IN THE MATTER OF	*	
CRAIG KESTNER, LEGAL OWNER	*	
AND PETITIONER FOR SPECIAL	*	CIRCUIT COURT
HEARING AND VARIANCE ON	*	FOR
THE PROPERTY LOCATED AT	*	BALTIMORE COUNTY
13217 CHERWIN AVENUE	*	Case No.: C-03-CV-21-001906
	*	
15th ELECTION DISTRICT	*	
6th COUNCILMANIC DISTRICT	*	
Board of Appeals Case Nos. 19-402	*	
SPHA and 20-090-SPHA	*	

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ORDER

Upon review and consideration of Petitioner's Petition for Judicial Review, Memorandum in Support of Appeal and arguments heard at a hearing on September 22, 2022, it is this 22nd day of September, 2022, by the Circuit Court for Baltimore County,

ORDERED, for the reasons stated in open court, that the Petitioner's request to reverse the decision rendered by the Board of Appeals of Baltimore County dated May 20, 2021 in the above captioned matter is hereby **DENIED**.

9-22-22
Date

Honorable Nancy M. Purpura
Circuit Court for Baltimore County

Entered: Clerk, Circuit Court for
Baltimore County, MD
September 22, 2022

Clerk to mail copies to all parties (9/22/2022 ntr)

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 February17, 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

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

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[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

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[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.

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

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[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.

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 removed[6], 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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[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.

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 Pauszczewiczes 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.

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.**

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 /tmp
Adam T. Sampson

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

JEFFERSON BUILDING
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105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
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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

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

RECEIVED
NOV – 2 2020
BALTIMORE COUNTY
BOARD OF APPEALS

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

IN RE: **PETITIONS FOR SPECIAL HEARING AND VARIANCE**	*	BEFORE THE
(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.

ORDER RECEIVED FOR FILING
Date 9/29/20
By DMignon

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.

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Date 9/29/20
By DMugrion

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 DM Mignon

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,

PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM:dlm
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

IN RE: **PETITIONS FOR SPECIAL HEARING AND VARIANCE** (13217 Cherwin Avenue)	*	BEFORE THE OFFICE OF
15th Election District 6th Council District	*	ADMINISTRATIVE HEARINGS
	*	FOR BALTIMORE COUNTY
Craig Kestner, *Legal Owner* Petitioner	*	**Case No. 2019-0402-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 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.

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Date 10/23/19
By ALN

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
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By

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

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Date 10/23/19
By DLN

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

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Date 10/23/19
By

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

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,

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

Craig Kestner
12922 Eastern Avenue
Middle River, MD 21220

Bruce E. Doak
Bruce E. Doak Consulting, LLC
3801 Baker Schoolhouse Road
Freeland, MD 21053

John Dawson
13215 Cherwin Avenue
Middle River, MD 21220

Michael R. McCann, Esquire
Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, MD 21204

Linda Kuchta, President
The Twin River Beach Protective and Improvement Association, Inc.
13209 Powderdale Avenue
Middle River, MD 21220

Ruth Hauf, Secretary
The Twin River Beach Protective and Improvement Association, Inc.
13209 Powderdale 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@wcslaw.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,

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

Confidentiality Statement
This electronic mail transmission contains confidential information belonging to sender which is legally privileged and confidential. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or taking of any action based on the contents of this electronic mail transmission is strictly prohibited. If you have received this electronic mail transmission in error, please immediately notifiy sender.

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

Linda Kuchta, President
The Twin River Beach Protective and
Improvement Association, Inc.
13209 Powderdale Avenue
Middle River, MD 21220

Ruth Hauf, Secretary
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

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

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.

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
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.

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

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

Linda Kuchta, President
The Twin River Beach Protective and
Improvement Association, Inc.
13209 Powderdale Avenue
Middle River, MD 21220

Ruth Hauf, Secretary
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

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

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

Julie L. Ensor
Clerk of the Circuit Court

cc:

RECEIVED
JUN 25 2021
BALTIMORE COUNTY
BOARD OF APPEALS

E-FILED; Baltimore County Circuit Court
Docket: 6/17/2021 4:36 PM; Submission: 6/17/2021 4:36 PM

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

RECEIVED
JUN 25 2021
BALTIMORE COUNTY
BOARD OF APPEALS

PETITION OF: *

CRAIG KESTNER *
7237 Greenbank Road
Baltimore, MD 21220 *

Petitioner *

FOR JUDICIAL REVIEW OF THE * CIVIL ACTION No. C-03-CV-21-001906
DECISION OF THE BOARD OF
APPEALS OF BALTIMORE COUNTY *
Jefferson Building, Suite 203
105 W. Chesapeake Avenue *
Towson, Maryland 21204
*
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@wcslaw.com
Attorneys for Petitioner

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@wcslaw.com>
Sent: Friday, June 25, 2021 2:37 PM
To: Appeals Board <appealsboard@baltimorecountymd.gov>
Cc: Neil Lanzi <nlanzi@wcslaw.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@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.

Enclosed is a courtesy copy of the Petition for Judicial review filed in the above case.

Thank you.

WC&S
Melody Loughlin, Paralegal
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102 W. Pennsylvania Avenue, Suite 406
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Docket: 6/17/2021 4:36 PM; Submission: 6/17/2021 4:36 PM

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

PETITION OF: *

CRAIG KESTNER *
7237 Greenbank Road
Baltimore, MD 21220 *

Petitioner *

FOR JUDICIAL REVIEW OF THE * CIVIL ACTION No. C-03-CV-21-001906
DECISION OF THE BOARD OF
APPEALS OF BALTIMORE COUNTY *
Jefferson Building, Suite 203
105 W. Chesapeake Avenue *
Towson, Maryland 21204

*

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

RECEIVED
JUN 25 2021
BALTIMORE COUNTY
BOARD OF APPEALS

****

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)
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E-FILED; Baltimore County Circuit Court
Docket: 6/17/2021 4:36 PM; Submission: 6/17/2021 4:36 PM

IN THE MATTER OF CRAIG KESTNER, LEGAL OWNER AND PETITIONER FOR SPECIAL HEARING AND VARIANCE ON THE PROPERTY LOCATED AT 13217 CHERWIN AVENUE	*	BEFORE THE BOARD OF APPEALS OF BALTIMORE COUNTY
15th ELECTION DISTRICT 6th COUNCILMANIC DISTRICT	*	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 February17, 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

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.

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

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[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.

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 removed[6], 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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[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.

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 Pauszczewiczes 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.

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.**

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
Adam T. Sampson

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

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Board of Appeals of Baltimore County

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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,

Sunny Cannington Hay

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 February17, 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

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

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[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

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[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.

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

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[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.

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 removed[6], 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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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.

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 Pauszczewiczes 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.

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**.

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
Adam T. Sampson

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

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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
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**

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

US 12/16/2020 MAILED FROM 21204

Hasler
12/16/2020
$000.38

FIRST-CLASS MAIL
AUTO

ZIP 21204
041D10203FJ

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

RECEIVED
JAN 04 2021
BALTIMORE COUNTY
BOARD OF APPEALS

Craig Kestner
7237 Greenbank Road
Baltimore, MD 21220

20-090-SPH
19-402-SPH

New Address
↓
12922 Eastern Ave 21220

KL1-SSB 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.**

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

RECEIVED
NOV - 2 2020
BALTIMORE COUNTY
BOARD OF APPEALS

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

RECEIVED
OCT 29 2020
OFFICE OF
ADMINISTRATIVE HEARINGS

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)	*	BEFORE THE
	*	OFFICE OF
15th Election District 6th Councilmanic District	*	ADMINISTRATIVE
	*	HEARINGS
Craig Kestner – *Legal Owner*	*	FOR
Petitioner	*	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

RECEIVED
OCT 29 2020
OFFICE OF
ADMINISTRATIVE HEARINGS

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

Michael R. McCann

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
001	806	0000		6150				$600.00

Total: $ 600.00

Rec From: Michael McCann, Esq

For: Office of Administrative Hearings (CD OR APPEAL)

CASE NO. 2020-0090-SPHA

ADDRESS/PROJECT: 13217 Chemin Ave

HEARING DATE(S): 9-23-2020

CHECK #: 5781

DISTRIBUTION

WHITE- CASHIER PINK - AGENCY YELLOW - CUSTOMER GOLD - ACCOUNTING

PLEASE PRESS HARD!!!!

PAID RECEIPT

BUSINESS	ACTUAL	TIME	DRW
11/04/2020	10/30/2020	15:55:13	3

WS03 MAIL CAM
RECEIPT N 090672 10/30/2020 OPLN
S 326 ZONING VERIFICATION
RE 174858
Recpt Tot $ 600.00
600.00 CK .00 CA
Baltimore County, Maryland

RECEIVED
NOV 04 2020
OFFICE OF
ADMINISTRATIVE HEARINGS

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
001	806	0000		6150				$600.00

Total: $ 600.00

Rec From: Michael McCann, Esq

For: Office of Administrative Hearings (CD OR APPEAL)

CASE NO. 2020-0090-SPHA

ADDRESS/PROJECT: 13217 Chemin 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.

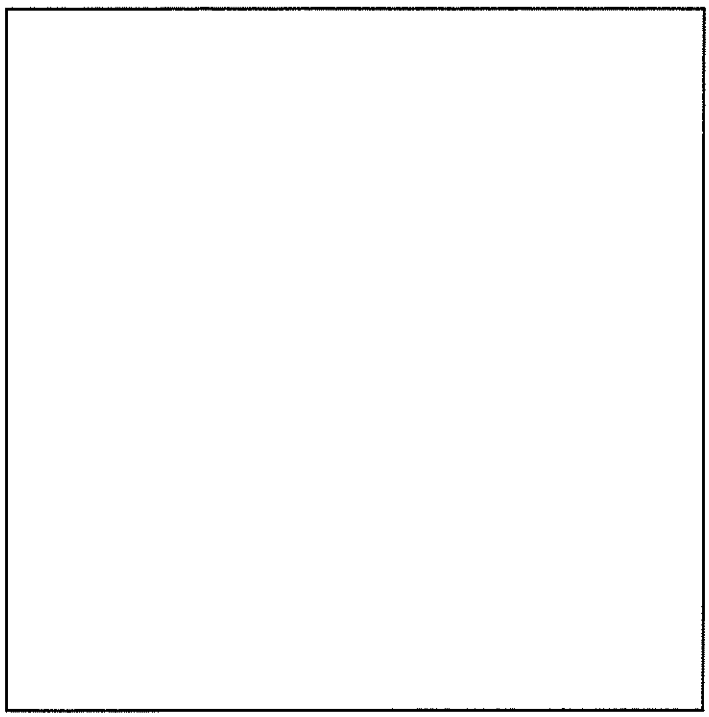
Let me know when is a good time to come.

Thanks.

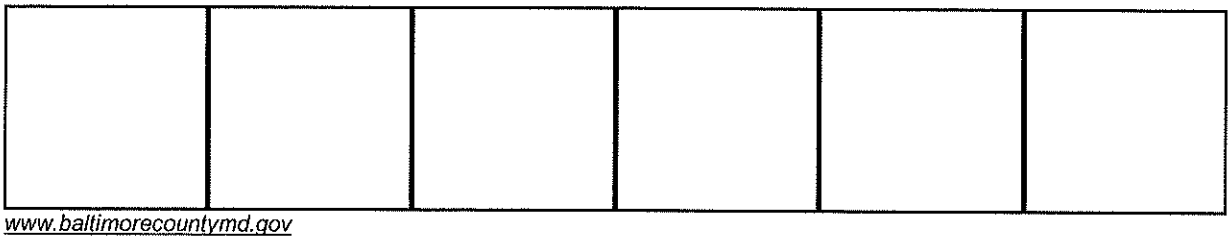
Michael

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



www.baltimorecountymd.gov

IN RE: **PETITIONS FOR SPECIAL HEARING AND VARIANCE**	*	BEFORE THE
(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.

ORDER RECEIVED FOR FILING
Date 9/29/20
By DMignon

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 DMignon

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 DM Mignon

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,

PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM:dlm
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

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 X AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

The undersigned legal owner(s) of the property situate in Baltimore County and which is described in the description and plan attached hereto and made a part hereof, hereby petition for:

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

SEE ATTACHED PAGE

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

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

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:

ORDER RECEIVED FOR FILING
Date 9/29/20
By D Wiseman

Name- Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

Attorney for Petitioner:

NEIL LANZI
WRIGHT CONSTABLE & SKEEN LLP
Name- Type or Print

Signature

102 W. PENNSYLVANIA AVE, SUITE 406 TOWSON MD
Mailing Address City State

21204 | 443-991-5917 | NLANZI@WCSLAW.COM
Zip Code Telephone # Email Address

Legal Owners (Petitioners):

CRAIG KESTNER
Name #1 – Type or Print Name #2 – Type or Print

X
Signature #1 Signature # 2

X 13015 EASTERN AVE. BALTIMORE MD
Mailing Address City State

21220 X 410-591-2901 X KBIGCRAIG@AOL.COM
Zip Code Telephone # Email Address

Representative to be contacted:

BRUCE E. DOAK
BRUCE E. DOAK CONSULTING LLC
Name – Type or Print

Signature

3801 BAKER SCHOOLHOUSE ROAD FREELAND MD
Mailing Address City State

21053 | 410-419-4906 | BDOAK@BRUCEDOAKCONSULTING.COM
Zip Code Telephone # Email Address

CASE NUMBER 2020-0090-SPHA **Filing Date** 3/30/20 **Do Not Schedule Dates:** ____ **Reviewer** ____

REV. 10/4/11

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

2020-0090-SPHA

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 304.1 BCZR

2020-0090-SPHA

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.

STATE OF MARYLAND
BRUCE EDWIN DOAK
531
PROPERTY LINE SURVEYOR

Bruce E. Doak Consulting, LLC
3801 Baker Schoolhouse Road
Freeland, MD 21053
410-419-4906 cell / 443-900-5535 office
bdoak@bruceedoakconsulting.com

2020-0050-SPHA

[redacted] Order 9/23 1:30 pm [redacted]
ltr

CASE NO. 2020-0090SPHA

CHECKLIST

Comment Received	Department	Support/Oppose/ Conditions/ Comments/ No Comment
4/9	DEVELOPMENT PLANS REVIEW (if not received, date e-mail sent _____)	Comments
4/24	DEPS (if not received, date e-mail sent _____)	Comments
_____	FIRE DEPARTMENT	_____
4/15	PLANNING (if not received, date e-mail sent _____)	Comments
5/11	STATE HIGHWAY ADMINISTRATION	N/C or No objection
_____	TRAFFIC ENGINEERING	_____
_____	COMMUNITY ASSOCIATION	_____
_____	ADJACENT PROPERTY OWNERS	_____

ZONING VIOLATION (Case No. _____)

PRIOR ZONING (Case No. 2019-0402-SPHA)

NEWSPAPER ADVERTISEMENT Date: _____

SIGN POSTING (1st) Date: 9/1 by BDoak

SIGN POSTING (2nd) Date: 9/18 by "

PEOPLE'S COUNSEL APPEARANCE Yes ☒ No ☐

PEOPLE'S COUNSEL COMMENT LETTER Yes ☐ No ☒

Comments, if any: _____

d/18

DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS
ZONING REVIEW OFFICE

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

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

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

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

For Newspaper Advertising:

Case Number: 2020-0090-SPHA

Property Address: 13217 CHERWIN AVENUE

Property Description: LOTS 155 & 156 TWIN RIVER BEACH PLAT BOOK 9/33

Legal Owners (Petitioners): CRAIG KESTNER

Contract Purchaser/Lessee: _____

PLEASE FORWARD ADVERTISING BILL TO:

Name: CRAIG KESTNER

Company/Firm (if applicable): N/A

Address: 13015 EASTERN AVENUE
BALTIMORE MD 21220

Telephone Number: 410-591-2901

Revised 5/20/2014

Bruce Doak emailed in

Case No.: 2020-0090 SPHA – 13217 Cherwin Ave.– Sept. 23, 2020 @ 1:30 PM

Exhibit Sheet

	Petitioner/Developer	Protestants
No. 1	Zoning Plan	Duplicates
No. 2	Key Sheet for Photos	
No. 3	Photo's A-H-2	
No. 4		
No. 5		
No. 6		
No. 7		
No. 8		
No. 9		
No. 10		
No. 11		
No. 12		

GENERAL SITE INFORMATION

1. Ownership: Craig Kestner
   13015 Eastern Avenue Baltimore, MD 21220
2. Address: 13217 Cherwin Avenue
3. Deed references: SM 34935/ 437
   Lots 155 & 156 " Section A Twin River Beach" PB 9/ 33
4. Area: 6,050 sq. ft. / 0.138 acre Total (per SDAT)
5. Tax Map / Parcel / Lot / Tax account #: 64 / 43 /155/ 15-22-350392
   Tax Map / Parcel / Lot / Tax account #: 64 / 43 /156/ 15-22-350391
6. Election District: 15 Councilmanic District: 6
   ADC Map: 4583C10 GIS tile: 084A1 Position sheet: 31NE49
7. 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.
8. 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

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 2400100315 G.

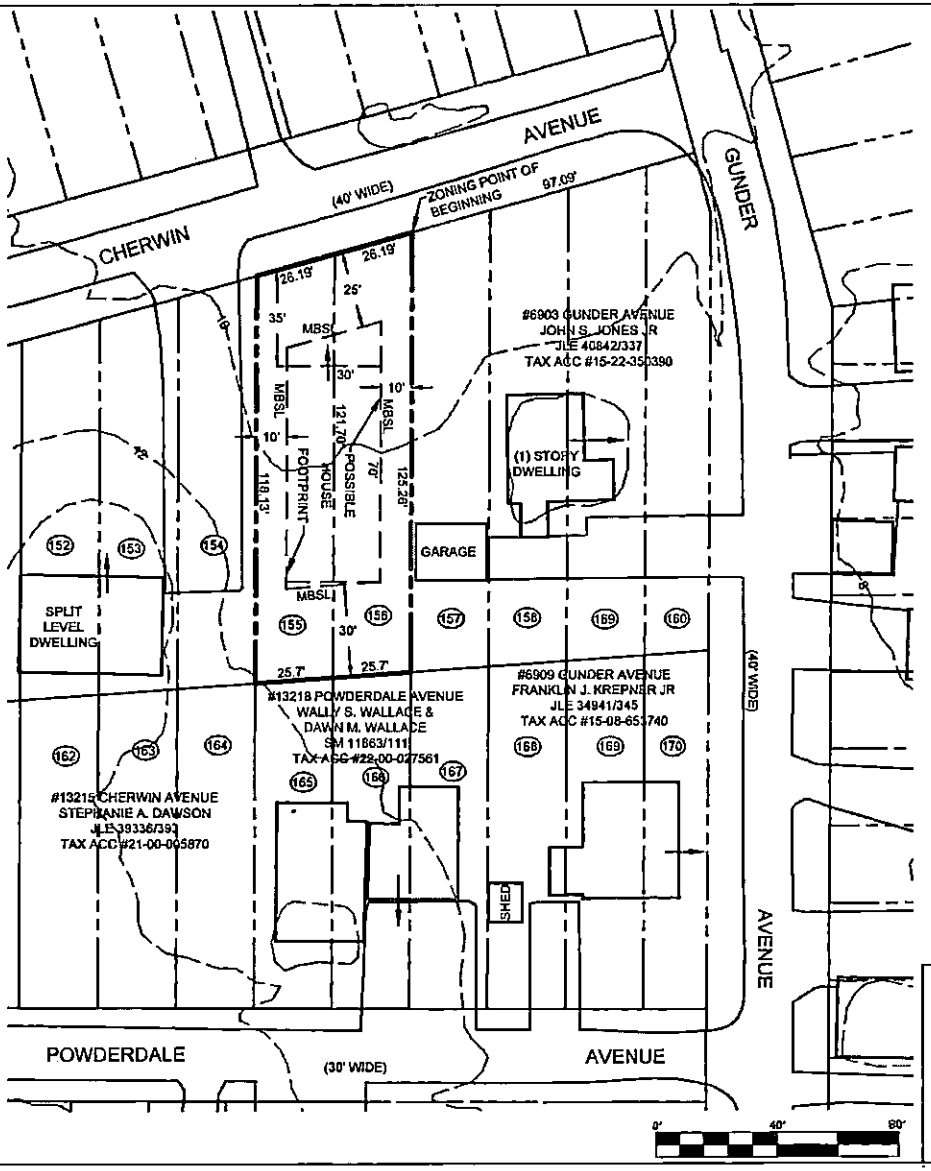
OFFICE OF PLANNING

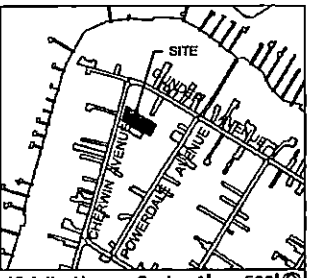
Regional Planning District: Windlass District Code: 322

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
Frederick, MD 21253
o 443-900-5535 m 410-419-4900
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

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

PETITIONER'S

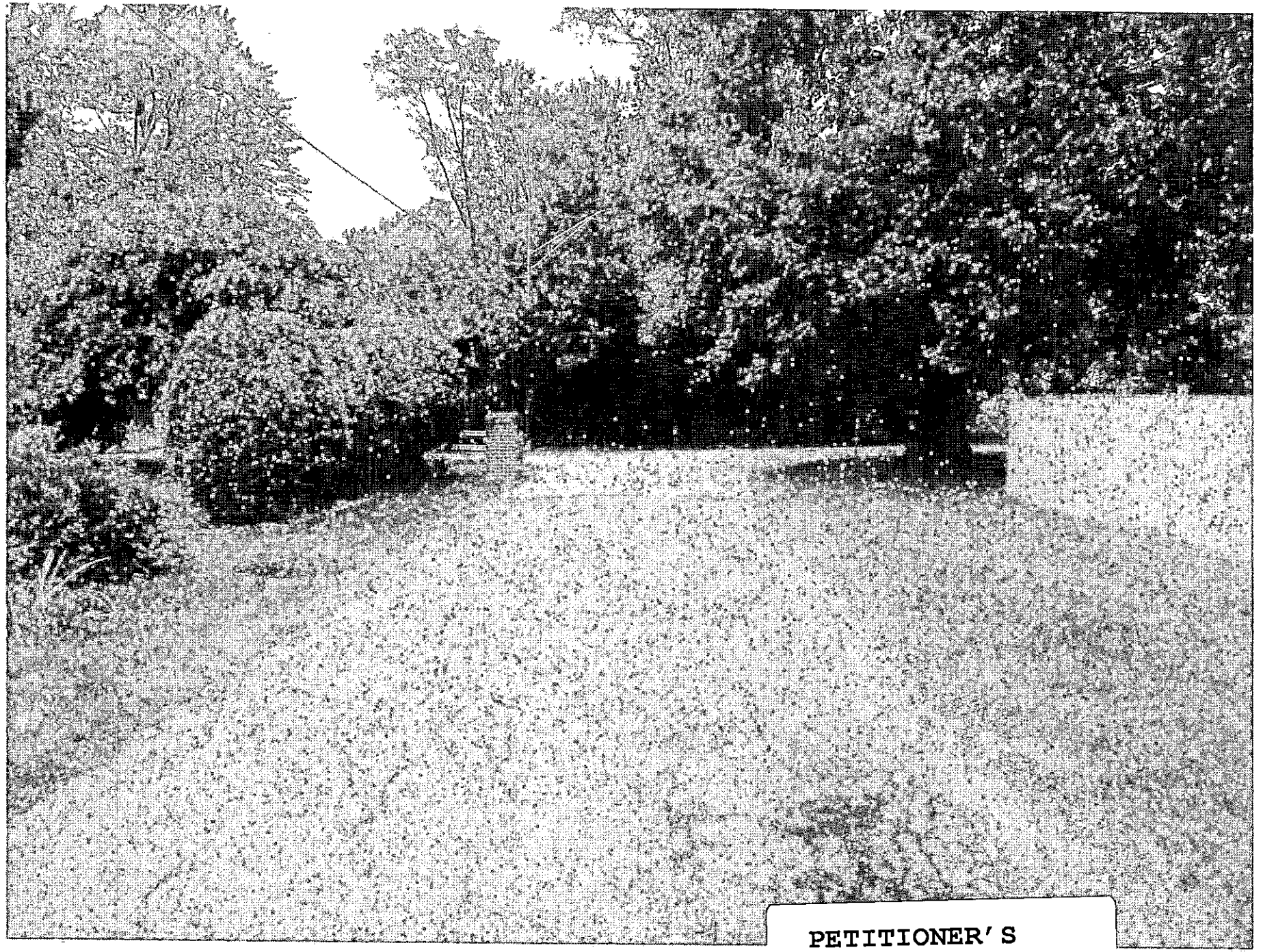
EXHIBIT NO. 1



KEY SHEET FOR EXHIBIT PHOTOS

PETITIONER'S

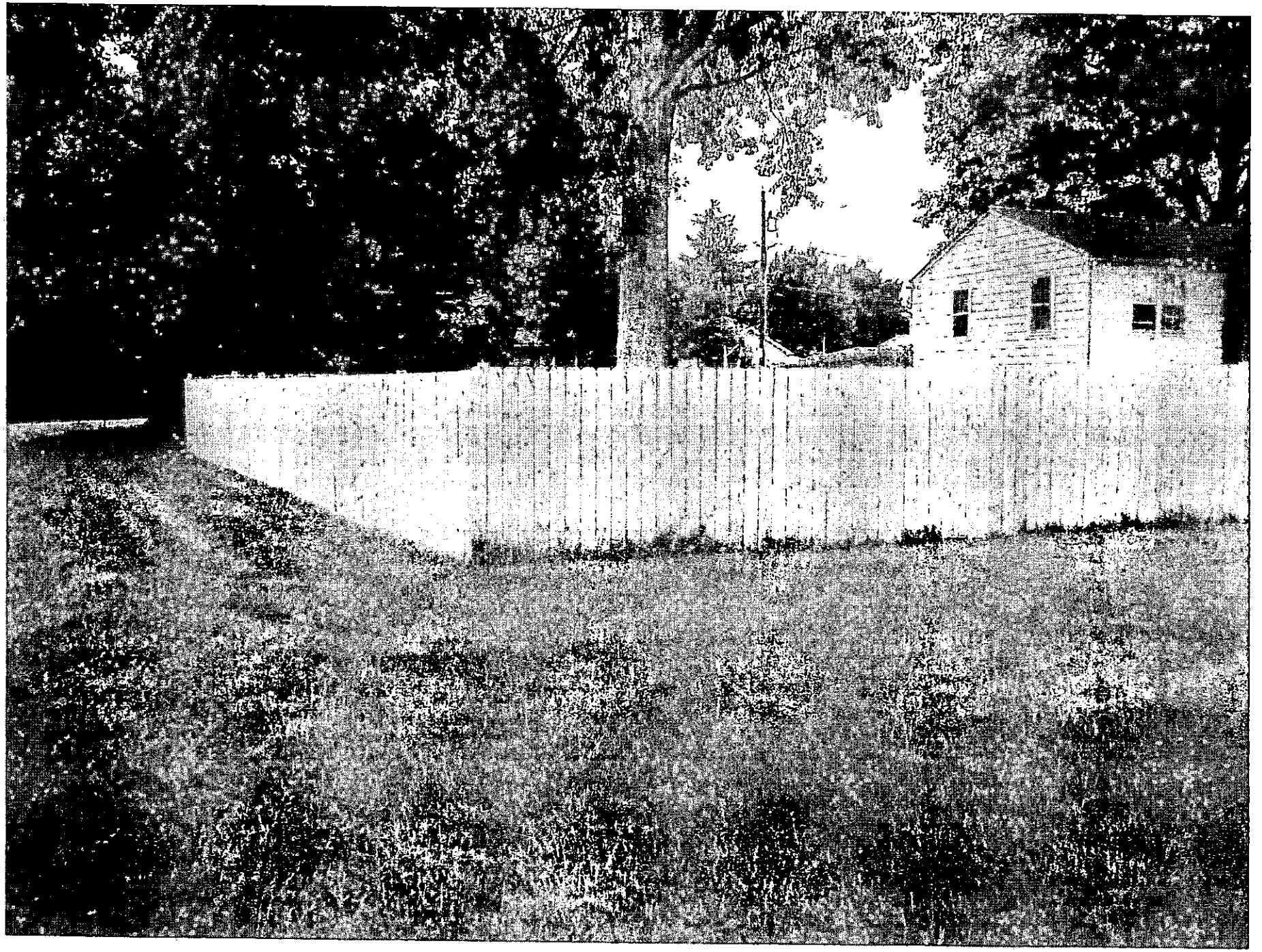
EXHIBIT NO. 2



PETITIONER'S

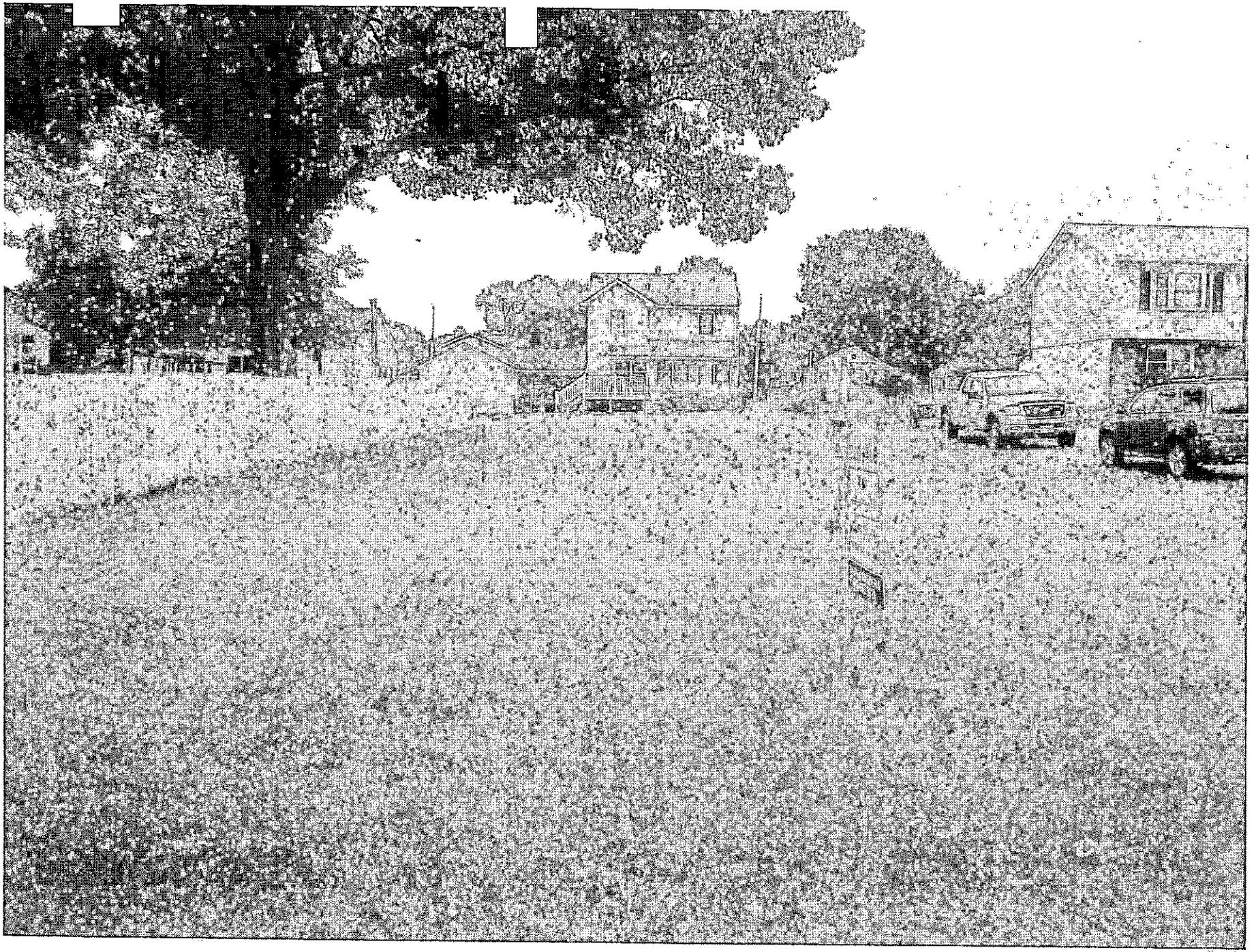
EXHIBIT NO. 3

A



B

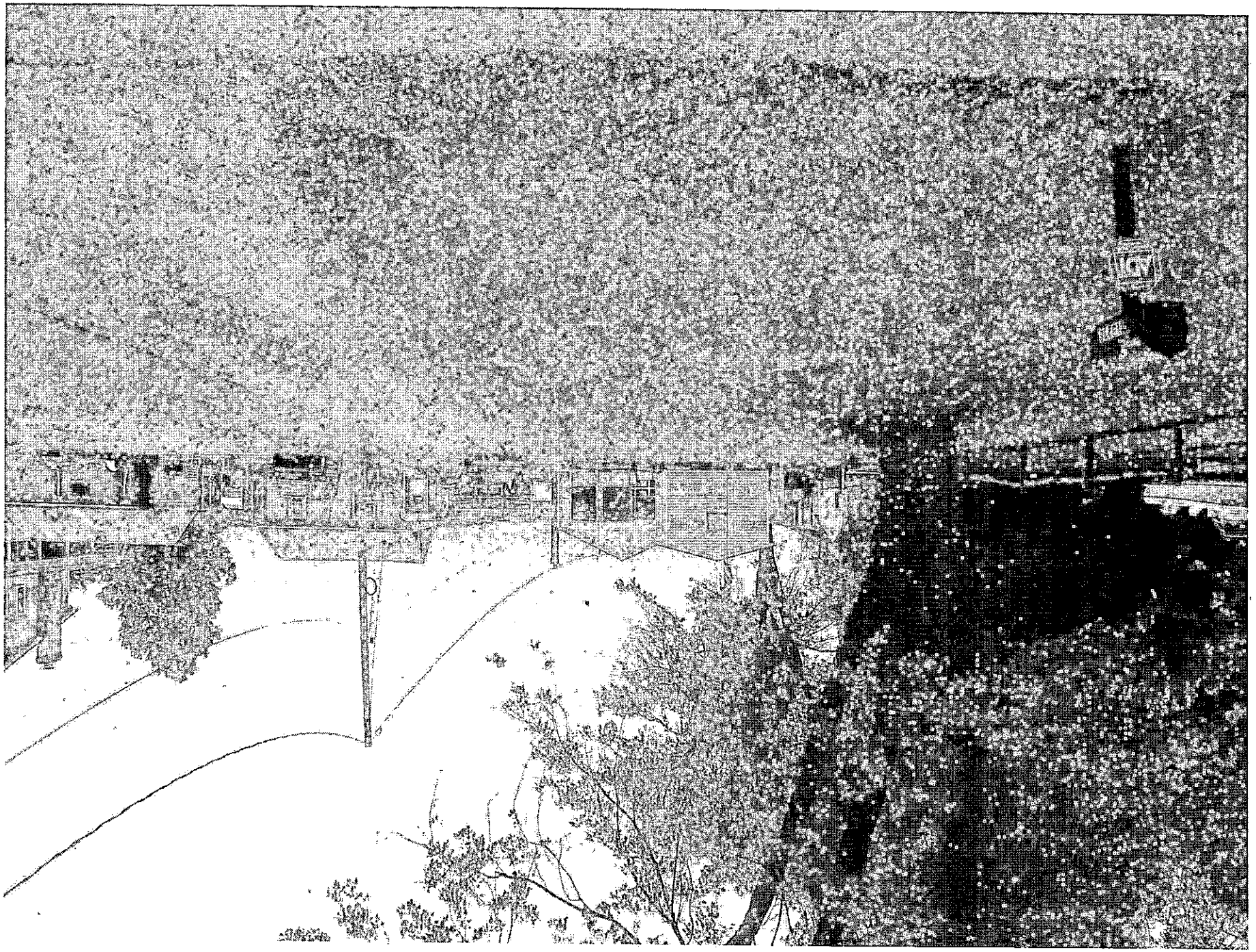




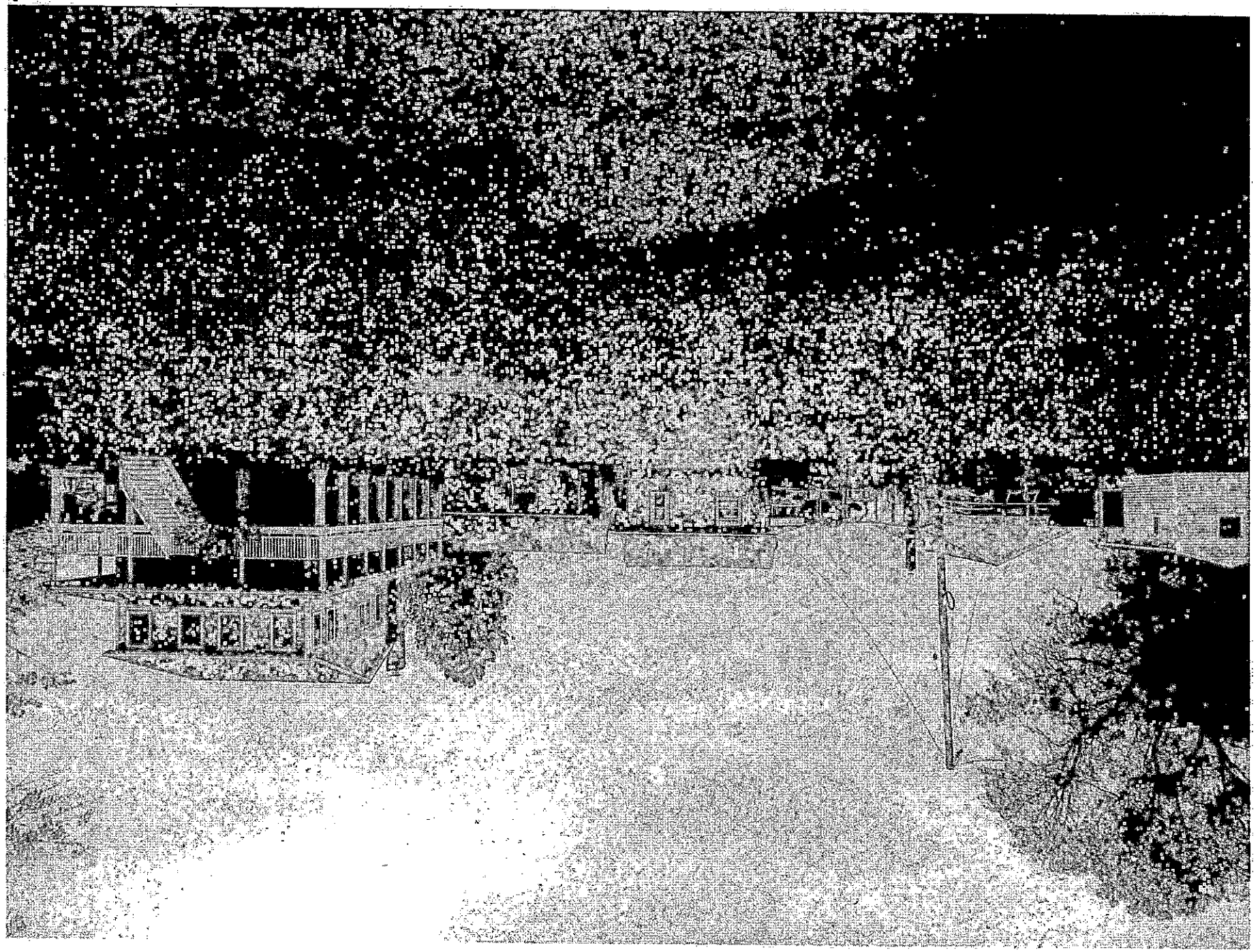
D



E



H



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. Zon regs
- BOA to hold their case until this one gets heard
- People's Counsel is involved
- Moved house back
- Shrunk house
- No setback variances

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

RECEIVED
SEP 21 2020
OFFICE OF
ADMINISTRATIVE HEARINGS

W&S

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

This message may contain privileged or confidential information that is protected from disclosure. If you are not the intended recipient of this message, you may not disseminate, distribute or copy it. If you have received this message in error, please delete it and notify the sender immediately by reply email or by calling 410-659-1300.

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.

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: Craig Kastner
   10015 Eastern Avenue Baltimore, MD 21220
2. Address: 13217 Cherwin Avenue
3. Deed reference: SM 34935/ 437
   Lots 155 & 156 " Section A Twin River Beach" PB 9/ 33
4. Acres: 6,050 sq. ft. / 0.139 acre Total (per SDAT)
5. Tax Map / Parcel / Lot / Tax account #: 94 / 43 /155/ 15-22-350350
   Tax Map / Parcel / Lot / Tax account #: 94 / 43 /156/ 15-22-350350
6. Election District: 15 Council/manic District: 6
   ADC Map, 4553C10 GIS Ste: 3344A1 Fire/Sta district: 31N549
7. 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 4644A1 and the information provided by Baltimore County on the Internet.
8. Improvements: Vacant

OFFICE OF ZONING

Zoning: DR 5.5

Zoning History: #2019-0420-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

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 4E per FIRM Panel 240010015 G.

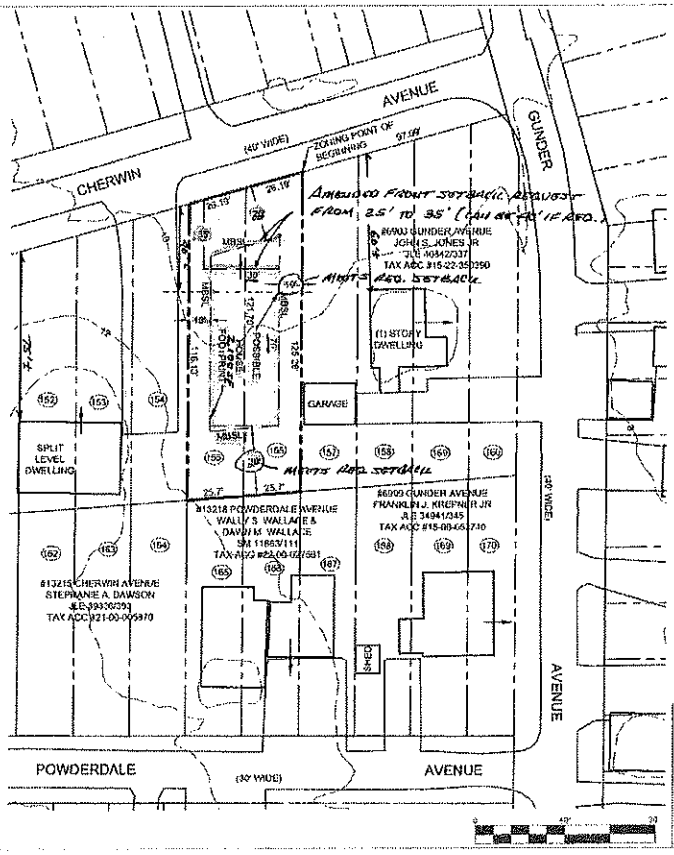
OFFICE OF PLANNING

Regional Planning District: Windsor Mill/ Council Code: 307

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

PROPOSED DEVELOPMENT

To construct a single family dwelling on the subject lot.





Vicinity Map – Scale: 1" = 500'

NOTE: IF 40' FRONT SETBACK = HSE FOOTPRINT 65'x 30' = 1950 sf

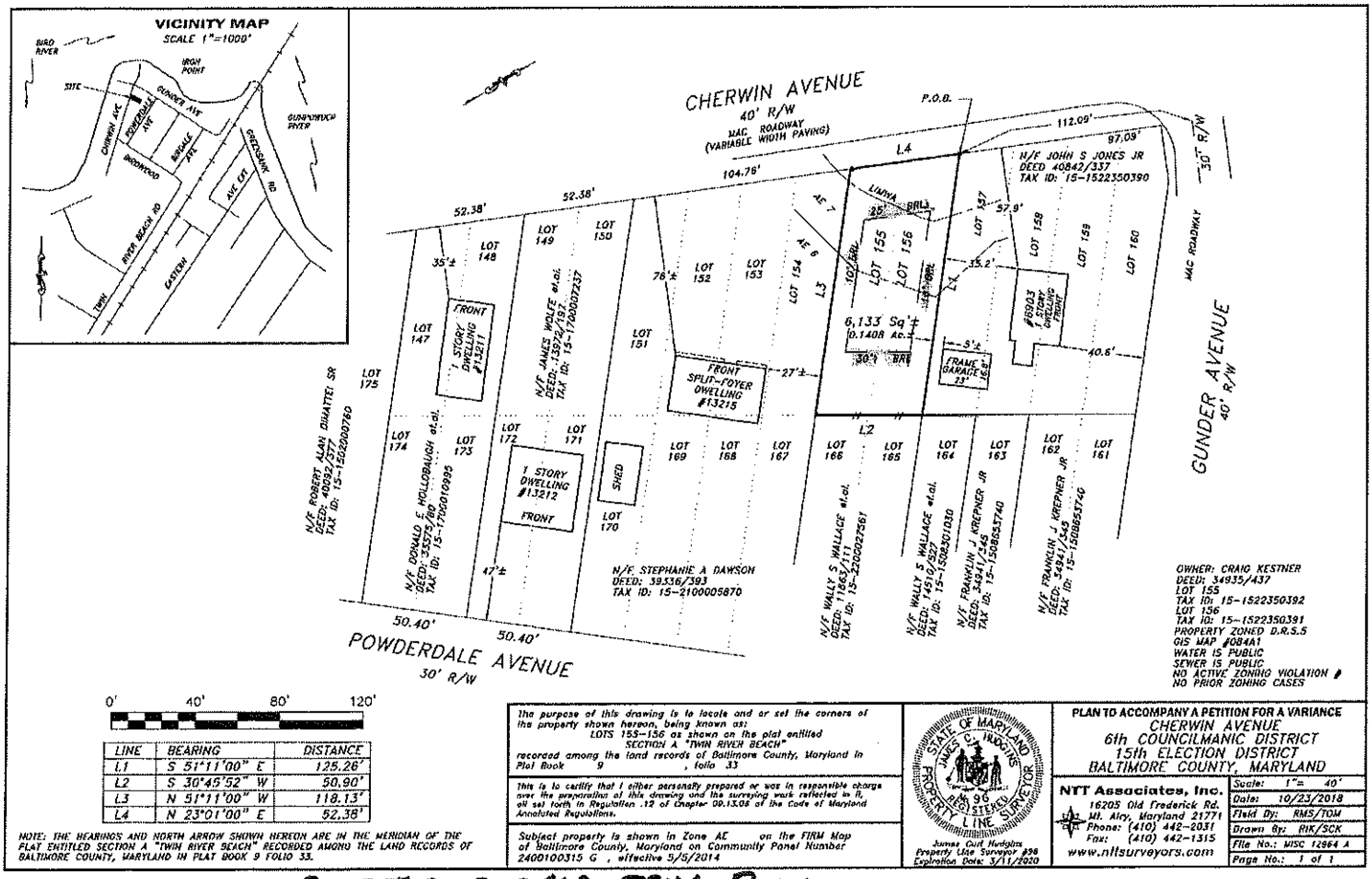
REVISION

Bruce E. Doak Consulting, LLC
Land Use Expert and Surveyor
3801 Baker School House Road
Finksburg, MD 21048
c 443-909-1625 w 410-413-2406
bruce@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

Date: 3/14/2020
Scale: 1"=50'

CASE #2020-0090-SPHA PLAN - AMENDMENT EXPLAINED



OWNER: CRAIG KESTNER
DEED: 34935/437
LOT 155
TAX ID: 15-1522350392
LOT 156
TAX ID: 15-1522350391
PROPERTY ZONED D.R.S.5
GIS MAP #084A1
WATER IS PUBLIC
SEWER IS PUBLIC
NO ACTIVE ZONING VIOLATION
NO PRIOR ZONING CASES

0' 40' 80' 120'

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

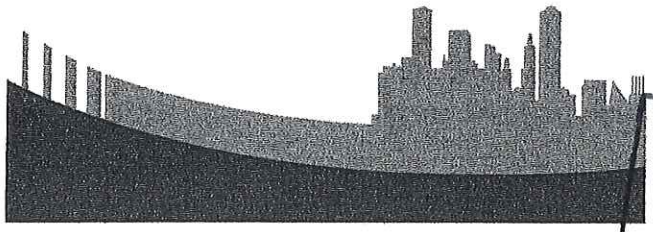
STATE OF MARYLAND
JAMES C. HUDGINS
PROPERTY LINE SURVEYOR
No. 21192
James Curt Hudgins
Property Line Surveyor #656
Expiration Date: 9/11/2020

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) 442-1315
www.nttsurveyors.com

Scale:	1"= 40'
Date:	10/23/2018
Field By:	RMS/TOM
Drawn By:	RIK/SCK
File No.:	WISC 12864 A
Page No.:	1 of 1

CASE # 2019-0402-SPHA PLAN



RECEIVED
SEP 18 2020
OFFICE OF
ADMINISTRATIVE HEARINGS

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.**

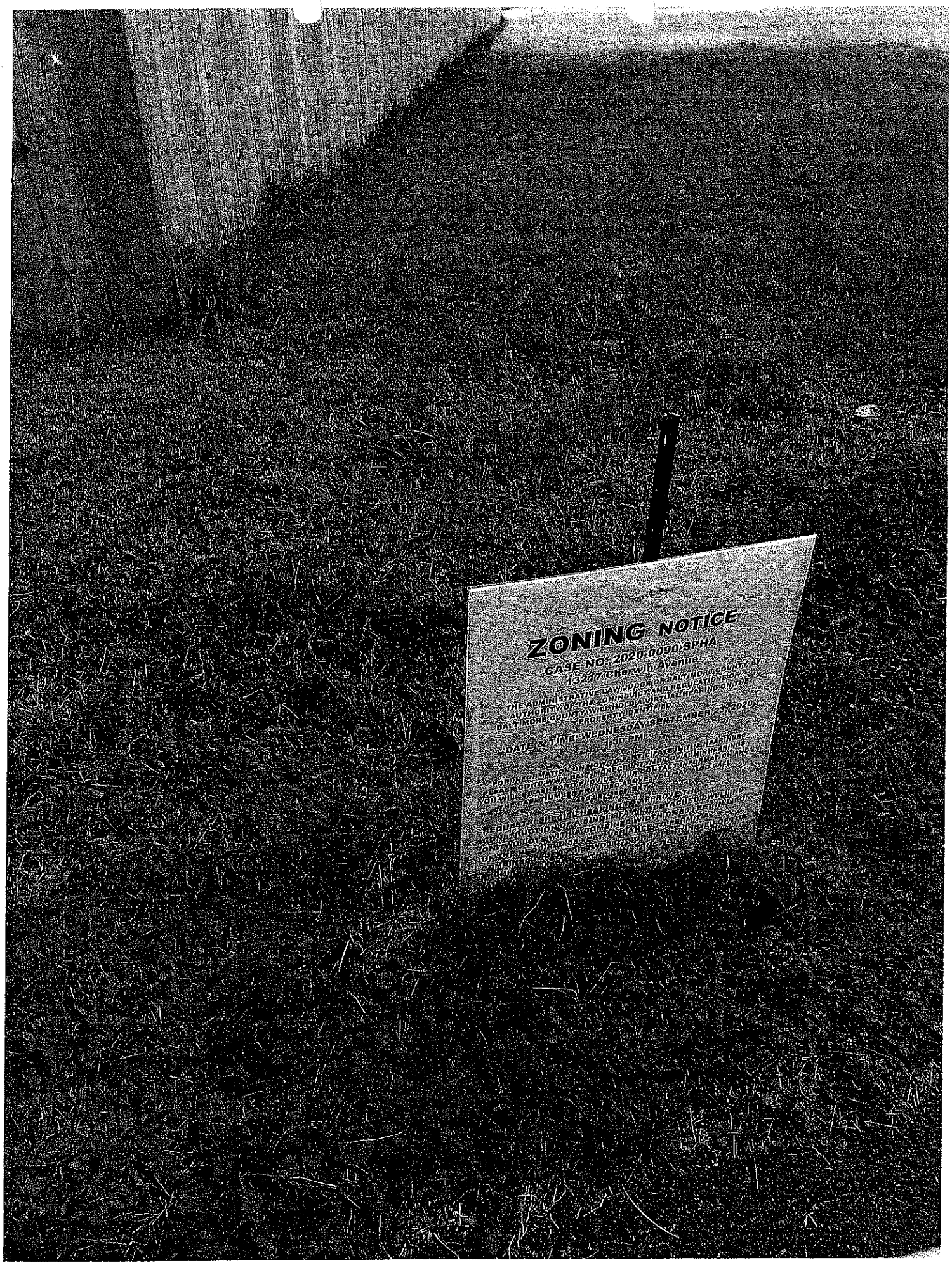
Sincerely,

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


ZONING NOTICE
CASE NO: 2020-0090-SPHA
13217 Cherryhill Avenue
DATE & TIME: WEDNESDAY SEPTEMBER 23, 2020
1:00 PM

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,

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR/kl

Enclosures

c: People's Counsel
Bruce E Doak 3801 Baker Schoolhouse Road Freeland MD 21053

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,

Richard A Zeller

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

DATE: April 9, 2020

efc for VKD

FROM: Vishnu Desai, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For April 13, 2020
Item No. 2020-0090-SPHA

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

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

s3

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

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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.

Select Contacts... Import Contacts...

Panelists to Invite

	Name	Email address	Phone number	Language	Time Zone	Locale
☐	donna mignon (Alternate Host)	dmignon@baltimorecountymd.gov	1-	English	New York Time	U.S.
☐	henry ayakwah (Alternate Host)	hayakwah@baltimorecountymd.gov	1-	English	New York Time	U.S.
☐	Barbara Kestner	bkestner@bnjsweeping.com	1-	English	New York Time	U.S.
☐	bruce e. doak	bdoak@bruceedoakconsulting.com	1-	English	New York Time	U.S.
☐	Craig Kestner	kbigcraig@aol.com	1-	English	New York Time	U.S.
☐	J. Neil Lanzi, Esq.	nlanzi@wcslaw.com	1-	English	New York Time	U.S.
☐	John Dawson	jdawson999@aol.com	1-	English	New York Time	U.S.
☐	Paul M. Mayhew	pmayhew@baltimorecountymd.gov	1-	English	New York Time	U.S.

added 9-21

Invite Select All Clear All Delete Cancel

New Panelist

Full name: (required)

Email address: (required)

Phone number: Country/Region 1 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

Add to Invitation List

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@wcslaw.com	1-	New York Time	English	U.S.
Paul M. Mayhew	pmayhew@baltimorecountymd.gov	1-	New York Time	English	U.S.

OK

2020-0090-SPHA

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@wcslaw.com	1-	New York Time	English	U.S.
Paul M. Mayhew	pmayhew@baltimorecountymd.gov	1-	New York Time	English	U.S.

OK

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 prev. sent invite email today
Barbara Kestner, email is bkestner@bnjsweeping.com

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

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
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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 X AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

The undersigned legal owner(s) of the property situate in Baltimore County and which is described in the description and plan attached hereto and made a part hereof, hereby petition for:

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

SEE ATTACHED PAGE

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

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

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:

NEIL LANZI
WRIGHT CONSTABLE & SKEEN LLP
Name- Type or Print

Signature

102 W. PENNSYLVANIA AVE. SUITE 406 TOWSON MD
Mailing Address City State

21204 1443-991-5917
Zip Code Telephone # Email Address

NLANZI@WCSLAW.COM

Legal Owners (Petitioners):

CRAIG KESTNER
Name #1 – Type or Print Name #2 – Type or Print

X
Signature #1 Signature # 2

X 13015 EASTERN AVE. BALTIMORE MD
Mailing Address City State

21220 X 410-591-2901 X
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

3801 BAKER SCHOOLHOUSE ROAD FREELAND MD
Mailing Address City State

21053 1410-419-4906
Zip Code Telephone # Email Address

BDOAK@BRUCEDOAKCONSULTING.COM

CASE NUMBER 2020-0090-APHA **Filing Date** 3/30/20 **Do Not Schedule Dates:** _____ **Reviewer** GA

REV. 10/4/11

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

RECEIVED
APR 28 2020
OFFICE OF
ADMINISTRATIVE HEARINGS

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 15th Election & 6th 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 X AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

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

SEE ATTACHED PAGE

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

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

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

ORDER RECEIVED FOR FILING
Date: 3/30/20
By: BNG

Attorney for Petitioner:

NEIL LANZI
WRIGHT CONSTABLE & SKEEN LLP
Name - Type or Print

Signature

102 W. PENNSYLVANIA AVE, SUITE 406 TOWSON MD
Mailing Address City State

21204 / 443-991-5917 /
Zip Code Telephone # Email Address

NLANZI@WCSLAW.COM

Legal Owners (Petitioners):

CRAIG KESTNER
Name #1 – Type or Print

X
Signature #1

Name #2 – Type or Print

Signature # 2

X 13015 EASTERN AVE. BALTIMORE MD
Mailing Address City State

21220 X 410-591-2901 X
Zip Code Telephone # Email Address

KLBIGCRAIG@AOL.COM

Representative to be contacted:

BRUCE E. DOAK
BRUCE E. DOAK CONSULTING LLC
Name – Type or Print

Signature

3801 BAKER SCHOOLHOUSE ROAD FREELAND MD
Mailing Address City State

21053 / 410-419-9906 /
Zip Code Telephone # Email Address

BDOAK@BRUCEDOAKCONSULTING.COM

CASE NUMBER 2020-0090-A **Filing Date** 3/30/20 **Do Not Schedule Dates:** _____ **Reviewer** GA

REV. 10/4/11

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

2020-0090-SPHA

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 1B02.3C.1

2020-0090-SPHA

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.

STATE OF MARYLAND
BRUCE EDWIN DOAK
531
PROPERTY LINE SURVEYOR

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-SPHA

ZAC AGENDA

Case Number: 2020-0090-SPHA **Reviewer:** Gary Hucik
Existng 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:	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 01/01/2018	As of 07/01/2020	As of 07/01/2021
Land:	10,400	10,400		
Improvements	0	0		
Total:	10,400	10,400	10,400	
Preferential Land:	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

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 : 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
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@wcslaw.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

{00417185v. (16927.00001)}

Krysundra Cannington

From: Melody Loughlin <mloughlin@wcslaw.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@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.

Please see the attached letter requesting postponement of the hearing date for the above referenced case.

W&S

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@wcslaw.com
www.wcslaw.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.

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@wcslaw.com>
Sent: Monday, March 2, 2020 1:44 PM
To: Krysundra Cannington
Subject: 2019-0402-SPHA 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.

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

W&S

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@wcslaw.com

This message may contain privileged or confidential information that is protected from disclosure. If you are not the intended recipient of this message, you may not disseminate, distribute or copy it. If you have received this message in error, please delete it and notify the sender immediately by reply email or by calling 410-659-1300.

11/25/19 Neil Lanzi

Please hold - trying to work out settlement

will √in wk of 12/9 for update.

message

FOR Jenny

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 & expert for June conflicts. wcb.

JOHN A. OLSZEWSKI, JR.
County Executive

PAUL M. MAYHEW
Managing Administrative Law Judge
LAWRENCE M. STAHL
Administrative Law Judge

November 21, 2019

RECEIVED
NOV 21 2019
BALTIMORE COUNTY
BOARD OF APPEALS

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

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

RECEIVED
NOV 21 2019
OFFICE OF
ADMINISTRATIVE HEARINGS

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

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount
001	806	0000		6150				300.00 CR

Total: 300.00

Rec From: Barbara & Donald Bortman

For: (Neil Lanze, ESQ.)

ZAC-2019-SPHA - Appeal of Variance

CR#217 Problem Checks

CK#217

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER GOLD - ACCOUNTING

PLEASE PRESS HARD!!!!

CASHIER'S VALIDATION

PAID RECEIPT

BUSINESS ACTUAL TIME REG
11/22/2019 11/21/2019 10:20:43 1

REG# MGR WALKIN LIC#

RECEIPT # 083638 11/21/2019 OLIN

Rev 5 538 20000 06000 06000 00000

NO. 174843

Rcpt Tot 300.00

300.00 CK .00 CA

Baltimore County, Maryland

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 AND VARIANCE** (13217 Cherwin Avenue)	*	BEFORE THE
	*	OFFICE OF
15th Election District 6th Council District	*	ADMINISTRATIVE HEARINGS
	*	FOR BALTIMORE COUNTY
Craig Kestner, *Legal Owner* Petitioner	*	**Case No. 2019-0402-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 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

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 Den

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

PLEASE PRINT CLEARLY

CASE NAME KESTNER
CASE NUMBER 2019-0402-SPHA
DATE 10/18/19

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E - MAIL
BRUCE E. DOAK	3801 BAKER SCHOOLHOUSE ROAD	FREEDOM MD 21053	BDOAK@BRUCEDOAKCONSULTING.COM
Barbara C Kestner	12913 Eastern Ave	Balto MD 21220	bkestner@bnjsweeping.com
Craig W Kestner	13015 Eastern Ave	Middle River, MD 21220	Kbigcraig@Aol.com
Shawn Sanders	4315 Hoffmanville Rd	Millers Md 21102	ssanders@pinnaclere.net

PLEASE PRINT CLEARLY

CASE NAME _____
CASE NUMBER _____
DATE _____

CITIZEN'S SIGN - IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E - MAIL
John Dawson	13215 Charwen Ave.	Middle River, MD	JDawson999@AOL.com

CERTIFICATE OF POSTING

RE: Case No.: 2019-0402-SPHA

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

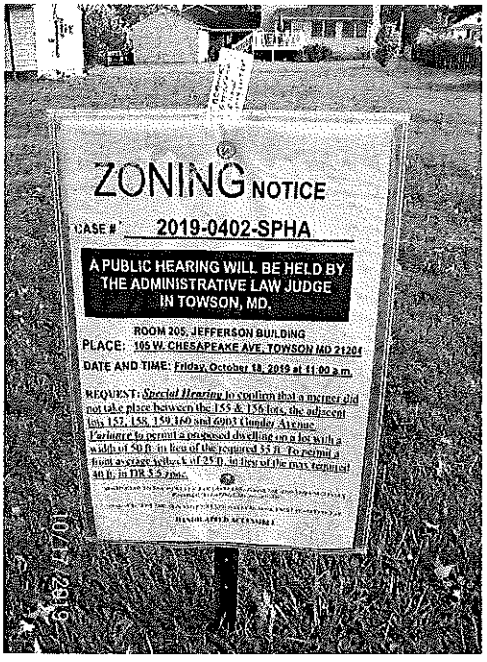
Attn: Kristen Lewis:

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**

The sign(s) were posted on September 28, 2019
(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:

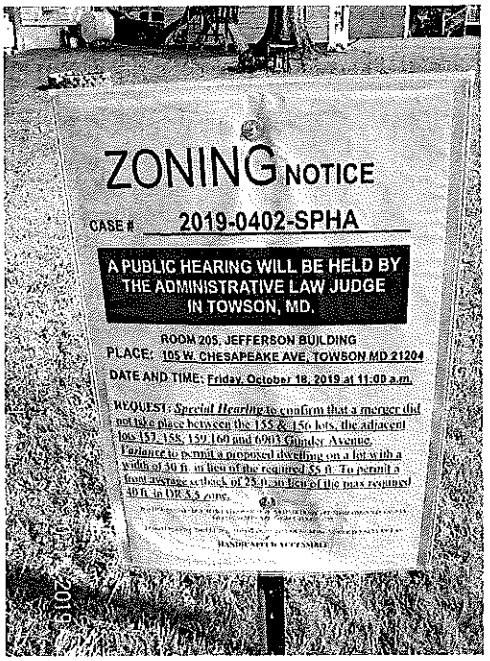
Ladies and Gentlemen:

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

RECEIVED
OCT 18 2019
OFFICE OF
ADMINISTRATIVE HEARINGS

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,

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

RECEIVED
AUG 20
OFFICE OF
ADMINISTRATIVE HEARINGS

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

MARYLAND DEPARTMENT OF TRANSPORTATION
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. 2019-0402-SPHA
Special Hearing, Variance
Craig Keefner
1324 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,

Richard A. Zeller

for 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

RE: Case No.: 2019-0402-SPHA

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**

The sign(s) were posted on September 28, 2019
(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

RE: Case No.: 2019-0402-SPHA

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 2**

The sign(s) were posted on September 28, 2019
(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)

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:

NOTICE OF ZONING HEARING - CASE NUMBER: 2019-0402-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:

9/27/2019

Darlene Miller

Darlene Miller, Public Notice Coordinator
(Representative Signature)

Baltimore County

NOTICE OF ZONING HEARING

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

CASE NUMBER: 2019-0402-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.

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

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 AND VARIANCE	*	BEFORE THE OFFICE
13217 Cherwin Avenue; E/S of Cherwin Avenue, E/S of 112.09' S of Gunder Avenue	*	OF ADMINSTRATIVE
15th Election & 6th Councilmanic Districts	*	HEARINGS FOR
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 21220 which is presently zoned DR 5.5

Deed References: 40985/325 10 Digit Tax Account # 1522352391 & 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:

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~~ 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

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

3. ✓ **a Variance** from Section(s) 1B02.3.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 21220

Mailing Address City State

2120 | 4105912901 | kcraig@aol.com

Zip Code Telephone # Email Address

Attorney for Petitioner:

Name- Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

ORDER RECEIVED FOR FILING
Date 10/23/19
By

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

REV. 10/4/11

ZONING DESCRIPTION FOR LOTS 155 AND 156 CHERWIN AVENUE

13917

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 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		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 01/01/2018	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

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:**

IN THE MATTER OF: CRAIG KESTNER 13217 Cherwin Avenue	*	BEFORE THE BOARD OF APPEALS
Petitioner/Appellee	*	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 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 askes 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 sough had a significantly heavier burden of proof in the first case then 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 AND SPECIAL HEARING	*	BEFORE THE
(13217 Cherwin Avenue)	*	COUNTY
15th Election District		
6th Councilmanic District	*	BOARD OF APPEALS
Craig Kestner – Legal Owner	*	Case Nos. 19-402-SPHA and
	*	20-090-SPHA
	*	
	*	

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

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. <u>The 2019 Case</u>

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. <u>The 2020 Case</u>

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]

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[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]

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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]

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[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

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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

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[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,

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[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

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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

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[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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(410) 825-2150

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

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 Exs 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: KESYNIP 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	
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: _____	

Board of Appeals

Exhibit List

Case No.: 2019-402-SPHA 2020-008-SPHA Case Name: In re Craig Gestner

Party: Petitioner Date: 2/17/2021

Exhibit No.	Description	ID Only
GI		
J		
K		
	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 Kestner
   13015 Eastern Avenue Baltimore, MD 21220
2. Address: 13217 Cherwin Avenue
3. Deed references: SM 34935/ 437
   Lots 155 & 156 "Section A Twin River Beach" PB 9/ 33
4. Area: 6,060 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 /156/ 15-22-350391
6. Election District: 15 Councilmanic District: 6
   ADC Map: 4583C10 GIS tile: 084A1 Position sheet: 31NE4B
7. 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.
8. Improvements: Vacant

OFFICE OF ZONING

Zoning: DR 5.5

Zoning History: #2019-0402-SPHA
Special Hearing: granted
Variances: denied

Zoning History: #2020-0090-SPHA
Special Hearing: granted
Variances: moot

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 24053C0315 G.

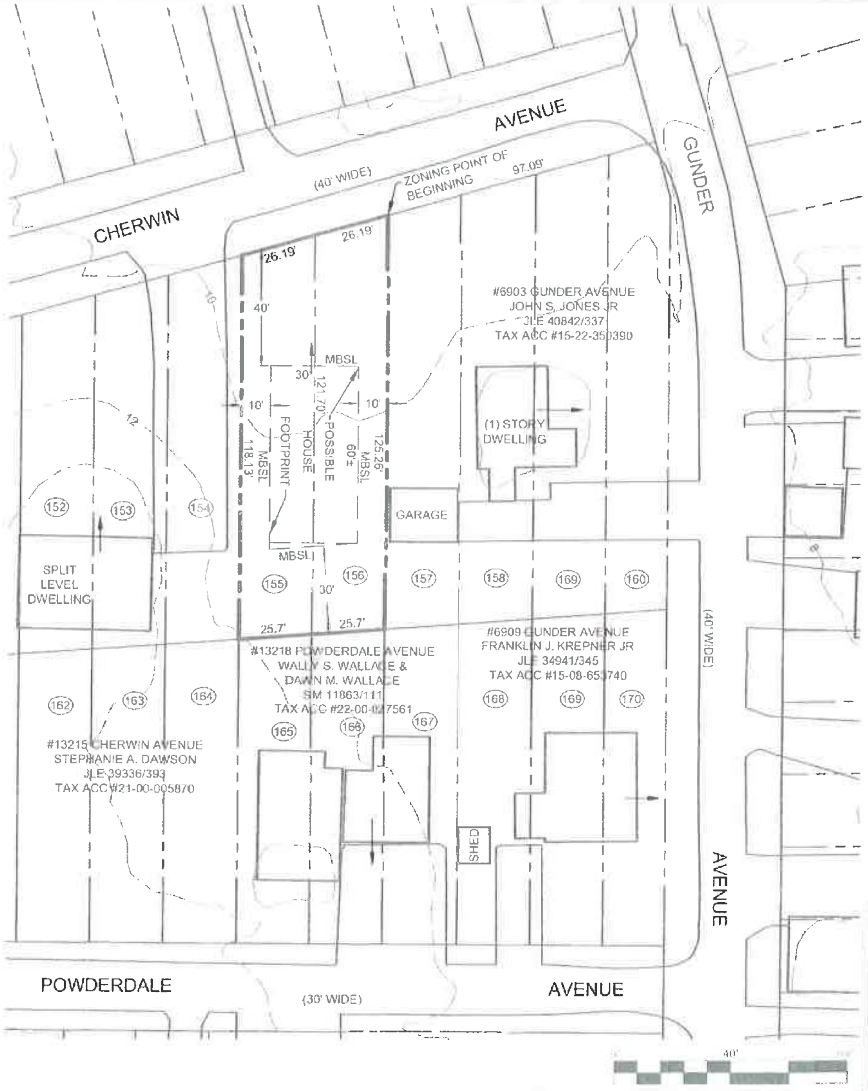
OFFICE OF PLANNING

Regional Planning District: Windlass District Code: 522

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

PROPOSED DEVELOPMENT

To construct a single family dwelling on the subject lot.





Vicinity Map – Scale: 1' = 500'



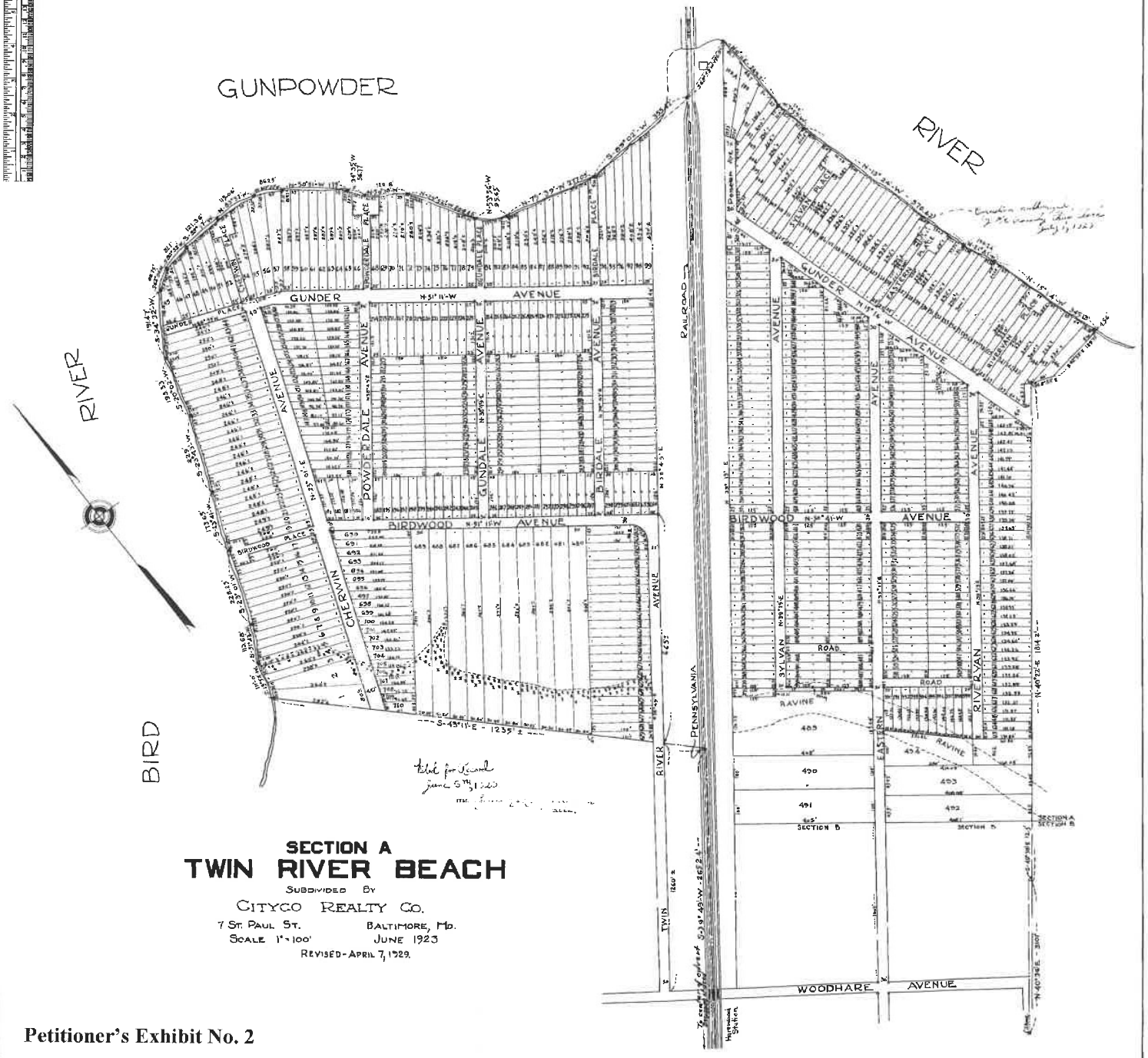
Bruce E. Doak Consulting, LLC
Land Use Expert and Surveyor
3801 Baker Schoolhouse Road
Freeland, MD 21053
o 443-900-5535 m 410-419-4900
bdoak@brucedoakconsulting.com

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	Date: 2/15/21
10/11/20 AMENDMENTS REQUIRED BY CASE #2020-0090-SPHA ORDER	Scale: 1"=40'

Petitioner's Exhibit No. 1

L.McL.M. Nº 9 – 33



SECTION A
TWIN RIVER BEACH

SUBDIVIDED BY

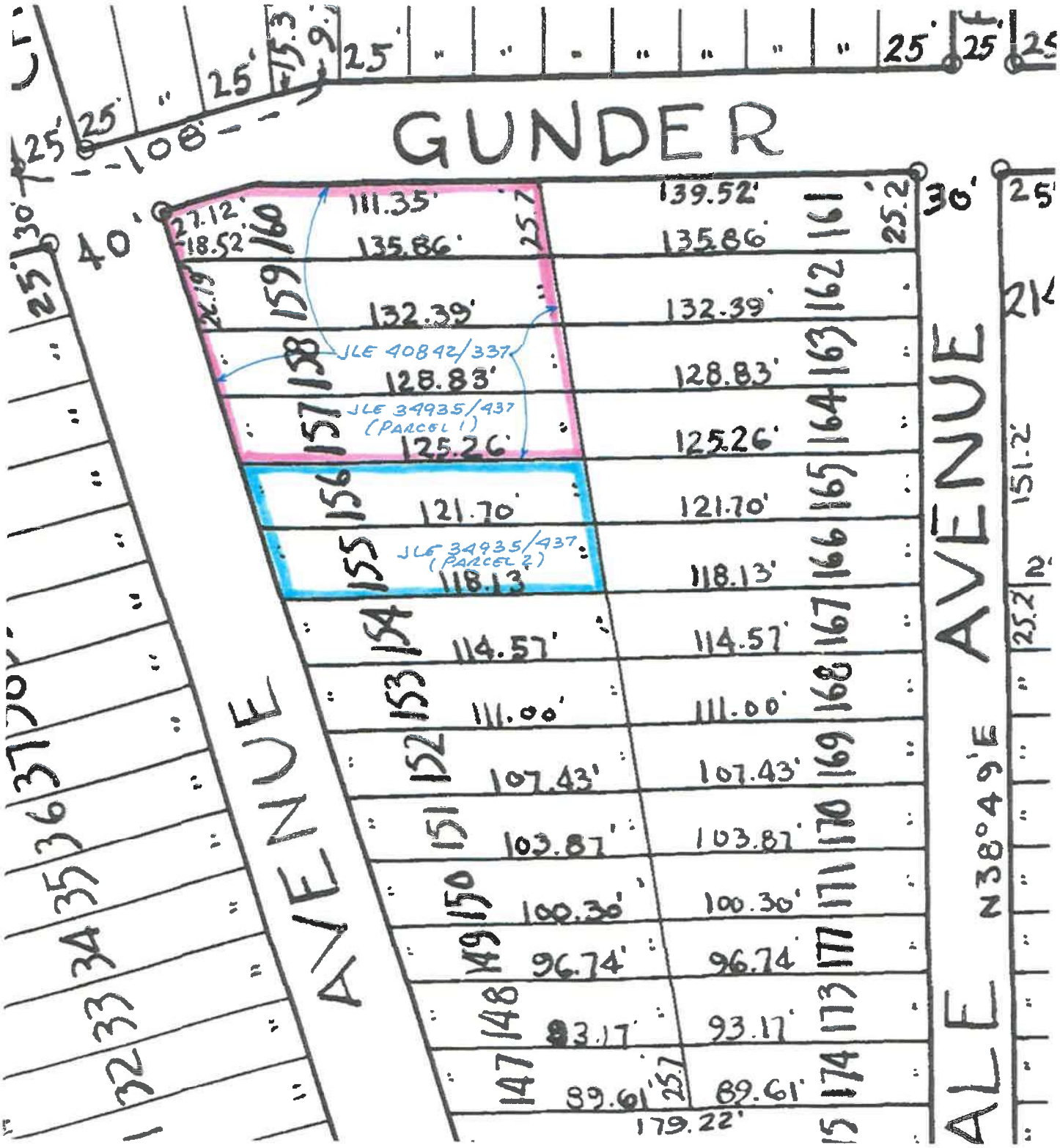
CITYCO REALTY CO.

7 ST. PAUL ST. BALTIMORE, MD.

SCALE 1" = 100' JUNE 1923

REVISED - APRIL 7, 1929.

Petitioner's Exhibit No. 2



PORTION OF PB 9/33 SHOWING SUBJECT LOTS

Petitioner's Exhibit No. 3



KEY SHEET FOR EXHIBIT PHOTOS

Petitioner's Exhibit No. 4



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

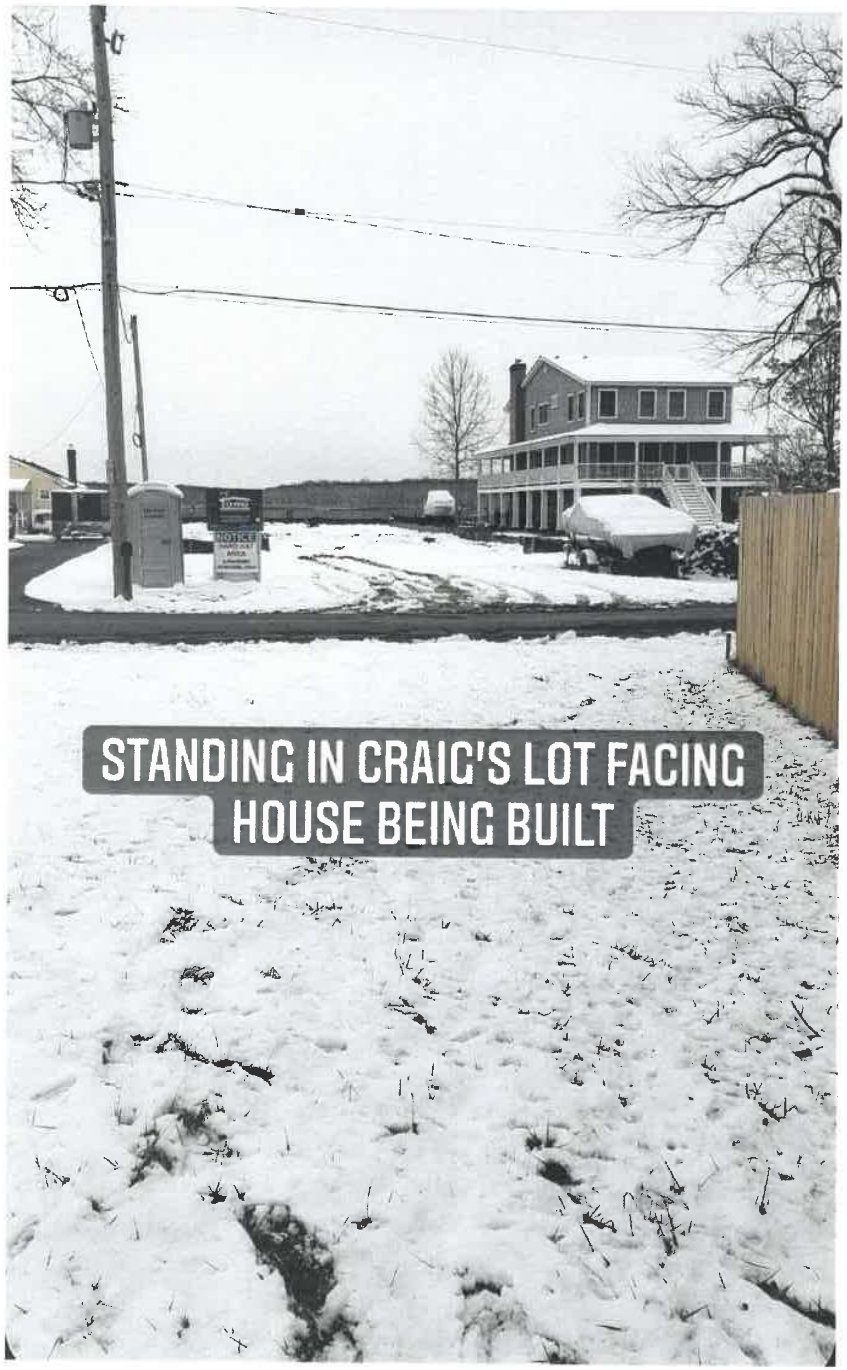


Petitioner's Exhibit 6A

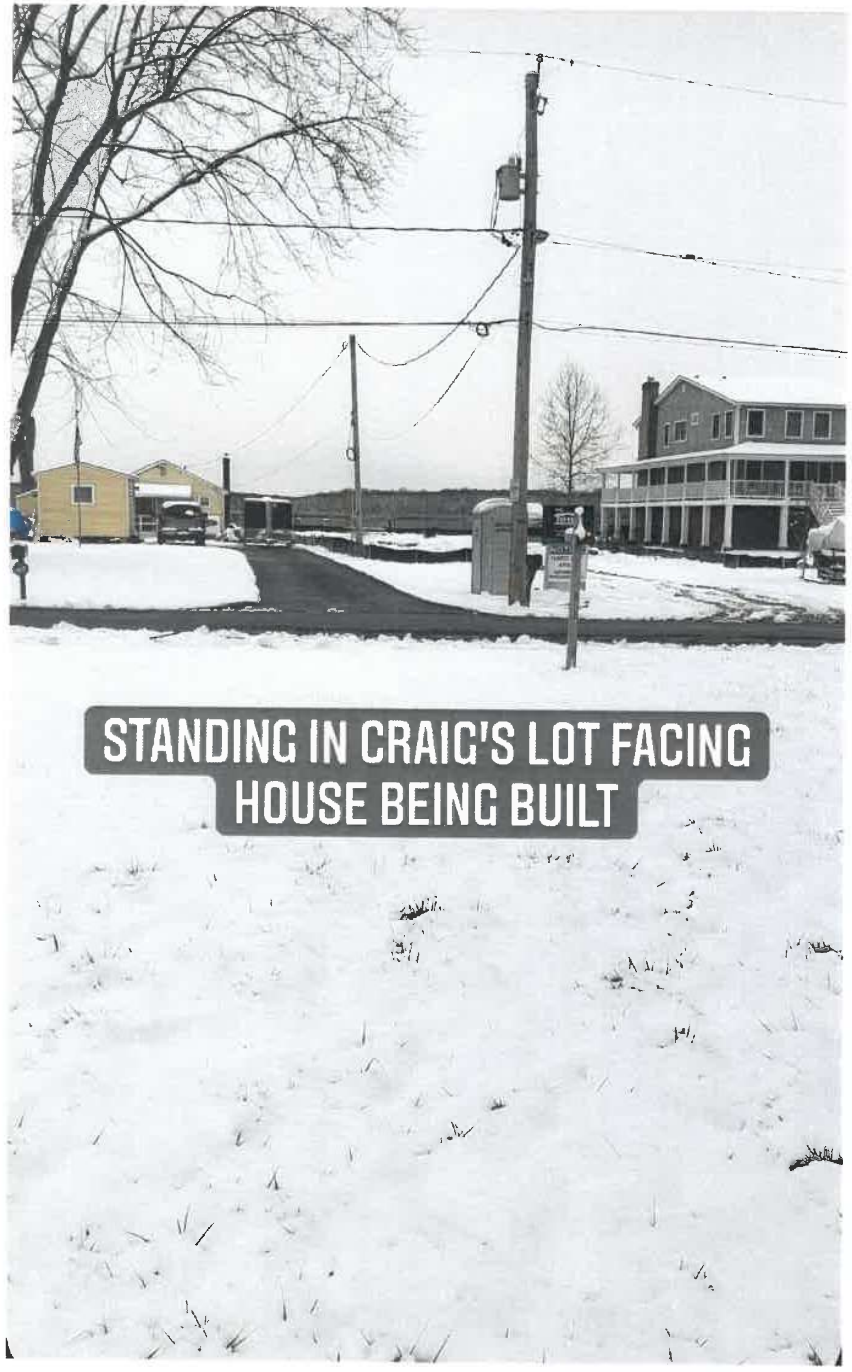


STANDING IN BUILDERS LOT FACING CRAIG'S LOT AND MR DAWSON'S LOT

6B



6C



6 D

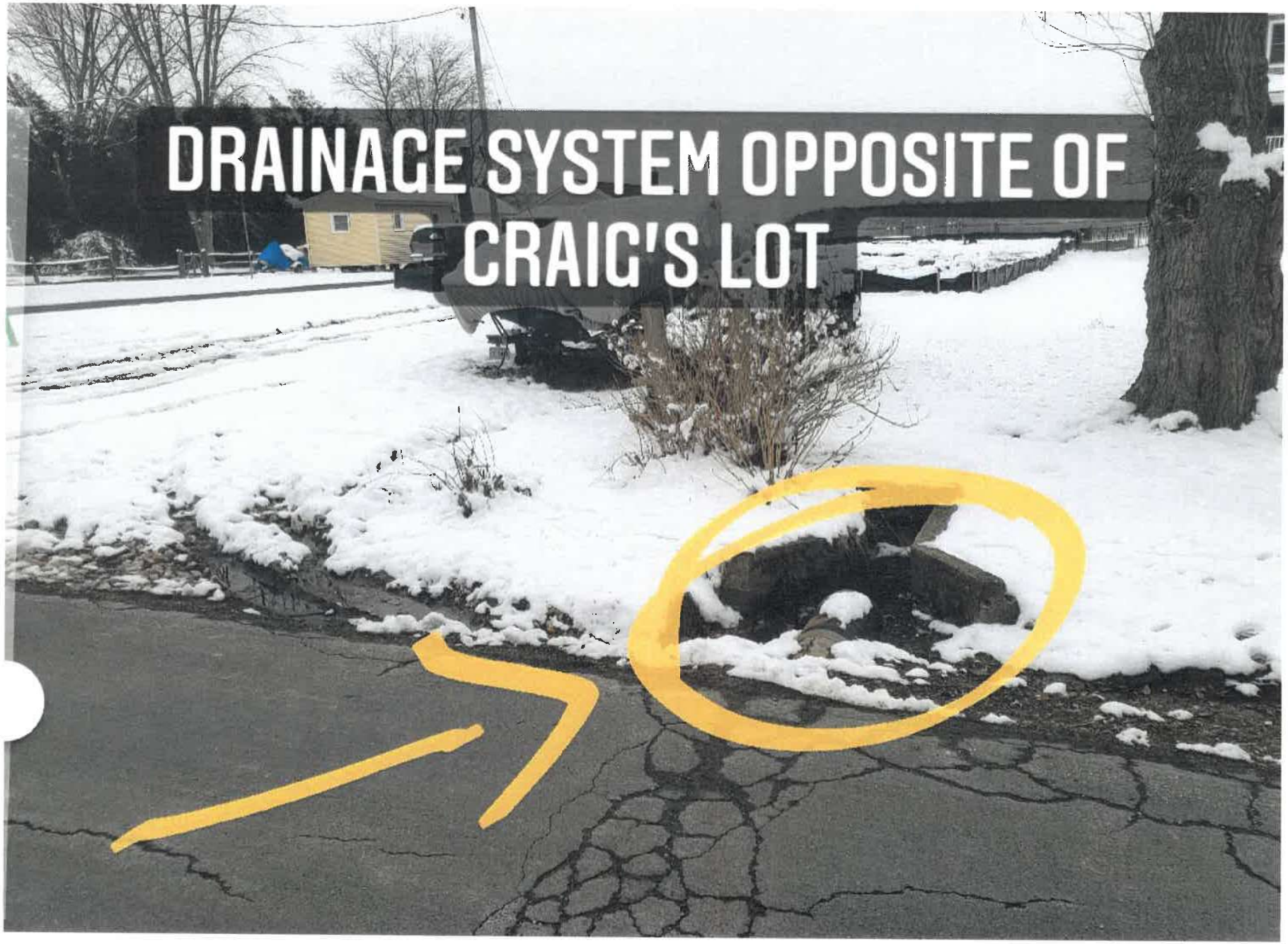


6E



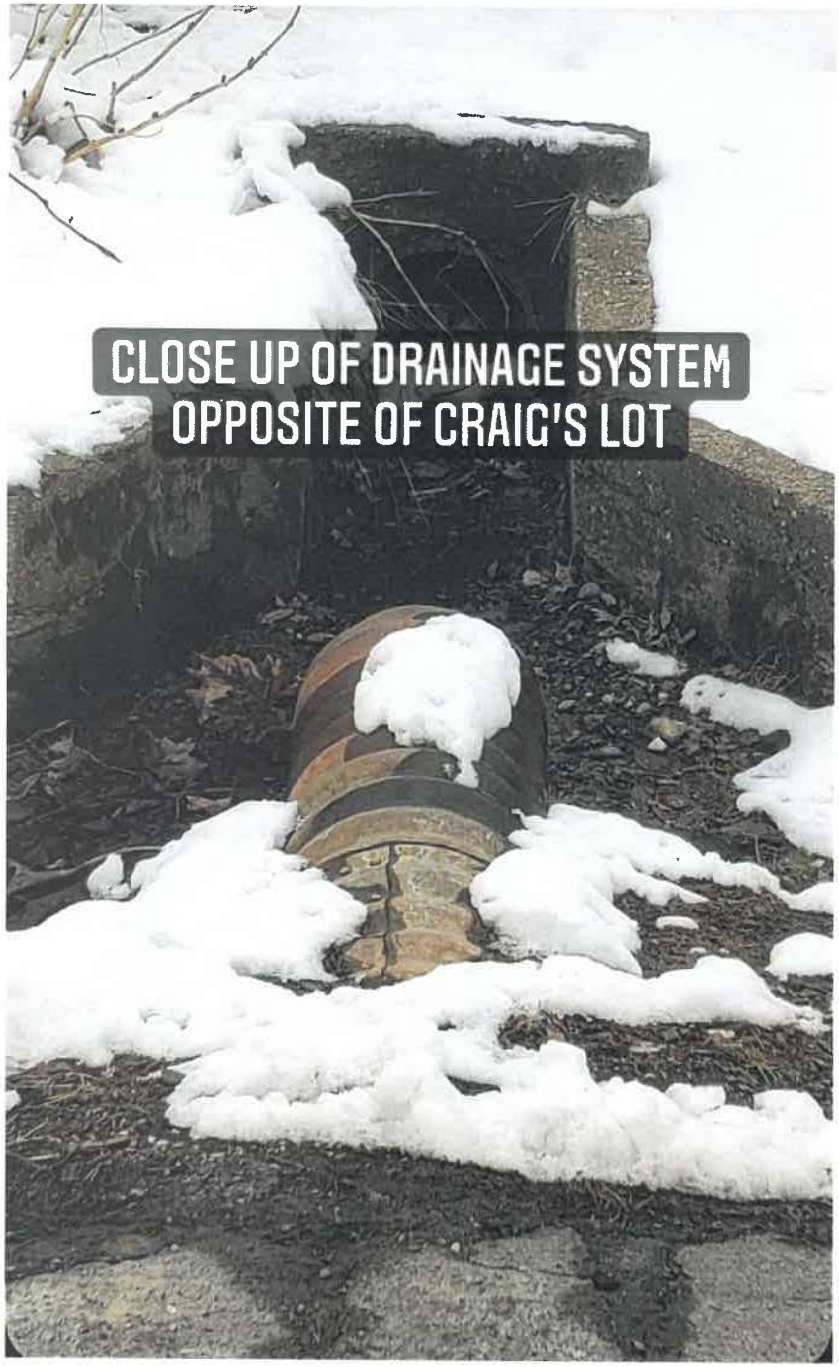
6 F


STANDING IN BUILDERS LOT FACING
ACROSS FROM CRAIG'S LOT


DRAINAGE SYSTEM OPPOSITE OF
CRAIG'S LOT



6 I


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 Kestner
   13015 Eastern Avenue Baltimore, MD 21220
2. Address: 13217 Cherwin Avenue
3. Deed references: SM 34935/ 437
   Lots 155 & 156 ' Section A Twin River Beach' PB 9/ 33
4. Area: 6,050 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 /156/ 15-22-350391
6. Election District: 15 Councilmanic District: 6
   ADC Map: 4583C10 GIS tile: 084A1 Position sheet: 31NE49
7. 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.
8. Improvements: Vacant

OFFICE OF ZONING

Zoning: DR 5.5

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

Zoning History: #2020-0090-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 24005C0315 G

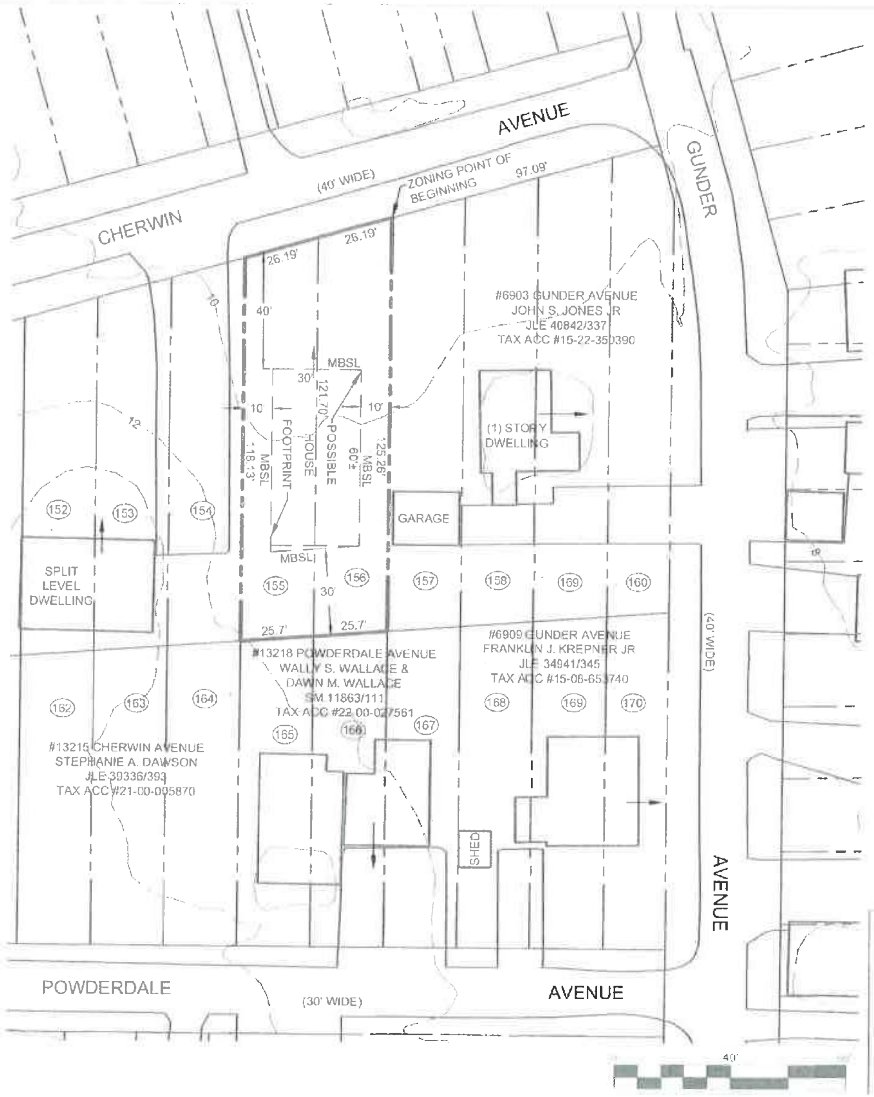
OFFICE OF PLANNING

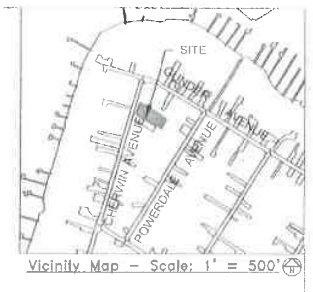
Regional Planning District: Windlass District Code: 322

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'



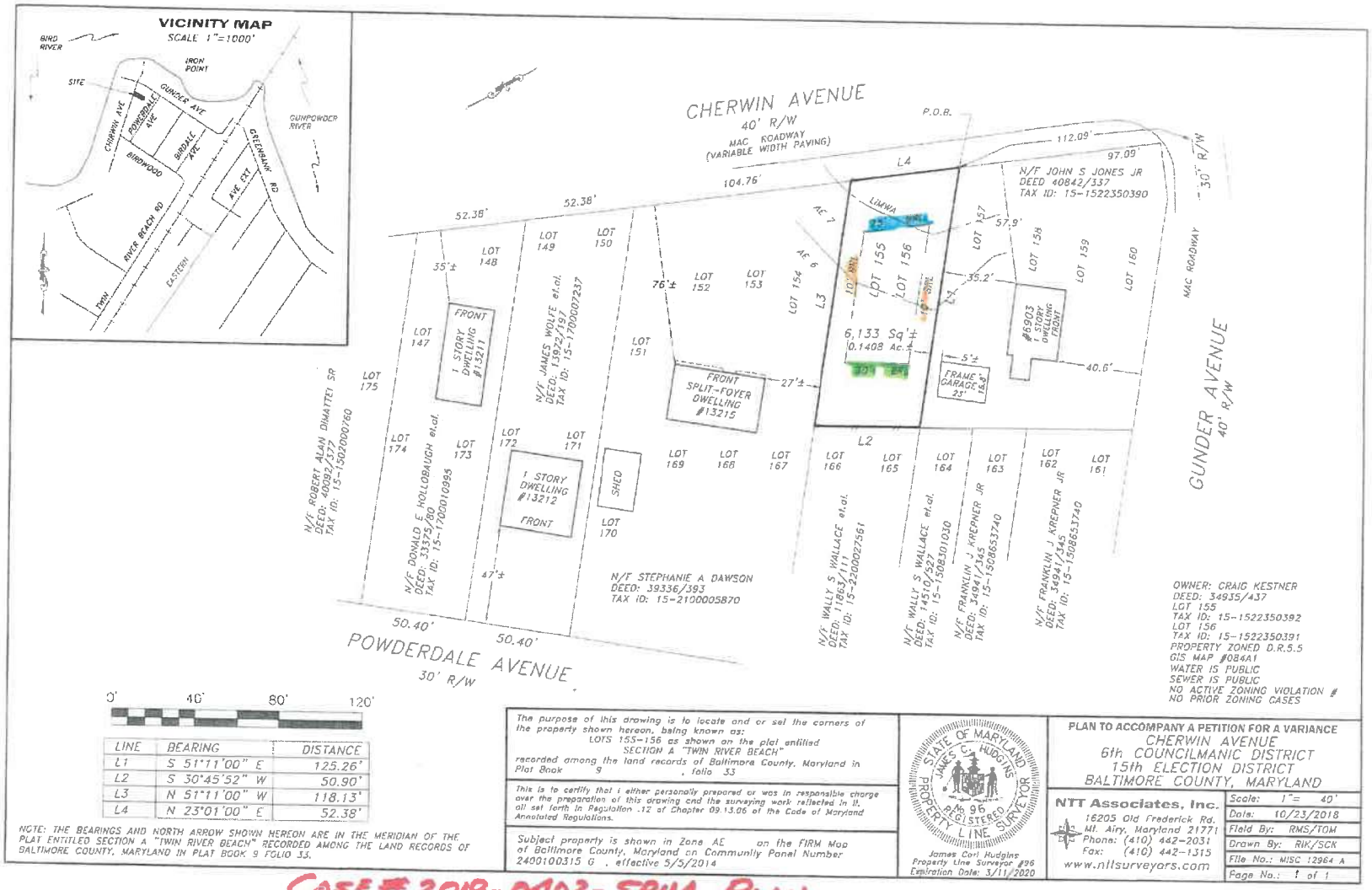
Bruce E. Doak Consulting, LLC
Land Use Expert and Surveyor
3801 Baker Schoolhouse Road
Freeland, MD 21053
o 443-900-3535 m 410-419-6906
bdoak@brucedoakconsulting.com

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

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

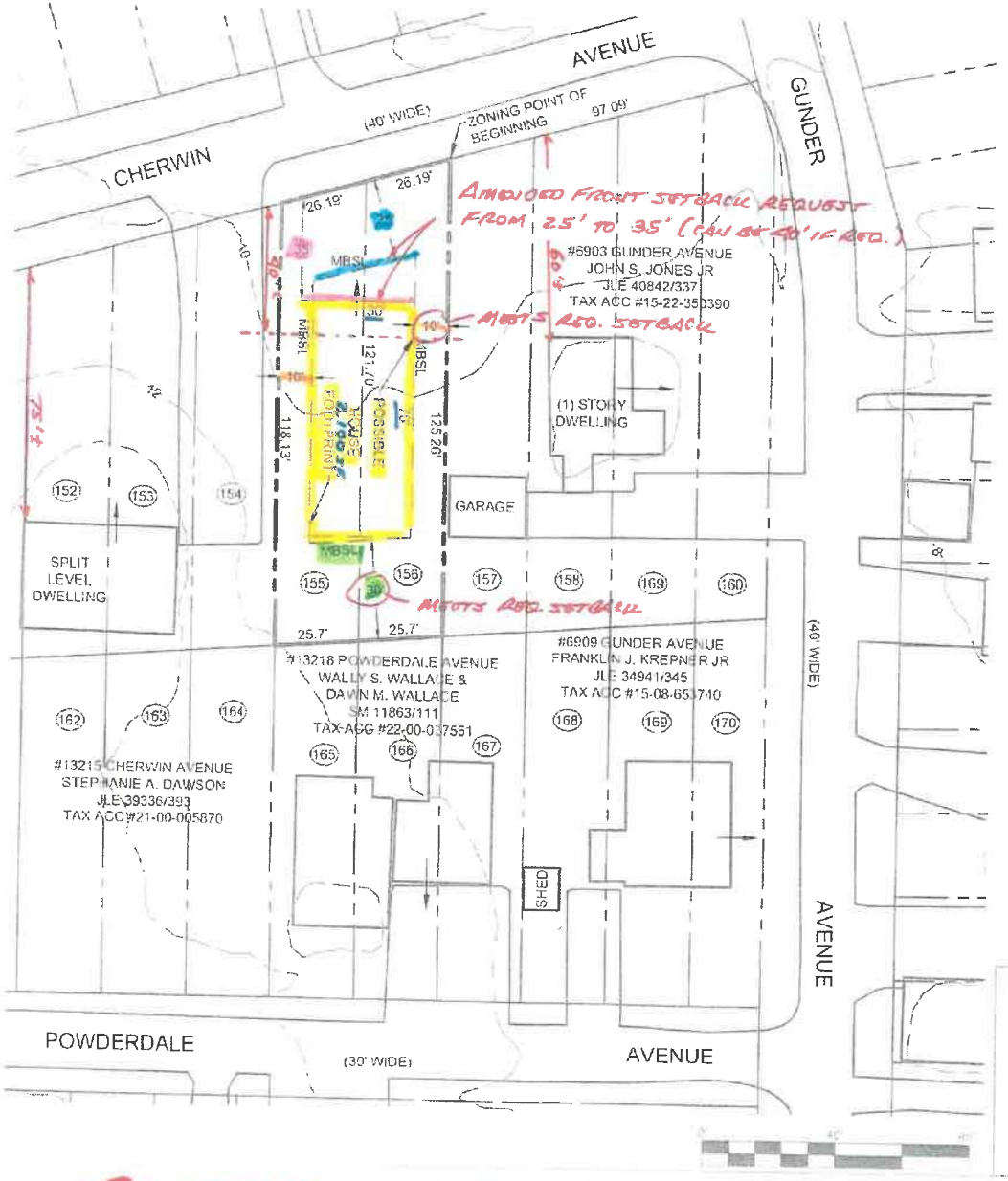
REVISION
10/11/20 AMENDMENTS REQUIRED BY CASE #2020-0090-SPHA ORDER

Petitioner's Exhibit No. 7 A

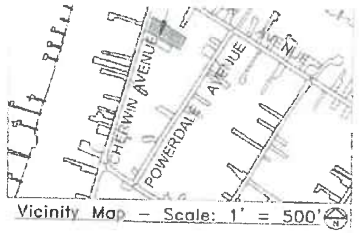


CASE #2019-0402-SPHA PLAN

Petitioner's Exhibit No. 7 B



NOTE: IF 40' FRONT SETBACK = 45E
FOOTPRINT 60'x30' = 1800 SF



REVISION

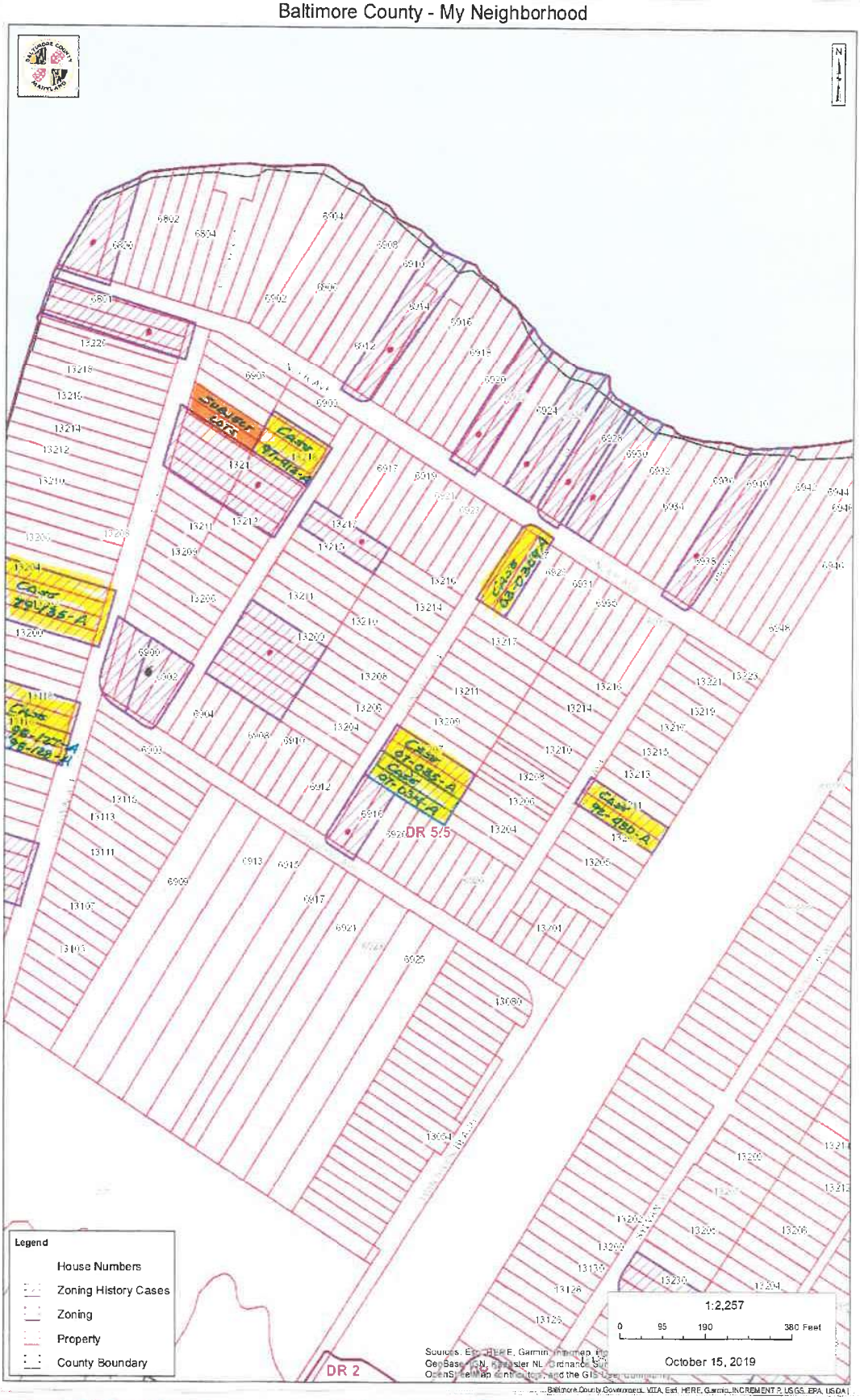
Bruce E. Doak Consulting, LLC
Land Use Expert and Surveyor
3801 Baker Schoolhouse Road
Freeland, MD 21053
o 443-900-5555 m 410-419-4906
bdoak@brucedoakconsulting.com

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

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

CASE #2020-0090-SPHA PLAN - AMENDMENT EXPLAINED

Petitioner's Exhibit No. 7 C



MAP SHOWING LOTS BEING GRANTED UNDER WIDTH

Petitioner's Exhibit No. 8

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

FILED FOR
9-20-06
BY

Petitioner's Exhibit No. 9 A

(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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9-20-06
By

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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9-20-06
By

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

9-20-06

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 disproportionably 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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Date 9-20-06
By

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.

Date 9-20-06
By

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

JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

JVM:pz

ORDER RECEIVED FOR FILING
Date 9-20-06
By 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) 1B02.3.C.1; BCZR, TO PERMIT A SINGLE FAMILY RESIDENTIAL DWELLING ON A ~~50~~ 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

Gerald H Kestner
Signature

BARBARA C. KESTNER
Name - Type or Print

Barbara C Kestner
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

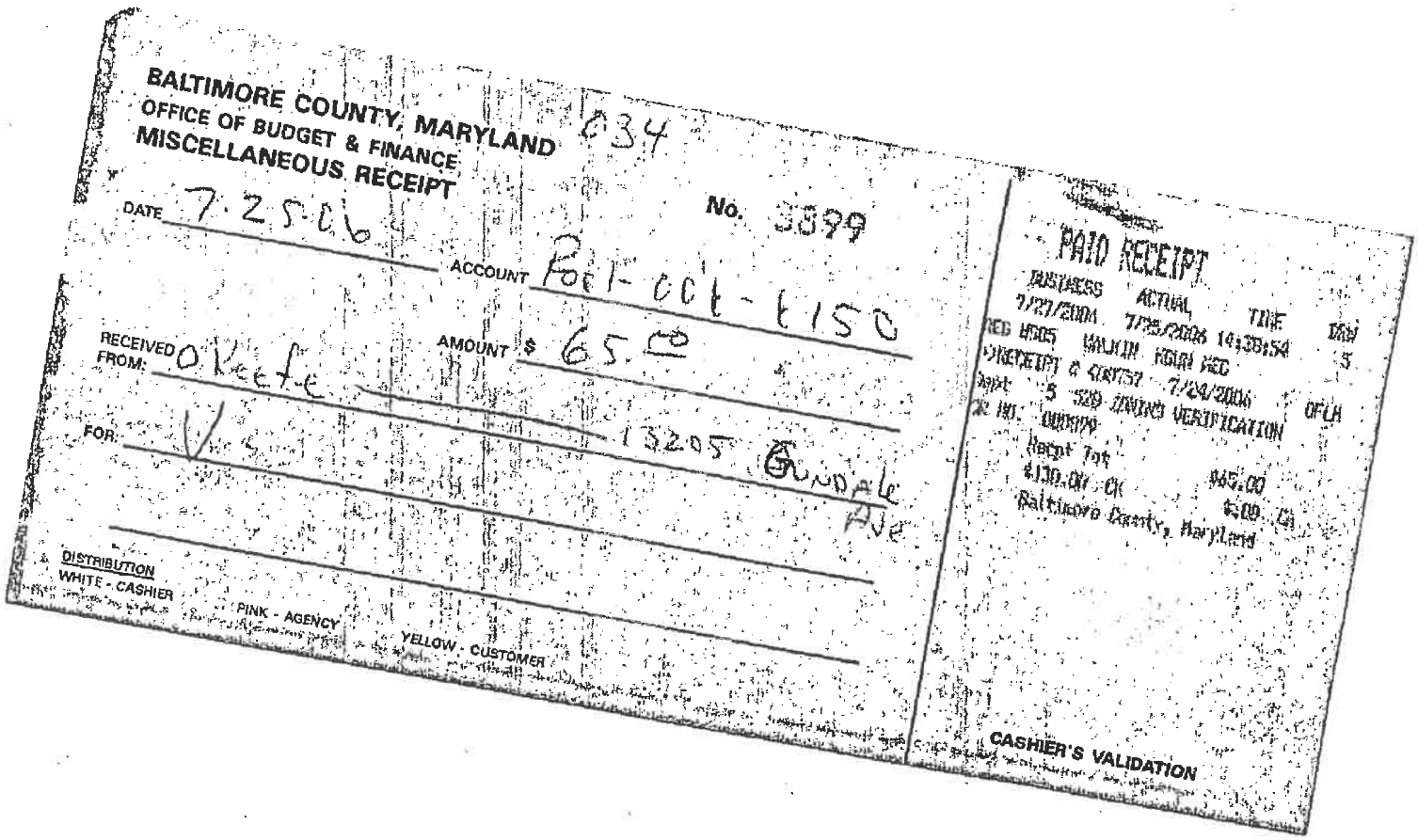
RECEIVED FOR FILING

REV 9/15/98 9-20-06 **Reviewed By** _____ **Date** 7-25-06

ZONING DESCRIPTION

ZONING DESCRIPTION FOR # 13205 GUNDALE AVENUE

Beginning at a pint 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

DATE 7-25-06 No. 3899

ACCOUNT 001-001-6150

RECEIVED FROM: Keefe AMOUNT $ 65.00

FOR: V 13205 Gonsale Ave

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT
BUSINESS ACTUAL TIME DRW
7/27/2006 7/25/2006 14:38:54 5
REG HRGS WALKIN HEARING REC
OVERCEIPT # 0267257 7/24/2006 OFLH
Rept: 5 529 ZONING VERIFICATION
PO NO: 0000000
Receipt Tot
$130.00 CK $65.00
$0.00 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 Gundale Avenue
Southside of Gundale 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.

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

S. Wilkinson

LEGAL ADVERTISING

CERTIFICATE OF POSTING

ATTENTION: KRISTEN MATHHEWS **DATE:** 9/5/06

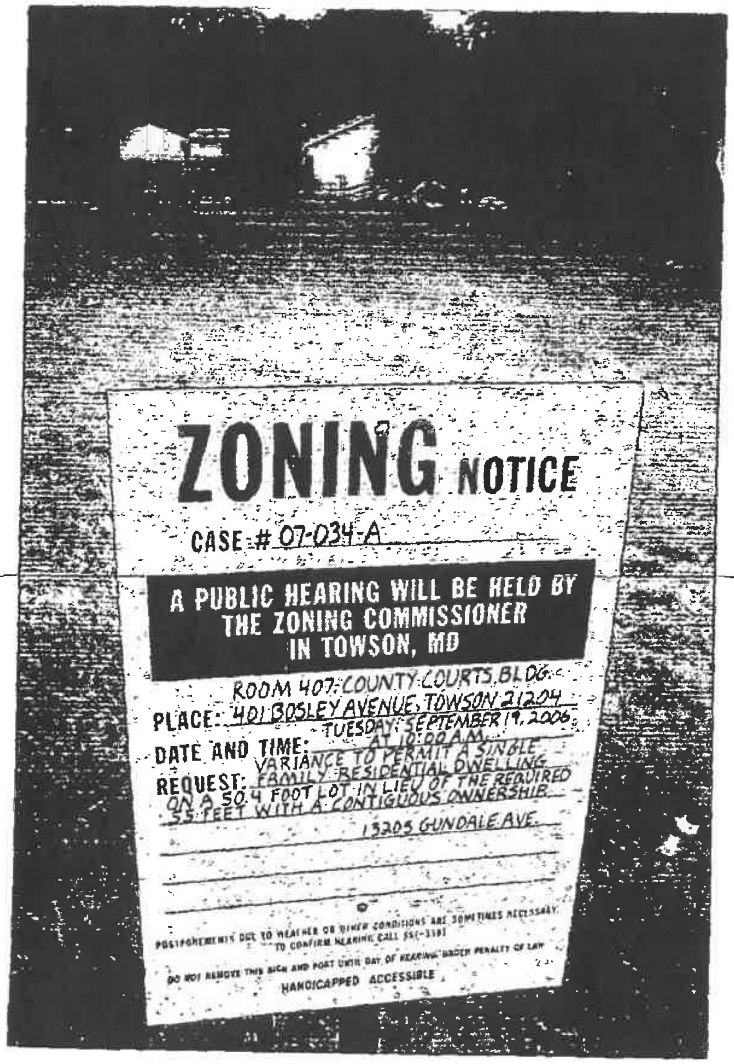
Case Number: 07-034-A

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

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.

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

Please forward billing to:
Gerald Kestner 410-335-7866
12913 Eastern Avenue
Baltimore, MD 21220

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).

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

RECEIVED
AUG 03 2006
Per.....

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: #13205 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
MARYLAND

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

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: Cynthia Murray

Division Chief: Lynn Lanham

CM/LL

RECEIVED
AUG 31 2006
ZONING COMMISSIONER

RECEIVED FOR FILING
9-20-06

W:\DEVREV\ZAC\7-035.doc

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: August 4, 2006

FROM: Dennis A. Kennedy, Supervisor
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
Date: 9-20-06
By: [illegible]

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

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 FILING
9-20-06
By

County Courts Building | 401 Bosley Avenue, Suite 405 | Towson, Maryland 21204 | Phone 410-887-3868 | Fax 410-887-3468
www.baltimorecountyonline.info

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

Printed on Recycled Paper

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

SHA State Highway Administration — Driven to Excel

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

Maryland Department of Transportation

Date: 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,

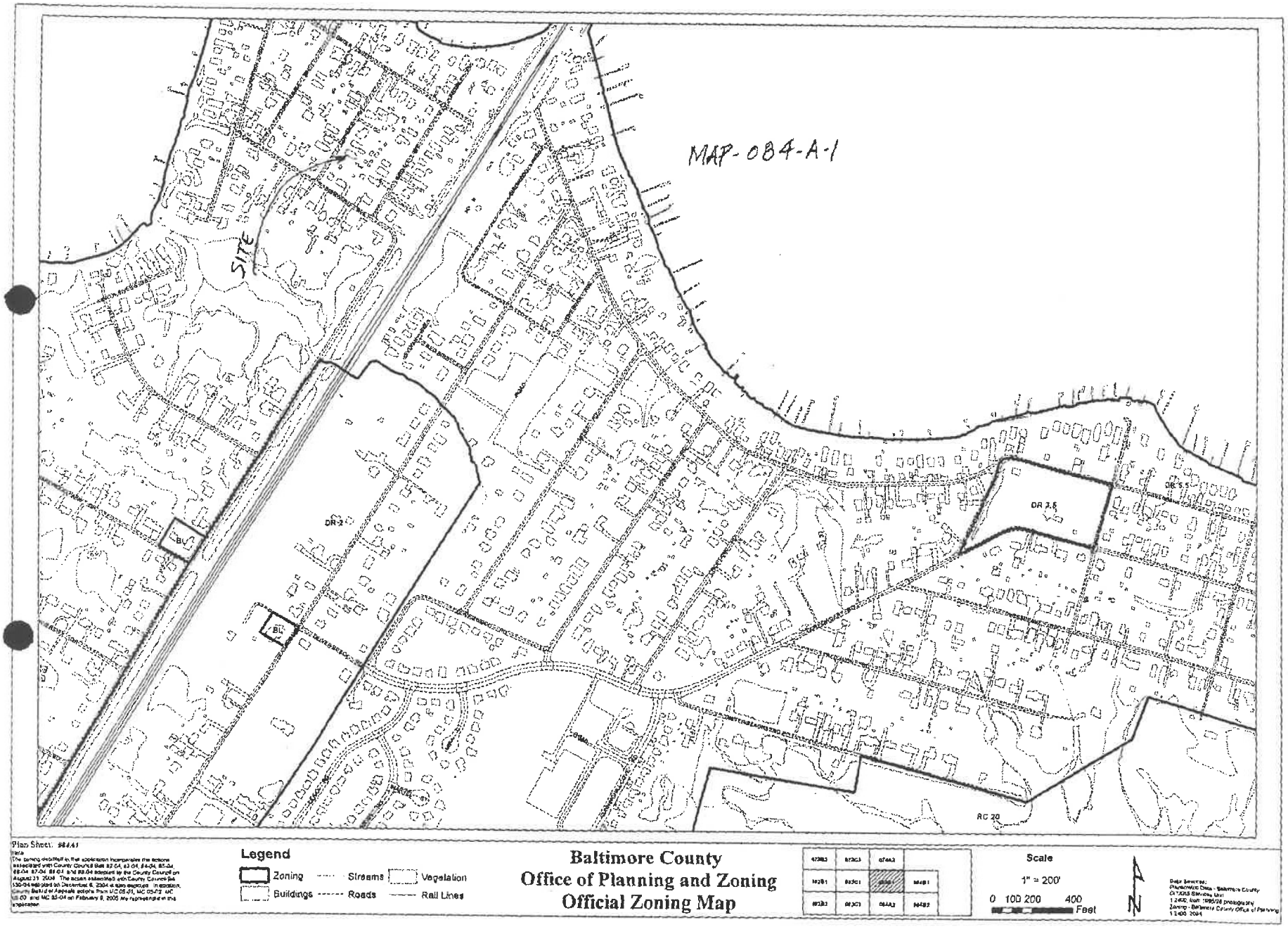
S. D. Foster

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.


MAP-084-A-1
SITE
DR 2
BL
BL
DR 3.5
DR 5.5
RC 20
Legend
Zoning
Streams
Vegetation
Buildings
Roads
Rail Lines
Baltimore County
Office of Planning and Zoning
Official Zoning Map
Scale
1" = 200'
0 100 200 400
Feet

PLAT TO ACCOMPANY PETITION FOR ZONING ☑ VARIANCE ☐ SPECIAL HEARING

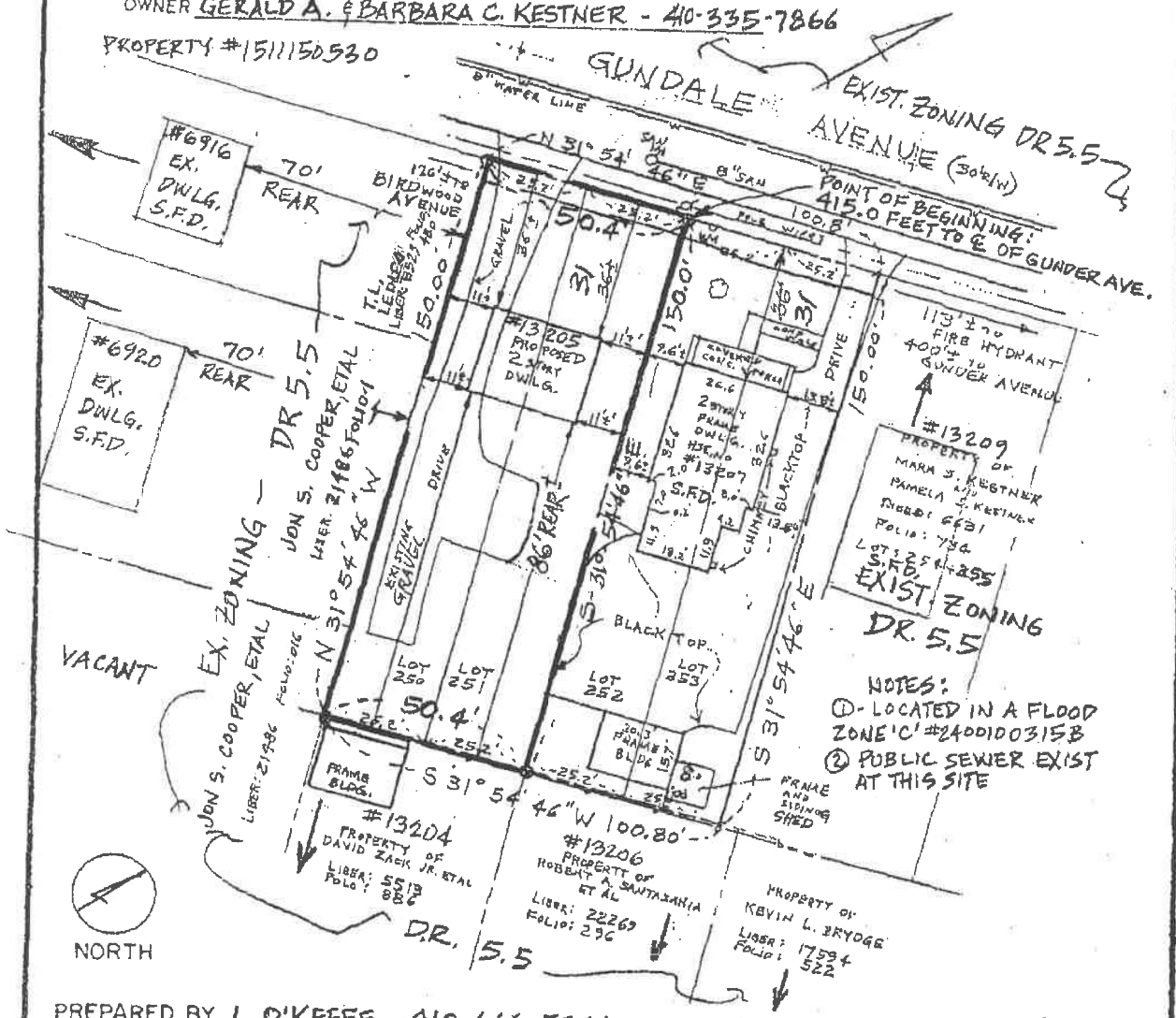
PROPERTY ADDRESS #13205 GUNDALE AVENUE

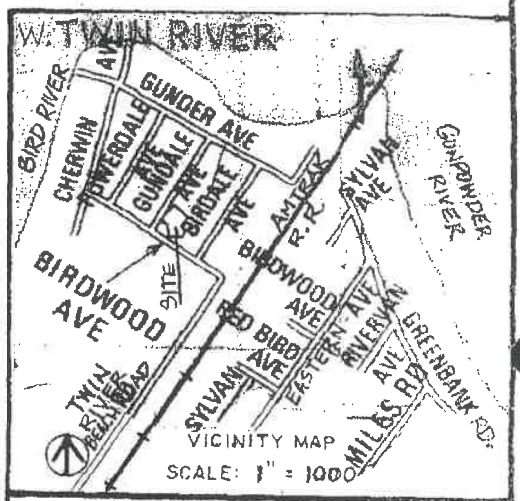
SUBDIVISION NAME TWIN RIVER BEACH, SECTION 'A'

PLAT BOOK # 9 FOLIO # 33 LOT # 250 & 251 SECTION # A

OWNER GERALD A. & BARBARA C. KESTNER - 410-335-7866

PROPERTY #1511150530





LOCATION INFORMATION

ELECTION DISTRICT - 15

COUNCILMANIC DISTRICT - 5

1" = 200' SCALE MAP # NE 8M (OLD) 084-A1 (NEW)

ZONING : DR 5.5

LOT SIZE 0.172 ACREAGE ~~7500~~ SQUARE FEET

	PUBLIC	PRIVATE
SEWER	☑	☐
WATER	☑	☐

	YES	NO
CHESAPEAKE BAY CRITICAL AREA	☑	☐
100 YEAR FLOOD PLAIN	☐	☑
HISTORIC PROPERTY/ BUILDING	☐	☑

PRIOR ZONING HEARING N/A

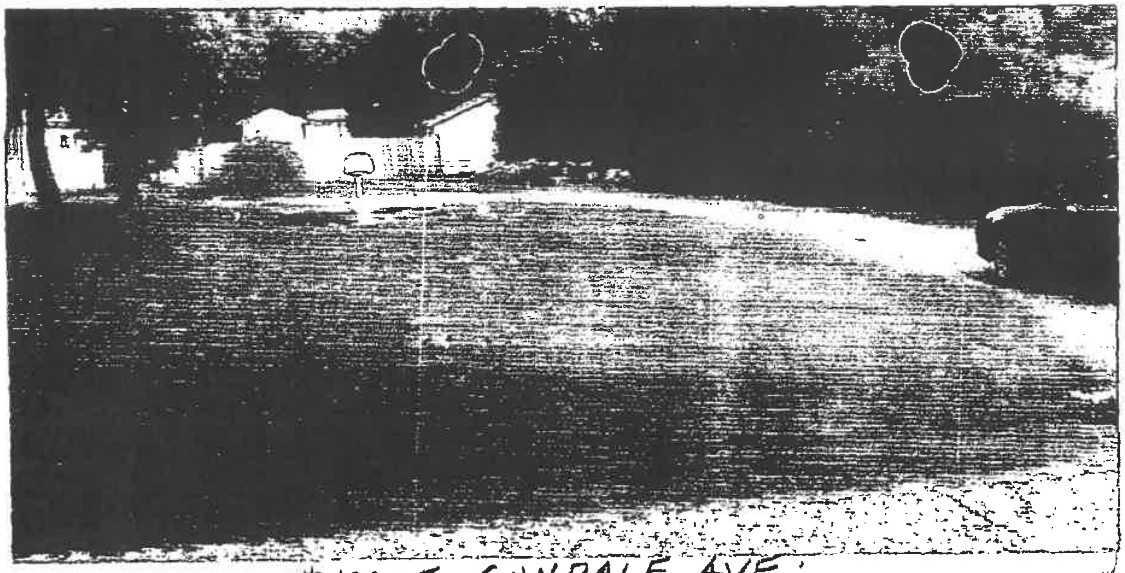
ZONING OFFICE USE ONLY

REVIEWED BY ITEM # CASE #

Pet #1

PREPARED BY L. O'KEEFE - 410-666-5366

SCALE OF DRAWING: 1" = 40'



#13205 GUNDALE AVE.

2A

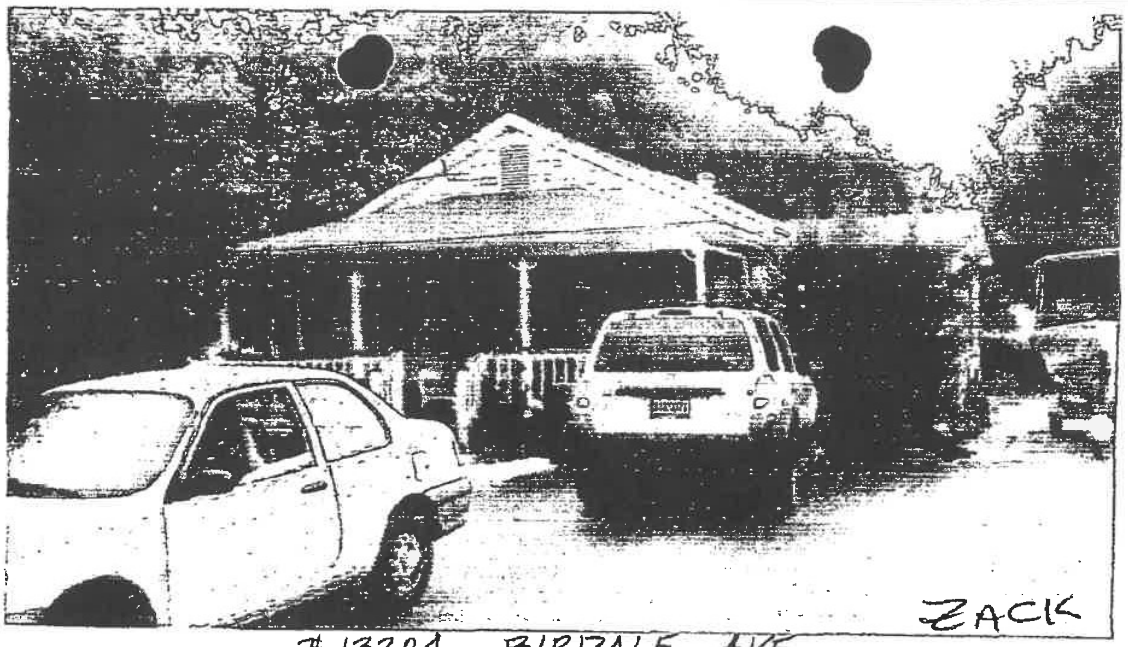


#13207 GUNDALE AVE.

2B



2C



ZACK

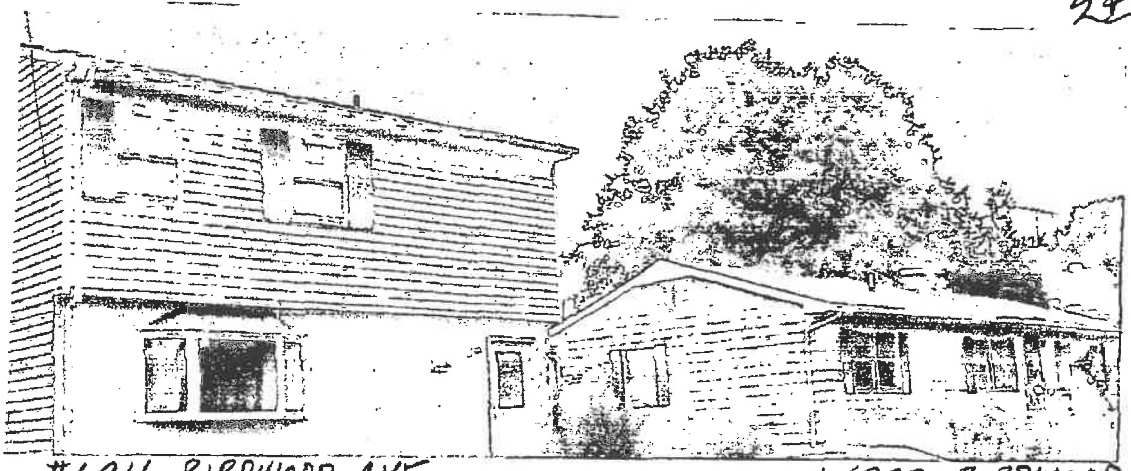
#13204 BIRDALE AVE.

2D



#13206 - BIRDALE AVE.

2E



#6916 BIRDWOOD AVE

never home

#6920 BIRDWOOD AVE.

2F

IN RE: PETITION FOR ZONING VARIANCE
32/6 Birdale Avenue, 322' SW of the c/l of Gunder Avenue
(13211 Birdale Avenue)
15th Election District
4th Councilmanic District
Ronald W. Bair
Petitioner

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 92-430-A

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner as a Petition for Zoning Variance in which the Petitioner requests relief from Section 1B02.3.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 7,560 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.

ORDER RECEIVED FOR FILING
Date 6/24/92
By [illegible]

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. Moseng v. Baley, 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 unreasonably burdensome;

2) whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and

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

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

It is clear from the testimony that if the variance is granted, such use, as proposed, 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 requirements from which the Petitioner seeks relief will unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the 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, posting of the property, and public hearing on this Petition held, and for the reasons given above, the variance requested should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 24th day of June, 1992 that the Petition for Zoning Variance requesting relief from Section 1B02.3.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.

TMK:bjs

Timothy M. Kotroco
Deputy Zoning Commissioner
for Baltimore County

ORDER RECEIVED FOR FILING
Date 6/24/92
By [illegible]

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning

Suite 113 Courthouse
400 Washington Avenue
Towson, MD 21204
(410) 887-4386

June 24, 1992

Mr. Ronald W. Bair
12 Fitzgerald Court
Baltimore, Maryland 21234

RE: PETITION FOR ZONING VARIANCE
SE/S 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 Petition 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,

Timothy M. Kotroco
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

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

DEPRM

People's Counsel

File

Mr. Eugene W. Schwandtner
902-J Swallow Crest Court, Edgewood, Md. 21040

457

92-430-A

Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 13211 BIRDALE AVE

which is presently zoned DR5.5

This Petition shall be filed with the Office of Zoning Administration & Development Management.

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s) 1B02.3.C.1 of the

SEE IT PERMIT A MINIMUM LOT WIDTH of 50.4 ft IN LIEU A THE REQUIRED 55ft

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County, for the following reasons: (Indicate hardship or practical difficulty)

THE FRONTAGE OF THIS PROPERTY IS 50.4 FEET. SINCE 55 FEET IS REQUIRED, WE CAN NOT OBTAIN A BUILDING PERMIT WITHOUT A VARIANCE

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. 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.

CRITICAL AREA

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:
EUGENE W SCHWANDTNER
Name (Type or Print)
Eugene W Schwandtner
Signature
902 J Swallow Crest Ct
EDGEWOOD MD 21040
Address
City State Zipcode

Legal Owner(s):
RONALD W BAIR
Name (Type or Print)
Ronald W Bair
Signature
12 Fitzgerald Ct 836-4477
Address Phone No.
Balto MD 21234
City State Zipcode

Attorney for Petitioner:
Name (Type or Print)
Signature
Address
City State Zipcode

Representative to be Contacted:
Name
Address
City State Zipcode

OFFICE USE ONLY
ESTIMATED LENGTH OF HEARING
UNAVAILABLE FOR HEARING
Reviewed By
Date

ORDER RECEIVED FOR FILING
Date 6/24/92
By [illegible]

ESTIMATED POSTING DATE 7/3/92 AND 7/5/92

457 3

92-430-A

ZONING DESCRIPTION FOR 13211 BIRDALE AVE.

BEGINNING FOR THE FIRST AND SECOND THEREOF ON THE SOUTHEAST SIDE OF BIRDALE AVE, WHICH IS 50 FEET WIDE AT A DISTANCE OF 322.4 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.G.L.M. No. 9, FOLIO 33, CONTAINING 7560 SQUARE FEET. ALSO KNOWN AS 13211 BIRDALE AVENUE AND LOCATED IN THE 15th ELECTION DISTRICT. ALSO RECORDED IN LIBER 8050 AND 551.

92-430-A

CERTIFICATE OF POSTING
BALTIMORE COUNTY
Towson, Maryland

District 15th
Date of Posting 7/3/92
Posted for: Eugene W. Schwandtner & Ronald Bair
Petitioner: SE/S Birdale Ave. (13211), 322' SW Gunder Ave.
Location of property:
Location of Signs: Facing Birdale Ave. on property of Petitioner
Remarks:
Posted by [illegible] Date of return: 7/5/92
Number of Signs: 1

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. Zahe Ordinen
Publisher

$ 84.74

Baltimore County
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

receipt

6/19/92 Reasons

92-430

PUBLIC HEARING FEES
ADV. POSTING SIGNS / ADVERTISING
LAST NAME OF OWNER: BAIR

TOTAL: $84.74

Cashier Validation

Petitioner's Exhibit No. 9 B

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning

111 West Chesapeake Avenue
Towson, MD 21204 (410) 887-3353

Date: 4/14/92

Ronald W. Bair
12 Fitzgerald Court, #8
Baltimore, Maryland 21234

RE:
CASE NUMBER: 92-430-A
8490 Deereco Road, 300' SE from c/l Chesher Avenue
12311 Birdie Avenue
15th Election District - 5th Councilmanic
Petitioner(s): Ronald W. Bair

Dear Petitioner(s):

Please be advised that $ 74.26 is due for advertising and posting of the above captioned property.

THIS FEE MUST BE PAID AND THE ZONING SIGN & POST RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT ISSUE. DO NOT REMOVE THE SIGN & POST UNTIL FROM THE PROPERTY UNTIL THE DAY 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 21204. It should have your case number noted thereon and be made payable to Baltimore County, Maryland. In order to process dates of the issuance of proper credit cards/any post Order, immediate attention to this matter is appreciated.

Very truly yours,

Arnold Jablon
Director

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning

111 West Chesapeake Avenue
Towson, MD 21204 (410) 887-3353

MAY 15, 1992

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 on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland 21204 as follows:

CASE NUMBER: 92-430-A
8490 Deereco Road, 300' SE from c/l Chesher Avenue
12311 Birdie Avenue
15th Election District - 5th Councilmanic
Petitioner(s): Ronald W. Bair
HEARING: WEDNESDAY, JUNE 17, 1992 at 11:00 a.m.

Variance to permit a minimum lot width of 59.4 ft. in lieu of the required 75 ft.

Lawrence E. Schmidt
Zoning Commissioner of
Baltimore County

cc: Ronald W. Bair
Eugene W. Zimmerman

NOTE: HEARINGS ARE RESCHEDULED AUTOMATICALLY FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning

111 West Chesapeake Avenue
Towson, MD 21204 887-3353

June 2, 1992

Mr. Ronald W. Bair
12 Fitzgerald 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 (ZAC) 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 Commissioner, 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 ZAC that offer or request information on your petition. If additional comments are received from other members of ZAC, 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 21204 887-3353

Your petition has been received and accepted for filing this

30th day of April, 1992.

Arnold Jablon
Director

Received By:

W. Carl Richards, Jr.
Chairman,
Zoning Plans Advisory Committee

Petitioner: Ronald W. Bair

Petitioner's Attorney:

5/11/92

DPW/Developers Engineering Division (Public Services) 05/18/92
Development Review Committee Response Form
Authorized signature Robert J. Family Date 5/18/92

Project Name / File Number	Waiver Number	Zoning Issue	Meeting Date	
8490 Deereco Road Limited Partnership		450	5-11-92	
DED DEPRM RP STP TE				NC
Orville Jones		451		
DED DEPRM RP STP TE				NC
Harbor Realty Partnership		452		
DED DEPRM RP STP TE				NC
Jerald M. And Brenda D. Windes		453		
DED DEPRM RP STP TE				NC
Daniel C. And Susan E. Gutkin		454		
DED DEPRM RP STP TE				NC
Donald And Anne Kahn		455		
DED DEPRM RP STP TE				NC
Signet Bank, Maryland		456		
DED DEPRM RP STP TE				NC
Ronald W. Bair		457		
DED DEPRM RP STP TE				NC
A. Eric And Esther J. Dott		458		
DED DEPRM RP STP TE				NC
William J. And Mary Jane Kramer		459		
DED DEPRM RP STP TE				NC
Douglas B. And Judith A. Colmar		460		
DED DEPRM RP STP TE				NC

COUNT 11

5/18/92

BALTIMORE COUNTY, MARYLAND

OFFICE OF PLANNING AND ZONING
Mey Courts Building
401 Bosley Avenue
Towson, MD 21204

MEMORANDUM

TO: Arnold Jablon, Director - Zoning Administration & Development Management

FROM: Kevin 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 Colmar - 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.

3_11_92.tmc
Petitions.tmc

RECEIVED
MAY 18 1992
ZONING OFFICE

DPW/Traffic Engineering 05/18/92
Development Review Committee Response Form
Authorized signature Robert J. Family Date 5/18/92

Project Name / File Number	Waiver Number	Zoning Issue	Meeting Date	
8490 Deereco Road Limited Partnership		450	5-11-92	
DED DEPRM RP STP TE				N/C
Orville Jones		451		
DED DEPRM RP STP TE				N/C
Harbor Realty Partnership		452		
DED DEPRM RP STP TE				N/C
Jerald M. And Brenda D. Windes		453		
DED DEPRM RP STP TE				N/C
Daniel C. And Susan E. Gutkin		454		
DED DEPRM RP STP TE				N/C
Donald And Anne Kahn		455		
DED DEPRM RP STP TE				N/C
Signet Bank, Maryland		456		
DED DEPRM RP STP TE				N/C
Ronald W. Bair		457		
DED DEPRM RP STP TE				N/C
A. Eric And Esther J. Dott		458		
DED DEPRM RP STP TE				N/C
William J. And Mary Jane Kramer		459		
DED DEPRM RP STP TE				N/C
Douglas B. And Judith A. Colmar		460		
DED DEPRM RP STP TE				N/C

COUNT 11

5/18/92

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
12311 Birdie Avenue
Zoning Advisory Committee Meeting May 11, 1992

This 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/3/TXTSBP

RECEIVED
MAY 14 1992
ZONING OFFICE

Baltimore County Government
Fire Department

700 East Joppa Road Suite 901
Towson, MD 21204-5500 (301)887-4500

MAY 13, 1992

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

RE: Property Owner: RONALD W. BAIR

Location: #13211 BIRDALE 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: Lieut. Jerry Feyer Noted and Approved
Planning Group
Special Inspection Division Fire Prevention Bureau

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MAY 14 1992
ZONING OFFICE

Department of Recreation and Parks
Development Review Committee Response Form
Authorized signature _____ Date 5/11/92

Project Name / File Number	Waiver Number	Zoning Issue	Meeting Date
6490 Deer-Acre Road Limited Partnership		AD	5-11-92
DED DEPRM RP STP TE			No Comment
Orville Jones		451	
DED DEPRM RP STP TE			No Comment
Harbor Realty Partnership		452	
DED DEPRM RP STP TE			No Comment
Jerald M. And Brenda D. Mindes		453	
DED DEPRM RP STP TE			No Comment
Daniel C. And Susan E. Gussin		454	
DED DEPRM RP STP TE			No Comment
Donald And Anne Kahn		455	
DED DEPRM RP STP TE			No Comment
Signet Bank, Maryland		456	
DED DEPRM RP STP TE			No Comment
Ronald W. Bair		457	
DED DEPRM RP STP TE			No Comment
A. Eric And Esther J. Dietz		458	
DED DEPRM RP STP TE			No Comment
William J. And Mary Jane Kramer		459	
DED DEPRM RP STP TE			No Comment
Douglas B. And Judith A. Celmer		460	
DED DEPRM RP STP TE			No Comment

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 Birdale 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

JAMLON/S/TXTJU

RECEIVED
JUL 23 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 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 W. Bair

APPLICANT PROPOSAL

The applicant has requested a variance from section 1B02.3.C.1 of the Baltimore County Zoning Regulations to permit a minimum lot width of 50.4 feet in lieu of the required 85 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.D>

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 waters, tidal wetlands, and tributary streams" <Baltimore County Code Section 26-449(a)>.

   Finding: There are no tidal waters, 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 26-447>.

   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 1, 1985, then man-made impervious surfaces associated with that use are limited to 25% of the parcel or lot" <Baltimore County Code, Section 26-543(e)(1)>.

   Findings: The amount of impervious areas shall not exceed 1890 square feet. This includes all building structures, paved and crusher run driveways and parking pads, or any other impervious surfaces.

4. Regulation: "If no forest is established or 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)(a)>.

   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 phosphorous 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 26-452(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 M. Farr at 887-3904.

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. Schwaneter, w/attachment

BAIR/TXTMSS

PLEASE PRINT CLEARLY PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
Eugene W. Schwaneter	9037 Sandhar Court 21040
Ronald Bair	13 Fitzgerald Ct 21234

Plat to accompany Petition for Zoning ☒ Variance ☐ Special Hearing

PROPERTY ADDRESS: 13211 BIRDALE AVE

Subdivision name: TWIN RIVERS BEACH
Plat book 9 Folio 33 Lot 96

OWNER: RONALD BAIR 13 FITZGERALD CT ART A 21234

P.R. RAILROAD R/W

Lot 94 Sec 4 Rec 9/33 Ronald Bair 7984-0451

Lot 95 Sec 4 Rec 9/33 Harold Reisner 5785-0071

Lot 96 Sec 4 Rec 9/33 Eagle M Parker 7984-0449

Existing 1 STY DWELLING 3FB

Proposed 1 STY DWELLING 3FB

Existing 1 STY FRAME SHED

Proposed 1 STY FRAME SHED

Existing 1 STY FRAME SHED

Plat Ex. MJ

BIRDALE AVE

All dwellings to be connected to public water & sewerage

N

92-430-A

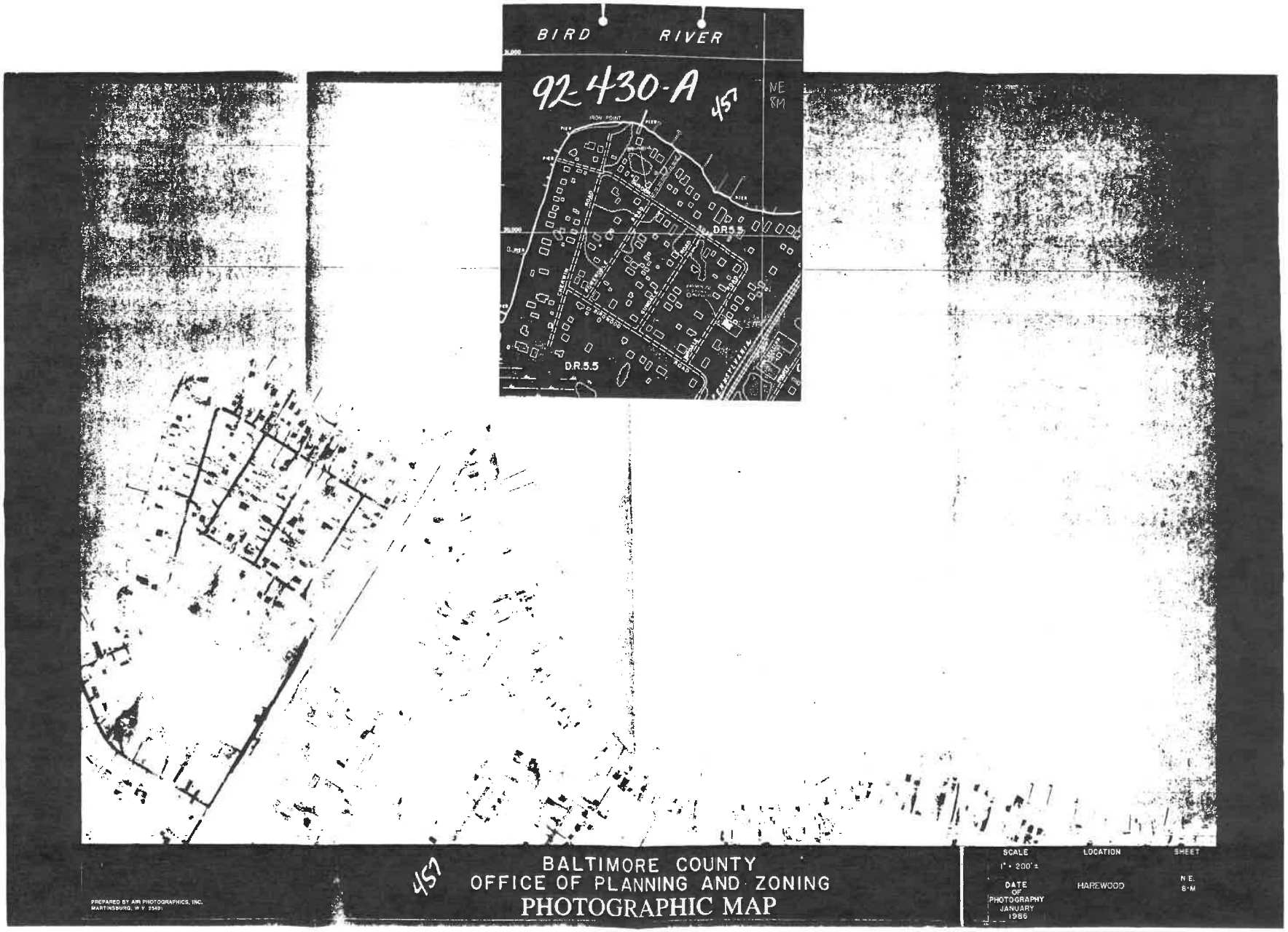
North arrow: MAR-92
prepared by: SHARON STEINBERG
Scale of Drawing: 1" = 80'

VICINITY MAP
HAREWOOD
Turkey Neck Point

LOCATION INFORMATION
Councilmanic District: 5
Election District: 15
1"=200' scale map #: E4
Zoning: DR 5.5
Lot size: .174 acreage 7660 square feet

REVIEWED: ☐
VERIFIED: ☑
Chesapeake Bay Critical Area ☐
Prior Zoning Hearings: N/A

Zoning Office USE ONLY!
reviewed by: JCM ITEM #: 457 DATE:


BIRD RIVER
92-430-A
457
NE 8M
IRON POINT
D.R.5.5
D.R.5.5
457
BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
PHOTOGRAPHIC MAP
PREPARED BY AIR PHOTOGRAPHICS, INC.
MARTINSBURG, W. V. 25401
SCALE
1" = 200'±
LOCATION
HAREWOOD
SHEET
N E.
8-M
DATE OF PHOTOGRAPHY
JANUARY
1986

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

Thomas A. Hahn and Lillie H. Hentz, Trustees * Case Nos. 98-127-A 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 11/24/97
By

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
By

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

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Date 11/24/97
By

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 Kotroco

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 Kotroco

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

Printed with Soybean Ink

#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(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

~~Contract 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, Address and phone number of representative to be contacted

Paul Lee Engineering, Inc.
Name

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

OFFICE 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 w/ #127

ORDER RECEIVED FOR FILING
Date 11/5/97
By

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Zoning Administration & Development Management

98-128-A

Paul Lee P.E.

Paul Lee Engineering Inc.
304 W. Pennsylvania Ave.
Towson, Maryland 21204
410-821-5941

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.

STATE OF MARYLAND
PAUL LEE
4047
PROFESSIONAL ENGINEER

#128

J.O. 97-029

9/8/97

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 approx 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.

98-128-A

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.: 128

Petitioner: Thomas A Hahn.

Location: 13118 Cherwin Avenue

PLEASE FORWARD ADVERTISING BILL TO:

NAME: Lillie Hantz.

ADDRESS: 8820 Walther Blvd, Apt. 3608

Balto. MD. 21234

PHONE NUMBER: (410) 663-4939

AJ:ggs

(Revised 09/24/96)

Printed with Soybean Ink

BALTIMORE COUNTY, MARYL[illegible]
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 044425

DATE 10/2/97 ACCOUNT 01-615

Item: 128
By - mm

AMOUNT $ 50.00

RECEIVED FROM: Hente, Charles - 13118 Charwin Ac

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 10:03:03
REC MSOI CASHIER CLUB CHL DRAWER
5 MISCELLANEOUS CASH RECEIPT
Receipt # 024556
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. 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: #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., 401 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 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 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,

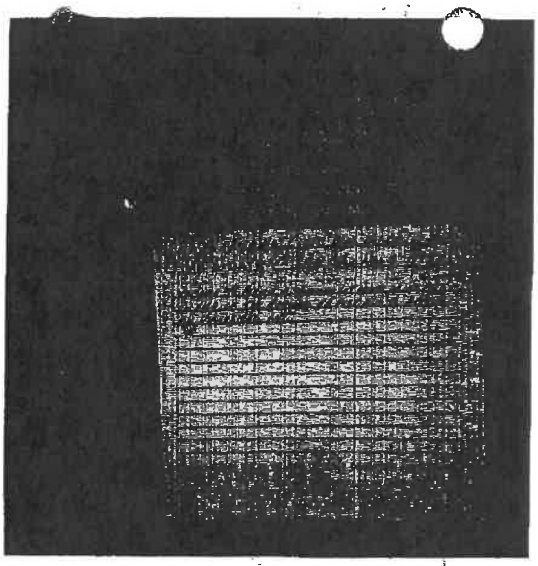
Thomas P. Ogle Sr. 10/17/97
(Signature of Sign Poster & Date)

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.

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 CONCERING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.

Printed with Soybean Ink
on Recycled Paper

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

Please foward 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,

W. Carl Richards, Jr.

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

ORDER RECEIVED FOR FILING
Date 11/24/97
By

ZONE1020.128

B A L T I M O R E C O U N T Y, M A R Y L A N D

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
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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.

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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, 130, 131 and 131

REVIEWER: LT. ROBERT P. SAUERWALD
Fire Marshal Office, PHONE 887-4881, MS-1102F

cc: File

Printed with Soybean Ink on Recycled Paper

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. (Print Name of Applicant) 304W. PENNSYLVANIA AVE. (Address) (410) 821-5941 (Telephone Number)

☐ Lot Address 1311B CHERWIN AVE Election District 15 Council District 5 Square Feet 11,250 S.F.

Lot Location: ~~NW~~ W / side / ~~corner~~ of CHERWIN AVE. (street), 0 feet from the SW corner of BIRDWOOD AVE (street).

Land Owner THOMAS A. HAHN & LILLIE H. HAHTZ, TRUSTEES Tax Account Number 15-08-00 2241

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)*	✓	—
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 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

RECEIVED
OCT 8 1997
OFFICE OF PLANNING

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

Date: 10/9/97

smlets.pub

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

* sign posted w/ variance

CERTIFICATE OF POSTING

District _____

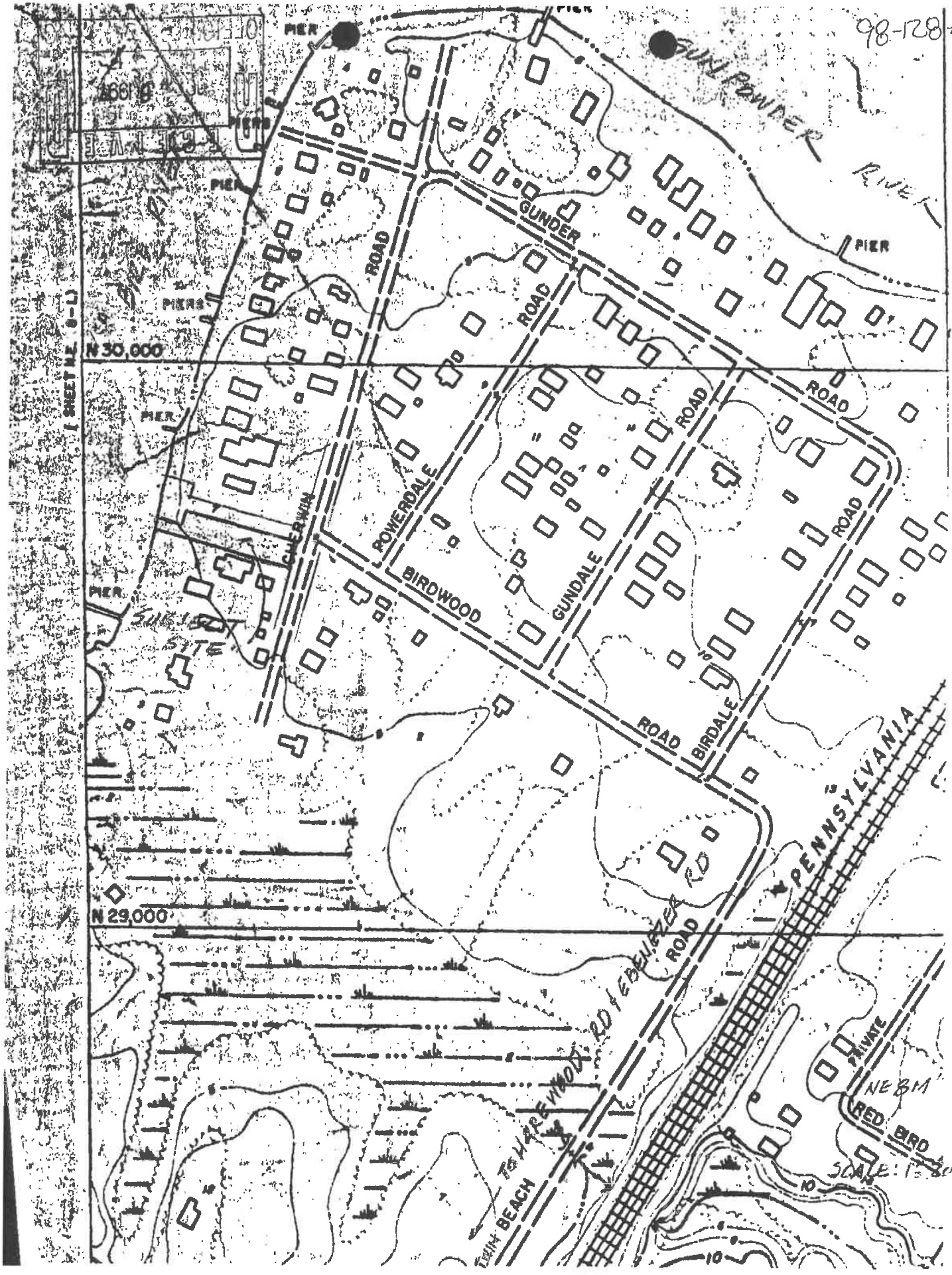
Location of property: _____

_____

Posted by: _____ Date of Posting: _____
Signature

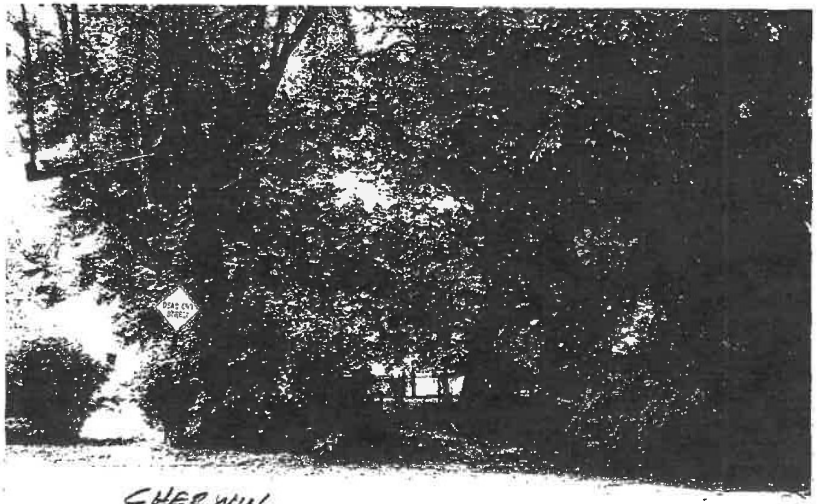
Number of Signs: _____

CK/UNDER.LOT (TXTSOPH)


98-128-A
PIER
SUN POWER RIVER
GUNDER ROAD
PIER
PIERS
N 30,000
PIER
CHERWIN
POWERDALE
BIRDWOOD
GUNDALE
ROAD
BIRDALE
ROAD
PIER
SUBJECT SITE
PENNSYLVANIA
N 29,000
EBENEZER ROAD
PRIVATE
NEBM
RED BIRD
TO HAREWOOD
TWIN BEACH
SCALE: 1" = 200'
10
10


BIRD RIVER
SCALE: 1"=200'
IRON POINT
PIER
PIER
PIER
PIER
PIER
GUNDER ROAD
ROAD
ROAD
ROAD
ROAD
ROAD
D.R.5.5
D.R.5.5
SUBJECT SITE
POWERDALE
GUNDALE
BIRDWOOD
BIRDALE
SHERWIN
PENNSYLVANIA RR
SUB STATION
PRIVATE
BIRDWOOD
TWIN RIVER AVE
RED BIRD AVE
EASTERN AVE
AVE
1,000
10,000
9,000

#1



CHERWIN AVE

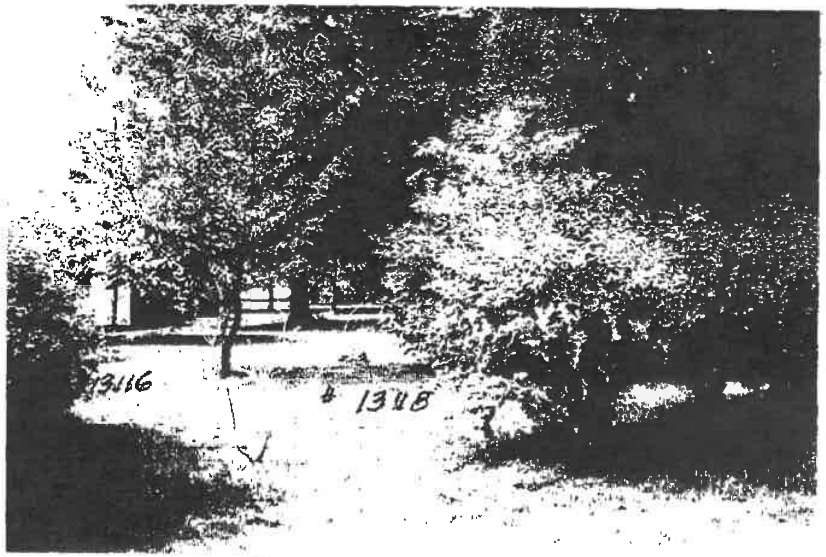
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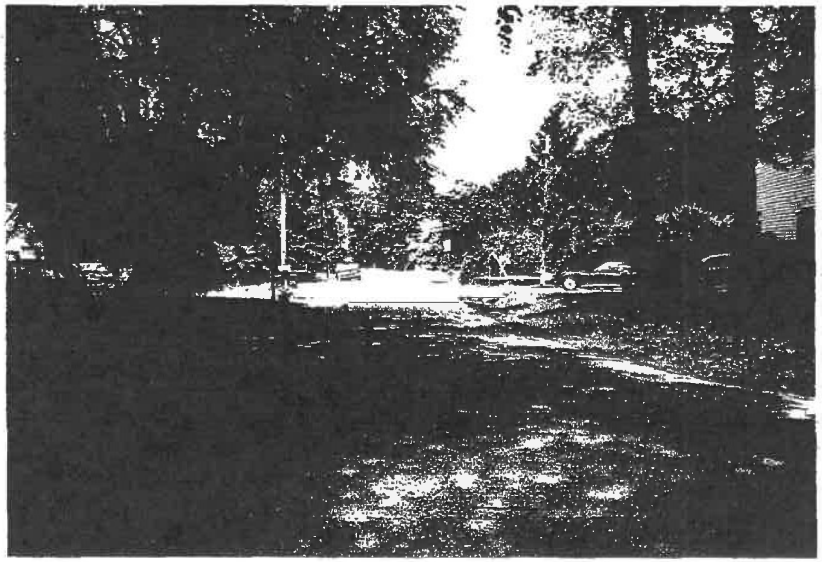


#4



SHEET 1 OF 1

98-128-A





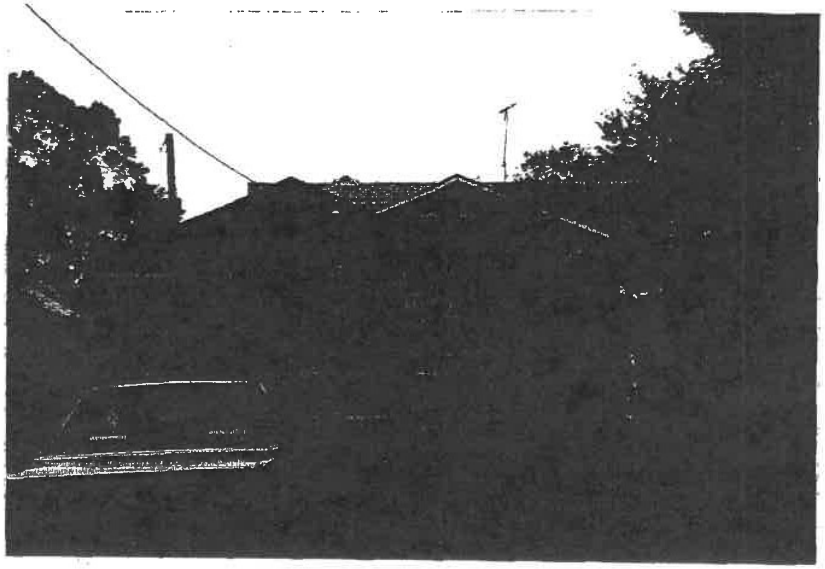
PHOTO'S

1311B CHERWIN AVE

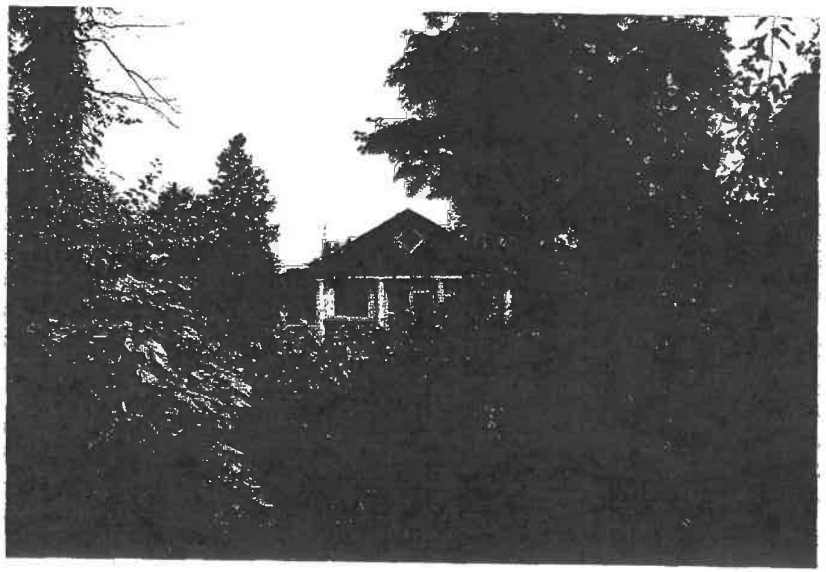
(SEE PLAT FOR PHOTO LOCATIONS)

98-128-A

#9



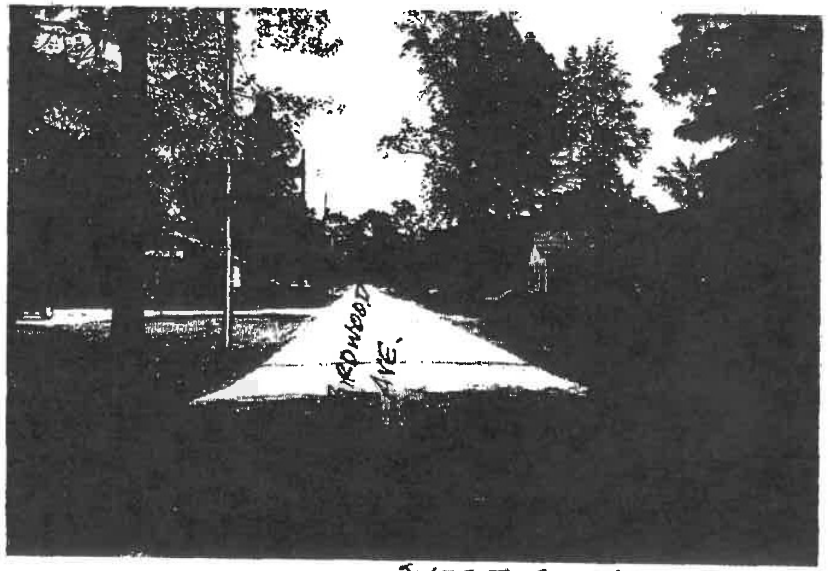
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#11



#12



98-128-A

SHEET 3 OF 4

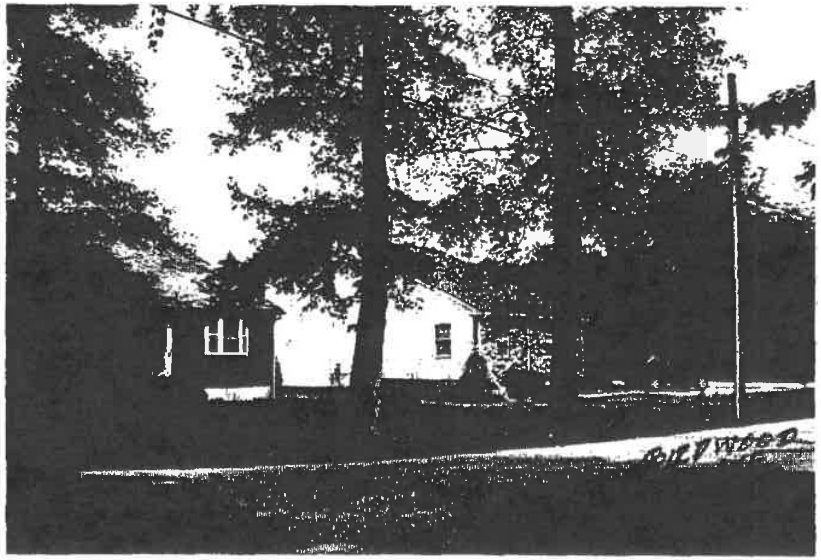
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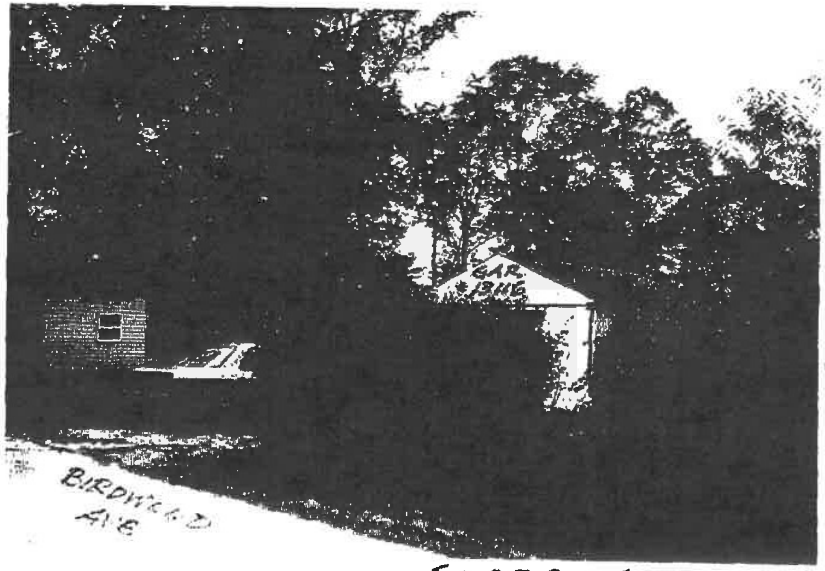
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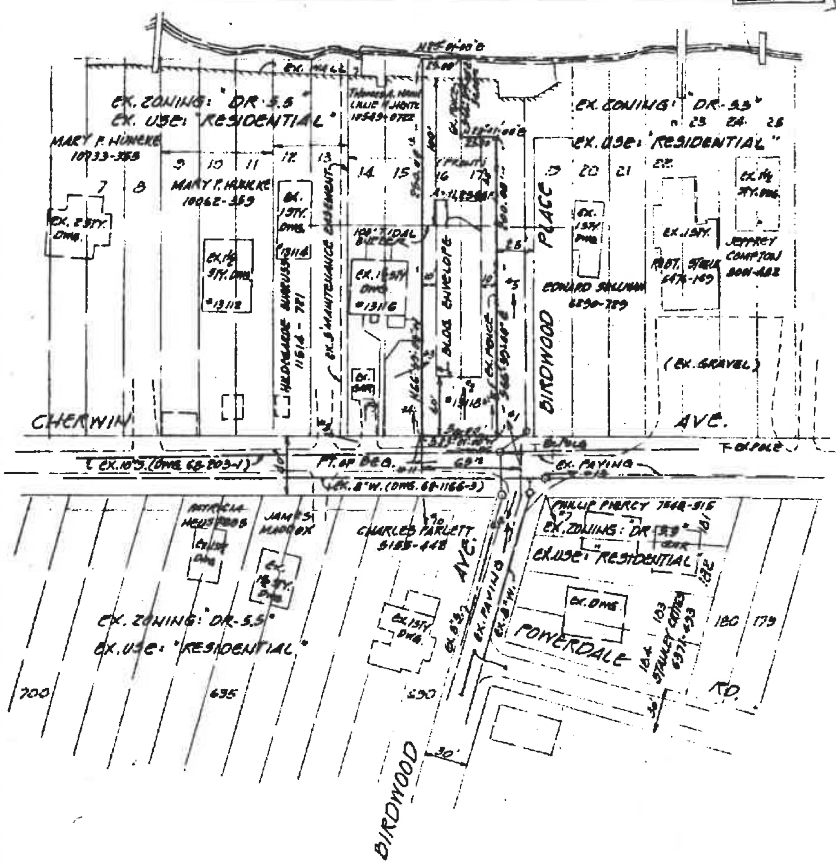
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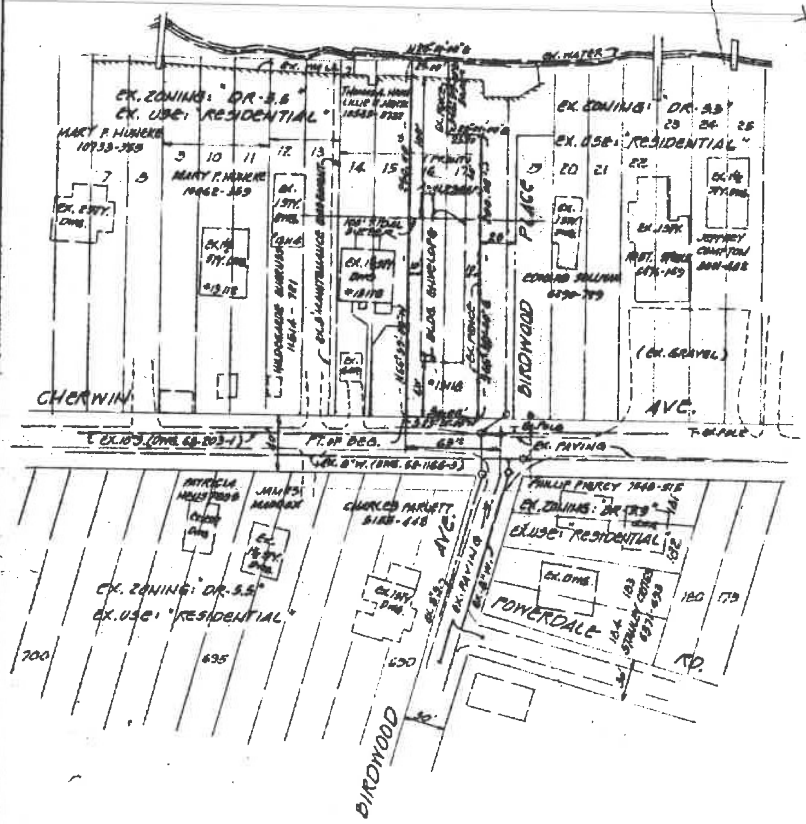


#8



98H128-A


BIRD RIVER
EX. ZONING: "DR 5.5"
EX. USE: "RESIDENTIAL"
MARY P. HINKEL
10933-389
MARY P. HINKEL
10962-389
EX. 1 STY. DWG.
#13118
EX. 1½ STY. DWG.
#13116
HIGHLANDS SURVEY
11614 - 721
EX. 5' MAINTENANCE EASEMENT
EX. 1 STY. DWG.
#13114
EX. 1½ STY. DWG.
EX. 1 STY. DWG.
EX. 1 STY. DWG.
EX. 1


BIRD RIVER
EX. ZONING: DR-3.5
EX. USE: RESIDENTIAL
MARY P. HUBERT 10933-359
MARY P. HUBERT 1946-359
THOMAS A. HAHN & LILLIE H. HENTZ 10937-361
EX. ENTR.
EX. 1½ STY. DWG.
EX. 1 STY. DWG.
EX. GAR.
EX. 1 STY. DWG.
EX. 1 STY. DWG.
EX. 1 STY. DWG.
EX. 1½ STY. DWG.
EX. 1 STY. DWG.
EX. 1 STY. DWG.
EX. 1

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.

ORDER RECEIVED FOR FILING
Date 3/20/97
By

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

Petitioner's Exhibit No. 9 D

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.

ORDER RECEIVED FOR FILING
Date 5/28/97
By Mr. Brooke

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

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.

ORDER RECEIVED FOR FILING
Date 3/20/97
By M. Grant

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.

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:

ORDER RECEIVED FOR FILING
Date 5/20/97
By

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.

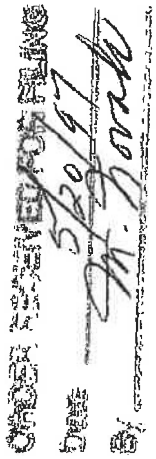
3. The Petitioners shall comply with the comments submitted by the Baltimore County Zoning Plans Advisory Committee (ZAC), namely, Development Plans Review Division dated April 14, 1997.

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,

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



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,

Lawrence E. Schmidt
Zoning Commissioner

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

Printed with Soybean Ink on Recycled Paper

RE: PETITION FOR VARIANCE
13218 Powderdale Avenue, N/S Powderdale Avenue, 115' W from c/l Gunder Avenue
15th Election District, 5th Councilmanic
Legal Owner(s): Wally and Dawn Wallace
Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* 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) 1B02.3.C.1 & 304; BCZR,

TO PERMIT A SINGLE FAMILY DWELLING ON AN UNDERSIZE LOT (50' IN LIEU of 55' WIDTH).

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:

(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: _____ 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 FT². Also known as lot 165, 166, Powderdale Ave and located in the 15th Election District.

13218

97-412-A

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 c/l Guilder 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

4/188 April 10 C134004

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. Henderson

LEGAL AD. - TOWSON

ALTIMORE COUNTY, MARYLAND 412 No. 020760
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

DATE 3-25-97 ACCOUNT R001-6152

AMOUNT $ 50.00

RECEIVED FROM: Wally Wallace — 1321 Ridgedale Ave

FOR: VAR (Oil.)

03A91#0162MICHRC $50.00
BA C011:54AM03-25-97

VALIDATION OR SIGNATURE OF CASHIER JC M

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/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

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/~~Closing~~:
(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,

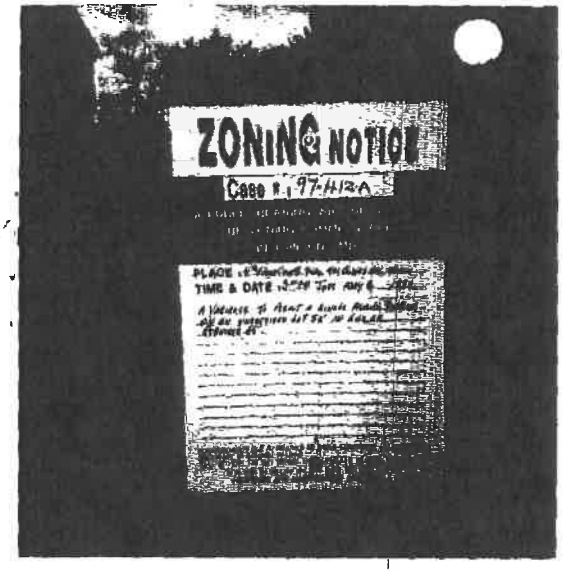
4/18/97
(Signature of Sign Poster & Date)

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 (Print Name of Applicant) 7014 GREENBANK Rd (Address) 335-9458 (Telephone Number)

☐ Lot Address 13218 POWDERDALE AVE. Election District 15 Council District 5 Square Feet 6,137

Lot Location: (N) E S W (side) / corner of POWDERDALE AVE (street) . 108.2 feet from (N) E S (W) corner of GUNDER AVE (street) 04 15 2200037561/6434.

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 _____ 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. MURRAY 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

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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

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☐ WALLY WALLACE (Print Name of Applicant) 7019 GREENBANK Rd (Address) 335-9458 (Telephone Number)

☐ Lot Address 13218 POWDERDALE AVE Election District 15 Council District 5 Square Feet 6,137

Lot Location: (N) E S W / (side) / corner of POWDERDALE AVE (street) , 108.2 feet from (N) E S (W) corner of GUNDER AVE, (street) Act 04 15 22000 27561 / 0484 -

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) (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 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 M Daniel
for the Director, Office of Planning & Zoning

Date: 3/28/97

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

Please foward 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.

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 CONCERING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.

Printed with Soybean Ink
on Recycled Paper

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,

R. J. Gredlein

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

B A L T I M O R E C O U N T Y, M A R Y L A N D

INTEROFFICE CORRESPONDENCE

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

Date: April 14, 1997

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.

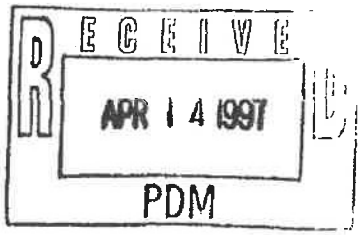
RWB:HJO:cab

cc: File

ZONE414.412

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONCE



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

AFK/JL

C:\MSOFFICE\WINWORD\ZAC\NOCOM\412.DOC

Baltimore County Government
Fire Department

700 East Joppa Road
Towson, MD 21286-5500

Office of the Fire Marshal
(410)887-4880

RECEIVED
APR 10 1997
PDM

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
Location: DISTRIBUTION MEETING OF April 7, 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.

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

410, (412) 413, 415, 416, 420, and 424

REVIEWER: LT. ROBERT P. SAUERWALD
Fire Marshal Office, PHONE 887-4881, MS-1102F

cc: File

Printed with Soybean Ink on Recycled Paper

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONCE

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: Carl L. Lewis

AFK/JL

C:\MSOFFICE\WINWORD\ZAC\NOCOM\412.DOC

_____ Attach original petition Due Date 4/16/97

To: Arnold L. Jablon

From: Robert A. Wirth RAW/JSP

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).

____ _____

_____

_____

_____

_____

_____

jablon.doc

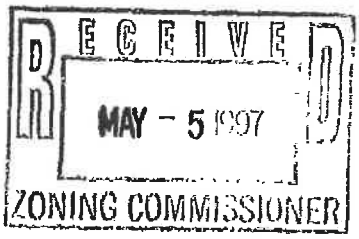
DANIEL PUSZCZEWICZ
13215 CHERWIN AVE.
BALTIMORE, MARYLAND. 21220

Home Phone 410-335-6726

5/6 hrs

April 29, 1997

Mr.Lawrence Schmidt:
Zoning Commissioner
Old Courthouse
400 Washinton Ave.
Room 112
Towson, Mrayland 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 enviroment 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 deppreciation . 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 Cherwin 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	7019 GREENBANK Rd
Dawn Wallace	7019 GREENBANK Rd

Printed with Soybean Ink on Recycled Paper

PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

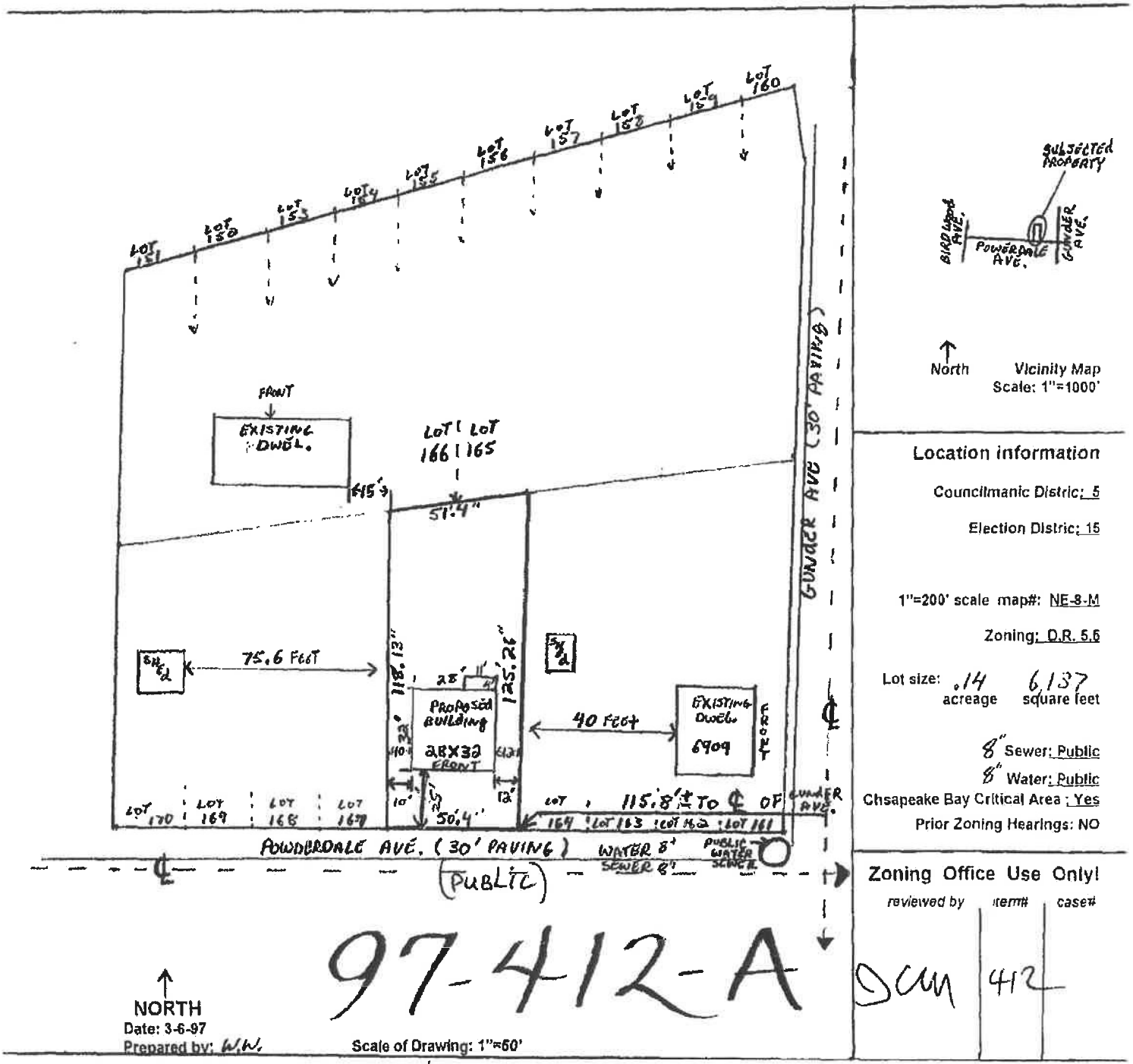
NAME	ADDRESS
Daniel T Piszczewicz	15215 Charcoal Ave
Brenda R Piszczewicz	15215 Charcoal Ave 92530

Plat to accompany petition for Zoning ☒ Variance ☐ Special Hearing

Property Address: 1312 & 1316 Powderdale 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-8-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

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; BCZR.

Wally Wallace

DATE: 3-24-97

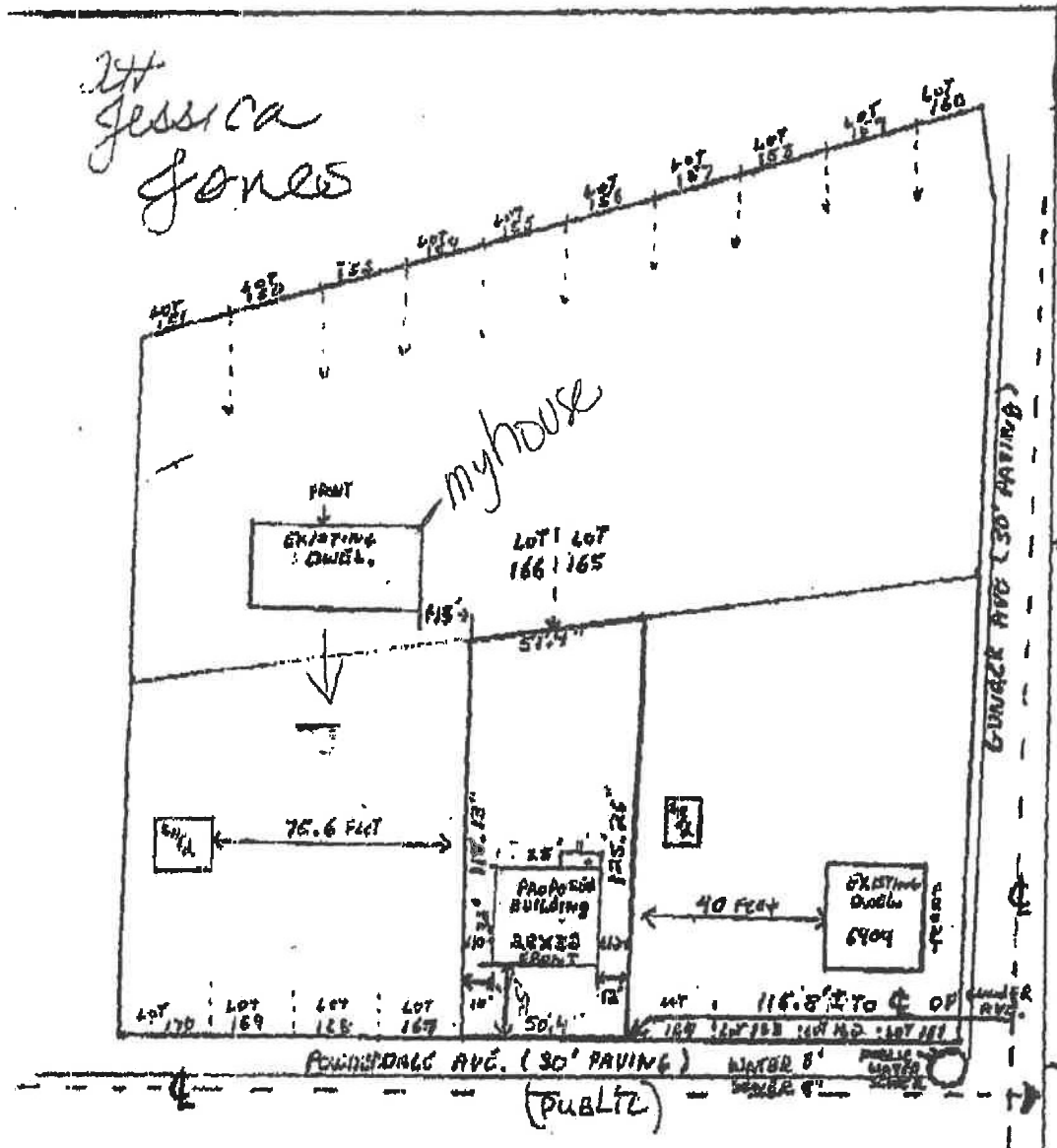
Plat to accompany petition for Zoning ☒ Variance ☐ Special Hearing

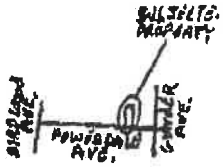
Property Address: 1115 Powderdale Ave

Plat book# 8, folio# 33, lot# 165,166, section# A

Owner: Wally & Dawn Wallace

Att Jessica Jones





North Vicinity Map
Scale: 1"=1000'

Location Information

Councilmanic District: 5

Election District: 15

1"=200' scale map#: NE-5-11

Zoning: O.R.-5.5

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!

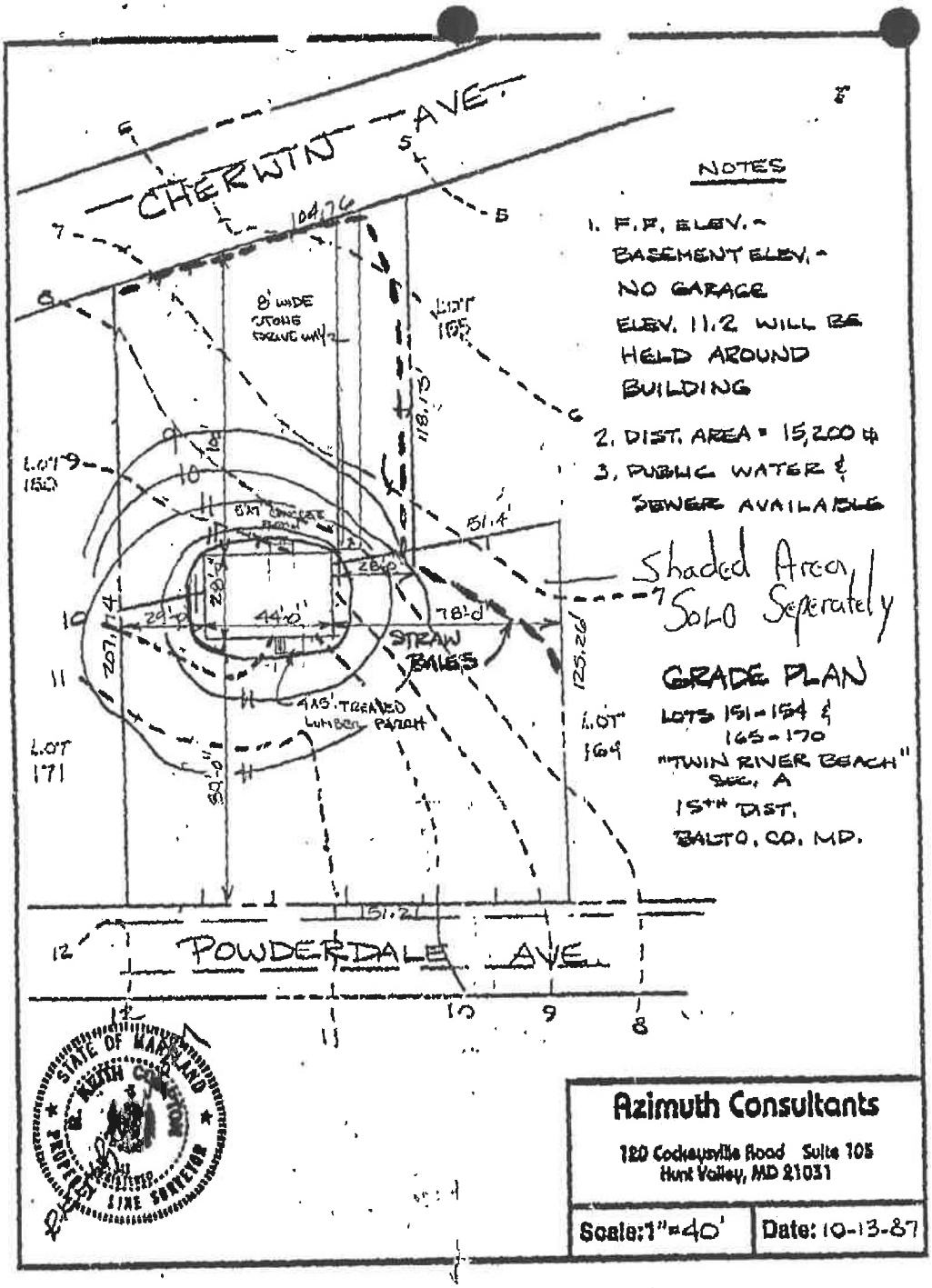
reviewed by	item#:	case#
DCM	412	

97-412-A

Applicant/Petitioner affirm that the 25' setback for the proposed dwelling meets the front averaging requirements of Section 303.1, BCZR

Wally Wallace Date 3-24-97

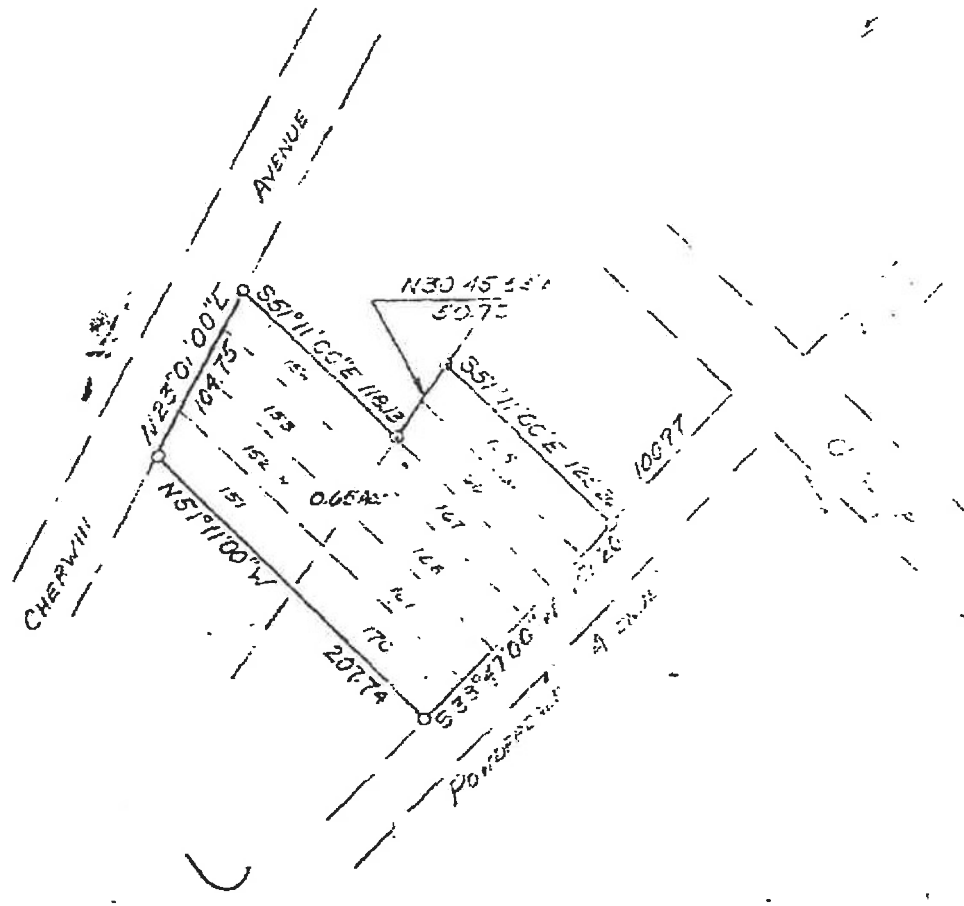
686-018



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....

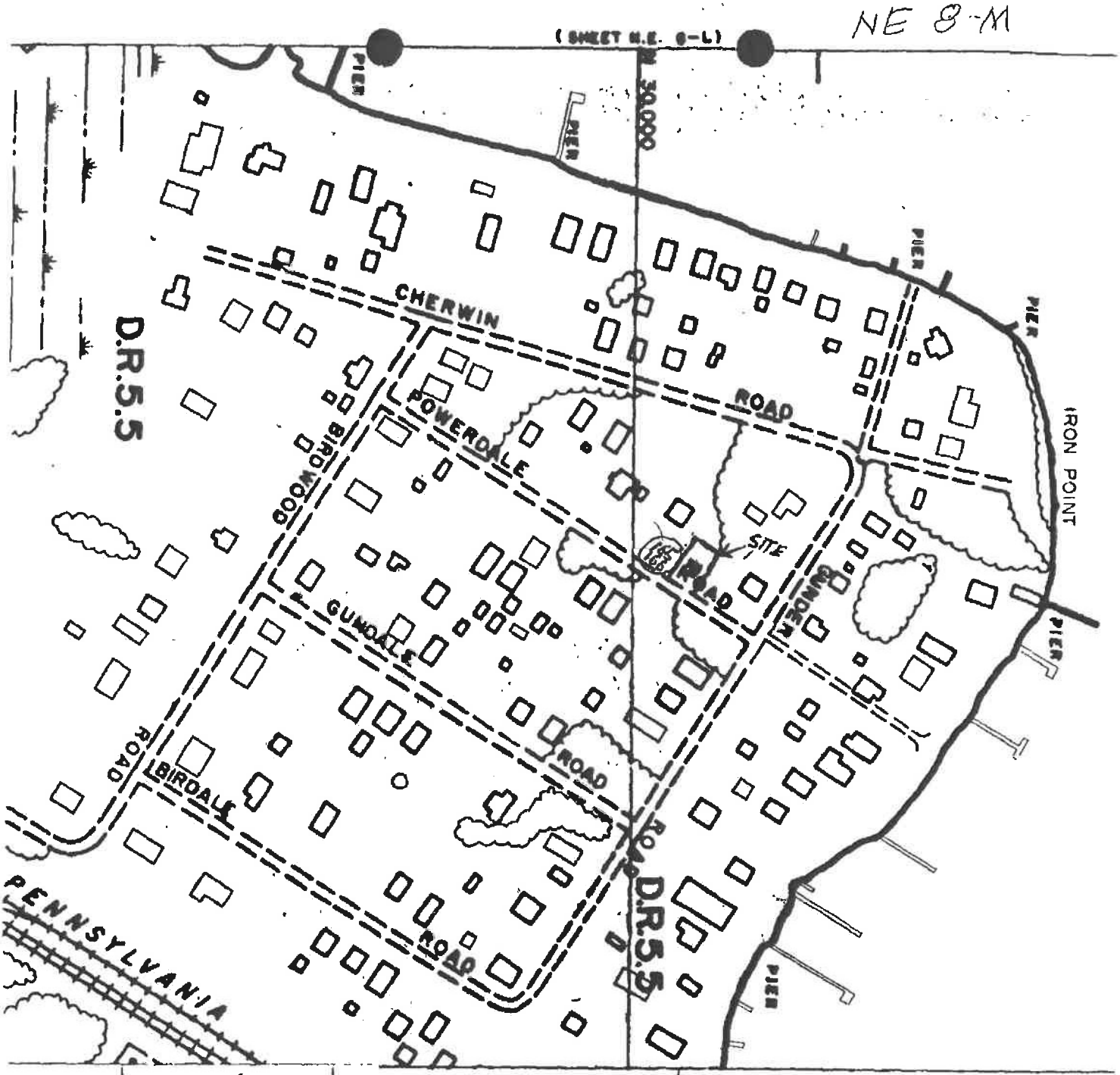
Located at Twin River Beach, Baltimore County, Maryland...

FREDERICK YATES HARD - LAND SURVEYOR - 3292 - STATE OF MARYLAND

Frederick Ward Associates

DATE	SCALE	PLAT NO
1-6-69	1"=100'	C-69-3

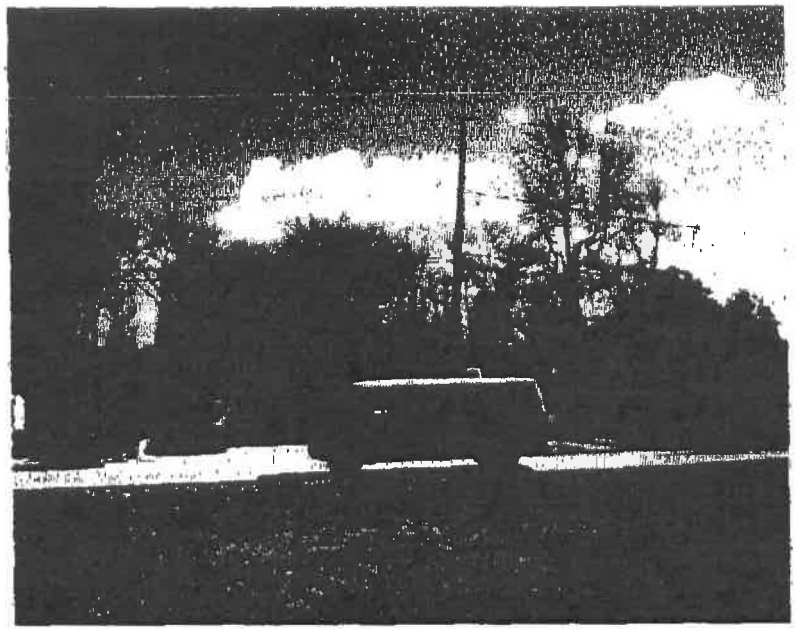
NE 8-M

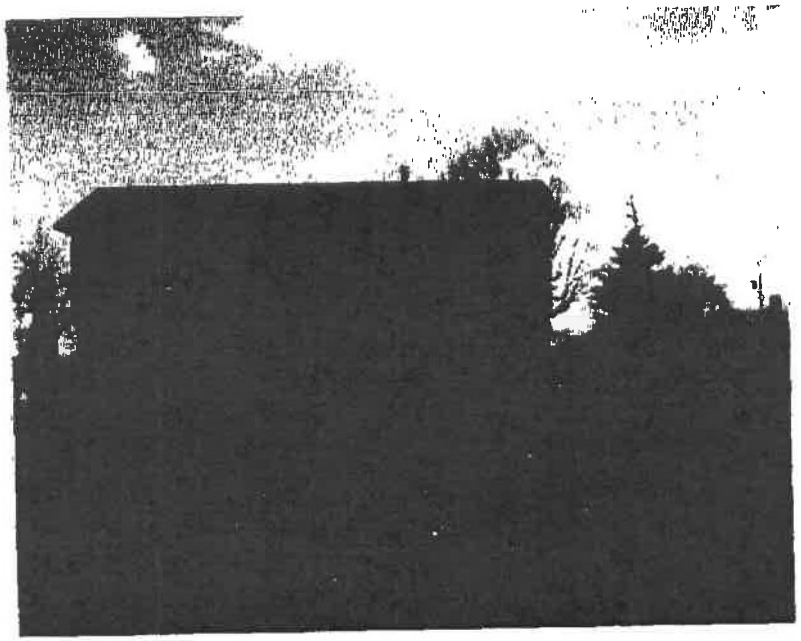


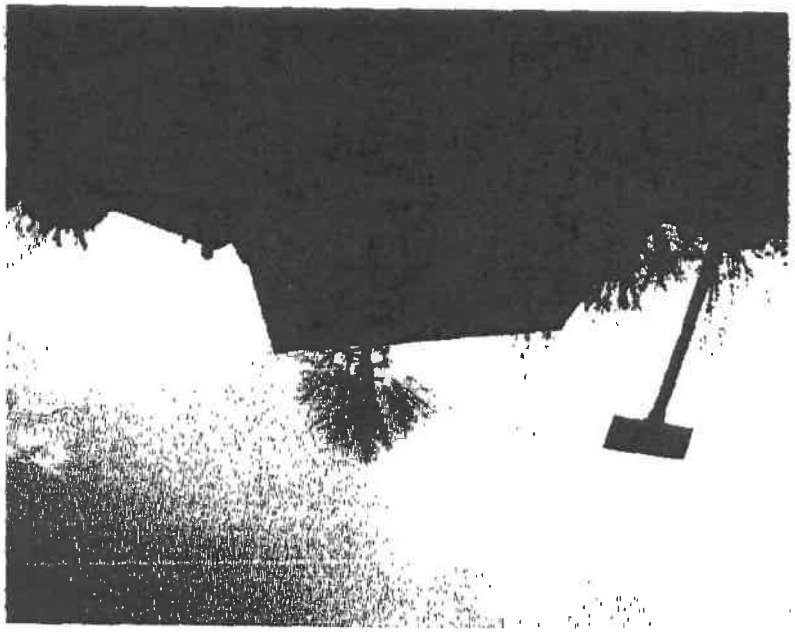
SCALE	LOCATION	SHEET
1" = 200'±	TWIN RIVERS	N.E. 6-L (NE 8-M)
	412	

97-412-A

97-412-X



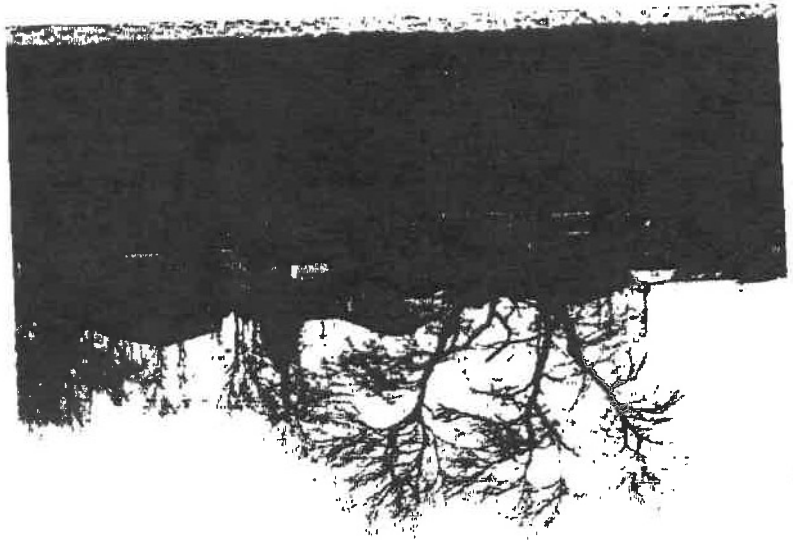


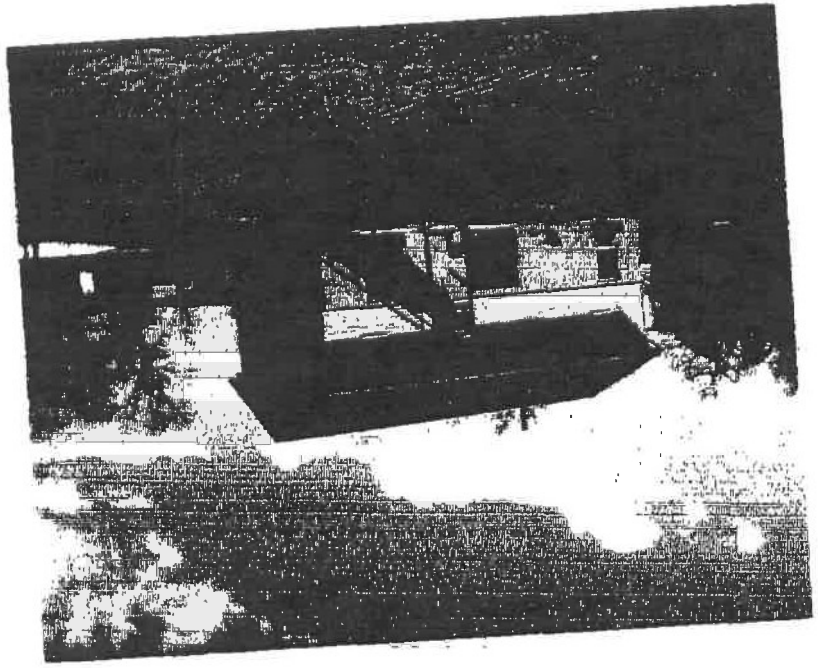




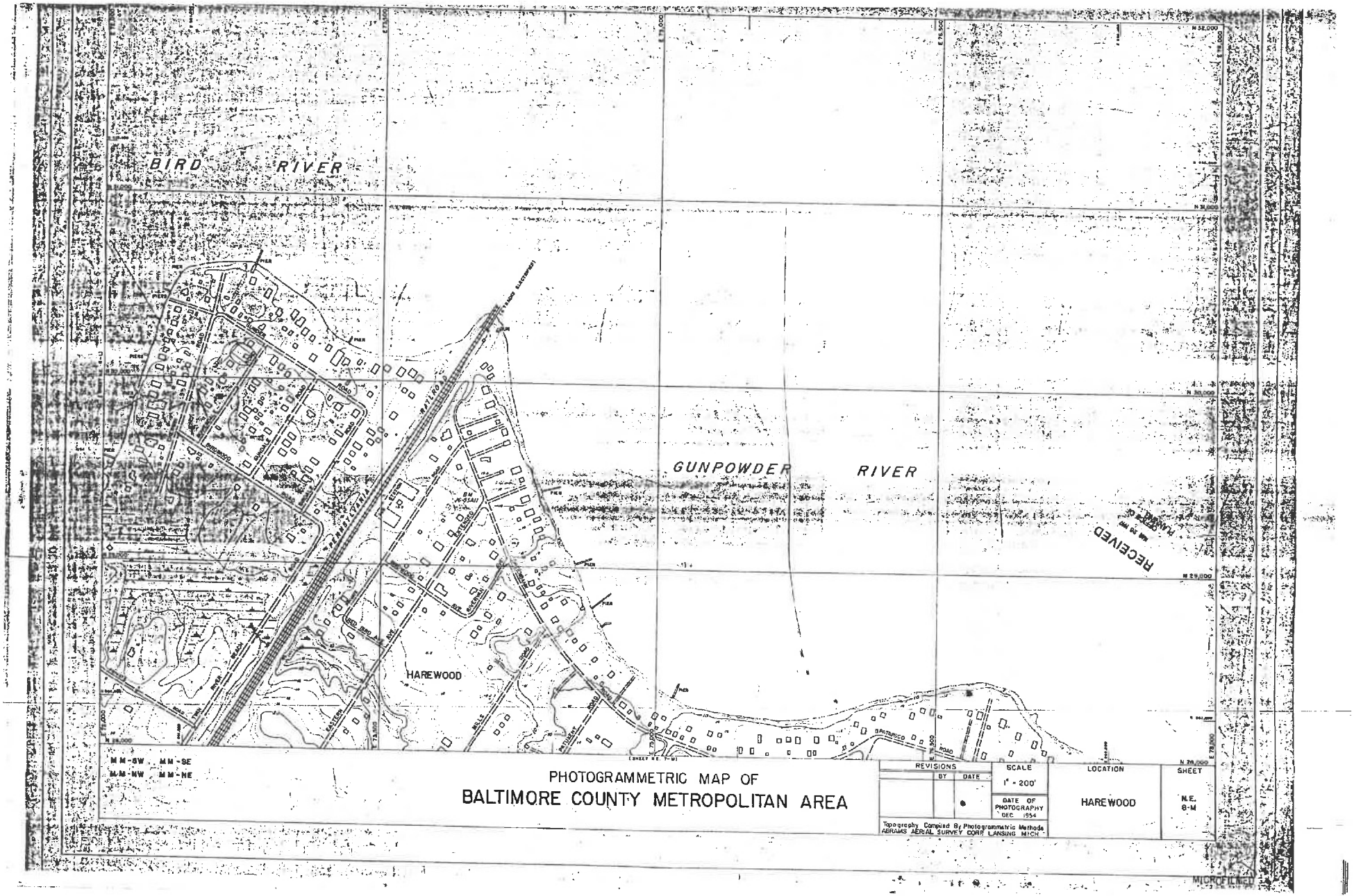












MM-SW MM-SE
MM-NW MM-NE

PHOTOGRAMMETRIC MAP OF
BALTIMORE COUNTY METROPOLITAN AREA

REVISIONS			SCALE	LOCATION	SHEET
	BY	DATE	1" = 200'	HAREWOOD	N.E. 8-M
			DATE OF PHOTOGRAPHY DEC 1954		

Topography Compiled By Photogrammetric Methods
ABRAMS AERIAL SURVEY CORP LANSING MICH

February 9, 2021

Board of Appeals of Baltimore County
2nd Floor Suite 203
105 West Chesapeake Avenue
Towson, Maryland, 21204

RE: 13217 Cherwin Avenue
Case No. 20-090-SPHA

I live in the immediate neighborhood of the subject property of this appeal and support the requested special hearing zoning relief and site plan submitted by the Petitioner in this case.

Name	Address	Date
Mary Kelly	13112 Cherwin Ave	2-10-2
Denise Wolfenbarger	13206 Sundale Ave	Feb. 10
Joseph J Ostrom	Middle River Md 21220	2021
Sue A. Zack	13204 Birdale Ave 21220	2/10/21
Alicia Criddle	6915 Birchwood Ave 21220	2-12-21

Petitioner's Exhibit No. 10

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 Hauf	13211 Powderdale Ave 21220	Lots 206 & 207 50.4' x 150
2)	Aaron Crites	6902 Birdwood Ave 21220	Lots 183 & 184 50' x 126' x 68' x 127.24
3)	Stanley R. Crites	6902 Birdwood Ave 21220	
4)	Margret Neumann	6910 Birdwood Ave. 21220	Lots 240 & 241 50' x 126'
5)	Elizabeth Woodward	6920 Birdwood Ave 21220	Lots 680 & 681 100.0' x 601' x 100.99 x 608'
6)	David Lee	6911 Birdwood Ave 21220	Lots 685 & Pt 684 95' x 567'3
7)	[illegible]	6902 GUNDER AVE, 21220	
8)	Teresa 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)	Patty [illegible]	13204 Cherwin Avenue	Lots 24 & 25 50' x 248'
12)	Lisa Schmitt	13204 Cherwin Avenue 21220	
13)	[illegible]	13215 CHERWIN AVE. 21220	Lots 151-154 167-170 100' x 208'+

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)	Jon Stokes	13212 Cherwin Avenue	Lots 32 & 33 50' x 246'
15)	Patty Stokes	13212 Cherwin Avenue	
16)	Teresa Spangler	6918 Gunder Avenue	Lots 70 & 71 50' x 270'
17)	Joe Spangler	6911 Gunder Avenue	
18)	Donna Dowell	6920 Gunder Avenue	Lots 72 & 73 50' x 270'
19)	Alma Griffin	6918 Gunder Avenue	
20)	Mark [illegible]	6800 Gunder ave	Lots 45, 46 & P/O 47 108.40' Frontage
21)	John Fielding	6800 Gunder Ave	
22)	Tracy Fleet	6909 Birdwood Ave.	Lots 688 & 689 100' x 540'
23)	[illegible]	13217 Gundale Ave	Lots 260-263 100' x 150'
24)	[illegible]	6905 Birdwood Ave	Lots 198 & 199 50' x 126'
25)	Darlene E. Reavey	6900 Birdwood Ave, 21220	Lots 181 & 182 50.7 x 129.72' ±
26)	Stephanie Schaefer	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)	[illegible]	13200 Chewin Ave	
28)	Katie Carroll	13206 Cherwin	LOTS 26 & 27 50'x 246'±
29)	Dale Morgan	13210 Cherwin Ave.	LOTS 30 & 31 50'x 246'
30)	Rachel Morgan	13210 Cherwin Ave	
31)	Linda R Knuckles	6908 Gunder Ave	LOTS 61 & 62 50'x 287'
32)	William J Knuckles	6908 Gunder Ave	
33)	[illegible]	6903 Gunder Ave	LOTS 157-160 138.97'x 100'
34)	[illegible]	6909 GUNDER AVE	LOTS 161 & 162 752'x 135'±
35)	[illegible]	13218 Powderdale Ave	LOTS 165 & 165 75'x 125'±
36)	Linda Drasher	13217 Powderdale Ave	LOTS 212 & 213 50'x 150'
37)	Robert Smith	13215 Powderdale Ave	LOTS 208-211 100'x 150'
38)	[illegible]	13215 Powderdale Ave.	
39)	Ruth Hovey	13211 Powderdale Ave	
40)			

TWIN RIVER BEACH PROTECTIVE AND IMPROVEMENT ASSOCIATION, INC

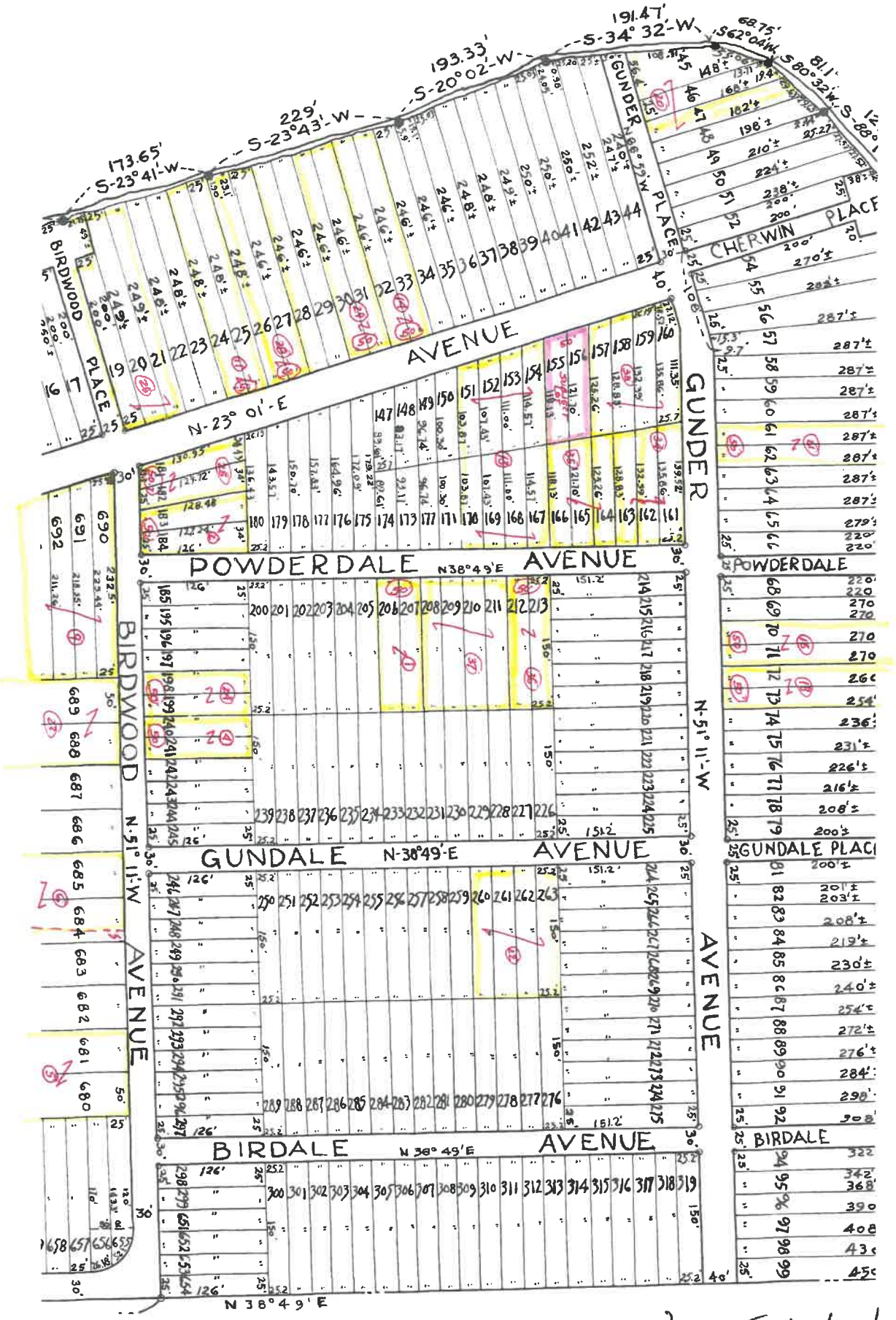


13209 Powderdale Avenue
Middle River, MD 21202
443-525-7038
President: Thomas M. Brookes
Tbrookes927@msn.com

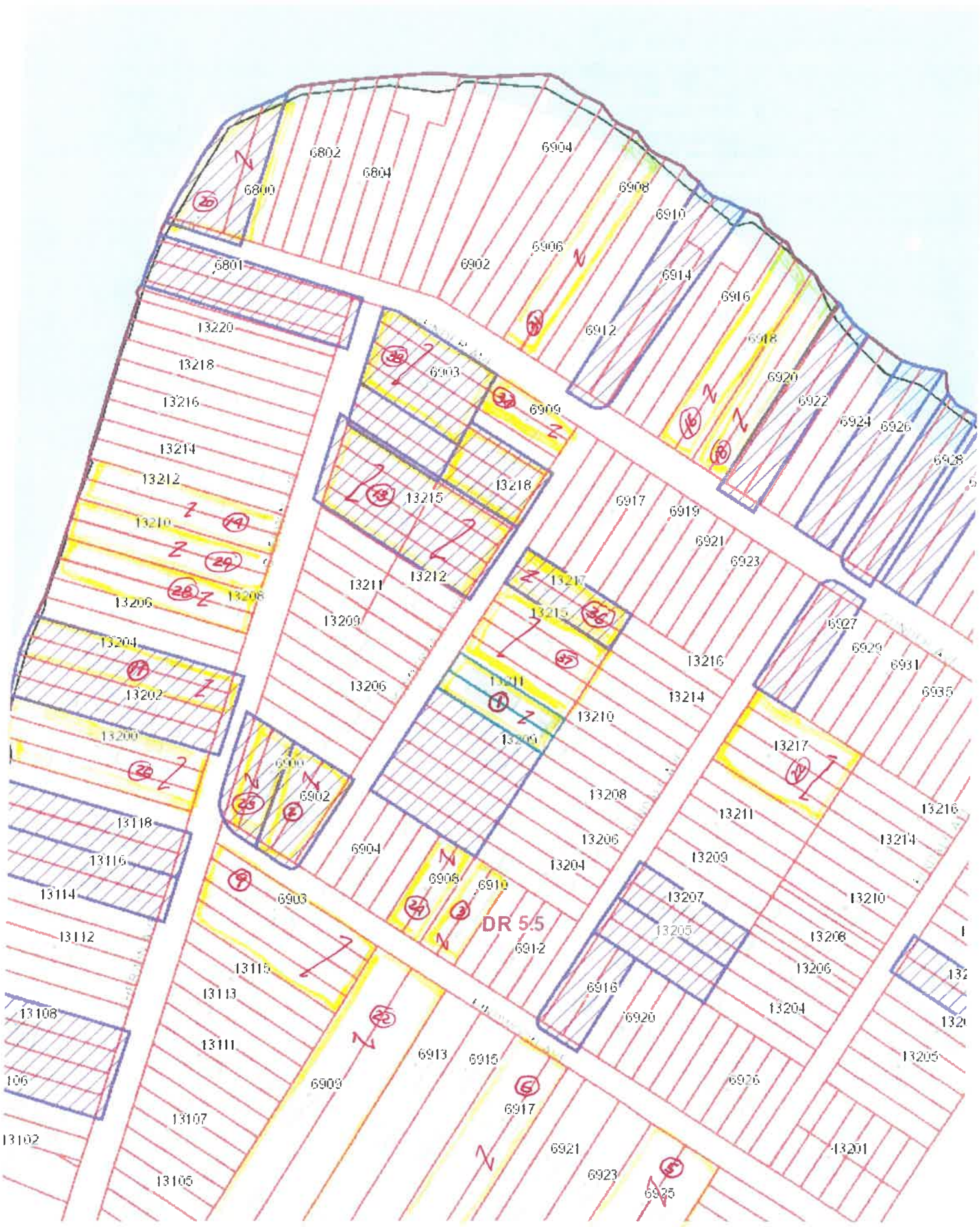


PETITION SIGNATURES

	NAME	ADDRESS
40)	Stephanie Davis	13215 Chelwin Ave, 21220



Petitioner's Exhibit 12



Petitioner's Exhibit 13

Board of Appeals

19-402-SPHA

Exhibit List

Case No.: 20-090-SPHA Case Name: In re CRAIG KESTNER

Party: Protestants Date: 2/17/2021

Exhibit No.	Description	ID Only
1		
2	My Neighborhood Map	
3	Deed for 153	
4	" " 156	
5	SDAT 157-160	
6	Deed for all of the lots	
7	1961 Deed re 156	
8	1961 " " 155	
9	1959 " " 157-60	
10	see next page	
11.	Petition	
	VERIFIED BY: _____ DATE: _____	

Board of Appeals

Exhibit List

Case No.: _____ Case Name: _____

Party: Protestants Date: _____

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

Board of Appeals

Exhibit List

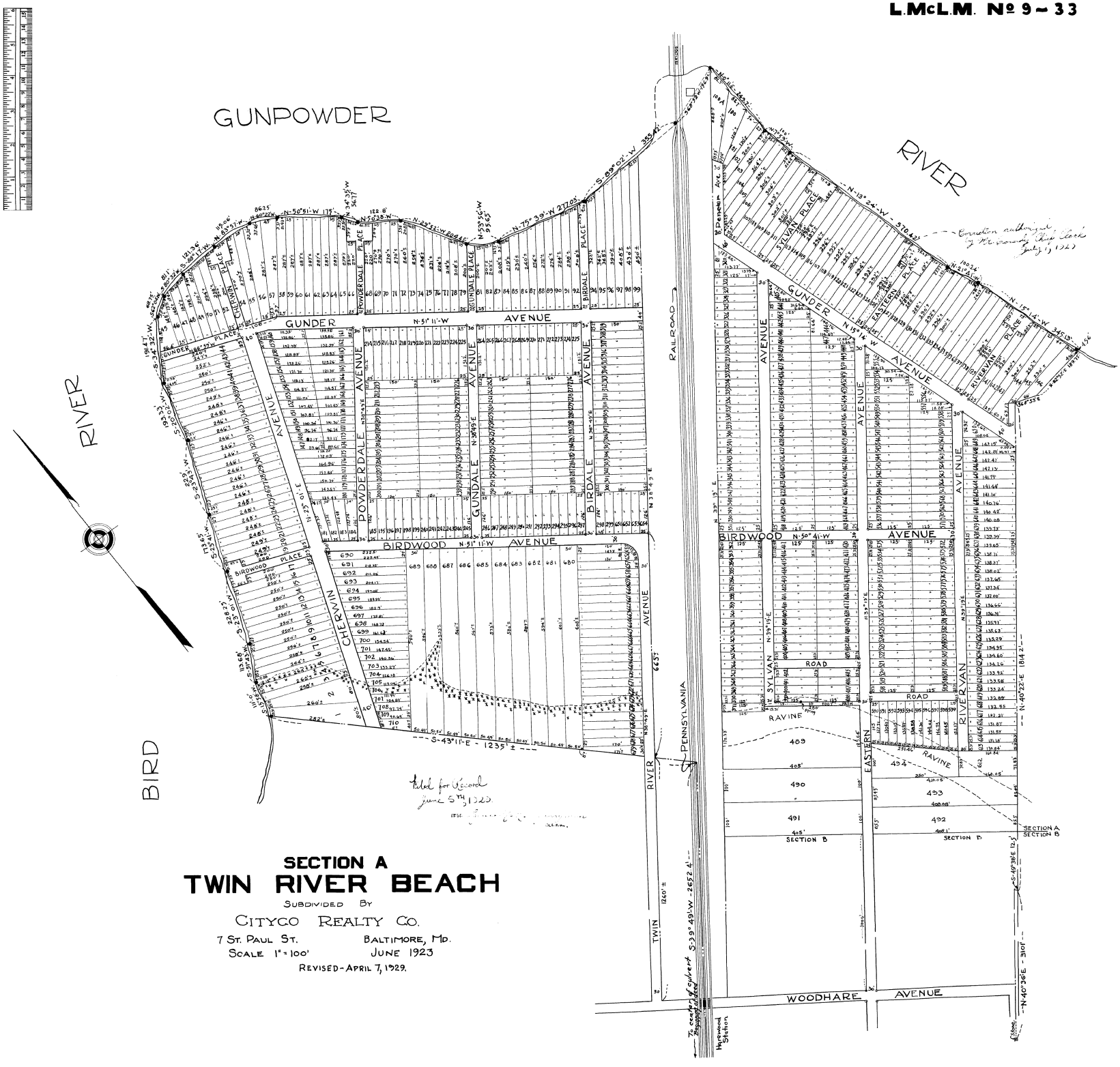
Case No.: 19-402-SPHA 20-0090-SPHA Case Name: In re Craig Chester

Party: Protestants Date: 2/17/2021

Exhibit No.	Description	ID Only
12	Docs re Underlying cases for ~~#s~~ 8	
13	" " " " " 03-309-A	
14	Petition for Variance - 13106 Cherwyn.	
15	SDAT ~~sheets~~ ~~recorded~~ ~~plat~~ printouts	
16	4 properties ~~color~~ related to pink highlighted on 13112 - Kestrel Run plus 3 others	
17	Rule 8 Documents	
	VERIFIED BY: _____ DATE: _____	

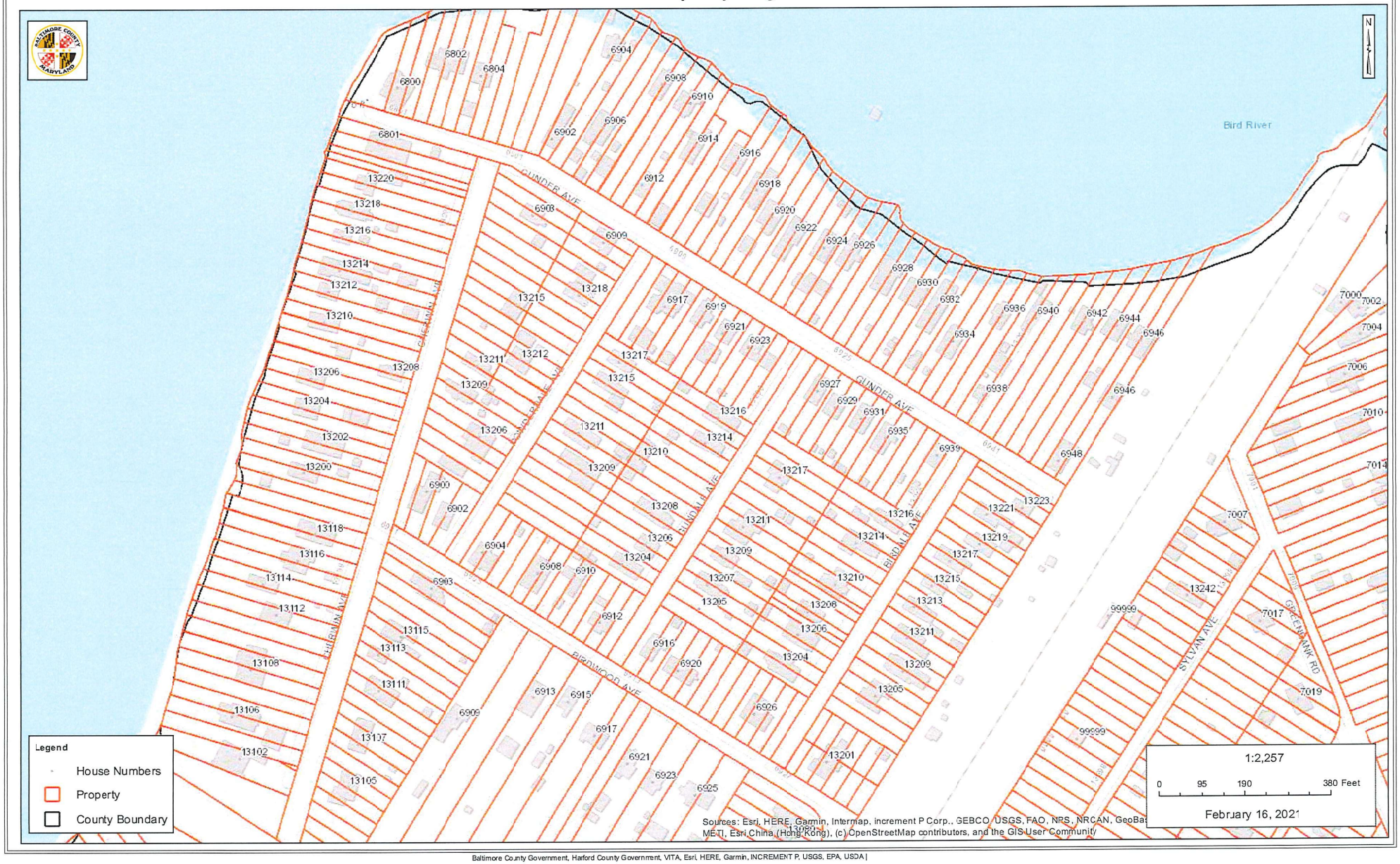
Protestants' Exhibit List

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



BALTIMORE COUNTY CIRCUIT COURT (Plats) Plat Book: LMCLM 9, fo. 33, MSA_C2136_29178, Date available 10/29/0407, Printed 02/15/2021.

Baltimore County - My Neighborhood



Baltimore County Government, Harford County Government, VITA, Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA |

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 -** 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	2021	Plat Ref:	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	Phase-in Assessments	
		As of 01/01/2021	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

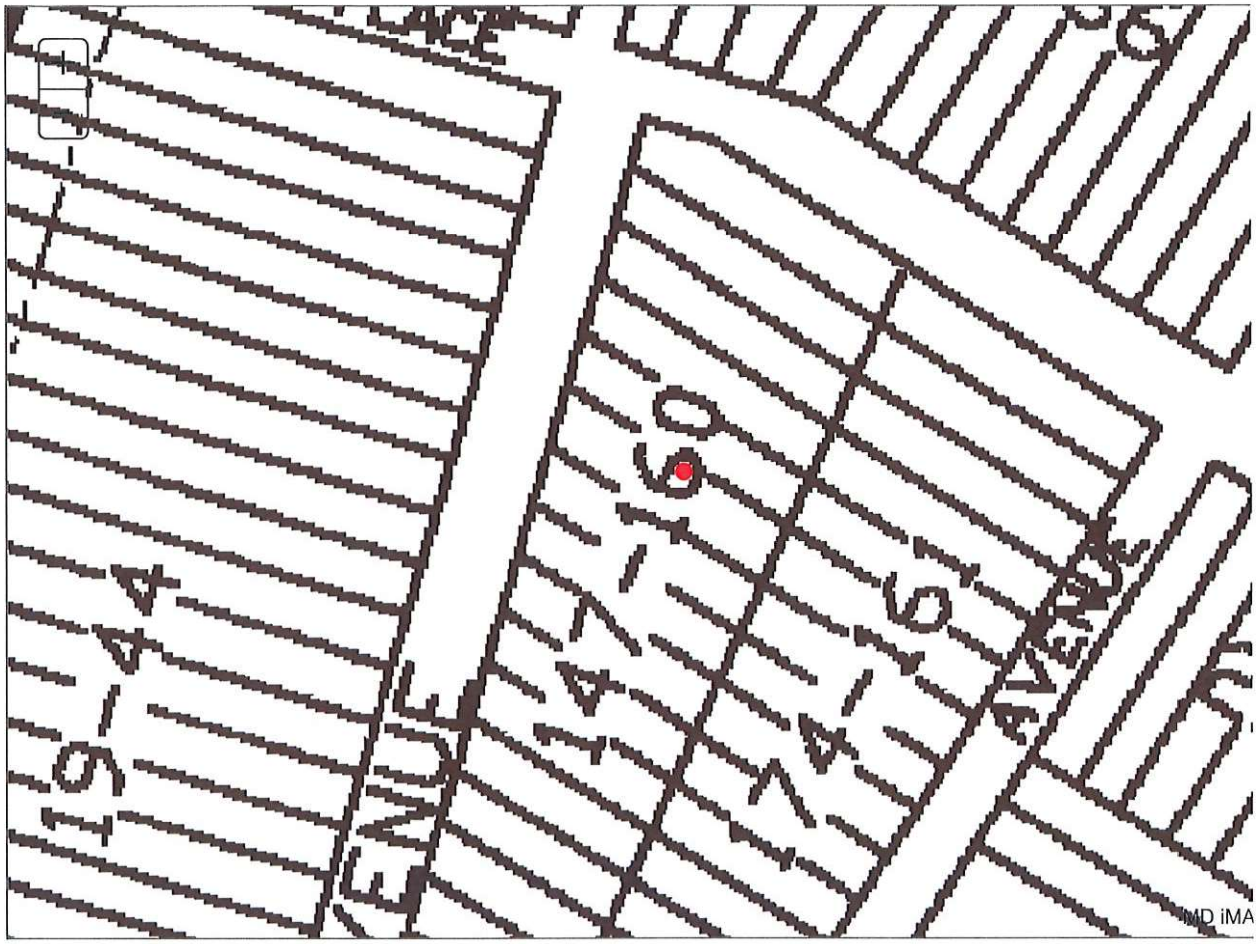
Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application **Date:**

Baltimore County

New Search (https://sdat.dat.maryland.gov/RealProperty)

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)**.

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:	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 01/01/2021	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:** /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:**

Baltimore County

New Search (https://sdat.dat.maryland.gov/RealProperty)

District: 15 Account Number: 1522350391



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

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

Property maps provided courtesy of the Maryland Department of Planning.

For more information on electronic mapping applications, visit the Maryland Department of Planning web site at http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx (http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx).

Real Property Data Search

Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Special Tax Recapture: None

Account Identifier: **District -** 15 **Account Number -** 1522350390

Owner Information

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

Location & Structure Information

Premises Address:	6903 GUNDER AVE BALTIMORE 21220-1023	**Legal Description:**	LT 157-160 .304 AC 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 As of 01/01/2021	Phase-in Assessments As of 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	170,567
Preferential Land:	0	0		

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	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

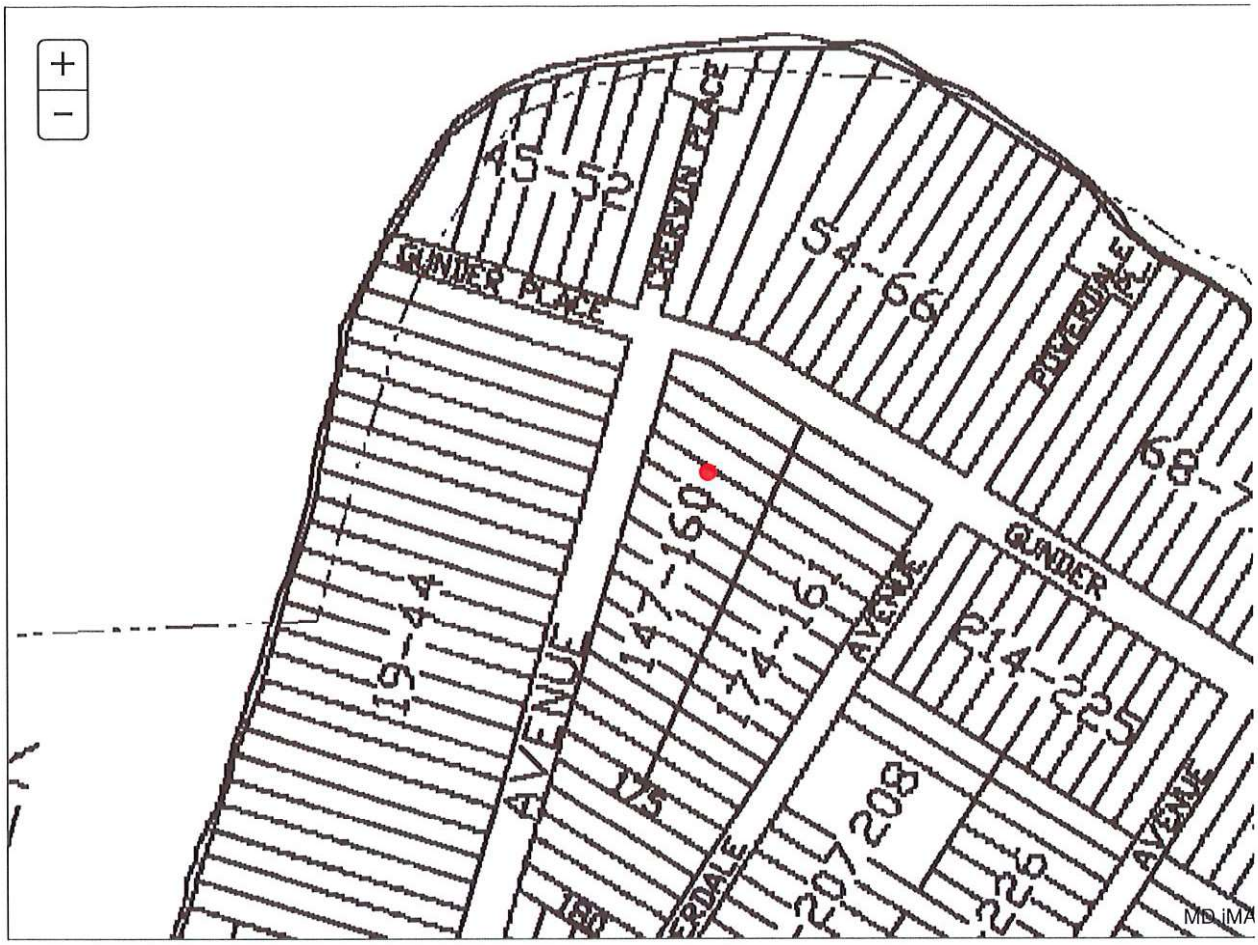
Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application **Date:**

Baltimore County

New Search (https://sdat.dat.maryland.gov/RealProperty)

District: 15 **Account Number: 1522350390**



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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)**.

(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. 0437, MSA_CE62_34791. Date available 05/09/2014. Printed 02/15/2021.

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 Jospeh 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

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 aforegoing 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 02/15/2021.

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 34935, p. 0440, MSA_CE62_34791. Date available 05/09/2014. Printed 02/15/2021.

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

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

My Commission Expires: 8/22/14

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 02/15/2021.

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

The Estate of Margaret L. Vitek

By: Dawn M. Watson P.R

Dawn Marie Watson, as Personal Representative of the Estate of Margaret Leola Vitek

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 34935, p. 0442, MSA_CE62_34791. Date available 05/09/2014. Printed 02/15/2021.

0034935 443

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)

IMP FD SURE 40.00
RECORDING FEE 20.00
TR TAX STATE 295.00
TOTAL 355.00
Rcpt# BA02 Rcpt # 56867
JLE CR Bil: # 234
May 06, 2014 02:11 pm

1	Type(s) of Instruments	(☐ Check Box if Addendum Intake Form is Attached.)					
		1 Deed	☐ Mortgage	☐ Other _____	☐ Other _____		
		2 Deed of Trust	☐ Lease				
2	Conveyance Type Check Box	Improved Sale Arms-Length(1)	Unimproved Sale Arms-Length(2)	Multiple Accounts Arms-Length(3)	Not an Arms-Length Sale(9)		
3	Tax Exemptions (if Applicable) Cite or Explain Authority	Recordation					
		State Transfer	1st time buyer				
		County Transfer	owner occ				

4 Consideration and Tax Calculations	Consideration Amount		Finance Office Use Only Transfer and Recordation Tax Consideration	
	Purchase Price/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	$		

5 Fees	Amount of Fees	Doc 1	Doc 2	Agent
3 Acct #'s	Recording Charge	$20.00	$20.00	
	Surcharge	$40.00	$40.00	Tax Bill
	State Recordation Tax	$590.00	$	
	State Transfer Tax	$295.00	$	C B Credit
	County Transfer Tax	$1,440.00	$	
	Other	$	$	Ag Tax/Other
	Other	$	$	

6 Description of Property	District	Property Tax ID No.(1)	Grantor Liber/Folio	Map		Parcel No.	Var. Log ☐ (5)
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).	15	1522350390 & 91 & 92	3615/392/				
	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) — **Water meter Account**
3813/510 and 3817/436

Residential ☒ **or Non-Residential** ☐ **Fee Simple** ☒ **Ground Rent** ☐ **Amount**

Partial Conveyance ☐ **Yes** ☐ **No** **Description/Amt. Of SqFt/Acreage Transferred:** 295.00

If Partial Conveyance, List Improvements Conveyed-

7 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)**

8 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	

9 Other Names to Be Indexed	Doc 1 - Additional Names to be indexed (Optional)	Doc 2 - Additional Names to be indexed (Optional)
		M&T Bank

10 Contact/Mail information	Instrument Submitted By or Contact Person	
	Name: Donna Gain	☐ Return to Contact Person
	Firm: Sage Title Group, LLC	☐ Hold for Pickup
	Address: 7939 Honeygo Boulevard, Suite 124 Baltimore, MD 21236	☒ Return Address Provided
	Phone-: 410-931-3500	

IMPORTANT: ORIGINAL AND PHOTOCOPY MUST ACCOMPANY EACH TRANSFER

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)

Assessment Use Only - Do Not Write Below This Line

☐ Terminal Verification ☐ Agricultural ☐ Whole ☐ Part ☐ Tran Process Verification

Transfer Number:	Date Received:	Deed Reference:	Assigned Property No.

			Geo	Map	Sub	Block
			Zoning	Grid	Plat	Lot
Land			Use	Parcel	Section	Doc Od.
Buildings			Town Cd.	Ex. St.	Ex. Cd.	
Total						

RECORDATION TAX NOT REQUIRED
Director of Budget and Finance
BALTIMORE COUNTY, MARYLAND
T.P. ART 12-108

DOC# 2 3 4 5 6
Initial
Date 05-05-14

Grantor's Mailing Address:

DUPLICATE PAID RECEIPT
BUSINESS ACTUAL TIME
5/06/2014 5/05/2014 10:23:48
File No. 116312WHMS

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

LIBER 3813 PAGE 510

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.

BALTIMORE COUNTY CIRCUIT COURT (Land Records) WJR 3813, p. 0510, MSA_CE62_3668. Date available 12/13/2035. Printed 02/15/2021.

BALTIMORE COUNTY, GIRCUIT COURT (Land Records) MSA_CE62_3888. Date available 12/12/2005. Printed 02/16/2021.

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 Jr.

Mary Nechamkin (SEAL)
Mary Nechamkin

Benjamin Nechamkin (SEAL)
Benjamin Nechamkin

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY that on this 15th 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.

Robert E. Carney Jr.
Notary Public

ROBERT E. CARNEY JR. NOTARY PUBLIC BALTIMORE CO., MD.



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 1129 M
Per Walter J. Rasmussen, Clerk
Mail to Robert E. Carney
Receipt No. 156255 $ 4.00

THIS QUIT-CLAIM DEED, made this 15th 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.

BALTIMORE COUNTY CIRCUIT COURT (Land Records) WJR 3813, p. 0512, MSA_CE62_3668. Date available 12/13/2005. Printed 02/15/2021.

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.

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 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 L. O'Connor

Mary Nechamkin (SEAL)
Mary Nechamkin

Benjamin Nechamkin (SEAL)
Benjamin Nechamkin

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY that on this 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.

Robert L. O'Connor
Notary Public

NOTARY PUBLIC BALTIMORE COUNTY

TRANSFER TAX NOT REQUIRED

Norman W. Wood
Director of Finance
Per: Ferd. J. Eischeid
Authorized Signature

Rec'd for record FEB 25 1961 at 11:31 A.M.
Per Walter J. Rasmussen, Clerk
Mail to Robert Connor
Receipt No. 75254 $ 6.00

BALTIMORE COUNTY CIRCUIT COURT (Land Records) MSA_CE62_3813 Date Available 12/15/2005. Printed 12/15/2021.

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 CIRCUIT COURT (Land Records) MSA_CE62_3615, p. 0392, MSA_CE62_3615. Date available 11/26/2003. Printed 12/10/2014.

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, Jr. 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, Jr.
Notary Public

ROBERT E. CARNEY JR. NOTARY PUBLIC BALTIMORE CO., MD.

Rec'd for record OCT 26 1959 at 11 15 a M
For Walter J. Rasmussen, Clerk
Mail to Robert E. Carney
Receipt No. 65334 $ 3.50











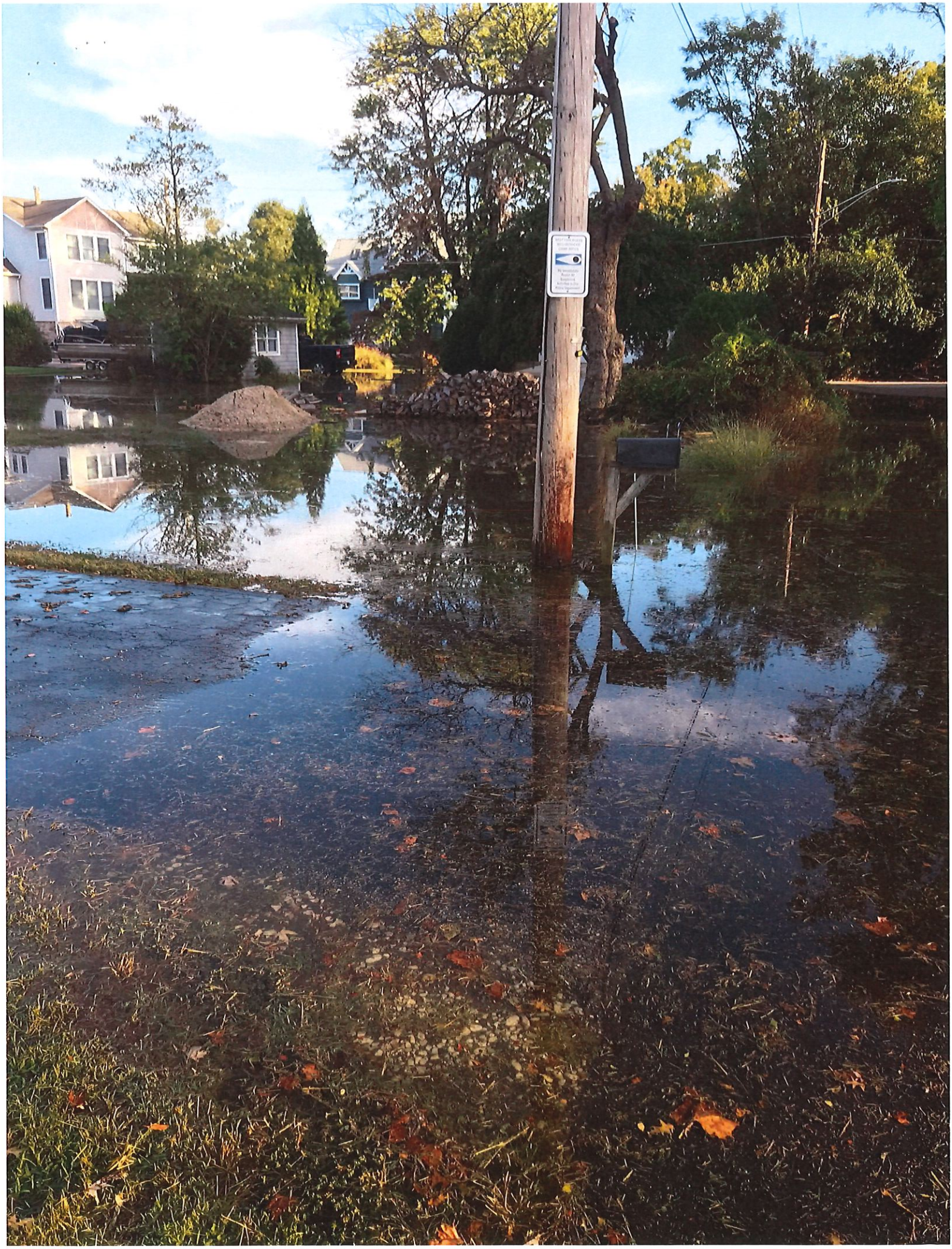


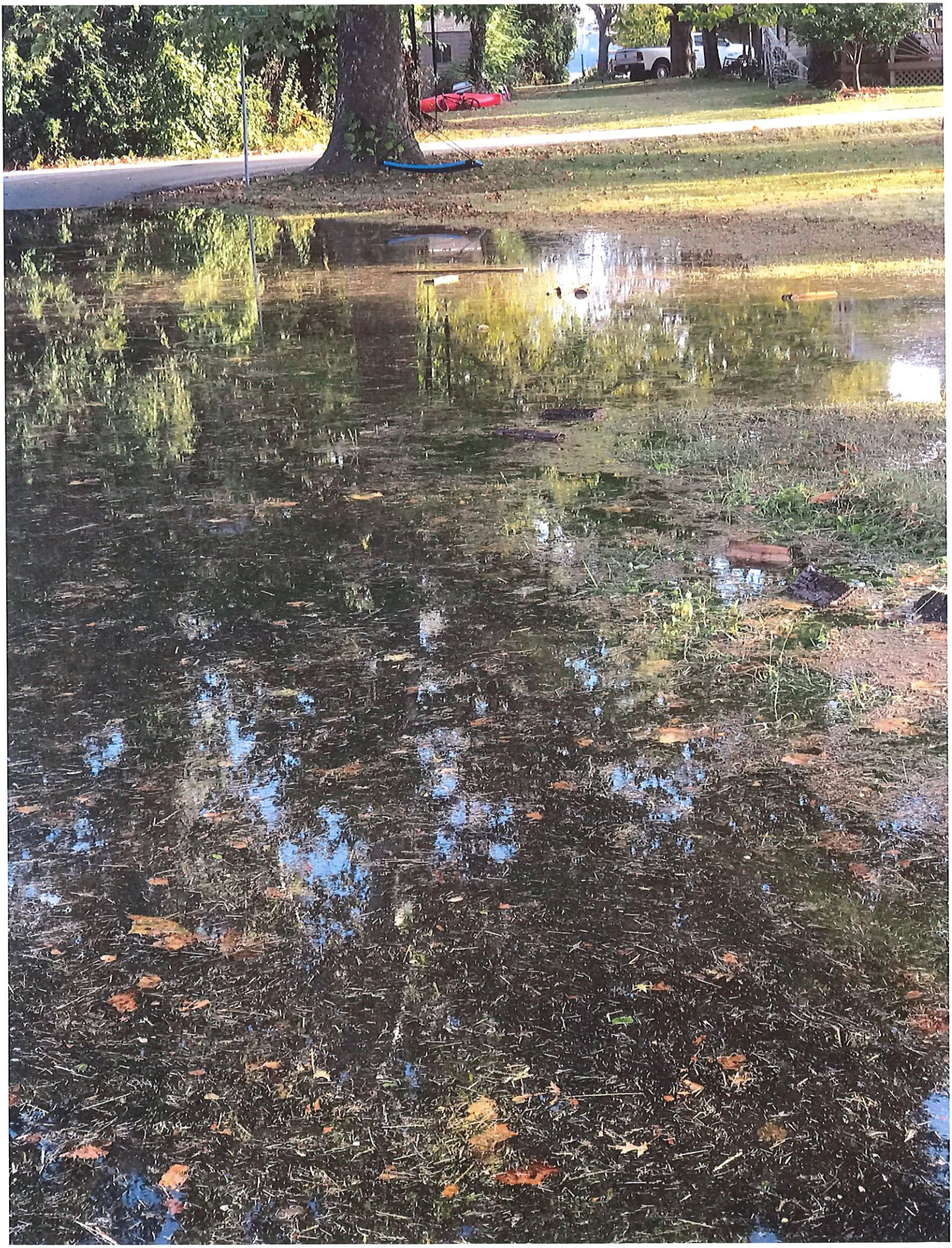

FOR SALE
8947
4x4


FOR SALE
410-568-3556




Police Department
7309









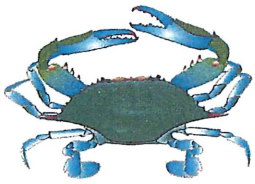
Petition in opposition to the relief and variances requested by the petitioner.

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 Hauf	13211 Powderdale Ave 21220
Aaron Crites	6902 Birdwood Ave 21220
Stanley R. Crites	6902 Birdwood Ave 21220
Margaret Neumann	6918 Birdwood Ave. 21220
Elizabeth Woodward	6920 Birdwood Ave 21220
David [illegible]	6917 Birdwood Ave 21220
[illegible]	6902 GUNDER AVE, 21220
Teresa Lee	6917 Birdwood Ave 21220
Julie Brooker	6903 Birdwood Ave. 21220
Thomas M. Brookes	6903 BIRDWOOD AVE 21220
Kathy [illegible]	13204 Cherwin Avenue 21220
Lisa Schmitt	13204 Cherwin Avenue 21220
[illegible]	13215 CHERWIN AVE. 21220

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PETITION SIGNATURES

NAME	ADDRESS
Tom Stokes	13212 Cherwin Avenue
Patty Stokes	13212 Cherwin Avenue
Peggy Spangler	6918 Gunder Avenue
Joe Spangler	6918 Gunder Avenue
Donna Powell	6920 Gunder Avenue
Alma Griffin	6908 Gunder Avenue
[illegible]	6800 Gunder Ave
Lou Sutton	6800 Gunder Ave
[illegible]	6909 Birchwood Ave.
[illegible]	13217 Gundale Ave
[illegible]	6905 Birchwood Ave
Darlene E. Reese	6900 Birchwood Ave, 21220
Stephen J. Schepis	13200 Cherwin Ave. 21220

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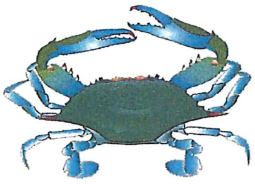
PETITION SIGNATURES

NAME	ADDRESS
[illegible]	13200 Cherwin Ave
Katie Carroll	13206 Cherwin
Dale Morgan	13210 Cherwin Ave
Rachel Morgan	13210 Cherwin Ave
Linda R Kuchta	6908 Gunder Ave
William J Kuchta	6908 Gunder Ave
[illegible]	6903 Gunder Ave
[illegible]	6909 GUNDER AVE
[illegible]	13218 POWDERDALE AVE
Linda Drasher	13217 Powderdale Ave.
Robert S Marsden	13215 Powderdale ave.
Judy Marsden	13215 Powderdale Ave.
Ruth Hary	13211 Powderdale Ave

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PETITION SIGNATURES

NAME	ADDRESS
Stephanie Davis	13215 Chelwin Ave, 21220

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

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(ON RECORD)

CHAIR: Good morning, everybody. We are here this morning via WebEx concerning case matters 19-402-SPHA and 20-0, or dash, 090-SPH, I'm sorry, SPHA on both of those. This is an appeal from the Administrative Law decision made back in September concerning a zoning variance and, and we're here, and counsel if you could introduce yourself to the Board?

MR. LANZI: Sure. Neil Lanzi, Wright, Constable & Skeen, 102 West Pennsylvania Avenue, Suite 406, Towson, Maryland on behalf of the Petitioner, Craig Kestner.

CHAIR: Good afternoon. Mr. McCann?

MR. MCCANN: Yes, thank you. Good morning, everyone. Michael McCann on behalf of John Dawson, as well as the Twin River Beach Protective and Improvement Association. And my officers are here in Towson at 118 West Pennsylvania Avenue.

CHAIR: Mr. McCann, Mr. Lanzi, just reading into the words of Ms. Cannington, are there any preliminary matters or should we turn the case over to Mr. Lanzi?

MR. LANZI: I have a preliminary matter that's really going to be part of my opening, which will take care of one of the cases. So, it'll be helpful. Do we need to wait for Mr. Evans?

MR. EVANS: No, I'm here.

MR. LANZI: Oh, you're there?

CHAIR: Yeah, I think he has video issues.

MR. LANZI: Okay. However you want me to proceed, I can just do my opening and take care of one of the two cases right off the bat.

CHAIR: However you'd like to do it, Mr. Lanzi. Whatever is, is the most convenient and efficient for you it works for us.

MR. LANZI: Okay. So, good morning, everyone. Again, I'm here on behalf of Craig Kestner, he's the owner of the property known as 13217 Cherwin Avenue in the Twin River Beach Subdivision.

There are two lots that are at issue here, 155 and 156 of the Twin River Beach Subdivision, which was created back in 1929. And as you mentioned in the beginning, we're here on two cases, two appeals.

One appeal was taken by the Petitioner to the denial of the variance in case 19-402-SPHA. And no appeal was taken to the merger issue, so that should be a final decision.

And then the appeal taken by Mr. Dawson as to the approval, of the special hearing approval of the undersized lot in case 20-090.

And as you'll hear testimony today and as Judge Mayhew heard in the most recent case, the 2020 case, special hearing relief was pursued under Section 304.1 and from the, I'll, I'll call it Kestner case one, which was the 2019 case, and Kestner case two, which was the 2020 case.

The site plan changed substantially from case one to case two, whereas the front yard setback variance was eliminated, and the building size was downsized significantly, and we went under a different section of the regulations.

So, the house footprint was reduced when the front setback went from twenty-five feet to forty. And most importantly, the, the filing of the case two was made under Section 304 and no (inaudible) without the variance.

The variance was added as alternative relief in case two, basically at the Zoning Office's zoning staff (inaudible) at the time of filing. And before filing case two, I had discussions with, with People's Counsel regarding the res, potential res judicata issue and due to the change in the plans, the setback of, elimination of the front yard setback and the filing under 304. There was no issue, at least on their part, at least they didn't enter their appearance or, or note any appeals.

In addition, they, it was looked at that this Petition and site plan is in accordance with the pattern of development in the area and really in eastern Baltimore County, along the waterfront.

So, we will be providing a map, some sample cases of other zoning approval cases of fifty-foot-wide lots as here. We also will have exhibits showing a number of the individuals that are here for the association against this zoning relief

also reside on fifty-foot-wide lots.

So, I'm not sure how many cases the current Board has heard, but clearly over the last twenty years, plus years, there have been many, many cases brought to the Board for approval for undersized lots, many of them waterfront.

And in this case, as we heard in the last ALJ case, we realized Mr. Dawson, the neighbor, doesn't want a house next to his that could potentially block his view and we also know there's concerns about flooding and the community association is worried about flooding.

But I guess the fundamental question today is as the property owner, shouldn't they be allowed to build on their own lot just as the others were able to build on their lots, all subject to, of course, County permit requirements and critical area issues.

Further, if there is any issue raised as to merger, I will be objection, objecting, since that was part of the first case decided in Petitioner's favor and no appeal was filed, thus a final judgment.

And to show good faith at the ALJ level, and again at this level, the variance issue was determined moot in Kestner case two, and in accordance with that line of thinking, Petitioner will dismiss the variance appeal from case 19-402, leaving us just with case two, which is 20-090-SPHA.

So, hopefully that will at least streamline some of

the issues for the Board and I will be ready to proceed with witnesses depending on Mr. McCann, if he has a response.

CHAIR: Mr. McCann, do you have a response to that?

MR. MCCANN: No, thank you, Mr. McComas. Their opening, Mr. Lanzi obviously has the right to withdraw an appeal. It's a bit odd the way it played out but, the failure to brief these issues in the first Petition.

The only thing I would disagree with, and we can certainly talk about it when we get to, to the point when it's raised is, I disagree with the, the effect of the withdrawal of that appeal on the evidence that you're going to hear today.

So, but we can certainly discuss that as we go along. But, but, but in terms of an opening, Mr. McComas, no opening per se.

CHAIR: All right. Is, is, is there any objection to Mr. Lanzi's position that we're only really considering 20-090-SPHA today?

MR. MCCANN: No, as I said, I, I believe he has the right to withdraw an appeal, of course.

CHAIR: All right. Okay. Mr. Lanzi, your case.

MR. LANZI: Okay. So, I'm ready to proceed with, Bruce Doak would be my first witness.

MR. MCCANN: And Neil, I'm sorry to interrupt but I, I'm obviously aware of Mr. Doak, so, if you want to proffer his ex, expertise and offer him as an expert, I don't have a

problem with that.

MR. LANZI: All right. I appreciate that. I would offer Mr. Doak as an expert surveyor --

CHAIR: As an expert in what, in what, in what area, Mr. Lanzi?

MR. LANZI: An expert in surveying, zoning and land use.

CHAIR: Mr. McCann, no objection to that, that expert scope?

MR. MCCANN: No, no objection. Thank you.

CHAIR: Okay. Thank you, Mr. McCann. (inaudible).

MR. LANZI: Okay. So, (inaudible) --

CHAIR: Sorry, Mr. Lanzi. You go to swear him in.

MR. SAMPSON: I made him a panelist and I'll swear him in. I don't see him on my screen. Are you there, Mr. Doak?

MR. DOAK: Yes, sir, I am.

MR. SAMPSON: Okay. Would you please raise your right hand? You swear and affirm under the penalties of perjury, that the testimony you are about to give is true and correct to the best of your knowledge and belief?

MR. DOAK: Yes, sir.

MR. SAMPSON: Please state your name and business address for the record.

MR. DOAK: My name is Bruce E. Doak. My address is

3801 Baker Schoolhouse Road, Freeland, Maryland 21053.

CHAIR: And Mr. Doak, if you have a video, we'd appreciate it if you're able to turn on the video for the purpose of your testimony. Thank you, Mr. Doak.

MR. DOAK: You're quite welcome.

MR. LANZI: Okay. Thank you, Mr. Doak. Can you, I think you may have already done it, just state your name and your business address.

MR. DOAK: My name is Bruce E. Doak, address is 3801 Baker Schoolhouse Road, Freeland, Maryland 21053.

MR. LANZI: Okay and if I could have the ability to show the exhibits?

MR. SAMPSON: I believe you do. Would you try that?

MR. LANZI: Okay.

CHAIR: You've got (inaudible), Mr. Lanzi.

MR. LANZI: All right. Okay. We tried that beforehand and it worked fine and I'm having technical difficulties now.

MR. SAMPSON: It's on you, I don't know what else to do on my end.

MR. LANZI: Yeah, let's see here. Share content.

CHAIR: If you have to, I've got your, oh, there you go. You got it, Mr. Lanzi.

MR. LANZI: Okay, got it. All right. Mr. Doak, first I'll ask the zoning plan that's marked as Petitioner's

Exhibit 1 dated February 15th, 2021, was that prepared by you or under your supervision?

MR. DOAK: Yes, sir, it was.

MR. LANZI: Okay. Can everyone see that?

CHAIR: Can you try to increase the, the size of it, Mr. Lanzi, for people that are blind, like myself?

MR. LANZI: How about that?

CHAIR: That looks perfect.

MR. LANZI: Okay. Probably, and what I wanted to do and, and maybe Mr. McCann would be willing to stipulate, rather than go through all the exhibits and come back, I have Exhibits 1 through 10 that were submitted and then a separate submittal of Exhibits 11 through 13.

Exhibit, here, what I'll do is go back up to the exhibit list. Exhibit 2, Twin River Subdivision, Exhibit 3 is the subdivision plat zoomed into these lots, and then we have some photographs. Mr. McCann, do you have any objection to the Exhibits 1, 2 and 3 I provided you yesterday?

MR. MCCANN: Thank you. Yeah, I'm sorry, I'm looking through them now. I have seen them in advance. We, as you said, have exchanged exhibits. The only question I have about one is is this the plan that was before the ALJ?

MR. LANZI: Okay, let me go back to Exhibit 1. This is, this is the, the final plan that was reviewed and approved by the ALJ without redlines and I'll have, ask Mr. Doak to

chime in as necessary.

MR. MCCANN: Okay. I, I'm not --

MR. LANZI: Yeah, this shows the forty-foot setback.

MR. MCCANN: This shows the thirty, oh, it does show forty. Okay. Yeah, anything on that point I can handle on cross. But no, no objection to Exhibits 2 or 3.

CHAIR: One, two or three, right, Mr. Lanzi?

MR. LANZI: Pardon me?

CHAIR: It's one, two and three, right?

MR. LANZI: Correct.

CHAIR: Yeah, so --

MR. LANZI: Yeah, offer one, two and three into evidence.

MR. MCCANN: In fact, one through six are fine as well, the exhibits, photos, yeah, four, five and six as well.

MR. LANZI: Okay. Just to give the Board a sense of what's going on here, how about if we go right to the photographs. Mr. Doak, describe, if you could, take us through, it looks like four was the key sheet for the photographs.

It's going to be hard to use that when I have to scroll. I don't know if the Board is able to look at that and look at the other ones, but if you could just, I'll slowly scroll through these and then you can just talk about each photograph.

MR. DOAK: Okay. Let's, let's, Mr. Lanzi, if you would get to the areas where all the arrows are, and we'll just talk generally about where I was and what I was doing. So, --

CHAIR: Hold on for one second, Mr. Doak. You probably have to reduce the size, Mr. Lanzi, so you can, there you go.

MR. DOAK: There you go, thank you.

MR. LANZI: I'm on it.

MR. DOAK: So, for everybody, this is what I normally do to add some sort of ability for you to understand where I shot the photographs and in what orientation.

So, I'm standing out in Cherwin Road and I'm looking up and down the street. I'm looking across the lot that was conveyed to our left and then our subject property and then Mr. Dawson's property and then finally towards the lots that are on the waterfront.

So, if we could go the, the, the lots, the photographs I can, so, with this one, I am standing out on Cherwin. I am standing in front of the subject lots. I am looking north on Cherwin, so, and then you can see the fence that surrounds the adjoining property to our left. So, if you can go to the next one, please?

MR. EVANS: Mr. Doak? When, when you're talking about these photographs, you need to, you need to say which exhibit number it is so that the record --

MR. DOAK: Sorry, Mr. Evans. Petitioner's exhibit number 5-A. Like I said, we're standing in, I'm standing in the, the center of Cherwin Road. I'm looking north up the road and our, the subject property, subject lot would be to the right, my right.

MR. LANZI: Okay.

MR. DOAK: If I could see the next one, please?

MR. LANZI: Thank you.

MR. DOAK: This is Petitioner's exhibit number 5-B. It is, I'm panning around north easterly. You will see the adjoining property and the house that is on that, the fence that is on it and just the, our frontage on the subject lot. If I could go to the next one, please?

MR. EVANS: Is 5-B, is, is the house that's depicted in 5-B is that what also used to be Mr. Kestner's property?

MR. DOAK: That is correct. Yes, sir.

MR. EVANS: All right.

MR. DOAK: In 5-C, once again you'll see the, the fence on the adjoining property, the former Kestner house, the former Kestner garage that's on the property that was sold and the, most of the lot of the subject property there. You'll see, if, if I may one, real quick.

We talked a little bit about this one. You'll see that it has a slight gradient to the, to the road. It's not perfectly flat but it, it grades to the road and a little bit

to the south.

MR. LANZI: Okay. So, Petitioner's exhibit number 5-D, once again, is, it's the subject property. It's looking, I'm standing right at the edge of the paving and I'm looking at the entire subject property. To the right you'll see a driveway and cars in the parking lot, or in the driveway and those belong to Mr. Dawson and that's Mr. Dawson's house to the right and Mr. Wallace, Wally Wallace, in the rear, his property there.

Petitioner's 5-E, I am focusing in on Mr. Dawson's house, driveway and property. You'll see that his property falls toward our subject lot. He has a lot of paving there for his driveway and so, in turn, (inaudible) needs to be addressed with that. Next photograph?

Petitioner's Exhibit 5-F is looking south on Cherwin Road. The driveway to the left is Mr. Dawson's driveway. You'll see that it's grass and yards and stuff all the way down there, going south. Next photo, please?

Petitioner's 5-G is looking at the lot, house, driveway, all the improvements in the property directly across the street from Mr. Dawson's driveway. So, it'd really be more in front of Mr. Dawson then it would be in front of our subject property.

MR. LANZI: Okay.

MR. DOAK: The lot in front of the subject property

on the water side, Petitioner's 5-H is, shows sheds. It also shows the new house that was built just northwest of our property on this.

MR. LANZI: Okay. All right. I believe that those are the photographs that you took, Mr. Doak. Is that correct?

MR. DOAK: That is correct.

MR. LANZI: Okay and, and they've been stipulated to. So, I would offer Petitioner's 5-A through H into evidence.

CHAIR: Any objection, Mr. McCann?

MR. MCCANN: No objection, thank you.

CHAIR: Okay. They're admitted.

MR. LANZI: In an effort to also streamline time, the next series of photographs, much more recent, taken in the last couple weeks by Mr. Kestner's mother, who's an attendee. I was just going to see if, if there's no objection, just have Mr. Doak describe them because they're very, very current.

MR. MCCANN: That's fine.

MR. LANZI: Okay. So, this would be Petitioner's, I believe it would be 6, 6-A through K. All right, Mr. Doak.

MR. DOAK: Okay. On Petitioner's Exhibit 6-A, we are standing across the street to the west of our subject property. Cherwin Road is in front, in the foreground and we are looking back. Our entire subject property, once again, if you could see past those signs that are there, that would be Mr. Dawson's property and then Wally Wallace's house is in the rear.

CHAIR: So, Mr. Doak, if I look back where you're positioning A, B, C, D, E, F, G and H, which, which one is this closest to in terms of you're A, B, C, D, E (inaudible)?

MR. DOAK: It would be C or, it'd be probably D.

CHAIR: D? Okay, thank you.

MR. DOAK: And if you'll see that, once again, the, the grade of the property. You can see it even better in this one. I like the snow being on the ground versus the grass. You can see that it, the topography, it falls towards the road. So, any runoff that you would have, you will have from a house, driveway, will run towards the road.

You can see it also runs back towards the fence or the adjoining lots so whatever management you would have when building a house on this property, you would manage it, of course, around the house and the improvements but you would also, you would manage it even more on the north side or towards that fence.

So, this is helpful a little bit. Petitioner's Exhibit 6-B. It takes a few, a number of steps backwards, so it's pretty much the same vantage point, but this one you can see that to the left of the fence is what Mr. Kestner, the house he used to own, and then you can see to the right is Mr. Dawson's driveway, cars and house.

MR. LANZI: Mr. Doak, is that a garage where I'm pointing?

MR. DOAK: Yes, it is.

MR. LANZI: Okay.

MR. DOAK: A one stall, wood frame garage. Like with the house, it's in good shape, definitely usable, so, yes.

MR. LANZI: Got it.

MR. DOAK: So, we're now standing on the subject lot, about halfway back on the north side and we're looking at the lot that is about to be built on. That in my earlier pictures had two sheds on. Now a house is about to be built or is being built there now and you can see the one next to it, to the right, was the one that was built just recently.

VOICE: So, you're saying that the empty lot there next to the new house is a house, is a lot that's presently under construction?

MR. DOAK: Yes, sir, it is.

VOICE: Have permits been issued?

MR. DOAK: I cannot tell you, sir. I, I do apologize. Silt fence is up.

VOICE: So, what do you mean when you say it's under construction? What do you mean?

MR. DOAK: Well, they're, they're starting the process. So, they've got silt fence up. Also, they, I'm sure they filed for the permit, but I don't know if it's been issued yet.

MR. MCCANN: Yeah, I'd like to piggyback on that. I

was allowing Mr. Doak to, I'm sorry to interrupt, but I was allowing Mr. Doak to proceed because I thought much of this was by way of background. But I, but I do want to be very careful and make sure that I object to what I perceive to be a lot of testimony about what's happening on other properties and what should or should not be happening on other properties. I just, and if you'd like me to, to explain why I don't think it's relevant, I'm certainly happy to do that. But with respect to this particular set of questions, I, I would impose an objection on the basis of relevance.

CHAIR: And, and Mr. McCann, I, I, I don't, I'm going to overrule it and allow the witness a little latitude here. I think some of the things that you raised can be, you can raise on, when you cross examine him. But I, but Mr. Lanzi, I also agree with Mr. McCann in terms of the relevance here. So, we're going to end up giving it the weight, you know, that, that it's going to be given since it's more speculative here.

MR. LANZI: This, yeah, this is just for background to show what's happening in the community.

CHAIR: Yeah.

MR. MCCANN: Yeah. Okay, thank you, Mr. McComas.

MR. DOAK: I'll keep my comments shorter and sweeter. This is pretty much the same lot that we looked at in Petitioner's 6-C.

What this is is the, this is in front of, you can see

by the fence, you can figure out where you are. You're in front of the previous Kestner house lot. And what this is showing is that, like I said, the, the topography is flowing down towards the road off of the subject lot. It's being managed and caught in the swale that's down the front of both the subject lot and the adjoining lot. It comes down and then goes into a pipe crossing the road and then on the other side of the road it goes into another pipe and is outfalled somewhere down at the stream or the water.

MR. LANZI: This is Petitioner's 6-E?

MR. DOAK: Yes, sir, it is.

CHAIR: And Mr. Doak, is that also Mr. Dawson's house? Is that, that drainage system going from there, if it doesn't, if it falls off the driveway there?

MR. DOAK: It doesn't, that's a very good question, Mr. McComas. It doesn't quite go to Mr. Dawson's driveway. It, it is probably three-quarters of the way or a little bit more across our lot, but it doesn't cross Mr. Dawson's.

Once again, that's the, the lot being built. You can see what I was saying is, the silt fence is up and, like I said, that's all I have to say about that. That's 6-F.

6-G, once again, it's the same lot to be built on.

What this is, this, on 6-H, it is, is that drainage swale that goes down the front of the subject lot, in front of Mr. Kestner's prior ownership lot. Then it goes through a pipe

onto the other side of Cherwin Road and then you'll see it catches another pipe and goes down through the lot that's going to be built on and then outfalls at the water.

So, you would be having your back towards Cherwin looking at this and the subject, the, the, the other side of Cherwin and then in turn you can see that there's another pipe and it goes westerly towards the water.

MR. LANZI: Okay.

MR. DOAK: That's, that's just another sight of the, what's there.

MR. LANZI: Okay.

MR. DOAK: And this is 6, I don't see, it's 6, I don't know where I am.

CHAIR: K, I think.

MR. DOAK: K, thank you very much, sir, K. This is standing on the opposite side of Cherwin and just looking at Mr. Dawson's property.

MR. LANZI: Okay. All right. So, Mr. Doak, does 6 through A, 6-A through K reflect the subject property, the property across the street, the Dawson property, the road and the drainage, to your knowledge these have not been altered or changed in any way?

MR. DOAK: No, sir.

MR. LANZI: Okay. I would offer these photographs Petitioner's 6-A through K.

CHAIR: Okay. Any objection, Mr. McCann?

MR. MCCANN: I understand your, your prior ruling, Mr. McComas. Only, only to those, just for the record, to those photographs that are solely directed towards the lot across the street. To the extent any suggestion is being made that that is somehow relevant to the case before the Board. But I understand your ruling on that.

CHAIR: All right.

MR. MCCANN: Thank you.

CHAIR: So, we'll admit them.

MR. LANZI: Thank you. All right. Mr. Doak, it probably would be helpful just to go ahead down to Exhibit 7-A through C, A, B and C. And just for the record, 7-A is the same as Exhibit 1, Petitioner's one. It just would be easier to show them in order here for you.

Mr. Doak, what I'll do is, if you could just describe what's shown on the site plan, what's proposed and then we'll go to the other two site plans that were used previously. Starting with 7-A.

MR. DOAK: Okay. What this, it's like Mr. Lanzi said, this is the same as Petitioner's exhibit number one. This is the plat that was most recently done and submitted, and it is, reflects the redlines that were done in the 2020, or the last zoning hearing.

It reflects the subject lot, subject two lots. It

also shows Mr. Dawson's house to the left and then Wally Wallace's house to the rear. And then also to the right, it reflects the, it shows the, the dwelling that used to be Mr. Kestner's, as well as the garage close to the property line.

If you could please focus in on our subject two lots, Mr. Lanzi, a little bit more? And drop it down a little, please. Then drop it down just a little bit. The other way, please.

MR. LANZI: The other way?

MR. DOAK: The other way.

MR. LANZI: How's that?

MR. DOAK: Thank you very much. So, on a DR-5.5 lot, well, first, if I may. This is, the subject lots are Lot 155 and 156 of Section A, Twin River Beach, which was recorded in Plat Book 9, Page 33, and that, I believe that's Petitioner's exhibit number two, but that's the subject lots.

Each are twenty-five feet wide and approximately a hundred and twenty-five feet long on the one side and then a hundred and eighteen on the other.

This is zoned DR-5.5 and the zoning setbacks for a DR-5.5 are, I'm going to start with the south sides and then run to the front. Are ten feet on each side. There is not a sum required but it is ten on each side. And then with a rear setback of thirty.

As to the front, the front minimum is twenty-five

feet. And in the very first hearing that I did for the Kestners, I applied for a variance of twenty-five in lieu of the required forty.

What forty is is the maximum front yard setback based on front yard, front street averaging. What that is is that you take, you look at properties on either side of you, or if there isn't one, you look at those as much as two hundred feet in either direction.

Now, the one to the right, 6903 Gunder Avenue, is not considered because it has a frontage on Gunder. So, in turn, now we look to the left, or to the south, and we would look at Mr. Dawson's house, which is approximately seventy-five feet and then we look down the road further for the next hundred feet. With that in mind, there are no additional houses within the next seventy-five, then you get one at the very end.

So, it was determined by the Office of Zoning and myself that we should apply the maximum here of forty feet in lieu of the minimum of twenty-five feet.

MR. LANZI: And that's based on Section 303.1 of the zoning regulations, is that correct?

MR. DOAK: That is correct.

MR. EVANS: I'm a little confused.

MR. DOAK: I'm sorry.

MR. EVANS: Well, I'm confused. Putting aside the first hearing in front of the ALJ, which really is not

relevant, okay?

MR. DOAK: Yes, sir.

MR. EVANS: What, what is the, what is the setback on this new plan?

MR. DOAK: Forty feet.

MR. EVANS: Forty feet?

MR. DOAK: Yes, sir.

MR. EVANS: And, and the requirement is forty feet?

MR. DOAK: That is the maximum required front yard setback.

MR. EVANS: What do you mean, the maximum requirement?

MR. DOAK: That's, that's the way setbacks works. It's not to exceed forty feet.

MR. EVANS: So, you can't have a house fifty feet back from a road?

MR. DOAK: You can if you want it, like Mr. Dawson did. But you're not required to.

MR. EVANS: Right, so the forty foot is the minimum setback?

MR. DOAK: Nah, it's both, can I put it that way?

CHAIR: (inaudible) make any sense to me.

MR. EVANS: The forty foot is what is required in this instance. So, there's no variance, you're not seeking a variance or alter the set, front setback in any way, is that

correct?

MR. DOAK: Not only am I not seeking a variance for the front, I'm not seeking a variance for either of the sides, or the rear, or the total area of the property.

MR. EVANS: Okay, all right. I, I'm not trying to challenge you, I'm just trying to understand what, what the deal is here. Okay.

MR. DOAK: Keeps me on my toes if you challenge me, so.

MR. EVANS: Okay, so. Okay. So, basically, the forty foot is in compliance with the requirements?

MR. DOAK: That is correct.

MR. EVANS: Okay. That's all I'm asking.

MR. DOAK: Yes. So, with the setbacks we've discussed, that leaves a building envelope of approximately, maximum building envelope, of thirty by sixty or eighteen hundred square feet.

MR. EVANS: Thirty by sixty you said?

MR. DOAK: Yes, sir.

MR. EVANS: Okay.

MR. DOAK: Feet. It's a fifty-foot lot, ten on either side, that makes the thirty and then coming in from the rear, forty on the front gives me six, approximately sixty feet and multiply those two, approximately eighteen hundred square feet.

CHAIR: A sixty by thirty-five, right? Or is it sixty by thirty?

MR. DOAK: Sixty by thirty.

CHAIR: All right. And which is, some of the older homes, that's a little larger than some of the older homes in that area. For the newer homes, it is, as a matter of fact, it might be even a little small. But we'll say it's, it's in the running for some of the newer homes.

MR. LANZI: And Mr. Doak, this is a smaller footprint than what was initially presented in the first hearing?

MR. DOAK: That is correct, by fifteen feet in its depth.

MR. LANZI: All right. So, I'm going to scroll down to the, I believe it's 7-B. Let me make it smaller just to --

CHAIR: (inaudible) the new house that's built, that's on the right as you look out to the water, what, what kind of size do you think that has?

MR. DOAK: A little, when looking at the GIS, it has a little larger footprint than what we're showing.

CHAIR: (inaudible) comparable to (inaudible)?

MR. DOAK: Yes, sir, it is. Yes, sir, it is. And it's three stories.

MR. LANZI: Okay. I'm showing you what is marked Petitioner's 7-B, which is from the, Petitioner's one, the 2019 case. And I'm not sure if you can, whether I should bring it,

make it a little bigger.

MR. DOAK: That'll be fine.

MR. MCCANN: I'm sorry to interrupt, but I'm, I am going to object to these old plans coming in. I don't understand the relevance of them.

CHAIR: I was thinking the same thing, Mr. McCann. It may start confusing people like me.

MR. LANZI: Well, the, the, the relevance would be, if there is going to be an argument made by the Protestants of res judicata or collateral estoppel, any of those issues, it's extremely relevant under, under the most current Maryland case law that we're showing these are, this is a totally different plan.

It's a different house, it's, it's smaller. The, the location of the house is different and so it's extremely relevant. If, if there's not going to be any defense of res judicata, then it's not a, not as big of a concern. But I need to preserve that for my record going forward.

MR. MCCANN: Well, I would certainly stipulate that this building has changed in the way that Mr. Doak may describe it. But to introduce the plans for the purpose of showing that, I, I assume, the, the implicit purpose here is to show that we've done a good job of responding to community concerns and even reduced the size of the building, to that extent, I don't think it's relevant at all. And I really don't think the

plans themselves should be in.

But I would certainly stipulate to whatever changes, I, I'm not even confident, to be honest with you, that I'm going to be making a collateral estoppel or res judicata argument at all. But, so I understand that, that reason.

But I think Mr. Doak just saying that the, the way in which the building has been changed since the last hearing is sufficient. I know we're splitting hairs here, but that's, that's my position.

CHAIR: And I'm going to agree with Mr. McCann on this, Mr. Lanzi in that he hasn't raised res judicata, at least as far as I know. I, I respect that you want to preserve it, but I also look at it as he, he, that he hasn't made those claims yet. And he's actually stipulated with you, you know, the material differences here.

So, I, I would, I would sustain his objection at, at this given point in time. And so, if we can move on because it, it was confusing to me, myself, in terms of where you guys are in your case.

MR. LANZI: Okay. Well, let me just go onto the next plan. I don't know whether that will help or not. But --

MR. DOAK: If I may, Mr. Lanzi?

MR. LANZI: Sure.

MR. DOAK: We could always come back to this one if there's questions about, for the Board. I did this to help it,

you understand the differences between the, what I applied for originally and what we're doing here today. But if that doesn't come back up again, then we can always come back to this. Okay?

MR. LANZI: That's fine.

CHAIR: Yeah, that works. That works for me. (inaudible), Mr. Evans? I mean, do you guys agree with this (inaudible)?

MR. EVANS: Yeah, I don't know why we're --

CHAIR: Yes, it's confusing me and, and if Mr. McCann doesn't raise these arguments, I, you know, I, I, I question the relevance too.

MR. LANZI: Okay. Well, maybe the next several questions will eliminate the confusion. And I, and I do think it's important that the Petitioner is able to show not only the changes, but these changes are minimized, I would think, some of the concerns.

And, in fact, I wasn't involved in the first case. Mr., Mr. Kestner was unrepresented. I was involved in the second case. And, and that's why we filed the, the new plan. And there was an effort made to accommodate the concerns of the neighbor. That's what any good neighbor does.

So, I, I think, I think it's relevant.

CHAIR: Well, (inaudible) Mr. Lanzi, I think Mr. Doak has been doing that in his testimony today, is sharing

(inaudible) how he's changed the footprint here.

MR. LANZI: Okay.

CHAIR: And at, to, to me there's, you know, he's explained it, you know, just his testimony on the current plan.

MR. LANZI: Got it. All right. Mr. Doak, I'm going to now turn you to Section 304 of the --

MR. EVANS: I'm sorry to interrupt. I'm sorry to interrupt, Mr. Lanzi. I'm the keeper of the exhibits here. So, I just, so, so, I'm a little pin, you know, I don't want to be too pinheaded about this but. So, 7-B I have marked as i.d. only and are we doing the same then for 7-C?

MR. LANZI: Yes, for now, for now.

MR. EVANS: For now? Okay and again, 7-C is, is from the original case, right, from Kestner one?

MR. LANZI: 7-C is actually from Kestner two. I believe it was an exhibit in Kestner two.

MR. EVANS: Okay. But you're not offering it or it's for i.d. only?

MR. LANZI: Right now, it's i.d. only.

CHAIR: Yeah, i.d. only.

MR. EVANS: Okay, that's fine.

CHAIR: (inaudible) for the res judicata argument, Joe, so I look at it as i.d. only as well.

MR. EVANS: Okay, great.

MR. LANZI: So, one through, one through six are in

and 7-A are in, right?

MR. EVANS: Yes, one through, yes, that's correct.

MR. LANZI: Okay. I just keep track too. All right. Mr. Doak, turning to Section 304 of the Baltimore County zoning regulations, which I believe you're familiar with, but first ask you whether the, the lots that are in question here, were they either duly recorded by deed or a validly approved subdivision prior to March of 1955?

MR. DOAK: Yes, sir, they were. The subdivision was done in 1929.

MR. LANZI: I'm going to go up to that. Okay.

MR. DOAK: Yeah, Exhibit, Petitioner's Exhibit 2 shows the subdivision of Twin River Beach done in 19, I apologize, June 1923.

MR. LANZI: And then revised in 1929?

MR. DOAK: That's right.

MR. LANZI: Okay and then I'm going to go to the next exhibit, which kind of zooms in on the two lots that are the subject of today's hearing. Let me --

MR. DOAK: The only thing that was enhanced was I zoomed it in on the area in question and I outlined the property that was formerly the Kestner property in pink with the deed reference on it. And then the subject property, Lot 155, 156 in blue, with the deed reference on that.

MR. LANZI: This is Cherwin here?

MR. DOAK: Yes, sir, it is.

MR. LANZI: And Gunder there. Okay. Now, now the next requirement under Section 304, all other requirements of the height and regulations are compared with, is that correct?

MR. DOAK: That is correct. We have an area that exceeds the minimum six thousand square feet for a DR-5.5 lot. We have the required forty feet in the front, the required ten foot on either side, setbacks of ten feet on either side and the rear setback of thirty feet. And this lot, or this house, will not exceed fifty feet tall.

MR. LANZI: And does Mr. Kestner own any adjoining land which would allow him to meet the fifty-five-foot-wide lot width requirement?

MR. DOAK: No, sir, he does not.

MR. LANZI: Okay and if you could, let's just go through a little bit of the history of Mr. Kestner's lot ownership, if you would?

MR. DOAK: Yes, sir.

MR. LANZI: So, at one point, did Mr. Kestner own Lots 155, 156, 157 through 160?

MR. DOAK: Yes, sir, he did. He bought those as two separate parcels. In Deed 34935, page 3, or 437, he bought under parcel one as Lots 157 to 160. And then as parcel two, he has, he purchased the 155 and 156 as a separate parcel, same Deed.

MR. LANZI: And Lot 157 through 160, those lots are improved, is that correct?

MR. DOAK: They are. And I, and I, I missed saying that over the years, each one of these have been taxed separately. So, 157 through 160 is improved with a single-story wood frame house, as well as a wood frame garage in the north, or the southeast corner.

MR. LANZI: And that garage that you're talking about it, I'm going to take you to a photograph. I believe is that the garage right there?

MR. DOAK: No, that is the house.

MR. EVANS: That's the house, yeah.

MR. DOAK: One more. There you go. It's, it's --

MR. LANZI: Right here?

MR. DOAK: There on the other, behind the tree and the play, playground, it's that and it's, it's within or closer than five foot to the property line.

MR. LANZI: Got it. Okay. When did you say Mr. Kestner purchased the lots, do you recall the year?

MR. DOAK: I believe '18, I'd have to look at the title deed.

MR. LANZI: When he purchased them, you said fourteen, I think you said '14?

MR. EVANS: Yeah, isn't it '14?

MR. DOAK: It is. It is, thank you.

MR. LANZI: Okay and that, then there came a time when Mr. Kestner sold Lots 157 through 160?

MR. DOAK: Yes, sir.

MR. LANZI: And do you know when that was?

MR. DOAK: That might have been ’18.

MR. LANZI: Okay.

MR. DOAK: I’d have to look at the deeds, but yes.

MR. LANZI: So, the, the improved lot, the lots with the improvements were sold. And that included the, the garage that you just showed in the photograph up against the fence?

MR. DOAK: Yes, sir.

MR. LANZI: Now, could Mr. Kestner have taken five feet from Lot 157?

MR. DOAK: Can I see Petitioner’s exhibit number one? It’ll help.

MR. LANZI: Okay.

MR. DOAK: So, and if you’ll blow it up just a smidge? There we go. So, the, the issue with this is that, like I said, very nice little house, very nice little garage. Mr. Kestner could not have added five more feet for two reasons.

One is, that would have been into, into the garage, and the second reason would have been that, well, that’s, that’s really the, the main reason. And also, the, he has to retain a thirty-foot setback from the rear of the house to the

adjoining property line.

So, we wouldn't have been able to get the entire five feet from that to the property line. So, it would have been in the garage, and it may have encroached the setback, required setback off the back of the Gunder Avenue house.

MR. EVANS: So, so was the house there when he bought the property?

MR. DOAK: Oh, yes, sir. I don't remember the year it was built, but it was built, let me see, I'll tell you in a second. It was built in, I'm sorry to do this, 19 --

MR. LANZI: It was 1945.

MR. DOAK: Thank you.

MR. EVANS: So, I, I don't understand, Mr. Doak, what you're saying about the rear setback.

MR. DOAK: Okay. So, --

MR. EVANS: What does that have to do with the five feet on the side, that, that I don't get.

MR. DOAK: Yes, sir. So, you'll see that the existing house is facing Gunder. Zoning requires it to have a thirty-foot setback on the rear.

MR. EVANS: Oh, oh, I see, I see, I see, I gotcha.

MR. DOAK: So, if I took five feet off of lot number one fifty-seven, one, I'd be through the garage and two, I would be encroaching on the thirty-foot setback for the house.

MR. EVANS: Because it faces Gunder, not --

MR. DOAK: Correct, yeah.

MR. LANZI: So, Mr. Doak, Mr. Kestner didn't have a lot of options then when it came time to sell Lots 157 through 160 then?

MR. DOAK: Yeah, and what he, not only those two reasons but he also, his Deed was in two separate parcels. So, he sold parcel one of his Deed and kept parcel two. So, it was conveyed that way, he just, he just resold parcel one at that time.

MR. LANZI: Okay. All right. So, you're, you're aware how I guess the Zoning, Zoning Office kind of scrutinizes the undersize lots. If you, based on your knowledge of the history here, and, and your communications with the Kestner family, you see any intent on their part to void the area requirements in this case?

MR. DOAK: No, sir. I mean, the area is, is, it makes the area requirements. It's over six thousand square feet. And it meets the setbacks. The only thing it cannot be is fifty-five feet wide.

MR. LANZI: And Section 304 allows the Petitioner with the zoning relief to, to build without the necessity of a variance, is that correct?

MR. DOAK: That's correct.

MR. LANZI: Okay. Bear with me. Well, Mr. Doak, based on your knowledge of this, this area and the proposed

building, I guess, the proposed residential building here on, on, on the lot, the subject lots, do you see, as an expert, or do you have any opinion whether a house constructed here would be, have an adverse impact on the adjoining properties?

MR. DOAK: No, sir, I do not believe it will. I mean, there are, I can't quantify, but there are dozens and dozens and there's even some in this close proximity to this, that are fifty feet wide. So, no, sir, I, it meets the setbacks. The only thing it reduces is the potential width of a house that can be built here and that, that would be a benefit, I would see, think that people would see it as a benefit to this if nothing else.

MR. LANZI: Now, there, we know there are concerns of the neighbor with regard to the flooding in the area and along Cherwin Avenue. Will there be any grade change to the Petitioner's property?

MR. DOAK: Yes, sir. When a building permit, prior to a building permit being done and a site plan being prepared, we would design the grading so it would not outfall onto the adjoining properties. And would be captured, and then, by drywells, or a level spreader, which is nothing more than a long ditch with stone in it. And it would, it would keep the water and let it out slowly.

Also, if there was any kind of overflow of the facilities, it would be caught in the existing swale in the

front, taken across the road, and then outfalled like all the other runoff in that area of Cherwin.

MR. LANZI: If I recall correctly, you indicated the Kestner property slopes, let's call it the, the rear of the property, down towards the road, it actually goes downhill towards the road, is that correct?

MR. DOAK: That is correct.

MR. LANZI: And then the Dawson property actually slopes towards the Kestner property down?

MR. DOAK: A portion of it does. The driveways and stuff does, do. And some of it does in the rear. But it, it, for the most part, it, like with ours, will flow towards the road.

MR. LANZI: And at the end of the day, even, if this were to be approved by the Board, this is just a step in the process. In other words, Mr. Kestner, or whoever builds a house there, will have to get building permits, critical area requirements met and, and I'm not sure what else. Maybe you can further explain.

MR. DOAK: The, depending on the amount of impervious, they may have to plant trees, shrubs on their property for the critical area. So, it goes through a lot of review and scrutiny by the different Baltimore County agencies.

MR. LANZI: Are you aware whether the Department of Environmental Protection and Sustainability has any objection?

MR. DOAK: They do not.

MR. LANZI: And how about the Department of Planning?

MR. DOAK: I, I passed it by, talked to the Planning Department and they, they, they support it.

MR. EVANS: Well, do you have anything in writing from them to that effect, Mr. Doak?

MR. DOAK: Yes, sir. Did you not put that in, Mr. Lanzi?

MR. LANZI: I believe that's part of the file. It's typically part of the file.

MR. EVANS: Okay.

MR. LANZI: The County comments. I did not submit it as an exhibit but.

MR. EVANS: But it's in the file?

MR. LANZI: It should be.

MR. DOAK: Yes, sir.

MR. LANZI: It should be in, in your file.

MR. EVANS: Was, was that, and, and DEPS and Planning review the second, this plat or the original one?

MR. DOAK: Both.

MR. EVANS: Both, okay.

MR. DOAK: And I'm about to give you the date of the Planning ZAC comments. They were April 15th, 2020.

MR. EVANS: Okay.

MR. DOAK: They were done by Wally Lippincott.

MR. EVANS: Okay.

MR. DOAK: And if you don't believe me, you can't get ahold of me, because he retired. And they supported our, our Petition.

MR. EVANS: Okay.

MR. LANZI: And I believe that they wanted a forty-foot front setback?

MR. DOAK: Yes, they did. Yes, they did. And I'll read one sentence. The Department of Planning supports the request with the modification of the front setback to a minimum of forty feet.

MR. LANZI: Okay.

MR. MCCANN: Excuse me, sorry to interrupt.

MR. DOAK: Yes, sir.

MR. MCCANN: I'd like to see a copy of those, if that's at all possible, Mr. McComas, maybe during a break. Normally, I would just go in and take a look at the file and find those things. I haven't seen them in this case. So, maybe at some point I could get a copy of those, since they're not an exhibit.

CHAIR: Yeah.

MR. DOAK: Mr. McComas, am I allowed to e-mail those directly to Mr. McCann?

CHAIR: Or Sunny, probably. So, she can --

MR. DOAK: Oh, I don't know her.

CHAIR: And I was just looking to see if we have it here.

MR. DOAK: They should be in that file from below.

MR. LANZI: Yeah. My, my understanding is the entire record from the ALJ case should have been --

CHAIR: Yeah, that's, that's, I'm trying to (inaudible).

MR. MCCANN: Yeah. I'll accept an e-mail from Mr. Doak, that's fine for (inaudible) purposes.

CHAIR: Yeah.

MR. MCCANN: If that's okay?

CHAIR: Yeah, that, that works for me. Mr. Evans, Mr. Sampson?

MR. SAMPSON: Yeah, no, that's fine.

MR. EVANS: That's fine.

CHAIR: I'm good with it too.

MR. MCCANN: Okay, great. Thank you.

MR. LANZI: All right. Mr. Doak, there was some other concerns at the previous hearing with regard to --

CHAIR: And Mr. Lanzi, Mr. McCann, I just got, I have the whole file, case file here if something else comes up.

MR. LANZI: Okay, great. Mr. Doak, there were some concerns at the prior hearing about a view being blocked. Is there a difference with the plan that we're, we're here for today?

MR. DOAK: Oh, by all means. So, the first hearing, we started out asking for a variance of twenty-five feet and then --

MR. MCCANN: Same objection. Sorry to interrupt.

MR. DOAK: Oh, I'm sorry.

MR. MCCANN: Same objection.

CHAIR: Mr. McCann, I'm going to give Mr. Lanzi some latitude on this in that he's just giving a historical, you know, building up and background to, you know, how he's gotten there and as opposed to, you know, (inaudible) for an issue that really hasn't arised yet. So, I'm going to give Mr. Lanzi some latitude on this for background.

MR. MCCANN: Okay, thank you.

MR. LANZI: Okay. Mr. Doak, how far back does the Dawson property sit from the road, if you recall?

MR. DOAK: Approximately seventy-five feet.

MR. LANZI: Okay. All right and so, so, Mr. Dawson I, either Mr. Dawson or his predecessor, I don't know who built the property.

MR. DOAK: (inaudible).

MR. LANZI: They, they decided to locate their home where it's, in its current location, how far it sits back from the road?

MR. DOAK: Yes. His house was built in 1989 and he didn't, Mr., Mrs., Mrs. Dawson didn't buy the property until

2017. So, it was built thirty, thirty-four years before that.

MR. LANZI: Okay. It might be helpful if you could give, you kind of gave an evolution of the Kestner lots, maybe you could do the same thing for the Dawson lots, if that would be helpful.

MR. DOAK: I think it would. Let's see, I'm trying to think which exhibit would be best. May we please go to Pet, that one, please? And then, let's go to Petitioner's exhibit number two, or three, please. Let me look at it one second.

MR. LANZI: Okay.

MR. DOAK: So, I can make it really easy for everybody. And if you could reduce the size, please? Thank you.

MR. LANZI: How's that work?

MR. DOAK: Keep reducing, please. That's good, no, one up. A little, a little larger, please. Thank you very much. Okay. So, what I did was, I, the scenario we have here where lots are separated in ownership, it's so prevalent in this area. I started out looking, of course, at the Kestner's. But then I said, what about the Dawson property? Could it be similar in that, and I found that it, it was exactly the same scenario as the Kestner property. In 1987, --

MR. MCCANN: Again, I'm going to object for the record.

CHAIR: Okay. We're going to overrule it.

MR. MCCANN: Okay, thank you.

CHAIR: (inaudible) background.

MR. DOAK: If you'll, if you'll look at the, the plan and I'll go slowly through, Mr. Dawson owns 151 through 154. He also owns 170 down to 167. So, keep that in mind. That block of eight lots right there is Mr. Dawson's. And it has been since 2017.

But in 1987, the Hopewell Village, Inc. sold to Christopher Steg, Steg, and he sold not only the eight lots of Mr. Dawson's, but he also sold 165 and 166, which are behind our subject property. So, in 1987, the Hopewell Village sold to Christopher Steg ten lots. Ten lots.

Then Mr. Steg sold Lot 165 and 166 to Wally Wallace, okay? And, and let me take one step back, I apologize. Right after he sold those two lots to Wally Wallace, 165 and 166, he built his house in 1989 and that's the, Mr. Dawson's house now.

So, he bought, they bought lot, ten lots, Mr. Steg did, he built a house, or he sold the two lots, he built a house on the remainder and then Mr. Wallace built his house as soon as he bought those two lots from Mr. Steg, 165 and 166, he built his house on that. And later, in year 2000, he bought 164 and put a garage on it.

So, to sum this up and make it more simple, this is the same thing that the Kestner's did. Mr. Steg, in, in 1987, bought ten lots. Sold off 166, 165 and 166, which you'll see

is both, is fifty feet wide and approximately the same depth as ours and he built a house on it. With the remainder, Mr. Steg built his house on the, on the eight lots that we're talking about.

So, not only does it happen in the area, but it happens adjoining, because Mr. Steg didn't have the right, if we, if we see it the way that Mr. McCann and Mr. Dawson wants us to, Mr. Steg would have never been able to sell that and Mr., Wally Wallace would have not been able to build on it.

May I please see the photograph --

MR. EVANS: So, Mr. Doak, you've got to be, frankly, you've got to be a little more careful with your language. Because there's no, nothing here that prevents the sale of the property, correct? I mean, the man could sell the property, just like Mr. Kestner can sell the property.

MR. DOAK: Yes, sir.

MR. EVANS: The question, the only question is the, the right to get, the right to build under certain circumstances.

MR. DOAK: That, you are perfectly correct. Thank you.

MR. EVANS: So, so, please don't overstate it.

MR. DOAK: Okay. Yes, sir. Mr. Lanzi, may I please have the photographs, the first set of photographs?

MR. LANZI: Bear with me. Mr. Doak, while I'm doing

that, do you know when Mr. Dawson bought those eight lots?

MR. DOAK: His wife bought them August 8, 2017.

MR. LANZI: Okay. Which photographs would you like to --

MR. DOAK: Keep going.

MR. LANZI: Okay.

MR. DOAK: I think it's three more. Okay, right there, please. So, the two lots that Mr. Steg sold, 165 and 166, are the ones that the house you see in the rear is placed on.

MR. EVANS: That's Mr. Wallace's house, right?

MR. DOAK: That's Wally Wallace's house. I just love that name. That, that's the house. In 2000, he bought, bought the adjoining twenty-five-foot lot and he built a garage on it.

MR. LANZI: Right.

MR. DOAK: Okay.

MR. LANZI: Okay, got it. All right. I believe we talked about front averaging previously, so I won't go there. But as far as, you're familiar that we have, I believe it's roughly forty signatures signed by Mr. McCann's client, community association client. Are you, you're aware of those signatures?

MR. DOAK: I am, yes, sir.

MR. LANZI: And, and did you do some research on the addresses of all those people that signed that?

MR. DOAK: Yes, sir, I did.

MR. LANZI: Okay. I'll ask what you found. I, I do want to go to an exhibit. I think I'm going to have to get out of this one and go to another screen, so bear with me, everybody. So, all right. I need to find, I have four separate exhibit attachments. Okay, let's see. Okay, I think I got it now. So, these are Petitioner's eleven, twelve and thirteen. I'm showing you now twelve, and if you could explain to the Board what you did, Mr. Doak?

MR. DOAK: Yes, sir.

MR. LANZI: Can you read it?

MR. DOAK: Yes, sir. What I did was on the left-hand side I numbered them one through, it ended up being forty. Different places, numerous places there were the same, people from the same residents. So, I, even though I did number them one through forty, some of them share the same residence.

MR. LANZI: Okay.

MR. DOAK: On the right-hand side I noted which lots of the subdivision plat they own and their approximate width and depth and (inaudible) when I say approximate, I mean that if, if they own multiple lots and the lot depths changed, I usually grabbed the one of the least and, and did that. But if nothing else, I was really focusing more on the width of what they own.

MR. LANZI: Okay and what did you find?

MR. DOAK: If I could go to the next exhibit, please?

MR. MCCANN: Mr. McComas, may I have a continuing objection? Same basis, relevance of what's going on with these other lots.

CHAIR: (inaudible) I'm going to overrule it and, and let Mr. Lanzi continue on it.

MR. MCCANN: Okay.

CHAIR: In the questioning of the witness here.

MR. MCCANN: Okay, thank you.

MR. LANZI: All right.

MR. DOAK: Mr. Lanzi?

MR. LANZI: Yeah, is that the one you're looking for?

MR. DOAK: No, keep going. That's just a continuation of what I've already done.

MR. LANZI: Okay.

MR. DOAK: Okay.

MR. LANZI: Is that it?

MR. DOAK: Yes, sir.

MR. EVANS: Is this number twelve? Is this Petitioner's twelve, Mr. Doak?

MR. DOAK: I can't see the bottom, is it marked? Yes, it is, Petitioner's exhibit number twelve.

MR. EVANS: Thank you.

MR. DOAK: So, what I have done here, Mr. Lanzi, if you will blow it up for a second and then reduce it back down.

A little bit more, please. Okay. So, what I did was, I was just curious, and I wanted to apply it to something that was relevant to our case.

So, what I did was, I reviewed the ownership, not only for the tax, by their tax records, but by each deed and I reviewed it as to the, the size of the lot of the people that are, are on the Petition from the improvement association.

And what I found was, and that each one of those are highlighted, encompassed by yellow highlighter. And then, in the circle in the middle of the lot is the number of the name, like I said, there was one through forty. I put the number of the Pet, the Petition signature person in there.

And then what I did was any of the lots that were fifty feet or, or that I put fifty in front of the lot, and I circled it. So, if you'll see what we're looking at now, there's four fifty-foot lots, which are improved on Gunder. There are, there is, our subject prop, oh, I apologize, I apologize.

There are three on Gunder. On Cherwin, there are, on the other side of the street, there are four fifty-foot lots those, there. And I did not look at every lot, I just looked at the ones that were, were the petition signatures.

And then, also on Birdwood there are four there and then on Powderdale, there are two there. So, you'll see just surrounding our property, and from this list of forty people,

not forty households, there are thirteen properties that are improved and built on with fifty-foot-wide lots.

MR. LANZI: Okay.

MR. DOAK: If you look at, can we look at one, the, the last exhibit, please?

MR. LANZI: Yes. This would be Exhibit 13.

MR. DOAK: Yes, sir. I did the same thing on this. This is GI, this is on Petitioner's thirteen. This is the GIS map and I highlighted those, and I did not put the fifties on it, but I highlighted all the ones I looked at and the, the number in the circle is the Petitioner's signature number, so.

MR. LANZI: Okay. All right. Mr. Doak, before I leave that, I would offer exhibit, Petitioner's eleven, twelve and thirteen into evidence.

CHAIR: Mr. McCann?

MR. MCCANN: Same objection. Thank you.

CHAIR: We're going to admit them, Mr. McCann and Mr. Lanzi.

MR. LANZI: Okay, thank you. All right. Mr. Doak, as an expert, in your opinion, would the granting of the requested special hearing zoning relief alter the essential character and nature of this community?

MR. DOAK: No, sir, not at all. There are, as you know, many, many, many fifty-foot-wide lots. We're meeting all the setbacks and we're building a house that is comparable and

compatible to the area.

MR. LANZI: Okay. Bear with me. All right. Will the granting of the zoning relief, if approved, impair the appropriate use and development of adjoining properties?

MR. DOAK: No, sir, not at all. Mr., Mr. Dawson's property is, is eight lots. It is, it's improved with a, a nice size single family home, big back yard, large driveway. So, I don't see how it would impede it at all.

The, the former Kestner property is improved with the, the house and the garage and everything and, and then the only other adjoining property is Mr. Wallace's in the rear that has everything, you know, the house, the garage and everything.

So, I don't see how this would impede anybody's use or enjoyment of their property. Especially since we've moved the house, potential house and giving Mr. Dawson a much larger vista, a viewshed, now than we formally had.

MR. LANZI: In your expert opinion, if the zoning relief is, is granted will there be any detrimental impact on the public health, safety and (inaudible) welfare of this immediate community?

MR. DOAK: No, sir, I don't believe so. The only issue that came up in the, in the past was, was runoff and what may cause a safety issue in, in Cherwin Avenue and that'll be addressed as a part of the building permit and storm water management review and approval. And also, we've shown that

there is a, a drain there that catches the water and takes it out of that area.

MR. LANZI: Mr. Doak, if the requested zoning relief is granted, in your opinion, will it be in harmony with the spirit and intent of the zoning regulations, specifically, Section 304?

MR. DOAK: Yes, sir, it will.

MR. LANZI: And can the Petitioner use this property without the zoning relief for the construction of a home?

MR. DOAK: No, sir, he cannot.

MR. LANZI: Mr. Chairman, I have, just to go back through the exhibits. So, I think we have one through six in, 7-A in, 7-B and C are i.d. only. I have eight, nine and ten, I have not discussed. Ten, I'm going to have to leave the screen, so I'll go back. Oh, come on now.

So, I'll just go to ten first. Mr., Mr. McCann and I discussed these Petitions. He had one. Number ten is the letter that the Kestners submitted to the neighborhood, that they do not oppose, in fact, support the requested zoning relief. I want to offer that, and offer without having to call the Kestners unless Mr. McCann or the Board says.

MR. MCCANN: No objection.

CHAIR: We'll admit, we'll admit them, Mr. Lanzi.

MR. LANZI: Okay. So, that would be ten, which only leaves eight and nine. I don't know whether you had a chance

to look, Mr. McCann, or not, but basically eight is a map showing the various cases where lot width, undersized lots were approved, and then 9-A through D are those cases.

I don't want to take up the Board's time. I, I assume Mr. McCann's objection is the same. But I would like those in the record if possible. It just, shows these are public records of cases that were approved for lot widths being under size.

CHAIR: Mr. McCann?

MR. MCCANN: Yeah, Mr. Lanzi is correct. Same, same objection.

CHAIR: Well, we'll let these in, Mr. McCann. The other thing to me that we kept out is along the lines of an issue that hasn't been presented. These are, to me, more background information about the surrounding areas I think Mr. Doak testified on. So, so we'll admit those into evidence.

MR. LANZI: Okay. So, those were all my exhibits. The only ones that did not get in at this point are 7-B and 7-C. I guess I'll reserve on that. And that is all I have for Mr. Doak at this point, unless you have anything to add, Mr. Doak.

MR. DOAK: No, sir, I do not.

MR. LANZI: Okay.

MR. EVANS: Just, just so I'm clear, Mr. Lanzi, again, I'm being a bureaucrat here. (inaudible) and then 9-A

through D are the underlying documents for each of those lots, is that correct?

MR. LANZI: We give four examples.

MR. EVANS: Four examples.

MR. LANZI: Yes.

MR. EVANS: Okay.

MR. LANZI: And I apologize for the, the length but basically the entire file for each case that we did present.

MR. EVANS: Oh, no, that's not a problem. I'm just trying to do the housekeeping, that's all.

MR. LANZI: Okay. So, that's all I have for Mr. Doak at this time.

CHAIR: Mr. McCann, do you have any cross of Mr. Doak?

MR. MCCANN: I do.

CHAIR: Mr. McCann, how long do you think you'll be because (inaudible) --

MR. MCCANN: I'm going to be a while, sorry to interrupt. I was going to suggest, I don't know what the Board's inclination is in terms of lunch. But now would be a good time. I could probably clean up some of what I had in response to some of the new stuff so a lunch break would be great. But I'll proceed if you guys want to proceed.

CHAIR: I, I was looking for like a five-minute break. Mr. Sampson, Mr. Evans, do you want to, how about Mr.

McCann's suggestion of taking lunch at this time?

MR. MCCANN: And it can be a short one.

MR. EVANS: Yeah, it, it would actually help me. I have something that I need to do at 12:15, so it would actually be useful.

CHAIR: You want to take a forty-five-minute break--

MR. EVANS: Yeah, or thirty minutes, it doesn't matter.

CHAIR: (inaudible). Mr. Lanzi, does thirty minutes work for you?

MR. LANZI: That's fine.

CHAIR: Mr. Doak, does that, does that fit into your schedule here?

MR. DOAK: Yes, sir, it does.

CHAIR: All right. So, let's take a thirty-minute break and we'll be back at 12:30.

MR. MCCANN: Thank you.

MR. LANZI: Thank you.

MR. DOAK: Do we come back on, or do we just leave it open?

CHAIR: I'm just going to leave mine open. I, I'm not, I think Adam, Mr. Sampson is the host. I think, I was just going to sort of mute mine and, I was going to mute mine and stop the video, Mr. Doak.

MR. DOAK: Okay. Thank you for --

MR. SAMPSON: Bill, so I just pause the recording, correct?

CHAIR: Yes.

MR. SAMPSON: All right, thanks.

(PAUSE)

MR. SAMPSON: Okay, we're good there.

CHAIR: And I, are we going to swear in Mr. Doak or state that he's already sworn in and he's just going to pick up where he left off?

MR. EVANS: He's already sworn.

CHAIR: All right. Mr. McCann, I think it, he, he's your witness for cross examination.

MR. MCCANN: Great, great. Mr. Sampson, I'm sorry, but I haven't been able to see that I can share yet.

MR. SAMPSON: That's because I gave it to Mr. McComas, my fault.

MR. MCCANN: He can handle the cross, that's fine.

CHAIR: I'm not sure if I'll be able to pull this off, too much pressure on me.

MR. MCCANN: Yeah.

MR. SAMPSON: You should be okay now.

MR. MCCANN: Okay, thank you. Appreciate it. Good afternoon, Mr. Doak.

MR. DOAK: Good afternoon.

MR. MCCANN: I want to start where you left off and that is with, I think Petitioner's number, exhibit numbers 8 and 9-A through D, and that is these cases that you spoke about having been decided. I'm going to pull up Petitioner's number eight. Let's see here.

CHAIR: You're on the wrong screen it looks like, Mr. McCann. There you go.

MR. MCCANN: You see that?

MR. DOAK: Yes.

MR. MCCANN: Okay. So, as I understand it, just for everybody's benefit it is Petitioner's exhibit number eight, we have the subject property identified here in orange and then you have in yellow indicating properties pertaining to which a case was decided regarding undersized lots, correct?

MR. DOAK: Yes.

MR. MCCANN: Okay. Did you actually look at these one, two, three, four, five, six cases?

MR. DOAK: It was a while back, yes, sir, I did.

MR. MCCANN: Okay. Have you looked at them recently?

MR. DOAK: No, sir.

MR. MCCANN: Okay. Well, they certainly speak for their, for themselves, but would you agree with me that none of these cases that you have identified here involved 304.1.

MR. DOAK: That's correct.

MR. MCCANN: In fact, they each addressed simply in,

in, I would submit, brief fashion, the variance standard in Section 307, correct?

MR. DOAK: I, I couldn't say that for sure. I, I'd have to read them and make sure that's what they're referring to. But that very well could be.

MR. MCCANN: Okay. In fact, maybe to, to help you, these case, many of these cases were decided before 304.1 came into existence, correct?

MR. DOAK: That's correct.

MR. MCCANN: Okay.

MR. DOAK: But they all dealt with lots of fifty foot wide.

MR. MCCANN: Okay. Did you, did you catch in your review of any of these decisions, whether there were any Protestants in any of them?

MR. DOAK: No, sir, I did not.

MR. MCCANN: Isn't it true that in each of these cases the issue of whether the property owner owned sufficient property adjoining his or her property to meet the height and area requirements was not even discussed, correct?

MR. DOAK: You evidently have looked at them since I have. It could be, but I can't tell you off the top of my head.

MR. MCCANN: Okay. Well, do you know whether, in fact, with regard to any of these properties, the Petitioner

had adjacent property (inaudible) requirements? Did you look into that, in other words?

MR. DOAK: No, sir, I did not. Whatever was in the, whatever was in the pleadings was all that I based it on.

MR. MCCANN: Okay. In all of these cases, you would agree with me, well, we have six here. Four of the decisions you've attached as Exhibit 9-A through D. Let's deal with 9-A through D first. I don't need to pull those up. You would agree with me that each of those are decisions of the Administrative Law Judge or then the Zoning Commissioner, correct?

MR. DOAK: Yes.

MR. MCCANN: (inaudible) decisions of the four that I just mentioned, or the other two, are decisions of the Board of Appeals, correct?

MR. DOAK: I believe so.

MR. MCCANN: What I'd like to do, if I could, Mr. McComas, is to, there's, as I indicated, there's six cases referenced, or highlighted rather, in Petitioner's exhibit number eight. Four of those are Petition, Petitioner's Exhibits 9-A through D. I would like to have marked in and introduced into evidence the other two decisions of the, of Zoning Commissioner, and I can certainly show those to the Board.

The first one is, this is 79-135, which is one of

the, one of the highlighted cases in Petitioner's exhibit number eight. The other is 0, 03-0309, 03-309. And, so these would be, I already have marked and introduced, or sent to Sunny anyway, Exhibits 1 through 11. So, I would ask that these be marked and introduced as Exhibits 12 and 13, respectively. I can certainly send over copies to --

CHAIR: Mr. Lanzi, any objections? Did we lose Mr. Lanzi? Or is he on mute?

MR. LANZI: Okay. I would like to see them. If they are the same as the other four, then I have no objection. They say what they say and they're public record.

CHAIR: Okay.

MR. MCCANN: Okay. I'll send them to everybody, including the Board. But let's, this, this would be the second of these, case number 03-309, which I think I've just marked as Protestants' Exhibit 13.

As an example, Mr. Doak, and (inaudible) spend a whole lot of time looking at this because the opinion itself is only two, a little over two pages. This, this Petition, in particular, was not, was a variance case. No reference to 304.1 at all, correct?

MR. DOAK: I don't see that reference.

MR. MCCANN: Okay.

MR. DOAK: Of course, I don't move as fast as you do, but --

MR. MCCANN: But normally it would say it in the first paragraph, right?

MR. DOAK: That's correct.

MR. MCCANN: And then it would also say it in the, in the Order itself, correct?

MR. DOAK: That's, that's what I was waiting for.

MR. MCCANN: Okay. There, 304 is mentioned there, I stand corrected.

MR. DOAK: Yeah, it is, that's 304.

MR. MCCANN: Okay. But no discussion --

MR. DOAK: Which would be similar to what we're doing, yes.

MR. MCCANN: Well, it speaks for itself. So, next, also in your Exhibit 8, let's get back to that if we could. You didn't identify in this exhibit cases where an undersized lot was denied, did you?

MR. DOAK: I, I don't remember what my criteria is, if, if you found one that was denied, I have to think that I would have because that would have been slant, too slanted, even for me. But if you would have, if you would have, if you found one, I, I'd be glad to review it. But I just don't remember that, that being the criteria, only ones that were approved.

MR. MCCANN: Okay. I'm not criticizing you, I'm just asking if you looked at other cases and --

MR. DOAK: I believe I looked at, I looked at, how I started was all the, all the lots that have cross hatching is that there's a zoning hearing on it.

MR. MCCANN: Right.

MR. DOAK: So, then I pulled those that, and I read very quickly if they had something to do with lot (inaudible), then in turn I looked at them and saw if they were approved or not and then put them down there. If they were, other things like just setbacks, which most of them are, just a setback variance, then I didn't (inaudible), I didn't, I didn't put them down.

MR. MCCANN: And I'm glad you said that because I think the Board may know from its experience with My Neighborhood, these, these cross hatched lots indicate that it, that there was a zoning case involved, correct?

MR. DOAK: Are you talking to me or them?

MR. MCCANN: I'm talking to you, Mr. Doak.

MR. DOAK: Oh, I'm sorry. Yes.

MR. MCCANN: Yeah, and --

MR. DOAK: I feel that that's what they know but I make it a point to point it out to them each and every time I'm up.

MR. MCCANN: I'm just asking you if that's correct.

MR. DOAK: Yes.

MR. MCCANN: Okay. In fact, I've looked through all

these and I think you're correct, all of these other ones that you haven't highlighted, subject to the ones we'll talk about next that have denied an undersized lot, all of these are just your run of the mill sort of setback variances or variances to put a shed, you know, things of that nature, correct?

MR. DOAK: Yes.

MR. MCCANN: Okay. So, let's look at one that you didn't include, and that would be this one. So, this is right on Cherwin Ave. This is a case more recent than the others.

MR. DOAK: Where is it? Where is it located?

MR. MCCANN: 13108. So, in reference to your exhibits, some of your other exhibits showed this property better, but your Exhibit 8, it would be this one right here. Which you'll see that on the left-hand side.

MR. DOAK: Okay.

MR. MCCANN: This, this particular one. And you can, you can verify that, if you don't know --

MR. DOAK: And I'll, and I'll have to tell you the truth, I, I worked the block above it. I didn't, I didn't go that far down. The reason why, because I wanted it to be in the close proximity to our lot versus reaching out. Even though it's on the record plat, I didn't go that far down.

MR. MCCANN: Okay. Well, you included this one --

MR. DOAK: Yes, yes, I did. That, that roadway there that runs into that lot was my southern boundary, railroad was

the eastern boundary, the water, and the water was my northern and western boundaries.

MR. MCCANN: Yeah, but my point is, you went below that southern boundary to show this one.

MR. DOAK: Only because it was right in line with, but that's the only thing I can tell you is, I just didn't go any further than that.

MR. MCCANN: Okay. Well, let's look at this one. This is, I'll have this marked and we'll seek to introduce it as Petitioner's Exhibit 14.

MR. DOAK: Um hm.

MR. MCCANN: And again, it speaks for itself, and like Neil, I included, you can see I included the entire file, which is obtainable through My Neighborhood. This, this one, in fact, unlike the others, so, the vast majority of the others, refers to Section 304, correct?

MR. DOAK: It does.

MR. MCCANN: It also talks, unlike all the others, talks about opposition, correct? Where I'm highlighting there?

MR. DOAK: Yes, sir.

MR. MCCANN: Okay. Just for completeness sake, Mr. Schmidt actually denied a variance request, which I, and that, I'm sorry, I went right by it. Was, in fact, denied, correct? Do you see that, Mr. Doak?

MR. DOAK: I do see it, but it calls for approval of

two newly created lots as undersized. I don't, I don't know what the history of what made them newly created. I, I don't know what that is. So, this may or may not be similar to what ours is because our lots were not newly created. They've been lots since 1929.

MR. MCCANN: Okay. But just for clarity's sake, there was no approval, this paragraph, the reference to newly created is just a description of the relief that was sought.

MR. DOAK: I don't know that.

MR. MCCANN: Okay. Well, again, it speaks for itself. So, that would be Exhibit 14 and I would move that into evidence.

CHAIR: Any objection, Mr. Lanzi?

MR. LANZI: I, I'll object for relevance, but I'm sure the Board will take the same position allowing my stuff to go in, so.

CHAIR: Yeah.

MR. LANZI: They're public record and they speak for themselves.

CHAIR: Yeah. Yes, so we'll admit them.

MR. MCCANN: Okay. Bear with me one second.

MR. LANZI: I, I would request copies of these, because these are new exhibits that are being presented literally as we speak. I'll admit that we sent some exhibits yesterday afternoon instead of in the morning. But I have not

experienced exhibits being allowed simultaneously with the hearing before. So, I guess I will object for the record as to all new exhibits being presented now.

CHAIR: You'll, and Mr. McCann, you'll, you'll send it to Sunny, right? And we can get it, so we all have a record of it.

MR. MCCANN: Yeah, that's, that is the case. Just for, just to speak to that issue, this is actually my first Board of Appeals hearing since the pandemic. I've had many, many ALJ cases and the rule that's been followed there is since this is cross examination, just like you wouldn't have to do at a hearing itself, you don't need to send those exhibits in advance. In fact, you know, I pulled these during the break.

CHAIR: Yeah.

MR. MCCANN: So, I could not have produced them. So, I just wanted to make that clear for the record.

CHAIR: And that's, and that's, and that's how I've viewed it as well, Mr. McCann. That you're well within the, the scope of the cross examination and since all the other ones have come in, you know, it's fair to you to have the, the ones that support, in your mind, support your, your perspective as well. That's how I viewed it.

MR. MCCANN: Okay, great. Great, thank you. The other thing I wanted to ask you about, Mr. Doak, related to that is, bear with me one second. Okay. So this is, this is a

different exhibit. This is Petitioner's Exhibit 13, and this is an exhibit that you created, I take it, in response to the, to the Petition that we sent over to Mr. Lanzi yesterday identifying where all of the sign, signatories of the Petition live and the lots on which they live, correct?

MR. DOAK: That is correct.

MR. MCCANN: Okay. And in connection with this exhibit, when you talked about it on direct examination, I think your exact words were, there are many, many fifty foot lots amongst, amongst these properties. And I, I guess the first thing I wanted to clarify is, let me pull up a separate exhibit which is also a new, new exhibit, this is a copy of your exhibit that we just looked at.

And what I've done here for your benefit, or everyone's benefit, is I highlighted in green amongst all the lots that you highlighted those that are, in fact, not fifty-foot lots but have, consist of multiple, three or four, I think it's at most three or four, twenty-five-foot lots, correct?

MR. DOAK: But they didn't build on those. Like the one behind our property, you have it green. That was Wally --

MR. MCCANN: Well, --

MR. DOAK: Go ahead.

MR. MCCANN: That wasn't my question. My question is simply have I highlighted in green the lots that are not just simply --

MR. DOAK: No, so what --

MR. MCCANN: Hold on. Let me finish the question.

MR. DOAK: I apologize.

MR. MCCANN: And I'm not asking about any houses or anything else. All I'm asking is, did I highlight in green those, those yellow highlighted properties that you identified that actually comprise more than two lots, correct?

MR. DOAK: That is correct.

MR. MCCANN: Okay. Did you, with respect to all of these in yellow, and we'll get to the pink in a moment, did you actually look as to when the houses on these lots were constructed?

MR. DOAK: No, sir.

MR. MCCANN: You did not?

MR. DOAK: I did not.

MR. MCCANN: Okay. So, I, I started at the subject property, and I went out and I just grabbed a couple in the limited time that I had.

MR. DOAK: Um hm.

MR. MCCANN: And, and I'll, I have SDAT reports that I'll mark. Before I move on, this exhibit that's now in front of the Board, since it's a, a new exhibit, would be Protestants' Exhibit 15, is that correct, Mr. Evans?

MR. EVANS: Yes, yes, um hm.

MR. MCCANN: Okay and what I would like to do in

conjunction with this is also show the Board and introduce the S, the SDAT sheets associated with these lots. So, for instance, and this is, this would be Exhibit 16. This consists of, for the record, four SDAT sheets corresponding to the, the properties outlined in pink on Protestant's Exhibit 15.

So, as an example, and they speak for themselves, but the first one I have coincidentally is I have 6903 Gunder, which is the property formerly owned by Mr. Kestner, correct?

MR. DOAK: That is correct.

MR. MCCANN: And you, I'm not sure if you had indicated this or not, according to this SDAT sheet, that property was, that building rather, was constructed in 1945, correct?

MR. DOAK: That's what Mr. Lanzi says, and I can see it here, yes, sir.

MR. MCCANN: That's what Mr. Lanzi says?

MR. DOAK: Yes. That, he said that in one of my questions.

MR. MCCANN: Okay, all right. Very well. And as another example, I don't, I think they speak for themselves, I don't need to go through all of them but there's one, 13217 Powderdale, which is this property right here, I'll represent to you. We can check by these lot numbers, see 212 and 213, do you see that?

MR. DOAK: Yes, sir.

MR. MCCANN: If we go back to the SD, SDH, SDAT sheets.

MR. DOAK: Um hm.

MR. MCCANN: There's a reference there to Lots 212 and 213, correct?

MR. DOAK: Yes, sir.

MR. MCCANN: And this structure was built in 1921, 29, correct?

MR. DOAK: Yes.

MR. MCCANN: And for, I'm sure the Board knows this but for everyone's benefit, the, the, the, the dates when structures were built in this exhibit, which is Protestants' 16, 1945, 1929, 1934 and 1929, those dates all, all predate the enactment of the County zoning regulations, correct?

MR. DOAK: Oh, that was a ques, yes, yes, they do.

MR. MCCANN: Okay. Okay. With that, I would offer, if I haven't already, Exhibits 15 and 16 into evidence.

CHAIR: Mr. Lanzi, same objection? Mr. Lanzi, did we lose you?

MR. LANZI: No objection.

CHAIR: All right. We'll admit them.

MR. MCCANN: Thank you. Thank you. Okay. (inaudible) one second. It sounds like, based on your testimony, Mr. Doak, that you looked a little, that you looked at the title history of the subject lots as well as the lots

that were, that were owned for a period of time by Mr. Kestner, correct?

MR. DOAK: By whom, I couldn't hear?

MR. MCCANN: Mr. Kestner. Did I pronounce that right?

MR. DOAK: Yes, sir.

MR. MCCANN: Okay. You looked at the title history of those, those groupings of lots?

MR. DOAK: Yes, sir.

MR. MCCANN: Okay. I want to show you, let me get rid of some of these so I can have some room here. And I might as well do it in order. I'm going to pull up the SD, SDAT sheets first. This would be our pre-marked Exhibits 3, 4 and 5 and a couple things. This is Exhibit 3. Do you recognize this exhibit as the SDAT sheet for Lot 155, Mr. Doak?

MR. DOAK: Yes, sir, I do.

MR. MCCANN: And I think as you and Mr. Lanzi talked about, Mr. Kestner purchased this lot in April 2014, correct?

MR. DOAK: Yes, sir.

MR. MCCANN: Okay and real quick, go to four, same question. Do you recognize this as the SDAT sheet for Lot 156?

MR. DOAK: Yes, sir.

MR. MCCANN: Okay and again, this lot was acquired by Mr. Kestner in April of 2014, correct?

MR. DOAK: Yes, sir.

MR. MCCANN: Okay. And before we move onto the next one, the square, the square footage of Lots 155 and 156, according to these SDAT sheets are two thousand nine hundred seventy-five and three thousand and seventy-five?

MR. DOAK: Yes, sir.

MR. MCCANN: Respectively, correct?

MR. DOAK: That's correct.

MR. MCCANN: Okay and as I, as I add those up, that's six thousand and fifty feet, collectively, correct?

MR. DOAK: Yes, sir.

MR. MCCANN: Okay. SDAT sheets, which is Protestants' Exhibit 5, is, is the sheet that pertains to Lots 157 through 160 we've spoken about. And that was, as we indicated, acquired by Mr. Kestner in 2014 and sold by him or conveyed by him to the current owner in November 2018, correct?

MR. DOAK: Yes, sir.

MR. MCCANN: Okay. That, I'm not sure you're aware that May date is different than the April date on the other two lots, but that deed reference 34935 and 347 --

MR. DOAK: It was, it was April 30th.

MR. MCCANN: But my question again, my question is, is that deed reference in Exhibit 5, 34935, folio 437, that's the same deed that we, that, that we would see with respect to Lots 155 and 156, correct?

MR. DOAK: Correct. It's beginning for the first,

beginning for the second.

MR. MCCANN: Okay. Okay. I would move Protestants' three, four and five into evidence.

CHAIR: Any objections, Mr. Lanzi?

MR. LANZI: No objection.

CHAIR: All right. We'll admit them.

MR. MCCANN: Okay. Thank you. Next, real quick, same exercise. I don't, actually don't want to go through these in any detail but I'm going to pull up, (inaudible) do that all at once. Okay. Do you recognize what's been marked as Protestants' Exhibit 6 as the Deed by which Mr. Kestner acquired all of the lots in April 2014?

MR. DOAK: That is correct.

MR. MCCANN: Okay and then quickly, Exhibit 7, Protestants' Exhibit 7, do you recognize that as the 1961 Deed by which Mr. Kestner's predecessor acquired Lot 156.

MR. DOAK: Yes.

MR. MCCANN: And Exhibit 8, do you recognize that document as the 1961 Deed by which Mr. Kestner's predecessor acquired Lot 155?

MR. DOAK: Yes.

MR. MCCANN: And then lastly, do you recognize Petitioner's, Protestants' rather, Exhibit 9 as the 1959 Deed by which Mr. Kestner's predecessor acquired Lots 157 through 160?

MR. DOAK: Yes.

MR. MCCANN: Okay. Mr. McComas, I would move six, seven, eight and nine into evidence.

CHAIR: Any objections, Mr. Lanzi?

MR. LANZI: No objection.

CHAIR: I'll admit them.

MR. MCCANN: Thank you. Okay. So, I asked you previously about the, the square footage of each of these lots, that Lot 155, twenty-nine seventy-five square feet, Lot 156, three thousand seventy-five square feet.

MR. DOAK: Correct.

MR. MCCANN: And then, Lots 157 through 160 are thir, comprised of thirteen thousand two hundred and forty-one square feet, correct?

MR. DOAK: That's what they're showing on the SDAT, yes.

MR. MCCANN: Well, do you have any information that is con, contrary to those SDAT sheets?

MR. DOAK: Yes, sir, I do.

MR. MCCANN: You do. What is that information?

MR. DOAK: If you look at Petitioner's Exhibit, it would be the previous zoning, the first (inaudible) surveyed. They surveyed the property and came out with an even more square footage for Lot 155 and 156.

MR. MCCANN: Okay and approximately how much, we can

all look at that, but approximately how much more?

MR. DOAK: It was twenty-one, I mean, sixty-one hundred and some square feet.

MR. MCCANN: Okay. Either way, you would agree with me that Lots 155 and 156 together meet the, what you indicated to be the minimum square footage of a lot, which is six thousand square feet, correct?

MR. DOAK: In a DR-5.5, yes.

MR. MCCANN: Okay and just, I don't want, I don't want to get on a tangent. But you, you obtained, you derive that square footage, that minimum square footage, as well as the setbacks that you spoke about earlier, from what's called the, the small lot table in the zoning regulations, correct?

MR. DOAK: That's correct.

MR. MCCANN: Okay. So, if we just do some simple math. When, and for this I'm going to go to another exhibit. This would be Protestants' Exhibit 2, which is just another My Neighborhood map. And I'll zoom in. When, well, strike that. Mr. Kestner owned all six lots, I know we discussed this already but I'm just clarifying. Owned all six lots that we just spoke about for a period of approximately four and a half plus years, correct?

MR. DOAK: That's correct.

MR. MCCANN: And during that period of time, there was a sufficient area, and in particular, on Lots 155, 156 for,

for Mr. Kestner to have subdivided the six parcels and put a house on that property, correct?

MR. DOAK: No, sir.

MR. MCCANN: Why is that not the case?

MR. DOAK: You would have had to, like I said, if you would have pushed the lines over (inaudible) 156 and 157 it would have been through the garage.

MR. MCCANN: Okay. Well, that's not my question, Mr. Doak. I'll get, I'll get --

MR. DOAK: Oh, I'm sorry.

MR. MCCANN: I'll get to this, this so-called garage in a second. My question is, my question is simply during the four and a half plus years that Mr. Kestner owned six parcels, there was enough square footage during that period of time for him to have constructed a second house on those parcels.

MR. DOAK: He would have had to go through --

MR. MCCANN: That's not my question, Mr. Doak. My question is whether or not there was sufficient space or area on those six parcels to put a second house.

MR. DOAK: Yes.

MR. MCCANN: Okay. Now, with the garage --

MR. EVANS: When, when you say a second house, you mean, that satisfies the fifty-five-foot limit, right, or requirement?

MR. MCCANN: Yes, I'm sorry. Thank you, Mr. Evans.

MR. DOAK: That isn't what I answered then. I answered for area, not width.

MR. MCCANN: And that's true too (inaudible).

MR. DOAK: I'm not answering it to the width, I'm only answering it to the, the area.

MR. MCCANN: Yeah. Well, thank, thank you both. I'll ask, ask another question to clarify Mr. Evans' issue, and that is, at the time that Mr. Kestner owned the six parcels, he had sufficient property, to meet, to build another house and to meet the width requirements, putting aside what you may or may not say about the garage, correct?

MR. DOAK: Correct.

MR. MCCANN: And I was listening very carefully when you spoke about the garage. Have you actually measured, in a survey, Mr. Doak, to the distance between the garage, that the southern face of the garage and the northern property line of Lot 156, did you actually undertake that?

MR. DOAK: I did not.

MR. MCCANN: Because when you spoke about the, you know, the, the distance, or alleged diff, distance between lot, the northern portion of Lot, I mean, the northern property line of Lot 156 and the garage, you said the garage is within or closer than five feet (inaudible). Sitting here today, you don't know what that distance is, correct, number one?

MR. DOAK: Not exactly.

MR. MCCANN: You also said that the garage is in good shape.

MR. DOAK: Yes, sir.

MR. MCCANN: Did you actually go in the garage?

MR. DOAK: No, sir. I looked at the exterior.

MR. MCCANN: I guess we, we have no pictures of the interior of the garage for the Board to look at today?

MR. DOAK: No, sir.

MR. MCCANN: Okay. No estimates for the Board to look at as to what it may cost to, to reduce the size of that garage or to move it, if necessary?

MR. DOAK: No, sir.

MR. MCCANN: Okay. Do you know whether or not, you called it a garage, I heard other people refer to it as a shed? Do you know whether or not Mr. Kestner or his predecessor obtained a permit for that shed or, for that shed?

MR. DOAK: I, I don't know whether he did or not. Looks at the age prior to building permits being required.

MR. MCCANN: But you didn't look into it?

MR. DOAK: I did not.

MR. EVANS: Now, the shed was there when Mr. Kestner bought that property?

MR. DOAK: Yes, sir.

MR. EVANS: Yeah, it, it was there, it pre-existed?

MR. DOAK: Yes, sir.

MR. MCCANN: Do we know that, Mr. Doak?

MR. DOAK: It's an assumption, but looking at the age, looking at the, at it and the age of it, looking at when he bought it, I would say yes. That's an assumption.

MR. MCCANN: When he bought what?

MR. DOAK: Bought the property.

MR. MCCANN: Okay. Now, and, and how did you look at it? There's a fence up. How did you look at the garage?

MR. DOAK: I started, it was afterwards, and I easily can look over top of the fence.

MR. MCCANN: But did you?

MR. DOAK: That, yes.

MR. MCCANN: Okay and, and that's a good point. You, the fence was, was not installed by Mr. Kestner, correct?

MR. DOAK: It was not, the new owners.

MR. MCCANN: The, the new owners put if up after they acquired the properties from Mr. Kestner, correct?

MR. DOAK: Yes.

MR. MCCANN: And did you catch that the new owners are, signed the Petition opposing Mr. Kestner's request, did you catch that?

MR. DOAK: Yes, sir, I did.

MR. MCCANN: And here, you know, here's the other thing that you said that (inaudible), Mr. Doak, because you usually mean what you say. You said, you said there was a

second reason, other than the garage that you believed that Mr. Kestner, during the time he owned the properties, could not meet the, the lot width requirement, and that is you may have an encroachment on the thirty-foot setback. And I wrote those words down.

Did you, as I asked with respect to the garage, did you conduct any survey or measurement to determine how far back the house on 6903 Gunder, Mr. Kestner's prior residence, how far back that house is from the northern property line of Lot 156?

MR. DOAK: It was done before me.

MR. MCCANN: I'm asking you, did you do it?

MR. DOAK: No, sir.

MR. MCCANN: Mr. Doak, you, you will, you probably do work, zoning variance more than anybody else in this County, is that fair?

MR. DOAK: Yes, sir.

MR. MCCANN: And you would agree that I've seen you, I've seen you in action. You would agree that setback variances are (inaudible) all the time, daily, if not weekly, by the Zoning Commissioner's Office and the Office of Administrative Hearings?

MR. DOAK: If you have a good enough case.

MR. MCCANN: Is that a yes?

MR. DOAK: That's a --

MR. MCCANN: Qualified yes?

MR. DOAK: That's a qualified yes.

MR. MCCANN: Okay. And you would also agree with me, in fact, well, strike that. You would also agree with me that many times variances are granted when there is no opposition from any adjoining or nearby community member, correct?

MR. DOAK: That's correct.

MR. LANZI: I'm going to object to this for relevance.

CHAIR: Mr. McCann, any response?

MR. MCCANN: Yeah, I mean, it goes to the alleged, I think we've heard so far, Mr. McComas, that, that Mr. Kestner could not, and assumedly could never, meet the lot width requirements because of an existing garage that is allegedly within five feet and an existing house that is allegedly within thirty feet. So, if there is such a difficulty, I was just asking Mr. Doak about the ease with which a variance from those requirements can be obtained.

CHAIR: We'll let it in, Mr. Lanzi. You know, we'll give it the weight that, that, (inaudible) not the case here, we'll let it in for just the surrounding community, just like we did with your, some of your (inaudible). Go ahead, Mr. McCann.

MR. MCCANN: Okay, thank you.

CHAIR: (inaudible) I'll overrule you, Mr. Lanzi, and

let it in. Sorry. Go ahead, Mr. McCann.

MR. MCCANN: Okay, thanks. A couple more things, Mr. Doak. I, I didn't hear anywhere in your testimony, I didn't see on the plan itself, is how many stories this house was going to be. You, you talked about an envelope, a building envelope being eighteen hundred square feet. But how, how tall will it be? How many stories will it be?

MR. DOAK: At this point, I don't know for certain. It can be up to fifty feet high per zoning regulations.

MR. MCCANN: Would you agree with me that, at the least, this property, this house is going to have to be on, gosh, I want, I want to call them stilts, but there's another name for them.

MR. DOAK: That's all right. Pilings.

MR. MCCANN: Pilings. This property, this house is going to have to be, to be on pilings, correct?

MR. DOAK: Yes, sir.

MR. MCCANN: Okay. Wouldn't you agree though that in order for this Board to determine, and you spoke a lot about what you believe to be the lack of impairments and impacts on the neighborhood.

In fact, you said you didn't think that this house would impair, when asked, when you were asked whether this house would impair Mr. Dawson's use of his property, as an example, you said not at all.

And my question to you is wouldn't you agree that in order to determine what the, the real and practical and appreciable impact might be on Mr. Dawson and his neighbors, you would need to know the height of this building?

MR. DOAK: It's my opinion that whether it is two story at thirty-five feet or three story at fifty feet, it's going to be the same view from Mr. Dawson looking over top of this house. He's going to be looking at sky whether he's at thirty-five trying to look over or fifty.

MR. MCCANN: Wait a minute. You're, you're saying Mr. Dawson is not going to see this house but rather sky?

MR. DOAK: No, you said his view. Is a view of the house or view elsewhere with the house in place?

MR. MCCANN: Well, --

MR. DOAK: I didn't, I didn't understand your question.

MR. MCCANN: Yeah, I'm not sure I understood your answer, but.

MR. DOAK: Okay.

MR. MCCANN: You'd have to agree with me, and let's go to Plaintiff's Exhibit, this should be Exhibit 1. You would have, you would have to agree to me, with me, wouldn't you not, that Mr. Dawson, out of his front and side windows will see nearly, if not entirely, the entire structure, if, if, if approved?

MR. DOAK: Yes, sir, he would.

MR. MCCANN: And would you agree with me that because it will be on pilings, and maybe, I don't know, sounds like it could be as high as fifty feet, that that view, Mr. Dawson, would you want to live next to, would you want to live, Mr. Doak, thirty to forty feet away from a structure that big?

MR. DOAK: Living down here, you know it's a, something that's going to happen. Look across the street, at the new house they built there, it's just going to be similar to that. Look at that photograph with the Board, and it'll give you an idea of what'd you be looking at.

MR. MCCANN: Okay and where, where is that (inaudible) are they in the same position, vis-à-vis, the, the structure as Mr. Dawson is? They're not, are they?

MR. DOAK: I, I don't, I'm sorry.

MR. MCCANN: You don't?

MR. DOAK: If you look at that photograph, we can talk about it in that regard. I don't.

MR. MCCANN: Well, I don't think the photograph shows it, so.

MR. DOAK: Well, it's the new house across the street.

MR. MCCANN: I know, I know what the house is.

MR. DOAK: Oh.

MR. MCCANN: Your photographs don't show the

relationship between that, you know, that new, so-called new house and its neighbors.

MR. DOAK: As a matter of fact, it would be closer, those two neighbors would be closer to each other than Mr. Dawson to this house because Mr. Dawson has an empty lot between them, a twenty-five-foot empty lot and his driveway between them.

MR. MCCANN: Now, hold on. How do you know that, Mr. Doak? I know that you know that there's a lot there, we can all see the lot here. But how do you know that there's, there's more space, or less space rather, in, in between the new house across the street and its neighbor? How do you know that?

MR. DOAK: Because there, the size of the lots.

MR. MCCANN: Okay. Okay. Let's talk about storm water management. The water table at this property, the subject property, is extremely high. You would agree with that, right?

MR. DOAK: The water table?

MR. MCCANN: Yes.

MR. DOAK: I don't know, are we talking about a flood plain elevation versus a water table?

MR. MCCANN: I, well, that's what you said in, when Mr., when Judge Mayhew asked you isn't it true that the water table is extremely high. This is at page seventeen of your

testimony. You said yes. So, I don't know what you meant when you answered that question but --

MR. LANZI: I, I'm going to object. When did Mr. Mayhew get involved in this hearing? I don't follow this.

MR. MCCANN: He held, he held the hearing in this case.

MR. LANZI: Are, are you saying of the transcript?

MR. MCCANN: I have the transcript, yeah, I have it right here.

MR. LANZI: Okay.

CHAIR: (inaudible) prior testimony, Mr. Lanzi. Right, Mr. McCann?

MR. MCCANN: That's correct.

MR. LANZI: Okay.

MR. MCCANN: I'm not, I'm not trying to catch Mr. Doak in a lie, I'm just ask, I know he wouldn't do that. But I'm asking him, it was his word, not mine, or Judge Mayhew's word, which he didn't disagree with. I'm just, you know, what, what's the difference between, is there a difference between water table and, and flood plain?

MR. DOAK: I, I use, I, I answered his question knowing what he really was asking. That's not the right terminology.

MR. MCCANN: Okay.

MR. DOAK: Water table usually means sub-surface,

okay? But what you're talking about is a flood plain elevation. And what we have here, the elevation is approximately ten through the middle of the proposed house footprint and in comparison to say twelve for his prior house and roughly thirteen for Mr. Dawson's house.

MR. MCCANN: Okay. But that wasn't my question. My, my question was about the water table, and it is extremely high, right?

MR. DOAK: It's similar, as a matter of fact, it's, it's no more than most places in this, along that, that road.

MR. MCCANN: Did you look at the water table at all the properties along Cherwin Road?

MR. DOAK: No. No, no, no, no. But you can see the, on Petitioner's exhibit number one, you can see the contour elevations there. You can see ten, twelve and thirteen in the way of contour intervals. And those are taken from GIS.

MR. MCCANN: Okay. Well, what, what you said, and I'll move onto storm water management as I indicated I would, that storm water management, that will be addressed as part of the County's review, correct?

MR. DOAK: That's correct.

MR. MCCANN: So, sitting here today, certainly you testified about it in your direct examination, other than to generally talk about it, we don't know what will be submitted to the County or what the County will improve, approve, sorry,

in terms of storm water management, fair?

MR. DOAK: Not as to specifics, no.

MR. MCCANN: Okay. Have you, have you prepared a storm water management concept plan?

MR. DOAK: I don't even know what the size of the house or how much impervious we will have. So, I can't do that yet.

MR. MCCANN: Okay. Well, you know, I understand that may, that may be a good argument in the development plan case, but we're here on a, on a variance case and a 304.1 case. How is, how are we able to have, how is the Board able to reasonably conclude that this house will not have an impact on adjoining properties, from a storm water management perspective, without knowing what, what the plan may look like or whether we'll ever be approved?

MR. DOAK: Because the required steps to be able to get approval for a permit --

MR. MCCANN: Yeah, but that may change the plan. You certainly submitted storm water management plans that resulted in a, in a, in a change of plan, correct?

MR. DOAK: Please ask that again, I don't understand that.

MR. MCCANN: Have you ever submitted a storm water management concept plan that, as a result of changes required by the County, resulted in a change to the development plan or

site plan?

MR. DOAK: Yes.

MR. MCCANN: That's happened?

MR. DOAK: Yes.

MR. EVANS: Mr. Doak, I think you (inaudible) BCZR than I do, but is there a separate appeal process for building permits under these circumstances? Do you know?

MR. DOAK: Well, Mr. Evans, there is the normal, well, I won't say normal, there is the written procedure under 304, Section 304, where you file for a building permit with the elevations and the grading and site plan, and then in turn, then that's reviewed, then it's advertised and then a hearing may come from that. So, that's a little different then, then the way we're going about it now.

MR. EVANS: So, I guess my question is what, what opportunity is there for the neighborhood to have input into the building permits for the Kestner property, if any? Is there any formal way for them --

MR. DOAK: No, sir. No, sir. It's all done through the County. The County is going to require us to shoot topography out here, they're going to require us to show accurately the foot, proposed footprint and the drainage in each direction and how we're going to address it into facilities, whether there will be a drywell or anything. And then, how much impervious or how much area will be drainage

onto the roads. So, all that is taken into consideration as a part of the building permit process.

MR. EVANS: Okay.

MR. MCCANN: And there's no (inaudible) appeal per se to a building permit, that, that, in other words, the person who is seeking the building permit, if his building permit is denied, he can seek, he or she can seek an appeal of that decision, correct?

MR. DOAK: That's correct.

MR. MCCANN: Okay. I think that's all I have, Mr. Doak. Just bear with me one second. Nothing else, thank you.

CHAIR: Mr. Doak, I have one question that's kind of following up with, you may have answered it in answering Mr. Evans' question, but the storm water management plan that you just mentioned, I mean, suppose that the, the County says, you know, you know, Mr. Owner, you've got to do x, y and z. And they're, they're so out of the ordinary that the neighborhood may not appreciate some of those, you know, County, you know, storm water management plans. Is it right to say that they would have no path to object to it?

MR. DOAK: No, sir. I mean, it wouldn't be a formal path but, by all means, they can go, and they can meet with and discuss it with the reviewer from storm water management as to their concerns. And I, I know from experience that the reviewer would at least take it into consideration and would

look into it.

But, if you look at something else, I mean, you're worried about the runoff here, if you look at Petitioner's exhibit number one, if you would, please? Neil, can you put up Petitioner's exhibit number one?

MR. LANZI: I don't have the --

MR. DOAK: Oh.

MR. MCCANN: I can, I can.

MR. DOAK: Thank you.

CHAIR: We'll get there in a second, Mr. Doak, because I, I wanted to make sure Mr. McCann was wrapped up and I was going to give it over to Mr. Lanzi here.

MR. DOAK: Oh, okay.

CHAIR: (inaudible) there is a path here, it's more of an informal path (inaudible) about the runoff, but maybe design of the storm water manage, you know, management.

MR. DOAK: Yes, sir.

CHAIR: (inaudible).

MR. DOAK: And the one, like the one that's going in across the street or any others around that area they do it in common practice and most, all of that is, almost all that is underground in the way of drywells. So, you wouldn't even notice it on a lot like this.

CHAIR: All right. Well, thank you, Mr. Doak.

MR. DOAK: You're welcome.

MR. EVANS: Mr. Doak, can I go back to what I was asking because I, I was trying to look at the, you know, 304.1, which has a cross reference to Section 4 (inaudible). And what, what these two provisions, you're correct. This was, this was submitted as a Petition for Special Hearing, right?

MR. DOAK: Yes, sir.

MR. EVANS: To seek a variance. But if, if they had followed, if the, if Mr. Kestner had followed 304.1 and 4-A-03.2, then, then, then there would be an opportunity, would there not, for neighbors or concerned citizens, I should say, to actually have formal input into the issuance of building permits. That's how I read it. I could be reading it wrong, but.

MR. DOAK: No, you are right. But if you look under 304.1 or 2, excuse me, B-1 or B-2, they would be, they would be given an opportunity for, you know, the aesthetics of the house, those things. And then, then we would, under 3, you would usually give them a preliminary site plan or under 1.1, we'd give them a preliminary site plan. Would we, would we go into full storm water management design and the cost and time for that? No, sir.

MR. EVANS: Well, except that storm water management is a pre-requisite to the issuance of a building permit and the building permit can be appealed under 4-A-304.3, 4 and 5.

MR. DOAK: Yes, sir.

MR. LANZI: That's, that's if you're, Judge, that's if you're in Bowley's Quarters and Back River Neck.

MR. EVANS: Is that all that applies to?

MR. DOAK: Yes, sir.

CHAIR: Yes.

MR. LANZI: Yeah.

MR. EVANS: So, I'm completely, I just want to make sure I'm incorrect or correct, I mean, I'm not trying to trick anyone. I'm just trying to understand the, the (inaudible) of these sections.

MR. DOAK: You're correctly incorrect.

MR. EVANS: Okay, good. Mr. Lanzi, what, maybe you could help me here.

MR. LANZI: Yeah, I mean, I don't believe this property is, I know it's not in Bowley's Quarters, I don't believe it's in Back River Neck either.

MR. EVANS: Okay.

MR. LANZI: So, this is a specific growth management plan. So, the qualifier that you mentioned in 304.1 does not apply here.

MR. EVANS: Okay, okay. All right.

MR. MCCANN: (inaudible) Mr. Evans, that, or maybe Mr. Doak is correct, that 30, this process that's called for in 304.2, etcetera, does not a process that considers anything, at least based on the, the plain wording of 304.2, anything other

than design, architectural design and site design as opposed to the more substantive issue of storm water management.

MR. EVANS: Well, I don't know. If it doesn't apply, it doesn't apply, by its terms, but whether it would include a storm water management plan, I, I would have to be convinced that it doesn't include that.

MR. MCCANN: I just, I would just look at those things that it does include, and that they don't, they don't appear to be of the same --

MR. EVANS: Right, right. But it talks about the application for building permits, and you need the storm water management plan for a, for a building permit, correct? Or not?

MR. MCCANN: Yeah, but the only thing that the Department of PAI is, is required to make recommendations con, are those things that are identified in B-1, 2 and 3.

MR. DOAK: Yes.

MR. MCCANN: I think Mr. Doak --

MR. EVANS: Okay.

MR. MCCANN: -- Mr. Doak agrees with that.

MR. DOAK: Yes.

MR. EVANS: I, I'm sure he does. I mean, it helps his position.

MR. DOAK: Well, not, I would not say, but I wouldn't say outright that it does, so. I've just never done full storm water management when applying through a permit for 304.

MR. EVANS: But if Mr., if Mr. Lanzi's correct that this entire provision doesn't even apply here then this conversation is not necessary.

MR. DOAK: Moot.

CHAIR: Well, he's talking about the (inaudible), he's talking about the exception to the rule, the, the 4-A-03, which is the Bowley's Quarters thing.

MR. EVANS: Yes.

CHAIR: He's not talking about the whole thing.

MR. DOAK: Right.

MR. LANZI: Correct.

MR. EVANS: Right, right, just the 4-A-03.

CHAIR: Right.

MR. EVANS: If that's Bowley's Quarters then, and --

CHAIR: Back River.

MR. EVANS: -- Back River then, and if that's all it is, limited to that, then I'm completely wrong and I --

CHAIR: And the property doesn't exist in that section.

MR. EVANS: And, and that this property doesn't exist in that section, then I, I am sorry for wasting everyone's time.

CHAIR: Mr. McCann, I, I thought I heard you say that you had no further questions for Mr. Doak? Mr. McCann?

MR. MCCANN: (inaudible).

CHAIR: I thought I heard you say that you had no further questions for Mr. Doak?

MR. MCCANN: Yeah, I was thinking about whether I wanted to ask him in light of your questions but I'm, I'm going to refrain.

CHAIR: All right. Mr. Lanzi, do you have anything on, on re-cross?

MR. LANZI: I do. Mr. Doak, just to follow up on the most recent topic of the storm water management. So, Mr. Doak, in your experience, I, and I know you're not an engineer, but just your experience with development and land use, is it the typical County method of dealing with storm water management plans to look at the impact, or possible impact, on neighboring properties?

MR. DOAK: Yes, sir, it is.

MR. LANZI: Okay, all right. I have a couple other questions. And, and also, just to make sure I understand after, after listening to Judge Evans, they would still have to go through 304.2, they being the applicant, where they would submit the building permit plan and then there would be all the input from the planning office and the director, I guess it would be the director of permits, approvals and inspections, is that your understanding?

MR. DOAK: Are you talking about our subject lots?

MR. LANZI: Yes, so, --

MR. DOAK: No, they would not.

MR. LANZI: So, but they would have to file for a building permit and the building permit has its own set of requirements and reviews, just --

MR. DOAK: We would not have to go through the steps of 304.2 when applying for this. That's what this hearing was meant to do, is be pro-active on that.

MR. LANZI: However, when you file for a building permit, there are different reviews by the various departments before the permit can be issued.

MR. DOAK: Oh, yes, sir.

MR. LANZI: Okay. That, that was the point I was trying to make.

MR. DOAK: Yes, sir.

MR. LANZI: Okay, just a couple other questions. Early on in your cross examination, there was questions about houses being built back in the, I guess, twenties, thirties, pre-zoning regulations. Is it true that the Dawson's house was built within the last thirty years, or do you remember when the Dawson house was built?

MR. DOAK: The, the Dawson house was built in 1989.

MR. LANZI: And how about the Wallace house?

MR. DOAK: The Wallace house was built in 1998.

MR. LANZI: So, if time permitted, and I'm not asking the Board for this time, but if time permitted, you would be

able to go back and check out some of those properties that were shown you by Mr. McCann in the exhibit, and you would be able to identify houses that were built within the last thirty years.

MR. MCCANN: Objection. That's a complete and utter speculation. You would be able to identify such houses, that's, I can't imagine, I can't imagine anything more speculative than that.

MR. LANZI: He just identified two and if we need, if the Board needs it, we would need the time for him to do that.

MR. MCCANN: Mr. Dawson has five, he doesn't have a two-lot problem. He owns more than two lots (inaudible).

MR. LANZI: I understand. The question was the years the house was built.

MR. MCCANN: It doesn't matter what years the houses were built if you have more than two lots.

MR. LANZI: But that was not the, that was not the (inaudible) --

CHAIR: To Mr. Lanzi and Mr. McCann, Mr. Lanzi, so you objected on what grounds, Mr. McCann, speculative?

MR. MCCANN: So, the question posed, unless I misheard it was, whether Mr. Doak, given the time, could go back and look and find other houses that were not built prior to the zoning regulations. And I think, I don't think the question went much further than that. But that's suggesting

what he might find if he did that search and I think that's speculative.

CHAIR: I, I mean, I, Mr. Lanzi, what's your reaction to that?

MR. LANZI: Well, we've already established through Mr. Doak's exhibit that there were many properties that are fifty-foot lots. And then, I guess, in the Protestants' exhibit, they're establishing some of the houses were built on more than two lots, some were built before zoning regulations.

MR. MCCANN: That's not accurate. That's not accurate.

MR. LANZI: That's exactly what was established. But in any event, let me finish, I may ask for a break after my re-direct, for us to do a little search to confirm or not confirm, that there, some of these houses that are objecting, are on two lots and their houses were built after the zoning regulations. That's all. I may be asking the Board's leave for fifteen minutes to do that.

CHAIR: But I think the, I, I guess the question of Mr. Doak is could he find all those lots given enough time and I think the answer is yes, right, Mr. Doak?

MR. DOAK: It would have to be based solely on the SDAT records.

CHAIR: Yes.

MR. DOAK: While I'm sitting here in my office. But

I would say yes that I would have that opportunity in fifteen to twenty minutes.

CHAIR: Well, there are two questions there. One is, is, whether you could do that if you had (inaudible) amount of time and, and you're going to live for twenty years and the answer is I think you could do that, right?

MR. DOAK: Yes.

CHAIR: And the second question is, what I think what Mr. Lanzi is asking for is, he's asking for judicial indulgence here after he wraps up his testimony with you to maybe bring you back up to ask you maybe a couple other questions (inaudible) to see if he can find some rebuttal evidence to Mr. McCann's arguments. And, and I think, Mr. Lanzi, I think the answer to Mr. Doak is yes, given enough time, he could find all those things on all those properties.

And Mr. Lanzi, I think the answer to you is if you need a few extra minutes at some point (inaudible) do a little research, just like Mr. McCann did during lunch, we can give you fifteen minutes if you think you can do that sufficient. You know, otherwise, maybe you can continue and if we need to revisit that, we can do that. How's that, Mr. Lanzi and Mr. McCann?

MR. MCCANN: I, you certainly are making the decisions, not me, Mr. McComas. (inaudible) --

CHAIR: All I was asking was whether you had any

objections to it. So, if you're not objecting, Mr. Lanzi, do you have any objections with that or any clarifications on that?

MR. LANZI: (inaudible).

CHAIR: (inaudible).

MR. LANZI: Yeah, I'll just reserve the right to call, recall Mr. Doak after the Protestants' case. But I have a couple more questions.

CHAIR: Sure. Proceed, Mr. Lanzi.

MR. LANZI: All right. Mr. Doak, also to clarify some of your earlier testimony on cross, our, our case, our, Mr. Kestner did not own, never owned six unimproved lots as compared to some of the examples given by Protestants.

MR. DOAK: That is correct.

MR. LANZI: Okay. If I recall correctly, four of our lots that were purchased by Mr. Kestner are improved and two are unimproved.

MR. DOAK: That is correct.

MR. LANZI: Okay and also, to maybe clarify the discussions on the five-foot issue with the garage and the thirty-foot rear setback with the garage, I believe you testified you didn't perform the survey but there was a survey done and plans done by, I think it's our Exhibit 7-B and C, which are identified but not entered. So, can we, am I able to pull up? Am I, do I have the, do I have the exhibits now? I

don't think I do.

CHAIR: Mr. Sampson, does he have the token?

MR. SAMPSON: It's still with Mr. McCann.

MR. MCCANN: Sorry, I was on mute again.

CHAIR: That's all right. I think we're just trying to get Mr. Lanzi the, the token.

MR. LANZI: I got it.

MR. MCCANN: Yeah, I don't have the share anymore.

MR. LANZI: I have it now.

CHAIR: Okay. You got it, Mr. Lanzi.

MR. LANZI: Okay. If I can find it. Okay, right there. Okay. This is another reason why Exhibit 7-B should be entered into evidence, but right now it's just identified only. Mr. Doak, can you see Exhibit 7-B?

MR. DOAK: Yes, if you can make the subject property larger for me? Then bring it down.

MR. LANZI: And this plan was prepared by a different survey firm?

MR. DOAK: It was, NT, NTT Associates.

MR. LANZI: Okay and do you have any reason to think that they may not have done a nice job on showing distances?

MR. DOAK: No, they're, they're a good firm.

MR. LANZI: Okay.

MR. DOAK: And if you'll, if you'll look at the, the, our subject property is outlined and then to the right is Mr.

Kestner's previous property, you'll see the garage, and you'll see that there's a five foot, plus or minus, offset. There also would be a two and a half foot zoning setback off the rear of that to our property.

So, if you tried to move that line one, you would be on or in the garage. If you moved it five feet, you would be on or in the garage and you definitely would be within the two and a half foot zoning setback.

And then, if you moved the five foot with the back of the house, you'd be within that setback there. You'd be right at that setback there. There, there is additional things that would require setback and that would be the porch and stuff on the back of it, but yeah.

MR. LANZI: Okay. There's, there's been also mention that this is a variance case. This is a special hearing case, correct?

MR. DOAK: That's correct. I don't know of any variances that are needed

MR. LANZI: And we're not dealing with the standards of uniqueness that are required for a variance, correct?

MR. DOAK: No, sir.

MR. LANZI: And in fact, you've been doing this for a long time and variance cases are not necessarily routinely granted anymore.

MR. DOAK: No, sir.

MR. LANZI: In fact, the variance in this case was denied.

MR. DOAK: It was. The twenty-five in lieu of forty was denied in the first case.

MR. LANZI: Okay. There was some discussions about if a subdivision had, the possibility of a subdivision had occurred on the Kestner's six lots. If, in fact, it had gone through a minor subdivision, let's, let's assume for this question that all six lots are unimproved and they went through a minor subdivision and the house was built, or strike that.

Let's assume the five foot of the Kestner lot was moved over to this lot and we didn't have to be here today, and the house was built. Would that, would that view out of the Dawson's side window change any?

MR. DOAK: As long as they used the entire building envelope, which, at that time then, would be thirty-five feet wide in lieu of the, instead of the thirty that we're proposing now. That it would look exactly the same, only the house may have more square footage.

MR. LANZI: So, it might, it might even be bigger?

MR. DOAK: It might even be bigger.

MR. LANZI: Okay, okay. That's all I have.

MR. EVANS: Can, can I go back to my weirdness here? Mr. Doak, you said that the special hearing process utilized in this instance, which I think you, you're the one that initiated

it, correct?

MR. DOAK: Yes, sir I am.

MR. EVANS: Yeah, that this process was designed to supplant, you said 4-A-03, but actually, I think Mr. Lanzi is absolutely correct, that that wouldn't apply here. But 304.2--

MR. DOAK: Yes, it's to take the place of that or --

MR. EVANS: Okay. So, it takes the place of 304.2, but in, in 304.2, the review would include the architectural design in all those subdivisions. Now, we can't review that, can we? Because we don't have it.

MR. DOAK: Yes, sir.

MR. EVANS: Okay. So, --

MR. DOAK: I mean, we don't have it in this case --

MR. EVANS: -- (inaudible) this process, the other process you have (inaudible) input by the neighbors, do you not?

MR. DOAK: Of the architectural design, yes.

MR. EVANS: Yes, yes, yeah.

MR. DOAK: Nothing else. But keep in mind that, that architectural design is, is not, there is no criteria for architectural design. It doesn't, nowhere in zoning does it say it has to be, what materials you have to use, what (inaudible) you have to have, or how many windows. None of that is a requirement of zoning and it's only a preference of planning.

So, even though I would show it, which I have no opportunity now because it's going to be sold, but still, there's no requirements of it being any specific design.

MR. EVANS: So, so the fact that there's a review provided for architectural design is, is, in, in, is irrelevant?

MR. DOAK: Not irrelevant. What they wanted to do is make sure it conforms with the area. So, if you were, and it's not so much the design of it. I mean, if somebody wanted to build something that looked like a castle here, they'd have that right. The community may not prefer it, but they still have that right. What they're worried about is --

MR. EVANS: It says within fifteen days of posting of the building permit, any owner or occupant within a thousand feet, and that would include both the people who are in the first Kestner property and Mr. Dawson's, (inaudible) request for a hearing.

MR. DOAK: That's correct. Yes, sir.

MR. EVANS: Okay. But now they can't.

MR. DOAK: They are in it right now.

MR. EVANS: Not as to architectural design they're not.

MR. DOAK: So, but once again, the design can't be determined by the public or even the County agencies. That's up to the, that's up to the, the owner.

MR. EVANS: Well, apparently, it's not.

MR. DOAK: Well, --

MR. EVANS: It's not up to the owner. The, the neighbors have input, right?

MR. DOAK: They, they can make that part of their case, just like Mr. McCann could say that we're fine with this if you build a one story, twelve hundred square foot house. He could say that right now. How much weight you would give that and whether you have the right to demand that is another thing.

MR. EVANS: Well, --

MR. DOAK: What 304.2 does is gives people the opportunity to, for their day in Court, if they deem it, if, if they decide to and that's what we're doing here.

MR. EVANS: But we're not doing it as to the building permit.

MR. DOAK: As, as to --

MR. EVANS: As to whether or not it's an undersized lot and whether, you know, fifty feet is okay when it's supposed to be fifty-five feet, because it's an undersized lot it's grandfathered in. That's what we're here for. We're not, there is, I mean, the lot hasn't even been sold to the, you know, to the person who's going to build the house, so we have no house to examine.

MR. DOAK: We have no elevations, that's correct, sir.

MR. EVANS: But we don't have anything about the house.

MR. DOAK: We have the probability or the poss, at least we'll say the possibility, of it being eight, a footprint of eighteen hundred square feet.

MR. EVANS: Okay.

MR. DOAK: Now, whether it is thirty-five feet high or fifty feet, no, sir, we do not.

MR. EVANS: Yeah, well, okay. I have nothing, I have nothing --

MR. DOAK: If I may, one more thing is that, that would be no different than the people across the street starting to build theirs in, in, in the, the local, you know, the people within a thousand feet, we'll say, having an opportunity to give them their input on it. It's just not, it's just not a requirement. Or, or so.

MR. EVANS: Well, it, it, you say that, but I'm, I mean, I'm just looking at the language of 304.2 and 304.3 and 304.4 --

MR. DOAK: And I do a number, I, I, I do go through 304.2 as a building application and through this and the only thing that planning is, because there's no DRP, development review panel, in this area, like there would be in Ruxton or Pikesville or those, they just want to make sure that the, the, the house design conforms with the area. And they have that

same opportunity during building permit process also.

MR. EVANS: Okay.

MR. DOAK: Because planning gets to see a building permit.

MR. EVANS: Okay.

CHAIR: Mr. Lanzi?

MR. LANZI: I have nothing further.

CHAIR: All right. Mr. Lanzi, do you have any other witnesses?

MR. LANZI: Not at this time. I'll just reserve --

CHAIR: Sure.

MR. LANZI: -- to bring Mr. Doak back. I, I do want to again offer Exhibit 7-B, 7-B, Petitioner's 7-B into evidence.

CHAIR: You know, this one is to, you know, is not for res judicata, but more for, I won't say repairment of a witness, but response to Mr. McCann's, and some of the, his questions about the thing. And I, I, I, to me, we should admit on those grounds. Mr. Lanzi, I think we should admit it. Mr. McCann, do you have any objections?

MR. MCCANN: No, I think it's helpful to us and I want to ask him questions about it.

MR. EVANS: Yeah, I agree with that, yeah.

CHAIR: Okay. Mr. McCann, you want, you want to follow-up --

MR. MCCANN: I do, I have a couple follow-up to what's, to, to what's, the discussion that's been going on so, I do. Just a couple though, Mr. McComas. May I proceed?

CHAIR: Yeah, go ahead, sure.

MR. MCCANN: Okay. Real quick, and I (inaudible) that 7-B now is, I can't, unless I can share.

MR. LANZI: You want me to give up the baton? I'll give up the baton.

CHAIR: Mr. Sampson, I think you may have to do it.

MR. SAMPSON: Working on it. (inaudible).

MR. MCCANN: While he's doing that, Mr. Doak, regardless, regardless of whether this, this hearing, by the way, before the Board is just not a Petition for Special Hearing, it's also a Petition for Variance before this Board as we sit here today, correct?

MR. DOAK: Yes.

MR. MCCANN: Okay.

MR. LANZI: There is not. It, it was deemed moot. It was withdrawn at the, at the ALJ level, it was deemed moot.

MR. DOAK: Right.

MR. MCCANN: So, you're saying --

MR. LANZI: So, (inaudible) variance case here today.

MR. MCCANN: We, we appealed the case. We appealed the entire case and before Judge Mayhew was both the Petition for Variance and the Petition for Special Hearing. I don't

think it matters much, but that's the state of things.

MR. LANZI: Well, we, we withdrew our Petition at the ALJ level, which he determined it was moot and he based his decision on 304.

CHAIR: Yeah, I'm looking at the Order now.

MR. MCCANN: Okay. As I read the decision itself, it refers to the first Petition at the beginning.

CHAIR: At the end, the Order is, is granted on the 304 and moot on, on the 1-B.

MR. MCCANN: So, how does that not, how does that not make it in front of the Board? I'm not sure I understand that. But, how is that not, just because that's what the Judge ruled, we disagree with that. So, but --

MR. LANZI: That issue was taken off the table at the ALJ hearing.

MR. MCCANN: No, it was rendered moot by a decision that we appealed. But in any event, I'll move on, I'm sorry.

CHAIR: Keep going, Mr. McCann. I, I think your point is taken.

MR. MCCANN: Okay. I'll move on. Sorry about that. I just wanted to, I don't want to beat a dead horse (inaudible). This, this plan that we were just looking at, shows 35.2 feet (inaudible) the rear property line, correct?

MR. DOAK: Yes.

MR. MCCANN: Okay and I'm sorry, I'm trying to find

it real quick here. It's 7-B. And you, I think it's an overstatement to say you swore by this survey, but you, you certainly espoused its accuracy. So, this very plot that you were relying upon, shows 35.2 and the rear yard setback, just from this zone again is thirty feet, correct?

MR. DOAK: That's correct.

MR. MCCANN: Okay. Okay. I'll leave it at that. Thank you, Mr. McComas.

CHAIR: All right. Okay. Mr. Lanzi, you, you have no other witnesses. So, Mr. McCann, do you have any witnesses you'd like to call?

MR. MCCANN: Yeah, just a couple and I think they'll be quick. No experts, just community folks.

CHAIR: Okay.

MR. MCCANN: So, hopefully, they're here. I haven't checked in with them, but Mr. Dawson, is he available?

CHAIR: It looks like he's a participant on, on my, on my, on my dashboard.

MR. MCCANN: Okay, great.

MR. SAMPSON: (inaudible). I have to move him from attendee to participant.

CHAIR: I see.

MR. SAMPSON: Give me one second here.

CHAIR: Yep.

MR. SAMPSON: He should be able to hear you, but I

think (inaudible).

CHAIR: Yeah.

MR. SAMPSON: All right. He's in and he's unmuted. I don't see him, but he's in.

MR. MCCANN: Mr. Dawson, are you with us?

MR. DAWSON: I am. Can you see me now?

MR. MCCANN: There we go.

CHAIR: There we go.

MR. MCCANN: Great, --

CHAIR: Can you swear him in, Mr. Sampson?

MR. SAMPSON: Can you raise your right hand, please, Mr. Dawson? I can't see you for some reason on my screen. Is your right hand raised?

CHAIR: He's got his hand raised, I can see him, Mr. Sampson.

MR. SAMPSON: All right, thank you. Do you swear and affirm under the penalties of perjury, that the testimony you are about to give is true and correct to the best of your knowledge and belief?

MR. DAWSON: I do.

MR. SAMPSON: Please, again, state your name and address for the record, spell your last name, please.

MR. DAWSON: John Dawson, D-A-W-S-O-N. My address is 13215 Cherwin Avenue, Middle River, Maryland 21220.

MR. SAMPSON: Thank you.

MR. MCCANN: Okay, thank you, Mr. Sampson. Good afternoon, Mr. Dawson. We've said your name a couple times in this hearing but just for the record, tell us where your, where is the property that you just identified in relation to the subject properties?

MR. DAWSON: If you're facing my house, it is to the left. It's the front two, or the lots to the left of my driveway.

MR. MCCANN: Okay.

MR. DAWSON: If you're facing out, they're to the right.

MR. MCCANN: Okay and just by way of background, what do you do for a living, sir?

MR. DAWSON: I am a sergeant with the Baltimore County Police Department in the Burglary Unit.

MR. MCCANN: Okay and how long have you lived at this, at the property you identified?

MR. DAWSON: Since August of 2017.

MR. MCCANN: Okay and who do you live with?

MR. DAWSON: My wife and my two children.

MR. MCCANN: Okay and have you sat through the hearing this morning and this afternoon?

MR. DAWSON: I have.

MR. MCCANN: Okay, you've had that pleasure.

MR. DAWSON: Yes, sir.

MR. MCCANN: So, would it be fair to say that you're familiar with what's been, what's been proposed?

MR. DAWSON: Yes, sir.

MR. MCCANN: And you, I think it's accurate to say that you were also involved in the cases before, correct?

MR. DAWSON: That is correct, sir.

MR. MCCANN: Okay. So, just, tell the, tell the, the Board, what, what it, what it is that are your, what are your concerns about the project?

MR. DAWSON: My concerns are that it's going to have a negative impact on my property, the surrounding area, the roadway, as well as possibly reducing my property value. I know when I bought this house, I bought it because the houses spread out throughout the area was, if there was a house already on that lot, I probably wouldn't have purchased it. I would have moved onto something else.

That area floods a lot. I've seen it firsthand, and the water, not only is it storm water that you've been speaking of, but there's also coastal flooding where if you have a storm surge or an extra high tide, it will come in and encroach upon that property. So, obviously water has to go somewhere and it's going to end up, I believe, and from what I've seen, and a reasonable person would believe, it'll end up on my property and do damage to my, my home, my area.

MR. MCCANN: (inaudible) point before we move on,

you've heard testimony today that, from Mr. Doak regarding how the property slopes. And I think the suggestion was that it, it slopes from your property, at least part of your property, towards the subject lots. Could you describe a little bit about how that is, number one, is it true? And if it's not true, how, how you see the water flowing?

MR. DAWSON: There's a grade that goes from my driveway towards the, that property. But also, that property, when the, when the water does come up, it will come into my driveway from his property. So, it will come over into the driveway as it is now already. But there is a slight grade away from my home as, I want to say most homes, you have a grade away from it, so water doesn't come into it.

MR. MCCANN: Is it a grade away the entire length of your property line or is it just a portion of it –

MR. DAWSON: A portion of it.

MR. MCCANN: Okay. And in the short time you've lived there, you've lived there four or five years or so, have you seen flooding on your property on a number of occasions?

MR. DAWSON: Not so much onto mine, it does come into my driveway as it stands right now. So, yeah, a little flood onto my driveway but not as much as it does onto the lots next door.

MR. MCCANN: Okay and we'll, we'll show some pictures about that. But I wanted you, if you could, be a little more

specific about why you think this house, as you've heard it today, will impact you. And, including, among other things, how it, you think it will impact your property values.

MR. DAWSON: So, when I purchased this house, I loved the views out of the windows up, actually, lower level and top levels, it's a split-level home. You can see the water clearly. It's right smack dab in the middle of where the Bird River and Gunpowder River meet, so it's a beautiful area. I, I loved it like when we came in. The house next door, it was just a normal house, there was no giant structure in the backyard.

With this, I know it's going to take away from my views. I know it's going to, like I said, for me personally, I wouldn't have purchased the house and as a normal person would, I wouldn't think anyone would want to purchase a house with a giant structure right next to basically up in front of their house. So, I just, for me, I wouldn't want to do that and for, it would lower my property values is what I would assume.

MR. MCCANN: Okay. Well, there, there, there's certainly a suggestion today from opposing counsel that this type of thing is, is all over your neighborhood. Is that, is that an accurate statement? That is, obstructed views?

MR. DAWSON: No, I wouldn't say that's an accurate statement. There, this is an old community, so there were shore shacks around the side, around the waterfront.

MR. MCCANN: Yeah.

MR. DAWSON: People, obviously, will build bigger houses on the waterfront as, you know, times go on from those shore shacks. But there's not really any building going on in, on across from that, at least what I've seen since I've been in the neighborhood.

The one house that they alluded to earlier across the street, trees actually fell on that house and that's why it was taken down. It was two trees actually in a storm prior to the pandemic starting and it had been in disrepair and obviously the owner is going to do it at his pace, but that, that is what happened with that house.

MR. MCCANN: That's why it's being rebuilt?

MR. DAWSON: Yes, sir.

MR. MCCANN: Okay.

MR. DAWSON: (inaudible) shed, there was a house and a shed.

MR. MCCANN: Okay. You mentioned your view. Do you have a view, do you have windows on the side of your house? That is, when you're facing it, we can see it from the photographs and we'll look at some more, your side, what's that?

MR. DAWSON: Not on the side, just so I have a bay window on the front and a, a double window on the bottom that would face that side.

MR. MCCANN: So, from your windows that you just described, if you were to look sort of to the right, standing in your house, you would be able to see clearly this building?

MR. DAWSON: I'm looking right through my window right now and I would see exactly where it is, and I'm sitting in the middle of my lower level, and I would, I'm looking right now at it. I would see directly, I would see a house, a giant house.

MR. MCCANN: Okay. In either your first floor or second floor, do you have, presently, do you have views of the water in that direction?

MR. DAWSON: Yes, both, both, both floors, and from my back deck where if you were looking off towards the side, that's all I would see is the house.

MR. MCCANN: Okay. Any other ways, I want to, I may have cut you off in terms of how you think it has impacted you, or will impact you, and, or if you've described --

MR. DAWSON: I know that it will impact this area ecologically, I would assume, because there's so much, being, being where we are, there's bald eagles, there's all types of waterfowl. It, very regular during the summer, to see all types of waterfowl in the yard, frogs, turtles, all, all that type of stuff being right here on the water.

Which, like I said, it's a small community and having something like that also put in where there wasn't a previous

structure before is going to disrupt more than, than whatever development already is going on.

MR. MCCANN: Okay. The, I wanted to go through a couple exhibits with you, if I could, real quick.

MR. DAWSON: Sure.

MR. MCCANN: There's some photographs I want to go through quickly because I think the Board, I mean, I won't go through them slowly. I think the Board is familiar with the property by now. Okay. This would be Protestants' Exhibit 10. There are fifteen pages to this and, unfortunately, I did not number, or letter these pages. So, I, I may just identify them by, you know, the first picture, the second picture, etcetera.

So, let's go through this quickly if we could, Mr. Dawson. Tell us what the first photograph in Exhibit 10 shows us.

MR. DAWSON: That would be at the edge of my property against Mr. Kestner's lot. You can see the property stake right there at the bottom of the picture.

MR. MCCANN: In the foreground that's the property stake?

MR. DAWSON: Yes, sir.

MR. MCCANN: Okay. The fence that we see to the righthand side, was that fence installed since you've lived there?

MR. DAWSON: Since I lived here, yes. It was after

the property was sold. The house was sold.

MR. MCCANN: Okay. It was, it was installed after Mr. Kestner sold the property?

MR. DAWSON: Yes, the new owner put that up.

MR. MCCANN: Okay. So, so, you, when, for a period of time when you lived at this property the fence was not there, right?

MR. DAWSON: Correct. It was never there until the new owner moved in.

MR. MCCANN: Okay and during that period of time, Mr. Kestner was living on the property, that is, the four parcels to the right of you that we've been talking about?

MR. DAWSON: Yes, sir.

MR. MCCANN: Okay and during the time that you, you lived there and during the time that Mr. Kestner lived there, have you ever seen him or other, other persons visiting him, use the, these two lots that we're looking now at in this, in this first picture?

MR. DAWSON: Yes, it was used like a backyard, like you normally would. There was a swing set, a firepit, there was, he would regularly have gatherings of friends and family, I would assume, but it was gath, social gatherings out there where people would be throwing the ball around. I believe he had dogs as well. It was, it was used as a normal backyard would. Like any one of us sitting here would use our backyard

for to, to entertain.

MR. MCCANN: Okay. You mentioned a swing set. Did, did he have, did, does he have children, do you know?

MR. DAWSON: He had children, yes.

MR. MCCANN: Okay and I take it they would use the swing set and you would see them do that?

MR. DAWSON: Yes. Right before I, because I recall probably, exactly, because right before he moved, I guess when he was putting it up on the market, he tore the swing set down and actually burned it in the fire pit.

MR. MCCANN: And, and where in this area was, was the swing set and the fire pit, just --

MR. DAWSON: It would have been right off to the right, over by where the fence is. There's a large, there's a very large tree over there, right up against that fence line. It was right over by that tree and the fence line. And the fire pit was offset, closer to the property line, my property line, I should say.

MR. MCCANN: Did you see him take care of these, these two parcels?

MR. DAWSON: Yes, so, like when he would cut the grass, he would cut all the grass, you know. We would wave to him as he was on his riding mower. There was actually, and when he would do it, he would do everything at once.

There was a tree actually at the end of where the

road, where the parcel is, up by the road and it came down. He was out there with, with his family cutting it up and getting it taken care of because it actually came down in one of the storms.

MR. MCCANN: Okay. Other than things you mentioned, you said the swing set, the firepit, the social gatherings, can you think of any other, the mowing of the lawn, taking care of the tree, anything else? Any other specific ways in which you observed Mr. Kestner and his family using these two parcels?

MR. DAWSON: No, like I said, just like it would, a normal backyard and that's how I observed it when I, I would come pull in, I'd wave, say hi to him. It's just like you would have a normal backyard.

MR. MCCANN: Okay and the, the things that you described as observing, did you see those things on a regular basis?

MR. DAWSON: Yes, I did.

MR. MCCANN: Okay. All right. The second photograph --

MR. EVANS: So, I, I'm sorry, Mr. McCann. What, what is, is there an exhibit number on what we just looked at?

MR. MCCANN: This is Protestants' Exhibit 10, photograph one.

MR. EVANS: Okay, all right.

MR. MCCANN: Sorry. There are fifteen photographs

here and I did not number them individually, so they're all --

MR. EVANS: Okay. So, it's going to be 10-1 through 15, or 10-A through something?

MR. MCCANN: Yes, one through fifteen.

MR. EVANS: Okay. Thank you.

MR. MCCANN: Okay and then the second photograph in this exhibit, Mr. Dawson.

MR. DAWSON: Yes.

MR. MCCANN: Just describe what it is I'm showing you as we go.

MR. DAWSON: Just standing a little further back from the property line, the edge of my driveway up to the front of my house taking a picture over of how close it is and how small that lot is compared, you know, obviously we know what the width is but how it actually looks when you look out front of my home.

MR. MCCANN: Okay, all right. The third photograph in Protestants' Exhibit 10. Do you see that?

MR. DAWSON: Yes, that's my driveway down by the street, down by Cherwin looking out over the, the two plots. Just again, showing the, the width of it and how the new owner had put up a fence around the area.

MR. MCCANN: Okay. The fourth photograph, that's your house on the right?

MR. DAWSON: Yes, just showing where my house is in

relation to it, my driveway next to the lot.

MR. MCCANN: Okay.

MR. DAWSON: You can see the bay window up front.

MR. MCCANN: Yep. Okay. The fifth photograph, fifth photograph. That may be, looks like it would be the same as before. The sixth photo --

MR. DAWSON: Down, yes, that's down the middle of Cherwin Avenue looking down towards, you can see my driveway and the lot where Mr. Kestner has for sale.

MR. MCCANN: Okay. The seventh, I'm sorry, yeah, the seventh photograph in Protestants' Exhibit 10. This was taken from your, it looks like from your window.

MR. DAWSON: Yes.

MR. MCCANN: Okay and when was this taken?

MR. DAWSON: I, I want to say it was in 2020. It was after, obviously after Mr. Kestner sold the property, the house, because the fence is up. It was just a storm that came through, it wasn't anything big or crazy, it was just a, a storm. And that happens routinely in this neighborhood. Especially in, in that area of the neighborhood.

MR. MCCANN: So, what we're seeing in Exhibit, I'm sorry, photograph seven of Exhibit 10 is something that you see regularly?

MR. DAWSON: Yes, it's the river coming up and over, I guess, the bulkhead or whatever you want to call it.

MR. MCCANN: Okay.

MR. DAWSON: It comes across the street and actually gets, as you can see in the picture, the water gets pretty deep. If you look at the mailbox, that's right up at the road. It makes the road impassable for a lot of cars.

MR. MCCANN: Okay. The eighth photograph, same thing? (inaudible)?

MR. DAWSON: Same storm, just taking pictures of it to, to show the different areas of, of how the water (inaudible).

MR. MCCANN: Okay. The ninth photograph in this exhibit? Let me switch this around for you. Is this a different storm?

MR. DAWSON: This is a different day. This is, this is before the, the fence was put up. I want to say it was in 2019. I can't, I can't say the exact date. But yes, this is another time, and it was in, I don't even think it was raining that day. I just think it was an excessive high tide that we get routinely.

MR. MCCANN: Okay and this, this tree that we see on the right-hand side, is, is that the tree that you indicated was taken down?

MR. DAWSON: No, there was actually another tree that was up front that's not there anymore. It was more like a pine style tree. It was actually quite tall. I was very lucky

because when it came down, it fell straight and missed all of my cars in the driveway.

MR. MCCANN: Wow, okay.

MR. DAWSON: It was a larger, it was a larger pine tree.

MR. MCCANN: Okay, all right. The tenth photograph in Protestants' Exhibit 10, where are we here?

MR. DAWSON: This is the, that mailbox, I was just trying to show the depth of the water to the mailbox. And you can see actually the waterline, how high it got with the telephone pole and the mailbox right there.

MR. MCCANN: Okay. So, this is across the street?

MR. DAWSON: It's, yes, it's across the street, up against Cherwin Avenue.

MR. MCCANN: Okay. All right. The eleventh photograph, same thing?

MR. DAWSON: That's more down the street showing the water coming across from the, that, that high tide.

MR. MCCANN: Okay. The twelfth photograph?

MR. DAWSON: That was just, that's more towards the, the river, I took it, that's the house that was taken down because the trees fell on it.

MR. EVANS: That's, the white building is the house that was taken down?

MR. DAWSON: Yes, the white building and the blue

building is a shed. There were two trees that fell on it. They were on the river side of the house that came down on it like that.

MR. MCCANN: Okay. So, this is across the street from your house?

MR. DAWSON: Yes, that's across the street from my house right there.

MR. MCCANN: And this, this, this is not a road but rather a driveway on the left-hand side?

MR. DAWSON: That's a driveway for the residents to the left of that, it's a yellow house.

MR. MCCANN: Okay. The thirteenth photograph in this exhibit, where, where are we looking at here?

MR. DAWSON: We're looking down Cherwin, that's onto Mr. Kestner's property as the water was starting to recede. But you can see, it's still all the way up into the yard, past the tree.

MR. MCCANN: Okay and this is Gunder Road in the background here?

MR. DAWSON: Yes, yes, that's Gunder, and that's Cherwin right at --

MR. MCCANN: Right in here?

MR. DAWSON: At the corner, yes.

MR. MCCANN: And Mr. Kestner's property, when he, when he owned it was on the righthand side here?

MR. DAWSON: Correct.

MR. MCCANN: Okay, all right. The fourteenth photograph, let me switch this around for you. What is this?

MR. DAWSON: That is the, the drainpipe that runs out to the river for all the storm water that runs down. So, we have, I don't want to call it a valley, but a ditch, a drainage ditch, around the front of everyone's house and mine you can't see it because the County came in and put a pipe down underneath. But if you look at the edges of Mr. Kestner's property, the pipe runs out into that drainage ditch and it all funnels down and goes through there, out to the river.

MR. MCCANN: Okay. So, where's the river? To the, just above this?

MR. DAWSON: If you, if you were to lift your head straight up above that and look straight out, that's the river.

MR. MCCANN: Okay.

MR. DAWSON: That would be Bird River.

MR. MCCANN: Okay and the fifteenth photograph.

MR. DAWSON: That is the pipe that runs underneath the road across, you can see the drainage ditch, how the water funnels down into that from both sides and runs across out to that main drain out to the river.

MR. MCCANN: Okay. So, your property is up here?

MR. DAWSON: Correct.

MR. MCCANN: My pointer on the left-hand side.

MR. DAWSON: Yes, sir.

MR. MCCANN: So, the water comes down here, then goes under the road and heads towards the river?

MR. DAWSON: Yes.

MR. MCCANN: Okay. All right. Before I move on, I would move Protestants' Exhibit 10 into evidence.

CHAIR: And I suspect some of the other ones too, right, Mr. McCann? All these pictures, right?

MR. MCCANN: Yes.

CHAIR: Yeah, Mr. Lanzi, do you have any objection of admitting in these pictures?

MR. LANZI: No objection.

CHAIR: We'll admit them.

MR. MCCANN: Okay. Let me grab another exhibit. This is, can you see that, Mr. Dawson?

MR. DAWSON: Yes, sir.

MR. MCCANN: Okay. This is Protestants' Exhibit 11 and it's five pages. And this is, just, can you identify what this is for the record?

MR. DAWSON: It was a petition that the President of the Community Association, Mr. Tom Brookes, took around and had the neighbors sign who were in opposition of the variance/relief that the, Mr. Kestner was looking for.

MR. MCCANN: Okay. So, you, you didn't participate in collecting the signatures?

MR. DAWSON: No, I signed it but, but Mr. Brookes undertook that.

MR. MCCANN: Okay. I'm sorry, I thought you did. We're going to ask Mr. Brookes some questions so I'll move it in at that time if that's okay, Mr. McComas?

MR. LANZI: Sorry to interrupt. I, I'm, and I hate to object here but I believe the, the heading of this is confusing and, and inaccurate. It literally says variances, we're not here on variances for the fifth time. So, if this was presented to the neighborhood, then it's presented incorrectly, and I would have to object to all these signatures.

CHAIR: Well, Mr. Lanzi, I think that (inaudible) impeachment with Mr. Brookes, especially since Mr. McCann said he's going to call Mr. Brookes.

MR. LANZI: Okay.

MR. MCCANN: Yeah, obviously, we disagree about the variance as well.

CHAIR: Okay.

MR. MCCANN: So, okay. Let me stop sharing here. Let me get back to that. Did that stop sharing, did I stop sharing?

CHAIR: You stopped sharing, Mr. McCann. I don't see it.

MR. MCCANN: Okay, great. Thank you. Okay. Mr.

Dawson, I don't have any other questions. Were there any other concerns that you wanted to tell the Board about that you haven't brought up yet?

MR. DAWSON: No, just that, I strongly oppose the, I don't know what you want to call it, but being able to build a house on this lot. I know it's going back and forth between relief and variances. But I just, I strongly oppose it. I feel like it's going to have a negative impact on me. I feel like here, this is my, my forever home.

I plan on retiring here and this is not, I would not have purchased the house if that had been there to begin with and when I bought it, I would have never thought someone would have cut their backyard off and, and tried to sell it to a builder to build a, possibly a fifty foot hall, house, so I just, I just wanted to reiterate that I oppose it and that is all, thank you.

MR. MCCANN: Okay. Thank you, Mr. Dawson.

CHAIR: Mr. Lanzi, any, any cross?

MR. LANZI: I do. I was, I was wondering if we could have about a seven-minute break.

CHAIR: Mr. Evans, Mr. Sampson?

MR. EVANS: That's fine with me.

MR. SAMPSON: Yeah, fine with me.

CHAIR: Yeah, works for me as well. All right. So, we'll get back in at 2:30 here.

MR. LANZI: Very good, thank you.

CHAIR: Mr. McCann, you're sharing your screen and your e-mail, you probably don't want to be doing that. There you go.

(PAUSE)

MR. EVANS: Hello? Are we back?

MR. SAMPSON: I think you're a few minutes early. I'm here, but he said 2:30.

MR. EVANS: Oh, okay. Did someone call me?

MR. SAMPSON: I didn't, I didn't hear it.

MR. EVANS: Okay.

MR. SAMPSON: Came back at 2:27.

CHAIR: I can't hear you, Mr. Sampson. I hear, I hear your lips moving, but I can't, either you're talking away from your microphone or you're on mute.

MR. SAMPSON: I'm not on mute. Can you hear me now?

CHAIR: I don't know what the issue is. I've got my sound on my speakers (inaudible) hear you.

MR. EVANS: You can hear me, can't you?

CHAIR: I can hear you (inaudible). Mr. McCann, are you back?

MR. MCCANN: I am, thank you.

CHAIR: All right. So, Mr. McCann, it's still your witness, right? Oh, I'm sorry, Mr. Lanzi, you asked for a little break to prepare for the cross. Sorry, Mr. Lanzi, Mr.

McCann. Your witness, Mr. Lanzi.

MR. LANZI: Thank you. Let's see. All right. Mr. McCann, would you mind putting up your photograph exhibits, specifically, I want to look at photo one. Oh, I'm using it now? There we go. Okay, all right. Mr. Dawson, are you there?

MR. DAWSON: I'm here.

MR. LANZI: Okay, all right. Looking at Protestants' Exhibit 10, photo one, can you see the arrow that I'm showing? No? Okay. I guess because, because I'm not the person with the baton.

CHAIR: (inaudible) the cursor, Mr. Lanzi, but it, it's not on the picture. It, it's up in the, in the (inaudible) talking about, Mr. Lanzi.

MR. LANZI: Yeah, basically, Mr. Dawson, it appears to me that there's a, a, a, a slant that goes from where your truck is down into the Kestner property, is that correct?

MR. DAWSON: Yes.

MR. LANZI: Okay. All right and then you're indicating that the water sometimes comes up, I guess, part of the slope, not all the way back to the post, but comes onto the slope and onto your driveway?

MR. DAWSON: Yes.

MR. LANZI: And how far up the driveway does it come?

MR. DAWSON: Ten feet, maybe, sometimes.

MR. LANZI: Okay. Have you done, have you done anything to help with the water issues coming on your property? Have you taken any steps for mediation?

MR. DAWSON: No.

MR. LANZI: Okay and I don't know if there's another, well, I'll, I'll have to use one of my photographs but go, Mr. McCann, if you could go to photograph nine, I believe. What, what view is that from your property, Mr. Dawson?

MR. DAWSON: You have to scroll down a little bit so I can see. That would be from the front window.

MR. LANZI: Okay. So, you're looking out your front window and the house that's kind of in the middle to the right, is that a relatively new house?

MR. DAWSON: No, that's been there for, since I've been here.

MR. LANZI: Okay and the house to the left, was that also there when you bought your house?

MR. DAWSON: Yes, all those houses were there.

MR. LANZI: Okay. So, if you go further to the left, and I'll keep the photographs (inaudible), okay. Those are the houses that, I believe you said, one of them was like a shore shack that was destroyed and they're building a new one?

MR. DAWSON: Yes.

MR. LANZI: Okay. Do you know if the new house is going to be built like these that are in this photograph or is

it going to be more like the shore shack that was destroyed?

MR. DAWSON: I, I don't know.

MR. LANZI: Okay. So, I mean, if, if you knew that the one-story shore shack was going to be replaced by a two story would you, would you not have bought your property?

MR. DAWSON: I don't, it's across the street from my house, it's not in, wouldn't be in front of my house on the same side of the street. So, that wouldn't have changed my mind on that.

MR. LANZI: But isn't, isn't across the street through the houses your view of the water?

MR. DAWSON: Yes.

MR. LANZI: Okay. So, wouldn't a larger house --

MR. DAWSON: You can still see the water through those houses that are there now.

MR. LANZI: Right. But, but a larger house would further impact the water view, wouldn't it?

MR. DAWSON: Correct.

MR. LANZI: Okay, all right. I don't, Mr. McCann, you don't need to share anymore. I'm going to use my own exhibits now. So, I guess we'll have to switch.

MR. SAMPSON: Okay.

MR. LANZI: Okay, let's see. And there's a, this, this property is across the street from your house?

MR. DAWSON: No, that's more across from Mr.

Kestner's house.

MR. LANZI: Okay. Is, was this an empty lot or is this the shore shack?

MR. DAWSON: Next to the house that the trees fell on.

MR. LANZI: Got it, okay.

MR. EVANS: What exhibit number is that, Mr. Lanzi?

MR. LANZI: Okay. That is Exhibit 6-G.

MR. EVANS: Thank you.

MR. LANZI: All right. All right. I'm going to now go to where Mr. Doaks, I'm looking now at Petitioner's 5-D. So, this shot is taken from the road, looking at the front of your house, is that correct?

MR. DAWSON: Correct.

MR. LANZI: So, isn't it true that you have, do not even have windows on the side of your house that faces the Kestner property?

MR. DAWSON: That's what I told Mr. Kestner earlier.

MR. LANZI: Okay.

MR. DAWSON: I advised I have bay windows and if you look underneath the bay windows to, it's a double window that looks out panoramic, pretty much, of the river. I can see, I'm looking at it right now, looking out, I can see right across his lot to the, the water.

MR. LANZI: Right. The, the other view we were just

looking at, you had a clear view from your house to the water and it had, didn't even show the Kestner property, I believe, but. It, it's your testimony that a new house will block your view of the water?

MR. DAWSON: Yes, if you look at the back, actually, on the, there's a, a deck off the, the second story.

MR. LANZI: Um hm.

MR. DAWSON: If you, I have a, a table at the end there, if you look out, it'll just be looking at the back of his house, or a house that will be put there.

MR. LANZI: Okay. But when, when you bought the property there, there wasn't, there were empty lots next to you, correct?

MR. DAWSON: Well, it was his backyard. It was his whole property, it was one piece of land. It was like a normal house, like mine would be.

MR. LANZI: Well, that's, that's your testimony, but you've heard the testimony earlier that there, there were separate lots, two groups, two groups of lots. In any event, you're not a licensed real estate appraiser, are you?

MR. DAWSON: No.

MR. LANZI: Okay and you don't have storm water management expertise?

MR. DAWSON: No.

MR. LANZI: Okay and the flooding that you talked

about on, on your property is really just on your driveway about ten feet in?

MR. DAWSON: Yeah, right now.

MR. LANZI: Okay and you do, you do realize that if Mr. Kestner had gone through the subdivision process and, and built two houses, there would still be a house on the lot next to you, you understand that, correct?

MR. DAWSON: No, can you restate that again, I'm sorry?

MR. LANZI: There were a lot of questions from your counsel to Mr. Doak about the possibility of doing a, a subdivision. And then I also followed up with Mr. Doak about this, that the Kestner properties were not six unimproved lots, they were four lots with improvements and two without. But assuming, for the sake of this example, that the Kestner property, the four lots were shifted five feet over so we didn't have to be here today for this hearing, that would allow the second lot, second building lot, --

MR. DAWSON: I understand what you're saying.

MR. LANZI: Okay. So, if the property were subdivided into two lots, you would still be looking at a house next door, do you understand that?

MR. DAWSON: Unfortunately, I do.

MR. LANZI: Okay, all right. And then, you were also talking about I believe there was a swing set, a fire pit that

were on the property but then they were removed?

MR. DAWSON: Yeah, he burned the swing set in the fire pit.

MR. LANZI: Okay and then, but there wasn't a driveway there, there wasn't a different garage building there that was being used?

MR. DAWSON: No, there were horseshoe pits, I recall.

MR. LANZI: Okay. But, but not, not any permanent structures or anything?

MR. DAWSON: The horseshoe pits are pretty permanent.

MR. LANZI: Okay. Okay, I want to look at, bear with me. So, I see this, you have a fair amount of impervious, your driveway is quite large (inaudible). You have --

MR. DAWSON: Yes, I bought it like that.

MR. LANZI: Okay. Do you have a patio in the back?

MR. DAWSON: A deck.

MR. LANZI: Just a deck, okay.

MR. DAWSON: Just a deck.

MR. LANZI: Got it. That, that's all I have for now.

CHAIR: Mr. McCann, any, any questions, any more questions?

MR. MCCANN: I do not. Thank you.

CHAIR: All right. Mr. Dawson, you can step down. Thank you for your service (inaudible).

MR. DAWSON: It was greatly appreciated. Thank you,

sir.

CHAIR: Mr. McCann, do you have any other witnesses?

MR. MCCANN: Yeah, I think two more and, quick ones, quicker than Mr. Dawson. Is Mr. Brookes available?

CHAIR: Mr. Sampson, you have to do the honors, Buddy.

MR. SAMPSON: Yeah, I'm working on it. I'm not as fast --

VOICE: (inaudible).

MR. LANZI: Got it.

MR. SAMPSON: Mr. Brookes should be in, unmuted and now who needs the token?

MR. MCCANN: I do, if I could.

MR. SAMPSON: Okay.

CHAIR: Mr. Brookes, can you hear?

MR. BROOKES: Yes, I can hear you.

CHAIR: All right, great. To the extent you have a video capability (inaudible) enable your video, Mr. Brookes. There you go. We got you, Mr. Brookes. Nice job. Mr. Sampson, you got to raise your right hand, Mr. Brookes. Mr. Sampson will do the honors.

MR. SAMPSON: Thank you, sir. Do you swear and affirm under the penalties of perjury, that the testimony you are about to give is true and correct to the best of your knowledge and belief?

MR. BROOKES: I do.

MR. SAMPSON: Will you again please state your name and address, spell your last name for the record. Thank you.

MR. BROOKES: Thomas Brookes, B-R-O-O-K-E-S, I'm at 6903 Birdwood Avenue, Middle River 21220.

MR. SAMPSON: Thank you, sir.

MR. MCCANN: Okay, thank you. Mr. Brookes, how are you doing?

MR. BROOKES: I'm fine, thank you.

MR. MCCANN: Tell the Board where you live in relationship to the subject properties.

MR. BROOKES: I think I'm like five houses down the street, right around the corner.

MR. MCCANN: Okay. What's the name of your street again?

MR. BROOKES: Birdwood Avenue.

MR. MCCANN: And does that run parallel to or perpendicular to Cherwin?

MR. BROOKES: It would be perpendicular.

MR. MCCANN: Didn't think this would be a geometry test, huh? And how long have you lived there?

MR. BROOKES: Purchased my house in 2013.

MR. MCCANN: Okay. What do you do for a living?

MR. BROOKES: I'm a state worker, I work at Fort McHenry Tunnel.

MR. MCCANN: Okay. Are you an officer in the association?

MR. BROOKES: Yes, I'm the president of our community association.

MR. MCCANN: What, what's the name of the association for the record?

MR. BROOKES: The full legal name is, let me get the paper, because we usually go by just Twin River, but the real, the actual name is Twin River Beach Protective and Improvement Association, Inc., Incorporated.

MR. MCCANN: Okay. Now, are you authorized, well, tell us about the association. Who does it encompass? What, what homes does it encompass?

MR. BROOKES: There's a hundred and ten homes down in this community with, the streets are outlining, Birdwood, goes to Sherwood, goes to Gunder and then we have a couple streets in between, which would be Gundale, Powderdale and Birddale. So, in that little circle, only one way in and one way out, there's a hundred and ten homes already here.

MR. MCCANN: Okay and are you authorized to speak on behalf of the association and, and tell the Board its, the Association's position?

MR. BROOKES: Yes.

MR. MCCANN: Okay. Let me, I want to show you, if I could share, Mr. Sampson?

MR. EVANS: What exhibits are these going to be, Mr. McCann?

MR. MCCANN: This is going to be our Exhibit 17.

MR. SAMPSON: All right. Mr. McCann, I keep putting it on Mr. McComas by mistake.

MR. MCCANN: That's okay. I got it. Here we go. Okay. Mr. Brookes, can you see?

MR. BROOKES: Yes.

MR. MCCANN: Okay. I'm going to scroll down. These are what are, what we in the business call rule eight papers. And there's three documents in here. Just, I'll scroll through them quickly. But can you confirm for me that these are, that is your signature and the signature of your secretary, Teresa Lee?

MR. BROOKES: That is my signature.

MR. MCCANN: And is that the signature of Teresa Lee?

MR. BROOKES: Yes.

MR. MCCANN: Okay, great. I would move this in as Exhibit 16.

CHAIR: Any objections, Mr. Lanzi? Mr. Lanzi? You're probably on mute. Any objections?

MR. LANZI: Yeah, I wanted to, if I could have Mr. McCann slowly go down to what exactly the vote (inaudible). No objection to the rule eight in general, but I just want to see what they voted on.

MR. MCCANN: Sure.

MR. LANZI: Okay. No objection.

CHAIR: All right. So, we'll admit them.

MR. MCCANN: (inaudible). All right. So, Mr. Brookes, I'll ask you the same question I asked Mr. Dawson and that is what concerns does the association have about the proposed house?

MR. BROOKES: Well, like I said before, it's a small community with already a hundred and ten homes in here and then to cram another house in here, especially one that will be at least thirty-five feet tall to fifty feet tall around the other smaller homes would stick out like a sore thumb for one.

Another, another impact would be, it would be a negative impact on the community having this tall house around the smaller ones and then for the ecosystem, like Mr. Dawson had mentioned, when it rains here, the water lays on that property there and bucks go there. I've walked past there after a rainstorm and seen standing water there and bucks playing there. It's pretty awesome being down here on the water and, or near the water, and be able to see all this wildlife. And to put a house there would take that away.

MR. MCCANN: Okay. Are you also concerned about the impact it may have on property values, including Mr. Dawson's? Is that a concern?

MR. BROOKES: Yes.

MR. MCCANN: Well, you were, you were here for Mr. Dawson's testimony, you heard it?

MR. BROOKES: Yes.

MR. MCCANN: Okay. Mr. Dawson spoke about his observations of Mr. Kestner's use of the adjoining parcels. Do you have any observations in that regard?

MR. BROOKES: I saw basically the same things. The swing set that was out there and his children used it quite often and the fire pit. Even had horseshoe pits out there where they played horseshoes. One of the pits was on this side of the fence, on Mr. Dawson's side of the fence, the other was inside of the fence that's there now. It wasn't a fence there before.

MR. MCCANN: What, I missed that, what was it, what was that?

MR. BROOKES: The, one of the horseshoe pits was on this side of where that fence is and the other pit was on the other side of the, it went parallel with Cherwin Avenue.

MR. MCCANN: Okay and how did you have occasion to observe all that? You live five houses down.

MR. BROOKES: Well, this community, a lot of people walk in the evenings, walk in the days, it's a really nice, friendly community. And just walking through here multiple times with my wife, I've even interjected with them, the Kestners, you know.

MR. MCCANN: And the types of things that you described, and Mr. Dawson described as well, those are things that you've seen during the time that he lived there on a, on a regular basis, fairly regular basis?

MR. BROOKES: Yes.

MR. MCCANN: Okay. Did he use those parcels in conjunction with the other parcels any differently than anybody else in the community uses their property?

MR. BROOKES: Well, the way I see it, it's a backyard. You use your backyard however, when you're entertaining people, having a party.

MR. MCCANN: Okay. Any other concerns you haven't expressed yet, Mr. Brookes or is that about it?

MR. BROOKES: That's about it, sir.

MR. MCCANN: Okay. No other questions. Thank you. Oh, I'm sorry, the petition. I'm not sure, I can't recall, Mr. McComas, if the petition is in yet.

CHAIR: I think you were going to wait, we were going to wait until you had Mr. (inaudible).

MR. MCCANN: I'm sorry, yeah. I forgot about that.

CHAIR: (inaudible) some questions for him.

MR. MCCANN: Yeah, real quick, were you, were you involved in collecting the petition's signatures for this case?

MR. BROOKES: Yes, I was.

MR. MCCANN: And what did you do in that regard, Mr.

Brookes? What did you do?

MR. BROOKES: I don't know if you can see this, but I had the notice of assignment letter, Mr. Dawson had a copy of this. I carried this with me as I, as I obtained the signatures for the petition.

MR. MCCANN: Okay and what's the date of that assignment, if you could hold it up?

MR. BROOKES: December 15th, 2020, and there's the assignment of the hearing that would be on February 17th, today.

MR. MCCANN: Okay, great. And this, this petition, this is different than the petition that you got during the, the 2019 case, correct?

MR. BROOKES: I was not president back then.

MR. MCCANN: Okay. But you --

MR. BROOKES: I did sign that petition, I was, I was still part of the community then.

MR. MCCANN: Okay. But is this a separate petition? When I say this, I should show you the exhibit so I'm not putting words in your mouth. This is Protestants' Exhibit 11. Is the, the petition that you obtained signatures on?

MR. BROOKES: Yes.

MR. MCCANN: And, and is this different than the prior petition that you recall being introduced into the first case?

MR. BROOKES: Yes, it is.

MR. MCCANN: When did you, over what period of time did you obtain these signatures?

MR. BROOKES: Probably a week or two ago, before all the bad weather we've had because, like I said, I'm a state worker so I'm at work during the bad weather.

MR. MCCANN: Okay. All right, thank you, Mr. Brookes. I would move Exhibit 11 into evidence, and I have no further questions.

CHAIR: Mr. Lanzi, any objection?

MR. LANZI: I'm going to remain in objection and I'm going to ask Mr. Brookes about that.

CHAIR: Sure. We're going to, we're going to leave, we're going to, I'm going to overrule you, Mr. Lanzi. But I know that you're going to impeach him in his testimony here based off of that. So, we'll admit it in as evidence and we'll leave it to you in your, in your cross here to, to, you know, resolve any issues with it. So, Mr. Lanzi, your witness.

MR. LANZI: Thank you. Mr., Mr. Brookes, how long have you lived in, in your home?

MR. BROOKES: I purchased it back in 2013.

MR. LANZI: Okay. All right and, and you just became president within the last year?

MR. BROOKES: Yes.

MR. LANZI: Got it, okay. You're, you're not, your job for the state, you're not a real estate appraiser?

MR. BROOKES: No, sir. I'm actually a welder.

MR. LANZI: Okay and the ex, the exhibit that you had, or the petition that you took around the neighborhood, which I believe is Protestants' Exhibit 11, used the word variances, is that correct? The exhibit we just showed you?

MR. BROOKES: Whatever this sign, whatever this letter here says, this notice of assignment talking about this hearing today, that's what I took around when I obtained these signatures.

MR. LANZI: All right. If you, if we could, if we could see Exhibit 11?

CHAIR: Mr. McCann, I think that's you.

MR. MCCANN: Yep, I can do that. There you go.

MR. LANZI: The, the top of this refers to variances requested, is that correct?

MR. BROOKES: That's what it says there.

MR. LANZI: And, and I don't know if you heard earlier today but, in fact, Petitioner has not been requesting variances. You, do you understand the difference between a variance and a special hearing?

MR. MCCANN: Objection. That's not true. And, and he's testifying, number one. And he's asking a question at the end, which is, it's not true and he can't testify.

MR. LANZI: Well, you, --

CHAIR: Maybe you can rephrase the question, Mr.

Lanzi.

MR. LANZI: All right. Mr. Brookes, do you understand the difference between a zoning variance and a zoning special hearing relief?

MR. BROOKES: Not really, I'm not an attorney.

MR. LANZI: Okay. So, on that, do you know the different standard of proof for a zoning variance or a zoning special hearing?

MR. BROOKES: Say that again, please?

MR. LANZI: Would, would you know the difference as far as the standard of proof a Petitioner has to make with regard to a zoning variance versus a special hearing?

MR. BROOKES: Well, first of all, sir, there's a Petition in opposition to the relief and variances requested by the Petitioner, I did not write that on, on those forms when I took them out to my community.

MR. LANZI: Who wrote that?

MR. BROOKES: I, I'm not aware of that.

MR. LANZI: Was it your counsel?

MR. MCCANN: It's the assignment from the Board of Appeals, it's the assignment notice.

MR. LANZI: That's not what people signed. What people signed is variances requested by Petitioner, which is not true.

MR. BROOKES: No, what they signed is this letter

here that I was showing you. This is what I took around when I was --

MR. LANZI: Okay. That's fine.

MR. BROOKES: That was just a cover sheet. That's all that was.

MR. LANZI: That's fine. I, I understand what you did. Nothing further.

CHAIR: Mr. McCann?

MR. MCCANN: Yeah, I'm sorry to belabor this point. Mr. Brookes, any doubt in your mind that each of the people that signed the petition, which we've introduced as Protestants' Exhibit 11, are opposed to this house, this proposed house, being constructed on these two lots?

MR. BROOKES: There's no doubt in my mind that they're opposed to this.

MR. MCCANN: Thank you. No other questions.

CHAIR: Mr. Lanzi?

MR. LANZI: Nothing further.

CHAIR: All right. You can step down, Mr. Brookes. Thanks for your time today.

MR. BROOKES: Thank you.

CHAIR: Mr. McCann, your witness?

MR. MCCANN: Could I, that may be all we have, Mr. McComas. But I'd like to confer with my clients real quick and I could do that in a, in a quick phone call.

CHAIR: There's another, there's another person. I don't know if you see the attendee list or not, Mr. McCann. I can't pronounce, looks like (inaudible).

MR. MCCANN: Yeah, I don't know her, so if she wants to testify, I'm not sure if I represent her or not but I can find out. She may be --

CHAIR: Well, you have, take your time. You want to make a call or go offline here for five minutes, is that (inaudible), Mr. McCann?

MR. MCCANN: That's all I need, if not less.

CHAIR: Yep, perfect.

MR. MCCANN: Thank you.

(PAUSE)

CHAIR: Sorry about that, you guys. So, Mr. McCann, any more witnesses or I'm sorry, is Mr. Lanzi back? Mr. Sampson, are you back?

MR. SAMPSON: I'm back. Did you see the note from Ms. Cannington?

CHAIR: No.

MR. SAMPSON: I will read it quickly. Ms., I have to find it now, Ms. Bondar called.

CHAIR: (inaudible).

MR. SAMPSON: Sunny to relay that Ms. Bondar is not a party to the Kestner, she is just watching.

CHAIR: Oh, okay.

MR. MCCANN: Great.

CHAIR: Mr. McCann, sorry, do you have any more additional witnesses?

MR. MCCANN: I do, I have another short one. Her name is Ruth Hauf, H-A-U-F, and she is --

CHAIR: Is she in the panel? I don't think she's on the --

MR. MCCANN: No, she's, she's actually at Mr. Brookes' house.

CHAIR: Oh, I see.

MR. MCCANN: So, she's going to hop on. Hopefully she's going to do so shortly.

CHAIR: And what's her name, Mr. McCann?

MR. MCCANN: Ruth Hauf, H-A-U-F.

CHAIR: So, I guess you need her, to move her into the participant, Mr. Brookes under participant, Mr. Sampson.

MR. MCCANN: Actually, it's Tom Brookes.

CHAIR: Yeah, Tom Brookes. You got to move him into a participant, Mr. Sampson. So we can get Ms. Hauf to speak. There we go, we've got her. There you go. Mr. Sampson, you going to give the honors?

MR. SAMPSON: Yes. Ms. Brookes, please raise your right hand. Do you swear and affirm under the penalties of perjury, that the testimony you are about to give is true and accurate to the best of your knowledge and belief?

MS. HAUF: Yes.

MR. SAMPSON: Please again state your name and address for the record, spelling your last name.

MS. HAUF: My first name is Ruth, R-U-T-H, last name is Hauf, H-A-U-F. I live at 13211 Powderdale Avenue, Middle River, Maryland 21220.

MR. MCCANN: Okay. May I proceed?

CHAIR: You're welcome to sit down, Mrs. Hauf (inaudible). You don't have to stand up, it looks like you're standing.

MS. HAUF: I'm standing? No, I'm sitting. I'm (inaudible). Am I in there now?

MR. MCCANN: Yeah, we can see you.

MS. HAUF: Thank you.

MR. MCCANN: Okay. Ms. Hauf, Powderdale Road, that runs parallel to Cherwin, right?

MS. HAUF: Correct.

MR. MCCANN: And where on Powderdale roughly are you?

MS. HAUF: I am south of, the southwest of the area that we're discussing today.

MR. MCCANN: So, how many houses away, that may be the simplest way of putting it.

MS. HAUF: One street behind and two houses.

MR. MCCANN: Okay and how long have you lived there?

MS. HAUF: In that home, I've lived there for forty-

seven years.

MR. MCCANN: Okay, great. And what do you do for a living?

MS. HAUF: I'm retired.

MR. MCCANN: Good for you. You've sat through the testimony this afternoon, is that right?

MS. HAUF: Yes, sir.

MR. MCCANN: And you know about the, the proposed house?

MS. HAUF: Yes, sir.

MR. MCCANN: Okay. Tell us what your concerns are, Ms. Hauf.

MS. HAUF: Well, it's been my observation, I've lived in this area for over fifty years, in this community and to my rec, you know, recollection and to my observation, ninety-nine percent of any permits in this area have been for reconstruction (inaudible). So, not for a new home being built on an empty lot. They've been reconstructions on lots that have a house on them already. So, it's my concern of overloading the community and the effect that will be on the environment and on the neighbors, and on our property (inaudible).

MR. MCCANN: Okay. So, this, this in your experience is, would be very unusual?

MS. HAUF: Extremely.

MR. MCCANN: Okay. You were here for Mr. Brookes' testimony and Mr. Dawson's testimony about their observations on the subject property and Mr. Kestner's use of, of his properties. Do you have any observations in that same regard that you --

MS. HAUF: Well, when I retired six years ago, I would take my dog for a walk in that area every morning. And often in the afternoons around school time. So, I frequently saw the family utilizing the area as anyone would, as (inaudible).

MR. MCCANN: Okay. In the same manners that Mr. Dawson and Mr. Brookes described?

MS. HAUF: Yes.

MR. MCCANN: Anything else that you can think of?

MS. HAUF: Not that I'm, I can think of. I think that pretty much, between the testimony of all of us, I think we've covered everything (inaudible) concerns.

MR. MCCANN: Okay, thank you. No other questions.

MS. HAUF: Thank you.

CHAIR: Mr. Lanzi, your witness.

MR. LANZI: Ms. Hauf, before you retired, or even when you retired, were you a licensed appraiser?

MS. HAUF: No, sir.

MR. LANZI: And if you owned two lots that you were counting on to build a house on, would you, would you still

want to build a house just because others didn't --

MS. HAUF: I'm sorry, I don't understand your question.

MR. LANZI: If you owned a couple lots that you intended to have a house built upon.

MS. HAUF: Um hm.

MR. LANZI: Would you be proceeding with building a house, whether a new house or a reconstruction?

MS. HAUF: I don't believe I could even answer that question because I don't have that experience.

MR. LANZI: So, I guess the question would be, do you believe a person that owns property has the right to build on it, as long as it meets the requirements of the County?

MS. HAUF: I absolutely support families building property and living in our community.

MR. LANZI: And your observations walking around the lot, around the neighborhood, and specifically, the Kestner property, you did not observe, there were no permanent structures on the two lots in question that are next to the Dawson property, is that correct?

MS. HAUF: Other than the horseshoe pit, (inaudible).

MR. LANZI: (inaudible). I have nothing further.

CHAIR: All right. Mr. McCann?

MR. MCCANN: Nothing else.

CHAIR: All right --

MR. MCCANN: Thank you.

CHAIR: I'm sorry, go ahead, Mr. Lanzi.

MR. LANZI: Two things. I don't know whether the Board would be willing to allow me --

CHAIR: (inaudible).

MR. LANZI: (inaudible).

CHAIR: Okay. Mrs. Hauf, you're good to go. Thank you for your time this afternoon.

MS. HAUF: Thank you.

CHAIR: All right. Mr. Lanzi, I think you have some other, some things you're going to raise, right (inaudible)?

MR. LANZI: Yeah. Two, two things. One, how the Board would want to handle it, I don't know whether the Board has the rec, well, the Board should have the record from both cases below at the ALJ level.

One of them, I'll call it Kestner one, that deals with the merger issue. There's been a lot of testimony clearly geared towards raising merger by the Protestants. And that issue was put to rest by the, the Judge in that case. It was not appealed, it is a final decision. That's A.

B, in the, in the decision itself, again, I wasn't at that hearing, there's testimony, or evidence that's in the decision where it says, evidence Mr. Dawson testified, of course, under oath, that there's been (inaudible) use of those lots since he moved in.

So, I could either call him back and question that or we can accept, you know, that, that decision and that Court Order will be part of the record.

CHAIR: A couple things, Mr. Lanzi. You're going to have to slow down and distill it for me a little bit. You went awfully fast, and you gave me two opt, you gave the, the Board here two options. So, you're going to have to slow it down for me.

MR. LANZI: Okay. The first would be, to me, I object to all testimony and any consideration of the, of the zoning merger issue. That's been decided, it was not appealed, it's a final decision. That's the first part. If you want to address that first, then we'll go to the second.

CHAIR: Mr. McCann, what's your, what's your view on this?

MR. MCCANN: Yeah, I, I, I'd be happy to respond. Are we, I didn't know I was done my case. But are we --

CHAIR: I was kind of thinking the same thing too, Mr. McCann.

MR. MCCANN: I don't know what we're doing here.

CHAIR: I thought the same thing and if your answer is, because some of this sounds a little bit, and Mr. Lanzi, let me just ask you, Mr. McCann, do you have any more witnesses to call?

MR. MCCANN: I do not, so (inaudible).

CHAIR: (inaudible) now the question is, Mr. Lanzi, do you have any rebuttal witnesses that you'd like to call and what I think you're doing, Mr. Lanzi, is you're trying to set up the scope of your rebuttal here (inaudible) questions here, is that, is that the nature of it?

MR. LANZI: Yes.

CHAIR: Okay and so, you want to know whether or not the, the, the, the fact that it was moot down at the lower court and that they had been separated and the appeal was only for the special exception, that that's the only things that we should consider at the Board, is that the nature of your question?

MR. LANZI: The first case was the denial of the variance that Kestner appealed, okay? I appealed it on their behalf.

CHAIR: Okay.

MR. LANZI: In that first case, the Judge ruled that there was no merger. That merger, in his decision mentioned Mr. Dawson's testimony. That issue was not appealed by anyone. So, it's a final decision.

My position is the Board should not consider this argument, shouldn't consider that testimony. I don't know whether the Board is going to be asking for memos, probably are. Hopefully not, but.

CHAIR: I think it's pretty safe to say that we are,

and I think that this is kind of grounds for those kinds of discussions. But go ahead, Mr. Lanzi.

MR. LANZI: Okay.

MR. EVANS: Now, I, I did look at Mr. Lanzi's Petition appealing the first case and there is no question in the world that he did not appeal the merger finding. So, that is final, as far as I can see that's, that's final. I mean, there's, you know, that's done and over. I, I, I, right? Isn't that what you're saying, Mr. Lanzi?

MR. LANZI: Yes, and if that's the case, there won't be any need for rebuttal.

MR. EVANS: Well, I mean, I'm not ruling for the Board, I'm just saying, I understand your position.

MR. LANZI: Yes, that's my position.

MR. EVANS: All right.

MR. LANZI: And, and that doesn't even get, get to the burden of proof on merger that we have, you know, temporary structures. But in any event, that would be my position. It was a final decision not appealed by the community and they could have.

MR. EVANS: And they could have, yes, and they didn't.

MR. LANZI: Right.

CHAIR: And Mr. McCann, your, your, your view on this?

MR. MCCANN: A, a whole lot of things, I guess --

CHAIR: I'm not sure who, there's somebody whose got their mic that we can hear you. I'm not sure who that is.

MR. MCCANN: Tom, John, if you guys could mute yourselves, please? Great, thank you.

CHAIR: Okay. You got it.

MR. MCCANN: Okay. I, I do see a bit of irony in all this in that, you know, Mr. Lanzi files, juggles two cases like he's, he's done in this case, and I understand he may not have been involved below in the first case.

But relying upon, what I guess, is a res judicata argument but, you know, when he filed two Petitions, certainly could have filed, you know, regardless of whether he represented, I didn't represent Mr. Dawson in the first hearing either.

But certainly, could have and should have filed a 304.1 Petition in, in, in the first case. But the bottom line is, he appealed that. Any appeal would have been de novo. In my experience, the Board considers and would have considered, or considering it now, any and all issues that could have been raised.

In fact, in Judge Mayhew's decision in this case, the 2020 case, he said that, this is in footnote one, he's referring to the first Petition. He says, in my view, this Petition would be barred by res judicata but for the fact that

my previous Order was not a final judgment. So, in ruling, he certainly believed (inaudible).

And I just think, I find it, number one, I find it ironic that we're, we're in this position. But also, I don't think that we're precluded from raising lot merger as an issue because that decision was, in fact, not final. And the fact that we did not take an explicit appeal of that issue doesn't change anything.

And I would also say that, you know, there's some, 304.1 (inaudible) I think we could all agree on that. And 304.1 and lot, and lot merger in many ways are, are one and the same. I mean, they are, I think I would, I would even go so far as to say 304.1 is the statutory cod, you know, codification of lot merger. That's certainly been my understanding on past cases. And even argued lot merger case law in past cases. So, --

MR. EVANS: Are you saying that, are, are you, are you saying that, you're using the word merger in the sense that lots, Lot 157 for example, would be deemed part of 155 and 56 so that the five-foot requirement could have been met if it had been subdivided (inaudible), is that what you're saying?

MR. MCCANN: Yeah, I think, I think that's the same analysis, whether you're looking at 304.1 or lot merger.

MR. EVANS: Um hm.

MR. MCCANN: It's the same. And as I said, I would,

I would go so far as to say it's a codification of, of the lot merger and there, there are, I had an Anne Arundel case where there was a statutory provision that was a codification of a common law, it went to the Court of Appeals on other issues.

But, so, I think it's absolutely before you. And that nothing that Mr. Lanzi has said changes that.

CHAIR: So, so, Mr. Lanzi, then Mr. McCann, I mean, Mr. Evans, what, what are your thoughts here? My thoughts are is let Mr. Lanzi make the, the arguments here for, and then he can make their arguments in their briefs and then memos that they, they submit here at the end. That's my thought, Mr. Evans. What do you think?

MR. EVANS: Yeah, I mean, I, I, I, I don't want to pre-judge this and so I guess I would like, I mean, I, it sounded to me like Mr. Lanzi had the high side of this argument, but I don't want to foreclose anyone from making any (inaudible) --

CHAIR: Yep.

MR. EVANS: -- because, you know, first of all, I, I make a lot of mistakes. And I would, so if, you know, Mr. McCann can demonstrate somehow that, I mean, it may be that he's saying that it's not so much merger as it is (inaudible) somehow affects the developability of these lots. I, I mean, I get that. But anyway, I'm happy to have it briefed.

CHAIR: Okay. But Mr. Evans, I think also Mr. Lanzi

though, we should let him put on his, his position as if, anticipation of that as a, as a, since Mr. McCann has raised it here. I think Mr. Lanzi should put on the, the facts to help him in his, his argument as well.

MR. EVANS: I think that's correct as well, yes.

CHAIR: Yeah, and Mr. Sampson, do you agree with us?

MR. SAMPSON: Yes, I agree, absolutely.

MR. MCCANN: And what, what is it that we're doing? I, I missed --

CHAIR: Well, I, I think on Mr. Lanzi's rebuttal, Mr. McCann, is, he wants to put on some evidence to, that will help him, you know, respond to your, your claims on cross.

MR. MCCANN: Well, he's entitled to that, obviously, to put on a rebuttal case. I'm just not sure how any of that relates to what we just spoke about.

CHAIR: Well, I think Mr. Lanzi has some evidence that he held back, and he wants to now present it. (inaudible) speak for you, Mr. Lanzi, but that's my understanding of what you said to us.

MR. LANZI: Well, if I understand what, what is occurring, the issue of zoning merger will be allowed to continue, it will be briefed, it will be decided by you all.

CHAIR: Yeah.

MR. LANZI: And you're going to allow me to call a witness if I need to.

CHAIR: Yeah.

MR. LANZI: To maybe address that issue on my end.

CHAIR: Yes

MR. LANZI: Which, which leads me to that, the second question I, I raised in the beginning when I was talking very fast and that is I can, I can call Mr. Dawson back to ask him about his testimony in the first hearing where he testified under oath there was no activity since he moved in. And now he's testifying as to all kinds of activities. So, we can either do that and then I can call my own witnesses or --

MR. MCCANN: Listen, I, I don't have a problem with that. But it, again, we're arguing that the case, the old case, I mean, that, that's a question that doesn't, that isn't dependent on this lot merger.

Mr. Lanzi clearly could have asked that question of Mr. Dawson as, I assume he's going to make the point that it's some sort of prior inconsistent statement by a party. But that, that, that has nothing to do with the lot merger versus 304.1.

It's, it's a, I don't understand the connection, other than it happened to be related to the factual matter to the lot merger question. And maybe I'm talking in circles a little bit, but I don't, I don't, I don't understand why it couldn't have been raised earlier.

All that said, I don't have a problem with Mr. Lanzi

asking Mr. Dawson whether he said that or not.

CHAIR: Yeah, how about if we do that, Mr. McCann? Mr. Lanzi, I, you may want to address what you had (inaudible) multiple questions, I think, we may only be answering one of them. I think your question is, you'd like to call Mr. Dawson and then you also may want to call Mr. Doak afterwards, I suspect. Is that what you're getting to?

MR. LANZI: I can call Mr. Dawson, then I'm, then I'm going to need to call my client.

CHAIR: Yeah.

MR. LANZI: Which would take two minutes and then we can decide whether I'm even going to have any more witnesses.

CHAIR: Okay. Fair enough. So, so how about Mr. Dawson, are you still available? You may have to move him over, Mr. Sampson.

MR. SAMPSON: He should be there.

CHAIR: There's Mr. Dawson. Do we need to swear him back in, Mr. Sampson?

MR. SAMPSON: I, I don't think so, but I will --

CHAIR: (inaudible) I think we're good.

MR. SAMPSON: Yeah, he's under oath.

CHAIR: All right, Mr. Lanzi. Your witness.

MR. LANZI: Okay. Mr. Dawson, earlier in your direct testimony you testified that since you've been living there, you observed the Kestner family utilizing the entire property,

I believe you said that he cut the entire lawn, is that correct?

MR. DAWSON: That's correct.

MR. LANZI: Okay. But you also indicated that there were some temporary structures, specifically a swing set and I believe you said a fire pit were, were in the lot closest to you, is that correct?

MR. DAWSON: Yes, did you hear me?

CHAIR: Yes.

MR. LANZI: Okay. Now, I guess my question is, in the very first case, and I was not involved in that case, but when you were before Judge Mayhew you testified that you believe those lots were the backyard of the house, I'm quoting, at 6903 Gunder and there had not been any use of the lots, at least since you had moved in.

MR. MCCANN: Hold on, hold on. That's not what he said. That's what Judge, that's what the, the opinion says. So, just make that distinction, please, in your question.

MR. LANZI: It says Mr. Dawson testified --

MR. MCCANN: I know, but that's still, that's still what the Judge said.

MR. LANZI: All right. Mr., Mr. Dawson, did you, in fact, testify in the first hearing under oath that there had not been any use of those lots since you moved in?

MR. DAWSON: From what I recall, it was, the way I

took the question was since he moved out. And if I recall properly, I said that no one has used the lot since Mr. Kestner moved out and he even has a grass cutting company come in to maintain that property.

MR. LANZI: Okay.

MR. DAWSON: That's how I recall it.

MR. LANZI: All right and, and since then, you've been, you discussed your testimony with counsel with regard to the legal issue called zoning merger, is that correct?

MR. MCCANN: When? Wait a minute, hold on. Since --

CHAIR: Mr. McCann, say you object or --

MR. MCCANN: I'm sorry, objection. Object.

CHAIR: On, on what basis, Mr. McCann?

MR. MCCANN: Because the question assumes, well, he has the right to ask whether he's had any communications with me. I think the question, to be fair, needs to be more specific about when. And, and, and once it, once it is asked properly, I would object under attorney/client privilege. I can represent to this Board that I've had no communications with Mr. Dawson since this hearing started --

MR. LANZI: And I'm not implying that you did.

MR. MCCANN: That's certainly the way I heard the question, so.

MR. LANZI: No, --

CHAIR: Mr. Lanzi, maybe you can rephrase the

question along the lines of Mr. McCann's concerns and --

MR. LANZI: Yes.

CHAIR: -- and I think we can move past this one, because I didn't think you were going down the path that Mr. McCann (inaudible) --

MR. LANZI: No, I would never do that. I've known Mr. McCann too long and have too much respect. My, my purpose of the question was once, once you hired counsel, once counsel was hired for this appeal and you were, and I'm not asking you to provide me any attorney/client privilege, but once your strategy was determined, you, you seemed to clarify your memory about how that lot next to you was used. I, I just, I just wonder how you didn't understand it back in, in Kestner one and you now understand it in, in this case (inaudible) --

CHAIR: Can you, can you break that down to a, a, a question that Mr. Dawson could, could, can answer? I think you're asking a couple questions in there and, and I myself, I'm not sure how to answer that one.

MR. LANZI: I'll ask it this way. Would, would you even have brought up the fact that there was a swing set or fire pit if Mr. McCann had asked you?

MR. MCCANN: Objection. Objection.

CHAIR: Yeah, I'm going to sustain that, Mr. Lanzi. I, I think you're asking for attorney/client privilege communications.

MR. LANZI: Okay. I'll tell you what, I'm just, I'm just going to let the, since the decision of the first ALJ case is in, in the record, I will just let that stand for itself and then I will have no more questions here. But I would ask for three minutes for me to call my client.

CHAIR: Let me just ask Mr. McCann if he has any, any, any rebuttal here. Mr. McCann, do you have any follow-up questions?

MR. MCCANN: No, I think he explained it perfectly. Thank you.

CHAIR: Mr. Dawson, thank you again for your service and thank you for your time.

MR. DAWSON: Thank you.

CHAIR: And, and Mr. Lanzi, you want a few minutes, right? Because we're still in your rebuttal phase of the, of the case here, so.

MR. LANZI: Five minutes.

CHAIR: Yep, take your time.

MR. LANZI: Thank you.

(PAUSE)

CHAIR: Mr. Lanzi, are, are you ready to proceed?

MR. LANZI: I am, I am ready to proceed.

CHAIR: All right. Mr. Evans, Mr. Sampson, you guys, okay. All right. So, Mr. Sampson, I mean, Mr. Lanzi, we're, we're now at your, you have (inaudible) rebuttal case. You may

have additional witnesses, or you want to give us an update?

MR. LANZI: Okay. I'm not going to call rebuttal on the merger issue. I will just argue the closing in my brief. But I do want to call Mr. Doak on one very limited issue. If he, if he can be connected?

CHAIR: Mr. Sampson, you got the honors.

MR. SAMPSON: You're still under oath, Mr. Doak.

MR. DOAK: Sir.

CHAIR: Mr. Evans, I think you better pull down the shade. I mean, I'm looking in your video and all I see is blinding sun.

MR. EVANS: Well, okay.

CHAIR: I have enough problems seeing. But I'm getting blinded. I didn't think it was possible through a video.

MR. EVANS: Any better?

CHAIR: That's a little better. You (inaudible) on the thing.

MR. MCCANN: He's looking very angelic.

CHAIR: Yeah, (inaudible).

MR. EVANS: (inaudible).

CHAIR: All right. We're good, Mr. Evans.

MR. EVANS: I, I see what you mean, but you know. That's as good as I can do, I'm sorry.

CHAIR: Yeah, it looks like a vision of ET. All

right. Mr. Lanzi, your, your case. All right and Mr. Sampson, you've got him over, right, Mr. Doak is in as a participant now? He can (inaudible).

MR. SAMPSON: Correct.

CHAIR: All right. Mr. Lanzi, go, proceed, please.

MR. LANZI: Thank you. All right. Mr., Mr. Doak, if you recall earlier in the day, I reserved the right to call you back regarding some of the property owners in this community. Do you recall that?

MR. DOAK: Yes, sir, I do.

MR. LANZI: And did you have an opportunity to do some checking? And I don't know if you need me to show the exhibit or you can just testify.

MR. DOAK: No, I need you to show, please, it would have been twelve, eleven, twelve.

MR. LANZI: Okay, let me find it. A little slow. I don't think this is it. So, --

MR. DOAK: It's like six or seven.

MR. LANZI: Yeah, let me, let me get, let me go back.

MR. DOAK: It's one of the new ones, the later ones.

MR. LANZI: Got it. Okay. I think this is it. That is, I believe, twelve.

MR. DOAK: If you would, please, go to the next one? That one, please.

MR. LANZI: This one?

MR. DOAK: Yes, and if you would please --

CHAIR: We're looking at Petitioner's Exhibit 12.

MR. DOAK: Yes, sir. If you could please come out a little further.

MR. LANZI: Okay.

MR. DOAK: Mr. McCann brought out the point that some of these houses were built on some of the lots that I looked at, that were only fifty feet, the houses were built prior to the zoning regulations. And he was correct, and it was a good thing to point out.

But also, he didn't look at all of them and so, in turn, the ones that are, let's just start with the ones on our street and let's start where the A is in Avenue.

These are all on fifty foot two lots and that one in front of you is built in 2010. Then, and this is all based on the, the SDAT. The next one --

CHAIR: I'm sorry, Mr. Doak. What side of the street is on, because Mr. Lanzi I think is using the cursor. Are you talking about on the side, on the side, the side of the street where the subject property is or the --

MR. DOAK: No, sir, the other side.

CHAIR: All right.

MR. DOAK: You see where --

MR. EVANS: Can you tell, Mr. Doak, whether these are new, new buildings or whether these are reconstructions?

MR. DOAK: No, sir. It's whatever, however SDAT, whatever their criteria is for placing on there.

MR. EVANS: Okay.

MR. DOAK: In their reports. So, Lot 32 and 33 you'll see there, that was built in 2010. Mr. Lanzi brought, or Mr. McCann brought out 30 and 31, that was in twenty-nine. Lot 26 and 27 was built in 2020, and then Lot 24 and 25 was back, built in 2014.

If we could go down a little bit, down on that exhibit, please. The ones at the corner of Cherwin and Birdwood, which would be lot number 181 and 182, that was built in 1980.

MR. MCCANN: I'm sorry, which one?

MR. DOAK: I'm sorry, 181 and 182.

MR. MCCANN: Okay, thank you.

MR. DOAK: It's right there. Thank you, Mr. Lanzi. And then the one next to it was built in 1980. And then, if we go on down the road a little bit, the next one, 180, 198 and 199 was built in '76, 1976. And then, the next one was built in 1929.

So, and then if we go up to, if we go up to Gunder, straight across from, which would be lot number 61 and 62, that was 1924. But we go down to 70 and 71, that was 2012, and then the one next to it was 2005.

So, those were fifty-foot-wide lots with houses newer

than what was in place as of, when the zoning regulations came in.

MR. LANZI: Okay. Thank you, Mr. Doak.

CHAIR: Mr. McCann, any rebuttal, or cross?

MR. MCCANN: No, but I'm concerned that there's no sufficient foundation for the Board to take heed of that. I can call my witness back, who I'm texting with now, and she can tell you whether they're new or reconstruction. So, I think either, I think the Board needs to disregard that testimony because Bruce, for example, doesn't know whether they're new or, he acknowledged that --

MR. LANZI: I, I disagree –

(EVERYONE TALKING AT ONCE)

CHAIR: Let Mr. McCann finish, yeah, sorry.

MR. MCCANN: He, he explicitly acknowledged that he did not know whether these were new homes or reconstruction. He said that. On that, on that basis, it, it would be speculation for this Board to rely upon his testimony that these are sub, I mean, all this is irrelevant anyway.

It's very, you know, I know, Mr. McComas, I, I'm well aware of the fact that the Board takes things for the weight they're given but when they're not supposed to be given anyway, that, that always concerns me. Because I can't think of a single fact, you know, the definition of evidence is whether or not the evidence is, would make a, a fact of consequence more

likely or not, or not, you know.

And in this case, the fact that there's something approved down the street, has no bearing on the standards for which the Board is here today. So, I'm having a real problem with the relevance in the first place.

Number two, I think Bruce's testimony is truthful, but --

MR. EVANS: Mr. Doak's, Mr. Doak's testimony.

MR. MCCANN: I'm sorry, Mr. Doak's testimony, I don't mean to be informal. But I, I don't think there's sufficient, sufficient basis for the Board to accept it.

But if the Board does accept it, I would like to put on my witnesses who will testify whether each of these lots that he just identified are, these, these are folks that live in the neighborhood, of course, whether these are new construction or reconstruction.

CHAIR: Mr. Lanzi, do you have a response to that?

MR. LANZI: Yes. The, the purpose, or one of the purposes of the testimony was to show that there are houses, whether they're new houses or reconstruction houses, but they are houses on two lots, as compared to three lots, four lots, five lots. That is the limited purpose of this testimony and I think it's relevant to the Board because we're trying to build a house on two lots.

And there was other testimony, or questions, trying

to indicate that they needed to be on more than two lots. And that's not the case. And that's the limited purpose of Mr. Doak's testimony.

MR. MCCANN: But that doesn't, that doesn't answer the question of why they're relevant. He hasn't answered that question. That begs the question. He basically put the question back to you, Mr. McComas.

CHAIR: Yeah, I, the way that I look at it is it's relevant for the (inaudible) that Mr. Lanzi brought here is that, you know, whether fifty or fifty-five feet. I think that, I look at it as, I mean, my, my, my initial reaction here is going to be, I'm going to overrule your objection, Mr. McCann.

I, I, I think it comes in. I think that it gets the weight that we're going to give to it. I, I, I look at it as Mr. Doak just testified that there, you know, that, and I, and we've heard people say, or we've heard Mr. Doak say he doesn't know whether they're new construction. But it's given you a couple things.

One, a history of, of when structures were built. Some of them sound like they've been around pre, pre implementation of the laws and then other people, as Mr. Lanzi just said, which is, there are ones that just have two properties and they only have fifty feet. And I think it is part of their case.

So, we're going to let it in, Mr. McCann. And Mr. Lanzi, go ahead, you want to, any more questions, Mr. Lanzi?

MR. LANZI: No, nothing further of Mr. Doak.

CHAIR: Mr. McCann, do you have any rebuttal here?

MR. EVANS: Before you answer that, Mr. McCann, Mr. Lanzi stipulated that he doesn't know whether these are new or reconstructed houses.

CHAIR: Yeah.

MR. EVANS: So, he's not trying to make the case that these are new.

CHAIR: Yeah.

MR. EVANS: And so, --

CHAIR: And I've heard Mr. Doak testify he doesn't know that.

MR. EVANS: And he doesn't know that, so if that, if that affects whether you want to call anyone or not, you know.

MR. MCCANN: But, but then how is it possibly relevant?

MR. EVANS: I don't know.

CHAIR: Well, I think that's the --

MR. EVANS: You'll have to, that's something to argue in, in the, in, in memos.

MR. MCCANN: Yeah. Well, listen, I, you know, I can put in an affidavit that, from my witness, that, that says whether based on her having been there for forty-nine years or

whatever she said, whether each of the houses identified by Mr. Doak --

CHAIR: All right, Mr. McCann, I'm sorry, go ahead.

MR. MCCANN: Whether they're new, new houses or reconstruction. I could call her as a witness. But if it's relevant, if you guys deem it relevant, then I should be able to put, put her on.

CHAIR: Yeah. (inaudible) you can't put her on and, Mr. McCann, as you know from being in front of this Board is we (inaudible) a lot of info, I mean, a lot of this is coming straight out of SDAT so, you know, they're public records that this, this, this Board lets in on a pretty regular basis.

Even when, in many cases, when we let it in, it's, to me, totally irrelevant and, and the, the people on the, we, we give it the, the weight that it, it deserves when we evaluate and make decisions here.

MR. MCCANN: Okay.

MR. EVANS: But we don't want to talk you out of your case.

CHAIR: We don't want to talk you out of your case, that's a good point, Mr. Evans.

MR. MCCANN: Yeah, I mean, I'm sorry for hesitating.

CHAIR: Well, you can call Mrs. Hauf back if (inaudible).

MR. MCCANN: Yeah, I, I'm going to do that. I don't

--

CHAIR: No one is saying not to do that, Mr. McCann.

MR. MCCANN: Okay. I appreciate, I appreciate your, your, your patience and your accommodation. I, I will, I am going to call her back real quick and go through these.

MR. EVANS: Okay.

CHAIR: But before we do that, Mr., Mr. McCann, Mr. Lanzi, were there any other witnesses that you wanted to do, let's go through your, your, your --

MR. LANZI: Depending on what Ms. Hauf testifies, I may or may not call Mr. Kestner.

(EVERYBODY TALKING AT ONCE)

CHAIR: Fair enough, Mr. Lanzi.

MR. LANZI: Okay.

CHAIR: Mr. Brookes, I mean, Mr. Doak, you can step down. Mrs. Hauf, you can, you can come back on the stand here. And maybe you want to keep, whoever is sharing that, that --

MR. MCCANN: Can I share, Mr. Sampson?

MR. SAMPSON: Yeah, one second here.

MS. HAUF: Am I muted?

CHAIR: Mrs. Hauf, we here you.

MS. HAUF: Okay. I'm here.

CHAIR: You got to wait until Mr. Sampson, he's trying to pass the token.

MR. MCCANN: Thank you. Thank you, Mr. Sampson.

MR. SAMPSON: You're welcome.

MR. MCCANN: Okay. I'm going to share, one second. Okay. I'm going to share my exhibit because it's prettier than Mr. Doak's.

CHAIR: It's upside down for us old people. There you go.

MR. MCCANN: Yeah. Okay and it'll help us identify which ones I did not address in cross with Mr. Doak, previously. So, Ms. Hauf, you there?

MS. HAUF: Yes, I am, can you hear me?

MR. MCCANN: I can. Yeah, thank you.

MS. HAUF: Okay, all right.

MR. MCCANN: So, if you need a, I have another exhibit that has, rather than lot numbers, has street numbers and we can, that may be easier for you. But let me, we're going to, you just saw what (inaudible) --

MS. HAUF: (inaudible) will be fine, we're not, I'm not a professional, so we're just going by the best I can recollect.

MR. MCCANN: Okay and again, the question is, I'm going to start with these lots that Mr., Mr. Bruce, Mr. Doak had identified, and I tried to catch him as he was writing it down, I think he began with 32 and 33. Do you see those lots there?

MS. HAUF: And that is on Cherwin?

MR. MCCANN: It's on Cherwin, do you see that, where we are?

MS. HAUF: Yeah, Cherwin.

MR. MCCANN: Can, can you tell us whether or not, are you familiar with the house that's there?

MS. HAUF: The map won't let me see Cherwin.

MR. MCCANN: Oh, the, well, --

MS. HAUF: There, bring it down a little bit more.

MR. MCCANN: There is no Cherwin on here, but this is Cherwin Avenue.

MS. HAUF: It stops at Gunder on here.

MR. MCCANN: I'm not asking you what the street name is. I'm asking you whether or not you recognize where I am with my pointer here, Lots 32 and 33. Do you recognize that as being --

MS. HAUF: I see it, yes. Those, those are reconstructions.

MR. MCCANN: Okay. How do you know that?

MS. HAUF: From being down here for fifty years.

MR. MCCANN: Okay. Do you know who lives there?

MS. HAUF: I can't tell you the names, but I know that was Henning's house.

MR. MCCANN: Okay and just continue on. I think Mr. Doak went around to Lots 26 and 27, which are, gosh, I was too busy writing it down, I didn't follow where he was going.

Let's just go to these, do you see where I'm pointing on Gunder Avenue?

MS. HAUF: Yes, those, those, those flooded out and I know for a fact they're reconstruction.

MR. MCCANN: Okay. This would be Lot 7, Lot 70, 71 and 72 and 73?

MS. HAUF: Correct.

MR. MCCANN: Okay and do you know how --

MS. HAUF: That area flooded.

MR. MCCANN: And when you say re, reconstruction, do you know when approximately they were? Well, strike that. When you say, when you say, when I'm asking --

MS. HAUF: Isabel, during, during Isabel. What year was that?

VOICE: That's a new house.

MS. HAUF: That house, there were homes there and people were living there, and they flooded out during Isabel, and they rebuilt.

MR. MCCANN: Okay.

VOICE: They rebuilt.

MS. HAUF: But there were people living there and have been for generations.

MR. MCCANN: Okay, all right. How about these lots right on Pow, you live on Powderdale, correct?

MS. HAUF: I do.

MR. MCCANN: So, these Lots 206 and 207, do you see them?

MS. HAUF: That's exactly where I live.

MR. MCCANN: That's where you live, okay. And when was your house constructed?

MS. HAUF: Our home was, there was a home on it, and we bought it, they, they rebuilt, they put a new home and tore down the old one and that would have been in 1977.

VOICE: There you go.

MR. MCCANN: Okay and then, let's go to these Lots 198 and 199 on Birchwood. Are you familiar with that property?

MS. HAUF: Yes. That is, they've been there since the seventies or eighties. One of them was a rebuild and one was, I believe, a new build. I don't re, the one on the left would be a, a new build.

MR. MCCANN: Okay and the one on the right?

MS. HAUF: Was a rebuild of an older home and they both went up approximately the same time in the, like eighties.

MR. MCCANN: When you say the one on the right, are you referring to 240 and 241?

MS. HAUF: Correct.

MR. MCCANN: Okay. What about these lots on the corner of Cherwin and Birdwood? That is, Lots 181 and 182?

MS. HAUF: Those were definitely new homes.

MR. MCCANN: On all four of these lots or --

MS. HAUF: On all four of them.

MR. MCCANN: There's two homes there?

MS. HAUF: Because there, there's two homes there and they had to get a variance and I am guessing that was in the late seventies.

MR. MCCANN: Okay and when were they re, rebuilt, do you know?

MS. HAUF: No, they, they were new homes. They, they, that was a wooded lot, and they are new homes.

MR. MCCANN: Oh, they are new homes. Okay, both of those?

MS. HAUF: Yes.

MR. MCCANN: Okay.

MS. HAUF: So, at this point, I can tell you there's three new homes out of all of this, at this point.

MR. EVANS: You said 181 and 182 and was, and then two more. What were the other two that was a new house there also?

MS. HAUF: The whole corner was a wooded lot and there's two homes there.

MR. MCCANN: So, 183 and 184 is a new home.

MR. EVANS: Okay, all right, thanks. That's all I meant, yeah, thank you.

MR. MCCANN: Okay. What about across the other side of Birdwood, 688 and 689? Well, in fact, those are larger

sized lots.

MS. HAUF: Yeah, they're, they're larger lots and even that, we're going back to the early seventies, and it was a fam, they were family lots. There's, there's been homes there.

MR. MCCANN: Okay. I think those are --

MS. HAUF: They're the Parlett family, so they've been here for three generations.

MR. MCCANN: Okay and I won't go through these again, these are fifty-foot lots, not twenty-five-foot lots. I think that's it. I think I went through them all.

VOICE: How about Gunder?

MR. MCCANN: I'm sorry, Gunder?

VOICE: Gunder.

MS. HAUF: All of those were existing homes. Yeah, all the shoreline ones are existing, were existing homes.

MR. MCCANN: What do you mean by existing homes?

MS. HAUF: People lived there and then Isabel took a lot of houses out.

MR. MCCANN: Okay.

MS. HAUF: And they had to build on their existing foundation.

MR. MCCANN: Okay. Okay.

MS. HAUF: As I said before, you know, as you can easily see, my major concern is the effect of adding new

buildings and new plots to build on in an already congested area and the effect that will be on our property value and the environment of a beautiful water area.

MR. MCCANN: Okay. Thank you, Ms. Hauf.

MS. HAUF: You're welcome, sir.

CHAIR: Thank you, Ms. Hauf. Any, any, Mr. Lanzi, any cross of Mrs. Hauf?

MR. LANZI: Yes. Yes, and if you could leave this exhibit up?

MR. MCCANN: Sure.

MR. LANZI: Ms. Hauf, I was not able to write down all the lots where you said there were three new homes, Lots 183, 184?

MS. HAUF: Okay. We're looking at Birdwood.

MR. LANZI: Uh huh.

MS. HAUF: And if you look at the corner of Powderdale and Cherwin, those four lots are two homes and they're, I wouldn't call them new, discussing fifty-year-old homes.

MR. LANZI: Right.

MS. HAUF: But those were not replacing older homes, those were new homes.

MR. LANZI: That was at Powderdale and Cherwin?

MS. HAUF: Yes. That whole corner there was a wooded lot, and two houses are there.

MR. LANZI: Are you able to bring that down just a little bit, Mike?

MR. MCCANN: That's it.

MR. LANZI: Okay. Okay and you said there was another?

MS. HAUF: Yes, I believe it is Birdwood and I think that's 198 and 199.

MR. LANZI: Okay.

MS. HAUF: And again, we're going back fifty years.

MR. LANZI: Now, what about, do you, are you familiar with 13205 Gundale Avenue, which I'm not sure what lot that is but it's owned by Bobby Martin Sexton (phonetic). Is that familiar to you?

MS. HAUF: No. Again, in a community such as ours, we wave, and we smile, and we don't know last names a lot.

MR. LANZI: If, so if I told you that a house was built in 2010 at 13205 Gundale, you wouldn't be able to confirm or deny? It's a new house.

MR. MCCANN: Objection. He can't just say that.

MR. LANZI: Okay. I'm asking you whether you're, whether you're, you can confirm or deny --

MS. HAUF: Is it on the corner of Gundale and Gunder?

MR. LANZI: I have an address of 13205 Gundale Avenue.

MS. HAUF: Gundale.

MR. MCCANN: (inaudible) another exhibit to show her. I think, in all fairness to the witness, --

MS. HAUF: I have to see the house we're discussing.

CHAIR: Yeah. Mr. Lanzi, Mr. Lanzi, so, (inaudible).

MR. LANZI: My question is are, whether, whether she's familiar with that particular address and two, is she familiar, does she know whether it was a brand-new home that was built there in 2010.

MS. HAUF: And give me the address again, please?

MR. LANZI: 13205 Gundale Avenue.

MS. HAUF: Gundale?

MR. LANZI: Gundale.

MS. HAUF: And if I could, can you, if that's on the left-hand side that is not a brand-new home. That was, that was a redo.

MR. LANZI: Gunder, Birdwood, Gundale.

CHAIR: All right, Mr. Lanzi, any other questions?

MR. LANZI: No, I have, I have nothing further for her.

CHAIR: All right. Mr. McCann, any, any, anything further?

MR. MCCANN: No, thank you.

CHAIR: Yep. All right. Thank you, Ms. Hauf.

MS. HAUF: You're welcome, sir.

CHAIR: All right, Mr. McCann, any, any other

rebuttal witnesses?

MR. MCCANN: No, thank you.

CHAIR: Mr. Lanzi, I think, I think we're done, right?

MR. LANZI: I think so. I did have one, one item I did want to bring to the Board's attention, to handle it.

CHAIR: Sure.

MR. LANZI: And it's more of a suggestion. If you could bear with me for one second. Judge, Judge Evans, you raised some issues about 304.2 of the zoning regulations and I don't know whether it would be helpful to the Board or not, but this would be my suggestion.

CHAIR: Um hm.

MR. LANZI: That we leave the record and hearing open (inaudible) the Petitioner would have the builder submit elevation drawings to Planning for comment and then we, we, we'd reconvene. Because that's really the only difference if, if, if you go with the building permit application and go through that process.

That's really the only difference, is the Planning Office comments, which they would do. And then, they're just recommendations. I don't know if that would be helpful.

MR. EVANS: Honestly, I don't know if it would or not, I, I, you know, I'm, I'm confused about how (inaudible) in your briefs you would clarify for me how 304.2 gets into this.

I, because I don't really know. I, I'm confused, actually.

CHAIR: Mr. McCann, do, what are your thoughts on, on Mr. Lanzi's proposal here? It, it seems sort of unique here. It seems like he's also offering to be an additional opportunity for your, your, your, your community association to participate in this process. (inaudible).

MR. MCCANN: Yeah, Ms. Hauf, Ms. Hauf, please, will you mute, please? Tom?

CHAIR: Ms. Hauf, we can still hear you. There you go. I think you, Mr. Sampson, you can mute all them.

MR. SAMPSON: I did, but it still kept going. (inaudible) happen, can't even do that right.

CHAIR: (inaudible) operator error, Mr. Sampson. So, Mr. McCann, Mr. Lanzi, I don't want to put words into his mouth, it sounds like he's entertaining keeping this appeals process open for your parties to participate in it further.

MR. LANZI: That's, that's not what I'm saying.

CHAIR: I was waiting for you to, I'm waiting for you to interject there.

MR. LANZI: We, we know they're against it. I'm sure they'd be against it if we built a ten-foot shack but. The point being that Judge Evans has some concerns about the architectural elevations and so we thought if we had the builder submit those elevations to Planning for comment.

Planning supports, supports the Petition as it is and

they typically comment on the building permit, assuming you all grant the relief, they would be commenting anyway, but this is just a way to maybe have them comment now and then the Board would see those comments. The community certainly, it's a public record we would be filing. They would certainly be able to look at it as well. That was, that was just my only suggestion.

MR. EVANS: Are, are you saying that there is actually a building, there's, there's an architectural design already? The house is designed?

MR. LANZI: I would have to get the, I don't have anything that I can offer. I would have to have the builder provide elevation drawings. I don't have something I can submit today.

MR. EVANS: Okay. No, I, no, I get that. I get that. I'm just --

(EVERYONE TALKING AT ONCE)

CHAIR: Mr. McCann, any comment on that?

MR. MCCANN: I, I tried very hard all the time not to be an obstructionist, I really do. But I think, I, I'm having a hard time understanding what it is we're doing, number one. Why we're doing it and why we need to keep the record open. I, I'm sorry, I'm just not --

CHAIR: I'm with you, Mr. McCann. I, I think we just move forward and, and Mr. Lanzi, I appreciate your, your

accommodation there. I, I, I'm not sure leaving this case in this posture is, I mean, I, I look at it as those things are all part of the process of getting permits and, and I thought you were offering up another opportunity for Mr. McCann's parties to weigh in.

What I'm hearing you say is no, that's not what you're doing, you're doing it more for an accommodation for the Board and, and I think that the permitting process will take care of it and, and we, you know, the, this process is, you know, Mr. Evans, Mr. Sampson, as much as we like to reinvent law, I don't think we need to at this point.

And so, I think that, I think that if you guys briefed the, the matters here in your, in your, in a motion here and then, and then we'll rule on it.

Mr. Evans, Mr. Sampson, do you guys agree with that approach?

MR. SAMPSON: Yes.

MR. EVANS: Yeah, I, I do.

CHAIR: All right. So, so, do I just confirm a second on the, on the exhibits here because I know we added a few, Mr. McCann, maybe to start. Make sure you have your exhibits (inaudible) with Mr. Evans. Mr. Lanzi, maybe you do the same thing because I, I think there are a couple of extra ones that came in and just so nobody is surprised that there's additional exhibits in the record and everybody's working off

the same scorecard.

MR. MCCANN: You want to go first, Mr. Lanzi?

MR. LANZI: Sure. I have that one through ten, I'm sorry, one through 7-A and B are in, 7-C was only identified for the record. And then, eight through fourteen were all in.

MR. EVANS: I thought 7-C came in with 7-B?

CHAIR: No, it was just 7-B.

MR. EVANS: Okay, all right.

MR. LANZI: So, everything is in other than 7-C for Petitioner.

CHAIR: Okay. Okay and, Mr. McCann?

MR. MCCANN: I know that Exhibit 1 is not in evidence. That, that was just our, that was a copy of the plat, which is already in evidence as a Petitioner's exhibit. But I believe Exhibits 2 through 17 are in evidence. Two I may not have moved in, it's just a My Neighborhood map that I showed the witness briefly. I, --

CHAIR: (inaudible), I'm sorry. I'm sorry, Mr. McCann.

MR. MCCANN: Yeah. I don't think I actually moved that in, so I would move that into the extent it, it adds anything. But other than that, I think everything else is in.

CHAIR: Do, do you have all that, Mr. Evans?

MR. EVANS: I, I do, yeah. Mr. Lanzi, are your Exhibits 11, 12 and 13, were they submitted to Ms. Cannington?

MR. LANZI: They were submitted yesterday afternoon to the administrative, or whatever the website is. Yes.

MR. EVANS: Okay and Mr., Mr. McCann, are all of your Exhibits 1 through 17, well, not one, two through seventeen, are those all, were those all submitted in electronic form?

MR. MCCANN: No, twelve through seventeen are all cross exhibits that I introduced today for the first time. So, when I get off the phone, I'm going to send those to you.

MR. EVANS: Okay. So, but one through, or two through eleven are already there?

MR. MCCANN: Yes.

MR. EVANS: Okay, all right.

CHAIR: And Joe, I've got Mr. Lanzi's exhibits that he posted yesterday. So, it's on, it's on the server. And Mr. Lanzi, just to clear the record here, you, you have no objections to Mr. McCann's admission into evidence Exhibit 2 that he mentioned, from the My Neighborhood map?

MR. LANZI: No, no, I don't.

CHAIR: Okay.

MR. LANZI: No, no objection.

MR. MCCANN: Mr. Evans, could, could I ask you --

MR. EVANS: Yes.

MR. MCCANN: -- twelve through seventeen, I, I know what they are, but I don't know what they're numbered. Would you mind running through those with me?

MR. EVANS: Yes, I can, sure.
MR. MCCANN: Okay.
MR. EVANS: Number twelve were the documents underlying cases for, for, for Petitioner's Exhibit 8.
MR. MCCANN: Okay.
MR. EVANS: Thirteen were, was the documents for the underlying cases, no, it was the, the cases for 03-309-A.
MR. MCCANN: Okay.
MR. EVANS: That was a Board of Appeals case.
MR. MCCANN: Yep.
MR. EVANS: Number fourteen was a Petition for a Variance at 13101 Cherwin. Number fifteen was the SDAT printout. Number sixteen was the four properties related to the pink highlights.
MR. MCCANN: Yep.
MR. EVANS: And the three others, plus three others. And then, number seventeen was the rule eight documents.
MR. MCCANN: Okay. I think I got that. Can you repeat, what's twelve again?
MR. EVANS: Twelve is documents relating to the underlying cases associated with Petitioner's Exhibit 8.
MR. MCCANN: Okay. Okay.
MR. EVANS: Okay.
MR. MCCANN: Thank you.
MR. EVANS: Sure.

CHAIR: So, Mr. McCann and Mr. Lanzi, can we have closing briefs submitted in thirty days, is that --

MR. MCCANN: Yes, that's good by me.

CHAIR: Because Mr. McCanna and Mr. Lanzi, we're not on an accelerated track here, right? Like we don't have to have a deliberation in ten days or something like that, right?

MR. LANZI: Correct.

CHAIR: Because I don't think we are. All right. So, if we can have it within thirty days, that'd be great. And then we'll schedule (inaudible) Ms. Cannington the deliberation.

MR. EVANS: Maybe we should give them a specific date for the memos, do you think?

CHAIR: Yeah, I was going off of thirty days from today, so that would be, it's (inaudible) --

MR. LANZI: St. Patrick's Day.

CHAIR: Can't do that.

MR. LANZI: How about Friday, the 19th?

CHAIR: How's that work, Mr. McCann?

MR. MCCANN: I'm sorry, I was looking at my calendar. Yeah, I mean, (inaudible) that's my son's spring break. We're going to, we're going out of town.

CHAIR: Part of it or in the, in the middle of it?

MR. MCCANN: We'll be back on the 19th.

CHAIR: Okay, you'll be back on the 19th. Yeah, you

want to make it --

MR. MCCANN: (inaudible).

CHAIR: -- the 25th to give you a time to dig out of your, so if you come back --

MR. MCCANN: Yeah.

CHAIR: -- if you come back on that, on that week of the 19th or 20th, (inaudible) use a couple days, right?

MR. MCCANN: Yeah, that would be great.

CHAIR: So, why don't we make it the 26th, does that work, Mr. Lanzi? If we make that accommodation?

MR. LANZI: Yes.

CHAIR: Joe, Mr. Sampson, any objection? Or Mr. Evans, Mr. Sampson, any objection?

MR. EVANS: No, that's fine with me.

MR. SAMPSON: I'm good.

CHAIR: I mean, you know, I wouldn't want to do that to Mr. McCann to go off of spring break and then having to have it the very next day he comes back --

MR. MCCANN: Yeah, I appreciate that.

CHAIR: I'm sure, I'm sure Mr. Lanzi would appreciate that advantage, but we'll try to be neutral here. Anything else for the good of the order, Mr. Lanzi or Mr. McCann?

MR. MCCANN: Other than thank you very much.

CHAIR: Mr. Evans, Mr. Sampson?

MR. EVANS: Thank you.

MR. SAMPSON: I'm good, thank you.

MR. EVANS: Thank you, counsel. Appreciate it.

MR. SAMPSON: (inaudible).

CHAIR: And thank you for being hospitable to each other too, appreciate it. Mr. Sampson, I think you can close the record here and I think we're good to go.

MR. SAMPSON: All right, I'm stopping it. Thank you.

MR. MCCANN: Take care, everybody.

MR. LANZI: Thank you.

CHAIR: (inaudible).

(OFF THE RECORD)

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

9/29/20
DMcManon

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
" 1.9 - Final Site Plan per AJ Mayhew's Order of 9-29-2020 Decision 10-13-2020

GENERAL SITE INFORMATION

1. Ownership: Craig Kestner
   13015 Eastern Avenue Baltimore, MD 21220
2. Address: 13217 Cherwin Avenue
3. Deed references: SM 34935/ 437
   Lots 155 & 156 " Section A Twin River Beach" PB 9/ 33
4. Area: 6,050 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 /156/ 15-22-350391
6. Election District: 15 Councilmanic District: 6
   ADC Map: 4583C10 GIS tile: 084A1 Position sheet: 31NE49
7. 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.
8. 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

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 2400100315 G.

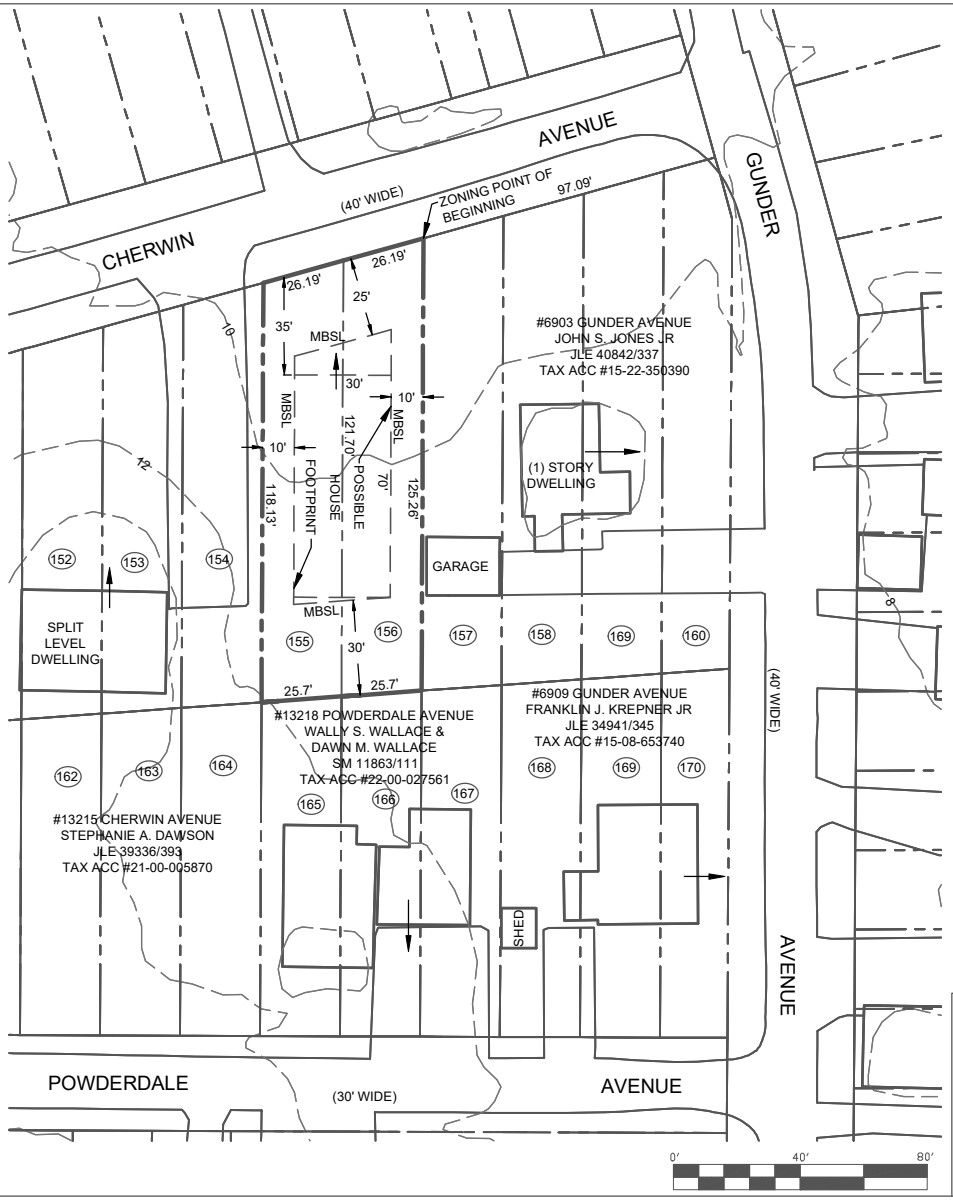
OFFICE OF PLANNING

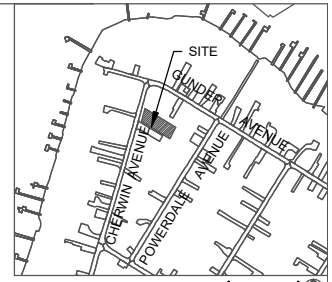
Regional Planning District: Windlass District Code: 322

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'

REVISION

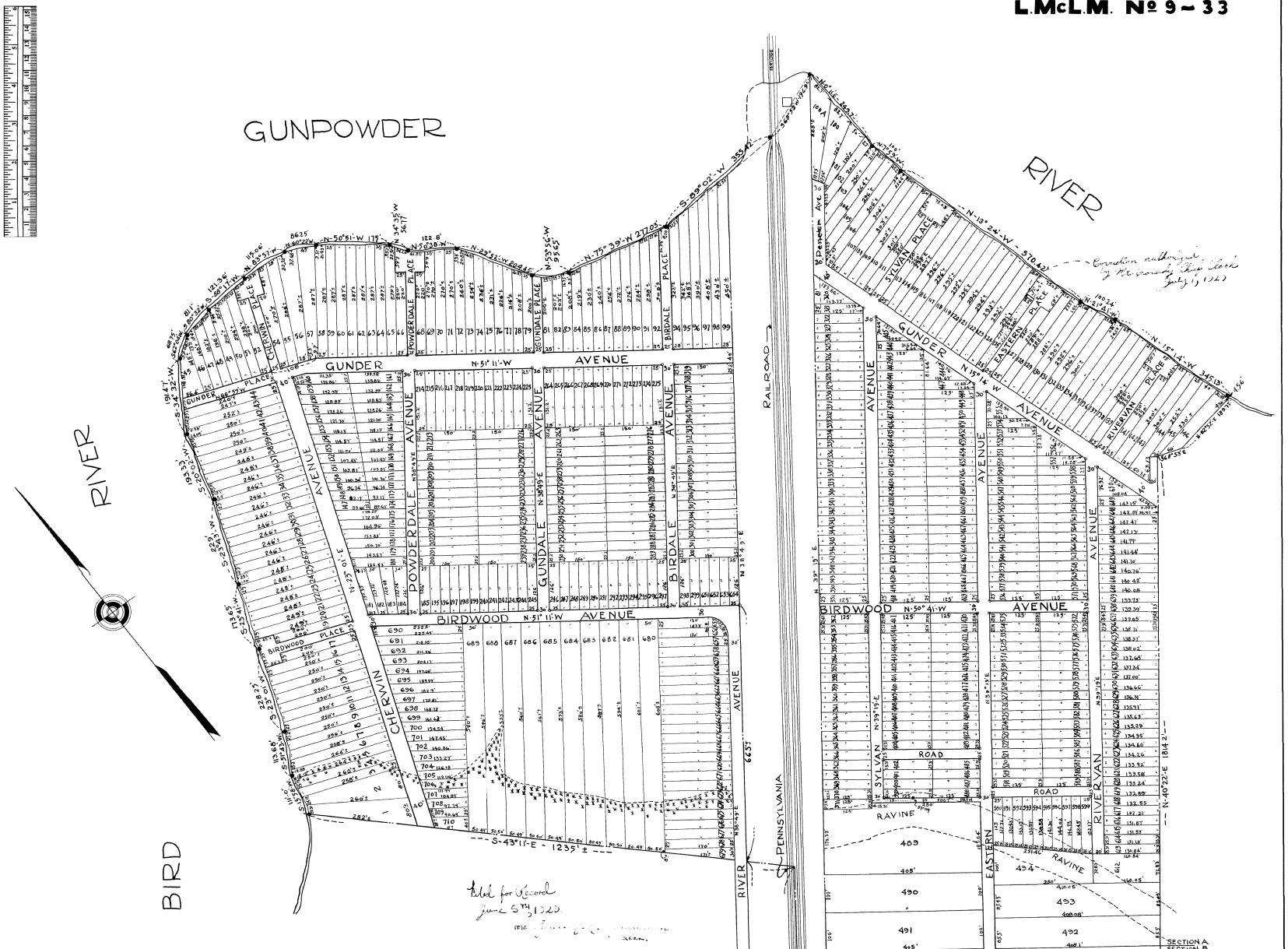
Bruce E. Doak Consulting, LLC
Land Use Expert and Surveyor
3801 Baker Schoolhouse Road
Freeland, MD 21053
o 443-900-5535 m 410-419-4906
bdoak@bruceedoakconsulting.com

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"=80"

Petitioner's Exhibit No. 1

L.McL.M. № 9 – 33



SECTION A
TWIN RIVER BEACH

SUBDIVIDED BY

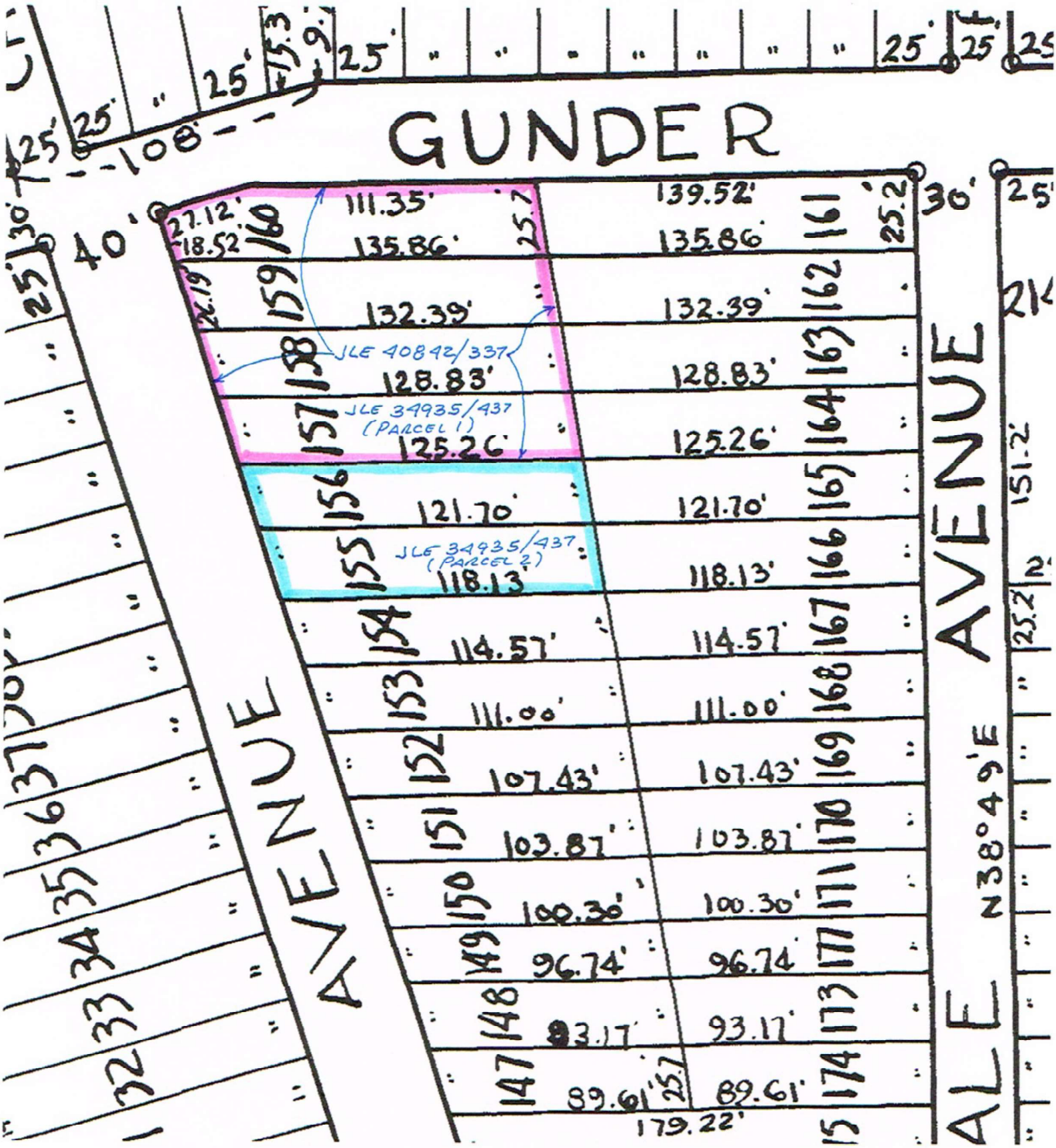
CITYCO REALTY CO.

7 ST. PAUL ST. BALTIMORE, MD.

SCALE 1" = 100' JUNE 1923

REVISED - APRIL 7, 1929.

BALTIMORE COUNTY CIRCUIT COURT (Plats) Plat Book LMcLM 9, p. 33, MSA_C2136_2978. Date available 10/26/2457. Printed 10/12/2018.



PORTION OF PB 9/33 SHOWING SUBJECT LOTS

Petitioner's Exhibit No. 3



KEY SHEET FOR EXHIBIT PHOTOS

Petitioner's Exhibit No. 4



A



B



C



D



E



F


1218
ADT



H

GENERAL SITE INFORMATION

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4. The subject property is located in flood plain Zone AE per FIRM Panel 2400100315 G.

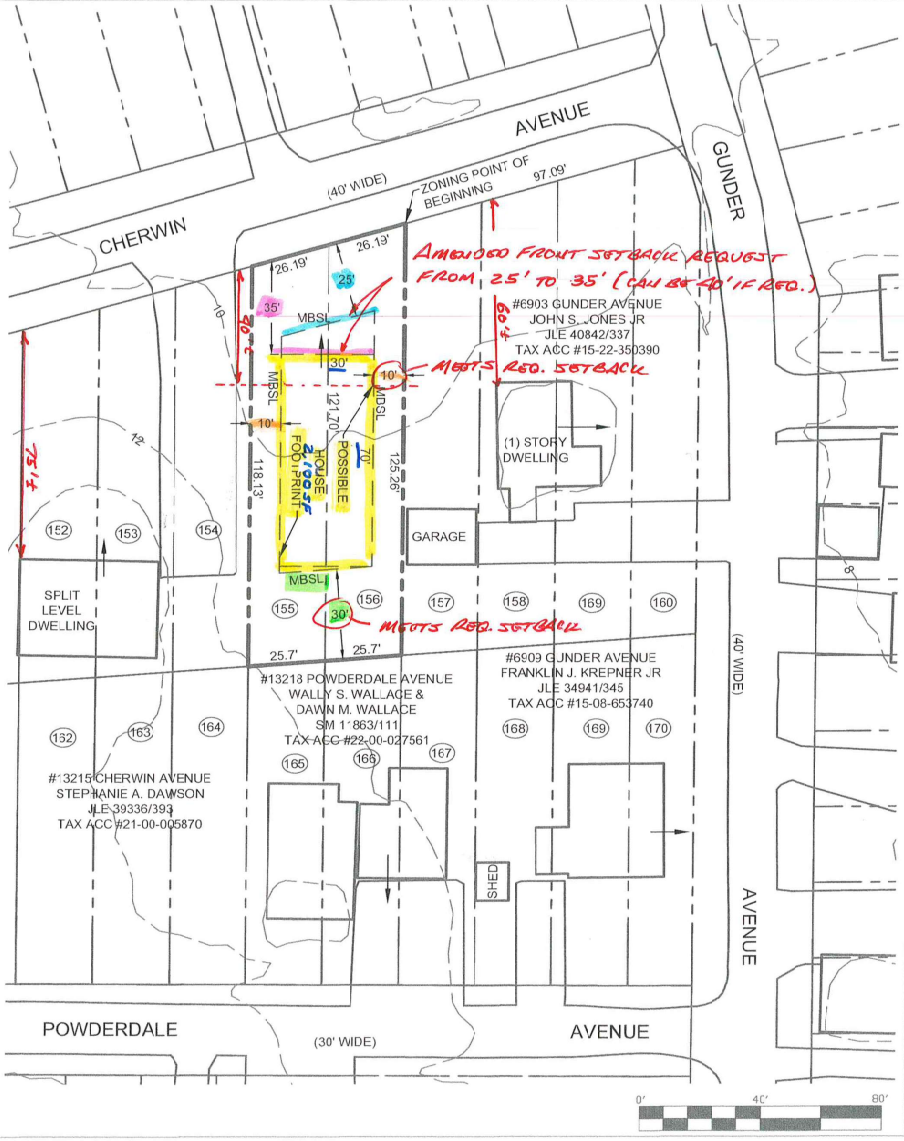
OFFICE OF PLANNING

Regional Planning District: Windlass District Code: 322

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'

NOTE: IF 40' FRONT SETBACK = 45E
FOOTPRINT 65'X 30' = 1950 SF

Bruce E. Doak Consulting, LLC
Land Use Expert and Surveyor
3801 Baker Schoolhouse Road
Frederick, MD 21703
o 443-900-5535 m 410-419-4936
bdoak@bruceedoakconsulting.com

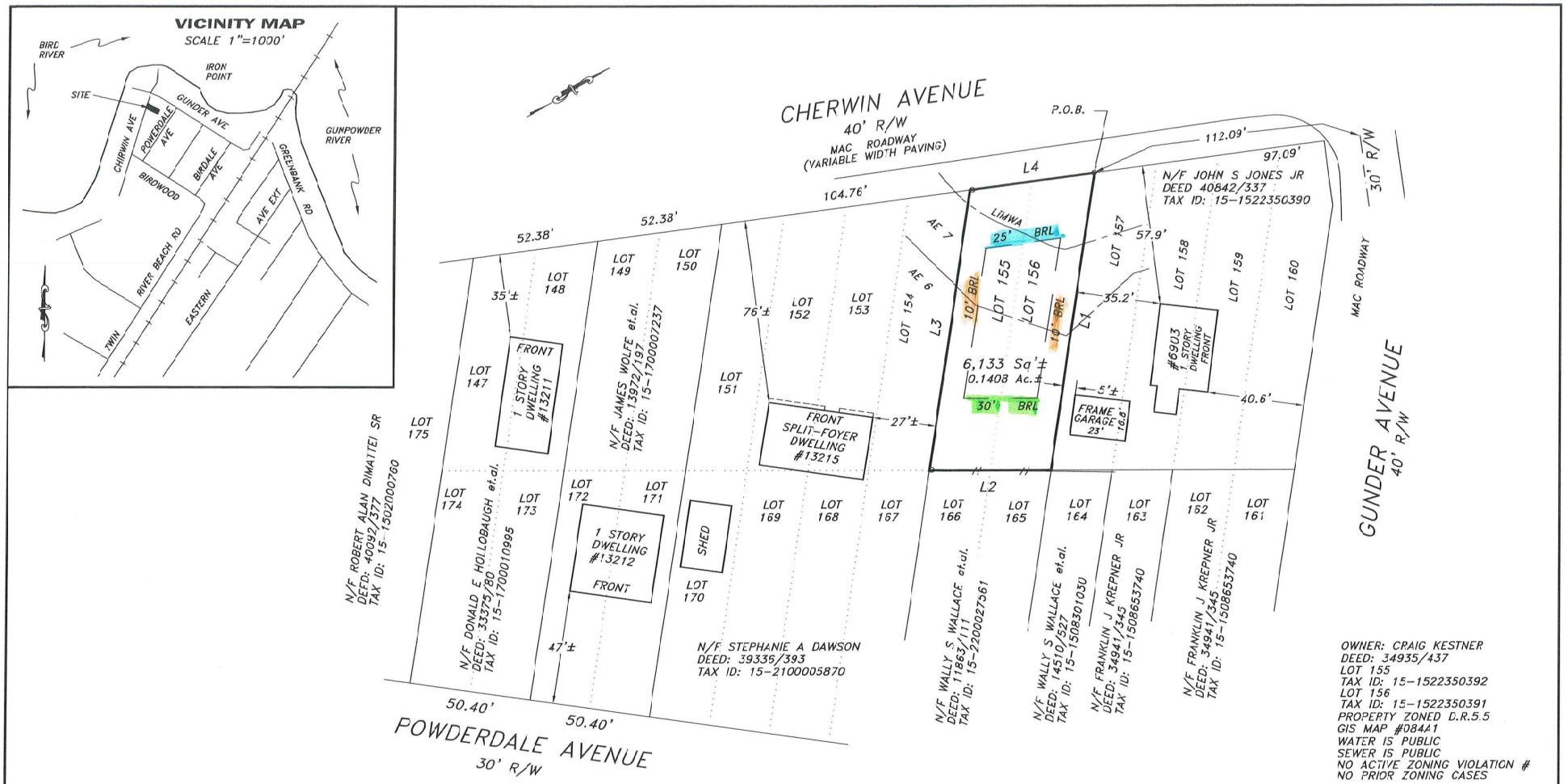
PLAN TO ACCOMPANY
A ZONING PETITION
FOR
LOT 155 & LOT 156
"TWIN RIVER BEACH"
#13217 CHERWIN AVENUE
BALTIMORE COUNTY, MARYLAND
15th ELECTION DISTRICT 6th COUNCILMANIC DISTRICT

REVISION

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

CASE #2020-0090-SPHA PLAN - AMENDMENT EXPLAINED

Petitioner's Exhibit No. 6



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

0' 40' 80' 120'

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

STATE OF MARYLAND
JAMES C. HUDGINS
PROPERTY LINE SURVEYOR
REGISTERED
96

James Carl Hudgins
Property Line Surveyor #96
Expiration Date: 3/11/2020

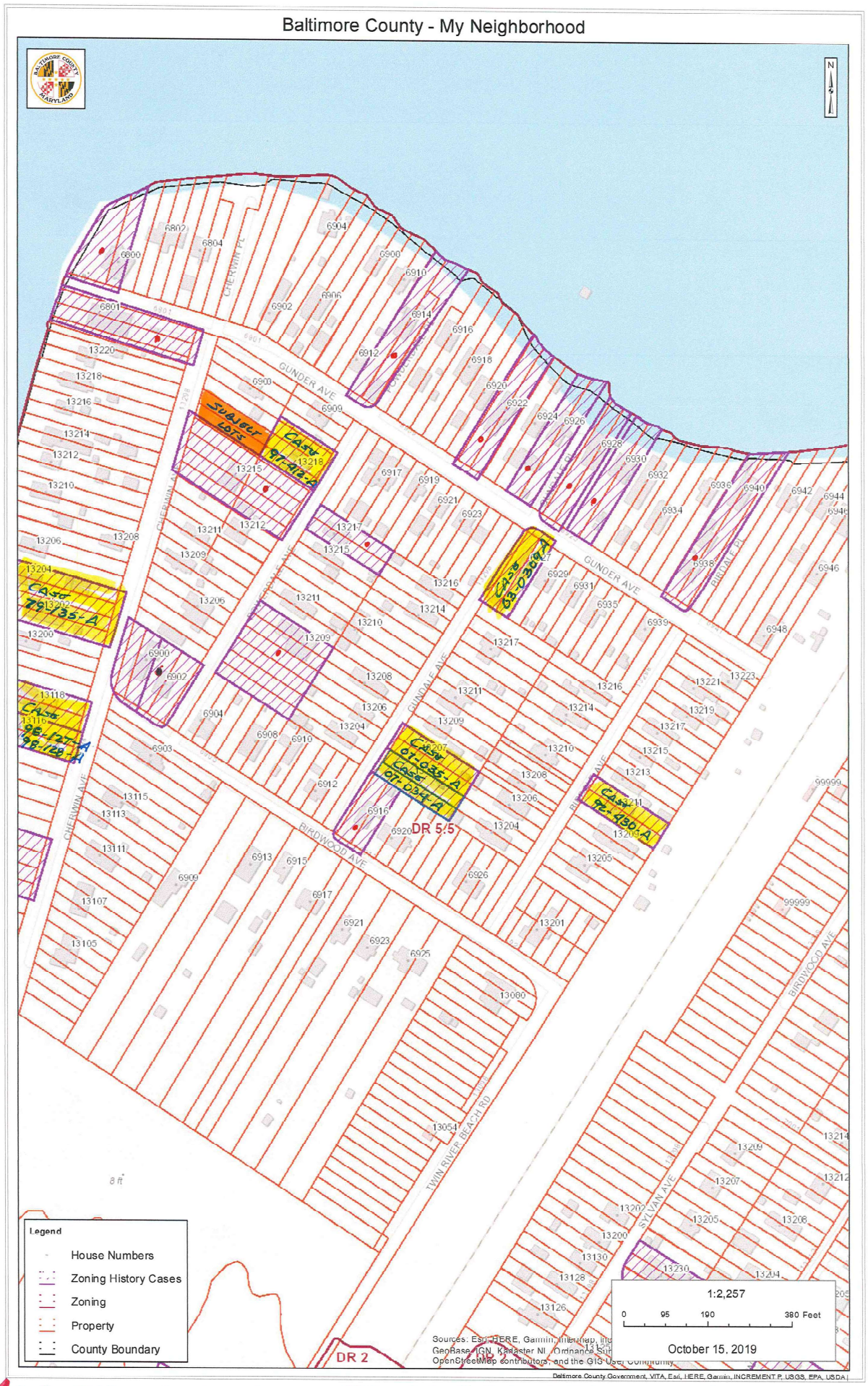
PLAN TO ACCOMPANY A PETITION FOR A VARIANCE
CHERWIN AVENUE
6th COUNCILMANIC DISTRICT
15th ELECTION DISTRICT
BALTIMORE COUNTY, MARYLAND

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

CASE #2019-0402-SPHA PLAN

Petitioner's Exhibit No. 6



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)** 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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Date 9-26-06
By

Petitioner's Exhibit 8A

(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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9-20-06

Petitioner's Exhibit 8A

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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9-20-06

Petitioner's Exhibit 8A

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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Petitioner's Exhibit 8A

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 disproportionably 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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9-20-06

Petitioner's Exhibit 8A

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.

Petitioner's Exhibit 8A

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

JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

JVM:pz

ORDER RECEIVED FOR FILING
Date 9-20-06
By 13

Petitioner's Exhibit 8A

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; BCZR, TO PERMIT A SINGLE FAMILY RESIDENTIAL DWELLING ON A 50.4 ~~50~~ 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

~~RECEIVED FOR FILING~~

REV 9/15/98 9-20-06 **Reviewed By** _____ **Date** 7-25-06

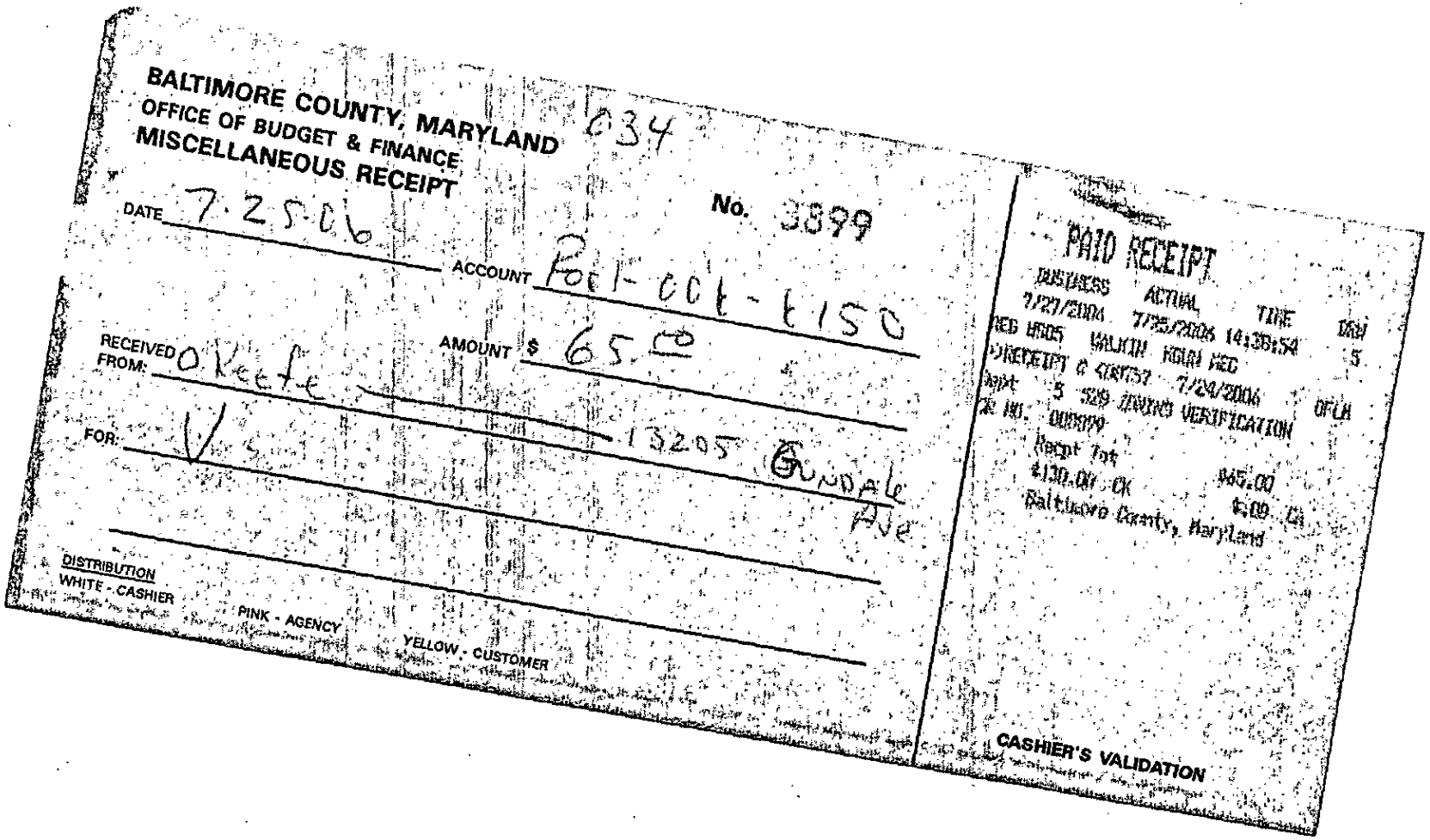
Petitioner's Exhibit 8A

ZONING DESCRIPTION

ZONING DESCRIPTION FOR # 13205 GUNDALE AVENUE

Beginning at a pint 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.

Petitioner's Exhibit 8A



BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

DATE 7.25.06 No. 3899

ACCOUNT 001-001-6150

AMOUNT $ 65.00

RECEIVED FROM: O'Keefe

FOR: V 13205 Glendale Ave

DISTRIBUTION
WHITE - CASHIER
PINK - AGENCY
YELLOW - CUSTOMER

PAID RECEIPT
BUSINESS ACTUAL TIME DRAW
7/27/2006 7/25/2006 14:38:54 5
REG HRGS WALKIN HEAR REC
RECEIPT # 036737 7/24/2006
Dept 5 529 ZONING VERIFICATION OFLH
Rec No. 0003099
Recpt Tot
$130.00 CK $65.00
$0.00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

Petitioner's Exhibit 6A

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 Gundale Avenue
Southside of Gundale 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.

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

S. Wilkinson

LEGAL ADVERTISING

Petitioner's Exhibit 8A

CERTIFICATE OF POSTING

ATTENTION: KRISTEN MATHHEWS **DATE:** 9/5/06

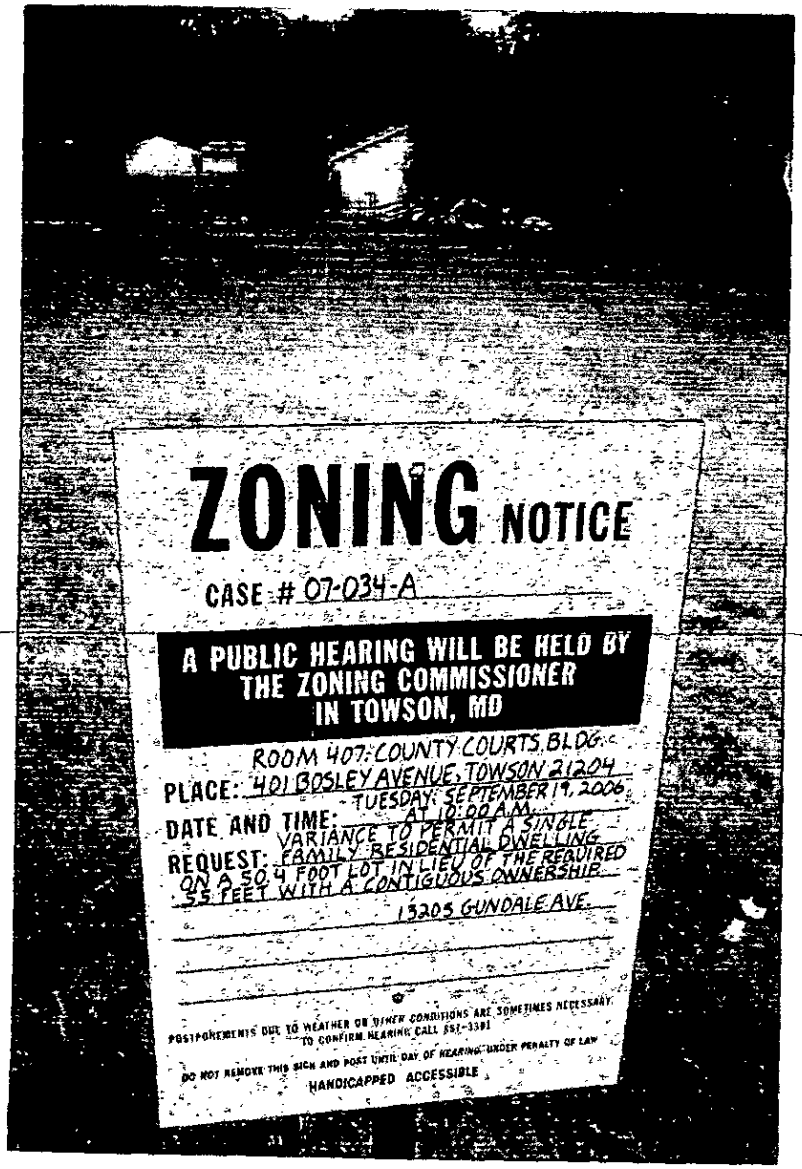
Case Number: 07-034-A

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)

Petitioner's Exhibit 8A

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

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.

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

Please forward billing to:
Gerald Kestner 410-335-7866
12913 Eastern Avenue
Baltimore, MD 21220

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.

Petitioner's Exhibit 8A

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

Petitioner's Exhibit 8A

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: #13205 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

Petitioner's Exhibit 8A

BALTIMORE COUNTY
MARYLAND

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

Petitioner's Exhibit 8A

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: Curtis Murray

Division Chief: Lyn Lanham

CM/LL

RECEIVED
AUG 31 2006
ZONING COMMISSIONER

JEN, RECEIVED FOR FILING
9-20-06

W:\DEVREV\ZAC\7-035.doc

Petitioner's Exhibit 8A

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: August 4, 2006

FROM: Dennis A. Kennedy, Supervisor
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
Date: 9-20-06
By: [illegible]

Petitioner's Exhibit 8A

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

FILED FOR FILING
9-20-06

County Courts Building | 401 Bosley Avenue, Suite 405 | Towson, Maryland 21204 | Phone 410-887-3868 | Fax 410-887-3468
www.baltimorecountyonline.info

Petitioner's Exhibit 8A

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

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

SHA State Highway Administration — Driven to Excel

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

Maryland Department of Transportation

Date: 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,

S. D. Foster

Steven D. Foster, Chief
Engineering Access Permits Division

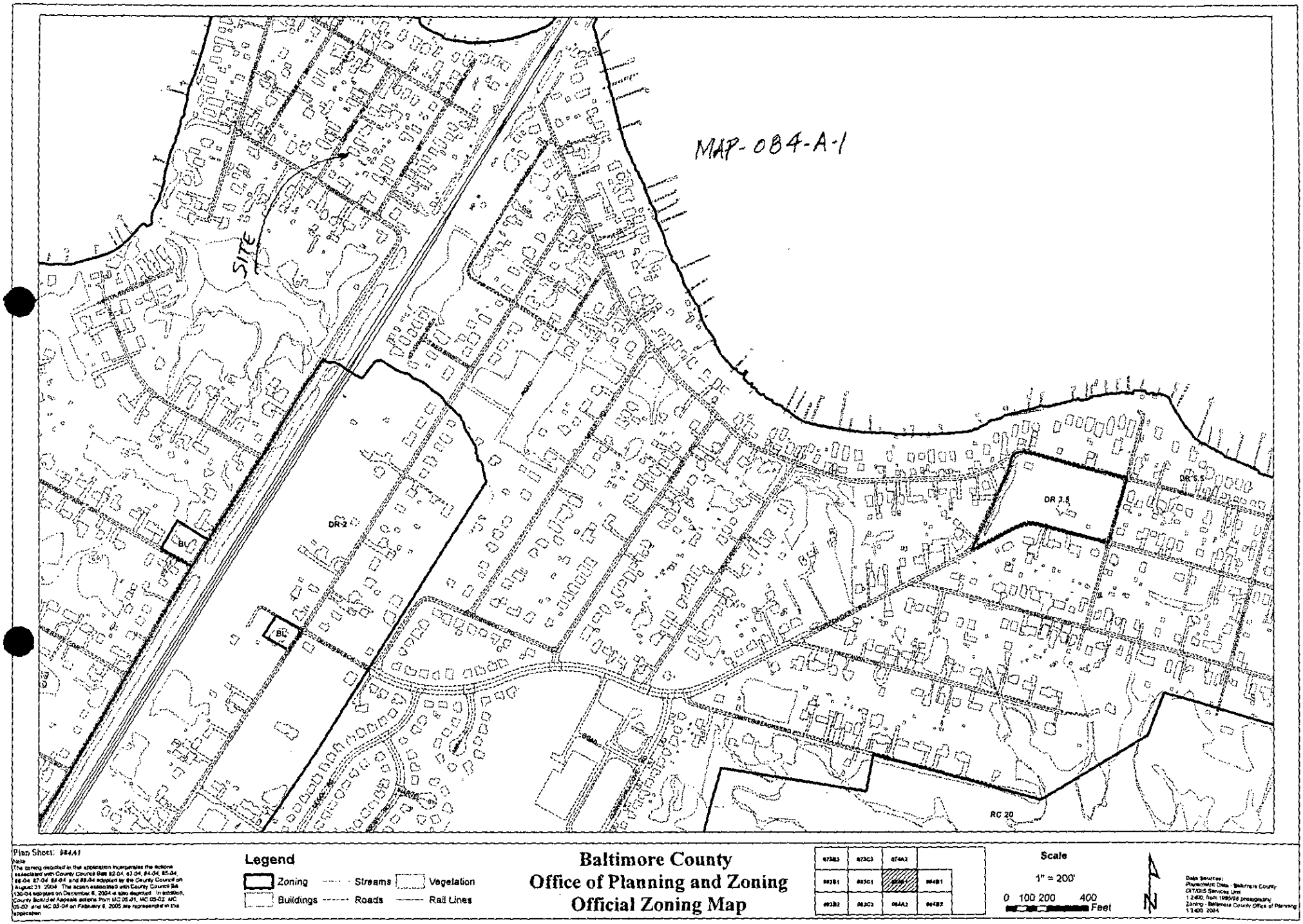
Petitioner's Exhibit 8A

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.

Petitioner's Exhibit 8A



Plan Sheet: #84A1

Note
The zoning depicted in the application incorporates the actions associated with County Council Bills #2-04, #3-04, #4-04, #5-04, #6-04, #7-04, #8-04, and #9-04 adopted by the County Council on August 31, 2004. The action associated with County Council Bill #30-04 was signed on December 6, 2004 at sine 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 this application.

Legend

Zoning — Streams — Vegetation
Buildings — Roads — Rail Lines

Baltimore County
Office of Planning and Zoning
Official Zoning Map

#73B3	#73C3	#74A3	
#83B1	#83C1	#84A1	#84B1
#83B2	#83C2	#84A2	#84B2

Scale
1" = 200'
0 100 200 400
Feet

N

Data Sources:
Planimetric Data - Baltimore County GIS/GIS Services Unit
1:2400, from 1999/00 photography
Zoning - Baltimore County Office of Planning
1:1400, 2004

Petitioner's Exhibit 8A

PLAT TO ACCOMPANY PETITION FOR ZONING ☑ VARIANCE ☐ SPECIAL HEARING

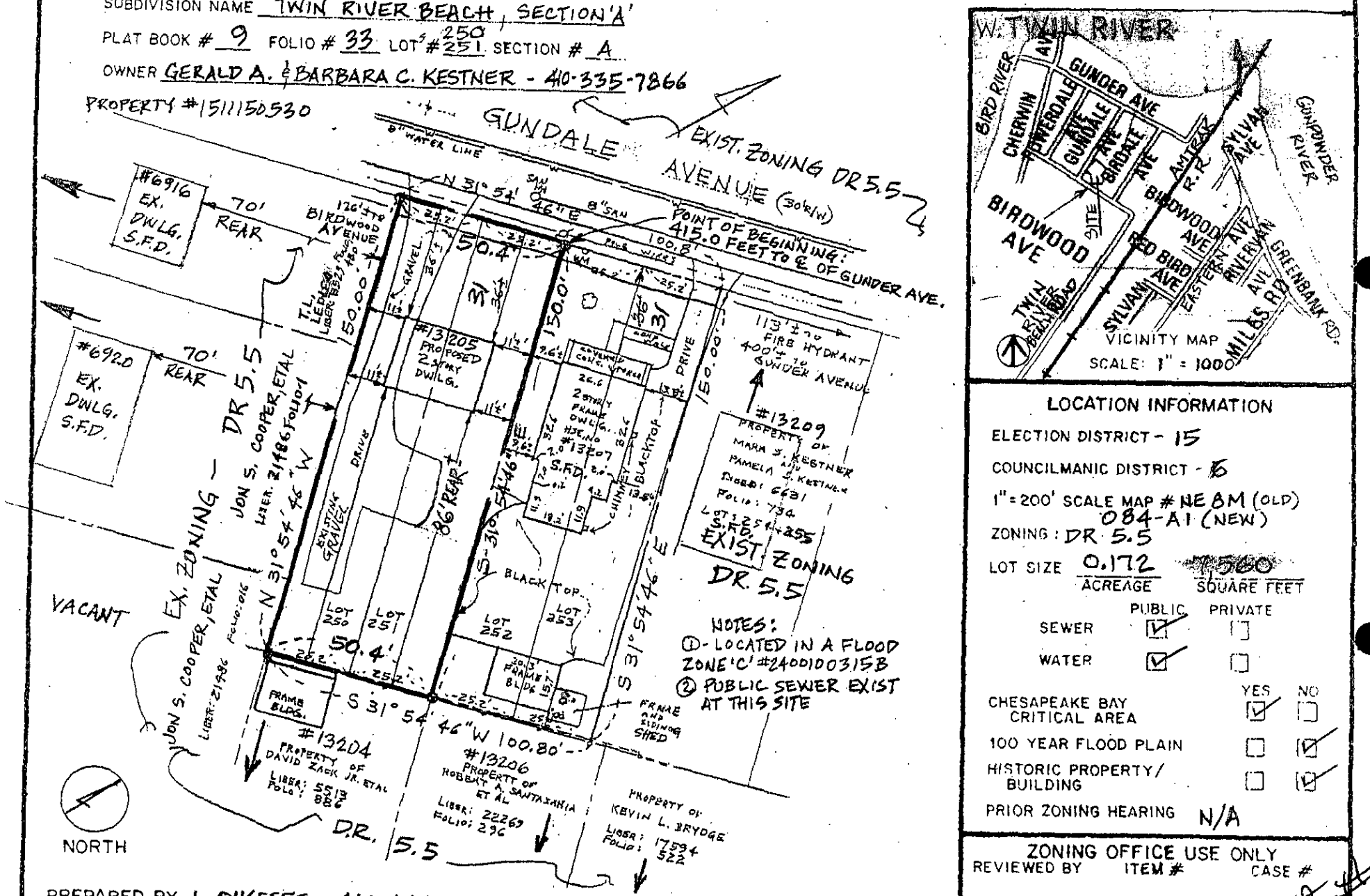
PROPERTY ADDRESS #13205 - GUNDALE AVENUE

SUBDIVISION NAME TWIN RIVER BEACH, SECTION 'A'

PLAT BOOK # 9 FOLIO # 33 LOT # 250 251 SECTION # A

OWNER GERALD A. & BARBARA C. KESTNER - 410-335-7866

PROPERTY # 1511150530



NOTES:
1. LOCATED IN A FLOOD ZONE 'C' #2400100315B
2. PUBLIC SEWER EXIST AT THIS SITE

LOCATION INFORMATION

ELECTION DISTRICT - 15

COUNCILMANIC DISTRICT - 5

1" = 200' SCALE MAP # NE 8M (OLD) 084-A1 (NEW)

ZONING : DR 5.5

LOT SIZE 0.172 ACREAGE ~~7500~~ SQUARE FEET

	PUBLIC	PRIVATE
SEWER	☑	☐
WATER	☑	☐

	YES	NO
CHESAPEAKE BAY CRITICAL AREA	☑	☐
100 YEAR FLOOD PLAIN	☐	☑
HISTORIC PROPERTY/ BUILDING	☐	☑

PRIOR ZONING HEARING N/A

ZONING OFFICE USE ONLY

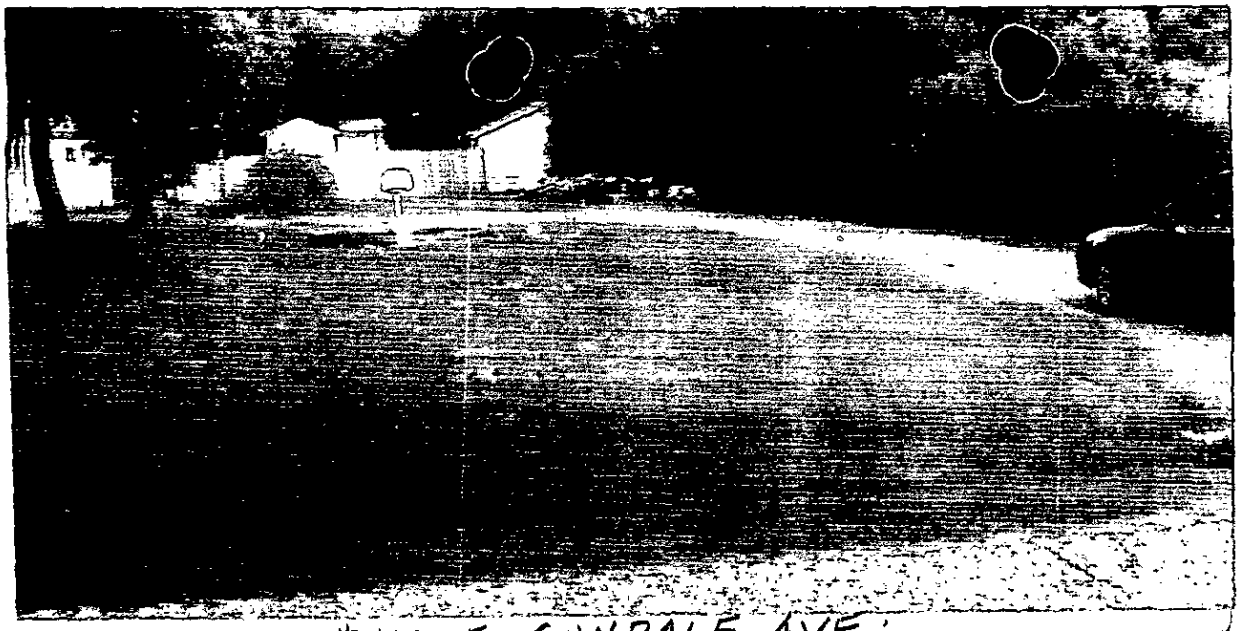
REVIEWED BY ITEM # CASE #

Pet #1

PREPARED BY L. O'KEEFE - 410-666-5366

SCALE OF DRAWING: 1" = 40'

Petitioner's Exhibit 8A



#13205 GUNDALE AVE.

2A



#13207 GUNDALE AVE.

2B



2C

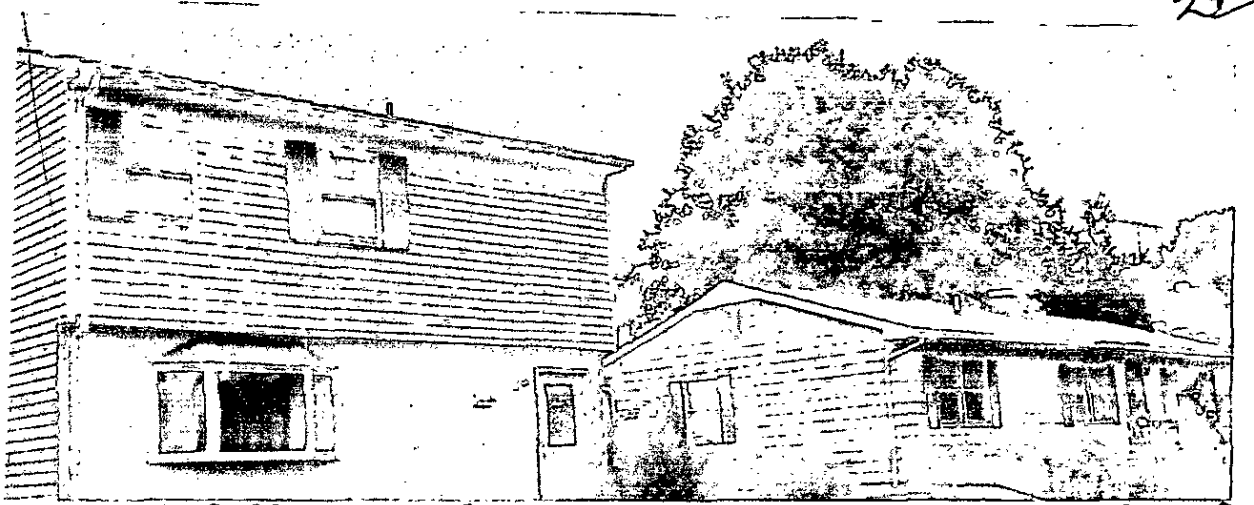
Petitioner's Exhibit 8A



#13204 BIRDALE AVE. 2D



#13206 - BIRDALE AVE. 2E



#6916 BIRDWOOD AVE #6920 BIRDWOOD AVE. 2F

newer house

Petitioner's Exhibit 8A

IN RE: PETITION FOR ZONING VARIANCE
SE/S Birdale Avenue, 322' SW of the c/l of Gunder Avenue (13211 Birdale Avenue)
15th Election District
6th Councilmanic District
Ronald W. Bair
Petitioner

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 92-430-A

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner as a Petition for Zoning Variance in which the Petitioner requests relief from Section 1B02.3.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 7,560 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.

ORDER RECEIVED FOR FILING
Date 6/24/92
By

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. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;

2) whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and

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

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

It is clear from the testimony that if the variance is granted, such use, as proposed, 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-

- 2-

ORDER RECEIVED FOR FILING
Date 6/24/92
By

ments from which the Petitioner seeks relief will unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the 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, posting of the property, and public hearing on this Petition held, and for the reasons given above, the variance requested should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 24th day of June, 1992 that the Petition for Zoning Variance requesting relief from Section 1B02.3.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 tor 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.

TMK:bjs

Timothy M. Kotroco
TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

- 3-

ORDER RECEIVED FOR FILING
Date 6/24/92
By

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning

Suite 113 Courthouse
400 Washington Avenue
Towson, MD 21204
(410) 887-4386

June 24, 1992

Mr. Ronald W. Bair
12 Fitzgerald Court
Baltimore, Maryland 21234

RE: PETITION FOR ZONING VARIANCE
SE/S Birdale Avenue, 322' SW of the c/l of Gunder Avenue
(13211 Birdale Avenue)
15th Election District - 6th 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 Petition 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,

Timothy M. Kotroco

TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

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

DEPRM

People's Counsel

File

Mr. Eugene W. Schwandtner
902-J Swallow Crest Court, Edgewood, Md. 21040

92-430-A

457

92-430-A

Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 13211 BIRDALE AVE which is presently zoned DR5.5

This Petition shall be filed with the Office of Zoning Administration & Development Management.
The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s) 1B02.3.C.1 of the BCZR TO PERMIT A MINIMUM LOT WIDTH of 50.4 ft IN LIEU of THE REQUIRED 55'

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (Indicate hardship or practical difficulty)
THE FRONTAGE OF THIS PROPERTY IS 50.4 FEET. SINCE 55 FEET IS REQUIRED, WE CAN NOT OBTAIN A BUILDING PERMIT WITHOUT A VARIANCE

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.

CRITICAL AREA

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:
EUGENE W SCHWANDTNER
(Type or Print Name)
Eugene W. Schwandtner
Signature
902 J Swallow Crest Ct
Address
EDGEWOOD MD 21040
City State Zipcode
Attorney for Petitioner
(Type or Print Name)
Signature
Address Phone No.
City State Zipcode

Legal Owner(s):
RONALD W BAIR
(Type or Print Name)
Ronald W. Bair
Signature
2 (Type or Print Name)
Signature
12 FITZGERALD CT 882-4699
Address Phone No.
Baltimore MD 21234
City State Zipcode
Name, Address and phone number of legal owner, contract purchaser or representative to be contacted.
Name
Address Phone No.
City State Zipcode

OFFICE USE ONLY
ESTIMATED LENGTH OF HEARING
Reviewable for Hearing
Be following dates Next Two Months
ALL OTHER
REVIEWED BY: JCM DATE 4-30-92

ORDER RECEIVED FOR FILING
Date 6/24/92
By

457 3

92-430-A

ZONING DESCRIPTION FOR 13211 BIRDALE AVE.

BEGINNING FOR THE FIRST AND SECOND THEREOF ON THE SOUTH EAST SIDE OF BIRDALE AVE, WHICH IS 30 FEET WIDE AT A DISTANCE OF 322.4 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. M. No. 9, FOLIO 33, CONTAINING 7560 SQUARE FEET. ALSO KNOWN AS 13211 BIRDALE AVENUE AND LOCATED IN THE 15th ELECTION DISTRICT. ALSO RECORDED IN LIBER 8050 PAGE 551.

92-430-A

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 15th Date of Posting 6/18/92
Posted for: Variance
Petitioner: Eugene W. Schwandtner - Ronald W. Bair
Location of property: S/E/S Birdale Ave. (13211), 322' SW Gunder Ave.
Location of Signs: Facing Roadway, on Property of Petitioner
Remarks:
Posted by (Signature) Date of return: 6/19/92
Number of Signs: 1



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 Orlinsky
Publisher

$ 74.76

Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

receipt

6/17/92 hearing

Date

92-430

Account R-001-6150
Number

6/18/92 DEPOSIT

	QTY	FEE
PUBLIC HEARING FEES		
080 -POSTING SIGNS / ADVERTISING	1 X	
	TOTALS	

LAST NAME OF OWNER: BAIR

DAA04#0004#ICHRC $74.76
BA COC12:25PM06-18-92
Please Make Checks Payable To: Baltimore County

Cashier Validation

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning

111 West Chesapeake Avenue
Towson, MD 21204 (410) 887-3353

DATE: 6/1/92

Ronald W. Bair
12 Fitzgerald Court, #A
Baltimore, Maryland 21234

RE:
CASE NUMBER: 92-430-A
SE/S Birdale Avenue, 322' SW from c/l Sunder Avenue
13211 Birdale Avenue
15th Election District - 6th Councilmanic
Petitioner(s): Ronald W. Bair

Dear Petitioner(s):

Please be advised that $ 74.76 is due for advertising and posting of the above captioned property.

THIS FEE MUST BE PAID AND THE ZONING SIGN & POST SET(S) RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT ISSUE. DO NOT REMOVE THE SIGN & POST SET(S) FROM THE PROPERTY UNTIL THE DAY 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 21204. It should have your case number noted thereon and be made payable to Baltimore County, Maryland. In order to prevent delay of the issuance of proper credit and/or your Order, immediate attention to this matter is suggested.

Arnold Jablon
ARNOLD JABLON
DIRECTOR

Printed on Recycled Paper

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning

111 West Chesapeake Avenue
Towson, MD 21204 (410) 887-3353

MAY 15, 1992

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 on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland 21204 as follows:

CASE NUMBER: 92-430-A
SE/S Birdale Avenue, 322' SW from c/l Sunder Avenue
13211 Birdale Avenue
15th Election District - 6th Councilmanic
Petitioner(s): Ronald W. Bair
HEARING: WEDNESDAY, JUNE 17, 1992 at 11:00 a.m.

Variance to permit a minimum lot width of 50.4 ft. in lieu of the required 55 ft.

Lawrence E. Schmidt
Zoning Commissioner of
Baltimore County

cc: Ronald W. Bair
Eugene W. Schmeisser

NOTE: HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.

Printed on Recycled Paper

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning

111 West Chesapeake Avenue
Towson, MD 21204 887-3353

June 2, 1992

Mr. Ronald W. Bair
12 Fitzgerald 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 (ZAC) 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 Commissioner, 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 ZAC that offer or request information on your petition. If additional comments are received from other members of ZAC, 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 21204 887-3353

Your petition has been received and accepted for filing this

30th day of April, 1992.

ARNOLD JABLON
DIRECTOR

Received By:

W. Carl Richards, Jr.
Chairman,
Zoning Plans Advisory Committee

Petitioner: Ronald W. Bair

Petitioner's Attorney:

5/19/92

DPW/Developers Engineering Division (Public Services) 05/18/92
Development Review Committee Response Form
Authorized signature _____ Date 5/18/92

Project Name / File Number	Waiver Number	Zoning Issue	Meeting Date
9690 Deereco Road Limited Partnership	450		5-11-92
DED DEPRM RP STP TE			NC
Orville Jones	451		
DED DEPRM RP STP TE			NC
Harbor Realty Partnership	452		
DED DEPRM RP STP TE			NC
Jerald H. And Brenda D. Windes	453		
DED DEPRM RP STP TE			NC
Daniel C. And Susan E. Gutkin	454		
DED DEPRM RP STP TE			NC
Donald And Anne Kahn	455		
DED DEPRM RP STP TE			NC
Signet Bank, Maryland	456		
DED DEPRM RP STP TE			NC
Ronald W. Bair	457		
DED DEPRM RP STP TE			NC
A. Eric And Esther J. Dott	458		
DED DEPRM RP STP TE			NC
William J. And Mary Jane Kramer	459		
DED DEPRM RP STP TE			NC
Douglas B. And Judith A. Celmar	460		
DED DEPRM RP STP TE			NC

COUNT 11

5/19/92

BALTIMORE COUNTY, MARYLAND

OFFICE OF PLANNING AND ZONING
New Courts Building
401 Bosley Avenue
Towson, MD 21204

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_11_92.txt
Petitns.txt

RECEIVED
MAY 19 1992
ZONING OFFICE

5/19/92

DPW/Traffic Engineering 05/18/92
Development Review Committee Response Form
Authorized signature Kathleen J. Formoso Date 5/18/92

Project Name / File Number	Waiver Number	Zoning Issue	Meeting Date
9690 Deereco Road Limited Partnership	450	N/C	5-11-92
DED DEPRM RP STP TE			
Orville Jones	451	N/C	
DED DEPRM RP STP TE			
Harbor Realty Partnership	452	N/C	
DED DEPRM RP STP TE			
Jerald H. And Brenda D. Windes	453	N/C	
DED DEPRM RP STP TE			
Daniel C. And Susan E. Gutkin	454	N/C	
DED DEPRM RP STP TE			
Donald And Anne Kahn	455	N/C	
DED DEPRM RP STP TE			
Signet Bank, Maryland	456	N/C	
DED DEPRM RP STP TE			
Ronald W. Bair	457	N/C	
DED DEPRM RP STP TE			
A. Eric And Esther J. Dott	458	N/C	
DED DEPRM RP STP TE			
William J. And Mary Jane Kramer	459	N/C	
DED DEPRM RP STP TE			
Douglas B. And Judith A. Celmar	460	N/C	
DED DEPRM RP STP TE			

COUNT 11

5/19/92

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/TXTSBP

RECEIVED
MAY 19 1992
ZONING OFFICE

Baltimore County Government
Fire Department

700 East Joppa Road Suite 901
Towson, MD 21204-5500

(301) 887-4500

MAY 13, 1992

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

RE: Property Owner: RONALD W. BAIR

Location: #13211 BIRDALE 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. Joseph Kelly Noted and Approved
Planning Group
Special Inspection Division
Fire Prevention Bureau

RECEIVED
MAY 14 1992
ZONING OFFICE

Department of Recreation and Parks
Development Review Committee Response Form
Authorized signature _____ Date 5/18/92

Project Name / File Number	Waiver Number	Zoning Issue	Meeting Date
9690 Deereco Road Limited Partnership		450	5-11-92
DED DEPRM RP STP TE			No Comment
Orville Jones		451	
DED DEPRM RP STP TE			No Comment
Harbor Realty Partnership		452	
DED DEPRM RP STP TE			No Comment
Jerald M. And Brenda D. Windes		453	
DED DEPRM RP STP TE			No Comment
Daniel C. And Susan E. Gutkin		454	
DED DEPRM RP STP TE			No Comment
Donald And Anne Kahn		455	
DED DEPRM RP STP TE			No Comment
Signet Bank, Maryland		456	
DED DEPRM RP STP TE			No Comment
Ronald W. Bair		457	
DED DEPRM RP STP TE			No Comment
A. Eric And Esther J. Dott		458	
DED DEPRM RP STP TE			No Comment
William J. And Mary Jane Kramer		459	
DED DEPRM RP STP TE			No Comment
Douglas B. And Judith A. Celmer		460	
DED DEPRM RP STP TE			No Comment

COUNT 11

92-430-A 8/1/92 2290-92 JW

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 Birdale 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/S/TXTJEU

RECEIVED
AUG 5 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 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 W. Bair

APPLICANT PROPOSAL

The applicant has requested a variance from section 1B02.3.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.D>

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 waters, tidal wetlands, and tributary streams" <Baltimore County Code Section 26-449(a)>.

Finding: There are no tidal waters, 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 26-447>.

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 1, 1985, then man-made impervious surfaces associated with that use are limited to 25% of the parcel or lot" <Baltimore County Code, Section 26-543(e)(1)>.

Findings: The amount of impervious areas shall not exceed 1890 square feet. This includes all building structures, paved and crusher 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 phosphorous 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 M. Farr at 887-2904.

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. Schwandtner, w/attachment

BAIR/TXTWSS

PLEASE PRINT CLEARLY PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
Eugene W. Schwandtner	9025 Swallow Crest ct apt 1 21040
Ronald Bair	12 Fitzgerald ct apt A 21234

Plat to accompany Petition for Zoning ☒ Variance ☐ Special Hearing

PROPERTY ADDRESS: 13211 BIRDALE AVE

see pages 5 & 6 of the CHECKLIST for additional required information

Subdivision name: TWIN RIVERS BEACH
plat book# 9 folio# 33 and 104 section#

OWNER: RONALD BAIR 12 FITZGERALD CT APT A BALT 21234

P.R. RAILROAD ROW.

LOT 308-309 HAROLD REISHER 5316-0171

LOT 306-307 RONALD BAIR 8050-0551

LOT 304-305 GEORGE M. POLINARO 7956-0443

50.4' 50.4' 50.4'

150.0'

EX. 1 STORY FRAME

CONCRETE

PROP. 1 ST. FRAME SFD

EXISTING 1 ST FRAME SFD

37.6' 48'

Pet ex #1

339.4' TO CENTER GUNDER AVE

BIRDALE AVE 50' R/W

ALL GRADES 90° EXISTING 8" WATER & 8" SANITARY

92-430-A

North
date: 4-15-92
prepared by: EUGENE SCHWANDTNER

Scale of Drawing: 1" = 50'

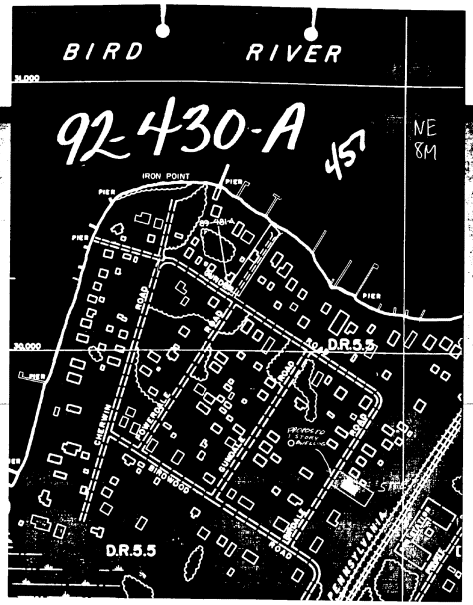
Vicinity Map scale: 1"=1000' HAREWOOD PARK

LOCATION INFORMATION

Councilmanic District: 6
Election District: 15
1"=200' scale map#: E4
Zoning: DR 5.5
Lot size: .174 acreage 7560 square feet

SEWER: ☑ ☐
WATER: ☑ ☐
Chesapeake Bay Critical Area: ☐ ☑
Prior Zoning Hearings: N/A

Zoning Office USE ONLY!
reviewed by: JCM ITEM #: 457 CASE#:



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

Petitioner's Exhibit No. 3

IN RE:	PETITIONS FOR VARIANCE - NW/Cor. Cherwin Avenue and Birdwood Place (13116 and 13118 Cherwin Avenue) 15th Election District 5th Councilmanic District	*	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY
	Thomas A. Hahn and Lillie H. Hentz, Trustees	*	Case Nos. 98-127-A 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 11/24/97
By

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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By

Petitioner's Exhibit No. 8C

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

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Date 11/24/97
By

Petitioner's Exhibit No. 8C

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 Kotroco

TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

Petitioner's Exhibit No. 8C

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 Kotroco

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

Printed with Soybean Ink

#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(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

~~Contract 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, Address and phone number of representative to be contacted

Paul Lee Engineering, Inc.
Name

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

OFFICE 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 scheduled

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By

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Zoning Administration & Development Management

Petitioner's Exhibit No. 8C

98-128-A

Paul Lee, P.E.

Paul Lee Engineering Inc.
304 W. Pennsylvania Ave.
Towson, Maryland 21204
410-821-5941

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.

STATE OF MARYLAND
PAUL LEE
4047
PROFESSIONAL ENGINEER

#128

J.O. 97-029

9/8/97

Petitioner's Exhibit No. 8C

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 approval of 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.

Petitioner's Exhibit No. 8C

98-128-A

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.: 128

Petitioner: Thomas A Hahn

Location: 13118 Cherwin Avenue

PLEASE FORWARD ADVERTISING BILL TO:

NAME: Lillie Hentz

ADDRESS: 8820 Walther Blvd, Apt. 3608

Balto. MD. 21234

PHONE NUMBER: (410) 663-4939

AJ:ggs

(Revised 09/24/96)

Petitioner's Exhibit No. 8C

Printed with Soybean Ink

BALTIMORE COUNTY, MARYL[illegible]
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 044425

DATE 10/2/97 ACCOUNT 01-615

Item: 128
By: mrr

AMOUNT $ 50.00

RECEIVED FROM: Hentz, Charles - 13118 Charwin Ct

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
REG WS01 CASHIER CLUM CML DRAWER
5 MISCELLANEOUS CASH RECEIPT
Receipt # 024336
CR NO. 044425

50.00 CHECK: PR
Baltimore County, Maryland

CASHIER'S VALIDATION

Petitioner's Exhibit No. 8C

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. Henrikson

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., 401 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 C181893

Petitioner's Exhibit No. 8C

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,

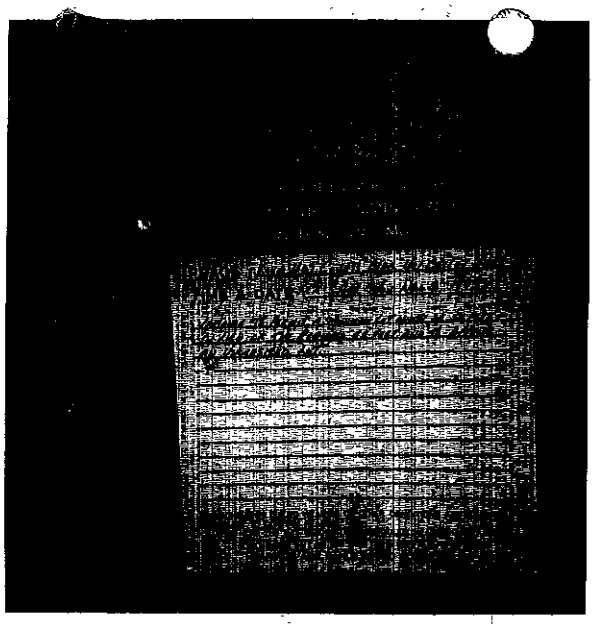
Thomas P. Ogle Sr. 10/17/97
(Signature of Sign Poster & Date)

Thomas P. Ogle, Sr.

325 Nicholson Road

Baltimore, Maryland 21221

(410)-687-8405
(Telephone Number)



98-128-A

Petitioner's Exhibit No. 8C

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.

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 CONCERING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.

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Petitioner's Exhibit No. 8C

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

Please foward 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.

Petitioner's Exhibit No. 8C

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,

W. Carl Richards, Jr.

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

ORDER RECEIVED FOR FILING
Date 11/24/97
By

ZONE1020.128

Petitioner's Exhibit No. 8C

B A L T I M O R E C O U N T Y, M A R Y L A N D

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

Petitioner's Exhibit No. 8C

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, 130, 131
and 131

REVIEWER: LT. ROBERT P. SAUERWALD
Fire Marshal Office, PHONE 887-4881, MS-1102F

cc: File

Printed with Soybean Ink
on Recycled Paper

Petitioner's Exhibit No. 8C

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

Petitioner's Exhibit No. 8C

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: ~~N/S~~ W / side ~~Corner~~ of CHERWIN AVE. (street) 0 **feet from the** ~~S/W~~ **corner of** BIRDWOOD AVE. (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)*	✓	—
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 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

RECEIVED
OCT 8 1997
OFFICE OF PLANNING

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

Date: 10/9/97

Petitioner's Exhibit No. 8C

smlots.pub

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

* sign posted w/ variance

CERTIFICATE OF POSTING

District _____

Location of property: _____

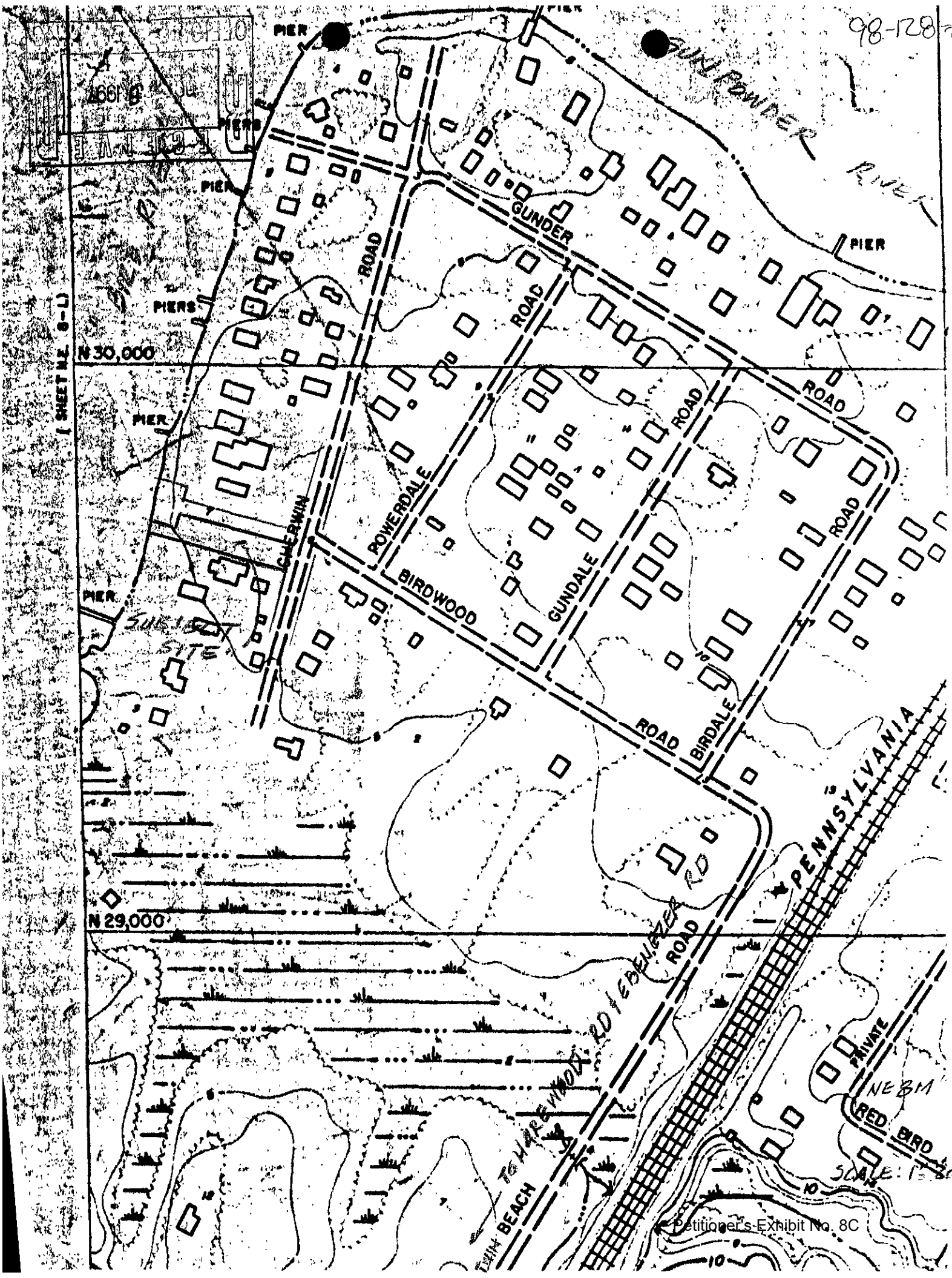
_____

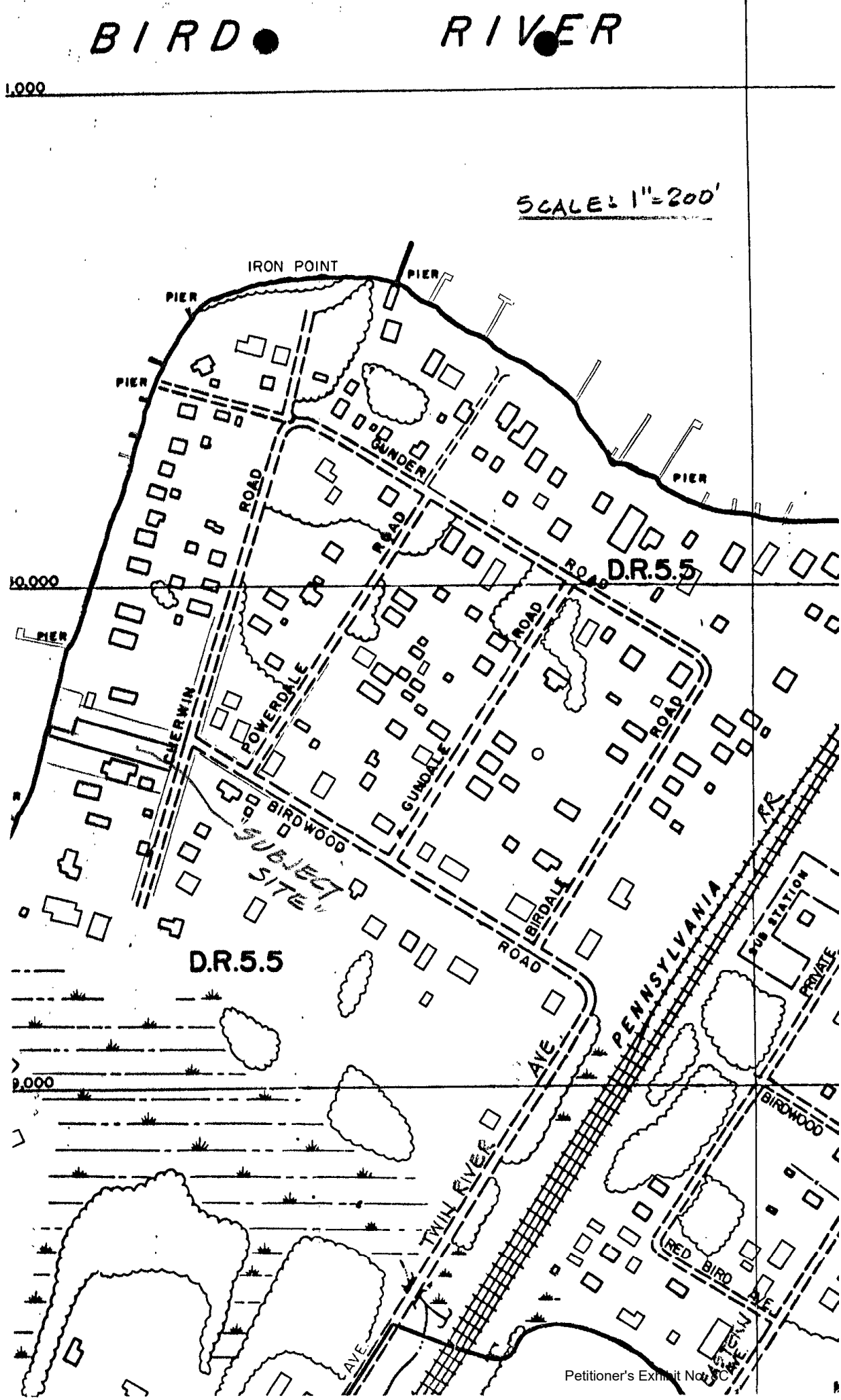
Posted by: _____ Date of Posting: _____
Signature

Number of Signs: _____

CK/UNDER.LOT (TXTSOPH)

Petitioner's Exhibit No. 8C


98-128-A
PIER
SUNPOWDER RIVER
GUNDER ROAD
ROAD
PIERS
N 30,000
ROWERDALE
BIRDWOOD
GUNDALE
BIRDALE
SUBJECT SITE
PENNSYLVANIA
N 29,000
EBENEZER RD
TO WAREHOUSE RD & EBENEZER ROAD
TWIN BEACH
PRIVATE
NEBM
RED BIRD
SCALE: 1" = 800'
Petitioner's Exhibit No. 8C



Petitioner's Exhibit No. 3C

#1



CHERWIN AVE

#2



3



#4



Petitioner's Exhibit No. 8C

98-128-A

SHEET 1 OF 1





CHERWIN AVE.

PHOTO'S

13118 CHERWIN AVE

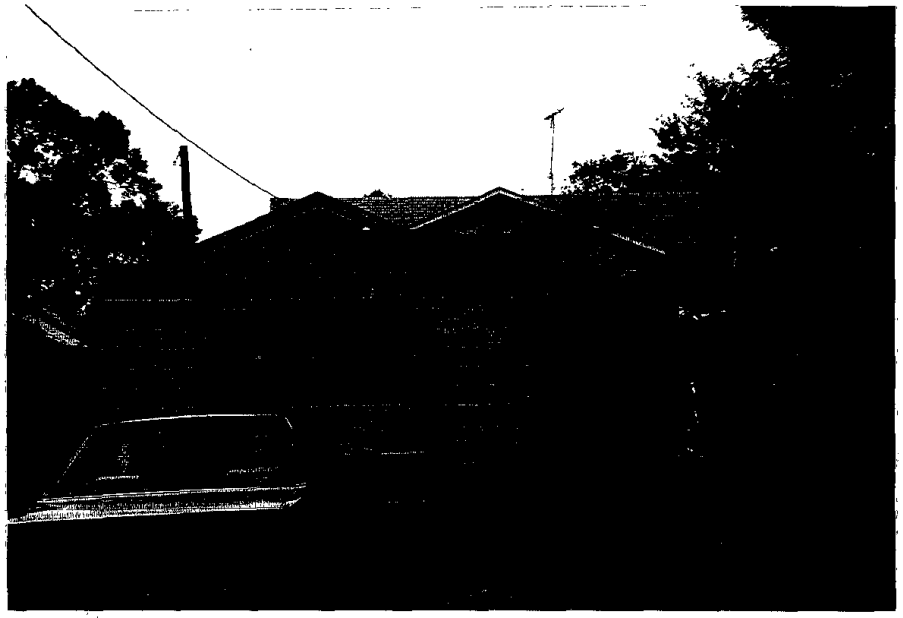
(SEE PLAT FOR PHOTO LOCATIONS)

98-128-A

Petitioner's Exhibit No. 8C

SHEET 4 OF 4

#9



#10



#11



#12



98-128-A

#5



#6



#7

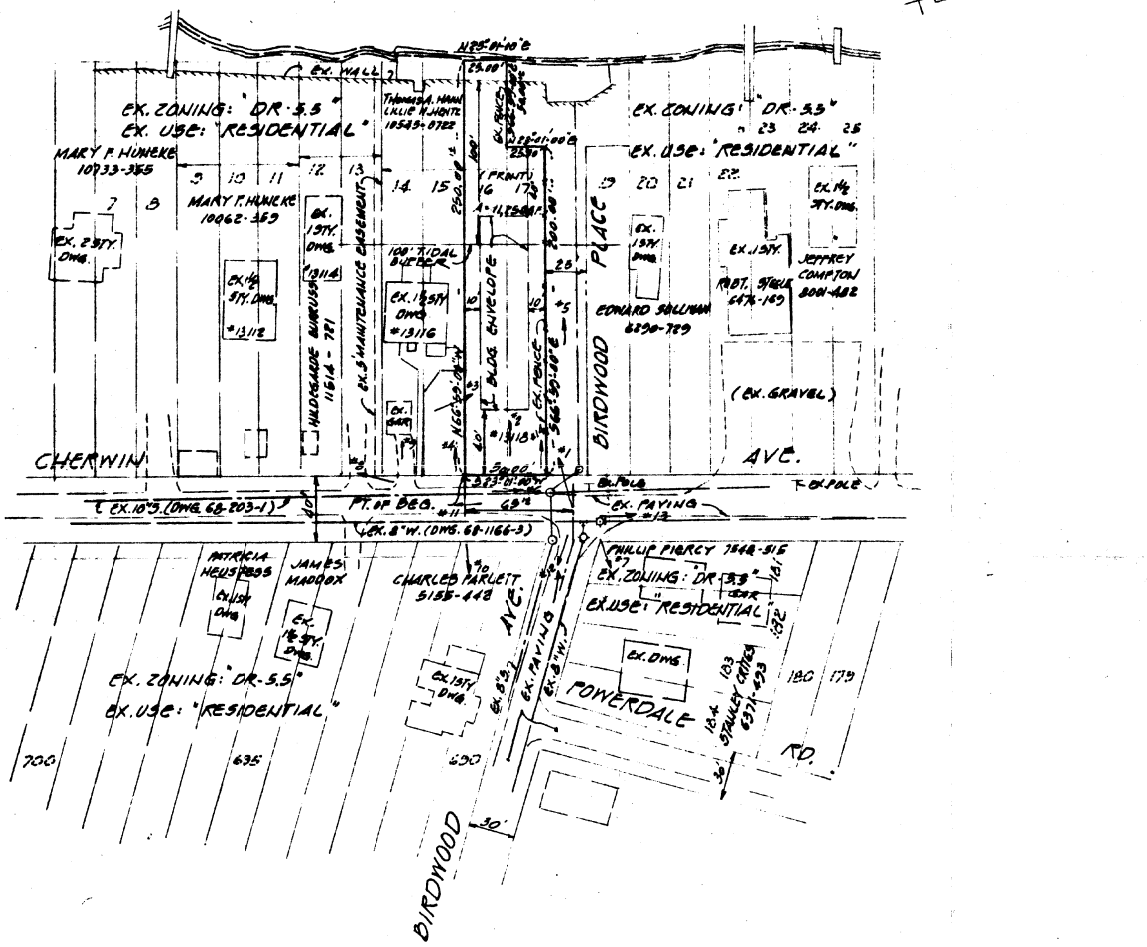


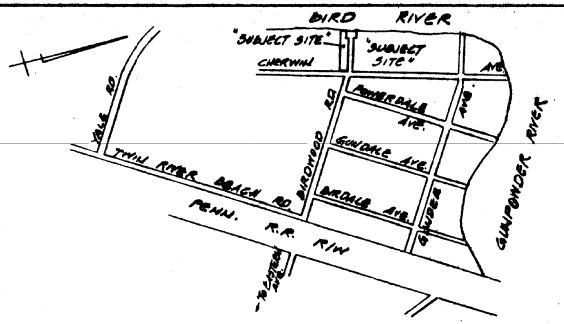
#8



98-128-A

SHEET 2 OF 4





LOCATION PLAN
SCALE: 1" = 500'

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, "TWIN RIVER BEACH," L.M.C.L.M. 9-33.
8. PROPERTY SERVED BY PUBLIC WATER AND SEWER.
9. PETITIONER REQUESTING A VARIANCE TO SECTION 1B02.3C1 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 1B02.3C1 OF THE BCZR.

PHOTO LOCATION - 9/14-97

PLAT TO ACCOMPANY PETITION
FOR

VARIANCE

#13118 CHERWIN AVENUE

ELECT. DIST. 15 — BALTIMORE COUNTY, MD.
SCALE: 1" = 30' — SEPT. 24, 1997

OWNER:
THOMAS A. HAHN &
LILLIE H. HENTZ, TRUSTEES
APT. 3608 - 8820 WALTHER BLVD.
BALTIMORE, MARYLAND 21234
PROP.# 15-08-002241
DEED: 10937-0461

RECEIVED
OCT - 3 1997
OFFICE OF PLANNING

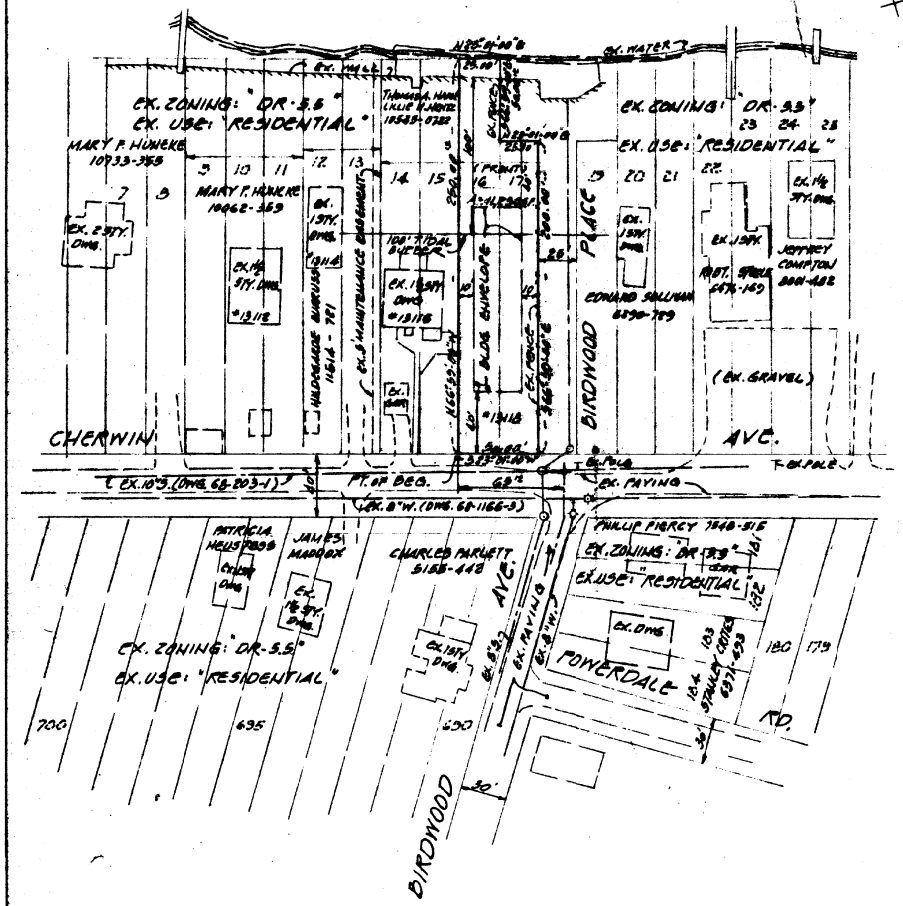
PAUL LEE ENGINEERING, INC.
304 W. PENNSYLVANIA AVE.
TOWSON, MARYLAND 21204

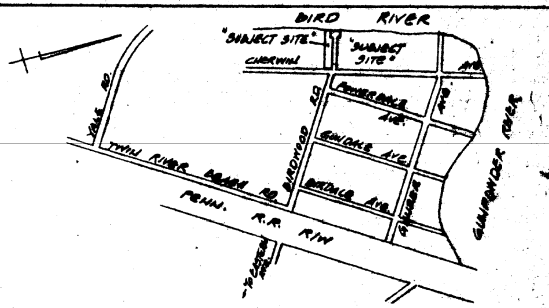
STATE OF MARYLAND · PAUL LEE · 9047 · PROFESSIONAL ENGINEER

SHEET 2 OF 2

IN 97-466

Petitioner's Exhibit No. 8C





LOCATION PLAN
SCALE: 1" = 500'

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, "TWIN RIVER BEACH," L.M.G. L.M. 9-33.
8. PROPERTY SERVED BY PUBLIC WATER AND SEWER.
9. PETITIONER REQUESTING A VARIANCE TO SECTION 1B02.3C1 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 304 OF THE BCZR.

PETITIONER'S EXHIBIT 1

OWNER:
THOMAS A. HAHN &
LILLIE H. HENTZ, TRUSTEES
APT. 3608 - 8820 WALTHER BLVD.
BALTIMORE, MARYLAND 21234
PROP. # 13-08-002241
DEED: 10937 - 0481

RECEIVED
OCT - 3 1997
OFFICE OF PLANNING

PLAT TO ACCOMPANY PETITION
FOR
VARIANCE
#13118 CHERWIN AVENUE
ELECT. DIST. 13 BALTIMORE COUNTY, MD.
SCALE: 1" = 30' SEPT. 15, 1997

PAUL LEE ENGINEERING, INC.
304 W. PENNSYLVANIA AVE.
TOWSON, MARYLAND 21204

STATE OF MARYLAND PAUL LEE 9047 PROFESSIONAL ENGINEER

SHEET 2 OF 2

98-121-A

Petitioner's Exhibit No. 8C

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 9/9/97
By

Petitioner's Exhibit No. 8D

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.

ORDER RECEIVED FOR FILING
Date 5/2/97
By Mr. Grant

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

Petitioner's Exhibit No. 8D

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.

ORDER RECEIVED FOR FILING
Date 3/5/97
By M. Grant

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.

Petitioner's Exhibit No. 8D

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,

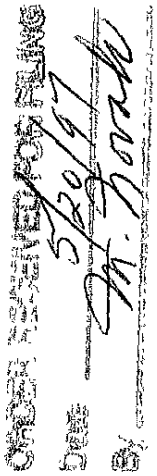
ORDER RECEIVED FOR FILING
Date 5/20/97
By

Petitioner's Exhibit No. 8D

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



Petitioner's Exhibit No. 8D

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,

Lawrence E. Schmidt
Zoning Commissioner

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

Printed with Soybean Ink on Recycled Paper

Petitioner's Exhibit No. 8D

RE: PETITION FOR VARIANCE 13218 Powderdale Avenue, N/S Powderdale Avenue, 115' W from c/l Gunder Avenue 15th Election District, 5th Councilmanic Legal Owner(s): Wally and Dawn Wallace Petitioners	*	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY 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

Petitioner's Exhibit No. 8D

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) 1B02.3.C.1 & 304; BCZR, TO PERMIT A SINGLE FAMILY DWELLING ON AN UNDERSIZE LOT (50' IN LIEU of 55' WIDTH).

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.

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

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):

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: JWW DATE 3-24-97

412

Printed with Soybean Ink on Recycled Paper

Revised 9/5/95

Petitioner's Exhibit No. 8D

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, Powderdale Ave and located in the 15th Election District.

13218

97-412-A

Petitioner's Exhibit No. 8D

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 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

4/188 April 10 C134004

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. Henderson

LEGAL AD. - TOWSON

Petitioner's Exhibit No. 8D

ALTIMORE COUNTY, MARYLAND 412 No. 026760
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

DATE 3-25-97 ACCOUNT R001-6150

AMOUNT $ 50.00

RECEIVED FROM: WALLY WALLACE — 1321 Ridgeside Ave.

FOR: VAR. (Oil.)

D3A91#0162MICHRC $50.00
BA C011:54AM03-25-97

VALIDATION OR SIGNATURE OF CASHIER JCM

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

Petitioner's Exhibit No. 8D

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)

Petitioner's Exhibit No. 8D

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.

Petitioner's Exhibit No. 8D

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.

Petitioner's Exhibit No. 8D

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

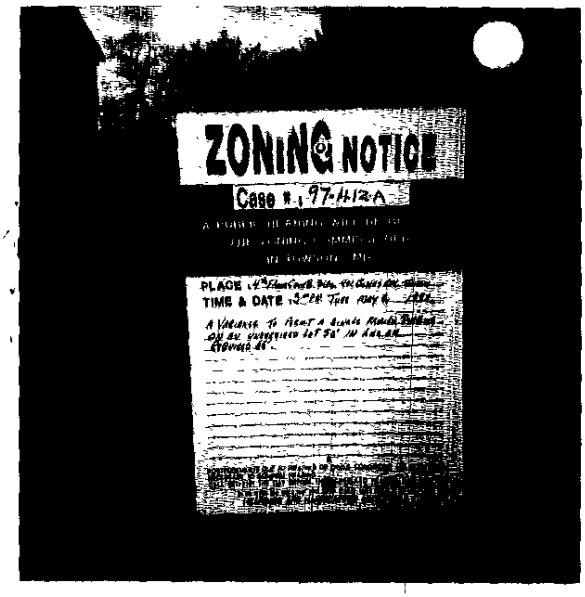
Attention: Ms. Gwendolyn Stephens

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)



97-412-A

Sincerely,

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)

Petitioner's Exhibit No. 8D

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 (Print Name of Applicant) 7019 GREENBANK Rd (Address) 335-9458 (Telephone Number)

☐ Lot Address 13218 POWDERDALE AVE. Election District 15 Council District 5 Square Feet 6,137

Lot Location: (N) E S W (side) / corner of POWDERDALE AVE (street) . 108.2 feet from (N) E S (W) corner of GUNDER AVE (street) 04 15 22000 37561/6484.

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 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 _____ ZADM
Date _____

RECEIVED
MAR 28 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. MERRAY on 3-25-97 (A) Date.

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)

Petitioner's Exhibit No. 8D

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

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Date

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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)

Petitioner's Exhibit No. 8D

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**

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☐ Lot Address 3218 POWDERDALE AVE Election District 15 Council District 5 Square Feet 6,137

Lot Location: (N) E S W / (side) / corner of POWDERDALE AVE (street), 108.2 feet from (N) E S (W) corner of GUNDER AVE (street) Act 04 15 22000 27561 / 0484

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) (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 _____ (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 M Daniel
for the Director, Office of Planning & Zoning

Date: 3/28/97

Petitioner's Exhibit No. 8D

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

Please foward 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.

Petitioner's Exhibit No. 8D

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.

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 CONCERING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.

Printed with Soybean Ink on Recycled Paper

Petitioner's Exhibit No. 8D

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,

R. J. Gredlein

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

B A L T I M O R E C O U N T Y, M A R Y L A N D

INTEROFFICE CORRESPONDENCE

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

Date: April 14, 1997

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

Petitioner's Exhibit No. 8D

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONCE

RECEIVED
APR 14 1997
PDM

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

AFK/JL

C:\MSOFFICE\WINWORD\ZAC\NOCOM\412.DOC

Petitioner's Exhibit No. 8D

Baltimore County Government
Fire Department

700 East Joppa Road
Towson, MD 21286-5500

Office of the Fire Marshal
(410)887-4880

RECEIVED
APR 10 1997
PDM

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
Location: DISTRIBUTION MEETING OF April 7, 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.

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

410, (412) 413, 415, 416, 420, and 424

REVIEWER: LT. ROBERT P. SAUERWALD
Fire Marshal Office, PHONE 887-4881, MS-1102F

cc: File

Printed with Soybean Ink on Recycled Paper

Petitioner's Exhibit No. 8D

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONCE

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: Carl L. Dennis

AFK/JL

C:\MSOFFICE\WINWORD\ZAC\NOCOM\412.DOC

Petitioner's Exhibit No. 8D

_____ 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).

____ _____

_____

_____

_____

_____

_____

jablon.doc

Petitioner's Exhibit No. 8D

DANIEL PUSZCZEWICZ
13215 CHERWIN AVE.
BALTIMORE, MARYLAND. 21220

Home Phone 410-335-6726

5/6

April 29, 1997

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

RECEIVED
MAY - 5 1997
ZONING COMMISSIONER

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 enviroment 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 deppreciation . 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

Petitioner's Exhibit No. 8D

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 Cherwin 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

Petitioner's Exhibit No. 8D

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
Wally Wallace	7019 GREENBANK Rd
Dawn Wallace	7019 GREENBANK Rd

Printed with Soybean Ink on Recycled Paper

Petitioner's Exhibit No. 8D

PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
Daniel T Puszkiewicz	13215 Clarendon Ave
Brenda R Puszkiewicz	13215 Clarendon Ave 21520

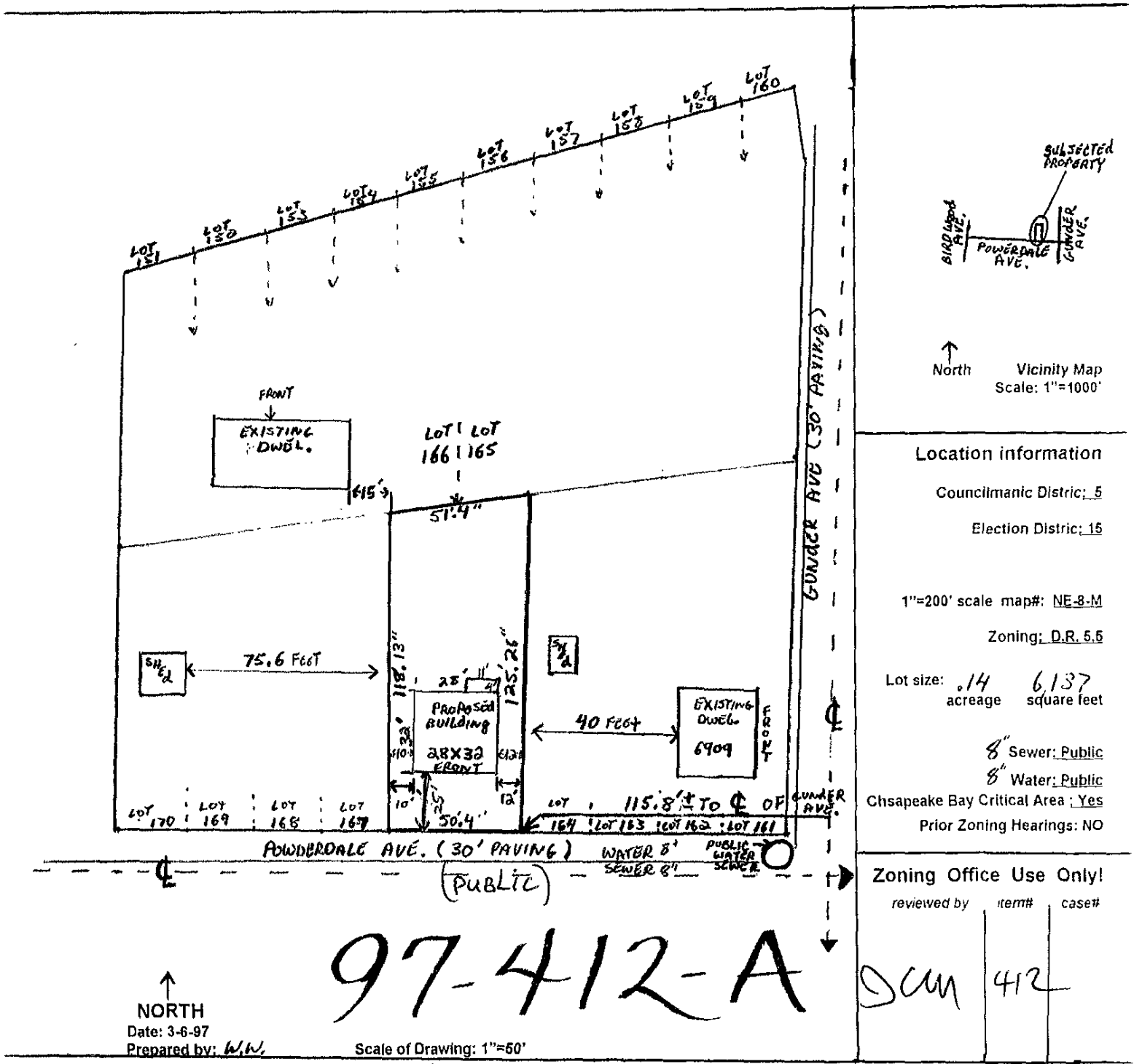
Petitioner's Exhibit No. 8D

Plat to accompany petition for Zoning ☒ Variance ☐ Special Hearing

Property Address: 1312 E. Powderdale Ave

Plat book# 9, folio# 33, lot# 165,166, section# A

Owner: Wally & Dawn Wallace



97-412-A

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	

Applicant/Petitioner affirm that the 25' setback for the proposed dwelling meets the front averaging requirements of Section 303.1, BCZR.

Wally Wallace

Petitioner's Exhibit No. 8 Date: 3-24-97

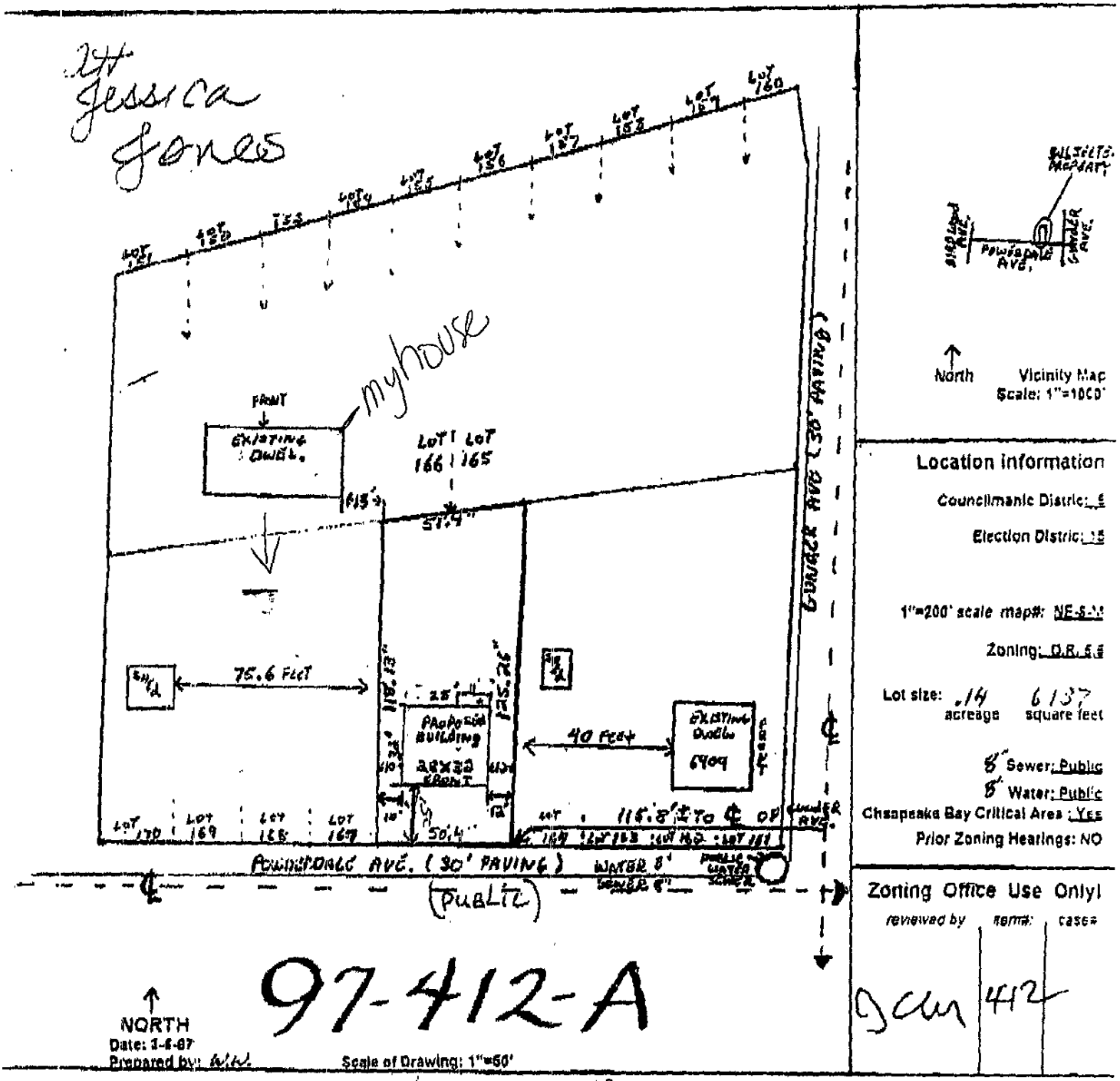
Plat to accompany petition for Zoning ☒ Variance ☐ Special Hearing

Property Address: Rockdale Ave

Plat book# 9, folio# 33, lot# 165,166, section# A

Owner: Wally & Dawn Wallace

24 Jessica Jones



North Vicinity Map
Scale: 1"=1000'

Location information

Councilmanic District: 5

Election District: 15

1"=200' scale map#: NE-5-11

Zoning: D.R.5.5

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!

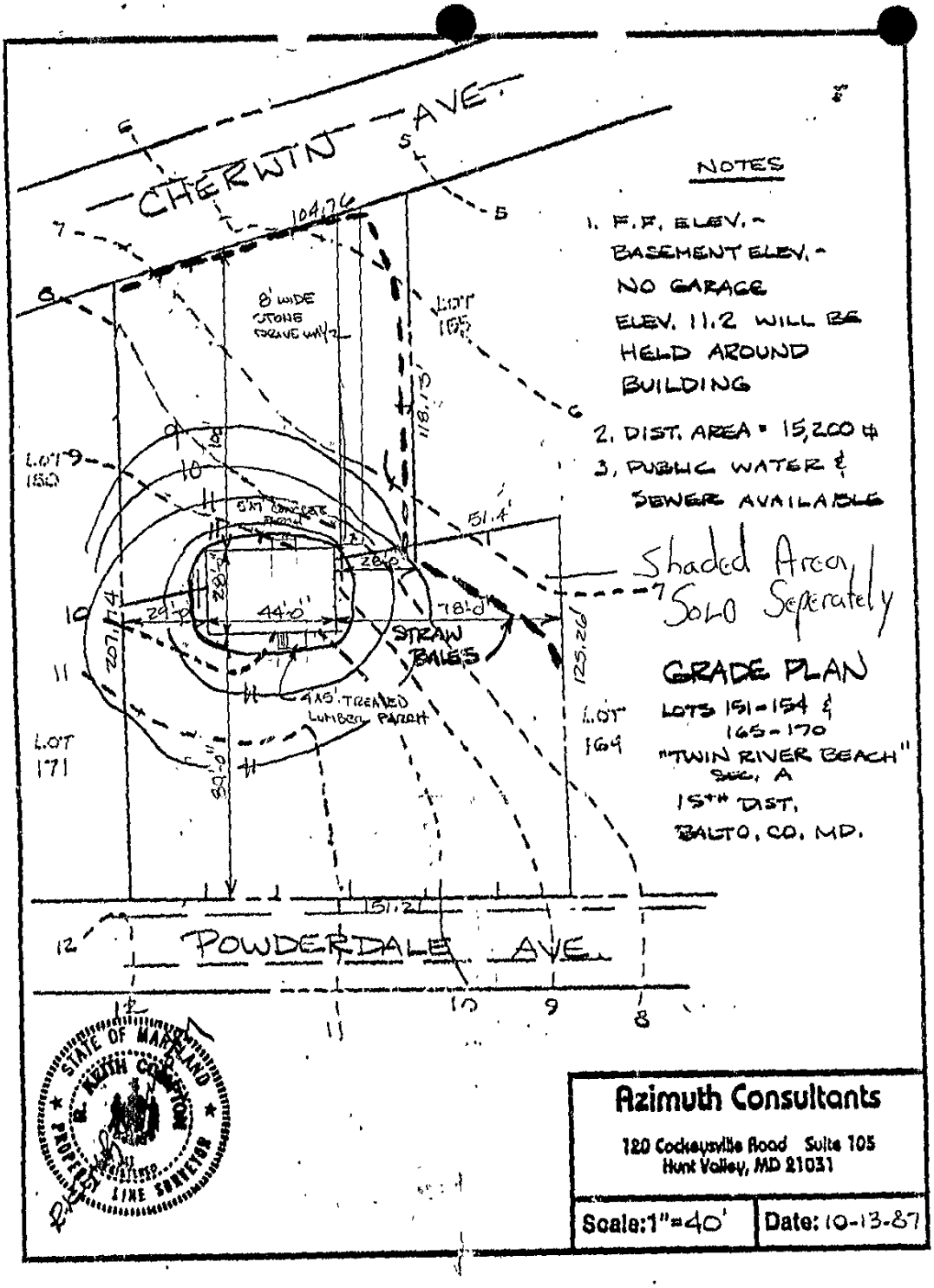
reviewed by	item#	case#
DCM	442	

97-412-A

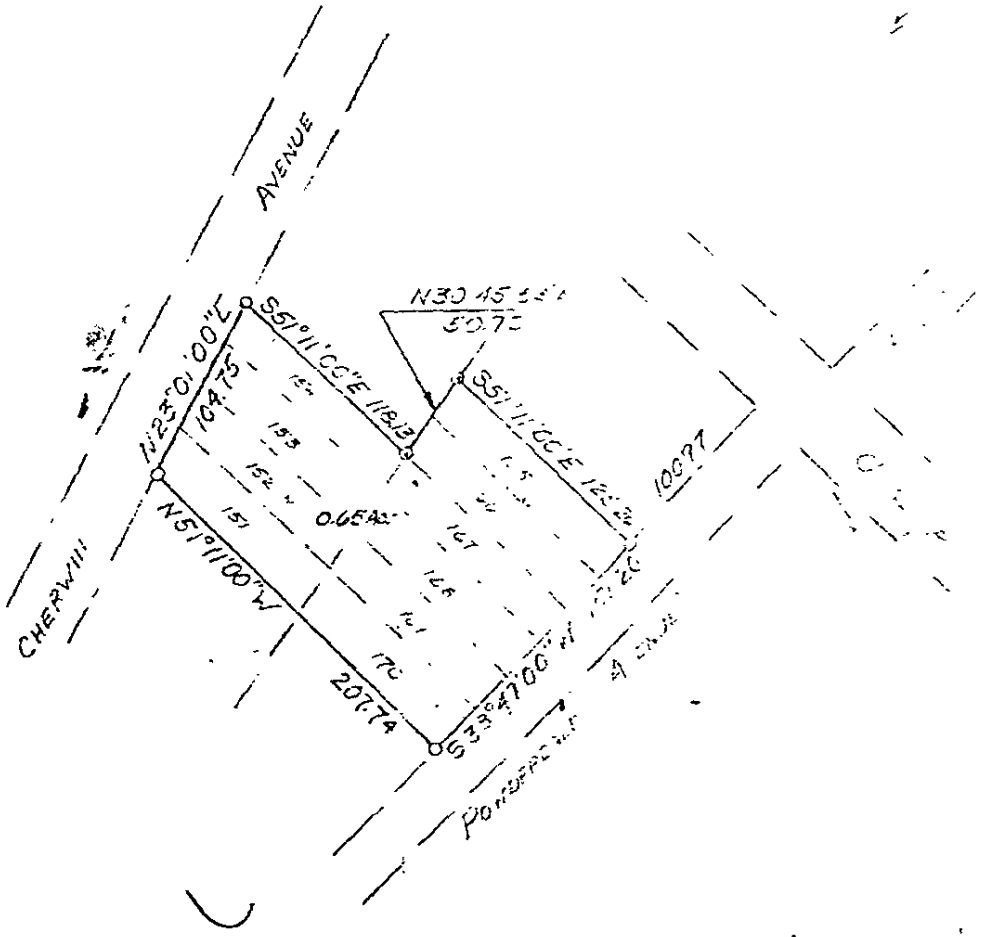
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Wally Wallace DATE 3-24-97

Petitioner's Exhibit No. 8D



Petitioner's Exhibit No. 8D



FREDERICK YATES WARD - LAND SURVEYOR - 3292 - STATE OF MARYLAND

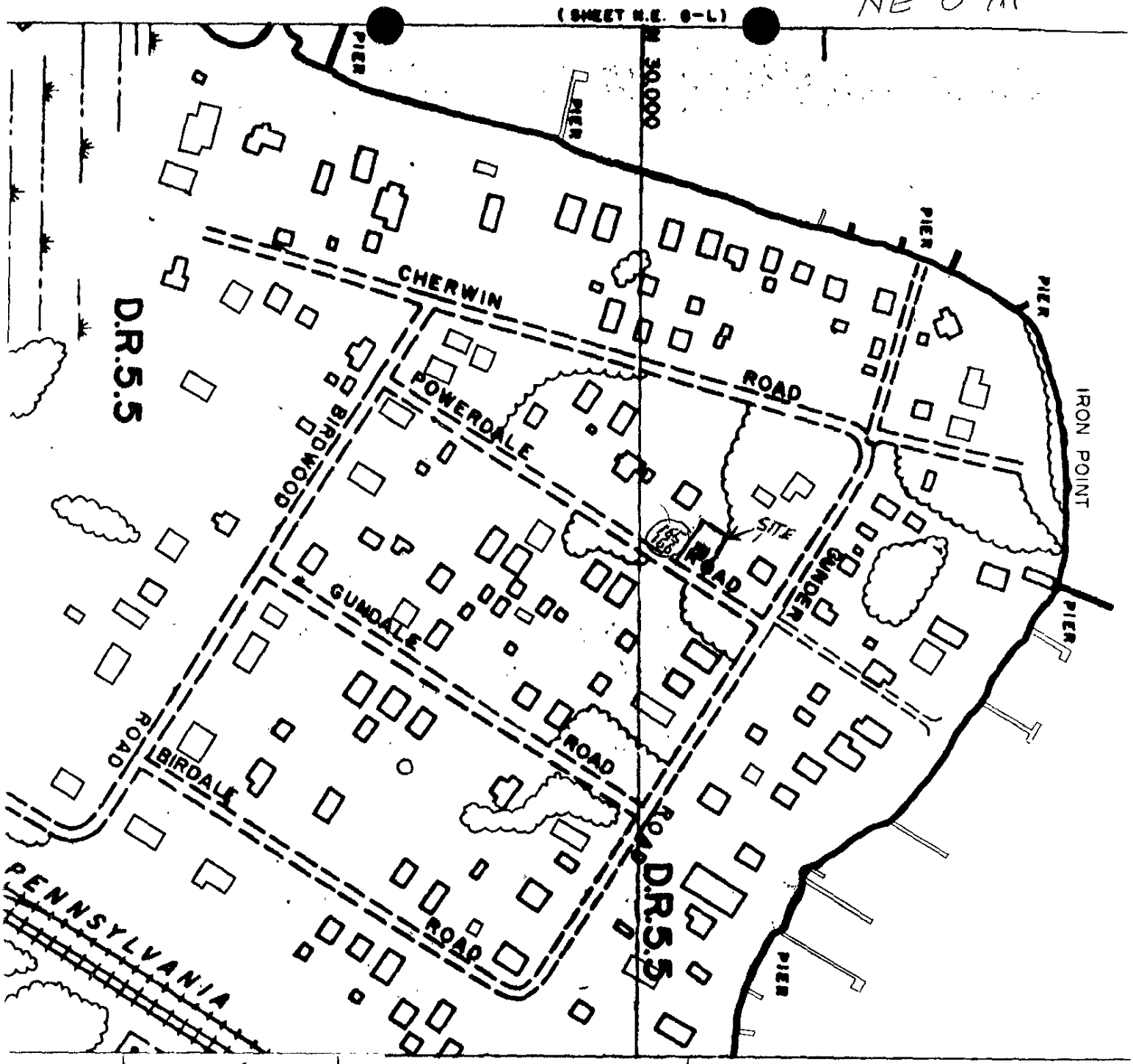
TWO PARCELS OF LAND SURVEYED FOR JAMES CROUSE....

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

Frederick Ward Associates

DATE	SCALE	PLAT NO
1-6-69	1"=100'	C-69-3

NE 8-M



SCALE	LOCATION	SHEET
1" = 200'±	TWIN RIVERS	N.E. 6-L (NE 8-M)
	412	

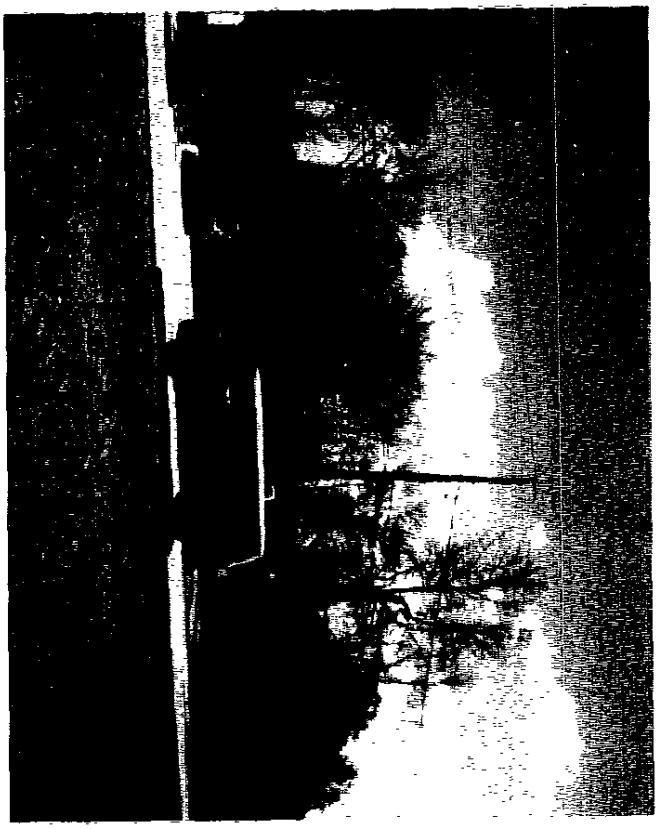
97-412-A

Petitioner's Exhibit No. 8D

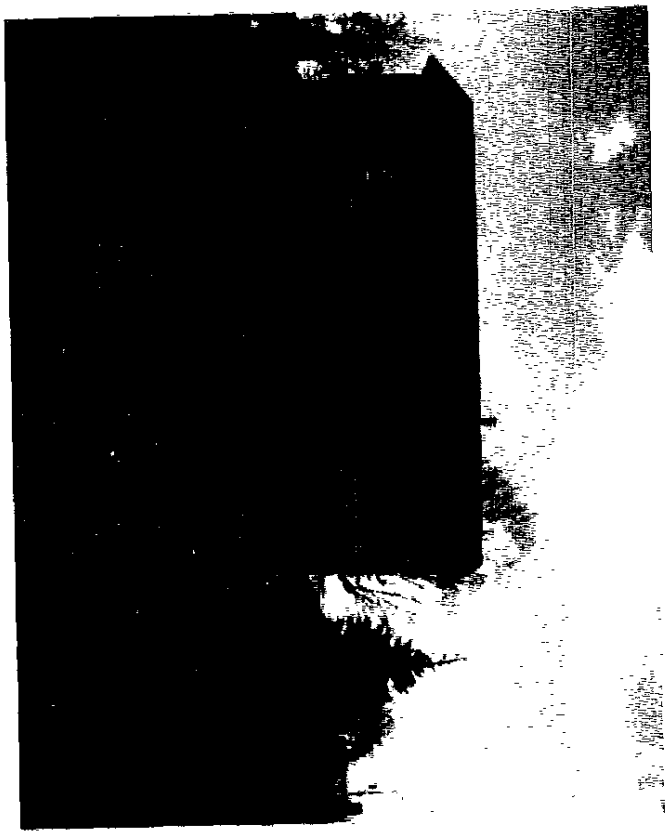
Petitioner's Exhibit No. 8D

97-412-A







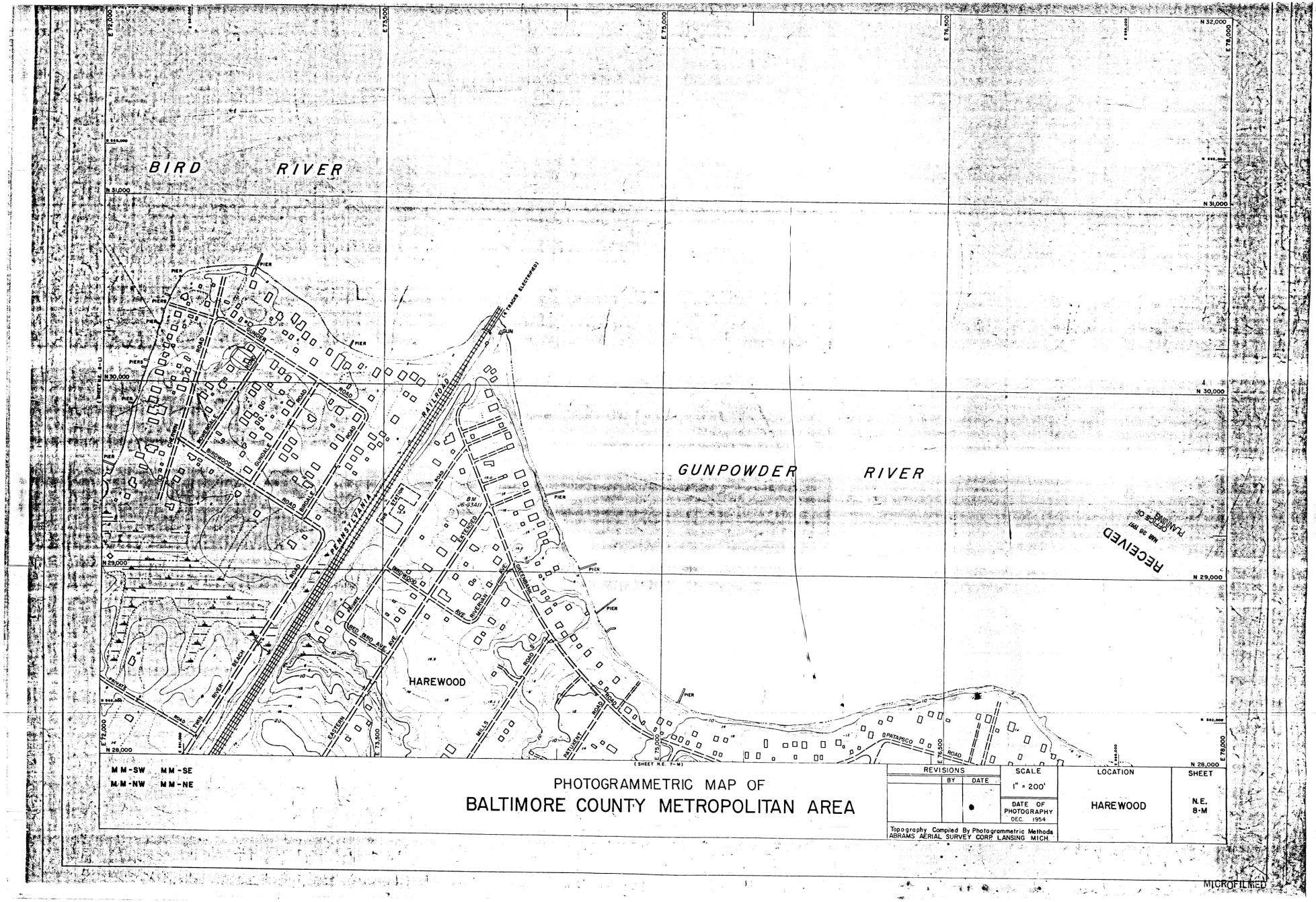


Petitioner's Exhibit No. 8D

Petitioner's Exhibit No. 8D



Petitioner's Exhibit No. 8D



Petitioner's Exhibit No. 8D

GENERAL SITE INFORMATION

1. Ownership: Craig Kestner
   13015 Eastern Avenue Baltimore, MD 21220
2. Address: 13217 Cherwin Avenue
3. Deed references: SM 34935/ 437
   Lots 155 & 156 " Section A Twin River Beach" PB 9/ 33
4. Area: 6,050 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 /156/ 15-22-350391
6. Election District: 15 Councilmanic District: 6
   ADC Map: 4583C10 GIS tile: 084A1 Position sheet: 31NE49
7. 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.
8. 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

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 2400100315 G.

OFFICE OF PLANNING

Regional Planning District: Windlass District Code: 322

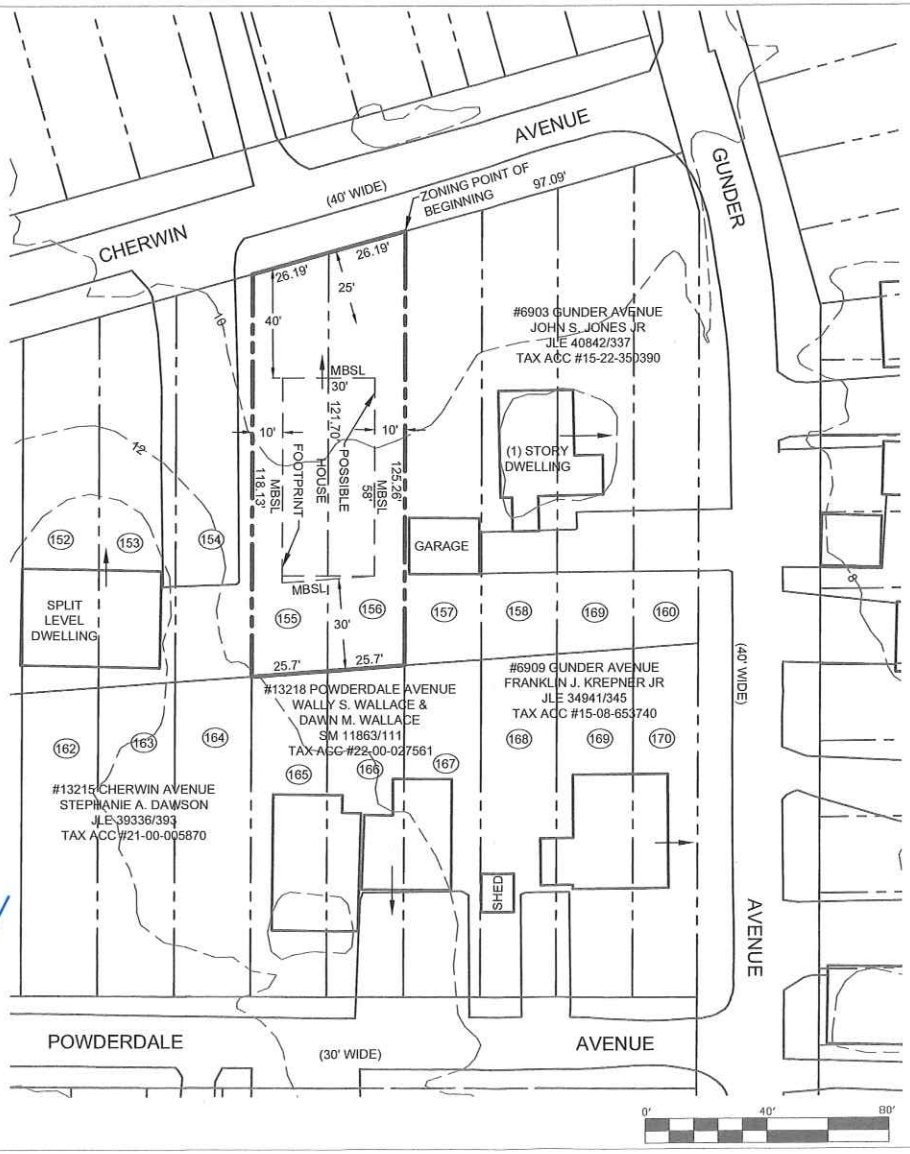
1. The subject property is not in a historic district.

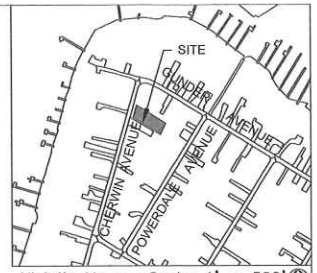
PROPOSED DEVELOPMENT

To construct a single family dwelling on the subject lots

RECEIVED
OCT 13 2020
DEPARTMENT OF PLANNING

STATE OF MARYLAND
BRUCE EDWIN DOAK
531
PROPERTY LINE SURVEYOR





Vicinity Map – Scale: 1' = 500'

REVISION
10/11/20 AMENDMENTS REQUIRED BY CASE #2020-0090-SPHA ORDER

Bruce E. Doak Consulting, LLC
Land Use Expert and Surveyor
3801 Baker Schoolhouse Road
Freeland, MD 21053
o 443-900-5535 m 410-419-6906
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'

GENERAL SITE INFORMATION

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   13015 Eastern Avenue Baltimore, MD 21220
2. Address: 13217 Cherwin Avenue
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OFFICE OF ZONING

Zoning: DR 5.5

Zoning History: #2019-0402-SPHA
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OFFICE OF PLANNING

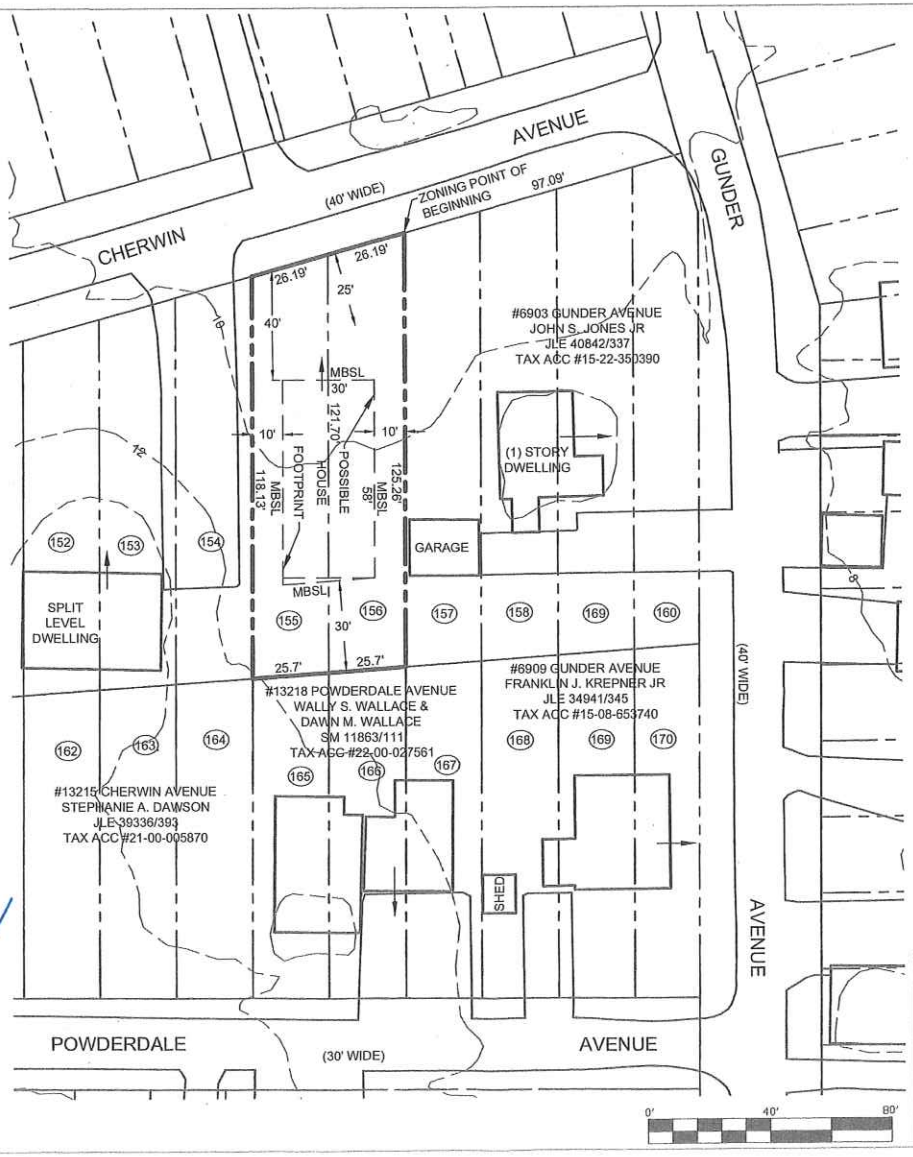
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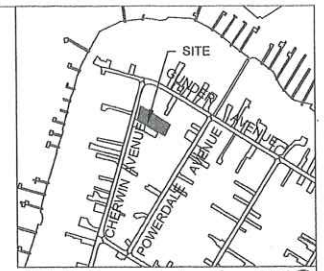
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PROPOSED DEVELOPMENT

To construct a single family dwelling on the subject lots







Vicinity Map – Scale: 1' = 500'

REVISION
10/11/20 AMENDMENTS REQUIRED BY CASE #2020-0090-SPHA ORDER

Bruce E. Doak Consulting, LLC
Land Use Expert and Surveyor
3801 Baker Schoolhouse Road
Freeland, MD 21053
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'

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OFFICE OF PLANNING

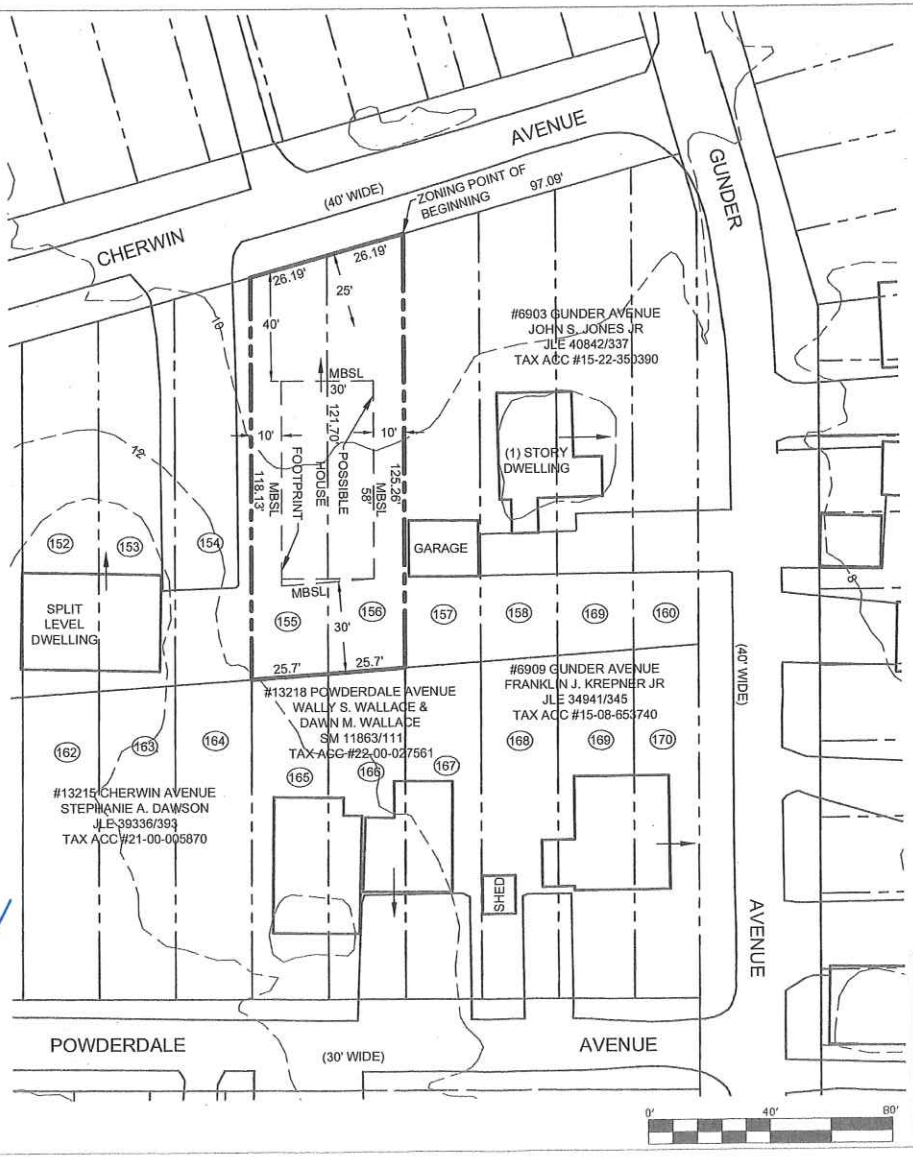
Regional Planning District: Windlass District Code: 322

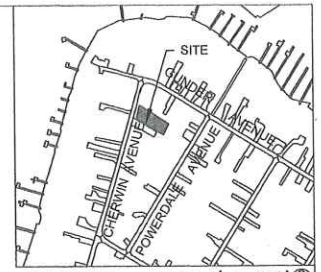
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PROPOSED DEVELOPMENT

To construct a single family dwelling on the subject lots







Vicinity Map – Scale: 1' = 500'

REVISION
10/11/20 AMENDMENTS REQUIRED BY CASE #2020-0090-SPHA ORDER

Bruce E. Doak Consulting, LLC
Land Use Expert and Surveyor
3801 Baker Schoolhouse Road
Freeland, MD 21053
o 443-900-5535 m 410-419-5906
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'

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Zoning: DR 5.5

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OFFICE OF PLANNING

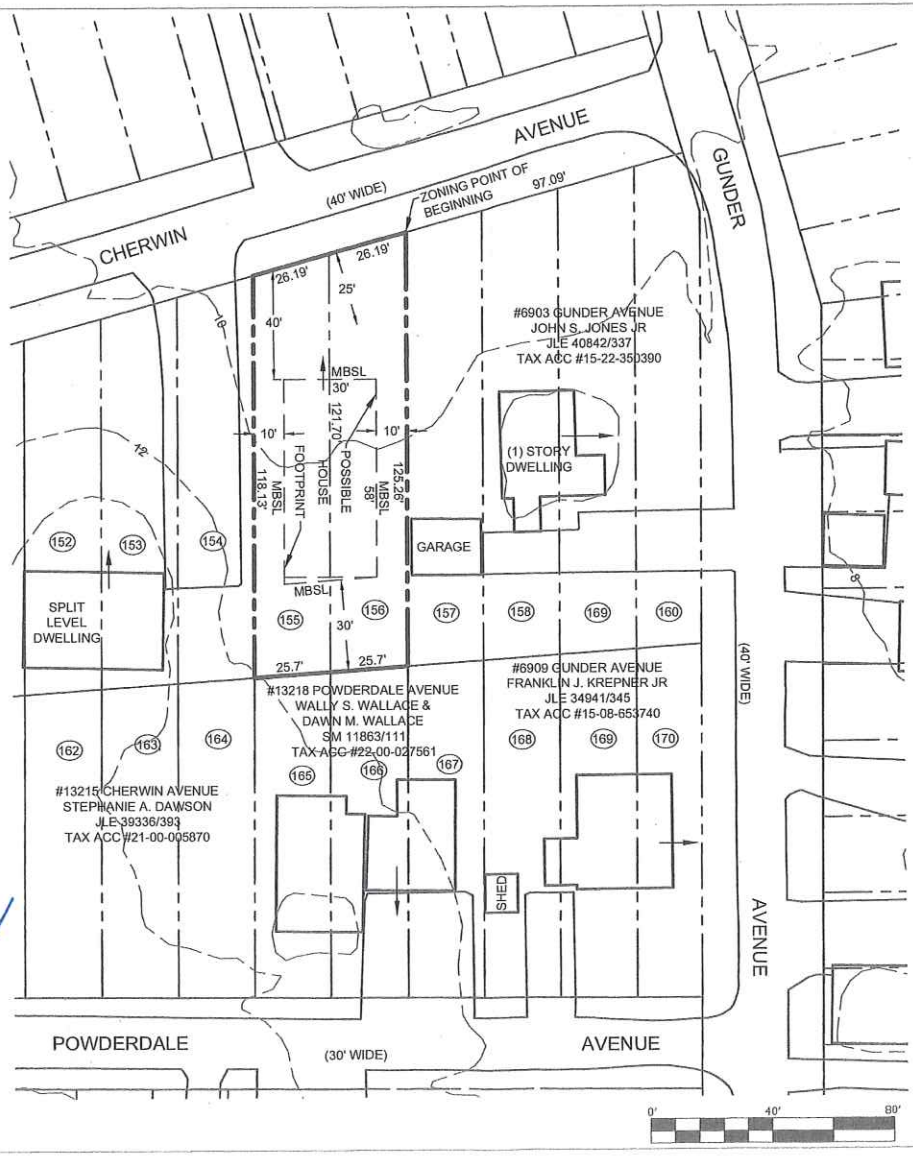
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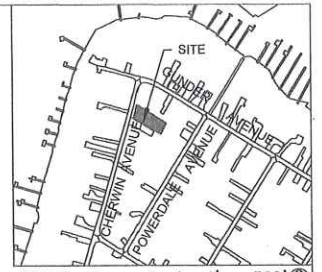
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PROPOSED DEVELOPMENT

To construct a single family dwelling on the subject lots

STATE OF MARYLAND
BRUCE EDWIN DOAK
531
PROPERTY LINE SURVEYOR





Vicinity Map – Scale: 1' = 500'

REVISION
10/11/20 AMENDMENTS REQUIRED BY CASE #2020-0090-SPHA ORDER

Bruce E. Doak Consulting, LLC
Land Use Expert and Surveyor
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o 443-900-5535 m 410-419-4906
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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'

PM 9-23-20
2020-0090-SPHA

Transmittal

Land Use Expert & Surveyor

Date **10/12/20**

Bruce E. Doak Consulting, LLC
3801 Baker Schoolhouse Road
Freeland, MD 21053
Phone 443-900-5535
Cell 410-419-4906
bdoak@bruceedoakconsulting.com

PROVIDE TO **Baltimore County AJ**
Paul Mayhew

COMMENTS **13217 Cherwin Avenue**
Case #2020-0090-SPHA

Date	#	Description	Request
10/11/20	4	Amended Zoning Plan	Requested as p/o order
		Please feel free to email me with any questions you may have or if you need anything else.	

RECEIVED
OCT 13 2020
OFFICE OF ADMINISTRATIVE HEARINGS

RECEIVED
OCT 13 2020
DEPARTMENT OF PLANNING

Case No.: 2020-0090-SPHA – 13217 Cherwin Ave. – September 23, 2020

Exhibit Sheet

9/29/20 DR Hughes

	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


FOR SALE


3


4


5

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

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Attached are Protestant John Dawson's exhibits. This is email 2 of 2.

RECEIVED
SEP 22 2020
OFFICE OF
ADMINISTRATIVE HEARINGS




FOR SALE





Case No.: 2019 - 0402 - SPNA

Exhibit Sheet

DLN 10-23-19

	Petitioner/Developer	Protestants
No. 1	SITE PLAN	19-K Photos
No. 2	DOBD	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 GUNDOR 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 34935, p. 0437, MSA_CE62_34791. Date available 05/09/2014. Printed 10/12/2019.

PETITIONER'S

EXHIBIT NO. 2

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 Jospeh 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

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 34935, p. 0438, MSA_CE62_34791. Date available 05/09/2014. Printed 10/12/2019.

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 aforegoing 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

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 34935, p. 0440, MSA_CE62_34791. Date available 05/09/2014. Printed 10/12/2019.

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

The Estate of Margaret L. Vitek

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

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 34935, p. 0442, MSA_CE62_34791. Date available 05/09/2014. Printed 10/12/2019.

☐ 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
TR TAX STATE 295.00
TOTAL 355.00
Rest# BA02 Rcpt # 56867
JLE CR Blr # 934
May 06, 2014 02:11 PM

1	Type(s) of Instruments	( ) Check Box if Addendum Intake Form is Attached.			
		1 Deed	☐ Mortgage	☐ Other _____	☐ Other _____
		2 Deed of Trust	☐ Lease		
2	Conveyance Type Check Box	Improved Sale Arms-Length(1)	Unimproved Sale Arms-Length(2)	Multiple Accounts Arms-Length(3)	Not an Arms-Length Sale(9)
3	Tax Exemptions (if Applicable)	Recordation			
		State Transfer	1st time buyer		
	Cite or Explain Authority	County Transfer	owner occ		

4	Consideration and Tax Calculations	Consideration Amount		Finance Office Use Only	
		Purchase Price/Consideration	$118,000.00	Transfer and Recordation Tax Consideration	
		Any New Mortgage	$115,862.00	Transfer Tax Consideration	$
		Balance of Existing Mortgage		X ( )% =	$
		Other:	$	Less Exemption Amount - Total Transfer Tax =	$ 1440.00
		Other:	$	Recordation Tax Consideration X( )per $500 =	$ 590.00
		Full Cash Value	$	TOTAL DUE	$

5	Fees	Amount of Fees	Doc 1	Doc 2	Agent
	3 Acct #'s	Recording Charge	$20.00	$20.00	
		Surcharge	$40.00	$40.00	Tax Bill
		State Recordation Tax	$590.00	$	
		State Transfer Tax	$295.00	$	C B Credit
		County Transfer Tax	$1,440.00	$	
		Other	$	$	Ag 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).	District	Property Tax ID No.(1)	Grantor Liber/Folio	Map	Parcel No.	Var. Log ☐ (5)
		15	1522350390 & 91 & 92	3615/392/			
		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)				Water meter Account	
		3813/510 and 3817/436					
		Residential ☒ or Non-Residential ☐		Fee Simple ☒ Ground Rent ☐ Amount			
		Partial Conveyance ☐ Yes ☐ No		Description/Amt. Of SqFt/Acreage Transferred:		295 00	
		If Partial Conveyance, List Improvements Conveyed-					

7	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)
8	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	
9	Other Names to Be Indexed	Doc 1 - Additional Names to be Indexed (Optional)	Doc 2 - Additional Names to be Indexed (Optional)
			M&T Bank
10	Contact/Mail information	Name: Donna Gain	☐ Return to Contact Person
		Firm: Sage Title Group, LLC	☐ Hold for Pickup
		Address: 7939 Honeygo Boulevard, Suite 124 Baltimore, MD 21236	☒ Return Address Provided
		Phone-: 410-931-3500	

IF PAPER RECORDS ARE REQUESTED, A COPY MUST ACCOMPANY EACH TRANSFER

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)

Assessment Use Only - Do Not Write Below This Line

☐ Terminal Verification ☐ Agricultural ☐ Whole ☐ Part ☐ Tran Process Verification

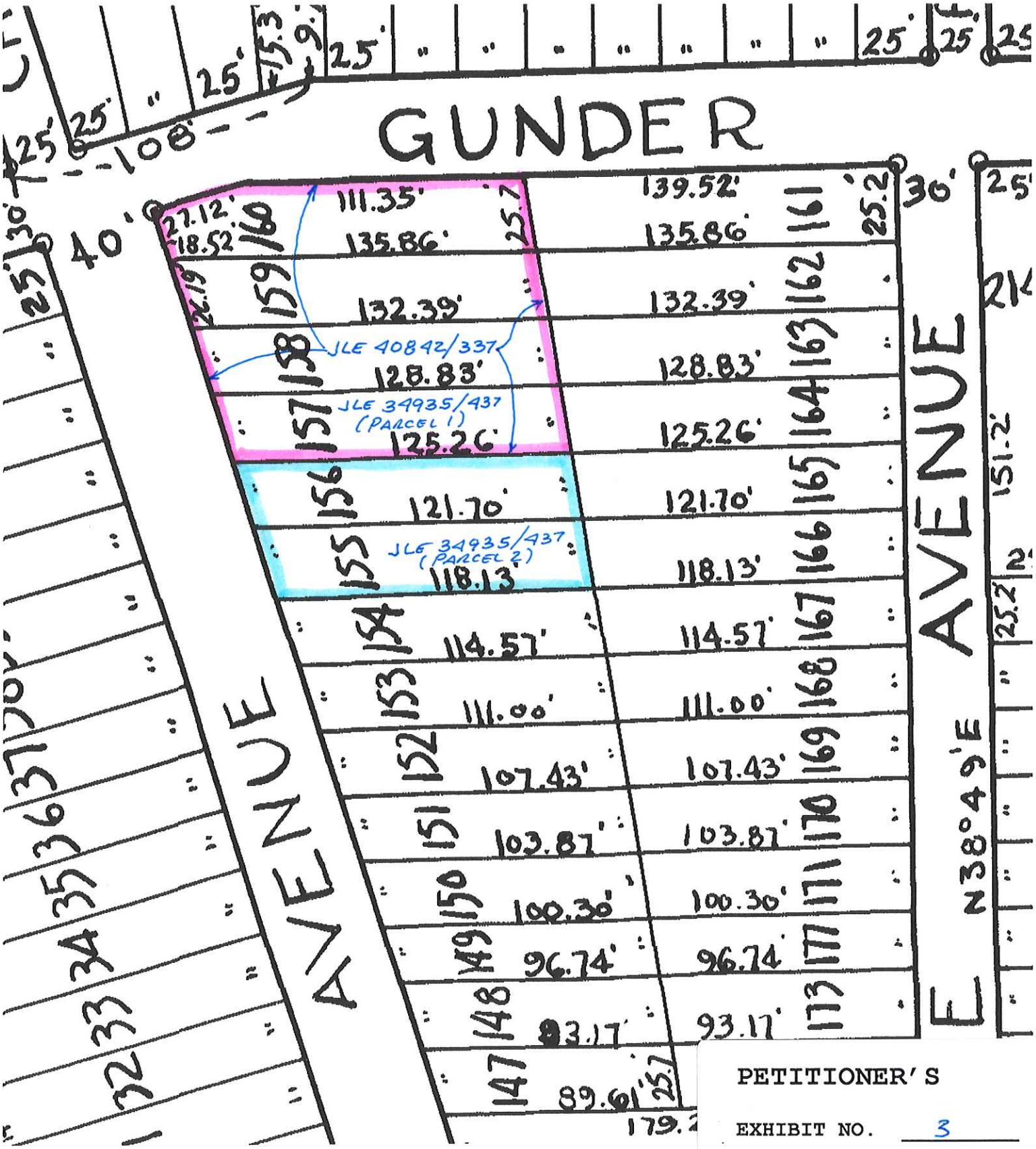
Transfer Number:		Date Received:		Deed Reference:		Assigned Property No.	
Land			Geo	Map	Sub	Block	
Buildings			Zoning	Grid	Plat	Lot	
Total			Use	Parcel	Section	Doc Od.	
			Town Cd.	Ex. St.	Ex Cd.		

RECORDATION TAX NOT REQUIRED
Director of Budget and Finance
BALTIMORE COUNTY, MARYLAND
T.P.ART 12-108

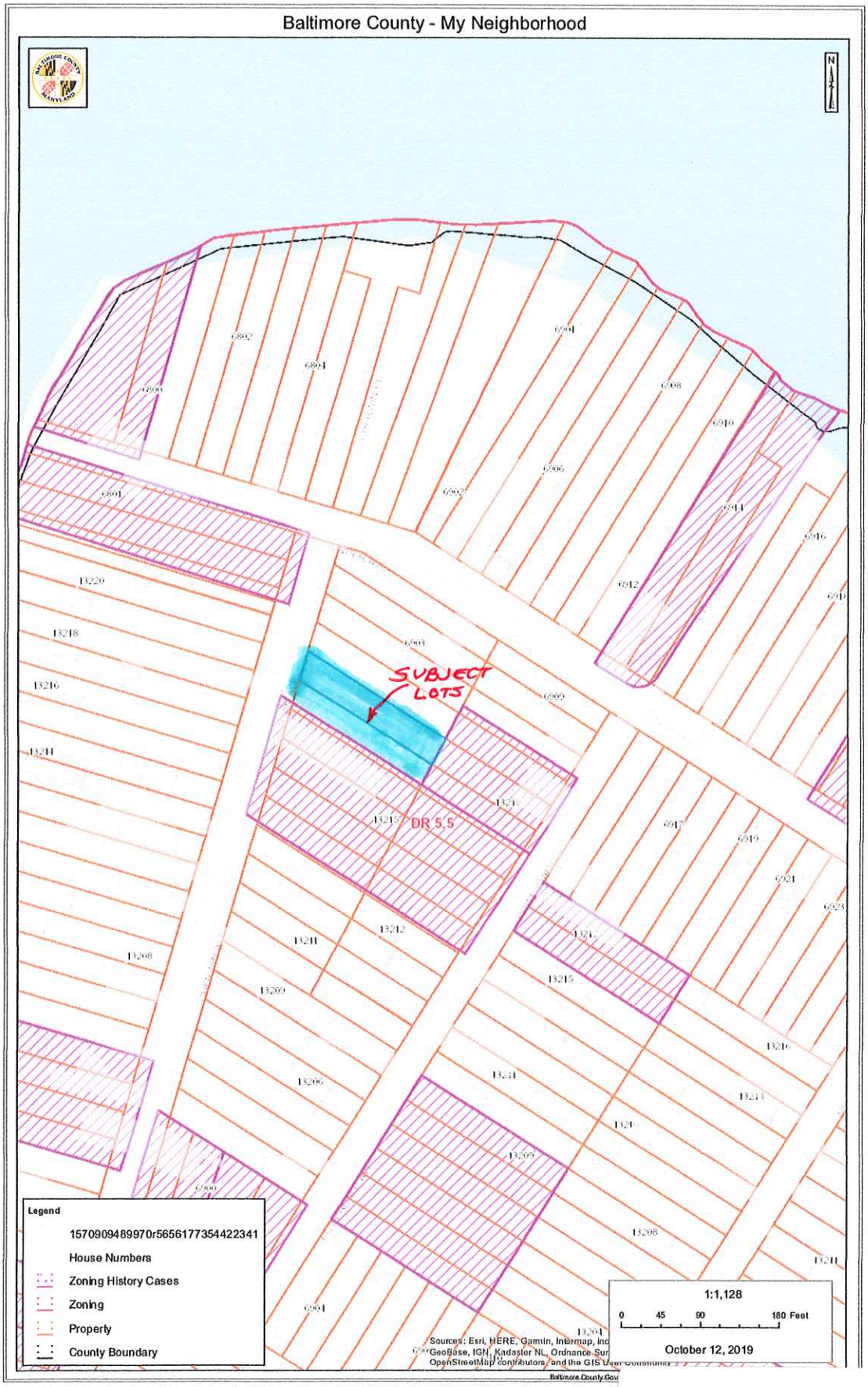
Grantor Mailing Address:

DOC # 2 3 4 5 6

BE COUNTY CIRCUIT COURT (Land Records) JLE 34935, p. 0443, MSA_CE62_34791. Date available 05/09/2014. Printed 10/12/2019.



PORTION OF PB 9/33 SHOWING SUBJECT LOTS



PETITIONER'S

EXHIBIT NO. 4



ıd

Parcels - Tax parcel

1570909489970r5656177354422341

PETITIONER'S

EXHIBIT NO. 5

PETITIONER'S

EXHIBIT NO. 6

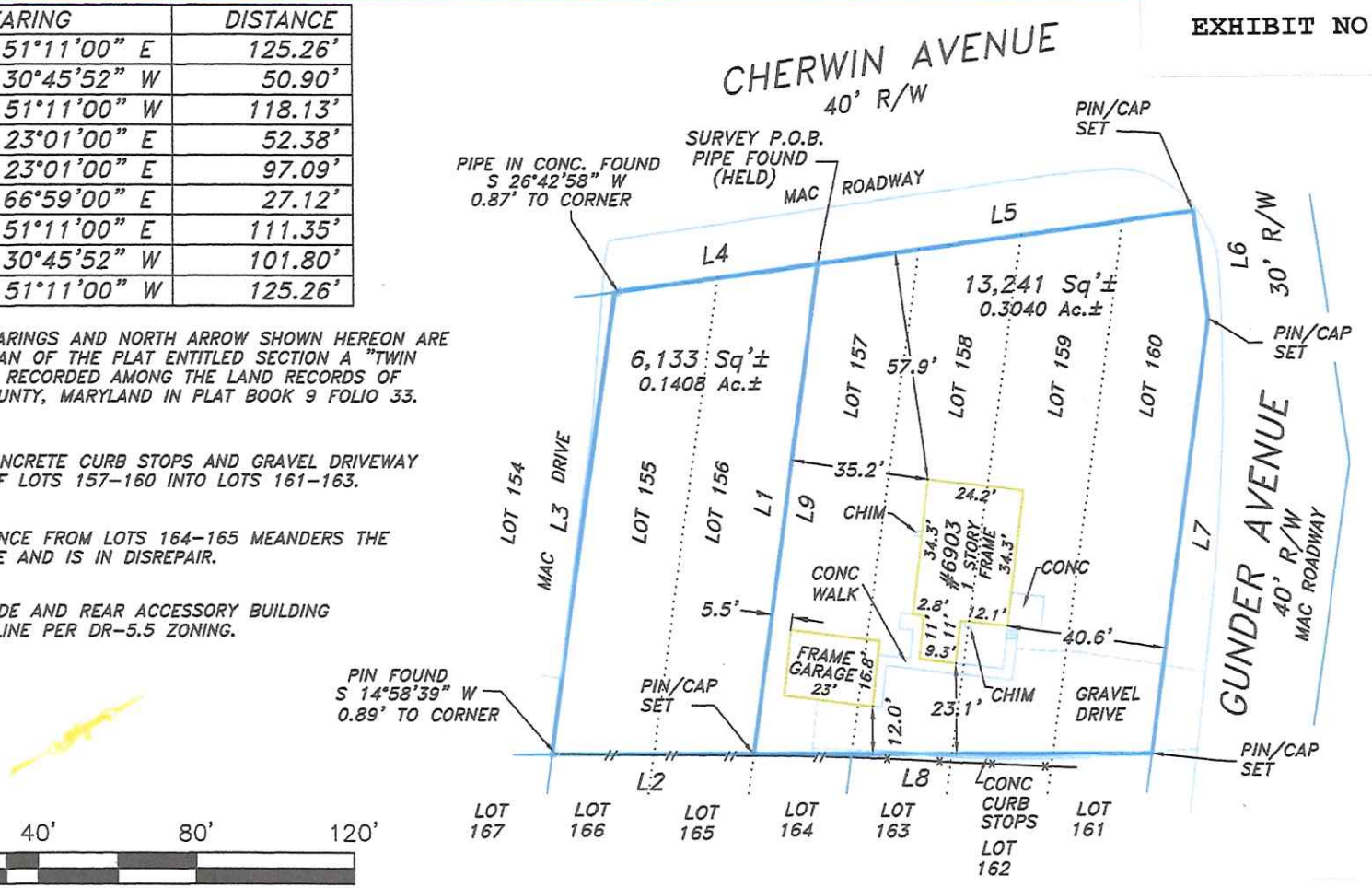
LINE	BEARING	DISTANCE
L1	S 51°11'00" E	125.26'
L2	S 30°45'52" W	50.90'
L3	N 51°11'00" W	118.13'
L4	N 23°01'00" E	52.38'
L5	N 23°01'00" E	97.09'
L6	S 66°59'00" E	27.12'
L7	S 51°11'00" E	111.35'
L8	S 30°45'52" W	101.80'
L9	N 51°11'00" W	125.26'

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 2400100315 G , effective 5/5/2014

STATE OF MARYLAND · JAMES C. HUDGINS · No. 96 · REGISTERED PROPERTY LINE SURVEYOR

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
Special Tax Recapture: None
Exempt Class: 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	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
			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 01/01/2018	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

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
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:**

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

Real Property Data Search (w4)

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 - 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:	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 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

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
Exempt Class: None

Special Tax Recapture: None

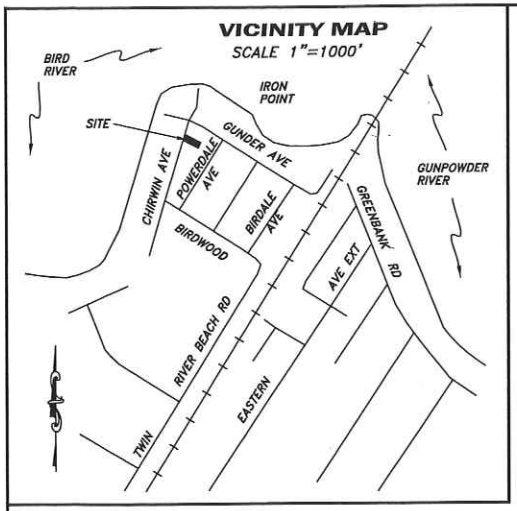
Homestead Application Information

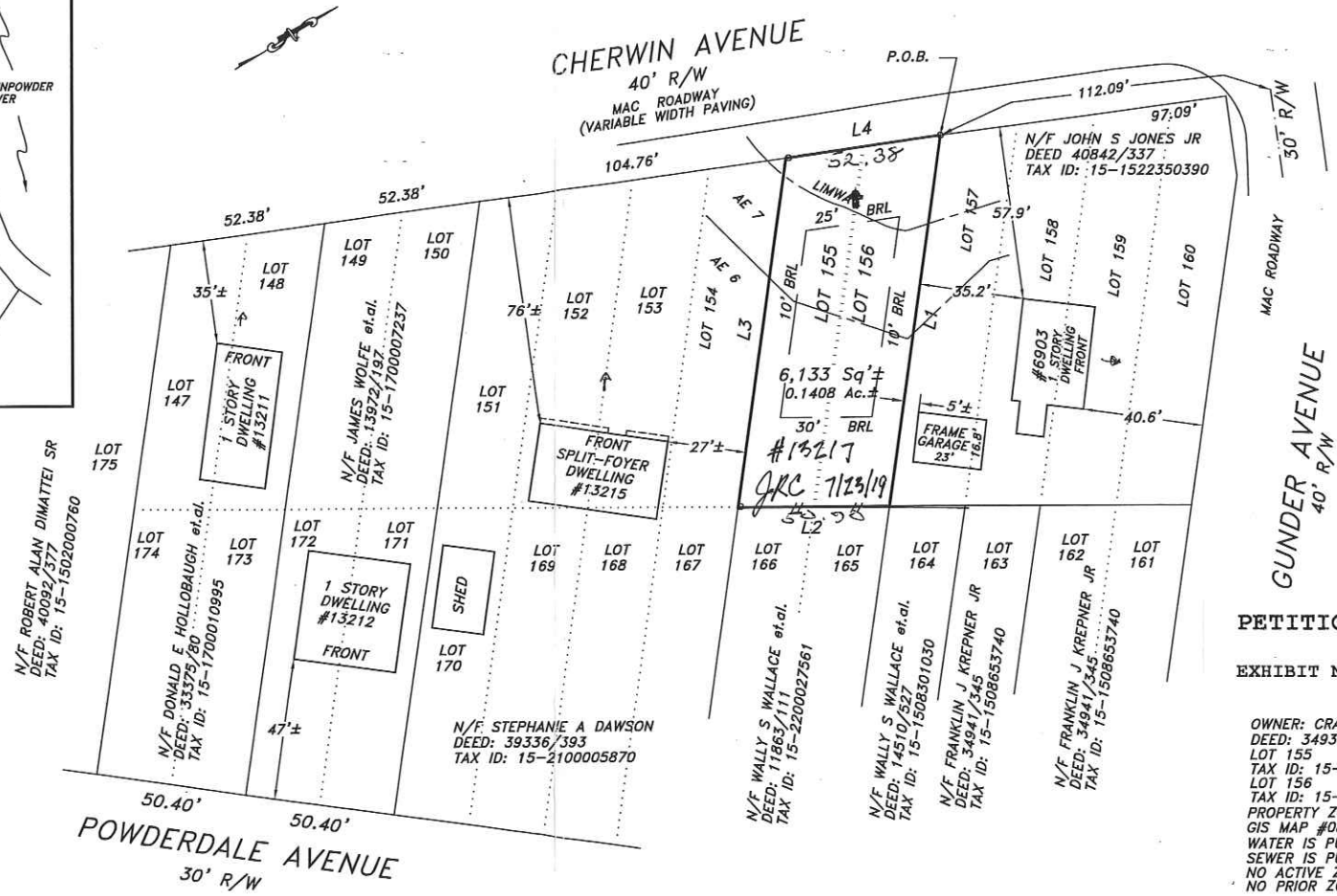
Homestead Application Status: No Application

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application **Date:**

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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 #0B4A1
WATER IS PUBLIC
SEWER IS PUBLIC
NO ACTIVE ZONING VIOLATION #
NO PRIOR ZONING CASES

0' 40' 80' 120'

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'

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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

STATE OF MARYLAND
JAMES C. HUDGINS
No. 96
REGISTERED
PROPERTY LINE SURVEYOR

James Carl Hudgins
Property Line Surveyor #96
Expiration Date: 3/11/2020

PLAN TO ACCOMPANY A PETITION FOR A VARIANCE /SRH
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

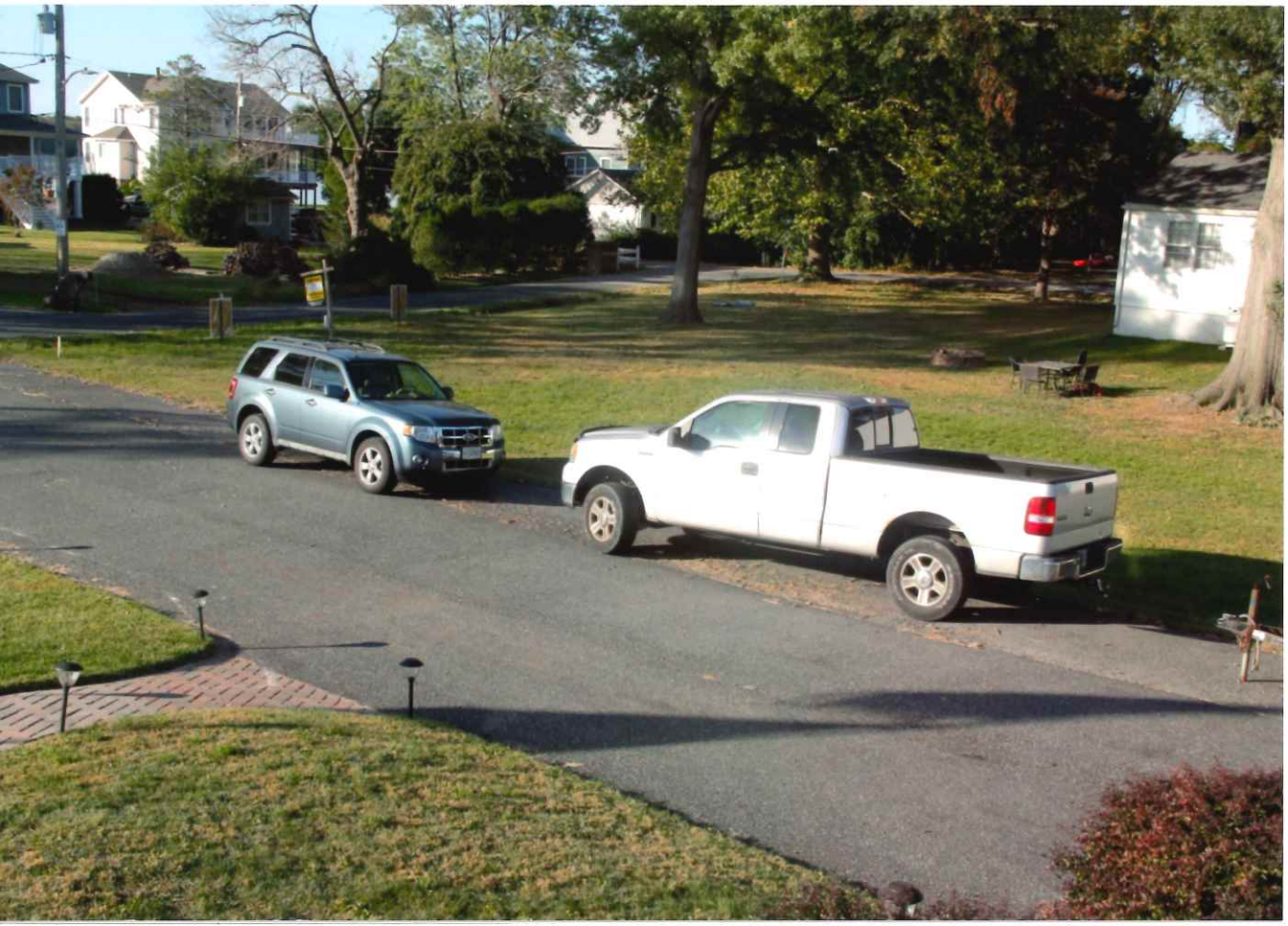


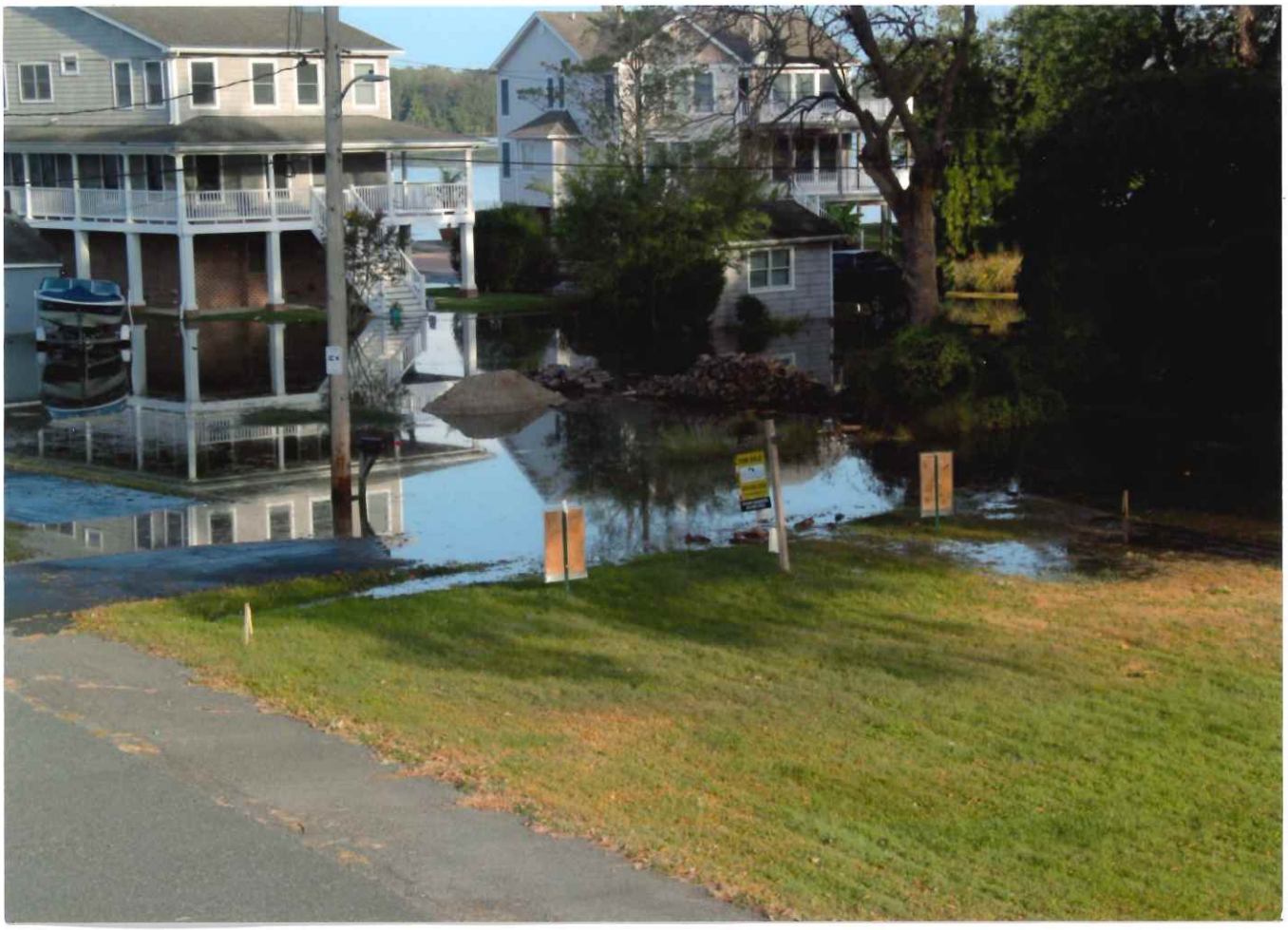
MAP SHOWING LOTS BEING GRANTED UNDER WIDTH



PROTESTANT'S

EXHIBIT NO. 1a-k






FOR SALE








ZONING







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.
Melissa Hauf	13204 Powderdale Ave	21220
Linda 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 Reed	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 & Nicole 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 DAWSON	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