

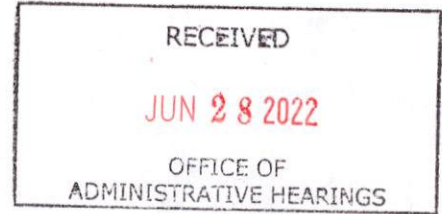
2020-0121-A
TIMOTHY M. KOTROCO, Esq.

305 Washington Avenue, Suite 502
Towson, Maryland 21204
410-299-2943

Tkotroco@gmail.com

PM
10/13/20
Denied
10/14/20

June 27, 2022



The Honorable Paul Mayhew
Managing Administrative Law Judge for Baltimore County
105 West Chesapeake Avenue, Suite 103
Towson, Maryland 21204

Re: Verification Letter
3941 North Point Road

Dear Judge Mayhew,

You may recall on October 14th, 2020 you denied a petition requesting variance relief from BCZR section 1B02.3.C.1 for 3941 North Point Road. This variance request was to allow an existing, partially constructed dwelling to remain on a lot with a width of 50 feet in lieu of the required 55 feet, with side setbacks of 4 feet and 5 feet in lieu of 10 feet, and a rear setback of 5 feet in lieu of 30 feet. The construction of that dwelling was commenced without first applying for a building permit.

In addition, the dwelling that was the subject of your prior hearing was controversial, as it was a large shed-like structure that displaced rain water onto the neighboring lots. You denied the variance requests, finding that the Petitioners failed to meet the first prong of the *Cromwell v. Ward* analysis; that the property was not unique. A copy of your decision is attached for your reference.

That old structure was removed from the property and the lot is now vacant. A new homebuilder is requesting to build a new dwelling on the vacant lot, utilizing section 304 of the BCZR, (Undersized Lot). Under section 304, there is no requirement for "uniqueness" of the property in that all zoning setbacks are being satisfied and no variance relief is being requested.

The purpose of this letter is to seek your verification that a new house can be constructed on this vacant lot. Your prior denial was based on the fact that the property was "not unique". However, since this new house meets all setback requirements and satisfies the 3 prong test under section 304 of the BCZR, uniqueness of the property does not need to be proven.

The zoning office has asked us to request this spirit and intent letter seeking your verification that your previous decision does not preclude a new home from being this new home, given that no variances are needed.

The Honorable Paul Mayhew
Managing Administrative Law Judge
Zoning Verification Letter

Should you agree that the construction of a new home on this vacant lot does not violate your prior decision, then I would request that you kindly affix your signature to the affirmation below. I am available to meet and discuss this matter with you in more detail, should you deem it necessary. I thank you for your attention to this matter and look forward to your reply.

Very truly yours,



Timothy M. Kotroco

Upon my review of the site plan attached to this letter as well as my prior decision in Case No. 2020-0121-A, I hereby find that the construction of a new single family dwelling on the subject property located at 3941 Old North Point Road is permitted to proceed as it requires no variances and is proceeding as an undersized lot as set forth in BCZR section 304.


Paul Mayhew, Administrative Law Judge

0032873-0571

AFTER RECORDING RETURN TO:

RJ Tosato
123 Breakwater Court
Joppa, MD 21085
Tax ID#: 15-06-572572

DOCUMENT PREPARED BY:

Sage Title Group, LLC
1208 Light Street
Suite 1
Baltimore, MD 21230
File Number: 85548BACS

This Deed, MADE THIS 8th day of November 2012, by and between **Edgar Hackney**, party of the first part, and **RJ Tosato and Susinn A. Tosato**, parties of the second part.

WITNESSETH, That in consideration of the sum of **THIRTY THOUSAND AND 00/100 DOLLARS (\$30,000.00)**, the receipt of which is hereby acknowledged, the said party of the first part does grant and convey to the said parties 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:

BEGINNING for the same at the intersection of North Point Road with the northwest side of an avenue 17.50 feet wide as laid out on the plat of subdivision of the property of Charles Schmidt, said point of beginning being 182.25 feet northwesterly measured along the southwest side of the North Point Road from the southeast outline of the whole tract of land of which the lot now being described is a part and running thence binding on the southwest side of the North Point Road North 48 degrees West fifty feet to the division line between Lots 4 and 5 on the Plat of the Subdivision of Charles Schmidt's property, thence leaving the North Point Road and binding on said division line south 42 degrees west one hundred and thirty feet thence running parallel with the North Point Road South 48 degrees east forty-seven and sixty-eight one hundredths feet to the northwest side of the 17.50 foot avenue above referred to and thence running and binding on the northwest side of said 17.50 foot avenue north 43 degrees 02 minutes east one hundred and thirty and two one-hundredths feet to the beginning.

The improvements thereon being known as Old North Point Road, Baltimore, Maryland 21222.

Tax ID#: 15-06-572572

BEING the same property which by deed dated November 9, 1994 and recorded among the Land Records of Baltimore County, Maryland in Liber No. 10834, folio 11, was granted and conveyed by Barbara Jean Slimmer unto Edgar Hackney and Linda M. Hackney. The said Linda M. Hackney died on or about December 31, 2005, thereby vesting title in the said Edgar Hackney as surviving tenant by the entirety.

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.

2020-0121-A

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
(3941 North Point Road)		
15 th Election District	*	BOARD OF APPEALS
4th Council District		
R.J. & Susinn Tosato	*	OF
Legal Owners		
Robert Griffin	*	BALTIMORE COUNTY
Contract Purchaser		
	*	BALTIMORE COUNTY
	*	Case No.: 20-121-A

* * * * *

OPINION

This matter comes before the Baltimore County Board of Appeals as an appeal of the ALJ's March 14, 2021 Opinion denying a Petition for Variance filed by R.J. and Susinn Tosato, Legal Owners and Robert Griffin, Contract Purchaser for property located at 3941 North Point Road, requesting variance relief from the Baltimore County Zoning Regulations ("BCZR") § 1802.3.C.1, to allow an existing dwelling to remain (partially constructed, building permits not obtained in advance) on a lot with a lot width of 50 ft. in lieu of the required 55 ft., side setbacks of 4 ft. and 5 ft. in lieu of the required 10 ft. each, and rear setback of 5 ft. in lieu of the required 30 ft. Due to the COVID-19 pandemic, a public WebEx hearing was conducted by this Board virtually in lieu of an in-person hearing on March 11, 2021. A public deliberation was held on April 14, 2021. Both the Petitioners and Protestants participated *pro se*.

In the interest of judicial economy, the exhibits previously offered in the hearing before the ALJ were moved into evidence. A site plan was previously marked and accepted into evidence as Petitioner's Exhibit 11. Substantive Zoning Advisory Committee ("ZAC") comment was previously received from the Department of Environmental Protection and Sustainability ("DEPS") which indicates that the subject property is located within the Chesapeake Bay Critical Area

("CBCA"). A ZAC comment was also received from the Department of Planning ("DOP"). R.J. Tosato appeared in support of the Petitioners. Robert Zacherl, the President of the Wells and McComas Citizens Improvement Association appeared in opposition and submitted a community petition opposing the requested variance relief.

The subject property is approximately 6,500 square feet and is zoned DR 5.5. A code enforcement citation is pending due to Petitioners conducted extensive construction of a pole barn building on the site without first obtaining permits. Petitioners now seek substantial variance relief for the partially constructed building.

Mr. Tosato testified that when his family purchased the property at issue in 2012 it was zoned ML. Mr. Tosato explained that he was previously informed by the zoning office that he needed to maintain only three-foot setbacks from all property lines. He further testified that he was unaware the property had been rezoned DR 5.5 in 2016 and was unaware of the CZMP process. He noted that there is a road adjacent to the subject property that leads to the property behind it. That property has a commercial use. Mr. Tosato explained his father was building the structure for storage on the bottom level and a residence for himself on the second floor. He stated that his father did not believe a permit was necessary due to the pre-fab nature of the structure. When questioned by the Board, Mr. Tosato was unable to articulate how the lot is unique or distinguishable from other lots on the street.

Mr. Robert Zacherl of the Wells and McComas Citizens Improvement Association testified in opposition to the requested variance relief. Mr. Zacherl explained that the Wells and McComas Citizens Improvement Association had lobbied the District's County Councilman to change the zoning of the subject property during the last CZMP. Mr. Zacherl further explained that the property's present zoning is now in keeping with the other properties on that portion of the street.

Under the BCZR § 307 and Maryland common law, in order to be entitled to variance relief, Petitioners must satisfy a two-step legal analysis, summarized as follows:

It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity is what necessitates the requested variance relief; and If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691,699 (1995).

The general rule is that "the authority to grant a variance should be exercised sparingly and only under exceptional circumstances." *Mueller v. People's Counsel for Baltimore County*, 177 Md. App. 43, 71(2007). This is because "a variance is an authorization for that which is prohibited by a zoning ordinance." *Cromwell v. Ward*, 102 Md. App. 691,699 (1995), and because "citizens [of a given county or municipality] are entitled to strict enforcement of the existing zoning regulations." *Salisbury Bd. Of Zoning Appeals v. Bounds*, 240 Md. 547, 555-56 (1965). Therefore, "[t]he burden is on the applicant to show facts to warrant a variance," and "the specific need for the variance must be substantial and urgent and not merely for the convenience of the applicant." *Mueller v. People's Counsel for Baltimore County*, 177 Md. App. at 70.

By failing to present any evidence regarding the uniqueness of the subject property, the Petitioners failed to meet the first prong of the *Cromwell* analysis. While not necessary, but if the Board were to consider the second prong of the *Cromwell* analysis, it is clear that any resulting hardship is self-imposed. In the instant case, the hardship arises out of the Petitioner's own disregard of the building permit process. A "self-created" hardship is not a proper justification for granting a variance. *Mueller, supra*, 177 Md. App. at 90-91. While the Board is convinced that it was not the Petitioners' intent to conflict with County Zoning law, "mistake" is not an issue for the Board to consider when considering variance relief.

ORDER

THEREFORE, IT IS THIS 12th day of September, 2021 by the Board
of Appeals of Baltimore County

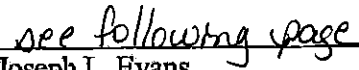
ORDERED the Petitioner's Request for Variance Relief pursuant Baltimore County Zoning Regulations ("BCZR") § 1802.3.C.1, to allow an existing dwelling to remain (partially constructed, building permits not obtained in advance) on a lot with a lot width of 50 feet in lieu of the required 55 feet, side setbacks of 4 feet and 5 feet in lieu of the required 10 feet each, and rear setback of 5 feet in lieu of the required 30 feet, is hereby **DENIED**.

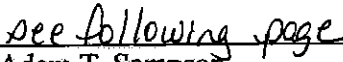
In the matter of R.J. and Susinn Tosato – Legal Owners
Robert Griffin – Contract Purchaser
Case No: 20-121-A

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**


Andrew M. Belt, Panel Chair


Joseph L. Evans


Adam T. Sampson

In the matter of R.J. and Susinn Tosato – Legal Owners
Robert Griffin – Contract Purchaser
Case No: 20-121-A

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
Andrew M. Belt, Panel Chair

Joseph L. Evans
Joseph L. Evans

see following page
Adam T. Sampson

In the matter of R.J. and Susinn Tosato – Legal Owners
Robert Griffin – Contract Purchaser
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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
Andrew M. Belt, Panel Chair

see previous page
Joseph L. Evans

[Signature]
Adam T. Sampson



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

September 14, 2021

R.J. and Susinn Tosato
123 Breakwater Court
Joppa, Maryland 21085

RE: In the Matter of: *R.J. & Susinn Tosato – Legal Owners*
Robert Griffin – Contract Purchaser
Case No.: 20-121-A

Dear Mr. and Mrs. Tosato:

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,

A handwritten signature in cursive script, reading "Sunny Cannington", followed by a horizontal line.

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure

c: Robert Griffin
Joyce Cook
Robert Zacherl/Wells McComas Citizens Improvement Association
Office of People's Counsel
Paul M. Mayhew, Managing Administrative Law Judge
Stephen Lafferty, Director/Department of Planning
Adam Whitlock, Acting Chief of Code Enforcement/PAI
C. Pete Gutwald, Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
James R. Benjamin, Jr., County Attorney/Office of Law

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: RJ and Susinn Tosato - Owner 20-121-A
Robert Griffin – Contract Purchaser

DATE: April 22, 2021

BOARD/PANEL: Andrew M. Belt, Panel Chairman
Joseph L. Evans
Adam T. Sampson

RECORDED BY: Sunny Cannington, Administrator

PURPOSE: To deliberate the Petition for Variance to allow an existing dwelling to remain (partially constructed, building permits not obtained in advance):
a) on a lot with a lot width of 50 ft in lieu of the required 55 ft.;
b) side setbacks of 4 ft. and 5 ft. in lieu of the required 10 ft. each; and
c) rear setback of 5 ft. in lieu of the required 30 ft.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- The Board reviewed the history of this matter. The owners began building on the property without the proper permits or zoning relief.
- The Board reviewed the testimony they heard. The property's zoning was changed. The Owners testified they didn't know the zoning had changed. The Community Association was responsible for requesting that the zoning on this property change in keeping with the rest of the neighboring community.
- The Board reviewed the standards for granting the Petition for Variance as required by *Cromwell v. Ward*.
- The Board determined that this property does not meet the uniqueness standards in *Cromwell* because there is nothing unique about the shape or topography of the lot.
- The Board reviewed that *Cromwell* does not require the Board to determine if there is practical difficulty if the property is not unique, however, for the sake of argument, they reviewed the practical difficulty standard. The Board determined that any practical difficulty in this matter is self-imposed.
- The Board reviewed that *Cromwell* explains that any self-imposed practical difficulty does not meet the standard for the granting of a variance.

CONCLUSION: After thorough review of the facts, testimony, and law in the matter, the Board unanimously agreed to DENY the Petition for Variance.

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

Respectfully Submitted,

_____/s
Sunny Cannington



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 17, 2021

NOTICE OF DELIBERATION

IN THE MATTER OF:

20-121-A

R.J. & Susinn Tosato – Legal Owners
Robert Griffin – Contract Purchaser
3941 North Point Road
15th Election District; 7th Councilmanic District

Re: Petition for Variance pursuant to BCZR § 1B02.3.C.1 to allow an existing dwelling to remain (partially constructed, building permits not obtained in advance):

- on a lot with a lot width of 50 ft in lieu of the required 55 ft.; and
- side setbacks of 4 ft. and 5 ft. in lieu of the required 10 ft. each; and
- rear setback of 5 ft. in lieu of the required 30 ft.

10/14/2020 Opinion and Order of the Administrative Law Judge wherein the Petition for Variance was DENIED.

This matter having been heard and concluded on March 11, 2021, a public deliberation has been

ASSIGNED FOR:

APRIL 22, 2021, AT 9:00 A.M.

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

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

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

Krysundra Cannington, Administrator

c. Petitioner/Legal Owner

: R.J. and Susinn Tosato

Petitioner/Contract Purchaser

: Robert Griffin

Protestants

: Robert Zacherl, President of the Wells McComas
Citizens Improvement Association; Joyce Cook

Office of People's Counsel
Steve Lafferty, Director/Department of Planning
James R. Benjamin, Jr., County Attorney

Paul M. Mayhew, Managing Administrative Law Judge
C. Pete Gutwald, Director/PAI
Nancy C. West, Assistant County Attorney



Board of Appeals of Baltimore County

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

January 14, 2021

NOTICE OF ASSIGNMENT

IN THE MATTER OF:

20-121-A

R.J. & Susinn Tosato – Legal Owners
Robert Griffin – Contract Purchaser
3941 North Point Road
15th Election District; 7th Councilmanic District

Re: Petition for Variance pursuant to BCZR § 1B02.3.C.1 to allow an existing dwelling to remain (partially constructed, building permits not obtained in advance):

- on a lot with a lot width of 50 ft in lieu of the required 55 ft.; and
- side setbacks of 4 ft. and 5 ft. in lieu of the required 10 ft. each; and
- rear setback of 5 ft. in lieu of the required 30 ft.

10/14/2020 Opinion and Order of the Administrative Law Judge wherein the Petition for Variance was DENIED.

ASSIGNED FOR: **MARCH 11, 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 computer or smart device, please contact our office for the call-in information the day before the scheduled hearing.

Krysundra Cannington, Administrator

Notice of Assignment

In the matter of: R.J. and Susinn Tosato – Legal Owners

Robert Griffin – Contract Purchaser

Case number: 20-121-A

January 14, 2021

Page 2

c.	Petitioner/Legal Owner	: R.J. and Susinn Tosato
	Petitioner/Contract Purchaser	: Robert Griffin
	Protestants	: Robert Zacherl, President of the Wells McComas Citizens Improvement Association; Joyce Cook

Office of People's Counsel

Paul M. Mayhew, Managing Administrative Law Judge

C. Pete Gutwald, Director/Department of Planning

Lionel van Dommelen, Chief of Code Enforcement

Michael D. Mallinoff, Director/PAI

Nancy C. West, Assistant County Attorney/Office of Law

James R. Benjamin, Jr., County Attorney/Office of Law

**IN RE: PETITION FOR VARIANCE
(3941 North Point Road)**

15th Election District

4th Council District

RJ & Susinn Tosato

Legal Owners

Robert Griffin

Contract Purchaser

Petitioners

*

*

*

*

*

BEFORE THE

OFFICE OF ADMINISTRATIVE

HEARINGS FOR

BALTIMORE COUNTY

CASE NO. 2020-0121-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Variance filed by RJ and Susinn Tosato, Legal Owners and Robert Griffin, Contract Purchaser for property located at 3941 North Point Road. The Petitioner is requesting variance relief from the Baltimore county Zoning Regulations ("BCZR") § 1B02.3.C.1, to allow an existing dwelling to remain (partially constructed, building permits not obtained in advance) on a lot with a lot width of 50 ft. in lieu of the required 55 ft., side setbacks of 4 ft. and 5 ft. in lieu of the required 10 ft. each, and rear setback of 5 ft. in lieu of the required 30 ft.

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 11.

Substantive Zoning Advisory Committee ("ZAC") comment was received from the Department of Environmental Protection and Sustainability ("DEPS") which indicates that the subject property is located within the Chesapeake Bay Critical Area ("CBCA"). A ZAC comment was also received from the Department of Planning ("DOP"). They oppose the request.

RJ and Susinn Tosato and Robert Griffin appeared in support of the petitions. Robert

ORDER RECEIVED FOR FILING

Date 10/14/20

By D. Magon

Zacherl, the President of the Wells McComas Citizens Improvement Association appeared in opposition and submitted a community petition opposing the requested variance relief. (Protestants' Exhibit 1).

The subject property is approximately 6500 square feet and is zoned DR 5.5. A code enforcement citation is pending because Petitioners conducted extensive construction of a pole barn building on the site without obtaining any building permits. Petitioners now seek substantial variance relief for the building. Petitioners testified that when they purchased the property in 2012 it was zoned ML. Mr. Tosato testified that at the time he was informed by the zoning office that he needed to maintain only 3 ft. setbacks from all property lines. He further testified that he was unaware that the property had been rezoned DR 5.5 in 2016. He also testified that he didn't think he needed any building permits because he was constructing a pre-fab building. He testified that his father is building the structure as a residence. He acknowledged that there is nothing unique about the lot that would differentiate it from other lots on the street.

The general rule is that "the authority to grant a variance should be exercised sparingly and only under exceptional circumstances." *Mueller v. People's Counsel for Baltimore County*, 177 Md. App. 43, 71(2007). This is because "a variance is an authorization for that which is prohibited by a zoning ordinance." *Cromwell v. Ward*, 102 Md. App. 691, 699 (1995), and because "citizens [of a given county or municipality] are entitled to strict enforcement of the existing zoning regulations." *Salisbury Bd. Of Zoning Appeals v. Bounds*, 240 Md. 547, 555-56 (1965). Therefore, "[t]he burden is on the applicant to show facts to warrant a variance," and "the specific need for the variance must be substantial and urgent and not merely for the convenience of the applicant." *Mueller v. People's Counsel for Baltimore County*, 177 Md. App. at 70.

Under BCZR § 307, and Maryland common law, in order to be entitled to variance relief

ORDER RECEIVED FOR FILING

Date

10/14/20

By

D. Magnon

the Petitioners must satisfy a two-step legal analysis, 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 is what necessitates the requested variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, supra. Finally, “unless there is a finding that the property is unique, unusual, or different, the process stops here and the variance is denied without any consideration of practical difficulty or unreasonable hardship.” *Mueller, supra*, 177 Md. App. at 70.

At the hearing the undersigned asked the Petitioner directly whether there is anything unique about his property as compared with the surrounding properties. To his credit, Mr. Tosato was forthright in conceding that there is not. The Petitioners have therefore failed to meet the first prong of the legal analysis. Further, even if I were to reach the second prong, the record evidence does not support a finding that Petitioners’ need for this variance is “substantial and urgent.” In the instant case, the hardship arises out of the Petitioner’s own disregard of the building permit process. A “self-created” hardship is not a proper justification for granting a variance. *Mueller, supra*, 177 Md. App. at 90-91. While I am somewhat sympathetic to the financial hardship this denial will cause the Petitioners, the law does not allow me to grant the requested variances. To the contrary, the neighboring property owners are entitled to “strict enforcement of the existing zoning regulations.” *Salisbury Bd. Of Zoning Appeals v. Bounds*, 240 Md. 547, 555-56 (1965).

THEREFORE, IT IS ORDERED, this **14th** day of **October 2020**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to the Baltimore County Zoning Regulations § 1B02.3.C.1, to allow an existing dwelling to remain (partially constructed, building permits not obtained in advance) on a lot with a lot width of 50 ft. in lieu of the required 55 ft., side setbacks of 4 ft. and 5 ft. in lieu of the required 10 ft. each, and rear setback of 5 ft. in

ORDER RECEIVED FOR FILING

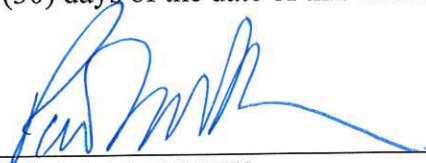
Date

By

10/14/20
D. Mignon

lieu of the required 30 ft. 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/dlm

ORDER RECEIVED FOR FILING

Date

10/14/20

By

J. Mignone



JOHN A. OLSZEWSKI, JR.
County Executive

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

October 13, 2020

RJ & Susinn Tosato
123 Breakwater Court
Joppa, MD 21085

RE: Petition for Variance
Case No. 2020-0121-A
Property: 3941 North Point Road

Dear Mr. and Ms. Tosato:

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

Pursuant to Baltimore County Code § 32-3-401(a), "a person aggrieved or feeling aggrieved" by this Decision and Order may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Office of Administrative Hearings at 410-887-3868.

Sincerely,

A handwritten signature in cursive script that reads "Paul M. Mayhew".

PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM:dlm
Enclosure

c: Robert Griffin, 4227 Silver Spring road, Perry Hall, MD 21128
Robert Zacherl, Street Traffic Studies, LTD, 400 Crain Highway, N.
Glen Burnie, MD 21061
Joyce Cook, 3937 North Point Road, Baltimore, MD 21222
Code Enforcement

✓ltr
✓order

10/13/20

CASE NO. 2020-

0121-A

CHECKLIST

Comment
Received

Department

Support/Oppose/
Conditions/
Comments/
No Comment

DEVELOPMENT PLANS REVIEW

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

6/17

DEPS

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

Comment
critical
area

FIRE DEPARTMENT

4/8

PLANNING

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

Objects
Comments

STATE HIGHWAY ADMINISTRATION

TRAFFIC ENGINEERING

COMMUNITY ASSOCIATION

ADJACENT PROPERTY OWNERS

*ltr. From neighbor
Opposing*

Code
ZONING VIOLATION

(Case No. attached)

PRIOR ZONING

(Case No. _____)

NEWSPAPER ADVERTISEMENT

Date:

SIGN POSTING (1st)

Date:

9/21/20

by Bruce Daax

SIGN POSTING (2nd)

Date:

10/11/20

by "

PEOPLE'S COUNSEL APPEARANCE

Yes



No



PEOPLE'S COUNSEL COMMENT LETTER

Yes



No



Comments, if any:

Note From Jason Seidman
Zoning Review

Donna Mignon

From: Donna Mignon
Sent: Monday, October 26, 2020 12:51 PM
To: 'tkotroco@gmail.com'
Subject: Case No: 2020-0121-A
Attachments: 2020-0121-A.pdf

Good Afternoon Tim,
Paul asked me to send you the attached. Thanks.
If you need anything else, please let me know.
Have a great day.

Donna Mignon, Legal Assistant
Baltimore County Office of Administrative Hearings
105 West Chesapeake Avenue, Suite 103
Towson, Maryland 21204
410-887-3868

Real Property Data Search (w4)

Search Result for BALTIMORE COUNTY

View Map	View GroundRent Redemption	View GroundRent Registration
Special Tax Recapture: None		
Account Identifier: District - 15 Account Number - 1506572572		
Owner Information		
Owner Name:	TOSATO RJ TOSATO SUSINN A	Use: Principal Residence: COMMERCIAL NO
Mailing Address:	123 BREAKWATER COURT JOPPA MD 21085-	Deed Reference: /32873/ 00057
Location & Structure Information		
Premises Address:	OLD NORTH POINT RD BALTIMORE 21222-	Legal Description: LT WS OLD NORTH PT R 400 N OLD BATTLE GR RD CHAS SCHMIDT PLAT
Map:	Grid:	Parcel:
0104	0008	0085
Neighborhood:	Subdivision:	Section:
30000.04	0000	
Block:	Lot:	Assessment Year:
	X	2018
Plat No:	Plat Ref:	
Town: None		
Primary Structure Built	Above Grade Living Area	Finished Basement Area
	6,500 SF	County Use
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:	29,200	32,500
Improvements	0	0
Total:	29,200	32,500
Preferential Land:	0	0
		31,400
		32,500
Transfer Information		
Seller: HACKNEY EDGAR	Date: 12/06/2012	Price: \$30,000
Type: ARMS LENGTH VACANT	Deed1: /32873/ 00057	Deed2:
Seller: SLIMMER CARNES LOUIS	Date: 11/17/1994	Price: \$5,000
Type: ARMS LENGTH VACANT	Deed1: /10834/ 00011	Deed2:
Seller: NICELY LEONARD ELWOOD, JR	Date: 08/23/1976	Price: \$0
Type: NON-ARMS LENGTH OTHER	Deed1: /05660/ 00517	Deed2:
Exemption Information		
Partial Exempt Assessments:	Class	07/01/2019
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:		

1. This screen allows you to search the Real Property database and display property records.

0032873 0571

AFTER RECORDING RETURN TO:
RJ Tosato
123 Breakwater Court
Joppa, MD 21085
Tax ID#: 15-06-572572

DOCUMENT PREPARED BY:
Sage Title Group, LLC
1208 Light Street
Suite 1
Baltimore, MD 21230
File Number: 85548BACS

This Deed, MADE THIS 8th day of November 2012, by and between **Edgar Hackney**, party of the first part, and **RJ Tosato and Susinn A. Tosato**, parties of the second part.

WITNESSETH, That in consideration of the sum of **THIRTY THOUSAND AND 00/100 DOLLARS (\$30,000.00)**, the receipt of which is hereby acknowledged, the said party of the first part does grant and convey to the said parties 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:

BEGINNING for the same at the intersection of North Point Road with the northwest side of an avenue 17.50 feet wide as laid out on the plat of subdivision of the property of Charles Schmidt, said point of beginning being 182.25 feet northwesterly measured along the southwest side of the North Point Road from the southeast outline of the whole tract of land of which the lot now being described is a part and running thence binding on the southwest side of the North Point Road North 48 degrees West fifty feet to the division line between Lots 4 and 5 on the Plat of the Subdivision of Charles Schmidt's property, thence leaving the North Point Road and binding on said division line south 42 degrees west one hundred and thirty feet thence running parallel with the North Point Road South 48 degrees east forty-seven and sixty-eight one hundredths feet to the northwest side of the 17.50 foot avenue above referred to and thence running and binding on the northwest side of said 17.50 foot avenue north 43 degrees 02 minutes east one hundred and thirty and two one-hundredths feet to the beginning.

The improvements thereon being known as Old North Point Road, Baltimore, Maryland 21222.

Tax ID#: 15-06-572572

BEING the same property which by deed dated November 9, 1994 and recorded among the Land Records of Baltimore County, Maryland in Liber No. 10834, folio 11, was granted and conveyed by Barbara Jean Slimmer unto Edgar Hackney and Linda M. Hackney. The said Linda M. Hackney died on or about December 31, 2005, thereby vesting title in the said Edgar Hackney as surviving tenant by the entirety.

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.

2020-0121-A



JOHN A. OLSZEWSKI, JR.
County Executive

MICHAEL D. MALLINOFF, *Director*
Department of Permits,
Approvals & Inspections

September 14, 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: 2020-0121-A

3941 North Point Road

Southwest side of North Point Road, south east of intersection with Raymond Avenue
15th Election District – 4th Councilmanic District

Legal Owners: RJ & Susinn Tosato

Contract Purchaser/Lessee: Robert Griffin

Variance to allow an existing dwelling to remain (partially constructed, building permits not obtained in advance) on a lot with a lot width of 50 ft. in lieu of the required 55 ft., side setbacks of 4 ft. and 5 ft. in lieu of the required 10 ft. each, and rear setback of 5 ft. in lieu of the required 30 ft.

Hearing: Tuesday, October 13, 2020 at 10:00 a.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.

A handwritten signature in black ink, appearing to read "Michael Mallinoff".

Michael Mallinoff
Director

MM:kl

C: Robert Griffin, 4227 Silver Spring Road, Perryhall 21128
Mr. & Mrs. Tosato, 123 Breakwater Court, Joppa 21085

NOTES: (1) THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY WED., SEPTEMBER 23, 2020

TO: THE DAILY RECORD
Wednesday, September 23, 2020 - Issue

Please forward billing to:
Robert Griffin
4227 Silver Spring Road
Perry Hall, MD 21128

410-404-5769

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: 2020-0121-A

3941 North Point Road

Southwest side of North Point Road, south east of intersection with Raymond Avenue

15th Election District – 4th Councilmanic District

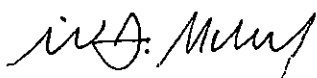
Legal Owners: RJ & Susinn Tosato

Contract Purchaser/Lessee: Robert Griffin

Variance to allow an existing dwelling to remain (partially constructed, building permits not obtained in advance) on a lot with a lot width of 50 ft. in lieu of the required 55 ft., side setbacks of 4 ft. and 5 ft. in lieu of the required 10 ft. each, and rear setback of 5 ft. in lieu of the required 30 ft.

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Michael Mallinoff
Director of Permits, Approvals and Inspections for Baltimore County



JOHN A. OLSZEWSKI, JR.
County Executive

MICHAEL D. MALLINOFF, *Director*
Department of Permits,
Approvals & Inspections

October 5, 2020

Robert Griffin,
4227 Silver Spring Road
Perry Hall MD 21128

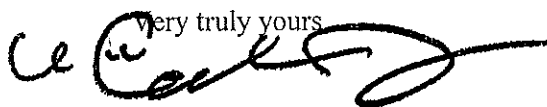
RE: Case Number: 2020-0121-A, 3941 North Point Road

To Whom It May Concern:

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits, Approvals, and Inspection (PAI) on May 21, 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

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



RECEIVED

JUN 18 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: June 17, 2020

SUBJECT: DEPS Comment for Zoning Item # 2020-0121-A
Address 3941 North Point Road
(Tosato Property)

Zoning Advisory Committee Meeting of **June 8, 2020.**

The subject property is located within the Chesapeake Bay Critical Area. According to BCZR Section 500.14, no decision shall be rendered on any petition for special exception, zoning variance, or zoning special hearing for a property within the Critical Area until the Department of Environmental Protection and Sustainability (EPS) has provided written recommendations describing how the proposed request would:

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 lot coverage requirements. Critical Area lot coverage differs from BCZR lot coverage and is defined in Natural Resources Article §8-1802(a)(17), as follows:

(17) (i) "Lot coverage" means that percentage of total lot or parcel that is:

- 1. Occupied by a structure, parking area, driveway, walkway, or roadway; or*
- 2. Covered with gravel, stone, shell impermeable decking, a paver, permeable pavement, or any manmade material*

(ii) "Lot coverage" includes the ground area covered or occupied by a stairway or impermeable deck.

(iii) "Lot coverage" does not include:

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE MEMORANDUM

TO: Michael D. Mallinoff
Director, Department of Permits, Approvals and Inspections

DATE: 6/8/2020

FROM: C. Pete Gutwald
Director, Department of Planning

SUBJECT: ZONING ADVISORY COMMITTEE COMMENTS
Case Number: 20-121

INFORMATION:

Property Address: 3941 North Point Road
Petitioner: R.J. Tosato, Susinn Tosato
Zoning: DR 5.5
Requested Action: Variance

The Department of Planning has reviewed the petition for a Variance from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations to allow an existing dwelling to remain (partially constructed, building permits not obtained in advance) on a lot width of 50 feet in lieu of the required 55 feet, side setbacks of 4 feet and 5 feet in lieu of the required 10 feet each, and a rear setback of 5 feet in lieu of the required 30 feet.

The property is located along North Point Road between North Point Boulevard and the Beltway. The property is zoned DR 5.5 and is bordered by DR 5.5 zoning to the northwest and northeast, and ML IM zoning to the southwest and southeast.

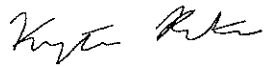
A code complaint was filed (Record CB2000071) for constructing a large building without permits. Aerial imagery shows that the property has historically been used for storing boats and other vehicles, at least since 2014.

A site visit was conducted on 6/2/2020. A large wood-frame structure has been framed and is under construction. The structure is quite large, 6,500 sq. ft. While there are a number of properties that have garages and barns in the immediate area, they are much smaller and generally behind existing homes. Given the size of the structure and it being the primary building on the lot, the structure is not compatible with the neighborhood.

Given the code complaint, size of the structure, and lack of neighborhood compatibility, the Department of Planning does not recommend approval of the variance request.

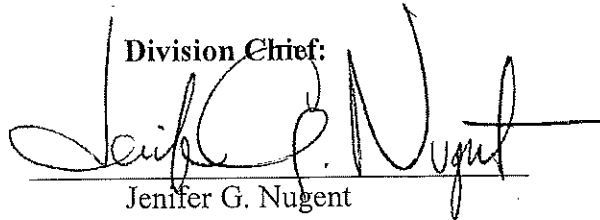
For further information concerning the matters stated herein, please contact Joseph Fraker at 410-887-3480.

Prepared by:



Krystle Patchak

Division Chief:



Jenifer G. Nugent

CPG/JGN/kma/

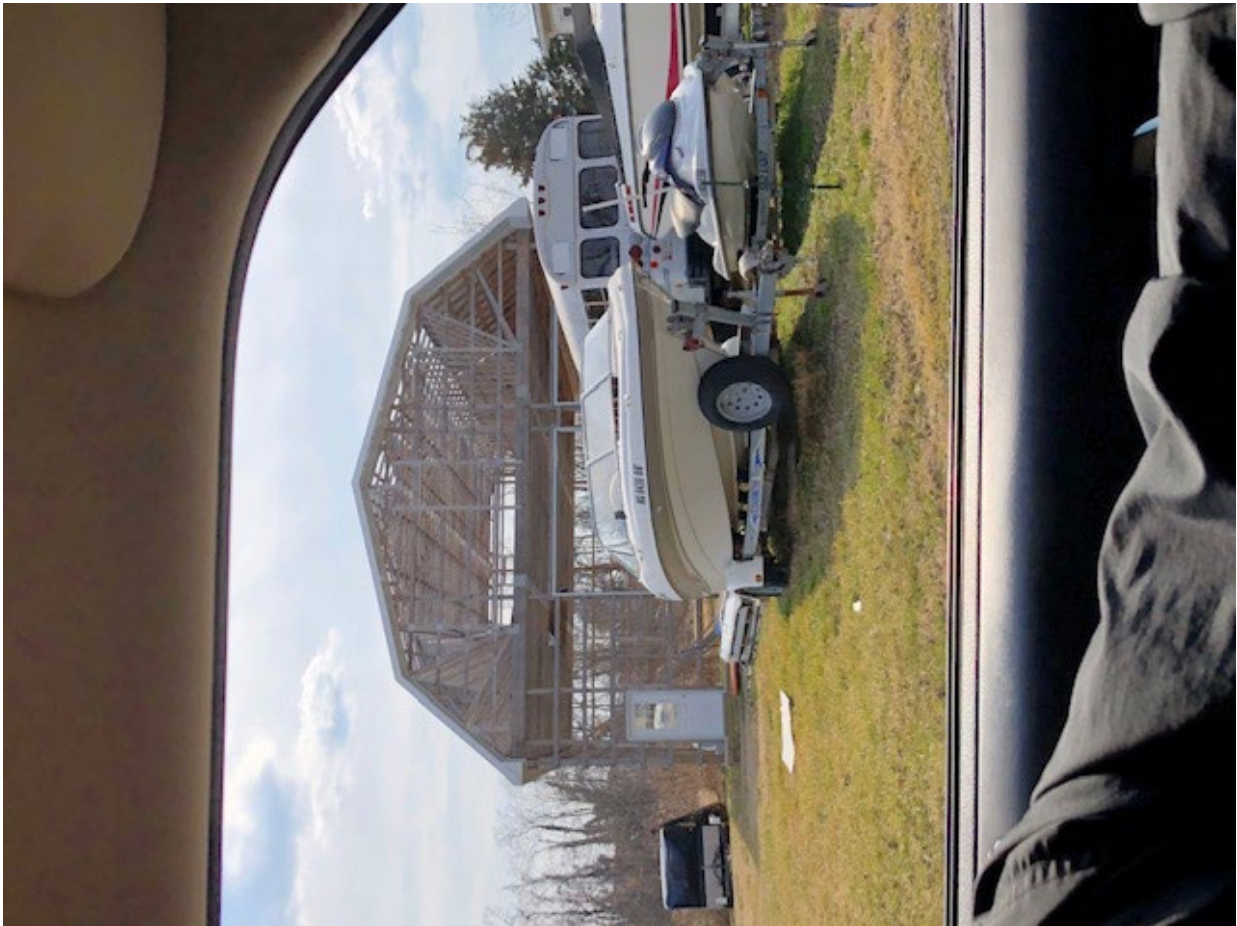
c: Joseph Fraker
R.J. & Susinn Tosato
Office of the Administrative Hearings
People's Counsel for Baltimore County

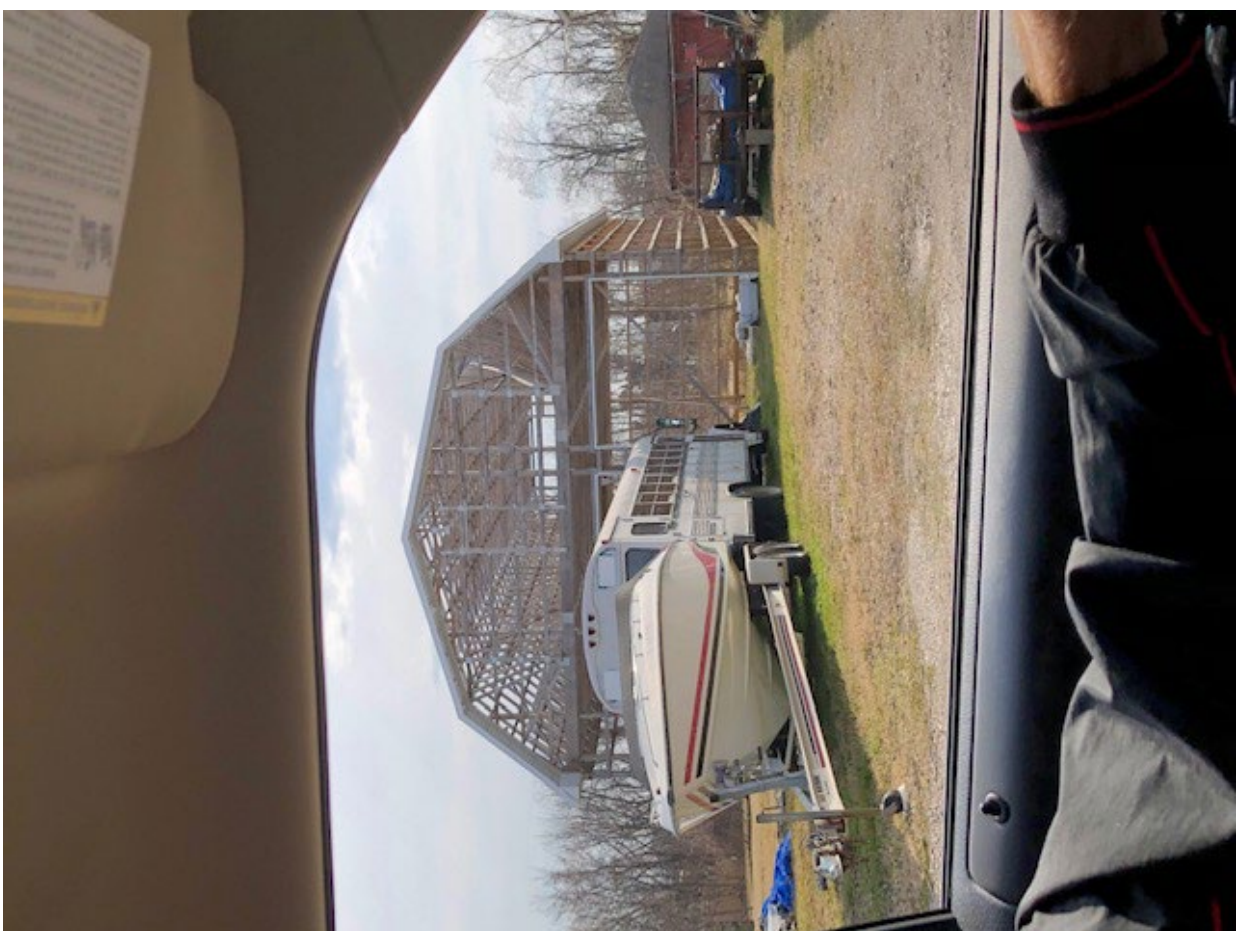
From: [Robert Zacherl](#)
To: [Appeals Board](#)
Cc: kcaddington@baltimorecountymd.gov
Subject: Case No.2020-0121-A
Date: Tuesday, March 9, 2021 3:03:17 PM

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

Attached are a few pictures of the Pole Barn, showing it's height of 27' and it's proximity to the adjacent property owners fence and shed.

Sincerely,
Robert Zacherl







Sent from my iPhone

From: [Robert Zacherl](#)
To: [Peoples Counsel](#); [Appeals Board](#)
Cc: [jcook0504@yahoo.com](#); [Steve Lafferty](#)
Subject: RE: RJ & Susinn Tosato - 3941 North Point Road - Case No 2020-121-A
Date: Friday, March 5, 2021 11:59:45 AM

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

To all,

Just for clarification to Mr. Zimmerman's Letter, the structure is 27' tall at the peak. I measured it myself from the neighbor's property.

Sincerely,

Robert Zacherl
President,
Wells McComas Citizens Improvement Association

From: Peoples Counsel <peoplescounsel@baltimorecountymd.gov>
Sent: Tuesday, March 2, 2021 12:09 PM
To: Appeals Board <appealsboard@baltimorecountymd.gov>
Cc: rgriffin552123@comcast.net; tosato@comcast.net; Robert Zacherl <rzacherl@streettrafficstudies.com>; jcook0504@yahoo.com; Steve Lafferty <slafferty@baltimorecountymd.gov>
Subject: RJ & Susinn Tosato - 3941 North Point Road - Case No 2020-121-A

Good Afternoon,

Enclosed for filing, please find a letter from our office relating to the above-referenced case.

Thank you for your consideration.

Rebecca M. Wheatley, Legal Secretary
Office of People's Counsel
105 W. Chesapeake Avenue, Suite 204
Towson, Maryland 21204
410-887-2188



CONNECT WITH BALTIMORE COUNTY



www.baltimorecountymd.gov

Exhibit Sheet

Petitioner/Developer

Protestants

No. 1	Photo	Petition Signed by Joy Cook and Neighbors
No. 2	Photo	Email from Robert Zacherl, President of W.M.C.I.A
No. 3	Photo	
No. 4	Photo	
No. 5	Photo	
No. 6	Photo	
No. 7	Photo	
No. 8	Photo	
No. 9	Photo	
No. 10	Photo	
No. 11	Site Plan	
No. 12		

To: BALTIMORE COUNTY ADMINISTRATIVE LAW JUDGE

RE: ZONING CASE No. 2020-0121-A

3941 North Point Road

We the undersigned, respectfully request the Administrative Law Judge to deny the property owners request to be granted multiple variances for side setbacks as well as a rear setback for his partially completed building. The owner should have been well aware that variances and permits were required prior to beginning work on this building. He stated to a neighbor prior to the start of construction that "I do not need a permit" when he was asked if he acquired one. This owner, over the last several years has not been a very good neighbor, he has refused to mow the property and our Community Association (Wells McComas Citizens Improvement Association) has had to file multiple complaints with Code Enforcement to get the weeds and grass cut.

In our opinion, this property owner has chosen to circumvent County regulations and should not be rewarded for it. The size and location is very detrimental to his neighbors. Again, we urge you to deny the Variance requests.

NAME AND SIGNATURE:	ADDRESS:	YEARS AT ADDRESS:	PHONE/EMAIL:
Joy Cook Joy Cook	3937 North Point Rd	19	410-241-9357 jcook0504@yahoo.com
Tammy Lewis Tammy Lewis	3935 North Point Rd	20	410-982-3009 tammy3935@comcast.net
Tim Miskimon Karen Miskimon	3921 North Point Rd	50	410-477-4940
Karen Miskimon Karen Miskimon	3921 North Point Rd 21222	6	443-722-9272 k5ki1457@verizon.net
Kerri Laird Kerri Laird	3921 North Point Rd. Dundalk 21222	1	(410) 941-4505 blastcheer729@verizon.net
Nancy Fram Nancy Fram	3938 North Point Rd Dundalk 21222	23	410-236-2991 nfram51@gmail.com
Timothy Bryan Timothy Bryan	3943 North Point Rd	1	443-519-2520 tim042671h@gmail.com
Beth Hoefler Beth Hoefler	3939 North Point Rd	24	410-404-0811 mbshoeffler@comcast.net
Scott Ey Scott Ey	8000 Bletzer Rd	39	
Liz Fisher Liz Fisher	8109 Raymond Rd	25	410-388-2130 efisher31@verizon.net

From: [Robert Zacherl](#)
To: [Appeals Board](#)
Subject: FW: Case no 2020-0121-A
Date: Tuesday, March 9, 2021 7:01:49 AM
Attachments: [20210309070210131.pdf](#)

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

Appeals Board,

Below is a letter from Mr. and Mrs. Michael Hoeffler who live next door to the site of the Pole Barn, they asked me to forward this to you. Also included is their original letter to the Administrative Law Judge from October. Attached is a Neighborhood Petition that was signed by the neighbors in the immediate area of the Pole Barn.

Thank you,

Rob Zacherl
President
Wells McComas Citizens Improvement Association

From: Beth Hoeffler <mbshoeffler@comcast.net>
Sent: Saturday, March 6, 2021 11:24 AM
To: Appealsboard@baltimorecountymd.gov; Robert Zacherl <rzacherl@streettrafficstudies.com>; Joy Cook <jcook0504@yahoo.com>
Subject: Fwd: Case no 2020-0121-A

Good morning,

I am writing in reference to case 2030-0121-A.

I am forwarding the information I shared with you back in October 2020, giving you the many reasons this property should not be granted any variances, and the very large and dangerous structure should be torn down. In addition to all those, I would like to add that during the many weather events we have had this season, the ice and snow build up, and thaw has become very dangerous for our dogs. I have seen very large pieces of ice slide off that roof into my yard and almost kill my dogs. Thank you for your time, and consideration through this appeal process.

Michael and Elizabeth Hoeffler

3939 North Point Rd
Baltimore MD 21222
410-404-0811

Sent from my iPhone

Begin forwarded message:

From: Beth Hoeffler <mbshoeffler@comcast.net>

Date: October 7, 2020 at 8:27:03 PM EDT

To: administrativehearings@baltimorecountymd.gov

Subject: Case no 2020-0121-A

Hello Your Honor,

I am Elizabeth Hoeffler. I live at 3939 North Point Rd, next to 3941 North Point rd, which is the address in question for the Case no. 2020-0121-A. Unfortunately, I will not be able to attend the hearing for this case on Tuesday October 13, 2020 at 10:00am. I have a young child, who has learning disabilities, and will be in the middle of virtual learning at the time. I was advised by our community association president, Robert Zacherl, that I should send you an email listing our reasons why we do not want the pole barn variances approved on 3941 North Point rd.

1. No permit was obtained from Baltimore county, prior to the frame being erected. My husband Michael Hoeffler spoke to Mr. Tosado the day all the supplies were delivered. He questioned Mr. Tosado if he had a permit, and Mr. Tosado replied "I do not need a permit".
2. No setbacks were followed during the build. The setback between our property at 3939 and Mr. Tosado's structure at 3941 is currently 3 feet. Because it is so close, every time it rains, we have water pouring off the roof of the pole barn onto our property. In addition, I do not believe there is enough room for a fire break between our property and this structure.
3. Myself, as well as many other neighbors are concerned about our property values being reduced significantly because of this structure.
4. From what I understand there is an easement on that property at 3941, that is owned by a business called Fence Fair, which is behind our properties, as well as a field that is also owned by Fence Fair. I have lived at 3939 since 1996. In that time, the field has caught on fire, twice. The fire department accessed the field both times byway of that easement.
5. I have been advised by a friend who knows Mr. Tosado, that he is talking about renting out rooms when this pole barn gets done. We are very concerned because, there is no water or sewage on his property. In addition, as I stated before, we have a young child, and there are several other children in the neighborhood. This concerns us because, we do not know who he would be renting to. We have dealt with, for many years, unsavory characters ie. (Drug addicts) roaming the neighborhood. The neighborhood has had enough, dealing with the drug addicts and the Methadone clinic at 3955 North Point rd.
6. I do not believe a survey was obtained.
7. The structure is too large for the property.

8. Broken down untagged vehicles on the property.

Please, feel free to contact me if you need any further information.

Thank you for your help and service to our county,

Elizabeth and Michael Hoeffler

3939 North Point rd

Baltimore, Md. 21222

410-404-0811

Sent from my iPhone

From: [Robert Zacherl](#)
To: [Peoples Counsel](#); [Appeals Board](#)
Cc: [jcook0504@yahoo.com](#); [Steve Lafferty](#)
Subject: RE: RJ & Susinn Tosato - 3941 North Point Road - Case No 2020-121-A
Date: Friday, March 5, 2021 11:59:45 AM

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

To all,

Just for clarification to Mr. Zimmerman's Letter, the structure is 27' tall at the peak. I measured it myself from the neighbor's property.

Sincerely,

Robert Zacherl
President,
Wells McComas Citizens Improvement Association

From: Peoples Counsel <peoplescounsel@baltimorecountymd.gov>
Sent: Tuesday, March 2, 2021 12:09 PM
To: Appeals Board <appealsboard@baltimorecountymd.gov>
Cc: rgriffin552123@comcast.net; tosato@comcast.net; Robert Zacherl <rzacherl@streettrafficstudies.com>; jcook0504@yahoo.com; Steve Lafferty <slafferty@baltimorecountymd.gov>
Subject: RJ & Susinn Tosato - 3941 North Point Road - Case No 2020-121-A

Good Afternoon,

Enclosed for filing, please find a letter from our office relating to the above-referenced case.

Thank you for your consideration.

Rebecca M. Wheatley, Legal Secretary
Office of People's Counsel
105 W. Chesapeake Avenue, Suite 204
Towson, Maryland 21204
410-887-2188



CONNECT WITH BALTIMORE COUNTY



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From: [Robert Zacherl](#)
To: [Appeals Board](#)
Subject: FW: Case No. 2020-0121-A
Date: Tuesday, March 9, 2021 6:50:09 AM

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

Dear Appeals Court Judge,

My name is Robert Zacherl and I am the President of the Wells McComas Citizens Improvement Association in the North Point area of Southeastern Baltimore County. Our Association has been active since 1956 and I have been a member since 1977 and President for 7 years.

On behalf of the neighbors along North Point Road in the area of the 3900 block, the WMCIA respectfully requests that the request for multiple Variances at 3941 North Point Road be denied.

The property owner was approached by Mr. Hoeffler who owns the adjacent home before construction began (there was piles of materials stacked on the property), Mr. Hoeffler asked if the owner had acquired Permits from the County and the property owner replied that he didn't need permits. Rather than call the County and look into the Permitting process, he decided to continue with the project which was shut down by Baltimore County within a few days. We would not have an issue, had this been a small shed or other out building, but this is a huge structure in square footage as well as height that changes the dynamics of the residential area.

Again, our position has not changed in the months since the first Hearing, we respectfully request that the Variances be denied.

Sincerely,

Robert Zacherl
President,
W.M.C.I.A.
410-591-3233



Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

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

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

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

March 2, 2021

SENT VIA EMAIL

Deborah Dopkin, Chair
Board of Appeals of Baltimore County
105 West Chesapeake Avenue, Suite 203
Towson, Maryland 21204

Re: RJ & Susinn Tosato –Legal Owners
Robert Griffin – Contract Purchaser
3941 North Point Road
Case No.: 2020-121-A
Scheduled Virtual Webex Trial Hearing: March 11, 2021

Dear Chair Dopkin,

Consistent with our office's responsibility to defend the comprehensive zoning maps under Baltimore County Charter Sec. 524.1, we have reviewed the record pertinent to this imminent appeal hearing. Based on the documentary and historical facts, we agree with Administrative Law Judge Paul Mayhew's decision that the petition for variances must be denied as a matter of law.

The petition does not meet the relevant standards of uniqueness resulting in practical difficulty under BCZR Sec. 307.1, as explicated in such cases as Cromwell v. Ward 102 Md. App. 691 (1995) and Trinity Assembly of God v. People's Counsel 407 Md. 53 (2008). To begin, the property looks to be fairly average and not unique as relate to potential use. A key point is that the requests for side yard and rear yard variances are extreme. This is due to the disproportionate size, scale, and location of the proposed residence. The rudimentary site plan depicts the structure as occupying 2400 square feet, with five feet or less for the side and rear yard setbacks. The site plan gives no indication of the height, but a photograph shows it to be at least 2 stories. We agree with the Planning Director's June 8, 2020 finding that it is incompatible with the character of the neighborhood, thereby generating adverse impacts.

Unfortunately, the proposed residence was partially constructed prior to proper zoning approval. As ALJ Mayhew says, the premature construction poses a self-created difficulty or hardship. Cromwell is apt on this subject as well. It often happens that initial circumvention of the zoning process involves an excessive and unreasonable use. A petitioner then tries to legitimize the situation after the fact with *post hoc* rationalizations, so as to be rewarded with variances.

Attention should also be paid to the legitimate concerns of the Wells-McComas Citizens Improvement Association and interested neighbors. We note President Robert Zacherl's e-mail, which concludes reasonably,

"We would not have had an issue, had this been a small shed or other out building, but this is a huge structure in square footage as well as height that changes the dynamics of the neighborhood."

Under these circumstances, we submit on the record. We anticipate and expect the material facts elicited at the CBA trial hearing will inevitably corroborate our observations.

Sincerely,



Peter Max Zimmerman

People's Counsel for Baltimore County

PMZ/rmw

cc: Robert Griffin, Contract Purchaser, rgriffin552123@comcast.net RJ
& Susinn Tosato, Property Owners, tosato@comcast.net
Robert Zacherl, Wells McComas Citizen Improvement Association,
rzacherl@streettrafficstudies.com
Joyce Cook, Protestant, jcook0504@yahoo.com
Stephen Lafferty, Director of Planning

R. J. Tosato
Susinn Tosato
123 Breakwater Court
Joppa, MD 21085

November 11, 2020

Office of Administrative Hearings
105 West Chesapeake Avenue, Suite 103
Towson, Maryland 21204
Attn: Judge Paul Mayhew

Re: Notice of Appeal
Case No. 2020-0121-A
3941 North Point Road



Dear Judge Mayhew;

R.J. Tosato and Susinn Tosato (Petitioners) feeling aggrieved by the decision rendered against them, file this Notice of Appeal of the decision of the Office of Administrative Hearings dated October 14th, 2020. Attached to this letter is a copy of the opinion and Order of the Office of Administrative Hearings.

Thank you. A check in the amount of \$300 has been included to cover the cost of this appeal.

Sincerely,

Susinn Tosato

R.J. Tosato

CC: Baltimore County Board of Appeals, 105 W. Chesapeake Ave, Ste 203, Towson MD 21204
Baltimore County Department of PAI, 111 W. Chesapeake Avenue, Towson MD 21204

*w/ check
D. Wiley*



JOHN A. OLSZEWSKI, JR.
County Executive

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

October 13, 2020

RJ & Susinn Tosato
123 Breakwater Court
Joppa, MD 21085

RE: Petition for Variance
Case No. 2020-0121-A
Property: 3941 North Point Road

Dear Mr. and Ms. Tosato:

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

Pursuant to Baltimore County Code § 32-3-401(a), "a person aggrieved or feeling aggrieved" by this Decision and Order may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Office of Administrative Hearings at 410-887-3868.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul M. Mayhew".

PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM:dlm
Enclosure

c: Robert Griffin, 4227 Silver Spring road, Perry Hall, MD 21128
✓ Robert Zacherl, Street Traffic Studies, LTD, 400 Crain Highway, N.
Glen Burnie, MD 21061
Joyce Cook, 3937 North Point Road, Baltimore, MD 21222
Code Enforcement



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 3941 NORTH POINT RD which is presently zoned DR 5.5
 Deed References: 11785:0572 10 Digit Tax Account # 16 06 5 725.72
 Property Owner(s) Printed Name(s) SUSINN TOSATO / RJ TOSATO

(SELECT THE HEARING(S) BY MARKING ☒ AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

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

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

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

3. ☒ a Variance from Section(s)

BCZR: 1B02.3.C.1. -->To allow an existing dwelling to remain (partially constructed, building permits not obtained in advance) on a lot with a lot width of 50 feet in lieu of the required 55 feet, side setbacks of 4 feet and 5 feet in lieu of the required 10 feet each, and a rear setback of 5 feet in lieu of the required 30 feet.

of the
(Indic

If

you need additional space, you may add an attachment to this petition)

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

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

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

Contract Purchaser/Lessee:

Robert Griffin

Name- Type or Print

Robert Griffin

Signature

4227 Silver Spring Rd Perryhall

Mailing Address

City

State

Zip Code

Telephone #

Email Address

Attorney for Petitioner:

Name- Type or Print

Signature

Mailing Address

City

State

Zip Code

Telephone #

Email Address

Zip Code

Telephone #

Email Address

Case Number

Filing Date

Do Not Schedule Dates:

Reviewer

Legal Owners (Petitioners):

RJ Tosato

Name #1 - Type or Print

RJ Tosato

Signature #1

123 Breakwater Ct Joppa Md

Mailing Address

City

State

Zip Code

Telephone #

Email Address

Representative to be contacted:

Name - Type or Print

Signature

Mailing Address

City

State

Zip Code

Telephone #

Email Address

Zip Code

Telephone #

Email Address

Case Number

Filing Date

Do Not Schedule Dates:

Reviewer

REV. 10/4/11



PETITION FOR ZONING HEARING(S)

To be filed with the Department of Permits, Appeals and Inspections

To the Office of Administrative Law of Baltimore County for the property located at:
Address 3941 NORTH POINT RD which is presently zoned DR 5.5
Deed References: 11785-0572 10 Digit Tax Account # 1506572572
Property Owner(s) Printed Name(s) SUSINN TOSATO/RJ TOSATO

(SELECT THE HEARING(S) BY MARKING ☒ AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

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

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Contract Purchaser/Lessee:

Robert Griffin

Name- Type or Print

Robert Griffin

4227 Silver Spring Rd Perryhall

Mailing Address

City

State

Md

211281 410 404 5769

Zip Code

Telephone #

Email Address

Attorney for Petitioner: rgnaffan552103@comcast.net

Name- Type or Print

Signature

Mailing Address

City

State

Zip Code

Telephone #

Email Address

Legal Owners (Petitioners):

RJ Tosato

Name #1 - Type or Print

Susinn Tosato

Name #2 - Type or Print

[Signature]

Signature #1

Susinn Tosato

Signature #2

123 Breakwater Ct Toppa Md

Mailing Address

City

State

210851

Zip Code

Telephone #

Email Address

Representative to be contacted:

Name - Type or Print

Signature

Mailing Address

City

State

Zip Code

Telephone #

Email Address

CASE NUMBER 2020-0121-A

Filing Date 5/21/20

Do Not Schedule Dates: _____

Reviewer JS

Beginning at a point on the Northeast side of North Point Road, which is twenty-four feet wide at 881 feet west of the center line of the nearest improved intersection street named North Point Boulevard which is thirty-two feet wide.

Beginning for the same at the intersection of North Point Road with the northwest side of an avenue 17.50 feet wide as laid out on a plat of subdivision of the property of Charles Schmidt, said point of beginning being 182.25 feet northwesterly measured along the southwest side of the North Point Road from the southeast outline of the whole tract of land of which the lot now being described is a part and running thence binding on the southwest side of the North Point Road North 48 degrees West fifty feet to the division line between Lots 4 and 5 on the Plat of the Subdivision of Charles Schmidt's property, thence leaving the North Point Road and binding on said division line south 42 degrees west one hundred and thirty feet thence running parallel with the North Point Road South 48 degrees east forty-seven and sixty-eight one hundredths feet to the northwest side of the 17.50 foot avenue above referred to and thence running and binding on the northwest side of said 17.50 foot avenue north 43 degrees 02 minutes east one hundred and thirty and two one-hundredths feet to the beginning.

2020-0121 - A

**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/neighbor property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the legal owner/petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least twenty (20) days before the hearing.

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

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

For Newspaper Advertising:

Case Number: 2020-0121-A

Property Address: 3941 NORTH POINT RD

Property Description:

Legal Owners (Petitioners): TOSATO, RJ + SUSINN

Contract Purchaser/Lessee: ROBERT GRIFFIN

PLEASE FORWARD ADVERTISING BILL TO:

Name: ROBERT GRIFFIN

Company/Firm (if applicable):

Address: 4227 SILVER SPRING RD

PERRY HALL, MD 21288

Telephone Number: 410-404-5769

To: BALTIMORE COUNTY ADMINISTRATIVE LAW JUDGE

RE: ZONING CASE No. 2020-0121-A

3941 North Point Road

We the undersigned, respectfully request the Administrative Law Judge to deny the property owners request to be granted multiple variances for side setbacks as well as a rear setback for his partially completed building. The owner should have been well aware that variances and permits were required prior to beginning work on this building. He stated to a neighbor prior to the start of construction that "I do not need a permit" when he was asked if he acquired one. This owner, over the last several years has not been a very good neighbor, he has refused to mow the property and our Community Association (Wells McComas Citizens Improvement Association) has had to file multiple complaints with Code Enforcement to get the weeds and grass cut.

In our opinion, this property owner has chosen to circumvent County regulations and should not be rewarded for it. The size and location is very detrimental to his neighbors. Again, we urge you to deny the Variance requests.

NAME AND SIGNATURE:	ADDRESS:	YEARS AT ADDRESS:	PHONE/EMAIL:
Joy Cook Joy Cook	3937 North Point Rd	19	410-241-9357 JCOOK0504@yahoo.com
Tammy Lewis Tammy Lewis	3935 North Point Rd	20	410-982-3009 tammy3935@comcast.net
Tim Miskimon Tim Miskimon	3921 North Point Rd	50	410-477-4940
Karen Miskimon Karen Miskimon	3921 North Point Rd 21222	6	443-722-9272 K5K11457@verizon.net
Kerni Laird Kerni M. Laird	3921 North Point Rd. Dundalk 21222	1	(410) 961-4505 blastcheer729@verizon.net
Nancy Fram Nancy Fram	3938 North Point Rd Dundalk 21222	23	410-236-2991 NFRAM51@gmail.com
Timothy Ryan Timothy Ryan	3943 North Point Rd	1	443-519-2520 tim042671h@gmail.com
Beth Hoeffler Beth Hoeffler	3939 North Point Rd	24	410-404-0811 mhshoeffler@comcast.net
Scott Ey Scott Ey	8000 Bletzer Rd	39	
Liz Fisher Liz Fisher	8109 Raymond Rd	25	410-388-2150 efisher31@verizon.net

From: [Robert Zacherl](#)
To: [Administrative Hearings](#)
Subject: RE: Case No. 2020-0121-A
Date: Tuesday, October 13, 2020 8:42:15 AM

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

Dear Administrative Hearing Judge,

My name is Robert Zacherl and I am the President of the Wells McComas Citizens Improvement Association in the North Point area of Southeastern Baltimore County. Our Association has been active since 1956 and I have been a member since 1977 and President for 7 years.

On behalf of the neighbors along North Point Road in the area of the 3900 block, the WMCIA respectfully requests that the request for multiple Variances at 3941 North Point Road be denied.

The property owner was approached by Mr. Hoeffler who owns the adjacent home before construction began (there was piles of materials stacked on the property), Mr. Hoeffler asked if the owner had acquired Permits from the County and the property owner replied that he didn't need permits. Rather than call the County and look into the Permitting process, he decided to continue with the project which was shut down by Baltimore County within a few days. We would not have an issue, had this been a small shed or other out building, but this is a huge structure in square footage as well as height that changes the dynamics of the residential area.

Again, we respectfully request that the Variances be denied.

Sincerely,

Robert Zacherl
President,
W.M.C.I.A.

From: Robert Zacherl
Sent: Monday, October 5, 2020 2:23 PM
To: 'administrativehearings@baltimorecountymd.gov'
Subject: Case No. 2019-0121-A

Hi,

I was nice talking to you this afternoon. Here is the picture of the Notice with the 2019 Case number.

Please let me know which is correct.

Rob Zacherl
President,
Wells McComas Citizens Improvement Association

Robert R. Zacherl
Partner
Street Traffic Studies, Ltd.
400 Crain Highway, N.
Glen Burnie, MD 21061
410-590-5500 (Office)
410-591-3233 (Cell)

A Maryland DOT Small Business Certified Company
A Virginia Swam Certified Company













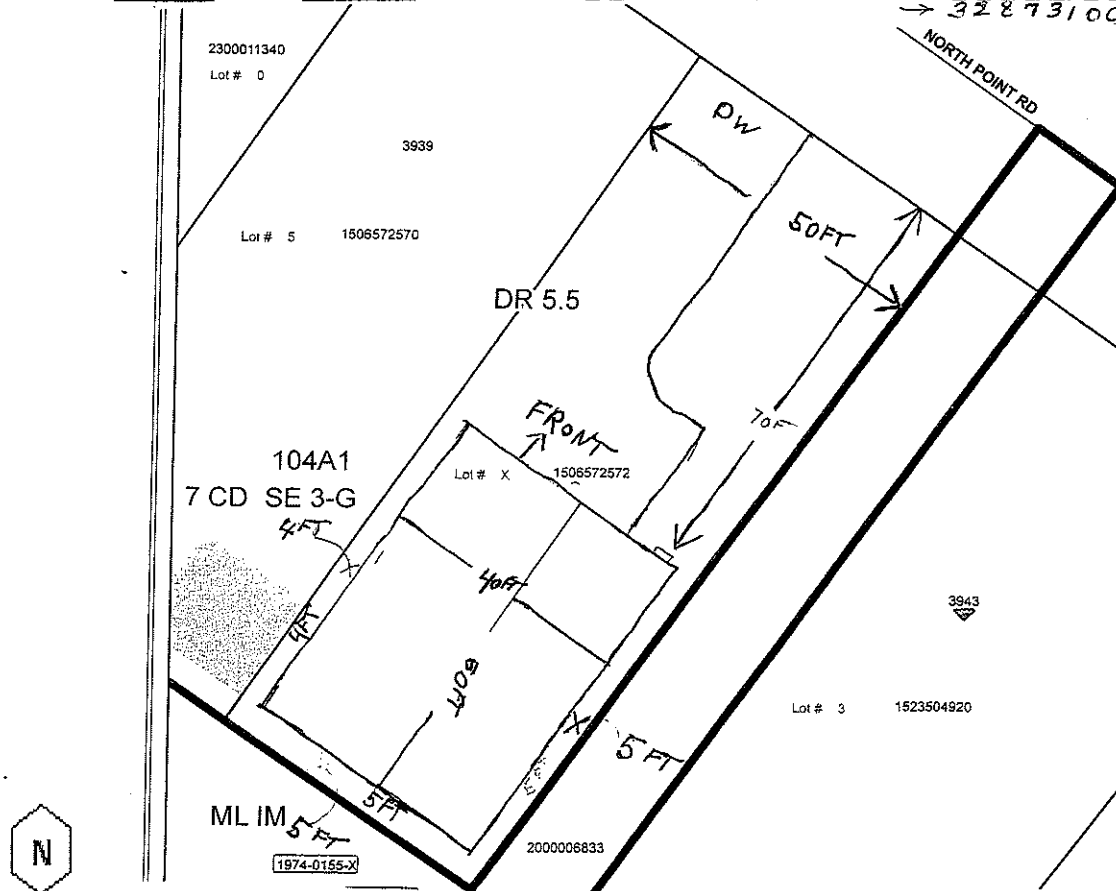






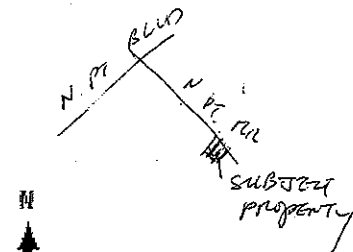


ZONING HEARING PLAN FOR VARIANCE FOR SPECIAL HEARING X (MARK TYPE REQUESTED WITH X)
 ADDRESS 391 Old North Point Rd 21222 OWNER(S) NAME(S) RJ & Susinn Tosato
 SUBDIVISION NAME CHAS SCHMIDT PLAT LOT# X BLOCK# SECTION#
 PLAT BOOK# FOLIO# 10 DIGIT TAX# 1506572572 DEED REF.# SC 328173057
32873100057



PLAN DRAWN BY RJ TOSATO DATE 3/3/2023 SCALE: 1 INCH = 20 FEET

SITE VICINITY MAP



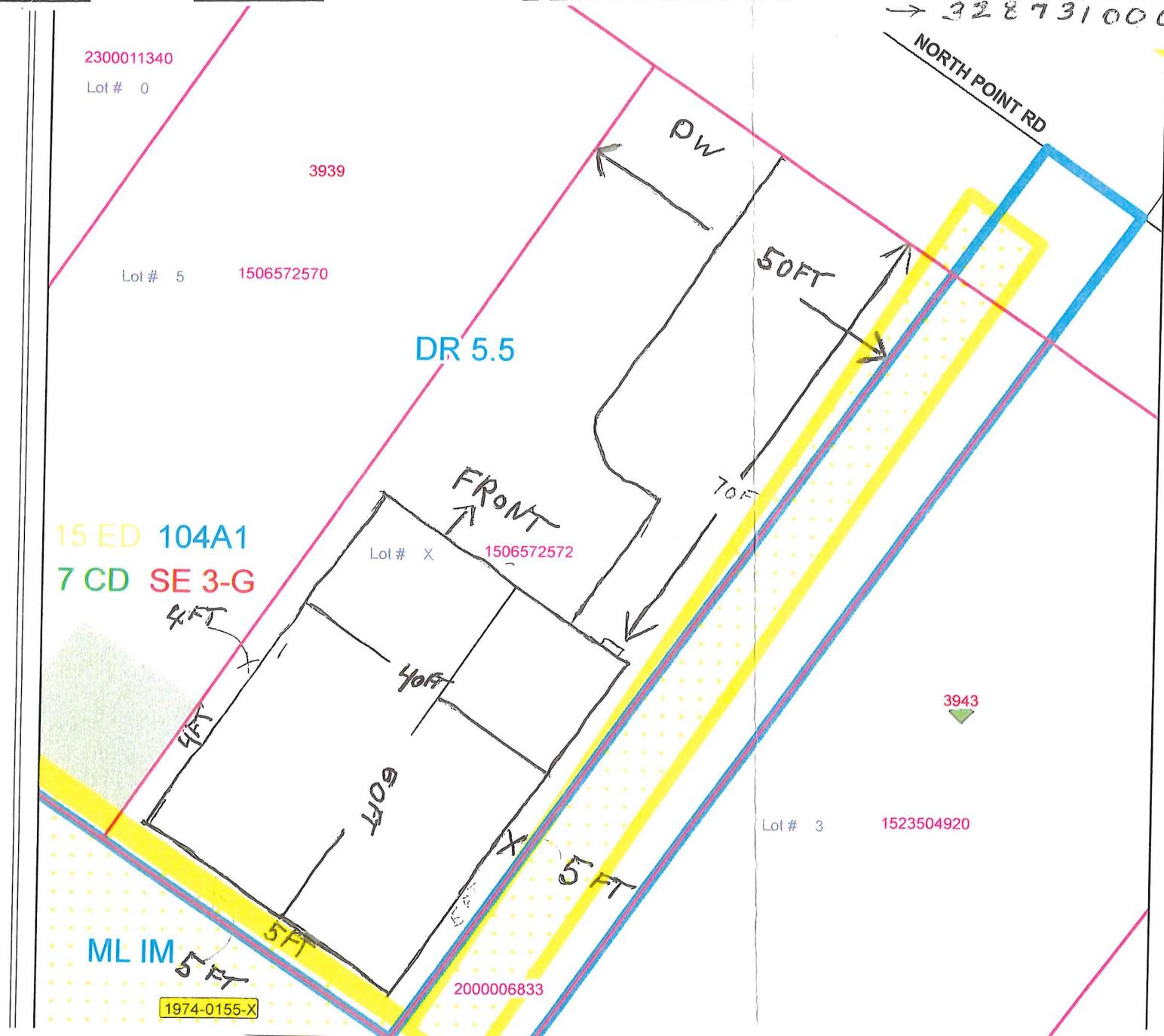
MAP IS NOT TO SCALE
 ZONING MAP# 104-A1
 SITE ZONED DR 5.5
 ELECTION DISTRICT 15
 COUNCIL DISTRICT 7
 LOT AREA ACREAGE
 OR SQUARE FEET 6,500 SF
 HISTORIC? NO
 IN CBCA? NO
 IN FLOOD PLAIN? NO
 UTILITIES? MARK WITH X
 WATER IS:
 PUBLIC X PRIVATE
 SEWER IS:
 PUBLIC X PRIVATE
 PRIOR HEARING? NO
 IF SO GIVE CASE NUMBER
 AND ORDER RESULT BELOW
NO

VIOLATION CASE INFO:

CB2000071

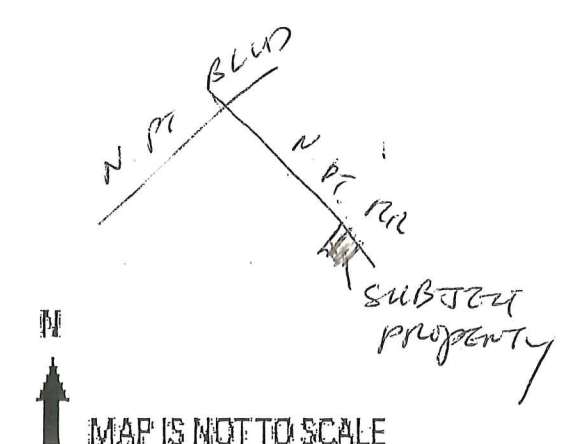
2070-0121-A

ZONING HEARING PLAN FOR VARIANCE _____ FOR SPECIAL HEARING X (MARK TYPE REQUESTED WITH X)
 ADDRESS 3741 Old North Point Rd 21222 OWNER(S) NAME(S) RJ & Susinn Tosato
 SUBDIVISION NAME CHAS SCHMIDT PLAT LOT # X BLOCK # _____ SECTION # _____
 PLAT BOOK # _____ FOLIO # _____ 10 DIGIT TAX # 1506572572 DEED REF. # 32873100057



PLAN DRAWN BY RJ TOSATO DATE 3/3/2020 SCALE: 1 INCH = 20 FEET

SITE VICINITY MAP



MAP IS NOT TO SCALE
 ZONING MAP# 104-A1
 SITE ZONED DR 5.5
 ELECTION DISTRICT 15
 COUNCIL DISTRICT 7
 LOT AREA ACREAGE _____
 OR SQUARE FEET 6,500 SF
 HISTORIC? No
 IN CBCA? No
 IN FLOOD PLAIN? No
 UTILITIES? MARK WITH X
 WATER IS: PUBLIC X PRIVATE _____
 SEWER IS: PUBLIC X PRIVATE _____
 PRIOR HEARING? No
 IF SO GIVE CASE NUMBER
 AND ORDER RESULT BELOW
No

VIOLATION CASE INFO:

CB2000071

2020-0121-A