

IN THE MATTER OF
CRAIG KESTNER, LEGAL OWNER
AND PETITIONER FOR SPECIAL
HEARING AND VARIANCE ON
THE PROPERTY LOCATED AT
13217 CHERWIN AVENUE

15th ELECTION DISTRICT
6th COUNCILMANIC DISTRICT

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NOS.: 19-402-SPHA and
20-090-SPHA

* * * * *

OPINION

This matter comes before the Board of Appeals (“Board”) as a *de novo* appeal from an Order dated September 29, 2020, from Administrative Law Judge (“ALJ”) Paul M. Mayhew, granting a variance request pursuant to Baltimore County Zoning Regulation (“BCZR”) § 304.1. Craig Kestner, (“the Petitioner”) seeks approval for the construction of a single-family home on two lots with a combined width of 50 ft. in an area that requires 55 ft. for such construction. The ALJ granted the variance, and a number of individuals and a community organization noted this appeal. The Board held a *de novo* virtual hearing on February 17, 2021. A virtual public deliberation was held on April 7, 2021, at which the Board voted unanimously to deny the variance request.

HISTORY

Mr. Kestner purchased lots 155, 156, 157, 158, 159 and 160 in the Twin River Beach subdivision in 2014. The plat for that subdivision was recorded in 1929. Each lot is 25 ft. wide. There was a pre-existing garage on lot 157 and a single-family home on portions of lots 157-158. Mr. Kestner lived in the home for four years. He used lots 155 and 156 for home recreational purposes. In 2018 he sold lots 157-160 as a single unit, leaving 155 and 156 in his possession. The present zoning, which is DR5.5, requires a lot width area of 55 ft. for the

In the matter of: Craig Kestner
Case Nos.: 19-402-SPHA and 20-090-SPHA

construction of a single-family home, but together, lots 155 and 156 only make 50 ft. As a result, Mr. Kestner filed a petition for special hearing and request for a variance in Case No. 19-402-SPHA (“Kestner 1”). That petition sought a regular variance from the 55 ft. requirement pursuant to *Cromwell v. Ward*, 102 Md. App. 691 (1995). It also sought confirmation that lots 155 and 156 had remained independent and had not merged into the other four. A contested hearing was held before ALJ Mayhew who ruled: (1) lots 155 and 156 had not merged into the other four; and (2) because there was nothing unique about lots 155 and 156, a variance from the 55 ft. requirement was not justified under *Cromwell*. Mr. Kestner appealed the variance ruling to the Board.¹

Mr. Kestner requested that the appeal in Kestner 1 be held in abeyance to permit the filing of this case (“Kestner 2”). Kestner 2 raised the variance issue pursuant to § 304.1. This argument could have been raised in Kestner 1. By reason of the appeal in Kestner 1, ALJ Mayhew’s ruling in Kestner 1 was not a final resolution of the case. Consequently, there was no prohibition by reason of *res judicata* or collateral estoppel that precluded consideration of Kestner 2.

Mueller v. People’s Counsel for Baltimore County, 177 Md. App. 43 (2007) discusses the difference between BCZR §§ 307 and 304.1. BCZR § 304.1 permits what amounts to a variance for the construction of a single-family home on a lot undersized by width if three

¹ At our hearing on February 17, 2021, Protestants argued that Mr. Kestner’s appeal in the first case meant that the merger issue which Mr. Kestner had won was also available to be re-litigated in any *de novo* hearing because the hearing was *de novo*. The Board rejected that contention. First, the Baltimore County Code at § 32-3-401(a) indicates that any person “feeling aggrieved” from a decision by the ALJ has the right to appeal to the Board of Appeals. Mr. Kestner was certainly not aggrieved, nor did he feel aggrieved, from the merger ruling in his favor. Second, Mr. Kestner’s counsel was scrupulously careful in his written notice of appeal in the first case to limit the appeal to the variance issue. Third, the Protestants in the first case did not appeal the merger ruling. Therefore, in the Board’s view, the merger issue was not automatically subject to review by reason of Mr. Kestner’s appeal on the variance question and was not otherwise preserved for appellate review.

conditions are met. The first two conditions were clearly satisfied here: (1) the lot was recorded as part of a valid subdivision prior to March 30, 1955; and (2) all of the other height and area requirements are met. The third requirement is the only point of contention in this matter. This third condition requires that the owner seeking the variance did not own adjoining property that would have made adherence to the width requirement possible. The specific language of subsection C states:

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

With virtually no discussion of subsection (C), ALJ Mayhew found that § 304.1 compelled the variance grant.²

FACTUAL PRESENTATION

The only witness called by the Petitioner was Bruce Doak who was accepted as an expert in surveying, zoning and land use. Through Mr. Doak, the petitioner presented the site plan which had been modified from Kestner 1 to include the front, side, and rear setbacks that had been presented in and ratified by ALJ Mayhew in Kestner 2. Mr. Doak testified that Mr. Kestner purchased lots 155-160 in 2014. The deed was introduced into evidence showing that Mr. Kestner paid \$118,000 for the six lots. Protestant Exhibit 6. Mr. Doak established that the Twin River subdivision had been recorded prior to March 30, 1955, and that the site plan introduced as Petitioner's Exhibit 1 showed that the proposed construction met all of the other

² ALJ Mayhew also imposed specific and appropriate setback conditions as well as approval from DEPS and DPW regarding flood control and stormwater management prior to any construction. *See* Kestner 2 at p.4. These are conditions which Mr. Kestner himself suggested to ALJ Mayhew and which he reiterated before this Board. Given the nature of the Board's ruling, the Board did not address these conditions. In this regard, *see* n.4, *infra* at p. 6.

In the matter of: Craig Kestner
Case Nos.: 19-402-SPHA and 20-090-SPHA

height and area requirements. He also testified that Mr. Kestner had sold lots 157-160 in 2018. Petitioner's Exhibits 5A-H and 6A-K were photographs depicting the site from various perspectives. They also showed that the new owners of lots 157-160 had constructed a large stockade fence along the edge of lot 157. He testified that Mr. Kestner could not have added 5 feet from lot 157 onto lot 156 because the pre-existing garage would likely have resulted in an odd configuration and may also have required some type of rear setback variance. Mr. Doak testified to the necessity of addressing the stormwater and flood issues and of obtaining a permit to build in a critical area, all of which required approvals by DEPS and DPW prior to the issuance of a building permit. The Petitioner also presented deeds and other public records showing that the granting of variances in this subdivision was quite commonplace. Petitioner Exhibits 9A-H. Finally, he testified that there would be no detriment to the health and welfare of the public so long as the drainage and stormwater issues were properly addressed.

The cross-examination of Mr. Doak was straight forward. Mr. Doak conceded that most, if not all, of his similar cases in which variances were granted did not involve the ownership of adjoining properties or had other possible differences from the Kestner situation. He did acknowledge that Mr. Kestner owned all six lots for over 4 years, and prior to the sale of the four lots, there was possibly sufficient area to make two lots on which a second house could have been constructed and still satisfy the width requirements. This concluded the Petitioner's case.

The Protestants presented a number of lay witnesses who expressed concern over drainage and flooding. They also presented photographs showing lots 156 and 157 being largely flooded at one point. *See e.g.*, Protestants' Exhibit 10(7). John Dawson, the neighbor

directly adjacent to the Kestner lots, testified that his view of the water would be diminished by construction of a house on the subject property. He also stated that the flooding depicted in Exhibit 10(7) was not unusual. Thomas Brooks, who lives five houses away, testified on behalf of the Twin River Beach Protective and Improvement Association, Inc. (TRBPIA) which is the community association in which the Kestner property is located. Mr. Brooks indicated that the TRBPIA opposed any further building because it would be ill-advised to “cram” another house in the area for aesthetic reasons, because of possible harmful effect on the fragile eco-system, and because of the possibility of impaired property values. He presented a petition signed by approximately 40 members of the community opposing the project.³ Finally, Ruth Hauf, a 50-year resident of the area, testified that most of the building permits that are issued are for reconstruction on small lots, and the relief requested in this case would be, in her words, “very unusual”.

ANALYSIS

The Board’s decision in this matter turns on the application and interpretation of BCZR § 304.1(C). Accordingly, many of the factual disputes are not particularly germane to the Board’s determination. For example, the treatment of other properties in a neighborhood can be quite probative. In this case, however, the way zoning variances were decided with other properties neither supported nor detracted from Petitioner’s argument. The case turns entirely on the question of the effect of Mr. Kestner’s ownership of the adjoining properties. This is a

³ The Board agrees with Protestants’ counsel that Petitioner’s objection to the language of the petition, and particularly to the use of the word “variance”, is completely without merit. Both Kestner 1 and Kestner 2 raised the issue of a variance albeit under differing analyses. It is obvious that the signers of the petition knew what they were signing and what its purpose was. Indeed, Mr. Brooks testified directly that everyone who signed the petition “was opposed to this house on this lot”.

unique factual circumstance, and absent a variance grant that presented the issue of ownership of adjoining property, the way other properties in the subdivision were handled provides no particular insight. *See infra* at p.8-10. Similarly, the support by or opposition from others in the community, while normally an important consideration, does not affect the significance of Mr. Kestner's prior ownership of adjoining property. At the end of the day, whether or not Mr. Dawson's view of the water would be impaired by the new house has virtually no impact on the interpretation of § 304.1(C).⁴

Section 304.1(C) indicates that if an owner has adjoining property, then the easy variance under § 304.1 is not available. Under those circumstances, an owner would have to obtain a regular *Cromwell* variance which has additional requirements, like uniqueness of the property and reduced use of the property without the variance. These are not required for a § 304.1 variance. It is only necessary to show that the three simple requisites of § 304.1 are satisfied: that the subdivision was recorded prior to March 30, 1955, that the other area and height requirements are met, and that the owner did not own adjoining land such that the 50 foot width requirement could have been met by utilizing some of the adjoining land. *See generally Mueller v. People's Counsel of Baltimore County, supra.*, 177 Md. App at 70-91.

In this instance, Mr. Kestner purchased the six lots in 2014. In 2018, he sold off the four 25 foot lots as one parcel, while keeping just two.⁵ It goes without saying that one who owns adjoining parcels cannot blithely sell off some, keep two, and then claim the special

⁴ In the event that this decision is reversed, the Board would have to resolve all open questions as well as determine how the application of § 304.1 would, if at all, affect the safety, health, or welfare of the public. *See Kestner 2* at p.3, and n.2 *supra*.

⁵ The record indicates that Mr. Kestner purchased the six lots in 2014 for \$118,000 (Protestant's Exhibit 6). SDAT records show that he sold the four lots in 2018 for approximately \$180,000, with the remaining two undeveloped lots having a combined value of \$10,400.

In the matter of: Craig Kestner
Case Nos.: 19-402-SPHA and 20-090-SPHA

benefit of § 304.1. This would completely undermine the basis of having § 304.1(C). On the other hand, presumably, if one did sell the adjoining property in good faith, then there is no reason to deny the benefits of § 304.1. In this instance, Mr. Kestner did not testify so there is no record of his actual thought process. Consequently, we have only the external circumstances by which to assess the situation.

The Baltimore County Zoning Commissioner's Policy Manual has commentary on this question of the ownership of adjoining property at p. 3-3. That commentary discusses various aspects of the issue and seeks to balance the equity of permitting long time owners of adjoining property who divide their parcels in good faith with short time owners who seek to maximize development opportunities. Mr. Kestner is a short-term owner who appears to have purchased the property with ultimate re-sale in mind. The Manual directs County planners to look at a host of circumstances in an effort to assess good faith including dates of purchase of the parcels and the purpose of the purchase. The commentary also describes a number of sham or nominee transactions which are not permitted because they would undermine the area width requirements. It also describes a situation not too different than the instant one:

Another method is to sell adjoining undersized lots which were recently purchased to individual, bona fide buyers. This would permit the new owner of a single undersized lot to build without a variance, where such permission would not have been granted to the owner of the entire tract.

While acknowledging that the circumstances of every situation must be individually assessed, the Commentary does provide some guidance to planners. It posits a (non-binding) six-year rule to help determine good faith:

...[I]f the single owner of an undersized lot contiguous to another parcel owned by him has transferred ownership of one to another, 304c would apply if such new ownership has been held for a period of at least six years. This rule shall not preclude exceptions where it is clear, and equitable, that single ownership was not intended to avoid area requirements.

By its express terms, this is by no means a hard and fast rule. What it does do, however, is illustrate the importance of gauging the intent of the individual seeking to qualify under § 304.1 where that individual has held contiguous property in the recent past. As indicated above, Mr. Kestner did not testify. Mr. Doak testified that Mr. Kestner could not have added five feet from lot 158 to 157 because the garage which is approximately 50 years old would encroach on the side setback requirements of the now 55 foot lot. This does not answer the question as to why the garage could not have been removed⁶, why there could not be two buildable lots each of 75 feet, or why there could not be two lots of varying sizes made out of the combined 150 foot parcel such that each was over 55 feet wide (like 90 and 60 feet, 70 and 80, 83 and 67, etc.). There is nothing magical about lots being in 25 foot sections.

Petitioner presented records from two cases which touch on the operation of § 304.1 without providing clear guidance. Exhibit 9A concerns a 2006 case at 13205 and 13207 Gundale Avenue in the Twin River subdivision. The case was initiated by Gerald H. and Barbara C. Kestner.⁷ It appears from the records – which are somewhat difficult to interpret with exact precision – that those Kestners received a variance for a vacant lot at 13205 of 50.4

⁶ Mr. Doak testified that he believed that the garage was as old as the pre-existing house. It appears from the deeds that the house, and therefore the free-standing garage, were built around 1959.

⁷ The exact relationship between Gerald and Barbara Kestner and Craig Kestner is unclear. The documents in Exhibit 9A make it appear that Gerald and Barbara may be Craig's parents. Some of the photographs placed into evidence by the Petitioner were possibly taken by Barbara Kestner. The pictures have captions which refer to "Craig's lot". See Petitioner's Exhibits 6A-K. The informality of that reference suggests a close relationship.

In the matter of: Craig Kestner
Case Nos.: 19-402-SPHA and 20-090-SPHA

feet wide contiguous to another 50.4 foot wide lot upon which the Kestner home was built. Gerald Kestner's parents had purchased the four lots composing the two properties in 1956, and Gerald Kestner thereafter purchased the lots once it became too difficult for his parents to maintain the property. The zoning decision permitting the variance of 50.4 feet in lieu of the 55 foot requirement for 13205 does not mention § 304.1, but it does state that the variance petition requests permission to build a new home "... on a 50.4 foot lot in lieu of the required 55 feet **with a contiguous owner**". (Emphasis supplied). That language seems to gesture at § 304.1. The closest neighbor supported the variance request, and there appeared to be no opposition. The opinion of the zoning commissioner granting the variance used vague *Cromwell* language regarding "circumstances and conditions" that "are peculiar to the land or structure", findings unnecessary under § 304.1. *Mueller v. People's Counsel*, 177 Md. App. at 87. Clearly, though, there was no available adjoining property by which two lots, each satisfying the width requirement, could be made. Any sound reading of the decision, leads to the conclusion that, whatever the stated doctrinal basis, the finding was squarely within the language, intent, and spirit of § 304.1. As a result, it does not further the analysis herein.

Exhibit 9D is a bit more complicated. In that case, one owner in 1996 sold four 25 foot lots (167-170) on Cherwin Road in Bird River to Daniel and Brenda Pauszczewicz and two abutting lots (165-66) approximately 51 feet wide to the Wallaces, who were the party seeking the variance.⁸ There is no discussion about the prior owner except to say that he sold the respective pieces of property to the Wallaces and the Pauszczewicz in 1996. Exhibit 9D at

⁸ Mr. and Mrs. Pauszczewicz apparently own four additional adjoining lots in the rear, but those lots do not impact the width requirements of the Wallace property.

In the matter of: Craig Kestner
Case Nos.: 19-402-SPHA and 20-090-SPHA

p.2. Neither Mr. Pauszczewicz nor any other person objected to the variance. In the opening paragraph, the Zoning Commissioner refers to § 304. In the paragraph granting the variance the opinion refers to § 307, which is the standard variance provision. Unlike the opinion in Exhibit 9A, there is no language regarding uniqueness so it would appear that § 304.1 is the real basis for the decision, and the later reference to § 307 is either mistaken or the conflation of two differing analyses. So, while there is no inquiry into the intent of the unnamed seller, it would appear that the Wallaces purchased their two lots in good faith for the purposes of § 304.1. Perhaps because there was no objection to the variance, no one had any incentive to look behind the transaction which sold the four lots to one owner and two lots to the other. At the same time, there is no reason to doubt the Wallaces' good faith so the operation of § 304.1, if that is indeed the basis for the decision, is reasonable and understandable. Once again, that case does not contribute to the analysis in this matter except to show that variances and/or accommodations under § 304.1 are possible under different circumstances.

The *Mueller* case cited above also has some discussion of the adjoining property question. In that case, the owner had purchased two adjoining properties **at different times** and **each of which satisfied the width requirements at the time.** 177 Md. App. at 90. They constructed a home on one lot and then years later, sold off the other lot. Under the factual circumstances of that case, the Court determined that there was not sufficient adjoining land to make the second lot conform to the width requirements which were enacted after the lots were subdivided. As the Court stated: "Neither [of the two relevant lots] was rendered nonconforming by virtue of actions taken by the elder Muellers, or appellants, *after* the zoning law in issue was enacted." *Id.* (Emphasis in original). *Mueller* appears on its facts to be quite

similar to the transaction in Petitioner's Exhibit 9A discussed above at p. 8-9. In this matter, the actual method of subdivision by Mr. Kestner rendered the remaining two lots being non-buildable without the special grandfathering variance provision.

The Board does not enjoy issuing a ruling that would appear to limit the usability and alienability of lots 155 and 156. This Board is often faced with situations where an absence of foresight results in the Board being asked to untangle a messy but otherwise avoidable problem. It would have been useful for Petitioner to have carefully studied the situation before selling off the four lots. Consulting zoning experts at that point might have resulted in a more creative subdivision of the property. A simple subdivision of the six Kestner lots into two lots of varying widths would have resulted in two lots buildable by right.

In Kestner 1, the ALJ indicated "regret" that a fair and conscientious application of the law required rejecting the petition for a standard variance. (Opinion at p.5). Similarly, we must apply § 304.1 fairly and equitably as it is written even if there is a resulting hardship for Mr. Kestner. The burden of proof in this matter is on the Petitioner to show that he acted in good faith such that the § 304.1 exception applies to him. On this record, however, we cannot conclude by a preponderance of the evidence that Petitioner has met this burden.

CONCLUSION

For these reasons, we deny the Petitioner's request for relief under § 304.1.

In the matter of: Craig Kestner
Case Nos.: 19-402-SPHA and 20-090-SPHA

ORDER

For the reasons stated in the Opinion accompanying this Order, it is this 20th day of May, 2021 by the Board of Appeals of Baltimore County

ORDERED, that the approval pursuant to BCZR § 304.1 to construct a home on lots 155 and 156 of the Twin River Beach subdivision, said lots having an approximate combined width of 50 feet in lieu of the 55 foot required width, be, and the same hereby, is **DENIED**.

In the matter of: Craig Kester
Case Nos.: 19-402-SPHA and 20-090-SPHA

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*.

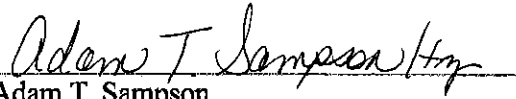
**BOARD OF APPEALS
OF BALTIMORE COUNTY**



William A. McComas, Panel Chair

see following page

Joseph L. Evans




Adam T. Sampson

In the matter of: Craig Kester
Case Nos.: 19-402-SPHA and 20-090-SPHA

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**BOARD OF APPEALS
OF BALTIMORE COUNTY**

see previous page
William A. McComas, Panel Chair


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Board of Appeals of Baltimore County

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May 20, 2021

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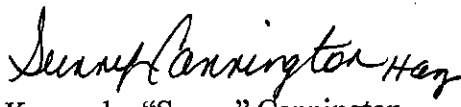
RE: In the Matter of: *Craig Kestner*
Case Nos.: 19-402-SPHA and 20-090-SPHA

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,


Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure
Duplicate Original Cover Letter

c: Craig Kestner
John Dawson/Twin River Beach Protective and Improvement Association
Bruce E. Doak
Office of People's Counsel
Paul M. Mayhew, Managing Administrative Law Judge
Stephen Lafferty, Director/Department of Planning
David Lykens, Director/DEPS
D'Andrea L. Walker, Acting Director/DPW
C. Pete Gutwald, Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
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IN THE MATTER OF:
CRAIG KESTNER
13217 Cherwin Avenue

Petitioner/Appellee

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. 19-402-SPHA and
* Case No. 20-090-SPHA

* * * * *

PETITIONER’S MEMORANDUM

Craig Kestner, Petitioner/Appellee, by his attorneys, J. Neil Lanzi and Wright, Constable & Skeen, LLP, respectfully submits this Memorandum as requested by the County Board of Appeals (“CBA”) at the conclusion of the hearing in the above captioned matters.

I. STATEMENT OF THE CASE

Petitioner in Case No. 19-402-SPHA (hereinafter referred to as “Kestner I”) filed a Petition for Variance pursuant to the Baltimore County Zoning Regulations (“BCZR”), §§ 1B02.3.C.1 and 303.1, to permit a proposed dwelling on a lot with a width of 50 feet in lieu of the required 55 feet; and to permit a front yard setback of 25 feet in lieu of the required 40 feet in the DR 5.5 zone. In addition, Petitioner in Kestner I, filed a Petition for Special Hearing pursuant to BCZR § 500.7 to confirm that a merger did not take place between the Lots 155 and 156 and the adjacent Lots 157, 158, 159 and 160, otherwise known as 6903 Gunder Avenue. Administrative Law Judge, Paul Mayhew by Opinion and Order dated October 23, 2019, denied the Petition for Variance and granted the Special Hearing relief confirming that a merger did not take place between Lots 155 and 156 and the adjacent Lots 157, 158, 159 and 160 (“Kestner I ALJ Order”). Lots 155 and 156 consist of the property which is the subject of the hearing before the CBA.

On November 21, 2019, Petitioner filed an appeal limited to the Kestner I ALJ Order denying the Petition for Variance. No appeal to the granting of the Special Hearing relief was taken by the Protestants participating in Kestner I, thus confirming the Kestner I ALJ Order regarding the merger issue was final.

In Case No. 20-090-SPHA (hereinafter referred to as “Kestner II”), Petitioner, after substantially modifying the site plan, filed a Petition for Special Hearing pursuant to § 304.1 of the BCZR to approve the construction of a single family detached dwelling on two lots with a combined width of 50 feet in lieu of the required 55 feet. In addition, as alternative relief in response to the request of the Department of Zoning at the time of filing, Petitioner filed a Petition for Variance pursuant to § 1B02.3C.1 to permit a combined width for two lots of 50 feet in lieu of the required 55 feet for the construction of the single family detached dwelling. No variance was filed for the front setback. At the Kestner II hearing before the Administrative Law Judge, Petitioner withdrew the Petition for Variance as unnecessary in light of the special hearing relief requested. In his Opinion and Order for Kestner II dated September 29, 2020 (“Kestner II ALJ Order”), the Administrative Law Judge agreed with Petitioner, allowing the dismissal of the Variance Petition, ruling the Petition for Variance moot and granted the special hearing relief under § 304.1 of the BCZR approving the construction of a single family detached dwelling on two lots with a combined width of 50 feet in lieu of the required 55 feet. During the pendency of the ALJ hearing for Kestner II, the issue of zoning merger was not raised. Protestant John Dawson subsequently filed an appeal to the Kestner II ALJ Order.

As part of the preliminary remarks before the CBA, Petitioner presented the procedural history of these two cases, including the finality of the merger issue from Kestner I, the dismissal of the Variance Petition before the ALJ in Kestner II and the contemporaneous dismissal by

Petitioner of Petitioner's appeal to the denial of Variance Relief in Kestner I, thereby limiting the case before the CBA to the § 304.1 Special Hearing relief granted in Kestner II.

II. STATEMENT OF FACTS

Petitioner purchased Lots 155 and 156 (collectively "Parcel 1") and Lots 157, 158, 159 and 160 (collectively "Parcel 2") on or about April 30, 2014. Parcel 2 is improved with a residence built in 1945 and attached garage and has an address of 6903 Gunder Avenue. The garage located on Parcel 2 is within 5 feet of the property line of Parcel 1. Parcel 1 has no improvements and has an address of 13217 Cherwin Avenue. No evidence was presented that at any time permanent structures have ever been located on Parcel 1 prior to or during Petitioner's ownership. Parcel 2 was sold with the improvements on or about November 5, 2018.

Petitioner's intent since purchasing the two parcels and now has been to sell Parcel 2 with its improvements to a family once he decided not to reside there and then to sell the unimproved Parcel 1 to a builder as is his right. The building footprint for a proposed residence on Parcel 1 is shown on Petitioner's Exhibit 1. This exhibit confirms a substantially reduced building footprint (30' X 60') from the prior proposed building footprint (30' X 70') shown on the site plan considered in Kestner I (See Petitioner's Exhibit 7A). In addition, as shown on Petitioner's Exhibits 1 and 7A, the proposed new residence is now set back 40 feet from the front property line instead of 25 feet as presented in Kestner I, thus eliminating the need for any variance.

III. ISSUES PRESENTED ON APPEAL

A. Whether the subject property with the proposed building area and proposed front setback satisfies BCZR § 304.1?

B. Whether the issue of zoning merger applies notwithstanding the final Order of the ALJ in Kestner I?

C. Whether *res judicata* or *collateral estoppel* apply prohibiting Petitioner from seeking and obtaining the special hearing zoning relief requested in Kestner II.

IV. PETITIONER'S EVIDENCE

Petitioner offered expert testimony through Bruce Doak (“Doak”)¹, accepted by the CBA as an expert in surveying, land use and zoning. In addition to Doak’s testimony, Petitioner submitted 13 exhibits. Petitioner’s Exhibit 1 consisted of the zoning plan dated February 15, 2021 which confirmed the size of the building footprint, the existing 50’ front lot width and the 40’ front yard building setback. Doak opined without challenge that all the applicable zoning regulations were satisfied by the plans shown on Petitioner’s Exhibit 1, including front, side and rear setbacks. Doak further opined that the proposed residence on Parcel 1 could be constructed up to 50 feet in height under the regulations and therefore whether one or two stories were constructed on pilings, the height would fall well within allowable limits.

Petitioner’s Exhibit 2 is the 1929 subdivision plat for the Twin River Beach community recorded in the Land Records for Baltimore County in Plat Book 9 Page 33. Exhibit 3 enlarged the plat showing Petitioner’s six lots, including the two lots of Parcel 1. Petitioner’s Exhibits 4, 5 and 6 consisted of a photograph key plan and various photographs showing the nature of the neighborhood with its variety of house types and sizes, including new construction across Cherwin Avenue from Petitioner’s property. The photographs also demonstrate the grade of Parcel 1 from the proposed house location falling downhill to Cherwin Avenue and the grade of Protestant Dawson’s property falling downhill towards Parcel 1. The existing storm water drain in front of and across the street from the subject lot is shown in the photographs represented by Exhibit 6.

¹ References to testimony of Bruce Doak are taken from the video of the hearing and are not based on a certified transcript of the proceeding.

Petitioner next presented a key map and sample zoning cases of undersize lots requiring zoning relief for lot width entered as Petitioner's Exhibits 8 and 9A-D. A letter in support of Petitioner's requested zoning relief signed by various neighbors was admitted as Petitioner's Exhibit 10.

Expert Testimony was provided by Doak concerning Petitioner's compliance with § 304.1 of the BCZR. First, Doak confirm the two lots of Parcel 1 were recorded in a validly approved subdivision prior to March 30, 1955. Second, Doak confirmed the proposed site plan represented by Exhibit 1 with the proposed residence satisfied all height and area requirements of the BCZR. Specifically, Doak explained how the area of the lots on Parcel 1 was greater than the minimum requirement of 6,000 square feet on property zoned DR 5.5, the side and rear setbacks met the requirements of the BCZR and, after meeting with County zoning staff determined the proposed 40' front setback met the requirements of § 303.1 of the BCZR. Doak also confirmed the Department of Planning supported the requested zoning relief subject to the new 40' front setback. Third, Doak confirmed Petitioner, as the owner of Parcel 1 only, did not own sufficient adjoining land to conform to the width requirements contained in the BCZR.

Mr. Doak testified with regard to the history of the purchase by Mr. Kestner of Parcels 1 and 2, the absence of any permanent structures on Parcel 1 and the existing permanent structures, residence and garage, on Parcel 2. When asked if property line adjustments could have been made between Lot 156 (part of Parcel 1) and 157 (one of the four lots in Parcel 2), Doak opined with an emphatic "no" pointing to the existence of the garage on Lot 157 approximately five feet from the property line as shown on Petitioner's Exhibits 7A-B. Doak also pointed out the 2.5' zoning setback that was required. Doak opined that the only way to accommodate the additional 5 feet needed to create the 55-foot front lot width for Parcel 1 would have been to move or

remove the garage in Parcel 2. The BCZR simply does not require such action. Doak expressed further concern about moving the lot line of Lot 157 indicating a possible resulting adverse issue for the 30' rear setback of the existing residence on Parcel 2 since the front of the home faced Gunder Avenue instead of Cherwin Avenue. When the distances shown on Petitioner's Exhibit 7B were challenged on cross examination, Doak testified as to the excellent reputation and work of NTT Associates, the survey firm that prepared the Exhibit. No challenging survey was offered by Protestant's.

In conclusion on the lot area issue, Doak opined that Petitioner did not have any viable option for the lot width issue for Parcel 1 since Parcel 2 was sold in good faith to a third party in 2018. Based on his knowledge of the history of all six lots making up Parcel 1 and Parcel 2, the fact that the lots were taxed separately in two parcels, Doak testified that in his opinion, the actions of Petitioner from the date of purchase of the six lots to the date of the CBA hearing, demonstrated there was no intent to avoid the BCZR area requirements. Doak testified that Petitioner was following the clear intent of the County when it adopted § 304.1 which was to provide a way for the numerous owners of 50' wide lots existing in Baltimore County to use and sell their properties for residences.

Petitioner's expert was asked to address the concerns of the Petitioner's neighbor Dawson who alleged his view would be blocked if Petitioner's residence was built. Doak noted the lots have existed since 1929 and the Dawson residence was set back approximately 80 feet from the Dawson front property line. Doak noted and the photographs confirmed, there were in fact no windows on the side of the Dawson residence facing Petitioner's future residence location. Doak further pointed out the building setback shown on the plans in Kestner I was 25 feet and subsequently moved to 40 feet in Kestner II, the amount of the front setback pending before the

CBA. The new building envelope was also a significant factor according to Doak in that the new site plan provides for a building envelope of approximately 1800 square feet versus the previous building envelope. Doak opined that a new house built no higher than 50 feet on the Kestner property would have no impact on Dawson's view.

In response to the flooding concerns of the both the Twin River Beach Protective and Improvement Association, Inc. ("Association") and Dawson, Doak reviewed the development process that Petitioner and/or Petitioner's builder would be required to go through after zoning approval. Specifically, Doak advised the CBA that zoning approval was only the first step and Petitioner and/or Petitioner's Builder would have to go through the full building permit process, including plans review by the Department of Planning ("Planning") and critical area compliance review by the Department of Environmental Protection and Sustainability ("DEPS"). Doak explained how DEPS would require compliance by requiring any storm water be captured by dry wells and level spreaders on Petitioner's property with any excess ultimately flowing into the storm drains located within Cherwin Avenue as shown on the photographs. The grade issue mentioned previously was expanded upon with Doak stating there was an approximate 4 to 5-foot grade difference from the proposed house location down to Cherwin Avenue. The flood plain elevation was approximately 10 feet for Petitioner's proposed residence and 13 feet for the Dawson residence, all factors considered by DEPS in their review. Upon questioning from the CBA panel, Doak testified that the County agencies, including DEPS and Planning, would consider neighbor concerns as to storm water management and proposed house plans. Doak further explained that the BCZR did not have design requirements for DR 5.5 zoned property.

Next, Doak testified there were many undersized lots in the Twin River Beach community and, interestingly, 13 of the 40 Protestants signing a petition against Petitioner lived

on undersized lots, 50 feet wide. Those 13 lots are shown in Petitioner's Exhibits 11, 12 and 13. Doak went into detail as to the evolution of Protestant Dawson's property (10 lots commonly owned at one time and then reduced to 8) which notably was comparable to the evolution of the Kestner property (6 lots) in that the house owned by Wally Wallace directly behind the Kestner lots 155 and 156 was built in 1998 upon two 25' wide lots (2 of the 8 lots) with a third lot added later for a garage. The Dawson house was built in 1989 on two 25' wide lots, 167 and 168 (2 of the 8 lots) as shown on the subdivision plat. Therefore, if Petitioner is allowed to build his home on lots 155 and 156, there will be 3 homes built on 2 lots each, all adjacent to each other. Interestingly, Dawson was not on the title to the deed for the Dawson property until June of 2020.

During rebuttal testimony, Doak utilized SDAT records and described the many homes either constructed or reconstructed after the zoning regulations went into effect, including several houses built on Cherwin Avenue, Gunder Avenue and Birdwood Avenue. The three houses on Cherwin according to Doak were either built or reconstructed in 2010, 2014 and 2020 respectively, all relevant since they were built on two lots, same as Petitioner is requesting.

In sum, Doak concluded in his expert opinion the Petitioner met his burden of proof and that the granting of the special hearing zoning relief under § 304.1 would not alter the essential character of the Twin River Beach neighborhood, would not impair the appropriate use and enjoyment of adjacent properties and would not in any way be detrimental to the public health, safety or general welfare of the community. Doak opined that in fact the granting of the zoning relief under § 304.1 would be in harmony with the spirit and intent of the Zoning Regulations and that without the zoning relief, no home could be constructed on the subject property.

V. PROTESTANT'S EVIDENCE

Protestant's evidence consisted of testimony from John Dawson, the immediate neighbor to the subject property, Tom Brookes, President of the Association and Ruth Hauf, a longtime resident of the community.² A petition against the requested zoning relief was also submitted on behalf of the Association as Protestant's Exhibit 11. It was deemed misleading and objected to because it contained a reference to a zoning variance not the subject of the appeal. As noted previously, 13 of the 40 individuals who signed the petition reside on 50' wide lots. See also Petitioner's Exhibits 11-13. Protestants made it clear they would have preferred if Petitioner sold all of the six lots together and, despite raising much fuss about Petitioner creating a new subdivision by chopping off five feet from Lot 157 and adding it to Lot 156, Protestants rejected that solution also since it would have also allowed a second house on the Kestner property. Protestants consistently and conveniently left out the critical fact that moving five feet from Lot 157 to Lot 156, would necessitate moving the existing garage on Lot 157, notwithstanding that the garage existing on Lot 157 was sold with the primary residence located on Lots 157-160.

Protestant Dawson testified he had concerns over flooding issues, reduction in property values and a blockage of his view if a house was allowed to be built on the Kestner Property. Dawson admitted the alleged flooding issue caused the water from the street to go up onto his driveway approximately 10 feet as shown on Protestant's Exhibit 5E, but never actually near his residence. Dawson acknowledged the grade difference with his property being located several feet higher than the subject property. Dawson admitted on cross examination to having no expertise in the area of storm water management and to taking no steps on his own to mitigate any water issues affecting his property. Dawson also admitted he was not a real estate appraiser.

² References to testimony are taken from the video of the hearing and are not based on a certified transcript of the proceeding.

Protestant Dawson, in his testimony under oath before the ALJ in Kestner I, indicated there were no structures on Lot 156 and conveniently remembered the non-permanent recreational items when testifying before the CBA. Dawson did not mention any structures or use of Lot 156 by Kestner or his predecessors when testifying before the ALJ in Kestner II.

Finally, on cross, Dawson reluctantly acknowledged that in the event Petitioner had taken the subdivision steps argued by his counsel, the same house he was opposed to in this case would in fact have been allowed.

Association President Tom Brookes testified that prior to the sale of Lots 157-160 by Petitioner, a children's swing set, horseshoe pit and fire pit were located on Lot 156, all temporary and easily removable items. No permanent structures were alleged to have existed on Lot 156. Brookes also testified that he felt property values would go down with a new house on Parcel 1 despite admitting he was not a licensed real estate appraiser.

Protestant Ruth Hauf initially testified that after living in the community for 50 years, there was only one new house constructed on an empty lot with numerous reconstructions of houses damaged during Hurricane Isabel. Many of those damaged houses were shore shacks with the rebuilds significantly larger. Ms. Hauf's memory about new house construction seemed to improve upon further questioning and review of the subdivision plat as she admitted there were at least three new houses constructed on lots in the community. Ms. Hauf stated it was her opinion a new house on Petitioner's lot would cause property values to go down despite admitting to having no expertise as a real estate appraiser and having discussed at length all of the houses built on two lots throughout the community, same as Petitioner intends.

VI. ARGUMENT

A. **Whether the subject property with the proposed building area and proposed front setback satisfies BCZR § 304.1.**

§ 304.1 of the BCZR states as follows:

§ 304.1. - Types of dwellings allowed; conditions.

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

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

This Section allows a property owner permission to build a residence on what is considered a “undersized lot” as long as these three conditions are met. Section 304.1 was enacted for property owners such as Petitioner to allow them to “grandfather” the development right for lots like the ones in this case which are deemed consistent with the pattern of development and compatible with the other homes on similar fifty foot lots in the neighborhood. *See Mueller v. People’s Counsel vs. Baltimore County*, 177 Md. App. 43 (2007). The Court in Mueller determined the relief provided by § 304.1 was intended to limit construction of new residences on undersize lots where the property owner possesses contiguous vacant and unimproved parcels, not improved parcels as is the case before the CBA. The house on Parcel 2 was built in 1945, pre-dating the zoning regulations requiring 55-foot-wide lots. In the event all

of the conditions are met, relief must be granted as long as it will not cause harm to the public health, safety or welfare. Petitioner's evidence with regard to the three conditions of § 304.1 is uncontroverted.

With regard to the concerns of the immediate neighbor and the community, Petitioner's expert clearly testified that the zoning relief is just the initial phase of the development process as the building permit process will provide for the review of storm water management and design, thus addressing potential flood concerns and architectural requirements. Once the requirements of § 304.1 are satisfied, Petitioner moves on to the building permit application requirements of § 304.2. Doak testified that an owner or builder could file for a building permit on an undersized lot pursuant to § 304.1 and then wait for any hearing requests or, as recommended practice by the County zoning office, a special hearing can be filed as Petitioner did on the lot width issue prior to filing a building permit. In Petitioner's case, the public hearing option provided in § 304 has been held. Petitioner's expert testified that based on his extensive experience dealing with undersized lots over his career with Baltimore County, it was his expert opinion the public hearing requirements of § 304 have been satisfied by the hearings held in Kestner I, Kestner II and before the CBA, leaving the building permit application process with the County agency reviews as the next step for Petitioner.

Upon application for the building permit by Petitioner, DEPS will be reviewing any proposed construction for compliance with critical rea requirements and at the same time addressing any mitigation that will be necessary. Doak made it clear that Planning will be reviewing elevation drawings for the proposed residence. Petitioner finds it ironic that Protestants want to have a say to the style of architecture of Petitioner's proposed residence while several other new houses were built and numerous damaged houses reconstructed without

any input or opinions being provided by the neighbors. Quite simply, Protestants' desire to take away Petitioner's property rights while preserving their own.

B. Whether the issue of zoning merger applies notwithstanding the final Order of the ALJ in Kestner I.

While not directly addressing the issues of zoning merger, res judicata or collateral estoppel, Protestants certainly attempted to provide evidence of such. In fact, Protestant's counsel argued it was his belief that § 304.1 was the codification of zoning merger.

Merger in the context of land use is the adjoining of contiguous parcels under common ownership so they are viewed as a single parcel for the purpose of zoning regulations. *Mueller*, 177 Md. App. 43. The courts look at zoning merger when the owner forms one tract while showing an intent from the owner's conduct with respect to the land and use of it. *See Friends of the Ridge, v. Balte Gas & Elec Co*, 352 Md. 645 (1999). Zoning merger is utilized to determine if abutting lots are consolidated as far as determining what can be constructed on property by allowing compliance with the zoning requirements including area and setbacks without regard to a common property line between the lots. *See Remes v. Montgomery County*, 387 Md. 52 (2005). In the *Remes* case, since the owner of abutting lots constructed a swimming pool on one lot, a common driveway over the adjoining lots, and an addition to an existing house on a separate lot, the court determined that zoning merger had occurred thus consolidating the lots for determining what could be constructed on the land and what use could be made of the land. Title to the lots remained separate. The court was looking at the permanent structure on the one lot and what was utilized by the common owner on the adjacent lot. *In Remes*, the swimming pool required a building permit. Cases where zoning merger was determined to exist are clearly in contrast to a common lot owner owning one lot improved with a home and the other lot

unimproved. If the unimproved lot was used for recreational activities and/or for example a shed was located on the second property, the courts did not view that as a permanent structure and determined merger did not occur. *Mueller*, 177 Md. App. 43.

In this case, the ALJ determined that no merger occurred between Parcels 1 and 2 in Kestner I. That determination was not appealed by Protestants and accordingly became a final decision. The only evidence provided by Protestants, albeit contradictory in light of Dawson's completely inconsistent testimony on the issue, was the alleged use of Parcel 156 for recreational purposes and the existence of a swing set, fire pit and horseshoe pit. All of these are temporary placements not requiring building permits. In two of the three hearings on this issue, Dawson indicated affirmatively or by silence, the absence of any use or structures, permanent or temporary, on Parcel 1. Either way, the finality of the ALJ's finding and the absence of any evidence of permanent structures on Parcel 1 is enough for the CBA to not even consider this issue when deciding this appeal and if to be considered, enough for the CBA to deny its applicability. Protestant's Exhibit 3 (SDAT Sheet for unimproved lot 155), Protestant's Exhibit 4 (SDAT Sheet for unimproved lot 156) and Protestant's Exhibit 5 (SDAT Sheet for improved lots 157-160) evidence the three separate account numbers for Petitioner's lots on Parcel 1 and Parcel 2. Finally, Petitioner's expert opined all three elements of § 304.1 were satisfied.

C. Whether *res judicata* or *collateral estoppel* apply prohibiting Petitioner from seeking and obtaining the special hearing zoning relief requested in Kestner II.

Neither defense applies since Petitioner requested completely new relief based on a substantially revised site plan in Kestner II.

Res judicata precludes re-litigation of a suit if:

1. The parties in the present litigation are the same or in privity to the parties of the earlier action; and

2. The claim in the current action is identical to the one determined in the prior adjudication; and

3. There was a final judgment on the merits in the previous action. *Powell v. Breslin*, 430 Md. 52 (2013) (citing *Colandrea v. Wilde Lake Cmty Ass'n, Inc.*, 361 Md. 371 (2000)); *Cicala v. Disability Review Bd*, 288 Md. 254 (1980).

While acknowledging the parties may be the same or in privity to the parties of Kestner I, II and the appeal, claims in Kestner II are not identical to the claims in Kestner I. There was no final judgement on the Special Hearing § 304.1 ALJ approval in Kestner II due to the appeal. For these reasons alone, res judicata cannot bar Petitioner's claim for § 304.1 Special Hearing zoning relief in Kestner II.

To invoke the defense of collateral estoppel, a party must establish five elements: *See Jesus Christ is the Answer Ministries, Inc. v. Balt. County* 305 F. Supp. 3d 378 D. Md. (2018).

1. That the issue sought to be precluded is identical to the one previously litigated.
2. That the issue was actually determined in the prior proceeding.
3. That the issue's determination was "a critical and necessary part of the decision in the prior proceeding."
4. That the prior judgment is final and valid.
5. That the party against whom collateral estoppel is asserted "had a full and fair opportunity to litigate the issue in the previous forum."

The CBA can look to its own recent history with the issues of res judicata and collateral estoppel recalling *In Re: Reverend Lucy Ware*, Board of Appeals, Case No. 13-147-SPHA ("Ware I") and Case No. 14-064-SPH ("Ware II"). In the course of litigation for Ware I and II,

Petitioners site plan was significantly changed and one variance was eliminated in Ware II. Proceedings took place before the Administrative Law Judge, CBA, Circuit Court for Baltimore County, the Court of Special Appeals and ultimately the United States District Court for the District of Maryland on a related case. The Circuit Court for Baltimore County in Ware II citing the federal case, *Jesus Christ is the Answer Ministries, Inc.*, 303 F.Supp. 3d at 390 quoted Judge Bennett:

The Complaint asserts that Ware II proposes a different site plan than Ware I. Specifically, Ware II proposes a 50-foot buffer and setbacks, through the north, east and west that either completely or substantially comply with the zoning requirements of the BCZR, ... The changes in Ware II prevent res judicata from barring Plaintiff's claims....

For the same reason, collateral estoppel also does not bar Plaintiff's claims, "under collateral estoppel, once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation ... As described above, the issues Defendants seek to preclude in Ware II are not identical to the issues previously litigated in Ware I. According to the facts before this Court, Ware II asks the Board to consider whether the Ware II site plan, offering different buffer and setbacks measurements, meets the two conditions for a new church to be exempt from the RTA requirements. Accordingly, collateral estoppel does not bar Plaintiff's claims." (citation omitted)

As in Ware II, the site plan in Kestner II proposes significant changes from the site plan in Kestner I. The site plan approved in Kestner II proposes a 40' setback, eliminates a front setback variance and reduces the size of the building footprint. In Kestner II, Petitioner requests special hearing relief only under § 304.1 (after dismissing the variance relief at the commencement of the ALJ hearing for Kestner II), thus the issues in Kestner II and this appeal are not identical to the issues determined in Kestner I. Specifically, the Petition in Kestner II is based on § 304.1 of the BCZR as compared to the variance relief under § 1B02.3.C.1 requested

in Kestner I. Your Petitioner withdrew his variance petition in Kestner II at the Administrative Law Judge level and dismissed its appeal before this Board of the ALJ's denial of the petition for variance in Kestner I.

With regard to the special hearing relief requested for the zoning merger issue in Kestner I, that relief was granted by the ALJ and not appealed, resulting in a final judgment on the merger issue. Res judicata does apply to the zoning merger issue since the parties are the same in the earlier actions, the zoning merger issue would be the same if raised in Kestner II as it was in Kestner I by Petitioner and there was a final judgement on the merger issue in Kestner I. Again, it is Petitioner's position the CBA should not even consider the zoning merger issue as the change in site plan and relief requested had no impact on the final merger determination. Petitioner did not ask for merger relief in Kestner II because said relief was already final following the ALJ decision that a merger did not take place in Kestner I, and no appeal filed therefrom. Should the CBA decide to consider the merger issue, under Maryland case law, the absence of any permanent structures on Parcel 1 confirm that zoning merger did not occur between Parcel 1 and Parcel 2.

In contrast, for purposes of considering whether or not res judicata or collateral estoppel defenses apply to bar the special hearing relief requested in Kestner II, while the parties may be the same for the appeal, the claim or relief under § 304.1 is clearly not the same as the variance relief previously requested and there has been no final judgment on the § 304.1 special hearing relief. No determination under § 304.1 was made in Kestner I. The requested zoning relief had to be different for Kestner I and Kestner II (as in Ware I and Ware II) since the site plan in Kestner II is significantly different than the site plan in Kestner I. There was no final judgment of the Special Hearing relief under § 304.1 in Kestner II.

The burden of proof is also higher for a variance petition than for special hearing relief under § 304.1, thus further distinguishing the issues being reviewed in Kestner I and II.

The court in *Jesus Christ is the Answer Ministries, Inc.* cites *Reaching Hearts Int'l, Inc. v. Prince George's County*, 584 F.Supp 2d. 766 (2008), D. Md., 303 F.Supp. 3d at 389, also dealt with a congregation's attempts to develop a plan for a church, school and other facilities. In *Reaching Hearts*, the court discussed claim and issue preclusion and determined neither res judicata nor collateral estoppel applied to Petitioner's claims as the plans in the current proceeding were different than previously considered plans. The court determined that since the applicant had changed the size of the church's footprint, parking and lot coverage among other issues, neither res judicata nor collateral estoppel applied to bar Petitioner's claims. *Id.* at 787.

In *Jack v. Foster Branch*, 53 Md. App 325 (1982), while considering the issue of res judicata, the court discussed what it referred to as the "same evidence test" to determine whether the causes of action are the same and whether the judgment in the prior action will be a bar to consideration of a subsequent action. The court in *Foster Branch* determined that a cause of action was the same if the same evidence will support both actions. In that case a variance was denied for parking with the court determining the evidence necessary to sustain the second action for a modified parking plan was not the same as the evidence necessary to support the first, therefore, res judicata was not a bar. In fact, the court in *Foster Branch* noted the party against whom claim preclusion was sought had a significantly heavier burden of proof in the first case than the second, the same as the burden of proof necessary in Kestner I for the variance relief and Kestner II for the special hearing relief. *Id.* at 330. Despite Protestant's assertions otherwise, Doak testified that variances in Baltimore County are not routinely granted.

The relief necessary for Petitioner in the subject case under § 304.1 is clearly distinct and different from the relief necessary for a variance under § 307 of the BCZR. In essence, two different tests were necessary and res judicata will not apply in this case.

VII. CONCLUSION

Petitioner has met his burden of proof under § 304.1. Zoning merger does not apply. Res judicata and collateral estoppel under these facts do not apply to Petitioner's relief and should not bar Petitioner from seeking and obtaining zoning relief for the lot width of Parcel 1. The facts presented were different in Kestner II as compared to Kestner I, including height, setback and building size. The relief sought is completely different in Kestner II as compared to Kestner I. The County agencies do not object to Petitioner's requested relief subject to the 40' front setback and compliance with the critical area requirements.

Petitioner does not believe whether houses in this community are new, original or reconstructed should be determinative. What matters is the undisputed evidence there are many houses in the community built on 50-foot-wide lots. Further, it is common knowledge that houses are often built larger during reconstruction after suffering damage in storms such as Hurricane Isabel subject of course to building permit approval, BCZR compliance and review by Planning and DEPS, exactly as Petitioner is proceeding.

Simply because certain members of the community and an immediate neighbor do not want a home to be built on land that meets the requirements under the BCZR should not be enough for the CBA to deny Petitioner from either building a house for himself or selling the property to a builder. Without the zoning approval, Petitioner will be prevented from using the land in this waterfront neighborhood for its intended residential purpose all in accordance with the long standing pattern of development (50' wide lots) and clear intention of § 304.1.

For all of these reasons, Petitioner's requested zoning relief under § 304.1 should be granted.

Respectfully submitted,



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CRAIG KESTNER
13217 Cherwin Avenue

Petitioner/Appellee

* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. 19-402-SPHA and
Case No. 20-090-SPHA

* * * * *

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of March, 2021, a copy of Petitioner’s Memorandum was emailed to:

Michael R. McCann, Esquire
Attorney for John Dawson and
Twin River Beach HOA
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| IN RE: PETITIONS FOR VARIANCE | * | BEFORE THE |
| AND SPECIAL HEARING | | |
| (13217 Cherwin Avenue) | * | COUNTY |
| 15 th Election District | | |
| 6 th Councilmanic District | * | BOARD OF APPEALS |
| | | |
| Craig Kestner – Legal Owner | * | Case Nos. 19-402-SPHA and |
| | | |
| | * | 20-090-SPHA |
| | | |
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POST-HEARING MEMORANDUM

Protestants, John Dawson and the Twin River Beach Protective and Improvement Association, Inc., submit this memorandum in support of their opposition to the relief sought by Petitioner Craig Kestner (“Mr. Kestner”).

I. PROCEDURAL AND FACTUAL BACKGROUND

A. Mr. Kestner’s purchase and use of lots 155-160

Mr. Kestner purchased lots 155-160 in April 2014. All six lots were conveyed to him by the Estate of Margaret Leola Vitek in a single deed (Liber 34935/ Folio 00437). That deed describes the six lots as located at a single address, 6903 Gunder Avenue. (Prots’ Ex. 6, p. 1). When Mr. Kestner purchased the lots, the property was improved with a single family house, constructed in 1945. (Prots’ Ex. 5). There is presently a shed on the property, although there was no testimony confirming whether the shed existed when Mr. Kestner purchased the property or whether he constructed it.

Mr. Kestner lived at 6903 Gunder with his family until November 2018, when he sold four of the six lots (nos. 157-160) to their current owner and retained lots 155 and 156. (Prots' Exs. 3-6).¹ During the time that Mr. Kestner lived at the property, he and his family used lots 155 and 156 as part and parcel of his larger property, 6903 Gunder Avenue, and as one would typically use a backyard. He regularly hosted gatherings with friends and family, played ball there, constructed a swing set, horseshoe pit, and fire pit in that area, and otherwise used the lots as a normal backyard. Mr. Kestner took care of the area comprising lots 155 and 156, just as he did his entire yard, including cutting the grass and removing a tree. The fence that currently exists separating parcels 155 and 156 from the other parcels was not there during the time that Mr. Kestner live there, but rather was constructed by the person to whom he sold lots 157-160.

B. The 2019 Case

In or about 2019, Mr. Kestner filed a Petition for Variance pursuant to BCZR sections 1B02.3.C.1 and 303.1 (1) to permit a dwelling on a 50 foot wide lot (lots 155 and 156) in lieu of the required 55 feet, and (2) to permit a front yard setback on lots 155 and 156 of 25 feet in lieu of the required 40 feet. Mr. Kestner also filed a Petition for Special Hearing pursuant to section 500.7 to confirm that lots 155 and 156 had not merged with lots 157, 158, 159 and 160.

¹ Prior to their consolidation in the deed to Mr. Kestner, the six parcels were held by Margaret Leola Vitek and her husband under three separate deeds. In 1959, Ms. Vitek and her husband acquired lots 157-160 from Sidney Farber (Liber 3615/Folio 3912) (Prots' Ex. 9). In 1961, Ms. Vitek and her husband acquired lots 155 and 156 from Mary and Benjamin Nechamkin (Liber 3813/Folio 510 and Liber 3813/Folio 512) (Prots' Exs. 7 and 8).

On October 23, 2019, the ALJ, following a hearing, issued an Opinion and Order denying the Petition for Variances and granting the Petition for Special Hearing. With respect to the variances, the ALJ found that the lots were not unique as they are identical to the other 25 foot lots in the Twin River Beach development. The ALJ did not reach the second prong of the variance analysis, but noted that even if the evidence satisfied both prongs of the analysis, the granting of the requested variances would be detrimental to the health, safety and general welfare of the community and not be in strict harmony with the spirit and intent of the BCZR. (*Id.*, pp. 4-5).

With respect to the issue of merger, the ALJ found there was no merger between lots 155 and 156 and the other four lots. (*Id.*, p. 3). The ALJ pointed to the testimony of Mr. Dawson that lots 155 and 156 “were merely the backyard of the house at 6903 Gunder and that there had not been any use of the lots, at least since he moved in.” (*Id.*, p. 2).

Mr. Kestner subsequently appealed that portion of the ALJ’s Order denying the Petition for Variances. When that appeal was scheduled, counsel for Mr. Kestner requested a postponement of the hearing on the basis that he was filing a new zoning request and “as the possibility remains the decision from that case could also be appealed, it makes sense to have one appeal hearing on the subject property.” (*See* ltr. From N. Lanzi to Board dated Aug. 27, 2020). Accordingly, the Board stayed the 2019 case.

C. The 2020 Case

While the 2019 case was still pending before the Board, Mr. Kestner filed new Petitions for Variances and for Special Hearing and a new plan accompanying those

petitions showing a 30' x 60' "possible house footprint." (Pet's Ex. 1). The Petition for Variances seeks approval of a combined width for two lots of 50 feet in lieu of the required 55 feet under section 1B02.3.C.1. The Petition for Special Hearing seeks approval, under section 304.1, for the construction of a single family detached dwelling on two lots with a combined width of 50 feet in lieu of the required 55 feet.

In an Opinion and Order dated September 29, 2020, the ALJ granted the Petition for Special Hearing, finding without explanation that the conditions in section 304.1 were met. The ALJ also found, without explanation, that the Petition for Variance was "moot." (Op. and Order, pp. 3-4). Mr. Dawson filed a timely appeal of the ALJ's decision. On December 15, 2020, the Board issued a Notice of Assignment scheduling a combined hearing for the 2019 case and the 2020 case.

II. ARGUMENT

A. The Requirements Of Section 304.1 Are Not Met

1. *The statutory requirements*

Section 304.1 of the BCZR authorizes the construction of dwellings on undersized lots in certain limited circumstances:

§ 304.1. - Types of dwellings allowed; conditions.

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

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

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

(Emphasis added).

As the Court of Special Appeals explained in *Mueller v. People's Counsel for Baltimore County*, the County Council enacted BCZR § 304 “to ‘grandfather’ lots that had become substandard as a result of the zoning law, allowing them to be developed under certain conditions. BCZR § 304 was intended to mitigate the harsh effect of the zoning scheme, and to avoid constitutional takings violations. *The County sought to balance the expectancy interests of landowners who, in the 1940's and 1950's, may have intended to build on land that was later affected by the zoning scheme, and the long-term interests of the County in protecting against over-development and overcrowding.*” 177 Md. App. 43, 69 (2007) (emphasis added). Thus, while the grandfathering of undersized lots is permitted in certain circumstances, there is also a countervailing public policy disfavoring the continued development of such lots because the expectancy interests of purchasers diminish over time. This is somewhat akin to the policy disfavoring the continuation of nonconforming uses.

In the instant case, subsection C of 304.1 is clearly not met. For a number of years, Mr. Kestner owned “sufficient adjoining land,” namely lots 157-160, to allow him to meet the 55-foot width requirement. During that time, he could have subdivided his six lots (155-160) and, by simply utilizing 5 feet of lot 157, constructed a house in the area now comprising lots 155 and 156.²

² Subdividing the lots in this fashion would not have prevented Mr. Kestner from meeting the lot *area* requirements. The minimum lot size is 6000 square feet. Lots 155 and 156 are 2975 square feet and 3075 square feet, respectively. Lots 157-160 are 13,241 square feet. Using 5 feet of lot 157 to

At the hearing, Mr. Doak strenuously asserted that Mr. Kestner could not have met the 55 foot width requirement because moving lot 156's property line 5 feet onto lot 157 would encroach upon the shed located on lot 157. He also posited that moving the property line 5 feet "may" not allow for the 30-foot setback from the rear of the existing house on 6903 Gunder.

Mr. Doak's assertions are hardly supported by the evidence. On cross-examination, he acknowledged that he did not know the actual distance between the shed and the property line shared by lots 156 and 157. He did not survey the properties or measure that distance. Indeed, Mr. Doak was not certain whether the shed was even on lot 157 during the time that Mr. Kestner owned the properties, but rather "assumed" that it was. Likewise, Mr. Doak did not survey or measure the distance between the house on 6903 Gunder Avenue and the property line shared by lots 156 and 157 to support his assertion that the rear yard setback on 6903 Gunder "may" not be met.

Most importantly, Mr. Doak's assertions are refuted by the site plan submitted in the 2019 case (Petitioner's Ex. 7B). That plan shows the shed to be +/-5 feet from the property line, *i.e.*, moving the property line 5 feet would likely *not* encroach upon the shed. The 2019 plan also shows the house on 6903 Gunder Avenue to be 35.2 feet from the property line and thus moving the property line 5 feet towards the house would not encroach upon the rear yard setback of 30 feet.³

accommodate a house on lots 155 and 156 would have left plenty of area on the remaining lots to meet this minimum requirement.

³ Even if moving the lot line 5 feet encroached on the shed, there is no reason it could not be moved or that a minimal variance could not be sought. As Mr. Doak acknowledged, such variances are routinely granted.

2. *The timing of Mr. Kestner's sale of lots 157-160*

The fact that Mr. Kestner owned lots 157-160 for a period of time in the past, and does not presently own them, makes no difference. If a property owner could escape the requirements of 304.1 by simply selling off his “sufficient adjoining property,” then the purpose of 304.1 would be easily defeated. Mr. Kestner had the opportunity, over the course of several years, to construct a second house on his property but failed to take advantage of that opportunity. Consistent with the purpose of section 304.1 to restrict grandfathering of undersized lots, Mr. Kestner no longer has the limited right afforded by that section. Any expectancy interest he had when he purchased the six lots was extinguished when he sold lots 157-160 in 2018. In short, Mr. Kestner is in this predicament because he put himself there.

The County's Policy Manual addresses this very point, that is, whether 304.1 is available when the property owner has transferred the contiguous property to another. (See Policy Manual attached hereto, at no. 3). As the Manual states, the County applies a “six year rule” to determine whether the property was transferred in good faith and without the intention to avoid 304.1C. If the property was transferred six or more years ago, then there is a presumption of such good faith. Here, Mr. Kestner conveyed lots 157-160 in November 2018 (*see* Prots' Ex. 5) and filed the 2019 case within months thereafter. Indeed, the plan accompanying the petitions filed in 2019 case were prepared on October 23, 2018 (*i.e.*, before he conveyed the lots) (*see* Pet's Ex. 7B), suggesting that it was perhaps Mr. Kestner's intent all along to avoid 304.1C. Mr. Kestner could have testified that he operated in good faith, but he was not called to do so and there is no evidence otherwise.

3. *Public health, safety, and welfare*

Although not referenced in section 304.1, another consideration in the approval of undersized lots is the impact on public health, safety and welfare. (*See e.g.* ALJ Op. in 2020 case, p. 3). Here, Mr. Dawson, Mr. Brookes and Ms. Hauf spoke compellingly about the impacts that they believe the proposed house would have on their community, property values, and the use and enjoyment of their properties.

Mr. Dawson and his family purchased their property in 2015. This is his “forever house,” the place where he plans on retiring. When he first saw the house, he loved the views to the water and would not have bought the property if he had known there would be a house there. He would never have expected someone to “cut off their backyard” and sell it to a developer to construct another house. Mr. Dawson believes that the construction of a large house in essentially his front yard will have a negative impact on his family’s use and enjoyment of their property, the value of his property, and the community at large. He explained how he will be able to see the structure from the bay window and panoramic first and second floor windows of his house, and from his rear deck.

Thomas Brookes is President of the Twin River Beach Protective and Improvement Association, Inc., an association comprising 110 homes in the community. He testified that the Association’s membership is opposed to the relief sought by Mr. Kestner because the house will “stick out like a sore thumb.” He presented a petition signed by 40 members of the Twin River Beach community.⁴

⁴ Counsel for Mr. Kestner criticized the petition signed by residents in the community because it makes reference to “variances,” contending apparently that there are no variances before the Board. This is not true. As the Notice of Assignment for this matter reflects, counsel for Mr. Kestner requested that the 2019 case be stayed while he took the unusual step of filing the 2020 case. By virtue of counsel’s

Ruth Hauf has lived in Twin River Beach for 47 years. Based on her 47 years there, she believes the proposed house would be “extremely unusual.” She echoed the concerns of Mr. Dawson and Mr. Brooks. She supports the right of property owners to build but believes the house would overload the community and, if allowed, will reduce property values.

Mr. Doak, the only witness who testified on behalf of Mr. Kestner, testified that there will be “no adverse impact” on community. In his opinion, the house would not alter the essential character or nature of the neighborhood “at all.” In his words, “[w]e are building a house that is comparable and compatible with the area. I don’t see how this will impair anyone’s use and enjoyment of their property, especially since the house was moved back and we gave Mr. Dawson a much larger viewshed.”

The Board should accord little, if any weight, to the testimony of Mr. Doak in this regard. He has no basis for rendering these opinions because of the utter lack of information he has regarding the proposed house. He could provide no information other than what the plan itself shows – a 30 foot x 60 foot “possible house footprint.” (Pet’s Ex. 1). Mr. Doak did not know the square footage or height of the house, whether it would be two stories or three stories, or what it would look like. No drawings or renderings of the house were offered into evidence.

Mr. Doak also did not have any information regarding how stormwater would be handled on site. He has not prepared a stormwater management plan, even a

request, both cases are before the Board and both cases involve variances. Even if the 2019 case was not stayed and we were proceeding solely on the 2020 case, Mr. Kestner filed a Petition for Variance in this case. Counsel’s argument that, because Judge Mayhew found that Petition for Variance to be moot, the Petition is not before the Board is rather silly.

concept plan, because, as he said, he does not know what size house will be or what amount of impervious surface there will be. He did not know what will be submitted to DEPS or what that department might approve or not approve in terms of stormwater management. He acknowledged that the submission of a stormwater management plan, and DEPS's comments on it, may actually result in changes to the site plan.⁵ No reason was offered why more information regarding the house itself and or proposed stormwater management could not be provided. When asked about this, Mr. Doak's only response was that these issues would be addressed during the permitting process. That is little solace to Protestants and not sufficient, as a matter of law, to meet Mr. Kestner's burden under 304.1.

There was considerable discussion at the hearing about sections 304.2 through 304.7. Mr. Doak described the procedure in 304.2 *et seq.* as not applicable here because Mr. Kestner opted instead to file a petition for special hearing rather than submit the building permit application and plans called for in those sections. Mr. Doak also suggested that, even if that procedure was followed, it would not provide the community with more detail about the proposed house other than aspects of its design. That is not true. Under, 304.2B.1 and .2, the applications and plans that are submitted are evaluated based on "new building size, lot coverage, building orientation and location on the lot" as well as "height," "bulk," and "massing."

The point is that all of this information could have been provided at the hearing in this case and would have been provided if Mr. Kestner had proceeded under section

⁵ Mr. Doak stated that the Planning Office and DEPS supported the project. The Planning Office's comment is in the record, but DEPS's comment, if it exists, is not. That these agencies signed off on this proposal, if in fact they did, is troubling given the lack of detail that is provided.

304.2 *et seq.* The fact that Mr. Kestner may have had the right to file a petition for special hearing instead, as Mr. Doak claims, is not an excuse for failing to provide this information at the hearing nor an excuse for failing to meet his burden of proof.

B. Evidence Regarding Other Homes Constructed In The Community Does Not Remotely Support Mr. Kestner's Position

During opening remarks, counsel for Mr. Kestner stated that “clearly over the last 20 plus years, there have been many many cases brought to the Board for approval of undersized lots, many of them waterfront” and posited that “the fundamental question today is for the Board was whether [Mr. Kestner] should be allowed to build on their own lot just as the others were able to build on their lots.” Mr. Doak likewise asserted several times during the hearing that there are “dozens and dozens of lots in the community that are 50 feet wide” and “many, many, many 50 foot lots.” He testified that “we are building a house that is comparable and compatible with the area.”

These remarks by counsel and Mr. Doak grossly overstate the true state of affairs in the Twin River Beach community. The evidence introduced at the hearing does not remotely support such hyperbole.⁶

⁶ Protestants continue to maintain that any and all evidence regarding other houses in the community, or cases involving other houses, is irrelevant and should not be considered. To the extent the Board does consider such evidence, it does not remotely support Mr. Kestner's position.

**1. Petitioner's Exhibit 8 and 9A-D (Other cases
"approving" undersized lots)**

Petitioner's Exhibit 8 is a My Neighborhood Map identifying, in yellow highlighting, six properties in Twin River Beach where undersized lots were approved. Petitioner's Exhibits 9A-D are the files from four of the six cases.⁷

The six cases are easily distinguishable. As Mr. Doak agreed, each of these cases are run-of-the-mill variance cases; none of them involved section 304.1 nor any discussion of whether the petitioner owned sufficient adjoining property to meet width or area requirements. All of the cases were decided by the Zoning Commissioner, not by the Board of Appeals, and none of them involved any protestants or challenge to the relief sought.

Further, Petitioner's Exhibit 8 does not identify cases in which undersized lots were *denied*. One example is *In re: 13108 Cherwin*, Case nos.01-020 and 01-044-A. The file for this case is Protestants' Ex. 14. In that case, unlike those cited by Mr. Kestner, the petitioners sought approval under section 304.1 for the construction of two houses on four 25-foot lots in place of a single residence that had fallen into disrepair and had been razed. The Zoning Commissioner denied the petition on the grounds that the property had been used as 100-foot wide lot for years and because the size of the lots was not consistent with the neighborhood.

Notably, the Zoning Commissioner, who had visited the site, observed:

I visited the site subsequent to the hearing. Suffice it to say that the housing stock in this neighborhood is not uniform; that is, there are some large houses on bigger lots as well as several houses on smaller lots.... My site inspection is persuasive to a finding that the

⁷ Petitioner's Exhibit 9 does not include two of the six cases. The two missing cases were introduced by Protestants as their Exhibits 12 and 13.

granting of the relief would result in two building lots that are inconsistent with the surrounding neighborhood. Generally, although there are indeed some smaller lots in this community, my site inspection was persuasive as to a finding that most of the lots are larger....

(Prots' Ex. 14, p. 3).⁸

2. *Petitioner's Exhibit 11, 12 and 13 (Protestants who allegedly built houses on undersized lots)*

Counsel for Mr. Kestner introduced Petitioner's Exhibits 11, 12 and 13 for the apparent purpose of showing that 13 of the 40 community members who signed the petition opposing the requested relief have constructed homes on 50-foot lots. These exhibits mean little, if anything.

First, Mr. Doak did not consider when the homes were constructed, which is important because if a home was constructed before the zoning regulations were enacted in 1955, that home would be a *legal* nonconforming structure and approval under 304.1 would be unnecessary. Based on SDAT information, at least four of the 13 homes were constructed prior to 1955. (Prots' Ex. 16; *see also* Prots' Ex. 15 (pink highlighted properties)).

Second, Mr. Doak did not know or consider whether the homes had been newly constructed on empty lots or were rebuilds of an already existing house. This is important because reconstruction of an existing house may be permitted without seeking relief under 304.1. *See* BCZR 104.1 (continuance of nonconformance); 104.2 (restoration of damaged or destroyed structures); 104.3 (limit on extension of nonconforming structures and uses). On this point, Ruth Hauf, who has lived in the

⁸ This description of Twin River Beach, of course, contrasts starkly with Mr. Doak's and counsel's descriptions of it.

community for 47 years, testified that of the relatively few homes that have been constructed on undersized lots, “99% of them” are rebuilds.⁹

3. The “new” house across the street

Mr. Doak made much of the fact that a house is being constructed right across the street from lots 155 and 156 on the waterfront. Mr. Doak had no information regarding the house, which is depicted in Petitioner’s Ex. 6G. However, as Mr. Dawson explained, the house is being reconstructed because trees fell on the house and shed that existed. (Pet’s Ex. 6G).

4. Mr. Dawson’s lots

Mr. Doak stated that the construction of Mr. Dawson’s house involved “exactly same scenario as the Kestner property.” This point is a bit difficult to understand. As is reflected in Petitioner’s Exhibit 12 and Protestants’ Ex. 1, Mr. Dawson’s house is constructed on 8 lots (151-154 and 167-170), and his neighbors behind him have homes on either 3 or 4 lots (164-66 and 161-163).

C. Lots 155 and 156 Merged With Lots 157-160

Merger is the joining of contiguous parcels under common ownership such that they are viewed as a single parcel for purposes of zoning. *Remes v. Montgomery Cnty.*, 387 Md. 52, 63-68 (2005). A finding of merger requires that the intent of the owner

⁹ In rebuttal, counsel recalled Mr. Doak who testified that 9 of the 13 houses identified in Petitioner’s Ex. 12 (Prots’ Ex. 15) were constructed after the BCZR was enacted. Mr. Doak based his testimony solely on information available on SDAT and acknowledged that he did not know whether the houses were new construction or reconstruction of an existing dwelling. In response to Mr. Doak’s rebuttal testimony, Protestants recalled Ms. Hauf, who testified that several of the 9 houses identified by Mr. Doak were, in fact, reconstruction of an old house. Ms. Hauf stated that she was aware of only three houses in the community that were new construction.

to merge the parcels be expressed, “though little evidence of that intent is required.” *Friends of the Ridge v. Baltimore Gas & Elec.*, 352 Md. 645, 653 (1999). The owner's intent “is to be derived from the facts,” and “[e]ach case must be examined on its own.” *Remes*, 387 Md. at 66, 68; *Friends of the Ridge*, 352 Md. at 659 (“An intent on the part of the owner to do so may be inferred from his conduct with respect to the land and the use which he makes of it.... Intent is a question of fact”).

One important way for a property owner to express this intent is by using one lot in service of one or more of the other lots or a structure on those lots. *Friends of the Ridge*, 352 Md. at 724; *Remes*, 387 Md. at 66 (“merger may be derived from the common owner's intent, as evidenced by ‘integrat[ing] or utiliz[ing] the contiguous lots in the service of a single structure or project....’”) (citations omitted).

Here, the evidence is undisputed that Mr. Kestner used lots 155 and 156 in conjunction with and in the service of lots 157-160 and the house on those lots. Mr. Dawson, Tom Brookes, and Ruth Hauf each testified that during the time Mr. Kestner lived at 6903 Gunder Road, he and his family used the area comprising lots 155 and 156 as part and parcel of his entire property and as one would typically use a backyard. He regularly hosted gatherings with friends and family, played ball there, constructed a swing set, horseshoe pit, and fire pit in that area, and otherwise used the lots as a normal backyard. Mr. Kestner took care of the area comprising lots 155 and 156, just as he did his entire yard, including cutting the grass and removing a tree.¹⁰ Notably,

¹⁰ Counsel for Mr. Kestner tried to make much of the following statement by the ALJ in the Opinion in the 2019 case: “Mr. Dawson[] testified that he believed these lots were merely the back yard of the house at 6903 Gunder and that there had not been any use of the lots, at least since he moved in.” (Op., p. 2). On cross-examination, Mr. Dawson explained that he what he actually stated at the hearing in 2019 was that no one had used the *since Mr. Kestner had moved out* [in November 2018]. This is an entirely plausible explanation from Mr. Dawson, a witness whose credibility cannot seriously be

the fence that currently exists separating parcels 155 and 156 from the other parcels was not there during the time that Mr. Kestner live there, but rather was constructed by the person to whom he sold lots 157-160. This evidence, again, was uncontroverted. Mr. Kestner did not testify nor did any other witness on his behalf other than Mr. Doak.¹¹

The fact that Mr. Kestner does not presently own lots 157-160 and is not presently using lots 155 and 156 in service of those lots does not mean, of course, that there was no merger. *See Mueller v. People's Counsel for Baltimore County*, 177 MD. App. 43, 66 (2007) (“[W]hen zoning merger occurs...one can't later sell off a parcel without correcting nonconformance issues and simply seek a variance. To hold otherwise would allow the original owner to “flip-flop between his or her adjacent parcels, thwarting the intent of the land development regulations and, perhaps more egregiously skirting [the] County's exacting requirements for subdivision”) (citations omitted); *see also Friends of the Ridge*, 352 Md. at 653-54 (“the doctrine of merger... generally prohibits the use of individual substandard parcels if contiguous parcels have

challenged. Again, counsel could have called Mr. Kestner to testify about his use of lots 155 and 156, but elected not to do so.

¹¹ During the hearing, counsel for Mr. Kestner suggested in his questioning that it was necessary for Mr. Kestner to have constructed a “permanent” structure on lots 155 and 156 in order for those lots to merge. There is no such requirement in the law. Counsel likely misreads *Mueller*. In *Mueller*, the Court held that there was no merger because Mr. Mueller had used the lot in question for recreational activities only, no permanent structures were erected on the lot (such as a swimming pool or driveway), the lot was not used in service of the other lot, and Mr. Mueller testified it was not his intent to merge the lots. 177 Md. App. at 101. The Court in *Mueller* did not state or imply that installation of a permanent structure is a prerequisite to merger. That may be one indicia of the property owner’s intent, but it is the intent that is determinative. Even if installation of a permanent structure were required for lot merger to occur (it is not), a fire pit, swing set, and two horseshoe pits are surely permanent in nature, perhaps as permanent as the driveway and swimming mentioned in *Mueller*.

been, *at any relevant time*, in the same ownership and at the time of that ownership, the combined parcel was not substandard”) (emphasis added).

Counsel for Mr. Kestner claims that lot merger is not properly before this Board because it was adjudicated in the 2019 case and thus barred by *res judicata*. Counsel is wrong.

First, the ALJ’s ruling on lot merger in the 2019 case was not a final decision. When Mr. Kestner appealed the 2019 case, even if he appealed only the ruling on the petition for variance and not the petition for special hearing, that case would have been heard *de novo* by the Board of Appeals. Had that case proceeded before the Board back then, Protestants undoubtedly would have been able to raise the lot merger issue. At a minimum, they would have been able to raise lot merger as a defense to the variance relief sought by Mr. Kestner. Instead of proceeding to the Board, however, Mr. Kestner requested a stay of the 2019 case, which was granted, and ultimately the 2019 case was consolidated with the 2020 case. Both cases were before the Board *de novo* at the recent hearing, as reflected in the Notice of Assignment and as acknowledged by counsel at the beginning of this hearing.¹² The failure of Protestants to appeal the ALJ’s decision in the 2019 case does not change anything in this regard.¹³

Second, regardless of whether the ALJ’s decision on lot merger in the 2019 case was a final decision or not, Protestants can still raise the lot merger issue as a

¹² Like the Board, the Planning Office also understood that the Petition for Variance was before the Board in this 2020 case, as reflected in that agency’s written comments.

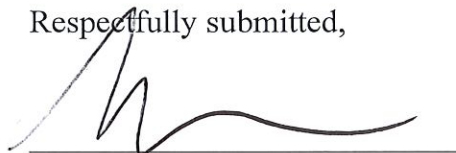
¹³ Notably, the ALJ found that the relief sought under 304.1 “could have and should been sought” in the 2019 case, but found that Mr. Kestner’s request was not barred by *res judicata* because the ruling in the 2019 case was still pending and therefore not a final judgment. (Op., fn. 1).

defense to the *new* relief sought in the 2020 case. The “claims” in the 2019 case and 2020 case are not identical, as is required for application of *res judicata*. See *Colandrea v. Wild Lake Comm. Ass’n*, 361 Md. 371, 388-89 (2000) (*res judicata* applies where “a proceeding between parties involves the same cause of action as a previous proceeding between the same parties”). Section 304.1, although similar in some respects, is not the same as the common law doctrine of lot merger. Even if the ALJ’s decision in 2019 was a final decision, Protestants may still raise lot merger as a defense to the relief sought in this 2020 case.

III. CONCLUSION

For the reasons stated, Protestants respectfully request that the Board of Appeals deny the relief requested by Petitioner.

Respectfully submitted,



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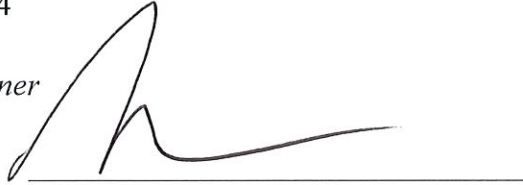
Counsel for Protestant/Appellant

CERTIFICATE OF SERVICE

I hereby certify that on 26th day of March 2021 a copy of the foregoing Post-Hearing Memorandum was mailed, *via* first-class mail, postage prepaid to:

Neil Lanzi
Wright, Constable & Skeen
102 W. Pennsylvania Avenue, Suite 406
Towson, MD 21204

Counsel for Petitioner

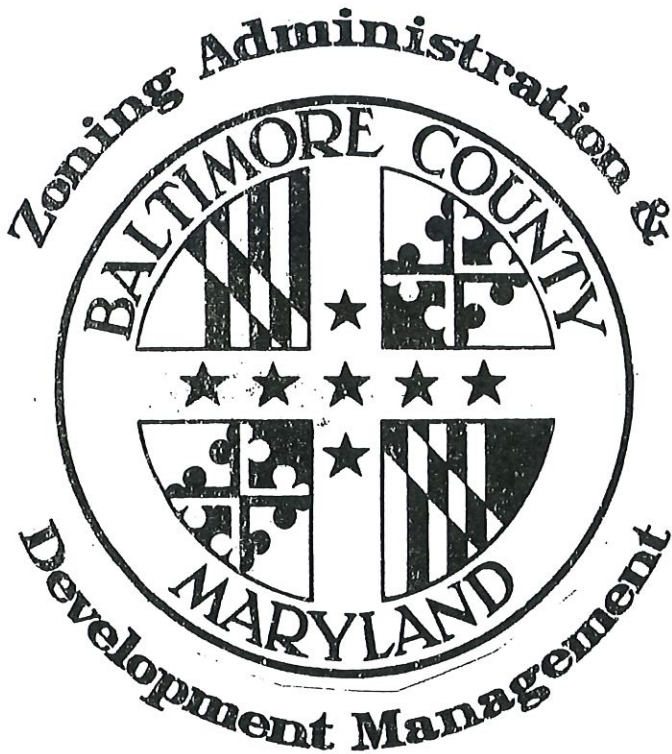
A handwritten signature in black ink, appearing to read 'Michael R. McCann', is written over a horizontal line. The signature is stylized with a large initial 'M' and a long horizontal stroke.

Michael R. McCann

Attachment

1992 Edition

Baltimore County Zoning Commissioner's Policy Manual



amended May 13, 1992

adopted May 21, 1991

Administrative Supplement to the Baltimore County Zoning Regulations

SECTION 304 -- USE OF UNDERSIZED SINGLE-FAMILY LOTS - Prior to the application for a building permit, the applicant must provide satisfactory documentation. The applicant may be required to furnish:

- a. a copy of the pre-1955 deed or subdivision plat;
- b. (no additions)
- c. contiguous ownership

It is obvious that Section 304 of the Baltimore County Zoning Regulations recognizes the existence of parcels of property that did not meet the minimum lot sizes mandated at the time the minimum lot size regulations were passed. To do otherwise would have the effect of rendering such undersized lots useless, and such legislation would be unconstitutional.

1. Section 304 B.C.Z.R., however, is silent as to when contiguous ownership would serve as a bar to its implementation, i.e., contiguous ownership in existence only at the time this regulation was passed or contiguous ownership in existence at that time and at any time thereafter.
2. It is therefore important to consider the intent of the owner who attempts to invoke the applicability of Section 304 BCZR. Each situation must be judged individually by the particular facts and circumstances presented. If the intent to avoid the regulations is obvious, Section 304c. cannot be invoked and variances must be required. An obvious method used is called "checkerboarding". The owner of a tract of land consisting of undersized lots makes conveyances of certain lots in order to create a pattern of ownership which qualifies each parcel as an undersized lot in a single and separate ownership, thereby avoiding the necessity of public hearing and notice for a variance. Often this is done by transferring title to members of the owner's family or to his business associates, e.g., to officers of the corporation which purchased the tract. Another method is to sell adjoining undersized lots which were recently purchased to individual, bona fide buyers. This would permit the new owner of a single undersized lot to build without a variance, where such permission would not have been granted to the owner of the entire tract.
3. If a single owner of contiguous undersized lots has purchased the property in good faith and without any intent to avoid the area requirements, 304c. may be used to allow the owner to build pursuant thereto. Good faith also must be determined by the facts and circumstances of each situation, but such factors as dates of purchase of the parcels, the purpose of the purchase, the intent of the purchase, can be utilized to so determine. This office has traditionally applied the "six year rule" to determine good faith, and that rule shall be one criteria to be used. The rule holds that if the single owner of an undersized lot contiguous to another parcel owned by him has transferred ownership of one to another, 304c. would apply if such new ownership has been held for a period of at least six years. This rule shall not preclude exceptions where it is clear, and equitable, that single ownership of contiguous property was not intended to avoid area requirements.
4. Ownership Information Including:
 - (i) a property tax computer printout for all adjacent properties, in addition to the subject property;
 - (ii) copies of the deeds for all adjacent properties, in addition to the subject property; and
 - (iii) a notarized affidavit stating that the applicant has had no financial interests for the prior six years in any adjacent properties.

Interpretation: The Zoning Commissioner retains the right Section 500.6 B.C.Z.R. to interpret whether the spirit and intent of these Regulations are being adhered to on a case-by-case basis (see Section 101 - Ownership Z.C.P.M., Page 1-23)

Board of Appeals

Exhibit List

Case No.: 19-402-SPHA
2020-0090-SPHA

Case Name: In re Craig Kestner

Party: KESTNER

Date: 2/17/2021

| Exhibit No. | Description | ID Only |
|--------------------------------|---|---------|
| 1 | Zoning Plan 2/15/21 | |
| 2 | Twin River Subdivision | |
| 3 | Portion of the Plat | |
| 4 | Key Sheet for Exhibit Photo Exhibits for 5 | |
| 5A | Photos | |
| B | ↓ | |
| C | | |
| D | | |
| E | | |
| F | | |
| G | | |
| H | | |
| 6A | | Photos |
| B | ↓ | |
| C | | |
| VERIFIED BY: _____ DATE: _____ | | |

Board of Appeals

Exhibit List

Case No.: _____ Case Name: _____

Party: KESYNTA

Date: _____

| Exhibit No. | Description | ID Only |
|--------------------------------|------------------------------------|-------------------|
| 6D | | |
| E | | |
| F | | |
| G | | |
| H | | |
| | (see p.3 for 6I, 6J, 6K) | |
| 7A | Same as Ex 1 | |
| B | Plan from Kestner 1 | XXXX |
| C | Kestner 2 | |
| 8 | OTHER ZONING CASES MAP | |
| 9A | Documents related to Ex 8 and Ex 4 | |
| B | ↓ | |
| C | | |
| D | | |
| 10 | | Letter in Support |
| VERIFIED BY: _____ DATE: _____ | | |

IN THE MATTER OF:

Craig Kestner-Legal Owner, Petitioner

13217 Cherwin Avenue
Case No. 2020-0090-SPHA
Case No. 19-402-SPHA

Petitioner's Exhibit List:

- Exhibit No. 1 – Zoning Plan, February 15, 2021
- Exhibit No. 2 – PB 9/33 – Twin River Subdivision
- Exhibit No. 3 – PB 9/33 – Portion of the Plat
- Exhibit No. 4 – Key Sheet for Exhibit Photos
- Exhibit No. 5 A-H – Exhibit Photos
- Exhibit No. 6 A-K – Additional Photographs Current
- Exhibit No. 7 A, B and C Site Plans Reflecting Explanation of Petition Revisions
- Exhibit No. 8 – Map Showing Cases Granted
- Exhibit No. 9 A-D - Similar Cases
- Exhibit No. 10 - Letter in Support

IN THE MATTER OF:

Craig Kestner-Legal Owner, Petitioner

13217 Cherwin Avenue
Case No. 2020-0090-SPHA
Case No. 19-402-SPHA

Petitioner's Supplemental Exhibit List:

Exhibit No. 11 – List of Properties Reviewed
Exhibit No. 12 – GIS Map Showing Lots Reviewed
Exhibit No. 13 – Record Plats Showing Lots Reviewed

GENERAL SITE INFORMATION

1. Ownership: Craig Kessler
13015 Eastern Avenue Baltimore, MD 21220
2. Address: 13217 Cherwin Avenue
3. Deed references: SM 34935v 437
Lots 155 & 157 - Section A Twin River Beach PD 9733
4. Area: 0.068 sq ft (0.138 acre) Total (per SDAT)
5. Tax Map / Parcel / Lot / Tax account #: 84 / 43 / 155/ 15-22-350392
Tax Map / Parcel / Lot / Tax account #: 84 / 43 / 157/ 15-22-350391
6. Election District: 15 Councilmanic District: 6
ADC Map: 4583C10 GIS Use: 084A1 Position sheet: 31NL49
7. The boundary shown herein is from the deed recorded in the Land Records of Baltimore County. All other information shown herein was taken from Baltimore County GIS files 084A1 and the information provided by Baltimore County on the internet.
8. Improvements: Vacant

OFFICE OF ZONING

Zoning: DR 5.5

Zoning History: #2019-0409-SPHA
Special Hearing: granted
Variances: none

Zoning History: #2020-0050-SPHA
Special Hearing: granted
Variances: none

DR 5.5 Setbacks for Residential Buildings

Front: 40 feet from the street right of way
Side: 10 feet from property line
Rear: 30 feet from property line

ENVIRONMENTAL IMPACT

Watershed: Bird River

1. A future dwelling will be served by public water and sewer.
2. There are no underground storage tanks on the subject property.
3. The subject property is in the Chesapeake Bay Critical Area.
4. The subject property is located in flood plain Zone AE per FIRM Panel 2401162315 G.

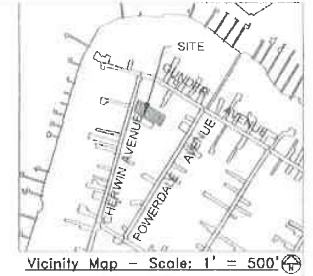
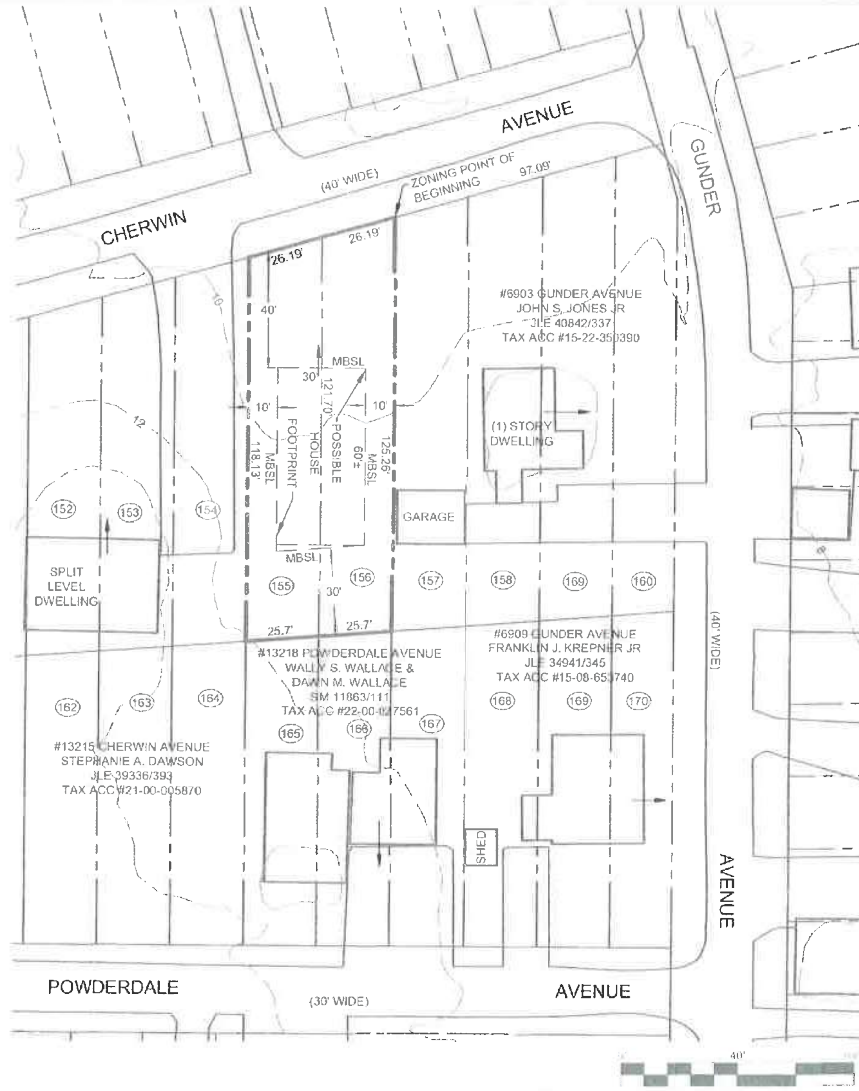
OFFICE OF PLANNING

Regional Planning District: Woodlark District Code: 322

1. The subject property is not in a historic district.

PROPOSED DEVELOPMENT

For comments or single family dwelling see the subject file.

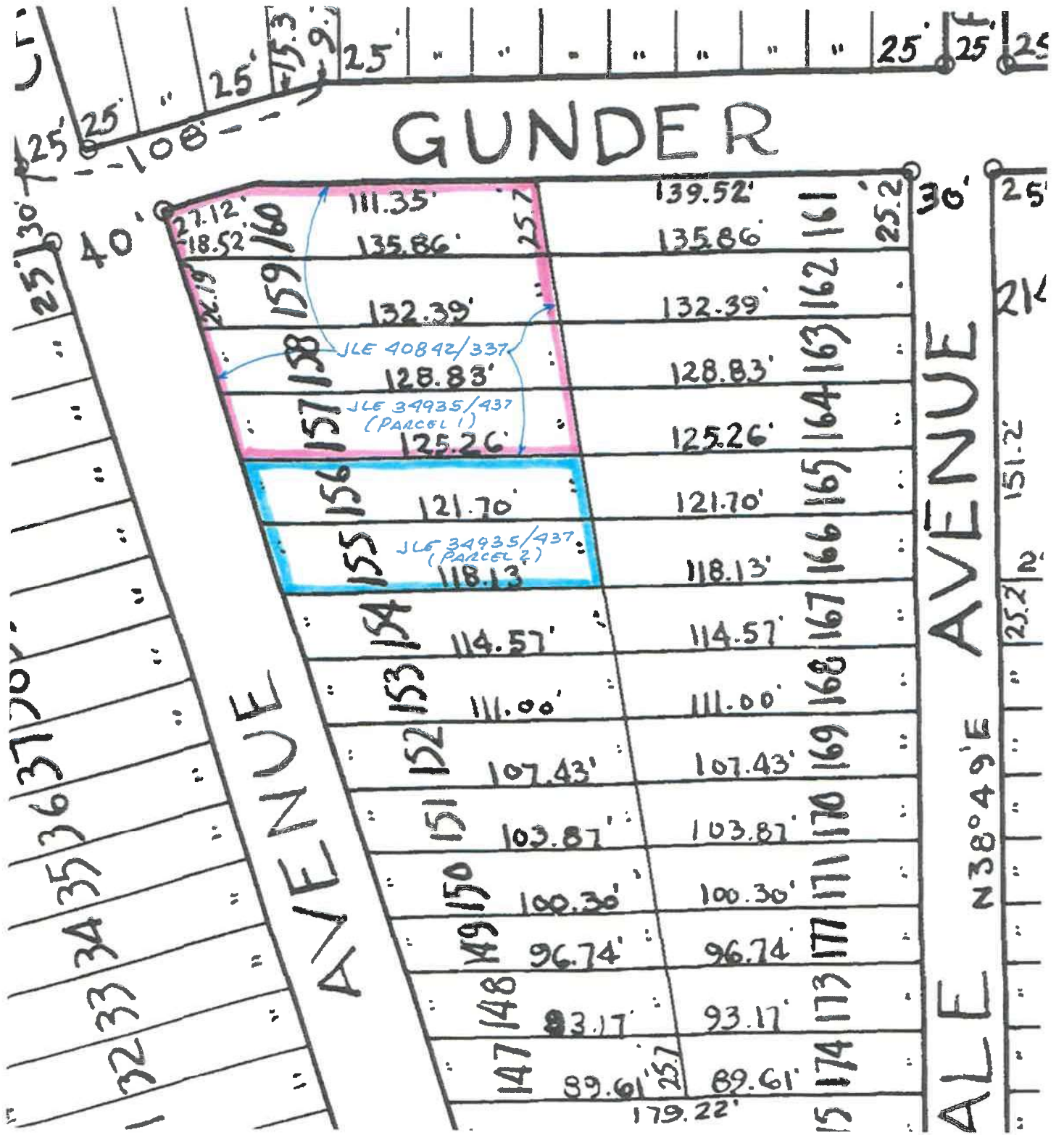


Bruce E. Doak Consulting, LLC
Land Use Expert and Surveyor
3831 Belair Schoolhouse Road
Problems, MD 21058
o 443-900-5525 m 410-414-4500
bdoak@brucedoakconsulting.com

PLAN TO ACCOMPANY
A ZONING PETITION
FOR
LOT 155 & LOT 156
"TWIN RIVER BEACH"
#13217 CHERWIN AVENUE
BALTIMORE COUNTY, MARYLAND
15th ELECTION DISTRICT 6th COUNCILMANIC DISTRICT

REVISION
10/11/20 AMENDMENTS REQUIRED
BY CASE #2020-0050-SPHA
ORDER

Date: 2/15/21
Scale: 1"=40'



PORTION OF PB 9/33 SHOWING SUBJECT LOTS



KEY SHEET FOR EXHIBIT PHOTOS



Petitioner's Exhibit No. 5 A



Petitioner's Exhibit No. 5 B



Petitioner's Exhibit No. 5 C



Petitioner's Exhibit No. 5 D



Petitioner's Exhibit No. 5 E



Petitioner's Exhibit No. 5 F



Petitioner's Exhibit No. 5 G



Petitioner's Exhibit No. 5 H

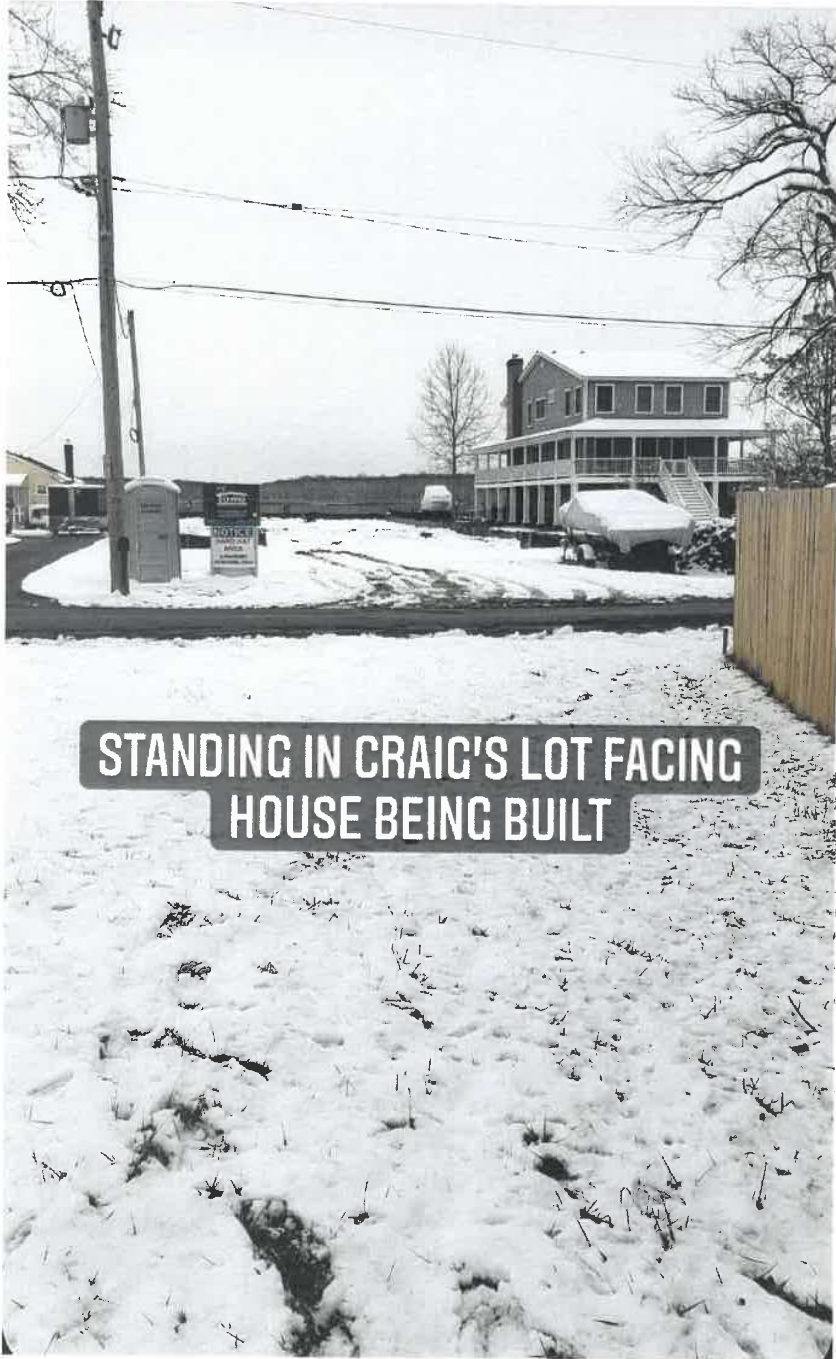


**STANDING IN BUILDERS LOT FACING
CRAIG'S LOT**

Petitioner's Exhibit 6A

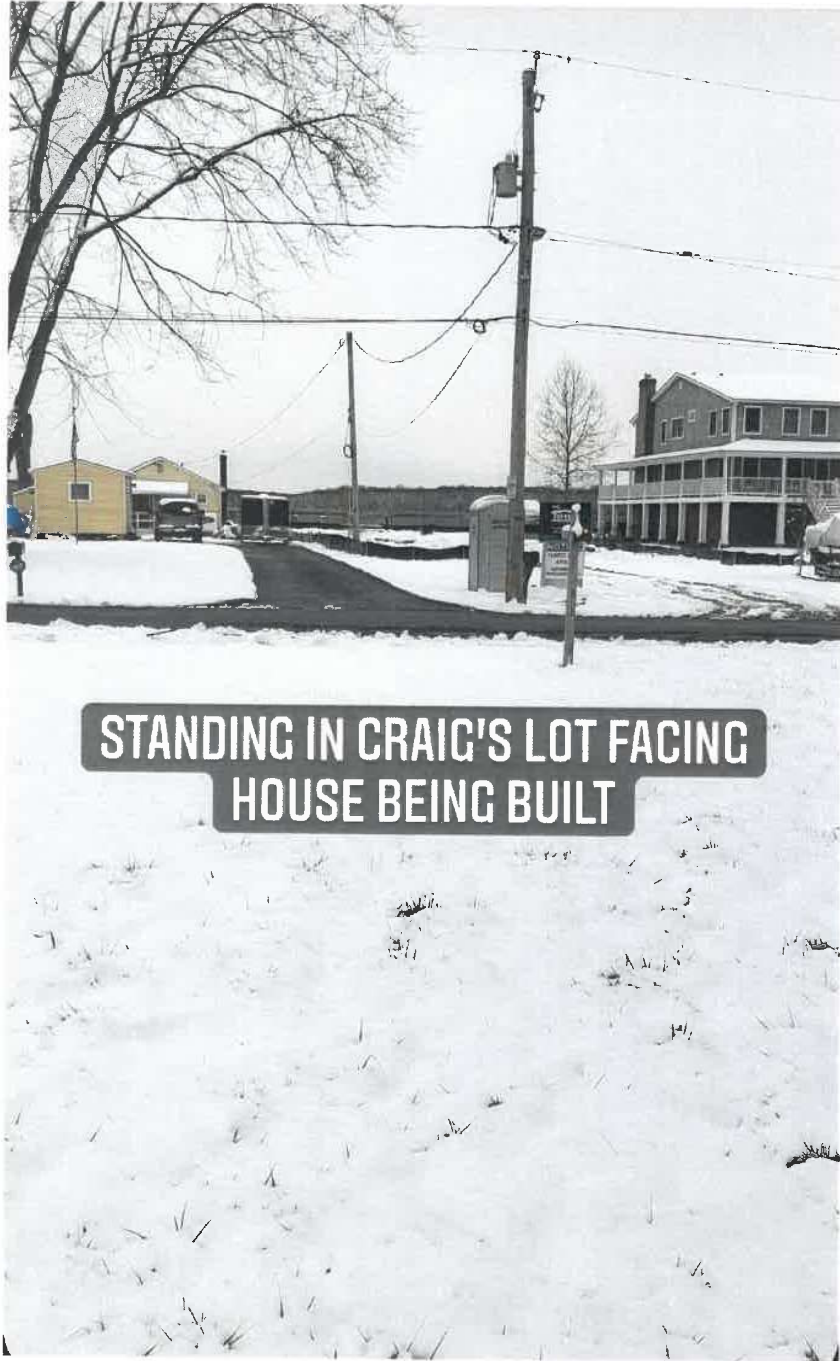


**STANDING IN BUILDERS LOT FACING
CRAIG'S LOT AND MR DAWSON'S LOT**



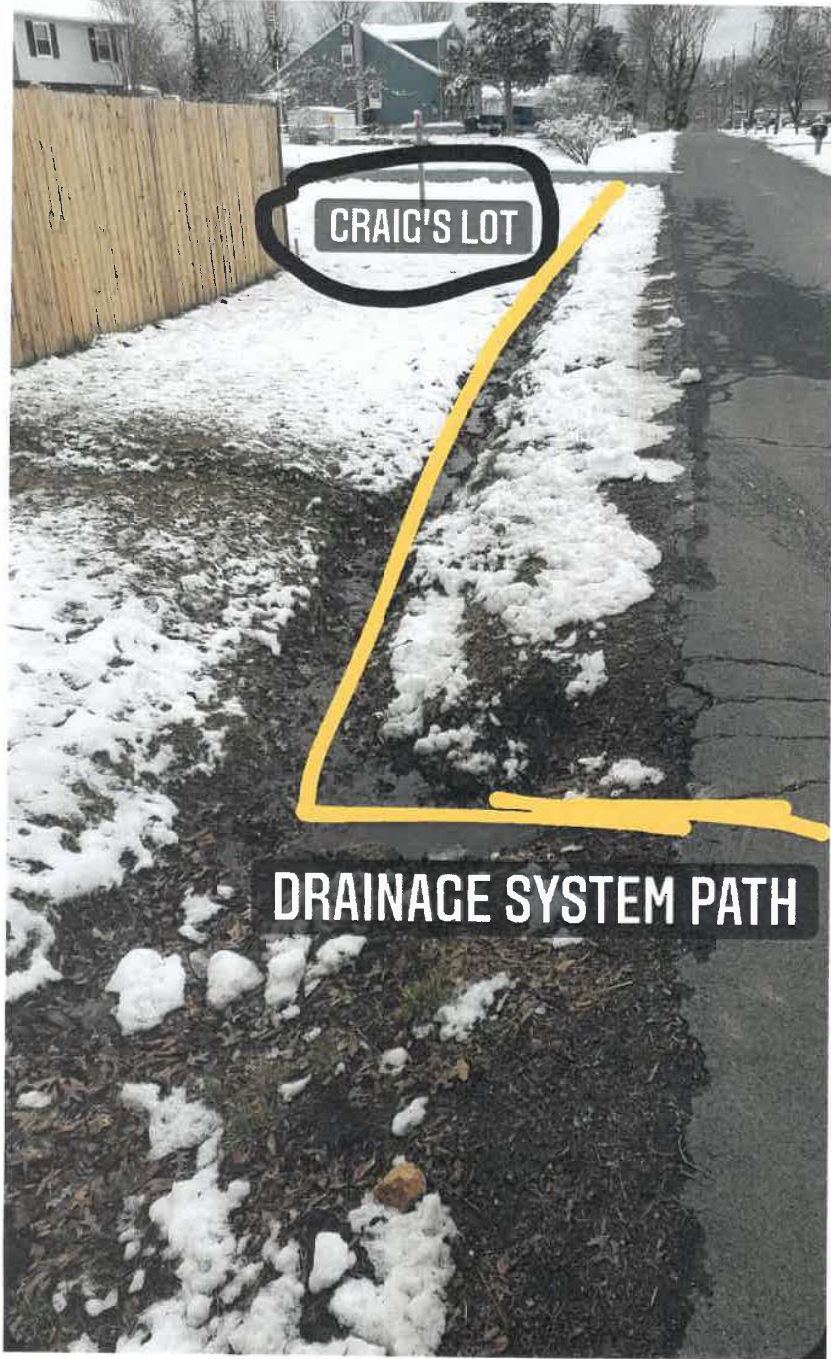
**STANDING IN CRAIG'S LOT FACING
HOUSE BEING BUILT**

6C



**STANDING IN CRAIG'S LOT FACING
HOUSE BEING BUILT**

6 D



DRAINAGE SYSTEM PATH

6E

**STANDING IN BUILDERS LOT FACING
ACROSS FROM CRAIG'S LOT**



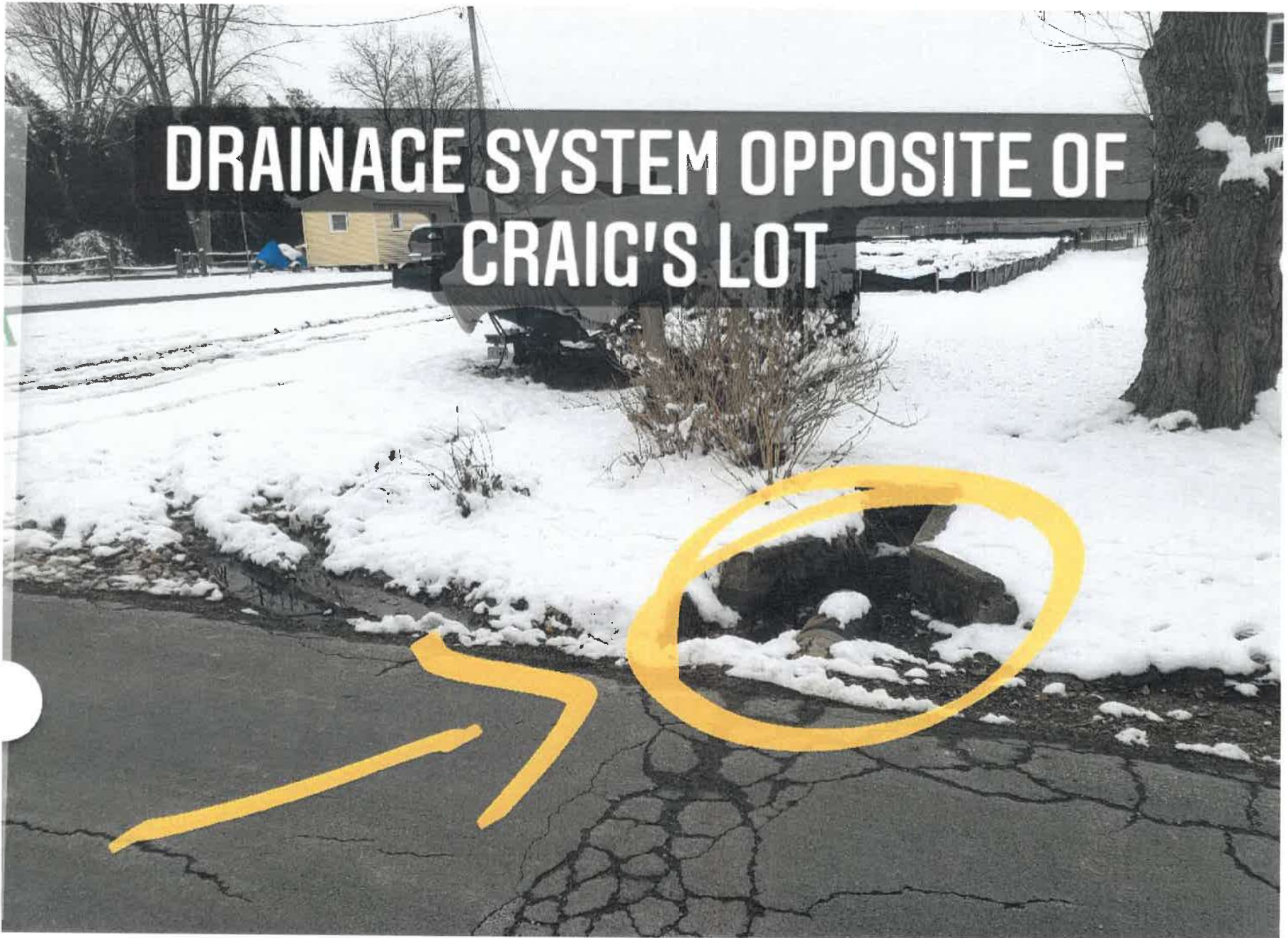
6F


**STANDING IN BUILDERS LOT FACING
ACROSS FROM CRAIG'S LOT**



66

DRAINAGE SYSTEM OPPOSITE OF CRAIG'S LOT



A close-up photograph of a drainage system in winter. A large, rusted metal pipe is partially covered in snow and is surrounded by dark, wet soil and scattered leaves. The pipe is set within a concrete drainage channel. The surrounding area is heavily snowed, with snow piled up on the concrete edges and on the ground around the pipe. The overall scene is dimly lit, suggesting an overcast day.

**CLOSE UP OF DRAINAGE SYSTEM
OPPOSITE OF CRAIG'S LOT**



**CLOSE UP OF DRAINAGE SYSTEM
OPPOSITE OF CRAIG'S LOT**



**STANDING IN BUILDERS LOT FACING
MR DAWSON'S HOUSE**

6 K

GENERAL SITE INFORMATION

1. Ownership: Craig Keshner
13915 Eastern Avenue Baltimore, MD 21220
2. Address: 13917 Cherwin Avenue
3. Deed references: SM 34935/437
4. Lots: 155 & 156 Section A Twin River Beach P18 91 33
5. Area: 6,189 sq. ft. (0.143 acre) Total (per SDA11)
6. Tax Map / Parcel / Lot / Tax account #: RA 143 11567 15 22 358392
Tax Map / Parcel / Lot / Tax account #: RA 143 11567 15 22 358391
7. Election District: 15 Councilmanic District: 6
ADC Map: 4B83C10 GIS file: 084A1 Position sheet: 31N149
8. The boundary shown herein is from the deed recorded in the Land Records of Baltimore County. All other information shown herein was taken from Baltimore County GIS files 084A1 and the information provided by Baltimore County on the internet.
9. Improvements: Vacant

OFFICE OF ZONING

Zoning: DR 5.5

Zoning History: #2015-0402-SPHA
Special Hearing: granted
Variances: denied

Zoning History: #2020-0030-SPHA
Special Hearing: granted
Variances: met

DR 5.5 Setbacks for Residential buildings

- Front: 40 feet from the street right of way
- Side: 10 feet from property line
- Rear: 30 feet from property line

ENVIRONMENTAL IMPACT

Watershed: Bird River

1. A future dwelling will be served by public water and sewer.
2. There are no underground storage tanks on the subject property.
3. The subject property is not in the Chesapeake Bay Critical Area.
4. The subject property is located in flood plain Zone AE per FIRM Panel 2400102119 (1).

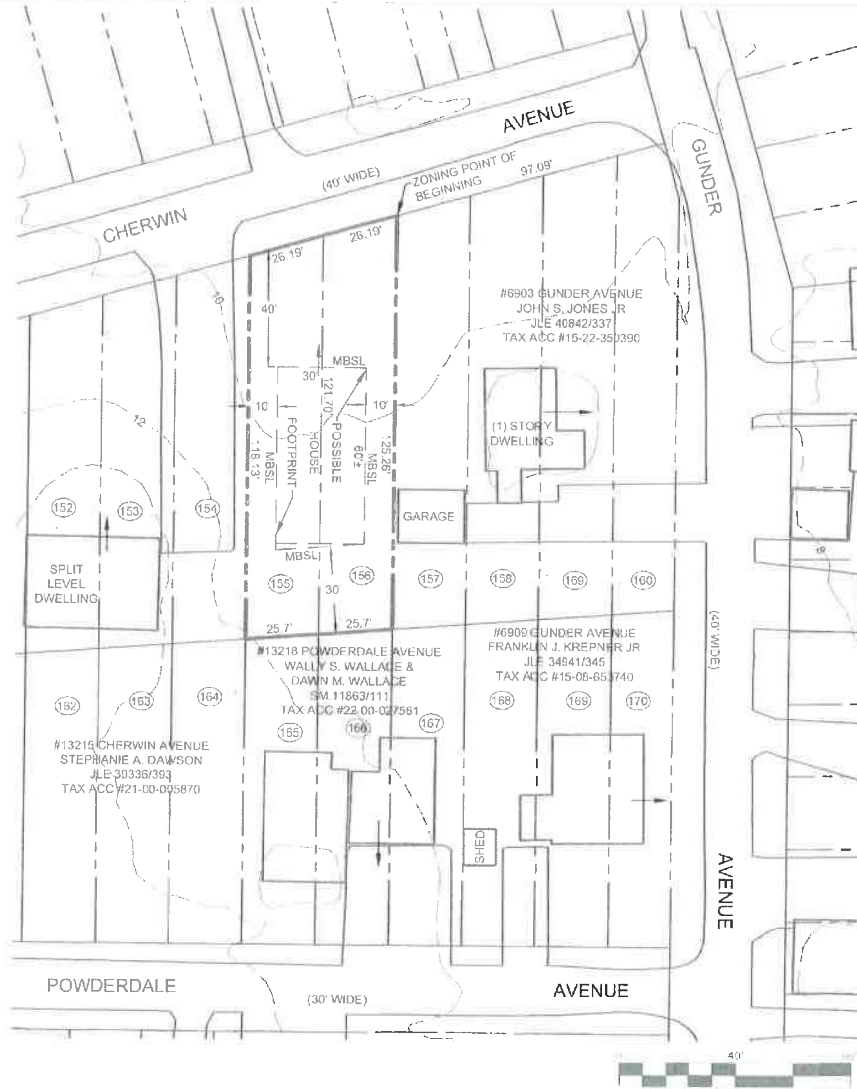
OFFICE OF PLANNING

Regional Planning District: Wreath District Code: 322

1. The subject property is not in a historic district.

PROPOSED DEVELOPMENT

To construct a single family dwelling on the subject lots

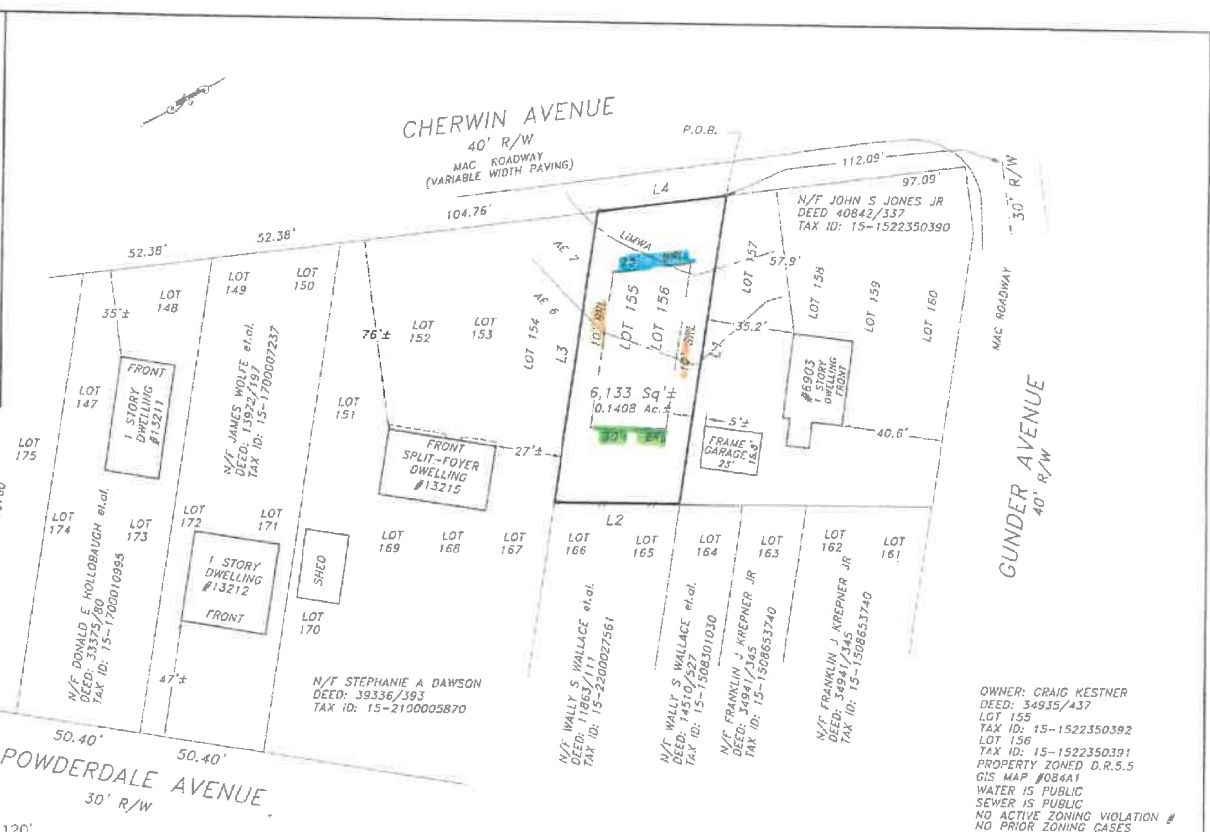
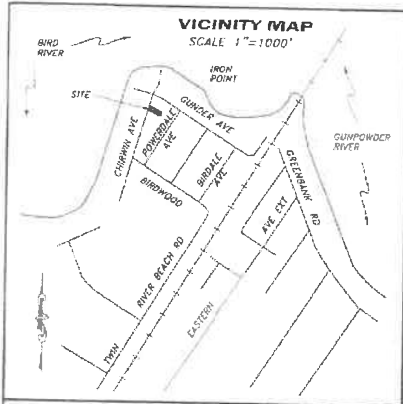


Bruce E. Doak Consulting, LLC
Land Use Experts and Surveyors
3801 Buhse Street/Bass Road
Preston, MD 21082
o 443-900-3535 m 410-619-6900
bdoak@bruceedoakconsulting.com

PLAN TO ACCOMPANY
A ZONING PETITION
FOR
LOT 155 & LOT 156
"TWIN RIVER BEACH"
#13217 CHERWIN AVENUE
BALTIMORE COUNTY, MARYLAND
15th ELECTION DISTRICT 6th COUNCILMANIC DISTRICT

Date: 2/15/21
Scale: 1"=40'

REVISION
10/1/20 AMENDMENTS REQUIRED
BY CASE #2020-0030-SPHA
ORDER



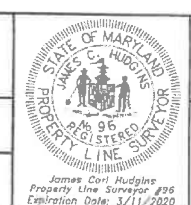
| LINE | BEARING | DISTANCE |
|------|---------------|----------|
| L1 | S 51°11'00" E | 125.26' |
| L2 | S 30°45'52" W | 50.90' |
| L3 | N 51°11'00" W | 118.13' |
| L4 | N 23°01'00" E | 52.38' |

NOTE: THE BEARINGS AND NORTH ARROW SHOWN HEREON ARE IN THE MERIDIAN OF THE PLAT ENTITLED SECTION A "TWIN RIVER BEACH" RECORDED AMONG THE LAND RECORDS OF BALTIMORE COUNTY, MARYLAND IN PLAT BOOK 9 FOLIO 33.

The purpose of this drawing is to locate and or set the corners of the property shown hereon, being known as:
 LOTS 155-156 as shown on the plat, entitled
 SECTION 6 "TWIN RIVER BEACH"
 recorded among the land records of Baltimore County, Maryland in
 Plat Book 9 folio 33

This is to certify that I either personally prepared or was in responsible charge over the preparation of this drawing and the surveying work reflected in it, all set forth in Regulation 12 of Chapter 09.13.06 of the Code of Maryland Annotated Regulations.

Subject property is shown in Zone AE on the FIRM Map of Baltimore County, Maryland on Community Panel Number 2400100315 G, effective 5/5/2014



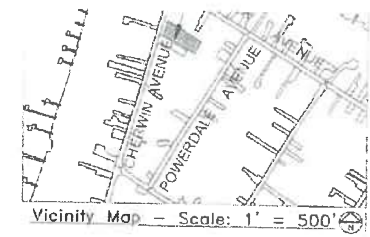
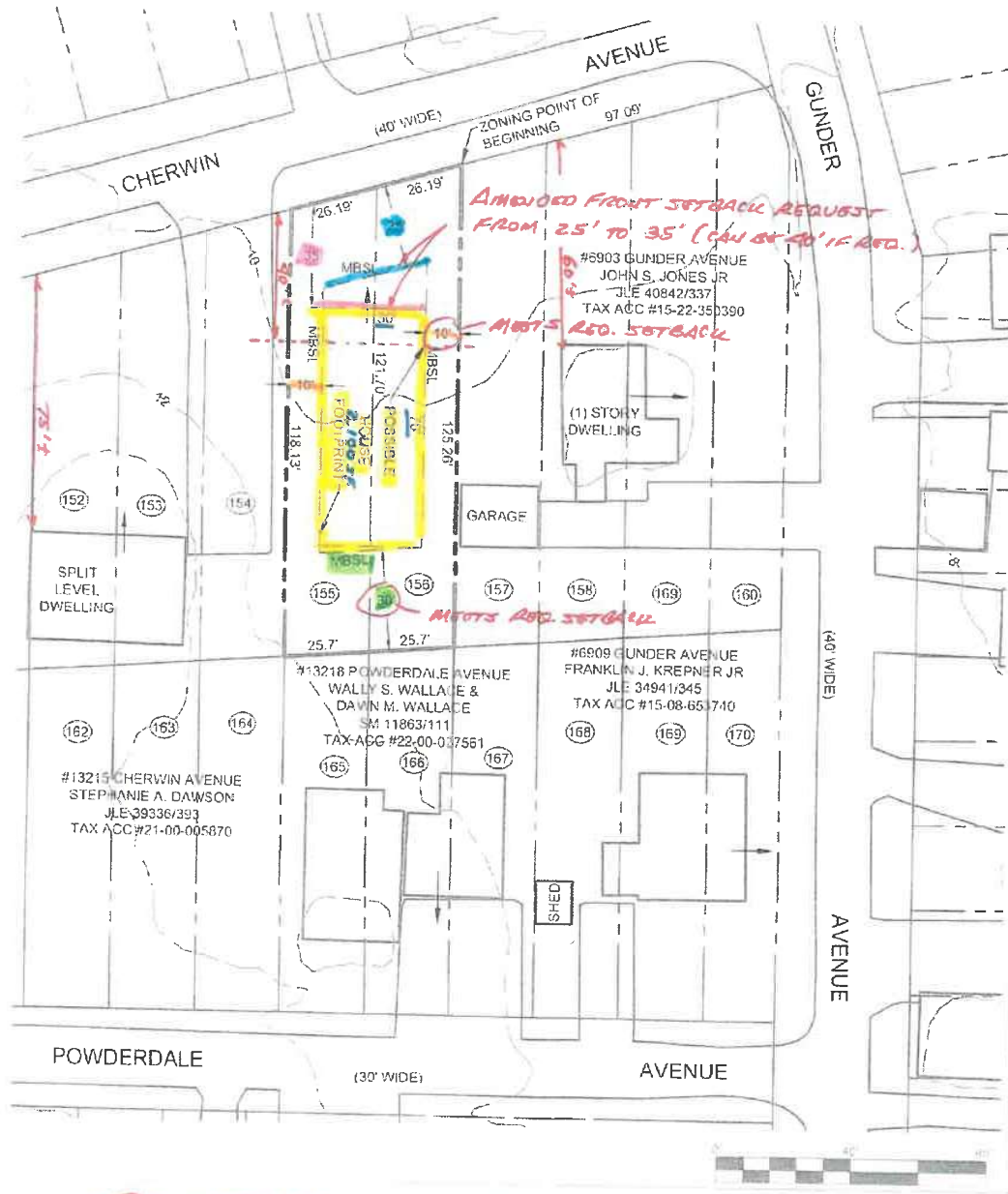
PLAN TO ACCOMPANY A PETITION FOR A VARIANCE
 CHERWIN AVENUE
 6th COUNCILMANIC DISTRICT
 15th ELECTION DISTRICT
 BALTIMORE COUNTY, MARYLAND

Scale: 1" = 40'

NTT Associates, Inc.
 16205 Old Frederick Rd.
 Mt. Airy, Maryland 21771
 Phone: (410) 442-2031
 Fax: (410) 442-1315
 www.nlttsurveyors.com

Date: 10/23/2018
 Field By: RMS/TOM
 Drawn By: RIK/SCK
 File No.: MISC 12964 A
 Page No.: 1 of 1

CASE # 2019-0402-SPHA PLAN



NOTES: 1/6 90' FRONT SETBACK = 455 FOOTPRINT 60' x 30' = 1800 SF

Bruce E. Doak Consulting, LLC
 Land Use Expert and Surveyor
 3801 Baker Schenckusa Road
 Frostburg, MD 21523
 P 410-299-5525 F 410-219-4926
 bdoak@bruceedoakconsulting.com

PLAN TO ACCOMPANY
 A ZONING PETITION
 FOR
 LOT 155 & LOT 156
 "TWIN RIVER BEACH"
 #13217 CHERWIN AVENUE
 BALTIMORE COUNTY, MARYLAND
 15th ELECTION DISTRICT 6th COUNCILMANIC DISTRICT

Date: 3/14/2020
 Scale: 1"=80'

CASE #2020-0090-SPHA PLAN - AMENDMENT EXPLAINED

Baltimore County - My Neighborhood



MAP SHOWING LOTS BEING GRANTED UNDER WIDTH

IN RE: PETITION FOR VARIANCE
S/S of Gundale Avenue, south of c/l
Of Gunder Avenue
15th Election District
6th Councilmanic District
(13205 Gundale Avenue)

Gerald H. and Barbara C. Kestner
Petitioner and Legal Owner

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
*
* CASE NO. 07-034-A

* * * * *

IN RE: PETITION FOR VARIANCE
S/S of Gundale Avenue, south of c/l
Of Gunder Avenue
15th Election District
6th Councilmanic District
(13207 Gundale Avenue)

Gerald H. and Barbara C. Kestner
Petitioner and Legal Owner

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
*
* CASE NO. 07-035-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner on September 19, 2006 as a Petition for Variance filed by the legal owners of the subject property, Gerald H. and Barbara C. Kestner. The Petitioners are requesting the following variance relief:

Case No. 07-034-A: This property is located at 13205 Gundale Avenue. The variance request is from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a new single family residential dwelling on a 50.4 foot lot in lieu of the required 55 feet with a contiguous owner.

Case No. 07-035-A: This property is located at 13207 Gundale Avenue. The variance request is from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations

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BY [Signature]

(B.C.Z.R.) to permit an existing house with a side yard setback of 9.6 feet in lieu of the required 10 feet and a lot width of 50.4 feet in lieu of the required 55 feet.

The properties were posted with Notice of Hearing on September 4, 2006, for 15 days prior to the hearing, in order to notify all interested citizens of the requested zoning relief and time and date of the public hearing. In addition, a Notice of Zoning hearing was published in "The Jeffersonian" newspaper on September 5, 2006 to notify any interested persons of the scheduled hearing date and relief requested.

Applicable Law

Section 307 of the B.C.Z.R. – *Variances*.

"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."

Zoning Advisory Committee Comments

The Zoning Advisory Committee (ZAC) comments are made part of the record of this case and contain the following highlights: ZAC comments were received from the Office of Planning dated August 29, 2006 which contains restrictions. ZAC comments

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Date 9-20-06
By [Signature]

were received from the Bureau of Development Plans Review dated August 4, 2006 which contains restrictions. Copies are attached hereto and made a part hereof.

Interested Persons

Appearing at the hearing on behalf of the variance request were Gerald H. and Barbara C. Kestner, Petitioners. Sue Zack, an adjacent property owner, appeared at the hearing in support of the requests. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case.

Testimony and Evidence

The subject properties are adjacent lots 50.4 foot wide lots zoned DR 5.5. Each lot is composed of two 25.2 foot wide lots which were created in the Twin River, Section A, subdivision which Ms. Zack opined was recorded in the land records in 1938. The lot at 13205 Gundale Road is composed of subdivision lot numbers 250 and 251 and is presently vacant. The lot at 13207 Gundale Road is composed of lot numbers 252 and 253 and is presently improved by the Petitioner's son's house which the Petitioner's believe was built in the 1940's. This house is 9.6 feet from the common property lot line and consequently does not meet the 10 foot setback required by the DR 5.5 regulations. The Petitioner opined that it would be impractical to remove 5 inches of house to meet the regulations. Both lots are 7560 square feet and meet the minimum lot area required by the regulations. See exhibit 1 which has had redline changes to reflect the ZAC comment from the Bureau of Development Plans Review regarding widening of the right of way of Gunvale Road.

The Petitioner's parent bought the subject properties in 1956 and the Petitioner lived in the house while growing up. He purchased the house from his parents as it was

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getting difficult for his parents to maintain the properties. The Petitioner proposes to build a house for another son on the vacant lot which would meet all setback regulations. They pointed out the they live close by the subject sites, that a brother owns the house at 13209 and Ms. Zack owns the house and lot directly behind the proposed house. The neighborhood is composed of older homes on 50 foot lots east of 13205 and newer homes sometimes on wider lots to the west of 13205. Ms. Zack mentioned that the newer homes are built on property which was wooded for much of the time the parties lived in this area. The Petitioners presented photographs of the vacant lot, the existing homes and houses in the area as exhibit 2. They also do not object to the conditions for approval prepared by the Planning Office or the Bureau of Development Plans Review.

In regard to zoning merger the Petitioner asserted that 13205 and 13207 are separately assessed and taxed and that the Petitioner's father always considered the lots separate and buildable especially when he got his tax bills in the mail. Other than cutting the grass the only use made of 13205 has been a driveway which the Petitioner constructed to make his father's entry onto Gundale Road easier than coming off 13207 directly. See photograph 2 A.

Ms. Zack, an adjacent property owner, testified in favor of the requests. She lives directly to the south of the property and would be most affected by the new house on this lot. She has lived in the neighborhood for 60 years and welcomed new residents. She noted that houses on the "older" section of the neighborhood are all one house on a 50 foot wide lot while those to the west in the newer section have larger lots at times. She supported the requests and did not think and new house as shown would change the

187
9-20-06
PB

pattern of development of the neighborhood. She indicated that the other neighbors knew of the request to build a new house on the property and had no objections.

Findings of Fact and Conclusions of Law

In regard to zoning merger I find the adjacent lots have not merged. While the Petitioners were unaware that proof of separate tax assessment would be helpful, I believe their testimony that the Petitioner's father always considered them separate especially when confronted with separate tax bills. I think the Petitioner's family's use of the vacant lot is miniscule towards showing that the lots had merged.

Considering all the testimony and evidence presented, I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. This subdivision and the subject lots were created much before the zoning was imposed on the area. The imposition of zoning on this property disproportionately impacts the subject property as compared to others in the zoning district.

I further find that strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. There is no other land available to widen the lots and it is impractical to reduce the size of the existing house to meet the side yard setbacks specified.

No increase in residential density beyond that otherwise allowable by the Zoning Regulations will occur as a result of granting this variance as the lot size for both meet the regulations.

Finally, I find this variance can be granted in strict harmony with the spirit and intent of said regulations, and in such manner as to grant relief without injury to the

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P3

public health, safety and general welfare. The pattern of development shown by the Petitioner is similar to this plan so there will be no change to the character of the neighborhood. Ms. Zack was very supportive of the requests and indicated the neighborhood supported the requests as well.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by the Petitioners, I find that the Petitioners' variance request should be granted.

THEREFORE, IT IS ORDERED, this 20th day of September, 2006, by this Deputy Zoning Commissioner, that variance relief for properties set forth as follows:

Case No. 07-034-A: This property is located at 13205 Gundale Avenue. The variance request is from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a single family residential dwelling on a 50.4 foot lot in lieu of the required 55 feet, with a contiguous owner is hereby GRANTED; and

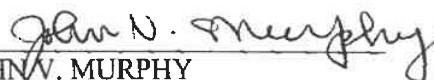
Case No. 07-035-A: This property is located at 13207 Gundale Avenue. The variance request is from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a side yard setback of 9.6 feet in lieu of the required 10 feet and a lot width of 50.4 feet in lieu of the required 55 feet is hereby GRANTED; both subject however to the following 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. Submit building elevations to the Office of Planning for review and approval prior to the issuance of any building permit. The proposed dwelling shall be compatible in size, exterior building materials, color and architectural detail as that of the existing dwellings in the area.

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9-20-06
P3

3. Provide landscaping along the public road, if consistent with the existing streetscape.
4. Show a future 40 foot wide right-of-way on the existing 30 foot right-of-way and adjust the setback accordingly.
5. When applying for building permit, the site plan filed 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
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

JVM:pz

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JVM
9-20-06
B



CBCA

Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at #13205 GUNDALE AVENUE

which is presently zoned DR 5.5

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)

1802.3.C.1; BC22, TO PERMIT A SINGLE FAMILY RESIDENTIAL DWELLING ON A ^{50.4} ft. LOT IN LIEU OF THE REQUIRED 55ft., WITH CONTIGUOUS OWNERSHIP.

of the Zoning Regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons: (indicate hardship or practical difficulty)

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):

GERALD H. KESTNER
Name - Type or Print

Signature

BARBARA C. KESTNER
Name - Type or Print

Signature

12913 EASTERN AVENUE - 410-335-5939
Address Telephone No.

BALTIMORE, MARYLAND 21220
City State Zip Code

Representative to be Contacted:

LINDA O'KEEFE
Name

523 PENNY LANE 410-666-5366
Address Telephone No.

COCKEYSVILLE, MD. 21030
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

UNAVAILABLE FOR HEARING

Case No. 07-034-A

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REV 9/15/98

9-20-04

Reviewed By

J. [Signature]

Date 7-25-06

m

ZONING DESCRIPTION

ZONING DESCRIPTION FOR # 13205 GUNDALE AVENUE

Beginning at a point on the south side of Gundale Avenue which is 30 feet wide at the distance of 415.0 feet south of the centerline of the nearest improved intersecting street: Gunder Avenue which is 30 feet wide. *Being Lot # 250 and 251, and Block , Section # A in the subdivision of Twin River Beach as recorded in Baltimore County Plat Book # 9, Folio # 33, containing 7, 560. Also known as # 13205 Gundale Avenue and located in the 15th Election District, 6th Councilman District.

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

034

No. 3399

DATE 7-25-06

ACCOUNT Fort-Cot-6150

AMOUNT \$ 65.00

RECEIVED FROM: O'Keefe

FOR: V.S. 13205 GUNDAL
Ave

DISTRIBUTION
WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

PAID RECEIPT

BUSINESS ACTUAL TIME DED
7/27/2006 7/25/2006 10:35:54 5
REG #005 WALTON HORN MED
RECEIPT & CREDIT 7/24/2006 OFCA
Dept 5 529 ZONING VERIFICATION
RE IN: 00000000
Recpt Tot 65.00
4130.00 - CK 65.00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

NOTICE OF ZONING HEARING

The Zoning Commissioner 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 # **07-034-A**

13205 Gurdale Avenue
Southside of Gurdale Avenue, 415 feet +/- south of centerline of Gurdale Avenue

15th Election District — 6th Councilmanic District
Legal Owner(s): Gerald H. & Barbara C. Kestner

Variance: to permit a single family residential dwelling on a 50.4-foot lot in lieu of the required 55 feet, with a contiguous ownership.

Hearing: Tuesday, September 19, 2006 at 10:00 a.m. in Room 407, County Courts Building, 401 Bostley Avenue, Towson 21204.

WILLIAM J. WISEMAN, III

Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-3868.

(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

JT 9/6/07 Sept. 5 108299

CERTIFICATE OF PUBLICATION

9/7/, 2006

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 9/5/, 2006.

- The Jeffersonian
- Arbutus Times
- Catonsville Times
- Towson Times
- Owings Mills Times
- NE Booster/Reporter
- North County News

J. Wilkins

LEGAL ADVERTISING

CERTIFICATE OF POSTING

ATTENTION: KRISTEN MATHHEWS

DATE: 9/5/06

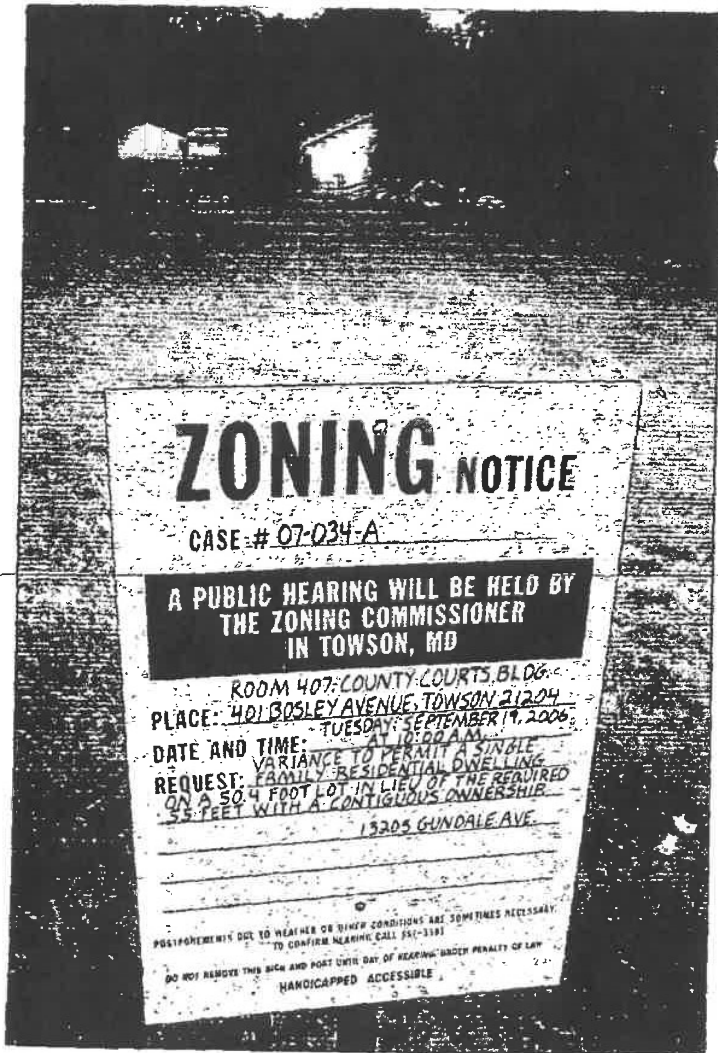
Case Number: 07-034-A

Petitioner/Developer: GERALD & BARBARA KESTNER

Date of Hearing (Closing): 09/19/06

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: 13205 GUNDALE AVENUE

The sign(s) were posted on: 9/04/06



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**



Baltimore County

*James T. Smith, Jr., County Executive
Timothy M. Korooco, Director*

Director's Office
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204
Tel: 410-887-3353 • Fax: 410-887-5708

August 3, 2006

NOTICE OF ZONING HEARING

The Zoning Commissioner 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: 07-034-A

13205 Gundale Avenue

Southside of Gundale Avenue, 415 feet +/- south of centerline of Gunder Avenue

15th Election District – 6th Councilmanic District

Legal Owners: Gerald H. & Barbara C. Kestner

Variance to permit a single family residential dwelling on a 50.4-foot lot in lieu of the required 55 feet, with a contiguous ownership.

Hearing: Tuesday, September 19, 2006 at 10:00 a.m. in Room 407, County Courts Building,
401 Bosley Avenue, Towson 21204

A handwritten signature in black ink that reads "Timothy Korooco".

Timothy Korooco
Director

TK:klm

C: Gerald & Barbara Kestner, 12913 Eastern Avenue, Baltimore 21220
Linda O'Keefe, 523 Penny Lane, Cockeysville 21030

- NOTES:** (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY MONDAY, SEPTEMBER 4, 2006.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

Visit the County's Website at www.baltimorecountyonline.info



TO: PATUXENT PUBLISHING COMPANY
Tuesday, September 5, 2006 Issue - Jeffersonian

Please forward billing to:

Gerald Kestner
12913 Eastern Avenue
Baltimore, MD 21220

410-335-7866

NOTICE OF ZONING HEARING

The Zoning Commissioner 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: 07-034-A

13205 Gundale Avenue

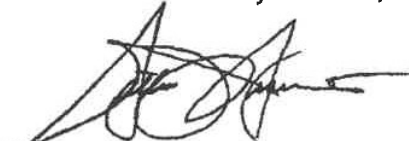
Southside of Gundale Avenue, 415 feet +/- south of centerline of Gunder Avenue

15th Election District – 6th Councilmanic District

Legal Owners: Gerald H. & Barbara C. Kestner

Variance to permit a single family residential dwelling on a 50.4-foot lot in lieu of the required 55 feet, with a contiguous ownership.

Hearing: Tuesday, September 19, 2006 at 10:00 a.m. in Room 407, County Courts Building,
401 Bosley Avenue, Towson 21204



WILLIAM J. WISEMAN III
ZONING COMMISSIONER FOR BALTIMORE COUNTY

- NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
- (2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

RE: PETITION FOR VARIANCE * BEFORE THE
 13205 Gundale Avenue; S/S Gundale *
 Avenue, 415' S c/line Gunder Avenue * ZONING COMMISSIONER
 15th Election & 6th Councilmanic Districts *
 Legal Owner(s): Gerald & Barbara Kestner * FOR
 Petitioner(s) * BALTIMORE COUNTY
 * 07-034-A

* * * * *

ENTRY OF APPEARANCE

Please enter the appearance of People's Counsel 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
Carole S. Demilio
 CAROLE S. DEMILIO
 Deputy People's Counsel
 Old Courthouse, Room 47
 400 Washington Avenue
 Towson, MD 21204
 (410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of August, 2006, a copy of the foregoing Entry of Appearance was mailed to, Linda O'Keefe, 523 Penny Lane, Cockeysville, MD 21030, Representative for Petitioner(s).

RECEIVED

AUG 03 2006

Per.....

Peter Max Zimmerman
 PETER MAX ZIMMERMAN
 People's Counsel for Baltimore County

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.

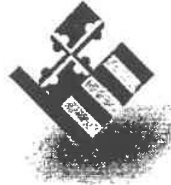
OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.

For Newspaper Advertising:

Item Number or Case Number: 07-034-A
Petitioner: GERALD KESTNER
Address or Location: #1320 ~~B~~ GUNDALE AVENUE (#13205)

PLEASE FORWARD ADVERTISING BILL TO:

Name: GERALD KESTNER
Address: 12913 EASTERN AVENUE
BALTO., MD. 21220
Telephone Number: 410-335-7866



BALTIMORE COUNTY

M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, *Director*
Department of Permits and
Development Management

September 13, 2006

Gerald H. Kestner
Barbara C. Kestner
12913 Eastern Avenue
Baltimore, MD 21220

Dear Mr. and Mrs. Kestner:

RE: Case Number: 07-034-A, 13205 Gundale Avenue

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on July 25, 2006 .

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:amf

Enclosures

c: People's Counsel
Linda O'Keefe 523 Penny Lane Cockeysville 21030

John
9/19

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits and
Development Management

DATE: August 29, 2006

FROM: Arnold F. 'Pat' Keller, III
Director, Office of Planning

SUBJECT: Zoning Advisory Petition(s): Case(s) 7-034 and 7-035

The Office of Planning has reviewed the subject request and has determined that the petitioner owns sufficient adjoining land to conform to the minimum width and area requirements and therefore does not meet the standards stated in Section 304.1.C of the BCZR. However, there appears to be several existing undersized lots in the neighborhood. As such, this office does not oppose the petitioner's request.

If the petitioner's request is granted, the following conditions shall apply to the proposed dwelling:

1. Submit building elevations to this office for review and approval prior to the issuance any building permit. The proposed dwelling shall be compatible in size, exterior building materials, color, and architectural detail as that of the existing dwellings in the area.
2. Provide landscaping along the public road, if consistent with the existing streetscape.

For further questions or additional information concerning the matters stated herein, please contact Laurie Hay with the Office of Planning at 410-887-3480.

Prepared By: Candis Murray

Division Chief: John Taylor
CM/LL

RECEIVED

AUG 31 2006

ZONING COMMISSIONER

NOT RECORDED FOR FILING
9-20-06
187
188

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits & Development
Management

DATE: August 4, 2006

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

SUBJECT: Zoning Advisory Committee Meeting
For August 7, 2006
Item No. 034

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

The minimum right-of-way width for Gundale Avenue is 40-feet. Show a future 40-foot-wide right-of-way centered on the existing 30-foot right-of-way and adjust the setback accordingly.

DAK:CEN:clw
cc: File
ZAC-ITEM NO 034-08012006.doc

RECEIVED FOR FILES

9-20-06

13



BALTIMORE COUNTY

MARYLAND

JAMES T. SMITH, JR.
County Executive

WILLIAM J. WISEMAN III
Zoning Commissioner

September 20, 2006

GERALD H. AND BARBARA C. KESTNER
12913 EASTERN AVENUE
BALTIMORE MD 21220

Re: Petition for Variance
Case No. 07-034-A and 07-035-A
Property: 13205 Gundale Avenue

Dear Mr. and Mrs. Kestner:

Enclosed please find the decision rendered in the above-captioned case. The petition for 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
Deputy Zoning Commissioner

JVM:pz

Enclosure

c: Linda O'Keefe, 523 Penny Lane, Cockeysville MD 21030
Sue Zack, 13204 Birdale Avenue, Baltimore MD 21220

RECEIVED FOR FILES
9-20-06
B3

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

August 1, 2006

ATTENTION: Zoning Review Planners

Distribution Meeting of: July 31, 2006

Item No.: 492, 015, 024, 025, 027, 028, 029, 030, 032, 033, 034 and 035.

Pursuant to your request, the referenced plan(s) have been reviewed by the Fire Marshal's Office 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
Fire Marshal's Office
410-887-4880
MS-1102F

Visit the County's Website at www.baltimorecountyonline.info



Printed on Recycled Paper



Robert L. Ehrlich, Jr., Governor
Michael S. Steele, Lt. Governor

Driven to Excel
State Highway
Administration

Robert L. Flanagan, Secretary
Neil J. Pedersen, Administrator

Maryland Department of Transportation

Date: 8-1-06

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

RE: Baltimore County
Item No. 034 JCM

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.

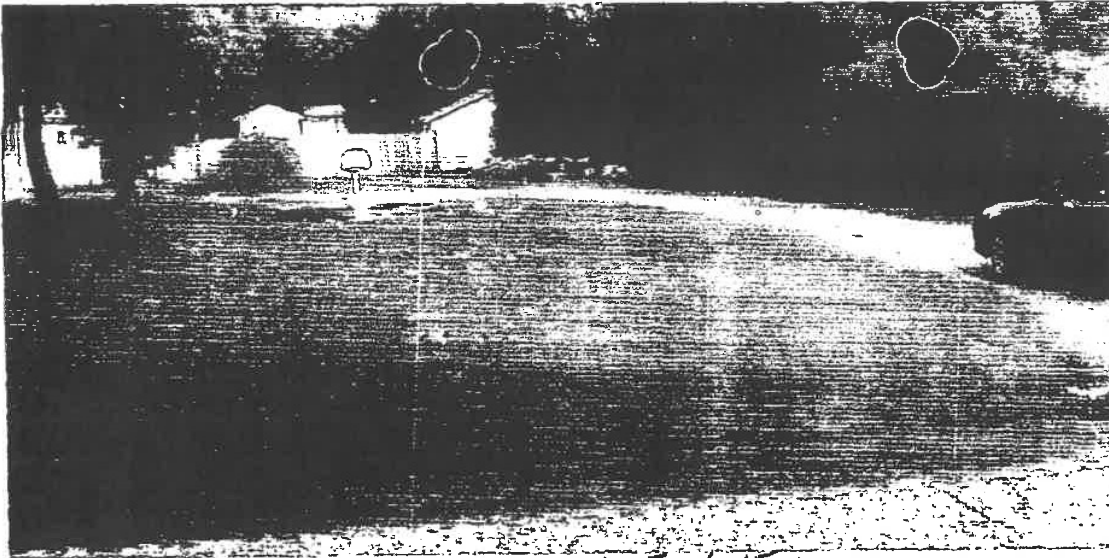
Should you have any questions regarding this matter, please contact Larry Gredlein at 410-545-5606 or by E-mail at lgredlein@sha.state.md.us.

Very truly yours,

Steven D. Foster, Chief
Engineering Access Permits Division

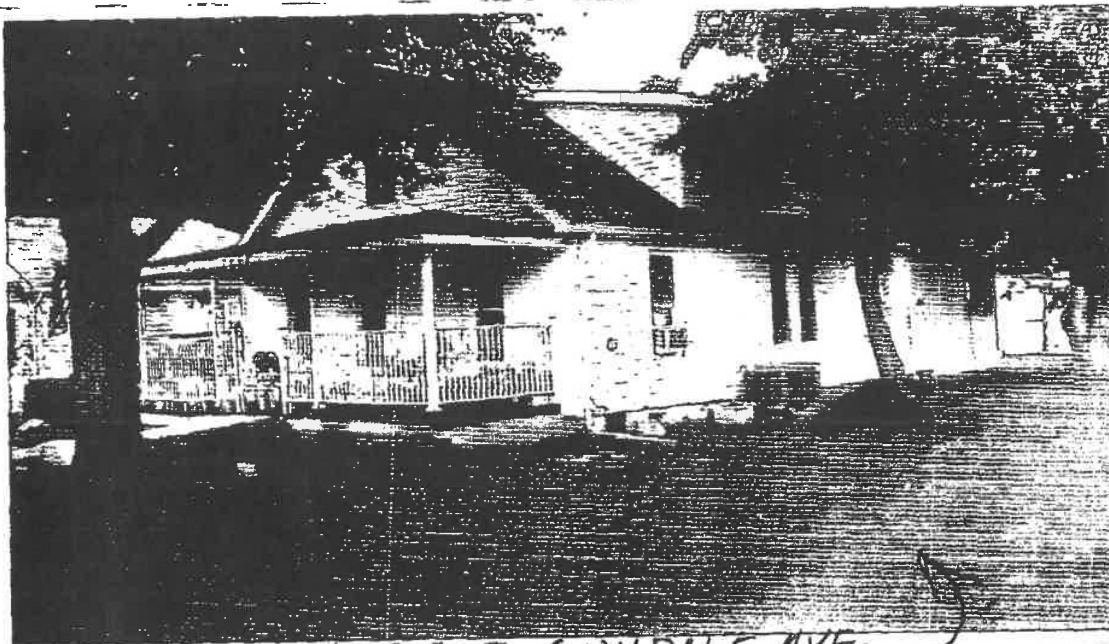
| Zoning Classification | Minimum Net Lot Area per Dwlling Unit (sq. ft.) | Minimum Lot Width (feet) | Minimum Front Yard Depth (feet) | Minimum Width of Individual Side Yard (feet) | Minimum Sum of Side Yard Widths (feet) | Minimum Rear Yard Depth (feet) |
|-----------------------|---|--------------------------|---------------------------------|--|--|--------------------------------|
| 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.
- D. An amendment to any part of a development plan involving only property subject to the provisions of this subsection shall not be subject to the provisions of Section 1B01.3.A.7.



#13205 GUNDALE AVE

2A



#13207 GUNDALE AVE.

2B



2C



#13204 BIRDALE AVE.

ZACK

2D



#13206 - BIRDALE AVE.

2E



#6916 BIRDWOOD AVE

Newer house #6920 BIRDWOOD AVE.

2F

Baltimore County Government
Fire Department
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RAY 23, 1992

02010074500

Arnold Jablon
Director
Zoning Administration and
Development Management
Baltimore County Office Building
Towson, MD 21286

RE: Property Owner: RONALD M. BAIR
Location: 13211 BIRDALE AVENUE
1200 No. 451 (300) Zoning Agenda: RAY 11, 1992

Re: The Zoning Enforcement Bureau has no comments at this time.

Noted and
Approved
Special Inspection Division

RECEIVED
JUL 24 1992
ZONING OFFICE

Department of Recreation and Parks
Development Review Committee
Authorized Signature: _____ Date: 7/23/92

Project Name: Harbor Realty Partnership
File Number: 6490 DeMarco Road Listed Partnership
Parcel Number: 430
Zoning Issue: S-11-00
Meeting Date: 5-11-90

DCD DEPRM RP 570 TC
/ Orville Jones 431

DCD DEPRM RP 570 TC
/ Harbor Realty Partnership 430

DCD DEPRM RP 570 TC
/ Ronald M. Bair 437

DCD DEPRM RP 570 TC
/ A. Eric and Esther J. Dots 438

DCD DEPRM RP 570 TC
/ William J. and Mary Jane Graham 439

DCD DEPRM RP 570 TC
/ Douglas B. and Dustin A. Cester 440

DCD DEPRM RP 570 TC
/ Ronald M. Bair 451

DCD DEPRM RP 570 TC
/ Ernest and Anne Mann 455

DCD DEPRM RP 570 TC
/ Sigurd Bank, Harvland 456

DCD DEPRM RP 570 TC
/ Ronald M. Bair 457

DCD DEPRM RP 570 TC
/ William J. and Mary Jane Graham 458

DCD DEPRM RP 570 TC
/ Douglas B. and Dustin A. Cester 460

COUNT 11

TO: Mr. Arnold Jablon, Director
Zoning Administration and
Development Management
DATE: July 22, 1992

FROM: J. Lawrence Plummer, DEPRM
Development Coordinator, DEPRM

SUBJECT: Zoning 1200 451
13211 Birdale Avenue
Zoning Advisory Committee Meeting of May 11, 1990.

The Department of Environmental Protection and Resource Management offers the following comments on the above referenced zoning issue.
See attached Chesapeake Bay Critical Area Floodings.

JLP:js
JAL/MS/ST/MSU
RECEIVED
JUL 5 1992
ZONING OFFICE

TO: Mr. Arnold E. Jablon, Director
Office of Zoning Administration
and Development Management
DATE: July 17, 1992

FROM: J. James Oltar

SUBJECT: Petition for Zoning Variance - 1200 451
Bair Property
Chesapeake Bay Critical Area Floodings

SITE LOCATION
The subject property is located at 13211 Birdale Avenue. The site is within the Chesapeake Bay Critical Area and is classified as a Limited Development Area (LDA).

APPLICANT'S NAME Mr. Ronald M. Bair
APPLICANT'S ADDRESS 13211 Birdale Avenue, Baltimore, MD 21286

NAME OF THE CHESAPEAKE BAY CRITICAL AREA PROGRAM

- In accordance with the Chesapeake Bay Critical Area Program, all project approvals shall be based on a finding which states that proposed projects are consistent with the following goals of the Critical Area Law:
1. "Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or outcrops or that have runoff from surrounding lands;
 2. Conserve fish, wildlife and plant habitat; and
 3. Establish land use policies for development in the Chesapeake Bay Critical Area which encourage growth and also address the fact that, even if pollution is controlled, the number, movement, and activities of persons in these areas can create adverse environmental impacts." (COMAR 14.13.10.01.D)

Mr. Arnold E. Jablon
July 15, 1992
Page 2

REGULATIONS AND FINDINGS

1. **Regulation:** "A minimum 100 foot buffer shall be established landward from the mean high water line of tidal wetlands, tidal wetlands, and tributary streams" (Baltimore County Code Section 26-440(e)).
Finding: There are no tidal wetlands, tidal wetlands or tributary streams on or within 100 feet of this property.
2. **Regulation:** "Grading, filling, or construction other than approved landscaping shall not be permitted in any non-tidal and tidal wetlands unless the proposed development consists of utility, bridge, or street development in a non-tidal wetland and unless the Director of Environmental Protection and Resource Management finds this proposed development not detrimental to the County's Wetland Management Program" (Baltimore County Code, Section 26-447).
Finding: No tidal or non-tidal wetlands were found on this site, or in the vicinity of the site.
3. **Regulation:** "If a parcel or lot one-half acre or less in size was in residential use or zoned for residential purposes on or before December 31, 1980, then any impervious surface associated with that use and located on 25% of the parcel or lot" (Baltimore County Code, Section 26-448(1)(1)).
Finding: The amount of impervious areas shall not exceed 1900 square feet. This includes all building structures, paved and crushed run driveways and parking areas, or any other impervious surfaces.
4. **Regulation:** "If no forest is established or proposed development after, this site shall be planted to provide a forest. A developed wooded cover of at least 15% (COMAR 14.13.10.01.C.(3)(1))."
Finding: The following plant material shall be selected from the attached list and planted in addition to existing vegetation to provide a 15% forested cover.
Shrub and small tree list: 4 stems - tall and bushy or 2 gallon container size
Trees are an important factor in improving water quality. The roots of trees greatly improve the infiltration rate of storm water and efficiently remove nitrogen from subsurface flows of ground water. Trees also act as both a barrier and a sponge, absorbing and storing eroding soils and the pollutants associated with them.

Mr. Arnold E. Jablon
July 17, 1992
Page 3

5. **Regulation:** "Infiltration of stormwater shall be minimized throughout the site, rather than directing flow to single discharge points" (Baltimore County Code, Section 26-450(b)(1)).
Finding: Stormwater runoff shall be directed from impervious surfaces associated with this site, to pervious areas. To encourage maximum infiltration, rooftop runoff shall be collected through downspouts and into dry wells, to encourage maximum infiltration (see attachment).
- CONCLUSION**
The Zoning Variance shall be conditioned on the project proposal be in compliance with the Chesapeake Bay Critical Area Regulations and Findings listed above. This proposal does comply with Chesapeake Bay Critical Area Regulations, and is therefore approved. If there are any questions, please contact Mr. Patricia R. Furr at 933-9906.

JAL:ms:ju
Attachment
cc: Mr. Ronald M. Bair, applicant
Mr. Eugene W. Schwedler, w/attachment

BAIR/TT/MS

PLEASE PRINT CLEARLY
EXEMPTED FROM THE MAP

EXEMPTED FROM THE MAP
Eugene W. Schwedler
Ronald Bair
9021 Southern Comfort 21040
44 Ridgeland Ct #11334

Plat to accompany Petition for Zoning Variance Special Hearing

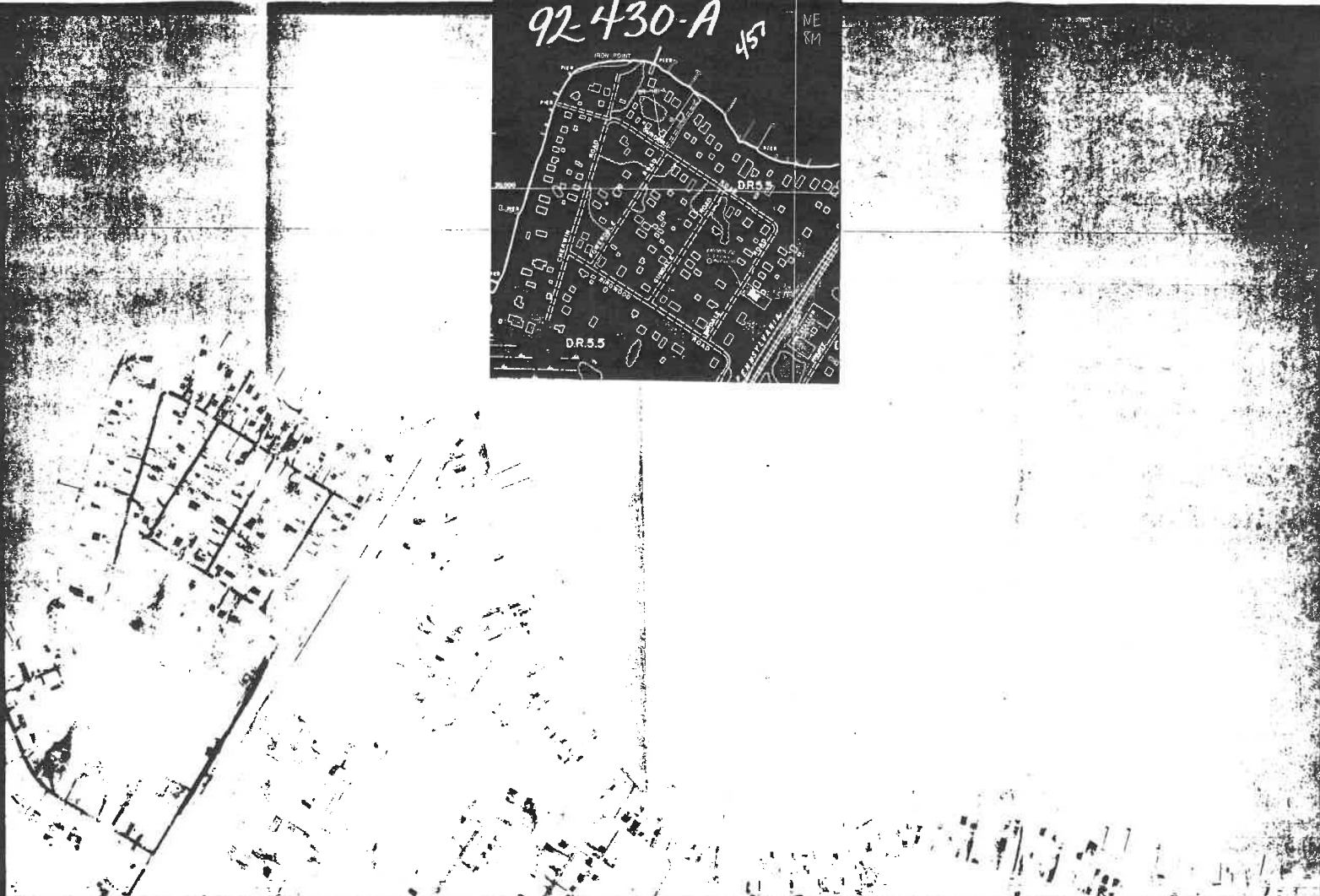
PROPERTY ADDRESS: 13211 BIRDALE AVE

Subdivision name: THE BIRDALE ESTATES
and Block 2, Lot 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

OWNER: RONALD BAIR IS FITZGERALD ET AL A GRANT 9134

LOCATION INFORMATION
Baltimore County, MD
Map Sheet 15
Block 2, Lot 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

92-430-A
Prepared by: PLUMMER, COOPER & ASSOCIATES Date of Drawing: T-20



457

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
PHOTOGRAPHIC MAP

PREPARED BY AIR PHOTOGRAPHICS, INC.
BARTHOLOMEW, N.Y. 12010

| SCALE | LOCATION | SHEET |
|---------------------------|----------|-------------|
| 1" = 200' | HAREWOOD | N.E. 8-M |
| DATE OF PHOTOGRAPHY | | |
| JANUARY 1986 | | |

IN RE: PETITIONS FOR VARIANCE - NW/Cor. * BEFORE THE
 Cherwin Avenue and Birdwood Place
 (13116 and 13118 Cherwin Avenue) * DEPUTY ZONING COMMISSIONER
 15th Election District
 5th Councilmanic District * OF BALTIMORE COUNTY

Thomas A. Hahn and * Case Nos. 98-127-A
 Lillie H. Hentz, Trustees * and 98-128-A
 *

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of combined Petitions for Variance for the adjoining waterfront properties known as 13116 and 13118 Cherwin Avenue, located in the Twin River Beach community in southeastern Baltimore County. The Petitions were filed by Thomas A. Hahn and Lillie H. Hentz, Trustees of the subject property. In Case No. 98-127-A, the Petitioners seek relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a lot width of 50 feet in lieu of the required 55 feet and a minimum side yard setback of 1 foot in lieu of the required 10 feet for an existing dwelling at 13116 Cherwin Avenue. In Case No. 98-128-A, the Petitioners seek similar relief from Section 1B02.3.C.1 of the B.C.Z.R. to permit a lot width of 50 feet in lieu of the required 55 feet for a proposed dwelling, to be known as 13118 Cherwin Avenue, and approval of the property as an undersized lot, pursuant to Section 304 of the B.C.Z.R. The subject properties and relief requested are more particularly described on the site plan submitted with each Petition, identified respectively as Petitioner's Exhibit 1.

Appearing at the hearing on behalf of the Petitions were Thomas A. Hahn and Lillie H. Hentz, Trustees of the subject property, Charles Hentz, and Paul Lee, Professional Engineer, who prepared the site plan for

ORDER RECEIVED FOR FILING
 Date 11/24/99
 By [Signature]

These properties. There were no Protestants or other interested persons present.

Testimony and evidence offered revealed that the two properties identified above have been in the ownership of the Hentz family for many decades and that Thomas Hahn and Lillie Hentz are the Trustees for the owner, who now resides in an assisted living facility. The Petitioners have filed the instant Petitions in an effort to prepare the two subject properties for sale in the event it becomes necessary to do so. The property known as 13116 Cherwin Avenue consists of a gross area of 12,500 sq.ft., zoned D.R. 5.5 and is improved with a 1.5 story dwelling and a detached garage. Testimony indicated that the dwelling on the property was constructed in 1926. In 1945, the owner of the property purchased the adjacent property, known as 13118 Cherwin Avenue, by separate deed. The owner has owned and maintained that parcel as an unimproved lot since that time. In order to offer the properties for individual sale, however, the requested variances are necessary to legitimize existing conditions.

This property is located within the Chesapeake Bay Critical Areas and as such, is subject to compliance with any recommendations made by the Department of Environmental Protection and Resource Management (DEPRM), pursuant to Section 500.14 of the Baltimore County Zoning Regulations (B.C.Z.R.), to minimize any effects the proposed development might have on the Bay and its tributaries. As of the date of this Order, DEPRM had not completed its review of this project. Therefore, the relief granted herein shall be conditioned upon Petitioner's compliance with any recommendations made by DEPRM upon completion of their review.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and

ORDER REGRANDED FOR PLANS
Date 11/24/92
[Signature]

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 variances are not granted. It has been established that special circumstances or conditions exist that are peculiar to the subject properties and that the requirements from which the Petitioners seek relief will unduly restrict the use of the land due to the special conditions unique to these particular parcels. 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 advertisement, posting of the property, and public hearing on these Petitions held, and for the reasons given above, the requested relief should be granted.

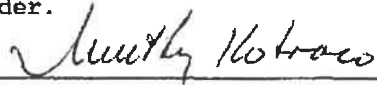
THEREFORE IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 24th day of November, 1997 that the Petition for Variance filed in Case No. 98-127-A seeking relief from Section 1B02.3.C.1

RECEIVED FOR FILING
Date 11/24/97
By [Signature]

of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a lot width of 50 feet in lieu of the required 55 feet and a minimum side yard setback of 1 foot in lieu of the required 10 feet for an existing dwelling at 13116 Cherwin Avenue, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Variance filed in Case No. 98-128-A seeking relief from Section 1B02.3.C.1 of the B.C.Z.R. to permit a lot width of 50 feet in lieu of the required 55 feet for a proposed dwelling, to be known as 13118 Cherwin Avenue, in accordance with Petitioner's Exhibit 1, and approval of the property as an undersized lot, pursuant to Section 304 of the B.C.Z.R., 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 the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
- 2) Compliance with the Zoning Plans Advisory Committee (ZAC) comments submitted by the Bureau of Developer's Plans Review, dated October 20, 1997, a copy of which is attached hereto and made a part hereof. In addition, Petitioners shall comply with any recommendations made by DEPRM upon completion of their review.
- 3) Prior to the issuance of any building permits for the proposed dwelling at 13118 Cherwin Avenue, elevation drawings of the dwelling intended to be constructed shall be submitted to the Office of Planning to insure that the proposed dwelling is compatible with other houses in the surrounding neighborhood.
- 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.


TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs



Baltimore County
Zoning Commissioner
Office of Planning

Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204
410-887-4386

November 24, 1997

Mr. Thomas Hahn
13116 Cherwin Road
Baltimore, Maryland 21220

RE: PETITIONS FOR VARIANCE
NW/Corner Cherwin Avenue and Birdwood Place
(13116 and 13118 Cherwin Avenue)
15th Election District - 5th Councilmanic District
Thomas A. Hahn and Lillie H. Hentz, Trustees
Case Nos. 98-127-A and 98-128-A

Dear Mr. Hahn:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petitions for Variance have been granted, in accordance with the attached Order.

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 Zoning Administration and Development Management office at 887-3391.

Very truly yours,

TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

cc: Ms. Lillie H. Hentz
8820 Walther Boulevard, Apt. 3608, Baltimore, Md. 21234

Mr. Paul Lee
304 W. Pennsylvania Avenue, Towson, Md. 21204

Chesapeake Bay Critical Areas Commission
45 Calvert Street, 2nd Floor, Annapolis, Md. 21401

DEPRM; People's Counsel; Case Files



Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at

#13118 CHERWIN AVENUE

which is presently zoned DR 5.5

#128
CBCA
98-128-A

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) 1B02.3C1 To permit a min. lot width of 50' in lieu of the required 55' (a variance of 5'), and to approve an undersize lot pursuant to Section 304 of the BCZR.

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 addressed at 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

Contact: Purchaser/Lessee, Engineer:

Paul Lee Engineering, Inc.
(Type or Print Name)

Paul Lee
Signature

304 W. Pennsylvania Avenue
Address

Towson, Maryland 21204
City State Zipcode

Attorney for Petitioner

(Type or Print Name)

Signature

Address Phone No

City State Zipcode

Legal Owner(s)

Thomas A. Hahn, Trustee
(Type or Print Name)

Thomas A. Hahn
Signature

Lillie H. Hentz, Trustee
(Type or Print Name)

Lillie H. Hentz
Signature

8820 Walther Blvd.
Apt. 3608 (410) 663-4939
Address Phone No

Baltimore, Maryland 21234
City State Zipcode

Name, Address and phone number or representative to be contacted

Paul Lee Engineering, Inc.
Name

304 W. Pennsylvania Ave. (410) 821-5941
Towson, Maryland 21204
Address Phone No

OFFICIAL USE ONLY

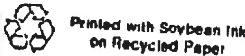
ESTIMATED LENGTH OF HEARING 2 hr
unavailable for hearing

the following date _____ Next Two Months

ALL _____ OTHER _____
REVIEWED BY: mtr DATE 10/2/97

4 schedule w/ #127

ORDER RECEIVED FOR FILING
Date _____
By _____



98-128-A

Paul Leo, P.E.

Paul Leo Engineering Inc.

304 W. Pennsylvania Ave.

Towson, Maryland 21204

410-821-5944

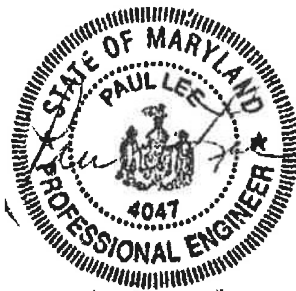
DESCRIPTION

#13118 CHERWIN AVENUE

ELECTION DISTRICT 15 BALTIMORE COUNTY, MARYLAND

Beginning for the same at a point on the west side of Cherwin Avenue, said point also being located S 23°01'00" W - 65 feet[±] from the center of Birdwood Avenue; thence leaving leaving said west side of Cherwin Avenue (1) N 66°59'00" W - 250 feet, thence (2) N 23°01'00" E 25 feet, thence (3) S 66°59'00" E - 50 feet, thence (4) N 23°01'00" E - 25 feet and (5) S 66°59'00" E - 200 feet to the west side of Cherwin Avenue, the running with and binding on said west side of Cherwin Avenue (6) S 23°01'00" W 50 feet to the point of beginning.

Containing 11,250 s.f. of land more or less.



#128

J.O. 97-029

9/8/97

Engineers — Surveyors — Site Planners

Exhibit B

Request for Zoning: Variance, Special Exception, or Special Hearing

Date to be Posted: Anytime before but no later than * _____

Format for Sign Printing, Black Letters on White Background:

Item # 128

ZONING NOTICE

Case No.: 98-128-A

A PUBLIC HEARING WILL BE HELD BY
THE ZONING COMMISSIONER
IN TOWSON, MD

PLACE: * _____

DATE AND TIME: * _____

REQUEST: variance to permit a 50 ft lot width in lieu
of 55 ft. and approve on undersized lot pursuant
to Section 304 of the BCZR

POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY.
TO CONFIRM HEARING CALL 887-3391.

DO NOT REMOVE THIS SIGN AND POST UNTIL DAY OF HEARING UNDER PENALTY OF LAW

HANDICAPPED ACCESSIBLE

9/96
post.4.doc

*UPON RECEIPT OF THE NOTICE OF HEARING, THE PETITIONER OR HIS AGENT
FILLS IN THIS INFORMATION AND THEN FORWARDS THIS FORM TO THE SIGN
POSTER.



Baltimore County
 Department of Permits and
 Development Management

98-128-A
 Development Processing
 County Office Building
 111 West Chesapeake Avenue
 Towson, Maryland 21204

ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES

Baltimore County zoning regulations 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 which, lies with the petitioner/applicant) and placement of a notice in at least one newspaper of general circulation in the County.

This office will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with this requirement.

Billing for legal advertising, due upon receipt, will come from and should be remitted directly to the newspaper.

NON-PAYMENT OF ADVERTISING FEES WILL STAY ISSUANCE OF ZONING ORDER.

 ARNOLD JABLON, DIRECTOR

 For newspaper advertising:

Item No.: 128

Petitioner: Thomas A Hahn

Location: 13118 Cherrin Avenue

PLEASE FORWARD ADVERTISING BILL TO:

NAME: Lillic Hertz

ADDRESS: 8820 Waltham Blvd, Apt. 3608

Beth. Md. 21234

PHONE NUMBER: (410) 663-4939

AJ:ggs

(Revised 09/24/96)

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 044425

DATE 10/2/97 ACCOUNT 01-615

Item: 128
By: MDR AMOUNT \$ 50.00

RECEIVED FROM: Hente, Charles - 13118 Charwin Ave

FOR: 010-Res Ltr. - \$ 50.00

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

98-128-A

PAID RECEIPT

PROCESS ACTUAL TIME
10/02/1997 10/02/1997 10:03:03
REQ MSOL CASHIER CLERK DRAMER
5 MISCELLANEOUS DASH RECEIPT
Receipt # 024336
OR NO. 044425

50.00 CHECK: EN
Baltimore County, Maryland

CASHIER'S VALIDATION

98-128-A

CERTIFICATE OF PUBLICATION

TOWSON, MD., October 16, 19 97

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 Oct-16, 19 97.

THE JEFFERSONIAN,

A. Henriksen
LEGAL AD. - TOWSON

NOTICE OF HEARING

The Zoning Commissioner 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 #98-128-A
13118 Cherwin Avenue
W/S Cherwin Avenue, 65' S of
Birdwood Avenue
15th Election District
5th Councilmanic
Legal Owner(s):

Thomas A. Hahn, Trustee
and Lillie H. Hentz, Trustee

Variance: to permit a minimum lot width of 50 feet in lieu of the required 55 feet and to approve an undersized lot.

Hearing: Monday, November 3, 1997, at 2:00 p.m. in Room 487 Courts Bldg., 401 Boslay Avenue.

LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Call (410) 887-3353

(2) For information concerning the File and/or Hearing, Please Call (410) 887-3391

10/274 Oct. 16 .. C181893

CERTIFICATE OF POSTING

RE: Case No.: # 98-128-A
Petitioner/Developer:
(Lillie Hentz)
Date of Hearing/Closing:
(Nov. 3, 1997)

**Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, Maryland 21204**

Attention : Ms. Gwendolyn Stephens

Ladies and Gentlemen:

**This letter is to certify under the penalties of perjury that the necessary sign(s) required by law
were posted conspicuously on the property located at _____**

__13118 Cherwin Ave. Baltimore Maryland 21220_____

**The sign(s) were posted on _____ Oct. 17, 1997 _____
(Month, Day, Year)**

Sincerely,

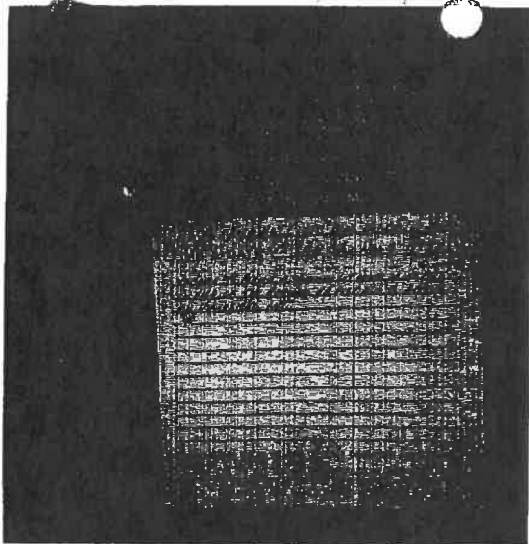

(Signature of Sign-Poster & Date)

_____ Thomas P. Ogle, Sr. _____

_____ 325 Nicholson Road _____

_____ Baltimore, Maryland 21221 _____

**_____ (410)-687-8405 _____
(Telephone Number)**



98-128-A



Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

October 10, 1997

NOTICE OF HEARING

The Zoning Commissioner 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: 98-128-A
13118 Cherwin Avenue
W/S Cherwin Avenue, 65' S of Birdwood Avenue
15th Election District - 5th Councilmanic
Legal Owner(s): Thomas A. Hahn, Trustee and Lillie H. Hentz, Trustee

Variance to permit a minimum lot width of 50 feet in lieu of the required 55 feet and to approve an undersized lot.

HEARING: MONDAY, NOVEMBER 3, 1997 at 2:00 p.m. in Room 407 Courts Building, 401 Bosley Avenue.

A handwritten signature in cursive script, appearing to read "Arnold Jablon".

Arnold Jablon
Director

cc: Thomas Hahn and Lillie H. Hentz
Paul Lee Engineering, Inc.

- NOTES: (1) YOU MUST HAVE THE ZONING NOTICE SIGN POSTED ON THE PROPERTY BY OCTOBER 19, 1997.
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.



Printed with Soybean Ink
on Recycled Paper

TO: PUTUMENT PUBLISHING COMPANY
October 16, 1997 Issue - Jeffersonian

Please forward billing to:

Lillie Hentz
8820 Walter Boulevard, #3608
Baltimore, MD 21234
410-663-4939

NOTICE OF HEARING

The Zoning Commissioner 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: 98-128-A
13118 Cherwin Avenue
W/S Cherwin Avenue, 65' S of Birdwood Avenue
15th Election District - 5th Councilmanic
Legal Owner(s): Thomas A. Hahn, Trustee and Lillie H. Hentz, Trustee

Variance to permit a minimum lot width of 50 feet in lieu of the required 55 feet and to approve an undersized lot.

HEARING: MONDAY, NOVEMBER 3, 1997 at 2:00 p.m. in Room 407 Courts Building, 401 Bosley Avenue.

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, PLEASE CALL 887-3391.



Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

October 29, 1997

Mr. Thomas Hahn & Ms. Lillie Hentz
8820 Walther Boulevard, Apt. 3608
Baltimore, MD 21234

RE: Item No.: 128
Case No.: 98-128-A
Petitioner: Thomas Hahn, et al

Dear Mr. Hahn & Ms. Hentz:

The Zoning Advisory Committee (ZAC), which consists of representatives from Baltimore County approval agencies, has reviewed the plans submitted with the above referenced petition, which was accepted for processing by Permits and Development Management (PDM), Zoning Review, on October 2, 1997.

Any comments submitted thus far from the members of ZAC that offer or request information on your petition are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to assure 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. Only those comments that are informative will be forwarded to you; those that are not informative will be placed in the permanent case file.

If you need further information or have any questions regarding these comments, please do not hesitate to contact the commenting agency or Roslyn Eubanks in the zoning office (410-887-3391).

Sincerely,

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

W. Carl Richards, Jr.
Zoning Supervisor

WCR/re
Attachment(s)



Printed with Soybean Ink
on Recycled Paper

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits & Development
Management
Date: October 20, 1997

FROM: Robert W. Bowling, Chief
Bureau of Developer's Plans Review

SUBJECT: Zoning Advisory Committee Meeting
for October 20, 1997
Item No. 128

The Bureau of Developer's Plans Review has reviewed the subject zoning item. The property to be developed is located adjacent to tidewater. The Developer is advised that the proper sections of the Baltimore County Building Code must be followed whereby elevation limitations are placed on the lowest floor (including basements) of residential (commercial) development.

In conformance with Federal Flood Insurance requirements, the first floor or basement floor must be at least 1 foot over the flood plain elevation in all construction.

The minimum flood protection elevation is 11.2 feet for this site.

RWB:HJO:jrb

cc: File

UNDER RECEIVED FOR FILING
Date 11/24/97
By [Signature]

ZONE1020.128

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits & Development
Management

Date: October 20, 1997

FROM: Robert W. Bowling, Chief
Bureau of Developer's Plans Review

SUBJECT: Zoning Advisory Committee Meeting
for October 20, 1997
Item No. 128

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In conformance with Federal Flood Insurance requirements, the first floor or basement floor must be at least 1 foot over the flood plain elevation in all construction.

The minimum flood protection elevation is 11.2 feet for this site.

RWB:HJO:jrb

cc: File

ZONE1020.128



Baltimore County
Fire Department

Office of the Fire Marshal
700 East Joppa Road
Towson, Maryland 21286-5500
(410)887-4880

October 16, 1997

Arnold Jablon, Director
Zoning Administration and Development Management
Baltimore County Office Building
Towson, MD 21204
MAIL STOP-1105

RE: Property Owner: SEE BELOW

Location: DISTRIBUTION MEETING OF October 14, 1997

Item No.: See Below

Zoning Agenda:

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

8. The Fire Marshal's Office has no comments at this time.
IN REFERENCE TO THE FOLLOWING ITEM NUMBERS:

120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130
and 131

REVIEWER: LT. ROBERT P. SAUERWALD
Fire Marshal Office, PHONE 887-4881, MS-1103F
cc: File



| | | |
|--|---|---------------------|
| RE: PETITION FOR VARIANCE | * | BEFORE THE |
| 13118 Cherwin Avenue, W/S Cherwin Ave, | * | ZONING COMMISSIONER |
| 65' S of Birdwood Avenue | * | |
| 15th Election District, 5th Councilmanic | * | OF BALTIMORE COUNTY |
| Thomas Hahn, and Lillie Hentz, Trustees | * | |
| Petitioners | * | CASE NO. 98-128-A |
| * * * * * | | |

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

Peter Max Zimmerman
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio
CAROLE S. DEMILIO
Deputy People's Counsel
Room 47, Courthouse
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of October, 1997, a copy of the foregoing Entry of Appearance was mailed to Paul Lee Engineering, Inc., 304 W. Pennsylvania Avenue, Towson, MD 21204, representative for Petitioners.

Peter Max Zimmerman
PETER MAX ZIMMERMAN

98-128-A

INTER-OFFICE CORRESPONDENCE
RECOMMENDATION FORM

TO: Director, Office of Planning and Zoning
Attn: Ervin McDaniel
County Courts Bldg, Rm 406
401 Bosley Av
Towson, MD 21204

B n/a
Permit Number

FROM: Arnold Jablon, Director, Zoning Administration and Development Management

RE: **Undersized Lots**

Pursuant to Section 304.2(Baltimore County Zoning Regulations) effective June 25, 1992; this office is requesting recommendations and comments from the Office of Planning & Zoning prior to this office's approval of a dwelling permit.

MINIMUM APPLICANT SUPPLIED INFORMATION:

PAUL LEE ENGR, INC. 304 W. PENNSYLVANIA AVE. (410) 821-5941
Print Name of Applicant Address Telephone Number

Lot Address 13118 CHERWIN AVE Election District 15 Council District 5 Square Feet 11,250 S.F.
 Lot Location: W side / corner of CHERWIN AVE., 0 feet from W & SW corner of BIRDWOOD AVE.
(street) (street)

Land Owner THOMAS A. HANN / LILLIE A. HEITE, TRUSTEES Tax Account Number 15-08-002241

Address APT. 3608 - 8820 WALTHER BLVD. Telephone Number (410) 663-4939
BALTIMORE, MD. 21234

CHECKLIST OF MATERIALS: (to be submitted for design review by the Office of Planning and Zoning) PROVIDED?

| | YES | NO |
|---|-------------------------------------|-------------------------------------|
| 1. This Recommendation Form (3 copies) | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 2. Permit Application | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 3. Site Plan | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Property (3 copies) | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Topo Map (available in Rm 206 C.O.B.) (2 copies) (please label site clearly) | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 4. Building Elevation Drawings | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 5. Photographs (please label all photos clearly) | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Adjoining Buildings | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Surrounding Neighborhood | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Residential Processing Fee Paid
Codes 030 & 080 (\$85)

Accepted by ML
ZADM

Date 10/2/97 *

* w/ Zoning
Variance 98-128-A

TO BE FILLED IN BY THE OFFICE OF PLANNING AND ZONING ONLY!

RECOMMENDATIONS/COMMENTS:

Approval Disapproval Approval conditioned on required modifications of the permit to conform with the following recommendations:

Building elevations should be submitted as part of the building permit application

Signed by: Ervin McDaniel
for the Director, Office of Planning & Zoning

Date: 10/9/97

RECEIVED
OCT 8 1997
OFFICE OF PLANNING

SCHEDULED DATES, CERTIFICATE OF FILING AND POSTING
FOR A BUILDING PERMIT APPLICATION PURSUANT TO SECTION 304.2
ZONING ADMINISTRATION AND DEVELOPMENT MANAGEMENT
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

The application for your proposed Building Permit Application has been accepted
for filing by _____ on _____
Date (A)

A sign indicating the proposed Building must be posted on the property for
fifteen (15) days before a decision can be rendered. The cost of filing is
\$50.00 and posting \$35.00; total \$85.00.

In the absence of a request for public hearing during the 15-day posting period,
a decision can be expected within approximately four weeks. However, if a valid
demand is received by the closing date, then the decision shall only be rendered
after the required public special hearing.

*SUGGESTED POSTING DATE _____ D (15 Days Before C)

DATE POSTED _____

HEARING REQUESTED-YES _____ NO _____ -DATE _____

CLOSING DAY (LAST DAY FOR HEARING DEMAND) _____ C (B-3 Work Days)

TENTATIVE DECISION DATE _____ B (A + 30 Days)

*Usually within 15 days of filing

CERTIFICATE OF POSTING

District _____

Location of property: _____

Posted by: _____ Date of Posting: _____
Signature

Number of Signs: _____

CK/UNDER.LOT (TXTSOPH)

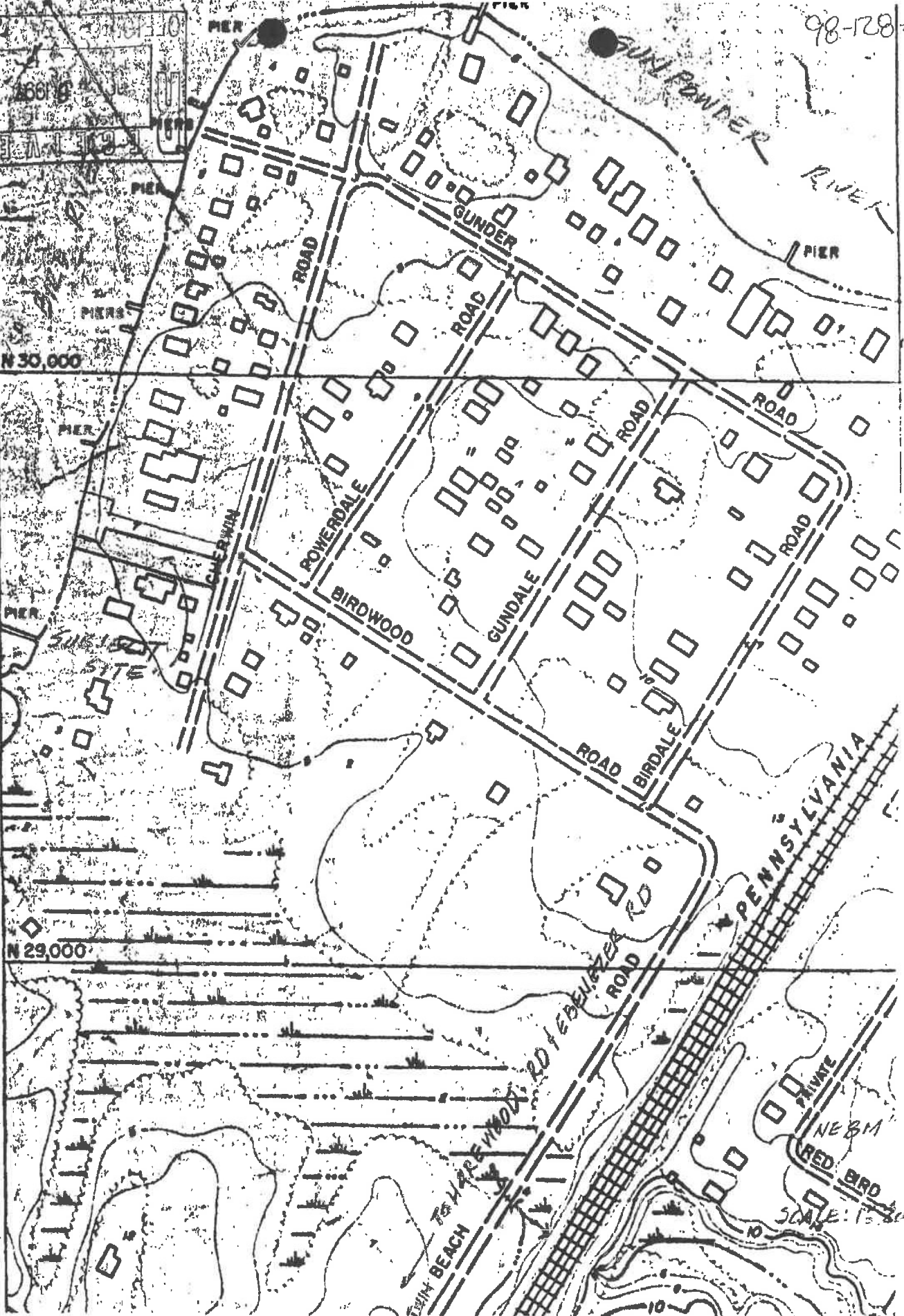
* Sign posted
w/ variance

98-128-A

(SHEET NO. 8-L)

N 30,000

N 29,000



SCALE: 1:5,000

TWIN BEACH

TO WAREHOUSE RD / BENNETT RD

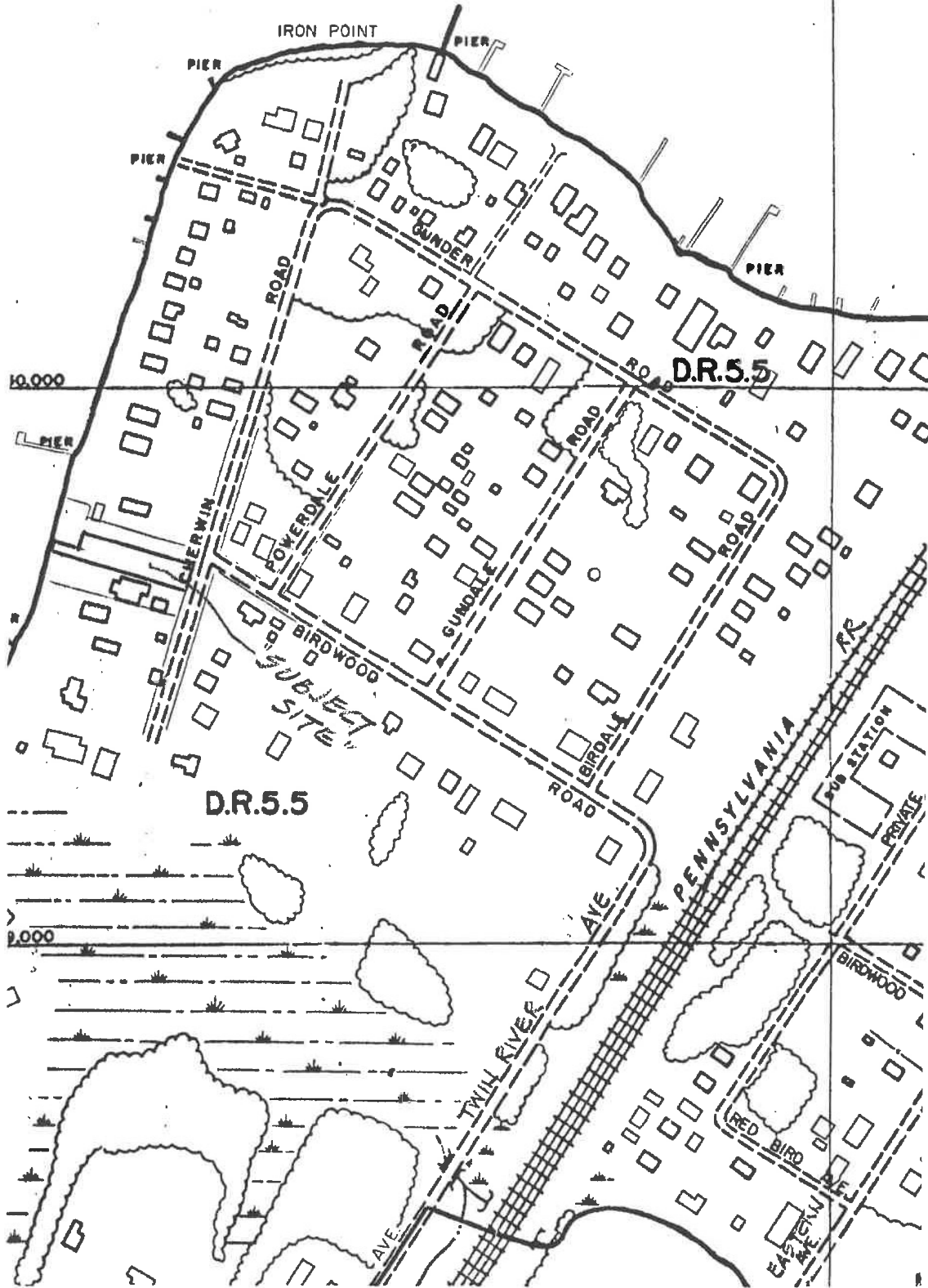
PENNSYLVANIA

NE 8M
RED BRD

BIRD RIVER

1,000

SCALE: 1"=200'



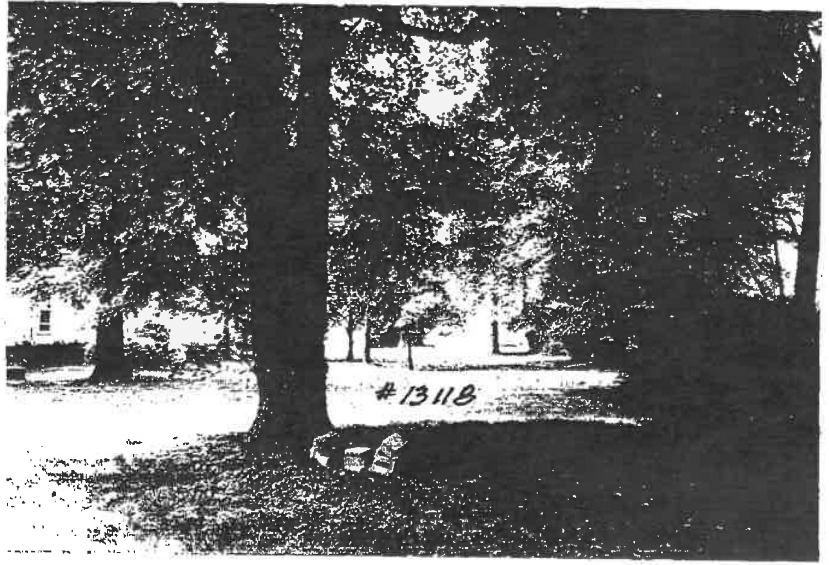
#1



CHERWIN

AVE

#2



#1311B

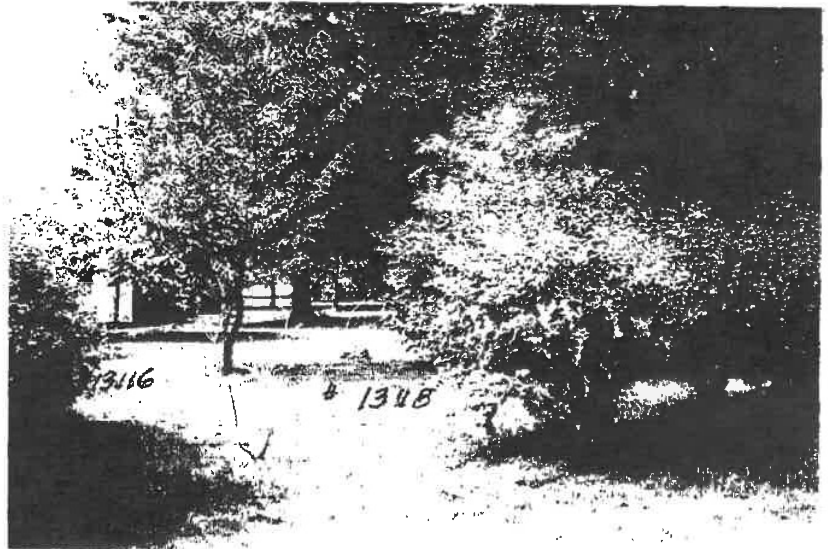
#3



#1311C

#3

#4

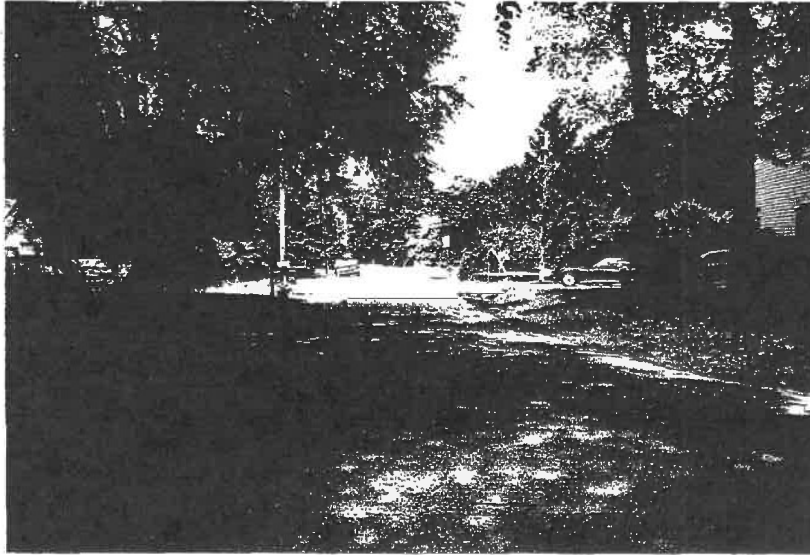


#13116

#13118

SHEET 1 OF 4

98-128-A



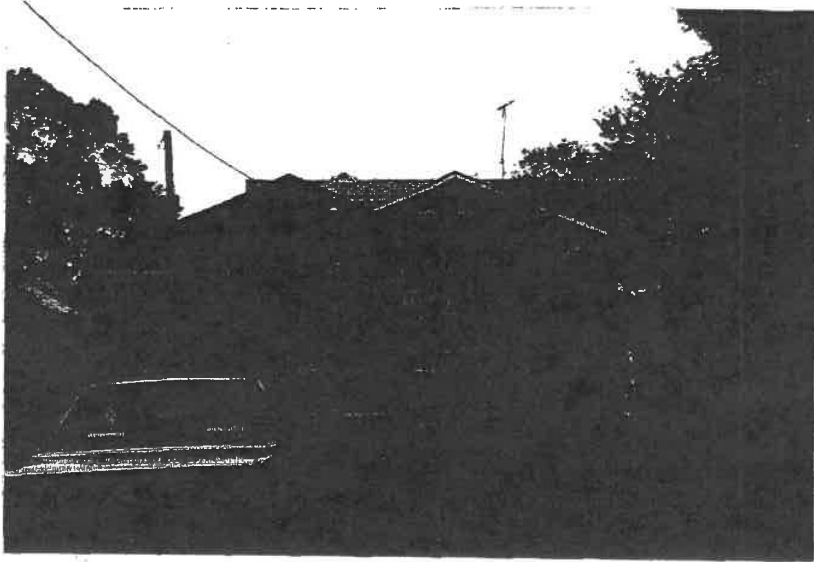
CHERWIN AVE.

PHOTO'S
1311B CHERWIN AVE
(SEE PLAT FOR PHOTO LOCATIONS)

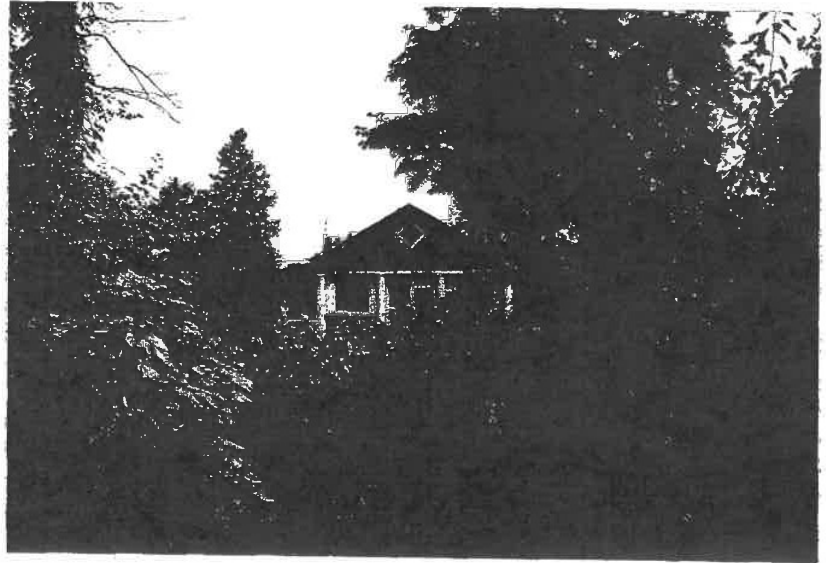
98-128-A

SHEET 4 OF 4

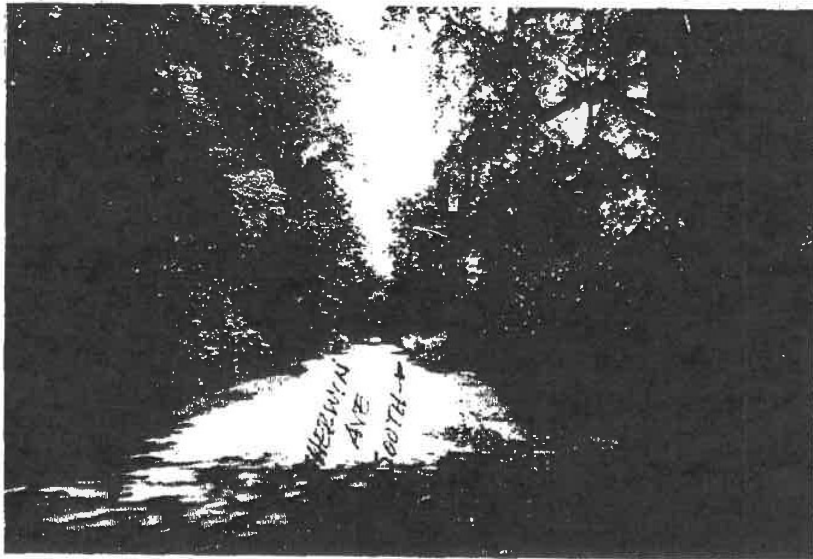
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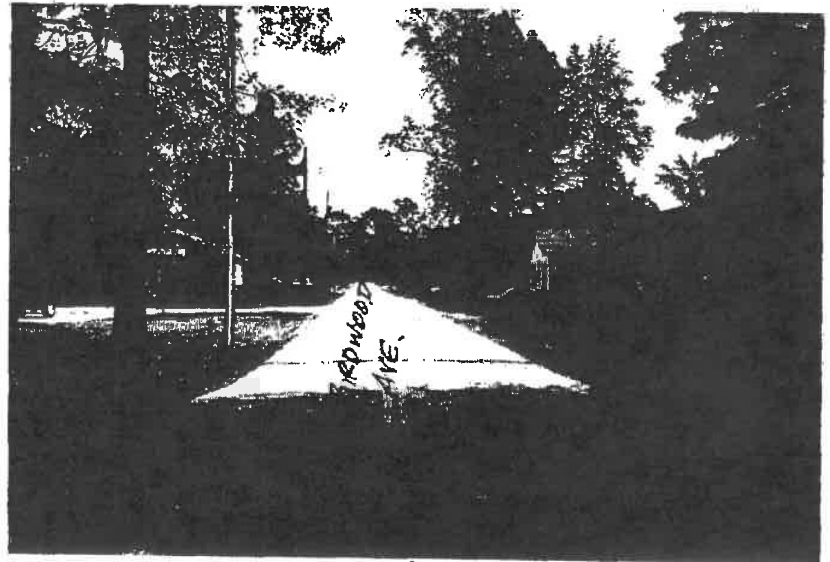
#10



#11



#12



98-128-A

#5

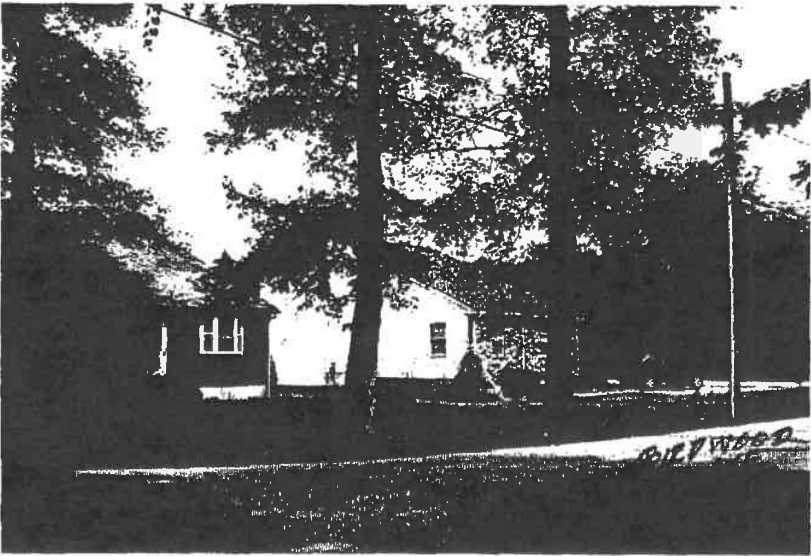


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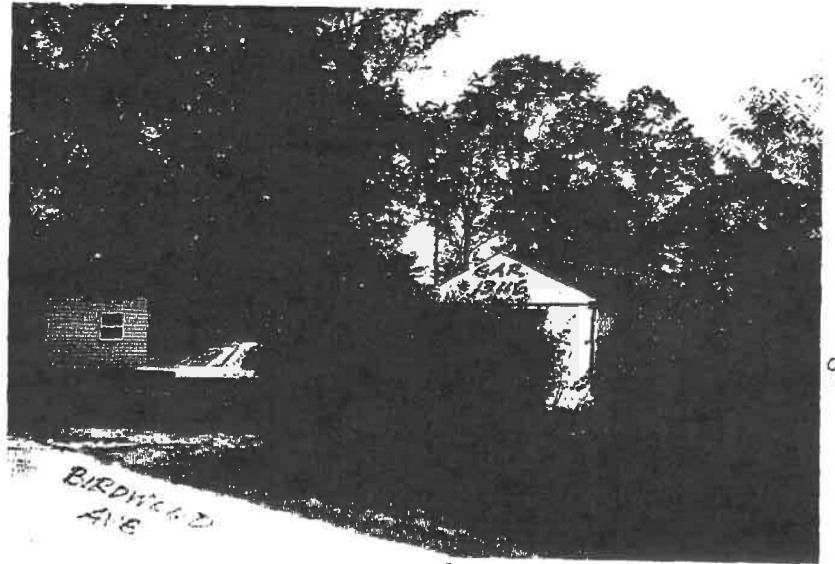
CHERRY AVE

#7



BIRDWOOD

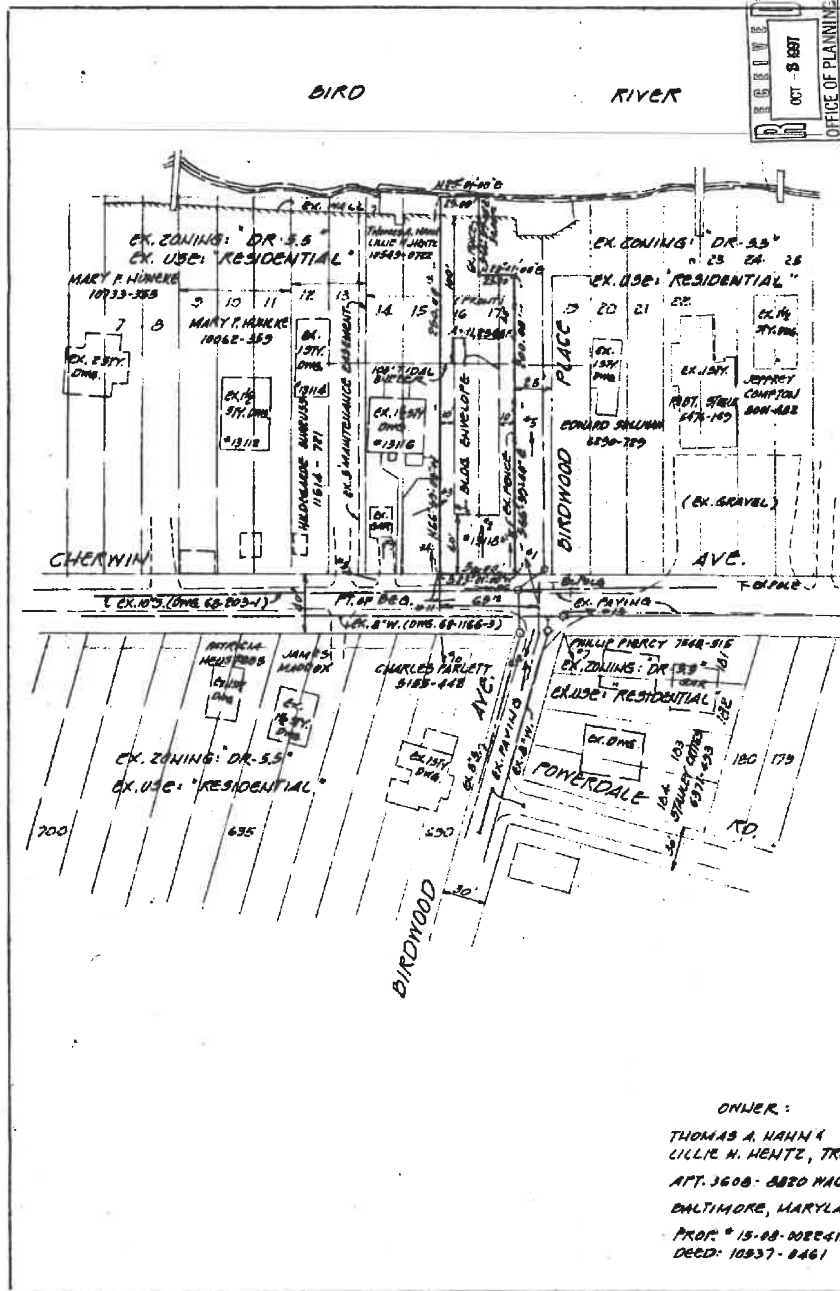
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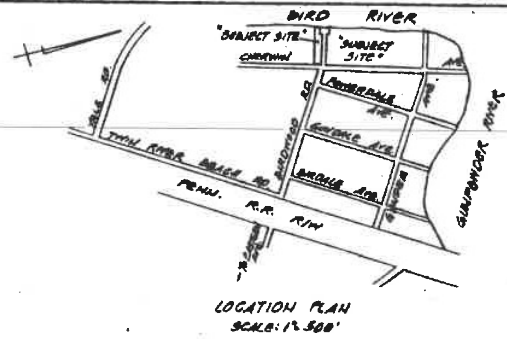
BIRDWOOD AVE

98H28-A

SHEET 2 OF 4



RECEIVED
 OCT - 8 1997
 OFFICE OF PLANNING



GENERAL NOTES:

1. AREA OF PROPERTY = 11,250.92'
2. EXISTING ZONING OF PROPERTY = "DR-5"
3. EXISTING USE OF PROPERTY = "RESIDENTIAL"
4. PROPOSED ZONING OF PROPERTY = "DR-5.5"
5. PROPOSED USE OF PROPERTY = "RESIDENTIAL"
6. PROPERTY LOCATED IN CRITICAL AREA (BIRD RIVER)
7. LOTS RECORDED ON PLAT OF SECTION A, TOWN RIVER BEACH, L.M.P.L.A. 2-53.
8. PROPERTY SERVED BY PUBLIC WATER AND SEWER.
9. PETITIONER REQUESTING A VARIANCE TO SECTION 1802.3C1 OF THE BCZR TO PERMIT A MIN. LOT WIDTH OF 30' IN LIEU OF THE REQUIRED 55' (A VARIANCE OF 5'), AND TO APPROVE AN UNDERSIZED LOT PURSUANT TO SECTION 1802.3C1 OF THE BCZR.

PHOTO LOCATION - 9/14-97

PLAT TO ACCOMPANY PETITION
FOR

VARIANCE
#13118 CHERWIN AVENUE

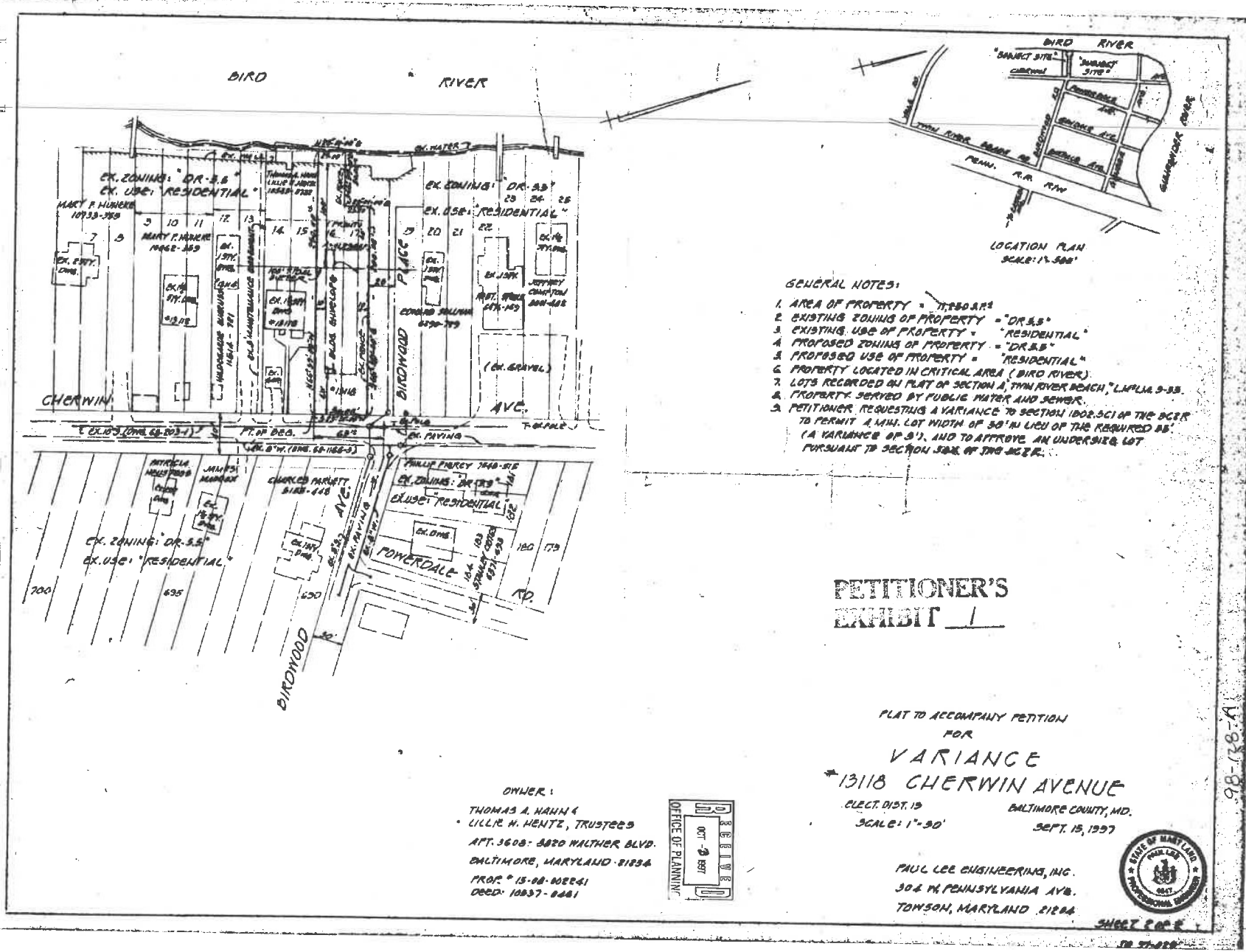
ELECT. DIST. 19 BALTIMORE COUNTY, MD.
SCALE: 1"=50' SEPT. 24, 1997

OWNER:
 THOMAS A. NAHM &
 LILLIE N. HENTZ, TRUSTEES
 APT. 3608 - 8820 HALTHER BLVD.
 BALTIMORE, MARYLAND 21234
 PROP. # 15-08-1022-51
 DEED: 10537-8461

RECEIVED
 OCT - 8 1997
 OFFICE OF PLANNING

PAUL LEE ENGINEERING, INC.
 304 W. PENNSYLVANIA AVE.
 TOWSON, MARYLAND 21284





- GENERAL NOTES:**
1. AREA OF PROPERTY = 11,850 SQ. FT.
 2. EXISTING ZONING OF PROPERTY = "DR-3.5"
 3. EXISTING USE OF PROPERTY = "RESIDENTIAL"
 4. PROPOSED ZONING OF PROPERTY = "DR-3.5"
 5. PROPOSED USE OF PROPERTY = "RESIDENTIAL"
 6. PROPERTY LOCATED IN CRITICAL AREA (BIRD RIVER)
 7. LOTS RECORDED IN PLAT OF SECTION 1, THOMAS RIVER BEACH, L.M.P.L.A. 5-33.
 8. PROPERTY SERVED BY PUBLIC WATER AND SEWER.
 9. PETITIONER REQUESTING A VARIANCE TO SECTION 1002.5C1 OF THE DCR TO PERMIT A MIN. LOT WIDTH OF 30' IN LIEU OF THE REQUIRED 35' (A VARIANCE OF 5'), AND TO APPROVE AN UNDERSIDE LOT PURSUANT TO SECTION 502 OF THE DCR.

PETITIONER'S EXHIBIT 1

PLAT TO ACCOMPANY PETITION FOR
VARIANCE
 *13118 CHERWIN AVENUE
 ELECT. DIST. 19 BALTIMORE COUNTY, MD.
 SCALE: 1"=30' SEPT. 15, 1997

OWNER:
 THOMAS A. HANN &
 LILLIE H. HENTZ, TRUSTEES
 APT. 3608- 3820 WALTER BLVD.
 BALTIMORE, MARYLAND 21234
 PROP. # 15-08-100241
 DEED: 10037-8481



PAUL LEE ENGINEERING, INC.
 302 N. PENNSYLVANIA AVE.
 TOWSON, MARYLAND 21284



SHEET 2 OF 2

A-821-86

IN RE: PETITION FOR ZONING VARIANCE * BEFORE THE
 N/S Powderdale Avenue, 115 ft. *
 W from c/l Gunder Avenue * ZONING COMMISSIONER
 13218 Powderdale Avenue *
 15th Election District * OF BALTIMORE COUNTY
 5th Councilmanic District *
 Wally S. Wallace, et ux * Case No. 97-412-A
 Petitioners *

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner on a Petition for Variance for the property located at 13218 Powderdale Avenue, near Bird River in eastern Baltimore County. The Petition was filed by Wally S. Wallace and Dawn Wallace, his wife, property owners. Variance relief is requested from Sections 1B02.3.C.1 and 304 of the Baltimore County Zoning Regulations (BCZR) to permit a single family dwelling on a lot 50 ft. in width, in lieu of the required 55 ft. The subject property and requested relief are more particularly shown on the plat to accompany the Petition for Variance, marked as Petitioners' Exhibit No. 1.

Appearing at the public hearing held for this case were the Petitioners/property owners, Wally S. Wallace and Dawn Wallace. Also present were neighboring property owners, Daniel and Brenda Puszczewicz who reside at 13215 Cherwin Avenue. There were no other Protestants or interested persons present.

Testimony and evidence presented was that the Petitioners have owned the subject parcel for less than a year, having acquired same in approximately August 1996. The subject property is roughly rectangular in shape, approximately 51 ft. in width and ranging in depth from 118 to 125 ft. Presently, the property is unimproved. The property features frontage on Powderdale Avenue, a public road in the Bird River community of Baltimore County. Although the property does not have frontage on the water, Bird

ORDER RECEIVED FOR FILING
 Date 7/20/97
 By [Signature]

River is located nearby and the property is within the Chesapeake Bay Critical area.

Additional testimony and evidence offered was that the property is located within an older community, which was originally platted and laid out many years ago. Apparently, the lots as originally laid out were 25 ft. in width. Collectively, the Petitioners' property is known as lots 165 and 166 of the subdivision.

As noted above, Mr. and Mrs. Puszczewicz also appeared at the hearing. They own 8 individual lots adjacent to the Petitioners' property. Four of the lots owned by the Puszczewicz front Cherwin Road and are known as lots Nos. 150 through 154. Mr. and Mrs. Puszczewicz reside in a single family dwelling which fronts Cherwin Avenue and is centered on these four lots. Their other holdings are four lots which constitute their rear yard, known as lots 167 through 170 of the subdivision. Their 4 lots abut Powderdale Avenue, and, collectively, is 100 ft. wide.

Apparently, both the Puszczewicz and Wallace properties was owned by a single property owner until 1996. At that time, the property owner sold the lands described above to Mr. and Mrs. Puszczewicz and the subject property to Mr. and Mrs. Wallace.

In support of their request for variance relief, the Petitioners offered copies of their building plans and elevation drawings. These plans have previously been reviewed and approved by the Office of Planning, as compatible with other houses in the neighborhood. It was also indicated that there are other dwellings in this subdivision which are on 50 ft. lots. Therefore, the proposed lot size and yard area will not be inconsistent with the existing neighborhood. Mr. Wallace also indicated that the site would not be graded so as to increase runoff on adjacent properties. Obviously, there will be some disturbance of the land as part

ORDER RECEIVED FOR FILING
Date 5/20/97
By Mr. Park

of the construction of the dwelling, however, the grade will remain substantially the same.

Mr. Puszczewicz indicated that he does not particularly object to the building but asked that several conditions be attached to any relief granted. First, he wants assurance that, during construction, construction equipment will not cross his property. As I indicated at the hearing, such a request is a civil matter and is not appropriate for incorporation in my Order. Obviously, Mr. and Mrs. Puszczewicz have the right to protect their property as they see fit. They may deal with any trespass upon their property through the appropriate criminal/civil procedures available in the Court system.

Second, Mr. Puszczewicz asked that a privacy fence be constructed to separate the properties. Subject to the zoning and building code sections, there is nothing to prevent Mr. Puszczewicz from installing a fence along his part of the property line. If he wishes to install such a buffer, so be it. However, I do not think it appropriate to require the Petitioners to install a fence unless they desire to do so. Obviously, any fence must be in compliance with the applicable zoning regulations and codes.

Third, Mr. Puszczewicz asked that an escrow account be established containing funds from which he may make a claim for any damages done to his yard during construction. Again, this is not an appropriate matter for the Zoning Commissioner, rather an issue which should be addressed directly between neighbors or in a court of law.

Based upon the testimony and evidence presented, I am persuaded to grant the Petition for Variance. The proposed dwelling is an appropriate use for this property. In my judgment, the Petitioners have satisfied the requirements of Section 307 of the BCZR, as construed by the case law.

ORDER RECEIVED FOR FILING

Date

5/20/97

By

M. G. G. G.

The only restriction which I shall impose is that the property owners must comply with the requirements of the Department of Environmental Protection and Resource Management (DEPRM) and the Development Plans Review Division as they relate to the Chesapeake Bay Critical Area and floodplain regulations. Also, the Petitioners shall not change the grade of the property and shall take appropriate steps (e.g., installation of downspouts and rain gutters) to prevent discharge of storm water onto adjacent properties. All such devices shall be reviewed and approved by DEPRM.

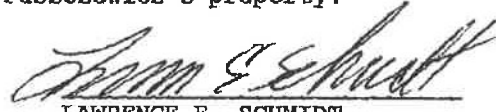
Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the Petition for Variance shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 20th day of May, 1997 that a variance from Sections 1B02.3.C.1 and 304 of the BCZR to permit a single family dwelling on an undersized lot of 50 ft. in width, in lieu of the required 55 ft., be and is hereby GRANTED, subject, however, to the following restrictions:

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.
2. The Petitioners shall comply with all requirements of the Department of Environmental Protection and Resource Management as set forth in their comments dated April 16, 1997.
3. The Petitioners shall comply with the comments submitted by the Baltimore County Zoning Plans Advisory Committee (ZAC), namely, Development Plans Review Division dated April 14, 1997.
4. The Petitioners shall not materially alter the grade of the property, so as to not increase storm water runoff onto adjacent properties and shall, at the advice and direction of DEPRM,

ORDER RECEIVED FOR PLANS
Date 5/20/97
By M. J. Park

install such devices (downspouts, gutters, etc.)
as are necessary to control and direct storm
water away from the Puszczewicz's property.



LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES/mmn

ORDER RECEIVED FOR FILING
DATE 5/20/97
BY M. Dora



Baltimore County
Zoning Commissioner
Office of Planning and Zoning

Suite 112, Courthouse
400 Washington Avenue
Towson, Maryland 21204
(410) 887-4386

May 19, 1997

Mr. and Mrs. Wally S. Wallace
7019 Greenbank Road
Baltimore, Maryland 21220

RE: Case No. 97-412-A
Petition for Zoning Variance
Property: 13218 Powderdale Avenue, Twin Rivers

Dear Mr. and Mrs. Wallace:

Enclosed please find the decision rendered in the above captioned case. The Petition for Zoning Variance has been granted, with restrictions, in accordance with the attached 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 of the date of the Order to the County Board of Appeals. If you require additional information concerning filing an appeal, please feel free to contact our Appeals Clerk at 887-3391.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Lawrence E. Schmidt".

Lawrence E. Schmidt
Zoning Commissioner

LES:mmn
att.

c: Mr. and Mrs. Daniel Puszczewicz
13215 Cherwin Avenue
Baltimore, Maryland 21220



RE: PETITION FOR VARIANCE * BEFORE THE
13218 Powderdale Avenue, N/S Powderdale *
Avenue, 115' W from c/l Gunder Avenue * ZONING COMMISSIONER
15th Election District, 5th Councilmanic * OF BALTIMORE COUNTY
Legal Owner(s): Wally and Dawn Wallace *
Petitioners * CASE NO. 97-412-A

* * * * *

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

Peter Max Zimmerman
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio
CAROLE S. DEMILIO
Deputy People's Counsel
Room 47, Courthouse
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of May, 1997, a copy of the foregoing Entry of Appearance was mailed to Wally and Dawn Wallace, 7019 Greenbank Road, Baltimore, MD 21220, Petitioners.

Peter Max Zimmerman
PETER MAX ZIMMERMAN



CRITICAL AREA

Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at

13218
POWDERDALE AVE TWIN RIVERS

97-412-A

which is presently zoned D.R. 5,5,

This Petition shall be filed with the Department of Permits & 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)

TO PERMIT A SINGLE FAMILY DWELLING ON AN UNDERSIZE LOT (50' IN LIEU OF 55' WIDTH).
1802.3.C.1 § 304; BCZR,

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 PRESENTED AT 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.

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):

WALLY S WALLACE
(Type or Print Name)

Wally S Wallace
Signature

DAWN WALLACE
(Type or Print Name)

Dawn M Wallace
Signature

7014 GREENBANK RD 335-3496
Address Phone No.

BALTIMORE MD 21220
City State Zipcode

Name, Address and phone number of representative to be contacted.

SAME
Name

Address Phone No.

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING
unavailable for Hearing

the following dates _____ Next Two Months

ALL _____ OTHER _____

REVIEWED BY: Jim DATE 3-24-97

412



Printed with Soybean Ink on Recycled Paper

Revised 9/5/95

Zoning Discription

97-412-A

Beginning at a point on the N38 49'E side of POWDERdale Ave.

Which is 30 feet wide at the distance of 115.8 feet, N51 11'W

of the centerline of the nearest improved intersecting street Gunder Ave.

which is 30 feet wide. *being lot 165,166, Block ____ Section #(A)

in the subdivision of Citygo Realty Co. as recorded in Baltimore County

Plat Book #9, Folio #33, containing 6,137 ¹³²¹⁸ FT². Also known as lot 165, 166, ¹³²¹⁸ POWDERdale Ave and located in the 15th Election District.

97-412-A

CERTIFICATE OF PUBLICATION

TOWSON, MD., April 10, 1997

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 April 10, 1997.

THE JEFFERSONIAN,

A. Henikson
LEGAL AD. - TOWSON

NOTICE OF HEARING

The Zoning Commissioner 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: 437-412-A
13218 Potomac Avenue

N/S Potomac Avenue, 115
W from of Gahler Avenue,
15th Election District
5th Councilmanic

Legal Owner(s):

Wally S. Wallace and Dawn
Wallace

Variance: to permit a single family dwelling on an under-sized lot (50 feet wide) in lieu of 55 foot width.

Hearing: Tuesday, May 6,
1997 at 3:00 p.m., 4th floor
hearing room, Courts Bldg.,
401 Bosley Avenue.

LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County

NOTES: (1) Hearings are
Handicapped Accessible, for
special accommodations
Please Call 887-3353.

(2) For information concern-
ing the File and/or Hearing,
Please Call 887-3391

4/188 April 10 C134004

BALTIMORE COUNTY, MARYLAND **412** No. **028760**
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

DATE **3-25-97** ACCOUNT **F001-6152**

RECEIVED FROM: **WALLY WALLACE** AMOUNT **\$ 50.⁰⁰**
13218 Proprietor's Ac

FOR: **VAR. (DIN.)**

D3A91#0162MICRRC \$50.00
BA C011#54AMD3-25-97

VALIDATION OR SIGNATURE OF CASHIER

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

JCM



Baltimore County
 Department of Permits and
 Development Management

Development Processing
 County Office Building
 111 West Chesapeake Avenue
 Towson, Maryland 21204

ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES

Baltimore County zoning regulations 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 which, lies with the petitioner/applicant) and placement of a notice in at least one newspaper of general circulation in the County.

This office will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with this requirement.

Billing for legal advertising, due upon receipt, will come from and should be remitted directly to the newspaper.

NON-PAYMENT OF ADVERTISING FEES WILL STAY ISSUANCE OF ZONING ORDER.

 ARNOLD JABLON, DIRECTOR

 For newspaper advertising:

Item No.: 412
 Petitioner: WALLY WALLACE
 Location: 13218 POWDERDALE AVE.

PLEASE FORWARD ADVERTISING BILL TO:

NAME: WALLY WALLACE
 ADDRESS: 7019 GREENBANK RD.
BALTO., Md. 21220
 PHONE NUMBER: 335-3496

AJ:ggs

(Revised 09/24/96)

ADMINISTRATIVE VARIANCES
CLOSING DATE.....May 5, 1997

CASE NUMBER: 97-435-A
8720 Wendell Avenue
NWC intersection of Wendell Avenue and Delpha Court
14th Election District - 6th Councilmanic
Legal Owner(s): Mary Kathleen Farrell

Administrative Variance to permit a rear yard setback of 14 feet for a
deck in lieu of the required 22.5 feet.

Request for Zoning: Variance, Special Exception, or Special Hearing

Date to be Posted: Anytime before but no later than _____ *

Format for Sign Printing, Black Letters on White Background:

ZONING NOTICE

Case No.: 97-412-A

A PUBLIC HEARING WILL BE HELD BY
THE ZONING COMMISSIONER
IN TOWSON, MD

PLACE: * _____

DATE AND TIME: * _____

REQUEST: A VARIANCE TO PERMIT A SINGLE
FAMILY DWELLING ON A LOT 50' WIDE
IN LIEU OF THE REQUIRED 55'.

POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY.
TO CONFIRM HEARING CALL 887-3391.

DO NOT REMOVE THIS SIGN AND POST UNTIL DAY OF HEARING UNDER PENALTY OF LAW

HANDICAPPED ACCESSIBLE

CERTIFICATE OF POSTING

RE: Case # 97-412-*A*

Petitioner/Developer:
(Wally Wallace)
Date of Hearing/~~Closing~~:
(May 6, 1997)

Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, Maryland 21284

Attention: Ms. Gwendolyn Stephens

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at _____

_____ 13218 Powderdale Ave., Baltimore, Maryland 21220 _____

The sign(s) were posted on _____ April 18, 1997 _____
(Month, Day, Year)

Sincerely,

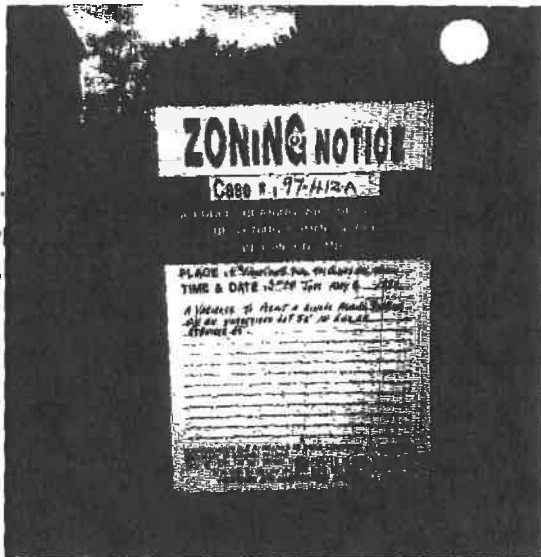

(Signature of Sign Poster & Date)

_____ Thomas P. Ogle, Sr. _____
(Printed Name)

_____ 325 Nicholson Road _____
(Address)

_____ Baltimore, Maryland 21221 _____

_____ (410)-687-8405 _____
(Telephone Number)



97-412-A

**INTER-OFFICE CORRESPONDENCE
RECOMMENDATION FORM**

TO: Director, Office of Planning and Zoning
Attn: Ervin McDaniel
County Courts Bldg, Rm 406
401 Bosley Av
Towson, MD 21204

B _____
Permit Number

FROM: Arnold Jablon, Director, Zoning Administration and Development Management

RE: Undersized Lots

Pursuant to Section 304.2(Baltimore County Zoning Regulations) effective June 25, 1992; this office is requesting recommendations and comments from the Office of Planning & Zoning prior to this office's approval of a dwelling permit.

MINIMUM APPLICANT SUPPLIED INFORMATION:

WALLY WALLACE 7019 GREENBANK RD 335-9458
Print Name of Applicant Address Telephone Number
13218
 Lot Address POWDERDALE AVE. Election District 15 Council District 5 Square Feet 6,137
Lot Location: NE SW side/corner of POWDERDALE AVE .108.2 feet from NE SW corner of GUNDER AVE
(street) (street) 04 15 2200037561/6484
Land Owner WALLY & DAWN WALLACE Tax Account Number 373030K
Address 7019 GREENBANK RD Telephone Number 335-3496
BALTIMORE, MD 21220

CHECKLIST OF MATERIALS: (to be submitted for design review by the Office of Planning and Zoning) **PROVIDED?**

| | YES | NO |
|---|-----|----|
| 1. This Recommendation Form (3 copies) | ✓ | |
| 2. Permit Application | — | ✓ |
| 3. Site Plan | | |
| Property (3 copies) | ✓ | |
| Topo Map (available in Rm 306 C.O.B.) (2 copies) (please label site clearly) | ✓ | |
| 4. Building Elevation Drawings | ✓ | |
| 5. Photographs (please label all photos clearly) | | |
| Adjoining Buildings | ✓ | |
| Surrounding Neighborhood | ✓ | |

Residential Processing Fee Paid
Codes 030 & 080 (\$35)

Accepted by _____
ZADM

Date _____

RECEIVED

MAR 20 1997

OFFICE OF
PLANNING

TO BE FILLED IN BY THE OFFICE OF PLANNING AND ZONING ONLY

RECOMMENDATIONS/COMMENTS:

Approval Disapproval Approval conditioned on required modifications of the permit to conform with the following recommendations:

97-412-A

Signed by: Ervin McDaniel
for the Director, Office of Planning & Zoning

Date: 3/28/97

SCHEDULED DATES, CERTIFICATE OF FILING AND POSTING
FOR A BUILDING PERMIT APPLICATION PURSUANT TO SECTION 304.2
ZONING ADMINISTRATION AND DEVELOPMENT MANAGEMENT .

County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

The application for your proposed Building Permit Application has been accepted
for filing by J. MEPPY on 3-25-97
Date (A)

A sign indicating the proposed Building must be posted on the property for
fifteen (15) days before a decision can be rendered. The cost of filing is
\$50.00 and posting \$35.00; total \$85.00.

In the absence of a request for public hearing during the 15-day posting period,
a decision can be expected within approximately four weeks. However, if a valid
demand is received by the closing date, then the decision shall only be rendered
after the required public special hearing.

*SUGGESTED POSTING DATE 4-4 D (15 Days Before C)

DATE POSTED _____

HEARING REQUESTED-YES _____ NO _____ DATE _____

CLOSING DAY (LAST DAY FOR HEARING DEMAND) 4-21 C (B-3 Work Days)

TENTATIVE DECISION DATE 4-24 B (A + 30 Days)

*Usually within 15 days of filing

CERTIFICATE OF POSTING

District _____

Location of property: _____

Posted by: _____ Date of Posting: _____
Signature

Number of Signs: _____

CK/UNDER.LOT (TXTSOPH)

SCHEDULE DATES, CERTIFICATE OF FILING POSTING
FOR A BUILDING PERMIT APPLICATION PURSUANT TO SECTION 304.2
ZONING ADMINISTRATION AND DEVELOPMENT MANAGEMENT

County Office Building
111 W. Chesapeake Avenue
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*SUGGESTED POSTING DATE 4-4 D (15 Days Before C)

DATE POSTED _____

HEARING REQUESTED-YES ___ NO ___ -DATE _____

CLOSING DAY (LAST DAY FOR HEARING DEMAND) 4-21 C (B-3 Work Days)

TENTATIVE DECISION DATE 4-24 B (A + 30 Days)

*Usually within 15 days of filing

CERTIFICATE OF POSTING

District _____

Location of property: _____

Posted by: _____ Date of Posting: _____
Signature

Number of Signs: _____

CK/UNDER.LOT (TXTSOPH)

INTER-OFFICE CORRESPONDENCE
RECOMMENDATION FORM

TO: Director, Office of Planning and Zoning
Attn: Ervin McDaniel
County Courts Bldg, Rm 406
401 Bosley Av
Towson, MD 21204

B _____
Permit Number

FROM: Arnold Jablon, Director, Zoning Administration and Development Management

RE: **Undersized Lots**

Pursuant to Section 304.2(Baltimore County Zoning Regulations) effective June 25, 1992; this office is requesting recommendations and comments from the Office of Planning & Zoning prior to this office's approval of a dwelling permit.

MINIMUM APPLICANT SUPPLIED INFORMATION:

WALLY WALLACE 7019 GREENBANK RD 335-9458
Print Name of Applicant ¹³²¹⁸ Address Telephone Number

Lot Address POWDERDALE AVE Election District 15 Council District 5 Square Feet 6,137

Lot Location: (N E S W) (side) corner of POWDERDALE AVE, 108.2 feet from (N E S W) corner of GUNDER AVE,
(street) (street) Act 04 15 22000 27561/4134

Land Owner WALLY & DAWN WALLACE Tax Account Number 373030R

Address 7019 GREENBANK RD Telephone Number 335-3496
BALTIMORE, MD 21220

CHECKLIST OF MATERIALS: (to be submitted for design review by the Office of Planning and Zoning)

| | PROVIDED? | |
|---|-------------------------------------|--------------------------|
| | YES | NO |
| 1. This Recommendation Form (3 copies) | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 2. Permit Application | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Site Plan | | |
| Property (3 copies) | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Topo Map (available in Rm 206 C.O.B.) (2 copies) (Please label site clearly) | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 4. Building Elevation Drawings | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 5. Photographs (please label all photos clearly) | | |
| Adjoining Buildings | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Surrounding Neighborhood | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Residential Processing Fee Paid
Codes 030 & 080 (\$85)

Accepted by _____
ZADM

Date _____

RECEIVED

MAR 26 1997

OFFICE OF
PLANNING

TO BE FILLED IN BY THE OFFICE OF PLANNING AND ZONING ONLY!

RECOMMENDATIONS/COMMENTS:

Approval Disapproval Approval conditioned on required modifications of the permit to conform with the following recommendations:

97-412-A

Signed by: Ervin McDaniel
for the Director, Office of Planning & Zoning

Date: 3/28/97

TO: PUTUMENT PUBLISHING COMPANY
April 10, 1997 Issue - Jeffersonian

Please forward billing to:

Wally Wallace
7019 Greenbank Road
Baltimore, MD 21220
335-3496

NOTICE OF HEARING

The Zoning Commissioner 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: 97-412-A
13218 Powderdale Avenue
N/S Powderdale Avenue, 115' W from c/l Gunder Avenue
15th Election District - 5th Councilmanic
Legal Owner(s): Wally S. Wallace and Dawn Wallace

Variance to permit a single family dwelling on an undersized lot (50 feet wide) in lieu of 55 foot width.

HEARING: TUESDAY, MAY 6, 1997 at 3:00 p.m., 4th floor hearing room, Courts Bldg., 401 Bosley Avenue.

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, PLEASE CALL 887-3391.



Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

April 7, 1997

NOTICE OF HEARING

The Zoning Commissioner 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: 97-412-A
13218 Powderdale Avenue
N/S Powderdale Avenue, 115' W from c/l Gunder Avenue
15th Election District - 5th Councilmanic
Legal Owner(s): Wally S. Wallace and Dawn Wallace

Variance to permit a single family dwelling on an undersized lot (50 feet wide) in lieu of 55 foot width.

HEARING: TUESDAY, MAY 6, 1997 at 3:00 p.m., 4th floor hearing room, Courts Bldg., 401 Bosley Avenue.

A handwritten signature in cursive script, appearing to read "Arnold Jablon".

Arnold Jablon
Director

cc: Wally and Dawn Wallace

NOTES: (1) YOU MUST HAVE THE ZONING NOTICE SIGN POSTED ON THE PROPERTY BY APRIL 21, 1997.
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.





**Maryland Department of Transportation
State Highway Administration**

David L. Winstead
Secretary
Parker F. Williams
Administrator

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

RE: Baltimore County 4.4.97
Item No. 412 JCM

Dear Ms. Eubanks:

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.

Please contact Larry Gredlein at 410-545-5606 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,

A handwritten signature in cursive script, appearing to read 'R. J. Burns'.

for Ronald Burns, Chief
Engineering Access Permits
Division

LG

My telephone number is _____

Maryland Relay Service for Impaired Hearing or Speech
1-800-735-2258 Statewide Toll Free

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits & Development
Management

Date: April 14, 1997

FROM: Robert W. Bowling, Chief
Development Plans Review Division

SEARCHED: [unclear] FILED: [unclear]

SUBJECT: Zoning Advisory Committee Meeting
for April 14, 1997
Item No. 412

The Development Plans Review Division has reviewed the subject zoning item.

The property to be developed is located adjacent to tidewater. The Developer is advised that the proper sections of the Baltimore County Building Code must be followed whereby elevation limitations are placed on the lowest floor (including basements) of residential (commercial) development.

In conformance with Federal Flood Insurance requirements, the first floor or basement floor must be at least 1 foot over the flood plain elevation in all construction.

The flood plain management elevation is 11.2 feet for the proposed lot.

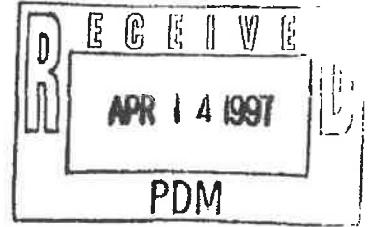
RWB:HJO:cab

cc: File

ZONE414.412

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE



TO: Arnold Jablon, Director
Department of Permits
and Development Management

FROM: Arnold F. "Pat" Keller, III, Director
Office of Planning

SUBJECT: Zoning Advisory Petitions

The Planning Office has no comments on the following petitions (s):

Item Nos. 412 & 420

If there should be any questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3495

Prepared by:

Jeffrey W. Long

Division Chief:

Arnold F. Keller, III

AFK/JL

Baltimore County Government
Fire Department



700 East Joppa Road
Towson, MD 21286-5500



Office of the Fire Marshal
(410) 887-4880

April 9, 1997

Arnold Jablon, Director
Zoning Administration and Development Management
Baltimore County Office Building
Towson, MD 21204
MAIL STOP 1105

RE: Property Owner: SEE BELOW
Locations: DISTRIBUTION MEETING OF April 7, 1997

Item No.: See Below Zoning Agendas:

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plan for the property.

Re: The Fire Marshal's Office has no comments at this time.
IN REFERENCE TO THE FOLLOWING ITEM NUMBERS:

410, 411, 413, 415, 416, 420, and 424

REVIEWER: LT. ROBERT P. SAUERWALD
Fire Marshal Office, PHONE 887-4881, MD-11021

cc: File

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits
and Development Management

FROM: Arnold F. "Pat" Keller, III, Director
Office of Planning

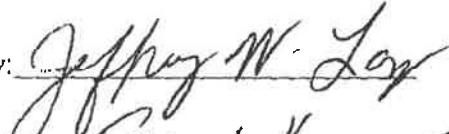
SUBJECT: Zoning Advisory Petitions

The Planning Office has no comments on the following petitions (s):

Item Nos. 412 & 420

If there should be any questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3495

Prepared by:



Division Chief:



AFK/JL

Attach original petition

Due Date 4/16/97

To: Arnold L. Jablon

From: Robert A. Wirth *RAW/jp*

Subject: Zoning Item #412

Wallace 13218 Powderdale Avenue

Zoning Advisory Committee Meeting of April 7, 1997

The Department of Environmental Protection and Resource Management has no comments on the above-referenced zoning item.

The Department of Environmental Protection and Resource Management requests an extension for the review of the above-referenced zoning item to determine the extent to which environmental regulations apply to the site.

The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item:

Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 14-331 through 14-350 of the Baltimore County Code).

Development of this property must comply with the Forest Conservation Regulations (Sections 14-401 through 14-422 of the Baltimore County Code).

Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 26-436 through 26-461, and other Sections, of the Baltimore County Code).

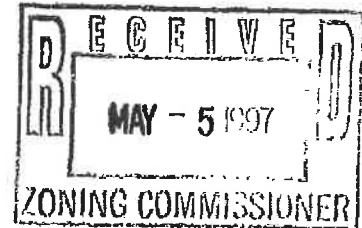
DANIEL PUSZCZEWICZ
13215 CHERWIN AVE.
BALTIMORE, MARYLAND. 21220

Home Phone 410-335-6726

*Ho
5/6
Krz*

April 29, 1997

Mr. Lawrence Schmidt:
Zoning Commissioner
Old Courthouse
400 Washinton Ave.
Room 112
Towson, Maryland 21204



Re: Case No. 97-412-A

Dear Mr. Schmid:

This letter is being written pertaining to the above referenced case number. I am the owner of 13215 Cherwin Ave. I am writing this letter to object to the variance filed by the Wallaces' to build a single family dwelling which requires 55 feet of property. I do not particularly object to the building of a dwelling. What I do object to is that knowing there will only be 10 ft between the property and mine, thus creating a very tight working environment for construction. I do not think this is enough room. I think there is a great possibility that construction could overlap. I am very concerned about this encroachment and the possibility of property depreciation. I have spent a considerable amount of time and money purchasing this property. I have a great deal of pride for this property and keep it in a very reputable condition. For this reason I am asking that the Wallaces', before construction, provide an eight foot privacy fence dividing my property and their property. The fence could possibly be located on the property line. I am also asking that an escrow account with \$500.00 be set up for any possible damages to my property.

If there are any problems or if you would like discuss this matter further, please do not hesitate to contact either me or my wife at (410) 335-6726. I hope to be able to attend the hearing on May 6th.

Sincerely,

Daniel and Brenda Puszczewicz

Daniel Puszczewicz
Brenda Puszczewicz

April 29, 1997

Mr. Lawrence Schmidt
Zoning Commissioner
Old Courthouse
400 Washington Ave.
Room 112
Towson, Maryland 21204

Re: Case No. 97-412-A

Dear Mr. Schmidt:

This letter is being written pertaining to the above-referenced case number. I am the owner of 13215 Charwin Avenue. I am writing this letter to object to the variance filed by the Wallaces' to build a single family dwelling which requires 55 feet of property. I do not particularly object to the building of the dwelling. What I do object to is that knowing there will only be 10 feet between there property line and mine, means that they will only be giving the builders with their trucks and equipment ten feet of there property on my side to work with. I do not only think this is not enough room but I think the greatest possibility is that these builders will be using not only their ten feet of property but also part of my property for equipment. I spend a considerable amount of time keeping my yard and property in reputable condition. For this reason I am asking that the Wallaces' provide a six foot privacy fence dividing my property and their property. The fence can be put on my property with a 2.5 foot setback. I am also asking that an escrow account with \$500.00 be set up for any damages done to my yard and property.

If there are any problems or if you would like to discuss this matter further, please do not hesitate to contact me at (410) 335-6726. I will also be attending the hearing on May 6th.

Very truly yours,

Daniel and Brenda Puszczewicz

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME

ADDRESS

Wally Wallace
Don Wallace

7019 GREENBANK RD
7019 GREENBANK RD

Blank lined area for writing names.

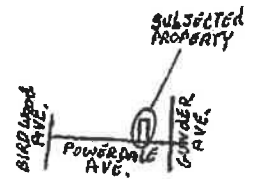
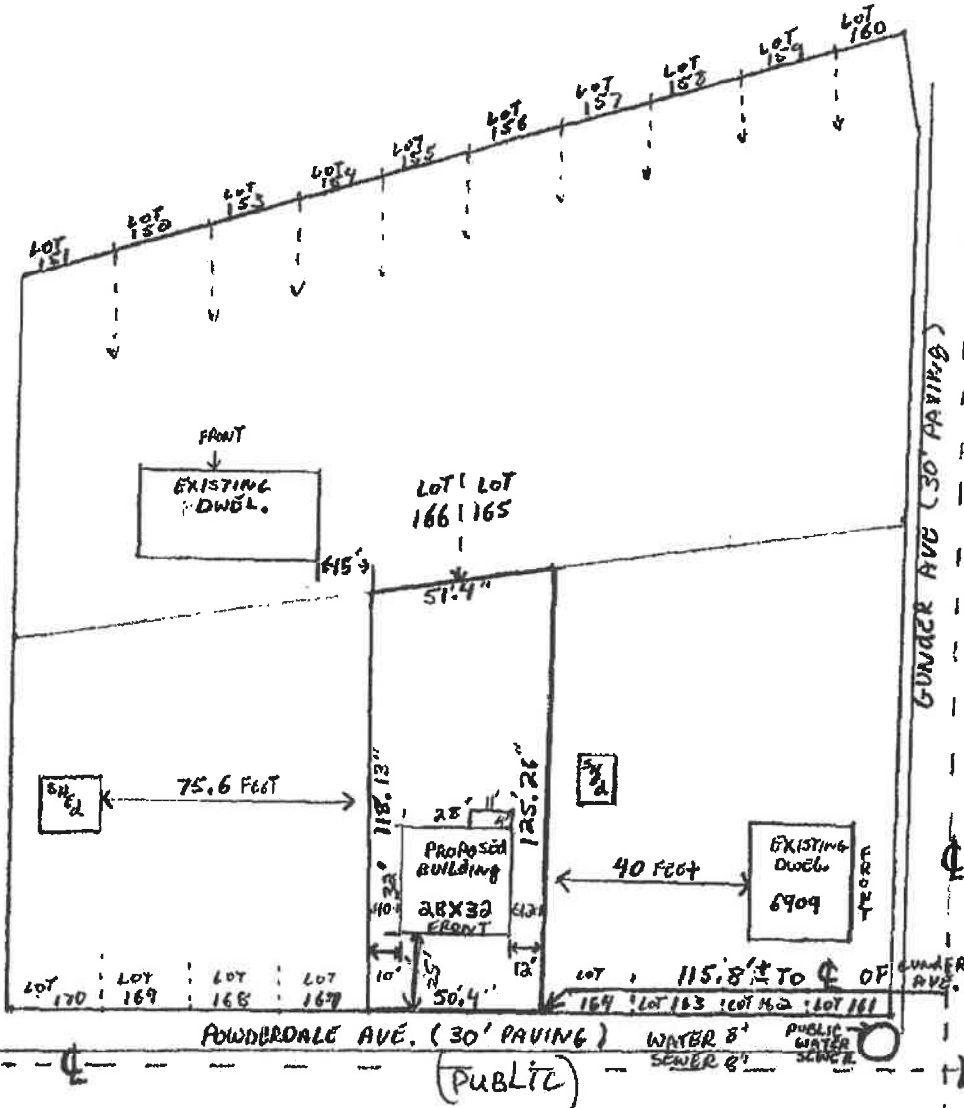
Blank lined area for writing addresses.



Plat to accompany petition for Zoning Variance Special Hearing

Property Address: ~~Powerdale Ave~~
 Plat book# 9, folio# 33, lot# 165, 166, section# A

Owner: Wally & Dawn Wallace



North
 Vicinity Map
 Scale: 1"=1000'

Location information

Councilmanic District: 5

Election District: 15

1"=200' scale map#: NE-9-M

Zoning: D.R. 5.6

Lot size: .14 acreage
 6,137 square feet

8" Sewer: Public

8" Water: Public

Chsapeake Bay Critical Area: Yes

Prior Zoning Hearings: NO

Zoning Office Use Only!

reviewed by item# case#

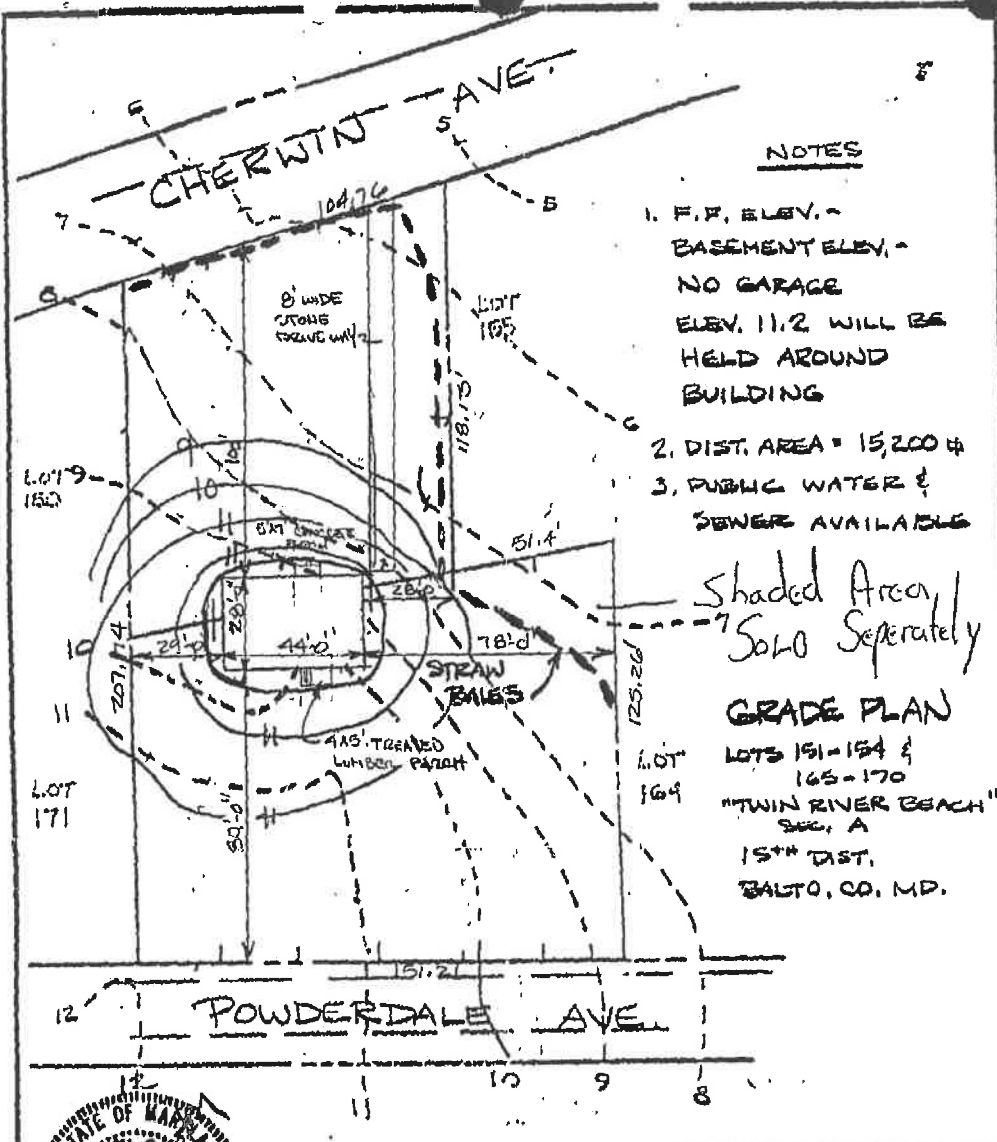
DCM 412

97-412-A

NORTH
 Date: 3-6-97
 Prepared by: W.W.

Scale of Drawing: 1"=50'

APPLICANT/PETITIONER AFFIRM THAT THE 25' SETBACK FOR THE PROPOSED DWELLING MEETS THE FRONT AVERAGING REQUIREMENTS OF SECTION 303.1; BCZP.
Wally Wallace DATE: 3-24-97



NOTES

1. F.F. ELEV. -
BASEMENT ELEV. -
NO GARAGE
ELEV. 11.2 WILL BE
HELD AROUND
BUILDING
2. DIST. AREA = 15,200 #
3. PUBLIC WATER &
SEWER AVAILABLE

Shaded Area
Solo Separately

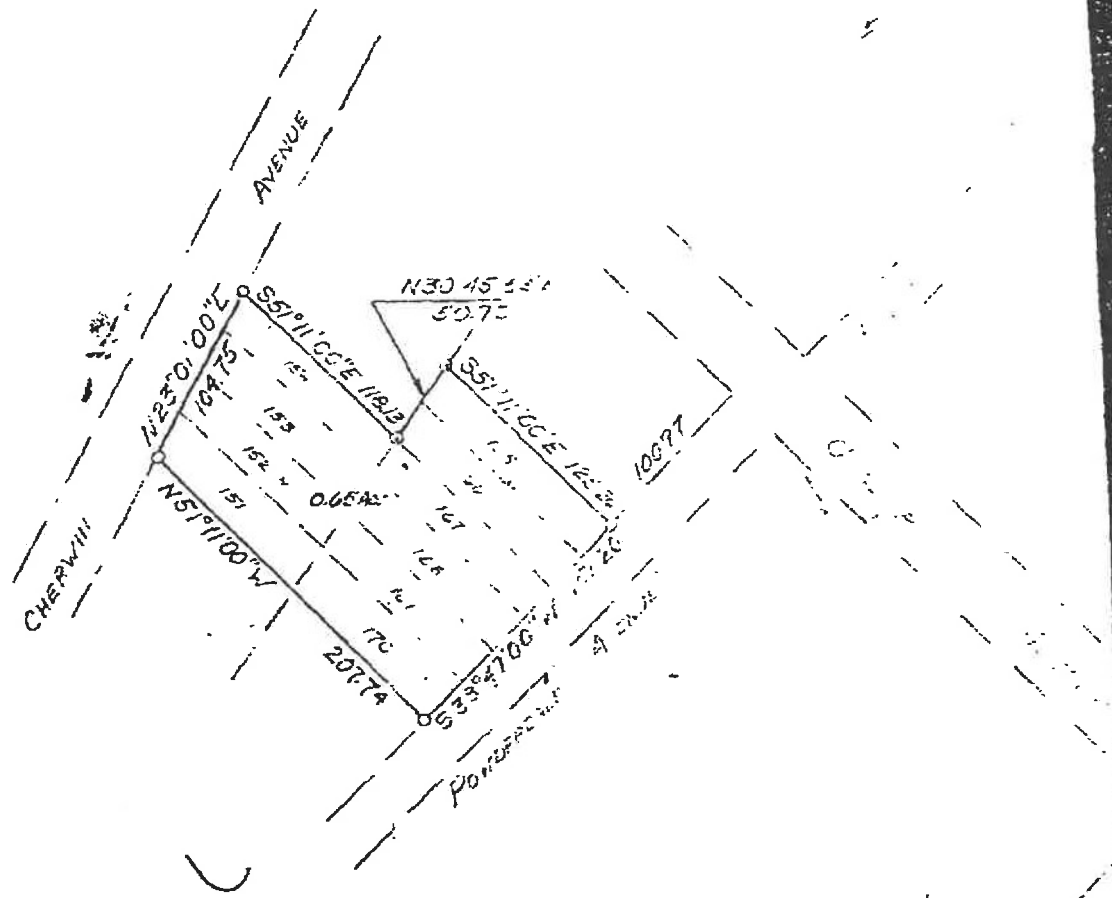
GRADE PLAN

LOTS 151-154 &
165-170
"TWIN RIVER BEACH"
SEC. A
15TH DIST.
BALTO. CO. MD.



Azimuth Consultants
120 Cockeysville Road Suite 105
Hunt Valley, MD 21031

Scale: 1"=40' Date: 10-13-87



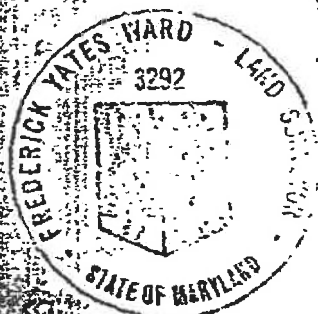
TWO PARCELS OF LAND SURVEYED
FOR JAMES CROUSE....

Located at Twin River Beach, Baltimore
County, Maryland...

*Frederick Ward
& Associates*

RECORDED IN BOOK NO. 111

FILED IN OFFICE OF
1969



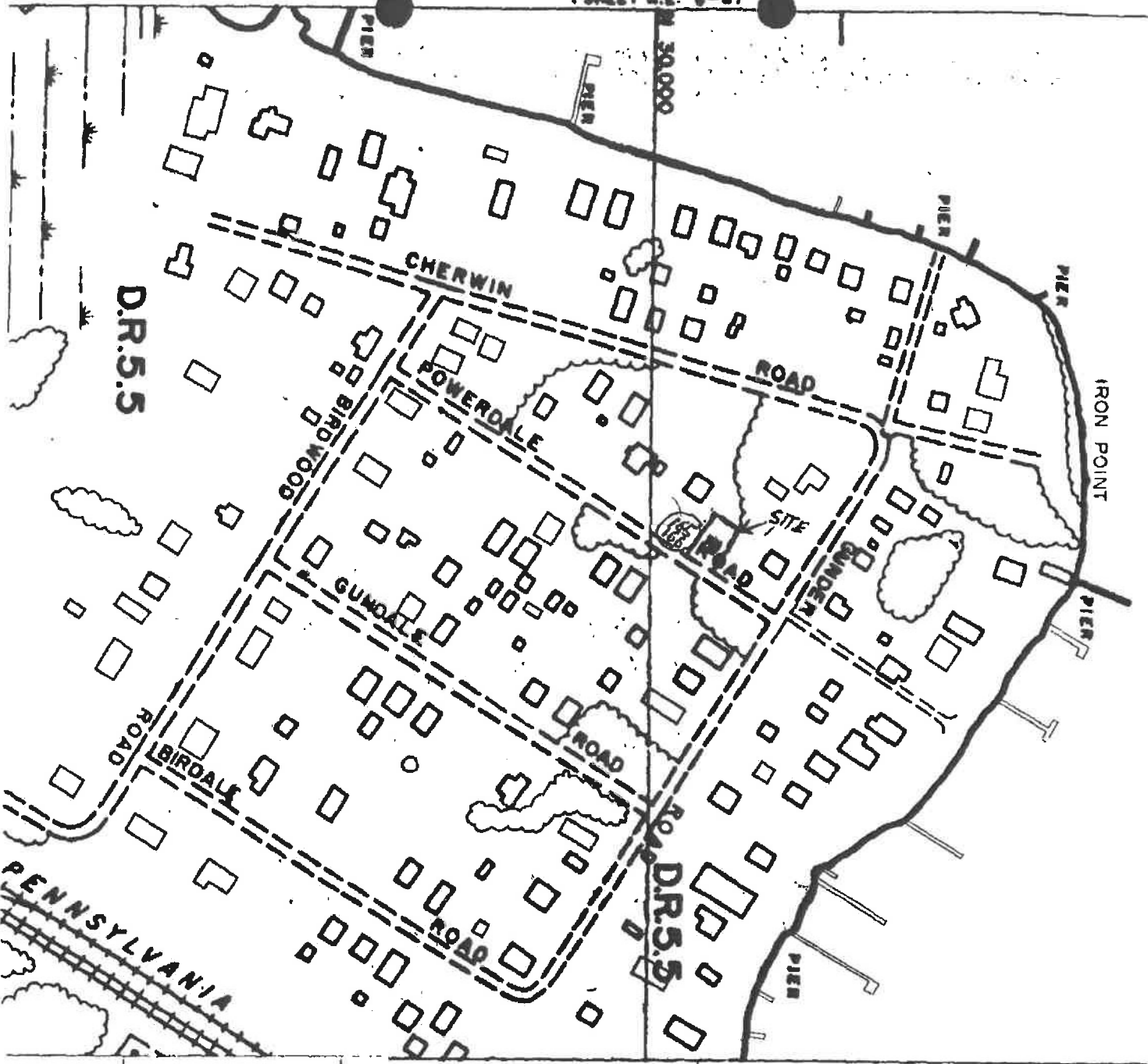
DATE
1-6-69

SCALE
1" = 100'

PLAT NO.
C-67-3

(SHEET N.E. 6-L)

NE 8-M

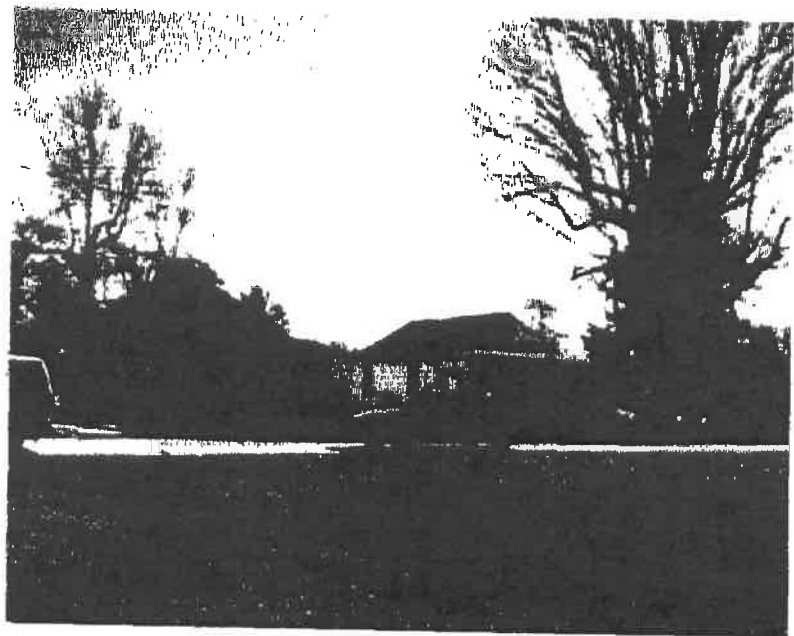


SCALE
1" = 200' ±

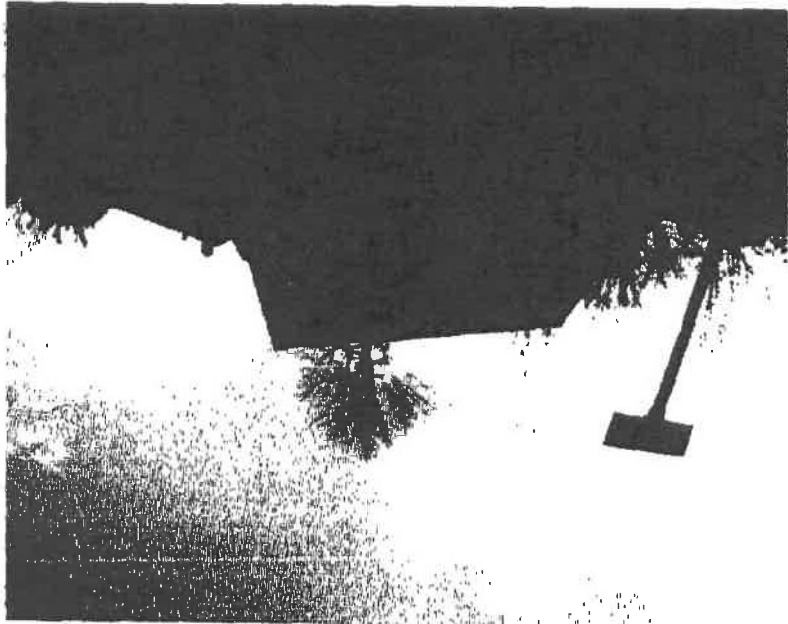
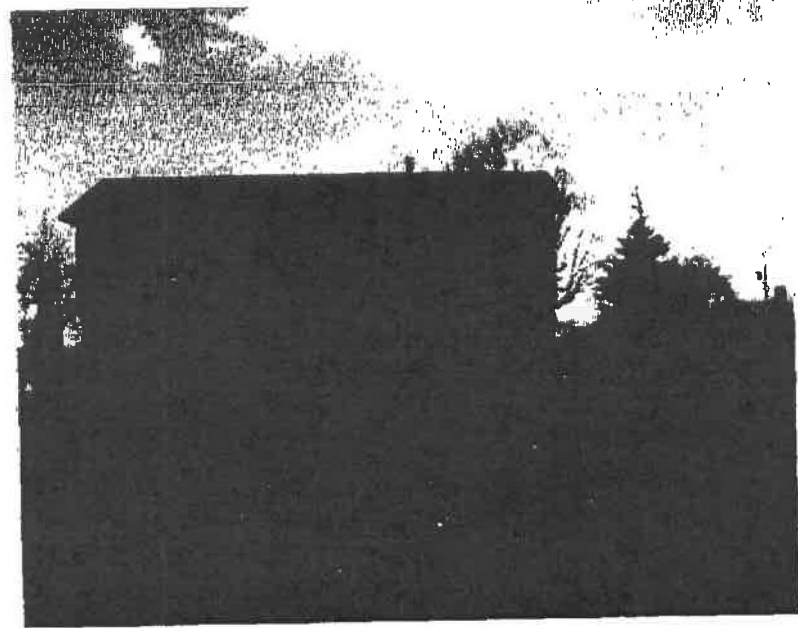
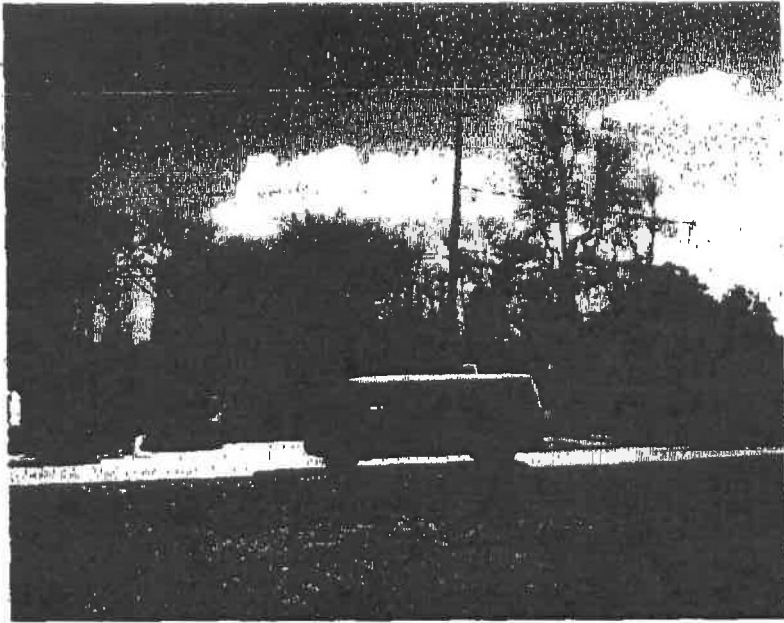
LOCATION
TWIN RIVERS
412

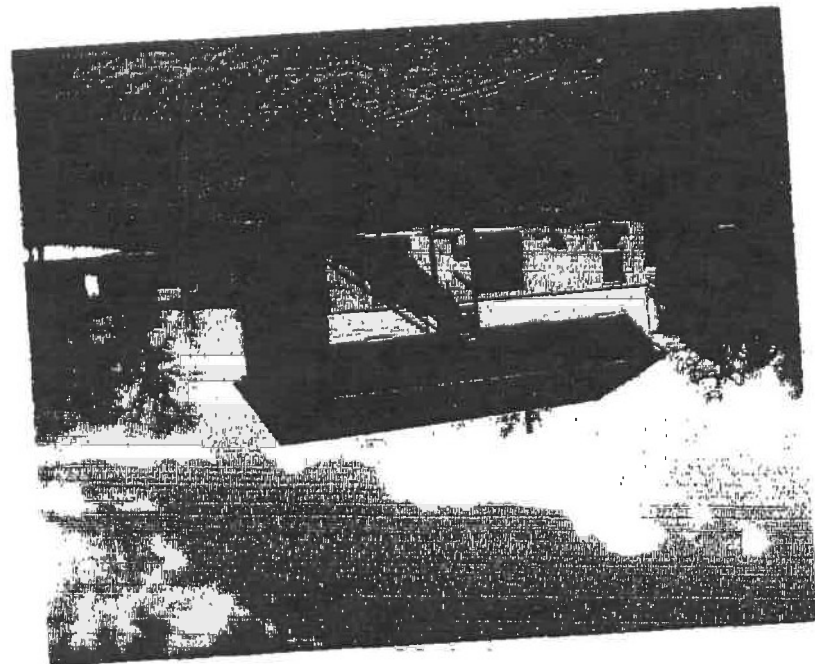
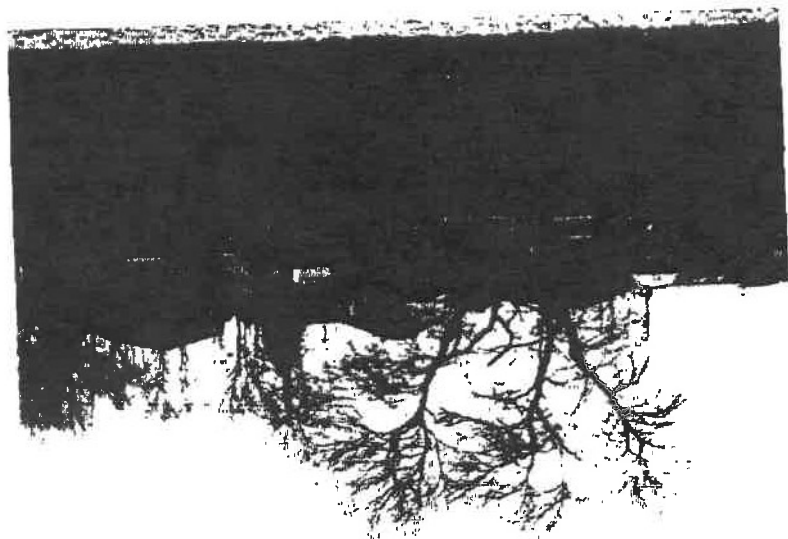
SHEET
N.E.
6-L
(NE 8-M)

97-412-A

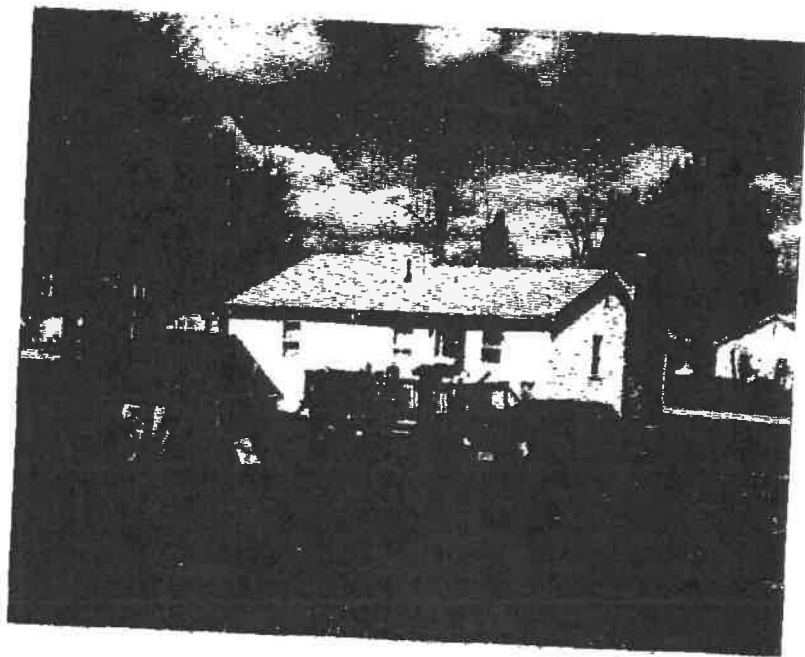


97-412-A





1. The photograph shows a house with a chimney, a porch, and a large tree in the foreground. The house is partially obscured by the tree. The ground is covered in snow. The photograph is high-contrast, with deep shadows and bright highlights from the snow.



BIRD RIVER

GUNPOWDER RIVER

HAREWOOD

MM-SW MM-SE
MM-NW MM-NE

PHOTOGRAMMETRIC MAP OF
BALTIMORE COUNTY METROPOLITAN AREA

| REVISIONS | |
|-----------|------|
| BY | DATE |
| | |
| | |

SCALE
1" = 200'

DATE OF PHOTOGRAPHY
DEC. 1954

LOCATION

HAREWOOD

SHEET

N.E.
8-M

Topography Compiled By Photogrammetric Methods
ABRAMS AERIAL SURVEY CORP. LANSING MICH.

RECEIVED
NOV 20 1954
MICHIGAN STATE UNIVERSITY

TWIN RIVER BEACH PROTECTIVE AND IMPROVEMENT ASSOCIATION, INC



13209 Powderdale Avenue
 Middle River, MD 21202
 443-525-7038
 President: Thomas M. Brookes
Tbrookes927@msn.com



PETITION SIGNATURES

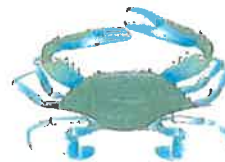
| | NAME | ADDRESS | |
|-----|------------------------|----------------------------|--|
| 1) | George D. Hane | 13211 Powderdale Ave 21220 | LOTS 206 + 207 50.9' x 150' |
| 2) | Aaron Crites | 6902 Birdwood Ave 21220 | LOTS 183 + 184 50' x 126' x 68' x 127.2' |
| 3) | Stanley R. Crites | 6902 Birdwood Ave 21220 | |
| 4) | Margaret Neumann | 6910 Birdwood Ave. 21220 | LOTS 240 + 241 50' x 126' |
| 5) | Elizabeth W. Wadsworth | 6920 Birdwood Ave 21220 | LOTS 680 + 681 100.0' x 601' x 106.99' x 608' |
| 6) | David Lee | 6917 Birdwood Ave 21220 | LOTS 685 + 686 95' x 567.5' |
| 7) | John Lee | 6902 GUNDER AVE, 21220 | |
| 8) | Serena Lee | 6917 Birdwood Ave 21220 | |
| 9) | Julie Brookes | 6903 Birdwood Ave. 21220 | LOTS 690-693 100' x 211.26' |
| 10) | Thomas M. Brookes | 6903 BIRDWOOD AVE 21220 | |
| 11) | Nancy Smith | 13204 Cherwin Avenue | LOTS 242 + 245 50' x 248' |
| 12) | Ann Schmitt | 13204 Cherwin Avenue 21220 | |
| 13) | John Lee | 13215 Cherwin Ave. 21220 | LOTS 151-154 167-170 100' x 208.1' |

Petitioner's Exhibit 11

TWIN RIVER BEACH PROTECTIVE AND IMPROVEMENT ASSOCIATION, INC



13209 Powderdale Avenue
 Middle River, MD 21202
 443-525-7038
 President: Thomas M. Brookes
 Tbrookes927@msn.com



PETITION SIGNATURES

| | NAME | ADDRESS | |
|-----|----------------|--------------------------|--|
| 14) | Tom Stokes | 13212 Cherwin Avenue | LOTS 32 + 33 50' x 246' |
| 15) | Patty Stokes | 13212 Cherwin Avenue | |
| 16) | Donna Spangler | 6918 Gunder Avenue | LOTS 70 + 71 50' x 270' |
| 17) | Joe Spangler | 6911 Gunder Avenue | |
| 18) | Donna Spangler | 6920 Gunder Avenue | LOTS 72 + 73 50' x 270' |
| 19) | Alma Griffin | 6908 Gunder Avenue | |
| 20) | Yvonne J. J. | 6800 Gunder Ave | LOTS 45, 46 + P/O 47 FOB 40' FRONTAGE |
| 21) | John J. J. | 6800 Gunder Ave | |
| 22) | Tara J. J. | 6909 Birdwood Ave | LOTS 688 + 689 100' x 540' |
| 23) | W. J. J. | 13217 Gunder Ave | LOTS 260 - 263 100' x 150' |
| 24) | W. J. J. | 6908 Birdwood Ave | LOTS 198 + 199 50' x 126' |
| 25) | Carol E. J. | 6900 Birdwood Ave, 21220 | LOTS 181 + 182 50.7 x 129.72' ± |
| 26) | Stephan J. J. | 13200 Cherwin Ave. 21220 | LOTS 19, 20, 21 75' x 249' |

TWIN RIVER BEACH PROTECTIVE AND IMPROVEMENT ASSOCIATION, INC

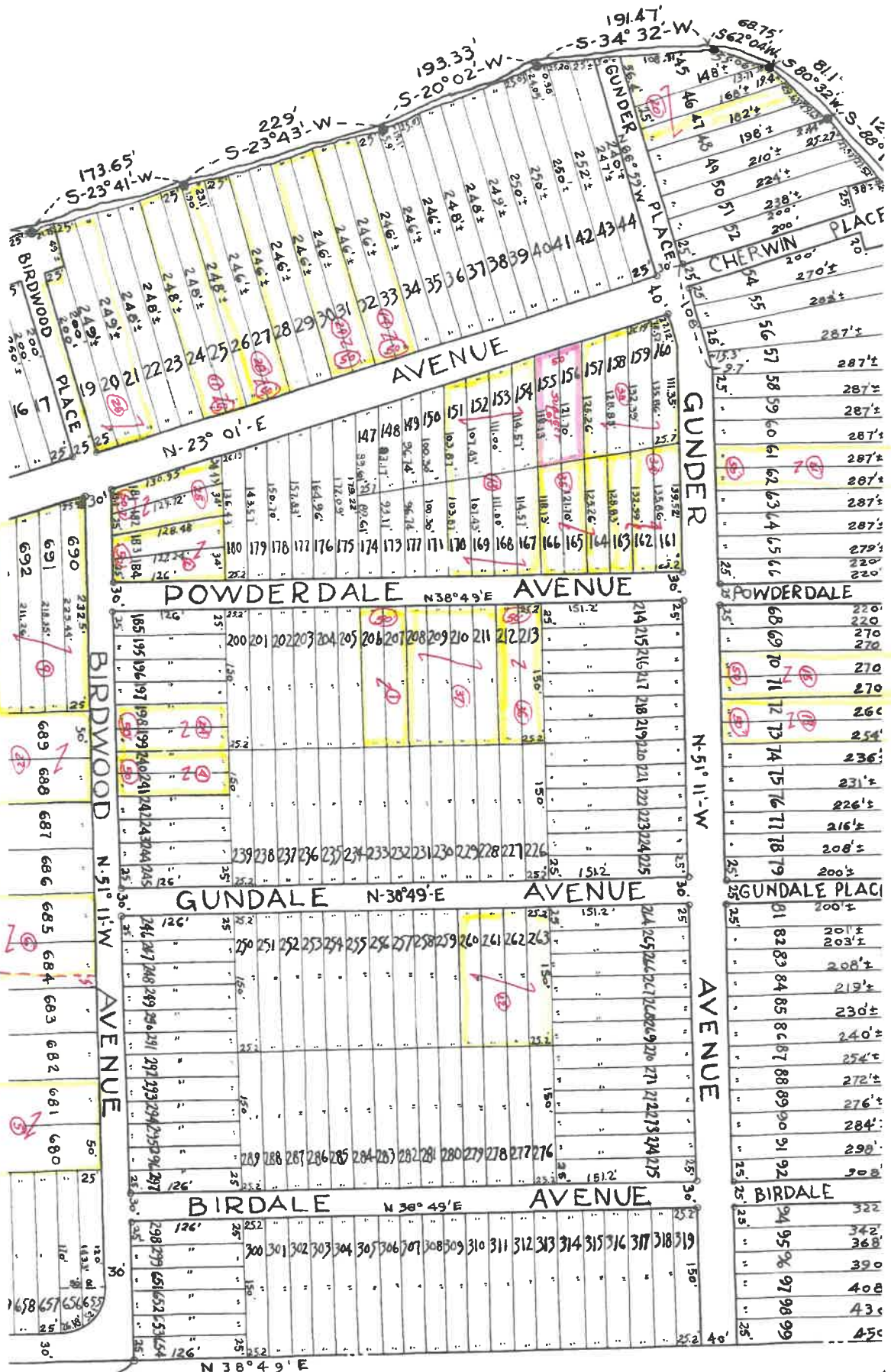


13209 Powderdale Avenue
 Middle River, MD 21202
 443-525-7038
 President: Thomas M. Brookes
Tbrookes927@msn.com



PETITION SIGNATURES

| NAME | ADDRESS | |
|--------------------------------|-----------------------|----------------|
| 27) <i>John Jelipus</i> | 13200 Cherwin Ave | LOTS 26 & 27 |
| 28) <i>Katie Carroll</i> | 13206 Cherwin | 50' x 246' |
| 29) <i>Dale Morgan</i> | 13210 Cherwin Ave. | LOTS 30 & 31 |
| 30) <i>Rachel Morgan</i> | 13210 Cherwin Ave | 50' x 246' |
| 31) <i>Sunda R Kuchta</i> | 6908 Gunder Ave | LOTS 61 & 62 |
| 32) <i>William J Knight</i> | 6904 Gunder Ave | 50' x 287' |
| 33) <i>John [unclear]</i> | 6903 Gunder Ave | LOTS 157-160 |
| 34) <i>[unclear]</i> | 6909 GUNDER AVE | 138.97' x 100' |
| 35) <i>[unclear]</i> | 13218 POWDERDALE AVE | LOTS 161 & 162 |
| 36) <i>Lizida Brasher</i> | 13217 Powderdale Ave. | 752' x 135' ± |
| 37) <i>Robert S. [unclear]</i> | 13215 Powderdale ave | LOTS 165 & 165 |
| 38) <i>Daily Mardel</i> | 13215 Powderdale Ave. | 75' x 125' ± |
| 39) <i>Ruth Hany</i> | 13211 Powderdale Ave | LOTS 212 & 213 |
| | | 50' x 150' |
| | | LOTS 208-211 |
| | | 100' x 150' |





Petitioner's Exhibit 13

Board of Appeals

Exhibit List

Case No.: _____ Case Name: _____

Party: Protestants

Date: _____

| Exhibit No. | Description | ID Only |
|-------------|---------------------------------|---------|
| 10(1) | Photo - showing building stake | |
| (2) | " " " | |
| (3) | from Dawson downway near street | |
| (4) | | |
| (5) | | |
| (6) | | |
| (7) | flooding - 2020 | |
| (8) | | |
| (9) | | |
| (10) | | |
| (11) | | |
| (12) | | |
| (13) | | |
| (14) | | |
| (15) | VERIFIED BY: _____ DATE: _____ | |

Protestants' Exhibit List

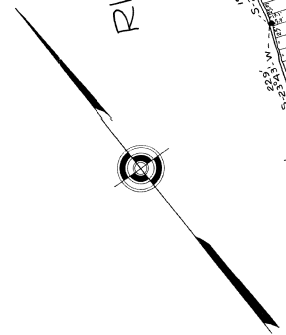
1. (Withdrawn)
2. MyNeighborhood Map
3. SDAT sheet (lot 155)
4. SDAT sheet (lot 156)
5. SDAT sheet (lots 157-60)
6. 2014 Deed to Craig Krestner
7. 1961 Deed (lot 156)
8. 1961 Deed (lot 155)
9. 1959 Deed (lots 157-60)
10. Photographs
11. Petition
12. Opinion (Case no. 79-135)
13. Opinion (Case no. 03-309) (6927 Gunder)
14. Opinion (Case no. 01-02) (13108 Cherwin)
15. SDAT sheets
16. colored copy of Petitioner's Ex. 13
17. Rule 8 papers



GUNPOWDER

RIVER

RIVER



BIRD

SECTION A TWIN RIVER BEACH

SUBDIVIDED BY
CITYCO REALTY CO.
7 ST. PAUL ST. BALTIMORE, MD.
SCALE 1"=100'
REVISED-APRIL 7, 1929.

*held for record
June 5th 1929*

*Condition authorized
by Maryland Title Code
July 1, 1922*

*To complete plat sheet S.39.49W.2652.41--
Hollywood Station*

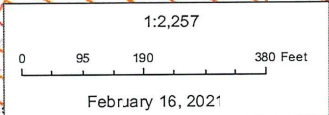
SECTION A
SECTION B

BALTIMORE COUNTY CIRCUIT COURT (FILE) (RE BOOK L.McL.M. 9-33, RES. 22136-279, Date available 1929/04/07, Revised 02/15/2021)

Baltimore County - My Neighborhood



- Legend**
- House Numbers
 - Property
 - County Boundary



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NRS, NRCAN, GeoBasis, GEBCO, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community

View Map View GroundRent Redemption View GroundRent Registration

Special Tax Recapture: None

Account Identifier: District - 15 Account Number - 1522350392

Owner Information

Owner Name: KESTNER CRAIG Use: RESIDENTIAL
 Principal Residence: NO
 Mailing Address: 6903 GUNDER AVE Deed Reference: /34935/ 00437
 BALTIMORE MD 21220-1023

Location & Structure Information

Premises Address: CHERWIN AVE Legal Description:
 0-0000 TWIN RIVER BEACH

| Map: | Grid: | Parcel: | Neighborhood: | Subdivision: | Section: | Block: | Lot: | Assessment Year: | Plat No: | Plat Ref: |
|------|-------|---------|---------------|--------------|----------|--------|------|------------------|----------|------------|
| 0084 | 0001 | 0043 | 15010005.04 | 0000 | A | | 155 | 2021 | | 0009/ 0033 |

Town: None

| Primary Structure Built | Above Grade Living Area | Finished Basement Area | Property Land Area | County Use |
|-------------------------|-------------------------|------------------------|--------------------|------------|
| | | | 2,975 SF | 04 |

| Stories | Basement | Type | Exterior | Quality | Full/Half Bath | Garage | Last Notice of Major Improvements |
|---------|----------|------|----------|---------|----------------|--------|-----------------------------------|
| | | | / | | | | |

Value Information

| | Base Value | Value As of 01/01/2021 | Phase-in Assessments As of 07/01/2020 | As of 07/01/2021 |
|--------------------|------------|------------------------|---------------------------------------|------------------|
| Land: | 10,400 | 700 | | |
| Improvements | 0 | 0 | | |
| Total: | 10,400 | 700 | 10,400 | 700 |
| Preferential Land: | 0 | 0 | | |

Transfer Information

| | | |
|----------------------------|----------------------|------------------|
| Seller: | Date: 04/30/2014 | Price: \$118,000 |
| Type: ARMS LENGTH MULTIPLE | Deed1: /34935/ 00437 | Deed2: |
| Seller: | Date: | Price: \$0 |
| Type: | Deed1: /03817/ 00436 | Deed2: |
| Seller: | Date: | Price: |
| Type: | Deed1: | Deed2: |

Exemption Information

| Partial Exempt Assessments: | Class | 07/01/2020 | 07/01/2021 |
|-----------------------------|-------|------------|------------|
| 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

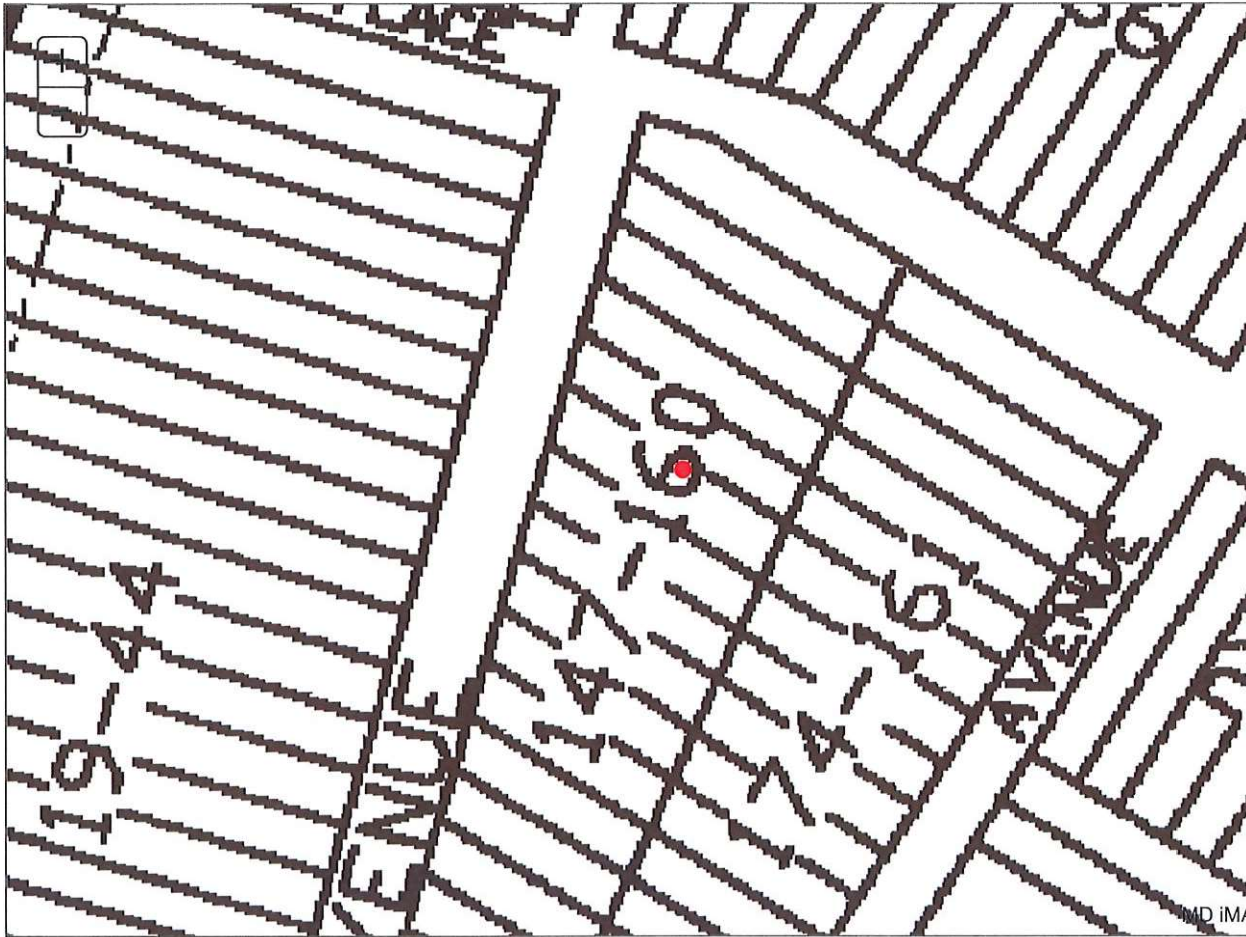
Homestead Application Status: No Application

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application

Date:

District: **15** Account Number: **1522350392**



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>).

[View Map](#)
[View GroundRent Redemption](#)
[View GroundRent Registration](#)

Special Tax Recapture: None

Account Identifier: District - 15 Account Number - 1522350391

Owner Information

| | | | |
|------------------|--|----------------------|---------------|
| Owner Name: | KESTNER CRAIG | Use: | RESIDENTIAL |
| Mailing Address: | 6903 GUNDER AVE BALTIMORE MD 21220-1023 | Principal Residence: | NO |
| | | Deed Reference: | /34935/ 00437 |

Location & Structure Information

| | | | |
|-------------------|-----------------------|--------------------|------------------|
| Premises Address: | CHERWIN AVE 0-0000 | Legal Description: | TWIN RIVER BEACH |
|-------------------|-----------------------|--------------------|------------------|

| | | | | | | | | | |
|------|-------|---------|---------------|--------------|----------|--------|------|------------------|----------------------|
| Map: | Grid: | Parcel: | Neighborhood: | Subdivision: | Section: | Block: | Lot: | Assessment Year: | Plat No: |
| 0084 | 0001 | 0043 | 15010005.04 | 0000 | A | | 156 | 2021 | Plat Ref: 0009/ 0033 |

Town: None

| | | | | |
|-------------------------|-------------------------|------------------------|--------------------|------------|
| Primary Structure Built | Above Grade Living Area | Finished Basement Area | Property Land Area | County Use |
| | | | 3,075 SF | 04 |

| | | | | | | | |
|---------|----------|------|----------|---------|----------------|--------|-----------------------------------|
| Stories | Basement | Type | Exterior | Quality | Full/Half Bath | Garage | Last Notice of Major Improvements |
| | | | / | | | | |

Value Information

| | | | | |
|--------------------|------------|------------|----------------------|------------|
| | Base Value | Value | Phase-in Assessments | |
| | | As of | As of | As of |
| | | 01/01/2021 | 07/01/2020 | 07/01/2021 |
| Land: | 10,400 | 700 | | |
| Improvements | 0 | 0 | | |
| Total: | 10,400 | 700 | 10,400 | 700 |
| Preferential Land: | 0 | 0 | | |

Transfer Information

| | | |
|----------------------------|----------------------|------------------|
| Seller: | Date: 04/30/2014 | Price: \$118,000 |
| Type: ARMS LENGTH MULTIPLE | Deed1: /34935/ 00437 | Deed2: |
| Seller: | Date: | Price: \$0 |
| Type: | Deed1: /03813/ 00510 | Deed2: |
| Seller: | Date: | Price: |
| Type: | Deed1: | Deed2: |

Exemption Information

| | | | |
|-----------------------------|-------|------------|------------|
| Partial Exempt Assessments: | Class | 07/01/2020 | 07/01/2021 |
| 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:

District: **15** Account Number: **1522350391**



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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>).

Search Result for BALTIMORE COUNTY

View Map View GroundRent Redemption View GroundRent Registration

Special Tax Recapture: None

Account Identifier: District - 15 Account Number - 1522350390

Owner Information

Owner Name: JONES JOHN S JR Use: RESIDENTIAL
 Principal Residence: YES
 Mailing Address: 6903 GUNDER AVE Deed Reference: /40842/ 00337
 BALTIMORE MD 21220-1023

Location & Structure Information

Premises Address: 6903 GUNDER AVE Legal Description: LT 157-160 .304 AC
 BALTIMORE 21220-1023 COR CHERWIN AVE
 TWIN RIVER BEACH

| Map: | Grid: | Parcel: | Neighborhood: | Subdivision: | Section: | Block: | Lot: | Assessment Year: | Plat No: |
|------|-------|---------|---------------|--------------|----------|--------|------|------------------|----------------------|
| 0084 | 0001 | 0043 | 15010005.04 | 0000 | A | | 157 | 2021 | Plat Ref: 0009/ 0033 |

Town: None

| Primary Structure Built | Above Grade Living Area | Finished Basement Area | Property Land Area | County Use |
|-------------------------|-------------------------|------------------------|--------------------|------------|
| 1945 | 816 SF | | 13,241 SF | 04 |

| Stories | Basement | Type | Exterior | Quality | Full/Half Bath | Garage | Last Notice of Major Improvements |
|---------|----------|---------------|----------|---------|----------------|------------|-----------------------------------|
| 1 | YES | STANDARD UNIT | SIDING/ | 3 | 1 full/ 1 half | 1 Detached | |

Value Information

| | Base Value | Value | Phase-in Assessments |
|--------------------|------------|------------|----------------------|
| | | As of | As of |
| | | 01/01/2021 | 07/01/2020 |
| | | | As of |
| | | | 07/01/2021 |
| Land: | 86,900 | 86,900 | |
| Improvements | 70,900 | 109,200 | |
| Total: | 157,800 | 196,100 | 157,800 |
| Preferential Land: | 0 | 0 | 170,567 |

Transfer Information

| | | |
|-----------------------------|----------------------|------------------|
| Seller: KESTNER CRAIG | Date: 11/05/2018 | Price: \$196,500 |
| Type: ARMS LENGTH IMPROVED | Deed1: /40842/ 00337 | Deed2: |
| Seller: | Date: 05/06/2014 | Price: \$118,000 |
| Type: NON-ARMS LENGTH OTHER | Deed1: /34935/ 00437 | Deed2: |
| Seller: | Date: | Price: |
| Type: | Deed1: | Deed2: |

Exemption Information

| Partial Exempt Assessments: | Class | | |
|-----------------------------|-------|------------|------------|
| County: | 000 | 07/01/2020 | 07/01/2021 |
| State: | 000 | 0.00 | |
| Municipal: | 000 | 0.00 | |
| | | 0.00 0.00 | 0.00 0.00 |

Special Tax Recapture: None

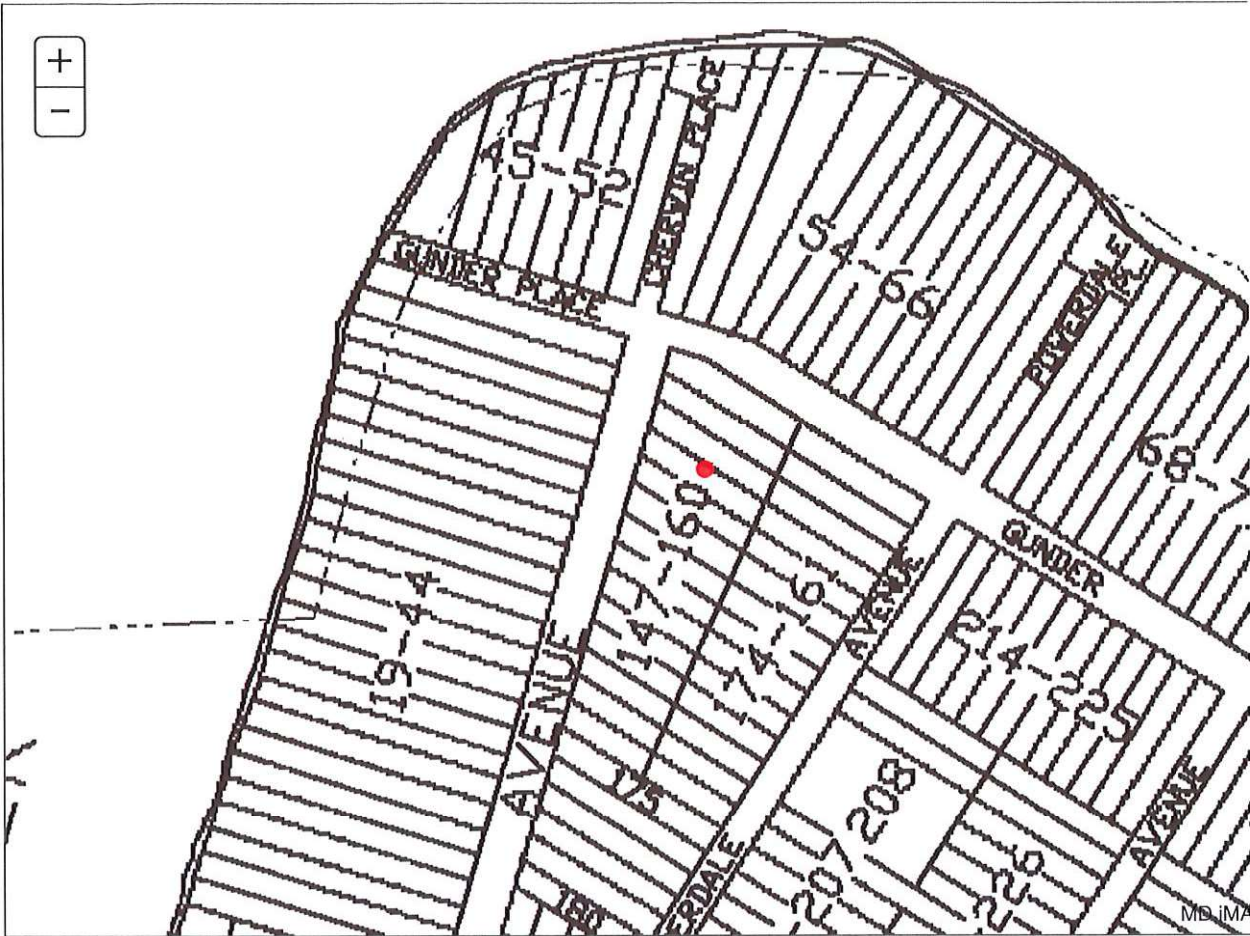
Homestead Application Information

Homestead Application Status: No Application

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application

Date:



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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>).

0034935 437

①

AFTER RECORDING RETURN TO:
Craig Kestner
6903 Gunder Avenue
Baltimore, MD 21220

DOCUMENT PREPARED BY:
Sage Title Group, LLC
7939 Honeygo Boulevard, Suite 124
Baltimore, MD 21236
File Number: 116312WHMS

Tax ID #: 15 1522350390

This Deed, MADE THIS 30th day of April 2014, by and between Dawn Marie Watson, as Personal Representative of The Estate of Margaret Leola Vitek, party of the first part, and Craig Kestner, party of the second part.

WHEREAS, by Letters of Administration from the Register of Wills of Baltimore County, Maryland, issued in the estate of the decedent, Estate Number 171923, the party of the first part was appointed Personal Representative for the decedent's estate and is so acting on the date of this Deed, and

WHEREAS the party of the first part, as Personal Representative is validly seized and possessed of all lands hereinbelow conveyed.

WITNESSETH, That in consideration of the sum of **ONE HUNDRED EIGHTEEN THOUSAND AND 00/100 DOLLARS (\$118,000.00)**, the receipt of which is hereby acknowledged, the said party of the first part does grant and convey to the said party of the second part, in fee simple, all that parcel of ground situated in **Baltimore County, Maryland** and as described as follows, that is to say:

ALL THAT certain lot of ground situate, lying and being in the County of Baltimore, State of Maryland, aforesaid, and described as follows, that is to say:

BEGINNING FOR THE FIRST hereof at the South corner of Cherwin Avenue and Gunder Avenue, thence southwesterly along the southeast side of Cherwin Avenue 97.09 feet to the northeast side of Lot 156 as shown on the Plat of Twin River Beach, Section A, which Plat is recorded in Plat Book W.H.M. No. 9, folio 33; thence southeasterly along the northeast side of Lot 156, 125.26 feet to the northwest side of Lot 154; thence northeasterly along the northwest side of Lots 164, 163, 162 and 161, a distance of 102.8 feet to the southwest side of Gunder Avenue; thence northwesterly and along the southwest side of Gunder Avenue 111.35 feet to a bend in said Avenue; thence still along said Avenue in a more westerly direction 27.12 feet to the place of BEGINNING. Being Lot Nos. 157, 158, 159 and 160 as laid out on the aforesaid Plat.

AND ALSO

BEING KNOWN AND DESIGNATED as Lots 155 and 156, as shown and designated on the Plat of Twin River Beach, Section A, which Plat is recorded in Plat Book W.H.M. No. 9, folio 33, among the Plat Records of Baltimore County, Maryland.

AS TO LOTS 157, 158, 159 & 160; TAX ID #15 1522350390

AS TO LOT 155; TAX ID #15 1522350392

AS TO LOT 156; TAX ID #15 1522350391

The improvements thereon being known as 6903 Gunder Avenue, Baltimore, MD 21220.

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 34935, p. 0438, MSA_CE62_34791. Date available 05/09/2014. Printed 02/15/2021.

BEING the same property which by deed dated October 23, 1959 and recorded among the Land Records of Baltimore County, Maryland in Liber No. 3615, folio 392, was granted and conveyed by Sidney Farber unto Wenceslaus Joseph Vitek, Jr. and Margaret LeOla Vitek, as tenants by the entirety.

BEING the same property which by deed dated February 25, 1961 and recorded among the Land Records of Baltimore County, Maryland in Liber No. 3813, folio 510, was granted and conveyed by Mary Nechamkin and Benjamin Nechamkin unto Wenseslaus Joseph Vitek, Jr. and Margaret LeOla Vitek, as tenants by the entirety.

BEING the same property which by deed dated February 25, 1961 and recorded among the Land Records of Baltimore County, Maryland in Liber No. 3813, folio 512, was granted and conveyed by Mary Nechamkin and Benjamin Nechamkin unto Wenceslaus Jospheh Vitek, Jr. and Margaret LeOla Vitek, as tenants by the entirety.

The said Wenceslaus Joseph Vitek, Jr., having departed this life on or about November 17, 1997, thereby vesting title unto Margaret Leola Vitek, surviving tenant by the entirety of Wenceslaus Joseph Vitek, Jr., deceased.

The said Margaret LeOla Vitek, having departed this life TESTATE, on or about January 11, 2013, thereby vesting title unto Dawn Marie Watson as Personal Representative of the Estate of Margaret LeOla Vitek, pursuant to Last Will and Testament of Margaret LeOla Vitek as filed in Estate # 171923 as filed in the Register of Wills for Baltimore County, Maryland.

TOGETHER with the buildings thereupon, and the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging, or in anywise appertaining.

SUBJECT TO all rights, easements, restrictions, covenants and reservations of record.

TO HAVE AND TO HOLD the said described lot(s) of ground and premises to the said party of the second part, as sole owner, his personal representatives, heirs and assigns, in fee simple.

WITNESS the hand and seal of the said party of the first part:


WITNESS:

By: *Dawn Marie Watson* (SEAL) Personal Representative
Dawn Marie Watson, as Personal Representative of the Estate of Margaret Leola Vitek

STATE OF Maryland, CITY/COUNTY OF Baltimore to wit:

I HEREBY CERTIFY, that on this 30th day of April, 2014, before me, the subscriber, a Notary Public of the State of Maryland in and for Harford County, personally appeared Dawn Marie Watson, who acknowledged herself to be the as Personal Representative of **The Estate of Margaret L. Vitek**, and that she as such as Personal Representative of the Estate of Margaret Leola Vitek being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing in my presence, the name of the entity grantor by herself as such as Personal Representative.

IN WITNESS WHEREOF, I hereunto set my hand and official seal:




Notary Public

DORIS J. HALL-SCHEELER
NOTARY PUBLIC STATE OF MARYLAND
County of Harford
My Commission Expires August 22, 2014

My Commission Expires: 8/22/14

This is to certify that the within instrument was prepared under the supervision of an Attorney duly admitted to practice before the Court of Appeals in the State of Maryland.



F. Michael Grace, Esq.

AFFIDAVIT OF INDIVIDUAL(S)
TO QUALIFY FOR TAX EXEMPTION FOR FIRST TIME MARYLAND HOMEBUYER(S)

Grantee(s) hereby make oath or affirm under penalties of perjury that the following statements are true:

1. The undersigned individuals and each of them has/have never before owned an interest in residential real property located in the State of Maryland that has been the individual's principal residence; and
2. The property described in the Deed to which this affidavit is attached is improved by a residence which will be occupied as my/our principal residence; and
3. I/we am/are fully qualified to make this affidavit.
4. This affidavit is made to qualify Grantee(s) for benefits under TP section 13-203.
5. In the event the hereinabove statements are being certified by an agent pursuant to Tax-Property Section 13-409(b), said Agent certifies:
 - a. That the representations are based on a diligent inquiry made by the agent; and
 - b. Are true to the best knowledge information and belief of the agent.

WITNESS the hand and seal of the said party of the second part:


WITNESS:

 (SEAL)
Craig Kestner

STATE OF MARYLAND, COUNTY OF BALTIMORE to wit:

I HEREBY CERTIFY, that on this 30th day of April, 2014, before me, the subscriber, a Notary Public of the State of Maryland in and for Harford County, personally appeared **Craig Kestner** known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged the foregoing Deed to be his act, and in my presence signed and sealed the same.

IN WITNESS WHEREOF, I hereunto set my hand and official seal:



Notary Public

My Commission Expires: 8/22/14

DORIS J. HALL-SCHEELER
NOTARY PUBLIC STATE OF MARYLAND
County of Harford
My Commission Expires August 22, 2014

OWNER OCCUPANCY AFFIDAVIT

THE WITHIN GRANTEE DO HEREBY CERTIFY UNDER THE PENALTY OF PERJURY THAT THE LAND CONVEYED HEREIN IS RESIDENTIALLY IMPROVED OWNER-OCCUPIED REAL PROPERTY AND THAT THE RESIDENCE WILL BE OCCUPIED BY MYSELF AT LEAST 7 OUT OF 12 MONTHS IMMEDIATELY AFTER THE PROPERTY IS CONVEYED AS EVIDENCED BY THE SIGNATURE BELOW

WITNESS the hand and seal of the said party of the second part:

WITNESS:


Craig Kestner (SEAL)

STATE OF MARYLAND, COUNTY OF BALTIMORE to wit:

I HEREBY CERTIFY, that on this 30th day of April, 2014, before me, the subscriber, a Notary Public of the State of Maryland in and for Harford County, personally appeared **Craig Kestner** known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged the foregoing Deed to be his act, and in my presence signed and sealed the same.

IN WITNESS WHEREOF, I hereunto set my hand and official seal:



Notary Public

My Commission Expires: 8/22/14

DORIS J. HALL-SCHEELER
NOTARY PUBLIC STATE OF MARYLAND
County of Harford
My Commission Expires August 22, 2014

2014

MARYLAND
FORM

Certification of Exemption from Withholding Upon
Disposition of Maryland Real Estate
Affidavit of Residence or Principal Residence

Based on the certification below, Transferor claims exemption from the tax withholding requirements of 10-912 of the Tax-General Article, Annotated Code of Maryland. Section 10-912 provides that certain tax payments must be withheld and paid when a deed or other instrument that effects a change in ownership of real property is presented for recordation. The requirements of 10-912 do not apply when a transferor provides a certification of Maryland residence or certification that the transferred property is the transferor's principal residence.

1. Transferor Information

Name of Transferor: The Estate of Margaret L. Vitek

2. Reason for Exemption

Resident Status

- I, Transferor, am a resident of the State of Maryland
- Transferor is a resident entity as defined in Code of Maryland Regulations (COMAR) 03.04.12.02B(11), I am an agent of Transferor, and I have authority to sign this document on Transferor's behalf.

Principal Residence

- Although I am no longer a resident of the State of Maryland, the Property is my principal residence as defined in IRC 121 and is recorded as such with the State Department of Assessments and Taxation.

Under penalty of perjury, I certify that I have examined this declaration and that, to the best of my knowledge, it is true, correct, and complete.

3a. Individual Transferors

Witness Name

Name

Signature

3b Entity Transferors

Witness/Attest

Lisa D. Arnold

The Estate of Margaret L. Vitek

By *Dawn Marie Watson* P.R.
Dawn Marie Watson, as Personal
Representative of the Estate of
Margaret Leola Vitek

State of Maryland Land Instrument Intake Sheet

Baltimore City County: Baltimore

Information provided is for the use of the Clerk's Office, State Department of Assessments and Taxation, and County Finance Office only. (Type or Print in Black Ink Only-All Copies Must Be Legible)

MP FD SURE 40.00
RECORDING FEE 20.00
TR TAX STATE 295.00
TOTAL 355.00
Rec# BA02 Rcp# 56867
JLE CR Bl# 934
May 06, 2014 02:11 PM

1 Type(s) of Instruments
2 Conveyance Type Check Box
3 Tax Exemptions (if Applicable)
4 Cite or Explain Authority

Table with columns: Consideration Amount, Finance Office Use Only. Rows include Purchase Price/Consideration, Any New Mortgage, Balance of Existing Mortgage, Other, Full Cash Value, Transfer and Recordation Tax Consideration, Transfer Tax Consideration, X()% =, Less Exemption Amount - Total Transfer Tax =, Recordation Tax Consideration X()per \$500 =, TOTAL DUE.

Table with columns: Amount of Fees, Doc 1, Doc 2, Agent. Rows include Recording Charge, Surcharge, State Recordation Tax, State Transfer Tax, County Transfer Tax, Other, Other.

6 Description of Property SDAT requires submission of all applicable information. A maximum of 40 characters will be indexed in accordance with the priority cited in Real Property Article Section 3-104(g)(3)(i).

7 Transferred From
8 Transferred To
9 Other Names to Be Indexed

10 Contact/Mail information
11 Assessment Information
12 Terminal Verification, Agricultural, Whole, Part, Tran Process Verification

Table with columns: Transfer Number, Date Received, Deed Reference, Assigned Property No. Rows include Transfer Number, Date Received, Deed Reference, Assigned Property No.

RECORDATION TAX NOT REQUIRED
Director of Budget and Finance
BALTIMORE COUNTY, MARYLAND
T.P. ART 12-108
DOC# 2 3 4 5 6
Initial [Signature]
Date 05-05-14

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 34935, p. 0443, MSA_CE62_34791. Date available 05/09/2014. Printed 02/15/2021.

3 Acct #s

Water meter Account 62

295.00

[Signature]

Duplicate Paid Receipt
File No. 11631212
BUSINESS
5/06/2014
RECEIPT # 50643
RECORDATION TAXES
7.701
ACCOUNT # 2350390
Total \$2,030.00
\$2,030.00
CA

THIS DEED, made this ~~25th~~ day of February, in the year one thousand nine hundred and sixty-one, between MARY NECHAMKIN and BENJAMIN NECHAMKIN, her husband, of the County of Baltimore, in the State of Maryland, of the first part, Grantors, and WENCESLAUS JOSEPH VITEK, JR. and MARGARET LeOLA VITEK, his wife, of the second part, Grantees.

WITNESSETH, that in consideration of the sum of Five Dollars (\$5.00), and other good and valuable considerations, the receipt of which is hereby acknowledged, the said Mary Nechamkin and Benjamin Nechamkin, her husband, do grant and convey unto the said Wenceslaus Joseph Vitek, Jr. and Margaret LeOla Vitek, his wife, as tenants by the entireties, their assigns, the survivor of them and the survivor's heirs and assigns, in fee simple, all that lot of ground situate, lying and being in the Fifteenth Election District of Baltimore County, State of Maryland, aforesaid, and described as follows, that is to say:

BEING known as Lot 156 as shown and designated on the Plat of Twin River Beach, Section A, which Plat is recorded among the Land Records of Baltimore County in Plat Book W. H. M. No. 9, folio 33.

BEING one of the lots of ground which by Deed dated August 17, 1932, and recorded among the Land Records of Baltimore County in Liber L. McL. M. No. 901, folio 278, was granted and conveyed by The Cityco Realty Company to Mary Nechamkin, one of the Grantors herein.

TOGETHER with the buildings and improvements thereupon erected, made or being, and all and every the rights, alleys, ways, waters, privileges, appurtenances and advantages to the same belonging or anywise appertaining.

TO HAVE AND TO HOLD the said lot of ground and premises above described and mentioned and hereby intended to be conveyed, together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining, unto and to the proper use and benefit of the said Wenceslaus Joseph Vitek, Jr. and Margaret LeOla Vitek, his wife, as tenants by the entireties, their assigns, the survivor of them and the survivor's heirs and assigns, in fee simple.

3813 PAGE 511
AND the said parties of the first part hereby covenant that they

have not done or suffered to be done any act, matter or thing whatsoever to encumber the property hereby conveyed; that they will warrant specially the property granted; and that they will execute such further assurances of the same as may be requisite.

WITNESS the hands and seals of the said Grantors.

TEST:

Robert E. Carney

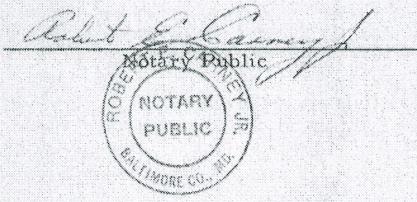
Mary Nechamkin (SEAL)
Mary Nechamkin

Benjamin Nechamkin (SEAL)
Benjamin Nechamkin

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY that on this 25th day of February, 1961, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County of Baltimore, personally appeared MARY NECHAMKIN and BENJAMIN NECHAMKIN, her husband, the within named Grantors, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained, and in my presence signed and sealed the same.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix my Notarial Seal.



PAID - Baltimore County, Md. - Office of Finance

2-27-61 2827 • 08959 PPG- 2.00
2-27-61 2827 • 08959 PPG- 2.00

Rec'd for record FEB 25 1961 at 11:29 AM
Per Walter J. Rasmussen, Clerk
Mail to Robert E. Carney
Receipt No. 156255 \$ 16.00

BALTIMORE COUNTY CIRCUIT COURT RECORDS WORK 35-3, p. 0511, 859A_WEBZ_3886. Date available 12/13/2015. Printed 03/19/2017.

THIS QUIT-CLAIM DEED, made this ~~15~~ day of February, in the year one thousand nine hundred and sixty-one, between MARY NECHAMKIN and BENJAMIN NECHAMKIN, her husband, of the County of Baltimore, in the State of Maryland, of the first part, Grantors, and WENCESLAUS JOSEPH VITEK, JR. and MARGARET LeOLA VITEK, his wife, of the second part, Grantees.

WITNESSETH, that in consideration of the sum of Five Dollars (\$5.00), and other good and valuable considerations, the receipt of which is hereby acknowledged, the said Mary Nechamkin and Benjamin Nechamkin, her husband, do hereby release, remise, grant, convey and forever quit-claim unto the said Wenceslaus Joseph Vitek, Jr. and Margaret LeOla Vitek, his wife, as tenants by the entireties, their assigns, the survivor of them and the survivor's heirs and assigns, in fee simple, all their right, title and interest in and to that lot of ground situate, lying and being in the Fifteenth Election District of Baltimore County, State of Maryland, aforesaid, and described as follows, that is to say:

BEING known as Lot 155 as shown and designated on the Plat of Twin River Beach, Section A, which Plat is recorded among the Land Records of Baltimore County in Plat Book W. H. M. No. 9, folio 33.

BEING one of the lots of ground which by Deed dated August 17, 1932, and recorded among the Land Records of Baltimore County in Liber L. McL. M. No. 901, folio 278, was granted and conveyed by The Cityco Realty Company to Mary Nechamkin, one of the Grantors herein.

TOGETHER with the buildings and improvements thereupon erected, made or being, and all and every the rights, alleys, ways, waters, privileges, appurtenances and advantages to the same belonging or anywise appertaining.

THIS DEED, made this 23rd day of October, in the year one thousand nine hundred and fifty-nine, between SIDNEY FARBER, Widower, of Baltimore City, State of Maryland, party of the first part, and WENCESLAUS JOSEPH VITEK, JR. and MARGARET LeOLA VITEK, his wife, of the second part.

WITNESSETH, that in consideration of the sum of Five Dollars (\$5.00), and other good and valuable considerations, the receipt of which is hereby acknowledged, the said Sidney Farber does grant and convey unto the said Wenceslaus Joseph Vitek, Jr. and Margaret LeOLA Vitek, his wife, as tenants by the entireties, their assigns, the survivor of them and the survivor's heirs and assigns, in fee simple, all that lot of ground situate, lying and being in the County of Baltimore, State of Maryland, aforesaid, and described as follows, that is to say:

BEGINNING FOR THE FIRST hereof at the South corner of Cherwin Avenue and Gunder Avenue, thence southwesterly along the southeast side of Cherwin Avenue 97.09 feet to the northeast side of Lot 156 as shown on the Plat of Twin River Beach, Section A, which Plat is recorded in Plat Book W.H.M. No. 9, folio 33, thence southeasterly along the northeast side of Lot 156 125.26 feet to the northwest side of Lot 154, thence northeasterly along the northwest side of Lots 164, 163, 162, and 161, a distance of 102.8 feet to the southwest side of Gunder Avenue, thence northwesterly and along the southwest side of Gunder Avenue 111.35 feet to a bend in said Avenue, thence still along said Avenue in a more westerly direction 27.12 feet to the place of beginning. Being Lots Nos. 157, 158, 159, and 160 as laid out on the aforesaid Plat.

BEING the second parcel of ground which by Deed dated November 17, 1944, and recorded among the Land Records of Baltimore County in Liber R.J.S. No. 1372, folio 131, was granted and conveyed by Beulah B. Burke to Beulah A. Watson, the said Beulah A. Watson having since intermarried with Sidney Farber, the Grantor herein; the said Beulah W. Farber (nee Beulah A. Watson) died intestate on January 8, 1958, a resident of Baltimore City, leaving as her sole heirs Dora B. Watson, her mother, and Sidney Farber, her husband; see Estate Docket 83, folio 66, file No. 7099. The said Dora B. Watson died a resident of Baltimore City on February 17, 1958, and by her Last Will and Testament dated January 17, 1958, and recorded in Wills Liber 267, folio 339, devised and bequeathed all her property to her son-in-law Sidney Farber, the Grantor herein; see Estate Docket 83, folio 242.

TOGETHER with the buildings and improvements thereupon erected, made or being, and all and every the rights, alleys, ways, waters, privileges, appurtenances and advantages to the same belonging or anywise appertaining.

TO HAVE AND TO HOLD the said lots of ground and premises above described and mentioned and hereby intended to be conveyed, together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining, unto and to the proper use and benefit of the said Wenceslaus



BALTIMORE COUNTY CLERK'S OFFICE (Land Records) FOR 3011, p. 0392, WCA_P502_5470. Date available: 11/26/2015. Printed: 12/10/2017.

Joseph Vitek, Jr. and Margaret LeOla Vitek, his wife, as tenants by the entireties, their assigns, the survivor of them and the survivor's heirs and assigns, in fee simple.

AND the said party of the first part hereby covenants that he has not done or suffered to be done any act, matter or thing whatsoever to encumber the property hereby conveyed; that he will warrant specially the property granted; and that he will execute such further assurances of the same as may be requisite.

WITNESS the hand and seal of the said Grantor.

TEST:

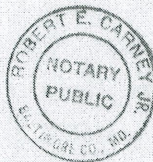
Robert E. Carney *Sidney Farber* (SEAL)
Sidney Farber

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY that on this 23rd day of October, 1959, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County of Baltimore aforesaid, personally appeared SIDNEY FARBER, the within named Grantor, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained, and in my presence signed and sealed the same.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix my Notarial Seal.

Robert E. Carney
Notary Public



Rec'd for record OCT 26 1959 at 11¹⁵ AM
Per Walter J. Rasmussen, Clerk
Mail to *Robert E. Carney*
Receipt No. 65334 \$ 350

BALTIMORE COUNTY CIRCUIT COURT Land Records Administration 909 MCA DE02 v. 10 - Baltimore, Md. 11/22/2015







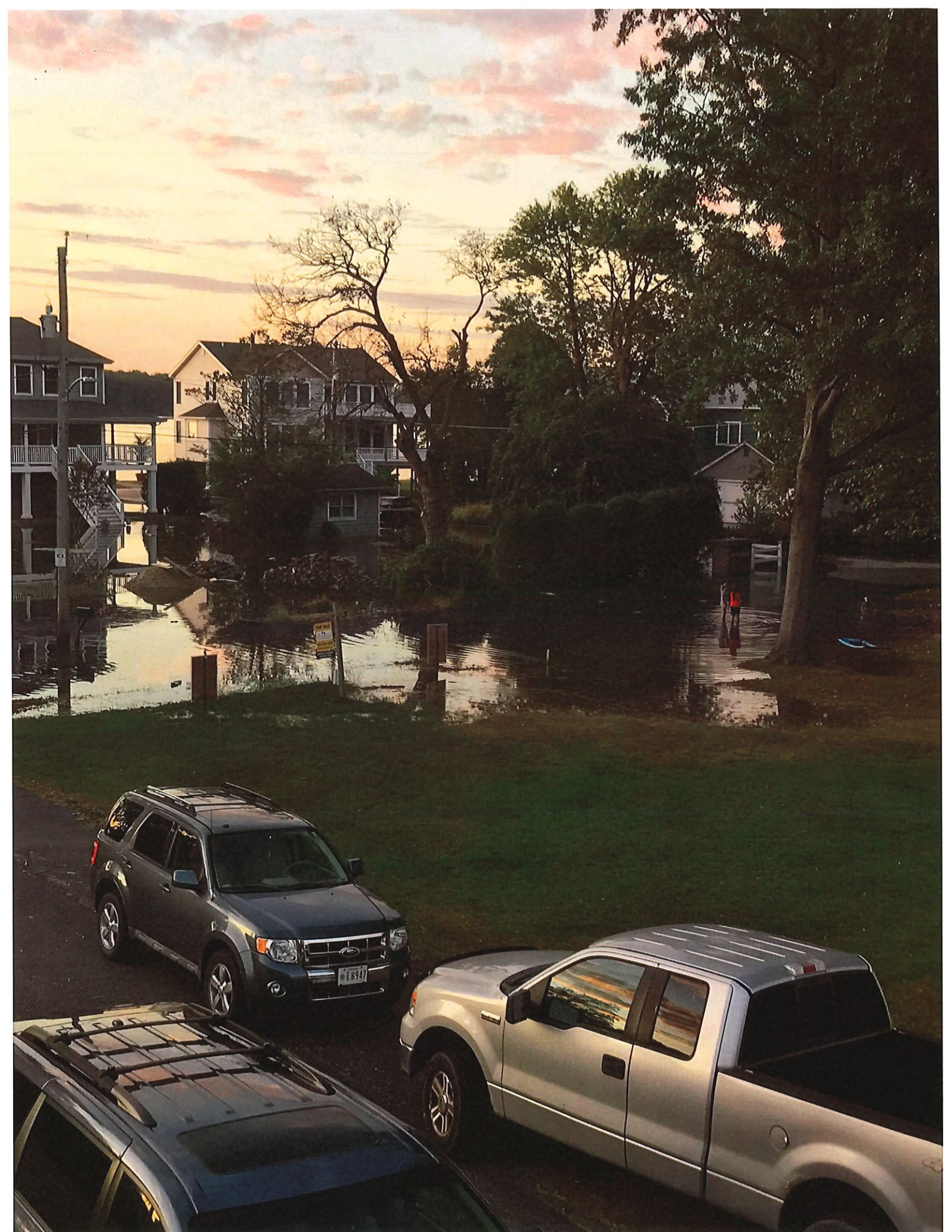








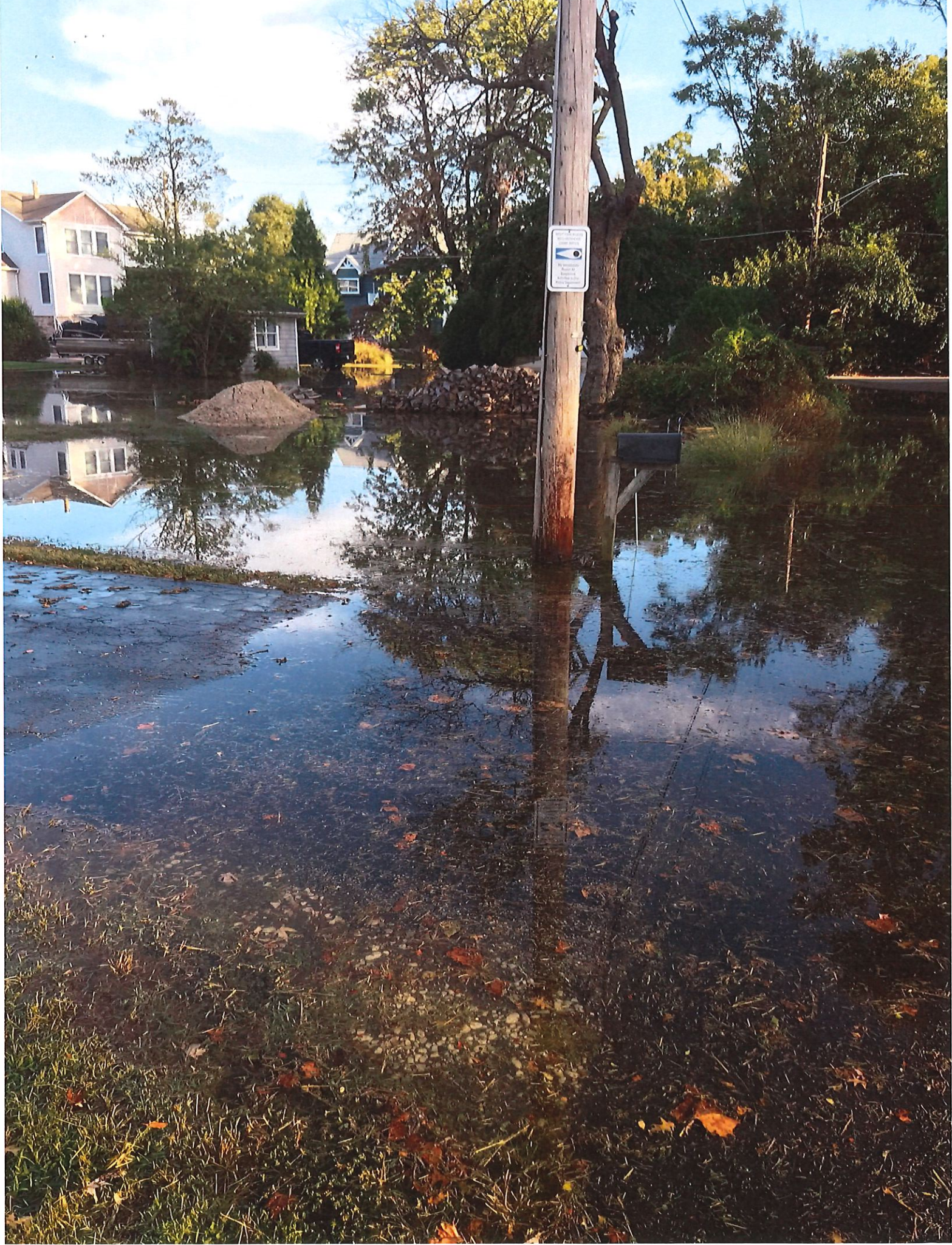




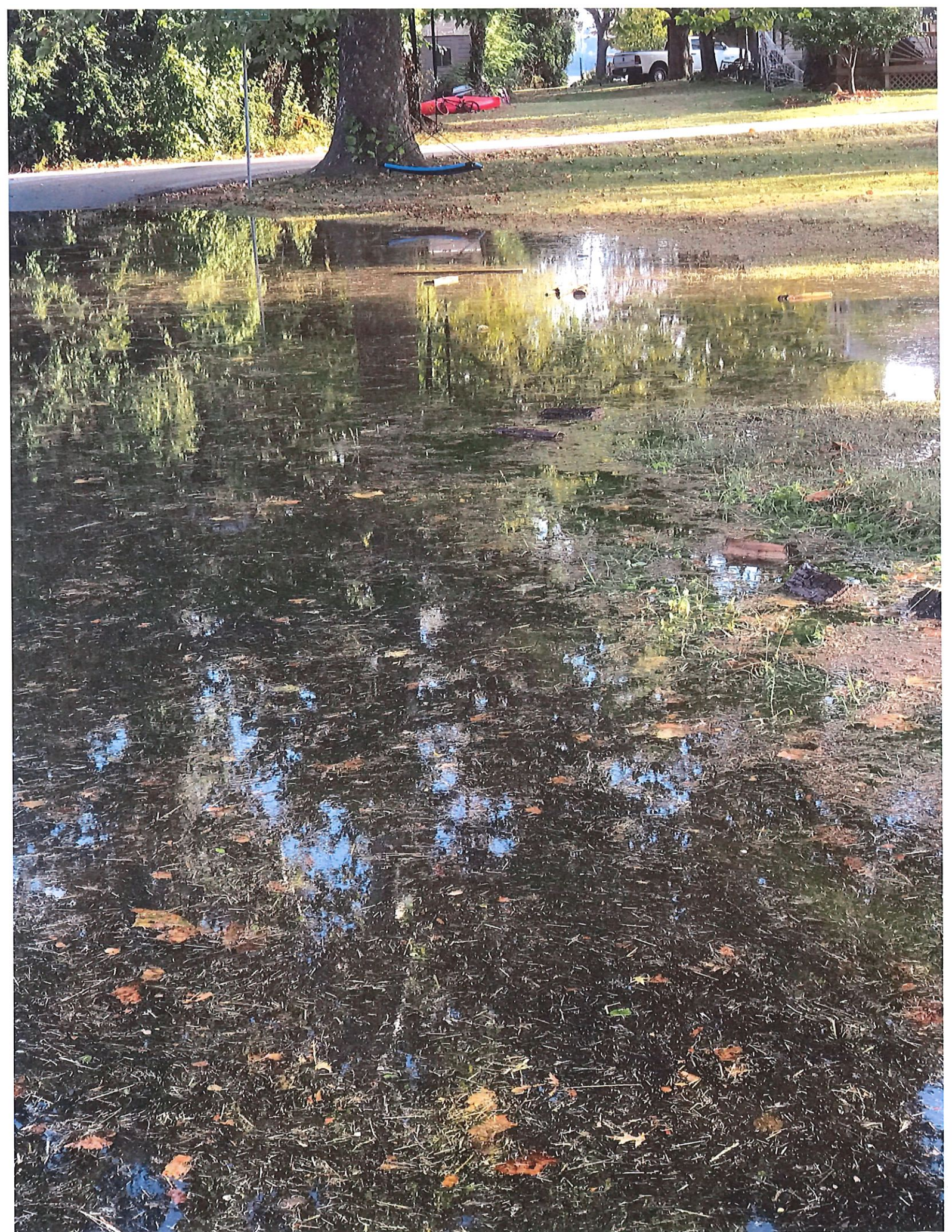
Activities to Our
Police Department

7309













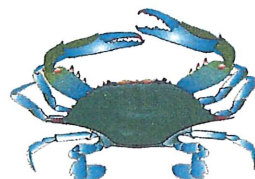
Petition in opposition to the relief and
variances requested by the petitioner.

Signed by the residents of The West Twin River
Community

TWIN RIVER BEACH PROTECTIVE AND IMPROVEMENT ASSOCIATION, INC



13209 Powderdale Avenue
Middle River, MD 21202
443-525-7038
President: Thomas M. Brookes
Tbrookes927@msn.com



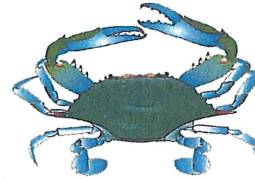
PETITION SIGNATURES

| NAME | ADDRESS |
|-------------------|----------------------------|
| George D Hane | 13211 Powderdale Ave 21220 |
| Aaron Crites | 6902 Birdwood Ave 21220 |
| Stanley R. Crites | 6902 Birdwood Ave 21220 |
| Margaret Neumann | 6918 Birdwood Ave. 21220 |
| Elizabeth Meadows | 6920 Birdwood Ave 21220 |
| David Lee | 6917 Birdwood Ave 21220 |
| Teresa Lee | 6902 GUNDER AVE, 21220 |
| Julie Brookes | 6917 Birdwood Ave 21220 |
| Thomas M. Brookes | 6903 BIRDWOOD AVE 21220 |
| Nancy Smith | 13204 Cherwin Avenue 21220 |
| Ann Schmitt | 13204 Cherwin Avenue 21220 |
| John Doe | 13215 Cherwin Ave. 21220 |

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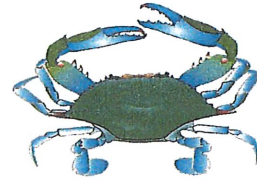
PETITION SIGNATURES

| NAME | ADDRESS |
|-------------------|--------------------------|
| Tom Stokes | 13212 Cherwin Avenue |
| Patty Stokes | 13212 Cherwin Avenue |
| Deanna Spangler | 6918 Gunder Avenue |
| Jae Spangler | 6911 Gunder Avenue |
| Donna Dowell | 6920 Gunder Avenue |
| Alma Griffin | 6908 Gunder Avenue |
| Yvonne May | 6800 Gunder Ave |
| Loni Sullivan | 6800 Gunder Ave |
| Tara West | 6909 Birdwood Ave. |
| Michelle | 13217 Gunder Ave |
| John | 6908 Birdwood Ave |
| Pauline E. Percy | 6900 Birdwood Ave, 21220 |
| Stephan J. Scheff | 13200 Cherwin Ave. 21220 |

TWIN RIVER BEACH PROTECTIVE AND IMPROVEMENT ASSOCIATION, INC



13209 Powderdale Avenue
 Middle River, MD 21202
 443-525-7038
 President: Thomas M. Brookes
Tbrookes927@msn.com



PETITION SIGNATURES

| NAME | ADDRESS |
|------------------|-----------------------|
| Sheryl Jelpers | 13200 Cherwin Ave |
| Katie Carroll | 13206 Cherwin |
| Dale Morgan | 13210 Cherwin Ave |
| Rachel Morgan | 13210 Cherwin Ave |
| Suzanne R Kuchta | 6908 Gunder Ave |
| William J Kuchta | 6904 Gunder Ave |
| Jan [unclear] | 6903 Gunder Ave |
| Fra [unclear] | 6909 GUNDER AVE |
| Wally [unclear] | 13218 Powderdale Ave |
| Linda Brasher | 13217 Powderdale Ave. |
| Robert Smushko | 13215 Powderdale ave. |
| Shirley Mardel | 13215 Powderdale Ave. |
| Ruth Hany | 13211 Powderdale Ave |

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IN THE MATTER OF:
CRAIG KESTNER
CASE NUMBER: 19-402-SPHA and 20-090-SPHA

Hearing Date: February 19, 2021

Pursuant to Notice, the above-entitled hearing was held before the Board of Appeals for Baltimore County by remote access.

PANEL PRESIDING:
WILLIAM A. MCCOMAS, CHAIR
JOSEPH L. EVANS, BOARD
ADAM T. SAMPSON, BOARD

PRESENT ON BEHALF OF THE PARTIES:
J. NEIL LANZI, ESQUIRE, Counsel for Petitioner
MICHAEL R. MCCANN, Counsel for Protestants

Christine R. Leary
crleary1@comcast.net

TABLE OF CONTENTS

| | | |
|----|--|-------------|
| 1 | | |
| 2 | Description | Page |
| 3 | Mr. Lanzi's opening statement..... | 4 |
| 4 | Direct exam of Bruce Doak by Mr. Lanzi..... | 8 |
| 5 | Cross exam of Mr. Doak by Mr. McCann..... | 56 |
| 6 | Re-direct exam of Mr. Doak by Mr. Lanzi..... | 96 |
| 7 | Re-cross exam of Mr. Doak by Mr. McCann..... | 110 |
| 8 | Direct exam of John Dawson by Mr. McCann..... | 114 |
| 9 | Cross exam of Mr. Dawson by Mr. Lanzi..... | 134 |
| 10 | Direct exam of Thomas Brookes by Mr. McCann..... | 142 |
| 11 | Cross exam of Mr. Brookes by Mr. Lanzi..... | 149 |
| 12 | Re-direct exam of Mr. Brookes by Mr. McCann..... | 152 |
| 13 | Direct exam of Ruth Hauf by Mr. McCann..... | 155 |
| 14 | Direct exam of John Lawson by Mr. Lanzi..... | 168 |
| 15 | Direct exam of Bruce Doak by Mr. Lanzi..... | 174 |
| 16 | Direct exam of Ruth Hauf by Mr. McCann..... | 183 |
| 17 | Cross exam of Ms. Hauf by Mr. Lanzi..... | 189 |
| 18 | | |
| 19 | | |
| 20 | | |
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1 (ON RECORD)

2 CHAIR: Good morning, everybody. We are here this
3 morning via WebEx concerning case matters 19-402-SPHA and 20-0,
4 or dash, 090-SPH, I'm sorry, SPHA on both of those. This is an
5 appeal from the Administrative Law decision made back in
6 September concerning a zoning variance and, and we're here, and
7 counsel if you could introduce yourself to the Board?

8 MR. LANZI: Sure. Neil Lanzi, Wright, Constable &
9 Skeen, 102 West Pennsylvania Avenue, Suite 406, Towson,
10 Maryland on behalf of the Petitioner, Craig Kestner.

11 CHAIR: Good afternoon. Mr. McCann?

12 MR. MCCANN: Yes, thank you. Good morning, everyone.
13 Michael McCann on behalf of John Dawson, as well as the Twin
14 River Beach Protective and Improvement Association. And my
15 officers are here in Towson at 118 West Pennsylvania Avenue.

16 CHAIR: Mr. McCann, Mr. Lanzi, just reading into the
17 words of Ms. Cannington, are there any preliminary matters or
18 should we turn the case over to Mr. Lanzi?

19 MR. LANZI: I have a preliminary matter that's really
20 going to be part of my opening, which will take care of one of
21 the cases. So, it'll be helpful. Do we need to wait for Mr.
22 Evans?

23 MR. EVANS: No, I'm here.

24 MR. LANZI: Oh, you're there?

25 CHAIR: Yeah, I think he has video issues.

1 MR. LANZI: Okay. However you want me to proceed, I
2 can just do my opening and take care of one of the two cases
3 right off the bat.

4 CHAIR: However you'd like to do it, Mr. Lanzi.
5 Whatever is, is the most convenient and efficient for you it
6 works for us.

7 MR. LANZI: Okay. So, good morning, everyone.
8 Again, I'm here on behalf of Craig Kestner, he's the owner of
9 the property known as 13217 Cherwin Avenue in the Twin River
10 Beach Subdivision.

11 There are two lots that are at issue here, 155 and
12 156 of the Twin River Beach Subdivision, which was created back
13 in 1929. And as you mentioned in the beginning, we're here on
14 two cases, two appeals.

15 One appeal was taken by the Petitioner to the denial
16 of the variance in case 19-402-SPHA. And no appeal was taken
17 to the merger issue, so that should be a final decision.

18 And then the appeal taken by Mr. Dawson as to the
19 approval, of the special hearing approval of the undersized lot
20 in case 20-090.

21 And as you'll hear testimony today and as Judge
22 Mayhew heard in the most recent case, the 2020 case, special
23 hearing relief was pursued under Section 304.1 and from the,
24 I'll, I'll call it Kestner case one, which was the 2019 case,
25 and Kestner case two, which was the 2020 case.

1 The site plan changed substantially from case one to
2 case two, whereas the front yard setback variance was
3 eliminated, and the building size was downsized significantly,
4 and we went under a different section of the regulations.

5 So, the house footprint was reduced when the front
6 setback went from twenty-five feet to forty. And most
7 importantly, the, the filing of the case two was made under
8 Section 304 and no (inaudible) without the variance.

9 The variance was added as alternative relief in case
10 two, basically at the Zoning Office's zoning staff (inaudible)
11 at the time of filing. And before filing case two, I had
12 discussions with, with People's Counsel regarding the res,
13 potential res judicata issue and due to the change in the
14 plans, the setback of, elimination of the front yard setback
15 and the filing under 304. There was no issue, at least on
16 their part, at least they didn't enter their appearance or, or
17 note any appeals.

18 In addition, they, it was looked at that this
19 Petition and site plan is in accordance with the pattern of
20 development in the area and really in eastern Baltimore County,
21 along the waterfront.

22 So, we will be providing a map, some sample cases of
23 other zoning approval cases of fifty-foot-wide lots as here.
24 We also will have exhibits showing a number of the individuals
25 that are here for the association against this zoning relief

1 also reside on fifty-foot-wide lots.

2 So, I'm not sure how many cases the current Board has
3 heard, but clearly over the last twenty years, plus years,
4 there have been many, many cases brought to the Board for
5 approval for undersized lots, many of them waterfront.

6 And in this case, as we heard in the last ALJ case,
7 we realized Mr. Dawson, the neighbor, doesn't want a house next
8 to his that could potentially block his view and we also know
9 there's concerns about flooding and the community association
10 is worried about flooding.

11 But I guess the fundamental question today is as the
12 property owner, shouldn't they be allowed to build on their own
13 lot just as the others were able to build on their lots, all
14 subject to, of course, County permit requirements and critical
15 area issues.

16 Further, if there is any issue raised as to merger, I
17 will be objection, objecting, since that was part of the first
18 case decided in Petitioner's favor and no appeal was filed,
19 thus a final judgment.

20 And to show good faith at the ALJ level, and again at
21 this level, the variance issue was determined moot in Kestner
22 case two, and in accordance with that line of thinking,
23 Petitioner will dismiss the variance appeal from case 19-402,
24 leaving us just with case two, which is 20-090-SPHA.

25 So, hopefully that will at least streamline some of

1 the issues for the Board and I will be ready to proceed with
2 witnesses depending on Mr. McCann, if he has a response.

3 CHAIR: Mr. McCann, do you have a response to that?

4 MR. MCCANN: No, thank you, Mr. McComas. Their
5 opening, Mr. Lanzi obviously has the right to withdraw an
6 appeal. It's a bit odd the way it played out but, the failure
7 to brief these issues in the first Petition.

8 The only thing I would disagree with, and we can
9 certainly talk about it when we get to, to the point when it's
10 raised is, I disagree with the, the effect of the withdrawal of
11 that appeal on the evidence that you're going to hear today.

12 So, but we can certainly discuss that as we go along.
13 But, but, but in terms of an opening, Mr. McComas, no opening
14 per se.

15 CHAIR: All right. Is, is, is there any objection to
16 Mr. Lanzi's position that we're only really considering 20-090-
17 SPHA today?

18 MR. MCCANN: No, as I said, I, I believe he has the
19 right to withdraw an appeal, of course.

20 CHAIR: All right. Okay. Mr. Lanzi, your case.

21 MR. LANZI: Okay. So, I'm ready to proceed with,
22 Bruce Doak would be my first witness.

23 MR. MCCANN: And Neil, I'm sorry to interrupt but I,
24 I'm obviously aware of Mr. Doak, so, if you want to proffer his
25 ex, expertise and offer him as an expert, I don't have a

1 problem with that.

2 MR. LANZI: All right. I appreciate that. I would
3 offer Mr. Doak as an expert surveyor --

4 CHAIR: As an expert in what, in what, in what area,
5 Mr. Lanzi?

6 MR. LANZI: An expert in surveying, zoning and land
7 use.

8 CHAIR: Mr. McCann, no objection to that, that expert
9 scope?

10 MR. MCCANN: No, no objection. Thank you.

11 CHAIR: Okay. Thank you, Mr. McCann. (inaudible).

12 MR. LANZI: Okay. So, (inaudible) --

13 CHAIR: Sorry, Mr. Lanzi. You go to swear him in.

14 MR. SAMPSON: I made him a panelist and I'll swear
15 him in. I don't see him on my screen. Are you there, Mr.
16 Doak?

17 MR. DOAK: Yes, sir, I am.

18 MR. SAMPSON: Okay. Would you please raise your
19 right hand? You swear and affirm under the penalties of
20 perjury, that the testimony you are about to give is true and
21 correct to the best of your knowledge and belief?

22 MR. DOAK: Yes, sir.

23 MR. SAMPSON: Please state your name and business
24 address for the record.

25 MR. DOAK: My name is Bruce E. Doak. My address is

1 3801 Baker Schoolhouse Road, Freeland, Maryland 21053.

2 CHAIR: And Mr. Doak, if you have a video, we'd
3 appreciate it if you're able to turn on the video for the
4 purpose of your testimony. Thank you, Mr. Doak.

5 MR. DOAK: You're quite welcome.

6 MR. LANZI: Okay. Thank you, Mr. Doak. Can you, I
7 think you may have already done it, just state your name and
8 your business address.

9 MR. DOAK: My name is Bruce E. Doak, address is 3801
10 Baker Schoolhouse Road, Freeland, Maryland 21053.

11 MR. LANZI: Okay and if I could have the ability to
12 show the exhibits?

13 MR. SAMPSON: I believe you do. Would you try that?

14 MR. LANZI: Okay.

15 CHAIR: You've got (inaudible), Mr. Lanzi.

16 MR. LANZI: All right. Okay. We tried that
17 beforehand and it worked fine and I'm having technical
18 difficulties now.

19 MR. SAMPSON: It's on you, I don't know what else to
20 do on my end.

21 MR. LANZI: Yeah, let's see here. Share content.

22 CHAIR: If you have to, I've got your, oh, there you
23 go. You got it, Mr. Lanzi.

24 MR. LANZI: Okay, got it. All right. Mr. Doak,
25 first I'll ask the zoning plan that's marked as Petitioner's

1 Exhibit 1 dated February 15th, 2021, was that prepared by you or
2 under your supervision?

3 MR. DOAK: Yes, sir, it was.

4 MR. LANZI: Okay. Can everyone see that?

5 CHAIR: Can you try to increase the, the size of it,
6 Mr. Lanzi, for people that are blind, like myself?

7 MR. LANZI: How about that?

8 CHAIR: That looks perfect.

9 MR. LANZI: Okay. Probably, and what I wanted to do
10 and, and maybe Mr. McCann would be willing to stipulate, rather
11 than go through all the exhibits and come back, I have Exhibits
12 1 through 10 that were submitted and then a separate submittal
13 of Exhibits 11 through 13.

14 Exhibit, here, what I'll do is go back up to the
15 exhibit list. Exhibit 2, Twin River Subdivision, Exhibit 3 is
16 the subdivision plat zoomed into these lots, and then we have
17 some photographs. Mr. McCann, do you have any objection to the
18 Exhibits 1, 2 and 3 I provided you yesterday?

19 MR. MCCANN: Thank you. Yeah, I'm sorry, I'm looking
20 through them now. I have seen them in advance. We, as you
21 said, have exchanged exhibits. The only question I have about
22 one is is this the plan that was before the ALJ?

23 MR. LANZI: Okay, let me go back to Exhibit 1. This
24 is, this is the, the final plan that was reviewed and approved
25 by the ALJ without redlines and I'll have, ask Mr. Doak to

1 chime in as necessary.

2 MR. MCCANN: Okay. I, I'm not --

3 MR. LANZI: Yeah, this shows the forty-foot setback.

4 MR. MCCANN: This shows the thirty, oh, it does show
5 forty. Okay. Yeah, anything on that point I can handle on
6 cross. But no, no objection to Exhibits 2 or 3.

7 CHAIR: One, two or three, right, Mr. Lanzi?

8 MR. LANZI: Pardon me?

9 CHAIR: It's one, two and three, right?

10 MR. LANZI: Correct.

11 CHAIR: Yeah, so --

12 MR. LANZI: Yeah, offer one, two and three into
13 evidence.

14 MR. MCCANN: In fact, one through six are fine as
15 well, the exhibits, photos, yeah, four, five and six as well.

16 MR. LANZI: Okay. Just to give the Board a sense of
17 what's going on here, how about if we go right to the
18 photographs. Mr. Doak, describe, if you could, take us
19 through, it looks like four was the key sheet for the
20 photographs.

21 It's going to be hard to use that when I have to
22 scroll. I don't know if the Board is able to look at that and
23 look at the other ones, but if you could just, I'll slowly
24 scroll through these and then you can just talk about each
25 photograph.

1 MR. DOAK: Okay. Let's, let's, Mr. Lanzi, if you
2 would get to the areas where all the arrows are, and we'll just
3 talk generally about where I was and what I was doing. So, --

4 CHAIR: Hold on for one second, Mr. Doak. You
5 probably have to reduce the size, Mr. Lanzi, so you can, there
6 you go.

7 MR. DOAK: There you go, thank you.

8 MR. LANZI: I'm on it.

9 MR. DOAK: So, for everybody, this is what I normally
10 do to add some sort of ability for you to understand where I
11 shot the photographs and in what orientation.

12 So, I'm standing out in Cherwin Road and I'm looking
13 up and down the street. I'm looking across the lot that was
14 conveyed to our left and then our subject property and then Mr.
15 Dawson's property and then finally towards the lots that are on
16 the waterfront.

17 So, if we could go the, the, the lots, the
18 photographs I can, so, with this one, I am standing out on
19 Cherwin. I am standing in front of the subject lots. I am
20 looking north on Cherwin, so, and then you can see the fence
21 that surrounds the adjoining property to our left. So, if you
22 can go to the next one, please?

23 MR. EVANS: Mr. Doak? When, when you're talking
24 about these photographs, you need to, you need to say which
25 exhibit number it is so that the record --

1 MR. DOAK: Sorry, Mr. Evans. Petitioner's exhibit
2 number 5-A. Like I said, we're standing in, I'm standing in
3 the, the center of Cherwin Road. I'm looking north up the road
4 and our, the subject property, subject lot would be to the
5 right, my right.

6 MR. LANZI: Okay.

7 MR. DOAK: If I could see the next one, please?

8 MR. LANZI: Thank you.

9 MR. DOAK: This is Petitioner's exhibit number 5-B.
10 It is, I'm panning around north easterly. You will see the
11 adjoining property and the house that is on that, the fence
12 that is on it and just the, our frontage on the subject lot.
13 If I could go to the next one, please?

14 MR. EVANS: Is 5-B, is, is the house that's depicted
15 in 5-B is that what also used to be Mr. Kestner's property?

16 MR. DOAK: That is correct. Yes, sir.

17 MR. EVANS: All right.

18 MR. DOAK: In 5-C, once again you'll see the, the
19 fence on the adjoining property, the former Kestner house, the
20 former Kestner garage that's on the property that was sold and
21 the, most of the lot of the subject property there. You'll
22 see, if, if I may one, real quick.

23 We talked a little bit about this one. You'll see
24 that it has a slight gradient to the, to the road. It's not
25 perfectly flat but it, it grades to the road and a little bit

1 to the south.

2 MR. LANZI: Okay. So, Petitioner's exhibit number 5-
3 D, once again, is, it's the subject property. It's looking,
4 I'm standing right at the edge of the paving and I'm looking at
5 the entire subject property. To the right you'll see a
6 driveway and cars in the parking lot, or in the driveway and
7 those belong to Mr. Dawson and that's Mr. Dawson's house to the
8 right and Mr. Wallace, Wally Wallace, in the rear, his property
9 there.

10 Petitioner's 5-E, I am focusing in on Mr. Dawson's
11 house, driveway and property. You'll see that his property
12 falls toward our subject lot. He has a lot of paving there for
13 his driveway and so, in turn, (inaudible) needs to be addressed
14 with that. Next photograph?

15 Petitioner's Exhibit 5-F is looking south on Cherwin
16 Road. The driveway to the left is Mr. Dawson's driveway.
17 You'll see that it's grass and yards and stuff all the way down
18 there, going south. Next photo, please?

19 Petitioner's 5-G is looking at the lot, house,
20 driveway, all the improvements in the property directly across
21 the street from Mr. Dawson's driveway. So, it'd really be more
22 in front of Mr. Dawson then it would be in front of our subject
23 property.

24 MR. LANZI: Okay.

25 MR. DOAK: The lot in front of the subject property

1 on the water side, Petitioner's 5-H is, shows sheds. It also
2 shows the new house that was built just northwest of our
3 property on this.

4 MR. LANZI: Okay. All right. I believe that those
5 are the photographs that you took, Mr. Doak. Is that correct?

6 MR. DOAK: That is correct.

7 MR. LANZI: Okay and, and they've been stipulated to.
8 So, I would offer Petitioner's 5-A through H into evidence.

9 CHAIR: Any objection, Mr. McCann?

10 MR. MCCANN: No objection, thank you.

11 CHAIR: Okay. They're admitted.

12 MR. LANZI: In an effort to also streamline time, the
13 next series of photographs, much more recent, taken in the last
14 couple weeks by Mr. Kestner's mother, who's an attendee. I was
15 just going to see if, if there's no objection, just have Mr.
16 Doak describe them because they're very, very current.

17 MR. MCCANN: That's fine.

18 MR. LANZI: Okay. So, this would be Petitioner's, I
19 believe it would be 6, 6-A through K. All right, Mr. Doak.

20 MR. DOAK: Okay. On Petitioner's Exhibit 6-A, we are
21 standing across the street to the west of our subject property.
22 Cherwin Road is in front, in the foreground and we are looking
23 back. Our entire subject property, once again, if you could
24 see past those signs that are there, that would be Mr. Dawson's
25 property and then Wally Wallace's house is in the rear.

1 CHAIR: So, Mr. Doak, if I look back where you're
2 positioning A, B, C, D, E, F, G and H, which, which one is this
3 closest to in terms of you're A, B, C, D, E (inaudible)?

4 MR. DOAK: It would be C or, it'd be probably D.

5 CHAIR: D? Okay, thank you.

6 MR. DOAK: And if you'll see that, once again, the,
7 the grade of the property. You can see it even better in this
8 one. I like the snow being on the ground versus the grass.
9 You can see that it, the topography, it falls towards the road.
10 So, any runoff that you would have, you will have from a house,
11 driveway, will run towards the road.

12 You can see it also runs back towards the fence or
13 the adjoining lots so whatever management you would have when
14 building a house on this property, you would manage it, of
15 course, around the house and the improvements but you would
16 also, you would manage it even more on the north side or
17 towards that fence.

18 So, this is helpful a little bit. Petitioner's
19 Exhibit 6-B. It takes a few, a number of steps backwards, so
20 it's pretty much the same vantage point, but this one you can
21 see that to the left of the fence is what Mr. Kestner, the
22 house he used to own, and then you can see to the right is Mr.
23 Dawson's driveway, cars and house.

24 MR. LANZI: Mr. Doak, is that a garage where I'm
25 pointing?

1 MR. DOAK: Yes, it is.

2 MR. LANZI: Okay.

3 MR. DOAK: A one stall, wood frame garage. Like with
4 the house, it's in good shape, definitely usable, so, yes.

5 MR. LANZI: Got it.

6 MR. DOAK: So, we're now standing on the subject lot,
7 about halfway back on the north side and we're looking at the
8 lot that is about to be built on. That in my earlier pictures
9 had two sheds on. Now a house is about to be built or is being
10 built there now and you can see the one next to it, to the
11 right, was the one that was built just recently.

12 VOICE: So, you're saying that the empty lot there
13 next to the new house is a house, is a lot that's presently
14 under construction?

15 MR. DOAK: Yes, sir, it is.

16 VOICE: Have permits been issued?

17 MR. DOAK: I cannot tell you, sir. I, I do
18 apologize. Silt fence is up.

19 VOICE: So, what do you mean when you say it's under
20 construction? What do you mean?

21 MR. DOAK: Well, they're, they're starting the
22 process. So, they've got silt fence up. Also, they, I'm sure
23 they filed for the permit, but I don't know if it's been issued
24 yet.

25 MR. MCCANN: Yeah, I'd like to piggyback on that. I

1 was allowing Mr. Doak to, I'm sorry to interrupt, but I was
2 allowing Mr. Doak to proceed because I thought much of this was
3 by way of background. But I, but I do want to be very careful
4 and make sure that I object to what I perceive to be a lot of
5 testimony about what's happening on other properties and what
6 should or should not be happening on other properties. I just,
7 and if you'd like me to, to explain why I don't think it's
8 relevant, I'm certainly happy to do that. But with respect to
9 this particular set of questions, I, I would impose an
10 objection on the basis of relevance.

11 CHAIR: And, and Mr. McCann, I, I, I don't, I'm going
12 to overrule it and allow the witness a little latitude here. I
13 think some of the things that you raised can be, you can raise
14 on, when you cross examine him. But I, but Mr. Lanzi, I also
15 agree with Mr. McCann in terms of the relevance here. So,
16 we're going to end up giving it the weight, you know, that,
17 that it's going to be given since it's more speculative here.

18 MR. LANZI: This, yeah, this is just for background
19 to show what's happening in the community.

20 CHAIR: Yeah.

21 MR. MCCANN: Yeah. Okay, thank you, Mr. McComas.

22 MR. DOAK: I'll keep my comments shorter and sweeter.
23 This is pretty much the same lot that we looked at in
24 Petitioner's 6-C.

25 What this is is the, this is in front of, you can see

1 by the fence, you can figure out where you are. You're in
2 front of the previous Kestner house lot. And what this is
3 showing is that, like I said, the, the topography is flowing
4 down towards the road off of the subject lot. It's being
5 managed and caught in the swale that's down the front of both
6 the subject lot and the adjoining lot. It comes down and then
7 goes into a pipe crossing the road and then on the other side
8 of the road it goes into another pipe and is outfalled
9 somewhere down at the stream or the water.

10 MR. LANZI: This is Petitioner's 6-E?

11 MR. DOAK: Yes, sir, it is.

12 CHAIR: And Mr. Doak, is that also Mr. Dawson's
13 house? Is that, that drainage system going from there, if it
14 doesn't, if it falls off the driveway there?

15 MR. DOAK: It doesn't, that's a very good question,
16 Mr. McComas. It doesn't quite go to Mr. Dawson's driveway.
17 It, it is probably three-quarters of the way or a little bit
18 more across our lot, but it doesn't cross Mr. Dawson's.

19 Once again, that's the, the lot being built. You can
20 see what I was saying is, the silt fence is up and, like I
21 said, that's all I have to say about that. That's 6-F.

22 6-G, once again, it's the same lot to be built on.

23 What this is, this, on 6-H, it is, is that drainage
24 swale that goes down the front of the subject lot, in front of
25 Mr. Kestner's prior ownership lot. Then it goes through a pipe

1 onto the other side of Cherwin Road and then you'll see it
2 catches another pipe and goes down through the lot that's going
3 to be built on and then outfalls at the water.

4 So, you would be having your back towards Cherwin
5 looking at this and the subject, the, the, the other side of
6 Cherwin and then in turn you can see that there's another pipe
7 and it goes westerly towards the water.

8 MR. LANZI: Okay.

9 MR. DOAK: That's, that's just another sight of the,
10 what's there.

11 MR. LANZI: Okay.

12 MR. DOAK: And this is 6, I don't see, it's 6, I
13 don't know where I am.

14 CHAIR: K, I think.

15 MR. DOAK: K, thank you very much, sir, K. This is
16 standing on the opposite side of Cherwin and just looking at
17 Mr. Dawson's property.

18 MR. LANZI: Okay. All right. So, Mr. Doak, does 6
19 through A, 6-A through K reflect the subject property, the
20 property across the street, the Dawson property, the road and
21 the drainage, to your knowledge these have not been altered or
22 changed in any way?

23 MR. DOAK: No, sir.

24 MR. LANZI: Okay. I would offer these photographs
25 Petitioner's 6-A through K.

1 CHAIR: Okay. Any objection, Mr. McCann?

2 MR. MCCANN: I understand your, your prior ruling,
3 Mr. McComas. Only, only to those, just for the record, to
4 those photographs that are solely directed towards the lot
5 across the street. To the extent any suggestion is being made
6 that that is somehow relevant to the case before the Board.
7 But I understand your ruling on that.

8 CHAIR: All right.

9 MR. MCCANN: Thank you.

10 CHAIR: So, we'll admit them.

11 MR. LANZI: Thank you. All right. Mr. Doak, it
12 probably would be helpful just to go ahead down to Exhibit 7-A
13 through C, A, B and C. And just for the record, 7-A is the
14 same as Exhibit 1, Petitioner's one. It just would be easier
15 to show them in order here for you.

16 Mr. Doak, what I'll do is, if you could just describe
17 what's shown on the site plan, what's proposed and then we'll
18 go to the other two site plans that were used previously.
19 Starting with 7-A.

20 MR. DOAK: Okay. What this, it's like Mr. Lanzi
21 said, this is the same as Petitioner's exhibit number one.
22 This is the plat that was most recently done and submitted, and
23 it is, reflects the redlines that were done in the 2020, or the
24 last zoning hearing.

25 It reflects the subject lot, subject two lots. It

1 also shows Mr. Dawson's house to the left and then Wally
2 Wallace's house to the rear. And then also to the right, it
3 reflects the, it shows the, the dwelling that used to be Mr.
4 Kestner's, as well as the garage close to the property line.

5 If you could please focus in on our subject two lots,
6 Mr. Lanzi, a little bit more? And drop it down a little,
7 please. Then drop it down just a little bit. The other way,
8 please.

9 MR. LANZI: The other way?

10 MR. DOAK: The other way.

11 MR. LANZI: How's that?

12 MR. DOAK: Thank you very much. So, on a DR-5.5 lot,
13 well, first, if I may. This is, the subject lots are Lot 155
14 and 156 of Section A, Twin River Beach, which was recorded in
15 Plat Book 9, Page 33, and that, I believe that's Petitioner's
16 exhibit number two, but that's the subject lots.

17 Each are twenty-five feet wide and approximately a
18 hundred and twenty-five feet long on the one side and then a
19 hundred and eighteen on the other.

20 This is zoned DR-5.5 and the zoning setbacks for a
21 DR-5.5 are, I'm going to start with the south sides and then
22 run to the front. Are ten feet on each side. There is not a
23 sum required but it is ten on each side. And then with a rear
24 setback of thirty.

25 As to the front, the front minimum is twenty-five

1 feet. And in the very first hearing that I did for the
2 Kestners, I applied for a variance of twenty-five in lieu of
3 the required forty.

4 What forty is is the maximum front yard setback based
5 on front yard, front street averaging. What that is is that
6 you take, you look at properties on either side of you, or if
7 there isn't one, you look at those as much as two hundred feet
8 in either direction.

9 Now, the one to the right, 6903 Gunder Avenue, is not
10 considered because it has a frontage on Gunder. So, in turn,
11 now we look to the left, or to the south, and we would look at
12 Mr. Dawson's house, which is approximately seventy-five feet
13 and then we look down the road further for the next hundred
14 feet. With that in mind, there are no additional houses within
15 the next seventy-five, then you get one at the very end.

16 So, it was determined by the Office of Zoning and
17 myself that we should apply the maximum here of forty feet in
18 lieu of the minimum of twenty-five feet.

19 MR. LANZI: And that's based on Section 303.1 of the
20 zoning regulations, is that correct?

21 MR. DOAK: That is correct.

22 MR. EVANS: I'm a little confused.

23 MR. DOAK: I'm sorry.

24 MR. EVANS: Well, I'm confused. Putting aside the
25 first hearing in front of the ALJ, which really is not

1 relevant, okay?

2 MR. DOAK: Yes, sir.

3 MR. EVANS: What, what is the, what is the setback on
4 this new plan?

5 MR. DOAK: Forty feet.

6 MR. EVANS: Forty feet?

7 MR. DOAK: Yes, sir.

8 MR. EVANS: And, and the requirement is forty feet?

9 MR. DOAK: That is the maximum required front yard
10 setback.

11 MR. EVANS: What do you mean, the maximum
12 requirement?

13 MR. DOAK: That's, that's the way setbacks works.
14 It's not to exceed forty feet.

15 MR. EVANS: So, you can't have a house fifty feet
16 back from a road?

17 MR. DOAK: You can if you want it, like Mr. Dawson
18 did. But you're not required to.

19 MR. EVANS: Right, so the forty foot is the minimum
20 setback?

21 MR. DOAK: Nah, it's both, can I put it that way?

22 CHAIR: (inaudible) make any sense to me.

23 MR. EVANS: The forty foot is what is required in
24 this instance. So, there's no variance, you're not seeking a
25 variance or alter the set, front setback in any way, is that

1 correct?

2 MR. DOAK: Not only am I not seeking a variance for
3 the front, I'm not seeking a variance for either of the sides,
4 or the rear, or the total area of the property.

5 MR. EVANS: Okay, all right. I, I'm not trying to
6 challenge you, I'm just trying to understand what, what the
7 deal is here. Okay.

8 MR. DOAK: Keeps me on my toes if you challenge me,
9 so.

10 MR. EVANS: Okay, so. Okay. So, basically, the
11 forty foot is in compliance with the requirements?

12 MR. DOAK: That is correct.

13 MR. EVANS: Okay. That's all I'm asking.

14 MR. DOAK: Yes. So, with the setbacks we've
15 discussed, that leaves a building envelope of approximately,
16 maximum building envelope, of thirty by sixty or eighteen
17 hundred square feet.

18 MR. EVANS: Thirty by sixty you said?

19 MR. DOAK: Yes, sir.

20 MR. EVANS: Okay.

21 MR. DOAK: Feet. It's a fifty-foot lot, ten on
22 either side, that makes the thirty and then coming in from the
23 rear, forty on the front gives me six, approximately sixty feet
24 and multiply those two, approximately eighteen hundred square
25 feet.

1 CHAIR: A sixty by thirty-five, right? Or is it
2 sixty by thirty?

3 MR. DOAK: Sixty by thirty.

4 CHAIR: All right. And which is, some of the older
5 homes, that's a little larger than some of the older homes in
6 that area. For the newer homes, it is, as a matter of fact, it
7 might be even a little small. But we'll say it's, it's in the
8 running for some of the newer homes.

9 MR. LANZI: And Mr. Doak, this is a smaller footprint
10 than what was initially presented in the first hearing?

11 MR. DOAK: That is correct, by fifteen feet in its
12 depth.

13 MR. LANZI: All right. So, I'm going to scroll down
14 to the, I believe it's 7-B. Let me make it smaller just to --

15 CHAIR: (inaudible) the new house that's built, that's
16 on the right as you look out to the water, what, what kind of
17 size do you think that has?

18 MR. DOAK: A little, when looking at the GIS, it has
19 a little larger footprint than what we're showing.

20 CHAIR: (inaudible) comparable to (inaudible)?

21 MR. DOAK: Yes, sir, it is. Yes, sir, it is. And
22 it's three stories.

23 MR. LANZI: Okay. I'm showing you what is marked
24 Petitioner's 7-B, which is from the, Petitioner's one, the 2019
25 case. And I'm not sure if you can, whether I should bring it,

1 make it a little bigger.

2 MR. DOAK: That'll be fine.

3 MR. MCCANN: I'm sorry to interrupt, but I'm, I am
4 going to object to these old plans coming in. I don't
5 understand the relevance of them.

6 CHAIR: I was thinking the same thing, Mr. McCann.
7 It may start confusing people like me.

8 MR. LANZI: Well, the, the, the relevance would be,
9 if there is going to be an argument made by the Protestants of
10 res judicata or collateral estoppel, any of those issues, it's
11 extremely relevant under, under the most current Maryland case
12 law that we're showing these are, this is a totally different
13 plan.

14 It's a different house, it's, it's smaller. The, the
15 location of the house is different and so it's extremely
16 relevant. If, if there's not going to be any defense of res
17 judicata, then it's not a, not as big of a concern. But I need
18 to preserve that for my record going forward.

19 MR. MCCANN: Well, I would certainly stipulate that
20 this building has changed in the way that Mr. Doak may describe
21 it. But to introduce the plans for the purpose of showing
22 that, I, I assume, the, the implicit purpose here is to show
23 that we've done a good job of responding to community concerns
24 and even reduced the size of the building, to that extent, I
25 don't think it's relevant at all. And I really don't think the

1 plans themselves should be in.

2 But I would certainly stipulate to whatever changes,
3 I, I'm not even confident, to be honest with you, that I'm
4 going to be making a collateral estoppel or res judicata
5 argument at all. But, so I understand that, that reason.

6 But I think Mr. Doak just saying that the, the way in
7 which the building has been changed since the last hearing is
8 sufficient. I know we're splitting hairs here, but that's,
9 that's my position.

10 CHAIR: And I'm going to agree with Mr. McCann on
11 this, Mr. Lanzi in that he hasn't raised res judicata, at least
12 as far as I know. I, I respect that you want to preserve it,
13 but I also look at it as he, he, that he hasn't made those
14 claims yet. And he's actually stipulated with you, you know,
15 the material differences here.

16 So, I, I would, I would sustain his objection at, at
17 this given point in time. And so, if we can move on because
18 it, it was confusing to me, myself, in terms of where you guys
19 are in your case.

20 MR. LANZI: Okay. Well, let me just go onto the next
21 plan. I don't know whether that will help or not. But --

22 MR. DOAK: If I may, Mr. Lanzi?

23 MR. LANZI: Sure.

24 MR. DOAK: We could always come back to this one if
25 there's questions about, for the Board. I did this to help it,

1 you understand the differences between the, what I applied for
2 originally and what we're doing here today. But if that
3 doesn't come back up again, then we can always come back to
4 this. Okay?

5 MR. LANZI: That's fine.

6 CHAIR: Yeah, that works. That works for me.
7 (inaudible), Mr. Evans? I mean, do you guys agree with this
8 (inaudible)?

9 MR. EVANS: Yeah, I don't know why we're --

10 CHAIR: Yes, it's confusing me and, and if Mr. McCann
11 doesn't raise these arguments, I, you know, I, I, I question
12 the relevance too.

13 MR. LANZI: Okay. Well, maybe the next several
14 questions will eliminate the confusion. And I, and I do think
15 it's important that the Petitioner is able to show not only the
16 changes, but these changes are minimized, I would think, some
17 of the concerns.

18 And, in fact, I wasn't involved in the first case.
19 Mr., Mr. Kestner was unrepresented. I was involved in the
20 second case. And, and that's why we filed the, the new plan.
21 And there was an effort made to accommodate the concerns of the
22 neighbor. That's what any good neighbor does.

23 So, I, I think, I think it's relevant.

24 CHAIR: Well, (inaudible) Mr. Lanzi, I think Mr. Doak
25 has been doing that in his testimony today, is sharing

1 (inaudible) how he's changed the footprint here.

2 MR. LANZI: Okay.

3 CHAIR: And at, to, to me there's, you know, he's
4 explained it, you know, just his testimony on the current plan.

5 MR. LANZI: Got it. All right. Mr. Doak, I'm going
6 to now turn you to Section 304 of the --

7 MR. EVANS: I'm sorry to interrupt. I'm sorry to
8 interrupt, Mr. Lanzi. I'm the keeper of the exhibits here.
9 So, I just, so, so, I'm a little pin, you know, I don't want to
10 be too pinheaded about this but. So, 7-B I have marked as i.d.
11 only and are we doing the same then for 7-C?

12 MR. LANZI: Yes, for now, for now.

13 MR. EVANS: For now? Okay and again, 7-C is, is from
14 the original case, right, from Kestner one?

15 MR. LANZI: 7-C is actually from Kestner two. I
16 believe it was an exhibit in Kestner two.

17 MR. EVANS: Okay. But you're not offering it or it's
18 for i.d. only?

19 MR. LANZI: Right now, it's i.d. only.

20 CHAIR: Yeah, i.d. only.

21 MR. EVANS: Okay, that's fine.

22 CHAIR: (inaudible) for the res judicata argument,
23 Joe, so I look at it as i.d. only as well.

24 MR. EVANS: Okay, great.

25 MR. LANZI: So, one through, one through six are in

1 and 7-A are in, right?

2 MR. EVANS: Yes, one through, yes, that's correct.

3 MR. LANZI: Okay. I just keep track too. All right.

4 Mr. Doak, turning to Section 304 of the Baltimore County zoning
5 regulations, which I believe you're familiar with, but first
6 ask you whether the, the lots that are in question here, were
7 they either duly recorded by deed or a validly approved
8 subdivision prior to March of 1955?

9 MR. DOAK: Yes, sir, they were. The subdivision was
10 done in 1929.

11 MR. LANZI: I'm going to go up to that. Okay.

12 MR. DOAK: Yeah, Exhibit, Petitioner's Exhibit 2
13 shows the subdivision of Twin River Beach done in 19, I
14 apologize, June 1923.

15 MR. LANZI: And then revised in 1929?

16 MR. DOAK: That's right.

17 MR. LANZI: Okay and then I'm going to go to the next
18 exhibit, which kind of zooms in on the two lots that are the
19 subject of today's hearing. Let me --

20 MR. DOAK: The only thing that was enhanced was I
21 zoomed it in on the area in question and I outlined the
22 property that was formerly the Kestner property in pink with
23 the deed reference on it. And then the subject property, Lot
24 155, 156 in blue, with the deed reference on that.

25 MR. LANZI: This is Cherwin here?

1 MR. DOAK: Yes, sir, it is.

2 MR. LANZI: And Gunder there. Okay. Now, now the
3 next requirement under Section 304, all other requirements of
4 the height and regulations are compared with, is that correct?

5 MR. DOAK: That is correct. We have an area that
6 exceeds the minimum six thousand square feet for a DR-5.5 lot.
7 We have the required forty feet in the front, the required ten
8 foot on either side, setbacks of ten feet on either side and
9 the rear setback of thirty feet. And this lot, or this house,
10 will not exceed fifty feet tall.

11 MR. LANZI: And does Mr. Kestner own any adjoining
12 land which would allow him to meet the fifty-five-foot-wide lot
13 width requirement?

14 MR. DOAK: No, sir, he does not.

15 MR. LANZI: Okay and if you could, let's just go
16 through a little bit of the history of Mr. Kestner's lot
17 ownership, if you would?

18 MR. DOAK: Yes, sir.

19 MR. LANZI: So, at one point, did Mr. Kestner own
20 Lots 155, 156, 157 through 160?

21 MR. DOAK: Yes, sir, he did. He bought those as two
22 separate parcels. In Deed 34935, page 3, or 437, he bought
23 under parcel one as Lots 157 to 160. And then as parcel two,
24 he has, he purchased the 155 and 156 as a separate parcel, same
25 Deed.

1 MR. LANZI: And Lot 157 through 160, those lots are
2 improved, is that correct?

3 MR. DOAK: They are. And I, and I, I missed saying
4 that over the years, each one of these have been taxed
5 separately. So, 157 through 160 is improved with a single-
6 story wood frame house, as well as a wood frame garage in the
7 north, or the southeast corner.

8 MR. LANZI: And that garage that you're talking about
9 it, I'm going to take you to a photograph. I believe is that
10 the garage right there?

11 MR. DOAK: No, that is the house.

12 MR. EVANS: That's the house, yeah.

13 MR. DOAK: One more. There you go. It's, it's --

14 MR. LANZI: Right here?

15 MR. DOAK: There on the other, behind the tree and
16 the play, playground, it's that and it's, it's within or closer
17 than five foot to the property line.

18 MR. LANZI: Got it. Okay. When did you say Mr.
19 Kestner purchased the lots, do you recall the year?

20 MR. DOAK: I believe '18, I'd have to look at the
21 title deed.

22 MR. LANZI: When he purchased them, you said
23 fourteen, I think you said '14?

24 MR. EVANS: Yeah, isn't it '14?

25 MR. DOAK: It is. It is, thank you.

1 MR. LANZI: Okay and that, then there came a time
2 when Mr. Kestner sold Lots 157 through 160?

3 MR. DOAK: Yes, sir.

4 MR. LANZI: And do you know when that was?

5 MR. DOAK: That might have been '18.

6 MR. LANZI: Okay.

7 MR. DOAK: I'd have to look at the deeds, but yes.

8 MR. LANZI: So, the, the improved lot, the lots with
9 the improvements were sold. And that included the, the garage
10 that you just showed in the photograph up against the fence?

11 MR. DOAK: Yes, sir.

12 MR. LANZI: Now, could Mr. Kestner have taken five
13 feet from Lot 157?

14 MR. DOAK: Can I see Petitioner's exhibit number one?
15 It'll help.

16 MR. LANZI: Okay.

17 MR. DOAK: So, and if you'll blow it up just a
18 smidge? There we go. So, the, the issue with this is that,
19 like I said, very nice little house, very nice little garage.
20 Mr. Kestner could not have added five more feet for two
21 reasons.

22 One is, that would have been into, into the garage,
23 and the second reason would have been that, well, that's,
24 that's really the, the main reason. And also, the, he has to
25 retain a thirty-foot setback from the rear of the house to the

1 adjoining property line.

2 So, we wouldn't have been able to get the entire five
3 feet from that to the property line. So, it would have been in
4 the garage, and it may have encroached the setback, required
5 setback off the back of the Gunder Avenue house.

6 MR. EVANS: So, so was the house there when he bought
7 the property?

8 MR. DOAK: Oh, yes, sir. I don't remember the year
9 it was built, but it was built, let me see, I'll tell you in a
10 second. It was built in, I'm sorry to do this, 19 --

11 MR. LANZI: It was 1945.

12 MR. DOAK: Thank you.

13 MR. EVANS: So, I, I don't understand, Mr. Doak, what
14 you're saying about the rear setback.

15 MR. DOAK: Okay. So, --

16 MR. EVANS: What does that have to do with the five
17 feet on the side, that, that I don't get.

18 MR. DOAK: Yes, sir. So, you'll see that the
19 existing house is facing Gunder. Zoning requires it to have a
20 thirty-foot setback on the rear.

21 MR. EVANS: Oh, oh, I see, I see, I see, I gotcha.

22 MR. DOAK: So, if I took five feet off of lot number
23 one fifty-seven, one, I'd be through the garage and two, I
24 would be encroaching on the thirty-foot setback for the house.

25 MR. EVANS: Because it faces Gunder, not --

1 MR. DOAK: Correct, yeah.

2 MR. LANZI: So, Mr. Doak, Mr. Kestner didn't have a
3 lot of options then when it came time to sell Lots 157 through
4 160 then?

5 MR. DOAK: Yeah, and what he, not only those two
6 reasons but he also, his Deed was in two separate parcels. So,
7 he sold parcel one of his Deed and kept parcel two. So, it was
8 conveyed that way, he just, he just resold parcel one at that
9 time.

10 MR. LANZI: Okay. All right. So, you're, you're
11 aware how I guess the Zoning, Zoning Office kind of scrutinizes
12 the undersize lots. If you, based on your knowledge of the
13 history here, and, and your communications with the Kestner
14 family, you see any intent on their part to void the area
15 requirements in this case?

16 MR. DOAK: No, sir. I mean, the area is, is, it
17 makes the area requirements. It's over six thousand square
18 feet. And it meets the setbacks. The only thing it cannot be
19 is fifty-five feet wide.

20 MR. LANZI: And Section 304 allows the Petitioner
21 with the zoning relief to, to build without the necessity of a
22 variance, is that correct?

23 MR. DOAK: That's correct.

24 MR. LANZI: Okay. Bear with me. Well, Mr. Doak,
25 based on your knowledge of this, this area and the proposed

1 building, I guess, the proposed residential building here on,
2 on, on the lot, the subject lots, do you see, as an expert, or
3 do you have any opinion whether a house constructed here would
4 be, have an adverse impact on the adjoining properties?

5 MR. DOAK: No, sir, I do not believe it will. I
6 mean, there are, I can't quantify, but there are dozens and
7 dozens and there's even some in this close proximity to this,
8 that are fifty feet wide. So, no, sir, I, it meets the
9 setbacks. The only thing it reduces is the potential width of
10 a house that can be built here and that, that would be a
11 benefit, I would see, think that people would see it as a
12 benefit to this if nothing else.

13 MR. LANZI: Now, there, we know there are concerns of
14 the neighbor with regard to the flooding in the area and along
15 Cherwin Avenue. Will there be any grade change to the
16 Petitioner's property?

17 MR. DOAK: Yes, sir. When a building permit, prior
18 to a building permit being done and a site plan being prepared,
19 we would design the grading so it would not outfall onto the
20 adjoining properties. And would be captured, and then, by
21 drywells, or a level spreader, which is nothing more than a
22 long ditch with stone in it. And it would, it would keep the
23 water and let it out slowly.

24 Also, if there was any kind of overflow of the
25 facilities, it would be caught in the existing swale in the

1 front, taken across the road, and then outfalled like all the
2 other runoff in that area of Cherwin.

3 MR. LANZI: If I recall correctly, you indicated the
4 Kestner property slopes, let's call it the, the rear of the
5 property, down towards the road, it actually goes downhill
6 towards the road, is that correct?

7 MR. DOAK: That is correct.

8 MR. LANZI: And then the Dawson property actually
9 slopes towards the Kestner property down?

10 MR. DOAK: A portion of it does. The driveways and
11 stuff does, do. And some of it does in the rear. But it, it,
12 for the most part, it, like with ours, will flow towards the
13 road.

14 MR. LANZI: And at the end of the day, even, if this
15 were to be approved by the Board, this is just a step in the
16 process. In other words, Mr. Kestner, or whoever builds a
17 house there, will have to get building permits, critical area
18 requirements met and, and I'm not sure what else. Maybe you
19 can further explain.

20 MR. DOAK: The, depending on the amount of
21 impervious, they may have to plant trees, shrubs on their
22 property for the critical area. So, it goes through a lot of
23 review and scrutiny by the different Baltimore County agencies.

24 MR. LANZI: Are you aware whether the Department of
25 Environmental Protection and Sustainability has any objection?

1 MR. DOAK: They do not.

2 MR. LANZI: And how about the Department of Planning?

3 MR. DOAK: I, I passed it by, talked to the Planning
4 Department and they, they, they support it.

5 MR. EVANS: Well, do you have anything in writing
6 from them to that effect, Mr. Doak?

7 MR. DOAK: Yes, sir. Did you not put that in, Mr.
8 Lanzi?

9 MR. LANZI: I believe that's part of the file. It's
10 typically part of the file.

11 MR. EVANS: Okay.

12 MR. LANZI: The County comments. I did not submit it
13 as an exhibit but.

14 MR. EVANS: But it's in the file?

15 MR. LANZI: It should be.

16 MR. DOAK: Yes, sir.

17 MR. LANZI: It should be in, in your file.

18 MR. EVANS: Was, was that, and, and DEPS and Planning
19 review the second, this plat or the original one?

20 MR. DOAK: Both.

21 MR. EVANS: Both, okay.

22 MR. DOAK: And I'm about to give you the date of the
23 Planning ZAC comments. They were April 15th, 2020.

24 MR. EVANS: Okay.

25 MR. DOAK: They were done by Wally Lippincott.

1 MR. EVANS: Okay.

2 MR. DOAK: And if you don't believe me, you can't get
3 ahold of me, because he retired. And they supported our, our
4 Petition.

5 MR. EVANS: Okay.

6 MR. LANZI: And I believe that they wanted a forty-
7 foot front setback?

8 MR. DOAK: Yes, they did. Yes, they did. And I'll
9 read one sentence. The Department of Planning supports the
10 request with the modification of the front setback to a minimum
11 of forty feet.

12 MR. LANZI: Okay.

13 MR. MCCANN: Excuse me, sorry to interrupt.

14 MR. DOAK: Yes, sir.

15 MR. MCCANN: I'd like to see a copy of those, if
16 that's at all possible, Mr. McComas, maybe during a break.
17 Normally, I would just go in and take a look at the file and
18 find those things. I haven't seen them in this case. So,
19 maybe at some point I could get a copy of those, since they're
20 not an exhibit.

21 CHAIR: Yeah.

22 MR. DOAK: Mr. McComas, am I allowed to e-mail those
23 directly to Mr. McCann?

24 CHAIR: Or Sunny, probably. So, she can --

25 MR. DOAK: Oh, I don't know her.

1 CHAIR: And I was just looking to see if we have it
2 here.

3 MR. DOAK: They should be in that file from below.

4 MR. LANZI: Yeah. My, my understanding is the entire
5 record from the ALJ case should have been --

6 CHAIR: Yeah, that's, that's, I'm trying to
7 (inaudible).

8 MR. MCCANN: Yeah. I'll accept an e-mail from Mr.
9 Doak, that's fine for (inaudible) purposes.

10 CHAIR: Yeah.

11 MR. MCCANN: If that's okay?

12 CHAIR: Yeah, that, that works for me. Mr. Evans,
13 Mr. Sampson?

14 MR. SAMPSON: Yeah, no, that's fine.

15 MR. EVANS: That's fine.

16 CHAIR: I'm good with it too.

17 MR. MCCANN: Okay, great. Thank you.

18 MR. LANZI: All right. Mr. Doak, there was some
19 other concerns at the previous hearing with regard to --

20 CHAIR: And Mr. Lanzi, Mr. McCann, I just got, I have
21 the whole file, case file here if something else comes up.

22 MR. LANZI: Okay, great. Mr. Doak, there were some
23 concerns at the prior hearing about a view being blocked. Is
24 there a difference with the plan that we're, we're here for
25 today?

1 MR. DOAK: Oh, by all means. So, the first hearing,
2 we started out asking for a variance of twenty-five feet and
3 then --

4 MR. MCCANN: Same objection. Sorry to interrupt.

5 MR. DOAK: Oh, I'm sorry.

6 MR. MCCANN: Same objection.

7 CHAIR: Mr. McCann, I'm going to give Mr. Lanzi some
8 latitude on this in that he's just giving a historical, you
9 know, building up and background to, you know, how he's gotten
10 there and as opposed to, you know, (inaudible) for an issue
11 that really hasn't arised yet. So, I'm going to give Mr. Lanzi
12 some latitude on this for background.

13 MR. MCCANN: Okay, thank you.

14 MR. LANZI: Okay. Mr. Doak, how far back does the
15 Dawson property sit from the road, if you recall?

16 MR. DOAK: Approximately seventy-five feet.

17 MR. LANZI: Okay. All right and so, so, Mr. Dawson
18 I, either Mr. Dawson or his predecessor, I don't know who built
19 the property.

20 MR. DOAK: (inaudible).

21 MR. LANZI: They, they decided to locate their home
22 where it's, in its current location, how far it sits back from
23 the road?

24 MR. DOAK: Yes. His house was built in 1989 and he
25 didn't, Mr., Mrs., Mrs. Dawson didn't buy the property until

1 2017. So, it was built thirty, thirty-four years before that.

2 MR. LANZI: Okay. It might be helpful if you could
3 give, you kind of gave an evolution of the Kestner lots, maybe
4 you could do the same thing for the Dawson lots, if that would
5 be helpful.

6 MR. DOAK: I think it would. Let's see, I'm trying
7 to think which exhibit would be best. May we please go to Pet,
8 that one, please? And then, let's go to Petitioner's exhibit
9 number two, or three, please. Let me look at it one second.

10 MR. LANZI: Okay.

11 MR. DOAK: So, I can make it really easy for
12 everybody. And if you could reduce the size, please? Thank
13 you.

14 MR. LANZI: How's that work?

15 MR. DOAK: Keep reducing, please. That's good, no,
16 one up. A little, a little larger, please. Thank you very
17 much. Okay. So, what I did was, I, the scenario we have here
18 where lots are separated in ownership, it's so prevalent in
19 this area. I started out looking, of course, at the Kestner's.
20 But then I said, what about the Dawson property? Could it be
21 similar in that, and I found that it, it was exactly the same
22 scenario as the Kestner property. In 1987, --

23 MR. MCCANN: Again, I'm going to object for the
24 record.

25 CHAIR: Okay. We're going to overrule it.

1 MR. MCCANN: Okay, thank you.

2 CHAIR: (inaudible) background.

3 MR. DOAK: If you'll, if you'll look at the, the plan
4 and I'll go slowly through, Mr. Dawson owns 151 through 154.
5 He also owns 170 down to 167. So, keep that in mind. That
6 block of eight lots right there is Mr. Dawson's. And it has
7 been since 2017.

8 But in 1987, the Hopewell Village, Inc. sold to
9 Christopher Steg, Steg, and he sold not only the eight lots of
10 Mr. Dawson's, but he also sold 165 and 166, which are behind
11 our subject property. So, in 1987, the Hopewell Village sold
12 to Christopher Steg ten lots. Ten lots.

13 Then Mr. Steg sold Lot 165 and 166 to Wally Wallace,
14 okay? And, and let me take one step back, I apologize. Right
15 after he sold those two lots to Wally Wallace, 165 and 166, he
16 built his house in 1989 and that's the, Mr. Dawson's house now.

17 So, he bought, they bought lot, ten lots, Mr. Steg
18 did, he built a house, or he sold the two lots, he built a
19 house on the remainder and then Mr. Wallace built his house as
20 soon as he bought those two lots from Mr. Steg, 165 and 166, he
21 built his house on that. And later, in year 2000, he bought
22 164 and put a garage on it.

23 So, to sum this up and make it more simple, this is
24 the same thing that the Kestner's did. Mr. Steg, in, in 1987,
25 bought ten lots. Sold off 166, 165 and 166, which you'll see

1 is both, is fifty feet wide and approximately the same depth as
2 ours and he built a house on it. With the remainder, Mr. Steg
3 built his house on the, on the eight lots that we're talking
4 about.

5 So, not only does it happen in the area, but it
6 happens adjoining, because Mr. Steg didn't have the right, if
7 we, if we see it the way that Mr. McCann and Mr. Dawson wants
8 us to, Mr. Steg would have never been able to sell that and
9 Mr., Wally Wallace would have not been able to build on it.

10 May I please see the photograph --

11 MR. EVANS: So, Mr. Doak, you've got to be, frankly,
12 you've got to be a little more careful with your language.
13 Because there's no, nothing here that prevents the sale of the
14 property, correct? I mean, the man could sell the property,
15 just like Mr. Kestner can sell the property.

16 MR. DOAK: Yes, sir.

17 MR. EVANS: The question, the only question is the,
18 the right to get, the right to build under certain
19 circumstances.

20 MR. DOAK: That, you are perfectly correct. Thank
21 you.

22 MR. EVANS: So, so, please don't overstate it.

23 MR. DOAK: Okay. Yes, sir. Mr. Lanzi, may I please
24 have the photographs, the first set of photographs?

25 MR. LANZI: Bear with me. Mr. Doak, while I'm doing

1 that, do you know when Mr. Dawson bought those eight lots?

2 MR. DOAK: His wife bought them August 8, 2017.

3 MR. LANZI: Okay. Which photographs would you like
4 to --

5 MR. DOAK: Keep going.

6 MR. LANZI: Okay.

7 MR. DOAK: I think it's three more. Okay, right
8 there, please. So, the two lots that Mr. Steg sold, 165 and
9 166, are the ones that the house you see in the rear is placed
10 on.

11 MR. EVANS: That's Mr. Wallace's house, right?

12 MR. DOAK: That's Wally Wallace's house. I just love
13 that name. That, that's the house. In 2000, he bought, bought
14 the adjoining twenty-five-foot lot and he built a garage on it.

15 MR. LANZI: Right.

16 MR. DOAK: Okay.

17 MR. LANZI: Okay, got it. All right. I believe we
18 talked about front averaging previously, so I won't go there.
19 But as far as, you're familiar that we have, I believe it's
20 roughly forty signatures signed by Mr. McCann's client,
21 community association client. Are you, you're aware of those
22 signatures?

23 MR. DOAK: I am, yes, sir.

24 MR. LANZI: And, and did you do some research on the
25 addresses of all those people that signed that?

1 MR. DOAK: Yes, sir, I did.

2 MR. LANZI: Okay. I'll ask what you found. I, I do
3 want to go to an exhibit. I think I'm going to have to get out
4 of this one and go to another screen, so bear with me,
5 everybody. So, all right. I need to find, I have four
6 separate exhibit attachments. Okay, let's see. Okay, I think
7 I got it now. So, these are Petitioner's eleven, twelve and
8 thirteen. I'm showing you now twelve, and if you could explain
9 to the Board what you did, Mr. Doak?

10 MR. DOAK: Yes, sir.

11 MR. LANZI: Can you read it?

12 MR. DOAK: Yes, sir. What I did was on the left-hand
13 side I numbered them one through, it ended up being forty.
14 Different places, numerous places there were the same, people
15 from the same residents. So, I, even though I did number them
16 one through forty, some of them share the same residence.

17 MR. LANZI: Okay.

18 MR. DOAK: On the right-hand side I noted which lots
19 of the subdivision plat they own and their approximate width
20 and depth and (inaudible) when I say approximate, I mean that
21 if, if they own multiple lots and the lot depths changed, I
22 usually grabbed the one of the least and, and did that. But if
23 nothing else, I was really focusing more on the width of what
24 they own.

25 MR. LANZI: Okay and what did you find?

1 MR. DOAK: If I could go to the next exhibit, please?

2 MR. MCCANN: Mr. McComas, may I have a continuing
3 objection? Same basis, relevance of what's going on with these
4 other lots.

5 CHAIR: (inaudible) I'm going to overrule it and, and
6 let Mr. Lanzi continue on it.

7 MR. MCCANN: Okay.

8 CHAIR: In the questioning of the witness here.

9 MR. MCCANN: Okay, thank you.

10 MR. LANZI: All right.

11 MR. DOAK: Mr. Lanzi?

12 MR. LANZI: Yeah, is that the one you're looking for?

13 MR. DOAK: No, keep going. That's just a
14 continuation of what I've already done.

15 MR. LANZI: Okay.

16 MR. DOAK: Okay.

17 MR. LANZI: Is that it?

18 MR. DOAK: Yes, sir.

19 MR. EVANS: Is this number twelve? Is this
20 Petitioner's twelve, Mr. Doak?

21 MR. DOAK: I can't see the bottom, is it marked?
22 Yes, it is, Petitioner's exhibit number twelve.

23 MR. EVANS: Thank you.

24 MR. DOAK: So, what I have done here, Mr. Lanzi, if
25 you will blow it up for a second and then reduce it back down.

1 A little bit more, please. Okay. So, what I did was, I was
2 just curious, and I wanted to apply it to something that was
3 relevant to our case.

4 So, what I did was, I reviewed the ownership, not
5 only for the tax, by their tax records, but by each deed and I
6 reviewed it as to the, the size of the lot of the people that
7 are, are on the Petition from the improvement association.

8 And what I found was, and that each one of those are
9 highlighted, encompassed by yellow highlighter. And then, in
10 the circle in the middle of the lot is the number of the name,
11 like I said, there was one through forty. I put the number of
12 the Pet, the Petition signature person in there.

13 And then what I did was any of the lots that were
14 fifty feet or, or that I put fifty in front of the lot, and I
15 circled it. So, if you'll see what we're looking at now,
16 there's four fifty-foot lots, which are improved on Gunder.
17 There are, there is, our subject prop, oh, I apologize, I
18 apologize.

19 There are three on Gunder. On Cherwin, there are, on
20 the other side of the street, there are four fifty-foot lots
21 those, there. And I did not look at every lot, I just looked
22 at the ones that were, were the petition signatures.

23 And then, also on Birdwood there are four there and
24 then on Powderdale, there are two there. So, you'll see just
25 surrounding our property, and from this list of forty people,

1 not forty households, there are thirteen properties that are
2 improved and built on with fifty-foot-wide lots.

3 MR. LANZI: Okay.

4 MR. DOAK: If you look at, can we look at one, the,
5 the last exhibit, please?

6 MR. LANZI: Yes. This would be Exhibit 13.

7 MR. DOAK: Yes, sir. I did the same thing on this.
8 This is GI, this is on Petitioner's thirteen. This is the GIS
9 map and I highlighted those, and I did not put the fifties on
10 it, but I highlighted all the ones I looked at and the, the
11 number in the circle is the Petitioner's signature number, so.

12 MR. LANZI: Okay. All right. Mr. Doak, before I
13 leave that, I would offer exhibit, Petitioner's eleven, twelve
14 and thirteen into evidence.

15 CHAIR: Mr. McCann?

16 MR. MCCANN: Same objection. Thank you.

17 CHAIR: We're going to admit them, Mr. McCann and Mr.
18 Lanzi.

19 MR. LANZI: Okay, thank you. All right. Mr. Doak,
20 as an expert, in your opinion, would the granting of the
21 requested special hearing zoning relief alter the essential
22 character and nature of this community?

23 MR. DOAK: No, sir, not at all. There are, as you
24 know, many, many, many fifty-foot-wide lots. We're meeting all
25 the setbacks and we're building a house that is comparable and

1 compatible to the area.

2 MR. LANZI: Okay. Bear with me. All right. Will
3 the granting of the zoning relief, if approved, impair the
4 appropriate use and development of adjoining properties?

5 MR. DOAK: No, sir, not at all. Mr., Mr. Dawson's
6 property is, is eight lots. It is, it's improved with a, a
7 nice size single family home, big back yard, large driveway.
8 So, I don't see how it would impede it at all.

9 The, the former Kestner property is improved with
10 the, the house and the garage and everything and, and then the
11 only other adjoining property is Mr. Wallace's in the rear that
12 has everything, you know, the house, the garage and everything.

13 So, I don't see how this would impede anybody's use
14 or enjoyment of their property. Especially since we've moved
15 the house, potential house and giving Mr. Dawson a much larger
16 vista, a viewshed, now than we formally had.

17 MR. LANZI: In your expert opinion, if the zoning
18 relief is, is granted will there be any detrimental impact on
19 the public health, safety and (inaudible) welfare of this
20 immediate community?

21 MR. DOAK: No, sir, I don't believe so. The only
22 issue that came up in the, in the past was, was runoff and what
23 may cause a safety issue in, in Cherwin Avenue and that'll be
24 addressed as a part of the building permit and storm water
25 management review and approval. And also, we've shown that

1 there is a, a drain there that catches the water and takes it
2 out of that area.

3 MR. LANZI: Mr. Doak, if the requested zoning relief
4 is granted, in your opinion, will it be in harmony with the
5 spirit and intent of the zoning regulations, specifically,
6 Section 304?

7 MR. DOAK: Yes, sir, it will.

8 MR. LANZI: And can the Petitioner use this property
9 without the zoning relief for the construction of a home?

10 MR. DOAK: No, sir, he cannot.

11 MR. LANZI: Mr. Chairman, I have, just to go back
12 through the exhibits. So, I think we have one through six in,
13 7-A in, 7-B and C are i.d. only. I have eight, nine and ten, I
14 have not discussed. Ten, I'm going to have to leave the
15 screen, so I'll go back. Oh, come on now.

16 So, I'll just go to ten first. Mr., Mr. McCann and I
17 discussed these Petitions. He had one. Number ten is the
18 letter that the Kestners submitted to the neighborhood, that
19 they do not oppose, in fact, support the requested zoning
20 relief. I want to offer that, and offer without having to call
21 the Kestners unless Mr. McCann or the Board says.

22 MR. MCCANN: No objection.

23 CHAIR: We'll admit, we'll admit them, Mr. Lanzi.

24 MR. LANZI: Okay. So, that would be ten, which only
25 leaves eight and nine. I don't know whether you had a chance

1 to look, Mr. McCann, or not, but basically eight is a map
2 showing the various cases where lot width, undersized lots were
3 approved, and then 9-A through D are those cases.

4 I don't want to take up the Board's time. I, I
5 assume Mr. McCann's objection is the same. But I would like
6 those in the record if possible. It just, shows these are
7 public records of cases that were approved for lot widths being
8 under size.

9 CHAIR: Mr. McCann?

10 MR. MCCANN: Yeah, Mr. Lanzi is correct. Same, same
11 objection.

12 CHAIR: Well, we'll let these in, Mr. McCann. The
13 other thing to me that we kept out is along the lines of an
14 issue that hasn't been presented. These are, to me, more
15 background information about the surrounding areas I think Mr.
16 Doak testified on. So, so we'll admit those into evidence.

17 MR. LANZI: Okay. So, those were all my exhibits.
18 The only ones that did not get in at this point are 7-B and 7-
19 C. I guess I'll reserve on that. And that is all I have for
20 Mr. Doak at this point, unless you have anything to add, Mr.
21 Doak.

22 MR. DOAK: No, sir, I do not.

23 MR. LANZI: Okay.

24 MR. EVANS: Just, just so I'm clear, Mr. Lanzi,
25 again, I'm being a bureaucrat here. (inaudible) and then 9-A

1 through D are the underlying documents for each of those lots,
2 is that correct?

3 MR. LANZI: We give four examples.

4 MR. EVANS: Four examples.

5 MR. LANZI: Yes.

6 MR. EVANS: Okay.

7 MR. LANZI: And I apologize for the, the length but
8 basically the entire file for each case that we did present.

9 MR. EVANS: Oh, no, that's not a problem. I'm just
10 trying to do the housekeeping, that's all.

11 MR. LANZI: Okay. So, that's all I have for Mr. Doak
12 at this time.

13 CHAIR: Mr. McCann, do you have any cross of Mr.
14 Doak?

15 MR. MCCANN: I do.

16 CHAIR: Mr. McCann, how long do you think you'll be
17 because (inaudible) --

18 MR. MCCANN: I'm going to be a while, sorry to
19 interrupt. I was going to suggest, I don't know what the
20 Board's inclination is in terms of lunch. But now would be a
21 good time. I could probably clean up some of what I had in
22 response to some of the new stuff so a lunch break would be
23 great. But I'll proceed if you guys want to proceed.

24 CHAIR: I, I was looking for like a five-minute
25 break. Mr. Sampson, Mr. Evans, do you want to, how about Mr.

1 McCann's suggestion of taking lunch at this time?

2 MR. MCCANN: And it can be a short one.

3 MR. EVANS: Yeah, it, it would actually help me. I
4 have something that I need to do at 12:15, so it would actually
5 be useful.

6 CHAIR: You want to take a forty-five-minute break--

7 MR. EVANS: Yeah, or thirty minutes, it doesn't
8 matter.

9 CHAIR: (inaudible). Mr. Lanzi, does thirty minutes
10 work for you?

11

12 MR. LANZI: That's fine.

13 CHAIR: Mr. Doak, does that, does that fit into your
14 schedule here?

15 MR. DOAK: Yes, sir, it does.

16 CHAIR: All right. So, let's take a thirty-minute
17 break and we'll be back at 12:30.

18 MR. MCCANN: Thank you.

19 MR. LANZI: Thank you.

20 MR. DOAK: Do we come back on, or do we just leave it
21 open?

22 CHAIR: I'm just going to leave mine open. I, I'm
23 not, I think Adam, Mr. Sampson is the host. I think, I was
24 just going to sort of mute mine and, I was going to mute mine
25 and stop the video, Mr. Doak.

1 MR. DOAK: Okay. Thank you for --

2 MR. SAMPSON: Bill, so I just pause the recording,
3 correct?

4 CHAIR: Yes.

5 MR. SAMPSON: All right, thanks.

6 (PAUSE)

7 MR. SAMPSON: Okay, we're good there.

8 CHAIR: And I, are we going to swear in Mr. Doak or
9 state that he's already sworn in and he's just going to pick up
10 where he left off?

11 MR. EVANS: He's already sworn.

12 CHAIR: All right. Mr. McCann, I think it, he, he's
13 your witness for cross examination.

14 MR. MCCANN: Great, great. Mr. Sampson, I'm sorry,
15 but I haven't been able to see that I can share yet.

16 MR. SAMPSON: That's because I gave it to Mr.
17 McComas, my fault.

18 MR. MCCANN: He can handle the cross, that's fine.

19 CHAIR: I'm not sure if I'll be able to pull this
20 off, too much pressure on me.

21 MR. MCCANN: Yeah.

22 MR. SAMPSON: You should be okay now.

23 MR. MCCANN: Okay, thank you. Appreciate it. Good
24 afternoon, Mr. Doak.

25 MR. DOAK: Good afternoon.

1 MR. MCCANN: I want to start where you left off and
2 that is with, I think Petitioner's number, exhibit numbers 8
3 and 9-A through D, and that is these cases that you spoke about
4 having been decided. I'm going to pull up Petitioner's number
5 eight. Let's see here.

6 CHAIR: You're on the wrong screen it looks like, Mr.
7 McCann. There you go.

8 MR. MCCANN: You see that?

9 MR. DOAK: Yes.

10 MR. MCCANN: Okay. So, as I understand it, just for
11 everybody's benefit it is Petitioner's exhibit number eight, we
12 have the subject property identified here in orange and then
13 you have in yellow indicating properties pertaining to which a
14 case was decided regarding undersized lots, correct?

15 MR. DOAK: Yes.

16 MR. MCCANN: Okay. Did you actually look at these
17 one, two, three, four, five, six cases?

18 MR. DOAK: It was a while back, yes, sir, I did.

19 MR. MCCANN: Okay. Have you looked at them recently?

20 MR. DOAK: No, sir.

21 MR. MCCANN: Okay. Well, they certainly speak for
22 their, for themselves, but would you agree with me that none of
23 these cases that you have identified here involved 304.1.

24 MR. DOAK: That's correct.

25 MR. MCCANN: In fact, they each addressed simply in,

1 in, I would submit, brief fashion, the variance standard in
2 Section 307, correct?

3 MR. DOAK: I, I couldn't say that for sure. I, I'd
4 have to read them and make sure that's what they're referring
5 to. But that very well could be.

6 MR. MCCANN: Okay. In fact, maybe to, to help you,
7 these case, many of these cases were decided before 304.1 came
8 into existence, correct?

9 MR. DOAK: That's correct.

10 MR. MCCANN: Okay.

11 MR. DOAK: But they all dealt with lots of fifty foot
12 wide.

13 MR. MCCANN: Okay. Did you, did you catch in your
14 review of any of these decisions, whether there were any
15 Protestants in any of them?

16 MR. DOAK: No, sir, I did not.

17 MR. MCCANN: Isn't it true that in each of these
18 cases the issue of whether the property owner owned sufficient
19 property adjoining his or her property to meet the height and
20 area requirements was not even discussed, correct?

21 MR. DOAK: You evidently have looked at them since I
22 have. It could be, but I can't tell you off the top of my
23 head.

24 MR. MCCANN: Okay. Well, do you know whether, in
25 fact, with regard to any of these properties, the Petitioner

1 had adjacent property (inaudible) requirements? Did you look
2 into that, in other words?

3 MR. DOAK: No, sir, I did not. Whatever was in the,
4 whatever was in the pleadings was all that I based it on.

5 MR. MCCANN: Okay. In all of these cases, you would
6 agree with me, well, we have six here. Four of the decisions
7 you've attached as Exhibit 9-A through D. Let's deal with 9-A
8 through D first. I don't need to pull those up. You would
9 agree with me that each of those are decisions of the
10 Administrative Law Judge or then the Zoning Commissioner,
11 correct?

12 MR. DOAK: Yes.

13 MR. MCCANN: (inaudible) decisions of the four that I
14 just mentioned, or the other two, are decisions of the Board of
15 Appeals, correct?

16 MR. DOAK: I believe so.

17 MR. MCCANN: What I'd like to do, if I could, Mr.
18 McComas, is to, there's, as I indicated, there's six cases
19 referenced, or highlighted rather, in Petitioner's exhibit
20 number eight. Four of those are Petition, Petitioner's
21 Exhibits 9-A through D. I would like to have marked in and
22 introduced into evidence the other two decisions of the, of
23 Zoning Commissioner, and I can certainly show those to the
24 Board.

25 The first one is, this is 79-135, which is one of

1 the, one of the highlighted cases in Petitioner's exhibit
2 number eight. The other is 0, 03-0309, 03-309. And, so these
3 would be, I already have marked and introduced, or sent to
4 Sunny anyway, Exhibits 1 through 11. So, I would ask that
5 these be marked and introduced as Exhibits 12 and 13,
6 respectively. I can certainly send over copies to --

7 CHAIR: Mr. Lanzi, any objections? Did we lose Mr.
8 Lanzi? Or is he on mute?

9 MR. LANZI: Okay. I would like to see them. If they
10 are the same as the other four, then I have no objection. They
11 say what they say and they're public record.

12 CHAIR: Okay.

13 MR. MCCANN: Okay. I'll send them to everybody,
14 including the Board. But let's, this, this would be the second
15 of these, case number 03-309, which I think I've just marked as
16 Protestants' Exhibit 13.

17 As an example, Mr. Doak, and (inaudible) spend a
18 whole lot of time looking at this because the opinion itself is
19 only two, a little over two pages. This, this Petition, in
20 particular, was not, was a variance case. No reference to
21 304.1 at all, correct?

22 MR. DOAK: I don't see that reference.

23 MR. MCCANN: Okay.

24 MR. DOAK: Of course, I don't move as fast as you do,
25 but --

1 MR. MCCANN: But normally it would say it in the
2 first paragraph, right?

3 MR. DOAK: That's correct.

4 MR. MCCANN: And then it would also say it in the, in
5 the Order itself, correct?

6 MR. DOAK: That's, that's what I was waiting for.

7 MR. MCCANN: Okay. There, 304 is mentioned there, I
8 stand corrected.

9 MR. DOAK: Yeah, it is, that's 304.

10 MR. MCCANN: Okay. But no discussion --

11 MR. DOAK: Which would be similar to what we're
12 doing, yes.

13 MR. MCCANN: Well, it speaks for itself. So, next,
14 also in your Exhibit 8, let's get back to that if we could.
15 You didn't identify in this exhibit cases where an undersized
16 lot was denied, did you?

17 MR. DOAK: I, I don't remember what my criteria is,
18 if, if you found one that was denied, I have to think that I
19 would have because that would have been slant, too slanted,
20 even for me. But if you would have, if you would have, if you
21 found one, I, I'd be glad to review it. But I just don't
22 remember that, that being the criteria, only ones that were
23 approved.

24 MR. MCCANN: Okay. I'm not criticizing you, I'm just
25 asking if you looked at other cases and --

1 MR. DOAK: I believe I looked at, I looked at, how I
2 started was all the, all the lots that have cross hatching is
3 that there's a zoning hearing on it.

4 MR. MCCANN: Right.

5 MR. DOAK: So, then I pulled those that, and I read
6 very quickly if they had something to do with lot (inaudible),
7 then in turn I looked at them and saw if they were approved or
8 not and then put them down there. If they were, other things
9 like just setbacks, which most of them are, just a setback
10 variance, then I didn't (inaudible), I didn't, I didn't put
11 them down.

12 MR. MCCANN: And I'm glad you said that because I
13 think the Board may know from its experience with My
14 Neighborhood, these, these cross hatched lots indicate that it,
15 that there was a zoning case involved, correct?

16 MR. DOAK: Are you talking to me or them?

17 MR. MCCANN: I'm talking to you, Mr. Doak.

18 MR. DOAK: Oh, I'm sorry. Yes.

19 MR. MCCANN: Yeah, and --

20 MR. DOAK: I feel that that's what they know but I
21 make it a point to point it out to them each and every time I'm
22 up.

23 MR. MCCANN: I'm just asking you if that's correct.

24 MR. DOAK: Yes.

25 MR. MCCANN: Okay. In fact, I've looked through all

1 these and I think you're correct, all of these other ones that
2 you haven't highlighted, subject to the ones we'll talk about
3 next that have denied an undersized lot, all of these are just
4 your run of the mill sort of setback variances or variances to
5 put a shed, you know, things of that nature, correct?

6 MR. DOAK: Yes.

7 MR. MCCANN: Okay. So, let's look at one that you
8 didn't include, and that would be this one. So, this is right
9 on Cherwin Ave. This is a case more recent than the others.

10 MR. DOAK: Where is it? Where is it located?

11 MR. MCCANN: 13108. So, in reference to your
12 exhibits, some of your other exhibits showed this property
13 better, but your Exhibit 8, it would be this one right here.
14 Which you'll see that on the left-hand side.

15 MR. DOAK: Okay.

16 MR. MCCANN: This, this particular one. And you can,
17 you can verify that, if you don't know --

18 MR. DOAK: And I'll, and I'll have to tell you the
19 truth, I, I worked the block above it. I didn't, I didn't go
20 that far down. The reason why, because I wanted it to be in
21 the close proximity to our lot versus reaching out. Even
22 though it's on the record plat, I didn't go that far down.

23 MR. MCCANN: Okay. Well, you included this one --

24 MR. DOAK: Yes, yes, I did. That, that roadway there
25 that runs into that lot was my southern boundary, railroad was

1 the eastern boundary, the water, and the water was my northern
2 and western boundaries.

3 MR. MCCANN: Yeah, but my point is, you went below
4 that southern boundary to show this one.

5 MR. DOAK: Only because it was right in line with,
6 but that's the only thing I can tell you is, I just didn't go
7 any further than that.

8 MR. MCCANN: Okay. Well, let's look at this one.
9 This is, I'll have this marked and we'll seek to introduce it
10 as Petitioner's Exhibit 14.

11 MR. DOAK: Um hm.

12 MR. MCCANN: And again, it speaks for itself, and
13 like Neil, I included, you can see I included the entire file,
14 which is obtainable through My Neighborhood. This, this one,
15 in fact, unlike the others, so, the vast majority of the
16 others, refers to Section 304, correct?

17 MR. DOAK: It does.

18 MR. MCCANN: It also talks, unlike all the others,
19 talks about opposition, correct? Where I'm highlighting there?

20 MR. DOAK: Yes, sir.

21 MR. MCCANN: Okay. Just for completeness sake, Mr.
22 Schmidt actually denied a variance request, which I, and that,
23 I'm sorry, I went right by it. Was, in fact, denied, correct?
24 Do you see that, Mr. Doak?

25 MR. DOAK: I do see it, but it calls for approval of

1 two newly created lots as undersized. I don't, I don't know
2 what the history of what made them newly created. I, I don't
3 know what that is. So, this may or may not be similar to what
4 ours is because our lots were not newly created. They've been
5 lots since 1929.

6 MR. MCCANN: Okay. But just for clarity's sake,
7 there was no approval, this paragraph, the reference to newly
8 created is just a description of the relief that was sought.

9 MR. DOAK: I don't know that.

10 MR. MCCANN: Okay. Well, again, it speaks for
11 itself. So, that would be Exhibit 14 and I would move that
12 into evidence.

13 CHAIR: Any objection, Mr. Lanzi?

14 MR. LANZI: I, I'll object for relevance, but I'm
15 sure the Board will take the same position allowing my stuff to
16 go in, so.

17 CHAIR: Yeah.

18 MR. LANZI: They're public record and they speak for
19 themselves.

20 CHAIR: Yeah. Yes, so we'll admit them.

21 MR. MCCANN: Okay. Bear with me one second.

22 MR. LANZI: I, I would request copies of these,
23 because these are new exhibits that are being presented
24 literally as we speak. I'll admit that we sent some exhibits
25 yesterday afternoon instead of in the morning. But I have not

1 experienced exhibits being allowed simultaneously with the
2 hearing before. So, I guess I will object for the record as to
3 all new exhibits being presented now.

4 CHAIR: You'll, and Mr. McCann, you'll, you'll send
5 it to Sunny, right? And we can get it, so we all have a record
6 of it.

7 MR. MCCANN: Yeah, that's, that is the case. Just
8 for, just to speak to that issue, this is actually my first
9 Board of Appeals hearing since the pandemic. I've had many,
10 many ALJ cases and the rule that's been followed there is since
11 this is cross examination, just like you wouldn't have to do at
12 a hearing itself, you don't need to send those exhibits in
13 advance. In fact, you know, I pulled these during the break.

14 CHAIR: Yeah.

15 MR. MCCANN: So, I could not have produced them. So,
16 I just wanted to make that clear for the record.

17 CHAIR: And that's, and that's, and that's how I've
18 viewed it as well, Mr. McCann. That you're well within the,
19 the scope of the cross examination and since all the other ones
20 have come in, you know, it's fair to you to have the, the ones
21 that support, in your mind, support your, your perspective as
22 well. That's how I viewed it.

23 MR. MCCANN: Okay, great. Great, thank you. The
24 other thing I wanted to ask you about, Mr. Doak, related to
25 that is, bear with me one second. Okay. So this is, this is a

1 different exhibit. This is Petitioner's Exhibit 13, and this
2 is an exhibit that you created, I take it, in response to the,
3 to the Petition that we sent over to Mr. Lanzi yesterday
4 identifying where all of the sign, signatories of the Petition
5 live and the lots on which they live, correct?

6 MR. DOAK: That is correct.

7 MR. MCCANN: Okay. And in connection with this
8 exhibit, when you talked about it on direct examination, I
9 think your exact words were, there are many, many fifty foot
10 lots amongst, amongst these properties. And I, I guess the
11 first thing I wanted to clarify is, let me pull up a separate
12 exhibit which is also a new, new exhibit, this is a copy of
13 your exhibit that we just looked at.

14 And what I've done here for your benefit, or
15 everyone's benefit, is I highlighted in green amongst all the
16 lots that you highlighted those that are, in fact, not fifty-
17 foot lots but have, consist of multiple, three or four, I think
18 it's at most three or four, twenty-five-foot lots, correct?

19 MR. DOAK: But they didn't build on those. Like the
20 one behind our property, you have it green. That was Wally --

21 MR. MCCANN: Well, --

22 MR. DOAK: Go ahead.

23 MR. MCCANN: That wasn't my question. My question is
24 simply have I highlighted in green the lots that are not just
25 simply --

1 MR. DOAK: No, so what --

2 MR. MCCANN: Hold on. Let me finish the question.

3 MR. DOAK: I apologize.

4 MR. MCCANN: And I'm not asking about any houses or
5 anything else. All I'm asking is, did I highlight in green
6 those, those yellow highlighted properties that you identified
7 that actually comprise more than two lots, correct?

8 MR. DOAK: That is correct.

9 MR. MCCANN: Okay. Did you, with respect to all of
10 these in yellow, and we'll get to the pink in a moment, did you
11 actually look as to when the houses on these lots were
12 constructed?

13 MR. DOAK: No, sir.

14 MR. MCCANN: You did not?

15 MR. DOAK: I did not.

16 MR. MCCANN: Okay. So, I, I started at the subject
17 property, and I went out and I just grabbed a couple in the
18 limited time that I had.

19 MR. DOAK: Um hm.

20 MR. MCCANN: And, and I'll, I have SDAT reports that
21 I'll mark. Before I move on, this exhibit that's now in front
22 of the Board, since it's a, a new exhibit, would be
23 Protestants' Exhibit 15, is that correct, Mr. Evans?

24 MR. EVANS: Yes, yes, um hm.

25 MR. MCCANN: Okay and what I would like to do in

1 conjunction with this is also show the Board and introduce the
2 S, the SDAT sheets associated with these lots. So, for
3 instance, and this is, this would be Exhibit 16. This consists
4 of, for the record, four SDAT sheets corresponding to the, the
5 properties outlined in pink on Protestant's Exhibit 15.

6 So, as an example, and they speak for themselves, but
7 the first one I have coincidentally is I have 6903 Gunder,
8 which is the property formerly owned by Mr. Kestner, correct?

9 MR. DOAK: That is correct.

10 MR. MCCANN: And you, I'm not sure if you had
11 indicated this or not, according to this SDAT sheet, that
12 property was, that building rather, was constructed in 1945,
13 correct?

14 MR. DOAK: That's what Mr. Lanzi says, and I can see
15 it here, yes, sir.

16 MR. MCCANN: That's what Mr. Lanzi says?

17 MR. DOAK: Yes. That, he said that in one of my
18 questions.

19 MR. MCCANN: Okay, all right. Very well. And as
20 another example, I don't, I think they speak for themselves, I
21 don't need to go through all of them but there's one, 13217
22 Powderdale, which is this property right here, I'll represent
23 to you. We can check by these lot numbers, see 212 and 213, do
24 you see that?

25 MR. DOAK: Yes, sir.

1 MR. MCCANN: If we go back to the SD, SDH, SDAT
2 sheets.

3 MR. DOAK: Um hm.

4 MR. MCCANN: There's a reference there to Lots 212
5 and 213, correct?

6 MR. DOAK: Yes, sir.

7 MR. MCCANN: And this structure was built in 1921,
8 29, correct?

9 MR. DOAK: Yes.

10 MR. MCCANN: And for, I'm sure the Board knows this
11 but for everyone's benefit, the, the, the, the dates when
12 structures were built in this exhibit, which is Protestants'
13 16, 1945, 1929, 1934 and 1929, those dates all, all predate the
14 enactment of the County zoning regulations, correct?

15 MR. DOAK: Oh, that was a ques, yes, yes, they do.

16 MR. MCCANN: Okay. Okay. With that, I would offer,
17 if I haven't already, Exhibits 15 and 16 into evidence.

18 CHAIR: Mr. Lanzi, same objection? Mr. Lanzi, did we
19 lose you?

20 MR. LANZI: No objection.

21 CHAIR: All right. We'll admit them.

22 MR. MCCANN: Thank you. Thank you. Okay.
23 (inaudible) one second. It sounds like, based on your
24 testimony, Mr. Doak, that you looked a little, that you looked
25 at the title history of the subject lots as well as the lots

1 that were, that were owned for a period of time by Mr. Kestner,
2 correct?

3 MR. DOAK: By whom, I couldn't hear?

4 MR. MCCANN: Mr. Kestner. Did I pronounce that
5 right?

6 MR. DOAK: Yes, sir.

7 MR. MCCANN: Okay. You looked at the title history
8 of those, those groupings of lots?

9 MR. DOAK: Yes, sir.

10 MR. MCCANN: Okay. I want to show you, let me get
11 rid of some of these so I can have some room here. And I might
12 as well do it in order. I'm going to pull up the SD, SDAT
13 sheets first. This would be our pre-marked Exhibits 3, 4 and 5
14 and a couple things. This is Exhibit 3. Do you recognize this
15 exhibit as the SDAT sheet for Lot 155, Mr. Doak?

16 MR. DOAK: Yes, sir, I do.

17 MR. MCCANN: And I think as you and Mr. Lanzi talked
18 about, Mr. Kestner purchased this lot in April 2014, correct?

19 MR. DOAK: Yes, sir.

20 MR. MCCANN: Okay and real quick, go to four, same
21 question. Do you recognize this as the SDAT sheet for Lot 156?

22 MR. DOAK: Yes, sir.

23 MR. MCCANN: Okay and again, this lot was acquired by
24 Mr. Kestner in April of 2014, correct?

25 MR. DOAK: Yes, sir.

1 MR. MCCANN: Okay. And before we move onto the next
2 one, the square, the square footage of Lots 155 and 156,
3 according to these SDAT sheets are two thousand nine hundred
4 seventy-five and three thousand and seventy-five?

5 MR. DOAK: Yes, sir.

6 MR. MCCANN: Respectively, correct?

7 MR. DOAK: That's correct.

8 MR. MCCANN: Okay and as I, as I add those up, that's
9 six thousand and fifty feet, collectively, correct?

10 MR. DOAK: Yes, sir.

11 MR. MCCANN: Okay. SDAT sheets, which is
12 Protestants' Exhibit 5, is, is the sheet that pertains to Lots
13 157 through 160 we've spoken about. And that was, as we
14 indicated, acquired by Mr. Kestner in 2014 and sold by him or
15 conveyed by him to the current owner in November 2018, correct?

16 MR. DOAK: Yes, sir.

17 MR. MCCANN: Okay. That, I'm not sure you're aware
18 that May date is different than the April date on the other two
19 lots, but that deed reference 34935 and 347 --

20 MR. DOAK: It was, it was April 30th.

21 MR. MCCANN: But my question again, my question is,
22 is that deed reference in Exhibit 5, 34935, folio 437, that's
23 the same deed that we, that, that we would see with respect to
24 Lots 155 and 156, correct?

25 MR. DOAK: Correct. It's beginning for the first,

1 beginning for the second.

2 MR. MCCANN: Okay. Okay. I would move Protestants'
3 three, four and five into evidence.

4 CHAIR: Any objections, Mr. Lanzi?

5 MR. LANZI: No objection.

6 CHAIR: All right. We'll admit them.

7 MR. MCCANN: Okay. Thank you. Next, real quick,
8 same exercise. I don't, actually don't want to go through
9 these in any detail but I'm going to pull up, (inaudible) do
10 that all at once. Okay. Do you recognize what's been marked
11 as Protestants' Exhibit 6 as the Deed by which Mr. Kestner
12 acquired all of the lots in April 2014?

13 MR. DOAK: That is correct.

14 MR. MCCANN: Okay and then quickly, Exhibit 7,
15 Protestants' Exhibit 7, do you recognize that as the 1961 Deed
16 by which Mr. Kestner's predecessor acquired Lot 156.

17 MR. DOAK: Yes.

18 MR. MCCANN: And Exhibit 8, do you recognize that
19 document as the 1961 Deed by which Mr. Kestner's predecessor
20 acquired Lot 155?

21 MR. DOAK: Yes.

22 MR. MCCANN: And then lastly, do you recognize
23 Petitioner's, Protestants' rather, Exhibit 9 as the 1959 Deed
24 by which Mr. Kestner's predecessor acquired Lots 157 through
25 160?

1 MR. DOAK: Yes.

2 MR. MCCANN: Okay. Mr. McComas, I would move six,
3 seven, eight and nine into evidence.

4 CHAIR: Any objections, Mr. Lanzi?

5 MR. LANZI: No objection.

6 CHAIR: I'll admit them.

7 MR. MCCANN: Thank you. Okay. So, I asked you
8 previously about the, the square footage of each of these lots,
9 that Lot 155, twenty-nine seventy-five square feet, Lot 156,
10 three thousand seventy-five square feet.

11 MR. DOAK: Correct.

12 MR. MCCANN: And then, Lots 157 through 160 are thir,
13 comprised of thirteen thousand two hundred and forty-one square
14 feet, correct?

15 MR. DOAK: That's what they're showing on the SDAT,
16 yes.

17 MR. MCCANN: Well, do you have any information that
18 is con, contrary to those SDAT sheets?

19 MR. DOAK: Yes, sir, I do.

20 MR. MCCANN: You do. What is that information?

21 MR. DOAK: If you look at Petitioner's Exhibit, it
22 would be the previous zoning, the first (inaudible) surveyed.
23 They surveyed the property and came out with an even more
24 square footage for Lot 155 and 156.

25 MR. MCCANN: Okay and approximately how much, we can

1 all look at that, but approximately how much more?

2 MR. DOAK: It was twenty-one, I mean, sixty-one
3 hundred and some square feet.

4 MR. MCCANN: Okay. Either way, you would agree with
5 me that Lots 155 and 156 together meet the, what you indicated
6 to be the minimum square footage of a lot, which is six
7 thousand square feet, correct?

8 MR. DOAK: In a DR-5.5, yes.

9 MR. MCCANN: Okay and just, I don't want, I don't
10 want to get on a tangent. But you, you obtained, you derive
11 that square footage, that minimum square footage, as well as
12 the setbacks that you spoke about earlier, from what's called
13 the, the small lot table in the zoning regulations, correct?

14 MR. DOAK: That's correct.

15 MR. MCCANN: Okay. So, if we just do some simple
16 math. When, and for this I'm going to go to another exhibit.
17 This would be Protestants' Exhibit 2, which is just another My
18 Neighborhood map. And I'll zoom in. When, well, strike that.
19 Mr. Kestner owned all six lots, I know we discussed this
20 already but I'm just clarifying. Owned all six lots that we
21 just spoke about for a period of approximately four and a half
22 plus years, correct?

23 MR. DOAK: That's correct.

24 MR. MCCANN: And during that period of time, there
25 was a sufficient area, and in particular, on Lots 155, 156 for,

1 for Mr. Kestner to have subdivided the six parcels and put a
2 house on that property, correct?

3 MR. DOAK: No, sir.

4 MR. MCCANN: Why is that not the case?

5 MR. DOAK: You would have had to, like I said, if you
6 would have pushed the lines over (inaudible) 156 and 157 it
7 would have been through the garage.

8 MR. MCCANN: Okay. Well, that's not my question, Mr.
9 Doak. I'll get, I'll get --

10 MR. DOAK: Oh, I'm sorry.

11 MR. MCCANN: I'll get to this, this so-called garage
12 in a second. My question is, my question is simply during the
13 four and a half plus years that Mr. Kestner owned six parcels,
14 there was enough square footage during that period of time for
15 him to have constructed a second house on those parcels.

16 MR. DOAK: He would have had to go through --

17 MR. MCCANN: That's not my question, Mr. Doak. My
18 question is whether or not there was sufficient space or area
19 on those six parcels to put a second house.

20 MR. DOAK: Yes.

21 MR. MCCANN: Okay. Now, with the garage --

22 MR. EVANS: When, when you say a second house, you
23 mean, that satisfies the fifty-five-foot limit, right, or
24 requirement?

25 MR. MCCANN: Yes, I'm sorry. Thank you, Mr. Evans.

1 MR. DOAK: That isn't what I answered then. I
2 answered for area, not width.

3 MR. MCCANN: And that's true too (inaudible).

4 MR. DOAK: I'm not answering it to the width, I'm
5 only answering it to the, the area.

6 MR. MCCANN: Yeah. Well, thank, thank you both.
7 I'll ask, ask another question to clarify Mr. Evans' issue, and
8 that is, at the time that Mr. Kestner owned the six parcels, he
9 had sufficient property, to meet, to build another house and to
10 meet the width requirements, putting aside what you may or may
11 not say about the garage, correct?

12 MR. DOAK: Correct.

13 MR. MCCANN: And I was listening very carefully when
14 you spoke about the garage. Have you actually measured, in a
15 survey, Mr. Doak, to the distance between the garage, that the
16 southern face of the garage and the northern property line of
17 Lot 156, did you actually undertake that?

18 MR. DOAK: I did not.

19 MR. MCCANN: Because when you spoke about the, you
20 know, the, the distance, or alleged diff, distance between lot,
21 the northern portion of Lot, I mean, the northern property line
22 of Lot 156 and the garage, you said the garage is within or
23 closer than five feet (inaudible). Sitting here today, you
24 don't know what that distance is, correct, number one?

25 MR. DOAK: Not exactly.

1 MR. MCCANN: You also said that the garage is in good
2 shape.

3 MR. DOAK: Yes, sir.

4 MR. MCCANN: Did you actually go in the garage?

5 MR. DOAK: No, sir. I looked at the exterior.

6 MR. MCCANN: I guess we, we have no pictures of the
7 interior of the garage for the Board to look at today?

8 MR. DOAK: No, sir.

9 MR. MCCANN: Okay. No estimates for the Board to
10 look at as to what it may cost to, to reduce the size of that
11 garage or to move it, if necessary?

12 MR. DOAK: No, sir.

13 MR. MCCANN: Okay. Do you know whether or not, you
14 called it a garage, I heard other people refer to it as a shed?
15 Do you know whether or not Mr. Kestner or his predecessor
16 obtained a permit for that shed or, for that shed?

17 MR. DOAK: I, I don't know whether he did or not.
18 Looks at the age prior to building permits being required.

19 MR. MCCANN: But you didn't look into it?

20 MR. DOAK: I did not.

21 MR. EVANS: Now, the shed was there when Mr. Kestner
22 bought that property?

23 MR. DOAK: Yes, sir.

24 MR. EVANS: Yeah, it, it was there, it pre-existed?

25 MR. DOAK: Yes, sir.

1 MR. MCCANN: Do we know that, Mr. Doak?

2 MR. DOAK: It's an assumption, but looking at the
3 age, looking at the, at it and the age of it, looking at when
4 he bought it, I would say yes. That's an assumption.

5 MR. MCCANN: When he bought what?

6 MR. DOAK: Bought the property.

7 MR. MCCANN: Okay. Now, and, and how did you look at
8 it? There's a fence up. How did you look at the garage?

9 MR. DOAK: I started, it was afterwards, and I easily
10 can look over top of the fence.

11 MR. MCCANN: But did you?

12 MR. DOAK: That, yes.

13 MR. MCCANN: Okay and, and that's a good point. You,
14 the fence was, was not installed by Mr. Kestner, correct?

15 MR. DOAK: It was not, the new owners.

16 MR. MCCANN: The, the new owners put it up after they
17 acquired the properties from Mr. Kestner, correct?

18 MR. DOAK: Yes.

19 MR. MCCANN: And did you catch that the new owners
20 are, signed the Petition opposing Mr. Kestner's request, did
21 you catch that?

22 MR. DOAK: Yes, sir, I did.

23 MR. MCCANN: And here, you know, here's the other
24 thing that you said that (inaudible), Mr. Doak, because you
25 usually mean what you say. You said, you said there was a

1 second reason, other than the garage that you believed that Mr.
2 Kestner, during the time he owned the properties, could not
3 meet the, the lot width requirement, and that is you may have
4 an encroachment on the thirty-foot setback. And I wrote those
5 words down.

6 Did you, as I asked with respect to the garage, did
7 you conduct any survey or measurement to determine how far back
8 the house on 6903 Gunder, Mr. Kestner's prior residence, how
9 far back that house is from the northern property line of Lot
10 156?

11 MR. DOAK: It was done before me.

12 MR. MCCANN: I'm asking you, did you do it?

13 MR. DOAK: No, sir.

14 MR. MCCANN: Mr. Doak, you, you will, you probably do
15 work, zoning variance more than anybody else in this County, is
16 that fair?

17 MR. DOAK: Yes, sir.

18 MR. MCCANN: And you would agree that I've seen you,
19 I've seen you in action. You would agree that setback
20 variances are (inaudible) all the time, daily, if not weekly,
21 by the Zoning Commissioner's Office and the Office of
22 Administrative Hearings?

23 MR. DOAK: If you have a good enough case.

24 MR. MCCANN: Is that a yes?

25 MR. DOAK: That's a --

1 MR. MCCANN: Qualified yes?

2 MR. DOAK: That's a qualified yes.

3 MR. MCCANN: Okay. And you would also agree with me,
4 in fact, well, strike that. You would also agree with me that
5 many times variances are granted when there is no opposition
6 from any adjoining or nearby community member, correct?

7 MR. DOAK: That's correct.

8 MR. LANZI: I'm going to object to this for
9 relevance.

10 CHAIR: Mr. McCann, any response?

11 MR. MCCANN: Yeah, I mean, it goes to the alleged, I
12 think we've heard so far, Mr. McComas, that, that Mr. Kestner
13 could not, and assumedly could never, meet the lot width
14 requirements because of an existing garage that is allegedly
15 within five feet and an existing house that is allegedly within
16 thirty feet. So, if there is such a difficulty, I was just
17 asking Mr. Doak about the ease with which a variance from those
18 requirements can be obtained.

19 CHAIR: We'll let it in, Mr. Lanzi. You know, we'll
20 give it the weight that, that, (inaudible) not the case here,
21 we'll let it in for just the surrounding community, just like
22 we did with your, some of your (inaudible). Go ahead, Mr.
23 McCann.

24 MR. MCCANN: Okay, thank you.

25 CHAIR: (inaudible) I'll overrule you, Mr. Lanzi, and

1 let it in. Sorry. Go ahead, Mr. McCann.

2 MR. MCCANN: Okay, thanks. A couple more things, Mr.
3 Doak. I, I didn't hear anywhere in your testimony, I didn't
4 see on the plan itself, is how many stories this house was
5 going to be. You, you talked about an envelope, a building
6 envelope being eighteen hundred square feet. But how, how tall
7 will it be? How many stories will it be?

8 MR. DOAK: At this point, I don't know for certain.
9 It can be up to fifty feet high per zoning regulations.

10 MR. MCCANN: Would you agree with me that, at the
11 least, this property, this house is going to have to be on,
12 gosh, I want, I want to call them stilts, but there's another
13 name for them.

14 MR. DOAK: That's all right. Pilings.

15 MR. MCCANN: Pilings. This property, this house is
16 going to have to be, to be on pilings, correct?

17 MR. DOAK: Yes, sir.

18 MR. MCCANN: Okay. Wouldn't you agree though that in
19 order for this Board to determine, and you spoke a lot about
20 what you believe to be the lack of impairments and impacts on
21 the neighborhood.

22 In fact, you said you didn't think that this house
23 would impair, when asked, when you were asked whether this
24 house would impair Mr. Dawson's use of his property, as an
25 example, you said not at all.

1 And my question to you is wouldn't you agree that in
2 order to determine what the, the real and practical and
3 appreciable impact might be on Mr. Dawson and his neighbors,
4 you would need to know the height of this building?

5 MR. DOAK: It's my opinion that whether it is two
6 story at thirty-five feet or three story at fifty feet, it's
7 going to be the same view from Mr. Dawson looking over top of
8 this house. He's going to be looking at sky whether he's at
9 thirty-five trying to look over or fifty.

10 MR. MCCANN: Wait a minute. You're, you're saying
11 Mr. Dawson is not going to see this house but rather sky?

12 MR. DOAK: No, you said his view. Is a view of the
13 house or view elsewhere with the house in place?

14 MR. MCCANN: Well, --

15 MR. DOAK: I didn't, I didn't understand your
16 question.

17 MR. MCCANN: Yeah, I'm not sure I understood your
18 answer, but.

19 MR. DOAK: Okay.

20 MR. MCCANN: You'd have to agree with me, and let's
21 go to Plaintiff's Exhibit, this should be Exhibit 1. You would
22 have, you would have to agree to me, with me, wouldn't you not,
23 that Mr. Dawson, out of his front and side windows will see
24 nearly, if not entirely, the entire structure, if, if, if
25 approved?

1 MR. DOAK: Yes, sir, he would.

2 MR. MCCANN: And would you agree with me that because
3 it will be on pilings, and maybe, I don't know, sounds like it
4 could be as high as fifty feet, that that view, Mr. Dawson,
5 would you want to live next to, would you want to live, Mr.
6 Doak, thirty to forty feet away from a structure that big?

7 MR. DOAK: Living down here, you know it's a,
8 something that's going to happen. Look across the street, at
9 the new house they built there, it's just going to be similar
10 to that. Look at that photograph with the Board, and it'll
11 give you an idea of what'd you be looking at.

12 MR. MCCANN: Okay and where, where is that
13 (inaudible) are they in the same position, vis-à-vis, the, the
14 structure as Mr. Dawson is? They're not, are they?

15 MR. DOAK: I, I don't, I'm sorry.

16 MR. MCCANN: You don't?

17 MR. DOAK: If you look at that photograph, we can
18 talk about it in that regard. I don't.

19 MR. MCCANN: Well, I don't think the photograph shows
20 it, so.

21 MR. DOAK: Well, it's the new house across the
22 street.

23 MR. MCCANN: I know, I know what the house is.

24 MR. DOAK: Oh.

25 MR. MCCANN: Your photographs don't show the

1 relationship between that, you know, that new, so-called new
2 house and its neighbors.

3 MR. DOAK: As a matter of fact, it would be closer,
4 those two neighbors would be closer to each other than Mr.
5 Dawson to this house because Mr. Dawson has an empty lot
6 between them, a twenty-five-foot empty lot and his driveway
7 between them.

8 MR. MCCANN: Now, hold on. How do you know that, Mr.
9 Doak? I know that you know that there's a lot there, we can
10 all see the lot here. But how do you know that there's,
11 there's more space, or less space rather, in, in between the
12 new house across the street and its neighbor? How do you know
13 that?

14 MR. DOAK: Because there, the size of the lots.

15 MR. MCCANN: Okay. Okay. Let's talk about storm
16 water management. The water table at this property, the
17 subject property, is extremely high. You would agree with
18 that, right?

19 MR. DOAK: The water table?

20 MR. MCCANN: Yes.

21 MR. DOAK: I don't know, are we talking about a flood
22 plain elevation versus a water table?

23 MR. MCCANN: I, well, that's what you said in, when
24 Mr., when Judge Mayhew asked you isn't it true that the water
25 table is extremely high. This is at page seventeen of your

1 testimony. You said yes. So, I don't know what you meant when
2 you answered that question but --

3 MR. LANZI: I, I'm going to object. When did Mr.
4 Mayhew get involved in this hearing? I don't follow this.

5 MR. MCCANN: He held, he held the hearing in this
6 case.

7 MR. LANZI: Are, are you saying of the transcript?

8 MR. MCCANN: I have the transcript, yeah, I have it
9 right here.

10 MR. LANZI: Okay.

11 CHAIR: (inaudible) prior testimony, Mr. Lanzi.
12 Right, Mr. McCann?

13 MR. MCCANN: That's correct.

14 MR. LANZI: Okay.

15 MR. MCCANN: I'm not, I'm not trying to catch Mr.
16 Doak in a lie, I'm just ask, I know he wouldn't do that. But
17 I'm asking him, it was his word, not mine, or Judge Mayhew's
18 word, which he didn't disagree with. I'm just, you know, what,
19 what's the difference between, is there a difference between
20 water table and, and flood plain?

21 MR. DOAK: I, I use, I, I answered his question
22 knowing what he really was asking. That's not the right
23 terminology.

24 MR. MCCANN: Okay.

25 MR. DOAK: Water table usually means sub-surface,

1 okay? But what you're talking about is a flood plain
2 elevation. And what we have here, the elevation is
3 approximately ten through the middle of the proposed house
4 footprint and in comparison to say twelve for his prior house
5 and roughly thirteen for Mr. Dawson's house.

6 MR. MCCANN: Okay. But that wasn't my question. My,
7 my question was about the water table, and it is extremely
8 high, right?

9 MR. DOAK: It's similar, as a matter of fact, it's,
10 it's no more than most places in this, along that, that road.

11 MR. MCCANN: Did you look at the water table at all
12 the properties along Cherwin Road?

13 MR. DOAK: No. No, no, no, no. But you can see the,
14 on Petitioner's exhibit number one, you can see the contour
15 elevations there. You can see ten, twelve and thirteen in the
16 way of contour intervals. And those are taken from GIS.

17 MR. MCCANN: Okay. Well, what, what you said, and
18 I'll move onto storm water management as I indicated I would,
19 that storm water management, that will be addressed as part of
20 the County's review, correct?

21 MR. DOAK: That's correct.

22 MR. MCCANN: So, sitting here today, certainly you
23 testified about it in your direct examination, other than to
24 generally talk about it, we don't know what will be submitted
25 to the County or what the County will improve, approve, sorry,

1 in terms of storm water management, fair?

2 MR. DOAK: Not as to specifics, no.

3 MR. MCCANN: Okay. Have you, have you prepared a
4 storm water management concept plan?

5 MR. DOAK: I don't even know what the size of the
6 house or how much impervious we will have. So, I can't do that
7 yet.

8 MR. MCCANN: Okay. Well, you know, I understand that
9 may, that may be a good argument in the development plan case,
10 but we're here on a, on a variance case and a 304.1 case. How
11 is, how are we able to have, how is the Board able to
12 reasonably conclude that this house will not have an impact on
13 adjoining properties, from a storm water management
14 perspective, without knowing what, what the plan may look like
15 or whether we'll ever be approved?

16 MR. DOAK: Because the required steps to be able to
17 get approval for a permit --

18 MR. MCCANN: Yeah, but that may change the plan. You
19 certainly submitted storm water management plans that resulted
20 in a, in a, in a change of plan, correct?

21 MR. DOAK: Please ask that again, I don't understand
22 that.

23 MR. MCCANN: Have you ever submitted a storm water
24 management concept plan that, as a result of changes required
25 by the County, resulted in a change to the development plan or

1 site plan?

2 MR. DOAK: Yes.

3 MR. MCCANN: That's happened?

4 MR. DOAK: Yes.

5 MR. EVANS: Mr. Doak, I think you (inaudible) BCZR
6 than I do, but is there a separate appeal process for building
7 permits under these circumstances? Do you know?

8 MR. DOAK: Well, Mr. Evans, there is the normal,
9 well, I won't say normal, there is the written procedure under
10 304, Section 304, where you file for a building permit with the
11 elevations and the grading and site plan, and then in turn,
12 then that's reviewed, then it's advertised and then a hearing
13 may come from that. So, that's a little different then, then
14 the way we're going about it now.

15 MR. EVANS: So, I guess my question is what, what
16 opportunity is there for the neighborhood to have input into
17 the building permits for the Kestner property, if any? Is
18 there any formal way for them --

19 MR. DOAK: No, sir. No, sir. It's all done through
20 the County. The County is going to require us to shoot
21 topography out here, they're going to require us to show
22 accurately the foot, proposed footprint and the drainage in
23 each direction and how we're going to address it into
24 facilities, whether there will be a drywell or anything. And
25 then, how much impervious or how much area will be drainage

1 onto the roads. So, all that is taken into consideration as a
2 part of the building permit process.

3 MR. EVANS: Okay.

4 MR. MCCANN: And there's no (inaudible) appeal per se
5 to a building permit, that, that, in other words, the person
6 who is seeking the building permit, if his building permit is
7 denied, he can seek, he or she can seek an appeal of that
8 decision, correct?

9 MR. DOAK: That's correct.

10 MR. MCCANN: Okay. I think that's all I have, Mr.
11 Doak. Just bear with me one second. Nothing else, thank you.

12 CHAIR: Mr. Doak, I have one question that's kind of
13 following up with, you may have answered it in answering Mr.
14 Evans' question, but the storm water management plan that you
15 just mentioned, I mean, suppose that the, the County says, you
16 know, you know, Mr. Owner, you've got to do x, y and z. And
17 they're, they're so out of the ordinary that the neighborhood
18 may not appreciate some of those, you know, County, you know,
19 storm water management plans. Is it right to say that they
20 would have no path to object to it?

21 MR. DOAK: No, sir. I mean, it wouldn't be a formal
22 path but, by all means, they can go, and they can meet with and
23 discuss it with the reviewer from storm water management as to
24 their concerns. And I, I know from experience that the
25 reviewer would at least take it into consideration and would

1 look into it.

2 But, if you look at something else, I mean, you're
3 worried about the runoff here, if you look at Petitioner's
4 exhibit number one, if you would, please? Neil, can you put up
5 Petitioner's exhibit number one?

6 MR. LANZI: I don't have the --

7 MR. DOAK: Oh.

8 MR. MCCANN: I can, I can.

9 MR. DOAK: Thank you.

10 CHAIR: We'll get there in a second, Mr. Doak,
11 because I, I wanted to make sure Mr. McCann was wrapped up and
12 I was going to give it over to Mr. Lanzi here.

13 MR. DOAK: Oh, okay.

14 CHAIR: (inaudible) there is a path here, it's more of
15 an informal path (inaudible) about the runoff, but maybe design
16 of the storm water manage, you know, management.

17 MR. DOAK: Yes, sir.

18 CHAIR: (inaudible).

19 MR. DOAK: And the one, like the one that's going in
20 across the street or any others around that area they do it in
21 common practice and most, all of that is, almost all that is
22 underground in the way of drywells. So, you wouldn't even
23 notice it on a lot like this.

24 CHAIR: All right. Well, thank you, Mr. Doak.

25 MR. DOAK: You're welcome.

1 MR. EVANS: Mr. Doak, can I go back to what I was
2 asking because I, I was trying to look at the, you know, 304.1,
3 which has a cross reference to Section 4 (inaudible). And
4 what, what these two provisions, you're correct. This was,
5 this was submitted as a Petition for Special Hearing, right?

6 MR. DOAK: Yes, sir.

7 MR. EVANS: To seek a variance. But if, if they had
8 followed, if the, if Mr. Kestner had followed 304.1 and 4-A-
9 03.2, then, then, then there would be an opportunity, would
10 there not, for neighbors or concerned citizens, I should say,
11 to actually have formal input into the issuance of building
12 permits. That's how I read it. I could be reading it wrong,
13 but.

14 MR. DOAK: No, you are right. But if you look under
15 304.1 or 2, excuse me, B-1 or B-2, they would be, they would be
16 given an opportunity for, you know, the aesthetics of the
17 house, those things. And then, then we would, under 3, you
18 would usually give them a preliminary site plan or under 1.1,
19 we'd give them a preliminary site plan. Would we, would we go
20 into full storm water management design and the cost and time
21 for that? No, sir.

22 MR. EVANS: Well, except that storm water management
23 is a pre-requisite to the issuance of a building permit and the
24 building permit can be appealed under 4-A-304.3, 4 and 5.

25 MR. DOAK: Yes, sir.

1 MR. LANZI: That's, that's if you're, Judge, that's
2 if you're in Bowley's Quarters and Back River Neck.

3 MR. EVANS: Is that all that applies to?

4 MR. DOAK: Yes, sir.

5 CHAIR: Yes.

6 MR. LANZI: Yeah.

7 MR. EVANS: So, I'm completely, I just want to make
8 sure I'm incorrect or correct, I mean, I'm not trying to trick
9 anyone. I'm just trying to understand the, the (inaudible) of
10 these sections.

11 MR. DOAK: You're correctly incorrect.

12 MR. EVANS: Okay, good. Mr. Lanzi, what, maybe you
13 could help me here.

14 MR. LANZI: Yeah, I mean, I don't believe this
15 property is, I know it's not in Bowley's Quarters, I don't
16 believe it's in Back River Neck either.

17 MR. EVANS: Okay.

18 MR. LANZI: So, this is a specific growth management
19 plan. So, the qualifier that you mentioned in 304.1 does not
20 apply here.

21 MR. EVANS: Okay, okay. All right.

22 MR. MCCANN: (inaudible) Mr. Evans, that, or maybe Mr.
23 Doak is correct, that 30, this process that's called for in
24 304.2, etcetera, does not a process that considers anything, at
25 least based on the, the plain wording of 304.2, anything other

1 than design, architectural design and site design as opposed to
2 the more substantive issue of storm water management.

3 MR. EVANS: Well, I don't know. If it doesn't apply,
4 it doesn't apply, by its terms, but whether it would include a
5 storm water management plan, I, I would have to be convinced
6 that it doesn't include that.

7 MR. MCCANN: I just, I would just look at those
8 things that it does include, and that they don't, they don't
9 appear to be of the same --

10 MR. EVANS: Right, right. But it talks about the
11 application for building permits, and you need the storm water
12 management plan for a, for a building permit, correct? Or not?

13 MR. MCCANN: Yeah, but the only thing that the
14 Department of PAI is, is required to make recommendations con,
15 are those things that are identified in B-1, 2 and 3.

16 MR. DOAK: Yes.

17 MR. MCCANN: I think Mr. Doak --

18 MR. EVANS: Okay.

19 MR. MCCANN: -- Mr. Doak agrees with that.

20 MR. DOAK: Yes.

21 MR. EVANS: I, I'm sure he does. I mean, it helps
22 his position.

23 MR. DOAK: Well, not, I would not say, but I wouldn't
24 say outright that it does, so. I've just never done full storm
25 water management when applying through a permit for 304.

1 MR. EVANS: But if Mr., if Mr. Lanzi's correct that
2 this entire provision doesn't even apply here then this
3 conversation is not necessary.

4 MR. DOAK: Moot.

5 CHAIR: Well, he's talking about the (inaudible),
6 he's talking about the exception to the rule, the, the 4-A-03,
7 which is the Bowley's Quarters thing.

8 MR. EVANS: Yes.

9 CHAIR: He's not talking about the whole thing.

10 MR. DOAK: Right.

11 MR. LANZI: Correct.

12 MR. EVANS: Right, right, just the 4-A-03.

13 CHAIR: Right.

14 MR. EVANS: If that's Bowley's Quarters then, and --

15 CHAIR: Back River.

16 MR. EVANS: -- Back River then, and if that's all it
17 is, limited to that, then I'm completely wrong and I --

18 CHAIR: And the property doesn't exist in that
19 section.

20 MR. EVANS: And, and that this property doesn't exist
21 in that section, then I, I am sorry for wasting everyone's
22 time.

23 CHAIR: Mr. McCann, I, I thought I heard you say that
24 you had no further questions for Mr. Doak? Mr. McCann?

25 MR. MCCANN: (inaudible).

1 CHAIR: I thought I heard you say that you had no
2 further questions for Mr. Doak?

3 MR. MCCANN: Yeah, I was thinking about whether I
4 wanted to ask him in light of your questions but I'm, I'm going
5 to refrain.

6 CHAIR: All right. Mr. Lanzi, do you have anything
7 on, on re-cross?

8 MR. LANZI: I do. Mr. Doak, just to follow up on the
9 most recent topic of the storm water management. So, Mr. Doak,
10 in your experience, I, and I know you're not an engineer, but
11 just your experience with development and land use, is it the
12 typical County method of dealing with storm water management
13 plans to look at the impact, or possible impact, on neighboring
14 properties?

15 MR. DOAK: Yes, sir, it is.

16 MR. LANZI: Okay, all right. I have a couple other
17 questions. And, and also, just to make sure I understand
18 after, after listening to Judge Evans, they would still have to
19 go through 304.2, they being the applicant, where they would
20 submit the building permit plan and then there would be all the
21 input from the planning office and the director, I guess it
22 would be the director of permits, approvals and inspections, is
23 that your understanding?

24 MR. DOAK: Are you talking about our subject lots?

25 MR. LANZI: Yes, so, --

1 MR. DOAK: No, they would not.

2 MR. LANZI: So, but they would have to file for a
3 building permit and the building permit has its own set of
4 requirements and reviews, just --

5 MR. DOAK: We would not have to go through the steps
6 of 304.2 when applying for this. That's what this hearing was
7 meant to do, is be pro-active on that.

8 MR. LANZI: However, when you file for a building
9 permit, there are different reviews by the various departments
10 before the permit can be issued.

11 MR. DOAK: Oh, yes, sir.

12 MR. LANZI: Okay. That, that was the point I was
13 trying to make.

14 MR. DOAK: Yes, sir.

15 MR. LANZI: Okay, just a couple other questions.
16 Early on in your cross examination, there was questions about
17 houses being built back in the, I guess, twenties, thirties,
18 pre-zoning regulations. Is it true that the Dawson's house was
19 built within the last thirty years, or do you remember when the
20 Dawson house was built?

21 MR. DOAK: The, the Dawson house was built in 1989.

22 MR. LANZI: And how about the Wallace house?

23 MR. DOAK: The Wallace house was built in 1998.

24 MR. LANZI: So, if time permitted, and I'm not asking
25 the Board for this time, but if time permitted, you would be

1 able to go back and check out some of those properties that
2 were shown you by Mr. McCann in the exhibit, and you would be
3 able to identify houses that were built within the last thirty
4 years.

5 MR. MCCANN: Objection. That's a complete and utter
6 speculation. You would be able to identify such houses,
7 that's, I can't imagine, I can't imagine anything more
8 speculative than that.

9 MR. LANZI: He just identified two and if we need, if
10 the Board needs it, we would need the time for him to do that.

11 MR. MCCANN: Mr. Dawson has five, he doesn't have a
12 two-lot problem. He owns more than two lots (inaudible).

13 MR. LANZI: I understand. The question was the years
14 the house was built.

15 MR. MCCANN: It doesn't matter what years the houses
16 were built if you have more than two lots.

17 MR. LANZI: But that was not the, that was not the
18 (inaudible) --

19 CHAIR: To Mr. Lanzi and Mr. McCann, Mr. Lanzi, so
20 you objected on what grounds, Mr. McCann, speculative?

21 MR. MCCANN: So, the question posed, unless I
22 misheard it was, whether Mr. Doak, given the time, could go
23 back and look and find other houses that were not built prior
24 to the zoning regulations. And I think, I don't think the
25 question went much further than that. But that's suggesting

1 what he might find if he did that search and I think that's
2 speculative.

3 CHAIR: I, I mean, I, Mr. Lanzi, what's your reaction
4 to that?

5 MR. LANZI: Well, we've already established through
6 Mr. Doak's exhibit that there were many properties that are
7 fifty-foot lots. And then, I guess, in the Protestants'
8 exhibit, they're establishing some of the houses were built on
9 more than two lots, some were built before zoning regulations.

10 MR. MCCANN: That's not accurate. That's not
11 accurate.

12 MR. LANZI: That's exactly what was established. But
13 in any event, let me finish, I may ask for a break after my re-
14 direct, for us to do a little search to confirm or not confirm,
15 that there, some of these houses that are objecting, are on two
16 lots and their houses were built after the zoning regulations.
17 That's all. I may be asking the Board's leave for fifteen
18 minutes to do that.

19 CHAIR: But I think the, I, I guess the question of
20 Mr. Doak is could he find all those lots given enough time and
21 I think the answer is yes, right, Mr. Doak?

22 MR. DOAK: It would have to be based solely on the
23 SDAT records.

24 CHAIR: Yes.

25 MR. DOAK: While I'm sitting here in my office. But

1 I would say yes that I would have that opportunity in fifteen
2 to twenty minutes.

3 CHAIR: Well, there are two questions there. One is,
4 is, whether you could do that if you had (inaudible) amount of
5 time and, and you're going to live for twenty years and the
6 answer is I think you could do that, right?

7 MR. DOAK: Yes.

8 CHAIR: And the second question is, what I think what
9 Mr. Lanzi is asking for is, he's asking for judicial indulgence
10 here after he wraps up his testimony with you to maybe bring
11 you back up to ask you maybe a couple other questions
12 (inaudible) to see if he can find some rebuttal evidence to Mr.
13 McCann's arguments. And, and I think, Mr. Lanzi, I think the
14 answer to Mr. Doak is yes, given enough time, he could find all
15 those things on all those properties.

16 And Mr. Lanzi, I think the answer to you is if you
17 need a few extra minutes at some point (inaudible) do a little
18 research, just like Mr. McCann did during lunch, we can give
19 you fifteen minutes if you think you can do that sufficient.
20 You know, otherwise, maybe you can continue and if we need to
21 revisit that, we can do that. How's that, Mr. Lanzi and Mr.
22 McCann?

23 MR. MCCANN: I, you certainly are making the
24 decisions, not me, Mr. McComas. (inaudible) --

25 CHAIR: All I was asking was whether you had any

1 objections to it. So, if you're not objecting, Mr. Lanzi, do
2 you have any objections with that or any clarifications on
3 that?

4 MR. LANZI: (inaudible).

5 CHAIR: (inaudible).

6 MR. LANZI: Yeah, I'll just reserve the right to
7 call, recall Mr. Doak after the Protestants' case. But I have
8 a couple more questions.

9 CHAIR: Sure. Proceed, Mr. Lanzi.

10 MR. LANZI: All right. Mr. Doak, also to clarify
11 some of your earlier testimony on cross, our, our case, our,
12 Mr. Kestner did not own, never owned six unimproved lots as
13 compared to some of the examples given by Protestants.

14 MR. DOAK: That is correct.

15 MR. LANZI: Okay. If I recall correctly, four of our
16 lots that were purchased by Mr. Kestner are improved and two
17 are unimproved.

18 MR. DOAK: That is correct.

19 MR. LANZI: Okay and also, to maybe clarify the
20 discussions on the five-foot issue with the garage and the
21 thirty-foot rear setback with the garage, I believe you
22 testified you didn't perform the survey but there was a survey
23 done and plans done by, I think it's our Exhibit 7-B and C,
24 which are identified but not entered. So, can we, am I able to
25 pull up? Am I, do I have the, do I have the exhibits now? I

1 don't think I do.

2 CHAIR: Mr. Sampson, does he have the token?

3 MR. SAMPSON: It's still with Mr. McCann.

4 MR. MCCANN: Sorry, I was on mute again.

5 CHAIR: That's all right. I think we're just trying
6 to get Mr. Lanzi the, the token.

7 MR. LANZI: I got it.

8 MR. MCCANN: Yeah, I don't have the share anymore.

9 MR. LANZI: I have it now.

10 CHAIR: Okay. You got it, Mr. Lanzi.

11 MR. LANZI: Okay. If I can find it. Okay, right
12 there. Okay. This is another reason why Exhibit 7-B should be
13 entered into evidence, but right now it's just identified only.
14 Mr. Doak, can you see Exhibit 7-B?

15 MR. DOAK: Yes, if you can make the subject property
16 larger for me? Then bring it down.

17 MR. LANZI: And this plan was prepared by a different
18 survey firm?

19 MR. DOAK: It was, NT, NTT Associates.

20 MR. LANZI: Okay and do you have any reason to think
21 that they may not have done a nice job on showing distances?

22 MR. DOAK: No, they're, they're a good firm.

23 MR. LANZI: Okay.

24 MR. DOAK: And if you'll, if you'll look at the, the,
25 our subject property is outlined and then to the right is Mr.

1 Kestner's previous property, you'll see the garage, and you'll
2 see that there's a five foot, plus or minus, offset. There
3 also would be a two and a half foot zoning setback off the rear
4 of that to our property.

5 So, if you tried to move that line one, you would be
6 on or in the garage. If you moved it five feet, you would be
7 on or in the garage and you definitely would be within the two
8 and a half foot zoning setback.

9 And then, if you moved the five foot with the back of
10 the house, you'd be within that setback there. You'd be right
11 at that setback there. There, there is additional things that
12 would require setback and that would be the porch and stuff on
13 the back of it, but yeah.

14 MR. LANZI: Okay. There's, there's been also mention
15 that this is a variance case. This is a special hearing case,
16 correct?

17 MR. DOAK: That's correct. I don't know of any
18 variances that are needed

19 MR. LANZI: And we're not dealing with the standards
20 of uniqueness that are required for a variance, correct?

21 MR. DOAK: No, sir.

22 MR. LANZI: And in fact, you've been doing this for a
23 long time and variance cases are not necessarily routinely
24 granted anymore.

25 MR. DOAK: No, sir.

1 MR. LANZI: In fact, the variance in this case was
2 denied.

3 MR. DOAK: It was. The twenty-five in lieu of forty
4 was denied in the first case.

5 MR. LANZI: Okay. There was some discussions about
6 if a subdivision had, the possibility of a subdivision had
7 occurred on the Kestner's six lots. If, in fact, it had gone
8 through a minor subdivision, let's, let's assume for this
9 question that all six lots are unimproved and they went through
10 a minor subdivision and the house was built, or strike that.

11 Let's assume the five foot of the Kestner lot was
12 moved over to this lot and we didn't have to be here today, and
13 the house was built. Would that, would that view out of the
14 Dawson's side window change any?

15 MR. DOAK: As long as they used the entire building
16 envelope, which, at that time then, would be thirty-five feet
17 wide in lieu of the, instead of the thirty that we're proposing
18 now. That it would look exactly the same, only the house may
19 have more square footage.

20 MR. LANZI: So, it might, it might even be bigger?

21 MR. DOAK: It might even be bigger.

22 MR. LANZI: Okay, okay. That's all I have.

23 MR. EVANS: Can, can I go back to my weirdness here?
24 Mr. Doak, you said that the special hearing process utilized in
25 this instance, which I think you, you're the one that initiated

1 it, correct?

2 MR. DOAK: Yes, sir I am.

3 MR. EVANS: Yeah, that this process was designed to
4 supplant, you said 4-A-03, but actually, I think Mr. Lanzi is
5 absolutely correct, that that wouldn't apply here. But 304.2--

6 MR. DOAK: Yes, it's to take the place of that or --

7 MR. EVANS: Okay. So, it takes the place of 304.2,
8 but in, in 304.2, the review would include the architectural
9 design in all those subdivisions. Now, we can't review that,
10 can we? Because we don't have it.

11 MR. DOAK: Yes, sir.

12 MR. EVANS: Okay. So, --

13 MR. DOAK: I mean, we don't have it in this case --

14 MR. EVANS: -- (inaudible) this process, the other
15 process you have (inaudible) input by the neighbors, do you
16 not?

17 MR. DOAK: Of the architectural design, yes.

18 MR. EVANS: Yes, yes, yeah.

19 MR. DOAK: Nothing else. But keep in mind that, that
20 architectural design is, is not, there is no criteria for
21 architectural design. It doesn't, nowhere in zoning does it
22 say it has to be, what materials you have to use, what
23 (inaudible) you have to have, or how many windows. None of
24 that is a requirement of zoning and it's only a preference of
25 planning.

1 So, even though I would show it, which I have no
2 opportunity now because it's going to be sold, but still,
3 there's no requirements of it being any specific design.

4 MR. EVANS: So, so the fact that there's a review
5 provided for architectural design is, is, in, in, is
6 irrelevant?

7 MR. DOAK: Not irrelevant. What they wanted to do is
8 make sure it conforms with the area. So, if you were, and it's
9 not so much the design of it. I mean, if somebody wanted to
10 build something that looked like a castle here, they'd have
11 that right. The community may not prefer it, but they still
12 have that right. What they're worried about is --

13 MR. EVANS: It says within fifteen days of posting of
14 the building permit, any owner or occupant within a thousand
15 feet, and that would include both the people who are in the
16 first Kestner property and Mr. Dawson's, (inaudible) request
17 for a hearing.

18 MR. DOAK: That's correct. Yes, sir.

19 MR. EVANS: Okay. But now they can't.

20 MR. DOAK: They are in it right now.

21 MR. EVANS: Not as to architectural design they're
22 not.

23 MR. DOAK: So, but once again, the design can't be
24 determined by the public or even the County agencies. That's
25 up to the, that's up to the, the owner.

1 MR. EVANS: Well, apparently, it's not.

2 MR. DOAK: Well, --

3 MR. EVANS: It's not up to the owner. The, the
4 neighbors have input, right?

5 MR. DOAK: They, they can make that part of their
6 case, just like Mr. McCann could say that we're fine with this
7 if you build a one story, twelve hundred square foot house. He
8 could say that right now. How much weight you would give that
9 and whether you have the right to demand that is another thing.

10 MR. EVANS: Well, --

11 MR. DOAK: What 304.2 does is gives people the
12 opportunity to, for their day in Court, if they deem it, if, if
13 they decide to and that's what we're doing here.

14 MR. EVANS: But we're not doing it as to the building
15 permit.

16 MR. DOAK: As, as to --

17 MR. EVANS: As to whether or not it's an undersized
18 lot and whether, you know, fifty feet is okay when it's
19 supposed to be fifty-five feet, because it's an undersized lot
20 it's grandfathered in. That's what we're here for. We're not,
21 there is, I mean, the lot hasn't even been sold to the, you
22 know, to the person who's going to build the house, so we have
23 no house to examine.

24 MR. DOAK: We have no elevations, that's correct,
25 sir.

1 MR. EVANS: But we don't have anything about the
2 house.

3 MR. DOAK: We have the probability or the poss, at
4 least we'll say the possibility, of it being eight, a footprint
5 of eighteen hundred square feet.

6 MR. EVANS: Okay.

7 MR. DOAK: Now, whether it is thirty-five feet high
8 or fifty feet, no, sir, we do not.

9 MR. EVANS: Yeah, well, okay. I have nothing, I have
10 nothing --

11 MR. DOAK: If I may, one more thing is that, that
12 would be no different than the people across the street
13 starting to build theirs in, in, in the, the local, you know,
14 the people within a thousand feet, we'll say, having an
15 opportunity to give them their input on it. It's just not,
16 it's just not a requirement. Or, or so.

17 MR. EVANS: Well, it, it, you say that, but I'm, I
18 mean, I'm just looking at the language of 304.2 and 304.3 and
19 304.4 --

20 MR. DOAK: And I do a number, I, I, I do go through
21 304.2 as a building application and through this and the only
22 thing that planning is, because there's no DRP, development
23 review panel, in this area, like there would be in Ruxton or
24 Pikesville or those, they just want to make sure that the, the,
25 the house design conforms with the area. And they have that

1 same opportunity during building permit process also.

2 MR. EVANS: Okay.

3 MR. DOAK: Because planning gets to see a building
4 permit.

5 MR. EVANS: Okay.

6 CHAIR: Mr. Lanzi?

7 MR. LANZI: I have nothing further.

8 CHAIR: All right. Mr. Lanzi, do you have any other
9 witnesses?

10 MR. LANZI: Not at this time. I'll just reserve --

11 CHAIR: Sure.

12 MR. LANZI: -- to bring Mr. Doak back. I, I do want
13 to again offer Exhibit 7-B, 7-B, Petitioner's 7-B into
14 evidence.

15 CHAIR: You know, this one is to, you know, is not
16 for res judicata, but more for, I won't say repairment of a
17 witness, but response to Mr. McCann's, and some of the, his
18 questions about the thing. And I, I, I, to me, we should admit
19 on those grounds. Mr. Lanzi, I think we should admit it. Mr.
20 McCann, do you have any objections?

21 MR. MCCANN: No, I think it's helpful to us and I
22 want to ask him questions about it.

23 MR. EVANS: Yeah, I agree with that, yeah.

24 CHAIR: Okay. Mr. McCann, you want, you want to
25 follow-up --

1 MR. MCCANN: I do, I have a couple follow-up to
2 what's, to, to what's, the discussion that's been going on so,
3 I do. Just a couple though, Mr. McComas. May I proceed?

4 CHAIR: Yeah, go ahead, sure.

5 MR. MCCANN: Okay. Real quick, and I (inaudible)
6 that 7-B now is, I can't, unless I can share.

7 MR. LANZI: You want me to give up the baton? I'll
8 give up the baton.

9 CHAIR: Mr. Sampson, I think you may have to do it.

10 MR. SAMPSON: Working on it. (inaudible).

11 MR. MCCANN: While he's doing that, Mr. Doak,
12 regardless, regardless of whether this, this hearing, by the
13 way, before the Board is just not a Petition for Special
14 Hearing, it's also a Petition for Variance before this Board as
15 we sit here today, correct?

16 MR. DOAK: Yes.

17 MR. MCCANN: Okay.

18 MR. LANZI: There is not. It, it was deemed moot.
19 It was withdrawn at the, at the ALJ level, it was deemed moot.

20 MR. DOAK: Right.

21 MR. MCCANN: So, you're saying --

22 MR. LANZI: So, (inaudible) variance case here today.

23 MR. MCCANN: We, we appealed the case. We appealed
24 the entire case and before Judge Mayhew was both the Petition
25 for Variance and the Petition for Special Hearing. I don't

1 think it matters much, but that's the state of things.

2 MR. LANZI: Well, we, we withdrew our Petition at the
3 ALJ level, which he determined it was moot and he based his
4 decision on 304.

5 CHAIR: Yeah, I'm looking at the Order now.

6 MR. MCCANN: Okay. As I read the decision itself, it
7 refers to the first Petition at the beginning.

8 CHAIR: At the end, the Order is, is granted on the
9 304 and moot on, on the 1-B.

10 MR. MCCANN: So, how does that not, how does that not
11 make it in front of the Board? I'm not sure I understand that.
12 But, how is that not, just because that's what the Judge ruled,
13 we disagree with that. So, but --

14 MR. LANZI: That issue was taken off the table at the
15 ALJ hearing.

16 MR. MCCANN: No, it was rendered moot by a decision
17 that we appealed. But in any event, I'll move on, I'm sorry.

18 CHAIR: Keep going, Mr. McCann. I, I think your
19 point is taken.

20 MR. MCCANN: Okay. I'll move on. Sorry about that.
21 I just wanted to, I don't want to beat a dead horse
22 (inaudible). This, this plan that we were just looking at,
23 shows 35.2 feet (inaudible) the rear property line, correct?

24 MR. DOAK: Yes.

25 MR. MCCANN: Okay and I'm sorry, I'm trying to find

1 it real quick here. It's 7-B. And you, I think it's an
2 overstatement to say you swore by this survey, but you, you
3 certainly espoused its accuracy. So, this very plot that you
4 were relying upon, shows 35.2 and the rear yard setback, just
5 from this zone again is thirty feet, correct?

6 MR. DOAK: That's correct.

7 MR. MCCANN: Okay. Okay. I'll leave it at that.
8 Thank you, Mr. McComas.

9 CHAIR: All right. Okay. Mr. Lanzi, you, you have
10 no other witnesses. So, Mr. McCann, do you have any witnesses
11 you'd like to call?

12 MR. MCCANN: Yeah, just a couple and I think they'll
13 be quick. No experts, just community folks.

14 CHAIR: Okay.

15 MR. MCCANN: So, hopefully, they're here. I haven't
16 checked in with them, but Mr. Dawson, is he available?

17 CHAIR: It looks like he's a participant on, on my,
18 on my, on my dashboard.

19 MR. MCCANN: Okay, great.

20 MR. SAMPSON: (inaudible). I have to move him from
21 attendee to participant.

22 CHAIR: I see.

23 MR. SAMPSON: Give me one second here.

24 CHAIR: Yep.

25 MR. SAMPSON: He should be able to hear you, but I

1 think (inaudible).

2 CHAIR: Yeah.

3 MR. SAMPSON: All right. He's in and he's unmuted.

4 I don't see him, but he's in.

5 MR. MCCANN: Mr. Dawson, are you with us?

6 MR. DAWSON: I am. Can you see me now?

7 MR. MCCANN: There we go.

8 CHAIR: There we go.

9 MR. MCCANN: Great, --

10 CHAIR: Can you swear him in, Mr. Sampson?

11 MR. SAMPSON: Can you raise your right hand, please,
12 Mr. Dawson? I can't see you for some reason on my screen. Is
13 your right hand raised?

14 CHAIR: He's got his hand raised, I can see him, Mr.
15 Sampson.

16 MR. SAMPSON: All right, thank you. Do you swear and
17 affirm under the penalties of perjury, that the testimony you
18 are about to give is true and correct to the best of your
19 knowledge and belief?

20 MR. DAWSON: I do.

21 MR. SAMPSON: Please, again, state your name and
22 address for the record, spell your last name, please.

23 MR. DAWSON: John Dawson, D-A-W-S-O-N. My address is
24 13215 Cherwin Avenue, Middle River, Maryland 21220.

25 MR. SAMPSON: Thank you.

1 MR. MCCANN: Okay, thank you, Mr. Sampson. Good
2 afternoon, Mr. Dawson. We've said your name a couple times in
3 this hearing but just for the record, tell us where your, where
4 is the property that you just identified in relation to the
5 subject properties?

6 MR. DAWSON: If you're facing my house, it is to the
7 left. It's the front two, or the lots to the left of my
8 driveway.

9 MR. MCCANN: Okay.

10 MR. DAWSON: If you're facing out, they're to the
11 right.

12 MR. MCCANN: Okay and just by way of background, what
13 do you do for a living, sir?

14 MR. DAWSON: I am a sergeant with the Baltimore
15 County Police Department in the Burglary Unit.

16 MR. MCCANN: Okay and how long have you lived at
17 this, at the property you identified?

18 MR. DAWSON: Since August of 2017.

19 MR. MCCANN: Okay and who do you live with?

20 MR. DAWSON: My wife and my two children.

21 MR. MCCANN: Okay and have you sat through the
22 hearing this morning and this afternoon?

23 MR. DAWSON: I have.

24 MR. MCCANN: Okay, you've had that pleasure.

25 MR. DAWSON: Yes, sir.

1 MR. MCCANN: So, would it be fair to say that you're
2 familiar with what's been, what's been proposed?

3 MR. DAWSON: Yes, sir.

4 MR. MCCANN: And you, I think it's accurate to say
5 that you were also involved in the cases before, correct?

6 MR. DAWSON: That is correct, sir.

7 MR. MCCANN: Okay. So, just, tell the, tell the, the
8 Board, what, what it, what it is that are your, what are your
9 concerns about the project?

10 MR. DAWSON: My concerns are that it's going to have
11 a negative impact on my property, the surrounding area, the
12 roadway, as well as possibly reducing my property value. I
13 know when I bought this house, I bought it because the houses
14 spread out throughout the area was, if there was a house
15 already on that lot, I probably wouldn't have purchased it. I
16 would have moved onto something else.

17 That area floods a lot. I've seen it firsthand, and
18 the water, not only is it storm water that you've been speaking
19 of, but there's also coastal flooding where if you have a storm
20 surge or an extra high tide, it will come in and encroach upon
21 that property. So, obviously water has to go somewhere and
22 it's going to end up, I believe, and from what I've seen, and a
23 reasonable person would believe, it'll end up on my property
24 and do damage to my, my home, my area.

25 MR. MCCANN: (inaudible) point before we move on,

1 you've heard testimony today that, from Mr. Doak regarding how
2 the property slopes. And I think the suggestion was that it,
3 it slopes from your property, at least part of your property,
4 towards the subject lots. Could you describe a little bit
5 about how that is, number one, is it true? And if it's not
6 true, how, how you see the water flowing?

7 MR. DAWSON: There's a grade that goes from my
8 driveway towards the, that property. But also, that property,
9 when the, when the water does come up, it will come into my
10 driveway from his property. So, it will come over into the
11 driveway as it is now already. But there is a slight grade
12 away from my home as, I want to say most homes, you have a
13 grade away from it, so water doesn't come into it.

14 MR. MCCANN: Is it a grade away the entire length of
15 your property line or is it just a portion of it -

16 MR. DAWSON: A portion of it.

17 MR. MCCANN: Okay. And in the short time you've
18 lived there, you've lived there four or five years or so, have
19 you seen flooding on your property on a number of occasions?

20 MR. DAWSON: Not so much onto mine, it does come into
21 my driveway as it stands right now. So, yeah, a little flood
22 onto my driveway but not as much as it does onto the lots next
23 door.

24 MR. MCCANN: Okay and we'll, we'll show some pictures
25 about that. But I wanted you, if you could, be a little more

1 specific about why you think this house, as you've heard it
2 today, will impact you. And, including, among other things,
3 how it, you think it will impact your property values.

4 MR. DAWSON: So, when I purchased this house, I loved
5 the views out of the windows up, actually, lower level and top
6 levels, it's a split-level home. You can see the water
7 clearly. It's right smack dab in the middle of where the Bird
8 River and Gunpowder River meet, so it's a beautiful area. I, I
9 loved it like when we came in. The house next door, it was
10 just a normal house, there was no giant structure in the
11 backyard.

12 With this, I know it's going to take away from my
13 views. I know it's going to, like I said, for me personally, I
14 wouldn't have purchased the house and as a normal person would,
15 I wouldn't think anyone would want to purchase a house with a
16 giant structure right next to basically up in front of their
17 house. So, I just, for me, I wouldn't want to do that and for,
18 it would lower my property values is what I would assume.

19 MR. MCCANN: Okay. Well, there, there, there's
20 certainly a suggestion today from opposing counsel that this
21 type of thing is, is all over your neighborhood. Is that, is
22 that an accurate statement? That is, obstructed views?

23 MR. DAWSON: No, I wouldn't say that's an accurate
24 statement. There, this is an old community, so there were
25 shore shacks around the side, around the waterfront.

1 MR. MCCANN: Yeah.

2 MR. DAWSON: People, obviously, will build bigger
3 houses on the waterfront as, you know, times go on from those
4 shore shacks. But there's not really any building going on in,
5 on across from that, at least what I've seen since I've been in
6 the neighborhood.

7 The one house that they alluded to earlier across the
8 street, trees actually fell on that house and that's why it was
9 taken down. It was two trees actually in a storm prior to the
10 pandemic starting and it had been in disrepair and obviously
11 the owner is going to do it at his pace, but that, that is what
12 happened with that house.

13 MR. MCCANN: That's why it's being rebuilt?

14 MR. DAWSON: Yes, sir.

15 MR. MCCANN: Okay.

16 MR. DAWSON: (inaudible) shed, there was a house and a
17 shed.

18 MR. MCCANN: Okay. You mentioned your view. Do you
19 have a view, do you have windows on the side of your house?
20 That is, when you're facing it, we can see it from the
21 photographs and we'll look at some more, your side, what's
22 that?

23 MR. DAWSON: Not on the side, just so I have a bay
24 window on the front and a, a double window on the bottom that
25 would face that side.

1 MR. MCCANN: So, from your windows that you just
2 described, if you were to look sort of to the right, standing
3 in your house, you would be able to see clearly this building?

4 MR. DAWSON: I'm looking right through my window
5 right now and I would see exactly where it is, and I'm sitting
6 in the middle of my lower level, and I would, I'm looking right
7 now at it. I would see directly, I would see a house, a giant
8 house.

9 MR. MCCANN: Okay. In either your first floor or
10 second floor, do you have, presently, do you have views of the
11 water in that direction?

12 MR. DAWSON: Yes, both, both, both floors, and from
13 my back deck where if you were looking off towards the side,
14 that's all I would see is the house.

15 MR. MCCANN: Okay. Any other ways, I want to, I may
16 have cut you off in terms of how you think it has impacted you,
17 or will impact you, and, or if you've described --

18 MR. DAWSON: I know that it will impact this area
19 ecologically, I would assume, because there's so much, being,
20 being where we are, there's bald eagles, there's all types of
21 waterfowl. It, very regular during the summer, to see all
22 types of waterfowl in the yard, frogs, turtles, all, all that
23 type of stuff being right here on the water.

24 Which, like I said, it's a small community and having
25 something like that also put in where there wasn't a previous

1 structure before is going to disrupt more than, than whatever
2 development already is going on.

3 MR. MCCANN: Okay. The, I wanted to go through a
4 couple exhibits with you, if I could, real quick.

5 MR. DAWSON: Sure.

6 MR. MCCANN: There's some photographs I want to go
7 through quickly because I think the Board, I mean, I won't go
8 through them slowly. I think the Board is familiar with the
9 property by now. Okay. This would be Protestants' Exhibit 10.
10 There are fifteen pages to this and, unfortunately, I did not
11 number, or letter these pages. So, I, I may just identify them
12 by, you know, the first picture, the second picture, etcetera.

13 So, let's go through this quickly if we could, Mr.
14 Dawson. Tell us what the first photograph in Exhibit 10 shows
15 us.

16 MR. DAWSON: That would be at the edge of my property
17 against Mr. Kestner's lot. You can see the property stake
18 right there at the bottom of the picture.

19 MR. MCCANN: In the foreground that's the property
20 stake?

21 MR. DAWSON: Yes, sir.

22 MR. MCCANN: Okay. The fence that we see to the
23 righthand side, was that fence installed since you've lived
24 there?

25 MR. DAWSON: Since I lived here, yes. It was after

1 the property was sold. The house was sold.

2 MR. MCCANN: Okay. It was, it was installed after
3 Mr. Kestner sold the property?

4 MR. DAWSON: Yes, the new owner put that up.

5 MR. MCCANN: Okay. So, so, you, when, for a period
6 of time when you lived at this property the fence was not
7 there, right?

8 MR. DAWSON: Correct. It was never there until the
9 new owner moved in.

10 MR. MCCANN: Okay and during that period of time, Mr.
11 Kestner was living on the property, that is, the four parcels
12 to the right of you that we've been talking about?

13 MR. DAWSON: Yes, sir.

14 MR. MCCANN: Okay and during the time that you, you
15 lived there and during the time that Mr. Kestner lived there,
16 have you ever seen him or other, other persons visiting him,
17 use the, these two lots that we're looking now at in this, in
18 this first picture?

19 MR. DAWSON: Yes, it was used like a backyard, like
20 you normally would. There was a swing set, a firepit, there
21 was, he would regularly have gatherings of friends and family,
22 I would assume, but it was gath, social gatherings out there
23 where people would be throwing the ball around. I believe he
24 had dogs as well. It was, it was used as a normal backyard
25 would. Like any one of us sitting here would use our backyard

1 for to, to entertain.

2 MR. MCCANN: Okay. You mentioned a swing set. Did,
3 did he have, did, does he have children, do you know?

4 MR. DAWSON: He had children, yes.

5 MR. MCCANN: Okay and I take it they would use the
6 swing set and you would see them do that?

7 MR. DAWSON: Yes. Right before I, because I recall
8 probably, exactly, because right before he moved, I guess when
9 he was putting it up on the market, he tore the swing set down
10 and actually burned it in the fire pit.

11 MR. MCCANN: And, and where in this area was, was the
12 swing set and the fire pit, just --

13 MR. DAWSON: It would have been right off to the
14 right, over by where the fence is. There's a large, there's a
15 very large tree over there, right up against that fence line.
16 It was right over by that tree and the fence line. And the
17 fire pit was offset, closer to the property line, my property
18 line, I should say.

19 MR. MCCANN: Did you see him take care of these,
20 these two parcels?

21 MR. DAWSON: Yes, so, like when he would cut the
22 grass, he would cut all the grass, you know. We would wave to
23 him as he was on his riding mower. There was actually, and
24 when he would do it, he would do everything at once.

25 There was a tree actually at the end of where the

1 road, where the parcel is, up by the road and it came down. He
2 was out there with, with his family cutting it up and getting
3 it taken care of because it actually came down in one of the
4 storms.

5 MR. MCCANN: Okay. Other than things you mentioned,
6 you said the swing set, the firepit, the social gatherings, can
7 you think of any other, the mowing of the lawn, taking care of
8 the tree, anything else? Any other specific ways in which you
9 observed Mr. Kestner and his family using these two parcels?

10 MR. DAWSON: No, like I said, just like it would, a
11 normal backyard and that's how I observed it when I, I would
12 come pull in, I'd wave, say hi to him. It's just like you
13 would have a normal backyard.

14 MR. MCCANN: Okay and the, the things that you
15 described as observing, did you see those things on a regular
16 basis?

17 MR. DAWSON: Yes, I did.

18 MR. MCCANN: Okay. All right. The second photograph
19 --

20 MR. EVANS: So, I, I'm sorry, Mr. McCann. What, what
21 is, is there an exhibit number on what we just looked at?

22 MR. MCCANN: This is Protestants' Exhibit 10,
23 photograph one.

24 MR. EVANS: Okay, all right.

25 MR. MCCANN: Sorry. There are fifteen photographs

1 here and I did not number them individually, so they're all --

2 MR. EVANS: Okay. So, it's going to be 10-1 through
3 15, or 10-A through something?

4 MR. MCCANN: Yes, one through fifteen.

5 MR. EVANS: Okay. Thank you.

6 MR. MCCANN: Okay and then the second photograph in
7 this exhibit, Mr. Dawson.

8 MR. DAWSON: Yes.

9 MR. MCCANN: Just describe what it is I'm showing you
10 as we go.

11 MR. DAWSON: Just standing a little further back from
12 the property line, the edge of my driveway up to the front of
13 my house taking a picture over of how close it is and how small
14 that lot is compared, you know, obviously we know what the
15 width is but how it actually looks when you look out front of
16 my home.

17 MR. MCCANN: Okay, all right. The third photograph
18 in Protestants' Exhibit 10. Do you see that?

19 MR. DAWSON: Yes, that's my driveway down by the
20 street, down by Cherwin looking out over the, the two plots.
21 Just again, showing the, the width of it and how the new owner
22 had put up a fence around the area.

23 MR. MCCANN: Okay. The fourth photograph, that's
24 your house on the right?

25 MR. DAWSON: Yes, just showing where my house is in

1 relation to it, my driveway next to the lot.

2 MR. MCCANN: Okay.

3 MR. DAWSON: You can see the bay window up front.

4 MR. MCCANN: Yep. Okay. The fifth photograph, fifth
5 photograph. That may be, looks like it would be the same as
6 before. The sixth photo --

7 MR. DAWSON: Down, yes, that's down the middle of
8 Cherwin Avenue looking down towards, you can see my driveway
9 and the lot where Mr. Kestner has for sale.

10 MR. MCCANN: Okay. The seventh, I'm sorry, yeah, the
11 seventh photograph in Protestants' Exhibit 10. This was taken
12 from your, it looks like from your window.

13 MR. DAWSON: Yes.

14 MR. MCCANN: Okay and when was this taken?

15 MR. DAWSON: I, I want to say it was in 2020. It was
16 after, obviously after Mr. Kestner sold the property, the
17 house, because the fence is up. It was just a storm that came
18 through, it wasn't anything big or crazy, it was just a, a
19 storm. And that happens routinely in this neighborhood.
20 Especially in, in that area of the neighborhood.

21 MR. MCCANN: So, what we're seeing in Exhibit, I'm
22 sorry, photograph seven of Exhibit 10 is something that you see
23 regularly?

24 MR. DAWSON: Yes, it's the river coming up and over,
25 I guess, the bulkhead or whatever you want to call it.

1 MR. MCCANN: Okay.

2 MR. DAWSON: It comes across the street and actually
3 gets, as you can see in the picture, the water gets pretty
4 deep. If you look at the mailbox, that's right up at the road.
5 It makes the road impassable for a lot of cars.

6 MR. MCCANN: Okay. The eighth photograph, same
7 thing? (inaudible)?

8 MR. DAWSON: Same storm, just taking pictures of it
9 to, to show the different areas of, of how the water
10 (inaudible).

11 MR. MCCANN: Okay. The ninth photograph in this
12 exhibit? Let me switch this around for you. Is this a
13 different storm?

14 MR. DAWSON: This is a different day. This is, this
15 is before the, the fence was put up. I want to say it was in
16 2019. I can't, I can't say the exact date. But yes, this is
17 another time, and it was in, I don't even think it was raining
18 that day. I just think it was an excessive high tide that we
19 get routinely.

20 MR. MCCANN: Okay and this, this tree that we see on
21 the right-hand side, is, is that the tree that you indicated
22 was taken down?

23 MR. DAWSON: No, there was actually another tree that
24 was up front that's not there anymore. It was more like a pine
25 style tree. It was actually quite tall. I was very lucky

1 because when it came down, it fell straight and missed all of
2 my cars in the driveway.

3 MR. MCCANN: Wow, okay.

4 MR. DAWSON: It was a larger, it was a larger pine
5 tree.

6 MR. MCCANN: Okay, all right. The tenth photograph
7 in Protestants' Exhibit 10, where are we here?

8 MR. DAWSON: This is the, that mailbox, I was just
9 trying to show the depth of the water to the mailbox. And you
10 can see actually the waterline, how high it got with the
11 telephone pole and the mailbox right there.

12 MR. MCCANN: Okay. So, this is across the street?

13 MR. DAWSON: It's, yes, it's across the street, up
14 against Cherwin Avenue.

15 MR. MCCANN: Okay. All right. The eleventh
16 photograph, same thing?

17 MR. DAWSON: That's more down the street showing the
18 water coming across from the, that, that high tide.

19 MR. MCCANN: Okay. The twelfth photograph?

20 MR. DAWSON: That was just, that's more towards the,
21 the river, I took it, that's the house that was taken down
22 because the trees fell on it.

23 MR. EVANS: That's, the white building is the house
24 that was taken down?

25 MR. DAWSON: Yes, the white building and the blue

1 building is a shed. There were two trees that fell on it.
2 They were on the river side of the house that came down on it
3 like that.

4 MR. MCCANN: Okay. So, this is across the street
5 from your house?

6 MR. DAWSON: Yes, that's across the street from my
7 house right there.

8 MR. MCCANN: And this, this, this is not a road but
9 rather a driveway on the left-hand side?

10 MR. DAWSON: That's a driveway for the residents to
11 the left of that, it's a yellow house.

12 MR. MCCANN: Okay. The thirteenth photograph in this
13 exhibit, where, where are we looking at here?

14 MR. DAWSON: We're looking down Cherwin, that's onto
15 Mr. Kestner's property as the water was starting to recede.
16 But you can see, it's still all the way up into the yard, past
17 the tree.

18 MR. MCCANN: Okay and this is Gunder Road in the
19 background here?

20 MR. DAWSON: Yes, yes, that's Gunder, and that's
21 Cherwin right at --

22 MR. MCCANN: Right in here?

23 MR. DAWSON: At the corner, yes.

24 MR. MCCANN: And Mr. Kestner's property, when he,
25 when he owned it was on the righthand side here?

1 MR. DAWSON: Correct.

2 MR. MCCANN: Okay, all right. The fourteenth
3 photograph, let me switch this around for you. What is this?

4 MR. DAWSON: That is the, the drainpipe that runs out
5 to the river for all the storm water that runs down. So, we
6 have, I don't want to call it a valley, but a ditch, a drainage
7 ditch, around the front of everyone's house and mine you can't
8 see it because the County came in and put a pipe down
9 underneath. But if you look at the edges of Mr. Kestner's
10 property, the pipe runs out into that drainage ditch and it all
11 funnels down and goes through there, out to the river.

12 MR. MCCANN: Okay. So, where's the river? To the,
13 just above this?

14 MR. DAWSON: If you, if you were to lift your head
15 straight up above that and look straight out, that's the river.

16 MR. MCCANN: Okay.

17 MR. DAWSON: That would be Bird River.

18 MR. MCCANN: Okay and the fifteenth photograph.

19 MR. DAWSON: That is the pipe that runs underneath
20 the road across, you can see the drainage ditch, how the water
21 funnels down into that from both sides and runs across out to
22 that main drain out to the river.

23 MR. MCCANN: Okay. So, your property is up here?

24 MR. DAWSON: Correct.

25 MR. MCCANN: My pointer on the left-hand side.

1 MR. DAWSON: Yes, sir.

2 MR. MCCANN: So, the water comes down here, then goes
3 under the road and heads towards the river?

4 MR. DAWSON: Yes.

5 MR. MCCANN: Okay. All right. Before I move on, I
6 would move Protestants' Exhibit 10 into evidence.

7 CHAIR: And I suspect some of the other ones too,
8 right, Mr. McCann? All these pictures, right?

9 MR. MCCANN: Yes.

10 CHAIR: Yeah, Mr. Lanzi, do you have any objection of
11 admitting in these pictures?

12 MR. LANZI: No objection.

13 CHAIR: We'll admit them.

14 MR. MCCANN: Okay. Let me grab another exhibit.
15 This is, can you see that, Mr. Dawson?

16 MR. DAWSON: Yes, sir.

17 MR. MCCANN: Okay. This is Protestants' Exhibit 11
18 and it's five pages. And this is, just, can you identify what
19 this is for the record?

20 MR. DAWSON: It was a petition that the President of
21 the Community Association, Mr. Tom Brookes, took around and had
22 the neighbors sign who were in opposition of the
23 variance/relief that the, Mr. Kestner was looking for.

24 MR. MCCANN: Okay. So, you, you didn't participate
25 in collecting the signatures?

1 MR. DAWSON: No, I signed it but, but Mr. Brookes
2 undertook that.

3 MR. MCCANN: Okay. I'm sorry, I thought you did.
4 We're going to ask Mr. Brookes some questions so I'll move it
5 in at that time if that's okay, Mr. McComas?

6 MR. LANZI: Sorry to interrupt. I, I'm, and I hate
7 to object here but I believe the, the heading of this is
8 confusing and, and inaccurate. It literally says variances,
9 we're not here on variances for the fifth time. So, if this
10 was presented to the neighborhood, then it's presented
11 incorrectly, and I would have to object to all these
12 signatures.

13 CHAIR: Well, Mr. Lanzi, I think that (inaudible)
14 impeachment with Mr. Brookes, especially since Mr. McCann said
15 he's going to call Mr. Brookes.

16 MR. LANZI: Okay.

17 MR. MCCANN: Yeah, obviously, we disagree about the
18 variance as well.

19 CHAIR: Okay.

20 MR. MCCANN: So, okay. Let me stop sharing here.
21 Let me get back to that. Did that stop sharing, did I stop
22 sharing?

23 CHAIR: You stopped sharing, Mr. McCann. I don't see
24 it.

25 MR. MCCANN: Okay, great. Thank you. Okay. Mr.

1 Dawson, I don't have any other questions. Were there any other
2 concerns that you wanted to tell the Board about that you
3 haven't brought up yet?

4 MR. DAWSON: No, just that, I strongly oppose the, I
5 don't know what you want to call it, but being able to build a
6 house on this lot. I know it's going back and forth between
7 relief and variances. But I just, I strongly oppose it. I
8 feel like it's going to have a negative impact on me. I feel
9 like here, this is my, my forever home.

10 I plan on retiring here and this is not, I would not
11 have purchased the house if that had been there to begin with
12 and when I bought it, I would have never thought someone would
13 have cut their backyard off and, and tried to sell it to a
14 builder to build a, possibly a fifty foot hall, house, so I
15 just, I just wanted to reiterate that I oppose it and that is
16 all, thank you.

17 MR. MCCANN: Okay. Thank you, Mr. Dawson.

18 CHAIR: Mr. Lanzi, any, any cross?

19 MR. LANZI: I do. I was, I was wondering if we could
20 have about a seven-minute break.

21 CHAIR: Mr. Evans, Mr. Sampson?

22 MR. EVANS: That's fine with me.

23 MR. SAMPSON: Yeah, fine with me.

24 CHAIR: Yeah, works for me as well. All right. So,
25 we'll get back in at 2:30 here.

1 MR. LANZI: Very good, thank you.

2 CHAIR: Mr. McCann, you're sharing your screen and
3 your e-mail, you probably don't want to be doing that. There
4 you go.

5 (PAUSE)

6 MR. EVANS: Hello? Are we back?

7 MR. SAMPSON: I think you're a few minutes early.
8 I'm here, but he said 2:30.

9 MR. EVANS: Oh, okay. Did someone call me?

10 MR. SAMPSON: I didn't, I didn't hear it.

11 MR. EVANS: Okay.

12 MR. SAMPSON: Came back at 2:27.

13 CHAIR: I can't hear you, Mr. Sampson. I hear, I
14 hear your lips moving, but I can't, either you're talking away
15 from your microphone or you're on mute.

16 MR. SAMPSON: I'm not on mute. Can you hear me now?

17 CHAIR: I don't know what the issue is. I've got my
18 sound on my speakers (inaudible) hear you.

19 MR. EVANS: You can hear me, can't you?

20 CHAIR: I can hear you (inaudible). Mr. McCann, are
21 you back?

22 MR. MCCANN: I am, thank you.

23 CHAIR: All right. So, Mr. McCann, it's still your
24 witness, right? Oh, I'm sorry, Mr. Lanzi, you asked for a
25 little break to prepare for the cross. Sorry, Mr. Lanzi, Mr.

1 McCann. Your witness, Mr. Lanzi.

2 MR. LANZI: Thank you. Let's see. All right. Mr.
3 McCann, would you mind putting up your photograph exhibits,
4 specifically, I want to look at photo one. Oh, I'm using it
5 now? There we go. Okay, all right. Mr. Dawson, are you
6 there?

7 MR. DAWSON: I'm here.

8 MR. LANZI: Okay, all right. Looking at Protestants'
9 Exhibit 10, photo one, can you see the arrow that I'm showing?
10 No? Okay. I guess because, because I'm not the person with
11 the baton.

12 CHAIR: (inaudible) the cursor, Mr. Lanzi, but it,
13 it's not on the picture. It, it's up in the, in the
14 (inaudible) talking about, Mr. Lanzi.

15 MR. LANZI: Yeah, basically, Mr. Dawson, it appears
16 to me that there's a, a, a, a slant that goes from where your
17 truck is down into the Kestner property, is that correct?

18 MR. DAWSON: Yes.

19 MR. LANZI: Okay. All right and then you're
20 indicating that the water sometimes comes up, I guess, part of
21 the slope, not all the way back to the post, but comes onto the
22 slope and onto your driveway?

23 MR. DAWSON: Yes.

24 MR. LANZI: And how far up the driveway does it come?

25 MR. DAWSON: Ten feet, maybe, sometimes.

1 MR. LANZI: Okay. Have you done, have you done
2 anything to help with the water issues coming on your property?
3 Have you taken any steps for mediation?

4 MR. DAWSON: No.

5 MR. LANZI: Okay and I don't know if there's another,
6 well, I'll, I'll have to use one of my photographs but go, Mr.
7 McCann, if you could go to photograph nine, I believe. What,
8 what view is that from your property, Mr. Dawson?

9 MR. DAWSON: You have to scroll down a little bit so
10 I can see. That would be from the front window.

11 MR. LANZI: Okay. So, you're looking out your front
12 window and the house that's kind of in the middle to the right,
13 is that a relatively new house?

14 MR. DAWSON: No, that's been there for, since I've
15 been here.

16 MR. LANZI: Okay and the house to the left, was that
17 also there when you bought your house?

18 MR. DAWSON: Yes, all those houses were there.

19 MR. LANZI: Okay. So, if you go further to the left,
20 and I'll keep the photographs (inaudible), okay. Those are the
21 houses that, I believe you said, one of them was like a shore
22 shack that was destroyed and they're building a new one?

23 MR. DAWSON: Yes.

24 MR. LANZI: Okay. Do you know if the new house is
25 going to be built like these that are in this photograph or is

1 it going to be more like the shore shack that was destroyed?

2 MR. DAWSON: I, I don't know.

3 MR. LANZI: Okay. So, I mean, if, if you knew that
4 the one-story shore shack was going to be replaced by a two
5 story would you, would you not have bought your property?

6 MR. DAWSON: I don't, it's across the street from my
7 house, it's not in, wouldn't be in front of my house on the
8 same side of the street. So, that wouldn't have changed my
9 mind on that.

10 MR. LANZI: But isn't, isn't across the street
11 through the houses your view of the water?

12 MR. DAWSON: Yes.

13 MR. LANZI: Okay. So, wouldn't a larger house --

14 MR. DAWSON: You can still see the water through
15 those houses that are there now.

16 MR. LANZI: Right. But, but a larger house would
17 further impact the water view, wouldn't it?

18 MR. DAWSON: Correct.

19 MR. LANZI: Okay, all right. I don't, Mr. McCann,
20 you don't need to share anymore. I'm going to use my own
21 exhibits now. So, I guess we'll have to switch.

22 MR. SAMPSON: Okay.

23 MR. LANZI: Okay, let's see. And there's a, this,
24 this property is across the street from your house?

25 MR. DAWSON: No, that's more across from Mr.

1 Kestner's house.

2 MR. LANZI: Okay. Is, was this an empty lot or is
3 this the shore shack?

4 MR. DAWSON: Next to the house that the trees fell
5 on.

6 MR. LANZI: Got it, okay.

7 MR. EVANS: What exhibit number is that, Mr. Lanzi?

8 MR. LANZI: Okay. That is Exhibit 6-G.

9 MR. EVANS: Thank you.

10 MR. LANZI: All right. All right. I'm going to now
11 go to where Mr. Doaks, I'm looking now at Petitioner's 5-D.
12 So, this shot is taken from the road, looking at the front of
13 your house, is that correct?

14 MR. DAWSON: Correct.

15 MR. LANZI: So, isn't it true that you have, do not
16 even have windows on the side of your house that faces the
17 Kestner property?

18 MR. DAWSON: That's what I told Mr. Kestner earlier.

19 MR. LANZI: Okay.

20 MR. DAWSON: I advised I have bay windows and if you
21 look underneath the bay windows to, it's a double window that
22 looks out panoramic, pretty much, of the river. I can see, I'm
23 looking at it right now, looking out, I can see right across
24 his lot to the, the water.

25 MR. LANZI: Right. The, the other view we were just

1 looking at, you had a clear view from your house to the water
2 and it had, didn't even show the Kestner property, I believe,
3 but. It, it's your testimony that a new house will block your
4 view of the water?

5 MR. DAWSON: Yes, if you look at the back, actually,
6 on the, there's a, a deck off the, the second story.

7 MR. LANZI: Um hm.

8 MR. DAWSON: If you, I have a, a table at the end
9 there, if you look out, it'll just be looking at the back of
10 his house, or a house that will be put there.

11 MR. LANZI: Okay. But when, when you bought the
12 property there, there wasn't, there were empty lots next to
13 you, correct?

14 MR. DAWSON: Well, it was his backyard. It was his
15 whole property, it was one piece of land. It was like a normal
16 house, like mine would be.

17 MR. LANZI: Well, that's, that's your testimony, but
18 you've heard the testimony earlier that there, there were
19 separate lots, two groups, two groups of lots. In any event,
20 you're not a licensed real estate appraiser, are you?

21 MR. DAWSON: No.

22 MR. LANZI: Okay and you don't have storm water
23 management expertise?

24 MR. DAWSON: No.

25 MR. LANZI: Okay and the flooding that you talked

1 about on, on your property is really just on your driveway
2 about ten feet in?

3 MR. DAWSON: Yeah, right now.

4 MR. LANZI: Okay and you do, you do realize that if
5 Mr. Kestner had gone through the subdivision process and, and
6 built two houses, there would still be a house on the lot next
7 to you, you understand that, correct?

8 MR. DAWSON: No, can you restate that again, I'm
9 sorry?

10 MR. LANZI: There were a lot of questions from your
11 counsel to Mr. Doak about the possibility of doing a, a
12 subdivision. And then I also followed up with Mr. Doak about
13 this, that the Kestner properties were not six unimproved lots,
14 they were four lots with improvements and two without. But
15 assuming, for the sake of this example, that the Kestner
16 property, the four lots were shifted five feet over so we
17 didn't have to be here today for this hearing, that would allow
18 the second lot, second building lot, --

19 MR. DAWSON: I understand what you're saying.

20 MR. LANZI: Okay. So, if the property were
21 subdivided into two lots, you would still be looking at a house
22 next door, do you understand that?

23 MR. DAWSON: Unfortunately, I do.

24 MR. LANZI: Okay, all right. And then, you were also
25 talking about I believe there was a swing set, a fire pit that

1 were on the property but then they were removed?

2 MR. DAWSON: Yeah, he burned the swing set in the
3 fire pit.

4 MR. LANZI: Okay and then, but there wasn't a
5 driveway there, there wasn't a different garage building there
6 that was being used?

7 MR. DAWSON: No, there were horseshoe pits, I recall.

8 MR. LANZI: Okay. But, but not, not any permanent
9 structures or anything?

10 MR. DAWSON: The horseshoe pits are pretty permanent.

11 MR. LANZI: Okay. Okay, I want to look at, bear with
12 me. So, I see this, you have a fair amount of impervious, your
13 driveway is quite large (inaudible). You have --

14 MR. DAWSON: Yes, I bought it like that.

15 MR. LANZI: Okay. Do you have a patio in the back?

16 MR. DAWSON: A deck.

17 MR. LANZI: Just a deck, okay.

18 MR. DAWSON: Just a deck.

19 MR. LANZI: Got it. That, that's all I have for now.

20 CHAIR: Mr. McCann, any, any questions, any more
21 questions?

22 MR. MCCANN: I do not. Thank you.

23 CHAIR: All right. Mr. Dawson, you can step down.

24 Thank you for your service (inaudible).

25 MR. DAWSON: It was greatly appreciated. Thank you,

1 sir.

2 CHAIR: Mr. McCann, do you have any other witnesses?

3 MR. MCCANN: Yeah, I think two more and, quick ones,
4 quicker than Mr. Dawson. Is Mr. Brookes available?

5 CHAIR: Mr. Sampson, you have to do the honors,
6 Buddy.

7 MR. SAMPSON: Yeah, I'm working on it. I'm not as
8 fast --

9 VOICE: (inaudible).

10 MR. LANZI: Got it.

11 MR. SAMPSON: Mr. Brookes should be in, unmuted and
12 now who needs the token?

13 MR. MCCANN: I do, if I could.

14 MR. SAMPSON: Okay.

15 CHAIR: Mr. Brookes, can you hear?

16 MR. BROOKES: Yes, I can hear you.

17 CHAIR: All right, great. To the extent you have a
18 video capability (inaudible) enable your video, Mr. Brookes.
19 There you go. We got you, Mr. Brookes. Nice job. Mr.
20 Sampson, you got to raise your right hand, Mr. Brookes. Mr.
21 Sampson will do the honors.

22 MR. SAMPSON: Thank you, sir. Do you swear and
23 affirm under the penalties of perjury, that the testimony you
24 are about to give is true and correct to the best of your
25 knowledge and belief?

1 MR. BROOKES: I do.

2 MR. SAMPSON: Will you again please state your name
3 and address, spell your last name for the record. Thank you.

4 MR. BROOKES: Thomas Brookes, B-R-O-O-K-E-S, I'm at
5 6903 Birdwood Avenue, Middle River 21220.

6 MR. SAMPSON: Thank you, sir.

7 MR. MCCANN: Okay, thank you. Mr. Brookes, how are
8 you doing?

9 MR. BROOKES: I'm fine, thank you.

10 MR. MCCANN: Tell the Board where you live in
11 relationship to the subject properties.

12 MR. BROOKES: I think I'm like five houses down the
13 street, right around the corner.

14 MR. MCCANN: Okay. What's the name of your street
15 again?

16 MR. BROOKES: Birdwood Avenue.

17 MR. MCCANN: And does that run parallel to or
18 perpendicular to Cherwin?

19 MR. BROOKES: It would be perpendicular.

20 MR. MCCANN: Didn't think this would be a geometry
21 test, huh? And how long have you lived there?

22 MR. BROOKES: Purchased my house in 2013.

23 MR. MCCANN: Okay. What do you do for a living?

24 MR. BROOKES: I'm a state worker, I work at Fort
25 McHenry Tunnel.

1 MR. MCCANN: Okay. Are you an officer in the
2 association?

3 MR. BROOKES: Yes, I'm the president of our community
4 association.

5 MR. MCCANN: What, what's the name of the association
6 for the record?

7 MR. BROOKES: The full legal name is, let me get the
8 paper, because we usually go by just Twin River, but the real,
9 the actual name is Twin River Beach Protective and Improvement
10 Association, Inc., Incorporated.

11 MR. MCCANN: Okay. Now, are you authorized, well,
12 tell us about the association. Who does it encompass? What,
13 what homes does it encompass?

14 MR. BROOKES: There's a hundred and ten homes down in
15 this community with, the streets are outlining, Birdwood, goes
16 to Sherwood, goes to Gunder and then we have a couple streets
17 in between, which would be Gundale, Powderdale and Birddale.
18 So, in that little circle, only one way in and one way out,
19 there's a hundred and ten homes already here.

20 MR. MCCANN: Okay and are you authorized to speak on
21 behalf of the association and, and tell the Board its, the
22 Association's position?

23 MR. BROOKES: Yes.

24 MR. MCCANN: Okay. Let me, I want to show you, if I
25 could share, Mr. Sampson?

1 MR. EVANS: What exhibits are these going to be, Mr.
2 McCann?

3 MR. MCCANN: This is going to be our Exhibit 17.

4 MR. SAMPSON: All right. Mr. McCann, I keep putting
5 it on Mr. McComas by mistake.

6 MR. MCCANN: That's okay. I got it. Here we go.
7 Okay. Mr. Brookes, can you see?

8 MR. BROOKES: Yes.

9 MR. MCCANN: Okay. I'm going to scroll down. These
10 are what are, what we in the business call rule eight papers.
11 And there's three documents in here. Just, I'll scroll through
12 them quickly. But can you confirm for me that these are, that
13 is your signature and the signature of your secretary, Teresa
14 Lee?

15 MR. BROOKES: That is my signature.

16 MR. MCCANN: And is that the signature of Teresa Lee?

17 MR. BROOKES: Yes.

18 MR. MCCANN: Okay, great. I would move this in as
19 Exhibit 16.

20 CHAIR: Any objections, Mr. Lanzi? Mr. Lanzi?
21 You're probably on mute. Any objections?

22 MR. LANZI: Yeah, I wanted to, if I could have Mr.
23 McCann slowly go down to what exactly the vote (inaudible). No
24 objection to the rule eight in general, but I just want to see
25 what they voted on.

1 MR. MCCANN: Sure.

2 MR. LANZI: Okay. No objection.

3 CHAIR: All right. So, we'll admit them.

4 MR. MCCANN: (inaudible). All right. So, Mr.

5 Brookes, I'll ask you the same question I asked Mr. Dawson and
6 that is what concerns does the association have about the
7 proposed house?

8 MR. BROOKES: Well, like I said before, it's a small
9 community with already a hundred and ten homes in here and then
10 to cram another house in here, especially one that will be at
11 least thirty-five feet tall to fifty feet tall around the other
12 smaller homes would stick out like a sore thumb for one.

13 Another, another impact would be, it would be a
14 negative impact on the community having this tall house around
15 the smaller ones and then for the ecosystem, like Mr. Dawson
16 had mentioned, when it rains here, the water lays on that
17 property there and bucks go there. I've walked past there
18 after a rainstorm and seen standing water there and bucks
19 playing there. It's pretty awesome being down here on the
20 water and, or near the water, and be able to see all this
21 wildlife. And to put a house there would take that away.

22 MR. MCCANN: Okay. Are you also concerned about the
23 impact it may have on property values, including Mr. Dawson's?
24 Is that a concern?

25 MR. BROOKES: Yes.

1 MR. MCCANN: Well, you were, you were here for Mr.
2 Dawson's testimony, you heard it?

3 MR. BROOKES: Yes.

4 MR. MCCANN: Okay. Mr. Dawson spoke about his
5 observations of Mr. Kestner's use of the adjoining parcels. Do
6 you have any observations in that regard?

7 MR. BROOKES: I saw basically the same things. The
8 swing set that was out there and his children used it quite
9 often and the fire pit. Even had horseshoe pits out there
10 where they played horseshoes. One of the pits was on this side
11 of the fence, on Mr. Dawson's side of the fence, the other was
12 inside of the fence that's there now. It wasn't a fence there
13 before.

14 MR. MCCANN: What, I missed that, what was it, what
15 was that?

16 MR. BROOKES: The, one of the horseshoe pits was on
17 this side of where that fence is and the other pit was on the
18 other side of the, it went parallel with Cherwin Avenue.

19 MR. MCCANN: Okay and how did you have occasion to
20 observe all that? You live five houses down.

21 MR. BROOKES: Well, this community, a lot of people
22 walk in the evenings, walk in the days, it's a really nice,
23 friendly community. And just walking through here multiple
24 times with my wife, I've even interjected with them, the
25 Kestners, you know.

1 MR. MCCANN: And the types of things that you
2 described, and Mr. Dawson described as well, those are things
3 that you've seen during the time that he lived there on a, on a
4 regular basis, fairly regular basis?

5 MR. BROOKES: Yes.

6 MR. MCCANN: Okay. Did he use those parcels in
7 conjunction with the other parcels any differently than anybody
8 else in the community uses their property?

9 MR. BROOKES: Well, the way I see it, it's a
10 backyard. You use your backyard however, when you're
11 entertaining people, having a party.

12 MR. MCCANN: Okay. Any other concerns you haven't
13 expressed yet, Mr. Brookes or is that about it?

14 MR. BROOKES: That's about it, sir.

15 MR. MCCANN: Okay. No other questions. Thank you.
16 Oh, I'm sorry, the petition. I'm not sure, I can't recall, Mr.
17 McComas, if the petition is in yet.

18 CHAIR: I think you were going to wait, we were going
19 to wait until you had Mr. (inaudible).

20 MR. MCCANN: I'm sorry, yeah. I forgot about that.

21 CHAIR: (inaudible) some questions for him.

22 MR. MCCANN: Yeah, real quick, were you, were you
23 involved in collecting the petition's signatures for this case?

24 MR. BROOKES: Yes, I was.

25 MR. MCCANN: And what did you do in that regard, Mr.

1 Brookes? What did you do?

2 MR. BROOKES: I don't know if you can see this, but I
3 had the notice of assignment letter, Mr. Dawson had a copy of
4 this. I carried this with me as I, as I obtained the
5 signatures for the petition.

6 MR. MCCANN: Okay and what's the date of that
7 assignment, if you could hold it up?

8 MR. BROOKES: December 15th, 2020, and there's the
9 assignment of the hearing that would be on February 17th, today.

10 MR. MCCANN: Okay, great. And this, this petition,
11 this is different than the petition that you got during the,
12 the 2019 case, correct?

13 MR. BROOKES: I was not president back then.

14 MR. MCCANN: Okay. But you --

15 MR. BROOKES: I did sign that petition, I was, I was
16 still part of the community then.

17 MR. MCCANN: Okay. But is this a separate petition?
18 When I say this, I should show you the exhibit so I'm not
19 putting words in your mouth. This is Protestants' Exhibit 11.
20 Is the, the petition that you obtained signatures on?

21 MR. BROOKES: Yes.

22 MR. MCCANN: And, and is this different than the
23 prior petition that you recall being introduced into the first
24 case?

25 MR. BROOKES: Yes, it is.

1 MR. MCCANN: When did you, over what period of time
2 did you obtain these signatures?

3 MR. BROOKES: Probably a week or two ago, before all
4 the bad weather we've had because, like I said, I'm a state
5 worker so I'm at work during the bad weather.

6 MR. MCCANN: Okay. All right, thank you, Mr.
7 Brookes. I would move Exhibit 11 into evidence, and I have no
8 further questions.

9 CHAIR: Mr. Lanzi, any objection?

10 MR. LANZI: I'm going to remain in objection and I'm
11 going to ask Mr. Brookes about that.

12 CHAIR: Sure. We're going to, we're going to leave,
13 we're going to, I'm going to overrule you, Mr. Lanzi. But I
14 know that you're going to impeach him in his testimony here
15 based off of that. So, we'll admit it in as evidence and we'll
16 leave it to you in your, in your cross here to, to, you know,
17 resolve any issues with it. So, Mr. Lanzi, your witness.

18 MR. LANZI: Thank you. Mr., Mr. Brookes, how long
19 have you lived in, in your home?

20 MR. BROOKES: I purchased it back in 2013.

21 MR. LANZI: Okay. All right and, and you just became
22 president within the last year?

23 MR. BROOKES: Yes.

24 MR. LANZI: Got it, okay. You're, you're not, your
25 job for the state, you're not a real estate appraiser?

1 MR. BROOKES: No, sir. I'm actually a welder.

2 MR. LANZI: Okay and the ex, the exhibit that you
3 had, or the petition that you took around the neighborhood,
4 which I believe is Protestants' Exhibit 11, used the word
5 variances, is that correct? The exhibit we just showed you?

6 MR. BROOKES: Whatever this sign, whatever this
7 letter here says, this notice of assignment talking about this
8 hearing today, that's what I took around when I obtained these
9 signatures.

10 MR. LANZI: All right. If you, if we could, if we
11 could see Exhibit 11?

12 CHAIR: Mr. McCann, I think that's you.

13 MR. MCCANN: Yep, I can do that. There you go.

14 MR. LANZI: The, the top of this refers to variances
15 requested, is that correct?

16 MR. BROOKES: That's what it says there.

17 MR. LANZI: And, and I don't know if you heard
18 earlier today but, in fact, Petitioner has not been requesting
19 variances. You, do you understand the difference between a
20 variance and a special hearing?

21 MR. MCCANN: Objection. That's not true. And, and
22 he's testifying, number one. And he's asking a question at the
23 end, which is, it's not true and he can't testify.

24 MR. LANZI: Well, you, --

25 CHAIR: Maybe you can rephrase the question, Mr.

1 Lanzi.

2 MR. LANZI: All right. Mr. Brookes, do you
3 understand the difference between a zoning variance and a
4 zoning special hearing relief?

5 MR. BROOKES: Not really, I'm not an attorney.

6 MR. LANZI: Okay. So, on that, do you know the
7 different standard of proof for a zoning variance or a zoning
8 special hearing?

9 MR. BROOKES: Say that again, please?

10 MR. LANZI: Would, would you know the difference as
11 far as the standard of proof a Petitioner has to make with
12 regard to a zoning variance versus a special hearing?

13 MR. BROOKES: Well, first of all, sir, there's a
14 Petition in opposition to the relief and variances requested by
15 the Petitioner, I did not write that on, on those forms when I
16 took them out to my community.

17 MR. LANZI: Who wrote that?

18 MR. BROOKES: I, I'm not aware of that.

19 MR. LANZI: Was it your counsel?

20 MR. MCCANN: It's the assignment from the Board of
21 Appeals, it's the assignment notice.

22 MR. LANZI: That's not what people signed. What
23 people signed is variances requested by Petitioner, which is
24 not true.

25 MR. BROOKES: No, what they signed is this letter

1 here that I was showing you. This is what I took around when I
2 was --

3 MR. LANZI: Okay. That's fine.

4 MR. BROOKES: That was just a cover sheet. That's
5 all that was.

6 MR. LANZI: That's fine. I, I understand what you
7 did. Nothing further.

8 CHAIR: Mr. McCann?

9 MR. MCCANN: Yeah, I'm sorry to belabor this point.
10 Mr. Brookes, any doubt in your mind that each of the people
11 that signed the petition, which we've introduced as
12 Protestants' Exhibit 11, are opposed to this house, this
13 proposed house, being constructed on these two lots?

14 MR. BROOKES: There's no doubt in my mind that
15 they're opposed to this.

16 MR. MCCANN: Thank you. No other questions.

17 CHAIR: Mr. Lanzi?

18 MR. LANZI: Nothing further.

19 CHAIR: All right. You can step down, Mr. Brookes.
20 Thanks for your time today.

21 MR. BROOKES: Thank you.

22 CHAIR: Mr. McCann, your witness?

23 MR. MCCANN: Could I, that may be all we have, Mr.
24 McComas. But I'd like to confer with my clients real quick and
25 I could do that in a, in a quick phone call.

1 CHAIR: There's another, there's another person. I
2 don't know if you see the attendee list or not, Mr. McCann. I
3 can't pronounce, looks like (inaudible).

4 MR. MCCANN: Yeah, I don't know her, so if she wants
5 to testify, I'm not sure if I represent her or not but I can
6 find out. She may be --

7 CHAIR: Well, you have, take your time. You want to
8 make a call or go offline here for five minutes, is that
9 (inaudible), Mr. McCann?

10 MR. MCCANN: That's all I need, if not less.

11 CHAIR: Yep, perfect.

12 MR. MCCANN: Thank you.

13 (PAUSE)

14 CHAIR: Sorry about that, you guys. So, Mr. McCann,
15 any more witnesses or I'm sorry, is Mr. Lanzi back? Mr.
16 Sampson, are you back?

17 MR. SAMPSON: I'm back. Did you see the note from
18 Ms. Cannington?

19 CHAIR: No.

20 MR. SAMPSON: I will read it quickly. Ms., I have to
21 find it now, Ms. Bondar called.

22 CHAIR: (inaudible).

23 MR. SAMPSON: Sunny to relay that Ms. Bondar is not a
24 party to the Kestner, she is just watching.

25 CHAIR: Oh, okay.

1 MR. MCCANN: Great.

2 CHAIR: Mr. McCann, sorry, do you have any more
3 additional witnesses?

4 MR. MCCANN: I do, I have another short one. Her
5 name is Ruth Hauf, H-A-U-F, and she is --

6 CHAIR: Is she in the panel? I don't think she's on
7 the --

8 MR. MCCANN: No, she's, she's actually at Mr.
9 Brookes' house.

10 CHAIR: Oh, I see.

11 MR. MCCANN: So, she's going to hop on. Hopefully
12 she's going to do so shortly.

13 CHAIR: And what's her name, Mr. McCann?

14 MR. MCCANN: Ruth Hauf, H-A-U-F.

15 CHAIR: So, I guess you need her, to move her into
16 the participant, Mr. Brookes under participant, Mr. Sampson.

17 MR. MCCANN: Actually, it's Tom Brookes.

18 CHAIR: Yeah, Tom Brookes. You got to move him into
19 a participant, Mr. Sampson. So we can get Ms. Hauf to speak.
20 There we go, we've got her. There you go. Mr. Sampson, you
21 going to give the honors?

22 MR. SAMPSON: Yes. Ms. Brookes, please raise your
23 right hand. Do you swear and affirm under the penalties of
24 perjury, that the testimony you are about to give is true and
25 accurate to the best of your knowledge and belief?

1 MS. HAUF: Yes.

2 MR. SAMPSON: Please again state your name and
3 address for the record, spelling your last name.

4 MS. HAUF: My first name is Ruth, R-U-T-H, last name
5 is Hauf, H-A-U-F. I live at 13211 Powderdale Avenue, Middle
6 River, Maryland 21220.

7 MR. MCCANN: Okay. May I proceed?

8 CHAIR: You're welcome to sit down, Mrs. Hauf
9 (inaudible). You don't have to stand up, it looks like you're
10 standing.

11 MS. HAUF: I'm standing? No, I'm sitting. I'm
12 (inaudible). Am I in there now?

13 MR. MCCANN: Yeah, we can see you.

14 MS. HAUF: Thank you.

15 MR. MCCANN: Okay. Ms. Hauf, Powderdale Road, that
16 runs parallel to Cherwin, right?

17 MS. HAUF: Correct.

18 MR. MCCANN: And where on Powderdale roughly are you?

19 MS. HAUF: I am south of, the southwest of the area
20 that we're discussing today.

21 MR. MCCANN: So, how many houses away, that may be
22 the simplest way of putting it.

23 MS. HAUF: One street behind and two houses.

24 MR. MCCANN: Okay and how long have you lived there?

25 MS. HAUF: In that home, I've lived there for forty-

1 seven years.

2 MR. MCCANN: Okay, great. And what do you do for a
3 living?

4 MS. HAUF: I'm retired.

5 MR. MCCANN: Good for you. You've sat through the
6 testimony this afternoon, is that right?

7 MS. HAUF: Yes, sir.

8 MR. MCCANN: And you know about the, the proposed
9 house?

10 MS. HAUF: Yes, sir.

11 MR. MCCANN: Okay. Tell us what your concerns are,
12 Ms. Hauf.

13 MS. HAUF: Well, it's been my observation, I've lived
14 in this area for over fifty years, in this community and to my
15 rec, you know, recollection and to my observation, ninety-nine
16 percent of any permits in this area have been for
17 reconstruction (inaudible). So, not for a new home being built
18 on an empty lot. They've been reconstructions on lots that
19 have a house on them already. So, it's my concern of
20 overloading the community and the effect that will be on the
21 environment and on the neighbors, and on our property
22 (inaudible).

23 MR. MCCANN: Okay. So, this, this in your experience
24 is, would be very unusual?

25 MS. HAUF: Extremely.

1 MR. MCCANN: Okay. You were here for Mr. Brookes'
2 testimony and Mr. Dawson's testimony about their observations
3 on the subject property and Mr. Kestner's use of, of his
4 properties. Do you have any observations in that same regard
5 that you --

6 MS. HAUF: Well, when I retired six years ago, I
7 would take my dog for a walk in that area every morning. And
8 often in the afternoons around school time. So, I frequently
9 saw the family utilizing the area as anyone would, as
10 (inaudible).

11 MR. MCCANN: Okay. In the same manners that Mr.
12 Dawson and Mr. Brookes described?

13 MS. HAUF: Yes.

14 MR. MCCANN: Anything else that you can think of?

15 MS. HAUF: Not that I'm, I can think of. I think
16 that pretty much, between the testimony of all of us, I think
17 we've covered everything (inaudible) concerns.

18 MR. MCCANN: Okay, thank you. No other questions.

19 MS. HAUF: Thank you.

20 CHAIR: Mr. Lanzi, your witness.

21 MR. LANZI: Ms. Hauf, before you retired, or even
22 when you retired, were you a licensed appraiser?

23 MS. HAUF: No, sir.

24 MR. LANZI: And if you owned two lots that you were
25 counting on to build a house on, would you, would you still

1 want to build a house just because others didn't --

2 MS. HAUF: I'm sorry, I don't understand your
3 question.

4 MR. LANZI: If you owned a couple lots that you
5 intended to have a house built upon.

6 MS. HAUF: Um hm.

7 MR. LANZI: Would you be proceeding with building a
8 house, whether a new house or a reconstruction?

9 MS. HAUF: I don't believe I could even answer that
10 question because I don't have that experience.

11 MR. LANZI: So, I guess the question would be, do you
12 believe a person that owns property has the right to build on
13 it, as long as it meets the requirements of the County?

14 MS. HAUF: I absolutely support families building
15 property and living in our community.

16 MR. LANZI: And your observations walking around the
17 lot, around the neighborhood, and specifically, the Kestner
18 property, you did not observe, there were no permanent
19 structures on the two lots in question that are next to the
20 Dawson property, is that correct?

21 MS. HAUF: Other than the horseshoe pit, (inaudible).

22 MR. LANZI: (inaudible). I have nothing further.

23 CHAIR: All right. Mr. McCann?

24 MR. MCCANN: Nothing else.

25 CHAIR: All right --

1 MR. MCCANN: Thank you.

2 CHAIR: I'm sorry, go ahead, Mr. Lanzi.

3 MR. LANZI: Two things. I don't know whether the
4 Board would be willing to allow me --

5 CHAIR: (inaudible).

6 MR. LANZI: (inaudible).

7 CHAIR: Okay. Mrs. Hauf, you're good to go. Thank
8 you for your time this afternoon.

9 MS. HAUF: Thank you.

10 CHAIR: All right. Mr. Lanzi, I think you have some
11 other, some things you're going to raise, right (inaudible)?

12 MR. LANZI: Yeah. Two, two things. One, how the
13 Board would want to handle it, I don't know whether the Board
14 has the rec, well, the Board should have the record from both
15 cases below at the ALJ level.

16 One of them, I'll call it Kestner one, that deals
17 with the merger issue. There's been a lot of testimony clearly
18 geared towards raising merger by the Protestants. And that
19 issue was put to rest by the, the Judge in that case. It was
20 not appealed, it is a final decision. That's A.

21 B, in the, in the decision itself, again, I wasn't at
22 that hearing, there's testimony, or evidence that's in the
23 decision where it says, evidence Mr. Dawson testified, of
24 course, under oath, that there's been (inaudible) use of those
25 lots since he moved in.

1 So, I could either call him back and question that or
2 we can accept, you know, that, that decision and that Court
3 Order will be part of the record.

4 CHAIR: A couple things, Mr. Lanzi. You're going to
5 have to slow down and distill it for me a little bit. You went
6 awfully fast, and you gave me two opt, you gave the, the Board
7 here two options. So, you're going to have to slow it down for
8 me.

9 MR. LANZI: Okay. The first would be, to me, I
10 object to all testimony and any consideration of the, of the
11 zoning merger issue. That's been decided, it was not appealed,
12 it's a final decision. That's the first part. If you want to
13 address that first, then we'll go to the second.

14 CHAIR: Mr. McCann, what's your, what's your view on
15 this?

16 MR. MCCANN: Yeah, I, I, I'd be happy to respond.
17 Are we, I didn't know I was done my case. But are we --

18 CHAIR: I was kind of thinking the same thing too,
19 Mr. McCann.

20 MR. MCCANN: I don't know what we're doing here.

21 CHAIR: I thought the same thing and if your answer
22 is, because some of this sounds a little bit, and Mr. Lanzi,
23 let me just ask you, Mr. McCann, do you have any more witnesses
24 to call?

25 MR. MCCANN: I do not, so (inaudible).

1 CHAIR: (inaudible) now the question is, Mr. Lanzi, do
2 you have any rebuttal witnesses that you'd like to call and
3 what I think you're doing, Mr. Lanzi, is you're trying to set
4 up the scope of your rebuttal here (inaudible) questions here,
5 is that, is that the nature of it?

6 MR. LANZI: Yes.

7 CHAIR: Okay and so, you want to know whether or not
8 the, the, the, the fact that it was moot down at the lower
9 court and that they had been separated and the appeal was only
10 for the special exception, that that's the only things that we
11 should consider at the Board, is that the nature of your
12 question?

13 MR. LANZI: The first case was the denial of the
14 variance that Kestner appealed, okay? I appealed it on their
15 behalf.

16 CHAIR: Okay.

17 MR. LANZI: In that first case, the Judge ruled that
18 there was no merger. That merger, in his decision mentioned
19 Mr. Dawson's testimony. That issue was not appealed by anyone.
20 So, it's a final decision.

21 My position is the Board should not consider this
22 argument, shouldn't consider that testimony. I don't know
23 whether the Board is going to be asking for memos, probably
24 are. Hopefully not, but.

25 CHAIR: I think it's pretty safe to say that we are,

1 and I think that this is kind of grounds for those kinds of
2 discussions. But go ahead, Mr. Lanzi.

3 MR. LANZI: Okay.

4 MR. EVANS: Now, I, I did look at Mr. Lanzi's
5 Petition appealing the first case and there is no question in
6 the world that he did not appeal the merger finding. So, that
7 is final, as far as I can see that's, that's final. I mean,
8 there's, you know, that's done and over. I, I, I, right?
9 Isn't that what you're saying, Mr. Lanzi?

10 MR. LANZI: Yes, and if that's the case, there won't
11 be any need for rebuttal.

12 MR. EVANS: Well, I mean, I'm not ruling for the
13 Board, I'm just saying, I understand your position.

14 MR. LANZI: Yes, that's my position.

15 MR. EVANS: All right.

16 MR. LANZI: And, and that doesn't even get, get to
17 the burden of proof on merger that we have, you know, temporary
18 structures. But in any event, that would be my position. It
19 was a final decision not appealed by the community and they
20 could have.

21 MR. EVANS: And they could have, yes, and they
22 didn't.

23 MR. LANZI: Right.

24 CHAIR: And Mr. McCann, your, your, your view on
25 this?

1 MR. MCCANN: A, a whole lot of things, I guess --

2 CHAIR: I'm not sure who, there's somebody whose got
3 their mic that we can hear you. I'm not sure who that is.

4 MR. MCCANN: Tom, John, if you guys could mute
5 yourselves, please? Great, thank you.

6 CHAIR: Okay. You got it.

7 MR. MCCANN: Okay. I, I do see a bit of irony in all
8 this in that, you know, Mr. Lanzi files, juggles two cases like
9 he's, he's done in this case, and I understand he may not have
10 been involved below in the first case.

11 But relying upon, what I guess, is a res judicata
12 argument but, you know, when he filed two Petitions, certainly
13 could have filed, you know, regardless of whether he
14 represented, I didn't represent Mr. Dawson in the first hearing
15 either.

16 But certainly, could have and should have filed a
17 304.1 Petition in, in, in the first case. But the bottom line
18 is, he appealed that. Any appeal would have been de novo. In
19 my experience, the Board considers and would have considered,
20 or considering it now, any and all issues that could have been
21 raised.

22 In fact, in Judge Mayhew's decision in this case, the
23 2020 case, he said that, this is in footnote one, he's
24 referring to the first Petition. He says, in my view, this
25 Petition would be barred by res judicata but for the fact that

1 my previous Order was not a final judgment. So, in ruling, he
2 certainly believed (inaudible).

3 And I just think, I find it, number one, I find it
4 ironic that we're, we're in this position. But also, I don't
5 think that we're precluded from raising lot merger as an issue
6 because that decision was, in fact, not final. And the fact
7 that we did not take an explicit appeal of that issue doesn't
8 change anything.

9 And I would also say that, you know, there's some,
10 304.1 (inaudible) I think we could all agree on that. And
11 304.1 and lot, and lot merger in many ways are, are one and the
12 same. I mean, they are, I think I would, I would even go so
13 far as to say 304.1 is the statutory cod, you know,
14 codification of lot merger. That's certainly been my
15 understanding on past cases. And even argued lot merger case
16 law in past cases. So, --

17 MR. EVANS: Are you saying that, are, are you, are
18 you saying that, you're using the word merger in the sense that
19 lots, Lot 157 for example, would be deemed part of 155 and 56
20 so that the five-foot requirement could have been met if it had
21 been subdivided (inaudible), is that what you're saying?

22 MR. MCCANN: Yeah, I think, I think that's the same
23 analysis, whether you're looking at 304.1 or lot merger.

24 MR. EVANS: Um hm.

25 MR. MCCANN: It's the same. And as I said, I would,

1 I would go so far as to say it's a codification of, of the lot
2 merger and there, there are, I had an Anne Arundel case where
3 there was a statutory provision that was a codification of a
4 common law, it went to the Court of Appeals on other issues.

5 But, so, I think it's absolutely before you. And
6 that nothing that Mr. Lanzi has said changes that.

7 CHAIR: So, so, Mr. Lanzi, then Mr. McCann, I mean,
8 Mr. Evans, what, what are your thoughts here? My thoughts are
9 is let Mr. Lanzi make the, the arguments here for, and then he
10 can make their arguments in their briefs and then memos that
11 they, they submit here at the end. That's my thought, Mr.
12 Evans. What do you think?

13 MR. EVANS: Yeah, I mean, I, I, I, I don't want to
14 pre-judge this and so I guess I would like, I mean, I, it
15 sounded to me like Mr. Lanzi had the high side of this
16 argument, but I don't want to foreclose anyone from making any
17 (inaudible) --

18 CHAIR: Yep.

19 MR. EVANS: -- because, you know, first of all, I, I
20 make a lot of mistakes. And I would, so if, you know, Mr.
21 McCann can demonstrate somehow that, I mean, it may be that
22 he's saying that it's not so much merger as it is (inaudible)
23 somehow affects the developability of these lots. I, I mean, I
24 get that. But anyway, I'm happy to have it briefed.

25 CHAIR: Okay. But Mr. Evans, I think also Mr. Lanzi

1 though, we should let him put on his, his position as if,
2 anticipation of that as a, as a, since Mr. McCann has raised it
3 here. I think Mr. Lanzi should put on the, the facts to help
4 him in his, his argument as well.

5 MR. EVANS: I think that's correct as well, yes.

6 CHAIR: Yeah, and Mr. Sampson, do you agree with us?

7 MR. SAMPSON: Yes, I agree, absolutely.

8 MR. MCCANN: And what, what is it that we're doing?
9 I, I missed --

10 CHAIR: Well, I, I think on Mr. Lanzi's rebuttal, Mr.
11 McCann, is, he wants to put on some evidence to, that will help
12 him, you know, respond to your, your claims on cross.

13 MR. MCCANN: Well, he's entitled to that, obviously,
14 to put on a rebuttal case. I'm just not sure how any of that
15 relates to what we just spoke about.

16 CHAIR: Well, I think Mr. Lanzi has some evidence
17 that he held back, and he wants to now present it. (inaudible)
18 speak for you, Mr. Lanzi, but that's my understanding of what
19 you said to us.

20 MR. LANZI: Well, if I understand what, what is
21 occurring, the issue of zoning merger will be allowed to
22 continue, it will be briefed, it will be decided by you all.

23 CHAIR: Yeah.

24 MR. LANZI: And you're going to allow me to call a
25 witness if I need to.

1 CHAIR: Yeah.

2 MR. LANZI: To maybe address that issue on my end.

3 CHAIR: Yes

4 MR. LANZI: Which, which leads me to that, the second
5 question I, I raised in the beginning when I was talking very
6 fast and that is I can, I can call Mr. Dawson back to ask him
7 about his testimony in the first hearing where he testified
8 under oath there was no activity since he moved in. And now
9 he's testifying as to all kinds of activities. So, we can
10 either do that and then I can call my own witnesses or --

11 MR. MCCANN: Listen, I, I don't have a problem with
12 that. But it, again, we're arguing that the case, the old
13 case, I mean, that, that's a question that doesn't, that isn't
14 dependent on this lot merger.

15 Mr. Lanzi clearly could have asked that question of
16 Mr. Dawson as, I assume he's going to make the point that it's
17 some sort of prior inconsistent statement by a party. But
18 that, that, that has nothing to do with the lot merger versus
19 304.1.

20 It's, it's a, I don't understand the connection,
21 other than it happened to be related to the factual matter to
22 the lot merger question. And maybe I'm talking in circles a
23 little bit, but I don't, I don't, I don't understand why it
24 couldn't have been raised earlier.

25 All that said, I don't have a problem with Mr. Lanzi

1 asking Mr. Dawson whether he said that or not.

2 CHAIR: Yeah, how about if we do that, Mr. McCann?
3 Mr. Lanzi, I, you may want to address what you had (inaudible)
4 multiple questions, I think, we may only be answering one of
5 them. I think your question is, you'd like to call Mr. Dawson
6 and then you also may want to call Mr. Doak afterwards, I
7 suspect. Is that what you're getting to?

8 MR. LANZI: I can call Mr. Dawson, then I'm, then I'm
9 going to need to call my client.

10 CHAIR: Yeah.

11 MR. LANZI: Which would take two minutes and then we
12 can decide whether I'm even going to have any more witnesses.

13 CHAIR: Okay. Fair enough. So, so how about Mr.
14 Dawson, are you still available? You may have to move him
15 over, Mr. Sampson.

16 MR. SAMPSON: He should be there.

17 CHAIR: There's Mr. Dawson. Do we need to swear him
18 back in, Mr. Sampson?

19 MR. SAMPSON: I, I don't think so, but I will --

20 CHAIR: (inaudible) I think we're good.

21 MR. SAMPSON: Yeah, he's under oath.

22 CHAIR: All right, Mr. Lanzi. Your witness.

23 MR. LANZI: Okay. Mr. Dawson, earlier in your direct
24 testimony you testified that since you've been living there,
25 you observed the Kestner family utilizing the entire property,

1 I believe you said that he cut the entire lawn, is that
2 correct?

3 MR. DAWSON: That's correct.

4 MR. LANZI: Okay. But you also indicated that there
5 were some temporary structures, specifically a swing set and I
6 believe you said a fire pit were, were in the lot closest to
7 you, is that correct?

8 MR. DAWSON: Yes, did you hear me?

9 CHAIR: Yes.

10 MR. LANZI: Okay. Now, I guess my question is, in
11 the very first case, and I was not involved in that case, but
12 when you were before Judge Mayhew you testified that you
13 believe those lots were the backyard of the house, I'm quoting,
14 at 6903 Gunder and there had not been any use of the lots, at
15 least since you had moved in.

16 MR. MCCANN: Hold on, hold on. That's not what he
17 said. That's what Judge, that's what the, the opinion says.
18 So, just make that distinction, please, in your question.

19 MR. LANZI: It says Mr. Dawson testified --

20 MR. MCCANN: I know, but that's still, that's still
21 what the Judge said.

22 MR. LANZI: All right. Mr., Mr. Dawson, did you, in
23 fact, testify in the first hearing under oath that there had
24 not been any use of those lots since you moved in?

25 MR. DAWSON: From what I recall, it was, the way I

1 took the question was since he moved out. And if I recall
2 properly, I said that no one has used the lot since Mr. Kestner
3 moved out and he even has a grass cutting company come in to
4 maintain that property.

5 MR. LANZI: Okay.

6 MR. DAWSON: That's how I recall it.

7 MR. LANZI: All right and, and since then, you've
8 been, you discussed your testimony with counsel with regard to
9 the legal issue called zoning merger, is that correct?

10 MR. MCCANN: When? Wait a minute, hold on. Since --

11 CHAIR: Mr. McCann, say you object or --

12 MR. MCCANN: I'm sorry, objection. Object.

13 CHAIR: On, on what basis, Mr. McCann?

14 MR. MCCANN: Because the question assumes, well, he
15 has the right to ask whether he's had any communications with
16 me. I think the question, to be fair, needs to be more
17 specific about when. And, and, and once it, once it is asked
18 properly, I would object under attorney/client privilege. I
19 can represent to this Board that I've had no communications
20 with Mr. Dawson since this hearing started --

21 MR. LANZI: And I'm not implying that you did.

22 MR. MCCANN: That's certainly the way I heard the
23 question, so.

24 MR. LANZI: No, --

25 CHAIR: Mr. Lanzi, maybe you can rephrase the

1 question along the lines of Mr. McCann's concerns and --

2 MR. LANZI: Yes.

3 CHAIR: -- and I think we can move past this one,
4 because I didn't think you were going down the path that Mr.
5 McCann (inaudible) --

6 MR. LANZI: No, I would never do that. I've known
7 Mr. McCann too long and have too much respect. My, my purpose
8 of the question was once, once you hired counsel, once counsel
9 was hired for this appeal and you were, and I'm not asking you
10 to provide me any attorney/client privilege, but once your
11 strategy was determined, you, you seemed to clarify your memory
12 about how that lot next to you was used. I, I just, I just
13 wonder how you didn't understand it back in, in Kestner one and
14 you now understand it in, in this case (inaudible) --

15 CHAIR: Can you, can you break that down to a, a, a
16 question that Mr. Dawson could, could, can answer? I think
17 you're asking a couple questions in there and, and I myself,
18 I'm not sure how to answer that one.

19 MR. LANZI: I'll ask it this way. Would, would you
20 even have brought up the fact that there was a swing set or
21 fire pit if Mr. McCann had asked you?

22 MR. MCCANN: Objection. Objection.

23 CHAIR: Yeah, I'm going to sustain that, Mr. Lanzi.
24 I, I think you're asking for attorney/client privilege
25 communications.

1 MR. LANZI: Okay. I'll tell you what, I'm just, I'm
2 just going to let the, since the decision of the first ALJ case
3 is in, in the record, I will just let that stand for itself and
4 then I will have no more questions here. But I would ask for
5 three minutes for me to call my client.

6 CHAIR: Let me just ask Mr. McCann if he has any,
7 any, any rebuttal here. Mr. McCann, do you have any follow-up
8 questions?

9 MR. MCCANN: No, I think he explained it perfectly.
10 Thank you.

11 CHAIR: Mr. Dawson, thank you again for your service
12 and thank you for your time.

13 MR. DAWSON: Thank you.

14 CHAIR: And, and Mr. Lanzi, you want a few minutes,
15 right? Because we're still in your rebuttal phase of the, of
16 the case here, so.

17 MR. LANZI: Five minutes.

18 CHAIR: Yep, take your time.

19 MR. LANZI: Thank you.

20 (PAUSE)

21 CHAIR: Mr. Lanzi, are, are you ready to proceed?

22 MR. LANZI: I am, I am ready to proceed.

23 CHAIR: All right. Mr. Evans, Mr. Sampson, you guys,
24 okay. All right. So, Mr. Sampson, I mean, Mr. Lanzi, we're,
25 we're now at your, you have (inaudible) rebuttal case. You may

1 have additional witnesses, or you want to give us an update?

2 MR. LANZI: Okay. I'm not going to call rebuttal on
3 the merger issue. I will just argue the closing in my brief.
4 But I do want to call Mr. Doak on one very limited issue. If
5 he, if he can be connected?

6 CHAIR: Mr. Sampson, you got the honors.

7 MR. SAMPSON: You're still under oath, Mr. Doak.

8 MR. DOAK: Sir.

9 CHAIR: Mr. Evans, I think you better pull down the
10 shade. I mean, I'm looking in your video and all I see is
11 blinding sun.

12 MR. EVANS: Well, okay.

13 CHAIR: I have enough problems seeing. But I'm
14 getting blinded. I didn't think it was possible through a
15 video.

16 MR. EVANS: Any better?

17 CHAIR: That's a little better. You (inaudible) on
18 the thing.

19 MR. MCCANN: He's looking very angelic.

20 CHAIR: Yeah, (inaudible).

21 MR. EVANS: (inaudible).

22 CHAIR: All right. We're good, Mr. Evans.

23 MR. EVANS: I, I see what you mean, but you know.
24 That's as good as I can do, I'm sorry.

25 CHAIR: Yeah, it looks like a vision of ET. All

1 right. Mr. Lanzi, your, your case. All right and Mr. Sampson,
2 you've got him over, right, Mr. Doak is in as a participant
3 now? He can (inaudible).

4 MR. SAMPSON: Correct.

5 CHAIR: All right. Mr. Lanzi, go, proceed, please.

6 MR. LANZI: Thank you. All right. Mr., Mr. Doak, if
7 you recall earlier in the day, I reserved the right to call you
8 back regarding some of the property owners in this community.
9 Do you recall that?

10 MR. DOAK: Yes, sir, I do.

11 MR. LANZI: And did you have an opportunity to do
12 some checking? And I don't know if you need me to show the
13 exhibit or you can just testify.

14 MR. DOAK: No, I need you to show, please, it would
15 have been twelve, eleven, twelve.

16 MR. LANZI: Okay, let me find it. A little slow. I
17 don't think this is it. So, --

18 MR. DOAK: It's like six or seven.

19 MR. LANZI: Yeah, let me, let me get, let me go back.

20 MR. DOAK: It's one of the new ones, the later ones.

21 MR. LANZI: Got it. Okay. I think this is it. That
22 is, I believe, twelve.

23 MR. DOAK: If you would, please, go to the next one?
24 That one, please.

25 MR. LANZI: This one?

1 MR. DOAK: Yes, and if you would please --

2 CHAIR: We're looking at Petitioner's Exhibit 12.

3 MR. DOAK: Yes, sir. If you could please come out a
4 little further.

5 MR. LANZI: Okay.

6 MR. DOAK: Mr. McCann brought out the point that some
7 of these houses were built on some of the lots that I looked
8 at, that were only fifty feet, the houses were built prior to
9 the zoning regulations. And he was correct, and it was a good
10 thing to point out.

11 But also, he didn't look at all of them and so, in
12 turn, the ones that are, let's just start with the ones on our
13 street and let's start where the A is in Avenue.

14 These are all on fifty foot two lots and that one in
15 front of you is built in 2010. Then, and this is all based on
16 the, the SDAT. The next one --

17 CHAIR: I'm sorry, Mr. Doak. What side of the street
18 is on, because Mr. Lanzi I think is using the cursor. Are you
19 talking about on the side, on the side, the side of the street
20 where the subject property is or the --

21 MR. DOAK: No, sir, the other side.

22 CHAIR: All right.

23 MR. DOAK: You see where --

24 MR. EVANS: Can you tell, Mr. Doak, whether these are
25 new, new buildings or whether these are reconstructions?

1 MR. DOAK: No, sir. It's whatever, however SDAT,
2 whatever their criteria is for placing on there.

3 MR. EVANS: Okay.

4 MR. DOAK: In their reports. So, Lot 32 and 33
5 you'll see there, that was built in 2010. Mr. Lanzi brought,
6 or Mr. McCann brought out 30 and 31, that was in twenty-nine.
7 Lot 26 and 27 was built in 2020, and then Lot 24 and 25 was
8 back, built in 2014.

9 If we could go down a little bit, down on that
10 exhibit, please. The ones at the corner of Cherwin and
11 Birdwood, which would be lot number 181 and 182, that was built
12 in 1980.

13 MR. MCCANN: I'm sorry, which one?

14 MR. DOAK: I'm sorry, 181 and 182.

15 MR. MCCANN: Okay, thank you.

16 MR. DOAK: It's right there. Thank you, Mr. Lanzi.
17 And then the one next to it was built in 1980. And then, if we
18 go on down the road a little bit, the next one, 180, 198 and
19 199 was built in '76, 1976. And then, the next one was built
20 in 1929.

21 So, and then if we go up to, if we go up to Gunder,
22 straight across from, which would be lot number 61 and 62, that
23 was 1924. But we go down to 70 and 71, that was 2012, and then
24 the one next to it was 2005.

25 So, those were fifty-foot-wide lots with houses newer

1 than what was in place as of, when the zoning regulations came
2 in.

3 MR. LANZI: Okay. Thank you, Mr. Doak.

4 CHAIR: Mr. McCann, any rebuttal, or cross?

5 MR. MCCANN: No, but I'm concerned that there's no
6 sufficient foundation for the Board to take heed of that. I
7 can call my witness back, who I'm texting with now, and she can
8 tell you whether they're new or reconstruction. So, I think
9 either, I think the Board needs to disregard that testimony
10 because Bruce, for example, doesn't know whether they're new
11 or, he acknowledged that --

12 MR. LANZI: I, I disagree -

13 (EVERYONE TALKING AT ONCE)

14 CHAIR: Let Mr. McCann finish, yeah, sorry.

15 MR. MCCANN: He, he explicitly acknowledged that he
16 did not know whether these were new homes or reconstruction.
17 He said that. On that, on that basis, it, it would be
18 speculation for this Board to rely upon his testimony that
19 these are sub, I mean, all this is irrelevant anyway.

20 It's very, you know, I know, Mr. McComas, I, I'm well
21 aware of the fact that the Board takes things for the weight
22 they're given but when they're not supposed to be given anyway,
23 that, that always concerns me. Because I can't think of a
24 single fact, you know, the definition of evidence is whether or
25 not the evidence is, would make a, a fact of consequence more

1 likely or not, or not, you know.

2 And in this case, the fact that there's something
3 approved down the street, has no bearing on the standards for
4 which the Board is here today. So, I'm having a real problem
5 with the relevance in the first place.

6 Number two, I think Bruce's testimony is truthful,
7 but --

8 MR. EVANS: Mr. Doak's, Mr. Doak's testimony.

9 MR. MCCANN: I'm sorry, Mr. Doak's testimony, I don't
10 mean to be informal. But I, I don't think there's sufficient,
11 sufficient basis for the Board to accept it.

12 But if the Board does accept it, I would like to put
13 on my witnesses who will testify whether each of these lots
14 that he just identified are, these, these are folks that live
15 in the neighborhood, of course, whether these are new
16 construction or reconstruction.

17 CHAIR: Mr. Lanzi, do you have a response to that?

18 MR. LANZI: Yes. The, the purpose, or one of the
19 purposes of the testimony was to show that there are houses,
20 whether they're new houses or reconstruction houses, but they
21 are houses on two lots, as compared to three lots, four lots,
22 five lots. That is the limited purpose of this testimony and I
23 think it's relevant to the Board because we're trying to build
24 a house on two lots.

25 And there was other testimony, or questions, trying

1 to indicate that they needed to be on more than two lots. And
2 that's not the case. And that's the limited purpose of Mr.
3 Doak's testimony.

4 MR. MCCANN: But that doesn't, that doesn't answer
5 the question of why they're relevant. He hasn't answered that
6 question. That begs the question. He basically put the
7 question back to you, Mr. McComas.

8 CHAIR: Yeah, I, the way that I look at it is it's
9 relevant for the (inaudible) that Mr. Lanzi brought here is
10 that, you know, whether fifty or fifty-five feet. I think
11 that, I look at it as, I mean, my, my, my initial reaction here
12 is going to be, I'm going to overrule your objection, Mr.
13 McCann.

14 I, I, I think it comes in. I think that it gets the
15 weight that we're going to give to it. I, I, I look at it as
16 Mr. Doak just testified that there, you know, that, and I, and
17 we've heard people say, or we've heard Mr. Doak say he doesn't
18 know whether they're new construction. But it's given you a
19 couple things.

20 One, a history of, of when structures were built.
21 Some of them sound like they've been around pre, pre
22 implementation of the laws and then other people, as Mr. Lanzi
23 just said, which is, there are ones that just have two
24 properties and they only have fifty feet. And I think it is
25 part of their case.

1 So, we're going to let it in, Mr. McCann. And Mr.
2 Lanzi, go ahead, you want to, any more questions, Mr. Lanzi?

3 MR. LANZI: No, nothing further of Mr. Doak.

4 CHAIR: Mr. McCann, do you have any rebuttal here?

5 MR. EVANS: Before you answer that, Mr. McCann, Mr.
6 Lanzi stipulated that he doesn't know whether these are new or
7 reconstructed houses.

8 CHAIR: Yeah.

9 MR. EVANS: So, he's not trying to make the case that
10 these are new.

11 CHAIR: Yeah.

12 MR. EVANS: And so, --

13 CHAIR: And I've heard Mr. Doak testify he doesn't
14 know that.

15 MR. EVANS: And he doesn't know that, so if that, if
16 that affects whether you want to call anyone or not, you know.

17 MR. MCCANN: But, but then how is it possibly
18 relevant?

19 MR. EVANS: I don't know.

20 CHAIR: Well, I think that's the --

21 MR. EVANS: You'll have to, that's something to argue
22 in, in the, in, in memos.

23 MR. MCCANN: Yeah. Well, listen, I, you know, I can
24 put in an affidavit that, from my witness, that, that says
25 whether based on her having been there for forty-nine years or

1 whatever she said, whether each of the houses identified by Mr.
2 Doak --

3 CHAIR: All right, Mr. McCann, I'm sorry, go ahead.

4 MR. MCCANN: Whether they're new, new houses or
5 reconstruction. I could call her as a witness. But if it's
6 relevant, if you guys deem it relevant, then I should be able
7 to put, put her on.

8 CHAIR: Yeah. (inaudible) you can't put her on and,
9 Mr. McCann, as you know from being in front of this Board is we
10 (inaudible) a lot of info, I mean, a lot of this is coming
11 straight out of SDAT so, you know, they're public records that
12 this, this, this Board lets in on a pretty regular basis.

13 Even when, in many cases, when we let it in, it's, to
14 me, totally irrelevant and, and the, the people on the, we, we
15 give it the, the weight that it, it deserves when we evaluate
16 and make decisions here.

17 MR. MCCANN: Okay.

18 MR. EVANS: But we don't want to talk you out of your
19 case.

20 CHAIR: We don't want to talk you out of your case,
21 that's a good point, Mr. Evans.

22 MR. MCCANN: Yeah, I mean, I'm sorry for hesitating.

23 CHAIR: Well, you can call Mrs. Hauf back if
24 (inaudible).

25 MR. MCCANN: Yeah, I, I'm going to do that. I don't

1 --

2 CHAIR: No one is saying not to do that, Mr. McCann.

3 MR. MCCANN: Okay. I appreciate, I appreciate your,
4 your, your patience and your accommodation. I, I will, I am
5 going to call her back real quick and go through these.

6 MR. EVANS: Okay.

7 CHAIR: But before we do that, Mr., Mr. McCann, Mr.
8 Lanzi, were there any other witnesses that you wanted to do,
9 let's go through your, your, your --

10 MR. LANZI: Depending on what Ms. Hauf testifies, I
11 may or may not call Mr. Kestner.

12 (EVERYBODY TALKING AT ONCE)

13 CHAIR: Fair enough, Mr. Lanzi.

14 MR. LANZI: Okay.

15 CHAIR: Mr. Brookes, I mean, Mr. Doak, you can step
16 down. Mrs. Hauf, you can, you can come back on the stand here.
17 And maybe you want to keep, whoever is sharing that, that --

18 MR. MCCANN: Can I share, Mr. Sampson?

19 MR. SAMPSON: Yeah, one second here.

20 MS. HAUF: Am I muted?

21 CHAIR: Mrs. Hauf, we here you.

22 MS. HAUF: Okay. I'm here.

23 CHAIR: You got to wait until Mr. Sampson, he's
24 trying to pass the token.

25 MR. MCCANN: Thank you. Thank you, Mr. Sampson.

1 MR. SAMPSON: You're welcome.

2 MR. MCCANN: Okay. I'm going to share, one second.
3 Okay. I'm going to share my exhibit because it's prettier than
4 Mr. Doak's.

5 CHAIR: It's upside down for us old people. There
6 you go.

7 MR. MCCANN: Yeah. Okay and it'll help us identify
8 which ones I did not address in cross with Mr. Doak,
9 previously. So, Ms. Hauf, you there?

10 MS. HAUF: Yes, I am, can you hear me?

11 MR. MCCANN: I can. Yeah, thank you.

12 MS. HAUF: Okay, all right.

13 MR. MCCANN: So, if you need a, I have another
14 exhibit that has, rather than lot numbers, has street numbers
15 and we can, that may be easier for you. But let me, we're
16 going to, you just saw what (inaudible) --

17 MS. HAUF: (inaudible) will be fine, we're not, I'm
18 not a professional, so we're just going by the best I can
19 recollect.

20 MR. MCCANN: Okay and again, the question is, I'm
21 going to start with these lots that Mr., Mr. Bruce, Mr. Doak
22 had identified, and I tried to catch him as he was writing it
23 down, I think he began with 32 and 33. Do you see those lots
24 there?

25 MS. HAUF: And that is on Cherwin?

1 MR. MCCANN: It's on Cherwin, do you see that, where
2 we are?

3 MS. HAUF: Yeah, Cherwin.

4 MR. MCCANN: Can, can you tell us whether or not, are
5 you familiar with the house that's there?

6 MS. HAUF: The map won't let me see Cherwin.

7 MR. MCCANN: Oh, the, well, --

8 MS. HAUF: There, bring it down a little bit more.

9 MR. MCCANN: There is no Cherwin on here, but this is
10 Cherwin Avenue.

11 MS. HAUF: It stops at Gunder on here.

12 MR. MCCANN: I'm not asking you what the street name
13 is. I'm asking you whether or not you recognize where I am
14 with my pointer here, Lots 32 and 33. Do you recognize that as
15 being --

16 MS. HAUF: I see it, yes. Those, those are
17 reconstructions.

18 MR. MCCANN: Okay. How do you know that?

19 MS. HAUF: From being down here for fifty years.

20 MR. MCCANN: Okay. Do you know who lives there?

21 MS. HAUF: I can't tell you the names, but I know
22 that was Henning's house.

23 MR. MCCANN: Okay and just continue on. I think Mr.
24 Doak went around to Lots 26 and 27, which are, gosh, I was too
25 busy writing it down, I didn't follow where he was going.

1 Let's just go to these, do you see where I'm pointing on Gunder
2 Avenue?

3 MS. HAUF: Yes, those, those, those flooded out and I
4 know for a fact they're reconstruction.

5 MR. MCCANN: Okay. This would be Lot 7, Lot 70, 71
6 and 72 and 73?

7 MS. HAUF: Correct.

8 MR. MCCANN: Okay and do you know how --

9 MS. HAUF: That area flooded.

10 MR. MCCANN: And when you say re, reconstruction, do
11 you know when approximately they were? Well, strike that.
12 When you say, when you say, when I'm asking --

13 MS. HAUF: Isabel, during, during Isabel. What year
14 was that?

15 VOICE: That's a new house.

16 MS. HAUF: That house, there were homes there and
17 people were living there, and they flooded out during Isabel,
18 and they rebuilt.

19 MR. MCCANN: Okay.

20 VOICE: They rebuilt.

21 MS. HAUF: But there were people living there and
22 have been for generations.

23 MR. MCCANN: Okay, all right. How about these lots
24 right on Pow, you live on Powderdale, correct?

25 MS. HAUF: I do.

1 MR. MCCANN: So, these Lots 206 and 207, do you see
2 them?

3 MS. HAUF: That's exactly where I live.

4 MR. MCCANN: That's where you live, okay. And when
5 was your house constructed?

6 MS. HAUF: Our home was, there was a home on it, and
7 we bought it, they, they rebuilt, they put a new home and tore
8 down the old one and that would have been in 1977.

9 VOICE: There you go.

10 MR. MCCANN: Okay and then, let's go to these Lots
11 198 and 199 on Birchwood. Are you familiar with that property?

12 MS. HAUF: Yes. That is, they've been there since
13 the seventies or eighties. One of them was a rebuild and one
14 was, I believe, a new build. I don't re, the one on the left
15 would be a, a new build.

16 MR. MCCANN: Okay and the one on the right?

17 MS. HAUF: Was a rebuild of an older home and they
18 both went up approximately the same time in the, like eighties.

19 MR. MCCANN: When you say the one on the right, are
20 you referring to 240 and 241?

21 MS. HAUF: Correct.

22 MR. MCCANN: Okay. What about these lots on the
23 corner of Cherwin and Birdwood? That is, Lots 181 and 182?

24 MS. HAUF: Those were definitely new homes.

25 MR. MCCANN: On all four of these lots or --

1 MS. HAUF: On all four of them.

2 MR. MCCANN: There's two homes there?

3 MS. HAUF: Because there, there's two homes there and
4 they had to get a variance and I am guessing that was in the
5 late seventies.

6 MR. MCCANN: Okay and when were they re, rebuilt, do
7 you know?

8 MS. HAUF: No, they, they were new homes. They,
9 they, that was a wooded lot, and they are new homes.

10 MR. MCCANN: Oh, they are new homes. Okay, both of
11 those?

12 MS. HAUF: Yes.

13 MR. MCCANN: Okay.

14 MS. HAUF: So, at this point, I can tell you there's
15 three new homes out of all of this, at this point.

16 MR. EVANS: You said 181 and 182 and was, and then
17 two more. What were the other two that was a new house there
18 also?

19 MS. HAUF: The whole corner was a wooded lot and
20 there's two homes there.

21 MR. MCCANN: So, 183 and 184 is a new home.

22 MR. EVANS: Okay, all right, thanks. That's all I
23 meant, yeah, thank you.

24 MR. MCCANN: Okay. What about across the other side
25 of Birdwood, 688 and 689? Well, in fact, those are larger

1 sized lots.

2 MS. HAUF: Yeah, they're, they're larger lots and
3 even that, we're going back to the early seventies, and it was
4 a fam, they were family lots. There's, there's been homes
5 there.

6 MR. MCCANN: Okay. I think those are --

7 MS. HAUF: They're the Parlett family, so they've
8 been here for three generations.

9 MR. MCCANN: Okay and I won't go through these again,
10 these are fifty-foot lots, not twenty-five-foot lots. I think
11 that's it. I think I went through them all.

12 VOICE: How about Gunder?

13 MR. MCCANN: I'm sorry, Gunder?

14 VOICE: Gunder.

15 MS. HAUF: All of those were existing homes. Yeah,
16 all the shoreline ones are existing, were existing homes.

17 MR. MCCANN: What do you mean by existing homes?

18 MS. HAUF: People lived there and then Isabel took a
19 lot of houses out.

20 MR. MCCANN: Okay.

21 MS. HAUF: And they had to build on their existing
22 foundation.

23 MR. MCCANN: Okay. Okay.

24 MS. HAUF: As I said before, you know, as you can
25 easily see, my major concern is the effect of adding new

1 buildings and new plots to build on in an already congested
2 area and the effect that will be on our property value and the
3 environment of a beautiful water area.

4 MR. MCCANN: Okay. Thank you, Ms. Hauf.

5 MS. HAUF: You're welcome, sir.

6 CHAIR: Thank you, Ms. Hauf. Any, any, Mr. Lanzi,
7 any cross of Mrs. Hauf?

8 MR. LANZI: Yes. Yes, and if you could leave this
9 exhibit up?

10 MR. MCCANN: Sure.

11 MR. LANZI: Ms. Hauf, I was not able to write down
12 all the lots where you said there were three new homes, Lots
13 183, 184?

14 MS. HAUF: Okay. We're looking at Birdwood.

15 MR. LANZI: Uh huh.

16 MS. HAUF: And if you look at the corner of
17 Powderdale and Cherwin, those four lots are two homes and
18 they're, I wouldn't call them new, discussing fifty-year-old
19 homes.

20 MR. LANZI: Right.

21 MS. HAUF: But those were not replacing older homes,
22 those were new homes.

23 MR. LANZI: That was at Powderdale and Cherwin?

24 MS. HAUF: Yes. That whole corner there was a wooded
25 lot, and two houses are there.

1 MR. LANZI: Are you able to bring that down just a
2 little bit, Mike?

3 MR. MCCANN: That's it.

4 MR. LANZI: Okay. Okay and you said there was
5 another?

6 MS. HAUF: Yes, I believe it is Birdwood and I think
7 that's 198 and 199.

8 MR. LANZI: Okay.

9 MS. HAUF: And again, we're going back fifty years.

10 MR. LANZI: Now, what about, do you, are you familiar
11 with 13205 Gundale Avenue, which I'm not sure what lot that is
12 but it's owned by Bobby Martin Sexton (phonetic). Is that
13 familiar to you?

14 MS. HAUF: No. Again, in a community such as ours,
15 we wave, and we smile, and we don't know last names a lot.

16 MR. LANZI: If, so if I told you that a house was
17 built in 2010 at 13205 Gundale, you wouldn't be able to confirm
18 or deny? It's a new house.

19 MR. MCCANN: Objection. He can't just say that.

20 MR. LANZI: Okay. I'm asking you whether you're,
21 whether you're, you can confirm or deny --

22 MS. HAUF: Is it on the corner of Gundale and Gunder?

23 MR. LANZI: I have an address of 13205 Gundale
24 Avenue.

25 MS. HAUF: Gundale.

1 MR. MCCANN: (inaudible) another exhibit to show her.
2 I think, in all fairness to the witness, --

3 MS. HAUF: I have to see the house we're discussing.

4 CHAIR: Yeah. Mr. Lanzi, Mr. Lanzi, so, (inaudible).

5 MR. LANZI: My question is are, whether, whether
6 she's familiar with that particular address and two, is she
7 familiar, does she know whether it was a brand-new home that
8 was built there in 2010.

9 MS. HAUF: And give me the address again, please?

10 MR. LANZI: 13205 Gundale Avenue.

11 MS. HAUF: Gundale?

12 MR. LANZI: Gundale.

13 MS. HAUF: And if I could, can you, if that's on the
14 left-hand side that is not a brand-new home. That was, that
15 was a redo.

16 MR. LANZI: Gunder, Birdwood, Gundale.

17 CHAIR: All right, Mr. Lanzi, any other questions?

18 MR. LANZI: No, I have, I have nothing further for
19 her.

20 CHAIR: All right. Mr. McCann, any, any, anything
21 further?

22 MR. MCCANN: No, thank you.

23 CHAIR: Yep. All right. Thank you, Ms. Hauf.

24 MS. HAUF: You're welcome, sir.

25 CHAIR: All right, Mr. McCann, any, any other

1 rebuttal witnesses?

2 MR. MCCANN: No, thank you.

3 CHAIR: Mr. Lanzi, I think, I think we're done,
4 right?

5 MR. LANZI: I think so. I did have one, one item I
6 did want to bring to the Board's attention, to handle it.

7 CHAIR: Sure.

8 MR. LANZI: And it's more of a suggestion. If you
9 could bear with me for one second. Judge, Judge Evans, you
10 raised some issues about 304.2 of the zoning regulations and I
11 don't know whether it would be helpful to the Board or not, but
12 this would be my suggestion.

13 CHAIR: Um hm.

14 MR. LANZI: That we leave the record and hearing open
15 (inaudible) the Petitioner would have the builder submit
16 elevation drawings to Planning for comment and then we, we,
17 we'd reconvene. Because that's really the only difference if,
18 if, if you go with the building permit application and go
19 through that process.

20 That's really the only difference, is the Planning
21 Office comments, which they would do. And then, they're just
22 recommendations. I don't know if that would be helpful.

23 MR. EVANS: Honestly, I don't know if it would or
24 not, I, I, you know, I'm, I'm confused about how (inaudible) in
25 your briefs you would clarify for me how 304.2 gets into this.

1 I, because I don't really know. I, I'm confused, actually.

2 CHAIR: Mr. McCann, do, what are your thoughts on, on
3 Mr. Lanzi's proposal here? It, it seems sort of unique here.
4 It seems like he's also offering to be an additional
5 opportunity for your, your, your, your community association to
6 participate in this process. (inaudible).

7 MR. MCCANN: Yeah, Ms. Hauf, Ms. Hauf, please, will
8 you mute, please? Tom?

9 CHAIR: Ms. Hauf, we can still hear you. There you
10 go. I think you, Mr. Sampson, you can mute all them.

11 MR. SAMPSON: I did, but it still kept going.
12 (inaudible) happen, can't even do that right.

13 CHAIR: (inaudible) operator error, Mr. Sampson. So,
14 Mr. McCann, Mr. Lanzi, I don't want to put words into his
15 mouth, it sounds like he's entertaining keeping this appeals
16 process open for your parties to participate in it further.

17 MR. LANZI: That's, that's not what I'm saying.

18 CHAIR: I was waiting for you to, I'm waiting for you
19 to interject there.

20 MR. LANZI: We, we know they're against it. I'm sure
21 they'd be against it if we built a ten-foot shack but. The
22 point being that Judge Evans has some concerns about the
23 architectural elevations and so we thought if we had the
24 builder submit those elevations to Planning for comment.

25 Planning supports, supports the Petition as it is and

1 they typically comment on the building permit, assuming you all
2 grant the relief, they would be commenting anyway, but this is
3 just a way to maybe have them comment now and then the Board
4 would see those comments. The community certainly, it's a
5 public record we would be filing. They would certainly be able
6 to look at it as well. That was, that was just my only
7 suggestion.

8 MR. EVANS: Are, are you saying that there is
9 actually a building, there's, there's an architectural design
10 already? The house is designed?

11 MR. LANZI: I would have to get the, I don't have
12 anything that I can offer. I would have to have the builder
13 provide elevation drawings. I don't have something I can
14 submit today.

15 MR. EVANS: Okay. No, I, no, I get that. I get
16 that. I'm just --

17 (EVERYONE TALKING AT ONCE)

18 CHAIR: Mr. McCann, any comment on that?

19 MR. MCCANN: I, I tried very hard all the time not to
20 be an obstructionist, I really do. But I think, I, I'm having
21 a hard time understanding what it is we're doing, number one.
22 Why we're doing it and why we need to keep the record open. I,
23 I'm sorry, I'm just not --

24 CHAIR: I'm with you, Mr. McCann. I, I think we just
25 move forward and, and Mr. Lanzi, I appreciate your, your

1 accommodation there. I, I, I'm not sure leaving this case in
2 this posture is, I mean, I, I look at it as those things are
3 all part of the process of getting permits and, and I thought
4 you were offering up another opportunity for Mr. McCann's
5 parties to weigh in.

6 What I'm hearing you say is no, that's not what
7 you're doing, you're doing it more for an accommodation for the
8 Board and, and I think that the permitting process will take
9 care of it and, and we, you know, the, this process is, you
10 know, Mr. Evans, Mr. Sampson, as much as we like to reinvent
11 law, I don't think we need to at this point.

12 And so, I think that, I think that if you guys
13 briefed the, the matters here in your, in your, in a motion
14 here and then, and then we'll rule on it.

15 Mr. Evans, Mr. Sampson, do you guys agree with that
16 approach?

17 MR. SAMPSON: Yes.

18 MR. EVANS: Yeah, I, I do.

19 CHAIR: All right. So, so, do I just confirm a
20 second on the, on the exhibits here because I know we added a
21 few, Mr. McCann, maybe to start. Make sure you have your
22 exhibits (inaudible) with Mr. Evans. Mr. Lanzi, maybe you do
23 the same thing because I, I think there are a couple of extra
24 ones that came in and just so nobody is surprised that there's
25 additional exhibits in the record and everybody's working off

1 the same scorecard.

2 MR. MCCANN: You want to go first, Mr. Lanzi?

3 MR. LANZI: Sure. I have that one through ten, I'm
4 sorry, one through 7-A and B are in, 7-C was only identified
5 for the record. And then, eight through fourteen were all in.

6 MR. EVANS: I thought 7-C came in with 7-B?

7 CHAIR: No, it was just 7-B.

8 MR. EVANS: Okay, all right.

9 MR. LANZI: So, everything is in other than 7-C for
10 Petitioner.

11 CHAIR: Okay. Okay and, Mr. McCann?

12 MR. MCCANN: I know that Exhibit 1 is not in
13 evidence. That, that was just our, that was a copy of the
14 plat, which is already in evidence as a Petitioner's exhibit.
15 But I believe Exhibits 2 through 17 are in evidence. Two I may
16 not have moved in, it's just a My Neighborhood map that I
17 showed the witness briefly. I, --

18 CHAIR: (inaudible), I'm sorry. I'm sorry, Mr.
19 McCann.

20 MR. MCCANN: Yeah. I don't think I actually moved
21 that in, so I would move that into the extent it, it adds
22 anything. But other than that, I think everything else is in.

23 CHAIR: Do, do you have all that, Mr. Evans?

24 MR. EVANS: I, I do, yeah. Mr. Lanzi, are your
25 Exhibits 11, 12 and 13, were they submitted to Ms. Cannington?

1 MR. LANZI: They were submitted yesterday afternoon
2 to the administrative, or whatever the website is. Yes.

3 MR. EVANS: Okay and Mr., Mr. McCann, are all of your
4 Exhibits 1 through 17, well, not one, two through seventeen,
5 are those all, were those all submitted in electronic form?

6 MR. MCCANN: No, twelve through seventeen are all
7 cross exhibits that I introduced today for the first time. So,
8 when I get off the phone, I'm going to send those to you.

9 MR. EVANS: Okay. So, but one through, or two
10 through eleven are already there?

11 MR. MCCANN: Yes.

12 MR. EVANS: Okay, all right.

13 CHAIR: And Joe, I've got Mr. Lanzi's exhibits that
14 he posted yesterday. So, it's on, it's on the server. And Mr.
15 Lanzi, just to clear the record here, you, you have no
16 objections to Mr. McCann's admission into evidence Exhibit 2
17 that he mentioned, from the My Neighborhood map?

18 MR. LANZI: No, no, I don't.

19 CHAIR: Okay.

20 MR. LANZI: No, no objection.

21 MR. MCCANN: Mr. Evans, could, could I ask you --

22 MR. EVANS: Yes.

23 MR. MCCANN: -- twelve through seventeen, I, I know
24 what they are, but I don't know what they're numbered. Would
25 you mind running through those with me?

1 MR. EVANS: Yes, I can, sure.

2 MR. MCCANN: Okay.

3 MR. EVANS: Number twelve were the documents
4 underlying cases for, for, for Petitioner's Exhibit 8.

5 MR. MCCANN: Okay.

6 MR. EVANS: Thirteen were, was the documents for the
7 underlying cases, no, it was the, the cases for 03-309-A.

8 MR. MCCANN: Okay.

9 MR. EVANS: That was a Board of Appeals case.

10 MR. MCCANN: Yep.

11 MR. EVANS: Number fourteen was a Petition for a
12 Variance at 13101 Cherwin. Number fifteen was the SDAT
13 printout. Number sixteen was the four properties related to
14 the pink highlights.

15 MR. MCCANN: Yep.

16 MR. EVANS: And the three others, plus three others.
17 And then, number seventeen was the rule eight documents.

18 MR. MCCANN: Okay. I think I got that. Can you
19 repeat, what's twelve again?

20 MR. EVANS: Twelve is documents relating to the
21 underlying cases associated with Petitioner's Exhibit 8.

22 MR. MCCANN: Okay. Okay.

23 MR. EVANS: Okay.

24 MR. MCCANN: Thank you.

25 MR. EVANS: Sure.

1 CHAIR: So, Mr. McCann and Mr. Lanzi, can we have
2 closing briefs submitted in thirty days, is that --

3 MR. MCCANN: Yes, that's good by me.

4 CHAIR: Because Mr. McCanna and Mr. Lanzi, we're not
5 on an accelerated track here, right? Like we don't have to
6 have a deliberation in ten days or something like that, right?

7 MR. LANZI: Correct.

8 CHAIR: Because I don't think we are. All right.
9 So, if we can have it within thirty days, that'd be great. And
10 then we'll schedule (inaudible) Ms. Cannington the
11 deliberation.

12 MR. EVANS: Maybe we should give them a specific date
13 for the memos, do you think?

14 CHAIR: Yeah, I was going off of thirty days from
15 today, so that would be, it's (inaudible) --

16 MR. LANZI: St. Patrick's Day.

17 CHAIR: Can't do that.

18 MR. LANZI: How about Friday, the 19th?

19 CHAIR: How's that work, Mr. McCann?

20 MR. MCCANN: I'm sorry, I was looking at my calendar.
21 Yeah, I mean, (inaudible) that's my son's spring break. We're
22 going to, we're going out of town.

23 CHAIR: Part of it or in the, in the middle of it?

24 MR. MCCANN: We'll be back on the 19th.

25 CHAIR: Okay, you'll be back on the 19th. Yeah, you

1 want to make it --

2 MR. MCCANN: (inaudible).

3 CHAIR: -- the 25th to give you a time to dig out of
4 your, so if you come back --

5 MR. MCCANN: Yeah.

6 CHAIR: -- if you come back on that, on that week of
7 the 19th or 20th, (inaudible) use a couple days, right?

8 MR. MCCANN: Yeah, that would be great.

9 CHAIR: So, why don't we make it the 26th, does that
10 work, Mr. Lanzi? If we make that accommodation?

11 MR. LANZI: Yes.

12 CHAIR: Joe, Mr. Sampson, any objection? Or Mr.
13 Evans, Mr. Sampson, any objection?

14 MR. EVANS: No, that's fine with me.

15 MR. SAMPSON: I'm good.

16 CHAIR: I mean, you know, I wouldn't want to do that
17 to Mr. McCann to go off of spring break and then having to have
18 it the very next day he comes back --

19 MR. MCCANN: Yeah, I appreciate that.

20 CHAIR: I'm sure, I'm sure Mr. Lanzi would appreciate
21 that advantage, but we'll try to be neutral here. Anything
22 else for the good of the order, Mr. Lanzi or Mr. McCann?

23 MR. MCCANN: Other than thank you very much.

24 CHAIR: Mr. Evans, Mr. Sampson?

25 MR. EVANS: Thank you.

1 MR. SAMPSON: I'm good, thank you.

2 MR. EVANS: Thank you, counsel. Appreciate it.

3 MR. SAMPSON: (inaudible).

4 CHAIR: And thank you for being hospitable to each
5 other too, appreciate it. Mr. Sampson, I think you can close
6 the record here and I think we're good to go.

7 MR. SAMPSON: All right, I'm stopping it. Thank you.

8 MR. MCCANN: Take care, everybody.

9 MR. LANZI: Thank you.

10 CHAIR: (inaudible).

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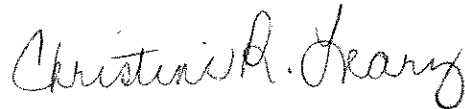
CERTIFICATE OF TRANSCRIBER

I hereby certify that the hearing in the matter of Craig Kestner, case numbers 19-402-SPHA and 20-090-SPHA, heard before the Board of Appeals of Baltimore County, February 19, 2021, were recorded by means of audiotape.

I further certify that, to the best of my knowledge and belief, page numbers 1 through 201 constitute a complete and accurate transcript of the proceedings as transcribed by me.

I further certify that I am neither a relative to nor an employee of any attorney or party herein, and that I have no interest in the outcome of this case.

In witness thereof, I have affixed my signature this 3rd day of August 2021.



Christine R. Leary

Transcriber

| | | |
|--------------------------------------|---|-------------------------|
| IN RE: PETITIONS FOR SPECIAL HEARING | * | BEFORE THE |
| AND VARIANCE | | |
| (13217 Cherwin Avenue) | * | OFFICE OF |
| 15th Election District | | |
| 6th Council District | * | ADMINISTRATIVE HEARINGS |
| Craig Kestner | | |
| Legal Owner | * | FOR BALTIMORE COUNTY |
| Petitioner | * | Case No. 2020-0090-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 Craig Kestner, legal owner (“Petitioner”). The Special Hearing was filed pursuant to §304.1 of the Baltimore County Zoning Regulations (“BZCR”) to approve the construction of a single family detached dwelling on two (2) lots with a combined width of 50 ft. in lieu of the required 55 ft. In addition, a Petition for Variance was filed pursuant to § 1B02.3.C.1 to permit a combined width for two (2) lots of 50 ft. in lieu of the required 55 ft. for the construction of a single family detached dwelling.¹

Due to the COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. A site plan was marked and accepted into evidence as Petitioner’s Exhibit 1.

Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Department of Environmental Protection Sustainability (“DEPS”) which indicated that the

¹ The same variance relief was requested and denied in Case No. 2019-0402-SPHA. Mr. Lanzi represented that the Order in that case was appealed and that the Board of Appeals, at his request, has stayed that appeal pending resolution of the instant Petition. In my view this Petition would be barred by *res judicata*, but for the fact that my previous Order is not a final judgment. *See, Seminary Galleria, LLC v. Dulaney Valley Improvement Ass’n*, 192 Md. App. 719 (2010). *Res judicata* bars subsequent petitions for relief unless there are significant changes in circumstances from the time of the first petition to the time of the subsequent petition. Here, there have been no changes to the site, the petitioner is simply seeking relief under a different section of the BCZR – relief that could and should have been sought the first time. But again, because there is no final judgment I must, I suppose, consider the pending petition.

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Date 9/29/20
 By [Signature]

Petitioner must comply with critical area requirements. Comments were also received from the Department of Planning (“DOP”) and from The Bureau of Development Plans Review (“DPR”).

Craig Kestner, Neil Lanzi and Bruce Doak appeared in support of the requests. Neil Lanzi, Esq. represented the Petitioner. John Dawson appeared in opposition, on his own behalf and as an officer of the Twin River Beach Protective and Improvement Association.

Factual Background

The subject parcel consists of two adjoining 25 foot wide lots that are part of the Twin River Beach subdivision plat that was recorded in 1929. Mr. Kestner purchased these two, and four adjoining lots, several years ago. He sold the existing residence, which, together with a free standing garage, occupied four of the six lots. He has contracted with a builder for the sale of the remaining two lots, contingent on the grant of the requested relief.

Mr. Doak, the surveyor who prepared the plan, was accepted as an expert in surveying and the BCZR. He testified that in order to appease Mr. Dawson, the next door neighbor, that the Petitioner is amenable to a 40 ft. setback from the front property line. Mr. Doak also testified that before building permits are issued that a site plan that addresses stormwater and tidal flooding problems at the site will have to be approved by DEPS, and by the Department of Public Works (DPW). He testified that “site levelers” and/or dry wells may need to be utilized, as well as permeable paving for the driveway. He testified that the site meets all the criteria of BCZR §304.1, and that in his opinion the requested relief can be granted within the spirit and intent of the BCZR and without causing harm to the public health, safety, and welfare. Mr. Lanzi submitted an amended site plan showing the 40 foot front setback. Per this plan the 10 foot side yard setbacks and 30 foot rear yard setback are observed. (Petitioner’s Exhibit 6). Also submitted were copies of numerous Orders granting BCZR §304.1 relief to other neighborhood residents.

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Date 9/29/20

By DMagnon

Mr. Dawson is the next door neighbor. He raised the same concerns that he raised at the previous hearing: that his views would be impaired, and that he and the neighborhood association are concerned with flooding conditions at the site. He submitted a letter of opposition from the association (Protestants' Exhibit 1), and a series of photographs showing flooding on the lot (Protestants' Exhibit 2).

Special Hearing Relief under BCZR §304.1

Under BCZR §304.1, it is permissible to build a residence on an "undersized" lot if certain conditions are met. This provision of the zoning regulations was enacted in order to "grandfather" the development rights for lots like the ones in this case. *See, Mueller v. People's Counsel for Baltimore County*, 177 Md. App. 43, 84-94 (2007). The regulation states as follows:

§ 304.1 - Types of dwellings allowed; conditions.

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

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

If all these conditions are met then relief should be granted under this regulation, provided that it will not cause harm to the public health, safety, or welfare. Based on the record evidence I find that all the conditions are met in this case. The question therefore is whether the relief will harm the public health, safety, or welfare. Based on the conditions I will impose I find that the relief can be granted without causing such harm. I am mindful that this conclusion is at odds with my recent decision in the case discussed in the footnote above. But I am persuaded by Mr.

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Date 9/29/20
By J. M. Cannon

Doak's additional testimony concerning the flood control measures that will be required, as well as the additional front setback that will be provided. Not only will this reduce the obstruction of Mr. Dawson's water views, it will reduce the footprint of the proposed residence, thereby reducing impervious surface. In the final analysis, I do not believe that I can lawfully deny the Petitioner the value of his property rights – including the development rights, when conditions can be imposed that will also protect the public health, safety, and welfare.

THEREFORE, IT IS ORDERED this 29th day of **September, 2020**, by this Administrative Law Judge, that the Petition for Special Hearing seeking relief pursuant to § 304.1, to approve the construction of a single family detached dwelling on two (2) lots with a combined width of 50 ft. in lieu of the required 55 ft. and hereby is GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance seeking relief pursuant to § 1B02.3.C1, to permit a combined width for two (2) lots of 50 ft. in lieu of the required 55 ft. for the construction of a single family detached dwelling is therefore MOOT.

The relief granted herein shall be subject to the following:

- Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at 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, Petitioner would be required to return the subject property to its original condition.
- Petitioner must comply with the critical area and flood protection regulations.
- Petitioner must submit stormwater runoff and tidal flood control site plans and obtain approval from DEPS and from DPW prior to the issuance of permits.
- Petitioner shall submit a final site plan depicting a 40 ft. front yard setback, 10 ft. side yard setbacks, and 30 ft. rear yard setback.

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Date 9/29/20
By [Signature]

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



PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM/dlm

ORDER RECEIVED FOR FILING

Date

9/29/20

By

J. Mignou



JOHN A. OLSZEWSKI, JR.
County Executive

PAUL M. MAYHEW
Managing Administrative Law Judge
LAWRENCE M. STAHL
Administrative Law Judge

September 29, 2020

Neil Lanzi, Esquire
102 W. Pennsylvania Avenue, Suite 406
Towson, MD 21204

RE: Petition for Special Hearing and Variance
Case No. 2020-0090-SPHA
Property: 13217 Cherwin Avenue

Dear Mr. Lanzi:

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

Pursuant to Baltimore County Code § 32-3-401(a), "a person aggrieved or feeling aggrieved" by this Decision and Order may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Office of Administrative Hearings at 410-887-3868.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul M. Mayhew".

PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM:d1m
Enclosure

c: Craig Kestner, 13015 Eastern Avenue, Baltimore, MD 21220
Bruce Doak, 3801 Baker Schoolhouse road, Freeland, MD 21053
John Dawson, 13215 Cherwin Avenue, Middle River, MD 21220

9/29/20
D. Mignone

IN THE MATTER OF:

Craig Kestner-Legal Owner, Petitioner

13217 Cherwin Avenue
Case No. 2020-0090-SPHA

Petitioner's Amended Exhibit List:

- Exhibit No. 1 – Zoning Plan (previously submitted)
- Exhibit No. 2 – PB 9/33 – Twin River Subdivision
- Exhibit No. 3 – PB 9/33 – Portion of the Plat
- Exhibit No. 4 – Key Sheet for Exhibit Photos (previously submitted)
- Exhibit No. 5 A-H – Exhibit Photos (previously submitted)
- Exhibit No. 6 A and B – Sketches Reflecting Explanation of Petition Amendments
- Exhibit No. 7 – Map Showing Cases Granted for Under Width
- Exhibit No. 8 A-D - Similar Cases

" 119 - Final Site Plan per AIG Mayhew's Order of
9-29-2020 rec'd on
10-13-2020

GENERAL SITE INFORMATION

- Ownership: Craig Kestner
13015 Eastern Avenue Baltimore, MD 21220
- Address: 13217 Cherwin Avenue
- Deed references: SM 34935/ 437
Lots 155 & 156 " Section A Twin River Beach" PB 9/ 33
- Area: 6,050 sq. ft. / 0.138 acre Total (per SDAT)
- Tax Map / Parcel / Lot / Tax account #: 84 / 43 /155/ 15-22-350392
Tax Map / Parcel / Lot / Tax account #: 84 / 43 /156/ 15-22-350391
- Election District: 15 Councilmanic District: 6
ADC Map: 4583C10 GIS tile: 084A1 Position sheet: 31NE49
- The boundary shown hereon is from the deed recorded in the Land Records of Baltimore County. All other information shown hereon was taken from Baltimore County GIS tiles 084A1 and the information provided by Baltimore County on the internet.
- Improvements: Vacant

OFFICE OF ZONING

Zoning: DR 5.5
Zoning History: #2019-0402-SPHA
Special Hearing- granted
Variances- denied
DR 5.5 Setbacks for Residential Buildings
Front: 25 feet from the street right of way
Side: 10 feet from property line
Rear: 30 feet from property line

ENVIRONMENTAL IMPACT

- A future dwelling will be served by public water and sewer.
- There are no underground storage tanks on the subject property.
- The subject property is in the Chesapeake Bay Critical Area.
- The subject property is located in flood plain Zone AE per FIRM Panel 2400100315 G.

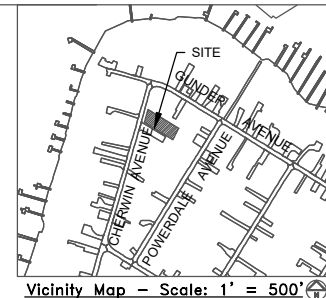
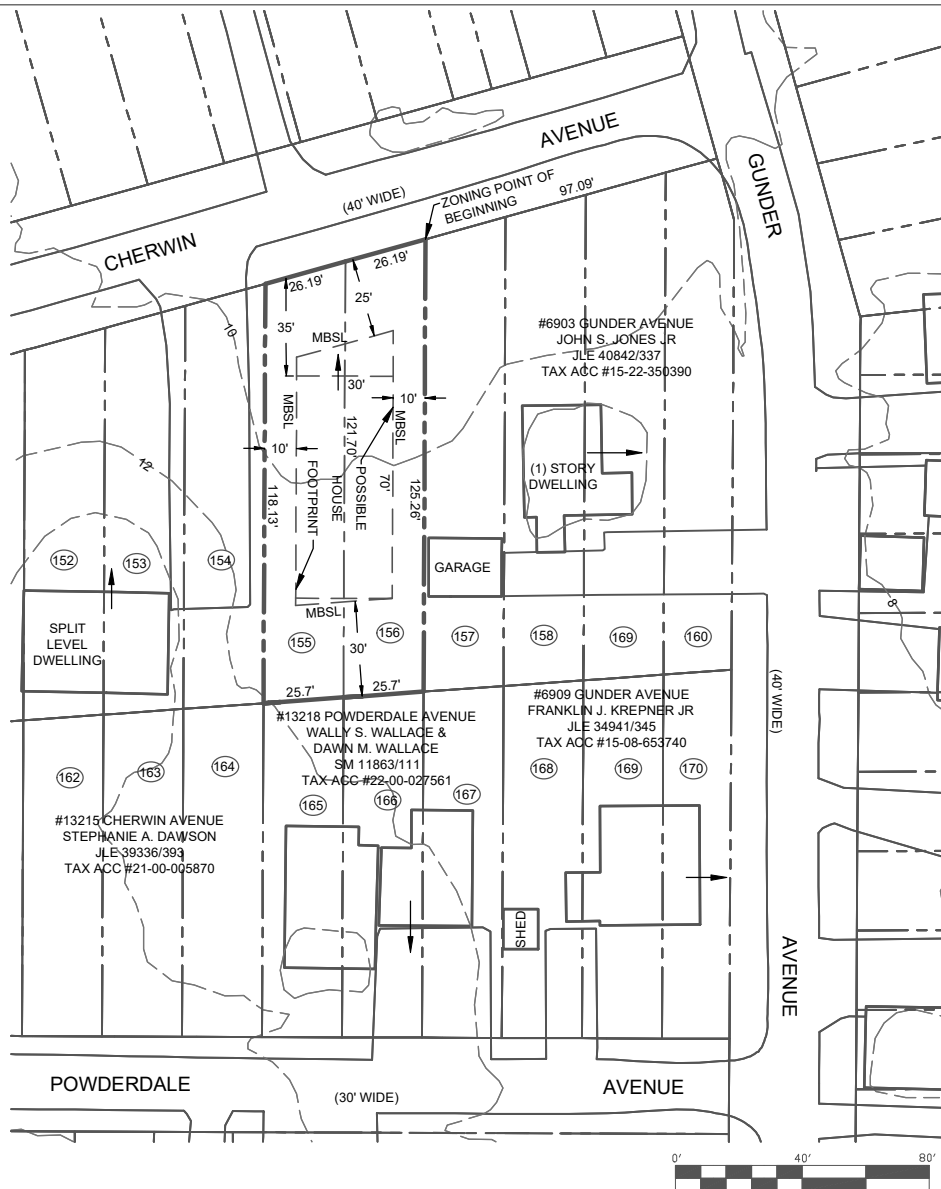
OFFICE OF PLANNING

Regional Planning District: Windlass District Code: 322

- The subject property is not in a historic district.

PROPOSED DEVELOPMENT

To construct a single family dwelling on the subject lots



Bruce E. Doak Consulting, LLC
Land Use Expert and Surveyor
3801 Baker Schoolhouse Road
Freedland, MD 21053
o 442-900-5535 m 410-419-4906
bdca@bruceedoakconsulting.com

PLAN TO ACCOMPANY
A ZONING PETITION
FOR
LOT 155 & LOT 156
"TWIN RIVER BEACH"
#13217 CHERWIN AVENUE
BALTIMORE COUNTY, MARYLAND
15th ELECTION DISTRICT 6th COUNCILMANIC DISTRICT

REVISION

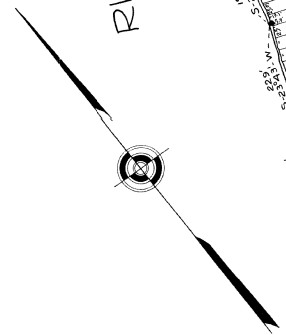
Date: 3/14/2020
Scale: 1"=80"



GUNPOWDER

RIVER

RIVER



BIRD

SECTION A TWIN RIVER BEACH

SUBDIVIDED BY
CITYCO REALTY CO.
7 St. Paul St. BALTIMORE, MD.
SCALE 1"=100' JUNE 1923
REVISED-APRIL 7, 1929.

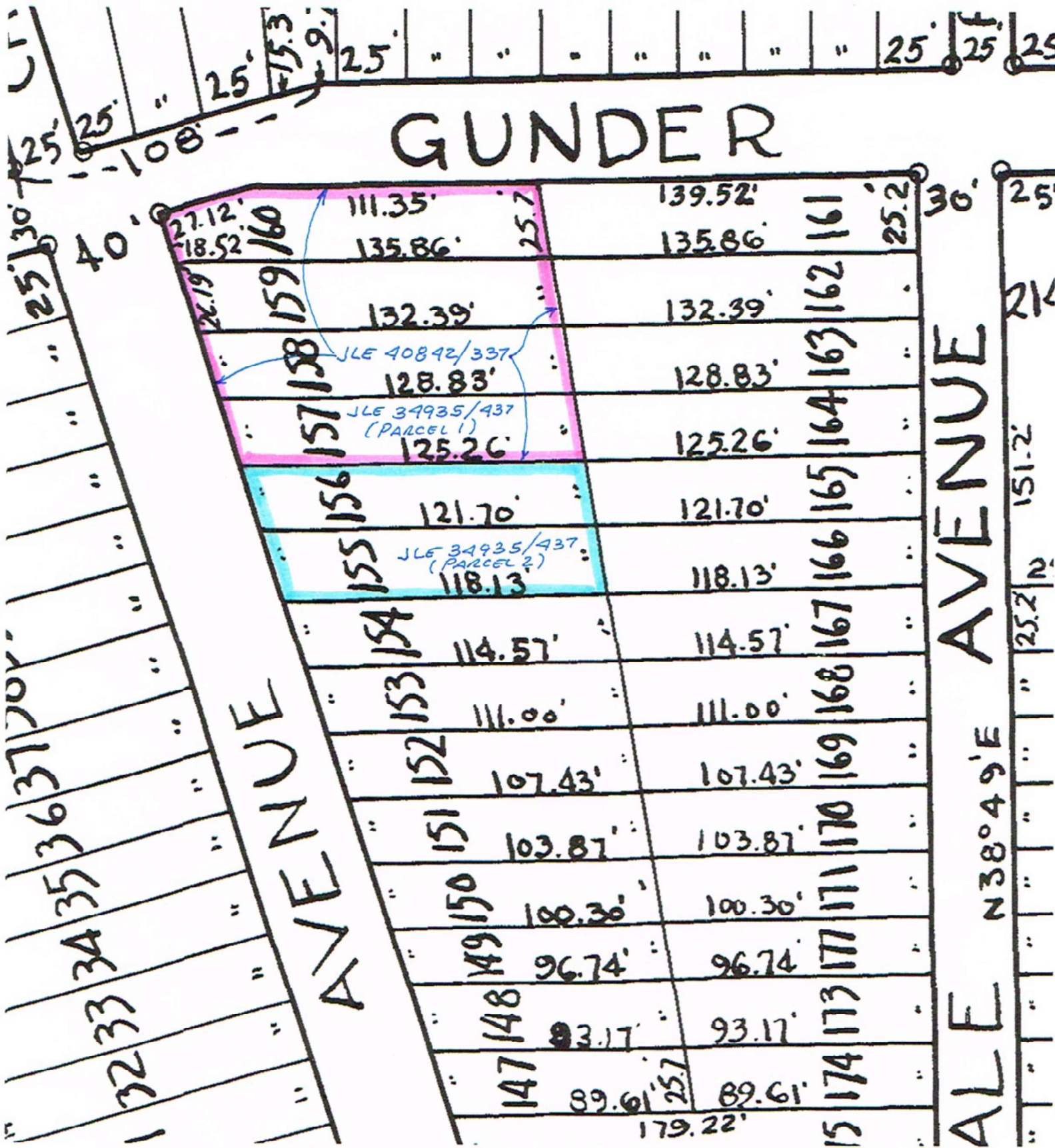
*held for record
June 5th 1923*

*Condition authorized
by Maryland Title Code
July 1, 1923*

*Transfer of plat
S. 39° 49' W - 2652.41 -
Hollywood Station*

SECTION A
SECTION B

BALTIMORE COUNTY COURT (Part) Plat Book L.McL.M. p. 33, L.McL.M. C-218, 278. Date recorded: 10/20/1927. Printed 10/12/1918.



PORTION OF PB 9/33 SHOWING SUBJECT LOTS



KEY SHEET FOR EXHIBIT PHOTOS



A



B













H

GENERAL SITE INFORMATION

- Ownership: Craig Kestner
130'5 Eastern Avenue Batimora, MD 21220
- Address: 132'7 Cherwin Avenue
- Deed references: SM 34935/437
Lots 155 & 156 "Section A Twin River Beach" PB 9/33
- Area: 6,050 sq. ft. / 0.138 acre Total (per SDAT)
- Tax Map / Parcel / Lot / Tax account #: 64 / 43 / 155/ 15-22-350392
Tax Map / Parcel / Lot / Tax account #: 64 / 43 / 156/ 15-22-350391
- Election District: 15 Councilmanic District: 6
ADC Map: 45B3C10 GIS tile: 084A' Position sheet: 31NE49
- The boundary shown hereon is from the deed recorded in the Land Records of Baltimore County. All other information shown hereon was taken from Baltimore County GIS tiles 084A1 and the information provided by Baltimore County on the internet
- Improvements: Vacant

OFFICE OF ZONING

Zoning: CR 5.5
Zoning History: #2019-0402-SPHA
Special Hearing: granted
Variances: denied

DR 5.5 Setbacks for Residential Buildings

Front: 25 feet from the street right of way
Side: 10 feet from property line
Rear: 30 feet from property line

ENVIRONMENTAL IMPACT

- A future dwelling will be served by public water and sewer.
- There are no underground storage tanks on the subject property.
- The subject property is in the Chesapeake Bay Critical Area.
- The subject property is located in flood plain Zone AE per FIRM Panel 2400100315 G.

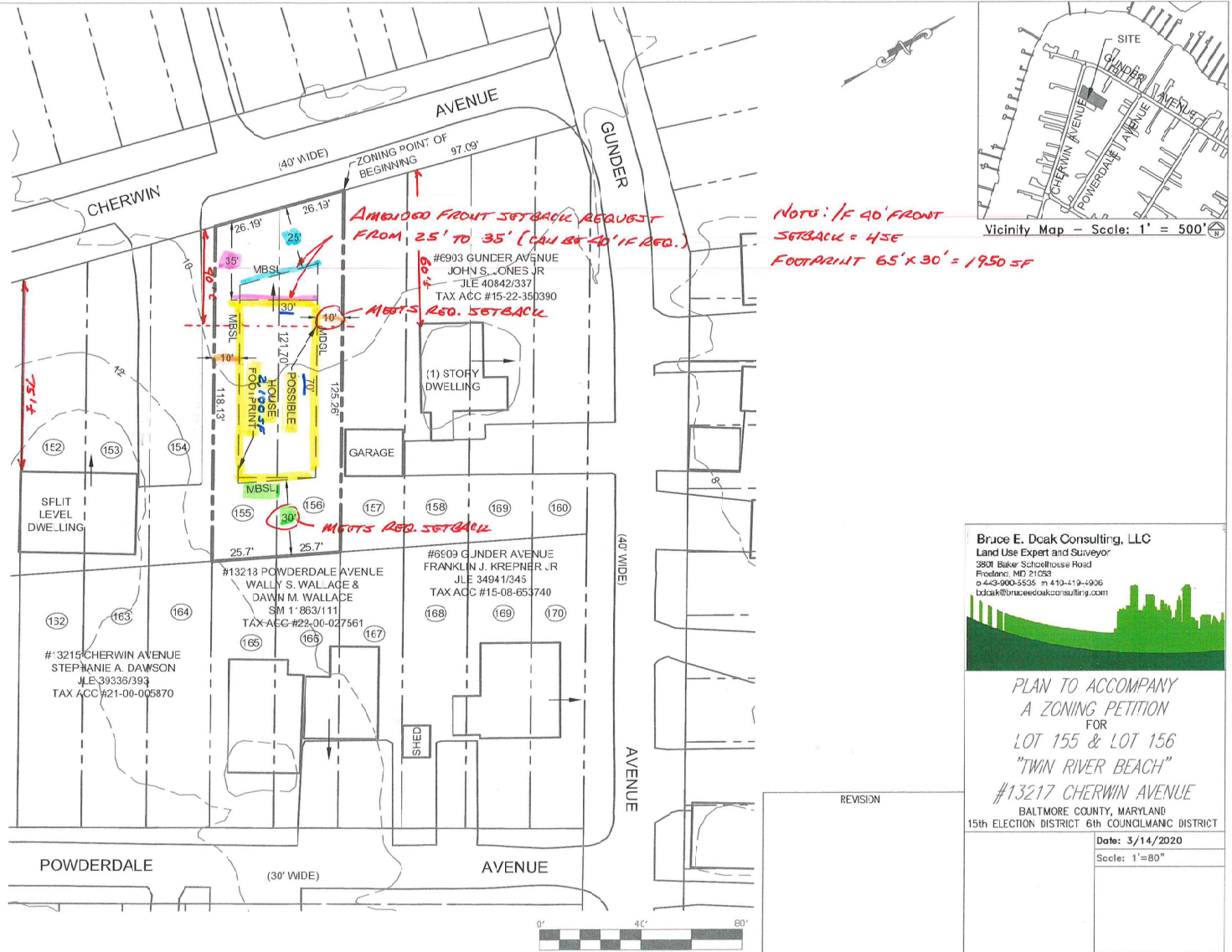
OFFICE OF PLANNING

Regional Planning District: Windliss District Code: 322

- The subject property is not in a historic district.

PROPOSED DEVELOPMENT

To construct a single family dwelling on the subject lots



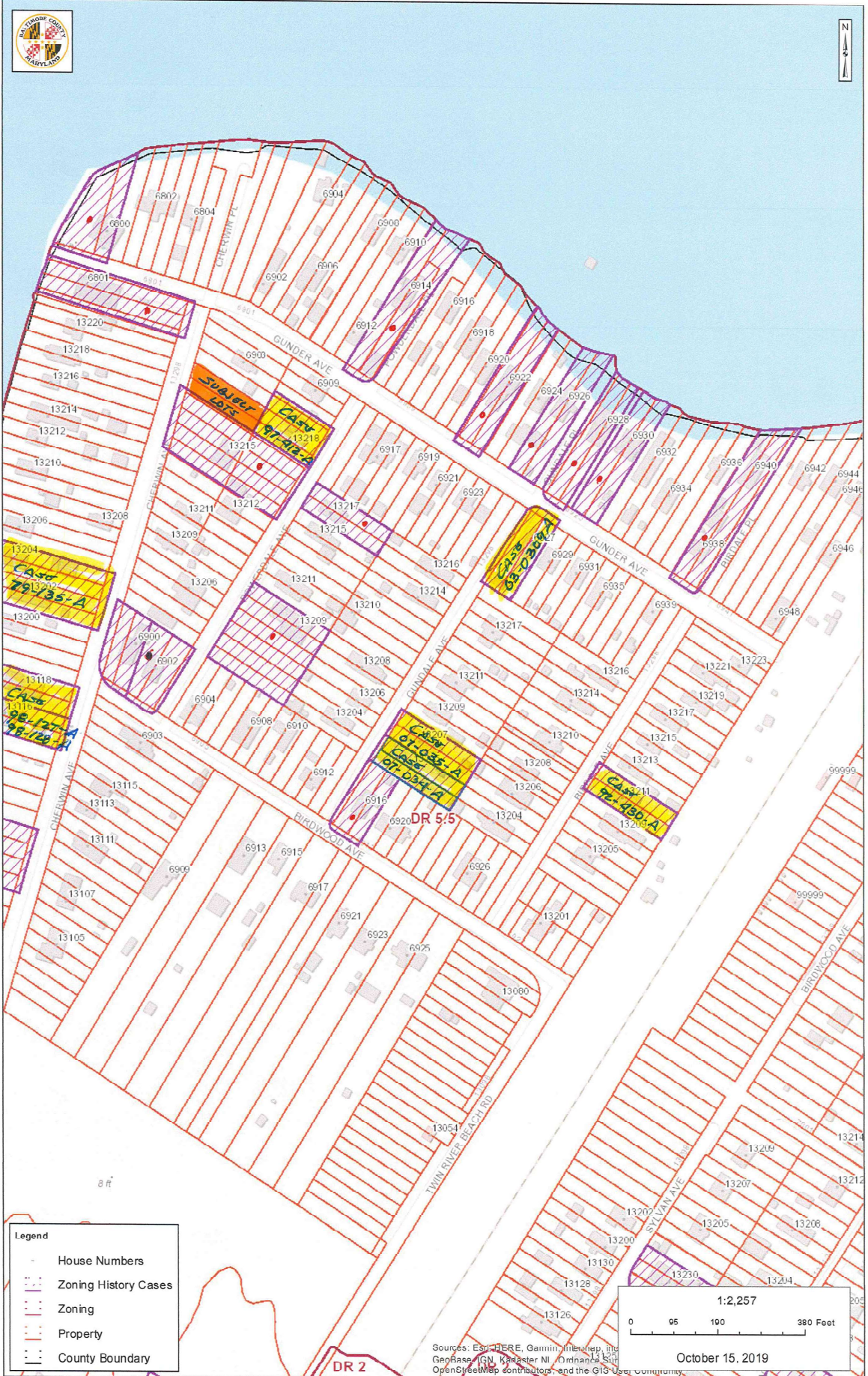
Bruce E. Deak Consulting, LLC
Land Use Expert and Surveyor
3801 Baker Schottloffe Road
Frostburg, MD 21533
o 410-900-5535 m 410-419-1936
bdca@bruceedeakconsulting.com

PLAN TO ACCOMPANY
A ZONING PETITION
FOR
LOT 155 & LOT 156
"TWIN RIVER BEACH"
#13217 CHERWIN AVENUE
BALTIMORE COUNTY, MARYLAND
15th ELECTION DISTRICT 6th COUNCILMANIC DISTRICT

| |
|-----------------|
| REVISION |
| Date: 3/14/2020 |
| Scale: 1"=80' |

CASE #2020-0090-SPHA PLAN - AMENDMENT EXPLAINED

Baltimore County - My Neighborhood



Petitioner's Exhibit No. 7

MAP SHOWING LOTS BEING GRANTED UNDER WIDTH

IN RE: PETITION FOR VARIANCE
S/S of Gundale Avenue, south of c/l
Of Gunder Avenue
15th Election District
6th Councilmanic District
(13205 Gundale Avenue)

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
*

Gerald H. and Barbara C. Kestner
Petitioner and Legal Owner

* CASE NO. 07-034-A

* * * * *

IN RE: PETITION FOR VARIANCE
S/S of Gundale Avenue, south of c/l
Of Gunder Avenue
15th Election District
6th Councilmanic District
(13207 Gundale Avenue)

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
*

Gerald H. and Barbara C. Kestner
Petitioner and Legal Owner

* CASE NO. 07-035-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner on September 19, 2006 as a Petition for Variance filed by the legal owners of the subject property, Gerald H. and Barbara C. Kestner. The Petitioners are requesting the following variance relief:

Case No. 07-034-A: This property is located at 13205 Gundale Avenue. The variance request is from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a new single family residential dwelling on a 50.4 foot lot in lieu of the required 55 feet with a contiguous owner.

Case No. 07-035-A: This property is located at 13207 Gundale Avenue. The variance request is from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations

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(B.C.Z.R.) to permit an existing house with a side yard setback of 9.6 feet in lieu of the required 10 feet and a lot width of 50.4 feet in lieu of the required 55 feet.

The properties were posted with Notice of Hearing on September 4, 2006, for 15 days prior to the hearing, in order to notify all interested citizens of the requested zoning relief and time and date of the public hearing. In addition, a Notice of Zoning hearing was published in "The Jeffersonian" newspaper on September 5, 2006 to notify any interested persons of the scheduled hearing date and relief requested.

Applicable Law

Section 307 of the B.C.Z.R. – *Variances*.

"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."

Zoning Advisory Committee Comments

The Zoning Advisory Committee (ZAC) comments are made part of the record of this case and contain the following highlights: ZAC comments were received from the Office of Planning dated August 29, 2006 which contains restrictions. ZAC comments

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BY [Signature]

were received from the Bureau of Development Plans Review dated August 4, 2006 which contains restrictions. Copies are attached hereto and made a part hereof.

Interested Persons

Appearing at the hearing on behalf of the variance request were Gerald H. and Barbara C. Kestner, Petitioners. Sue Zack, an adjacent property owner, appeared at the hearing in support of the requests. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case.

Testimony and Evidence

The subject properties are adjacent lots 50.4 foot wide lots zoned DR 5.5. Each lot is composed of two 25.2 foot wide lots which were created in the Twin River, Section A, subdivision which Ms. Zack opined was recorded in the land records in 1938. The lot at 13205 Gundale Road is composed of subdivision lot numbers 250 and 251 and is presently vacant. The lot at 13207 Gundale Road is composed of lot numbers 252 and 253 and is presently improved by the Petitioner's son's house which the Petitioner's believe was built in the 1940's. This house is 9.6 feet from the common property lot line and consequently does not meet the 10 foot setback required by the DR 5.5 regulations. The Petitioner opined that it would be impractical to remove 5 inches of house to meet the regulations. Both lots are 7560 square feet and meet the minimum lot area required by the regulations. See exhibit 1 which has had redline changes to reflect the ZAC comment from the Bureau of Development Plans Review regarding widening of the right of way of Gunvale Road.

The Petitioner's parent bought the subject properties in 1956 and the Petitioner lived in the house while growing up. He purchased the house from his parents as it was

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getting difficult for his parents to maintain the properties. The Petitioner proposes to build a house for another son on the vacant lot which would meet all setback regulations. They pointed out the they live close by the subject sites, that a brother owns the house at 13209 and Ms. Zack owns the house and lot directly behind the proposed house. The neighborhood is composed of older homes on 50 foot lots east of 13205 and newer homes sometimes on wider lots to the west of 13205. Ms. Zack mentioned that the newer homes are built on property which was wooded for much of the time the parties lived in this area. The Petitioners presented photographs of the vacant lot, the existing homes and houses in the area as exhibit 2. They also do not object to the conditions for approval prepared by the Planning Office or the Bureau of Development Plans Review.

In regard to zoning merger the Petitioner asserted that 13205 and 13207 are separately assessed and taxed and that the Petitioner's father always considered the lots separate and buildable especially when he got his tax bills in the mail. Other than cutting the grass the only use made of 13205 has been a driveway which the Petitioner constructed to make his father's entry onto Gundale Road easier than coming off 13207 directly. See photograph 2 A.

Ms. Zack, an adjacent property owner, testified in favor of the requests. She lives directly to the south of the property and would be most affected by the new house on this lot. She has lived in the neighborhood for 60 years and welcomed new residents. She noted that houses on the "older" section of the neighborhood are all one house on a 50 foot wide lot while those to the west in the newer section have larger lots at times. She supported the requests and did not think and new house as shown would change the

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pattern of development of the neighborhood. She indicated that the other neighbors knew of the request to build a new house on the property and had no objections.

Findings of Fact and Conclusions of Law

In regard to zoning merger I find the adjacent lots have not merged. While the Petitioners were unaware that proof of separate tax assessment would be helpful, I believe their testimony that the Petitioner's father always considered them separate especially when confronted with separate tax bills. I think the Petitioner's family's use of the vacant lot is miniscule towards showing that the lots had merged.

Considering all the testimony and evidence presented, I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. This subdivision and the subject lots were created much before the zoning was imposed on the area. The imposition of zoning on this property disproportionately impacts the subject property as compared to others in the zoning district.

I further find that strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. There is no other land available to widen the lots and it is impractical to reduce the size of the existing house to meet the side yard setbacks specified.

No increase in residential density beyond that otherwise allowable by the Zoning Regulations will occur as a result of granting this variance as the lot size for both meet the regulations.

Finally, I find this variance can be granted in strict harmony with the spirit and intent of said regulations, and in such manner as to grant relief without injury to the

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public health, safety and general welfare. The pattern of development shown by the Petitioner is similar to this plan so there will be no change to the character of the neighborhood. Ms. Zack was very supportive of the requests and indicated the neighborhood supported the requests as well.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by the Petitioners, I find that the Petitioners' variance request should be granted.

THEREFORE, IT IS ORDERED, this 20th day of September, 2006, by this Deputy Zoning Commissioner, that variance relief for properties set forth as follows:

Case No. 07-034-A: This property is located at 13205 Gundale Avenue. The variance request is from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a single family residential dwelling on a 50.4 foot lot in lieu of the required 55 feet, with a contiguous owner is hereby GRANTED; and

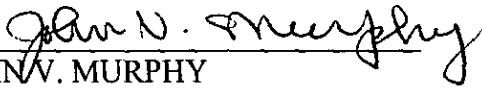
Case No. 07-035-A: This property is located at 13207 Gundale Avenue. The variance request is from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a side yard setback of 9.6 feet in lieu of the required 10 feet and a lot width of 50.4 feet in lieu of the required 55 feet is hereby GRANTED; both subject however to the following 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. Submit building elevations to the Office of Planning for review and approval prior to the issuance of any building permit. The proposed dwelling shall be compatible in size, exterior building materials, color and architectural detail as that of the existing dwellings in the area.

APPROVED FOR THE COMMISSIONER
9-20-06
PB

3. Provide landscaping along the public road, if consistent with the existing streetscape.
4. Show a future 40 foot wide right-of-way on the existing 30 foot right-of-way and adjust the setback accordingly.
5. When applying for building permit, the site plan filed 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
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

JVM:pz

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CBCA

Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at #13205 GUNDALE AVENUE

which is presently zoned DR 5.5

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)

1802.3.C.1; BC22, TO PERMIT A SINGLE FAMILY RESIDENTIAL DWELLING ON A 50.4 ft. LOT IN LIEU OF THE REQUIRED 55ft., WITH CONTIGUOUS OWNERSHIP.

of the Zoning Regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons: (indicate hardship or practical difficulty)

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

Legal Owner(s):

GERALD H. KESTNER
Signature
BARBARA C. KESTNER
Signature

Attorney For Petitioner:

Name - Type or Print
Signature
Company
Address Telephone No.
City State Zip Code

12913 EASTERN AVENUE - 410-335-5939
Address Telephone No.
BALTIMORE, MARYLAND 21220
City State Zip Code

Representative to be Contacted:

LINDA O'KEEFE
Name
523 PENNY LANE 410-666-5366
Address Telephone No.
COCKEYSVILLE, MD. 21030
City State Zip Code

OFFICE USE ONLY

Case No. 07-034-A

ESTIMATED LENGTH OF HEARING

UNAVAILABLE FOR HEARING

REV 9/15/98 9-20-04

Reviewed By Date 7-25-06

ZONING DESCRIPTION

ZONING DESCRIPTION FOR # 13205 GUNDALE AVENUE

Beginning at a point on the south side of Gundale Avenue which is 30 feet wide at the distance of 415.0 feet south of the centerline of the nearest improved intersecting street: Gunder Avenue which is 30 feet wide. *Being Lot # 250 and 251, and Block , Section # A in the subdivision of Twin River Beach as recorded in Baltimore County Plat Book # 9, Folio # 33, containing 7,560. Also known as # 13205 Gundale Avenue and located in the 15th Election District, 6th Councilman District.

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

034

No. 3899

DATE 7.25.06

ACCOUNT FOOT-COT-6150

AMOUNT \$ 65.00

RECEIVED FROM: O. Keefe

FOR: V. S. 13205 GUNDALE AVE

DISTRIBUTION

WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

PAID RECEIPT

| BUSINESS | ACTUAL | TIME | DRN |
|----------------------------|-----------|---------------------|------|
| 7/27/2006 | 7/25/2006 | 14:38:54 | 5 |
| REG HD05 | WALKIN | REGA MED | |
| RECEIPT & CERTS | 7/24/2006 | | OFFH |
| Dept: 5 | 529 | ZIVIND VERIFICATION | |
| Acct No: 000000 | | | |
| Receipt Tot | | 445.00 | |
| 4130.00 - OK | | 6.00 - CA | |
| Baltimore County, Maryland | | | |

CASHIER'S VALIDATION

NOTICE OF ZONING HEARING

The Zoning Commissioner 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: # 07-034-A

13205 Guindale Avenue

Southside of Guindale Avenue, 415 feet +/- south of centerline of Gunder Avenue

15th Election District — 6th Councilmanic District

Legal Owner(s): Gerald H. & Barbara C. Kestner

Variance: to permit a single family residential dwelling on a 50.4-foot lot in lieu of the required 55 feet, with a contiguous ownership.

Hearing: Tuesday, September 19, 2006 at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204.

WILLIAM J. WISEMAN, III

Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-3868.

(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.
JT 9/607 Sept. 5 108299

CERTIFICATE OF PUBLICATION

9/7/2006

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 9/5/2006.

- The Jeffersonian
- Arbutus Times
- Catonsville Times
- Towson Times
- Owings Mills Times
- NE Booster/Reporter
- North County News

J. Wilkinson

LEGAL ADVERTISING

CERTIFICATE OF POSTING

ATTENTION: KRISTEN MATHHEWS

DATE: 9/5/06

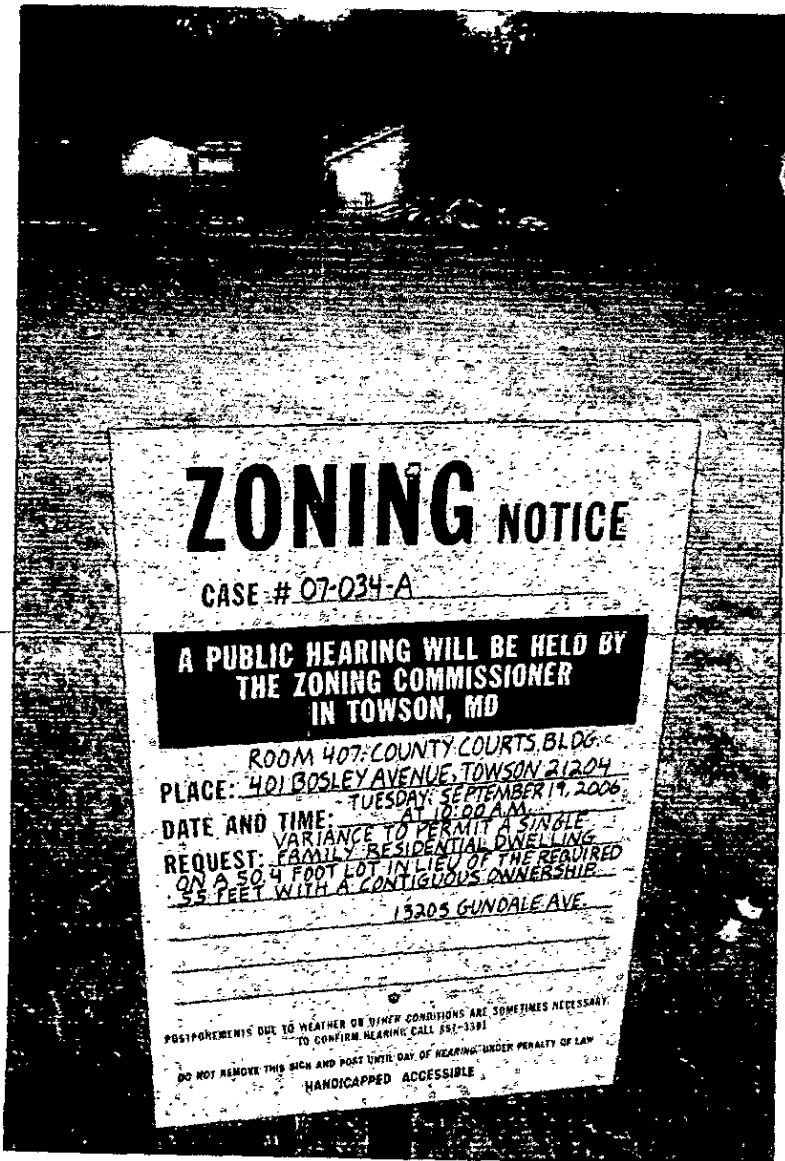
Case Number: 07-034-A

Petitioner/Developer: GERALD & BARBARA KESTNER

Date of Hearing (Closing): 09/19/06

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: 13205 GUNDALE AVENUE

The sign(s) were posted on: 9/04/06



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**

Director's Office
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204
Tel: 410-887-3353 • Fax: 410-887-5708



Baltimore County

*James T. Smith, Jr., County Executive
Timothy M. Kotroco, Director*

August 3, 2006

NOTICE OF ZONING HEARING

The Zoning Commissioner 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: 07-034-A

13205 Gundale Avenue
Southside of Gundale Avenue, 415 feet +/- south of centerline of Gunder Avenue
15th Election District – 6th Councilmanic District
Legal Owners: Gerald H. & Barbara C. Kestner

Variance to permit a single family residential dwelling on a 50.4-foot lot in lieu of the required 55 feet, with a contiguous ownership.

Hearing: Tuesday, September 19, 2006 at 10:00 a.m. in Room 407, County Courts Building,
401 Bosley Avenue, Towson 21204

A handwritten signature in black ink that reads "Timothy Kotroco".

Timothy Kotroco
Director

TK:klm

C: Gerald & Barbara Kestner, 12913 Eastern Avenue, Baltimore 21220
Linda O'Keefe, 523 Penny Lane, Cockeysville 21030

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY MONDAY, SEPTEMBER 4, 2006.**
- (2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
- (3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

Visit the County's Website at www.baltimorecountyonline.info



TO: PATUXENT PUBLISHING COMPANY
Tuesday, September 5, 2006 Issue - Jeffersonian

Please forward billing to:
Gerald Kestner
12913 Eastern Avenue
Baltimore, MD 21220

410-335-7866

NOTICE OF ZONING HEARING

The Zoning Commissioner 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: 07-034-A

13205 Gundale Avenue

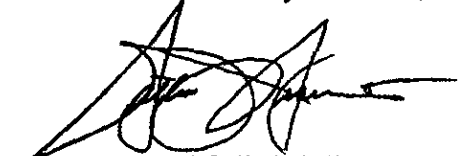
Southside of Gundale Avenue, 415 feet +/- south of centerline of Gunder Avenue

15th Election District – 6th Councilmanic District

Legal Owners: Gerald H. & Barbara C. Kestner

Variance to permit a single family residential dwelling on a 50.4-foot lot in lieu of the required 55 feet, with a contiguous ownership.

Hearing: Tuesday, September 19, 2006 at 10:00 a.m. in Room 407, County Courts Building,
401 Bosley Avenue, Towson 21204



WILLIAM J. WISEMAN III
ZONING COMMISSIONER FOR BALTIMORE COUNTY

- NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
- (2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

RE: PETITION FOR VARIANCE
13205 Gundale Avenue; S/S Gundale
Avenue, 415' S c/line Gunder Avenue
15th Election & 6th Councilmanic Districts
Legal Owner(s): Gerald & Barbara Kestner
Petitioner(s)

* BEFORE THE
* ZONING COMMISSIONER
* FOR
* BALTIMORE COUNTY
* 07-034-A

* * * * *

ENTRY OF APPEARANCE

Please enter the appearance of People's Counsel 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
Carole S. Demilio
CAROLE S. DEMILIO
Deputy People's Counsel
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of August, 2006, a copy of the foregoing Entry of Appearance was mailed to, Linda O'Keefe, 523 Penny Lane, Cockeysville, MD 21030, Representative for Petitioner(s).

RECEIVED

AUG 03 2006

Per.....

Peter Max Zimmerman
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

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/neighborhood 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: 07-034-A

Petitioner: GERALD KESTNER

Address or Location: #1320 ~~5~~ GUNDALE AVENUE (#13205)

PLEASE FORWARD ADVERTISING BILL TO:

Name: GERALD KESTNER

Address: 12913 EASTERN AVENUE

BALTO., MD. 21220

Telephone Number: 410-335-7866

Revised 7/11/05 - SCJ



BALTIMORE COUNTY
M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, *Director*
Department of Permits and
Development Management

September 13, 2006

Gerald H. Kestner
Barbara C. Kestner
12913 Eastern Avenue
Baltimore, MD 21220

Dear Mr. and Mrs. Kestner:

RE: Case Number: 07-034-A, 13205 Gundale Avenue

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on July 25, 2006 .

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

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

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR:amf

Enclosures

c: People's Counsel
Linda O'Keefe 523 Penny Lane Cockeysville 21030

John
9/19

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits and
Development Management

DATE: August 29, 2006

FROM: Arnold F. 'Pat' Keller, III
Director, Office of Planning

SUBJECT: Zoning Advisory Petition(s): **Case(s) 7-034 and 7-035**

The Office of Planning has reviewed the subject request and has determined that the petitioner owns sufficient adjoining land to conform to the minimum width and area requirements and therefore does not meet the standards stated in Section 304.1.C of the BCZR. However, there appears to be several existing undersized lots in the neighborhood. As such, this office does not oppose the petitioner's request.

If the petitioner's request is granted, the following conditions shall apply to the proposed dwelling:

1. Submit building elevations to this office for review and approval prior to the issuance any building permit. The proposed dwelling shall be compatible in size, exterior building materials, color, and architectural detail as that of the existing dwellings in the area.
2. Provide landscaping along the public road, if consistent with the existing streetscape.

For further questions or additional information concerning the matters stated herein, please contact Laurie Hay with the Office of Planning at 410-887-3480.

Prepared By: Candis Murray

Division Chief: [Signature]
CM/LL

RECEIVED

AUG 31 2006

ZONING COMMISSIONER

NOT RECORDED FOR FILING
9-20-06
[Signature]

BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits & Development
Management

DATE: August 4, 2006

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

SUBJECT: Zoning Advisory Committee Meeting
For August 7, 2006
Item No. 034

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

The minimum right-of-way width for Gundale Avenue is 40-feet. Show a future 40-foot-wide right-of-way centered on the existing 30-foot right-of-way and adjust the setback accordingly.

DAK:CEN:clw
cc: File
ZAC-ITEM NO 034-08012006.doc

RECEIVED FOR FILING
SEP 20 9-20-06
PB



BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

WILLIAM J. WISEMAN III
Zoning Commissioner

September 20, 2006

GERALD H. AND BARBARA C. KESTNER
12913 EASTERN AVENUE
BALTIMORE MD 21220

Re: Petition for Variance
Case No. 07-034-A and 07-035-A
Property: 13205 Gundale Avenue

Dear Mr. and Mrs. Kestner:

Enclosed please find the decision rendered in the above-captioned case. The petition for 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
Deputy Zoning Commissioner

JVM:pz

Enclosure

c: Linda O'Keefe, 523 Penny Lane, Cockeysville MD 21030
Sue Zack, 13204 Birdale Avenue, Baltimore MD 21220

RECEIVED FOR FILED
9-20-06
PB

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

August 1, 2006

ATTENTION: Zoning Review Planners

Distribution Meeting of: July 31, 2006

Item No.: 492, 015, 024, 025, 027, 028, 029, 030, 032, 033, 034 and 035.

Pursuant to your request, the referenced plan(s) have been reviewed by the Fire Marshal's Office 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
Fire Marshal's Office
410-887-4880
MS-1102F

Visit the County's Website at www.baltimorecountyonline.info





Robert L. Ehrlich, Jr., Governor
Michael S. Steele, Lt. Governor

Robert L. Flanagan, Secretary
Neil J. Pedersen, Administrator

Maryland Department of Transportation

Date: 8.1.06

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

RE: Baltimore County
Item No. 034 JCM

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,

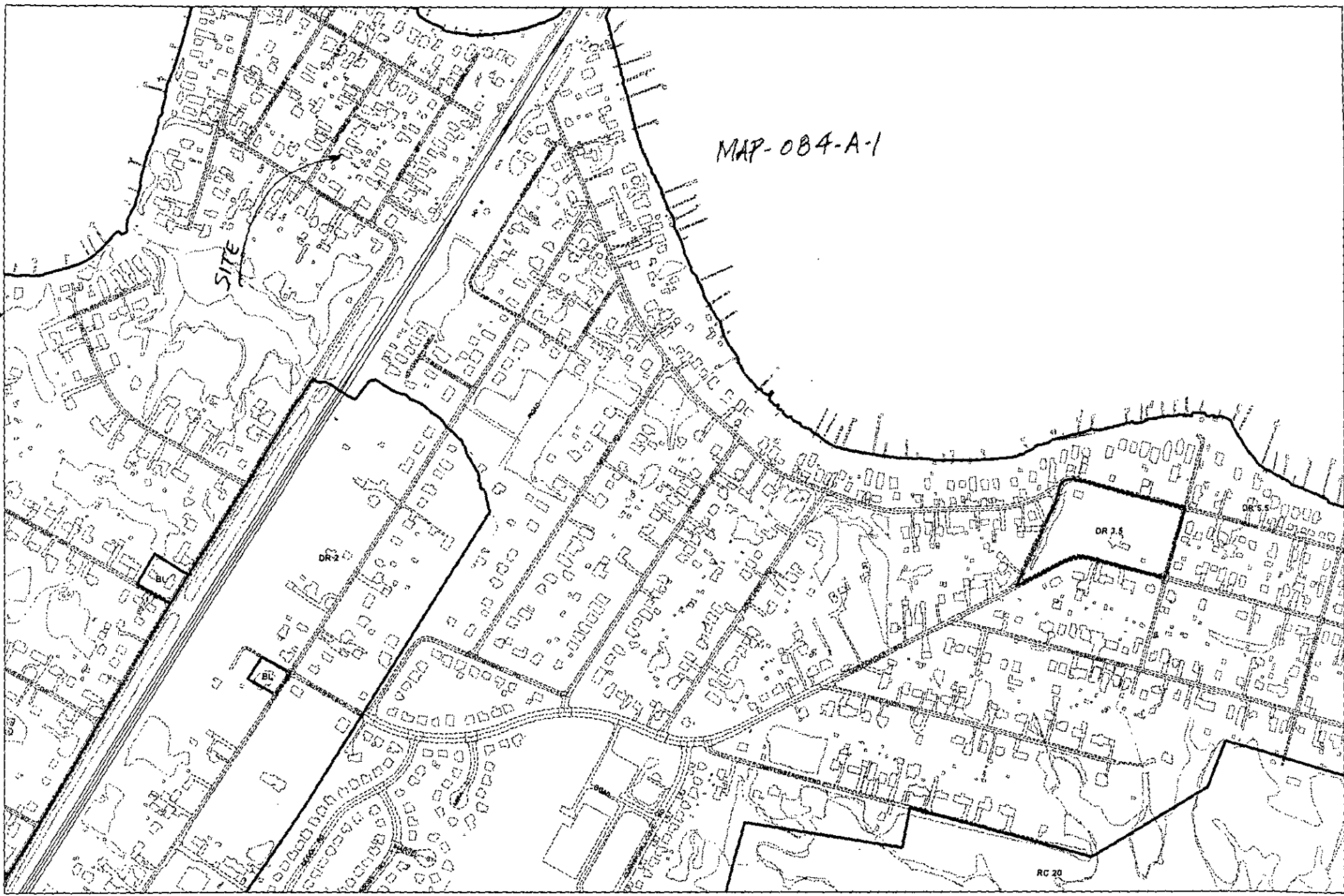
Steven D. Foster, Chief
Engineering Access Permits Division

| Zoning Classification | Minimum Net Lot Area per Dwelling Unit (sq. ft.) | 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.

D. An amendment to any part of a development plan involving only property subject to the provisions of this subsection shall not be subject to the provisions of Section 1B01.3.A.7.

MAP-084-A-1



Plan Sheet: #8441
 Scale:
 The zoning depicted in the application incorporates the actions associated with County Council Bill 82-04, 83-04, 84-04, 85-04, 86-04, 87-04, 88-04 and 89-04 adopted by the County Council on August 31, 2004. The action associated with County Council Bill 130-04 adopted on December 8, 2004 is also depicted. In addition, County Board of Appeals actions from MC 05-01, MC 05-02, MC 05-03 and MC 05-04 on February 9, 2005 are represented in the application.

Legend

| | | |
|-----------|---------|------------|
| Zoning | Streams | Vegetation |
| Buildings | Roads | Rail Lines |

**Baltimore County
 Office of Planning and Zoning
 Official Zoning Map**

| | | | |
|-------|-------|-------|-------|
| 073B1 | 073C1 | 074A1 | |
| 082B1 | 083C1 | 084A1 | 084B1 |
| 093B1 | 093C1 | 094A1 | 094B1 |

Scale
 1" = 200'
 0 100 200 400 Feet



Data Sources:
 Planometric Data: Baltimore County
 OT/GIS Services Unit
 12400 North 11850th Anniversary
 Zoning: Baltimore County Office of Planning
 11405 2004

PLAT TO ACCOMPANY PETITION FOR ZONING VARIANCE SPECIAL HEARING

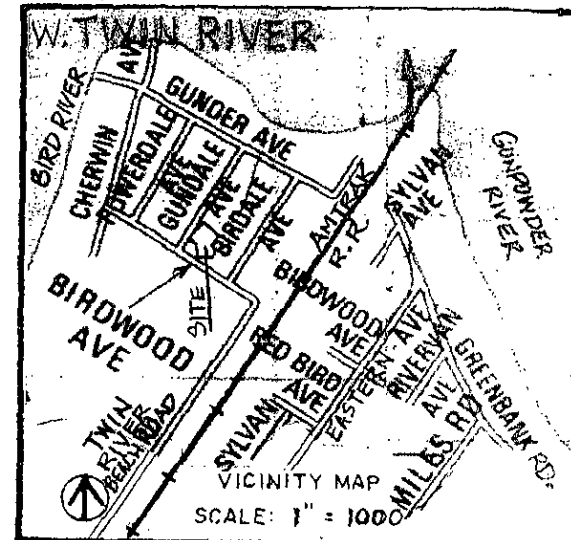
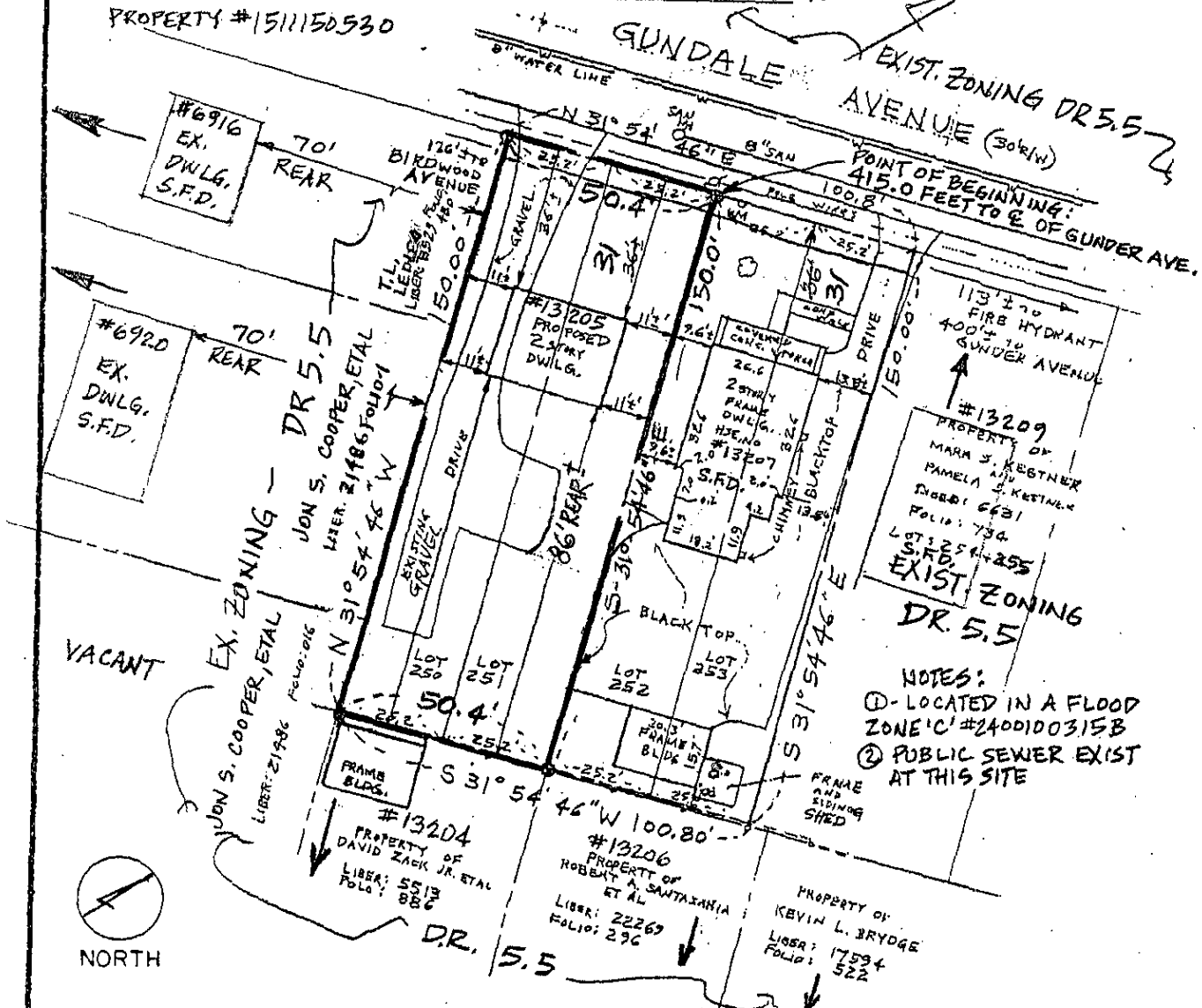
PROPERTY ADDRESS #13205 GUNDALE AVENUE

SUBDIVISION NAME TWIN RIVER BEACH, SECTION 'A'

PLAT BOOK # 9 FOLIO # 33 LOT # 251 SECTION # A

OWNER GERALD A. & BARBARA C. KESTNER - 410-335-7866

PROPERTY #151150530



LOCATION INFORMATION

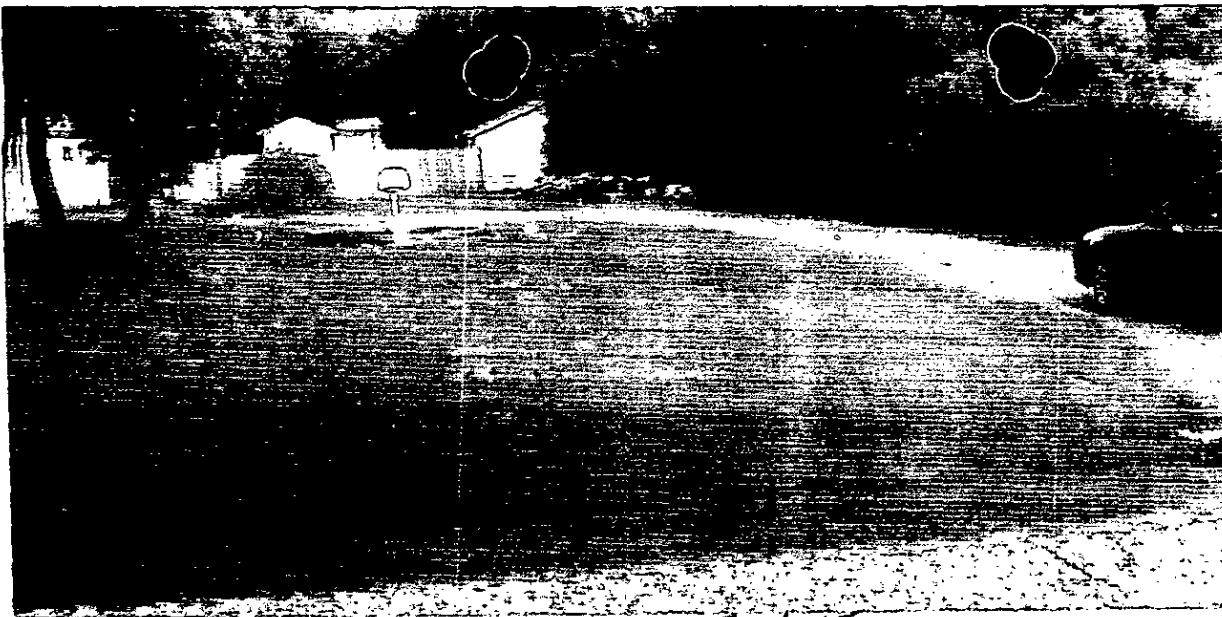
ELECTION DISTRICT - 15
 COUNCILMANIC DISTRICT - 16
 1" = 200' SCALE MAP # NE 8M (OLD)
 084-A1 (NEW)
 ZONING: DR 5.5
 LOT SIZE 0.172 ~~1.580~~
 ACREAGE SQUARE FEET

| | PUBLIC | PRIVATE | YES | NO |
|------------------------------|-------------------------------------|--------------------------|-------------------------------------|-------------------------------------|
| SEWER | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| WATER | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| CHESAPEAKE BAY CRITICAL AREA | | | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 100 YEAR FLOOD PLAIN | | | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| HISTORIC PROPERTY/BUILDING | | | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| PRIOR ZONING HEARING | N/A | | | |

NOTES:
 ① - LOCATED IN A FLOOD ZONE 'C' #2400100315B
 ② - PUBLIC SEWER EXIST AT THIS SITE

ZONING OFFICE USE ONLY
 REVIEWED BY _____ ITEM # _____ CASE # _____
 1 Pet #1

PREPARED BY L.O'KEEFE - 410-666-5366 SCALE OF DRAWING: 1" = 40'



#13205 GUNDALE AVE

2A



#13207 GUNDALE AVE.

2B



#13209

2C



#13204 BIRDALE AVE.

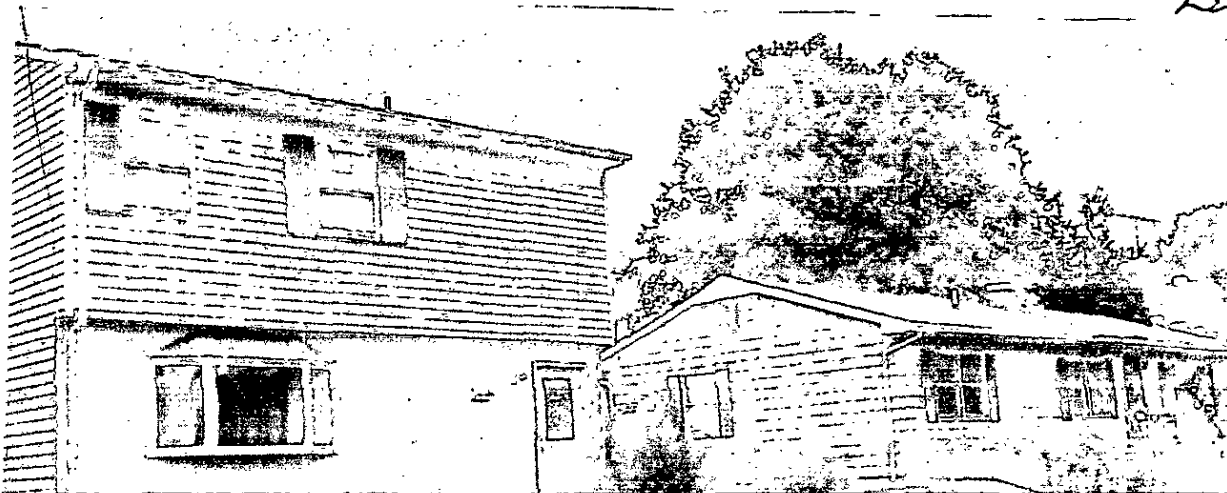
ZACK

2D



#13206 - BIRDALE AVE.

2E



#6916 BIRDWOOD AVE

Newer house #6920 BIRDWOOD AVE.

2F

IN RE: PETITION FOR ZONING VARIANCE
5875 Birdale Avenue, 322' SW
of the c/l of Gunder Avenue
(13211 Birdale Avenue)
15th Election District - 4th Councilmanic District

BEFORE THE
DEPUTY ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 92-430-A

Ronald W. Bair
Petitioner

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner as a Petitioner for Zoning Variance in which the Petitioner requests relief from Section 1802.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a minimum lot width of 50.4 feet in lieu of the required 55 feet for a proposed dwelling in accordance with Petitioner's Exhibit 1.

The Petitioner, Ronald W. Bair, appeared and testified. Also appearing on behalf of the Petition was Eugene W. Schwandtner, Contract Purchaser of the subject property. There were no Protestants.

Testimony indicated that the subject property, known as 13211 Birdale Avenue, consists of 7,540 sq. ft. zoned D.R. 5.5 and is presently unimproved. Said property is located within the Chesapeake Bay Critical Areas near Bird River. The Petitioner has contracted to sell the subject property to Eugene Schwandtner who is desirous of constructing a single family dwelling thereon in accordance with Petitioner's Exhibit 1. Testimony indicated that the subject property is located in the subdivision known as Twin Rivers Beach which was developed with 50-foot wide lots many years ago. Petitioner testified that there is no available land on either side of the subject lot from which to acquire the additional land needed and to require strict compliance with the zoning regulations would result in practical difficulty and unreasonable hardship for him.

This property is located within the Chesapeake Bay Critical Areas and as such, is subject to any recommendations made by the Department of Environmental Protection and Resource Management (DEPRM) as to Critical Areas requirements. Accordingly, the granting of the relief requested herein is contingent upon compliance with any recommendations made by DEPRM concerning the proposed development upon completion of their review.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. Metcalf v. Boloy, 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. Md. of Appeals, Town of Chesapeake Beach, 22 Md. App. 20 (1974).

It is clear from the testimony that if the variance is granted, such use, as proposed, will not be contrary to the spirit of the B.C.Z.R. and will not result in any injury to the public good.

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 land or structure which is the subject of this variance request and that the require-

ORDER RECEIVED FOR FILING
Date: 4/29/92
By: [Signature]

ments from which the Petitioner seeks relief will unably restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the variance requested will not cause any injury to the public health, safety or general welfare. Further, the granting of the Petitioner's request is in strict harmony with the spirit and intent of the B.C.Z.R.

Pursuant to the advertisement, postings of the property, and public hearing on this Petition held, and for the reasons given above, the variance requested should be granted.

WHEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 29th day of June, 1992 that the Petition for Zoning Variance requesting relief from Section 1802.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a minimum lot width of 50.4 feet in lieu of the required 55 feet for a proposed dwelling 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 Petitioners would be required to return, and be responsible for returning, said property to its original condition.
- 2) The relief granted herein is contingent upon the Petitioner's compliance with any recommendations made by DEPRM upon completion of their findings. Petitioner shall submit a Critical Area Findings Plan for review and approval by DEPRM prior to the issuance of any permits.
- 3) When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.

[Signature]
Deputy Zoning Commissioner
for Baltimore County

ORDER RECEIVED FOR FILING
Date: 4/29/92
By: [Signature]

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

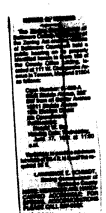
District: 15th
Date of Posting: 4/29/92
Posted for: Eugene W. Schwandtner, Contract Purchaser
Petitioner: Eugene W. Schwandtner, Contract Purchaser
Location of property: 13211 Birdale Ave. (SW) 322' SW of Gunder Ave.
Location of Sign: [Signature]
Remarks: [Signature]
Posted by: [Signature]
Date of return: 4/29/92
Number of Signs: 2

CERTIFICATE OF PUBLICATION

TOWSON, MD. May 21, 1992
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 May 21, 1992

THE JEFFERSONIAN,
S. Zeke Orlov
Publisher

F 39.76



Petition for Variance
to the Zoning Commissioner of Baltimore County
for the property located at 13211 BIRDAL AVE
which is presently zoned D.R. 5.5

BEFORE THE
DEPUTY ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 92-430-A

BEFORE THE
DEPUTY ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 92-430-A

BEFORE THE
DEPUTY ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 92-430-A

BEFORE THE
DEPUTY ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 92-430-A

BEFORE THE
DEPUTY ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 92-430-A

BEFORE THE
DEPUTY ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 92-430-A

BEFORE THE
DEPUTY ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 92-430-A

ZONING DESCRIPTION FOR 13211 BIRDAL AVE.

BEGINNING FOR THE FIRST AND SECOND THEREON ON THE SOUTHEAST SIDE OF BIRDAL AVE, WHICH IS 30 FEET WIDE AT A DISTANCE OF 382.4 FEET SOUTHWEST FROM THE CENTERLINE OF GUNDER AVE WHICH IS 40 FEET WIDE, BEING LOTS # 306 + 307 AS Laid OUT ON THE PLAT OF TWIN RIVER BEACH, SECTION "A" AS RECORDED AMONG THE LAND RECORDS OF BALTIMORE COUNTY IN PLAT BOOK L.M.L. No. 9, FOLIO 33, CONTAINING 7560 SQUARE FEET. ALSO KNOWN AS 13211 BIRDAL AVE AND LOCATED IN THE 15th ELECTION DISTRICT, ALSO RECORDED IN LIBER 8050 PAGE 551.

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning
Suite 113 Courthouse
400 Washington Avenue
Towson, MD 21284
June 24, 1992
(410) 887-4386

Mr. Ronald W. Bair
12 Fitzgerald Court
Baltimore, Maryland 21234
RE: PETITION FOR ZONING VARIANCE
5875 Birdale Avenue, 322' SW of the c/l of Gunder Avenue
(13211 Birdale Avenue)
15th Election District - 4th Councilmanic District
Ronald W. Bair - Petitioner
Case No. 92-430-A

Dear Mr. Bair:
Enclosed please find a copy of the decision rendered in the above-captioned matter. The Decision for Zoning Variance has been granted in accordance with the attached Order.

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 Ms. Charlotte Radcliffe at 887-3391.

Very truly yours,
[Signature]
TIMOTHY M. KUTROCO
Deputy Zoning Commissioner
for Baltimore County

cc: Chesapeake Bay Critical Areas Commission
45 S. Calvert Street, 2nd Floor, Annapolis, Md. 21401
DEPRM
People's Counsel
[Signature]
Mr. Eugene W. Schwandtner, Edgewood, Md. 21040

CRITICAL AREA

This Public Hearing was held on the Office of Zoning Administration & Development Management. The controversial legal character of the property, which is located 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 Baltimore County Zoning Regulations, Section 1802.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a minimum lot width of 50.4 feet in lieu of the required 55 feet for a proposed dwelling in accordance with Petitioner's Exhibit 1.

THE FRONTAGE OF THIS PROPERTY IS 50.4 FEET. SINCE 55 FEET IS REQUIRED, WE CANNOT OBTAIN A BUILDING PERMIT WITHOUT A VARIANCE.

Property to be posted and advertised as provided by Zoning Regulations. Property is to be posted and advertised as provided by Zoning Regulations. Property is to be posted and advertised as provided by Zoning Regulations. Property is to be posted and advertised as provided by Zoning Regulations.

Approved by: [Signature]
EUGENE W. SCHWANDTNER
Eugene W. Schwandtner
13211 Birdale Ave
Edgewood, MD 21040

Approved by: [Signature]
RONALD W. BAIR
Ronald W. Bair
12 Fitzgerald Ct
Baltimore, MD 21234

Approved by: [Signature]
TIMOTHY M. KUTROCO
Timothy M. Kutroco
111 West Chesapeake Avenue
Towson, Maryland 21284

ORDER RECEIVED FOR FILING
Date: 4/29/92
By: [Signature]

receipt
92-430
Account # 9014130
Number
Date: 4/29/92
PUBLIC HEARING FEES
POSTING SIGN / ADVERTISING
LAST NAME OF OWNER / PAIR
TOTAL \$ 74.76
840480091218RC
18 030122P65-18-92
Please Make Checks Payable To: Baltimore County
\$74.76
County Validation

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning

111 West Chesapeake Avenue
Towson, MD 21284 (410) 887-3353

DATE: 6/1/92

RE: Ronald W. Bair
12 Pittersford Court, #8
Baltimore, Maryland 21234

RE: CASE NUMBER: 92-430-A
9201 BIRDALE AVENUE, 302' SW from e/l Birda Avenue
13211 BIRDALE AVENUE
13211 BIRDALE AVENUE - 41A COMMERCE
Petitioner(s): Ronald W. Bair

Dear Petitioner(s):

Please be advised that § 24-76 is due for advertising and posting of the above captioned property.

NOTE: THE HEARING WILL BE HELD AND THE ZONING STEPS A FOOT NOTIFIED BY MAIL ON THE DATE OF THE HEARING. THE OWNER SHALL NOT OBEY TO NOT REMOVE THE SIGN A FOOT NOTIFIED BY MAIL ON THE DATE OF THE HEARING.

Please forward your check via return mail to the Zoning Office, County Office Building, 111 W. Chesapeake Avenue, Room 113, Towson, Maryland 21284. It should have your name on the check and be made payable to Baltimore County, Maryland. In order to prevent delay of the issuance of proper certificate and/or your order, immediate attention to this matter is suggested.

Arnold Jablon
DIRECTOR

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning

111 West Chesapeake Avenue
Towson, MD 21284 (410) 887-3353

MAY 15, 1992

NOTICE OF HEARING

The Zoning Commission of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland 21284 on the following:

CASE NUMBER: 92-430-A
9201 BIRDALE AVENUE, 302' SW from e/l Birda Avenue
13211 BIRDALE AVENUE
13211 BIRDALE AVENUE - 41A COMMERCE
Petitioner(s): Ronald W. Bair
HEARING: WEDNESDAY, MAY 17, 1992 at 11:00 a.m.

Purpose: to permit a minimum lot width of 50.4 ft. in lieu of the required 55 ft.

Arnold Jablon
DIRECTOR

RE: Ronald W. Bair
Raymond W. Schmitt
NOTE: HEARINGS ARE PUBLIC AFFAIRS. FOR SPECIAL INFORMATION PLEASE CALL 887-3353.

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning

111 West Chesapeake Avenue
Towson, MD 21284 (410) 887-3353

June 2, 1992

Mr. Ronald W. Bair
12 Pittersford Court
Baltimore, MD 21234

RE: Item No. 457, Case No. 92-430-A
Petitioner: Ronald W. Bair, et al
Petition for Variance

Dear Mr. Bair:

The Zoning Plans Advisory Committee (ZPAC) has reviewed the plans submitted with the above referenced petition. The attached comments from each reviewing agency are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties, i.e., Zoning Commission, attorney and/or the petitioner, are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case.

Enclosed are all comments submitted thus far from the members of ZPAC that offer or request information on your petition. If additional comments are received from other members of ZPAC, 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.

The following comments are related only to the filing of future zoning petitions and are aimed at expediting the petition filing process with this office.

1) The Director of Zoning Administration and Development Management has instituted a system whereby seasoned zoning attorneys who feel that they are capable of filing petitions that comply with all aspects of the zoning regulations and petitions filing requirements can file their petitions with this office without the necessity of a preliminary review by zoning personnel.

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning

111 West Chesapeake Avenue
Towson, MD 21284 (410) 887-3353

Your petition has been received and accepted for filing this 30th day of April, 1992.

Arnold Jablon
DIRECTOR

Received By:
W. Carl Rebeck, Jr.
CHAIRMAN,
Zoning Plans Advisory Committee

Petitioner: Ronald W. Bair
Petitioner's Attorney:

DPW/Developers Engineering Division (Public Services) 05/18/92
Development Review Committee Response Form
Authorized signature: Donald W. Morsey Date: 5/18/92

| File Number | Project Name | Waiver Number | Zoning Issue | Meeting Date | Decision |
|--------------------------------------|--------------|---------------|--------------|--------------|----------|
| 9690 DEERCO ROAD LIMITED PARTNERSHIP | | 450 | | 5-11-92 | NC |
| DEDPH RP STP TE | | | | | NC |
| Harbor Realty Partnership | | 451 | | | NC |
| DEDPH RP STP TE | | | | | NC |
| Harbor Realty Partnership | | 452 | | | NC |
| DEDPH RP STP TE | | | | | NC |
| Jerald H. And Brenda D. Windes | | 453 | | | NC |
| DEDPH RP STP TE | | | | | NC |
| Daniel C. And Susan E. Gutkin | | 454 | | | NC |
| DEDPH RP STP TE | | | | | NC |
| Donald And Anne Kahn | | 455 | | | NC |
| DEDPH RP STP TE | | | | | NC |
| Signet Bank, Maryland | | 456 | | | NC |
| DEDPH RP STP TE | | | | | NC |
| Ronald W. Bair | | 457 | | | NC |
| DEDPH RP STP TE | | | | | NC |
| A. Eric And Esther J. Dott | | 458 | | | NC |
| DEDPH RP STP TE | | | | | NC |
| William J. And Mary Jane Kramer | | 459 | | | NC |
| DEDPH RP STP TE | | | | | NC |
| Douglas B. And Judith A. Celmer | | 460 | | | NC |
| DEDPH RP STP TE | | | | | NC |

COUNT 11

BALTIMORE COUNTY, MARYLAND

OFFICE OF PLANNING AND ZONING
New Course Building
401 Bealey Avenue
Towson, MD 21286

MEMORANDUM

TO: Arnold Jablon, Director - Zoning Administration & Development Management

FROM: Ervin McDaniel, Chief Development Review Section
Office of Planning and Zoning

DATE: May 13, 1992

SUBJECT: PETITIONS FROM ZONING ADVISORY COMMITTEE - 5/11/92

The Office of Planning and Zoning has no comments on the following petitions:

| | |
|----------------------------|------------|
| Jerald & Brenda Windes | - Item 453 |
| Daniel & Susan Gutkin | - Item 454 |
| Donald & Anne Kahn | - Item 455 |
| Ronald W. Bair | - Item 457 |
| William & Mary Jane Kramer | - Item 459 |
| Douglas & Judith Celmer | - Item 460 |

If there should be any further questions or if this office can provide additional information, please contact Francis Morsey in the Office of Planning and Zoning at 887-3211.

5_13_92.txt
Petition.txt

RECEIVED
MAY 18 1992
ZONING OFFICE

DPW/Traffic Engineering 05/18/92
Development Review Committee Response Form
Authorized signature: Ervin McDaniel Date: 5/18/92

| File Number | Project Name | Waiver Number | Zoning Issue | Meeting Date | Decision |
|--------------------------------------|--------------|---------------|--------------|--------------|----------|
| 9690 DEERCO ROAD LIMITED PARTNERSHIP | | 450 | | 5-11-92 | N/C |
| DEDPH RP STP TE | | | | | N/C |
| Orville Jones | | 451 | | | N/C |
| DEDPH RP STP TE | | | | | N/C |
| Harbor Realty Partnership | | 452 | | | N/C |
| DEDPH RP STP TE | | | | | N/C |
| Jerald H. And Brenda D. Windes | | 453 | | | N/C |
| DEDPH RP STP TE | | | | | N/C |
| Daniel C. And Susan E. Gutkin | | 454 | | | N/C |
| DEDPH RP STP TE | | | | | N/C |
| Donald And Anne Kahn | | 455 | | | N/C |
| DEDPH RP STP TE | | | | | N/C |
| Signet Bank, Maryland | | 456 | | | N/C |
| DEDPH RP STP TE | | | | | N/C |
| Ronald W. Bair | | 457 | | | N/C |
| DEDPH RP STP TE | | | | | N/C |
| A. Eric And Esther J. Dott | | 458 | | | N/C |
| DEDPH RP STP TE | | | | | N/C |
| William J. And Mary Jane Kramer | | 459 | | | N/C |
| DEDPH RP STP TE | | | | | N/C |
| Douglas B. And Judith A. Celmer | | 460 | | | N/C |
| DEDPH RP STP TE | | | | | N/C |

COUNT 11

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT
INTER-OFFICE CORRESPONDENCE

TO: Mr. Arnold Jablon, Director
Zoning Administration and Development Management

DATE: May 14, 1992

FROM: Mr. J. Lawrence Pilson
Development Coordinator, DEPRM

SUBJECT: Zoning Item #457
13211 Birdale Avenue
Zoning Advisory Committee Meeting May 11, 1992

The Department of Environmental Protection and Resource Management requests an extension for the review of the above referenced zoning item to determine whether the proposed development is in compliance with the Chesapeake Bay Critical Area Regulations. The applicant must submit a Critical Area Findings Plan for review and approval by this Department prior to preparation of a Critical Area Findings for the development. The applicant may contact the Environmental Impact Review Division of the Department at 887-2904 for details.

JLP:sp
JABLON/S/TXTSP

RECEIVED
MAY 19 1992
ZONING OFFICE

Baltimore County Government
Fire Department
700 East Joppa Road, Suite 301
Towson, MD 21286-5300
(301) 887-4500
MAY 13, 1992

Arnold Jablon
Director
Zoning Administration and
Development Management
Baltimore County Office Building
Towson, MD 21264

RE: Property Owner: RONALD W. BAIR
Location: 813211 BIRDLE AVENUE
Item No.: 457 (JCM) Zoning Agenda: MAY 11, 1992

Gentlemen:
Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

7. The Fire Prevention Bureau has no comments at this time.

REVIEWER: *Capt. Adam J. Goff* Noted and Approved
Planning Group Fire Prevention Bureau
Special Inspection Division

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MAY 14 1992
ZONING OFFICE

Department of Recreation and Parks
Development Review Committee *Responsible*
Authorized Signature _____ Date *13/11/92*

| File Number | Waiver Number | Zoning Issue | Meeting Date |
|--|---------------|--------------|--------------|
| 9490 Deereaco Road Limited Partnership | 450 | | 5-11-92 |
| DED DEPRM RP STP TE | | | |
| Orville Jones | 451 | | |
| DED DEPRM RP STP TE | | | |
| Harbor Health Partnership | 452 | | |
| DED DEPRM RP STP TE | | | |
| Terald M. And Brenda D. Windes | 453 | | |
| DED DEPRM RP STP TE | | | |
| Daniel C. And Susan E. Gutkin | 454 | | |
| DED DEPRM RP STP TE | | | |
| Donald And Anne Kahn | 455 | | |
| DED DEPRM RP STP TE | | | |
| Signet Bank, Harvland | 456 | | |
| DED DEPRM RP STP TE | | | |
| Ronald W. Bair | 457 | | |
| DED DEPRM RP STP TE | | | |
| Eric And Esther J. Doss | 458 | | |
| DED DEPRM RP STP TE | | | |
| William J. And Mary Jane Kramer | 459 | | |
| DED DEPRM RP STP TE | | | |
| Douglas B. And Judith A. Celear | 460 | | |
| DED DEPRM RP STP TE | | | |

COUNT 11

92-430-A BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT
INTER-OFFICE CORRESPONDENCE

TO: Mr. Arnold Jablon, Director
Zoning Administration and
Development Management
DATE: July 22, 1992

FROM: J. Lawrence Pilson
Development Coordinator, DEPRM

SUBJECT: Zoning Item 457
13211 Birdle Avenue
Zoning Advisory Committee Meeting of May 11, 1992.

The Department of Environmental Protection and Resource Management offers the following comments on the above referenced zoning item.
See attached Chesapeake Bay Critical Area Findings.

JLP:ju
JABLON/STXTEU

RECEIVED
MAY 8 1992
ZONING OFFICE

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT
INTER-OFFICE CORRESPONDENCE

TO: Mr. Arnold E. Jablon, Director
Office of Zoning Administration
and Development Management
DATE: July 17, 1992

FROM: J. James Dieter

SUBJECT: Petition for Zoning Variance - Item 457
Bair Property
Chesapeake Bay Critical Area Findings

SITE LOCATION

The subject property is located at 13211 Birdle Avenue. The site is within the Chesapeake Bay Critical Area and is classified as a Limited Development Area (LDA).

APPLICANT'S NAME: Mr. Ronald W. Bair

APPLICANT PROPOSAL

The applicant has requested a variance from section 1802.5.C.1 of the Baltimore County Zoning Regulations to permit a minimum lot width of 50.4 feet in lieu of the required 55 feet.

GOALS OF THE CHESAPEAKE BAY CRITICAL AREA PROGRAM

In accordance with the Chesapeake Bay Critical Area Program, all project approvals shall be based on a finding which assures that proposed projects are consistent with the following goals of the Critical Area Law:

1. Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have runoff from surrounding lands;
2. Conserve fish, wildlife and plant habitat; and
3. Establish land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts. <COMAR 14.15.10.01.0>

Mr. Arnold E. Jablon
July 17, 1992
Page 2

REGULATIONS AND FINDINGS

1. Regulation: "A minimum 100 foot buffer shall be established landward from the mean high water line of tidal wetlands, tidal wetlands, and tributary streams" (Baltimore County Code Section 26-49(b)(3)).
Finding: There are no tidal wetlands, tidal wetlands or tributary streams on or within 100 feet of this property.
2. Regulation: "Dredging, filling, or construction other than approved bulkheading shall not be permitted in any non-tidal and tidal wetlands unless the proposed development consists of utility, bridge, or street development in a non-tidal wetland and unless the Director of Environmental Protection and Resource Management finds this proposed development not detrimental to the County's Wetland Management Programs" (Baltimore County Code, Section 26-44).
Finding: No tidal or non-tidal wetlands were found on this site, or in the vicinity of the site.
3. Regulation: "If a parcel or lot one-half acre or less in size was in residential use or zoned for residential purposes on or before December 1, 1985, then man-made impervious surfaces associated with that use are limited to 25% of the parcel or lot" (Baltimore County Code, Section 26-58(e)(1)).
Finding: The amount of impervious areas shall not exceed 1800 square feet. This includes all building structures, paved and crushed run driveways and parking pads, or any other impervious surfaces.
4. Regulation: "If no forest is established on proposed development sites, these sites shall be planted to provide a forest or developed woodland cover of at least 15%" (COMAR 14.15.02.04 C. (5)(e)).
Finding: The following plant material shall be selected from the enclosed list and planted in addition to existing vegetation to provide a 15% forested cover.
Shrub and small tree list: 4 items - ball and burlap or 2 gallon container size

Trees are an important factor in improving water quality. The roots of trees greatly improve the infiltration rate of storm water and efficiently remove nitrogen from subsurface flows of ground water. Trees also act as both a barrier and a sponge, blocking and absorbing eroding soils and the phosphorus associated with them.

Mr. Arnold E. Jablon
July 17, 1992
Page 3

5. Regulation: "Infiltration of stormwater shall be maximized throughout the site, rather than directing flow to single discharge points" (Baltimore County Code, Section 26-453(h)(2)).
Finding: Stormwater runoff shall be directed from impervious surfaces associated with this plan, to pervious areas, to encourage maximum infiltration. Rooftop runoff shall be directed through downspouts and into dry wells, to encourage maximum infiltration (see attachment).

CONCLUSION

The Zoning Variance shall be conditioned so the project proposal is in compliance with the Chesapeake Bay Critical Area Regulations and Findings listed above. This proposal does comply with Chesapeake Bay Critical Area Regulations, and is therefore approved. If there are any questions, please contact Ms. Patricia N. Farr at 881-2904.

J. James Dieter
J. James Dieter, Director
Department of Environmental Protection
and Resource Management

JJD:MM:ju

Attachment

cc: Mr. Ronald W. Bair, w/attachment
Mr. Eugene W. Schwandner, w/attachment

BAIR/TXTNNS

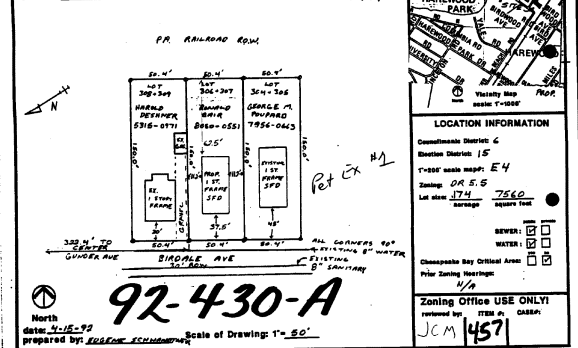
PLEASE PRINT CLEARLY

PETITIONER(S) SIGN IN SHEET

NAME ADDRESS
Eugene W. Schwandner 9025 Sunnyside Court # 21040
Ronald Bair 14 Elizabeth Ct # 21234

Plat to accompany Petition for Zoning Variance Special Hearing

PROPOSED ADDRESS: 13211 BIRDLE AVE see pages 2 & 3 of the CHECKLIST for additional required information
APPLICANT'S NAME: RONALD BAIR
OWNER: RONALD BAIR 13211 BIRDLE AVE AT A BALT 21234

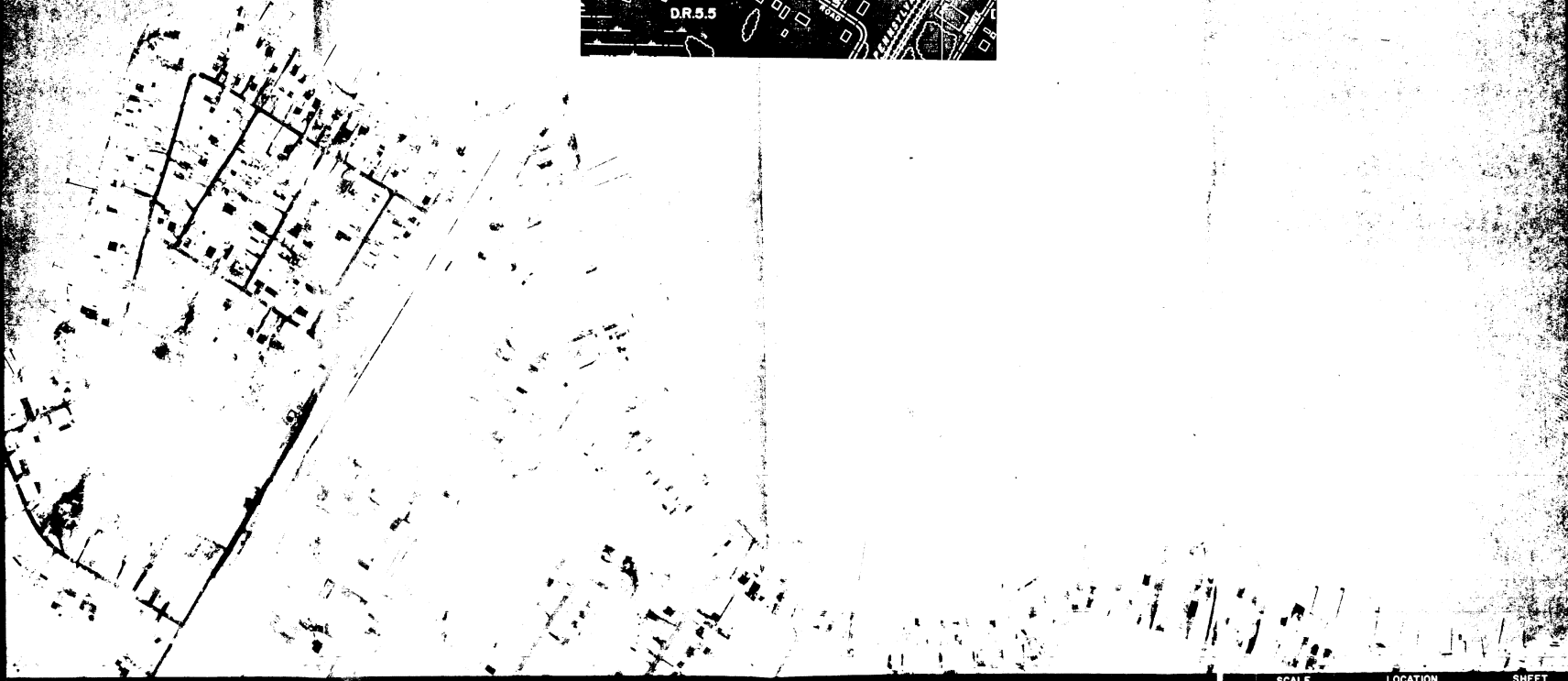


Scale of Drawing: 1" = 50'
North
Date: 7-15-92
Prepared by: EUGENE W. SCHWANDNER

LOCATION INFORMATION
Commuter District: 6
Electoral District: 15
1"-50" scale map: E4
Zoning: OR 5.5
Lot area: 1774
Area: 7560

SEWER:
WATER:
Chesapeake Bay Critical Area
Petitioning Map: 4/4

Zoning Office USE ONLY!
Reviewed by: JCM
Date: 7/17/92



457

BALTIMORE COUNTY
 OFFICE OF PLANNING AND ZONING
 PHOTOGRAPHIC MAP

| | | |
|---------------------|----------|-------------|
| SCALE | LOCATION | SHEET |
| 1" = 200' ± | HAREWOOD | N.E. 8-M |
| DATE OF PHOTOGRAPHY | | |
| JANUARY 1986 | | |

PREPARED BY AIR PHOTOGRAPHICS, INC.
 MARTINSBURG, W. V. 25401

IN RE: PETITIONS FOR VARIANCE - NW/Cor. * BEFORE THE
 Cherwin Avenue and Birdwood Place
 (13116 and 13118 Cherwin Avenue) * DEPUTY ZONING COMMISSIONER
 15th Election District
 5th Councilmanic District * OF BALTIMORE COUNTY

Thomas A. Hahn and * Case Nos. 98-127-A
 Lillie H. Hentz, Trustees and 98-128-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of combined Petitions for Variance for the adjoining waterfront properties known as 13116 and 13118 Cherwin Avenue, located in the Twin River Beach community in southeastern Baltimore County. The Petitions were filed by Thomas A. Hahn and Lillie H. Hentz, Trustees of the subject property. In Case No. 98-127-A, the Petitioners seek relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a lot width of 50 feet in lieu of the required 55 feet and a minimum side yard setback of 1 foot in lieu of the required 10 feet for an existing dwelling at 13116 Cherwin Avenue. In Case No. 98-128-A, the Petitioners seek similar relief from Section 1B02.3.C.1 of the B.C.Z.R. to permit a lot width of 50 feet in lieu of the required 55 feet for a proposed dwelling, to be known as 13118 Cherwin Avenue, and approval of the property as an undersized lot, pursuant to Section 304 of the B.C.Z.R. The subject properties and relief requested are more particularly described on the site plan submitted with each Petition, identified respectively as Petitioner's Exhibit 1.

Appearing at the hearing on behalf of the Petitions were Thomas A. Hahn and Lillie H. Hentz, Trustees of the subject property, Charles Hentz, and Paul Lee, Professional Engineer, who prepared the site plan for

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 Date 11/24/67
 By [Signature]

these properties. There were no Protestants or other interested persons present.

Testimony and evidence offered revealed that the two properties identified above have been in the ownership of the Hentz family for many decades and that Thomas Hahn and Lillie Hentz are the Trustees for the owner, who now resides in an assisted living facility. The Petitioners have filed the instant Petitions in an effort to prepare the two subject properties for sale in the event it becomes necessary to do so. The property known as 13116 Cherwin Avenue consists of a gross area of 12,500 sq.ft., zoned D.R. 5.5 and is improved with a 1.5 story dwelling and a detached garage. Testimony indicated that the dwelling on the property was constructed in 1926. In 1945, the owner of the property purchased the adjacent property, known as 13118 Cherwin Avenue, by separate deed. The owner has owned and maintained that parcel as an unimproved lot since that time. In order to offer the properties for individual sale, however, the requested variances are necessary to legitimize existing conditions.

This property is located within the Chesapeake Bay Critical Areas and as such, is subject to compliance with any recommendations made by the Department of Environmental Protection and Resource Management (DEPRM), pursuant to Section 500.14 of the Baltimore County Zoning Regulations (B.C.Z.R.), to minimize any effects the proposed development might have on the Bay and its tributaries. As of the date of this Order, DEPRM had not completed its review of this project. Therefore, the relief granted herein shall be conditioned upon Petitioner's compliance with any recommendations made by DEPRM upon completion of their review.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and

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Date 11/24/79
[Signature]

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 variances are not granted. It has been established that special circumstances or conditions exist that are peculiar to the subject properties and that the requirements from which the Petitioners seek relief will unduly restrict the use of the land due to the special conditions unique to these particular parcels. 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 advertisement, posting of the property, and public hearing on these Petitions held, and for the reasons given above, the requested relief should be granted.

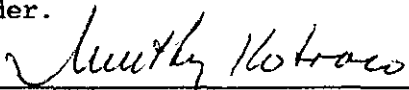
THEREFORE IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 24th day of November, 1997 that the Petition for Variance filed in Case No. 98-127-A seeking relief from Section 1B02.3.C.1

RECEIVED FOR FILING
Date 11/24/97
By [Signature]

of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a lot width of 50 feet in lieu of the required 55 feet and a minimum side yard setback of 1 foot in lieu of the required 10 feet for an existing dwelling at 13116 Cherwin Avenue, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Variance filed in Case No. 98-128-A seeking relief from Section 1B02.3.C.1 of the B.C.Z.R. to permit a lot width of 50 feet in lieu of the required 55 feet for a proposed dwelling, to be known as 13118 Cherwin Avenue, in accordance with Petitioner's Exhibit 1, and approval of the property as an undersized lot, pursuant to Section 304 of the B.C.Z.R., 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 the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
- 2) Compliance with the Zoning Plans Advisory Committee (ZAC) comments submitted by the Bureau of Developer's Plans Review, dated October 20, 1997, a copy of which is attached hereto and made a part hereof. In addition, Petitioners shall comply with any recommendations made by DEPRM upon completion of their review.
- 3) Prior to the issuance of any building permits for the proposed dwelling at 13118 Cherwin Avenue, elevation drawings of the dwelling intended to be constructed shall be submitted to the Office of Planning to insure that the proposed dwelling is compatible with other houses in the surrounding neighborhood.
- 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.


TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs



Baltimore County
Zoning Commissioner
Office of Planning

Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204
410-887-4386

November 24, 1997

Mr. Thomas Hahn
13116 Cherwin Road
Baltimore, Maryland 21220

RE: PETITIONS FOR VARIANCE
NW/Corner Cherwin Avenue and Birdwood Place
(13116 and 13118 Cherwin Avenue)
15th Election District - 5th Councilmanic District
Thomas A. Hahn and Lillie H. Hentz, Trustees
Case Nos. 98-127-A and 98-128-A

Dear Mr. Hahn:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petitions for Variance have been granted, in accordance with the attached Order.

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 Zoning Administration and Development Management office at 887-3391.

Very truly yours,

TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

cc: Ms. Lillie H. Hentz
8820 Walther Boulevard, Apt. 3608, Baltimore, Md. 21234

Mr. Paul Lee
304 W. Pennsylvania Avenue, Towson, Md. 21204

Chesapeake Bay Critical Areas Commission
45 Calvert Street, 2nd Floor, Annapolis, Md. 21401

DEPRM; People's Counsel; Case Files

Petitioner's Exhibit No. 8C

#128

CBCA

Petition for Variance

98-128-A



to the Zoning Commissioner of Baltimore County

for the property located at #13118 CHERWIN AVENUE

which is presently zoned DR 5.5

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(e) 1B02.3C1 To permit a min. lot width of 50' in lieu of the required 55' (a variance of 5'), and to approve an undersize lot pursuant to Section 304 of the BCZR.

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 addressed at 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

Contact Purchaser/Lessee Engineer:

Paul Lee Engineering, Inc.
(Type or Print Name)

Paul Lee
Signature

304 W. Pennsylvania Avenue
Address

Towson, Maryland 21204
City State Zipcode

Attorney for Petitioner
(Type or Print Name)

Signature

Address Phone No

City State Zipcode

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)
Thomas A. Hahn, Trustee
(Type or Print Name)

Thomas A. Hahn
Signature

Lillie H. Hentz, Trustee
(Type or Print Name)

Lillie H. Hentz
Signature

8820 Walther Blvd.
Apt. 3608 (410) 663-4939
Address Phone No

Baltimore, Maryland 21234
City State Zipcode

Name
Paul Lee Engineering, Inc.

304 W. Pennsylvania Ave. (410) 821-5941
Address Phone No
Towson, Maryland 21204

OF FILE USE ONLY

ESTIMATED LENGTH OF HEARING 2 hr
unavailable for Hearing

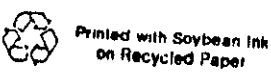
the following dates _____ Next Two Months

ALL _____ OTHER _____

REVIEWED BY: mtr DATE 10/2/97

4 schedule Petitioner's Exhibit No. 8C

ORDER RECEIVED FOR FILING
Date _____
By _____



Paul Lee, P.E.

Paul Lee Engineering Inc.

304 W. Pennsylvania Ave.

Towson, Maryland 21204

410-821-5944

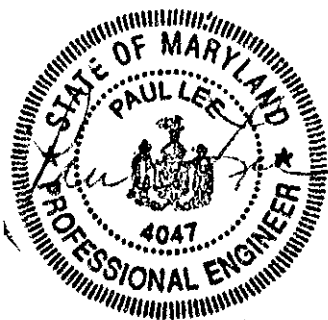
DESCRIPTION

#13118 CHERWIN AVENUE

ELECTION DISTRICT 15 BALTIMORE COUNTY, MARYLAND

Beginning for the same at a point on the west side of Cherwin Avenue, said point also being located S 23°01'00" W - 65 feet⁺ from the center of Birdwood Avenue; thence leaving leaving said west side of Cherwin Avenue (1) N 66°59'00" W - 250 feet, thence (2) N 23°01'00" E 25 feet, thence (3) S 66°59'00" E - 50 feet, thence (4) N 23°01'00" E - 25 feet and (5) S 66°59'00" E - 200 feet to the west side of Cherwin Avenue, the running with and binding on said west side of Cherwin Avenue (6) S 23°01'00" W 50 feet to the point of beginning.

Containing 11,250 s.f. of land more or less.



#128

J.O. 97-029

9/8/97

Request for Zoning: Variance, Special Exception, or Special Hearing

Date to be Posted: Anytime before but no later than _____*

Format for Sign Printing, Black Letters on White Background:

Item # 128

ZONING NOTICE

Case No.: 98-128-A

A PUBLIC HEARING WILL BE HELD BY
THE ZONING COMMISSIONER
IN TOWSON, MD.

PLACE: _____*

DATE AND TIME: _____*

REQUEST: variance to permit a 50 ft lot width in lieu
of 55 ft. and approve on undersized lot pursuant
to Section 304 of the BCZR

POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY.
TO CONFIRM HEARING CALL 887-3391.

DO NOT REMOVE THIS SIGN AND POST UNTIL DAY OF HEARING UNDER PENALTY OF LAW

HANDICAPPED ACCESSIBLE

*UPON RECEIPT OF THE NOTICE OF HEARING, THE PETITIONER OR HIS AGENT FILLS IN THIS INFORMATION AND THEN FORWARDS THIS FORM TO THE SIGN POSTER.



Baltimore County
 Department of Permits and
 Development Management

98-128-A
 Development Processing
 County Office Building
 111 West Chesapeake Avenue
 Towson, Maryland 21204

ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES

Baltimore County zoning regulations require that notice be given to the general public/neighborhood 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 which, lies with the petitioner/applicant) and placement of a notice in at least one newspaper of general circulation in the County.

This office will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with this requirement.

Billing for legal advertising, due upon receipt, will come from and should be remitted directly to the newspaper.

NON-PAYMENT OF ADVERTISING FEES WILL STAY ISSUANCE OF ZONING ORDER.

 ARNOLD JABLON, DIRECTOR

 For newspaper advertising:

Item No.: 128

Petitioner: Thomas A Hahn

Location: 13118 Cherwin Avenue

PLEASE FORWARD ADVERTISING BILL TO:

NAME: Lillic Hentz

ADDRESS: 8820 Waltham Blvd, Apt. 3608
Bethesda, MD. 21234

PHONE NUMBER: (410) 663-4939

AJ:ggs

(Revised 09/24/96)

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 044425

DATE 10/2/97 ACCOUNT 01-615

Item: 128
By: msr AMOUNT \$ 50.00

RECEIVED FROM: Hente, Charles - 13118 Charwin Ave

FOR: 010-Res Var. - \$50.00

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

98-128-A

PAID RECEIPT

PROCESS ACTUAL TIME
10/02/1997 10/02/1997 10:05:03
REC MS01 CASHIER CLIN CML DRAWER
5 MISCELLANEOUS CASH RECEIPT
Receipt # 024336
CR NO. 044425

50.00 CHECK: FR
Baltimore County, Maryland

CASHIER'S VALIDATION

98-128-A

CERTIFICATE OF PUBLICATION

TOWSON, MD., October 16, 19 97

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 Oct. 16, 19 97.

THE JEFFERSONIAN,

A. Henickson

LEGAL AD. - TOWSON

NOTICE OF HEARING

The Zoning Commissioner 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 #98-128-A
13118 Cherwin Avenue
W/S Cherwin Avenue, 65' S of
Birdwood Avenue
15th Election District
5th Councilmanic
Legal Owner(s):

Thomas A. Hahn, Trustee
and Lillie H. Hentz, Trustee

Variance: to permit a minimum lot width of 50 feet in lieu of the required 55 feet and to approve an undersized lot.

Hearing: Monday, November 3, 1997 at 2:00 p.m. in Room 407 Courts Bldg., 407 Bosley Avenue.

LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations

Please Call (410) 887-3353

(2) For information concerning the File and/or Hearing, Please Call (410) 887-3391

10/274 Oct. 16 .. G181893

CERTIFICATE OF POSTING

RE: Case No.: # 98-128-A
Petitioner/Developer:
(Lillie Hentz)
Date of Hearing/Closing:
(Nov. 3, 1997)

**Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, Maryland 21204**

Attention : Ms. Gwendolyn Stephens

Ladies and Gentleman:

**This letter is to certify under the penalties of perjury that the necessary sign(s) required by law
were posted conspicuously on the property located at _____**

__13118 Cherwin Ave. Baltimore Maryland 21220_____

**The sign(s) were posted on _____ Oct. 17, 1997 _____
(Month, Day, Year)**

Sincerely,

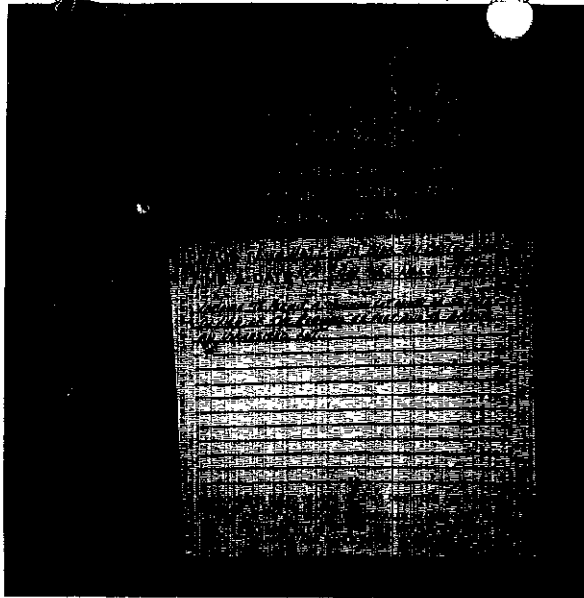

(Signature of Sign-Poster & Date)

_____ Thomas P. Ogle, Sr. _____

_____ 325 Nicholson Road _____

_____ Baltimore, Maryland 21221 _____

**_____ (410)-687-8405 _____
(Telephone Number)**



98-128-A



Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

October 10, 1997

NOTICE OF HEARING

The Zoning Commissioner 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: 98-128-A
13118 Cherwin Avenue
W/S Cherwin Avenue, 65' S of Birdwood Avenue
15th Election District - 5th Councilmanic
Legal Owner(s): Thomas A. Hahn, Trustee and Lillie H. Hentz, Trustee

Variance to permit a minimum lot width of 50 feet in lieu of the required 55 feet and to approve an undersized lot.

HEARING: MONDAY, NOVEMBER 3, 1997 at 2:00 p.m. in Room 407 Courts Building, 401 Bosley Avenue.

A handwritten signature in cursive script, appearing to read "Arnold Jablon".

Arnold Jablon
Director

cc: Thomas Hahn and Lillie H. Hentz
Paul Lee Engineering, Inc.

- NOTES: (1) YOU MUST HAVE THE ZONING NOTICE SIGN POSTED ON THE PROPERTY BY OCTOBER 19, 1997.
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.



TO: PUTUKENT PUBLISHING COMPANY
October 16, 1997 Issue - Jeffersonian

Please forward billing to:

Lillie Hentz
8820 Walter Boulevard, #3608
Baltimore, MD 21234
410-663-4939

NOTICE OF HEARING

The Zoning Commissioner 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: 98-128-A
13118 Cherwin Avenue
W/S Cherwin Avenue, 65' S of Birdwood Avenue
15th Election District -- 5th Councilmanic
Legal Owner(s): Thomas A. Hahn, Trustee and Lillie H. Hentz, Trustee

Variance to permit a minimum lot width of 50 feet in lieu of the required 55 feet and to approve an undersized lot.

HEARING: MONDAY, NOVEMBER 3, 1997 at 2:00 p.m. in Room 407 Courts Building, 401 Bosley Avenue.

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, PLEASE CALL 887-3391.



Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

October 29, 1997

Mr. Thomas Hahn & Ms. Lillie Hentz
8820 Walther Boulevard, Apt. 3608
Baltimore, MD 21234

RE: Item No.: 128
Case No.: 98-128-A
Petitioner: Thomas Hahn, et al

Dear Mr. Hahn & Ms. Hentz:

The Zoning Advisory Committee (ZAC), which consists of representatives from Baltimore County approval agencies, has reviewed the plans submitted with the above referenced petition, which was accepted for processing by Permits and Development Management (PDM), Zoning Review, on October 2, 1997.

Any comments submitted thus far from the members of ZAC that offer or request information on your petition are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to assure 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. Only those comments that are informative will be forwarded to you; those that are not informative will be placed in the permanent case file.

If you need further information or have any questions regarding these comments, please do not hesitate to contact the commenting agency or Roslyn Eubanks in the zoning office (410-887-3391).

Sincerely,

A handwritten signature in cursive script that reads "W. Carl Richards, Jr.".

W. Carl Richards, Jr.
Zoning Supervisor

WCR/re
Attachment(s)



BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits & Development
Management

Date: October 20, 1997

FROM: Robert W. Bowling, Chief
Bureau of Developer's Plans Review

SUBJECT: Zoning Advisory Committee Meeting
for October 20, 1997
Item No. 128

The Bureau of Developer's Plans Review has reviewed the subject zoning item. The property to be developed is located adjacent to tidewater. The Developer is advised that the proper sections of the Baltimore County Building Code must be followed whereby elevation limitations are placed on the lowest floor (including basements) of residential (commercial) development.

In conformance with Federal Flood Insurance requirements, the first floor or basement floor must be at least 1 foot over the flood plain elevation in all construction.

The minimum flood protection elevation is 11.2 feet for this site.

RWB:HJO:jrb

cc: File

UNDER RECEIVED FOR FILING

Date 11/24/97

By [Signature]

ZONE1020.128

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits & Development
Management

Date: October 20, 1997

FROM: Robert W. Bowling, Chief
Bureau of Developer's Plans Review

SUBJECT: Zoning Advisory Committee Meeting
for October 20, 1997
Item No. 128

The Bureau of Developer's Plans Review has reviewed the subject zoning item. The property to be developed is located adjacent to tidewater. The Developer is advised that the proper sections of the Baltimore County Building Code must be followed whereby elevation limitations are placed on the lowest floor (including basements) of residential (commercial) development.

In conformance with Federal Flood Insurance requirements, the first floor or basement floor must be at least 1 foot over the flood plain elevation in all construction.

The minimum flood protection elevation is 11.2 feet for this site.

RWB:HJO:jrb

cc: File

ZONE1020.128



Baltimore County
Fire Department

Office of the Fire Marshal
700 East Joppa Road
Towson, Maryland 21286-5500
(410)887-4880

October 16, 1997

Arnold Jablon, Director
Zoning Administration and Development Management
Baltimore County Office Building
Towson, MD 21204
MAIL STOP-1105

RE: Property Owner: SEE BELOW

Location: DISTRIBUTION MEETING OF October 14, 1997

Item No.: See Below Zoning Agenda:

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

8. The Fire Marshal's Office has no comments at this time.
IN REFERENCE TO THE FOLLOWING ITEM NUMBERS:

120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131
and 131

REVIEWER: LT. ROBERT P. SAUERWALD
Fire Marshal Office, PHONE 887-4881, MS-1102F
File



RE: PETITION FOR VARIANCE
13118 Cherwin Avenue, W/S Cherwin Ave,
65' S of Birdwood Avenue
15th Election District, 5th Councilmanic
Thomas Hahn, and Lillie Hentz, Trustees
Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* CASE NO. 98-128-A

* * * * *

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
Room 47, Courthouse
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of October, 1997, a copy of the foregoing Entry of Appearance was mailed to Paul Lee Engineering, Inc., 304 W. Pennsylvania Avenue, Towson, MD 21204, representative for Petitioners.

Peter Max Zimmerman

PETER MAX ZIMMERMAN

98-128-A

INTER-OFFICE CORRESPONDENCE
RECOMMENDATION FORM

B n/a
Permit Number

TO: Director, Office of Planning and Zoning
Attn: Ervin McDaniel
County Courts Bldg, Rm 406
401 Bosley Av
Towson, MD 21204

FROM: Arnold Jablon, Director, Zoning Administration and Development Management

RE: **Undersized Lots**

Pursuant to Section 304.2(Baltimore County Zoning Regulations) effective June 25, 1992; this office is requesting recommendations and comments from the Office of Planning & Zoning prior to this office's approval of a dwelling permit.

MINIMUM APPLICANT SUPPLIED INFORMATION:

PAUL LEE ENGR, INC. 304 W. PENNSYLVANIA AVE. (410) 821-5941
Print Name of Applicant Address Telephone Number

Lot Address 13118 CHERWIN AVE Election District 15 Council District 5 Square Feet 11,250 S.F.

Lot Location: NE S W / side corner of CHERWIN AVE. 0 feet from the S W corner of BIRDWOOD AVE.
(street) (street)

Land Owner THOMAS A. HAHN & LILLIE H. HENTZ, TRUSTEES Tax Account Number 15-08-002241

Address APT. 3608-8820 WALTHER BLVD. Telephone Number (410) 663-4939
BALTIMORE, MD. 21234

CHECKLIST OF MATERIALS: (to be submitted for design review by the Office of Planning and Zoning)

| | PROVIDED? | |
|---|-------------------------------------|-------------------------------------|
| | YES | NO |
| 1. This Recommendation Form (3 copies) | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 2. Permit Application | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 3. Site Plan | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Property (3 copies) | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Topo Map (available in Rm 206 C.O.B.) (2 copies) (please label site clearly) | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 4. Building Elevation Drawings | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 5. Photographs (please label all photos clearly) | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Adjoining Buildings | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Surrounding Neighborhood | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Residential Processing Fee Paid
Codes 030 & 080 (\$85)
Accepted by M/L
ZADM
Date 10/2/97 *

* w/ zoning
variance 98-128-A

TO BE FILLED IN BY THE OFFICE OF PLANNING AND ZONING ONLY!

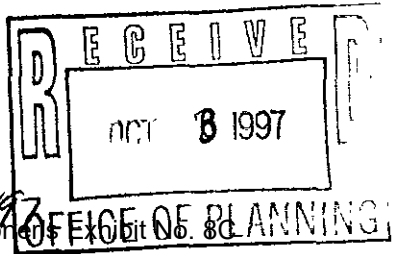
RECOMMENDATIONS/COMMENTS:

Approval Disapproval Approval conditioned on required modifications of the permit to conform with the following recommendations:

Building elevations should be submitted as part of the building permit application

Signed by: Ervin McDaniel
for the Director, Office of Planning & Zoning

Date: 10/9/97
Petition # 98-128-A
OFFICE OF PLANNING & ZONING



SCHEDULED DATES, CERTIFICATE OF FILING AND POSTING
FOR A BUILDING PERMIT APPLICATION PURSUANT TO SECTION 304.2
ZONING ADMINISTRATION AND DEVELOPMENT MANAGEMENT
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

The application for your proposed Building Permit Application has been accepted for filing by _____ on _____ Date (A)

A sign indicating the proposed Building must be posted on the property for fifteen (15) days before a decision can be rendered. The cost of filing is \$50.00 and posting \$35.00; total \$85.00.

In the absence of a request for public hearing during the 15-day posting period, a decision can be expected within approximately four weeks. However, if a valid demand is received by the closing date, then the decision shall only be rendered after the required public special hearing.

*SUGGESTED POSTING DATE _____ D (15 Days Before C)

DATE POSTED _____

HEARING REQUESTED-YES ___ NO ___ -DATE _____

CLOSING DAY (LAST DAY FOR HEARING DEMAND) _____ C (B-3 Work Days)

TENTATIVE DECISION DATE _____ B (A + 30 Days)

*Usually within 15 days of filing

CERTIFICATE OF POSTING

** sign posted w/ variance*

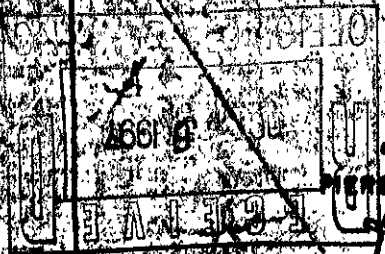
District _____

Location of property: _____

Posted by: _____ Date of Posting: _____
Signature

Number of Signs: _____

CK/UNDER.LOT (TXTSOPH)



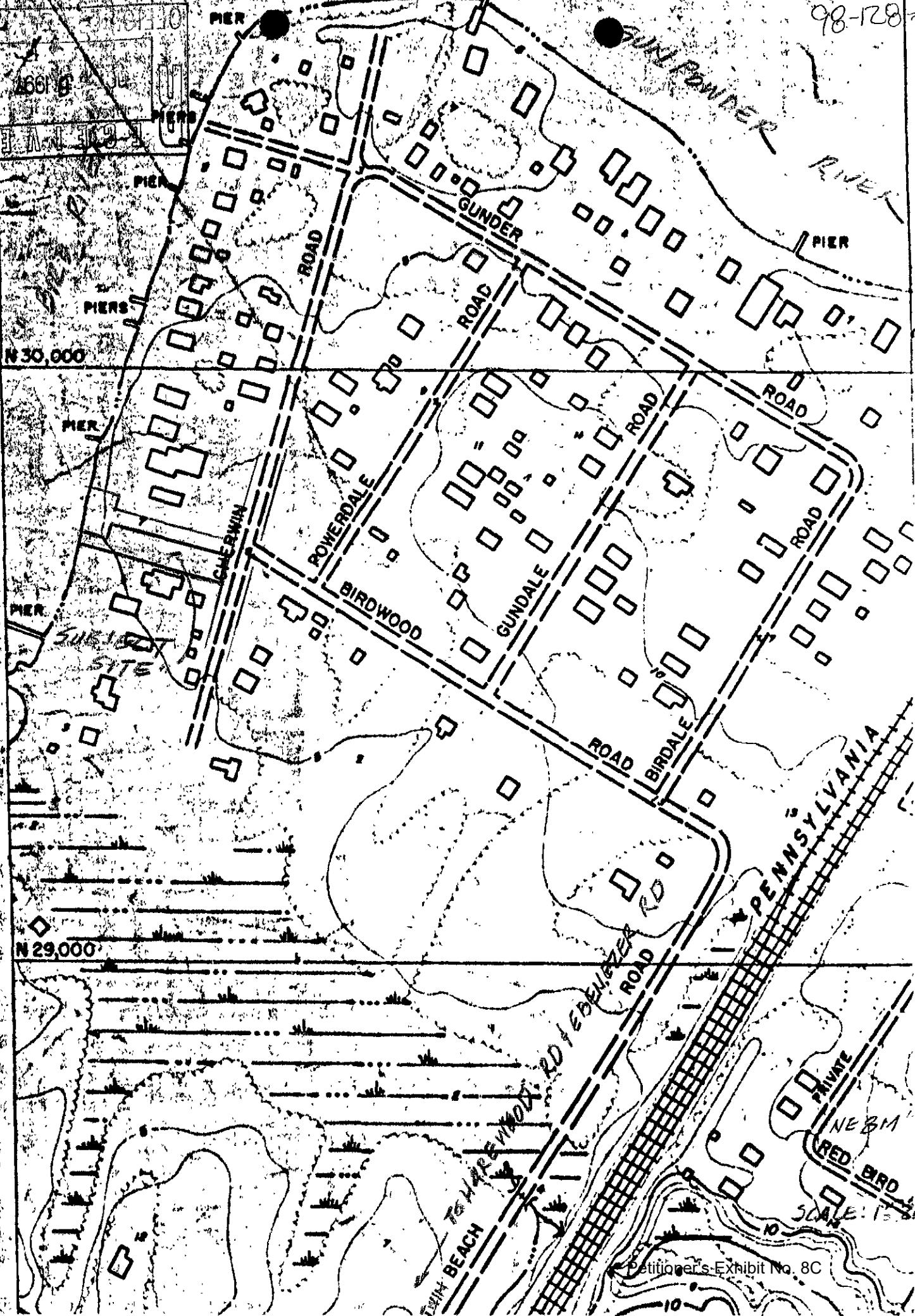
(SHEET NO. 8-L)

16618

N 30,000

N 29,000

Petitioner's Exhibit No. 8C



NE 8M
RED BRO
SCALE 1:5000

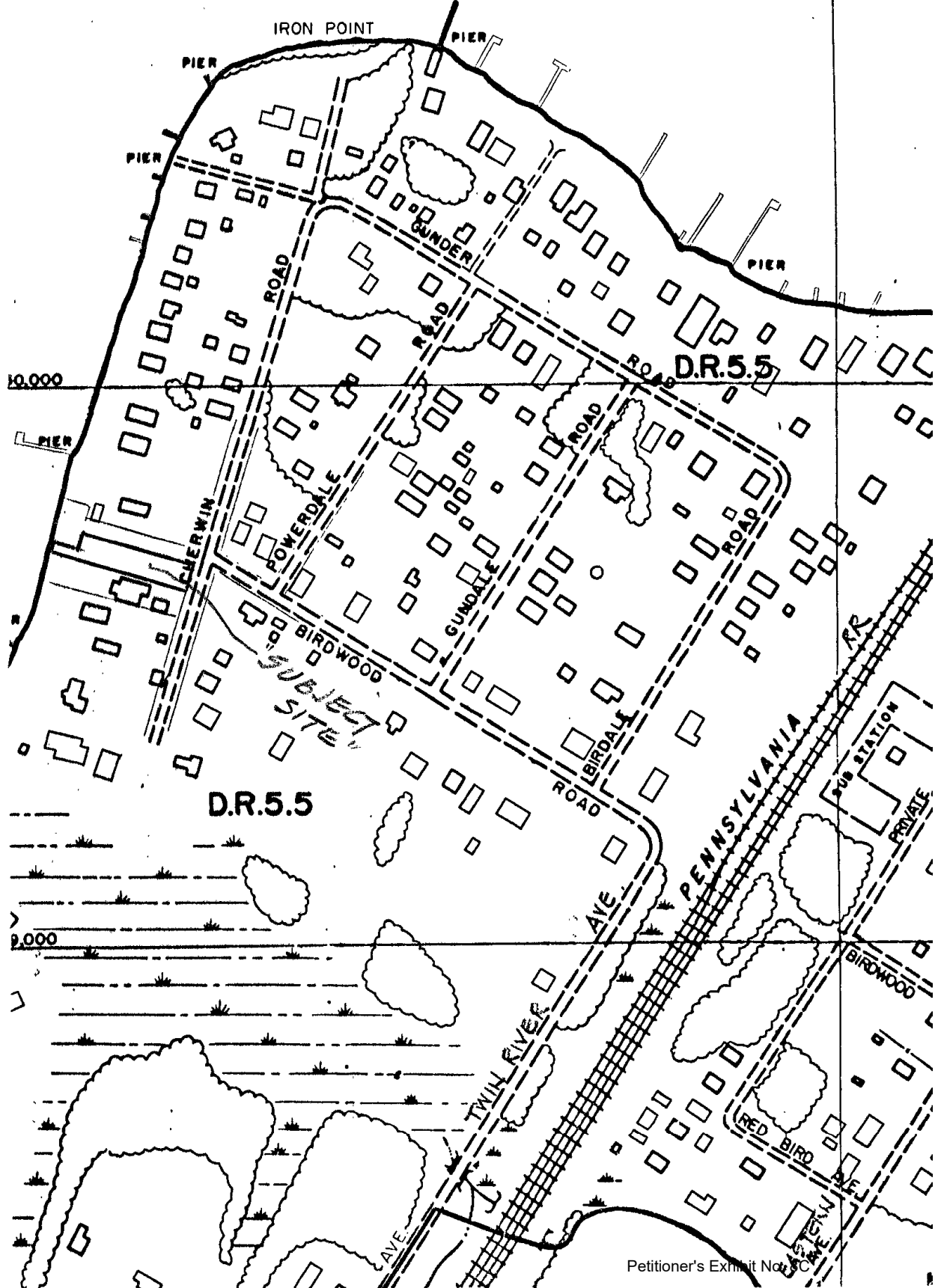
TO WAREHOUSES RD / BELLEZA RD
BEACH

BIRD

RIVER

1,000

SCALE: 1"=200'



#1



CHERWIN AVE

#2



#13118

#3



13116

#4



13116

#13118

Petitioner's Exhibit No. 8C

SHEET 1 OF 4

98-128-A



CHERWIN AVE.

PHOTO'S
1311B CHERWIN AVE
(SEE PLAT FOR PHOTO LOCATIONS)

98-128-A

Petitioner's Exhibit No. 8C
SHEET 4 OF 4



#9



#10



#11



#12

98-128-A

#5



BIRDWOOD AVE

#6



EMERSON AVE

#7



BIRDWOOD AVE

#8

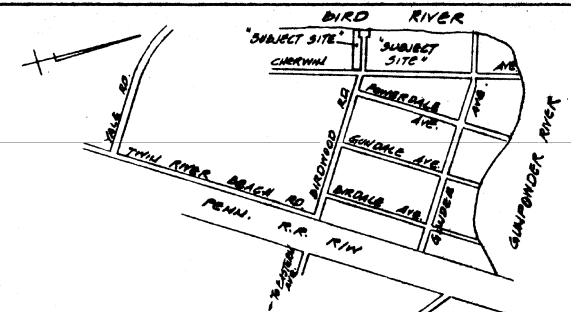
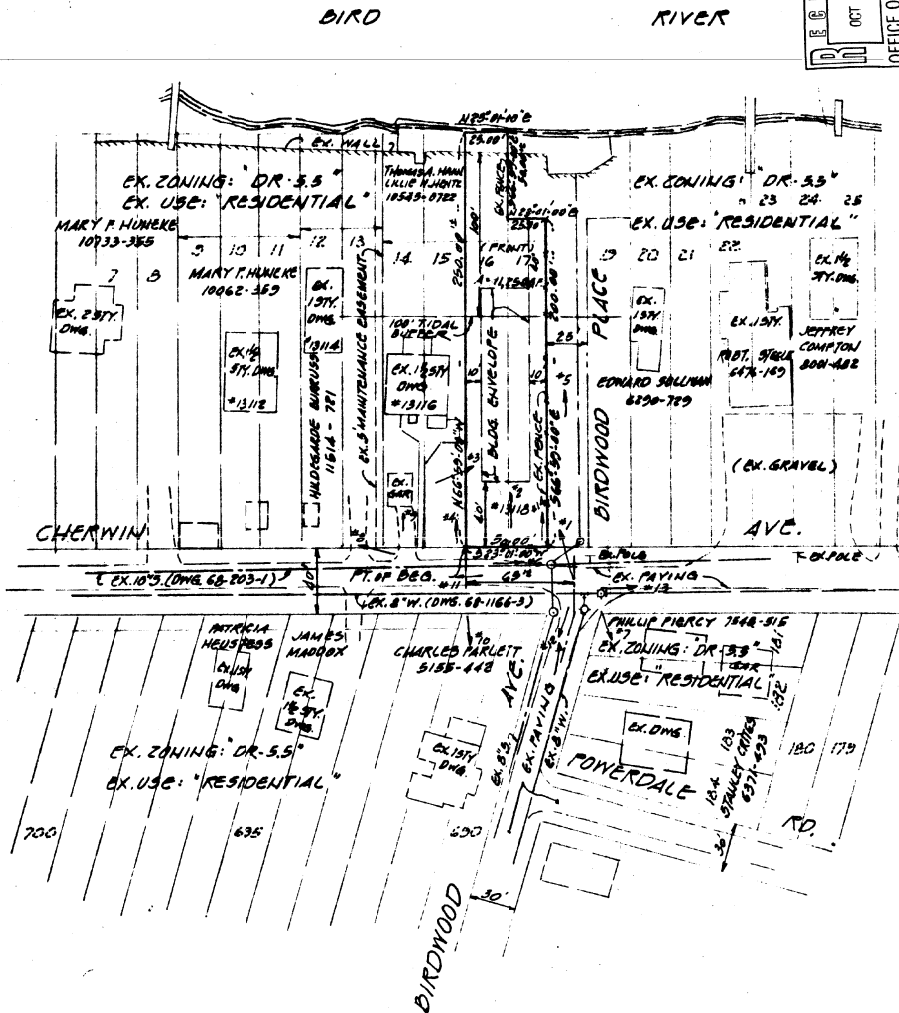


BIRDWOOD AVE

SHEET 2 OF 4

98H28-A

RECEIVED
OCT - 9 1997
OFFICE OF PLANNING



LOCATION PLAN
SCALE: 1" = 500'

- GENERAL NOTES:**
1. AREA OF PROPERTY = 11,250 S.F.
 2. EXISTING ZONING OF PROPERTY = "DR-3.5"
 3. EXISTING USE OF PROPERTY = "RESIDENTIAL"
 4. PROPOSED ZONING OF PROPERTY = "DR-3.5"
 5. PROPOSED USE OF PROPERTY = "RESIDENTIAL"
 6. PROPERTY LOCATED IN CRITICAL AREA (BIRD RIVER)
 7. LOTS RECORDED ON PLAT OF SECTION A, TWIN RIVER BEACH, L.M.C.M. 9-33.
 8. PROPERTY SERVED BY PUBLIC WATER AND SEWER.
 9. PETITIONER REQUESTING A VARIANCE TO SECTION 1802.3C1 OF THE BCZR TO PERMIT A MIN. LOT WIDTH OF 50' IN LIEU OF THE REQUIRED 55' (A VARIANCE OF 5'), AND TO APPROVE AN UNDERSIZE LOT PURSUANT TO SECTION 1802.3C1 OF THE BCZR.

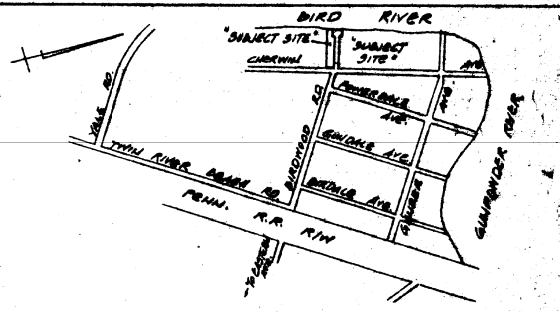
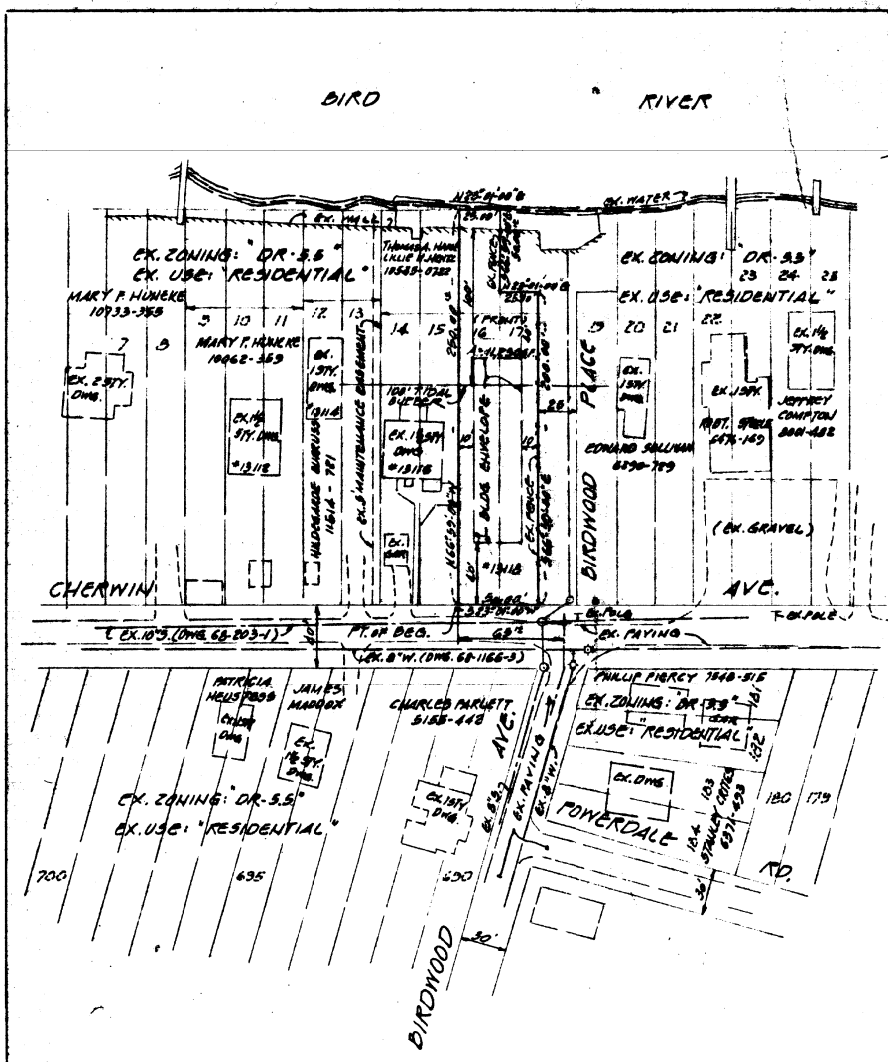
PHOTO LOCATION - 9/14-97
PLAT TO ACCOMPANY PETITION
FOR
VARIANCE
***13118 CHERWIN AVENUE**
ELECT. DIST. 19 BALTIMORE COUNTY, MD.
SCALE: 1" = 50' SEPT. 24, 1997

OWNER:
THOMAS A. HAHN &
LILLIE H. HENTZ, TRUSTEES
APT. 3608 - 8820 HALTHER BLVD.
BALTIMORE, MARYLAND 21234
PROP. # 15-08-002241
DECD: 10937-8461

RECEIVED
OCT - 9 1997
OFFICE OF PLANNING

PAUL LEE ENGINEERING, INC.
304 W. PENNSYLVANIA AVE.
TOWSON, MARYLAND 21284





GENERAL NOTES:

1. AREA OF PROPERTY = 11,250 S.F.
2. EXISTING ZONING OF PROPERTY = "DR-5.5"
3. EXISTING USE OF PROPERTY = "RESIDENTIAL"
4. PROPOSED ZONING OF PROPERTY = "DR-5.5"
5. PROPOSED USE OF PROPERTY = "RESIDENTIAL"
6. PROPERTY LOCATED IN CRITICAL AREA (BIRD RIVER)
7. LOTS RECORDED ON PLAT OF SECTION A, THIN RIVER BEACH, L.M.P.L.A. 9-83.
8. PROPERTY SERVED BY PUBLIC WATER AND SEWER.
9. PETITIONER REQUESTING A VARIANCE TO SECTION 1802.5C1 OF THE BCZC TO PERMIT A 1/4" LOT WIDTH OF 50' IN LIEU OF THE REQUIRED 55' (A VARIANCE OF 5'). AND TO APPROVE AN UNDERSIZE LOT PURSUANT TO SECTION 306 OF THE BCZC.

PETITIONER'S EXHIBIT 1

PLAT TO ACCOMPANY PETITION FOR

VARIANCE

***13118 CHERWIN AVENUE**

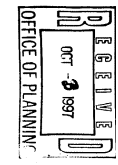
ELECT. DIST. 13

BALTIMORE COUNTY, MD.

SCALE: 1"=30'

SEPT. 15, 1997

OWNER:
 THOMAS A. HAHN &
 LILLIE H. HENTZ, TRUSTEES
 APT. 3608 - 5820 WALTER BLVD.
 BALTIMORE, MARYLAND 21234
 PROR. # 15-08-002241
 DEED: 10837-0461



PAUL LEE ENGINEERING, INC.
 304 W. PENNSYLVANIA AVE.
 TOWSON, MARYLAND 21284



SHEET 2 OF 2

TS 97-229

A-8-21-8

IN RE: PETITION FOR ZONING VARIANCE * BEFORE THE
 N/S Powderdale Avenue, 115 ft.
 W from c/l Gunder Avenue * ZONING COMMISSIONER
 13218 Powderdale Avenue
 15th Election District * OF BALTIMORE COUNTY
 5th Councilmanic District
 Wally S. Wallace, et ux * Case No. 97-412-A
 Petitioners

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner on a Petition for Variance for the property located at 13218 Powderdale Avenue, near Bird River in eastern Baltimore County. The Petition was filed by Wally S. Wallace and Dawn Wallace, his wife, property owners. Variance relief is requested from Sections 1B02.3.C.1 and 304 of the Baltimore County Zoning Regulations (BCZR) to permit a single family dwelling on a lot 50 ft. in width, in lieu of the required 55 ft. The subject property and requested relief are more particularly shown on the plat to accompany the Petition for Variance, marked as Petitioners' Exhibit No. 1.

Appearing at the public hearing held for this case were the Petitioners/property owners, Wally S. Wallace and Dawn Wallace. Also present were neighboring property owners, Daniel and Brenda Puszczewicz who reside at 13215 Cherwin Avenue. There were no other Protestants or interested persons present.

Testimony and evidence presented was that the Petitioners have owned the subject parcel for less than a year, having acquired same in approximately August 1996. The subject property is roughly rectangular in shape, approximately 51 ft. in width and ranging in depth from 118 to 125 ft. Presently, the property is unimproved. The property features frontage on Powderdale Avenue, a public road in the Bird River community of Baltimore County. Although the property does not have frontage on the water, Bird

ORDER RECEIVED FOR FILING
 Date 2/20/97
 By M. Bark

River is located nearby and the property is within the Chesapeake Bay Critical area.

Additional testimony and evidence offered was that the property is located within an older community, which was originally platted and laid out many years ago. Apparently, the lots as originally laid out were 25 ft. in width. Collectively, the Petitioners' property is known as lots 165 and 166 of the subdivision.

As noted above, Mr. and Mrs. Puszczewicz also appeared at the hearing. They own 8 individuals lots adjacent to the Petitioners' property. Four of the lots owned by the Puszczewicz front Cherwin Road and are known as lots Nos. 150 through 154. Mr. and Mrs. Puszczewicz reside in a single family dwelling which fronts Cherwin Avenue and is centered on these four lots. Their other holdings are four lots which constitute their rear yard, known as lots 167 through 170 of the subdivision. Their 4 lots abut Powderdale Avenue, and, collectively, is 100 ft. wide.

Apparently, both the Puszczewicz and Wallace properties was owned by a single property owner until 1996. At that time, the property owner sold the lands described above to Mr. and Mrs. Puszczewicz and the subject property to Mr. and Mrs. Wallace.

In support of their request for variance relief, the Petitioners offered copies of their building plans and elevation drawings. These plans have previously been reviewed and approved by the Office of Planning, as compatible with other houses in the neighborhood. It was also indicated that there are other dwellings in this subdivision which are on 50 ft. lots. Therefore, the proposed lot size and yard area will not be inconsistent with the existing neighborhood. Mr. Wallace also indicated that the site would not be graded so as to increase runoff on adjacent properties. Obviously, there will be some disturbance of the land as part

ORDER RECEIVED FOR FILING
Date 5/20/97
By Mr. [Signature]

of the construction of the dwelling, however, the grade will remain substantially the same.

Mr. Puszczewicz indicated that he does not particularly object to the building but asked that several conditions be attached to any relief granted. First, he wants assurance that, during construction, construction equipment will not cross his property. As I indicated at the hearing, such a request is a civil matter and is not appropriate for incorporation in my Order. Obviously, Mr. and Mrs. Puszczewicz have the right to protect their property as they see fit. They may deal with any trespass upon their property through the appropriate criminal/civil procedures available in the Court system.

Second, Mr. Puszczewicz asked that a privacy fence be constructed to separate the properties. Subject to the zoning and building code sections, there is nothing to prevent Mr. Puszczewicz from installing a fence along his part of the property line. If he wishes to install such a buffer, so be it. However, I do not think it appropriate to require the Petitioners to install a fence unless they desire to do so. Obviously, any fence must be in compliance with the applicable zoning regulations and codes.

Third, Mr. Puszczewicz asked that an escrow account be established containing funds from which he may make a claim for any damages done to his yard during construction. Again, this is not an appropriate matter for the Zoning Commissioner, rather an issue which should be addressed directly between neighbors or in a court of law.

Based upon the testimony and evidence presented, I am persuaded to grant the Petition for Variance. The proposed dwelling is an appropriate use for this property. In my judgment, the Petitioners have satisfied the requirements of Section 307 of the BCZR, as construed by the case law.

ORDER RECEIVED FOR FILING
Date 2/26/97
By M. G. G. G.

The only restriction which I shall impose is that the property owners must comply with the requirements of the Department of Environmental Protection and Resource Management (DEPRM) and the Development Plans Review Division as they relate to the Chesapeake Bay Critical Area and floodplain regulations. Also, the Petitioners shall not change the grade of the property and shall take appropriate steps (e.g., installation of downspouts and rain gutters) to prevent discharge of storm water onto adjacent properties. All such devices shall be reviewed and approved by DEPRM.

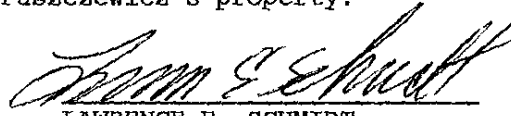
Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the Petition for Variance shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 20th day of May, 1997 that a variance from Sections 1B02.3.C.1 and 304 of the BCZR to permit a single family dwelling on an undersized lot of 50 ft. in width, in lieu of the required 55 ft., be and is hereby GRANTED, subject, however, to the following restrictions:

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.
2. The Petitioners shall comply with all requirements of the Department of Environmental Protection and Resource Management as set forth in their comments dated April 16, 1997.
3. The Petitioners shall comply with the comments submitted by the Baltimore County Zoning Plans Advisory Committee (ZAC), namely, Development Plans Review Division dated April 14, 1997.
4. The Petitioners shall not materially alter the grade of the property, so as to not increase storm water runoff onto adjacent properties and shall, at the advice and direction of DEPRM,

ORDER RECEIVED FOR FILING
Date 5/20/97
By M. Dora

install such devices (downspouts, gutters, etc.)
as are necessary to control and direct storm
water away from the Puszczewicz's property.



LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES/mmn

ORDER RECEIVED FOR FILING
Date 5/20/97
By M. Hark



Baltimore County
Zoning Commissioner
Office of Planning and Zoning

Suite 112, Courthouse
400 Washington Avenue
Towson, Maryland 21204
(410) 887-4386

May 19, 1997

Mr. and Mrs. Wally S. Wallace
7019 Greenbank Road
Baltimore, Maryland 21220

RE: Case No. 97-412-A
Petition for Zoning Variance
Property: 13218 Powderdale Avenue, Twin Rivers

Dear Mr. and Mrs. Wallace:

Enclosed please find the decision rendered in the above captioned case. The Petition for Zoning Variance has been granted, with restrictions, in accordance with the attached 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 of the date of the Order to the County Board of Appeals. If you require additional information concerning filing an appeal, please feel free to contact our Appeals Clerk at 887-3391.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Lawrence E. Schmidt".

Lawrence E. Schmidt
Zoning Commissioner

LES:mmn
att.

c: Mr. and Mrs. Daniel Puszczewicz
13215 Cherwin Avenue
Baltimore, Maryland 21220

| | | |
|--|---|---------------------|
| RE: PETITION FOR VARIANCE | * | BEFORE THE |
| 13218 Powderdale Avenue, N/S Powderdale | * | ZONING COMMISSIONER |
| Avenue, 115' W from c/l Gunder Avenue | * | OF BALTIMORE COUNTY |
| 15th Election District, 5th Councilmanic | * | CASE NO. 97-412-A |
| Legal Owner(s): Wally and Dawn Wallace | * | |
| Petitioners | * | |

* * * * *

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

Peter Max Zimmerman
 PETER MAX ZIMMERMAN
 People's Counsel for Baltimore County

Carole S. Demilio
 CAROLE S. DEMILIO
 Deputy People's Counsel
 Room 47, Courthouse
 400 Washington Avenue
 Towson, MD 21204
 (410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of May, 1997, a copy of the foregoing Entry of Appearance was mailed to Wally and Dawn Wallace, 7019 Greenbank Road, Baltimore, MD 21220, Petitioners.

Peter Max Zimmerman
 PETER MAX ZIMMERMAN



CRITICAL AREA

Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at

13218 POWDERDALE AVE TWIN RIVERS

97-412-A

which is presently zoned D.R. 5,5

This Petition shall be filed with the Department of Permits & 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)

TO PERMIT A SINGLE FAMILY DWELLING ON AN UNDERSIZE LOT (50' IN LIEU OF 55' WIDTH), 1802.3.C.1 § 304; BCZR,

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 PRESENTED AT 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/Lessee:

Legal Owner(s):

(Type or Print Name)

WALLY S WALLACE
(Type or Print Name)

Signature

Wally S Wallace
Signature

Address

DAWN WALLACE
(Type or Print Name)

City State Zipcode

Dawn M Wallace
Signature

Attorney for Petitioner:

7014 GREENBANK RD 335-3496
Address Phone No

(Type or Print Name)

BALTIMORE MD 21220
City State Zipcode

Signature

Name, Address and phone number of representative to be contacted.

Address Phone No.

SAME
Name

City State Zipcode

Address Phone No.

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing

the following dates _____ Next Two Months

ALL _____ OTHER _____

REVIEWED BY: JWS DATE 3-24-97

412

Petitioner's Exhibit No. 8D



Printed with Soybean Ink on Recycled Paper

Revised 9/5/95

Zoning Discription

97-412-A

Beginning at a point on the N38 49'E side of Powderdale Ave.

Which is 30 feet wide at the distance of 115.8 feet, N51 11'W

of the centerline of the nearest improved intersecting street Gunder Ave.

which is 30 feet wide. *being lot 165,166, Block _____ Section #(A)

in the subdivision of Citygo Realty Co. as recorded in Baltimore County

Plat Book #9, Folio #33, containing 6,137 ^{FT²}. Also known as lot 165, 166, ¹³²¹⁸ Powderdale Ave and located in the 15th Election District.

97-412-A

CERTIFICATE OF PUBLICATION

TOWSON, MD., April 10, 1997

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 April 10, 1997.

THE JEFFERSONIAN,

A. Henrickson

LEGAL AD. - TOWSON

NOTICE OF HEARING

The Zoning Commissioner 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: #97-412-A
13218 Powderdale Avenue

N/S Powderdale Avenue, 115'
W from of Gunder Avenue.

15th Election District
5th Councilmanic

Legal Owner(s):

Wally S. Wallace and Dawn Wallace

Variance: to permit a single family dwelling on an under-sized lot (50 feet wide) in lieu of 55 foot width.

Hearing: Tuesday, May 6, 1997 at 3:00 p.m., 4th floor hearing room, Courts Bldg., 401 Bosley Avenue.

LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Call 887-3353.

(2) For information concerning the File and/or Hearing, Please Call 887-3391

4/188 April 10 C134004

BALTIMORE COUNTY, MARYLAND *412* No. **028760**
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

DATE *3-25-97* ACCOUNT *Pool-6152*

RECEIVED FROM: *WALLY WALLACE* AMOUNT \$ *50.00*
13218 Providence Ave

FOR: *VAR (010)*

DJA9190162NICHRC \$50.00
BA 0011:54AND3-25-97

VALIDATION OR SIGNATURE OF CASHIER *JCM*
DISTRIBUTION: WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER



Baltimore County
 Department of Permits and
 Development Management

Development Processing
 County Office Building
 111 West Chesapeake Avenue
 Towson, Maryland 21204

ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES

Baltimore County zoning regulations require that notice be given to the general public/neighbor 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 which, lies with the petitioner/applicant) and placement of a notice in at least one newspaper of general circulation in the County.

This office will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with this requirement.

Billing for legal advertising, due upon receipt, will come from and should be remitted directly to the newspaper.

NON-PAYMENT OF ADVERTISING FEES WILL STAY ISSUANCE OF ZONING ORDER.

 ARNOLD JABLON, DIRECTOR

 For newspaper advertising:

Item No.: 412
 Petitioner: WALLY WALLACE
 Location: 13218 POWDERDALE AVE.

PLEASE FORWARD ADVERTISING BILL TO:

NAME: WALLY WALLACE
 ADDRESS: 7019 GREENBANK RD.
BALTO., Md. 21220
 PHONE NUMBER: 335-3496

AJ:ggs

(Revised 09/24/96)

ADMINISTRATIVE VARIANCES
CLOSING DATE.....May 5, 1997

CASE NUMBER: 97-435-A
8720 Wendell Avenue
NWC intersection of Wendell Avenue and Delpha Court
14th Election District - 6th Councilmanic
Legal Owner(s): Mary Kathleen Farrell

Administrative Variance to permit a rear yard setback of 14 feet for a
deck in lieu of the required 22.5 feet.

Request for Zoning: Variance, Special Exception, or Special Hearing

Date to be Posted: Anytime before but no later than _____*

Format for Sign Printing, Black Letters on White Background:

ZONING NOTICE

Case No.: 97-412-A

A PUBLIC HEARING WILL BE HELD BY
THE ZONING COMMISSIONER
IN TOWSON, MD

PLACE: *

DATE AND TIME: *

REQUEST: A VARIANCE TO PERMIT A SINGLE
FAMILY DWELLING ON A LOT 50' WIDE
IN LIEU OF THE REQUIRED 55'.

POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY.
TO CONFIRM HEARING CALL 887-3391.

DO NOT REMOVE THIS SIGN AND POST UNTIL DAY OF HEARING UNDER PENALTY OF LAW

HANDICAPPED ACCESSIBLE

9/96
post.4.doc

*UPON RECEIPT OF THE NOTICE OF HEARING, THE PETITIONER OR HIS AGENT FILLS IN THIS INFORMATION AND THEN FORWARDS THIS FORM TO THE SIGN POSTER.

CERTIFICATE OF POSTING

RE: Case # 97-412-*A*

Petitioner/Developer:
(Wally Wallace)
Date of Hearing/~~Closings~~
(May 6, 1997)

Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, Maryland 21204

Attention: Ms. Gwendolyn Stephens

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at _____
_____ 13218 Powderdale Ave. , Baltimore, Maryland 21220 _____

The sign(s) were posted on _____ April 18, 1997 _____
(Month, Day, Year)

Sincerely,

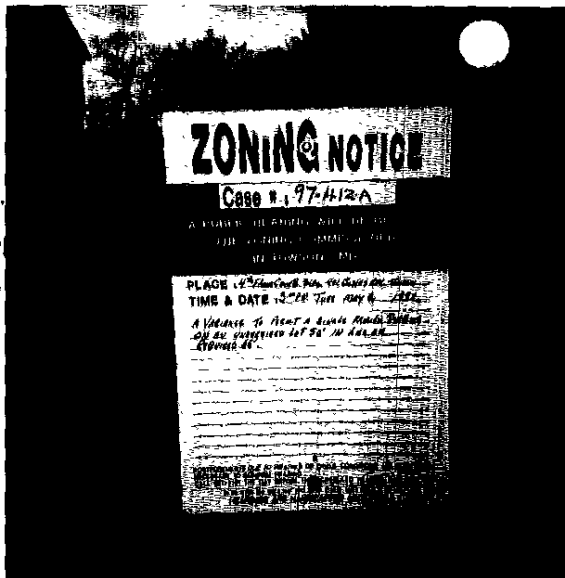
Thomas P. Ogle, Sr. 4/18/97
(Signature of Sign Poster & Date)

_____ Thomas P. Ogle, Sr. _____
(Printed Name)

_____ 325 Nicholson Road _____
(Address)

_____ Baltimore, Maryland 21221 _____

_____ (410)-687-8405 _____
(Telephone Number)



97-412-A

**INTER-OFFICE CORRESPONDENCE
RECOMMENDATION FORM**

TO: Director, Office of Planning and Zoning
Attn: Ervin McDaniel
County Courts Bldg, Rm 406
401 Bosley Av
Towson, MD 21204

B _____
Permit Number

FROM: Arnold Jablon, Director, Zoning Administration and Development Management

RE: Undersized Lots

Pursuant to Section 304.2(Baltimore County Zoning Regulations) effective June 25, 1992; this office is requesting recommendations and comments from the Office of Planning & Zoning prior to this office's approval of a dwelling permit.

MINIMUM APPLICANT SUPPLIED INFORMATION:

WALLY WALLACE 7014 GREENBANK RD 335-9458
Print Name of Applicant Address Telephone Number
13218
 Lot Address POWDERDALE AVE. Election District 15 Council District 5 Square Feet 6,137
 Lot Location: (NE S W side) corner of POWDERDALE AVE. 108.2 feet from (NE S W) corner of GUNDER AVE.
(street) (street) 0415 2200037561/6484-
 Land Owner WALLY & DAWN WALLACE Tax Account Number 373030K
 Address 7014 GREENBANK RD Telephone Number 335-3496
BALTIMORE, MD 21220

CHECKLIST OF MATERIALS: (to be submitted for design review by the Office of Planning and Zoning)

| | PROVIDED? | |
|---|------------------|-----------|
| | YES | NO |
| 1. This Recommendation Form (3 copies) | ✓ | |
| 2. Permit Application | — | ✓ |
| 3. Site Plan | | |
| Property (3 copies) | ✓ | |
| Topo Map (available in Rm 206 C.O.B.) (2 copies) (please label site clearly) | ✓ | |
| 4. Building Elevation Drawings | ✓ | |
| 5. Photographs (please label all photos clearly) | | |
| Adjoining Buildings | ✓ | |
| Surrounding Neighborhood | ✓ | |

Residential Processing Fee Paid
Codes 030 & 080 (\$85)

Accepted by _____
ZAOM

Date _____

RECEIVED

MAR 26 1997

OFFICE OF
PLANNING

TO BE FILLED IN BY THE OFFICE OF PLANNING AND ZONING ONLY!

RECOMMENDATIONS/COMMENTS:

Approval **Disapproval** Approval conditioned on required modifications of the permit to conform with the following recommendations:

.97-412-A

Signed by: Ervin McDaniel
for the Director, Office of Planning & Zoning

Date: 3/28/97
Petitioner's Exhibit No. 8D

SCHEDULED DATES, CERTIFICATE OF FILING AND POSTING
FOR A BUILDING PERMIT APPLICATION PURSUANT TO SECTION 304.2
ZONING ADMINISTRATION AND DEVELOPMENT MANAGEMENT

County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

The application for your proposed Building Permit Application has been accepted
for filing by J. MEPPY on 3-25-97
Date (A)

A sign indicating the proposed Building must be posted on the property for
fifteen (15) days before a decision can be rendered. The cost of filing is
\$50.00 and posting \$35.00; total \$85.00.

In the absence of a request for public hearing during the 15-day posting period,
a decision can be expected within approximately four weeks. However, if a valid
demand is received by the closing date, then the decision shall only be rendered
after the required public special hearing.

*SUGGESTED POSTING DATE 4-4 D (15 Days Before C)

DATE POSTED _____

HEARING REQUESTED-YES _____ NO _____ -DATE _____

CLOSING DAY (LAST DAY FOR HEARING DEMAND) 4-21 C (B-3 Work Days)

TENTATIVE DECISION DATE 4-24 B (A + 30 Days)

*Usually within 15 days of filing

CERTIFICATE OF POSTING

District _____

Location of property: _____

Posted by: _____ Date of Posting: _____
Signature

Number of Signs: _____

CK/UNDER.LOT (TXTSOPH)

SCHEDULE DATES, CERTIFICATE OF FILING POSTING
FOR A BUILDING PERMIT APPLICATION PURSUANT TO SECTION 304.2
ZONING ADMINISTRATION AND DEVELOPMENT MANAGEMENT

County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

The application for your proposed Building Permit Application has been accepted for filing by J. MEPPY on 3-25-97 Date (A)

A sign indicating the proposed Building must be posted on the property for fifteen (15) days before a decision can be rendered. The cost of filing is \$50.00 and posting \$35.00; total \$85.00.

In the absence of a request for public hearing during the 15-day posting period, a decision can be expected within approximately four weeks. However, if a valid demand is received by the closing date, then the decision shall only be rendered after the required public special hearing.

*SUGGESTED POSTING DATE 4-4 D (15 Days Before C)

DATE POSTED _____

HEARING REQUESTED-YES ___ NO ___ -DATE _____

CLOSING DAY (LAST DAY FOR HEARING DEMAND) 4-21 C (B-3 Work Days)

TENTATIVE DECISION DATE 4-24 B (A + 30 Days)

*Usually within 15 days of filing

CERTIFICATE OF POSTING

District _____

Location of property: _____

Posted by: _____ Date of Posting: _____
Signature

Number of Signs: _____

CK/UNDER.LOT (TXTSOPH)

**INTER-OFFICE CORRESPONDENCE
RECOMMENDATION FORM**

TO: Director, Office of Planning and Zoning
Attn: Ervin McDaniel
County Courts Bldg, Rm 406
401 Bosley Av
Towson, MD 21204

B _____
Permit Number

FROM: Arnold Jablon, Director, Zoning Administration and Development Management

RE: Undersized Lots

Pursuant to Section 304.2(Baltimore County Zoning Regulations) effective June 25, 1992; this office is requesting recommendations and comments from the Office of Planning & Zoning prior to this office's approval of a dwelling permit.

MINIMUM APPLICANT SUPPLIED INFORMATION:

WALLY WALLACE 7019 GREENBANK RD 335-9458
Print Name of Applicant Address Telephone Number

Lot Address POWDERDALE AVE Election District 15 Council District 5 Square Feet 6,137
13218

Lot Location: (N E S W) (side) corner of POWDERDALE AVE, 108.2 feet from (N E S W) corner of GUNDER AVE,
(street) (street) (lot # 04 15 22000 37501/4184)

Land Owner WALLY & DAWN WALLACE Tax Account Number 373030R

Address 7019 GREENBANK RD Telephone Number 335-3496
BALTIMORE, MD 21220

CHECKLIST OF MATERIALS: (to be submitted for design review by the Office of Planning and Zoning) **PROVIDED?**

| | YES | NO |
|--|-----|----|
| 1. This Recommendation Form (3 copies) | ✓ | — |
| 2. Permit Application | — | — |
| 3. Site Plan | | |
| Property (3 copies) | ✓ | — |
| Topo Map (available in Rm 206 C.O.B.) (2 copies) <small>(please label site clearly)</small> | ✓ | — |
| 4. Building Elevation Drawings | ✓ | — |
| 5. Photographs (please label all photos clearly) | | |
| Adjoining Buildings | ✓ | — |
| Surrounding Neighborhood | ✓ | — |

Residential Processing Fee Paid
Codes 030 & 080 (\$85)

Accepted by: _____
ZOM

Date: _____

RECEIVED

MAR 26 1997

OFFICE OF
PLANNING

TO BE FILLED IN BY THE OFFICE OF PLANNING AND ZONING ONLY!

RECOMMENDATIONS/COMMENTS:

Approval Disapproval Approval conditioned on required modifications of the permit to conform with the following recommendations:

97-412-A

Signed by: Ervin McDaniel
for the Director, Office of Planning & Zoning

Date: 3/18/97
Petitioner's Exhibit No. 8D

TO: PUTUXENT PUBLISHING COMPANY
April 10, 1997 Issue - Jeffersonian

Please forward billing to:

Wally Wallace
7019 Greenbank Road
Baltimore, MD 21220
335-3496

NOTICE OF HEARING

The Zoning Commissioner 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: 97-412-A
13218 Powderdale Avenue
N/S Powderdale Avenue, 115' W from c/l Gunder Avenue
15th Election District - 5th Councilmanic
Legal Owner(s): Wally S. Wallace and Dawn Wallace

Variance to permit a single family dwelling on an undersized lot (50 feet wide) in lieu of 55 foot width.

HEARING: TUESDAY, MAY 6, 1997 at 3:00 p.m., 4th floor hearing room, Courts Bldg., 401 Bosley Avenue.

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, PLEASE CALL 887-3391.



Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

April 7, 1997

NOTICE OF HEARING

The Zoning Commissioner 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: 97-412-A
13218 Powderdale Avenue
N/S Powderdale Avenue, 115' W from c/l Gunder Avenue
15th Election District - 5th Councilmanic
Legal Owner(s): Wally S. Wallace and Dawn Wallace

Variance to permit a single family dwelling on an undersized lot (50 feet wide) in lieu of 55 foot width.

HEARING: TUESDAY, MAY 6, 1997 at 3:00 p.m., 4th floor hearing room, Courts Bldg., 401 Bosley Avenue.

A handwritten signature in cursive script, appearing to read "Arnold Jablon".

Arnold Jablon
Director

cc: Wally and Dawn Wallace

- NOTES: (1) YOU MUST HAVE THE ZONING NOTICE SIGN POSTED ON THE PROPERTY BY APRIL 21, 1997.
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.





**Maryland Department of Transportation
State Highway Administration**

David L. Winstead
Secretary
Parker F. Williams
Administrator

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

RE: Baltimore County 4 . 4 . 97
Item No. 412 J C M

Dear Ms. Eubanks:

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.

Please contact Larry Gredlein at 410-545-5606 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,

for Ronald Burns, Chief
Engineering Access Permits
Division

LG

My telephone number is _____

Maryland Relay Service for Impaired Hearing or Speech
1-800-735-2258 Statewide Toll Free

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202

Petitioner's Exhibit No. 8D

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director Date: April 14, 1997
Department of Permits & Development
Management

FROM: Robert W. Bowling, Chief
Development Plans Review Division

SUBJECT: Zoning Advisory Committee Meeting
for April 14, 1997
Item No. 412

The Development Plans Review Division has reviewed the subject zoning item.

The property to be developed is located adjacent to tidewater. The Developer is advised that the proper sections of the Baltimore County Building Code must be followed whereby elevation limitations are placed on the lowest floor (including basements) of residential (commercial) development.

In conformance with Federal Flood Insurance requirements, the first floor or basement floor must be at least 1 foot over the flood plain elevation in all construction.

The flood plain management elevation is 11.2 feet for the proposed lot.

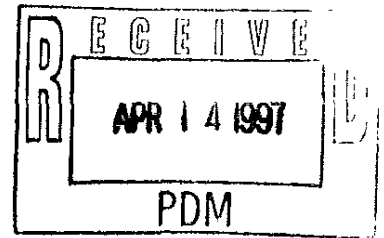
RWB:HJO:cab

cc: File

ZONE414.412

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE



TO: Arnold Jablon, Director
Department of Permits
and Development Management

FROM: Arnold F. "Pat" Keller, III, Director
Office of Planning

SUBJECT: Zoning Advisory Petitions

The Planning Office has no comments on the following petitions (s):

Item Nos. 412 & 420

If there should be any questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3495

Prepared by:

Jeffrey W. Long

Division Chief:

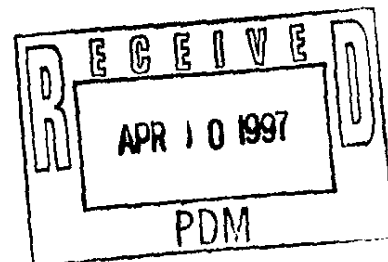
Carol Kerns

AFK/JL

Baltimore County Government
Fire Department



700 East Joppa Road
Towson, MD 21286-5500



Office of the Fire Marshal
(410) 887-4880

April 9, 1997

Arnold Jablon, Director
Zoning Administration and Development Management
Baltimore County Office Building
Towson, MD 21284
MAIL STOP 1105

RE: Property Owner: SEE BELOW
Location: DISTRIBUTION MEETING OF April 7, 1997

Item No.: See Below Zoning Agenda:

Comments:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plan for the property.

3. The Fire Marshal's Office has no comments at this time.
IN REFERENCE TO THE FOLLOWING ITEM NUMBERS:

410, 411, 413, 415, 416, 420, and 424

REVIEWER: LT. ROBERT P. SAUERWALD
Fire Marshal Office, PHONE 887-4881, MD-11021
cc: 1110



BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits
and Development Management

FROM: Arnold F. "Pat" Keller, III, Director
Office of Planning

SUBJECT: Zoning Advisory Petitions

The Planning Office has no comments on the following petitions (s):

Item Nos. 412 & 420

If there should be any questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3495

Prepared by:

Jeffrey W. Long

Division Chief:

Carol Kerns

AFK/JL

Attach original petition

Due Date 4/16/97

To: Arnold L. Jablon

From: Robert A. Wirth *RAW/jp*

Subject: Zoning Item #412

Wallace 13218 Powderdale Avenue

Zoning Advisory Committee Meeting of April 7, 1997

 The Department of Environmental Protection and Resource Management has no comments on the above-referenced zoning item.

 The Department of Environmental Protection and Resource Management requests an extension for the review of the above-referenced zoning item to determine the extent to which environmental regulations apply to the site.

 X The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item:

 Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 14-331 through 14-350 of the Baltimore County Code).

 Development of this property must comply with the Forest Conservation Regulations (Sections 14-401 through 14-422 of the Baltimore County Code).

 X Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 26-436 through 26-461, and other Sections, of the Baltimore County Code).

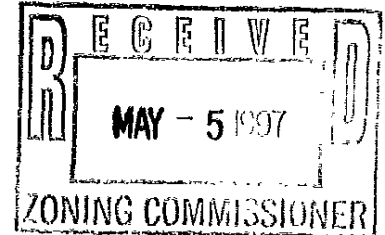
DANIEL PUSZCZEWICZ
13215 CHERWIN AVE.
BALTIMORE, MARYLAND. 21220

Home Phone 410-335-6726

*Ho 5/6
Brz'*

April 29, 1997

Mr. Lawrence Schmidt:
Zoning Commissioner
Old Courthouse
400 Washinton Ave.
Room 112
Towson, Maryland 21204



Re: Case No. 97-412-A

Dear Mr. Schmid:

This letter is being written pertaining to the above referenced case number. I am the owner of 13215 Cherwin Ave. I am writing this letter to object to the variance filed by the Wallaces' to build a single family dwelling which requires 55 feet of property. I do not particularly object to the building of a dwelling. What I do object to is that knowing there will only be 10 ft between the property and mine, thus creating a very tight working environment for construction. I do not think this is enough room. I think there is a great possibility that construction could overlap. I am very concerned about this encroachment and the possibility of property depreciation. I have spent a considerable amount of time and money purchasing this property. I have a great deal of pride for this property and keep it in a very reputable condition. For this reason I am asking that the Wallaces', before construction, provide an eight foot privacy fence dividing my property and their property. The fence could possibly be located on the property line. I am also asking that an escrow account with \$500.00 be set up for any possible damages to my property.

If there are any problems or if you would like discuss this matter further, please do not hesitate to contact either me or my wife at (410) 335-6726. I hope to be able to attend the hearing on May 6th.

Sincerely,

Daniel and Brenda Puszczewicz

Handwritten signatures in cursive script. The top signature appears to be "Daniel Puszczewicz" and the bottom signature appears to be "Brenda Puszczewicz".

April 29, 1997

Mr. Lawrence Schmidt
Zoning Commissioner
Old Courthouse
400 Washington Ave.
Room 112
Towson, Maryland 21204

Re: Case No. 97-412-A

Dear Mr. Schmidt:

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If there are any problems or if you would like to discuss this matter further, please do not hesitate to contact me at (410) 335-6726. I will also be attending the hearing on May 6th.

Very truly yours,

Daniel and Brenda Puszczewicz

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME

ADDRESS

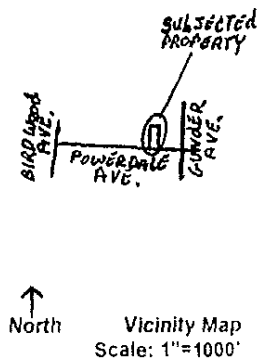
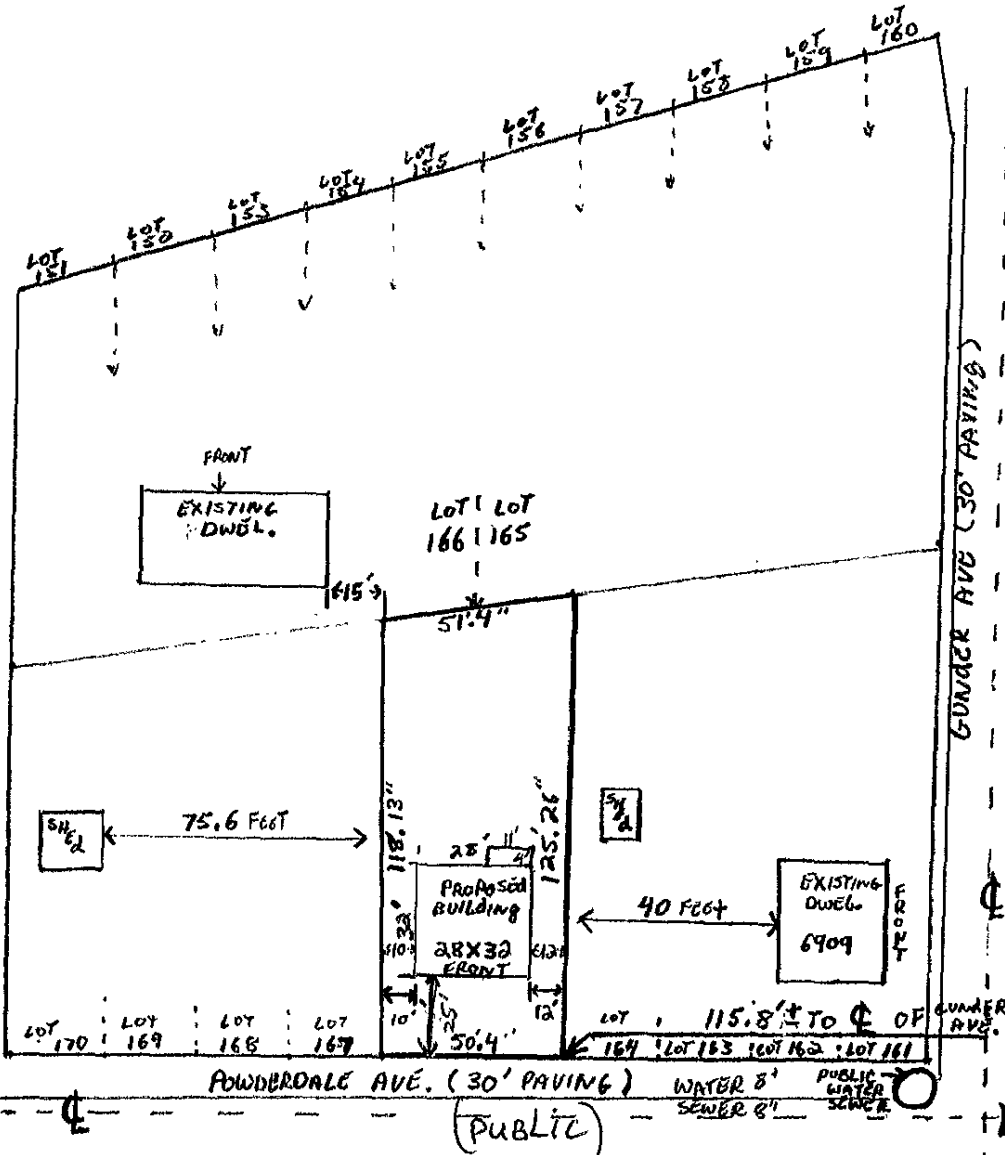
Wally Wallace
Jane Wallace

7019 GREENBANK Rd
7019 GREENBANK Rd

Plat to accompany petition for Zoning Variance Special Hearing

Property Address: POWDERDALE AVE
 Plat book# 9, folio# 33, lot# 166, 168, section# A

Owner: Wally & Dawn Wallace



Location information
 Councilmanic District: 5
 Election District: 15
 1"=200' scale map#: NE-8-M
 Zoning: D.R. 5.5
 Lot size: .14 acreage 6,137 square feet
 8" Sewer: Public
 8" Water: Public
 Chsapeake Bay Critical Area: Yes
 Prior Zoning Hearings: NO

Zoning Office Use Only!

| reviewed by | item# | case# |
|-------------|-------|-------|
| DCM | 412 | |

97-412-A

NORTH
 Date: 3-6-97
 Prepared by: W.W.

Scale of Drawing: 1"=60'

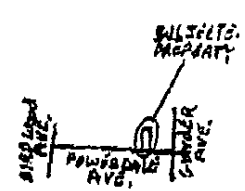
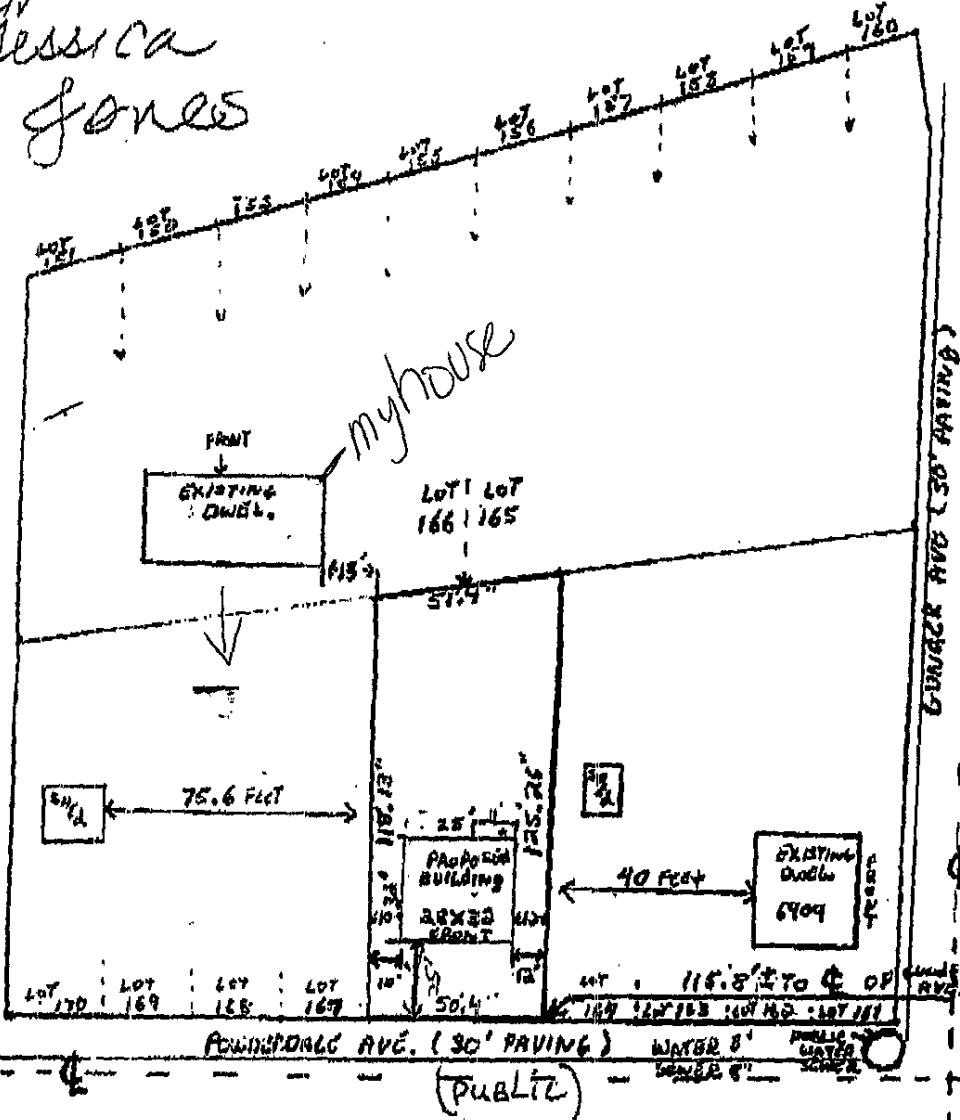
APPLICANT/PETITIONER AFFIRM THAT THE 25' SETBACK FOR THE PROPOSED DWELLING MEETS THE FRONT AVERAGING REQUIREMENTS OF SECTION 303.1; BCZP.
Wally Wallace
 Petitioner's Exhibit No. 8D: 3-24-97

Plat to accompany petition for Zoning Variance Special Hearing

Property Address: ^{171/B} ~~Road~~ Dale Ave
Plat book# 2, folio# 23, lot# 165, 166, section# A

Owner: Wally & Dawn Wallace

24
Jessica Jones



North
Vicinity Map
Scale: 1"=1000'

Location Information

Councilmanic Distric: 5
Election Distric: 15

1"=200' scale map#: NE-5-1

Zoning: O.B. 5E

Lot size: .14 acreage 6137 square feet

8" Sewer: Public
8" Water: Public
Chesapeake Bay Critical Area: YES
Prior Zoning Hearings: NO

Zoning Office Use Only

| reviewed by | term | case# |
|-------------|------------|-------|
| <i>Jan</i> | <i>412</i> | |

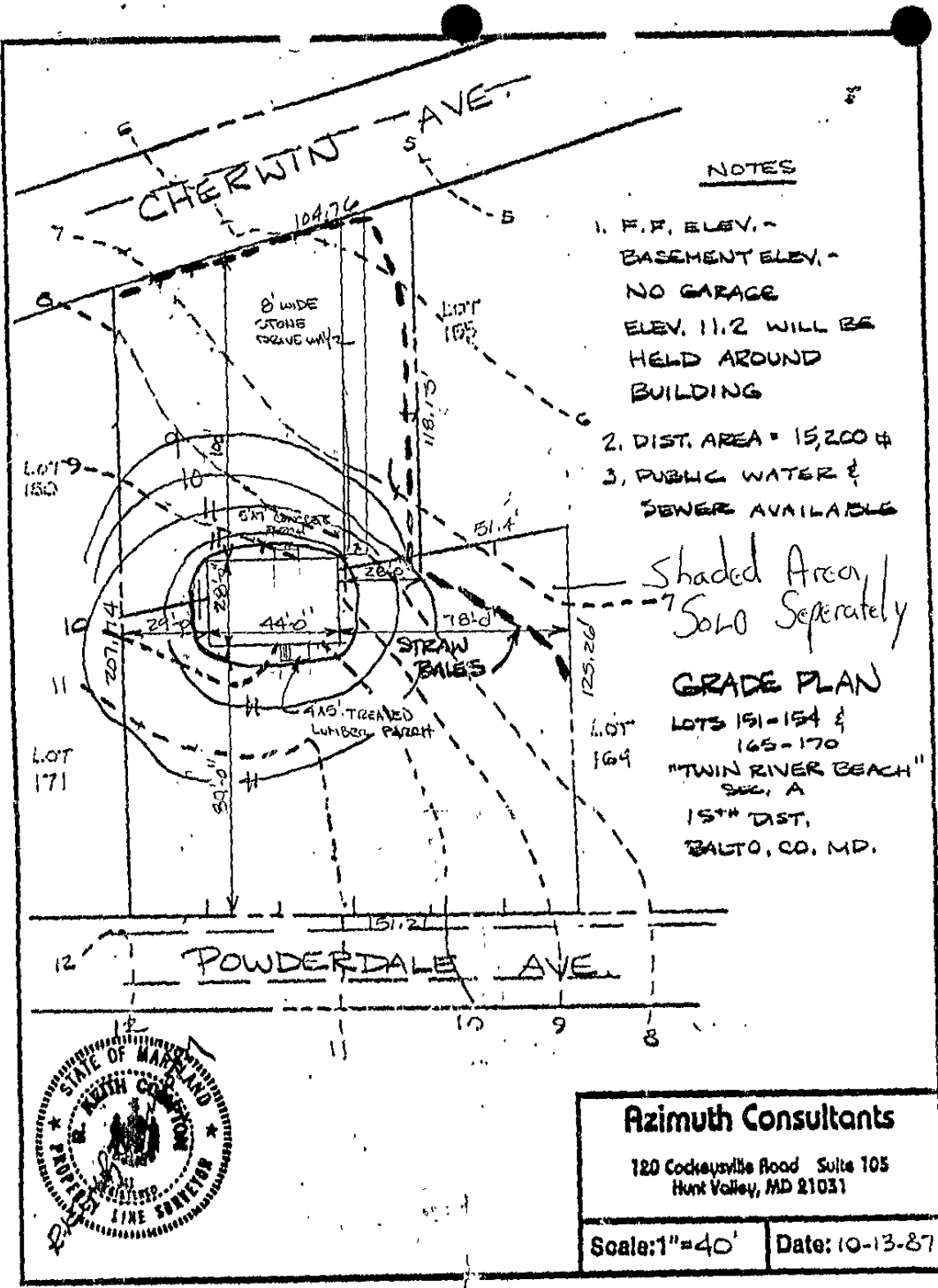
97-412-A

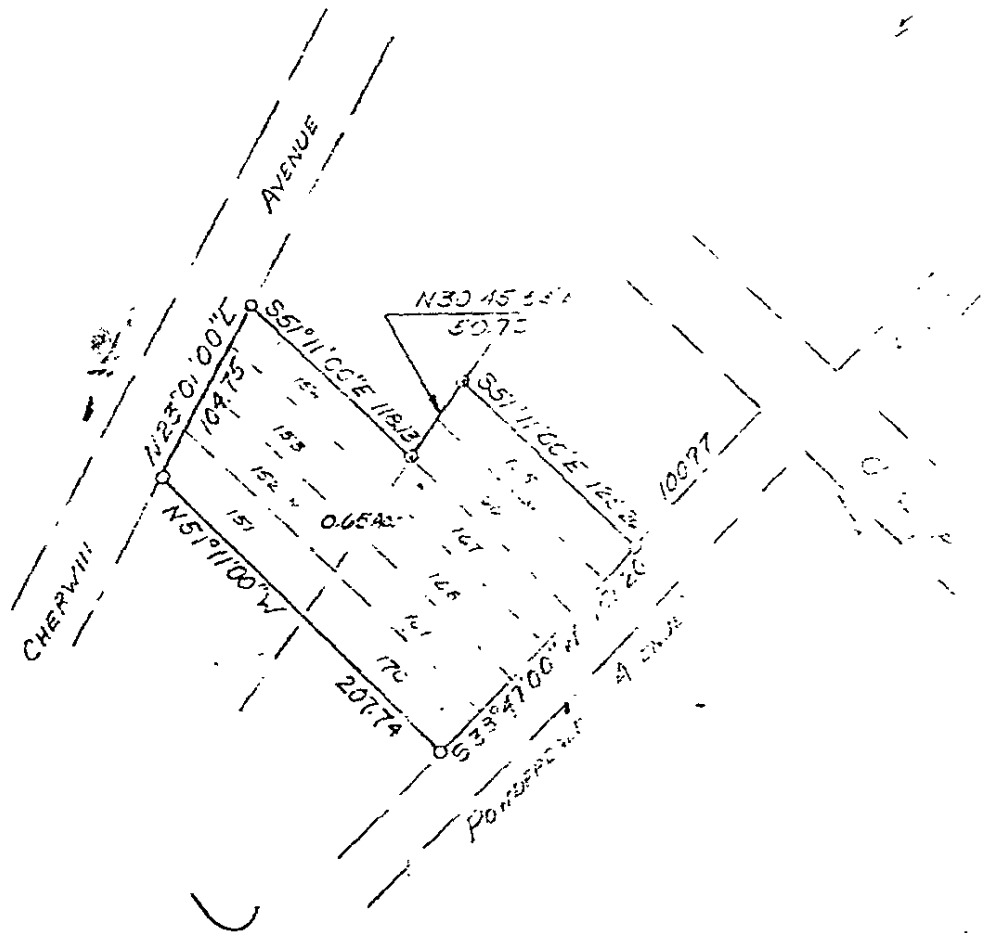
NORTH
Date: 3-6-87
Prepared by: *W/W*

Scale of Drawing: 1"=50'

Applicant/Petitioner Affirm THAT THE 25' SETBACK FOR THE PROPOSED DWELLING MEETS THE FRONT AVERAGING REQUIREMENTS OF SECTION 303.1, B.C.Z.D.
Wally Wallace DATE 3-24-97

1986-018
Petitioner's Exhibit No. 8D





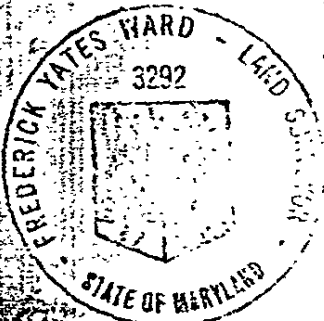
TWO PARCELS OF LAND SURVEYED
FOR JAMES CROUSE....

Located at Twin River Beach, Baltimore
County, Maryland...

*Frederick Ward
& Associates*

REGISTERED LAND SURVEYOR

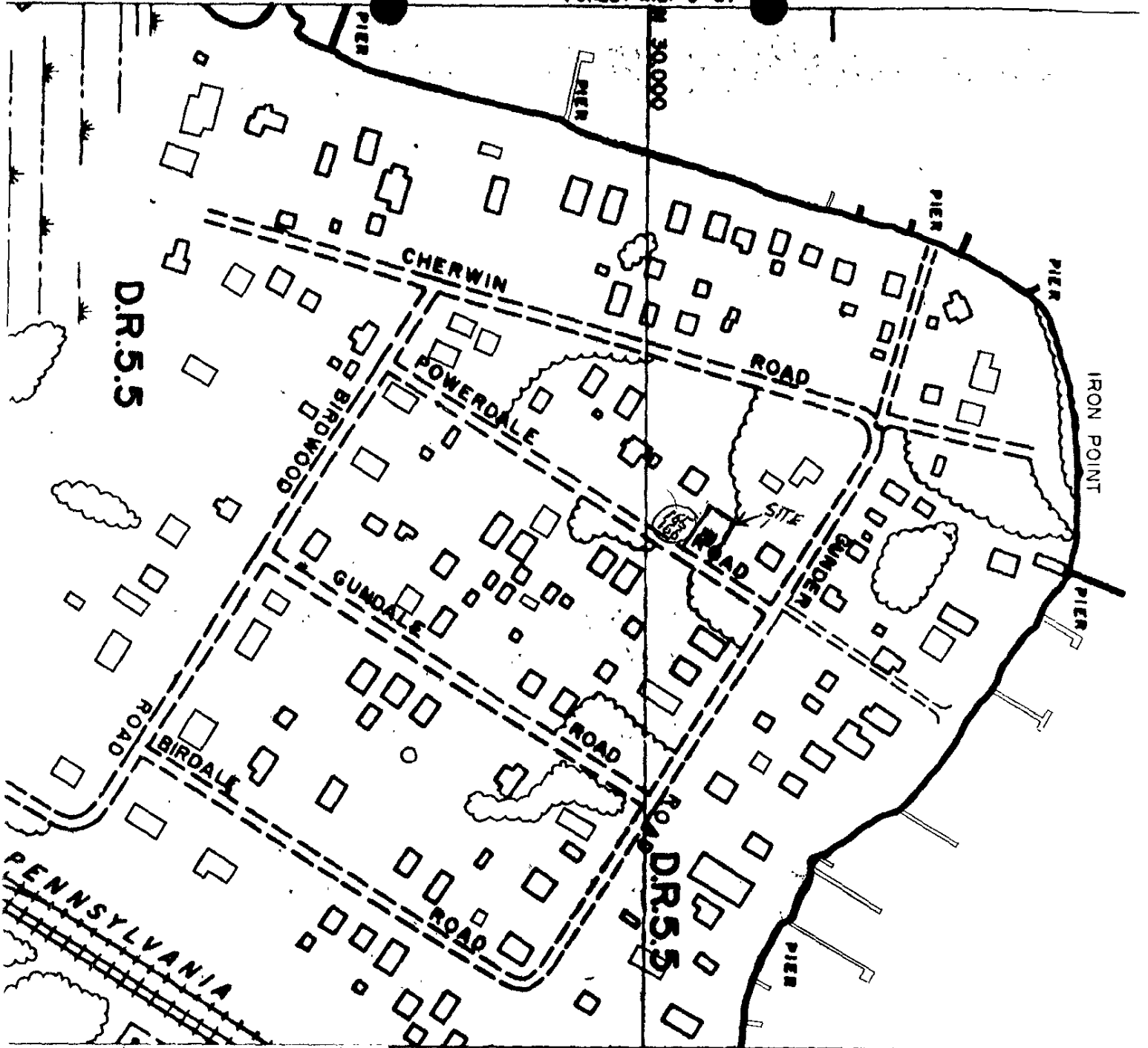
1110 W. BALTIMORE ST.
BALTIMORE, MARYLAND
21203



DATE
1-6-69

SCALE
1" = 100'

PLAT NO
C-67-3



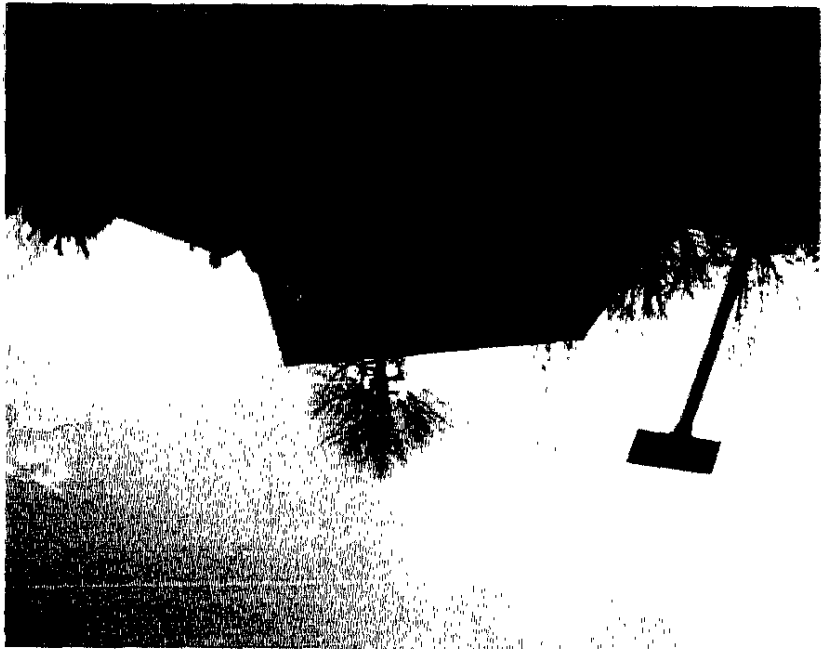
SCALE
1" = 200' ±

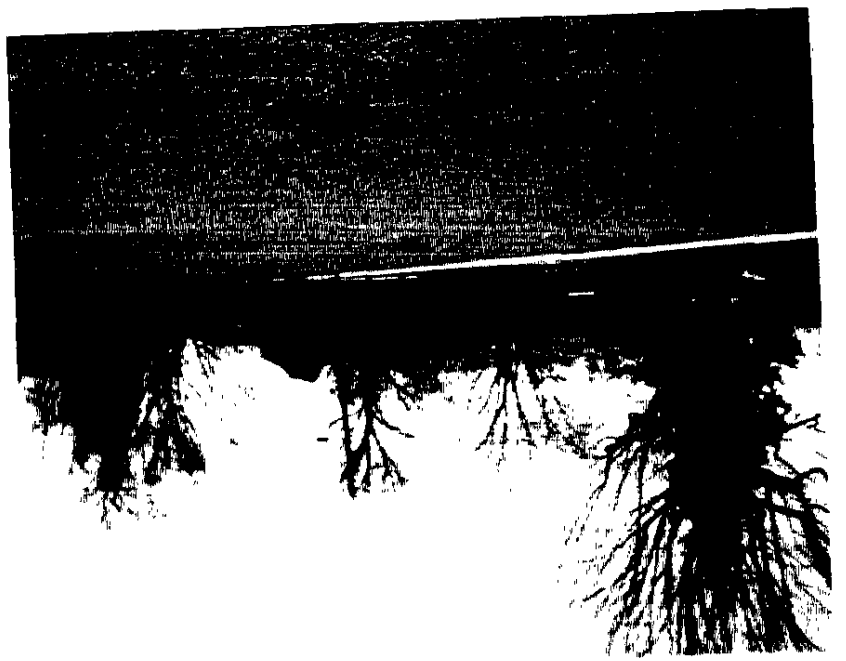
LOCATION
TWIN RIVERS
412

SHEET
N.E.
6-L
(NE 8-M)
97-412-A
Petitioner's Exhibit No. 8D

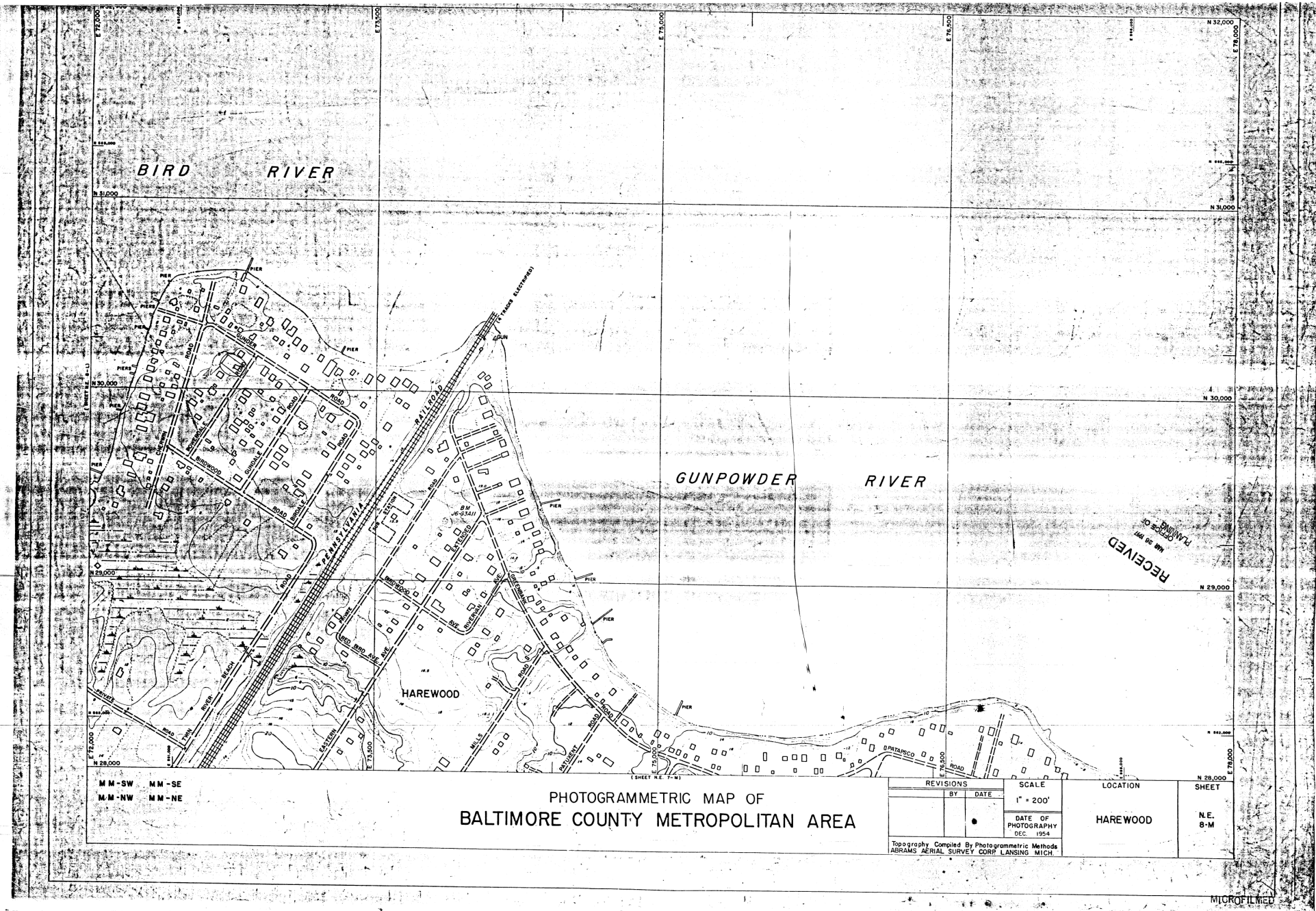


97-412-A









MM-SW MM-SE
MM-NW MM-NE

PHOTOGRAMMETRIC MAP OF
BALTIMORE COUNTY METROPOLITAN AREA

| REVISIONS | | SCALE 1" = 200' | LOCATION HAREWOOD | SHEET N.E. 8-M |
|-----------|------|----------------------------------|----------------------|----------------------|
| BY | DATE | | | |
| | | DATE OF PHOTOGRAPHY DEC. 1954 | | |

Topography Compiled By Photogrammetric Methods
ABRAMS AERIAL SURVEY CORP LANSING MICH.

MICROFILMED

GENERAL SITE INFORMATION

- Ownership: Craig Kesner
13015 Eastern Avenue Baltimore, MD 21220
- Address: 13217 Cherwin Avenue
- Deed references: SM 34935/ 437
Lots 155 & 156 "Section A Twin River Beach" PB 9/ 33
- Area: 6,050 sq. ft. / 0.138 acre Total (per SDAT)
- Tax Map / Parcel / Lot / Tax account #: 84 / 43 / 155/ 15-22-350392
Tax Map / Parcel / Lot / Tax account #: 84 / 43 / 156/ 15-22-350391
- Election District: 15 Councilmanic District: 6
ADC Map: 4583C10 GIS file: 084A1 Position sheet: 31NE49
- The boundary shown hereon is from the deed recorded in the Land Records of Baltimore County. All other information shown hereon was taken from Baltimore County GIS files 084A1 and the information provided by Baltimore County on the internet.
- Improvements: Vacant

OFFICE OF ZONING

Zoning: DR 5.5
Zoning History: #2019-0402-SPHA
Special Hearing- granted
Variances- denied
DR 5.5 Setbacks for Residential Buildings
Front: 25 feet from the street right of way
Side: 10 feet from property line
Rear: 30 feet from property line

ENVIRONMENTAL IMPACT

- A future dwelling will be served by public water and sewer.
- There are no underground storage tanks on the subject property.
- The subject property is in the Chesapeake Bay Critical Area.
- The subject property is located in flood plain Zone AE per FIRM Panel 2400100315 G.

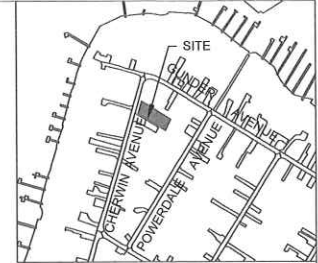
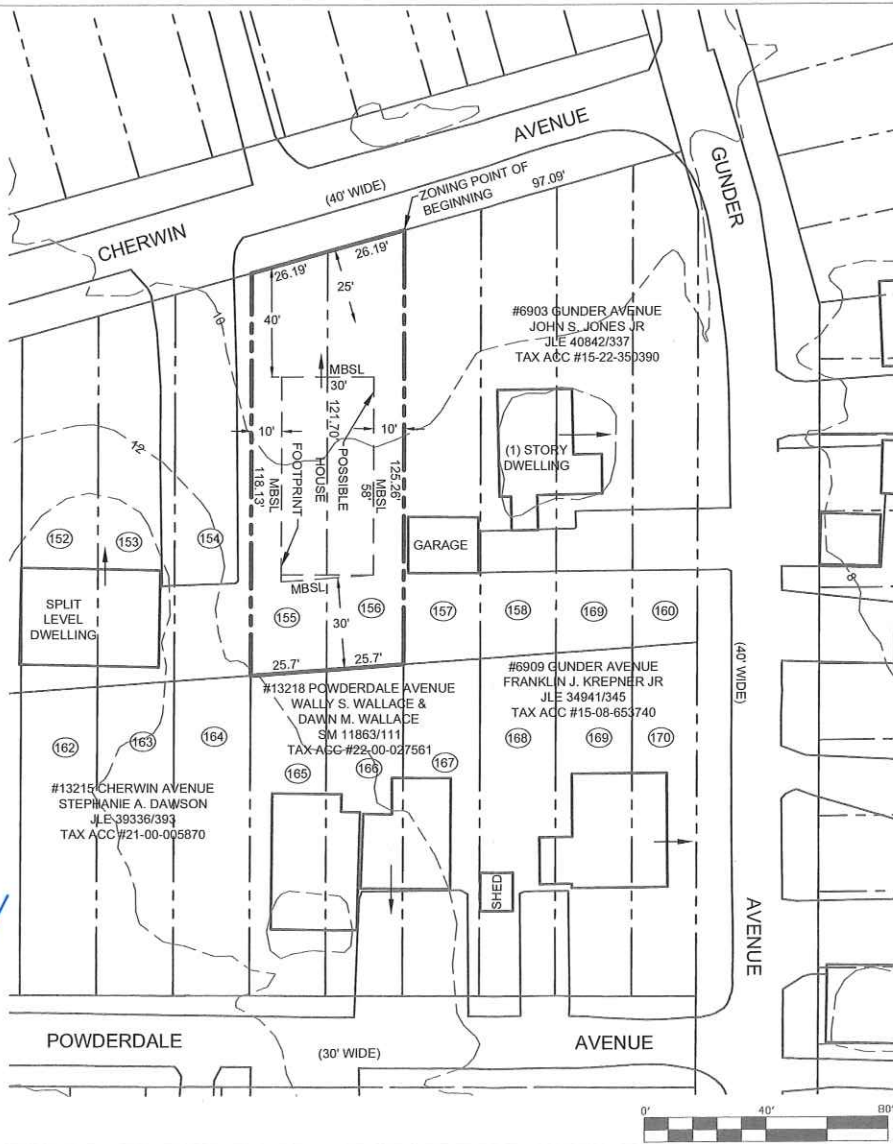
OFFICE OF PLANNING

Regional Planning District: Windlass District Code: 322

- The subject property is not in a historic district.

PROPOSED DEVELOPMENT

To construct a single family dwelling on the subject lots



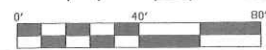
Vicinity Map - Scale: 1" = 500'

Bruce E. Doak Consulting, LLC
Land Use Expert and Surveyor
3801 Baker Schoolhouse Road
Frostland, MD 21033
o 443-900-5535 m 410-419-4906
bdoak@bruceedoakconsulting.com

PLAN TO ACCOMPANY
A ZONING PETITION
FOR
LOT 155 & LOT 156
"TWIN RIVER BEACH"
#13217 CHERWIN AVENUE
BALTIMORE COUNTY, MARYLAND
15th ELECTION DISTRICT 6th COUNCILMANIC DISTRICT

Date: 3/14/2020
Scale: 1" = 40'

REVISION
10/11/20 AMENDMENTS REQUIRED
BY CASE #2020-0090-SPHA
ORDER



RECEIVED
OCT 13 2020
DEPARTMENT OF PLANNING



GENERAL SITE INFORMATION

1. Ownership: Craig Kestner
13015 Eastern Avenue Baltimore, MD 21220
2. Address: 13217 Cherwin Avenue
3. Deed references: SM 34935/ 437
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OFFICE OF ZONING

Zoning: DR 5.5
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Special Hearing: granted
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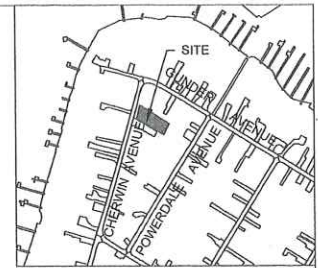
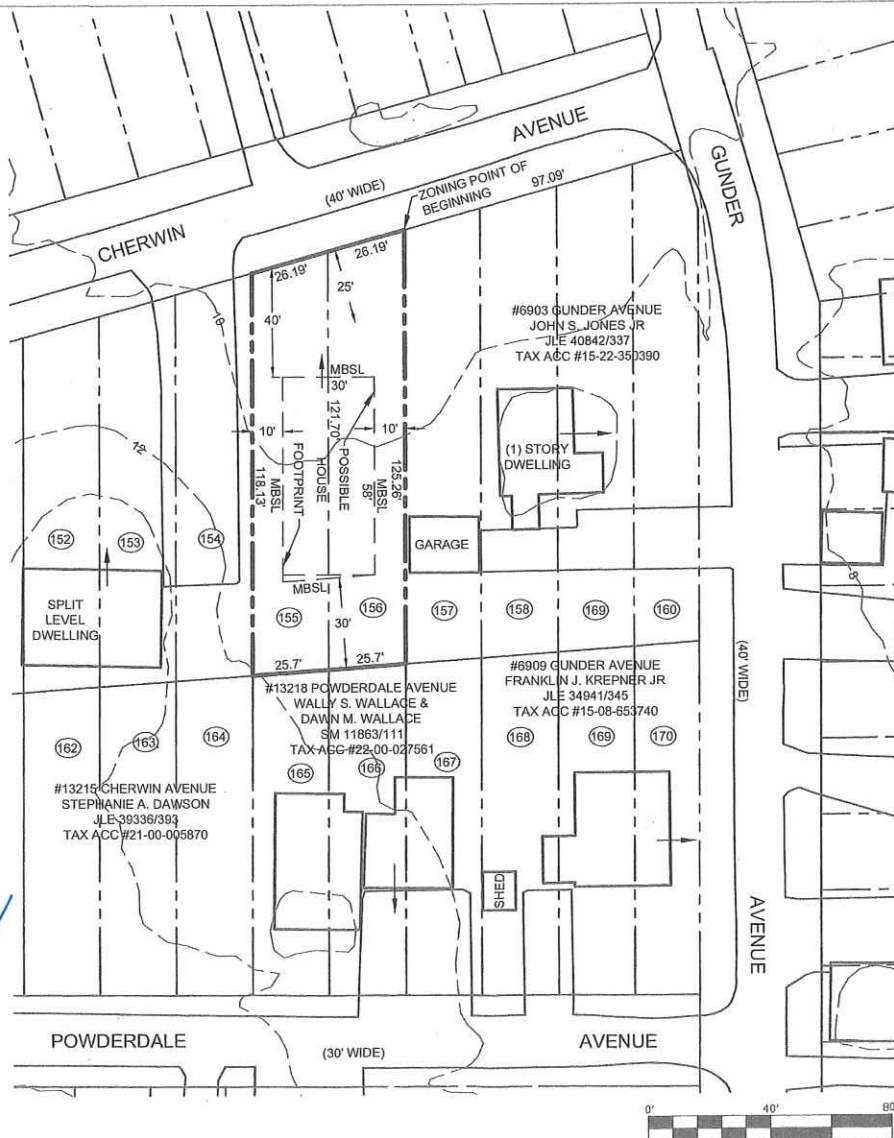
OFFICE OF PLANNING

Regional Planning District: Windlass District Code: 322

1. The subject property is not in a historic district.

PROPOSED DEVELOPMENT

To construct a single family dwelling on the subject lots



Vicinity Map - Scale: 1" = 500'

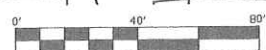


Bruce E. Doak Consulting, LLC
Land Use Expert and Surveyor
3801 Baker Schoolhouse Road
Friedland, MD 21053
o 443-900-3525 m 410-419-4906
bdoak@bruceedoakconsulting.com

**PLAN TO ACCOMPANY
A ZONING PETITION
FOR
LOT 155 & LOT 156
"TWIN RIVER BEACH" -
#13217 CHERWIN AVENUE**
BALTIMORE COUNTY, MARYLAND
15th ELECTION DISTRICT 6th COUNCILMANIC DISTRICT

REVISION
10/11/20 AMENDMENTS REQUIRED
BY CASE #2020-0090-SPHA
ORDER

Date: 3/14/2020
Scale: 1" = 40'



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OFFICE OF ZONING

Zoning: DR 5.5

Zoning History: #2019-0402-SPHA
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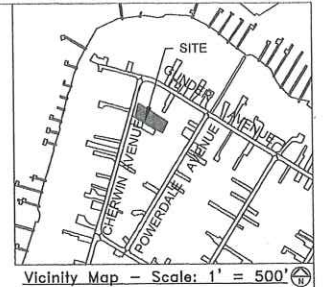
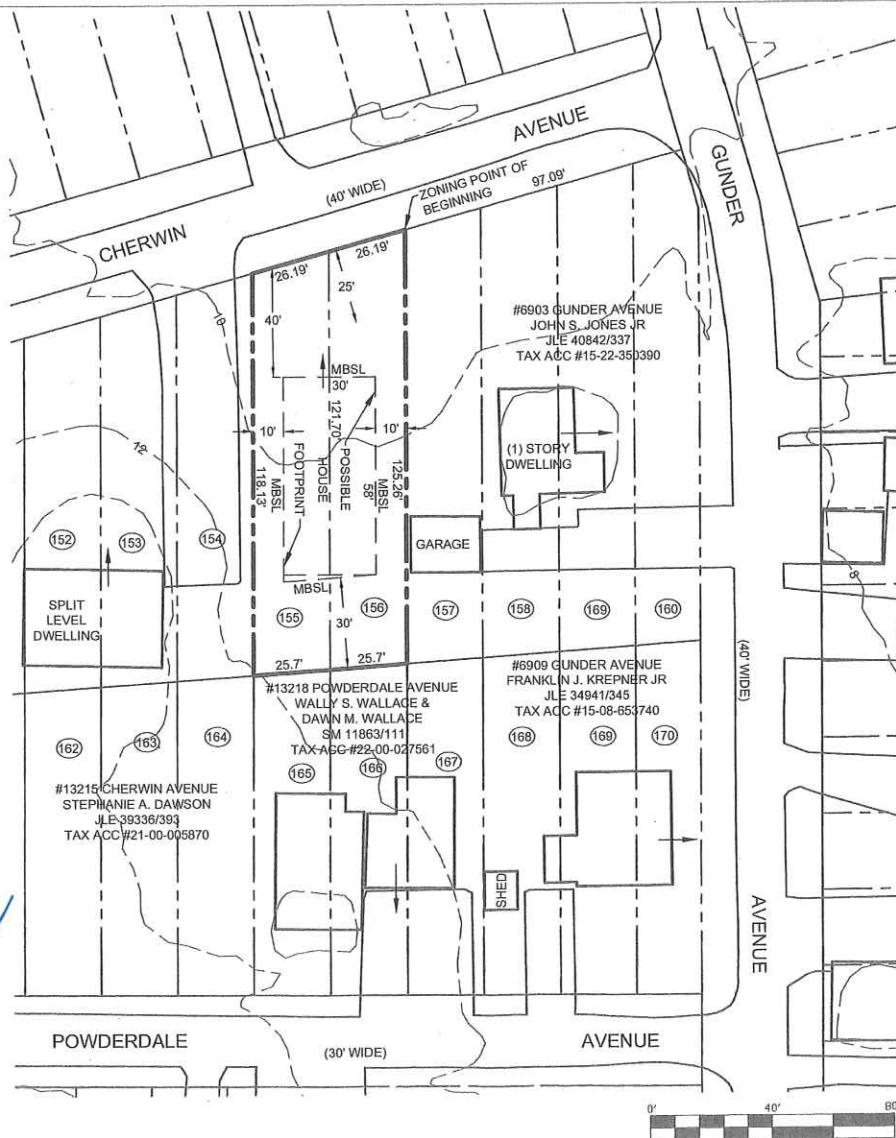
OFFICE OF PLANNING

Regional Planning District: Windlass District Code: 322

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PROPOSED DEVELOPMENT

To construct a single family dwelling on the subject lots

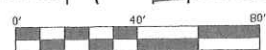


Bruce E. Doak Consulting, LLC
Land Use Expert and Surveyor
3801 Baker Schoolhouse Road
Frostland, MD 21058
o 443-900-5555 m 410-419-4906
bdoak@bruceedoakconsulting.com

**PLAN TO ACCOMPANY
A ZONING PETITION
FOR
LOT 155 & LOT 156
"TWIN RIVER BEACH"
#13217 CHERWIN AVENUE**
BALTIMORE COUNTY, MARYLAND
15th ELECTION DISTRICT 6th COUNCILMANIC DISTRICT

REVISION
10/11/20 AMENDMENTS REQUIRED
BY CASE #2020-0090-SPHA
ORDER

Date: 3/14/2020
Scale: 1" = 40'



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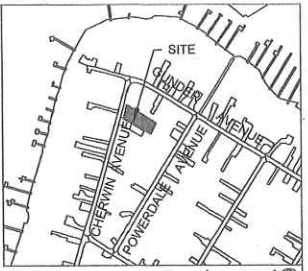
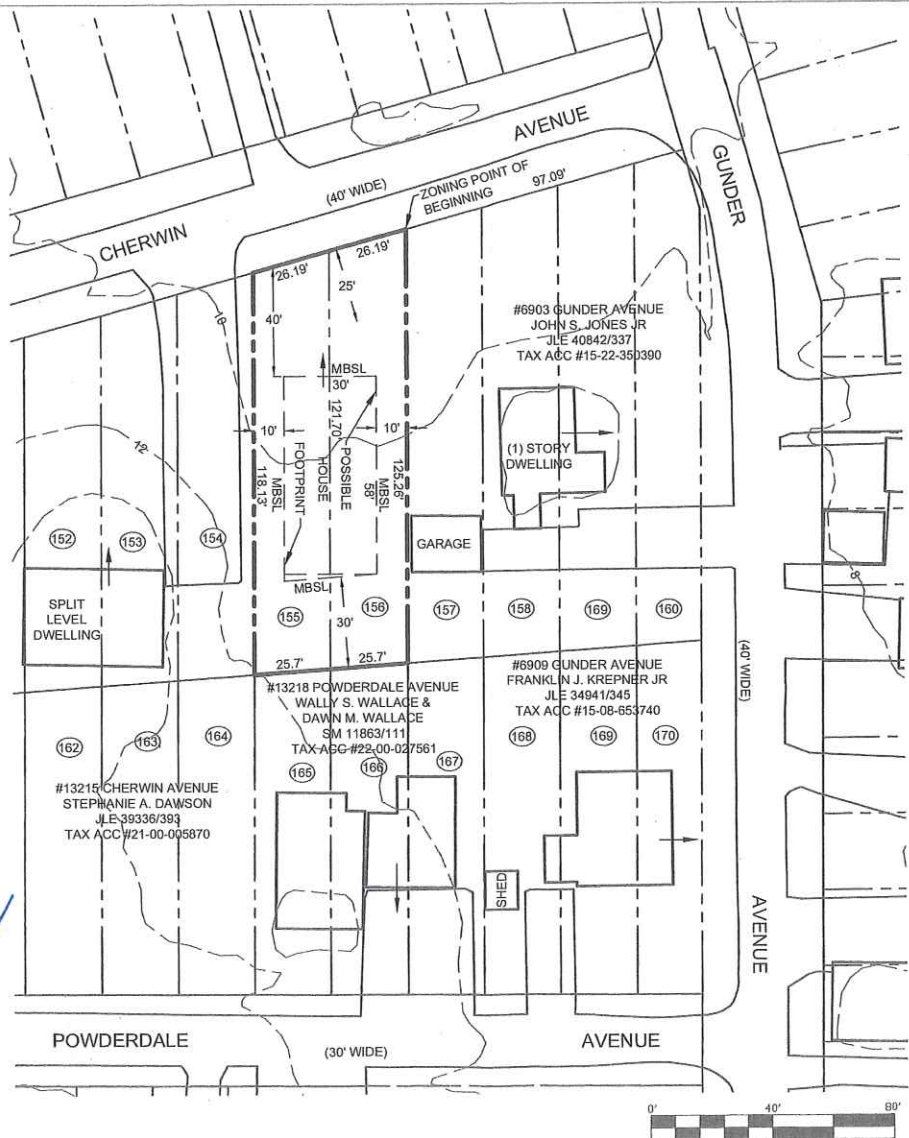
OFFICE OF PLANNING

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PROPOSED DEVELOPMENT

To construct a single family dwelling on the subject lots



Vicinity Map - Scale: 1" = 500'

Bruce E. Doak Consulting, LLC
Land Use Expert and Surveyor
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Frostland, MD 21053
P 443-900-5335 M 410-419-4906
bdoak@bruceedoakconsulting.com

**PLAN TO ACCOMPANY
A ZONING PETITION
FOR
LOT 155 & LOT 156
"TWIN RIVER BEACH" *
#13217 CHERWIN AVENUE**
BALTIMORE COUNTY, MARYLAND
15th ELECTION DISTRICT 6th COUNCILMANIC DISTRICT

Date: 3/14/2020
Scale: 1" = 40'



REVISION
10/11/20 AMENDMENTS REQUIRED
BY CASE #2020-0090-SPHA
ORDER

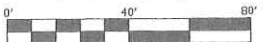


Exhibit Sheet

9/29/20
D. Dugnon

Petitioner/Developer

Protestant (John Dawson)

| | | |
|--------|--|---|
| No. 1 | | John Dawson – Twin River Beach Protective & Improvement Association Inc. Letter |
| No. 2 | | John Dawson – Photo 1 |
| No. 3 | | John Dawson – Photo 2 |
| No. 4 | | John Dawson – Photo 3 |
| No. 5 | | John Dawson – Photo 4 |
| No. 6 | | John Dawson – Photo 5 |
| No. 7 | | John Dawson – Photo 6 |
| No. 8 | | John Dawson – Photo 7 |
| No. 9 | | John Dawson – Photo 8 |
| No. 10 | | John Dawson – Photo 9 |
| No. 11 | | |
| No. 12 | | |

9/23
1:30 pm

Debra Wiley

From: Stephanie Dawson <sdawson52081@gmail.com>
Sent: Monday, September 21, 2020 9:51 PM
To: Administrative Hearings
Cc: Tommy Dawson
Subject: Case No. 2020-0090-SPHA - email 1 of 2
Attachments: Twin River Beach Protective and Improvement Association denial of variance letter.pdf; IMG-5335.JPG; IMG-5334.JPG; IMG-5337.JPG; IMG-5336.JPG

CAUTION: This message from sdawson52081@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.

This is in reference to Zoning Notice Case No. **2020-0090-SPHA** for the property address of 13217 Cherwin Avenue, Middle River MD, 21220.

Attached are Protestant John Dawson's exhibits. This is email 1 of 2.

RECEIVED
SEP 22 2020
OFFICE OF
ADMINISTRATIVE HEARINGS

The Twin River Beach Protective and Improvement Association, Inc.
13209 Powderdale Avenue
Middle River, Maryland

September 21, 2020

Ref: variance on lots 155 & 156

To whom it may concern:

We the Board of Directors for the Twin River Beach Protective and Improvement Association Incorporated (representing said community) wish to submit our request for denial of the variance on lots #155 and #156, Cherwin Avenue.

The area of the requested variance is known to flood due to rain and tidal waters. At a board meeting, community members including contractors overwhelming agreed that the creation of impervious structure and/or the change of grade on this natural drainage are could result in damage to adjacent properties and create a more hazardous driving/living situation due to a negative effect on water damage.

If you should have any questions concerning this issue, please feel free to contact us.

Respectfully,

Tom Brookes, President
443-525-7038

Thomas M. Brookes
9/21/2020

1



3



4





9/23
1:30 pm

Debra Wiley

From: Stephanie Dawson <sdawson52081@gmail.com>
Sent: Monday, September 21, 2020 9:52 PM
To: Administrative Hearings
Cc: Tommy Dawson
Subject: Case No. 2020-0090-SPHA - email 2 of 2
Attachments: IMG-5338.JPG; IMG-5339.JPG; IMG-5341.JPG; IMG-5340 (1).JPG

CAUTION: This message from sdawson52081@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.

This is in reference to Zoning Notice Case No. **2020-0090-SPHA**
for the property address of 13217 Cherwin Avenue, Middle River MD, 21220.

Attached are Protestant John Dawson's exhibits. This is email 2 of 2.

RECEIVED
SEP 22 2020
OFFICE OF
ADMINISTRATIVE HEARINGS









| | | |
|--------------------------------------|---|--------------------------------|
| IN RE: PETITIONS FOR SPECIAL HEARING | * | BEFORE THE |
| AND VARIANCE | | |
| (13217 Cherwin Avenue) | * | OFFICE OF |
| 15 th Election District | * | ADMINISTRATIVE HEARINGS |
| 6 th Council District | * | FOR BALTIMORE COUNTY |
| Craig Kestner, <i>Legal Owner</i> | * | Case No. 2019-0402-SPHA |
| Petitioner | * | |

* * * * *

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 Craig Kestner, legal owner (“Petitioner”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to confirm that a merger did not take place between the 155 & 156 lots, the adjacent lots at Lots 157, 158, 159, 160 otherwise known as 6903 Gunder Avenue. In addition, a Petition for Variance was filed pursuant to BCZR Sections 1B02.3.C.1 and 303.1: (1) to permit a proposed dwelling on a lot with a width of 50 ft. in lieu of the required 55 ft.; and (2) to permit a front average setback of 25 ft. in lieu of the required 40 ft. in the DR 5.5 zone. A site plan was marked and accepted into evidence as Petitioner’s Exhibit 1.

Craig Kestner, the property owner, and Bruce Doak, surveyor, appeared in support of the requests. The adjoining neighbor, John Dawson, appeared as a Protestant. The Petition was advertised and posted as required by the BCZR. A substantive Zoning Advisory Committee (“ZAC”) comment was received from the Department of Environmental Protection and Sustainability (“DEPS”).

Mr. Doak proffered the following: The subject lots (155 and 156) are part of the Twin River Beach development plat. This is an older development with lots that are only 25 feet wide. Mr.

ORDER RECEIVED FOR FILING

Date 10/23/19
 By SEN

Kestner purchased the two lots in question in 2014 as part of a purchase that also included four other lots (157, 158, 159 and 160) along with the single family home at 6903 Gunder Avenue. The Title Deed was offered into evidence as Exhibit 2. Mr. Kestner subsequently sold the house and the other four lots but retained lots 155 and 156. He now wishes to sell those two lots as a buildable lot and therefore needs the requested relief.

With respect to the issue of merger the Petitioner submitted the tax bills for lots 155 and 156 as evidence that these lots are separate and apart from the other four lots and from each other. He testified that these two lots were never used in connection with the residence at 6903 Gunder Avenue and that there have never been any structures on these two lots. There was no evidence to the contrary. In fact, the Protestant, Mr. Dawson, testified that he believed these lots were merely the back yard of the house at 6903 Gunder and that there had not been any use of the lots, at least since he moved in.

In regards to his request for variance relief the Petitioner explained that the subdivision was originally laid out with 25 foot wide lots and that because of the subsequent change in the zoning it is now impermissible to build a residence even if you own two of the original 25 foot wide lots due to the current 55 foot minimum lot width. Mr. Doak stated that he has been involved in approximately forty cases arising out of this change in the zoning and that the variance relief is almost always afforded because otherwise the property owner cannot build on their property. Doak further expressed that the Petitioner needs the front yard setback variance in order to build even a modest "modern" house on the property. The site plan (Exhibit 1) shows that the setbacks on the neighboring houses are 76 feet and 58 feet. Therefore a 40 foot setback is required under BCZR Sec. 303.1 in this DR5.5 zone. Doak submitted a neighborhood plat from the County's My

ORDER RECEIVED FOR FILING

Date 10/23/19

By Sen

Neighborhood webpage which identifies several other variance cases in the vicinity. (Petitioner's Exhibit 7).

The Protestant, John Dawson, testified that he and his wife purchased the house next door in March of 2017. He opposes the variance relief for several reasons. First, if a house is built on those lots it will greatly obstruct his view of the river. Further, because the property is in a floodplain any structure built will have to be up on pilings, which will make it even more obstructive. In addition he explained that there is, in fact, substantial flooding on the lots during heavy rains, causing water to run off onto his and the other adjoining properties. He submitted a series of photographs that document the views from his home, and the flooding problem. (Protestant's Exhibit 1A thru 1K). He also submitted a letter of opposition from the Twin River Beach Protective and Improvement Association, Inc., which was signed by nineteen neighborhood residents. The letter expresses the community's concerns, stating in relevant part that:

"The area of the requested variance is known to flood due to rain and tidal waters. At our meeting tonight, community members including contractors overwhelmingly agreed that the creation of an impervious structure and/or the change of grade on this natural drainage area could result in damage to adjacent properties and create a more hazardous driving/living situation due to a negative affect on water drainage."

In sum, both the next door neighbor, Mr. Dawson, and the Community Association are opposed to the requested variance relief.

SPECIAL HEARING

Based on the evidence presented I find that there has been no merger between the two lots in question – 155 and 156- and the other four lots – 157 thru 160 that were sold along with the home at 6903 Gunder Avenue. The Special Hearing relief in the Petition will therefore be granted.

VARIANCE

ORDER RECEIVED FOR FILING

Date

10/23/19

By

sen

Two variances are requested. The first seeks to allow a dwelling to be built on a 50 foot wide lot when the minimum lot width is 55 feet. The second asks for a front yard setback of 25 feet in lieu of the applicable 40 foot setback. As to the variances, a two-step analysis is required, 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).

In addition to these factors, the variance relief must also be in harmony with the spirit and intent of the BCZR and not be detrimental to the public health, safety or welfare.

In the instant case, these lots are essentially identical to all the other 25 foot wide lots in the original Twin River Beach development. As such, the property is not unique. I am aware that in previous cases "uniqueness" has sometimes been found in the fact that the lots were created before the 55 foot minimum regulations were enacted. And perhaps in a case with no opposition, no other requested variance relief, and no other conflict with the BCZR this strained analysis would be appropriate. But in this case, in addition to the width variance the Petitioner is also seeking a front yard setback variance that will directly impact his neighbor Mr. Dawson. Further, the Community Association has also opposed the requested variance relief for the reasons stated in the letter quoted above, which are the same concerns voiced by Mr. Dawson.

In sum, I do not find the property "unique" within the plain meaning or the legal meaning of the word. As a result I do not reach the second prong of the analysis. However, even if the evidence satisfied both prongs of the analysis I would still find, based on the documented flooding issues, that the addition of more impervious surface on this property would be detrimental to the

ORDER RECEIVED FOR FILING

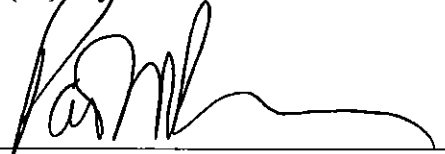
Date 10/23/19
By sen

health, safety and welfare of the Twin River Beach community and would not be in strict harmony with the spirit and intent of the BCZR. I am mindful that this decision limits Petitioner's uses of the property. I regret that fact but it is my duty to fairly apply the law.

THEREFORE, IT IS ORDERED this 23rd day of **October, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing to confirm that a merger did not take place between the 155 & 156 lots, the adjacent lots at Lots 157, 158, 159, 160 and 6903 Gunder Avenue, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance: (1) to permit a proposed dwelling on a lot with a width of 50 ft. in lieu of the required 55 ft.; and (2) to permit a front average setback of 25 ft. in lieu of the required 40 ft. in the DR 5.5 zone, be and is hereby DENIED.

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



PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM:sln

ORDER RECEIVED FOR FILING

Date

10/23/19

By

sln



JOHN A. OLSZEWSKI, JR.
County Executive

PAUL M. MAYHEW
Managing Administrative Law Judge
LAWRENCE M. STAHL
Administrative Law Judge

October 23, 2019

Craig Kestner
7237 Greenbank Road
Baltimore, Maryland 21220

RE: Petition for Special Hearing and Variance
Case No. 2019-0402-SPHA
Property: 13217 Cherwin Avenue

Dear Mr. Kestner:

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,


PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM:sln
Enclosure

C: Bruce Doak, 3801 Baker Schoolhouse Road,
Freeland, Maryland 21053
John Dawson, 13215 Cherwin Avenue,
Middle River, Maryland 21220

Case No.: 2019 - 0402 - SPNA

Exhibit Sheet

blw
10-23-19

Petitioner/Developer

Protestants

| No. 1 | SITB PLAN | 19-K Photos |
|--------|---|---|
| No. 2 | DOB | ltr from Twin River Beach Protective & Improvement Assoc. |
| No. 3 | Plat excerpt | |
| No. 4 | MY NEIGHBORHOOD OVERHEAD | |
| No. 5 | Aerial Photo | |
| No. 6 | Survey Plat of 6903 GUNDOX AVE | |
| No. 7 | My Neighborhood map of other ZONING CASES | |
| No. 8 | TAX BILLS FOR LOTS 155 and 156 | |
| No. 9 | | |
| No. 10 | | |
| No. 11 | | |
| No. 12 | | |

0034935 437

①

AFTER RECORDING RETURN TO:
Craig Kestner
6903 Gunder Avenue
Baltimore, MD 21220

DOCUMENT PREPARED BY:
Sage Title Group, LLC
7939 Honeygo Boulevard, Suite 124
Baltimore, MD 21236
File Number: 116312WHMS

Tax ID #: 15 1522350390

This Deed, MADE THIS 30th day of April 2014, by and between Dawn Marie Watson, as Personal Representative of The Estate of Margaret Leola Vitek, party of the first part, and Craig Kestner, party of the second part.

WHEREAS, by Letters of Administration from the Register of Wills of Baltimore County, Maryland, issued in the estate of the decedent, Estate Number 171923, the party of the first part was appointed Personal Representative for the decedent's estate and is so acting on the date of this Deed, and

WHEREAS the party of the first part, as Personal Representative is validly seized and possessed of all lands hereinbelow conveyed.

WITNESSETH, That in consideration of the sum of **ONE HUNDRED EIGHTEEN THOUSAND AND 00/100 DOLLARS (\$118,000.00)**, the receipt of which is hereby acknowledged, the said party of the first part does grant and convey to the said party of the second part, in fee simple, all that parcel of ground situated in **Baltimore County, Maryland** and as described as follows, that is to say:

ALL THAT certain lot of ground situate, lying and being in the County of Baltimore, State of Maryland, aforesaid, and described as follows, that is to say:

BEGINNING FOR THE FIRST hereof at the South corner of Cherwin Avenue and Gunder Avenue, thence southwesterly along the southeast side of Cherwin Avenue 97.09 feet to the northeast side of Lot 156 as shown on the Plat of Twin River Beach, Section A, which Plat is recorded in Plat Book W.H.M. No. 9, folio 33; thence southeasterly along the northeast side of Lot 156, 125.26 feet to the northwest side of Lot 154; thence northeasterly along the northwest side of Lots 164, 163, 162 and 161, a distance of 102.8 feet to the southwest side of Gunder Avenue; thence northwesterly and along the southwest side of Gunder Avenue 111.35 feet to a bend in said Avenue; thence still along said Avenue in a more westerly direction 27.12 feet to the place of BEGINNING. Being Lot Nos. 157, 158, 159 and 160 as laid out on the aforesaid Plat.

AND ALSO

BEING KNOWN AND DESIGNATED as Lots 155 and 156, as shown and designated on the Plat of Twin River Beach, Section A, which Plat is recorded in Plat Book W.H.M. No. 9, folio 33, among the Plat Records of Baltimore County, Maryland.

AS TO LOTS 157, 158, 159 & 160; TAX ID #15 1522350390

✦ **AS TO LOT 155; TAX ID #15 1522350392**

✦ **AS TO LOT 156; TAX ID #15 1522350391**

The improvements thereon being known as 6903 Gunder Avenue, Baltimore, MD 21220.

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 84835, p. 0437, MSA_CE62_34791. Date available 05/09/2014. Printed 10/12/2019.

PETITIONER'S

EXHIBIT NO. 2

0034935 438

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 94935, p. 0438, MSA_CE62_34791. Date available 05/09/2014. Printed 10/12/2019.

BEING the same property which by deed dated October 23, 1959 and recorded among the Land Records of Baltimore County, Maryland in Liber No. 3615, folio 392, was granted and conveyed by Sidney Farber unto Wenceslaus Joseph Vitek, Jr. and Margaret LeOla Vitek, as tenants by the entirety.

BEING the same property which by deed dated February 25, 1961 and recorded among the Land Records of Baltimore County, Maryland in Liber No. 3813, folio 510, was granted and conveyed by Mary Nechamkin and Benjamin Nechamkin unto Wenceslaus Joseph Vitek, Jr. and Margaret LeOla Vitek, as tenants by the entirety.

BEING the same property which by deed dated February 25, 1961 and recorded among the Land Records of Baltimore County, Maryland in Liber No. 3813, folio 512, was granted and conveyed by Mary Nechamkin and Benjamin Nechamkin unto Wenceslaus Joseph Vitek, Jr. and Margaret LeOla Vitek, as tenants by the entirety.

The said Wenceslaus Joseph Vitek, Jr., having departed this life on or about November 17, 1997, thereby vesting title unto Margaret Leola Vitek, surviving tenant by the entirety of Wenceslaus Joseph Vitek, Jr., deceased.

The said Margaret LeOla Vitek, having departed this life TESTATE, on or about January 11, 2013, thereby vesting title unto Dawn Marie Watson as Personal Representative of the Estate of Margaret LeOla Vitek, pursuant to Last Will and Testament of Margaret LeOla Vitek as filed in Estate # 171923 as filed in the Register of Wills for Baltimore County, Maryland.

TOGETHER with the buildings thereupon, and the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging, or in anywise appertaining.

SUBJECT TO all rights, easements, restrictions, covenants and reservations of record.

TO HAVE AND TO HOLD the said described lot(s) of ground and premises to the said party of the second part, as sole owner, his personal representatives, heirs and assigns, in fee simple.

WITNESS the hand and seal of the said party of the first part:

WITNESS:

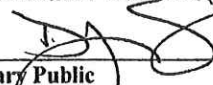
By: *Dawn Marie Watson* Personal Representative
(SEAL)
Dawn Marie Watson, as Personal Representative of the
Estate of Margaret Leola Vitek

0034935 439

STATE OF Maryland, CITY/COUNTY OF Baltimore to wit:

I HEREBY CERTIFY, that on this 30th day of April, 2014, before me, the subscriber, a Notary Public of the State of Maryland in and for Harford County, personally appeared Dawn Marie Watson, who acknowledged herself to be the as Personal Representative of The Estate of Margaret L. Vitek, and that she as such as Personal Representative of the Estate of Margaret Leola Vitek being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing in my presence, the name of the entity grantor by herself as such as Personal Representative.

IN WITNESS WHEREOF, I hereunto set my hand and official seal:

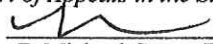


Notary Public

DORIS J. HALL-SCHEELER
NOTARY PUBLIC STATE OF MARYLAND
County of Harford
My Commission Expires August 22, 2014

My Commission Expires: 8/22/14

This is to certify that the within instrument was prepared under the supervision of an Attorney duly admitted to practice before the Court of Appeals in the State of Maryland.



F. Michael Grace, Esq.

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 34935, p. 0439, MSA_CE62_34791. Date available 05/09/2014. Printed 10/12/2019.

0034935 440

AFFIDAVIT OF INDIVIDUAL(S)
TO QUALIFY FOR TAX EXEMPTION FOR FIRST TIME MARYLAND HOMEBUYER(S)

Grantee(s) hereby make oath or affirm under penalties of perjury that the following statements are true:

1. The undersigned individuals and each of them has/have never before owned an interest in residential real property located in the State of Maryland that has been the individual's principal residence; and
2. The property described in the Deed to which this affidavit is attached is improved by a residence which will be occupied as my/our principal residence; and
3. I/we am/are fully qualified to make this affidavit.
4. This affidavit is made to qualify Grantee(s) for benefits under TP section 13-203.
5. In the event the hereinabove statements are being certified by an agent pursuant to Tax-Property Section 13-409(b), said Agent certifies:
 - a. That the representations are based on a diligent inquiry made by the agent; and
 - b. Are true to the best knowledge information and belief of the agent.

WITNESS the hand and seal of the said party of the second part:

WITNESS:

 (SEAL)
Craig Kestner

STATE OF MARYLAND, COUNTY OF BALTIMORE to wit:

I HEREBY CERTIFY, that on this 30th day of April, 2014, before me, the subscriber, a Notary Public of the State of Maryland in and for Harford County, personally appeared **Craig Kestner** known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged the foregoing Deed to be his act, and in my presence signed and sealed the same.

IN WITNESS WHEREOF, I hereunto set my hand and official seal:

Notary Public



My Commission Expires:

8/22/14

DORIS J. HALL-SCHEELER
NOTARY PUBLIC STATE OF MARYLAND
County of Harford
My Commission Expires August 22, 2014

0034935 441

OWNER OCCUPANCY AFFIDAVIT

THE WITHIN GRANTEE DO HEREBY CERTIFY UNDER THE PENALTY OF PERJURY THAT THE LAND CONVEYED HEREIN IS RESIDENTIALLY IMPROVED OWNER-OCCUPIED REAL PROPERTY AND THAT THE RESIDENCE WILL BE OCCUPIED BY MYSELF AT LEAST 7 OUT OF 12 MONTHS IMMEDIATELY AFTER THE PROPERTY IS CONVEYED AS EVIDENCED BY THE SIGNATURE BELOW

WITNESS the hand and seal of the said party of the second part:

WITNESS:

 (SEAL)
Craig Kestner

STATE OF MARYLAND, COUNTY OF BALTIMORE to wit:

I HEREBY CERTIFY, that on this 30th day of April, 2014, before me, the subscriber, a Notary Public of the State of Maryland in and for Harford County, personally appeared **Craig Kestner** known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged the foregoing Deed to be his act, and in my presence signed and sealed the same.

IN WITNESS WHEREOF, I hereunto set my hand and official seal:


Notary Public

My Commission Expires: 8/22/14

DORIS J. HALL-SCHEELER
NOTARY PUBLIC STATE OF MARYLAND
County of Harford
My Commission Expires August 22, 2014

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 34935, p. 0441, MSA_CE62_34791. Date available 05/09/2014. Printed 10/12/2019.

0034935 442

2014

MARYLAND
FORM

Certification of Exemption from Withholding Upon
Disposition of Maryland Real Estate
Affidavit of Residence or Principal Residence

Based on the certification below, Transferor claims exemption from the tax withholding requirements of 10-912 of the Tax-General Article, Annotated Code of Maryland. Section 10-912 provides that certain tax payments must be withheld and paid when a deed or other instrument that effects a change in ownership of real property is presented for recordation. The requirements of 10-912 do not apply when a transferor provides a certification of Maryland residence or certification that the transferred property is the transferor's principal residence.

1. Transferor Information

Name of Transferor: The Estate of Margaret L. Vitek

2. Reason for Exemption

Resident Status

I, Transferor, am a resident of the State of Maryland
 Transferor is a resident entity as defined in Code of Maryland Regulations (COMAR) 03.04.12.02B(11), I am an agent of Transferor, and I have authority to sign this document on Transferor's behalf.

Principal Residence

Although I am no longer a resident of the State of Maryland, the Property is my principal residence as defined in IRC 121 and is recorded as such with the State Department of Assessments and Taxation.

Under penalty of perjury, I certify that I have examined this declaration and that, to the best of my knowledge, it is true, correct, and complete.

3a. Individual Transferors

Witness Name

Name

Signature

3b Entity Transferors

Witness/Attest

Luca D. Arnold

The Estate of Margaret L. Vitek

By: *Dawn Marie Watson* P.R.
Dawn Marie Watson, as Personal
Representative of the Estate of
Margaret Leola Vitek

Baltimore City County: Baltimore

Information provided is for the use of the Clerk's Office, State Department of Assessments and Taxation, and County Finance Office only.
(Type or Print in Black Ink Only-All Copies Must Be Legible)

IMP FD SURE 40.00
RECORDING FEE 20.00
R TAX STATE 295.00
TOTAL 355.00
Res# BA02 Rcp# 56867
ILE CR R1# 934
May 06, 2014 02:11 PM

Check Box if Addendum Intake Form is Attached.

| | | | | |
|--------------------------------|-----------------|-----------------|-------------------|----------------------------|
| Type(s) of Instruments | 1 Deed | Mortgage | Other | Other |
| Conveyance Type Check Box | 2 Deed of Trust | Lease | | |
| Tax Exemptions (if Applicable) | Improved Sale | Unimproved Sale | Multiple Accounts | Not an Arms-Length Sale(9) |
| Cite or Explain Authority | Arms-Length(1) | Arms-Length(2) | Arms-Length(3) | |
| | Recordation | | | |
| | State Transfer | 1st time buyer | | |
| | County Transfer | owner oco | | |

| Consideration and Tax Calculations | Consideration Amount | | Finance Office Use Only | |
|------------------------------------|------------------------------|--------------|---|------------|
| | Purchase Price/Consideration | | Transfer and Recordation Tax Consideration | |
| | \$118,000.00 | | Transfer Tax Consideration | \$ |
| | Any New Mortgage | \$115,862.00 | X ()% = | \$ |
| | Balance of Existing Mortgage | | Less Exemption Amount - Total Transfer Tax = | \$ 1440.00 |
| | Other: | \$ | Recordation Tax Consideration X()per \$500 = | \$ 590.00 |
| | Other: | \$ | TOTAL DUE | \$ |
| | Full Cash Value | \$ | | |

| Fees | Amount of Fees | | Doc 1 | Doc 2 | Agent |
|------|------------------|-----------|---------|---------|--------------|
| | Recording Charge | Surcharge | | | |
| | \$20.00 | \$40.00 | \$20.00 | \$40.00 | Tax Bill |
| | \$590.00 | \$ | \$ | \$ | C B Credit |
| | \$295.00 | \$ | \$ | \$ | Ag Tax/Other |
| | \$1,440.00 | \$ | \$ | \$ | |
| | \$ | \$ | \$ | \$ | |
| | \$ | \$ | \$ | \$ | |

Description of Property SDAT requires submission of all applicable information. A maximum of 40 characters will be indexed in accordance with the priority cited in Real Property Article Section 3-104(g)(3)(i).

| | | | | | |
|---|------------------------|---------------------|--|------------|------------------------------|
| District | Property Tax ID No.(1) | Grantor Liber/Folio | Map | Parcel No. | Var. Log |
| 15 | 1522350390 & 91 & 92 | 3615/392/ | | | <input type="checkbox"/> (5) |
| | Subdivision Name | Lot (3a) | Block (3b) | SectAR(3c) | Plat Ref. |
| | | | | | SqFt/Acreage(4) |
| Location/Address of Property Being Conveyed (2) | | | | | |
| 6903 Gunder Avenue, Baltimore, MD 21220 | | | | | |
| Other Property Identifiers (if applicable) | | | | | |
| 3813/510 and 3817/436 | | | | | |
| Residential <input checked="" type="checkbox"/> or Non-Residential <input type="checkbox"/> | | | Fee Simple <input checked="" type="checkbox"/> Ground Rent <input type="checkbox"/> Amount | | |
| Partial Conveyance <input type="checkbox"/> Yes <input type="checkbox"/> No | | | Description/Amt. Of SqFt/Acreage Transferred: 295 00 | | |

| | | |
|------------------|--|--|
| Transferred From | Grantor(s) Name(s) | Doc 2 - Grantor(s) Name(s) |
| | the Estate of Margaret Leola Vitek | Craig Kestner |
| | Doc 1 - Owner(s) of Record, if Different from Grantor(s) | Doc 2 - Owner(s) of Record, if Different from Grantor(s) |

| | | |
|--|--------------------------|----------------------------|
| Transferred To | Doc 1 Grantee(s) Name(s) | Doc 2 - Grantee(s) Name(s) |
| | Craig Kestner | M & T Bank |
| New Owner's (Grantee) Mailing Address | | |
| 6903 Gunder Avenue Baltimore, MD 21220 | | |

| | | |
|---------------------------|---|---|
| Other Names to Be Indexed | Doc 1 - Additional Names to be indexed (Optional) | Doc 2 - Additional Names to be indexed (Optional) |
| | | M&T Bank |

| | | |
|--------------------------|--|---|
| Contact/Mail information | Name: Donna Gain | <input type="checkbox"/> Return to Contact Person |
| | Firm: Sage Title Group, LLC | <input type="checkbox"/> Hold for Pickup |
| | Address: 7939 Honeygo Boulevard, Suite 124 Baltimore, MD 21236 | <input checked="" type="checkbox"/> Return Address Provided |
| | Phone: 410-931-3500 | |

Assessment Information

Yes No Will the property being conveyed be the grantee's principal

Yes No Does transfer include personal property? If yes, identify

Yes No Was property surveyed? If yes, attach copy of survey (if recorded no copy required)

| | | | | |
|--|---------------------------------------|--------------------------------|-------------------------------|--|
| <input type="checkbox"/> Terminal Verification | <input type="checkbox"/> Agricultural | <input type="checkbox"/> Whole | <input type="checkbox"/> Part | <input type="checkbox"/> Tran Process Verification |
| Transfer Number: | Date Received: | Deed Reference: | | Assigned Property No. |
| Geo | Map | Sub | Block | |
| Zoning | Grid | Plat | Lot | |
| Use | Parcel | Section | Doc Od. | |
| Town Cd. | Ex. St. | Ex. Cd. | | |

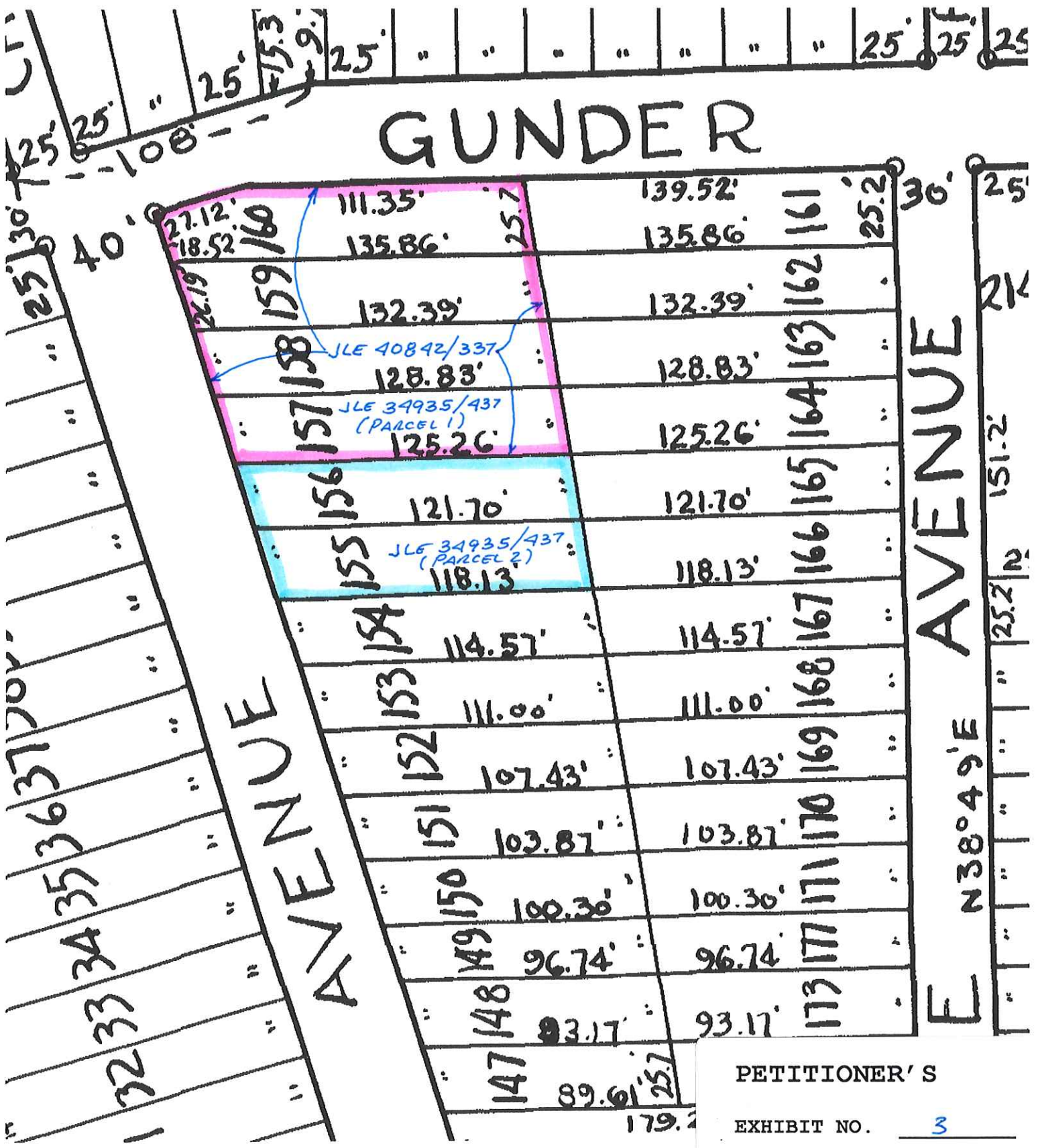
RECORDATION TAX NOT REQUIRED

Director of Budget and Finance

BALTIMORE COUNTY, MARYLAND

T.P. ART-12-100

3E COUNTY CIRCUIT COURT (Land Records) JLE 34935, p. 0443, MSA_CE62_34791. Date available 05/09/2014. Printed 10/12/2019.



GUNDER

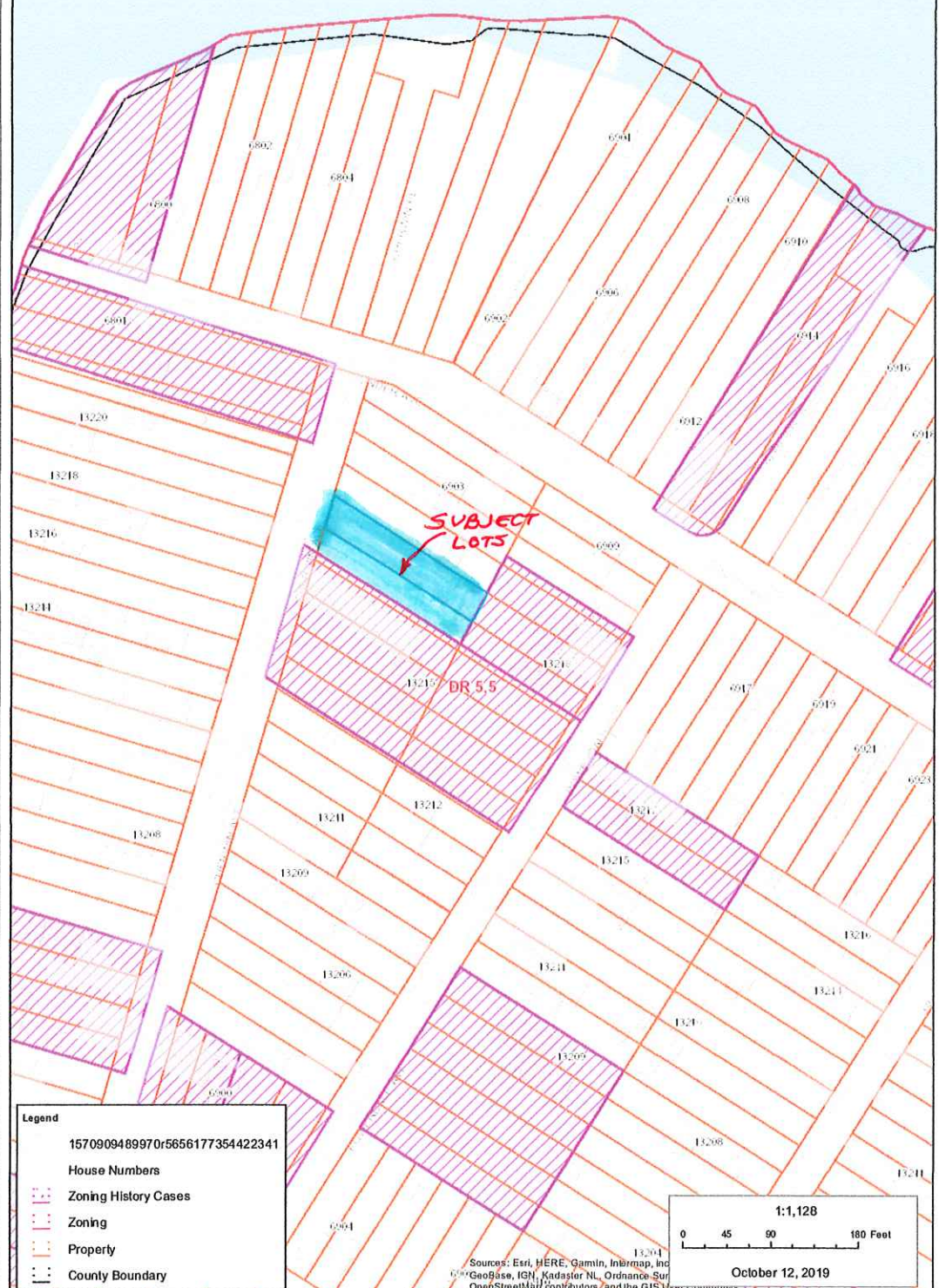
AVENUE

AVENUE

PETITIONER'S
EXHIBIT NO. 3

PORTION OF PB 9/33 SHOWING SUBJECT LOTS

Baltimore County - My Neighborhood



PETITIONER'S

EXHIBIT NO. 4



nd

Parcels - Tax parcel

1570909489970r5656177354422341

PETITIONER'S

EXHIBIT NO. 5

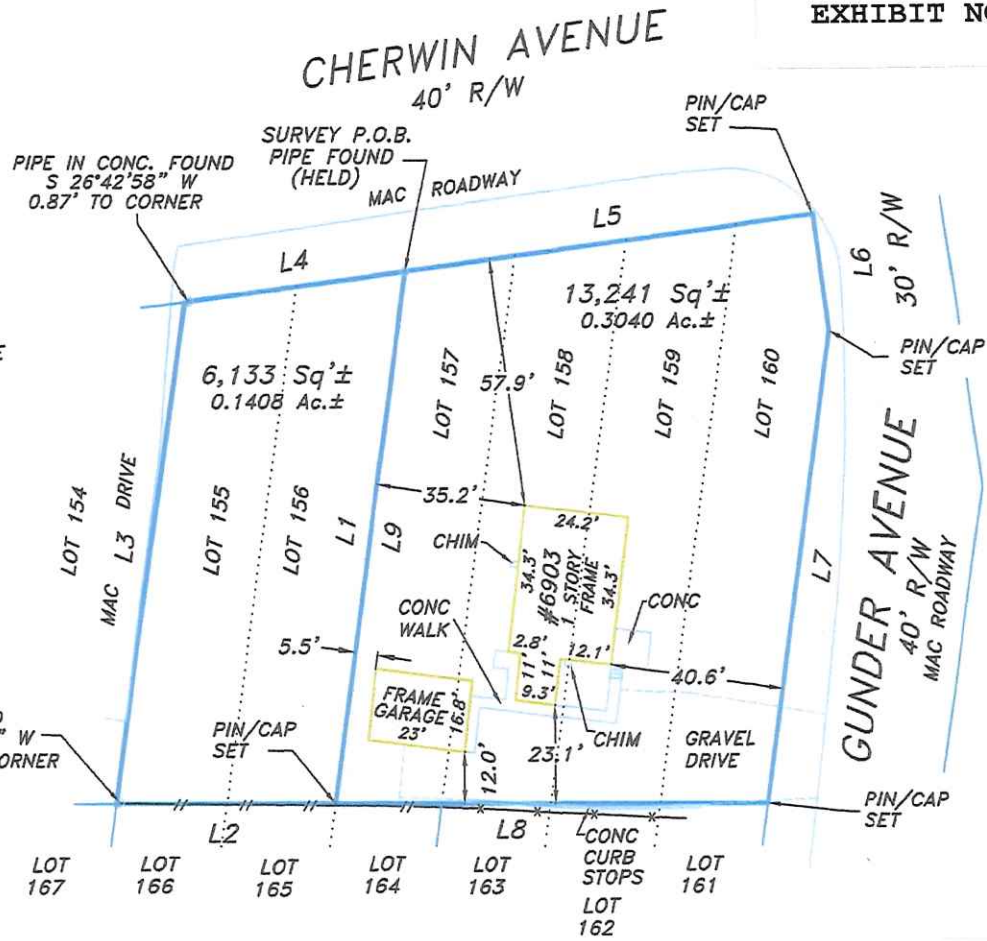
| LINE | BEARING | DISTANCE |
|------|---------------|----------|
| L1 | S 51°11'00" E | 125.26' |
| L2 | S 30°45'52" W | 50.90' |
| L3 | N 51°11'00" W | 118.13' |
| L4 | N 23°01'00" E | 52.38' |
| L5 | N 23°01'00" E | 97.09' |
| L6 | S 66°59'00" E | 27.12' |
| L7 | S 51°11'00" E | 111.35' |
| L8 | S 30°45'52" W | 101.80' |
| L9 | N 51°11'00" W | 125.26' |

NOTE: THE BEARINGS AND NORTH ARROW SHOWN HEREON ARE IN THE MERIDIAN OF THE PLAT ENTITLED SECTION A "TWIN RIVER BEACH" RECORDED AMONG THE LAND RECORDS OF BALTIMORE COUNTY, MARYLAND IN PLAT BOOK 9 FOLIO 33.

NOTE: THE CONCRETE CURB STOPS AND GRAVEL DRIVEWAY ENCROACH OFF LOTS 157-160 INTO LOTS 161-163.

NOTE: THE FENCE FROM LOTS 164-165 MEANDERS THE PROPERTY LINE AND IS IN DISREPAIR.

NOTE: 2.5' SIDE AND REAR ACCESSORY BUILDING RESTRICTION LINE PER DR-5.5 ZONING.



The purpose of this drawing is to locate and or set the corners of the property shown hereon, being known as:
 LOTS 155-156 AND LOTS 157-160 as shown on the plat entitled SECTION A "TWIN RIVER BEACH" recorded among the land records of Baltimore County, Maryland in Plat Book 9, folio 33

This is to certify that I either personally prepared or was in responsible charge over the preparation of this drawing and the surveying work reflected in it, all set forth in Regulation .12 of Chapter 09.13.06 of the Code of Maryland Annotated Regulations.

Subject property is shown in Zone AE on the FIRM Map of Baltimore County, Maryland on Community Panel Number 240D100315 G, effective 5/5/2014



James Carl Hudgins
 Property Line Surveyor #96
 Expiration Date: 3/11/2020

PLAT OF SURVEY
 6903 GUNDER AVENUE
 15th ELECTION DISTRICT
 BALTIMORE COUNTY, MARYLAND

NTT Associates, Inc.
 16205 Old Frederick Rd.
 Mt. Airy, Maryland 21771
 Phone: (410) 442-2031
 Fax: (410) 442-1315
 www.nttsurveyors.com

Scale: 1" = 40'
 Date: 10/23/2018
 Field By: RMS/TOM
 Drawn By: RIK/SCK
 File No.: MISC 12964
 Page No.: 1 of 1

Search Result for BALTIMORE COUNTY

[View Map](#)
[View GroundRent Redemption](#)
[View GroundRent Registration](#)

Tax Exempt: None
Exempt Class: None

Special Tax Recapture: None

Account Identifier: District - 15 Account Number - 1522350392

Owner Information

| | | | |
|------------------|--|----------------------|---------------|
| Owner Name: | KESTNER CRAIG | Use: | RESIDENTIAL |
| | | Principal Residence: | NO |
| Mailing Address: | 6903 GUNDER AVE BALTIMORE MD 21220-1023 | Deed Reference: | /34935/ 00437 |

Location & Structure Information

| | | | |
|-------------------|-----------------------|--------------------|------------------|
| Premises Address: | CHERWIN AVE 0-0000 | Legal Description: | TWIN RIVER BEACH |
|-------------------|-----------------------|--------------------|------------------|

| | | | | | | | | | |
|-------------------------|-------|---------|---------------|--------------|----------|--------|------|------------------|----------------------|
| Map: | Grid: | Parcel: | Neighborhood: | Subdivision: | Section: | Block: | Lot: | Assessment Year: | Plat No: |
| 0084 | 0001 | 0043 | 15010005.04 | 0000 | A | | 155 | 2018 | |
| Special Tax Areas: None | | | | | | | | | Plat Ref: 0009/ 0033 |
| | | | | | | | | | Town: None |
| | | | | | | | | | Ad Valorem: None |
| | | | | | | | | | Tax Class: None |

| | | | | |
|-------------------------|-------------------------|------------------------|--------------------|------------|
| Primary Structure Built | Above Grade Living Area | Finished Basement Area | Property Land Area | County Use |
| | | | 2,975 SF | 04 |

| | | | | | | | |
|---------|----------|------|----------|---------|----------------|--------|-----------------------------------|
| Stories | Basement | Type | Exterior | Quality | Full/Half Bath | Garage | Last Notice of Major Improvements |
| | | | / | | | | |

Value Information

| | | | | |
|--------------------|------------|------------|----------------------|------------|
| | Base Value | Value | Phase-in Assessments | |
| | | As of | As of | As of |
| | | 01/01/2018 | 07/01/2019 | 07/01/2020 |
| Land: | 10,400 | 10,400 | | |
| Improvements | 0 | 0 | | |
| Total: | 10,400 | 10,400 | 10,400 | 10,400 |
| Preferential Land: | 0 | | | 0 |

Transfer Information

| | | |
|----------------------------|----------------------|------------------|
| Seller: | Date: 04/30/2014 | Price: \$118,000 |
| Type: ARMS LENGTH MULTIPLE | Deed1: /34935/ 00437 | Deed2: |
| Seller: | Date: | Price: \$0 |
| Type: | Deed1: /03817/ 00436 | 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 |

Tax Exempt: None
Exempt Class: None

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:

1. This screen allows you to search the Real Property database and display property records.
2. Click [here](#) for a glossary of terms.
3. Deleted accounts can only be selected by Property Account Identifier.
4. The following pages are for information purpose only. The data is not to be used for legal reports or documents. While we have confidence in the accuracy of these records, the Department makes no warranties, expressed or implied, regarding the information.

PETITIONER' S

EXHIBIT NO. 8

Search Result for BALTIMORE COUNTY

[View Map](#) [View GroundRent Redemption](#) [View GroundRent Registration](#)

Tax Exempt: None **Special Tax Recapture: None**
Exempt Class: None

Account Identifier: District - 15 Account Number - 1522350391

Owner Name: KESTNER CRAIG **Use:** RESIDENTIAL
Principal Residence: NO
Mailing Address: 6903 GUNDER AVE **Deed Reference:** /34935/ 00437
 BALTIMORE MD 21220-1023

Premises Address: CHERWIN AVE 0-0000 **Legal Description:** TWIN RIVER BEACH

| Map: | Grid: | Parcel: | Neighborhood: | Subdivision: | Section: | Block: | Lot: | Assessment Year: | Plat No: |
|------|-------|---------|---------------|--------------|----------|--------|------|------------------|----------------------|
| 0084 | 0001 | 0043 | 15010005.04 | 0000 | A | | 156 | 2018 | Plat Ref: 0009/ 0033 |

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 |
|-------------------------|-------------------------|------------------------|--------------------|------------|
| | | | 3,075 SF | 04 |

| Stories | Basement | Type | Exterior | Quality | Full/Half Bath | Garage | Last Notice of Major Improvements |
|---------|----------|------|----------|---------|----------------|--------|-----------------------------------|
| | | | / | | | | |

| | Base Value | Value As of 01/01/2018 | Phase-in Assessments As of 07/01/2019 | As of 07/01/2020 |
|--------------------|------------|------------------------|---------------------------------------|------------------|
| Land: | 10,400 | 10,400 | | |
| Improvements | 0 | 0 | | |
| Total: | 10,400 | 10,400 | 10,400 | 10,400 |
| Preferential Land: | 0 | | | 0 |

| Seller: | Date: | Price: |
|----------------------------|----------------------|------------|
| Type: ARMS LENGTH MULTIPLE | 04/30/2014 | \$118,000 |
| | Deed1: /34935/ 00437 | Deed2: |
| Seller: | Date: | Price: \$0 |
| Type: | Deed1: /03813/ 00510 | Deed2: |
| Seller: | Date: | Price: |
| Type: | Deed1: | Deed2: |

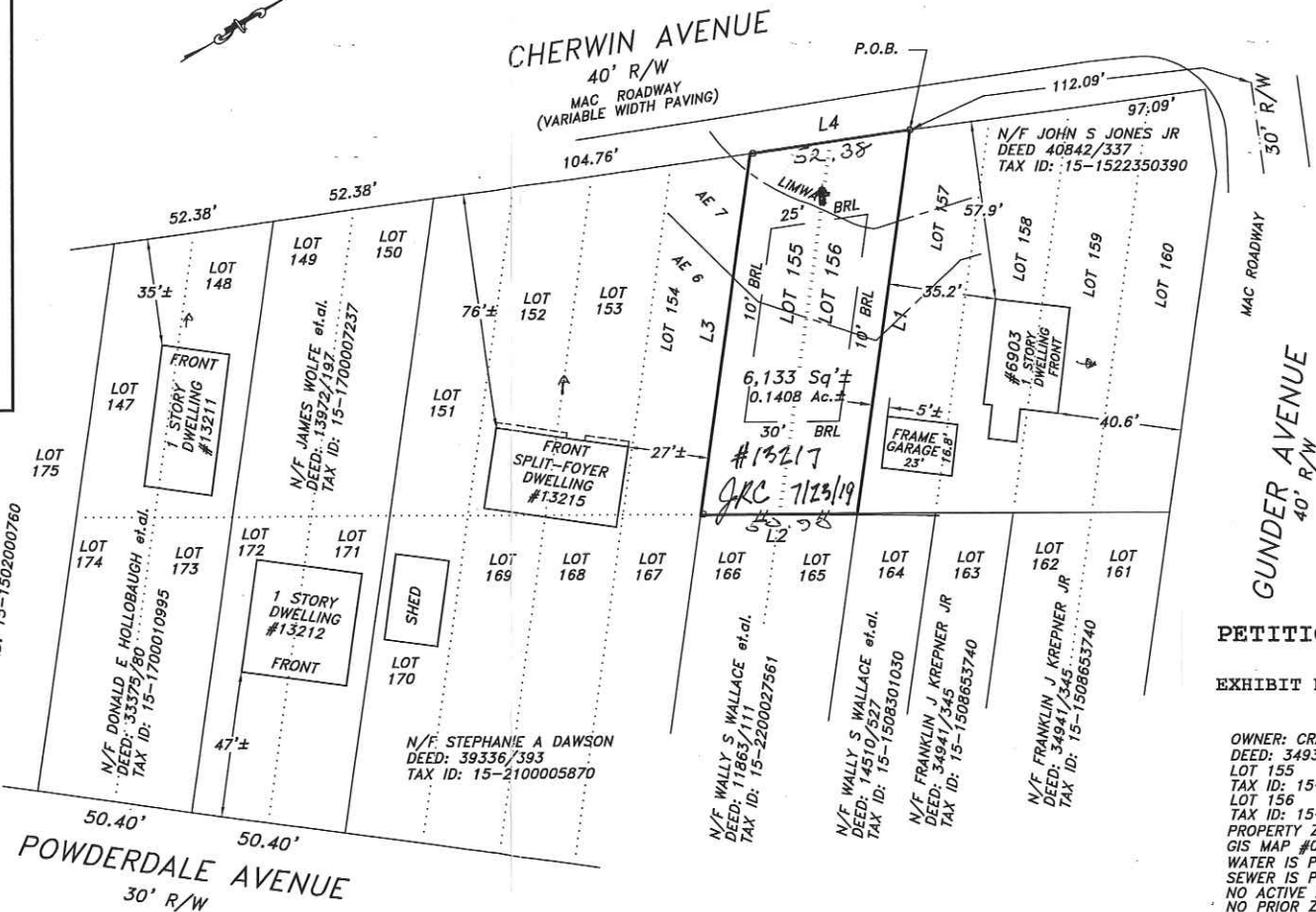
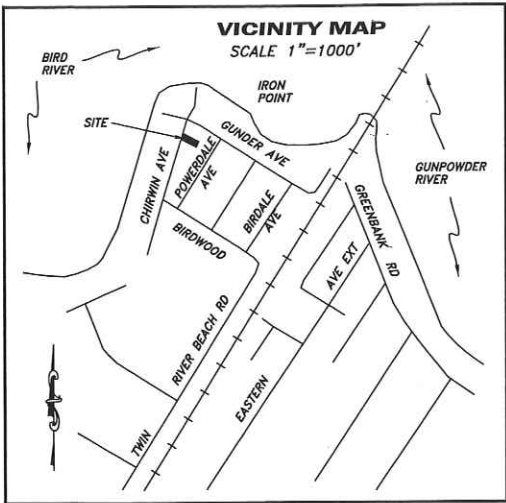
| Partial Exempt Assessments: | Class | 07/01/2019 | 07/01/2020 |
|-----------------------------|-------|------------|------------|
| County: | 000 | 0.00 | |
| State: | 000 | 0.00 | |
| Municipal: | 000 | 0.00 0.00 | 0.00 0.00 |

Tax Exempt: None **Special Tax Recapture: None**
Exempt Class: None

Homestead Application Status: No Application

Homeowners' Tax Credit Application Status: No Application **Date:**

1. This screen allows you to search the Real Property database and display property records.
2. Click [here](#) for a glossary of terms.
3. Deleted accounts can only be selected by Property Account Identifier.
4. The following pages are for information purpose only. The data is not to be used for legal reports or documents. While we have confidence in the accuracy of these records, the Department makes no warranties, expressed or implied, regarding the information.



PETITIONER'S
EXHIBIT NO. 1

OWNER: CRAIG KESTNER
DEED: 34935/437
LOT 155
TAX ID: 15-1522350392
LOT 156
TAX ID: 15-1522350391
PROPERTY ZONED D.R.5.5
GIS MAP #084A1
WATER IS PUBLIC
SEWER IS PUBLIC
NO ACTIVE ZONING VIOLATION #
NO PRIOR ZONING CASES



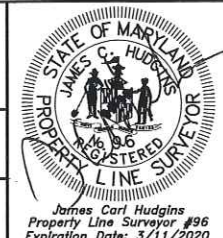
| LINE | BEARING | DISTANCE |
|------|---------------|----------|
| L1 | S 51°11'00" E | 125.26' |
| L2 | S 30°45'52" W | 50.90' |
| L3 | N 51°11'00" W | 118.13' |
| L4 | N 23°01'00" E | 52.38' |

NOTE: THE BEARINGS AND NORTH ARROW SHOWN HEREON ARE IN THE MERIDIAN OF THE PLAT ENTITLED SECTION A "TWIN RIVER BEACH" RECORDED AMONG THE LAND RECORDS OF BALTIMORE COUNTY, MARYLAND IN PLAT BOOK 9 FOLIO 33.

The purpose of this drawing is to locate and or set the corners of the property shown hereon, being known as:
LOTS 155-156 as shown on the plat entitled
SECTION A "TWIN RIVER BEACH"
recorded among the land records of Baltimore County, Maryland in
Plat Book 9 folio 33

This is to certify that I either personally prepared or was in responsible charge over the preparation of this drawing and the surveying work reflected in it, all set forth in Regulation .12 of Chapter 09.13.06 of the Code of Maryland Annotated Regulations.

Subject property is shown in Zone AE on the FIRM Map of Baltimore County, Maryland on Community Panel Number 2400100315 G, effective 5/5/2014



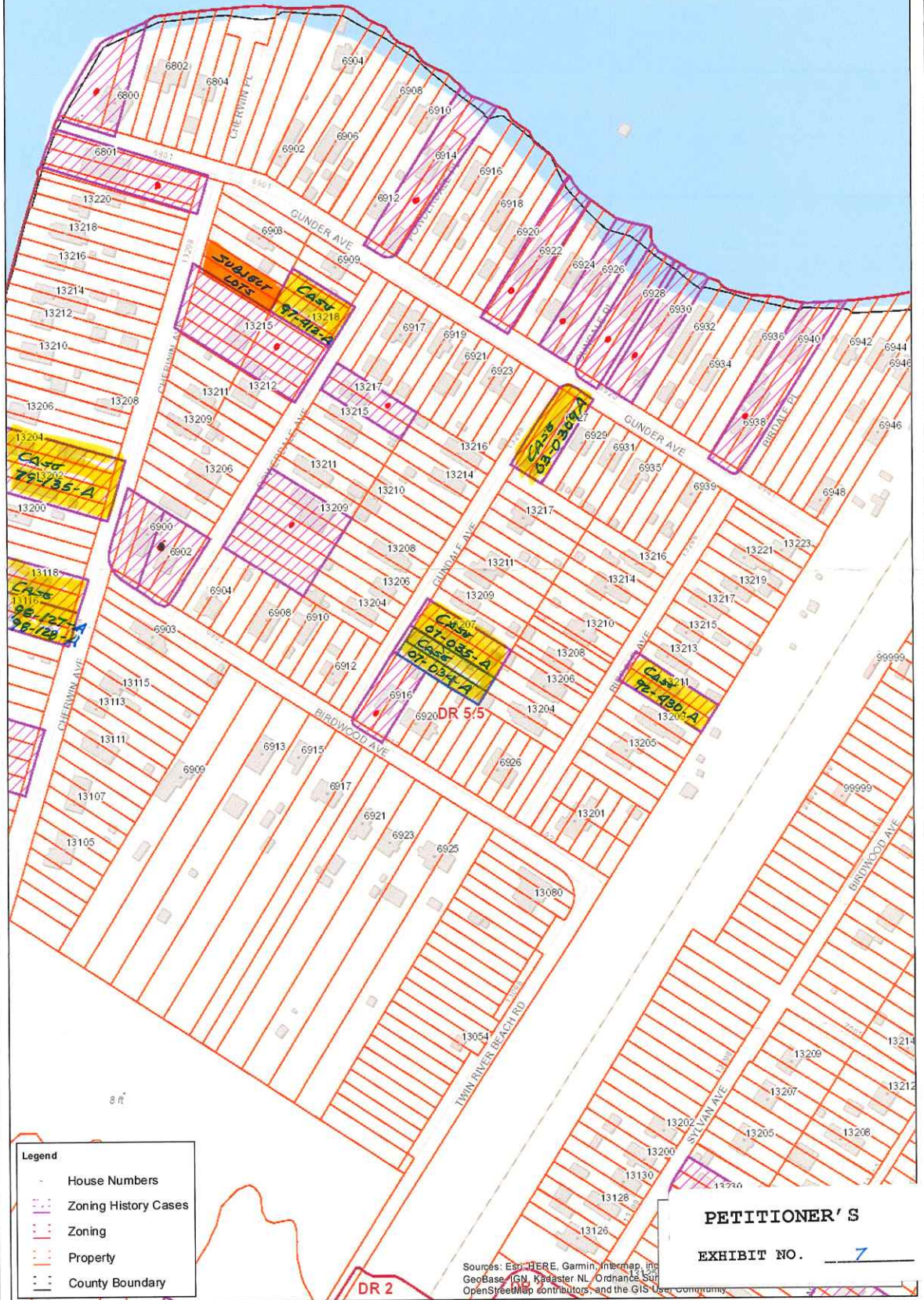
PLAN TO ACCOMPANY A PETITION FOR A VARIANCE /SPH
CHERVIN AVENUE
6th COUNCILMANIC DISTRICT
15th ELECTION DISTRICT
BALTIMORE COUNTY, MARYLAND

NTT Associates, Inc.
16205 Old Frederick Rd.
Mt. Airy, Maryland 21771
Phone: (410) 442-2031
Fax: (410) 442-1315
www.nttsurveyors.com

Scale: 1"= 40'
Date: 10/23/2018
Field By: RMS/TOM
Drawn By: RIK/SCK
File No.: MISC 12964 A
Page No.: 1 of 1

James Carl Hudgins
Property Line Surveyor #96
Expiration Date: 3/11/2020

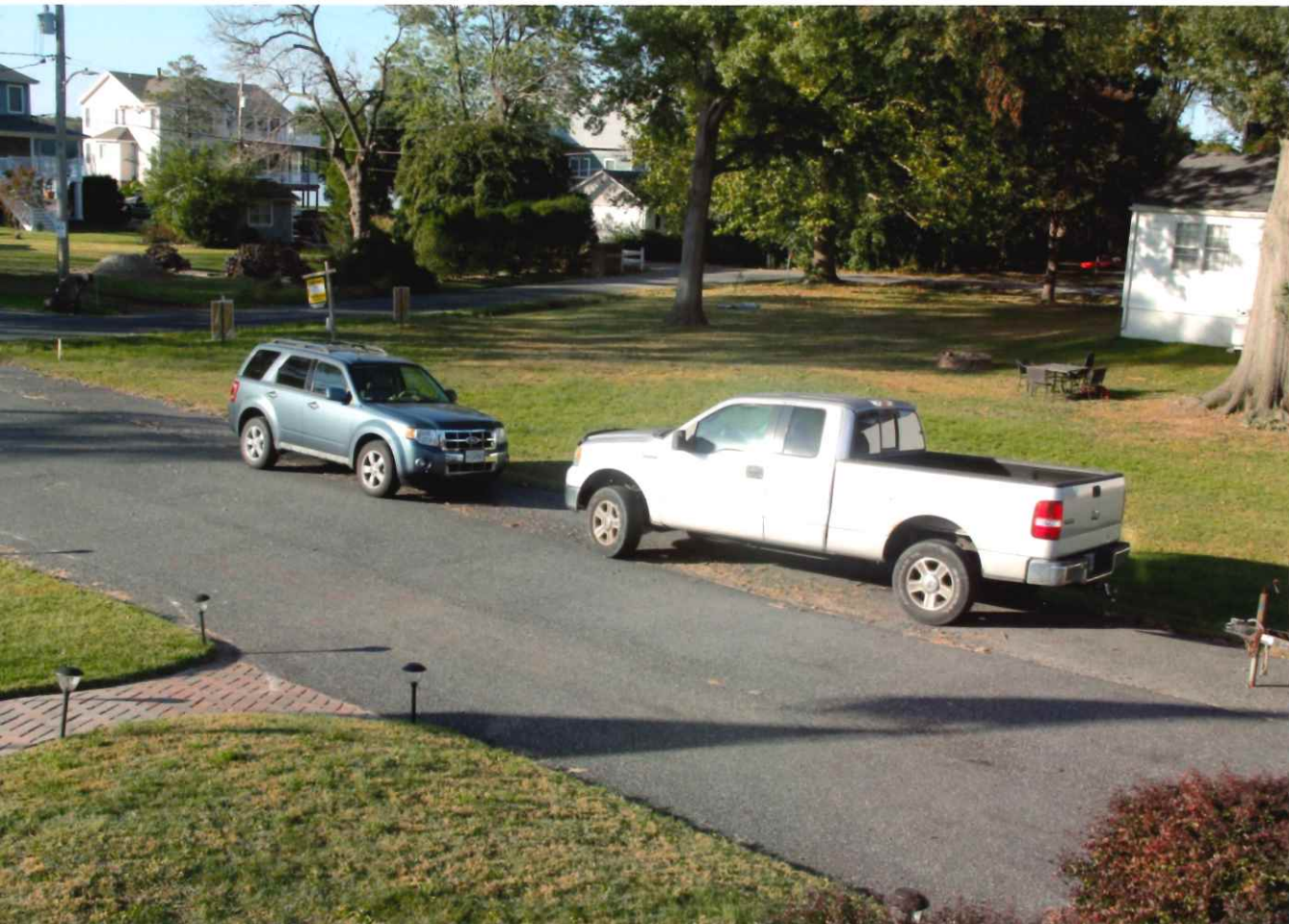
Baltimore County - My Neighborhood

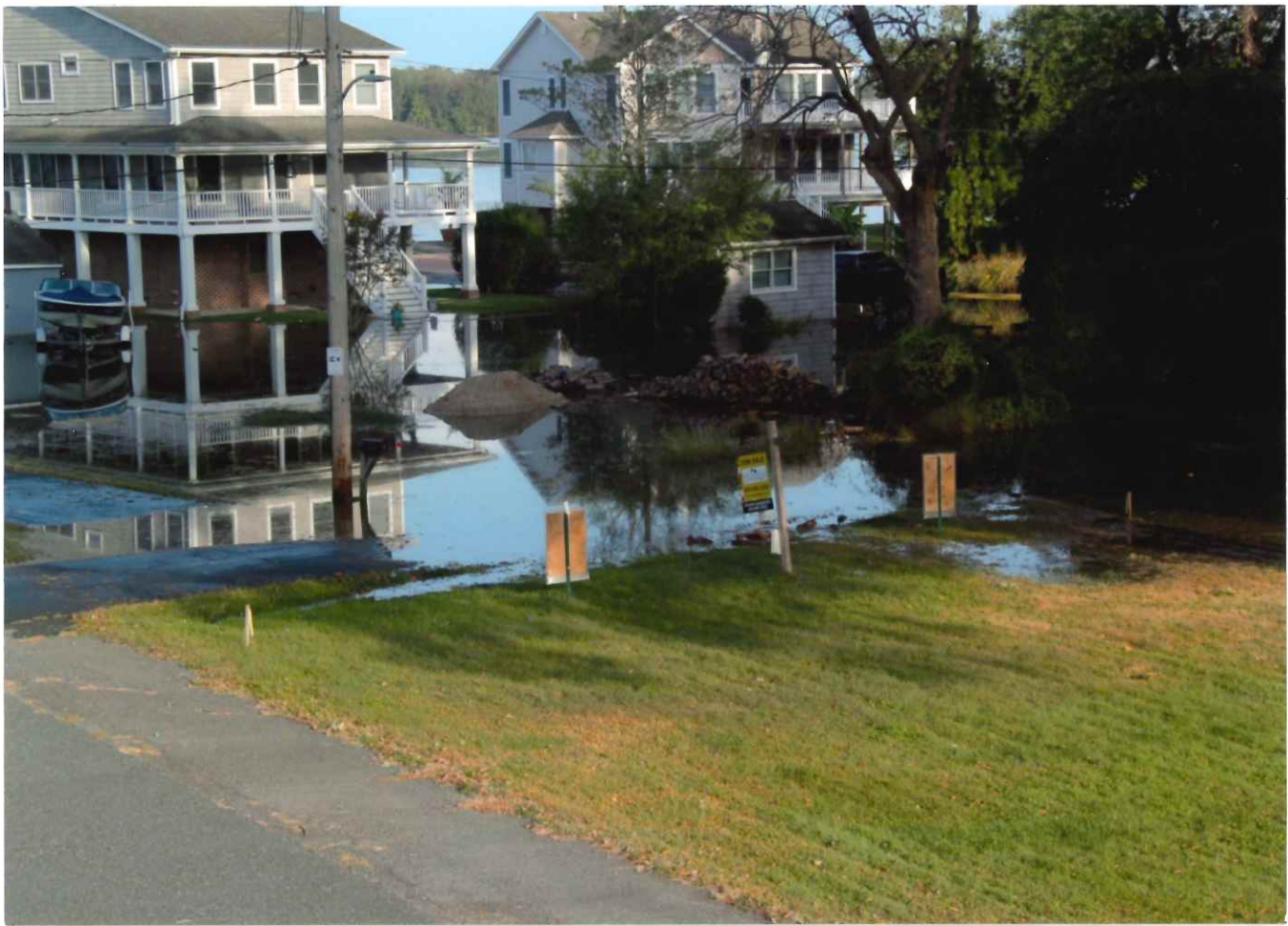


MAP SHOWING LOTS BEING GRANTED UNDER WIDTH



PROTESTANT' S
EXHIBIT NO. 1a-k













**The Twin River Beach Protective and Improvement Association, Inc.
13209 Powderdale Avenue
Middle River, Maryland 21220**

October 9, 2019

Ref: variance on lots 155 & 156

To whom it may concern:

We the Board of Directors for the Twin River Beach Protective and Improvement Association Incorporated (representing said community) wish to submit our request for denial of the variance on lots #155 and 156, Cherwin Road.

The area of the requested variance is known to flood due to rain and tidal waters. At our meeting tonight, community members including contractors overwhelmingly agreed that the creation of an impervious structure and/or the change of grade on this natural drainage area could result in damage to adjacent properties and create a more hazardous driving/living situation due to a negative affect on water drainage.

If you should have questions concerning this issue, please feel free to contact us.

Respectfully,
Ruth Hauf, Secretary
410-335-5073
Linda Kuchta, President
410-335-8051

*** Please see attached signatures**

PROTESTANT' S

EXHIBIT NO. 2

| | | |
|------------------------------|----------------------|-------|
| Ruth Hauf | 13211 Powderdale Ave | 21220 |
| Theresa Abbott | 13204 Birdale Ave | 21220 |
| Sandra Kuchta | 6908 Gunder Ave | 21220 |
| Wm. J. Kuchta | 6908 Gunder Ave | 21220 |
| Gina Schmitt | 13204 Cherwin Ave | 21220 |
| Sue ZACK | 13204 Birdale Ave | 21220 |
| Mary T. Wolfe | 13212 Powderdale Ave | 21220 |
| Amy Henry (Reeb) | 6926 Gunder Ave | 21220 |
| Amy Jo Barry | 6927 Gunder Ave | 21220 |
| Ricky & Debbie Krueger | 13220 Cherwin Ave | 21220 |
| Rick & Sharon Fuller | 6912 Gunder Ave | 21220 |
| Frankie & Nicolette Valentin | 6916 Gunder Ave | 21220 |
| BARBARA & WAYNE GOODWILL | 6904 GUNDER AVE | 21220 |
| Teresa & DAVID Lee | 6917 Birdwood Ave | 21220 |
| Tom & JULIE BROOKES | 6903 BIRDWOOD AVE | 21220 |
| JOHN Damsund | 13215 CHERWIN AVE. | 21220 |
| DONNA & DAVE Powell | 6920 GUNDER AVE | 21220 |
| Peggy & Joe Spangler | 6918 Gunder Avenue, | 21220 |
| JEFF & JULIE Lutz | 6917 Gunder Ave, | 21220 |



Board of Appeals of Baltimore County

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

August 30, 2021

J. Neil Lanzi, Esquire
Wright, Constable & Skeen, LLP
102 W. Pennsylvania Avenue, Suite 406
Towson, Maryland 21204

Michael R. McCann, Esquire
Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204

RE: Petition for Judicial Review
Circuit Court Civil Action No.: C-03-CV-21-001906
In the Matter of: Craig Kestner
Board of Appeals Case Nos.: 19-402-SPHA and 20-090-SPHA

Dear Counsel:

Kindly note that the Proceedings before the Administrative Law Judge and the Board of Appeals of Baltimore County have been filed with the Circuit Court for Baltimore County via the Maryland Electronic Courts and E-filing system. Enclosed is a copy for your records.

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

Sincerely,

A handwritten signature in cursive script that reads "Tammy A. Zahner".

Tammy A. Zahner
Legal Secretary

Duplicate Original Cover Letter
Enclosure

c: Craig Kestner
Bruce E. Doak/Bruce E. Doak Consulting, LLC
John Dawson
Linda Kuchta, President/Twin River Beach Protective and Improvement Association
Ruth Hauf, Secretary/ Twin River Beach Protective and Improvement Association

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

*

*

PETITION OF:
CRAIG KESTNER

*

FOR JUDICIAL REVIEW OF THE OPINION OF
THE BOARD OF APPEALS
OF BALTIMORE COUNTY
Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204

*

*

*

*

CIVIL ACTION
NO.: C-03-CV-21-001906

IN THE MATTER OF:
CRAIG KESTNER
Legal Owner and Petitioner for Special Hearing
and Variance on the Property located at
13217 Cherwin Avenue

*

*

*

15TH ELECTION DISTRICT
6TH COUNCILMANIC DISTRICT

*

BOARD OF APPEALS
CASE NOS.: 19-402-SPHA and 20-090-SPHA

*

* * * * *

**PROCEEDINGS BEFORE THE ADMINISTRATIVE LAW JUDGE
AND THE BOARD OF APPEALS OF BALTIMORE COUNTY**

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now comes the Board of Appeals of Baltimore County and, in answer to the Petition for Judicial Review directed against it in this case, herewith transmits the record of proceedings had in the above-entitled matter, consisting of the original papers on file in the Department of Permits, Approvals and Inspections and the Board of Appeals of Baltimore County:

**ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND
DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS
OF BALTIMORE COUNTY**

Case No.: 19-402-SPHA

July 23, 2019 Petition for Special Hearing and Variance filed by Craig Kestner requesting Special Hearing pursuant to § 500.7 of the BCZR to confirm that a merger did not take place between Lots 155 and 156, and the adjacent Lots 157, 158, 159 and 160 known as 6903 Gunder Avenue, and Variance pursuant to BCZR § 1B02.3.C.1 and 303.1 to (1) permit a proposed dwelling on a lot with a width of 50 ft. in lieu of the required 55 ft.; and (2) to permit a front average setback of 25 ft. in lieu of the required 40 ft. in the DR 5.5 zone.

August 2, 2019 Entry of Appearance filed by People’s Counsel for Baltimore County.

September 13, 2019 Notice of Zoning Hearing

September 27, 2019 Certificate of Publication in newspaper.

September 28, 2019 Certificate of Posting

October 9, 2019 ZAC Comments

October 17, 2019 Certificate of Posting – Recertification

October 18, 2019 Administrative Law Judge convened for a Hearing.

October 23, 2019 Opinion and Order issued by the Administrative Law Judge wherein the Petition for Special Hearing was GRANTED, and the Petition for Variance was DENIED.

November 20, 2019 Notice of Limited Appeal filed by J. Neil Lanzi, Esquire on behalf of Craig Kestner, Petitioner, only to that portion of the Order denying the Petition for Variance.

November 21, 2019 Appeal received by the Board.

August 17, 2020 Notice of Assignment issued by the Board.

August 27, 2020 Letter to Board from J. Neil Lanzi, Esquire requesting a postponement pending the outcome of the second case.

August 31, 2020 Notice of Postponement issued by the Board.

Case No. 20-090-SPHA

March 30, 2020 Petition for Special Hearing and Variance filed by J. Neil Lanzi, Esquire on behalf of Craig Kestner requesting Special Hearing relief to approve the construction of a single family detached dwelling on two lots with a combined width of 50 feet in lieu of the required 55 feet per Section 304.1 of the BCZR; and Variance relief to permit a combined width for two lots of 50 feet in lieu of the required 55 feet for the construction of a single family detached dwelling per Section 1B02.3.C.1.

April 10, 2020 Entry of Appearance filed by People's Counsel for Baltimore County.

April 24, 2020 Inter-Office Correspondence from the Department of Environmental Protection and Sustainability to the Office of Administrative Hearings providing comments for zoning items.

August 24, 2020 Notice of Zoning Hearing

September 3, 2020 Certificate of Publication in newspaper.

September 9, 2020 ZAC Comments

September 18, 2020 Certificate of Posting (signs posted September 1, 2020 and inspected September 18, 2020)

September 21, 2020 E-mail to the Office of Administrative Hearings from J. Neil Lanzi, Esquire

September 23, 2020 Administrative Law Judge convened for a Hearing.

September 24, 2020 E-mail from Managing Administrative Law Judge Paul Mayhew to People's Counsel.

September 29, 2020 Opinion and Order issued by the Administrative Law Judge wherein the Petition for Special Hearing was GRANTED with conditions, and the Petition for Variance was MOOT.

October 29, 2020 Notice of Appeal filed by Michael R. McCann, Esquire on behalf of John Dawson, Protestant.

November 2, 2020 Appeal received by the Board.

Case Nos. 19-402-SPHA and 20-090-SPHA

December 15, 2020 Notice of Assignment issued by the Board.

February 17, 2021 Board convened for a Hearing.

Exhibits submitted at Hearing before the Board of Appeals:

Petitioners' Exhibit No.

- 1 – Zoning Plan, February 15, 2021
- 2 – Twin River Subdivision PB 9/33
- 3 – Portion of Plat PB 9/33
- 4 – Key Sheet for Exhibit 5 Photos
- 5A-H – Exhibit Photos
- 6A-K – Additional Photos Current
- 7A – Zoning Plan (same as Exhibit 1)
- 7B – Plan from Kestner 1
- 7C – Plan from Kestner 2 (IDENTIFICATION ONLY)
- 8 – Map Show Undersized Lot cases granted
- 9A-D – Similar cases related to Exhibits 4 and 8
- 10 – Letter in Support
- 11 – List of Properties Reviewed
- 12 – GIS Map Showing Lots Reviewed
- 13 – Record Plats Showing Lots Reviewed

Protestants Exhibit No.

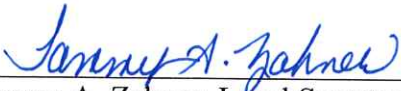
- 1 – (Withdrawn)
- 2 – My Neighborhood Map
- 3 – SDAT sheet for Lot 155
- 4 – SDAT sheet for Lot 156
- 5 – SDAT sheet for Lots 157-160
- 6 – 2014 Deed to Kestner for all 4 lots
- 7 – 1961 Deed for Lot 156
- 8 – 1961 Deed for Lot 155
- 9 – 1959 Deed for Lots 157-160
- 10(1)–(15) – Photographs
- 11 – Petition in Opposition
- 12 – Documents re underlying case in Petitioner's Exhibit 8
(Case No. 79-135)
- 13 – Documents re underlying case in Petitioner's Exhibit 8
(Case No. 03-309) (6927 Gunder)
- 14 – Petition and Opinion (Case No. 01-02) (13108 Cherwin)
- 15 – SDAT print-outs

16 – Four properties related to pink highlights Petitioner’s
Exhibit 13

17 – Rule 8 Documents

| | |
|-----------------|--|
| March 26, 2021 | Petitioner’s Memorandum filed by J. Neil Lanzi, Esquire on behalf of Craig Kestner. |
| March 26, 2021 | Post-Hearing Memorandum filed by Michael R. McCann, Esquire on behalf of John Dawson and the Twin River Beach Protective and Improvement Association, Inc. |
| April 7, 2021 | Board convened for Public Deliberation. |
| May 20, 2021 | Opinion and Order issued by the Board wherein the request pursuant to BCZR § 304.1 to construct a home on lots 155 and 156 of the Twin River Beach subdivision, said lots having an approximate combined width of 50 feet in lieu of the 55 foot required width, was DENIED. |
| June 17, 2021 | Petition for Judicial Review filed in the Circuit Court for Baltimore County by J. Neil Lanzi, Esquire on behalf of Craig Kestner. |
| June 25, 2021 | Copy of Petition for Judicial Review received from the Circuit Court for Baltimore County by the Board of Appeals. |
| June 30, 2021 | Certificate of Compliance sent to all parties and interested persons. |
| July 20, 2021 | Letter from Board to Mr. Lanzi providing name and contact information for the transcriptionist. |
| August 30, 2021 | Transcript of testimony filed. |
| August 30, 2021 | Record of Proceedings filed in the Circuit Court for Baltimore County. |

Record of Proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court, together with exhibits entered into evidence before the Board.



Tammy A. Zahner, Legal Secretary
Board of Appeals for Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, Maryland 21204
(410) 887-3180
appealsboard@baltimorecountymd.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of August, 2021 a copy of the foregoing was mailed first class mail, postage prepaid, or inter-office mail to the following:

J. Neil Lanzi, Esquire
Wright, Constable & Skeen, LLP
102 W. Pennsylvania Avenue, Suite 406
Towson, MD 21204

Michael R. McCann, Esquire
Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, MD 21204

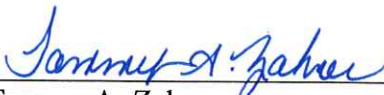
Craig Kestner
12922 Eastern Avenue
Middle River, MD 21220

Linda Kuchta, President
The Twin River Beach Protective and
Improvement Association, Inc.
13209 Powderdale Avenue
Middle River, MD 21220

Bruce E. Doak
Bruce E. Doak Consulting, LLC
3801 Baker Schoolhouse Road
Freeland, MD 21053

Ruth Hauf, Secretary
The Twin River Beach Protective and
Improvement Association, Inc.
13209 Powderdale Avenue
Middle River, MD 21220

John Dawson
13215 Cherwin Avenue
Middle River, MD 21220



Tammy A. Zahner



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 20, 2021

SENT VIA E-MAIL nlanzi@wclsaw.com

J. Neil Lanzi, Esquire
Wright, Constable & Skeen, LLP
102 W. Pennsylvania Avenue, Suite 406
Towson, Maryland 21204

Re: In the Matter of: *Craig Kestner*
Case Nos.: 19-402-SPHA and 20-090-SPHA

Dear Mr. Lanzi:

We are in receipt of your request for transcript in the above referenced matter. Please be advised that we have sent the recording to the typist listed below.

The typist has been instructed to contact you upon receipt of the recording. She will be able to provide you with the estimated cost, and required deposit, if any. I have advised her that the transcript is due in our office by August 23, 2021.

Please direct all payments and questions regarding the transcript to the typist listed below.

Very truly yours,

A handwritten signature in blue ink that reads "Tammy A. Zahner".

Tammy A. Zahner
Legal Secretary

Typist: Christine Leary
Mailing Address: 3129 Hiss Avenue, Baltimore, MD 21234
Telephone #: (443) 622-4898
E-mail: crleary1@verizon.net

Tammy Zahner

From: Tammy Zahner
Sent: Tuesday, July 20, 2021 12:14 PM
To: Neil Lanzi
Subject: Kestner
Attachments: Ltr to Atty re transcript-with name of typist.pdf

Dear Mr. Lanzi:

Please see letter attached regarding the Kestner transcript.
Please let us know if you have any questions.

Tammy A. Zahner, Legal Secretary
Board of Appeals for Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, Maryland 21204
tzahner@baltimorecountymd.gov
(410) 887-3180
(410) 887-3182 Fax

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IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

*
*

PETITION OF:
CRAIG KESTNER

*

FOR JUDICIAL REVIEW OF THE OPINION OF
THE BOARD OF APPEALS
OF BALTIMORE COUNTY
Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204

*
*
*
*
*

CIVIL ACTION
NO.: C-03-CV-21-001906

IN THE MATTER OF:
CRAIG KESTNER
Legal Owner and Petitioner for Special Hearing
and Variance on the Property located at
13217 Cherwin Avenue

*
*
*
*

15TH ELECTION DISTRICT
6TH COUNCILMANIC DISTRICT

*

BOARD OF APPEALS
CASE NOS.: 19-402-SPHA and 20-090-SPHA

*

* * * * *

CERTIFICATE OF COMPLIANCE

Madam Clerk:

Pursuant to the Provisions of Rule 7-202(d) of the *Maryland Rules*, the Board of Appeals of Baltimore County has given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely:

J. Neil Lanzi, Esquire
Wright, Constable & Skeen, LLP
102 W. Pennsylvania Avenue, Suite 406
Towson, MD 21204

Michael R. McCann, Esquire
Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, MD 21204

Craig Kestner
12922 Eastern Avenue
Middle River, MD 21220

John Dawson
13215 Cherwin Avenue
Middle River, MD 21220

In the Matter of: Craig Kestner
Board of Appeals Case Nos.: 19-402-SPHA and 20-090-SPHA
Circuit Court Civil Action No.: C-03-CV-21-001906

2

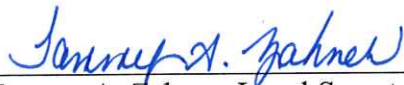
Linda Kuchta, President
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Improvement Association, Inc.
13209 Powderdale Avenue
Middle River, MD 21220

Bruce E. Doak
Bruce E. Doak Consulting, LLC
3801 Baker Schoolhouse Road
Freeland, MD 21053

A copy of said Notice is attached hereto and prayed that it may be made a part hereof.

I HEREBY CERTIFY that on this 30th day of June, 2021, a copy of the foregoing was mailed first class mail, postage prepaid, to the individuals listed above.



Tammy A. Zahner, Legal Secretary
Board of Appeals for Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, Maryland 21204
(410) 887-3180
appealsboard@baltimorecountymd.gov



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 30, 2021

J. Neil Lanzi, Esquire
Wright, Constable & Skeen, LLP
102 W. Pennsylvania Avenue, Suite 406
Towson, Maryland 21204

Michael R. McCann, Esquire
Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204

RE: Petition for Judicial Review
Circuit Court Civil Action No.: C-03-CV-21-001906
In the Matter of: Craig Kestner
Board of Appeals Case Nos.: 19-402-SPHA and 20-090-SPHA

Dear Counsel:

Notice is hereby given, in accordance with the Maryland Rules, that a Petition for Judicial Review was filed by J. Neil Lanzi, Esquire on behalf of Craig Kestner, in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. The County Board of Appeals received written notification of acceptance from the Circuit Court for Baltimore County on June 25, 2021. Any party wishing to oppose the petition must file a response with the Circuit Court for Baltimore County within 30 days after the date of this letter, pursuant to the Maryland Rules.

In accordance with the Maryland Rules, the Board of Appeals is required to submit the record of proceedings of the Petition for Judicial Review within 60 days. Mr. Lanzi, having taken the appeal on behalf of his clients, is responsible for the cost of the transcript of the record and the transcript must be paid for in time to transmit the same to the Circuit Court within the 60 day timeframe as stated in the Maryland Rules.

WebEx was the official record of the hearings before the Board. The recording will be copied by this office and provided to you for transcription. The transcriptionist must meet the requirements set forth in Maryland Rules which states: "*a stenographer, court reporter, or transcription service designated by the court for the purpose of preparing an official transcript from the recording.*" The Board of Appeals can assist in obtaining a qualified transcriptionist upon request.

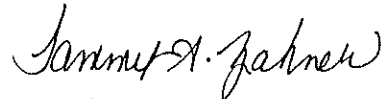
In the Matter of: Craig Kestner
Board of Appeals Case Nos.: 19-402-SPHA and 20-090-SPHA
Circuit Court Civil Action No.: C-03-CV-21-001906

2

Please be advised that the ORIGINAL transcript must be provided to the Board of Appeals no later than AUGUST 23, 2021 so that it may be transmitted to the Circuit Court with the record of proceedings, pursuant to the Maryland Rules.

A copy of the Certificate of Compliance has been enclosed for your convenience.

Very truly yours,



Tammy A. Zahner
Legal Secretary

Duplicate Original Cover Letter
Enclosure

c: Craig Kestner
Bruce E. Doak/Bruce E. Doak Consulting, LLC
John Dawson
Linda Kuchta, President/Twin River Beach Protective and Improvement Association
Ruth Hauf, Secretary/ Twin River Beach Protective and Improvement Association



Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
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TOWSON, MARYLAND, 21204
410-887-3180
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June 30, 2021

J. Neil Lanzi, Esquire
Wright, Constable & Skeen, LLP
102 W. Pennsylvania Avenue, Suite 406
Towson, Maryland 21204

Michael R. McCann, Esquire
Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204

RE: Petition for Judicial Review
Circuit Court Civil Action No.: C-03-CV-21-001906
In the Matter of: Craig Kestner
Board of Appeals Case Nos.: 19-402-SPHA and 20-090-SPHA

Dear Counsel:

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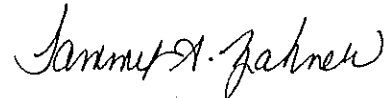
In the Matter of: Craig Kestner
Board of Appeals Case Nos.: 19-402-SPHA and 20-090-SPHA
Circuit Court Civil Action No.: C-03-CV-21-001906

2

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Very truly yours,



Tammy A. Zahner
Legal Secretary

Duplicate Original Cover Letter
Enclosure

c: Craig Kestner
Bruce E. Doak/Bruce E. Doak Consulting, LLC
John Dawson
Linda Kuchta, President/Twin River Beach Protective and Improvement Association
Ruth Hauf, Secretary/ Twin River Beach Protective and Improvement Association

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

*

*

PETITION OF:
CRAIG KESTNER

*

FOR JUDICIAL REVIEW OF THE OPINION OF
THE BOARD OF APPEALS
OF BALTIMORE COUNTY
Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204

*

*

*

*

CIVIL ACTION
NO.: C-03-CV-21-001906

IN THE MATTER OF:
CRAIG KESTNER
Legal Owner and Petitioner for Special Hearing
and Variance on the Property located at
13217 Cherwin Avenue

*

*

*

15TH ELECTION DISTRICT
6TH COUNCILMANIC DISTRICT

*

BOARD OF APPEALS
CASE NOS.: 19-402-SPHA and 20-090-SPHA

*

* * * * *

CERTIFICATE OF COMPLIANCE

Madam Clerk:

Pursuant to the Provisions of Rule 7-202(d) of the *Maryland Rules*, the Board of Appeals of Baltimore County has given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely:

J. Neil Lanzi, Esquire
Wright, Constable & Skeen, LLP
102 W. Pennsylvania Avenue, Suite 406
Towson, MD 21204

Michael R. McCann, Esquire
Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, MD 21204

Craig Kestner
12922 Eastern Avenue
Middle River, MD 21220

John Dawson
13215 Cherwin Avenue
Middle River, MD 21220

In the Matter of: Craig Kestner
Board of Appeals Case Nos.: 19-402-SPHA and 20-090-SPHA
Circuit Court Civil Action No.: C-03-CV-21-001906

2

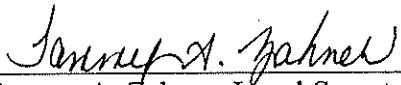
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Bruce E. Doak
Bruce E. Doak Consulting, LLC
3801 Baker Schoolhouse Road
Freeland, MD 21053

A copy of said Notice is attached hereto and prayed that it may be made a part hereof.

I HEREBY CERTIFY that on this 30th day of June, 2021, a copy of the foregoing was mailed first class mail, postage prepaid, to the individuals listed above.



Tammy A. Zahner, Legal Secretary
Board of Appeals for Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, Maryland 21204
(410) 887-3180
appealsboard@baltimorecountymd.gov



**CIRCUIT COURT FOR BALTIMORE COUNTY,
MARYLAND**

401 Bosley Avenue, P.O. Box 6754
Towson, MD 21285-6754

Main: 410-887-2601
Fax: 410-887-3062

Case Number: C-03-CV-21-001906
Administrative Agency: 19-402 SPHA; 20-090 SPHA
Workers Compensation Number: N/A

To: BALTIMORE COUNTY BOARD OF APPEALS
105 WEST CHESAPEAKE AVENUE
TOWSON MD 21204

IN THE MATTER OF CRAIG KESTNER

Date: 6/21/2021

NOTICE TO ADMINISTRATIVE AGENCY OF JUDICIAL REVIEW

You are advised that a petition for judicial review was filed on 06/21/2021 and assigned Civil Action No. C-03-CV-21-001906.

Pursuant to Maryland Rule 7-202(d) (1), a copy of the petition is enclosed for the agency.

Julie L. Ensor
Clerk of the Circuit Court

cc:



IN THE CIRCUIT COURT FOR BALTIMORE COUNTY



PETITION OF: *

CRAIG KESTNER *
7237 Greenbank Road *
Baltimore, MD 21220 *

Petitioner *

FOR JUDICIAL REVIEW OF THE *
DECISION OF THE BOARD OF *
APPEALS OF BALTIMORE COUNTY *
Jefferson Building, Suite 203 *
105 W. Chesapeake Avenue *
Towson, Maryland 21204 *

CIVIL ACTION No. C-03-CV-21-001906

IN THE CASE OF: *

CRAIG KESTNER, LEGAL OWNER *
AND PETITIONER FOR SPECIAL *
HEARING AND VARIANCE ON *
THE PROPERTY LOCATED AT *
13217 CHERWIN AVENUE *
15th ELECTION DISTRICT *
6th COUNCILMANIC DISTRICT *
Case Nos. 19-402 SPHA and *
20-090-SPHA *

PETITION FOR JUDICIAL REVIEW

Now come Petitioner, by his attorneys, J. Neil Lanzi and Wright, Constable & Skeen, LLP, and state:

1. Petitioner Craig Kestner requests judicial review of the decision of the Board of Appeals of Baltimore County on May 20, 2021, as sent to Petitioner on May 20, 2021, denying the Administrative Law Judge's approval of Petitioner's requested relief

Tammy Zahner

From: Appeals Board
Sent: Monday, June 28, 2021 8:15 AM
To: 'Melody Loughlin'
Subject: RE: In the Matter of Craig Kestner, Board of Appeals Case Nos. 19-402-SPHA and 20-090-SPHA

Thank you

Board of Appeals for Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, Maryland 21204
tzahner@baltimorecountymd.gov
(410) 887-3180
(410) 887-3182 Fax

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From: Melody Loughlin <mloughlin@wcsolaw.com>
Sent: Friday, June 25, 2021 2:37 PM
To: Appeals Board <appealsboard@baltimorecountymd.gov>
Cc: Neil Lanzi <nlanzi@wcsolaw.com>
Subject: In the Matter of Craig Kestner, Board of Appeals Case Nos. 19-402-SPHA and 20-090-SPHA

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

Enclosed is a courtesy copy of the Petition for Judicial review filed in the above case.

Thank you.



Melody Loughlin, Paralegal
Wright, Constable & Skeen, LLP
102 W. Pennsylvania Avenue, Suite 406
Towson, Maryland 21204
Tele: 443-991-5917 Fax: 667-206-4610
E-mail: mloughlin@wcsolaw.com
www.wcsolaw.com

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IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

PETITION OF: *

CRAIG KESTNER *
7237 Greenbank Road *
Baltimore, MD 21220 *

Petitioner *

FOR JUDICIAL REVIEW OF THE *
DECISION OF THE BOARD OF *
APPEALS OF BALTIMORE COUNTY *
Jefferson Building, Suite 203 *
105 W. Chesapeake Avenue *
Towson, Maryland 21204 *

CIVIL ACTION No. C-03-CV-21-001906



IN THE CASE OF: *

CRAIG KESTNER, LEGAL OWNER *
AND PETITIONER FOR SPECIAL *
HEARING AND VARIANCE ON *
THE PROPERTY LOCATED AT *
13217 CHERWIN AVENUE *
15th ELECTION DISTRICT *
6th COUNCILMANIC DISTRICT *
Case Nos. 19-402 SPHA and *
20-090-SPHA *

PETITION FOR JUDICIAL REVIEW

Now come Petitioner, by his attorneys, J. Neil Lanzi and Wright, Constable & Skeen, LLP, and state:

1. Petitioner Craig Kestner requests judicial review of the decision of the Board of Appeals of Baltimore County on May 20, 2021, as sent to Petitioner on May 20, 2021, denying the Administrative Law Judge's approval of Petitioner's requested relief

pursuant to BCZR § 304.1 to construct a home on lots 155 and 156 of the Twin River Beach subdivision, said lots having an approximate combined width of 50 feet in lieu of the 55 foot required width. (*In the Matter of Craig Kestner*, Board of Appeals Case Nos. 19-402-SPHA and 20-090-SPHA). A copy of the Board's opinion and decision is attached hereto.

2. Petitioner was a party to the proceeding below.

/s/
J. Neil Lanzi (#8512010347)
Wright, Constable & Skeen, LLP
102 W. Pennsylvania Avenue, Suite 406
Towson, Maryland 21204
(410) 659-1390
nlanzi@wcsolaw.com
Attorneys for Petitioner

IN THE MATTER OF
CRAIG KESTNER, LEGAL OWNER
AND PETITIONER FOR SPECIAL
HEARING AND VARIANCE ON
THE PROPERTY LOCATED AT
13217 CHERWIN AVENUE

15th ELECTION DISTRICT
6th COUNCILMANIC DISTRICT

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NOS.: 19-402-SPHA and
20-090-SPHA

* * * * *

OPINION

This matter comes before the Board of Appeals ("Board") as a *de novo* appeal from an Order dated September 29, 2020, from Administrative Law Judge ("ALJ") Paul M. Mayhew, granting a variance request pursuant to Baltimore County Zoning Regulation ("BCZR") § 304.1. Craig Kestner, ("the Petitioner") seeks approval for the construction of a single-family home on two lots with a combined width of 50 ft. in an area that requires 55 ft. for such construction. The ALJ granted the variance, and a number of individuals and a community organization noted this appeal. The Board held a *de novo* virtual hearing on February 17, 2021. A virtual public deliberation was held on April 7, 2021, at which the Board voted unanimously to deny the variance request.

HISTORY

Mr. Kestner purchased lots 155, 156, 157, 158, 159 and 160 in the Twin River Beach subdivision in 2014. The plat for that subdivision was recorded in 1929. Each lot is 25 ft. wide. There was a pre-existing garage on lot 157 and a single-family home on portions of lots 157-158. Mr. Kestner lived in the home for four years. He used lots 155 and 156 for home recreational purposes. In 2018 he sold lots 157-160 as a single unit, leaving 155 and 156 in his possession. The present zoning, which is DR5.5, requires a lot width area of 55 ft. for the

In the matter of: Craig Kestner
Case Nos.: 19-402-SPHA and 20-090-SPHA

construction of a single-family home, but together, lots 155 and 156 only make 50 ft. As a result, Mr. Kestner filed a petition for special hearing and request for a variance in Case No. 19-402-SPHA ("Kestner 1"). That petition sought a regular variance from the 55 ft. requirement pursuant to *Cromwell v. Ward*, 102 Md. App. 691 (1995). It also sought confirmation that lots 155 and 156 had remained independent and had not merged into the other four. A contested hearing was held before ALJ Mayhew who ruled: (1) lots 155 and 156 had not merged into the other four; and (2) because there was nothing unique about lots 155 and 156, a variance from the 55 ft. requirement was not justified under *Cromwell*. Mr. Kestner appealed the variance ruling to the Board.¹

Mr. Kestner requested that the appeal in Kestner 1 be held in abeyance to permit the filing of this case ("Kestner 2"). Kestner 2 raised the variance issue pursuant to § 304.1. This argument could have been raised in Kestner 1. By reason of the appeal in Kestner 1, ALJ Mayhew's ruling in Kestner 1 was not a final resolution of the case. Consequently, there was no prohibition by reason of *res judicata* or collateral estoppel that precluded consideration of Kestner 2.

Mueller v. People's Counsel for Baltimore County, 177 Md. App. 43 (2007) discusses the difference between BCZR §§ 307 and 304.1. BCZR § 304.1 permits what amounts to a variance for the construction of a single-family home on a lot undersized by width if three

¹ At our hearing on February 17, 2021, Protestants argued that Mr. Kestner's appeal in the first case meant that the merger issue which Mr. Kestner had won was also available to be re-litigated in any *de novo* hearing because the hearing was *de novo*. The Board rejected that contention. First, the Baltimore County Code at § 32-3-401(a) indicates that any person "feeling aggrieved" from a decision by the ALJ has the right to appeal to the Board of Appeals. Mr. Kestner was certainly not aggrieved, nor did he feel aggrieved, from the merger ruling in his favor. Second, Mr. Kestner's counsel was scrupulously careful in his written notice of appeal in the first case to limit the appeal to the variance issue. Third, the Protestants in the first case did not appeal the merger ruling. Therefore, in the Board's view, the merger issue was not automatically subject to review by reason of Mr. Kestner's appeal on the variance question and was not otherwise preserved for appellate review.

In the matter of: Craig Kestner
Case Nos.: 19-402-SPHA and 20-090-SPHA

conditions are met. The first two conditions were clearly satisfied here: (1) the lot was recorded as part of a valid subdivision prior to March 30, 1955; and (2) all of the other height and area requirements are met. The third requirement is the only point of contention in this matter. This third condition requires that the owner seeking the variance did not own adjoining property that would have made adherence to the width requirement possible. The specific language of subsection C states:

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

With virtually no discussion of subsection (C), ALJ Mayhew found that § 304.1 compelled the variance grant.²

FACTUAL PRESENTATION

The only witness called by the Petitioner was Bruce Doak who was accepted as an expert in surveying, zoning and land use. Through Mr. Doak, the petitioner presented the site plan which had been modified from Kestner 1 to include the front, side, and rear setbacks that had been presented in and ratified by ALJ Mayhew in Kestner 2. Mr. Doak testified that Mr. Kestner purchased lots 155-160 in 2014. The deed was introduced into evidence showing that Mr. Kestner paid \$118,000 for the six lots. Protestant Exhibit 6. Mr. Doak established that the Twin River subdivision had been recorded prior to March 30, 1955, and that the site plan introduced as Petitioner's Exhibit 1 showed that the proposed construction met all of the other

² ALJ Mayhew also imposed specific and appropriate setback conditions as well as approval from DEPS and DPW regarding flood control and stormwater management prior to any construction. See Kestner 2 at p.4. These are conditions which Mr. Kestner himself suggested to ALJ Mayhew and which he reiterated before this Board. Given the nature of the Board's ruling, the Board did not address these conditions. In this regard, see n.4, *infra* at p. 6.

In the matter of: Craig Kestner
Case Nos.: 19-402-SPHA and 20-090-SPHA

height and area requirements. He also testified that Mr. Kestner had sold lots 157-160 in 2018. Petitioner's Exhibits 5A-H and 6A-K were photographs depicting the site from various perspectives. They also showed that the new owners of lots 157-160 had constructed a large stockade fence along the edge of lot 157. He testified that Mr. Kestner could not have added 5 feet from lot 157 onto lot 156 because the pre-existing garage would likely have resulted in an odd configuration and may also have required some type of rear setback variance. Mr. Doak testified to the necessity of addressing the stormwater and flood issues and of obtaining a permit to build in a critical area, all of which required approvals by DEPS and DPW prior to the issuance of a building permit. The Petitioner also presented deeds and other public records showing that the granting of variances in this subdivision was quite commonplace. Petitioner Exhibits 9A-H. Finally, he testified that there would be no detriment to the health and welfare of the public so long as the drainage and stormwater issues were properly addressed.

The cross-examination of Mr. Doak was straight forward. Mr. Doak conceded that most, if not all, of his similar cases in which variances were granted did not involve the ownership of adjoining properties or had other possible differences from the Kestner situation. He did acknowledge that Mr. Kestner owned all six lots for over 4 years, and prior to the sale of the four lots, there was possibly sufficient area to make two lots on which a second house could have been constructed and still satisfy the width requirements. This concluded the Petitioner's case.

The Protestants presented a number of lay witnesses who expressed concern over drainage and flooding. They also presented photographs showing lots 156 and 157 being largely flooded at one point. *See e.g.*, Protestants' Exhibit 10(7). John Dawson, the neighbor

In the matter of: Craig Kestner
Case Nos.: 19-402-SPHA and 20-090-SPHA

directly adjacent to the Kestner lots, testified that his view of the water would be diminished by construction of a house on the subject property. He also stated that the flooding depicted in Exhibit 10(7) was not unusual. Thomas Brooks, who lives five houses away, testified on behalf of the Twin River Beach Protective and Improvement Association, Inc. (TRBPPIA) which is the community association in which the Kestner property is located. Mr. Brooks indicated that the TRBPPIA opposed any further building because it would be ill-advised to "cram" another house in the area for aesthetic reasons, because of possible harmful effect on the fragile eco-system, and because of the possibility of impaired property values. He presented a petition signed by approximately 40 members of the community opposing the project.³ Finally, Ruth Hauf, a 50-year resident of the area, testified that most of the building permits that are issued are for reconstruction on small lots, and the relief requested in this case would be, in her words, "very unusual".

ANALYSIS

The Board's decision in this matter turns on the application and interpretation of BCZR § 304.1(C). Accordingly, many of the factual disputes are not particularly germane to the Board's determination. For example, the treatment of other properties in a neighborhood can be quite probative. In this case, however, the way zoning variances were decided with other properties neither supported nor detracted from Petitioner's argument. The case turns entirely on the question of the effect of Mr. Kestner's ownership of the adjoining properties. This is a

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In the matter of: Craig Kestner
Case Nos.: 19-402-SPHA and 20-090-SPHA

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In this instance, Mr. Kestner purchased the six lots in 2014. In 2018, he sold off the four 25 foot lots as one parcel, while keeping just two.⁵ It goes without saying that one who owns adjoining parcels cannot blithely sell off some, keep two, and then claim the special

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In the matter of: Craig Kestner
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While acknowledging that the circumstances of every situation must be individually assessed, the Commentary does provide some guidance to planners. It posits a (non-binding) six-year rule to help determine good faith:

In the matter of: Craig Kestner
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... [I]f the single owner of an undersized lot contiguous to another parcel owned by him has transferred ownership of one to another, 304c would apply if such new ownership has been held for a period of at least six years. This rule shall not preclude exceptions where it is clear, and equitable, that single ownership was not intended to avoid area requirements.

By its express terms, this is by no means a hard and fast rule. What it does do, however, is illustrate the importance of gauging the intent of the individual seeking to qualify under § 304.1 where that individual has held contiguous property in the recent past. As indicated above, Mr. Kestner did not testify. Mr. Doak testified that Mr. Kestner could not have added five feet from lot 158 to 157 because the garage which is approximately 50 years old would encroach on the side setback requirements of the now 55 foot lot. This does not answer the question as to why the garage could not have been removed⁶, why there could not be two buildable lots each of 75 feet, or why there could not be two lots of varying sizes made out of the combined 150 foot parcel such that each was over 55 feet wide (like 90 and 60 feet, 70 and 80, 83 and 67, etc.). There is nothing magical about lots being in 25 foot sections.

Petitioner presented records from two cases which touch on the operation of § 304.1 without providing clear guidance. Exhibit 9A concerns a 2006 case at 13205 and 13207 Gundale Avenue in the Twin River subdivision. The case was initiated by Gerald H. and Barbara C. Kestner.⁷ It appears from the records – which are somewhat difficult to interpret with exact precision – that those Kestners received a variance for a vacant lot at 13205 of 50.4

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In the matter of: Craig Kestner
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feet wide contiguous to another 50.4 foot wide lot upon which the Kestner home was built. Gerald Kestner's parents had purchased the four lots composing the two properties in 1956, and Gerald Kestner thereafter purchased the lots once it became too difficult for his parents to maintain the property. The zoning decision permitting the variance of 50.4 feet in lieu of the 55 foot requirement for 13205 does not mention § 304.1, but it does state that the variance petition requests permission to build a new home "... on a 50.4 foot lot in lieu of the required 55 feet with a contiguous owner". (Emphasis supplied). That language seems to gesture at § 304.1. The closest neighbor supported the variance request, and there appeared to be no opposition. The opinion of the zoning commissioner granting the variance used vague *Cromwell* language regarding "circumstances and conditions" that "are peculiar to the land or structure", findings unnecessary under § 304.1. *Mueller v. People's Counsel*, 177 Md. App. at 87. Clearly, though, there was no available adjoining property by which two lots, each satisfying the width requirement, could be made. Any sound reading of the decision, leads to the conclusion that, whatever the stated doctrinal basis, the finding was squarely within the language, intent, and spirit of § 304.1. As a result, it does not further the analysis herein.

Exhibit 9D is a bit more complicated. In that case, one owner in 1996 sold four 25 foot lots (167-170) on Cherwin Road in Bird River to Daniel and Brenda Pauszczewicz and two abutting lots (165-66) approximately 51 feet wide to the Wallaces, who were the party seeking the variance.⁸ There is no discussion about the prior owner except to say that he sold the respective pieces of property to the Wallaces and the Pauszczewicz in 1996. Exhibit 9D at

⁸ Mr. and Mrs. Pauszczewicz apparently own four additional adjoining lots in the rear, but those lots do not impact the width requirements of the Wallace property.

In the matter of: Craig Kestner
Case Nos.: 19-402-SPHA and 20-090-SPHA

p.2. Neither Mr. Pauszczewicz nor any other person objected to the variance. In the opening paragraph, the Zoning Commissioner refers to § 304. In the paragraph granting the variance the opinion refers to § 307, which is the standard variance provision. Unlike the opinion in Exhibit 9A, there is no language regarding uniqueness so it would appear that § 304.1 is the real basis for the decision, and the later reference to § 307 is either mistaken or the conflation of two differing analyses. So, while there is no inquiry into the intent of the unnamed seller, it would appear that the Wallaces purchased their two lots in good faith for the purposes of § 304.1. Perhaps because there was no objection to the variance, no one had any incentive to look behind the transaction which sold the four lots to one owner and two lots to the other. At the same time, there is no reason to doubt the Wallaces' good faith so the operation of § 304.1, if that is indeed the basis for the decision, is reasonable and understandable. Once again, that case does not contribute to the analysis in this matter except to show that variances and/or accommodations under § 304.1 are possible under different circumstances.

The *Mueller* case cited above also has some discussion of the adjoining property question. In that case, the owner had purchased two adjoining properties at **different times** and **each of which satisfied the width requirements at the time.** 177 Md. App. at 90. They constructed a home on one lot and then years later, sold off the other lot. Under the factual circumstances of that case, the Court determined that there was not sufficient adjoining land to make the second lot conform to the width requirements which were enacted after the lots were subdivided. As the Court stated: "Neither [of the two relevant lots] was rendered nonconforming by virtue of actions taken by the elder Muellers, or appellants, *after* the zoning law in issue was enacted." *Id.* (Emphasis in original). *Mueller* appears on its facts to be quite

In the matter of: Craig Kestner
Case Nos.: 19-402-SPHA and 20-090-SPHA

similar to the transaction in Petitioner's Exhibit 9A discussed above at p. 8-9. In this matter, the actual method of subdivision by Mr. Kestner rendered the remaining two lots being non-buildable without the special grandfathering variance provision.

The Board does not enjoy issuing a ruling that would appear to limit the usability and alienability of lots 155 and 156. This Board is often faced with situations where an absence of foresight results in the Board being asked to untangle a messy but otherwise avoidable problem. It would have been useful for Petitioner to have carefully studied the situation before selling off the four lots. Consulting zoning experts at that point might have resulted in a more creative subdivision of the property. A simple subdivision of the six Kestner lots into two lots of varying widths would have resulted in two lots buildable by right.

In Kestner 1, the ALJ indicated "regret" that a fair and conscientious application of the law required rejecting the petition for a standard variance. (Opinion at p.5). Similarly, we must apply § 304.1 fairly and equitably as it is written even if there is a resulting hardship for Mr. Kestner. The burden of proof in this matter is on the Petitioner to show that he acted in good faith such that the § 304.1 exception applies to him. On this record, however, we cannot conclude by a preponderance of the evidence that Petitioner has met this burden.

CONCLUSION

For these reasons, we deny the Petitioner's request for relief under § 304.1.

In the matter of: Craig Kestner
Case Nos.: 19-402-SPHA and 20-090-SPHA

ORDER

For the reasons stated in the Opinion accompanying this Order, it is this 20th day of May, 2021 by the Board of Appeals of Baltimore County

ORDERED, that the approval pursuant to BCZR § 304.1 to construct a home on lots 155 and 156 of the Twin River Beach subdivision, said lots having an approximate combined width of 50 feet in lieu of the 55 foot required width, be, and the same hereby, is **DENIED**.

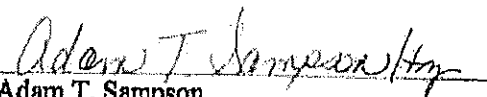
In the matter of: Craig Kester
Case Nos.: 19-402-SPHA and 20-090-SPHA

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**


William A. McComas, Panel Chair

see following page
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Board of Appeals of Baltimore County

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

May 20, 2021

J. Neil Lanzi, Esquire
Wright, Constable & Skeen, L.L.P.
102 W. Pennsylvania Avenue, Suite 406
Towson, Maryland 21204

Michael R. McCann, Esquire
Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204

RE: In the Matter of: *Craig Kestner*
Case Nos.: 19-402-SPHA and 20-090-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,

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure
Duplicate Original Cover Letter

c: Craig Kestner
John Dawson/Twin River Beach Protective and Improvement Association
Bruce E. Doak
Office of People's Counsel
Paul M. Mayhew, Managing Administrative Law Judge
Stephen Lafferty, Director/Department of Planning
David Lykens, Director/DEPS
D'Andrea L. Walker, Acting Director/DPW
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
CRAIG KESTNER, LEGAL OWNER
AND PETITIONER FOR SPECIAL
HEARING AND VARIANCE ON
THE PROPERTY LOCATED AT
13217 CHERWIN AVENUE

15th ELECTION DISTRICT
6th COUNCILMANIC DISTRICT

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NOS.: 19-402-SPHA and
20-090-SPHA

* * * * *

OPINION

This matter comes before the Board of Appeals (“Board”) as a *de novo* appeal from an Order dated September 29, 2020, from Administrative Law Judge (“ALJ”) Paul M. Mayhew, granting a variance request pursuant to Baltimore County Zoning Regulation (“BCZR”) § 304.1. Craig Kestner, (“the Petitioner”) seeks approval for the construction of a single-family home on two lots with a combined width of 50 ft. in an area that requires 55 ft. for such construction. The ALJ granted the variance, and a number of individuals and a community organization noted this appeal. The Board held a *de novo* virtual hearing on February 17, 2021. A virtual public deliberation was held on April 7, 2021, at which the Board voted unanimously to deny the variance request.

HISTORY

Mr. Kestner purchased lots 155, 156, 157, 158, 159 and 160 in the Twin River Beach subdivision in 2014. The plat for that subdivision was recorded in 1929. Each lot is 25 ft. wide. There was a pre-existing garage on lot 157 and a single-family home on portions of lots 157-158. Mr. Kestner lived in the home for four years. He used lots 155 and 156 for home recreational purposes. In 2018 he sold lots 157-160 as a single unit, leaving 155 and 156 in his possession. The present zoning, which is DR5.5, requires a lot width area of 55 ft. for the

In the matter of: Craig Kestner
Case Nos.: 19-402-SPHA and 20-090-SPHA

construction of a single-family home, but together, lots 155 and 156 only make 50 ft. As a result, Mr. Kestner filed a petition for special hearing and request for a variance in Case No. 19-402-SPHA (“Kestner 1”). That petition sought a regular variance from the 55 ft. requirement pursuant to *Cromwell v. Ward*, 102 Md. App. 691 (1995). It also sought confirmation that lots 155 and 156 had remained independent and had not merged into the other four. A contested hearing was held before ALJ Mayhew who ruled: (1) lots 155 and 156 had not merged into the other four; and (2) because there was nothing unique about lots 155 and 156, a variance from the 55 ft. requirement was not justified under *Cromwell*. Mr. Kestner appealed the variance ruling to the Board.¹

Mr. Kestner requested that the appeal in Kestner 1 be held in abeyance to permit the filing of this case (“Kestner 2”). Kestner 2 raised the variance issue pursuant to § 304.1. This argument could have been raised in Kestner 1. By reason of the appeal in Kestner 1, ALJ Mayhew’s ruling in Kestner 1 was not a final resolution of the case. Consequently, there was no prohibition by reason of *res judicata* or collateral estoppel that precluded consideration of Kestner 2.

Mueller v. People’s Counsel for Baltimore County, 177 Md. App. 43 (2007) discusses the difference between BCZR §§ 307 and 304.1. BCZR § 304.1 permits what amounts to a variance for the construction of a single-family home on a lot undersized by width if three

¹ At our hearing on February 17, 2021, Protestants argued that Mr. Kestner’s appeal in the first case meant that the merger issue which Mr. Kestner had won was also available to be re-litigated in any *de novo* hearing because the hearing was *de novo*. The Board rejected that contention. First, the Baltimore County Code at § 32-3-401(a) indicates that any person “feeling aggrieved” from a decision by the ALJ has the right to appeal to the Board of Appeals. Mr. Kestner was certainly not aggrieved, nor did he feel aggrieved, from the merger ruling in his favor. Second, Mr. Kestner’s counsel was scrupulously careful in his written notice of appeal in the first case to limit the appeal to the variance issue. Third, the Protestants in the first case did not appeal the merger ruling. Therefore, in the Board’s view, the merger issue was not automatically subject to review by reason of Mr. Kestner’s appeal on the variance question and was not otherwise preserved for appellate review.

conditions are met. The first two conditions were clearly satisfied here: (1) the lot was recorded as part of a valid subdivision prior to March 30, 1955; and (2) all of the other height and area requirements are met. The third requirement is the only point of contention in this matter. This third condition requires that the owner seeking the variance did not own adjoining property that would have made adherence to the width requirement possible. The specific language of subsection C states:

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

With virtually no discussion of subsection (C), ALJ Mayhew found that § 304.1 compelled the variance grant.²

FACTUAL PRESENTATION

The only witness called by the Petitioner was Bruce Doak who was accepted as an expert in surveying, zoning and land use. Through Mr. Doak, the petitioner presented the site plan which had been modified from Kestner 1 to include the front, side, and rear setbacks that had been presented in and ratified by ALJ Mayhew in Kestner 2. Mr. Doak testified that Mr. Kestner purchased lots 155-160 in 2014. The deed was introduced into evidence showing that Mr. Kestner paid \$118,000 for the six lots. Protestant Exhibit 6. Mr. Doak established that the Twin River subdivision had been recorded prior to March 30, 1955, and that the site plan introduced as Petitioner's Exhibit 1 showed that the proposed construction met all of the other

² ALJ Mayhew also imposed specific and appropriate setback conditions as well as approval from DEPS and DPW regarding flood control and stormwater management prior to any construction. *See* Kestner 2 at p.4. These are conditions which Mr. Kestner himself suggested to ALJ Mayhew and which he reiterated before this Board. Given the nature of the Board's ruling, the Board did not address these conditions. In this regard, *see* n.4, *infra* at p. 6.

In the matter of: Craig Kestner
Case Nos.: 19-402-SPHA and 20-090-SPHA

height and area requirements. He also testified that Mr. Kestner had sold lots 157-160 in 2018. Petitioner's Exhibits 5A-H and 6A-K were photographs depicting the site from various perspectives. They also showed that the new owners of lots 157-160 had constructed a large stockade fence along the edge of lot 157. He testified that Mr. Kestner could not have added 5 feet from lot 157 onto lot 156 because the pre-existing garage would likely have resulted in an odd configuration and may also have required some type of rear setback variance. Mr. Doak testified to the necessity of addressing the stormwater and flood issues and of obtaining a permit to build in a critical area, all of which required approvals by DEPS and DPW prior to the issuance of a building permit. The Petitioner also presented deeds and other public records showing that the granting of variances in this subdivision was quite commonplace. Petitioner Exhibits 9A-H. Finally, he testified that there would be no detriment to the health and welfare of the public so long as the drainage and stormwater issues were properly addressed.

The cross-examination of Mr. Doak was straight forward. Mr. Doak conceded that most, if not all, of his similar cases in which variances were granted did not involve the ownership of adjoining properties or had other possible differences from the Kestner situation. He did acknowledge that Mr. Kestner owned all six lots for over 4 years, and prior to the sale of the four lots, there was possibly sufficient area to make two lots on which a second house could have been constructed and still satisfy the width requirements. This concluded the Petitioner's case.

The Protestants presented a number of lay witnesses who expressed concern over drainage and flooding. They also presented photographs showing lots 156 and 157 being largely flooded at one point. *See e.g.*, Protestants' Exhibit 10(7). John Dawson, the neighbor

directly adjacent to the Kestner lots, testified that his view of the water would be diminished by construction of a house on the subject property. He also stated that the flooding depicted in Exhibit 10(7) was not unusual. Thomas Brooks, who lives five houses away, testified on behalf of the Twin River Beach Protective and Improvement Association, Inc. (TRBPIA) which is the community association in which the Kestner property is located. Mr. Brooks indicated that the TRBPIA opposed any further building because it would be ill-advised to “cram” another house in the area for aesthetic reasons, because of possible harmful effect on the fragile eco-system, and because of the possibility of impaired property values. He presented a petition signed by approximately 40 members of the community opposing the project.³ Finally, Ruth Hauf, a 50-year resident of the area, testified that most of the building permits that are issued are for reconstruction on small lots, and the relief requested in this case would be, in her words, “very unusual”.

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The Board’s decision in this matter turns on the application and interpretation of BCZR § 304.1(C). Accordingly, many of the factual disputes are not particularly germane to the Board’s determination. For example, the treatment of other properties in a neighborhood can be quite probative. In this case, however, the way zoning variances were decided with other properties neither supported nor detracted from Petitioner’s argument. The case turns entirely on the question of the effect of Mr. Kestner’s ownership of the adjoining properties. This is a

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In the matter of: Craig Kestner
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In the matter of: Craig Kestner
Case Nos.: 19-402-SPHA and 20-090-SPHA

feet wide contiguous to another 50.4 foot wide lot upon which the Kestner home was built. Gerald Kestner's parents had purchased the four lots composing the two properties in 1956, and Gerald Kestner thereafter purchased the lots once it became too difficult for his parents to maintain the property. The zoning decision permitting the variance of 50.4 feet in lieu of the 55 foot requirement for 13205 does not mention § 304.1, but it does state that the variance petition requests permission to build a new home "... on a 50.4 foot lot in lieu of the required 55 feet **with a contiguous owner**". (Emphasis supplied). That language seems to gesture at § 304.1. The closest neighbor supported the variance request, and there appeared to be no opposition. The opinion of the zoning commissioner granting the variance used vague *Cromwell* language regarding "circumstances and conditions" that "are peculiar to the land or structure", findings unnecessary under § 304.1. *Mueller v. People's Counsel*, 177 Md. App. at 87. Clearly, though, there was no available adjoining property by which two lots, each satisfying the width requirement, could be made. Any sound reading of the decision, leads to the conclusion that, whatever the stated doctrinal basis, the finding was squarely within the language, intent, and spirit of § 304.1. As a result, it does not further the analysis herein.

Exhibit 9D is a bit more complicated. In that case, one owner in 1996 sold four 25 foot lots (167-170) on Cherwin Road in Bird River to Daniel and Brenda Pauszczewicz and two abutting lots (165-66) approximately 51 feet wide to the Wallaces, who were the party seeking the variance.⁸ There is no discussion about the prior owner except to say that he sold the respective pieces of property to the Wallaces and the Pauszczewicz in 1996. Exhibit 9D at

⁸ Mr. and Mrs. Pauszczewicz apparently own four additional adjoining lots in the rear, but those lots do not impact the width requirements of the Wallace property.

p.2. Neither Mr. Pauszczewicz nor any other person objected to the variance. In the opening paragraph, the Zoning Commissioner refers to § 304. In the paragraph granting the variance the opinion refers to § 307, which is the standard variance provision. Unlike the opinion in Exhibit 9A, there is no language regarding uniqueness so it would appear that § 304.1 is the real basis for the decision, and the later reference to § 307 is either mistaken or the conflation of two differing analyses. So, while there is no inquiry into the intent of the unnamed seller, it would appear that the Wallaces purchased their two lots in good faith for the purposes of § 304.1. Perhaps because there was no objection to the variance, no one had any incentive to look behind the transaction which sold the four lots to one owner and two lots to the other. At the same time, there is no reason to doubt the Wallaces' good faith so the operation of § 304.1, if that is indeed the basis for the decision, is reasonable and understandable. Once again, that case does not contribute to the analysis in this matter except to show that variances and/or accommodations under § 304.1 are possible under different circumstances.

The *Mueller* case cited above also has some discussion of the adjoining property question. In that case, the owner had purchased two adjoining properties **at different times** and **each of which satisfied the width requirements at the time.** 177 Md. App. at 90. They constructed a home on one lot and then years later, sold off the other lot. Under the factual circumstances of that case, the Court determined that there was not sufficient adjoining land to make the second lot conform to the width requirements which were enacted after the lots were subdivided. As the Court stated: "Neither [of the two relevant lots] was rendered nonconforming by virtue of actions taken by the elder Muellers, or appellants, *after* the zoning law in issue was enacted." *Id.* (Emphasis in original). *Mueller* appears on its facts to be quite

similar to the transaction in Petitioner's Exhibit 9A discussed above at p. 8-9. In this matter, the actual method of subdivision by Mr. Kestner rendered the remaining two lots being non-buildable without the special grandfathering variance provision.

The Board does not enjoy issuing a ruling that would appear to limit the usability and alienability of lots 155 and 156. This Board is often faced with situations where an absence of foresight results in the Board being asked to untangle a messy but otherwise avoidable problem. It would have been useful for Petitioner to have carefully studied the situation before selling off the four lots. Consulting zoning experts at that point might have resulted in a more creative subdivision of the property. A simple subdivision of the six Kestner lots into two lots of varying widths would have resulted in two lots buildable by right.

In Kestner 1, the ALJ indicated "regret" that a fair and conscientious application of the law required rejecting the petition for a standard variance. (Opinion at p.5). Similarly, we must apply § 304.1 fairly and equitably as it is written even if there is a resulting hardship for Mr. Kestner. The burden of proof in this matter is on the Petitioner to show that he acted in good faith such that the § 304.1 exception applies to him. On this record, however, we cannot conclude by a preponderance of the evidence that Petitioner has met this burden.

CONCLUSION

For these reasons, we deny the Petitioner's request for relief under § 304.1.

In the matter of: Craig Kestner
Case Nos.: 19-402-SPHA and 20-090-SPHA

ORDER

For the reasons stated in the Opinion accompanying this Order, it is this 20th day of May, 2021 by the Board of Appeals of Baltimore County

ORDERED, that the approval pursuant to BCZR § 304.1 to construct a home on lots 155 and 156 of the Twin River Beach subdivision, said lots having an approximate combined width of 50 feet in lieu of the 55 foot required width, be, and the same hereby, is **DENIED**.

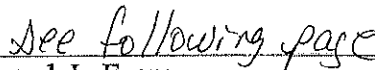
In the matter of: Craig Kester
Case Nos.: 19-402-SPHA and 20-090-SPHA

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*.

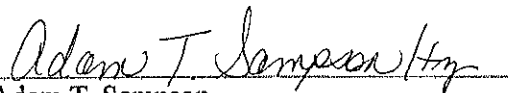
**BOARD OF APPEALS
OF BALTIMORE COUNTY**



William A. McComas, Panel Chair



Joseph L. Evans



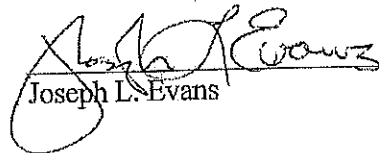
Adam T. Sampson

In the matter of: Craig Kester
Case Nos.: 19-402-SPHA and 20-090-SPHA

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
William A. McComas, Panel Chair


Joseph L. Evans

see previous page
Adam T. Sampson

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Craig Kestner 19-402-SPHA &
20-090-SPHA

DATE: April 7, 2021

BOARD/PANEL: William A. McComas, Panel Chair
Joseph L. Evans
Adam S. Sampson

RECORDED BY: Tammy A. Zahner, Legal Secretary

PURPOSE: To deliberate the following:

1. Petition for Special Hearing pursuant to § 304.1 of the BCZR to approve construction of a single family detached dwelling on two (2) lots with a combined width of 50 ft. in lieu of the required 55 ft.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

- The Board reviewed the history of Petitioner's request. The Petitioner wishes to build a house on an undersized lot. Two cases have been filed by Petitioner, and the cases were consolidated before the Board.
- Case No. 19-402-SPHA. The ALJ found that a merger did not take place between Lots 155 and 156, with the adjoining Lots 157, 158, 159 and 160. This finding was not appealed to the Board. The ALJ denied the Variance request to permit a proposed dwelling on a lot with a width of 50 ft. in lieu of 55 ft. and to permit a front average setback of 25 ft. in lieu of the required 40 ft. The Petitioner appealed the Variance denial to the Board. At the beginning of the hearing before the Board, the Petitioner dismissed its appeal.
- Case No. 20-090-SPHA. Mr. Kestner modified his plan and filed the 2020 case requesting approval pursuant to § 304.1 of the BCZR to approve construction of a single family detached dwelling on two (2) lots with a combined width of 50 ft. in lieu of the required 55 ft.
- The Board discussed BCZR §304.1 which sets out three criteria for being able to develop an undersized lot: A) Such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to March 30, 1955; B) All other requirements of the height and area regulations are complied with; and C) The owner of the lot does not own sufficient adjoining land to conform to the width and area requirements contained in these regulations.
- The Board determined there was sufficient evidence and testimony that the Petitioner meets the requirements of subsections A and B.
- The Board discussed the requirement of subsection C. The Board noted that Mr. Kestner purchased all 6 lots in 2014. In 2018 Mr. Kestner sold Lots 157, 158, 159 and 160, which contained a house and garage. The Board questioned why only Lots 155 and 156 were combined, and why a portion of the adjoining lot was not transferred to meet the 55 ft. lot requirement. Mr. Doak testified that

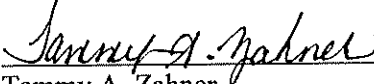
a garage was located on the adjoining property which prevented additional land from being transferred. The Board noted there was no testimony by the Petitioner. The Board also noted that the County Zoning Manual references 6 years as a good faith period when looking back on property transfers. The Petitioner sold the adjoining property approximately 18 months before filing the Petition.

- The Board determined that the Petitioner did not meet its burden of proof for compliance with BCZR § 304.1(C).

CONCLUSION: After thorough review of the facts, testimony, and law in the matter, the Board unanimously agreed to DENY the Petition for Special Hearing.

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

Respectfully Submitted,


Tammy A. Zahner



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 3, 2021

NOTICE OF DELIBERATION

IN THE MATTER OF: Craig Kestner – Legal Owner
13217 Cherwin Avenue
19-402-SPHA 15th Election District; 6th Councilmanic District

Re: Petition for Special Hearing pursuant to BCZR Section 500.7 to confirm that a merger did not take place between the 155 and 156 lots, the adjacent lots 157, 158, 159 and 160 otherwise known as 6903 Gunder Avenue; and

Petition for Variance pursuant to BCZR Sections 1B02.3.C.1 and 303.1 to 1) permit a proposed dwelling on a lot with a width of 50 ft. in lieu of the required 55 ft.; and 2) to permit a front average setback of 25 ft. in lieu of the required 40 ft. in the DR 5.5 zone.

10/23/19 Opinion and Order of the Administrative Law Judge wherein the Petition for Special Hearing was GRANTED; and the Petition for Variance was DENIED.

---- SET WITH ----

IN THE MATTER OF: Craig Kestner – Legal Owner
13217 Cherwin Avenue
20-090-SPHA 15th Election District; 6th Councilmanic District

Re: Petition for Special Hearing pursuant to § 304.1 of the BCZR to approve construction of a single family detached dwelling on two (2) lots with a combined width of 50 ft. in lieu of the required 55 ft.

Petition for Variance pursuant to § 1B02.3.C.1 to permit a combined width for two (2) lots of 50 ft. in lieu of the required 55 ft. for the construction of a single family detached dwelling.

9/29/2020 Opinion and Order of the Administrative Law Judge wherein the Petition for Special Hearing was GRANTED, with conditions; and the Petition for Variance is MOOT.

This matter having been heard and concluded on February 17, 2021, a public deliberation has been

ASSIGNED FOR: APRIL 7, 2021, at 10:00 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**

Notice of Deliberation
In the matter of: Craig Kestner
Case number: 20-090-SPHA
March 3, 2021
Page 2

will be posted on our web calendar the night before at www.baltimorecountymd.gov/Agencies/appeals/index.html.

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.

**NOTE: Closing briefs are due on March 26, 2021 no later than 3:00 p.m.
(email only to: appealsboard@baltimorecountymd.gov)**

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 | : J. Neil Lanzi, Esquire |
| | Legal Owner | : Craig Kestner |
| | Counsel for Protestants | : Michael R. McCann, Esquire |
| | Protestants | : John Dawson |
| | | : The Twin River Beach Protective and Improvement Association, Inc. Linda Kuchta, President |

Bruce Doak

Office of People's Counsel
Paul M. Mayhew, Managing Administrative Law Judge
Steve Lafferty, Director/Department of Planning
David Lykens, Director/DEPS
Peter Gutwald, Director/PAI
James R. Benjamin, Jr., County Attorney
Nancy C. West, Assistant County Attorney

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ZIP 21204
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Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204

Return service requested

11/4/21 Changed address &
mailed. J

20-090-SPH
19-402-SPH

RECEIVED
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BALTIMORE COUNTY
BOARD OF APPEALS

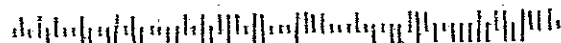
Craig Kestner
7237 Greenbank Road
Baltimore, MD 21220

New Address



12922 Eastern Ave 21220

KL1-555 21220





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

IN THE MATTER OF: Craig Kestner – Legal Owner
13217 Cherwin Avenue
19-402-SPHA 15th Election District; 6th Councilmanic District

Re: Petition for Special Hearing pursuant to BCZR Section 500.7 to confirm that a merger did not take place between the 155 and 156 lots, the adjacent lots 157, 158, 159 and 160 otherwise known as 6903 Gunder Avenue; and

Petition for Variance pursuant to BCZR Sections 1B02.3.C.1 and 303.1 to 1) permit a proposed dwelling on a lot with a width of 50 ft. in lieu of the required 55 ft.; and 2) to permit a front average setback of 25 ft. in lieu of the required 40 ft. in the DR 5.5 zone.

10/23/19 Opinion and Order of the Administrative Law Judge wherein the Petition for Special Hearing was GRANTED; and the Petition for Variance was DENIED.

---- SET WITH ----

IN THE MATTER OF: Craig Kestner – Legal Owner
13217 Cherwin Avenue
20-090-SPHA 15th Election District; 6th Councilmanic District

Re: Petition for Special Hearing pursuant to § 304.1 of the BCZR to approve construction of a single family detached dwelling on two (2) lots with a combined width of 50 ft. in lieu of the required 55 ft.

Petition for Variance pursuant to § 1B02.3.C.1 to permit a combined width for two (2) lots of 50 ft. in lieu of the required 55 ft. for the construction of a single family detached dwelling.

9/29/2020 Opinion and Order of the Administrative Law Judge wherein the Petition for Special Hearing was GRANTED, with conditions; and the Petition for Variance is MOOT.

ASSIGNED FOR: FEBRUARY 17, 2021, AT 10:00 A.M.

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.**

Notice of Assignment
In the matter of: Craig Kestner
Case number: 19-402-SPHA and 20-090-SPHA
December 15, 2020
Page 2

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 computing device, please contact our office for the call-in information the day before the scheduled deliberation.

Krysundra Cannington, Administrator

| | | |
|----|-------------------------|---|
| c. | Counsel for Petitioners | : J. Neil Lanzi, Esquire |
| | Legal Owner | : Craig Kestner |
| | Counsel for Protestants | : Michael R. McCann, Esquire |
| | Protestants | : John Dawson |
| | | : The Twin River Beach Protective and Improvement Association, Inc. Linda Kuchta, President |

Bruce Doak

Office of People's Counsel
Paul M. Mayhew, Managing Administrative Law Judge
C. Pete Gutwald, Director/Department of Planning
David Lykens, Director/DEPS
Michael D. Mallinoff, Director/PAI
James R. Benjamin, Jr., County Attorney
Nancy C. West, Assistant County Attorney



JOHN A. OLSZEWSKI, JR.
County Executive

PAUL M. MAYHEW
Managing Administrative Law Judge
LAWRENCE M. STAHL
Administrative Law Judge

November 2, 2020

Neil Lanzi, Esquire
102 W. Pennsylvania Avenue, Suite 406
Towson, MD 21204

RE: **APPEAL TO BOARD OF APPEALS**
Case No. 2020-0090-SPHA
Location: 13217 Cherwin Avenue




Dear Mr. Lanzi

Please be advised that an appeal of the above-referenced case was filed in this Office on October 29, 2020. 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,


PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM/dlw

c: ✓ Baltimore County Board of Appeals
People's Counsel for Baltimore County
Michael R. McCann, Esq., Michael R. McCann, P.A., 118 West Pennsylvania Avenue,
Towson, Maryland 21204-4518
Craig Kestner, 13015 Eastern Avenue, Baltimore, MD 21220
Bruce Doak, 3801 Baker Schoolhouse Road, Freeland, MD 21053
John Dawson, 13215 Cherwin Avenue, Middle River, MD 21220

APPEAL

Petitions for Special Hearing and Variance

Case No.: 2020-0090-SPH

13217 Cherwin Avenue

15th Election District, 6th Council District

Petitions for Special Hearing and Variance – March 30, 2020

Zoning Description of Property (1 page)

Notice of Zoning Hearing - August 24, 2020

Certification of Publication – *The Daily Record* newspaper - published on September 3, 2020

Certification of Posting by Bruce E. Doak – September 3, 2020

Entry of Appearance by People's Counsel – April 10, 2020

Attendance Report (2 sheets)

Zoning Advisory Committee Comments:

Petitioner's Exhibits:

- (1) Zoning Plan
- (2) PB 9/33 – Twin River Subdivision
- (3) PB 9/33 – Portion of the Plat
- (4) Key Sheet for Exhibit Photos
- (5) A-H – Exhibit Photos
- (6) A-B – Sketches Reflecting Explanation of Petition Amendments
- (7) Map Showing Cases Granted for Under Width
- (8) A-D – Similar Cases
- (9) Final Site Plan per ALJ Mayhew's Order of 9/29/2020 received on 10/13/2020

Protestant's Exhibits (John Dawson):

- (1) Twin River Beach Protective & Improvement Association, Inc. Letter
- (2) Photo 1
- (3) Photo 2
- (4) Photo 3
- (5) Photo 4
- (6) Photo 5
- (7) Photo 6
- (8) Photo 7
- (9) Photo 8
- (10) Photo 9

Miscellaneous

Cover Letter and Administrative Law Judge's Order Decision – Special Hearing - Granted with Conditions & Variance - Moot – September 29, 2020 (5 pages)

Notice of Appeal & Check #5781 for \$600 - Received on October 29, 2020 –filed by Michael R. McCann, Esq.

Cashier's Receipt #174858 – \$600 fee for Special Hearing and Variance

Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204
Phone: (410) 825-2150
Facsimile: (410) 825-2149
michael@mmccannlaw.net

October 29, 2020

Via Hand Delivery

Office of Administrative Hearings
105 W. Chesapeake Avenue
Towson, Maryland 21204


*Re: Case No.2020-0090-SPHA
13217 Cherwin Avenue*



To whom it may concern:

Enclosed for filing in this matter is a Notice of Appeal, along with the required filing fee of \$600.

Thank you.

Regards,

Michael R. McCann

IN RE: PETITIONS FOR SPECIAL HEARING
AND VARIANCE
(13217 Cherwin Avenue)

15th Election District
6th Councilmanic District

Craig Kestner – *Legal Owner*

Petitioner

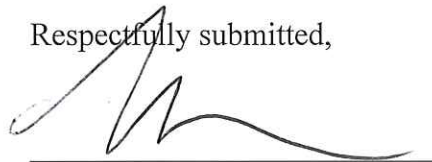
* BEFORE THE
* OFFICE OF
* ADMINISTRATIVE
* HEARINGS
* FOR
* BALTIMORE COUNTY
* Case No. 2020-0090-SPHA
*

* * * * *

NOTICE OF APPEAL

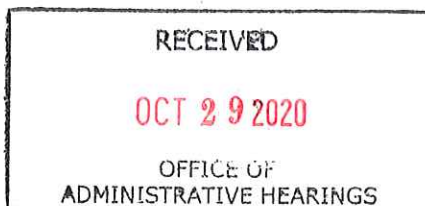
Protestant, John Dawson, pursuant to Baltimore County Code §32-3-401, hereby files an appeal to the Board of Appeals of Baltimore County from the Opinion and Order of the Administrative Law Judge dated September 29, 2020. Pursuant to Rule 3 of the Rules of Practice and Procedure of the Board of Appeals, the address of the appellant is: John Dawson, 13215 Cherwin Avenue, Middle River, Maryland 21220.

Respectfully submitted,



Michael R. McCann
118 W. Pennsylvania Ave.
Towson, MD 21204
(410) 825-2150

Counsel for Protestant/Appellant



CERTIFICATE OF SERVICE

I hereby certify that on 29th day of October 2020 a copy of the foregoing Notice of Appeal was mailed, *via* first-class mail, postage prepaid to:

Neil Lanzi, Esq.
102 W. Pennsylvania Avenue, Suite 406
Towson, MD 21204

Counsel for Petitioner

A handwritten signature in black ink, appearing to read 'Michael R. McCann', is written over a horizontal line.

Michael R. McCann

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

No. **174858**

Date: **10-29-20**

PAID RECEIPT

| Fund | Dept | Unit | Sub Unit | Rev Source/Obj | Sub Rev/Obj | Dept | Obj | BS Acct | Amount |
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BUSINESS ACTUAL TIME DRW
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 RECEIPT N 058872 10/30/2020 (FEN)
 5 526 ZONING VERIFICATION
 174858
 Receipt for \$ 600.00
 600.00 - CK 00 - CA
 Baltimore County, Maryland

Total: \$ **600.00**

Rec From: **Michael McCann Esq**

For: **Office of Administrative Hearings (CD OR APPEAL)**
 CASE NO. **2020-0090-SPHA**
 ADDRESS/PROJECT: **13217 Cherrin Ave**
 HEARING DATE(S): **9-23-2020**
 CHECK #: **5781**

RECEIVED
NOV 04 2020
OFFICE OF ADMINISTRATIVE HEARINGS

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

CASHIER'S VALIDATION

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

No. 174858

Date: 10-29-20

| Fund | Dept | Unit | Sub Unit | Rev Source/ Obj | Sub Rev/ Sub Obj | Dept | Obj | BS Acct | Amount |
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| Total: \$ | | | | | | | | | 600.00 |

Rec From: Michael McCann, Esq

For: Office of Administrative Hearings (CD OR APPEAL)

CASE NO. 2020-0090-SPHA

ADDRESS/PROJECT: 13217 Cherwin Ave.

HEARING DATE(S): 9-23-2020

CHECK #: 5781

DISTRIBUTION

WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

GOLD - ACCOUNTING

PLEASE PRESS HARD!!!!

**CASHIER'S
 VALIDATION**

Donna Mignon

From: Donna Mignon
Sent: Thursday, October 29, 2020 11:34 AM
To: 'Michael McCann'
Subject: RE: Appeal - Case no. 2020-0090-SPHA

Thank you. You can bring over the \$600.00 when you are ready. Deb is writing up a receipt. Let us know when you are here and we will get the check/money order from you and give you your receipt.

From: Michael McCann <michael@mmccannlaw.net>
Sent: Thursday, October 29, 2020 11:33 AM
To: Donna Mignon <dmignon@baltimorecountymd.gov>
Subject: RE: Appeal - Case no. 2020-0090-SPHA

CAUTION: This message from michael@mmccannlaw.net originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Yes, both the variance and special hearing. Thanks.

Michael

Michael R. McCann
Michael R. McCann, PA
118 W. Pennsylvania Avenue
Towson, Maryland 21204
(p) 410-825-2150
(f) 410-825-2149

E-mail Confidentiality: The information contained in this message may be confidential, proprietary and/or protected by the attorney-client privilege or work product doctrine. If the reader of this message is not the intended recipient, or an employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please delete/destroy any copy of this message and notify Michael R. McCann at 410 825-2150.

From: Donna Mignon [<mailto:dmignon@baltimorecountymd.gov>]
Sent: Thursday, October 29, 2020 11:32 AM
To: Michael McCann <michael@mmccannlaw.net>
Subject: RE: Appeal - Case no. 2020-0090-SPHA

Hi Michael,
Are you appealing the entire Order?

From: Michael McCann <michael@mmccannlaw.net>
Sent: Thursday, October 29, 2020 11:27 AM

To: Debra Wiley <dwiley@baltimorecountymd.gov>; Donna Mignon <dmignon@baltimorecountymd.gov>
Subject: Appeal - Case no. 2020-0090-SPHA

CAUTION: This message from michael@mmccannlaw.net originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Hey guys. I am filing an appeal in this case today. Was going to run it over shortly, but thought I should let you know in case you need to give me the invoice for payment of the filing fee.

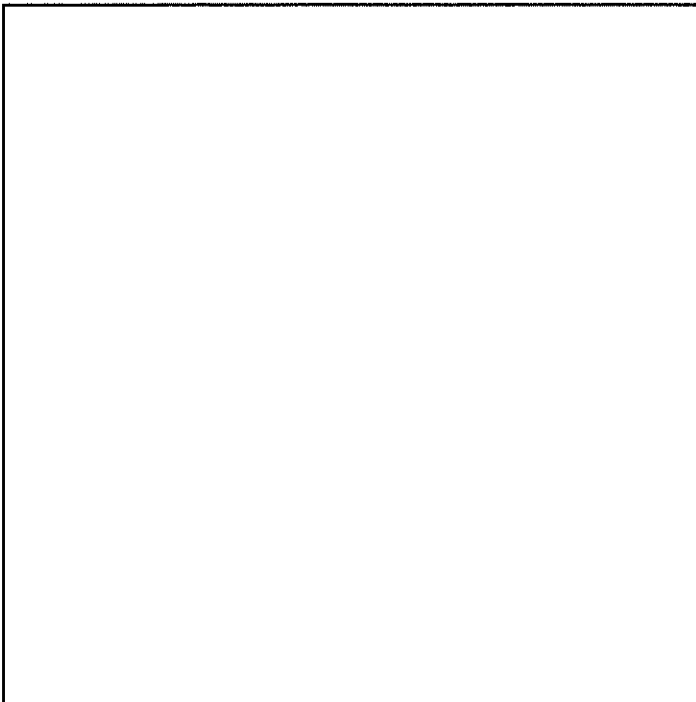
Let me know when is a good time to come.

Thanks.

Michael

Michael R. McCann
Michael R. McCann, PA
118 W. Pennsylvania Avenue
Towson, Maryland 21204
(p) 410-825-2150
(f) 410-825-2149

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CONNECT WITH BALTIMORE COUNTY

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www.baltimorecountymd.gov

| | | |
|--------------------------------------|---|-------------------------|
| IN RE: PETITIONS FOR SPECIAL HEARING | * | BEFORE THE |
| AND VARIANCE | | |
| (13217 Cherwin Avenue) | * | OFFICE OF |
| 15th Election District | | |
| 6th Council District | * | ADMINISTRATIVE HEARINGS |
| Craig Kestner | | |
| Legal Owner | * | FOR BALTIMORE COUNTY |
| Petitioner | * | Case No. 2020-0090-SPHA |
| | | |
| | * | |
| | * | |
| | * | |
| | * | |
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| | * | |

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 Craig Kestner, legal owner (“Petitioner”). The Special Hearing was filed pursuant to §304.1 of the Baltimore County Zoning Regulations (“BZCR”) to approve the construction of a single family detached dwelling on two (2) lots with a combined width of 50 ft. in lieu of the required 55 ft. In addition, a Petition for Variance was filed pursuant to § 1B02.3.C.1 to permit a combined width for two (2) lots of 50 ft. in lieu of the required 55 ft. for the construction of a single family detached dwelling.¹

Due to the COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. A site plan was marked and accepted into evidence as Petitioner’s Exhibit 1.

Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Department of Environmental Protection Sustainability (“DEPS”) which indicated that the

¹ The same variance relief was requested and denied in Case No. 2019-0402-SPHA. Mr. Lanzi represented that the Order in that case was appealed and that the Board of Appeals, at his request, has stayed that appeal pending resolution of the instant Petition. In my view this Petition would be barred by *res judicata*, but for the fact that my previous Order is not a final judgment. *See, Seminary Galleria, LLC v. Dulaney Valley Improvement Ass’n*, 192 Md. App. 719 (2010). *Res judicata* bars subsequent petitions for relief unless there are significant changes in circumstances from the time of the first petition to the time of the subsequent petition. Here, there have been no changes to the site, the petitioner is simply seeking relief under a different section of the BCZR – relief that could and should have been sought the first time. But again, because there is no final judgment I must, I suppose, consider the pending petition.

ORDER RECEIVED FOR FILING
 Date 9/29/20
 By [Signature]

Petitioner must comply with critical area requirements. Comments were also received from the Department of Planning (“DOP”) and from The Bureau of Development Plans Review (“DPR”).

Craig Kestner, Neil Lanzi and Bruce Doak appeared in support of the requests. Neil Lanzi, Esq. represented the Petitioner. John Dawson appeared in opposition, on his own behalf and as an officer of the Twin River Beach Protective and Improvement Association.

Factual Background

The subject parcel consists of two adjoining 25 foot wide lots that are part of the Twin River Beach subdivision plat that was recorded in 1929. Mr. Kestner purchased these two, and four adjoining lots, several years ago. He sold the existing residence, which, together with a free standing garage, occupied four of the six lots. He has contracted with a builder for the sale of the remaining two lots, contingent on the grant of the requested relief.

Mr. Doak, the surveyor who prepared the plan, was accepted as an expert in surveying and the BCZR. He testified that in order to appease Mr. Dawson, the next door neighbor, that the Petitioner is amenable to a 40 ft. setback from the front property line. Mr. Doak also testified that before building permits are issued that a site plan that addresses stormwater and tidal flooding problems at the site will have to be approved by DEPS, and by the Department of Public Works (DPW). He testified that “site levelers” and/or dry wells may need to be utilized, as well as permeable paving for the driveway. He testified that the site meets all the criteria of BCZR §304.1, and that in his opinion the requested relief can be granted within the spirit and intent of the BCZR and without causing harm to the public health, safety, and welfare. Mr. Lanzi submitted an amended site plan showing the 40 foot front setback. Per this plan the 10 foot side yard setbacks and 30 foot rear yard setback are observed. (Petitioner’s Exhibit 6). Also submitted were copies of numerous Orders granting BCZR §304.1 relief to other neighborhood residents.

ORDER RECEIVED FOR FILING

Date 9/29/20
By DMignon

Mr. Dawson is the next door neighbor. He raised the same concerns that he raised at the previous hearing: that his views would be impaired, and that he and the neighborhood association are concerned with flooding conditions at the site. He submitted a letter of opposition from the association (Protestants' Exhibit 1), and a series of photographs showing flooding on the lot (Protestants' Exhibit 2).

Special Hearing Relief under BCZR §304.1

Under BCZR §304.1, it is permissible to build a residence on an "undersized" lot if certain conditions are met. This provision of the zoning regulations was enacted in order to "grandfather" the development rights for lots like the ones in this case. *See, Mueller v. People's Counsel for Baltimore County*, 177 Md. App. 43, 84-94 (2007). The regulation states as follows:

§ 304.1 - Types of dwellings allowed; conditions.

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

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

If all these conditions are met then relief should be granted under this regulation, provided that it will not cause harm to the public health, safety, or welfare. Based on the record evidence I find that all the conditions are met in this case. The question therefore is whether the relief will harm the public health, safety, or welfare. Based on the conditions I will impose I find that the relief can be granted without causing such harm. I am mindful that this conclusion is at odds with my recent decision in the case discussed in the footnote above. But I am persuaded by Mr.

ORDER RECEIVED FOR FILING

Date 9/29/20

By JMugnon

Doak's additional testimony concerning the flood control measures that will be required, as well as the additional front setback that will be provided. Not only will this reduce the obstruction of Mr. Dawson's water views, it will reduce the footprint of the proposed residence, thereby reducing impervious surface. In the final analysis, I do not believe that I can lawfully deny the Petitioner the value of his property rights – including the development rights, when conditions can be imposed that will also protect the public health, safety, and welfare.

THEREFORE, IT IS ORDERED this 29th day of **September, 2020**, by this Administrative Law Judge, that the Petition for Special Hearing seeking relief pursuant to § 304.1, to approve the construction of a single family detached dwelling on two (2) lots with a combined width of 50 ft. in lieu of the required 55 ft. and hereby is GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance seeking relief pursuant to § 1B02.3.C1, to permit a combined width for two (2) lots of 50 ft. in lieu of the required 55 ft. for the construction of a single family detached dwelling is therefore MOOT.

The relief granted herein shall be subject to the following:

- Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at 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, Petitioner would be required to return the subject property to its original condition.
- Petitioner must comply with the critical area and flood protection regulations.
- Petitioner must submit stormwater runoff and tidal flood control site plans and obtain approval from DEPS and from DPW prior to the issuance of permits.
- Petitioner shall submit a final site plan depicting a 40 ft. front yard setback, 10 ft. side yard setbacks, and 30 ft. rear yard setback.

ORDER RECEIVED FOR FILING

Date 9/29/20

By J. Mignone

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



PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County


PMM/dlm

ORDER RECEIVED FOR FILING

Date

9/29/20

By





JOHN A. OLSZEWSKI, JR.
County Executive

PAUL M. MAYHEW
Managing Administrative Law Judge
LAWRENCE M. STAHL
Administrative Law Judge

September 29, 2020

Neil Lanzi, Esquire
102 W. Pennsylvania Avenue, Suite 406
Towson, MD 21204

RE: Petition for Special Hearing and Variance
Case No. 2020-0090-SPHA
Property: 13217 Cherwin Avenue

Dear Mr. Lanzi:

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

Pursuant to Baltimore County Code § 32-3-401(a), "a person aggrieved or feeling aggrieved" by this Decision and Order may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Office of Administrative Hearings at 410-887-3868.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul M. Mayhew".

PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM:dln

Enclosure

c: Craig Kestner, 13015 Eastern Avenue, Baltimore, MD 21220
Bruce Doak, 3801 Baker Schoolhouse road, Freeland, MD 21053
John Dawson, 13215 Cherwin Avenue, Middle River, MD 21220

Paul Mayhew

From: Paul Mayhew
Sent: Thursday, September 24, 2020 1:53 PM
To: Peoples Counsel; Peter Max Zimmerman
Subject: FW: Case No. 2020-0090-SPHA
Attachments: 20200924133925349.pdf

Peter,
Can you give me a call about this case. Neil Lanzi stated at the hearing that he had spoken with you (he actually said "People's Counsel" but I'm assuming that meant you). I denied variance relief last November and they appealed to the BOA. Evidently the BOA has stayed the appeal pending resolution of this new Petition, in which they are seeking the exact same relief, on the exact same facts, but now as a Special Hearing under BCZR 304. I realize my prior Order is not a final judgment but this still feels like they are trying to circumvent res judicata principles.

Paul M. Mayhew
Managing Administrative Law Judge
105 West Chesapeake Ave., Suite 103
Towson, Maryland 21204
410-887-3868
pmayhew@baltimorecountymd.gov

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

From: adminhearingscpr@baltimorecountymd.gov <adminhearingscpr@baltimorecountymd.gov>
Sent: Thursday, September 24, 2020 1:39 PM
To: Paul Mayhew <pmayhew@baltimorecountymd.gov>
Subject: Message from "RNP002673F6C9D3"

This E-mail was sent from "RNP002673F6C9D3" (MP 3055).

Scan Date: 09.24.2020 13:39:25 (-0400)
Queries to: adminhearingscpr@baltimorecountymd.gov

Attendance Report

My Reports->Search Criteria->Search Results->Detailed Results

The following is a portion of the attendance report. To obtain all the details, click **Export**.

Export

*Attention to Duration ratio: Attentiveness based on total duration of the event.

**Attention to Attendance ratio: Attentiveness based on how long participant was in the event.

All times in: New York Time

Attendee Count 1

| | | | |
|--------------------------------------|----------------------------------|---|--|
| Event ID: | 170549370369876699 | Event key: | 1729032789 |
| Program name: | | Event name: | Zoning Hearing - 13217 Cherwin avenue |
| Event Start date: | September 23, 2020 New York Time | Event Start time: | 1:30 pm New York Time |
| Event End time: | 2:30 pm New York Time | Event/Recording Duration: | 60.0 mins |
| User Type: | Panelist | First name: | John |
| Last name: | Dawson | Email: | jdawson999@aol.com |
| Invited: | Yes | Registered: | Yes |
| Attended: | Yes | Join Time: | 1:22 pm New York Time |
| Leave Time: | 2:50 pm New York Time | Attendance Duration: | 88.0 mins |
| Attention to Duration ratio:* | 93% | Attention to Attendance ratio:** | 100% |
| Lead source ID: | | Registration Date/Time: | September 23, 2020 1:21 pm New York Time |
| Registration ID: | 724027 | Registration Score: | 0.0 |
| Okay to send email: | No | IP: | 100.110.182.177 |
| Client Agent: | IPHONE,Standalone App | Title: | |
| Number of Employees: | | Company: | |
| Phone: | 1- | Address 1: | 13215 Cherwin Ave. |
| Address 2: | | City: | Middle River |
| State/Province: | MD | ZIP/Postal code: | 21220 |
| Country/Region: | United States of America | | |

Attendee Count 2

| | | | |
|--------------------------------------|----------------------------------|---|---------------------------------------|
| Event ID: | 170549370369876699 | Event key: | 1729032789 |
| Program name: | | Event name: | Zoning Hearing - 13217 Cherwin avenue |
| Event Start date: | September 23, 2020 New York Time | Event Start time: | 1:30 pm New York Time |
| Event End time: | 2:30 pm New York Time | Event/Recording Duration: | 60.0 mins |
| User Type: | Panelist | First name: | Barbara |
| Last name: | Kestner | Email: | bkestner@bnjsweeping.com |
| Invited: | Yes | Registered: | No |
| Attended: | Yes | Join Time: | 1:25 pm New York Time |
| Leave Time: | 2:51 pm New York Time | Attendance Duration: | 85.0 mins |
| Attention to Duration ratio:* | 89% | Attention to Attendance ratio:** | 100% |
| Lead source ID: | | Registration Date/Time: | |
| Registration ID: | 0 | Registration Score: | |
| Okay to send email: | No | IP: | 192.168.1.153 |
| Client Agent: | WINDOWS,Chrome | Title: | |
| Number of Employees: | | Company: | |
| Phone: | 1- | Address 1: | |
| Address 2: | | City: | |
| State/Province: | | ZIP/Postal code: | |
| Country/Region: | | | |

Attendee Count 3

| | | | |
|------------------------------|----------------------------------|----------------------------------|---------------------------------------|
| Event ID: | 170549370369876699 | Event key: | 1729032789 |
| Program name: | | Event name: | Zoning Hearing - 13217 Cherwin avenue |
| Event Start date: | September 23, 2020 New York Time | Event Start time: | 1:30 pm New York Time |
| Event End time: | 2:30 pm New York Time | Event/Recording Duration: | 60.0 mins |
| User Type: | Panelist | First name: | Bruce |
| Last name: | Doak | Email: | bdoak@bruceedoakconsulting.com |
| Invited: | Yes | Registered: | No |
| Attended: | Yes | Join Time: | 1:26 pm New York Time |
| Leave Time: | 2:50 pm New York Time | Attendance Duration: | 84.0 mins |
| Attention to Duration | 89% | Attention to Attendance | 100% |

| | | | |
|-----------------------------|------------|--------------------------------|---------------|
| ratio:* | | ratio:** | |
| Lead source ID: | | Registration Date/Time: | |
| Registration ID: | 0 | Registration Score: | |
| Okay to send email: | No | IP: | 192.168.1.157 |
| Client Agent: | MAC,Safari | Title: | |
| Number of Employees: | | Company: | |
| Phone: | 1- | Address 1: | |
| Address 2: | | City: | |
| State/Province: | | ZIP/Postal code: | |
| Country/Region: | | | |

Attendee Count 4

| | | | |
|--------------------------------------|----------------------------------|---|---------------------------------------|
| Event ID: | 170549370369876699 | Event key: | 1729032789 |
| Program name: | | Event name: | Zoning Hearing - 13217 Cherwin avenue |
| Event Start date: | September 23, 2020 New York Time | Event Start time: | 1:30 pm New York Time |
| Event End time: | 2:30 pm New York Time | Event/Recording Duration: | 60.0 mins |
| User Type: | Panelist | First name: | Neil |
| Last name: | Lanzi | Email: | nlanzi@wcslaw.com |
| Invited: | Yes | Registered: | No |
| Attended: | Yes | Join Time: | 1:28 pm New York Time |
| Leave Time: | 2:51 pm New York Time | Attendance Duration: | 82.0 mins |
| Attention to Duration ratio:* | 87% | Attention to Attendance ratio:** | 100% |
| Lead source ID: | | Registration Date/Time: | |
| Registration ID: | 0 | Registration Score: | |
| Okay to send email: | No | IP: | 10.0.0.52 |
| Client Agent: | WINDOWS,IE | Title: | |
| Number of Employees: | | Company: | |
| Phone: | 1- | Address 1: | |
| Address 2: | | City: | |
| State/Province: | | ZIP/Postal code: | |
| Country/Region: | | | |

Attendee Count 5

| | | | |
|--------------------------------------|----------------------------------|---|---------------------------------------|
| Event ID: | 170549370369876699 | Event key: | 1729032789 |
| Program name: | | Event name: | Zoning Hearing - 13217 Cherwin avenue |
| Event Start date: | September 23, 2020 New York Time | Event Start time: | 1:30 pm New York Time |
| Event End time: | 2:30 pm New York Time | Event/Recording Duration: | 60.0 mins |
| User Type: | Panelist | First name: | Henry |
| Last name: | Ayakwah | Email: | hayakwah@baltimorecountymd.gov |
| Invited: | Yes | Registered: | No |
| Attended: | Yes | Join Time: | 1:15 pm New York Time |
| Leave Time: | 2:51 pm New York Time | Attendance Duration: | 95.0 mins |
| Attention to Duration ratio:* | 100% | Attention to Attendance ratio:** | 100% |
| Lead source ID: | | Registration Date/Time: | |
| Registration ID: | 0 | Registration Score: | |
| Okay to send email: | No | IP: | 172.26.101.42 |
| Client Agent: | WINDOWS,IE | Title: | |
| Number of Employees: | | Company: | |
| Phone: | 1- | Address 1: | |
| Address 2: | | City: | |
| State/Province: | | ZIP/Postal code: | |
| Country/Region: | | | |

Sp. to Neil Lanzi
9-21 11:40 AM

- Diff. for regs
- BOA to hold their case until this one gets heard
- People's Counsel is involved
- Moved house back
- Shrink house
- No setback variations

To send case law as exhibits today.

To send ltr. that went to community addressing concerns.

Debra Wiley

From: Neil Lanzi <nlanzi@wcslaw.com>
Sent: Monday, September 21, 2020 12:21 PM
To: Debra Wiley
Subject: Hearing Wednesday
Attachments: Board of Improvement Letter (00401899xB71C4).docx; sketch reflecting explanation of petition amendments.pdf

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

Debbie,

As requested, here is a copy of the letter sent to the community back in December. I am also attaching an explanatory plan that Bruce prepared. It will be coming to you as an exhibit also. I believe we will have 8 additional exhibits for this case.

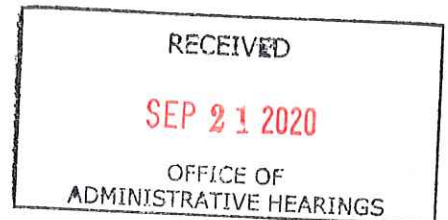
We filed originally as a Special Hearing only for an undersized lot under Section 304 but the zoning office insisted on the alternative variance relief. If you have any questions, please let me know.

Regards,

Neil



Neil Lanzi
Partner
Wright, Constable & Skeen, LLP
102 W. Pennsylvania Avenue, Suite 406
Towson, Maryland 21204
Tele: 410-659-1390
E-mail: nlanzi@wcslaw.com



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December 12, 2019

The Twin River Beach Protective
and Improvement Association, Inc.
13209 Powderdale Avenue
Middle River, MD 21220
Attn: Linda Kuchta, President

Re: My Client: Craig Kestner
Lots 155 and 156 (13217 Cherwin Avenue)
Case 2019-0402-SPHA

Dear Ms. Kuchta:

This letter is in follow up to our telephone conversation earlier this week with regard to my client and the above referenced property. As I informed you, my client has appealed the October 23, 2019 Decision of the Administrative Law Judge to the Board of Appeals of Baltimore County. Specifically, the appeal is limited to the denial of the Petitions for Variance to permit a proposed building on a lot with a width of 50 ft. in lieu of the required 55 ft. and to permit a front average setback of 25 ft. in lieu of the required 40 ft. in the DR 5.5 zone. As indicated to you during our telephone conversation, my preference would be to meet with members of your Association's Board and the immediate neighbor, John Dawson, however in accordance with your instructions on behalf of the Board, I am sending this written request.

First, I would respectfully request the Board of Directors of the Twin River Beach Protective and Improvement Association, Inc. ("Association") reconsider its position opposing the variances and therefore the construction of a residence on Lots 155 and 156 along Cherwin Avenue. My client respects and appreciates the concerns of the Association and Mr. Dawson and therefore has authorized me to present an alternative plan. A copy of the site plan previously submitted to the Administrative Law Judge is attached with the changes mentioned marked in red and blue. The residence proposed on the site plan presented to the Administrative Law Judge consisted of 3,306 sq. ft. for a two story residence and 4,950 sq. ft. for a three story residence.

The enclosed red line plans present a substantially smaller residence of 2,436 sq. ft. for a two story residence and 3,654 sq. ft. for a three story residence. The difference between the original plan and the amended plan is 870 sq. ft. based on two stories and 1,305 sq. ft. based on three stories. A residence in your neighborhood is allowed a height up to 50 ft. As you probably are aware residing near the water, the first story is essentially unusable.

December 12, 2019

Page Two

Second, the next substantial change shown on the new plan is the house location. The proposed residence has been pushed back away from Cherwin Avenue from the 25 feet as originally presented to 40 feet, thus eliminating the second variance. There have been many homes constructed on 50-foot-wide lots both in your neighborhood and other neighborhoods in Eastern Baltimore County.

Third, you expressed to me during our telephone conversation this week and to the Administrative Law Judge by way of the Association's October 9, 2019 letter, of the Association's concern for flooding in this area. Baltimore County will require appropriate steps be taken by any builder on the subject lots and in fact will not approve the building permit for a residence on these lots unless County requirements are met. I would urge you to contact Terry Curtis in the Department of Public Works at (410) 887-3117 to confirm.

It is my understanding the Association Board intends to meet on or about January 7, 2020 to review and discuss this proposal. If you deem it necessary, I would be more than happy to present what I have described by this letter. It is my client's sincere hope that an agreement can be reached without the necessity of the full hearing before the Board of Appeals.

I look forward to hearing from you.

Very truly yours,

J. Neil Lanzi

cc: Craig Kestner
John Dawson

John Dawson
13215 Cherwin Avenue
Middle River, MD 21220

Craig Kestner
7237 Greenbank Road
Baltimore, MD 21220

GENERAL SITE INFORMATION

1. Ownership: Celia Kestner
10615 Eastern Avenue Baltimore, MD 21220
2. Address: 13217 Cherrwin Avenue
3. Parcel Number: 558 04929143E
4. Area: 8,850 sq. ft. (9,139 sq. ft. Total (per SDAT))
5. Tax Map / Parcel / Lot / Tax account #: 24 / 43 / 1156 / 15 22 350202
6. Parcel / Parcel / Lot / Tax account #: 24 / 43 / 1156 / 15 22 350202
7. The Maryland State Historic Sites from the deeds recorded in the Land Records of Baltimore County, MD cover information shown herein was taken from Baltimore County GIS data 06/01 and the information provided by Telephone Copy on site request.
8. Improvements: Vacant

OFFICE OF ZONING

Zoning: DR S.S.
 Existing History: #219-2401-SPHA
 Special Use: granted
 Variance: denied
 DR S.S. Setbacks for Residential Dwellings

Front: 25 feet from the street right of way
 Side: 10 feet from property line
 Rear: 25 feet from property line

ENVIRONMENTAL IMPACT

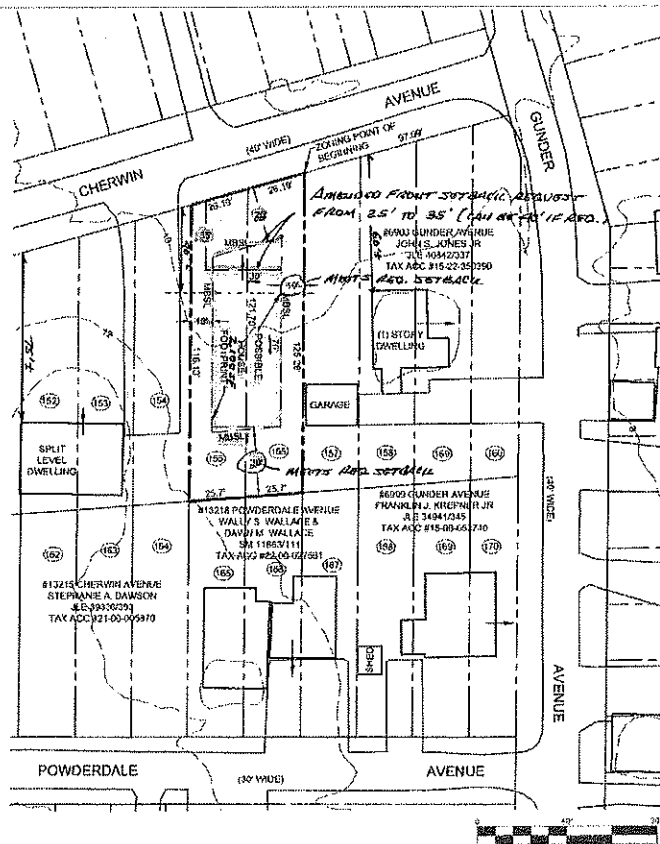
1. A future dwelling will be provided by public water and sewer.
2. There are no underground storage tanks on the subject property.
3. The subject property is in the Chesapeake Bay Critical Area.
4. The subject property is located in flood plain zone AE, in the 100 Year Flood Hazard Area.

OFFICE OF PLANNING

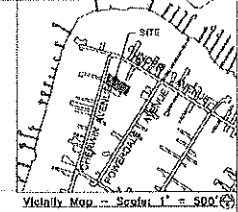
Regional Planning District: 100000 District Code: 302

PROPOSED DEVELOPMENT

The proposed development is a split-level dwelling.



Notes: 1/4" = 20' front setback = 4'5" FOOTPRINT 65' x 30' = 1950 sq ft

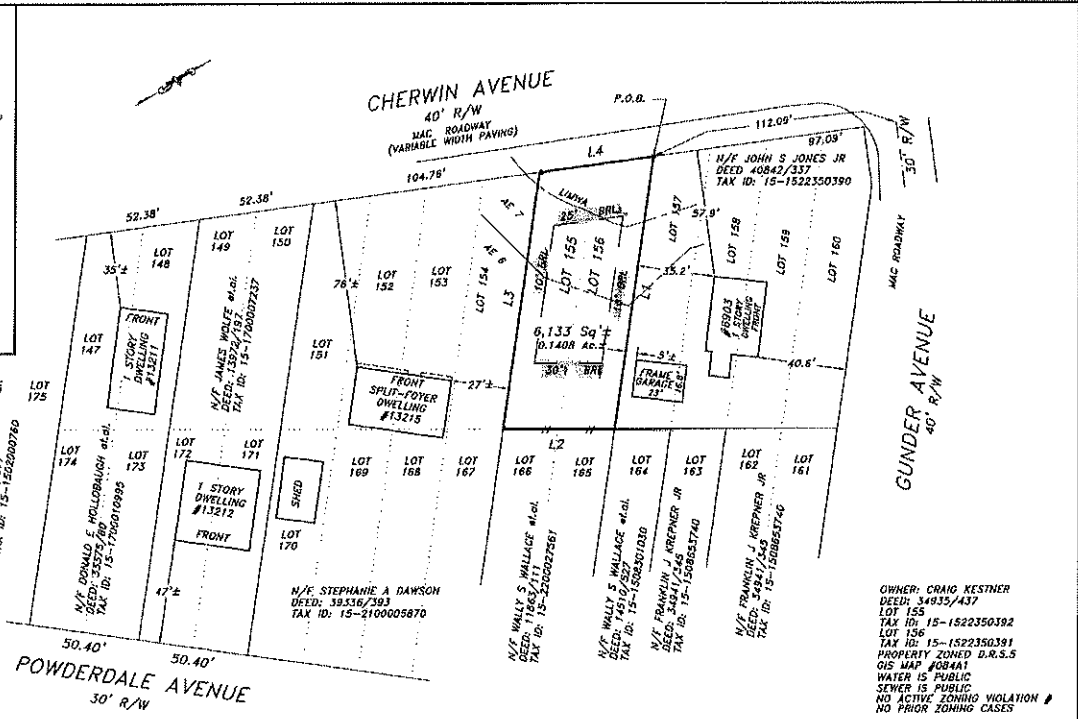
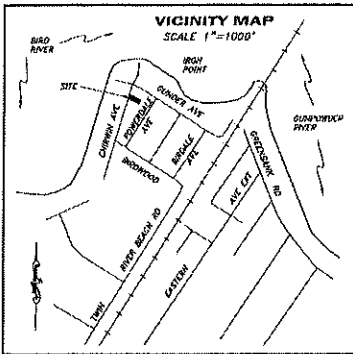


Bruce E. Deak Consulting, LLO
 Land Use Expert and Surveyor
 2001 Baker Schoolhouse Road
 Pikesville, MD 21208
 P: 410-420-1626 F: 410-412-4126
 www.bruceedeakconsulting.com

**PLAN TO ACCOMPANY
 A ZONING PETITION
 FOR
 LOT 155 & LOT 156
 "TWIN RIVER BEACH"
 #13217 CHERWIN AVENUE**
 BALTIMORE COUNTY, MARYLAND
 15th ELECTION DISTRICT 6th CONGRESSIONAL DISTRICT

Date: 3/14/2020
 Scale: 1"=60'

CASE #2020-0090-SPHA PLAN - AMENDMENT EXPLAINED



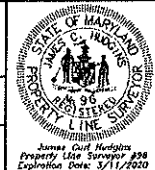
| LINE | BEARING | DISTANCE |
|------|---------------|----------|
| L1 | S 51°11'00" E | 125.26' |
| L2 | S 30°45'52" W | 50.90' |
| L3 | N 51°11'00" W | 118.13' |
| L4 | N 23°01'00" E | 52.38' |

NOTE: THE BEARINGS AND NORTH ARROW SHOWN HEREON ARE IN THE MERIDIAN OF THE PLAT ENTITLED SECTION A "TWIN RIVER BEACH" RECORDED AMONG THE LAND RECORDS OF BALTIMORE COUNTY, MARYLAND IN PLAT BOOK 9 FOLIO 33.

The purpose of this drawing is to locate and set the corners of the property shown hereon, being known as:
 LOTS 155-156 as shown on the plat entitled
 SECTION A "TWIN RIVER BEACH"
 recorded among the land records of Baltimore County, Maryland in
 Plat Book 9, folio 33

This is to certify that I either personally prepared or was in responsible charge over the preparation of this drawing and the surveying work reflected in it, all set forth in Regulations 12 of Chapter 09.13.02 of the Code of Maryland Annotated Regulations.

Subject property is shown in Zone AE on the FIRM Map of Baltimore County, Maryland on Community Panel Number 2400100315 G, effective 5/5/2014

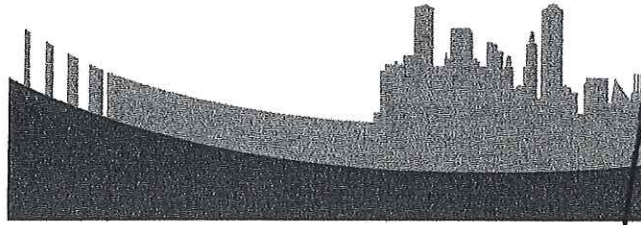


PLAN TO ACCOMPANY A PETITION FOR A VARIANCE
 CHERWIN AVENUE
 6th COUNCILMANIC DISTRICT
 15th ELECTION DISTRICT
 BALTIMORE COUNTY, MARYLAND

NTT Associates, Inc.
 16205 Old Frederick Rd.
 Mt. Airy, Maryland 21771
 Phone: (410) 442-2031
 Fax: (410) 442-1515
 www.nitlsurveyors.com

Scale: 1"= 40'
 Date: 10/23/2018
 Filed By: RMS/TOM
 Drawn By: RIK/SCK
 File No.: MSC 12864 A
 Page No.: 1 of 1

CASE # 2019-0402-SPHA PLAN



CERTIFICATE OF POSTING

September 3, 2020

September 18, 2020 amended for second inspection

Re:

Zoning Case No. 2020- 0090- SPHA

Legal Owner: Craig Kestner

Hearing date: September 23, 2020

Baltimore County Department of Permits, Approvals & Inspections
County Office Building
111 West Chesapeake Avenue, Room 111
111 West Chesapeake Avenue Towson, MD 21204

Attention: Jenae Johnson

Ladies and Gentlemen,

This letter is to certify under the penalties of perjury that the two necessary signs required by law were posted conspicuously on the property located at **13217 Cherwin Avenue**.

The signs were initially posted on **September 1, 2020**.

The subject property was also inspected on **September 18, 2020**.

Sincerely,

A handwritten signature in black ink, appearing to read "B. E. Doak".

Bruce E. Doak
MD Property Line Surveyor #531

See the attached sheets for the photos of the posted signs

Bruce E. Doak Consulting, LLC
3801 Baker Schoolhouse Road
Freeland, MD 21053
410-419-4906 cell / 443-900-5535 office
bdoak@bruceedoakconsulting.com



ZONING NOTICE

CASE NO. 2010-00000-0000

12345 Main Avenue

THE BOARD OF ZONING ADJUSTMENTS HAS GRANTED A ZONING VARIANCE TO THE ABOVE PROPERTY FOR THE CONSTRUCTION OF A SINGLE-FAMILY RESIDENTIAL DWELLING WITH A SECONDARY SUITE. THE VARIANCE IS SUBJECT TO THE FOLLOWING CONDITIONS:

1. THE VARIANCE SHALL BE LIMITED TO THE CONSTRUCTION OF ONE (1) SINGLE-FAMILY RESIDENTIAL DWELLING WITH A SECONDARY SUITE.
2. THE VARIANCE SHALL BE LIMITED TO THE CONSTRUCTION OF A SECONDARY SUITE WITH A SEPARATE ENTRANCE AND EXITS.
3. THE VARIANCE SHALL BE LIMITED TO THE CONSTRUCTION OF A SECONDARY SUITE WITH A SEPARATE UTILITIES METER.
4. THE VARIANCE SHALL BE LIMITED TO THE CONSTRUCTION OF A SECONDARY SUITE WITH A SEPARATE WATER METER.
5. THE VARIANCE SHALL BE LIMITED TO THE CONSTRUCTION OF A SECONDARY SUITE WITH A SEPARATE ELECTRICAL METER.
6. THE VARIANCE SHALL BE LIMITED TO THE CONSTRUCTION OF A SECONDARY SUITE WITH A SEPARATE GAS METER.
7. THE VARIANCE SHALL BE LIMITED TO THE CONSTRUCTION OF A SECONDARY SUITE WITH A SEPARATE HEATING SYSTEM.
8. THE VARIANCE SHALL BE LIMITED TO THE CONSTRUCTION OF A SECONDARY SUITE WITH A SEPARATE COOLING SYSTEM.
9. THE VARIANCE SHALL BE LIMITED TO THE CONSTRUCTION OF A SECONDARY SUITE WITH A SEPARATE WATER HEATER.
10. THE VARIANCE SHALL BE LIMITED TO THE CONSTRUCTION OF A SECONDARY SUITE WITH A SEPARATE SINK.
11. THE VARIANCE SHALL BE LIMITED TO THE CONSTRUCTION OF A SECONDARY SUITE WITH A SEPARATE TOILET.
12. THE VARIANCE SHALL BE LIMITED TO THE CONSTRUCTION OF A SECONDARY SUITE WITH A SEPARATE SHOWER.
13. THE VARIANCE SHALL BE LIMITED TO THE CONSTRUCTION OF A SECONDARY SUITE WITH A SEPARATE BATH.
14. THE VARIANCE SHALL BE LIMITED TO THE CONSTRUCTION OF A SECONDARY SUITE WITH A SEPARATE KITCHEN.
15. THE VARIANCE SHALL BE LIMITED TO THE CONSTRUCTION OF A SECONDARY SUITE WITH A SEPARATE LIVING AREA.
16. THE VARIANCE SHALL BE LIMITED TO THE CONSTRUCTION OF A SECONDARY SUITE WITH A SEPARATE BEDROOM.
17. THE VARIANCE SHALL BE LIMITED TO THE CONSTRUCTION OF A SECONDARY SUITE WITH A SEPARATE BATHROOM.
18. THE VARIANCE SHALL BE LIMITED TO THE CONSTRUCTION OF A SECONDARY SUITE WITH A SEPARATE CLOSET.
19. THE VARIANCE SHALL BE LIMITED TO THE CONSTRUCTION OF A SECONDARY SUITE WITH A SEPARATE WARDROBE.
20. THE VARIANCE SHALL BE LIMITED TO THE CONSTRUCTION OF A SECONDARY SUITE WITH A SEPARATE DRESSING ROOM.

DATE OF THE VARIANCE: SEPTEMBER 21, 2010

12:00 PM

FOR MORE INFORMATION, CONTACT THE BOARD OF ZONING ADJUSTMENTS AT 12345 MAIN AVENUE, SUITE 100, ANYTOWN, CA 94500. PHONE: (925) 555-1234. FAX: (925) 555-5678. WEBSITE: WWW.CITYOFANYTOWN.CA.GOV

IF YOU HAVE ANY COMMENTS OR QUESTIONS, PLEASE CONTACT THE BOARD OF ZONING ADJUSTMENTS AT 12345 MAIN AVENUE, SUITE 100, ANYTOWN, CA 94500. PHONE: (925) 555-1234. FAX: (925) 555-5678. WEBSITE: WWW.CITYOFANYTOWN.CA.GOV

IF YOU HAVE ANY COMMENTS OR QUESTIONS, PLEASE CONTACT THE BOARD OF ZONING ADJUSTMENTS AT 12345 MAIN AVENUE, SUITE 100, ANYTOWN, CA 94500. PHONE: (925) 555-1234. FAX: (925) 555-5678. WEBSITE: WWW.CITYOFANYTOWN.CA.GOV

IF YOU HAVE ANY COMMENTS OR QUESTIONS, PLEASE CONTACT THE BOARD OF ZONING ADJUSTMENTS AT 12345 MAIN AVENUE, SUITE 100, ANYTOWN, CA 94500. PHONE: (925) 555-1234. FAX: (925) 555-5678. WEBSITE: WWW.CITYOFANYTOWN.CA.GOV

ZONING NOTICE

CASE NO: 2020-0090-SPHA
13247 Gborwin Avenue

THE ADMINISTRATIVE LAW BOARD OF BALTIMORE COUNTY, BY
AUTHORITY OF THE ZONING AND REGULATIONS OF
BALTIMORE COUNTY, WILL HOLD A PUBLIC HEARING ON THE
MATTER IDENTIFIED:

DATE & TIME: WEDNESDAY, SEPTEMBER 23, 2020
11:00 AM

FOR FURTHER INFORMATION, PLEASE CONTACT THE HEARING
CLERK AT 410-386-7300. IF YOU HAVE ANY QUESTIONS
REGARDING THE MATTER, PLEASE CONTACT THE HEARING
CLERK AT 410-386-7300. IF YOU WISH TO APPEAR AT
THE HEARING, PLEASE CONTACT THE HEARING CLERK AT
410-386-7300. IF YOU WISH TO SUBMIT A COMMENT
ON THE MATTER, PLEASE CONTACT THE HEARING CLERK AT
410-386-7300. IF YOU WISH TO REQUEST A PUBLIC
HEARING, PLEASE CONTACT THE HEARING CLERK AT
410-386-7300. IF YOU WISH TO REQUEST A PUBLIC
HEARING, PLEASE CONTACT THE HEARING CLERK AT
410-386-7300.



JOHN A. OLSZEWSKI, JR.
County Executive

MICHAEL D. MALLINOFF, *Director*
Department of Permits,
Approvals & Inspections

September 9, 2020

Neil Lani,
102 W. Pennsylvania Ave Ste 406
Towson MD 21204

RE: Case Number: 2020-0090-SPHA, 13217 Cherwin 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 March 30, 2020. This letter is not an approval, but only a **NOTIFICATION**.

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

A handwritten signature in black ink, appearing to read "W. Carl Richards, Jr.", with a long, sweeping flourish extending to the right.

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR/kl

Enclosures

c: People's Counsel
Bruce E Doak 3801 Baker Schoolhouse Road Freeland MD 21053

MDOT
MARYLAND DEPARTMENT
OF TRANSPORTATION
STATE HIGHWAY
ADMINISTRATION

Larry Hogan
Governor
Boyd K. Rutherford
Lt. Governor
Gregory Slater
Secretary
Tim Smith, P.E.
Acting Administrator

Date: May 11, 2020

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

Dear Ms. Lewis:

Thank you for the opportunity to review your referral request on the subject of the Case number referenced below. We have determined that the subject property does not access a State roadway and is not affected by any State Highway Administration projects. Therefore, based upon available information this office has no objection to Baltimore County Zoning Advisory Committee approval of Case No. **2020-0090-SPHA**

Special Hearing, Variance
Craig Kestner
13217 Cherwin Avenue

Should you have any questions regarding this matter, please contact Mr. Richard Zeller at 410-229-2332 or 1-866-998-0367 (in Maryland only) extension 2332, or by email at (rzeller@mdot.maryland.gov).

Sincerely,



For Wendy Wolcott, P.L.A.
Metropolitan District Engineer
Maryland Department of Transportation
State Highway Administration
District 4 - Baltimore and Harford Counties

WW/RAZ

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE MEMORANDUM

TO: Michael D. Mallinoff
Director, Department of Permits, Approvals and Inspections

DATE: 4/15/2020

FROM: C. Pete Gutwald
Director, Department of Planning

SUBJECT: ZONING ADVISORY COMMITTEE COMMENTS
Case Number: 20-090

INFORMATION:

Property Address: 13217 Cherwin Avenue
Petitioner: Craig Kestner
Zoning: DR 5.5
Requested Action: Variance, Special Hearing

The Department of Planning has reviewed the petition for the following:

Special Hearing – To approve the construction of a single family detached dwelling on two lots with a combined width of 50 feet in lieu of the required 55 feet per Section 304.1 of the BCZR

Variance – To permit a combined width for two lots of 50 feet in lieu of the required 55 feet for the construction of a single family detached dwelling per Section 304.1 of the BCZR

The site is in a waterfront neighborhood with similar lot sizes to that requested. The single-family dwellings in the neighborhood are a mix of different architecture types with fairly large setbacks from the street.

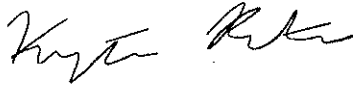
The site is located within the Eastern Baltimore County Revitalization Strategy which was adopted on July 1, 1996. On Page 51 it states the “special character and quality of life in the outer community conservation Areas should be reinforced and enhanced.”

The petitioner has agreed to revise the submitted site plan to provide a 40’ front yard setback in lieu of the 25’ shown on the plan so that the placement of the new dwelling will be more consistent with the neighborhood.

The Department of Planning supports the request with the modification of the front setback to a minimum of 40 feet.

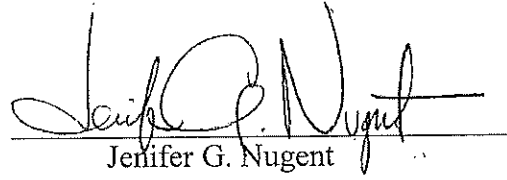
For further information concerning the matters stated herein, please contact Wally Lippincott at 410-887-3480.

Prepared by:



Krystle Patchak

Division Chief:



Jenifer G. Nugent

CPG/JGN/kma/

c: Wally Lippincott
Choose an item.
Bruce E. Doak, Bruce E. Doak Consulting, LLC
Neil J. Lanzi, Esquire, Wright, Constable & Skeen LLP
Office of the Administrative Hearings
People's Counsel for Baltimore County

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Michael Millanoff, Director
Department of Permits, Approvals

FROM: ^{EFC for VKD}
Vishnu Desai, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For April 13, 2020
Item No. 2020-0090-SPHA

DATE: April 9, 2020

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

Prior to building permit application, the Petitioner must contact the office of the Director of Public works in writing to determine the Flood Protection Elevation, so the first floor elevation can be established.

* * * * *

VKD: efc
cc: file

The Daily Record

200 St. Paul Place Suite 2480

Baltimore, Maryland 21202

1 (443) 524-8100

www.thedailyrecord.com

Order #: 11913059

Case #:

Description:

NOTICE OF ZONING HEARING - CASE NUMBER:
2020-0090-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:

9/3/2020

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 virtual hearing the property identified herein as follows:

CASE NUMBER: 2020-0090-SPHA

13217 Cherwin Avenue

East side of Cherwin Avenue, 97 ft. south of Gunder Avenue

15th Election District - 6th Councilmanic District

Legal Owners: Craig Kestner

Special Hearing to approve the construction of a single family detached dwelling on two lots with a combined width of 50 feet in lieu of the required 55 ft. Variance to permit a combined width for two lots of 50 ft. in lieu of the required 55 ft. for the construction of a single family detached dwelling.

Hearing: Wednesday, September 23, 2020 at 1:30 p.m.

For information on how to participate in the hearings please go to www.baltimorecountymd.gov/adminhearings no later than 48 hours prior to the hearing. You will be asked to provide your contact information and the case number provided above. You may also call 410-887-3868, ext. 0.

Michael Mallinoff

Director of Permits, Approvals and Inspections for Baltimore County



JOHN A. OLSZEWSKI, JR.
County Executive

MICHAEL D. MALLINOFF, Director
Department of Permits,
Approvals & Inspections

August 24, 2020

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 virtual hearing on the property identified herein as follows:

CASE NUMBER: 2020-0090-SPHA

13217 Cherwin Avenue
East side of Cherwin Avenue, 97 ft. south of Gunder Avenue
15th Election District – 6th Councilmanic District
Legal Owners: Craig Kestner

Special Hearing to approve the construction of a single family detached dwelling on two lots with a combined width of 50 feet in lieu of the required 55 ft. Variance to permit a combined width for two lots of 50 ft. in lieu of the required 55 ft. for the construction of a single family detached dwelling.

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A handwritten signature in black ink, appearing to read "Michael Mallinoff".

Michael Mallinoff
Director

MM:kl

C: Neil Lanzi, 102 W. Pennsylvania Avenue, Ste. 406, Towson 21204
Craig Kestner, 13015 Eastern Avenue, Baltimore 21220
Bruce Doak, 3801 Baker Schoolhouse Road, Freeland 21053

NOTES: (1) THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY THURS., SEPTEMBER 3, 2020

Donna Mignon

From: Bruce Doak <doakfarm@gmail.com>
Sent: Monday, September 21, 2020 11:22 AM
To: Donna Mignon
Subject: Zoning Hearing Panelists

CAUTION: This message from doakfarm@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.

Donna,

Please send an invite to the following people for tomorrow's hearings:

* Case #2020-0089-A david@dspcontracting.com

Case #2020-0087-A ✓ mcallister.julie@gmail.com kmcallister@accessholdings.com

Case #2020-0088-A ✓ ejtaylor25@hotmail.com

Please send an invite for Wednesday's hearing:

* Case #2020-0090-SPHA bkestner@bnjsweeping.com ✓ *prev. invited*

Thank you very much.

Bruce
Bruce E. Doak Consulting, LLC
3801 Baker Schoolhouse Road
Freeland, MD 21053
410-419-4906
bdoak@bruceedoakconsulting.com

Edit Panelist Invitation List

You can select contacts from an existing address book, import a Comma or Tab Delimited file (file contains non-ASCII characters, use a Unicode file delimited either by commas or tabs) or add new contacts. Note that the number of invitation emails cannot exceed 10000.

Panelists to Invite

| | Name | Email address | Phone number | Language | Time Zone | Locale |
|--------------------------|--|--------------------------------|--------------|----------|---------------|--------|
| <input type="checkbox"/> | <u>donna mignon</u> (Alternate Host) | dmignon@baltimorecountymd.gov | 1- | English | New York Time | U.S. |
| <input type="checkbox"/> | <u>henry ayakwah</u> (Alternate Host) | hayakwah@baltimorecountymd.gov | 1- | English | New York Time | U.S. |
| <input type="checkbox"/> | <u>Barbara Kestner</u> | bkestner@bnjsweeping.com | 1- | English | New York Time | U.S. |
| <input type="checkbox"/> | <u>bruce e. doak</u> | bdoak@bruceedoakconsulting.com | 1- | English | New York Time | U.S. |
| <input type="checkbox"/> | <u>Craig Kestner</u> | kbigcraig@aol.com | 1- | English | New York Time | U.S. |
| <input type="checkbox"/> | <u>J. Neil Lanzi, Esq.</u> | nlanzi@wcslaw.com | 1- | English | New York Time | U.S. |
| <input type="checkbox"/> | <u>John Dawson</u> | jdawson999@aol.com | 1- | English | New York Time | U.S. |
| <input type="checkbox"/> | <u>Paul M. Mayhew</u> | pmayhew@baltimorecountymd.gov | 1- | English | New York Time | U.S. |

*Added
9-21*

New Panelist

Full name: (required)

Email address: (required)

Phone number:

Country/Region: Number (with area/city code):

Time Zone: New York (Eastern Daylight Time, GMT-04:00) ▼

Language: English ▼

Locale: U.S. ▼

Add new panelist in my address book

Invite as alternate host

Debra Wiley

From: Debra Wiley
Sent: Tuesday, August 25, 2020 8:16 AM
To: Kristen L Lewis
Subject: Link - 2020-0090-SPHA

Event: Zoning Hearing - 13217 Cherwin avenue
Type: Listed Event
Event address for attendees: <https://baltimorecountymd.webex.com/baltimorecountymd/onstage/g.php?MTID=e6f26b1>
Event address for panelists: <https://baltimorecountymd.webex.com/baltimorecountymd/onstage/g.php?MTID=efa3ac0>
Date and time: Wednesday, September 23, 2020 1:30 pm
Eastern Daylight Time (New York, GMT-04:00)
Duration: 1 hour
Description: Zoning Hearing
13217 Cherwin Avenue
Case No. 2020-0090-SPHA
Craig Kestner
Event number: 172 903 2789
Event password: 1234
Host key: 848837
Alternate Host: donna mignon,henry ayakwah
Panelist Info:
Panelist password:
Panelist numeric password: 128710
Video Address: 1729032789@baltimorecountymd.webex.com
You can also dial 173.243.2.68 and enter your meeting number.
Audio conference: US Toll
+1-415-655-0001
[Show all global call-in numbers](#)
Access code: 172 903 2789

Debra Wiley, Legal Administrative Secretary
Baltimore County Office of Administrative Hearings
105 West Chesapeake Avenue, Suite 103
Towson, Maryland 21204
410-887-3868

Panelist List

| Name | Email address | Phone number | Time Zone | Language | Locale |
|-----------------------------------|--------------------------------|---------------------|------------------|-----------------|---------------|
| donna mignon (Alternate Host) | dmignon@baltimorecountymd.gov | 1- | New York Time | English | U.S. |
| henry ayakwah (Alternate Host) | hayakwah@baltimorecountymd.gov | 1- | New York Time | English | U.S. |
| bruce e. doak | bdoak@bruceedoakconsulting.com | 1- | New York Time | English | U.S. |
| Craig Kestner | kbigcraig@aol.com | 1- | New York Time | English | U.S. |
| Neil Lanzi, Esq. | nlanzi@wcsolaw.com | 1- | New York Time | English | U.S. |
| Paul M. Mayhew | pmayhew@baltimorecountymd.gov | 1- | New York Time | English | U.S. |

OK

Panelist List

| Name | Email address | Phone number | Time Zone | Language | Locale |
|-----------------------------------|--------------------------------|--------------|---------------|----------|--------|
| donna mignon (Alternate Host) | dmignon@baltimorecountymd.gov | 1- | New York Time | English | U.S. |
| henry ayakwah (Alternate Host) | hayakwah@baltimorecountymd.gov | 1- | New York Time | English | U.S. |
| Barbara Kestner | bkestner@bnjsweeping.com | 1- | New York Time | English | U.S. |
| bruce e. doak | bdoak@bruceedoakconsulting.com | 1- | New York Time | English | U.S. |
| Craig Kestner | kbigcraig@aol.com | 1- | New York Time | English | U.S. |
| Neil Lanzi, Esq. | nlanzi@wclaw.com | 1- | New York Time | English | U.S. |
| Paul M. Mayhew | pmayhew@baltimorecountymd.gov | 1- | New York Time | English | U.S. |

Debra Wiley

From: Neil Lanzi <nlanzi@wcslaw.com>
Sent: Tuesday, August 25, 2020 10:08 AM
To: Debra Wiley
Cc: Kristen L Lewis; 'Bruce Doak'
Subject: 13217 Cherwin Avenue

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

Debra, Kristen,

Thanks for the invite to the ALJ hearing on 9/23 for the above case. I still do not have a case number as I did not file the Petition initially and have not received any notices.

The other participants for this case besides Bruce Doak are:

Craig Kestner, email is kbigcraig@aol.com
Barbara Kestner, email is bkestner@bnjsweeping.com

prev. sent invite today ✓

Thanks,

Neil

Debra Wiley

From: Kristen L Lewis
Sent: Monday, August 24, 2020 4:41 PM
To: Debra Wiley; Donna Mignon
Subject: Webex
Attachments: 20200824163709955.pdf

Follow Up Flag: Flag for follow up
Flag Status: Flagged

Last one for today.

Kristen Lewis
PAI – Zoning Review
410-887-3391



JOHN A. OLSZEWSKI, JR.
County Executive

MICHAEL D. MALLINOFF, *Director*
Department of Permits,
Approvals & Inspections

August 24, 2020

NOTICE OF ZONING HEARING

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East side of Cherwin Avenue, 97 ft. south of Gunder Avenue

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A handwritten signature in black ink, appearing to read "Michael Mallinoff".

Michael Mallinoff
Director

MM:kl

C: Neil Lanzi, 102 W. Pennsylvania Avenue, Ste. 406, Towson 21204
Craig Kestner, 13015 Eastern Avenue, Baltimore 21220
Bruce Doak, 3801 Baker Schoolhouse Road, Freeland 21053

NOTES: (1) THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY THURS., SEPTEMBER 3, 2020



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 13217 CHERWIN AVENUE which is presently zoned DR 5.5
Deed References: 34935/437 10 Digit Tax Account # 1522350391
Property Owner(s) Printed Name(s) CRAIG KESTNER 1522350392

(SELECT THE HEARING(S) BY MARKING AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

The undersigned legal owner(s) of the property situate in Baltimore County and which is described in the description and plan attached hereto and made a part hereof, hereby petition for:

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

SEE ATTACHED PAGE

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

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

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

TO BE PRESENTED AT THE HEARING

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above petition(s), advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.
Legal Owner(s) Affirmation: I / we do so solemnly declare and affirm, under the penalties of perjury, that I / We are the legal owner(s) of the property which is the subject of this / these Petition(s).

Contract Purchaser/Lessee:

Name- Type or Print _____
Signature /
Mailing Address _____ City _____ State _____
Zip Code _____ Telephone # _____ Email Address _____

Legal Owners (Petitioners):

CRAIG KESTNER
Name #1 - Type or Print _____ Name #2 - Type or Print _____
Signature #1 [Signature] Signature #2 _____
X 13015 EASTERN AVE. BALTIMORE MD
Mailing Address _____ City _____ State _____
21220 X 410-591-2901 X
Zip Code _____ Telephone # _____ Email Address _____
K.BIGCRAIG@AOL.COM

Attorney for Petitioner:

NEIL LANZI
WRIGHT CONSTABLE & SKEEN LLP
Name- Type or Print _____
Signature [Signature]
102 W. PENNSYLVANIA AVE. SUITE 406 TOWSON MD
Mailing Address _____ City _____ State _____
21209 1493-991-5917
Zip Code _____ Telephone # _____ Email Address _____
NLANZI@WCSLAW.COM

Representative to be contacted:

BRUCE E. DOAK
BRUCE E. DOAK CONSULTING LLC
Name - Type or Print _____
Signature [Signature]
3801 BAKER SCHOOLHOUSE ROAD FREE LANS MD
Mailing Address _____ City _____ State _____
21053 1410-419-9906
Zip Code _____ Telephone # _____ Email Address _____
BD@BRUCEDOAKCONSULTING.COM

CASE NUMBER 2020 0090 AP/HA Filing Date 3/30/20 Do Not Schedule Dates: _____ Reviewer GA

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



TO: Hon. Paul M. Mayhew; Managing Administrative Law Judge
Office of Administrative Hearings

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

DATE: April 24, 2020

SUBJECT: DEPS Comment for Zoning Item # 2020-0090-SPHA
Address 13217 Cherwin Avenue
(Kestner Property)

Zoning Advisory Committee Meeting of **April 13, 2020**.

EPS has reviewed the subject zoning petition for compliance with the goals of the State-mandated Critical Area Law listed in the Baltimore County Zoning Regulations, Section 500.14. Based upon this review, we offer the following comments:

1. Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands;

The subject property is located within a Limited Development Area (LDA) and is subject to Critical Area requirements. The applicant is proposing to permit a combined lot width less than permitted. The lot is not waterfront. Any proposed development must meet all LDA requirements, including lot coverage limits and afforestation requirements. Lot coverage is limited to a maximum of 2012 square feet, with mitigation required for any lot coverage between 1,512 square feet and 2012 square feet. Proposed lot coverage was not included on the plan. 15% afforestation (2 trees) is required. If the lot coverage and afforestation requirements are met, then the relief requested by the applicant will result in minimal adverse impacts to water quality.

2. Conserve fish, plant, and wildlife habitat;

This property is not waterfront and must meet all lot coverage and afforestation requirements. If lot coverage and afforestation requirements are met this request will help conserve fish, plant, and wildlife habitat in the Chesapeake Bay.

3. Be consistent with established land use policies for development in the Chesapeake Bay Critical Area, which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement and activities of persons in that area can create adverse environmental impacts;

This is a grandfathered lot. Provided that the applicants meet their lot coverage and afforestation requirements, then the relief requested will be consistent with established land-use policies.

Reviewer: Regina Esslinger

| | | |
|---|--|--|
| RE: PETITION FOR SPECIAL HEARING AND VARIANCE 13217 Cherwin Avenue; E/S of Cherwin Avenue, S 97' to c/line Gunder Avenue 15 th Election & 6 th Councilmanic Districts Legal Owner(s): Craig Kestner Petitioner(s) | * * * * * * * * * * | BEFORE THE OFFICE OF ADMINSTRATIVE HEARINGS FOR BALTIMORE COUNTY 2020-090-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

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 10th day of April, 2020, a copy of the foregoing Entry of Appearance was emailed to Bruce Doak, 3801 Baker Schoolhouse Road, Freeland, Maryland 21053 and J. Neil Lanzi, Esquire, 102 W. Pennsylvania Avenue, Suite 406, 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 13217 CHERWIN AVENUE which is presently zoned DR 5.5
Deed References: 34935/437 10 Digit Tax Account # 1522350391
Property Owner(s) Printed Name(s) CRAIG KESTNER 1522350392

(SELECT THE HEARING(S) BY MARKING AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

The undersigned legal owner(s) of the property situate in Baltimore County and which is described in the description and plan attached hereto and made a part hereof, hereby petition for:

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

SEE ATTACHED PAGE

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

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

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

TO BE PRESENTED AT THE HEARING

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

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

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

Contract Purchaser/Lessee:

Name- Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

Attorney for Petitioner:

Name Type or Print

Signature

Legal Owners (Petitioners):

CRAIG KESTNER

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

[Signature] /

Signature #1 Signature #2

13015 EASTERN AVE. BALTIMORE MD

Mailing Address City State

21220 410-591-2901

Zip Code Telephone # Email Address

KBIGCRAIG@AOL.COM

Representative to be contacted:

BRUCE E. DOAK

BRUCE E. DOAK CONSULTING LLC

Name - Type or Print

[Signature]

Signature

Mailing Address City State

21053 410-419-4906

Zip Code Telephone # Email Address

BDOAK@BRUCEEDOAKCONSULTING.COM

ORDER RECEIVED FOR FILING
DATE 02/20/20
BY [Signature]

102 W. PENNSYLVANIA AVE, SUITE 406 TOWSON 3801 BAKER SCHOOLHOUSE ROAD FREELAND MD

Mailing Address City State Mo

21209 443-991-5917

Zip Code Telephone # Email Address

NLANZI@WCSLAW.COM

CASE NUMBER 2020 0090-1014A Filing Date 3/30/20

BDOAK@BRUCEEDOAKCONSULTING.COM

Do Not Schedule Dates: _____ Reviewer JA

Zoning Hearing Petitions Being Requested

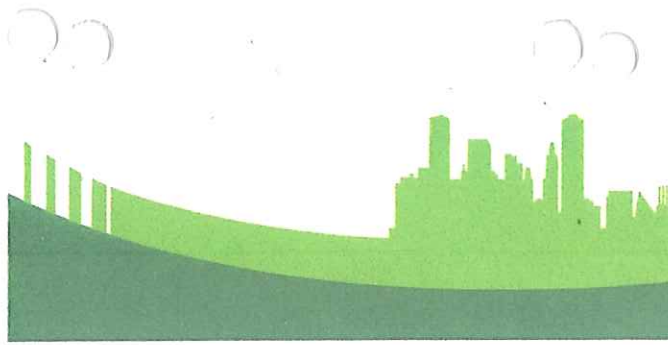
Special Hearing to approve the construction of a single family detached dwelling on two lots with a combined width of 50 feet in lieu of the required 55 feet per Section 304.1 BCZR

Zoning Hearing Petitions Being Requested

Variance to permit a combined width for two lots of 50 feet in lieu of the required 55 feet for the construction of a single family detached dwelling

per section 1B02.3 C.1

2020-0090-SpH/A



Zoning Description

#13217 Cherwin Avenue
Fifteenth Election District Sixth Councilmanic District
Baltimore County, Maryland

Beginning at a point on the east side of Cherwin Avenue, 97.09 feet from the southern side of Gunder Avenue.

Being Lot #155 and Lot #156 as shown on the plat entitled "Section A Twin River Beach" dated April 7, 1929 and recorded in the land records of Baltimore County in Plat Book 9, page 33.

Containing 6,050 square feet of land, more or less.

This description is part of a zoning hearing petition and is not intended for any conveyance purposes.



Bruce E. Doak Consulting, LLC
3801 Baker Schoolhouse Road
Freeland, MD 21053
410-419-4906 cell / 443-900-5535 office
bdoak@bruceedoakconsulting.com

2020-0090-SP#11

ZAC AGENDA

Case Number: 2020-0090-SPHA **Reviewer:** Gary Hucik
Existing Use: RESIDENTIAL **Proposed Use:** RESIDENTIAL
Type: SPECIAL HEARING, VARIANCE
Legal Owner: Craig Kestner
Contract Purchaser: No Contract Purchaser was set.

Critical Area: Yes **Flood Plain:** Yes **Historic:** No **Election Dist:** 15 **Council Dist:** 6

Property Address: 13217 CHERWIN AVE
Location: East side of Cherwin Ave South 97 feet to the centerline of Gunder Avenue.

Existing Zoning: DR 3.5 **Area:** .138 AC

Proposed Zoning:

SPECIAL HEARING:

To approve the Construction of a single family detached dwelling on two lots with a combined width of 50 feet in lieu of the required 55 feet per Section 304.1 BCZR.

VARIANCE:

To permit a combined width for two lots of 50 feet in lieu of the required 55 feet for the construction of a single family detached dwelling per Section 1B02.3.C1.

Attorney: Neil Lanzi Wright Constable & Skeen LLP

Prior Zoning Cases: 2019-0402-SPHA

Concurrent Cases: None

Violation Cases: None

Closing Date:

Miscellaneous Notes:

Real Property Data Search

Search Result for BALTIMORE COUNTY

| View Map | View GroundRent Redemption | View GroundRent Registration |
|--|--|---|
| Special Tax Recapture: None | | |
| Account Identifier: District - 15 Account Number - 1522350391 | | |
| Owner Information | | |
| Owner Name: | KESTNER CRAIG | Use: RESIDENTIAL Principal Residence: NO |
| Mailing Address: | 6903 GUNDER AVE BALTIMORE MD 21220-1023 | Deed Reference: /34935/ 00437 |
| Location & Structure Information | | |
| Premises Address: | CHERWIN AVE 0-0000 | Legal Description: TWIN RIVER BEACH |
| Map: | Grid: | Parcel: |
| 0084 | 0001 | 0043 |
| Neighborhood: | Subdivision: | Section: |
| 15010005.04 | 0000 | A |
| Block: | Lot: | Assessment Year: |
| | 156 | 2021 |
| | | Plat No: |
| | | Plat Ref: 0009/ 0033 |
| Town: None | | |
| Primary Structure Built | Above Grade Living Area | Finished Basement Area |
| | | Property Land Area 3,075 SF |
| | | County Use 04 |
| Stories | Basement | Type |
| | | Exterior |
| | | Quality |
| | | Full/Half Bath |
| | | Garage |
| | | Last Notice of Major Improvements |
| Value Information | | |
| | Base Value | Value |
| | | As of |
| | | 01/01/2018 |
| Land: | 10,400 | 10,400 |
| Improvements | 0 | 0 |
| Total: | 10,400 | 10,400 |
| Preferential Land: | 0 | |
| | | Phase-in Assessments |
| | | As of |
| | | 07/01/2020 |
| | | As of |
| | | 07/01/2021 |
| Transfer Information | | |
| Seller: | Date: 04/30/2014 | Price: \$118,000 |
| Type: ARMS LENGTH MULTIPLE | Deed1: /34935/ 00437 | Deed2: |
| Seller: | Date: | Price: \$0 |
| Type: | Deed1: /03813/ 00510 | Deed2: |
| Seller: | Date: | Price: |
| Type: | Deed1: | Deed2: |
| Exemption Information | | |
| Partial Exempt Assessments: | Class | 07/01/2020 |
| County: | 000 | 0.00 |
| State: | 000 | 0.00 |
| Municipal: | 000 | 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: |



Board of Appeals of Baltimore County

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

August 31, 2020

NOTICE OF POSTPONEMENT

IN THE MATTER OF: Craig Kestner– Legal Owner
13217 Cherwin Avenue
19-402-SPHA 15th Election District; 6th Councilmanic District

Re: Petition for Special Hearing pursuant to BCZR Section 500.7 to confirm that a merger did not take place between the 155 and 156 lots, the adjacent lots 157, 158, 159 and 160 otherwise known as 6903 Gunder Avenue; and

Petition for Variance pursuant to BCZR Sections 1B02.3.C.1 and 303.1 to 1) permit a proposed dwelling on a lot with a width of 50 ft. in lieu of the required 55 ft.; and 2) to permit a front average setback of 25 ft. in lieu of the required 40 ft. in the DR 5.5 zone.

10/23/19 Opinion and Order of the Administrative Law Judge wherein the Petition for Special Hearing was GRANTED; and the Petition for Variance was DENIED.

This matter was assigned for hearing on September 23, 2020 and has been postponed by request of Counsel. In the interests of judicial economy, this matter will continue to be postponed pending the outcome of a related case.

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.

Krysundra Cannington, Administrator

c. Counsel for Petitioners
Legal Owner

: J. Neil Lanzi, Esquire
: Craig Kestner

Protestants

: John Dawson
: The Twin River Beach Protective and Improvement
Association, Inc. Linda Kuchta, President

Bruce Doak
Paul M. Mayhew, Managing Administrative Law Judge
David Lykens, Director/DEPS
James R. Benjamin, Jr., County Attorney

Office of People’s Counsel
C. Pete Gutwald, Director/Department of Planning
Michael D. Mallinoff, Director/PAI
Nancy C. West, Assistant County Attorney



Wright, Constable & Skeen, L.L.P. | Attorneys at Law

102 W. Pennsylvania Avenue - Suite 406 - Towson - Maryland - 21204 - Phone: 410-659-1390 - Facsimile: 667-206-4610

J. NEIL LANZI

Email: nlanzi@wcsllaw.com

August 27, 2020

Ms. Krysundra L. Cannington, Administrator
Board of Appeals of Baltimore County
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204

Re: In the Matter of: Craig Kestner-Legal Owner
13217 Cherwin Avenue, Case No. 19-402-SPHA

Dear Ms. Cannington:

Thank you for the Notice of Assignment of the above captioned case setting the hearing for September 23, 2020. You may recall my advising you just before COVID that my client was filing a new plan and zoning request for the subject property. The hearing before the Administrative Law Judge is being scheduled for September 23, 2020 and as the possibility remains the decision from that case could also be appealed, it makes sense to have one appeal hearing on the subject property.

Accordingly, I am respectfully requesting a postponement in accordance with Rule 2B of the Board of Appeals Rules of Practice and Procedure. I will advise you once the Administrative Law Judge hearing has been completed on the second case and the decision rendered so the appeal hearing can be scheduled.

Thank you for your consideration.

Very truly yours,

J. Neil Lanzi

cc: Office of People's Counsel
Paul M. Mayhew, Managing Administrative Law Judge
C. Pete Gutwald, Director/Department of Planning
David Lykens, Director DEPS
Michael D. Mallinoff, Director/PAI
Craig Kestner
Bruce Doak
John Dawson
The Twin River Beach Protective and Improvement Association, Inc.
Linda Kuchta, President

Krysundra Cannington

From: Melody Loughlin <mloughlin@wclaw.com>
Sent: Thursday, August 27, 2020 12:16 PM
To: Krysundra Cannington
Cc: Neil Lanzi; 'Bruce Doak'
Subject: Kestner Case No. 19-402-SPHA
Attachments: Kestner Request For Postponement Letter.pdf

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

Please see the attached letter requesting postponement of the hearing date for the above referenced case.



Melody Loughlin, Paralegal
Wright, Constable & Skeen, LLP
102 W. Pennsylvania Avenue, Suite 406
Towson, Maryland 21204
Tele: 443-991-5917 Fax: 667-206-4610
E-mail: mloughlin@wclaw.com
www.wclaw.com

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Board of Appeals of Baltimore County

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

August 17, 2020

NOTICE OF ASSIGNMENT

IN THE MATTER OF: Craig Kestner– Legal Owner
13217 Cherwin Avenue
19-402-SPHA 15th Election District; 6th Councilmanic District

Re: Petition for Special Hearing pursuant to BCZR Section 500.7 to confirm that a merger did not take place between the 155 and 156 lots, the adjacent lots 157, 158, 159 and 160 otherwise known as 6903 Gunder Avenue; and

Petition for Variance pursuant to BCZR Sections 1B02.3.C.1 and 303.1 to 1) permit a proposed dwelling on a lot with a width of 50 ft. in lieu of the required 55 ft.; and 2) to permit a front average setback of 25 ft. in lieu of the required 40 ft. in the DR 5.5 zone.

10/23/19 Opinion and Order of the Administrative Law Judge wherein the Petition for Special Hearing was GRANTED; and the Petition for Variance was DENIED.

ASSIGNED FOR: SEPTEMBER 23, 2020, AT 10:00 A.M.

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.

Notice of Assignment
In the matter of: Craig Kestner
Case number: 19-402-SPHA
August 17, 2020
Page 2

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

Krysundra Cannington, Administrator

| | | |
|----|-------------------------|---|
| c. | Counsel for Petitioners | : J. Neil Lanzi, Esquire |
| | Legal Owner | : Craig Kestner |
| | Protestants | : John Dawson |
| | | : The Twin River Beach Protective and Improvement Association, Inc. Linda Kuchta, President |

Bruce Doak

Office of People's Counsel
Paul M. Mayhew, Managing Administrative Law Judge
C. Pete Gutwald, Director/Department of Planning
David Lykens, Director/DEPS
Michael D. Mallinoff, Director/PAI
James R. Benjamin, Jr., County Attorney
Nancy C. West, Assistant County Attorney

Krysundra Cannington

From: Neil Lanzi <nlanzi@wclaw.com>
Sent: Monday, March 2, 2020 1:44 PM
To: Krysundra Cannington
Subject: 2019-0402-SPHA 13217 Cherwin Avenue

CAUTION: This message from nlanzi@wclaw.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 Ms. Cannington,

In follow up to our phone conversation last week, my client and expert are available for any hearing date in June, 2020. Thank you for your assistance.

Regards,

Neil



J. Neil Lanzi
Partner
Wright, Constable & Skeen, LLP
102 W. Pennsylvania Avenue, Suite 406
Towson, Maryland 21204
Tele: 410-659-1390 Fax: 667-206-4610
E-mail: nlanzi@wclaw.com

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11/25/19 Neil Lanzi

Please hold-trying to work
out settlement

will v in wk of 12/9 for update.

message

FOR Sunny
FROM Neil Lanzi
TIME 11:35 am DATE 12/10
PHONE 410-659-1390

URGENT!

please call

1:30 - LM -

Kestner - trying to settle
comm assn to meet
1/7/20 - will follow
up ~ 1/9/20

2/25/20 Neil Lanzi

10:13 am LM

11:49 am - Neil - set in June - no settle.

- filing another petition but don't
want to wait until Aug/Sept.

- Will check with his client's expert
for June conflicts. web.



JOHN A. OLSZEWSKI, JR.
County Executive

PAUL M. MAYHEW
Managing Administrative Law Judge
LAWRENCE M. STAHL
Administrative Law Judge

November 21, 2019

J. Neil Lanzi, Esq.
Wright, Constable & Skeen, L.L.P.
102 W. Pennsylvania Avenue, Suite 406
Towson, Maryland 21204



RE: APPEAL TO BOARD OF APPEALS (APPEAL ON VARIANCE ONLY)

Case No. 2019-0402-SPHA

Location: 13217 Cherwin Avenue

Dear Mr. Lanzi:

Please be advised that an appeal of the above-referenced case was filed in this Office on November 21, 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,

PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM/sln

c: Baltimore County Board of Appeals
People's Counsel for Baltimore County
Craig Kestner, 7237 Greenbank Road, Baltimore, Maryland 21220
Bruce Doak, 3801 Baker Schoolhouse Road, Freeland, Maryland 21053
John Dawson, 13215 Cherwin Avenue, Middle River, Maryland 21220

APPEAL

**Petitions for Special Hearing and Variance
(13217 Cherwin Avenue)
15th Election District – 6th Councilmanic District
Legal Owner: Craig Kestner
Case No. 2019-0402-SPHA**

*****APPEAL ON VARAINCE ONLY*****

Petitions for Special Hearing and Variance Hearing (July 23, 2019)

Zoning Description of Property

Notice of Zoning Hearing (September 13, 2019)

Certificate of Publication (September 27, 2019)

Certificate of Posting:

1st Certification (September 28, 2019)- SSG Robert Black

2nd Certification (October 17, 2019)- SSG Robert Black

Entry of Appearance by People's Counsel – August 2, 2019

Petitioner(s) Sign-in Sheet – One

Citizen(s) Sign-in Sheet – One

Zoning Advisory Committee (ZAC) Comments

Petitioner(s) Exhibits:

1. Site Plan
2. Deed
3. Plat excerpt
4. My neighborhood Overhead
5. Aerial Photo
6. Survey Plat of 6903 Gunder Avenue
7. My neighborhood map of other zoning cases
8. Tax bill for Lots 155 and 156

Protestants' Exhibits:

1. 1a-k Photos
2. Letter from Twin River Beach Protective and Improvement Association, Inc.

Miscellaneous (Not Marked as Exhibits) – SDAT

Administrative Law Judge Order and Letter (GRANTED in part/DENIED in part)
October 23, 2019.

Notice & Receipt of Appeal – J. Neil Lanzi, Esq. November 21, 2019

*****APPEAL ON VARIANCE ONLY*****



Wright, Constable & Skeen, L.L.P. | Attorneys at Law

102 W. Pennsylvania Avenue - Suite 406 - Towson - Maryland - 21204 - Phone: 443-991-5917 - Facsimile: 667-206-4610

J. NEIL LANZI

Email: nlanzi@wcslaw.com

November 20, 2019



Office of Administrative Hearings
105 West Chesapeake Avenue
Suite 103
Towson, MD 21204

Re: Petition for Special Hearing and Variance
Case No.: 2019-0402 SPHA
Property: 13217 Cherwin Avenue

Dear Judge Mayhew:

On behalf of Petitioner, Craig Kestner in the above referenced case, I hereby file this letter to serve as a Notice of Limited Appeal to the County Board of Appeals for Baltimore County. This appeal is to the Opinion and Order of the Administrative Law Judge rendered on October 23, 2019 denying the Petition for Variance: (1) to permit a proposed building on a lot with a width of 50 feet in lieu of the required 55 feet; and 2) to permit a front average setback of 25 feet in lieu of the required 40 feet in the DR 5.5 zone. This appeal is limited to only that portion of the Order denying the Petition for Variance.

Respectfully submitted,

J. Neil Lanzi

cc: Craig Kestner
Bruce Doak, 3801 Baker Schoolhouse Road, Freeland, MD 21053
John Dawson, 13215 Cherwin Avenue, Middle River MD 21220
Director, Department of Permits and Development Management
People's Counsel for Baltimore County

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

No. **174843**

Date: **11/21/19**

PAID RECEIPT

BUSINESS ACTION TIME REQ
 02/22/2019 11/21/2019 10:28:43 1
 REI BRDL WALKIN LTR
 5M RECEIPT # 043631 11/21/2019 0519
 5 520 ZONING REGULATION
 01 174843
 Receipt Tot: \$ 300.00
 300.00 CR 00 00
 Baltimore County, Maryland

| Fund | Dept | Unit | Sub Unit | Rev Source/ Obj | Sub Rev/ Sub Obj | Dept | Obj | BS Acct | Amount | Ref |
|--------|------|------|----------|-----------------|------------------|------|-----|---------|--------|-----|
| 001 | 8000 | 000 | | 10150 | | | | | 300.00 | CR |
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| | | | | | | | | | | |
| Total: | | | | | | | | | 300.00 | |

Rec From: Barbara E Howard Thornton
(NEIL LANZI, ESQ)
 For: 2019 CYRBA-SPHA - (UPPER) ON VOUCHER
13217 (PROBLEM) CHICHILO
CR # 5117

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

**CASHIER'S
 VALIDATION**



JOHN A. OLSZEWSKI, JR.
County Executive

PAUL M. MAYHEW
Managing Administrative Law Judge
LAWRENCE M. STAHL
Administrative Law Judge

October 23, 2019

Craig Kestner
7237 Greenbank Road
Baltimore, Maryland 21220

RE: Petition for Special Hearing and Variance
Case No. 2019-0402-SPHA
Property: 13217 Cherwin Avenue

Dear Mr. Kestner:

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,


PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM:sln
Enclosure

C: Bruce Doak, 3801 Baker Schoolhouse Road,
Freeland, Maryland 21053
John Dawson, 13215 Cherwin Avenue,
Middle River, Maryland 21220

| | | |
|--------------------------------------|---|--------------------------------|
| IN RE: PETITIONS FOR SPECIAL HEARING | * | BEFORE THE |
| AND VARIANCE | | |
| (13217 Cherwin Avenue) | * | OFFICE OF |
| 15 th Election District | * | ADMINISTRATIVE HEARINGS |
| 6 th Council District | * | FOR BALTIMORE COUNTY |
| Craig Kestner, <i>Legal Owner</i> | * | Case No. 2019-0402-SPHA |
| Petitioner | * | |

* * * * *

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 Craig Kestner, legal owner (“Petitioner”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to confirm that a merger did not take place between the 155 & 156 lots, the adjacent lots at Lots 157, 158, 159, 160 otherwise known as 6903 Gunder Avenue. In addition, a Petition for Variance was filed pursuant to BCZR Sections 1B02.3.C.1 and 303.1: (1) to permit a proposed dwelling on a lot with a width of 50 ft. in lieu of the required 55 ft.; and (2) to permit a front average setback of 25 ft. in lieu of the required 40 ft. in the DR 5.5 zone. A site plan was marked and accepted into evidence as Petitioner’s Exhibit 1.

Craig Kestner, the property owner, and Bruce Doak, surveyor, appeared in support of the requests. The adjoining neighbor, John Dawson, appeared as a Protestant. The Petition was advertised and posted as required by the BCZR. A substantive Zoning Advisory Committee (“ZAC”) comment was received from the Department of Environmental Protection and Sustainability (“DEPS”).

Mr. Doak proffered the following: The subject lots (155 and 156) are part of the Twin River Beach development plat. This is an older development with lots that are only 25 feet wide. Mr.

ORDER RECEIVED FOR FILING

Date 10/23/19
 By SEN

Kestner purchased the two lots in question in 2014 as part of a purchase that also included four other lots (157, 158, 159 and 160) along with the single family home at 6903 Gunder Avenue. The Title Deed was offered into evidence as Exhibit 2. Mr. Kestner subsequently sold the house and the other four lots but retained lots 155 and 156. He now wishes to sell those two lots as a buildable lot and therefore needs the requested relief.

With respect to the issue of merger the Petitioner submitted the tax bills for lots 155 and 156 as evidence that these lots are separate and apart from the other four lots and from each other. He testified that these two lots were never used in connection with the residence at 6903 Gunder Avenue and that there have never been any structures on these two lots. There was no evidence to the contrary. In fact, the Protestant, Mr. Dawson, testified that he believed these lots were merely the back yard of the house at 6903 Gunder and that there had not been any use of the lots, at least since he moved in.

In regards to his request for variance relief the Petitioner explained that the subdivision was originally laid out with 25 foot wide lots and that because of the subsequent change in the zoning it is now impermissible to build a residence even if you own two of the original 25 foot wide lots due to the current 55 foot minimum lot width. Mr. Doak stated that he has been involved in approximately forty cases arising out of this change in the zoning and that the variance relief is almost always afforded because otherwise the property owner cannot build on their property. Doak further expressed that the Petitioner needs the front yard setback variance in order to build even a modest "modern" house on the property. The site plan (Exhibit 1) shows that the setbacks on the neighboring houses are 76 feet and 58 feet. Therefore a 40 foot setback is required under BCZR Sec. 303.1 in this DR5.5 zone. Doak submitted a neighborhood plat from the County's My

ORDER RECEIVED FOR FILING

Date 10/23/19
By Sen

Neighborhood webpage which identifies several other variance cases in the vicinity. (Petitioner's Exhibit 7).

The Protestant, John Dawson, testified that he and his wife purchased the house next door in March of 2017. He opposes the variance relief for several reasons. First, if a house is built on those lots it will greatly obstruct his view of the river. Further, because the property is in a floodplain any structure built will have to be up on pilings, which will make it even more obstructive. In addition he explained that there is, in fact, substantial flooding on the lots during heavy rains, causing water to run off onto his and the other adjoining properties. He submitted a series of photographs that document the views from his home, and the flooding problem. (Protestant's Exhibit 1A thru 1K). He also submitted a letter of opposition from the Twin River Beach Protective and Improvement Association, Inc., which was signed by nineteen neighborhood residents. The letter expresses the community's concerns, stating in relevant part that:

"The area of the requested variance is known to flood due to rain and tidal waters. At our meeting tonight, community members including contractors overwhelmingly agreed that the creation of an impervious structure and/or the change of grade on this natural drainage area could result in damage to adjacent properties and create a more hazardous driving/living situation due to a negative affect on water drainage."

In sum, both the next door neighbor, Mr. Dawson, and the Community Association are opposed to the requested variance relief.

SPECIAL HEARING

Based on the evidence presented I find that there has been no merger between the two lots in question – 155 and 156- and the other four lots – 157 thru 160 that were sold along with the home at 6903 Gunder Avenue. The Special Hearing relief in the Petition will therefore be granted.

VARIANCE

ORDER RECEIVED FOR FILING

Date

10/23/19

By

Sen

Two variances are requested. The first seeks to allow a dwelling to be built on a 50 foot wide lot when the minimum lot width is 55 feet. The second asks for a front yard setback of 25 feet in lieu of the applicable 40 foot setback. As to the variances, a two-step analysis is required, 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).

In addition to these factors, the variance relief must also be in harmony with the spirit and intent of the BCZR and not be detrimental to the public health, safety or welfare.

In the instant case, these lots are essentially identical to all the other 25 foot wide lots in the original Twin River Beach development. As such, the property is not unique. I am aware that in previous cases "uniqueness" has sometimes been found in the fact that the lots were created before the 55 foot minimum regulations were enacted. And perhaps in a case with no opposition, no other requested variance relief, and no other conflict with the BCZR this strained analysis would be appropriate. But in this case, in addition to the width variance the Petitioner is also seeking a front yard setback variance that will directly impact his neighbor Mr. Dawson. Further, the Community Association has also opposed the requested variance relief for the reasons stated in the letter quoted above, which are the same concerns voiced by Mr. Dawson.

In sum, I do not find the property "unique" within the plain meaning or the legal meaning of the word. As a result I do not reach the second prong of the analysis. However, even if the evidence satisfied both prongs of the analysis I would still find, based on the documented flooding issues, that the addition of more impervious surface on this property would be detrimental to the

ORDER RECEIVED FOR FILING

Date 10/23/19

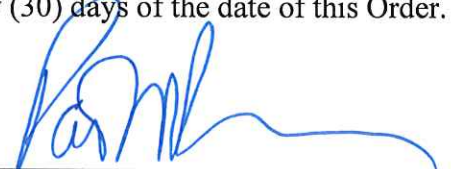
By Sen

health, safety and welfare of the Twin River Beach community and would not be in strict harmony with the spirit and intent of the BCZR. I am mindful that this decision limits Petitioner's uses of the property. I regret that fact but it is my duty to fairly apply the law.

THEREFORE, IT IS ORDERED this 23rd day of **October, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing to confirm that a merger did not take place between the 155 & 156 lots, the adjacent lots at Lots 157, 158, 159, 160 and 6903 Gunder Avenue, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance: (1) to permit a proposed dwelling on a lot with a width of 50 ft. in lieu of the required 55 ft.; and (2) to permit a front average setback of 25 ft. in lieu of the required 40 ft. in the DR 5.5 zone, be and is hereby DENIED.

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



PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM:sln

ORDER RECEIVED FOR FILING
Date 10/23/19
By sen

CERTIFICATE OF POSTING

2019-0402-SPHA

RE: Case No.: _____

Petitioner/Developer: _____

Craig Kestner

Date of Hearing/Closing: October 18, 2019

Baltimore County Department of
Permits, Approvals and Inspections
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, Maryland 21204

Attn: Kristen Lewis:

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at: _____

13217 Cherwin Avenue **SIGN 1 Recertification**

September 28, 2019

The sign(s) were posted on _____
(Month, Day, Year)



Sincerely,

 October 17, 2019
(Signature of Sign Poster) (Date)

SSG Robert Black

(Print Name)

1508 Leslie Road

(Address)

Dundalk, Maryland 21222

(City, State, Zip Code)

(410) 282-7940

(Telephone Number)

CERTIFICATE OF POSTING

2019-0402-SPHA

RE: Case No.: _____

Petitioner/Developer: _____

Craig Kestner

October 18, 2019
Date of Hearing/Closing: _____

Baltimore County Department of
Permits, Approvals and Inspections
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, Maryland 21204

Attn: Kristen Lewis:

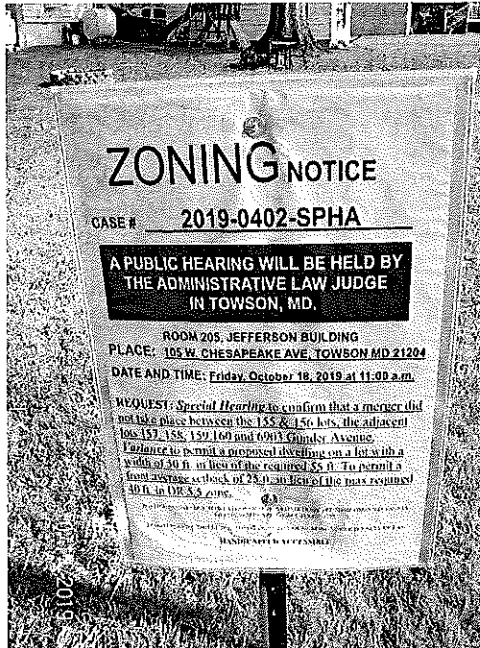
Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at: _____

13217 Cherwin Avenue **SIGN 2 Recertification**

September 28, 2019

The sign(s) were posted on _____
(Month, Day, Year)



Sincerely,

 October 17, 2019
(Signature of Sign Poster) (Date)

SSG Robert Black

(Print Name)

1508 Leslie Road

(Address)

Dundalk, Maryland 21222

(City, State, Zip Code)

(410) 282-7940

(Telephone Number)

PM 10-18-19
11 am

Debra Wiley

From: SGT ROBERT BLACK <1opie@comcast.net>
Sent: Thursday, October 17, 2019 5:06 PM
To: Administrative Hearings
Subject: Recertification's For 2019-0402-SPHA
Attachments: Re-Cert 1 2019-0402-SPHA.doc; Re-Cert 2 2019-0402-SPHA.doc

CAUTION: This message from 1opie@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.

Recertification's for 13217 Cherwin Avenue





JOHN A. OLSZEWSKI, JR.
County Executive

MICHAEL D. MALLINOFF, *Director*
Department of Permits,
Approvals & Inspections

October 09, 2019

Craig Kestner
7237 Greenbank Road
Baltimore MD 21220

RE: Case Number: 2019-0402-SPHA, 13217 Cherwin 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 September 23, 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,

A handwritten signature in black ink, appearing to read "W. Carl Richards, Jr.", written over a horizontal line.

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR/kl

Enclosures

c: People's Counsel

10-18-19

RECEIVED
AUG 22 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: August 22, 2019

SUBJECT: DEPS Comment for Zoning Item # 2019-0402-SPHA
Address 13217 Cherwin Avenue
(Kestner Property)

Zoning Advisory Committee Meeting of **July 29, 2019**.

EPS has reviewed the subject zoning petition for compliance with the goals of the State-mandated Critical Area Law listed in the Baltimore County Zoning Regulations, Section 500.14. Based upon this review, we offer the following comments:

1. Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands;

The subject property is located within a Limited Development Area (LDA) and is subject to Critical Area requirements. The applicant is proposing to permit a dwelling with less front setback and lot width than permitted. The lot is not waterfront. Any proposed development must meet all LDA requirements, including lot coverage limits and afforestation requirements. Lot coverage is limited to a maximum of 2012 square feet, with mitigation required for any lot coverage between 1,512 square feet and 2012 square feet. Proposed lot coverage was not included on the plan. 15% afforestation (2 trees) is required. If the lot coverage and afforestation requirements are met, then the relief requested by the applicant will result in minimal adverse impacts to water quality.

2. Conserve fish, plant, and wildlife habitat;

This property is not waterfront and must meet all lot coverage and afforestation requirements. If lot coverage and afforestation requirements are met this request will help conserve fish, plant, and wildlife habitat in the Chesapeake Bay.

3. Be consistent with established land use policies for development in the Chesapeake Bay Critical Area, which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement and activities of persons in that area can create adverse environmental impacts;

This is a grandfathered lot. Provided that the applicants meet their lot coverage and afforestation requirements, then the relief requested will be consistent with established land-use policies.

Reviewer: Regina Esslinger

**BALTIMORE COUNTY, MARYLAND
INTER-OFFICE MEMORANDUM**



TO: Michael D. Mallinoff
Director, Department of Permits, Approvals and Inspections

DATE: 8/14/2019

FROM: C. Pete Gutwald
Director, Department of Planning

SUBJECT: ZONING ADVISORY COMMITTEE COMMENTS
Case Number: 19-402

INFORMATION:

Property Address: 13217 Cherwin Avenue
Petitioner: Craig Kestner
Zoning: DR 5.5
Requested Action: Special Hearing, Variance

The Department of Planning has reviewed the petition for special hearing and variance as indicated on said petition.

A site visit was conducted on August 7, 2019. Staff observed no discernable signs of a use merger between the subject property and 6903 Gunder Avenue nor an established setback pattern in the neighborhood.

The Department has no objection to granting the petitioned zoning relief.

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

Prepared by:

A blue ink signature of Lloyd T. Moxley, consisting of a large, stylized initial 'L' followed by the name 'loyd T. Moxley'.

Lloyd T. Moxley

Division Chief:

A purple ink signature of Jenifer G. Nugent, consisting of a large, stylized initial 'J' followed by the name 'enifer G. Nugent'.

Jenifer G. Nugent

CPG/JGN/LTM/

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



STATE HIGHWAY
ADMINISTRATION

Larry Hogan
Governor
Boyd K. Rutherford
Lt. Governor
Pete K. Rahn
Secretary
Gregory Slater
Administrator

Date: 7/31/19

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

Dear Ms. Lewis:

Thank you for the opportunity to review your referral request on the subject of the Case number referenced below. We have determined that the subject property does not access a State roadway and is not affected by any State Highway Administration projects. Therefore, based upon available information this office has no objection to Baltimore County Zoning Advisory Committee approval of Case No. 2019-D402-SPHA

Special Hearing, Variance
Craig Kestner
13217 Cherwin Avenue

Should you have any questions regarding this matter, please contact Mr. Richard Zeller at 410-229-2332 or 1-866-998-0367 (in Maryland only) extension 2332, or by email at (rzeller@sha.state.md.us).

Sincerely,

f Wendy Wolcott, P.L.A.
Metropolitan District Engineer
Maryland Department of Transportation
State Highway Administration
District 4 - Baltimore and Harford Counties

WW/RAZ

CERTIFICATE OF POSTING

2019-0402-SPHA

RE: Case No.: _____

Petitioner/Developer: _____

Craig Kestner

October 18, 2019
Date of Hearing/Closing: _____

Baltimore County Department of
Permits, Approvals and Inspections
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, Maryland 21204

Attn: Kristen Lewis:

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at: _____

13217 Cherwin Avenue **SIGN 1**

September 28, 2019

The sign(s) were posted on _____
(Month, Day, Year)



Sincerely,

September 28, 2019

(Signature of Sign Poster)

(Date)

SSG Robert Black

(Print Name)

1508 Leslie Road

(Address)

Dundalk, Maryland 21222

(City, State, Zip Code)

(410) 282-7940

(Telephone Number)

CERTIFICATE OF POSTING

2019-0402-SPHA

RE: Case No.: _____

Petitioner/Developer: _____

Craig Kestner

October 18, 2019

Date of Hearing/Closing: _____

Baltimore County Department of
Permits, Approvals and Inspections
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, Maryland 21204

Attn: Kristen Lewis:

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at: _____

13217 Cherwin Avenue **SIGN 2**

September 28, 2019

The sign(s) were posted on _____
(Month, Day, Year)



Sincerely,

 _____
September 28, 2019
(Date)

(Signature of Sign Poster)

SSG Robert Black

(Print Name)

1508 Leslie Road

(Address)

Dundalk, Maryland 21222

(City, State, Zip Code)

(410) 282-7940

(Telephone Number)

The Daily Record

200 St. Paul Place Suite 2480
Baltimore, Maryland 21202
1 (443) 524-8100
www.thedailyrecord.com

Order #: 11792874
Case #: 2019-0402-SPHA
Description:

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:

9/27/2019

NOTICE OF ZONING HEARING - CASE NUMBER:
2019-0402-SPHA

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: 2019-0402-SPHA

13217 Cherwin Avenue
E/side of Cherwin Avenue, south of Gunder Avenue
15th Election District - 6th Councilmanic District
Legal Owners: Craig Kestner

Special Hearing to confirm that a merger did not take place between the 155 & 156 lots, the adjacent lots 157, 158, 159, 160 and 6903 Gunder Avenue. Variance to permit a proposed dwelling on a lot with a width of 50 ft. in lieu of the required 55 ft. To permit a front average setback of 25 ft. in lieu of the max required 40 ft. in DR 5.5 zone.

Hearing: Friday, October 18, 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 410-887-3301.

s27



JOHN A. OLSZEWSKI, JR.
County Executive

MICHAEL D. MALLINOFF, Director
Department of Permits,
Approvals & Inspections

September 13, 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: 2019-0402-SPHA
13217 Cherwin Avenue
E/side of Cherwin Avenue, south of Gunder Avenue
15th Election District – 6th Councilmanic District
Legal Owners: Craig Kestner

Special Hearing to confirm that a merger did not take place between the 155 & 156 lots, the adjacent lots 157, 158, 159, 160 and 6903 Gunder Avenue. Variance to permit a proposed dwelling on a lot with a width of 50 ft. in lieu of the required 55 ft. To permit a front average setback of 25 ft. in lieu of the max required 40 ft. in DR 5.5 zone.

Hearing: Friday, October 18, 2019 at 11:00 a.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204

A handwritten signature in black ink, appearing to read "Michael Mallinoff".

Michael Mallinoff
Director

MM:kl

C: Craig Kestner, 7237 Greenbank Road, Baltimore 21220

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY SAT., SEPTEMBER 28, 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 * BEFORE THE OFFICE
 AND VARIANCE * OF ADMINSTRATIVE
 13217 Cherwin Avenue; E/S of Cherwin *
 Avenue, E/S of 112.09' S of Gunder Avenue * HEARINGS FOR
 15th Election & 6th Councilmanic Districts *
 Legal Owner(s): Craig Kestner *
 Petitioner(s) * BALTIMORE COUNTY
 * 2019-402-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

Carole S. Demilio

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

RECEIVED
 AUG 02 2019

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of August, 2019, a copy of the foregoing Entry of Appearance was mailed to Craig Kestner, 7237 Greenbank Road, Baltimore, Maryland 21220, 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 13217 Cherwin Ave Baltimore which is presently zoned DR 5.5
Deed References: 409851325 10 Digit Tax Account # 1522350391 & 392
Property Owner(s) Printed Name(s) Craig Kestner

(SELECT THE HEARING(S) BY MARKING AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

The undersigned legal owner(s) of the property situate in Baltimore County and which is described in the description and plan attached hereto and made a part hereof, hereby petition for:

- a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve confirm that a merger did not take place between the lots & the adjacent lots at 6903 Gunder Ave. (lots 157, 158, 159 & 160)
- a Special Exception under the Zoning Regulations of Baltimore County to use the herein described property for

- a Variance from Section(s) 1002.3.C.1 BCZR/303.1 BC22 to permit a proposed dwelling on a lot with a width of 50' in lieu of the required 55'. And to permit a front average setback of 25' in lieu of the max required 40' in DR 5.5 zone, of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons: (Indicate below your hardship or practical difficulty or indicate below "TO BE PRESENTED AT HEARING". If you need additional space, you may add an attachment to this petition)

TO BE PRESENTED AT HEARING

Property is to be posted and advertised as prescribed by the zoning regulations. I, or we, agree to pay expenses of above petition(s), advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County. Legal Owner(s) Affirmation: I / we do so solemnly declare and affirm, under the penalties of perjury, that I / We are the legal owner(s) of the property which is the subject of this / these Petition(s).

Contract Purchaser/Lessee:

Name- Type or Print _____

Signature _____

Mailing Address _____ City _____ State _____

Zip Code _____ Telephone # _____ Email Address _____

Legal Owners (Petitioners):

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

[Signature]
Signature #1 _____ Signature #2 _____

7237 Greenbank Rd Baltimore
Mailing Address _____ City _____ State _____

21220, 4105912901, MD
Zip Code _____ Telephone # _____ Email Address _____

kj@owl.com

Attorney for Petitioner:

Name- Type or Print _____

Signature _____

Mailing Address _____ City _____ State _____

Zip Code _____ Telephone # _____ Email Address _____

Representative to be contacted:

Craig Kestner
Name - Type or Print _____

[Signature]
Signature _____

7237 Greenbank Rd BALTIMORE
Mailing Address _____ City _____ State _____

21220, 4105912901,
Zip Code _____ Telephone # _____ Email Address _____

ORDER RECEIVED FOR FILING
10/23/19
[Signature]

CASE NUMBER 2019-0402-5PHA Filing Date 7/23/19 Do Not Schedule Dates: _____ Reviewer JF

ZONING DESCRIPTION FOR LOTS 155 AND 156 CHERWIN AVENUE

BEGINNING at a point on the East side of Cherwin Avenue which is 40 feet wide and 112.09 feet southerly from centerline of Gunder Avenue which is 30 feet wide.

Being Lots 155 and 156, Section A, in the subdivision of Twin River Beach as recorded in Baltimore County Plat Book #9, folio #33, containing 6,133 square feet. Located in the 15TH Election District and 6TH Council District.

Real Property Data Search

Search Result for BALTIMORE COUNTY

[View Map](#) [View GroundRent Redemption](#) [View GroundRent Registration](#)

Tax Exempt: None **Special Tax Recapture:** None
Exempt Class: None

Account Identifier: **District - 15 Account Number - 1522350391**

Owner Information

Owner Name: KESTNER CRAIG **Use:** RESIDENTIAL
Principal Residence: NO
Mailing Address: 6903 GUNDER AVE **Deed Reference:** /34935/ 00437
 BALTIMORE MD 21220-1023

Location & Structure Information

Premises Address: CHERWIN AVE **Legal Description:**
 0-0000 TWIN RIVER BEACH

| Map: | Grid: | Parcel: | Neighborhood: | Subdivision: | Section: | Block: | Lot: | Assessment Year: | Plat No: |
|------|-------|---------|---------------|--------------|----------|--------|------|------------------|---------------------|
| 0084 | 0001 | 0043 | 15010005.04 | 0000 | A | | 156 | 2018 | Plat Ref: 0009/0033 |

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**
 3,075 SF 04

Stories **Basement** **Type** **Exterior** **Quality** **Full/Half Bath** **Garage** **Last Notice of Major Improvements**
 /

Value Information

| | Base Value | Value | Phase-in Assessments | |
|---------------------------|------------|------------|----------------------|------------|
| | | As of | As of | As of |
| | | 01/01/2018 | 07/01/2019 | 07/01/2020 |
| Land: | 10,400 | 10,400 | | |
| Improvements | 0 | 0 | | |
| Total: | 10,400 | 10,400 | 10,400 | 10,400 |
| Preferential Land: | 0 | | | 0 |

Transfer Information

Seller: **Date:** 04/30/2014 **Price:** \$118,000
Type: ARMS LENGTH MULTIPLE **Deed1:** /34935/ 00437 **Deed2:**
Seller: **Date:** **Price:** \$0
Type: **Deed1:** /03813/ 00510 **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 |

Tax Exempt: None **Special Tax Recapture:** None
Exempt Class: None

Homestead Application Information

Homestead Application Status: No Application

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application **Date:**

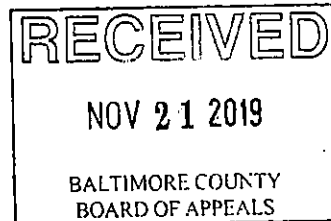


JOHN A. OLSZEWSKI, JR.
County Executive

PAUL M. MAYHEW
Managing Administrative Law Judge
LAWRENCE M. STAHL
Administrative Law Judge

November 21, 2019

J. Neil Lanzi, Esq.
Wright, Constable & Skeen, L.L.P.
102 W. Pennsylvania Avenue, Suite 406
Towson, Maryland 21204



RE: APPEAL TO BOARD OF APPEALS (APPEAL ON VARIANCE ONLY)
Case No. 2019-0402-SPHA
Location: 13217 Cherwin Avenue

Dear Mr. Lanzi:

Please be advised that an appeal of the above-referenced case was filed in this Office on November 21, 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,

A handwritten signature in cursive script that reads "Paul M. Mayhew".

PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM/sln

c: Baltimore County Board of Appeals
People's Counsel for Baltimore County
Craig Kestner, 7237 Greenbank Road, Baltimore, Maryland 21220
Bruce Doak, 3801 Baker Schoolhouse Road, Freeland, Maryland 21053
John Dawson, 13215 Cherwin Avenue, Middle River, Maryland 21220

APPEAL

**Petitions for Special Hearing and Variance
(13217 Cherwin Avenue)
15th Election District – 6th Councilmanic District
Legal Owner: Craig Kestner
Case No. 2019-0402-SPHA**

*******APPEAL ON VARAINCE ONLY*******

Petitions for Special Hearing and Variance Hearing (July 23, 2019)

Zoning Description of Property

Notice of Zoning Hearing (September 13, 2019)

Certificate of Publication (September 27, 2019)

Certificate of Posting:

1st Certification (September 28, 2019)- SSG Robert Black

2nd Certification (October 17, 2019)- SSG Robert Black

Entry of Appearance by People's Counsel – August 2, 2019

Petitioner(s) Sign-in Sheet – One

Citizen(s) Sign-in Sheet – One

Zoning Advisory Committee (ZAC) Comments

Petitioner(s) Exhibits:

1. Site Plan
2. Deed
3. Plat excerpt
4. My neighborhood Overhead
5. Aerial Photo
6. Survey Plat of 6903 Gunder Avenue
7. My neighborhood map of other zoning cases
8. Tax bill for Lots 155 and 156

Protestants' Exhibits:

1. 1a-k Photos
2. Letter from Twin River Beach Protective and Improvement Association, Inc.

Miscellaneous (Not Marked as Exhibits) – SDAT

Administrative Law Judge Order and Letter (GRANTED in part/DENIED in part)
October 23, 2019.

Notice & Receipt of Appeal – J. Neil Lanzi, Esq. November 21, 2019

*******APPEAL ON VARIANCE ONLY*******



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 13217 Cherwin Ave Baltimore which is presently zoned DR 5.5
Deed References: 40985 1325 10 Digit Tax Account # 152235239 I & 392
Property Owner(s) Printed Name(s) Craig Kestner

(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:

- a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should ~~approve~~ confirm that a merger did not take place between the lots & the adjacent lots at 6903 Gunder Ave.
(155 & 156) (lots 157, 158, 159 & 160)
- a Special Exception under the Zoning Regulations of Baltimore County to use the herein described property for
- a Variance from Section(s) 1002.3.C.1 BCZR/303.1 BC22
To permit a proposed dwelling on a lot with a width of 50' in lieu of the required 55'. And to permit a front average setback of 25' in lieu of the max required 40' in DR 5.5 zone.
of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons:
(Indicate below your hardship or practical difficulty or indicate below "TO BE PRESENTED AT HEARING". If you need additional space, you may add an attachment to this petition)

TO BE PRESENTED AT HEARING

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

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

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

Contract Purchaser/Lessee:

Name- Type or Print _____
 Signature _____
 Mailing Address _____ City _____ State _____
 Zip Code _____ Telephone # _____ Email Address _____

Attorney for Petitioner:

Name- Type or Print _____
 Signature _____
 Mailing Address _____ City _____ State _____
 Zip Code _____ Telephone # _____ Email Address _____

Legal Owners (Petitioners):

Craig Kestner
 Name #1 - Type or Print _____ Name #2 - Type or Print _____
 Signature #1 _____ Signature #2 _____
7237 Greenbank Rd Baltimore
 Mailing Address _____ City _____ State _____
21201-4105912901
 Zip Code _____ Telephone # _____ Email Address _____

Representative to be contacted:

Craig Kestner
 Name - Type or Print _____
 Signature _____
7237 Greenbank Rd Baltimore
 Mailing Address _____ City _____ State _____
21201-4105912901
 Zip Code _____ Telephone # _____ Email Address _____

CASE NUMBER 2019-0402-5PHA Filing Date 7/23/19

Do Not Schedule Dates: _____

Reviewer JF

ZONING DESCRIPTION FOR LOTS 155 AND 156 CHERWIN AVENUE

BEGINNING at a point on the East side of Cherwin Avenue which is 40 feet wide and 112.09 feet southerly from centerline of Gunder Avenue which is 30 feet wide. ¹³²¹⁷

Being Lots 155 and 156, Section A, in the subdivision of Twin River Beach as recorded in Baltimore County Plat Book #9, folio #33, containing 6,133 square feet. Located in the 15TH Election District and 6TH Council District.



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 13217 Cherwin Ave Baltimore which is presently zoned DR 5.5
Deed References: 40985/325 10 Digit Tax Account # 1522350391 & 392
Property Owner(s) Printed Name(s) Craig Kestner

(SELECT THE HEARING(S) BY MARKING AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

The undersigned legal owner(s) of the property situate in Baltimore County and which is described in the description and plan attached hereto and made a part hereof, hereby petition for:

- a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should ~~approve~~ confirm that a merger did not take place between the lots & the adjacent lots at 6903 Gunder Ave. (lots 155 & 156) (lots 157, 158, 159 & 160)
- a Special Exception under the Zoning Regulations of Baltimore County to use the herein described property for

- a Variance from Section(s) 1002.3.C.1 BCZR/303.1 BCZR To permit a proposed dwelling on a lot with a width of 50' in lieu of the required 55'. And to permit a front average setback of 25' in lieu of the max required 40' in DR 5.5 zone. of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons: (Indicate below your hardship or practical difficulty or indicate below "TO BE PRESENTED AT HEARING". If you need additional space, you may add an attachment to this petition)

TO BE PRESENTED AT HEARING

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

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

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

Contract Purchaser/Lessee:

Name- Type or Print _____
 Signature _____
 Mailing Address _____ City _____ State _____
 Zip Code _____ Telephone # _____ Email Address _____

Legal Owners (Petitioners):

Craig Kestner
 Name #1 - Type or Print _____ Name #2 - Type or Print _____
 Signature #1 _____ Signature #2 _____
7237 Greenbank Rd Baltimore MD
 Mailing Address _____ City _____ State _____
21220, 4105912901
 Zip Code _____ Telephone # _____ Email Address _____

Attorney for Petitioner:

Name- Type or Print _____
 Signature _____
 Date 10/23/19
Den
 Mailing Address _____ City _____ State _____
 BY _____
 Zip Code _____ Telephone # _____ Email Address _____

Representative to be contacted:

Craig Kestner
 Name - Type or Print _____
 Signature _____
7237 Greenbank Rd Baltimore
 Mailing Address _____ City _____ State _____
21220, 4105912901
 Zip Code _____ Telephone # _____ Email Address _____

CASE NUMBER 2019-0402-SPHA Filing Date 7/23/19 Do Not Schedule Dates: _____ Reviewer JF

ZONING DESCRIPTION FOR LOTS 155 AND 156 CHERWIN AVENUE

BEGINNING at a point on the East side of Cherwin Avenue which is 40 feet wide and 112.09 feet southerly from centerline of Gunder Avenue which is 30 feet wide. 13217

Being Lots 155 and 156, Section A, in the subdivision of Twin River Beach as recorded in Baltimore County Plat Book #9, folio #33, containing 6,133 square feet. Located in the 15TH Election District and 6TH Council District.

TO: THE DAILY RECORD
Friday, September 27, 2019 - Issue

Please forward billing to:
Craig Kestner
7237 Greenbank Road
Baltimore, MD 21220

410-591-2901

NOTICE OF ZONING HEARING

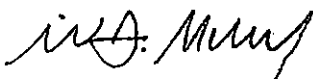
The Administrative Law Judge of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 2019-0402-SPHA

13217 Cherwin Avenue
E/side of Cherwin Avenue, south of Gunder Avenue
15th Election District – 6th Councilmanic District
Legal Owners: Craig Kestner

Special Hearing to confirm that a merger did not take place between the 155 & 156 lots, the adjacent lots 157, 158, 159, 160 and 6903 Gunder Avenue. Variance to permit a proposed dwelling on a lot with a width of 50 ft. in lieu of the required 55 ft. To permit a front average setback of 25 ft. in lieu of the max required 40 ft. in DR 5.5 zone.

Hearing: Friday, October 18, 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.

DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS
ZONING REVIEW OFFICE

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The Baltimore County Zoning Regulations (BCZR) require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the legal owner/petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least twenty (20) days before the hearing.

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

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

For Newspaper Advertising:

Case Number: 2019-0402-SPHA
Property Address: 13217 Cherwin Avenue Balto Md 21220
Property Description: _____
Legal Owners (Petitioners): Craig Kestner
Contract Purchaser/Lessee: _____

PLEASE FORWARD ADVERTISING BILL TO:

Name: Craig Kestner
Company/Firm (if applicable): _____
Address: 7237 Greenbank Rd
Baltimore Md 21220
Telephone Number: 410 591 2901

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: August 22, 2019

SUBJECT: DEPS Comment for Zoning Item # 2019-0402-SPHA
Address 13217 Cherwin Avenue
(Kestner Property)

Zoning Advisory Committee Meeting of July 29, 2019.

EPS has reviewed the subject zoning petition for compliance with the goals of the State-mandated Critical Area Law listed in the Baltimore County Zoning Regulations, Section 500.14. Based upon this review, we offer the following comments:

1. Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands;

The subject property is located within a Limited Development Area (LDA) and is subject to Critical Area requirements. The applicant is proposing to permit a dwelling with less front setback and lot width than permitted. The lot is not waterfront. Any proposed development must meet all LDA requirements, including lot coverage limits and afforestation requirements. Lot coverage is limited to a maximum of 2012 square feet, with mitigation required for any lot coverage between 1,512 square feet and 2012 square feet. Proposed lot coverage was not included on the plan. 15% afforestation (2 trees) is required. If the lot coverage and afforestation requirements are met, then the relief requested by the applicant will result in minimal adverse impacts to water quality.

2. Conserve fish, plant, and wildlife habitat;

This property is not waterfront and must meet all lot coverage and afforestation requirements. If lot coverage and afforestation requirements are met this request will help conserve fish, plant, and wildlife habitat in the Chesapeake Bay.

3. Be consistent with established land use policies for development in the Chesapeake Bay Critical Area, which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement and activities of persons in that area can create adverse environmental impacts;

This is a grandfathered lot. Provided that the applicants meet their lot coverage and afforestation requirements, then the relief requested will be consistent with established land-use policies.

Reviewer: Regina Esslinger

**BALTIMORE COUNTY, MARYLAND
INTER-OFFICE MEMORANDUM**

TO: Michael D. Mallinoff
Director, Department of Permits, Approvals and Inspections

DATE: 8/14/2019

FROM: C. Pete Gutwald
Director, Department of Planning

SUBJECT: ZONING ADVISORY COMMITTEE COMMENTS
Case Number: 19-402

INFORMATION:

Property Address: 13217 Cherwin Avenue
Petitioner: Craig Kestner
Zoning: DR 5.5
Requested Action: Special Hearing, Variance

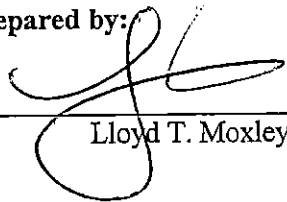
The Department of Planning has reviewed the petition for special hearing and variance as indicated on said petition.

A site visit was conducted on August 7, 2019. Staff observed no discernable signs of a use merger between the subject property and 6903 Gunder Avenue nor an established setback pattern in the neighborhood.

The Department has no objection to granting the petitioned zoning relief.

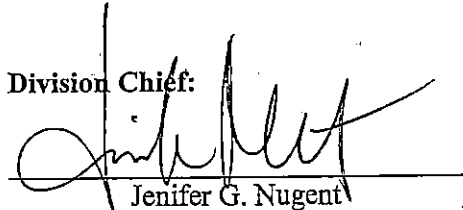
For further information concerning the matters stated herein, please contact Krystle Patchak at 410-887-3480.

Prepared by:



Lloyd T. Moxley

Division Chief:



Jenifer G. Nugent

CPG/JGN/LTM/

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

C H E C K L I S T

| <u>Comment Received</u> | <u>Department</u> | <u>Support/Oppose/ Conditions/ Comments/ No Comment</u> |
|-------------------------|---|---|
| _____ | DEVELOPMENT PLANS REVIEW (if not received, date e-mail sent _____) | _____ |
| <u>8/22</u> | DEPS (if not received, date e-mail sent _____) | <u>Comment</u> |
| _____ | FIRE DEPARTMENT | _____ |
| <u>8/14</u> | PLANNING (if not received, date e-mail sent _____) | <u>NO Objection</u> |
| <u>7/31</u> | STATE HIGHWAY ADMINISTRATION | <u>NO Objection</u> |
| _____ | TRAFFIC ENGINEERING | _____ |
| _____ | COMMUNITY ASSOCIATION | _____ |
| _____ | ADJACENT PROPERTY OWNERS | _____ |

ZONING VIOLATION (Case No. _____)

PRIOR ZONING (Case No. _____)

NEWSPAPER ADVERTISEMENT Date: 9/27/19

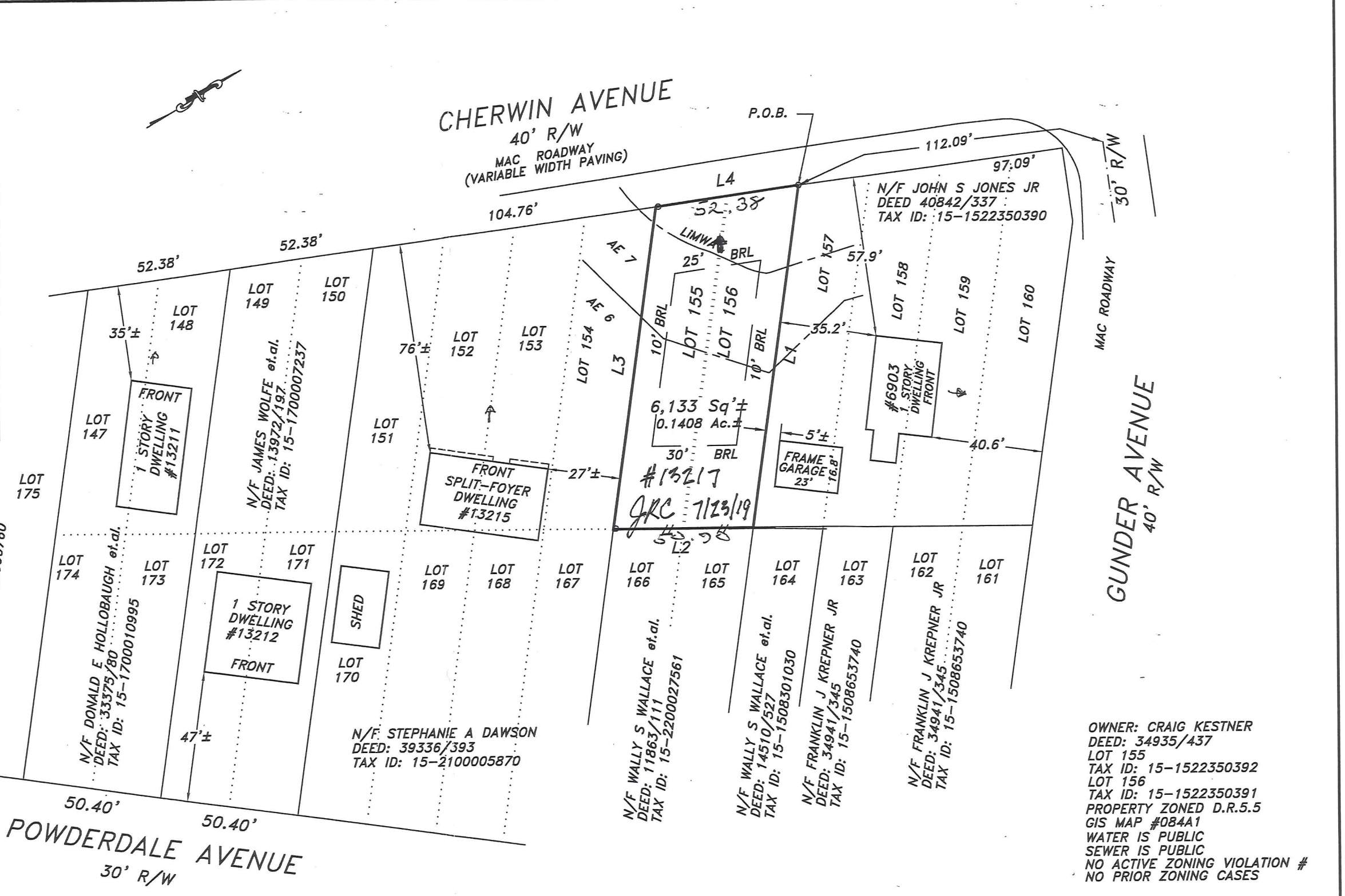
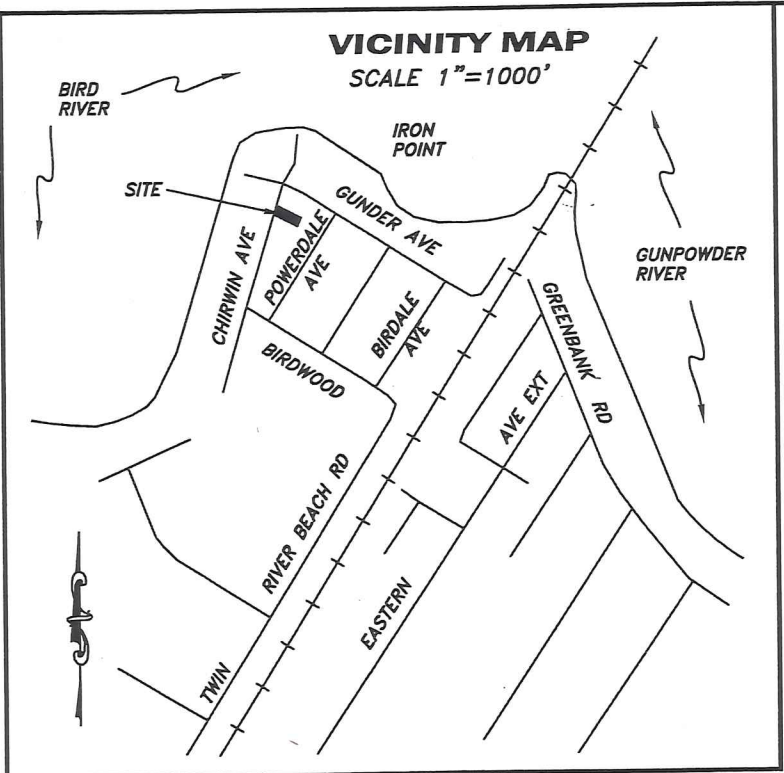
SIGN POSTING (1st) Date: 9/28/19 by SSG Black

SIGN POSTING (2nd) Date: 9/17/19 by SSG Black

PEOPLE'S COUNSEL APPEARANCE Yes No

PEOPLE'S COUNSEL COMMENT LETTER Yes No

Comments, if any: _____



| LINE | BEARING | DISTANCE |
|------|---------------|----------|
| L1 | S 51°11'00" E | 125.26' |
| L2 | S 30°45'52" W | 50.90' |
| L3 | N 51°11'00" W | 118.13' |
| L4 | N 23°01'00" E | 52.38' |

NOTE: THE BEARINGS AND NORTH ARROW SHOWN HEREON ARE IN THE MERIDIAN OF THE PLAT ENTITLED SECTION A "TWIN RIVER BEACH" RECORDED AMONG THE LAND RECORDS OF BALTIMORE COUNTY, MARYLAND IN PLAT BOOK 9 FOLIO 33.

The purpose of this drawing is to locate and or set the corners of the property shown hereon, being known as:
LOTS 155-156 as shown on the plat entitled SECTION A "TWIN RIVER BEACH" recorded among the land records of Baltimore County, Maryland in Plat Book 9 folio 33

This is to certify that I either personally prepared or was in responsible charge over the preparation of this drawing and the surveying work reflected in it, all set forth in Regulation .12 of Chapter 09.13.06 of the Code of Maryland Annotated Regulations.

Subject property is shown in Zone AE on the FIRM Map of Baltimore County, Maryland on Community Panel Number 2400100315 G, effective 5/5/2014



PLAN TO ACCOMPANY A PETITION FOR A VARIANCE /SPH
CHERWIN AVENUE
 6th COUNCILMANIC DISTRICT
 15th ELECTION DISTRICT
 BALTIMORE COUNTY, MARYLAND

NTT Associates, Inc.
 16205 Old Frederick Rd.
 Mt. Airy, Maryland 21771
 Phone: (410) 442-2031
 Fax: (410) 442-1315
 www.nttsurveyors.com

Scale: 1"= 40'
 Date: 10/23/2018
 Field By: RMS/TOM
 Drawn By: RIK/SCK
 File No.: MISC 12964 A
 Page No.: 1 of 1