.

In the case *sub judice,* appellee's act of constructing a building of such a height as to produce a roof pitched at the angle he

desired caused the roof to extend above the fifteen-foot height limit. This fact alone was found by the Board (and affirmed by the trial court) to make the property's problems unique. Simply stated, the variance that is desired (and the difficulties that would exist if it is not granted) cannot be the source of the first prong of the variance process—an inherent uniqueness of the subject property not shared by surrounding properties.

***696 The Facts**

Appellee's contractor, Donald S. Huber and Company, Inc. (Huber), prepared plans for a garage, wine cellar, and storage area on appellee's property. Using these plans, Huber, on appellee's behalf, applied for a building permit, noting on the application that it was to construct a two story "garage and wine cellar;" "[second] story to be used as storage, [first] floor for garage and wine testing room. Cellar will be for wine." The application indicates that some prior height indication was marked over on the application for a permit and a new mark was made indicating the anticipated height of the structure to be fourteen feet. Huber admitted that he had little experience with the zoning requirements for accessory buildings and ****427** was unaware of the height limitations. The County's automated tracking system, in creating its general permit application data on the subject property, noted: "Height: 14' " and "Stories: 2+ CELL."

The plans presented to the County included a "Left Side Elevation" but no height is shown on the elevation plan. Neither, as far as we have been able to find, does the plan contain a scale from which the "Left Side elevation" can be determined. The plans also include a "Front Elevation" from which actual proposed heights are also conspicuously, almost suspiciously, absent given that all other dimensions appear to be included on the plans.

We have, however, extrapolated from a horizontal distance indicated on the lower right-hand corner of the "Second Floor Plan" that fourteen feet five and one-half inches equals slightly over three and one-half inches on our ruler. It would appear that the front elevation plan indicates five and one-fourth inches on our ruler or approximately twenty-one and one-half feet in height. When measured in similar fashion, the left side elevation indicates a similar height. Thus, if the other measurements are correct, a method existed in which, even absent a scale, rough height elevations might have been discernable, though we are at a loss to understand why the ***697** elevations were not given in feet and why the plans contained no scale.[2]

After receiving a building permit, appellee proceeded to construct the building that violated the fifteen foot height requirement. During the building process, inspections were made of footings, foundations, framing, and electrical service. Final occupancy was then given. Later, the building was discovered to be twenty-one feet in height.[3] Appellee then successfully applied for an after the fact variance. Appellant appealed to the Board of Appeals and it, in a two to one decision, granted the variance that the circuit court ultimately affirmed.

The Law

The State Zoning Enabling Act was first passed in 1927 by Chapter 705 of the Acts of 1927. It has since been codified as Article 66B of the Annotated Code of Maryland (1957, 1988 Repl.Vol., 1994 Cum.Supp.). While it was generally believed that local subdivisions did not have to enact zoning regulations (and some did not), if enacted, they normally had to conform to the provisions of Article 66B.

Baltimore County, however, is a charter county and is exempt from many of the provisions in Md.Code Art. 66B. See Md.Code Art. 66B § 7.03 which provides "Except as provided in [sections not pertinent here] ... this article does not apply to the chartered counties of Maryland." Nevertheless, the language of Art. 66B relating to variances is virtually identical to the provisions of the Baltimore County ordinance.

***698** The Article 66B provision that provides for variance authority in local zoning ordinances is section 1.00(j). As relevant to an area variance, this section defines a variance under Art. 66B as follows:

> [M]odification only of density, bulk, or area requirements in the zoning ordinance ... where *owing to conditions peculiar to the property, and not the result of any action taken by the applicant,* a literal enforcement ... would result in either, as specified by the local governing body in a zoning ordinance, unnecessary hardship or practical difficulty. [Emphasis added.]

The Baltimore County Zoning Ordinance in section 307, "Variances," provides, in relevant part, that variances from the ordinances provision, *i.e.,* height, may be granted

> 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 ... would result in practical difficulty ****428** or unreasonable hardship. [Emphasis added.]

Accordingly, we shall, in our discussion of cases, refer extensively to cases under the provisions relating to Art. 66B as well as cases under the Baltimore County provisions.

The Baltimore County ordinance requires "conditions ... peculiar to the land ... and ... practical difficulty...." Both must exist. But the terms "practical difficulty" and "unreasonable hardship" are stated in the ordinance disjunctively. Thus, at least as to variances other than use variances,[4] if the property is found to be unique, the practical difficulty standard would then apply. We address practical difficulty at some length hereafter. However, as is clear from the language of the Baltimore County ordinance, the initial factor that must be established before the practical difficulties, if any, are addressed, is the abnormal impact the ordinance has on a specific piece of property because of the peculiarity and ***699** uniqueness of *that* piece of property, not the uniqueness or peculiarity of the practical difficulties alleged to exist. It is only when that uniqueness is first established that we then concern ourselves with the practical difficulties (or unnecessary hardships in use variance cases).

Because we have discerned that some of the confusion in this and other jurisdictions may have arisen because of a tendency to intermingle the concepts of special exceptions/conditional uses[5] (where normally an applicant has an easier burden) and variances, we shall first discuss the cases (local as well as foreign) and treatises in which the terms are distinguished. We shall then discuss our cases and certain of those elsewhere in which the proper (and, on occasion, improper) applications of variance law have been applied. The Baltimore County statute will then be restated and applied to the facts and circumstances of the case *sub judice.*

Special Exceptions (and Conditional Uses) and Variance —Distinguished

The treatise writers define the concept as:

> A variance is an authorization for [that] ... which is prohibited by a zoning ordinance....
>
> ... [T]he difference between the two [variances and special exceptions] ... is of practical significance....
>
> "... [T]he variance and exception are designed to meet two entirely different needs. The variance contemplates a departure from the terms of the ordinance in order to preclude confiscation of property, while the exception ***700** contemplates a permitted use ... [once] the prescribed conditions therefor are met."
>
> ... [A] variance is "authority ... to use his property in a manner forbidden ...," while an exception "allows him to put his property to a use which the enactment expressly permits."
>
> ... [T]he standards for ... exceptions are usually less stringent than in the case of variances. A Maryland court summarized this difference and the reason for it.
>
> "A special exception ... is one which is controlled and ... permissible in a given zone. It is granted ... upon a finding conditions of the zoning ordinance are satisfied. A variance is authorized ... where the literal enforcement of its terms would result in unnecessary hardships."

3 Robert M. Anderson, *American Law of Zoning* § 18.02–03 (2d ed. 1977) (footnotes omitted) (quoting in part *Stacy v. Montgomery County,* 239 Md. 189, 193, 210 A.2d 540 (1965)). *See also* ****429** *Schultz v. Pritts,* 291 Md. 1, 11, 432 A.2d 1319 (1981); *People's Counsel v. Mangione,* 85 Md.App. 738, 748, 584 A.2d 1318 (1991).

> A distinction commonly is made between [special] exceptions ... and variances.... An "exception" ... is a dispensation permissible where a board ... finds existing those facts ... specified in the ordinance as sufficient.... "... But zoning ordinances usually provide for another kind of dispensation, ... by which a variance ... may be authorized ... where a literal enforcement ... would result in unnecessary hardship."

8 Eugene McQuillin, *Municipal Corporations* § 25.160 (3d ed. rev. 1991) (footnotes omitted).

> The general rule is that variances and exceptions are to be granted sparingly, only in rare instances and under peculiar and exceptional circumstances.... A variance should be strictly construed....

Id. § 25.162 (footnotes omitted). *See also* 5 Norman Williams, Jr. et al., *American Land Planning Law* § 133.01 (1985 rev.); 3 Arden H. Rathkopf, *The Law of Zoning and Planning* ***701** § 38.01 (4th ed. 1981); 3 E.C. Yokley, *Zoning Law and Practice*

§ 21–6 (4th ed. 1979); 3 Robert M. Anderson, *American Law of Zoning* § 14.55 (1968); Anderson, *supra* § 18.30 (2d ed.).

Maryland courts, and courts elsewhere, have generally made the same distinction.

> There is a marked distinction between "variance" and "special exception" in Montgomery County. A special exception ... is expressly permissible.... [A zoning board has authority to grant] variances from the strict application of this chapter when by reason of exceptional narrowness, shallowness, or shape of specific parcels of property ... or by reason of exceptional topographical conditions or other extraordinary situations ... of specific parcels of property, the strict application ... would result in ... unusual practical difficulties to, or exceptional or undue hardship....

Stacy, 239 Md. at 193, 210 A.2d 540.

Judge Hammond for the Court of Appeals noted in *Montgomery County v. Merlands Club, Inc.,* 202 Md. 279, 288–91, 96 A.2d 261 (1953):

> It is the common practice to join an application for an exception with an application for a variance, leaving it to the Board to decide on which ground it will grant the application. As a result, many cases discuss exceptions and variances without differentiation, yet the two do differ, and one important distinction is that where a specific use is permitted by the legislative body in a given area ... the application can be granted without a showing of hardship or other conditions which are necessary for the allowance of a variance....
>
> ....
>
> ... There is a distinction between ... the ordinance provisions ... in those cases [Baltimore City cases] and the facts and the ordinance provision in this case....

See also our case of *Martin Marietta Aggregates v. Citizens,* 41 Md.App. 26, 34–35, 395 A.2d 179 (1978).

***702** A conditional use is not a variance. The primary difference between the two is that a conditional use is not an exceptional [6] use. A conditional use is a desirable use which is attended with detrimental effects which require that certain conditions be met.... While a variance is a departure from the terms of an ordinance, a conditional use is a permitted use ... so long as ... conditions are met. Therefore, conditional use grants cannot be encompassed within the ... statutory authority to grant variances. *Eberhart v. Indiana Waste Systems, Inc.,* 452 N.E.2d 455, 459 (Ind.App. 3 Dist.1983) (citations omitted).

In a case affirming the granting of a special exception, the court in *Ash v. Rush County Bd. of Zoning Appeals,* 464 N.E.2d 347, 350 (Ind.App. 1 Dist.1984), opined:

> A great deal of confusion has been generated ... because of the parties' failure to distinguish among rezoning amendments, variances, and special exceptions.... A variance involves a deviation ... from the ****430** legislated zoning classification.... A special exception involves a use which is permitted ... once certain statutory criteria have been satisfied. [Citations omitted.]

See also Lindquist v. Board of Adjustment, 490 So.2d 16, 18 (Ala.Civ.App.1986) ("Thus a special exception is not truly an exception to the zoning regulations at all") and ("a special exception may not be used as a substitute for a variance in order to avoid the ... burden of proving ... hardship"); *Wolfner v. Board of Adjustment,* 672 S.W.2d 147, 150 (Mo.App.1984) ("an exception is legislatively permitted whereas a variance is legislatively prohibited, but may be allowed for special reasons"); *Urban Farms, Inc. v. Franklin Lakes,* 179 N.J.Super. 203, 431 A.2d 163, 167 (A.D.), *cert. denied,* 87 N.J. 428, 434 A.2d 1099 (1981) (special exception and variance defined—case decided on zoning estoppel basis); ***703** *A.J. Grosek & Associates v. Zoning Hearing Bd.,* 69 Pa.Cmwlth. 38, 450 A.2d 263, 265 (1982); *Bell v. City Council,* 224 Va. 490, 297 S.E.2d 810, 813–14 (1982).

VARIANCE—

The First Step—Uniqueness or Peculiarity of the Subject Property

> The general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances. *See, e.g.,* A. Rathkopf, 3 The Law of Zoning and Planning § 38 (1979).
> *Doorack v. Board of Adjustment,* 709 S.W.2d 140, 143 (Mo.App.1986). *See also McMorrow v. Board of Adjustment,* 765 S.W.2d 700, 701–02 (Mo.App.1989); *Taylor v. Board of Zoning Adjustment,* 738 S.W.2d 141, 144 (Mo.App.1987).

The requirement of uniqueness of the subject property, as we have indicated, is specifically set out for noncharter counties in the State enabling legislation, Md.Code Article 66B, and it

is also set out in the Baltimore County ordinance applicable here. Additionally, it has been a necessary prerequisite almost since the inclusion of variance practice in zoning laws—and, before that, it was a part of Maryland case law. That case law is in accord generally with the case law elsewhere as we shall later discuss.

Early on, prior to the State specifically empowering local governments to delegate the granting of variances to zoning boards, the Maryland Court of Appeals found that the delegation of power to an administrative board to grant variances from the terms of a zoning "type" ordinance was improper because

> the board of zoning appeals is in effect given the power to set aside or annul the ordinance ... with no more definite standard or guide than that such action may only be taken when there are "practical difficulties or unnecessary hardships".... [U]nder our system of written constitutions it is essential that they accomplish those ... objects in conformity with the restrictions, rules, and limitations which the law itself provides and not in disregard of them.... For such ***704** phrases as "practical difficulties," "unnecessary hardships," "substantial justice," are too general and indefinite to furnish such a guide, or to mark the limits or control the exercise of the power conferred....

Jack Lewis, Inc. v. Mayor and City Council of Baltimore, 164 Md. 146, 151, 164 A. 220, *appeal dismissed,* 290 U.S. 585, 54 S.Ct. 56, 78 L.Ed. 517 (1933) (though it questioned the variance provisions under which the appellant sought a variance to operate a funeral home, it upheld the restriction prohibiting the funeral home in the first instance). In *Sugar v. North Baltimore Methodist Protestant Church,* 164 Md. 487, 165 A. 703 (1933), the Court likewise found the board's powers to grant special exceptions to permit a confectionery store where otherwise prohibited to be invalid for the same reasons.

In moving towards an acceptance of variance procedures, the Court noted that the "increasing need for garages in the cities was one of the main reasons for the rapid spread of zoning in this country." *Heath v. Mayor and City Council of Baltimore,* 187 Md. 296, 300, 49 A.2d 799 (1946). By the time of its decision in *Heath,* the Court had accepted the inevitable need for formal variance and special exception provisions, noting that "[c]haos would result if [a building engineer] were allowed to make exceptions or variances ****431** in his own discretion." 187 Md. at 301, 49 A.2d 799. The Court further pointed to the special exception powers of the Board of Zoning Appeals as a legally acceptable alternative. The Court also observed that, in response to its decisions in *Jack Lewis* and *Sugar,* the city had amended the Baltimore City ordinance to incorporate additional standards to guide the Board. The Court then correctly defined an exception as "a dispensation permissible where the Board ... finds ... those facts ... specified in the ordinance...." *Id.* 187 Md. at 303, 49 A.2d 799.

It was then that the court, for the first time that we can discern, combined exceptions and variances when discussing conformity to the rules in regard to the grant of either. This is the first instance where the two concepts were intermingled with respect to the Baltimore City ordinance. To a certain extent, this intermingling has, from time to time, created some ***705** confusion in the cases arising out of Baltimore City. Because of the proportionately larger number of cases arising out of that jurisdiction, that confusion can be seen in subsequent cases arising from other jurisdictions. This intermingling increased over the years and, during this time, Baltimore City amended its ordinance and eventually became subject to an ordinance that does not distinguish between variances and exceptions except as to the title of their respective sections. In other words, Baltimore City, by the terms of its ordinance, applies the same standards to both variances and special exceptions; this standard is the one used elsewhere for variances. Thus, the Baltimore City special exceptions procedure is one only by title. For all practical purposes, it is also a variance procedure.

Caution should always be used therefore when a court is concerned with special exceptions, as reliance on the cases from Baltimore City may well lead one to rely on inapposite zoning concepts and cases. Judge Marbury, for the Court of Appeals, noticed this unusual circumstance in *Dampman v. Mayor and City Council of Baltimore,* 231 Md. 280, 285, 189 A.2d 631 (1963) ("In Baltimore City there appears to be no distinction between the two terms....").[7] We also attempted to indicate the problem in *North v. St. Mary's County,* 99 Md.App. 502, 510, 638 A.2d 1175 (1994), in footnote 3:

> Baltimore City's zoning code makes no distinction between special exceptions and variances. Its code treats special exceptions as if they were variances.... [I]t is generally inexact to rely on Baltimore City cases when a special exception is at issue in another jurisdiction, but would be appropriate when a variance is at issue.

In any event, as to variances, the Court of Appeals, applying the uniqueness standard, stated:

***706** [I]t was incumbent upon the Marinos to have shown ... (ii) that the difficulties or hardships *were peculiar to the property in question in contrast with those of other property owners in the same district, and* (iii) that the hardship was not the result of the applicants' own actions.

Marino v. Mayor and City Council of Baltimore, 215 Md. 206, 218, 137 A.2d 198 (1957) (emphasis added). *Salisbury Bd. of Zoning Appeals v. Bounds,* 240 Md. 547, 214 A.2d 810 (1965), also involved the completion of structural improvements in violation of an ordinance and a subsequent request for an after the fact variance. The Court opined:

> The only evidence before the Board as to hardship or injustice involving the property was the fact that repairs and alteration work had been substantially completed before an application for either a variance or a building permit had been made and that what had been done could not be undone without financial hardship to appellees....

240 Md. at 554, 214 A.2d 810. The Court first quoted from 2 Rathkopf, *The Law of Zoning and Planning,* § 48–1, and then noted:

> "Where property, due to unique circumstances applicable to it, cannot reasonably be adopted to use in conformity with the restrictions ... hardship ****432** arises.... The restrictions of the ordinance, taken in conjunction with the unique circumstances *affecting the property* must be the proximate cause of the hardship.... [T]he hardship, arising as a result of the act of the owner ... will be regarded as having been self-created, barring relief...."
>
> The instant case fits squarely within the above general rule.... [I]f the appellees had used proper diligence ... and then made accurate measurements ... [the resultant hardship could have been avoided]. The hardship ... was entirely self-created....

Id. at 554–55, 214 A.2d 810 (emphasis added). Had **Ward's** contractor, Huber, in the case at bar, checked the ordinance's height limitation, the situation that now exists could easily have been avoided. *See also Burns v. Mayor and City* ***707** *Council of Baltimore,* 251 Md. 554, 559, 248 A.2d 103 (1968); *Pem Constr. Co. v. Mayor and City Council of Baltimore,* 233 Md. 372, 378, 196 A.2d 879 (1964) ("[There was] no evidence of any limitation ... by ... size of yards, irregularity of shape of land or buildings, topography, grade or accessibility"....); *Mayor and City Council v. Sapero,* 230 Md. 291, 186 A.2d 884 (1962); *Frankel v. Mayor and City Council of Baltimore,* 223 Md. 97, 104, 162 A.2d 447 (1960) ("It was incumbent ... to show that the hardship ... affected his particular premises and was not ... common to other property in the neighborhood.... [H]e met the burden...."); *Park Shopping Center, Inc. v. Lexington Park Theatre Co., Inc.,* 216 Md. 271, 277–78, 139 A.2d 843 (1958).

> Secs. 14(b), 14(d) and 16 ... have been held not to authorize a granting for the mere convenience to the owner but to require a showing of urgent necessity, hardship peculiar to the particular property....

Mayor and City Council v. Polakoff, 233 Md. 1, 9, 194 A.2d 819 (1963).

The Court in *Kennerly v. Mayor and City Council of Baltimore,* 247 Md. 601, 606–07, 233 A.2d 800 (1967), dismissed an appeal of the grant of a height variance for lack of standing, but, in doing so, nevertheless opined:

> Our dismissal of the appeal is not to be taken as showing that if the appeal properly was here we would affirm the Board. To grant a variance the Board must find from the evidence more than that the building allowed would be suitable or desirable or could do no harm or would be convenient for or profitable to its owner. The Board must find there was proof of "*urgent necessity, hardship peculiar to the particular property....*" ... Specific reasons, specific bases to support the finding must be revealed by the evidence before the Board. [Emphasis added, citation omitted.]

In *McLean v. Soley,* 270 Md. 208, 210, 310 A.2d 783 (1973), one of the few reported Maryland appellate cases approving of a variance, the applicant for an area variance in connection ***708** with an application to build forty units asserted that it was his desire to retain the "present trees and natural growth, terrain, and topography which provides excellent drainage and natural screening and beauty." There was evidence that, if the applicant destroyed the existing trees, he could have built 330 units without needing a variance. It was established that a number of attractive trees along the western boundary would have to be destroyed absent a variance. The Court noted that "there was considerable evidence to show the natural beauty of these trees and their importance to the ecology." 270 Md. at 211, 310 A.2d 783. The Court, seeming to acknowledge that it was making a detour from Maryland variance law, opined:

> Given the unique facts of this case, we think those criteria are met by this evidence: That the construction of the buildings in strict compliance with the sideyard requirements would result in the destruction of the trees; that the preservation of trees in the construction of the first section had contributed to full occupancy ... that the benefits of retaining the trees would accrue to the general public; that greater density would result from strict compliance....
>
> ....
>
> Concededly, this is a close case, but it is nevertheless sufficient....

****433** *Id.* at 215, 310 A.2d 783. We would have to agree that it is a close case. The opinion does not make mention that the practical difficulty resulted from the fact that the uniqueness of the property caused the ordinance to have a different impact on it than on adjoining property. Also, there was no evidence that the neighboring properties were in any way different than the subject property. If the presence of trees on a particular lot was unique, that might have been a basis, but the court did not make that connection. Thus, this case, coupled with *Loyola Federal Savings & Loan Assoc. v. Buschman,* 227 Md. 243, 176 A.2d 355 (1961), and *Frankel v. Mayor & City Council of Baltimore,* 223 Md. 97, 162 A.2d 447 (1960), is among the affirmances of variances that we perceive to be, at best, extremely close calls and, as we shall indicate, exceedingly rare.

***709** The Court in the sludge storage case of *AD + Soil, Inc. v. County Comm'rs,* 307 Md. 307, 513 A.2d 893 (1986), reiterated the standards applicable to variances when it affirmed a trial court's affirmance of a zoning agency's denial of an area and other variances. The variances were necessary to satisfy the requirements for a conditional use permit to operate the sludge storage and distribution operation. The Court of Appeals noted that the trial court, in affirming the agency's denial of a variance, agreed that "the only hardships facing Ad + Soil were of its own making." 307 Md. at 317, 513 A.2d 893. After addressing the important preemption issues therein raised, the Court directed its attention to the area variances sought and, referring to the Board's findings, stated that, in Queen Anne's County, the Board's authority to grant variances was limited to a situation where "there are exceptional or extraordinary circumstances or special conditions applying to the property in question ... that do not apply generally to other properties ... in the ... district." *Id.* at 340, 513 A.2d 893. The Court concluded:

> The board declined to grant the variances, concluding that Ad + Soil's "hardship" was self-inflicted, and, in any event, that it was not the result of exceptional or extraordinary *characteristics* of the *land itself* and therefore not the kind of hardship cognizable under the Zoning Ordinance....
>
> We think the Board's decisions ... reflect no error of law.

Id. at 340–41, 513 A.2d 893 (emphasis added).

In *Red Roof Inns, Inc. v. People's Counsel,* 96 Md.App. 219, 224, 624 A.2d 1281 (1993), after noting the standard of review, we said:

> In reviewing the zoning authority's decision, the court must consider all of the evidence in the administrative record. The reviewing court's role, however, is confined to determining the legality of the procedure employed and whether the decision was fairly debatable in light of the evidence adduced before the zoning authority.
>
> ***710** The role of this Court "is essentially to repeat the task for the circuit court; that is, to be certain the circuit court did not err in its review." [Citations omitted.]

We then discussed the legal standards to utilize in respect to variances construing the same statute that applies in the case at bar, saying that variances may be granted "where special circumstances or conditions exist *that are peculiar to the land* ... and where strict compliance ... would result in practical difficulty...." *Id.* (emphasis added). We noted that, in regards to area variances, we were only concerned that the conditions peculiar to the land in question presented practical difficulties. In concluding that the Board had not acted wrongly in denying the variance at issue (a sign variance), we noted: "Zoning matters, including sign variance requests, depend upon the unique facts and circumstances *of a particular location* and must be analyzed individually." *Id.* at 227–28, 624 A.2d 1281 (emphasis added).

In *North v. St. Mary's County,* 99 Md.App. at 512, 638 A.2d 1175, we held that the ordinance there required a finding that "special conditions or circumstances exist that are peculiar to the land...." We there stated that, in the zoning context, the term "unique" has a customized meaning:

> In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. ****434** "Uniqueness" of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, *i.e.,* its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by

abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls.

....

In some zoning ordinances, the specialness or uniqueness requirement is more explicitly set out. The Court of Appeals, ***711** in *Ad + Soil, Inc. v. County Comm'rs,* 307 Md. 307, 339, 513 A.2d 893 (1986), quoted from the Queen Anne's County ordinance:

> Where by reason of the exceptional narrowness, shallowness, or unusual shape of a specific ... property ..., or by reason of exceptional topographic conditions or other extraordinary situation or special condition of ... property ... the literal enforcement ... would make it exceptionally difficult ... to comply ... and would cause unwarranted hardship and injustice....

The general thrust of the meaning of special features or uniqueness of property for variance purposes relates to the type of uniqueness discussed by the Court in *Ad + Soil, Inc.* *Id.* at 514–15, 638 A.2d 1175.

One indication of the general rule that variances are rarely appropriate is that, in our review of the reported Maryland cases since the creation of the state zoning enabling act in 1927, we have found only five reported Maryland cases in which the grant of a variance has been affirmed or the denial of a variance has been reversed. The cases are *McLean, supra; Stacy, supra; Sapero, supra; Loyola Federal Savings & Loan Assoc., supra* (a Baltimore County case); and *Frankel, supra.* All of these cases were decided over a twelve-year period and the last of them was decided more than twenty-one years ago. Three of them, *Frankel, Loyola,* and *McLean* appear to be somewhat at odds with accepted Maryland law. *McLean* was described by the Court as a "[c]oncededly ... close case...." *Frankel* has caused some confusion in that it has later been viewed by some as lowering the standards for the granting of variances. *Mayor and City Council of Baltimore v. Borinsky,* 239 Md. 611, 212 A.2d 508 (1965), involved one of the same issues that was presented in *Frankel, i.e.,* whether a zoning restriction so compromised the use of property as to constitute an unconstitutional taking absent the granting of a variance—a variance Frankel was granted. The Court noted that the trial court had found *Frankel* controlling. The Court of Appeals disagreed. The Court acknowledged ***712** that Borinsky had the "same expert witness," "he was asked the same general questions ... and gave the same answers," and that the "economic suicide" present in *Frankel* was "doubly true in this instance." *Id.* 239 Md. at 624, 212 A.2d 508. The Court, nevertheless, made a factual distinction and declined to apply *Frankel.* Judge Barnes opined in dissent that, based on what the Court had done in *Frankel,* the facts for variances were stronger in *Borinsky. Sapero* and *Stacy* met traditional standards for the granting of variances. *Frankel, Loyola,* and *McLean* were anomalous cases.

In any event, nowhere in those five cases, or any others, has the Court of Appeals ever changed the Maryland rule relating to uniqueness and peculiarity of the subject property.

Cases from other jurisdictions are generally in accord.

The Supreme Court of Nebraska in *Bowman v. City of York,* 240 Neb. 201, 482 N.W.2d 537 (1992), reversed the grant of a variance for a structure after, pursuant to the variance, the structure was constructed. Citing an earlier Nebraska case, *Frank v. Russell,* 160 Neb. 354, 70 N.W.2d 306 (1955), and noting that the Nebraska statute had been made more specific in light of *Frank,* the court said 482 N.W.2d at 545: "[A] variance [may be granted] ... only if strict application of the regulation, because of the unusual physical characteristics of the property existing at the time of the enactment, [of ****435** the zoning ordinance] 'would result in peculiar and exceptional practical difficulties ... or exceptional ... hardships....' "

In *Shafer v. Zoning Bd. of Appeals,* 24 Mass.App. 966, 511 N.E.2d 635 (1987), the property owner had conveyed away several parcels from a larger tract leaving a parcel, the size of which was prohibited under the ordinance. The Board granted him a variance, the trial court reversed it, and the appellate court affirmed the trial court. The appellate court reiterated the trial court's finding:

> There was no evidence ... regarding "soil conditions, shape or topography of [the property] ... especially affecting [the property] but not affecting generally the zoning district in which it is located".... The ... argument that ***713** the insufficient width ... constitutes a special circumstance of "shape" is unpersuasive, particularly as the deficiency is one which they themselves produced through subdivision of the land they originally owned at a time when the 125 foot width requirement pertained.

511 N.E.2d at 636–37 (citation omitted). *See also VanLandschoot v. City of Mendota Heights,* 336 N.W.2d 503, 509 (Minn.1983) ("the plight of respondent was not due to circumstances 'unique to his property.' ... [S]ome of the problems were the result of illegal acts of respondent's predecessor in title, of which respondent was aware....")

In *St. Clair v. Skagit County,* 43 Wash.App. 122, 715 P.2d 165 (1986), a landowner applied for a variance of a lot width requirement on the grounds that the county had given him a permit to install a trailer on her fifty-foot wide lot even though the ordinance mandated a width of at least seventy feet. The zoning board, approving the variance, determined that she had applied for the permit in good faith. The Skagit County ordinance, as does the instant statute, provided that a variance had to be "because of special circumstances applicable to subject property, including size, shape, topography, location or surroundings...." 715 P.2d at 167. The code also required that an application for a variance include a narration that "special conditions and circumstances exist ... peculiar to the land...." *Id.* The court then noted that the applicant had done there what **Ward** attempts to do in the case *sub judice:*

> [The appellant] relied primarily upon the fact that the County issued a building permit ... and that she acted in good faith....

Id. at 168. The court responded: "Reasons for a variance must be reasons pertaining to the property itself.... Evidence of hardship or difficulty that will support a variance must relate to the land itself and not to the owner-applicant." *Id.* (citation omitted). The court added that "the 75–foot width and aggregation requirements do not put a burden on [appellant's] property which does not apply to other properties in the vicinity...." *Id.* at 169. In the case *sub judice,* the ***714** Baltimore County fifteen foot height limitation for accessory buildings does not affect **Ward's** property alone; it applies to all of the properties in the neighborhood.

In *Walkingstick v. Board of Adjustment,* 706 P.2d 899 (Okla.1985), the zoning board, having failed to comply with notice requirements, granted a permit for an oil drilling well. Amoco had expended considerable sums before the board's omission was discovered. The relevant part of the ordinance involved was similar to the one in the instant case. After the court noted that the hardships alleged were not peculiar to the subject site, it stated the general rule that "a hardship created by the owner ... constitutes no valid basis for a variance.... [D]eprivation of an advantage does not constitute an unnecessary hardship." 706 P.2d at 904. It concluded:

> The need to expose tools to the ravages of the environment may be peculiar to Amoco. But, the language of section 44–107(2) [as does the language in the Baltimore County ordinance] clearly refers to conditions peculiar to the property, *not to activities peculiar to the owner of such property.*

Id. at 904–05 (emphasis added).

In a decision somewhat difficult to understand, which carried the variance limitations to the extreme and predated the 1992 case of ****436** *Lucas v. South Carolina Coastal Council,* —— U.S. ——, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992), but had facts similar to *Lucas,* the Supreme Court of Delaware in *Baker v. Connell,* 488 A.2d 1303 (Del.Supr.1985), upheld a trial court's reversal of the grant of a variance even though the ordinance limited the use of applicant's entire lot to open space only. The zoning board had found that the property was unique because the entire property was zoned open space and *nothing* could be constructed there. The board permitted a variance to allow two semi-detached dwellings. The trial court reversed on the grounds that the 0–1 zoning did not make the property unique. The trial court noted that a need for a variance arises only when the plight of the property is unique in that it cannot reasonably be put to a conforming use. The trial court found that there was no evidence that the ***715** property could not conform to open space land. The appellate court affirmed, stating:

> [F]inancial return ... alone, never justifies a variance. As to the unique character of the land, the mere fact that it sits entirely within the 0–1 zone does not make it unique. There is no evidence that this lot is the only one of its type in Rehoboth. Nor does it become unique because it adjoins the R–2 zone containing multi-family units.

488 A.2d at 1309. Whether this Delaware opinion remains viable in light of *Lucas* and *Dolan v. City of Tigard,* 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994), is doubtful.

The case of *Xanthos v. Board of Adjustment,* 685 P.2d 1032 (Utah 1984), involved a factual scenario similar to the case *sub judice.* The Xanthoses received notice that they were in violation of the city zoning code. The building of a duplex by the Xanthoses caused a pre-existing dwelling to lose frontage on a public street and to violate set-back and parking requirements. The Xanthoses requested variances in reference to the violations. The court initially noted that, "in order to justify a variance ... the applicant [must] show ... that there are special conditions with regard to the property...." 685 P.2d at 1035–36. The court continued:

> What must be shown ... is that the property itself contains some special circumstance that relates to the hardship complained of....

> ... The property is neither unusual topographically or by shape, nor is there anything extraordinary about the piece of property itself. Simply having an old building on land upon which a new building has been constructed does not constitute special circumstances.
>
> ....
>
> Hardship is not demonstrated by economic loss alone. It must be tied to the special circumstances, none of which have been proven here. Every person requesting a variance can indicate some economic loss. To allow a variance anytime any economic loss is alleged would make a mockery of the zoning program. Further, the Xanthos[es] brought ***716** their losses upon themselves. The application affirmatively alleged ... that no dwelling existed....[8]

Id. at 1036–37 (footnotes omitted).

[1] The Xanthoses also argued, in a fashion similar to the argument in the case *sub judice,* that the city should be estopped because the plot plan submitted to the city showed the dwelling and the fact that the city failed to realize it misled them to their detriment. The court noted, in rejecting the Xanthoses' argument: "[T]o hold that the city should have been put on notice ... in the face of an affirmative statement that no such dwelling existed, would put a premium on prevarication ... and ... shift the burden of proof in variance cases to the city. None of these results is acceptable." *Id.* at 1038. In the case at bar, appellants' application for the permit contained a clear statement that he would comply with the zoning requirements. His plan's elevation schematics contained neither elevation dimensions nor scale. While the zoning inspectors might have been able to extrapolate dimensions from other schematics, they certainly were not required ****437** to do so in light of appellants' affirmative statement of compliance.

See also Chambers v. Smithfield City, 714 P.2d 1133, 1135 (Utah 1986), where the court stated: "[T]here is no evidence of special conditions attached to the property itself which do not also attach to other property in the vicinity. The property is neither unusual topographically or by shape, nor is there anything extraordinary about the piece of property itself." (Footnote omitted.) In a case involving the conversion of a garage into a dwelling, the Supreme Court of Virginia in *Prince William County Bd. of Zoning Appeals v. Bond,* 225 Va. 177, 300 S.E.2d 781 (1983), reversed a trial court decision reversing a zoning board's denial of a variance. The court noted that the conversion was underway when the Bonds discovered a need and applied for a variance. It opined that, ***717** in order to grant a variance, the hardship allegedly created by the ordinance must "not [be] shared generally by other properties in the same zoning district and the same vicinity." 300 S.E.2d at 783. It then held: "The limitation imposed by the zoning ordinance is one shared by all property owners in the A–1 district." *Id.*

The court in *Richardson v. Town of Salisbury,* 123 N.H. 93, 455 A.2d 1059, 1061 (1983), noted:

> We have defined unnecessary hardship as follows:
>
> > "A hardship exists only if due to special conditions *unique* to a *particular parcel of land,* the ordinance unduly restricts the use.... The hardship must relate to the special character of the land rather than to the personal circumstances of the landowner." [Emphasis added.]

See also Margate Motel, Inc. v. Gilford, 130 N.H. 91, 534 A.2d 717 (1987); *Ryan v. City of Manchester Zoning Bd. of Adjustment,* 123 N.H. 170, 459 A.2d 244 (1983).

In *Sibley v. Inhabitants of the Town of Wells,* 462 A.2d 27, 30–31 (1983), the Supreme Judicial Court of Maine upheld the denial of a variance, holding:

> [T]he need for a variance [must be] due to the unique circumstances of the property and not to the general conditions in the neighborhood;
>
> ....
>
> ... [T]he hardship [must] not [be] the result of action taken by the appellant or a prior owner.
>
> ....
>
> ... However, the mere fact that the lot is substandard is not a unique circumstance; all the undeveloped lots in that neighborhood are of substandard size....
>
> ... However, when a landowner purchases land with actual or constructive knowledge of the zoning restrictions, he may not be granted a variance on the grounds of undue hardship.

See also Williams v. Salem Township, 92 Pa.Cmwlth. 634, 500 A.2d 933 (1985) *alloc. denied,* 516 Pa. 615, 531 A.2d 781 (1987); ***718** *Hersh v. Zoning Hearing Bd. of Marlborough Township,* 90 Pa.Cmwlth. 15, 493 A.2d 807 (1985); *Serban v. Zoning Hearing Bd. of the City of Bethlehem,* 84 Pa.Cmwlth. 558, 480 A.2d 362 (1984) (burden sustained); *Davis v. Zoning Bd. of Adjustment,* 78 Pa.Cmwlth. 645, 468 A.2d 1183 (1983) (burden sustained); *Malakoff v. Zoning Bd. of Adjustment,* 72 Pa.Cmwlth. 109, 456 A.2d 1110 (1983); *Immordino v. Zoning Hearing Bd.,* 65 Pa.Cmwlth. 79, 441 A.2d 818, 821 (1982) ("[P]roperty owner must sustain the heavy burden of proving that the zoning ordinance imposes an unnecessary hardship *which is unique to his particular property*....") (Emphasis added.)

> A prerequisite to the granting of a hardship zoning variance is the presence of an exceptional and unique hardship to the individual landowner, *unique to that parcel* and not shared by other property owners in the area.... Indialantic's zoning restrictions are common difficulties shared by all other oceanfront lot owners in the area, and are therefore not the unique hardship required to support a variance.

Town of Indialantic v. Nance, 400 So.2d 37, 40 (Fla.App. 5th Dist.1981), *aff'd,* 419 So.2d 1041 (1982) (citation omitted). *See also Fort Lauderdale Bd. of Adjustment v. Nash,* 425 So.2d 578, 579 (Fla.App. 4th Dist.1983); *City of Naples v. Clam Court Marina Trust,* 413 So.2d 475, 477 (Fla.App. 2d Dist.1982); *Lakeshore* ****438** *Property Owners Ass'n v. City of New Orleans Zoning Bd. of Appeals and Adjustments,* 481 So.2d 162, 168 (La.App. 4th Cir.1985), *cert. denied,* 484 So.2d 674 (1986).

We mentioned earlier that there are very few Maryland cases upholding the grant of a variance (or the reversal of a denial). We likewise note that this is also the case in foreign jurisdictions. We mentioned two cases from Pennsylvania above where this occurred. We now discuss several others.

A minimum lot area variance was affirmed in *Russell v. District of Columbia Bd. of Zoning Adjustment,* 402 A.2d 1231 (D.C.App.1979), where, due to the size of the lot, no viable economical use of the property could be had without the ***719** variance. It was determined that the lot was the only lot in the area that had been subdivided into smaller lots prior to the adoption of the zoning ordinance. The Supreme Court of New Hampshire reversed the denial of a variance in *U–Haul Co. of New Hampshire & Vermont, Inc. v. City of Concord,* 122 N.H. 910, 451 A.2d 1315, 1317 (1982), saying: "The location and characteristics of the property involved create greater security requirements ... than ... other property in the area because the parcel ... is less central ... less populated and ... less serviced by law enforcement patrols. This hardship arises from the uniqueness of the building and the land itself." In *Atwood v. City of Portland,* 55 Or.App. 215, 637 P.2d 1302 (1981), *cert. denied,* 292 Or. 722, 644 P.2d 1131 (1982), application for a variance was granted and affirmed on appeal in part because the site was a steep and rocky slope, the former site of a landfill. *See also Higgins v. Township of Radnor,* 13 Pa.Cmwlth. 195, 318 A.2d 761, 763 (1974).

The treatise writers also are in accord with the rule that variances should only be granted when the uniqueness or peculiarity of a subject property is not shared by neighboring property and where the uniqueness of that property results in an extraordinary impact upon it by the operation of the statute, thus creating undue difficulty (or unnecessary hardship in respect to use variances).

> It is *fundamental* that the difficulties or hardships must be unique to justify a variance; they must be peculiar to the application of zoning restrictions *to particular property* and not general in character.... [I]t is not uniqueness of the plight of the owner, but uniqueness of the land causing the plight, which is the criterion. If the hardship is common to the whole neighborhood, it may be ground for an exception or special use permit [if the statute so provides].... [T]he hardship [in order to justify a variance, however,] ... must relate to the particular property of the applicant....

McQuillin, *supra* § 25.167 (emphasis added, footnotes omitted).

> ***720** [I]t is held that a variance may be granted only for hardship which relates specifically to the applicant's land. Thus, a landowner was not entitled to a variance to relieve his land from a restriction which applied equally to all lots of similar size.

Anderson, *supra* § 14.55 (1968).

> It follows that the unnecessary hardship ... must relate to the land, not to the applicant-owner. Hardship which is merely personal to the current owner of real property will not justify the granting of a variance....
>
> In each case [where the variance was denied], the hardship results from an error on the part of the landowner, not from an unduly severe impact of the regulations upon the land in question....
>
> ....
>
> Reviewing a wide variety of variance applications based upon reasons personal to the applicant, the courts have consistently held that such personal difficulties do not constitute unnecessary hardship.

Anderson, *supra* § 18.30 (2d ed.) (footnotes omitted).

> The most important part of [the] law of variances depends upon a distinction between two kinds of hardship. In one type of case, hardship in developing a given lot ... arises from circumstances peculiar to that lot ...; and in that case the appropriate remedy is ... a variance.... In the other types of cases, the hardship ... may arise because of conditions which are general in the neighborhood; ... it is often ****439** held that the appropriate remedy is a change in the zoning.... [T]he courts have usually (but not always) held that variances are inappropriate in that situation.

Williams, *supra* § 142.

> The great strengthening of the criteria for granting variances, ... has thus been particularly evident in the number of cases emphasizing the requirement that hardship must arise from circumstances unique to the particular lot in question.... Moreover, the courts have again emphasized that a variance granted to take care of some hardship ***721** personal to the applicant is not a unique hardship resulting from circumstances peculiar to the piece of land.

Id. § 142.06. *See also* Rathkopf, *supra* § 38.04; Yokley, *supra* § 21–6. ("The burden of proof is on the applicant to establish that his land is uniquely affected resulting in unnecessary hardship.").

Yokley quotes from *Taxpayers Association v. Board of Zoning Appeals,* 301 N.Y. 215, 93 N.E.2d 645, 647 (1950):

> [T]he record does not show that the property suffers a unique or singular disadvantage, not common to other property in the district, through the operation of the zoning ordinance. Here, the hardship, if any, is general and characteristic of the entire area, and the remedy lies in a revision of the zoning ordinance through legislative action, not by the granting of a variance to a single property owner.

Yokley, *supra* § 21–6.

[2] We conclude that the law in Maryland and in Baltimore County under its charter and ordinance remains as it has always been—a property's peculiar characteristic or unusual circumstances relating only and uniquely to that property must exist in conjunction with the ordinance's more severe impact on the specific property because of the property's uniqueness before any consideration will be given to whether practical difficulty or unnecessary hardship exists. Before applying the facts of the instant case to the law and, thus, resolving the case *sub judice,* we must touch upon two other aspects of the process, *i.e.,* the self-inflicted injury and the zoning authorities' acquiescence in issuing a building permit based on plans that left unclear the elevation of the structure and the subsequent inspection.

Self–Inflicted Hardship

[3] We have before referred to *Marino v. Mayor and City Council of Baltimore,* 215 Md. 206, 137 A.2d 198. There, the Court said, "it was incumbent [on the applicant] to [show] ... that the hardship was not the result of the applicants' own actions." *Id.* at 218, 137 A.2d 198. The Court of Appeals ***722** noted in *AD + Soil, Inc. v. County Comm'rs,* 307 Md. at 340, 513 A.2d 893:

> The essence of AD + Soil's argument ... is that the setback requirements ... would cause ... unwarranted hardship because it had obtained its first state permit and constructed its transfer station before it learned of these local requirements.... The Board declined to grant the variances, concluding that Ad + Soil's "hardship" was self-inflicted ... and therefore not the kind of hardship cognizable under the Zoning Ordinance.

The Court affirmed the Board. Foreign jurisdictions are generally in accord. *See Pollard v. Zoning Bd. of Appeals,* 186 Conn. 32, 438 A.2d 1186, 1190 (1982) (" '[S]elf-inflicted or self-created hardship ... is never considered proper grounds for a variance.' ... '[W]here the applicant ... creates a nonconformity, the board lacks power to grant a variance.' ") (citations omitted); *Volkman v. City of Kirkwood,* 624 S.W.2d 58 (Mo.App.1981); *Matter of Schrader,* 660 P.2d 135 (Okl.1983); *Ex Parte La Quinta Motor Inns, Inc. v. Greenville County Bd. of Zoning Appeals,* 279 S.C. 598, 310 S.E.2d 438 (App.1983); *McClurkan v. Board of Zoning Appeals,* 565 S.W.2d 495 (Tenn.1977); *Steele v. Fluvanna County Bd. of Zoning Appeals,* 246 Va. 502, 436 S.E.2d 453, 456 (1993) ("[T]he hardship, if any, was self-inflicted. The placement of the improvements ... was within the control of the Garretts and their contractor, Raintree."). *See also Shafer, supra; VanLandschoot, supra; Walkingstick, supra; Xanthos, supra; St. Clair, supra.* Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively ****440** not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted.

The Granting of the Permit

In *Francis v. MacGill,* 196 Md. 77, 75 A.2d 91 (1950), a property owner sought equitable injunctive relief. The facts ***723** were that while the enactment of a zoning ordinance was pending, the property owner obtained a building permit to construct that which would not be permitted after the enactment of the ordinance. After the ordinance was enacted, the owner constructed, pursuant to the permit, a building that had become prohibited by reason of the passage of the ordinance. The Court noted:

> "Adoption of zoning ordinance *ipso facto* revokes permit for construction ... where no construction has begun."
>
> ... They completely ignored the Zoning Regulations, and they were engaged in an unlawful act.

196 Md. at 85, 75 A.2d 91 (citation omitted). The Court affirmed the revocation of the building permit.

The Court noted, pursuant to a timely appeal, in *Mayor and City Council of Baltimore v. Shapiro,* 187 Md. 623, 634, 51 A.2d 273 (1947), *overruled on other grounds in Nutter v. Non–Profit Housing Co.,* 230 Md. 6, 185 A.2d 360 (1962), where the ordinance was changed prior to commencement of construction under a permit, and where the change made that use, which was previously permitted, prohibited, that the "mere issuance of a permit ... does not create a vested right, or estop[9] the municipal authorities from revoking it." In a case for the issuance of a mandatory injunction that involved an attempt to obtain a permit for what was alleged would be a nonconforming use the court opined in *Board of County Comm'rs v. Snyder,* 186 Md. 342, 347, 46 A.2d 689 (1946): "No permit was issued, and if it had been, it would have conferred no vested right, nor would it have created an estoppel."

In the mandamus case of *County Comm'rs v. Ward,* 186 Md. 330, 340, 46 A.2d 684 (1946), the Court held:

> The Board ..., as an administrative body, was bound to follow the regulations it adopted, in the exercise of ... ***724** delegated legislative power. The fact that it might have rezoned ... does not alter its obligation to adhere to existing regulations....

In the case of *Lipsitz v. Parr,* 164 Md. 222, 164 A. 743 (1933), a case seeking injunctive relief by way of a restraining order, a city officer mistakenly issued a building permit for an ice factory when the statute prohibited ice factories. The Court there held:

> A municipality may be estopped by the act of its officers if done within the scope and in the course of their authority or employment, but estoppel does not arise should the act be in violation of law.... [T]he ordinance forbade the officials ... to grant the permit which the plaintiff asked and obtained....
>
> ... [I]t was therefore unlawful for the officers ... to grant the permit, and it would be unlawful for the licensee to do what the purporting permit apparently sanctioned. A permit thus issued ... does not ... prevent the permit from being unlawful nor from being denounced by the municipality because of its illegality.... *Every one dealing* with the officers and agents of a municipality *is charged with knowledge of the nature of their duties and the extent of their powers, and therefore such a person cannot be considered to have been deceived or misled* by their acts when done without legal authority.
>
> So, even where a municipality has the power, but has done nothing, to ratify or sanction the unauthorized act ... it is not estopped by the unauthorized or wrongful act of its officer ... in issuing a permit that is forbidden by the explicit terms of an ordinance.... *Valentine v. Rds. Directors,* ****441** 146 Md. 199, 206 [126 A. 147] [(1924)].... [Citations omitted, emphasis added.]

164 Md. at 227–28, 164 A. 743.

The Court cited *Lipsitz* in *Inlet Associates v. Assateague House Condominium Assoc.,* 313 Md. 413, 545 A.2d 1296 (1988), a case seeking specific performance and injunctive relief, and also cited *City of Hagerstown v. Long Meadow* ***725** *Shopping Center,* 264 Md. 481, 287 A.2d 242 (1972), a case of a timely appeal of the denial of a building permit. In *Inlet Associates,* the Court opined that "[c]onsequently, '[e]veryone dealing with officers and agents of a municipality is charged with knowledge of the nature of their duties and the extent of their powers, and therefore such a person cannot be considered to have been deceived or misled by their acts when done without legal authority.' " 313 Md. at 437, 545 A.2d 1296. The Court added: "[T]he doctrine of equitable estoppel 'cannot be ... invoked to defeat the ... enforcement of ... ordinances, because of an error or mistake committed by one of its officers ... which has been relied on by the third party to his detriment.' " *Id.*

[4] Accordingly, it appears clear that the mistake of a county official cannot be the "practical difficulty" unique to the

subject property required in order to authorize the grant of the variance sought and obtained by **Ward**.

The authorities elsewhere are in accord.

> The master also erred in finding that unnecessary hardship resulted from the plaintiffs' reliance upon representations by the selectmen. This finding disregards the principal that hardship relates to the special character of the *land,* not to the circumstances of the *owner.*

Richardson, 455 A.2d at 1062.

> [R]elator argues the Board should be estopped from denying the height variance because a city building inspector visited the premises several times and observed the construction taking place but made no complaint....
>
> In any case there is no authority on the part of a building inspector to grant a variance....

Katz v. Board of Zoning Adjustments, 232 So.2d 546, 548 (La.App. 4th Cir.1970). *See also Klanke v. Zoning Bd. of Adjustment,* 83 Pa.Cmwlth. 441, 477 A.2d 907, 909 (1984), and *Walkingstick, supra; Xanthos, supra; and St. Clair, supra.*

***726 Resolution**

We resolve here only the issue of the granting of the variance sought and applied for by **Ward**.

[5] There was no evidence submitted to the Board that the subject site was in any way peculiar, unusual, or unique when compared to other properties in the neighborhood such that the ordinance's height restriction's impact upon the subject property would be different than the restriction's impact upon neighboring properties. In essence, the impact would be the same. The first step of the variance process was thus not met. Had there been evidence before the Board indicating that the subject property was peculiar or unusual and, thus, disproportionately affected by the height restriction, then we might have been able to conclude that the Board was correct. There was, however, no such evidence presented. Therefore, the Board's granting of the variance was arbitrary and illegal.

It is not the purpose of variance procedures to effect a legalization of a property owner's intentional or unintentional violations of zoning requirements. When administrative entities such as zoning authorities take it upon themselves to ignore the provisions of the statutes enacted by the legislative branch of government, they substitute their policies for those of the policymakers. That is improper. We shall reverse.

JUDGMENT REVERSED; COSTS TO BE PAID BY APPELLEE.

All Citations

102 Md.App. 691, 651 A.2d 424

Footnotes

1 Some ordinances use the conjunctive, “and,” creating a requirement that both practical difficulty “and” unreasonable hardship exist. Because hardship is the most severe standard, this means that it is the standard used regardless of whether an area or use variance is sought. Some ordinances use the disjunctive, “or,” to separate the two standards. These jurisdictions construe the ordinance to require the unreasonable hardship standard to be used when “use” variances are sought, because use variances are believed to be more disruptive of zoning goals and purposes, but require the lesser “practical difficulty” standard when “area” variances are sought.

2 Appellee, several times in his brief, states that the plans “clearly” show the height of the building. We are tempted to respond with a short rejoinder. We resist. The heights shown on the plans are not clearly shown—they are not shown at all—but must be computed, as we have done, without the benefit of a scale by a difficult reference to dimensions that are given for horizontal distances.

3 As we have said, the application, building permit and the county data indicated that its height was to be fourteen feet.

4 It is not clear that section 307, “Variances,” would even permit any use variances except perhaps as to signs or parking, as the section is framed primarily in terms of “area” variance requests.

5 Matters relating to area issues are intended to be, and usually are, addressed as special exceptions. Matters relating to “use” issues are intended to be, and usually are, addressed as conditional uses. The terms, however, are, with some frequency, intermixed. Because both concepts envision that they are permitted so long as certain conditions are met, the indiscriminate use of the two terms has created little difficulty. In a pure sense, however, “conditional uses” refer to uses while exceptions normally apply to area, *i.e.,* yard, height, and density matters. In either event, conditional uses and special exceptions are permitted uses, so long as the conditions set out in the ordinance are met.

6 Exceptional is used here in its generic sense.

7 Another typical Baltimore City case in that regard is *Easter v. Mayor and City Council of Baltimore,* 195 Md. 395, 400, 73 A.2d 491 (1950), where the Court noted “facts to justify an exception ... [show] that the hardship affects the particular premises and is not common to other property in the neighborhood.” This is a variance standard.

8 The application and plans in the case *sub judice* were, at best, vague and unclear as to the height of the structure.

9 The applicability of the “doctrine of zoning estoppel” has still not been accepted (or rejected) by the Court of Appeals in spite of the opportunity presenting itself to that Court as recently as our case of *Offen v. County Council,* 96 Md.App. 526, 625 A.2d 424 (1993), *rev'd in part,* 334 Md. 499, 639 A.2d 1070 (1994).

Cromwell v. Ward, 102 Md.App. 691 (1995)
651 A.2d 424

End of Document © 2021 Thomson Reuters. No claim to original U.S. Government Works.

137 Md.App. 90
Court of Special Appeals of Maryland.

James RIFFIN,
v.
PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY, Maryland, et al.

No. 3002, Sept. Term, 1999.
|
March 2, 2001.

Synopsis
Landowner appealed decision of the county board of appeals denying request for a special exception to construct a commercial recreation facility to accommodate bungee jumping. The Circuit Court, Baltimore County, Thomas J. Bollinger, Sr., J., affirmed. Landowner appealed. The Court of Special Appeals, Moylan, J., held that the proposed use was a "bungee jumping operation" prohibited by state law and county ordinance.

Affirmed.

West Headnotes (7)

[1] **Administrative Law and Procedure** Substantial evidence

The standard of review of an administrative agency's findings of fact requires the Court of Special Appeals to determine whether substantial evidence on the record as a whole supports its conclusions.

[2] **Administrative Law and Procedure** Substitution of reviewing court's discretion or judgment

The Court of Special Appeals cannot substitute its judgment for that of an administrative agency on findings of fact, but must exercise a restrained and disciplined judicial judgment so as not to interfere with the agency's factual conclusions.

[3] **Zoning and Planning** Entertainment and recreation; theaters and clubs

Landowner's proposed commercial recreation facility to accommodate bungee jumping was a "bungee jumping operation" prohibited by state law and county ordinance, rather than a "commercial recreational facility," and, thus, the landowner was not entitled to a special exception; the crane operator acknowledged payment by the landowner, and the county ordinance defined "commercial recreational facility" to exclude an amusement park or similar use. Code, Business Regulation, § 3–503.

[4] **Zoning and Planning** Grounds for grant or denial in general

The county board of appeals cannot grant a special exception for a use that is neither permitted by law nor by county zoning regulations.

[5] **Zoning and Planning** Entertainment and recreation; theaters and clubs

Evidence supported conclusions by the county board of appeals that a one-story office building was not unique and that the landowner was not entitled to special exception and variances to construct a commercial recreation facility.

[6] **Zoning and Planning** Nature and necessity in general

A "variance," if granted, permits a use that is normally prohibited and presumed to be in conflict with the ordinance.

[7] **Zoning and Planning** Presumptions and burden of proof

An applicant for a variance bears the burden of overcoming the presumption that the proposed use is unsuitable.

Attorneys and Law Firms

****923** ***91** James Riffin, Timonium, for appellant.

Peter Max Zimmerman and Carole S. Demilio, Towson, for appellees.

***92** Submitted before MOYLAN,* SONNER and PAUL E. ALPERT (retired, specially assigned), JJ.

Opinion

MOYLAN, Judge.

The appellant, James Riffin, challenges an Order issued by Judge Thomas J. Bollinger in the Circuit Court for Baltimore County affirming the decision of the Baltimore County Board of Appeals, which denied his petitions for a special hearing, special exception, and five separate zoning variances. On appeal, he contends:

1. that the Board erred in finding that the appellant's proposed use of the property constituted a "bungee jumping operation"; and

2. that the Board acted arbitrarily and capriciously in denying his petitions.[1]

At some point in the spring of 1998, the appellant petitioned the Baltimore County Zoning Commissioner for a Special Hearing, for a Special Exception, and for nine area parking and sign variances in an effort to operate a "Commercial Recreational Facility" at 1941 Greenspring Avenue Drive in Timonium. At that time, there existed on the property an old one-story building which was rented for office space. The property was zoned for M.L. (Manufacturing–Light). It was the appellant's intention in seeking the exception and the variances to create a commercial/recreation facility that would accommodate bungee jumping.

On June 1, 1998, the Zoning Commissioner granted four of the requested nine variances for existing non-conforming front and side-yard setbacks but denied all of the other requests. The appellant appealed that decision to the Baltimore County Board of Appeals ("the Board") and a three day public hearing ***93** began on November 25, 1998.[2] In the course of that hearing, the Board heard extensive testimony from the appellant regarding his plans for the property. The Board also heard testimony from adjacent property owners, from the Office of the People's Counsel, and from a representative from the Greater Timonium Community Council, all of whom testified in opposition to the appellant's petitions.

On December 31, 1998, the Board issued an extensive written Opinion denying the appellant's request for both the Special Hearing and Special Exception for bungee jumping and for the requested variances that had been denied by the Zoning Commissioner. The appellant appealed to the Circuit Court for Baltimore County. On October 4, 1999 a hearing was held before Judge Bollinger. On October 7, Judge Bollinger affirmed the Board's decision, finding that it was supported by substantial evidence and was not premised on any error of law. The appellant noted this timely appeal.

[1] **[2]** With regard to the standard of review to be applied in a case such as this, we explained in *Stover v. Prince George's County,* 132 Md.App. 373, 380–81, 752 A.2d 686 (2000), that:

> [w]hen reviewing a decision of the administrative agency, this Court's role is "precisely the same as that of the circuit court." "Judicial review of administrative agency action is narrow. The court's task on review is *not* to 'substitute its judgment for the expertise of those persons who constitute the administrative agency."
>
> ****924** Rather, "*[t]o the extent the issues on appeal turn on the correctness of an agency's findings of fact, such findings must be reviewed on the substantial evidence test.*" The reviewing court's task is to determine "whether there was substantial evidence before the administrative agency on the record as a whole to support its conclusions." *The court cannot substitute its judgment for that of the agency, but* ***94** *instead must exercise a "restrained and disciplined judicial judgment so as not to interfere with the agency's factual conclusions.*"

(Citations omitted; emphasis supplied).

[3] The appellant first contends that the trial court erred in denying his petition for a Special Hearing and a Special Exception in order to accommodate bungee jumping. The appellant specifically contends that the trial court erred in finding that his proposed use of the property would amount to a "bungee jumping operation," which both parties agree is prohibited in Maryland,[3] rather than a "recreational use," which is permissible. We are not persuaded.

In its Opinion denying the appellant's request for a Special Hearing and Special Exception, the Board set out, in great detail, its findings with respect to the appellant's proposed use:

> The Board has carefully considered the testimony produced and the numerous exhibits of the evidence admitted and items marked for identification and weight assessment. This Board's initial review involved bungee jumping and how it is addressed in the Maryland Code. A review of the law and supporting documents afforded the Board members some insight into the thinking of the legislature on this subject.... *The Board concluded that the bungee jumping operations as proposed by the appellant/petitioner was in actuality a bungee jumping operation.* Regardless of ***95** whether using the word "operation" or the word "activity," it is semantical and one resembles the other. The inference regarding fees came out in the testimony by a crane operator who acknowledged that he was paid by Mr. Riffin for operating the crane, and that he expected to continue on as a crane operator if Mr. Riffin were allowed to have a bungee jumping operation. As well, Mr. Riffin indicated that individuals would be able to rent the crane and /or any needed equipment in order to perform bungee jumping activities. *These representations produce the appearance of being a bungee jumping operation, which is not allowed by Maryland law, this would not be a permitted use under the Baltimore County Zoning Regulations ["BCZR"].*

The Board then explored whether the appellant's proposed use could in any way be viewed as a Commercial Recreational Facility, a permissible use for the property under the zoning regulations. In rejecting the appellant's contention, the Board stated:

> The Board then looked at the definitions of Commercial Recreational Facilities under BCZR 101.... *The definition notes that a commercial recreational facility shall not include an amusement park or similar use.* Throughout the numerous discussions as to what bungee jumping would be considered, it came up ****925** that it was frequently done in conjunction with amusement-like operations and was described by expert witnesses as a "thrill seeking activity." It was noted that State legislation regarding bungee jumping was put in that Section of the Annotated Code as amusement activities.

In rejecting the appellant's final two arguments with respect to his request for a Special Exception, the Board found 1) that bungee jumping did not qualify as a permitted use under Section 253 of the BCZR, which permits practice or physical training conditioning facilities and fields for amateur or professional sports organizations; and 2) that bungee jumping did not qualify as a use permitted without special exception under Section 270 of the BCZR 2–115 Schedule of Special Exceptions. That Schedule provides that a community building, ***96** swimming pool, or other structural or land use devoted to civic, social or recreational and educational activities is a use permitted without special exception.

[4] The appellant is correct in that a requested special exception should be granted unless there is substantial evidence that it would have an adverse effect above and beyond those inherently associated with such a special exception use irrespective of its location within the zone. What the appellant fails to acknowledge, however, is that the Board made a factual finding that the appellant's proposed use of the property amounted to a "bungee jumping operation," not a "recreational facility." That finding alone required the Board to deny the petition for the special exception. The Board simply cannot grant a special exception for a use that is neither permitted by law nor by Baltimore County Zoning Regulations. There is substantial evidence in the record to support that finding by the Board. We see no error.

[5] Additionally, we note that even assuming *arguendo* that the Board erred in finding that the appellant's proposed use was an illegal "bungee jumping operation," we would still hold that the Board did not err in denying the appellant's petition for a Special Exception. In its Opinion the Board carefully examined the criteria for granting a request for a special exception under Section 502.1 of the BCZR.[4] After ***97** doing so, the Board found that the appellant failed to satisfy those criteria. We hold that there was substantial evidence on the record supporting that decision.

[6] **[7]** With regard to the appellant's variance requests, we note that a variance, if granted, permits a use that is normally prohibited and presumed to be in conflict with the ordinance. *North v. St. Mary's County,* 99 Md.App. 502, 510, 638 A.2d 1175 (1994). "An applicant for a variance bears the burden of overcoming the presumption that the proposed use is unsuitable. That is done, if at all, by satisfying fully the dictates of the statute authorizing the variance." *North,* 99 Md.App. at 510, 638 A.2d 1175.

In denying the appellant's requests for variances, the Board explained:

Section 307.1 of the *Baltimore County Zoning Regulations* states, in pertinent part, as follows:

> ****926** "... [T]he County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area 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* ... Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area .. regulations, and only in such manner as to grant relief without injury to public health, safety, and general welfare."

As well, this Board enjoys the guidance provided by the Court of Special Appeals in *Cromwell v. Ward,* 102 Md.App. 691 [651 A.2d 424] (1995). In requiring a pre-requisite finding of "uniqueness," the Court defined the term and stated:

> ***98** In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. *"Uniqueness" of a property for zoning purposes requires that the subject property has an inherent characteristic not shared by other properties in the area, i.e.,* it shape, topography, subsurface condition, environmental factors, historical significance, access, or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions....
>
> *It is this Board's finding that the proposed site is in no way unique, unusual or different from the other properties that are existent in this M.L.-I.M. zone.* The Maryland Department of Assessments and Taxation, real Property System map, shows just how similar in size and shape all of the properties are along Greenspring Drive. Testimony by Mr. Patton indicated that this property was consistent with others in the community, and he noted that the gentle slope off of Greenspring Drive was consistent with other properties, further noting that some chose to fill in their properties before building and have entrances at the rear of their locations.... At no time in the hearing did the appellant entertain any historical significance to the site nor were environmental or subsurface conditions documented. Mr. Riffin did testify as to the damage to the interior of his building but did not document the same with photographic exhibits, receipts for repairs or documentation by some authority regarding the nature or extent of this damage. There was no testimony or evidence regarding abutting properties restricting his activities or imposing any unique characteristics upon his site. *In the absence of an initial finding of uniqueness, the inquiry under Section 307.1 stops and, in this case, the three variances must be denied.*

(Emphasis supplied). We see no error.

JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANT.

All Citations

137 Md.App. 90, 767 A.2d 922

Footnotes

* Moylan, J., participated in the hearing and conference of this case while an active member of this Court; he participated in the adoption of this opinion as a retired, specially assigned member of this Court.

1 We note that in his brief to this Court, the appellant raised five issues with approximately twenty subcontentions. We have condensed those subcontentions into two.

2 The public hearing was held on November 25, December 15, and December 17, 1998.

3 Md.Code, Business Regulation, § 3–503 specifically provides:
§ 3–503. **Prohibition on bungee jumping operation.**
(a) *Definitions.*—(1) in this section the following words have the meaning indicated.
(2) "Bungee jump" means jumping or falling by an individual from a height while attached to a rope or cord that is elastic, rubber, or latex.
(3) "Bungee jumping operation" means an operation that allows an individual to bungee jump for a fee or dues.
(b) *Prohibition.*—A person may not conduct a bungee jumping operation.
(c) *Penalties.*—A person who violates subsection (b) of this section is guilty of a misdemeanor and, on conviction, is subject to a fine not exceeding $2,500 or imprisonment not exceeding 6 months or both.

4 Section 502.1 specifically provides:

Before any Special Exception may be granted, it must appear that the uses for which the Special exception is requested will not:

a. Be detrimental to the health, safety or general welfare of the locality involved;
b. Tend to create congestion in roads, streets or alley therein;
c. Create a potential hazard from fire, panic, or other dangers;
d. Tend to overcrowd land and cause undue concentration of population;
e. Interfere with adequate provisions for schools, parks, water, sewerage, transformations or other public requirements, convenience, or improvements;
f. Interfere with adequate light and air;
g. Be consistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; nor
h. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations.

End of Document © 2021 Thomson Reuters. No claim to original U.S. Government Works.

KeyCite Yellow Flag - Negative Treatment
Distinguished by Montgomery County v. Merlands Club, Inc., Md., April 17, 1953

195 Md. 395
Court of Appeals of Maryland.

EASTER

v.

MAYOR & CITY COUNCIL OF BALTIMORE et al.

No. 176.
|
May 12, 1950.

Synopsis

Action by Andrew J. **Easter** against **Mayor** and City Council of Baltimore and others challenging validity of city's approval of construction of addition on front of store and dwelling. The Baltimore City Court, Emory H. Niles, J., rendered judgment for defendants and plaintiff appealed. The Court of Appeals, Henderson, J., held that granting of variance of setback requirements and occupancy rule was not warranted.

Reversed.

West Headnotes (5)

[1] **Zoning and Planning** Grounds for grant or denial in general

Board of Zoning Appeals of City of Baltimore in granting special exceptions must consider the factors set out as standard in zoning ordinance, and its action must be reasonable in light of these and all other pertinent facts.

1 Cases that cite this headnote

[2] **Zoning and Planning** Nature and extent of power

The power of Board of Zoning Appeals on City of Baltimore under zoning ordinance to grant exceptions must be strictly construed.

1 Cases that cite this headnote

[3] **Zoning and Planning** Necessity of showing

Zoning and Planning Presumptions and burden of proof

Burden of showing facts to justify an exception of variance under zoning ordinance rests upon applicants, and it must be shown that hardship affects particular premises and is not common to other property in neighborhood.

8 Cases that cite this headnote

[4] **Zoning and Planning** Profit or disadvantage; financial considerations

Mere fact that variance would make property more profitable is not a sufficient ground to justify granting of variance from setback requirements of Baltimore Zoning Ordinance.

8 Cases that cite this headnote

[5] **Zoning and Planning** Building or setback lines

That other buildings extended to front line of lot and lot was irregular did not authorize Board of Municipal and Zoning Appeals of City of Baltimore to grant a permit for construction of addition on front of store and dwelling in variance of setback rules and occupancy requirement on ground of hardship.

3 Cases that cite this headnote

Attorneys and Law Firms

***397** ****491** John F. Heath, Baltimore, for appellant.

***398** Benjamin Kann and Malcolm J. Coan, Baltimore, for appellees J. P. **Easter** and wife.

Thomas N. Biddison, City Sol., Edwin, Harlan, Deputy City Sol., and Hamilton O'Dunne, Asst.City Sol., Baltimore, for appellee **Mayor** and City Council of Baltimore.

Before MARBURY, C. J., and DELAPLAINE, COLLINS, GRASON, HENDERSON and MARKELL, JJ.

Opinion

HENDERSON, Judge.

This appeal is from a judgment of the Baltimore City Court affirming the action of the Board of Municipal and Zoning Appeals in granting a permit for the construction of a one-story and basement addition on the front of a store and dwelling at 6418 Belair Road, owned by John P. **Easter**. The only protestant, Andrew J. **Easter**, is a brother of the permittee, residing at 6420 Belair Road, where he conducts a tavern.

As stated by the trial Court, 'The property is in a First Commercial Use, C. Area District, and the permit would allow the store front to be brought out to the building line, in contravention of paragraph 24 of the Zoning Ordinance, which requires a 10-foot minimum depth of front yard in the area in question, and of the percentage of occupancy requirements under paragraph 21, bringing the percentage of occupancy to 85% as opposed to 60%, as provided in the Ordinance. The Board of Municipal and Zoning Appeals granted the permit under the provision of Paragraph 33(c) on the ground that '* * * due to its peculiar location and surroundings it is a case of practical difficulty and unnecessary hardship, since the Tavern already obstructs the view of the store where the addition is now proposed''. The court thought there was 'evidence sufficient to support the legal definition of a hardship and * * * in fact, it would be a hardship to allow one brother ****492** to have a tavern all the way out to the street, and to deny the other brother the right to build his store out to the same line as the tavern.'

The Board found that the store was 'on the west side of Belair Road, 105 feet south of **Easter** Terrace. * * * ***399** Adjacent to the premises under appeal is a building containing a tavern which is built out to the front line of the lot. To the north between **Easter** Avenue and Kenwood Avenue there are several buildings constructed to the front lines of the lot and the proposed addition would not affect access of light and air to any neighboring properties, nor would it even cut off the view up and down the street. The lot in question is of very shallow depth and irregular in shape * * *.' The store and tavern were built as semidetached buildings. In 1935 Andrew J. **Easter** obtained a permit to build a sort of covered entrance-way out to the building line. John P. **Easter** did not object, and there were no protests. In his present application John P. **Easter** states that since his brother 'has built out in front of us it has hid our store making it difficult to rent.' There is a small triangular vacant lot to the south of 6418, and a church property adjoining to the south, across an alley laid out but apparently not opened. The church is set back the required distance. Andrew J. **Easter** has applied for a permit, and obtained the approval of the Board, to develop the land to the north, comprising about six acres, as a shopping center with off-street parking facilities and the required set-back. If this project is carried out, he states that he proposes to remove the entrance in front of his tavern.

[1] **[2]** We may assume here, as we have assumed in previous cases, that the delegation to the Board of Zoning Appeals of the power to make special exceptions or variances is valid, and that the standards set up in Section 32(j) are adequate. Colati v. Jirout, 186 Md. 652, 656, 47 A.2d 613; Heath v. **Mayor** and City Council of Baltimore, 187 Md. 296, 49 A.2d 799; Heath v. **Mayor** and City Council of Baltimore, Md., 58 A.2d 896, 898. The Board must consider the factors set out in that section and 'its action must be reasonable in the light of these and all other pertinent facts.' Heath v. **Mayor** and City Council of Baltimore, supra, 187 Md. 305, 49 A.2d 804. The power to grant exceptions ***400** must be strictly construed. Colati v. Jirout, supra, 186 Md. page 659, 47 A.2d 613.

[3] **[4]** The burden of showing facts to justify an exception or variance rests upon the applicant, and it must be shown that the hardship affects the particular premises and is not common to other property in the neighborhood. Rathkopf, Zoning, 2d Ed., p. 215; Levy v. Board of Standards and Appeals, 267 N.Y. 347, 196 N.E. 284. The mere fact that the variance would make the property more profitable is not a sufficient ground to justify a relaxation of setback requirements. Garden View Homes v. Board of Adjustment, 137 N.J.L. 44, 57 A.2d 677.

In the instant case there is no suggestion that the Board failed to 'act as a fact-finding body' or to 'give consideration to the rules, regulations, restrictions, guides and standards set forth' in the Ordinance (paragraph 33(c)). The question is whether the undisputed facts support the Board's action. The fact that the lot is irregular has no bearing on the question, nor is it material that three buildings, some distance to the north, extend to the building line. These may have been built before the passage of the Ordinance, or they may have been built under permit or without permit. As was said in Potts v. Board of Adjustment, 133 N.J.L. 230, 43 A.2d 850, 854: 'Prior exceptions granted by the adjustment board are not in themselves controlling. Ill-advised or illegal variances do not

furnish grounds for a repetition of the wrong. If that were not so, one variation would sustain if it did not compel others, and thus the general regulation eventually would be nullified. The annulment of zoning is a legislative function that is beyond the domain of the zoning board.' See also the cases collected in a note 168 A.L.R. 13, 41-44. The same principle was announced and applied in **493 Heath v. Mayor and City Council of Baltimore, supra, Md., 58 A.2d 896, 898, Mayor and City Council of Baltimore v. Byrd, Md., 62 A.2d 588, 591, and Cassel v. Mayor and City Council of Baltimore, Md., 73 A.2d 486.

*401 The principal fact relied upon to justify an exception to the area and set-back rules, adopted in the general interest under the police power, is the existence of an exception on the adjoining lot. Undoubtedly this is detrimental to the applicant, although his case is somewhat weakened by his tacit acceptance of the situation over a period of years. But we think the detriment to the applicant must be weighed against the benefit to the community in maintaining the general plan. 'It is by these gradual encroachments, individually or relative insignificance, that the integrity of the general scheme is undermined and ultimately shattered. One departure serves as justification for another * * *.' Dubin v. Wich, 120 N.J.L. 469, 200 A. 751, 754. In the case of non-conforming uses, the ordinance tolerates their continuance, but looks towards their ultimate elimination. Colati v. Jirout, supra. The same principle applies to special exceptions. Heath v. Mayor and City Council of Baltimore, supra, Md., 58 A.2d 896. Use variances are doubtless more serious than dimensional changes, but that is only a matter of degree.

In People ex rel. Fordham Manor Reformed Church v. Walsh, 244 N.Y. 280, 286, 155 N.E. 575, 577, it was contended that the existence of a garage immediately adjoining the proposed garage was sufficient justification for the grant of an exception on the ground of unnecessary hardship. But the Court, speaking through Chief Judge Cardozo, said: 'We think the reasons assigned are insufficient to supply a basis for a departure from the map. They amount to nothing more than this, that a garage may be built because there is another one next door.' See also Ventresca v. Exley, 358 Pa. 98, 56 A.2d 210, 212. No estoppel can be raised against the Board by reason of its approval of similar extensions in other cases. Appeal of Valicenti, 298 Pa. 276, 148 A. 308; Note 119 A.L.R. 1509, 1517.

[5] Under the circumstances we think the action of the Board cannot be sustained.

Judgment reversed, with costs.

All Citations

195 Md. 395, 73 A.2d 491

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

216 Md. 271
Court of Appeals of Maryland.

PARK SHOPPING CENTER, Inc., and St. Mary's County Planning and Zoning Comms.
v.
LEXINGTON PARK THEATRE CO., Inc., et al. and Zoning Board of Appeals for St. Mary's Co.

No. 150.
|
April 1, 1958.

Synopsis
Proceeding on application to municipal zoning and planning commission for use and occupancy permits for certain premises. The commission disapproved the application, and applicant appealed to zoning board of appeals for the county which reversed the decision of the commission, and the commission appealed. The Circuit Court, St. Mary's County, John B. Gray, Jr., J., affirmed action of board, and commission appealed. The Court of Appeals, Brune, C. J., held that there was no substantial evidence to support a finding that use and conformity with zoning restrictions would prevent applicants from making a reasonable use of their property and in view of absence of evidence of any hardship or injustice resulting from requiring applicants to conform, action of zoning board of appeals in granting a variance was unwarranted and erroneous.

Order reversed and case remanded for entry of an order in accordance with opinion.

West Headnotes (3)

[1] **Zoning and Planning** Effect of other applications or nonconforming uses
It is not proper to consider the existence of surrounding ill-advised or illegal zoning variances as grounds for granting additional variances.
2 Cases that cite this headnote

[2] **Zoning and Planning** What constitutes in general
The criterion for determining unnecessary hardship, as a ground for granting a zoning variance, is whether the applicable zoning restriction, when applied to the property in the setting of its environment, is so unreasonable as to constitute an arbitrary and capricious interference with the basic right of private ownership.

[3] **Zoning and Planning** Grounds for grant or denial in general
In proceeding on application for use and occupancy permits at variance with zoning restrictions there was no substantial evidence to support a finding that use and conformity with zoning restrictions would prevent applicants from making a reasonable use of their property, and in view of absence of evidence of any hardship or injustice resulting from requiring applicants to conform, action of zoning board of appeals in granting a variance was unwarranted and erroneous.

Attorneys and Law Firms

***273** ****843** Arthur L. Rysticken, Lexington Park (Joseph D. Weiner, Leonardtown, on the brief), for Park Shopping Center, Inc.

William O. E. Sterling, Leonardtown, for St. Mary's County Planning & Zoning Comms.

William M. Loker, Jr., Leonardtown (Loker, Wigginton & Loker, Leonardtown, on the brief), for appellees.

Before BRUNE, C. J., and HENDERSON, HAMMOND, PRESCOTT and HORNEY, JJ.

Opinion

BRUNE, Chief Judge.

This is an appeal from an order of the Circuit Court for St. Mary's County, ****844** Maryland, affirming the action of the Board of Zoning Appeals for St. Mary's County in reversing the decision of the St. Mary's County Planning and Zoning Commission which denied Certificates of Use and Occupancy to the appellees. The action of the Circuit Court resulted in granting to the appellees a variance from the Zoning Ordinance for St. Mary's County.

On March 2, 1955, the Lexington Park Theatre Company, Inc. (the 'Theatre Company'), located in Lexington Park, Maryland, applied to the St. Mary's Planning and Zoning Commission for a Use and Occupancy Permit for a one story building to contain storage space, a lobby for the adjoining theatre, and one retail store. On April 9, the Planning and Zoning Commission granted approval of the plans for ***274** the one story building upon condition that the Theatre Company would remove that part of the building which was to extend into the 25-foot rear yard and thus constituted a violation of Section VIII D (5) of the Zoning Ordinance for St. Mary's County (approved August 24, 1945, and corrected, revised and amended February 26, 1952.) On June 30, 1955, the Theatre Company filed a new application requesting authority to add a second floor for use as office space. This application was also approved. The Theatre Company then proceeded with construction of the building and by the summer of 1956 the building was substantially completed.

The completed building was not in compliance with the permits granted by the Planning and Zoning Commission in that it still contained the extension which encroached upon the 25-foot back yard, and the upstairs portion of the building was not used in compliance with the original Use and Occupancy Permit, since, instead of leasing the rooms for use as offices, the Theatre Company had installed kitchens in four of the units and rented them as apartments and also rented the remaining rooms as individual living quarters.

In December of 1956 the Theatre Company filed applications for Use and Occupancy Permits for the first floor as one retail store unit, and the second floor as apartments and living quarters. The Zoning and Planning Commission disapproved this application on the ground that the plans were in violation of the Zoning Ordinances (presumably with reference to the encroachment on the 25-foot back yard, and the use of the upper floor as residences without providing for a 30-foot side or rear yard as required by Section VIII D (3) of the Zoning Ordinance.) From this decision the Theatre Company appealed to the Zoning Board of Appeals for St. Mary's County, claiming, *inter alia*, that the decision of the Planning and Zoning Commission was arbitrary and capricious. After publication of a notice (which did not specifically state that the Theatre Company was asking for a variance) and a hearing, the Zoning Board of Appeals rendered its decision reversing the action of the Planning and Zoning Commission on the ground that there was evidence of so many other violations of the Zoning Ordinance in the ***275** vicinity of the Theatre Company's building that it would be unjust to enforce the ordinance against the Theatre Company alone. The Board of Zoning Appeals stated in its opinion that 'Violations apparent from existing uses of the property in respect of the required space for loading and unloading of goods and materials appear frequent and to have been passed by the Zoning Commission and the usual Certificate[s] of Use and Occupancy were issued to the buildings notwithstanding such violations * * *.'

The Board of Zoning Appeals also found as a fact that the Theatre Company had knowingly violated the Zoning Ordinance when it built the extension into the 25-foot year yard and used the upper floor for residential purposes and said that, 'if it were not for the existence of what appears to have been almost a customary thing for ****845** minor violations to be overlooked or condoned by the Zoning Commission we would not say that the Appellants [appellees here] were in the best position to ask that a variance be condoned in the present instance.' The Board found it difficult to decide what category, as defined by the Zoning Ordinance Section II, the second floor residences fitted into and apparently did not reach a conclusion on that question, but held they were not multiple dwellings.

The appellants, Park Shopping Center, Inc. and the County Planning and Zoning Commission, appealed from this decision to the Circuit Court for St. Mary's County, and the cases were consolidated for hearing (as they are here). After a full hearing the Circuit Court ruled that there was sufficient evidence before the Zoning Board of Appeals to grant the variance for the first floor of the building. It also found that the second floor of the building constituted a 'multiple dwelling' as defined by Section II of the Zoning Ordinance for St. Mary's County, and that although the Zoning Board of Appeals had not specifically granted a veriance for this second story, it could have determined from the evidence before it that no appreciable mischief would be done to the surrounding area or to the public interest by granting a

variance for the second story. Thereupon the Court affirmed the decision of the Zoning Board of Appeals.

***276** The appellants make three contentions: first, that the decision of the Zoning Board was arbitrary and capricious because there was no showing of any such unwarranted hardship as would be necessary to justify a variance; second, that the Circuit Court could not properly grant a variance for the use of the second floor as a multiple dwelling when the Zoning Board of Appeals itself did not decide that this was a multiple dwelling unit and therefore granted no variance; and third, that the notice of hearing published by the Zoning Board of Appeals was not legally sufficient since it did not state that the matter of a variance was in issue.

With respect to the appellants' first contention, it is evident from both the opinion of the Board of Zoning Appeals and the opinion of the Circuit Court that the Board used the existence of other violations or variances in the immediate area tolerated or granted by the Planning and Zoning Commission to justify the issuance of the Certificates of Use and Occupancy here in question.

[1] This Court has held that it is not proper to consider the existence of surrounding ill-advised or illegal variances as grounds for granting additional variances. As stated in Easter v. Mayor and City Council of Baltimore, 195 Md. 395, 400, 73 A.2d 491, 492, 'Prior exceptions granted by the adjustment board are not in themselves controlling. Ill-advised or illegal variances do not furnish grounds for a repetition of the wrong. If that were not so, one variation would sustain if it did not compel others, and thus the general regulation eventually would be nullified.' In Marino v. City of Baltimore, 215 Md. 206, 220, 137 A.2d 198, 203, Judge Horney stated for the Court: 'Certainly a prior exception granted by the Board does not control the granting of a subsequent exception.'

The authority under which the Board of Zoning Appeals can grant a variance is found in Section XVIII (3) of the Zoning Ordinance for St. Mary's County which states that the Board shall have power '[t]o authorize upon appeal in specific cases such variance from the terms of the ordinances as will not be contrary to the public interest, where, owing to special conditions, the enforcement of the provisions of ***277** this ordinance will result in *unwarranted hardship and injustice*, but which will most nearly accomplish the purpose and intent of the Zoning Plan and of the Zoning Regulations.' (Emphasis supplied.) It is in language typical of a variance as distinguished from an exception. ****846** Montgomery County v. Merlands Club, 202 Md. 279, 288, 96 A.2d 261. Cf. Marino v. City of Baltimore, supra, which points out that under the Baltimore City Ordinance an 'exception' perhaps overlaps a 'variance' in cases of 'practical difficulties or unnecessary hardships' and the two are accordingly discussed without distinction in many cases arising under that Ordinance. 215 Md. 216, 137 A.2d 202. The section before us is an almost verbatim copy of the enabling act, Section 22(g)(3), Article 66B of the Maryland Code (1957 Ed.).

[2] This Court has had many occasions to pass upon the question of what constitutes such a hardship and injustice as to sustain the granting of a variance. It has most recently done so in Judge Horney's clear and exhaustive opinion in Marino v. City of Baltimore, supra. No useful purpose would be served by repeating here what was well said there beyond quoting the test of hardship therein stated (215 Md. 217, 137 A.2d 202): 'The criterion for determining unnecessary hardship is whether the applicable zoning restriction when applied to the property in the setting of its environment is so unreasonable as to constitute an arbitrary and capricious interference with the basic right of private ownership. [Citing Carney v. City of Baltimore, 1952, 201 Md. 130, 137, 93 A.2d 74, 76-77.]'

[3] The Theatre Company has not made any showing of hardship such as to justify the granting of a variance. We find no substantial evidence in the record to support a finding that use in conformity with the Zoning restrictions would prevent the appellees from making a reasonable use of the property as to either the first or second floor. On the contrary, the testimony establishes the fact that when the St. Mary's County Planning and Zoning Commission approved the first application for a Certificate of Use and Occupancy for the first floor of the building to be used as a retail store, lobby space for the theatre, and storage, the Theatre Company had ***278** agreed to remove the obstruction in the rear yard shown on the building plans. It is difficult to believe that it would have so readily acquiesced in this removal if it had felt that it would prevent a reasonable use of its property. The chief, if not the only, stated ground for the Theatre Company's objection to removing that structure is that it 'was unfair to have to, the other stores had not but I said I would move it.' (Testimony of Mr. Dean, described as 'one of the owners of the building under consideration,' before the Zoning Board of Appeals.) There is no showing, so far as we can discover, as to either the cost or difficulty of removing the 25-foot extension and transferring the equipment therein to the main building.

As to the second floor, the evidence of hardship is perhaps even less. When asked by a member of the Board of Zoning

Appeals whether the upstairs had been used, Mr. Dean replied: 'To some extent for rooms instead of offices. If the business for rooms drops off, we can use them for offices.'

In view of the absence of evidence of any hardship or injustice, we are of the opinion that the Zoning Board of Appeals' action was unwarranted and erroneous.

Our decision on this ground makes it unnecessary to consider the other questions raised by the appellants.

Order reversed, and case remanded for the entry of an order in accordance with this opinion; costs to be paid by appellees.

All Citations

216 Md. 271, 139 A.2d 843

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Bair Day 3 Ex. List

People's Counsel
Exh. 14 - Code Sections
Ex 15 - Internet Realtor Info.

Petitioners
Exh 17 - Real Estate Testimony
Ex 18 - Ar. Plath
Ex 19 CBC Applic.
Ex 20 CBC Approv
Ex 21 County Complaint
Ex 22 Photos "Frame"
Ex 23 Frame Height
Ex 24 Photos Property
Ex 25 Drawing
Ex 26 - Signs

Protestants -
As previously submitted via email

Ex 30	Ex 14a-d	Withdrawn Ex.
Ex 24	Ex 18a-b	16a-e
Ex 28	Ex 18c-e	15a-d
Ex 6a-m	Ex 17a-f	25-a-d
Ex 10a-c		33
Ex 12		
Ex 11a-b		

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

March 30, 2021

NOTICE OF DELIBERATION

IN THE MATTER OF: Donna V. Bair – Legal Owner
4607 Prospect Avenue
19-342-SPHA 4th Election District; 3rd Councilmanic District

8/9/19 Opinion and Order of the Administrative Law Judge wherein the:

- Petition for Special Hearing: 1) to approve a nonconforming lot width and lot area; and 2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of 30 inches was GRANTED; the
- Petition for Special Hearing: 1) to approve a nonconforming dwelling side yard setback; and 2) to confirm that an existing fence (swimming pool enclosure) with a height of 6' is in compliance with BCZR §427.1 and BCC §13-6-101 was DENIED; and the
- Petition for Variance: 1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.; 2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; and 3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches was DENIED

9/9/19 Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire on behalf of Donna V. Bair, Petitioner.

9/25/19 Order on Motion for Reconsideration issued by the Administrative Law Judge wherein it was Ordered:

- that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms in BCZR §104;
- that all new construction must comply with current setbacks and restrictions at the time of new construction; and
- all other matters and respects of Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

This matter having been heard on February 6, 2020, March 23, 2021, and concluded on March 25, 2021, a public deliberation has been

ASSIGNED FOR: APRIL 20, 2021, AT 9:00 A.M.

The above scheduled public deliberation will be held remotely using WebEx for audio and video participation. **Call-in information and a link to the public deliberation will be posted on our web calendar the night before at** www.baltimorecountymd.gov/Agencies/appeals/index.html.

NOTE: Closing briefs are due on **APRIL 9, 2021 no later than 3:00 p.m.**
ELECTRONIC COPY ONLY
emailed to appealsboard@baltimorecountymd.gov

NOTE: PUBLIC DELIBERATIONS ARE OPEN WORK SESSIONS WHICH ALLOW THE PUBLIC TO WITNESS THE DECISION-MAKING PROCESS. A WRITTEN OPINION AND ORDER WILL BE ISSUED BY THE BOARD WITHIN A REASONABLE TIMEFRAME AFTER DELIBERATION AND A COPY SENT TO ALL PARTIES.

If you do not have access to a computer or smart device, please contact our office for the call-in information the day before the scheduled deliberation.

Krysundra Cannington, Administrator

c. Counsel for Petitioners : Lawrence E. Schmidt, Esquire
Legal Owner : Donna Bair

People's Counsel for Baltimore County : Peter M. Zimmerman, Esquire

Protestants *pro se* : Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
John E. Lemmerman/RTF Associates, Inc.
Kim and Tom Montanye
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz

Paul M. Mayhew, Managing Administrative Law Judge
Steve Lafferty, Director/Department of Planning
C. Pete Gutwald, Director/PAI
James R. Benjamin, Jr., County Attorney
Nancy C. West, Assistant County Attorney

From:	Peoples Counsel
To:	Appeals Board
Cc:	Tom@montanye.net; "Steve Fradkin"; "Lawrence Schmidt"; "Sue Benson"; mmolinaro@reisterstown.com; "Kimberley Karlsen"; Robin Coffin
Subject:	Donna Bair - 2019-342-SPHA - PC Exhibits
Date:	Friday, March 26, 2021 8:56:18 AM
Attachments:	PCExh14-Md Code 17-532.pdf PCExh15- Real Estate Lic Req..pdf

---

Good Morning,

Attached please find the following exhibits introduced at yesterday's hearing:

PC Exh. 14	MD Code Sec. 17-532
PC Exh. 15	MD Real Estate License Requirements

Thank you for your consideration.

Rebecca Wheatley, Legal Secretary
Office of People's Counsel
410-887-2188

About This Maryland Real Estate Salesperson (MRES) Exam Study Guide

Taking the exam for the first time | Retaking the exam

The Maryland Real Estate Salesperson (MRES) exam is a crucial step in becoming a licensed Real Estate salesperson in the state of Maryland. It consists of two sections designed to cover national-and state-specific questions about the real estate. Our professional instructors have developed a comprehensive study guide to help you prepare for this exam. As part of our study guide, lessons, quizzes, practice tests and flashcards can help you perfect your knowledge of the exam content areas.

Check out our Real Estate test prep (https://study.com/real-estate/index.html) materials! We've got comprehensive Real Estate study guides (https://study.com/real-estate/real-estate-study-guides.html) to help you study, Real Estate practice tests (https://study.com/real-estate/real-estate-practice-tests.html) to test your knowledge, and informational Real Estate resources (https://study.com/real-estate/real-estate-resources.html) to get you up to speed on testing logistics.

Exam Course Information

This course is designed to prepare you for the Maryland Real Estate Salesperson exam, covering all of the topics outlined in the official test materials provided by PSI Examination Services. Our professional instructors created this comprehensive course to help you master these objectives. Some of the topics covered in this course are listed below:

National topics:

- Explain the basics of property ownership
- Describe the types of land use controls and regulations
- Understand general principles of valuation and market analysis
- Detail key concepts of financing and landing
- Point out general principles of agency and property disclosures
- Outline the basics of contract law
- Share the fundamentals of leasing and property management
- Relate the elements of the transfer of title
- Summarize the practice of real estate
- Utilize basic real estate calculations

Maryland state-specific topics:

- Identify the duties and powers of the Maryland Real Estate Commission
- Explain licensing requirements in the state of Maryland
- Describe the listing agreements and the types of agency disclosures
- Perform supervision duties
- Assess types of business conduct
- Demonstrate the general ethics principles

Maryland Real Estate Salesperson Exam Course Format

Our Maryland Real Estate Salesperson Exam study guide course is broken down into 19 chapters and 155 lessons which coincide with the national and state-specific portions of questions from the exam. In the chapters, video lessons are followed with quizzes, and each of the chapters offers a practice test for you to gauge your knowledge on the topic.

Maryland Real Estate Salesperson Exam Information

- **Number of Questions**: 110 questions
- **Question Type**: multiple choice
- **Time Limit**: 120 minutes (90 minutes for the national portion and 30 minutes for the state-specific portion)
- **Exam Cost**: $61

Maryland Real Estate Salesperson Exam Breakdown

National Portion

Maryland Real Estate Salesperson Exam Concept - National	Percentage of Subtest	Approximate Number of Questions
Property ownership	8%	6
Land use control and regulation	5%	4
Valuation and market analysis	7%	6
Financing	10%	8
General principles of agency	13%	10
Property disclosures	6%	5
Contracts	17%	14
Leasing and property management	3%	2
Transfer of title	8%	6
Practice of real estate	13%	10
Real estate calculations	10%	8

State Portion

Maryland Real Estate Salesperson Exam Concept - State	Percentage of Subtest	Approximate Number of Questions
Duties and power of the real estate commission	13%	4
Licensing requirements	13%	4
Agency	23%	7
Supervision	17%	5
Business conduct	20%	6
Ethics	13%	4

Registering and Preparing for the Maryland Real Estate Salesperson Exam

Your education provider will verify your eligibility to PSI after successful completion of all requirements. After this, you will receive a confirmation email with instructions on how to pay for and schedule the examination. There are several registration options for this exam: online, standard mail, telephone, fax, and email.

This study guide can help you become more efficient in answering exam questions under the required timeline. It offers tests at the end of each chapter, as well as a comprehensive practice exam to gauge your knowledge on the subject. Should you need additional help regarding the content of the study guide, you can submit questions to our professional instructors who are available for personalized support.

For more information on registering and preparing for the Maryland Real Estate Salesperson Exam check out our Maryland Real Estate Salesperson Exam Informational Resources (https://study.com/real-estate/real-estate-resources.html).

Subscribe to our Newsletters

Fit Small Business

Fit Small Business content and reviews are editorially independent. We may make money when you click on links to our partners. Learn More.

Real Estate > Real Estate Careers | How To

How to Become a Real Estate Agent in Maryland

NOVEMBER 15, 2017



WRITTEN BY: Jen Gregorio

In this guide you'll learn all the details you need to know to get your license and become a real estate agent in Maryland.

You'll learn the basic real estate licensing requirements in Maryland, information about the exam including pass rates and test prep, reciprocity rules, county by county breakdowns of the most expensive real estate in Maryland, and more.

Okay, grab a cup of coffee, and let's start at the beginning.

Basic Maryland Real Estate Licensing Requirements

Getting a real estate license in Maryland is rather easy compared to other states. You only need a total of 60 classroom hours of commission-approved pre-licensing courses. In comparison, to get a license in Texas, real estate licenses require applicants to complete 180 hours of courses. Here's a quick breakdown of the real estate licensing requirements in Maryland.

Pre-licensing Courses Required in Maryland

In order to get a real estate license in Maryland, you will need to complete 60 hours of real estate pre-licensing courses that will cover such topics as:

- The Real Estate Business
- License Law and Qualifications for Licensure
- License Law and Commission Rules
- Authorized Relationships, Duties, and Disclosure
- Real Estate Brokerage Activities and Procedures
- Violations of License Law, Penalties, and Procedures
- Federal and State Laws Pertaining to Real Estate
- Property Rights: Estates and Tenancies, Condominiums, Cooperatives, and Time Sharing
- Title, Deeds, and Ownership Restrictions

- Legal Descriptions
- Real Estate Contracts
- Residential Mortgages
- Types of Mortgages and Sources of Financing
- Computations and Closing of Transactions
- The Real Estate Market and Analysis
- Real Estate Appraisal
- Real Estate Investments and Business Opportunity Brokerage
- Taxes Affecting Real Estate
- Planning, Zoning, and Environmental Hazard

Maryland Real Estate Exam Information

While the Maryland Real Estate License exam has a lower passing rate (less than 50 percent) than other states, that shouldn't scare you away from taking the test.

Even though the passing rate is low, if you work hard and take the courses seriously you should have no problem passing the exam. If you're looking for help studying for the test, we recommend Real Estate Exam Scholar's Exam prep course. They offer top-notch exam prep for an affordable price. Even better, they also offer a money back guarantee if you don't pass on the first try.

Visit Real Estate Exam Scholar

Maryland Pre-Licensing Exam Questions

Total of 110 multiple-choice questions (80 for the national and 30 for the state-specific questions) to be completed in 120 minutes total.

What to Bring to the Exam

- 2 valid forms of identification with signatures. One ID must be a government-issued Photo ID
- Confirmation number when the test reservation was made.

Passing Score

You must earn a score of 70% or better to pass the Maryland Real Estate Salesperson Exam (56/80 for the national and 21/30 for the state portion)

Pass Rate

Less than 50%

Maryland Real Estate License Fee

$110 for original salesperson license ($90 for renewal)

Exam Fee in Maryland

$61.00

Education Requirements

You need to have at least a high school diploma or GED in order to apply for a license in Maryland

apply for a license in Maryland.

Age

Applicants must be at least 18 of age or older

Residency

Any U.S. citizen or a lawfully admitted alien can apply.

Exemptions

Any active member of the Maryland Bar who is in good standing and qualified under the real estate license law is exempt from taking the real estate sales associate prerequisite course.

Criminal Background

Applicants who have an existing criminal record may still apply for a real estate license. It would be best if applicants were to include their criminal history along with the necessary documents related to the conviction, if any, on their application. After submitting your fingerprints, your application will be forwarded to the Division of Criminal Justice Information Systems and to the Federal Bureau of Investigation. Upon investigation, each applicant will be considered on their own merits.

Processing Time

On average, it will take anywhere from 2 weeks to 2 months from education to license in hand, depending on the pre-licensing classes you take.

Online Real Estate Schools in Maryland

While taking your real estate pre-licensing course in person can be helpful, online courses are much cheaper and offer the exact same courses. Mbition – Learn Real Estate is a solid choice.

Visit Mbition – Learn Real Estate

Maryland Real Estate License Reciprocity and Portability

If you plan on working in states besides Maryland, then you need to know the real estate license reciprocity and portability laws for Maryland.

- **Reciprocity:** Maryland doesn't have reciprocity with any other state.
- **Portability:** Cooperative

To learn more about real estate license portability in Maryland, check out our guide on real estate license reciprocity and portability here.

How to Choose the Right Real Estate Company to Work For in Maryland

Let's face it. Choosing the right brokerage to work for in any state isn't easy. In order to make your choice a little bit easier, check out our in-depth guide on choosing the right real estate company to work for.

Once you've finished reading the guide, check out our buyer's guide comparing Keller Williams, RE/MAX, and Century 21 here.

If you're curious about which Maryland brokerages are the most successful, check out Real Trends list of the top real estate brokerages in Maryland for 2020 below.

Washington D.C./Arlington/Alexandria

Real Estate Brokerage	Sales Volume (2020)
Long & Foster Companies, Inc.	$13,918,354,853
CENTURY 21 New Millennium	$2,888,952,964
TTR Sotheby's International Realty	$2,501,489,575
Coldwell Banker Residential Brokerage/NRT	$2,386,529,000
Berkshire Hathaway HomeServices PenFed Realty	$2,521,310,501

Baltimore

Real Estate Brokerage	Sales Volume (2020)
Long & Foster Companies, Inc.	$4,866,253,542
Coldwell Banker Residential Brokerage/NRT	$2,863,694,000
Keller Williams Realty Centre	$900,716,150
Keller Williams Integrity	$860,442,755
RE/MAX Advantage Realty	$853,961,406

*Data from Real Trends Market Leaders 2020

Maryland Counties with Highest Average Listing Price and Highest Median Sales Price 2020

Let's face it, higher listing prices mean higher commission checks! To get a sense of which counties offer the best opportunities for big bucks in Maryland check out this sales data from Trulia's Maryland home price page below (week ending June 21):

County	Average List Price	Median Sales price
Montgomery	$750,595	$424,000
Talbot	$706,866	$277,500
Howard	$556,021	$396,500
Queen Anne's	$481,318	$297,350

JUSTIA

View the 2019 Maryland Code | View Other Versions of the Maryland Code

Maryland Business Occupations and Professions Section 17-532

Article - Business Occupations and Professions

§ 17-532.

(a) In this section, "client" includes a prospective buyer or lessee under a presumed buyer's agency relationship or a presumed lessee's agency relationship as described in § 17-533 of this subtitle.

(b) A licensee shall comply with the provisions of this section when providing real estate brokerage services.

(c) (1) A licensee shall:

(i) act in accordance with the terms of the brokerage agreement;

(ii) promote the interests of the client by:

1. seeking a sale or lease of real estate at a price or rent specified in the brokerage agreement or at a price or rent acceptable to the client;

2. seeking a sale or lease of real estate on terms specified in the brokerage agreement or on terms acceptable to the client; and

3. unless otherwise specified in the brokerage agreement, presenting in a timely manner all written offers or counteroffers to and from the client, even if the real estate is subject to an existing contract of sale or lease;

(iii) disclose to the client all material facts as required under § 17-322 of this title;

(iv) treat all parties to the transaction honestly and fairly and answer all questions truthfully;

(v) in a timely manner account for all trust money received;

(vi) exercise reasonable care and diligence; and

(vii) comply with all:

1. requirements of this title;

2. applicable federal, State, and local fair housing laws and regulations; and

3. other applicable laws and regulations.

(2) Unless the client consents in writing to the disclosure, a licensee may not disclose confidential information received from or about a client to any other party or licensee acting as the agent of that party or other representative of that party.

(3) Unless the client to whom the confidential information relates consents in writing to a disclosure of that confidential information, a licensee who receives confidential information from or about the licensee's own past or present client or a past or present client of the licensee's broker may not disclose that information to:

(i) any of the licensee's other clients;

(ii) any of the clients of the licensee's broker;

(iii) any other party;

(iv) any licensee acting as an agent for another party; or

(v) any representative of another party.

(4) Unless otherwise specified in the brokerage agreement, a licensee is not required to seek additional offers to purchase or lease real estate while the real estate is subject to an existing contract of sale or lease.

(5) An intra-company agent may disclose confidential information to the broker or dual agent for whom the intra-company agent works but the broker or dual agent may not disclose that confidential information to the other party or the intra-company agent for the other party, as provided in § 17-530(d).

(d) A licensee does not breach any duty or obligation to the client by:

(1) showing other available properties to prospective buyers or lessees;

(2) representing other clients who have or are looking for similar properties for sale or lease;

(3) representing other sellers or lessors who have similar properties to that sought by the buyer or lessee; and

(4) showing the buyer other available properties.

(e) This title does not limit the applicability of § 10-702 of the Real Property Article.

(f) The requirements of this section are in addition to any other duties required of the agent by law that are not inconsistent with these duties.

(g) The duties specified in this section may not be waived or modified.

(h) A licensee who performs ministerial acts for a person may not be construed to:

(1) violate the licensee's duties to the client, provided that the client has consented in the brokerage agreement to the licensee's provision of ministerial acts; or

(2) form an agency relationship between the licensee and the person for whom the ministerial acts are performed.

Exhibits 3/23/21

Peoples Coun. Exhibits
Exhs 5 through 12 Admitted as noted in Folder in F.T.P.
Ex. 13- Witness Description

Petitioner Ex.
Ex 17. - Real Estate Testing Topics

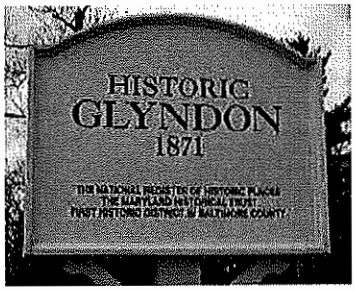
Protestants Ex - As Identified in F.T.P Folder

29a	7	20
29b	26a	23
32a.	26b	21
1	8	22
2	9	
3a	13a	
3b	13b	
4.	13c	
5.	19	

Glyndon, Maryland

Glyndon is an unincorporated community in Baltimore County, Maryland, United States. Founded in 1871 by Dr. Charles A. Leas, the village is located in the northwest section of Baltimore County[1] and is primarily a residential suburb of metropolitan Baltimore City. The village is characterized by the predominance of historic Victorian homes and a strong sense of community among its residents. Glyndon is listed on the National Register of Historic Places (1973) and on the Maryland Inventory of Historic Properties[2] (1973); the Glyndon Historic District was also designated as the first historic district in Baltimore County[3] (1981).

Also listed on the National Register of Historic Places is the Worthington Valley Historic District.[4]



A roadside sign marking Historic Glyndon.

Contents

History[5]
Geography
Demographics
Education
Community organizations
Famous/renowned residents
Places and points of interest
References
External links

History[5]

Glyndon still maintains much of the charm it had as a Victorian summer village over 100 years ago. The arrival of the Western Maryland Rail Road in 1860 promoted the early location and growth of Glyndon. The area itself was beautiful with green expanses and tall trees; an elevation above sea level of almost 700 feet provided delightful summers and mild winters.

Prior to 1871, Dr. Charles A. Leas, the first health officer of Baltimore City and a former American consul, made several purchases of land in what is now Glyndon. When he discovered that farming was not his metier, he decided to found a small town. He employed the Baltimore surveyor Augustus Bouldin to lay out the lots and streets, planting rows of maples along the avenues. Baltimore County businessman Samuel P. Townsend also promoted the growth of the town with his purchase and development of a substantial number of acres. He assumed an active role in the community as a merchant, a railroad agent, and a postmaster.

Affluent Baltimorians acquired summer homes in early Glyndon to escape the heat of the city. The proximity of the railroad to Glyndon allowed easy commuting for the businessmen to their jobs in the city some 25 miles away. Two- and three-story Victorian homes, with large airy rooms, wide halls from front to rear, and spacious porches, was the type of architecture chosen by the majority of the builders. Additionally, several boarding houses invited city folks to live in the country during the summer months.

A small business district grew up around the railroad station to service the needs of Glyndon's growing population. Besides the station, along Railroad Avenue there were a post office, a general store, a town hall, a blacksmith shop, a livery, a wheelwright shop, and an ice cream parlor. Along nearby Chatsworth Avenue (originally Reisterstown Avenue) there were a general store, a bakery, a butchery, an ice house, a carpenter, and the town magistrate's office. There was, however, no candlestick maker.

The Western Maryland Railway and a later streetcar line, the Pikesville, Reisterstown & Emory Grove Railway, also brought summer people to Emory Grove (http://emorygrove.homestead.com), a Methodist religious campground founded before Glyndon in 1868. Across Butler Road (what was then called Dover Road) to the south is Glyndon Park, established in 1887 as a temperance camp meeting ground, the first of its kind in the nation south of the Mason and Dixon's Line.

In 1878, the Glyndon United Methodist Church (http://glyndonumchurch.org/index.html)(then called the Glyndon Methodist Episcopal Church) was constructed on Dover Road. The original brown-shingled chapel was destroyed by fire in 1929 and the present stone structure was dedicated in 1931. In 1873 the cornerstone was laid for Sacred Heart Church (http://www.shgparish.org/), at the time the only Catholic church between Westminster and Baltimore. The handsome Gothic structure was built with marble from the nearby quarry at the foot of "Dark Hollow Hill" (the Hill now being part of Butler Road).

There were two schools in the immediate area. St. George's Hall (https://web.archive.org/web/20110724000905/http://external.bcpl.lib.md.us/hcdo/cfdocs/photopage.cfm?id=16491), located at the end of Central Avenue where Bond Avenue crosses the railroad tracks (506 Bond), was established by Prof. J. C. Kinear in 1876 as a private boarding school for boys. The original building was destroyed by fire in 1896; it was replaced with the current structure.

The two-room Glyndon School (https://web.archive.org/web/20110724000929/http://external.bcpl.lib.md.us/hcdo/cfdocs/photopage.cfm?id=7460) on Butler Road was built in 1887 when the growing year-round population of Glyndon necessitated a public school. The school house was abandoned in 1930 after consolidation with Franklin Elementary School in Reisterstown. In 1932 it became the home of the Woman's Club of Glyndon (http://www.gfwcmd.org/clubs/baltimore/glyndon.html). The Club was originally established in 1898 by some ladies who were "summering" in Glyndon and who gathered on a regular basis on a neighbor's porch to read together. They called themselves the Glyndon Porch Class. Today the Woman's Club of Glyndon promotes literary and social activities as well as interest in local civic problems and in national and world affairs.

The Glyndon Volunteer Fire Department (http://www.gvfd40.org/) has been active since 1904. Over the years its members have worked hard to provide the most modern and effective fire protection possible for the residents of the Glyndon community and of the surrounding area. The Ladies Auxiliary, organized in 1953, helps with this mission by raising funds for the work of the Company.

Geography

Glyndon is located at a latitude of 39.4764935 North and a longitude of 76.8158100 West at an elevation of 689 feet.[6] Butler Road, formerly Dover Road, is the main road.

Demographics

According to the 2000 census,[7] the population of Glyndon was 424 (female 210, male 214). The median age was 39.6. The average household size was 2.72 and the average family size 3.30. The population was 96.5% White, 1.2% Black, 0.5% Asian, 1.9% of two or more races and 0.2% Hispanic/Latino. Of the population aged 25 and over, 96.1% had achieved high school graduation or higher and 51.3% a bachelor's degree or higher.

Education

Public schools
The public schools serving the children of Glyndon are:

- Franklin Elementary
- Franklin Middle
- Franklin High

Franklin High School is the oldest high school in Baltimore County, founded in Reisterstown in 1820 as the private school Franklin Academy.[8] Local lore contends that Edgar Allan Poe applied to be principal of the Academy in the 1830s but was turned down by the school's trustees. Students may opt to attend a number of magnet schools within the public school system.

Private schools
Some Glyndon children attend nearby Sacred Heart School (K-8), a Catholic parish school. Others attend any number of private schools in the greater Baltimore area, such as

- Gilman School
- St. Paul's School
- St. Paul's School for Girls
- Boys' Latin School of Maryland
- Friends School of Baltimore
- Maryvale Preparatory School
- Loyola Blakefield
- Calvert Hall College High School
- Garrison Forest School
- Bryn Mawr School
- McDonogh School

Higher education
There are a number of institutions of higher learning within a 25-mile radius of Glyndon, offering various levels and intensity of education:

- Stevenson University
- University of Maryland, Baltimore County
- McDaniel College
- Towson University
- Goucher College
- Loyola University Maryland
- Notre Dame of Maryland University
- Johns Hopkins University
- Maryland Institute College of Art
- University of Baltimore
- Coppin State University
- Community College of Baltimore County
- Carroll Community College

Community organizations

Glyndon Community Association (GCA)
The exact date of the first community association meeting in Glyndon is not known, but by early 1945 several community leaders and residents decided to formalize the activities of their group. On February 28, 1945, the group was incorporated under the name of The Glyndon Corporation. According to the original corporate charter, the founding fathers of GCA were Thomas Kooken, Donald P. Bellows, Eugene H. Ryer, as the incorporators; Mr. Bellows, along with John O. Cockey, Rosemund E. Smith, and Ira L. Wales as the first members of the board of directors. Bellows was also the first resident agent.

The name of the community association was changed to the Glyndon Community Association in 1956. The Board of Directors approved the name change on April 23, 1956, and the membership approved the name change at the May 3 membership meeting. The formal change of name was registered with the charter division of the State of Maryland on July 27, 1956.

As stated in its bylaws, the purpose of the GCA is to promote and maintain a strong community spirit in Glyndon, to bring about improved conditions in all things that affect the community in general, and to promote other non-profit purposes.

Membership is open to all individuals 18 years or older who own or occupy residential real property in Glyndon. GCA also has an *emeritus* membership which is limited to past members of GCA who no longer qualify as a regular member and whose request for Esuch status has been approved by GCA. Membership dues are minimal and a family discount is available.

For the purposes of GCA, Glyndon is the area within a line that generally runs from Emory Grove, including Seven Farms at Worthington Valley, east to Butler Road, across Worthington Avenue, then south to the south side of St. Paul Avenue, out to Central Avenue, north along Central to 350 Central and then west to the railroad tracks and then north across Butler Road back to Emory Grove.

GCA holds its annual meeting, at which its officers and directors are elected, in February. GCA also holds quarterly membership meetings. The board is composed of a president, a first and second vice president, a secretary, a treasurer, six directors elected at large and the immediate past president of GCA. The term of office is one year for officers and two years for directors to ensure both participation from the entire neighborhood and the preservation of institutional memory.

GCA sponsors several events during the course of the year, all currently without charge to the public, even those outside of Glyndon proper. For many years there has been an Easter Egg Hunt. Currently, this is held the Saturday before Easter in Glyndon Station Park, preceded the night before by an egg-stuffing event held at a neighborhood home and attended exclusively by parents.

A long-standing tradition of GCA has been a parade on Independence Day. The parade commences at 10:00 am at the intersection of Albright and Central avenues and proceeds north to Chatsworth, turns left to Railroad Avenue, and then again to the starting point and the historic O'Meara lawn. There, the federal flag is affixed to the end of an extended fire-truck ladder, a prayer is said, and all join in the singing of the national anthem, followed by hot dogs, lemonade and cookies. The parade is in essence a bike parade with children and adults marching the route. The Glyndon Volunteer Fire Department leads the event with one of its trucks, accompanied on occasion by a historic vehicle or lawn tractor.

In autumn, there is a Halloween Party at the firehouse and, at Christmas, GCA lights a local tree and sings carols at its Christmas Tree Lighting and Festival of Carols Without Lessons.

Historic Glyndon, Inc.(HGI)
Historic Glyndon, Inc. was founded in 1972. It began as a committee under the aegis of the Glyndon Community Association and became a separate organization after the town's centennial in 1971. This organization is responsible for having had Glyndon declared a historic district at three levels: national, state and county.

HGI's mission is "to preserve and protect Glyndon's cultural, social, economic and architectural history, as well as to conduct educational and beautification projects which enrich Glyndon's historical heritage."

The organization consists of officers (president, 1st vice-president, 2nd vice-president, treasurer and secretary), nine additional board members, a number of committees and a general membership. Membership is open to anyone with an interest in Glyndon and its mission. The committees include Membership, Architectural Design & Review, Historic House Plaques' Welcome and Holiday Open House

Regular events of HGI include the annual spring meeting of the general membership, a spring clean-up around the train station and post office, a biennial fall Celebrate Glyndon! display, and the Holiday Open House in December. Other endeavors have included the publication of a history book about the village (*Glyndon: The Story of a Victorian Village*, 1990), a 125th anniversary weekend celebration in 1996, historic town markers, historic street signs, historic house plaques and a house and garden tour.

Famous/renowned residents

Dr. Charles A. Leas
Dr. Charles A. Leas, Glyndon's founder, was Baltimore City's first public health officer. During the Crimean War, he went to Russia at the request of the Russian Minister to serve on the army's medical staff. For this service, he was knighted by Czar Alexander II with the Imperial Order of St. Stanislaus. After the war, President Buchanan appointed him U.S. Consul to Russia. In subsequent years, he also served as American Consul to Sweden, Madeira and British Honduras. Leas eventually returned to Baltimore and shortly thereafter retired and moved to the country. A *Baltimore Sun* article from February 13, 1952, states, "He soon found that running a farm was not his métier, so he decided to found a little town, where he could live amongst congenial people of his own tastes and inclinations."

The entrance to the Leas homestead, the oldest home in Glyndon, is located at the corner of Albright and Railroad avenues. The main part of the dwelling, more than 200 years old, was originally a farmhouse when bought by Leas and his second wife, Elizabeth Frush, who was known as Lizzie. Leas had three daughters, two with his first wife Eliza Moore Leas, who died in 1850, and one with Lizzie.[9]

T. Rowe Price
Thomas Rowe Price, Jr., founder of the investment firm T. Rowe Price, was born in Glyndon in 1898 and spent his childhood there in the home that his father built at 4801 Butler Road. His father was T. Rowe Price, Sr., a country doctor who raised three children in Glyndon with his wife Ella (*née* Black). The young Price graduated from nearby Franklin High School in 1914 and went on to receive a bachelor's degree in chemistry in 1919 from Swarthmore College. After working for a short time as a chemist for the DuPont Company, Price switched to selling stocks and bonds and eventually launched his own investment counseling firm in 1937. He is primarily known as a pioneer of the growth stock approach as well as helping to build the mutual-fund industry. Price died in Baltimore, Maryland, in 1983.

Places and points of interest

- Emory Grove
- Glyndon Park
- Glyndon Station Park
- Train station/post office
- Glyndon School/Woman's Club of Glyndon
- Glyndon Square Shopping Center
- Glyndon Village Shopping Center
- Glyndon Bank building

References

1. "Google Maps, Glyndon, Maryland" (https://maps.google.com/maps?f=q&source=s_q&hl=en&geocode=&q=Glyndon,+Maryland&sll=37.0625,-95.677068&sspn=38.092988,81.914062&ie=UTF8&ll=39.47685,-76.816599&spn=0.009076,0.020149&z=16&iwloc=addr).
2. "Search the Maryland Inventory of Historic Properties" (http://mht.maryland.gov/survey_mihp_search.html).
3. "Historic Districts Enacted by the Baltimore County Council" (http://www.baltimorecountymd.gov/Agencies/planning/historic_preservation/bchistdist.html).
4. "National Register Information System" (https://npgallery.nps.gov/NRHP). *National Register of Historic Places*. National Park Service. April 15, 2008.
5. *Glyndon: The Story of a Victorian Village*. Historic Glyndon, Inc. 2010.
6. "U.S. Geological Survey, Geographic Names System" (http://geonames.usgs.gov/pls/gnispublic/f?p=127:3:1752772008373983::NO:3:P3_FID,P3_TITLE:590340%2CGlyndon).

7. "U.S. Census Bureau, 2000 Census Fact Sheet" (https://archive.today/20200212050241/http://factfinder.census.gov/servlet/SAFFFacts?_event=Search&geo_id=&_geoContext=&_street=&_county=21071&_cityTown=21071&_state=04000US24&_zip=21071&_lang=en&_sse=on&pctxt=fph&pgsl=010&show_2003_tab=&redirect=Y). Archived from the original (http://factfinder.census.gov/servlet/SAFFFacts?_event=Search&geo_id=&_geoContext=&_street=&_county=21071&_cityTown=21071&_state=04000US24&_zip=21071&_lang=en&_sse=on&pctxt=fph&pgsl=010&show_2003_tab=&redirect=Y) on 2020-02-12. Retrieved 2010-09-15.
8. Reister's Desire—Reisterstown, 1758-1976. Compiled by Carrol Pollack. 1976.
9. *Glyndon: The Story of a Victorian Village*. Historic Glyndon, Inc. 1991.

External links

- Historic Glyndon, Inc. (http://www.historicglyndon.org/)
- Woman's Club of Glyndon (http://www.gfwcmd.org/clubs/baltimore/glyndon.html)
- Glyndon Volunteer Fire Department (http://www.gvfd40.org/)
- Emory Grove, Maryland (http://emorygrove.homestead.com/index.html)
- Baltimore County Office of Planning, Historic Preservation (http://www.baltimorecountymd.gov/Agencies/planning/historic_preservation/index.html)
- Reisterstown, Owings Mills, Glyndon Chamber of Commerce (http://www.romgchamber.org/)
- Glyndon United Methodist Church (http://glyndonumchurch.org/)
- Sacred Heart Parish of Glyndon (http://www.sacredheartofglyndonmd.org/)

Retrieved from "https://en.wikipedia.org/w/index.php?title=Glyndon,_Maryland&oldid=984847292"

This page was last edited on 22 October 2020, at 13:31 (UTC).

Text is available under the Creative Commons Attribution-ShareAlike License; additional terms may apply. By using this site, you agree to the Terms of Use and Privacy Policy. Wikipedia® is a registered trademark of the Wikimedia Foundation, Inc., a non-profit organization.

Board of Appeals

Case No: 19-342 SPHA Case Name: Donna Bair

Exhibit List

Party: People's Counsel Date: 2/6/2020

Exhibit No:	Description:
✓ 1	Neighborhood Aerial Photo 2017
✓ 2	PC Sign In Sheet.
✓ 3	Dept Labor Website Realtor Info
✓ 2A	PC Additional Sign In Sheet.
✓ 4A-B	Dept Labor Realtor Supp Info.
	VERIFIED BY _____ DATE: _____

ID only

KC 2/7/2020

People's Counsel Sign-In Sheet

People's Counsel
CBA Exhibit
2

Case Name: DONNA BAIR
Case No.: 2019-342-SPHA
Date: 2/6/2020

The Office of People's Counsel was created by the County Charter to participate in zoning matters on behalf of the public interest. While it does not actually represent community groups or protestants, it will assist in the presentation of their concerns, whether they have their own attorney or not. If you wish to be assisted by People's Counsel, please sign below.

Check to testify	Name	Address	Phone #	Email	Group you represent	Basis of your concerns
	RAMZI HEMADY	4603 Prospect Ave	410-2181638	ramzi.hemady59@gmail.com		
✓	Susan Benson	4813 Butler Rd. Glyndon	410-925-4047	sbenson gomma@aol.com	HGI	Oppose variances after
	Karen Cervino	4716 Butler Rd, Glyndon	410-299-2541	kwcervino@gmail.com	HGI	oppose the fact variances after the fact
	Bryan Maynard	822A Berrymans Ln Reist.	410 2596251	mogman1120@yahoo.com	ROG	Failure of Bult. Co. Permits Dept
	Patricia Gordon	823A Berrymans Ln Reist	410 833-0508	pgordonmaynard@yahoo.com	ROG	over Neighbors property
	Mary Molinaro	215 Chartley Dr. Reist	410-908-0724	mmolinaro@reisterstown.com	ROG	no permits built on someone else's property
	Noel Levy	11 Windsong Ct. 21208	410-486-1541	megamapster@verizon.net		Property Rights violation
	David Hughes	2 Albright Ave. 21071	410-526-0248	davidghugherrpt@comcast.net		oppose variances
	Judith Hughes	2 Albright Ave 21071	"			against variance
	CARLYLE MONTANYE	4600 PROSPECT AVE, 21071	410-833-0820	LYLE@LT-MONLINE.NET		OPPOSE ALL VARIANCES
	Jacob Wroe	317 Central AVE, 21071	443-797-9042	jacobwroe@gmail.com		against variances
	JAMES WROE	4804 BUTLER RD 21071	443 690 4673	wroe@mindspring.com	HGI, GCA, RESIDENT	"OPPOSE" VARIANCES
	RAYMOND LONG	114 HANOVER RD 21136	443-797-4961	linda.long769@gmail		" "
	Linda Long	" " " "	443 797 4965	"	"	" "
	CHARLES WELSH	4601 PROSPECT AVE, 21071	410-207-6607	prospect1990@msn.com		OPPOSE VARIANCES
	Anna Welsh	4601 Prospect Ave 21071	410 526 0688	prospect1990@msn.com		*NO PERMITS OPPOSE VARIANCES
	Frances Acle	4606 Prospect Ave 21071	410-627-8415	franacle@aol.com		OPPOSE ALL Variances
	Kim Montanye	4609 Prospect Ave. 21136				
	Cookie Stone	233 Tidyman Rd 21136	410-984-2554	cstone@longfestaw		oppose variances
	Kim KARLSEN	304 Hammond Ave PO306	4109609302	perardkim@aol.com	Glyndon Comm. Assoc	oppose appeal for variance encroachment variance
	Patricia Fradkin	4605 Prospect Ave GLYNDON 21071	443-744-1225	PFradkin003@gmail		

People's Counsel Sign-In Sheet

Case Name: Donna Bair

Case No.: 2019-342-SPHA

Date: 2/6/2020

The Office of People's Counsel was created by the County Charter to participate in zoning matters on behalf of the public interest. While it does not actually represent community groups or protestants, it will assist in the presentation of their concerns, whether they have their own attorney or not. If you wish to be assisted by People's Counsel, please sign below.

Check to testify	Name	Address	Phone #	Email	Group you represent	Basis of your concerns
✓	STEVE FRANCIS	4605 PROSPECT AVE	443 841 6700	WESTLAXCOACH@GMAIL.COM	OPPOSE ALL VARIANCES	
✓	Thomas Montanye	4609 Prospect Ave	4109353526	tome.montanye.net	Oppose Variances	

People's Counsel Sign-In Sheet

Case Name: Donna V. Bair
Case No.: 2019 342 SPHA
Date: 2-6-20

People's Counsel
CBA Exhibit
2A

The Office of People's Counsel was created by the County Charter to participate in zoning matters on behalf of the public interest. While it does not actually represent community groups or protestants, it will assist in the presentation of their concerns, whether they have their own attorney or not. If you wish to be assisted by People's Counsel, please sign below.

Check to testify	Name	Address	Phone #	Email	Group you represent	Basis of your concerns
	Jeffrey Beher	4611 Prospect Ave	410-905-8074	jeffs52055@msn.com		concerned neighbor.
	See attached					

NOEL LEVY

for Democratic Central Committee
District 11, Baltimore County



Vote in the Democratic Primary, Tuesday, June 26

11 Windsong Court
Pikesville, MD 21208-1930
410-486-1541
megamapster@verizon.net

34

Maryland
DEPARTMENT OF LABOR

Results for Active Licensed Real Estate: 3

The following results do not include current licensees who are on inactive status.

Name	Trade Name	Address	City	State	Zip	Expiration	Category	Reg. #
DONNA V BAIR	CENTURY 21 THE REAL ESTATE	8230 RITCHIE HIGHWAY RITCHIE HWY	PASADENA	MD	21122	2020-03-04	SALESPERSON	533281
DANA K BAIRD	REGAL REALTY	100 WEST ROAD SUITE 300	TOWSON	MD	21204	2021-02-28	SALESPERSON	623874
DAVID WALLACE BAIRD IV	CUSHMAN & WAKEFIELD OF MARYLAND LLC	ONE EAST PRATT STREET SUITE 700	BALTIMORE	MD	21202	2021-01-28	ASSOCIATE BROKER	17047

[NEW SEARCH FOR ACTIVE LICENSED INDIVIDUALS]

[Home] [Return to Licensing Queries]

ID only

People's Counsel
CBA Exhibit
3

Maryland
DEPARTMENT OF LABOR

Results for Active Licensed Real Estate: 1

The following results do not include current licensees who are on inactive status.

Name	Trade Name	Address	City	State	Zip	Expiration	Category	Reg. #
DONNA V BAIR	CENTURY 21 THE REAL ESTATE	8230 RITCHIE HIGHWAY RITCHIE HWY	PASADENA	MD	21122	2020-03-04	SALESPERSON	533281

[NEW SEARCH FOR ACTIVE LICENSED INDIVIDUALS]

[Home] [Return to Licensing Queries]

3 of 5

People's Counsel
CBA Exhibit
4A-4B

importance : selling agent highlighted

Agent Full

4607 Prospect Ave, Glyndon, MD 21071 | **Closed** | **Residential** | **$320,500**





MLS #:	1003026450	Beds:	3
Tax ID #:	04040416015450	Baths:	2 / 1
Ownership Interest:	Fee Simple	Year Built:	1951
Structure Type:	Detached	Style:	Ranch/Rambler
Levels/Stories:	2	Central Air:	Yes
Waterfront:	No	Basement:	Yes
Garage:	Yes		

Location

County:	Baltimore, MD	Election District:	4
Subdiv / Neigh:	GLYNDON		

Taxes and Assessment

Tax Annual Amt / Year:	$3,800 / 2013	Tax Assessed Value:	$246,800 / 2014
County Tax:	$2,991 / Annually	Imprv. Assessed Value:	$164,400
		Land Assessed Value:	$82,400
		Special Assmt:	Annually
		Tax Other Annual Assmt:	$809
		Historic:	No

Rooms

			Bed	Bath
Den:	Lower 1	12 x 8	Main	3	2 Full, 1 Half
Family Room:	Lower 1	18 x 13			
Bedroom:	Main	11 x 9			
Master Bedroom:	Main	12 x 9			
Bedroom:	Main	11 x 9			
Dining Room:	Main	15 x 8			
Kitchen:	Main	10 x 8			
Living Room:	Main	15 x 11, Fireplace - Wood Burning			
Other:	Main	6 x 9			

Building Info

Tax Total Fin SQFT:	1,493	Construction Materials:	Vinyl Siding
Basement Type:	Connecting Stairway, Fully Finished, Heated, Improved, Outside Entrance		

Lot

Lot Acres / SQFT:	0.78a / 33,976sf

Interior Features

Interior Features:	Dining Area, 1 Fireplace(s), Dishwasher, Disposal, Dryer-Front Loading, Exhaust Fan, Extra Refrigerator/Freezer, Microwave, Oven/Range-Gas, Refrigerator, Washer- Fr Accessibility Features: None

Exterior Features

Exterior Features:	Pool: Yes - Personal, Other Structures: Cabana/Pool House, Shed

Parking

Parking:	Attached Garage, 1 Total Garage Spaces, 1 Attached Garage Spaces, 1 Total Garage and Parking

EXHIBIT 4B

Spaces

Utilities

Utilities:	Central A/C, Cooling Fuel: Electric, Heating: Forced Air, Heating Fuel: Natural Gas, Wood, Hot Water: Natural Gas, Water Source: Public, Sewer: Public Septic, Public Sewer

Remarks

Inclusions:	Parking Included In ListPrice,Parking Included In SalePrice
Agent:	CHARMING RANCHER IN HISTORIC GLYNDON. GREAT FOR ENTERTAINING WITH LARGE LEVEL LOT WITH IN-GROUND POOL ON PRIVATE CUL-DE-SAC. POOL HAS NEW LINER, FILTER AND HIGH QUALITY COVER. HANG OUT ON THE 2 TEIR DECK OR THE POOLSIDE CABANA. ROAST MARSHMELLOWS IN THE FIRE PIT THIS SUMMER. 2 A/C UNITS, 1 CAR GARAGE, 2 DRIVEWAYS. BATHROOMS REMODELED, STAINLESS STEEL APPLIANCES, FIREPLACE IN THE LIVING ROOM
Public:	CHARMING RANCHER IN HISTORIC GLYNDON. GREAT FOR ENTERTAINING WITH LARGE LEVEL LOT WITH IN-GROUND POOL ON PRIVATE CUL-DE-SAC. POOL HAS NEW LINER, FILTER AND HIGH QUALITY COVER. HANG OUT ON THE 2 TEIR DECK OR THE POOLSIDE CABANA. ROAST MARSHMELLOWS IN THE FIRE PIT THIS SUMMER. 2 A/C UNITS, 1 CAR GARAGE, 2 DRIVEWAYS. BATHROOMS REMODELED, STAINLESS STEEL APPLIANCES, FIREPLACE IN THE LIVING ROOM

Listing Office

Listing Agent:	Stacy Buckley (3054311) (Lic# Unknown)		(443) 277-0030
Listing Agent Email:	sbuckley3.1.6@gmail.com		
Broker of Record:	Shawn Guzzo (3049188) (Lic# 6291 - MD)		
Listing Office:	Coldwell Banker Residential Brokerage (CBRB35) (Lic# Unknown) 1130 Baltimore Blvd, Westminster, MD 21157-0000		
Office Manager:	Sharon Crisafulli (77620) (Lic# Unknown)		
Office Phone:	(410) 876-1666	Office Fax:	(410) 876-2662
Co-Listing Agent:	Robert Korrell (28128)		(443) 398-4858
Co-Listing Agent Email:	robert.korrell@century21.com		

Directions

Butler to Waugh, slight right on Prospect, property on the right

Compensation

Buyer Agency Comp:	2.5%%	Sub Agency Comp:	2.5%%
		Dual/Var Comm:	No

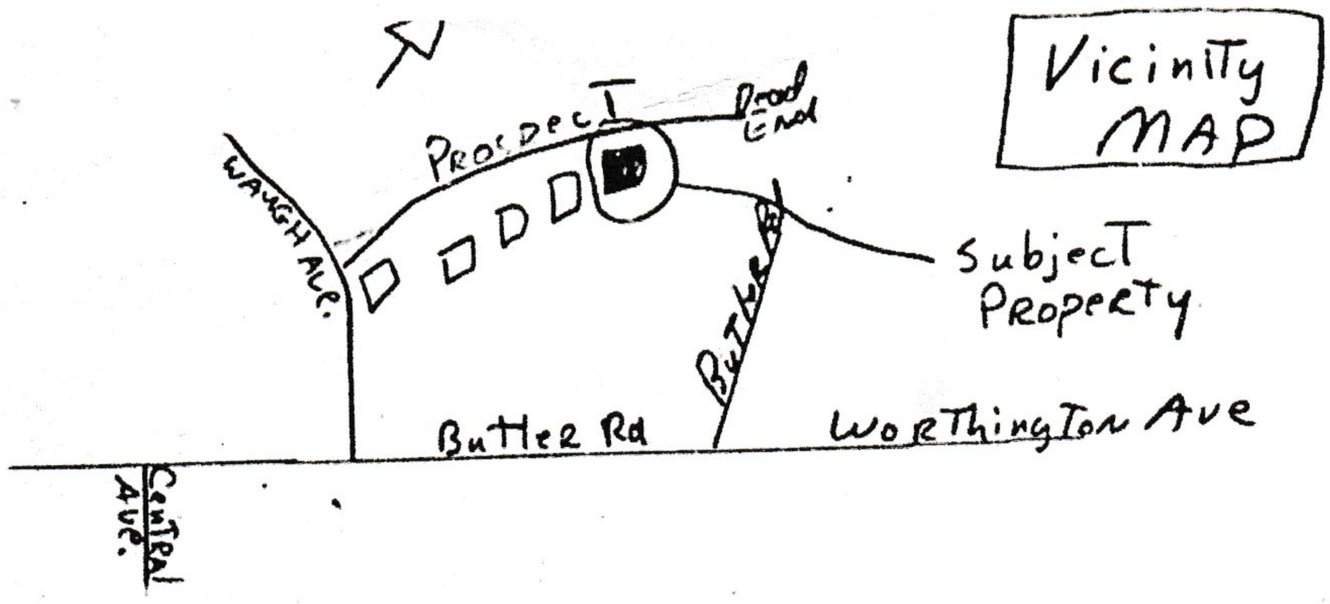
Listing Details

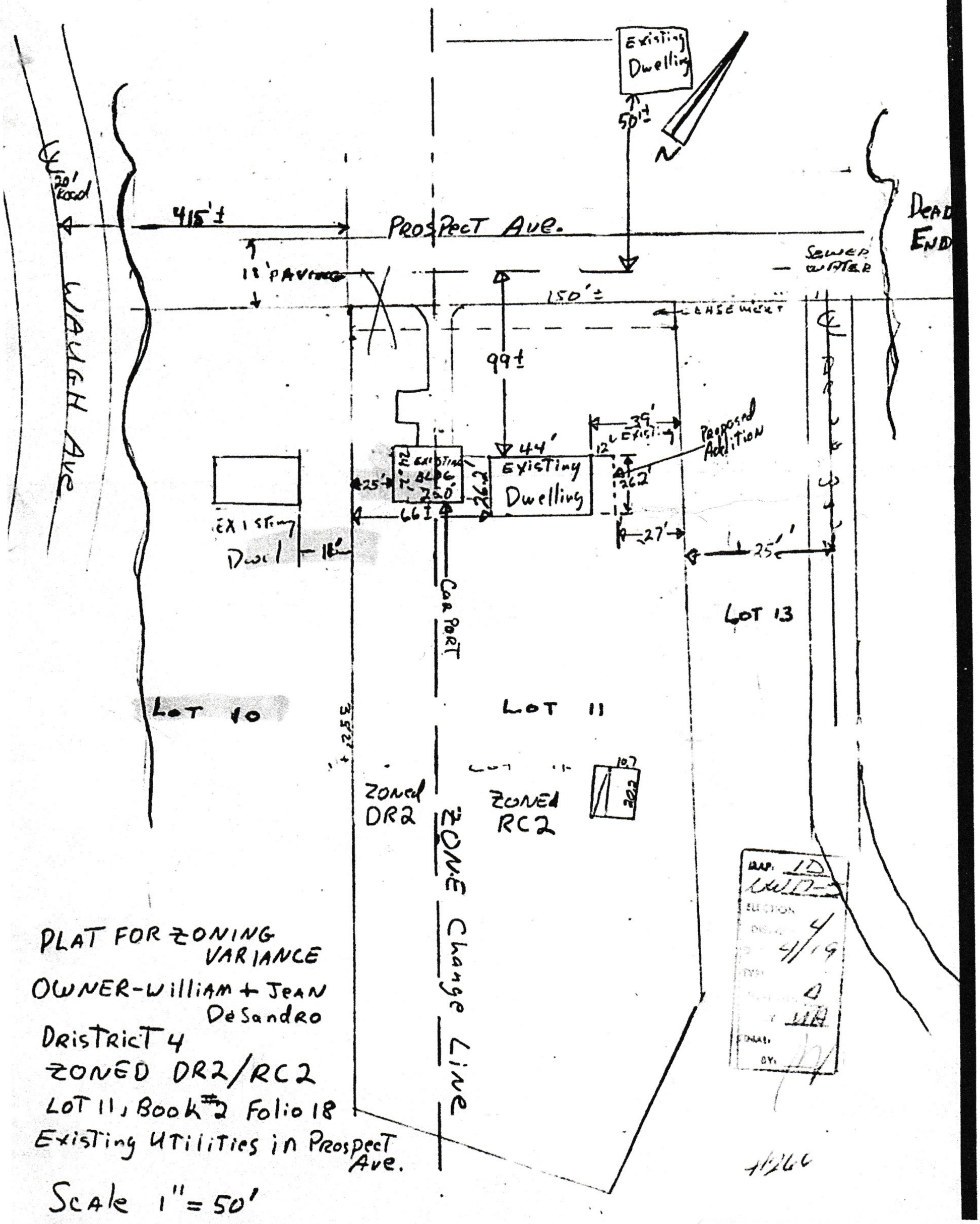
Original Price:	$339,000	Owner Name:	Devaney
Vacation Rental:	No	DOM / CDOM:	11 / 11
Listing Agrmnt Type:	Exclusive Right	Original MLS Name:	MRIS
Prospects Excluded:	No	Off Market Date:	07/19/14
Dual Agency:	Yes		
Sale Type:	Standard		
Original MLS Number:	BC8363040		
Listing Term Begins:	05/30/2014		
Listing Entry Date:	05/30/2014		
Possession:	Negotiable		
Disclosures:	Prop Disclosure		

Sale/Lease Contract

Selling Agent:	Donna Bair (78898) (Lic# Unknown)		(443) 929-2255
Selling Agent Email:	donna.bair@yahoo.com		
Selling Office:	CENTURY 21 The Real Estate Centre (CREC2) (Lic# Unknown) Gary Hoffer (51417) (Lic# 517288 - MD) 135 East Main St, Westminster, MD 21157-0000		
Office Phone:	(410) 876-1477	Office Fax:	(410) 876-9218
Selling Office Email:	garyhoffer@realtysells.com		
Concessions:	No		
Agreement of Sale Dt:	06/09/14	Close Date:	07/18/14
		Close Price:	$320,500.00
Buyer Financing:	Cash	Last List Price:	$339,000.00

© BRIGHT MLS - All information, regardless of source, should be verified by personal inspection by and/or with the appropriate professional(s). The information is not guaranteed. Measurements are solely for the purpose of marketing, may not be exact, and should not be relied upon for loan, valuation, or other purposes. Copyright 2020. Created: 01/22/2020 11:21 PM


Vicinity MAP
PROSPECT
Dead End
WAUGH AVE.
BUTLER RD
Subject Property
Butler Rd
Worthington Ave
Central Ave.


Existing Dwelling
50'±
N
20' Road
WAUGH AVE
415'±
PROSPECT AVE.
DEAD END
18' PAVING
150'±
SEWER & WATER
EASEMENT
99±
44'
39'
12' EXISTING
Proposed Addition
26.2'
EXISTING Dwelling
25'
66'±
EXISTING Dwel
18'
CAR PORT
27'
25'
LOT 13
LOT 10
LOT 11
225'±
ZONED DR2
ZONED RC2
ZONE Change Line
107
202
PLAT FOR ZONING VARIANCE
OWNER-William + Jean DeSandro
DISTRICT 4
ZONED DR2/RC2
LOT 11, Book #2 Folio 18
Existing UTILITIES in Prospect Ave.
Scale 1" = 50'

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a

Variance from Section 1A01.3.A.1 To permit a sideyard setback of 25 feet

instead of the required 35 feet

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (Indicate hardship or practical difficulty)

1. As a matter of right
2. County Council to rezone in November, 1984, and we are petitioning the council as well
3. Property in question is already hooked up to county sewer and water
4. Part of property is zoned OS2 and other part of property is zoned DC2
5. Design and layout of the house precludes constructing the proposed addition in any other way.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

I/We do 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 Petition.

Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State

Attorney for Petitioner:

(Type or Print Name)

Signature

Address

City and State

Legal Owner(s):

William K. DeSandro

(Type or Print Name)

William K. DeSandro

Signature

Joan M. DeSandro

(Type or Print Name)

Joan M. DeSandro

Signature

4605 Prospect Avenue 594-1706

Address Phone No.

Glyndon, Maryland 21071

City and State

Name, address and phone number of legal owner, con-tract purchaser or representative to be contacted

William K. DeSandro

Name

4605 Prospect Ave. 517-1930

Address Business Phone No.

Attorney's Telephone No.:

ORDERED By The Zoning Commissioner of Baltimore County, this 11th day of April, 1984, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation through-out Baltimore County, that property be posted, and that the public hearing be held before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 9th day of May, 1984, at 9:45, a.m.

Zoning Commissioner of Baltimore County.

(over)

BALTIMORE COUNTY

ZONING PLANS

ADVISORY COMMITTEE

PETITION AND SITE PLAN

EVALUATION COMMENTS

Item #266 (1983-1984)
Property Owner: William K. DeSandro, et ux
Location: S/S Prospect Avenue 415' S/E of Waugh Avenue (4605 Prospect Avenue)
Acres: 100 x 150
District: 8th

84-332-A

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. Arnold Jablon, Zoning Commissioner
Office of Planning and Zoning Date: May 15, 1984

FROM: Ian J. Forrest

SUBJECT: Zoning Variance Items
Meeting - April 17, 1984

The Baltimore County Department of Health has reviewed the following zoning items and does not anticipate any health hazards at this time regarding these items.

Item #260 - Dennis Fisher, et ux
Item #262 - Arthur H. Dingley, III, et ux
Item #266 - William K. DeSandro, et ux
Item #267 - Joseph D. Deigert, et al
Item #268 - Robert N. Lewis, et ux
Item #269 - Dale G. Forte

Ian J. Forrest, Director
BUREAU OF ENVIRONMENTAL SERVICES

IJF/fth

84-332-A

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Your petition has been received and accepted for filing this 17th day of April, 1984.

Arnold Jablon
Zoning Commissioner

Petitioner: William K. DeSandro, et ux Received by: William K. DeSandro
Petitioner's Attorney:

Nicholas B. Commodari
Chairman, Zoning Plans Advisory Committee

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

May 21, 1984

County Office Bldg.
111 W. Chesapeake Ave.
Towson, Maryland 21204

Nicholas B. Commodari
Chairman

MEMBERS
Bureau of Engineering
Department of Traffic Engineering
State Roads Commission
Bureau of Fire Prevention
Health Department
Project Planning
Building Department
Board of Education
Zoning Administration
Industrial Development

Mr. & Mrs. William K. DeSandro
4605 Prospect Avenue
Glyndon, Maryland 21071

RE: Item No. 266 - Case No. 84-332-A
William K. DeSandro, et ux
Variance Petition

Dear Mr. & Mrs. DeSandro:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. The Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

In view of your proposal to construct an addition to the side of the existing dwelling within 25 feet of the side property line, this hearing is required. As stated in our previous conversation, the site plan indicates a setback of 27 feet from the side property line. However, it was your decision to have the petition advertised as requesting a 25 foot side setback to allow some flexibility in construction.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours,

Nicholas B. Commodari
NICHOLAS B. COMMODARI, Chairman
Zoning Plans Advisory Committee

NBC:bsc
Enclosures

BALTIMORE COUNTY
DEPARTMENT OF PUBLIC WORKS
TOWSON, MARYLAND 21204

PAUL H. REINCKE
CHIEF

May 17, 1984

Mr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Re: Item #266 (1983-1984)
Property Owner: William K. DeSandro, et ux
S/S Prospect Avenue 415' S/E from centerline Waugh Avenue
Acres: 100 x 150 (to be all "Deeded to Depletion" - 1.5)
District: 8th

Dear Mr. Jablon:

The following comments are furnished in regard to the plat submitted to this office for review by the Zoning Advisory Committee in connection with the subject item.

General:

Baltimore County highway and utility improvements are not directly involved.

Prospect Avenue, an existing public road, is proposed to be further improved in the future as a 30-foot closed section roadway on a 50-foot right-of-way with a standard type roadway termination at the end thereof.

Development of this property through stripping, grading and stabilization could result in a sediment pollution problem, damaging private and public holdings downstream of the property. A grading permit is, therefore, necessary for all grading, including the stripping of top soil.

The Petitioner must provide necessary drainage facilities (temporary or permanent) to prevent creating any nuisances or damages to adjacent properties, especially by the concentration of surface waters. Correction of any problem which may result, due to improper grading or improper installation of drainage facilities, would be the full responsibility of the Petitioner.

This office has no further comment in regard to the plan submitted for Zoning Advisory Committee review in connection with this item (1983-1984).

Very truly yours,

Robert A. Morton
ROBERT A. MORTON, P.E., Chief
Bureau of Public Services

RAM:EAH:ss

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
TOWSON, MARYLAND 21204
494-3351

WILLIAM E. HAMMOND
DIRECTOR

Mr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

4-26-84

Re: Zoning Advisory Meeting of 4-17-84
Item # 266
Property Owner: William K. DeSandro, et ux
Location: S/S Prospect Ave., 415' S/E of c/l of Waugh Ave.

Dear Mr. Jablon:

The Division of Current Planning and Development has reviewed the subject petition and offers the following comments. The items checked below are applicable.

(X) There are no site planning factors requiring comment.
( ) A County Review Group Meeting is required.
( ) A County Review Group Meeting was held and the minutes will be forwarded by the Bureau of Public Services.
( ) This site is part of a larger tract; therefore it is defined as a subdivision. The plan must show the entire tract.
( ) A record plat will be required and must be recorded prior to issuance of a building permit.
( ) The access is not satisfactory.
( ) The circulation on this site is not satisfactory.
( ) The parking arrangement is not satisfactory.
( ) Parking calculations must be shown on the plan.
( ) This property contains soils which are defined as wetlands, and development on these soils is prohibited.
( ) Construction in or alteration of the floodplain is prohibited under the provisions of Section 22-98 of the Development Regulations.
( ) Development of this site may constitute a potential conflict with the Baltimore County Master Plan.
( ) The amended Development Plan was approved by the Planning Board on
( ) Landscaping should be provided on this site and shown on the plan.
( ) The property is located in a traffic area controlled by a "D" level intersection as defined by Bill 178-79, and as conditions change traffic capacity may become more limited. The Basic Services Areas are re-evaluated annually by the County Council.
( ) Additional comments:

Eugene A. Bober
Chief, Current Planning and Development

cc: James Hoswell

BALTIMORE COUNTY
FIRE DEPARTMENT
TOWSON, MARYLAND 21204-2586
494-4500

PAUL H. REINCKE
CHIEF

May 7, 1984

Mr. William Hammond
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, Maryland 21204

Attention: Nick Commodari, Chairman
Zoning Plans Advisory Committee

RE: Property Owner: William K. DeSandro, et ux

Location: S/S Prospect Avenue 415' S/E from c/l Waugh Avenue

Item No.: 266 Zoning Agenda: Meeting of 4/17/84

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

( ) 1. Fire hydrants for the referenced property are required and shall be located at intervals of _____ feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.

( ) 2. A second means of vehicle access is required for the site.

( ) 3. The vehicle dead end condition shown at _____

EXCEEDS the maximum allowed by the Fire Department.

( ) 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

(X) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1976 Edition prior to occupancy.

( ) 6. Site plans are approved, as drawn.

( ) 7. The Fire Prevention Bureau has no comments, at this time.

Reviewer: Lt. Howard Kelly Approved: George M. Wagner
Planning Group
Special Inspection Division

Noted and Approved: George M. Wagner
Fire Prevention Bureau

jmb

BALTIMORE COUNTY
DEPARTMENT OF PERMITS & LICENSES
TOWSON, MARYLAND 21204
494-3610

TED ZALESKI, JR.
DIRECTOR

Mr. Arnold Jablon, Zoning Commissioner
Office of Planning and Zoning
County Office Building
Towson, Maryland 21204

April 23, 1984

Dear Mr. Jablon:

Comments on Item # 266 Zoning Advisory Committee Meeting are as follows:

Property Owner: William K. DeSandro, et ux
Location: S/S Prospect Avenue 415' S/E of c/l Waugh Avenue
Existing Zoning: D.R. 3.5 & D.C. 2
Proposed Zoning: Variance to permit a side yard setback of 25' in lieu of the required 35'.

Acres: Lot #11 "Deeded to Depletion" 0.18
District: 8th

The items checked below are applicable:

( ) All structures shall conform to the Baltimore County Building Code (BOCA/Supplement and the Council of American Building Officials (CABO) Standards and other applicable Codes.

( ) A building( ) shall ( ) other _____ permit shall be required before beginning construction.

( ) Residential: Three sets of construction drawings are required to file a permit application. Architect/Engineer seal is/are not required. Non-residential sets and signatures are required on Plans and Technical Data.

( ) Commercial: Three sets of construction drawings with a Maryland Registered Architect or Engineer shall be required to file a permit application.

( ) An exterior wall erected within 6'0 feet of an adjacent lot line shall be of one hour fire resistive construction, no openings permitted within 3'0 of lot lines. A firewall is required of construction or as the 1st time, see Table 401, line 2, Section 1407 and Table 1401, also Section 505.1.

( ) Requested variance appears to conflict with the Baltimore County Building Code, Section/s _____

( ) A change of occupancy shall be applied for, along with an alternate permit application, and three required sets of drawings indicating how the structure will meet the Code requirements for the proposed change. Drawings may require a professional seal.

( ) Before this office can comment on the above structure, please have the owner, thru the services of a Registered in Maryland Architect or Engineer certify to this office, that, the structure for which a proposed change in use is proposed can comply with the height/area requirements of Table 505 and the required construction classification of Table 601.

( ) Comments

NOTE: These comments reflect only on the information provided by the drawings submitted to the office of Planning and Zoning and are not intended to be construed as the full extent of any permit. If desired, additional information may be obtained by visiting Room 122 (Plans Review) at 111 W. Chesapeake Ave., Towson.

Very truly yours,

Charles E. Burnham, Chief
Plans Review

CEB:rrj

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Elizabeth K Dinges
4603 Prospect Ave
Glyndon, Md 21071

PETITIONER'S EXHIBIT 1

MICROFILMED

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Barry W. Thomas
4606 Prospect Ave.
Glyndon, Md.
21071

MICROFILMED

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

[illegible]
4607 Prospect Ave
Glyndon, Md. 21071
[illegible]

MICROFILMED

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Marie Maevere
(Mrs Karl F.)
4615 Prospect Av
Glyndon, Md
21071

MICROFILMED

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Carlyle N Montenegro Jr.
4500 Prospect Ave.
Glyndon, MD 21071

MICROFILMED

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Thos. P. Walton
4610 Prospect ave
Glyndon, Md 21071

MICROFILMED

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Alma S. Whiteside
4601 Prospect Ave
Glyndon, Md. 21071

MICROFILMED

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

84-332-A

District: R.C.
Date of Posting: 5-11-84
Posted for: Variance
Petitioner: William R. DeSandro et ux
Location of property: S.E/S of Prospect Ave., 415' NE of Waugh Avenue (4605 Prospect Ave.)
Location of Signs: in front of 4605 Prospect Avenue
Remarks:
Posted by: [illegible]
Signature
Date of return: 5-18-84
Number of Signs: 1

MICROFILMED

[illegible]NITY NEWSPAPERS OF MARYLAND, INC.

Westminster, Md., May 10 19 84

[illegible]TIFY that the annexed Petition for Variance [illegible] (one) successive weeks/days previous [illegible]y of May 19 84 in the [illegible]ounty Times, a daily newspaper published in Westminster, Carroll County, Maryland. [illegible]rroll Herald, a weekly newspaper published in Eldersburg, Carroll County, Maryland. [illegible]y Times, a weekly newspaper published in Reisterstown, Baltimore County, Maryland.

[illegible]NITY NEWSPAPERS OF MARYLAND, INC.

Per

MICROFILMED

MAR 14 1985

appearing that strict compliance with the Baltimore County Zoning Regulations would ~~unable~~ result in practical difficulty and unreasonable hardship upon the Petitioner(s) and the granting of the variance(s) requested will will not adversely affect the health, safety, and general welfare of the community, the variance(s) should ~~should~~ not be granted.

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 22nd day of June, 19 84, that the herein Petition for Variance(s) to permit A side yard setback of 27 feet in lieu of the required 35 feet for the proposed addition, in accordance with the site plan filed herein, is GRANTED, from and after the date of this Order, subject, however, to the approval of a site plan by the Office of Planning and Zoning.

Deputy Zoning Commissioner of Baltimore County

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Elizabeth K Dinges
4603 Prospect Ave
Glyndon, Md 21071

PETITIONER'S EXHIBIT 1

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Sally W Thomas
4608 Prospect Ave
Glyndon Md 21071

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Marie Meyers
(Mrs Karl 7),
4615 Prospect Ave
Glyndon, Md
21071

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Carlyle W Montanye Jr.
4500 Prospect Ave
Glyndon, MD 21071

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Thos L Walsh
4610 Prospect ave
Glyndon, md 21071

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Alma L Wolcott
4601 Prospect Ave
Glyndon Md 21071

ZONING DESCRIPTION

Beginning on the southeast side of Prospect Avenue, at the distance of 415 feet measured along the northeast side measured straight to intersect the centerline of Waugh Avenue. Being lot #11 on the plat of Bennett to Regester Book #2, Folio 18. Fourth Election District. Also known as 4605 Prospect Avenue.

PETITION FOR VARIANCE

4th Election District

ZONING: Petition for Variance

LOCATION: Southeast side Prospect Ave., 415 ft. Northeast of Waugh Avenue (4605 Prospect Avenue)

DATE & TIME: Tuesday, May 29, 1984 at 9:45 A.M.

PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

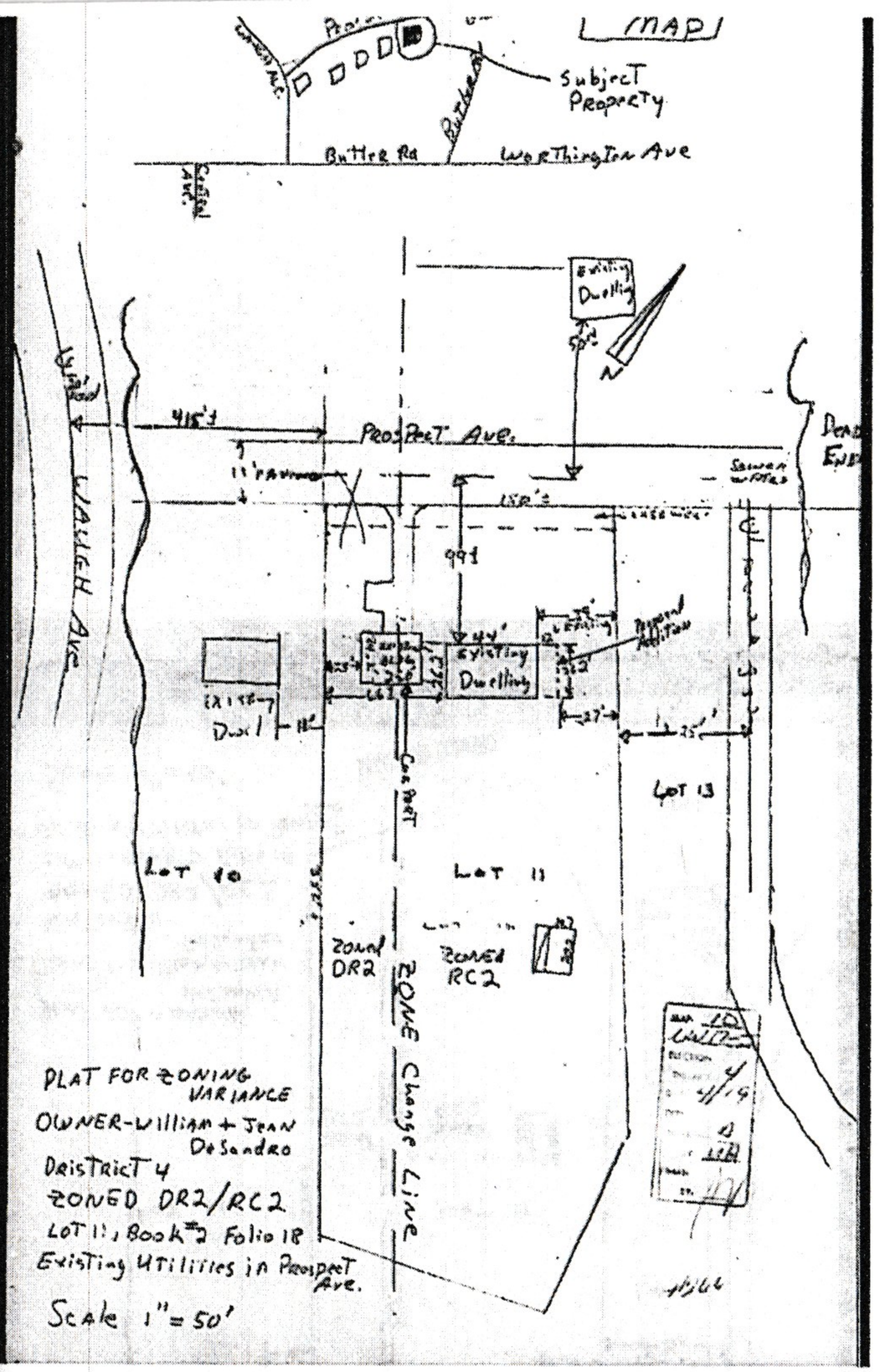
The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

Petition for Variance to permit a side yard setback of 25 ft. instead of the required 35 ft.

Being the property of William R. DeSandro, et ux, as shown on plat plan filed with the Zoning Department.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be received in writing by the date of the hearing set above or made at the hearing.

BY ORDER OF
ARNOLD JABLON
ZONING COMMISSIONER
OF BALTIMORE COUNTY



RE: PETITION FOR VARIANCE
SE/S Prospect Ave., 415' NE of Waugh Ave. (4605 Prospect Ave.);
4th District

WILLIAM R. DeSANDRO, et ux,
Petitioners

: BEFORE THE ZONING COMMISSIONER
: OF BALTIMORE COUNTY
:
: Case No. 84-332-A

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notices should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

Phyllis Cole Friedman
People's Counsel

Peter Max Zimmerman
Deputy People's Counsel
Rm. 223, Court House
Towson, MD 21204
494-2188

I HEREBY CERTIFY that on this 9th day of May, 1984, a copy of the foregoing Entry of Appearance was mailed to Mr. and Mrs. William R. DeSandro, 4605 Prospect Ave., Glyndon, MD 21071, Petitioners.

Peter Max Zimmerman

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

ARNOLD JABLON
ZONING COMMISSIONER

May 22, 1984

Mr. & Mrs. William R. DeSandro
4605 Prospect Avenue
Glyndon, Maryland 21071

Re: Petition for Variance
SE/S Prospect Ave., 415' NE of Waugh Avenue (4605 Prospect Avenue)
Case No. 84-332-A

Dear Mr. & Mrs. DeSandro:

This is to advise you that $51.35 is due for advertising and posting of the above property.

This fee must be paid and our zoning sign and post returned on the day of the hearing before an Order is issued. Do not remove sign until day of hearing.

Please make the check payable to Baltimore County, Maryland, and remit to Mrs. Arlene January, Zoning Office, Room 113, County Office Building, Towson, Maryland 21204, before the hearing.

Sincerely,

ARNOLD JABLON
Zoning Commissioner

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 130510

DATE 5/29/84 ACCOUNT R-01-615-000
AMOUNT $51.35
RECEIVED Jean M. DeSandro
FOR advertising and posting Case #84-332-A

B 684******51350 E284A

VALIDATION OR SIGNATURE OF CASHIER

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Douglas A. Rodgers
4609 Prospect Ave

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Mr. & Mrs. Laurence E. Evans
(Selma E. Evans)
4612 Prospect Ave
Glyndon, Md. 21071

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

ARNOLD JABLON
ZONING COMMISSIONER

June 14, 1984

Mr. and Mrs. William R. DeSandro
4605 Prospect Avenue
Glyndon, Maryland 21071

RE: Petition for Variance
SE/S Prospect Avenue,
415' NE Waugh Avenue
(4605 Prospect Avenue) -
4th Election District
William R. DeSandro, et ux -
Petitioner
No. 84-332-A (Item No. 266)

Dear Mr. and Mrs. DeSandro:

I have this date passed my Order in the above referenced matter in accordance with the attached.

Very truly yours,

JEAN M. H. JUNG
Deputy Zoning Commissioner

JMHJ:mc

Attachments

cc: People's Counsel

May 1, 1984

Mr. & Mrs. William R. DeSandro
4605 Prospect Avenue
Glyndon, Maryland 21071

NOTICE OF HEARING

Re: Petition for Variance
SE/S Prospect Ave., 415' NE of Waugh Avenue (4605 Prospect Avenue)
Case No. 84-332-A

TIME: 9:45 A.M.

DATE: Tuesday, May 29, 1984

PLACE: Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland

Zoning Commissioner
Ste County

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 128246

DATE 4/5/84 ACCOUNT R-01-615000
AMOUNT 35.00
RECEIVED Wm. R. DeSandro
FOR Postage for Item #266
(Ck.) B 835******35001b E084A

VALIDATION OR SIGNATURE OF CASHIER

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

84-332-A

District 8th
Date of Posting 5-11-84
Posted for: Variance
Petitioner: William R. DeSandro, et ux
Location of property: S/S/E of Prospect Ave., 415' NE of Waugh Avenue (4605 Prospect Ave.)
Location of Signs: In front of 4605 Prospect Avenue
Remarks:
Posted by: D. Rath (Signature)
Number of Signs: 1
Date of return: 5-18-84

Petition for Variance
4th Election District

ZONING: Petition for Variance to permit a setback of 25 ft. in lieu of the required 35 ft. and to permit a side yard setback of 10 ft. in lieu of the required 15 ft.
LOCATION: SE/S Prospect Ave., 415 ft. N/East of centerline of Waugh Ave. (4605 Prospect Ave.)
DATE & TIME: Tuesday, May 29, 1984 at 9:45 A.M.
PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Ave., Towson, Maryland

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

Petition for a variance to permit a side yard setback of 10 ft. in lieu of the required 15 ft. and a rear yard setback of 25 ft. in lieu of the required 35 ft. for an existing dwelling.

The Zoning Regulations to be excepted as follows: Section 1A01.3.B.3 of the Baltimore County Zoning Regulations.

All that parcel of land in the Fourth District of Baltimore County

Being the property of William R. DeSandro, et ux as shown on plat plan filed with the Zoning Office.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be received in writing by the date of the hearing set above or presented at the hearing.

BY ORDER OF
ARNOLD JABLON
ZONING COMMISSIONER
OF BALTIMORE COUNTY

COMMUNITY NEWSPAPERS OF MARYLAND, INC.

Westminster, Md. May 10 19 84

...IFY that the annexed Petition for Variance
(Case)..... successive weeks/days previous
...y of..... May ..... 19..84..... in the
...unty Times, a daily newspaper published
in Westminster, Carroll County, Maryland.
...roll Herald, a weekly newspaper published
in Eldersburg, Carroll County, Maryland.
... Times, a weekly newspaper published
...n Reisterstown, Baltimore County, Maryland.

CARROLL COMMUNITY NEWSPAPERS OF MARYLAND, INC.

Per.....

84-332-A

CERTIFICATE OF PUBLICATION



TOWSON, MD., May 10, 19 84

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., ~~successive~~ of ...one... ~~successive~~ before the ...29th... day of ...May..., 19 84, the ~~first~~ publication appearing on the ...10th... day of ...May..., 19 84.

THE JEFFERSONIAN,
D. Frank Streeter
Manager

Cost of Advertisement, $.....

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a

Variance from Section 1401.3.B.1 To permit a pleasure setback of 25 feet

instead of the required 35 feet.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (Indicate hardship or practical difficulty)

1. As a matter of right
2. County Council to rezone in November, 1984, and we are petitioning the council as well
3. Property in question is already hooked up to county sewer and water
4. Part of property is zoned DR2 and other part of property is zoned RC2
5. Design and layout of the house precludes constructing the proposed addition in any other way.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, 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.

I/We do 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 Petition.

Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State

Attorney for Petitioner:

(Type or Print Name)

Signature

Address

City and State

Attorney's Telephone No.:

Legal Owner(s):

William R. DeSandro
(Type or Print Name)
William R. DeSandro
Signature

Joan M. DeSandro
(Type or Print Name)
Joan M. DeSandro
Signature

4605 Prospect Avenue 526-5792
Address Phone No.

Glyndon, Maryland 21071
City and State

Name, address and phone number of legal owner, con-tract purchaser or representative to be contacted

William R. DeSandro
Name

4605 Prospect Ave. 257-1936
Address Business Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 17th day of April, 1984, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 29th day of May, 1984, at 11:15 o'clock A.M.

Zoning Commissioner of Baltimore County.

(over)

BY Mary Carpenter (Clerk)

84-332-A

Posted 4/19

Hearing 4/19

Date 4/19

Phone 4/19

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
TOWSON, MARYLAND 21204
494-3211

NORMAN E. GERBER
DIRECTOR

4-26-84

Mr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Re: Zoning Advisory Meeting of 4-17-84
Item # 266
Property Owner: William R. DeSandro, et ux
Location: S/E/S Prospect Ave., 415' S/E of Waugh Ave.
Existing Zoning: D.R. 1 & D.R. 2
Proposed Zoning: Variance to permit a side yard setback of 15' in lieu of the required 35'.

Dear Mr. Jablon:

The Division of Current Planning and Development has reviewed the subject petition and offers the following comments. The items checked below are applicable.

(X) There are no site planning factors requiring comment.
( ) A County Review Group meeting is required.
( ) A County Review Group meeting was held and the minutes will be forwarded by the Bureau of Public Services.
( ) This site is part of a larger tract; therefore it is defined as a subdivision. The plat must show the entire tract.
( ) A record plat will be required and must be recorded prior to issuance of a building permit.
( ) The access is not satisfactory.
( ) The circulation on this site is not satisfactory.
( ) The parking arrangement is not satisfactory.
( ) Parking calculations must be shown on the plan.
( ) This property contains soils which are defined as wetlands, and development on these soils is prohibited.
( ) Construction in or alteration of the floodplain is prohibited under the provisions of Section 22-98 of the Development Regulations.
( ) Development of this site may constitute a potential conflict with the Baltimore County Master Plan.
( ) The unmapped Development Plan was approved by the Planning Board on
( ) Landscaping should be provided on this site and shown on the plan.
( ) The property is located in a deficient service area as defined by Bill 178-79. No building permit may be issued until a Reserve Capacity Use Certificate has been issued. The deficient service is
( ) The property is located in a traffic area controlled by a "D" level intersection as defined by Bill 178-79, and as conditions change traffic capacity may become more limited. The Basic Services Areas are re-evaluated annually by the County Council.
( ) Additional comments:

Eugene A. Bober
Eugene A. Bober
Chief, Current Planning and Development

cc: James Hoswell

RE: PETITION FOR VARIANCE
SE/S Prospect Ave., 415' NE of Waugh Ave. (4605 Prospect Ave.)
4th District

WILLIAM R. DeSANDRO, et ux,
Petitioners

: BEFORE THE ZONING COMMISSIONER
: OF BALTIMORE COUNTY
: Case No. 84-332-A

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notices should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

Phyllis Cole Friedman
Phyllis Cole Friedman
People's Counsel

Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel
Rm. 223, Court House
Towson, MD 21204
494-2188

I HEREBY CERTIFY that on this 9th day of May, 1984, a copy of the foregoing Entry of Appearance was mailed to Mr. and Mrs. William R. DeSandro, 4605 Prospect Ave., Glyndon, MD 21071, Petitioners.

Peter Max Zimmerman
Peter Max Zimmerman

MICROFILMED

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. Arnold Jablon, Zoning Commissioner
Office of Planning and Zoning
Date: May 16, 1984

FROM: Ian J. Forrest

SUBJECT: Zoning Variance Items
Meeting - April 17, 1984

The Baltimore County Department of Health has reviewed the following zoning items and does not anticipate any Health hazards at this time regarding these items.

Item #260 - Dennis Fisher, et ux
Item #262 - Arthur B. Singley, III, et ux
Item #266 - William R. DeSandro, et ux
Item #267 - Joseph D. Deignet, et al
Item #268 - Robert H. Lonas, et ux
Item #2[illegible] - Lulie G. Forte

Ian J. Forrest, Director
BUREAU OF ENVIRONMENTAL SERVICES

IJF/fth

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

May 21, 1984

COUNTY OFFICE BLDG.
111 W. Chesapeake Ave.
Towson, Maryland 21204

Nicholas B. Commodari
Chairman

MEMBERS
Bureau of Engineering
Department of Traffic Engineering
State Roads Commission
Bureau of Fire Prevention
Health Department
Project Planning
Building Department
Board of Education
Zoning Administration
Industrial Development

Mr. & Mrs. William R. DeSandro
4605 Prospect Avenue
Glyndon, Maryland 21071

RE: Item No. 266 - Case No. 84-332-A
William R. DeSandro, et ux
Variance Petition

Dear Mr. & Mrs. DeSandro:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. The Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

In view of your proposal to construct an addition to the side of the existing dwelling within 25 feet of the side property line, this hearing is required. As stated in our previous conversation, the site plan indicates a setback of 27 feet from the side property line. However, it was your decision to have the petition advertised as requesting a 25 foot side setback to allow some flexibility in construction.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours,
Nicholas B. Commodari
NICHOLAS B. COMMODARI, Chairman
Zoning Plans Advisory Committee

NBC:bsc
Enclosures

BALTIMORE COUNTY
DEPARTMENT OF PUBLIC WORKS
TOWSON, MARYLAND 21204

HARRY J. PISTEL, P.E.
DIRECTOR

W-SW Key Sheet
66 & 67 NW 37 & 38
Pos. Sheets
NW 17 J Topo
43 Tax Map

July 17, 1984

Mr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Re: Item #266 (1983-1984)
Property Owner: William R. DeSandro, et ux
S/ES Prospect Avenue 415' S/E from centerline Waugh Avenue
Acres: Lot #11 "Bennett to Register" 2-18
District: 4th

Dear Mr. Jablon:

The following comments are furnished in regard to the plat submitted to this office for review by the Zoning Advisory Committee in connection with the subject item.

General:

Baltimore County highway and utility improvements are not directly involved.

Prospect Avenue, an existing public road, is proposed to be further improved in the future as a 30-foot closed section roadway on a 50-foot right-of-way with a standard type roadway termination at the end thereof.

Development of this property through stripping, grading and stabilization could result in a sediment pollution problem, damaging private and public holdings downstream of the property. A grading permit is, therefore, necessary for all grading, including the stripping of top soil.

The Petitioner must provide necessary drainage facilities (temporary or permanent) to prevent creating any nuisances or damages to adjacent properties, especially by the concentration of surface waters. Correction of any problem which may result, due to improper grading or improper installation of drainage facilities, would be the full responsibility of the Petitioner.

This office has no further comment in regard to the plan submitted for Zoning Advisory Committee review in connection with this Item 266 (1983-1984).

Very truly yours,
Robert A. Morris
ROBERT A. MORRIS, P.E., Chief
Bureau of Public Services

RAM:EAM:FWR:ss

BALTIMORE COUNTY
FIRE DEPARTMENT
TOWSON, MARYLAND 21204-2586
494-4500

HALE H. REMOTE
CHIEF

May 3, 1984

Mr. William Hammond
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, Maryland 21204

Attention: Nick Commodari, Chairman
Zoning Plans Advisory Committee

RE: Property Owner: William R. DeSandro, et ux

Location: SE/S Prospect Avenue 415' S/E from c/l Waugh Avenue

Item No.: 266 Zoning Agenda: Meeting of 4/17/84

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

( ) 1. Fire hydrants for the referenced property are required and shall be located at intervals or _____ feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.

( ) 2. A second means of vehicle access is required for the site.

( ) 3. The vehicle dead end condition shown at _____

EXCEEDS the maximum allowed by the Fire Department.

( ) 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

(X) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1976 Edition prior to occupancy.

( ) 6. Site plans are approved, as drawn.

( ) 7. The Fire Prevention Bureau has no comments, at this time.

Reviewer: Noted and Approved: George M. Zepp
Planning Group
Special Inspection Division
Fire Prevention Bureau

mb

BALTIMORE COUNTY
DEPARTMENT OF PERMITS & LICENSES
TOWSON, MARYLAND 21204
494-3610

TED ZALESKI JR.
DIRECTOR

April 23, 1984

Mr. Arnold Jablon, Zoning Commissioner
Office of Planning and Zoning
County Office Building
Towson, Maryland 21204

Dear Mr. Jablon:

Comments on Item # 266 Zoning Advisory Committee Meeting are as follows:

Property Owner: William R. DeSandro, et ux
Location: SE/S Prospect Avenue 415' S/E from c/l Waugh Avenue
Existing Zoning: D.R. 1 & D.R. 2
Proposed Zoning: Variance to permit a side yard setback of 15' in lieu of the required 35'.

Acres: Lot #11 "Bennett to Register" 2-18
District: 4th

The items checked below are applicable:

(X) A. All structures shall conform to the Baltimore County Building Code 1981/Council Bill 4-82 [illegible] and other applicable Codes.

(X) B. A building & other [illegible] permit shall be required before beginning construction.

C. Residential: Three sets of construction drawings are required to file a permit application. Architect/Engineer seal is/is not required. Non-reproduced seals and signatures are required on Prints and Technical Data.

D. Commercial: Three sets of construction drawings with a Maryland Registered Architect or Engineer shall be required to file a permit application.

E. An exterior wall erected within 6'0 for Commercial uses or 3'0 for One & Two Family use group of an adjacent lot line shall be of one hour fire resistive construction, no openings permitted within 3'0 of lot lines. A firewall is required if construction is on the lot line, see Table 401, Line 2, Section 1407 and Table 1406, also Section 503.2.

F. Requested variance appears to conflict with the Baltimore County Building Code, Section/s _____.

G. A change of occupancy shall be applied for, along with an alteration permit application, and three required sets of drawings indicating how the structure will meet the Code requirements for the proposed change. Drawings may require a professional seal.

H. Before this office can comment on the above structure, please have the owner, thru the services of a Registered in Maryland Architect or Engineer certify to this office, that the structure for which a proposed change in use is proposed can comply with the height/area requirements of Table 505 and the required construction classification of Table 601.

I. Comments:

NOTE: These comments reflect only on the information provided by the drawings submitted to the office of Planning and Zoning and are not intended to be construed as the full extent of any permit. If desired, additional information may be obtained by visiting Room 122 (Plans Review) at 111 W. Chesapeake Ave., Towson.

Very truly yours,
Charles E. Burnham
Charles E. Burnham, Chief
Plans Review

CEB:rrj

result in practical difficulty and unreasonable hardship upon the Petitioner(s) and the granting of the variance(s) requested will not adversely affect the health, safety, and general welfare of the community, the variance(s) should ~~should~~ not be granted.

Therefore, IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County, this 14th day of June, 1984, that the herein Petition for Variance(s) to permit a side yard setback of 27 feet in lieu of the required 35 feet for the proposed addition, in accordance with the site plan filed herein, is GRANTED, from and after the date of this Order, subject, however, to the approval of a site plan by the Office of Planning and Zoning.

Deputy Zoning Commissioner of Baltimore County

June 14, 1984 (cont.)
BY Mary Commissioner

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

ARNOLD JABLON
ZONING COMMISSIONER

June 14, 1984

Mr. and Mrs. William R. DeSandro
4605 Prospect Avenue
Glyndon, Maryland 21071

RE: Petition for Variance
SE/S Prospect Avenue,
415' NE Waugh Avenue
(4605 Prospect Avenue) -
4th Election District
William R. DeSandro, et ux -
Petitioner
No. 84-332-A (Item No. 266)

Dear Mr. and Mrs. DeSandro:

I have this date passed my Order in the above referenced matter in accordance with the attached.

Very truly yours,

JEAN M. H. JUNG
Deputy Zoning Commissioner

JMHJ:mc

Attachments

cc: People's Counsel

MICROFILMED

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

ARNOLD JABLON
ZONING COMMISSIONER

May 22, 1984

Mr. & Mrs. William R. DeSandro
4605 Prospect Avenue
Glyndon, Maryland 21071

Re: Petition for Variance
SE/S Prospect Ave., 415' NE of Waugh
Avenue (4605 Prospect Avenue)
Case No. 84-332-A

Dear Mr. & Mrs. DeSandro:

This is to advise you that $51.35 is due for advertising and posting of the above property.

This fee must be paid and our zoning sign and post returned on the day of the hearing before an Order is issued. Do not remove sign until day of hearing.

Please make the check payable to Baltimore County, Maryland, and remit to Mrs. Arlene January, Zoning Office, Room 113, County Office Building, Towson, Maryland 21204, before the hearing.

Sincerely,

ARNOLD JABLON
Zoning Commissioner

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 130510

DATE 5/29/84 ACCOUNT R-01-615-000
AMOUNT $51.35
RECEIVED FROM Jean M. DeSandro
FOR advertising and posting Case #84-332-A

VALIDATION OR SIGNATURE OF CASHIER

MICROFILMED

May 1, 19[illegible]

Mr. & Mrs. William R. DeSandro
4605 Prospect Avenue
Glyndon, Maryland 21071

NOTICE OF HEARING

Re: Petition for Variance
SE/S Prospect Ave., 415' NE of Waugh
Avenue (4605 Prospect Avenue)
Case No. 84-332-A

TIME: 9:45 A.M.

DATE: Tuesday, May 29, 1984

PLACE: Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland

Zoning Commissioner
of Baltimore County

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 128246

DATE 4/5/84 ACCOUNT R-01-615-000
AMOUNT 35.00
RECEIVED FROM Wm. DeSandro
FOR Filing fee for Item #266

VALIDATION OR SIGNATURE OF CASHIER

MICROFILMED

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Douglas A Dalzgyck
4609 Prospect Ave

MICROFILMED

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Mr. & Mrs. Laurence E. Snow
(Helen + Larry)
4612 Prospect Ave.
Glyndon Md 21071

MICROFILMED

ZONING DESCRIPTION

Beginning on the southeast side of Prospect Avenue, at the distance of 415 feet measured along the northeast side measured straight to intersect the centerline of Waugh Avenue. Being lot #11 on the plat of Bennett to Regester Book #2, Folio 18. Fourth Election District. Also known as 4605 Prospect Avenue.

MICROFILMED

PETITION FOR VARIANCE

4th Election District

ZONING: Petition for Variance

LOCATION: Southeast side Prospect Ave., 415 ft. Northeast of Waugh Avenue (4605 Prospect Avenue)

DATE & TIME: Tuesday, May 29, 1984 at 9:45 A.M.

PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

Petition for Variance to permit a side yard setback of 25 ft. instead of the required 35 ft.

Being the property of William R. DeSandro, et ux, as shown on plat plan filed with the Zoning Department.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be received in writing by the date of the hearing set above or made at the hearing.

BY ORDER OF
ARNOLD JABLON
ZONING COMMISSIONER
OF BALTIMORE COUNTY

MICROFILMED

84-332-A

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

County Office Building
111 . Chesapeake Avenue
Towson, Maryland 21204

Your petition has been received and accepted for filing this 17th day of April, 19 84

ARNOLD JABLON
Zoning Commissioner

Petitioner William R. DeSandro, et al
Petitioner's Attorney

Received by: Nicholas B. Commodari
Chairman, Zoning Plans Advisory Committee

84-332-A

CERTIFICATE OF PUBLICATION

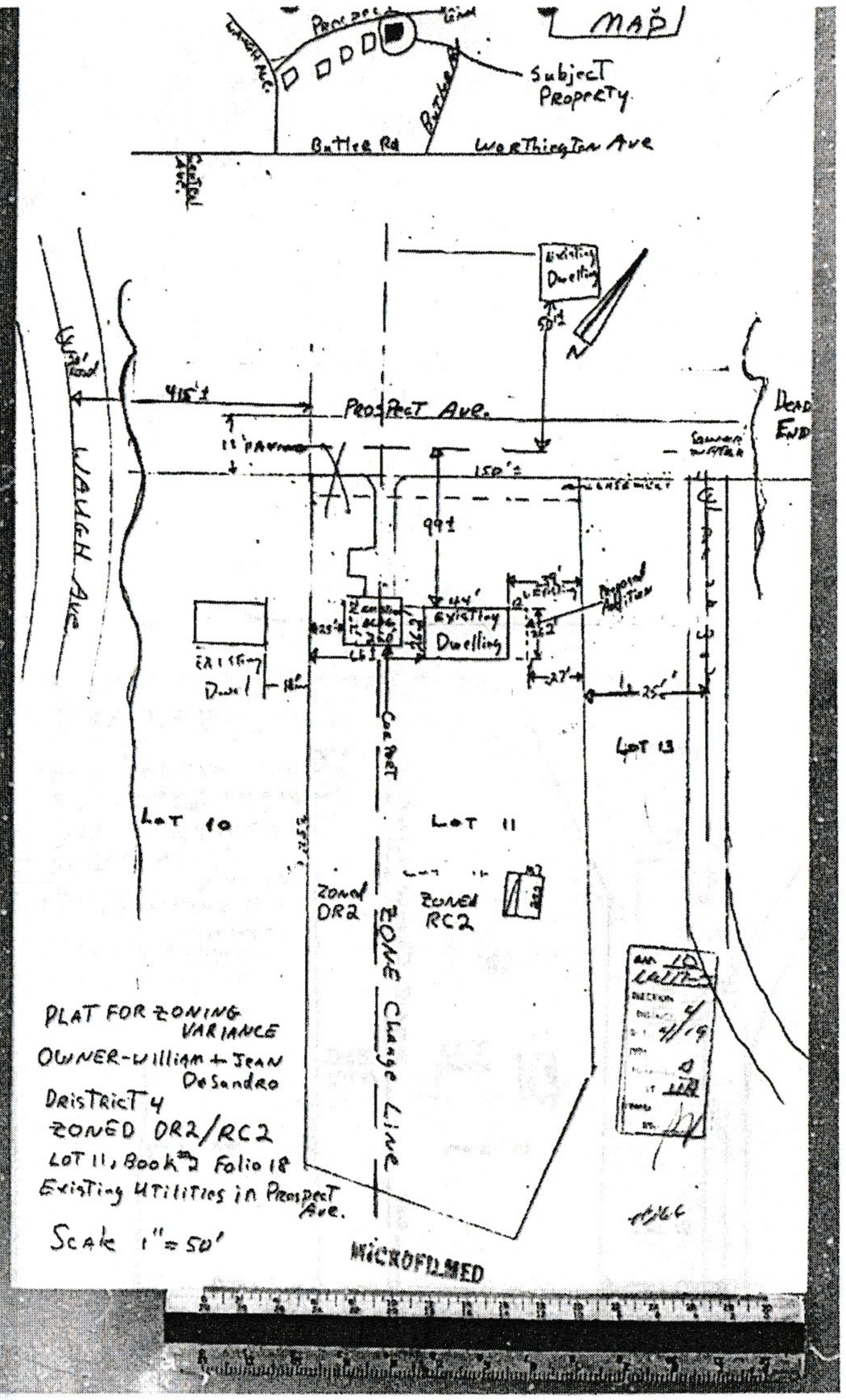
TOWSON, MD., May 10, 19 84

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., of one time before the 29th day of May, 1984, the publication appearing on the 10th day of May 19 84.

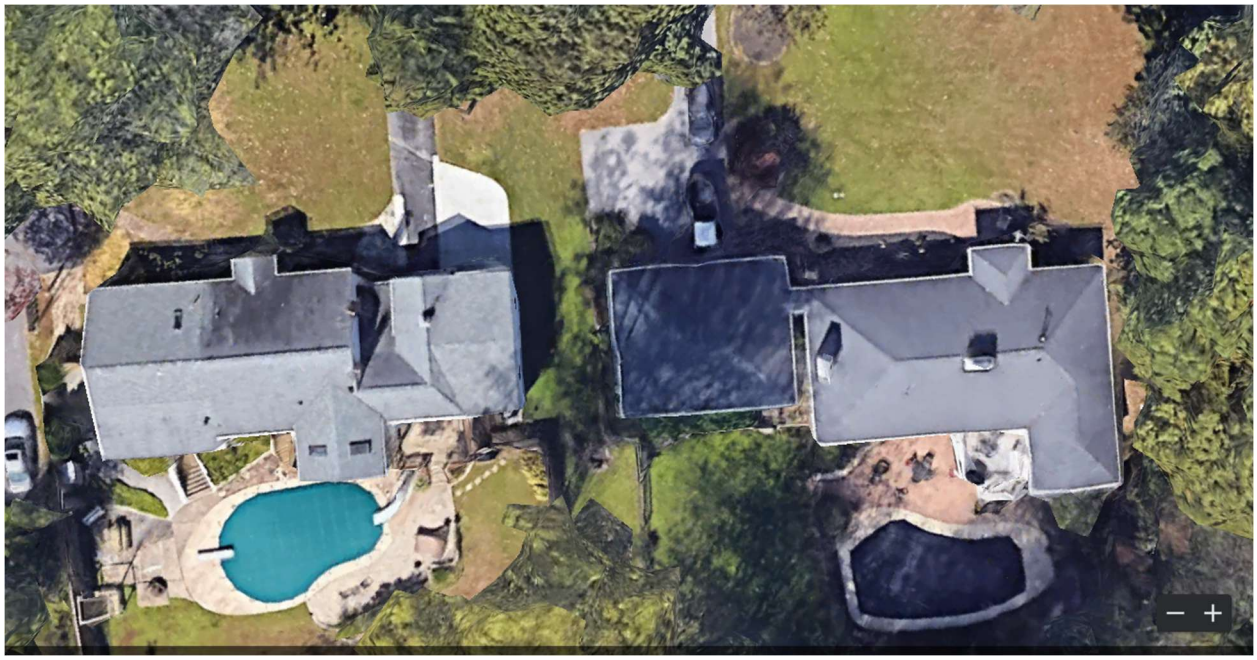
THE JEFFERSONIAN
G. Frank Siriotti
Manager.

Cost of Advertisement, $ 18.00

MICROFILMED



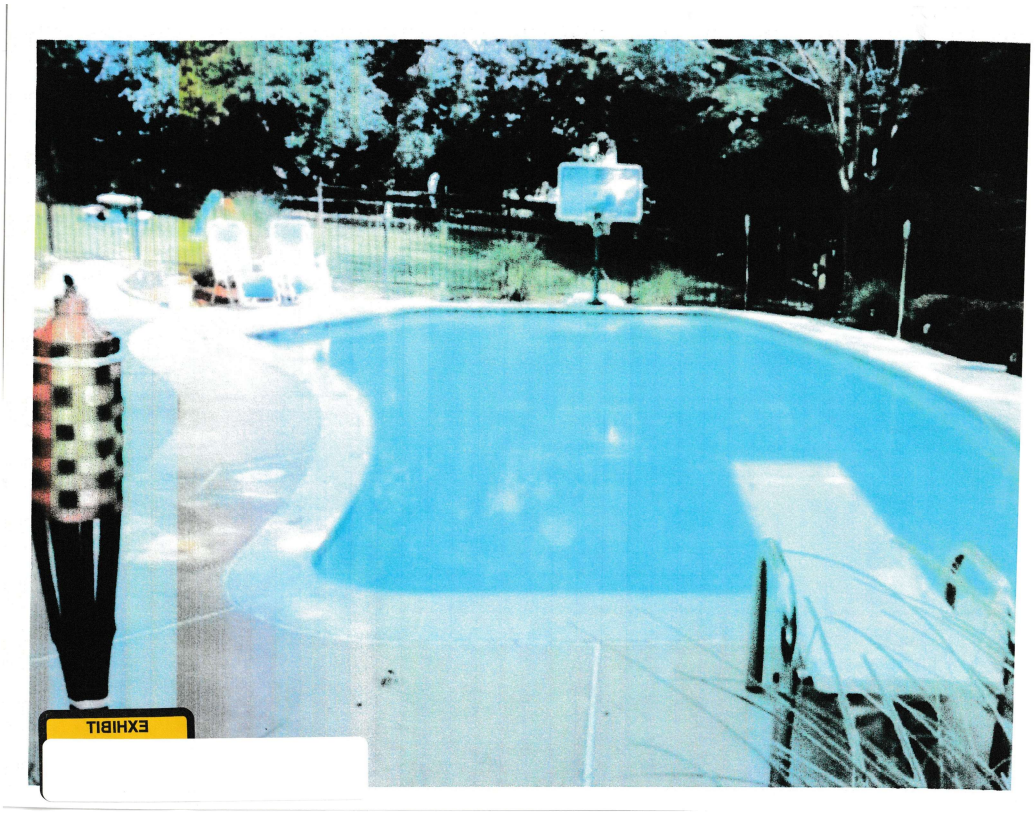
Recent arial depicting destruction of easement between 4607 and 4605 Prospect Avenue. Permitting a zero easement will allow no space should anything happen and need access to rear of property. The white driveway addition and the garage are 2.5’ onto 4605 Prospect Avenue’s property.



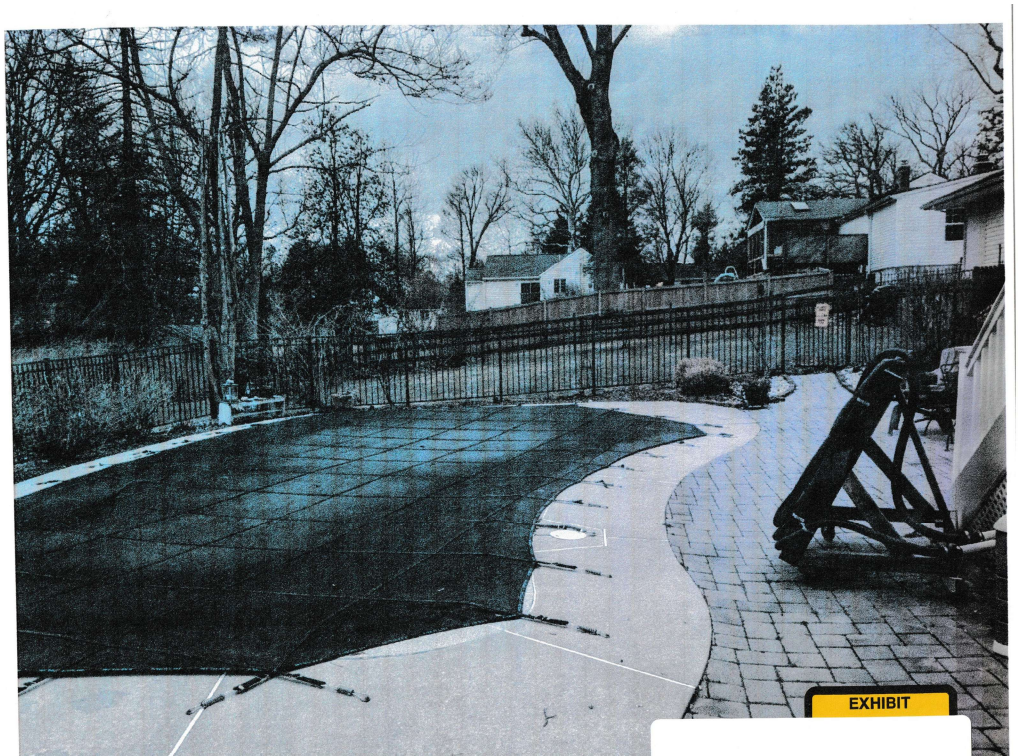
Same issue on 4609 side: no access to rear of property should the need arise.



View from 4605 towards 4607 prior to removing hedges



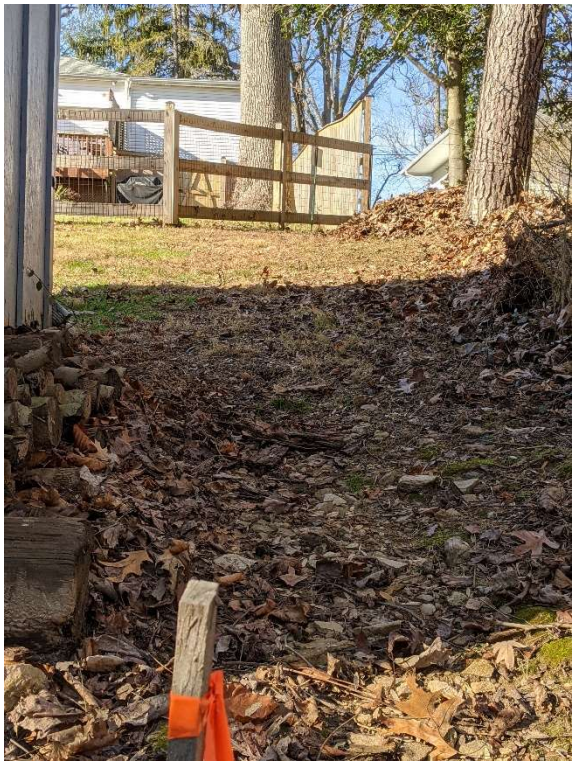
Same view after removal of hedges and installation of fence.



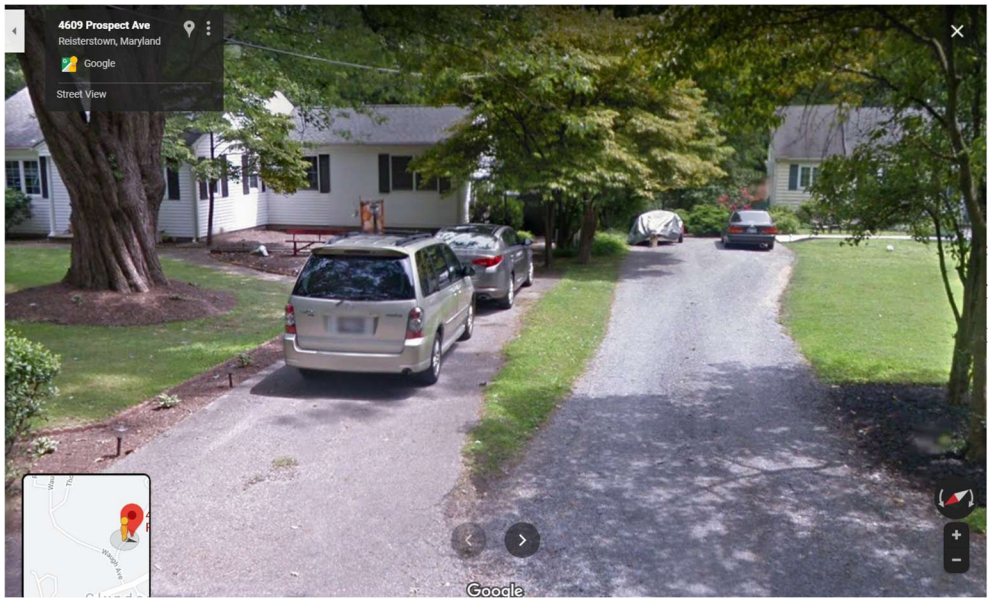
4607 Prospect Ave looking straight down tree line. Clearly, garage is well over the line. First two zoning signs are on 4605 property. The Bair's have since removed the shrubs that were on 4605's property.



Rear yard looking toward 4607 back yard. Stake in foreground, tree is on 4605 property.



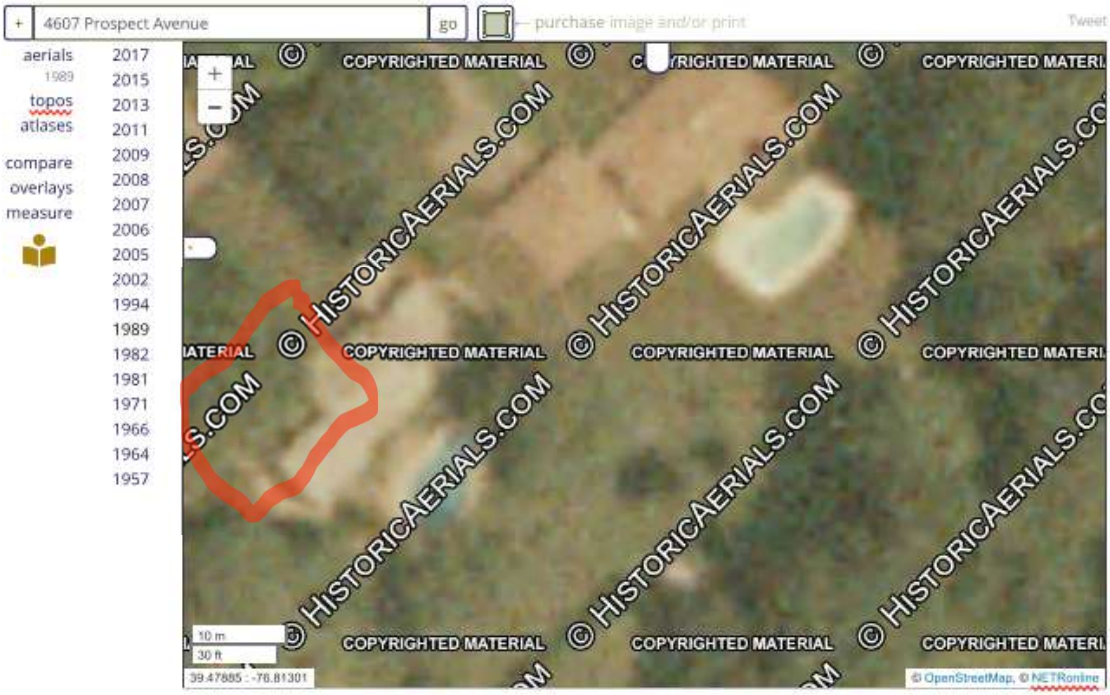
Prior to filling the opening addition. Note the previous non-permitted addition roof peak is on the downslope of the rear of the original structure.



The addition filling the opening. Note new roofing for size perspective.



4607 Prospect Ave 4605 Prospect Ave 1989 arial



Note above the opening created by the first non-permitted addition done after 1971? Could find no permits for that addition either. Clearly visible the addition expanse by the new roofing shingles below in a recent arial of property.



Recent arial 4607 rear enclosure



Pre-purchase sales brochure of rear deck, not enclosed. Permits again not acquired.



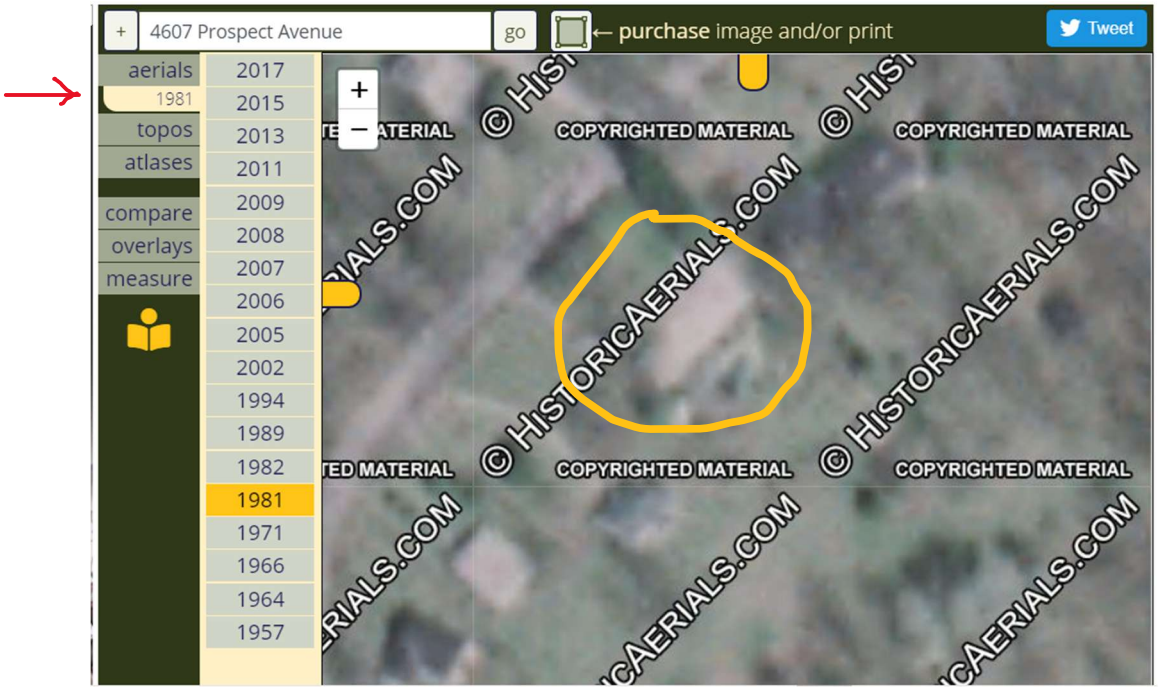
1971 arial 4607 Prospect Avenue

Clearly, no first non-permitted addition on the left side. DR zoning regulation adopted in 1970.

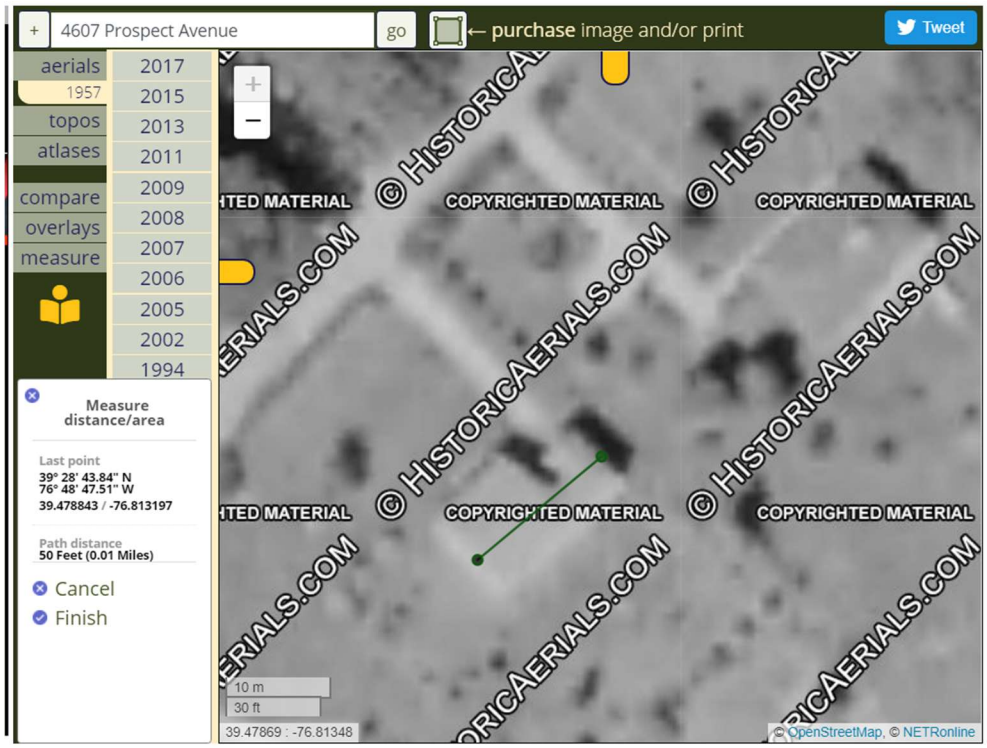


1981 arial 4607 Prospect Avenue

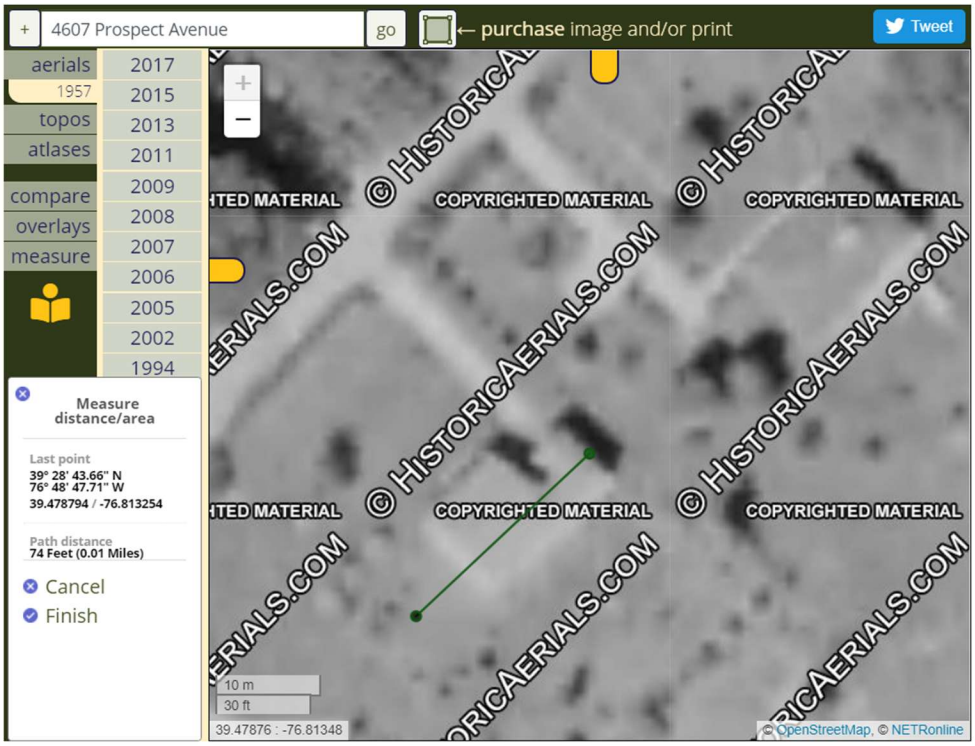
While not as clear, it is clear that the first non-permitted addition is in place. This addition erected with no permits either: we could not find any in the county record. Had this been done properly, the county would have then made the proper decision at that time.



1957 arial with 50’ length superimposed.



1957 arial with 74’ length (non-permitted addition length) superimposed.





4605 meadow oversaturated with runoff. Shoes come off suctioned into the depth of the mud.

Glyndon vicinity. 4607 Prospect is highlighted teal. 4615 Prospect in green.



4615 Prospect Avenue.





Fence is over 7’ on 4605 property, garage drainage is further still.



Close up of drainage, can make out beginning of gulley being formed by runoff.



4605 meadow looking towards 4607 rear yard.







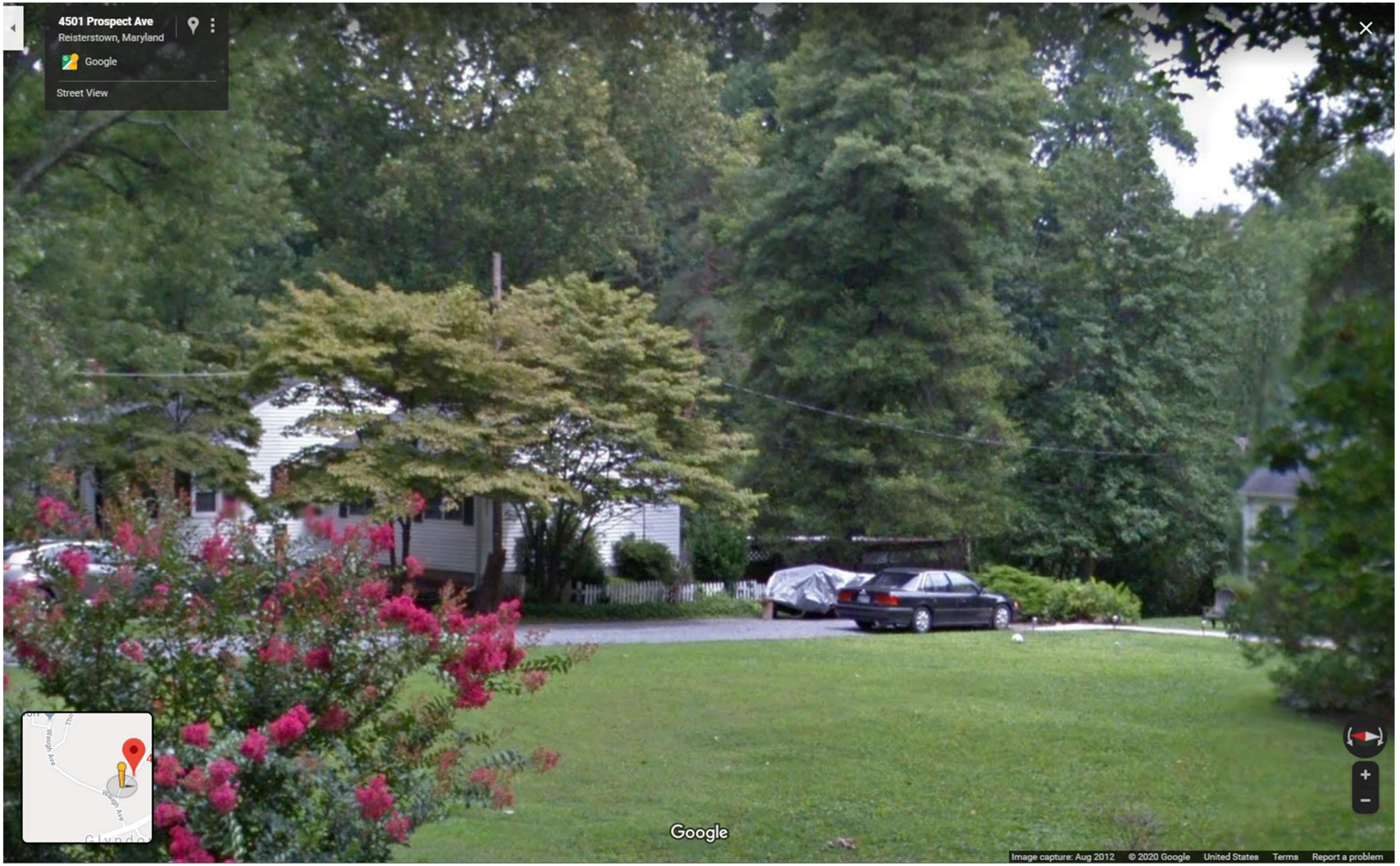










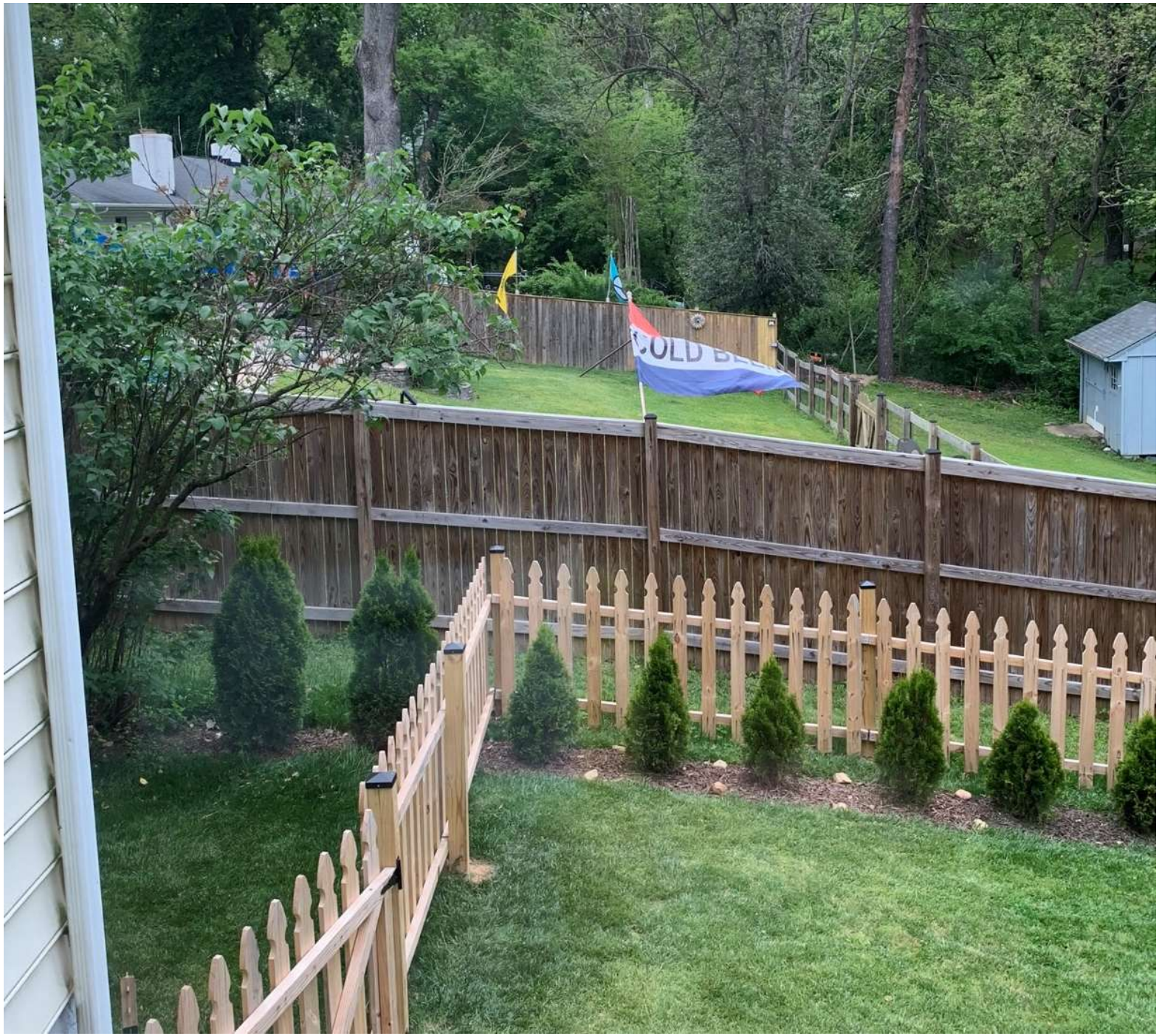

4501 Prospect Ave
Reisterstown, Maryland
Google
Street View
Google
Image capture: Aug 2012 © 2020 Google United States Terms Report a problem




4501 Prospect Ave
Reisterstown, Maryland
Google
Street View
Google
Image capture: Aug 2012 © 2020 Google United States Terms Report a problem











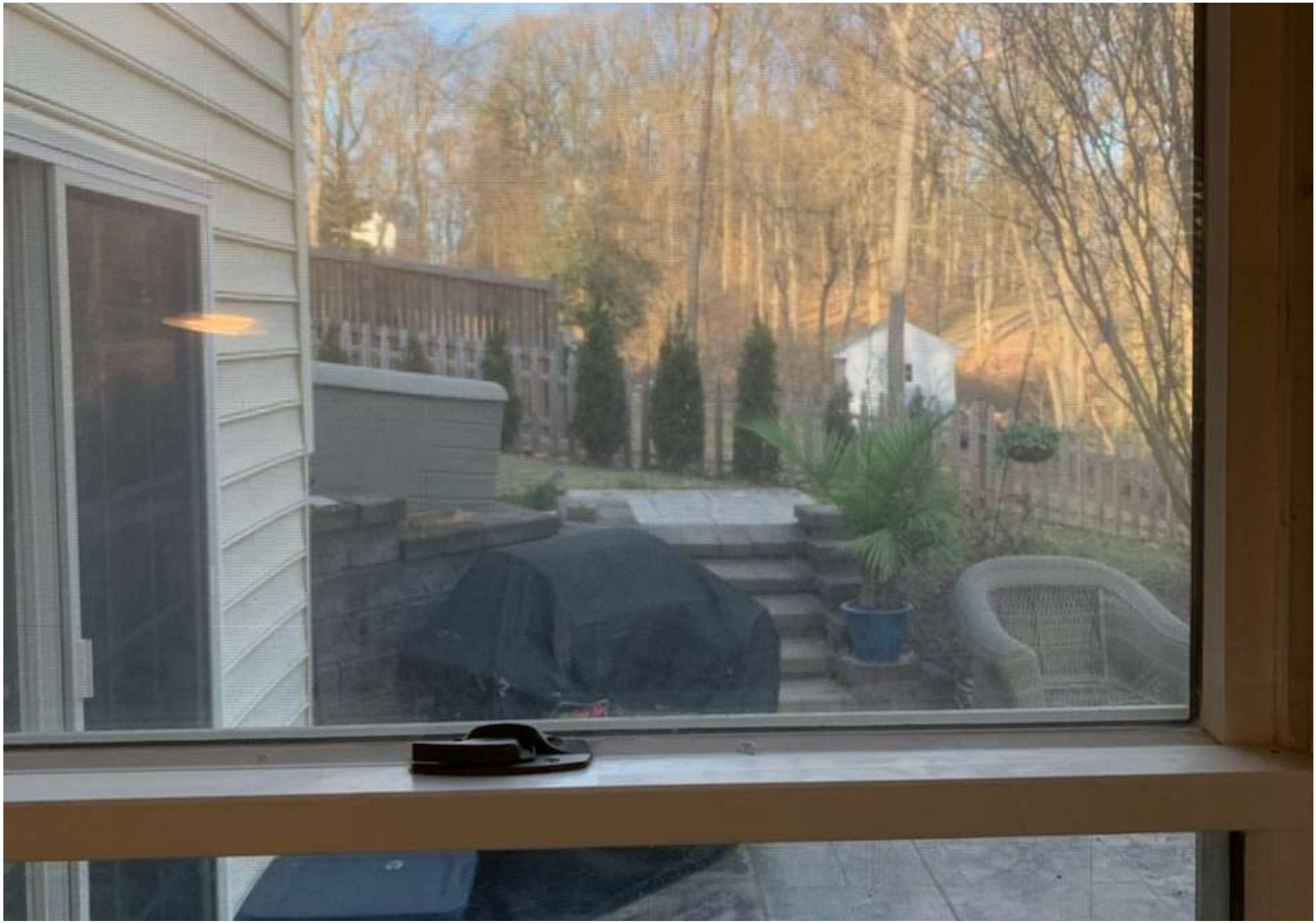




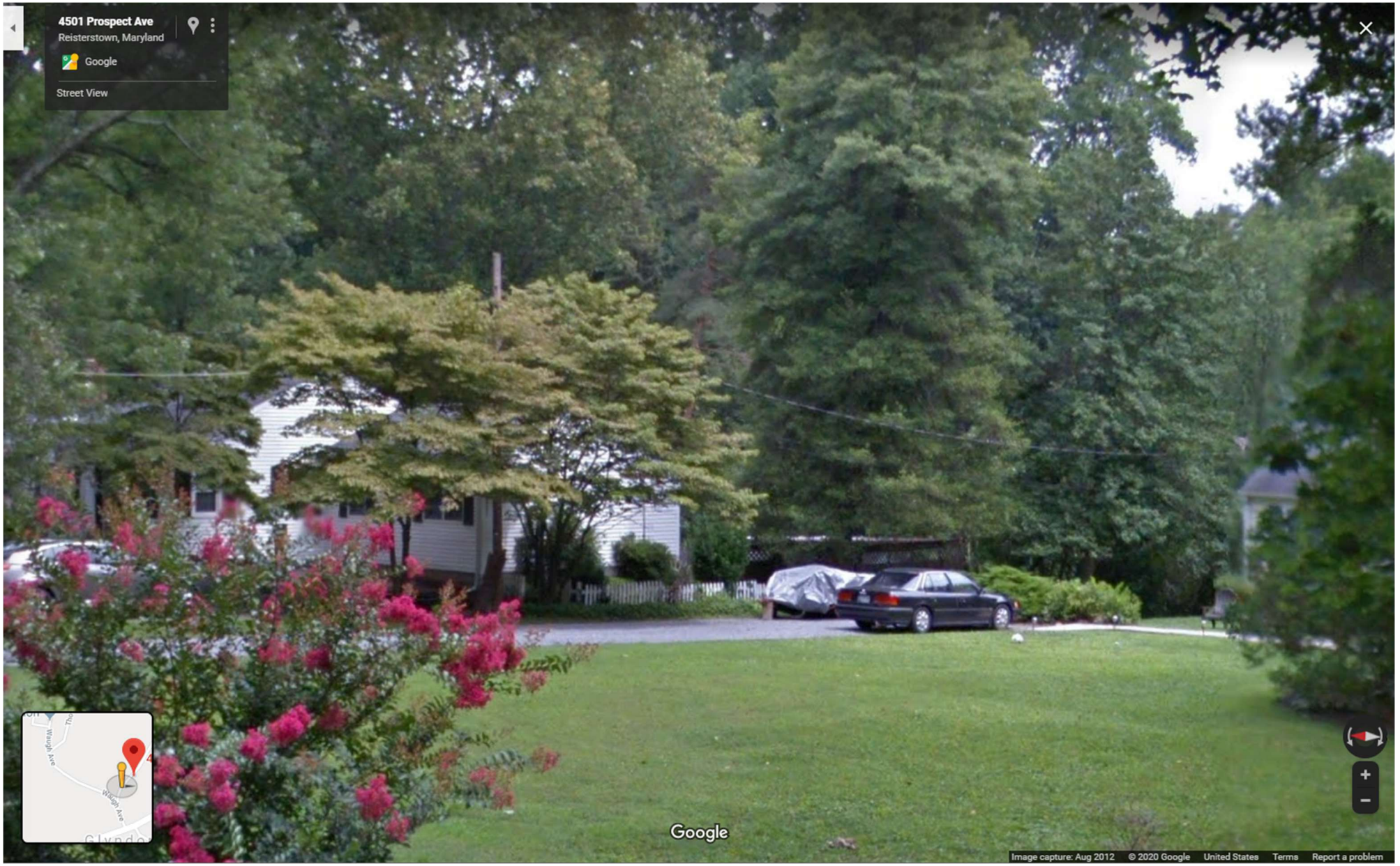

COLD BEER

Protestant's Exhibit 6 View from back patio of Montanye privacy on other side 6M







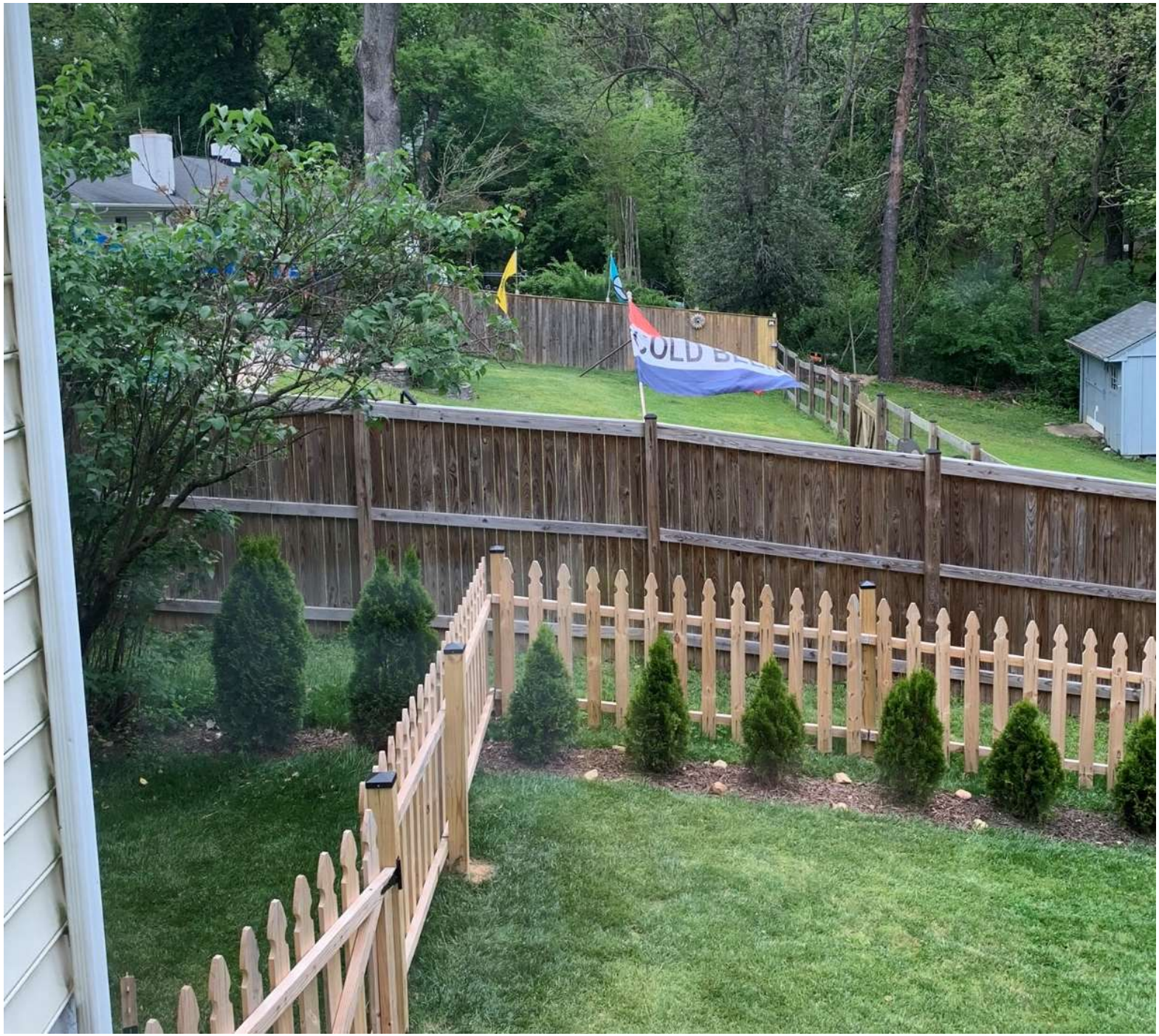

4501 Prospect Ave
Reisterstown, Maryland
Google
Street View
Google
Image capture: Aug 2012 © 2020 Google United States Terms Report a problem




4501 Prospect Ave
Reisterstown, Maryland
Google
Street View
Google
Image capture: Aug 2012 © 2020 Google United States Terms Report a problem











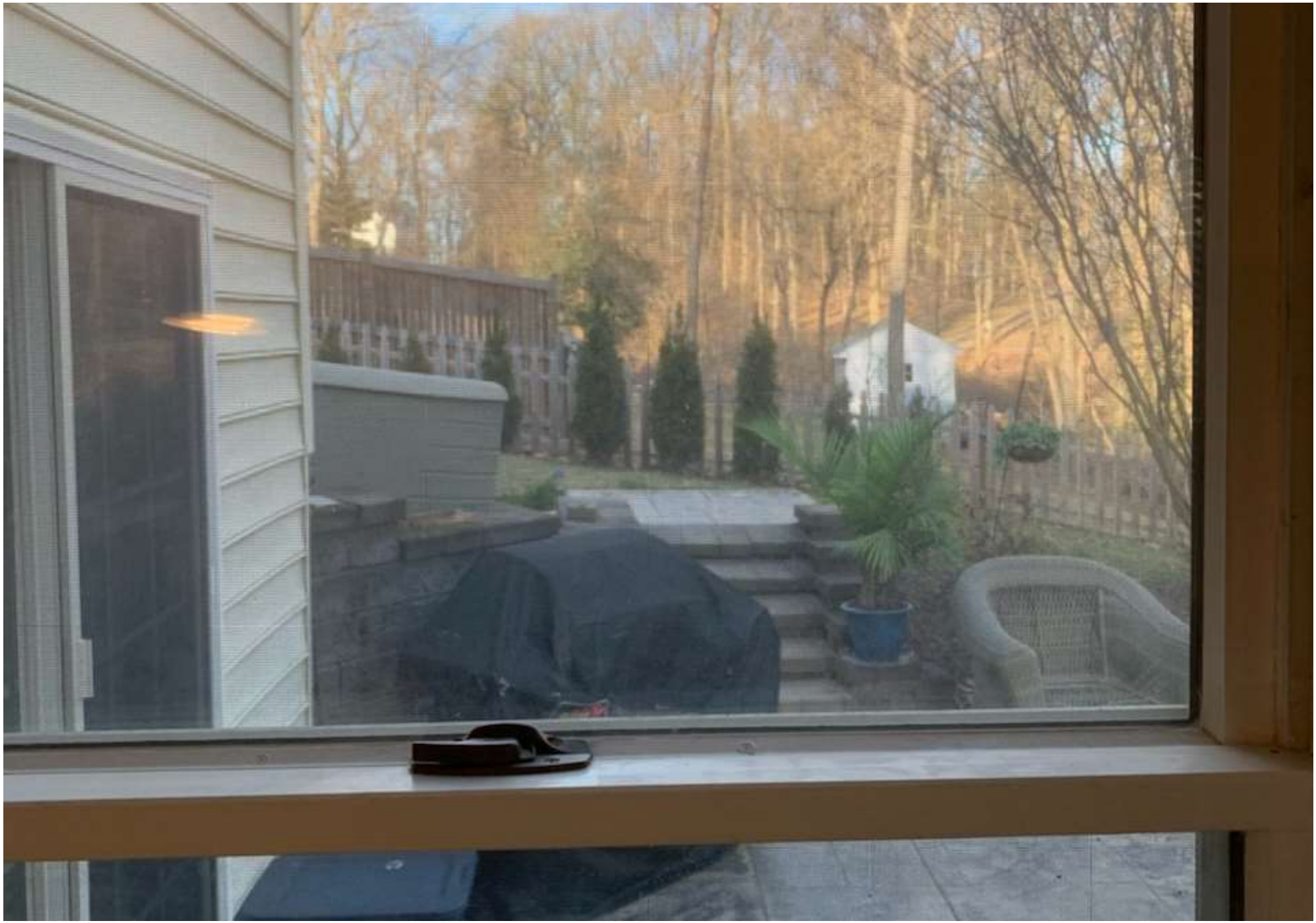





COLD BEER

Protestant's Exhibit 6 View from back patio of Montanye privacy on other side 6M





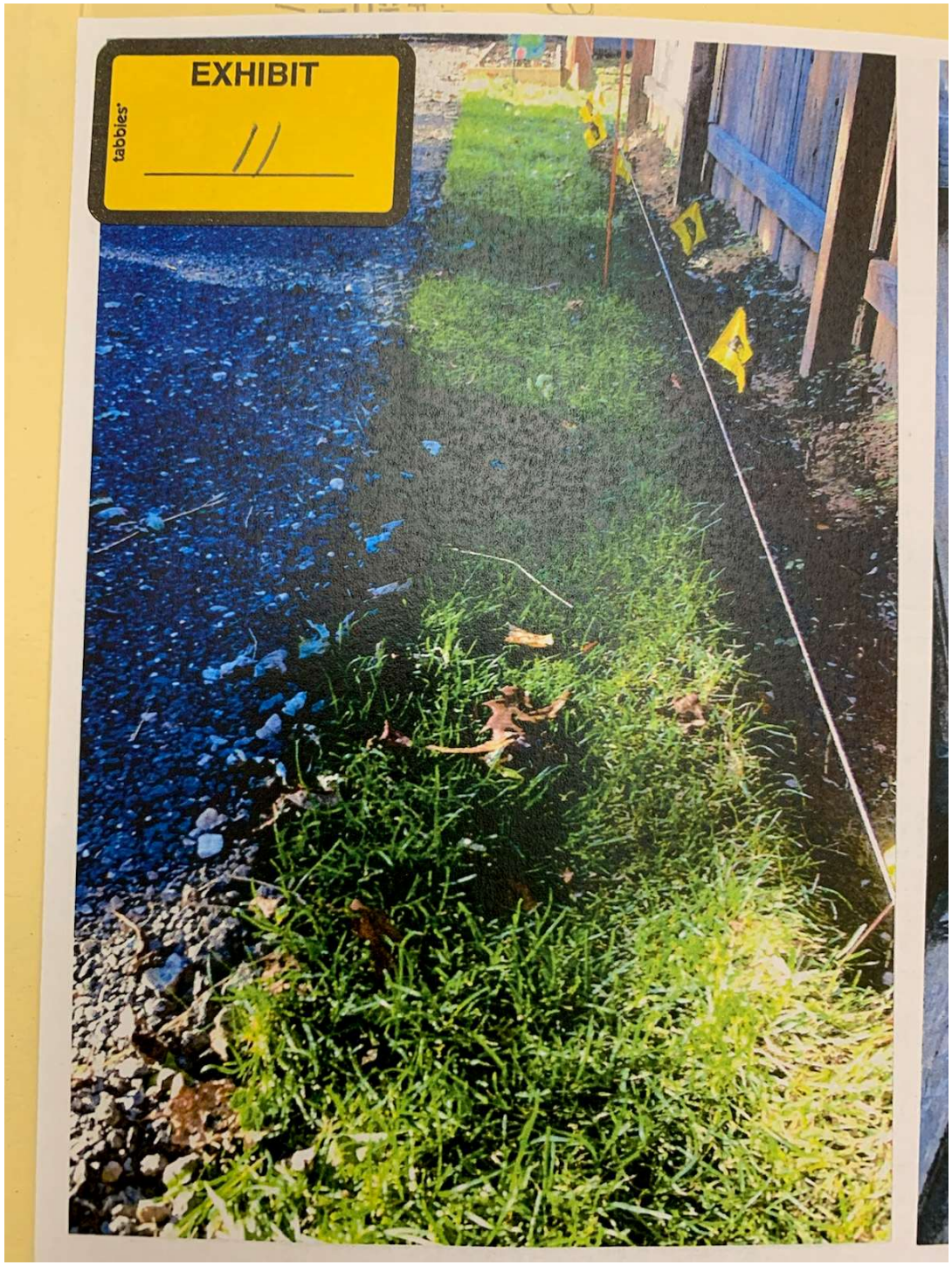


EXHIBIT
tabbies
//









Protestant's Exhibit 17 Moved stake #3 17D









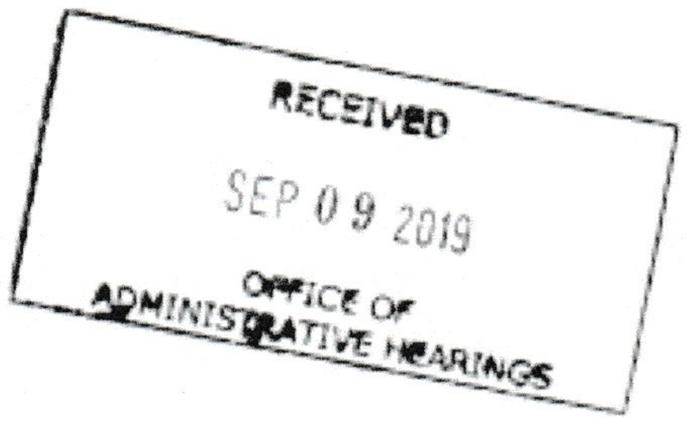

09804M8

SMITH, GILDEA & SCHMIDT LLC

MICHAEL PAUL SMITH
DAVID K. GILDEA
LAWRENCE E. SCHMIDT
MICHAEL G. DEHAVEN
JASON T. VETTORI
MARIELA C. D'ALESSIO*
MELISSA L. ENGLISH
*Admitted in MD, FL, PA

LAUREN D. BENJAMIN
SARAH A. ZADROZNY
CARMELO D. MORABITO
ZACHARY J. WILKINS
of counsel:
EUGENE A. ARBAUGH, JR.
DAVID T. LAMPTON
MARY G. LOKER
STEPHEN J. NOLAN

September 9, 2019



Via Hand Delivery
Honorable Lawrence M. Stahl
Office of Administrative Hearings
105 W. Chesapeake Avenue, Suite 103
Towson, MD 21204

Re: Bair – 4607 Prospect Avenue
Case No. 2019-342-SPHA

Dear Honorable Judge Stahl:

Please find enclosed a Motion for Reconsideration for filing in the above matter. This filing is somewhat complicated by the fact that the order for which we seek reconsideration was issued by former ALJ Beverungen. I am aware that he is now retired and no longer a County employee. Thus, I enclose a copy of his opinion and order for your reference.

Additionally, although the order was signed by former ALJ Beverungen, it is certainly a decision that is the product of the Office of Administrative Hearings ("OAH"). As such, I believe that you, or whoever replaces ALJ Beverungen, has authority to review the Motion and revise the Order. OAH's refusal to reconsider the Opinion and Order of ALJ Beverungen would restrict and impair the jurisdiction and efficiency of OAH and be inconsistent with the long held principle that any action of a court remains within the control of the court until and unless that decision is final (See e.g. *Scott v. State* 379 Md. 170 (2004)). This Motion is timely filed and thus within the jurisdiction of OAH.

In an administrative law setting, I believe the situation here is akin to similar circumstances that I have encountered at the Board of Appeals. Frequently, a Board member may resign or leave the Board for whatever reason. I have seen circumstances where new panel members are assigned as needed. Recently, I was involved in a case where a remand to the Board was required by order of the appellate court and two of the three original members were no longer on the Board. Two "replacements" were inserted and the matter continued on. Thus, I do not view ALJ Beverungen's departure as an event preventing review of the Motion.

As you are aware, Rule K of the Rules of Practice and Procedure also allow the OHA to reconvene the hearing. A reconvened hearing is at the discretion of your office. At that hearing,.the subject matter is limited to only the issue(s) identified in the Motion. The hearing may be limited to argument, or additional evidence might be allowed. As you will note from the Motion, the request for reconsideration is limited to a single issue. I am pleased to proceed in any manner that you deem appropriate and do not believe that a new hearing is mandated unless you believe it necessary. The Motion can be considered based only on the pleadings or I am pleased to appear if you prefer.

Thank you for your consideration of this matter.

Very truly yours,

Lawrence E. Schmidt

LES/amf
Enclosures
cc: Donna Bair
Peter Max Zimmerman, Esquire
Pamela Becker
Richard Stanley
Vernene Lenz
Shirley Winebarger
Teresa Moore
Kimberley Karlsen
Martha Wist
Ann Rea
Lyle Montanye
Tom and Kim Montanye
Charles and Anna Welsh
Robin Coffin
Frances Acle
Steve and Patricia Fradkin
Cynthia Morrison
Robert Gehman
Ramzi and Roula Hemady
Raymond and Linda Long

IN RE: PETITION FOR SPECIAL HEARING AND VARIANCE **4607 Prospect Avenue** 4th Election District 3rd Councilmanic District Donna V. Bair *Legal Owner*	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY **Case No.: 2019-342-SPHA**

* *

MOTION FOR RECONSIDERATION

The Petitioner/Property Owner, Donna V. Bair, ("Petitioner"), by Lawrence E. Schmidt, Esquire, and Smith Gildea and Schmidt, LLC, her attorneys, submits this Motion for Reconsideration pursuant to Rule K of the Rules of Practice and Procedure of the Zoning Commissioner/Hearing Officer of Baltimore County (now Administrative Law Judge or "ALJ") and respectfully requests that the Office of Administrative Hearings revise its' Opinion and Order issued in the above captioned matter dated August 19, 2019. In support of this Motion, the Petitioner offers the following:

I. Procedural History

This matter came before then ALJ John Beverungen on Petitions for Variance and Special Hearing for the property located at 4607 Prospect Avenue in the community known as Glyndon, in northwestern Baltimore County. The Petitions were filed by Donna Bair, property owner. The subject property at issue is a residential property, zoned DR 1 and is improved with a dwelling in which Petitioner resides. Other

improvements on the property include a two bay attached garage, a swimming pool, shed and deck.

As they relate to certain of the issues presented, several of the requests within the Petitions are presented in the alternative as either via a Special Hearing or Variance. A special hearing has been likened to an action for declaratory judgment and is used to establish a non-conforming use. (See *Antwerpen v. Baltimore County*, 163 Md. App. 194, 2005). A variance seeks relief from a bulk regulation; in this case, certain building setbacks for the sideyards.

II. Statement of Facts

Testimony and evidence presented established that the subject property is approximately three quarters of an acre in size (33,976 square feet) predominantly zoned DR 1 (Density Residential, 1 unit per acre). A small sliver of the property in the rear is zoned RC 2 (Resource Conservation). None of the improvements are within the RC zone. The property is designated as Lot 10 on the plat recorded in the Land Records of Baltimore County in Plat Book 126, Page 371. This plat subdivided the property known as "the lands belonging to B.F. Bennett and Joshua Regester" into residential building lots and was recorded on October 31, 1880, long before the adoption of Baltimore County's first zoning regulations in 1945.

The property is improved with a detached single family dwelling that was constructed in 1951. Evidence of the age of the dwelling was established through the submittal of a property tax report issued by the State Department of Assessments and Taxation (Petitioner's Ex. No. 4). For convenience, another copy of that exhibit is

attached to this Motion. Although the County's first zoning regulations were adopted in 1945, they were rudimentary in nature and the current regulations and requirements therein spring from the comprehensively amended regulations adopted in 1955. Additionally, the DR zoning classification came into being in 1970, at which time the County Council enacted Bill 100-70. Therefore, both the lot and the house itself predate the regulations that govern its use and setbacks. The property is located within the Glyndon historic district which has been overlaid in this area but the dwelling itself is not designated as a contributing structure. Many of the individual properties in Glyndon are historically significant and the houses quite old.

The petitioner acquired the property by deed dated July 18, 2014. At the time of her acquisition, the property was improved with the dwelling, an attached one car garage, a small storage shed and a swimming pool. It is not in dispute that the dwelling, at the time of Petitioner's acquisition, was in the same configuration, size and footprint as it had existed since its construction in 1951. Since her acquisition, the Petitioner has further improved the property by expanding the garage to create a second bay (on the left side of the house when facing the same from the street), a small addition "squaring off" the dwelling on the right side of the house and a new/replacement fence enclosing the pool. Petitioner requested and obtained the approval of these improvements from the Baltimore County Landmarks Preservation Commission ("LPC") (Petitioner's Ex. No. 7). The LPC's approval was required due to the property's location in the historic district.

III. Relief Requested

By his opinion and order, ALJ Beverungen granted some of the relief requested and denied other requests. For example, he granted the Petition for Special Hearing finding that the subject property (lot) was non-conforming, but denied the Petition for Variance related to the garage addition and the fence. **This Motion for Reconsideration is limited in scope and is filed only as to one specific finding by the ALJ.** The Petitioner avers that the ALJ clearly erred as to this single issue. Specifically, the Petitioner requests that ALJ Beverungen's opinion and order be revised to include a finding that the side yard setbacks as they existed in 1951 and at the time of Petitioner's acquisition in 1951, are "non-conforming". Petitioner avers that this conclusion is entirely supported by the evidence presented and the applicable provisions of law. Judge Beverungen erred when he denied that portion of the Special Hearing. His order incorrectly states a denial of a "non-conforming dwelling side yard setback".

BCZR § 104 permits the continuation of non-conforming uses and structures. This is a designation for uses and conditions that have existed prior to the adoption of the regulation that now governs the property at issue. The designation "non-conforming" allows the use/condition to continue as legally "grandfathered". The special hearing process is that zoning tool by which non-conforming uses are recognized. Unrefuted evidence presented at the hearing (Petitioner's Ex. No. 4) established that the dwelling was constructed on the Property in 1951. This documentary evidence was corroborated by the Petitioner and the neighbors did not dispute it.

Within his decision (wherein he approved the Lot as non-conforming), ALJ Beverungen specifically stated on page two of his decision that the applicable date to establish the non-conforming use/condition was 1955. This date is correct insofar as considering the lot. However, the proper date in considering the dwelling is, at the least, 1970, when, as noted above, the DR zoning regulations came into being. But the precise determination of the applicable date makes no practical difference, because the dwelling (constructed in 1951) pre-dates both of those dates.

Although the existing dwelling meets the required front yard and rear yard setbacks, the dwelling's side yard setbacks do not meet the current DR 1 standard. BCZR § 1B02.3.C establishes setbacks required in the DR 1 zone. A minimum side yard setback of 20 feet is required. Additionally, a sum of the side yard setbacks of 50 feet is required. Therefore, a property owner could have a 30 foot setback on one side and a 20 foot setback on the other; or a 25 foot setback on each side, or some similar combination; for so long as each side yard setback is at least 20 feet in dimension and they total fifty feet. As noted above, the property did not meet these requirements when the Petitioner acquired the property. Therefore, the deficiency is non-conforming. When one faces the dwelling from the street, the side yard setback on the right (southwest) side is 14.9 feet. This dimension (obviously) is less than the twenty feet required. Ms. Bair added an addition to this part of the dwelling, but that addition did **NOT** reduce/alter the existing setback. It was 14.9 feet before and remains the same. She merely "squared off" the corner of the dwelling and did not alter the setback. The dwelling is no closer to the side property line than it was before. Therefore, the dimension of 14.9 feet is non-

conforming on the southwest (right) side of the dwelling. Judge Beverungen erred when he did not approve this setback as "non-conforming."

On the other side of the dwelling (the northeast or left side), the previously existing setback was 9.5 feet. After her acquisition, Petitioner expanded the garage so as to add a second garage bay to that side of the dwelling. There was a previously existing one car attached garage on that side and the Petitioner added a second bay to accommodate a second vehicle. The Petitioner, in the instant case, requested a variance to allow the further reduced setback (to zero feet) as the garage is built up to (actually slightly over) the property line with the neighbor on that side. The Petitioner does not, through this Motion, ask the Office of Administrative Hearings to reconsider that variance. That variance was denied by ALJ Beverungen. But the Petitioner insists, that if she removes the garage addition, that the previous setback be determined to be no-conforming. That is, the previous setback (9.5 feet) is not technically compliant with the current regulations but is also grandfathered. If this Motion were denied and ALJ Beverungen's order stands, then the Petitioner would need to comply with current setbacks (i.e. 20 feet minimum per side and fifty feet total) which would require the removal of nearly the entire house, which has existed with 14.9 and 9.5 setbacks for nearly seventy years. ALJ Beverungen's decision in this regard is simply erroneous when he wholly denied non conforming setbacks reflecting the location of the dwelling since 1951.

Although the Petitioner presented evidence of the dwelling's size/configuration at the hearing, attached hereto is an aerial photograph that has been obtained from a public data source. The photo was taken in 1957. Although to quality is not good, it does show the house on the subject property at that time and provides further verification that the dwelling constructed in 1951 remained in the same condition through when the Petitioner bought it. This is further corroborating evidence above and beyond the SDAT printout and testimony offered at the hearing.

In sum, Petitioner requests that ALJ Beverungen's opinion and order be revised to approve non conforming side yard setbacks of 9.5 feet and 14.9 feet, with a total of 24.4 feet. Thus, both the individual side yards do not meet the current standard, nor does the sum of the side yards. But these are existing conditions, dating to when the house was constructed, well prior to the adoption of the governing standard in the BCZR. The Petitioner is evaluating her options insofar as the garage addition that she added, but seeks assurance that if the prior setbacks are restored, then the dwelling is not subject to a violation hearing due to its failure to comply with current standards.

A copy of this Motion is being sent to all who appeared. Although the neighbors who appeared objected as to the fence and garage addition, Petitioner believes that the neighbors do not object to the setbacks as they existed at the time Petitioner purchased the property. Certainly, they may respond to this Motion and correct this representation if it is incorrect. But Petitioner and her undersigned counsel do not believe that the Protestants object to the setbacks as they existed when this dwelling was built.

Respectfully submitted,

LAWRENCE E. SCHMIDT
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
(410) 821-0070
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of **September, 2019,** a copy of the foregoing Motion for Reconsideration was mailed first-class pre-paid postage to:

Peter Max Zimmerman, Esquire
People's Counsel for Baltimore County
The Jefferson Building
105 West Chesapeake Avenue, Rm 204
Towson, MD 21204

Pamela Becker
24 Chatsworth Avenue
Glyndon, MD 21071

Richard Stanley
215 Central Avenue
Glyndon, MD 21071

Vernene Lenz
4722 Butler Road
Glyndon, MD 21071

Shirley Winebarger
80 Hanover Road
Reisterstown, MD 21136

Teresa Moore
29 Waugh Avenue
Reisterstown, MD 21136

Kimberley Karlsen
304 Hammond Avenue
Glyndon, MD 21071

Martha Wist
3834 Ivy Hill Drive
Hampstead, MD 21074

Ann Rea
1015 Caren Drive
Eldersburg, MD 21784

Lyle Montanye
4342 Butler Road
Glyndon, MD 21071

Tom and Kim Montanye
4609 Prospect Avenue
Glyndon, MD 21136

Charles and Anna Welsh
4601 Prospect Avenue
Glyndon, MD 21071

Robin Coffin
4511 Prospect Avenue
Glyndon, MD 21071

Frances Acle
4606 Prospect Avenue
Glyndon, MD 21071

Steve and Patricia Fradkin
4605 Prospect Avenue
Glyndon, MD 21136

Cynthia Morrison
4500 Prospect Avenue
Glyndon, MD 21071

Robert Gehman
4612 Prospect Avenue
Glyndon, MD 21136

Ramzi and Roula Hemady
4603 Prospect Avenue
Glyndon, MD 21136

Raymond and Linda Long
114 Hanover Road
Reisterstown, MD 21136

LAWRENCE E. SCHMIDT

5/22/19 10:02 AM

Donna Bair

Hey neighbors... we're all so busy doesn't look like we'll get time to get together before we file variance request with the County next Tuesday. Patty mentioned you guys didn't really know where the actual property line is, so we wanted to give you a copy of the survey we had done when we realized some of the garage and fence is over the line and encroaching on your property. The zoning attorney who is filing the variance papers said we don't need to involve our deeds or mortgage companies because the County will only be looking at the fact that we



The zoning attorney who is filing the variance papers said we don't need to involve our deeds or mortgage companies because the County will only be looking at the fact that we don't have the required feet of setback (which we didn't have even before adding the garage!) The zoning attorney said it would be helpful to know if you will object to the variance or if you will sign a letter for him to present at the hearing to say you do not object to the variance. Please lmk if you want us to leave the survey and proposed letter to sign on your front door, or if you want us to bring them over sometime this evening. Would just like to know your feelings on the variance

Would just like to know your feelings on the variance request and what your wishes are with the garage and fence encroachment before this Friday so we can inform the attorney before he files. We're really sorry we are in this situation and we will respect whatever you're decision is. We'd love to give you more details but life is so crazy for us all right now. Thanks, Donna n Denny

5/22/19 10:37 AM

Hey Donna if you could leave it taped to the door just because we're really busy as well this way it'll give me time to look at it and send it to Steve sinc it's alreadv Wednesdav and It

it's already Wednesday and It will give us time to look at the line and see where it actually is. what is bothering us at this point is that it seems that previous owners have taken property that was ours and now you guys have moved in on property that is ours and we pay all the taxes. So knowing where the actual line is will help us have a clear decision as to where are decision will go. PS we were thinking it was a couple feet of yard when this conversation started.

5/22/19 11:01 AM

Donna Bair

Sounds good! Yeah, it's 2.5 feet over with garage. The

Donna Bair

Sounds good! Yeah, it's 2.5 feet over with garage. The fence is 7+ feet and that's an easy fix to move it over. I understand your concerns and we want you to decide how you feel without thinking it will affect our friendship. It was our mistake and we apologize we're now in this position. We're just trying to make it right however we can. Thanks! Have a good day.

We totally agree

Thanks Donna

Donna Bair

We totally agree

Thanks Donna

Donna Bair

Liked “Thanks Donna ”

5/22/19 11:27 AM

Steve Honey
Bunny

Can't affect our friendship: this has nothing to do with that.

Donna Bair

Loved “Can't affect our friendship: this has nothing to do with that. ”

6/15/19 8:33 PM

6/30/19 8:18 PM

Hi Donna, did you say there is a scheduled court date? Hope you enjoyed the great day today.

Sent

6/30/19 8:48 PM

Yes. Sign should be posted tomorrow or Tuesday on our property. You don't need to attend unless you want to disputed the variance we are requesting which is to have only 14.9 feet setback instead of 50 feet setback combined on the two sides of our property according to current zoning code. Lets talk about it

zoning code. Lets talk about it so if this doesn't make sense and/or if you guys have any questions. Thanks and have a good rest of the day! 😊

Yes. Sign should be posted tomorrow or Tuesday on our property. You don't need to attend unless you want to disputed the variance we are requesting which is to have only 14.9 feet setback instead of 50 feet setback combined on the two sides of our property according to current zoning code. Lets talk about it so if this doesn't make sense and/or if you guys have any questions. Thanks and have a good rest of the day! 😊

7/18/19 8:04 PM

Donna Bair

We got more clarity from attorney today about what to expect at hearing on Monday. Let us know if you have 10-15 mins sometime before Monday and we'll fill you guys in. Hope Buck is healthy and feeling better!

7/19/19 7:46 AM

We are around this weekend in and out of course but we will catch up.

7/19/19 7:52 AM

Donna Bair

Liked "We are around this weekend in and out of course

7/21/19 4:56 PM

Donna Bair

Lyk if you want to chat sometime tonight and hearing tomorrow. You guys can come out to the pool or inside! 10 mins or more! Drinks or not! Hope you're having a good day and staying cool!😎

7/21/19 5:37 PM

Running late had dinner Steve dropping me off at bus I have a run tonight. He will be home in a bit,

Delivered

7/21/19 8:53 PM

Donna Bair

a week later in writing. Have a good rest of the weekend.

Steve Honey
Bunny

Patti is still working, so we really can't tonight.

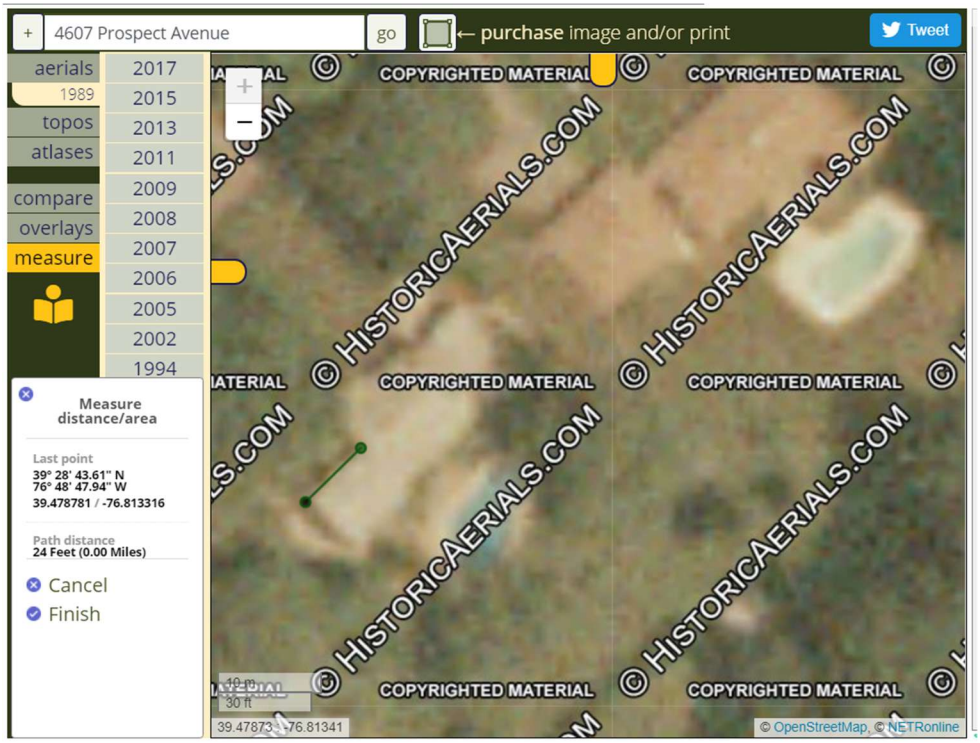
7/22/19 3:13 PM

Donna Bair

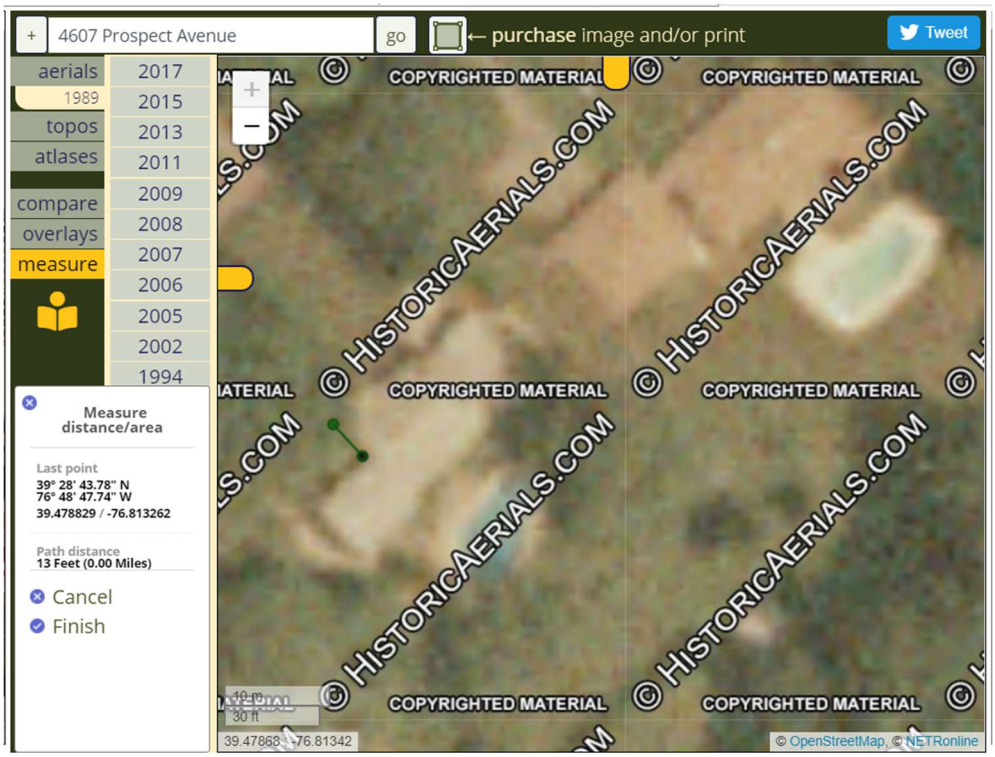
If you can send me your email address, Steve, the attorney wants to send you an email that has some information for you.... with name and contact number of company that posted zoning signs.

7/22/19 8:45 PM

Steve Honey
Bunny



Above arial from 1989 showing measurement length of the opening at 4607 Prospect Avenue. Length of opening 24'. Below arial from 1989 showing measurement width of the opening at 4607 Prospect Avenue.



BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF PLANNING

Memorandum

TO: Donna V. Bair **DATE:** March 19, 2019

FROM: Teri Rising, Administrator/Secretary
Landmarks Preservation Commission

SUBJECT: 4607 Prospect Avenue, Glyndon

At its March 14, 2019 meeting, the Baltimore County Landmarks Preservation Commission (LPC) voted to issue an Ex Post Facto Certificate of Appropriateness for the following items as proposed:

- 6 foot high wood privacy fence (Code Enforcement Case # CC1814071)
- 12 foot x 28 foot single car garage addition (Code Enforcement Correction Notice # CB1800693)
- 13 foot by 13 foot addition (Code Enforcement Correction Notice # CB1800693)

This action is in accordance with Baltimore County Code Section 32-7-403 and 32-7-405 citing Baltimore County Historic Design Guidelines: Fences & Landscape, p. 4; Additions & Infill, pp. 5-7.

Please note, the work will require a Baltimore County building permit. Applications for building permits are obtained from the Department of Permits, Approvals and Inspections located at 111 Chesapeake Avenue in Towson. Information regarding building permits is available on the County's website. https://www.baltimorecountymd.gov/Agencies/permits/index.html Questions regarding that process should be directed to the Permits, Approvals & Inspections Office.

EXHIBIT

Petitioner's Exhibit 7

Landscaping on 4605 Property by 4607.
Orange ribbon marks line: shrubs to left of ribbon are on 4605 property.



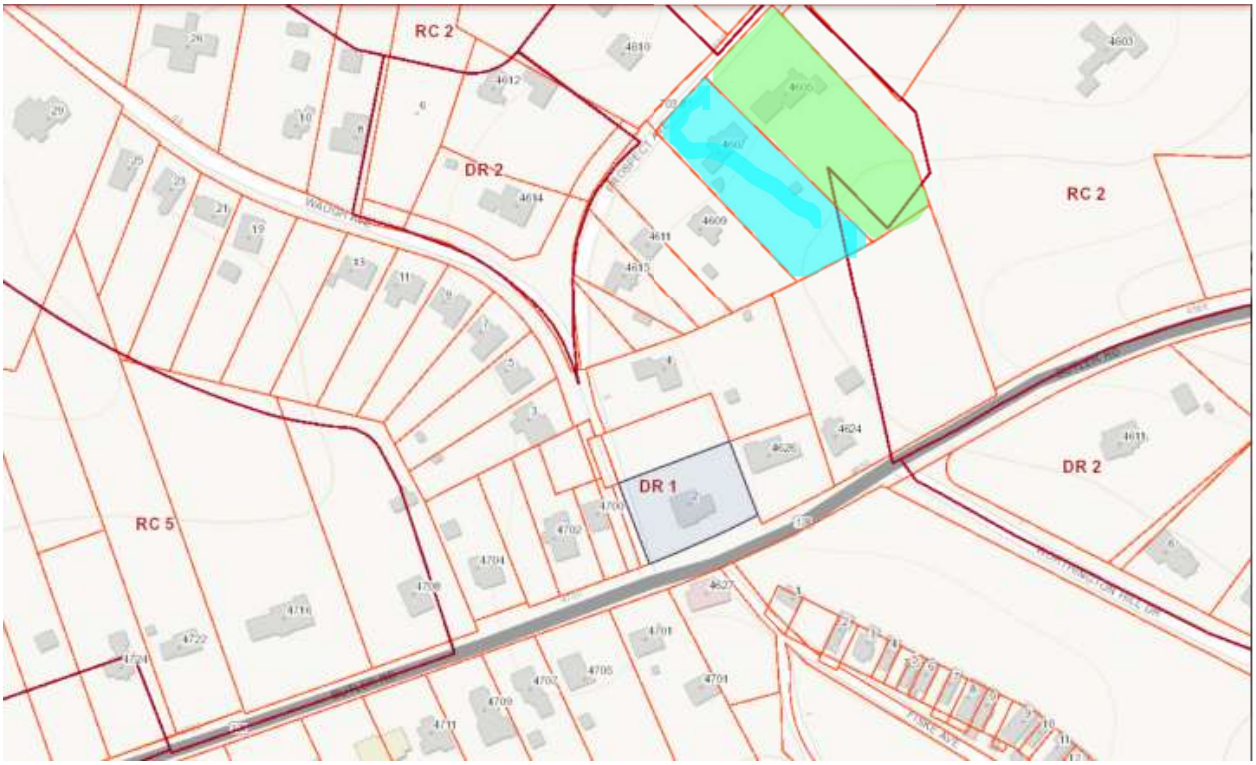
Glyndon vicinity. 4607 Prospect is highlighted teal. 4609 Prospect in green.



4609 Prospect Avenue.



Glyndon vicinity. 4607 Prospect is highlighted teal, 4605 Prospect in green.



4605 Prospect Avenue.



Glyndon vicinity. 4607 Prospect is highlighted teal. 4611 Prospect in green.



4611 Prospect Avenue.



Glyndon vicinity. 4607 Prospect is highlighted teal.



4607 Prospect Avenue



Opposition to 4607 Prospect Ave Appeal, Case # 2019-0342-SPHA

To: Baltimore County Board of Appeals

I oppose exceptions for 4607 Prospect Ave, case # 2019-0342-SPHA.

Name Pamela Bucks Signature Pamela Bucks

Street Address 24 Chatsworth Ave, Glyndon

Name Nan Kaestner Signature Nan I. Kaestner

Street Address 117 Central Ave Glyndon, MD 21071

Name Eleanor Taylor Signature Eleanor Taylor

Street Address 16 Worthington Hall Dr.

Name Marti Clements Signature Marti Clements

Street Address 227 Central Ave Glyndon 21071

Name Sue Benson Signature Sue Benson

Street Address 4813 Butler Rd., P.O. Box 282 Glyndon, MD 21071-0282

Name _____ Signature _____

Street Address _____

Name _____ Signature _____

Street Address _____

Name _____ Signature _____

Street Address _____

Name _____ Signature _____

Street Address _____

EXHIBIT

Opposition to 4607 Prospect Ave Appeal, Case # 2019-0342-SPHA

To: Baltimore County Board of Appeals

I oppose exceptions for 4607 Prospect Ave, case # 2019-0342-SPHA.

Name Charles C Wells Signature Charles C Wells

Street Address 15 Glyndon Ave, Glyndon MD 21071

Name Robin Coffin Signature

Street Address 4511 Prospect Ave 21071

Name_____ Signature_____

Street Address_____

Name_____ Signature_____

Street Address_____

Name_____ Signature_____

Street Address_____

Name_____ Signature_____

Street Address_____

Name_____ Signature_____

Street Address_____

Name_____ Signature_____

Street Address_____

Name_____ Signature_____

Street Address_____

Opposition to 4607 Prospect Ave Appeal, Case # 2019-0342-SPHA

To: Baltimore County Board of Appeals

I oppose exceptions for 4607 Prospect Ave, case # 2019-0342-SPHA.

Name Frances Acle Signature Frances M. Acle

Street Address 4606 Prospect Ave., Glyndon, MD 21071

Name Karen Solheim Signature Karen Solheim

Street Address 329 Central Ave Glyndon, MD 21071

Name Rebecca Boykin Signature

Street Address 4709 Butler Road, Glyndon, MD 21071

Name Signature

Street Address

Name Signature

Street Address

Name Signature

Street Address

Name Signature

Street Address

Name Signature

Street Address

Name Signature

Street Address

Opposition to 4607 Prospect Ave Appeal, Case # 2019-0342-SPHA

To: Baltimore County Board of Appeals

I oppose exceptions for 4607 Prospect Ave, case # 2019-0342-SPHA.

Name Tami Daniel Signature _____

Street Address 225 Central Ave Glyndon

Name _____ Signature _____

Street Address _____

Name _____ Signature _____

Street Address _____

Name _____ Signature _____

Street Address _____

Name _____ Signature _____

Street Address _____

Name _____ Signature _____

Street Address _____

Name _____ Signature _____

Street Address _____

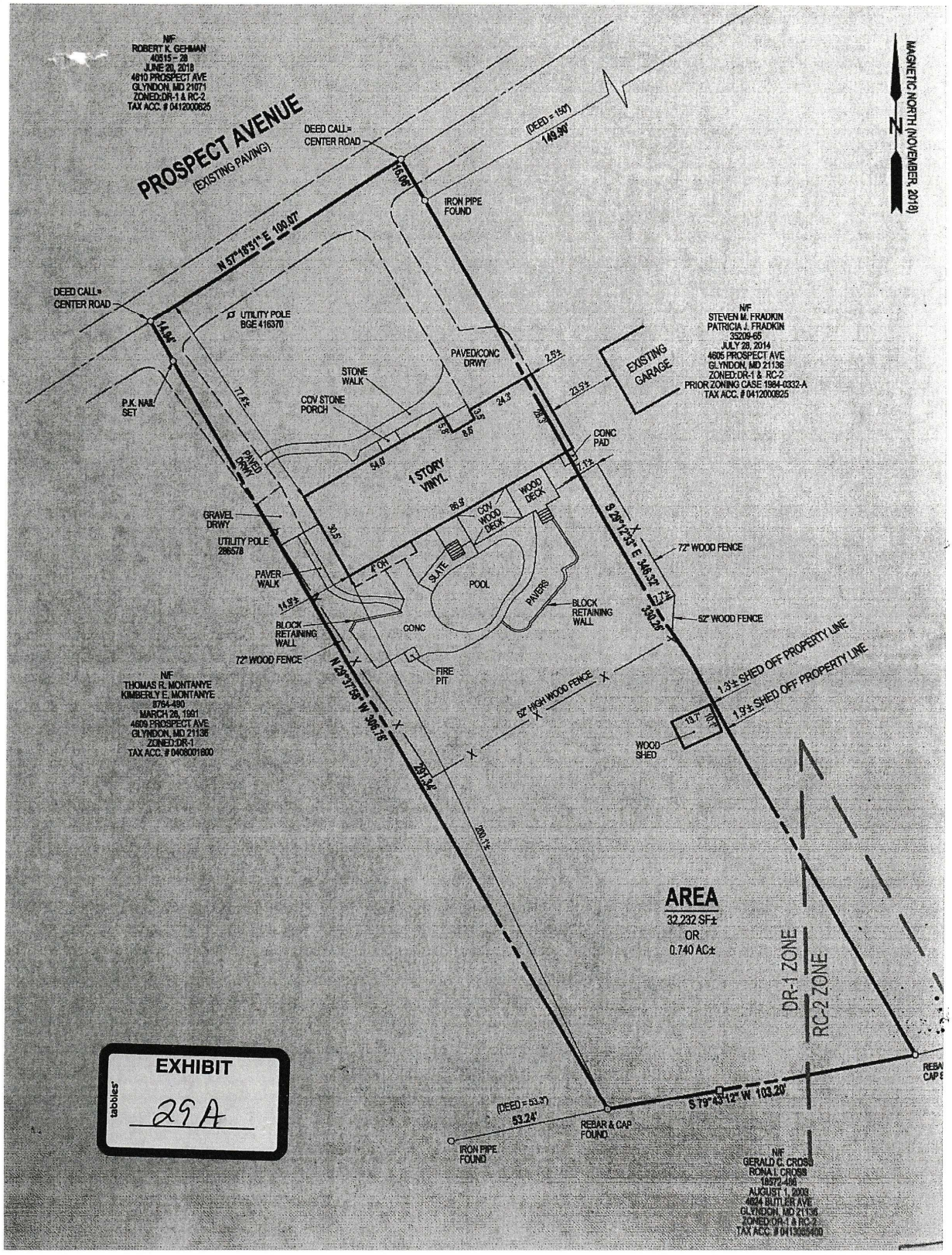
Name _____ Signature _____

Street Address _____

Name _____ Signature _____

Street Address _____

Bair's survey complete. Note cutoff at top of Montanye's driveway. Excluded on Fradkin's provided copy.



Opposition to 4607 Prospect Ave Appeal, Case # 2019-0342-SPHA

To: Baltimore County Board of Appeals

I oppose exceptions for 4607 Prospect Ave, case # 2019-0342-SPHA

Name Polly Papp Signature [signature]

Street Address 25 Waugh Avenue, Reisterstown, MD 21136

Name Kim KAELSEN Signature [signature]

Street Address 304 Hammond Avenue GLYNDON MD 21071.

Name _____ Signature _____

Street Address _____

Name _____ Signature _____

Street Address _____

Name _____ Signature _____

Street Address _____

Name _____ Signature _____

Street Address _____

Name _____ Signature _____

Street Address _____

Name _____ Signature _____

Street Address _____

Name _____ Signature _____

Street Address _____

Opposition to 4607 Prospect Ave Appeal, Case # 2019-0342-SPHA

To: Baltimore County Board of Appeals

I oppose exceptions for 4607 Prospect Ave, case # 2019-0342-SPHA.

Name MARC SZPARAGA Signature _____

Street Address 18 CHATSWORTH AVE. GLYNDON, MD 21071

Name Patty Szparaga Signature _____

Street Address 18 Chatsworth Ave Glyndon Md 21071

Name Diane Playhart Signature _____

Street Address 9719 Butler Rd Box 2 Glyndon MD 21071

Name _____ Signature _____

Street Address _____

Name _____ Signature _____

Street Address _____

Name _____ Signature _____

Street Address _____

Name _____ Signature _____

Street Address _____

Name _____ Signature _____

Street Address _____

Name _____ Signature _____

Street Address _____

Opposition to 4607 Prospect Ave Appeal, Case # 2019-0342-SPHA

To: Baltimore County Board of Appeals

I oppose exceptions for 4607 Prospect Ave, case # 2019-0342-SPHA.

Name Marian Macdonald Signature Marian Macdonald

Street Address 111 Central Avenue, Glyndon, MD 21071

Name David Hughes Signature David D. Hughes

Street Address 2 Albright Ave. Glyndon, MD 21071

Name Teresa Moore Signature Teresa Moore

Street Address 29 Waugh Ave Glyndon MD 21136

Name Lauren Teixeira Signature Lauren Teixeira

Street Address 301 Railroad Ave, Glyndon, MD 21071

Name Vernene Rodgers Lenz Signature Vernene Rodgers Lenz

Street Address 4722 Butler Rd, PO Box 279, Glyndon, MD 21071

Name [illegible] Signature [illegible]

Street Address 4804 BUTLER ROAD GLYNDON MD 21071

Name _____ Signature _____

Street Address _____

Name _____ Signature _____

Street Address _____

Name _____ Signature _____

Street Address _____

Opposition to 4607 Prospect Ave Appeal, Case # 2019-0342-SPHA

To: Baltimore County Board of Appeals

I oppose exceptions for 4607 Prospect Ave, case # 2019-0342-SPHA.

Name Karen Cerwins Signature Karen Cerwins

Street Address 4716 Butler Rd, Glyndon, MD 21071

Name Sarah Bosmans Signature

Street Address 26 Waugh Avenue, Glyndon MD 21136

Name Barbara Whitman Signature Barbara C. Whitman

Street Address 4702 Butler Rd., Glyndon, Md. 21071

Name Sandy Arnette Signature Sandra Arnette

Street Address 15 Belle View Avenue, Glyndon, MD 21071

Name_____ Signature_____

Street Address_____

Name_____ Signature_____

Street Address_____

Name_____ Signature_____

Street Address_____

Name_____ Signature_____

Street Address_____

Bair's survey provided to Fradkin's.



From:	Peoples Counsel
To:	Appeals Board
Cc:	Tom@montanye.net; Steve Fradkin; Lawrence Schmidt; Sue Benson; mmolinaro@reisterstown.com; Peter Max Zimmerman; Kimberley Karlsen
Subject:	Donna Bair - 2019-342-SPHA -Day 2 - Exhibits
Date:	Thursday, March 18, 2021 3:00:05 PM
Attachments:	PCExh5 -Historic Glyndon Inc - Rule 8 Papers.pdf PCExh6 - Glyndon Community - Rule 8 Papers.pdf PCExh7-Reisterstown- Owings Mills- Glyndon - Rule 8 Papers.pdf PCExh8 -GIS Aerial.pdf PCExh9-Google Map.pdf PCExh10a-c -Historic Districts -Glyndon Map - Bill 48-81.pdf PCExh11-SDAT Printouts.pdf PCExh12 -Zoning History.pdf

---

Good Afternoon,

Attached please find the following documents for submission as exhibits in the Donna Bair hearing scheduled for March 23, 2021:

PC Exh. 5	Rule 8 documents for Historic Glyndon Inc.
PC. Exh. 6	Rule 8 documents for Glyndon Community Association
PC Exh. 7	Rule 8 documents – Reisterstown-Owings Mills- Glyndon
PC Exh. 8	GIS Aerial
PC Exh. 9	Google Map
PC Exh. 10a	Historic Districts enacted by Baltimore County Council
PC Exh. 10b	Glyndon Historic District Map
PC Exh. 10c	County Council Bill 48-81
PC Exh. 11	SDAT Printouts
PC Exh. 12	Zoning History

Thank you for your consideration.

Rebecca Wheatley, Legal Secretary
Office of People's Counsel
410-887-2188

From:	Peoples Counsel
To:	Appeals Board
Cc:	Tom@montanye.net; Steve Fradkin; Lawrence Schmidt; Sue Benson; mmolinaro@reisterstown.com; Peter Max Zimmerman; Kimberley Karlsen
Subject:	Donna Bair - 2019-342-SPHA -Day 2 - Exhibits
Date:	Thursday, March 18, 2021 3:00:05 PM
Attachments:	PCExh5 -Historic Glyndon Inc - Rule 8 Papers.pdf PCExh6 - Glyndon Community - Rule 8 Papers.pdf PCExh7-Reisterstown- Owings Mills- Glyndon - Rule 8 Papers.pdf PCExh8 -GIS Aerial.pdf PCExh9-Google Map.pdf PCExh10a-c -Historic Districts -Glyndon Map - Bill 48-81.pdf PCExh11-SDAT Printouts.pdf PCExh12 -Zoning History.pdf

---

Good Afternoon,

Attached please find the following documents for submission as exhibits in the Donna Bair hearing scheduled for March 23, 2021:

PC Exh. 5	Rule 8 documents for Historic Glyndon Inc.
PC. Exh. 6	Rule 8 documents for Glyndon Community Association
PC Exh. 7	Rule 8 documents – Reisterstown-Owings Mills- Glyndon
PC Exh. 8	GIS Aerial
PC Exh. 9	Google Map
PC Exh. 10a	Historic Districts enacted by Baltimore County Council
PC Exh. 10b	Glyndon Historic District Map
PC Exh. 10c	County Council Bill 48-81
PC Exh. 11	SDAT Printouts
PC Exh. 12	Zoning History

Thank you for your consideration.

Rebecca Wheatley, Legal Secretary
Office of People's Counsel
410-887-2188

Real Property Data Search

Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Special Tax Recapture: None

Account Identifier: District - 04 Account Number - 0412000925

Owner Information

Owner Name:	FRADKIN STEVEN M FRADKIN PATRICIA J	**Use:** **Principal Residence:**	RESIDENTIAL YES
Mailing Address:	4605 PROSPECT AVE REISTERSTOWN MD 21136-	**Deed Reference:**	/35209/ 00065

Location & Structure Information

Premises Address:	4605 PROSPECT AVE GLYNDON MD 21136-	**Legal Description:**	4605 PROSPECT AVE B F BENNETT&JOSHUA REGE

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:	
0048	0008	0752	4020023.04	0000			11	2019	Plat Ref:	0002/ 0018

Special Tax Areas: None **Town:** None
Ad Valorem: None
Tax Class: None

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1953	1,458 SF	600 SF	1.0100 AC	04

Stories	Basement	Type	Exterior	Quality	Full/Half Bath	Garage	Last Notice of Major Improvements
1	YES	STANDARD UNIT	BRICK/	5	2 full	1 Attached	

Value Information

	Base Value	Value As of 01/01/2019	Phase-in Assessments As of 07/01/2019	As of 07/01/2020
Land:	120,100	120,100		
Improvements	226,600	168,200		
Total:	346,700	308,300	308,300	308,300
Preferential Land:	0			0

Transfer Information

Seller: BINDER ISAAK	**Date:** 07/30/2014	**Price:** $350,000
Type: ARMS LENGTH IMPROVED	**Deed1:** /35209/ 00065	**Deed2:**
Seller: WOLF CYNTHIA E	**Date:** 11/13/2013	**Price:** $166,000
Type: ARMS LENGTH IMPROVED	**Deed1:** /34429/ 00185	**Deed2:**
Seller: BENDER TRACY V	**Date:** 06/30/2008	**Price:** $479,000
Type: ARMS LENGTH IMPROVED	**Deed1:** /27148/ 00343	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2019	07/01/2020
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Special Tax Recapture: None

Homestead Application Information

Homestead Application Status: Approved 09/09/2014

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application **Date:**

Baltimore County

New Search (https://sdat.dat.maryland.gov/RealProperty)

District: 04 **Account Number:** 0412000925



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 http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx (http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx).

P.C. Exh. 11

Real Property Data Search

Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Special Tax Recapture: None

Account Identifier: District - 04 Account Number - 0408067270

Owner Information

Owner Name:	ACLE SERGIO A TRUSTEE ACLE FRANCES M TRUSTEE	**Use:** **Principal Residence:**	RESIDENTIAL YES
Mailing Address:	4608 PROSPECT AV GLYNDON MD 21071	**Deed Reference:**	/39466/ 00170

Location & Structure Information

Premises Address:	4608 PROSPECT AVE GLYNDON 21071-	**Legal Description:**	2.27 AC WS PROSPECT 2640 FR GLYNDON STATIO

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0048	0006	0762	4020023.04	0000				2019	Plat Ref:

Special Tax Areas: None

Town: None
Ad Valorem: None
Tax Class: None

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1917	3,632 SF		2.2700 AC	04

Stories	Basement	Type	Exterior	Quality	Full/Half Bath	Garage	Last Notice of Major Improvements
2	YES	STANDARD UNIT	SIDING/	5	2 full	1Det/1Carport	

Value Information

	Base Value	Value As of 01/01/2019	Phase-in Assessments As of 07/01/2019	As of 07/01/2020
Land:	135,200	135,200		
Improvements	264,200	304,000		
Total:	399,400	439,200	412,667	425,933
Preferential Land:	0			0

Transfer Information

Seller: ACLE SERGIO A	**Date:** 10/02/2017	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /39466/ 00170	**Deed2:**
Seller: THOMAS BARRY WAYNE	**Date:** 06/19/1989	**Price:** $180,000
Type: ARMS LENGTH IMPROVED	**Deed1:** /08202/ 00743	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2019	07/01/2020
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Special Tax Recapture: None

Homestead Application Information

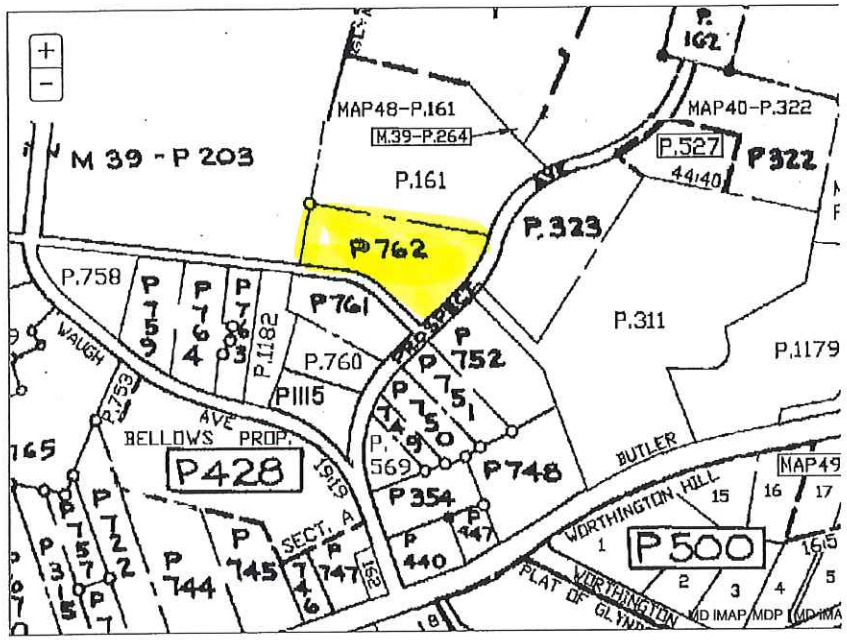
Homestead Application Status: Approved 09/11/2012

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application **Date:**

Baltimore County New Search (https://sdat.dat.maryland.gov/RealProperty)

District: 04 **Account Number:** 0408067270



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 http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx (http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx).

Real Property Data Search

Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Special Tax Recapture: None

Account Identifier: District - 04 Account Number - 0416015450

Owner Information

Owner Name:	BAIR DONNA V	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	4607 PROSPECT AVE GLYNDON MD 21071-3800	**Deed Reference:**	/35307/ 00489

Location & Structure Information

Premises Address:	4607 PROSPECT AVE 0-0000	**Legal Description:**	.78 AC 4607 PROSPECT AVE SWS 200FT NE OF WAUGH AVE

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0048	0008	0751	4020023.04	0000				2019	Plat Ref:

Special Tax Areas: None

Town: None
Ad Valorem: None
Tax Class: None

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1951	1,493 SF	800 SF	33,976 SF	04

Stories	Basement	Type	Exterior	Quality	Full/Half Bath	Garage	Last Notice of Major Improvements
1	YES	STANDARD UNIT	SIDING/	4	2 full/ 1 half	1 Attached	

Value Information

	Base Value	Value As of 01/01/2019	Phase-In Assessments As of 07/01/2019	As of 07/01/2020
Land:	82,400	82,400		
Improvements	161,300	204,500		
Total:	243,700	286,900	258,100	272,500
Preferential Land:	0			0

Transfer Information

Seller: DEVANEY TIMOTHY W	**Date:** 08/28/2014	**Price:** $320,500
Type: NON-ARMS LENGTH OTHER	**Deed1:** /35307/ 00489	**Deed2:**
Seller: TOWLES MARK	**Date:** 08/04/2011	**Price:** $235,000
Type: NON-ARMS LENGTH OTHER	**Deed1:** /31063/ 00346	**Deed2:**
Seller: HAMILTON BRIAN R	**Date:** 05/25/2005	**Price:** $344,900
Type: ARMS LENGTH IMPROVED	**Deed1:** /21925/ 00100	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2019	07/01/2020
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Special Tax Recapture: None

Homestead Application Information

Homestead Application Status: Approved 02/12/2015

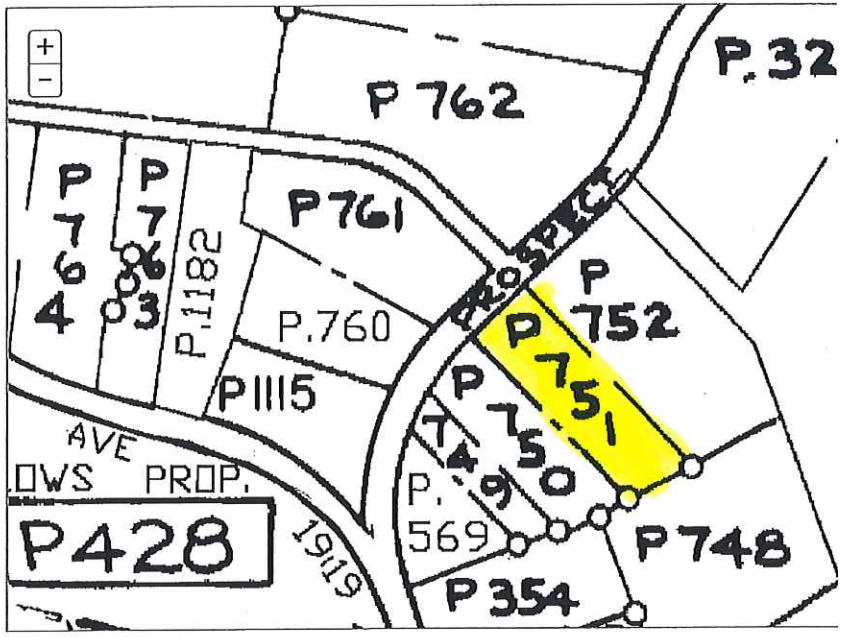
Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application **Date:**

Baltimore County

New Search (https://sdat.dat.maryland.gov/RealProperty)

District: **04** Account Number: **0416015450**



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 http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx (http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx).

Real Property Data Search

Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Special Tax Recapture: None

Account Identifier: District - 04 Account Number - 0408001600

Owner Information

Owner Name:	MONTANYE THOMAS R MONTANYE KIMBERLY E	**Use:** **Principal Residence:**	RESIDENTIAL YES
Mailing Address:	4609 PROSPECT AV GLYNDON MD 21136-3800	**Deed Reference:**	/08764/ 00490

Location & Structure Information

Premises Address:	4609 PROSPECT AVE GLYNDON 21136-3800	**Legal Description:**	LT SES PROSPECT AV .69 AC 300 NE WAUGH AV

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0048	0006	0750	4020023.04	0000				2019	Plat Ref:

Special Tax Areas: None

Town: None
Ad Valorem: None
Tax Class: None

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1949	1,380 SF		30,056 SF	04

Stories	Basement	Type	Exterior	Quality	Full/Half Bath	Garage	Last Notice of Major Improvements
1	YES	STANDARD UNIT	SIDING/	3	2 full		

Value Information

	Base Value	Value As of 01/01/2019	Phase-in Assessments As of 07/01/2019	As of 07/01/2020
Land:	81,500	81,500		
Improvements	94,100	109,400		
Total:	175,600	190,900	180,700	185,800
Preferential Land:	0			0

Transfer Information

Seller: HALL ROBERT G,3RD	**Date:** 04/19/1991	**Price:** $92,000
Type: ARMS LENGTH IMPROVED	**Deed1:** /08764/ 00490	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2019	07/01/2020
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Special Tax Recapture: None

Homestead Application Information

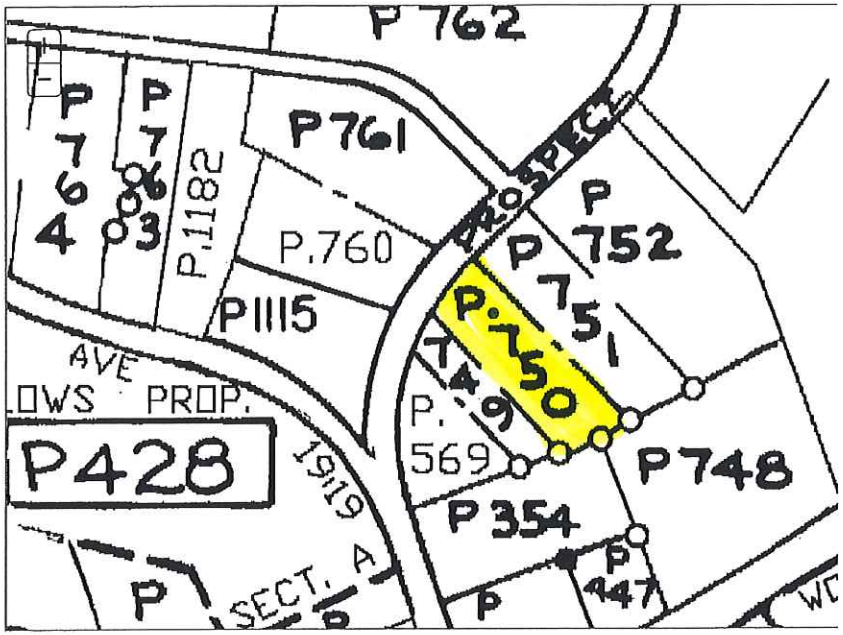
Homestead Application Status: Approved 02/18/2014

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application **Date:**

Baltimore County New Search (https://sdat.dat.maryland.gov/RealProperty)

District: 04 **Account Number:** 0408001600



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 http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx (http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx).

Real Property Data Search

Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Special Tax Recapture: None

Account Identifier: District - 04 Account Number - 0412000625

Owner Information

Owner Name:	GEHMAN ROBERT K	**Use:**	RESIDENTIAL
		Principal Residence:	NO
Mailing Address:	4610 PROSPECT AV GLYNDON MD 21071	**Deed Reference:**	/40515/ 00028

Location & Structure Information

Premises Address:	4610 PROSPECT AVE GLYNDON 21071-	**Legal Description:**	1.12 AC 4610 PROSPECT AV NS 700 N BUTLER RD

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0048	0006	0761	4020023.04	0000				2019	Plat Ref:

Special Tax Areas: None

Town: None
Ad Valorem: None
Tax Class: None

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1852	1,995 SF		1.1200 AC	04

Stories	Basement	Type	Exterior	Quality	Full/Half Bath	Garage	Last Notice of Major Improvements
2	YES	STANDARD UNIT	ASBESTOS SHINGLE/	4	2 full	1 Detached	

Value Information

	Base Value	Value As of 01/01/2019	Phase-In Assessments As of 07/01/2019	As of 07/01/2020
Land:	121,400	121,400		
Improvements	107,100	130,000		
Total:	228,500	251,400	236,133	243,767
Preferential Land:	0			0

Transfer Information

Seller: WILLIAMS THOMAS L	**Date:** 07/30/2018	**Price:** $215,000
Type: NON-ARMS LENGTH OTHER	**Deed1:** /40515/ 00028	**Deed2:**
Seller: WILLIAMS THOMAS L	**Date:** 04/15/1993	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /09711/ 00129	**Deed2:**
Seller: LARKINS MARY J	**Date:** 09/01/1982	**Price:** $82,000
Type: ARMS LENGTH IMPROVED	**Deed1:** /06429/ 00450	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2019	07/01/2020
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Special Tax Recapture: None

Homestead Application Information

Homestead Application Status: No Application

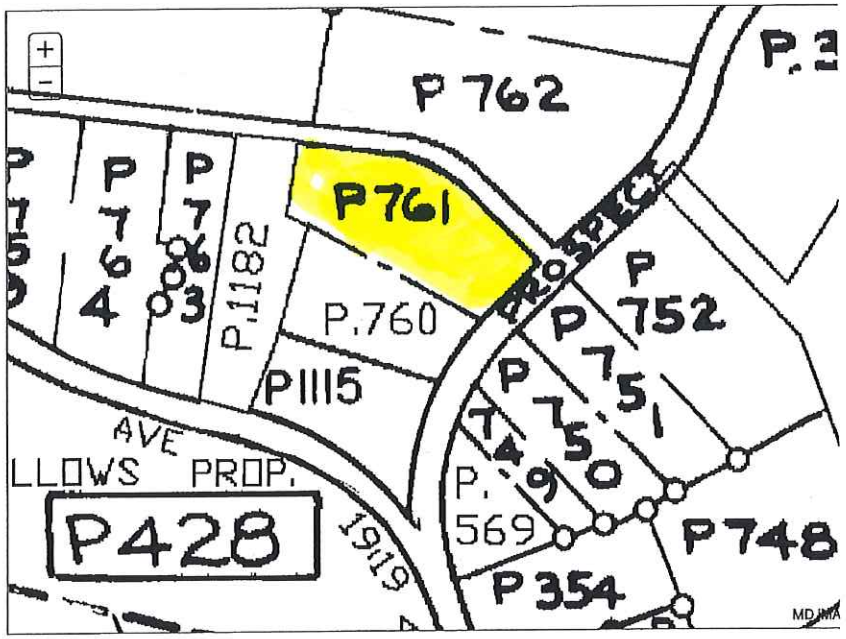
Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application **Date:**

Baltimore County

New Search (https://sdat.dat.maryland.gov/RealProperty)

District: 04 **Account Number:** 0412000625



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 http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx (http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx).

Real Property Data Search

Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Special Tax Recapture: None

Account Identifier: District - 04 Account Number - 0408055460

Owner Information

Owner Name:	BEHAR JEFFREY M FARINA CAROL L	**Use:** **Principal Residence:**	RESIDENTIAL YES
Mailing Address:	4611 PROSPECT AVE GLYNDON MD 21071-4203	**Deed Reference:**	/40587/ 00234

Location & Structure Information

Premises Address:	4611 PROSPECT AVE GLYNDON 21071-4203	**Legal Description:**	.42 AC 4611 PROSPECT AVE 500FT NE OF BUTLER RD

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0040	0006	0749	4020023.04	0000				2019	Plat Ref:

Special Tax Areas: None

Town: None
Ad Valorem: None
Tax Class: None

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1958	850 SF	800 SF	18,295 SF	04

Stories	Basement	Type	Exterior	Quality	Full/Half Bath	Garage	Last Notice of Major Improvements
1	YES	STANDARD UNIT	BRICK/	3	2 full		

Value Information

	Base Value	Value As of 01/01/2019	Phase-in Assessments As of 07/01/2019	As of 07/01/2020
Land:	78,500	78,500		
Improvements	105,300	149,200		
Total:	183,800	227,700	198,433	213,067
Preferential Land:	0			0

Transfer Information

Seller: BEHAR JEFFREY M	**Date:** 08/20/2018	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /40587/ 00234	**Deed2:**
Seller: CROW BRUCE A	**Date:** 03/26/2008	**Price:** $270,000
Type: ARMS LENGTH IMPROVED	**Deed1:** /26816/ 00016	**Deed2:**
Seller: JONES ROBERT J	**Date:** 08/04/2003	**Price:** $195,000
Type: NON-ARMS LENGTH OTHER	**Deed1:** /18510/ 00261	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2019	07/01/2020
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Special Tax Recapture: None

Homestead Application Information

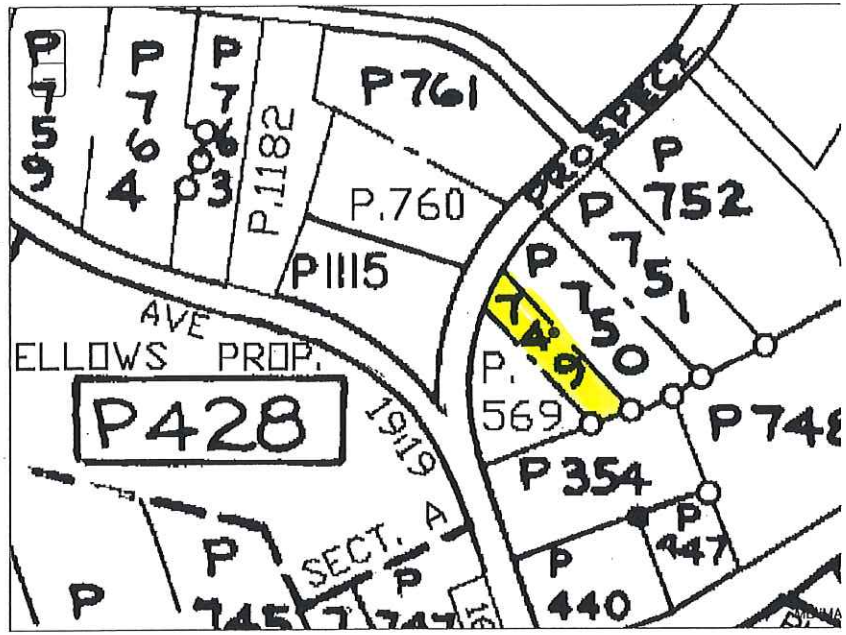
Homestead Application Status: Approved 07/09/2008

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application **Date:**

Baltimore County New Search (https://sdat.dat.maryland.gov/RealProperty)

District: 04 **Account Number:** 0408055460



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 http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx (http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx).

Real Property Data Search

Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Special Tax Recapture: None

Account Identifier: District - 04 Account Number - 0418087075

Owner Information

Owner Name:	GEHMAN ROBERT K SR	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	4612 PROSPECT AVE GLYNDON MD 21071-5314	**Deed Reference:**	/31722/ 00177

Location & Structure Information

Premises Address:	4612 PROSPECT AVE GLYNDON 21071-	**Legal Description:**	.75998 AC 4612 PROSPECT AVE WS 200 FT N WAUGH AVE

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0048	0006	0760	4020023.04	0000				2019	Plat Ref:

Special Tax Areas: None

Town: None
Ad Valorem: None
Tax Class: None

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1927	1,624 SF		0.7600 AC	04

Stories	Basement	Type	Exterior	Quality	Full/Half Bath	Garage	Last Notice of Major Improvements
2	NO	STANDARD UNIT	WOOD SHINGLE/	4	2 full	1 Detached	

Value Information

	Base Value	Value As of 01/01/2019	Phase-In Assessments As of 07/01/2019	As of 07/01/2020
Land:	82,200	82,200		
Improvements	158,300	201,600		
Total:	240,500	283,800	254,933	269,367
Preferential Land:	0			0

Transfer Information

Seller: GEHMAN ROBERT K SR	**Date:** 02/16/2012	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /31722/ 00177	**Deed2:**
Seller: ENSOR LAWRENCE E	**Date:** 01/16/2001	**Price:** $243,000
Type: ARMS LENGTH MULTIPLE	**Deed1:** /14921/ 00041	**Deed2:**
Seller: RYER EUGENE H	**Date:** 06/28/1973	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /05372/ 00479	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2019	07/01/2020
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Special Tax Recapture: None

Homestead Application Information

Homestead Application Status: Approved 11/08/2012

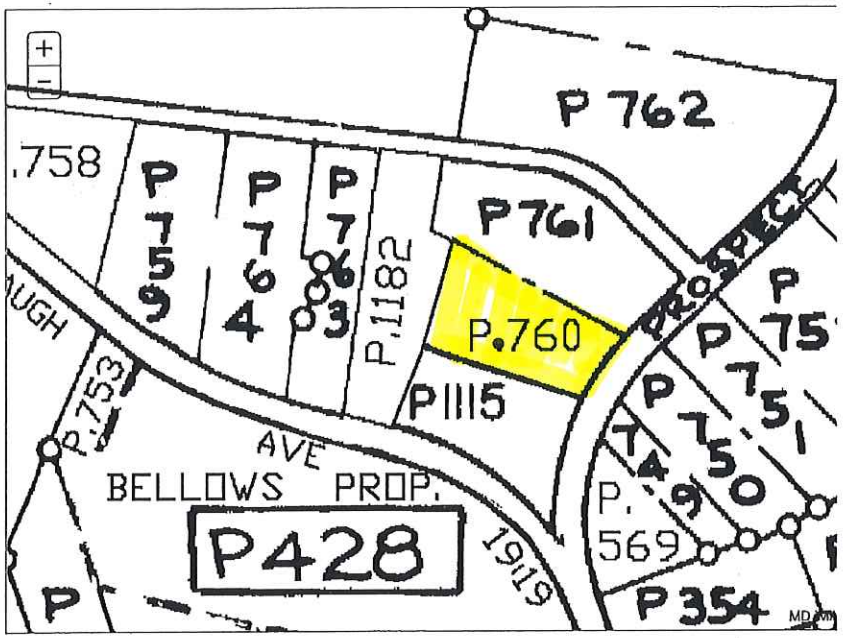
Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application **Date:**

Baltimore County

New Search (https://sdat.dat.maryland.gov/RealProperty)

District: 04 **Account Number:** 0418087075



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 http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx (http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx).

Real Property Data Search

Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Special Tax Recapture: None

Account Identifier: District - 04 Account Number - 2200011167

Owner Information

Owner Name:	EBELEIN RONALD L EBELEIN PATRICIA	**Use:** **Principal Residence:**	RESIDENTIAL YES
Mailing Address:	4614 PROSPECT AVE GLYNDON MD 21071-3864	**Deed Reference:**	/13487/ 00746

Location & Structure Information

Premises Address:	4614 PROSPECT AVE 0-0000	**Legal Description:**	.47005 AC NES PROSPECT AVE COR WAUGH AVE

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:	MS
0048	0006	1115	4020023.04	0000			2	2019	Plat Ref:	

Special Tax Areas: None

Town: None
Ad Valorem: None
Tax Class: None

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
2002	2,407 SF		20,475 SF	04

Stories	Basement	Type	Exterior	Quality	Full/Half Bath	Garage	Last Notice of Major Improvements
1 1/2	YES	STANDARD UNIT	SIDING/	5	2 full/ 1 half	1 Attached	2001

Value Information

	Base Value	Value As of 01/01/2019	Phase-In Assessments As of 07/01/2019	As of 07/01/2020
Land:	79,100	79,100		
Improvements	276,900	391,400		
Total:	356,000	470,500	394,167	432,333
Preferential Land:	0			0

Transfer Information

Seller: STEUART ENSOR AND SMITH COMPANY	**Date:** 01/29/1999	**Price:** $90,000
Type: ARMS LENGTH MULTIPLE	**Deed1:** /13487/ 00746	**Deed2:**
Seller: GREENSPRING REALTY INC	**Date:** 08/02/1993	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /10781/ 00186	**Deed2:**
Seller: ENSOR LAWRENCE E	**Date:** 03/13/1992	**Price:** $1
Type: ARMS LENGTH IMPROVED	**Deed1:** /09095/ 00190	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2019	07/01/2020
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Special Tax Recapture: None

Homestead Application Information

Homestead Application Status: Approved 12/31/2012

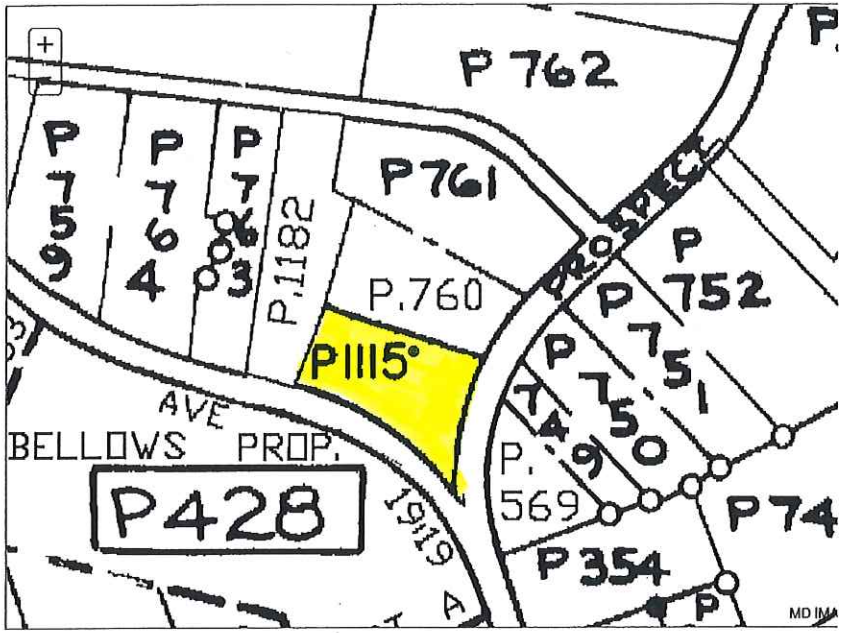
Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application **Date:**

Baltimore County

New Search (https://sdat.dat.maryland.gov/RealProperty)

District: 04 **Account Number: 2200011167**



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 http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx (http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx).

Real Property Data Search

Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Special Tax Recapture: None

Account Identifier: District - 04 Account Number - 1600009610

Owner Information

Owner Name:	MAEVERS MARIE C	Use: Principal Residence:	RESIDENTIAL YES
Mailing Address:	4615 PROSPECT AV GLYNDON MD 21071	Deed Reference:	/40629/ 00349

Location & Structure Information

Premises Address:	4615 PROSPECT AVE GLYNDON 21071-	Legal Description:	.59 AC ES PROSPECT AVENUE 200 N BUTLER ROAD

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0048	0006	0568	4020023.04	0000				2019	Plat Ref:

Special Tax Areas: None

Town: None
Ad Valorem: None
Tax Class: None

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1951	1,752 SF		25,700 SF	04

Stories	Basement	Type	Exterior	Quality	Full/Half Bath	Garage	Last Notice of Major Improvements
1 1/2	YES	STANDARD UNIT	STUCCO/ SIDING	3	1 full	1 Detached	

Value Information

	Base Value	Value As of 01/01/2019	Phase-In Assessments As of 07/01/2019	As of 07/01/2020
Land:	80,400	80,400		
Improvements	120,600	139,500		
Total:	201,000	219,900	207,300	213,600
Preferential Land:	0			0

Transfer Information

Seller: MAEVERS KARL F	Date: 09/04/2018	Price: $0
Type: NON-ARMS LENGTH OTHER	Deed1: /40629/ 00349	Deed2:
Seller:	Date:	Price: $0
Type: NON-ARMS LENGTH OTHER	Deed1: /04930/ 00151	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:

Exemption Information

Partial Exempt Assessments:	Class	07/01/2019	07/01/2020
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Special Tax Recapture: None

Homestead Application Information

Homestead Application Status: Approved 10/16/2012

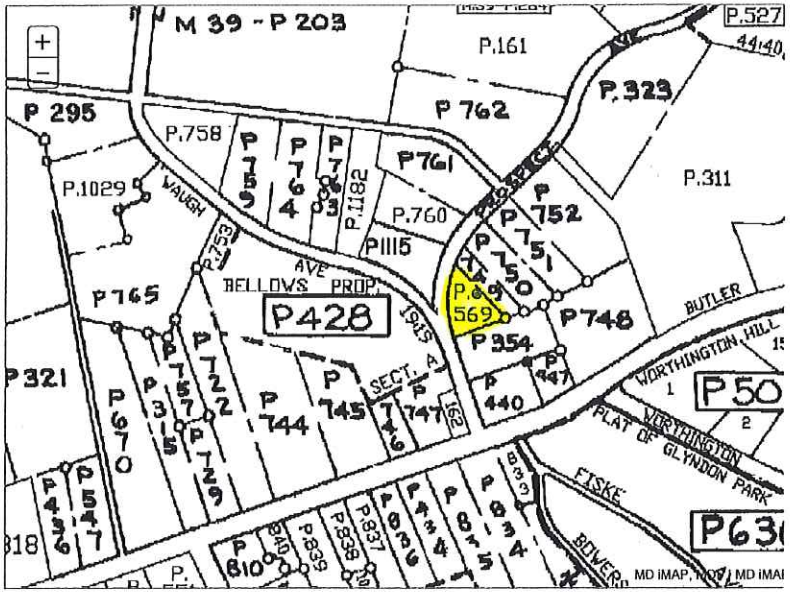
Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application Date:

Baltimore County

New Search (https://sdat.dat.maryland.gov/RealProperty)

District: 04 Account Number: 1600009610

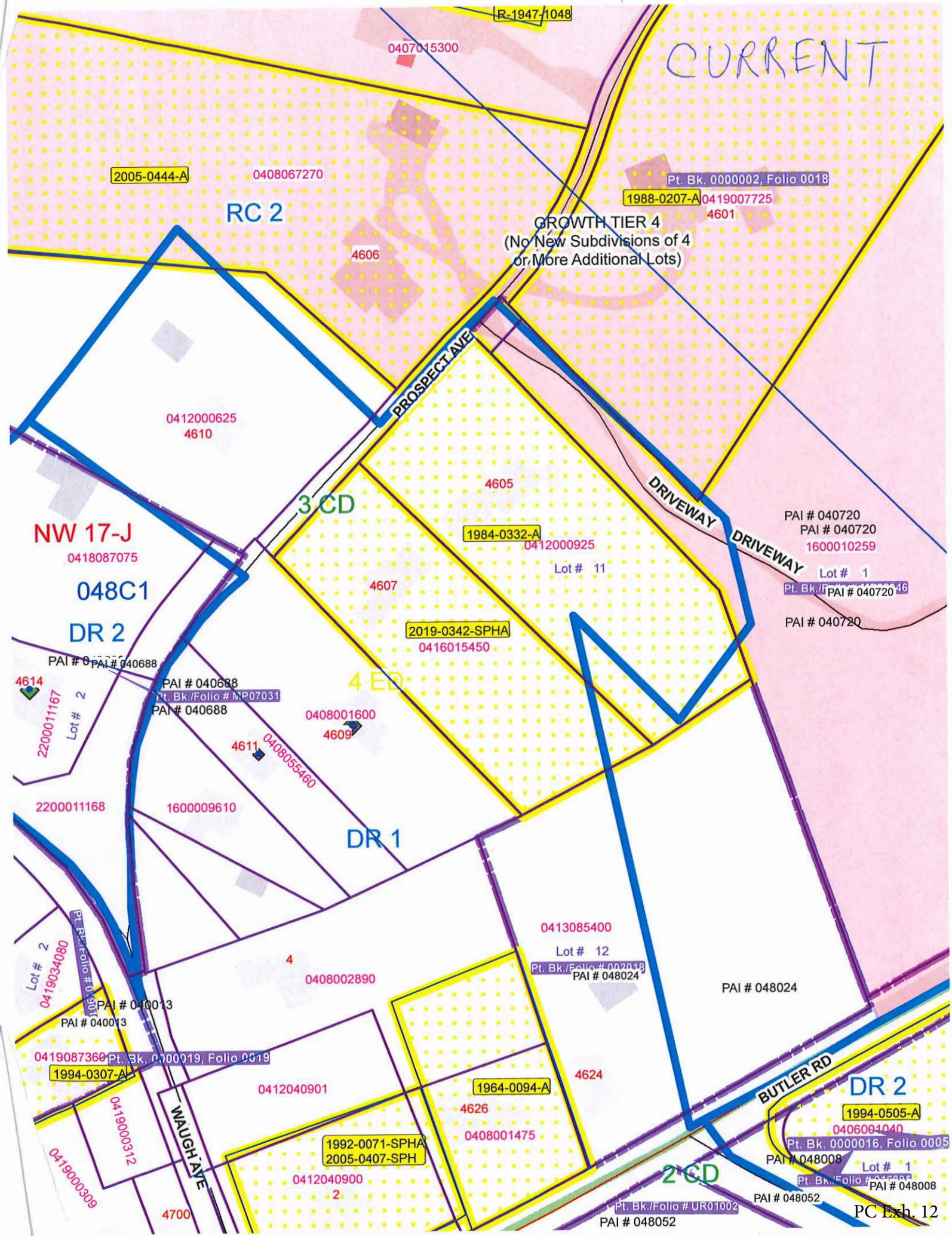


The information shown on this map has been compiled from deed descriptions and plats and is not a property survey. The map should not be used for legal descriptions. Users noting errors are urged to notify the Maryland Department of Planning Mapping, 301 W. Preston Street, Baltimore MD 21201.

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).

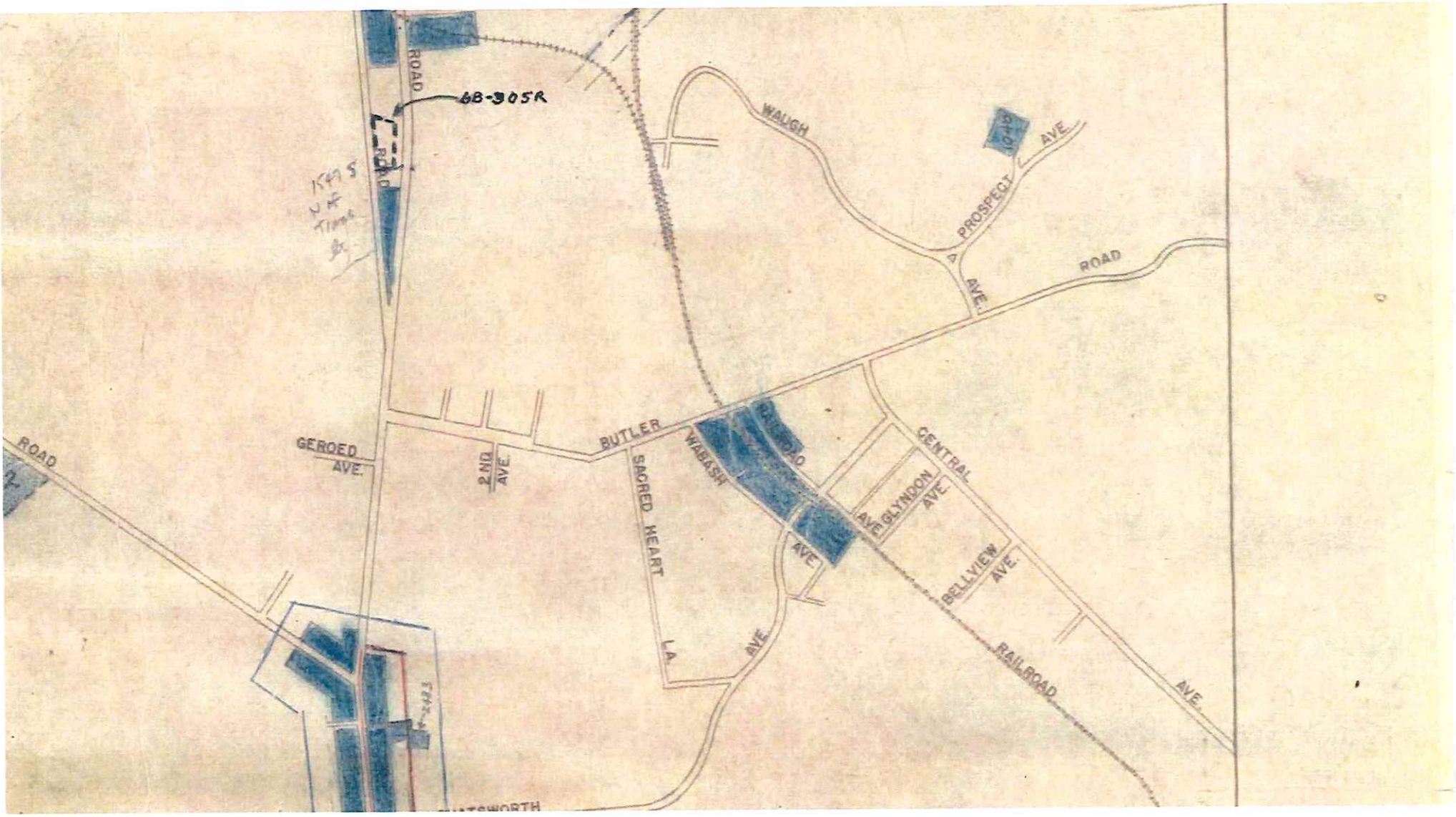
Property maps provided courtesy of the Maryland Department of Planning.

For more information on electronic mapping applications, visit the Maryland Department of Planning web site at http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx (http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx).


CURRENT
R-1947-1048
0407015300
2005-0444-A
0408067270
RC 2
Pt. Bk. 0000002, Folio 0018
1988-0207-A
0419007725
4601
GROWTH TIER 4
(No New Subdivisions of 4
or More Additional Lots)
4606
PROSPECT AVE
0412000625
4610
4605
3 CD
DRIVEWAY
DRIVEWAY
PAI # 040720
PAI # 040720
1600010259
NW 17-J
0418087075
1984-0332-A
0412000925
Lot # 11
Lot # 1
PAI # 040720
PAI # 040720
048C1
4607
DR 2
2019-0342-SPHA
0416015450
PAI # 040688
4614
PAI # 040688
Pt. Bk./Folio # MP07031
PAI # 040688
4 ED
2200011167
Lot # 2
0408001600
4609
4611
0408055460
2200011168
1600009610
DR 1
0413085400
Lot # 12
Pt. Bk./Folio # 002048
PAI # 048024
PAI # 048024
4
0408002890
Lot # 2
0419034080
Pt. Bk./Folio # 0001
PAI # 040013
PAI # 040013
0419087360
Pt. Bk. 0000019, Folio 0019
1994-0307-A
0412040901
4624
1964-0094-A
BUTLER RD
DR 2
1994-0505-A
0406001040
Pt. Bk. 0000016, Folio 0005
PAI # 048008
Lot # 1
PAI # 048008
0419000312
WAUGH AVE
4626
0408001475
1992-0071-SPHA
2005-0407-SPH
2 CD
0419000309
0412040900
2
4700
Pt. Bk./Folio # UR01002
PAI # 048052
PAI # 048052

PC Exh. 12

1945


ROAD
BB-305R
WAUGH
PROSPECT
AVE.
ROAD
BUTLER
GEROED
AVE.
2ND
AVE
SACRED HEART
LA
AVE.
WABASH
RAILROAD
CENTRAL
AVE.
GLYNDON
AVE.
BELLVIEW
AVE.
RAILROAD
AVE.
ROAD

1945 Key

USE DISTRICT MAP

FOURTH ELECTION DISTRICT OF BALTIMORE COUNTY

SECTION "A"

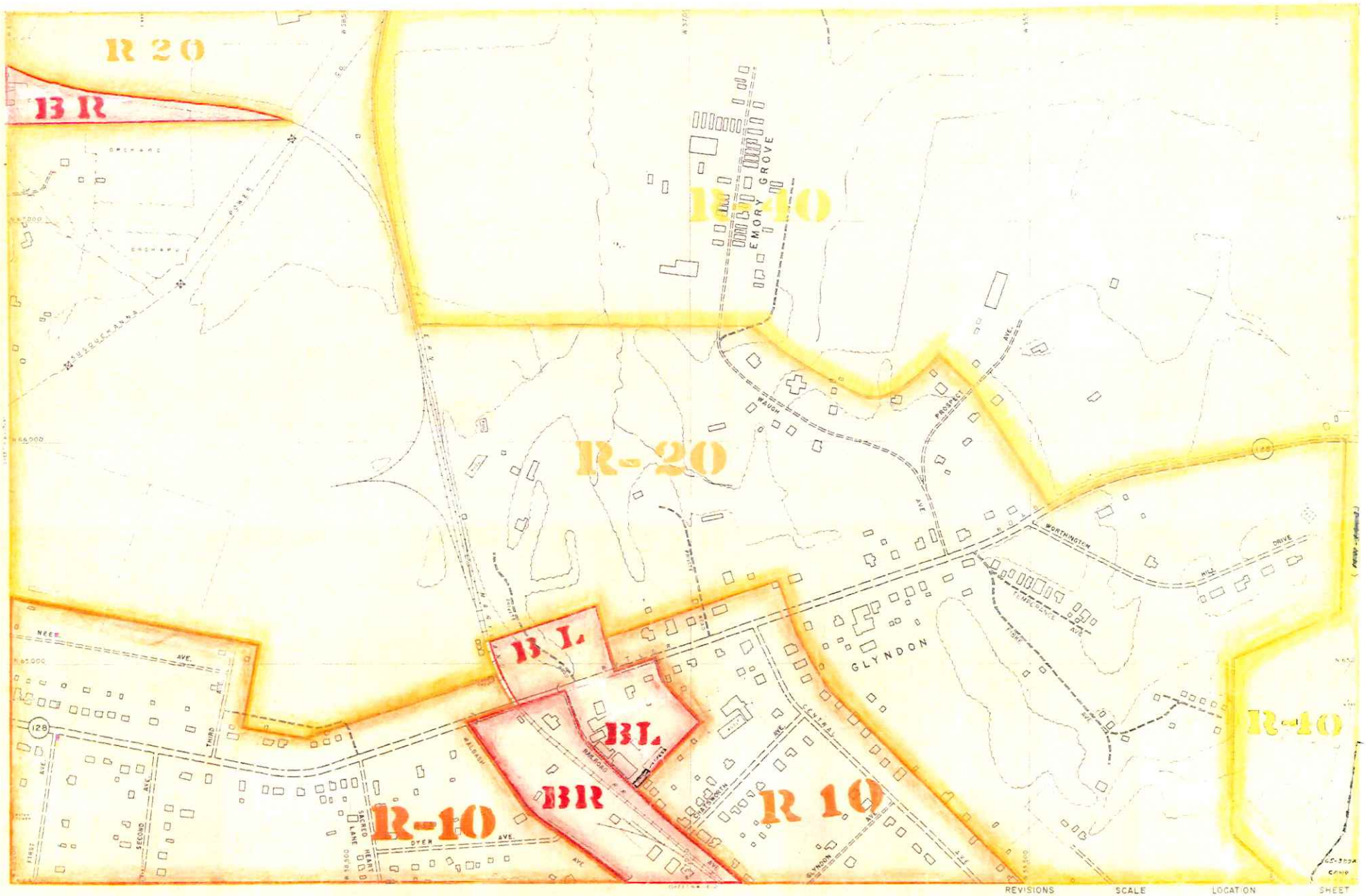
SCALE

0 1000 2000 3000 4000

1000 FEET TO ONE INCH

LEGEND

- "A" RESIDENCE ZONE - R-6
- "B" RESIDENCE ZONE - R-6
- "C" RESIDENCE ZONE - R-A.
- "D" RESIDENCE ZONE - R-G.
- "E" COMMERCIAL ZONE - B-L.
- "F" INDUSTRIAL ZONE - M.L.



PHOTOGRAMMETRIC MAP OF
BALTIMORE COUNTY METROPOLITAN AREA

REVISIONS		SCALE	LOCATION	SHEET
BY	DATE	1" = 200'	GLYNDON REISTERSTOWN AREA	NW 17-J

DATE OF PHOTOGRAPHY APRIL 1955

Compiled by Photogrammetric Methods
AERO SERVICE CORPORATION - PHILADELPHIA, PA

4TH Dist.

X-SE W-SW

ADOPTED BY THE
BALTIMORE COUNTY COUNCIL
MARCH 24, 1971

PHOTOGRAMMETRIC MAP OF

BALTIMORE COUNTY METROPOLITAN AREA

OFFICIAL ZONING MAP

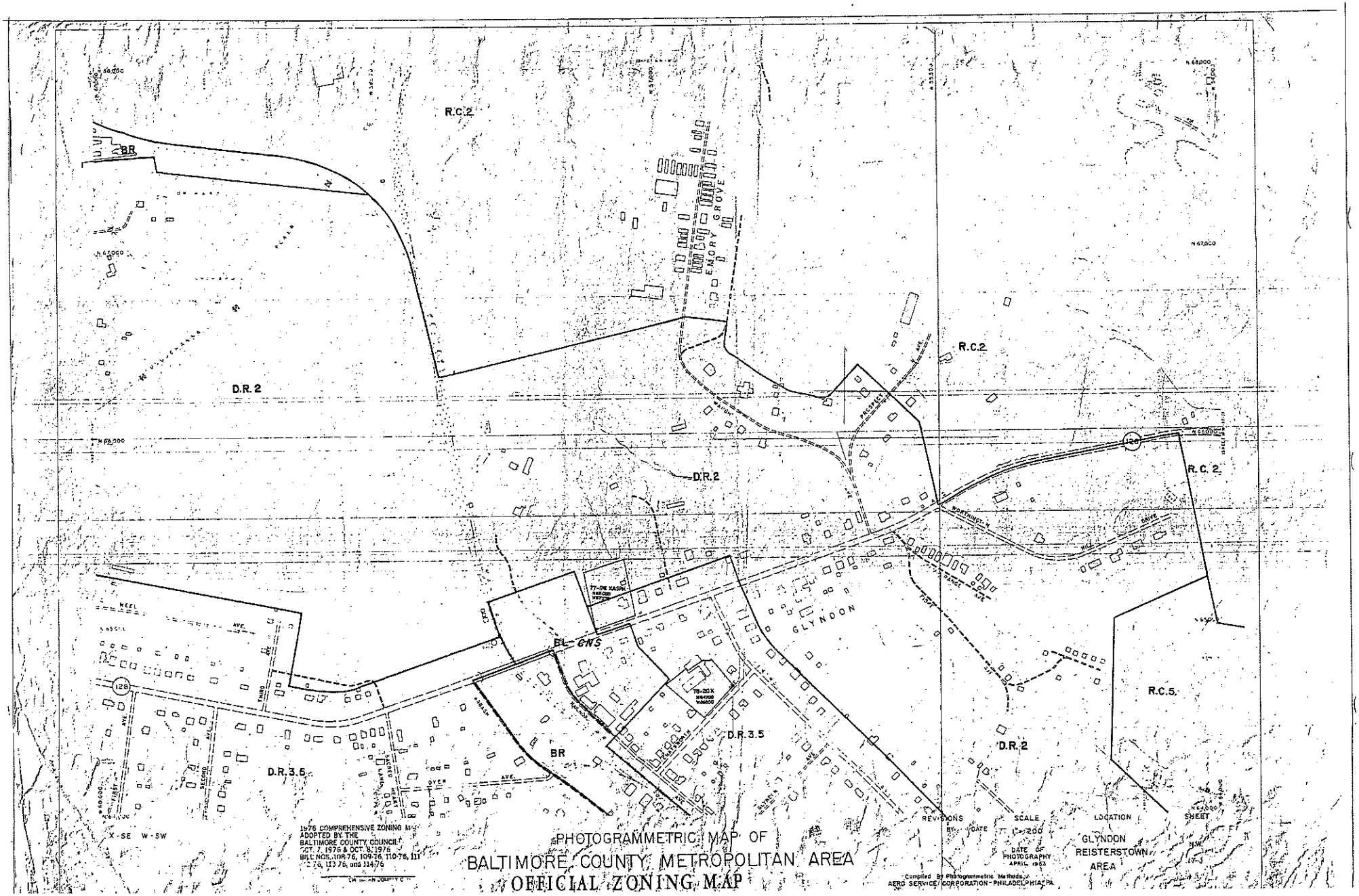
REVISIONS BY	DATE	SCALE	LOCATION	SHEET
		1" = 200'	GLYNDON REISTERSTOWN AREA	N.W. 17-J

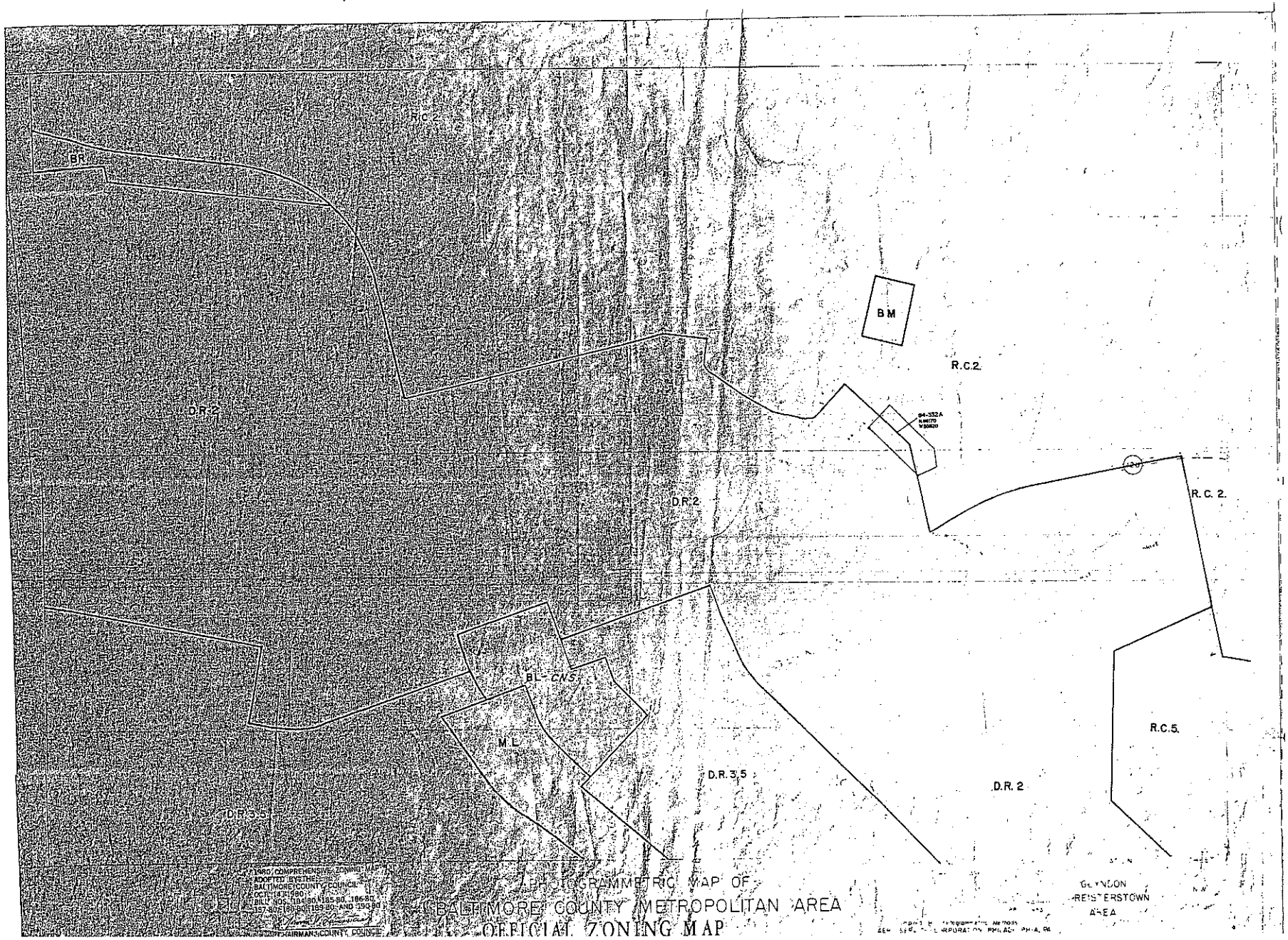
DATE OF PHOTOGRAPHY APRIL 1963

Compiled By Photogrammetric Methods

PLAN HOLD

MW-17-J


R.C.2
BR
EMORY GROVE
D.R.2
R.C.2
D.R.2
R.C.2
GLYNDON
BL-CNS
BR
D.R.3.5
D.R.3.5
D.R.2
R.C.5
128
X-SE W-SW
1976 COMPREHENSIVE ZONING MAP
ADOPTED BY THE
BALTIMORE COUNTY COUNCIL
OCT. 7, 1976 & OCT. 8, 1976
BILL NOS. 108-76, 109-76, 110-76, 111-76, 113-76, and 114-76
PHOTOGRAMMETRIC MAP OF
BALTIMORE COUNTY METROPOLITAN AREA
OFFICIAL ZONING MAP
REVISIONS
BY
DATE
SCALE
1"=200'
DATE OF PHOTOGRAPHY APRIL 1963
LOCATION
GLYNDON
REISTERSTOWN
AREA
SHEET
Compiled By Photogrammetric Methods
AERO SERVICE CORPORATION - PHILADELPHIA, PA.



PHOTOGRAMMETRIC MAP OF BALTIMORE COUNTY METROPOLITAN AREA

OFFICIAL ZONING MAP

X-SE W-SW

1984 COMPREHENSIVE ZONING MAP
ADOPTED BY THE
BALTIMORE COUNTY COUNCIL
NOV. 13, 1984
BILL NOS. 133-84, 134-84, 135-84, 137-84 AND 139-84

CHAIRMAN, COUNTY COUNCIL

PHOTOGRAMMETRIC MAP OF BALTIMORE COUNTY METROPOLITAN AREA

REVISIONS | BY | DATE

SCALE 1" = 200'

BASE OF PHOTOGRAPHY APRIL 1953

Compiled by Photogrammetric Methods
AERO SERVICE CORPORATION - PHILADELPHIA, PA.

LOCATION
GLYNDON
REISTERSTOWN
AREA

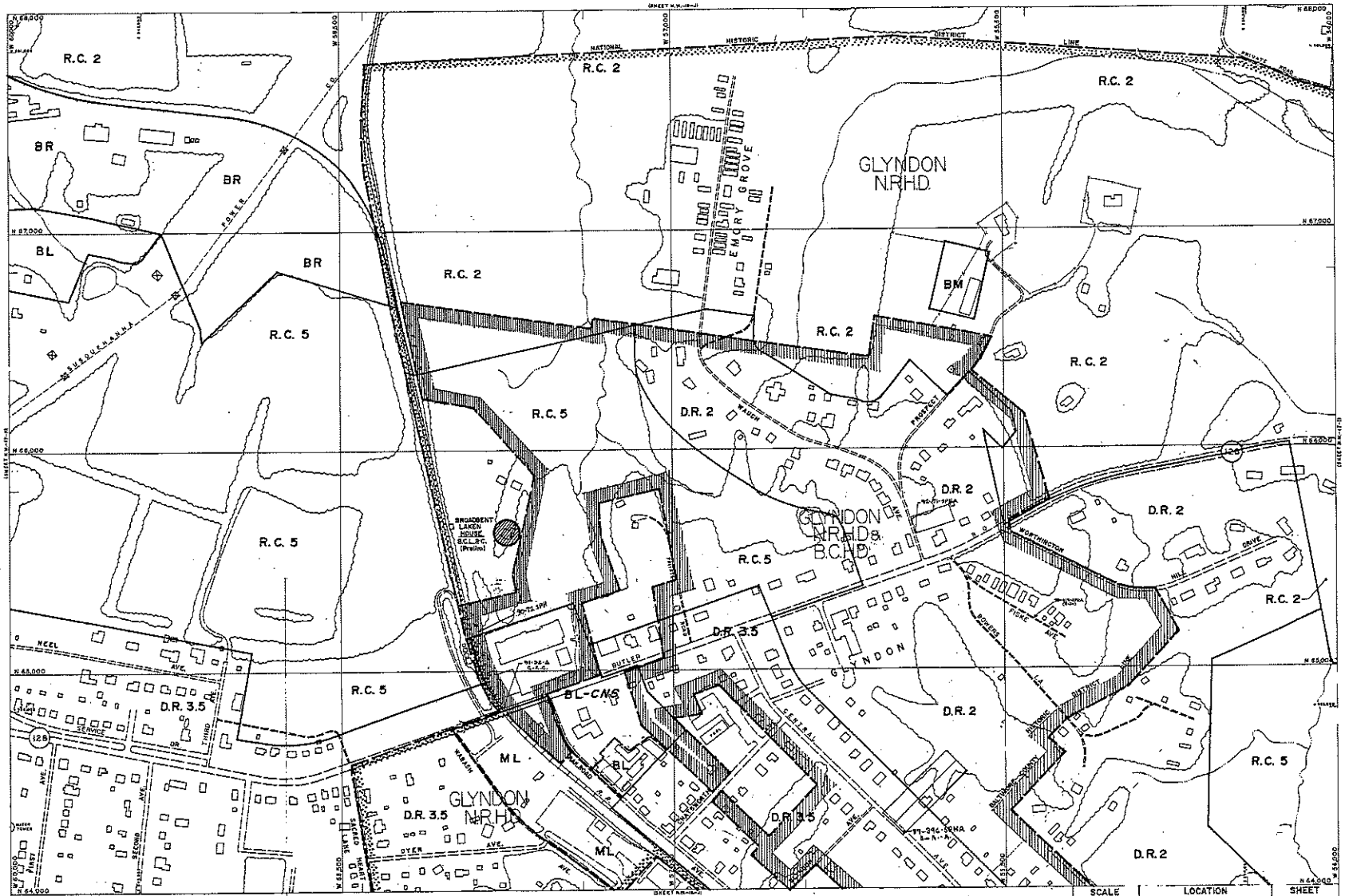
SHEET N.W. 17-J

DRAWING NUMBER NW 17-J

DRAWING NUMBER

DRAWING NUMBER

DRAWING NUMBER



X-SE W-SW

1988 COMPREHENSIVE ZONING MAP
Adopted by the Baltimore County Council
Oct. 13, 1988
Bill Nos. 144-88, 145-88, 146-88, 147-88, 148-88, 149-88, 150-88, 151-88

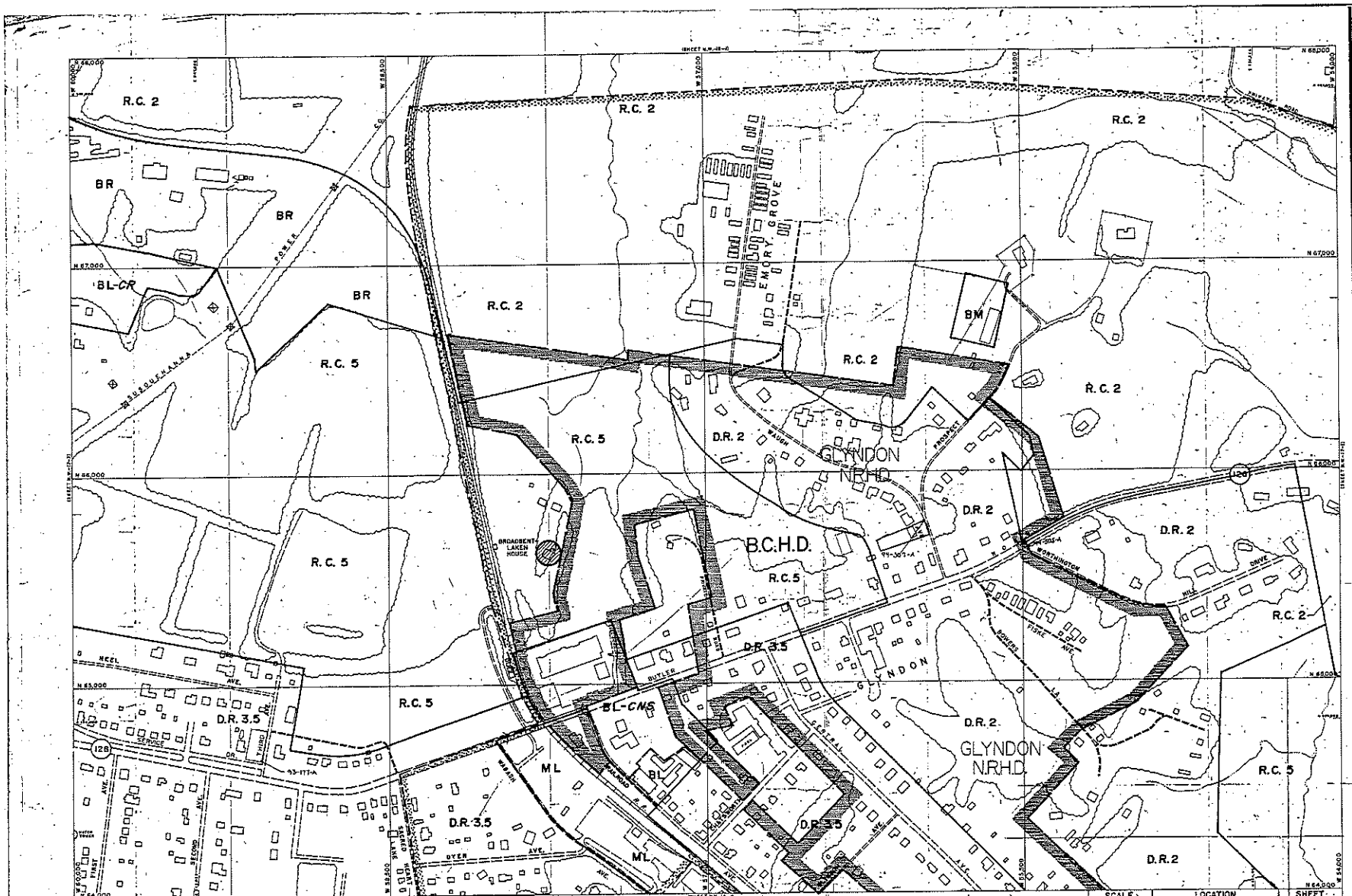
Chairman, County Council

THIS MAP HAS BEEN REVISED IN SELECTED AREAS.
TOPOGRAPHY COMPILED BY PHOTOGRAMMETRIC METHODS
BY MICHART-HORN, INC. BALTIMORE, MD. 21210

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
OFFICIAL ZONING MAP

SCALE	LOCATION	SHEET
1" = 200' ±	GLYNDON REISTERSTOWN AREA	N.W. 17-J
DATE OF PHOTOGRAPHY JANUARY 1986		

DRAWING NUMBER
DRAWING NUMBER
DRAWING NUMBER
DRAWING NUMBER
NW 17-J



X-SE W-SW

THIS MAP HAS BEEN REVISED IN SELECTED AREAS.
TOPOGRAPHY COMPILED BY PHOTOGRAMMETRIC METHODS
BY BUCHART-HORN, INC. BALTIMORE, MD. 21210

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
OFFICIAL ZONING MAP

1992 COMPREHENSIVE ZONING MAP
Adopted by the Baltimore County Council
Oct. 15, 1992

Chairman, County Council

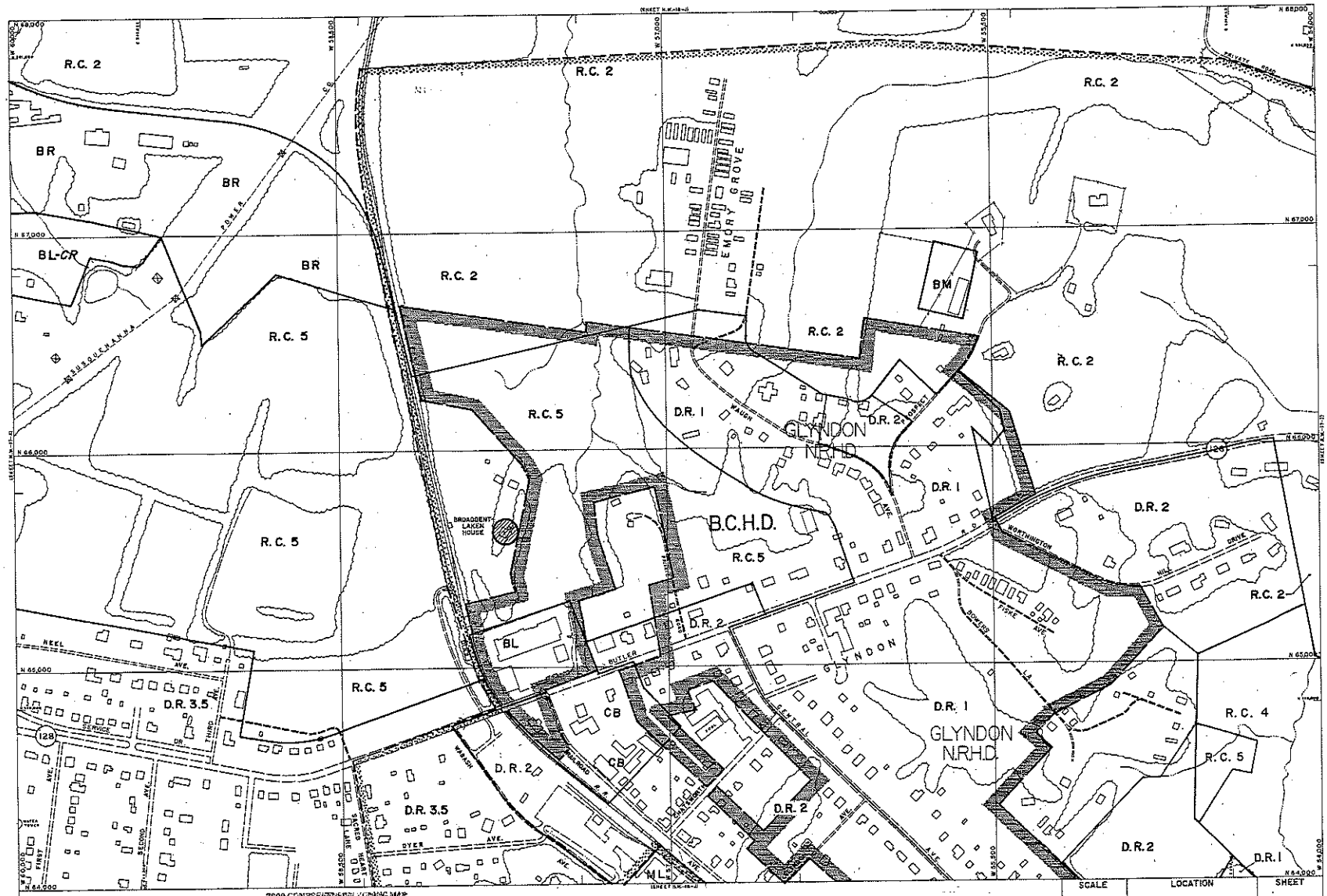
SCALE	LOCATION	SHEET
1" = 200'±	GLYNDON REISTERSTOWN AREA	N.W. 17-J
DATE OF PHOTOGRAPHY JANUARY 1986		

DRAWING NUMBER

DRAWING NUMBER

DRAWING NUMBER

DRAWING NUMBER NW 17-J



X-SE W-SW

2000 COMPREHENSIVE ZONING MAP
ADOPTED by
THE BALTIMORE COUNTY COUNCIL
OCTOBER 16, 2000
Bills Nos. 97-00, 82-00, 85-00, 90-00, 91-00, 92-00, 93-00.

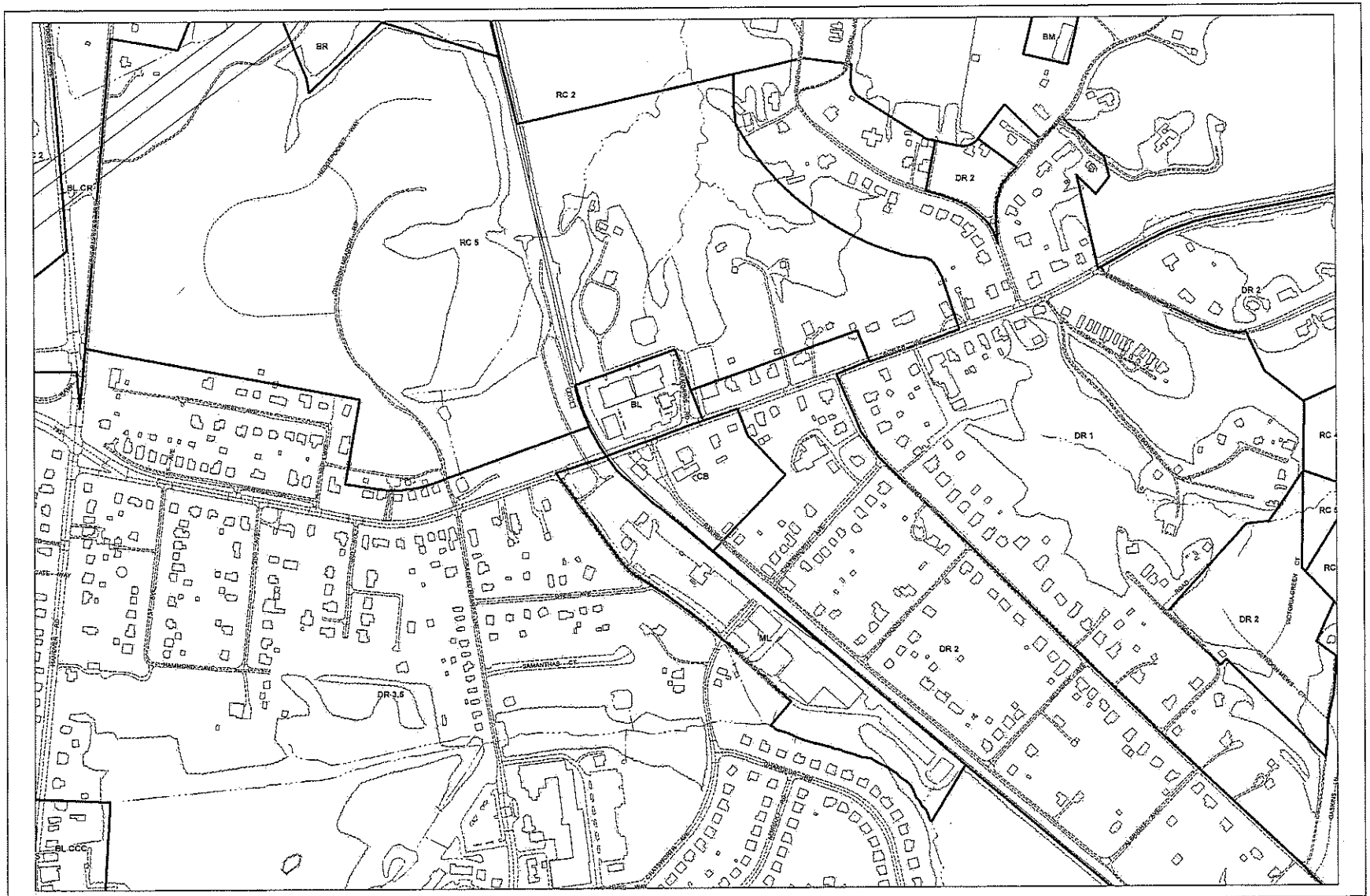
THIS MAP HAS BEEN REVISED IN SELECTED AREAS.
TOPOGRAPHY COMPILED BY PHOTOGRAMMETRIC METHODS
BY BUCHART-HORN, INC. BALTIMORE, MD. 21210

Chairman, County Council

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
OFFICIAL ZONING MAP

SCALE	LOCATION	SHEET
1" = 200'	GLYNDON REISTERSTOWN AREA	N.W. 17-J
DATE OF PHOTOGRAPHY JANUARY 1986		

NW 17 J



Plan Sheet: 048C1

Note:
The zoning depicted in this application incorporates the actions associated with County Council Bills #2-04, #3-04, #4-04, #5-04, #6-04, #7-04, #8-04, and #9-04 adopted by the County Council on August 31, 2004. The action associated with County Council Bill #30-04 adopted on December 6, 2004 is also depicted. In addition, County Board of Appeals actions from MC #5-01, MC #6-02, MC #3-03, and MC #3-04 on February 8, 2005 are represented in this application.

Legend

Buildings — Streams — Vegetation
Zoning — Roads — Rail Lines

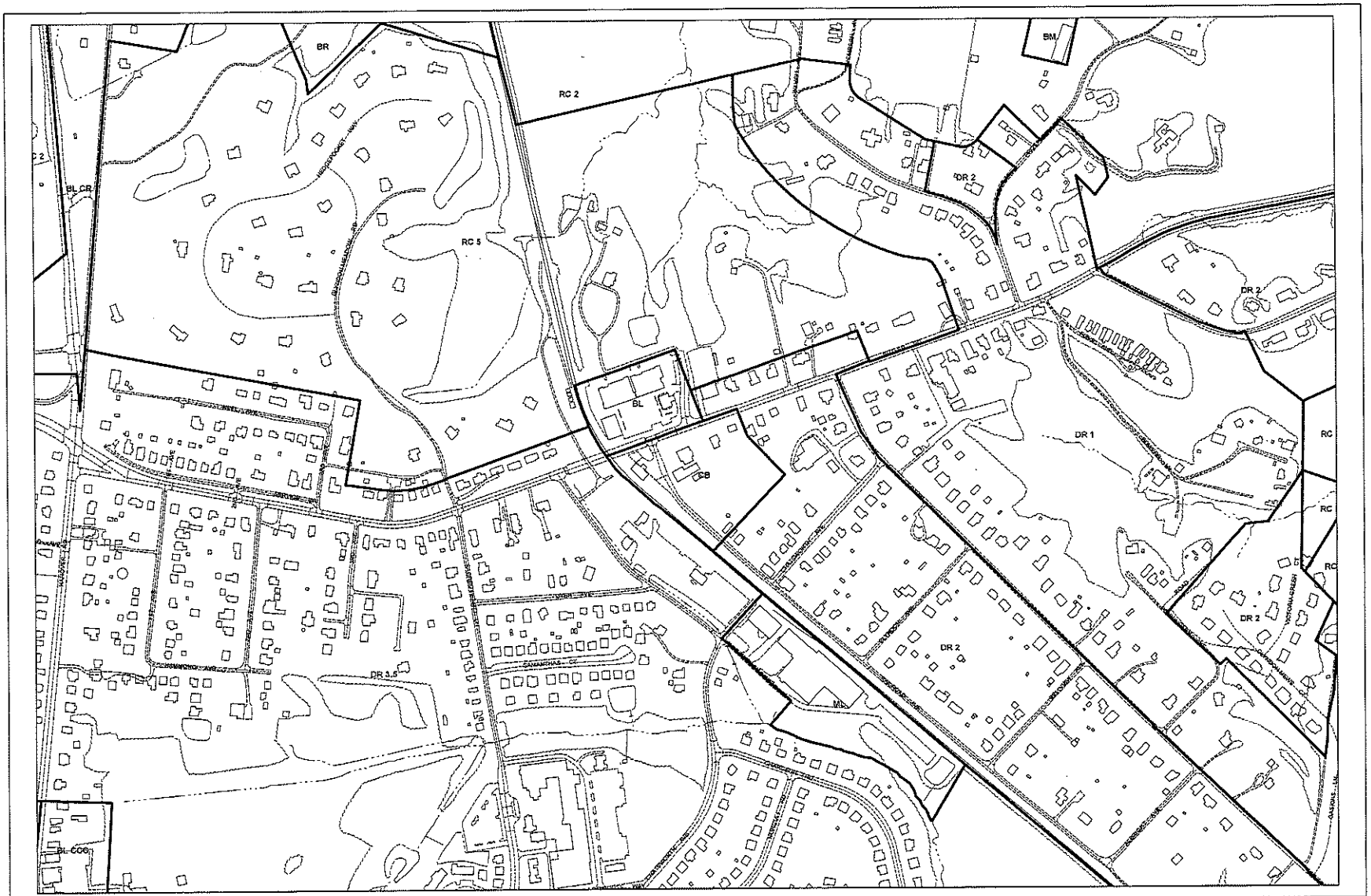
Baltimore County
Office of Planning and Zoning
Official Zoning Map

039A3	039B3	039C3	040A3	040B3
048A1	048B1	048C1	040A1	040B1
048A2	048B2	048C2	040A2	040B2

Scale
1" = 200'
0 100 200 400
Feet

N

Data Sources:
Planimetric Data - Baltimore County
CITICS Services Unit
1:2400, from 1998/99 photography
Zoning - Baltimore County Office of Planning
1:2400, 2004



Plan Sheet: *048C1*

Note:
The zoning depicted in this application incorporates the actions associated with 2008 Comprehensive Zoning Map Process, zoning changes associated with an adopted Community Plan and Baltimore County Board of Appeals actions through December 31, 2008.

Legend

Buildings — Streams — Vegetation
Zoning — Roads — Rail Lines

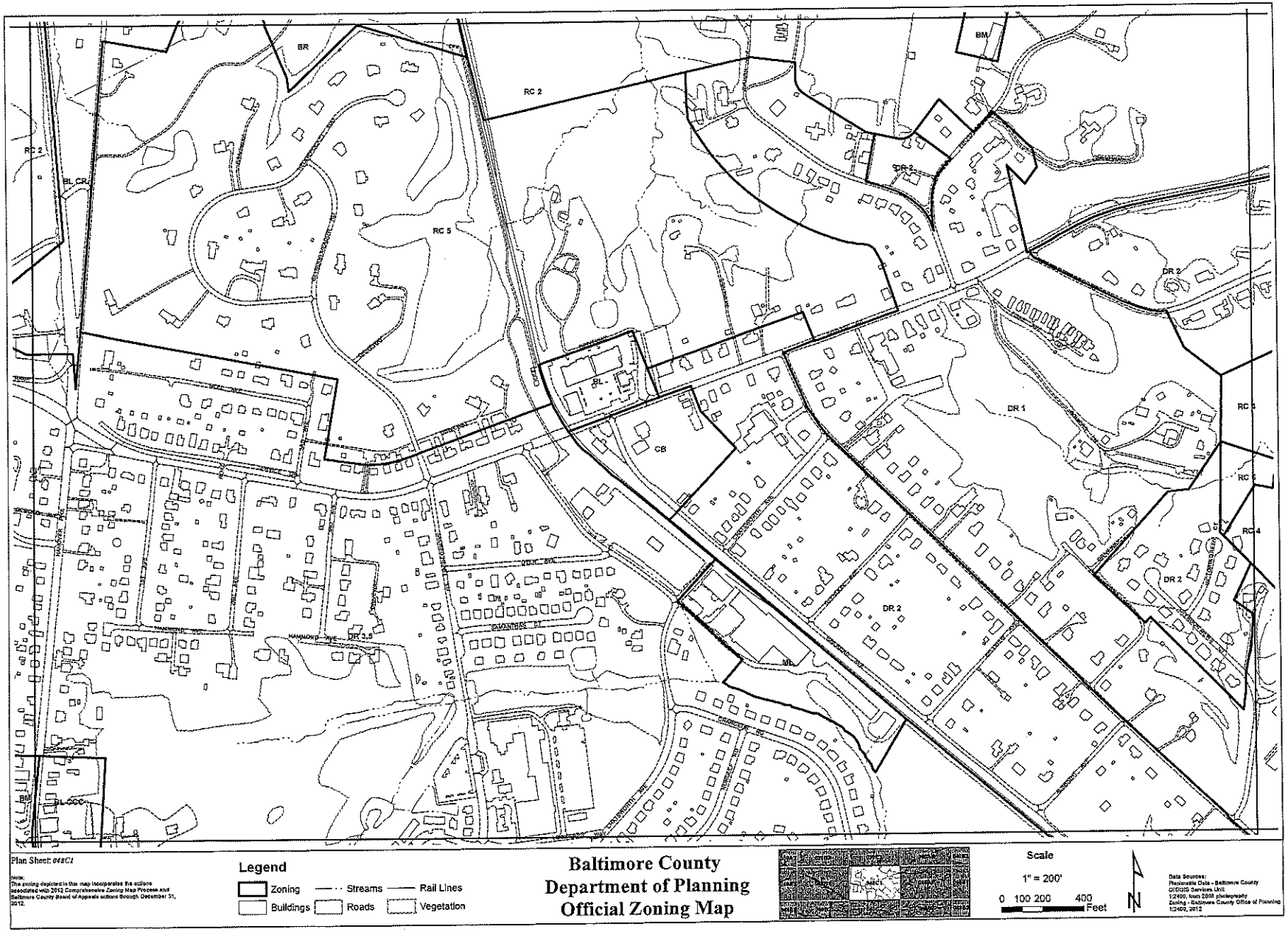
Baltimore County
Office of Planning and Zoning
Official Zoning Map

039A3	039B3	039C3	040A3	040B3
048A1	048B1	048C1	049A1	049B1
048A2	048B2	048C2	049A2	049B2

Scale
1" = 200'
0 100 200 400 Feet

N

Data Sources:
Planimetric Data - Baltimore County
OIT/GIS Services Unit
1:2400, from 1995/96 photography
Zoning - Baltimore County Office of Planning
1:2400, 2008



Plan Sheet: 048C1

Note:
The zoning depicted in this map incorporates the actions associated with 2012 Comprehensive Zoning Map Process and Baltimore County Board of Appeals actions through December 31, 2012.

Legend

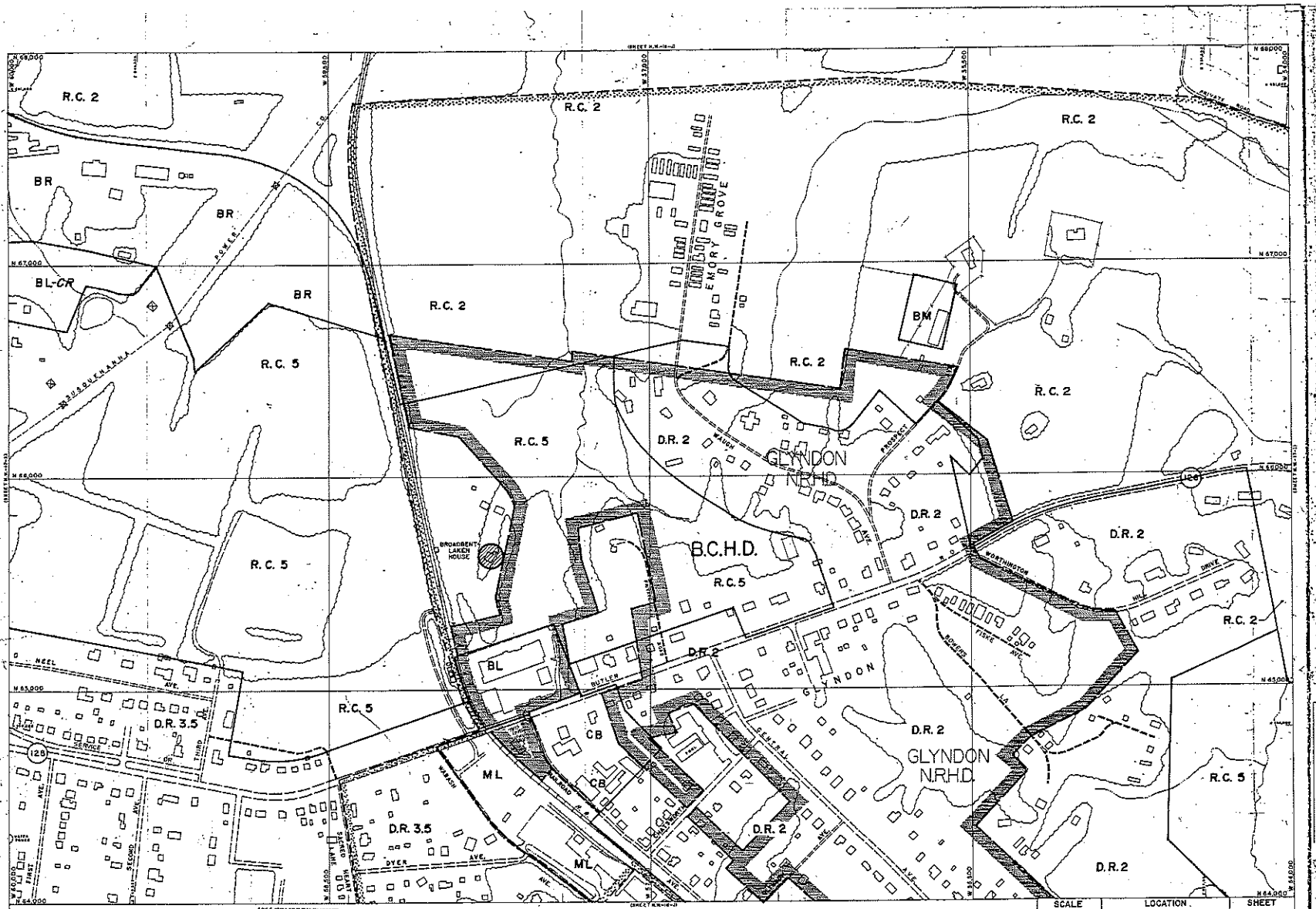
Zoning — Streams — Rail Lines
Buildings — Roads — Vegetation

Baltimore County
Department of Planning
Official Zoning Map

Scale
1" = 200'
0 100 200 400 Feet

N

Data Sources:
Planimetric Data - Baltimore County
GIS/GIS Services Unit
1:2400, from 2008 photography
Zoning - Baltimore County Office of Planning
1:2400, 2012



X-SE W-SW

1996 COMPREHENSIVE ZONING MAP
ADOPTED by
THE BALTIMORE COUNTY COUNCIL
OCTOBER 8, 1996
Bills Nos. 129-96, 130-96, 131-96, 132-96, 133-96, 134-96, 135-96

Kevin Kamenetz
Chairman, County Council

THIS MAP HAS BEEN REVISED IN SELECTED AREAS.
TOPOGRAPHY COMPILED BY PHOTOGRAMMETRIC METHODS
BY BUCHART-HORN, INC. BALTIMORE, MD. 21210

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
OFFICIAL ZONING MAP

SCALE	LOCATION	SHEET
1" = 200'±	GLYNDON REISTERSTOWN AREA	N.W. 17-J
DATE OF PHOTOGRAPHY JANUARY 1986		

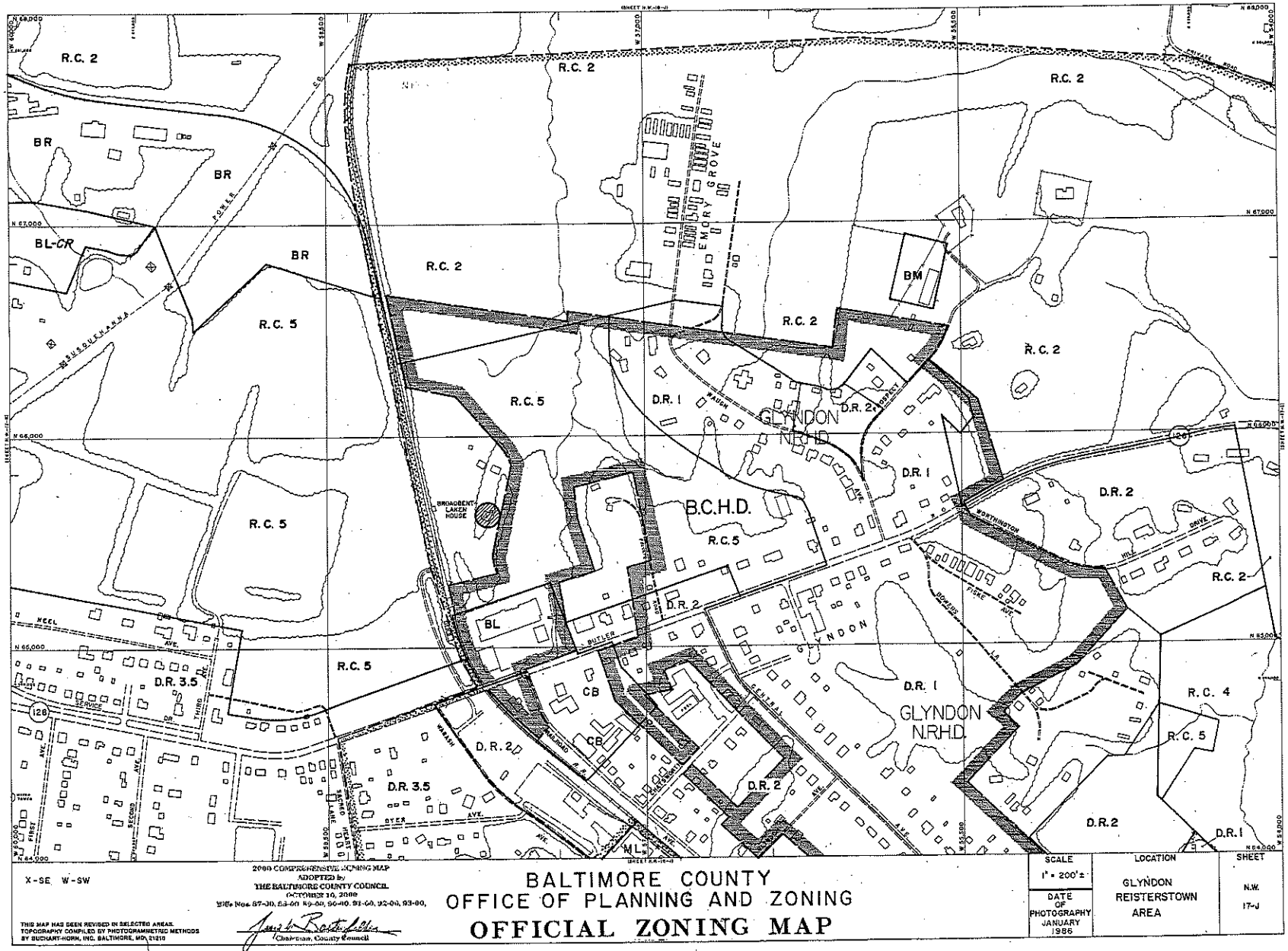
DRAWING NUMBER

DRAWING NUMBER

DRAWING NUMBER

DRAWING NUMBER

NW 17-J



X-SE W-SW

2000 COMPREHENSIVE ZONING MAP
ADOPTED by
THE BALTIMORE COUNTY COUNCIL
OCTOBER 10, 2000
Bills Nos. 87-00, 88-00, 89-00, 90-00, 91-00, 92-00, 93-00,

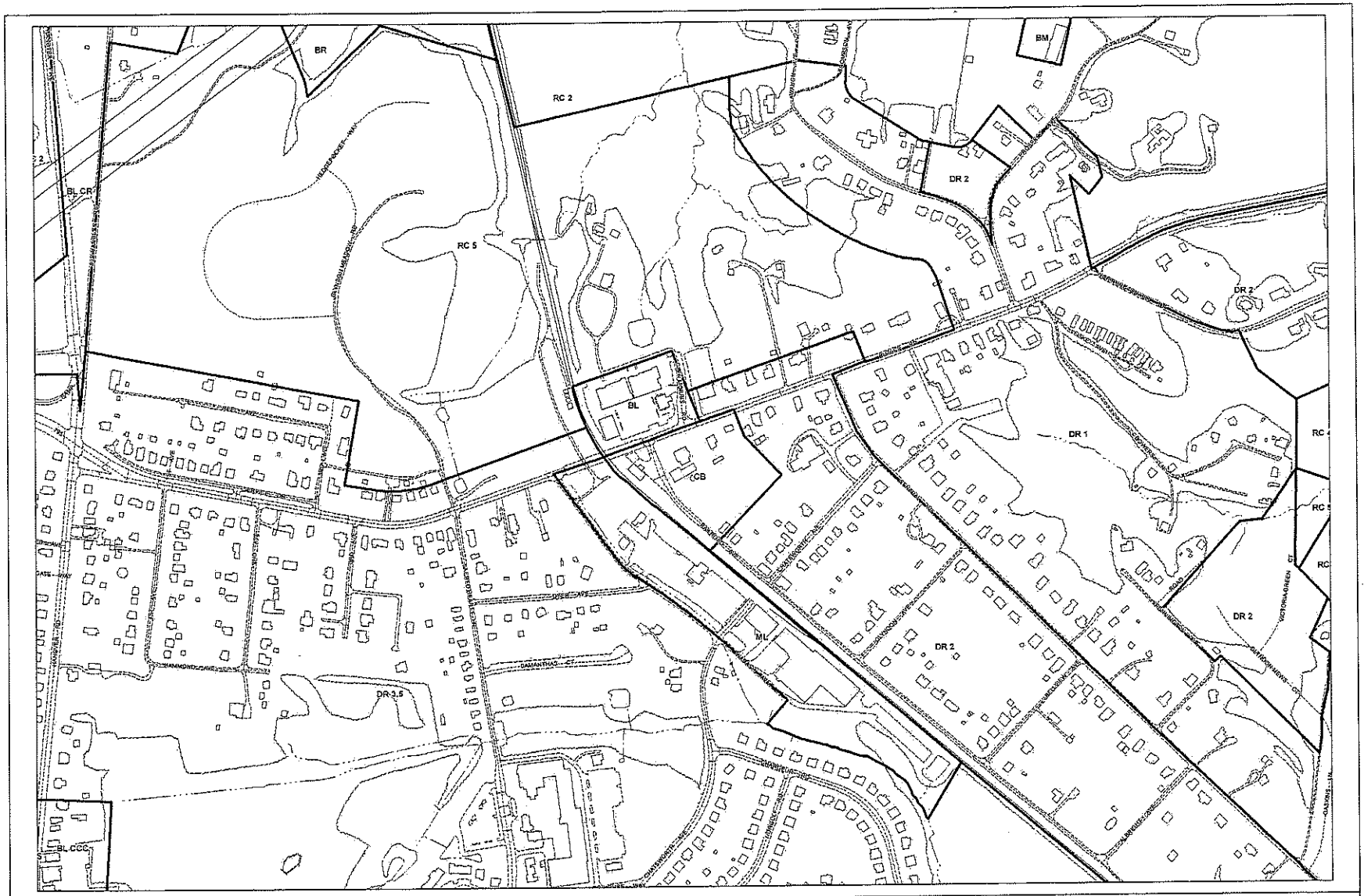
THIS MAP HAS BEEN REVISED IN SELECTED AREAS.
TOPOGRAPHY COMPILED BY PHOTOGRAMMETRIC METHODS
BY BUCHART-HORN, INC. BALTIMORE, MD. 21210

James T. Smith, Jr.
Chairman, County Council

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
OFFICIAL ZONING MAP

SCALE	LOCATION	SHEET
1" = 200'±	GLYNDON REISTERSTOWN AREA	N.W. 17-J
DATE OF PHOTOGRAPHY JANUARY 1986		

NW 17 J



Plan Sheet: *048C1*

Note:
The zoning depicted in this application incorporates the actions associated with County Council Bills #2-04, #3-04, #4-04, #5-04, #6-04, #7-04, #8-04, and #9-04 adopted by the County Council on August 31, 2004. The action associated with County Council Bill #30-04 adopted on December 6, 2004 is also depicted. In addition, County Board of Appeals actions from MC 05-91, MC 05-02, MC 05-03, and MC 05-04 on February 9, 2005 are represented in this application.

Legend

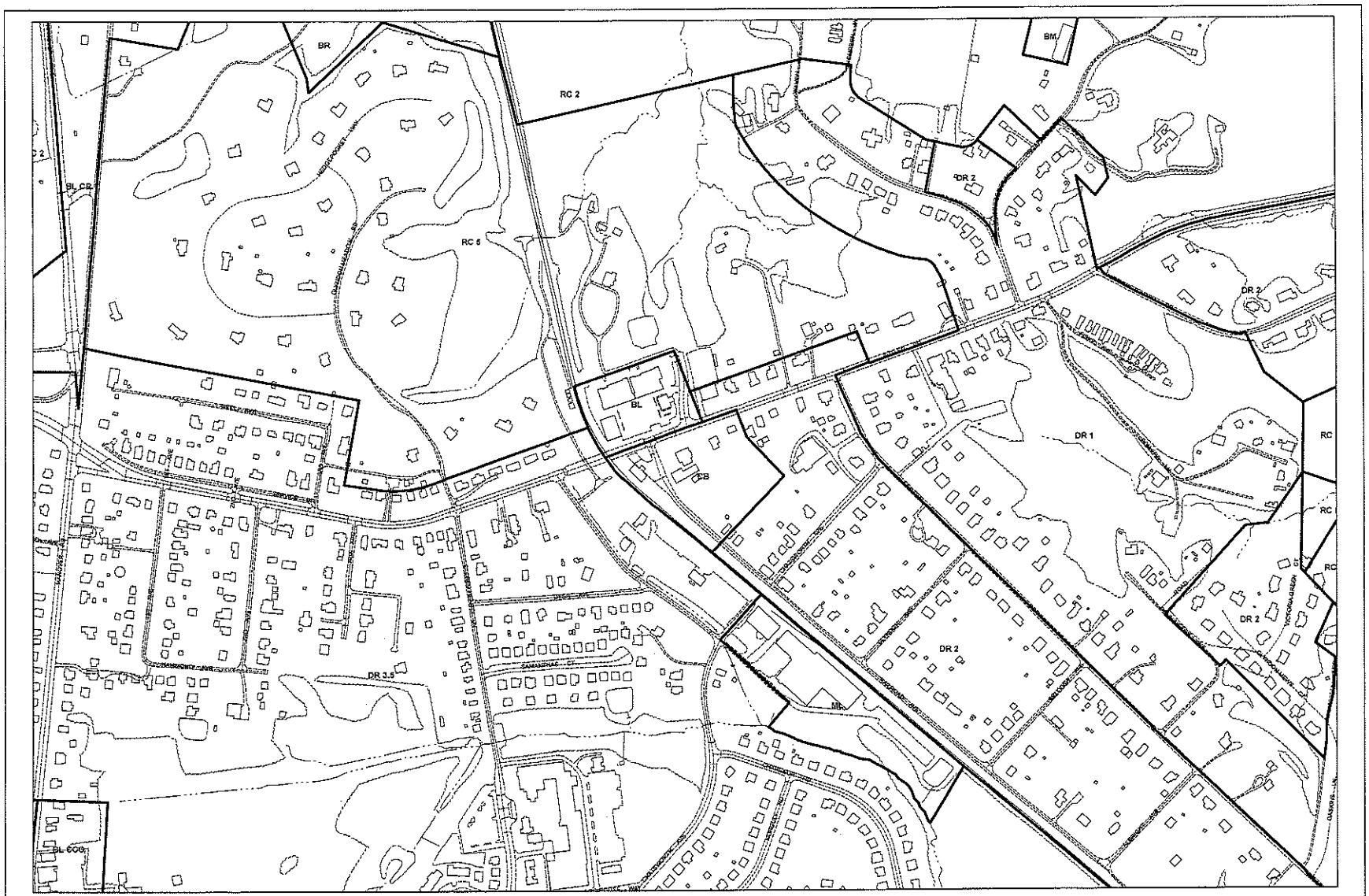
Buildings — Streams — Vegetation
Zoning — Roads — Rail Lines

Baltimore County
Office of Planning and Zoning
Official Zoning Map

039A2	039B3	039C3	040A3	040B3
048A1	048B1	048C1	049A1	049B1
048A2	048B2	048C2	049A2	049B2

Scale
1" = 200'
0 100 200 400
Feet

Data Sources:
Planimetric Data - Baltimore County OIT/GIS Services Unit
1:2400, from 1995/96 photography
Zoning - Baltimore County Office of Planning
1:2400, 2004



Plan Sheet: *048C1*

Note:
The zoning depicted in this application incorporates the actions associated with 2008 Comprehensive Zoning Map Process, zoning changes associated with an adopted Community Plan and Baltimore County Board of Appeals actions through December 31, 2008.

Legend

Buildings — Streams — Vegetation
Zoning — Roads — Rail Lines

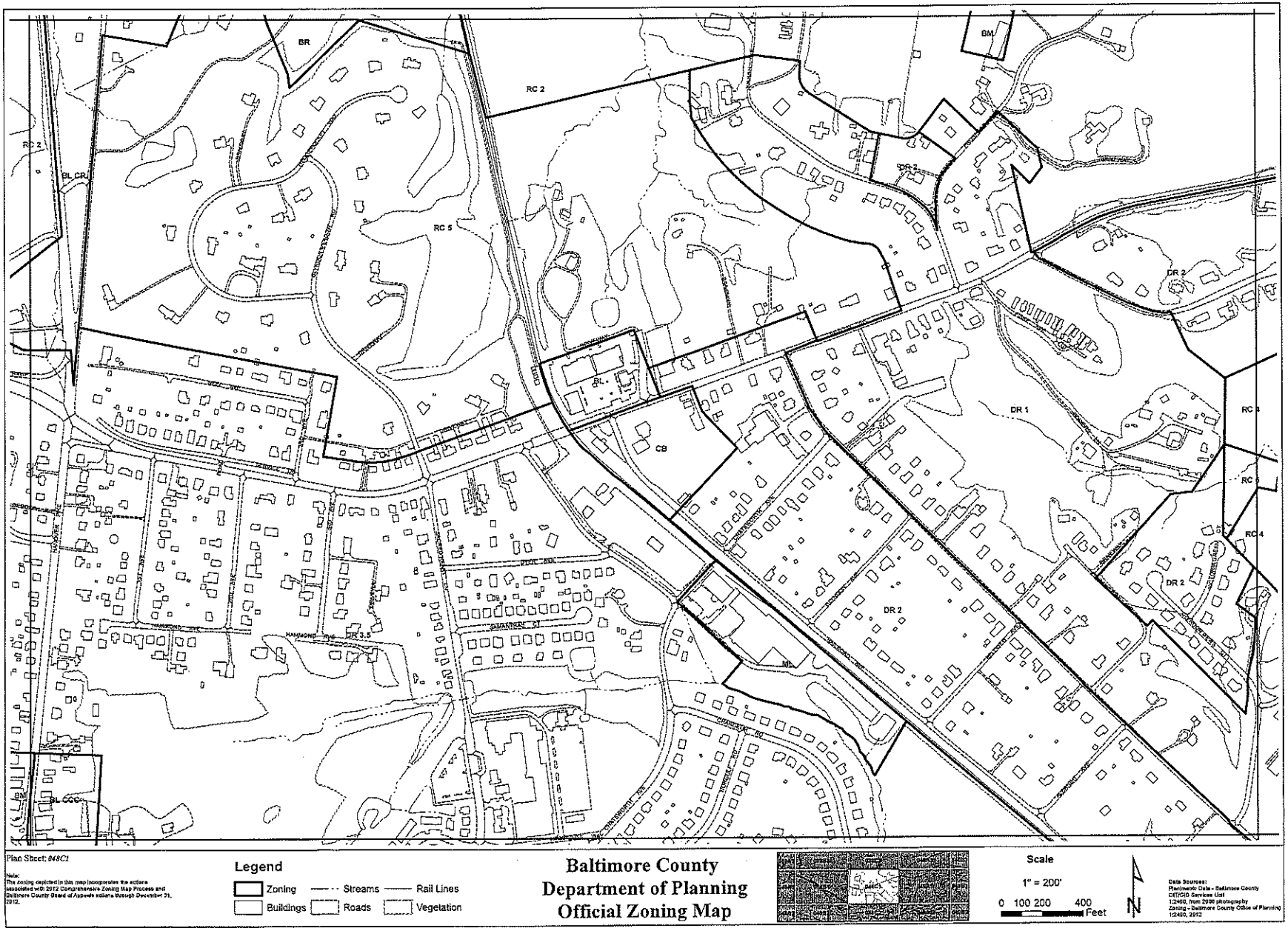
Baltimore County
Office of Planning and Zoning
Official Zoning Map

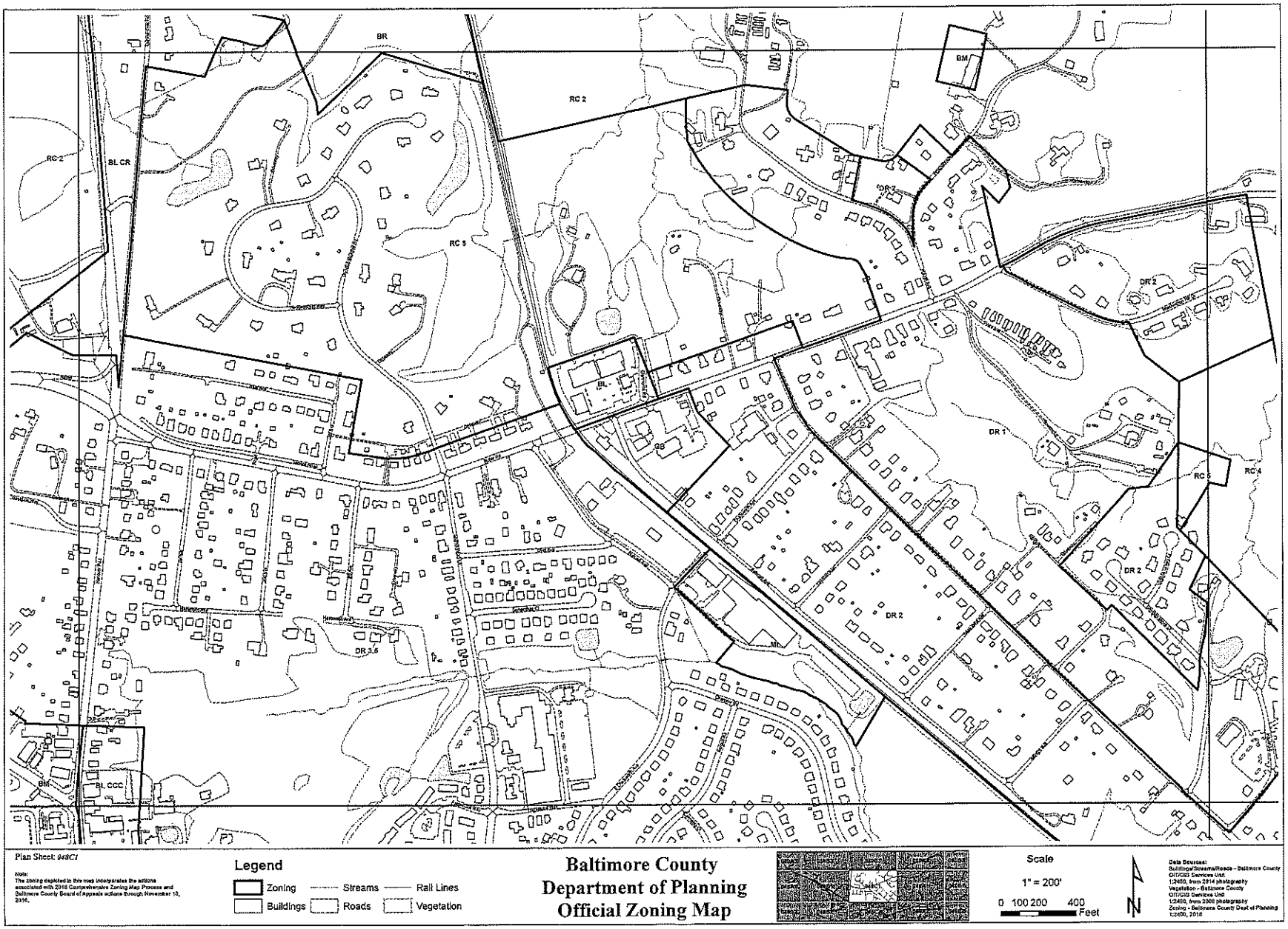
036A3	036B3	036C3	040A3	040B3
048A1	048B1	048C1	048A1	048B1
048A2	048B2	048C2	048A2	048B2

Scale
1" = 200'
0 100 200 400 Feet

N

Data Sources:
Planimetric Data - Baltimore County
OITCIS Services Unit
1:2400, from 1995/96 photography
Zoning - Baltimore County Office of Planning
1:2400, 2008


BR
RC 2
BM
RC 2
BL-CR
RC 5
DR 2
DR 2
BL
CB
DR 1
RC 4
RC 4
RC 4
DR 2
DR 2
BM
BL-CCC
Plan Sheet: 84BC1
Note:
This zoning depicted in this map incorporates the actions associated with 2012 Comprehensive Zoning Map Process and Baltimore County Board of Appeals actions through December 31, 2012.
Legend
Zoning
Streams
Rail Lines
Buildings
Roads
Vegetation
Baltimore County
Department of Planning
Official Zoning Map
Scale
1" = 200'
0 100 200 400
Feet
Data Sources:
Planimetric Data - Baltimore County
OITGIS Services East
1:2400, from 2006 photography
Zoning - Baltimore County Office of Planning
1:2400, 2012


BR
RC 2
BM
RC 2
BL CR
RC 5
DR 2
DR 2
BL
DR 1
RC 5
RC 4
DR 2
DR 2
DR 3.5
BM
BL CCC
Plan Sheet: 94SC1
Note:
The zoning depicted in this map incorporates the actions associated with 2016 Comprehensive Zoning Map Process and Baltimore County Board of Appeals actions through November 10, 2016.
Legend
Zoning
Streams
Rail Lines
Buildings
Roads
Vegetation
Baltimore County
Department of Planning
Official Zoning Map
Scale
1" = 200'
0 100 200 400
Feet
N
Data Sources:
Buildings/Streams/Roads - Baltimore County OIT/GIS Services Unit
1:2400, from 2014 photography
Vegetation - Baltimore County
OIT/GIS Services Unit
1:2400, from 2008 photography
Zoning - Baltimore County Dept of Planning
1:2400, 2016

Historic Glyndon Incorporated

P.O. Box 3641
Glyndon, Maryland 21071-3641

RESOLVED: That at the ANNUAL meeting of HISTORIC GLYNDON, INC. (HGI) held on JANUARY 27, 2020, it was decided by HGI membership that responsibility for review and action on all zoning matters for the period JANUARY 27, 2020 – JANUARY 27, 2021 be placed in the HGI Board of Directors, which includes the following members, each of whom is hereby authorized to testify on positions adopted by the HGI board before the County Board of Appeals or other duly constituted zoning agency, body, or commission:

Susan Benson
Nicole Crumpler
Richard Stanley
Jayme Provencher
Paul Crampton
Pam Becker
Vernene Lenz
Polly Papp
Jamal Robinson
Missy Fanshaw
Joyce Geipe
Diane Flayhart
Nan Kaestner
Marian MacDonald
Patty Szparaga

AS WITNESS OUR HANDS AND SEAL THIS _27th_day of _January_____, _2020_____

ATTEST:

Jayme Provencher
Secretary

Historic Glyndon, Inc.

Susan Benson
President

P.C. Exh. 5

Historic Glyndon Incorporated

P.O. Box 3641
Glyndon, Maryland 21071-3641

AFFIDAVIT

STATE OF MARYLAND
BALTIMORE COUNTY, SS:

TO WIT:

I, Susan M. Benson, hereby swear upon penalty of perjury that I am currently a duly elected member of the Board of Directors of Historic Glyndon, Inc. (HGI).

ATTEST:

Jayme Provencher

Secretary

Historic Glyndon, Inc. (HGI)

Susan M. Benson

President

DATE: 1/28/2020

Historic Glyndon Incorporated

P.O. Box 3641
Glyndon, Maryland 21071-3641

RESOLVED: That the position of Historic Glyndon, Inc. (HGI), as adopted by the Board of Directors on the zoning matter known as:

Donna Bair - Case No. 2019-342- SPHA (4607 Prospect Ave)

is that:

The Board of Directors and the general membership of Historic Glyndon, Inc. (HGI) **strongly oppose** the variances that Donna Bair, Respondent, is seeking. At its Annual Meeting on Monday, January 27, 2020, the membership of Historic Glyndon, Inc., unanimously voted to oppose the Petition for Variances, case #2019-0342-SPHA, on all of the former denials, including:

- "To approve a non-conforming dwelling side yard setback, pursuant to BCZR 104.1."
- "To confirm that an existing fence (swimming pool enclosure) with a height of 6 feet is in compliance with BCZR 427.1 and BCC 13-6-101."
- "Variance to permit an existing 12x28 feet attached garage addition with a side yard setback of 0 feet in lieu of the required 20 feet."
- "To permit an existing 12x28 feet attached garage addition with a sum of the side yards of 14.9 feet in lieu of the required 50 feet. BCZR 400.1."
- "To permit, if necessary, an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches."

Historic Glyndon was the first designated historic district in Baltimore County. HGI's mission is to preserve and protect Glyndon's cultural, social, economic, and architectural history, as well as to conduct educational and beautification projects that enrich Glyndon's historical heritage.

To that end, we believe that all homeowners within Historic Glyndon should follow Baltimore County laws and procedures relating to property improvement. This includes, but is not limited to, obtaining required approvals from the Baltimore County Landmarks Preservation Commission, seeking required building permits, completing land surveys when applicable, and assuring compliance with zoning codes prior to commencing any property improvement projects.

Donna Bair complied with none of those requirements when undertaking work on her home.

HGI regularly publishes recommended best practices for home improvements within the Historic District in our newsletters. The newsletters are distributed to all homeowners in the Historic District two times a year. We expect all homeowners to follow these guidelines with the understanding that some properties deemed as contributing structures may have to undergo an additional approval process.

Therefore, we continue to oppose the approval of any variances after the completion of work for 4607 Prospect Avenue. Doing so would set a bad precedent that would only serve to erode the expected responsibilities of our community property owners.

AS WITNESS OUR HANDS AND SEAL THIS __27th_____ day of _January_____, __2020_____.

ATTEST:

Jayme Provencher

Secretary

Historic Glyndon, Inc.

Susan M. Benson

President

Historic Glyndon Incorporated

P.O. Box 3641
Glyndon, Maryland 21071-3641

July 18, 2019

VIA email (administrativehearings@baltimorecountymd.gov)
And via hand delivery at meeting
Baltimore County Office of Administrative Hearing

13x2 26
18 20
50 5155

RE: **Zoning Notice for Case #2019-0342-SPHA**
Property at 4607 Prospect Avenue, Glyndon
Hearing Date: July 22, 2019

This letter is to **express strong opposition** by Historic Glyndon, Inc. (HGI), on behalf of the Board of Directors, for the request of building variances/special exceptions **after the completion** of structures/modifications at 4607 Prospect Avenue, Glyndon, MD. This letter specifically refers to case #2019-0342-SPHA. Refer to page 2 for specific BCRZ codes.

The mission of HGI is to preserve and protect Glyndon's cultural, social, economic and architectural history, as well as to conduct educational and beautification projects which enrich Glyndon's historical heritage.

To that end, we believe that all homeowners within the Historic Glyndon District should follow Baltimore County laws and procedures relating to property improvement. This includes, but is not limited to, obtaining required approvals from the Baltimore County Landmarks Preservation Commission, seeking required building permits, completing land surveys when applicable, and assuring compliance to zoning codes prior to beginning any property improvement projects.

HGI routinely publishes recommended best practices for home improvements within the Historic District in our newsletters. The newsletters are distributed to all homeowners in the Historic Glyndon District. We expect all homeowners to follow these guidelines with the understanding that some properties deemed as contributing structures may have to undergo additional approval processes.

Therefore, we strongly oppose approving the variances after the completion of work for 4607 Prospect Avenue. This would set a precedent, and serve only to further erode the expected responsibilities of our community property owners.

Sincerely,

Pamela Becker

Pamela Becker
President, Historic Glyndon, Inc.

"It has been said that, at its best, preservation engages the past in a conversation with the present over a mutual concern for the future."

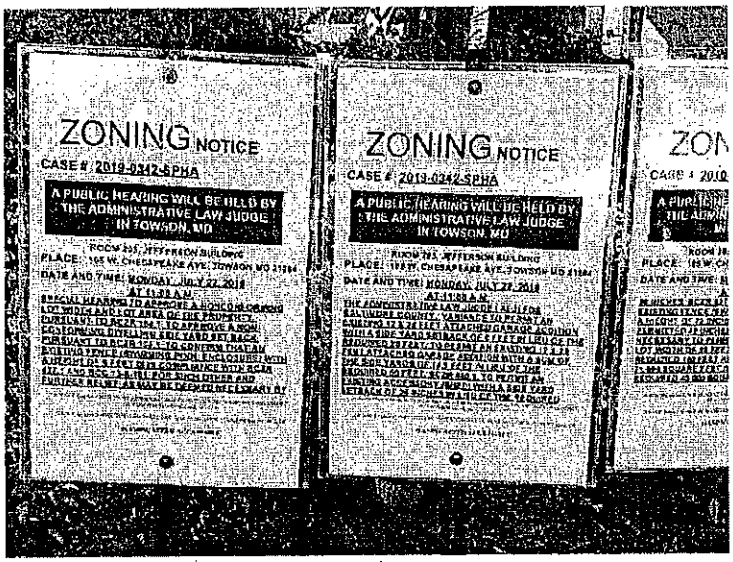
– William Murtagh, first keeper of the National Register of Historic Places

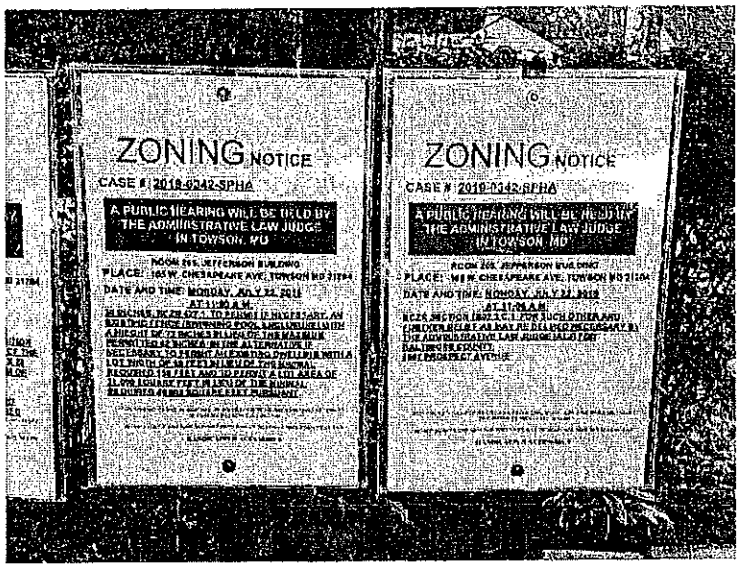
This letter specifically addresses the below applications:

Application for variance/exceptions of newly-built structures (non-conforming, built without permits)

- Zero side-yard set-back for left-side garage (on the property line, in lieu of 20' back)
- 14'-9" set-back for right-side front addition (in lieu of 30' back/ sum of 50' both sides)
- 72" high front-yard fence (in lieu of 42" max)

(Zoning sign photos below for the exact BCRZ codes for exception)





The mission of HGI is to preserve and protect Glyndon's cultural, social, economic, and architectural history, as well as to conduct educational and beautification projects which enrich Glyndon's historical heritage,

Glyndon Community Association & Historic Glyndon, Inc.

Opposition to Baltimore County Zoning Case #2019-0342-SPHA

4607 Prospect Ave., Glyndon, Baltimore County, MD

Application for variance/exceptions of newly-built structures (non-conforming, built without permits)

- Zero side-yard set-back for left-side garage (on the property line, in lieu of 20' back)
- 14'-9" set-back for right-side front addition (in lieu of 30' back/ sum of 50' both sides)
- 72" high front-yard fence (in lieu of 42" max)

(Zoning sign photos below for the exact BCRZ codes for exception)

Signatures of Community Members Opposing Above:

Signature	Print Name	Street Address
	GERARD CROSS	4624 Butler Glyndon
	Michael Pristoop	4 Waugh Av
Joan M Davenport	Joan M Davenport	7 Waugh Ave
Sarah Schlegelmilch	Sarah Schlegelmilch	7 Waugh Ave.
Robyn Mue	Robyn Mue	10 Waugh Ave
	Lee Woe	10 Waugh Ave
Robert K. Behman	Robert K. Behman	4612 Prospect Ave
Marie Maevers	MARIE MAEVERS	4615 PROSPECT AV
	STEVE EHRENPREIS	3 WAUGH AVE.
Barbara C. Whitman	Barbara C. Whitman	4707 Butler Rd. 21071
	Diane Flaghart	4719 Butler Rd 21071
	NICK ST. AMANT	5 CENTRAL 21071
	John Michael O'Neill	4724 Butler Rd 21071

Signatures of Community Members Opposing (continued):

Signature	Print Name	Street Address
	James W Rees	4804 Butler Rd Glyndon MD 21071
	Gary Wink	4802 Butler Rd Glyndon MD 21071
	Terry Vinson	4806 Butler Rd
	Claudette LeBlanc	Claudette LeBlanc ↑
	Alek Vinson	↑
	Matt Reitzel	4811 Butler Rd
	Bryan Benson	4813 Butler Rd
	Linda Myers	26 Chatsworth
	Jim MacDonald	111 Central Ave 21071
	Nan Kaestner	117 Central Ave, 21071
	Robert Kaestner	117 Central Ave 21071
	Eleanor H. Taylor	16 Worthington Hill Dr. 21071
	Martha Clements	222 Central Ave 21071
	[illegible]	222 Central Ave 21071
	Jennifer Diaz	207 Central Ave 21071
	Kmontanye	4609 Prospect Avenue 21136
	Thomas Montanye	4609 Prospect Ave
	Frances M. Acle	4606 Prospect Ave

Reisterstown~Owings Mills~ Glyndon
Coordinating Council

The undersigned hereby acknowledge and attest that on 7/1/19 the Membership, with a quorum present, of the Reisterstown-Owings Mills-Glyndon Coordinating Council, Inc. (ROG), a Maryland corporation, in accordance with Section 2-408 of the Maryland Corporations and Associations Code and its Charter and By-Laws, approved the Resolution set forth herein:

RESOLVED: That the Board empowers and instructs Mark Stewart, Mary Molinaro, Gary Lenz and George Harman, President, 1st Vice President, 2nd Vice President, and Immediate Past President, respectively, to individually or jointly represent ROG at any hearings before the Administrative Law Judge of Baltimore County and anybody of appropriate jurisdiction for any subsequent appeals. Mr. Stewart, Ms. Molinaro, Mr. Lenz, and Mr. Harman to appear at those hearings for ROG and make known the position of ROG in this matter, to wit, that:

Furthermore, Mr. Stewart, Ms. Molinaro, Mr. Lenz, and Mr. Harman are authorized to explain or amplify as they see fit, stated positions until June 30, 2020.

AS WITNESS OUR HANDS AND SEAL THIS 1st day of July, 2019.

ATTEST: Reisterstown-Owings Mills-Glyndon Coordinating Council, Inc.

_____, Secretary

_____, President

RESOLVED, that at this meeting of ROG on July 1, 2019, that the responsibility for the official presentation of positions for actions on all zoning and development matters is hereby assigned only to the President, Vice Presidents, and Immediate Past President as of July 1, 2019. The President and Vice Presidents may authorize in writing with two signatures, the delegation of this authority to other members of the organization.

AS WITNESS OUR HANDS AND SEAL THIS 1st day of July 1, 2019.

ATTEST: Reisterstown-Owings Mills-Glyndon Coordinating Council, Inc.

_____, Secretary

_____, President

Reisterstown~Owings Mills~ Glyndon
Coordinating Council

AFFIDAVIT

STATE OF MARYLAND
BALTIMORE COUNTY

TO WIT:

I hereby swear upon penalty of perjury that I am currently a duly elected member of the Board of Directors of the Reisterstown – Owings Mills – Glyndon Coordinating Council.

Mark Stewart, President
Mary Molinaro, 1st Vice President
Gary Lenz, 2nd Vice President
George Harman, Immediate Past President

ATTEST:

Reisterstown – Owings Mills – Glyndon Coordinating Council

Secretary

President

Date: 2/3/2020

P.O. Box 117 Reisterstown, Maryland 21136

Reisterstown~Owings Mills~ Glyndon
Coordinating Council

The undersigned hereby acknowledge and attest that on 2/3/2020 the Membership, with a quorum present, of the Reisterstown-Owings Mills-Glyndon Coordinating Council, Inc. (ROG), a Maryland corporation, in accordance with Section 2-408 of the Maryland Corporations and Associations Code and its Charter and By-Laws, approved the Resolution set forth herein:

RESOLVED: That ROG is opposed to Bair, Donna – 4607 Prospect Avenue, Case No: 19-0342-SPHA requesting nonconforming dwelling side yard setback, height of swimming pool enclosure, and various setbacks to property lines requests and authorizes its officers and Board members to submit a letter and speak to this effect at any and all hearings and court cases that may arise and as may continue.

AND FURTHER RESOLVED: That the Board empowers and instructs Mark Stewart, Mary Molinaro, Gary Lenz and George Harman, President, 1st Vice President, 2nd Vice President, and Immediate Past President, respectively, to individually or jointly represent ROG at any hearings before the Administrative Law Judge of Baltimore County and anybody of appropriate jurisdiction for any subsequent appeals. Mr. Stewart, Ms. Molinaro, Mr. Lenz, and Mr. Harman to appear at those hearings for ROG and make known the position of ROG in this matter, to wit, that:

Furthermore, Mr. Stewart, Ms. Molinaro, Mr. Lenz, and Mr. Harman are authorized to explain or amplify as they see fit, this stated position.

AS WITNESS OUR HANDS AND SEAL THIS 3rd day of February, 2019.

ATTEST: Reisterstown-Owings Mills-Glyndon Coordinating Council, Inc.

Marilyn Fuda, Secretary

Mark Stewart, President

RESOLVED, that at this meeting of ROG on February 3, 2020, that the responsibility for the official presentation of positions for actions on all zoning and development matters is hereby assigned only to the President, Vice Presidents, and Immediate Past President as of July 1, 2019. The President and Vice Presidents may authorize in writing with two signatures, the delegation of this authority to other members of the organization.

AS WITNESS OUR HANDS AND SEAL THIS 3rd day of February, 2020.

ATTEST: Reisterstown-Owings Mills-Glyndon Coordinating Council, Inc.

Marilyn Fuda, Secretary

Mark Stewart, President

Reisterstown~Owings Mills~ Glyndon
Coordinating Council

March 14, 2021

Re: 4607 Prospect Avenue
Case No: 19-0342-SPHA

To Whom it May Concern:

At the 2/3/2020 Membership meeting, ROG resolved to oppose the request by Donna Bair for multiple variances which include:

1) A nonconforming dwelling, zero side-yard setback for left-side garage on the property line. Current laws require a 20-foot setback and we believe it is a bad precedent to the community to allow this variance.

2) 72" height of swimming pool enclosure when the zoning law indicates a maximum of 42"

3) 14' 9" set-back for front side addition when the zoning law is 30' setback with a sum of 50' both sides

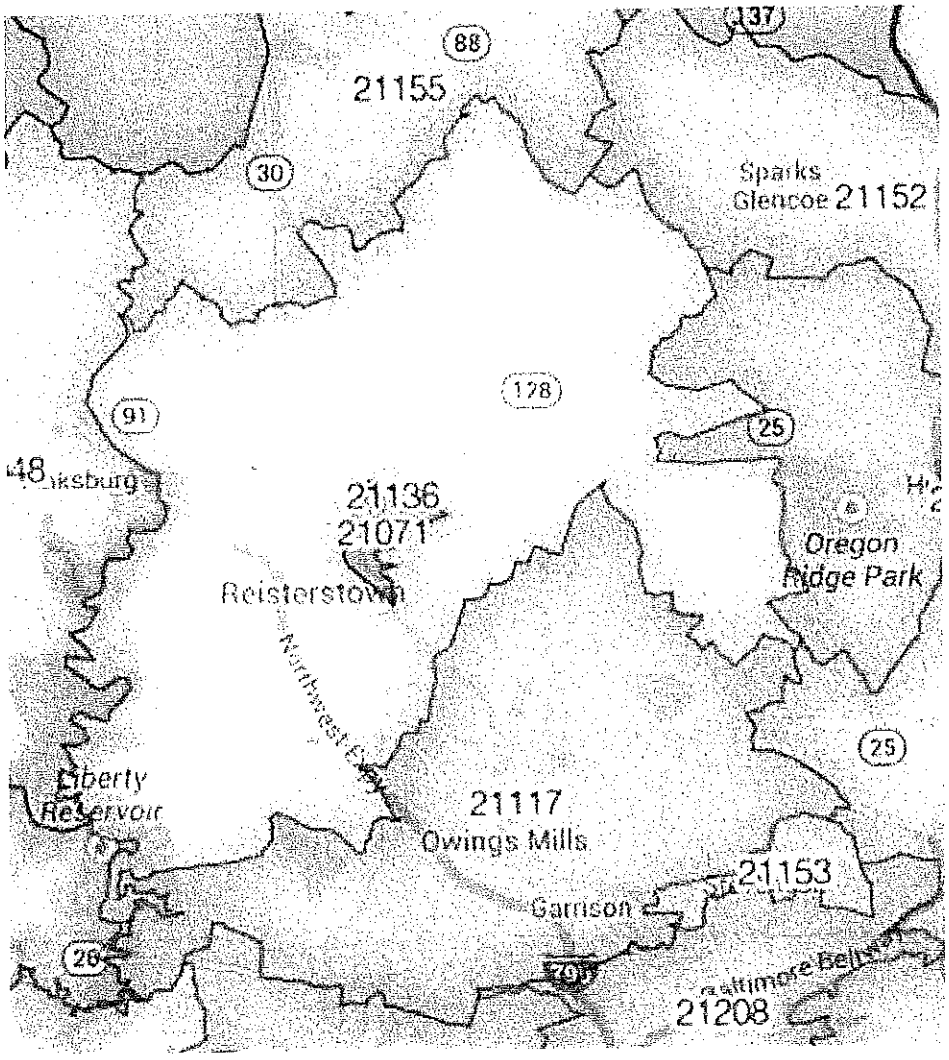
Our organization monitors zoning hearings and supports community concerns when homeowners do not follow Baltimore County regulations. We feel it is a bad precedent to ignore existing regulations as happened on this property. It is important that permits are obtained prior to modifications. A homeowner should know their property lines so they do not impinge on their neighbors.

Sincerely,

Mark Stewart

Mark Stewart
President

P.O. Box 117 Reisterstown, Maryland 21136


88
21155
30
Sparks
Glencoe 21152
91
178
25
21136
21071
Reisterstown
Oregon
Ridge Park
Northwest Expy
Liberty
Reservoir
21117
Owings Mills
21153
Garrison
26
70
21208


ROBERTS AVE
THOMPSON AVE
EMORY GROVE CAMP MEETING ASSN
MONTANYE CARLYLE III
MONTANYE CARLYLE N JR
MONTANYE CARLYLE N JR
GETTIER MONTANYE INC
COFFIN ROBIN S
RITTER CLARENCE E
ROZENCWAIG ERIC S
WELSH CHARLES F
ACLE SERGIO A TRUSTEE
MCGEEVY JACOB
GULLEY JAMES A
FLICKINGER BARRY M
DOSMAS BRYAN
WADE CLARK LEE
SMITH ALTWOOD R
GEHMAN ROBERT K SR
GEHMAN ROBERT K
HEMADY RAMZI K
HEMADY RAMZI K
HEMADY RAMZI K
HEMADY RAMZI K
WAUGH AVE
PROSPECT AVE
DRIVEWAY
GEHMAN ROBERT K SR
FRADKIN STEVEN M
BAIR DONNA V
GREB CHRISTOPHER JAMES
WAKEEN JOSEPH R
VOCA JOHN T
CHARNAWSKY ANCERA
SIMMONS CHARLES P III
SIMMONS CHARLES P III
KNIGHT EDITH D
KNIGHT JEANNE A
DAVENPORT JOHN M
SHAEFER JAMES DAVID SR
EHRENPREIS STEVE
GROVER ROBERT O
EBELEIN RONALD L
BALTIMORE COUNTY MARYLAND
EBELEIN RONALD L
MONTANYE THOMAS R
GERARD JEFFREY M
MAEVERS MARIE C
MAEVERS MARIE C
MAEVERS MARIE C
BUTLER RD
CROSS GERARD C
PRISTOOP MICHAEL ALAN
WELSH CHARLES F
WELSH CHARLES F
WELSH CHARLES F

Historic Districts Enacted by Baltimore County Council

	Acreages (and Percentages)			County Council	
District	**Total**	**Participating***	**Not Participating****	**Bill Number**	**Date of Vote**
Glyndon Map (PDF)	163.71 (100%)	154.22 (83.9%)	29.64 (16.1%)	48-81	April 20, 1981
Monkton Map (PDF)	55.78 (100%)	55.78 (100%)	---	49-81	April 20, 1981
Corbett Map (PDF)	64.35 (100%)	54.74 (85.1%)	9.61 (14.9%)	130-85	August 5, 1985
Lutherville Map (PDF)	103.86 (100%)	90.59 (87.2%)	13.27 (12.8%)	156-87	December 7, 1987
Sudbrook Park Map (PDF)	86.83 (100%)	70.64 (81.4%)	16.19 (18.6%)	25-93	March 15, 1993

Rippling Run (Single Property) Map (PDF)	15 (100%)	15 (100%)	---	80-95	June 5, 1995
Sudbrook Park (Expansion Number One, Cliveden Road) Map (PDF)	1.4 (100%)	1.2 (85.7%)	0.2 (14.3%)	81-95	June 5, 1995
Franklinville Map (PDF)	17.27 (100%)	14.8 (85.9%)	2.43 (14.1%)	107-95	July 3, 1995
Relay Map (PDF)	134.29 (100%)	108.45 (80.0%)	25.84 (19.2%)	144-96	November 4, 1996
Sudbrook Park (Expansion Number Two, Adana Road) Map (PDF)	4.7 (100%)	4.01 (85.4%)	0.69 (14.7%)	95-99	November 15, 1999
Fieldstone Map (PDF)	31.38 (100%)	24.65 (78.6%)	6.73 (21.4%)	59-01	August 6, 2001
Ahearn–Braid House (Single Property) Map (PDF)	0.80 (100%)	0.80 (100%)	---	14-06	February 12, 2006
English Consul House (Single Property) Map (PDF)	0.378 (100%)	0.378 (100%)	---	15-06	February 12, 2006
Overlea House (Single Property) Map (PDF)	1.34 (100%)	1.34 (100%)	---	16-06	February 12, 2006

Rest–Melby House (Single Property) Map (PDF)	1.19 (100%)	1.19 (100%)	---	17-06	February 12, 2006
The Ridge (Single Property) Lot 12 only Map (PDF)	1.52 (100%)	1.52 (100%)	---	18-06	February 12, 2006
Wicks House (aka Taylor House) (Single Property) Map (PDF)	0.13 (100%)	0.13 (100%)	---	19-06	February 12, 2006

*Participating indicates that the owner(s) of the properties signed the Petition requesting designation of the Historic District.

**Not Participating indicates that the owner(s) did not sign (and might or might not also have expressed opposition to) the District's enactment.

Revised November 20, 2018

DEPARTMENT OF PLANNING

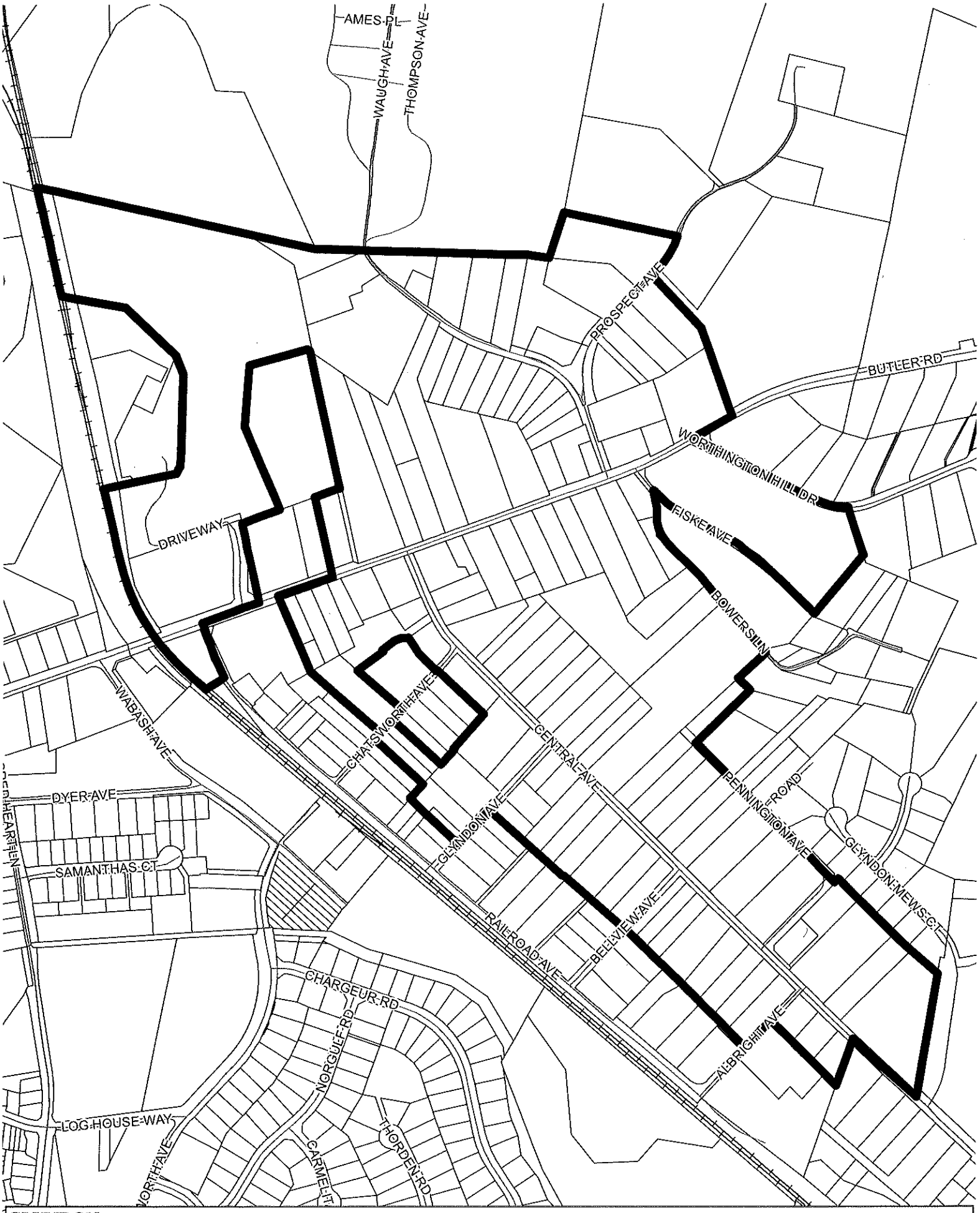
Baltimore County Government

Historic Courthouse
400 Washington Avenue
Towson, Maryland 21204

Directions >>

BALTCO

Download on the App Store


AMES PL
WAUGH AVE
THOMPSON AVE
PROSPECT AVE
BUTLER RD
WORTHINGTON HILL DR
FISKE AVE
BOWERSTON
DRIVEWAY
WABASH AVE
CHATSWORTH AVE
CENTRAL AVE
PENNINGTON AVE
GLYNDON AVE
GLYNDON MEWS CT
DYER AVE
SAMANTHAS CT
RAILROAD AVE
BELLVIEW AVE
ALBRIGHT AVE
CHARGEUR RD
NORGUEF RD
THORDEN RD
CARMEL CT
LOG HOUSE WAY
NORTH AVE
GLYNDON
N
Baltimore County Historic District Boundary
Parcel Boundaries
Rail
0 125 250 500 Feet

P.C. Exh. 10B

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND

Legislative Session 1981, Legislative Day No. 7

BILL NO. 48-81

Mr. James T. Smith, Jr., Councilman

By the County Council, April 6, 1981

A BILL
ENTITLED

AN ORDINANCE concerning.

Glyndon Historic District-Creation

FOR the purpose of establishing the Glyndon Historic District in accordance with the provisions of Section 22-149 of the Baltimore County Code, 1978.

WHEREAS, the Landmarks Preservation Commission and the County Executive have recommended the creation of the Glyndon Historic District and all requirements necessary for the creation of such district, including notice and public hearing, have been satisfied.

SECTION 1. Be it ordained by the County Council of Baltimore County, Maryland, that the area outlined and the map attached hereto and incorporated by reference herein, be and it is hereby designated and established as the "Glyndon Historic District" (as amended).

SECTION 2. Be if further ordained, that the Map attached hereto be and it is hereby adopted as the "Official Glyndon Historic District Map" and that the boundaries of the Glyndon Historic District shall be determined by reference to said Map (as amended).

SECTION 3. Be it further ordained, that the Official Glyndon Historic District Map shll be authenticated by the signature of the Chairman of the County Council and after enactment of this Ordinance, the same shall be delivered to the Director of Planning and Zoning for custody.

SECTION 4. And be it further ordained, that this Ordinance shall take effect forty-five days after its enactment.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike-out~~ indicates matter stricken from bill.
Underlining indicates amendments to bill.

P.C. Exh. 10C

READ AND PASSED this 4th day of May, 1981

BY ORDER

Thomas Toporovich
Secretary

PRESENTED to the County Executive for his approval this 6th day of May, 1981

Thomas Toporovich
Secretary

APPROVED AND ENACTED:

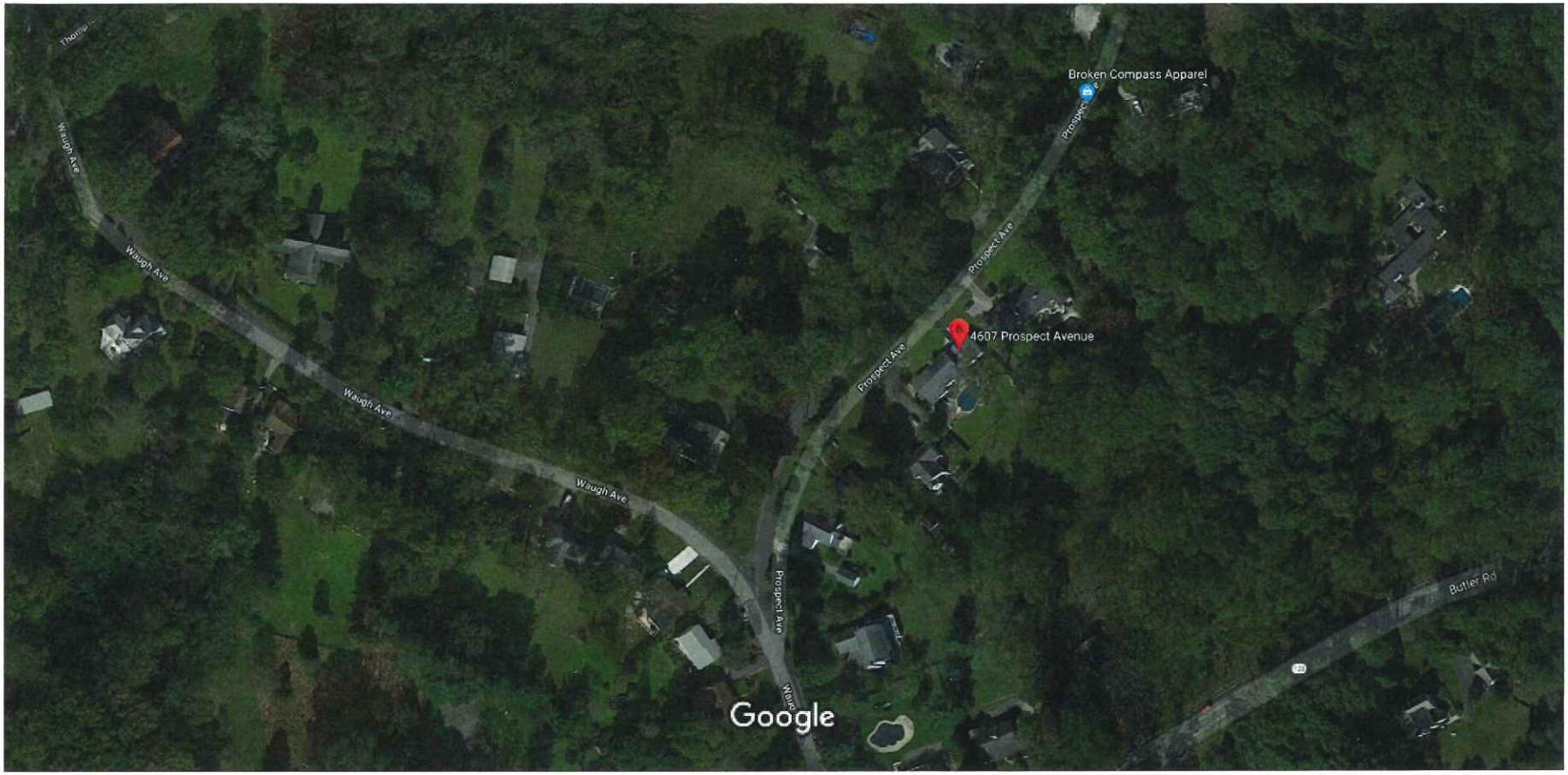
5/15/81

Donald P. Hutchinson
County Executive

I HEREBY CERTIFY THAT BILL NO. 48-81 IS TRUE AND CORRECT AND TOOK EFFECT ON June 29, 1981.

Ronald B. Hickernell
Chairman, County Council

Google Maps 4607 Prospect Ave



Imagery ©2019 Google, Map data ©2019 100 ft

P.C. Exh. 9

Board of Appeals

Case No: 19-342 SPHA. Case Name: Donna Bair.

Exhibit List

Party: Petitioner Date: 2/6/2020

Exhibit No:	Description:
✓ 1	Plan to Accompany Pet Zoning Hearing.
✓ 2A-E	Photos before construction
✓ 3A-3Q	Photos present time
✓ 4	Code Violation Order 2/11/19 and Citations
✓ 5A-5C	Landmarks Preservation Comm Meeting 3/14/19
✓ 6	Landmarks Preservation Comm Meeting 10/10/19
✓ 7A-7I	Photos of neighborhood garages.
✓ 8A-8I	Photos of neighborhood fences
✓ 9	My Neighborhood Balt County Map
✓ 9A-9D	Zoning Commissions / BOA Orders.
✓ 10A-10C	Photos of Bair Trees.
✓ 11	Pyle Tree Co. Invoice 3/21/2017
✓ 12	John Motsco PE, CV
✓ 13	1880 Record Plat
	VERIFIED BY KC DATE: 2/7/2020

ID Only

Board of Appeals

Case No: 19-342 SPHA Case Name: Donna Bair

Exhibit List

Party: Petitioners Date: 2/6/2020

Exhibit No:	Description:
14	SDAT Info on Bair Property.
✓ 15	BCZR 421.1 - Fences. + BCC 13-6-107
✓ 16	BCZR § 104.3 - NCU
	VERIFIED BY _____ DATE: _____

KC 2/7/2020

Board of Appeals

Case No: 19-342 SPHA Case Name: Donna Bair

Exhibit List

Party: People's Counsel Date: 2/6/2020

Exhibit No:	Description:
✓ 1	Neighborhood Aerial Photo 2017
✓ 2	PC Sign In Sheet.
✓ 3	Dept Labor Website Realtor Info
✓ 2A	PC Additional Sign In Sheet.
✓ 4A-E	Dept Labor Realtor Supp Info.
	VERIFIED BY _____ DATE: _____

ID only

KC 2/7/2020

Board of Appeals

Case No: 19-342 SPHA. Case Name: Donna Bair.

Exhibit List

Party: Petitioner Date: 2/6/2020

Exhibit No:	Description:
✓ 1	Plan to Accompany Pet Zoning Hearing.
✓ 2A-E	Photos before construction
✓ 3A-3Q	Photos present time
✓ 4	Code Violation Order 2/11/19 and Citations
✓ 5A-5C	Landmarks Preservation Comm Meeting 3/14/19
✓ 6	Landmarks Preservation Comm Meeting 10/10/19
✓ 7A-7I	Photos of neighborhood garages.
✓ 8A-8I	Photos of neighborhood fences
✓ 9	My Neighborhood Balt County Map
✓ 9A-9D	Zoning Commissions / BOA Orders.
✓ 10A-10C	Photos of Bair Trees.
✓ 11	Pyle Tree Co. Invoice 3/21/2017
✓ 12	John Motsco PE, CV
✓ 13	1880 Record Plat
	VERIFIED BY KC DATE: 2/7/2020

ID Only

Board of Appeals

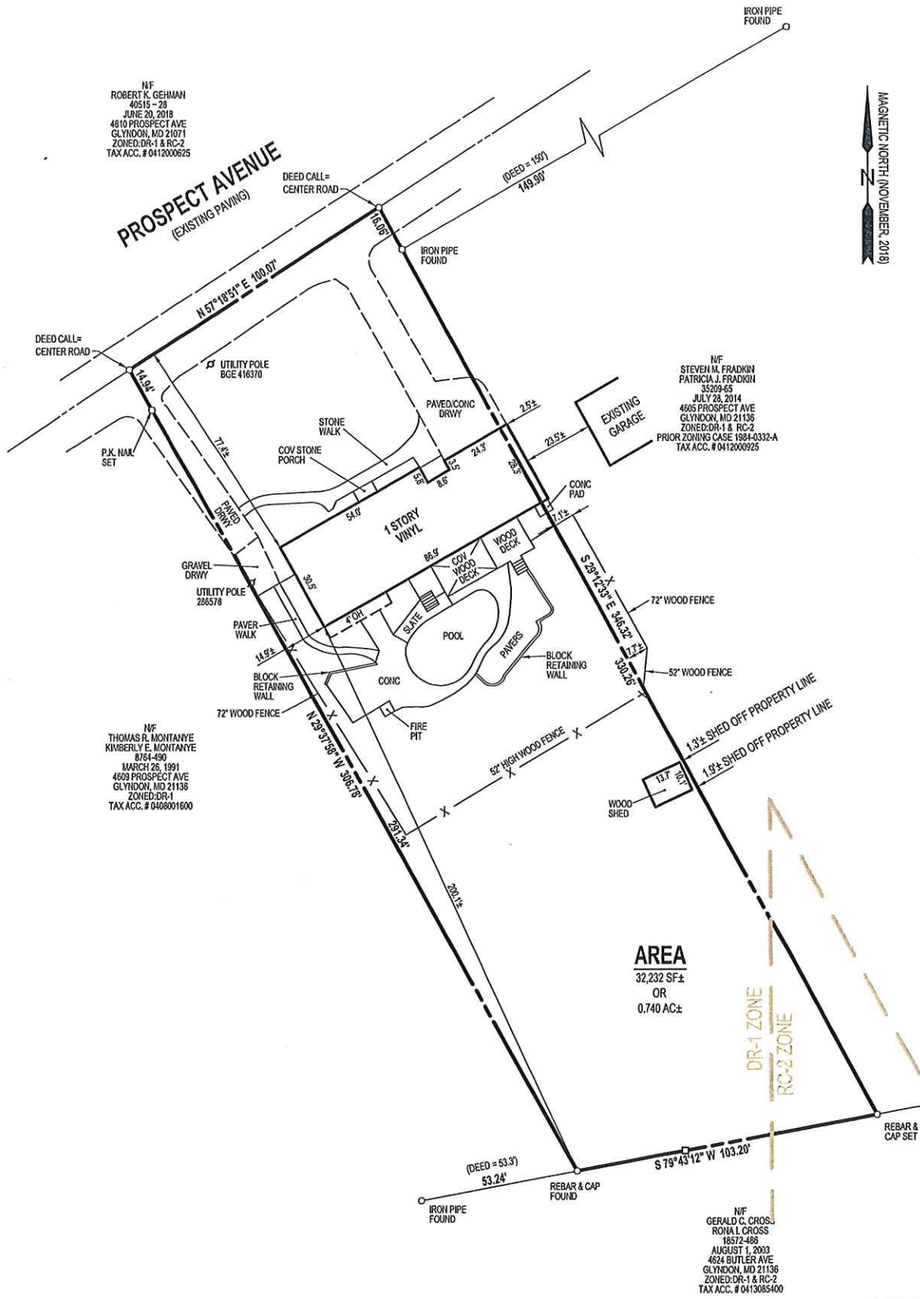
Case No: 19-342 SPHA Case Name: Donna Bair

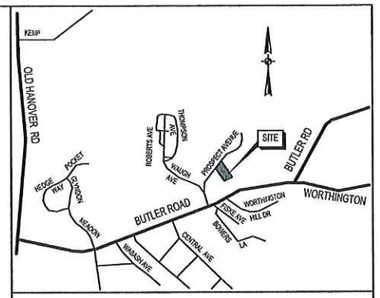
Exhibit List

Party: Petitioners Date: 2/6/2020

Exhibit No:	Description:
14	SDAT Info on Bair Property.
✓ 15	BCZR 421.1 - Fences. + BCC 13-6-107
✓ 16	BCZR § 104.3 - NCU
	VERIFIED BY _____ DATE: _____

KC 2/7/2020





VICINITY MAP

SCALE: 1" = 2000'

SPECIAL HEARING RELIEF:

1. TO APPROVE A NONCONFORMING LOT WIDTH AND LOT AREA OF THE PROPERTY, PURSUANT TO BCZR §104.1;
2. TO APPROVE A NONCONFORMING DWELLING SIDE YARD SETBACK, PURSUANT TO BCZR §104.1;
3. TO CONFIRM THAT AN EXISTING FENCE (SWIMMING POOL ENCLOSURE) WITH A HEIGHT OF 6 FEET IS IN COMPLIANCE WITH BCZR §427.1 AND BCC §13-6-101; AND
4. FOR SUCH OTHER AND FURTHER RELIEF AS MAY BE DEEMED NECESSARY BY THE ADMINISTRATIVE LAW JUDGE ("ALJ") FOR BALTIMORE COUNTY.

VARIANCE RELIEF FROM:

1. BCZR §1B02.3.C.1. TO PERMIT AN EXISTING 12 x 28 FOOT ATTACHED GARAGE ADDITION WITH A SIDE YARD SETBACK OF 0 FEET IN LIEU OF THE REQUIRED 20 FEET.
2. BCZR §1B02.3.C.1. TO PERMIT AN EXISTING 12 x 28 FEET ATTACHED GARAGE ADDITION WITH A SUM OF THE SIDE YARDS OF 14.9 FEET IN LIEU OF THE REQUIRED 50 FEET.
3. BCZR §400.1. TO PERMIT AN EXISTING ACCESSORY STRUCTURE (SHED) WITH A SIDE YARD SETBACK OF 1.3 FEET IN LIEU OF THE REQUIRED 2.5 FEET.
4. BCZR §427.1. TO PERMIT, IF NECESSARY, AN EXISTING FENCE (SWIMMING POOL ENCLOSURE) WITH A HEIGHT OF 72 INCHES IN LIEU OF THE MAXIMUM PERMITTED 42 INCHES;
5. BCZR §1B02.3.C.1. IN THE ALTERNATIVE, IF NECESSARY, TO PERMIT AN EXISTING DWELLING WITH A LOT WIDTH OF 98 FEET IN LIEU OF THE MINIMAL REQUIRED 150 FEET AND TO PERMIT A LOT AREA OF 31,000 SQUARE FEET IN LIEU OF THE MINIMAL REQUIRED 40,000 SQUARE FEET, AND
6. FOR SUCH OTHER AND FURTHER RELIEF AS MAY BE DEEMED NECESSARY BY THE ADMINISTRATIVE LAW JUDGE ("ALJ") FOR BALTIMORE COUNTY.

GENERAL NOTES:

1. **OWNER & APPLICANT:**
   DONNA V. BAIR
   4607 PROSPECT AVENUE
   GLYNDON, MARYLAND 21071
2. **PROPERTY REFERENCE:**
   TAX MAP 48, GRID 6, PARCEL 751
   TAX ACCOUNT #: 0416015450
   DEED = 35307 ~ 489
3. **FLOODPLAIN:** NO IDENTIFIED FEMA FLOODPLAIN ON SITE
4. **SITE AREA:** 0.740 ACRES. ±
5. **EXISTING USE:** RESIDENTIAL
6. **ZONING HISTORY:** NONE
7. THE SITE IS NOT LOCATED WITHIN THE CHESAPEAKE BAY CRITICAL AREA.
8. EXISTING ZONING: DR-1 (PRIMARY) AND RC-2
9. DR-1 ZONE
   - 9.1. MINIMUM NET LOT AREA PER DWELLING UNIT = 40,000 SQ. FT.
   - 9.2. MINIMUM LOT WIDTH = 150 FEET
   - 9.3. MINIMUM FRONT YARD DEPTH = 50 FEET
   - 9.4. MINIMUM WIDTH OF INDIVIDUAL SIDE YARD = 20 FEET
   - 9.5. MINIMUM SUM OF SIDE YARDS = 50 FEET
   - 9.6. MINIMUM REAR YARD DEPTH = 50 FEET
10. THE FIELD SURVEY SHOWN HEREON WAS PERFORMED BY RTF ASSOCIATES, INC. ON NOVEMBER 12, 2018 AND VERIFIED MAY 8, 2019.

PLAN TO ACCOMPANY
PETITION FOR ZONING HEARING
ON

BAIR PROPERTY

4607 PROSPECT AVENUE
4TH ELECTION DISTRICT, BALTIMORE CO. MD
COUNCILMANIC DISTRICT 3
TAX MAP: 48, GRID: 6, PARCEL: 751

NOTE:
THIS SURVEY WAS COMPLETED WITHOUT THE BENEFIT OF A TITLE REPORT.

NOTE:
A LICENSEE EITHER PERSONALLY PREPARED THIS BOUNDARY SURVEY OR WAS IN RESPONSIBLE CHARGE OVER ITS PREPARATION AND THE SURVEY WORK REFLECTED IN IT, IN COMPLIANCE WITH REQUIREMENTS SET FORTH IN §09.13.06.12 OF THE ANNOTATED CODE OF MARYLAND.

REVISIONS	
DATE	REASON
5-10-2019	ATTORNEY REVIEW
7-19-2019	UPDATE VARIANCES

JOHN E. LEMMERMAN
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 21096
EXP. 8-3-19

TITLE REFERENCE
DONNA V. BAIR 35307-489 JULY 18, 2014

STATE OF MARYLAND · JOHN E. LEMMERMAN · No. 21096 · PROFESSIONAL LAND SURVEYOR

RTF Associates, Inc.
LAND SURVEYORS & PLANNERS
142 EAST MAIN STREET WESTMINSTER, MD 21157
410-848-2040 FAX# 443-289-8942 410-876-1222
EMAIL: RTF142@GMAIL.COM WWW.RTFSURVEYING.COM

CHECKED BY: JEL DATE: 5-9-2019
DRAWN BY: SP & JL DATE: 11-16-18 & 5-8-19
SCALE: 1" = 30' RTF JOB#: 18-147

Petitioner
CBA Exhibit
1

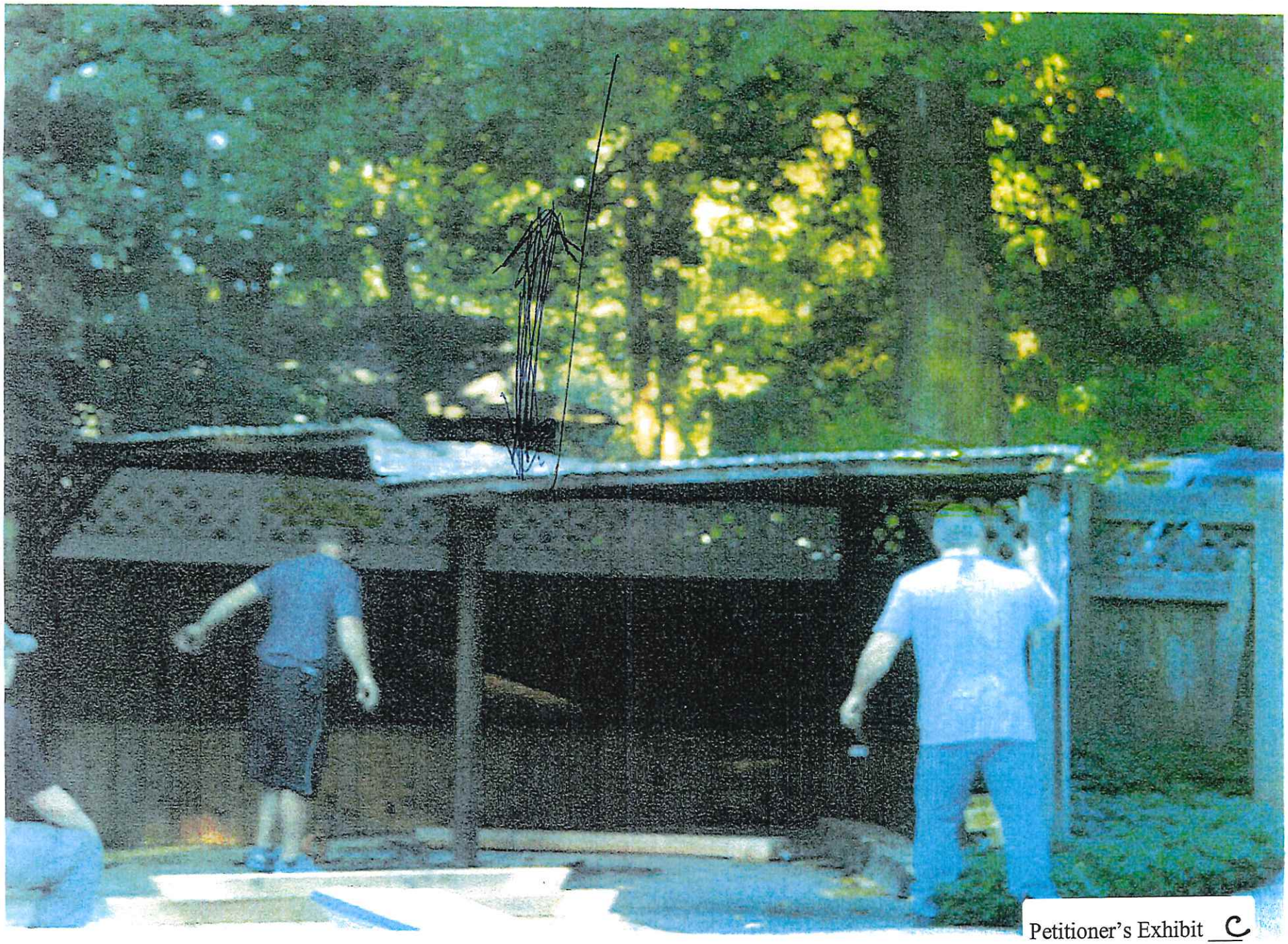
Petitioner's Exhibit 1

Petitioner's Exhibit 4

Petitioner
CBA Exhibit
24-22



Petitioner's Exhibit B



Petitioner's Exhibit C

Petitioner's Exhibit D

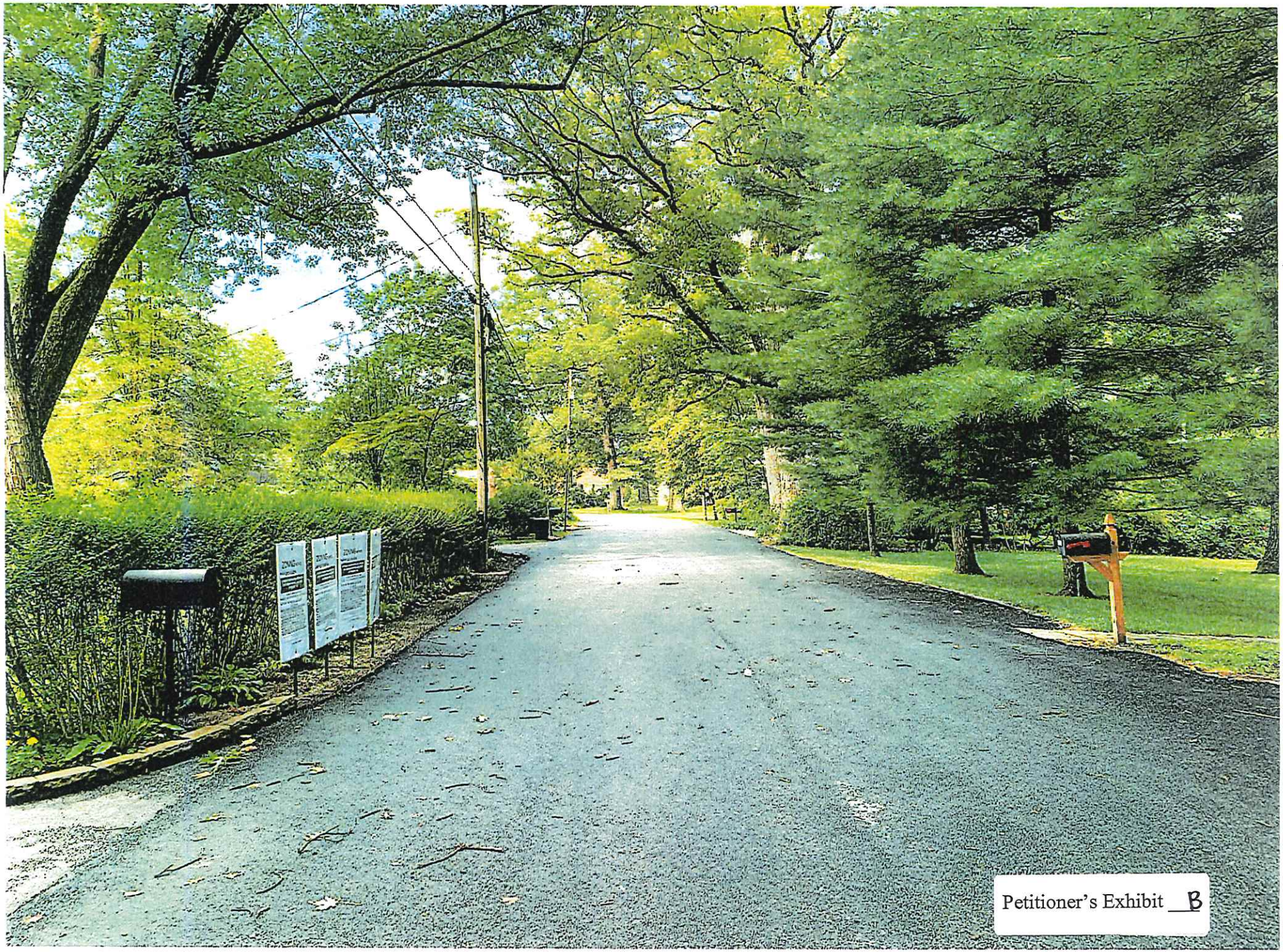


Petitioner's Exhibit E



Petitioner
CBA Exhibit
3A-3Q

Petitioner's Exhibit A


Petitioner's Exhibit B


Petitioner's Exhibit C


4DA6782
Petitioner's Exhibit D


Petitioner's Exhibit E

Petitioner's Exhibit F

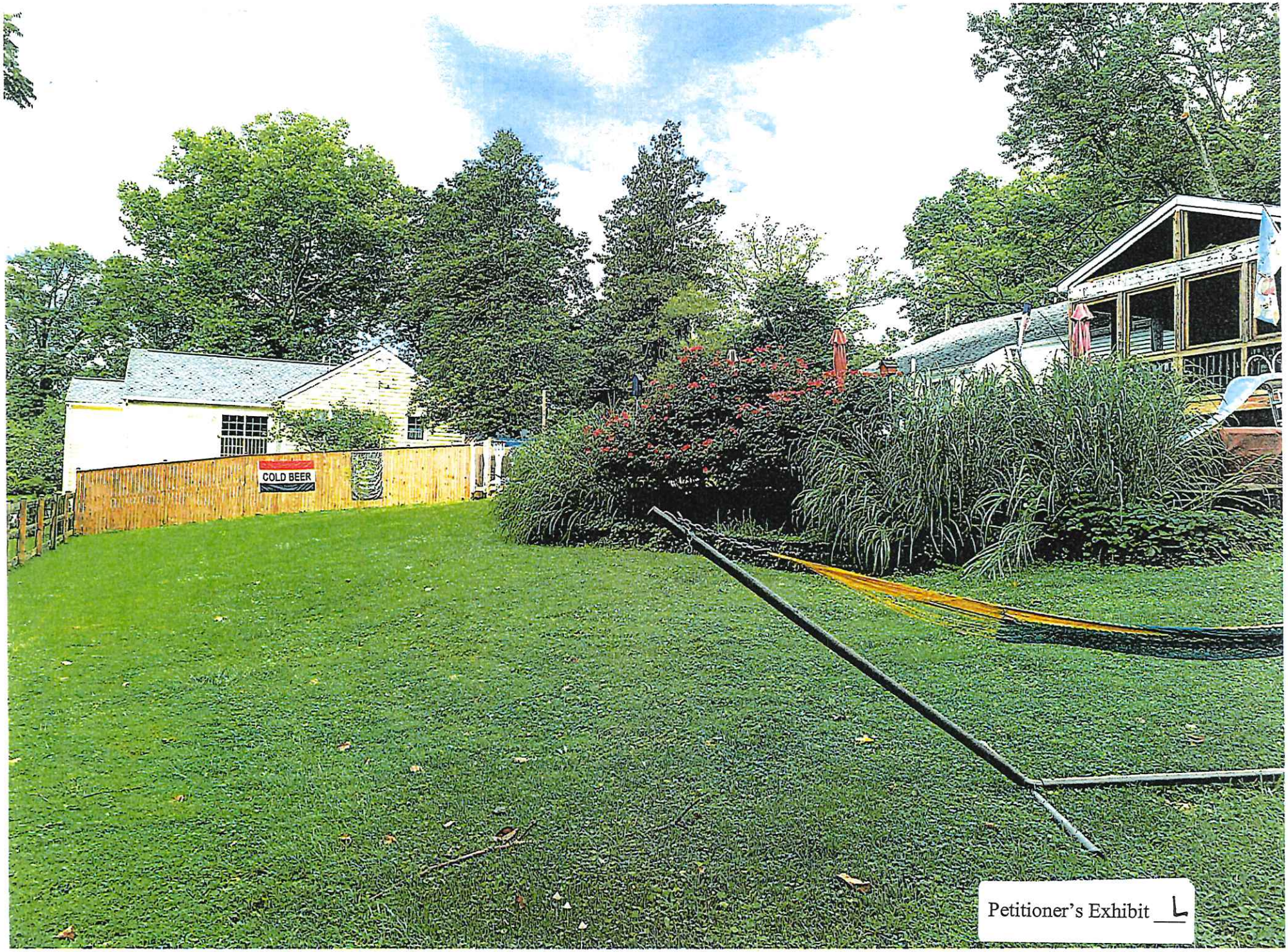

Petitioner's Exhibit 6


Petitioner's Exhibit H


COLD BEER
Petitioner's Exhibit I


Petitioner's Exhibit J


Petitioner's Exhibit K



Petitioner's Exhibit L


Petitioner's Exhibit M


Petitioner's Exhibit N


Petitioner's Exhibit D


Petitioner's Exhibit P


Petitioner's Exhibit Q

Civil Citation No. CC1814071
(4607 Prospect Avenue)

Donna Bair
4607 Prospect Avenue
Baltimore, Maryland 21071

FINAL ORDER

The matter came before the Administrative Law Judge on February 6, 2019, for a hearing on a Code Inspections and Enforcement Citation ("Citation"), for specified violations of the Baltimore County Code ("B.C.C.") or Zoning Regulations ("B.C.Z.R."). The Citation names the owners of record, as published in the Maryland State Tax Assessment Database, as Respondents. The Citation was served upon Respondent(s) in a manner consistent with Section 3-6-205(c)(2) of the Baltimore County Code. The Citation, which is included in the case file and is incorporated herein by reference, proposes a civil penalty in the amount of $1,000.00.

The following persons appeared for the Hearing: Donna Bair, Respondent, and Assistant County Attorney, Marissa L. Merrick, on behalf of Baltimore County.

Based on the testimony, photographs, documents and other exhibits I find for the reasons stated at the conclusion of the hearing Baltimore County has proven by a preponderance of the evidence that Respondent(s) is in violation of the ordinances or regulations set forth in the civil Citation.

THEREFORE, IT IS ORDERED this 11th day of February, 2018, by the Administrative Law Judge for Baltimore County that a civil penalty of $1,000.00 be imposed and suspended.

IT IS FURTHER ORDERED, that Respondent shall file for the appropriate zoning relief, or, shall otherwise correct and abate violations pursuant to this ORDER, by April 12, 2019.

Petitioner's Exhibit ___

Petitioner
CBA Exhibit
4

IT IS FURTHER ORDERED, that if the subject property is not brought into compliance pursuant to this Order by April 12, 2019, the suspended $1,000.00 civil penalty may be imposed without need for further hearing or order; and, that Baltimore County shall be authorized to send an employee or authorized contractor to enter the property to correct the violation(s), the costs and expenses of which shall be assessed against Respondents.

LAWRENCE M. STAHL
Administrative Law Judge
for Baltimore County

NOTICE: Pursuant to §3-6-301(a) of the Baltimore County Code, the Respondent or Baltimore County may appeal this order to the Baltimore County Board of Appeals within fifteen (15) days from the date of this order. Any such appeal requires the filing of a petition setting forth the grounds for appeal, payment of a filing fee of $225.00 and the posting of security in the amount of the penalty assessed.

Send payments to:

Baltimore County Office of Budget and Finance

400 Washington Ave, Rm 150

Towson, MD 21204

LMS/hk

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

www.baltimorecountymd.gov/Agencies/permits/

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

CODE ENFORCEMENT & INSPECTION CITATION

CASE NUMBER	PROP.TAX ID
CC1814071	04-16-015450

VIOLATION ADDRESS
4607 PROSPECT AVE
REISTERSTOWN, MD 21136

BAIR DONNA V
4607 PROSPECT AVE
GLYNDON, MD 21071-3800

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

County Codes/Regulations	Inspector's Comments
B.C.C. 35-2-301: Obtain building/ fence/ sign permit B.C.Z.R 400: Illegal accessory structure — ? fence	Failure to comply with correction notice issued back on 10/11/18 regarding fence. . There is no record of permit nor Landmark Preservation approval plus illegal placement of fence.

Pursuant to Section 1-2-217, Baltimore County Code, civil penalty has been assessed, as a result of the violation(s) cited herein, in the amount indicated: **$1000**

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

DATE: 02/06/2019 **TIME:** 09:00 **A.M.**

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

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

Inspector Badge Number		Issued Date
101		01/24/2019

Permits, Approvals, and Inspections
Code Inspections & Enforcement
County Office Building, Rm. 213
111 West Chesapeake Ave
Towson, Maryland 21204
www.baltimorecountymd.gov/Agencies/permits/

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

CODE ENFORCEMENT CORRECTION NOTICE

CASE NUMBER	PROP.TAX ID
CC1814071	04-16-015450

VIOLATION ADDRESS
4607 PROSPECT AVE
REISTERSTOWN, MD 21136

BAIR DONNA V
4607 PROSPECT AVE
GLYNDON, MD 21071-3800

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

County Codes/Regulations	Inspector's Comments
B.C.C. 35-2-301: Obtain building/ fence/ sign permit B.C.Z.R 400: Illegal accessory structure	There are multiple violations pertaining to the privacy fence installed on property. There is no record of obtained permit. Permit needs to be obtained and will need to get Landmark preservation approval. Secondly, the placement of fence is illegal based on height, location, etc.... Fence must not protrude past yours or neighboring properties front foundation. It is recommended you contact Baltimore County zoning in working to resolve these violations.

Failure to comply with this correction notice, may result in a $200.00 fine/penalty per day, per violation pursuant to BCC: 1-2-217; 32-3-602 and/or the County sending a contractor to correct the violation(s) at your expense. Call the inspector for more information and details.

COMPLIANCE DATE: 10/30/2018	INSPECTOR ID: 101
	ISSUED DATE: 10/11/2018

IMPORTANT INFORMATION TO THE PERSON'S CHARGED

1. It is important that you read this document carefully, as it charges you with the commission of a crime.
2. If you fail to correct the violations noted by the date dictated, a citation may be issued, and a trial scheduled at which you may be penalized by a fine, imprisonment, or both.
3. If the County is required to bring your property into compliance, all costs and fines shall become a lien and shall be collectible in the manner provided for collection of real estate taxes; or may be collected in the same manner as any civil money judgment or debt collected.
4. A lawyer can give important assistance to you:
   (a) on how to correct the violation(s) in order to avoid trial or
   (b) at trial, if you failed to correct the violation(s) noted. Assistance may be provided to determine whether there are any defenses to the charges against you or any circumstances helpful to you that should be brought to the trial. A lawyer can help you by developing and presenting information, which could effect how you correct the violation(s).
5. A conviction for each violation will subject you to potential fines of $200, $500, $1000 per day per violation, depending on the violation, or 90 days in jail, or both Baltimore County Code section 1-2-217 and 32-3-602.
6. It is your responsibility to obtain any required permit(s) to correct the cited violation(s). All repairs must be in accordance with applicable laws, Code of Baltimore County Regulations, and standards.
7. Upon correction of these violation(s), contact the inspector for re-inspection. If you have any questions contact the inspector promptly.

Permits, Approvals, and Inspections
Code Inspections & Enforcement
County Office Building, Rm. 213
111 West Chesapeake Ave
Towson, Maryland 21204
www.baltimorecountymd.gov/Agencies/permits/

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

CODE ENFORCEMENT CORRECTION NOTICE

CASE NUMBER	PROP.TAX ID
CC1814071	04-16-015450

VIOLATION ADDRESS
4607 PROSPECT AVE
REISTERSTOWN, MD 21136

BAIR DONNA V
4607 PROSPECT AVE
GLYNDON, MD 21071-3800

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

County Codes/Regulations	Inspector's Comments
B.C.C. 35-2-301: Obtain building/ fence/ sign permit	There are multiple violations pertaining to the privacy fence installed on property. There is no record of obtained permit. Permit needs to be obtained and will need to get Landmark preservation approval. Secondly, the placement of fence is illegal based on height, location, etc.... Fence must not protrude past yours or neighboring properties front foundation. It is recommended you contact Baltimore County zoning in working to resolve these violations.
B.C.Z.R 400: Illegal accessory structure	

Failure to comply with this correction notice, may result in a $200.00 fine/penalty per day, per violation pursuant to BCC: 1-2-217; 32-3-602 and/or the County sending a contractor to correct the violation(s) at your expense. Call the inspector for more information and details.

COMPLIANCE DATE: 10/30/2018	INSPECTOR ID: 101
	ISSUED DATE: 10/11/2018

IMPORTANT INFORMATION TO THE PERSON'S CHARGED

1. It is important that you read this document carefully, as it charges you with the commission of a crime.
2. If you fail to correct the violations noted by the date dictated, a citation may be issued, and a trial scheduled at which you may be penalized by a fine, imprisonment, or both.
3. If the County is required to bring your property into compliance, all costs and fines shall become a lien and shall be collectible in the manner provided for collection of real estate taxes; or may be collected in the same manner as any civil money judgment or debt collected.
4. A lawyer can give important assistance to you:
   (a) on how to correct the violation(s) in order to avoid trial or
   (b) at trial, if you failed to correct the violation(s) noted. Assistance may be provided to determine whether there are any defenses to the charges against you or any circumstances helpful to you that should be brought to the trial. A lawyer can help you by developing and presenting information, which could effect how you correct the violation(s).
5. A conviction for each violation will subject you to potential fines of $200, $500, $1000 per day per violation, depending on the violation, or 90 days in jail, or both Baltimore County Code section 1-2-217 and 32-3-602.
6. It is your responsibility to obtain any required permit(s) to correct the cited violation(s). All repairs must be in accordance with applicable laws, Code of Baltimore County Regulations, and standards.
7. Upon correction of these violation(s), contact the inspector for re-inspection. If you have any questions contact the inspector promptly.

Baltimore County
Department of Permits,
Approvals And Inspections

OFFICE HOURS 7:30 am - 3:30 pm

Building Inspection: 410-887-3953

Code Inspections and Enforcement
County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

Plumbing Inspection: 410-887-3620
Electrical Inspection: 410-887-3960

BALTIMORE COUNTY UNIFORM CODE ENFORCEMENT CORRECTION NOTICE

Citation Case No. CB1800693 Property No. 04160154S0 Zoning:

Name(s): DONNA Beir

Address: 4607 PROSPECT AVE
GLYNDON MD 3107

Violation Location: SAME

DID UNLAWFULLY VIOLATE THE FOLLOWING BALTIMORE COUNTY LAWS:

2003 BALTIMORE COUNTY CODE SUBTITLE 3 SECTION 35-2-301 PERMITS AND INSPECTIONS REQUIRED FOR BALTIMORE COUNTY CODE CODE 40-12 PART 120 APPROVE PERMITS AND LANDMARK PRESERVATION COMMITTEE REQUIRED FOR ADDITIONS ON SFD, PERMIT REQUIRED FOR FENCE INSTALLED WITHOUT PERMIT

YOU ARE HEREBY ORDERED TO CORRECT THESE VIOLATION(S) ON OR BEFORE:

ON OR BEFORE: 10/26/18 DATE ISSUED: 10/5/18

FAILURE TO COMPLY WITH THE DEADLINE STATED IS A MISDEMEANOR. A CONVICTION FOR EACH VIOLATION SUBJECTS YOU TO POTENTIAL FINES OF $200, $500, OR $1,000 PER DAY, PER VIOLATION, DEPENDING ON VIOLATION, OR 90 DAYS IN JAIL, OR BOTH.

INSPECTOR: [signature] PRINT NAME: Hunter Rowe

STOP WORK NOTICE

PURSUANT TO INSEPCTION OF THE FOREGOING VIOLATIONS, YOU SHALL CEASE ALL WORK UNTIL THE VIOLATIONS ARE CORRECTED AND/OR PROPER PERMITS OBTAINED. WORK CAN RESUME WITH THE APPROVAL OF THE DIVISION OF CODE INSPECTIONS AND ENFORCEMENT. THESE CONDITIONS MUST BE CORRECTED NO LATER THAN:

ON OR BEFORE: _____ DATE ISSUED: _____

INSPECTOR: _____ PRINT NAME: _____

COPIES: PINK – AGENCY, YELLOW - VIOLATION SITE, GOLD – DEFENDANT, WHITE – INSPECTOR

REV. 2/13

PAI BI 10

Minutes
Baltimore County Landmarks Preservation Commission
March 14, 2019 Meeting

Call to order; introduction of Commission members; pledge of allegiance to the Flag; statement of purpose and operating procedures

Mr. Rob Brennan, Chairperson, opened the regular monthly meeting of the Baltimore County Landmarks Preservation Commission (LPC) at 6:07 p.m. The following Commission members were:

Present	Not Present
Ms. Carol Allen	Mr. C. Bruce Boswell
Mr. Robert P. Brennan, Chair	Mr. Ed Hord
Mr. Louis Diggs	Ms. Nancy W. Horst, Vice-Chair
Mr. Mitch Kellman	Mr. David S. Thaler
Ms. Wendy McIver	
Mr. Stephen P. Myer	
Ms. Faith Nevins Hawks	
Ms. Cathryn Pinheiro	
Mr. Raymond Scott	
Mr. Qutub U. K. Syed	

Attending County staff, Teri Rising (Preservation Services staff), Kaylee Justice (Planning staff), Jeff Mayhew (Acting Director) and Jenifer Nugent (Chief of Development Review and Strategic Planning).

Mr. Diggs joined the meeting at 6:08 PM.

Mr. Brennan welcomed the two new members of the Landmarks Preservation Commission, Mr. Raymond Scott, representing County Council District 7 and Ms. Catherine Pinheiro, representing the Planning Board.

Ms. Nevins-Hawks and Mr. Syed joined the meeting at 6:13 PM.

Special Presentation

Petitioner's Exhibit B

Petitioner
CBA Exhibit
5A-5C

Ms. Rising presented information on the nomination of the Day Village District to the National Register of Historic Places. Her presentation described the architectural features of the various buildings, general history of the Turner Station community and the World War II era development of the Day Village complex. She indicated the nomination was justified under criteria A and C.

Mr. Brennan recognized Sarah Vonesh, representing E.H.T. Traceries, the preservation consultants responsible for the preparation of the National Register nomination on behalf of the property's owner. Ms. Vonesh expressed support for the nomination and introduced Mr. Joowan Lee with Chelsea Investment, who explained they were the owners, and interested in a redevelopment project involving the site. Ms. Vonesh stated that the owners were in the process of preparing plans for rehabilitation in order to receive historic tax credits, which was the reason the nomination was prepared.

Ms. Allen questioned the ownership of the site as written on the National Register notification letter. Mr. Lee responded that the information was correct and MCAP and Chelsea Investment intended to be partners in the application process. Ms. Allen asked if both entities were in support of the nomination. Ms. Rising indicated that owner support was necessary for National Register nominations to move forward. Ms. Allen commented that the background information helped her better understand similar sites and suggested a marker be placed with information about the property's history. Mr. Lee offered information about his previous involvement with historic renovations in New England and agreed that a plaque was warranted for the recognition.

Ms. Allen asked if the renters were still predominately African American and Mr. Lee replied they were. He added that he had met earlier that afternoon with the Turner Station conservation group to share details about the project rehabilitation and they were very excited and supportive.

Ms. Rising provided information about the virtual Turner Station Exploration Trail Story Map on the Baltimore County web page that contained historic background information on the community, including Day Village.

Mr. Scott offered his support for the nomination and commented that Day Village has been continuously well maintained and looked unchanged from his experiences working in the Turner Station community in the 1970s.

Mr. Diggs shared information about his book on the history of Turner Station with Mr. Lee that also included Day Village. He added that he was extremely knowledgeable about the community. Mr. Diggs noted the past impact of rising water on the community and asked Mr. Lee if they planned to take this into consideration in the renovations. Mr. Lee responded that they hired an engineering firm to evaluate the site and develop drainage solutions to resolve standing water issues and to add landscaping features to help mitigate the problem. Mr. Diggs

asked if they planned to recognize specific building units that have special history in their own right. Mr. Lee offered appreciation for information Mr. Diggs would be willing to share.

Ms. Nevins-Hawks asked about the specifics of the renovations. Mr. Lee replied they would be adding 23 accessible units without compromising the historic integrity of the site and adding related amenities to aid with site accessibility. He also described the different rehabilitation and remodeling work that was anticipated, including the addition of modern plumbing and heating. Ms. Vonesh stated the work would follow the Secretary of the Interior's Standards because it was for a historic tax credit.

Mr. Diggs asked if the units would still be affordable to the residents after the renovation, he was concerned they might be forced out by higher rents. Mr. Lee replied they had a relocation plan and would be using funding sources with the intention of retaining their affordably so the residents would be affected as little as possible. Ms. Rising explained that she understood the accessibility upgrades were intended to help residents age in place.

Mr. Diggs moved to support the Day Village Historic District nomination, under National Register criteria A and C. Mr. Nevins-Hawks seconded the motion which passed with affirmative votes being cast by Ms. Allen, Mr. Brennan, Mr. Diggs, Mr. Kellman, Ms. McIver, Mr. Myer, Ms. Nevins-Hawks, Ms. Pinheiro, Mr. Scott and Mr. Syed. There were no dissenting votes.

Citing CLG procedural regulations (National Park Service)

1. **Review of the Agenda**

Ms. Rising reported there were no changes to the Preliminary Agenda published March 7th, 2019.

2. **Approval of the Minutes**

Mr. Brennan asked if anyone proposed changes to the February 14, 2019 Minutes. Hearing none, Mr. Brennan called for a motion to approve the Minutes as drafted. Mr. Diggs moved to approve the Minutes as drafted. Ms. Allen seconded the motion, which passed with affirmative votes being cast by Ms. Allen, Mr. Brennan, Mr. Diggs, Mr. Kellman, Ms. McIver, Mr. Myer, Ms. Nevins-Hawks, Ms. Pinheiro, Mr. Scott and Mr. Syed. There were no dissenting votes.

3. **Consent Agenda**

Ms. Rising read the Action Recommendation for Consent Agenda Item 4.

Mr. Brennan called for a motion. Mr. Myer moved to approve the Consent Agenda item as presented. Ms. McIver seconded the motion, which passed with affirmative votes being cast by Ms. Allen, Mr. Brennan, Mr. Diggs, Mr. Kellman, Ms. McIver, Mr. Myer, Ms. Nevins-Hawks, Ms.

Pinheiro, Mr. Scott and Mr. Syed. There were no dissenting votes.

Items for Discussion and Vote

**4. O'Neill property, 713 Cliveden Road, Sudbrook Park; Contributing structure in the Sudbrook Park County Historic District; Ex post facto garage demolition due to destruction from fallen tree (Code Enforcement Correction Notice # CB1900044) [County Council District # 2]

Approved via the Consent Agenda to issue an Ex post facto Notice to Proceed

Citing County Code, Sec 32-7-405; 32-7-403

5. Bair property, 4607 Prospect Avenue, Glyndon; Non-contributing structure in the Glyndon County Historic District; Ex post facto installation of a 6 foot high wood privacy fence; Ex post facto construction of a 12 foot x 28 foot single car garage addition; Ex post facto construction of a 13 foot by 13 foot addition (Baltimore County Code Enforcement Case # CC1814071; Baltimore County Code Enforcement Correction Notice # CB1800693) [County Council District # 2]

Ms. Rising gave an overview of the item which involved 2 separate Code Enforcement complaints. In response, the applicant submitted 3 separate Ex post facto requests for items already constructed. She shared that a Technical Committee consisting of herself, Ms. McIver and Mr. Myer visited the site and met with the applicant on March 11, 2019 and generated a report that was shared with the Commission prior to the meeting. Ms. Rising described Code Enforcement Case # CC1814071, which involved the prior installation of a 6 foot high wood privacy fence. She added that the complaint included zoning violations related to the fence installation which were not under the purview of the LPC. Pursuant to the Final Order issued by the Office of Administrative Hearings on February 11, 2019, the proposal was being brought forward prior to the April 12, 2019 date of correction specified on the Order. Ms. Rising also provided details related to Code Enforcement Correction Notice # CB1800693 involving the construction of a 12 foot x 28 foot single car garage addition to the eastern elevation of the structure and a 13 foot by 13 foot addition involving the northwest section of the structure. She stated that this correction notice also involved zoning violations not under the purview of the LPC. Permit applications involving all the items were requested from PAI on February 4, 2019 and were tabled pending LPC review. Ms. Rising explained how fences were considered under the Baltimore County Historic Design Guidelines. She added that they were usually recommend to be constructed of wood and located to the rear of the property. Ms. Rising indicated that the already constructed wood fence was a style previously approved by the Commission. She went on to describe the applicability of the Historic Design Guidelines to structural alterations involving a non-contributing house in terms of compatibility and effect to the overall Historic District and explained that Prospect Avenue was a dead end street on the outer edge of the Glyndon County Historic District.

Mr. Brennan asked the Technical Committee to summarize their report. Mr. Myer confirmed the details of the work items as explained by staff and explained they felt if the proposal had been submitted normally, it would have been approved. Ms. McIver agreed with Mr. Myer. Mr. Brennan noted that two people signed up to speak on this item. He recognized Mr. Tom Montanye, resident of 4609 Prospect Avenue, who introduced himself as the neighbor of the subject property on the other side of the fence. Mr. Montanye explained that he was speaking primarily out of concern for the fence and added that he had no issues with the other items assuming the proper processes and codes were followed. He clarified that his main objection involved the portion of the new fence that was directly adjacent to his driveway which had replaced shrubs and a previously existing cosmetic picket fence. Mr. Montanye stated that he believed the new fence was not built to code based on the siting of the two properties and their front and side yards. He added that the relationship of the fence to his driveway has negatively changed his view. Mr. Montanye remarked that he would like to see the expansion of the fence adjacent to his driveway be removed.

Ms. McIver asked Mr. Montanye if he had discussed his concerns with the neighbor before it was constructed. He replied that Ms. Bair had made him aware of the fence project and its proposed new location but had not expected the height and location being in such close proximity to the property line and parking pad. Ms. McIver asked if the fence was on the neighboring property and Mr. Montanye replied that it was.

Mr. Kellman remarked that there was information in the zoning regulations for fences unrelated to historic review and asked if the applicant had applied for a fence permit. Ms. Rising responded that a fence permit application had been filed and confirmed it was her understanding a zoning hearing would be scheduled. Mr. Kellman explained there were zoning regulations involving the erection of a fence in the side and rear yard adjoining a neighboring front yard. He added that the fence needed to be a certain height and distance away from the property line to avoid problems but stated there were certain exceptions. Mr. Kellman encouraged Mr. Montanye to look into the regulations but agreed there could be a conflict. Ms. Rising commented that she was not familiar with the details of the zoning issues as it was not under the purview of the LPC. She clarified the applicant may have to come back with a new plan depending on whether or not relief was granted. Mr. Montanye stated that he had tried to resolve the issue directly with his neighbor but was unsuccessful which led him to contact the County for assistance.

Mr. Brennan recognized Ms. Donna Bair as the owner of the property and invited her to speak. Ms. Rising clarified for the record that the LPC members had received Ms. Bair's letters and materials that summarized the situation prior to the meeting. Ms. Bair stated she wished to keep her fence because of her pool and privacy and added the company responsible for the fence installation had indicated they applied for a permit when they had not done so. She further explained that the fence had been discussed with her neighbor but blocking noise from their cars and dogs was an additional reason for why it was installed. Ms. Bair said the neighbor also moved their driveway closer to her house after the fence was installed. She clarified that her house actually sits in front of the neighbor's house and her pool sits in front of

their foundation, consequently the fence was for added safety of her grandchildren and privacy to enjoy the yard.

Mr. Brennan stated they were only concerned with the design issues and thanked both speakers for their testimony.

Ms. Nevins-Hawks commented that the front gate as specified in the plans was not aligned with the back of the house. Ms. Bair responded that because of the pool the County Code required the fence gate to open out. She said the house was on a slope, with the front of the house going down, and added the existence of a walkway led the fence installers to suggest the gate be moved forward so it could open outward. Consequently they could avoid disturbing the walkway by not having to dig down.

Ms. Pinheiro remarked that the permit situation was not within the Commission's purview and noted the Technical Committee's opinion that the work would have been approved. Ms. Pinheiro added she thought the fence looked good and along guidelines.

Ms. Rising commented it was unfortunate that the contractor doing the work did not apply for the permit as was stated on the invoice and paid for by the owner since any outstanding issues relating to historic review and zoning would have been flagged. She encouraged the Commission to focus on the design.

Ms. McIver moved to issue an Ex post facto Certificate of Appropriateness for the fence, and the 2 additions, as currently constructed. Mr. Diggs seconded the motion which passed with affirmative votes being cast by Ms. Allen, Mr. Brennan, Mr. Diggs, Mr. Kellman, Ms. McIver, Mr. Myer, Ms. Pinheiro, Mr. Scott and Mr. Syed. Ms. Nevins-Hawks voted nay.

(Citing Baltimore County Historic Design Guidelines: Fences & Landscape, p. 4; Additions & Infill, pp. 5-7) County Code, Sec 32-7-405; 32-7-403

The following historic property tax credit applications were reported as approved by staff as either an emergency repair or due to the receipt of Part II approval for work reviewed by MHT:

North Property, 1100 Copper Hill Road, Bare Hills; Technical Committee approval for amendment to Pt II to upgrade cooling and dehumidification units. [County Council District # 2]

Other Business

Ms. Rising provided Code Enforcement updates for several properties including 3605 Stoneybrook Road, 501 Bond Avenue and 5120 South Rolling Road.

Ms. Rising also identified 2 items in the binder of interest to Commission members including a schedule of programs being offered by the Maryland Association of Historic District

Commissions and an event flyer for the upcoming spring speaker series hosted by the Community College of Baltimore County.

Ms. Allen offered to share an article from the New York Times about Hudson Yards and a website developed by UMBC called Early Baltimore.

Ms. Pinheiro moved to adjourn the meeting. Mr. Scott seconded the motion which passed with affirmative votes being cast by Ms. Allen, Mr. Brennan, Mr. Diggs, Mr. Kellman, Ms. McIver, Mr. Myer, Ms. Nevins-Hawks, Ms. Pinheiro, Mr. Scott and Mr. Syed. There were no dissenting votes.

The meeting adjourned at 7:24 p.m.

TDR:tdr

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF PLANNING

Memorandum

TO: Donna V. Bair **DATE:** March 19, 2019

FROM: Teri Rising, Administrator/Secretary
Landmarks Preservation Commission

SUBJECT: 4607 Prospect Avenue, Glyndon

At its March 14, 2019 meeting, the Baltimore County Landmarks Preservation Commission (LPC) voted to issue an Ex Post Facto Certificate of Appropriateness for the following items as proposed:

- 6 foot high wood privacy fence (Code Enforcement Case # CC1814071)
- 12 foot x 28 foot single car garage addition (Code Enforcement Correction Notice # CB1800693)
- 13 foot by 13 foot addition (Code Enforcement Correction Notice # CB1800693)

This action is in accordance with Baltimore County Code Section 32-7-403 and 32-7-405 citing Baltimore County Historic Design Guidelines: Fences & Landscape, p. 4; Additions & Infill, pp. 5-7.

Please note, the work will require a Baltimore County building permit. Applications for building permits are obtained from the Department of Permits, Approvals and Inspections located at 111 Chesapeake Avenue in Towson. Information regarding building permits is available on the County's website. https://www.baltimorecountymd.gov/Agencies/permits/index.html Questions regarding that process should be directed to the Permits, Approvals & Inspections Office.

Petitioner's Exhibit B

March 13, 2019

LPC Technical Committee Report

4607 Prospect Avenue

Glyndon Historic District

On March 11, 2019, a Technical Committee consisting of commissioners, Wendy McIver and Steve Myer met with Baltimore County staff member Teri Rising on site with the owner to examine ex post facto the changes that they had made to their home and property. The meeting was the result of a Baltimore County Code Enforcement Correction Notice that had been issued for these changes. The house is a single story, frame single family dwelling. It is a non-contributing structure in the Glyndon Historic District. Due to a need for more family living space and the need for additional privacy and safety due to their in-ground pool, the owner added a second 12X28 foot single car garage to the east of the existing garage, had a 13X13 foot addition built on the west side of the house, and had two sections of a 6 foot privacy fence constructed on the property lines with the neighboring properties on the east and west sides of their property.

The changes to their property follow design guidelines for non-contributing structures in a historic district. The new garage and house addition use the same style siding, windows, shutters, and garage door. The new garage connects to the east side of the house with a shed roof. These changes do not overpower the appearance of the existing dwelling. The new fences are constructed of pressure treated wood with vertical planks and a top cap rail. They provide privacy and safety in the back yards with limited visibility from the street. The Technical Committee recognized that because the owner has followed design guidelines for non-contributing structures, it is likely that these changes would have been approved if the request had been submitted in accordance with Baltimore County requirements.

Steve Myer

Petitioner's Exhibit C

Minutes
Baltimore County Landmarks Preservation Commission
October 10, 2019 Meeting

Call to order; introduction of Commission members; pledge of allegiance to the Flag; statement of purpose and operating procedures

Mr. Rob Brennan, Chairperson, opened the regular monthly meeting of the Baltimore County Landmarks Preservation Commission (LPC) at 6:03 p.m. The following Commission members were:

Present	Not Present
Mr. C. Bruce Boswell	Ms. Cathryn Pinheiro
Mr. Robert P. Brennan, Chair	Mr. Jon Schmidt
Mr. Louis Diggs	Mr. Qutub U. K. Syed
Mr. John Holman	
Mr. Ed Hord	
Mr. Mitch Kellman, Vice-Chair	
Ms. Wendy McIver	
Mr. Stephen P. Myer	
Ms. Faith Nevins-Hawks	
Mr. Raymond Scott	
Mr. David S. Thaler	
Mr. Christopher Weston	

Attending County staff included Teri Rising (Preservation Services staff), Taylor Bensley (Preservation Services staff), Jenifer Nugent (Strategic Planning Division Chief), and C. Pete Gutwald (Director, Department of Planning).

1. **Review of the Agenda**

Ms. Rising reported there were no changes to the Preliminary Agenda published October 3, 2019.

2. **Approval of the Minutes**

Mr. Brennan asked if anyone proposed changes to the September 12th, 2019 Minutes. Hearing none, Mr. Brennan called for a motion to approve the Minutes as drafted. Mr. Hord moved to approve the Minutes as drafted. Mr. Myer seconded the motion, which passed with affirmative votes being cast by Mr. Boswell, Mr. Brennan, Mr. Diggs, Mr. Holman, Mr. Hord, Mr. Kellman, Ms. McIver, Mr. Myer, Ms. Nevins-Hawks, Mr. Scott, Mr. Thaler, and Mr. Weston. There were no dissenting votes.

Petitioner
CBA Exhibit
6

3. **Consent Agenda**

Ms. Rising gave background information and read the Action Recommendations for Consent Agenda Items 5, 6 and 7.

Mr. Brennan called for a motion on the items. Mr. Thaler moved to approve the Consent Agenda items as proposed. Mr. Boswell seconded the motion, which passed with affirmative votes being cast by Mr. Boswell, Mr. Brennan, Mr. Diggs, Mr. Holman, Mr. Hord, Mr. Kellman, Ms. McIver, Mr. Myer, Ms. Nevins-Hawks, Mr. Scott, Mr. Thaler, and Mr. Weston. There were no dissenting votes.

Items for Discussion and Vote

4. Rauser Property, 1727 Magnolia Avenue, Relay; Contributing structure in the Relay County Historic District; Removal and expansion of a side entrance porch with roof [County Council District # 1]

Ms. Bensley introduced the project, which involved the removal of an existing side entrance porch and a rebuild complete with a roof. She explained that the property was a corner lot at the intersection of Magnolia and Hazel Avenues, and was the last property before Hazel Avenue came to a dead end at the 195 sound wall. The proposed porch was similar to the front porch, which was approved by the Commission in October of 2016. The footprint including the roof overhang was proposed to be 12' by 10'. Ms. Bensley continued that the roof of the porch would have Gaf Ultra Shingles to match the existing roof and the rail height solid porch wall would have shingles that matched those on the home and existing front porch; the porch would have aluminum downspouts and gutters and pressure treated wood stairs. She added that the homeowners were in the process of filing for an administrative variance for a 15.5' side yard setback in lieu of the required 25' side yard setback and that a site visit was conducted on September 30th, 2019.

Mr. Weston questioned if the 2' roof overhang was appropriate for the proposed porch. Mr. Brennan agreed, but noted he felt it was the homeowner's intent to match the existing front porch overhang.

Mr. Brennan informed the Commission that he, Ms. Nevins-Hawks, Ms. Rising, and Ms. Bensley visited the site and spoke with the homeowner on September 30th, 2019.

Mr. Boswell asked if anyone knew the distance of the overhang of the existing front porch. Ms. Nevins-Hawks commented that she felt it was properly represented on the drawing of the front elevation. Mr. Boswell commented the overhang of the existing front porch appeared to be 12" to 18" per the plans.

Ms. Nevins-Hawks shared that the homeowner expressed the underside of the stairs would have lattice, similar to the existing front porch, however it was not depicted in the drawings.

Mr. Weston moved to issue a Certificate of Appropriateness with the conditions that the distance of the proposed porch roof overhang match the distance of the existing front porch overhang and that the underside of the stairs be screened with lattice to match the existing front porch. Mr. Thaler seconded the motion, which passed with affirmative votes being cast by Mr. Boswell, Mr. Brennan, Mr. Diggs, Mr. Holman, Mr. Hord, Mr. Kellman, Ms. McIver, Mr. Myer, Ms. Nevins-Hawks, Mr. Scott, Mr. Thaler, and Mr. Weston. There were no dissenting votes.

Citing Baltimore County Historic Design Guidelines: Porches & Steps, p. 6; Additions & Infill, p. 4; County Code, Sec 32-7-302

**5. Klinger Property, 719 Anneslie Road, Anneslie; Contributing structure in the Anneslie National Register Historic District; Part II approval for the in-kind replacement of approximately 30 slate roof tiles [County Council District # 5]

Approved via the Consent Agenda to issue a Certificate of Appropriateness.

Citing Baltimore County Historic Design Guidelines: Roofs, p. 9; County Code, Sec 11-2-201

**6. "Planters Paradise" and setting (Hoeing Property), 2316 Bauernschmidt Drive, Essex vicinity; Final Landmark # 110; MIHP # BA-263; Installation of a wood fence, gate, and pine arbor [County Council District # 7]

Approved via the Consent Agenda to issue a Certificate of Appropriateness.

Citing Baltimore County Historic Design Guidelines: Fences & Landscape, p. 4; County Code, Sec 32-7-403

**7. Kline Property, 308 Central Avenue, Glyndon; Contributing structure in the Glyndon County Historic District; MIHP # BA-796; Part II approval for a boiler replacement, installation of chimney liner, and asbestos remediation [County Council District # 2]

Approved via the Consent Agenda to issue a Certificate of Appropriateness.

Citing National Park Service, Technical Preservation Services, Preservation Brief # 24 - Heating, Ventilating, and Cooling Historic Buildings—Problems and Recommended Approaches; County Code, Sec 11-2-201

8. "Butler House", 517 Bond Avenue, Glyndon; Final Landmark # 128; MIHP # BA-764; Modifications to a previously approved window style [County Council District # 2]

Ms. Rising explained the project, which was an amendment to a previously approved window style for the historic residence at 30 Greensborough Road, formerly 517 Bond Avenue, which was approved by the Commission October 17th, 2017. She elaborated that the 49 double hung sash windows were comprised of 21 replacement wood clad windows with double pane glass, 27 original all wood windows with single pane glass, and one vinyl replacement window. She continued that at the October 2017 meeting, it was believed the 21 replacement windows were all wood. However, the Pella representative informed the owners that the 21 replacement

windows were wood clad, not all wood, and that proposed replacement for the 27 original all wood windows would not match the existing 21 windows staying in place. Consequently, the applicants were seeking approval to amend the proposed replacement window style with a wood clad window that identically matched the wood clad windows staying in place.

Mr. Brennan acknowledged the owner, Mr. Michael Greenspun of Bond Property, LLC.

Mr. Greenspun gave background information on the property, which is a Victorian, three-level home that is being renovated as a community benefit for the Victoria Crossing PUD. He clarified that there was no all wood style window that would match the remaining wood clad windows, which was why he was seeking an amendment.

Mr. Brennan noted that the originally approved windows were Kolbe, however the proposed amendment was Pella windows. Mr. Greenspun stated his contractor preferred to work with Pella.

Mr. Boswell commented that he believed the cladding of the windows should have been mentioned in the application, and that it was important to apply correct terminology.

Mr. Boswell moved to issue a Certificate of Appropriateness for the amendment as proposed with the notation that the cladding material be specified. Ms. Nevins-Hawks seconded the motion. Mr. Hord questioned if the Commission should note the cladding type. Mr. Weston shared he believed it was a metal clad and Mr. Brennan confirmed. Ms. Rising informed the Commission that the cladding material was stated in the specifications sheet of the meeting materials and the Commission could reference that. Mr. Thaler commented that the motion should be amended to specify the approved cladding materials were those according to the Pella contract dated August 22nd, 2019 and presented to the Commission October 10th, 2019. Mr. Boswell accepted the amendment to the motion. Ms. Nevins-Hawks seconded the amended motion, which passed with affirmative votes being cast by Mr. Boswell, Mr. Brennan, Mr. Diggs, Mr. Holman, Mr. Hord, Mr. Kellman, Ms. McIver, Mr. Myer, Ms. Nevins-Hawks, Mr. Scott, and Mr. Weston. There were no dissenting votes. Mr. Thaler abstained from voting.

Citing Baltimore County Historic Design Guidelines: Windows & Doors, p. 8; County Code, Sec 32-7-403

9. Bair Property; 4607 Prospect Avenue, Glyndon; Non-contributing structure in the Glyndon County Historic District; Lowering of a 6' wood privacy fence to 42"; relocating existing 6' wood privacy fence by nine feet; installation of a 42" tall paddock fence between two shared driveways [County Council District # 3]

Ms. Rising introduced the agenda item, which included three separate proposals. The first proposal was for the lowering of a 6' wood privacy fence to 42"; the second proposal was for the relocation of the wood privacy fence in nine feet so it was not encroaching on a neighboring property; the third proposal was for the installation of a 42" tall paddock fence between two conjoined driveways. Ms. Rising explained that the lowering and relocation of the existing wood privacy fence was submitted in response to a Final Order issued by the Office of Administrative

Hearings on August 19th, 2019 that denied the requests to retain the existing fence's height and location. In regards to the third proposal, Ms. Rising shared that, upon the advice of the Office of Law, staff recommended the proposal be tabled pending the resolution of lot line issues outlined in the Final Order, as well as several outstanding code enforcement issues. Ms. Rising elaborated that the homeowner would not be able to obtain a permit until all outstanding issues with Code Enforcement had been reconciled.

Mr. Brennan recognized Mr. Steve Fradkin, the property owner of 4605 Prospect Avenue, Glyndon.

Mr. Fradkin remarked that he and his wife had no problem with the lowering and relocation of the 6' wood privacy fence, as the fence was encroaching 7' onto their property. He expressed he did not support the proposal for a new fence between the two connected driveways of 4607 and 4609 Prospect Avenue as it was not in continuity with the rest of the historic neighborhood. He elaborated he would like the person who completed Ms. Bair's survey to come back to the property with him or members of the Commission present so it could be certain the fence was moved off his property.

Mr. Brennan recognized Mr. Tom Montanye and Ms. Kim Montanye, the property owners of 4609 Prospect Avenue, Glyndon.

Mr. Montanye shared that he had concerns with the 42" tall paddock style fence between the two conjoined driveways. He provided a survey he had completed, as well as a survey Ms. Bair had completed, which he stated showed the proposed location of the fence was on his property.

Mr. Brennan commented that this property boundary was under dispute.

Ms. Rising explained that staff, upon advice from the Office of Law, was recommending the new proposal be tabled because of outstanding code violations, an ongoing lot line dispute, and zoning compliance issues. She elaborated that Code Enforcement was responsible for overseeing that the work was conforming to the Final Order.

Mr. Thaler asked for clarification on what the lot line dispute was. Mr. Montanye explained that Ms. Bair's driveway was encroaching on his property and that numerous surveys had confirmed this; consequently, the proposed location of the paddock style fence was also located on his property.

Mr. Thaler asked who completed the survey. Mr. Montanye stated that BPR Surveyors completed his survey.

Mr. Thaler asked if Ms. Bair disputed the results of Mr. Montanye's survey. Mr. Montanye explained he had two separate surveys, both of which Ms. Bair disputed. He noted that Ms. Bair also had a survey, which he disputed.

Mr. Thaler clarified that if Ms. Bair built something on Mr. Montanye's property it would be trespassing and the proper venue for resolution would be Circuit Court.

Ms. Montanye asked if anyone on the Commission was able to assist her and her husband with the property line dispute. Mr. Thaler confirmed that the Commission focused on historical aspects and consequently, issues related to surveys and titles were not within the purview of administrative agencies within Baltimore County Government; he reiterated the disputes would need to be resolved in Circuit Court. Mr. Thaler continued that he did not believe the Commission would ever knowingly approve a project on someone else's property, but that it was not within the Commission purview to delve into property boundaries.

Ms. Rising noted that if the neighbors felt the work was not completed in accordance with the permits or the Final Order, they should contact Code Enforcement.

Mr. Boswell asked for clarification about the fence that projected beyond the front elevation of the home. Ms. Rising clarified that the fence was the new proposal between two conjoined driveways that staff has recommended be tabled.

Mr. Brennan asked if the property boundary between 4605 and 4607 Prospect Avenue was disputed. Ms. Rising responded that, based on discussions with the Office of Law regarding the Final Order, as well as discussions with Code Enforcement, she did not believe so and only the property boundary between 4607 and 4609 Prospect Avenue was disputed.

Mr. Brennan clarified that the Commission was okay to approve the lowering and relocation of the wood privacy fence since the lot line was not disputed. Ms. Rising confirmed this and stated that approving those proposals would allow Ms. Bair to be in accordance with the Final Order. Ms. Rising noted that Code Enforcement would be the agency to confirm the work was completed correctly.

Ms. Fradkin requested that the Commission specify someone from the survey company be present when relocating the fence to be sure it was moved off his property. He elaborated that he believed the stakes delineating his property line had been tampered with. Mr. Thaler stated that was not within the Commission's purview, but that he believed moving property line stakes was illegal.

Ms. Rising clarified that if the fence was moved in conjunction with lot lines that had been tampered with, it would be reasonable to file a Code Enforcement complaint. The inspector would then need to go out and inspect the location based on the site plan provided with the permit, the Final Order, and the completed work; if work was not done as specified, it would be a code violation.

Mr. Thaler stated that you could not determine property boundaries based off the site plan supplied for a fence permit. Mr. Hord agreed. Ms. Rising confirmed that Code Enforcement would still need to be involved as complaints were tied to that agency.

Mr. Kellman provided that he did not believe any County Commission or body could approve any permit until all outstanding code violations were resolved. Ms. Rising confirmed this, and continued that the applicant had not yet applied for a permit. Ms. Rising noted that this was one of the reasons the Office of Law recommended the proposal be tabled.

Mr. Boswell moved to issue a Certificate of Appropriateness for the lowering of a 6' wood privacy fence to 42", to issue a Certificate of Appropriateness for the relocation of an existing 6' wood privacy fence by nine feet, and to table the application for a new 42" tall paddock fence between two conjoined driveways due to outstanding lot line and code enforcement issues. Mr. Thaler seconded the motion, which passed with affirmative votes being cast by Mr. Boswell, Mr. Brennan, Mr. Diggs, Mr. Holman, Mr. Hord, Mr. Kellman, Ms. McIver, Mr. Myer, Ms. Nevins-Hawks, Mr. Scott, Mr. Thaler, and Mr. Weston. There were no dissenting votes.

Citing Baltimore County Historic Design Guidelines: Porches & Steps, p. 6; Additions & Infill, p. 2; Office of Administrative Hearings, Final Order - August 19, 2019 - Case # 2019-0342-SPHA; County Code, Sec 32-7-403

10. Santoni's Marketplace and Catering, 4854 Butler Road, Glyndon; Non-contributing structure in the Glyndon County Historic District; Installation of a vestibule to the front of the store; expansion of the loading dock [County Council District # 3]

Ms. Rising stated the address for the property and noted that it was a non-contributing structure in the Glyndon County Historic District, not a contributing structure as described on the preliminary agenda.

Ms. Bensley provided background on the project, which involved two additions to Santoni's Marketplace and Catering. The first addition was an 8' x 20' vestibule at the entrance on the south side of the building. She continued that the vestibule was proposed to have automatic swing doors for entry, egress on both sides, and board and batten, trim, details, and coloring that all matched the existing façade. The second addition was an 8' by 62' enclosure of the loading dock area on the west side of the building. Ms. Bensley stated that the existing loading platform would be expanded approximately 34' to meet the existing sidewalk grade, and six new overhead doors would be installed; the entire docking area will be enclosed. Additionally, she provided detail that the existing roofline would be extended to meet the new exterior wall, and all proposed materials, including the architectural asphalt shingle roof, board and batten, trim, details, and color, would match the existing façade.

Mr. Brennan recognized Mr. Lou Santoni, owner of Santoni's Marketplace and Catering.

Mr. Brennan asked if Mr. Santoni owned the building. Mr. Santoni explained that he owned the business that occupied that portion of the building and that the building was owned by P. Fred Obrect Management Company. Mr. Santoni elaborated that he worked alongside the building owners with the proposal and that they would be doing the construction.

Mr. Brennan commented that the drawings were clear and consistent, and he felt the additions fit with the site.

Mr. Myer moved to issue a Certificate of Appropriateness for the additions as proposed. Mr. Diggs seconded the motion, which passed with affirmative votes being cast by Mr. Boswell, Mr. Brennan, Mr. Diggs, Mr. Holman, Mr. Hord, Mr. Kellman, Ms. McIver, Mr. Myer, Ms. Nevins-Hawks, Mr. Scott, Mr. Thaler, and Mr. Weston. There were no dissenting votes.

Citing Baltimore County Historic Design Guidelines: Additions & Infill, p. 4; County Code, Sec 32-7-403

11. "Randallstown Community Bank (Center), 9000 Liberty Road, Fieldstone; Final Landmark # 191; Contributing structure in the Fieldstone County Historic District; MIHP # BA-2903; Addition of a lobby; addition above an existing one-story portion of the building [County Council District # 4]

Ms. Rising introduced the item, which was an amended plan for alterations originally reviewed by the Commission September 12th, 2019. The updated plans included a 1,480 square foot lobby addition to the rear of the building, a 264 square foot addition above an existing one-story portion of the building, the installation of an enclosure for electric signage, and derelict window replacement. She further explained that no details were provided in regards to the sign enclosure or the window replacement. Ms. Rising informed the Commission that the September 11th, 2014 meeting minutes reflected that the windows were character defining features, and that the second floor windows had been recently scraped and repainted; any deterioration that had occurred since then, which prompted the proposed replacement, would need to be addressed as a separate issue. Additionally, Ms. Rising noted that all elevations of a historic building, contributing or non-contributing, were subject to review, and that the proposed addition would not be easily reversible, should a future owner wish to remove the addition.

Mr. Brennan recognized Mr. Robert Charles and Mr. Mark Levin, both of Levin Brown Architects.

Mr. Thaler questioned if the architects had adjusted the plans following the Commissions suggestions at the September 12th, 2019 meeting. Mr. Levin confirmed that changes had been made.

Mr. Charles and Mr. Levin delivered a presentation highlighting the modifications made following staffs suggestions. Ms. Rising clarified that the suggestions came from the Commission, not from staff. Mr. Charles explained that the addition above the warming kitchen had been pushed back to preserve one of the windows on the second floor of the building, and that the addition had a window that replicated those on the Liberty Road façade of the building.

Mr. Brennan asked what the materials of the addition were, and confirmed it was what the Commission reviewed last month. Mr. Levin replied it was different than what had previously been reviewed, as it was a different color. Mr. Charles stated it was Trespa. Ms. Rising confirmed it was the plastic material as previously reviewed. Mr. Charles explained it was a multi-colored arrangement and that the Trespa material was a high-pressure, compact,

laminate panel, reinforced with wood-based fibers. He explained that a multi-colored arrangement was chosen to better compliment the random ashlar stone of the building.

Mr. Charles explained that the fenestration of the existing windows was a narrow band on the bottom, a wide band in the middle, and a narrow band at the top. Because of this, the fenestration of the glass for the rear lobby addition was adjusted to match the pattern. He then provided detail that the color palette had been adjusted to better compliment the colors of the random ashlar stone.

Mr. Charles presented a photo of the Randallstown Elementary School, located at 9013 Liberty Road, and explained how it had rust colored framing similar to what was proposed, and was across the street. Ms. Rising noted that it was not in within the bounds of the Fieldstone County Historic District or a Final Landmark. Mr. Charles stated he was looking at the community at large.

Mr. Brennan clarified Mr. Charles was referring the color of the window system. Mr. Levin confirmed he was. Mr. Charles explained that the Trespa color proposed for the addition was not inconsistent for the area.

Mr. Levin stated that the building appeared gray in renderings, but was actually quite varied because of the random ashlar stone; providing a range of Trespa colors would pick up on the variation.

Mr. Brennan asked if anyone on the Commission had experience working with Trespa. Mr. Hord offered he had. Mr. Brennan questioned if it was plastic. Mr. Hord confirmed it was. Ms. Nevins-Hawks advised it was durable and a through-body product, meaning it would maintain its color even if scratched. Mr. Brennan questioned if it was an appropriate material in this application. Ms. Nevins-Hawks stated she believed it was.

Mr. Boswell explained that he felt the Trespa cube-like portion of the addition on page 15 of the provided plans appeared very jarring in juxtaposition with the current buildings masonry structure. Mr. Brennan agreed and noted that bringing the corners of the cube-like portion to the ground may improve the design.

Mr. Brennan remarked that the addition was very prominent and did not preserve a significant portion of the original building. Additionally, he explained he felt the curve of the rear lobby addition was a gratuitous element. Mr. Levin responded the curve responded to the rear of the pocket park located adjacent to the site.

Mr. Hord expressed he felt the plans were moving in the correct directions and that the architects had addressed the suggestions the Commission made at the September 12th, 2019 meeting.

Mr. Diggs shared that he liked the addition.

Ms. McIver questioned why the applicants proposed such a strong color, especially for the warming kitchen. Mr. Levin explained they modeled the colors off the existing random ashlar stone.

Mr. Levin explained that people driving by would only see a sliver of the curve of the glass lobby, and only those entering the building would see the extent of the addition.

Mr. Hord stated the colors of the Trespa were picking up on the colors of the stone.

Ms. McIver commented she felt the addition was better than the original proposal, but that it could stand to be a bit more stubble. Mr. Levin stated art was subjective.

Mr. Weston asked if the Commission was voting on the electrified sign even though no additional information was provided and it was not on the renderings. Mr. Charles stated that the sign was shown on the two-dimensional drawings provided but not the renderings; he continued that it was a minor component and could likely be tabled.

Mr. Charles stated that Levin Brown Architects had received feedback from the community, the County Councilman, the Liberty Road Business Association, Fieldstone, and state representatives; the feedback was supportive of the modern feel of the addition and expressed that it made the site stand out. Consequently, Mr. Charles advised making the design more subtle would lessen the emphasis of the addition.

Mr. Levin asked if he could elaborate on the signage. Mr. Brennan asked Ms. Rising if the Commission should vote on the proposal. Ms. Rising explained there was not enough information about the signage, therefore staff did not feel comfortable making a recommendation. Mr. Kellman asked if it was free-standing. Mr. Levin confirmed it was. Mr. Kellman asked if it was changeable copy. Mr. Levin replied it would depend what was permitted for the area. Mr. Brennan clarified the Commission would not vote on the sign.

Mr. Brennan provided he believed the addition should be dialed back a bit. He offered suggestions that the Trespa cube-like portion at the rear of the building be adjusted to better flow, that the side addition be better integrated with the existing one-story portion beneath it, and that it would be ideal to preserve a second window on the side façade of the building where the warming kitchen was proposed. Mr. Levin stated they could not push the warming kitchen addition back any further without losing the functionality.

Mr. Brennan asked the material of the band on the glass of the windows and confirmed it was a different color from the rest of the addition. Mr. Levin stated it was proposed to be clear, but he felt the color should be adjusted to a champagne color to better compliment the addition.

Mr. Thaler asked Mr. Brennan's feelings on the color of the warming kitchen. Mr. Brennan shared he felt it was a bit distracting and could be better integrated. Mr. Boswell stated he did not have a significant concern with the color, but was concerned with the massing of the rear

addition. Mr. Hord expressed he was okay with the colors, as it made the distinction that it was a new addition.

Mr. Weston agreed with Mr. Brennan about the massing of the side addition, and noted that the proportions of the window on the warming kitchen did not match the proportions of any of the existing windows.

Ms. Nevins-Hawks stated she felt the addition was appropriate and she enjoyed the modern look of it. She agreed that the columns from the cube-like portion of the rear addition needed to be adjusted.

Mr. Thaler asked if the Commission was close enough to vote on the addition and if the Commission could form a working group to advise the applicants. Ms. Rising stated that the Commission had brought up numerous modifications, which made it difficult for staff to approve a final plan at the time of permit. She elaborated she felt additional review from the Commission as an entity would be helpful.

Mr. Thaler reiterated the applicants should form a working group with the architects of the Commission.

Mr. Scott explained his opinion of the project would change drastically if the pocket park at the corner of Liberty and McDonough Roads was not there. Mr. Thaler noted it was a Baltimore County public park. Mr. Scott observed the addition will look quite different in the winter when the trees at the park were not full and screening the building.

Mr. Hord suggested the Commission should make a motion outlining the discussed comments.

Mr. Brennan recognized Ms. Anne Gryczon, the Executive Director of the Preservation Alliance of Baltimore County.

Ms. Gryczon advised that Preservation Alliance felt the addition should be done in a way that the historic building stays intact and the addition can be removed in the future.

Mr. Weston observed that the plans called for the removal of 16' to 20' of the rear wall for the lobby addition. Mr. Charles commented that was something the architects has considered.

Ms. Rising noted that she felt it would be appropriate for a Technical Committee to work with the architects, but that the Commission should not delegate the responsibility of approving the plans on behalf of the Commission as too many modifications had been outlined. Mr. Hord agreed that comments should be given and that the plans should be reviewed by the Commission at a later date.

Mr. Boswell asked to further discuss the removal of the existing stone wall. Mr. Levin confirmed it was approximately 20' in total, but there were two existing windows. He elaborated that they could modify the plans to remove less.

Ms. Rising reminded the Commission that they still needed to make a motion to not issue a Certificate of Appropriateness or a Notice to Proceed if they were not approving the application presented to them. She further explained that the Commission should outline the modifications in any motion.

Mr. Thaler asked why the Commission had to vote to not approve the plans. Ms. Rising replied that the Commission was required to act in accordance with Title 7 of the Baltimore County Code, which indicated they must vote on an application once it has been deemed complete.

Mr. Thaler moved to not issue a Certificate of Appropriateness or a Notice to Proceed, but invited the applicants to come back with modifications. Ms. Nevins-Hawks stated the modification of adjusting the columns below the Trespa cube on the rear of the building to be more consistent with the proportions of the addition. She elaborated that possible adjustments included the cube could be stretched to the ground, or the columns could be pushed back to the wall to not be as prominent. Mr. Hord stated the modification of removing less of the existing stone building from the second floor. Ms. Nevins-Hawks stated the modification of adjusting the proportions of the warming kitchen window to better replicate the windows on the Liberty Road façade of the building. Mr. Brennan stated the modifications of providing a lighter range of Trespa colors for the whole addition and the modification of better integrating the warming kitchen to the stone below it. Mr. Holman seconded the motion, which passed with affirmative votes being cast by Mr. Boswell, Mr. Brennan, Mr. Diggs, Mr. Holman, Mr. Hord, Mr. Kellman, Ms. McIver, Mr. Myer, Ms. Nevins-Hawks, Mr. Scott, Mr. Thaler, and Mr. Weston. There were no dissenting votes.

Citing Baltimore County Historic Design Guidelines: Additions & Infill, pp. 1-7; National Park Service, Technical Preservation Services, Preservation Brief # 14 - New Exterior Additions to Historic Buildings: Preservation Concerns; Fieldstone Historic District Design Guidelines – Adopted November 13, 2003; County Code, Sec 32-7-403

Other Business

Ms. Rising reported on the following historic property tax credit applications that were approved by staff as either an emergency repair or due to the receipt of Part II approval for work reviewed by MHT:

> Nass-Teret Property, 323 Hopkins Road, Rodgers Forge; MHT approval for an in-kind asphalt shingle roof replacement. [County Council District # 5]
>
> Kysiak Property, 406 Dunkirk Road, Rodgers Forge; MHT approval for an amended scope of work for the installation of a fireplace and chimney liner. [County Council District # 5]
>
> "Willow Glen" (van den Beemt Property), 16616 Remare Road, Monkton; MHT approval for the in-kind replacement of a boiler. [County Council District # 3]

Ms. Rising stated that the 2020 meeting schedule was now available. She noted that the April date was changed due to Passover.

Mr. Diggs announced he was stepping down from the Commission and this was his last meeting. He expressed his gratitude for the Commission members and staff. Members of the Commission thanked him for his preservation efforts.

Mr. Thaler acknowledged Mr. Hord's retirement from the practice of architecture.

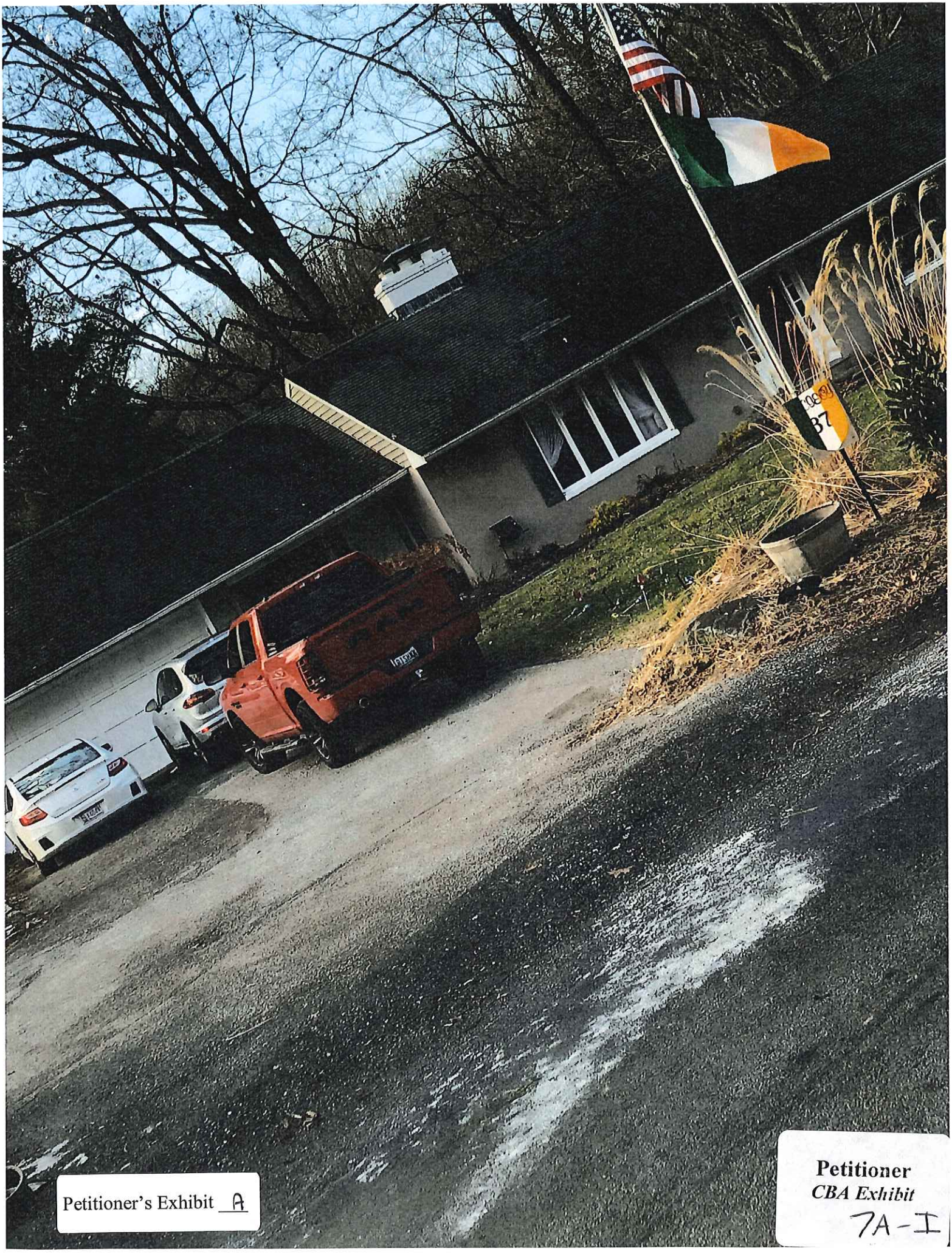
Mr. Thaler reminded the Commission and citizens that meetings are recorded and public information. He cited a legal suit a Commission member was involved in.

Mr. Brennan stated that the 6th annual Doors Open Baltimore was a success with tours of 57 unique buildings and sites in Baltimore City; he invited anyone interested to attend next year's event.

Mr. Diggs moved to adjourn the meeting. Ms. McIver seconded the motion, which passed with affirmative votes being cast by Mr. Boswell, Mr. Brennan, Mr. Diggs, Mr. Holman, Mr. Hord, Mr. Kellman, Ms. McIver, Mr. Myer, Ms. Nevins-Hawks, Mr. Scott, Mr. Thaler, and Mr. Weston. There were no dissenting votes.

The meeting adjourned at 7:48 PM.

TAB:tab



Petitioner's Exhibit A

Petitioner
CBA Exhibit
7A-I

Petitioner's Exhibit B


Petitioner's Exhibit C


Petitioner's Exhibit D



Petitioner's Exhibit 6



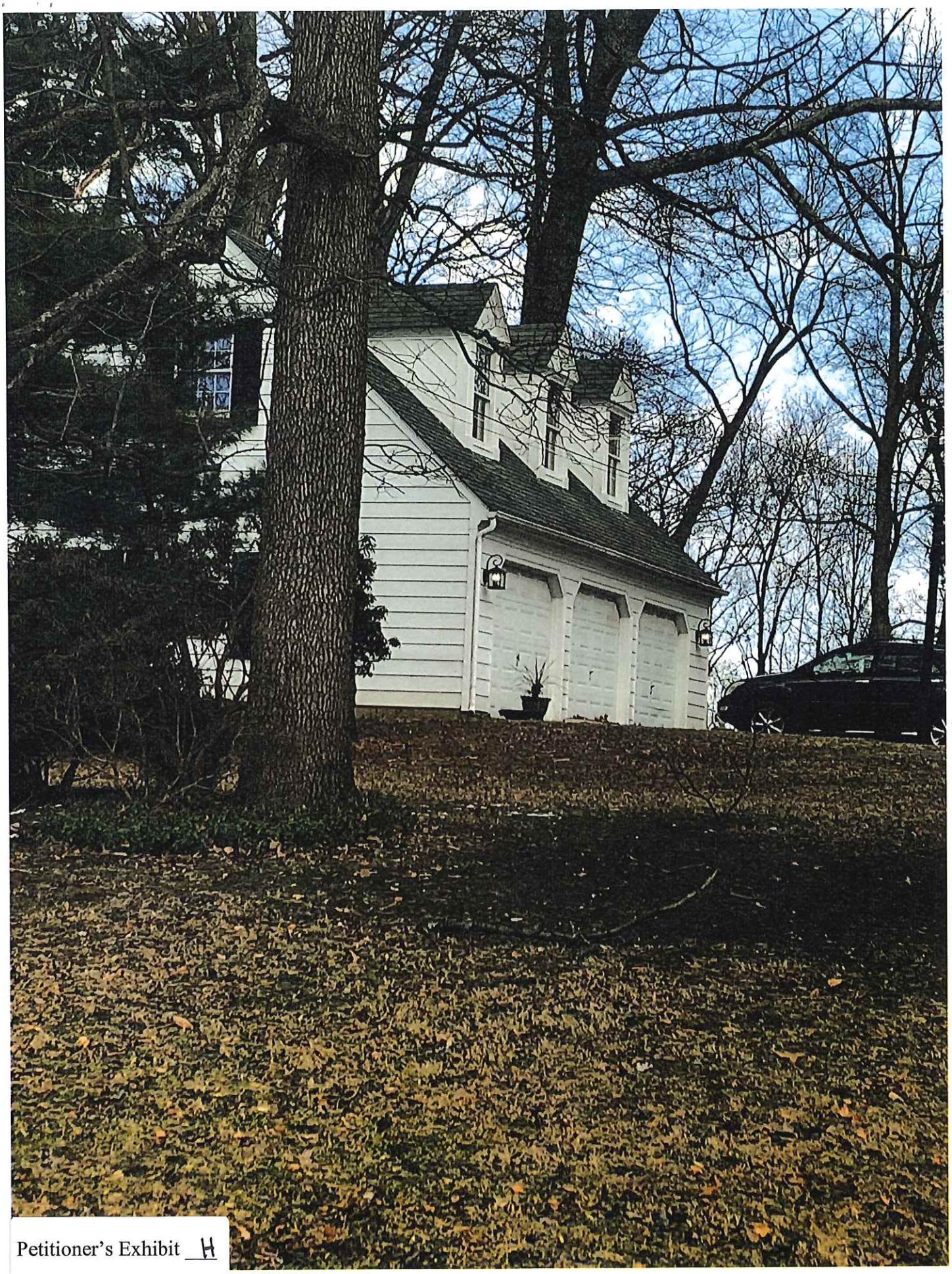
Petitioner's Exhibit F

4610 Prospect



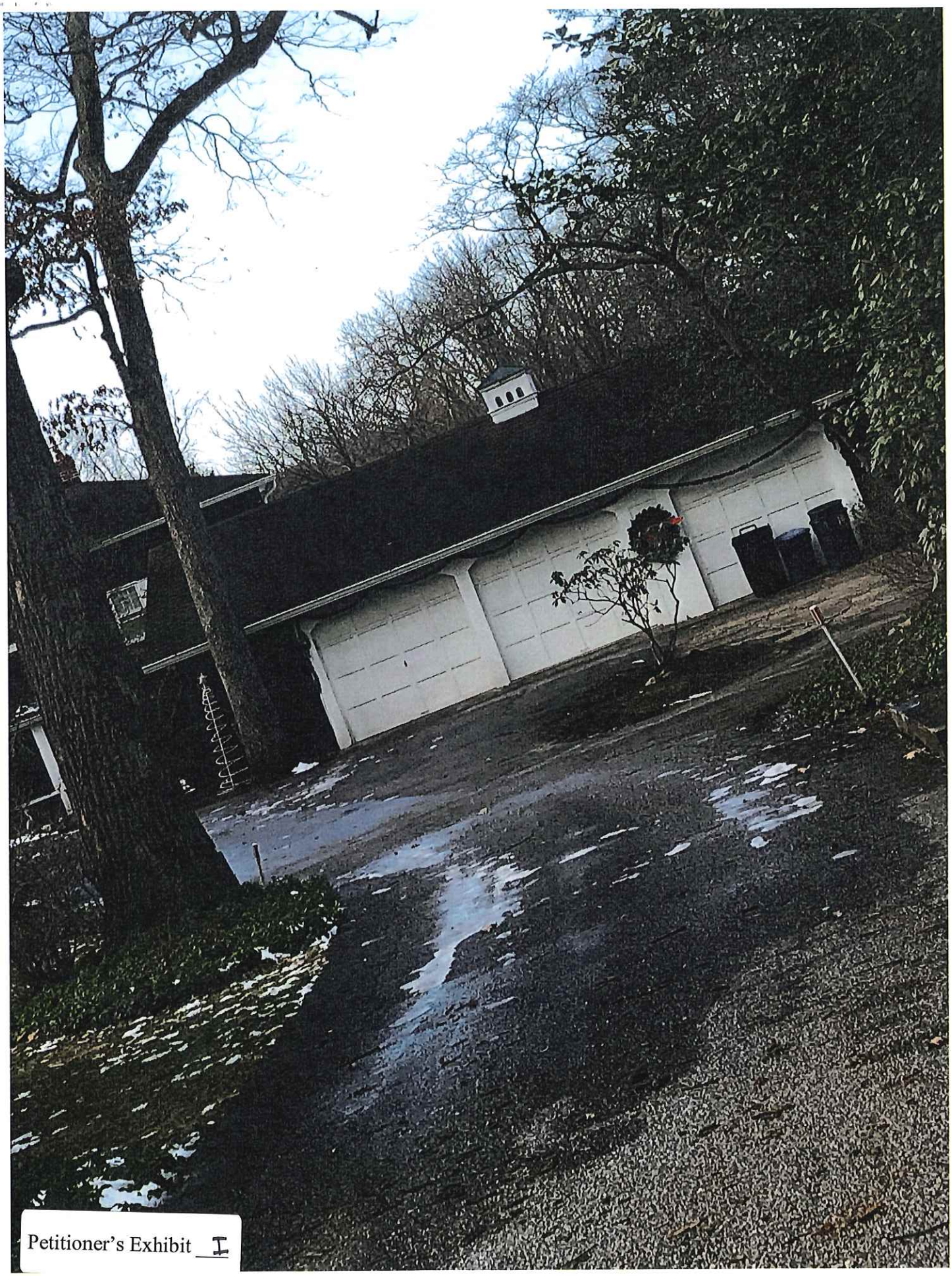
Petitioner's Exhibit 6

4606 Prospect



Petitioner's Exhibit H

4601 Prospect



Petitioner's Exhibit I

4612 Prospect



Butler Road Under HIstoric Glyndon

Petitioner's Exhibit A

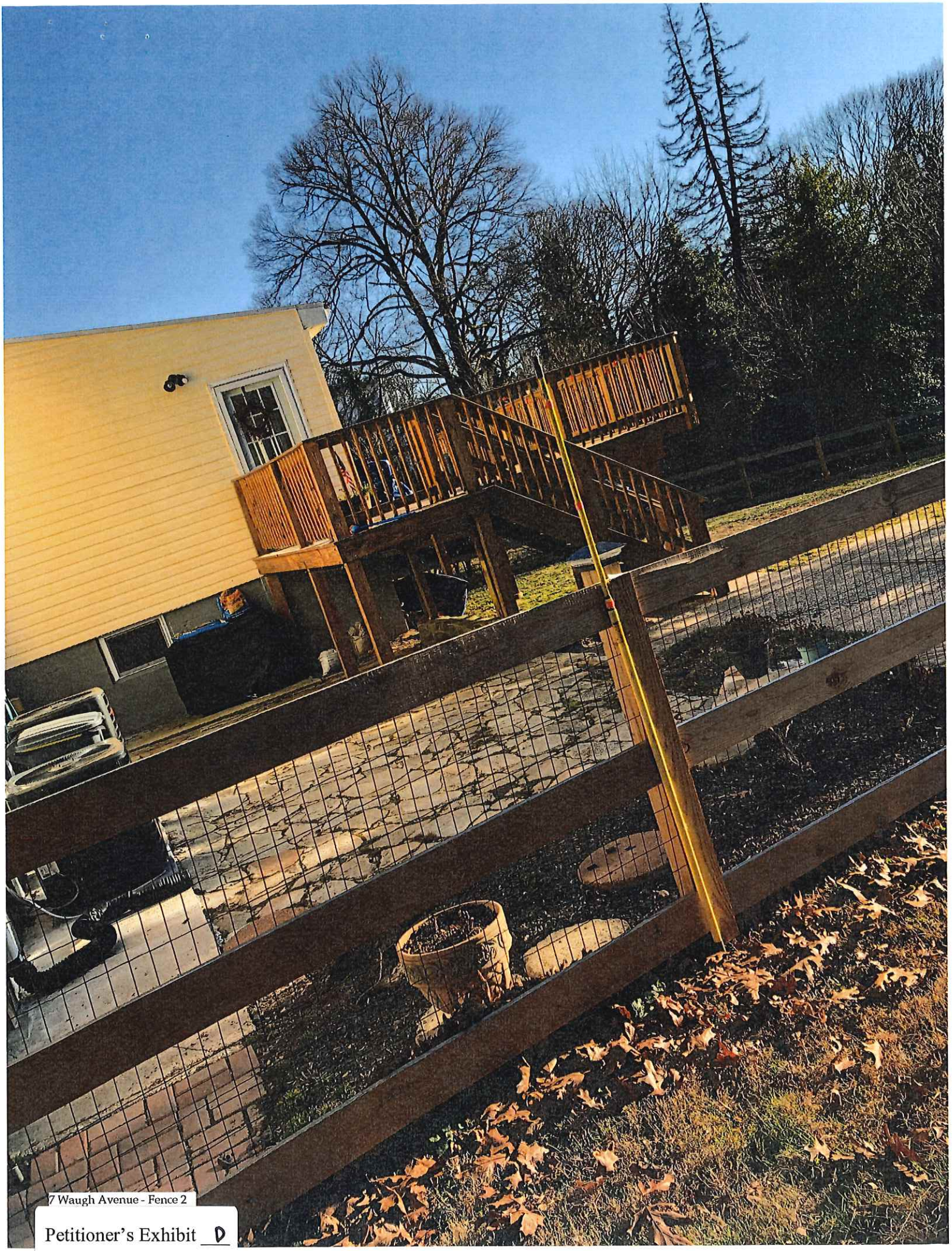
Petitioner
CBA Exhibit
8A - 8I



2 Waugh Avenue - Fence

Petitioner's Exhibit B


3 Waugh Avenue - Fence
Petitioner's Exhibit C



7 Waugh Avenue - Fence 2

Petitioner's Exhibit D


7 Waugh Avenue - Fence 1
Petitioner's Exhibit 6



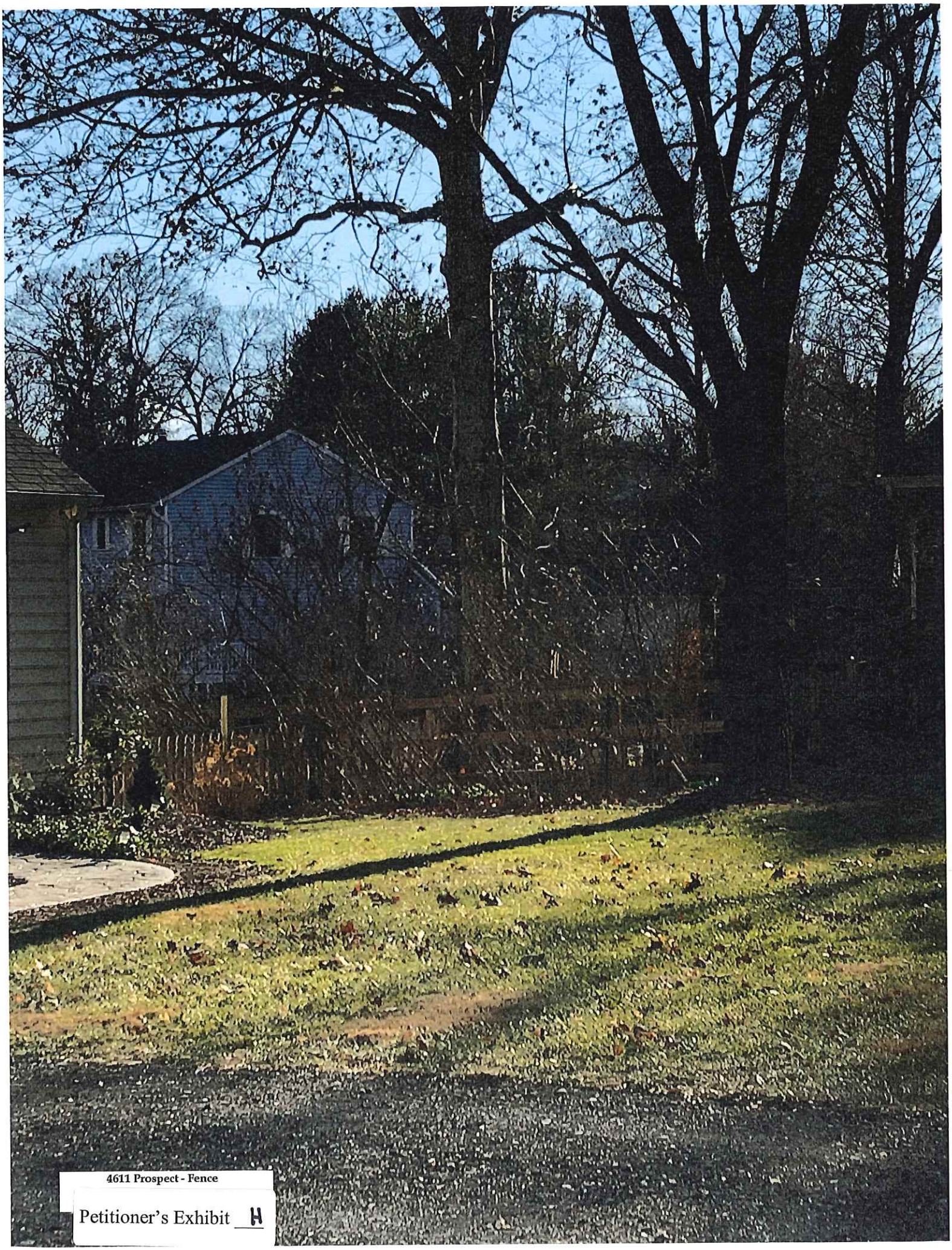
4603 Prospect Avenue - Fence

Petitioner's Exhibit F



4609 Prospect - New Fence

Petitioner's Exhibit G

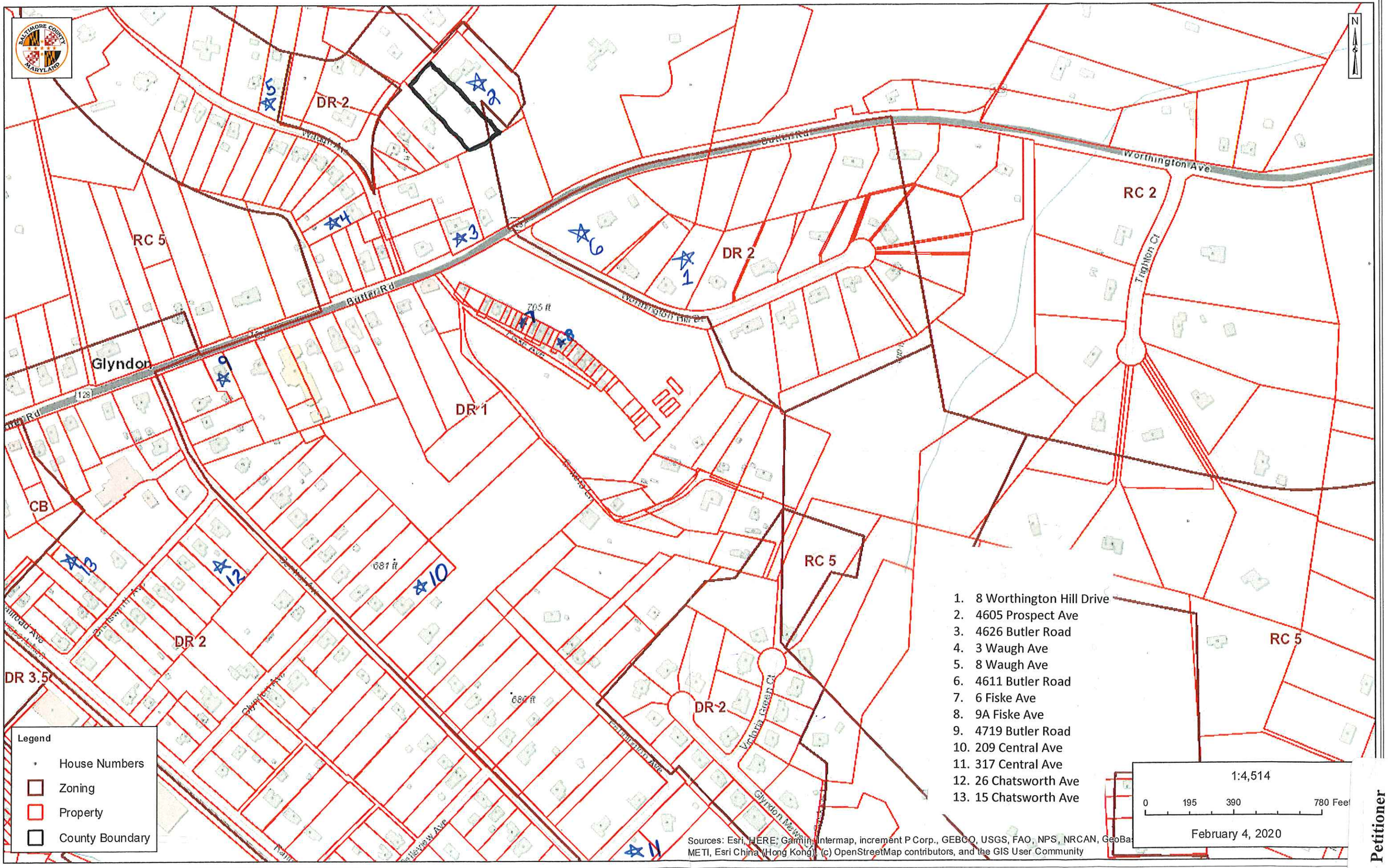


4611 Prospect - Fence

Petitioner's Exhibit H


4709 Butler Road - Fence
Petitioner's Exhibit I

Baltimore County - My Neighborhood



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community

Baltimore County Government, Carroll County, Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA |

Petitioner
CBA Exhibit
9

#1

IN RE: PETITION FOR ADMIN. VARIANCE	*	BEFORE THE
(8 Worthington Hill Drive)		
4th Election District	*	OFFICE OF ADMINISTRATIVE
2nd Council District		
Allen H. & Susan Wroe	*	HEARINGS FOR
Petitioners		
	*	BALTIMORE COUNTY
	*	**CASE NO. 2018-0261-A**

* * * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings ("OAH") as a Petition for Administrative Variance filed by the legal owners of the property, Allen H. and Susan Wroe ("Petitioners"). The Petitioners are requesting Variance relief from §§ 400.1 and 1B02.3.C.1 of the Baltimore County Zoning Regulations ("BCZR") and § 400.1.d. (2) of the Zoning Commissioner's Policy Manual ("ZCPM"), to permit a proposed detached accessory structure (shed) to be located in the side yard with a front street setback of 28.5 ft. in lieu of the required rear yard and a setback of 40 ft. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners' Exhibit 1.

The Zoning Advisory Committee ("ZAC") comments were received and are made part of the record of this case. A ZAC comment was received from the Department of Environmental Protection and Sustainability ("DEPS") dated April 4, 2018, indicating "Ground Water Management must review any proposed permit(s) for a shed, since the property is served by well and septic."

The Petitioners having filed a Petition for Administrative Variance and the subject property having been posted on April 5, 2018 and April 17, 2018, and there being no request for a public hearing, a decision shall be rendered based upon the documentation presented.

The Petitioners have filed the supporting affidavits as required by Section 32-3-303 of the Baltimore County Code ("BCC"). Based upon the information available, there is no evidence in the file to indicate that the requested variance would adversely affect the health, safety or general welfare of the public and should therefore be granted. In the opinion of the Administrative Law Judge, the information, photographs, and affidavits submitted provide sufficient facts that comply with the requirements of Section 307.1 of the BCZR. Furthermore, strict compliance with the BCZR would result in practical difficulty and/or unreasonable hardship upon the Petitioners.

Pursuant to the posting of the property and the provisions of both the BCC and the BCZR, and for the reasons given above, the requested variance should be granted.

THEREFORE, IT IS ORDERED, this **27th** day of **April, 2018**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance relief from §§ 400.1 and 1B02.3.C.1 of the Baltimore County Zoning Regulations ("BCZR") and § 400.1.d. (2) of the Zoning Commissioner's Policy Manual ("ZCPM"), to permit a proposed detached accessory structure (shed) to be located in the side yard with a front street setback of 28.5 ft. in lieu of the required rear yard and a setback of 40 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioners may apply for their appropriate permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.

- Petitioners must comply with the DEPS ZAC comment dated April 4, 2018; a copy of which is attached hereto and made a part hereof.

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

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:dlw

★2

PETITION FOR ZONING VARIANCE 84-332-A

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a

Variance from Section 1A01.3.B.3 To permit a sideyard setback of 25 feet instead of the required 35 feet.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (indicate hardship or practical difficulty)

1. As a matter of right
2. County Council to rezone in November, 1984, and we are petitioning the council as well
3. Property in question is already hooked up to county sewer and water
4. Part of property is zoned DR2 and other part of property is zoned RC2
5. Design and layout of the house precludes constructing the proposed addition in any other way.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

I/We do 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 Petition.

Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State

Attorney for Petitioner:

(Type or Print Name)

Signature

Address

City and State

Attorney's Telephone No.: ____

Legal Owner(s):

William R. DeSandro
(Type or Print Name)

William R. DeSandro
Signature

Jean M. DeSandro
(Type or Print Name)

Jean M. DeSandro
Signature

4605 Prospect Avenue 526-5792
Address Phone No.

Glyndon, Maryland 21071
City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

William R. DeSandro
Name

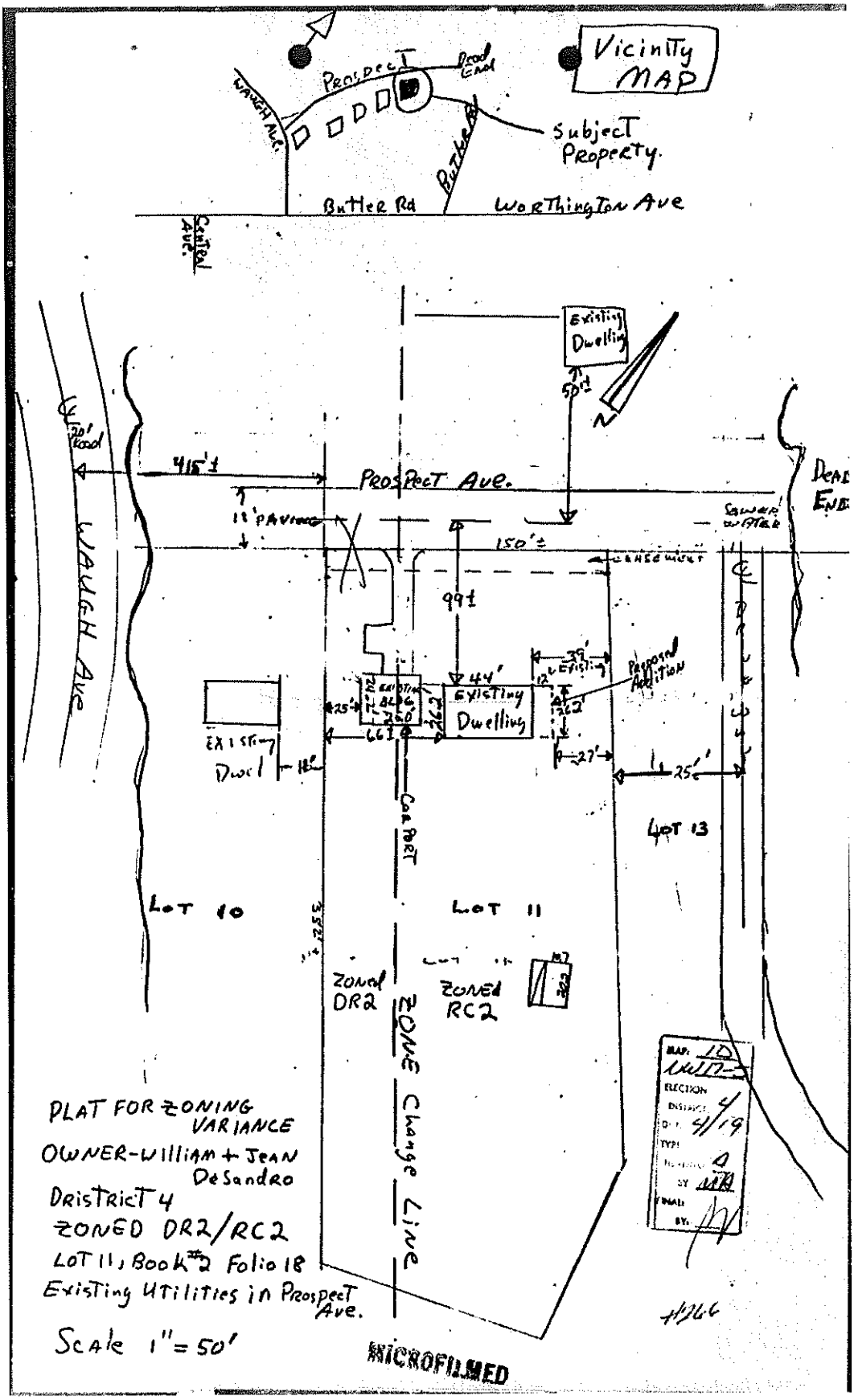
4605 Prospect Ave. 237-1936
Address Business Phone No.

DATE June 14, 1984 (Thurs.)
BY Mary Campagna

ORDERED By The Zoning Commissioner of Baltimore County, this 17th day of April, 1984, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 29th day of May, 1984, at 9:45 o'clock A. M.

Zoning Commissioner of Baltimore County.

(over)



PLAT FOR ZONING VARIANCE
OWNER-William + Jean DeSandro
DRISTRICT 4
ZONED DR2/RC2
LOT 11, Book #2 Folio 18
Existing Utilities in Prospect Ave.

Pursuant to the advertisement, posting of property, and public hearing on the Petition and it appearing that strict compliance with the Baltimore County Zoning Regulations would/~~would not~~ result in practical difficulty and unreasonable hardship upon the Petitioner(s) and the granting of the variance(s) requested will/will not adversely affect the health, safety, and general welfare of the community, the variance(s) should /~~should not~~ be granted.

Therefore, IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County, this 14th day of June, 1984, that the herein Petition for Variance(s) to permit a side yard setback of 27 feet in lieu of the required 35 feet for the proposed addition, in accordance with the site plan filed herein, is GRANTED, from and after the date of this Order, subject, however, to the approval of a site plan by the Office of Planning and Zoning.

Jean M. H. Jung
Deputy Zoning Commissioner of
Baltimore County

ORDER RECEIVED FOR FILING
DATE June 14, 1984 (Clerk)
BY Mary Campbell

#3

PETITION FOR ZONING VARIANCE FROM AREA AND HEIGHT REGULATIONS

64-94A

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, WILLIAM E. HAMMOND / DOROTHY D. HAMMOND legal owner s of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof,

hereby petition for a Variance from Section 205.3 Side Yards - to permit [redacted] side yard of 6'8" instead of required 15's

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (indicate hardship or practical difficulty) Impractical to locate addition on rear or other side - due to location of rooms and accessability.

See Attached Description

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

WILLIAM E. HAMMOND

Dorothy D. Hammond

DOROTHY D. HAMMOND Legal Owner

Address Butler Road, Glyndon, Md.

Contract purchaser

Address

Petitioner's Attorney

Address

Protestant's Attorney

ORDERED By The Zoning Commissioner of Baltimore County, this 13th day of February, 1964, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County, in Room 106, County Office Building in Towson, Baltimore County, on the 30th day of March, 1964, at 1:00 o'clock P.M.

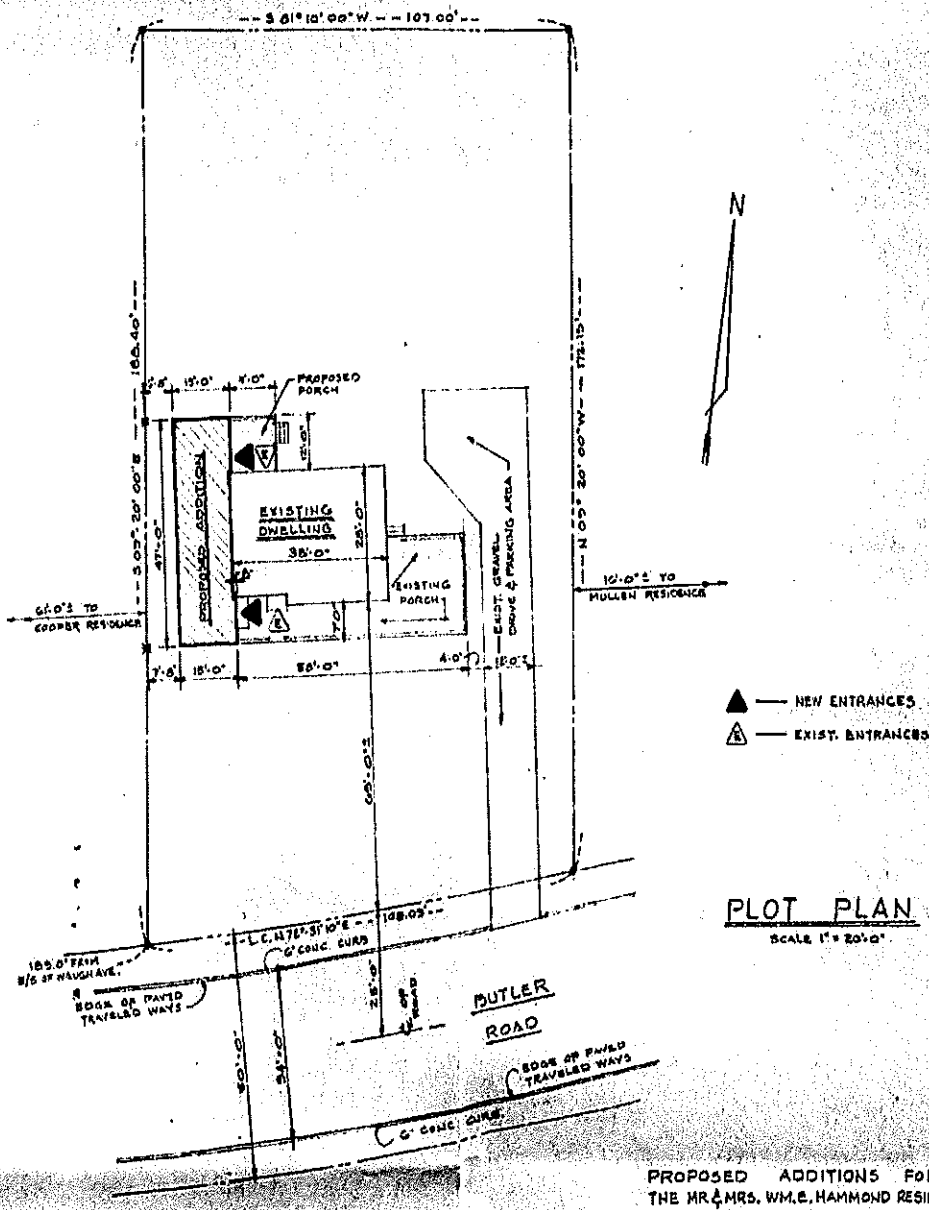
FEB 13 '64

OFFICE OF PLANNING & ZONING

Zoning Commissioner of Baltimore County.

(over)

1:00 P 2/30/64



PLOT PLAN

SCALE 1" = 20'-0"

PROPOSED ADDITIONS FOR
THE MR. & MRS. WM. E. HAMMOND RESIDENCE
BUTLER ROAD GLYNDON
4TH DISTRICT, BALTIMORE CO., MARYLAND

DAVE KEHNG

Pursuant to the advertisement, posting of property, and public hearing on the above petition and it appearing that by reason of the following finding of facts that the granting of the Variance would grant relief to the petitioner without substantial injury to the health, safety and general welfare of the location involved,

the above Variance should be had; and it further appearing that by reason of

fom Variance to permit side yard of 6'8" instead of the required 15' should be granted.

IT IS ORDERED by the Zoning Commissioner of Baltimore County this 30 day of March, 1964, that the herein Petition for a Variance should be and the same is granted, from and after the date of this order, to permit side yard of 6 feet 8 inches instead of the required 15 feet.

Edward D. Hardesty
Deputy Zoning Commissioner of Baltimore County

Pursuant to the advertisement, posting of property and public hearing on the above petition and it appearing that by reason of

the above Variance should NOT BE GRANTED.

IT IS ORDERED by the Zoning Commissioner of Baltimore County, this .....day of ....., 196..., that the above Variance be and the same is hereby DENIED.

Zoning Commissioner of Baltimore County

MICROFILMED

☆4

Petition for Administrative Variance

94-307-A

to the Zoning Commissioner of Baltimore County

for the property located at 3 Waugh Ave. Glyndon, Md.
which is presently zoned DR 2

This Petition shall be filed with the Office of Zoning Administration & Development Management.
The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s)

1B02.3.B To permit a side yard setback of 1.5 feet in lieu of the required 7 feet for a proposed addition (family & Dinning Room).

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (indicate hardship or practical difficulty)

1. Addition would be close to adjoining property.
(See reverse for additional information.)

Property is to be posted and advertised as prescribed by Zoning Regulations.
I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do 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 Petition.

Contract Purchaser/Lessee

(Type or Print Name)

Signature

Address

City State Zipcode

Attorney for Petitioner

(Type or Print Name)

Signature

Address Phone No

City State Zipcode

Legal Owner(s)

Russell G. McKay
(Type or Print Name)

Signature

Rebekah J McKay
(Type or Print Name)

Rebekah J. McKay
Signature

3 Waugh Ave. 526-5341
Address Phone No

Glyndon, Md 21071
City State Zipcode

Name, Address and phone number of representative to be contacted

Rebekah J. McKay
Name

3 Waugh Ave. 526-5341
Address Phone No

Glyndon, Md 21071

A Public Hearing having been requested and/or found to be required, it is ordered by the Zoning Commissioner of Baltimore County, this ___ day of _____ 19___ that the subject matter of this petition be set for a public hearing, advertised, as required by the Zoning Regulations of Baltimore County, in two newspapers of general circulation throughout Baltimore County, and that the property be reposted.

Zoning Commissioner of Baltimore County

REVIEWED BY: R.T DATE: 2/8/94

ESTIMATED POSTING DATE: 2/20/94

Printed with Soybean Ink on Recycled Paper

ITEM #: 307

Affidavit in support of Administrative Variance

The undersigned hereby affirms under the penalties of perjury to the Zoning Commissioner of Baltimore County, as follows:

That the information herein given is within the personal knowledge of the Affiant(s) and that Affiant(s) is/are competent to testify thereto in the event that a public hearing is scheduled in the future with regard thereto.

That the Affiant(s) does/do presently reside at 3 Waugh Ave. (address)

Glyndon, Md 21071 (City, State, Zip Code)

That based upon personal knowledge, the following are the facts upon which I/we base the request for an Administrative Variance at the above address (indicate hardship or practical difficulty)

Espand living space at this address rather than relocate.
To expand rear of home would distrub mature trees, existing deck, gardens, and patio.

That Affiant(s) acknowledge(s) that if a protest is filed, Affiant(s) will be required to pay a posting and advertising fee and may be required to provide additional information.

Russell G. McKay (signature)
Russell G McKay (type or print name)

Rebekah J McKay (signature)
Rebekah J McKay (type or print name)

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, this 19th day of February, 19 94, before me, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared

Russell G McKay and Rebekah J McKay

the Affiants(s) herein, personally known or satisfactorily identified to me as such Affiant(s), and made oath in due form of law that the matters and facts hereinabove set forth are true and correct to the best of his/her/their knowledge and belief.

AS WITNESS my hand and Notarial Seal

2/19/94 (date)

Notary Public

My Commission Expires: 10/1/97

MICROFILMED

Plat to accompany Petition for Zoning [X] Variance [ ] Special Hearing

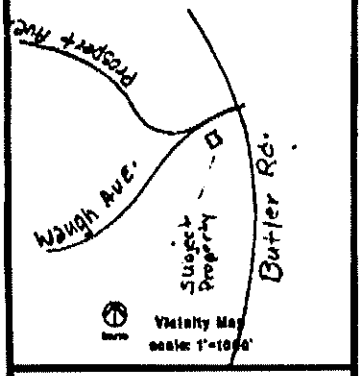
PROPERTY ADDRESS: 3 Waugh Ave. Glyndon, Md.

see pages 5 & 6 of the CHECKLIST for additional required information

Subdivision name: Bellows Property

plat book 19 folio 19 lot 1 section A

OWNER: Russell & Rebekah McKay



LOCATION INFORMATION

Election District: 3

Councilmanic District: 4

1"=200' scale map#: N. W. 17-3

Zoning: DR 2

Lot size: .370 acreage 16,120 square feet

	public	private
SEWER:	[X]	[ ]
WATER:	[X]	[ ]

Chesapeake Bay Critical Area: [ ] [X]

Prior Zoning Hearings: NONE

Zoning Office USE ONLY!

reviewed by:	ITEM #:	CASE#:
R.T.	307	

by: Rebekah McKay Scale of Drawing: 1"= 40

☆4

IN RE: PETITION FOR ADMINISTRATIVE ZONING VARIANCE
W/S Waugh Avenue, 20 ft. W of the c/l Prospect Avenue
3 Waugh Avenue
4th Election District
3rd Councilmanic District
Russell G. McKay, et ux
Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 94-307-A

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as an administrative variance filed by Russell G. McKay and Rebekah J. McKay, his wife, for that property known as 3 Waugh Avenue in the Bellows property subdivision of Baltimore County. The Petitioners herein seek a variance from Section 1B02.3.B of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a side yard setback of 1.5 ft. in lieu of the required 7 ft. for a proposed addition (family and dining room), as more particularly described on Petitioners' Exhibit No. 1, the plat to accompany the Petition.

The Petitioners having filed a Petition for Residential Variance and the subject property having been posted, and there being no request for a public hearing, a decision shall be rendered based upon the documentation presented.

ORDER RECEIVED FOR FILING
Date 3/1/94
By

The Petitioners have filed the supporting affidavits as required by Section 26-127 (b)(1) of the Baltimore County Code. Based upon the information available, there is no evidence in the file to indicate that the requested variance would adversely affect the health, safety or general welfare of the public and should therefore be granted. In the opinion of the Zoning Commissioner, the information, photographs, and affidavits submitted provide sufficient facts that comply with the requirements of Section 307.1 of the B.C.Z.R. Furthermore, strict compliance with the

MICROFILMED

B.C.Z.R. would result in practical difficulty and/or unreasonable hardship upon the Petitioners.

Pursuant to the posting of the property and the provisions of both the Baltimore County Code and the Baltimore County Zoning Regulations, and for the reasons given above, the requested variance should be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 11th day of March, 1994 that the Petition for a Zoning Variance from Section 1B02.3.B of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a side yard setback of 1.5 ft. in lieu of the required 7 ft. for a proposed addition (family and dining room), be and is hereby GRANTED, subject, however, to the following restriction which are conditions precedent to the relief granted herein:

1. The Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER
FOR BALTIMORE COUNTY

LES:mmn

ORDER RECEIVED FOR FILING
Date 3/11/94
By

MICROFILMED

#5

244-A

PETITION FOR ZONING VARIANCE FROM AREA AND HEIGHT REGULATIONS

68-244-A

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, Harry A. Batchelor ..... legal owner of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 205.1 to permit a lot width at the front building line of 79.91 feet instead of the required 100 feet.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (indicate hardship or practical difficulty)

In order to subdivide land into two parcels and make new parcel legal variance will be necessary.

See attached description

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

Harry A. Batchelor
10 Wauch Avenue
Glyndon, Md. 21071

Contract purchaser — Legal Owner

Address ..... Address .....

Petitioner's Attorney — Protestant's Attorney

Address .....

ORDERED By The Zoning Commissioner of Baltimore County, this 26th day of March, 1968, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 29th day of April, 1968, at 10:30 o'clock A. M.

Zoning Commissioner of Baltimore County.

(over)

ORDER RECEIVED FOR FILING

4/30/68 Jc Harris Clk

N/S of Wauch Ave. 705' W of Butler Road

Pursuant to the advertisement, posting of property, and public hearing on the above petition and it appearing that by reason of the following finding of facts that strict compliance with the Baltimore County Zoning Regulations would result in practical difficulty and unreasonable hardship upon the Petitioner and the Variance requested would grant relief without substantial injury to the public health, safety and general welfare of the locality involved.

the above Variance should be had; ~~and it further appearing that by reason of~~

a Variance to permit a lot width at the front building line of 79.91' instead of the required 100' should be granted.

IT IS ORDERED by the Zoning Commissioner of Baltimore County this 30th day of April, 1968, that the herein Petition for a Variance should be and the same is granted, from and after the date of this order, to permit a lot width at the front building line of 79.91' instead of the required 100', subject to approval of the site plan by the Bureau of Public Services and the Office of Planning and Zoning.

Zoning Commissioner of Baltimore County

Pursuant to the advertisement, posting of property and public hearing on the above petition and it appearing that by reason of

the above Variance should NOT BE GRANTED.

IT IS ORDERED by the Zoning Commissioner of Baltimore County, this ..... day of ..... 196 ... that the above Variance be and the same is hereby DENIED.

Zoning Commissioner of Baltimore County

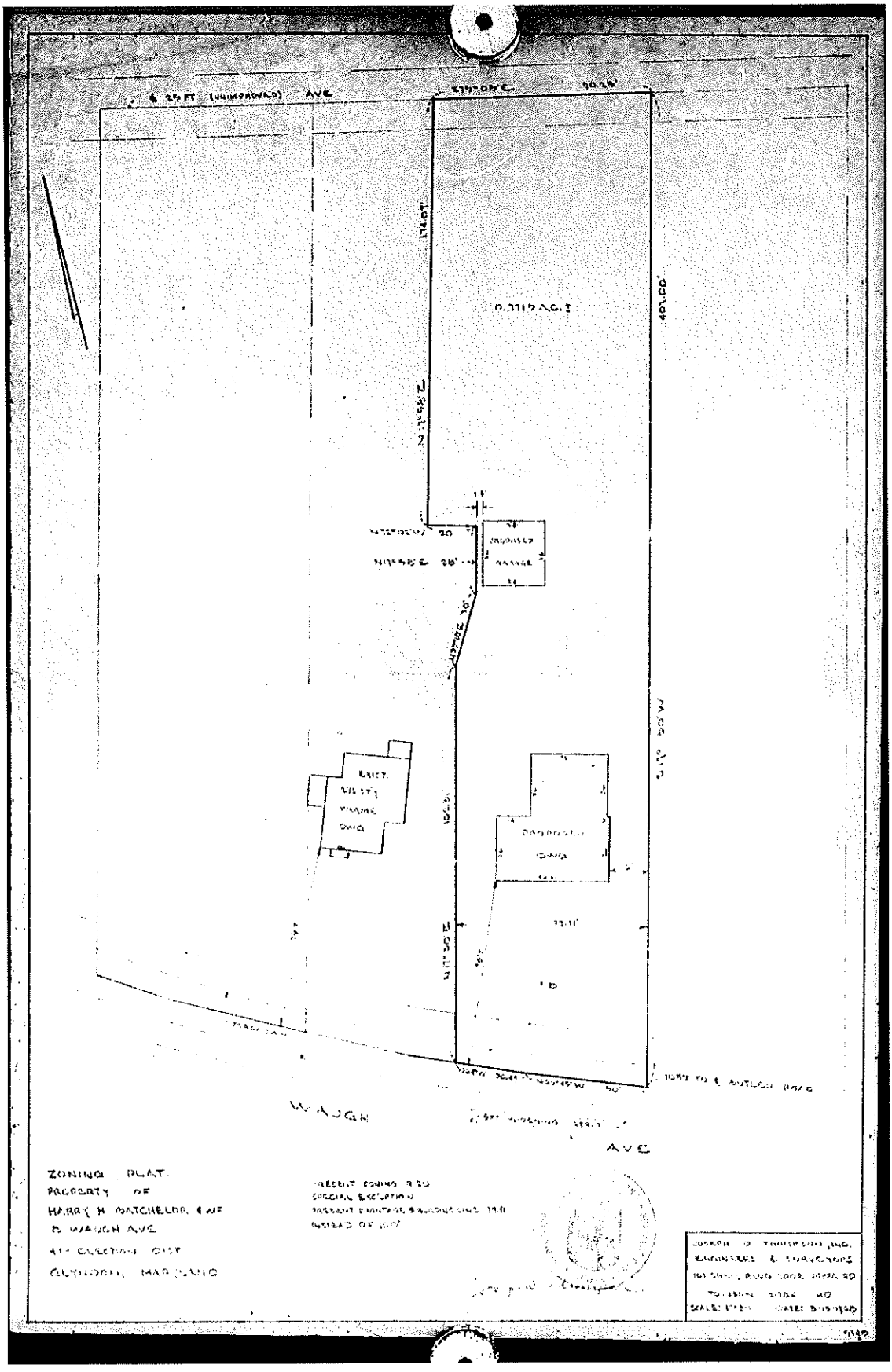
ORDER RECEIVED FOR FILING

DATE 4/30/68 - J C Harris Clk

BY

ADMINISTRATIVE ASSISTANT

MICROFILMED



AVE
WAUGH
AVE
ZONING PLAT
PROPERTY OF
HARRY H BATCHELOR & WF
B WAUGH AVE
4TH ELECTION DIST
GLYNDON, MARYLAND
PRESENT ZONING
SPECIAL EXCEPTION
INSTEAD OF

★6

Petition for Administrative Variance

94-[illegible]

to the Zoning Commissioner of Baltimore County

for the property located at 4611 Butler Road, Glyndon MD 21071

which is presently zoned DR2

This Petition shall be filed with the Office of Zoning Administration & Development Management.

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s) 1.1 (1945 BCZR) DEFINITION OF AN ACCESSORY BUILDING WHICH MAY NOT EXCEED 15 FEET IN HEIGHT TO PERMIT A HEIGHT OF 22 FEET FOR A PROPOSED DETACHED GARAGE.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons. (indicate hardship or practical difficulty) We are demolishing a dilapidated 2-car shed-type garage and want to erect a larger 3-car garage in the style of a Victorian garage. The height variance is requested so that we may build in a loft for additional storage space and so that we may install a cross-gabled roof more in keeping with th style of our house and the contiguous Glyndon Historic District.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County

I/We do 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 Petition

Contract Purchaser/Lessee

(Type or Print Name)

Signature

Address

City State Zipcode

Attorney for Petitioner

(Type or Print Name)

Signature

Address Phone No

City State Zipcode

Legal Owner(s)

David M. Porter
(Type or Print Name)

[signature]
Signature

Mary Ellen Porter
(Type or Print Name)

Mary Ellen Porter
Signature

4611 Butler Road 833-3771
Address Phone No

Glyndon Maryland 21071
City State Zipcode

Name, Address and phone number of representative to be contacted

David M. Porter
Name

Same 333-6813
Address Phone No

A Public Hearing having been requested and/or found to be required, it is ordered by the Zoning Commissioner of Baltimore County, this ___ day of _____ 19__ that the subject matter of this petition be set for a public hearing, advertised, as required by the Zoning Regulations of Baltimore County in two newspapers of general circulation throughout Baltimore County, and that the property be reposted

Zoning Commissioner of Baltimore County

ORDER RE
Date 2/13/94
By [signature]

REVIEWED BY: [signature] DATE: 6/13/94

ESTIMATED POSTING DATE 6/24/94

Printed with Soybean Ink on Recycled Paper

ITEM #: 493

Affidavit in support of Administrative Variance

The undersigned hereby affirms under the penalties of perjury to the Zoning Commissioner of Baltimore County, as follows:

That the information herein given is within the personal knowledge of the Affiant(s) and that Affiant(s) is/are competent to testify thereto in the event that a public hearing is scheduled in the future with regard thereto.

That the Affiant(s) does/do presently reside at 4611 Butler Road
(address)
Glyndon (City) Maryland (State) 21071 (Zip Code)

That based upon personal knowledge, the following are the facts upon which I/we base the request for an Administrative Variance at the above address: (indicate hardship or practical difficulty)

We are demolishing a dilapidated 2-car shed-type garage and want to erect a larger 3-car garage in the style of a Victorian barn. The height variance is requested so that we may build in a loft for additional storage space and so that we may install a cross-gabled roof more in keeping with the style of our house and the contiguous Glyndon Historic District.

That Affiant(s) acknowledge(s) that if a protest is filed, Affiant(s) will be required to pay a reposting and advertising fee and may be required to provide additional information.

(signature) David M. Porter
(type or print name) David M. Porter

(signature) Mary Ellen Porter
(type or print name) Mary Ellen Porter

STATE OF MARYLAND, City COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, this 10th day of June, 19 94, before me, a Notary Public of the State of Maryland, in and for the City aforesaid, personally appeared David M. and Mary Ellen Porter

the Affiants(s) herein, personally known or satisfactorily identified to me as such Affiant(s), and made oath in due form of law that the matters and facts hereinabove set forth are true and correct to the best of his/her/their knowledge and belief.

AS WITNESS my hand and Notarial Seal.

June 10, 1994
(date)

NOTARY PUBLIC

My Commission Expires: 7-1-95

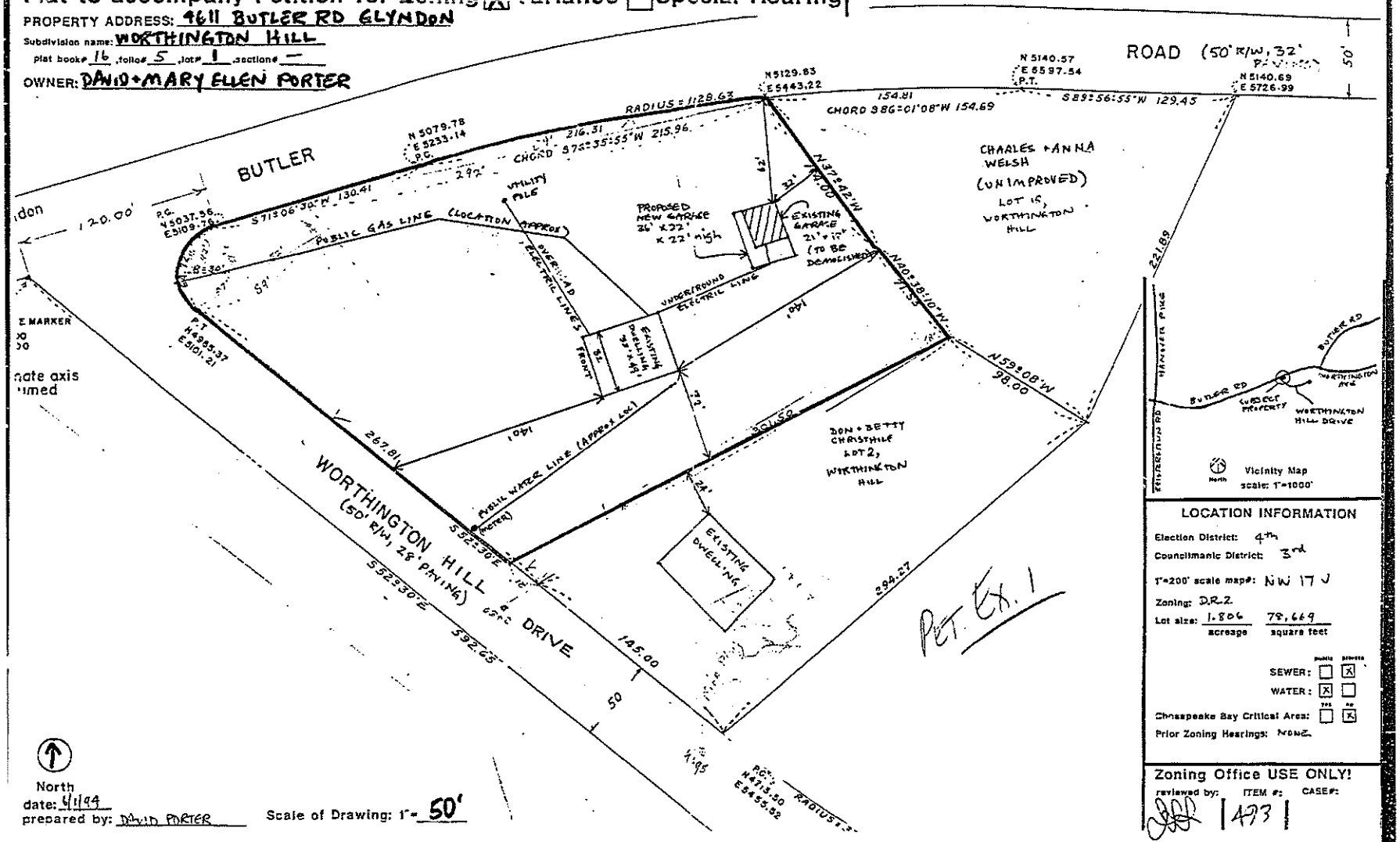
Plat to accompany Petition for Zoning [X] Variance [ ] Special Hearing

PROPERTY ADDRESS: 4611 BUTLER RD GLYNDON

Subdivision name: WORTHINGTON HILL

plat book# 16 folio# 5 lot# 1 section# —

OWNER: DAVID + MARY ELLEN PORTER



Pet Ex. 1

LOCATION INFORMATION

Election District: 4th

Councilmanic District: 3rd

1"=200' scale map#: NW 17 J

Zoning: D.R.2

Lot size: 1.806 acreage / 78,669 square feet

SEWER: [ ] PUBLIC [X] PRIVATE

WATER: [X] PUBLIC [ ] PRIVATE

Chesapeake Bay Critical Area: [ ] YES [X] NO

Prior Zoning Hearings: NONE

Zoning Office USE ONLY!

reviewed by: JJW ITEM #: 173 CASE#:

North

date: 4/1/99

prepared by: DAVID PORTER

Scale of Drawing: 1"= 50'

IN RE: PETITION FOR ADMIN. VARIANCE
SE/Corner Butler Road and
Worthington Hill Drive
(4611 Butler Road)
4th Election District
3rd Councilmanic District

David M. Porter, et ux
Petitioners

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 94-505-A
*

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner as a Petition for Administrative Variance filed by the owners of the property, David M. and Mary Ellen Porter. The Petitioners seek relief from Section 1.1 of the 1945 Baltimore County Zoning Regulations (B.C.Z.R.) to permit a height of 22 feet in lieu of the maximum permitted 15 feet for a proposed accessory structure (detached garage) in accordance with the plat submitted into evidence as Petitioner's Ehxibit 1.

The Petitioners having filed a Petition for Administrative Variance and the subject property having been posted and there being no requests for public hearing, a decision shall be rendered based upon the documentation presented.

The Petitioners have filed the supporting affidavits as required by Section 26-127 (b)(1) of the Baltimore County Code. Based upon the information available, there is no evidence in the file to indicate that the requested variances would adversely affect the health, safety or general welfare of the public and should therefore be granted. In the opinion of the Deputy Zoning Commissioner, the information, pictures, and affidavits submitted provide sufficient facts that comply with the requirements of Section 307.1 of the B.C.Z.R. Furthermore, strict compliance with the B.C.Z.R. would result in practical difficulty and/or unreasonable hardship

ORDER RECEIVED

upon the Petitioners.

Pursuant to the posting of the property and the provisions of both the Baltimore County Code and the B.C.Z.R. having been met, and for the reasons set forth above, the relief requested should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 15th day of July, 1994 that the Petition for Administrative Variance seeking relief from Section 1.1 (1945 B.C.Z.R.), as to its definition of an accessory structure, to permit a height of 22 feet in lieu of the maximum permitted 15 feet for a proposed detached garage in accordance with the plat submitted into evidence as Petitioner's Ehxibit 1, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.

2) The Petitioners shall not allow or cause the accessory structure to be converted to a second dwelling unit and/or apartments. The garage shall contain no living or sleeping quarters, and no kitchen or bathroom facilities. The garage shall be limited to use for storage purposes, only.

3) Upon request and reasonable notice, Petitioners shall permit a representative of the Zoning Enforcement Division to make an inspection of the subject property to insure compliance with this Order in the event it becomes necessary to do so as a result of a complaint.

4) When applying for a building permit, the site plan filed must reference this case and set forth and address the restrictions of this Order.

ORDER RECEIVED FOR Public
Date 7/15/94
By

Timothy M. Kotroco

TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

ADMINISTRATIVE ZONING PETITION

FOR ADMINISTRATIVE VARIANCE – OR – ADMINISTRATIVE SPECIAL HEARING
To be filed with the Department of Permits, Approvals and Inspections
To the Office of Administrative Hearings for Baltimore County for the property located at:

Address 6 FISKE AVENUE, GLYNDON 21071 **Currently zoned** DR-1
Deed Reference 06078 100197 10 Digit Tax Account # 0412020581
Owner(s) Printed Name(s) JOHN MICHAEL O'NEILL & ANN B. O'NEILL

(SELECT THE HEARING(S) BY MARKING X AT THE APPROPRIATE SELECTION(S) AND ADDING THE PETITION REQUEST)

For Administrative Variances, the Affidavit on the reverse of this Petition form must be completed and notarized.

The undersigned, who own and occupy the property situate in Baltimore County and which is described in the plan/plat attached hereto and made a part hereof, hereby petition for an:

1. X **ADMINISTRATIVE VARIANCE** from Section(s) 1B02.3.C.1. ; BCZR, TO PERMIT A SIDEYARD SETBACK OF 6' IN LIEU OF THE REQUIRED 30 FT. AND AN EXISTING SIDEYARD SETBACK OF 2.21' IN LIEU OF THE REQUIRED 20 FT. AND A SUM OF SIDEYARDS OF 8.21' IN LIEU OF THE REQUIRED 50'.
of the zoning regulations of Baltimore County, to the zoning law of Baltimore County.

2. ____ **ADMINISTRATIVE SPECIAL HEARING** to approve a waiver pursuant to Section 32-4-107(b) of the Baltimore County Code: (*indicate type of work in this space: i.e., to raze, alter or construct addition to building*)

of the Baltimore County Code, to the development law of Baltimore County.

Property is to be posted and advertised as prescribed by the zoning regulations.
I/ we agree to pay expenses of above petition(s), advertising, posting, etc. and further agree to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

Owner(s)/Petitioner(s):

JOHN MICHAEL O'NEILL ANN B. O'NEILL
Name #1 – Type or Print Name #2 – Type or Print

Signature #1 Signature # 2

PO Box 5 GLYNDON MD
Mailing Address City State

21071-0005 410-526-5147 jannoneill@verizon.net
Zip Code Telephone # Email Address

Attorney for Owner(s)/Petitioner(s):

Name- Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

ORDER RECEIVED FOR FILING
Date 6-2-15
By (DW)

Representative to be contacted:

Name – Type or Print

Signature

SAME

Mailing Address City State

Zip Code Telephone # Email Address

A PUBLIC HEARING having been formally demanded and/or found to be required, it is ordered by the Office of Administrative Hearings for Baltimore County, this 31 day of _____, _____ that the subject matter of this petition be set for a public hearing, advertised, and re-posted as required by the zoning regulations of Baltimore County.

Administrative Law Judge for Baltimore County

CASE NUMBER 2015-0278A Filing Date 6/3/15 Estimated Posting Date ___/___/___ Reviewer JCM

Rev 08/18/2014

6 Fiske Avenue, Glyndon
John Michael & Ann B. O'Neill

Zoning Application

We are requesting a zoning variance in set-back regulations to allow one or two small additions to be built onto our house. Our house is a small, one-bedroom, one-bathroom cottage built c. 1900. It is located in the Glyndon Historic District of Baltimore County. The current amount of living space is 932 sq. ft. The land area is 1306 sq. ft.

Having only one bathroom and one bedroom places limitations on the use of the house, as does the small area designated as a living room. For example, there is no space for overnight guests, such as our grandchildren. These limitations also extremely affect the future resale market of the property.

This house was built as a small summer cottage, most likely with only one or perhaps two rooms, in the late 1890s or very early 1900s. It was part of a temperance camp-meeting ground established in 1887. Over the decades it has had numerous additions added and porches enclosed, as well as being winterized in the 1940s. There are 12 other original neighboring cottages in what is known as Glyndon Park. All of them have expanded in the same manner, some with additions and changes in footprints in the past two decades. Additionally, all of the cottages are set in very close proximity to one another. Our one next-door-neighbor's cottage is positioned only 4 ft 4 in. from ours. It is the nature of these historic structures to evolve and grow in this way to meet people's needs at various times.

We would like to live our retirement years in this home and very much need certain spaces to do so reasonably and comfortably. Thus we are seeking approval for a small addition (14'x19') to include a small bedroom, a full bath, and a laundry area. We also would like to bump out a rear wall in our living room by three feet to add an additional 39 sq. ft. of living space and the addition of a small fireplace. However, based on the final cost of construction for both additions, we would like the option of deleting the living room expansion from the plan should it exceed our budget.

We also understand, given approval of this requested variance, that our building plans would need the additional approval of the Landmarks Preservation Commission of Baltimore County.

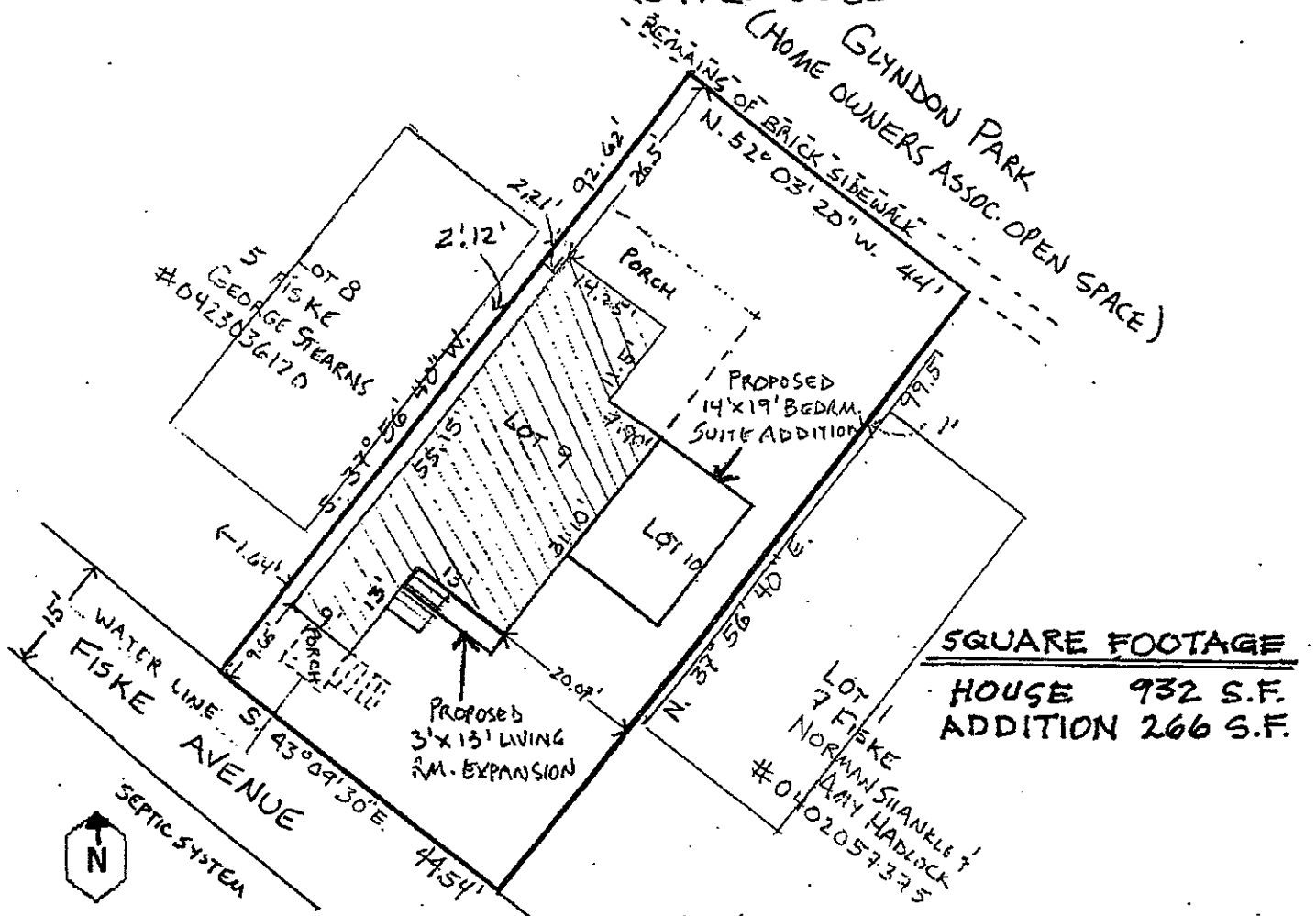
ZONING HEARING PLAN FOR VARIANCE X FOR SPECIAL HEARING ____ (MARK TYPE REQUESTED WITH X)

ADDRESS 6 FISKE AVENUE, GLYNDON OWNER(S) NAME(S) JOHN MICHAEL & ANN O'NEILL

SUBDIVISION NAME GLYNDON PARK CAMP GROUNDS LOT # 9 & 10 BLOCK # ____ SECTION # ____

PLAT BOOK # 239 FOLIO # 426 10 DIGIT TAX # 0412020511 DEED REF. # 0607810019 7

0412020582



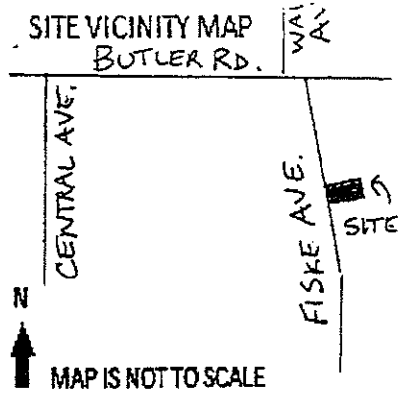
SQUARE FOOTAGE

HOUSE 932 S.F.

ADDITION 266 S.F.

PLAN DRAWN BY ANN O'NEILL DATE 5/30/2015 SCALE: 1 INCH = 20 FEET

SITE VICINITY MAP



MAP IS NOT TO SCALE

ZONING MAP# ____

SITE ZONED DR 1

ELECTION DISTRICT 4

COUNCIL DISTRICT 2

LOT AREA ACREAGE .06

OR SQUARE FEET 2,612

HISTORIC ? YES

IN CBCA ? NO

IN FLOOD PLAIN ? NO

UTILITIES ? MARK WITH

WATER IS:

PUBLIC ✓ PRIVATE ____

SEWER IS:

PUBLIC ____ PRIVATE ✓

PRIOR HEARING ? NO

IF SO GIVE CASE NUMBER AND ORDER RESULT BELOW

VIOLATION CASE INFO:

IN RE: PETITION FOR ADMIN. VARIANCE	*	BEFORE THE
(6 Fiske Avenue)		
4th Election District	*	OFFICE OF ADMINISTRATIVE
2nd Council District		
John M. and Ann B. O'Neill	*	HEARINGS FOR
Petitioners		
	*	BALTIMORE COUNTY
	*	**CASE NO. 2015-0278-A**

* * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Administrative Variance filed by the legal owners of the property, John M. and Ann B. O'Neill. The Petitioners are requesting Variance relief from § 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a side yard setback of 6 ft. in lieu of the required 30 ft. and an existing side yard setback of 2.21 ft. in lieu of the required 20 ft. and a sum of side yards of 8.21 ft. in lieu of the required 50 ft. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners' Exhibit 1.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. There were no adverse ZAC comments received from any of the County reviewing agencies. However, it is to be noted that the Landmarks Preservation Commission (LPC) will consider this application at their next meeting on Thursday, July 9, 2015.

The Petitioners having filed a Petition for Administrative Variance and the subject property having been posted on June 12, 2015, and there being no request for a public hearing, a decision shall be rendered based upon the documentation presented.

The Petitioners have filed the supporting affidavits as required by Section 32-3-303 of the Baltimore County Code (B.C.C.). Based upon the information available, there is no evidence in the file to indicate that the requested variance would adversely affect the health, safety or general

ORDER RECEIVED FOR FILING
Date 7-2-15
By

welfare of the public and should therefore be granted. In the opinion of the Administrative Law Judge, the information, photographs, and affidavits submitted provide sufficient facts that comply with the requirements of Section 307.1 of the B.C.Z.R. Furthermore, strict compliance with the B.C.Z.R. would result in practical difficulty and/or unreasonable hardship upon the Petitioners.

Pursuant to the posting of the property and the provisions of both the Baltimore County Code and the Baltimore County Zoning Regulations, and for the reasons given above, the requested variance should be granted.

THEREFORE, IT IS ORDERED, this 2nd day of **July, 2015**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking Variance relief from § 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a side yard setback of 6 ft. in lieu of the required 30 ft. and an existing side yard setback of 2.21 ft. in lieu of the required 20 ft. and a sum of side yards of 8.21 ft. in lieu of the required 50 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

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

2. Petitioners must comply with the Landmarks Preservation Commission (LPC) comments.

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

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:dlw

ORDER RECEIVED FOR FILING
Date 7-2-15
By

☆8

PETITION FOR ZONING VARIANCE

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: 90-419-SPHA

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a

Variance from Section See Attached

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County: for the following reasons: (indicate hardship or practical difficulty) Lots are locatedin Glyndon Park originally platted by deed in 1906. Home on Lot 18 is existing and predates zoning regs impossible to comply with certain regs. Petitioner is using all of his vacant property (lots 15,16,17) to construct new home. It is impossible to comply with current regulations for DR-2 zone. Home is designed and aligned to be in keeping wit existing homes. Strict application of regulations would prohibit construction of proposed dwelling. Most of the existing homes are located on 20' lots. Petitioner is combining 3 lots - all that are vacant for a house 22' wide.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

I/We do 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 Petition.

Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State

Legal Owner(s):

William A. Fowble, III.
(Type or Print Name)

William A. Fowble III
Signature

(Type or Print Name)

Signature

Attorney for Petitioner:

Charles E. Brooks
(Type or Print Name)

Charles E Brooks
Signature

610 Bosley Avenue
Address

Towson, Maryland 21204
City and State

Attorney's Telephone No.: (301) 296-2600

3 Fiske Avenue 833-9087
Address Phone No.

Glyndon, Maryland 21071
City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

Charles E. Brooks
Name

610 Bosley Avenue 296-2600
Address Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 7th day of March, 1990, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 24 day of April, 1990, at 9:30 o'clock A.M.

J. Robert Haines
Zoning Commissioner of Baltimore County.

(over)

PETITION FOR SPECIAL HEARING

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: 90-419-SPHA

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve

See attached

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of the above Special Hearing advertising, posting, etc., upon filing of this Petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do 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 Petition.

Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State

Attorney for Petitioner:

Charles E. Brooks
(Type or Print Name)

Charles E. Brooks
Signature

610 Bosley Avenue
Address

Towson, Maryland 21204
City and State

Attorney's Telephone No.: (301)296-2600

Legal Owner(s):

William A. Fowble, III
(Type or Print Name)

William A. Fowble III
Signature

(Type or Print Name)

Signature

3 Fiske Avenue 833-9087
Address Phone No.

Glyndon, Maryland 21071
City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

Charles E. Brooks
Name (301)296-2600

610 Bosley Avenue, Towson, MD
Address Phone No.

MAP NW 17-5
D-1
S.D. 474
DATE 12/6/91
ZOO JR
1002
OP G-ZC

ORDERED By The Zoning Commissioner of Baltimore County, this 7 day of March, 1990, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 24 day of April, 1990, at 9:30 o'clock A. M.

J. Robert Haines
Zoning Commissioner of Baltimore County

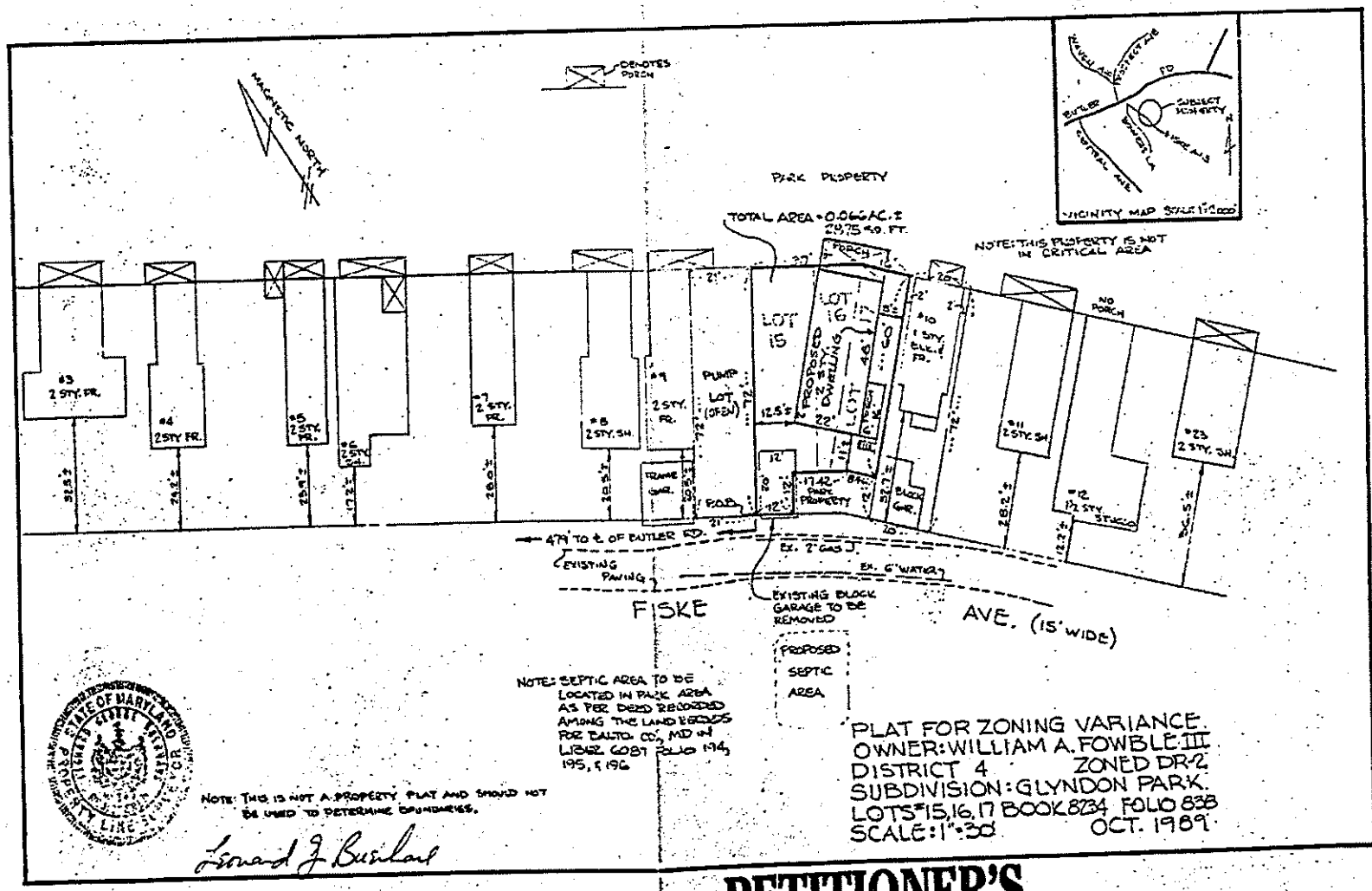
ORDER RECEIVED FOR FILING
Date
By

(over)

Z.C.O.—No. 1

ESTIMATED LENGTH OF HEARING -1/2HR. +1HR.
AVAILABLE FOR HEARING 1/2 DAY
MON./TUES./WED. - NEXT TWO MONTHS
ALL ✓ OTHER
REVIEWED BY: CAM DATE 12 Feb 90

90-419-SPHA



PETITIONER'S EXHIBIT 5

90-419 SPHA

261

IN RE: PETITIONS FOR SPECIAL HEARING AND ZONING VARIANCE
N/S Fiske Ave., 479' E of Butler Road
9-1/2 & 10 Fiske Avenue
4th Election District
3rd Councilmanic District
William A. Fowble, III
Petitioner

BEFORE THE
ZONING COMMISSIONER
OF BALTIMORE COUNTY
CASE # 90-419-SPHA

****

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests a special hearing to approve the placement of a porch and septic area on property other than the subject site and the approval of a lot 2,785 sq.ft. for a single family dwelling in lieu of the required 20,000 sq. ft. and zoning variances from (1) Section 1B02.3.C.1. to permit a dwelling to be constructed on lots 15, 16 and 17 with minimum total width of 37.88 ft. in lieu of the required 100 ft.; (2) Section 1B02.3.C.1. to permit a rear yard depth of 11 ft. in lieu of the required 40 ft.; (3) Section 1B02.3.C.1. to permit individual side yards of 8 ft. and 12.5 ft. in lieu of required 15 ft. minimum and a sum of side yard widths of 20.5 ft. in lieu of required 40 ft.; (4) Section 301.1 to permit a 6 foot wide open porch on S/E side with setback of 2 ft. in lieu of required 11.25 ft.; (5) Section 1B02.3.C.1. to permit dwelling unit to remain as is on 20 ft. lot (lot 18) instead of required 100 ft. with side yard setbacks of 2 ft. on each side in lieu of minimum 15 ft. on each, and a sum of side yards of 4 ft. in lieu of required 40 ft., as more particularly described on Petitioner's Exhibit 1.

The Petitioner, William A. Fowble, III, appeared, testified and was represented by Charles E. Brooks, Esquire. Appearing on behalf of Petition was Ralph Driscoll. Appearing and testifying as Protestants were Michael and

ORDER RECEIVED FOR FILING
Date 5/9/90
By M. Norsh

Ann O'Neill and Eileen Wuerthele. Appearing and noting their opposition to Petitioner's request were Elizabeth Steele, Sharon Herb, Eleanor H. Taylor, Anna Welsh, Samuel E. Scruggs and Ellen Cray.

Testimony indicated that the subject property known as 9-1/2 and 10 Fiske Avenue consists of .066 acres +/- zoned D.R.2 and is currently unimproved. Testimony indicated that the subject property is located within the "historic" Glyndon area adjoining Glyndon Park, as indicated on Petitioner's Exhibit No. 1.

The Petitioner testified that he is desirous of constructing a single family dwelling on combined lots No. 15, 16 and 17 with a 22 x 48 ft. footprint. Testimony indicated that the subject lots predate 1945. The Petitioner also desires to place a porch on the southeast side of the proposed house which will extend onto park property, as well as the proposed septic system, also to be located on Park property. The Petitioner testified that, pursuant to the deed of easement dated September 7, 1979, the Petitioner has the permission of the Glyndon Park Chatauqua Association to locate the septic system on park property. The Petitioner further testified that the rear of the proposed house will face Fiske Avenue from which a driveway will be constructed. The Petitioner concluded by stating that the proposed house would be consistent with the existing architecture in the neighborhood and, also, that should the requested relief be denied, he would suffer an undue hardship and practical difficulty.

Mr. Ralph Driscoll testified that he has lived in this community for the past 67 years. Mr. Driscoll testified that he has known the Petitioner and his family for many years and is familiar with the Petitioner's plans for the subject property. Mr. Driscoll testified that he supports Petition-

ORDER RECEIVED FOR FILING
Date 5/9/90
By M. Novak

er's request and believes that Petitioner's proposed home would be complimentary to this community.

Mr. J. Michael O'Neill appeared as a Protestant and testified that his primary concern, regarding the Petitioner's request, was safety. Mr. O'Neill testified that Fiske Avenue is an extremely roadway with vehicular parking on one side of the roadway only. He testified that he was concerning that Petitioner's proposed house will not match the architecture of the existing dwellings and that the proposed house is too large for the subject site.

Mrs. Ann O'Neill testified and concurred with the testimony of her husband.

After due consideration of the testimony and evidence presented, it is clear that a practical difficulty or unreasonable hardship would result if the relief requested in the special hearing were not granted in part. It has been established that the requirements from which the Petitioner seeks relief would unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the relief requested, if granted in part, will not be detrimental to the public health, safety and general welfare.

Based upon the testimony and evidence presented, it is clear that the Zoning Commission lacks authority to grant variance relief on property not owned by the Petitioner or properly brought under his jurisdiction by a properly filed Petition. Therefore, the special hearing relief relative to the subject porch must be denied. However, as Petitioner does have permission and authority, pursuant to the Confirmatory Deed of Easement, marked Petitioner's Exhibit No. 7, to locate the proposed septic system on park property, the special hearing request relative to the septic system shall be

ORDER RECEIVED FOR FILING
Date 7/9/90
By

granted. Further, Petitioner's special hearing request for a lot of 2,875 sq. ft. for single family dwelling in lieu of the required 20,000 sq. ft. shall be granted.

The Petitioner has also requested variance relief which is set forth specifically above.

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

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

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

It is clear from the testimony that if the variance is granted, such use as proposed would not be contrary to the spirit of the B.C.Z.R. and would not result in substantial detriment to the public good.

After due consideration of the testimony and evidence presented, it is clear that a practical difficulty or unreasonable hardship would result if the variances were not granted. It has been established that the requirements from which the Petitioner seeks relief would unduly restrict the use of the land due to the special conditions unique to this particular parcel.

ORDER RECEIVED FOR FILING
Date 5/9/90
By M. Novak

In addition, the variances requested will not be detrimental to the public health, safety and general welfare.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 9th day of May, 1990 that Petition for Special Hearing to approve the construction of a porch extending onto property not owned by Petitioner is hereby DENIED; and,

IT IS FURTHER ORDERED that the Petition for Special Hearing to approve the placement of a septic area on property other than that of Petitioner, pursuant to the Confirmatory Deed of Easement, marked Petitioner's Exhibit No. is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Special Hearing to grant a lot of 2,875 sq. ft. for a single family dwelling in lieu of the required 20,000 sq. ft. is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Zoning Variance from Section 1B02.3.3.C.1 to permit a dwelling to be constructed on lots 15, 16 and 17 with a minimum total width of 37.88 ft. in lieu of the required 100 ft. is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Zoning Variance from Section 1B02.3.C.1. to permit a rear yard depth of 11 ft. in lieu of the required 40 ft. is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Zoning Variance from Section 1B02.3.C.1. to permit individual side yards of 8 ft. and 12.5 ft. in lieu of required 15 ft. minimum and a sum of side yard widths of 20.5 ft. in lieu of required 40 ft. is hereby GRANTED; and,

ORDER RECEIVED FOR FILING
Date 5/9/90
By

IT IS FURTHER ORDERED that the Petition for Zoning Variance from Section 301.1 to permit a 6 foot wide open porch on S/E side with setback of 2 ft. in lieu of required 11.25 ft. is hereby DENIED; and,

IT IS FURTHER ORDERED that the Petition for Zoning Variance from Section 1B02.3.C.1. to permit dwelling unit to remain as is on 20 ft. lot (lot 18) instead of required 100 ft. with side yard setbacks of 2 ft. on each side in lieu of minimum 15 ft. on each, and a sum of side yards of 4 ft. in lieu of required 40 ft., is hereby GRANTED, subject, however, to the following restrictions which are conditions precedent to the relief granted herein:

1. The Petitioner may apply for his building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.

2. Upon request and reasonable notice, the Petitioner shall permit a representative of the Zoning Enforcement Division to make an inspection of the subject property to insure compliance with this Order.

3. The subject property shall be developed as a single family dwelling unit only.

J. Robert Haines
J. ROBERT HAINES
Zoning Commissioner for
Baltimore County

ORDER RECEIVED FOR FILING
Date 5/9/90
By M. Bowles

JRH:mmn
cc: Peoples Counsel
cc: Protestants

TAX ACC# 04 02058500 ★9

Petition for Administrative Variance

to the Zoning Commissioner of Baltimore County

for the property located at 4719 Butler Rd

which is presently zoned DR1

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s) BCZR 1B02.3.C.1

To permit an addition in the side yard of a single family dwelling with a side yard setback of 15ft and a sum of the side yards of 44ft in lieu of the required setbacks of 20ft and 50ft respectively.

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the reasons indicated on the back of this petition form.

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Variance, 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.

I/We do 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 Petition.

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address Telephone No.

City State Zip Code

Legal Owner(s):

Diane C. Flayhart
Name - Type or Print

x Diane C Flayhart
Signature

William H. Flayhart
Name - Type or Print

x [signature]
Signature

4719 Butler Rd. 410-526-2134
Address Telephone No.

Glyndon MD 21071
City State Zip Code

Representative to be Contacted:

Name

Address Telephone No

City State Zip Code

A Public Hearing having been formally demanded and/or found to be required, it is ordered by the Zoning Commissioner of Baltimore County, this ____ day of _____, _____ that the subject matter of this petition be set for a public hearing, advertised, as required by the zoning regulations of Baltimore County and that the property be reposted.

Zoning Commissioner of Baltimore County

CASE NO. 08-308-A **Reviewed By** AT/[illegible] **Date** 1/14/08

REV 10/25/01

[illegible] 2-21-08

Estimated Posting Date _____

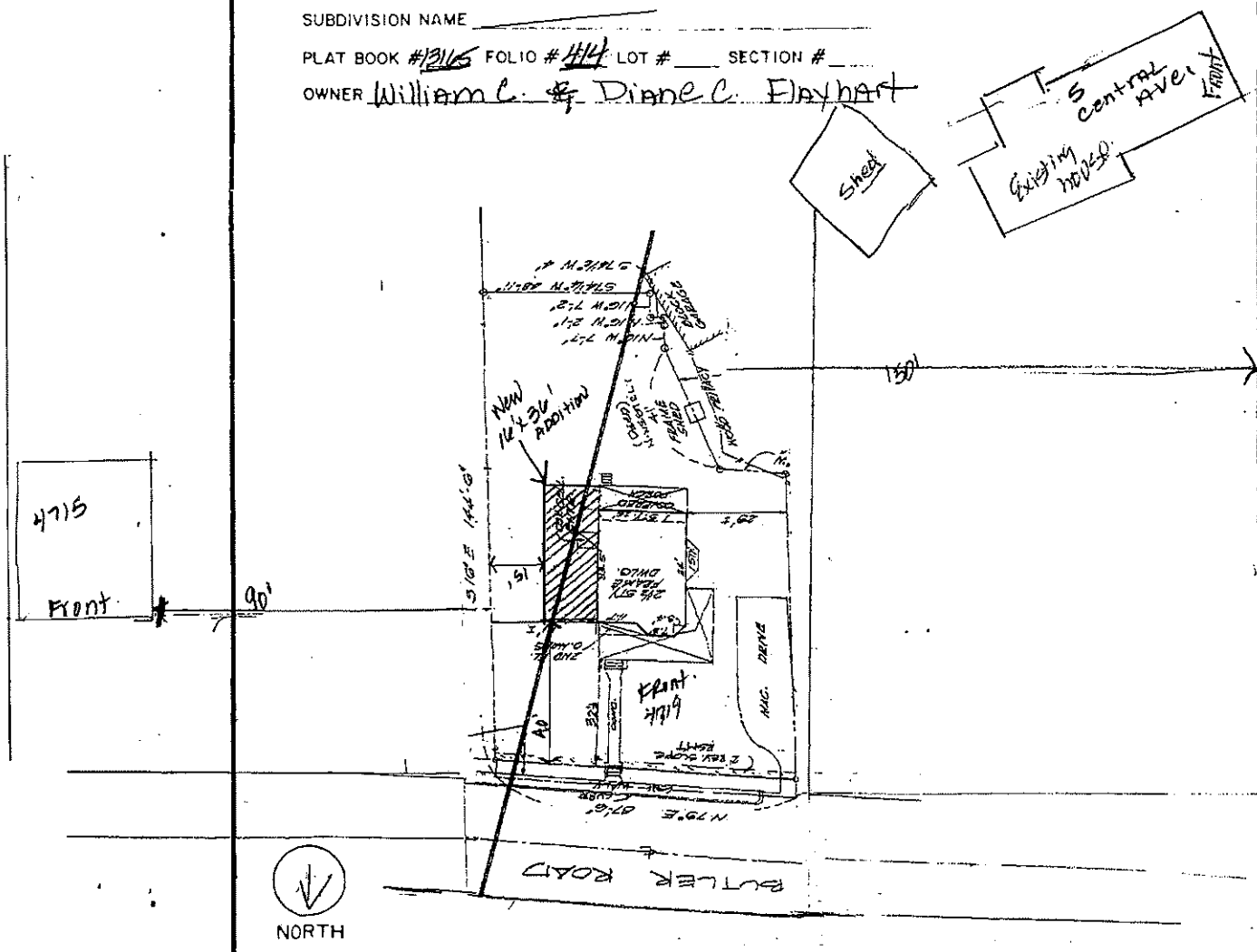
PLAT TO ACCOMPANY PETITION FOR ZONING [X] VARIANCE [ ] SPECIAL HEARING

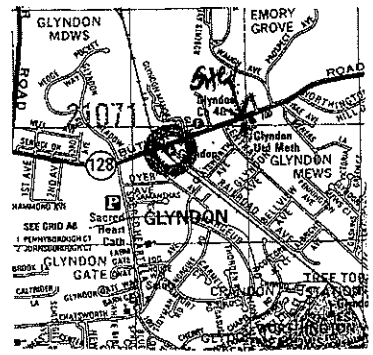
PROPERTY ADDRESS 4719 Butler Road — SEE PAGES 5 & 6 OF THE CHECKLIST FOR ADDITIONAL REQUIRED INFORMATION

SUBDIVISION NAME _____

PLAT BOOK # 13165 FOLIO # 414 LOT # ____ SECTION # ____

OWNER William C. & Diane C. Elyhart





VICINITY MAP
SCALE: 1" = 1000'

LOCATION INFORMATION

ELECTION DISTRICT 4th

COUNCILMANIC DISTRICT 3rd

1"=200' SCALE MAP # 084C1

ZONING DR1

LOT SIZE ____ ACREAGE 12901 SQUARE FEET

	PUBLIC	PRIVATE
SEWER	[X]	[ ]
WATER	[X]	[ ]

	YES	NO
CHESAPEAKE BAY CRITICAL AREA	[ ]	[X]
100 YEAR FLOOD PLAIN	[ ]	[X]
HISTORIC PROPERTY/ BUILDING	[ ]	[ ]

PRIOR ZONING HEARING N/A.

ZONING OFFICE USE ONLY

REVIEWED BY	ITEM #	CASE #
LW/ATeam	308	08-308-A

NORTH

PREPARED BY Beverly True

SCALE OF DRAWING: 1" = 30'

IN RE: PETITION FOR ADMIN. VARIANCE S side Butler Road, 200 feet E of c/l Central Avenue 4th Election District 3rd Councilmanic District **(4719 Butler Road)** Diane C. and William H. Flayhart *Petitioners*	*	BEFORE THE DEPUTY ZONING COMMISSIONER FOR BALTIMORE COUNTY **Case No. 08-308-A**

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Administrative Variance filed by the legal owners of the subject property, Diane C. and William H. Flayhart for property located at 4719 Butler Road. The variance request is from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an addition in the side yard of a single family dwelling with a side yard setback of 15 feet and a sum of the side yards of 44 feet in lieu of the required setbacks of 20 feet and 50 feet respectively. The subject property and requested relief are more particularly described on Petitioners' Exhibit No. 1. The Petitioners wish to construct an addition measuring 16 feet x 36 feet in size. The addition will contain a family room and library. Due to the location of the existing home and driveway it would be difficult to place the addition anywhere else on the property. The home was constructed in 1886, long before the imposition of DR 1 zoning on the property.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The comments indicate no opposition or other recommendations concerning the requested relief.

RECEIVED FOR FILING
Date 2.21.08
By

The Petitioners having filed a Petition for Administrative Variance and the subject property having been posted on January 27, 2008 and there being no request for a public hearing, a decision shall be rendered based upon the documentation presented.

The Petitioners have filed the supporting affidavits as required by Section 32-3-303 of the Baltimore County Code. Based upon the information available, there is no evidence in the file to indicate that the requested variance would adversely affect the health, safety or general welfare of the public and should therefore be granted. In the opinion of the Deputy Zoning Commissioner, the information, photographs, and affidavits submitted provide sufficient facts that comply with the requirements of Section 307.1 of the B.C.Z.R. Furthermore, strict compliance with the B.C.Z.R. would result in practical difficulty and/or unreasonable hardship upon the Petitioners.

Pursuant to the posting of the property and the provisions of both the Baltimore County Code and the Baltimore County Zoning Regulations, and for the reasons given above, the requested variance should be granted.

THEREFORE, IT IS ORDERED, by the Deputy Zoning Commissioner for Baltimore County, this 21st day of February, 2008 that a variance from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an addition in the side yard of a single family dwelling with a side yard setback of 15 feet and a sum of the side yards of 44 feet in lieu of the required setbacks of 20 feet and 50 feet respectively is hereby GRANTED, subject to the following:

1. The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.

ORDER RECEIVED FOR FILING
Date 2.21.08
By

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

THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz

RECEIVED FOR FILING
Date 2-28-08
By PZ

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

IN THE MATTER OF THE THE APPLICATION OF RONALD F. JONES, ET UX FOR A SPECIAL HEARING AND VARIANCE ON PROPERTY LOCATED ON THE NORTHEAST SIDE OF CENTRAL AVENUE, 60 FEET SOUTHEAST OF GLYNDON AVENUE (209 CENTRAL AVENUE 4TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 89-396-SPHA

* * * * * * * * * * *

NOTICE OF DISMISSAL

MADAM CLERK:

Please dismiss the above case pursuant to Maryland 2-506. This case is an appeal filed pursuant to Md. Rules B-13, Administrative Agencies.

Respectfully submitted,

Nevett Steele, Jr.
211 Central Avenue
Glyndon, MD 21071
(301) 296-8164 (Work)
(301) 833-6564 (Home)

Elizabeth B. Steele
211 Central Avenue
Glyndon, MD 21071
(301) 833-6564 (Home)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of May, 1991, a copy of the foregoing Order for Appeal was mailed to Eleanor J. Lipsitz, Esquire, 100 Church Lane, Baltimore, Maryland 21208; Charles B. Heyman, Esquire, Kaplan, Heyman, Greenberg, Engleman & Belgrad, P.A., Tenth Floor, Sun Life Bldg., 20 S. Charles Street, Baltimore, MD 21201; and Linda Kuszmaul, Board of Appeals, 111 W. Chesapeake Avenue, Towson, Maryland 21204.

Nevett Steele, Jr.

- 2 -

IN THE MATTER OF THE THE APPLICATION OF THE HOMESTEAD GROUP, LTD. AND RONALD F. JONES, ET UX FOR A SPECIAL HEARING AND VARIANCE ON PROPERTY LOCATED ON THE NORTH-EAST SIDE OF CENTRAL AVENUE, 60 FEET SOUTHEAST OF GLYNDON AVENUE (207 AND 209 CENTRAL AVENUE, RESPECTIVELY) 4TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 89-16-SPHA AND 89-396-SPHA

* * * * * * * * * * *

OPINION

These two cases 89-396-SPHA, Ronald F. Jones, et ux, and 89-16-SPHA, The Homestead Group, Ltd., come before this Board on appeal from a ruling of the Zoning Commissioner denying in part and granting in part said Petitions. These two cases consumed some five days of testimony and evidence.

It is important at the outset to establish just what issues the Board is confronted with. In 89-396-SPHA, the matter is whether or not the structure at 209 Central Avenue is in fact a nonconforming use for six apartments, a variance to permit side yard setbacks of 12 feet zero inches and 12 feet six inches in lieu of the required 20 foot setback for one side and 40 feet or 50 feet the sum of both sides and to permit a total lot width of 65 feet in lieu of the required 90 feet. In case 89-16-SPHA, the Petition is for the Board to find that lot 207 Central Avenue is totally separate from Lot 209 and is unencumbered by any use of 209 and to permit the erection of a building on a 65 foot lot (207) in lieu of the 70 foot lot width in a D.R.3.5 zone. The proposed building to be totally within the D.R.3.5 zoned area.

Counsel for the Petitioner in 89-396-SPHA made Motion to dismiss Protestants' appeal claiming that the required notice period before the Zoning Commissioner was not complied with and

therefore this Board lacks jurisdiction to hear the case. The Board denied this Motion and assumed jurisdiction.

In light of the fact that much testimony and evidence to be received would be pertinent to both cases, it was decided to hear the cases in combination. At the conclusion of the second witness it became obvious that it was impractical to try these as combined cases and the decision was made to bifurcate the cases and hear case 89-396-SPHA first with the understanding that the testimony and evidence received from the first two witnesses could be applied to both cases.

Much of the testimony received in these five days of hearing was cumulative, was not on point, was alleged testimony, and was to some degree hearsay evidence which in an administrative hearing is permitted. The testimony of each witness will not be detailed in this opinion but let the record speak for itself.

A very brief encapsulation of each witness who testified and their position on the matter before the Board will be stated. Ronald Jones purchased the property known as 209 Central Avenue in June of 1988. It was his understanding that this was a six apartment building with 27 rooms and it was his intention to continue this use. Mr. Jones was aware that in March of 1989 the adjoining vacant lot known as 207 Central Avenue had been sold. Zelma Ensor, a real estate broker, testified as to her familiarity with the property at 209, testified that it had always been an apartment use, that it constituted no detriment to the health and welfare of the neighborhood, and that the house planned for construction on 207 would be nonobjectionable and the plans had

been accepted by the Landmarks Commission. Aileen Singer testified that she owned Lots 209 and 207 Central Avenue since 1978. She testified as to the use of the property as six apartments, two on each floor, and that she sold it to Mr. Jones as a six apartment use. She alleged that she inquired from Baltimore County as to the feasibility to the separate sale of Lot 207 and received assurances that there was no problem. Cookie Stone, a real estate agent, testified that she handled the sale of 209 Central Avenue.

On July 24, 1990, testimony was taken from Mrs. Sue Susimehl who is 88 years old and resides in California. All proper parties were present for this telephone testimony. Mrs. Susimehl testified that she purchased the two lots in 1941 and that the building on 209 was in existence but was not converted to apartments. Beginning in 1941, she and her husband converted the building to six apartments complete with individual and separate electric meters, kitchens, baths, etc. Her husband, an electrical contractor, did most of the work and the plumbing work was done by a man named Zepp. As this conversion project was undertaken during World War II, plumbing and electrical supplies were scarce. It was Mrs. Susimehl's testimony that because of this scarcity, this conversion took several years but was completed in 1945. It was interesting to the Board to note that this 88 year old lady not only remembered the six apartments but the name of each renter in each apartment. She testified that she sold the property to a Mr. Redder in 1966. She testified that there were six parking spaces along the side of the house adjacent to 207 and that while 207 was used as a driveway it was just a dirt driveway. This concluded

Mrs. Susimehl's testimony. This same day testimony was received from James E. Redder, a long time Glyndon resident. He testified that he purchased 209 and 207 in 1966 for an investment only and that he never lived there but that its use at that time was identical to what it was in 1945, six apartments. He testified that he sold the two lots in 1968 and th t no further improvements had been made to the property. Testimony was then taken from Thaddeus Hense, an attorney who specializes in title searches. He testified that he did a title search of 209 as far back as 1926 and that 209 and 207 were always two separate recorded lots. Cookie Stone was recalled as the real estate agent involved int he sale and testified that in 1970, she listed the property as two parcels and another agent sold them and that she checked with Baltimore County to see if the parcels could be separated and was so assured. Colleen Thompson Chance, another real estate agent, testified that she listed the properties in December of 1987 and was assured by Baltimore County that they were two separate parcels. This concluded Petitioner's case in 89-396-SPHA. Protestants presented Carol Ann Wildesen, the real estate agent involved in the sale of 207. She testified that she checked the Land Records to see if these were separate parcels and found this to be true. It was her testimony that there was no question that this was a separate lot entitled to all the privileges attached thereto. Ronald Jones was recalled and testified that when he purchased 209, 207 had already been sold. Mark Laken, President of the Glyndon Community Association, entered their opposition to the granting of these two Petitions. Eleanor Taylor, a member of Historic Glyndon, Inc.,

read into the record their position in opposition to the granting of these Petitions. She further testified that she was acquainted with the property at 209 which prior to 1940 was first a boarding house and then converted to multiple apartments. Nevitt Steele who lives at 211 Central Avenue, next door to 209, testified as to his opposition to the two Petitions. It was his contention that 207 had always been the parking lot for 209 and that if this property is bifurcated from 209 that the six unit apartment building would no longer be a nonconforming use. This concluded Protestants case in 89-396-SPHA. Testimony was then received in case 89-16-SPHA, The Homestead Group. The first witness from the Homestead Group was Audrey Fox, President of the Homestead Group - Builders. She testified that their business was the design of homes to suit specific sites and specific areas. She testified that the proposed home was approved by the Landmarks Commission and of their agreement to relocate the driveway from 207 to 209. She entered the plans for the proposed building and testified that the proposed house met with approval of both the Landmarks Commission and the National Historic Register. William F. Kirwin, a land planner, testified that this lot is 65 feet wide by some 390 feet deep and that the proposed house meets all the side yard requirements and the only variance needed is the lot width in D.R.3.5 requiring an area variance from 70 feet to the 65 feet as the lot exists. Aileen Singer was then called in this case. She testified that the two lots had always been separate. She further testified that she inquired from Baltimore County as to whether a residence could be built on 207 and as far as she knew there were no problems.

Colleen T. Chance, the real estate agent, testified she listed 207 and 209 Central Avenue as two listings and was assured by Baltimore County that these were separate and buildable lots. Cookie Stone, a real estate agent actually involved in the sale, testified that she sold 207 to the Homestead Group as a buildable lot. This was the last witness for the Petitioner. Protestants presented Eleanor Taylor who testified as a member of the Board of Historic Glyndon and indicated their opposition to the variance as to lot width. She testified that Glyndon Park was founded in 1887 as a vacation resort and that there were large open areas in front of these buildings. In addition to the Board's opposition, she testified to her personal opposition since the proposed house would severely reduce the open space now existing on these two lots. Charles Wells, a member of the Board of the Glyndon Community Association, voiced their objection to the variance and testified that it would change the character of the neighborhood. Nevitt Steele, the neighbor of 209 Central Avenue, testified to his opposition to the granting of the variance. He testified it was his opinion that 209 was already in violation and that to grant the variance would put both lots in violation. He also testified that he attended the April, 1988 Land Preservation Meeting, looked at the plans for 207 and voiced no objection at that time. This concluded Protestants testimony in case 89-16-SPHA. The Board will once again reiterate that the aforegoing encapsulation is in no way intended to portray the depth and detail of all the testimony which is a part of the case record.

A10

Sometime prior to January 2, 1945, a structure was erected on lots 207 and 209. Since 1947, an apartment house consisting of at least four apartment units was maintained on lots 207 and 209. Since January 2, 1945 through 1988, a driveway and parking lot serving the building situated on lot 209 has been maintained on lot 207.

Notwithstanding the areas of agreement, several key facts remain in dispute. There is a genuine dispute as to whether an apartment dwelling was situated on lots 207 and 209 prior to January 2, 1945. Petitioners' Exhibit 3, an out of court statement not subject to cross-examination, indicates that property "consisting of house and lot at 209 Central Avenue" were purchased by Louis E. and Anita C. Susemihl on March 27, 1941. This statement further asserts that "upon settlement," the Susemihls "remodeled house into six apartments - two on each floor." Mr. Reter, who purchased lots 207 and 209 in 1965, recalls delivering groceries to the "apartment house" in the 1946 to 1947 time frame. Mr. Reter was born on October 24, 1931. Ms. Enzer testified that lots 207 and 209 were used for an apartment building since 1941. Mrs. Hammond testified that substantial improvements were made to the structure erected on lot 209 during the summer of 1947. Protestants' Exhibit 11, which consists of tax assessment records indicates that a dramatic increase in the assessed value of the improvements to lots 207 and 209 occurred in 1947.

The evidence presented before the Zoning Commissioner does not conclusively show that an apartment building with six units existed on January 2, 1945. The most likely scenario given the facts presented, is that the house was converted to an apartment house in 1947. This conversion was not consistent with the Baltimore County Zoning Regulations and effectively created an illegal apartment use. Since this use is illegal, the Petitioners' request for the Zoning Commissioner to determine that a legal nonconforming use exists should be denied.

Assuming, arguendo, that the Zoning Commissioner finds that a legal nonconforming use existed as of January 2, 1945, this use must be defined. Given the undisputed testimony, it is clear that any nonconforming apartment use included lots 207 and 209. The improvements to lot 207 (parking lot and driveway) were devoted to the apartment building situated on lot 209. In fact, the nonconforming use can only be defined as one parcel (lots 207 and 209) with improvements (apartment house, parking lot and driveway).

The erection of a single family dwelling on lot 207 is a change to another use. The nonconforming use encompasses the entire parcel of land. Employing a portion of this parcel for another legal use, a single family dwelling, is in violation of Section 104.1. When there is any change from a nonconforming use to any other use whatsoever, the right to continue or resume such nonconforming use shall terminate.

The factors set forth in McKemy also indicate that the proposed activity on lots 207 and 209 is not within the scope of the original nonconforming use. The proposed use, as a six unit apartment and single family dwelling, does not reflect the nature and purpose of the original nonconforming use. The original nonconforming use permitted a very large structure to fit into the ambiance and character of Historic Glyndon. The open space created by the landscaped areas of lot 207 diminished the impact of the oversized apartment building and provided an architectural scope to the large structure which was more in keeping with the expansive front yards and green spaces of Central Avenue.

The proposed use is different in character, nature and kind from the original nonconforming use. The original use was a single structure containing between four and six apartment units. The proposed use shall include the addition of a use permitted as a matter of right in a wholly new structure. The character of the parcel will change dramatically in that the land area dedicated to buildings will increase by almost two fold. The parking and driveway access previously situated on lot 207 is now cramped onto lot 209. Two driveway accesses are now required where only one was needed previously. The additional driveway access chops up the expansive lawn area which was consistent with the historic ambiance and especially open character of the community.

The proposed use will have a substantially different effect upon the neighborhood. The original use, although expansive in size and impact, was when placed in the context of

the total parcel, was more in keeping with the general character of the neighborhood. If the proposed single family dwelling is permitted on lot 207, there will be an overcrowding of the land and a degradation of the large lot, expansive open space, and pleasant landscaping and lawns previously associated with this portion of Central Avenue. Additionally, if all of the relief requested is granted, it will serve to encourage other owners to sell off adjacent "double lots," create additional variance requests, overcrowd Historic Glyndon and lead to the disintegration of the character of the community.

The proposed use is also a drastic enlargement or extension of the original nonconforming use. The relocation of the parking lot and driveway to lot 209 and proposed erection of a single family dwelling on lot 207 are an expansion, and not a mere intensification of the nonconforming use. See Odell v. City of Fagen, Young v. Board of Zoning Appeals, Huse v. Zoning Hearing Board, Jahnigen v. Staley, and Phillips v. Zoning Commissioner, supra.

The footprint of the existing apartment dwelling, including the front porch, equals 2,290 square feet. The footprint of the proposed single family dwelling is approximately 1,640 square feet. This represents a greater than 70 percent increase in the land area committed to structures. Section 104.1 only permits an extension of up to 25 percent of the ground floor area of buildings so used. This 70 percent extension of the ground floor area of the apartment building is clearly in violation of Section 104.1 and a drastic enlargement or extension

of the original nonconforming use. After reviewing the factors set forth in McKemy, it is clear that the proposed uses are not within the scope of the original nonconforming use. As such, the Zoning Commissioner should deny the Petition for Special Hearing to approve a multifamily apartment dwelling and lot at 209 Central Avenue as a legal nonconforming use for six apartment units.

(b) Conversion of Dwellings Pursuant to Section 402.

Section 402 permits the conversion of dwellings for residential uses. The dimensional requirements are set forth in a conversion table found on Page 4-3, RC2R. Protestants' Exhibit 7 is two letters which address, among other things, the application of Section 402 to the instant case. One letter, is from Messrs. Kellman and Dyer of the Office of Planning and Zoning to Ms. Coleen Thompson, Realtor for the Singers in the sale of lot 209 to the Joneses. The other portion of Protestants' Exhibit 7 is a letter from Messrs. Richards and Dyer to Mr. Steele. Both letters analyze the conversion of the existing improvements on lot 209 pursuant to the tables contained in Section 402. The conclusion reached by the zoning office is that only two units are allowed under County law.

Mr. Malmud, a land surveyor, testified on behalf of the Joneses that the conversion tables of Section 402 would permit a conversion to six units on lot 209. Mr. Malmud disagreed with the conclusions reached in Protestants' Exhibit 7 by the zoning office . Mr. Malmud did not offer any explanation for his disagreement with the zoning office opinions of Messrs. Dyer,

Richards and Kellman and did not present any calculations based upon Section 402 to show that six units were permitted. Further, Petitioners' Exhibit 7, the Plat to Accompany Zoning Petition for Special Hearing, indicates minimum frontage and lot area requirements. According to Mr. Malmud, 150 feet of frontage is required, while 65 feet is provided. Additionally, 28,500 square feet of lot area is provided, while 25,449 square feet is provided. Mr. Malmud could not indicate where these requirements are set forth in the Zoning Regulations. Nor does the Petition for Zoning Variance seek relief for the minimum lot area required as shown on the Petitioners' Exhibit 7.

The evidence clearly shows that only two apartment units are permitted pursuant to Section 402. The evidence also brings into question whether the lot area requirements as shown on Petitioners' Exhibit 7 have been met. A variance of this asserted lot area requirement has not been requested.

2. Petition for Zoning Variance (209)

The Petition for Zoning Variance seeks relief from the side yard and lot width requirements of the Zoning Regulations. Section 307 sets forth the test for the granting of any variance from the bulk regulations. Such variances should be granted only in cases where strict compliance with the Zoning Regulations would result in practical difficulty or unreasonable hardship. Furthermore, any such variance should be granted only if in strict harmony with the spirit and intent of the bulk regulations, and only in such manner as to grant relief without substantial injury to public health, safety and general welfare.

The need sufficient to justify a variance must be substantial and urgent and not merely for the Petitioners' convenience. McLean v. Soley, 270 Md. 208, 310 A.2d 783 (1973). A petitioner seeking a variance must exercise proper diligence in ascertaining zoning requirements prior to acquiring property in order to avoid a resultant hardship. If such diligence is not exercised, the hardship is self-created and the variance may be properly refused. Wilson v. Mayor and Commissioners of Town of Elkton, 35 Md. App. 417, 371 A.2d 443 (1977). If the grant of a variance would effect the aesthetic ambiance of the residences in the immediate area, such variance would be in disharmony with the spirit and intent of the Zoning Regulations. Dahl v. County Board of Appeals of Baltimore County, 258 Md. 257, 265 A.2d 227 (1970). The mere fact that a variance, if granted, would make the property more profitable is not a sufficient ground to justify the relaxation of bulk requirements. Easter v. Mayor and City Council of Baltimore, 195 Md. 395, 73 A.2d 491 (1950).

If the peculiar circumstances which render property incapable of meeting the zoning requirements have themselves been caused or created by the property owner or his predecessor in title, the essential basis of a variance is lacking. An act on the part of the property owner or his predecessor which has physically so affected the property as to create a unique circumstance or which in itself created either a practical difficulty or hardship in conforming to the restrictions of the Zoning Regulations bars relief. Salisbury Board of Zoning Appeals v. Bounds, 240 Md. 547, 214 A.2d 810 (1965).

The undisputed testimony indicates that the Joneses went to settlement on June 24, 1988. It is also undisputed that prior to settlement, Mr. Steele conversed with the Joneses and their counsel regarding the potential zoning violations surrounding the proposed uses for lots 207 and 209. Protestants' Exhibit 10 is a letter sent to the Joneses' counsel prior to their settlement confirming the existence of these issues and concerns. The record is so filled with examples of notice to the Joneses' predecessor in title, the Singers, it is unnecessary to reiterate them in this memorandum. Suffice it to say that Mr. Steele placed the Singers on notice of the potential zoning problems associated with their proposed uses of lots 207 and 209 prior to the respective settlements for lots 207 and 209..

The variances requested must be denied based upon the doctrine of self-inflicted hardship. Had the Singers or the Joneses acted with reasonable diligence regarding lot 209, they would have either obtained written confirmation from the zoning office that the proposed use of lot 209 as a six unit apartment was consistent with the Zoning Regulations or had filed the appropriate petitions to confirm compliance. At best, the realtor for the Singers received oral information from a zoning technician the exact substance and basis for which is clearly in question. Because the Petitioner did not act diligently and inflicted the hardship from which it seeks relief, the variances requested must be denied.

B. 207 CENTRAL AVENUE

1. Petition For Special Hearing.

Assuming, arguendo, that the Petitioner is not barred by the doctrine of self-inflicted hardship, the only testimony offered regarding compliance with the requirements of Section 307 came from Mr. Malmud. Mr. Malmud testified that the important requirements of Section 307 have been met. However, he merely stated conclusions without supporting them by explanation or reference to the facts of the case.

Mr. Malmud's credibility and credentials as an expert witness were severely called into question during the hearing. Mr. Malmud was offered as a "surveyor." He was not offered as an expert in real estate appraisal, civil engineering or land planning. Additionally, Mr. Malmud had not even read the petitions for special hearing or zoning variance filed by his clients, the Joneses. Further, his superficial analysis of Section 402 and the zoning office's interpretation of same genuinely call into question Mr. Malmud's ability to interpret the Zoning Regulations.

The record contains grossly insufficient evidence to support the requirements of Section 307. The Petitioner, who clearly has the burden of proving practical difficulty or unreasonable hardship pursuant to the Zoning Regulations, has failed to offer any substantial evidence in support of its Petition for Zoning Variance. Since the Petitioner has failed to meet its burden under Section 307, the Petitions for Zoning Variance must be denied.

In Muse v. Zoning Hearing Board, 415 A.2d 1255 (Pa. Cmwlth., 1980), the Court approved a zoning board's expansion of a country club through the addition of tennis courts. In Pennsylvania law, structures may be erected on open land previously devoted to a nonconforming use, as a matter of right. The erection of structures upon land not previously so used, may only be accomplished by way of variance. In the Muse case, the Zoning Board approved the expansion of the country club without a variance.

In reviewing the Board's approval, the Muse Court indicated that the threshold question is whether the land on which the country club proposes to locate the tennis courts has been devoted to the country club's nonconforming use. After reviewing the evidence introduced regarding the use of the land in question, the Court agreed that the land upon which the tennis courts were to be erected had been devoted to the country club's nonconforming use. Since it had been properly devoted, the court agreed that the construction of the tennis courts was a natural expansion of the club's activity and should therefore be permitted.

In the instant case, there are a number of undisputed facts which can be identified. In the 19th century, lots 207 and 209 were subdivided pursuant to a recorded plat. In the late 19th century, lots 207 and 209 came under the same ownership. From that time until lots 207 and 209 were conveyed to the Homestead Group and the Joneses, respectively, they were always held under the same ownership and transferred by the same deed.

Petitioner would like to seek relief, it should file a new petition for special hearing which accurately describes the relief requested.

The Protestants are not opposed to the continued use of lots 207 and 209 as a nonconforming apartment use. The focus of the Protestants' concerns relate to the improvement of lot 207 with a single family dwelling. If the relief requested in the Petition for Special Hearing is granted, then the nonconforming apartment use must be terminated. Such an outcome would be unfair and unreasonable in light of the long history of the apartment use and its previous condition served by the parking lot and driveway on lot 207. Prior to the Singers' attempts to exact greater profits from the sale of their parcel, the neighbors did not assert that the apartment use was an illegal use and not in conformity with the nonconforming use requirements of the Zoning Regulations.

2. Petition For Zoning Variance.

The Homestead Group seeks relief from the lot width requirements of the Zoning Regulations. For all the reasons set forth in reference to the Petition for Zoning Variance filed by the Joneses, the zoning variance must be denied. The record clearly indicates that the Singers were put on notice by Mr. Steele of the zoning problems associated with their proposed transfer of lots 207 and 209. Portions of Mrs. Singer's testimony support the Protestants' assertion that the Homestead Group was likewise apprised of Mr. Steele's concerns.

or tracts in DR zones. This section must be viewed as a part of a whole. The whole includes Section 104 and the law governing nonconforming uses. The purpose of Section 1B02.3 was to provide lot owners with relief from the more stringent requirements of the Zoning Regulations where existing developments or subdivisions have occurred.

In the instant case, the owners of the structure now used as an apartment building have owned and operated lots 207 and 209 as one parcel for at least 45 years, and possibly as long as 100 years.

Additionally, Section 304 of the Zoning Regulations offers further guidance on the Petition for Variance as well as the Petition for Special Hearing. Section 304 permits the erection of a single family dwelling on an undersized lot provided the following requirements are met:

> A. That such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to adoption of these Regulations; and
>
> B. That all other requirements of the height and area regulations are complied with; and
>
> C. That the owner of the lot does not own sufficient adjoining land to conform substantially to the width and area requirements.

In the instant case, it appears that Section 304.A has been met. Section 304.B is subject to question. There has not been any testimony offered that all other requirements of the height and area regulations are being complied with. In particular, there has been no testimony offered regarding whether

Section 1B01.2.C1 or 2 regarding distances between separate buildings and distances related to windows, respectively, have been met. The Protestants hesitate to concede a point of law where the record does not reflect that the Petitioner has addressed a requirement of the Zoning Regulations.

Section 304.C has clearly not been met. The Singers, prior to the sale of lot 207 to the Homestead Group, did own substantial adjoining land which would permit substantial conformance to the width and area requirements of the Zoning Regulations. RM-15 and RM-16 of the Zoning Policy Manual provide guidance as to the requirements of Section 304 and 307. The six year rule described in RM-16, when applied to the current case, clearly shows that Section 304.C has not been met. Therefore, a variance is required pursuant to Section 307 from the lot width requirements of Section 1B02.3C1.

The policy of the Zoning Regulations as supported by Sections 104, 1B02.3 and 304, is to provide a land owner with a reasonable use of its property. These sections acknowledge the historical and legal changes that may adversely affect the productive use of land. However, public policy does not support an unnecessary extension of a nonconforming use and overcrowding of land with detrimental impacts upon the character and ambiance of an Historic District merely for the economic gain of the land owner. The nonconforming apartment use, if approved, will provide the land owner with a more than adequate and reasonable

use of its land consistent with the spirit and intent of the Zoning Regulations and the character and ambiance of Historic Glyndon.

CONCLUSIONS

The Singers and the Petitioners have created a situation where someone must lose. The Petitioners want the Zoning Commissioner to ignore the self-inflicted nature of their hardship and provide the relief requested. However, to do so would require that the Zoning Commissioner also ignore the substantial harm to the welfare of the Glyndon community. As all of the Protestants who testified indicated, the relief, if granted, would dramatically impact the character and ambiance of their historic community. The erection of a single family dwelling on lot 207 will overcrowd the land, conflict with the character and ambiance of Central Avenue and dramatically reduce the open space which has provided a proper setting for the imposing apartment structure. It is unfair to the Glyndon community and inconsistent with the spirit and intent of the Baltimore County Zoning Regulations and the law governing nonconforming uses to grant the relief requested. The Singers and the Petitioners have created a hardship and are now before you asking that that hardship be relieved from their shoulders and placed on the backs of the residents of Historic Glyndon. Requiring the neighborhood to bear the burden of the Petitioners' lack of diligence would not be an act of justice. It will only reinforce the irresponsible behavior of the Singers and the Petitioners. If any relief is to be granted, a nonconforming

apartment use on lots 207 and 209 should be granted and the Singers and Petitioners should be forced to solve their own problems.

Respectfully submitted,

G. Scott Barhight

GSB:sb
cc: Hewett Steele, Jr., Esquire
Charles B. Heyman, Esquire
Eleanor J. Lipsitz, Esquire

IN THE MATTER OF THE APPLICATION OF THE HOMESTEAD GROUP, LTD. AND RONALD F. JONES, ET UX FOR A SPECIAL HEARING AND VARIANCE ON PROPERTY LOCATED ON THE NORTH-EAST SIDE OF CENTRAL AVENUE, 60 FEET SOUTHEAST OF GLYNDON AVENUE (207 AND 209 CENTRAL AVENUE, RESPECTIVELY) 4TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 89-16-SPHA AND 89-396-SPHA

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

OPINION

These two cases 89-396-SPHA, Ronald F. Jones, et ux, and 89-16-SPHA, The Homestead Group, Ltd., come before this Board on appeal from a ruling of the Zoning Commissioner denying in part and granting in part said Petitions. These two cases consumed some five days of testimony and evidence.

It is important at the outset to establish just what issues the Board is confronted with. In 89-396-SPHA, the matter is whether or not the structure at 209 Central Avenue is in fact a nonconforming use for six apartments, a variance to permit side yard setbacks of 12 feet zero inches and 12 feet six inches in lieu of the required 20 foot setback for one side and 40 feet or 50 feet the sum of both sides and to permit a total lot width of 65 feet in lieu of the required 90 feet. In case 89-16-SPHA, the Petition is for the Board to find that lot 207 Central Avenue is totally separate from Lot 209 and is unencumbered by any use of 209 and to permit the erection of a building on a 65 foot lot (207) in lieu of the 70 foot lot width in a D.R.3.5 zone. The proposed building to be totally within the D.R.3.5 zoned area.

Counsel for the Petitioner in 89-396-SPHA made Motion to dismiss Protestants' appeal claiming that the required notice period before the Zoning Commissioner was not complied with and

therefore this Board lacks jurisdiction to hear the case. The Board denied this Motion and assumed jurisdiction.

In light of the fact that much testimony and evidence to be received would be pertinent to both cases, it was decided to hear the cases in combination. At the conclusion of the second witness it became obvious that it was impractical to try these as combined cases and the decision was made to bifurcate the cases and hear case 89-396-SPHA first with the understanding that the testimony and evidence received from the first two witnesses could be applied to both cases.

Much of the testimony received in these five days of hearing was cumulative, was not on point, was alleged testimony, and was to some degree hearsay evidence which in an administrative hearing is permitted. The testimony of each witness will not be detailed in this opinion but let the record speak for itself.

A very brief encapsulation of each witness who testified and their position on the matter before the Board will be stated. Ronald Jones purchased the property known as 209 Central Avenue in June of 1989. It was his understanding that this was a six apartment building with 27 rooms and it was his intention to continue this use. Mr. Jones was aware that in March of 1988 the adjoining vacant lot known as 207 Central Avenue had been sold. Zelma Ensor, a real estate broker, testified as to her familiarity with the property at 209, testified that it had always been an apartment use, that it constit[illegible]d no detriment to the health and welfare of the neighborhood, and that the house planned for construction on 207 would be nonobjectionable and the plans had

been accepted by the Landmarks Commission. Aileen Singer testified that she owned Lots 209 and 207 Central Avenue since 1978. She testified as to the use of the property as six apartments, two on each floor, and that she sold it to Mr. Jones as a six apartment use. She alleged that she inquired from Baltimore County as to the feasibility to the separate sale of Lot 207 and received assurances that there was no problem. Cookie Stone, a real estate agent, testified that she handled the sale of 209 Central Avenue.

On July 24, 1990, testimony was taken from Mrs. Sue Susimehl who is 88 years old and resides in California. All proper parties were present for this telephone testimony. Mrs. Susimehl testified that she purchased the two lots in 1941 and that the building on 209 was in existence but was not converted to apartments. Beginning in 1941, she and her husband converted the building to six apartments complete with individual and separate electric me[illegible]rs, kitchens, baths, etc. Her husband, on electrical contractor, did most of the work and the plumbing work was done by a man named Zepp. As this conversion project was undertaken during World War II, plumbing and electrical supplies were scarce. It was Mrs. Susimehl's testimony that because of this scarcity, this conversion took several years but was completed in 1945. It was interesting to the Board to note that this 88 year old lady not only remembered the six apartments but the name of each renter in each apartment. She testified that she sold the property to a Mr. Redder in 1966. She testified that there were six parking spaces along the side of the house adjacent to 207 and that while 207 was used as a driveway it was just a dirt driveway. This concluded

Mrs. Susimehl's testimony. This same day testimony was received from James E. Redder, a long time Glyndon resident. He testified that he purchased 209 and 207 in 1966 for an investment only and that he never lived there but that its use at that time was identical to what it was in 1945, six apartments. He testified that he sold the two lots in 1968 and that no further improvements had been made to the property. Testimony was then taken from Thaddeus Hense, an attorney who specializes in title searches. He testified that he did a title search of 209 as far back as 1926 and that 209 and 207 were always two separate recorded lots. Cookie Stone was recalled as the real estate agent involved int he sale and testified that in 1970, she listed the property as two parcels and another agent sold them and that she checked with Baltimore County to see if the parcels could be separated and was so assured. Colleen Thompson Chance, another real estate agent, testified that she listed the properties in December of 1987 and was assured by Baltimore County that they were two separate parcels. This concluded Petitioner's case in 89-396-SPHA. Protestants presented Carol Ann Wildesen, the real estate agent involved in the sale of 207. She testified that she checked the Land Records to see if these were separate parcels and found this to be true. It was her testimony that there was no question that this was a separate lot entitled to all the privileges attached thereto. Ronald Jones was recalled and testified that when he purchased 209, 207 had already been sold. Mark Laken, President of the Glyndon Community Association, entered their opposition to the granting of these two Petitions. Eleanor Taylor, a member of Historic Glyndon, Inc.,

read into the record their position in opposition to the granting of these Petitions. She further testified that she was acquainted with the property at 209 which prior to 1940 was first a boarding house and then converted to multiple apartments. Nevitt Steele who lives at 211 Central Avenue, next door to 209, testified as to his opposition to the two Petitions. It was his contention that 207 had always been the parking lot for 209 and that if this property is bifurcated from 209 that the six unit apartment building would no longer be a nonconforming use. This concluded Protestants case in 89-396-SPHA. Testimony was then received in case 89-16-SPHA, The Homestead Group. The first witness from the Homestead Group was Audrey Fox, President of the Homestead Group - Builders. She testified that their business was the design of homes to suit specific sites and specific areas. She testified that the proposed home was approved by the Landmarks Comission and of their agreement to relocate the driveway from 207 to 209. She entered the plans for the proposed building and testified that the proposed house met with approval of both the Landmarks Comission and the National Historic Register. William F. Kirwin, a land planner, testified that this lot is 65 feet wide by some 190 feet deep and that the proposed house meets all the side yard requirements and the only variance needed is the lot width in D.R.3.5 requiring an area variance from 70 feet to the 65 feet as the lot exists. Aileen Singer was then called in this case. She testified that the two lots had always been separate. She further testified that she inquired from Baltimore County as to whether a residence could be built on 207 and as far as she knew there were no problems.

Colleen T. Chance, the real estate agent, testified she listed 207 and 209 Central Avenue as two listings and was assured by Baltimore County that these were separate and buildable lots. Cookie Stone, a real estate agent actually involved in the sale, testified that she sold 207 to the Homestead Group as a buildable lot. This was the last witness for the Petitioner. Protestants presented Eleanor Taylor who testified as a member of the Board of Historic Glyndon and indicated their opposition to the variance as to lot width. She testified that Glyndon Park was founded in 1887 as a vacation resort and that there were large open areas in front of these buildings. In addition to the Board's opposition, she testified to her personal opposition since the proposed house would severely reduce t[illegible] open space now existing on these two lots. Charles Wells, a member of the Board of the Glyndon Community Association, voiced their objection to the variance and testified that it would change the character of the neighborhood. Nevitt Steele, the neighbor of 209 Central Avenue, testified to his opposition to the granting of the variance. He testified it was his opinion that 209 was already in violation and that to grant the variance would put both lots in violation. He also testified that he attended the April, 1988 Land Preservation Meeting, looked at the plans for 207 and voiced no objection at that time. This concluded Protestants testimony in case 89-16-SPHA. The Board will once again reiterate that the aforegoing encapsulation is in no way intended to portray the depth and detail of all the testimony which is a part of the case record.

The Board in this Opinion will first address case 89-396-SPHA (Ronald F. Jones, et ux). From the plethora of testimony and evidence and allegations received some facts can be determined. It was uncontested that somewhere near the turn of the century a building of significant size was erected at 209 Central Avenue. There was uncontradicted testimony that this building was used at that time as a weekend country vacation spot for city residents. In 1941, Mr. and Mrs. Susimehl purchased the two lots and began the conversion of the building on 209 to six apartments. There was testimony that this six apartment use has continued up until the purchase of the site by Mr. Jones. Mrs. Susimehl testified that the lot at 207 did in fact contain an unpaved dirt driveway that was used for automobile access to 209. There was also testimony that parking for several vehicles was provided at the rear of 209. The Protestants claim that the use of this dirt driveway on 207 is vital to the noncontorming use of the property at 209. The Board will not find this so. While it is true that up until Mr. Jones's purchase the two lots were always conveyed as one sale but were always designated as two separate parcels, certainly the owners of an improved and an unimproved lot should be allowed the use of the unimproved lot in any incidental way they see fit. If 207 had been used as a garden to provide food for 209 would this then mean that 207 could never be anything but a garden as long as the structure on 209 existed. The use of the dirt driveway was a convenience to the owner of both lots and was an incidental use to the owner since he owned both lots. To rule that this incidental use by an owner perpetuates that use forever in conjunction with the legal

nonconforming use would appear to this Board to be arbitrary. The Board will further note in this Opinion that when Mr. Jones purchased the property at 209, he applied for and was granted the right to construct a driveway on 209. Mr. Steele, the neighbor at 211, complained because the driveway was to be constructed adjacent to his lot and that parking was to be provided in front of the structure on 209 and, as a result thereof, Mr. Jones relocated the driveway to the other side of the lot and provided the parking in the rear of the lot. There was testimony that during some of the time Aileen Singer owned the site she did not rent one of the first floor apartments but merely opened the connecting door between the two apartments and used them for a time for her own personal use. The Board will note that absolutely no changes were made in this nonrented apartment. It still retained its own meter system, its own kitchen, and its own bathroom. Section 104.1 provides that if a nonconforming use is abandoned or discontinued for a period of one year the right to continue or resume such nonconforming use shall terminate. Since no physical changes whatsoever were made in this nonrented apartment there is no evidence of intent to abandon and since there was no abandonment of this use the right to resume that use must exist.

After consideration of all the testimony and evidence and for all of the above reasons, the Board is of the opinion that the nonconforming use of the property at 209 Central Avenue as a six apartment dwelling should be affirmed and will so order. As to the requested variances on the property at 209 Central Avenue, the Board will note that the structure was built many many years prior

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

RONALD F. JONES and : Case No. 89-396-SPHA
SUZANNE LUSSIER-JONES, : NE/S Central Avenue, 125 SE
Appellants : Glyndon Avenue

APPELLANTS' BRIEF

Statement of Facts

The Appellants, Ronald F. Jones and Suzanne Lussier-Jones (hereinafter referred to as "Jones"), acquired title to property known as 209 Central Avenue, Glyndon, Maryland, on June 24, 1988. The property consists of a lot containing 25,545 square feet of land, more or less, and an existing structure, located in D.R. 2 and D.R. 3.5 zones. (See plats accompanying Appellants' petitions filed herein below). The structure has existed since before 1898. The building located at 209 Central Avenue has been operated as a boarding house and/or apartment house since, at least, the late 1800's.

209 Central Avenue and the adjacent lot known as 207 Central Avenue have been conveyed in one instrument, but as two separate lots, for at least sixty years. In March, 1988, the vacant lot known as 207 Central Avenue was sold by Aileen Singer (hereinafter referred to as "Singer") to the Homestead Group (hereinafter referred to as "Homestead"). 209 Central Avenue was

CCH MJ 22 JUN 16

subsequently conveyed by Singer to Jones by deed dated June 24, 1988.

(The Zoning Commissioner found that 207 and 209 are and have been two separate lots. Appellants do not dispute that part of the commissioner's decision, but adopt that finding.)

Prior to conveying the vacant lot at 207 Central Avenue to Homestead, Singer relocated a driveway and parking lot which from time to time had been, and was then, situated on 207 Central Avenue and had been used for access to 209 Central Avenue and for parking. Singer obtained a building permit to construct the driveway and parking lot on 209 Central Avenue. (Photographs in evidence show that the construction of the driveway was accomplished by putting down a stone surface. No curb cut was necessary.) She complied with the recommendations and/or requests of the Baltimore County Landmarks Preservation Commission.

Appellants received Citation No. 89-038, Citation For Civil Zoning Violation, dated August 10, 1988, citing a violation of section 101; 402; 1B01.1A, the alleged violation being "use of property zoned D.R. 3.5 to commit the following:

> Apartment building located on residential property that lacks required lot area and minimum dimensional (width/side yard) standards."

At trial of that matter, the County Solicitor agreed to enter a "stet" provided Jones filed the appropriate petitions with the Zoning Commissioner. Jones filed their petition for special hearing and petition for variance. Hearings thereon were held before Zoning Commissioner J. Robert Haines. This appeal is taken from the decision of the Zoning Commissioner denying Jones' petition for special hearing and petition for variance.

Questions Presented

1. Was the hearing date scheduled by the Zoning Commissioner advertised for fifteen (15) days prior thereto so as to comply with the requisite notice provisions of the zoning regulations to properly bring the matter before the Zoning Commissioner and, subsequently, properly before this Board?

2. Does the operation of a six unit apartment building at 209 Central Avenue, Glyndon, Maryland qualify as a nonconforming use?

3. Should Appellants' request for a variance from section 402.1 of the Baltimore County Zoning Code to permit side yard setback of 12.0 feet and 12.6 feet in lieu of required 20 feet for one side and 40 feet and/or 50 feet for the sum of both side yard setbacks and to permit a lot width of 65 feet in lieu

of the required 90 feet or greater as may be determined be granted?

Argument

1. The hearing date scheduled by the Zoning Commissioner was not advertised for fifteen (15) days prior thereto and hence, did not comply with the requisite notice provisions of the zoning regulations. This matter was not properly before the Zoning Commissioner and, subsequently, this Board is without authority to entertain the matter.

Hearing of Appellants' two petitions was originally scheduled before the Zoning Commissioner for April 4, 1989. Prior to the commencement of that scheduled hearing, Appellants argued that the scheduled hearing was not in compliance with the provisions of Sec. 500.7 B.C.Z.R. which provides, in pertinent part:

> "the Zoning Commissioner shall schedule a public hearing for a date not less than 30 days after the petition is accepted for filing". (Emphasis supplied.)

The Zoning Commissioner, noting that the date on the notification that the Jones' petitions were accepted for filing was March 8, 1989, agreed that recited provision had not been met. At that time, April 4, 1989, the Commissioner rescheduled the hearing on Appellants' petitions for April 17, 1989. The property at 209 Central Avenue was then posted with a notice of the new, April 17, 1989 hearing date. Appellants contended then, and continue to contend, that the April 17, 1989 date and posting of the property with notice of that date did not conform with the provision of Sec. 500.7 B.C.Z.R. which provides:

> If the petition related to a specific property, notice of the time and place of the hearing shall be conspicuously posted on the property for a period of at least 15 days before the time of the hearing. (Emphasis supplied.)

Clearly posting the property at 209 Central Avenue on April 4, 1989 with notice of an April 17, 1989 hearing date does not comply with the B.C.Z.R. provision that such notice be posted for a "period of at least 15 days before the time of the hearing". Assuming the notice of the April 17, 1989 was posted on the same date that the Commissioner scheduled that date, i.e. at April 4, 1989, there was not 15 days notice. The hearing on April 17, 1989 was not properly before the Commissioner.

This matter, not properly before the Zoning Commissioner, is, therefore, not within the jurisdiction of this Board. See Cassidy et al. v. County Board of Appeals of Baltimore County et al., 218 Md. 418, 146 A2d 896 (1958). In that case, the Court of Appeals of Maryland reiterated the clear legal principle that "the failure of an administrative official or board to give a proper notice of a hearing, required by law, is fatal to the jurisdiction of the official or the board" (146 A2d 896, at 898). In Cassidy, as here, the issue evolved from hearing before the Zoning Commissioner of Baltimore County, and the subsequent hearing on appeal before the Board of Appeals, both administrative proceedings. (Appellant's reserved this issue in their memorandum to the Commissioner and raised it again prior to the commencement of the hearing before this Board. They have in no way waived the 15 days notice requirement of Sec. 500.7.) The Zoning Commissioner had no jurisdiction to hear

Appellants' petitions on April 17, 1989 because of the failure to meet the requirements of law for notice of a hearing for a "period of at least 15 days before the time of the hearing". (B.C.Z.R. 500.7) The administrative hearing before the Zoning Commissioner was improper. This Board is therefore without jurisdiction in this matter.

2. The operation of a six unit apartment building at 209 Central Avenue, Glyndon, Maryland is a nonconforming use.

The determination of a nonconforming is essentially two part. First, there must be a finding that a lawful use existed prior to the adoption of zoning regulations. (See Section 101, B.C.Z.R., 1955; Bill No. 18, 1976) Second, it must be shown that that use has continued without interruption or change. (See Section 104, B.C.Z.R., 1955, Bill 18, 1976) Also see McKemy v. Baltimore County, Md., 39 A.2d. 257, 385 A.2d 96 (1978).

January 2, 1945 marks the inception of the Baltimore County zoning regulations. The County Commissioners then adopted a comprehensive set of zoning regulations. McKemy supra, at 98; Kahl v. Cons. Gas El. Lt. & Pwr. Co., 191 Md. 249, 254, 60 A.2d 754 (1948); Calhoun v. County Bd. of Appeals, 262 Md. 265 277 A.2d 589 (1971). Section XI, 1945, B.C.Z.R. first provided for nonconforming uses. On March 30, 1955, the County Commissioners adopted a new set of comprehensive zoning regulations. See McKemy. Section 104 of those regulations dealt with nonconforming uses. Currently, Section 104.1, as adopted on March 15, 1976 by Bill No. 18-76, of the Baltimore County Zoning

Regulations provides for nonconforming uses. In pertinent part, Section 104.1 provides:

> "A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these Regulations; provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, . . . the right to continue or resume such nonconforming use shall terminate. . . ."

The evidence herein patently shows that 209 Central Avenue has been, and continues to be, operated as a multi-family (six unit apartment) dwelling since prior to the adoption of the original Baltimore County Zoning Regulations in January, 1945, without any change from that usage, and without any abandonment or discontinuance. The testimony of Anita Susemihl, Ronald Jones, James Reter, Zelma Ensor, Aileen Singer, Cookie Stone and Colleen Thompson Chance establish that 209 Central Avenue has been a boarding house and/or six unit apartment house for as long as anyone can remember, since, perhaps the 1890's; it has been a six unit apartment building since prior to January, 1945. None of Respondents' witnesses disputed Appellants' evidence that 209 Central Avenue has been operated as a boarding house or multi-family apartment house since well before the inception of zoning regulation for Baltimore County, hence, Appellants submit, the question of the existence of a legal nonconforming use is undisputed and not in issue.

Appellants produced evidence of the existence of six units at 209 Central Avenue since the early 1940's. Anita Susemihl testified that, in 1941, she and Louis Susemihl, her

late husband, acquired the property (then a boarding house) and converted it to six apartments. (Appellants' introduced photographs taken by Susemihl of 209 Central Avenue in 1941.) Mr. Susemihl did much of the conversion work himself. Mrs. Susemihl is not aware of any requirements for permits for the conversion nor does she remember any inspections being made by any county personnel during the time of the conversion. She was able to recall the names of many of the tenants. She stated that the conversion was undertaken shortly after she and her husband acquired the property and and completed before January, 1945. (She was not certain when the outside and balcony trim were finished but she stated that everything was completed by 1946.) Mrs. Susemihl was able to name several of the then tenants. She further stated that parking was against the side of the building closest to 207 Central Avenue. The driveway was unpaved. 207 Central Avenue was well wooded with many trees and underbrush. Mrs. Susemihl testified that she could think of no other use for the 27 room structure except the continuation of the six unit apartments and was at a loss to understand why the six units were being questioned now.

James Reter testified to the continuance of the six unit apartment building usage from the time of his childhood (he is in his sixties now) to the present time. His family bought a grocery store in Glyndon in 1945 and operated it for years. He remembers delivering grocery orders to various units in 209 in his youth, both in the company of his father and later on his own. He is not aware of any construction by the Susemihls during 1945 or thereafter. He has lived in the area for many years and

is familiar with the property. He owned both 207 and 209 Central Avenue from 1966 until 1968. To his knowledge, the building has contained six apartments since at least 1945. Mr. Reter testified that he had planned to construct a separate resident on 207 Central Avenue and knew of no impediment to that development nor of any potential problem with regard to the operation of 209 Central Avenue as a six unit apartment building. A dirt driveway serviced the properties. The parking area was unpaved.

Telma Ensor, an area resident and real estate broker, testified that she is and has been familiar with the Glyndon area. The apartment building at 209 Central Avenue has been there for as long as she can remember, at least 50 years. Her wedding reception in 1941 was held on Central Avenue. Her first child was born in 1946 while Mrs. Ensor lived on Central Avenue. Mrs. Ensor has been in 209 Central Avenue as early as the 1940's. It has always been a three story building with a center hall and with an apartment unit on either side of the hall on each floor. She further stated that the property and building was an asset to the community, filled a need and had no negative effect on the community.

Aileen Singer acquired the both 207 and 209 Central Avenue in 1978. She sold 207 to Homestead in March, 1988 and 209 to Jones in June, 1988. 209 Central Avenue contained six apartments, two on each of three floors. During her ownership, each of the six units had its separate gas meter, bath and kitchen. There was a time that she occupied both units on the first floor. That was accomplished by merely opening a door

between the units. No physical or structural changes were made. The first floor still had two gas meters, two bath and kitchen facilities. This did not, Appellants submit, constitute an abandonment or discontinuance of the nonconforming use. See Feldstein v. LaVale Zoning Board, 227 A.2d 713, 246 Md.204 (1967). At most this was a temporary abatement of the six unit use to five units. The maintenance of two separate facilities, temporarily combined, supports a finding of a temporary abatement. There is no clear indication of intention, action or inaction which is mandated to extinguish a nonconforming use. See Feldstein, supra, at 734.

In 1978 Mrs. Singer made inquiries at the Baltimore County Zoning Office concerning 207 and 209 Central Avenue when she considered building a home on 207 Central. She was informed that such development would pose no problem. She made inquiries twice more prior to the sale of the lot at 207 Central Avenue. She learned of no necessity for both lots to remain together. Prior to her relocating the driveway and parking from 207 to 209, Mrs. Singer obtained a permit from Baltimore County and approval of Landmark Preservation. At no time during this process was there an interdiction in connection with the relocation of the driveway along the property line between 207 and 209 or relocation of the parking to the rear of 209 and behind the building. In fact, the parking area was located behind the structure in order to accommodate the neighbouring home owners, Nevett and Betsy Steele, who objected to parking on the front of the lot at 209 Central Avenue.

Colleen Thompson Chance, a real estate agent who listed both properties for Mrs. Singer, testified that she made inquiries at the Baltimore County Zoning Office concerning the separation of 207 and 209 Central Avenue and was never told that the lots could not be separate and independent. She made inquiries about the continued use of 209 Central Avenue as a six unit apartment building and concluded that, at worst, a special hearing to recognize the non-conforming use would be necessary. She did not interpret the correspondence presented by Respondents between the Steeles and various community and county groups as anything more than Steeles asserting their opinions. (Nevett Steele, on cross examination by Appellants, could not point to any language which said that the the six units at 209 Central Avenue was illegal.) She testified that she would not ha listed 209 as six units if she had firm information to the contrary. Although Nevett and Betsy Steele had indicated their unhappiness with the separation of 207 from 209 Central Avenue, Chance felt that they were unhappy neighbors. She testified that Mr. Steele informed her that he would do anything possible to prevent the separation sales of the two lots and that she interpreted the Steeles' subsequent actions as their efforts to advance their stated crusade. To her, the Steeles seemed to be casting around for any reason to prevent the separate sales to Homestead and Jones and the planned development of 207 Central Avenue and raisnd new objections each time a prior matter was resolved. She gave little credence to the Steeles' varying demands and positions. Indeed, Mr. Steele himself

testified that he did not "know the strength of his convictions" with regard to the applicable zoning for 209 Central Avenue.

Cookie Stone, the selling agent for 209 Central Avenue testified that she concurred Chance's interpretation of the zoning situation for 209 Central Avenue. She had had a listing earlier for 209 and was aware that it had been six units. She foresaw no problem other than a possible need to show the nonconforming use at a hearing.

Respondents introduced affidavits which they assert show the number of units contained in 209 Central Avenue. None of the affidavits were procured by Appellants or at their direction or by Respondents. There is no evidence that Appellants received the affidavits prior to settlement on 209 Central Avenue. In one instance, the existence of "four or more" units is mentioned, in another, six units. This does not contradict Appellants' position that there have been and are six units. While the remaining affidavits suggest the existence of four or five units, the preponderance of the evidence supports the continued use of the property as a six unit apartment building since prior to the inception of the Baltimore County Zoning Regulations. Mrs. Chance was notified that the nonconforming use could not be obtained by affidavit, but should properly be addressed by appropriate proceedings and hearings before the Zoning Commissioner. She did not believe that the six units at 209 Central Avenue was not a permitted use.

Respondents did not controvert the existence of the boarding house and/or apartment building at 209 Central Avenue before the adoption of the Baltimore County Zoning Regulations, nor did they successfully controvert the continued existence of six units at 209 Central Avenue during the critical period.

Respondents attempted to educe evidence to support their contention that the use of 209 Central Avenue has changed in such a manner to terminate the prior nonconforming use. Appellants urge that the evidence shows that the only changes in the use and operation of 209 Central Avenue since at least 1945 has been the relocation of the driveway and parking lot, from 207 Central Avenue to 209 Central Avenue. Further, applying the guidelines set out in McKemy v. Baltimore County, Maryland, 385 A.2d 96, 39 Md. App. 257 (1978), this is not a showing of any change of the nonconforming use which would terminate the right to continue the nonconforming, six unit apartment use already existing at 209 Central Avenue, since, at least, January 2, 1945.

McKemy, supra, at 104, clearly set forth the criteria to be applied in determining whether or not there has been a change in the use of the property which would serve to break the continued nature of the nonconforming use. These are:

> "(1) to what extent does the current use of these lots reflect the nature and purpose of the original non-conforming use;
> (2) is the current use merely a different manner of utilizing the original non-conforming use or does it constitute a use different in character, nature, and kind;
> (3) does the current use have a substantially different effect upon the neighborhood;

> (4) is the current use a 'drastic enlargement or extension' of the original non-conforming use."

Appellants presented large photographs showing 209 Central Avenue as it exists today and a small photograph showing the property when acquired by the Susemihls in 1941. A driveway runs parallel to and along the property line between 207 and 209 Central Avenue. No parking is visible from Central Avenue. The parking lot for 209 Central Avenue is located to the rear of the structure located thereon. The photographs show no change in the structure other than cosmetic improvements.

Evidence shows that the use of 209 Central Avenue as a multi-family dwelling has "changed" since the adoption of zoning regulations, if at all, only in the relocation of the driveway and parking lot on 209 Central Avenue. At various times, testimony indicates the driveway on 207 served both 207 and 209; at various times parking for 209 was on 209 and/or 207. The nonconforming use operating at 209 Central Avenue is the same six unit apartment building that has existed, and been in operation in the same manner, over the period of years predating the enactment of the Baltimore County Zoning Regulations to present. The location of the driveway and parking lot on 209 Central Avenue in no way changes the continuous operation of the six unit apartment building. It does not, in any way, reflect a different nature and purpose of use than existed prior to 1945. The driveway and parking lot are a part of the operation of the six units at 209 Central Avenue, not a new or different usage of the property. Indeed, the testimony of Mrs. Susemihl that 209 was used for parking. The drive way and parking represent no

difference in the basic use of the property. There is nothing about 209 Central Avenue to reflect anything but the nature and purpose of the original nonconforming use.

The current use reflects totally the nature and purpose of the original nonconforming use, a six unit dwelling. The property, as always, is being used as a six unit multi-family dwelling. The fact that the parking for the residents of 209 Central Avenue is now totally on that property and behind the building does not in any way reflect a new usage of the property. Parking and access are normal and established use associated with residents. This does not constitute a usage different in character, nature and kind than that which has long existed, i.e., a six unit multi-family dwelling. Usage has not changed from apartments to office, apartments to commercial or apartments to anything else.

The current use does not have a substantially different effect upon the neighborhood. The density of 209 Central Avenue has not changed since prior to zoning. The building has not changed in size, shape or character since the early 1940's. Its operation as a six unit multi-family dwelling has not changed. The location of the parking lot and driveway on the lot has not substantially changed the effect of the operation of 209 Central Avenue on the community. The operation of the apartment building had not undergone any substantial change since 1945, supporting Appellants position. The parking and driveway are not, Appellants reiterate, a change in the original use. The parking is now to the rear of the building on 209 Central Avenue. Parked vehicles are not visible from Central Avenue by

virtue of the very location of the lot behind the structure. If anything, this effects the community beneficially by limiting the visibility of parked vehicles. The location of both the driveway and the parking lot were approved by the Baltimore County Landmarks Preservation Commission and the work was done in compliance with a permit from Baltimore County. There was no showing of opposition by the community to the application or issuance of the permit.

Opposition to the continued nonconforming use and the granting of the requested variances is best represented by the position of the Glyndon Community Association, Inc, letter dated October 12, 1990 and introduced by Respondents. That letter states, in part:

> "[Glyndon residents] "appreciate the historic flavor of the community and are committed to maintaining and improving the beautiful Victorian houses and large lots on which they are situated. . . .[The Board] has voted unanimously to oppose this appeal until such time as the contiguous lot [207] can once again be used to support the parking lot and driveway requirements for a six unit facility."

Thus, the opposition is not to the nonconforming use of 209 Central Avenue, not to the "maintaining and improving the beautiful Victorian houses", but rather to the separate use of the lot at 207 Central Avenue. The community may well and properly object to what they perceive as the loss of open space at 207 Central Avenue, however the instant appeal of Jones is not the appropriate arena. There is no real showing of community resistance to the continued nonconforming use of 209, rather there is evidence of community dissatisfaction with the loss of the undeveloped lot. The opposition to development of 207 should

consideration in this appeal from decisions affecting

the current use of the property is

of the original usage. It

ough is permissible so

Phillips v.

4.2d 410

to the existing Zoning Regulations and that to deny the side yard variances or the 65 foot lot width in lieu of the required 70 feet would create extreme hardship since the only way this can be accomplished would be to tear the building down. The Board is therefore of the opinion that the requested variances should be granted and will so order.

The Board will next address in this Opinion case 89-16-SPHA (The Homestead Group, Ltd.). The Petition in 89-16-SPHA asks two things, that lot 207 be found an entity totally separate from lot 209 and be unencumbered by any use of 209 and to permit the erection of a building on a 65 foot lot (207) in lieu of the required 70 feet in the D.R.3.5 zoned area of the lot. After consideration of all the testimony and evidence and especially in light of the Board's finding in case 89-396-SPHA that the operation of 209 is a legal nonconforming use and that the two lots have always been separate deeded parcels, the Board will find as a fact that 207 is not encumbered by any use of 209 and is a buildable lot contingent on the granting of a five foot variance from the required 70 foot lot width to 65 feet. The Board of Appeals under Section 307.1 is given the power to grant an area variance where strict compliance with the Zoning Regulations would result in practical difficulty or unreasonable hardship. To deny this five foot variance would transfer a sizeable lot from a usable lot to an unusable lot and in the Board's opinion would result in unreasonable hardship and will therefore grant the requested variance.

ORDER

It is therefore this 12th day of April, 1991 by the County Board of Appeals of Baltimore County with reference to case 89-396-SPHA (Ronald F. Jones) ORDERED that the structure at 209 Central Avenue is in fact a nonconforming use for six apartments, that the variance to permit a side yard setback of 12 feet zero inches and 12 feet six inches in lieu of the required 20 foot setback for one side and 40 or 50 feet the sum of both sides and to permit a total lot width of 65 feet in lieu of the required 90 feet be and the same is hereby GRANTED.

IT IS FURTHER ORDERED that with reference to case 89-16-SPHA (The Homestead Group, Ltd.) that the property known as 207 Central Avenue be GRANTED the variance to permit construction on a 65 foot lot in lieu of the required 70 feet and that the property at 207 be declared an unencumbered property separate from 209 with the following restriction:

1) approval be obtained from the Landmarks Commission as to the format and style of the residence to be constructed so that it is in conformity to the community and not a detriment to the same.

Any appeal from this decision must be made in accordance with Rules B-1 through B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman

Harry E. Buchheister, Jr.
Harry E. Buchheister, Jr.

IN THE MATTER OF THE APPLICATION OF RONALD F. JONES, ET UX FOR A SPECIAL HEARING AND VARIANCE ON PROPERTY LOCATED ON THE NORTHEAST SIDE OF CENTRAL AVENUE, 50 FEET SOUTHEAST OF GLYNDON AVENUE (209 CENTRAL AVENUE) 4TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 89-396-SPHA

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

DISSENTING OPINION

This case comes before the Board as a companion case of 89-16-SPHA (The Homestead Group, Ltd.). It is an appeal from an adverse decision of the Zoning Commissioner of Baltimore County. The Petitioner requests the approval of a multi-family apartment dwelling at 209 Central Avenue as a legal nonconforming use or as an alternative approve the existing improvements and lot pursuant to Baltimore County Zoning Regulations (BCZR) that apply to conversion of dwellings to apartment use. Also requested are several variances.

I agree with the Chairman that much of the testimony was not on point and was alleged testimony, but would add that much testimony was supported to a high degree by lapsed memories and poor judgment. I would disagree with the Chairman as to what anyone believed in this case. It is difficult for me to figure out what Mr. Jones and Mrs. Singer had in mind after being given notice of zoning problems from Mr. Steele, a neighbor and attorney.

As the Chairman did not detail the testimony, I also will let the record speak for itself.

A nonconforming use must be proved by the Petitioner. The County does not have to prove the nonconforming use does not exist.

A nonconforming use can be extinguished if there is a change

in the use or if the use stops for at least one year. Nonconforming uses are inherently incompatible with uses permitted in a zone. Boyce v. Sembly, 25 Md. App. 43. Nonconforming uses pose a threat to the success of zoning, limit the effectiveness of land controls, imperil the success of community plans and injure property values. The purpose of restrictions on nonconforming uses is to achieve the ultimate elimination of such uses through economic attrition and physical obsolescence. County Council of Prince George's County v. E.L. Gardner, Inc., 293 Md. 259.

There was testimony as to the number of apartments in the building at 209 Central Avenue, that number being four, five or six apartments at various times.

The Zoning Commissioner of Baltimore County did not have testimony from Mrs. Susemihl who was the owner of the property when it was converted to the apartments. Mrs. Susemihl testified from the West Coast over the telephone. Mrs. Susemihl, who owned Lots 207 and 209 during the 1940's, could not conclusively testify that six apartments existed prior to January 2, 1945. She stated that the conversion to apartments was not completed until 1946 or 1947. Mrs. Susemihl also stated that the driveway and parking area for the apartment building were situated on Lot 207.

From additional testimony, it is my opinion that if I were to take a photograph of this use, prior to the sale of 207 Central Avenue, I would have a photograph of a large apartment building to one side of a 130' wide lot known as 209 Central Avenue, and on the other side of this 130' wide lot would be open space and a driveway to a parking pad covered with crusher run, known as 207 Central

Avenue.

In June of 1988, Ronald F. Jones purchased 209 Central Avenue from Mrs. Singer. If we now take another photograph of the use, we would see a very large apartment building with a driveway to the rear of the apartment building and an unimproved lot on the other 65' lot.

Baltimore County Zoning Regulations set forth the requirement for nonconforming uses. Section 104.1 states in part:

> A nonconforming use may continue except as otherwise specifically provided in these regulations provided that upon any change from such nonconforming use to any other use whatsoever, . . . , the right to continue or resume such nonconforming use shall terminate. No nonconforming building or structure and no nonconforming use of a building, structure, or parcel of land shall hereafter be extended more than 25% of the ground floor area of building so used.

In McKeny v. Baltimore County, 39 Md. App. 257, the standard to determine if the present use is within the scope of a nonconforming use:

> 1) To what extent does the current use of these lots reflect the nature and purpose of the original nonconforming use?
>
> 2) Is the current use merely a different manner of utilizing the original nonconforming use or does it constitute a use different in character, nature and kind?
>
> 3) Does the current use have a substantially different effect upon the neighborhood?
>
> 4) Is the current use a drastic enlargement or extension of the original nonconforming use?

In order to answer the above four questions let's look and compare the two photographs.

1) Clearly there has been a change from the original nonconforming use. A review of two photographs now shows an

unimproved lot at 207 Central Avenue which is not now supplying area to reduce the overall bulk of the building. In addition, parking areas are now behind 209 Central Avenue.

2) Yes there is a change in the use and that use is different in character, nature and kind. There have been very drastic changes in the use of 207 Central Avenue. The parking area and the supporting open space are not now located at 207 Central Avenue but are now all located on the 209 Central Avenue lot. The total legal density for the two lots is 5 units. Each lot would support 2.8 units. The new higher density that we would be left with if the petitions are approved would far exceed the density for these lots. The building of the new house at 207 Central Avenue would nearly double the bulk of the lots.

3) Yes the current use has a substantially different effect on the neighborhood. The original use, although both expansive in size and impact, was more in keeping with the general character of the neighborhood. If 209 Central Avenue is granted a nonconforming use as a six apartment building and all of the supporting services that were provided on 209 Central Avenue are shifted to 209 Central Avenue, there will be an overcrowding of the land and a degradation of the large lot, expansive open space, and pleasant landscaping.

4) Yes this proposed use is a drastic enlargement or

extension of the original nonconforming use. The existing structure covers 2,298 square feet of land. The proposed single-family dwelling will cover about 1,600 square feet of land. This is about a 70% increase in the land area used for structures. The BCZR allows only a 25% increase. On the other hand if we take and separate the lots, we find that the supporting services as such shifted to 209 Central Avenue have a drastic enlargement of the density on 209 and reducing what little open space as there may have been on 209.

After reviewing all of the testimony, exhibits, Memoranda, and argument, I find that the use of the property has changed since at least June, 1988.

Therefore, it is my opinion that 209 Central Avenue is an illegal use and not a legal nonconforming use.

It is also my opinion that the Petitioner does not fall within the meaning of the spirit and intent of the BCZR that apply to the conversion of dwellings to apartment use. The issue of granting the variance should be moot at this time.

DATE: April 12, 1991

John G. Disney
John G. Disney

THE
COMMISSIONER
BALTIMORE COUNTY
89-396-SPHA

OF LAW

Hearing to approve the
Central Avenue as a legal
that said lot (209) and
the B.C.Z.R. that apply to
a variance from Section
et and 12.6 feet in lieu of
for 50 feet for the sum of
mit a lot width of 65 feet
arly described on Peti-

eared, testified and was
followed witnessed ap-
Hyman, Herbert Malmud, Reg-
Green, Keith W. Mumford, Au-
linger and Zelma Kemer.
re represented by C. Scott
& Revett Steele, Jr.,
Joanne M. Hammond, Terry
ago and John Knee, Gren
by Sheft, Sam E. Scruggs,

not be a consideration in this appeal from decisions affecting 209 Central Avenue.

Appellants urge that the current use of the property is not a drastic enlargement or extension of the original usage. It is at most a mere intensification and as such is permissible so long as the nature of use, as here, in not changed. Phillips v. Zoning Commissioner of Howard County, 255 Md. 102, 169 A.2d 410 (1961). As the Court recognized in Phillips, the determination of drastic enlargement or extension or mere intensification is to be made of the facts of each case. There is nothing in the instant case to show a change from one nonconforming use to another or a substitution of one nonconforming use for another. The property is still, as ever, a six unit multi-family dwelling. It has not been converted any different usage by the location of the parking lot and driveway serving, and a part of the operations of, the existing nonconforming use. The current usage contesplates only the continuation of that usage, nothing more. Appellants contend there is no evidence upon which to base a finding of drastic enlargement or extension.

3. Appellants' request for a variance from section 402.1 of the Baltimore County Zoning Code to permit side yard setback of 12.0 feet and 12.6 feet in lieu of required 20 feet for one side and 40 feet and/or 50 feet for the sum of both side yard setbacks and to permit a lot width of 65 feet in lieu of the required 80 feet or greater as may be determined should be granted.

The granting of a variance is not properly a popularity contest. Such determination is to be based upon judicial principles and zoning regulations. The proper criteria are:

a. whether strict compliance with the zoning regulations for Baltimore County result in practical difficulty or unreasonable hardship

b. whether the granting of a variance will result in substantial injury to public health, safety and general welfare;

c. whether the granting of the requested variance will be inharmonic with the spirit and intent of applicable zoning regulations; and

d. whether the hardship complained of, and which is the basis of Appellants request for variances self-inflicted.

[B.C.Z.R., 1955; Bills No. 87, 1961; No. 13, 1962; also see, Salisbury Board of Zoning Appeals v. Bounds, 240 Md. 547, 214 A.2d 810 (1965).]

Obviously, if the current side yard setback and lot width requirements are applied to 209 Central Avenue practical difficulty and unreasonable hardship would result. The lot known as 209 Central Avenue exists and the structure, erected thereon in the 1890's exists. To try to squeeze the property and building into the limitations of current zoning requirements would be judicially unfair and physically impossible without the destruction of the building. The building was erected prior to any requirements imposed by zoning and must be allowed to continue in that form. It has not changed. There is no way to stretch the given land to accommodate the present zoning rules and regulations.

The granting of the requested variances will not result in any, much less, substantial injury to public health, safety and general welfare. There was no evidence to support any such injury at the hearing herein. At least one witness, Zelma Ensor, characterized 209 Central Avenue as an asset to the community. Not only is there absence of any such harm, but the granting of such variances merely recognizes the long existing situation with regard to lot size of 209 Central Avenue, the location of the building thereon. The community desires to maintain the Glyndon ambience and characteristics. This, Appellants urge, dictates that the requested and necessary variances be granted to permit the continued existence of the pre-1900 building. The existence and operation of the property are not injurious to the public health, safety or general welfare. There is no change in the density on 209 Central Avenue. The granting of the variance will not add any new demands, nor increase existing demands, on the community or community services.

There was no showing that the granting of the variances sought will be inharmonious with the spirit and intent of applicable zoning regulations. The gist of the zoning regulations for Baltimore County support appropriate use and re-use of large dwellings in residential zones. Even the conversion of the structure, if that were the case, would support the granting of the variances. (Respondents are resolute in their desire to maintain the ambiance of the Glyndon area. To grant the necessary variances for 209 Central Avenue is compatible, perhaps even required, to protect the very existence of the

structure at 209 Central Avenue, a part of the ambience and history of Glyndon.)

The facts surrounding 209 Central Avenue clearly reflect that the criteria for granting a variance have been fully met. Bounds, supra, would deny the granting of a variance, even where otherwise appropriate, if the circumstances requiring the variance have been created by the property owner or a predecessor in title. This, Appellants urge, is not the case in the instant situation.

Clearly the Appellants did nothing to cause the hardship complained of here. The evidence shows that Appellants had entered into a contract with Singer prior to any official notification of any possible zoning violations. (Again, Mr. Steele stated that he was not certain of the strength of his convictions with regard to the zoning applicable to 209 Central. If he, an attorney was not certain, why should lay people, as are the Jones, rely on his impression or position with regard to the zoning?)

The testimony further shows that Appellants had been assured that the property at 209 Central Avenue conformed with zoning regulations by the real estate people involved. The Appellants are not knowledgeable in real estate transactions. Ronald Jones testified that this was the first experience he or his wife had with zoning. The record shows that Jones previous real estate experience was the acquisition and sale of their family residences and the purchase of an Ocean City condominium. He testified that he had conversations with neighbors and was led

to believe that no problem related to the continued operation of the 6 units, but rather with the proposed development of 207 Central Avenue. Appellants believed that the worst case scenario with regard to the zoning of 209 Central Avenue would be a requirement that they "grandfather" the six unit use or show that it had existed before the zoning regulations. It was not until the Appellants received a citation dated 8-10-88 that they were given official notice of any potential zoning problem. Jones had conversations with the Steeles which indicated to Jones that the Steeles' objections to 209 Central Avenue related to the location of the driveway and parking, which had been resolved, that Steeles' opposition was to the development of 207 Central Avenue, not to the continued nonconforming use of 209 Central Avenue. Singer had sold the adjoining lot in March, 1988. Between March and June, 1988, Appellants had communications with citizens of the area which led them to believe that 209 Central Avenue met zoning requirements. Jones have no expertise in real estate matters. They may have been naive in their acquisition of 209 Central Avenue, but that does not constitute the self-inflicted hardship referred to in Bounds, supra. Respondents attempt to make some value of the execution of the second contract of sale between Jones and Singer. Mr. Jones repeatedly said that it was upon assurances that the property would be considered a nonconforming use and knowledge of similar situations in the area that he and his wife went through with the purchase of the property.

There is ample evidence that predecessors in title made ample efforts to determine that 209 Central Avenue was a lot independent of and separate from 207 Central Avenue. Singer, who conveyed the property to the Appellants made inquiries of the Baltimore County Zoning office to determine whether 207 and 209 Central Avenue were so connected as to deny their separation. She was informed of no bar to the separate development of 207 Central Avenue nor to the continued operation of 6 units at 209 Central Avenue. She made three separate inquiries at different times. Chance made similar inquiries and reached similar conclusions. Stone concurred with Chance. Appellants submit that none of the correspondence with county offices and personnel which was introduced by Respondents states that six units are not a permitted use of 209 Central Avenue; rather, the correspondence indicates what procedures may be necessary to have the County "grant" a nonconforming use status to 209. James Reter, who owned both lots in the 1960's, testified that it was his intention to develop and sell 207 Central Avenue and had never known that that would not be possible.

Unlike the situation in Bounds, there was no cavalier delegation of responsibility for obtaining the necessary permits or information. There was no failure to get permits or to inspect the permit that was issued. Singer was granted a permit to construct a parking lot and driveway on 209 Central Avenue and which was to be used in conjunction with the operation of that property as a 6 unit apartment building. She made efforts to assure herself of the viability of the six units at 209

Central Avenue independent of 207 Central Avenue. At the time of settlement on 209 Central Avenue, in June, 1988, some three months after the transfer of 207 Central Avenue to Homestead there were no zoning violations outstanding on that property. It was not until well after Appellants' settlement on the property that they received any notification from any county official of a potential zoning problem. There is nil in this case to support an argument for self-inflicted hardship.

The testimony and evidence supports a finding that there was no self-inflicted hardship; that the granting of the variances will not be contrary to the spirit of the B.C.Z.R. nor result in substantial detriment to the public health, safety and general welfare. The granting will relieve a hardship due to unique circumstances which cannot be alleviated otherwise.

Conclusion

For the reasons stated, the decision of the Zoning Commissioner should be reversed and Appellants' petition for special hearing to recognize the legal, nonconforming use of 209 Central Avenue as a six unit apartment building and petition for

variance should be granted.

Respectfully submitted,

ELEANOR J. LIPSITZ
100 Church Lane
Baltimore, Maryland 21208
(301) 484-3050,
Attorney for Appellants

I hereby certify that a copy of the foregoing brief was mailed to Charles B. Heyman, Esquire, 10th Floor, Sun Life Building, 20 South Charles Street, Baltimore, Maryland 21201 and to G. Scott Barhight, Esquire, 300 Lafayette Building, 40 West Chesapeake Avenue, Towson, Maryland 21204, this 22nd day of January, 1991.

ELEANOR J. LIPSITZ,
Attorney for Appellants

66 2nd Day 4-18-89 66 89-396SPHA

PLEASE PRINT CLEARLY — PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
Darlene L. Scheyer	301 Central Ave. Glyndon
Darlene M. Scheyer	301 Central Ave Glyndon
Jeanne W. Hammond	308 Central Ave Glyndon
Edward A. Wilson	14 Glyndon Ave Glyndon
Margaret M. Wilson	14 Glyndon Ave Glyndon
CHARLES WELSH	4601 PROSPECT AVE GLYN
Anne Welsh	4601 Prospect Ave Glynd
Ann Kershner	Box 308 Glyndon Md 21071
Shawn Taylor	Baynes, Glyndon, Md. 21071
Martha S. Healy	222 Central Ave. Glyndon Md 21071
Andrea Jones	46A Butler Rd Glyndon Md 21071
Karen L. Klein	308 Central Ave. Glyndon
Elizabeth B Klein	211 Central Ave Glyndon
Charles C. Boulbrooks	210 Glyndon Ave Glyndon
Patricia A. Hammond	206 Mallard Ct. Glyndon
M.E. Brainard	28 Butler Rd. Glyndon
Priscilla O'Neill	15 Glyndon Ave Glyndon
LINDA T. BURT	25 Wright Ave Glyndon
Sharon S. Hoch	312 Central Ave Glyndon
Karol Jurisich	412 Butler Rd Glyndon
Ruth Smith	4412 Butler Rd. Glyndon Md 21071
Joseph P. Boyd	119 Central Ave Glyndon
Janice D. Boyd	119 Central 21071
Mark Hoch	311 Central Ave 21071
Thomas Robert Long	47228 Butler Rd Glyndon
K Eugene Riley	325 Central Ave Glyn...

89-165SPHA

PLEASE PRINT CLEARLY — PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
CHARLES B. Heyman	500 Cliff Road - 10th Floor, 210 E. CHARLES ST., BALTO, MD 21202
Audrey Lee	16 Autumn Wind Ct. Baltimore 21136
Ronald E. Jones	210 CHURCH RD. REISTERSTOWN, MD 21136
Pauline R. Hyman	11500 Woodland Dr. 20903 Hyattsville

89-165SPHA
396

PLEASE PRINT CLEARLY — PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
Eleanor Lipsitz	100 Church Lane
Eleanor Lipsitz	100 Church Lane

89-396SPHA

PLEASE PRINT CLEARLY — PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
Eleanor J. Lipsitz	100 Church Lane 21208
Cedric Stone	222 Thomas Rd, Reisterstown, Md 21136
Ronald E. Jones	210 CHURCH RD. REISTERSTOWN 21136
Pauline Bethmann	11500 Woodland Dr. Hyattsville, Md. 20903
Audrey Lee	16 Autumn Wind Ct. Reisterstown 21136

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

RONALD F. JONES and SUZANNE LUSSIER-JONES, Petitioners : Case No. 89-396-SPHA, NE/S Central Avenue, 125 SE Glyndon Avenue

SUMMONS

Please issue a summons for the following witness:

REV. LLOYD AIKEN
Sacred Heart Catholic Church
Sacred Heart Lane
Glyndon, Maryland

to appear and to testify for petitioners at a hearing before the Zoning Commissioner on April 14, 1989 at 9:00 a.m., Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland.

ELEANOR J. LIPSITZ
100 Church Lane
Baltimore, Maryland 21208
(301) 484-3050
Attorney for Petitioners

Private Process Server:

Please process this summons in accordance with Zoning Commission Rule IV(c).

J. Robert Haines
Zoning Commissioner of Baltimore County

Law Offices
BENJAMIN LIPSITZ
ELEANOR J. LIPSITZ
100 Church Lane
Baltimore, Maryland 21208-3785
Area Code 301-484 3050
Telecopier 301-653-1546

RECEIVED
APR 7 1989
ZONING OFFICE

April 6, 1989

J. Robert Haines,
Zoning Commissioner of Baltimore County
Office of Planning and Zoning
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: Case No. 89-396-SPHA
Ronald F. Jones et ux.

Dear Mr. Haines:

I would like to arrange a meeting with you and interested counsel, at your earliest convenience, to discuss the possibility of a continuing procedural problem with regard to my clients' captioned, pending petitions and the hearing scheduled thereon. It would, I believe, be appropriate to resolve this question prior to the proposed hearing set for April 17, 1989.

Very truly yours,

Eleanor J. Lipsitz

EJL/ds

cc: Nevett Steele, Jr., Esquire
G. Scott Barhight, Esquire
Charles B. Heyman, Esquire
Mr. and Mrs. Ronald F. Jones

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
494-3353

J. Robert Haines
Zoning Commissioner

April 8, 1988

Mr. Nevett Steele, Jr.
211 Central Avenue
Glyndon, Maryland 21071

Re: 201-203 Central Avenue
Glyndon, Maryland
NE/S Central Avenue, Variable
Glyndon Avenue - Zoned DR 3.5 & 2
4th Election District

Dear Mr. Steele:

Thank you for your letters of concern to the Zoning Commissioner written March 5, 7, and 31st, concerning the above referenced property which was referred to me for reply. We have taken over the telephone and as a result of separation, you have enclosed information that was helpful with your correspondence.

By using the lot survey and other information that you provided, we have made the following determinations:

1. That the property is zoned DR.3.5. 160 feet parallel and northwest of the center line of Central Avenue. The balance of the property is zoned DR.2.

2. By utilizing the conversion provisions contained in Section 402 of the Baltimore County Zoning Regulations) for existing dwellings, and combining separate calculations for the total units allowed in each zone, we arrive at a total of 2 units allowed based on square footage. Obviously, if the adjoining lot has been sold, we could only approve a conversion to 2 units on the remaining lot provided that:

A. a variance would be granted to permit a lot width of 65 ft. in lieu of the required 80 ft. (DR.3.5), and

B. that a variance would be granted to permit side yard setbacks of approximately 12 feet each and a sum of 24 feet in lieu of the required 20 foot setback for one sideyard and a sum of 50 feet for both sideyard setbacks (DR.2).

3. That it would be an apparent violation of the Baltimore County Zoning Regulations if as indicated, the adjoining lot (that was a part of the property for years) was sold to a separate party, leaving the apartment building on the remaining 65 foot lot without the benefit of a legally established non-conforming use for six apartments on that single lot only.

Mr. Nevett Steele, Jr.
April 8, 1988
Page 2

4. That the request for a conditional non-conforming use for six apartments by the real estate agent for this property will not be approved by this office via the affidavit procedure and could only be resolved by a public hearing. (See attached letter by Mitchell Kellman of this office dated today)

5. That the issues of the driveway and parking lot relocation, the effect of the Glyndon National Historical District on the intentions of the owners or sub-sequent purchasers, and the input of other County agencies i.e. Buildings Engineer - Permits & Licenses, Fire Department, Department of Environmental Protection and Resource Management, and Public Works can be separately addressed to each department by any concerned individual. These separate departments would also have input into a zoning hearing as members of the Zoning Plans Advisory Committee and their separate concerns and jurisdictional requirements would be taken into consideration by the Zoning Commissioner when deciding a zoning case.

6. If the owners of the apartment building do not proceed with a zoning hearing to establish a non-conforming use on the property, then you or any other concerned individual c. id request a public hearing before the Zoning Commissioner pursuant to Section 500.7 (Baltimore County Zoning Regulations) to determine if a zoning violation would exist.

I am enclosing a copy of the zoning map with the property plotted on it, a letter sent today to the real estate agent, a copy of zoning regulations Section 402 and 500.7, and a copy of the location survey with the zoning lines plotted on it. I am also returning to you the exhibits "A" and "C" of the house and driveway not drawn to scale. If you have any further or more detailed explanations involving these properties, or need any further or more detailed explanations concerning the application of the zoning regulations, or if you would need information concerning the filing of a zoning hearing, please contact me in this office.

Very truly yours,

JAMES E. DYER
Zoning Supervisor

By W. CARL RICHARDS
Zoning Coordinator

JED:WCR:cer

cc: James V. Constable, Chairman
Landmarks Preservation Commission
Colleen Thompson, Realtor
Coldwell Banker Real Estate
Allen H. and George Singer
Carol A. Wildesen, Esquire
J. Norris Byrnes, Esquire
Mr. & Mrs. A. Hardy Harmond
Mr. & Mrs. Mark H. Clements
Mr. & Mrs. Charles C. Wells
Mr. & Mrs. William A. Elline
Mr. & Mrs. Arlen Herb
Mrs. Marie C. Smith
Mrs. Darlene M. Scheyer
Mrs. Jane B. Fanshaw

Darlene Scheyer
301 Central Avenue
Glyndon, Maryland 21071
(301) 833-4577

March 31, 1989

RECEIVED
APR 4 1989
ZONING OFFICE

J. Robert Haines
Zoning Comissioner of Baltimore County
Office of Planning and Zoning
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

RE: 89-16-SPHA & 89-396-SPHA, May 4, 1989
NE/S Central Avenue 60' SE Glyndon Av
(207-209 Central Avenue)

Dear Mr. Haines,

I want to voice my objection to the zoning variances proposed in the hearings identified above.

As I'm sure you are already aware, Glyndon is designated a National and State historic district. The community is also recognized by the Baltimore County Landmarks Commission. It seems to me that granting exceptional zoning is in direct contradiction to a concerted effort to preserve the character of a historic district. Allowing the variances requested would set a terribly destructive precedent...opening the door for development that is no longer obliged to comply with the longstanding "checks and balances" developed over the years to help shape the very character that desred Glyndon the first community designated by the Baltimore County Landmarks Comission.

Please take the time to consider the long range implications of granting special exceptions to zoning regulations in our area. Instead, I would like to see your office concentrating more on strengthening (rather than undermining) the role of the Baltimore County Landmarks Comission by supporting existing regulations and zoning and possibly by implementing new controls to prevent "spot" development from further eroding the quality of life in the established older communities throughout Baltimore County. The changes in setbacks at 207 and 209 Central Avenue will make this lot unpleasantly exceptional in appearance and the existing house, on a much smaller lot, cannot support six apartments without taking on the appearance of a small business enterprise.

The above described variances should not be granted, in my opinion, and I hope that you will take my concerns into consideration when hearing this case(s).

Sincerely,

Darlene Scheyer

cc: Mr. Carl Richards (Office of Planning and Zoning)
Nevett Steele, Jr.

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
494-3353

J. Robert Haines
Zoning Commissioner

April 8, 1988

Ms. Colleen Thompson, Realtor
Coldwell Banker Real Estate
Crossroad Square Shopping Center
Route 140
625 - D Baltimore Boulevard
Westminster, Maryland 21157

Dennis F. Rasmussen
County Executive

RE: Apartment Affidavits Approval
209 Central Avenue
NE/S approx. 60' S. centerline of
Glyndon Avenue extended
D.R. 3.5 and D.R. 2
4th Election District

Dear Ms. Thompson:

I am writing this letter to confirm our refusal to approve your request for this office to conditionally approve six non-conforming apartments at the above address for the following reasons:

1. The affidavits signed by Hildred Muse and Mary E. Lloyd clearly list four apartments; the one by Emma Belt lists five apartments, the one by Zelma Enson lists four or more and the one by Robert Belt, heating contractor states that the heating system was designed for six apartments but that it may have been occupied by less than six families since 1945. These affidavits are not conclusive and would be unacceptable by themselves without further documentation of six apartments existing and being used continuously. However,

2. It is of an even greater concern to us that as you state, and has been conveyed to this office by the neighbors that the adjoining lot that has been a part of this property ownership for many years has just recently been sold or is about to be sold to a separate party. If this has been accomplished, then this office would consider the six apartments on the remaining lot an apparent violation of the Baltimore County Zoning Regulations until such time as a proper application is made for a public hearing and subsequently granted for six non-conforming apartments existing solely on the remaining lot.

Without the benefit of the additional lot, only two units could be approved by this office by utilizing the conversion tables in Section 402 of the Baltimore County Zoning Regulations provided that variances for lot width and side setbacks would be granted.

Ms. Colleen Thompson, Realtor
April 8, 1988
Page 2

Please contact me in this office for any further clarification, filing information, or any additional zoning information.

Very truly yours,

Mitchell Kellman

By Mitchell Kellman
Planning and Zoning Associate III

James E. Dyer
Zoning Supervisor

MK:dt

cc: Mr. & Mrs. George Singer
209 Central Avenue
Glyndon, Maryland 21071

Mr. Nevett Steele, Jr.
211 Central Avenue
Glyndon, Maryland 21071

THE PROPERTY SHOWN HEREON IS SUBJECT TO ANY AND ALL AGREEMENTS, EASEMENTS, RIGHTS OF WAY AND/OR COVENANTS OF RECORD AND LAW.

NOTES

1. OWNER: RONALD F. JONES & SUZANNE LUSSIER JONES
   DEED REFERENCE: LIBER 7766, FOLIO 880
2. ZONING: D.R. 3.5 & D.R. 2
3. PROPERTY OUTLINE SHOWN HEREON IS FROM AVAILABLE DATA AND NOT FROM A PROPERTY LINE SURVEY.
4. SITE DATA FOR 6 APARTMENT UNITS:
   A. Existing Zoning: D.R.3.5
   B. Minimum Frontage Required: 70 feet + 15 feet X 4 = 130 feet Required. Provided = 65 feet
   C. Lot Area Required: 12,500 S.F. + 4000 S.F. X 4 = 28,500 Square Feet Required. Provided = 25,449 Square Feet
5. THIS PROPERTY WAS SUBDIVIDED BY DEED MARCH 21, 1961.
6. PUBLIC UTILITIES EXIST IN CENTRAL AVENUE.
7. PARKING DATA:
   6 UNIT APARTMENT: 6 X 1.33 = 8.18 (10 SPACES REQUIRED) (10 SPACES PROVIDED)

S 30° 27' 23" E

65'

SURROUNDING 6' HIGH STOCKADE FENCE W/ 1' HIGH CHAIN LINK EXTENSION, EXHIBIT

EX. DWELL # 211

EX. 8 STY FRAME

EX. 8 STY FRAME

EX. CONC. PORCH

ZONING LINE

ZONED: D.R.2

ZONED: D.R.3.5

N 59° 46' 12" W 391.55'

S 59° 46' 12" E 391.55'

150.5'

160'

EX. DWELL # 207

EX. DWELL # 205

EX. DWELL # 203

EX. 12" WATER

EX. 8" SEWER

EX. 8" GAS LINE

125' ± TO GLYDON AVE.

N 30° 28' 21" W 65'

± ROAD # DEED LINE

CENTRAL AVENUE

BEGINNING OF DESCRIPTION

EX. DWELL # 208

EX. DWELL # 206

EX. DWELL # 204

EX. DWELL # 202

EX. DWELL # 208

EX. DWELL # 210

EX. DWELL # 212

EX. DWELL # 214

EX. DWELL # 216

EX. DWELL # 218

EX. DWELL # 220

EX. DWELL # 222

EX. DWELL # 224

EX. DWELL # 226

EX. DWELL #

IN RE: PETITIONS FOR SPECIAL HEARING * BEFORE THE
AND ZONING VARIANCE
NES Central Ave. 60' SE Glyndon* ZONING COMMISSIONER
Ave. (209 Central Avenue)
4th Election District * OF BALTIMORE COUNTY
3rd Councilmanic District
* CASE # 89-396-SPHA
Ronald F. Jones, et ux
Petitioners *

****

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests a Special Hearing to approve the multi-family apartment dwelling and lot at 209 Central Avenue as a legal nonconforming use for six (6) apartment units or that said lot (209) and improvements conform to the spirit and intent of the B.C.Z.R. that apply to the conversion of dwellings for apartment use; and, a variance from Section 402.1 to permit a side yard setback of 12.0 feet and 12.6 feet in lieu of the required 20 feet for one side and 10 feet and/or 50 feet for the sum of both side yard setbacks and, a variance to permit a lot width of 65 feet in lieu of the required 80 feet, as more particularly described on Petitioners' Exhibit 7 in case No. 89-396-SPHA.

The Petitioner, Ronald F. Jones, appeared, testified and was represented by Eleanor J. Lipsitz, Esquire. The following witnesses appeared on behalf of the Petitioner: Pauline R. Hyman, Herbert Malsud, Registered Land Surveyor, Cookie Stone, Colleen Thompson, Keith E. Ronald, Audrey Fox, James E. Reter, George Singer, Aileen Singer and Zelma Ensor.

The following Protestants appeared and were represented by G. Scott Barbight, Esquire: Doris R. Hammond, Elizabath B. & Nevett Steele, Jr., Sharon L. Kline, Jane Gelpe, Marjorie H. Wilson, Jeanne W. Hammond, Terry Stanley, Martha Clements, Meredith B. Wells, George and Jean Woon, Gene Bevley, Anna Welsh, Pat Beaver, Vernene Lons, Kathy Swoo, Sam E. Scruggs,

CASE RECEIVED FOR FILING
Date 10/24/89
By [illegible]

-1-

Barbara Whitman, Ann and John H. O'Neill, Donald Wilson, Charles Welsh, Martha Healy, Charles and Mary Broderick, Sharon Herb, Sandy Laken, Nan Kaestner, H. Eugene Bosley, Darlene Scheyer, Marie C. Smith, Carol Wissel and Eleanor Taylor.

During the first hearing concerning case No. 89-16-SPHA, one of the Protestants, Nevett Steele, Jr., Esquire, represented himself and some of his neighbors. Mr. Steele generally presented objections on behalf of those Protestants. Later, the appearance of G. Scott Barbight, Esquire was entered on behalf of both Nevett Steele and all of the above listed Protestants.

The first hearing on this matter was held on April 4, 1989. At that time the Petitioner requested dismissal of this case and/or a postponement, because the hearing was less than 30 days from the date the Petition was received and accepted for filing on March 8, 1989. The hearing was rescheduled for April 17, 1989 to correct the 30 day notice issue.

The Petitioner has not and does not currently accept this corrective action by the Zoning Commissioner. Petitioner, Jones, does not believe he was afforded his legal rights. He does not suggest the complete remedy he is seeking, because a dismissal would only serve to cause a zoning violation to be brought on these same issues in the Maryland District Court. A postponement to allow the proper time to elapse is the only logical result.

There is no doubt that the Petitioners had notice of the hearings and that the additional thirteen (13) days added to the original twenty-seven (27) days complies with the requirements for notice. The Baltimore County Code, Section 22-26, requires a hearing not less than thirty (30) days after the date the Petition is accepted. The purpose of this law is to provide notice and a chance to prepare and be heard. The Petitioner, clearly, had notice and presented a complete case.

CASE RECEIVED FOR FILING
Date 10/24/89
By [illegible]

-2-

This matter and zoning case #89-16-SPHA have a long and very interdependent history. The evidence, clearly, established that this matter was inter-related with the lot of land known as 207 Central Avenue. I most steadfastly believe that the issues raised by this Petitioner cannot properly be resolved without a review of the two lots, namely, 207 Central Avenue and 209 Central Avenue, concurrently. However, each case will have its own final resolution, decision and Order.

For this reason, I continued the hearing in case No. 89-16-SPHA to allow that Petitioner time to correct their request by filing an additional Petition for Special Hearing. I was also desirous of having the owners of 209 Central Avenue file Petitions for relief concerning the continued use of that property as an apartment house. Finally, I decided that the original and new Petitions for 207 Central Avenue and the relief requested herein for 209 Central Avenue would be heard at the same time as companion cases. Both cases were processed for hearing and the hearings were held on April 17, 1989 and April 28, 1989.

By the very nature of these cases, some of the facts that apply to one case also apply in the other. Likewise, some of the exhibits are marked for one case or another and some are marked for both cases. I will attempt to recount herein only that testimony and evidence necessary to the final resolution of these cases.

In order to establish the basic factual framework, I will reduce the testimony of most of the witnesses to as few printed words as possible.

The following information was provided by the Petitioner, Ronald F. Jones:

CASE RECEIVED FOR FILING
Date 10/24/89
By [illegible]

-3-

The Petitioners, Ronald F. Jones and Suzanne Lussier-Jones, acquired title to property known as 209 Central Avenue, Glyndon, Maryland, the subject of the instant petition for special hearing and petition for variance on June 24, 1988. The property consists of a lot containing 25, 545 square foot of land, more or less, and an existing structure, located in D.R. 2 and D. R. 3.5 zones. The structure has existed since approximately 1890. (Petitioners' Exhibit 1 in case No. 89-396-SPHA). A notarized letter from Anita Sussmihl (Petitioners' Exhibit 3 in case no. 89-396-SPHA) states that the conversion of the improvements to six (6) apartment units was undertaken after she and her husband acquired title to the property in March, 1941. There was no opportunity to cross-examine this very important witness. That 209 Central Avenue was subsequently conveyed by Aileen Singer to Ronald F. Jones and Suzanne Lussier-Jones by deed dated June 24, 1988.

Mr. Jones claims he had no knowledge of any problem with the use of 209 Central Avenue as or for an apartment house of six apartments. He states that he was told that Baltimore County authorized the use of the property as an apartment house. He says that the house has always been an apartment house, as far as he knows, and there is no other use of the property.

Testimony was taken from Mrs. Audrey Fox, President of Homestead Group, Ltd. (hereinafter called "Homestead"). Mrs. Fox testified that Homestead is a company engaged in the business of building houses and that it acquired the lot known as 207 Central Avenue for this purpose. Settlement occurred for said the lot on March 29, 1988, pursuant to a contract entered into on January 23, 1988. She stated the lot was represented as a buildable lot by the real estate agent and by the listing agreement. (Petitioner's Exhibit 6 in case 89-16-SPHA) Mrs. Fox said she was aware that

CASE RECEIVED FOR FILING
Date 10/24/89
By [illegible]

-4-

207 Central Avenue was in a historic district and that plans for the dwelling to be erected on said lot had to be approved by the Landmark Preservation Commission ("LPC").

Mrs. Fox claims she went to the Zoning Office to apply for a window variance and, at that time, she was informed that a window variance was not necessary, but that the lot was undersized by 5 feet and that a variance was needed in order to build any house on 207 Central Avenue. An appointment was made to file the Petition for Zoning Variance which led to the original case No. 89-16-SPHA. Homestead continued to process plans for the proposed house, a Victorian style single-family dwelling, before LPC and approval was granted by LPC. (Petitioner's Exhibit 3 in 89-16-SPHA)

Mr. William Kirwin was called as an expert witness on behalf of Homestead and he testified that he has personally viewed 207 Central Avenue, the surrounding properties and neighborhood. That he is familiar with the Glyndon area. With regard to the variance for 207 Central Avenue, Mr. Kirwin testified that the granting of the variance and the development of the property as proposed would not do any substantial injury to the public health, safety or general welfare. In his opinion, there would be no adverse affects from an environmental standpoint. He believes that because the house is a single-family dwelling and there would be no overcrowding of the land; it would not tend to create traffic congestion or have any adverse affects as to air and noise pollution. Further, it was Mr. Kirwin's specific testimony that the variance, if granted, in his view, would not be inconsistent with the zoning or the spirit and intent of the zoning regulations.

Mr. Reter testified for the Petitioner concerning his ownership of 207 and 209 Central Avenue from 1965 to 1968. He also claims he visited the

CASE RECEIVED FOR FILING
Date 10/24/89
By [illegible]

-5-

apartment house during 1946 and 1947. He claims there were six (6) apartments in the house at 209 Central Avenue when he was in the building.

The next witness called on behalf of Homestead was Colleen Thompson, the listing real estate agent. She testified that the lot was listed for sale as a buildable lot and that she personally investigated whether or not it was a buildable lot. Mrs. Thompson claims that she went to the Baltimore County Zoning Office with a copy of a plat and the deeds for 207 and 209 Central Avenue. She claims she advised the Zoning Office of the manner in which both lots were being used, and of the proposal to sell the vacant lot separately from the sale of the lot improved with the apartment building. Mrs. Thompson stated that she was advised that this could be done and there was no problem building on the unimproved lot. Mrs. Thompson further testified that the lot was represented to Homestead as a buildable lot and that at no time prior to or at settlement was Homestead ever advised that there was any question as to whether or not this lot could be improved. Mrs. Thompson further testified that prior to settlement for 207 Central Avenue, she never understood that there was any question with regard to building on that lot. It is her opinion that the only issue raised by the Protestants, as of that time, related to the use of the property known as 209 Central Avenue and, in particular, the number of apartment units that could be occupied on that property and the location of a new driveway on 209 Central Avenue.

Mrs. Thompson could not provide any evidence concerning the information she claims to have received from the Office of Zoning. She did not know who she talked to and she did not obtain written confirmation of the information she received. She also had no explanation about why she did not check her information more closely when she received the letter of

CASE RECEIVED FOR FILING
Date 10/24/89
By [illegible]

-6-

April 8, 1989 from James E. Dyer and W. Carl Richards of the Baltimore County Office of Zoning to Nevett Steele, Jr., indicating there are problems with the lots known as 207-209 Central Avenue. See Protestants' Exhibit 7 in case No. 89-396-SPHA. Likewise, Mrs. Thompson had no answer why she took no action after receiving the April 8, 1988 letter from Mitchell Kellman and James E. Dyer of the Baltimore County Office of Zoning.

Mrs. Aileen Singer, the seller of 207 and 209 Central Avenue, testified that, prior to selling either of said lots, she had consulted the Baltimore County Zoning Office on two occasions regarding the sale of these lots as separate lots and the ability to build on lot 207. Mrs. Singer stated that, after reviewing the zoning maps and the situation with regard to the lots, she was advised that she could apply and obtain a building permit for lot 207. She claims she originally made such investigation because she thought she might want to build her home on the lot known as 207 Central Avenue.

Upon cross examination, Mrs. Singer could not provide any information concerning who she dealt with in the Office of Zoning, nor did she ever present any evidence of any of these meetings. In fact, she was very vague about who she spoke to, what facts were presented and what proof she provided to establish this alleged nonconforming use. It is nearly impossible to judge the legal and factual basis upon which the judgments, that were supposedly rendered granting authority to use the lots as claimed, were made.

Mrs. Singer did not respond to any of the letters written by Mr. Steele concerning her property and the alleged legal problems. In fact, Mrs. Singer does not attempt to justify her lack of action after she admits she received the letters marked Protestants' Exhibits No. 2 and 3 in case No. 89-16-SPHA. Mrs. Singer does not deny that she was aware of the contents of

CASE RECEIVED FOR FILING
Date 10/24/89
By [illegible]

-7-

Protestants' Exhibit No. 7 in case No. 89-396-SPHA addressed to her agent, Mrs. Thompson, and she offered no reason for not informing Homestead of any of these letters and she does not claim to have informed the Jones of any of these letters.

Whether or not Mrs. Thompson and/or Mrs. Singer were, as they claim, told by the Zoning Office that the vacant lot could be developed, is really not controlling of the relief requested herein. It has been established in Maryland, since virtually the advent of zoning, that an impermissible use not only must be denied, but also must be revoked where allowed by mistaken official action. In other words, the doctrine of estoppel does not operate to protect an illegal zoning use from permit revocation. Lipsits v. Parr, 164 Md. 222, 743 (1933). See e.g., Park Shopping Center v. Lexington Park Theatre Co., 216 Md. 271, 139 A.2d 843 (1958).

Therefore, what they claim they were told is not the issue in light of the fact this is not a violation hearing. No punishment is envisioned in these cases, only the correct enforcement of the regulations. The Zoning Commissioner is not estopped from preventing the possible illegal development of these lots.

Continuing with a review of testimony and evidence, Mr. Herbert Malsud, a Registered Land Surveyor, testified for Petitioner, Ronald Jones. He stated that he believes the apartment house at 209 Central Avenue is a proper use, as provided by the within the B.C.Z.R. in the D.R. 3.5 zone. Mr. Malsud testified that, in his opinion, the single lot known as 209 Central Avenue was large enough to support the density of the six (6) apartments. Mr. Malsud listed certain calculations on Petitioner's Exhibit 7 in case No. 89-396-SPHA which do not make sense in light of the requirements listed in the B.C.Z.R. for the D.R. zone. He made no attempt to ex-

CASE RECEIVED FOR FILING
Date 10/24/89
By [illegible]

-8-

plain his opinion or the basis for his calculations. It appears to me that there is no basis for Mr. Malmud's opinions and he is stating a position in support of a client with no realistic belief that it is true.

Mrs. Zelma Ensor also testified on behalf of Homestead. She is a Real Estate Broker with 31 years of experience in and around the Glyndon area. She is very active in the historic preservation of Glyndon. Mrs. Ensor was of the opinion that the proposed house at 207 Central Avenue would not harm the health, safety, or welfare; that the house was well-planned and, as situated on the lot, would have no adverse affect on the properties in the area, their values or the neighborhood, but, on the contrary, would have a good affect on the area and values of the property.

Mrs. Eleanor Taylor, past President and Member of the Board of Historic Glyndon, Incorporated, testified in opposition. Mrs. Taylor stated that a lot of time and effort was devoted to having Glyndon accepted by the LPC. Mrs. Taylor stated it was a protective measure because the objective of LPC is to try to have structures built that fit in architecturally and with the general appearance of the properties nearby. Mrs. Taylor acknowledged that the dwelling to be erected at 207 Central Avenue had been approved by the LPC and that the LPC would not have approved the plans if it did not feel that it was compatible with the present structures in the neighborhood. With regard to the width of the lot, Mrs. Taylor took the position that if the B.C.Z.R. require certain size lots, there should be no deviation therefrom under any circumstances. Mrs. Taylor basically felt that 207 Central Avenue ought to remain as a vacant lot to support 209 Central Avenue and the big house with all the apartments.

Mrs. Taylor also testified that many of the other small lots in the area are outside the official historical district. She does not believe

the second house on lot 207 Central Avenue is correct and good for the community. She stated that she has been in the house at 209 Central Avenue many times and for years the first floor was used as one apartment, not two. the nonconforming use for six apartments was lost, in her opinion, when the first floor was used as one apartment and not two.

Mr. Donald H. Wilson testified in opposition to all of the relief requested in both cases. He believes the variances requested are improper and will lead to over use of the land. He went on to say that the parking in the area is very bad and the big house on 209 Central Avenue needs the land from both lots to support all the cars, people, dogs and activity.

Mr. Wilson said he thinks the large house on 209 Central Avenue needs the open space of 207 Central Avenue to permit the house to fit into the community. The area of the land is needed to support the area and bulk of the house. These are not seperate lots for use purposes. He agreed with the other witnesses that the requirements of the B.C.Z.R. must be strictly enforced. He does not want any variances. Mr. Wilson also acknowledged, however, that he heard Mrs. Taylor's testimony and characterization of LPC and that he knew nothing about the plans and made his comments without any knowledge of what house was contemplated for the lot.

Mrs. Doris Harmond testified as a Protestant and she acknowledged that Historic Glyndon, Incorporated participated in the LPC meetings and that she was present as an observer at the LPC meetings at which the house to be erected on 207 Central Avenue was discussed. Mrs. Harmond voiced opposition to improvements being erected on 207 Central Avenue stating that she thought it ought to remain as a vacant lot as part of the use at 209 Central Avenue.

Mrs. Harmond stated she has lived across the street from this apartment house at 209 Central Avenue, since 1947. She knows that the first floor has not always been used as two apartments. In fact, when the owners live on site, the first floor was used as one apartment only. The doors between the two areas open up to make one big apartment.

Mrs. Harmond also testified how 207 and 209 Central Avenue have always been used together. She told how the parking and driveway were on the vacant area and how the people used 207 Central Avenue as the yard area. There is no doubt in her mind that the land from both lots have been used over the years to support the activities and needs of all the residents in the apartment building.

Also testifying for the Protestants was Mark Laken, President of Glyndon Community Association. Mr. Laken acknowledged that he saw the plans and felt they were irrelevant. In his mind the issue was that Glyndon has a very special designation given by the United States and Baltimore County and should have a more strict zoning code, but at the very least, there should be no deviation from the strict requirements of the present zoning code. He, therefore, felt that without regard to any impact, if a lot does not comply, it should not be built upon. He agreed that if plans are approved by LPC, this would mean that the type of house is compatible with the Historic District of Glyndon.

One of the main Protestants was Hewett Steele, Esquire, who is also the author of several letters, marked Protestant's Exhibits 2 and 3 collectively in zoning case No. 89-16SPHA. Mr. Steele's testimony, clearly, shows that he was aware of the possible sale of these lots and he did not believe the sale was proper. The exact nature of his complaint and the issues he raised have changed in form and nature over time. However, the un-

disputed fact is the Singers, the original owners of both 207 and 209 Central Avenue, knew that Mr. Steele questioned the sale of the lots to separate and different owners.

Mr. Steele testified he was concerned that, if various relief requested is permitted, the Victorian quality of the homes in the community will be disturbed. He stated that the purpose of LPC is to make sure the dwellings are compatible with the neighborhood. Mr. Steele testified he was not dissatisfied with the architecture or size of the proposed house, but in essence he feels that the lot at 207 Central Avenue should remain as a vacant lot joined together with 209 Central Avenue and the apartment house use thereon.

Mr. Steele's letter of February 26, 1988, marked Protestant's Exhibit 2 in case No. 89-16-SPHA, clearly raises issue with the proposed sale of the properties at 207 and 209 Central Avenue. In the first paragraph, of the letter, he raises the issue of sale of some area of land for a new house. In the second paragraph, there is a direct reference to the Baltimore County Zoning laws.

It is very interesting that Mr. and Mrs. Singer were also copied on the letters of March 5, 1988 and March 7, 1988 from Mr. Steele to the Baltimore County Zoning Commissioner, but Mrs. Singer found no need to take further action after receiving a copy of these letters. Also, Mrs. Singer received a copy of the March 30, 1988 letter from Mr. Steele to Carl Richards of the Baltimore County Zoning Office. All of these letters are found as part of Protestants' Exhibit 3 in case No. 89-16-SPHA. Mrs. Thompson and Mr. and Mrs. Singer both were mailed a copy of the nonconforming use denial letter from Mitchell Kellman, Zoning Associate, on April 8, 1988 which is marked Protestants' Exhibit 4 in case No. 89-16-SPHA.

Thirdly, the letters from Mr. Steele raise issue with the transfer of the parking lot and the continuation of the nonconforming apartment house use. In fact, the April 8, 1988 letter to Mrs. Thompson from Mitchell Kellman which refers to approve the alleged six (6) apartment house as a nonconforming use.

Mrs. Thompson never denied receiving these letters, nor does she attempt to explain why she did not take positive action to investigate the matter. Her only explanation concerning the issues raised in all of these letters is that her property was not involved. The letters were about the "other lot". She then returns to her testimony about her visits to the Baltimore County Zoning Office. Her handling of these potential problems takes no reason and her testimony about the whole subject is totally unconvincing. She attempts to hide behind the statements she claims she received from the Zoning Office and scorn how the letters from Mr. Steele are unimportant.

Neither Mrs. Thompson nor Mrs. Singer offered any explanation why they did not take any action after they received the April 8, 1988 letter, which is marked Protestants Exhibit 4 in case No. 89-16-SPHA. They did not even attempt to inform Homestead, who had just purchased the lot at 207 Central Avenue, nor did they inform the Jones, who would not settle on 209 Central Avenue for another two (2) months.

In fact, Mrs. Singer received a letter of March 25, 1988 from John W. McGrain, (Petitioner's Exhibit No. 6 in case 89-396-SPHA) that approves the parking area for 209 Central Avenue behind the house. Petitioner Jones argues that this letter supports his right to continue to use the six (6) apartments. Of course, neither Mrs. Singer nor Mr. Jones ever followed up on the requirements set out in paragraph No. 3 of that letter. They never

checked to confirm compliance with the ". . . zoning ordinance of Baltimore County. . . ".

Likewise, Mrs. Singer claims she received a permit for the transfer of the parking area (Petitioner's Exhibit No. 5 in case 89-396-SPHA) and the ". . . County. . . ", therefore, approved the six apartment house use. This is an interesting argument, but totally unfounded in either fact or law. The facts are the permit is a grading permit that is not reviewed by the Office of Zoning. Legally, she was referred to Landmarks Preservation Commission, who warned her of her need to comply with zoning in the letter of March 25, 1988. See Petitioner's Exhibit No. 6 in case No. 89-396-SPHA. Mrs. Singer failed to respond to any of the warnings to comply with the B.C.Z.R.

The Petitioners, in both cases, rely heavily upon the testimony of Mrs. Thompson and Mrs. Singer. I understand the Petitioner's desire to have this reliance upon the alleged statements of the Zoning Office carry the weight of persuasion in these cases.

The Petitioner's problem is very simple. Mrs. Singer and Mrs. Thompson, as her agent, did not react in anything close to a reasonable manner. No reasonable person would have ignored the problems raised in all of the letters. Mrs. Thompson and Mrs. Singer very carefully protected Homestead by not informing them of the letters dated February 26, March 5, March 7 and April 8, 1988. In fact, the first three letters were received at least three (3) weeks before the Homestead settlement. It appears Mrs. Singer, also, did not inform Petitioner, Jones, of the problems they had been forewarned of on at least six (6) different occasions and they completed the sale even after they had received official word from Baltimore County that the house was not a nonconforming apartment house.

There are certain underlying facts which are not in dispute and should be settled at this point. They are:

1. The parcels of land known as 207 and 209 Central Avenue have been for many years separately described lots. This has been true since prior to January 2, 1945.

2. During the time January 2, 1945 through and including March 28, 1988, the lots known as 207 and 209 Central Avenue have always been jointly owned. That 209 Central Avenue has been improved with a large building used as a multi-family dwelling unit for many years.

3. On March 28, 1988, Aileen N. Singer transferred 207 Central Avenue to Homestead Group, Ltd. (Protestant's Exhibit #1).

4. The land known as 207 Central Avenue is an unimproved lot except for the parking area, driveway and open space that, until March 28, 1988, serviced 209 Central Avenue for the past fifty (50) years, or so.

5. The Baltimore County Zoning Regulations (B.C.Z.R.) do not permit a multi-family, six (6) unit, apartment house to be located at 209 Central Avenue.

6. The lot known as 207 Central Avenue is too narrow to permit the construction of a single family home without a variance. All other area and set back requirements can be met by the proposal on Petitioner's Exhibit 4.

7. That Mrs. Singer decided to sell the two lots (207 and 209 Central Avenue) as two separate lots for two different uses and followed through on that decision on March 28, 1988.

The Protestants have argued that the relief requested herein cannot be granted if the two lots, 207 and 209 Central Avenue, are viewed as one parcel required to support the six apartments on 209 Central Avenue. This is

true in a fashion, but this view of the case will not answer all of the issues before the Zoning Commissioner.

Turning now to the legal decisions before the Zoning Commissioner, the proper place to begin is with the use of these lots prior to January 2, 1945, (The beginning of modern zoning in Baltimore County). All of the decisions concerning these lots are interrelated. There is no one answer to this case, but a series of decisions that begin on January 2, 1945. Therefore, the use of 207 Central Avenue is tied to the use of 209 Central Avenue, as the Protestants argue, but 209 Central Avenue does not totally control the use of 207 Central Avenue, as I will explain herein.

The reason for this format is very simple. When the two cases are viewed together, they raise several issues, namely, an alleged nonconforming use, the possible continuation of that use, after the removal of nearly fifty (50%) percent of the land area for a totally different and unrelated use, and a new single family home. The issue of the alleged nonconforming apartment house must be reviewed first.

The first principal to determine a nonconforming use as outlined in Section 101.1 of the B.C.Z.R. and as applied by McKemy v. Baltimore County, Maryland, 39 Md. App. 257, 385 A2d 96 (1978) is to determine whether or not there was a pre-existing lawful nonconforming use prior to January 2, 1945. This is both a factual decision and a legal decision.

Aileen Singer owned both lots and used them to support the apartment house. In this capacity, she was acting no different than every owner before her for many years. She owned what she believed was a valid apartment house at 209 Central Avenue and a vacant lot at 207 Central Avenue.

Prior to March 29, 1988, 207 and 209 Central Avenue were separately deeded lots, which were owned jointly from at least January 2, 1945. From

January 2, 1945 until March 29, 1988, 207 Central Avenue was used as a parking lot driveway, open space and yard area for a very large old house known as 209 Central Avenue. It is clear the house at 209 Central Avenue has been an apartment house for many years. When exactly it became an apartment house is somewhat unclear, but the best evidence is that it was an apartment house prior to January 2, 1945. The number of units in the apartment house is debatable. All of the evidence collectively establishes that 207 and 209 Central Avenue have been, for many years, used as one parcel of ground with one use, namely, an apartment house. The o[illegible] lot at 207 Central Avenue has always supported the apartment house.

Now, at first brush, this appears to be a nonconforming use apartment house and ends the review of these cases. The few facts listed above appear to comply with the requirements of Section 104.1, of the B.C.Z.R. for a nonconforming use. Section 104. says in pertinent part:

> "A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these regulations; provided that upon any change from such nonconforming use to any other use whatsoever, . . ., the right to continue or resume such nonconforming use shall terminate. No nonconforming building or structure and no nonconforming use of a building, structure, or parcel of land shall hereafter be extended more than 25% of the ground floor area of buildings so used."

Of course, Petitioner Jones in support of the case for 209 Central Avenue, Case No. 89-396-SPHA, claims the inquiry ends at this point; it does not. That type of review is too simplistic. Likewise, Petitioner, Homestead for 207 Central Avenue claims the separate lot is an individual lot and it is entitled to be used with no connection to the apartment house and 209 Central Avenue. Again, this is a simplistic view of the issues involved and an inappropriate review in this case. This type of review

ignores some of the basic underlying principals of a nonconforming use, namely, that the area incorporated into the actual nonconforming use must be determined; that the area required to support the continuation of an alleged nonconforming use must remain consistent; that the scope of the use must be determined; that the extent of the alleged nonconforming use must be established; and many other factors that must be defined and determined to complete the inquiry.

Continuing with a review of the alleged nonconforming use apartment house, the weight of the evidence has established an apartment house use for 207/209 Central Avenue. This nonconforming use, clearly, rests upon both 207 and 209 Central Avenue. The entire land area must be considered.

As to the issue of the number of units, the maximum claimed is six (6). There is no doubt that the first floor has been used as one apartment, at different points in time. Therefore, there have been lapses in the six (6) apartment use to a maximum of five (5) apartments. Those lapses have lasted for several years. The Petitioners, Mr. and Mrs. Jones, in case no. 89-396-SPHA, argue, very fiercely, the point about the number of units.

Petitioner, Jones, argues that their evidence proves six (6) apartments. There are so many holes in this argument that I will not list them all in this opinion. However, a short list includes: no proof of the date of establishment of the six (6) apartments, no evidence at all concerning the years 1951 through 1963, and no evidence concerning continued use during the years 1969 through 1976.

Petitioner, Jones, claims to substantiate his case with the evidence of Mr. Reter and Mrs. Singer. Mr. Reter only testified to having been present in the house at 209 Central Avenue during 1946 and 1947; then,

again, when he owned the building from 1965 through 1968. Mrs. Singer has no knowledge of the use of this property prior to 1976. She can prove nothing about its use during the 1940s, 1950s, 1960s or the early 1970s. This evidence simply does not meet the requirements of Section 104 of the B.C.Z.R. concerning continued use.

There is no debate that the maximum number of units is five (5). There is evidence of a few as three (3) apartments. There is very strong evidence to suggest a reduction to three (3) or four (4) apartments for multi-year periods of time during the 1960s and/or 1970s. However, as I will explain below, the discussion about the number of units is moot and the proof of continued use is incomplete and fails to establish a nonconforming use. Petitioner, Jones, failed to meet his burden of proof for the alleged nonconforming apartment house.

It is important to keep in mind that the burden of proving a nonconforming use rests always with the Petitioner. This burden may not be shifted to the Protestants, as Mr. and Mrs. Jones have attempted to do, nor may it be shifted to Baltimore County, Maryland. The Petitioners claim that the witnesses for the Protestants failed to controvert the existence of the six (6) unit nonconforming apartment house. This is a total misplacement of legal burden by Jones. I will not accept the Petitioner's attempt to shirt the burden of disproof upon the Protestants.

By definition, nonconforming uses are inherently incompatible with uses permitted in a zone. Boyce v. Sembly, 25 Md. App. 43, 334 A.2d 137 (1975). Nonconforming uses pose a threat to the success of zoning, limit the effectiveness of land use controls, imperil the success of community plans and injure property values. The purpose of restrictions on

nonconforming uses is to achieve the ultimate elimination of such uses through economic attrition and physical obsolescence.

Clearly, nonconforming uses are disfavored at law and are to be restricted. Furthermore, a nonconforming use is limited to the land on which the activity operates. If the activity is conducted within a building or structure this helps to define the use and to further limit the scope of the nonconforming use.

Petitioner, Jones, failed to prove a basis for the legal establishment of this apartment house as nonconforming use and he failed to prove a history of continuing use of a six (6) unit apartment house. The first principal, required by McKemy, supra, is not met by the weak evidence claimed for the nonconforming apartment house use prior to January 2, 1945 through March 29, 1988. I believe this nonconforming use must fail at this point and must, therefore, be rejected. However, for the purposes of argument, I will review the remaining principals of McKemy, supra, and review the remaining underlying legal principals raised by the parties.

Returning to the review of the nonconforming use, the inquiry now shifts to March 29, 1988 when Mrs. Singer transferred 207 Central Avenue to Homestead, a separate and unrelated buyer, for a distinct, different and unrelated use from the apartment house use at 209 Central Avenue. The inquiry then centers on the issues of change and/or lapses of the alleged nonconforming use.

As stated in McKemy v. Baltimore County, Maryland, 39 Md. App. 257, 385 A2d. 96 (1978), the second principal to be applied, as specified in Section 104.1, is whether or not there has been a change in the use of the subject property. A determination must be made as to whether or not the change is a different use and, therefore, breaks the continued nature of

the nonconforming use. If the change in use is found to be different than the original use, the current use of the property shall not be considered nonconforming.

The first part of this principal is a finding of whether or not there have been changes. I believe there have been changes. First, there has been a very drastic change in the use of 207 Central Avenue which was one-half of the land that always supported the apartment house use. That lot no longer supports the apartment house at 209 Central Avenue. The parking area and supporting open space, and yard space, is not located on 207 Central Avenue to diffuse or spread the apartment house use to a larger land area.

Secondly, the new house to be located at 207 Central Avenue will increase overall density for the total area of the original nonconforming use area which was originally both 207 and 209 Central Avenue.

Clearly, the total legal density for the two lots is five (5) units. Each lot has a separate density of 2.8 units which would only permit two (2) actual units per lot. What the Petitioners, jointly, want to establish on the total area would represent seven (7) density units (6 apartments and one house). There are only six (6) units currently and have been as few as five (5) units as recently as 1985. This new higher density would far exceed the density permitted for these lots, either jointly or severally.

Thirdly, the construction of a new house on 207 Central Avenue will nearly double the bulk of both lots. The new house will change the effect upon the community. The land area covered by improvements will also double. To claim as the Jones do that there is no change when density increases from five (5) to seven (7) units is to live with one's head in the sand. Density must be viewed as one of the hallmark considerations

of impact upon the community. Density is the fundamental basis of residential zoning in Baltimore County. Furthermore, to claim that the additional house with the additional bulk and parking is not a change, is unacceptable. The parking was never before upon 209 Central Avenue.

For all of the reasons listed above, including, but not limited to, the change in density, the change in parking, the loss of open space, the increase in overall density when the new house is built, and the change in special relationship between the old large house on two lots to the community; there is no other finding possible other than a change in use as envisioned by the McKemy, supra, standard. The new uses of the two lots is, clearly, different from the use on the two lots jointly for the past fifty (50) years.

I want to make it very clear that I believe Mrs. Singer had a right to transfer the lots to separate owners. The issue herein is the affect of her decision, not whether she had a right to make the decision to sell the lot. The owner of separately deeded lots has a right to sell them. However, the use of the lots is a zoning issue and will ri-htfully be determined by the Zoning Commissioner for Baltimore County.

When Mrs. Singer decided to sell 207 Central Avenue as a building lot, she was removing that land area and support services area from the apartment house. She is permitted to undertake this action, however, she is subjected to the consequences of that decision. The consequences of that decision is to change the nonconforming use apartment house into two new uses. One use is the old apartment house on a different land area with additional facilities and accessory uses, and the other use is the new single family house at 207 Central Avenue. Therefore, these new uses break the continuing nature of the alleged nonconforming use and the original

use, therefore, terminates. As held in McKemy, supra; the current use of the property shall not be considered nonconforming.

Now, turning to the final principal of Section 104.1 of the B.C.Z.R., as established in McKemy, supra.

When the claimed nonconforming use has changed, or expanded, then the Zoning Commissioner must determine whether or not the current use represents a permissible intensification of the original use or an actual change from the prior legal use. In order to decide whether or not the current activity is within the scope of the nonconforming use, the Zoning Commissioner should consider the following factors:

> "(a) To what extent does the current use of these lots reflect the nature and purpose of the original nonconforming use;
>
> (b) Is the current use merely a different manner of utilizing the original nonconforming use or does it constitute a use different in character, nature and kind;
>
> (c) Does the current use have a substantially different effect upon the neighborhood;
>
> (d) Is the current use a 'drastic enlargement or extension' of the original nonconforming use?"

A review of these standards, clearly, evidence a change in density. The nature of the current nonconforming apartment house use now has twice the impact upon the land and community. The land area is one-half the original land area. The new use of an apartment house at 209 Central Avenue and a new house at 207 Central Avenue will have a substantially different impact upon the neighborhood. There is no way that the reduction in land area committed to the big house at 209 Central Avenue does not double the impact of that oversized and over density use upon the neighborhood.

Using the factors set forth in McKemy, supra, also indicate that the proposed activity on lots 207 and 209 is not within the scope of the original nonconforming use. The proposed use, as a six (6) unit apartment house and single family dwelling, does not reflect the nature and purpose of the original nonconforming use. The original nonconforming use permitted a very large structure to fit into the ambiance and character of Historic Glyndon. The open space created by the landscaped areas of the lot at 207 diminished the impact of the oversized apartment building and provided an architectural scope to the large structure which was more in keeping with the expansive yards and green spaces of Central Avenue.

The proposed use is also a drastic enlargement of the original nonconforming use. The relocation of the parking lot and driveway on to lot 209 and proposed erection of a single family dwelling unit on lot 207 is an expansion, and not a mere intensification of the nonconforming use. See Odell v. City of Eagan, 348 N.W. 2d 792 (Minn.App. 1984), Young v. Board of Zoning Appeals, 307 N.Y.S. 2d 895 (1970), Muse v. Zoning Hearing Board, 415 A. 2d 1255 (Pa. Cmwlth., 1980), Jahnigen v. Staley, 245 Md. 130, 225 A. 2d 277 (1967) and Phillips v. Zoning Commissioner, 225 Md. 102, 169 A.2d 410 (1961).

The inquiry into the nonconforming use now ends with the following conclusions:

- the sale of 207 Central Avenue for a separate and different purpose from the 209 Central Avenue apartment house is proper, acceptable and legal.
- the use of 209 Central Avenue without the support of 207 Central Avenue does not meet the requirements of Section 104 of the B.C.Z.R., as applied by the principals set forth in McKemy, supra, for the continuation of a nonconforming use.

-the change in the use of both 207 and 209 Central Avenue terminates the nonconforming use for the alleged six (6) unit apartment house and the right to continue that nonconforming use shall cease.

This completes the inquiry as to the use of the two lots and the status of the use of the apartment house.

Turning now to a determination as to the future use of 209 Central Avenue. The house may not be used as a six (6) unit apartment building. However, it may be used as a single family dwelling unit, as a matter of right.

The Petitioner has requested a variance from certain parts of Section 402 of the B.C.Z.R. Section 402 deals with the conversion of dwellings to apartments. The Petitioner's computations shown on Petitioner's Exhibit No. 7 in case No. 89-396-SPHA do not reflect an acceptable application of the requirements of Section 402 of the B.C.Z.R. Most of the area and bulk of this building is found within the D.R.2 zone and the Petitioner has used the D.R. 3.5 requirements. The area requirement is not met, the front yard requirement is not met, and the side yard requirements are not met.

The Petitioner has left open the possibility that variances may be required. I believe this property should be viewed for purposes of Section 402, as a D.R.2 zoned property which requires 125 feet of width of front yard, a lot area of 25,000 square feet and side yards of 20 and 50 feet. If variances were granted to lot width and side yard distances, this house could have two (2) apartment units. There is no variance requested for the lot area and the lot only contains 25,449 square feet and two units would require 25,000 square feet of lot area.

Section 307.1, Baltimore County Zoning Regulations (B.C.Z.R.) states that the Baltimore County Zoning Commissioner shall have the power to

ORDER RECEIVED FOR FILING
Date 10/24/89
By [illegible]

create variances from an area regulation where strict compliance with the zoning regulations for Baltimore County would result in practical difficulty or unreasonable hardship.

In reviewing the Petition, it must be kept in mind that "(t)he standard for granting a variance. . . is . . . whether strict compliance with the regulations would result in 'practical difficulty or unreasonable hardship'; and that it should be granted only if in strict harmony with the spirit and intent of the Zoning regulations; and only in such manner as to grant relief without substantial injury to the public health, safety and general welfare." McLean v. Soley, 270 Md. 208 (1973)

Clearly, the evidence shows that Petitioner, Jones, does not have enough land to meet the requirements for lot width. The problem is the sale of 207 Central Avenue to Homestead. This sale raises the issue of a self-created hardship by the Petitioner's predecessor in title, Mrs. Singer.

Variances should be granted only in cases where strict compliance with the Zoning Regulations would result in practical difficulty or unreasonable hardship. Variances should be granted only if in strict harmony with the spirit and intent of the bulk regulations, and only in such a manner as to grant relief without substantial injury to the public health, safety and general welfare.

The need sufficient to justify a variance must be substantial and urgent and not merely for the Petitioners' convenience. McLean v. Soley, 270 Md. 208, 310 A.2d 783 (1973). A Petitioner seeking a variance must exercise proper diligence in ascertaining zoning requirements prior to acquiring property in order to avoid a resultant hardship. If such diligence is not exercised, the hardship is self-created and the variance may be properly refused. Wilson v. Mayor and Commissioners of Town of

ORDER RECEIVED FOR FILING
Date 10/24/89
By [illegible]

Elkton, 35 Md. App. 417, 371 A.2d 443 (1977). If the grant of a variance would affect the aesthetic ambiance of the residences in the immediate area, such variance would be in disharmony with the spirit and intent of the Zoning Regulations. Dahl v. County Board of Appeals of Baltimore County, 258 Md. 157, 265 A.2d 227 (1970). The mere fact that a variance, if granted, would make the property more profitable is not sufficient ground to justify the relaxation of bulk requirements. Easter v. Mayor and City Council of Baltimore, 195 Md. 395, 73 A.2d 491 (1950).

If the peculiar circumstances which render property incapable of meeting the zoning requirements have themselves been caused or created by the property owner or his predecessor in title, the essential basis of a variance is lacking. An act on the part of the property owner, or his predecessor in title, which has physically so affected the property as to create a unique circumstance or which in itself created either a practical difficulty or hardship in conforming to the restrictions of the Zoning Regulations bars relief. Salisbury Board of Zoning Appeals v. Bounds, 240 Md. 547, 214 A.2d 810 (1965).

The undisputed testimony indicates that Petitioner, Jones, went to settlement on June 24, 1988. It is also undisputed that prior to settlement, Mr. Steele conversed with the Petitioners and their counsel regarding the potential zoning violations surrounding the proposed uses for lots 207 and 209. Protestants' Exhibit 10, in case No. 89-396-SPHA, is a letter sent to the Jones' counsel prior to their settlement confirming the existence of these issues and concerns. The record is so filled with examples of notice to the Jones' predecessor in title, Mrs. Singers, it is unnecessary to reiterate them. See Protestants' Exhibit 4, 5, 6 and 7 in case No. 89-396-SPH.

ORDER RECEIVED FOR FILING
Date 10/24/89
By [illegible]

The variances requested must be denied based upon the doctrine of self-inflicted hardship. Had the Singers or Jones acted with reasonable diligence regarding lot 209, they would have either obtained written confirmation from the zoning office that the proposed use of lot 209 as a six (6) unit apartment was consistent with the Zoning Regulations or had filed the appropriate petitions to confirm compliance. At best, the realtor for the Singers received oral information from a zoning technician the exact substance and basis for which is, clearly, in question. The Petitioner did not act diligently and inflicted the hardship from which it seeks relief upon himself and, therefore, the variances requested must be denied.

The record contains grossly insufficient evidence to support the requirements of Section 307.1. The Petitioner who, clearly, has the burden of proving practical difficulty or unreasonable hardship, pursuant to the Zoning Regulations, has failed to offer any substantial evidence in support of its Petition for Zoning Variance. Since the Petitioner has failed to meet his burden, the Petition for Zoning Variance must be denied.

Pursuant to the advertisement, posting of the property and public hearing on the Petitions held, and for the reasons given above, the relief requested should be denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County, this 24th day of Oct., 1989 that the Petition for Special Hearing to approve the use of six (6) unit apartment dwelling located at 209 Central Avenue as a legal nonconforming use be and is hereby DENIED; and,

ORDER RECEIVED FOR FILING
Date 10/24/89
By [illegible]

IT IS FURTHER ORDERED that the Petition for Zoning Variance to permit a lot width of 65 feet in lieu of the required 70 feet be and is hereby DENIED; and,

IT IS FURTHER ORDERED that the Petition for Zoning Variance from Section 402.1 to permit a side yard setback of 12.0 feet and 12.6 feet in lieu of the required 20 feet for one side and 40 feet and/or 50 feet for the sum of both side yard setbacks be and is hereby DENIED; and,

IT IS FURTHER ORDERED that the Petitioner shall permit, upon request and reasonable notice, a representative of the Zoning Enforcement Division to make an inspection of the subject property to insure compliance with this Order.

IT IS FURTHER ORDERED that the Petition for Special Hearing to approve the improvements at 209 Central Avenue as conforming to the spirit and intent of the B.C.Z.R., Section 402, for the conversion of dwellings to apartments be and is hereby DENIED.

ORDER RECEIVED FOR FILING
Date 10/24/89
By [illegible]

J. Robert Haines
J. ROBERT HAINES
Zoning Commissioner for
Baltimore County

JRH:rw
cc: Peoples Counsel
cc: Petitioners
cc: Protestants

PETITION FOR SPECIAL HEARING

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve a 3-story multi family apartment dwelling and lot at 209 Central Avenue as a legal nonconforming use for six (6) apartment units or the said lot (209) and improvements conform to the spirit and intent of the B.C.Z.R. that apply to the conversion of dwellings for apartment use.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of the above Special Hearing advertising, posting, etc., upon filing of this Petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do 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 Petition.

Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State

Legal Owner(s):

Ronald F. Jones
(Type or Print Name)
Ronald F. Jones
Signature

Suzanne Lussier-Jones
(Type or Print Name)
Suzanne Lussier-Jones
Signature

Attorney for Petitioner:

Eleanor J. Hyatt
(Type or Print Name)
Eleanor J. Hyatt
Signature

100 Church Lane
Address

Baltimore, Maryland 21208
City and State

Attorney's Telephone No.: 484-3050

312 Church Road 833-2244
Address Phone No.

Reisterstown, Maryland 21136
City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

Ronald F. Jones
Name

312 Church Road 833-2244
Address Phone No.

ORDER RECEIVED FOR FILING
Date 10/24/89
By [illegible]

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 065788

DATE 1-31-89 ACCOUNT [illegible]
AMOUNT $ 70.00
RECEIVED [illegible]
FROM: [illegible]
FOR: 89-396-SPHA
VALIDATION OR SIGNATURE OF CASHIER

this ..... day
this petition be advertised, as
of general circulation through-
aring be had before the Zoning
Building in Towson, Baltimore
..., 19..., at ..... o'clock

Robert Haines
missioner of Baltimore County.

PETITION FOR ZONING VARIANCE Item # 356

89-396-SPHA

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 402.1 to permit side yard setbacks of 12.0 ft. and 12.6 ft. in lieu of the required 20 ft. for one side and 40 ft. and/or 50 ft. for the sum of both side yard setbacks. Also to permit a lot width of 65 ft. in lieu of the required 70 ft. or greater as may be determined.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (Indicate hardship or practical difficulty)

TO BE DETERMINED AT THE PUBLIC HEARING

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

I/We do 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 Petition.

Contract Purchaser:

Legal Owner(s):

Ronald F. Jones
(Type or Print Name)
Ronald F. Jones
Signature

Suzanne Lussier-Jones
(Type or Print Name)
Suzanne Lussier-Jones
Signature

312 Church Road 833-2244
Address Phone No.

Reisterstown, Maryland 21136
City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

Ronald F. Jones
Name

312 Church Road 833-2244
Address Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 2nd day of Feb., 19 89, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 9th day of March, 19 89, at 2 o'clock P.M.

J. Robert Haines
Zoning Commissioner of Baltimore County

(over)

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 065787

DATE 2-21-89 ACCOUNT R-01-615-000
AMOUNT $ 110.00
RECEIVED Ronald F. Jones
FROM: [illegible] ITEM #356
FOR: [illegible]
[illegible] 110.00 CK
VALIDATION OR SIGNATURE OF CASHIER

[illegible]
Name)

ter-Jones
Name)

[illegible]
[illegible]

[illegible]
[illegible]

MAR 17 1989
DATE 10/24/89
ACCOUNT R-01-615-000
AMOUNT $110.00
CK

[illegible]oad 833-2244
Phone No.

Maryland 21136

phone number of legal owner, con-
representative to be

[illegible]
[illegible]

312 Church Road 833-2244
Address Phone No.

H. MALHUB & ASSOCIATES, INC.
100 CHURCH LANE
BALTIMORE, MARYLAND 21208

TELEPHONE (301) 653-9511

356

ZONING DESCRIPTION
4th ELECTION DISTRICT
BALTIMORE COUNTY, MARYLAND

Beginning at a point in the center of Central Avenue, 30 feet wide, at a distance of 325 feet, more or less, measured southeasterly from the center of Glyndon Avenue, thence leaving the center of Central Avenue and running the three (3) following courses and distances:

(1) North 59° 46' 12" East 391.53 feet;

(2) South 30° 27' 23" East 65.00 feet and

(3) South 59° 46' 12" West 391.53 feet to the center of Central Avenue, thence with Central Avenue,

(4) North 30° 28' 41 West 65.00 feet to the place of beginning.

Containing 25449 square feet or 0.584 of an acre of land, more or less.

This description is intended for zoning purposes only and not for the conveyance of title.

Herbert Malaub
Registered Land Surveyor
Maryland # 7558
December 17, 1989

File: Central Res 209 DH

LAW OFFICES

KAPLAN, HEYMAN, GREENBERG, ENGELMAN & BELGRAD, P.A.

TENTH FLOOR SUN LIFE BUILDING

20 SOUTH CHARLES STREET

BALTIMORE, MARYLAND 21201

(301)539-6967

TELECOPIER

(301)332-8083

January 22, 1991

HAND DELIVERED

County Board of Appeals
of Baltimore County
111 W. Chesapeake Avenue, Room 315
Towson, Maryland 1204

RE: Case No. 89-16-SPHA The Homestead Group, Ltd.
207 Central Avenue, Glyndon, Maryland

Gentlemen:

Please file the enclosed original and two copies of Memorandum in the above-entitled case. Copies are being sent to counsel for Ronald F. Jones and counsel for the Protestants.

Sincerely,

Charles B. Heyman

CBH:rb

cc: Eleanor Lipsitz (w/ Encl.)
Attorney for Ronald F. Jones
Scott Barhight (w/ Encl.)
Counsel for Protestants/Appellants

85 AM 22 MAY 16

2/8/90 - Following parties notified of hearing set for Tues., ... 26, 1990 at 10:00 a.m.:

Eleanor J. Lipsitz, Esquire
James E. Reter
John W. McGrain
Charles B. Heyman, Esquire
Audrey Fox
O. Scott Barhight, Esquire
Doris R. Hammond
Sharon L. Kline
Mr. & Mrs. Donald Wilson
Meredith B. Wells
Vernene Lenz
Mr. & Mrs. Charles Broderick
Nan Kanstner
Darlene Scheyer
Carol Wissel
Eleanor Taylor
Elizabeth B. Shule
Robin Smith
P. David Fields
J. Robert Haines
James E. Dyer
Docket Clerk - Zoning
Mr. & Mrs. Ronald F. Jones
Rev. Lloyd Aiken
Pauline R. Hyman
Cookie Stone
Mr. & Mrs. George Singer
Jean W. Hammond
Mr. & Mrs. Havett Steele, Jr.
Jane Geipe
Martha Clements
Mr. & Mrs. Charles Welsh
Martha Healy
Sharon Herb
M. Eugene Bosley
Marie C. Smith
Mr. & Mrs. Mark Laken
Patricia A. Waskevich
Linda T. Barr
People's Counsel
Pat Keller
Ann M. Nastarovicz
W. Carl Richards, Jr.
Arnold Jublon

7/2/90 - Above parties notified of hearing set for Friday, October 12, 1990 (Day #21 @ 1:00 p.m. and November 9, 1990, Friday (Day #31@ 10:00 a.m.

10/12/90 - Above parties sent Amended Notice Day #4 October 26, 1990 at 9:00 a.m. and Day #5 November 9, 1990 at 9:00 a.m.

10/26/90 -Notice of Assignment sent to above; correction to date of Z.C. order and also to reverse subject of petitions in each case (shown in reverse on prior Notice).

11/09/90 -Hearing completed; memos due 12/12/90.

12/05/90 -Per telephone conversation w/S. Barhight, deadline for filing memos extended to 1/14/91 w/agreement of counsel; possible settlement; will advise Board Letter sent to all counsel confirming extension. (WTH)

1/11/91 - Per telephone conversation w/S. Barhight, deadline for filing memos extended to 1/22/91 w/agreement of counsel; possible settlement; All parties notified per conference call. WTH acknowledged.

IN THE MATTER OF THE PETITIONS FOR SPECIAL HEARING AND ZONING VARIANCE
NES Central Avenue 60' SE Glyndon Avenue (209 Central Avenue)
4th Election District
3rd Councilmanic District

Ronald F. Jones, et ux
Petitioners

BEFORE THE
COUNTY BOARD OF APPEALS
FOR BALTIMORE COUNTY
CASE NO. 89-396-SPHA

****

SUBPOENA DUCES TECUM

Please issue a Subpoena Duces Tecum for the following witness to appear and testify before the County Board of Appeals for Baltimore County and to produce the documents listed below Hearing Room 301, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland 21204, on behalf of the Protestants, Havett Steele, Jr., et al, on Friday, October 12, 1990 at 1:00 p.m.

RECEIVED
COUNTY BOARD OF APPEALS
90 OCT 11 AM 10:14

Witness: Corporate Designee
Carroll County Bank and Trust Company
45 W. Main Street
Westminster, Maryland 21157

Documents: Please direct the witness to produce any and all documents in her possession or control regarding the sale by Eileen Singer and the purchase by Ronald and Suzanne Lussier-Jones of the property known as 209 Central Avenue, including but not limited to all contract documents, correspondence, title binder, title commitment, loan documents, settlement documents and any other writings which relate to the property at 209 Central Avenue.

O. Scott Barhight
WHITEFORD, TAYLOR & PRESTON
500 Court Towers
210 West Pennsylvania Avenue
Towson, Maryland 21204

CERTIFICATE OF MAILING:

Eleanor J. Lipsitz, Esquire
(100 Church Lane, Baltimore,
Maryland 21208)

Charles Heyman, Esquire
(Kaplan, Heyman, Greenberg, Engleman & Belgrad, Tenth Floor, Sun Life Building, 203 S. Charles Street, Baltimore, MD 21201)

Re: 89-396-SPHA
89-16-SPHA

RECEIVED
COUNTY BOARD OF APPEALS
90 JUN 26 PM 12:59

June 26, 1990
312 Central Ave.
Glyndon, MD 2103

Dear Mr. Buchheister, Mr. Hackett and Mr. Disney,

I apologize for handwriting this letter. Please read it even though it's not typed. Truly, I appreciate your taking the time to consider the reflections of a layman interested in maintaining the integrity of her neighborhood.

Let me briefly begin by saying that I'm a maverick - my opinion allies me with the Protestants but with variances.

Historic Glyndon, Inc. and the Glyndon Community Association recently submitted detailed, well-organized guidelines toward the latest Baltimore County Master Plan. We worked long and hard because as you can readily see historic preservation runs afoul of modern development and zoning. Each case for zoning variance, non-conforming use, etc. poses a lethal threat to this architecture and landscape preservation effort we residents cherish, not to mention the investment stability of our properties.

So, legal "wherefores" aside, here's the practical reality of the situation. Part of this reality doesn't jive with G. Scott Barhight's agreement with Mr. Haines' decision regarding two apartments for Mr. Jones at 209 Central (89-396-SPHA). His property, if you would view it, is obviously an old boarding house, one of three in Glyndon. As a Summer community, at the turn of the century, these boarding houses accomodated

Re: 89-396-SPHA
89-16-SPHA

-2-

June 26, 1990

Summer residents escaping the city's heat. Obviously, boarding houses are no longer in vogue, nor is Glyndon only a Summer community. To get to the bottom line, in lieu of seasonal boarders, this 209 Central property has been successfully used as 4-to apartments since the World War II era. But only with the adjoining lot of 207 Central Ave which supplied parking and recreation for the residents - all these years.

The photo finish of my layperson proposal, which hopefully comes close enough to existing codes and regulations to be viable. Leave Mr. Jones six apartments, maximum, and make him buy the lot of 207 Central. So the property remains as it always has. This solves two problems: 1) Mr. Jones can't financially make it with that big old beast of a building getting rent from only two apartments, and 2) a modern home, semi-old looking, won't be squashed on a too small a lot right next to this tall structure.

Not only will this phony old house look squished in and aesthetically wrpy, but each newer house built in my neighborhood undermines my property value. The central air, maintenance free exteriors, heat pumps, and other modern conveniences places the re-sale of my home in a one-down position.

Or my final idea is to make Eileen Singer buy back both properties (allegedly separate lots) and have her re-sell as one unit as it has been. After all she sorta took the zoning codes into her own hands by dividing 207 and 209 in the first place.

Thank you for recognizing my concerns by reading this.

Sincerely, Mrs. Sharon Herb

County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

December 5, 1990

Elizabeth J. Lipsitz, Esquire
100 Church Lane
Baltimore, MD 21208

Charles B. Heyman, Esquire
Sun Life Building, 10th Floor
20 S. Charles Street
Baltimore, MD 21201

G. Scott Barhight, Esquire
WHITEFORD, TAYLOR & PRESTON
210 W. Pennsylvania Avenue, Suite 500
Towson, MD 21204

Re: Case No. 89-16-SPHA /The Homestead Group, Ltd.
Case No. 89-396-SPHA /Ronald F. Jones, et ux

Dear Counsel:

Pursuant to a telephone conversation with Mr. Barhight this date and with agreement of all counsel, the deadline date for filing memorandums in the subject matter with this Board has been extended from December 12, 1990, to January 14, 1991.

Very truly yours,

William T. Hackett
William T. Hackett, Chairman
County Board of Appeals

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

RONALD F. JONES and SUZANNE LUSSIER-JONES, Petitioners : Case No. 89-396-SPHA
NE/S Central Avenue, 125 SE Glyndon Avenue

APPEAL

MR. ZONING COMMISSIONER:

Please enter an appeal to the Board of Appeals for Baltimore County in this matter on behalf of Petitioners.

Eleanor J. Lipsitz
ELEANOR J. LIPSITZ
100 Church Lane
Baltimore, Maryland 21208
(301) 484-3050
Attorney for Petitioners

I hereby certify that a copy of the foregoing Appeal was mailed, postage prepaid, to People's Counsel, Court House, Towson, Maryland 21204, G. Scott Barhight, Esquire, 300 Lafayette Building, 40 West Chesapeake Avenue, Towson, Maryland 21204, Attorney for Protestants and to Charles B. Heyman, Esquire, 10th Floor, Sun Life Building, 20 South Charles Street, Baltimore, Maryland 21201, Attorney for The Homestead Group, this 21 day of November, 1989.

Eleanor J. Lipsitz
ELEANOR J. LIPSITZ
Attorney for Petitioners

RECEIVED NOV 21 1989

IN RE: PETITION FOR SPECIAL HEARING AND ZONING VARIANCES
207 Central Avenue

The Homestead Group, Inc.
Petitioner

IN RE: PETITION FOR SPECIAL HEARING AND ZONING VARIANCES
209 Central Avenue

Ronald F. Jones and
Suzanna Lussler-Jones
Petitioners

BEFORE THE COUNTY
BOARD OF APPEALS
OF BALTIMORE COUNTY
Case No. 89-16-SPHA

BEFORE THE COUNTY
BOARD OF APPEALS
OF BALTIMORE COUNTY
Case No. 89-396-SPHA

PROTESTANTS' MEMORANDUM OF LAW

The Protestants, Hewett Steele, Jr., et al. (the "Protestants"), by their attorneys, G. Scott Barbight and Whiteford, Taylor & Preston, respectfully submit this memorandum regarding the above-captioned matters. This memorandum will set forth the Protestants' position as to each petition filed in both cases.

STATEMENT OF THE CASE

The Petitioners, the Homestead Group, Inc. ("Homestead") (Case No. 89-16-SPHA) and Ronald F. Jones and Suzanne Lussler-Jones (the "Joneses") (Case No. 89-396-SPHA) filed their respective Petitions before the Zoning Commissioner of Baltimore County. The cases were heard at the same time as companion cases. By Orders dated October 24, 1989, the Zoning

Commissioner denied the Petitions for Special Hearing and Variances in Case No. 89-396-SPHA and the Zoning Commissioner granted and denied portions of the Petition for Special Hearing and granted the Zoning Variance in Case No. 89-16-SPHA.

The Protestants appealed the Zoning Commissioner's Order in Case No. 89-16-SPHA to the County Board of Appeals of Baltimore County (the "Board"). The Joneses appealed the Zoning Commissioner's Order in Case No. 89-396 to the Board. After beginning its hearings on both cases in a consolidated fashion, the Board bifurcated the cases, hearing Case No. 89-396 first. The Board requested that the parties file Memorandum to support their respective positions.

A. CASE NO. 89-396, 209 CENTRAL AVENUE

1. Petition for Special Hearing.

The Petitioners in Case No. 89-396-SPHA, the Joneses, have requested that the Zoning Commissioner approve a multifamily apartment dwelling and lot at 209 Central Avenue as a legal nonconforming use for six apartment units. In the alternative, the Joneses' Petition requests that you approve the existing improvements and lot pursuant to the spirit and intent of the Baltimore County Zoning Regulations ("BCZR") that apply to the conversion of dwellings for apartment uses. For the purposes of this memorandum, it is assumed that the unnamed section relating to conversion of dwellings is Section 402.

(a) Nonconforming Use.

The Joneses seek an order approving the existing dwelling on the lot at 209 Central Avenue as a legal nonconforming use for six apartment units. The primary issues in determining whether a legal nonconforming use exists in the instant case are as follows:

(1) Whether Petitioner has met its burden of proof that a six unit apartment has been in existence since January 2, 1945; and

(2) Whether the relocation of the parking lot and driveway previously situated on lots 207 and 209 and the proposed erection of a single family dwelling on lot 207 has so changed the asserted nonconforming use such that it has been terminated.

The burden of proving the existence of a legal nonconforming use is on the Joneses, who lay claim to the use. Calhoun v. County Board of Appeals of Baltimore County, 262 Md. 265, 277 A.2d 589 (1971). By definition, nonconforming uses are inherently incompatible with uses permitted in a zone. Boyce v. Sembly, 25 Md. App. 43, 334 A.2d 137 (1975). Nonconforming uses pose a threat to the success of zoning, limit the effectiveness of land use controls, imperil the success of community plans and injure property values. The purpose of restrictions on nonconforming uses is to achieve the ultimate elimination of such uses through economic attrition and physical obsolescence. County Council of Prince George's County v. E.J. Gardner, Inc., 293 Md. 259, 443 A.2d 114 (1982). Therefore, nonconforming uses

should not be perpetuated any longer than necessary. Green v. Garrett, 192 Md. 52, 66 A.2d 412 (1949). Further, the spirit and intent of Zoning Regulations is to restrict rather than increase nonconforming uses. Phillips v. Zoning Commissioner, 225 Md. 102, 169 A.2d 410 (1961). As the above cases clearly indicate, the stated public policy is to severely limit nonconforming uses and bring about their eventual elimination.

The Baltimore County Zoning Regulations in Section 104 sets forth the requirements for nonconforming uses. Section 104.1 sets forth in pertinent part:

> A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these regulations; provided that upon any change from such nonconforming use to any other use whatsoever, ... the right to continue or resume such nonconforming use shall terminate. No nonconforming building or structure and no nonconforming use of a building, structure, or parcel of land shall hereafter be extended more than 25% of the ground floor area of buildings so used.

In McKeny v. Baltimore County, 39 Md. App. 257, 385 A.2d 96 (1978), the Court of Appeals set forth the following factors to be considered in determining whether a current activity is within the scope of a nonconforming use:

(1) To what extent does the current use of these lots reflect the nature and purpose of the original nonconforming use;

(2) Is the current use merely a different manner of utilizing the original nonconforming use or does it constitute a use different in character, nature and kind;

(3) Does the current use have a substantially different effect upon the neighborhood;

(4) Is the current use a "drastic enlargement or extension" of the original nonconforming use.

An intensification of a nonconforming use is generally permissible so long as the nature and character of the use is unchanged and substantially the same facilities are used. Phillips v. Zoning Commissioner, supra. However, an opportunity to intensify a nonconforming use does not confer on a land owner the right to subsequently change or add to that use a new and different one amounting to a drastic enlargement or extension of the prior existing use. Jahnigen v. Staley, 245 Md. 130, 225 A.2d 277 (1967). The general rule is that where there is a change from one nonconforming use to a new and different use, there is an extension of the use. Whereas, the more frequent present use of the property for the same or similar use is a lawful intensification and not an extension. Feldstein v. Javale Zoning Board, 246 Md. 204, 227 A.2d 731 (1967).

In Odell v. City of Eagen, 348 N.W.2d 792 (Minn. App. 1984), the Court of Appeals of Minnesota reviewed a decision by the Eagen City Council denying appellant's application for preliminary plat approval based on the existence of a nonconforming garage. The City Council refused to approve the subdivision of a lot on which a nonconforming garage was situated, saying that the building in question "is currently a nonconforming use and to authorize a split of the lot . . . would cause an expansion of a nonconforming use . . . ." Id. at 796.

The Court disagreed with the definition of the garage as a nonconforming use. Instead, based upon the distinctions made in the zoning ordinance between nonconforming structures and uses, the Court determined that the garage was a nonconforming structure and that the failure of the garage to comply with bulk requirements was not a reasonable basis on which to deny the appellant's preliminary plat application. However, the City Council's reasoning does stand for the proposition that subdividing a parcel would cause an expansion rather than an intensification of a nonconforming use.

In Young v. Board of Zoning Appeals, 307 N.Y.S.2d 895 (1970), the Supreme Court of Nassau County reviewed an owner's right to sell off an unimproved portion of a plot of land on which a nonconforming structure was situated. The denial of a variance from rear yard and side wall requirements so that a building may be constructed on unimproved land was held to be improper. The Court reasoned that reduction of the size of the plot on which stands a building nonconforming as to height, setback and the like, does not affect the right to continue the nonconformance, so long as the size of the reduced plot is conforming. In the Young case, unimproved land which did not serve the nonconforming use was permitted to be parcelled off from a plot upon which a nonconforming building was situated, so long as the bulk regulations were met.

In Muse v. Zoning Hearing Board, 415 A.2d 1255 (Pa. Cmwlth., 1980), the Court approved a zoning board's expansion of a country club through the addition of tennis courts. In

Pennsylvania law, structures may be erected on open land previously devoted to a nonconforming use, as a matter of right. The erection of structures upon land not previously so used, may only be accomplished by way of variance. In the Muse case, the Zoning Board approved the expansion of the country club without a variance.

In reviewing the Board's approval, the Muse Court indicated that the threshold question is whether the land on which the country club proposes to locate the tennis courts has been devoted to the country club's nonconforming use. After reviewing the evidence introduced regarding the use of the land in question, the Court agreed that the land upon which the tennis courts were to be erected had been devoted to the country club's nonconforming use. Since it had been properly devoted, the court agreed that the construction of the tennis courts was a natural expansion of the club's activity and should therefore be permitted.

In the instant case, there are a number of undisputed facts which can be identified. Prior to the adoption of Zoning Regulations in Baltimore County, lots 207 and 209 were subdivided pursuant to a recorded plat. Lots 207 and 209 have always been conveyed as one tract, held under the same ownership and transferred by the same deed. Sometime prior to January 2, 1945, a structure was erected on lots 207 and 209. Since 1947, an apartment house consisting of at least four apartment units was

maintained on lots 207 and 209. Since January 2, 1945 through 1988, a driveway and parking lot serving the building situated on lot 209 has been maintained on lot 207.

The Petitioner's witnesses failed to provide sufficient evidence to support the existence of a nonconforming six unit apartment prior to January 2, 1945. Mrs. Ensor, who had only a passing familiarity with the apartment house testified that there were "at least four" units on the premises.

Mrs. Susemihl, who owned lots 207 and 209 during the 1940's could not conclusively testify that a six unit apartment was in existence by January 2, 1945. In fact, she stated that the conversion into the apartment units was not completed until 1946 or 1947. Mrs. Susemihl also stated that the driveway and parking area for the apartment were situated on lot 207.

The evidence presented before the Board does not conclusively show that an apartment building with six units existed on January 2, 1945. The most likely scenario given the facts presented, is that the house was converted to an apartment house in 1946 or 1947. This conversion was not consistent with the Baltimore County Zoning Regulations and effectively created an illegal apartment use. Since this use is illegal, the Petitioners' request for the Board to determine that a legal nonconforming use exists should be denied.

Assuming, arguendo, that the Board finds that a legal nonconforming use existed as of January 2, 1945, this use must be defined. Given the undisputed testimony, it is clear that any nonconforming apartment use included lots 207 and 209. The

improvements to lot 207 (parking lot and driveway) were devoted to the apartment building situated on lot 209. In fact, the nonconforming use can only be defined as one parcel (lots 207 and 209) with improvements (apartment house, parking lot and driveway).

The erection of a single family dwelling on lot 207 is a change to another use. The nonconforming use encompasses the entire parcel of land. Employing a portion of this parcel for another legal use, a single family dwelling, is in violation of Section 104.1. When there is any change from a nonconforming use to any other use whatsoever, the right to continue or resume such nonconforming use shall terminate.

The factors set forth in McKemy also indicate that the proposed activity on lots 207 and 209 is not within the scope of the original nonconforming use. The proposed use, as a six unit apartment and single family dwelling, does not reflect the nature and purpose of the original nonconforming use. The original nonconforming use permitted a very large structure to fit into the ambiance and character of Historic Glyndon. The open space created by the landscaped areas of lot 207 diminished the impact of the oversized apartment building and provided an architectural scope to the large structure which was more in keeping with the expansive front yards and green spaces of Central Avenue.

The proposed use is different in character, nature and kind from the original nonconforming use. The original use was a single structure containing between four and six apartment units. The proposed use shall include the addition of a use permitted as

a matter of right in a wholly new structure. The character of the parcel will change dramatically in that the land area dedicated to buildings will increase by almost two fold. The parking and driveway access previously situated on lot 207 is now cramped onto lot 209. Two driveway accesses are now required where only one was needed previously. The additional driveway access chops up the expansive lawn area which was consistent with the historic ambiance and especially open character of the community.

The proposed use will have a substantially different effect upon the neighborhood. The original use, although expansive in size and impact, when placed in the context of the total parcel, was more in keeping with the general character of the neighborhood. If the proposed single family dwelling is permitted on lot 207, there will be an overcrowding of the land and a degradation of the large lot, expansive open space, and pleasant landscaping and lawns previously associated with this portion of Central Avenue. Additionally, if all of the relief requested is granted, it will serve to encourage other owners to sell off adjacent "double lots," create additional variance requests, overcrowd Historic Glyndon and lead to the disintegration of the character of the community.

The proposed use is also a drastic enlargement or extension of the original nonconforming use. The relocation of the parking lot and driveway to lot 209 and proposed erection of a single family dwelling on lot 207 are an expansion, and not a mere intensification of the nonconforming use. See Odell v. City

of Eagan, Young v. Board of Zoning Appeals, Huse v. Zoning Hearing Board, Jahnigen v. Staley, and Phillips v. Zoning Commissioner, supra.

The footprint of the existing apartment dwelling, including the front porch, equals 2,290 square feet. The footprint of the proposed single family dwelling is approximately 1,640 square feet. This represents a greater than 70 percent increase in the land area committed to structures. Section 104.1 only permits an extension of up to 25 percent of the ground floor area of buildings so used. This 70 percent extension of the ground floor area of the apartment building is clearly in violation of Section 104.1 and a drastic enlargement or extension of the original nonconforming use. After reviewing the factors set forth in McKemy, it is clear that the proposed uses are not within the scope of the original nonconforming use. As such, the Board should deny the Petition for Special Hearing to approve a multi-family apartment dwelling and lot at 209 Central Avenue as a legal nonconforming use for six apartment units.

In his very well reasoned opinion below, the Zoning Commissioner denied the nonconforming use because (1) there has been a very drastic change in the use of lot 207, which was one-half of the land that always supported the apartment house use, (2) the new house on lot 207 will increase overall density for the total area of the original nonconforming use area which was originally both lots 207 and 209, and (3) the construction of a new house on lot 207 will nearly double the bulk of both lots.

Given the analysis required by McKemy, the Zoning Commissioner held that approval of the proposed nonconforming use would have a substantially different impact upon the neighborhood.

(b) Conversion of Dwellings Pursuant to Section 402.

Section 402 permits the conversion of dwellings for residential uses. The dimensional requirements are set forth in a conversion table found on Page 4-3, BCZR. Protestants' Exhibits 6A and 6B are two letters which address, among other things, the application of Section 402 to the instant case. One letter, Exhibit 6B, is from Messrs. Kellman and Dyer of the Office of Planning and Zoning to Ms. Coleen Thompson, Realtor for the Singers in the sale of lot 209 to the Joneses. Exhibit 6A is a letter from Messrs. Richards and Dyer to Mr. Steele. Both letters analyze the conversion of the existing improvements on lot 209 pursuant to the tables contained in Section 402. The conclusion reached by the zoning office is that only two units are allowed under County law. The Zoning Commissioner's Order below confirms this conclusion.

The evidence clearly shows that only two apartment units are permitted pursuant to Section 402. The Petition for Special Hearing seeking approval for the existing improvements as being in compliance with Section 402 must be denied.

2. Petition for Zoning Variance (209)

The Petition for Zoning Variance seeks relief from the side yard and lot width requirements of the Zoning Regulations. Section 307 sets forth the test for the granting of any variance from the bulk regulations. Such variances should be granted only

in cases where strict compliance with the Zoning Regulations would result in practical difficulty or unreasonable hardship. Furthermore, any such variance should be granted only if in strict harmony with the spirit and intent of the bulk regulations, and only in such manner as to grant relief without substantial injury to public health, safety and general welfare.

The need sufficient to justify a variance must be substantial and urgent and not merely for the Petitioners' convenience. McLean v. Soley, 270 Md. 208, 310 A.2d 783 (1973). A petitioner seeking a variance must exercise proper diligence in ascertaining zoning requirements prior to acquiring property in order to avoid a resultant hardship. If such diligence is not exercised, the hardship is self-created and the variance may be properly refused. Wilson v. Mayor and Commissioners of Town of Elkton, 35 Md. App. 417, 371 A.2d 443 (1977). If the grant of a variance would effect the aesthetic ambiance of the residences in the immediate area, such variance would be in disharmony with the spirit and intent of the Zoning Regulations. Daihl v. County Board of Appeals of Baltimore County, 258 Md. 157, 265 A.2d 227 (1970). The mere fact that a variance, if granted, would make the property more profitable is not a sufficient ground to justify the relaxation of bulk requirements. Easter v. Mayor and City Council of Baltimore, 195 Md. 395, 73 A.2d 491 (1950).

If the peculiar circumstances which render property incapable of meeting the zoning requirements have themselves been caused or created by the property owner or his predecessor in title, the essential basis of a variance is lacking. An act on

the part of the property owner or his predecessor which has physically so affected the property as to create a unique circumstance or which in itself created either a practical difficulty or hardship in conforming to the restrictions of the Zoning Regulations bars relief. Salisbury Board of Zoning Appeals v. Bounds, 240 Md. 547, 214 A.2d 810 (1965).

The undisputed testimony indicates that the Joneses went to settlement on June 24, 1988. Prior to settlement, Mr. Steele conversed with the Joneses and their counsel regarding the potential zoning violations surrounding the proposed uses for lots 207 and 209. Protestants' Exhibit 7 is a letter sent to the Joneses' counsel prior to their settlement confirming the existence of these issues and concerns. Most importantly, the second contract of sale, dated May 26, 1988, contains language showing that the Joneses were well aware of the zoning problems and assumed the risk that these problems created. The record is so filled with examples of notice to the Joneses' predecessor in title, the Singers, and the knowledge of the Joneses, it is unnecessary to reiterate them in this memorandum. See Protestant's Exhibits 1-8, 10, 17 and 18. Suffice it to say that the Singers and the Joneses were well aware of the potential zoning problems associated with their proposed uses of lots 207 and 209 prior to the respective settlements for lots 207 and 209.

The variances requested must be denied based upon the doctrine of self-inflicted hardship. Had the Singers or the Joneses acted with reasonable diligence regarding lot 209, they would have either obtained written confirmation from the zoning

office that the proposed use of lot 209 as a six unit apartment was consistent with the Zoning Regulations or had filed the appropriate petitions to confirm compliance. At best, the realtor for the Singers received oral information from a zoning technician the exact substance and basis for which is clearly in question. The Petitioner did not act diligently and inflicted the hardship from which it seeks relief upon himself and, therefore, the variances requested must be denied.

Assuming, arguendo, that the Petitioner is not barred by the doctrine of self-inflicted hardship, the record contains grossly insufficient evidence to support the requirements of Section 307. The Petitioner, who clearly has the burden of proving practical difficulty or unreasonable hardship pursuant to the Zoning Regulations, has failed to offer any substantial evidence in support of its Petition for Zoning Variance. Since the Petitioner has failed to meet its burden under Section 307, the Petitions for Zoning Variance must be denied.

B. CASE NO. 89-16-SPHA, 207 CENTRAL AVENUE

1. Petition For Special Hearing.

The Petitioner, the Homestead Group, Inc., has filed a Petition for Special Hearing requesting the Board to approve the "unimproved" lot at 207 Central Avenue as a building lot separate, apart and unencumbered by the adjoining lot and improvements at 209 Central Avenue. Whether the relief requested by this petition can be granted is inextricably tied to the

Board's decision regarding the Joneses' Petition for Special Hearing and the issues surrounding the definition of the nonconforming apartment use.

If the Board determines that the nonconforming apartment use includes both of the lots and all improvements, then lot 207 may not be improved by a single family dwelling unless the nonconforming apartment use is terminated. If the nonconforming apartment use is permitted to exist on lot 207 without benefit of the improvements on lot 209, then the Petition for Special Hearing may be granted provided all other sections of the Zoning Regulations have been met.

It is important to note that the Petition for Special Hearing asserts that the lot at 207 Central Avenue is "unimproved." The uncontradicted testimony in the record is that lot 207 has been improved by a driveway and parking lot which has served the building on lot 209 since at least the early 1940's. This factual misrepresentation in the petition should be sufficient to require a denial of the petition filed. If the Petitioner would like to seek relief, it should file a new petition for special hearing which accurately describes the relief requested.

The Protestants are not opposed to the continued use of lots 207 and 209 as a nonconforming apartment use. The focus of the Protestants' concerns relate to the improvement of lot 207 with a single family dwelling in addition to a six unit apartment on lot 209. If the relief requested in the Petition for Special Hearing is granted, then the nonconforming apartment use must be

terminated. If the relief requested is denied, then the apartment building may be able to continue its operation on lots 207 and 209.

2. Petition For Zoning Variance.

The Homestead Group seeks relief from the lot width requirements of the Zoning Regulations. Section 307 sets forth the test for the granting of any variance from the bulk regulations. Such variances should be granted only in cases where strict compliance with the Zoning Regulations would result in practical difficulty or unreasonable hardship. Furthermore, any such variance should be granted only if in strict harmony with the spirit and intent of the bulk regulations, and only in such manner as to grant relief without substantial injury to public health, safety and general welfare.

The need sufficient to justify a variance must be substantial and urgent and not merely for the Petitioners' convenience. Nolsen v. Soley, 270 Md. 208, 310 A.2d 783 (1973). A petitioner seeking a variance must exercise proper diligence in ascertaining zoning requirements prior to acquiring property in order to avoid a resultant hardship. If such diligence is not exercised, the hardship is self-created and the variance may be properly refused. Wilson v. Mayor and Commissioners of Town of Elkton, 35 Md. App. 417, 371 A.2d 443 (1977). If the grant of a variance would effect the aesthetic ambiance of the residences in the immediate area, such variance would be in disharmony with the spirit and intent of the Zoning Regulations. Daihl v. County Board of Appeals of Baltimore County, 258 Md. 157, 265 A.2d 227

(1970). The mere fact that a variance, if granted, would make the property more profitable is not a sufficient ground to justify the relaxation of bulk requirements. Easter v. Mayor and City Council of Baltimore, 195 Md. 395, 73 A.2d 491 (1950).

If the peculiar circumstances which render property incapable of meeting the zoning requirements have themselves been caused or created by the property owner or his predecessor in title, the essential basis of a variance is lacking. An act on the part of the property owner or his predecessor which has physically affected the property as to create a unique circumstance or which in itself created either a practical difficulty or hardship in conforming to the restrictions of the Zoning Regulations bars relief. Salisbury Board of Zoning Appeals v. Bounds, 240 Md. 547, 214 A.2d 810 (1965).

The Homestead's petition for variance must fail, due to the doctrine of self-inflicted hardship. The doctrine applies not only because of the actions of the Singers (the Homestead's predecessor in title) but also because of the actions of Homestead.

Homestead settled on lot 207 on March 28, 1988. Prior to settlement, Mr. Steele put Homestead's predecessor on notice that there were numerous zoning problems associated with their proposed actions of selling lots 207 and 209 separately, of constructing a new dwelling on lot 207 and of continuing to operate an apartment house on lot 209. See Protestant's Exhibits

1-3. The third sentence of the second paragraph of Protestant's Exhibit 1 specifically refers to violating the zoning requirements by constructing a dwelling on lot 207.

Prior to the settlement on March 28, 1988, the Singers had sufficient lands to construct a single family home without the need of any variances. Selling lot 207, without altering the lot lines so that a variance would not be necessary, inflicted the hardship upon themselves,. The lot width required could have been accomplished by resubdividing the property. However, the Singers greed blinded them to the problems and they sold lot 207 as a "buildable" lot, ignoring the lot width requirements and Mr. Steele's warnings.

Notwithstanding the unconscionable actions of the Singers, Homestead also failed to act diligently. Ms. Fox admitted that she failed to independently investigate the need for any variances on lot 207, as she had done on every other lot she has purchased. A simple letter to the Zoning Office would have confirmed that a variance was required for lot width. Ms. Fox claims that had she known a variance was required, she would not have purchased lot 207. However, she did not know a variance was required because she chose to accept the flimsy representations of the Singers and failed to take any steps to confirm the need for a variance on her own.

Ms. Fox's failure to investigate the need for a variance is in violation of the requirements of Wilson v. Elkton. A petitioner seeking a variance must exercise proper diligence in ascertaining zoning requirements prior to acquiring property in

order to avoid a resultant hardship. Ms. Fox caused her own hardship. If she had contacted the Zoning Office or a competent zoning attorney, as she had done in every other purchase, she would have been warned of the variance. According to Ms. Fox, she would not have then purchased lot 207 and she would be free of the hardship that she has imposed upon herself.

Before the Zoning Commissioner, Homestead claimed relief under Section 304 of the Zoning Regulations. Section 304 permits the erection of a single family dwelling on an undersized lot provided the following requirements are met:

> A. That such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to adoption of these Regulations; and
>
> B. That all other requirements of the height and area regulations are complied with; and
>
> C. That the owner of the lot does not own sufficient adjoining land to conform substantially to the width and area requirements.

The previous debate surrounding this issue concerned bad faith and/or whether adjoining land is available. Section 304 does not apply because sufficient adjoining land was owned by Mrs. Singer prior to the sale to Homestead.

Section 304.C has clearly not been met. The Singers, prior to the sale of lot 207 to the Homestead Group, did own substantial adjoining land which would permit substantial conformance to the width and area requirements of the Zoning Regulations. RM-15 and RM-16 of the Zoning Policy Manual provide guidance as to the requirements of Section 304 and 307. The six

year rule described in RM-16, when applied to the current case, clearly shows that Section 304.C has not been met. Therefore, a variance is required pursuant to Section 307 from the lot width requirements of Section 1B02.3.c.1.

CONCLUSIONS

The Singers and both Petitioners have created a situation where the neighborhood is being asked to suffer for their lack of diligence, mistakes and greed. The Petitioners want the Board to ignore the self-inflicted nature of their hardship and provide the relief requested. However, to do so would require that the Board also ignore the substantial harm to the welfare of the Glyndon community.

The Joneses have failed to meet their burden, as they also filed before the Zoning Commissioner, to prove the existence of a nonconforming six unit apartment. There is insufficient evidence to show that a six unit apartment existed prior to January 2, 1945. Further, the loss of lot 207 has so drastically altered the apartment use that any nonconforming status has been terminated.

As all of the Protestants who testified indicated, the construction of a single family home on lot 207 would dramatically impact the character and ambiance of their historic community. The erection of a single family dwelling on lot 207 will overcrowd the land, conflict with the character and ambiance of Central Avenue and dramatically reduce the open space which has provided a proper setting for the imposing apartment structure. It is unfair to the Glyndon community and

inconsistent with the requirements of Maryland case law regarding variances to grant the relief requested. The Singers and the Homestead have created a hardship and are now before you asking that their self-inflicted hardship be lifted from their shoulders and placed on the backs of the residents of Historic Glyndon. Requiring the neighborhood to bear the burden of the Homestead's lack of diligence would not be an act of justice. It will only reinforce the irresponsible behavior of the Singers and the Petitioners.

Respectfully submitted,

G. Scott Barnight

GSB:eh
cc: Hewett Steele, Jr., Esquire
Charles B. Heyman, Esquire
Eleanor J. Lipsitz, Esquire

D.B.H.

County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) ~~XXXXXX~~ 887-3180

HEARING ROOM -
Room 301, County Office Bldg.

July 2, 1990

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASON. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 89-16-SPHA — THE HOMESTEAD GROUP, LTD.
SPH-to improve unimproved lots; VAR-lot width
AND
CASE NO. 89-398-SPHA — 10/24/89 - Z.C.'s Order GRANTING in part; DENYING in part
RONALD F. JONES, ET UX
SPH-nonconforming use apts.;
(Day Nos. 2 and 3 from 6/26/90) — VAR-setbacks & lot widths
10/25/89 - Z.C.'s Order DENYING Petitions
NE/s Central Avenue, 60' SE of Glyndon Avenue (207 & 209 Central Avenue, respectively)
4th Election District; 3rd Councilmanic District

ASSIGNED FOR: FRIDAY, OCTOBER 12, 1990 at 1:00 p.m. and
FRIDAY, NOVEMBER 9, 1990 at 10:00 a.m.

cc: Eleanor J. Lipsitz, Esquire — Counsel for Mr. and Mrs. Jones
Charles B. Heyman, Esquire — Counsel for The Homestead Group, Ltd.
G. Scott Barnight, Esquire — Counsel for Protestants/Appellants
Audrey Fox, President - The Homestead Group, Ltd.
Mr. and Mrs. Ronald F. Jones
Mr. & Mrs. Hewett Steele, Jr.
Mr. & Mrs. Mark Laken
Ms. Sharon Kline
Terry Stanley
Mr. Eugene Bosley
Ms. Kathy Sves
Ms. Barbara Whitman
Ms. Darlene Schryer
Ms. Carol Wissel
Ms. Sharon Herb
Ms. Doris Hammond
Ms. Jane Gelpe
Mr. & Mrs. Don Wilson
Ms. Jean Hammond
Mr. & Mrs. Mark Clements
Mr. & Mrs. George Wroe
Mr. & Mrs. Charles Welsh
Ms. Vernese Lenz
Ms. Martha Healy
Ms. Eleanor Taylor
Ms. Nan Kestner
Meredith B. Wells
Mr. & Mrs. John O'Neill
Mr. & Mrs. Charles Broderick
Ms. Marie C. Smith
Ms. Pauline R. Hyman
Ms. Connie Stone
Mr. James E. Reter
Mr. & Mrs. George Singer
Rev. Lloyd Aiken
Mr. John M. McGrain
Ms. Patricia Waskevich
Ms. Elizabeth B. Shale
Ms. Linda T. Barr
Ms. Robin Smith
F. David Fields
Pat Keller
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, County Attorney

Lindalee M. Kuszmaul
Legal Secretary

CERTIFICATE OF POSTING 89-396-SPHA
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 4th Date of Posting January 6, 1989
Posted for: Appeal
Petitioner: Ronald E. Jones, Jr. et ux
Location of property: 0.01 S Central Aven. 60' S E. Glyndon Aven.
209 Central Avenue
Location of Signs: In front of 209 Central Avenue
Remarks:
Posted by: A. J. Ganter Date of return: January 11, 1989
Signature

Maryland Historical Trust
Inventory Number

PETITIONER'S EXHIBIT 1 89-396SPHA

DISTRICT 4 - continued

776 CAPLES HOUSE - Before 1898 - 211 Central Avenue. Shown in 1898 atlases as Frank D. Orrick's, father of present owner. House was called Cromwell Park. Victorian structure, frame with covering of clapboard and fish-scale shingles; gable roof, stone foundation. Owner: owner, at 1972.NR survey, Elizabeth O. Caples. Owners: Nevett Steele, Jr.

777 MEADOWS HOUSE - Before 1898 - 209 Central Avenue. Shown in 1898 atlas as C. Montelle's and in 1915 as A. Bailey's. Possibly designed as a boarding house. Montelle's and in 1915 as A. Bailey's. Victorian Italianate style, with hipped roof, Frame and clapboard house in a stripped-down Italianate style, with hipped roof, stone foundation. Bracketed cornice, two-story high porch with slim posts. Owner: Louis A. Blodgett.

778 OKIFE HOUSE - Before 1898 - 119 Central Avenue. Shown in 1898 and 1915 atlases as G.Bellows house. Frame structure with wood shingle covering, built in Victorian Downing-Vaux cottage style with gable roof and stone foundation. Lancet windows sometime in pairs. Owner: Joseph P. Beips.

779 BELT HOUSE - Before 1898 - 117 Central Avenue. Shown in 1898 and 1915 atlases as G. Longnecker's. Victorian house in frame and wooden shingle with gable roof and stone foundation. Owner: Edward W. Belt.

780 BOARDMAN HOUSE - Before 1898 - 115 Central Avenue. Shown in 1898 atlas as C.E. Montell's and in 1915 as J. Warfield's. Victorian house in frame and composition shingles, with gable roof and stone foundation. Owner: Scott A. Brandbast.

781 BOLLINGER HOUSE - Before 1915 - 111 Central Avenue. Shown as H. Stringer's in 1915 atlas. Frame, wood-shingled house in shingle style with gable roof and stone foundation. Small 2nd-story windows. Owner: D. Howard Bollinger.

782 WHITE HOUSE - Before 1915 - 109 Central Avenue. Shown in 1915 atlas as J. Zouck's. Colonial revival house in frame and wood shingles with hip roof and stone foundation. Massive stone end chimney. Owner: Ellis S. White.

783 ROSE HOUSE - Before 1898 - 107 Central Avenue. Shown in 1898 atlas as W.C. Bishop's and in 1915 as Jacob Zouck's. Victorian house, frame and clapboard with gable roof and stone foundation. Owner: Everett Rose.

784 GRIFFIN HOUSE - Before 1898 - 11 Central Avenue. Shown in atlas of 1898 and 1915 as the F.J. Williams house. Small, low 1½ storey frame and clapboard cottage in Victorian style with gable roof and stone foundation. Decorated with bargeboards. Owner: John J. Griffin.

October 26, 1988

To Whom It May Concern -

This is to certify on March 27, 1941 Louis E. Susenihl and Anita C. Susenihl purchased property consisting of house and lot at 209 Central Ave. Glyndon, Md. from Mrs Shirley J Reisenstein, Md.

Upon settlement of this property owners remodled house into six apartments - two on each floor.

Owners sold this property in 1966 to Mr. Peter of Glyndon, Md.

Very Truly Yours,
Anita C. Susenihl

State of California)
County of Los Angeles)

Acknowledgement

On October 27, 1988, before me, the undersigned officer, personally appeared Anita C. Susenihl, personally to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledge that the subscriber executed it.

Julie Parrick
Julie Parrick

OFFICIAL SEAL
JULIE PARRICK
NOTARY PUBLIC - CALIFORNIA
LOS ANGELES COUNTY
My comm. expires NOV 16, 1991

PETITIONER'S EXHIBIT 3 89-396SPHA

PETITIONER'S EXHIBIT

PROTESTANT'S EXHIBIT 9 89-396 SPHA

April 3, 1989

The Honorable J. Robert Haines
Zoning Commissioner of Baltimore County
Office of Planning and Zoning
Towson, Maryland 21204

PROTESTANT'S EXHIBIT 5 89-165SPHA

Re: Case Number 89-16-SPHA
Case Number 89-396-SPHA

Dear Mr. Haines:

The community of Glyndon is justifiably proud of our lovely Victorian houses located on spacious lots on small, tree lined streets. Because of these features, Glyndon has been placed on the National Register of Historic Places and has the honor of being named as the very first historic district in all of Baltimore County. This combination of history and beauty has attracted a very special type of home owner to Glyndon. People who live or consider buying homes in Glyndon appreciate the historic flavor of the community and are committed to maintaining and improving the beautiful Victorian houses and large lots on which they are situated.

Central Avenue is the main residential street in Glyndon and contains many of the historic Victorian homes that have helped to make Glyndon special. The property in question is located right in the midst of many of Glyndon's most beautiful and historic properties.

The Board of Directors of the Glyndon Community Association has voted unanimously to oppose all of these proposed changes. The variances being requested would have a significantly negative impact on the nature of our community and the scale of residences and lots on Central Avenue.

Approving such changes could be seen as establishing precedent which could severely inhibit our ability to maintain that unique combination of history and tradition that is Glyndon.

Historic Glyndon Incorporated
Glyndon, Maryland 21071

April 17, 1989

To whom it may concern

Eleanor Taylor is our ex-president and member ex-officio of Historic Glyndon Inc. She is authorized to speak on behalf of the Board of Directors at the zoning variance hearings on 207 and 209 Central Ave., Glyndon, Md.

Sincerely,
Arlen Hirst
President

PROTESTANT'S EXHIBIT 2 89-396SPHA

PROTESTANT'S EXHIBIT 11 89-396SPHA

PROTESTANT'S EXHIBIT 1 89-396SPHA

O'CONOR, PIPER & FLYNN REALTORS

Selling Office: OPF Roehampton — Phone: 832-3400
Selling Associate: Carrie Stone — 832-1543
Listing Office: Northampton — Phone: 828-6440
Listing Associate: Colleen Thompson — 828-6547

LIBER 5320
FOLIO 566
MSA # SE 1-5304-4

THIS AGREEMENT OF SALE, made this 21st day of March, 19 89, between (Name) Alden Stone, (Address) 205 Central Avenue, Glyndon, Maryland 21071, Seller and (Name) Ronald E. Jones, Jr. and Deanne L. Jones (husband), (Address) 214 Church Lane, Reisterstown, Maryland 21136, Buyer.

Witness that Seller does hereby bargain and sell unto Buyer, and Buyer does hereby purchase from Seller the following described fee simple leasehold property, known as 209 Central Avenue, Glyndon, Maryland 21071, lying in Baltimore County of the State of Maryland, including improvements thereon and all rights and appurtenances thereto belonging or in anywise pertaining, that is to say:

AT and for the sum of Two Hundred and Twenty-Five Thousand ($225,000.00) DOLLARS (Purchase Price), of which a deposit of One Thousand ($1,000.00) DOLLARS is acknowledged, the balance to be paid as follows: in the form of Check, by bank or cash at the time of settlement.

An additional sum of $1,000.00 (Additional Deposit) shall be paid by Buyer to Seller within 5 days from the date of contract, and the remaining balance of the purchase price shall be paid to Seller in cash at settlement which shall be on or before May 30, 1989 or sooner by mutual agreement between the parties.

2. GROUND RENT IF APPLICABLE: The Property is subject to a ground rent of N/A per year, payable in advance on the first day of each and every month, and is not subject to redemption. Buyer shall pay all arrearages of ground rent, if any, and shall pay the current year's ground rent on or before N/A. Buyer shall pay all assessments for public improvements which are a lien against the Property as of the date of settlement, and all charges for water and sewer connection and front foot benefit charges, and all recording costs and transfer taxes, except that Seller shall pay the State Tax on the Deed. Buyer shall pay all recording costs and transfer taxes on the Mortgage and Note. Seller

Pet. Exh #2

THIS DEED, made this 24th day of June, in the year nineteen hundred and eighty-eight, by and between AILEEN N. SINGER, Grantor, and RONALD F. JONES and SUZANNE LUSSIER-JONES, his wife, Grantees.

WITNESSETH, that for and in consideration of the sum of ONE HUNDRED NINETY THOUSAND DOLLARS ($190,000.00), and other good and valuable considerations, the receipt whereof is hereby acknowledged, the said Grantor does hereby grant and convey unto the said Grantees, as tenants by the entireties, their assigns, the survivor of them, and the personal representatives and assigns of the survivor of them, forever in fee simple, all that lot or parcel of land situate on Central Avenue, in the Fourth Election District of Baltimore County, Maryland, and containing 25,545 square feet of land, more or less. The improvements thereon now being known as 209 Central Avenue.

BEING the second parcel of land conveyed unto the Grantor herein by deed from Louis A. Bladgett and Mary K. Bladgett, his wife, dated September 2, 1977, and recorded among the Land Records of Baltimore County, Maryland, in Liber E.H.K. Jr. No. 5799, folio 420 &c.

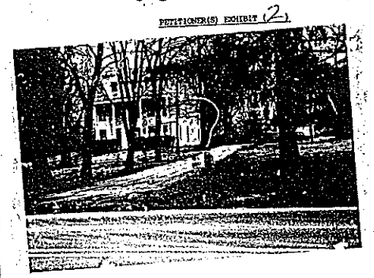
TOGETHER with the buildings and improvements thereon, and all and singular the rights, roads, ways, waters, privileges, appurtenances and advantages thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the above mentioned property unto the Grantees, as tenants by the entireties, their assigns, the survivor of them, and the personal representatives and assigns of the survivor of them, forever in fee simple.

AND the said Grantor hereby covenants that she has not done or suffered to be done any act, matter or thing whatsoever to encumber the property hereby conveyed; that she will warrant specially the property hereby granted; and that she will execute such other and further assurances of the same as may be requisite.

89-396SPHA

PETITIONER(S) EXHIBIT (2)



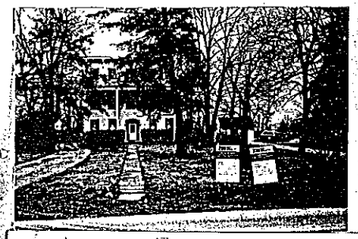


Spring 1989

Pet Exh #3

89-396SPHA

PETITIONER(S) EXHIBIT (2)



AFFIDAVIT

The undersigned hereby affirms under the penalties of perjury to the Zoning Commissioner of Baltimore County, as follows:

That the information herein given is within the personal knowledge of the Affiant and Affiant is competent to testify thereto in the event that a public hearing is scheduled in the future with regard thereto.

PROTESTANT'S EXHIBIT 8 — 89-396 SPHA

Mary E. Lloyd
AFFIANT (Signature)
MARY E. LLOYD
NOTARY (Printed Name)

Based upon your personal knowledge, please answer the following questions by indicating yes or no in the space provided:

1. Can you verify by this affidavit, and/or testify in Court if necessary, that the home located at 209 Central Avenue Glyndon, Maryland has been occupied as a 4 (two, three, etc.) apartment dwelling since May (month), 1942 (year)? Yes (answer)

2. Can you also verify and testify, if necessary, that said apartments have been occupied by renters every year since March (month), 1942 (year)? Yes (answer)

3. Will you realize any gain from the sale of this Property? (answer)

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, this 23rd day of March, 1988, before me, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared Mary E. Lloyd, and I am satisfactorily identified to me as such the Affiant herein, personally known to me to be the Affiant, and made oath in due form of law that the matters and facts hereinabove set forth are true and correct to the best of his/her knowledge and belief.

AS WITNESS my hand and Notarial Seal.

Donna M. Young
NOTARY PUBLIC

My Commission Expires: July 1, 1990

BCBA Protestant's Ex 4

Nevett Steele, Jr.
211 Central Avenue
Glyndon, Maryland 21071

March 30, 1988

HAND DELIVERED

Mr. Carl Richards
Office of Planning and Zoning
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

PROTESTANT'S EXHIBIT 6 — 89-396SPHA

Re: 207-209 Central Avenue
Glyndon, Maryland
Property of Aileen N. Singer

Dear Mr. Richards:

In accordance with our recent conversation I am enclosing a copy of a plat of the Singer's property and survey description which is marked as Exhibit A. I believe that this is a copy of the plat that was presented to the Landmark Preservation Commission at the hearing conducted on March 10, 1988 concerning the Singers' property. Using the scale indicated on the plat of one inch to fifty feet, it would appear to me that the distance between the Singer's building and the property line separating their property and our property is approximately twelve and a half feet.

Attached as Exhibit B is an outline of the Singer property, not drawn to scale, which outlines a proposed driveway between the Singer building and our driveway, ending in a parking lot behind the Singer building. This drawing although not drawn to scale seems to indicate that the distance between the building and the property line is perhaps a bit more than ten feet. Enclosed as Exhibit C is a drawing with a proposed horseshoe driveway/parking lot in the front lawn of the Singer property. Exhibits B and C were also presented at the Landmark Preservation Commission hearing of March 10, 1988.

I am also enclosing as Exhibit D a copy of the deed whereby Aileen N. Singer bought the lots identified as 207 and 209 Central Avenue from Mr. and Mrs. Badgett in 1977. The deed gives square footage information, as well as other references regarding the location and description of the property.

Protestant's Ex 5

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
494-3353

J. Robert Haines
Zoning Commissioner

PROTESTANT'S EXHIBIT 4 — 89-165SPHA

April 8, 1988

Mr. Nevett Steele, Jr.
211 Central Avenue
Glyndon, Maryland 21071

PROTESTANT'S EXHIBIT 7 — 89-396 SPHA

Re: 207-209 Central Avenue
Glyndon, Maryland
NE/S Central Avenue, opposite
Glyndon Avenue - Zoned DR 3.5/DR 2
4th Election District

Dear Mr. Steele:

Thank you for your letters of concern to the Zoning Commissioner written on March 5, 7, and 30th, concerning the above referenced property which have been referred to me for reply. We have talked over the telephone and as I had requested, you have enclosed information that was helpful with your last correspondence.

By using the lot survey and other information that you provided, we have made the following determinations:

1. That the property is zoned DR.3.5. 160 feet parallel and northeast of the center line of Central Avenue. The balance of the property is zoned DR.2.

2. By utilizing the conversion provisions contained in Section 402 (Baltimore County Zoning Regulations) for existing dwellings, and combining the separate calculations for the total units allowed in each zone, we arrive at a total of 2 units allowed based on square footage. Obviously, if the adjoining lot has been sold, we could only approve a conversion to 2 units on the remaining lot provided that:

   A. a variance would be granted to permit a lot width of 65 ft. in lieu of the required 90 ft. (DR.3.5), and

   B. that a variance would be granted to permit side yard setbacks of approximately 12 feet each and a sum of 24 feet in lieu of the required 20 foot setback for one sideyard and a sum of 50 feet for both sideyard setbacks (DR.2).

3. That it would be an apparent violation of the Baltimore County Zoning Regulations if as indicated, the adjoining lot (that was a part of the property for years) was sold to a separate party, leaving the apartment building on the remaining 65 foot lot without the benefit of a legally established non-conforming use for six apartments on that single lot only.

Protestant's Ex 6A

BCBA

DP 3
1/79

Permit

NOTE: A SEPARATE PERMIT IS REQUIRED FOR ALL ELECTRICAL & PLUMBING WORK WHICH MUST BE DONE BY AN ELECTRICIAN OR PLUMBER LICENSED IN BALTIMORE COUNTY.

County Executive
Dennis F. Rasmussen

APPLICATION FOR PERMIT
BALTIMORE COUNTY MARYLAND
OFFICE OF THE BUILDING ENGINEER
TOWSON, MARYLAND 21204 CJB

DISTRICT 04-07-086570 — HR Appl.

BUILDING ADDRESS: 209 CENTRAL AVE.
OWNER'S NAME: AILEEN SINGER — 101622
MAILING ADDRESS OF OWNER: 209 CENTRAL AVE. GLYNDON, MD 21071 — GR
LESSEE
BUILDING CONTRACTOR: OWNER
ENGINEER OR ARCHITECT
E. KNOWN CONTRACTS FOR SEWER AND WATER
OTHER DESCRIPTION: E/S CENTRAL AVE. 100' S OF GLYNDON AVE.

SITE MADE: APR 11 1988

A. TYPE OF IMPROVEMENT
1 ☐ NEW BUILDING CONSTRUCTION
2 ☐ ADDITION
3 ☐ ALTERATION
4 ☐ REPAIR
5 ☐ WRECK(NO ENTER NO SAFE REQUIRED)
6 ☐ MOVING
7 ☒ OTHER GRADING

RESIDENTIAL
10 ☐ ONE FAMILY
11 ☐ TWO FAMILY
12 ☐ THREE AND FOUR FAMILY
13 ☐ FIVE OR MORE FAMILY (ENTER NO. UNITS)
14 ☐ SWIMMING POOL
15 ☐ GARAGE
16 ☒ OTHER GRADING

C. TYPE OF USE
NON-RESIDENTIAL
30 ☐ AMUSEMENT, RECREATION, PLACE OF ASSEMBLY
31 ☐ CHURCH OTHER RELIGIOUS BUILDING
32 ☐ FENCE (HEIGHT)
33 ☐ INDUSTRIAL STORAGE BUILDING
34 ☐ PARKING GARAGE
35 ☐ SERVICE STATION, REPAIR GARAGE
36 ☐ HOSPITAL, INSTITUTIONAL, NURSING HOME
37 ☐ OFFICE BANK, PROFESSIONAL
38 ☐ PUBLIC UTILITY
39 ☐ SCHOOL, COLLEGE, OTHER EDUCATIONAL
40 ☐ STORE ☐ MERCANTILE ☐ RESTAURANT
SPECIFY TYPE
41 ☐ SWIMMING POOL AND HEALTH CLUB (ANY AREA)
42 ☐ TOWER
43 ☐ TRANSIENT HOTEL, NO. UNITS
44 ☐ OTHER

GRADE LESS THAN 5,000 S.F. FOR RELOCATING DRIVEWAY; OK TO FILE; J.M.B.; THE BALTIMORE COUNTY LANDMARKS PRESERVATION COMMISSION REQUESTED THAT THIS APPLICATION BE MADE. THIS PERMIT EXPIRES 2 YEARS FROM DATE ISSUED.

1988 ☒ MASONRY ☐ FRAME
WALLS: BRICK, BLOCK, CONCRETE
BASEMENT: FULL, PARTIAL, NONE

B. OWNERSHIP
1 ☒ PRIVATELY OWNED 2 ☐ PUBLICLY OWNED

ESTIMATED COST OF WORK $ 3,000

CHECK APPROPRIATE CATEGORIES FOR RESIDENTIAL ONLY
1 FAM. | 2 FAM. | 3 & 4 FAM. | 5 OR MORE FAM. | CONDOMINIUMS | TOWNHOUSES

34 PROPOSED USE(S): SAME & GRADING
BUILDINGS ERECTED: SFD; DIVIDED INTO APTS.

THIS PERMIT MUST BE POSTED
SEE OTHER SIDE FOR INSPECTIONS

PETITIONER'S EXHIBIT 5 — 89-396SPHA

BCBA
Petitioners Ex 7

Maryland Historical Trust Inventory Number

PETITIONER'S EXHIBIT — 89-396SPHA

DISTRICT 4 - continued

775 CAPLES HOUSE - Before 1898 - 211 Central Avenue. House was called Cromwell Park. as Frank D. Ortitz's, father of present owner. House was called Cromwell Park. Victorian structure, frame with covering of clapboard and fish-scale shingles; gable roof, stone foundation. Former owners, at 1972 NR survey, Elizabeth O. Caples. Owner: Nevett Steele, Jr.

BA 777 BLADGETT HOUSE - Before 1898 - 209 Central Avenue. Shown in 1898 atlas as C. Mantell's and in 1915 as A. Bailey's. Possibly designed as a boarding house. Frame and clapboard house in a cut-down Italianate style, with shed roof; stone foundation. Bracketed cornice, two-story high porch with Atis posts. Owner: Louis A. Bladgett.

778 GRIFE HOUSE - Before 1898 - 119 Central Avenue. Shown in 1898 and 1915 atlases as G.Bellows house. Frame structure with wood shingle covering, built in Victorian Downing-Vaux cottage style with gable roof and stone foundation. Lancet windows sometimes in pairs. Owner: Joseph T. Grife.

779 KEEY HOUSE - Before 1898 - 117 Central Avenue. Shown in 1898 and 1915 atlases as G. Longenecker's. Victorian house in frame and wooden shingle with gable roof and stone foundation. Owner: Edward W. Keir.

780 BROADBENT HOUSE - Before 1898 - 115 Central Avenue. Shown in 1898 atlas as C.E. Mantell's and in 1915 as J. Warfield's. Victorian house in frame and composition shingles, with gable roof and stone foundation. Owner: Scott A. Broadbent.

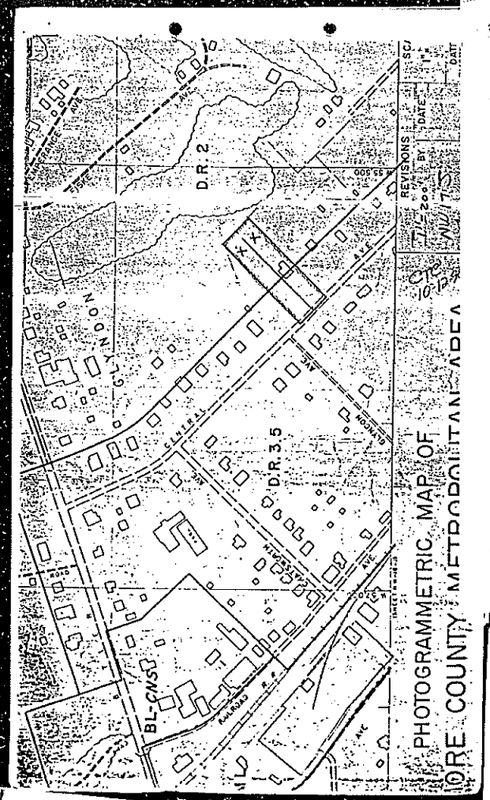
781 BOLLINGER HOUSE - Before 1915 - 111 Central Avenue. Shown as M. Stringer's in 1915 atlas. Frame, wood-shingled house in shingle style with gable roof and stone foundation. Small 2nd-storey windows. Owner: D. Howard Bollinger.

782 WHITE HOUSE - Before 1915 - 109 Central Avenue. Shown in 1915 atlas as J. Zouck's. Colonial revival house in frame and wood shingles with hip roof and stone foundation. Massive stone and chimney. Owner: Elsie S. White.

783 ROSE HOUSE - Before 1898 - 107 Central Avenue. Shown in 1898 atlas as W.G. Bishop's and in 1915 as Jacob Zouck's. Victorian house, frame and clapboard with gable roof and stone foundation. Owner: Everett Rose.

784 GRIFFIN HOUSE - Before 1898 - 11 Central Avenue. Shown in atlas of 1898 and 1915 as the F.J. Williams house. Small, low 1-½ storey frame and clapboard cottage in Victorian style with gable roof and stone foundation. Decorated with bargeboards. Owner: John J. Griffin.

Pet. Exh #5



PROTESTANT'S EXHIBIT 10 89-396 SPHA

347-8756

May 5, 1988

PROTESTANT'S EXHIBIT ____

Ellie Lipsitz, Esquire
6609 Reisterstown Road
Suite 102
Baltimore, Maryland 21215

RE: 207-209 Central Avenue
Glyndon, Maryland
Property of Aileen H. Singer

Dear Ellie:

Enclosed is a copy of a letter dated April 8, 1988 from the Zoning Commission's office in Baltimore County to me with various attachments. Included in the attachments is a letter dated April 8, 1988 to Colleen Thompson, the realtor for the Singers.

It was nice chatting with you and your dad the other day.

Very truly yours,

Nevett Steele, Jr.

NS/nov
enclosure

Protestant's Ex 7
BCBA

PROTESTANT'S EXHIBIT 3 89-16 SPHA

LAW OFFICES
WHITEFORD, TAYLOR & PRESTON

SUITE 1400
SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1626
301 347-8700
TELEX: 510 001 1954
Fax: 301 752-7092

NEVETT STEELE, JR.

July 14, 1988

RECEIVED
JUL 15 1988
ZONING OFFICE

The Honorable J. Robert Haines
Zoning Commissioner, Baltimore County
Office of Planning and Zoning
Towson, Maryland 21204

RE: 207-209 Central Avenue
Glyndon, Maryland

Dear Mr. Commissioner:

It is our understanding that a hearing has been set for July 27, 1988 in regard to a variance that is being applied for in connection with the proposed construction of a new house on 207 Central Avenue. The variance, we believe, is being requested because of the insufficient width of the property.

207 Central Avenue was formerly connected with 209 Central Avenue and 207 was in fact the situs of the driveway and parking lot for the structure on 209 which is presently a six-unit apartment building.

We wanted to register our opposition to the proposed variance for lot 207 and to point out that this is another significant zoning problem created by the sale of the lot (207) which was formerly part of the entire 1.2 acre premises that served as the site for a six-unit apartment building. As indicated in Mr. Richard's letter of April 8, 1988, the current zoning situation regarding the apartment building on 209 Central Avenue has become exacerbated by the sale of the lot (207). There is not sufficient land space to justify the existence of a six-unit apartment building, there is not sufficient front footage, and there is a side yard set back deficiency. The separation of these lots has resulted in both lots being of insufficient size and dimensions to support the proposed structure on 207 and the existing structure on 209.

We would suggest that both matters be reviewed by the Zoning Commission and ask the Comission to treat this letter as a complaint concerning the existing zoning violations in regard

Protestant's Ex 8
BCBA

August 10, 1988

The Honorable J. Robert Haines
Zoning Commissioner, Baltimore County
Office of Planning and Zoning
Towson, Maryland 21204

RE: 207-209 Central Avenue
Glyndon, Maryland
Case No: 89-16-A

Dear Commissioner Haines:

I am in receipt of Ms. Lipsitz's letter to you of August 9, 1988. In that letter, she indicated that Mr. and Mrs. Jones had never received any notice that a zoning violation existed with regard to their property.

I spoke with Ms. Lipsitz after having spoken to Mr. and Mrs. Jones concerning the letter dated April 8, 1988 from Mr. Dyer and Mr. Richards of your office to me.

After those conversations, I then sent Ms. Lipsitz, on May 5, 1988, prior to the purchase of the property by Mr. and Mrs. Jones, a copy of the April 8, 1988 letter from your office.

Very truly yours,

Nevett Steele, Jr.

NS/nov
cc: Charles B. Heyman, Esquire
Ellie Lipsitz, Esquire

Prot. Exh #12

Law Offices
BENJAMIN LIPSITZ
ELEANOR J. LIPSITZ
100 Church Lane
Baltimore, Maryland 21208-3785
Area Code 301-484-3050
Telecopier 301-653-1546

RECEIVED
AUG 15 1988

Respond to this

Dear Mr. Haines:

[illegible] letter which Shirley [illegible] Jones had written to you on August 5, 1988, during the [illegible] conversation I had with Mr. Heyman, I told him that my client, Aileen H. Jones, had not reached a decision as to what, if any, action should be with regard to the construction at 209 Central Avenue. In all fairness to the [illegible] Mrs. Jones' request to know the [illegible] with regard to asking [illegible] that Mrs. Jones was not in agreement with respect to the property which is [illegible] at 209 Central Avenue, nor as it may relate to his [illegible] any second home request, that is, the [illegible] with Mr. Jones, 305 Stevenson Avenue, Towson, Maryland [illegible] to her knowledge about the zoning [illegible] of second hand comments made to him by assorted [illegible], none of whom seemed to be speaking with any authority. He and Mrs. Jones will take whatever reasonable steps are required to have their property at 209 Central Avenue comply with appropriate zoning rules. They have heard such "rumblings", but have never received any notice that a zoning violation exists with regard to their property. In the absence of some notice from your office, they do not know what it is they are supposed to do. Neither they nor any one else I spoke to them attended the hearing referred to in Mr. Heyman's letter.

Cont. Exh #11

Mr. Haines
August [illegible], 1988
Page Two

I am scheduled to be out of town during the week of [illegible] and hence will not be able to attend a [illegible] meeting the time suggested in Mr. Heyman's letter. I will also be away on September 6, 1988.

Very truly yours,

Eleanor J. Lipsitz

cc: Charles B. Heyman, Esquire
Nevett Steele, Jr., Esquire
Mr. and Mrs. Ronald F. Jones

BY-LAWS
OF
GLYNDON COMMUNITY ASSOCIATION, INCORPORATED

ARTICLE I
NAME

SECTION 1. This association shall be known as "Glyndon Community Association, Incorporated."

ARTICLE II
PURPOSES

SECTION 1. The purposes and objects of this Association shall be to organize and operate an association to promote and maintain a stronger community spirit in Glyndon (hereinafter called the community), to bring about improved conditions in all things that affect the community in general, and to promote other non-profitable purposes, no part of the net earnings of which is to inure to the benefit of any member.

ARTICLE III
TERRITORIAL LIMITS - MEMBERSHIP - DUES

SECTION 1. The territorial limits of the Community of Glyndon shall be that area in Baltimore County within the confines of the Glyndon zip code 21071 postal area, and also includes the area designated as the Glyndon National Register Historic District.

SECTION 2. The membership of this association shall be limited to residents of the Community of Glyndon who have attained the age of eighteen (18) years and who have resided in Glyndon for a period of at least ninety (90) days.

SECTION 3. Membership in this Association shall be comprised of two (2) types: Resident and Associate. Resident membership will be limited to those individuals and families who own real estate or reside within the Community and who meet the requirements of the other sections of this article. Associate membership will include those individuals and families who have an interest in the Community but do not reside in the Community or own property in the Community.

SECTION 4. Any person, meeting the requirements of Sections 2 and 3 above, shall be entitled to membership in this Association and shall automatically become a member upon payment of current dues.

O'CONOR PITEPLAIN REALTORS

BCBA Ex 9

CONV

LIBER 5320
FOLIO 466
WSS # BC 151494-4

Selling Office: ORF Rockville — Phone: 881-3000
Selling Associate: Rosie Shaw — 881-1541
Listing Office: Hutchinson — Phone: 876-4440
Listing Associate: Colleen Thompson — 560-6467

THIS AGREEMENT OF SALE, made this 31st day of March, 19 88, between
(Name) Aileen Singer, Seller
(Address) 209 Central Avenue, Glyndon, Maryland 21071 and
(Name) Ronald F. Jones and Shirley Jones (Husband), Buyer
(Address) 305 Stevenson Road, Towson, Maryland 21204

Witness that Seller does hereby bargain and sell unto Buyer, and Buyer does hereby purchase from Seller the following described fee simple real property, known as 209 Central Avenue, Glyndon, Maryland 21071.

and all rights and appurtenances pertaining or belonging unto the same, and Buyer does hereby purchase from Seller the following described personal property, known as Refrigerator, Stove, Washer and Dryer, which, if they have been installed, are represented by Seller to be free of liens, and all of which are hereby declared to be and remain fixtures and a part of the realty, and which are now on the premises aforesaid, and Seller shall not remove any of the aforesaid property from the premises aforesaid, and Seller will warrant specially the property hereby agreed to be conveyed, and will execute such further assurances of the same as may be requisite, for the total consideration of One Hundred Fifty Two Thousand Dollars ($152,000.00)

1. DEPOSIT: As evidence of good faith and as a deposit on account of the purchase price, Buyer has paid or will pay to Seller's Settlement Agent the sum of Five Thousand Dollars ($5,000.00) to be held in escrow by Seller's Settlement Agent pending settlement hereunder, which deposit shall be credited to Buyer at settlement. In the event Buyer defaults in the performance of this Agreement, Seller may declare the deposit forfeited, and Seller may pursue any and all remedies at law or equity. In the event Seller defaults in the performance of this Agreement, Buyer may pursue any and all remedies at law or equity.

2. FINANCING: Buyer agrees to apply for a Conventional mortgage loan within seven (7) days from the date of contract, to pursue the necessary steps and furnish any and all information and papers as may be required by the lender in connection with such application, and to use reasonable diligence and in good faith to take all necessary steps to secure a 30 year mortgage loan in the amount of $ 121,600.00, with principal and interest not to exceed 10.5% per annum (this interest rate may be fixed, variable or graduated) and with a loan placement fee charge of a maximum not exceeding 1% in the aggregate. Buyer agrees to pay the Rate of 10.5% and Buyer agrees to pay the rent of $ 1,026.00 per month. Buyer agrees to promptly furnish a copy of such application to the Seller or Seller's agent, and in the event Buyer's mortgage loan application is not approved as above provided, Buyer shall so notify Seller in writing within 10 days from the date of contract, and this Agreement shall be void and the deposit shall be returned to Buyer. Any action taken by Buyer after acceptance of this Agreement which is detrimental to qualifying the Buyer for financing shall give the Seller the right to declare the deposit forfeited. Buyer's mortgage application shall not be considered approved for the purpose of Buyer's property sales contingency unless a written Agreement, whereby payment is to be in equal principal and interest plus one twelfth (1/12) of the annual real estate taxes, hazard property insurance, ground rent and private mortgage insurance (if any) and flood insurance if required.

3. ALTERNATE FINANCING: In the further and event it is agreed should Buyer make application for financing through a lending institution other than one of which Buyer will have made a payment, or procured at least fifty (50) percent of the financing as above mentioned, then in such case it is agreed that the Buyer from said lending institution or party that is the financing as applied for has been approved and a loan commitment granted, the proceeding provisions of this agreement shall be deemed to be fully satisfied and of no further effect, provided said financing mortgage terms do not increase closing costs to Seller or exceed the sum allowed to secure the mortgage commitment as called for above.

4. TERMITE CLAUSE: Seller authorizes Buyer and/or assignee, at Buyer's expense, a certificate from a licensed pest control operator that the Property is free and clear of any visible termites and other wood boring insects. If any infestation or any damage is present, then the Property shall be treated at Seller's expense to correct any such infestation and any damage caused by any present or prior infestation shall be repaired at Seller's expense. In the event that the cost of the treatment and repairs called for above exceed 2% of the purchase price of the Agreement, then Seller shall have the option of not proceeding from this Agreement; however, if Buyer, at Buyer's option and expense, shall choose to pay the cost of the treatment and repairs in excess of 2% then this Agreement shall remain in effect. All decisions regarding the above shall be made and communicated in writing to the other party within 10 days from the receipt of the inspection report. In the event this Agreement is voided and/or this provision, then all deposits thereunder shall be returned in full to Buyer. The property subject to this provision shall be residential dwellings, and attached garages but shall not include outbuildings or trailers.

5. INCLUSIONS: Included in the purchase price shall be all fixtures now on the Property as of date of settlement, if any, if not excepted herein, and the number of installed appliances now in the house if required by law. The purchase price shall also include the following, as and if now installed or on the premises: kitchen and oven, all attic, storm doors and windows, curtain rods, drapery hardware, awnings, fuel and shrubbery, light fixtures, TV aerials, dishwasher, garbage disposal, central air conditioning and wall to wall carpeting. Also included shall be the following: All Stove and Refrigerator also in Use, specifically, Window Shades
Excluded - Chandelier Light Fixtures, Some Drapes

GLYNDON
COMMUNITY ASSOCIATION, INC. GLYNDON, MARYLAND 21071

Prot. Exh #14

October 12, 1990

Baltimore County Board of Appeals
County Office Building Room 315
Towson, Md 21204

Re: Case Number 89-396-SPHA

Dear Board:

The community of Glyndon is justifiably proud of our lovely Victorian houses located on spacious lots on small, tree lined streets. Because of these features, Glyndon has been placed on the National Register of Historic Places and has the honor of being r ..ed as the very first historic district in all of Baltimore County. This combination of history and beauty has attracted a very special type of home owner to Glyndon. People who live or consider buying homes in Glyndon appreciate the historic flavor of the community and are committed to maintaining and improving the beautiful Victorian houses and large lots on which they are situated.

Central Avenue is the main residential street in Glyndon and contains many of the historic Victorian homes that have helped to make Glyndon special. The property in question is located right in the midst of many of Glyndon's most beautiful and historic properties.

The Board of Directors of the Glyndon Community Association has voted unanimously to oppose this appeal until such time as the contiguous lot can once again be used to support the parking lot and driveway requirements for a six unit facility. The appeal being requested would have a significantly negative impact on the nature of our community and the scale of residences and lots on Central Avenue.

We urge you to support the dedicated and tireless work of hundreds of Glyndon residents and deny this appeal.

Sincerely,

GLYNDON COMMUNITY ASSOCIATION

Mark Laken
Mark Laken
President

Duly resolved by the Board of Directors on October 11, 1990.

Mark Laken
Mark Laken
President

Darlene Schoyer
Darlene Schoyer
Secretary

LEVIN, GANN & HANKIN

Mr. & Mrs. George Singer, Sr.
Page 2
April 4, 1988

nonconforming use, as you would not likely be able to obtain a "conversion" to five dwelling units with the remaining lot size. It is unclear however, what effect both the outconveyance of 207 Central Avenue and the zoning line that bisects the lot will have on the conversion calculation and should this become a dispute, there may be possible avenues to resolution of the larger problem.

In any event, from what you have told me about your current disputes and differences, I suspect that an amicable resolution will likely be possible. Should you have any further questions or should I need be of any assistance to you, please do not hesitate to give me a call.

Sincerely,

Stuart E. Kaplow

SEK/tbh

Historic Glyndon Incorporated
Glyndon, Maryland 21071
October 23, 1990

Mr. J. Robert Haines
Zoning Commissioner of Baltimore County
Office of Planning and Zoning
111 W. Chesapeake Avenue
Towson, MD 21204

Dear Mr. Haines,

The board members of Historic Glyndon Inc. would like to express opposition to the granting of variances in case numbers 89-16-SPHA and 89-396-SPHA. We feel that allowing these changes would set an undesirable precedent for the future in the Glyndon Historic District.

The importance of maintaining the historic integrity of our houses and properties in spirit and in fact is not taken lightly by those of us who have chosen to live here and should be recognized by our appointed and elected officials as well. Adding new homes to the community is not at issue but we feel in this instance the changes allowed by the proposed variances could encourage developers to seek out similar properties and further variances. A community of once stately homes and spacious lawns could be chopped into small lots of unsuitable dimensions.

National, State and County designations have been put in place in Glyndon to afford some protection for its unique character and we feel that local boards and commissions should do everything in their power to uphold the laws which grant these designations.

We hope for your much needed and appreciated support by not granting these variances.

Sincerely,

Ann B. O'Neill
Ann B. O'Neill, President
Historic Glyndon, Inc.

Prot. Exh #15

Historic Glyndon Incorporated
Glyndon, Maryland 21071
October 23, 1990

To Whom It May Concern:

Historic Glyndon Incorporated is an historic organization of 141 members. The territorial boundary of Historic Glyndon Incorporated, as stated in the by-laws, "shall be the community known as Glyndon, Maryland which shall be deemed to contain the areas known as "Emory Grove" and "St. Georges" and which shall be deemed to contain the property known as the "Sacred Heart Catholic Church on Sacred Heart Lane, Glyndon, Maryland."

The Board of Directors is authorized by the by-laws of the Corporation to conduct all business, including items related to zoning issues. The Board has resolved that Mrs. Eleanor Taylor is authorized to present our views with respect to cases 89-16-SPHA and 89-396-SPHA.

Sincerely,

Ann B. O'Neill
Mrs. Ann B. O'Neill, President

Lynne Maher
Mrs. Lynne Maher, Secretary

Prot. Exh #16

LAW OFFICES
LEVIN, GANN & HANKIN
A PROFESSIONAL ASSOCIATION
305 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
301-321-0600
FAX 301-296-2501

ELLIS LEVIN (1893-1960)

BALTIMORE OFFICE
40 LIGHT STREET
BALTIMORE, MD 21202
301-539-1700
FAX 301-625-9055

CARROLL COUNTY OFFICE
RAY UTILITY ROAD
SYKESVILLE, MD 21784
301-795-8400

April 4, 1988

Mr. & Mrs. George Singer, Sr.
209 Central Avenue
Glyndon, Maryland 21071

Re: 207 and 209 Central Avenue

Dear George and Aileen:

I thought that I would drop you a quick note to confirm our telephone conversation of the other day with respect to a possible zoning violation for a multiple family dwelling use of 209 Central Avenue.

As we discussed, such a utilization of the property would be a "nonconforming use" under the current zoning regulations, however, it may continue as a legal use, if it meets the requirements of Section 104.1 of those regulations. While I am not familiar with the details of your current difficulties, it appears clear that the outconveyance of 207 Central Avenue has served to exacerbate the situation.

While I am unclear as to the nature of the Zoning Office's current involvement with this matter, I can only assume that it was as a result of someone attempting to obtain a certificate of zoning compliance incident to your contract to sell the property. It is extremely unlikely that the involvement was as a result of a citizen complaint because such a complaint would have been referred to the local zoning inspector, Ms. Robin Clarke and not to Carl Richards. In any event, as you likely have a settlement date for your contract, all efforts should be made to resolve this matter informally and with due haste. (before any written responses are promulgated by the Zoning Office), as hearings before the Zoning Commissioner are now being scheduled some four months from now and violation hearings before the District Court are now being scheduled almost five months from nov.

Assuming that your current difficulties are in securing a certificate of zoning compliance, you may be faced with the prospect of having the Zoning Comissioner validate your

Prot. Exh #17

GLYNDON COMMUNITY ASSOCIATION
MINUTES
General Meeting, February 27, 1990

Prot. Exh #13

President Mark Laken called the meeting to order at 7:40 P.M. There were 55 members in attendance. The minutes of the November 28, 1988 general meeting were approved as read. The Treasurer's report (attached) was approved as read.

COMMITTEE REPORTS

Traffic -- the intersection of Butler Rd. & Rt. #30 was downgraded to a Class F intersection.

Zoning -- No report.

BOG -- No report.

Improvement -- No report.

Master Plan - No report.

Environment -- The former National Circuits property (Rts. 140 & 30) has been found to contain high levels of hazardous waste products. Clean-up evaluation is currently in progress, but the surrounding communities have been told that there is no need to panic.

It was reported that a storm water management pond near 350 Central Ave. has presented some problems for the residents there. The gentleman reported that children have been playing in the approximately 8 feet of water and that there was an anticipated mosquito problem. He has followed this up with numerous phone calls to the proper Balto. Co. agencies and is making a diligent effort to correct the problems.

OLD BUSINESS

207 - 209 Central Avenue...An appeal date has been set for June.

Glyndon Square Parking Exp....The Zoning Commissioner said he would take a personal look at the site prior to making a decision. To date no further has been heard.

State Highway Property...There has been no new information.

Glyndon Historical Sign...George Wroe will continue investigation into replacing the sign. Total replacement seems to be less expensive than repairing the damaged sign.

W. LEE THOMAS, P.A.
ATTORNEY AT LAW
SUITE 3-A
408 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
TELEPHONE (301) 296-6777

W. LEE THOMAS
DAVID A. WILSON
LEITH E. ARNOLD
CAL G. COOPER

TELECOPIER
(301) 821-5404

May 10, 1988

Mr. William E. Doyle
5312 Emerald Drive
Sykesville, MD 21784

Re: Aileen M. Singer, 207 Central Avenue
Your File: No. 223-6

Dear Mr. Doyle:

This office represents Mrs. Singer in her effort to establish a non-conforming use at the above-referenced property.

In order to file a Petition for Special Hearing with the Office of the Zoning Commissioner for Baltimore County, I shall need a plat. I understand that you have already prepared one, which certainly can serve as a start.

As you may know, however, Baltimore County requires certain specific information on each plat. A copy of their checklist is enclosed for your reference.

In addition to the information set forth therein, I would also request that you include the following information on the plat:

1) location of new driveway and parking lot on 209 Central Avenue;

2) location and description of existing trees, shrubs and other screening on south property line; and

3) location of dwelling and screening on adjacent property (211 Central Avenue) owned by Mr. Steele, the primary opponent to Mrs. Singer.

I would appreciate your prompt attention to this matter so that I may file the petition at the earliest possible date. Should you have any questions or if I may be of any assistance, please do not hesitate to contact me.

RONALD F. JONES, ET UX

89-396-SPHA

NE/s Central Ave., 60' SE Glyndon Ave. (209 Central Ave.)

4th Election District
3rd Councilmanic District

Petition filed by Eleanor J. Lipsitz, Esquire on behalf of Ronald F. Jones, et ux for a Special Hearing to approve the multi-family apartment dwelling and lot at 209 Central Avenue as a legal nonconforming use for six apartment units or that said lot (209) and improvements conform to the spirit and intent of the BCZR that apply to the conversion of dwellings for apartment use.

Petition filed by Eleanor J. Lipsitz, Esquire on behalf of Ronald F. Jones, et ux for Variances to permit side yard setbacks of 12 ft. and 12.6 ft. in lieu of the required 20 ft. for one side and 40 ft. and/or 50 ft. for the sum of both side yard setbacks. Also to permit a lot width of 65 ft. in lieu of the required 90 ft. or greater as may be determined.

March 15, 1989	Comments of Baltimore County Zoning Plans Advisory Committee.
March 17	Publication in newspaper.
March 17	Certificate of Posting of property.
April 4	Hearing held on Petition by the Zoning Commissioner.
June 2	Petitioner's Brief filed by Eleanor J. Lipsitz, Esquire.
	Protestants' Memorandum of Law filed by G. Scott Barhight, Esquire.
October 24	Order of the Zoning Comaissioner DENYING Petitions for Special Hearing and Variances.
November 21	Notice of Appeal received from Eleanor J. Lipsitz, Esquire on behalf of Petitioner.
June 26, 1990	Hearing before the Board of Appeals.
July 24	Continued Hearing before the Board of Appeals (telephone testimony).
October 12	Continued Hearing before the Board of Appeals.
October 26	Concluded Hearing before the Board of Appeals.

RONALD F. JONES, ET UX

89-396-SPHA

NE/s Central Ave., 60' SE Glyndon Ave. (209 Central Ave.)

4th Election District
3rd Councilmanic District

January 22, 1991	Appellants' Brief filed by Eleanor J. Lipsitz, Esquire.
January 22	Protestants' Memorandum of Law filed by G. Scott Barhight, Esquire.
April 12	Opinion and Order of the Board GRANTING the Petitions for Special Hearing for nonconforming use and for requested Variances.
April 12	Dissenting Opinion by John G. Disney.
May 13	Order for Appeal filed in the Circuit Court for Baltimore County by Nevett Steele, Jr., et ux.
	Petition to accompany appeal filed in the Circuit Court for Baltimore County by Nevett Steele, Jr., et ux.
May 14	Certificate of Notice sent to interested parties.
	Transcript of testimony; Record of Proceedings filed in Circuit Court for Baltimore County.
May 22, 1991	Notice of Dismissal of appeal filed in CCt,BCo by Nevett Steele, Jr., Plaintiff/Appellant.
May 30	Above Notice of Dismissal stamped and filed by Clerk of the Court.

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

App N/A

IN THE MATTER OF THE APPLICATION OF RONALD F. JONES, ET UX FOR A SPECIAL HEARING AND VARIANCE ON PROPERTY LOCATED ON THE NORTHEAST SIDE OF CENTRAL AVENUE, 60 FEET SOUTHEAST OF GLYNDON AVENUE (209 CENTRAL AVENUE 4TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT

BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

CASE NO. 89-396-SPHA

91 CG 2061

94/90

NOTICE OF DISMISSAL

MADAM CLERK:

Please dismiss the above case pursuant to Maryland 2-506.

This case is an appeal filed pursuant to Md. Rules B-12, Administrative Agencies.

Respectfully submitted,

Nevett Steele, Jr.
211 Central Avenue
Glyndon, MD 21071
(301) 296-8164 (Work)
(301) 833-6564 (Home)

Elizabeth B. Steele
211 Central Avenue
Glyndon, MD 21071
(301) 833-6564 (Home)

PAID
MAY 29 1991
SUZANNE MENSH, CLERK
PER

FILED MAY 30 1991

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29 day of May, 1991, a copy of the foregoing Order for Appeal was mailed to Eleanor J. Lipsitz, Esquire, 100 Church Lane, Baltimore, Maryland 21208; Charles B. Heyman, Esquire, Kaplan, Heyman, Greenberg, Engleman & Belgrad, P.A., Tenth Floor, Sun Life Bldg., 20 S. Charles Street, Baltimore, MD 21201; and Linda Kuszmaul, Board of Appeals, 111 W. Chesapeake Avenue, Towson, Maryland 21204.

Nevett Steele, Jr.

Baltimore County Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

receipt

Account R-001-6150
Number

Date

FOR: FILING OF APPEAL

	QTY	UNIT
TOTAL		$ 35.00

Please Make Checks Payable To: Baltimore County

$35.00

Cashier Validation

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL GENERAL

DOCKET 94 PAGE 90 CASE NO. 91CG2061 CATEGORY APPEAL

IN THE MATTER OF THE APPLICATION OF RONALD F. JONES, ET UX FOR A SPECIAL HEARING AND VARIANCE ON PROPERTY LOCATED ON THE NORTHEAST SIDE OF CENTRAL AVENUE, 60 FEET SOUTHEAST OF GLYNDON AVENUE 209 CENTRAL AVENUE 4TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT

ATTORNEYS

Nevett Steele, Jr.
Elizabeth B. Steele
211 Central Ave, Glyndon 21071
296-8164, 833 6564

E

(1) May 13, 1991 - Order from Appeal from the Opinion and Order of the Baltimore County Board of Appeals fd. (89-396-SPHA)

(2) May 14, 1991 - Certificate of notice, fd.

COSTS

CV CIR ...
CV CLK ...
CV GEN $120.61
CV CLK 10.00
CHECK TL 10.00

MAY 30 1991

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
494-3353

J. Robert Haines
Zoning Commissioner

Date: 3/20/89

Donald F. Rasmussen
County Executive

Mr. & Mrs. Ronald F. Jones
315 Church Road
Reisterstown, Maryland 21136

Re: Petition for Special Hearing and Zoning Variance
CASE NUMBER: 89-396-SPHA
NE/S Central Avenue, 125' SE Glydon Avenue
(209 Central Avenue)
4th Election District - 3rd Councilmanic
Petitioner(s): Ronald F. Jones, et ux
HEARING SCHEDULED TUESDAY, APRIL 4, 1989 at 9:00 a.m.

Dear Mr. & Mrs. Jones:

Please be advised that $118.32 is due for advertising and posting of the above-referenced property. All fees must be paid prior to the hearing. Do not remove the sign and post set(s) from the time it is posted by this office until the day of the hearing itself.

THIS FEE MUST BE PAID AND THE ZONING SIGN(S) AND POST(S) RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT BE ISSUED.

Please make your check payable to Baltimore County, Maryland and bring it along with the sign(s) and post(s) back to the Zoning Office, County Office Building, Room 113, Towson, Maryland 21204 not later than 10:00 minutes before the hearing.

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 067538

DATE 4/4/89 ACCOUNT R01-615-000

AMOUNT $ 127.32

RECEIVED FROM Arnold Jan

FOR P.A. 4/4/89 Zoning 89-396-SPHA

B B013####127321a 0641F

VALIDATION OR SIGNATURE OF CASHIER

cc: Eleanor J. Lipsitz, Esq.
file

Case No. 89-396-SPHA

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 4th Date of Posting 4/5/89
Posted for: Special Hearing & Zoning Variance
Petitioner: Ronald F. Jones et ux
Location of property: NE/S Central Ave, 125' SE Glydon Ave (209 Central Ave)
Location of Signs: Front yard of subject property
Remarks:
Posted by: Signature Date of return:
Number of Signs: 2

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

89-396-SPHA

District 4th Date of Posting 3-17-89
Posted for: Special Hearing & Zoning Variance
Petitioner: Ronald F. Jones, et ux
Location of property: NE/S Central Avenue, 125 SE Glydon Ave
209 Central Avenue
Location of Signs: Front yard of subject property
Remarks:
Posted by: Signature Date of return:
Number of Signs: 2

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

RONALD F. JONES and SUZANNE LUSSIER-JONES, Petitioners : Case No. 89-396-SPHA NE/S Central Avenue, 125 SE Glyndon Avenue

APPEAL

MR. ZONING COMMISSIONER:

Please enter an appeal to the Board of Appeals for Baltimore County in this matter on behalf of Petitioners.

ELEANOR J. LIPSITZ
100 Church Lane
Baltimore, Maryland 21208
(301) 484-3050
Attorney for Petitioners

Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

receipt

Account R-001-6150
Number № 449

Date

	QTY	UNIT
FILING FEE		
POST OF ALL OTHER ORDERS	2 X	$150.00
ZONE POSTING SIGNS - ADVERTISING	1 X	125.00
	TOTAL:	$275.00

LAST NAME OF OWNER: LIPSITZ

CASE # 89-396-SPHA

B 075####275001a 0235F

Please make checks payable to: Baltimore County

Cashier Validation:

CERTIFICATE OF PUBLICATION

TOWSON, MD., March 17, 1989

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on March 16, 1989.

THE JEFFERSONIAN,

S. Zeke Orlinsky
Publisher

PO 10818
M27075
price 97.32

CERTIFICATE OF PUBLICATION

TOWSON, MD., March 16, 1989

THIS IS TO CERTIFY, that the annexed advertisement was published in the OWINGS MILLS TIMES, a weekly newspaper printed and published in Towson, Baltimore County, Md., appearing on March 16, 1989.

OWINGS MILLS TIMES,

S. Zeke Orlinsky
Publisher

PO 10818
M 27075
price 97.32

Baltimore County
Fire Department
Towson, Maryland 21204-2586
494-4500

Paul H. Reincke
Chief

J. Robert Haines, Zoning Commissioner
Office of Planning & Zoning
Baltimore County Office Building
Towson, Maryland 21204

Donald F. Rasmussen
County Executive

Re: Property Owner: Ronald F. Jones, et ux
Location: NE/S Central Avenue, 125' SE of Glyndon Avenue
Item No.: 356 Zoning Agenda: February 28, 1989

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

( ) 1. Fire hydrants for the referenced property are required and shall be located at intervals or ____ feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.

( ) 2. A second means of vehicle access is required for the site.

( ) 3. The vehicle dead end condition shown at _____ EXCEEDS the maximum allowed by the Fire Department.

( ) 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

(X) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code," 1976 edition prior to occupancy.

( ) 6. Site plans are approved, as drawn.

( ) 7. The Fire Prevention Bureau has no comments at this time.

REVIEWER: Lt. Robert Kelly 3-17-89 Planning Group Special Inspection Division

NOTED & APPROVED: Capt. William T. Bradley Fire Prevention Bureau

89-396-SPHA

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Your petition has been received and accepted for filing this 17th day of March, 1989.

J. ROBERT HAINES
ZONING COMMISSIONER

Petitioner Ronald F. Jones, et ux
Petitioner's Attorney Eleanor J. Lipsitz

Received by: James E. Dyer, Chairman, Plans Advisory Committee

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

RONALD F. JONES and SUZANNE LUSSIER-JONES, Petitioners : Case No. 89-395-SPHA
: NE/S Central Avenue, 125 SE
: Glyndon Avenue

RECEIVED
JUN 2 1989
ZONING OFFICE

PETITIONERS' BRIEF

Statement of Facts

The petitioners, Ronald F. Jones and Suzanne Lussier-Jones, acquired title to property known as 209 Central Avenue, Glyndon, Maryland, the subject of the instant petiton for special hearing and p ition for variance, on June 24, 1988. The property consists of a lot containing 25,545 square feet of land, more or less, and an existing structure, located in D.R. 2 and D.R. 3.5 zones. (See plats accompanying Petitioners' petitions filed herein). The structure has existed since before 1898. (Petitioners' Exhibit 1). The evidence shows that the building located at 209 Central Avenue has been operated as a boarding house and/or apartment house since, at least, the early 1900's. Even Protestant's Exhibit 8 indicates that prior to the enactment of the Baltimore County zoning regulations, 209 Central Avenue was operated as a multi-unit apartment building. A notarized letter from Anita Susemihl (Petitioner's Exhibit 3) states that the conversion of the improvements to six apartment units was

-2-

undertaken after she and her husband acquired title to the property in March, 1941.

The 209 Central Avenue and the adjacent lot known as 207 Central Avenue have been conveyed in one instrument, but as two separate lots, for at least ninety years. In March, 1988, the vacant lot known as 207 Central Avenue was sold by Aileen Singer to the Homestead Group. (Protestants' Exhibit 11). 209 Central Avenue was subsequently conveyed by Aileen Singer to Ronald F. Jones and Suzanne Lussier-Jones by deed dated June 24, 1988. The Zoning Commissioner, at the conclusion of the hearing herein, found that 207 and 209 are and have been two separate lots. [Since that issue is not addressed here.]

Prior to conveying the vacant lot at 207 Central Avenue, Singer relocated a driveway and parking lot from that lot to the lot known as 209 Central Avenue. Singer obtained a building permit (Petitioners' Exhibit 5) prior to locating the driveway and parking lot on 209 Central Avenue and met with the requests of the Baltimore County Landmarks Preservation Commission with regard to the location of both the driveway and the parking lot. (Petitioners' Exhibit 6).

Petitioners Jones received Citation No. 89-038, Citation for Civil Zoning Violation, dated August 10, 1988, citing a violation of section 101; 402; 1B01.1B, the alleged violation being "use of property zoned D.R. 3.5 to commit the following: Apartment building located on residential property that lacks required lot area and minimum dimensional (width/side yard) standards." At trial of that matter, the County Solicitor

-3-

agreed to enter a "stet," provided the Jonses filed the appropriate petitions with the Zoning Commissioner. Hence, this matter comes before the Zoning Commissioner for hearing on petitioners' petition for special hearing and petition for variance.

Questions Presented

1. Does the operation of a six unit apartment building at 209 Central Avenue, Glyndon, Maryland qualify as a nonconforming use?

2. Should Petitioners' request for a variance from section 402.1 of the Baltimore County Zoning Code to permit side yard setback of 12.0 feet and 12.6 feet in lieu of required 20 feet for one side and 40 feet and/or 50 feet for the sum of both side yard setbacks and to permit a lot width of 65 feet in lieu of the required 80 feet or greater as may be determined be granted?

[Petitioners do not abandon the issue of the timeliness of the hearing on their petitions as raised prior to the presentation of their evidence. In deference to the direction of the Zoning Commissioners to address certain issues, this position is not specifically addressed. However, Petitioners do not relinquish their position that the hearing date was not properly advertised to afford the 15 days notice required by the zoning regulations.]

-4-

Argument

1. The operation of a six unit apartment building at 209 Central Avenue, Glyndon, Maryland qualifies as a nonconforming use.

The determination of a nonconforming is essentially two part. First, there must be a finding that a lawful use existed prior to the adoption of zoning regulations. (See Section 101, B.C.Z.R., 1955; Bill No. 18, 1976) Second, it must be shown that that use has continued without interruption or change. (See Section 104, B.C.Z.R., 1955, Bill 18, 1976) Also see McKemy v. Baltimore County, Md., 30 Md.App. 257, 385 A.2d 96 (1978).

January 2, 1945 marks the inception of the Baltimore County zoning regulations. The County Commissioners then adopted a comprehensive set of zoning regulations. McKemy supra, at 98; Kahl v. Cons. Gas El. Lt. & Pwr. Co., 191 Md. 249, 254, 60 A.2d 754 (1948); Calhoun v. County Bd. of Appeals, 262 Md. 265, 277 A.2d 589 (1971). Section XI, 1945, B.C.Z.R. first provided for nonconforming uses. On March 30, 1955, the County Commissioners adopted a new set of comprehensive zoning regulations. See McKemy. Section 104 of those regulations dealt with nonconforming uses. Currently, Section 104.1, as adopted on March 15, 1976 by Bill No. 18-76, of the Baltimore County Zoning Regulations provides for nonconforming uses. In pertinent part, Section 104.1 provides:

> "A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these Regulations; provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such

-5-

nonconforming use for a period of one year or more, the right to continue or resume such nonconforming use shall terminate. . . .

Evidence produced at the special hearing herein patently shows that the structure at 209 Central Avenue has been, and continues to be, operated as a multi-family dwelling since prior to the adoption of the original Baltimore County Zoning Regulations in January, 1945. Even the testimony of Protestants' witnesses establishes such multi-family use prior to 1945. 209 Central Avenue was known as a boarding house and/or apartment house since the childhood of not less than one 66 year old witness, which establishes such multi-family use prior to 1945. None of Protestants' witnesses disputed Petitioners' evidence that 209 Central Avenue has been operated as a boarding house or multifamily apartment house since well before the inception of zoning regulation for Baltimore County, hence, petitioners submit, the question of the existence of a legal nonconforming use is undisputed and not in issue.

Petitioners produced evidence, both written and testimonial, to substantiate the existence of six units at 209 Central Avenue since the early 1940's. In 1941 Louis and Anita Susemihl acquired the property and converted it to six apartments (Pet. Ex. 3). James Reter and Aileen Singer testified to the continuance of the apartment building usage from Mr. Reter's childhood (he is in his sixties now) to the present time.

-6-

Petitioners submit that no witness for the Protestants disputed the petitioners' evidence of six units. Protestants' witnesses, at best, could say that they were uncertain of the exact number of apartments in the building. None of them, from their personal knowledge, could successfully challenge the existence of six units. At best, Protestants' witnesses had been in some, but not all of the units in the building, and therefore, could not identify the actual number of units. Protestants' Exhibit 8 is not, Petitioners submit, conclusive evidence of the number of units in the building except as being not less than 4. Those affidavits assert, in two instances, the existence of 4 units; in one instance, the existence of "four or more" units, in another instance, 5 units and in the remaining instance, six units. The testimony of one of Protestants' witnesses, Mrs. Hammond, attempted to show that substantial improvements were made to 209 Central Avenue in the late 1940's. This testimony was vague at best. She testified that she had no actual knowledge of what was transpiring at 209 Central Avenue and had personally seen one delivery of materials there. The preponderance of the evidence supports Petitioners' position as to the continued use of the property as a six unit apartment building.

In summary, Protestants did not controvert the existence of the boarding house and/or apartment building at 209 Central Avenue before the adoption of the Baltimore County Zoning Regulations, nor did they successfully controvert the existence of six units at 209 Central Avenue.

-7-

There is evidence that Aileen Singer and her husband occupied two units on the first floor of the building. Testimony further shows that there were separate kitchen and bath facilities maintained for each unit. The occupancy of two units by a single family does not, Petitioners assert, constitute an abandonment or discontinuance of the nonconforming use. See Feldstein v. LaVale Zoning Board, 227 A.2d 713, 246 Md.204 (1967). At most this was a temporary abatement of the six unit use. The maintenance of two separate kitchen and bath facilities for the temporarily combined two units support the contention of a temporary abatement rather than being a clear indication of intention; action or inaction which is mandated to extinguish a nonconforming use. Id. at 734.

The evidence produced by Protestants at hearing of the instant petitions, at best, shows that the only changes in the use and operation of 209 Central Avenue since at least 1945 has been the location of the driveway and parking lot, formerly located on the lot known as 207 Central Avenue, on 209 Central Avenue. Petitioners urge that, applying the guidelines set out in McKemy v. Baltimore County, Maryland, 385 A.2d 96, 39 Md. App. 257 (1978), there has been no showing of any change of the nonconforming use to any other use so as to terminate the right to continue the nonconforming, six unit apartment use already existing at 209 Central Avenue.

-8-

McKemy, supra, at 104, clearly set forth the criteria to be applied in determining whether or not there has been a change in the use of the property which would serve to break the continued nature of the nonconforming use. These are:

> "(1) to what extent does the current use of these lots reflect the nature and purpose of the original non-conforming use;
> (2) is the current use merely a different manner of utilizing the original non-conforming use or does it constitute a use different in character, nature, and kind;
> (3) does the current use have a substantially different effect upon the neighborhood;
> (4) is the current use a 'drastic enlargement or extension' of the original non-conforming use."

Petitioners' Exhibit 2 shows 209 Central Avenue as it exists today. A driveway runs parallel to and along the property line between 207 and 209 Central Avenue. No parking is visible from Central Avenue. The parking lot for 209 Central Avenue is located to the rear of the structure located thereon. Evidence shows that the use of 209 Central Avenue as a multi-family dwelling has changed since the adoption of zoning regulations only in the locating of the driveway and parking lot on 209 Central Avenue. The nonconforming use operating at 209 Central Avenue is the same six unit apartment building that has existed, and been in operation in the same manner, over the period of years predating the enactment of the Baltimore County Zoning Regulations. The location of the driveway and parking lot on 209 Central Avenue in no way changes the continuous operation of the six unit apartment building. It does not, in any way, reflect a

different nature and purpose of use than existed prior to 1945. The driveway and parking lot are an intimate part of the operation of the six units at 209 Central Avenue, not a new or different usage of the property; they represent no difference in the basic use of the property than existed prior to March, 1988. There has, thus, been no change in operation of the premises at 209 Central Avenue that reflects anythi, but the nature and purpose of the original nonconforming use.

The current use reflects totally the nature and purpose of the original nonconforming use. The property, as always, is being used as a multi-f. ly dwelling. The fact that the parking for the residents of 209 Central Avenue is now on that property and behind the building does not in any way reflect a new usage of the property. This does not constitute a usage different in character, nature and kind than that which has long existed, i.e., a multi-family dwelling.

The current use does not have a substantially different effect upon the neighborhood. The building, as testimony of even Protestants's witnesses shows, has not changed in size, shape or character since the early 1940's. Its operation as a multi-family dwelling has not changed. The location of the parking lot and driveway on the lot has not substantially changed the effect of the operation of 209 Central Avenue on the community. Some of Protestants' witnesses testified that the operation of the apartment building had not undergone any substantial change since 1945, supporting Petitioners position. A complaint relating to dust caused by crusher run surfacing of the

driveway, go not to the effect of the usage but to the composition of the driveway surface, a condition which can be easily corrected and should not go to the issue of the nonconforming usage. The parking and driveway are not, Petitioners reiterate, a change in the original use. The parking is now to the rear of the building on 209 Central Avenue. Parked vehicles are not visible from Central Avenue by virtue of the very location of the building behind the structure. If anything, this "stacks" the parked vehicles. The location of both the driveway and the parking lot were approved by the Baltimore County Landmarks Preservation Commission (Petitioners' Exhibit 6) and the work done in compliance with a permit from Baltimore County (Petitioners' Exhibit 5). There was no showing of opposition by the community to the application or issuance of the permit.

Petitioners urge that the current use of the property is not a drastic enlargement or extension of the original usage. It is at most a mere intensification and as such is permissible so long as the nature of use, as here, in not changed. Phillips v. Zoning Commissioner of Howard County, 255 Md. 102, 169 A.2d 410 (1961). As the Court recognized in Phillips, the determination of drastic enlargement or extension or mere intensification is to be made of the facts of each case. There is nothing in the instant case to show a change from one nonconforming use to another or a substitution of one nonconforming use for another. The property is still, as ever, a multi-family dwelling. It has not been converted any different usage by the location of the

parking lot and driveway serving, and a part of the continuation of, the existing nonconforming use. The current usage contemplates only the continuation of that usage, nothing more. Petitioners contend there is no evidence upon which there is a finding of drastic enlargement or extension.

2. Petitioners' request for a variance from section 402.1 of the Baltimore County Zoning Code to permit side yard setback of 12.0 feet and 12.6 feet in lieu of required 15 feet for one side and 40 feet and/or 50 feet for the sum of both side yard setbacks and to permit a lot width of 65 feet in lieu of the required 90 feet or greater as may be determined should be granted.

The granting of a variance is not properly a popularity contest. Such determination is to be based upon judicial principles and zoning regulations. The proper criteria are:

a. whether strict compliance with the zoning regulations for Baltimore County result in practical difficulty or unreasonable hardship

b. whether the granting of a variance will result in substantial injury to public health, safety and general welfare;

c. whether the granting of the requested variance will be inharmonious with the spirit and intent of applicable zoning regulations; and

d. whether the hardship complained of, and which is the basis of petitioners request for variances self-inflicted.

[B.C.Z.R., 1955; Bills No. 87, 1961; No. 19, 1962; Also see, Salisbury Board of Zoning Appeals v. Bounds, 240 Md. 547, 214 A.2d 810 (1965).]

Obviously, if the current side yard setback and lot width requirements are applied to 209 Central Avenue practical difficulty and unreasonable hardship would result. The lot known as 209 Central Avenue exists and the structure, erected thereon in the 1890's (Petitioners's Exhibit 1), exists. To try to squeeze the property and building into the limitations of current zoning requirements would be judicially unfair and physically impossible without the destruction of the building. The building was erected prior to any requirements imposed by zoning and must be allowed to continue in that form since it has not changed since prior to zoning. There is no way to stretch the given land to accommodate the present zoning rules and regulations.

The granting of the requested variances will not result in any, much less, substantial injury to public health, safety and general welfare. There was no evidence to support any such injury at the hearing herein. At least one witness, Zelma Enaor, characterized 209 Central Avenue as an asset to the community. Even Protestants witnesses, while not necessarily happy with the proposed development of the adjacent lot, identified no harm which would result to the community by the granting of the requested variances. In fact, again, the evidence shows not only the absence of any such harm, but the fact that the granting of such variances only recognizes the long existing situation with regard to lot size of 209 Central Avenue and the location of the

building thereon and that the existance and operation of the property are not injurious to the public health, safety or general welfare. One complaint heard concerned dust caused by the new crusher run surface on the driveway. This concern can be addressed by using some other surface or other corrective methods to control the dust production. The discomfort complained of is caused not by the driveway and its location but by the material used. This can easily be rectified well short of denial of a variance.

There was no showing that the granting of the variances sought will be inharmonious with the spirit and intent of applicable zoning regulations. The gist of the zoning regulations for Baltimore County support appropriate use and re-use of large dwellings in residential zones. Even the conversion of the structure, if that were the case, would support the granting of the variances. (Protestants repeatedly referred to their desire to maintain the ambiance of the Gylndon area. To grant the necessary variances for 209 Central Avenue is compatible, perhaps even required, to protect the very existence of the structure at 209 Central Avenue.)

The facts surrounding 209 Central Avenue clearly reflect that the criteria for granting a variance have been fully met.

Bounds, supra, would deny the granting of a variance even where otherwise appropriate if the circumstances requiring the variance have been created by the property owner or a predecessor in title. This, Petitioners urge, is not the case in the instant situation.

Clearly the Petitioners did nothing to cause the hardship complained of here. The evidence shows that Petitioners had entered into a contract with Aileen Singer prior to any official notification of any possible zoning violations. The testimony offered further shows that Petitioners had been assured that the property at 209 Central Avenue conformed with zoning regulations. The Petitioners are not knowledgeable in real estate transactions. Ronald Jones testified that this was the first experience he or his wife had with zoning. He testified that he had conversations with neighbors and was led to believe that no problem related to the continued operation of the 6 units, but rather with the proposed development of 207 Central Avenue. It was not until the Petitioners received a citation dated 8-10-88 that they were made aware of any zoning problem. Mrs. Singer had sold the adjoining lot in March, 1988. Between March and June, 1988, Petitioners had verbal communications with citizens of the area which led them to believe that 209 Central Avenue met zoning requirements. The Joneses are not experience in real estate. They may have been naive in their acquisition of 209 Central Avenue, but that does not constitute the self-inflicted hardship referred to in

There is evidence that predecessors in title made efforts to determine that 209 Central Avenue was a lot independent of 207 Central Avenue in the event of separate ownership of the lots. Aileen Singer, who conveyed the property to the Petitioners, testified that on two occasions she approached the Baltimore County Zoning office to determine

whether 207 and 209 Central Avenue were so connected as to deny their separation. On both occasions, she was informed of no bar to the separate development of 207 Central Avenue nor to the continued operation of 6 units at 209 Central Avenue. James Reter, who owned both lots in the 1960's, testified that it was his intention to develop and sell 207 Central Avenue and had never known that that would not be possible.

Unlike the situation in Bounds, there was no cavalier delegation of responsibility for obtaining the necessary permits or information. There was no failure to get permits or to inspect the permit that was issued. In fact Singer was granted a permit for a parking lot and driveway (Petitioners Exhibit 5) located on 209 Central Avenue and used in conjunction with the operation of that property as a 6 unit apartment building. At the time of settlement on 209 Central Avenue, in June, 1988, some three months after the transfer of 207 Central Avenue to the Homestead Group, there were no zoning violations outstanding on that property. It was not until well after Petitioners' settlement on the property that they received any official notification of a potential zoning problem. The evidence shows no self-inflicted hardship any where in the chain of title.

The testimony and evidence supports a finding that there was no self-inflicted hardship; that the granting of the variances will not be contrary to the spirit of the B.C.R.Z. nor result in substantial detriment to the public health, safety and general welfare. The granting will relieve a hardship due to unique circumstances which cannot be alleviated otherwise.

Conclusion

For the reasons stated, Petitioners' petition for special hearing to recognize the legal, nonconforming use of 209 Central Avenue as a six unit apartment building and petition for variance should be granted.

Respectfully submitted,

ELEANOR J. HIPSLEY
100 Church Lane
Baltimore, Maryland 21208
(301) 484-3050
Attorney for Petitioners

I hereby certify that a copy of the foregoing brief was mailed to Charles B. Heyman, Esquire, 10th Floor, Sun Life Building, 20 South Charles Street, Baltimore, Maryland 21201 and to G. Scott Barbight, Esquire, 300 Lafayette Building, 40 West Chesapeake Avenue, Towson, Maryland 21204, this 2nd day of June, 1989.

ELEANOR J. HIPSLEY
Attorney for Petitioners

#11

Petition for Administrative Variance

96-303-A

to the Zoning Commissioner of Baltimore County

for the property located at 317 Central Avenue, Glyndon, MD 21071

which is presently zoned DR 3.5

This Petition shall be filed with the Office of Zoning Administration & Development Management.

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s) 1 B02.3.C.1 to permit a side (street) setback of as close as 5 feet in lieu of the required 25 feet for an existing Dwelling with a proposed addition (5' set back to proposed Right of way) Actual set back 10ft

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (indicate hardship or practical difficulty)

Built in 1878*, the existing house was constructed long before current right of ways and set backs were established. Our desire is to add a two car garage, a family room and modernize the kitchen. After residing in the house for over twelve years, with many hours of careful consideration, we feel that our layout and design is the most asthetically

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do 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 Petition.

Contract Purchaser/Lessee:

(Type or Print Name)

Signature

Address

City State Zipcode

Attorney for Petitioner:

(Type or Print Name)

Signature

Address Phone No.

City State Zipcode

Legal Owner(s):

James T. Cook
(Type or Print Name)

James T. Cook
Signature

Elizabeth A. Cook
(Type or Print Name)

Elizabeth A. Cook
Signature

317 Central Avenue 410-526-3970 (h)
Address Phone No.

Glyndon, MD 21071 410-526-0100 (w)
City State Zipcode

Name, Address and phone number of representative to be contacted.

Name

Address Phone No.

ORDER RECEIVED FOR FILING
Date 2/15/96
By

A Public Hearing having been requested and/or found to be required, it is ordered by the Zoning Commissioner of Baltimore County, this ___ day of _____, 19___, that the subject matter of this petition be set for a public hearing, advertised, as required by the Zoning Regulations of Baltimore County, in two newspapers of general circulation throughout Baltimore County, and that the property be reposted.

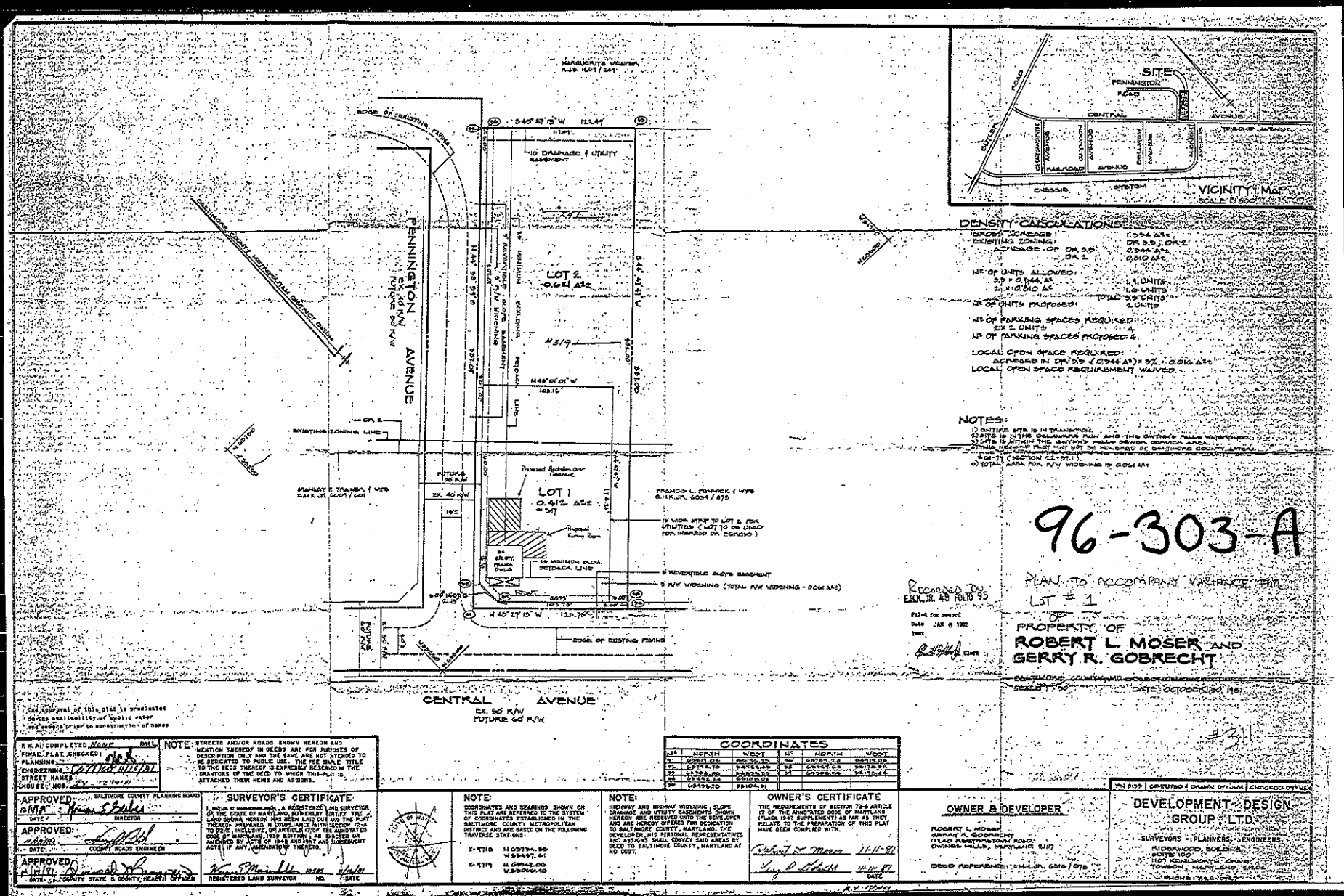
Zoning Commissioner of Baltimore County

REVIEWED BY: JJS DATE: 2/15/96

ESTIMATED POSTING DATE: 2/25/96

Printed with Soybean Ink on Recycled Paper

ITEM #: 311



DENSITY CALCULATIONS:

GROSS ACREAGE: 1.334 AS±
EXISTING ZONING: DR 3.5 ; DR 2
ACREAGE OF DR 3.5: 0.944 AS±
DR 2: 0.810 AS±

NR OF UNITS ALLOWED:
3.5 × 0.944 AS± = 3.4 UNITS
2 × 0.810 AS± = 1.6 UNITS
TOTAL 5.0 UNITS
NR OF UNITS PROPOSED: 2 UNITS

NR OF PARKING SPACES REQUIRED:
2 X 2 UNITS = 4
NR OF PARKING SPACES PROVIDED: 4

LOCAL OPEN SPACE REQUIRED:
ACREAGE IN DR 3.5 (0.944 AS±) × 5% = 0.016 AS±
LOCAL OPEN SPACE REQUIREMENT WAIVED.

NOTES:
1) ENTIRE SITE IS IN TRANSITION.
2) SITE IS IN THE CHESAPEAKE BAY AND THE GWYNNS FALLS WATERSHEDS.
3) SITE IS WITHIN THE GWYNNS FALLS SEWER SERVICE AREA.
4) PUBLIC WATER AND SEWER MUST NOT BE REQUIRED BY BALTIMORE COUNTY AGENCIES. (SECTION 22-95.1)
5) TOTAL AREA FOR R/W WIDENING IS 0.004 AS±

96-303-A

PLAN TO ACCOMPANY VARIANCE ITEM
LOT # 1
OF
PROPERTY OF
ROBERT L. MOSER AND
GERRY R. GOBRECHT
BALTIMORE COUNTY, MD.
SCALE: 1"=50'
DATE: OCTOBER 30, 1991

#311

Recorded in E.H.K. JR. 48 FOLIO 95
Filed for record
Date JAN 8 1992
Test

The approval of this plat is predicated upon the availability of public water and sewage prior to construction of homes

R.M.A.I. COMPLETED: None DWL
FINAL PLAT CHECKED:
PLANNING:
ENGINEERING: Contact utilities
STREET NAMES:
HOUSE NOS.:

NOTE: STREETS AND/OR ROADS SHOWN HEREON AND MENTION THEREOF IN DEEDS ARE FOR PURPOSES OF DESCRIPTION ONLY AND THE SAME ARE NOT INTENDED TO BE DEDICATED TO PUBLIC USE. THE FEE SIMPLE TITLE TO THE BEDS THEREOF IS EXPRESSLY RESERVED IN THE GRANTORS OF THE DEED TO WHICH THIS PLAT IS ATTACHED THEIR HEIRS AND ASSIGNS.

COORDINATES					
LP	NORTH	WEST	LP	NORTH	WEST
91	60811.02	89015.10	94	60751.28	89419.09
92	60778.70	89455.49	95	60947.00	89170.96
93	60752.20	89503.20	96	60909.99	89170.44
94	60948.34	89019.05			
95	60949.70	89104.91			

APPROVED: n/a — Thomas E. Stokes — DIRECTOR, BALTIMORE COUNTY PLANNING BOARD — DATE:
APPROVED: — COUNTY ROADS ENGINEER — DATE:
APPROVED: 1/13/92 — COUNTY STATE & COUNTY HEALTH OFFICER — DATE:

SURVEYOR'S CERTIFICATE

I, WILLIAM D. MACMILLAN, JR., A REGISTERED LAND SURVEYOR OF THE STATE OF MARYLAND, DO HEREBY CERTIFY THAT THE LAND SHOWN HEREON HAS BEEN SURVEYED AND THAT THE PLAT THEREOF PREPARED IN CONFORMANCE WITH SECTION 22-8 TO 22-11, INCLUSIVE, OF ARTICLE 17 OF THE ANNOTATED CODE OF MARYLAND, 1939 EDITION, AS AMENDED OR AMENDED BY ACTS OF 1945 AND 1947 AND SUBSEQUENT ACTS, IF ANY, AMENDATORY THERETO.

William D. MacMillan, Jr. — 11548 — REGISTERED LAND SURVEYOR — NO. — 1/16/92 — DATE

NOTE: COORDINATES AND BEARINGS SHOWN ON THIS PLAT ARE REFERRED TO THE SYSTEM OF COORDINATES ESTABLISHED IN THE BALTIMORE COUNTY METROPOLITAN DISTRICT AND ARE BASED ON THE FOLLOWING TRAVERSE STATIONS:

X-9716 N 60734.80 W 89447.61
X-9719 N 61147.00 W 89040.40

NOTE: HIGHWAY AND HIGHWAY WIDENING, SLOPE, DRAINAGE AND UTILITY EASEMENTS SHOWN HEREON ARE RESERVED UNTO THE DEVELOPER AND ARE HEREBY OFFERED FOR DEDICATION TO BALTIMORE COUNTY, MARYLAND. THE DEVELOPER, HIS PERSONAL REPRESENTATIVES AND ASSIGNS SHALL CONVEY SAID AREAS BY DEED TO BALTIMORE COUNTY, MARYLAND AT NO COST.

OWNER'S CERTIFICATE

THE REQUIREMENTS OF SECTION 22-9 ARTICLE 17 OF THE ANNOTATED CODE OF MARYLAND (FLACK 1947 SUPPLEMENT) AS FAR AS THEY RELATE TO THE PREPARATION OF THIS PLAT HAVE BEEN COMPLIED WITH.

Robert L. Moser — 12-11-91
Gerry R. Gobrecht — 12-11-91
DATE

OWNER & DEVELOPER

ROBERT L. MOSER
GERRY R. GOBRECHT
11540 PENNINGTON ROAD
OWINGS MILLS, MARYLAND 21117

DEED REFERENCE: E.H.K. JR. 6009 / 870

DEVELOPMENT DESIGN GROUP, LTD.
SURVEYORS - PLANNERS - ENGINEERS
RIDGEWOOD BUILDING
SUITE 100
1071 KENILWORTH DRIVE
TOWSON, MARYLAND 21204
PHONE: (410) 823-4510

PN 8109 | COMPUTED & DRAWN BY: JWK | CHECKED BY: WDM

IN RE: PETITION FOR ADMIN. VARIANCE
SE/Corner Central Avenue and
Pennington Avenue
(317 Central Avenue)
4th Election District
3rd Councilmanic District

James T. Cook, et ux
Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 96-303-A
*

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Variance for that property known as 317 Central Avenue, located in the vicinity of Butler Road in Glyndon. The Petition was filed by the owners of the property, James T. and Elizabeth A. Cook. The Petitioners seek relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a side street setback of as close as 5 feet in lieu of the minimum required 25 feet for an existing dwelling and proposed additions. The subject property and relief sought are more particularly described on the site plan submitted which was accepted and marked into evidence as Petitioner's Exhibit 1.

The Petitioners having filed a Petition for Administrative Variance and the subject property having been posted and there being no requests for public hearing, a decision shall be rendered based upon the documentation presented.

The Petitioners have filed the supporting affidavits as required by Section 26-127 (b)(1) of the Baltimore County Code. Based upon the information available, there is no evidence in the file to indicate that the requested variances would adversely affect the health, safety or general welfare of the public and should therefore be granted. In the opinion of the Zoning Commissioner, the information, pictures, and affidavits

ORDER RECEIVED FOR FILING
Date 3/14/96
By

submitted provide sufficient facts that comply with the requirements of Section 307.1 of the B.C.Z.R. Furthermore, strict compliance with the B.C.Z.R. would result in practical difficulty and/or unreasonable hardship upon the Petitioners.

Pursuant to the posting of the property and the provisions of both the Baltimore County Code and the B.C.Z.R. having been met, and for the reasons set forth above, the relief requested should be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 18th day of March, 1996 that the Petition for Administrative Variance seeking relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a side street setback of as close as 5 feet in lieu of the minimum required 25 feet for an existing dwelling and proposed additions, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject, however, to the following restrictions:

1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.

2) The subject property must continue to be used as a single family dwelling. The Petitioners shall not allow or cause the proposed improvements to be converted for use as a second dwelling unit or an apartment.

3) When applying for a building permit, the site plan filed must reference this case and set forth and address the restrictions of this Order.

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

ORDER RECEIVED FOR FILING
Date 3/18/96
By bjs

#12

IN RE: PETITION FOR ADMIN. VARIANCE (26 Chatsworth Avenue)	*	BEFORE THE
4th Election District	*	OFFICE OF ADMINISTRATIVE
2nd Council District		
Linda A. Brandenburg	*	HEARINGS FOR
Petitioner		
	*	BALTIMORE COUNTY
	*	**CASE NO. 2017-0205-A**

* * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Administrative Variance filed by the legal owner of the property, Linda A. Brandenburg ("Petitioner"). The Petitioner is requesting variance relief from § 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a rear yard addition with a combined side yard setback of 34 ft. in lieu of the required 40 ft. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioner's Exhibit 1.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. There were no adverse ZAC comments submitted by any of the County reviewing agencies.

The Petitioner having filed a Petition for Administrative Variance and the subject property having been posted on February 10, 2017, and there being no request for a public hearing, a decision shall be rendered based upon the documentation presented.

Based upon the information available, there is no evidence in the file to indicate that the requested variance would adversely affect the health, safety or general welfare of the public and should therefore be granted. In the opinion of the Administrative Law Judge, the information and

photographs submitted provide sufficient facts that comply with the requirements of Section 307.1 of the B.C.Z.R. Furthermore, strict compliance with the B.C.Z.R. would result in practical difficulty and/or unreasonable hardship upon the Petitioner.

Pursuant to the posting of the property and the provisions of both the Baltimore County Code and the Baltimore County Zoning Regulations, and for the reasons given above, the requested variance should be granted.

THEREFORE, IT IS ORDERED, this **14th** day of **April, 2017**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from § 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a rear yard addition with a combined side yard setback of 34 ft. in lieu of the required 40 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioner may apply for her appropriate permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at her own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.

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

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:dlw

Petition for Administrative Variance #13

to the Zoning Commissioner of Baltimore County

for the property located at 15 Chatsworth Ave

which is presently zoned DR2

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s)

400.1 and 400.3, BCZR to permit a 0' side setback in lieu of 2½' and a 20' height in lieu of 15' for an accessory structure (garage).

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the reasons indicated on the back of this petition form.

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Variance, 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.

I/We do 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 Petition.

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address Telephone No.

City State Zip Code

Legal Owner(s):

× EUGENE G. RICKS
Name - Type or Print

× Signature

× Name - Type or Print

× Signature

× 15 CHATSWORTH AV 410-526-7405
Address Telephone No.

× GLENSIDE MD 21071
City State Zip Code

Representative to be Contacted:

× Sheldon Forcheimer
Name

× 9474 Deereco Rd 410-252-4663
Address Telephone No.

× Timonium MD 21093
City State Zip Code

A Public Hearing having been formally demanded and/or found to be required, it is ordered by the Zoning Commissioner of Baltimore County, this ____ day of ____ that the subject matter of this petition be set for a public hearing, advertised, as required by the zoning regulations of Baltimore County and that the property be reposted.

Zoning Commissioner of Baltimore County

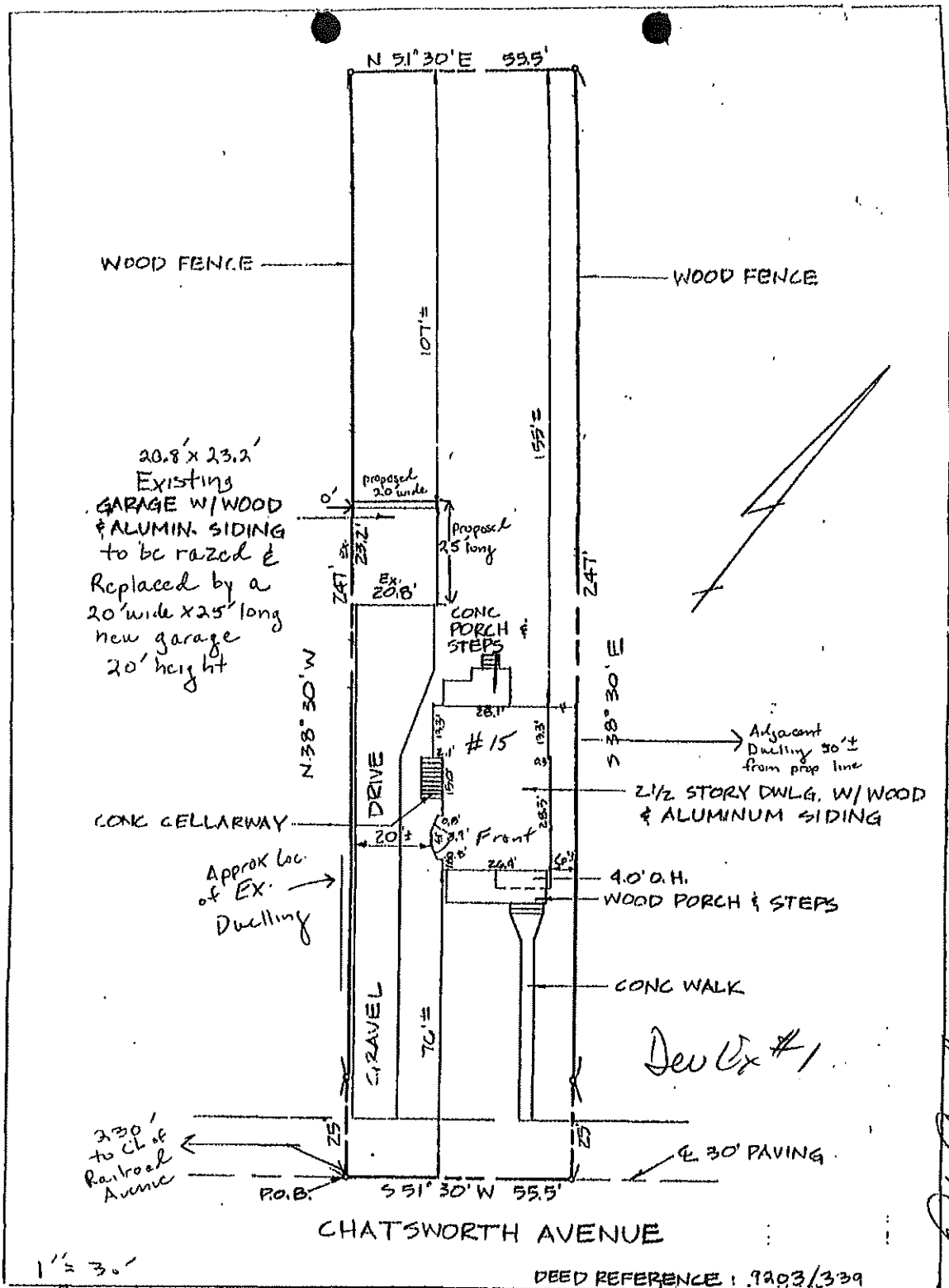
CASE NO. 03-102-A

Reviewed By JNP Date 9/3/02

Estimated Posting Date 9/16/02

REV 10/25/01

ORDER RECEIVED FOR FILING
Date 9/18/02
By JNP



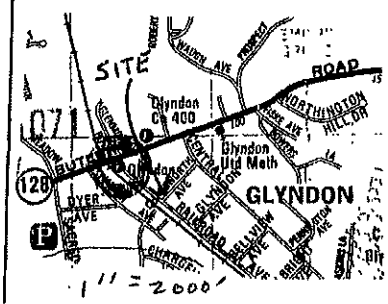
DEED REFERENCE : 9203/339

Dev Ex #1

General Notes

1. Owner: Eugene G. Ricks
2. Address: 15 Chatsworth Avenue
3. Election District 4; Council District 3
4. 1" = 200' Zoning Map is NW 17 J
5. There are no prior zoning hearings on the property
6. Zoning: DR 2; Lot size: 13,908.5 sf or .315 Ac.
7. Site is served by public water and sewer
8. The site is not within a floodplain or the CBCA
9. The site is located within the Glyndon NRHD
10. Site is not within a recorded subdivision
11. The existing dwelling is a historic structure.

Vicinity Map



Plan to Accompany Administrative Variance
for #15 Chatsworth Avenue

03-102-A

IN RE: PETITION FOR ADMIN. VARIANCE NW/S Chatsworth Avenue, 230' E centerline of Railroad Avenue 4th Election District 3rd Councilmanic District (15 Chatsworth Avenue) Eugene G. Ricks Petitioners	*	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY CASE NO. 03-102-A

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Administrative Variance filed by Eugene G. Ricks, the legal owner of the subject property. The Petitioner is requesting variance relief for property he owns at 15 Chatsworth Avenue in the Glyndon area of Baltimore County. The variance request is from Sections 400.1 and 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a 0 ft. side yard setback in lieu of the permitted 2 ½ ft. and a building height of 20 ft. in lieu of 15 ft. for an accessory structure. The subject property and requested relief are more particularly described on Petitioner's Exhibit No. 1, the plat to accompany the Petition for Administrative Variance.

Appearing on behalf of the request were Mr. and Mrs. Ricks, the owners of the subject property. No one appeared in opposition at the hearing.

Testimony and evidence indicated that the property, which is the subject of this administrative variance request, consists of 0.315 acres, more or less, zoned D.R.2. The subject property is improved with a 2-½-story dwelling wherein the property owners reside. To the rear of the subject site there exists an old garage. The property owners are interested in tearing down the old garage and replacing it with a new building. The property owners are interested in constructing the new garage over the existing footprint of the old one. The old garage currently has a 0 ft. side yard setback to the property line. They simply wish to reconstruct this new building where the old garage is situated. Furthermore, they intend to have a steeper pitched roof

11/15/02

on the new structure to be built. Accordingly, the peak of the roof will stand at 20 ft. in height in lieu of the permitted 15 ft. for an accessory structure. After considering the testimony and evidence offered at the hearing, I find that the variance should be granted to allow the Ricks' to move forward with their plans.

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

1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;

2) whether a grant of the variance would do a substantial justice to the applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give sufficient relief; and,

3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

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

After due consideration of the testimony and evidence presented, it is clear that practical difficulty or unreasonable hardship will result if the variance is not granted. It has been established that special circumstances or conditions exist that are peculiar to the property which is the subject of this request and that the requirements from which the Petitioner seeks relief will unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the relief requested will not cause any injury to the public health, safety or general welfare, and meets the spirit and intent of the B.C.Z.R.

Pursuant to the posting of the property and the provisions of both the Baltimore County Code and the Baltimore County Zoning Regulations, and for the reasons given above, the requested variance should be granted.

11/15/02

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 18th day of November, 2002, that a variance from Sections 400.1 and 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a 0 ft. side yard setback in lieu of the permitted 2 ½ ft. and a building height of 20 ft. in lieu of 15 ft. for an accessory structure, be and is hereby GRANTED, subject, however, to the following restrictions which are conditions precedent to the relief granted herein:

1. The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.

2. The Petitioners or subsequent owners shall be prohibited from converting the accessory structure into separate living quarters. In addition, the accessory structure should not be used for commercial purposes.

3. When applying for a building permit, the site plan filed must reference this case and set forth and address the restrictions of this Order.

Timothy Kotroco

TIMOTHY M. KOTROCO
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

TMK:raj

11/18/02



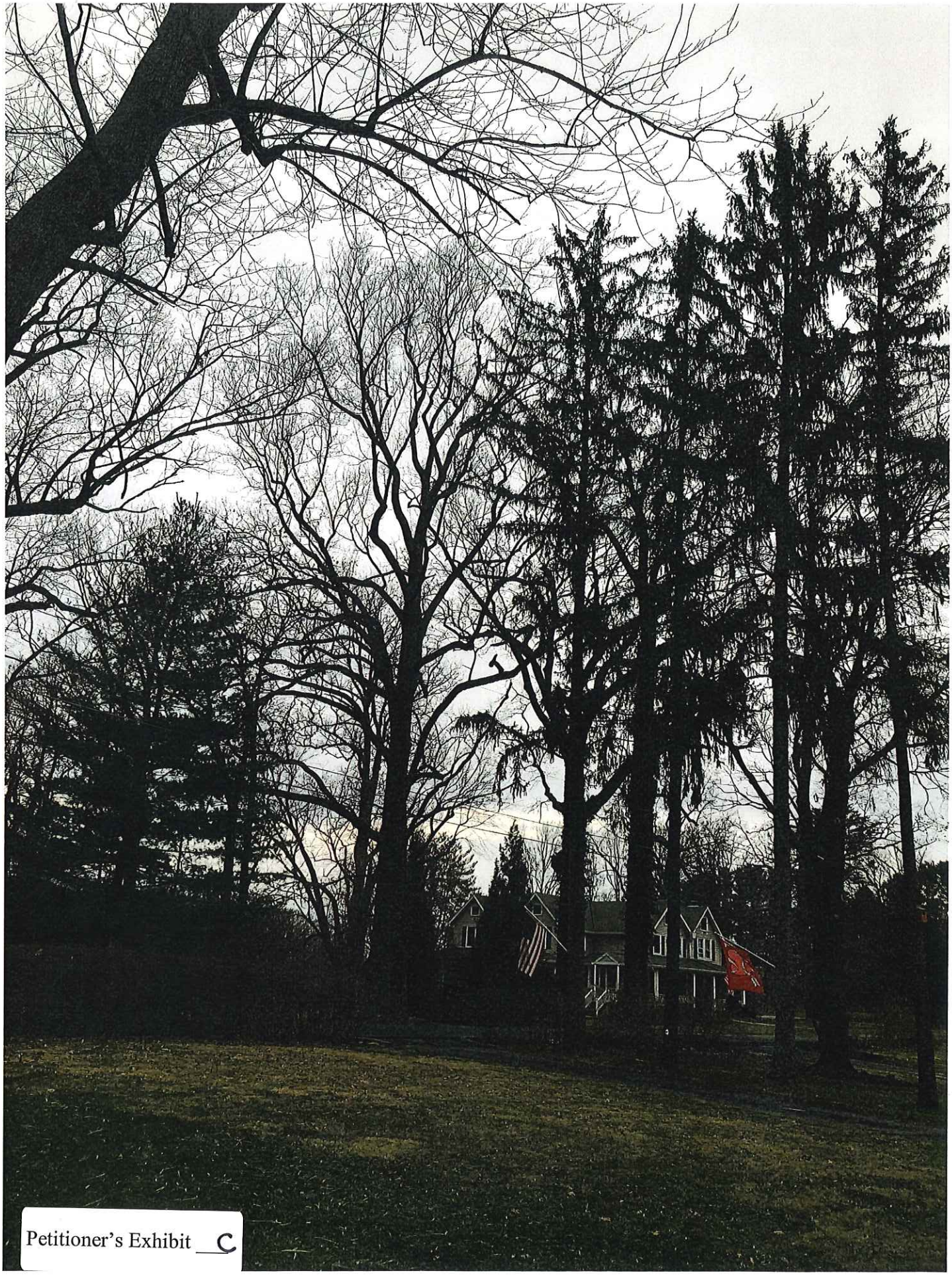
Petitioner's Exhibit A

Petitioner
CBA Exhibit
10A-10C

100yr old trees infront of 4607 Prospect



Petitioner's Exhibit B



Petitioner's Exhibit C

Statement

PYLE FENCE CO. INC (N)
4710 Harford Road
Baltimore MD 21214
Phone # 410-426-8319

Date
3/27/2017

To:

DONNA BAIR
4607 PROSPECT AVENUE
GLYNDON MD 21136

Amount Due	Amount Enc.
$4,246.00	

Date	Transaction	Amount	Balance
02/27/2017	Balance forward		0.00
03/27/2017	INV Due 03/27/2017.	6,349.00	6,349.00
	--- PADDOCK $6,349.00		
	--- Tax: Exempt @ 0.0% = 0.00		
03/27/2017	PMT #297.	-2,123.00	4,226.00
03/27/2017	INV #PO# 926875. Due 03/27/2017.	20.00	4,246.00
	--- PERMITS FEE $20.00		
	--- Tax: Exempt @ 0.0% = 0.00		

Petitioner
CBA Exhibit
//

CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
4,246.00	0.00	0.00	0.00	0.00	$4,246.00

John Motsco P.E.

Maryland Professional Engineer License Number 44112
10710 Gilroy Road Hunt Valley, MD 21031
410-705-5020 jmotsco@centuryeng.com

Technical Skills

AutoCAD 2004, 2007	TR-20, TR-55	HEC-HMS
HEC-RAS	eONE Design Assistant 8.0	Microsoft Office

Technical Knowledge

Septic System Design
Floodplain analyses
Storm Drain Hydrology and Hydraulics
Geometric Road Design
Site Grading
Pressure Sewer Design
Sediment Control Design
Environmental Site Design
Stormwater Management Design
Erosion and Sediment Control

Work Experience

Little & Associates, a Division of Century Engineering, Inc., Hunt Valley, MD
Senior Project Engineer / Manager
April 2019 - Current

Little & Associates, Inc., Towson, MD – Senior Project Engineer / Manager
September 2004 – April 2019

Schedule, design, and manage all engineering, permitting and public contract administration, for a variety of residential and commercial projects, supervising a group of 6 – 9 junior engineers and CADD draftsmen. Act as the primary liaison between Investors, Construction Superintendents, and Government Agencies. Provide construction inspection and Utility As-Built documentation for security reduction and contract suitability.

Provide expert testimony in matters of Land Development, Land Planning, Zoning, Stormwater Management, and Engineering. Accepted as an expert witness by the Baltimore County Administrative Law Judge and the Baltimore County Board of Appeals

Instruct New Hires in company policy and procedures aid familiarity with corporate and governmental design standards. Train employees in basic and advanced AutoCAD commands and techniques. Revised CAD layering standards to comply with AIA standards and coordinated rollout company wide. Supervise Workstation and Networking maintenance and upgrades. Perform repairs and maintenance on large format printer. Manage web-based E-Mail server.

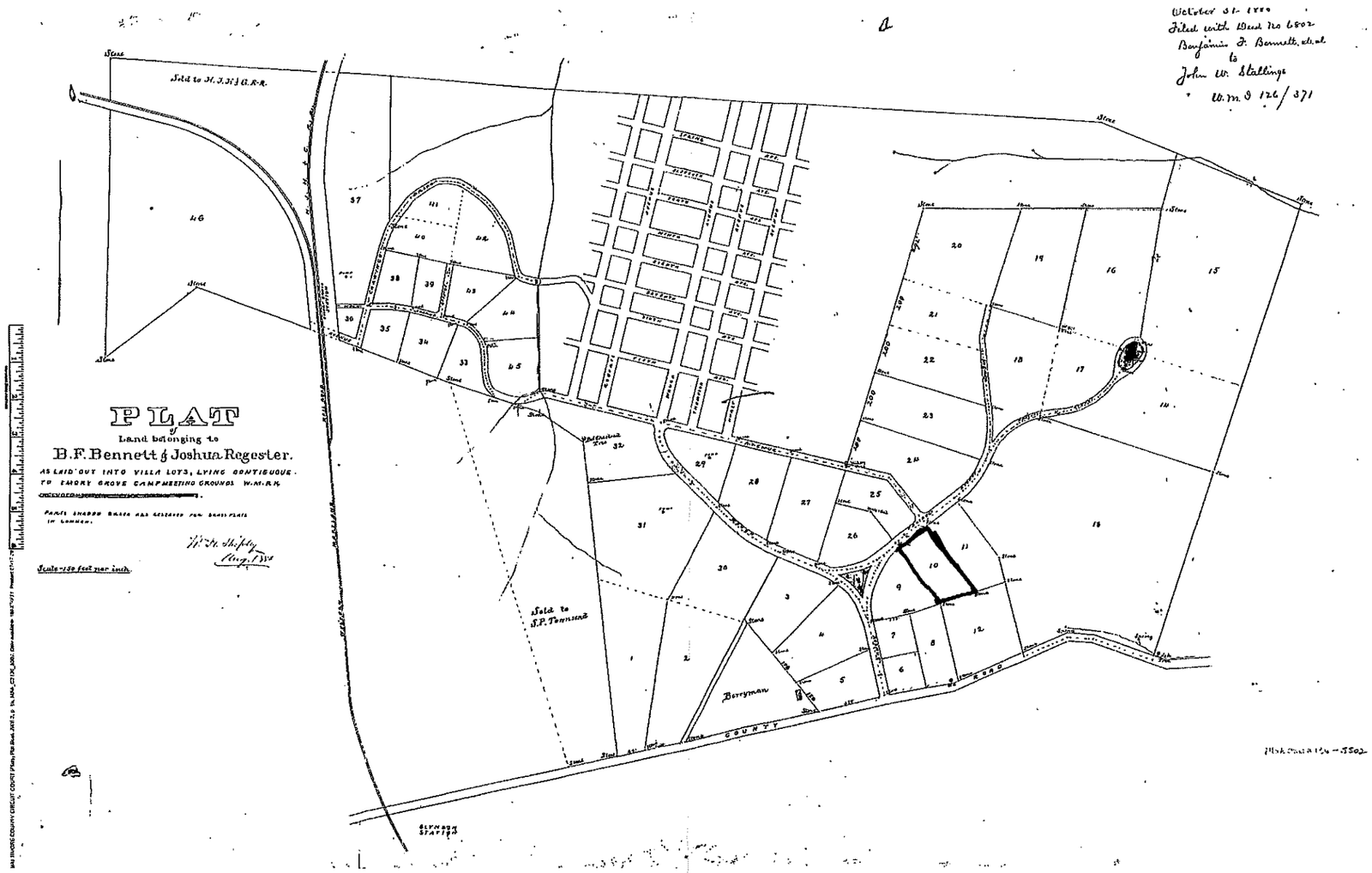
Education

The Pennsylvania State University
Bachelors of Science – Civil Engineering – Graduated May 2004

Training, Certifications and Awards

Maryland Professional Engineer License Number 44112
State of Maryland – Erosion & Sediment Control (Green Card) Certification
Baltimore County Soil Conservation District Consulting Firm of the Year – 2004, 2005 & 2016
Maximizing AutoCAD Productivity Seminar

Petitioner
CBA Exhibit
12



Petitioner's Exhibit ___

Petitioner
CBA Exhibit
13

§ 427.1. - Conditions for use; exceptions.

A. Notwithstanding any other provisions of this Code or the Baltimore County Code, in a D.R. or R.C. 5 Zone located in a historic district, the maximum height of a residential occupancy fence is 42 inches if the fence is erected in the side yard of a lot that adjoins a public road.

B.

1. A residential occupancy fence may not be erected in the rear or side yard of a lot which adjoins the front yard of another on which a residence has been built, except in accordance with the provisions of this section.
2. The fence may not exceed 42 inches in height if situated within ten feet of the adjoining front yard property line.
3. Any person may request a variance from the requirements of this subsection.

C. Applicability.

1. Subsection B of this section does not apply to a fence required by § 13-6-101 of the Baltimore County Code, as revised, to be constructed in order to screen a swimming pool.
2. Subsection B of this section does not apply if the residences on the adjoining lots are more than 200 feet apart.

Petitioner
CBA Exhibit
15

Petitioner's Exhibit A

TITLE 6. - SWIMMING POOLS AND BATHING BEACHES

SUBTITLE 1. - IN GENERAL

§ 13-6-101. - SWIMMING POOL ENCLOSURE.

(a) *Required.* A person who owns land on which there is a swimming pool that contains 24 inches (610 mm) or more of water in depth at any point shall erect and maintain on the land an adequate enclosure surrounding either the property or pool area sufficient to make the body of water inaccessible to small children.

(b) *Height.* A swimming pool enclosure, including gates, may not be less than 4 feet above the underlying ground.

(c) *Gates.* All gates shall be self-latching with latches placed 4 feet above the underlying ground and otherwise made inaccessible from the outside to small children.

(d) *Alternative enclosures.*

(1) For purposes of this section, the owner may use a natural barrier, hedge, or other protective device approved by the Department of Permits, Approvals and Inspections if the degree of protection afforded by the substituted devices or structures is not less than the protection afforded by the enclosure, gate, and latch described in subsections (a) through (c) of this section.

(2) A swimming pool cover is not another protective device that may be approved by the Department of Permits, Approvals and Inspections.

(e) *Enforcement.* The Code Official may enforce the provisions of this section in accordance with Article 3, Title 6 of the Code.

(f) *Exceptions.* This section does not apply to a public swimming pool or bathing beach as defined in Subtitle 2 of this title.

(1988 Code, § 20-5) (Bill No. 94-95, § 1, 8-19-1995; Bill No. 105-00, § 2, 7-1-2004; Bill No. 82-06, § 4, 8-24-2006; Bill No. 122-10, §§ 6, 30, 1-16-2011)

SUBTITLE 2. - PUBLIC SWIMMING POOLS AND BATHING BEACHES

§ 13-6-201. - DEFINITIONS.

(a) *In general.* In this subtitle the following words have the meanings indicated.

(b) "Approving authority" means the Health Officer or the Health Officer's designee.

(c) *Private swimming pool.* "Private swimming pool" means a swimming pool located on a

Petitioner's Exhibit B

§ 104.3. - Limit on extension of nonconforming buildings and uses; exception.

[Bill No. 124-1991]

No nonconforming building or structure and no nonconforming use of a building, structure or parcel of land shall hereafter be extended more than 25 percent of the ground floor area of the building so used. This provision does not apply to structures or uses restored pursuant to Section 104.2, except as authorized by the Zoning Commissioner pursuant to Section 307.

Petitioner
CBA Exhibit
16

Letters of Opposition

RECEIVED
FEB 05 2020
BALTIMORE COUNTY
BOARD OF APPEALS

Historic Glyndon Inc.

P.O. Box 3641
Glyndon, Maryland 21071-3641

VIA email (administrativehearings@baltimorecountymd.gov and
appealsboard@baltimorecountymd.gov
And via hand delivery at meeting
Baltimore County Office of Administrative Hearing

RE: Donna V. Bair -- Case No. 2019-342-SPHA
Property at 4607 Prospect Avenue, Glyndon
Hearing Date: Feb. 6, 2020

This letter is to express **strong opposition** by the Board of Directors and the general membership of Historic Glyndon, Inc. (HGI) to the variances that Donna Bair, Respondent, is seeking.

At its Annual Meeting on Monday, January 27, 2020, the membership of Historic Glyndon, Inc., unanimously voted to oppose the Petition for Variances, case #2019-0342-SPHA, on all of the former denials, including:

- "To approve a non-conforming dwelling side yard setback, pursuant to BCZR 104.1."
- "To confirm that an existing fence (swimming pool enclosure) with a height of 6 feet is in compliance with BCZR 427.1 and BCC 13-6-101."
- "Variance to permit an existing 12x28 feet attached garage addition with a side yard setback of 0 feet in lieu of the required 20 feet."
- "To permit an existing 12x28 feet attached garage addition with a sum of the side yards of 14.9 feet in lieu of the required 50 feet. BCZR 400.1."
- "To permit, if necessary, an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches."

Historic Glyndon was the first designated historic district in Baltimore County. Historic Glyndon, Inc.'s mission is to preserve and protect Glyndon's cultural, social, economic, and architectural history, as well as to conduct educational and beautification projects that enrich Glyndon's historical heritage.

To that end, we believe that all homeowners within Historic Glyndon should follow Baltimore County laws and procedures relating to property improvement. This includes, but is not limited to, obtaining required approvals from the Baltimore County Landmarks Preservation Commission, seeking required building permits, completing land surveys when applicable, and assuring compliance with zoning codes prior to commencing any property improvement projects.
Donna Bair complied with none of those requirements when undertaking work on her home.

HGI regularly publishes recommended best practices for home improvements within the Historic District in our newsletters. The newsletters are distributed to all homeowners in the Historic

Historic Glyndon Inc.
P.O. Box 3641
Glyndon, Maryland 21071-3641

District two times a year. We expect all homeowners to follow these guidelines with the understanding that some properties deemed as contributing structures may have to undergo an additional approval process.

Therefore, we continue to oppose the approval of any variances after the completion of work for 4607 Prospect Avenue. Doing so would set a bad precedent that would only serve to erode the expected responsibilities of our community property owners.

Sincerely,

Susan Benson
President, Historic Glyndon, Inc.

Tammy Zahner

From: Pamela Becker <hgiglyndonmd@yahoo.com>
Sent: Tuesday, February 4, 2020 8:37 PM
To: Administrative Hearings; Appeals Board
Subject: Hearing: 2/6/2020; Case no.; 2019-342-SPHA, Property at 4607 Prospect Avenue, Glyndon
Attachments: Historic Glyndon, Inc. (HGI) Opposition to Variances in Case 2019-0342-SPHAv2.pdf

CAUTION: This message from hgiglyndonmd@yahoo.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Dear Sir/Madam:

Attached please find the Board of Directors of Historic Glyndon, Inc.'s letter expressing their opposition to the approval of variances being heard at the appeal hearing on February 6, 2020 on case no.2019-342-SPHA.

The Historic Glyndon, Inc. and its membership recently met and voted to formally express our opposition to these requests for variances after the fact on this property.

Thank you for your consideration of our letter. if you should need anything else, please let us know.

Respectfully

Board of Directors
Historic Glyndon, Inc.

RECEIVED
FEB 05 2020
BALTIMORE COUNTY
BOARD OF APPEALS

Sherry Nuffer

From: Pamela Becker <hgiglyndonmd@yahoo.com>
Sent: Tuesday, February 4, 2020 8:37 PM
To: Administrative Hearings; Appeals Board
Subject: Hearing: 2/6/2020; Case no.; 2019-342-SPHA, Property at 4607 Prospect Avenue, Glyndon
Attachments: Historic Glyndon, Inc. (HGI) Opposition to Variances in Case 2019-0342-SPHAv2.pdf

CAUTION: This message from hgiglyndonmd@yahoo.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Dear Sir/Madam:

Attached please find the Board of Directors of Historic Glyndon, Inc.'s letter expressing their opposition to the approval of variances being heard at the appeal hearing on February 6, 2020 on case no.2019-342-SPHA.

The Historic Glyndon, Inc. and its membership recently met and voted to formally express our opposition to these requests for variances after the fact on this property.

Thank you for your consideration of our letter. if you should need anything else, please let us know.

Respectfully

Board of Directors
Historic Glyndon, Inc.

RECEIVED
FEB 05 2020
BALTIMORE COUNTY
BOARD OF APPEALS

Historic Glyndon Inc.

P.O. Box 3641
Glyndon, Maryland 21071-3641

RECEIVED
FEB 05 2020
BALTIMORE COUNTY
BOARD OF APPEALS

VIA email (administrativehearings@baltimorecountymd.gov and appealsboard@baltimorecountymd.gov
And via hand delivery at meeting
Baltimore County Office of Administrative Hearing

RE: Donna V. Bair -- Case No. 2019-342-SPHA
Property at 4607 Prospect Avenue, Glyndon
Hearing Date: Feb. 6, 2020

This letter is to express **strong opposition** by the Board of Directors and the general membership of Historic Glyndon, Inc. (HGI) to the variances that Donna Bair, Respondent, is seeking.

At its Annual Meeting on Monday, January 27, 2020, the membership of Historic Glyndon, Inc., unanimously voted to oppose the Petition for Variances, case #2019-0342-SPHA, on all of the former denials, including:

- "To approve a non-conforming dwelling side yard setback, pursuant to BCZR 104.1."
- "To confirm that an existing fence (swimming pool enclosure) with a height of 6 feet is in compliance with BCZR 427.1 and BCC 13-6-101."
- "Variance to permit an existing 12x28 feet attached garage addition with a side yard setback of 0 feet in lieu of the required 20 feet."
- "To permit an existing 12x28 feet attached garage addition with a sum of the side yards of 14.9 feet in lieu of the required 50 feet. BCZR 400.1."
- "To permit, if necessary, an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches."

Historic Glyndon was the first designated historic district in Baltimore County. Historic Glyndon, Inc.'s mission is to preserve and protect Glyndon's cultural, social, economic, and architectural history, as well as to conduct educational and beautification projects that enrich Glyndon's historical heritage.

To that end, we believe that all homeowners within Historic Glyndon should follow Baltimore County laws and procedures relating to property improvement. This includes, but is not limited to, obtaining required approvals from the Baltimore County Landmarks Preservation Commission, seeking required building permits, completing land surveys when applicable, and assuring compliance with zoning codes prior to commencing any property improvement projects.
Donna Bair complied with none of those requirements when undertaking work on her home.

HGI regularly publishes recommended best practices for home improvements within the Historic District in our newsletters. The newsletters are distributed to all homeowners in the Historic

Historic Glyndon Inc.
P.O. Box 3641
Glyndon, Maryland 21071-3641

District two times a year. We expect all homeowners to follow these guidelines with the understanding that some properties deemed as contributing structures may have to undergo an additional approval process.

Therefore, we continue to oppose the approval of any variances after the completion of work for 4607 Prospect Avenue. Doing so would set a bad precedent that would only serve to erode the expected responsibilities of our community property owners.

Sincerely,

Susan Benson
President, Historic Glyndon, Inc.

John E. Beverungen

From: Steve Fradkin <reistlaxcoach@gmail.com>
Sent: Sunday, July 21, 2019 11:17 PM
To: John E. Beverungen
Subject: Case 2019-0342-SPHA
Attachments: Letter Bair case.pdf

CAUTION: This message from reistlaxcoach@gmail.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Dear Judge Beverungen,
Attached are some thoughts concerning case 2019-0342-SPHA. Thank you for your time sir.

Steve Fradkin
4605 Prospect Avenue
Glyndon, MD 21136-3800

Steve Fradkin
reistlaxcoach@gmail.com

Debra Wiley

From: Tom Montanye <Tom@montanye.net>
Sent: Tuesday, July 23, 2019 9:57 PM
To: Administrative Hearings; John E. Beverungen
Cc: Kim Montanye
Subject: Re: Opposition to Case # 2019-0342-SPHA
Attachments: 12-13-17 IMG_1218.JPG; 12-13-17 IMG_1216.JPG; 7-29-17 IMG_0785.JPG; 12-13-17 IMG_1210.JPG; 2-18-18 IMG_1411.JPG

CAUTION: This message from tmontanye@gmail.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Judge Beverungen,

Attached are several photos taken over the last 2 years supporting the water/sediment run-off issue resulting from the bedroom addition. My wife, Kim, had these at the hearing but forgot to leave with you for the case file.

-Tom and Kim Montanye (immediate neighbor to Mrs. Bair 4607 Prospect)
4609 Prospect Ave, Glyndon, MD 21136

On Mon, Jul 22, 2019 at 8:54 AM Tom Montanye <Tom@montanye.net> wrote:

RECEIVED
JUL 24 2019
OFFICE OF
ADMINISTRATIVE HEARINGS

From:
Thomas and Kimberly Montanye
4609 Prospect Ave.
Glyndon MD 21136
(immediate neighbor)

To whom it may concern,

I'm writing in total opposition to the variances and special exceptions requested in Case # 2019-0342-SPHA, 4607 Prospect Ave., Glyndon Historic District, Baltimore County.

Please direct my arguments below to the Administrative Law Judge for consideration when reviewing this case.

Arguments Opposing 4607 Prospect Ave Variances/Special Exceptions

Case # 2019-0342-SPHA

Variances/Exceptions

1. In the first place, the procedures and restriction regarding variances, outlined in BCRZ 307.1, allow they be granted
    a. **"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"**...

b. **"and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship."**
c. These are two hurdles - the first has to be met, and only if so, then also the second is considered and must also be met.
d. On the **first bar** to be met, peculiarity or uniqueness of the land or structure
    i. I struggle to find *any* characteristics of the land or structure that are peculiar or unique compared with the surrounding properties, or to find any arguments offered by the applicant that support this.
        1. It's similarly rectangular in length and width ratios, similar terrain...slopes downward from front to back...like all the surrounding houses on this side of the street.
        2. The structure, prior to the recent improvements, did not meet *current* side set-back, requirements for DR1 or even DR2, same as many of the properties on the street.
        3. LPC recently reviewed the house, considering exactly the characteristics of the structure, and found nothing out of the ordinary from that perspective.
    ii. Since there is nothing peculiar, or unique only to this land or structure, there are no hardships that the others on the street, and more broadly in the community of Historic Glyndon, don't also have... therefore no exceptions should be granted. They simply shouldn't be granted special treatment.
e. These same arguments are well outlined, and expanded on, with numerous examples of similar situations and conclusions, **in the case of Cromwell v. Ward, No. 617, September Term, 1994, which I submit for the ALJ to include and consider in this case**.

2. In the next place, even if it were determined that the land/structures were somehow peculiar and unique, the **second bar** would not be met because there is no hardship except the ones they created on themselves by doing the improvements prior to applying for permission.
    a. Every neighbor in the community has had to make compromises and choices about improving their property within the confines of the County zoning and building codes.
    b. In the case of wanting a 2-car garage, **other options exist**. There's room in front to accomplish this within the zoning constraints, or at least easily within the boundaries of the formerly existing foundation constrains, with a more reasonable variance/exception request
    c. In the case of the second addition, **other options exist**, same thing,
    d. In the case of the fence, **other options exist**, same thing
    e. In the case of the fence, the beginning of the conflict, I personally offered reasonable alternatives that would be acceptable to me and the codes, and they were rejected outright.
    f. In the case of the second addition, the same (with regard to the sediment control/ run-off issue); rejected outright.
    g. We did not directly address the garage with this neighbor, as this was on the other side
        i. We support the general notion that set-backs are very important for the community in general
        ii. If I proposed a zero set-back garage addition on our side, near their non-conforming 14.9', would this neighbor agree? Would other neighbors agree and want precedence set that made this "normal"?
        iii. Would our DR1 zone turn into a community where structures were touching each other, like town homes, as we all got exceptions to the rules, to be fair, even though none of us had met the bars for exceptions according to the laws passed by the elected legislature?
        iv. One has to consider the long-term impact of these decisions. This line of thinking leads to a turbulent community.

3. In the next place,
    a. These requests are submitted based on the newly as-built structures as a complete package, which were built unlawfully, without applications for permits and variances beforehand, instead of on each improvement standing alone.
    b. Considering the "as-built" vs. the "before-built" are two different things,

i. People are naturally more sympathetic to the consequences of denying exceptions in the case of the as-built, because if declined, it has to be removed, likely at significant expense. It's a punitive decision.
ii. If plans to build are declined, the applicant simply has to re-work the plans to make them conformant, with far less cost.
iii. This gives an advantage to the "as-built" approach, which is **a bad precedence** because it encourages more residents to follow the thinking that "it's easier to ask forgiveness than permission." This thinking is destructive to the health of our communities and our civil society more broadly. It's not a law-abiding approach, it's a "catch me if you can" approach.

4. Finally, **this neighbor knows better**
   a. This particular applicant is a **licensed MD Real Estate Agent**, with professional training, which few of the other neighbors here have, and they absolutely know better
   b. I spent 12 years in the RE industry, in training
      i. Should recommend a survey with every purchase
      ii. Should hire only licensed professionals
         1. Who was the contractor that operated without a permit? The electrician?
         2. How do I know it's not unsafe, and that this house will not burn down because electrical inspections were not done, and that it won't spread through their illegal fence and onto my cars parked in my driveway and my trees and onto my house?
         3. There could be a lack of up-to-date smoke detectors that wouldn't adequately alert the owners of a fire
   c. In addition, **I educated this neighbor along the way** while opposing the fence and, in particular, the way the construction was being conducted (without any sediment control), and **offered very reasonable measures she could take to solve the issues. I gave a 60 day verbal warning followed by two separate written notices... that I was not to be ignored, and warned I would have no choice but to call the county for help.**
   d. These were **met with not just total rejection ("you'll get used to it"), but with aggression and continued provocation**, resulting in us having to call the police on multiple occasions for destruction of property and trespassing. **Police reviewed security video evidence**. I did not press charges, in hopes that these would be sufficient warning for them to compromise and address our minor grievances.
   e. Throughout this process this neighbor has also attempted to steal our property, where their driveway is encroaching on my property, being used only with permission, by **removing legitimately installed surveyor's markers from two different surveyors, mine and hers, and installing her own**, where she wants the property line to be but not where it actually is. This cost me $1500 which wouldn't have to have been spent had she not insisted she disputed the line. Security video evidence will be available at the hearing and after, should you decide to review it.
   f. We believe they have recently dropped dead frogs, found in their pool filter, over the fence onto our side. A perfect example of a bully, just some of the ongoing provocations.
   g. She has caused all of these opposing, law-abiding citizens to this take away from their work or vacation time, their limited time on this earth, to come out here, and time before this to organize and learn what's happening here... when will this end?
      It will end when people are held accountable for their actions, is my answer. Not until then.
   h. The Glyndon Community Association opposes this
   i. Historic Glyndon Inc. opposes this.
   j. Not a single neighbor I spoke to was in support of variances/exceptions in this case - dozens. Being on a dead-end street, word was slow to get out and many people have yet to be aware.

5. **If this neighbor, with her lawyers, are somehow able to convince an ALJ that what was done here, and how it was done, is somehow okay to stand, I and this entire community will see this as a complete abuse of both the**

spirit and the letter of the law. The illegal actions taken by this neighbor are exactly what BCRZ 307.1 was intended to prevent.

Thank you for your consideration.

-Thomas and Kimberly Montanye











Debra Wiley

From: Vernene Lenz <travelanduniqueventures@comcast.net>
Sent: Tuesday, July 23, 2019 7:26 PM
To: Administrative Hearings
Subject: GCAProspect.docx
Attachments: GCAProspect.docx

CAUTION: This message from travelanduniqueventures@comcast.net originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Sent from my iPad



Glyndon Community Association

PO Box 84

Glyndon, MD 21071

GcaPres@gmail.com

July 19th, 2019

To Whom It May Concern:

On behalf of the Glyndon Community Association's Board of Directors, this letter serves to notify all interested parties as to our strong opposition to any and all variances and special exceptions requested by the property owners of 4607 Prospect Avenue, Glyndon, Md applied for after completion of buildings and modifications. This letter applies to case #2019-0342-SPHA. This letter specifically addresses the following applications for variances/exceptions of newly-built structures, non conforming and constructed without permit application.

- Zero side-yard setback for left-side garage (on the property line, in lieu of 20 feet setback as required)
- 14'-9" set-back for front side addition (in lieu of 30' setback/sum of 50' both sides)
- 72" high front yard fence (42" max required by zoning)

The Glyndon Community Association strives to foster uniform and fair community standards, community awareness, relationships amongst community members, and exciting and unique opportunities that bring neighbors together for the benefit of the community. We believe that all residents, regardless of any identifying characteristics, should adhere to all Baltimore County zoning regulations, laws and procedures relating to modifications of existing structures as well as newly-built dwellings. This includes but is not limited to obtaining required permits PRIOR to starting construction or improvements, completion of land surveys to properly delineate property lines, obtaining and adherence to all environmental regulations with regards to storm water run-off, erosion control, etc., and obtaining an opinion and/or approval from Baltimore County Landmarks Commission as Glyndon is a historic district as defined by the National Historic District Commission.

As such, we believe that the modifications and improvements made to the property at 4607 Prospect Ave were done without many of the regulations and approvals required, and allowing said modifications and improvements would create a dangerous precedent which would or potentially could have a negative impact on other homeowners and the Glyndon community at large in the future. We do not have an opinion as to the aesthetics of the improvements, rather, it is the precedent that is our primary concern as well as allowing construction on another homeowners property to proceed unabated.

Regards,

Daryan V. Rodgers Lenz

President, Glyndon Community Association Inc.

Dear Judge Beverungen,

My name is Steve Fradkin, I am, along with my wife Patti, the residents at 4605 Prospect Avenue. Below are some thoughts that come to mind regarding the case number 2019-0342-SPHA.

Blatant disregard for neighbor's feelings.
Blatant disregard for neighbor's property.
Blatant disregard for the law.
Preface ALL of this by saying, had the proper procedures been followed, we would not be standing before your honor today.

We need to treat this as if NOTHING has been erected yet, no construction has taken place. We personally know one of the previous owners at 4607, and Mark Towels said he tried to get a garage built there for years, but was consistently turned down, due to laws. Which also brings to the forefront, if the easement parameters are a total of fifty feet (say, 20' on this side, 30' on that side), and the available easement on the Montanye's side is 14.9', that tells me that there should be 35.1' of easement on the Bair's side of our property line: 14.9 + 35.1 yields 50'. From the last "plat" I've viewed, there were 11' from the end of the single garage to the property line, which also tells me some previous owner essentially did the same thing: ignore permits and just build. We could carry further, but in truth, I don't have an issue with the original garage, just the additional one and the pavement added that are clearly sloped toward our property. This all being said, yes. We are against the garage, we are against the 0' easement. What I believe is being also overlooked is that the easement is also a safety net for access to the rear of the properties should an emergency arise, or a repair on a pool. Granting a zero easement essentially says that if any of these things occur, the Bair property would remain unscathed while either my or the Montanye properties will have whatever heavy equipment and gear tearing up our grounds. No, I speak for Patti and myself in saying no to the 0' easement. Garage being built, collapsed the first go round. "Builder" had paper in his hands, I assumed they were permits. I asked Denny to come with me to the road, look down at our houses. "Have you ever seen 4 white pines grow like that? A perfectly straight line?" Looking down the line, regardless of who put the trees up, the garage, fence and A/C units are all well beyond the tree line. Doesn't matter which house planted them. Denny turned white and admitted they started this process without permits. I made a call to the county and they said they don't deal with property line disputes, that I would need to hire an attorney. Our current situation makes the retaining of an attorney near impossible. The Bair's, however, were forced to do a land survey because of this case, and disclosed that they are indeed on our property. Since the

garage has gone up, the A/C unit installed, we have been experiencing more water down in our meadow. Last year, I could cut the grass down there. Now, sometimes I can barely walk down there without losing a shoe, it's a swamp. All the drainage from the garage, and the A/C unit are directed towards our property, and not down towards the back of the Bair property. We had water issues when we purchased this house, and corrected them by not directing water to the neighbors, but directing it further down our own hill. Since that time, we've had no issues in the meadow until the garage was erected.

The topography has changed such that the water now flows either toward my house, or apparently, the Montanye's house.

There is nothing "unique" about the Bair house that would condone the 0' easement, as set in the building code. Their house and property are right in line with ours and the Montanye's. In fact, I had asked about the fact that Donna, being a licensed real estate agent, didn't know to obtain permits first, before putting one shovel to the dirt. Never heard a respectable answer to that question. Too, I wonder about a "builder" that would construct something like this without a permit. Or, construct the additional bedroom on the Montanye's side, changing the topography for them. You don't build and then ask for the permission to build. Part of the permit process involves regulating water flow, regulating mud and silt: none of this was ever done, and it has changed the way water acts in our neighborhood. We have called the county and asked them to rebuild our small berm at the top of our driveway, as water was coming down in torrents. They took care of the issue for us. I also took it upon myself to put another "drain" on the street that shuffled water down between the Bair's and our house, on our side of the line. Every now and again, I see the header to my channel "rearranged"...

The signage posted for this hearing. Note that three of the signs are on my property. Again, there are eight. Eight of them. I overheard the conversation third party that Donna asked those posting the signs to not put them all on her property... why. I'm not asking for any variances, I've not broken any building laws or codes. My guess is that it looked embarrassing. Most times I pass a sign. A sign, not eight, on a piece of property.

Too, I find it interesting, to say the least, that the police get called for someone parking within 2' of a fire hydrant on the street, but that all of this should just be swept away under the proverbial rug, and not be disturbed again. This is not a townhouse community: this community is about privacy, open spaces, friendly neighbors. We moved here for peace and quite, on a dead end street, on purpose, to eliminate these type of confrontations. If you wish to live in a community where you're permitted to build on top of one another, this is not the proper community for you.

As far as the fence on our side of the property, go right ahead and put it right on the property line. Truthfully, we don't care. And make it 72" high if you wish. But, don't channel your runoff towards our property. Build the proper drainage and have it run down towards the woods. Please, use some common sense. Which brings me to several other points. Once the garage, A/C and fence are removed, the topography should be returned to it's pre-garage status, at the Baer's cost, using a contractor of our choice. We were not the ones who violated the law. And, here we are, in the courthouse, when I should be working. Who is going to compensate those of us who really shouldn't even be here? Had the proper procedures and laws been followed, I dare say we wouldn't be having these conversations.

smf

John E. Beverungen

From: Roula Hemady <rouhem@gmail.com>
Sent: Sunday, July 21, 2019 2:54 PM
To: John E. Beverungen; Lawrence Stahl
Subject: Case Number: 2019-0342-SPHA for 4607 Prospect Avenue

CAUTION: This message from rouhem@gmail.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Your honors,

Prospect Avenue is a dead end street in Glyndon, Maryland. A sleepy street but very quaint and charming. I love this neighborhood and proud to call it home. People are very caring and friendly. There is a strong sense of community, closeness and pride.
Although my husband and I moved in only in October of 2013, we both feel as if we lived our entire lives in this area. We were welcomed as soon as we moved in.
Seeing the signs come up in front of the Ms. BLair's house few weeks ago, advising the public of this hearing broke that sense of closeness and peace. Tension rose among neighbors and the love and calm was quickly replaced by anger. I feel we were pushed to take sides.
I would not have liked to be in the Fradkins' and Montanyas' position, taken to court to settle issues that violate the law, to be bullied, to fight to gain back my property, my rights and my privacy. This is not typical of our community. We all are proud of our homes/ our lots (big or small) and cherish our privacy.

Thank you for taking the time to read my email.
Roula Hemady
4603 Prospect Avenue

Glyndon

Seeing

Glyndon Community Association
PO Box 84
Glyndon, MD 21071
GcaPres@gmail.com

July 19th, 2019

To Whom It May Concern:
On behalf of the Glyndon Community Association's Board of Directors, this letter serves to notify all interested parties as to our strong opposition to any and all variances and special exceptions requested by the property owners of 4607 Prospect Avenue, Glyndon, Md applied for after completion of buildings and modifications. This letter applies to case #2019-0342-SPHA. This letter specifically addresses the following applications for variances/exceptions of newly-built structures, non conforming and constructed without permit application.

- Zero side-yard setback for left-side garage (on the property line, in lieu of 20 feet setback as required)
- 14'-9" set-back for front side addition (in lieu of 30' setback/sum of 50' both sides)
- 72" high front yard fence (42" max required by zoning)

The Glyndon Community Association strives to foster uniform and fair community standards, community awareness, relationships amongst community members, and exciting and unique opportunities that bring neighbors together for the benefit of the community. We believe that all residents, regardless of any identifying characteristics, should adhere to all Baltimore County zoning regulations, laws and procedures relating to modifications of existing structures as well as newly-built dwellings. This includes but is not limited to obtaining required permits PRIOR to starting construction or improvements, completion of land surveys to properly delineate property lines, obtaining and adherence to all environmental regulations with regards to storm water run-off, erosion control, etc., and obtaining an opinion and/or approval from Baltimore County Landmarks Commission as Glyndon is a historic district as defined by the National Historic District Commission.

As such, we believe that the modifications and improvements made to the property at 4607 Prospect Ave were done without many of the regulations and approvals required, and allowing said modifications and improvements would create a dangerous precedent which would or potentially could have a negative impact on other homeowners and the Glyndon community at large in the future. We do not have an opinion as to the aesthetics of the improvements, rather, it is the precedent that is our primary concern as well as allowing construction on another homeowners property to proceed unabated.

Regards,

Daryan V. Rodgers Lenz
President, Glyndon Community Association Inc.

Historic Glyndon Incorporated

P.O. Box 3641
Glyndon, Maryland 21071-3641

July 18, 2019

VIA email (administrativehearings@baltimorecountymd.gov)
And via hand delivery at meeting
Baltimore County Office of Administrative Hearing

13x2 26
18 24
50 sigs

RE: **Zoning Notice for Case #2019-0342-SPHA**
Property at 4607 Prospect Avenue, Glyndon
Hearing Date: July 22, 2019

This letter is to **express strong opposition** by Historic Glyndon, Inc. (HGI), on behalf of the Board of Directors, for the request of building variances/special exceptions **after the completion** of structures/modifications at 4607 Prospect Avenue, Glyndon, MD. This letter specifically refers to case #2019-0342-SPHA. Refer to page 2 for specific BCRZ codes.

The mission of HGI is to preserve and protect Glyndon's cultural, social, economic and architectural history, as well as to conduct educational and beautification projects which enrich Glyndon's historical heritage.

To that end, we believe that all homeowners within the Historic Glyndon District should follow Baltimore County laws and procedures relating to property improvement. This includes, but is not limited to, obtaining required approvals from the Baltimore County Landmarks Preservation Commission, seeking required building permits, completing land surveys when applicable, and assuring compliance to zoning codes prior to beginning any property improvement projects.

HGI routinely publishes recommended best practices for home improvements within the Historic District in our newsletters. The newsletters are distributed to all homeowners in the Historic Glyndon District. We expect all homeowners to follow these guidelines with the understanding that some properties deemed as contributing structures may have to undergo additional approval processes.

Therefore, we strongly oppose approving the variances after the completion of work for 4607 Prospect Avenue. This would set a precedent, and serve only to further erode the expected responsibilities of our community property owners.

Sincerely,

Pamela Becker

Pamela Becker
President, Historic Glyndon, Inc.

"It has been said that, at its best, preservation engages the past in a conversation with the present over a mutual concern for the future."

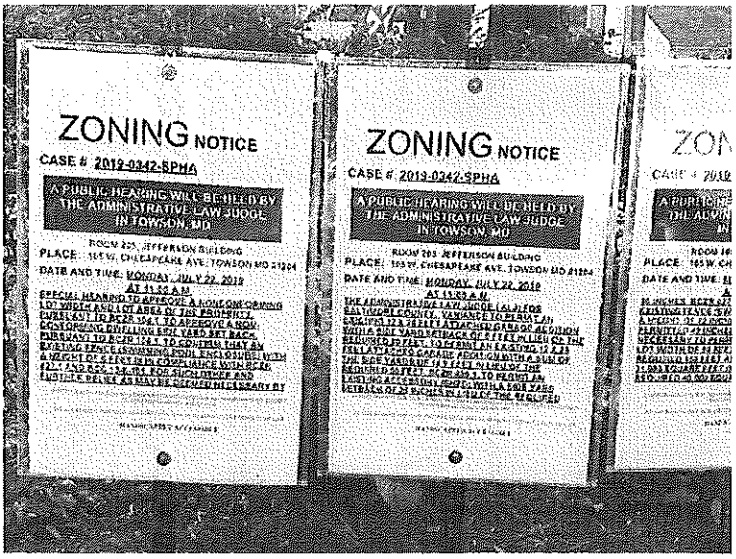
– William Murtagh, first keeper of the National Register of Historic Places

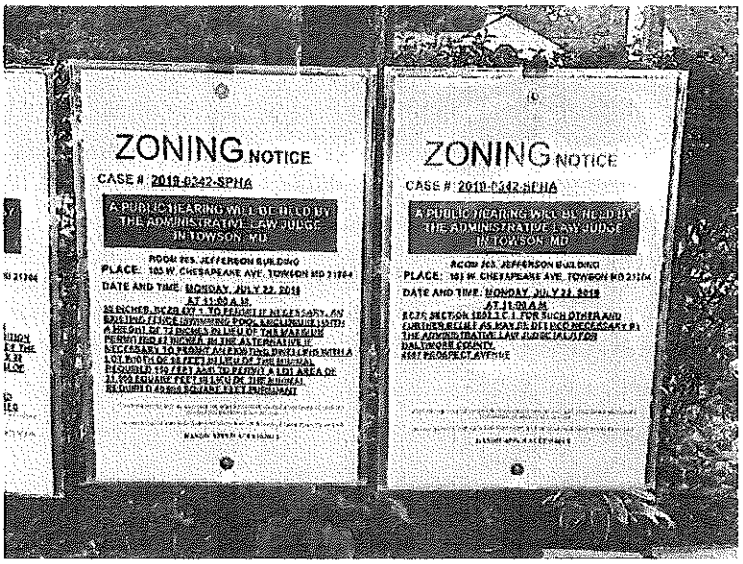
This letter specifically addresses the below applications:

Application for variance/exceptions of newly-built structures (non-conforming, built without permits)

- Zero side-yard set-back for left-side garage (on the property line, in lieu of 20' back)
- 14'-9" set-back for right-side front addition (in lieu of 30' back/ sum of 50' both sides)
- 72" high front-yard fence (in lieu of 42" max)

(Zoning sign photos below for the exact BCRZ codes for exception)





The mission of HGI is to preserve and protect Glyndon's cultural, social, economic, and architectural history, as well as to conduct educational and beautification projects which enrich Glyndon's historical heritage,

Glyndon Community Association & Historic Glyndon, Inc.

Opposition to Baltimore County Zoning Case #2019-0342-SPHA

4607 Prospect Ave., Glyndon, Baltimore County, MD

Application for variance/exceptions of newly-built structures (non-conforming, built without permits)

- Zero side-yard set-back for left-side garage (on the property line, in lieu of 20' back)
- 14'-9" set-back for right-side front addition (in lieu of 30' back/ sum of 50' both sides)
- 72" high front-yard fence (in lieu of 42" max)

(Zoning sign photos below for the exact BCRZ codes for exception)

Signatures of Community Members Opposing Above:

Signature	Print Name	Street Address
	Gerard Cross	4624 Butler Glyndon
	Michael Pristoop	4 Waugh Av
Joan M Davenport	Joan M Davenport	7 Waugh Ave
Sarah Schlegel	Sarah Schlegel	7 Waugh Ave.
Robyn Wroe	Robyn Wroe	10 Waugh Ave
	Lee Wroe	10 Waugh Ave
Robert K. Behman	Robert K. Behman	4612 Prospect Ave
Marie Maevers	MARIE MAEVERS	4615 PROSPECT AV
Steve Ehrenpreis	STEVE EHRENPREIS	3 WAUGH AVE.
Barbara C. Whitman	Barbara C. Whitman	4707 Butler Rd. 21071
Diane Flaherty	Diane Flaherty	4719 Butler Rd 21071
	NICK ST. AMANT	5 CENTRAL 21071
John Michael O'Neill	John Michael O'Neill	4724 Butler Rd 21071

Signatures of Community Members Opposing (continued):

Signature	Print Name	Street Address
	JAMES W ECCE	4804 BUTLER RD GLYNDON MD 21071
	GAYLE WARE	4802 BUTLER RD GLYNDON MD 21071
	TERRY VINSON	4806 Butler Rd
Claudette LeBlanc	Claudette LeBlanc	↑
Alek vinson	Alek vinson	↑
	MATT FLETCHER	4811 BUTLER RD
	Bryan Benson	4813 Butler Rd
Linda Myers	Linda Myers	26 Chatsworth
Jim MacDonald	Jim MacDonald	111 Central Ave 21071
Nan Kaestner	Nan Kaestner	117 Central Ave, 21071
Robert Kaestner	Robert Kaestner	117 Central Ave 21071
Eleanor H. Taylor	Eleanor H. Taylor	16 Worthington Hill Dr. 21071
Martha Clements	Martha Clements	222 Central Ave. 21071
M H Clements	M H Clements	222 Central Ave 21071
	Jennifer Diaz	207 Central Ave 21071
	Kmontanye	4609 Prospect Avenue 21136
	Thomas Montanye	4609 Prospect Ave
Frances M. Acle	Frances M. Acle	4606 Prospect Ave

Glyndon Community Association & Historic Glyndon, Inc.

Opposition to Baltimore County Zoning Case #2019-0342-SPHA

4607 Prospect Ave., Glyndon, Baltimore County, MD

Application for variance/exceptions of newly-built structures (non-conforming, built without permits)

- Zero side-yard set-back for left-side garage (on the property line, in lieu of 20' back)
- 14'-9" set-back for right-side front addition (in lieu of 30' back/ sum of 50' both sides)
- 72" high front-yard fence (in lieu of 42" max)

(Zoning sign photos below for the exact BCRZ codes for exception)

Signatures of Community Members Opposing Above:

Signature	Print Name	Street Address
Susan Donnelly	SUSAN DONNELLY	225 CHARTLEY DR Reisterstown MD 21136
Robin Long	Robin Long	8 Wolf Avenue Reisterstown MD 21136
Joan P. Long	JOAN P. LONG	105 CHARTLEY DR. REISTERSTOWN, 21136
Joseph E Roop Jr	JOSEPH E ROOP JR	P.O. Box 224 REISTERSTOWN 21136
Shirley M. Winebarger	Shirley M. Winebarger	80 HANOVER ROAD Reisterstown, MD. 21136
C. Thomas Winebarger	C. Thomas Winebarger	80 Hanover Road Reisterstown, Md. 21136
Kelly W Smith	Kelly L Smith	82 Hanover Road Reist., MD 21136
Raymond Long	RAYMOND LONG	114 HANOVER RD. REISTERSTOWN 21136
Linda Long	Linda Long	114 Hanover Rd 21136
Dana J Geppi-Frampton	Dana J Geppi-Frampton	106 Fairlawn Rd 21136
Kevin E Long	Kevin E. Long	114 Hanover Rd Reisterstown 21136
Anna Welsh	Anna Welsh	4601 Prospect Ave 21071
Charles Welsh	CHARLES WELSH	4601 Prospect Ave 21071

Signatures of Community Members Opposing (continued):

Signature	Print Name	Street Address
Richard Stanley	RICHARD STANLEY	215 Central Ave, Glyndon MD
	STEVE FRADKIN	4605 Prospect Ave Glyndon
Patricia J Fradkin	Patricia J Fradkin	4605 Prospect Ave Glynda md
Cynthia Morrison	Cindy Morrison	4500 Prospect Avenue 21071
Martha Wist	Martha Wist	3834 Ivy Hill Dr. 21074
	Robin Coffin	4511 Prospect Ave Glyndon 21071

Glyndon Community Association & Historic Glyndon, Inc.

Opposition to Baltimore County Zoning Case #2019-0342-SPHA

4607 Prospect Ave., Glyndon, Baltimore County, MD

Application for variance/exceptions of newly-built structures (non-conforming, built without permits)

- Zero side-yard set-back for left-side garage (on the property line, in lieu of 20' back)
- 14'-9" set-back for right-side front addition (in lieu of 30' back/ sum of 50' both sides)
- 72" high front-yard fence (in lieu of 42" max)

(Zoning sign photos below for the exact BCRZ codes for exception)

Signatures of Community Members Opposing Above:

Signature	Print Name	Street Address
Teresa Moore	Teresa Moore	29 Waugh Ave
	Joseph Lurzeski	27 Waugh Ave
C Gulley	Cassandra Gulley	32 Waugh Ave.
Roula Hemady	Roula Hemady	4603 Prospect Ave.
	RAMZI HEMADY	" " "
	Justin Montanye	4510 Prospect Ave
Kaylyn Gray	Kaylyn Gray	4510 prospect Ave.
	Tom Montanye	4510 Prospect Ave.
Robin Flickinger	Robin Flickinger	33 Waugh ave
Barry Flickinger	Barry Flickinger	33 Waugh Ave
	Jeffrey Beher	411 Prospect Ave
Carlyle Montanye	J. Carlyle Montanye Jr	4500 Prospect Ave
Grace E. Montanye	GRACE MONTANYE	4500 Prospect Ave.

John E. Beverungen

From: ramzi hemady <ramzi.hemady59@gmail.com>
Sent: Sunday, July 21, 2019 2:30 PM
To: John E. Beverungen
Subject: case # 2019-0342-SPHA; 4607 prospect ave, glyndon

CAUTION: This message from ramzi.hemady59@gmail.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Your Honor,
My name is Ramzi Hemady. I live at 4603 Prospect Ave in Glyndon. My wife and I are neighbors to the properties involved in the above case. We are cordial with all involved. However, if it is correct that the owners of the property at 4607 Prospect Ave violated numerous zoning/building laws (I apologize if I am not using the proper legal verbiage), including building without a permit, building on a neighbors property without consent, and disregarding easement laws, I find that completely unacceptable. In my opinion, if allowed, it would set a dangerous precedence.
Thank you,
Ramzi Hemady



Debra Wiley

From: Nick St.Amant <nick.st.amant@verizon.net>
Sent: Monday, July 22, 2019 9:23 AM
To: Administrative Hearings
Subject: Case # 2019-0342-SPHA

CAUTION: This message from nick.st.amant@verizon.net originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

RE: Zoning Variances, 4607 Prospect Avenue

I recently became aware of a request for zoning variances in my neighborhood, for which I'd like to offer my concerns.

Some, if not all, of the requested variances relate to work that has already been done in violation of our DR-1 Code. This is not good, and in my mind would reward someone for ignoring the codes.

Glyndon is a lovely area, and Prospect Avenue is a charming street. There's no question that any building not on one's property must be remedied. But the offset rules also should be followed. They are just common sense.

I believe there are six requests for variance, and I urge the county not to grant any of them. Were any to be granted it would set a terrible precedent that others may feel they can take advantage. And then … 'there goes the neighborhood,' as they say.

Respectfully,

Nick St. Amant
5 Central Avenue
Glyndon

Past President, Glyndon Community Association
Past Board Member, Historic Glyndon Inc.

RECEIVED
JUL 22 2019
OFFICE OF
ADMINISTRATIVE HEARINGS

Debra Wiley

From: Tom Montanye <Tom@montanye.net>
Sent: Monday, July 22, 2019 8:55 AM
To: Administrative Hearings
Cc: Tom@Montanye.net; Kim Montanye
Subject: Opposition to Case # 2019-0342-SPHA

CAUTION: This message from tmontanye@gmail.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

From:
Thomas and Kimberly Montanye
4609 Prospect Ave.
Glyndon MD 21136
(immediate neighbor)

RECEIVED
JUL 2 2 2019
OFFICE OF
ADMINISTRATIVE HEARINGS

To whom it may concern,

I'm writing in total opposition to the variances and special exceptions requested in Case # 2019-0342-SPHA, 4607 Prospect Ave., Glyndon Historic District, Baltimore County.

Please direct my arguments below to the Administrative Law Judge for consideration when reviewing this case.

Arguments Opposing 4607 Prospect Ave Variances/Special Exceptions

Case # 2019-0342-SPHA

Variances/Exceptions

1. In the first place, the procedures and restriction regarding variances, outlined in BCRZ 307.1, allow they be granted
    a. "**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**"...
    b. "**and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship**."
    c. These are two hurdles - the first has to be met, and only if so, then also the second is considered and must also be met.
    d. On the **first bar** to be met, peculiarity or uniqueness of the land or structure
        i. I struggle to find *any* characteristics of the land or structure that are peculiar or unique compared with the surrounding properties, or to find any arguments offered by the applicant that support this.
            1. It's similarly rectangular in length and width ratios, similar terrain...slopes downward from front to back...like all the surrounding houses on this side of the street.
            2. The structure, prior to the recent improvements, did not meet *current* side set-back, requirements for DR1 or even DR2, same as many of the properties on the street.
            3. LPC recently reviewed the house, considering exactly the characteristics of the structure, and found nothing out of the ordinary from that perspective.

ii. Since there is nothing peculiar, or unique only to this land or structure, there are no hardships that the others on the street, and more broadly in the community of Historic Glyndon, don't also have... therefore no exceptions should be granted. They simply shouldn't be granted special treatment.

e. These same arguments are well outlined, and expanded on, with numerous examples of similar situations and conclusions, **in the case of Cromwell v. Ward, No. 617, September Term, 1994, which I submit for the ALJ to include and consider in this case**.

2. In the next place, even if it were determined that the land/structures were somehow peculiar and unique, the **second bar** would not be met because there is no hardship except the ones they created on themselves by doing the improvements prior to applying for permission.
   a. Every neighbor in the community has had to make compromises and choices about improving their property within the confines of the County zoning and building codes.
   b. In the case of wanting a 2-car garage, **other options exist**. There's room in front to accomplish this within the zoning constraints, or at least easily within the boundaries of the formerly existing foundation constrains, with a more reasonable variance/exception request
   c. In the case of the second addition, **other options exist**, same thing,
   d. In the case of the fence, **other options exist**, same thing
   e. In the case of the fence, the beginning of the conflict, I personally offered reasonable alternatives that would be acceptable to me and the codes, and they were rejected outright.
   f. In the case of the second addition, the same (with regard to the sediment control/ run-off issue); rejected outright.
   g. We did not directly address the garage with this neighbor, as this was on the other side
      i. We support the general notion that set-backs are very important for the community in general
      ii. If I proposed a zero set-back garage addition on our side, near their non-conforming 14.9', would this neighbor agree? Would other neighbors agree and want precedence set that made this "normal"?
      iii. Would our DR1 zone turn into a community where structures were touching each other, like town homes, as we all got exceptions to the rules, to be fair, even though none of us had met the bars for exceptions according to the laws passed by the elected legislature?
      iv. One has to consider the long-term impact of these decisions. This line of thinking leads to a turbulent community.

3. In the next place,
   a. These requests are submitted based on the newly as-built structures as a complete package, which were built unlawfully, without applications for permits and variances beforehand, instead of on each improvement standing alone.
   b. Considering the "as-built" vs. the "before-built" are two different things,
      i. People are naturally more sympathetic to the consequences of denying exceptions in the case of the as-built, because if declined, it has to be removed, likely at significant expense. It's a punitive decision.
      ii. If plans to build are declined, the applicant simply has to re-work the plans to make them conformant, with far less cost.
      iii. This gives an advantage to the "as-built" approach, which is **a bad precedence** because it encourages more residents to follow the thinking that "it's easier to ask forgiveness than permission." This thinking is destructive to the health of our communities and our civil society more broadly. It's not a law-abiding approach, it's a "catch me if you can" approach.

4. Finally, **this neighbor knows better**
   a. This particular applicant is a **licensed MD Real Estate Agent**, with professional training, which few of the other neighbors here have, and they absolutely know better
   b. I spent 12 years in the RE industry, in training
      i. Should recommend a survey with every purchase
      ii. Should hire only licensed professionals
         1. Who was the contractor that operated without a permit? The electrician?

2. How do I know it's not unsafe, and that this house will not burn down because electrical inspections were not done, and that it won't spread through their illegal fence and onto my cars parked in my driveway and my trees and onto my house?
3. There could be a lack of up-to-date smoke detectors that wouldn't adequately alert the owners of a fire

c. In addition, **I educated this neighbor along the way** while opposing the fence and, in particular, the way the construction was being conducted (without any sediment control), and **offered very reasonable measures she could take to solve the issues. I gave a 60 day verbal warning followed by two separate written notices... that I was not to be ignored, and warned I would have no choice but to call the county for help.**
d. These were **met with not just total rejection ("you'll get used to it"), but with aggression and continued provocation**, resulting in us having to call the police on multiple occasions for destruction of property and trespassing. **Police reviewed security video evidence**. I did not press charges, in hopes that these would be sufficient warning for them to compromise and address our minor grievances.
e. Throughout this process this neighbor has also attempted to steal our property, where their driveway is encroaching on my property, being used only with permission, by **removing legitimately installed surveyor's markers from two different surveyors, mine and hers, and installing her own**, where she wants the property line to be but not where it actually is. This cost me $1500 which wouldn't have to have been spent had she not insisted she disputed the line. Security video evidence will be available at the hearing and after, should you decide to review it.
f. We believe they have recently dropped dead frogs, found in their pool filter, over the fence onto our side. A perfect example of a bully, just some of the ongoing provocations.
g. She has caused all of these opposing, law-abiding citizens to this take away from their work or vacation time, their limited time on this earth, to come out here, and time before this to organize and learn what's happening here... when will this end?
   It will end when people are held accountable for their actions, is my answer. Not until then.
h. The Glyndon Community Association opposes this
i. Historic Glyndon Inc. opposes this.
j. Not a single neighbor I spoke to was in support of variances/exceptions in this case - dozens. Being on a dead-end street, word was slow to get out and many people have yet to be aware.

5. **If this neighbor, with her lawyers, are somehow able to convince an ALJ that what was done here, and how it was done, is somehow okay to stand, I and this entire community will see this as a complete abuse of both the spirit and the letter of the law. The illegal actions taken by this neighbor are exactly what BCRZ 307.1 was intended to prevent.**

Thank you for your consideration.

-Thomas and Kimberly Montanye

Debra Wiley

From: Bob Gehman <rkgehman@gmail.com>
Sent: Monday, July 22, 2019 9:42 AM
To: Administrative Hearings
Subject: Zoning case #2019-0342-SPHA

CAUTION: This message from rkgehman@gmail.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

To whom it may concern:
My name is Bob Gehman and I live at 4612 Prospect Ave across the street from the zoning case above.
I'm very much opposed to the variance requested since it's a clear violation and disrespect for community values and county codes. Also this violation of codes has caused unnecessary confusion and stress for the neighbors of the subject property.
I hope the county codes will be upheld and the variance request denied.
Thanks.
Bob Gehman

RECEIVED
JUL 22 2019
OFFICE OF
ADMINISTRATIVE HEARINGS

JB 7-22-19
11 AM

Debra Wiley

Letters of opposition that came in today July 22nd.

MATTHEW <MATTHEWFLETCHER@comcast.net>
Sunday, July 21, 2019 10:33 PM
Administrative Hearings
Matthew Fletcher
Case # 2019-0342-SPHA

CAUTION: This message from matthewfletcher@comcast.net originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

To whom it may concern,

I express my opposition to the non-permitted, invasive construction done at 4607 Prospect Avenue.

Setbacks, easements and the provisions within the permitting process are there for a reason, legally for purposes of clarity, and the benefit and sensible protection of all neighbors and their properties.

Garages, fences, privacy hedges adjusted and built at 4607 without neighborly consultation and without proper permitting are multiple flagrant violations of the rules we all have to adhere to.

Matt Fletcher
4811 Butler Road, Glyndon, MD, 21071

Sent from XFINITY Connect Mobile App

RECEIVED
JUL 22 2019
OFFICE OF
ADMINISTRATIVE HEARINGS

Debra Wiley

From: Jennifer Diaz <cadwallader39@aol.com>
Sent: Sunday, July 21, 2019 3:46 PM
To: Administrative Hearings
Subject: Case #2019-0342-SPHA

CAUTION: This message from cadwallader39@aol.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

To Whom It May Concern,

My name is Jennifer Diaz and I live at 207 Central Ave, Glyndon MD 21071. I am writing to express my concerns regarding the property on Prospect Ave in Glyndon, Md. I hope that you will NOT grant special permission for the property owners to be exempt from the rules that have been established in our community. To grant special permission could set a precedent that current and future home owners could make changes without following the proper permitting procedures and regulations. Thank you for your consideration on this matter.

Sincerely,

Jennifer Diaz

Sent from my iPad

RECEIVED
JUL 22 2019
OFFICE OF
ADMINISTRATIVE HEARINGS

Debra Wiley

From: NAN KAESTNER <nantk@comcast.net>
Sent: Sunday, July 21, 2019 3:45 PM
To: Administrative Hearings
Subject: case #2019-0342-SPHA

CAUTION: This message from nantk@comcast.net originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

To Whom it May Concern,

I am writing in strong opposition to the request for variances on 4607 Prospect Avenue. To grant variances on this property AFTER the property owner completely bypassed the Zoning permit process would be an affront to law abiding citizens in Glyndon and all neighborhoods who take the time and compliance to go through the zoning process correctly!!!

In Glyndon we are keenly aware and thankful for the restrictions that we have, not only basic zoning restrictions, but also the restrictions that we have being in an Historic District. As a community, we have worked tirelessly for years to uphold correct zoning and to expect neighbors to do the same. We realize that Zoning laws are in place for a REASON! Those who disregard the whole zoning process should not be rewarded for their negligence by the granting of exceptions.

What a horrible precedent that would set. Down the road others would simply say "Oh the property at 4607 just didn't even bother to go through Zoning and they just got variances!" That makes a mockery of the zoning rules in place. Variances are for situations that are very special- topography, hills, cliffs, exceptionally narrow situations etc. They are NOT for people who blatantly ignore the law.

Thanks you for your time on this important issue.

RECEIVED
JUL 22 2019
OFFICE OF
ADMINISTRATIVE HEARINGS

Nan Kaestner

117 Central Avenue

Glyndon, MD 21071

Debra Wiley

From: terry vinson <tvnature@verizon.net>
Sent: Sunday, July 21, 2019 1:29 PM
To: Administrative Hearings
Subject: Case 2019-0342-SPHA

CAUTION: This message from tvnature@verizon.net originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

I am a resident in Glyndon and oppose the zoning variance requested in the above case. Glyndon is the County's first historical neighborhood, and as such, it is important to continue the uniqueness and historical quality of the neighborhood. Zoning rules are in place for many reasons. I am opposed to the variances requested.

RECEIVED
JUL 22 2019
OFFICE OF
ADMINISTRATIVE HEARINGS

Debra Wiley

From: Marti Clements <balletmom4@comcast.net>
Sent: Sunday, July 21, 2019 11:07 AM
To: Administrative Hearings
Subject: Case # 2019-0342-SPHA

CAUTION: This message from balletmom4@comcast.net originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

As a third generation resident of Glyndon, I have worked to help retain the unique quality of our little village.

As past President of Historic Glyndon, and having served numerous times on the Board of the Glyndon Community Association, I have worked to ensure zoning codes were not downgraded when the comprehensive maps were open, and with the Landmarks Preservation Committee.

This issue before you is merely an act of not following the written law. It is a flagrant violation of existing zoning codes we must all follow.

Please do not allow this breach of the law to stand. If you allow this variance, it will set a dangerous precident!

I appreciate your consideration and urge you to come visit Glyndon!

Sincerely,
Marti B. Clements. 443-326-3306



Debra Wiley

From: Michael O'Neill <jmichaeloneill@verizon.net>
Sent: Saturday, July 20, 2019 9:21 PM
To: Administrative Hearings
Subject: Case # 2019-0342-SPHA

CAUTION: This message from jmichaeloneill@verizon.net originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Dear Administrative Law Judge,

I wish to express in the strongest terms my opposition to the granting of the zoning variances requested for 4607 Prospect Ave. 21136-3800. I also wish that all structures that were built is violation of existing setbacks be ordered to be torn down at the property owner's expense immediately. Where applicable, impose fines for every day that the structures remain in violation of set backs.

Blatant violations of the rule of law, such as these, can not be allowed to stand.

Furthermore, any granting of the variances for this property would forever set a precedent for destruction of the neighborhood.

Variances Opposed:
All as described on the four boards posted in front of 4607 Prospect Ave. 21136-3800.

John Michael O'Neill
4724 Butler Rd.
Glyndon, MD 21071



Debra Wiley

From: Steve Ehrenpreis <ehrenpreis1@verizon.net>
Sent: Saturday, July 20, 2019 12:55 PM
To: Administrative Hearings
Subject: Case # 2019-0342-SPHA

CAUTION: This message from ehrenpreis1@verizon.net originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

To Whom This May Concern:

I am opposed to the actions that have been outlines and specifically listed under this case.

Sincerely,

Steve Ehrenpreis

RECEIVED
JUL 22 2019
OFFICE OF
ADMINISTRATIVE HEARINGS

Sherry Nuffer

From: Pamela Jane Becker <pamelajaneb24@gmail.com>
Sent: Friday, July 19, 2019 7:25 AM
To: Administrative Hearings
Cc: Teri Rising; Tom Montanye
Subject: Case #2019-0342-SPHA
Attachments: Historic Glyndon, Inc (HGI) Response for Case 2019-0342-SPHA.pdf

CAUTION: This message from pamelajaneb24@gmail.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Dear Sir/Madam:

On behalf of Historic Glyndon, Inc. ("HGI") and myself, please find our attached formal letter of opposition to the requested variances/special exceptions for Case #2019-0342-SPHA for the property located at 4607 Prospect Avenue. I would appreciate you providing this letter to the Administrative Judge who will be presiding over the hearing set for Monday, July 22, 2019 at 11 a.m.

Historic Glyndon, Inc. is Glyndon's volunteer organization that oversees the preservation and history of our lovely community. We were created in 1981 as a result of Glyndon being designated as Baltimore County's first historic district.

Myself and several Board members of HGI also plan to attend the Monday hearing. If appropriate, we would be happy to speak to expand on our stated oppositions and clarify any questions the Administrative Judge might have.

Thank you for your consideration.

Respectfully,

Pamela Becker
President, Historic Glyndon, Inc.



Sherry Nuffer

From: Mary Ellen Porter <meporter@gilman.edu>
Sent: Thursday, July 18, 2019 6:12 PM
To: Administrative Hearings
Subject: Zoning Hearing for Case #2019-0342-SPHA

CAUTION: This message from meporter@gilman.edu originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

To Whom It May Concern,

We are emailing to express our strong opposition to the variances and special exceptions requested after the fact at 4607 Prospect Avenue in Glyndon, MD. The homeowners erected a fence that exceeds the allowable height (72" vs. 42"), added an addition with no side-yard set back instead of the required 30', and built a garage on the left side of the house that is on the property line instead of leaving a 20' set back as required. Additionally, they completed all of the work without bothering to complete surveys or pull permits.

Zoning regulations exist to promote the health, safety, and general welfare of the community and to protect and conserve the value of property. The owners of 4607 Prospect Avenue clearly chose to ignore all regulations pertaining to their property. Their additions are encroaching upon their neighbors' properties with no concern for the effect on the neighbors' safety or on the value of their homes. Additionally, the homeowners did not consult with Landmarks, as is required by their location within a historic district.

We urge you not to issue variances and exceptions after the fact. This sets a terrible precedent that would serve as a green light to everyone in the community to do whatever they want with their property with no regard for the law or for the wellbeing of their neighbors. Additionally, we ask that you require the owners to remove the fence and the additions.

Thank you for your consideration of our concerns and requests.



Sincerely,

Mary Ellen and David Porter
4611 Butler Road
Glyndon, MD

This message is for the designated recipient only and may contain privileged, proprietary, or otherwise private information. If you have received it in error, please notify the sender immediately and delete the original. Any other use of this email is prohibited.

Sherry Nuffer

From: Vernene Lenz <travelanduniqueventures@comcast.net>
Sent: Thursday, July 18, 2019 5:40 PM
To: Administrative Hearings
Subject: Glyndon and the hearing upcoming Monday....

CAUTION: This message from travelanduniqueventures@comcast.net originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

To whom I may concern:

We must stress that all residents apply for the permits from the County, prior to beginning the building of additions. Asking for Variances, after the building is completed, is not a good practice.

Sincerely,
Vernene Lenz
PO Box 279
Glyndon, Md 21071

Sent from my iPhone



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 5, 2021

NOTICE OF POSTPONEMENT

IN THE MATTER OF: Donna V. Bair – Legal Owner
4607 Prospect Avenue
19-342-SPHA 4th Election District; 3rd Councilmanic District

8/9/19 Opinion and Order of the Administrative Law Judge wherein the:
- Petition for Special Hearing: 1) to approve a nonconforming lot width and lot area; and 2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of 30 inches was GRANTED; the
- Petition for Special Hearing: 1) to approve a nonconforming dwelling side yard setback; and 2) to confirm that an existing fence (swimming pool enclosure) with a height of 6' is in compliance with BCZR §427.1 and BCC §13-6-101 was DENIED; and the
- Petition for Variance: 1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.; 2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; and 3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches was DENIED

9/9/19 Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire on behalf of Donna V. Bair, Petitioner.

9/25/19 Order on Motion for Reconsideration issued by the Administrative Law Judge wherein it was Ordered:
- that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms in BCZR §104;
- that all new construction must comply with current setbacks and restrictions at the time of new construction; and
- all other matters and respects of Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

The Board convened for hearing on February 6, 2020. This matter did not conclude. This matter was assigned for hearing days 2 and 3 on February 23 and 25, 2021. By request of Counsel, these dates have been postponed and will be reassigned to later dates.

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 require special accommodations, please contact this office at least one week prior to hearing date.

If you do not have access to a computer or smart device, please contact our office for the call-in information the day before the scheduled hearing.

Krysundra Cannington, Administrator

c. Counsel for Petitioners : Lawrence E. Schmidt, Esquire
Legal Owner : Donna Bair

People's Counsel for Baltimore County : Peter M. Zimmerman, Esquire

Protestants *pro se* : Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
John E. Lemmerman/RTF Associates, Inc.
Kim and Tom Montanye
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz

C. Pete Gutwald, Director/Department of Planning
Michael D. Mallinoff, Director/PAI
James R. Benjamin, Jr., County Attorney

Paul M. Mayhew, Managing Administrative Law Judge
Nancy C. West, Assistant County Attorney

Krysundra Cannington

From: Alyssa Moyers <amoyers@sgs-law.com>
Sent: Monday, January 4, 2021 1:55 PM
To: Krysundra Cannington
Cc: Tom@montanye.net; rscoffin@verizon.net; reistlaxcoach@gmail.com; donna.bair@yahoo.com; Peoples Counsel; Peter Max Zimmerman; Lawrence Schmidt; Zachary Wilkins
Subject: Zoning Case No.2019-342-SPHA, Donna Bair, Petitioner, 4607 Prospect Avenue
Attachments: Letter to BOA requesting new dates in 2021.PDF

CAUTION: This message from amoyers@sgs-law.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Sunny,

Please see the attached letter in connection with the above referenced matter.

- *Alyssa*

Alyssa Fiore Moyers | Paralegal
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
amoyers@sgs-law.com | www.sgs-law.com

This email contains information from the law firm of Smith, Gildea & Schmidt, LLC which may be confidential and/or privileged. The information is intended to be for the exclusive use of the individual or entity named above. If you are not the intended recipient, be advised that any disclosure, copying, distribution or other use of this information is strictly prohibited. If you have received this e-mail in error, please notify Smith, Gildea & Schmidt, LLC by telephone immediately.

Please consider the environment before printing this email.

SMITH, GILDEA & SCHMIDT LLC

MICHAEL PAUL SMITH
DAVID K. GILDEA
LAWRENCE E. SCHMIDT
JASON T. VETTORI
MARIELA C. D'ALESSIO*
MELISSA L. ENGLISH**
* Admitted in MD, PA, FL
** Admitted in MD, NC

LAUREN S. FLEMING
NICOLE LAMBDIN
CARMELO D. MORABITO
ZACHARY J. WILKINS
of counsel:
EUGENE A. ARBAUGH, JR.
MARY G. LOKER
STEPHEN J. NOLAN

January 4, 2021

Via Email Only
Krysundra L. Cannington
County Board of Appeals of Baltimore County
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204
appealsboard@baltimorecountymd.gov

Re: In the Matter of: Donna V. Bair
Property: 4607 Prospect Avenue
Case No. 19-342-SPHA

Dear Sunny,

I write by way of follow up to the Notice of Assignment for Days 2 and 3 dated December 15, 2020 in the above referenced matter scheduling this matter for additional hearing dates on February 23, 2021 and February 25, 2021.

Please note that Mrs. Bair and her husband are scheduled to be out of the Country on a pre-planned, pre-paid work trip from February 21 – February 27, 2021. Additionally, they plan to participate in this hearing at our office and we would appreciate a quarantine period for them of 7-10 days. As such, we respectfully request that this matter be rescheduled any time after March 10, 2021.

Thank you for your consideration of this request. Please contact me should you have any questions.

Very truly yours,

Lawrence E. Schmidt

LES/am
cc: Peter Max Zimmerman, Esquire
Tom Montanye (via email: Tom@montanye.net)
Robin S. Coffin (via email: Rscoffin@verizon.net)
Steven Fradkin (via email: Reistlaxcoach@gmail.com)
Donna Bair (via email: donna.bair@yahoo.com)

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 15, 2020

NOTICE OF ASSIGNMENT - DAYS 2 and 3

IN THE MATTER OF: Donna V. Bair – Legal Owner
4607 Prospect Avenue
19-342-SPHA 4th Election District; 3rd Councilmanic District

8/9/19 Opinion and Order of the Administrative Law Judge wherein the:
- Petition for Special Hearing: 1) to approve a nonconforming lot width and lot area; and 2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of 30 inches was GRANTED; the
- Petition for Special Hearing: 1) to approve a nonconforming dwelling side yard setback; and 2) to confirm that an existing fence (swimming pool enclosure) with a height of 6' is in compliance with BCZR §427.1 and BCC §13-6-101 was DENIED; and the
- Petition for Variance: 1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.; 2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; and 3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches was DENIED

9/9/19 Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire on behalf of Donna V. Bair, Petitioner.

9/25/19 Order on Motion for Reconsideration issued by the Administrative Law Judge wherein it was Ordered:
- that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms in BCZR §104;
- that all new construction must comply with current setbacks and restrictions at the time of new construction; and
- all other matters and respects of Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

The Board convened for hearing on February 6, 2020. This matter did not conclude. This matter has been

ASSIGNED FOR: FEBRUARY 23, 2021, AT 10:00 A.M. – Day 2;
and: FEBRUARY 25, 2021, AT 10:00 A.M. – Day 3

The above scheduled hearing will be held remotely using WebEx for audio and video participation. **Call-in information and a link to the hearing will be posted on our web calendar at** www.baltimorecountymd.gov/Agencies/appeals/index.html **the night before.**

A complete set of **exhibits must be emailed** at least **48 hours before the hearing** to **appealsboard@baltimorecountymd.gov** in a format that complies with MDEC (Maryland Electronic Court) standards.

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 require special accommodations, please contact this office at least one week prior to hearing date.

If you do not have access to a computer or smart device, please contact our office for the call-in information the day before the scheduled hearing.

Krysundra Cannington, Administrator

c. Counsel for Petitioners : Lawrence E. Schmidt, Esquire
Legal Owner : Donna Bair

People's Counsel for Baltimore County : Peter M. Zimmerman, Esquire

Protestants *pro se* : Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
John E. Lemmerman/RTF Associates, Inc.
Kim and Tom Montanye
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz

C. Pete Gutwald, Director/Department of Planning
Michael D. Mallinoff, Director/PAI
Paul M. Mayhew, Managing Administrative Law Judge

James R. Benjamim, Jr., County Attorney
Nancy C. West, Assistant County Attorney

Krysundra Cannington

From: Lawrence Schmidt <lschmidt@sgs-law.com>
Sent: Thursday, October 29, 2020 1:38 PM
To: Peter Max Zimmerman
Cc: Krysundra Cannington; Tom@montanye.net; rscoffin@verizon.net; reistlaxcoach@gmail.com; Alyssa Moyers; donna.bair@yahoo.com
Subject: Re: Zoning Case No.2019-342-SPHA, Donna Bair, Petitioner, 4607 Prospect Avenue

CAUTION: This message from lschmidt@sgs-law.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Sunny
Ok we me.
I'd suggest you give us multiple dates as there are a number of persons to coordinate.
And 2021 is fine too
Thanks to all
Larry Schmidt

Sent from my iPhone

On Oct 29, 2020, at 12:56 PM, Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov> wrote:

Krysundra Cannington
County Board of Appeals Administrator

Dear Ms. Cannington,

On July 1, the Board of Appeals granted our office's request for continuance made in my June 17, 2020 letter.

At that time, we anticipated that the county would be up and running for in-person hearings by September or October. Unfortunately, that has not happened, and there is no specific schedule to reopen.

Upon review with the lead interested protestants, we have come to the conclusion that we should resume with a remote webex hearing, despite the challenges and issues.

In view of the many interested parties and/or witnesses, we ask if you could provide some options for dates. Just in case, if it is feasible to schedule 2 additional days, that might be prudent.
I suggest they be in January, after the holiday season and so everyone has ample time to reboot remotely as well.

Thank you again for your attention to this matter.

Respectfully, Peter Max Zimmerman, People's Counsel, 410 887-2188

Krysundra Cannington

From: Peter Max Zimmerman
Sent: Thursday, October 29, 2020 12:56 PM
To: Krysundra Cannington
Cc: 'Lawrence Schmidt'; Tom@montanye.net; rscoffin@verizon.net; reistlaxcoach@gmail.com
Subject: Zoning Case No.2019-342-SPHA, Donna Bair, Petitioner, 4607 Prospect Avenue

Krysundra Cannington
County Board of Appeals Administrator

Dear Ms. Cannington,

On July 1, the Board of Appeals granted our office's request for continuance made in my June 17, 2020 letter.

At that time, we anticipated that the county would be up and running for in-person hearings by September or October. Unfortunately, that has not happened, and there is no specific schedule to reopen.

Upon review with the lead interested protestants, we have come to the conclusion that we should resume with a remote webex hearing, despite the challenges and issues.

In view of the many interested parties and/or witnesses, we ask if you could provide some options for dates. Just in case, if it is feasible to schedule 2 additional days, that might be prudent.
I suggest they be in January, after the holiday season and so everyone has ample time to reboot remotely as well.

Thank you again for your attention to this matter.

Respectfully, Peter Max Zimmerman, People's Counsel, 410 887-2188

Krysundra Cannington

From: Krysundra Cannington
Sent: Wednesday, July 1, 2020 10:34 AM
To: 'Lawrence Schmidt'; Peter Max Zimmerman; J. Carroll Holzer, Esquire (jcholzer38 @gmail.com)
Cc: reistlaxcoach@gmail.com; tom@montanye.net; rscoffin@verizon.net; Carole Demilio; Rebecca Wheatley; Dave Hash; Sue Benson; Alyssa Moyers; Bair, Donna (donna.bair@yahoo.com)
Subject: RE: April 7 hearing --- Donna Bair case --- County Board of Appeals Schedule

Good morning Counsel,

I spoke with the Board and they have agreed to grant the request for continuance of this matter until such time as we can safely hold in-person hearings.

Thank you,

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

Confidentiality Statement

This electronic mail transmission contains confidential information belonging to the sender which is legally privileged and confidential. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or taking of any action based on the contents of this electronic mail transmission is strictly prohibited. If you have received this electronic mail transmission in error, please immediately notify the sender.

From: Lawrence Schmidt <lschmidt@sgs-law.com>
Sent: Monday, June 29, 2020 9:19 AM
To: Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov>; Krysundra Cannington <kcannington@baltimorecountymd.gov>
Cc: reistlaxcoach@gmail.com; tom@montanye.net; rscoffin@verizon.net; Carole Demilio <cdemilio@baltimorecountymd.gov>; Rebecca Wheatley <rwheatley@baltimorecountymd.gov>; J. Carroll Holzer, Esquire (jcholzer38@gmail.com) (jcholzer38@gmail.com) <jcholzer38@gmail.com>; Dave Hash <dhash@jhmi.edu>; Sue Benson <sbensoncomm@aol.com>; Alyssa Moyers <amoyers@sgs-law.com>; Bair, Donna (donna.bair@yahoo.com) <donna.bair@yahoo.com>
Subject: RE: April 7 hearing --- Donna Bair case --- County Board of Appeals Schedule

Krysundra Cannington

From: Lawrence Schmidt <lschmidt@sgs-law.com>
Sent: Monday, June 29, 2020 9:19 AM
To: Peter Max Zimmerman; Krysundra Cannington
Cc: reistlaxcoach@gmail.com; tom@montanye.net; rscoffin@verizon.net; Carole Demilio; Rebecca Wheatley; J. Carroll Holzer, Esquire (jcholzer38@gmail.com) (jcholzer38 @gmail.com); Dave Hash; Sue Benson; Alyssa Moyers; Bair, Donna (donna.bair@yahoo.com)
Subject: RE: April 7 hearing --- Donna Bair case --- County Board of Appeals Schedule

CAUTION: This message from lschmidt@sgs-law.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Ms. Cannington
I wanted to take this opportunity to respond to Mr. Zimmerman's emails regarding the continuation of the Board's hearing on the above matter. After conferring with my client, please note that we agree to move forward in whatever manner the Board deems appropriate and proper. We recognize the multiple issues caused by the coronavirus pandemic and resulting shut down of the Board and will defer to whatever course of action the Board deems proper. Thank you.

Lawrence E. Schmidt | Partner
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
lschmidt@sgs-law.com | www.sgs-law.com

This email contains information from the law firm of Smith, Gildea & Schmidt, LLC which may be confidential and/or privileged. The information is intended to be for the exclusive use of the individual or entity named above. If you are not the intended recipient, be advised that any disclosure, copying, distribution or other use of this information is strictly prohibited. If you have received this e-mail in error, please notify Smith, Gildea & Schmidt, LLC by telephone immediately.

From: Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov>
Sent: Friday, March 27, 2020 11:33 AM
To: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Cc: Lawrence Schmidt <lschmidt@sgs-law.com>; reistlaxcoach@gmail.com; tom@montanye.net; rscoffin@verizon.net; Carole Demilio <cdemilio@baltimorecountymd.gov>; Rebecca Wheatley <rwheatley@baltimorecountymd.gov>; J. Carroll Holzer, Esquire (jcholzer38@gmail.com) (jcholzer38@gmail.com) <jcholzer38@gmail.com>; Dave Hash <dhash@jhmi.edu>; Sue Benson <sbensoncomm@aol.com>
Subject: April 7 hearing --- Donna Bair case --- County Board of Appeals Schedule

Dear Ms. Cannington, the Board, and everybody,

As much as we would all wish to progress with this case on April 7, I do not see how that is practical given the coronavirus situation and social distancing and congregational limits. There are many witnesses and interested persons, and we would exceed 10 present.

Krysundra Cannington

From: Peter Max Zimmerman
Sent: Wednesday, June 17, 2020 11:54 AM
To: Krysundra Cannington
Cc: Lawrence Schmidt; rscoffin@verizon.net; reistlaxcoach@gmail.com; tom@montanye.net; Nancy C. West; Carole Demilio
Subject: Follow-up on scheduling of Bair continuation

Dear Ms. Cannington,

To follow up, at this time, we are objecting specifically only to continuation of the Bair trial remotely for reasons expressed in our office's letter. We submit that a regular trial can reasonably be scheduled with all deliberate speed for a September or October plenary trial.

The Bair case is the only pending trial hearing in midstream in which we are participating actively. In this context, we felt it incumbent to state our concerns as soon as possible.

This case appears to be the first case to come up, as it involves a continuation. So it is the only case we have looked at particularly.

Sincerely, Peter Max Zimmerman

Krysundra Cannington

From: Lawrence Schmidt <lschmidt@sgs-law.com>
Sent: Wednesday, June 17, 2020 11:49 AM
To: Krysundra Cannington; Peter Max Zimmerman
Cc: reistlaxcoach@gmail.com; tom@montanye.net; rscoffin@verizon.net; Carole Demilio; Nancy C. West
Subject: RE: Donna Bair - 4607 Prospect Avenue - Case No 2019-342-SPHA

CAUTION: This message from lschmidt@sgs-law.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Sunny: Maybe I have figured it out. I looked through my emails and noticed one from you dated June 8 (that date is referenced in Mr. Z's letter) which provided what I would call "generic" info about the Board's plans insofar as reopening and conducting hearings. To me, this seemed to be in line with what the ALJ is doing (I actually have a hearing there next week) and the Courts.

I suppose Mr. Zimmerman is objecting to the Bair case being one of the ones being conducted in this format.

Given the nature of the beast (i.e. that all cases at the Board are, by nature, contested) it would seem that his objections would apply to all and that he doesn't want the Board to re-open, at all.

In any event. I will review his letter, confer with my client, and let you know our position.

If you do actually assign a date for this matter, then I am sure that you will let me know.

Larry Schmidt

Lawrence E. Schmidt | Partner
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
lschmidt@sgs-law.com | www.sgs-law.com

This email contains information from the law firm of Smith, Gildea & Schmidt, LLC which may be confidential and/or privileged. The information is intended to be for the exclusive use of the individual or entity named above. If you are not the intended recipient, be advised that any disclosure, copying, distribution or other use of this information is strictly prohibited. If you have received this e-mail in error, please notify Smith, Gildea & Schmidt, LLC by telephone immediately.

From: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Sent: Wednesday, June 17, 2020 11:24 AM
To: Lawrence Schmidt <lschmidt@sgs-law.com>; Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov>
Cc: reistlaxcoach@gmail.com; tom@montanye.net; rscoffin@verizon.net; Carole Demilio <cdemilio@baltimorecountymd.gov>; Nancy C. West <nwest@baltimorecountymd.gov>
Subject: RE: Donna Bair - 4607 Prospect Avenue - Case No 2019-342-SPHA

Mr. Schmidt,

As I also just received this email at 11:05 a.m. today, I do not have any answers yet. I will let you know as soon as possible.

Krysundra Cannington

From: Krysundra Cannington
Sent: Wednesday, June 17, 2020 11:24 AM
To: Lawrence Schmidt; Peter Max Zimmerman
Cc: reistlaxcoach@gmail.com; tom@montanye.net; rscoffin@verizon.net; Carole Demilio; Nancy C. West
Subject: RE: Donna Bair - 4607 Prospect Avenue - Case No 2019-342-SPHA

Mr. Schmidt,

As I also just received this email at 11:05 a.m. today, I do not have any answers yet. I will let you know as soon as possible.

Thank you,

Sunny

From: Lawrence Schmidt <lschmidt@sgs-law.com>
Sent: Wednesday, June 17, 2020 11:21 AM
To: Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov>; Krysundra Cannington <kcannington@baltimorecountymd.gov>
Cc: reistlaxcoach@gmail.com; tom@montanye.net; rscoffin@verizon.net; Carole Demilio <cdemilio@baltimorecountymd.gov>; Nancy C. West <nwest@baltimorecountymd.gov>
Subject: RE: Donna Bair - 4607 Prospect Avenue - Case No 2019-342-SPHA

CAUTION: This message from lschmidt@sgs-law.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Ms. Cannington:

I received today the email below from Mr. Zimmerman. This is the first I have heard of this. I have not received any email, or any notice. Can you advise what the Board is proposing at this point?

Thanks.

Larry

Lawrence E. Schmidt | Partner
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
lschmidt@sgs-law.com | www.sgs-law.com

This email contains information from the law firm of Smith, Gildea & Schmidt, LLC which may be confidential and/or privileged. The information is intended to be for the exclusive use of the individual or entity named above. If you are not the intended recipient, be advised that any disclosure, copying, distribution or other use of this information is strictly prohibited. If you have received this e-mail in error, please notify Smith, Gildea & Schmidt, LLC by telephone immediately.

Krysundra Cannington

From: Lawrence Schmidt <lschmidt@sgs-law.com>
Sent: Wednesday, June 17, 2020 11:21 AM
To: Peter Max Zimmerman; Krysundra Cannington
Cc: reistlaxcoach@gmail.com; tom@montanye.net; rscoffin@verizon.net; Carole Demilio; Nancy C. West
Subject: RE: Donna Bair - 4607 Prospect Avenue - Case No 2019-342-SPHA

CAUTION: This message from lschmidt@sgs-law.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Ms. Cannington:

I received today the email below from Mr. Zimmerman. This is the first I have heard of this. I have not received any email, or any notice. Can you advise what the Board is proposing at this point?

Thanks.

Larry

Lawrence E. Schmidt | Partner
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
lschmidt@sgs-law.com | www.sgs-law.com

This email contains information from the law firm of Smith, Gildea & Schmidt, LLC which may be confidential and/or privileged. The information is intended to be for the exclusive use of the individual or entity named above. If you are not the intended recipient, be advised that any disclosure, copying, distribution or other use of this information is strictly prohibited. If you have received this e-mail in error, please notify Smith, Gildea & Schmidt, LLC by telephone immediately.

From: Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov>
Sent: Wednesday, June 17, 2020 11:05 AM
To: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Cc: Lawrence Schmidt <lschmidt@sgs-law.com>; reistlaxcoach@gmail.com; tom@montanye.net; rscoffin@verizon.net; Carole Demilio <cdemilio@baltimorecountymd.gov>; Nancy C. West <nwest@baltimorecountymd.gov>
Subject: Donna Bair - 4607 Prospect Avenue - Case No 2019-342-SPHA

Dear Ms. Cannington, County Board of Appeals Administrator,

The attached letter expresses our office's issues and objections concerning the proposed remote Webex trial for continuation of the Bair case. We submit that two in-person hearing days should be scheduled in September or October, subject to any guidelines then applicable.

Krysundra Cannington

From: Krysundra Cannington
Sent: Wednesday, June 17, 2020 11:20 AM
To: Peter Max Zimmerman
Cc: Lawrence Schmidt; reistlaxcoach@gmail.com; tom@montanye.net; rscoffin@verizon.net; Carole Demilio; Nancy C. West; Wheatley, Rebecca
Subject: RE: Donna Bair - 4607 Prospect Avenue - Case No 2019-342-SPHA

Pete,

To be clear, are you only objecting to the scheduling of a remote hearing in the Bair matter?

Sunny

From: Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov>
Sent: Wednesday, June 17, 2020 11:05 AM
To: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Cc: Lawrence Schmidt <lschmidt@sgs-law.com>; reistlaxcoach@gmail.com; tom@montanye.net; rscoffin@verizon.net; Carole Demilio <cdemilio@baltimorecountymd.gov>; Nancy C. West <nwest@baltimorecountymd.gov>
Subject: Donna Bair - 4607 Prospect Avenue - Case No 2019-342-SPHA

Dear Ms. Cannington, County Board of Appeals Administrator,

The attached letter expresses our office's issues and objections concerning the proposed remote Webex trial for continuation of the Bair case. We submit that two in-person hearing days should be scheduled in September or October, subject to any guidelines then applicable.

Thank you and the Board members for your attention to this matter,

Sincerely, Peter Max Zimmerman, People's Counsel, 410 887-2188

Krysundra Cannington

From:	Peter Max Zimmerman
Sent:	Wednesday, June 17, 2020 11:05 AM
To:	Krysundra Cannington
Cc:	Lawrence Schmidt; reistlaxcoach@gmail.com; tom@montanye.net; rscoffin@verizon.net; Carole Demilio; Nancy C. West
Subject:	Donna Bair - 4607 Prospect Avenue - Case No 2019-342-SPHA
Attachments:	Ltr to Panel Members on Donna Bair - 4607 Prospect Avenue - 2019-342-SPHA.pdf

Dear Ms. Cannington, County Board of Appeals Administrator,

The attached letter expresses our office's issues and objections concerning the proposed remote Webex trial for continuation of the Bair case. We submit that two in-person hearing days should be scheduled in September or October, subject to any guidelines then applicable.

Thank you and the Board members for your attention to this matter,

Sincerely, Peter Max Zimmerman, People's Counsel, 410 887-2188

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

June 17, 2020

William A. McComas Chairman
Andrew M. Belt, Panel Member
Maureen E. Murphy, Panel Member
Board of Appeals of Baltimore County
105 West Chesapeake Avenue, Suite 203
Towson, Maryland 21204

Re: Donna Bair, Petitioner
4607 Prospect Avenue
Case Nos.: 2019-342-SPHA

Dear Chairman McComas and Panel Members Murphy and Belt,

This responds to the June 8 e-mail from County Board of Appeals (CBA) administrator Krysundra Cannington, we respectfully object to the arrangement of a Webex remote event for a second trial hearing day (and any other days, if necessary) in the above Bair case. This objection is accentuated here because Petitioner Donna Bair (Bair) presented her case in open hearing on February 6, 2020. This discrimination is unfair and contravenes due process of law.

The scheduled second hearing day of April 7 was cancelled because of the pandemic after Governor Lawrence Hogan's order of March 16. There were also orders by Chief Judge Mary Ellen Barbera effectively closing the courts except for specified emergency or other priority cases.

We recognize the good faith effort of the CBA to resume activities backlogged by the pandemic. This includes the balanced and reasonable resumption of public deliberations and several of our cases and potential oral arguments on motions or for on-the-record appeals.

Here, while further delay prolongs the presence of dwelling additions and fencing in conflict with zoning law, due process warrants a moderate additional delay for a plenary in-person trial hearing, where, as noted, Bair had the benefit of such a hearing to present her case. We have e-mailed and phoned the leading Protestants --- Steve Fradkin, Tom Montanye, and Robin Coffin --- and they agree that a remote trial is inappropriate and unfair.

The CBA should assess soon the county's social reopening and schedule two days of plenary public hearings. We note that the District Courts are opening for non-jury trials June 22. The Circuit Courts are currently under the phased Maryland Court of Appeals Order for Phase V reopening in October. The CBA could reasonably proceed to schedule Bair in September or October, subject to adjustment if judicial guidelines or the pandemic demand it.

A few more months delay in this multi-year litigation will assure fairness and due process of law. Maryland Aggregates v. State 337 Md. 658, 686-87 (1995); Calvert County Pl. Comm'n v. Howlin Realty Mgt, Inc. 364 Md. 301, 322 (2001). Anyway. It it will likely be late July or August before a remote trial could be held, if then, given summer schedules of many participants.

Chief Judge Mary Ellen Barbera of the Maryland Court of Appeals implicitly recognized the practical problems of remote trials in her latest administrative order for the court system. Neither jury or non-jury trials are allowed until October. They are not allowed remotely in the phased transition which allows remote oral arguments. While this order does not apply directly to the County Board of Appeals, it appears reasonable to follow it.

Here are several practical problems for remote events:

1. Notice, compulsion of witness attendance, subpoenas, pretrial disclosures. A remote trial involves additional complexities and fairness issues here. There have to be notice provisions to enable all members of the public to attend and participate, not just those already identified. As the Court of Appeals observed, any hearing legislatively provided as "public" must be open to the public, even if not a contested case hearing. Sugarloaf Citizens v. Waste Disposal Authority 323 Md. 641, 657 n.12 (1991). Any person interested in the case may participate. Dorsey v. Bethel AME Church 375 Md. 59, 75-77 (2003).There would have also to be provisions for web compulsion of witnesses, subpoenas, and production of exhibits by all members of the public. If pretrial production of exhibits is involved, this entails pretrial identification of witnesses. Bair did not have to make any pretrial disclosures.

2. Trying the case: Trials are not scripted. Parties adjust to ongoing testimony, exhibits, and rulings. This occurs even more in *de novo* hearings. There are necessarily attorney/intraparty communications. Attorneys, clients, participants and experts communicate with each other in the hearing room during the trial or at recesses. This may include determination, scheduling, and scope of witnesses, unforeseen eventualities. It will not be possible to do that at a Webex activity.

3. Evaluating impact and credibility of witnesses. Testimony on a computer screen does not have the same impact as in-person testimony. Moreover, there is little or no body language on a computer screen. The dynamics of attorney/witness interactions are not the same. Webex hinders evaluation of impact and credibility.

4. Limited screen space for videos of participants. Our experience with Zoom and Skype reflects screen space for a relatively small number of videos. In land use cases, there are often many participants. Here, we have 3 CBA panel members, 2 or more attorneys (with Bair associates or Deputy People's Counsel), expert(s), at least 3 nearby property owners, community association representatives, and many others. It is unpredictable who will be shown on the screen at any time. This hinders the ability of participants to observe the proceedings. It is also unpredictable whether the screen will focus efficiently as speakers shift with high frequency at times.

5. Screening of exhibits. How are exhibits to be placed on the screen, especially site plans; photographs, some large; and pattern books where the fine print is already almost illegible. How do we question witnesses about exhibits? How does one point to, mark, or otherwise make use of exhibits, as is often done? What if there are physical exhibits?

6. Other exhibit problems. What happens when it becomes apparent during the course of the hearing that additional exhibits are appropriate, not anticipated or identified prior to the hearing? Does pretrial identification of exhibits apply to all parties before the first day of hearing? How can area citizens possibly anticipate what exhibits they will need until they observe a petitioner's case? Why should they have to provide any exhibits at all until they see what a petitioner has to say?

7. Evidentiary rulings. Dealing with evidentiary objections and rulings is already often challenging, including the opportunity for various parties to argue, and occasionally the opportunity for CBA members to confer with each other. This will be even more challenging and likely protracted by Webex.

8. Legal issues. Sometimes legal issues arise during the hearing, whether evidentiary or other. Sometimes, It may be helpful to provide copies of appellate cases. This cannot be done by Webex.

9. Technical issues. Citizens may have technical problems linking in, based on computer capability or location. Also, will the recording of the Webex work well? Will a transcriber know who is speaking?

10. Vacation and social distance issues. Even though the pandemic is limiting travel, some parties may be away in the region in July and August, whether for vacation or to socially distance. It makes sense to envision a September or October resumption, with normal public hearings and social distancing if then warranted.

11. Press access. The public character of hearings requires availability to the press. There are news publications which cover Baltimore County land use cases, including regional publications such as The Country Crier, The Peak, and The Villager. How would the Webex be made available to them.

12. Stress. It is uncertain to what degree it is stressful for participants to concentrate on the computer screen all day. While a day at a public zoning hearing may also be challenging, it is likely not challenging to that degree.

These problems are just aggravated here where the remote Webex is injected in the middle of the case. Bair has had the advantage of the usual open *de novo* hearing, with all of its accoutrements and presentational benefits and impacts, and without any pretrial disclosure of witnesses or exhibits. The shift to remote for Protestants and our office will suffer from all the enumerated infirmities and newly advance disclosure of exhibits and to an extent, witnesses. Such bifurcation of this case would manifestly be prejudicial and unfair.

Our office is anxious to make progress. Unfortunately, the wheels of justice grind slower than ever due to the pandemic. But the better and proper course is to envision the resumption and scheduling of proper normal public hearings. With an optimistic approach, it should very soon be plausible to schedule this case for two hearing days in September or October. The benefits to due process and the efficient administration of justice will outweigh by far the impairment of due process of law in the Webex setting.

We trust the CBA will appreciate our office's concerns. It is noteworthy there are also legal issues regarding the adequacy of the predicate for Webex or other remote proceedings. Nevertheless, as a matter of public interest, in view of the pandemic, we shall not enumerate them at this time. We are approaching this situation from the point of view of a balance between progress and fairness. We also refer to Chief Judge Barbera's orders as useful guides.

Thank you for your attention to this important matter.

Sincerely,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio
Deputy People's Counsel

cc: Lawrence Schmidt, Attorney for Donna Bair, sent via email
Steven Fradkin, sent via email
Robin S. Coffin, sent via email
Tom Montanye, sent via email
Nancy C. West, Assistant County Attorney

Krysundra Cannington

From: Rebecca Wheatley
Sent: Tuesday, June 9, 2020 1:07 PM
To: Krysundra Cannington
Cc: Peter Max Zimmerman
Subject: Donna Bair 2019-342-SPHA

Good Afternoon,

Our office kindly requests a CD copy of the first day of hearing in the Donna Bair matter. The first day of hearing was February 6, 2020.

Thank you in advance for your consideration.

Rebecca Wheatley, Legal Secretary
Office of People's Counsel for Baltimore County
410-887-2188

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

May 26, 2020

Ms. Donna V. Bair
4607 Prospect Avenue
Glyndon, Maryland 21071

Re: In the Matter of: Donna V. Bair
Case No.: 19-342-SPHA

Dear Ms. Bair:

In accordance with the request of Lawrence E. Schmidt, Esquire, kindly find enclosed a CD of the February 6, 2020 hearing held in your case.

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

Sincerely,

Tammy A. Zahner

Tammy A. Zahner
Legal Secretary

/taz
Enclosure

c: Lawrence E. Schmidt, Esquire

SMITH, GILDEA & SCHMIDT LLC

MICHAEL PAUL SMITH
DAVID K. GILDEA
LAWRENCE E. SCHMIDT
JASON T. VETTORI
MARIELA C. D'ALESSIO*
MELISSA L. ENGLISH**
* Admitted in MD, PA, FL
** Admitted in MD, NC

ROBERT B. HAMILTON
NICOLE LAMBDIN
CARMELO D. MORABITO
ZACHARY J. WILKINS
of counsel:
EUGENE A. ARBAUGH, JR.
MARY G. LOKER
STEPHEN J. NOLAN

May 19, 2020

Sent Via Email and First Class Mail
Ms. Krysundra L. Cannington, Administrator
Board of Appeals of Baltimore County
Jefferson Building
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204

RECEIVED
MAY 26 2020
BALTIMORE COUNTY
BOARD OF APPEALS

Re: In the Matter of: Donna V. Bair
4607 Prospect Avenue
19-342-SPHA

Dear Ms. Cannington,

I am writing to request a CD copy of the February 6, 2020 hearing held in the above referenced matter. I have enclosed a check in the amount of $50 which covers the fee for this request.

In light of the COVID pandemic and the continued remote access for most of us, the Board included, I have enclosed an envelope, postage prepaid, for you to send the copied CD to my client directly once you have had the opportunity to complete this request.

Please contact me should you have any questions. Thank you.

Very truly yours,

Lawrence E. Schmidt

LES:am
Enclosure

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

March 30, 2020

To whom it may concern:

Due to concerns about COVID-19, all Board of Appeals hearings and deliberations are being cancelled through May 1, 2020. Including but not limited to the matters of:

MGJ Properties, LLC, Case No.: 18-342-SPH;
Donna Bair, Case No.: 19-342-SPHA;
Robb Cohen and Gail Schwartz, Case No.: CBA-20-013;
NPR, LLC, Case No.: 19-364-XA;

We will continue to evaluate and adjust as the situation progresses. All hearings and deliberations will be reassigned as soon as possible. Notices will be sent upon rescheduling and our website, www.baltimorecountymd.gov/Agencies/appeals/index.html, will be updated with any changes.

We kindly request that you forward this letter to the parties, or anyone else you know involved in this matter.

Please contact our office with any questions.

Very truly yours,

Krysundra Cannington HOP

Krysundra Cannington
Administrator

Board of Appeals of Baltimore County

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

February 21, 2020

NOTICE OF ASSIGNMENT - DAY 2

IN THE MATTER OF: Donna V. Bair – Legal Owner
4607 Prospect Avenue
19-342-SPHA 4th Election District; 3rd Councilmanic District

8/9/19 Opinion and Order of the Administrative Law Judge wherein the:
- Petition for Special Hearing:
  1) to approve a nonconforming lot width and lot area; and
  2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of 30 inches was GRANTED; the
- Petition for Special Hearing:
  1) to approve a nonconforming dwelling side yard setback; and
  2) to confirm that an existing fence (swimming pool enclosure) with a height of 6' is in compliance with BCZR §427.1 and BCC §13-6-101 was DENIED; and the
- Petition for Variance:
  1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.;
  2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; and
  3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches was DENIED

9/9/19 Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire on behalf of Donna V. Bair, Petitioner.

9/25/19 Order on Motion for Reconsideration issued by the Administrative Law Judge wherein it was Ordered:
- that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms in BCZR §104;
- that all new construction must comply with current setbacks and restrictions at the time of new construction; and
- all other matters and respects of Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

The Board convened for hearing on February 6, 2020. This matter did not conclude. Upon agreement of the parties, a second day of hearing has been

ASSIGNED FOR: **APRIL 7, 2020, 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.
- Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits with the Board unless otherwise requested. Said Motions, Memoranda and exhibits must be in MDEC compliant formats pursuant to the Maryland Rules, unless otherwise requested
- Please contact our office for information about projection equipment. 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 Cannington, Administrator

c. Counsel for Petitioners : Lawrence E. Schmidt, Esquire
Legal Owner : Donna Bair

Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
John E. Lemmerman/RTF Associates, Inc.
Kim and Tom Montanye
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz

C. Pete Gutwald, Director/Department of Planning
James R. Benjamim, Jr., County Attorney
Michael D. Mallinoff, Director/PAI
Nancy C. West, Assistant County Attorney
Office of People's Counsel
Paul M. Mayhew, Managing Administrative Law Judge

Krysundra Cannington

From: Peter Max Zimmerman
Sent: Thursday, February 20, 2020 9:04 AM
To: Krysundra Cannington; Steve Fradkin
Cc: Tom Montanye; Peter Max Zimmerman; Lawrence Schmidt, Esquire; rscoffin@verizon.net; Alyssa Moyers (amoyers@sgs-law.com); Patti Fradkin
Subject: RE: The Bair Petition, Case No. 19-342-SPHA

Ms. Cannington,

Our office is ok with April 7th.

Thank you.

Rebecca Wheatley
People's Counsel Secretary

From: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Sent: Tuesday, February 18, 2020 2:57 PM
To: Steve Fradkin <reistlaxcoach@gmail.com>
Cc: Tom Montanye <Tom@montanye.net>; Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov>; Lawrence Schmidt, Esquire <lschmidt@sgs-law.com>; rscoffin@verizon.net; Alyssa Moyers (amoyers@sgs-law.com) <amoyers@sgs-law.com>; Rebecca Wheatley <rwheatley@baltimorecountymd.gov>; Patti Fradkin <pfradkin003@gmail.com>
Subject: RE: The Bair Petition, Case No. 19-342-SPHA

Mr. and Mrs. Fradkin,

I understand your frustration with not being included. Please be assured, I make sure that you, Mr. Montanye, and Ms. Coffin are on every email I send.

While Mr. Schmidt may have concluded his case on February 6th, he is entitled to question any witnesses any other party calls to testify. Mr. Schmidt will still need to attend and participate in any further hearings.

Again, the dates currently available for our Board are: April 7, May 12, 27, and 28. Please let me know by Friday whether these dates work for you. Once we have a date that works for everyone, we will send a formal assignment notice.

Please feel free to call our office with any questions.

Thank you for your cooperation in scheduling this matter.

Sunny

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

Krysundra Cannington

From: Tom Montanye <Tom@montanye.net>
Sent: Wednesday, February 19, 2020 5:09 PM
To: Krysundra Cannington
Subject: Re: The Bair Petition, Case No. 19-342-SPHA

CAUTION: This message from tmontanye@gmail.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Ms. Cannington,

The Montanye's are okay with 4/7.

Thanks,

-Tom Montanye

On Tue, Feb 18, 2020 at 2:04 PM Krysundra Cannington <kcannington@baltimorecountymd.gov> wrote:

> Good afternoon,
>
> I would like to clarify. We held a hearing in the above referenced matter on February 6, 2020. This matter did not conclude on that date. At this point, we are trying to find a date that works for everyone for a second day of hearings. No one has asked for a postponement.
>
> The following dates are currently available for our panel: April 7, May 12, 27 or 28.
>
> Please advise by Friday, February 21, 2020 as to your availability.
>
> Thank you,
>
> Sunny
>
> Krysundra "Sunny" Cannington
>
> Administrator

Krysundra Cannington

From: Patti Fradkin <pfradkin003@gmail.com>
Sent: Wednesday, February 19, 2020 9:52 PM
To: Krysundra Cannington
Subject: BOA Case # 2019-0342-SPHA

CAUTION: This message from pfradkin003@gmail.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Ms. Cannington,
Mr. and Mrs. Fradkin are both available April 7. Thank you very much.

Patti Fradkin

Krysundra Cannington

From: Alyssa Moyers <amoyers@sgs-law.com>
Sent: Wednesday, February 19, 2020 8:58 AM
To: Krysundra Cannington; Steve Fradkin
Cc: Tom Montanye; Peter Max Zimmerman; Lawrence Schmidt; rscoffin@verizon.net; Rebecca Wheatley; Patti Fradkin
Subject: RE: The Bair Petition, Case No. 19-342-SPHA

CAUTION: This message from amoyers@sgs-law.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Sunny,

Our team is available any of the offered dates: April 7, May 12, 27, and 28.

Thank you.

- *Alyssa*

Alyssa Fiore Moyers | Paralegal
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
amoyers@sgs-law.com | www.sgs-law.com

This email contains information from the law firm of Smith, Gildea & Schmidt, LLC which may be confidential and/or privileged. The information is intended to be for the exclusive use of the individual or entity named above. If you are not the intended recipient, be advised that any disclosure, copying, distribution or other use of this information is strictly prohibited. If you have received this e-mail in error, please notify Smith, Gildea & Schmidt, LLC by telephone immediately.

Please consider the environment before printing this email.

From: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Sent: Tuesday, February 18, 2020 2:57 PM
To: Steve Fradkin <reistlaxcoach@gmail.com>
Cc: Tom Montanye <Tom@montanye.net>; Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov>; Lawrence Schmidt <lschmidt@sgs-law.com>; rscoffin@verizon.net; Alyssa Moyers <amoyers@sgs-law.com>; Rebecca Wheatley <rwheatley@baltimorecountymd.gov>; Patti Fradkin <pfradkin003@gmail.com>
Subject: RE: The Bair Petition, Case No. 19-342-SPHA

Mr. and Mrs. Fradkin,

I understand your frustration with not being included. Please be assured, I make sure that you, Mr. Montanye, and Ms. Coffin are on every email I send.

While Mr. Schmidt may have concluded his case on February 6th, he is entitled to question any witnesses any other party calls to testify. Mr. Schmidt will still need to attend and participate in any further hearings.

Again, the dates currently available for our Board are: April 7, May 12, 27, and 28. Please let me know by Friday whether these dates work for you. Once we have a date that works for everyone, we will send a formal assignment notice.

Krysundra Cannington

From: Krysundra Cannington
Sent: Wednesday, February 19, 2020 8:40 AM
To: 'Steve Fradkin'
Cc: Tom Montanye; rscoffin@verizon.net; Lawrence Schmidt, Esquire; Peter Max Zimmerman; Wheatley, Rebecca; Alyssa Moyers (amoyers@sgs-law.com)
Subject: RE: The Bair Petition, Case No. 19-342-SPHA

Good morning Mr. Fradkin,

All parties have the right to call rebuttal witnesses.

If you need more explanation, I suggest you consult an attorney as my ability to answer your questions is limited.

Sunny

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

Confidentiality Statement

This electronic mail transmission contains confidential information belonging to the sender which is legally privileged and confidential. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or taking of any action based on the contents of this electronic mail transmission is strictly prohibited. If you have received this electronic mail transmission in error, please immediately notify the sender.

From: Steve Fradkin <reistlaxcoach@gmail.com>
Sent: Tuesday, February 18, 2020 6:00 PM
To: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Subject: Re: The Bair Petition, Case No. 19-342-SPHA

CAUTION: This message from reistlaxcoach@gmail.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Yes ma'am, we understand that. We understand that Mr. Schmidt will want to question us as well. My point was that Mr. Schmidt made it sound like he was done with his line of inquiry from his side. Then Mr. Montanye told me on Monday that the dates were being changed again because an expert witness for Mr. Schmidt couldn't attend the dates you had offered. My only point was, I thought Mr. Schmidt was done with his side of the hearing, that's all. Patti and I were not in the original thread, so none of the information disseminated reached us, so we were simply confused as to why the absence of another expert witness for Mr. Schmidt was the reason for the date changes, that's all. Again, not having that information is why all the questions. We will check our schedules and see what days coincide with the days offered.

Krysundra Cannington

From: Steve Fradkin <reistlaxcoach@gmail.com>
Sent: Tuesday, February 18, 2020 6:00 PM
To: Krysundra Cannington
Subject: Re: The Bair Petition, Case No. 19-342-SPHA

CAUTION: This message from reistlaxcoach@gmail.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Yes ma'am, we understand that. We understand that Mr. Schmidt will want to question us as well. My point was that Mr. Schmidt made it sound like he was done with his line of inquiry from his side. Then Mr. Montanye told me on Monday that the dates were being changed again because an expert witness for Mr. Schmidt couldn't attend the dates you had offered. My only point was, I thought Mr. Schmidt was done with his side of the hearing, that's all. Patti and I were not in the original thread, so none of the information disseminated reached us, so we were simply confused as to why the absence of another expert witness for Mr. Schmidt was the reason for the date changes, that's all. Again, not having that information is why all the questions. We will check our schedules and see what days coincide with the days offered.
Thank you for your help and knowledge.

Patti and Steve Fradkin
reistlaxcoach@gmail.com

On Feb 18, 2020, at 2:57 PM, Krysundra Cannington <kcannington@baltimorecountymd.gov> wrote:

Mr. and Mrs. Fradkin,

I understand your frustration with not being included. Please be assured, I make sure that you, Mr. Montanye, and Ms. Coffin are on every email I send.

While Mr. Schmidt may have concluded his case on February 6th, he is entitled to question any witnesses any other party calls to testify. Mr. Schmidt will still need to attend and participate in any further hearings.

Again, the dates currently available for our Board are: April 7, May 12, 27, and 28. Please let me know by Friday whether these dates work for you. Once we have a date that works for everyone, we will send a formal assignment notice.

Please feel free to call our office with any questions.

Thank you for your cooperation in scheduling this matter.

Sunny

Krysundra Cannington

From: Krysundra Cannington
Sent: Tuesday, February 18, 2020 2:57 PM
To: 'Steve Fradkin'
Cc: Tom Montanye; Peter Max Zimmerman; Lawrence Schmidt, Esquire; rscoffin@verizon.net; Alyssa Moyers (amoyers@sgs-law.com); Rebecca Wheatley; Patti Fradkin
Subject: RE: The Bair Petition, Case No. 19-342-SPHA

Mr. and Mrs. Fradkin,

I understand your frustration with not being included. Please be assured, I make sure that you, Mr. Montanye, and Ms. Coffin are on every email I send.

While Mr. Schmidt may have concluded his case on February 6th, he is entitled to question any witnesses any other party calls to testify. Mr. Schmidt will still need to attend and participate in any further hearings.

Again, the dates currently available for our Board are: April 7, May 12, 27, and 28. Please let me know by Friday whether these dates work for you. Once we have a date that works for everyone, we will send a formal assignment notice.

Please feel free to call our office with any questions.

Thank you for your cooperation in scheduling this matter.

Sunny

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

Confidentiality Statement

This electronic mail transmission contains confidential information belonging to the sender which is legally privileged and confidential. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or taking of any action based on the contents of this electronic mail transmission is strictly prohibited. If you have received this electronic mail transmission in error, please immediately notify the sender.

From: Steve Fradkin <reistlaxcoach@gmail.com>
Sent: Tuesday, February 18, 2020 2:18 PM
To: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Cc: Tom Montanye <Tom@montanye.net>; Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov>; Lawrence Schmidt, Esquire <lschmidt@sgs-law.com>; rscoffin@verizon.net; Alyssa Moyers (amoyers@sgs-law.com) <amoyers@sgs-law.com>; Rebecca Wheatley <rwheatley@baltimorecountymd.gov>; Patti Fradkin

Krysundra Cannington

From: Steve Fradkin <reistlaxcoach@gmail.com>
Sent: Tuesday, February 18, 2020 2:18 PM
To: Krysundra Cannington
Cc: Tom Montanye; Peter Max Zimmerman; Lawrence Schmidt, Esquire; rscoffin@verizon.net; Alyssa Moyers (amoyers@sgs-law.com); Rebecca Wheatley; Patti Fradkin
Subject: Re: The Bair Petition, Case No. 19-342-SPHA

CAUTION: This message from reistlaxcoach@gmail.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Yes ma'am, I understand that. Again, I did not receive an email proposing another day, I was not included in that email thread. What I said was I thought Mr. Schmidt was done, as that is essentially what he said at the end of the hearing on 02/06/20. Mr. Zimmerman was getting ready to call a witness, but the judges asked that we wait and carry on to another day. All I'm saying is that we are requesting that the second day of the hearing be done on one of the dates for continuance mentioned, or at least prior to 04/17, as was suggested by Mr. Montanye. My apologies for not utilizing the legal vocabulary on my first correspondence.

Patti and Steve Fradkin
reistlaxcoach@gmail.com

On Feb 18, 2020, at 2:04 PM, Krysundra Cannington <kcannington@baltimorecountymd.gov> wrote:

Good afternoon,

I would like to clarify. We held a hearing in the above referenced matter on February 6, 2020. This matter did not conclude on that date. At this point, we are trying to find a date that works for everyone for a second day of hearings. No one has asked for a postponement.

The following dates are currently available for our panel: April 7, May 12, 27 or 28.

Please advise by Friday, February 21, 2020 as to your availability.

Thank you,

Sunny

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

Krysundra Cannington

From: Krysundra Cannington
Sent: Tuesday, February 18, 2020 2:05 PM
To: 'Steve Fradkin'; Tom Montanye; Peter Max Zimmerman; Lawrence Schmidt, Esquire; 'rscoffin@verizon.net'
Cc: Alyssa Moyers (amoyers@sgs-law.com); Rebecca Wheatley; Patti Fradkin
Subject: RE: The Bair Petition, Case No. 19-342-SPHA

Good afternoon,

I would like to clarify. We held a hearing in the above referenced matter on February 6, 2020. This matter did not conclude on that date. At this point, we are trying to find a date that works for everyone for a second day of hearings. No one has asked for a postponement.

The following dates are currently available for our panel: April 7, May 12, 27 or 28.

Please advise by Friday, February 21, 2020 as to your availability.

Thank you,

Sunny

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

Confidentiality Statement

This electronic mail transmission contains confidential information belonging to the sender which is legally privileged and confidential. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or taking of any action based on the contents of this electronic mail transmission is strictly prohibited. If you have received this electronic mail transmission in error, please immediately notify the sender.

From: Steve Fradkin <reistlaxcoach@gmail.com>
Sent: Tuesday, February 18, 2020 9:30 AM
To: Tom Montanye <Tom@montanye.net>
Cc: Krysundra Cannington <kcannington@baltimorecountymd.gov>; Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov>; Lawrence Schmidt, Esquire <lschmidt@sgs-law.com>; Alyssa Moyers (amoyers@sgs-law.com) <amoyers@sgs-law.com>; Rebecca Wheatley <rwheatley@baltimorecountymd.gov>; Patti Fradkin <pfradkin003@gmail.com>
Subject: Re: The Bair Petition, Case No. 19-342-SPHA

Krysundra Cannington

From: Steve Fradkin <reistlaxcoach@gmail.com>
Sent: Tuesday, February 18, 2020 9:30 AM
To: Tom Montanye
Cc: Krysundra Cannington; Peter Max Zimmerman; Lawrence Schmidt, Esquire; Alyssa Moyers (amoyers@sgs-law.com); Rebecca Wheatley; Patti Fradkin
Subject: Re: The Bair Petition, Case No. 19-342-SPHA

CAUTION: This message from reistlaxcoach@gmail.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Good morning Ms. Carrington.
Apparently Patti and I were not included in the loop somewhere along the line, I found out about the request for postponement from Tom Montanye yesterday morning. I was under the impression that at the end of the day of the hearing Mr. Schmidt had said he had nothing further, and we were, in fact, contemplating calling on one of Mr. Zimmerman's witnesses who said "they would be quick." The judges had commented "It's not the witness we're concerned about, it's the attorney's that we are," as the judges had issued a "hard stop" at 1545 hours. I will have to concur with Mr. Montanye and too, ask that the hearing recommence on 4/17 or earlier so resolution can be obtained in a timely fashion.

Thank you for your time.

We are,

Patti and Steve Fradkin
reistlaxcoach@gmail.com

On Feb 17, 2020, at 11:26 PM, Tom Montanye <Tom@montanye.net> wrote:

Ms. Cannington,

I protest to a delay of the 2nd day beyond the 4/1 reasonable date proposed. There are no facts a second engineer (reason for the delay) will determine that have not already been revealed in the original ALJ hearing and the first full BOA day. Schedules on our side become difficult after mid/late-April. Please propose the first & second opportunity in April, if possible, prior to 4/17. Consider that structures are, and have been, encroaching on 4605 Prospect for years now, and time is of the essence to settle the matter.

Thank you for your consideration.

-Tom Montanye

Krysundra Cannington

From: Tom Montanye <Tom@montanye.net>
Sent: Monday, February 17, 2020 11:26 PM
To: Krysundra Cannington
Cc: Peter Max Zimmerman; Lawrence Schmidt, Esquire; Alyssa Moyers (amoyers@sgs-law.com); Rebecca Wheatley; Steve Fradkin
Subject: Re: The Bair Petition, Case No. 19-342-SPHA

CAUTION: This message from tmontanye@gmail.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Ms. Cannington,

I protest to a delay of the 2nd day beyond the 4/1 reasonable date proposed. There are no facts a second engineer (reason for the delay) will determine that have not already been revealed in the original ALJ hearing and the first full BOA day. Schedules on our side become difficult after mid/late-April. Please propose the first & second opportunity in April, if possible, prior to 4/17. Consider that structures are, and have been, encroaching on 4605 Prospect for years now, and time is of the essence to settle the matter.

Thank you for your consideration.

-Tom Montanye

On Fri, Feb 14, 2020 at 8:13 AM Krysundra Cannington <kcannington@baltimorecountymd.gov> wrote:

> Good morning Mr. Montanye,
>
> Thank you for your prompt response. I am hoping Mr. Zimmerman and Mr. Schmidt respond today. As you indicated March 4 is quickly approaching and to meet our 15-day notice requirement, we would need to issue the assignment notice no later than Tuesday.
>
> Thank you,
>
> Sunny

2/14/2020

No Pete

No 4/8

4/28 & 29

Pete was available both days.

Krysundra Cannington

From: Alyssa Moyers <amoyers@sgs-law.com>
Sent: Friday, February 14, 2020 10:05 AM
To: Krysundra Cannington; 'Tom@montanye.net'
Cc: Peter Max Zimmerman; Lawrence Schmidt; Rebecca Wheatley
Subject: RE: The Bair Petition, Case No. 19-342-SPHA

CAUTION: This message from amoyers@sgs-law.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Sunny,

As a follow up to my email below, and to aide in efficiently rescheduling, our team in unavailable the following dates:

April – 1, 2, 3, 8, 14, 27 and 28
May 4-8 and 13-26

Thank you.

- *Alyssa*

Alyssa Fiore Moyers | Paralegal
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
amoyers@sgs-law.com | www.sgs-law.com

This email contains information from the law firm of Smith, Gildea & Schmidt, LLC which may be confidential and/or privileged. The information is intended to be for the exclusive use of the individual or entity named above. If you are not the intended recipient, be advised that any disclosure, copying, distribution or other use of this information is strictly prohibited. If you have received this e-mail in error, please notify Smith, Gildea & Schmidt, LLC by telephone immediately.

Please consider the environment before printing this email.

From: Alyssa Moyers
Sent: Friday, February 14, 2020 8:41 AM
To: 'Krysundra Cannington' <kcannington@baltimorecountymd.gov>; Tom@montanye.net
Cc: Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov>; Lawrence Schmidt <lschmidt@sgs-law.com>; Rebecca Wheatley <rwheatley@baltimorecountymd.gov>
Subject: RE: The Bair Petition, Case No. 19-342-SPHA

All,

I apologize for our delayed response. We were trying to rearrange some things on our end, however, neither date will work. Our engineer has a conflict with April 1st and Mr. Schmidt has a conflict attending a conference in the Federal Court on March 4th.

At this time, the rest of April looks fairly open other than April 14th. If looking into May, however, please keep in mind that Mr. Schmidt is out of town May 13-26th.

Krysundra Cannington

From: Alyssa Moyers <amoyers@sgs-law.com>
Sent: Friday, February 14, 2020 8:41 AM
To: Krysundra Cannington; Tom@montanye.net
Cc: Peter Max Zimmerman; Lawrence Schmidt; Rebecca Wheatley
Subject: RE: The Bair Petition, Case No. 19-342-SPHA

CAUTION: This message from amoyers@sgs-law.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

All,

I apologize for our delayed response. We were trying to rearrange some things on our end, however, neither date will work. Our engineer has a conflict with April 1st and Mr. Schmidt has a conflict attending a conference in the Federal Court on March 4th.

At this time, the rest of April looks fairly open other than April 14th. If looking into May, however, please keep in mind that Mr. Schmidt is out of town May 13-26th.

Thank you for coordinating.

- *Alyssa*

Alyssa Fiore Moyers | Paralegal
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
amoyers@sgs-law.com | www.sgs-law.com

This email contains information from the law firm of Smith, Gildea & Schmidt, LLC which may be confidential and/or privileged. The information is intended to be for the exclusive use of the individual or entity named above. If you are not the intended recipient, be advised that any disclosure, copying, distribution or other use of this information is strictly prohibited. If you have received this e-mail in error, please notify Smith, Gildea & Schmidt, LLC by telephone immediately.

Please consider the environment before printing this email.

From: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Sent: Friday, February 14, 2020 8:13 AM
To: Tom@montanye.net
Cc: Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov>; Lawrence Schmidt <lschmidt@sgs-law.com>; Alyssa Moyers <amoyers@sgs-law.com>; Rebecca Wheatley <rwheatley@baltimorecountymd.gov>
Subject: RE: The Bair Petition, Case No. 19-342-SPHA

Good morning Mr. Montanye,

Thank you for your prompt response. I am hoping Mr. Zimmerman and Mr. Schmidt respond today. As you indicated March 4 is quickly approaching and to meet our 15-day notice requirement, we would need to issue the assignment notice no later than Tuesday.

Thank you,

Krysundra Cannington

From: Tom Montanye <Tom@montanye.net>
Sent: Thursday, February 13, 2020 9:42 PM
To: Krysundra Cannington
Cc: Peter Max Zimmerman
Subject: Re: The Bair Petition, Case No. 19-342-SPHA

CAUTION: This message from tmontanye@gmail.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Ms. Cannington,

I'm not sure who has gotten back to you from the protestant side. I think most of us responded to an email from Mr. Zimmerman. The Montanye's (Kim and me, immediate neighbors) are okay with either proposed day. I have also heard from (I believe) everyone else that either day works, including the Fradkins (other immediate neighbors), the Glyndon Community Association (Kim Karlsen), Historic Glyndon Inc. (Sue Benson), ROG (Mary Molinaro), Robin Coffin, and several other neighbors on the street who wish to testify.

As 2/4 is right around the corner, I would hope that if that were the day chosen, it would happen tomorrow (Friday), Monday being a holiday (President's Day), in order to give all of us time to adjust our schedules, ask off from work, etc.

Thank you and I look forward to hearing from you.

-Tom Montanye

On Tue, Feb 11, 2020 at 8:49 AM Krysundra Cannington <kcannington@baltimorecountymd.gov> wrote:

> Good morning,
>
> We have the following dates available March 4 or April 1.
>
> Please let me know as soon as possible which of these dates works best for you.
>
> Thank you,
>
> Sunny

Krysundra Cannington

From: Krysundra Cannington
Sent: Tuesday, February 11, 2020 8:50 AM
To: Peter Max Zimmerman; Lawrence Schmidt, Esquire
Cc: 'reistlaxcoach@gmail.com'; 'tom@montanye.net'; 'rscoffin@verizon.net'; Alyssa Moyers (amoyers@sgs-law.com)
Subject: RE: The Bair Petition, Case No. 19-342-SPHA

Good morning,

We have the following dates available March 4 or April 1.

Please let me know as soon as possible which of these dates works best for you.

Thank you,

Sunny

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

Confidentiality Statement

This electronic mail transmission contains confidential information belonging to the sender which is legally privileged and confidential. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or taking of any action based on the contents of this electronic mail transmission is strictly prohibited. If you have received this electronic mail transmission in error, please immediately notify the sender.

Krysundra Cannington

From: Peter Max Zimmerman
Sent: Monday, February 10, 2020 12:24 PM
To: Lawrence Schmidt; Krysundra Cannington; Peter Max Zimmerman
Cc: reistlaxcoach@gmail.com; tom@montanye.net; rscoffin@verizon.net; Alyssa Moyers
Subject: RE: The Bair Petition, Case No. 19-342-SPHA

Ms. Cannington,

People's Counsel does not object to Mr. Andrew Belt's continued participation as a panel member.

Thank you for the Board's consideration of this matter.

Peter Max Zimmerman

From: Lawrence Schmidt <lschmidt@sgs-law.com>
Sent: Friday, February 7, 2020 12:31 PM
To: Krysundra Cannington <kcannington@baltimorecountymd.gov>; Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov>
Cc: reistlaxcoach@gmail.com; tom@montanye.net; rscoffin@verizon.net; Alyssa Moyers <amoyers@sgs-law.com>
Subject: RE: The Bair Petition, Case No. 19-342-SPHA

CAUTION: This message from lschmidt@sgs-law.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

I have no objection to Mr. Belt continuing on the panel. I know both Mr. Belt and Ms. Coffin and they are of the highest integrity. I do not believe that there is any inappropriate conflict.

Larry Schmidt

Lawrence E. Schmidt | Partner
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
lschmidt@sgs-law.com | www.sgs-law.com

This email contains information from the law firm of Smith, Gildea & Schmidt, LLC which may be confidential and/or privileged. The information is intended to be for the exclusive use of the individual or entity named above. If you are not the intended recipient, be advised that any disclosure, copying, distribution or other use of this information is strictly prohibited. If you have received this e-mail in error, please notify Smith, Gildea & Schmidt, LLC by telephone immediately.

From: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Sent: Friday, February 7, 2020 11:55 AM
To: Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov>; Lawrence Schmidt <lschmidt@sgs-law.com>
Cc: reistlaxcoach@gmail.com; tom@montanye.net; rscoffin@verizon.net; Alyssa Moyers <amoyers@sgs-law.com>
Subject: RE: The Bair Petition, Case No. 19-342-SPHA

Good afternoon,

I am working on dates with the Board members and will get back to you as soon as I can.

Krysundra Cannington

From: Lawrence Schmidt <lschmidt@sgs-law.com>
Sent: Friday, February 7, 2020 12:31 PM
To: Krysundra Cannington; Peter Max Zimmerman
Cc: reistlaxcoach@gmail.com; tom@montanye.net; rscoffin@verizon.net; Alyssa Moyers
Subject: RE: The Bair Petition, Case No. 19-342-SPHA

CAUTION: This message from lschmidt@sgs-law.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

I have no objection to Mr. Belt continuing on the panel. I know both Mr. Belt and Ms. Coffin and they are of the highest integrity. I do not believe that there is any inappropriate conflict.

Larry Schmidt

Lawrence E. Schmidt | Partner
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
lschmidt@sgs-law.com | www.sgs-law.com

This email contains information from the law firm of Smith, Gildea & Schmidt, LLC which may be confidential and/or privileged. The information is intended to be for the exclusive use of the individual or entity named above. If you are not the intended recipient, be advised that any disclosure, copying, distribution or other use of this information is strictly prohibited. If you have received this e-mail in error, please notify Smith, Gildea & Schmidt, LLC by telephone immediately.

From: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Sent: Friday, February 7, 2020 11:55 AM
To: Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov>; Lawrence Schmidt <lschmidt@sgs-law.com>
Cc: reistlaxcoach@gmail.com; tom@montanye.net; rscoffin@verizon.net; Alyssa Moyers <amoyers@sgs-law.com>
Subject: RE: The Bair Petition, Case No. 19-342-SPHA

Good afternoon,

I am working on dates with the Board members and will get back to you as soon as I can.

I was advised this morning that toward the end of the day yesterday, Ms. Coffin came into the hearing and sat with the Protestants. Mr. Belt advised me that he worked with Ms. Coffin in the State's Attorney's Office approximately 20 years ago. While Mr. Belt does not feel that this would bias him in any way regarding this case, he asked me to disclose this information to you. Please contact me as soon as possible if you think this will cause any problems with Mr. Belt remaining on the panel for this case.

Thank you,

Sunny

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

Krysundra Cannington

From: Krysundra Cannington
Sent: Friday, February 7, 2020 11:55 AM
To: Peter Max Zimmerman; Lawrence Schmidt, Esquire
Cc: reistlaxcoach@gmail.com; tom@montanye.net; rscoffin@verizon.net; Alyssa Moyers (amoyers@sgs-law.com)
Subject: RE: The Bair Petition, Case No. 19-342-SPHA

Good afternoon,

I am working on dates with the Board members and will get back to you as soon as I can.

I was advised this morning that toward the end of the day yesterday, Ms. Coffin came into the hearing and sat with the Protestants. Mr. Belt advised me that he worked with Ms. Coffin in the State's Attorney's Office approximately 20 years ago. While Mr. Belt does not feel that this would bias him in any way regarding this case, he asked me to disclose this information to you. Please contact me as soon as possible if you think this will cause any problems with Mr. Belt remaining on the panel for this case.

Thank you,

Sunny

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

Confidentiality Statement

This electronic mail transmission contains confidential information belonging to the sender which is legally privileged and confidential. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or taking of any action based on the contents of this electronic mail transmission is strictly prohibited. If you have received this electronic mail transmission in error, please immediately notify the sender.

Krysundra Cannington

From: Lawrence Schmidt <lschmidt@sgs-law.com>
Sent: Friday, February 7, 2020 10:49 AM
To: Peter Max Zimmerman
Cc: Krysundra Cannington; Alyssa Moyers
Subject: RE: The Bair Petition, Case No. 19-342-SPHA

CAUTION: This message from lschmidt@sgs-law.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Thanks. Hopefully we can all coordinate up front so Sunny does not have to schedule, then re-schedule due to conflicts.

Larry

Lawrence E. Schmidt | Partner
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
lschmidt@sgs-law.com | www.sgs-law.com

This email contains information from the law firm of Smith, Gildea & Schmidt, LLC which may be confidential and/or privileged. The information is intended to be for the exclusive use of the individual or entity named above. If you are not the intended recipient, be advised that any disclosure, copying, distribution or other use of this information is strictly prohibited. If you have received this e-mail in error, please notify Smith, Gildea & Schmidt, LLC by telephone immediately.

From: Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov>
Sent: Friday, February 7, 2020 10:45 AM
To: Lawrence Schmidt <lschmidt@sgs-law.com>
Cc: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Subject: FW: The Bair Petition, Case No. 19-342-SPHA

Larry, I forgot to CC you on this email I just sent to Ms. Cannington on scheduling, so I am now forwarding it to you.
Peter

From: Peter Max Zimmerman
Sent: Friday, February 7, 2020 10:37 AM
To: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Cc: 'reistlaxcoach@gmail.com' <reistlaxcoach@gmail.com>; 'tom@montanye.net' <tom@montanye.net>; 'rscoffin@verizon.net' <rscoffin@verizon.net>
Subject: The Bair Petition, Case No. 19-342-SPHA

Dear Ms. Cannington,

I note Lawrence Schmidt's email re scheduling of a second day of hearing.

It will facilitate scheduling if you would kindly include Steven Fradkin (reistlaxcoach@gmail.com); Thomas Montanye (tom@montanye.net) and Robin Coffin (rscoffin@verizon.net) in any emails regarding possible dates. They will help spread the word to other interested citizens.

Thank you very much.

Krysundra Cannington

From: Peter Max Zimmerman
Sent: Friday, February 7, 2020 10:45 AM
To: Lawrence Schmidt
Cc: Krysundra Cannington
Subject: FW: The Bair Petition, Case No. 19-342-SPHA

Larry, I forgot to CC you on this email I just sent to Ms. Cannington on scheduling, so I am now forwarding it to you. Peter

From: Peter Max Zimmerman
Sent: Friday, February 7, 2020 10:37 AM
To: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Cc: 'reistlaxcoach@gmail.com' <reistlaxcoach@gmail.com>; 'tom@montanye.net' <tom@montanye.net>; 'rscoffin@verizon.net' <rscoffin@verizon.net>
Subject: The Bair Petition, Case No. 19-342-SPHA

Dear Ms. Cannington,

I note Lawrence Schmidt's email re scheduling of a second day of hearing.

It will facilitate scheduling if you would kindly include Steven Fradkin (reistlaxcoach@gmail.com); Thomas Montanye (tom@montanye.net) and Robin Coffin (rscoffin@verizon.net) in any emails regarding possible dates. They will help spread the word to other interested citizens.

Thank you very much.

Peter Max Zimmerman, People's Counsel 410 887-2188

Krysundra Cannington

From: Peter Max Zimmerman
Sent: Friday, February 7, 2020 10:37 AM
To: Krysundra Cannington
Cc: reistlaxcoach@gmail.com; tom@montanye.net; rscoffin@verizon.net
Subject: The Bair Petition, Case No. 19-342-SPHA

Dear Ms. Cannington,

I note Lawrence Schmidt's email re scheduling of a second day of hearing.

It will facilitate scheduling if you would kindly include Steven Fradkin (reistlaxcoach@gmail.com); Thomas Montanye (tom@montanye.net) and Robin Coffin (rscoffin@verizon.net) in any emails regarding possible dates. They will help spread the word to other interested citizens.

Thank you very much.

Peter Max Zimmerman, People's Counsel 410 887-2188

Krysundra Cannington

From: Lawrence Schmidt <lschmidt@sgs-law.com>
Sent: Friday, February 7, 2020 10:23 AM
To: Krysundra Cannington
Cc: Alyssa Moyers; Zachary J. Wilkins; Peoples Counsel; 'Donna Bair'
Subject: Bair Property

CAUTION: This message from lschmidt@sgs-law.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Hi Sunny: I assume you are aware that the Bair hearing (Prospect Ave.) did not finish yesterday and that we need a second date. The Protestants are not represented by counsel although there are three folks who are the "spokesmen". They are Mr. Montanye, Mr. Fradkin and Ms. Coffin. Ms. Coffin is an attorney and I have known her for many years. She is the Deputy State's Attorney for Baltimore County and does not practice zoning law.

I volunteered after the hearing to help coordinate rescheduling and advised them that when you circulated possible dates, I would forward that info on to them so they could determine any conflicts.

I am pleased to do that. And Peter Max is in the case as well.

Let us know when you are looking at another date. By the way, we completed the Petitioners case (I am fairly certain of that) and I would be optimistic that only one more date is needed.
Thanks.
Larry Schmidt

Lawrence E. Schmidt | Partner
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
lschmidt@sgs-law.com | www.sgs-law.com

This email contains information from the law firm of Smith, Gildea & Schmidt, LLC which may be confidential and/or privileged. The information is intended to be for the exclusive use of the individual or entity named above. If you are not the intended recipient, be advised that any disclosure, copying, distribution or other use of this information is strictly prohibited. If you have received this e-mail in error, please notify Smith, Gildea & Schmidt, LLC by telephone immediately.

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 13, 2019

NOTICE OF POSTPONEMENT AND REASSIGNMENT

IN THE MATTER OF: Donna V. Bair – Legal Owner
4607 Prospect Avenue
19-342-SPHA 4th Election District; 3rd Councilmanic District

8/9/19 Opinion and Order of the Administrative Law Judge wherein the:

- Petition for Special Hearing:
  1) to approve a nonconforming lot width and lot area; and
  2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of 30 inches was GRANTED; the
- Petition for Special Hearing:
  1) to approve a nonconforming dwelling side yard setback; and
  2) to confirm that an existing fence (swimming pool enclosure) with a height of 6' is in compliance with BCZR §427.1 and BCC §13-6-101 was DENIED; and the
- Petition for Variance:
  1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.;
  2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; and
  3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches was DENIED

9/9/19 Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire on behalf of Donna V. Bair, Petitioner.

9/25/19 Order on Motion for Reconsideration issued by the Administrative Law Judge wherein it was Ordered:

- that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms in BCZR §104;
- that all new construction must comply with current setbacks and restrictions at the time of new construction; and
- all other matters and respects of Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

This matter was scheduled for January 9, 2020 and has been postponed by request of Counsel. This matter has been

REASSIGNED FOR: FEBRUARY 6, 2020, 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.
- Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits with the Board unless otherwise requested. Said Motions, Memoranda and exhibits must be in MDEC compliant formats pursuant to the Maryland Rules, unless otherwise requested
- Please contact our office for information about projection equipment. 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 Cannington, Administrator

c. Counsel for Petitioners : Lawrence E. Schmidt, Esquire
Legal Owner : Donna Bair

Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
John E. Lemmerman/RTF Associates, Inc.
Kim and Tom Montanye
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz

C. Pete Gutwald, Director/Department of Planning
Michael D. Mallinoff, Director/PAI
James R. Benjamin, Jr., County Attorney
Nancy C. West, Assistant County Attorney
Office of People's Counsel
Paul M. Mayhew, Managing Administrative Law Judge

SMITH, GILDEA & SCHMIDT LLC

MICHAEL PAUL SMITH
DAVID K. GILDEA
LAWRENCE E. SCHMIDT
MICHAEL G. DEHAVEN
JASON T. VETTORI
MARIELA C. D'ALESSIO*
MELISSA L. ENGLISH**
* Admitted in MD, PA, FL
** Admitted in MD, NC

LAUREN D. BENJAMIN
CARMELO D. MORABITO
ZACHARY J. WILKINS
of counsel:
EUGENE A. ARBAUGH, JR.
MARY G. LOKER
STEPHEN J. NOLAN

RECEIVED
NOV 25 2019
BALTIMORE COUNTY
BOARD OF APPEALS

November 20, 2019

Sent Via First Class Mail
Ms. Krysundra L. Cannington, Administrator
Board of Appeals of Baltimore County
Jefferson Building
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204

Re: In the Matter of: Donna V. Bair
4607 Prospect Avenue
19-342-SPHA

Dear Ms. Cannington,

I am in receipt of the Board's Notice of Assignment in connection with the above referenced matter. I understand that this matter has been scheduled for a hearing on January 9, 2020 beginning at 10:00 a.m. Unfortunately, I am scheduled to be out of town from January 6 through January 20, 2020, and my client, the is out of town through the following week. As such, I am respectfully requesting a postponement in accordance with Rule 2B of the Board of Appeals Rules of Practice and Procedure until February when both myself and my client have returned.

Thank you for your courtesy. I look forward to hearing from you.

Very truly yours,

Lawrence E. Schmidt

LES:kmb

Board of Appeals of Baltimore County

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

November 14, 2019

NOTICE OF ASSIGNMENT

IN THE MATTER OF: Donna V. Bair – Legal Owner
4607 Prospect Avenue
19-342-SPHA 4th Election District; 3rd Councilmanic District

8/9/19 Opinion and Order of the Administrative Law Judge wherein the:
- Petition for Special Hearing:
  1) to approve a nonconforming lot width and lot area; and
  2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of 30 inches was GRANTED; the
- Petition for Special Hearing:
  1) to approve a nonconforming dwelling side yard setback; and
  2) to confirm that an existing fence (swimming pool enclosure) with a height of 6' is in compliance with BCZR §427.1 and BCC §13-6-101 was DENIED; and the
- Petition for Variance:
  1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.;
  2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; and
  3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches was DENIED

9/9/19 Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire on behalf of Donna V. Bair, Petitioner.

9/25/19 Order on Motion for Reconsideration issued by the Administrative Law Judge wherein it was Ordered:
- that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms in BCZR §104;
- that all new construction must comply with current setbacks and restrictions at the time of new construction; and
- all other matters and respects of Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

ASSIGNED FOR: **JANUARY 9, 2020, 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.
- Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits with the Board unless otherwise requested. Said Motions, Memoranda and exhibits must be in MDEC compliant formats pursuant to the Maryland Rules, unless otherwise requested
- Please contact our office for information about projection equipment. 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 Cannington, Administrator

c. Counsel for Petitioners : Lawrence E. Schmidt, Esquire
Legal Owner : Donna Bair

Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
John E. Lemmerman/RTF Associates, Inc.
Kim and Tom Montanye
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz

C. Pete Gutwald, Director/Department of Planning
Michael D. Mallinoff, Director/PAI
Michael E. Field, County Attorney
Nancy C. West, Assistant County Attorney
Office of People's Counsel
Paul M. Mayhew, Managing Administrative Law Judge

JOHN A. OLSZEWSKI, JR.
County Executive

PAUL M. MAYHEW
Managing Administrative Law Judge
LAWRENCE M. STAHL
Administrative Law Judge

October 25, 2019

Lawrence E. Schmidt, Esq.
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204

RECEIVED
OCT 25 2019
BALTIMORE COUNTY
BOARD OF APPEALS

RE: **APPEAL TO BOARD OF APPEALS**
Case No. 2019-0342-SPHA
Location: 4607 Prospect Avenue

Dear Mr. Schmidt:

Please be advised that an appeal of the above-referenced case was filed in this Office on October 24, 2019. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals ("Board").

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

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

Sincerely,

LAWRENCE M. STAHL
Administrative Law Judge
for Baltimore County

LMS/sln

c: Baltimore County Board of Appeals
People's Counsel for Baltimore County

Pamela Becker, 24 Chatsworth Avenue, Glyndon, Maryland 21071
Richard Stanley, 215 Central Avenue, Glyndon, Maryland 21071
Shirley Winebarger, 80 Hanover Road, Reisterstown, Maryland 21136
Teresa Moore, 29 Waugh Avenue, Reisterstown, Maryland 21136
Vernene Lenz, 4722 Butler Road, Glyndon,Maryland 21071
Kim Karlsen, 304 Hammond Avenue, Glyndon, Maryland 21071
Martha Wist, 3834 Ivy Hill Drive, Hampstead, Maryland 21074
Ann Rea, 1015 Caren Drive, Eldersburg, Maryland 21784
Lyle Montanye, 4342 Butler Road, Glyndon, Maryland 21071
Frances Acle, 4606 Prospect Avenue, Glyndon, Maryland 21071
Kim & Tom Montanye, 4609 Prospect Avenue, Glyndon, Maryland 21071
Charles & Anna Welsh, 4601 Prospect Avenue, Glyndon, Maryland 21071
Robin Coffin, 4511 Prospect Avenue, Glyndon, Maryland 21071
Raymond & Linda Long, 114 Hanover Road, Glyndon, Maryland 21136
Steve & Patricia Fradkin, 4605 Prospect Avenue, Glyndon, Maryland 21136
Ramzi & Roula Hemady, 4603 Prospect Avenue, Glyndon, Maryland 21136
Robert Gehman, 4612 Prospect Avenue, Glyndon, Maryland 21136
Cynthia Morrison 4500 Prospect Avenue, Glyndon, Maryland 21071

APPEAL

Petitions for Special Hearing and Variance
(4607 Prospect Avenue)
4th Election District – 3rd Councilmanic District
***Legal Owner*: Donna V. Bair**
Case No. 2019-0342-SPHA

Petition for Variance Hearing (May 28, 2019)

Zoning Description of Property

Notice of Zoning Hearing (June 25, 2019)

Certificate of Publication (July 2, 2019) The Daily Record

Certificate of Posting 1st posting (July 2, 2019) –Linda O'Keefe

Certificate of Posting 2nd posting (July 20, 2019)- Linda O'Keefe

Entry of Appearance by People's Counsel – June 6, 2019

Petitioner(s) Sign-in Sheet – One
Citizen(s) Sign-in Sheet –Four sheets

Zoning Advisory Committee (ZAC) Comments

Petitioner(s) Exhibits:

1. Site Plan
2. Plat-Glyndon
3. 3A-3C Aerial photos
4. SDAT Record
5. 5A-5U site photos
6. Code Citation Order
7. 3-19-2019 memo re: LPC
8. 8A-8B Code & BCZR Sections
9. 9A-9G photos pre-construction
10. 10A & 10B Prior zoning orders

Protestants Exhibits:

Miscellaneous (Not Marked as Exhibits)- Petitioner's Post-Hearing Memorandum, Code Enforcement violation and citation, letters of opposition, photos, miscellaneous e-mails and SDAT.

Administrative Law Judge Order and Letter (August 19, 2019 DENIED)

Motion for Reconsideration filed by Lawrence E. Schmidt, Esq. on September 9, 2019

Administrative Law Judge Order and Letter on Motion for Reconsideration (September 25, 2019 DENIED)

Notice of Appeal – filed by Lawrence E. Schmidt, Esq. on October 24, 2019.

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

No. 174835

Date: 10/24/19

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount
01	806	000		6150				600.00 CR

Total: 600.00

Rec From: Smith, Gildea & Schmidt

For: 2019-0342-SPHA

4107 Prospect Avenue

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER GOLD - ACCOUNTING

PLEASE PRESS HARD!!!!

PAID RECEIPT
BUSINESS ACTUAL TIME DRW
10/25/2019 10/24/2019 14:59:30 3
REG WS03 WALKIN CAM
>>RECEIPT # 036125 10/24/2019 CFLN
Dept 5 528 ZONING VERIFICATION
NO. 174835
Recpt Tot $ 600.00
600.00 CK .00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

IN RE:	*	BEFORE THE
PETITIONS FOR SPECIAL HEARING AND VARIANCE **4607 Prospect Avenue**	*	BOARD OF APPEALS OF
Donna V. Bair – Petitioner **4607 Prospect Avenue** **Glyndon, MD 21071**	*	BALTIMORE COUNTY
4th Election District 3rd Councilmanic District	*	**Case No. 2019-0342-SPHA**

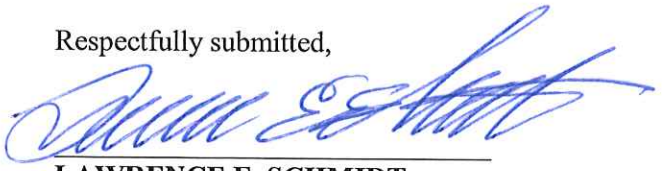
RECEIVED
OCT 24 2019
OFFICE OF
ADMINISTRATIVE HEARINGS

* *

NOTICE OF APPEAL

The Petitioner, Donna V. Bair, by and through her attorneys, Lawrence E. Schmidt, and Smith, Gildea, and Schmidt, LLC, feeling aggrieved by the denial of the Petition for Special Hearing to approve nonconforming dwelling side yard setbacks pursuant to Baltimore County Zoning Regulation ("BCZR") Section 104.1, by the denial of the Petition for Special Hearing to confirm that an existing fence (swimming pool enclosure) with a height of 6 ft. is in compliance with BCZR Section 427.1 and Baltimore County Code ("BCC") Section 13-6-101, by the denial of the Petition for Variance to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft., by the denial of the Petition for Variance to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft., by the denial of the Petition for Variance to permit, if necessary, an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of 42 inches as stated in the Opinion and Order dated August 19, 2019 by the Administrative Law Judge for Baltimore County and the Order on Motion for Reconsideration dated September 25, 2019 by the Administrative Law Judge for Baltimore in the above-captioned matter, hereby note this appeal to the County Board of Appeals for Baltimore County, as to those issues only, in accordance with Baltimore County Code §32-4-281. The Appellant does not appeal the ALJ's findings as to the lawfully nonconforming status of the size and width of the lot, the lawfully nonconforming status of the setback of the shed, and the lawfully nonconforming status of the original dwelling and setbacks existing in 1951.

Respectfully submitted,



LAWRENCE E. SCHMIDT
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
(410) 821-0070
lschmidt@sgs-law.com
Attorneys for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of **October, 2019,** a copy of the foregoing Notice of Appeal was mailed first-class pre-paid postage to:

Peter Max Zimmerman, Esquire
People's Counsel for Baltimore County
The Jefferson Building
105 West Chesapeake Avenue, Rm 204
Towson, MD 21204

Pamela Becker
24 Chatsworth Avenue
Glyndon, MD 21071

Richard Stanley
215 Central Avenue
Glyndon, MD 21071

Vernene Lenz
4722 Butler Road
Glyndon, MD 21071

Shirley Winebarger
80 Hanover Road
Reisterstown, MD 21136

Teresa Moore
29 Waugh Avenue
Reisterstown, MD 21136

Kimberley Karlsen
304 Hammond Avenue
Glyndon, MD 21071

Martha Wist
3834 Ivy Hill Drive
Hampstead, MD 21074

Ann Rea
1015 Caren Drive
Eldersburg, MD 21784

Lyle Montanye
4342 Butler Road
Glyndon, MD 21071

Tom and Kim Montanye
4609 Prospect Avenue
Glyndon, MD 21136

Charles and Anna Welsh
4601 Prospect Avenue
Glyndon, MD 21071

Robin Coffin
4511 Prospect Avenue
Glyndon, MD 21071

Frances Acle
4606 Prospect Avenue
Glyndon, MD 21071

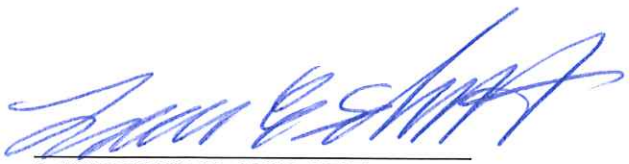
Steve and Patricia Fradkin
4605 Prospect Avenue
Glyndon, MD 21136

Cynthia Morrison
4500 Prospect Avenue
Glyndon, MD 21071

Robert Gehman
4612 Prospect Avenue
Glyndon, MD 21136

Ramzi and Roula Hemady
4603 Prospect Avenue
Glyndon, MD 21136

Raymond and Linda Long
114 Hanover Road
Reisterstown, MD 21136



LAWRENCE E. SCHMIDT

IN RE:	*	BEFORE THE
PETITIONS FOR SPECIAL HEARING AND VARIANCE **4607 Prospect Avenue**	*	BOARD OF APPEALS OF
Donna V. Bair – Petitioner **4607 Prospect Avenue** **Glyndon, MD 21071**	*	BALTIMORE COUNTY
4th Election District 3rd Councilmanic District	*	**Case No. 2019-0342-SPHA**

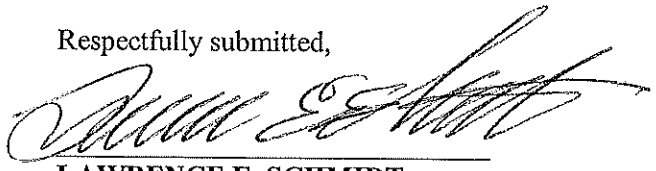
RECEIVED
OCT 24 2019
BALTIMORE COUNTY
BOARD OF APPEALS

* *

NOTICE OF APPEAL

The Petitioner, Donna V. Bair, by and through her attorneys, Lawrence E. Schmidt, and Smith, Gildea, and Schmidt, LLC, feeling aggrieved by the denial of the Petition for Special Hearing to approve nonconforming dwelling side yard setbacks pursuant to Baltimore County Zoning Regulation ("BCZR") Section 104.1, by the denial of the Petition for Special Hearing to confirm that an existing fence (swimming pool enclosure) with a height of 6 ft. is in compliance with BCZR Section 427.1 and Baltimore County Code ("BCC") Section 13-6-101, by the denial of the Petition for Variance to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft., by the denial of the Petition for Variance to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft., by the denial of the Petition for Variance to permit, if necessary, an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of 42 inches as stated in the Opinion and Order dated August 19, 2019 by the Administrative Law Judge for Baltimore County and the Order on Motion for Reconsideration dated September 25, 2019 by the Administrative Law Judge for Baltimore in the above-captioned matter, hereby note this appeal to the County Board of Appeals for Baltimore County, as to those issues only, in accordance with Baltimore County Code §32-4-281. The Appellant does not appeal the ALJ's findings as to the lawfully nonconforming status of the size and width of the lot, the lawfully nonconforming status of the setback of the shed, and the lawfully nonconforming status of the original dwelling and setbacks existing in 1951.

Respectfully submitted,



LAWRENCE E. SCHMIDT
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
(410) 821-0070
lschmidt@sgs-law.com
Attorneys for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of **October, 2019,** a copy of the foregoing Notice of Appeal was mailed first-class pre-paid postage to:

Peter Max Zimmerman, Esquire
People's Counsel for Baltimore County
The Jefferson Building
105 West Chesapeake Avenue, Rm 204
Towson, MD 21204

Pamela Becker
24 Chatsworth Avenue
Glyndon, MD 21071

Richard Stanley
215 Central Avenue
Glyndon, MD 21071

Vernene Lenz
4722 Butler Road
Glyndon, MD 21071

Shirley Winebarger
80 Hanover Road
Reisterstown, MD 21136

Teresa Moore
29 Waugh Avenue
Reisterstown, MD 21136

Kimberley Karlsen
304 Hammond Avenue
Glyndon, MD 21071

Martha Wist
3834 Ivy Hill Drive
Hampstead, MD 21074

Ann Rea
1015 Caren Drive
Eldersburg, MD 21784

Lyle Montanye
4342 Butler Road
Glyndon, MD 21071

Tom and Kim Montanye
4609 Prospect Avenue
Glyndon, MD 21136

Charles and Anna Welsh
4601 Prospect Avenue
Glyndon, MD 21071

Robin Coffin
4511 Prospect Avenue
Glyndon, MD 21071

Frances Acle
4606 Prospect Avenue
Glyndon, MD 21071

Steve and Patricia Fradkin
4605 Prospect Avenue
Glyndon, MD 21136

Cynthia Morrison
4500 Prospect Avenue
Glyndon, MD 21071

Robert Gehman
4612 Prospect Avenue
Glyndon, MD 21136

Ramzi and Roula Hemady
4603 Prospect Avenue
Glyndon, MD 21136

Raymond and Linda Long
114 Hanover Road
Reisterstown, MD 21136

LAWRENCE E. SCHMIDT

Sherry Nuffer

From: Paul Mayhew
Sent: Tuesday, October 22, 2019 2:08 PM
To: Sherry Nuffer
Cc: Lawrence Stahl
Subject: FW: Bair case

fyi

From: Paul Mayhew
Sent: Tuesday, October 22, 2019 2:07 PM
To: 'lschmidt@sgs-law.com' <lschmidt@sgs-law.com>
Subject: Bair case

Larry,
I do not feel comfortable meeting with you about the Bair case. First of all, I have personal friends that were among the neighbors who testified in opposition. Second, regardless of that I would not feel comfortable giving an informal "advisory opinion" interpreting John and Larry's rulings. Paul

Paul M. Mayhew
Managing Administrative Law Judge
105 West Chesapeake Ave., Suite 103
Towson, Maryland 21204
410-887-3868
pmayhew@baltimorecountymd.gov

Sherry Nuffer

From: Lawrence Schmidt <lschmidt@sgs-law.com>
Sent: Tuesday, October 22, 2019 1:21 PM
To: Sherry Nuffer
Subject: RE: Meet Paul

CAUTION: This message from lschmidt@sgs-law.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Sherry: Please pass this on to Paul.

My question relates to the Bair case. This was a variance that John heard. He granted in part and denied in part. There was a portion of the decision that I didn't understand so I filed a motion for reconsideration. John was gone by then and Larry considered the Motion. He has issued an order that is frankly more confusing that John's. I talked to Carl Richards about this and he can't figure it out either. I didn't want to have an ex parte communication with Larry, and Carl suggested that I talk to Paul. I may end up appealing the matter to the Board of Appeals but I (and Carl) were trying to figure out what the decisions mean as to this one issue.

You can advise Paul that I have never had ex parte communications with John , or Bill Wiseman before him. This is not a pending case. Carl is trying to figure out if he can issue a permit as it relates to this one portion of the case.

If he feels uncomfortable in talking to me, than I will respect that. However, I'd be interested in getting his input if he is willing.

Larry

Lawrence E. Schmidt | Partner
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
lschmidt@sgs-law.com | www.sgs-law.com

This email contains information from the law firm of Smith, Gildea & Schmidt, LLC which may be confidential and/or privileged. The information is intended to be for the exclusive use of the individual or entity named above. If you are not the intended recipient, be advised that any disclosure, copying, distribution or other use of this information is strictly prohibited. If you have received this e-mail in error, please notify Smith, Gildea & Schmidt, LLC by telephone immediately.

From: Sherry Nuffer [mailto:snuffer@baltimorecountymd.gov]
Sent: Tuesday, October 22, 2019 11:43 AM
To: Lawrence Schmidt
Subject:

Debra Wiley

From: Debra Wiley
Sent: Wednesday, October 2, 2019 9:31 AM
To: David W Kirby
Subject: MOTION FOR RECONSIDERATION ORDER - Case No. 2019-0342-SPHA
Attachments: 20191002092916183.pdf

Hi David,

It appears you've requested the original order back in August; however, I was not aware that you didn't receive this one. Just wanted you to be up-to-date with the records.

Thanks and have a good day.

-----Original Message-----
From: adminhearingscpr@baltimorecountymd.gov <adminhearingscpr@baltimorecountymd.gov>
Sent: Wednesday, October 2, 2019 9:29 AM
To: Debra Wiley <dwiley@baltimorecountymd.gov>
Subject: Message from "RNP002673F6C9D3"

This E-mail was sent from "RNP002673F6C9D3" (MP 3055).

Scan Date: 10.02.2019 09:29:16 (-0400)
Queries to: adminhearingscpr@baltimorecountymd.gov

JOHN A. OLSZEWSKI, JR.
County Executive

ADMINISTRATIVE LAW JUDGE
Office of Administrative Hearings

September 25, 2019

Lawrence E. Schmidt, Esq.
Zachary J. Wilkins, Esq.
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204

RE: **MOTION FOR RECONSIDERATION** –
Petitions for Special Hearing and Variance
Case No. 2019-0342-SPHA
Property: 4607 Prospect Avenue

Dear Counsel:

Enclosed please find a copy of the Order on Motion for Reconsideration 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,

LAWRENCE M. STAHL
Administrative Law Judge
for Baltimore County

LMS:sln
Enclosure

c: Pamela Becker, 24 Chatsworth Avenue, Glyndon, Maryland 21071
Richard Stanley, 215 Central Avenue, Glyndon, Maryland 21071
Shirley Winebarger, 80 Hanover Road, Reisterstown, Maryland 21136
Teresa Moore, 29 Waugh Avenue, Reisterstown, Maryland 21136
Vernene Lenz, 4722 Butler Road, Glyndon, Maryland 21071

Kim Karlsen, 304 Hammond Avenue, Glyndon, Maryland 21071
Martha Wist, 3834 Ivy Hill Drive, Hampstead, Maryland 21074
Ann Rea, 1015 Caren Drive, Eldersburg, Maryland 21784
Lyle Montanye, 4342 Butler Road, Glyndon, Maryland 21071
Frances Acle, 4606 Prospect Avenue, Glyndon, Maryland 21071
Kim & Tom Montanye, 4609 Prospect Avenue, Glyndon, Maryland 21071
Charles & Anna Welsh, 4601 Prospect Avenue, Glyndon, Maryland 21071
Robin Coffin, 4511 Prospect Avenue, Glyndon, Maryland 21071
Raymond & Linda Long, 114 Hanover Road, Glyndon, Maryland 21136
Steve & Patricia Fradkin, 4605 Prospect Avenue, Glyndon, Maryland 21136
Ramzi & Roula Hemady, 4603 Prospect Avenue, Glyndon, Maryland 21136
Robert Gehman, 4612 Prospect Avenue, Glyndon, Maryland 21136
Cynthia Morrison 4500 Prospect Avenue, Glyndon, Maryland 21071

IN RE: **PETITIONS FOR SPECIAL HEARING AND VARIANCE** (4607 Prospect Avenue) 4th Election District 3rd Council District Donna V. Bair, *Legal Owner*	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY
Petitioner	*	**Case No. 2019-0342-SPHA**

* * * * * * * *

ORDER ON MOTION FOR RECONSIDERATION

This matter is a request for a reconsideration of an Order issued by Judge Beverungen on August 19, 2019, granting in part and denying in part request for Special Hearing and Variance. Counsel for the Petitioner herein moves for reconsideration as to only one issue: namely the clarification of the status of the original structure constructed in 1951 as well as the setbacks existing at that time.

I have reviewed the record and evidence submitted an find that, notwithstanding the additional structures which were the subject of Judge Beverungen' s August 19, 2019 Order, the original structure and setbacks existing in 1951 are still clearly in effect and are entitled to status as nonconforming.

THEREFORE, IT IS ORDERED this **25th** day of **September, 2019**, that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms set forth in Baltimore County Zoning Regulations ("BCZR") § 104; and

IT IS FURTHER ORDERED that all new construction must comply with current setbacks and restrictions existing at the time of new construction.

ORDER RECEIVED FOR FILING

Date 9/25/19

By

IT IS FURTHER ORDERED that in all other matter and respects Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

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

LAWRENCE M. STAHL
Administrative Law Judge
for Baltimore County

LMS:sln

ORDER RECEIVED FOR FILING
Date 9/25/19
By sln

SMITH, GILDEA & SCHMIDT LLC

MICHAEL PAUL SMITH
DAVID K. GILDEA
LAWRENCE E. SCHMIDT
MICHAEL G. DEHAVEN
JASON T. VETTORI
MARIELA C. D'ALESSIO*
MELISSA L. ENGLISH
*Admitted in MD, FL, PA

LAUREN D. BENJAMIN
SARAH A. ZADROZNY
CARMELO D. MORABITO
ZACHARY J. WILKINS
of counsel:
EUGENE A. ARBAUGH, JR.
DAVID T. LAMPTON
MARY G. LOKER
STEPHEN J. NOLAN

September 9, 2019

Via Hand Delivery
Honorable Lawrence M. Stahl
Office of Administrative Hearings
105 W. Chesapeake Avenue, Suite 103
Towson, MD 21204



Re: Bair – 4607 Prospect Avenue
Case No. 2019-342-SPHA

Dear Honorable Judge Stahl:

Please find enclosed a Motion for Reconsideration for filing in the above matter. This filing is somewhat complicated by the fact that the order for which we seek reconsideration was issued by former ALJ Beverungen. I am aware that he is now retired and no longer a County employee. Thus, I enclose a copy of his opinion and order for your reference.

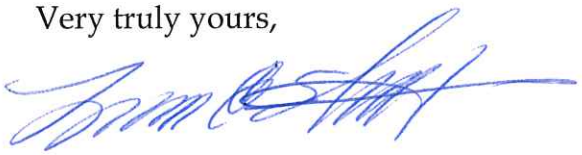
Additionally, although the order was signed by former ALJ Beverungen, it is certainly a decision that is the product of the Office of Administrative Hearings ("OAH"). As such, I believe that you, or whoever replaces ALJ Beverungen, has authority to review the Motion and revise the Order. OAH's refusal to reconsider the Opinion and Order of ALJ Beverungen would restrict and impair the jurisdiction and efficiency of OAH and be inconsistent with the long held principle that any action of a court remains within the control of the court until and unless that decision is final (See e.g. *Scott v. State* 379 Md. 170 (2004)). This Motion is timely filed and thus within the jurisdiction of OAH.

In an administrative law setting, I believe the situation here is akin to similar circumstances that I have encountered at the Board of Appeals. Frequently, a Board member may resign or leave the Board for whatever reason. I have seen circumstances where new panel members are assigned as needed. Recently, I was involved in a case where a remand to the Board was required by order of the appellate court and two of the three original members were no longer on the Board. Two "replacements" were inserted and the matter continued on. Thus, I do not view ALJ Beverungen's departure as an event preventing review of the Motion.

As you are aware, Rule K of the Rules of Practice and Procedure also allow the OHA to reconvene the hearing. A reconvened hearing is at the discretion of your office. At that hearing, the subject matter is limited to only the issue(s) identified in the Motion. The hearing may be limited to argument, or additional evidence might be allowed. As you will note from the Motion, the request for reconsideration is limited to a single issue. I am pleased to proceed in any manner that you deem appropriate and do not believe that a new hearing is mandated unless you believe it necessary. The Motion can be considered based only on the pleadings or I am pleased to appear if you prefer.

Thank you for your consideration of this matter.

Very truly yours,



Lawrence E. Schmidt

LES/amf
Enclosures
cc: Donna Bair
Peter Max Zimmerman, Esquire
Pamela Becker
Richard Stanley
Vernene Lenz
Shirley Winebarger
Teresa Moore
Kimberley Karlsen
Martha Wist
Ann Rea
Lyle Montanye
Tom and Kim Montanye
Charles and Anna Welsh
Robin Coffin
Frances Acle
Steve and Patricia Fradkin
Cynthia Morrison
Robert Gehman
Ramzi and Roula Hemady
Raymond and Linda Long

IN RE: PETITION FOR SPECIAL HEARING AND VARIANCE **4607 Prospect Avenue** 4th Election District 3rd Councilmanic District Donna V. Bair *Legal Owner*	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY **Case No.: 2019-342-SPHA**

* *

MOTION FOR RECONSIDERATION

The Petitioner/Property Owner, Donna V. Bair, ("Petitioner"), by Lawrence E. Schmidt, Esquire, and Smith Gildea and Schmidt, LLC, her attorneys, submits this Motion for Reconsideration pursuant to Rule K of the Rules of Practice and Procedure of the Zoning Commissioner/Hearing Officer of Baltimore County (now Administrative Law Judge or "ALJ") and respectfully requests that the Office of Administrative Hearings revise its' Opinion and Order issued in the above captioned matter dated August 19, 2019. In support of this Motion, the Petitioner offers the following:

I. Procedural History

This matter came before then ALJ John Beverungen on Petitions for Variance and Special Hearing for the property located at 4607 Prospect Avenue in the community known as Glyndon, in northwestern Baltimore County. The Petitions were filed by Donna Bair, property owner. The subject property at issue is a residential property, zoned DR 1 and is improved with a dwelling in which Petitioner resides. Other

improvements on the property include a two bay attached garage, a swimming pool, shed and deck.

As they relate to certain of the issues presented, several of the requests within the Petitions are presented in the alternative as either via a Special Hearing or Variance. A special hearing has been likened to an action for declaratory judgment and is used to establish a non-conforming use. (See *Antwerpen v. Baltimore County,* 163 Md. App. 194, 2005). A variance seeks relief from a bulk regulation; in this case, certain building setbacks for the sideyards.

II. Statement of Facts

Testimony and evidence presented established that the subject property is approximately three quarters of an acre in size (33,976 square feet) predominantly zoned DR 1 (Density Residential, 1 unit per acre). A small sliver of the property in the rear is zoned RC 2 (Resource Conservation). None of the improvements are within the RC zone. The property is designated as Lot 10 on the plat recorded in the Land Records of Baltimore County in Plat Book 126, Page 371. This plat subdivided the property known as "the lands belonging to B.F. Bennett and Joshua Regester" into residential building lots and was recorded on October 31, 1880, long before the adoption of Baltimore County's first zoning regulations in 1945.

The property is improved with a detached single family dwelling that was constructed in 1951. Evidence of the age of the dwelling was established through the submittal of a property tax report issued by the State Department of Assessments and Taxation (Petitioner's Ex. No. 4). For convenience, another copy of that exhibit is

attached to this Motion. Although the County's first zoning regulations were adopted in 1945, they were rudimentary in nature and the current regulations and requirements therein spring from the comprehensively amended regulations adopted in 1955. Additionally, the DR zoning classification came into being in 1970, at which time the County Council enacted Bill 100-70. Therefore, both the lot and the house itself predate the regulations that govern its use and setbacks. The property is located within the Glyndon historic district which has been overlaid in this area but the dwelling itself is not designated as a contributing structure. Many of the individual properties in Glyndon are historically significant and the houses quite old.

The petitioner acquired the property by deed dated July 18, 2014. At the time of her acquisition, the property was improved with the dwelling, an attached one car garage, a small storage shed and a swimming pool. It is not in dispute that the dwelling, at the time of Petitioner's acquisition, was in the same configuration, size and footprint as it had existed since its construction in 1951. Since her acquisition, the Petitioner has further improved the property by expanding the garage to create a second bay (on the left side of the house when facing the same from the street), a small addition "squaring off" the dwelling on the right side of the house and a new/replacement fence enclosing the pool. Petitioner requested and obtained the approval of these improvements from the Baltimore County Landmarks Preservation Commission ("LPC") (Petitioner's Ex. No. 7). The LPC's approval was required due to the property's location in the historic district.

III. Relief Requested

By his opinion and order, ALJ Beverungen granted some of the relief requested and denied other requests. For example, he granted the Petition for Special Hearing finding that the subject property (lot) was non-conforming, but denied the Petition for Variance related to the garage addition and the fence. **This Motion for Reconsideration is limited in scope and is filed only as to one specific finding by the ALJ.** The Petitioner avers that the ALJ clearly erred as to this single issue. Specifically, the Petitioner requests that ALJ Beverungen's opinion and order be revised to include a finding that the side yard setbacks as they existed in 1951 and at the time of Petitioner's acquisition in 1951, are "non-conforming". Petitioner avers that this conclusion is entirely supported by the evidence presented and the applicable provisions of law. Judge Beverungen erred when he denied that portion of the Special Hearing. His order incorrectly states a denial of a "non-conforming dwelling side yard setback".

BCZR § 104 permits the continuation of non-conforming uses and structures. This is a designation for uses and conditions that have existed prior to the adoption of the regulation that now governs the property at issue. The designation "non-conforming" allows the use/condition to continue as legally "grandfathered". The special hearing process is that zoning tool by which non-conforming uses are recognized. Unrefuted evidence presented at the hearing (Petitioner's Ex. No. 4) established that the dwelling was constructed on the Property in 1951. This documentary evidence was corroborated by the Petitioner and the neighbors did not dispute it.

Within his decision (wherein he approved the Lot as non-conforming), ALJ Beverungen specifically stated on page two of his decision that the applicable date to establish the non-conforming use/condition was 1955. This date is correct insofar as considering the lot. However, the proper date in considering the dwelling is, at the least, 1970, when, as noted above, the DR zoning regulations came into being. But the precise determination of the applicable date makes no practical difference, because the dwelling (constructed in 1951) pre-dates both of those dates.

Although the existing dwelling meets the required front yard and rear yard setbacks, the dwelling's side yard setbacks do not meet the current DR 1 standard. BCZR § 1B02.3.C establishes setbacks required in the DR 1 zone. A minimum side yard setback of 20 feet is required. Additionally, a sum of the side yard setbacks of 50 feet is required. Therefore, a property owner could have a 30 foot setback on one side and a 20 foot setback on the other; or a 25 foot setback on each side, or some similar combination; for so long as each side yard setback is at least 20 feet in dimension and they total fifty feet. As noted above, the property did not meet these requirements when the Petitioner acquired the property. Therefore, the deficiency is non-conforming. When one faces the dwelling from the street, the side yard setback on the right (southwest) side is 14.9 feet. This dimension (obviously) is less than the twenty feet required. Ms. Bair added an addition to this part of the dwelling, but that addition did **NOT** reduce/alter the existing setback. It was 14.9 feet before and remains the same. She merely "squared off" the corner of the dwelling and did not alter the setback. The dwelling is no closer to the side property line than it was before. Therefore, the dimension of 14.9 feet is non-

conforming on the southwest (right) side of the dwelling. Judge Beverungen erred when he did not approve this setback as "non-conforming."

On the other side of the dwelling (the northeast or left side), the previously existing setback was 9.5 feet. After her acquisition, Petitioner expanded the garage so as to add a second garage bay to that side of the dwelling. There was a previously existing one car attached garage on that side and the Petitioner added a second bay to accommodate a second vehicle. The Petitioner, in the instant case, requested a variance to allow the further reduced setback (to zero feet) as the garage is built up to (actually slightly over) the property line with the neighbor on that side. The Petitioner does not, through this Motion, ask the Office of Administrative Hearings to reconsider that variance. That variance was denied by ALJ Beverungen. But the Petitioner insists, that if she removes the garage addition, that the previous setback be determined to be no-conforming. That is, the previous setback (9.5 feet) is not technically compliant with the current regulations but is also grandfathered. If this Motion were denied and ALJ Beverungen's order stands, then the Petitioner would need to comply with current setbacks (i.e. 20 feet minimum per side and fifty feet total) which would require the removal of nearly the entire house, which has existed with 14.9 and 9.5 setbacks for nearly seventy years. ALJ Beverungen's decision in this regard is simply erroneous when he wholly denied non conforming setbacks reflecting the location of the dwelling since 1951.

Although the Petitioner presented evidence of the dwelling's size/configuration at the hearing, attached hereto is an aerial photograph that has been obtained from a public data source. The photo was taken in 1957. Although to quality is not good, it does show the house on the subject property at that time and provides further verification that the dwelling constructed in 1951 remained in the same condition through when the Petitioner bought it. This is further corroborating evidence above and beyond the SDAT printout and testimony offered at the hearing.

In sum, Petitioner requests that ALJ Beverungen's opinion and order be revised to approve non conforming side yard setbacks of 9.5 feet and 14.9 feet, with a total of 24.4 feet. Thus, both the individual side yards do not meet the current standard, nor does the sum of the side yards. But these are existing conditions, dating to when the house was constructed, well prior to the adoption of the governing standard in the BCZR. The Petitioner is evaluating her options insofar as the garage addition that she added, but seeks assurance that if the prior setbacks are restored, then the dwelling is not subject to a violation hearing due to its failure to comply with current standards.

A copy of this Motion is being sent to all who appeared. Although the neighbors who appeared objected as to the fence and garage addition, Petitioner believes that the neighbors do not object to the setbacks as they existed at the time Petitioner purchased the property. Certainly, they may respond to this Motion and correct this representation if it is incorrect. But Petitioner and her undersigned counsel do not believe that the Protestants object to the setbacks as they existed when this dwelling was built.

Respectfully submitted,

LAWRENCE E. SCHMIDT
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
(410) 821-0070
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of **September, 2019,** a copy of the foregoing Motion for Reconsideration was mailed first-class pre-paid postage to:

Peter Max Zimmerman, Esquire
People's Counsel for Baltimore County
The Jefferson Building
105 West Chesapeake Avenue, Rm 204
Towson, MD 21204

Pamela Becker
24 Chatsworth Avenue
Glyndon, MD 21071

Richard Stanley
215 Central Avenue
Glyndon, MD 21071

Vernene Lenz
4722 Butler Road
Glyndon, MD 21071

Shirley Winebarger
80 Hanover Road
Reisterstown, MD 21136

Teresa Moore
29 Waugh Avenue
Reisterstown, MD 21136

Kimberley Karlsen
304 Hammond Avenue
Glyndon, MD 21071

Martha Wist
3834 Ivy Hill Drive
Hampstead, MD 21074

Ann Rea
1015 Caren Drive
Eldersburg, MD 21784

Lyle Montanye
4342 Butler Road
Glyndon, MD 21071

Tom and Kim Montanye
4609 Prospect Avenue
Glyndon, MD 21136

Charles and Anna Welsh
4601 Prospect Avenue
Glyndon, MD 21071

Robin Coffin
4511 Prospect Avenue
Glyndon, MD 21071

Frances Acle
4606 Prospect Avenue
Glyndon, MD 21071

Steve and Patricia Fradkin
4605 Prospect Avenue
Glyndon, MD 21136

Cynthia Morrison
4500 Prospect Avenue
Glyndon, MD 21071

Robert Gehman
4612 Prospect Avenue
Glyndon, MD 21136

Ramzi and Roula Hemady
4603 Prospect Avenue
Glyndon, MD 21136

Raymond and Linda Long
114 Hanover Road
Reisterstown, MD 21136

LAWRENCE E. SCHMIDT

Real Property Data Search (w3)

Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Tax Exempt: | **Special Tax Recapture:**
Exempt Class: NONE

Account Identifier: District - 04 Account Number - 0416015450

Owner Information

Owner Name:	BAIR DONNA V	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	4607 PROSPECT AVE GLYNDON MD 21071-3800	**Deed Reference:**	/35307/ 00489

Location & Structure Information

Premises Address:	4607 PROSPECT AVE 0-0000	**Legal Description:**	.78 AC 4607 PROSPECT AVE SWS 200FT NE OF WAUGH AVE

Map:	Grid:	Parcel:	Sub District:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0048	0006	0751		0000				2019	Plat Ref:

Special Tax Areas: | **Town:** NONE
Ad Valorem:
Tax Class:

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1951	1,493 SF	800 SF	33,976 SF	04

Stories	Basement	Type	Exterior	Full/Half Bath	Garage	Last Major Renovation
1	YES	STANDARD UNIT	SIDING	2 full/ 1 half	1 Attached	

Value Information

	Base Value	Value As of 01/01/2019	Phase-in Assessments As of 07/01/2018	Phase-in Assessments As of 07/01/2019
Land:	82,400	82,400		
Improvements	161,300	204,500		
Total:	243,700	286,900	243,700	258,100
Preferential Land:	0			0

Transfer Information

Seller: DEVANEY TIMOTHY W	**Date:** 08/28/2014	**Price:** $320,500
Type: NON-ARMS LENGTH OTHER	**Deed1:** /35307/ 00489	**Deed2:**
Seller: TOWLES MARK	**Date:** 08/04/2011	**Price:** $235,000
Type: NON-ARMS LENGTH OTHER	**Deed1:** /31063/ 00346	**Deed2:**
Seller: HAMILTON BRIAN R	**Date:** 05/25/2005	**Price:** $344,900
Type: ARMS LENGTH IMPROVED	**Deed1:** /21925/ 00100	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2018	07/01/2019
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Tax Exempt: | **Special Tax Recapture:**
Exempt Class: NONE

Homestead Application Information

Homestead Application Status: Approved 02/12/2015

Homeowners' Tax Credit Application Information

Petitioner's Exhibit 4

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF PLANNING

Memorandum

TO: Donna V. Bair **DATE:** March 19, 2019

FROM: Teri Rising, Administrator/Secretary
Landmarks Preservation Commission

SUBJECT: 4607 Prospect Avenue, Glyndon

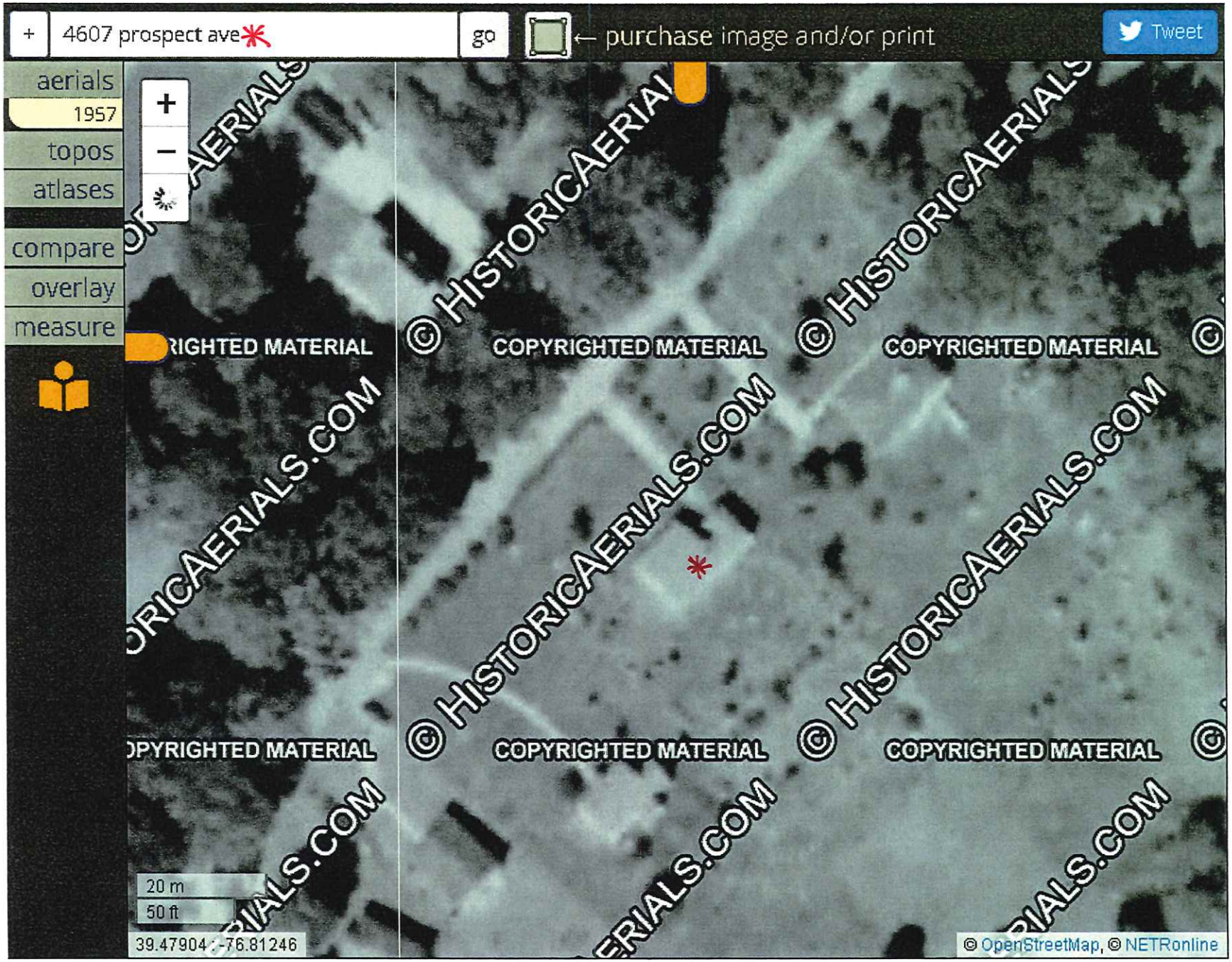
At its March 14, 2019 meeting, the Baltimore County Landmarks Preservation Commission (LPC) voted to issue an Ex Post Facto Certificate of Appropriateness for the following items as proposed:

- 6 foot high wood privacy fence (Code Enforcement Case # CC1814071)
- 12 foot x 28 foot single car garage addition (Code Enforcement Correction Notice # CB1800693)
- 13 foot by 13 foot addition (Code Enforcement Correction Notice # CB1800693)

This action is in accordance with Baltimore County Code Section 32-7-403 and 32-7-405 citing Baltimore County Historic Design Guidelines: Fences & Landscape, p. 4; Additions & Infill, pp. 5-7.

Please note, the work will require a Baltimore County building permit. Applications for building permits are obtained from the Department of Permits, Approvals and Inspections located at 111 Chesapeake Avenue in Towson. Information regarding building permits is available on the County's website. https://www.baltimorecountymd.gov/Agencies/permits/index.html Questions regarding that process should be directed to the Permits, Approvals & Inspections Office.

Petitioner's Exhibit 7


+
4607 prospect ave
go
← purchase image and/or print
Tweet
aerials
1957
topos
atlases
compare
overlay
measure
+
−
© HISTORICAERIALS.COM
COPYRIGHTED MATERIAL
20 m
50 ft
39.47904, -76.81246
© OpenStreetMap, © NETRonline

JOHN A. OLSZEWSKI, JR.
County Executive

ADMINISTRATIVE LAW JUDGE
Office of Administrative Hearings

August 19, 2019

Lawrence E. Schmidt, Esq.
Zachary J. Wilkins, Esq.
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204

RE: Petitions for Special Hearing and Variance
Case No. 2019-0342-SPHA
Property: 4607 Prospect Avenue

Dear Counsel:

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

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

Sincerely,

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln
Enclosure

c: Pamela Becker, 24 Chatsworth Avenue, Glyndon, Maryland 21071
Richard Stanley, 215 Central Avenue, Glyndon, Maryland 21071
Shirley Winebarger, 80 Hanover Road, Reisterstown, Maryland 21136
Teresa Moore, 29 Waugh Avenue, Reisterstown, Maryland 21136
Vernene Lenz, 4722 Butler Road, Glyndon,Maryland 21071

Kim Karlsen, 304 Hammond Avenue, Glyndon, Maryland 21071
Martha Wist, 3834 Ivy Hill Drive, Hampstead, Maryland 21074
Ann Rea, 1015 Caren Drive, Eldersburg, Maryland 21784
Lyle Montanye, 4342 Butler Road, Glyndon, Maryland 21071
Frances Acle, 4606 Prospect Avenue, Glyndon, Maryland 21071
Kim & Tom Montanye, 4609 Prospect Avenue, Glyndon, Maryland 21071
Charles & Anna Welsh, 4601 Prospect Avenue, Glyndon, Maryland 21071
Robin Coffin, 4511 Prospect Avenue, Glyndon, Maryland 21071
Raymond & Linda Long, 114 Hanover Road, Glyndon, Maryland 21136
Steve & Patricia Fradkin, 4605 Prospect Avenue, Glyndon, Maryland 21136
Ramzi & Roula Hemady, 4603 Prospect Avenue, Glyndon, Maryland 21136
Robert Gehman, 4612 Prospect Avenue, Glyndon, Maryland 21136
Cynthia Morrison 4500 Prospect Avenue, Glyndon, Maryland 21071

IN RE: **PETITIONS FOR SPECIAL HEARING AND VARIANCE**	*	BEFORE THE
(4607 Prospect Avenue)	*	OFFICE OF
4th Election District		
3rd Council District	*	ADMINISTRATIVE HEARINGS
Donna V. Bair, *Legal Owner*		
	*	FOR BALTIMORE COUNTY
Petitioner	*	**Case No. 2019-0342-SPHA**

* * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings ("OAH") for consideration of Petitions for Special Hearing and Variance filed on behalf of Donna V. Bair, legal owner ("Petitioner"). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("BCZR") as follows: (1) to approve a nonconforming lot width and lot area, pursuant to BCZR Section 104.1.; (2) to approve a nonconforming dwelling side yard setback, pursuant to BCZR Section 104.1; and (3) to confirm that an existing fence (swimming pool enclosure) with a height of 6 ft. is in compliance with BCZR Section 427.1 and BCC §13-6-101.

A Petition for Variance seeks: (1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.; (2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; (3) to permit an existing shed with a side yard setback of 26 inches in lieu of the required 30 inches; and (4) to permit, if necessary, an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches. A site plan was marked and accepted into evidence as Petitioner's Exhibit 1.

Donna Bair and surveyor John Lemmerman appeared in support of the requests. Lawrence E. Schmidt, Esq. and Zachary J. Wilkins, Esq. represented Petitioner. Numerous neighbors and

ORDER RECEIVED FOR FILING
Date 8/19/19
By ___

members of the community opposed the requests. The Petition was advertised and posted as required by the BCZR. A substantive Zoning Advisory Committee ("ZAC") comment was received from the Department of Planning ("DOP"). That agency opposed certain of the zoning requests.

SPECIAL HEARING

The subject property is shown as Lot 10 on the Plat of Glyndon, filed long before adoption of the BCZR. As such it is obvious the size and width of the lot (neither of which satisfy current DR1 zone requirements) are lawfully nonconforming. This means the lot was properly created long ago, and became nonconforming when the BCZR was adopted in 1955. That aspect of the special hearing request will be granted.

Similarly, the existing shed in the rear yard appears to have been constructed many years ago, likely before the BCZR required a 2 ½ ft. setback for accessory structures. The shed is 26 inches from the property boundary, which is just 4 inches shy of the required setback. As such, though included as a variance request, this will be approved as a lawful nonconforming structure under the special hearing petition.

But I believe the remainder of the special hearing requests must be denied as a matter of law. While the side yard setbacks were deficient and likely nonconforming when Petitioner purchased the property in 2014, improvements were made on both sides of the dwelling since that time. As discussed at the hearing Petitioner failed to obtain a building permit for these recent improvements and the setbacks are in violation of the BCZR. As a result the side yard setbacks (of 0' and 14.9') are not lawfully nonconforming. With respect to the fence, I do not believe it complies with the BCZR and therefore that aspect of the special hearing must also be denied. While the BCZR specifies fences surrounding pools are exempt from the 42" height limitation,

ORDER RECEIVED FOR FILING
Date 8/19/19
By Ash

another section of the same regulation states the exemption is not applicable in an historic district, like Glyndon. BCZR §427.1.A.

VARIANCE

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

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

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

Based on the site plan, photos and other exhibits I do not believe the subject property is unique in a zoning sense. The shape, size and topography of the lot is similar to many other properties in the community. While Glyndon is a historic district, the subject property itself is not historic. As such I do not believe that attribute can render this property unique; *i.e.,* unlike surrounding properties.

In addition, while Petitioner's counsel is correct that the boundary dispute issue must be resolved in circuit court, I do not believe variance relief can be properly granted in a case when the result would be to countenance a trespass onto another's property. It is undisputed, as shown on the site plan, that the improvements intrude 2.5 ft. onto the property owned by the Fradkins. It would be inappropriate, in my opinion, to grant a variance to "legitimize" from a zoning perspective the *status quo*. The BCZR specifies that variances must be in "strict harmony with the spirit and intent" of the regulations, and must not be injurious to the general welfare. BCZR §307.1. I do not believe that the requested variances would satisfy either criterion.

THEREFORE, IT IS ORDERED this **19th** day of **August, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing: (1) to approve a nonconforming lot width and

ORDER RECEIVED FOR FILING
Date 8/19/19
By Sen

area; and (2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of the required 30 inches, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Hearing: (1) to approve a nonconforming dwelling side yard setback; and (2) to confirm that an existing fence (swimming pool enclosure) with a height of 6 ft. is in compliance with BCZR Section 427.1 and BCC Section 13-6-101, be and is hereby DENIED.

IT IS FURTHER ORDERED that the Petition for Variance: (1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.; (2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of side yards of 14.9 ft. in lieu of the required 50 ft.; and (3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches, 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:sln

ORDER RECEIVED FOR FILING
Date 8/19/19
By sln

Debra Wiley

From: Debra Wiley
Sent: Monday, August 19, 2019 8:04 AM
To: David W Kirby
Subject: Case No. 2019-0342-SPHA - 4607 Prospect Ave.
Attachments: 20190819080329363.pdf

Good Morning David,

Per our telephone conversation on July 31st, please find attached a copy of ALJ Beverungen's Order dated today.

Have a great day !

-----Original Message-----
From: adminhearingscpr@baltimorecountymd.gov <adminhearingscpr@baltimorecountymd.gov>
Sent: Monday, August 19, 2019 8:03 AM
To: Debra Wiley <dwiley@baltimorecountymd.gov>
Subject: Message from "RNP002673F6C9D3"

This E-mail was sent from "RNP002673F6C9D3" (MP 3055).

Scan Date: 08.19.2019 08:03:29 (-0400)
Queries to: adminhearingscpr@baltimorecountymd.gov

JB 7-22-19

IN RE: PETITION FOR SPECIAL HEARING AND VARIANCE **4607 Prospect Avenue** 4th Election District 3rd Councilmanic District Donna V. Bair *Legal Owner*	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY **Case No.: 2019-342-SPHA**

RECEIVED
AUG 01 2019
OFFICE OF
ADMINISTRATIVE HEARINGS

* *

PETITIONER'S POST-HEARING MEMORANDUM

The Petitioner/Property Owner, Donna V. Bair, ("Petitioner"), by Lawrence E. Schmidt, Esquire, and Smith Gildea and Schmidt, LLC, her attorneys, submits this Post-Hearing Memorandum in support of the petitions for special hearing and/or variance for the above referenced matter.

I. Procedural History

This matter comes before the Administrative Law Judge on petitions for variance and special hearing for the property located at 4607 Prospect Avenue in the community known as Glyndon, in northwestern Baltimore County. The petitions were filed by Donna Bair, property owner. As they relate to certain of the issues presented, several of the requests within the petitions are presented in the alternative as either via a special hearing or variance. A special hearing has been likened to an action for declaratory judgment and is used to establish a non-conforming use. (See *Antwerpen v. Baltimore County,* 163 Md. App. 194, 2005). A variance seeks relief from a bulk regulation; in this case, certain building setbacks.

II. Statement of Facts

Testimony and evidence presented established that the subject property is approximately three quarters of an acre in size (33,976 square feet) predominantly zoned DR 1 (Density Residential, 1 unit per acre). A small sliver of the property in the rear is zoned RC 2 (Resource Conservation). None of the improvements are within the RC zone. The property is designated as Lot 10 on the plat recorded in the Land Records of Baltimore County in Plat Book 126, Page 371. This plat subdivided the property known as "the lands belonging to B.F. Bennett and Joshua Regester" into residential building lots and was recorded on October 31, 1880; long before the adoption of Baltimore County's first zoning regulations in 1945.

The property is improved with a detached single family dwelling that was constructed in 1951. Although the County's first zoning regulations were adopted in 1945, they were rudimentary in nature and the current regulations and requirements therein spring from the comprehensively amended regulations adopted in 1955. Additionally, the DR zoning classification came into being in 1970, at which time the County Council enacted Bill No. 100. Therefore, both the lot and the house itself predate the regulations that govern its use. The property is located within the Glyndon historic district which has been overlaid in this area. Many of the individual properties in Glyndon are historically significant and the houses quite old.

The petitioner acquired the property by deed dated July 18, 2014. At the time of her acquisition, the property was improved with the dwelling, an attached one car garage, a small storage shed and a swimming pool. Since her acquisition, the petitioner

has further improved the property with a second attached one car garage and a fence enclosing the pool.

III. Relief Requested

The specific relief requested in the instant petitions is as follows:

1. Lot Area and Width: Under the DR 1 zoning regulations, lots with that zoning classification shall be a minimum of 40,000 square feet in area and 150 feet in width (See Baltimore County Zoning Regulations ("BCZR") § 1B02.3.C). As is the case with many lots in this neighborhood, and often the case with many older subdivisions in Baltimore County, the subject property fails to meet these zoning requirements. However, BCZR § 104 permits the continuation of "non-conforming uses." This is a designation for uses and conditions that have existed prior to the adoption of the regulation that now governs the property at issue. The designation "non-conforming" allows the use/condition to continue as legally "grandfathered". The special hearing process is that zoning tool by which non-conforming uses are recognized. As this property was laid out and created in the above referenced 1880 plat, its width and size are clearly non-conforming and should therefore be permitted to continue under the petition for special hearing filed. In the alternative, a variance can be granted to permit the lot size and width indicated.

2. Storage Shed: As noted above, there is a small storage shed in the rear yard which houses lawn equipment and similar household items. This shed is classified as an "accessory structure" under BCZR § 400.1. That section further provides that such structures be located in the rear yard (which it is) and be two and one half feet (30

inches) from the property line. According to a survey completed by the petitioner's surveyor, John Lemmerman, the shed is 26 inches from the property line. Thus, a variance for these four (4) inches is requested. The neighbors who adjoin the Bair lot on that side (Steve and Patricia Fradkin) were present at the public hearing and indicated no opposition to that request. The placement of the shed appears to be due to the topography of the lot and the drainage pattern. Moreover, although the age of the shed is not determined, as it predates Ms. Bair's ownership, it too may be non-conforming.

3. Dwelling setbacks: Although the existing dwelling meets the required front yard and rear yard setbacks, relief is requested as to the side yard setbacks. Actually, this deficiency too is an existing condition, although construction by Ms. Bair has increased the setback deficiency on one side of the dwelling. BCZR § 1B02.3.C establishes setbacks required in the DR 1 zone. A minimum side yard setback of 20 feet is required. Additionally, a sum of the side yard setbacks of 50 feet is required. Therefore, a property owner could have a 30 foot setback on one side and a 20 foot setback on the other; or a 25 foot setback on each side, or some similar combination; for so long as the side yard setbacks are at least 20 feet in dimension and they total fifty feet. As noted above, the property did not meet these requirements when the Petitioner acquired the property. Therefore, the deficiency is non-conforming. When one faces the dwelling from the street, the side yard setback on the right (southwest) side is 14.9 feet. This dimension (obviously) is less than the twenty feet required. Ms. Bair added an addition to this part of the dwelling, but that addition did **NOT** reduce/alter the existing setback. It was 14.9 feet before and remains the same. The construction on this

side only "squared off" that corner of the dwelling and did not alter the setback. Therefore, the dimension of 14.9 feet is non-conforming on the southwest (right) side of the dwelling.

On the other side of the dwelling (the northeast or left side), the previously existing setback was 9.5 feet. This is determined by the fact that the Petitioner constructed a 12 foot wide second attached garage. However, as shown on the survey submitted, this garage infringes into the adjacent property (Fradkin lot) by approximately 2.5 feet. Thus, the previously existing setback on this side was 9.5 feet (i.e. 12 - 2.5 = 9.5) Coupled with the 14.9 feet on the other side, the sum of the side yard setbacks were also non-compliant as they totaled less than the fifty feet required (i.e. 14.9 + 9.5 = 24.5). Thus, both the individual side yards do not meet the current standard, nor does the sum of the side yards. But these are existing conditions, dating to when the house was constructed.

As acknowledged at the hearing, Ms. Bair's garage addition further reduced the setback on the Fradkin side. Her building actually extends into the neighbor's property (Fradkin) approximately 2.5 feet and thus may constitute a trespass. Ms. Bair was unaware of the location of the property line at the time the addition was constructed. As noted at the hearing (and shown in an old photograph of that side of the property) the prior owner had constructed improvements (i.e. landscaping, stairs, etc.) on that side of the property. Based on the location of those improvements, Ms. Bair placed the garage where these improvements were located and assumed that the addition was not infringing onto her neighbor's property.

Whatever the extent and resolution of the trespass issue with Mr. & Mrs. Fradkin, that matter is not within the jurisdiction of the Office of Administrative Hearings and the authority of the Administrative Law Judge. Their authority is as to the zoning regulations and not to adjudicate civil law property disputes between neighbors. Ms. Bair has offered to acquire an easement (at her sole cost) from the Fradkins to legitimize this infringement and will continue to seek a resolution of the issue that is agreeable to her neighbors. But from a zoning standpoint, she seeks variance relief to permit a 14.9 foot setback on one side, zero feet on the other and a sum of the two of 14.9 feet. As noted above, the non-conforming situation was 14.9 feet on the one side and 9.5 feet on the other for a sum of 24.5 feet.

4. Fence: The final issue relates to a six foot high fence that Ms. Bair constructed which surrounds the swimming pool that is located in the rear yard. On the southeast (Fradkin) side, the fence (like the addition) was incorrectly constructed on the neighbor's property. The Petitioner understands this violation and will relocate it to her property. This relocation has not occurred at this point in time as Ms. Bair wanted to ascertain what remedial changes might need be made before work began on the property. Thus, she would pay for and make any changes required at one time. The primary issue, however, relates to the height of the fence on the other side. The neighbors on this side are the Montanye's and they object to the height of the fence. Photographs show that the fence is located solely on the Bair property.

At the hearing, the Petitioner presented a photograph showing that there previously existed a seven to seven and one-half foot high structure/fence in the side

yard next to the Montanye property. This fence actually had a lattice top and roof. This "structure" apparently provided shelter/storage space near the pool. It is not clear when that structure was constructed but, it too, could be non-conforming.

BCZR § 427.1 regulates residential fences in Baltimore County. Subsection B of that regulation indicates that a fence cannot exceed the height of 42 inches if it abuts the front yard of the adjacent dwelling. The Montanye dwelling is set back a significant distance from the road (Prospect Ave.) so that its front yard abuts the side and rear yard of the Bair lot. Although BCZR § 427.1.B.1 appears to limit the Bair fence to 42 inches, BCZR § 427.1.C.1 provides an exclusion from that requirement. That section states that the 42 inch limitation does not apply when a pool fence is required. In this regard, Baltimore County Code § 13-6-101 requires a fence or similar enclosure around a pool. The reasons for this requirement are obvious. The justification to provide for the public safety and prevent any tragedy due to pool's attractive nuisance character trumps the aesthetic considerations in BCZR § 427.1 Moreover, the County Code provisions mandating a fence or similar enclosure provide no height limitation.

The only other potentially relevant regulation is BCZR § 427.1.A. This section limits a fence height to 42 inches for properties zoned DR (or RC) which are located in a historic district. This property is within the Glyndon Historic District. However, the regulation is read to prohibit a 42 inch height that is located in the side yard of the property which adjoins a public road. Here, the subject property's front yard adjoins the public road and thus this sub-section is not applicable. Therefore, the provisions of BCZR § 427 do not apply due to the exclusionary language within the County Code and

the layout of this lot. Moreover, as noted above, the County's Landscape Preservation Commission has approved the building additions and fence, arguably satisfying any applicable requirement imposed by BCZR § 427.1.A.

IV. The Legal Standard

The legal standard for zoning variance relief is well settled and is no doubt well familiar to the ALJ. (See *Cromwell v. Ward,* 102 Md. App. 691, 1995 and its progeny) There is a two part test; namely, a showing that the property is unique and a finding of practical difficulty. Admittedly, variances are not favored under law. But this does not mean that they should never be granted. If that were the case, the statute would be reduced to a nullity as it would have no application. Here, the property is undoubtedly unique. "Unique" means "one of a kind" or "different from others." A mere viewing of the plat shows that there are no other properties in this locale of the same shape and size of the subject property. This is not some cookie cutter subdivision where all lots are identically shaped and sized. The significant depth and corresponding lack of width, make compliance with the regulations impossible. As noted above, the lot's width is approximately two thirds of what is required. The lot width and setbacks are insufficient because this lot was created many years before the drafters of the BCZR codified the required bulk regulations for the DR 1 zone.

The property is also unique because of its topography and location within a historic district. The property slopes significantly from front to rear. It is simply not possible to locate a garage (and provide driveway access thereto) if it were located in the rear yard. Additionally, a separate garage structure in the rear would not be

compatible with the architecture of the houses in the Glyndon Historic District. The photos (including aerials) show no detached garages in the rear yards of houses in this neighborhood.

Insofar as practical difficulty, the Petitioner seeks only improvements common to what other neighbors in the area enjoy. The single car garage addition was constructed to provide storage for a second vehicle, which is a common necessity for residents in this area. Ms. Bair indicated that there are large trees on her and the neighbors' properties which could cause damage to vehicles parked outside during storms and loss of limbs. Prospect Avenue is a narrow street and, as the photos show, street parking is not practical.

V. Neighbors' Objections

A primary reason that the undersigned counsel asked for the opportunity to submit this written memorandum in lieu of oral argument was to review the correspondence and emails that many of the neighbors submitted to the ALJ regarding this matter. The undersigned appreciates that these neighbors are not represented by counsel and thus do not appreciate the inappropriate nature of ex parte communications with the ALJ. In responding to these communications, it is noted that perhaps the single biggest objection is not that the Bair dwelling is inappropriate or incompatible with the locale, rather than Ms. Bair did not "play by the rules." Although that is not a substantive factor upon the relief requested should be adjudged, a response is warranted. As was indicated at the hearing, the Petitioner hired contractors to construct both the additions and the fence. She assumed (as would most any home

owner) that the individuals hired would undertake the work lawfully and after securing all necessary permits. They apparently did not. The Petitioner was unaware of the fact that permits were not issued. Had permits been requested, then the zoning issues which are now presented would have come to light. No construction would have been allowed without the relief requested herein having been granted. The fraud perpetuated on the Petitioner was likewise perpetuated on at least one neighbor. In this regard, Mr. Montanye testified that he questioned an individual working on the roof of the addition to the dwelling; asking, "do you have permits for this work?" The individual answered in the affirmative.

Upon determining that the work had been done illegally, the Petitioner set out to bring the property into compliance. She first made application for approval of the additions and fence to the Landmark Preservation Commission ("LPC"). This approval is required due to the property's location in a historic district. After a hearing, the LPC approved the request. This is significant as the LPC's findings concluded that the additions/fence were compatible with the dwelling and consistent with historic Glyndon. The Petitioner thereafter engaged counsel and has sought the instant zoning relief. If that is obtained, permits will then be applied for. Admittedly, this matter has not followed the proper course. But the Petitioner, upon learning of the lack of permits and approvals, has openly and honestly sought them.

The obvious principle of law which has often been stated should also be emphasized here; to wit, that zoning decisions should not be made by plebiscite. Whether the request is supported by the neighbors or opposed, the ALJ must adjudge

this case by the requirements of law and not because the neighbors do not like the Petitioner or believe that she didn't "follow the rules."

Finally, as noted at the hearing, a number of properties in this immediate neighborhood have been afforded variance relief. One of the neighbors who testified in opposition (Fran Acle) obtained a variance in Case No. 05-444-A. In that decision, the Zoning Commissioner specifically opined that the request complied "with the requirements of Section 307.1 of the BCZR." (Acle opinion, page 2). This property is immediately across the street. The Fradkin property (immediately next door) also was granted a variance when owned by a previous owner (Case No. 84-332-A). Other variances granted in the neighborhood include one for a reduced side yard setback (the same type of relief as sought in the instant matter) for the property located at 4626 Butler Road (Case No. 64-94-A) and 3 Waugh Avenue (Case 94-307-A), which also requested a variance to a side yard setback less than required. These cases are not cited to the ALJ because approval in one case mandates the same result in another. Certainly, each request must be considered on its own. But all of these cases relate to properties on the plat which created the subject lot.[1] The Zoning Commissioner in these cases has consistently determined that lots created by this plat are unique and therefore qualify for variance relief. The same result is appropriate and mandated here.

[1] There are two other cases which are of note but neither was for properties shown on this plat. Rather, they were for properties on the other side of Butler Road. They are still in Historic Glyndon. In Case No. 2015-278-A (6 Fiske Ave), ALJ Beverungen granted relief allowing side yards (both individually and in total) to be less than required. In Case No. 90-419-SPH, difference side yard setbacks were allowed notwithstanding significant community opposition. These cases mirror the situation here.

VI. Conclusion

This case is not about an individual who didn't "follow the rules" or who her neighbors don't like. Based upon the testimony and evidence offered, it is clear that much of the relief sought is based upon the non-conforming nature of the property/dwelling. Other relief is warranted under the variance criteria established in Cromwell, *infra.* The Petitioner requests that relief wound be granted as indicated herein.

Respectfully submitted,

LAWRENCE E. SCHMIDT
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
(410) 821-0070
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of **August, 2019,** a copy of the foregoing Post-Hearing Memorandum was mailed first-class pre-paid postage to:

Peter Max Zimmerman, Esquire
People's Counsel for Baltimore County
The Jefferson Building
105 West Chesapeake Avenue, Rm 204
Towson, MD 21204

Pamela Becker
24 Chatsworth Avenue
Glyndon, MD 21071

Richard Stanley
215 Central Avenue
Glyndon, MD 21071

Vernene Lenz
4722 Butler Road
Glyndon, MD 21071

Shirley Winebarger
80 Hanover Road
Reisterstown, MD 21136

Teresa Moore
29 Waugh Avenue
Reisterstown, MD 21136

Kimberley Karlsen
304 Hammond Avenue
Glyndon, MD 21071

Martha Wist
3834 Ivy Hill Drive
Hampstead, MD 21074

Ann Rea
1015 Caren Drive
Eldersburg, MD 21784

Lyle Montanye
4342 Butler Road
Glyndon, MD 21071

Tom and Kim Montanye
4609 Prospect Avenue
Glyndon, MD 21136

Charles and Anna Welsh
4601 Prospect Avenue
Glyndon, MD 21071

Robin Coffin
4511 Prospect Avenue
Glyndon, MD 21071

Frances Acle
4606 Prospect Avenue
Glyndon, MD 21071

Steve and Patricia Fradkin
4605 Prospect Avenue
Glyndon, MD 21136

Cynthia Morrison
4500 Prospect Avenue
Glyndon, MD 21071

Robert Gehman
4612 Prospect Avenue
Glyndon, MD 21136

Ramzi and Roula Hemady
4603 Prospect Avenue
Glyndon, MD 21136

Raymond and Linda Long
114 Hanover Road
Reisterstown, MD 21136

LAWRENCE E. SCHMIDT

PLEASE PRINT CLEARLY

CASE NAME 2019-342-SPHA
CASE NUMBER
DATE

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E - MAIL
Lawrence E. Schmidt	600 Washington Ave	Towson, MD	lschmidt@sgs-law.com
Zachary Wilkins	600 Washington Ave	Towson, MD	zwilkins@sgs-law.com
Donna Bair	4607 Prospect Ave	Glyndon, MD	donna.bair@yahoo.
JOHN LEMMERMAN	142 E. MAIN ST.	WESTMINSTER, MD 21157	JOHN.RTF@GMAIL.COM
Dennis Bair	4607 Prospect Ave	Glyndon, MD 21136	dennis.bair@crystalfarms.com

PLEASE PRINT CLEARLY

CASE NAME 2019-342-SPHA
CASE NUMBER
DATE

CITIZEN'S SIGN - IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E - MAIL
Pamela Becker	24 Chatsworth Ave	Glyndon, MD 21071	pamelajaneb24@gmail.com
Richard Stanley	215 Central Ave	"	swisstrix@gmail.com
Shirley Winebarger	80 Hanover Road	Reisterstown, Md. 21136	
Teresa Moore	29 Waugh Ave	" "	tmoore84@comcast.net
Vernene Lenz	4722 Butler Rd	Glyndon 21071	Travelanduniqueventures@comcast.net

PLEASE PRINT CLEARLY

CASE NAME _____
CASE NUMBER _____
DATE _____

CITIZEN'S SIGN - IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E - MAIL
Kim Karlsen	304 Hammond Ave	Glyndon MD 21071	perandkim@aol.com
Martha Wist	3834 Ivy Hill Dr	Hampstead MD 21074	marthaw19@yahoo
Ann Rea	1015 Caren Dr	Eldersburg, MD 21784	aerea@comcast.net
LYLE MONTANYE	4342 BUTLER RD.	21071	LYLE@G-MONLINE.NET

PLEASE PRINT CLEARLY

CASE NAME _____
CASE NUMBER _____
DATE _____

CITIZEN'S SIGN - IN SHEET

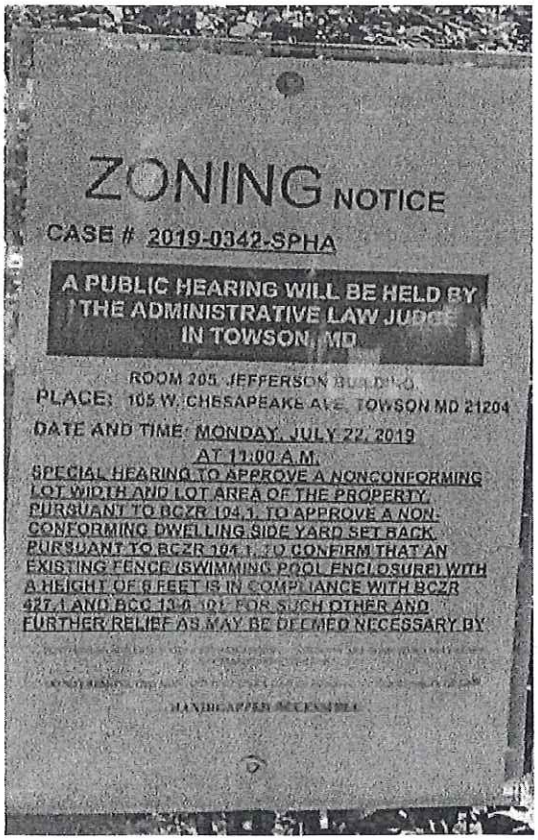
NAME	ADDRESS	CITY, STATE, ZIP	E - MAIL
Linda Long	114 Hanover Ra	21136 md	—
Raymond Long	114 HANOVER RD	21136 MD	
Patricia J Fradkin	4605 Prospect Ave	21136 MD	Pfradkin0U3@gm[illegible]-ou
RAMZZ a ROULA HEMADS	4603 Prospect Ave	Glyndon, MD 21136	
Robert Gehman	4612 Prospect Ave	Glyndon 21136	RKgehman@gmail.com
Cynthia Morrison	4500 Prospect Ave	Glyndon 21071	cmmjultim1@verizon.net
STEVE FRADKIN	4605 PROSPECT AVE	GLYNDON 21136-3800	RRISTLAXCOACH@GMAIL

SECOND CERTIFICATE OF POSTING

ATTENTION: SHERRY NUFFER
DATE: 7/20/2019
Case Number: 2019-0342-SPHA
Petitioner / Developer: ZACHARY WILKENS, ESQ. ~ DONNA BAIR
Date of Hearing: JULY 22, 2019

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:
4607 PROSPECT AVENUE

The sign(s) were posted on: JULY 2, 2019
The sign(s) were re-photographed on: JULY 20, 2019



Linda O'Keefe
(Signature of Sign Poster)

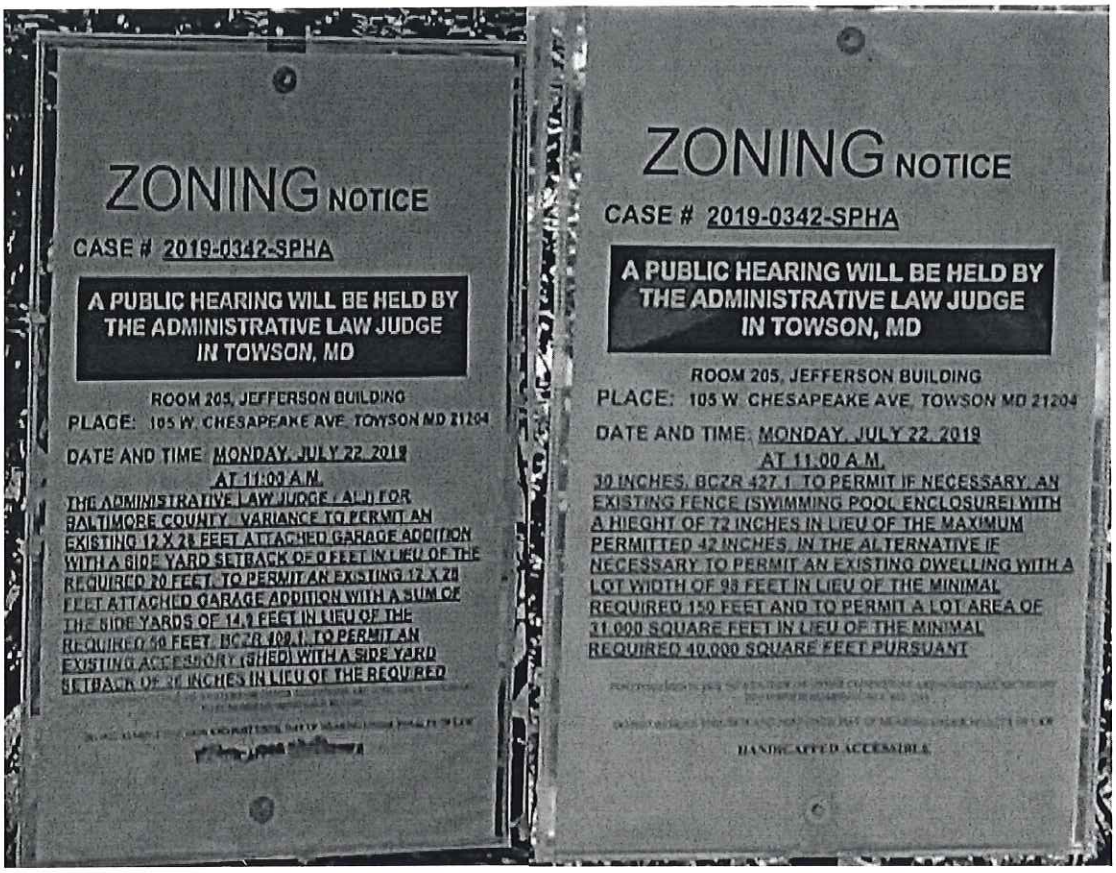
Linda O'Keefe
(Printed Name of Sign Poster)

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)

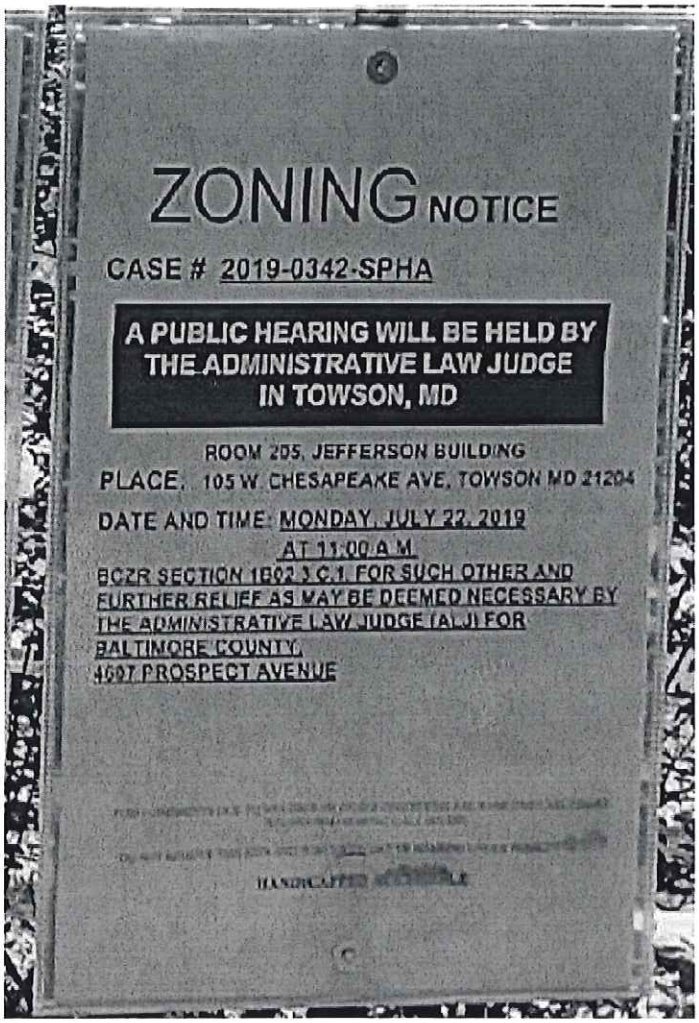
RECEIVED
JUL 22 2019
OFFICE OF
ADMINISTRATIVE HEARINGS



SIGN # 2 SIGN #3

RE-PHOTOGRAPHED @ 4607 PROSPECT AVENUE ~ 7/20/2019
CASE # 2019-0342-SPHA

RECEIVED
JUL 22 2019
OFFICE OF
ADMINISTRATIVE HEARINGS



SIGN #4

RE-PHOTOGRAPHED @ 4607 PROSPECT AVENUE ~ 7/20/20

CASE # 2019-0342-SPHA

RECEIVED

JUL 22 2019

OFFICE OF
ADMINISTRATIVE HEARINGS

Debra Wiley

From: Linda Okeefe <luckylinda1954@yahoo.com>
Sent: Sunday, July 21, 2019 12:25 AM
To: Administrative Hearings
Subject: Cert. Case # 2019-0342-SPHA @ 4607 Prospect Ave.
Attachments: Prospect Ave. Cert. .jpeg; Prospect Ave. Photos #1.docx; Prospect Ave. Photos #2.docx

CAUTION: This message from luckylinda1954@yahoo.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Hi Debbie,

I have another Cert. ready for you for Case # 2019-0342-SPHA @ 4607 Prospect Avenue.
Thank you,

Linda

Linda O'Keefe
523 Penny Lane
Hunt Valley MD 21030
Phone # 410-666-5366
Cell# 443-604-6431
Fax# 410-666-0929
luckylinda1954@yahoo.com

RECEIVED
JUL 22 2019
OFFICE OF
ADMINISTRATIVE HEARINGS

JOHN A. OLSZEWSKI, JR.
County Executive

MICHAEL D. MALLINOFF, *Director*
Department of Permits, Approvals & Inspections

July 16, 2019

Zachary J. Wilkins
600 Washington Ave Suite 200
Towson MD 21204

RE: Case Number: 2019-0342-SPHA, 4607 Prospect Ave

To Whom It May Concern:

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits, Approvals, and Inspection (PAI) on May 28, 2019. This letter is not an approval, but only a **NOTIFICATION.**

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR/kl

Enclosures

c: People's Counsel
Donna V. Bair 4607 Prospect Ave Glyndon MD 21071

ZAC Comments

7-22

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE MEMORANDUM

TO: Michael D. Mallinoff
Director, Department of Permits, Approvals and Inspections

DATE: 7/2/2019

FROM: C. Pete Gutwald
Director, Department of Planning

SUBJECT: **ZONING ADVISORY COMMITTEE COMMENTS**
Case Number: 19-342



INFORMATION:
Property Address: 4607 Prospect Avenue
Petitioner: Donna V. Bair
Zoning: RC 2, DR 1
Requested Action: Special Hearing, Variance

The Department of Planning has reviewed the petition for special hearing and the petition for variance to determine whether or not the Administrative Law Judge (ALJ) should approve, confirm and or permit the relief identified on the attachment submitted in support of the petitions.

A site visit was conducted on June 11, 2019. The site was the subject to review by the Landmarks Preservation Committee at their March 14, 2019 meeting wherein a Certificate of Appropriateness addressing privacy fencing and additions to the dwelling were approved.

The Department has no objection to granting the petitioned zoning relief in part, and opposes same, in part.

- The Department will concur with the ALJ as to the non-conforming status of the lot in terms of area and width.
- The Department does not oppose variance request #3.
- The Department opposes any confirmation of the non-conforming status or grant of variance relief for any component of the site shown to be encroaching on the adjacent property as shown on the site plan submitted by the petitioners.

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

Prepared by:

Lloyd T. Moxley

Division Chief:

Jenifer G. Nugent

CPG/JGN/LTM/
c: Bill Skibinski
Zachary J. Wilkins, Smith, Gildea & Schmidt, LLC
Office of the Administrative Hearings
People's Counsel for Baltimore County

s:\planning\dev rev\zac\zacs 2019\19-342.docx

M-22

RECEIVED
JUN 11 2019
OFFICE OF
ADMINISTRATIVE HEARINGS

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: June 11, 2019

SUBJECT: DEPS Comment for Zoning Item # 2019-0342-SPHA
Address 4607 Prospect Avenue
(Bair Property)

Zoning Advisory Committee Meeting of **June 10, 2019**.

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

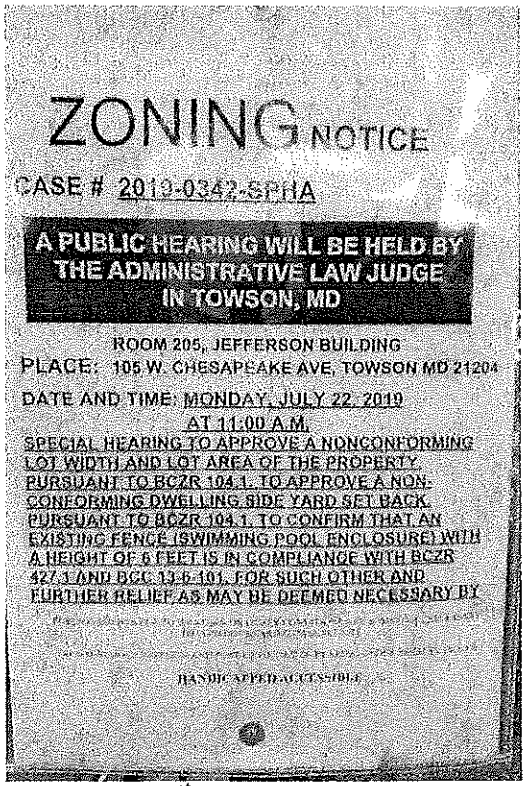
Reviewer: Steve Ford

CERTIFICATE OF POSTING

ATTENTION: KRISTEN LEWIS
DATE: 7/2/2019
Case Number: 2019-0342-SPHA
Petitioner / Developer: ZACHARY WILKINS, ESQ. ~ DONNA BAIR
Date of Hearing: JULY 22, 2019

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:
4607 PROSPECT AVENUE

The sign(s) were posted on: JULY 2, 2019



1st SIGN

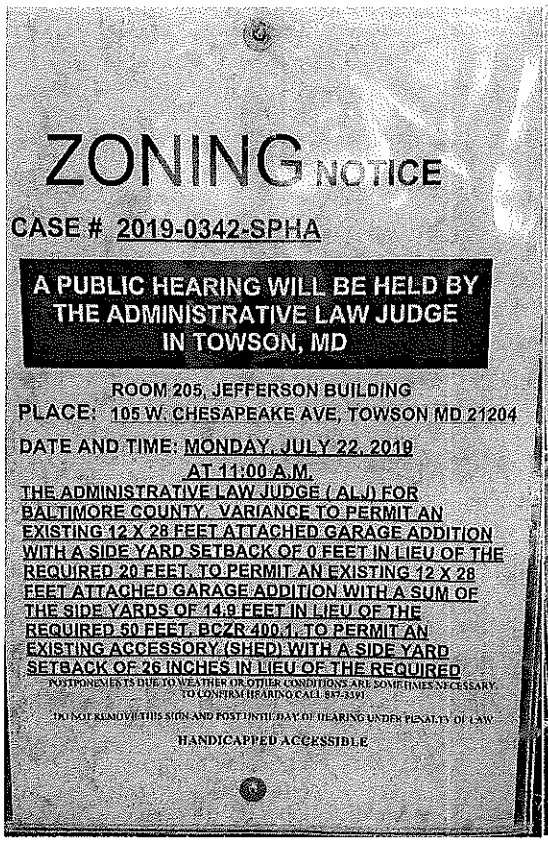
Linda O'Keefe
(Signature of Sign Poster)

Linda O'Keefe
(Printed Name of Sign Poster)

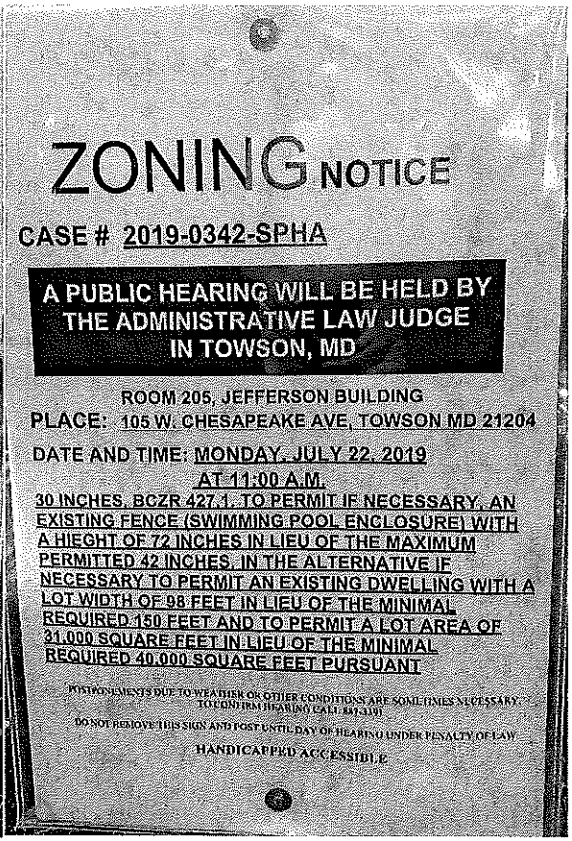
523 Penny Lane
(Street Address of Sign Poster)

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

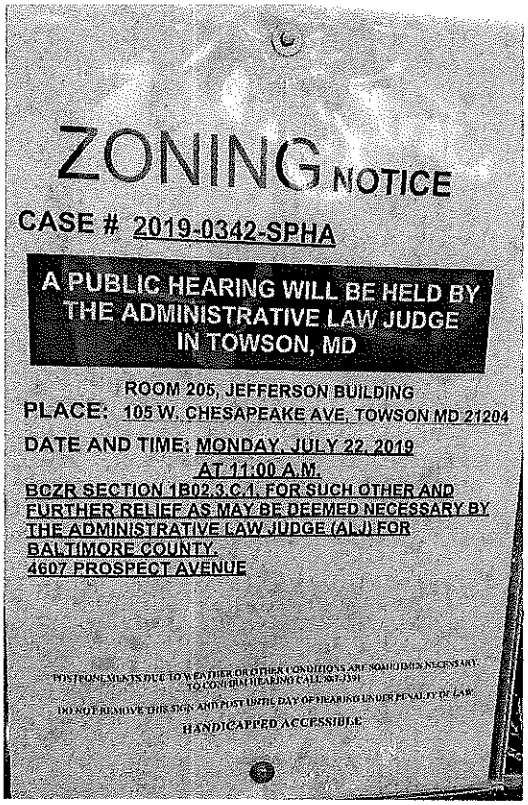
410 – 666 – 5366
(Telephone Number of Sign Poster)



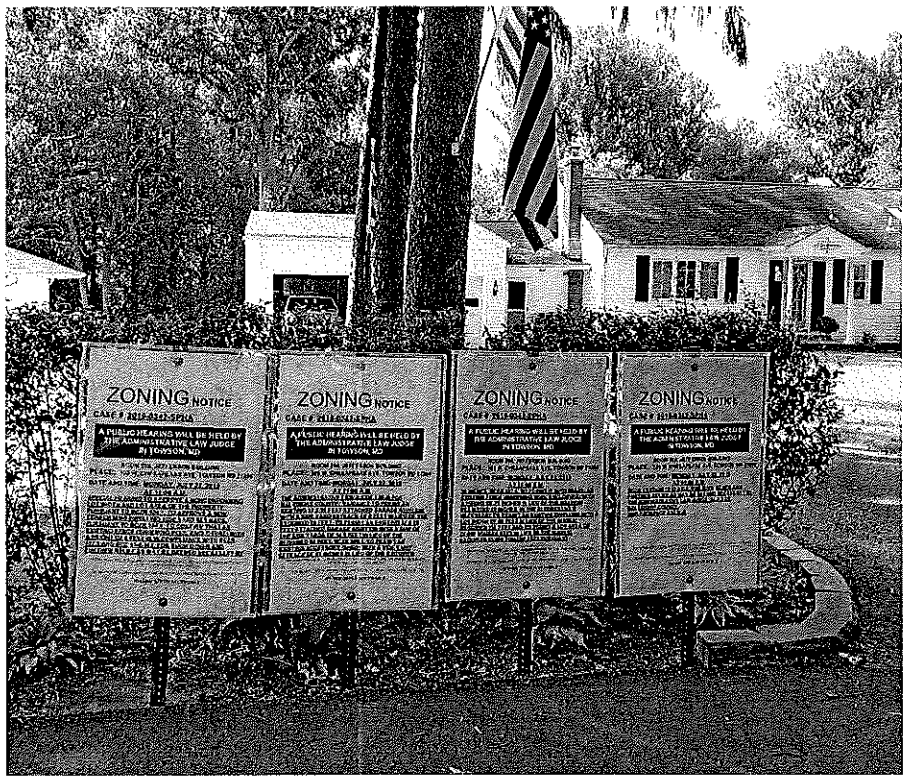
SIGN #2



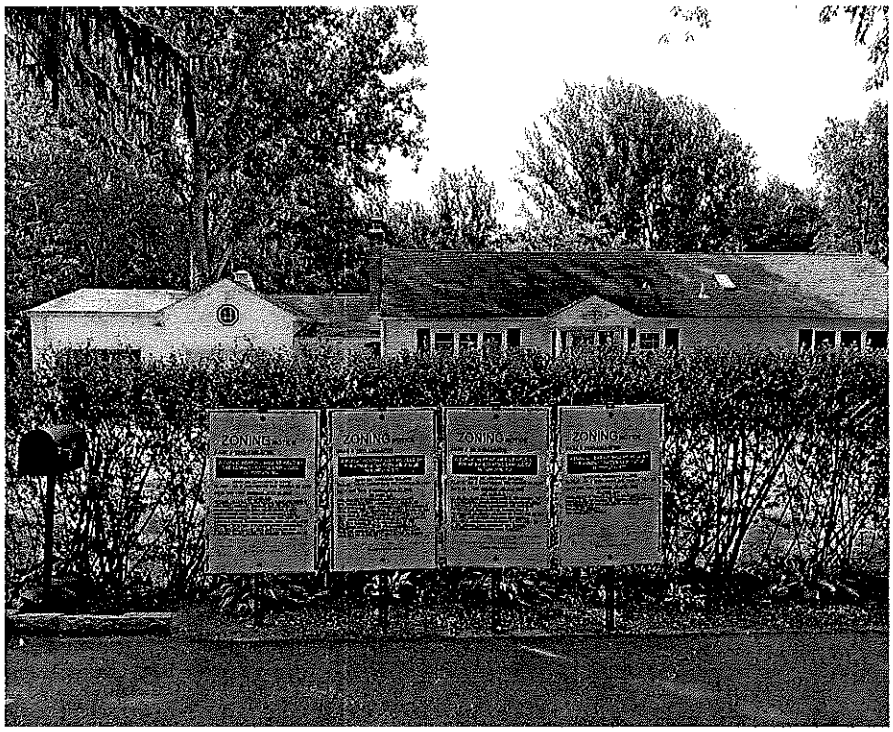
SIGN #3



SIGN #4 @ 4607 Prospect Ave. 7/2/2019 ~ **CASE # 2019-0342-SPHA**



Background Photo 1st Set of Signs @ 4607 Prospect Ave. ~ 7/2/2019



Background Photo 2nd Set of Signs @ 4607 Prospect Ave. ~ 7/2/2019

CASE # 2019-0342-SPHA

The Daily Record

11 East Saratoga Street
Baltimore, MD 21202-2199
(443) 524-8100
http://www.thedailyrecord.com

Order #: 11762662
Case #: 2019-0342-SPHA
Description:

NOTICE OF ZONING HEARING CASE NUMBER: 2019-0342-SPHA

PUBLISHER'S AFFIDAVIT

We hereby certify that the annexed advertisement was published in **The Daily Record**, a daily newspaper published in the State of Maryland 1 times on the following dates:

7/2/2019

Darlene Miller

Darlene Miller, Public Notice Coordinator
(Representative Signature)

Baltimore County

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: 2019-0342-SPHA
4607 Prospect Avenue
Southeast side of Prospect Avenue, northeast of Waugh Avenue
4th Election District - 3rd Councilmanic District
Legal Owners: Donna Bair

Special Hearing to approve a nonconforming lot width and lot area of the property, pursuant to BCZR 104.1. To approve a nonconforming dwelling side yard setback, pursuant to BCZR 104.1. To confirm that an existing fence (swimming pool enclosure) with a height of 6 feet is in compliance with BCZR 427.1 and BCC 13-6-101. For such other and further relief as may be deemed necessary by the Administrative Law Judge (ALJ) for Baltimore County. Variance to permit an existing 12x28 feet attached garage addition with a side yard setback of 0 feet in lieu of the required 20 feet. To permit an existing 12x28 feet attached garage addition with a sum of the side yards of 14.9 feet in lieu of the required 50 feet. BCZR 400.1. To permit an existing accessory (shed) with a side yard setback of 26 inches in lieu of the required 30 inches. BCZR 427.1. To permit if necessary, an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches. In the alternative if necessary to permit an existing dwelling with a lot width of 98 feet in lieu of the minimal required 150 feet and to permit a lot area of 31,000 square feet in lieu of minimal required 40,000 square feet pursuant BCZR Section 1B02.3.C.1. For such other and further relief as may be deemed necessary by the Administrative Law Judge (ALJ) for Baltimore County.

Hearing: Monday, July 22, 2019 at 11:00 a.m. in Room 205, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204

Michael Mallinoff
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.

jy2

JOHN A. OLSZEWSKI, JR.
County Executive

MICHAEL D. MALLINOFF, *Director*
Department of Permits, Approvals & Inspections

June 25, 2019

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: 2019-0342-SPHA
4607 Prospect Avenue
Southeast side of Prospect Avenue, northeast of Waugh Avenue
4th Election District – 3rd Councilmanic District
Legal Owners: Donna Bair

Special Hearing to approve a nonconforming lot width and lot area of the property, pursuant to BCZR 104.1. To approve a nonconforming dwelling side yard setback, pursuant to BCZR 104.1. To confirm that an existing fence (swimming pool enclosure) with a height of 6 feet is in compliance with BCZR 427.1 and BCC 13-6-101. For such other and further relief as may be deemed necessary by the Administrative Law Judge (ALJ) for Baltimore County. Variance to permit an existing 12x28 feet attached garage addition with a side yard setback of 0 feet in lieu of the required 20 feet. To permit an existing 12x28 feet attached garage addition with a sum of the side yards of 14.9 feet in lieu of the required 50 feet. BCZR 400.1. To permit an existing accessory (shed) with a side yard setback of 26 inches in lieu of the required 30 inches. BCZR 427.1. To permit if necessary, an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches. In the alternative if necessary to permit an existing dwelling with a lot width of 98 feet in lieu of the minimal required 150 feet and to permit a lot area of 31,000 square feet in lieu of minimal required 40,000 square feet pursuant BCZR Section 1B02.3.C.1. For such other and further relief as may be deemed necessary by the Administrative Law Judge (ALJ) for Baltimore County.

Hearing: Monday, July 22, 2019 at 11:00 a.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204

Michael Mallinoff
Director

MM:kl

C: Zachary Wilkins, 600 Washington Avenue, Ste. 200, Towson 21204
Donna Bair, 4607 Prospect Avenue, Glyndon 21071

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, JULY 2, 2019.**
(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.

RE: PETITION FOR SPECIAL HEARING AND VARIANCE 4607 Prospect Avenue; SE/S of Prospect Avenue, 410' NE of Waugh Avenue 4th Election & 3rd Councilmanic Districts Legal Owner(s): Donna V. Bair Petitioner(s)	*	BEFORE THE OFFICE OF ADMINSTRATIVE HEARINGS FOR BALTIMORE COUNTY	
	*	2019-342-SPHA	

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

ENTRY OF APPEARANCE

Pursuant to Baltimore County Charter § 524.1, please enter the appearance of People's Counsel for Baltimore County as an interested party in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence sent and all documentation filed in the case.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

RECEIVED
JUN 06 2019

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 6th day of June, 2019, a copy of the foregoing Entry of Appearance was mailed to Zachary J. Wilkins, Esquire, 600 Washington Avenue, Suite 200, Towson, Maryland 21204, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

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 4607 Prospect Avenue **which is presently zoned** RC 2 and DR 1

Deed References: 35307/489 10 Digit Tax Account # 0416015450

Property Owner(s) Printed Name(s) Donna V. Bair

(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

Please see attached.

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

3. ✓ **a Variance** from Section(s)

Please see attached.

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).

ORDER RECEIVED FOR FILING
Date 8/14/19
By AEN

Contract Purchaser/Lessee:

Name- Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

Legal Owners (Petitioners):

Donna V. Bair /

Name #1 – Type or Print Name #2 – Type or Print

Signature #1 Signature # 2

4607 Prospect Avenue Glyndon MD

Mailing Address City State

21071 / /

Zip Code Telephone # Email Address

Attorney for Petitioner:

Zachary J. Wilkins, Smith, Gildea & Schmidt, LLC

Name- Type or Print

Signature

600 Washington Avenue, Suite 200 Towson MD

Mailing Address City State

21204 / (410) 821-0070 / zwilkins@sgs-law.com

Zip Code Telephone # Email Address

Representative to be contacted:

Zachary J. Wilkins, Smith, Gildea & Schmidt, LLC

Name – Type or Print

Signature

600 Washington Avenue, Suite 200 Towson MD

Mailing Address City State

21204 / (410) 821-0070 / zwilkins@sgs-law.com

Zip Code Telephone # Email Address

CASE NUMBER 2019-0342-SPHA **Filing Date** 5/28/2019 **Do Not Schedule Dates:** _____ **Reviewer** JNP

amayers@sgs-law.com

REV. 10/4/11

ATTACHMENT TO PETITION FOR ZONING HEARING

4607 Prospect Avenue

Special Hearing relief:

1. To approve a nonconforming lot width and lot area of the property, pursuant to BCZR §104.1;

2. To approve a nonconforming dwelling side yard setback, pursuant to BCZR §104.1;

3. To confirm that an existing fence (swimming pool enclosure) with a height of 6 ft. is in compliance with BCZR §427.1. and BCC § 13-6-101; and

4. For such other and further relief as may be deemed necessary by the Administrative Law Judge ("ALJ") for Baltimore County.

Variance relief from:

1. BCZR §1B02.3.C.1. To permit an existing 12x28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.

2. BCZR §1B02.3.C.1. To permit an existing 12x28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50ft.

3. BCZR §400.1. To permit an existing accessory structure (shed) with a side yard setback of 26 inches in lieu of the required 30 inches.

4. BCZR §427.1. To permit, if necessary, an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches; and

6 6. For such other and further relief as may be deemed necessary by the Administrative Law Judge ("ALJ") for Baltimore County.

5. In the alternative, if necessary, to permit an existing dwelling with a lot width of 98 feet in lieu of the minimal required 150 feet and to permit a lot area of ± 31,000 square feet in lieu of minimal required 40,000 square feet pursuant BCZR Section 1B02.3.C.1.

RTF ASSOCIATES, INC. *LAND SURVEYORS & PLANNERS*

142 East Main Street
Westminster, Maryland 21157
Phone 410-848-2040, 410-876-1222
Web RTFsurveying.com
Fax 443-289-8942

May 13, 2019
JOB # 18-147

ZONING LEGAL DESCRIPTION

BEGINNING FOR THE SAME at a point in the center of Prospect Avenue 40 feet wide at the end of the north 51 degrees east 50 feet in a deed described the second parcel of land from M. Earl M. Hammond and wife to Lester S. Wheeler dated July 31, 1946 and recorded among the Land Records of Baltimore County in Liber R.J.S. No. 1473, folio 449, thence running as surveyed July 1946 binding on the center of Prospect Avenue and by outline of said second parcel of land North 57 degrees 30 minutes East 100 feet; thence by lines of division South 31 degrees 56 minutes East 355.8 feet intersecting the south 73 ½ degree West 156.5 foot line of said second parcel of land; thence binding thereon South 76 degrees West 103.2 feet; thence by line of division North 32 degrees 15 minutes West 322.2 feet to the place of beginning. Containing 78/100 of an acre of land more or less.



JOHN E. LEMMERMAN
PROFESSIONAL LAND SURVEYOR NO. 21096
CURRENT LICENSE EXPIRES AUGUST 3, 2019

2019-0342-SPHA

Constituent Complaint

Baltimore County
GOVERNMENT

Register for an Account Login

Home Animal Complaint License Residential Parking Permits
Land Management Code Complaint CZMP

Submit a Complaint Search Complaints

first at 1/28/19 from Hunter Rowe but Dave Kirby has this?

Record CC1814071:
Constituent Complaint
Record Status: Inspection Scheduled

Record Info

Code Enforcement Complaint and Violation

Property Location

4607 PROSPECT AVE
REISTERSTOWN MD 21136

Application Details

Complaint Description:

6 FT FENCE IN THE FRONT AND SIDE YARDS, SHE HAD WORK DONE TO HE HOUSE AND AS A RESULT OF NOT HAVING A SILT FENCE, SHE CREATED SWALE TO AFFECT THE FLOW OF THE WATER AND IS NOW DIRECTING THE WATER AT THE COMPLAINANT'S PROPERTY. SHE ALSO ADDED A 2ND BAY TO HER GARAGE AND COMPLAINANT

9/10/18
Inspection Scheduled 9/10
" Status Due 10/8
marked as Pending TBD

Permits, Approvals, and Inspections
Code Inspections & Enforcement
County Office Building, Rm. 213
111 West Chesapeake Ave
Towson, Maryland 21204
www.baltimorecountymd.gov/Agencies/permits/

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

CODE ENFORCEMENT CORRECTION NOTICE

CASE NUMBER	PROP.TAX ID
CC1814071	04-16-015450

VIOLATION ADDRESS
4607 PROSPECT AVE
REISTERSTOWN, MD 21136

BAIR DONNA V
4607 PROSPECT AVE
GLYNDON, MD 21071-3800

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

County Codes/Regulations	Inspector's Comments
B.C.C. 35-2-301: Obtain building/ fence/ sign permit B.C.Z.R 400: Illegal accessory structure	There are multiple violations pertaining to the privacy fence installed on property. There is no record of obtained permit. Permit needs to be obtained and will need to get Landmark preservation approval. Secondly, the placement of fence is illegal based on height, location, etc.... Fence must not protrude past yours or neighboring properties front foundation. It is recommended you contact Baltimore County zoning in working to resolve these violations.

Failure to comply with this correction notice, may result in a $200.00 fine/penalty per day, per violation pursuant to BCC: 1-2-217; 32-3-602 and/or the County sending a contractor to correct the violation(s) at your expense. Call the inspector for more information and details.

COMPLIANCE DATE: 10/30/2018	INSPECTOR ID: 101
	ISSUED DATE: 10/11/2018

IMPORTANT INFORMATION TO THE PERSON'S CHARGED

1. It is important that you read this document carefully, as it charges you with the commission of a crime.
2. If you fail to correct the violations noted by the date dictated, a citation may be issued, and a trial scheduled at which you may be penalized by a fine, imprisonment, or both.
3. If the County is required to bring your property into compliance, all costs and fines shall become a lien and shall be collectible in the manner provided for collection of real estate taxes; or may be collected in the same manner as any civil money judgment or debt collected.
4. A lawyer can give important assistance to you:
   (a) on how to correct the violation(s) in order to avoid trial or
   (b) at trial, if you failed to correct the violation(s) noted. Assistance may be provided to determine whether there are any defenses to the charges against you or any circumstances helpful to you that should be brought to the trial. A lawyer can help you by developing and presenting information, which could effect how you correct the violation(s).
5. A conviction for each violation will subject you to potential fines of $200, $500, $1000 per day per violation, depending on the violation, or 90 days in jail, or both Baltimore County Code section 1-2-217 and 32-3-602.
6. It is your responsibility to obtain any required permit(s) to correct the cited violation(s). All repairs must be in accordance with applicable laws, Code of Baltimore County Regulations, and standards.
7. Upon correction of these violation(s), contact the inspector for re-inspection. If you have any questions contact the inspector promptly.

BALTIMORE COUNTY MARYLAND

INTER-OFFICE CORRESPONDENCE

DATE:

TO: W. Carl Richards, Jr.
Zoning Review Supervisor

From: Matt Gawel
Chief Building Inspector

SUBJECT: Item No: 2019-0342-SPHA
Legal Owner/Petitioner: DONNA BAER
Contract Purchaser: None
Property Address: 4609 PROSPECT AVE
Location Description:
SE/S OF PROSPECT AVE 410' NE OF WINCH AVE

VIOLATION INFORMATION: Case No.: 0342
Defendents: DONNA BAER

Please be advised that the aforementioned petition is the subject of an active violation case.
When the petition is for a public hearing, please notify the following person(s) regarding the hearing date:

NAME	ADDRESS
TOM MONTANYE	4609 PROSPECT AVE GLYNDON MD 21071

In addition, please find attached a duplicate copy of the following pertinent documents relative to the violation case, for review by the Zoning Commissioner's Office:

- ☑ 1. Complaint letter/memo/email/fax (if applicable)
- ☑ 2. Complaint intake from/Code Enforcement Officer's report and notes
- ☐ 3. State Tax Assessment printout
- ☐ 4. State Tax Parcel Map (if applicable)
- ☐ 5. MVA Registration printout (if applicable)
- ☐ 6. Deed (if applicable)
- ☐ 7. Lease-Residential or Commercial (if applicable
- ☑ 8. Photographs including dates taken
- ☑ 9. Correction Notice/Code Violation Notice
- ☐ 10. Citation and Proof of Service (if applicable)
- ☐ 11. Certified Mail Receipt(s) (if applicable)
- ☐ 12. Final Order of the Code Official/Hearing Officer (if applicable)
- ☐ 13. Office of Budget & Finance Billing Notice/Property Lien Sheet (if applicable)
- ☐ 14. Complete Chronology of Events, beginning with the first complaint through the Billing Notice/Property Lien Sheet (if applicable)

After the public hearing is held, please send a copy of the Zoning Commissioner's order to Kristin Lewis in Room 111 in order that the appropriate action may be taken relative to the violation case.

Zoning Form

Baltimore County
Department of Permits,
Approvals And Inspections

OFFICE HOURS 7:30 am - 3:30 pm

Building Inspection: 410-887-3953

Code Inspections and Enforcement
County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

Plumbing Inspection: 410-887-3620
Electrical Inspection: 410-887-3960

BALTIMORE COUNTY UNIFORM CODE ENFORCEMENT CORRECTION NOTICE

Citation Case No. CB1300693 Property No. 04160154500 Zoning:

Name(s): DONNA Beir

Address: 4607 PROSPECT AVE
GLYNDON MD 3107

Violation Location: SAME

DID UNLAWFULLY VIOLATE THE FOLLOWING BALTIMORE COUNTY LAWS:

2003 BALTIMORE COUNTY CODE SUB TITLE 3 SECTION 35-2-301 PERMITS AND INSPECTIONS REQUIRED FOR BALTIMORE COUNTY CODE CODE 40-12 PART 120 APPROVE PERMITS AND LANDMARK PRESERVATION COMMITTEE REQUIRED FOR ADDITIONS ON SFD, PERMIT REQUIRED FOR FENCE INSTALLED WITHOUT PERMIT

YOU ARE HEREBY ORDERED TO CORRECT THESE VIOLATION(S) ON OR BEFORE:

ON OR BEFORE: 10/26/13 DATE ISSUED: 10/5/13

FAILURE TO COMPLY WITH THE DEADLINE STATED IS A MISDEMEANOR. A CONVICTION FOR EACH VIOLATION SUBJECTS YOU TO POTENTIAL FINES OF $200, $500, OR $1,000 PER DAY, PER VIOLATION, DEPENDING ON VIOLATION, OR 90 DAYS IN JAIL, OR BOTH.

INSPECTOR: PRINT NAME: Rowe

STOP WORK NOTICE

PURSUANT TO INSEPCTION OF THE FOREGOING VIOLATIONS, YOU SHALL CEASE ALL WORK UNTIL THE VIOLATIONS ARE CORRECTED AND/OR PROPER PERMITS OBTAINED. WORK CAN RESUME WITH THE APPROVAL OF THE DIVISION OF CODE INSPECTIONS AND ENFORCEMENT. THESE CONDITIONS MUST BE CORRECTED NO LATER THAN:

ON OR BEFORE: DATE ISSUED:

INSPECTOR: PRINT NAME:

COPIES: PINK – AGENCY, YELLOW - VIOLATION SITE, GOLD – DEFENDANT, WHITE – INSPECTOR

CODE ENFORCEMENT REPORT

DATE: 10 / 1 /18 INTAKE BY: LK CASE#: 1800693 INSPEC: H. ROWE

COMPLAINT
LOCATION: 4607 PROSPECT AVE

ZIP CODE: DIST: 4

COMPLAINT
NAME: TOM MONTAGNYE PHONE#:(H) 410-935-8526 (W)

ADDRESS: 4609 PROSPECT AVE ZIP CODE:

PROBLEM: BUILT 2 ADDITIONS ONTO SFD (~~REAR~~ ~~SIDE~~ 2ND BAY ON GARAGE AND 10' EXTENTION ON SIDE) W/OUT PERMITS L.P.C.

IS THIS A RENTAL UNIT? YES NO
IF YES, IS THIS SECTION 8? YES NO
OWNER/TENANT
INFORMATION

TAX ACCOUNT #: ZONING:

INSPECTION:

REINSPECTION:

REINSPECTION:

REINSPECTION:

Department of Permits, Approvals & Inspections
Complaint Report

Record Id: CB1800693

Record ID	Assigned To	Assigned Date	Received Date	Status	Compliance Date	Hearing Date
CB1800693	Hunter Rowe	10/01/2018	10/01/2018	Inspection Scheduled		

Complaint Description: Built 2 additions onto SFD (2nd bay on garage and 10' extension on side) without permits. L.P.C

Property
4607 PROSPECT AVE
REISTERSTOWN, MD 21136
Tax Id: 0416015450

Owner
BAIR DONNA V
4607 PROSPECT AVE
GLYNDON, MD 21071-3800

Complainant
Tom Montainye
4609 Prospect Avenue
Glyndon MD, 21071
410-935-3526

Inspection Details

Inspector	Date	Service	Result	Action	Complied On
Hunter Rowe		Initial Inspection	Scheduled		

Lien Information - No Lien

Comments Detail - No Comments

10/5/18 VISITED SITE TOOK PICTURES NOTICE WRITTEN P.V. 10/26/18
ADDITIONS ON BOTH SIDES OF SFD AND FENCE ALL REQUIRE PERMITS PER L.P.C.
H.R


10/5/18


10/5/18


4607 Prospect Rd
10/5/18


10/5/16


10/5/18


10/5/18


10/5/18

Real Property Data Search

Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Tax Exempt: **Special Tax Recapture:**
Exempt Class: NONE

Account Identifier: **District -** 04 **Account Number -** 0416015450

Owner Information

Owner Name:	BAIR DONNA V	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	4607 PROSPECT AVE GLYNDON MD 21071-3800	**Deed Reference:**	/35307/ 00489

Location & Structure Information

Premises Address:	4607 PROSPECT AVE 0-0000	**Legal Description:**	.78 AC 4607 PROSPECT AVE SWS 200FT NE OF WAUGH AVE

Map:	Grid:	Parcel:	Sub District:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0048	0006	0751		0000				2019	Plat Ref:

Special Tax Areas: **Town:** NONE
Ad Valorem:
Tax Class:

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1951	1,493 SF	800 SF	33,976 SF	04

Stories	Basement	Type	Exterior	Full/Half Bath	Garage	Last Major Renovation
1	YES	STANDARD UNIT	SIDING	2 full/ 1 half	1 Attached	

Value Information

	Base Value	Value	Phase-in Assessments	
		As of 01/01/2019	As of 07/01/2018	As of 07/01/2019
Land:	82,400	82,400		
Improvements	161,300	204,500		
Total:	243,700	286,900	243,700	258,100
Preferential Land:	0			0

Transfer Information

Seller: DEVANEY TIMOTHY W	**Date:** 08/28/2014	**Price:** $320,500
Type: NON-ARMS LENGTH OTHER	**Deed1:** /35307/ 00489	**Deed2:**
Seller: TOWLES MARK	**Date:** 08/04/2011	**Price:** $235,000
Type: NON-ARMS LENGTH OTHER	**Deed1:** /31063/ 00346	**Deed2:**
Seller: HAMILTON BRIAN R	**Date:** 05/25/2005	**Price:** $344,900
Type: ARMS LENGTH IMPROVED	**Deed1:** /21925/ 00100	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2018	07/01/2019
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: Appro[illegible] 02/12/2015

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application **Date:**

7/22
11 Am

Case No.: 2019-0342-SPHA 4607 Prospect Ave.

Exhibit Sheet

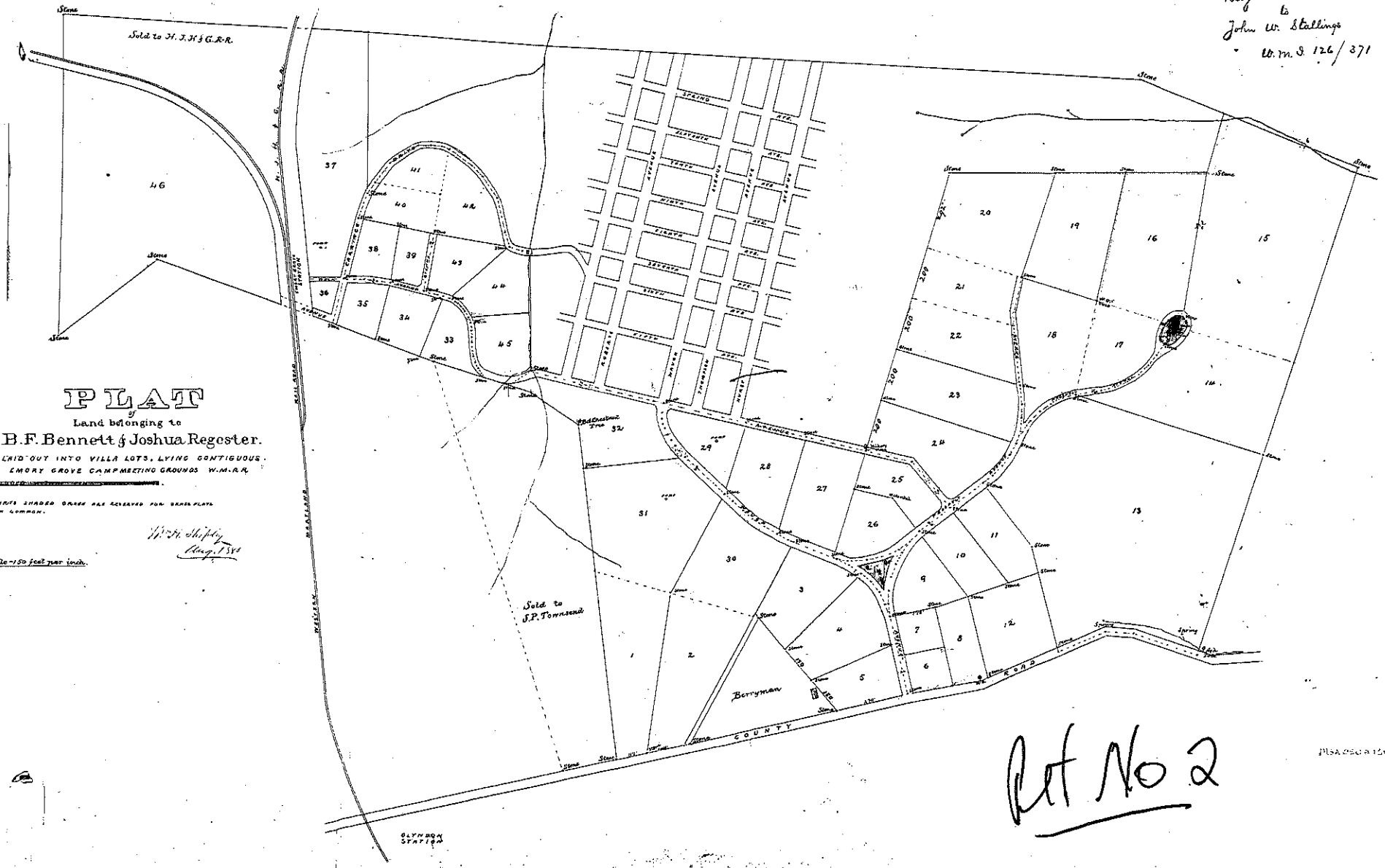
Petitioner/Developer

Protestants

Sln 8/19/19

No. 1	Site plan	
No. 2	Plat – Glyndon	
No. 3	3A-3C Aerial photos	
No. 4	SDAT record	
No. 5	5A-5U Site photos	
No. 6	Code citation Order	
No. 7	3-19-2019 memo re: LPC	
No. 8	8A, 8B > Code + BLZR Sections	
No. 9	Photos pre-construction 9A~9G	
No. 10	Prior zoning orders 10A+10B	
No. 11		
No. 12		

October 31- 1880
Filed with Deed No 6802
Benjamin F. Bennett, &c. et
to
John W. Stallings
W. M. S. 126/371



PLAT

of

Land belonging to

B.F. Bennett & Joshua Regester.

AS LAID OUT INTO VILLA LOTS, LYING CONTIGUOUS TO EMORY GROVE CAMPMEETING GROUNDS W.M.R.R.

PARTS SHADED GREEN ARE RESERVED FOR GRASS PLOTS IN COMMON.

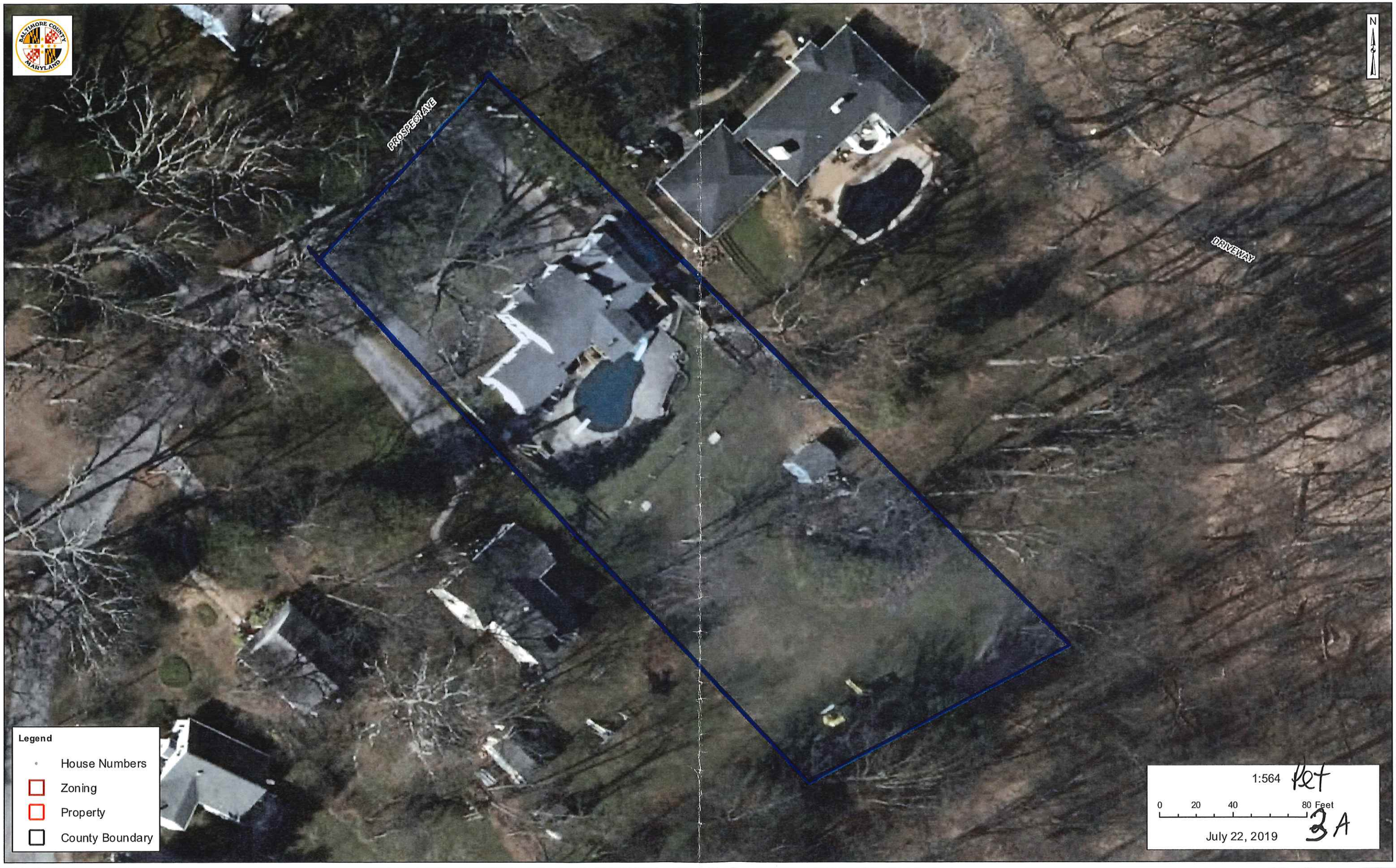
Wm. H. Shipley
Surv. 1881

Scale - 150 feet per inch.

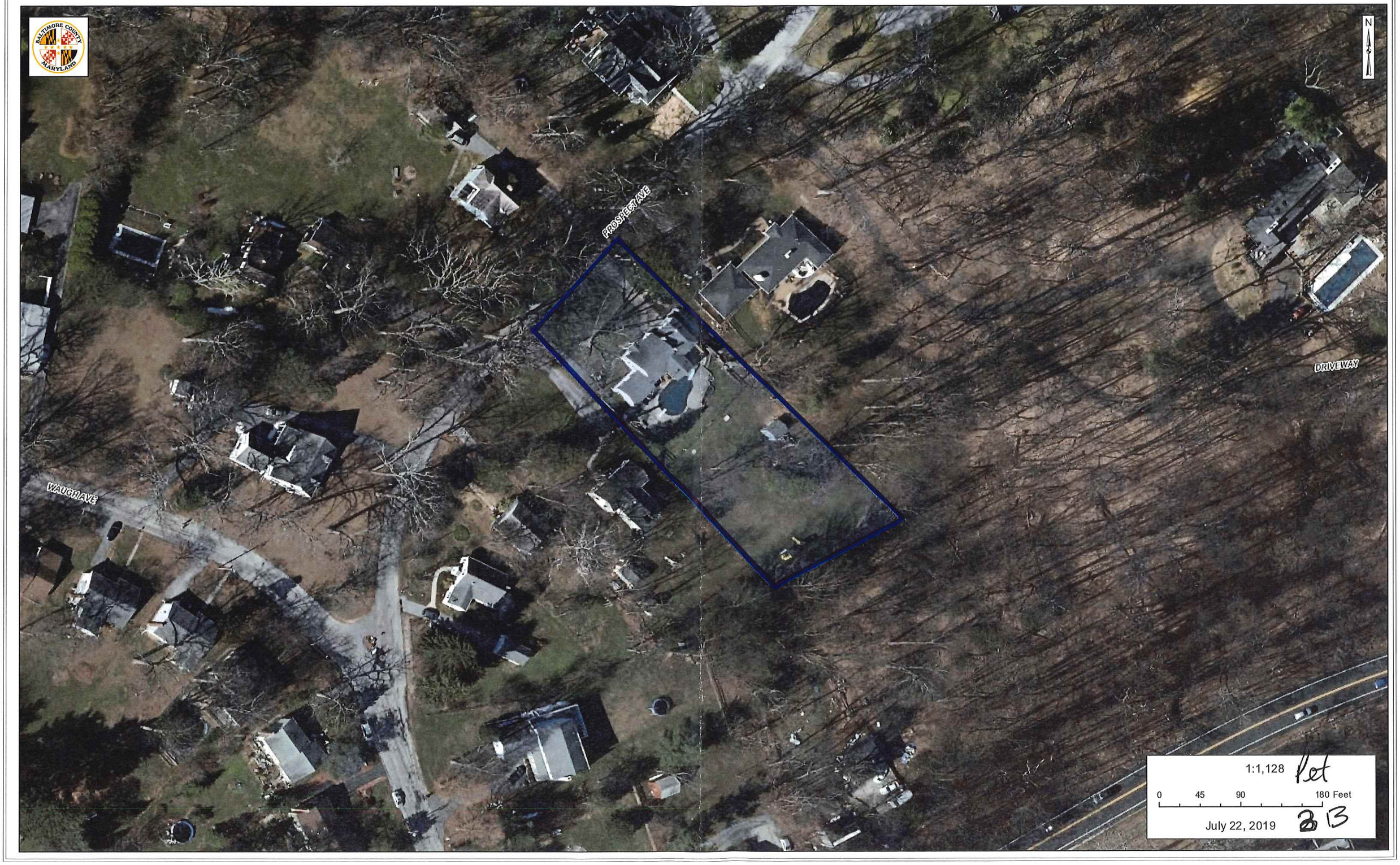
Plat No 2

MSA CE 126 - 3502

Baltimore County - My Neighborhood



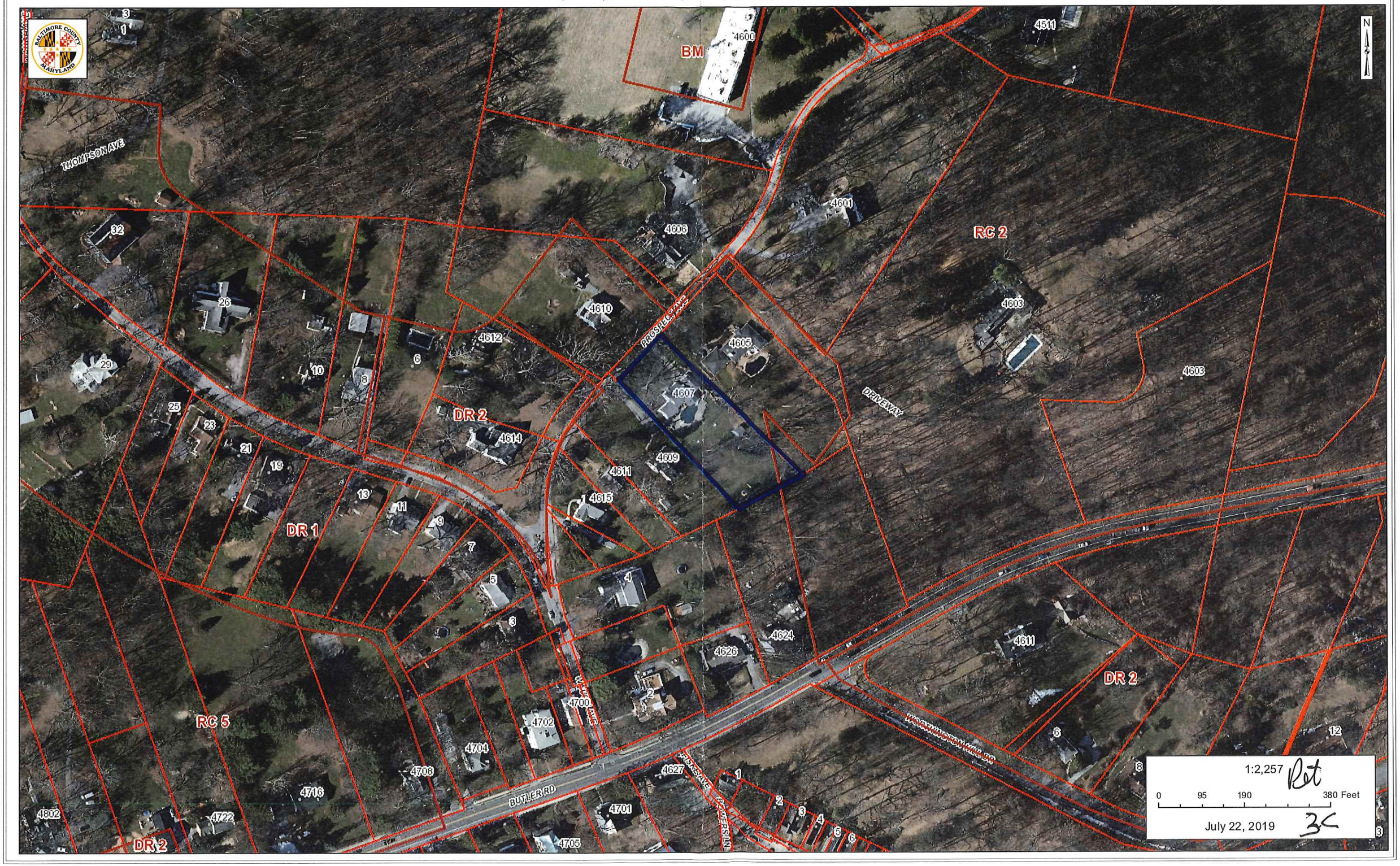
Baltimore County - My Neighborhood



Pet

2 B

Baltimore County - My Neighborhood



Real Property Data Search (w3)

Pet No 4

Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Tax Exempt: **Special Tax Recapture:**
Exempt Class: NONE

Account Identifier: **District -** 04 **Account Number -** 0416015450

Owner Information

Owner Name:	BAIR DONNA V	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	4607 PROSPECT AVE GLYNDON MD 21071-3800	**Deed Reference:**	/35307/ 00489

Location & Structure Information

Premises Address:	4607 PROSPECT AVE 0-0000	**Legal Description:**	.78 AC 4607 PROSPECT AVE SWS 200FT NE OF WAUGH AVE

Map:	Grid:	Parcel:	Sub District:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0048	0006	0751		0000				2019	Plat Ref:

Special Tax Areas: **Town:** NONE
Ad Valorem:
Tax Class:

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1951	1,493 SF	800 SF	33,976 SF	04

Stories	Basement	Type	Exterior	Full/Half Bath	Garage	Last Major Renovation
1	YES	STANDARD UNIT	SIDING	2 full/ 1 half	1 Attached	

Value Information

	Base Value	Value As of 01/01/2019	Phase-in Assessments As of 07/01/2018	Phase-in Assessments As of 07/01/2019
Land:	82,400	82,400		
Improvements	161,300	204,500		
Total:	243,700	286,900	243,700	258,100
Preferential Land:	0			0

Transfer Information

Seller: DEVANEY TIMOTHY W	**Date:** 08/28/2014	**Price:** $320,500
Type: NON-ARMS LENGTH OTHER	**Deed1:** /35307/ 00489	**Deed2:**
Seller: TOWLES MARK	**Date:** 08/04/2011	**Price:** $235,000
Type: NON-ARMS LENGTH OTHER	**Deed1:** /31063/ 00346	**Deed2:**
Seller: HAMILTON BRIAN R	**Date:** 05/25/2005	**Price:** $344,900
Type: ARMS LENGTH IMPROVED	**Deed1:** /21925/ 00100	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2018	07/01/2019
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Tax Exempt: **Special Tax Recapture:**
Exempt Class: NONE

Homestead Application Information

Homestead Application Status: Approved 02/12/2015

Homeowners' Tax Credit Application Information



Petitioner's Exhibit 5A



Petitioner's Exhibit 5B


Petitioner's Exhibit 5c


Petitioner's Exhibit 5D



Petitioner's Exhibit 5E



Petitioner's Exhibit 5F


Petitioner's Exhibit 56

Petitioner's Exhibit 5A


Petitioner's Exhibit 5I


Petitioner's Exhibit 5J


Petitioner's Exhibit 5K

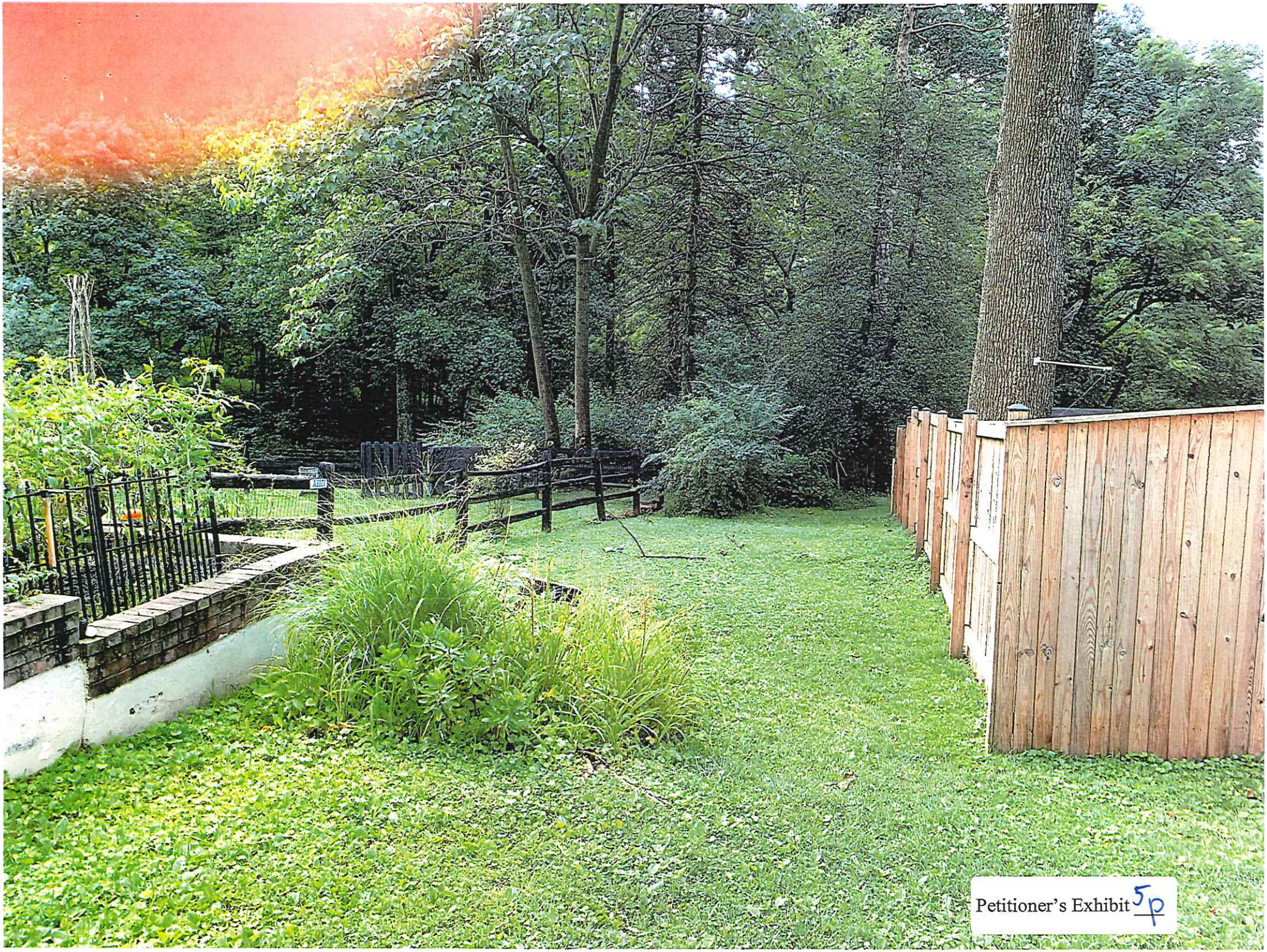

COLD BEER
Petitioner's Exhibit 5L


Petitioner's Exhibit 5M


Petitioner's Exhibit 5n



Petitioner's Exhibit 50


Petitioner's Exhibit 5p


Petitioner's Exhibit 5g


Petitioner's Exhibit 5r


Petitioner's Exhibit 5s


Petitioner's Exhibit 5+



Petitioner's Exhibit 5u

Civil Citation No. CC1814071
(4607 Prospect Avenue)

Ret No 6

Donna Bair
4607 Prospect Avenue
Baltimore, Maryland 21071

FINAL ORDER

The matter came before the Administrative Law Judge on February 6, 2019, for a hearing on a Code Inspections and Enforcement Citation ("Citation"), for specified violations of the Baltimore County Code ("B.C.C.") or Zoning Regulations ("B.C.Z.R."). The Citation names the owners of record, as published in the Maryland State Tax Assessment Database, as Respondents. The Citation was served upon Respondent(s) in a manner consistent with Section 3-6-205(c)(2) of the Baltimore County Code. The Citation, which is included in the case file and is incorporated herein by reference, proposes a civil penalty in the amount of $1,000.00.

The following persons appeared for the Hearing: Donna Bair, Respondent, and Assistant County Attorney, Marissa L. Merrick, on behalf of Baltimore County.

Based on the testimony, photographs, documents and other exhibits I find for the reasons stated at the conclusion of the hearing Baltimore County has proven by a preponderance of the evidence that Respondent(s) is in violation of the ordinances or regulations set forth in the civil Citation.

THEREFORE, IT IS ORDERED this 11th day of February, 2018, by the Administrative Law Judge for Baltimore County that a civil penalty of $1,000.00 be imposed and suspended.

IT IS FURTHER ORDERED, that Respondent shall file for the appropriate zoning relief, or, shall otherwise correct and abate violations pursuant to this ORDER, by April 12, 2019.

IT IS FURTHER ORDERED, that if the subject property is not brought into compliance pursuant to this Order by April 12, 2019, the suspended $1,000.00 civil penalty may be imposed without need for further hearing or order; and, that Baltimore County shall be authorized to send an employee or authorized contractor to enter the property to correct the violation(s), the costs and expenses of which shall be assessed against Respondents.

LAWRENCE M. STAHL
Administrative Law Judge
for Baltimore County

NOTICE: Pursuant to §3-6-301(a) of the Baltimore County Code, the Respondent or Baltimore County may appeal this order to the Baltimore County Board of Appeals within fifteen (15) days from the date of this order. Any such appeal requires the filing of a petition setting forth the grounds for appeal, payment of a filing fee of $225.00 and the posting of security in the amount of the penalty assessed.

Send payments to:

Baltimore County Office of Budget and Finance

400 Washington Ave, Rm 150

Towson, MD 21204

LMS/hk

Ref No7

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF PLANNING

Memorandum

TO: Donna V. Bair **DATE:** March 19, 2019

FROM: Teri Rising, Administrator/Secretary
Landmarks Preservation Commission

SUBJECT: 4607 Prospect Avenue, Glyndon

At its March 14, 2019 meeting, the Baltimore County Landmarks Preservation Commission (LPC) voted to issue an Ex Post Facto Certificate of Appropriateness for the following items as proposed:

- 6 foot high wood privacy fence (Code Enforcement Case # CC1814071)
- 12 foot x 28 foot single car garage addition (Code Enforcement Correction Notice # CB1800693)
- 13 foot by 13 foot addition (Code Enforcement Correction Notice # CB1800693)

This action is in accordance with Baltimore County Code Section 32-7-403 and 32-7-405 citing Baltimore County Historic Design Guidelines: Fences & Landscape, p. 4; Additions & Infill, pp. 5-7.

Please note, the work will require a Baltimore County building permit. Applications for building permits are obtained from the Department of Permits, Approvals and Inspections located at 111 Chesapeake Avenue in Towson. Information regarding building permits is available on the County's website. https://www.baltimorecountymd.gov/Agencies/permits/index.html Questions regarding that process should be directed to the Permits, Approvals & Inspections Office.

[Bill Nos. 111-1986; 137-2004; 65-2005 [1]]

Footnotes:

--- (1) ---

1. Editor's Note— See also Section 3111.0 of the Building Code of Baltimore County.

§ 427.1. - Conditions for use; exceptions.

A. Notwithstanding any other provisions of this Code or the Baltimore County Code, in a D.R. or R.C. 5 Zone located in a historic district, the maximum height of a residential occupancy fence is 42 inches if the fence is erected in the side yard of a lot that adjoins a public road.

B.

1. A residential occupancy fence may not be erected in the rear or side yard of a lot which adjoins the front yard of another on which a residence has been built, except in accordance with the provisions of this section.
2. The fence may not exceed 42 inches in height if situated within ten feet of the adjoining front yard property line.
3. Any person may request a variance from the requirements of this subsection.

C. Applicability.

1. Subsection B of this section does not apply to a fence required by § 13-6-101 of the Baltimore County Code, as revised, to be constructed in order to screen a swimming pool.
2. Subsection B of this section does not apply if the residences on the adjoining lots are more than 200 feet apart.

SUBTITLE 1. - IN GENERAL

§13

§ 13-6-101. - SWIMMING POOL ENCLOSURE.

(a) *Required.* A person who owns land on which there is a swimming pool that contains 24 inches (610 mm) or more of water in depth at any point shall erect and maintain on the land an adequate enclosure surrounding either the property or pool area sufficient to make the body of water inaccessible to small children.

(b) *Height.* A swimming pool enclosure, including gates, may not be less than 4 feet above the underlying ground.

(c) *Gates.* All gates shall be self-latching with latches placed 4 feet above the underlying ground and otherwise made inaccessible from the outside to small children.

(d) *Alternative enclosures.*

(1) For purposes of this section, the owner may use a natural barrier, hedge, or other protective device approved by the Department of Permits, Approvals and Inspections if the degree of protection afforded by the substituted devices or structures is not less than the protection afforded by the enclosure, gate, and latch described in subsections (a) through (c) of this section.

(2) A swimming pool cover is not another protective device that may be approved by the Department of Permits, Approvals and Inspections.

(e) *Enforcement.* The Code Official may enforce the provisions of this section in accordance with Article 3, Title 6 of the Code.

(f) *Exceptions.* This section does not apply to a public swimming pool or bathing beach as defined in Subtitle 2 of this title.

(1988 Code, § 20-5) (Bill No. 94-95, § 1, 8-19-1995; Bill No. 105-00, § 2, 7-1-2004; Bill No. 82-06, § 4, 8-24-2006; Bill No. 122-10, §§ 6, 30, 1-16-2011)

SUBTITLE 2. - PUBLIC SWIMMING POOLS AND BATHING BEACHES

§ 13-6-201. - DEFINITIONS.

(a) *In general.* In this subtitle the following words have the meanings indicated.

(b) "Approving authority" means the Health Officer or the Health Officer's designee.

(c) *Private swimming pool.* "Private swimming pool" means a swimming pool located on a private residential property, under the control of a single resident, the use of which is limited to members of the resident's family and invited guests.

(d) *Public bathing beach.*

(1) "Public bathing beach" means a natural bathing beach together with any buildings, appurtenances, or other improvements, at a pond, lake, quarry, stream, or bay, intended to be used collectively by numbers of individuals for swimming or recreational bathing, regardless of whether a fee is charged for use.

(2) "Public bathing beach" includes a bathing beach at a private club.

(e) *Public swimming pool.*

(1) (i) "Public swimming pool" means a swimming pool intended to be used collectively by numbers of individuals for swimming or bathing, operated by any person including an owner, lessee, operator, licensee, or concessionaire, regardless of whether a fee is charged for use.

(ii) "Public swimming pool" includes a swimming pool at a private club.

(2) "Public swimming pool" does not include a private swimming pool.

(f) *Swimming pool.*

(1) "Swimming pool" means an artificial structure, basin, chamber, or tank containing a body of water for the primary purpose of swimming, diving, or recreational bathing.

(2) "Swimming pool" includes a wading pool.

(g) *Wading pool.* "Wading pool" means a swimming pool not normally in excess of 2 feet deep at its maximum depth and usually reserved for use by small children.

(1988 Code, § 17-96) (Bill No. 173, 1989, § 2, 1-26-1990; Bill No. 105-00, § 2, 7-1-2004; Bill No. 73-03, § 10, 7-1-2004; Bill No. 122-10, § 6, 1-16-2011; Bill No. 80-15, § 1, 11-29-2015)

§ 13-6-202. - CONSTRUCTION, ALTERATION, OR RENOVATION OF A SWIMMING POOL.

(a) *In general.*

(1) A person may not begin construction of or substantial alteration or reconstruction of any public swimming pool or public bathing beach without first submitting plans and specifications to the Department of Health for review and approval.

(2) The plans shall be prepared and copies submitted to the Department of Health for review and approval within a reasonable time.

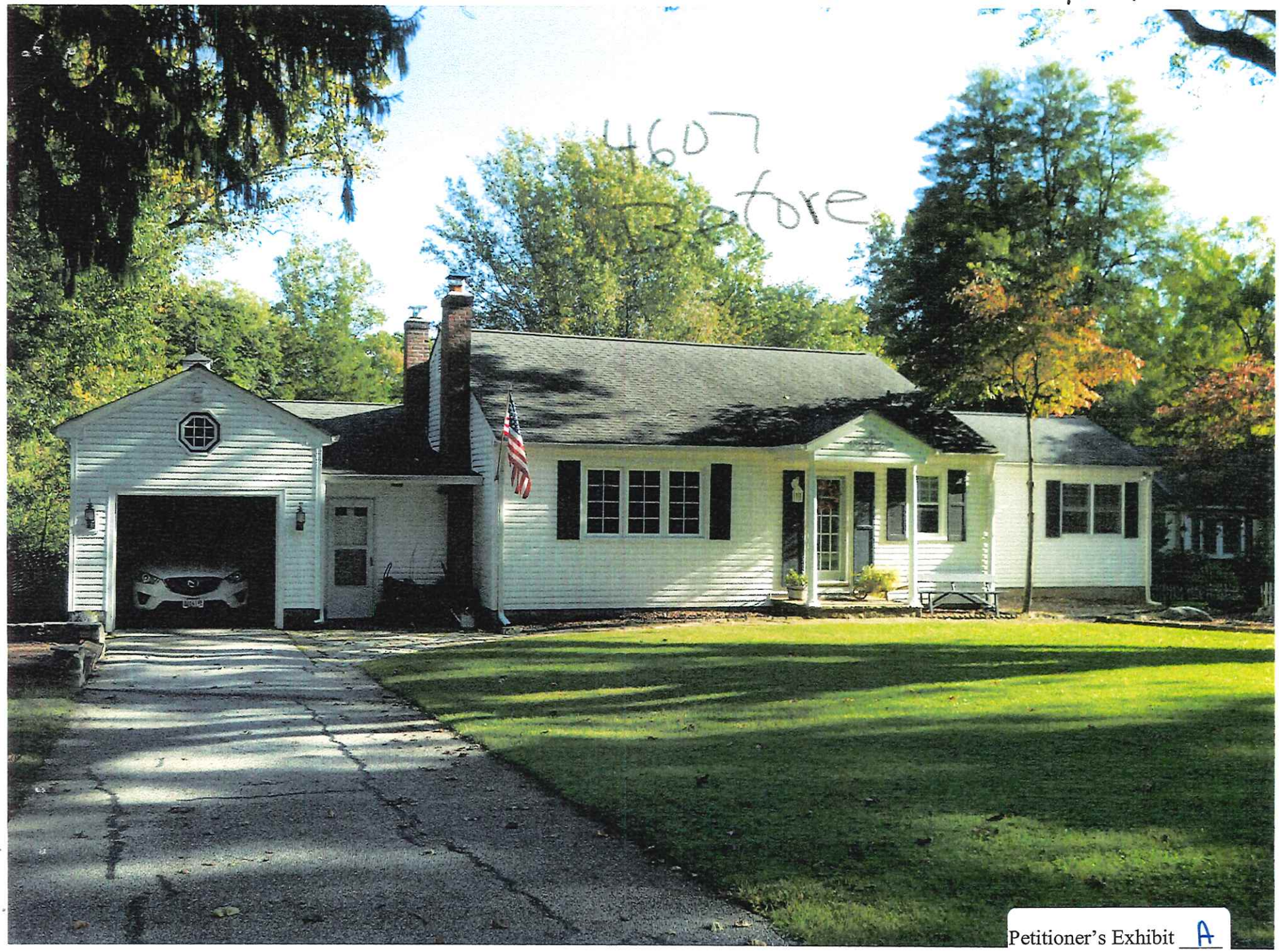
(b) *Standards for review and approval.*

(1) The Department of Health shall review plans in accordance with the standards set forth in regulations adopted by the Health Officer.

(2) The regulations are adopted and incorporated by reference in this subsection as if fully set forth.

(c) *Permit application.* If a building permit is required, the applicant for a permit shall submit an application on forms required by the Department of Permits, Approvals and

Pet 9



Petitioner's Exhibit A

Petitioner's Exhibit B

Petitioner's Exhibit C

Petitioner's Exhibit D



Petitioner's Exhibit E



Petitioner's Exhibit F





* 6' trellises to be installed and + foliage to make fence little wall

Install 3 trellises (photo above left) along property line by driveway (location on plot plan, and shown in photo) to shield from neighbor's new obtrusive security camera (circled top right). Photo shows my neighbor's house, fence, and security camera circled in red. The planned trellises between the telephone pole shown and the fence, along the property line, the same height as the fence shown, so the "future" picture would basically show trellises and Ivy/Clematis blocking this view of the camera, fence, and stone walk, providing mutual privacy. When we moved into our house 30 years ago, and until the fence was installed in this location, there was a trellis with a beautiful and established Clematis; we want to restore it.

10 – Deck Features (Main/NE Side, see also plot pl...

"Privacy along parking area"

Petitioner's Exhibit 6

Petition 10 A

PETITION FOR ZONING VARIANCE 84-332-A

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a

Variance from Section 1801.B.6.b To permit a sideyard setback of 25 feet

instead of the required 35 feet.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (Indicate hardship or practical difficulty)

1. As a matter of right
2. County Council to rezone in November, 1984, and we are petitioning the council as well
3. Property in question is already hooked up to county sewer and water
4. Part of property is zoned DR2 and other part of property is zoned RC7
5. Design and layout of the house precludes constructing the proposed addition in any other way.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

I/We do 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 Petition.

Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State

Attorney for Petitioner:

(Type or Print Name)

Signature

Address

City and State

Attorney's Telephone No.:

Legal Owner(s):

William R. DeSandro
(Type or Print Name)

William R. DeSandro
Signature

Joan M. DeSandro
(Type or Print Name)

Joan M. DeSandro
Signature

4005 Prospect Avenue 526-2704
Address Phone No.

Glyndon, Maryland 21071
City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

William R. DeSandro
Name

4005 Prospect Ave. 517-1935
Address Business Phone No.

ORDERED By the Zoning Commissioner of Baltimore County, this 17th day of April, 1984, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be held before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 9th day of May, 1984, at 2:45 o'clock P.M.

Zoning Commissioner of Baltimore County.

(over)

DATE 4/26/84 BY Judy Cappos (Cont)

Variance from Section 1801.B.6.b To permit a sideyard setback of 25 feet instead of the required 35 feet.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I/We do 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 Petition.

Legal Owner(s):

William R. DeSandro
(Type or Print Name)

William R. DeSandro
Signature

Joan M. DeSandro
(Type or Print Name)

Joan M. DeSandro
Signature

4005 Prospect Avenue 526-2704
Address Phone No.

Glyndon, Maryland 21071
City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

William R. DeSandro
Name

4005 Prospect Ave. 517-1935
Address Business Phone No.

ORDERED By the Zoning Commissioner of Baltimore County, this 17th day of April, 1984, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be held before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 9th day of May, 1984, at 2:45 o'clock P.M.

Zoning Commissioner of Baltimore County.

(over)

BALTIMORE COUNTY

ZONING PLANS

ADVISORY COMMITTEE

PETITION AND SITE PLAN

EVALUATION COMMENTS

84-332-A

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Petitioner William R. DeSandro et ux
Petitioner's Attorney

Reviewed by [illegible]
Chairman, Zoning Plans Advisory Committee

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

May 21, 1984

Mr. & Mrs. William R. DeSandro
4005 Prospect Avenue
Glyndon, Maryland 21071

RE: Item No. 266 - Case No. 84-332-A
William R. DeSandro, et ux
Variance Petition

Dear Mr. & Mrs. DeSandro:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. The Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

In view of your proposal to construct an addition to the side of the existing dwelling within 25 feet of the side property line, this hearing is required. As stated in our previous conversation, the site plan indicates a setback of 27 feet from the side property line. However, it was your decision to have the petition advertised as requesting a 25 foot side setback to allow some flexibility in construction.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours,

NICHOLAS B. COMMODARI, Chairman
Zoning Plans Advisory Committee

NBC:bsc
Enclosures

BALTIMORE COUNTY
DEPARTMENT OF PUBLIC WORKS
TOWSON, MARYLAND 21204

May 17, 1984

Mr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Re: Item #266 (1983-1984)
Property Owner: William R. DeSandro, et ux
E/S/E Prospect Avenue 415' S/E from centerline Waugh Avenue
Acres: Lot #11 "Bennett to Register" 2.10
District: 4th

Dear Mr. Jablon:

The following comments are furnished in regard to the plat submitted to this office for review by the Zoning Advisory Committee in connection with the subject item.

General:

Baltimore County highway and utility improvements are not directly involved.

Prospect Avenue, an existing public road, is proposed to be further improved in the future as a 30-foot closed section roadway on a 50-foot right-of-way with a standard type roadway termination at the end thereof.

Development of this property through stripping, grading and stabilization could result in a sediment pollution problem, damaging private and public coldings downstream of the property. A grading permit is, therefore, necessary for all grading, including the stripping of top soil.

The Petitioner must provide necessary drainage facilities (temporary or permanent) to prevent creating any nuisances or damages to adjacent properties, especially by the concentration of surface waters. Correction of any problem which may result, due to improper grading or improper installation of drainage facilities, would be the full responsibility of the Petitioner.

This office has no further comment in regard to the plan submitted for Zoning Advisory Committee review in connection with this Item 266 (1983-1984).

Very truly yours,

ROBERT A. MORTON, P.E., Chief
Bureau of Public Services

RAM:EAM:FWR:ss

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
TOWSON, MARYLAND 21204
494-3211

NORMAN E. GERBER
DIRECTOR

Mr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

4-26-84

Re: Zoning Advisory Meeting of 4-17-84
Item # 266
Property Owner: William R. DeSandro, et ux
Location: E/S/E Prospect Ave., SE of Waugh Ave.

Dear Mr. Jablon:

The Division of Current Planning and Development has reviewed the subject petition and offers the following comments. The items checked below are applicable.

(X) There are no site planning factors requiring comment.
( ) A County Review Group Meeting is required.
( ) A County Review Group meeting was held and the minutes will be forwarded by the Bureau of Public Services.
( ) This site is part of a larger tract; therefore it is defined as a subdivision. The plan must show the entire tract.
( ) A record plat will be required and must be recorded prior to issuance of a building permit.
( ) The access is not satisfactory.
( ) The circulation on this site is not satisfactory.
( ) The parking arrangement is not satisfactory.
( ) Parking calculations must be shown on the plan.
( ) This property contains soils which are defined as wetlands, and development on these soils is prohibited.
( ) Construction in or alteration of the floodplain is prohibited under the provisions of Section 22-98 of the Development Regulations.
( ) Development of this site may constitute a potential conflict with the Baltimore County Master Plan.
( ) The amended Development Plan was approved by the Planning Board on _____.
( ) Landscaping shall be provided in accordance with the requirements of Section 419 of the Zoning Regulations and shall be shown on the plan.
( ) This property is located in a traffic area controlled by a "D" level intersection as defined by Bill 178-79, and as conditions change traffic capacity may become more limited. The Basic Services Areas are re-evaluated annually by the County Council.
( ) Additional comments:

Eugene A. Bober
Chief, Current Planning and Development

cc: James Dyer

5/29 84-332-A

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. Arnold Jablon, Zoning Commissioner, Office of Planning and Zoning Date: May 16, 1984

FROM: Ian J. Forrest

SUBJECT: Zoning Variance Item
Meeting - April 17, 1984

The Baltimore County Department of Health has reviewed the following zoning items and does not anticipate any health hazards at this time regarding these items.

Item #260 - Dennis Fisher, et ux
Item #262 - Arthur S. Singley, III, et ux
Item #266 - William R. DeSandro, et ux
Item #267 - Joseph D. Delgorr, et al
Item #268 - Robert B. Lohan, et ux
Item #269 - Lottie G. Ports

Ian J. Forrest, Director
BUREAU OF ENVIRONMENTAL SERVICES

IJF/fth

BALTIMORE COUNTY
FIRE DEPARTMENT
TOWSON, MARYLAND 21204-2586
494-4500

PAUL H. REINCKE
CHIEF

May 3, 1984

Mr. William Hammond
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, Maryland 21204

Attention: Nick Commodari, Chairman
Zoning Plans Advisory Committee

RE: Property Owner: William R. DeSandro, et ux

Location: SE/S Prospect Avenue 415' S/E from c/l Waugh Avenue

Item No.: 266 Zoning Agenda: Meeting of 4/17/84

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

( ) 1. Fire hydrants for the referenced property are required and shall be located at intervals of _____ feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.

( ) 2. A second means of vehicle access is required for the site.

( ) 3. The vehicle dead end condition shown at _____ EXCEEDS the maximum allowed by the Fire Department.

( ) 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

(X) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1976 Edition prior to occupancy.

( ) 6. Site plans are approved, as drawn.

( ) 7. The Fire Prevention Bureau has no comments, at this time.

Reviewed and Approved: George M. Kragnott
Fire Prevention Bureau

Planning Group
Special Inspection Division

Jab

BALTIMORE COUNTY
DEPARTMENT OF PERMITS & LICENSES
TOWSON, MARYLAND 21204
494-3610

TED ZALESKI, JR.
DIRECTOR

April 27, 1984

Mr. Arnold Jablon, Zoning Commissioner
Office of Planning and Zoning
County Office Building
Towson, Maryland 21204

Dear Mr. Jablon:

Comments on Item # 266 Zoning Advisory Committee Meeting are as follows:

Property Owner: William R. DeSandro, et ux
Location: SE/S Prospect Avenue 415' S/E from c/l Waugh Avenue
Existing Zoning: D.R. 2 & D.R. 5
Proposed Zoning: Variance to permit a side yard setback of 25' in lieu of the required 35'.

Acres: Lot #11 "Bennett to Register" 2.10
District: 4th

The items checked below are applicable:

( ) A. All structures shall conform to the Baltimore County Building Code 1981/Council Bill [illegible] and other applicable codes.

( ) B. A building/s shall be required before beginning construction.

( ) C. Residential: Three sets of construction drawings are required to file a permit application. Architect/Engineer seal is/is not required. Non-registered seals and signatures are required on Plans and Technical Data.

( ) D. Commercial: Three sets of construction drawings with a Maryland Registered Architect or Engineer shall be required to file a permit application.

( ) E. An exterior wall erected within 6'0 (or Commercial uses or 3'0 for One & Two Family use groups) of an adjacent lot line shall be of no less fire resistive construction. no openings permitted within 3'0 of lot lines. A firewall is required if construction is on the lot line, see Table 401, Line 7, Section 1407 and 1604, of the Building Code.

( ) F. Requested variance appears to conflict with the Baltimore County Building Code, Section/s _____.

( ) G. A change of occupancy shall be applied for, along with an alteration permit application, and three complete sets of drawings indicating how the structure will meet the Code requirements for the proposed change. Drawings may require a preliminary meet.

( ) H. Before this office can comment on the above structure, please have the owner, thru the services of a Registered in Maryland Architect or Engineer certify to this office, that the structure for which a proposed change in use is proposed will comply with the height/area requirements of Table 505 and the required construction classification of Table 501.

( ) I. Comments

NOTE: These comments reflect only on the information provided by the drawings submitted to the office of Planning and Zoning and are not intended to be construed as the full extent of any permits. If desired, additional information may be obtained by visiting Room 122 (Plans Review) at 111 W. Chesapeake Ave., Towson.

Very truly yours,

Charles E. Burnham, Chief
Plans Review

CEBrae

PETITION FOR ZONING VARIANCE 84-332-A

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 1801.1.B.1.c To permit a sideyard setback of 25 feet in lieu of the required 35 feet.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County, for the following reasons: (Indicate hardship or practical difficulty)

1. An Addition of right
2. County Council to vacate in November, 1984, and we are petitioning the Council as well.
3. Property in question is already hooked up to county sewer and water
4. Part of property is zoned DR2 and other part of property is zoned RC2
5. Design and layout of the house precludes constructing the proposed addition in any other way.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

I/We do 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 Petition.

Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State

Attorney for Petitioner:

(Type or Print Name)

Signature

Address

City and State

Legal Owner(s):

William R. DeSandro
(Type or Print Name)
William R. DeSandro
Signature

Joan M. DeSandro
(Type or Print Name)
Joan M. DeSandro
Signature

4605 Prospect Avenue 426-5792
Address Phone No.

Glyndon, Maryland 21071
City and State

Name, address and phone number of legal owner, con-tract purchaser or representative to be contacted

William R. DeSandro
Name

4605 Prospect Ave. 237-1936
Address Business Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 17th day of April 1984 that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation through-out Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 29th day of May 1984, at 9:45 o'clock A.M.

Zoning Commissioner of Baltimore County.

(over)

DATE: June 11, 1984
BY: Wiley Gryphon (Code)

84-332-A

BALTIMORE COUNTY, MARYLAND
OFFICE OF PLANNING AND ZONING
TOWSON, MARYLAND 21204
494-3211

NORMAN E. GERBER
DIRECTOR

Mr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

4-26-84

Re: Zoning Advisory Meeting of 4-17-84
Item # 266
Property Owner: William R. DeSandro, et ux
Location: SE/S Prospect Ave., NE of Waugh Ave.

Dear Mr. Jablon:

The Division of Current Planning and Development has reviewed the subject petition and offers the following comments. The items checked below are applicable.

( ) There are no site planning factors requiring comment.
( ) A County Review Group Meeting was held and the minutes will be forwarded by the Bureau of Public Services.
( ) This site is part of a larger tract; therefore it is defined as a subdivision. The plat must show the entire tract.
( ) A record plat will be required and must be recorded prior to issuance of a building permit.
( ) The access is not satisfactory.
( ) The circulation on this site is not satisfactory.
( ) The parking arrangement is not satisfactory.
Parking calculations must be shown on the plan.
( ) This property contains soils which are defined as wetlands, and development on these soils is prohibited.
( ) Construction in or alteration of the floodplain is prohibited under the provisions of Section 22-95 of the Development Regulations.
( ) Development of this site may constitute a potential conflict with the Baltimore County Master Plan.
( ) The amended Development Plan was approved by the Planning Board on
( ) Landscaping should be provided on this site and shown on the plan.
( ) This property is located in a deficient service area as defined by Bill 178-79. No building permit may be issued until adequate service capacity is certified. The deficient service is
( ) This property is located in a traffic area controlled by a "no level" intersection as defined by Bill 178-79, and no construction or traffic capacity may become available until the basic services are re-evaluated annually by the County Council.
( ) Additional comments:

Eugene A. Bober
Chief, Current Planning and Development

Zoning Item # 266, Zoning Advisory Committee Meeting of April 17, 1984
Property Owner: William R. DeSandro, et ux
Location: SE/S Prospect Ave., NE of Waugh Ave.
Page 2

( ) 7. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1976 Edition prior to occupancy.

( ) 8. Site plans are approved, as drawn.

( ) 9. The Fire Prevention Bureau has no comments, at this time.

Noted and Approved:
Fire Prevention Bureau

Special Inspection Division

/mb

IN RE: PETITION FOR VARIANCE
SE/S Prospect Ave., 415' NE of Waugh Ave. (4605 Prospect Ave.)
4th District

WILLIAM R. DeSANDRO, et ux,
Petitioners

BEFORE THE ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 84-332-A

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notices should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

Phyllis Cole Friedman
People's Counsel

Peter Max Zimmerman
Deputy People's Counsel
Rm. 223, Court House
Towson, MD 21204
494-2188

I HEREBY CERTIFY that on this 9th day of May, 1984, a copy of the foregoing Entry of Appearance was mailed to Mr. and Mrs. William R. DeSandro, 4605 Prospect Ave., Glyndon, MD 21071, Petitioners.

Peter Max Zimmerman

MICROFILMED

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

May 21, 1984

County Office Bldg.
111 W. Chesapeake Ave.
Towson, Maryland 21204

Mr. & Mrs. William R. DeSandro
4605 Prospect Avenue
Glyndon, Maryland 21071

RE: Item No. 266 - Case No. 84-332-A
William R. DeSandro, et ux
Variance Petition

Dear Mr. & Mrs. DeSandro:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. The Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

In view of your proposal to construct an addition to the side of the existing dwelling within 25 feet of the side property line, this hearing is required. As stated in our previous conversation, the site plan indicates a setback of 27 feet from the side property line. However, it was your decision to have the petition advertised as requesting a 25 foot side setback to allow some flexibility in construction.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours,

Nicholas B. Commodari
NICHOLAS B. COMMODARI, Chairman
Zoning Plans Advisory Committee

NBC:bsc
Enclosures

BALTIMORE COUNTY
DEPARTMENT OF PUBLIC WORKS
TOWSON, MARYLAND 21204

HARRY J. PISTEL, P.E.
DIRECTOR

W-SW Key Sheet
66 & 67 NW 37 & 38
Pos. Sheets
NW 17 J Topo
48 Tax Map

May 17, 1984

Mr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Re: Item #266 (1983-1984)
Property Owner: William R. DeSandro, et ux
S/ES Prospect Avenue 415' N/E from centerline Waugh Avenue
Acres: Lot #12 "Bennett to Register" 2-18
District: 4th

Dear Mr. Jablon:

The following comments are furnished in regard to the plat submitted to this office for review by the Zoning Advisory Committee in connection with the subject item.

General:

Baltimore County Highway and utility improvements are not directly involved.

Prospect Avenue, an existing public road, is proposed to be further improved in the future as a 30-foot closed section roadway on a 50-foot right-of-way with a standard type cowdrey termination at the end thereof.

Development of this property through stripping, grading and stabilization could result in a sediment pollution problem, damaging private and public holdings downstream of the property. A grading permit is, therefore, necessary for all grading, including the stripping of top soil.

The Petitioner must provide necessary drainage facilities (temporary or permanent) to prevent creating any nuisances or damages to adjacent properties, especially by the concentration of surface waters. Correction of any problem which may result, due to improper grading or improper installation of drainage facilities, would be the full responsibility of the Petitioner.

This office has no further comment in regard to the plan submitted for Zoning Advisory Committee review in connection with this Item 266 (1983-1984).

Very truly yours,

Robert A. Morton, P.E., Chief
Bureau of Public Services

RAM:EAM:FWR:ss

BALTIMORE COUNTY
FIRE DEPARTMENT
TOWSON, MARYLAND 21204-2586
494-4500

PAUL H. REINCKE
CHIEF

May 3, 1984

Mr. William Hammond
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, Maryland 21204

Attention: Nick Commodari, Chairman
Zoning Plans Advisory Committee

RE: Property Owner: William R. DeSandro, et ux

Location: SE/S Prospect Avenue 415' N/E from c/l Waugh Avenue

Item No.: 266 Zoning Agenda: Meeting of 4/17/84

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

( ) 1. Fire hydrants for the referenced property are required and shall be located at intervals of feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.

( ) 2. A second means of vehicle access is required for the site.

( ) 3. The vehicle dead end condition shown at

EXCEEDS the maximum allowed by the Fire Department.

( ) 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

(X) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1976 Edition prior to occupancy.

( ) 6. Site plans are approved, as drawn.

( ) 7. The Fire Prevention Bureau has no comments, at this time.

REVIEWER: Lt. Gary Kelly Noted and Approved: George M. Kegerreis
Planning Group Fire Prevention Bureau
Special Inspection Division

/mb

BALTIMORE COUNTY
DEPARTMENT OF HEALTH
TOWSON, MARYLAND 21204
494-3600

ED KALBACH, JR.
DIRECTOR

April 23, 1984

Mr. Arnold Jablon, Zoning Commissioner
Office of Planning and Zoning
County Office Building
Towson, Maryland 21204

Dear Mr. Jablon:

Comments on Item # 266 Zoning Advisory Committee Meeting are as follows:

Property Owner: William R. DeSandro, et ux
Location: SE/S Prospect Avenue 415' S/E from c/l Waugh Avenue
Existing Zoning: D.R. 5.5 & D.R. 2
Proposed Zoning: Variance to permit a side yard setback of 25' in lieu of the required 35'.

Acres: Lot #12 "Bennett to Register" 2-18
District: 4th

The items checked below are applicable:

( ) All structures shall conform to the Baltimore County Building Code 1981, Council Bill 1-82 as amended and other applicable Codes.

( ) A building, & other permit shall be required before beginning construction.

( ) Residential: Three sets of construction drawings are required to file a permit application. Architect/Engineer seal is/is not required. Wells are/are not required. Site plan with gradings is/is not required.

( ) Commercial: Three sets of construction drawings with a Maryland Registered Architect or Engineer shall be required to file a permit application.

( ) An accessible unit complying with the Code is/is not required to be provided in the facility. Each unit is/is not to be identified by the use of the International Symbol of Accessibility.

( ) Food service facilities must comply with all applicable requirements of the Baltimore County Health Department.

( ) Prior approval must be obtained from the Department of Health for the use and/or construction of any well or septic system.

( ) Soil percolation tests have been/must be conducted. The results are/are not adequate for a septic system.

( ) A permit to construct from the Department of Health is required for the construction of the proposed swimming pool. Two sets of complete plans and specifications must be submitted.

( ) Prior approval must be obtained from the Department of Health for the removal of any underground storage tanks for petroleum products or any other hazardous substances.

( ) Others

Very truly yours,

Charles E. Burnham, Chief
Plans Review

CEB:ss

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Mr. Arnold Jablon, Zoning Commissioner
Office of Planning and Zoning
Date: May 14, 1984

FROM: Ian J. Forrest

SUBJECT: Zoning Variance Items
Meeting - April 17, 1984

The Baltimore County Department of Health has reviewed the following zoning items and does not anticipate any health hazards at this time regarding these items.

Item #260 - Dennis Fisher, et ux
Item #262 - Arthur D. Singley, III, et ux
Item #266 - William R. DeSandro, et ux
Item #267 - Joseph D. Delgert, et al
Item #268 - Robert H. Lonas, et ux
Item #26[illegible] - Lutie C. Forte

Ian J. Forrest, Director
BUREAU OF ENVIRONMENTAL SERVICES

IJF/fth

Pursuant to the advertisement, posting of property, and public hearing on the Petition and it appearing that strict compliance with the Baltimore County Zoning Regulations would ~~unreasonable~~ not result in practical difficulty and unreasonable hardship upon the Petitioner(s) and the granting of the variance(s) requested will/will not adversely affect the health, safety, and general welfare of the community, the variance(s) should /~~should~~ not be granted.

Therefore, IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County, this 14th day of June, 1984, that the herein Petition for Variance(s) to permit a side yard setback of 27 feet in lieu of the required 35 feet for the proposed addition, in accordance with the site plan filed herein, is GRANTED, from and after the date of this Order, subject, however, to the approval of a site plan by the Office of Planning and Zoning.

Jean M H Jones
Deputy Zoning Commissioner of Baltimore County

ORDER RECEIVED FOR FILING
Date June 14 1984 (Clerk)
BY Mary Campbell
Jean M H Jones

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Elizabeth K Dinger
4603 Prospect Ave
Glyndon, Md 21071

PETITIONER'S EXHIBIT 1

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Barry W Thomas
4606 Prospect Ave.
Glyndon, Md.
21071

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

[illegible]

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Marie Maurer
(Mrs Karl F.)
4615 Prospect Av
Glyndon, Md
21071

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Carlyle N Montanye Jr.
4500 Prospect Ave.
Glyndon, MD 21071

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Thos L. Willis
4610 Prospect ave
Glyndon, Md 21071

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Alma S Whiteside
4601 Prospect Ave
Glyndon, Md. 21071

Pursuant to the advertisement, posting of property, and public hearing on the Petition and it appearing that strict compliance with the Baltimore County Zoning Regulations would/would not result in practical difficulty and unreasonable hardship upon the Petitioner(s) and the granting of the variance(s) requested will/will not adversely affect the health, safety, and general welfare of the community, the variance(s) should/should not be granted.

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 14th day of June, 19 84, that the herein Petition for Variance(s) to permit: a side yard setback of 27 feet in lieu of the required 35 feet for the proposed addition, in accordance with the site plan filed herein, is GRANTED, from and after the date of this Order, subject, however, to the approval of a site plan by the Office of Planning and Zoning.

Deputy Zoning Commissioner of Baltimore County

ORDER RECEIVED FOR FILING
Date: June 14, 1984
By: Zoning Commissioner (Hearing Officer)

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

ARNOLD JABLON
ZONING COMMISSIONER

June 14, 1984

Mr. and Mrs. William R. DeSandro
4605 Prospect Avenue
Glyndon, Maryland 21071

RE: Petition for Variance
SE/S Prospect Avenue, 415' NE Waugh Avenue (4605 Prospect Avenue) - 4th Election District
William R. DeSandro, et ux - Petitioner
No. 84-332-A (Item No. 266)

Dear Mr. and Mrs. DeSandro:

I have this date passed my Order in the above referenced matter in accordance with the attached.

Very truly yours,

JEAN M. H. JUNG
Deputy Zoning Commissioner

JMHJ:mc

Attachments

cc: People's Counsel

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

ARNOLD JABLON
ZONING COMMISSIONER

May 22, 1984

Mr. & Mrs. William R. DeSandro
4605 Prospect Avenue
Glyndon, Maryland 21071

Re: Petition for Variance
SE/S Prospect Ave., 415' NE of Waugh Avenue (4605 Prospect Avenue)
Case No. 84-332-A

Dear Mr. & Mrs. DeSandro:

This is to advise you that $51.38 is due for advertising and posting of the above property.

This fee must be paid and our zoning sign and post returned on the day of the hearing before an Order is issued. Do not remove sign until day of hearing.

Please make the check payable to Baltimore County, Maryland, and remit to Mrs. Arlene January, Zoning Office, Room 113, County Office Building, Towson, Maryland 21204, before the hearing.

Sincerely,

ARNOLD JABLON
Zoning Commissioner

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 130510
DATE 5/29/84 ACCOUNT R-01-615-000
AMOUNT $51.38
RECEIVED Jean M. DeSandro
FOR advertising and posting Case #84-332-A
B 0524*****5138Fb 6298A
VALIDATION OR SIGNATURE OF CASHIER

MICROFILMED

May 31, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Douglas A DeGroote
4609 Prospect Ave

MICROFILMED

May 31, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Mr. + Mrs. Laurence E. Evans
(Lenore V. Evans)
4612 Prospect Ave.
Glyndon Md 21071

MICROFILMED

May 1, 1984

Mr. & Mrs. William R. DeSandro
4605 Prospect Avenue
Glyndon, Maryland 21071

NOTICE OF HEARING

Re: Petition for Variance
SE/S Prospect Ave., 415' NE of Waugh Avenue (4605 Prospect Avenue)
Case No. 84-332-A

TIME: 9:45 A.M.

DATE: Tuesday, May 29, 1984

PLACE: Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland

Zoning Commissioner
Baltimore County

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 128246
DATE 4/15/84 ACCOUNT R-01-615-000
AMOUNT $35.00
RECEIVED Mr. & Mrs. DeSandro
FOR Deposit for Hearing #266
B 0524*****3500b 6298A
VALIDATION OR SIGNATURE OF CASHIER

MICROFILMED

ZONING DESCRIPTION

Beginning on the southeast side of Prospect Avenue, at the distance of 415 feet measured along the northeast side measured straight to intersect the centerline of Waugh Avenue. Being lot #71 on the plat of Bennett to Hagerer Book #2, Folio 18, Fourth Election District. Also known as 4605 Prospect Avenue.

MICROFILMED

PETITION FOR VARIANCE

4th Election District

ZONING: Petition for Variance

LOCATION: Southeast side Prospect Ave., 415 ft. Northeast of Waugh Avenue (4605 Prospect Avenue)

DATE & TIME: Tuesday, May 29, 1984 at 9:45 A.M.

PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

Petition for Variance to permit a side yard setback of 25 ft. instead of the required 35 ft.

Being the property of William R. DeSandro, et ux, as shown on plat plan filed with the Zoning Department.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be received in writing by the date of the hearing set above or made at the hearing.

BY ORDER OF
ARNOLD JABLON
ZONING COMMISSIONER
OF BALTIMORE COUNTY

MICROFILMED

RE: PETITION FOR VARIANCE
SE/S Prospect Ave., 415' NE of Waugh Ave. (4605 Prospect Ave.);
4th District
WILLIAM R. DeSANDRO, et ux,
Petitioners

: BEFORE THE ZONING COMMISSIONER
: OF BALTIMORE COUNTY
: Case No. 84-332-A

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notices should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

Phyllis Cole Friedman
People's Counsel

Peter Max Zimmerman
Deputy People's Counsel
Rm. 223, Court House
Towson, MD 21204
494-2188

I HEREBY CERTIFY that on this 9th day of May, 1984, a copy of the foregoing Entry of Appearance was mailed to Mr. and Mrs. William R. DeSandro, 4605 Prospect Ave., Glyndon, MD 21071, Petitioners.

Peter Max Zimmerman

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

ARNOLD JABLON
ZONING COMMISSIONER

May 22, 1984

Mr. & Mrs. William R. DeSandro
4605 Prospect Avenue
Glyndon, Maryland 21071

Re: Petition for Variance
SE/S Prospect Ave., 415' NE of Waugh Avenue (4605 Prospect Avenue)
Case No. 84-332-A

Dear Mr. & Mrs. DeSandro:

This is to advise you that $51.35 is due for advertising and posting of the above property.

This fee must be paid and our zoning sign and post returned on the day of the hearing before an Order is issued. Do not remove sign until day of hearing.

Please make the check payable to Baltimore County, Maryland, and remit to Mrs. Arlene January, Zoning Office, Room 113, County Office Building, Towson, Maryland 21204, before the hearing.

Sincerely,

ARNOLD JABLON
Zoning Commissioner

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 130510
DATE 5/29/84
ACCOUNT R-01-615-000
AMOUNT $51.35
RECEIVED Wm. M. DeSandro
advertising and posting Case #84-332-A
VALIDATION OR SIGNATURE OF CASHIER

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Douglas A DeLoycht
4609 Prospect Ave

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Mr. & Mrs. Lawrence E. Emert
(Edna + Larry)
4612 Prospect Ave
Glyndon, Md 21071

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

ARNOLD JABLON
ZONING COMMISSIONER

June 14, 1984

Mr. and Mrs. William R. DeSandro
4605 Prospect Avenue
Glyndon, Maryland 21071

RE: Petition for Variance
SE/S Prospect Avenue,
415' NE Waugh Avenue
(4605 Prospect Avenue) -
4th Election District
William R. DeSandro, et ux -
Petitioner
No. 84-332-A (Item No. 266)

Dear Mr. and Mrs. DeSandro:

I have this date passed my Order in the above referenced matter in accordance with the attached.

Very truly yours,

JOAN M. H. JUNG
Deputy Zoning Commissioner

JMHJ:mc
Attachments
cc: People's Counsel

May 1, 1984

Mr. & Mrs. William R. DeSandro
4605 Prospect Avenue
Glyndon, Maryland 21071

NOTICE OF HEARING
Re: Petition for Variance
SE/S Prospect Ave., 415' NE of Waugh Avenue (4605 Prospect Avenue)
Case No. 84-332-A

TIME: 9:45 A.M.
DATE: Tuesday, May 29, 1984
PLACE: Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland

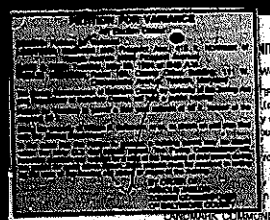
Zoning Commissioner
Baltimore County

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 128246
DATE 5/15/84
R-01-615-000
35.00
FOR Filing of Appeal for Case #84-332-A
VALIDATION OR SIGNATURE OF CASHIER

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

84-332-A

District 4th
Date of Posting 5-11-84
Posted for: Variance
Petitioner: William R. DeSandro, et ux
Location of property: S/S of Prospect Ave., 415' NE of Waugh Avenue (4605 Prospect Ave.)
Location of Signs: In front of 4605 Prospect Avenue
Remarks:
Posted by: [signature] Date of return: 5-15-84
Number of Signs: 1



LANDMARK COMMUNITY NEWSPAPERS OF MARYLAND, INC.

Westminster, Md., May 10, 19 84

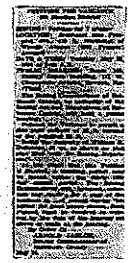
THIS IS TO CERTIFY that the annexed Petition for Variance was inserted in the following ... successive weeks/days previous, ... May, 19 84, in the ... County Times, a daily newspaper published in Westminster, Carroll County, Maryland. ... Herald, a weekly newspaper published in Eldersburg, Carroll County, Maryland. ... Times, a weekly newspaper published in Reisterstown, Baltimore County, Maryland.

LANDMARK COMMUNITY NEWSPAPERS OF MARYLAND, INC.

Per

84-332-A

CERTIFICATE OF PUBLICATION



TOWSON, MD., May 10, 19 84

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., ~~ONE TIME~~ ~~SUCCESSIVE WEEKS~~ before the 22nd day of May, 1984, the first publication appearing on the 10th day of May, 19 84.

THE JEFFERSONIAN

Manager.

Cost of Advertisement, $ 51.35

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Elizabeth K Dinges
4603 Prospect Ave
Glyndon, Md 21071

PETITIONER'S EXHIBIT 1

MICROFILMED

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Barry W. Thomas
4606 Prospect Ave.
Glyndon, Md.
21071

MICROFILMED

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

[illegible]
4607 Prospect Ave.
Glyndon, MD. 21071
[illegible]

MICROFILMED

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Marie Meeuwe
(Mrs Karl F.)
4615 Prospect Av
Glyndon, Md
21071

MICROFILMED

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Carlyle N Montanye Jr.
4500 Prospect Ave.
Glyndon, MD 21071

MICROFILMED

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Thos L. Willi[illegible]
4610 Prospect ave
Glyndon, md 21071

MICROFILMED

May 11, 1984

Zoning Commissioner
Baltimore Co.

Dear Sir:

I have no objection to the Petition of Variance filed by William R. DeSandro of 4605 Prospect Ave., Glyndon, Maryland, in which he requests a 25-foot setback in lieu of the required 35-foot setback.

Yours truly,

Alma S. Whiteside
4611 Prospect Ave
Glyndon, Md. 21071

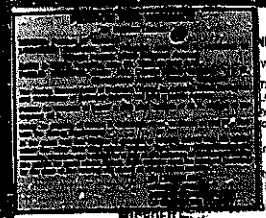
MICROFILMED

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

84-332-A

District: 8th Date of Posting: 5-11-84
Posted for: Variance
Petitioner: William R. DeSandro et ux
Location of property: S.E/S of Prospect Ave., 415' NE of Waugh Avenue (4605 Prospect Ave.)
Location of Signs: in front of 4605 Prospect Avenue
Remarks:
Posted by: [illegible] Date of return: 5-18-84
Number of Signs: 1

MICROFILMED



[illegible]NITY NEWSPAPERS OF MARYLAND, INC.

Westminster, Md., May 10 19 84

[illegible]TIFY that the annexed Petition for Variance [illegible] (one) successive weeks/days previous [illegible]y of May 19 84 in the [illegible]ounty Times, a daily newspaper published in Westminster, Carroll County, Maryland, [illegible]rroll Herald, a weekly newspaper published in Eldersburg, Carroll County, Maryland, [illegible]ty Times, a weekly newspaper published in Reisterstown, Baltimore County, Maryland.

[illegible]NITY NEWSPAPERS OF MARYLAND, INC.

Per

MICROFILMED

MAR 14 1985

ZONING DESCRIPTION

Beginning on the southeast side of Prospect Avenue, at the distance of 415 feet measured along the northeast side measured straight to intersect the centerline of Waugh Avenue. Being lot #11 on the plat of Bennett to Regester Book #2, Folio 18. Fourth Election District. Also known as 4605 Prospect Avenue.

PETITION FOR VARIANCE

4th Election District

ZONING: Petition for Variance

LOCATION: Southeast side Prospect Ave., 415 ft. Northeast of Waugh Avenue (4605 Prospect Avenue)

DATE & TIME: Tuesday, May 29, 1984 at 9:45 A.M.

PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

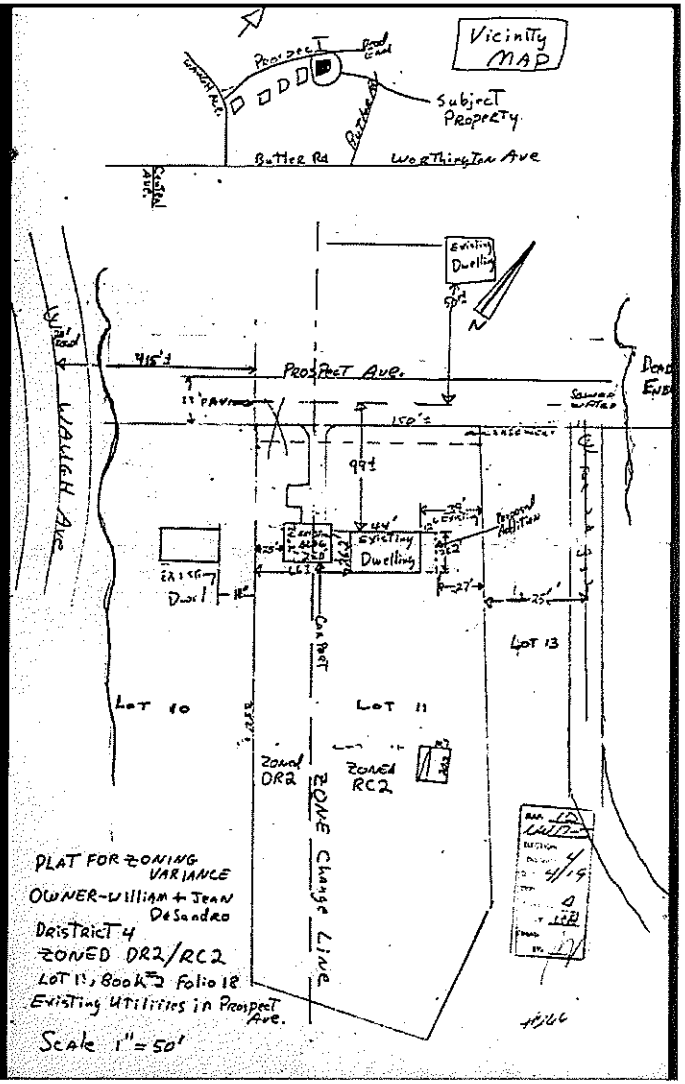
The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

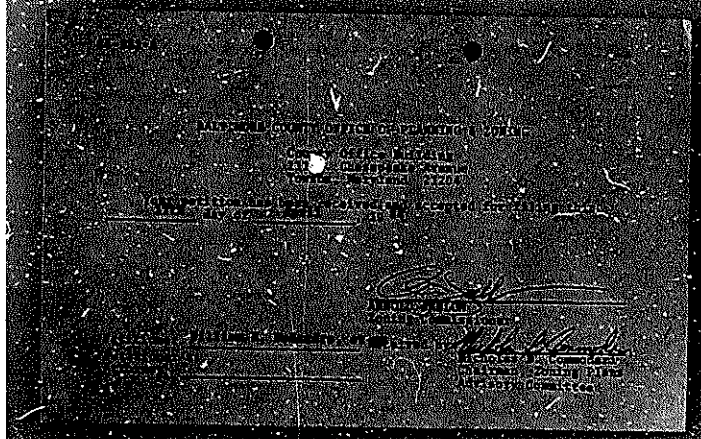
Petition for Variance to permit a side yard setback of 25 ft. instead of the required 35 ft.

Being the property of William R. DeSandro, et ux, as shown on plat plan filed with the Zoning Department.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be received in writing by the date of the hearing set above or made at the hearing.

BY ORDER OF
ARNOLD JABLON
ZONING COMMISSIONER
OF BALTIMORE COUNTY





84-332-A

CERTIFICATE OF PUBLICATION



TOWSON, MD., May 10, 19 84

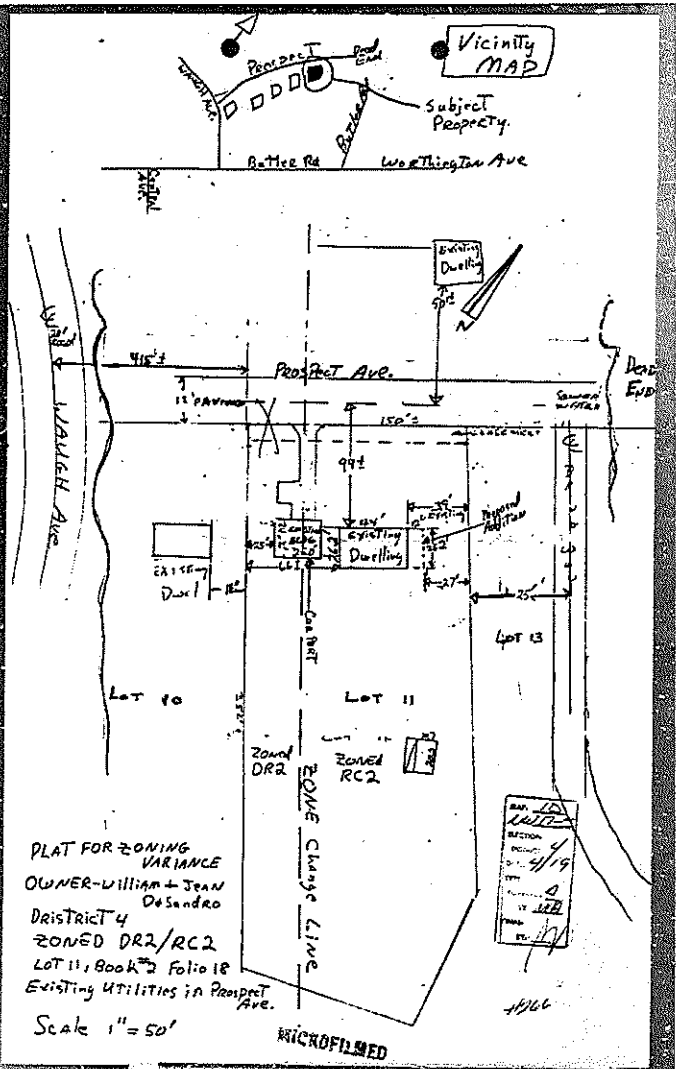
THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., ~~xxxxxxxxxx~~ of one time ~~xxxxxxxxxx~~ before the 29th day of May, 19~~xx~~ 84, the ~~xxx~~ publication appearing on the 10th day of May, 19 84.

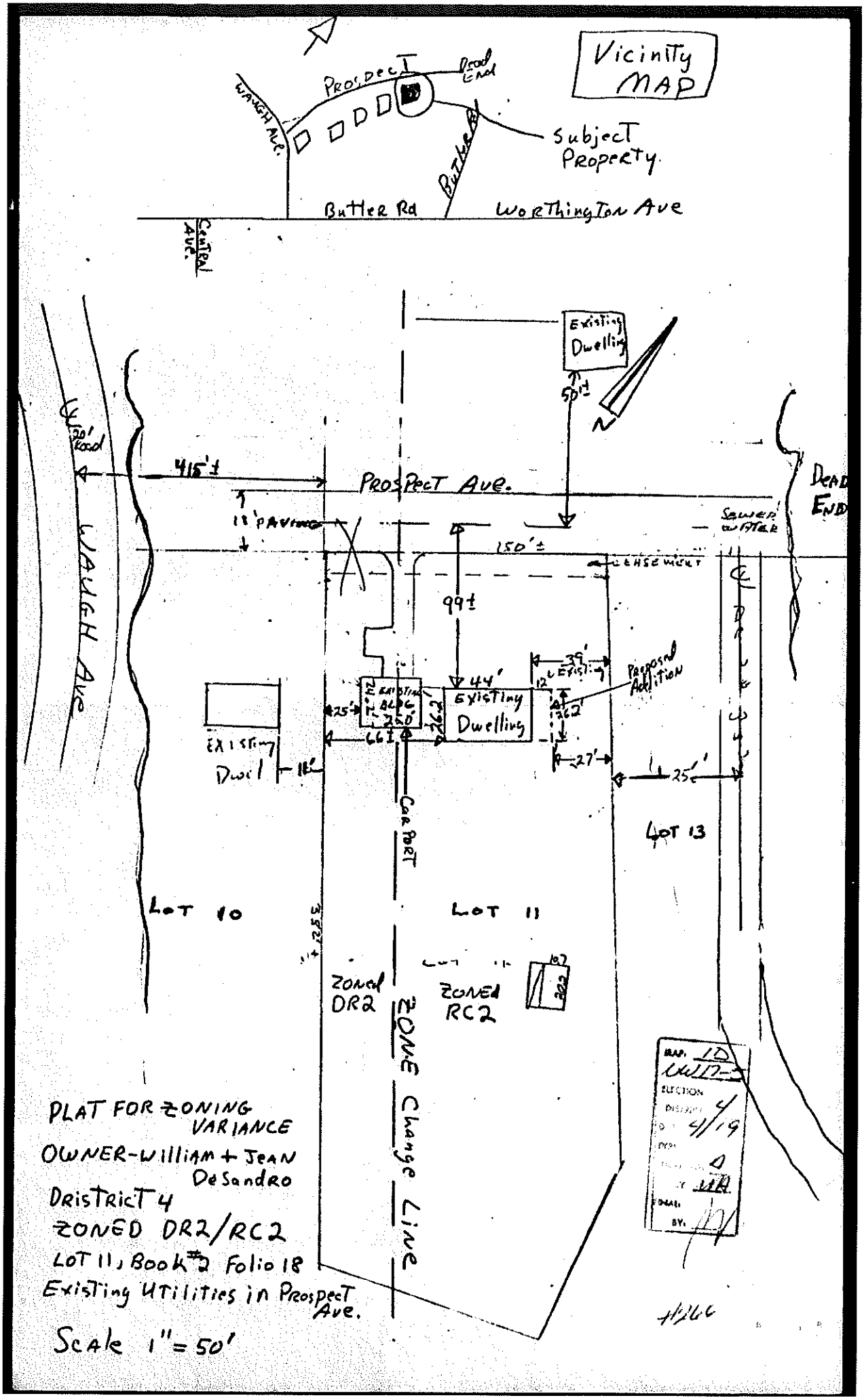
THE JEFFERSONIAN,

L. Frank Griffin
Manager.

Cost of Advertisement, $ 17.00

MICROFILMED





PLAT FOR ZONING VARIANCE

OWNER-William + Jean DeSandro

District 4

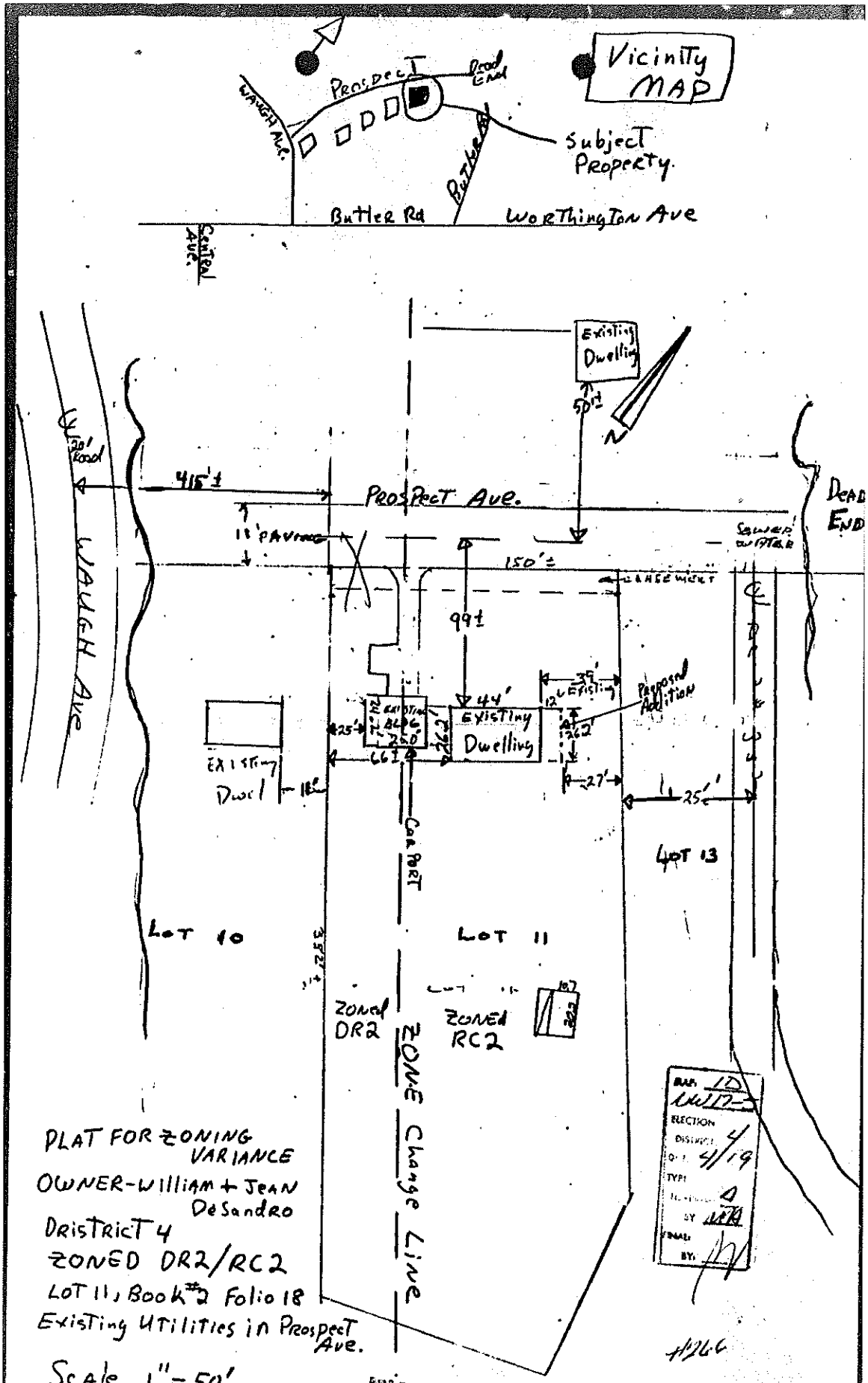
ZONED DR2/RC2

Lot 11, Book #2 Folio 18

Existing Utilities in Prospect Ave.

Scale 1" = 50'

4/26/66



PLAT FOR ZONING VARIANCE
OWNER-William + Jean DeSandro
DRISTRICT 4
ZONED DR2/RC2
LOT 11, Book #2 Folio 18
Existing Utilities in Prospect Ave.

Scale 1" = 50'

MICROFILMED

IN RE: PETITION FOR ADMIN. VARIANCE
W/S of Prospect Avenue, 742' NE
centerline of Waugh Avenue
4th Election District
3rd Councilmanic District
(4606 Prospect Avenue)

Fran & Sergio Acle
Petitioners

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* CASE NO. 05-444-A
*

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

Pet 103

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Administrative Variance filed by the legal owners of the subject property, Fran and Sergio Acle. The administrative variance is requested for property located at 4606 Prospect Avenue in the Glyndon area of Baltimore County. The administrative variance request is from Section 400 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a replacement free standing garage with a height of 21 ft. in lieu of the maximum allowed 15 ft. height. The subject property and requested relief are more particularly described on Petitioners' Exhibit No. 1, the plat to accompany the Petition for Variance.

The Petitioners having filed a Petition for Administrative Variance and the subject property having been posted on March 20, 2005, and there being no request for a public hearing, a decision shall be rendered based upon the documentation presented.

Zoning Advisory Committee Comments

The Zoning Advisory Committee (ZAC) comments are made part of the record of this case and contain the following highlights: A ZAC comment was received from the Office of Planning dated April 8, 2005, a copy of which is attached hereto and made a part hereof.

Applicable Law

Section 307 of the B.C.Z.R. – ***Variances***.

MADE RECEIVED FOR FILING
Date 4/12/05
By

"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 the 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."

The Petitioners have filed the supporting affidavits as required by Section 32-3-303 of the Baltimore County Code. Based upon the information available, there is no evidence in the file to indicate that the requested variance would adversely affect the health, safety or general welfare of the public and should therefore be granted. In the opinion of the Deputy Zoning Commissioner, the information, photographs, and affidavits submitted provide sufficient facts that comply with the requirements of Section 307.1 of the B.C.Z.R. Furthermore, strict compliance with the B.C.Z.R. would result in practical difficulty and/or unreasonable hardship upon the Petitioners.

Pursuant to the posting of the property and the provisions of both the Baltimore County Code and the Baltimore County Zoning Regulations, and for the reasons given above, I find that the requested variance should be GRANTED.

THEREFORE, IT IS ORDERED, this 12 day of April, 2005, by this Deputy Zoning Commissioner, that the Petitioners' request for variance from Section 400 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a replacement free standing garage with a height of 21 ft. in lieu of the maximum allowed 15 ft. height, be and is hereby GRANTED,

IMAGES RECEIVED FOR FILMING
Date: 4/12/05
By:

subject, however, to the following restrictions which are conditions precedent to the relief granted herein:

1. The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition;

2. Compliance with the ZAC comments submitted by the Office of Planning dated April 8, 2005, a copy of which is attached hereto and made a part hereof;

3. When applying for a building permit, the site plan field must reference this case and set forth and address the restrictions of this Order.

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

John V. Murphy

JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

JVM:raj

ORDER RECEIVED FOR FILING
Date 4/12/05
By Raj

Zoning Commissioner

Suite 405, County Courts Building
401 Bosley Avenue
Towson, Maryland 21204
Tel: 410-887-3868 • Fax: 410-887-3468

Baltimore County

James T. Smith, Jr., County Executive
William J. Wiseman III, Zoning Commissioner

April 12, 2005

Mr. & Mrs. Sergio Acle
4606 Prospect Avenue
Glyndon, Maryland 21071

Re: Petition for Administrative Variance
Case No. 05-444-A
Property: 4606 Prospect Avenue

Dear Mr. & Mrs. Acle:

Enclosed please find the decision rendered in the above-captioned case. The petition for administrative variance has been granted in accordance with the enclosed Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days from the date of the Order to the Department of Permits and Development Management. If you require additional information concerning filing an appeal, please feel free to contact our appeals clerk at 410-887-3391.

Very truly yours,

John V. Murphy

John V. Murphy
Deputy Zoning Commissioner

JVM:raj
Enclosure

c: Joseph Duschl, 8825 Orchard Road, Baltimore, MD 21208

Printed on Recycled Paper

HISTORIC

Petition for Administrative Variance

to the Zoning Commissioner of Baltimore County

for the property located at 4606 PROSPECT AVE.

which is presently zoned RC 2

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s) 400 BCZR TO PERMIT A REPLACEMENT FREE STANDING GARAGE WITH A HEIGHT OF 21 FT IN LIEU. OF THE MAXIMUM 15 FT. HEIGHT.

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the reasons indicated on the back of this petition form.

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Variance, 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.

I/We do 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 Petition.

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address Telephone No.

City State Zip Code

Legal Owner(s):

SERGIO ACLE
Name - Type or Print

Signature

FRAN ACLE
Name - Type or Print

Frances M. Acle
Signature

4606 PROSPECT AVENUE 410-833-1923
Address Telephone No

GLYNDON MD 21071
City State Zip Code

Representative to be Contacted:

JOSEPH DUSCHL
Name

8825 ORCHARD RD 410-370-9007 cell 410-602-0685 office
Address Telephone No

BALTIMORE MD. 21208
City State Zip Code

A Public Hearing having been formally demanded and/or found to be required, it is ordered by the Zoning Commissioner of Baltimore County, this ____ day of _____, _____ that the subject matter of this petition be set for a public hearing, advertised, as required by the zoning regulations of Baltimore County and that the property be reposted.

Zoning Commissioner of Baltimore County

ORDER RECEIVED FOR FILING
4/20/05

CASE NO. 05 444 A

Reviewed By JL Date 3/08/05

Estimated Posting Date 3/20/05

REV 10/25/01

5

Affidavit in Support of Administrative Variance

The undersigned hereby affirms under the penalties of perjury to the Zoning Commissioner of Baltimore County, as follows: That the information herein given is within the personal knowledge of the Affiant(s) and that Affiant(s) is/are competent to testify thereto in the event that a public hearing is scheduled in the future with regard thereto.

That the Affiant(s) does/do presently reside at 4606 PROSPECT AVENUE
Address

BALTIMORE MD. 21071
City State Zip Code

That based upon personal knowledge, the following are the facts upon which I/we base the request for an Administrative Variance at the above address (indicate hardship or practical difficulty):

- Extensive Termite damage to existing garage
- Extensive damage to existing Concrete floor
- Wood boring bee damage.
- Structure is of no historical value (Circa 1950's)
- Existing structure contains an upper level storage area as does the new structure, will tranfer items which are currently stored.
- 3 car garage will block view of commercial buiding on adjacent Property.
- Neighbor (4601 Prospect Ave) has a similar detatched structure with 2nd story storage.

That the Affiant(s) acknowledge(s) that if a formal demand is filed, Affiant(s) will be required to pay a reposting and advertising fee and may be required to provide additional information.

Signature

SERGIO ACLE
Name - Type or Print

Signature

FRAN ACLE
Name - Type or Print

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, this 7th day of March 2005 before me, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared Sergio Acle & Fran Acle the Affiant(s) herein, personally known or satisfactorily identified to me as such Affiant(s).

AS WITNESS my hand and Notarial Seal

Notary Public

My Commission Expires 10/1/05

REV 10/25/01

Affidavit in Support of Administrative Variance

The undersigned hereby affirms under the penalties of perjury to the Zoning Commissioner of Baltimore County, as follows: That the information herein given is within the personal knowledge of the Affiant(s) and that Affiant(s) is/are competent to testify thereto in the event that a public hearing is scheduled in the future with regard thereto.

That the Affiant(s) does/do presently reside at 4606 PROSPECT AVENUE
Address

BALTIMORE MD. 21071
City State Zip Code

That based upon personal knowledge, the following are the facts upon which I/we base the request for an Administrative Variance at the above address (indicate hardship or practical difficulty):

- Extensive Termite damage to existing garage
- Extensive damage to existing concrete floor.
- wood boring bee damage
- structure is of no historical value (circa 1950's)
- Existing structure contains an upper level storage area as does the new structure. Will transfer items which are currently stored.
- 3 car garage will block view of commercial building on adjacent property.
- Neighbor (4601 Prospect) has a similar detached structure with 2nd story storage.

That the Affiant(s) acknowledge(s) that if a formal demand is filed, Affiant(s) will be required to pay a reposting and advertising fee and may be required to provide additional information.

Signature

SERGIO ACLE
Name - Type or Print

Signature

FRAN ACLE
Name - Type or Print

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, this 7th day of March 2005, before me, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared Sergio Acle & Fran Acle the Affiant(s) herein, personally known or satisfactorily identified to me as such Affiant(s).

AS WITNESS my hand and Notarial Seal

Notary Public

My Commission Expires 10/1/05

REV 10/25/01

Petition for Administrative Variance

to the Zoning Commissioner of Baltimore County

for the property located at 4606 PROSPECT AVE.

which is presently zoned RC 2

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s) 400 BCZR TO PERMIT A REPLACEMENT FREE STANDING GARAGE WITH A HEIGHT OF 21 FT IN LIEU OF THE MAXIMUM 15 FT. HEIGHT

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the reasons indicated on the back of this petition form.

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Variance, 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.

I/We do 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 Petition.

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address Telephone No.

City State Zip Code

Legal Owner(s):

SERGIO AGLE

Name - Type or Print

Signature

FRAN AGLE

Name - Type or Print

Frances M. Agle

Signature

4606 PROSPECT AVENUE 410-83-192

Address Telephone No

GLYNDON MD 21071

City State Zip Code

Representative to be Contacted:

JOSEPH DUSCHL

Name 410-370-9007 cc

8825 ORCHARD RD 410-602-0685 of

Address Telephone No

BALTIMORE MD. 21208

City State Zip Code

A Public Hearing having been formally demanded and/or found to be required, it is ordered by the Zoning Commissioner of Baltimore County, this ____ day of _____, _____ that the subject matter of this petition be set for a public hearing, advertised, as required by the zoning regulations of Baltimore County and that the property be reposted.

Zoning Commissioner of Baltimore County

CASE NO. 05 444 A

Reviewed By JL **Date** 3/08/05

REV 10/25/01

Estimated Posting Date 3/20/05

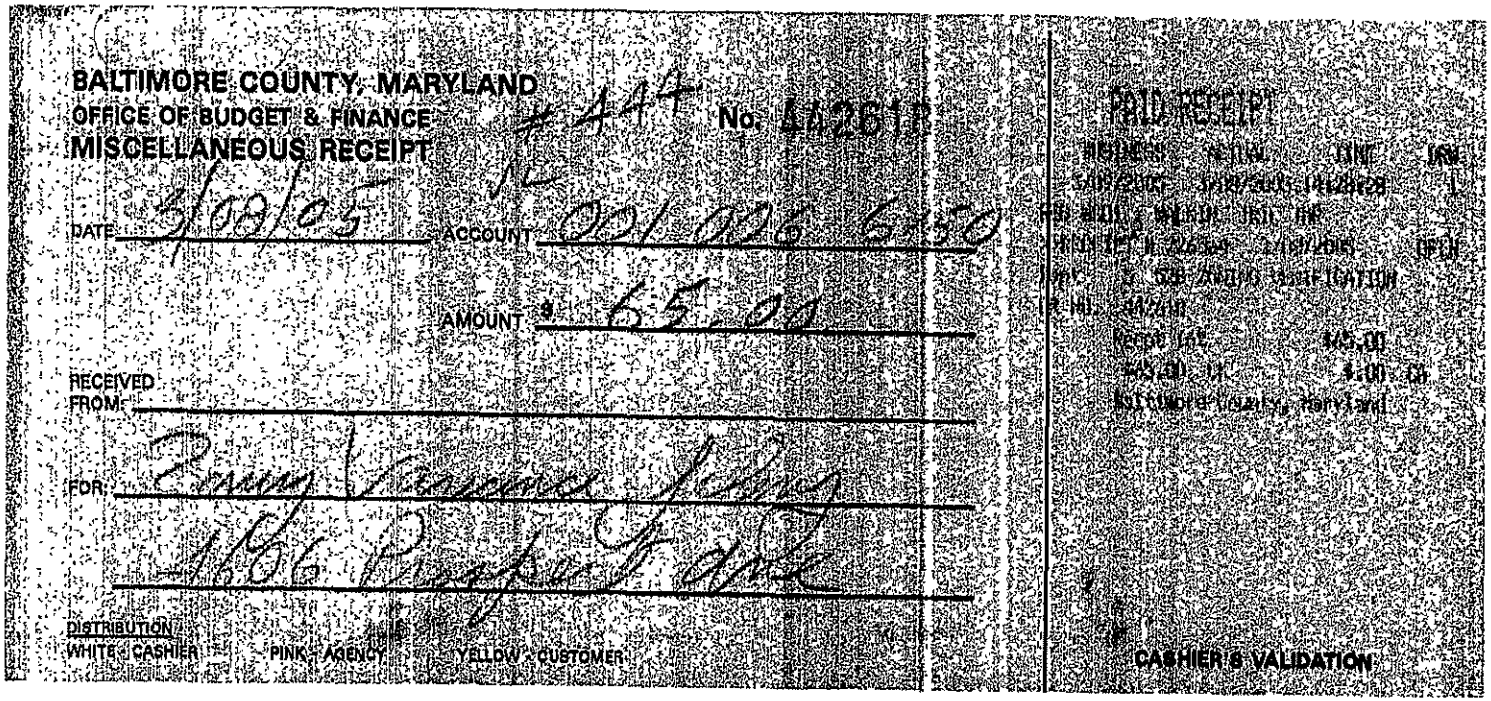
ZONING DESCRIPTION FOR 4606 Prospect Avenue

Begining at a point on the west side of Prospect Avenue, which is 20' +/- wide at a distance of 742' +/- northeast of the centerline of Waugh Avenue which is 20' +/- wide, containing 2.54 acres. Also known as 4606 Prospect Avenue and located in the fourth Election District, ~~second~~ THIRD Councilmanic District.

As recorded in Deed Liber 8208, Folio 743 and includes the measurements and metes and bounds here and on the plat in the correct location.

Metes & Bounds: N.51 20'07"E. 150 ft., N.51 26'31"E. 50 ft., N.46 43'44"E. 50.21 ft., N.37 50.08 ft., N.31 59'30"E. 52.30 ft., N.70 30'00"W. 526.00 ft., S.18 14' 53"W. 200.00 ft., S.73 55'02" E. 175.00 ft., S 37 40'02" E. 228.19 ft.

444



BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

#444 No. 442618

DATE 3/08/05 ACCOUNT 001 006 6150

AMOUNT $ 65.00

RECEIVED FROM:

FOR: Zoning Variance Filing
1606 Prospect Ave

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT

BUSINESS	ACTUAL	CONT	DRW
3/09/2005	3/08/2005	14:28:28	1

[illegible]
[illegible] 3/08/2005 OPEN
[illegible] CLASSIFICATION
[illegible] 442618
Receipt Int $65.00
$65.00 CK $.00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

CERTIFICATE OF POSTING

ATTENTION: KRISTEN MATTHEWS

Date May 5, 2005

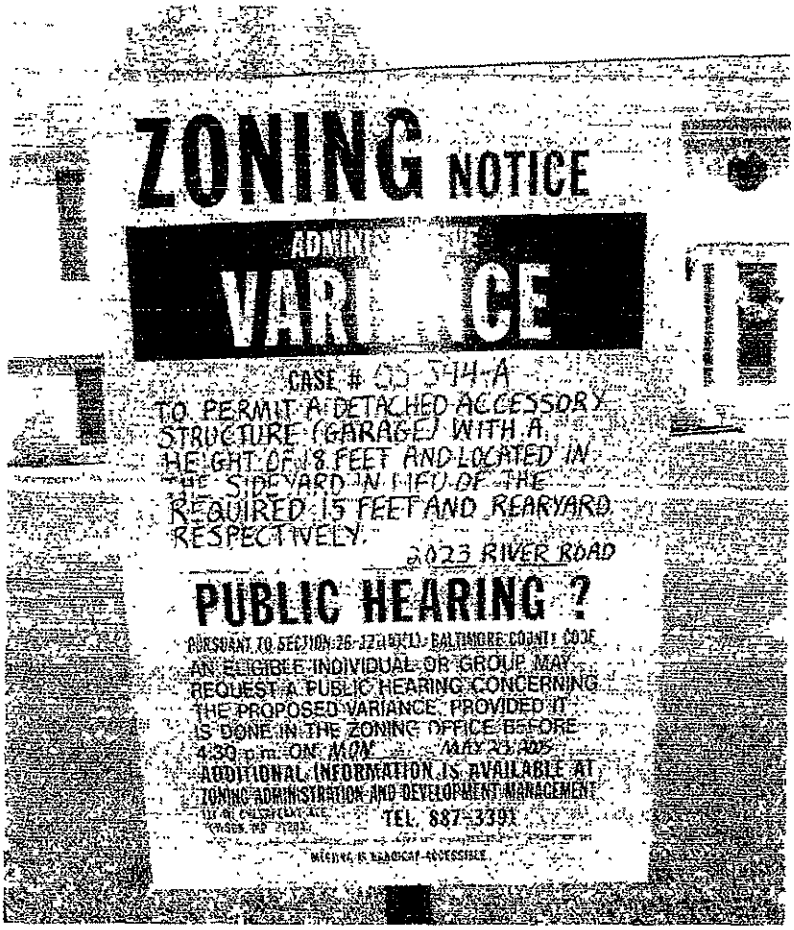
RE: Case Number 05-444-A

Petitioner/Developer PAUL MILLER / BUCK JONES

Date of Hearing/Closing) MAY 23, 2005

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 2023 RIVER ROAD

The sign(s) were posted on May 4, 2005



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 Code of Sign Poster)

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

CERTIFICATE OF POSTING

ATTENTION: KRISTEN MATTHEWS

Date March 20, 2005

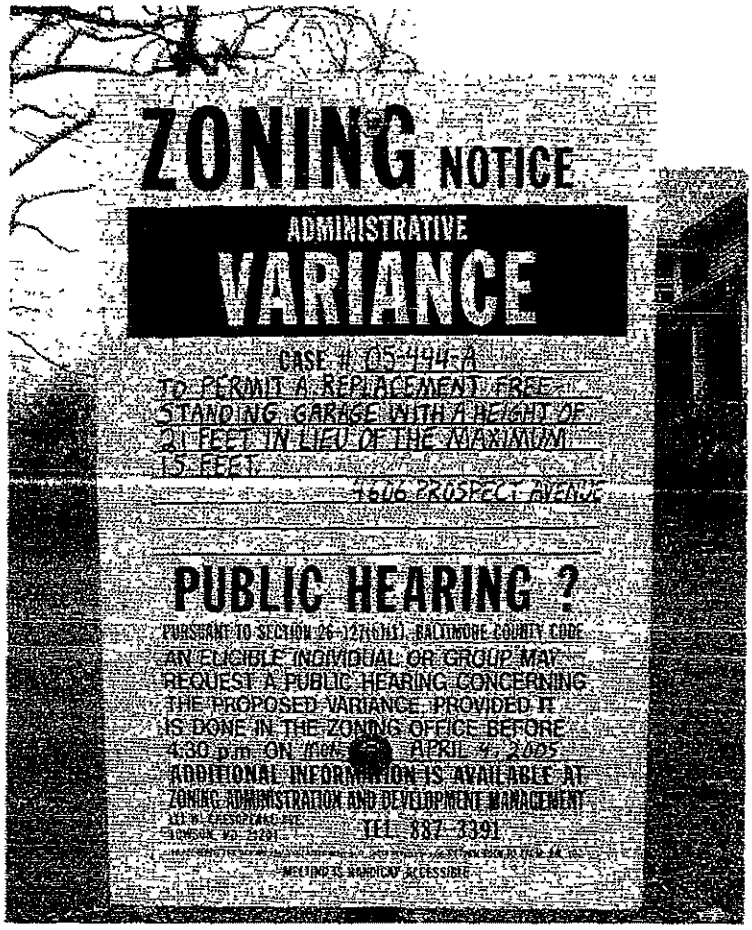
RE: Case Number 05-444-A

Petitioner/Developer SERGIO + FRAN ACLE / DIVERSIFIED BUILDERS GROUP

Date of Hearing/Closing) April 4, 2005

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 4606 PROSPECT AVENUE

The sign(s) were posted on March 20, 2005



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 Code of Sign Poster)

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

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

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

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

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

For Newspaper Advertising:

Item Number or Case Number: 05-444-A

Petitioner: Sergio & Fran Acle

Address or Location: 4606 Prospect Ave

PLEASE FORWARD ADVERTISING BILL TO:

Name: Joseph Duschl

Address: 8825 Orchard Rd

Baltimore, MD, 21208

Telephone Number: 410-370-9007

Revised 2/20/98 - SCJ

APP HAS ORIG + POSTER FORM.

BALTIMORE COUNTY DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
ZONING REVIEW

ADMINISTRATIVE VARIANCE INFORMATION SHEET AND DATES

Case Number 05-444-A Address 4606 PROSPECT AVE.

Contact Person: JOHN LEWIS Phone Number: 410-887-3391
Planner, Please Print Your Name

Filing Date: 3/08/05 **Posting Date:** 3/20/05 **Closing Date:** 4/04/05

Any contact made with this office regarding the status of the administrative variance should be through the contact person (planner) using the case number.

1. **POSTING/COST:** The petitioner must use one of the sign posters on the approved list (on the reverse side of this form) and the petitioner is responsible for all printing/posting costs. Any reposting must be done only by one of the sign posters on the approved list and the petitioner is again responsible for all associated costs. The zoning notice sign must be visible on the property on or before the posting date noted above. It should remain there through the closing date.

2. **DEADLINE:** The closing date is the deadline for an occupant or owner within 1,000 feet to file a formal request for a public hearing. Please understand that even if there is no formal request for a public hearing, the process is not complete on the closing date.

3. **ORDER:** After the closing date, the file will be reviewed by the zoning or deputy zoning commissioner. He may: (a) grant the requested relief; (b) deny the requested relief; or (c) order that the matter be set in for a public hearing. You will receive written notification (typically within 7 to 10 days of the closing date) as to whether the petition has been granted, denied, or will go to public hearing. The order will be mailed to you by First Class mail.

4. **POSSIBLE PUBLIC HEARING AND REPOSTING:** In cases that must go to a public hearing (whether due to a neighbor's formal request or by order of the zoning or deputy zoning commissioner), notification will be forwarded to you. The sign on the property must be changed giving notice of the hearing date, time and location. As when the sign was originally posted, certification of this change and a photograph of the altered sign must be forwarded to this office.

(Detach Along Dotted Line)

Petitioner: This Part of the Form is for the Sign Poster Only

USE THE ADMINISTRATIVE VARIANCE SIGN FORMAT

Case Number 05-444-A Address 4606 PROSPECT AVE.

Petitioner's Name SERGIO & FRAN ~~ALICE~~ ACLE Telephone 410-833-1923

Posting Date: 3/20/05 **Closing Date:** 4/04/05

Wording for Sign: To Permit A REPLACEMENT FREESTANDING GARAGE WITH A HEIGHT OF 21 FT. IN LIEU OF THE MAXIMUM 15 FT.

WCR - Revised 6/25/04

Department of Permits and Development Management

Development Processing
County Office Building
111 W Chesapeake Avenue
Towson, Maryland 21204

Baltimore County

James T Smith, Jr., County Executive
Timothy M Kotroco, Director

April 4, 2005

Sergio Acle
Fran Acle
4606 Prospect Avenue
Glyndon, Maryland 21071

Dear Mr. and Mrs.Acle:

RE: Case Number: 05-444-A, 4606 Prospect Avenue

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on March 8, 2005.

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR: clb

Enclosures

c: People's Counsel
Joseph Duschl 8825 Orchard Road Baltimore 21208

Printed on Recycled Paper

Fire Department

700 East Joppa Road
Towson, Maryland 21286-5500
Tel: 410-887-4500

Baltimore County

James T. Smith, Jr., County Executive
John J Hohman, Chief

County Office Building, Room 111
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

March 23, 2005

ATTENTION: Zoning Review planners

Distribution Meeting of: March 21, 2005

Item No.: 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455,457, 461, 462.

Pursuant to your request, the referenced plan(s) have been reviewed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

The Fire Marshal's Office has no comments at this time.

Acting Lieutenant Don W. Muddiman
Lieutenant Franklin J. Cook
Fire Marshal's Office
(O)410-887-4881 (C)443-829-2946
MS-1102F

cc: File

Printed on Recycled Paper

Robert L. Ehrlich, Jr., *Governor*
Michael S Steele, *Lt. Governor*

SHA State Highway Administration — Driven to Excel

Robert L Flanagan, *Secretary*
Neil J. Pedersen, *Administrator*

Maryland Department of Transportation

Date: 3.18.05

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

RE: Baltimore County
Item No. 444 JLL

Dear. Ms. Matthews:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not affected by any State Highway Administration projects.

Should you have any questions regarding this matter, please contact Larry Gredlein at 410-545-5606 or by E-mail at (lgredlein@sha.state.md.us).

Very truly yours,

S. D. Foster

Steven D. Foster, Chief
Engineering Access Permits Division

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO: Tim Kotroco

FROM: John D. Oltman, Jr JDO

DATE: April 19, 2005

SUBJECT: Zoning Items # See List Below

Zoning Advisory Committee Meeting of March 21, 2005

__X__ The Department of Environmental Protection and Resource Management has no comments on the following zoning items:

05-444
~~05-448~~
05-449

Reviewers: Sue Farinetti, Dave Lykens

S:\Devcoord\ZAC SHELL 11-20-03.doc

4/21

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits and
Development Management

DATE: April 8, 2005

FROM: Arnold F. 'Pat' Keller, III
Director, Office of Planning

SUBJECT: **5-444 – Administrative Variance**

The Office of Planning does not oppose the petitioner's request to permit an accessory structure with a height of 21 feet in lieu of the maximum permitted 15 feet provided the following conditions are met:

1. The petitioner or subsequent owners shall not convert the subject accessory structure into a dwelling unit or apartment. The structure shall not contain any sleeping quarters, living area, kitchen or bathroom facilities.
2. The accessory structure shall not be used for commercial purposes.

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

Prepared by: Mark A Cunningham

Section Chief: Lyn Lanham

AFK/LL: MAC

ORDER RECEIVED FOR FILING
4/12/05
Rej
By

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits & Development Management

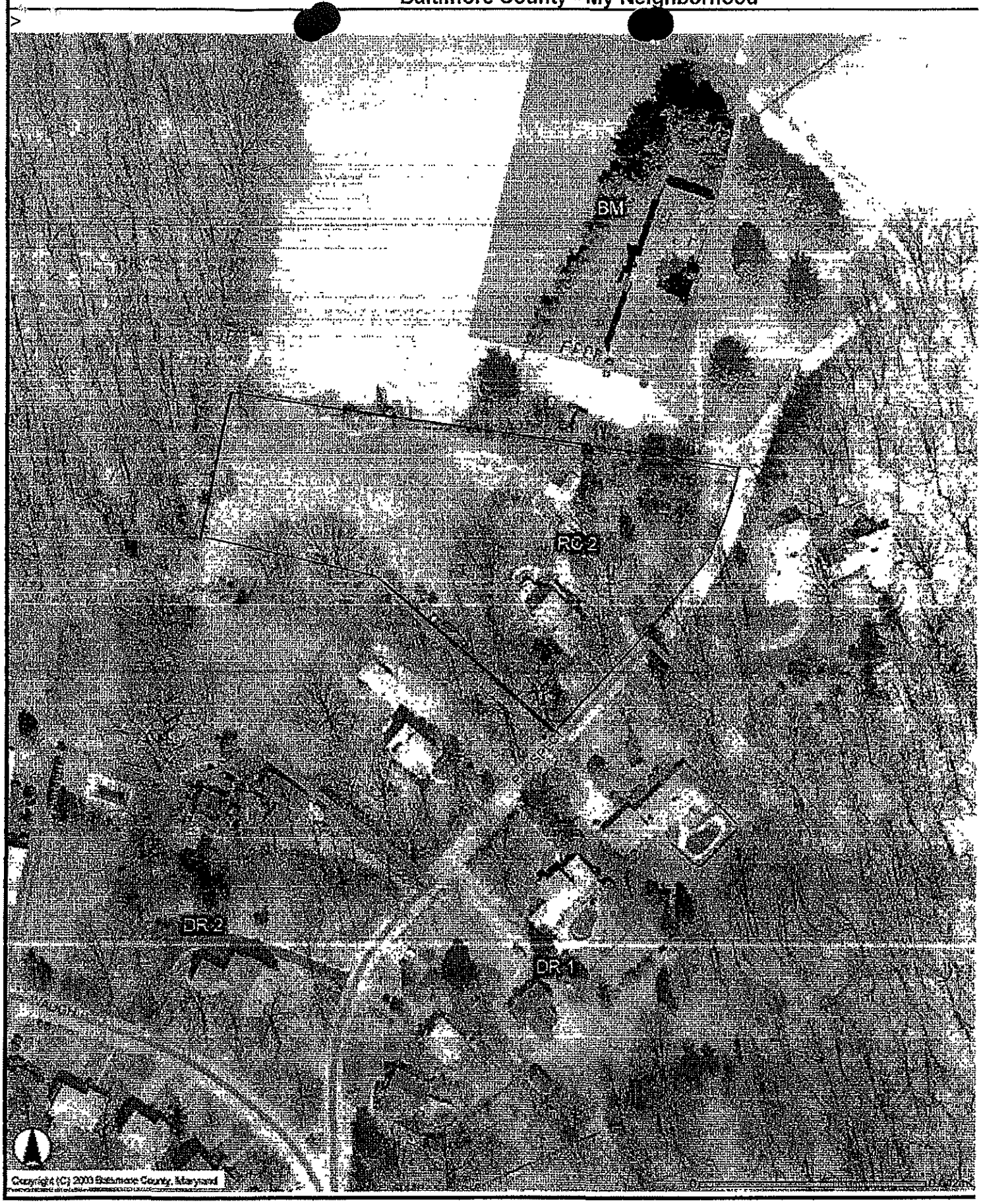
DATE: April 6, 2005

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

SUBJECT: Zoning Advisory Committee Meeting
for March 28, 2005
Item No. 444, 446, 447, 448, 449
450, 451, 452, 453, 454 and 455

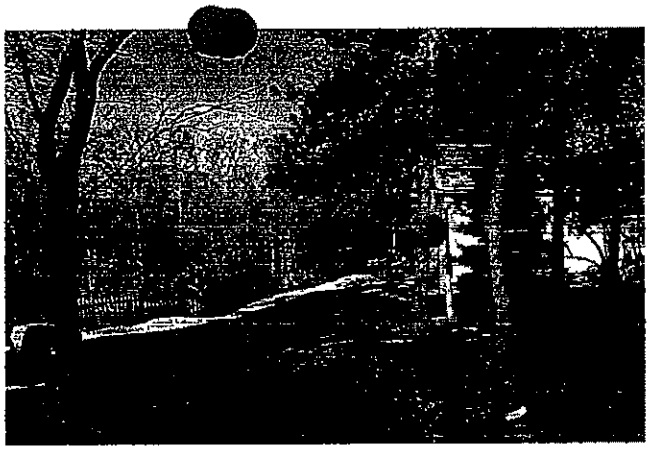
The Bureau of Development Plans Review has reviewed the subject zoning items and we have no comments.

DAK:CEN:clw
cc: file



444











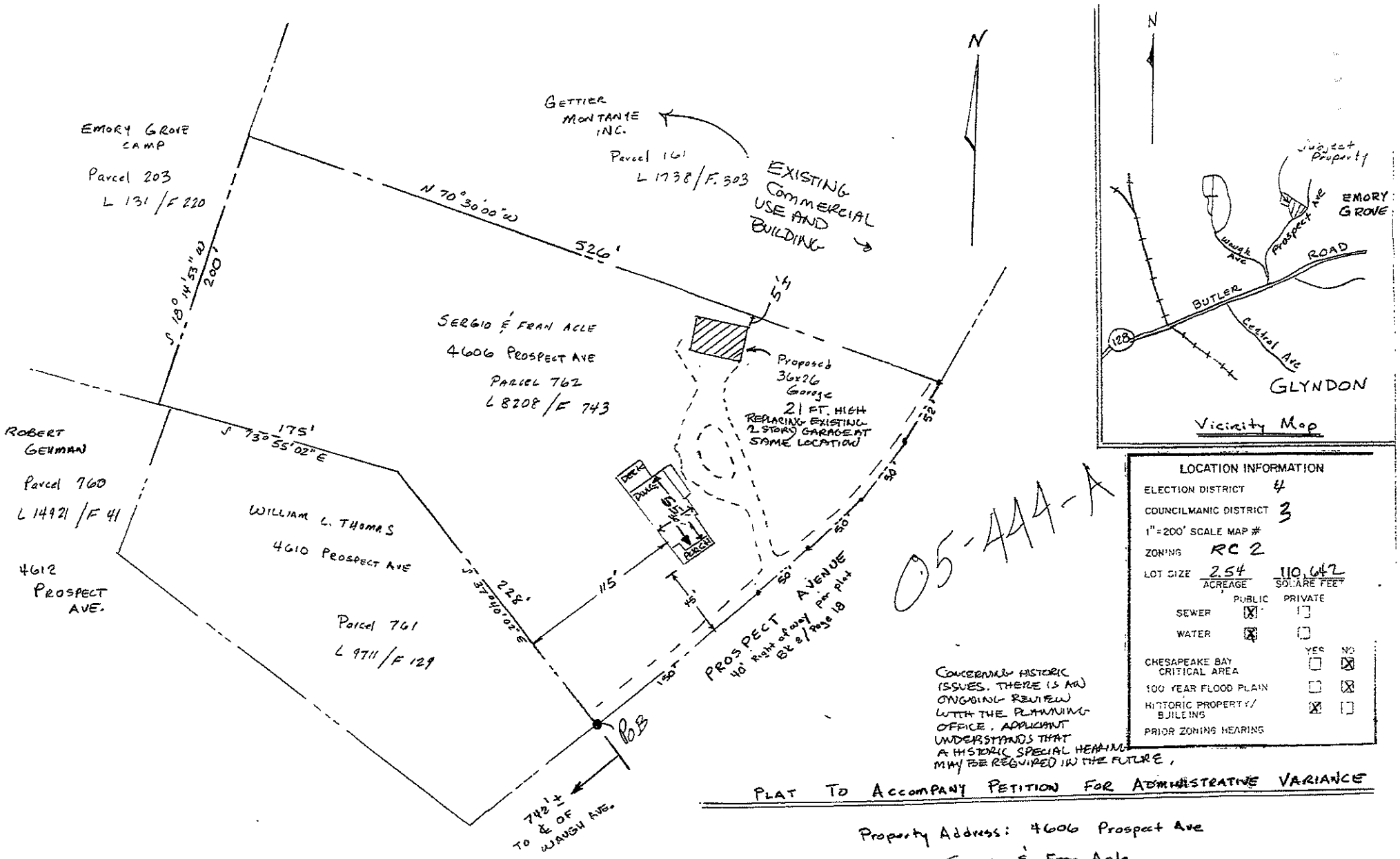




Acle
4606 Prospect Ave
Glyndon Md
21071

Photos of existing garage

444



05-444-A

LOCATION INFORMATION		
ELECTION DISTRICT	4	
COUNCILMANIC DISTRICT	3	
1"=200' SCALE MAP #		
ZONING	RC 2	
LOT SIZE	2.54 ACREAGE	110,642 SQUARE FEET

	PUBLIC	PRIVATE
SEWER	X	
WATER	X	

	YES	NO
CHESAPEAKE BAY CRITICAL AREA		X
100 YEAR FLOOD PLAIN		X
HISTORIC PROPERTY/ BUILDING	X	
PRIOR ZONING HEARING		

CONCERNING HISTORIC ISSUES. THERE IS AN ONGOING REVIEW WITH THE PLANNING OFFICE. APPLICANT UNDERSTANDS THAT A HISTORIC SPECIAL HEARING MAY BE REQUIRED IN THE FUTURE.

PLAT TO ACCOMPANY PETITION FOR ADMINISTRATIVE VARIANCE

Property Address: 4606 Prospect Ave

Owner: Sergio & Fran Acle

Scale of Drawing: 1" = 60'

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 21, 2021

NOTICE OF REASSIGNMENT - DAYS 2 and 3

IN THE MATTER OF: Donna V. Bair – Legal Owner
4607 Prospect Avenue
19-342-SPHA 4th Election District; 3rd Councilmanic District

8/9/19 Opinion and Order of the Administrative Law Judge wherein the:
- Petition for Special Hearing: 1) to approve a nonconforming lot width and lot area; and 2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of 30 inches was GRANTED; the
- Petition for Special Hearing: 1) to approve a nonconforming dwelling side yard setback; and 2) to confirm that an existing fence (swimming pool enclosure) with a height of 6' is in compliance with BCZR §427.1 and BCC §13-6-101 was DENIED; and the
- Petition for Variance: 1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.; 2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; and 3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches was DENIED

9/9/19 Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire on behalf of Donna V. Bair, Petitioner.

9/25/19 Order on Motion for Reconsideration issued by the Administrative Law Judge wherein it was Ordered:
- that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms in BCZR §104;
- that all new construction must comply with current setbacks and restrictions at the time of new construction; and
- all other matters and respects of Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

The Board convened for hearing on February 6, 2020. This matter did not conclude. This matter has been

ASSIGNED FOR: MARCH 23, 2021, AT 10:00 A.M. – Day 2;
and: MARCH 25, 2021, AT 10:00 A.M. – Day 3

The above scheduled hearing will be held remotely using WebEx for audio and video participation. **Call-in information and a link to the hearing will be posted on our web calendar at** www.baltimorecountymd.gov/Agencies/appeals/index.html **the night before.**

A complete set of **exhibits must be emailed** at least **48 hours before the hearing** to **appealsboard@baltimorecountymd.gov** in a format that complies with MDEC (Maryland Electronic Court) standards.

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 require special accommodations, please contact this office at least one week prior to hearing date.

If you do not have access to a computer or smart device, please contact our office for the call-in information the day before the scheduled hearing.

Krysundra Cannington, Administrator

c. Counsel for Petitioners : Lawrence E. Schmidt, Esquire
Legal Owner : Donna Bair

People's Counsel for Baltimore County : Peter M. Zimmerman, Esquire

Protestants *pro se* : Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
John E. Lemmerman/RTF Associates, Inc.
Kim and Tom Montanye
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz

Paul M. Mayhew, Managing Administrative Law Judge
Steve Lafferty, Director/Department of Planning
C. Pete Gutwald, Director/PAI
James R. Benjamin, Jr., County Attorney
Nancy C. West, Assistant County Attorney

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 5, 2021

NOTICE OF POSTPONEMENT

IN THE MATTER OF: Donna V. Bair – Legal Owner
4607 Prospect Avenue
19-342-SPHA 4th Election District; 3rd Councilmanic District

8/9/19 Opinion and Order of the Administrative Law Judge wherein the:
- Petition for Special Hearing: 1) to approve a nonconforming lot width and lot area; and 2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of 30 inches was GRANTED; the
- Petition for Special Hearing: 1) to approve a nonconforming dwelling side yard setback; and 2) to confirm that an existing fence (swimming pool enclosure) with a height of 6' is in compliance with BCZR §427.1 and BCC §13-6-101 was DENIED; and the
- Petition for Variance: 1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.; 2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; and 3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches was DENIED

9/9/19 Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire on behalf of Donna V. Bair, Petitioner.

9/25/19 Order on Motion for Reconsideration issued by the Administrative Law Judge wherein it was Ordered:
- that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms in BCZR §104;
- that all new construction must comply with current setbacks and restrictions at the time of new construction; and
- all other matters and respects of Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

The Board convened for hearing on February 6, 2020. This matter did not conclude. This matter was assigned for hearing days 2 and 3 on February 23 and 25, 2021. By request of Counsel, these dates have been postponed and will be reassigned to later dates.

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 require special accommodations, please contact this office at least one week prior to hearing date.

If you do not have access to a computer or smart device, please contact our office for the call-in information the day before the scheduled hearing.

Krysundra Cannington, Administrator

c. Counsel for Petitioners : Lawrence E. Schmidt, Esquire
Legal Owner : Donna Bair

People's Counsel for Baltimore County : Peter M. Zimmerman, Esquire

Protestants *pro se* : Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
John E. Lemmerman/RTF Associates, Inc.
Kim and Tom Montanye
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz

C. Pete Gutwald, Director/Department of Planning
Michael D. Mallinoff, Director/PAI
James R. Benjamin, Jr., County Attorney

Paul M. Mayhew, Managing Administrative Law Judge
Nancy C. West, Assistant County Attorney

SMITH, GILDEA & SCHMIDT LLC

MICHAEL PAUL SMITH
DAVID K. GILDEA
LAWRENCE E. SCHMIDT
JASON T. VETTORI
MARIELA C. D'ALESSIO*
MELISSA L. ENGLISH**
* Admitted in MD, PA, FL
** Admitted in MD, NC

LAUREN S. FLEMING
NICOLE LAMBDIN
CARMELO D. MORABITO
ZACHARY J. WILKINS
of counsel:
EUGENE A. ARBAUGH, JR.
MARY G. LOKER
STEPHEN J. NOLAN

January 4, 2021

Via Email Only
Krysundra L. Cannington
County Board of Appeals of Baltimore County
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204
appealsboard@baltimorecountymd.gov

Re: In the Matter of: Donna V. Bair
Property: 4607 Prospect Avenue
Case No. 19-342-SPHA

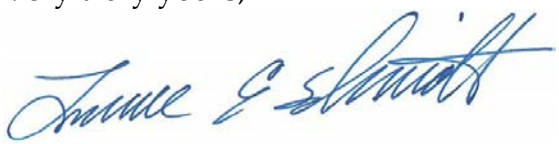
Dear Sunny,

I write by way of follow up to the Notice of Assignment for Days 2 and 3 dated December 15, 2020 in the above referenced matter scheduling this matter for additional hearing dates on February 23, 2021 and February 25, 2021.

Please note that Mrs. Bair and her husband are scheduled to be out of the Country on a pre-planned, pre-paid work trip from February 21 – February 27, 2021. Additionally, they plan to participate in this hearing at our office and we would appreciate a quarantine period for them of 7-10 days. As such, we respectfully request that this matter be rescheduled any time after March 10, 2021.

Thank you for your consideration of this request. Please contact me should you have any questions.

Very truly yours,



Lawrence E. Schmidt

LES/am
cc: Peter Max Zimmerman, Esquire
Tom Montanye (via email: Tom@montanye.net)
Robin S. Coffin (via email: Rscoffin@verizon.net)
Steven Fradkin (via email: Reistlaxcoach@gmail.com)
Donna Bair (via email: donna.bair@yahoo.com)

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 15, 2020

NOTICE OF ASSIGNMENT - DAYS 2 and 3

IN THE MATTER OF: Donna V. Bair – Legal Owner
4607 Prospect Avenue
19-342-SPHA 4th Election District; 3rd Councilmanic District

8/9/19 Opinion and Order of the Administrative Law Judge wherein the:
- Petition for Special Hearing: 1) to approve a nonconforming lot width and lot area; and 2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of 30 inches was GRANTED; the
- Petition for Special Hearing: 1) to approve a nonconforming dwelling side yard setback; and 2) to confirm that an existing fence (swimming pool enclosure) with a height of 6' is in compliance with BCZR §427.1 and BCC §13-6-101 was DENIED; and the
- Petition for Variance: 1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.; 2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; and 3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches was DENIED

9/9/19 Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire on behalf of Donna V. Bair, Petitioner.

9/25/19 Order on Motion for Reconsideration issued by the Administrative Law Judge wherein it was Ordered:
- that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms in BCZR §104;
- that all new construction must comply with current setbacks and restrictions at the time of new construction; and
- all other matters and respects of Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

The Board convened for hearing on February 6, 2020. This matter did not conclude. This matter has been

ASSIGNED FOR: FEBRUARY 23, 2021, AT 10:00 A.M. – Day 2;
and: FEBRUARY 25, 2021, AT 10:00 A.M. – Day 3

The above scheduled hearing will be held remotely using WebEx for audio and video participation. **Call-in information and a link to the hearing will be posted on our web calendar at** www.baltimorecountymd.gov/Agencies/appeals/index.html **the night before.**

A complete set of **exhibits must be emailed** at least **48 hours before the hearing** to **appealsboard@baltimorecountymd.gov** in a format that complies with MDEC (Maryland Electronic Court) standards.

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 require special accommodations, please contact this office at least one week prior to hearing date.

If you do not have access to a computer or smart device, please contact our office for the call-in information the day before the scheduled hearing.

Krysundra Cannington, Administrator

c. Counsel for Petitioners : Lawrence E. Schmidt, Esquire
Legal Owner : Donna Bair

People's Counsel for Baltimore County : Peter M. Zimmerman, Esquire

Protestants *pro se* : Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
John E. Lemmerman/RTF Associates, Inc.
Kim and Tom Montanye
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz

C. Pete Gutwald, Director/Department of Planning
Michael D. Mallinoff, Director/PAI
Paul M. Mayhew, Managing Administrative Law Judge

James R. Benjamim, Jr., County Attorney
Nancy C. West, Assistant County Attorney

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

June 17, 2020

William A. McComas Chairman
Andrew M. Belt, Panel Member
Maureen E. Murphy, Panel Member
Board of Appeals of Baltimore County
105 West Chesapeake Avenue, Suite 203
Towson, Maryland 21204

Re: Donna Bair, Petitioner
4607 Prospect Avenue
Case Nos.: 2019-342-SPHA

Dear Chairman McComas and Panel Members Murphy and Belt,

This responds to the June 8 e-mail from County Board of Appeals (CBA) administrator Krysundra Cannington, we respectfully object to the arrangement of a Webex remote event for a second trial hearing day (and any other days, if necessary) in the above Bair case. This objection is accentuated here because Petitioner Donna Bair (Bair) presented her case in open hearing on February 6, 2020. This discrimination is unfair and contravenes due process of law.

The scheduled second hearing day of April 7 was cancelled because of the pandemic after Governor Lawrence Hogan's order of March 16. There were also orders by Chief Judge Mary Ellen Barbera effectively closing the courts except for specified emergency or other priority cases.

We recognize the good faith effort of the CBA to resume activities backlogged by the pandemic. This includes the balanced and reasonable resumption of public deliberations and several of our cases and potential oral arguments on motions or for on-the-record appeals.

Here, while further delay prolongs the presence of dwelling additions and fencing in conflict with zoning law, due process warrants a moderate additional delay for a plenary in-person trial hearing, where, as noted, Bair had the benefit of such a hearing to present her case. We have e-mailed and phoned the leading Protestants --- Steve Fradkin, Tom Montanye, and Robin Coffin --- and they agree that a remote trial is inappropriate and unfair.

The CBA should assess soon the county's social reopening and schedule two days of plenary public hearings. We note that the District Courts are opening for non-jury trials June 22. The Circuit Courts are currently under the phased Maryland Court of Appeals Order for Phase V reopening in October. The CBA could reasonably proceed to schedule Bair in September or October, subject to adjustment if judicial guidelines or the pandemic demand it.

A few more months delay in this multi-year litigation will assure fairness and due process of law. Maryland Aggregates v. State 337 Md. 658, 686-87 (1995); Calvert County Pl. Comm'n v. Howlin Realty Mgt, Inc. 364 Md. 301, 322 (2001). Anyway. It it will likely be late July or August before a remote trial could be held, if then, given summer schedules of many participants.

Chief Judge Mary Ellen Barbera of the Maryland Court of Appeals implicitly recognized the practical problems of remote trials in her latest administrative order for the court system. Neither jury or non-jury trials are allowed until October. They are not allowed remotely in the phased transition which allows remote oral arguments. While this order does not apply directly to the County Board of Appeals, it appears reasonable to follow it.

Here are several practical problems for remote events:

1. Notice, compulsion of witness attendance, subpoenas, pretrial disclosures. A remote trial involves additional complexities and fairness issues here. There have to be notice provisions to enable all members of the public to attend and participate, not just those already identified. As the Court of Appeals observed, any hearing legislatively provided as "public" must be open to the public, even if not a contested case hearing. Sugarloaf Citizens v. Waste Disposal Authority 323 Md. 641, 657 n.12 (1991). Any person interested in the case may participate. Dorsey v. Bethel AME Church 375 Md. 59, 75-77 (2003).There would have also to be provisions for web compulsion of witnesses, subpoenas, and production of exhibits by all members of the public. If pretrial production of exhibits is involved, this entails pretrial identification of witnesses. Bair did not have to make any pretrial disclosures.

2. Trying the case: Trials are not scripted. Parties adjust to ongoing testimony, exhibits, and rulings. This occurs even more in *de novo* hearings. There are necessarily attorney/intraparty communications. Attorneys, clients, participants and experts communicate with each other in the hearing room during the trial or at recesses. This may include determination, scheduling, and scope of witnesses, unforeseen eventualities. It will not be possible to do that at a Webex activity.

3. Evaluating impact and credibility of witnesses. Testimony on a computer screen does not have the same impact as in-person testimony. Moreover, there is little or no body language on a computer screen. The dynamics of attorney/witness interactions are not the same. Webex hinders evaluation of impact and credibility.

4. Limited screen space for videos of participants. Our experience with Zoom and Skype reflects screen space for a relatively small number of videos. In land use cases, there are often many participants. Here, we have 3 CBA panel members, 2 or more attorneys (with Bair associates or Deputy People's Counsel), expert(s), at least 3 nearby property owners, community association representatives, and many others. It is unpredictable who will be shown on the screen at any time. This hinders the ability of participants to observe the proceedings. It is also unpredictable whether the screen will focus efficiently as speakers shift with high frequency at times.

5. Screening of exhibits. How are exhibits to be placed on the screen, especially site plans; photographs, some large; and pattern books where the fine print is already almost illegible. How do we question witnesses about exhibits? How does one point to, mark, or otherwise make use of exhibits, as is often done? What if there are physical exhibits?

6. Other exhibit problems. What happens when it becomes apparent during the course of the hearing that additional exhibits are appropriate, not anticipated or identified prior to the hearing? Does pretrial identification of exhibits apply to all parties before the first day of hearing? How can area citizens possibly anticipate what exhibits they will need until they observe a petitioner's case? Why should they have to provide any exhibits at all until they see what a petitioner has to say?

7. Evidentiary rulings. Dealing with evidentiary objections and rulings is already often challenging, including the opportunity for various parties to argue, and occasionally the opportunity for CBA members to confer with each other. This will be even more challenging and likely protracted by Webex.

8. Legal issues. Sometimes legal issues arise during the hearing, whether evidentiary or other. Sometimes, It may be helpful to provide copies of appellate cases. This cannot be done by Webex.

9. Technical issues. Citizens may have technical problems linking in, based on computer capability or location. Also, will the recording of the Webex work well? Will a transcriber know who is speaking?

10. Vacation and social distance issues. Even though the pandemic is limiting travel, some parties may be away in the region in July and August, whether for vacation or to socially distance. It makes sense to envision a September or October resumption, with normal public hearings and social distancing if then warranted.

11. Press access. The public character of hearings requires availability to the press. There are news publications which cover Baltimore County land use cases, including regional publications such as The Country Crier, The Peak, and The Villager. How would the Webex be made available to them.

12. Stress. It is uncertain to what degree it is stressful for participants to concentrate on the computer screen all day. While a day at a public zoning hearing may also be challenging, it is likely not challenging to that degree.

These problems are just aggravated here where the remote Webex is injected in the middle of the case. Bair has had the advantage of the usual open *de novo* hearing, with all of its accoutrements and presentational benefits and impacts, and without any pretrial disclosure of witnesses or exhibits. The shift to remote for Protestants and our office will suffer from all the enumerated infirmities and newly advance disclosure of exhibits and to an extent, witnesses. Such bifurcation of this case would manifestly be prejudicial and unfair.

Our office is anxious to make progress. Unfortunately, the wheels of justice grind slower than ever due to the pandemic. But the better and proper course is to envision the resumption and scheduling of proper normal public hearings. With an optimistic approach, it should very soon be plausible to schedule this case for two hearing days in September or October. The benefits to due process and the efficient administration of justice will outweigh by far the impairment of due process of law in the Webex setting.

We trust the CBA will appreciate our office's concerns. It is noteworthy there are also legal issues regarding the adequacy of the predicate for Webex or other remote proceedings. Nevertheless, as a matter of public interest, in view of the pandemic, we shall not enumerate them at this time. We are approaching this situation from the point of view of a balance between progress and fairness. We also refer to Chief Judge Barbera's orders as useful guides.

Thank you for your attention to this important matter.

Sincerely,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio
Deputy People's Counsel

cc: Lawrence Schmidt, Attorney for Donna Bair, sent via email
Steven Fradkin, sent via email
Robin S. Coffin, sent via email
Tom Montanye, sent via email
Nancy C. West, Assistant County Attorney

Board of Appeals of Baltimore County

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

February 21, 2020

NOTICE OF ASSIGNMENT - DAY 2

IN THE MATTER OF: Donna V. Bair – Legal Owner
4607 Prospect Avenue
19-342-SPHA 4th Election District; 3rd Councilmanic District

8/9/19 Opinion and Order of the Administrative Law Judge wherein the:
- Petition for Special Hearing:
  1) to approve a nonconforming lot width and lot area; and
  2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of 30 inches was GRANTED; the
- Petition for Special Hearing:
  1) to approve a nonconforming dwelling side yard setback; and
  2) to confirm that an existing fence (swimming pool enclosure) with a height of 6' is in compliance with BCZR §427.1 and BCC §13-6-101 was DENIED; and the
- Petition for Variance:
  1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.;
  2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; and
  3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches was DENIED

9/9/19 Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire on behalf of Donna V. Bair, Petitioner.

9/25/19 Order on Motion for Reconsideration issued by the Administrative Law Judge wherein it was Ordered:
- that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms in BCZR §104;
- that all new construction must comply with current setbacks and restrictions at the time of new construction; and
- all other matters and respects of Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

The Board convened for hearing on February 6, 2020. This matter did not conclude. Upon agreement of the parties, a second day of hearing has been

ASSIGNED FOR: APRIL 7, 2020, 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.
- Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits with the Board unless otherwise requested. Said Motions, Memoranda and exhibits must be in MDEC compliant formats pursuant to the Maryland Rules, unless otherwise requested
- Please contact our office for information about projection equipment. 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 Cannington, Administrator

c. Counsel for Petitioners : Lawrence E. Schmidt, Esquire
Legal Owner : Donna Bair

Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
John E. Lemmerman/RTF Associates, Inc.
Kim and Tom Montanye
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz

C. Pete Gutwald, Director/Department of Planning
James R. Benjamim, Jr., County Attorney
Michael D. Mallinoff, Director/PAI
Nancy C. West, Assistant County Attorney
Office of People's Counsel
Paul M. Mayhew, Managing Administrative Law Judge

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 13, 2019

NOTICE OF POSTPONEMENT AND REASSIGNMENT

IN THE MATTER OF: Donna V. Bair – Legal Owner
4607 Prospect Avenue
19-342-SPHA 4th Election District; 3rd Councilmanic District

8/9/19 Opinion and Order of the Administrative Law Judge wherein the:
- Petition for Special Hearing:
  1) to approve a nonconforming lot width and lot area; and
  2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of 30 inches was GRANTED; the
- Petition for Special Hearing:
  1) to approve a nonconforming dwelling side yard setback; and
  2) to confirm that an existing fence (swimming pool enclosure) with a height of 6' is in compliance with BCZR §427.1 and BCC §13-6-101 was DENIED; and the
- Petition for Variance:
  1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.;
  2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; and
  3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches was DENIED

9/9/19 Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire on behalf of Donna V. Bair, Petitioner.

9/25/19 Order on Motion for Reconsideration issued by the Administrative Law Judge wherein it was Ordered:
- that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms in BCZR §104;
- that all new construction must comply with current setbacks and restrictions at the time of new construction; and
- all other matters and respects of Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

This matter was scheduled for January 9, 2020 and has been postponed by request of Counsel. This matter has been

REASSIGNED FOR: FEBRUARY 6, 2020, 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.
- Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits with the Board unless otherwise requested. Said Motions, Memoranda and exhibits must be in MDEC compliant formats pursuant to the Maryland Rules, unless otherwise requested
- Please contact our office for information about projection equipment. 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 Cannington, Administrator

c. Counsel for Petitioners : Lawrence E. Schmidt, Esquire
Legal Owner : Donna Bair

Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
John E. Lemmerman/RTF Associates, Inc.
Kim and Tom Montanye
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz

C. Pete Gutwald, Director/Department of Planning
Michael D. Mallinoff, Director/PAI
James R. Benjamin, Jr., County Attorney
Nancy C. West, Assistant County Attorney
Office of People's Counsel
Paul M. Mayhew, Managing Administrative Law Judge

Board of Appeals of Baltimore County

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

November 14, 2019

NOTICE OF ASSIGNMENT

IN THE MATTER OF: Donna V. Bair – Legal Owner
4607 Prospect Avenue
19-342-SPHA 4th Election District; 3rd Councilmanic District

8/9/19 Opinion and Order of the Administrative Law Judge wherein the:
- Petition for Special Hearing:
  1) to approve a nonconforming lot width and lot area; and
  2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of 30 inches was GRANTED; the
- Petition for Special Hearing:
  1) to approve a nonconforming dwelling side yard setback; and
  2) to confirm that an existing fence (swimming pool enclosure) with a height of 6' is in compliance with BCZR §427.1 and BCC §13-6-101 was DENIED; and the
- Petition for Variance:
  1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.;
  2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; and
  3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches was DENIED

9/9/19 Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire on behalf of Donna V. Bair, Petitioner.

9/25/19 Order on Motion for Reconsideration issued by the Administrative Law Judge wherein it was Ordered:
- that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms in BCZR §104;
- that all new construction must comply with current setbacks and restrictions at the time of new construction; and
- all other matters and respects of Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

ASSIGNED FOR: **JANUARY 9, 2020, 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.
- Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits with the Board unless otherwise requested. Said Motions, Memoranda and exhibits must be in MDEC compliant formats pursuant to the Maryland Rules, unless otherwise requested
- Please contact our office for information about projection equipment. 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 Cannington, Administrator

c. Counsel for Petitioners : Lawrence E. Schmidt, Esquire
Legal Owner : Donna Bair

Ann Rea
Charles and Anna Welsh
Cynthia Morrison
Frances Acle
John E. Lemmerman/RTF Associates, Inc.
Kim and Tom Montanye
Kim Karlsen
Lyle Montanye
Martha Wist
Pamela Becker
Ramzi and Roula Hemady
Raymond and Linda Long
Richard Stanley
Robert Gehman
Robin Coffin
Shirley Winebarger
Steve and Patricia Fradkin
Teresa Moore
Vernene Lenz

C. Pete Gutwald, Director/Department of Planning
Michael D. Mallinoff, Director/PAI
Michael E. Field, County Attorney
Nancy C. West, Assistant County Attorney
Office of People's Counsel
Paul M. Mayhew, Managing Administrative Law Judge

IN RE: **PETITIONS FOR SPECIAL HEARING AND VARIANCE** (4607 Prospect Avenue) 4th Election District 3rd Council District Donna V. Bair, *Legal Owner*	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY
Petitioner	*	**Case No. 2019-0342-SPHA**

* * * * * * * *

ORDER ON MOTION FOR RECONSIDERATION

This matter is a request for a reconsideration of an Order issued by Judge Beverungen on August 19, 2019, granting in part and denying in part request for Special Hearing and Variance. Counsel for the Petitioner herein moves for reconsideration as to only one issue: namely the clarification of the status of the original structure constructed in 1951 as well as the setbacks existing at that time.

I have reviewed the record and evidence submitted an find that, notwithstanding the additional structures which were the subject of Judge Beverungen' s August 19, 2019 Order, the original structure and setbacks existing in 1951 are still clearly in effect and are entitled to status as nonconforming.

THEREFORE, IT IS ORDERED this **25th** day of **September, 2019**, that the dwelling known as 4607 Prospect Avenue, constructed in 1951, and the setbacks existing at that time, qualify as a lawful nonconforming use/structure and may continue to be used as such subject to the restrictions and terms set forth in Baltimore County Zoning Regulations ("BCZR") § 104; and

IT IS FURTHER ORDERED that all new construction must comply with current setbacks and restrictions existing at the time of new construction.

ORDER RECEIVED FOR FILING

Date 9/25/19

By

IT IS FURTHER ORDERED that in all other matter and respects Judge Beverungen's Order of August 19, 2019 remain in full force and effect.

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

LAWRENCE M. STAHL
Administrative Law Judge
for Baltimore County

LMS:sln

ORDER RECEIVED FOR FILING
Date 9/25/19
By sln

JOHN A. OLSZEWSKI, JR.
County Executive

ADMINISTRATIVE LAW JUDGE
Office of Administrative Hearings

September 25, 2019

Lawrence E. Schmidt, Esq.
Zachary J. Wilkins, Esq.
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204

RE: **MOTION FOR RECONSIDERATION –**
Petitions for Special Hearing and Variance
Case No. 2019-0342-SPHA
Property: 4607 Prospect Avenue

Dear Counsel:

Enclosed please find a copy of the Order on Motion for Reconsideration 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,

LAWRENCE M. STAHL
Administrative Law Judge
for Baltimore County

LMS:sln
Enclosure

c: Pamela Becker, 24 Chatsworth Avenue, Glyndon, Maryland 21071
Richard Stanley, 215 Central Avenue, Glyndon, Maryland 21071
Shirley Winebarger, 80 Hanover Road, Reisterstown, Maryland 21136
Teresa Moore, 29 Waugh Avenue, Reisterstown, Maryland 21136
Vernene Lenz, 4722 Butler Road, Glyndon, Maryland 21071

Kim Karlsen, 304 Hammond Avenue, Glyndon, Maryland 21071
Martha Wist, 3834 Ivy Hill Drive, Hampstead, Maryland 21074
Ann Rea, 1015 Caren Drive, Eldersburg, Maryland 21784
Lyle Montanye, 4342 Butler Road, Glyndon, Maryland 21071
Frances Acle, 4606 Prospect Avenue, Glyndon, Maryland 21071
Kim & Tom Montanye, 4609 Prospect Avenue, Glyndon, Maryland 21071
Charles & Anna Welsh, 4601 Prospect Avenue, Glyndon, Maryland 21071
Robin Coffin, 4511 Prospect Avenue, Glyndon, Maryland 21071
Raymond & Linda Long, 114 Hanover Road, Glyndon, Maryland 21136
Steve & Patricia Fradkin, 4605 Prospect Avenue, Glyndon, Maryland 21136
Ramzi & Roula Hemady, 4603 Prospect Avenue, Glyndon, Maryland 21136
Robert Gehman, 4612 Prospect Avenue, Glyndon, Maryland 21136
Cynthia Morrison 4500 Prospect Avenue, Glyndon, Maryland 21071

IN RE: **PETITIONS FOR SPECIAL HEARING AND VARIANCE**	*	BEFORE THE
(4607 Prospect Avenue) 4th Election District 3rd Council District Donna V. Bair, *Legal Owner*	*	OFFICE OF ADMINISTRATIVE HEARINGS
	*	FOR BALTIMORE COUNTY
Petitioner	*	**Case No. 2019-0342-SPHA**

* * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings ("OAH") for consideration of Petitions for Special Hearing and Variance filed on behalf of Donna V. Bair, legal owner ("Petitioner"). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("BCZR") as follows: (1) to approve a nonconforming lot width and lot area, pursuant to BCZR Section 104.1.; (2) to approve a nonconforming dwelling side yard setback, pursuant to BCZR Section 104.1; and (3) to confirm that an existing fence (swimming pool enclosure) with a height of 6 ft. is in compliance with BCZR Section 427.1 and BCC §13-6-101.

A Petition for Variance seeks: (1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.; (2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; (3) to permit an existing shed with a side yard setback of 26 inches in lieu of the required 30 inches; and (4) to permit, if necessary, an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches. A site plan was marked and accepted into evidence as Petitioner's Exhibit 1.

Donna Bair and surveyor John Lemmerman appeared in support of the requests. Lawrence E. Schmidt, Esq. and Zachary J. Wilkins, Esq. represented Petitioner. Numerous neighbors and

ORDER RECEIVED FOR FILING
Date 8/19/19
By ____

members of the community opposed the requests. The Petition was advertised and posted as required by the BCZR. A substantive Zoning Advisory Committee ("ZAC") comment was received from the Department of Planning ("DOP"). That agency opposed certain of the zoning requests.

SPECIAL HEARING

The subject property is shown as Lot 10 on the Plat of Glyndon, filed long before adoption of the BCZR. As such it is obvious the size and width of the lot (neither of which satisfy current DR1 zone requirements) are lawfully nonconforming. This means the lot was properly created long ago, and became nonconforming when the BCZR was adopted in 1955. That aspect of the special hearing request will be granted.

Similarly, the existing shed in the rear yard appears to have been constructed many years ago, likely before the BCZR required a 2 ½ ft. setback for accessory structures. The shed is 26 inches from the property boundary, which is just 4 inches shy of the required setback. As such, though included as a variance request, this will be approved as a lawful nonconforming structure under the special hearing petition.

But I believe the remainder of the special hearing requests must be denied as a matter of law. While the side yard setbacks were deficient and likely nonconforming when Petitioner purchased the property in 2014, improvements were made on both sides of the dwelling since that time. As discussed at the hearing Petitioner failed to obtain a building permit for these recent improvements and the setbacks are in violation of the BCZR. As a result the side yard setbacks (of 0' and 14.9') are not lawfully nonconforming. With respect to the fence, I do not believe it complies with the BCZR and therefore that aspect of the special hearing must also be denied. While the BCZR specifies fences surrounding pools are exempt from the 42" height limitation,

ORDER RECEIVED FOR FILING
Date 8/19/19
By Den

another section of the same regulation states the exemption is not applicable in an historic district, like Glyndon. BCZR §427.1.A.

VARIANCE

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

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

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

Based on the site plan, photos and other exhibits I do not believe the subject property is unique in a zoning sense. The shape, size and topography of the lot is similar to many other properties in the community. While Glyndon is a historic district, the subject property itself is not historic. As such I do not believe that attribute can render this property unique; *i.e.,* unlike surrounding properties.

In addition, while Petitioner's counsel is correct that the boundary dispute issue must be resolved in circuit court, I do not believe variance relief can be properly granted in a case when the result would be to countenance a trespass onto another's property. It is undisputed, as shown on the site plan, that the improvements intrude 2.5 ft. onto the property owned by the Fradkins. It would be inappropriate, in my opinion, to grant a variance to "legitimize" from a zoning perspective the *status quo*. The BCZR specifies that variances must be in "strict harmony with the spirit and intent" of the regulations, and must not be injurious to the general welfare. BCZR §307.1. I do not believe that the requested variances would satisfy either criterion.

THEREFORE, IT IS ORDERED this **19th** day of **August, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing: (1) to approve a nonconforming lot width and

ORDER RECEIVED FOR FILING

Date 8/19/19

By Sen

area; and (2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of the required 30 inches, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Hearing: (1) to approve a nonconforming dwelling side yard setback; and (2) to confirm that an existing fence (swimming pool enclosure) with a height of 6 ft. is in compliance with BCZR Section 427.1 and BCC Section 13-6-101, be and is hereby DENIED.

IT IS FURTHER ORDERED that the Petition for Variance: (1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.; (2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of side yards of 14.9 ft. in lieu of the required 50 ft.; and (3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches, 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:sln

ORDER RECEIVED FOR FILING
Date 8/19/19
By Sln

JOHN A. OLSZEWSKI, JR.
County Executive

ADMINISTRATIVE LAW JUDGE
Office of Administrative Hearings

August 19, 2019

Lawrence E. Schmidt, Esq.
Zachary J. Wilkins, Esq.
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204

RE: Petitions for Special Hearing and Variance
Case No. 2019-0342-SPHA
Property: 4607 Prospect Avenue

Dear Counsel:

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

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

Sincerely,

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln
Enclosure

c: Pamela Becker, 24 Chatsworth Avenue, Glyndon, Maryland 21071
Richard Stanley, 215 Central Avenue, Glyndon, Maryland 21071
Shirley Winebarger, 80 Hanover Road, Reisterstown, Maryland 21136
Teresa Moore, 29 Waugh Avenue, Reisterstown, Maryland 21136
Vernene Lenz, 4722 Butler Road, Glyndon,Maryland 21071

Kim Karlsen, 304 Hammond Avenue, Glyndon, Maryland 21071
Martha Wist, 3834 Ivy Hill Drive, Hampstead, Maryland 21074
Ann Rea, 1015 Caren Drive, Eldersburg, Maryland 21784
Lyle Montanye, 4342 Butler Road, Glyndon, Maryland 21071
Frances Acle, 4606 Prospect Avenue, Glyndon, Maryland 21071
Kim & Tom Montanye, 4609 Prospect Avenue, Glyndon, Maryland 21071
Charles & Anna Welsh, 4601 Prospect Avenue, Glyndon, Maryland 21071
Robin Coffin, 4511 Prospect Avenue, Glyndon, Maryland 21071
Raymond & Linda Long, 114 Hanover Road, Glyndon, Maryland 21136
Steve & Patricia Fradkin, 4605 Prospect Avenue, Glyndon, Maryland 21136
Ramzi & Roula Hemady, 4603 Prospect Avenue, Glyndon, Maryland 21136
Robert Gehman, 4612 Prospect Avenue, Glyndon, Maryland 21136
Cynthia Morrison 4500 Prospect Avenue, Glyndon, Maryland 21071

Address List

Petitioner/Appellant:

Donna V. Bair
4607 Prospect Avenue
Glyndon, MD 21071
Legal Owner

Lawrence E. Schmidt, Esquire
Zachary J. Wilkins, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue
Suite 200
Towson, MD 21204
lschmidt@sgs-law.com
zwilkins@sgs-law.com

John E. Lemmerman
RTF Associates, Inc.
142 East Main Street
Westminster, MD 21157

Interested Persons/ Protestants:

Pamela Becker
24 Chatsworth Avenue
Glyndon, MD 21071

Richard Stanley
215 Central Avenue
Glyndon, MD 21071

Shirley Winebarger
80 Hanover Road
Reisterstown, MD 21136

Teresa Moore
29 Waugh Avenue
Reisterstown, MD 21136

Vernene Lenz
4722 Butler Road
Glyndon, MD 21071

Kim Karlsen
304 Hammond Avenue
Glyndon, MD 21071

Martha Wist
3834 Ivy Hill Drive
Hampstead, MD 21074

Ann Rea
1015 Caren Drive
Eldersburg, MD 21784

Lyle Montanye
4342 Butler Road
Glyndon, MD 21071

Frances Acle
4606 Prospect Avenue
Glyndon, MD 21136

Kim and Tom Montanye
4609 Prospect Avenue
Glyndon, MD 21136

Charles & Anna Welsh
4601 Prospect Avenue
Glyndon, MD 21071

Robin Coffin
4511 Prospect Avenue
Glyndon, MD 21071

Raymond & Linda Long
114 Hanover Road
Glyndon, MD 21136

Steve & Patricia Fradkin
4605 Prospect Avenue
Glyndon, MD 21136

Ramzi & Roula Hemady
4603 Prospect Avenue
Glyndon, MD 21136

Robert Gehman
4612 Prospect Avenue
Glyndon, MD 21136

Cynthia Morrison
4500 Prospect Avenue
Glyndon, MD 21071

Interoffice:

Office of People's Counsel
Paul M. Mayhew, Managing Administrative Law Judge
C. Pete Gutwald, Director/Department of Planning
Michael D. Mallinoff, Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law